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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–03–195]

RIN 1625–AA01

Anchorage Grounds; Delaware Bay and River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations that govern Anchorage 5, southeast of Pea Patch Island, due to U.S. Army Corp of Engineers dredging operations in the anchorage. This regulation will help ensure the safety of vessels anchoring in Anchorage 5 while dredging operations are ongoing. Mariners must receive approval from the Captain of the Port Philadelphia before using the anchorage and

DATES: This rule is effective from December 9, 2003, until December 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–195 and are available for inspection or copying at Coast Guard Fifth District, 431 Crawford Street, Portsmouth, Virginia, 23704, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Roger Smith, Coast Guard Fifth District Marine Safety Division, at (757) 398–6389.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. On November 28, 2003, a contractor for the Army Corps of Engineers began conducting dredging operations, which are potentially hazardous to mariners in New Castle Range Ship Channel and in Anchorage 5 southeast of Pea Patch Island. Publishing an NPRM, allowing for a comment period, and/or waiting 30 days after publication before making this regulation effective is impracticable and contrary to public interest. Immediate action is needed to protect mariners against the potential hazards associated with the dredging operation. Advance notification will be made to affected mariners via marine information broadcasts.

Background and Purpose

The U.S. Army Corps of Engineers (USACE) conducts dredging operations on the Delaware River in the vicinity of New Castle Range Ship Channel to maintain the 46-foot project depth.

To reduce the hazards associated with dredging the channel, mariners must receive approval from the Captain of the Port Philadelphia before using Anchorage 5 while the operations are ongoing.

Discussion of Temporary Final Rule

Currently in paragraph (b)(2) of 33 CFR 110.157, vessels are allowed to anchor for up to 48 hours in the anchorage grounds listed in § 110.157(a), which includes Anchorage 5. However, because of underwater dredge piping in Anchorage 5 southeast of Pea Patch Island, the Coast Guard is temporarily adding paragraph (b)(12) in 33 CFR 110.157 to protect mariners from encountering hazards within Anchorage 5. All vessels desiring to use Anchorage 5 must obtain permission from the Captain of the Port 24 hours prior to anchoring. The Coast Guard expects that vessels normally permitted to anchor in Anchorage 5 will make arrangements to anchor elsewhere during the dredge operations, as there are 15 other anchorages in the local area.

Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS) because we expect the economic impact of this rule to be so minimal. There are fifteen other anchorages in the local area for use by mariners. Also, New Castle Range is not near any critical infrastructure or marine terminals and Anchorage 5 is rarely used by the public or by the river pilots.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the regulatory Flexibility Act (5 U.S.C 605(b)) that this rule will not have a significant impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the pilots association, the supply boat providers, and the tugboat operators. However, there are fifteen other anchorages in the local area for use by these small businesses. This temporary regulation will not have a significant impact on a substantial number of entities for the following reasons: Anchorage 5 is rarely used, as other anchorages are more convenient to these businesses. In addition, the New Castle Range is not near any critical infrastructure or marine terminals.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of federal employees who enforce or otherwise determine compliance with federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–743–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of temporarily restricting the usage of Anchorage 5 and concluded under figure 2–1, paragraph (34)(f), of Commandant Instruction M16475.1D, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g). Department of Homeland Security Delegation No. 0170.1.

■ 2. From December 9, 2003, until December 31, 2003, add temporary § 110.157(b)(12) to read:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(12) All vessels desiring to use Anchorage 5 southeast of Pea Patch Island must obtain permission from the Captain of the Port 24 hours prior to anchoring. The Captain of the Port means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271–4807 or via channels 13 and 16 on VHF marine band radio.

* * * * *

Dated: December 9, 2003.

Sally Brice-O'Hara,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–31391 Filed 12–19–03; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2003–P–001]

RIN 0651–AB57

Changes to Implement the 2002 *Inter Partes* Reexamination and Other Technical Amendments to the Patent Statute

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The 21st Century Department of Justice Appropriations Authorization Act contains a title relating to intellectual property. The patent-related provisions in the intellectual property title of the 21st Century Department of Justice Appropriations Authorization Act include provisions permitting a third party requester in an *inter partes* reexamination proceeding to appeal a final decision by the Board of Patent Appeals and Interferences (BPAI) to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and to participate in the patent owner's appeal of a final decision by the BPAI to the Federal Circuit. The patent-related provisions of the 21st Century Department of Justice Appropriations Authorization Act also include technical amendments to the provisions directed to *inter partes* reexamination, 18-month publication of patent applications and provisional rights; and issuance of patents. The United States Patent and Trademark Office (Office) is revising the rules of practice to implement the patent-related provisions of the 21st Century Department of Justice Appropriations Authorization Act, and other miscellaneous changes

related to appeals in reexamination proceedings.

EFFECTIVE DATE: January 21, 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Schor or Gerald A. Dost, Senior Legal Advisors. Kenneth M. Schor may be contacted by telephone at (703) 308–6710; by mail addressed to: U.S. Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Kenneth M. Schor; by facsimile transmission to (703) 872–9408, marked to the attention of Kenneth M. Schor; or by electronic mail message over the Internet addressed to *kenneth.schor@uspto.gov:* Gerald A. Dost may be contacted by telephone at (703) 305–8610; by mail addressed to: U.S. Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Gerald A. Dost; by facsimile transmission to (703) 308–6916, marked to the attention of Gerald A. Dost; or by electronic mail message over the Internet addressed to *gerald.dost@uspto.gov*.

SUPPLEMENTARY INFORMATION: The American Inventors Protection Act of 1999 (AIPA), enacted on November 29, 1999, contained a number of changes to title 35, United States Code (U.S.C.). *See* Pub. L. 106–113, 113 Stat. 1501, 1501A–552 through 1501A–591 (1999). The 21st Century Department of Justice Appropriations Authorization Act, enacted on November 2, 2002, contained technical corrections to the AIPA, as well as other technical amendments to title 35, U.S.C. *See* Pub. L. 107–273, 116 Stat. 1758, 1899–1906 (2002). This final rule revises the rules of practice in title 37 CFR to implement the patent-related provisions of the 21st Century Department of Justice Appropriations Authorization Act (and other related miscellaneous changes).

I. *Third Party Requester Appeal Rights to United States Court of Appeals for the Federal Circuit:* Optional *inter partes* reexamination was newly enacted in the AIPA. The AIPA provided that the patent owner in an *inter partes* reexamination could appeal a decision of the BPAI (adverse to patent owner) to the Federal Circuit. The third party requester of the *inter partes* reexamination, however, was specifically precluded from appealing a decision of the BPAI to the Federal Circuit. *See* 35 U.S.C. 134(c) as amended by the AIPA, 113 Stat. at 1501A–571. In addition, the AIPA did not permit the third party requester to be a party to (*i.e.*, participate in) an appeal taken by the patent owner to the Federal Circuit.

The Office published a final rule in December of 2000 revising the rules of practice in patent cases to implement the optional *inter partes* reexamination provisions of the AIPA. *See Rules to Implement Optional Inter Partes Reexamination Proceedings*, 65 FR 76755 (Dec. 7, 2000), 1242 *Off. Gaz. Pat. Office* 12 (Jan. 2, 2001) (final rule). Section 1.983 is promulgated to codify in the rules of practice the patent owner's statutory right, under 35 U.S.C. 141, to appeal to the Federal Circuit in *inter partes* reexamination proceedings. Because the third-party requester of an *inter partes* reexamination was previously expressly precluded under 35 U.S.C. 134(c) (as amended by the AIPA) from appealing the decision of the BPAI to the Federal Circuit, the rules of practice did not previously provide for such an appeal. Likewise, because there was no authority in the statute for the third party requester to participate in an appeal taken by the patent owner to the Federal Circuit, no such provision of the rules was provided. Finally, because the third-party requester of an *inter partes* reexamination was precluded under 35 U.S.C. 134(c) (as amended by the AIPA) from appealing the decision of the BPAI to the Federal Circuit, no provision in the rules concerning patent owner participation in a third-party requester appeal was provided.

Section 13106 of Public Law 107–273 now grants the *inter partes* reexamination third party requester the right to appeal an adverse decision of the BPAI to the Federal Circuit. *See* 35 U.S.C. 315(b)(1). It further authorizes the third party requester to be a party to any appeal taken by the patent owner to the Federal Circuit. *See* 35 U.S.C. 315(b)(2). Moreover, section 13106 of Public Law 107–273 also permits the patent owner to be a party to an appeal taken by the third party requester to the Federal Circuit. This is so because 35 U.S.C. 315(a)(2) as enacted by the AIPA states that the patent owner involved in an *inter partes* reexamination proceeding "may be a party to any appeal taken by a third-party requester under subsection (b)." Therefore, the Office is revising § 1.983 to implement this statutory revision, and making conforming or ancillary amendments to §§ 1.301, 1.304, and 1.979.

II. *Technical amendments to the inter partes reexamination provisions of the American Inventors Protection Act of 1999:* Section 13202 of Public Law 107–273 made technical corrections to statutory provisions directed to *inter partes* and *ex parte* reexamination. The Office is revising §§ 1.191, 1.303, and 1.913 to address the *inter partes* and *ex parte* reexamination technical corrections.

III. *Other miscellaneous changes made to reexamination proceedings:* Additionally, the Office is revising the *inter partes* reexamination rules to avoid the loss of appeal rights during appeals to the BPAI due to certain inadvertent errors on the part of the patent owner or third party requester. Further, the Office is revising the *inter partes* and *ex parte* reexamination appeal rules generally for clarity. These revisions are made in §§ 1.302, 1.959, 1.965, 1.967, 1.971, and 1.977.

IV. *Patent and Trademark Efficiency Act Amendments:* Section 13203 of Public Law 107–273 is directed to efficiency amendments to the statute. The Office is revising § 1.13(b) to eliminate its requirement for an attestation for certified copies of documents, similar to the elimination of the attestation requirement in 35 U.S.C. 153 as provided in section 13203(c) of Public Law 107–273.

V. *Technical amendment related to eighteen-month publication of applications and provisional rights:* Sections 13204 and 13205 of Public Law 107–273 made technical corrections to provisions directed to the eighteen-month publication of patent applications and provisional rights, and the issuance of patents. The Office is revising §§ 1.14, 1.78, 1.417, and 1.495 to implement the statutory revisions made by these sections of Public Law 107–273.

Section-by-Section Discussion

Section 1.1: Section 1.1(c) is amended to provide separate mail stops for *ex parte* reexamination proceedings and *inter partes* reexamination proceedings. Section 1.1(c) is amended to clarify that the mail stop for *ex parte* reexamination proceedings can only be used for the original request papers for *ex parte* reexamination. The new mail stop for *inter partes* reexamination includes both original request papers and all subsequent correspondence filed in the Office (other than correspondence to the Office of the General Counsel pursuant to § 1.1(a)(3) and § 1.302(c)). Correspondence relating to *inter partes* reexamination proceedings is best handled at one central location where Office personnel have specific expertise in *inter partes* reexamination because of the unique nature of *inter partes* reexamination proceedings.

Section 1.13: Section 1.13(b) is amended to delete "attested by an officer of the United States Patent and

Trademark Office authorized by the Director." Section 13203(c) of Public Law 107–273 eliminated the requirement in 35 U.S.C. 153 that the signature of the Director for issued patents be attested to by an officer of the Office. To achieve further efficiencies, certified copies of documents will no longer include an attestation for the Director's signature. Accordingly, § 1.13(b) is amended to eliminate the requirement for an attestation for certified copies of documents.

Section 1.14: Section 1.14(g)(2) is amended to correct the reference to "35 U.S.C. 154(d)(4)".

Section 1.78: Section 1.78(a)(3) is amended by deleting the phrase "in a nonprovisional application." Section 4508 of the AIPA as originally enacted did not make the eighteen-month publication amendments to 35 U.S.C. 119 and 120 applicable to an international application unless and until it enters the national stage under 35 U.S.C. 371. *See* Public Law 106–113, 113 Stat. at 1501A–566 through 1501A–567. Section 13205 of Public Law 107–273 amended section 4508 of the AIPA to make the eighteen-month publication amendments to 35 U.S.C. 119 and 120 also applicable during the international stage of an international application. With regard to international applications, § 1.78(a)(2)(ii) requires that the reference required by § 1.78(a)(2)(i) be submitted: (1) during the pendency of the later-filed application: and (2) within the later of (A) four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application, or (B) sixteen months from the filing date of the prior-filed application. Since an abandoned international application is not a nonprovisional application, the petition procedure set forth in former § 1.78(a)(3) was not applicable to a delayed priority claim in an abandoned international application. Section 1.78(a)(3) as amended now makes the petition procedure set forth in § 1.78(a)(3) applicable to submitting a delayed priority claim in an abandoned international application including an international application that has not entered the national stage under 35 U.S.C. 371. Therefore, when filing a "bypass" continuation application under 35 U.S.C. 111(a) that claims the benefit of the international application with a filing date on or after November 29, 2000, that could have but did not claim the benefit of an earlier U.S. nonprovisional application or international application designating the United States and the benefit claim is to be added, a petition under § 1.78(a)(3) will be required in the abandoned international application. A "bypass" continuation application is an application for patent filed under 35 U.S.C. 111(a) that claims the benefit of the filing date of an earlier international application designating the United States that did not enter the national stage under 35 U.S.C. 371. *See* H.R. Rep. No. 107–685, at 222 (2002). The Office previously indicated that to amend a later-filed abandoned international application to add a claim to the benefit of a prior-filed nonprovisional application, or a prior-filed international application designating the United States, an applicant need only file a petition under § 1.182 to amend an abandoned application (the later-filed international application) with the claim to the benefit of a prior-filed application. *See Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications*, 66 FR 67087, 67092 (Dec. 28, 2001), 1254 *Off. Gaz. Pat. Office* 121, 125 (Jan. 22, 2002) (final rule) (response to comment 6). In view of this change to § 1.78(a), applicants should no longer rely upon that advice.

Section 1.191: Section 1.191(a) is amended to delete each appearance of the phrase "for a patent that issued from an original application filed in the United States." Section 13202(d) of Public Law 107–273 provides a technical correction for the effective date set forth in the AIPA for appeals to the BPAI as follows:

> *Effective Date*—The amendments made by Section 4605(b), (c), and (e) of the Intellectual Property and Communications Omnibus Reform Act, as enacted by Section 1000(a)(9) of Public Law 106–113, shall apply to any reexamination filed in the United States Patent and Trademark Office on or after the date of enactment of Public Law 106–113..

The effective date language in section 4608 of the AIPA limited the applicability of the conforming amendments to 35 U.S.C. 134 to a reexamination of a patent that issued from an original application which was filed on or after November 29, 1999. Thus, the conforming amendments to 35 U.S.C. 134 applied only to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issued from an original application which was filed on or after November 29, 1999. Public Law 107–273 revised the applicability of the conforming amendments to 35 U.S.C. 134 such that the conforming amendments are applicable to a reexamination of a patent where the request for *ex parte* reexamination was filed on or after November 29, 1999. Accordingly, § 1.191 is amended to track the statutory revision of the effective date.

Section 1.191(a) is also subdivided into paragraphs (a)(1) (for applications and *ex parte* reexamination proceedings filed before November 29, 1999), (a)(2) (for *ex parte* reexamination proceedings filed on or after November 29, 1999), and (a)(3) (for *inter partes* reexamination proceedings).

Section 1.197: Section 1.197(c) is amended to provide that an appeal to the Federal Circuit is terminated when the mandate is issued by the Court, rather than when the mandate is received by the Office. This change to § 1.197(c) is for consistency with a 1998 amendment to Rule 41 of the Federal Rules of Appellate Procedure. The commentary on the addition of subdivision (c) to Rule 41 of the Federal Rules of Appellate Procedure indicates that this provision is intended to make clear that the Court's mandate is effective upon issuance, and that its effectiveness is not delayed until receipt of the mandate by the trial court or agency.

Section 1.301: Section 1.301 (last sentence) is amended by inserting the phrase "appeals by patent owners and third party requesters in" before "*inter partes* reexamination proceedings." The revision makes it clear that appeals by third party requesters of *inter partes* reexamination proceedings are controlled by § 1.983.

Section 1.302: Section 1.302 is amended by adding new paragraphs (c) and (d), and redesignating existing paragraph (c) as paragraph (e). New paragraph (c) points out that when an appeal is taken to the Federal Circuit in an *ex parte* reexamination proceeding, the appellant must serve notice as provided in § 1.550(f). New paragraph (d) points out that when an appeal is taken to the Federal Circuit in an *inter partes* reexamination proceeding, the appellant must serve notice as provided in § 1.903. These revisions are intended to focus parties on the unique service requirements in *ex parte* and *inter partes* reexamination proceedings, when appealing to the Federal Circuit.

Section 1.303: Section 1.303 is amended by revising paragraphs (a), (b) and (d) to delete the appearance of "for a patent that issued from an original application filed in the United States" in each paragraph. This revision is made for the reasons stated in the discussion of § 1.191.

Section 1.304: Section 1.304 is amended by revising paragraph (a)(1) to add after the second sentence, the following sentence: "If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.979(a), the time for filing an appeal shall expire two months after action on the last such request." In addition, reference to § 1.979(a) in the second sentence is deleted. Further, § 1.304 is amended to include all of the current provisions relating to interferences in § 1.304(i), and to include a new § 1.304(ii) which provides that in *inter partes* reexaminations the time for filing a cross-appeal expires: (1) fourteen days after service of the notice of appeal to the Federal Circuit; or (2) two months after the date of decision of the BPAI, whichever is later.

Section 1.304(a)(1) now provides that an *inter partes* third party requester can appeal to the Federal Circuit and can participate in the patent owner's appeal to the Federal Circuit. The time for filing an appeal to the Federal Circuit will expire two months after "action on the last such request made by the parties," as opposed to the sentence which precedes the added sentence where time for filing an appeal to the Federal Circuit is stated to expire two months after "action on the request." Thus, the potential for rehearing or reconsideration by more than one party is now factored into the time for appeal to the Federal Circuit. Since a party may not challenge a BPAI decision in an *inter partes* reexamination in a civil action under 35 U.S.C. 145, § 1.304(a)(1) provides that "the time for filing an appeal shall expire * * *" and not "the time for filing an appeal or commencing a civil action shall expire * * *" (which appears in the sentence which precedes the added sentence).

The revision to § 1.304(a)(1) also conforms to the change to § 1.983, by addressing the potential for cross appeal to the Federal Circuit in an *inter partes* reexamination (in addition to that in an interference).

Section 1.417: As discussed with regard to the revision to § 1.14, the statute has been revised to clarify that a translation of the international publication, as opposed to the international application, must be filed in order for a patent owner to obtain the provisional right of a reasonable royalty under 35 U.S.C. 154(d). Accordingly, § 1.417 is amended: (1) To delete "the international publication or"; (2) to add "of the publication" after "English language translation"; and (3) to delete ", unless it is being submitted pursuant to § 1.495,".

Section 1.495: Section 1.495(c) is amended to change "if it was originally filed in another language (35 U.S.C. 371(c)(2)" to "if the international application was originally filed in another language and if any English language translation of the publication of the international application previously submitted under 35 U.S.C. 154(d) (§ 1.417) is not also a translation of the international application as filed (35 U.S.C. 371(c)(2))." The purpose of this revision is to clarify that if an English language translation of the publication has already been filed and the publication was also a translation of the international application, a second translation is not required. Instead, the translation required by 35 U.S.C. 154(d) will satisfy the requirement for a translation under 35 U.S.C. 371(c)(2). In § 1.495(g), the phrase ", except for a copy of the international publication or translation of the international application that is identified as provided in § 1.417," is deleted because the phrase is unnecessary, since it merely repeats a provision of § 1.417.

Section 1.913: Section 1.913 is amended to add the phrase "other than the patent owner or its privies" after "any person," because section 13202 of Pub. L. 107–273 now clarifies that only the third party requester may file a request for *inter partes* reexamination; a patent owner may not file a request for *inter partes* reexamination. This is consistent with the initial position taken by the Office during the implementation of optional *inter partes* reexamination. *See Rules to Implement Optional Inter partes Reexamination Proceedings*, 65 FR 18153, 18178 (Apr. 6, 2000), 1234 *Off. Gaz. Pat. Office* 93, 116 (May 23, 2000) (proposed rule).

Section 1.959: Section 1.959 is amended by adding a new paragraph (f), which provides a non-extendable one-month period for correcting an inadvertent failure to comply with any requirement of § 1.959, when a notice of appeal or cross appeal is submitted. The revision of § 1.959 will permit a remedy of inadvertent defects in a notice of appeal or cross appeal.

Section 1.959 relates to appeals and cross appeals to the BPAI in *inter partes* reexamination proceedings. The requirements for acceptance by the Office of a notice of appeal and cross appeal to the BPAI are: (1) Payment of the appeal fee set forth in § 1.17(b) (§§ 1.959(a) and (b)); (2) identification of the appealed claim(s) (§ 1.959(c)); and (3) signature by the patent owner, the third party requester, or their duly authorized attorney or agent (§ 1.959(c)).

Section 1.959 is amended to provide the third party requester (as well as the patent owner) one opportunity to supply, within one month, the missing fee or missing portion of the fee that was inadvertently not supplied. Section 1.957(a) provides that if "the third party requester files an untimely or inappropriate comment [or] notice of appeal * * * in an *inter partes* reexamination, the paper will be refused consideration." Thus, if the third party requester inadvertently fails to pay the appeal fee, or makes a payment which is deficient as to the amount specified in § 1.17(b), the requester's notice of appeal (or cross appeal) will not be considered, and requester's appeal will otherwise be barred. The failure to submit the complete appeal fee is not a "*bona fide* attempt to respond and to advance the prosecution" where "some requirement has been inadvertently omitted" under § 1.957(d) (with requester then given a chance to rectify the inadvertency), since § 1.957(d) applies only to a patent owner and not to a third party requester. In addition, the third party requester does not have the opportunity to "revive" the appeal, as does the patent owner under § 1.137 (further, an extension of the time for filing the notice of appeal (or cross appeal) is not provided for by § 1.956, even if the requester becomes aware of the inadvertency on the last day to remedy it). Thus, the third party requester would be barred from appealing the case when a sufficient payment of the fee is inadvertently not made, in the absence of the present revision to § 1.959. Yet, estoppel attaches to the third party requester which precludes further resolution of the issues that the requester wishes to appeal. Under the statute, requester is estopped from later asserting in any civil action, or in a subsequent *inter partes* reexamination, the invalidity/unpatentability of any claim finally determined to be valid and patentable on any ground the third party requester raised or could have raised in the *inter partes* reexamination. Requester is further estopped from later challenging in a civil action any fact determined in the *inter partes* reexamination. Accordingly, a requester's loss of appeal rights because of an inadvertent payment would be an unduly harsh and extreme measure. Thus, the Office is revising § 1.959 to provide the third party requester one opportunity to supply, within one month, the missing fee or missing portion of the fee. As to the requirements that the notice of appeal (or cross appeal) identify the appealed claim(s) and be signed by the appellant, it may be that an opportunity to remedy the inadvertent failure to comply with same is not precluded by § 1.957(a). The refusal of consideration mandated by that section is directed only to "untimely or inappropriate" notices of appeal (and cross appeal). If so, the failure to sign or identify as required might not render the notice untimely, and the paper might be an "appropriate" paper, *i.e.*, the type of paper that is entitled to entry in an *inter partes* reexamination, but is not a complete paper. However, to cover the possibility that failure to comply with the signature or identification of claims requirements of § 1.959(c) could permanently bar the requester's appeal, new § 1.959(f) has been phrased to explicitly encompass these potential defects in a notice of appeal (or cross appeal).

Sections 1.965 and 1.967: Section 1.965(d) is amended by inserting "paragraphs (a) and (c)" in place of "paragraph (c)." Section 1.967(c) is amended by inserting "paragraphs (a) and (b)" in place of "paragraph (b)."

Under former § 1.965, an inadvertent failure to comply with a requirement of § 1.965(a) permanently barred the requester's appeal from going forward. Under former § 1.967, an inadvertent failure to comply with a § 1.967(a) requirement also barred the requester's participation via respondent brief in the patent owner's appeal. Sections 1.965 and 1.967 are revised to provide the appellant and respondent, respectively, with a non-extendable one-month period for correcting an inadvertent failure to comply with a requirement of §§ 1.965(a) and 1.967(a), respectively. This revision of §§ 1.965 and 1.967 is for reasons analogous to those set forth above for the revision of § 1.959. Again, the loss of requester's appeal rights because of a § 1.965(a) inadvertency, and the loss of requester's participation rights because of a § 1.967(a) inadvertency, are considered to be unduly harsh and extreme measures.

It is noted that § 1.965(b) states: "A party's appeal shall stand dismissed upon failure of that party to file an appellant's brief, accompanied by the requisite fee, within the time allowed." Under § 1.965(d), as it has now been revised, the phrase 'within the time allowed" in § 1.965(b) includes the filing of an "appellant's brief, accompanied by the requisite fee" within the one-month period for correcting an inadvertency (in failure to comply with a requirement of § 1.965(a) and/or (c)) set forth in § 1.965(d).

Section 1.971: Section 1.971 is amended by designating the sole current paragraph of the section as paragraph (a), and adding new paragraph (b). New paragraph (b) provides a non-extendable one-month period for correcting an inadvertent failure to comply with any requirement of paragraph (a) of § 1.971, when a rebuttal brief is submitted. Existing §§ 1.965(d) and 1.967(c) provide relief for certain non-compliance inadvertencies in appellant and respondent briefs, respectively. However, prior to the present amendment of § 1.971, there was no relief of this nature provided for rebuttal briefs. Section 1.971 is amended (in a new paragraph (b)) to provide similar relief for inadvertencies in the rebuttal brief. In addition, the phrase "[n]o new ground of rejection can be proposed by a third party requester" is being changed to "[n]o new ground of rejection may be proposed by a third party requester" to more correctly state the limitation.

Section 1.977: Section 1.977(g) is amended by inserting the phrase ", when the patent owner is responding under paragraph (b)(1) of this section" at the end of the first sentence of the paragraph, and by adding the following new sentence as the second sentence: "The time period set forth in paragraph (b) of this section may not be extended when the patent owner is responding under paragraph (b)(2) of this section."

Prior § 1.977(g) provided that "[t]he time period set forth in paragraph (b) of this section is subject to the extension of time provisions of § 1.956." Thus, an extension of time could be obtained for the filing of a patent owner amendment or showing of facts under § 1.977(b)(1), or the filing of a patent owner request for rehearing of the decision of the BPAI made under § 1.977(b)(2). However, § 1.979(g) stated, and continues to state, that the times for requesting rehearing under § 1.979(a) may not be extended, and a patent owner request for rehearing of the decision of the BPAI made under § 1.977(b)(2) is included as § 1.979(a)(2). Thus, the time for filing a patent owner request for rehearing under § 1.977(b)(2) could not be extended. The present amendment to § 1.977(g) makes it consistent with the language of § 1.979(g). Note further that this revision is consistent with the policy for a streamlined appeal procedure, which is reflected, for example, in § 1.959 (no extension of the time for filing the notice of appeal or cross appeal), § 1.963 (no extension of the time for filing appellant, respondent, and rebuttal briefs), and § 1.979(g) (no extension of the time for filing *any* rehearing request). Thus, it is appropriate that an extension of time cannot be obtained for the filing of a patent owner request for rehearing of the decision of the BPAI made under § 1.977(b)(2), while an extension can be obtained for the filing of a patent owner amendment or showing of facts presented under § 1.977(b)(1), which may be considered a reopening of the examination process, as opposed to the appeal process.

Section 1.979: Section 1.979 is amended by revising its paragraphs (e) and (f) to replace "patent owner" (and its possessive) with "parties to an appeal to the Board of Patent Appeals and Interferences," "party," "any party," or "party's," as applicable. Section 1.979 is also amended by deleting the first and second sentences of paragraph (f). The third sentence of § 1.979(f) is amended to add "to the Board of Patent Appeals and Interferences" after "An appeal" to provide additional clarity. Section 1.979 was formerly drafted to address the situation where an appeal to the Federal Circuit is possible only for the patent owner. The first revision modifies the language of § 1.979 to make it applicable to all parties to the *inter partes* reexamination proceeding, *i.e.*, the patent owner and any *inter partes* reexamination third party requester, who are the parties to the appeal to the BPAI. The second revision deletes the provision for termination of the third party requester's appeal, which was (before the enactment of Public Law 107–273) under criteria different than that for the patent owner (since a third party requester could not appeal to the courts under the statute prior to Public Law 107–273). The first revision to the text of § 1.979(f) makes the criteria for termination the same for all parties to the appeal. Finally, § 1.979(f) is amended to provide that an appeal to the Federal Circuit is terminated when the mandate is issued by the Federal Circuit, which is consistent with a 1998 amendment to Rule 41 of the Federal Rules of Appellate Procedure. *See* the discussion of § 1.197 above.

Undesignated center heading immediately preceding § 1.983: The undesignated center heading immediately preceding § 1.983 is revised by deleting "PATENT OWNER" before "APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT." The undesignated center heading immediately preceding § 1.983 was formerly drafted to address the situation where appeal to the Federal Circuit was possible only by the patent owner. This revision modifies the language to make it applicable to all parties to the *inter partes* reexamination proceeding who are the parties to the appeal to the BPAI.

Section 1.983: Section 13106 of Public Law 107–273 grants the *inter partes* reexamination third party requester the right to appeal an adverse decision of the BPAI to the Federal Circuit. 35 U.S.C. 315(b)(1). It further authorizes the third party requester to be a party to any appeal taken by the patent owner to the Federal Circuit. *See* 35 U.S.C.

315(b)(1). Also, as pointed out above, section 13106 of Public Law 107–273 implicitly permits the patent owner to be a party to the newly provided appeal taken by the third party requester to the Federal Circuit. Section 1.983 is amended to track this newly enacted legislation by revising its heading, dividing the existing text into paragraphs (a) and (b), revising the text of newly designated paragraphs (a) and (b), and adding new paragraphs (c) through (f).

The heading of § 1.983 is amended by changing "Patent owner appeal" to "Appeal."

Section 1.983(a) is amended to permit the patent owner and any third party requester who is a party to an appeal to the BPAI to: (1) appeal the BPAI's decision to the Federal Circuit; and (2) be a party to any appeal to the Federal Circuit taken from the BPAI's decision.

Section 1.983(b) is amended to clarify that service of the notice of appeal or cross appeal must be made on every other party to the reexamination proceeding as required in § 1.903. The explicit statement of requirement for service on other parties also provides antecedent for the fourteen-day period recited in paragraph (e) of § 1.983 that follows.

Section 1.983 is amended to add paragraphs (c) and (d) to provide for a cross appeal to the Federal Circuit within fourteen days of service of an opposing party's notice of appeal to the Federal Circuit. This is analogous to the cross appeal (within fourteen days of service of the notice of appeal) provided for in § 1.304(a)(1) for interferences. The interferences model is used, because an interference is the only other *inter partes* proceeding appealed to the Court from the decision of the BPAI. It is noted that if the two-month time period from the BPAI's decision will expire after the fourteen-day period set for a cross appeal, then the later-expiring two-month period will control. Thus, where a first party files an appeal to the court (the Federal Circuit) fourteen days after the BPAI's decision, an opposing party need not file a cross appeal fifteen days later (twenty-nine days after the BPAI's decision), but rather has the remainder of the two-month period to do so.

A new paragraph (e) is added to § 1.983, to set forth the action a party must take in order to participate in an appellant's appeal (including cross appeal). Participation in the appellant's appeal is directed to providing argument supporting the decision of the BPAI. Such participation is in contrast to the cross appeal which is provided for in paragraphs (c) and (d) of § 1.983, where a party challenges a decision of the BPAI adverse to that party. New paragraph (f): Section 13106(d) of Public Law 107–273 provides the effective date for the revision to the statute made in section 13106 as follows: "[t]he amendments made by this Section apply with respect to any reexamination proceeding commenced on or after the date of enactment of this Act."

Accordingly, § 1.983 is amended to add a new paragraph (f) stating: "[n]otwithstanding any provision of the rules, in any reexamination proceeding commenced prior to November 2, 2002, the third party requester is precluded from appealing and cross appealing any decision of the BPAI to the Federal Circuit, and the third party requester is precluded from participating in any appeal taken by the patent owner to the Court."

Response to comments: The Office published a notice proposing changes to the rules of practice to implement the patent-related provisions in the intellectual property title of the 21st Century Department of Justice Appropriations Authorization Act. *See Changes to Implement the 2002 Inter Partes Reexamination and other Technical Amendments to the Patent Statute*, 68 FR 22343 (Apr. 28, 2003), 1270 *Off. Gaz. Pat. Office* 106 (May 20, 2003) (proposed rule). The Office received six written comments (from intellectual property organizations, patent practitioners, and the general public) in response to this notice. While the comments were for the most part favorable to the changes proposed, a number of issues were raised. The comments which raise issues, and the Office's responses to these comments, now follow:

Comment 1: The comments of all three intellectual property associations which provided comments focused on the revision that was proposed for §§ 1.949 and 1.953, to issue a Right of Appeal Notice (under § 1.953) after all claims are found patentable, without first issuing an Action Closing Prosecution (under § 1.949). The comments noted that the revision was proposed in an effort to streamline *inter partes* reexamination prosecution, based on the assumption that a patent owner "presumably" would not file any further comments after receiving a notice that all claims are patentable. The comments then pointed out that while it is possible that this assumption should cover most situations, the proposed revision would eliminate an important safeguard for the patent owner in circumstances where the assumption is not correct. An example was given where a patent owner would wish to respond after all claims are allowed, but would be precluded from doing so under the proposal. A patent owner receiving notice that all claims are found patentable might very well decide to propose an amendment at that point, if the patent owner disagrees with the examiner's statement of reasons for allowance or statement of claim interpretation. If, as proposed, a Right of Appeal Notice would be the paper that first informs a patent owner that all claims have been found patentable, then the patent owner would be precluded from submitting such an amendment in the proceeding. One comment asserted that in the instance of a first action indication of patentability of all claims and simultaneous issuance of a Right of Appeal Notice, the proposed revision could deny the patent owner its statutory right to propose amendments during reexamination pursuant to 35 U.S.C. 314(a), since amendments to claims are expressly barred once the Right of Appeal Notice is issued.

Based on the above, the comments urge that the Office retain the current practice of issuing an Action Closing Prosecution in all cases where the request for *inter partes* reexamination is granted, even after all claims in the proceeding have been found patentable.

Response: In view of the comments, the proposed revision of §§ 1.949 and 1.953 will not be adopted. The public response expresses a view that the need to always provide the patent owner with an opportunity to comment after all claims are found patentable outweighs the pendency reduction benefit that would result from bypassing the issuance of an Action Closing Prosecution and directly issuing a Right of Appeal Notice. In view of the preference stated in the comments that the patent owner should always be given an opportunity to comment after all claims are found patentable (by issuing an Action Closing Prosecution under § 1.949, after which patent owner can comment under § 1.951(a)), the proposal to revise §§ 1.949 and 1.953 has been withdrawn.

One of the comments suggested that the Office's objective of streamlining prosecution (after a determination of patentability of all claims) could be achieved by providing patent owner with an opportunity to expressly waive its right to submit comments/amendments under current § 1.951(a) upon notice that all claims have been found patentable. It is noted, however, that such a right already exists, because the patent owner is free to file, after an Action Closing Prosecution under § 1.949, a paper stating that no comments/amendments will be filed under current § 1.951(a). Thus, a new provision is not needed to implement the suggestion.

As a final point, it is noted that (contrary to a statement made in one of the comments) under the current practice, an Action Closing Prosecution will not be issued in all cases where a request for *inter partes* reexamination is granted. Where all claims are rejected in a first Office action (for example) and the patent owner fails to respond, a Notice of Intent to Issue a Reexamination Certificate will issue canceling all the patent claims, and there is no need for an Action Closing Prosecution. Also, if the ordered reexamination is vacated, where appropriate, prior to the issuance of an Action Closing Prosecution, there will be no Action Closing Prosecution issued in the proceeding.

Comment 2: One comment points out that the effective date language in section 4608 of the AIPA changes to 35 U.S.C. 134 and 35 U.S.C. 145 was to be "phased in only years after enactment," *i.e.*, only for an *ex parte* reexamination that was based upon an original application filed on or after November 29, 1999. This would have taken many years to become effective, thus providing a gradual transition. Instead, the comment notes, Public Law 107–273 accelerates the effective date provision to apply to any reexamination filed on or after November 29, 1999 (*i.e.*, nearly three years ago). The comment urges that this change has accelerated the existence of a situation where an examiner can "suppress a case from appellate review 'forever' simply by refraining from making a rejection final." The comment requests relief from this situation.

Response: If a patent owner believes that a reexamination proceeding is being "suppressed" from appellate review by the examiner's refraining from making a rejection final, the patent owner may file a petition under § 1.181(a) requesting that the most recent Office action by the examiner be designated as a final rejection so as to permit an appeal. Such a petition should be accompanied by a showing as to why the most recent Office action should have been designated as a final rejection. If such a petition is denied by the Technology Center Director, the patent owner could seek further review by way of a petition under § 1.181(a)(3) requesting higher level review of the decision of the Technology Center Director. Since a petition under § 1.181 does not operate to stay the reexamination proceeding (§ 1.181(f)), it is advisable that the petition under § 1.181(a) be accompanied by a notice of appeal and appeal fee set forth in § 1.17(b) (which will be refunded as unnecessary if the petition is denied) and a request for an extension of time under § 1.550(c) to respond to the most recent Office action (since an appeal is not a proper response to a non-final Office action and the period for response to the Office action continues to run if the petition is denied). However, it must be remembered that in no case can the period for response be extended so as to expire later than six months from the date of the most recent Office action.

Comment 3: Two comments have suggested that the Office permit *inter partes* reexamination of patents issuing from original applications filed in the United States prior to November 29, 1999. One of the comments argues that the Office's statement that the effective date language in section 4608 of the AIPA limited the applicability of *inter partes* reexamination (and conforming amendments) to patents issuing from original applications filed in the United States on or after November 29, 1999, is "bad law, bad policy for the patent system and bad policy for the Patent and Trademark Office." The commenter then presents a constitutional argument to support this. The same comment further argues that the *inter partes* reexamination effective date provision of the AIPA has been repealed by implication, based upon the legislative expansion of third party requester appeal rights provided by Public Law 107–273. The comment further urges that, if its proposal is not adopted, then third party requester participation in *ex parte* reexamination which would be analogous to that provided by statute for *inter partes* reexamination should be permitted by rule for patents issuing from an original application filed in the United States prior to November 29, 1999.

Response: Section 4608 (effective date) of the AIPA provides: "this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act [November 29, 1999] and shall apply to any patent that issues from an original application filed in the United States on or after that date [November 29, 1999]." *See* Pub. L. 106–113, 113 Stat. at 1501A–572. The plain language of the statute is clear and is not ambiguous. The enacted *inter partes* provisions of the AIPA are clearly stated (in Section 4608) to apply "to any patent that issues from an original application filed in the United States on or after" the date of enactment (November 29, 1999).

To the extent that it is argued that this provision is unwise and should not be adhered to, and that Art. I, § 8, cl. 8 of the U.S. Constitution (Congress shall have the power * * * "[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries") provides a basis for the Office to ignore the limitations in the AIPA on the applicability of *inter partes* reexamination, it is noted that the Federal courts have generally held that the power of Congress to legislate on the subject of patents is plenary by the terms of the Constitution. *See e.g., McClurg* v. *Kingsland,* 42 U.S. (1 How.) 202, 206 (1843); *see also Owen* v. *Heimann,* 12 F.2d 173, 174 (D.C. Cir.), cert. denied, 271 U.S. 685 (1926) ("Congress has full power to prescribe to whom and upon what terms and conditions a patent shall issue"); *Kling* v. *Haring,* 11 F.2d 202, 204–05 (D.C. Cir.), *cert. denied,* 271 U.S. 671 (1926) (same). In any event, administrative agencies do not have the authority to declare unconstitutional the laws they are charged with administering. *See, e.g., Oestereich* v. *Selective Service Board,* 393 U.S. 233, 242 (1968); *McGowan* v. *Marshall,* 604 F.2d 885, 892 (5th Cir. 1979); and *Buckeye Industries, Inc.* v. *Secretary of Labor,* 587 F.2d 231 (5th Cir. 1979).

As to the argument that the *inter partes* reexamination effective date provision of the AIPA has been repealed by implication, based upon the legislative expansion of third party requester appeal rights provided by Public Law 107–273, Congress is well versed in the mechanism for changing an effective date of prior legislation (as it did for the eighteen-month publication provisions of the AIPA), and Congress did not do so for the *inter partes* reexamination effective date provisions of the AIPA. It is noted that a proposed revision to the *inter partes* reexamination eligibility effective date was explicitly placed before Congress by way of Section 3(a) of H.R. 2231 introduced on June 19, 2001, and referred to the House committee. *See* H.R. 2231, 107th Cong., 1st Sess. (2001). Thus, an explicit provision to revise the *inter partes* reexamination effective date was before Congress; yet, it was not carried forward into Public Law 107–273.

As to the suggestion that third party requester participation rights (analogous to those provided by statute for *inter partes* reexamination) should be provided by rule for *ex parte* for patents issuing from an original application filed in the United States prior to November 29, 1999, the statute does not provide authority for a third party requester of a reexamination proceeding requested under 35 U.S.C. 302 to file a paper directed to the issues during the examination of the reexamination proceeding. The statute and its intent are clear that the reexamination proceeding under 35 U.S.C. 302 must be *ex parte* and third party requester participation is barred by statute. *See Syntex (U.S.A.) Inc.* v. *U.S. Patent and Trademark Office,* 882 F.2d 1570, 1573, 11 USPQ2d 1866, 1868–69 (Fed. Cir. 1989) (third parties do not participate before the Office). While the third party requester is permitted by statute pursuant to 35 U.S.C. 304 to file a "reply" prior to the examination stage if the patent owner files a statement under 35 U.S.C. 304, that is the only paper directed to the merits of the proceeding authorized to a requester that files an *ex parte* reexamination.

Comment 4: One comment points out that a reexamination requester may "piggyback" a second or subsequent reexamination onto an ongoing reexamination proceeding with the possibility of merged proceedings and thus thwart a final rejection being made as the second action in the ongoing reexamination, with a first Office action then being issued for the merged proceeding. The commenter further notes that a requester could "hamstring a reexamination proceeding to keep a case bottled up in the examining corps forever" by filing multiple requests for reexamination based on the same patent.

Response: Section 2283 of the Manual of Patent Examining Procedure states that:

> Once the files are returned to the examiner for issuance of an Office action, the examiner should prepare an Office action at the most advanced point possible for the first proceeding. Thus, if the first proceeding is ready for a final rejection and the second proceeding does not provide any new information which would call for a new ground of rejection, the examiner should issue a final rejection for the merged proceeding using the guidelines for the prosecution stage set forth below.

See Manual of Patent Examining Procedure § 2283 (8th. ed. 2001) (Rev. 1, Feb. 2003) (MPEP).

Thus, the examiner is directed to, where possible, prepare an Office action at the most advanced point possible for the ongoing (first) proceeding, which in the commenter's scenario is the final rejection stage. If, however, a new issue (*e.g.*, new art, combining the old art a new way, or new evidence) that precludes a final rejection is raised by the later request, a final rejection would not be issued. In that instance, public policy dictates that the substance of the later request be considered and applied in order that only valid patent claims result from the reexamination proceeding, *i.e.*, to prevent the public from being barred from using claimed subject matter for which protection is not warranted. It is noted that even in this situation, the patent owner would be free to file a petition under § 1.181 requesting that the Office action be designated as a final rejection (see response to comment 2).

A patent owner faced with the filing of multiple reexamination requests on a patent may obtain relief if it can be shown that the newly filed reexamination request was filed: (1) by the same real party in interest who filed a previous request (rather than another party who wishes to approach the issue in its own way), and (2) without providing a new issue in the form of new art or viewing art previously applied in the reexamination proceeding in a new light. If a *bona fide* new issue is, however, raised by the later request, public policy dictates that the substance of the later request be considered and applied in order to resolve the new issue such that only valid patent claims result from the reexamination proceeding.

Comment 5: One comment raises a concern that there is no express requirement in § 1.953 for an examiner to set forth grounds for not making any third party proposed rejections (as is required in existing § 1.949) upon a determination of patentability of all claims.

Response: Initially, it is noted that § 1.953 (c) states "The Right of Appeal Notice shall be a final action, which comprises a final rejection setting forth each ground of rejection and/or final decision favorable to patentability including each determination not to make a proposed rejection, an identification of the status of each claim, and the reasons for decisions favorable to patentability and/or the grounds of rejection for each claim". Thus, the commenter's concern is in fact addressed in the rule.

It is also noted that in any Office action (in an *inter partes* reexamination) where an examiner declines to adopt a rejection proposed by a third party requester, the examiner must explicitly identify the proposed rejection, state that the proposed rejection is not adopted, and set forth grounds for not adopting the proposed rejection. This will be covered in a new chapter of the MPEP which will be directed to *inter partes* reexamination. It is noted, however, that if the third party requester then fails to address and contest the refusal to adopt the proposed rejection at the first opportunity to do so, such will be taken as an acquiescence to the examiner's position. In such a case, the proposed ground of rejection will be withdrawn from further consideration in the proceeding, will not be addressed in future Office actions, and will not serve as a basis for appeal in any subsequent appeal that may be taken by the requester in the proceeding.

Comment 6: Two comments suggested that an inconsistency was raised by the statement in the notice of proposed rule making that an Action Closing Prosecution (or Right of Appeal Notice) can be issued "even though the Office action being issued is the first action on the merits." It is argued that if a request for reexamination does not present prior art printed publications and patents that provide a *prima facie* case of unpatentability (or come "exceedingly close" to it), then the Office should not have issued an order for reexamination in the first place, but rather should have denied the request (and thus the first Office action stage should not be reached). Stated another way, it is argued that finding all the claims patentable over the art at the first action stage should be inconsistent with ordering reexamination based on such art.

Response: A finding that all of the claims are patentable over the art at the first action stage is not inconsistent with the prior order of reexamination based on such art. *See* MPEP 2240. The initial decision on a request for reexamination is based upon whether or not a "substantial new question of patentability" is raised by the art (the patents and/or printed publications). *See id.* Where a finding is made that a substantial new question of patentability has been raised, the examiner has only determined that there is a "substantial likelihood" that a reasonable examiner would consider the art of record important in deciding whether or not the claims are patentable. *See* MPEP 2242. After reexamination has been ordered, it is then determined, in the examination stage of the proceeding, whether or not the claims are patentable over the art. *See* MPEP 2240. At the time when the first Office action is issued, if one or more claims are not patentable over the art, the claims will be rejected based on that art. If claims are found patentable over the art, the action will state that finding (and supporting reasons). A decision that all the claims are patentable at this point does not negate the initial finding that a substantial new question of patentability was raised by the art, because reexamination will be ordered as long as a reasonable examiner would consider the art of record important in deciding whether or not the claims are patentable; there is no requirement that the claims be prima facie obvious over the art. The Federal Circuit has specifically indicated that:

> The inquiry occasioned by a request for reexamination is solely whether a reexamination order should issue and is not directed toward resolution of validity. The requestor's burden is simply to show a basis for issuance of the order, a burden unrelated to that assigned in [35 U.S.C.] 282. A refusal of reexamination leaves untouched the [35 U.S.C.] 282 presumption to which the patent is entitled in the courtroom.

See In re Etter, 756 F.2d 852, 857 n.5, 225 USPQ 1, 4 n.5 (Fed. Cir. 1985).

It is also noted that the third party requester is not entitled (under 35 U.S.C. 315(b)) to appeal a finding of claim patentability in situations in which the Director does not issue a determination pursuant to 35 U.S.C. 312 and 313 that a substantial new question of patentability has been presented. *See* 35 U.S.C. 312(c) (a determination made under 35 U.S.C. 312(a) by the Director on the request for reexamination is "final and non-appealable"). Refusing to order reexamination where a substantial new question has been found to be present, but all the claims are found to be patentable over the art, would deprive the requester of the right to appeal the finding of claim patentability (under 35 U.S.C. 315(b)).

Comment 7: One comment suggests that the policy of issuing an Action Closing Prosecution (or Right of Appeal Notice) as the first action on the merits where all claims are patentable may be "contrary to the letter of the law." The comment notes that according to 35 U.S.C. 314(a), "reexamination shall be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133." These sections (35 U.S.C. 132 and 133) are directed to prosecution before the examiner and not proceedings on appeal to the BPAI. The comment urges that 35 U.S.C. 132(a) indicates that "each interested party shall get two bites at the apple. By analogy to initial examination, 35 U.S.C. 132(a) should be construed, in the context of *inter partes* reexamination, to loosely read: "Whenever, on reexamination, any claim in a patent is confirmed to be patentable, the Director shall notify the Third Party Requester thereof, stating the reasons for such confirmation, together with such information and references as may be useful in judging of the propriety of continuing the Reexamination of the patent; and if after receiving such notice, the Third Party Requester persists, the previously-confirmed patent claim shall be reassessed." Thus, the commenter believes that the statute provides the third party requester with a right to address the finding of claims patentable during the examination stage of the *inter partes* reexamination proceeding.

Response: 35 U.S.C. 132(a) reads in part: "Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reexamined". 35 U.S.C. 132(a) provides for an applicant's opportunity to participate in an application, and by virtue of the incorporation of 35 U.S.C. 132(a) into 35 U.S.C. 314(a), it also provides for a patent owner's opportunity to participate during the examination stage of the *inter partes* reexamination proceeding. 35 U.S.C. 132(a), by virtue of its incorporation into 35 U.S.C. 314(a), does not confer any participation rights on a third party requester.

Further, 35 U.S.C. 314(b)(2) states: "Each time that the patent owner files a response to an action on the merits from the Patent and Trademark Office. the third-party requester shall have one opportunity to file written comments addressing issues raised by the action of the Office or the patent owner's response thereto, if those written comments are received by the Office within 30 days after the date of service of the patent owner's response". The third party requester may file a paper during the examination stage of the *inter partes* reexamination proceeding if, and only if, the patent owner files a response to an Office action. Thus, the third party requester is precluded by statute from participation in the examination stage of the *inter partes* reexamination proceeding if the patent owner fails to respond to all Office actions issued. Thus, contrary to the commenter's argument, the third party requester certainly is not ensured of the opportunity to participate during the examination stage of the *inter partes* reexamination proceeding. It is only the requester's right to appeal any rejection proposed and not adopted that is ensured by the statute.

As a final point, issuance of an Action Closing Prosecution as the first action on the merits (where all claims are patentable) is entirely consistent with the statute, since it provides the requester with the rights provided by statute to comment if and only if the patent owner responds to the Action Closing Prosecution.

In conclusion, the *inter partes* third party requester of reexamination is permitted by statute only to comment pursuant to 35 U.S.C. 314(b)(2) if the patent owner responds to an Office action, and to appeal and participate in appeals pursuant to 35 U.S.C. 315(b). No further participation in an *inter partes* reexamination proceeding is authorized by 35 U.S.C. chapter 31.

Rule Making Considerations

Administrative Procedure Act: The changes in this notice conform the patent-related rules of practice in 37 CFR to the changes to title 35 U.S.C. contained in Public Law 107–273. Therefore, these changes involve interpretive rules or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001); *Paralyzed Veterans of America* v. *West* 138 F.3d 1434, 1436 (Fed. Cir. 1998); and *Komjathy* v. *National Transportation Safety Board,* 832 F.2d 1294, 1296–97 (D.C. Cir. 1987). Therefore, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. See 5 U.S.C. 603.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers: 0651–0021, 0651–0031, 0651–0032, and 0651–0033. The United States Patent and Trademark Office is not resubmitting any information collection to OMB for its review and approval, because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The changes in this notice conform the patent-related rules of practice in 37 CFR to the changes to title 35 U.S.C. contained in Public Law 107–273.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, PCT/RO/134, PCT/RO/144, PTO–1382, PCT/IPEA/401, PCT/IB/328, PCT/SB/61/PCT, PCT/SB/64/PCT.

Type of Review: Approved through December of 2003.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 331,407.

Estimated Time Per Response: Between 15 minutes and 4 hours.

Estimated Total Annual Burden Hours: 401,202.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08A, PTO/SB/08B, PTO/SB/21–27, PTO/SB/30–32, PTO/SB/35–37, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL–413A, eIDS, EFS form.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,208,339.

Estimated Time Per Response: 1 minute 48 seconds to 8 hours.

Estimated Total Annual Burden Hours: 830,629 hours.

Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07, PTO/SB/13PCT, PTO/SB/16–19, PTO/SB/29 and 29A, PTO/SB/101–110.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 454,287.

Estimated Time Per Response: 22 minutes to 10 hours and 45 minutes.

Estimated Total Annual Burden Hours: 4,171,568 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, Provisional Application Cover Sheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/44, PTO/SB/50–51, PTO/SB/51S, PTO/SB/52–53, PTO/SB/55–58, PTOL–85B.

Type of Review: Approved through January of 2004.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, State, Local and Tribal Governments, and Federal Government.

Estimated Number of Respondents: 205,480.

Estimated Time Per Response: 1.8 minutes to 2 hours.

Estimated Total Annual Burden Hours: 63,640 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to Title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia, 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small Businesses.

■ For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.1 is amended by revising paragraph (c) to read:

§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

* * * * *

(c) *For reexamination proceedings.* (1) Requests for *ex parte* reexamination (*original* request papers only) should be additionally marked "Mail Stop *Ex parte* Reexam."

(2) Requests for *inter partes* reexamination (original request papers) and all subsequent *inter partes* reexamination correspondence filed in the Office, other than correspondence to the Office of the General Counsel pursuant to § 1.1(a)(3) and § 1.302(c), should be additionally marked "Mail Stop *Inter partes* Reexam."

* * * * *

■ 3. Section 1.13 is amended by revising paragraph (b) to read:

§ 1.13 Copies and certified copies.

* * * * *

(b) Certified copies of patents, patent application publications, and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his or her name, upon payment of the fee for the certified copy.

■ 4. Section 1.14 is amended by revising paragraph (g)(2) to read as follows:

§ 1.14 Patent applications preserved in confidence.

* * * * *

(g) * * *

(2) A copy of an English language translation of a publication of an international application which has been filed in the United States Patent and Trademark Office pursuant to 35 U.S.C. 154(d)(4) will be furnished upon written request including a showing that the publication of the application in accordance with PCT Article 21(2) has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(4)).

* * * * *

■ 5. Section 1.78 is amended by revising paragraph (a)(3) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(t); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

* * * * *

■ 6. Section 1.191 is amended by revising paragraph (a) to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a)(1) Every applicant for a patent or for reissue of a patent, and every owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 before November 29, 1999, any of whose claims has been twice or finally (§ 1.113) rejected, may appeal from the decision of the examiner to the Board of Patent Appeals and Interferences by filing a notice of appeal and the fee set forth in § 1.17(b) within the time period for reply provided under §§ 1.134 and 1.136 (for applications) or § 1.550(c) (for *ex parte* reexamination proceedings).

(2) Every owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 on or after November 29, 1999, any of whose claims has been finally (§ 1.113) rejected, may appeal from the decision of the examiner to the Board of Patent Appeals and Interferences by filing a notice of appeal and the fee set forth in § 1.17(b) within the time period for reply provided under §§ 1.134 and 1.550(c).

(3) Appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings filed under § 1.913 are controlled by §§ 1.959 through 1.981. Sections 1.191 through 1.198 are not applicable to appeals in *inter partes* reexamination proceedings filed under § 1.913.

* * * * *

■ 7. Section 1.197 is amended by revising paragraph (c) to read as follows:

§ 1.197 Action following decision.

* * * * *

(c) Termination of proceedings. (1) Proceedings are considered terminated by the dismissal of an appeal or the failure to timely file an appeal to the court or a civil action (§ 1.304) except:

(i) Where claims stand allowed in an application; or

(ii) Where the nature of the decision requires further action by the examiner.

(2) The date of termination of proceedings is the date on which the appeal is dismissed or the date on which the time for appeal to the Court or review by civil action (§ 1.304) expires. If an appeal to the Court or a civil action has been filed, proceedings are considered terminated when the appeal or civil action is terminated. An appeal to the U.S. Court of Appeals for the Federal Circuit is terminated when the mandate is issued by the Court. A civil action is terminated when the time to appeal the judgment expires.

■ 8. Section 1.301 is revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant, or any owner of a patent involved in any *ex parte* reexamination proceeding filed under § 1.510, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: In the U. S. Patent and Trademark Office, file a written notice of appeal directed to the Director (*see* §§ 1.302 and 1.304); and in the Court, file a copy of the notice of appeal and pay the fee for appeal as provided by the rules of the Court. For appeals by patent owners and third party requesters in *inter partes* reexamination proceedings filed under § 1.913, § 1.983 is controlling.

■ 9. Section 1.302 is revised to read as follows:

§ 1.302 Notice of appeal.

(a) When an appeal is taken to the U.S. Court of Appeals for the Federal Circuit, the appellant shall give notice thereof to the Director within the time specified in § 1.304.

(b) In interferences, the notice must be served as provided in § 1.646.

(c) In *ex parte* reexamination proceedings, the notice must be served as provided in § 1.550(f).

(d) In *inter partes* reexamination proceedings, the notice must be served as provided in § 1.903.

(e) Notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel as provided in § 104.2.

■ 10. Section 1.303 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(a) Any applicant, or any owner of a patent involved in an *ex parte* reexamination proceeding filed before November 29, 1999, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences may, instead of appealing to the U.S. Court of Appeals for the Federal Circuit (§ 1.301), have remedy by civil action under 35 U.S.C. 145 or 146, as appropriate. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an *ex parte* case, or an owner of a patent involved in an *ex parte* reexamination proceeding filed before November 29, 1999, has taken an appeal to the U.S. Court of Appeals for the Federal Circuit, he or she thereby waives his or her right to proceed under 35 U.S.C. 145.

* * * * *

(d) For an *ex parte* reexamination proceeding filed on or after November 29, 1999, and for any *inter partes* reexamination proceeding, no remedy by civil action under 35 U.S.C. 145 is available.

■ 11. Section 1.304 is amended by revising paragraph (a)(1) to read as follows:

§ 1.304 Time for appeal or civil action.

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.197(b) or § 1.658(b), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.979(a), the time for filing an appeal shall expire two months after action on the last such request.

(i) In interferences, the time for filing a cross-appeal or cross-action expires:

(A) Fourteen days after service of the notice of appeal or the summons and complaint; or

(B) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

(ii) In *inter partes* reexaminations, the time for filing a cross-appeal expires:

(A) Fourteen days after service of the notice of appeal; or

(B) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

* * * * *

■ 12. Section 1.417 is revised to read as follows:

§ 1.417 Submission of translation of international publication.

The submission of an English language translation of the publication of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked "Mail Stop PCT."

■ 13. Section 1.495 is amended by revising paragraphs (c) and (g) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(c) If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date but omits either a translation of the international application, as filed, into the English language, if the international application was originally filed in another language and if any English language translation of the publication of the international application previously submitted under 35 U.S.C. 154(d) (§ 1.417) is not also a translation of the international application as filed (35 U.S.C. 371(c)(2)), or the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26*ter*.1, applicant will be so notified and given a period of time within which to file the translation and/or oath or declaration in order to prevent abandonment of the application. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the oath or declaration of the inventor later than the expiration of thirty months after the priority date. A "Sequence Listing" need not be translated if the "Sequence Listing" complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

* * * * *

(g) The documents and fees submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

* * * * *

■ 14. Section 1.913 is revised to read as follows:

§ 1.913 Persons eligible to file request for inter partes reexamination.

Except as provided for in § 1.907, any person other than the patent owner or its privies may, at any time during the period of enforceability of a patent which issued from an original application filed in the United States on or after November 29, 1999, file a request for *inter partes* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501.

■ 15. Section 1.959 is amended by adding a new paragraph (f) to read as follows:

§ 1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences in inter partes reexamination.

* * * * *

(f) If a notice of appeal or cross appeal is timely filed but does not comply with any requirement of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended notice of appeal or cross appeal. If the appellant does not then file an amended notice of appeal or cross appeal within the one-month period, or files a notice which does not overcome all the reasons for non-compliance stated in the notification of the reasons for non-compliance, that appellant's appeal or cross appeal will stand dismissed.

■ 16. Section 1.965 is amended by revising paragraph (d) to read as follows:

§ 1.965 Appellant's brief in inter partes reexamination.

* * * * *

(d) If a brief is filed which does not comply with all the requirements of paragraphs (a) and (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, that appellant's appeal will stand dismissed.

■ 17. Section 1.967 is amended by revising paragraph (c) to read as follows:

§ 1.967 Respondent's brief in inter partes reexamination.

* * * * *

(c) If a respondent's brief is filed which does not comply with all the requirements of paragraphs (a) and (b) of this section, respondent will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the respondent does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the respondent brief will not be considered.

■ 18. Section 1.971 is revised to read as follows:

§ 1.971 Rebuttal brief in inter partes reexamination.

(a) Within one month of the examiner's answer in an *inter partes* reexamination appeal, any appellant may once file a rebuttal brief in triplicate. The rebuttal brief of the patent owner may be directed to the examiner's answer and/or any respondent brief. The rebuttal brief of any third party requester may be directed to the examiner's answer and/or the respondent brief of the patent owner. The rebuttal brief of a third party requester may not be directed to the respondent brief of any other third party requester. No new ground of rejection may be proposed by a third party requester. The time for filing a rebuttal brief may not be extended. The rebuttal brief must include a certification that a copy of the rebuttal brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(b) If a rebuttal brief is filed which does not comply with all the requirements of paragraph (a) of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended rebuttal brief. If the appellant does not file an amended rebuttal brief during the one-month period, or files an amended rebuttal brief which does not overcome all the reasons for non-compliance stated in the notification, that appellant's rebuttal brief will not be considered.

■ 19. Section 1.977 is amended by revising paragraph (g) to read as follows:

§ 1.977 Decision by the Board of Patent Appeals and Interferences; remand to examiner in inter partes reexamination.

* * * * *

(g) The time period set forth in paragraph (b) of this section is subject to the extension of time provisions of § 1.956, when the patent owner is responding under paragraph (b)(1) of this section. The time period set forth in paragraph (b) of this section may not be extended when the patent owner is responding under paragraph (b)(2) of this section. The time periods set forth in paragraphs (c) and (e) of this section may not be extended.

■ 20. Section 1.979 is amended by revising paragraphs (e) and (f) to read as follows:

§ 1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in inter partes reexamination.

* * * * *

(e) The parties to an appeal to the Board of Patent Appeals and Interferences may not appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983 until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board of Patent Appeals and Interferences is final and appealable by any party to an appeal to the Board of Patent Appeals and Interferences who is dissatisfied with the final decision of the Board of Patent Appeals and Interferences.

(f) An appeal to the Board of Patent Appeals and Interferences by a party is considered terminated by the dismissal of that party's appeal, the failure of the party to timely request rehearing under § 1.979(a) or (c), or the failure of the party to timely file an appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983. The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the date on which the time for the appeal to the U.S. Court of Appeals for the Federal Circuit expires. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, the appeal is considered terminated when the mandate is issued by the U.S. Court of Appeals for the Federal Circuit. Upon termination of an appeal, if no other appeal is present, the reexamination proceeding will be terminated and the Director will issue a certificate under § 1.997.

* * * * *

■ 21. The undesignated center heading immediately preceding § 1.983 is revised to read as follows:

Appeal to the United States Court of Appeals for the Federal Circuit in Inter Partes Reexamination

■ 22. Section 1.983 is revised to read as follows:

§ 1.983 Appeal to the United States Court of Appeals for the Federal Circuit in inter partes reexamination.

(a) The patent owner or third party requester in an inter partes reexamination proceeding who is a party to an appeal to the Board of Patent Appeals and Interferences and who is dissatisfied with the decision of the Board of Patent Appeals and Interferences may, subject to § 1.979(e), appeal to the U.S. Court of Appeals for the Federal Circuit and may be a party to any appeal thereto taken from a reexamination decision of the Board of Patent Appeals and Interferences.

(b) The appellant must take the following steps in such an appeal:

(1) In the U.S. Patent and Trademark Office, timely file a written notice of appeal directed to the Director in accordance with §§ 1.302 and 1.304;

(2) In the U.S. Court of Appeals for the Federal Circuit, file a copy of the notice of appeal and pay the fee, as provided for in the rules of the U.S. Court of Appeals for the Federal Circuit; and

(3) Serve a copy of the notice of appeal on every other party in the reexamination proceeding in the manner provided in § 1.248.

(c) If the patent owner has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the third party requester may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Board of Patent Appeals and Interferences.

(d) If the third party requester has filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit, the patent owner may cross appeal to the U.S. Court of Appeals for the Federal Circuit if also dissatisfied with the decision of the Board of Patent Appeals and Interferences.

(e) A party electing to participate in an appellant's appeal must, within fourteen days of service of the appellant's notice of appeal under paragraph (b) of this section, or notice of cross appeal under paragraphs (c) or (d) of this section, take the following steps:

(1) In the U.S. Patent and Trademark Office, timely file a written notice directed to the Director electing to participate in the appellant's appeal to the U.S. Court of Appeals for the Federal Circuit by mail to, or hand service on, the General Counsel as provided in § 104.2;

(2) In the U.S. Court of Appeals for the Federal Circuit, file a copy of the notice electing to participate in accordance with the rules of the U.S. Court of Appeals for the Federal Circuit; and

(3) Serve a copy of the notice electing to participate on every other party in the reexamination proceeding in the manner provided in § 1.248.

(f) Notwithstanding any provision of the rules, in any reexamination proceeding commenced prior to November 2, 2002, the third party requester is precluded from appealing and cross appealing any decision of the Board of Patent Appeals and Interferences to the U.S. Court of Appeals for the Federal Circuit, and the third party requester is precluded from participating in any appeal taken by the patent owner to the U.S. Court of Appeals for the Federal Circuit.

Dated: December 9, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–31398 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7601–4]

RIN 2060–AL80

Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: The EPA is taking final action to approve a correction to the mobile source provisions of EPA's regional haze rule. This correction is consistent with recommendations of the Western Regional Air Partnership (WRAP). The amendments to the rule are intended to address an emissions projection scenario for mobile sources which was not addressed when EPA published the regional haze rule in 1999.

EFFECTIVE DATE: This final rule is effective February 20, 2004.

ADDRESSES: The EPA has established an official public docket for this action under Docket No. OAR–2002–0076. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include confidential business information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying.

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FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule, contact Kathy Kaufman, Integrated Policies and Strategies Group, (919) 541–0102 or by e-mail *kaufman.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are nine States in the Western United States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and Wyoming) and Indian tribes within that same geographic area. This final action, and an earlier action taken by EPA in 1999, provides these States and tribes with an optional program to protect visibility in federally protected scenic areas. The portion of the program addressed by today's final rule is a program for tracking of mobile source emissions under the 1999 rule.

Outline

The contents of today's preamble are listed in the following outline.

I. Background
  A. What Is the Regional Haze Rule?
  B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?
II. Changes to the Mobile Source Provisions of Section 309
  A. Why Are We Changing the Mobile Source Provisions of 40 CFR 51.309?
  B. What Are the Specific Changes to the Mobile Source Provisions of 40 CFR 51.309?
  C. What Comments Did We Receive on the Proposed Rule and What Is Our Response?
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  A. Executive Order 12866: Regulatory Planning and Review
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  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
  I. National Technology Transfer Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act
IV. Statutory Provisions and Legal Authority

I. Background

A. What Is the Regional Haze Rule?

Section 169(A) of the Clean Air Act (CAA) establishes a national goal for protecting visibility in federally-protected scenic areas. These "Class I" areas include national parks and wilderness areas. The national visibility goal is to remedy existing impairment and prevent future impairment in these Class I areas, consistent with the requirements of sections 169A and 169B of the CAA.

Regional haze is a type of visibility impairment caused by air pollutants emitted by numerous sources across a broad region. The EPA uses the term regional haze to distinguish this type of visibility problem from those which are more local in nature. In 1999, EPA issued a regional haze rule requiring States to develop implementation plans that will make "reasonable progress" toward the national visibility goal (64 FR 35714, July 1, 1999). The first State plans for regional haze are due between 2003 and 2008. The regional haze rule provisions appear at 40 CFR 51.308 and 40 CFR 51.309.

B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?

The regional haze rule at 40 CFR 51.308 sets forth the requirements for State implementation plans (SIPs) under the regional haze program. The rule requires State plans to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the Grand Canyon Visibility Transport Commission (GCVTC) during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region. The regulatory provisions at 40 CFR 51.309 are based on the final report issued by the GCVTC in 1996,[1] which included a number of recommended emissions reductions strategies designed to improve visibility in the 16 Class I areas on the Colorado Plateau.

In developing the regional haze rule, EPA received a number of comments on the proposed rule encouraging the Agency to recognize explicitly the work of the GCVTC. In addition, in June 1998, Governor Leavitt of Utah provided comments to EPA on behalf of the Western Governors Association (WGA), further emphasizing the commitment of western States to implementing the GCVTC recommendations. The WGA's comments also suggested the translation of the GCVTC's recommendations into specific regulatory language. The EPA issued a Notice of Availability during the fall of 1998 requesting further comment on the WGA's proposal and a draft set of regulatory language based upon the WGA's recommendations. Based on the comments received on this **Federal Register** action, EPA developed the provisions set forth in 40 CFR 51.309 that allow the nine Transport Region States and eligible tribes within that geographic area to implement many of the GCVTC recommendations within the framework of the national regional haze rule.

The provisions in 40 CFR 51.309 comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within this geographic region. The strategy addresses the time period between the year 2003, when the implementation plans are due,[2] and the year 2018. The provisions address emissions from stationary sources, mobile sources, and area sources such as emissions from fires and windblown dust.

II. Changes to the Mobile Source Provisions of Section 309

A. Why Are We Changing the Mobile Source Provisions of 40 CFR 51.309?

1. What Is the Basis for the Old Provisions?

The GCVTC determined that mobile source emissions need to be an essential part of a strategy to reduce haze on the Colorado Plateau. Therefore, one element of the GCVTC's strategy, as reflected in 40 CFR 51.309(d)(5), was to address mobile sources emissions. Section 309 also requires States to establish a mobile source emissions budget for each area that significantly contributes to visibility impairment in any of the 16 Class I areas covered by this section of the regulations. At the time the GCVTC made its recommendations (in 1996), mobile source emissions were projected to be lowest in 2005, and to subsequently rise over the course of the first regional haze planning period (*i.e.*, until 2018). Accordingly, section 309 required mobile source emissions budgets to be set using the lowest projected level as a planning objective and performance indicator for each area.

2. What Is the Basis for the New Provisions?

Since the GCVTC made its recommendations, new developments have caused mobile source emissions projections to change significantly. Over the past few years, we have promulgated a series of new emissions standards for several different engine types, as well as new standards for diesel fuel content.[3] As a result of these new standards, the WRAP, using EPA's latest models,[4] now projects a significant decline in mobile source emissions throughout the region during the 2003–2018 time period covered by the section 309 plans, particularly from on-road mobile sources. Rather than emissions being lowest in 2005, and subsequently rising, mobile source emissions for all pollutants except sulfur dioxide (SO_2) are expected to decline continuously over the course of the first regional haze planning period.

The projected trends for mobile source emissions of SO_2 differ from those of other pollutants. Emissions reductions from pollutants such as nitrogen oxides (NO_X) and particulate matter (PM) are dependent on technological changes to the onroad fleet and to nonroad engines which are implemented gradually. In contrast, SO_2 emissions reductions are immediately realized when the sulfur content of the fuel changes, because emissions from both new and existing engines immediately drop sharply. We have already published stringent fuel sulfur limits for onroad engines and have proposed stringent fuel sulfur limits for nonroad engines.[5] These Federal fuel sulfur regulations, fully implemented, would together result in a substantial reduction in SO_2 emissions over the 2003—2018 planning period.

B. What Are the Specific Changes to the Mobile Source Provisions of 40 CFR 51.309?

These revisions would change 40 CFR 51.309(d)(5)(i) to eliminate the requirement for setting mobile source emissions budgets using the lowest projected level as a planning objective and performance indicator for each area. Instead, the new 40 CFR 51.309(d)(5)(i) would substitute, as the new planning objective and performance indicator, a requirement for statewide inventories to show a continuous decline in emissions of each pollutant of concern over the planning period. Should mobile source emissions not decline as expected, States would have to revise their SIPs to include any feasible additional strategies. This new requirement conforms to trends that are currently projected.

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[1] *Recommendations for Improving Western Vistas.* GCVTC, June 10, 1996.

[2] Indian tribes are given the flexibility under EPA regulations to submit implementation plans and opt into the program after the 2003 deadline.

[3] *See* 62 FR 25355, (May 8, 1997); 63 FR 18978, (April 16, 1998); 63 FR 56968, (October 23, 1998); 64 FR 73300, (December 29, 1999); 65 FR 59895, (October 6, 2000); 66 FR 5001, (January 18, 2001); 67 FR 68241, (November 8, 2002); and 68 FR 9745, (February 28, 2003).

[4] MOBILE6 and MOBILE6.2 for on-highway vehicles and the NON–ROAD model for nonroad vehicles.

[5] *See* 68 FR 28327, (May 23, 2003).

In addition, in light of the continuous decline in mobile source emissions expected over the entire region, these revisions also eliminate the unneeded requirement in 40 CFR 51.309(d)(5)(ii) and (iii) to determine whether mobile sources emissions constitute a significant contributor to haze in a given State. The revisions retain the requirements for statewide inventories and performance demonstrations.

Finally, the revisions contain a backstop provision, requested by the WRAP, to address any potential concerns regarding SO_2 from nonroad sources in the event that recently proposed Federal standards, referenced above, are not finalized. The backstop provision, contained in the new 40 CFR 51.309(d)(5)(i)(B), requires States to assess the need for any long-term strategies to address SO_2 from nonroad mobile sources by no later than December 31, 2008. In determining whether to revise their SIPs to address SO_2 from mobile sources, States may consider the emissions reductions achieved—or anticipated—by any Federal standards that are in place addressing fuel sulfur content for nonroad engines.

C. What Comments Did We Receive on the Proposed Rule and What Is Our Response?

We received one comment letter on the proposed rule, from the Center for Energy and Economic Development (CEED). We also received three comments at the public hearing—one from CEED, reiterating comments provided in its letter, one from the WRAP in support of this rule, and one from the Colorado Mining Association.

The CEED commented (1) that EPA should fix other flaws in section 309 before making this change; (2) that making this change now may constrain state authority in making "reasonable progress" determinations; (3) that it is not clear that all WRAP states and tribes have authorized the request for this change; and (4) that this action circumvents the recent statutory process enacted by Arizona for determining which regional haze path to implement.

In regard to comment (1), EPA believes that we would be remiss in awaiting the outcome of CEED's current lawsuit before bringing the requirements of section 309 in line with the most recent data on mobile sources emission trends. Section 309 is currently in effect, and, as explained earlier in this preamble, this change is needed by States and tribes who must submit section 309 SIPs to EPA by the December 31, 2003, deadline. Without this change, those section 309 SIPs would have to contain extra work by States to determine significance, work that the current data shows is unnecessary.

In regard to comment (2), EPA does not agree that making this change would constrain state authority in making "reasonable progress" determinations. We do not agree with CEED that greater public input is needed from western States on this point; we believe by specifically requesting this change, the WRAP has made it quite clear that western States (and tribes) need it. We believe that CEED's claim in comment (3), that it is not "clear that all WRAP States and tribes authorized such a request", is disingenuous at best. Representatives of the WRAP have assured us that the WRAP discussed this request at length. The WRAP requested this change, in writing, on behalf of its member States and tribes, and we have not heard of any member State or tribe objecting in any way.

In regard to comment (4), we do not believe that removing an unneeded requirement from a voluntary program circumvents the Arizona legislature in any way.

The Colorado Mining Association asserted that we should make available for public reivew the assumptions and model inputs that support our projections. In regard to this comment, as noted in footnote 4 of the proposed rule, the WRAP used EPA's MOBILE6 and MOBILE6.2 models for on-highway vehicles and the NONROAD model for nonroad vehicles. The assumptions and model inputs for these models have undergone numerous public workshops and reviews, as described in detail on our Web site, *http://www.epa.gov/otaq/models/mobile6/m6wkshop.htm.*

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

> (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
>
> (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
>
> (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
>
> (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this direct final rule is not a significant regulatory action.

B. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The OMB has approved the information collection requirements contained in the final Regional Haze regulations (64 FR 35714, July 1, 1999) and has assigned OMB control number 2060–0421 (EPA ICR No. 1813.04). A copy of this ICR may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rulemaking on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA Web site at *http://www.sba.gov/size/indextableofsize.html*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule eliminates certain comprehensive requirements to address mobile source emissions that EPA now considers to be unnecessary. Specifically, as discussed above, this rule eliminates the requirements in 51.309(5)(ii) and (iii) to determine whether mobile sources emissions constitute a significant contributor to haze in a given State, and for those States with areas that meet this significance criterion, to establish mobile source emissions budgets. The rule requires emissions reductions consistent with the downward trend in mobile source emission inventories that is currently projected, based on regulations that have already been promulgated. We have therefore concluded that today's rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

Because the entire program under 40 CFR 51.309, including today's amendments, is an option that each of the States may choose to exercise, these revisions to section 309 do not establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The program is not required and, thus is clearly not a "mandate." Moreover, as explained above, today's rule eliminates certain requirements and will overall reduce any regulatory burdens. Accordingly, this rule will not result in expenditures to State, local, and tribal governments, in the aggregate, or the private sector, of $100 million or more in any given year. Thus EPA is not obligated, under section 203 of UMRA, to develop a small government agency plan.

We believe that this rulemaking is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule (64 FR 35761, July 1, 1999). However, today's direct final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. In addition, the program contained in 40 CFR 51.309, including today's revisions, is an optional program.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing a regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132. As described above, this rule contains minor revisions to section 309 of the regional haze rule which will reduce any regulatory burden on the States. In addition, section 309 is an optional program for States. The minor revisions to section 309, accordingly, do not directly impose significant new requirements on State and local governments. Moreover, even if today's revisions did have federalism implications, these revisions would not impose substantial direct compliance costs on State or local governments, nor would they preempt State law. Thus, Executive Order 13132 does not apply to this rule.

Consistent with EPA policy, we nonetheless did consult with representatives of State and local governments in developing this rule. This rule directly implements specific recommendations from the WRAP, which includes representatives from all the affected States.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule eliminates certain requirements and will overall reduce any regulatory burden on the tribes. Moreover, the section 309 program is an optional program for tribes within the same geographic region as the WRAP states. Accordingly, this rule will not have tribal implications. In addition, this rule directly implements specific recommendations from the WRAP, which includes representatives of tribal governments. Thus, although the rule does not have tribal implications, representatives of Tribal governments have had the opportunity to provide input into development of the recommendations forming its basis.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, "Actions that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The requirements of Executive Order 12898 have been previously addressed to the extent practicable in the Regulatory Impact Analysis (RIA) for the regional haze rule (cited above), particularly in chapters 2 and 9 of the RIA. Today's direct final rule makes no changes that would have a disproportionately high and adverse human health or environmental effect on minorities and low-income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(a).

IV. Statutory Provisions and Legal Authority

Statutory authority for today's direct final rule comes from sections 169(a) and 169(b) of the CAA (42 U.S.C. 7545(c) and (k)). These sections require EPA to issue regulations that will require States to revise their SIPs to ensure that reasonable progress is made toward the national visibility goals specified in section 169(A).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: December 15, 2003.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons set forth in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart P—Protection of Visibility

■ 2. Section 51.309 is amended by revising paragraphs (b)(6) and (d)(5)(i), removing paragraphs (d)(5)(ii) and (d)(5)(iii), and redesignating paragraph (d)(5)(iv) as (d)(5)(ii), to read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(6) *Continuous decline in total mobile source emissions* means that the projected level of emissions from mobile sources of each listed pollutant in 2008, 2013, and 2018, are less than the projected level of emissions from mobile sources of each listed pollutant for the previous period (*i.e.*, 2008 less than 2003; 2013 less than 2008; and 2018 less than 2013).

* * * * *

(d) * * *

(5) * * *

(i) Statewide inventories of onroad and nonroad mobile source emissions of VOC, NO_X, SO_2, $PM_{2.5}$, elemental carbon, and organic carbon for the years 2003, 2008, 2013, and 2018.

(A) The inventories must demonstrate a continuous decline in total mobile source emissions (onroad plus nonroad; tailpipe and evaporative) of VOC, NO_X, $PM_{2.5}$, elemental carbon, and organic carbon, evaluated separately. If the inventories show a continuous decline in total mobile source emissions of each of these pollutants over the period 2003–2018, no further action is required as part of this plan to address mobile source emissions of these pollutants. If the inventories do not show a continuous decline in mobile source emissions of one or more of these pollutants over the period 2003–2018, the plan submission must provide for an implementation plan revision by no later than December 31, 2008 containing any necessary long-term strategies to achieve a continuous decline in total mobile source emissions of the pollutant(s), to the extent practicable, considering economic and technological reasonableness and federal preemption of vehicle standards and fuel standards under title II of the CAA.

(B) The plan submission must also provide for an implementation plan revision by no later than December 31, 2008 containing any long-term strategies necessary to reduce emissions of SO_2 from nonroad mobile sources, consistent with the goal of reasonable progress. In assessing the need for such long-term strategies, the State may consider emissions reductions achieved or anticipated from any new Federal standards for sulfur in nonroad diesel fuel.

* * * * *

[FR Doc. 03–31471 Filed 12–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 437

[FRL–7601–3]

RIN 2040–AD95

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Centralized Waste Treatment Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending certain provisions of a wastewater-discharge regulation for the Centralized Waste Treatment (CWT) Point Source Category. Today's action deletes the selenium limitations and standards from certain sections of Subpart A, the Metals Treatment and Recovery subcategory. In addition, it deletes the barium, molybdenum, antimony, and titanium limitations and standards from Subpart B, the Oils Treatment and Recovery subcategory. Further, this action deletes the molybdenum, antimony, aniline, and 2,3-dichloroaniline limitations and standards from the Organics Treatment and Recovery subcategory. This action also revises all applicable related sections of Subpart D, the Multiple Wastestream subcategory, to reflect the preceding revisions. Finally this action increases the maximum monthly average BOD_5 limitation for directly discharging facilities subject to a section of the Multiple Wastestreams subcategory. EPA originally established wastewater discharge standards for CWT facilities in December 2000. Following publication of that rule, a number of CWT facilities petitioned EPA to reconsider the limitations and standards for certain pollutants. EPA evaluated the technology basis and other analyses and agreed with many of the suggested revisions. Today's action establishes those changes. As a result, facilities will not be required to comply with certain discharge standards that were erroneously included in the earlier regulation or for which EPA had incorrectly assessed the capability of the technology to achieve the removals.

DATES: This regulation shall become effective on December 22, 2003.

ADDRESSES: The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center (EPA/DC) in the basement of the EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The rule and key supporting materials are also electronically available via EPA Dockets (Edocket) at *http://www.epa.gov/edocket/* Edocket number OW–2003–0075 or at *http://www.epa.gov/guide/cwt/*.

FOR FURTHER INFORMATION CONTACT: Elwood H. Forsht, EPA Office of Water by phone at (202) 566–1025 or by e-mail at *forsht.elwood@epa.gov*. For information on how to get copies of this document and other related information see the **SUPPLEMENTARY INFORMATION** section.

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I. General Information

A. What Entities Are Potentially Regulated by This Regulation?

Entities potentially regulated by this action include the following types of facilities that discharge pollutants directly or indirectly to U.S. waters.

Category	Examples of regulated entities	NAICS codes
Industry	Discharges from stand-alone waste treatment and recovery facilities receiving materials from off-site. These facilities may treat hazardous or non-hazardous waste, hazardous or non-hazardous wastewater, and/or used material from off-site, for disposal, recycling, or recovery. Certain discharges from waste treatment systems at facilities primarily engaged in other industrial operations. Industrial facilities that process their own, on-site generated, process wastewater with hazardous or non-hazardous wastes, wastewaters, and/or used material received from off-site, in certain circumstances, may be subject to this rule with respect to a portion of their discharge.	56221, 562219

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definitions and applicability criteria in §§ 437.1, 437.2, 437.10, 437.20, 437.30, and 437.40 of title 40 of the Code of Federal Regulations. If you have questions about the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2003–0075. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view these docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of $25.00.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

C. What Process Governs Judicial Review for Today's Final Rule?

In accordance with 40 CFR 23.2, today's rule is considered promulgated for the purposes of judicial review as of 1 p.m. eastern daylight time, January 5, 2004. Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and standards may be obtained by filing a petition in the United States Circuit Court of Appeals for review within 120 days from the date of promulgation of these guidelines and standards. Under section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

II. Legal Authority

The U.S. Environmental Protection Agency is promulgating these regulations under the authority of 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

III. Overview of Effluent Limitations Guidelines and Standards for Centralized Waste Treatment

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a), 33 U.S.C. 1251(a)). To achieve this, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The CWA confronts the problem of water pollution on a number of different fronts. It relies primarily, however, on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the Nation's waters would not achieve the CWA's goals. Consequently, the CWA requires EPA to set nationally-applicable pretreatment standards that restrict pollutant discharges for those facilities that discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those wastewater pollutants that may pass through or interfere with POTWs operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. POTWs must also implement local pretreatment limits applicable to their industrial indirect dischargers to satisfy local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations through National

Pollutant Discharge Elimination System (NPDES) permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

On December 22, 2000, EPA published regulations establishing effluent limitations guidelines, pretreatment standards for new and existing sources, and new source performance standards for the Centralized Waste Treatment (CWT) Point Source Category (65 FR 81242). These regulations control the discharges from CWT facilities that receive waste, wastewater, or used material from off-site. EPA established limitations and standards for four CWT subcategories. The first three subcategories cover facilities that treat or recover only one type of waste, either metal-bearing (Subpart A—Metals Treatment and Recovery), oily (Subpart B—Oils Treatment and Recovery), or organic (Subpart C—Organics Treatment and Recovery). The fourth subcategory, Subpart D—Multiple Wastestreams, covers facilities that treat or recover some combination of metal-bearing, oily, and organic waste, wastewater, or used material received from off-site. Using Subpart D limitations and standards simplifies implementation of the rule and compliance monitoring for CWT facilities that treat wastes subject to more than one of the first three subcategories. These facilities may choose to comply with the provisions of the multiple wastestreams Subpart D rather than Subparts A, B, or C. However, they must certify that an equivalent treatment system is installed and properly designed, maintained, and operated.

After the Agency published the December 2000 final rule, facilities in the regulated community conducted compliance monitoring studies and began to develop compliance strategies for the regulated pollutants. Based on these efforts, several members of the regulated community and a trade association submitted new information to the Agency and asked EPA to revise certain aspects of the final rule. In September 2003, EPA proposed to amend the regulations to delete certain pollutants from those subject to effluent limitations guidelines and standards. (68 FR 53432, September 10, 2003). After our own analysis and review of comments received on the proposed amendment, EPA has determined that it should adopt the proposed modifications to the current rule as well as several additional modifications resulting from additional analyses in the organics subcategory.

IV. Amendment To Remove Selenium Limitations From Certain Sections of the Metals Treatment and Recovery Subcategory

For the Metals Treatment and Recovery subcategory, EPA proposed to amend 40 CFR part 437 by deleting from §§ 437.11, 437.13, 437.15 and 437.16 the respective Best Practicable Control Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) limitations and standards for selenium. We are adopting the changes for the reasons explained below. Section VII describes the methodology used to revise the related segments of the Multiple Wastestreams subcategory to reflect deletion of selenium from the Metals Treatment and Recovery subcategory.

In the December 2000 final rule, EPA established, for the Metals Treatment and Recovery subcategory, direct discharge limitations and standards as well as pretreatment standards for selenium and 15 other metal pollutants. The model technology for the BPT, BAT, PSES, and PSNS limitations and standards was primary chemical precipitation, liquid-solid separation, secondary chemical precipitation, clarification, and sand filtration. Following promulgation of the final rule, EPA received information indicating that the model technology that was the basis for the limitations and standards for existing sources would not remove selenium from wastewater consistently to the level required by the regulation. Based on the Agency's review of this information, EPA agrees and has concluded that it should delete selenium from the regulated metals for this subcategory. (EPA did not reassess its New Source Performance Standards (NSPS) for selenium because the standards are based on a different model treatment system involving the use of selective metals precipitation.)

While the data in the record for the 2000 CWT regulation demonstrate that the technology EPA evaluated as the basis for the BPT, BAT, PSES, and PSNS limitations and standards removes selenium, they also show that selenium removal was achieved only in the last stage of the model treatment system—the sand filtration polishing step. The sand filtration polishing step was included in the model technology to ensure compliance with total suspended solids (TSS) limits and was not designed to achieve specific metal removals. While it is true that the removal of solids associated with sand filtration will also remove associated metals, these metals removals are not achieved at a consistent or predictable rate. EPA did not intend to regulate a metal for which removals were obtained only during this final, polishing step of an extended treatment train. The identified removals may be an artifact of the particular data set EPA evaluated, and the record does not demonstrate that selenium removals are achieved consistently and predictably with this technology. While removals were observed, EPA determined that facilities would not be able to achieve the consistent removals required for compliance with a specific regulatory limit for selenium. Commenters on the proposed amendment supported EPA's conclusions. Commenters' experience confirmed that the model technology would not achieve consistent and predictable high-percentage removal of selenium. The docket includes documents which describe EPA's review of the selenium data that form the basis for today's action (DCNs 47.1 and 47.2).

Although EPA is deleting the regulatory limits for selenium in the selected sections, operation of treatment systems required to achieve compliance with the 14 other metals limits will ensure some continued removal of selenium, even if not at a consistent and predictable rate. Even without incidental removals for selenium, the estimated pollution reduction for this regulation remains relatively unchanged from the December 2000 estimates. Specifically, the decrease in reductions would be only 398 pounds per year (lbs/yr) or 0.01 percent of the total estimated metals subcategory reduction of 3.17 million lbs/yr. Expressed as toxic pound-equivalents (lb-eq), the decrease as a result of assuming no selenium removals is 0.011 percent or 438 lb-eq/yr out of the total estimated metals subcategory reduction of 415,393 lb-eq/yr (DCN 48.1).

V. Amendment To Remove Barium, Molybdenum, Antimony, and Titanium Limitations From the Oils Treatment and Recovery Subcategory

In the December 2000 final rule, EPA established, for the Oils Treatment and Recovery subcategory, direct discharge limitations and standards for barium, molybdenum, antimony, and titanium as well as 18 other pollutants. It also established pretreatment standards for barium, molybdenum, and antimony as well as 11 other pollutants. The model technology used as the basis for the BPT, BAT, NSPS, and PSNS limitations and standards was emulsion breaking/gravity separation, secondary gravity separation, and dissolved air flotation (DAF). The PSES model technology was emulsion breaking/gravity separation, and DAF.

After EPA published the final rule, members of the regulated community evaluated different engineering strategies for complying with the promulgated limitations and standards. Several companies and a trade association submitted new information to EPA demonstrating that the model technology did not consistently remove certain pollutants from oils wastestreams. They reported to EPA that the limitations and standards were not technically achievable and petitioned EPA to delete these pollutants from the regulated parameters.

Based on the data submitted concerning metals removal and the model technology, EPA reexamined its model technology. As noted above, the model technology used for BPT, BAT, NSPS, and PSNS consists of emulsion breaking/gravity separation, secondary gravity separation, and DAF. During the DAF phase of treatment, surface active agents, coagulating agents, and polyelectrolytes are added to the wastewater, and the pH of the system is adjusted. The effect of adding coagulating agents and adjusting pH is to promote precipitation of metals and their consequent removal. Different metals are removed more effectively at different concentrations of coagulating agents and at different pH levels. EPA examined its database to identify which of the metal pollutants were removed consistently and predictably by the treatment system. Our review demonstrates that removals were not consistent and predictable for barium, molybdenum, antimony, and titanium. As a result, EPA is amending the regulations to remove the limitations and standards for these metal pollutants from Subpart B and to modify the related provisions of Subpart D to reflect these changes. In today's action, EPA is deleting BPT, BAT, and NSPS limitations and standards for barium, molybdenum, titanium, and antimony. EPA is also deleting PSES and PSNS standards for barium, molybdenum and antimony. (EPA had not promulgated pretreatment standards for titanium in the December 2000 rule.) Comments on the proposed amendment and EPA's record support these changes as explained in the following discussions.

Even though this amendment deletes the limitations and standards for these four metal pollutants, the control of other metal pollutants ensures some incidental removals for these parameters. For direct discharge facilities, limitations for nine other metals remain in place. For indirect discharge facilities, pretreatment standards for six other metals remain in place.

A. Barium

EPA is amending 40 CFR part 437 by deleting from §§ 437.21, 437.23, 437.24, 437.25 and 437.26 the respective BPT, BAT, NSPS, PSES, and PSNS limitations and standards for barium. Section VI describes the methodology used to revise the related segments of the Multiple Wastestreams subcategory to reflect deletion of barium from the Oils Treatment and Recovery subcategory.

EPA received information and data from several companies and a CWT trade association concerning barium concentrations in different types of waste receipts treated at CWT facilities. EPA evaluated this information and concluded that the model technology would not reliably and consistently remove barium to the limits required in the oils subcategory. The record includes the additional information provided to the Agency with the request for changes to the regulation and EPA's review of that information (DCNs 43.2.49, 43.2.51, 43.2.54, 43.2.60, 44.2, 44.2.1, 44.3, 45.29.1, and 47.7).

EPA based its determination on the information noted above and other information supplied by commenters. Petitioners and commenters noted that CWT facilities accept a variety of oily waste receipts that contain barium including used lubricating oils and greases and oil and gas extraction drilling fluids and brine. The information and data indicate that barium is usually precipitated as barium sulfate and that sedimentation, rather than dissolved air flotation, would provide more consistent barium removals.

EPA's single-stage DAF model treatment system was designed primarily to remove suspended solids and dispersed oil and grease from oily wastewater. The use of treatment chemicals effectively increases the efficiencies of DAF treatment systems in removing suspended solids and may also enhance the removal of metals (DCN 41.2, pages 8–13 to 15). The operating conditions of the model treatment technology in the final regulation included the addition of treatment chemicals (aluminum sulfate, caustic soda, and polymers). Use of aluminum sulfate (alum) precipitates barium sulfate which has a specific gravity 4.5 times heavier than water; the use of polymers flocculate suspended particles.

Because of the density of barium sulfate and the use of polymers, large floc formations would tend to sink, and smaller floc formations would tend to float. However, if colloidal suspensions are formed, DAF might be ineffective. Therefore, removing barium sulfate by DAF requires a careful balance between forming a large enough floc to be floated but not too large to sink. In these circumstances, EPA determined that the model DAF technology would not reliably and consistently provide the pollutant reductions that were used for the promulgated limitations. Thus, EPA proposed to remove the limitations and standards for barium from Subpart B and the associated provisions of Subpart D. EPA did not intend to regulate a pollutant in the oils waste receipts subcategory for which compliance could not be consistently and predictably achieved with the model DAF treatment system. Further analysis of EPA data and that supplied by commenters and others confirms EPA's conclusions about barium removals in the model DAF treatment system. As a consequence, EPA is modifying the limitations and standards to remove barium as a regulated pollutant.

Although EPA is deleting the regulatory limits for barium, operation of treatment systems required to achieve compliance with other metals limits will ensure some continued removal of barium, even if not at a consistent and predictable rate. Even without incidental removals for barium, the estimated pollutant reduction for this regulation remains relatively unchanged from the December 2000 estimates. Specifically, the oils subcategory pollutant reductions would decrease by 2,117 lbs/yr or 0.25 percent of the total estimated reduction of 859,988 lbs/yr if no barium removals were included. Expressed as toxic pound-equivalents, the decrease assuming no barium removals is less than 0.008 percent or 4 lb-eq/yr of the total estimated subcategory reduction of 52,603 lb-eq/yr (DCN 48.1).

B. Molybdenum, Antimony, and Titanium

EPA is amending 40 CFR part 437 by deleting the respective BPT, BAT, and NSPS limitations and standards for molybdenum, antimony, and titanium from §§ 437.21, 437.23, 437.24; and by deleting the respective PSES and PSNS standards for molybdenum and antimony from §§ 437.25 and 437.26. Section VI describes the methodology used to revise the related segments of the Multiple Wastestreams subcategory to reflect deletions of regulated pollutants.

As explained in the proposal, EPA's single-stage DAF model treatment system was designed primarily to remove suspended solids and dispersed oil and grease from oily wastewater. The use of treatment chemicals effectively increases the efficiencies of DAF treatment systems in removing suspended solids. It may also enhance the removal of metals (DCN 41.2, pages 8–13 to 15). The conditions under which the EPA's model treatment technology operated included adding treatment chemicals (aluminum sulfate, caustic soda, and polymer) with pH adjustments to relatively strong base levels between 9 to 11. These operating conditions optimize removals of the more traditional heavy metals including chromium, zinc, lead, nickel, copper, and cadmium.

As previously noted, after EPA published the December 2000 final rule, the regulated community evaluated several different engineering strategies for complying with the limitations and standards. Several companies and a CWT trade association submitted new information demonstrating that the model technology would not consistently remove certain pollutants from oils wastestreams. They reported that the antimony, molybdenum, and titanium limitations and standards were not technically achievable, petitioning EPA to delete these pollutants as regulated parameters. The docket includes the additional information and EPA's review of that information (DCNs 45.12.1, 45.12.2, 45.12.3, 45.12.4, 45.25, 45.25.2, 46.5.1, 46.5.2, 46.5.3, 46.10, 46.11, 46.12, 46.15, 46.21, and 47.5).

Based on the materials submitted, EPA reexamined its model technology and the removal data. The results led EPA to propose deleting the antimony, molybdenum, and titanium limitations and standards in the Oils Treatment and Recovery subcategory. Information and data submitted by commenters has further convinced the Agency that the oils subcategory model DAF treatment technology will not consistently meet the antimony, molybdenum, and titanium limitations and standards. The data demonstrate that optimum removals of antimony, molybdenum, and titanium require treatment with high concentrations of iron (ranging from 1,000 to 5,000 mg/l). The data also demonstrate that optimum removals of antimony and molybdenum require pH adjustments to relatively strong acid levels between 4 to 5. To ensure compliance with the antimony, molybdenum, and titanium limitations and standards, many oily waste facilities would need to add a second-stage chemical precipitation step, operated at a relatively low pH (between 4 and 5) and/or add large quantities of iron (1,000 to 5,000 mg/l), followed by clarification or filtration.

EPA did not intend to regulate a pollutant in the oils waste receipts subcategory for which compliance requires the addition of uniquely designed chemical precipitation systems to the model technology. Based on the information and data provided, we conclude that many CWT facilities subject to Subpart B would not be able to comply with the antimony, molybdenum, and titanium limitations and standards through the use of the model DAF technology alone. EPA is therefore amending the regulation to remove the limitations and standards for these pollutants from Subpart B and revise the associated provisions of Subpart D.

Although EPA is deleting the regulatory limits for antimony, molybdenum, and titanium, operation of treatment systems required to achieve compliance with other metals limits will ensure some continued removal of antimony, molybdenum, and titanium, even if not at consistent and predictable rates. Even with no incidental removals for antimony, molybdenum, and titanium, the estimated oils subcategory pollutant reduction for this regulation remains relatively unchanged (the December 2000 estimated pollutant reductions would decrease by 7,832 lbs/yr or 0.91 percent of the total estimated reduction of 859,988 lbs/yr). Expressed as pollutant pound-equivalents, the decrease, assuming no antimony, molybdenum, and titanium removals, is about 2.89 percent or 1,519 lb-eq/yr out of the total estimated subcategory reduction of 52,603 lb-eq/yr (DCN 48.1).

VI. Amendment To Remove Molybdenum, Antimony, Aniline, and 2,3-Dichloroaniline Limitations From the Organics Treatment and Recovery Subcategory

EPA is amending 40 CFR Part 437 by deleting from §§ 437.31, 437.33, and 437.34 the respective BPT, BAT, and NSPS limitations and standards for molybdenum, antimony, aniline, and 2,3-dichloroaniline; and by deleting the respective PSES and PSNS standards for molybdenum and 2,3-dichloroaniline from §§ 437.35 and 437.36. Section VII describes the methodology used to revise the related segments of the Multiple Wastestreams subcategory to reflect deletions of regulated pollutants.

In the proposed amendment, EPA asked for comment on an issue raised by the National Oil Recyclers Association (NORA). NORA submitted information with a request that EPA delete the molybdenum limitations and standards from the Organics Treatment and Recovery subcategory and from the related sections of the Multiple Wastestreams subcategory (DCNs 45.32 and 45.33). NORA stated that many CWT organics subcategory facilities had molybdenum influent raw waste concentrations that are too high for effective biological treatment. Based on our assessment of the information and data, EPA indicated in the proposed amendment that it would probably delete the molybdenum limitations from the organics subcategory. We sought further information that showed that the model technology for the Organics Treatment and Recovery subcategory would not consistently and predictably remove molybdenum from wastestreams. EPA received additional information and data from commenters on this issue and has determined that it should remove molybdenum from the pollutants regulated in the Organics Treatment and Recovery subcategory (and related sections of the Multiple Wastestreams subcategory).

EPA had based the December 2000 effluent limitations and pretreatment standards for Subpart C—the Organics Treatment and Recovery subcategory—on the performance of one model facility that used the BPT/BAT model technology. That technology consists of equalization followed by biological treatment provided by a sequential batch reactor (SBR). EPA's analysis of information and data submitted by commenters and in the rulemaking record demonstrates, however, that well-designed and well-operated treatment systems at CWT facilities that use the BPT/BAT technology as the basis for the organics subcategory limitations and standards will not consistently and predictably remove molybdenum. Commenters asserted that EPA had erroneously selected molybdenum as a regulated pollutant because it had used data from the wrong influent sample point. Further, commenters asserted that EPA had improperly included in its determination influent data for one day of sampling for which it had no corresponding effluent data. Commenters concluded that, if EPA had applied its methodology to the proper data set from the correct sampling point, the Agency would not have selected molybdenum for regulation.

EPA has reexamined the data underlying its original determination of which pollutants should be regulated in the organics subcategory. The

"Development Document for Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry—Final" describes the methodology EPA used to select regulated pollutants for this subcategory (DCN 41.2, Chapter 7). Among the criteria EPA had considered in selecting regulated pollutants was whether a pollutant was present in the influent wastewater at a treatable level and whether a pollutant was effectively removed by the model technology. Thus, selection of the influent sampling point can greatly influence whether a pollutant is regulated.

For today's action, EPA reviewed all of the information in the rulemaking record concerning the model sampled facility. EPA has realized that this facility used a more sophisticated treatment system than the model technology. Therefore, for the December 2000 final rule, EPA had relied on influent data that reflected additional treatment steps not included in the model technology.

EPA also reviewed its record to consider the comment that it should not include influent data from the last day of sampling at the model facility. EPA agrees with the comment because EPA does not have effluent data that corresponds to the last day of influent sampling at the model facility. Consequently, EPA cannot determine to what extent these influent pollutant concentrations were treated by the model technology on this day. As a result, it is appropriate to exclude the influent data from the last day of sampling in the analysis of treatment efficiency.

After revising the influent sampling point and deleting influent data from the last day of sampling, EPA found that the model technology did not effectively treat molybdenum. As a result, we are deleting molybdenum limitations and standards from the organics subcategory.

EPA also applied its pollutant selection methodology with the revised data sets to all pollutants regulated in the Organics subcategory. As a result of those analyses, we are also amending the limitations and standards for the Organics subcategory to delete antimony, aniline, and 2,3-dichloroaniline as regulated parameters. [DCN Section 48]

Although EPA is deleting the limits for molybdenum, antimony, aniline, and 2,3-dichloroaniline, compliance with other organics limitations and standards may still lead to incidental removals of these pollutants. Assuming no incidental removals, the organics subcategory pollutant reduction estimates for this regulation remain relatively unchanged from the December 2000 estimates. Specifically, the estimated organics subcategory pollutant reductions would decrease by 282 lbs/yr or 0.05 percent of the total estimated reduction of 611,283 lbs/yr if no molybdenum, antimony, aniline, and 2,3-dichloroaniline removals were included. Expressed as toxic pound-equivalents, the decrease is about 0.23 percent or 46 lb-eq/yr out of the total estimated subcategory reduction of 19,976 lb-eq/yr (DCN 48.1).

Finally, this analysis does not affect the actual numerical limitations and standards for the remaining regulated pollutants in the organics subcategory—it affects only the selection of regulated pollutants. EPA based the numerical limitations and standards only on effluent data. EPA has concluded that, because it properly selected the effluent sampling point at the model facility, the numerical limitations and standards for the remaining regulated pollutants do not change.

VII. Amendment To Revise the Related Multiple Wastestreams Subcategory Segments

In the December 2000 final rule, EPA established limitations and standards for facilities that treat a combination of metal-bearing, oily or organic waste, wastewater or used material. Use of these Multiple Wastestreams subcategory limitations and standards simplifies implementation of the rule and compliance monitoring for CWT facilities that treat wastes subject to more than one of the other subcategories. These facilities may elect to comply with the provisions of the Multiple Wastestreams subcategory rather than the applicable individual provisions of the metals, oils, and organics treatment and recovery subcategories in the circumstances described in 40 CFR 437.40.

EPA developed four sets of limitations for each of the possible combinations of the three subcategories of wastestreams. These are mixtures of:

- Metal-bearing, oils, and organics waste receipts,
- Metal-bearing and oils waste receipts,
- Metal-bearing and organics waste receipts, and
- Oils and organics waste receipts.

To derive these limitations and standards, EPA combined pollutant limitations and standards from each possible combination of subcategories, selecting the most stringent pollutant values where they overlap. (For each pollutant, EPA selected the most stringent maximum monthly average limitations and its corresponding maximum daily limitation.) For example, in the December 2000 rule, antimony is regulated under (*i.e.*, overlaps) Subparts A, B, and C. Therefore, the antimony Subpart D limitations for mixtures of Subparts A, B, and C wastestreams are based on Subpart B, the most stringent antimony limitations.

Today's action modifies the Multiple Wastestreams subcategory limitations and standards to reflect the removal of selenium from the Metals subcategory limitations and standards; the removal of barium, molybdenum, antimony, and titanium from the Oils Treatment and Recovery subcategory; and the removal of molybdenum, antimony, aniline, and 2,3-dichloroaniline from the Organics Treatment and Recovery subcategory.

A. Selenium

EPA is amending 40 CFR part 437 by deleting the respective BPT, BAT, PSES, and PSNS limitations and standards for selenium from §§ 437.42(b), (c), and (d); 437.44(b), (c), and (d); 437.46(b), (c), and (d); and 437.47(b), (c), and (d). Because selenium was regulated in the Metals Treatment and Recovery subcategory but not in the Oils or Organics Treatment and Recovery Subcategories, there are no overlapping limitations for this pollutant. Therefore, the result of deleting selenium from the BPT, BAT, PSES, and PSNS segments of the metals subcategory (see Section IV) is that selenium limitations and standards remain only for the New Source Performance Standards (NSPS) segment of the Multiple Wastestreams subcategory. The selenium NSPS standards are based on a different model treatment system involving the use of selective metals precipitation.

B. Barium

EPA is amending 40 CFR part 437 by deleting the respective BPT, BAT, NSPS, PSES, and PSNS limitations and standards for barium in the Oils Treatment and Recovery subcategory from §§ 437.42(b), (c), and (e); 437.44(b), (c), and (e); 437.45(b), (c), and (e); 437.46(b), (c), and (e); and 437.47(b), (c), and (e). Because barium was only regulated in the Oils Treatment and Recovery subcategory but not in the Metals or Organics Treatment and Recovery Subcategories, there are no overlapping limitations for this pollutant. Therefore, the result of deleting barium from the oils subcategory (see Section V) is that there are no barium limitations and standards for any segment of the Multiple Wastestreams subcategory.

C. Molybdenum

EPA is amending 40 CFR part 437 by deleting the respective BPT, BAT, NSPS, PSES, and PSNS limitations and standards for molybdenum from §§ 437.42(b), (c), (d), and (e); 437.44(b), (c), (d), and (e); 437.45(b), (c), (d), and (e); 437.46(b), (c), (d), and (e); and 437.47(b), (c), (d), and (e). EPA originally promulgated molybdenum limitations for the Oils Treatment and Recovery subcategory and the Organics Treatment and Recovery subcategory but not in the Metals Treatment and Recovery subcategory. Therefore, the result of deleting molybdenum from the Oils Treatment and Recovery subcategory and the Organics Treatment and Recovery subcategory (see Section V) is that there are no molybdenum limitations and standards for any segment of the Multiple Wastestreams subcategory.

D. Antimony

EPA is amending 40 CFR part 437 by deleting the respective BPT, BAT, NSPS, PSES and PSNS standards for antimony from §§ 437.42(e), 437.44(e), 437.45(e), 437.46(e) and 437.47(e), and by revising the respective BPT, PSES, and PSNS limitations and standards for antimony in §§ 437.42(b) and (c), 437.46(b) and (c), and 437.47(b) and (c).

Because antimony was originally regulated for indirect discharges only in the Metals and Oils Treatment and Recovery Subcategories but not in the Organics Treatment and Recovery subcategory and EPA is deleting antimony from the Oils Treatment and Recovery subcategory, there are PSES and PSNS standards for this pollutant only in the Metals subcategory. The antimony standards in the related indirect discharge segments of the Multiple Wastestreams subcategory are, therefore, based on the Metals subcategory limitations.

In the December 2000 rule, EPA regulated antimony for direct discharges in the Metals, Oils, and Organics Treatment and Recovery Subcategories. As the result of today's action, there are BPT, BAT, and NSPS limitations and standards for this pollutant only in the Metals subcategory. Therefore, the BPT, BAT, and NSPS antimony limitations and standards in the related direct discharge segments of the Multiple Wastestreams subcategory are based on the Metals subcategory limitations.

E. Titanium

EPA is amending 40 CFR part 437 by deleting the respective BPT, BAT, and NSPS limitations and standards for titanium in §§ 437.42(e), 437.44(e), and 437.45(e), and by revising the respective BPT limitations for titanium in paragraphs §§ 437.42(b) and (c). Because EPA has deleted titanium from the pollutants regulated for direct discharges in the Oils Treatment and Recovery subcategories, the only remaining subcategory for which it is a regulated parameter is the Metals subcategory. Therefore the BPT, BAT, and NSPS titanium limitations and standards in the related direct discharge segments of the Multiple Wastestreams subcategory are now based on the titanium limitations and standards in the Metals subcategory.

F. Aniline

EPA is amending 40 CFR part 437 by deleting the respective BPT, BAT, and NSPS limitations and standards for aniline in the Organics Treatment and Recovery subcategory from §§ 437.42(b), (d), and (e); 437.44(b), (d), and (e); and 437.45(b), (d), and (e). Because aniline was only regulated for direct dischargers in the Organics Treatment and Recovery subcategory but not in the Metals or Oils Treatment and Recovery Subcategories, there are no overlapping limitations for this pollutant. Therefore, the result of deleting aniline from the organics subcategory (see Section VI) is that there are no aniline limitations and standards for any segment of the Multiple Wastestreams subcategory.

G. 2,3-Dichloroaniline

EPA is amending 40 CFR part 437 by deleting the respective BPT, BAT, NSPS, PSES, and PSNS limitations and standards for 2,3-dichloroaniline in the Organics Treatment and Recovery subcategory from §§ 437.42(b), (d), and (e); 437.44(b) and (e); 437.45(b), (d), and (e); 437.46(b), (d), and (e); and 437.47(b), (d), and (e). Because 2,3-dichloroaniline was only regulated in the Organics Treatment and Recovery subcategory but not in the Metals or Oils Treatment and Recovery Subcategories, there are no overlapping limitations for this pollutant. Therefore, the result of deleting 2,3-dichloroaniline from the organics subcategory (see Section VI) is that there are no 2,3-dichloroaniline limitations and standards for any segment of the Multiple Wastestreams subcategory.

VIII. Summary of Today's Amendments

The Agency is deleting certain limitations and standards for selenium from the metals subcategory; for antimony, barium, molybdenum, and titanium from the oils subcategory; and for antimony, molybdenum, aniline, and 2,3-dichloroaniline from the organics subcategory. Today's rule also reflects these changes in the multiple wastestreams subcategory. The model technologies that provide the basis for the metals and oils subcategory limitations and standards do not consistently and predictably remove these pollutants to the specified levels. Furthermore, based on the revised analyses in the organics subcategory, four pollutant parameters do not meet the criteria for regulation (whether pollutants are present in influent wastewater at treatable levels and whether pollutants are effectively removed by the model technology). Nevertheless, using treatment systems required for compliance with other pollutant limits will ensure some continued removal of these seven pollutants, even if not at consistent and predictable rates.

Even if there were no incidental removals for these pollutants, the estimated pollutant reduction for this regulation remains relatively unchanged from the December 2000 estimated pollutant reductions. At most, the pollutant reductions would decrease by 10,629 lbs/yr, or 0.23 percent of the total estimated reduction of 4,642,635 lbs/yr. Expressed as toxic pound-equivalents, the decrease assuming no removals for these pollutants is 0.41 percent or 2,006 lb-eq/yr out of the total estimated reduction of 487,872 lb-eq/yr (DCN 48.1).

Even though EPA believes that possible increases in pollutant discharges will not result in significant environmental effects, we will continue to monitor the discharges from this industry as part of the biennial Effluent Guidelines Program Plans required under Section 304(m) of the Clean Water Act.

IX. Corrections and Edits to 40 CFR Part 437

EPA is correcting a technical error contained in the December 22, 2000 final rule. The **Federal Register** publication of the final rule (65 FR 81241) contained an error in § 437.42(d) for the maximum monthly average BOD_5 limitation for direct discharging facilities subject to the Multiple Wastestreams subcategory for combined metals and organics waste receipts. The BOD_5 maximum monthly average limitation is revised from 3.0 mg/l to 53.0 mg/l. This reflects the limitation in the final rule signed by the Administrator on August 28, 2000. The correct 53.0 mg/l BOD_5 limitation for this segment may also be found in the "Development Document for Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry—Final," (EPA 821–R–00–020, DCN 41.2) as well as in the supporting information and analyses in the record.

In addition, the "Authority" citation is revised to conform with current guidance from the Federal Register Office.

X. Good Cause for Making Today's Amendments Effective on December 22, 2003

Section 553(d) of the Administrative Procedure Act generally provides that a final rule may not be effective sooner than 30 days after it is published. Section 553(d)(3), however, provides that an agency may make a final rule effective in less than 30 days after publication for "good cause found and published with the rule." The purpose of this provision is to provide affected parties a reasonable time to prepare for the effective date of the rule or take such other action as needed. The legislative history of this provision indicates that it was not intended to unduly hamper agencies from making a rule effective immediately or at some time earlier than 30 days. The exercise of the "good cause" exception, however, requires legitimate grounds supported in law and fact. Legitimate grounds would include an "urgency of conditions coupled with demonstrated and unavoidable limitations of time." The primary consideration is the convenience or necessity of the people affected. *See Northern Arapahoe Tribe* v. *Hodel,* 808F.2d 741, 752 (10th Cir. 1987) citing, *United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977). EPA has determined that there is good cause for making today's amendments effective on December 22, 2003 for two reasons.

First, the changes would relieve direct and indirect dischargers from the legal obligation to comply with effluent limitations and pretreatment standards for certain pollutants that the Agency either erroneously determined should be regulated or incorrectly assessed the capability of the model technology to achieve the required removals. In these circumstances, immediate relief from the former limitations and standards is warranted.

Second, existing indirect dischargers are required to comply with the promulgated pretreatment standards by December 22, 2003. Delaying the effective date for 30 days could result in the contemplated changes not being effective before the required compliance date, possibly exposing some indirect dischargers to enforcement action for violation of standards that will be superseded. These circumstances constitute the requisite urgency of condition coupled with limitations of time to warrant good cause for making today's rule effective on December 22, 2003.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* It merely deletes the limitations for seven pollutants from certain provisions of the current rule and corrects a limitation for another pollutant that was incorrectly transcribed from the version signed by the EPA Administrator. Consequently, today's rule does not establish any new information collection burden on the regulated community.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business with gross revenue under $6 million (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The rule removes or revises the limitations and standards for seven pollutants from certain provisions of the current rule and corrects an error in another provision. These changes reduce the economic impacts of the regulation on those entities, including small entities, subject to the limitations and pretreatment standards. The estimated reduction in the analytical laboratory costs of compliance is about $500,000 (DCN 47.6). The change to the BOD_5 limitation will result in no change in economic burden because this modification merely corrects the limitation to reflect the BOD_5 limitation in the December 2000 version of the regulation.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. It deletes or revises the limitations and standards for seven pollutants from certain provisions of the CWT guideline and corrects an inadvertent error in another limitation in the codified version of the current rule. The effect of these changes is to reduce the cost of the CWT regulations promulgated in December 2000. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule would not uniquely affect small governments because small and large governments are affected in the same way. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule would amend effluent limitations and pretreatment standards which impose requirements that apply to facilities when they discharge wastewater or introduce wastewater to a POTW. It deletes or revises the limitations and standards for seven pollutants from certain provisions of the CWT guideline and corrects an inadvertent error in another limitation in the codified version of the current rule. EPA has determined that there are no CWT facilities owned and/or operated by State or local governments that would be subject to today's rule. Further, the rule would only incidentally affect State and local governments in their capacity as implementers of CWA NPDES permitting programs and approved pretreatment programs. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. EPA received no comments from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule deletes or revises the limitations and standards for seven pollutants from certain provisions of the current rule and corrects an inadvertent printing error in another section. EPA has not identified any CWT facilities covered by today's final rule that are owned and/or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials. EPA received no comments from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866. Further, this regulation does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This regulation is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d), (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any new voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on December 22, 2003 for the reasons explained in Section X.

List of Subjects in 40 CFR Part 437

Environmental protection, Waste treatment and disposal, Water pollution control.

Dated: December 16, 2003.

Michael O. Leavitt,

Administrator.

■ For reasons set out in the preamble, 40 CFR chapter I is amended as follows:

PART 437—THE CENTRALIZED WASTE TREATMENT POINT SOURCE CATEGORY

■ 1. The authority citation for part 437 is revised to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

§ 437.11 [Amended]

■ 2. Section 437.11(a) is amended by removing the entry for "Selenium" in the BPT Limitations table, under the heading "Metal Parameters".

§ 437.13 [Amended]

■ 3. Section 437.13(a) is amended by removing "selenium,".

§ 437.15 [Amended]

■ 4. Section 437.15(a) is amended by removing "selenium,".

§ 437.16 [Amended]

■ 5. Section 437.16(a) is amended by removing "selenium,".

§ 437.21 [Amended]

■ 6. Section 437.21 is amended by removing the following entries in the BPT Limitations table, under the heading "Metal Parameters":

a. Antimony.
b. Barium.
c. Molybdenum.
d. Titanium.

§ 437.23 [Amended]

■ 7. Section 437.23 is amended by removing the following words:

a. "antimony,".
b. "barium,".
c. "molybdenum,".
d. "titanium,".

§ 437.24 [Amended]

■ 8. Section 437.24 is amended by removing the following words:

a. "antimony,".
b. "barium,".
c. "molybdenum,".
d. "titanium,".

§ 437.25 [Amended]

■ 9. Section 437.25 is amended by removing the following entries in the Pretreatment Standards (PSES) table, under the heading "Metal Parameters":

a. Antimony.
b. Barium.
c. Molybdenum.

§ 437.26 [Amended]

■ 10. Section 437.26 is amended by removing the following words:

a. "antimony,".
b. "barium,".
c. "molybdenum,".

§ 437.31 [Amended]

■ 11. Section 437.31 is amended as follows:

■ a. In the BPT Limitations table by removing the following entries under the heading "Metal Parameters":

i. Antimony.
ii. Molybdenum.

b. In the BPT Limitations table by removing the following entries under the heading "Organic Parameters":

i. Aniline.
ii. 2,3-Dichloroaniline.

§ 437.33 [Amended]

■ 12. Section 437.33 is amended by removing the following words:

a. "antimony,".
b. "molybdenum,".
c. "aniline,".
d. "2,3,-dichloroaniline,".

§ 437.34 [Amended]

■ 13. Section 437.34 is amended by removing the following words:

a. "antimony,".
b. "molybdenum,".
c. "aniline,".
d. "2,3,-dichloroaniline,".

§ 437.35 [Amended]

■ 14. Section 437.35 is amended by removing the following words:

a. "molybdenum,".
b. "2,3,-dichloroaniline,".

§ 437.36 [Amended]

■ 15. Section 437.36 is amended by removing the following words:

a. "molybdenum,".
b. "2,3,-dichloroaniline,".

§ 437.42 [Amended]

■ 16. Sections 437.42 is amended as follows:

■ a. In paragraph (b)(1) by removing the following entries in the BPT Limitations table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.
iii. Selenium.

■ b. In paragraph (b)(1) by removing the following entries in the BPT Limitations table, under the heading "Organic Parameters":

i. Aniline.
ii. 2,3-Dichloroaniline.

■ c. In paragraph (b)(1) by revising the entry for "Antimony" in the BPT Limitations table under the heading "Metal Parameters" to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *
(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * *	*	*
Metal Parameters		
Antimony	0.249	0.206
* * *	*	*

[1] mg/L (ppm).

* * * * *

■ d. In paragraph (b)(1) by revising the entry for "Titanium" in the BPT Limitations table under the heading "Metal Parameters" to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(b) * * *
(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * *	*	*
Metal Parameters		
* * *	*	*
Titanium	0.0947	0.0618
* * *	*	*

[1] mg/L (ppm).

* * * * *

■ e. In paragraph (c)(1) by removing the following entries in the BPT Limitations table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.
iii. Selenium.

■ f. In paragraph (c)(1) by revising the entry for "Antimony" in the BPT Limitations table under the heading "Metal Parameters" to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(c) * * *
(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * *	*	*
Metal Parameters		
Antimony	0.249	0.206
* * *	*	*

[1] mg/L (ppm).

* * * * *

■ g. In paragraph (c)(1) by revising the entry for "Titanium" in the BPT Limitations table under the heading "Metal Parameters" to read as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(c) * * *
(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
* * *	*	*
Metal Parameters		
* * *	*	*
Titanium	0.0947	0.0618
* * *	*	*

[1] mg/L (ppm).

* * * * *

■ h. Paragraph (d)(1) is amended by:

■ i. Revising the entry for "BOD_5" in the BPT Limitations table under the heading "Conventional Parameters" as follows:

§ 437.42 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(d) * * *
(1) * * *

BPT LIMITATIONS

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Conventional Parameters		
BOD_5	163	53.0
* * *	*	*

[1] mg/L (ppm).

* * * * *

■ ii. Removing the following entries in the BPT Limitations table under the heading "Metal Parameters":

A. Molybdenum.
B. Selenium.

■ iii. Removing the following entries in the BPT Limitations table under the heading "Organic Parameters":

A. Aniline.
B. 2,3-Dichloroaniline.

■ i. Paragraph (e) is amended by removing the following entries in the BPT Limitations table under the heading "Metal Parameters":

i. Antimony.
ii. Barium.
iii. Molybdenum.
iv. Titanium.

■ j. Paragraph (e) is amended by removing the following entries in the BPT Limitations table, under the heading "Organic Parameters":

i. Aniline.
ii. 2,3-Dichloroaniline.

§ 437.44 [Amended]

■ 17. Sections 437.44 is amended as follows:

■ a. In paragraph (b)(1) by removing the following entries in the table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.
iii. Selenium.

■ b. In paragraph (b)(1) by removing the following entries in the table, under the heading "Organic Parameters":

i. Aniline.
ii. 2,3-Dichloroaniline.

■ c. In paragraph (c)(1) by removing the following entries in the table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.
iii. Selenium.

■ d. In paragraph (d)(1) by removing the following entries in the BAT Limitations table under the heading "Metal Parameters":

i. Molybdenum.
ii. Selenium.

■ e. In paragraph (d)(1) by removing the entry for "Aniline" in the BAT

Limitations table under the heading "Organic Parameters":

■ f. In paragraph (e) by removing the following entries in the BAT Limitations table under the heading "Metal Parameters":

i. Antimony.
ii. Barium.
iii. Molybdenum.
iv. Titanium.

■ g. In paragraph (e) by removing the following entries in the BAT Limitations table under the heading "Organic Parameters":

i. Aniline.
ii. 2,3-Dichloroaniline.

§ 437.45 [Amended]

■ 18. Sections 437.45 is amended as follows:

■ a. In paragraph (b)(1) by removing the following entries in the Performance Standards table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.

■ b. In paragraph (b)(1) by removing the following entries in the Performance Standards table, under the heading "Organic Parameters":

i. Aniline.
ii. 2,3-Dichloroaniline.

■ c. In paragraph (c)(1) by removing the following entries in the Performance Standards table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.

■ d. In paragraph (d)(1) by removing the entry for "Molybdenum" in the Performance Standards table, under the heading "Metal Parameters."

■ e. In paragraph (d)(1) by removing the following entries in the Performance Standards table, under the heading "Organic Parameters":

i. Aniline.
ii. 2,3-Dichloroaniline.

■ f. In paragraph (e) by removing the following entries in the Performance Standards table under the heading "Metal Parameters":

i. Antimony.
ii. Barium.
iii. Molybdenum.
iv. Titanium.

■ g. In paragraph (e) by removing the following entries in the Performance Standards table, under the heading "Organic Parameters":

i. Aniline.
ii. 2,3-Dichloroaniline.

§ 437.46 [Amended]

■ 19. Sections 437.46 is amended as follows:

■ a. In paragraph (b)(1) by removing the following entries in the Pretreatment Standards (PSES) table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.
iii. Selenium.

■ b. In paragraph (b)(1) by revising the entry for "Antimony" in the Pretreatment Standards (PSES) table under the heading "Metal Parameters" to read as follows:

§ 437.46 Pretreatment Standards for Existing Sources (PSES).

* * * * *

(b) * * *
(1) * * *

PRETREATMENT STANDARDS (PSES)

Regulated parameter	Maximum daily [1]	Maximum monthly avg. [1]
* * *	*	*
Metal Parameters		
Antimony	0.249	0.206
* * *	*	*

[1] mg/L (ppm)

* * * * *

■ c. In paragraph (b)(1) by removing the entry for "2,3-Dichloroaniline" in the Pretreatment Standards (PSES) table, under the heading "Organic Parameters."

■ d. In paragraph (c)(1) by removing the following entries in the Pretreatment Standards (PSES) table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.
iii. Selenuim.

■ e. In paragraph (c)(1) by revising the entry for "Antimony" in the Pretreatment Standards (PSES) table under the heading "Metal Parameters" to read as follows:

§ 437.46 Pretreatment Standards for Existing Sources (PSES).

* * * * *

(c) * * *
(1) * * *

PRETREATMENT STANDARDS (PSES)

Regulated parameter	Maximum daily [1]	Maximum monthly avg. [1]
* * *	*	*
Metal Parameters		
Antimony	0.249	0.206
* * *	*	*

[1] mg/L (ppm).

* * * * *

■ f. In paragraph (d)(1) by removing the following entries in the Pretreatment Standards (PSES) table under the heading "Metal Parameters":

i. Molybdenum.
ii. Selenium.

■ g. In paragraph (d)(1) by removing the entry for "2,3-Dichloroaniline" in the Pretreatment Standards (PSES) table under the heading "Organic Parameters."

■ h. In paragraph (e) by removing the following entries in the Pretreatment Standards (PSES) table under the heading "Metal Parameters":

i. Antimony.
ii. Barium.
iii. Molybdenum.

■ i. In paragraph (e) by removing the entry for "2,3-Dichloroaniline" in the Pretreatment Standards (PSES) table under the heading "Organic Parameters."

§ 437.47 [Amended]

■ 20. Section 437.47 is amended as follows:

■ a. In paragraph (b)(1) by removing the following entries in the Pretreatment Standards (PSNS) table, under the heading "Metal Parameters":

i. Barium.
ii. Molybdenum.
iii. Selenium.

■ b. In paragraph (b)(1) by revising the entry for "Antimony" in the Pretreatment Standards (PSNS) table under the heading "Metal Parameters" to read as follows:

§ 437.47 Pretreatment Standards for New Sources (PSNS).

* * * * *

(b) * * *
(1) * * *

PRETREATMENT STANDARDS (PSNS)

Regulated parameter	Maximum daily [1]	Maximum monthy avg. [1]
* * *	*	*
Metal Parameters		
Antimony	0.249	0.206
* * *	*	*

[1] mg/L (ppm).

* * * * *

■ c. In paragraph (b)(1) by removing the entry for "2,3-Dichloroaniline" in the Pretreatment Standards (PSNS) table, under the heading "Organic Parameters."

■ d. In paragraph (c)(1) by removing the following entries in the Pretreatment Standards (PSNS) table, under the heading "Metal Parameters":

i. Barium.

ii. Molybdenum.

iii. Selenium.

■ e. In paragraph (c)(1) by revising the entry for "Antimony" in the Pretreatment Standards (PSNS) table under the heading "Metal Parameters" to read as follows:

§ 437.47 Pretreatment Standards for New Sources (PSNS).

* * * * *

(c) * * *

(1) * * *

PRETREATMENT STANDARDS (PSNS)

Regulated parameter	Maximum daily [1]	Maximum monthy avg.[1]
*	*	*
Metal Parameters		
Antimony	0.249	0.206
*	*	*

[1] mg/L (ppm).

* * * * *

■ f. In paragraph (d)(1) by removing the following entries in the Pretreatment Standards (PSNS) table under the heading "Metal Parameters":

i. Molybdenum.

ii. Selenium.

■ g. In paragraph (d)(1) by removing the entry for "2,3-Dichloroaniline" in the Pretreatment Standards (PSNS) table under the heading "Organic Parameters."

■ h. In paragraph (e) by removing the following entries in the Pretreatment Standards (PSNS) table under the heading "Metal Parameters":

i. Antimony.

ii. Barium.

iii. Molybdenum.

■ i. In paragraph (e) by removing the entry for "2,3-Dichloroaniline" in the Pretreatment Standards (PSNS) table under the heading "Organic Parameters."

[FR Doc. 03–31346 Filed 12–19–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 301–50, 301–52, 301–70, and 301–73

[FTR Amendment 2003–07; FTR Case 2003–303]

RIN 3090–AH83

Federal Travel Regulation; eTravel Service (eTS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule is issued to amend the Federal Travel Regulation's (FTR) required use of a travel management service to the required use of the Governmentwide eTravel Service. This final rule revises the term and definition of "Travel Management System (TMS)" to "Travel Management Service." This final rule amends FTR requirements governing employees' use of their agencies' Travel Management Services (TMS) and the eTravel Service (eTS). This final rule also requires agencies to submit migration plans and schedules to the eTravel Program Management Office (PMO) no later than March 31, 2004, implement the eTS no later than December 31, 2004, and complete migration to eTS for full agency-wide use by September 30, 2006 (unless an exception, as defined within this regulation has been granted). This final rule specifies that award of a task order to a vendor under the eTS Master Contract constitutes eTS implementation. These changes will improve management efficiency and increase cost effectiveness.

DATES: *Effective Date:* January 21, 2004.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Umeki Thorne, Office of Governmentwide Policy, Travel Management Policy, at (703) 872–8590. Please cite FTR case 2003–303, FTR Amendment 2003–07.

SUPPLEMENTARY INFORMATION:

A. Background

The President's Management Agenda (PMA) for fiscal year 2002 identified five Governmentwide goals to improve Federal management and deliver results. This resulted in the establishment of a Governmentwide task force known as QuickSilver to address performance gaps in existing Government systems as they relate to E-Government, and to improve internal efficiency and effectiveness throughout the Federal Government. Accordingly, in support of the PMA, the Government is procuring the eTravel Service (eTS) from Government contract suppliers to replace agencies' current Travel Management Systems (TMS) (see section 301–1.1 of the FTR for the definition of "agency"). This final rule amends the FTR by requiring, with specified exceptions, the use of the common Governmentwide, end-to-end eTS. This regulation does not apply to the Department of Defense or the Government of the District of Columbia.

This final rule continues to be written in the "plain language" style of regulation writing as a continuation of the General Services Administration's (GSA) effort to make the FTR easier to understand and use. Questions are in the first person, and answers are in the second person. GSA uses a "we" and "you" question when referring to an agency, and an "I" and "you" question when referring to the employee. However, the rules stated in either section apply to both the employee and agency.

A proposed rule with request for comments was published in the **Federal Register** on June 30, 2003 (68 FR 38661). During the 30-day comment period, GSA received feedback from ten Federal agencies and one individual. GSA has carefully reviewed each comment, and based on those comments, this final rule modifies the proposed rule. An explanation of changes and/or further responses to questions received are discussed as follows.

Section 300–3.1 Glossary of Terms

One agency asked for a definition of "in-house system" and suggested that GSA rearrange the wording within the definition of "travel management service" to make it clear that an "in-house system" is not a part of a commercial method of arranging travel. GSA addresses this comment by stating that an "in-house (travel) system" is where some or all of an agency's travel processes (*e.g.*, travel reservation and ticketing services) are provided by the agency's employees. GSA has also rearranged the wording within the definition of "travel management service" to distinguish between an agency's "in-house system" and an agency's commercial method of arranging travel.

Section 301–50.3 Must I Use the eTravel Service To Arrange My Travel?

Scope of eTravel Service. This section defines the scope of the eTS, as well as the required date of agencies' full deployment. One Federal agency pointed out that the policy requirements in this section, which stated that this regulation applies to all Executive branch agencies, conflicted with the statement in the Summary of the proposed rule, which stated that the eTS will require all agencies subject to the Federal Travel Regulation (FTR) to begin migration to the eTS as soon as possible. GSA appreciates and agrees with this comment. As a result, GSA has revised the section to clarify that this rule applies to all agencies as defined in section 301–1.1, with the exception of the Department of Defense and the Government of the District of Columbia.

One agency stated that because agencies may phase in the eTS at different times for its various organizational components, the requirement should be that an employee must use the eTS when the agency makes the service available to the employee. GSA agrees with this comment. The regulation's intent is that employees will begin using eTS when the service becomes available within an agency, unless an exception applies under section 301–50.4, 301–73.102 or 301–73.104, and the agency will make it available no later than September 30, 2006. As a result, section 301–50.3 has been modified.

Section 301–50.4 May I Be Granted an Exception to the Required Use of the eTravel Service?

The section heading in the proposed rule, "Who in my agency has the authority to waive the required use of a Travel Management Service or the eTravel Service," has been revised to read, "May I be granted an exception to the required use of the eTravel Service?"

Section 301–50.5 What Is My Liability If I Do Not Use My Agency's TMS or the eTravel Service and an Exception Has Not Been Approved?

Section 301–50.6 Are There Any Limits on the Travel Arrangements I May Make?

One agency stated that sections 301–50.5 and 301–50.6 should be reversed. GSA is not persuaded that this change is needed, and the order of these sections remains unchanged.

Section 301–50.6 Are There Any Limits on the Travel Arrangements I May Make?

Limitations On The Use of Travel Management Services. This section imposes certain requirements and limitations on arranging for travel services. One agency stated that GSA should clarify that there are other regulations, contract provisions, *etc.*, with which both travelers and TMS providers must comply when making common carrier, lodging, or car rental reservations. GSA has considered this change and has added a sentence to this section to acknowledge that there may be additional limits on the travel arrangements that a traveler makes.

Section 301–52.3 Am I Required To File a Travel Claim in a Specific Format and Must the Claim Be Signed?

This section describes the process for filing a travel claim. One agency questioned whether this section applies to infrequent Government travelers, Government employees traveling for an agency/bureau other than the employing agency, and invitational travelers. GSA's answer is yes. The use of eTS applies to all travelers subject to the FTR, with the exception of employees of the Department of Defense and the Government of the District of Columbia. However, an agency head or his/her designee may grant individual case-by-case exceptions to the use of eTS in accordance with sections 301–73.102 and 301–73.104 of this regulation. In addition, if a traveler is unable to use a portion of the eTS, (*e.g.*, reservation services), the traveler is not exempt from the requirement to use the remaining eTS components.

Section 301–73.2 What Are Our Responsibilities as Participants in the Federal Travel Management Program?

This section defines what an agency must do under the Federal travel management program. One agency asked how would an agency support eTS in an "efficient" and "cost effective" manner and determine that support is "efficient" and "cost effective" other than through normal contracting procedures. GSA's response is that an agency can determine if its current TMS is cost effective by comparing its current service costs and benefits to the cost of services and benefits provided by the eTS contract. This will be accomplished through a competitive task order evaluation among the eTS contractors.

Section 301–73.100 Must We Require Employees To Use the eTravel Service?

This section sets the dates by which agencies must implement the eTS. eTS implementation is when an agency places a task order with an eTS vendor. It was unclear to one agency what GSA meant by the parenthetical "if applicable" in the note to this section. GSA agrees that the words "if applicable" may have been confusing to the reader and has therefore removed the use of these words throughout this regulation.

Two agencies requested more clarification in regard to the statement "Agency-wide use of the eTS accommodating FedTrip through September 30, 2004, and agency-contracted TMC support * * *". GSA provides the following clarification: The Department of Transportation's Governmentwide contract with FedTrip will expire on September 30, 2004. Until that time, the eTS will accommodate agencies' use of FedTrip. Upon expiration of the FedTrip contract, the eTS-provided on-line booking engine(s) (OBEs) will become the designated OBE(s) for all agencies as defined in section 301–1.1 of this regulation, except for the Government of the District of Columbia and the Department of Defense. In addition, the note to this section has been revised to clarify that agencies may continue to use non-eTS government-contracted TMC services.

Section 307–73.101 How Must We Prepare To Implement the eTravel Service?

This section outlines the steps agencies should take to prepare for eTS migration. One agency stated that budgetary and personnel allocations should not be part of the FTR and that the eTS final rule should establish goals or targets for implementing eTS, but not direct agencies on budgetary or personnel matters. GSA agrees that normally the FTR would not address how an agency should arrange its travel related budget or personnel requirements. In this instance, however, GSA believes it is very important for agencies to prepare for the eTS migration/implementation by establishing their budget and personnel resources. GSA did, however, remove the provisions as a requirement under paragraph (c) and established it as a "Note" to provide guidance to agencies.

301–73.102 May We Grant an Employee an Exception From the Use of the eTravel Service?

301–73.104 May Further Exceptions to the Required Use of the eTravel Service Be Approved?

Section 301–73.102 governs agency approval of exceptions to the use of the eTS on an individual case-by-case basis; section 301–73.104 governs approval of exceptions on an agency-wide basis, or a sub-component thereof. Two agencies stated that the exceptions in the proposed rule were too limited and that an agency might have need for exceptions other than those listed. GSA has considered these comments and modified section 301–73.102 to broaden the circumstances under which an agency head may approve exceptions on an individual case-by-case basis. GSA has also modified section 301–73.104 to broaden circumstances under which GSA may grant an exception to a Department (or component thereof) or an Independent agency.

General Comments

eTravel Service (eTS) and Travel Management Service. One agency commented that the statement "eTS will replace Executive agencies' current Travel Management System" clearly conflicts with other portions of the regulation that are intended to give agencies choices in obtaining travel agent services (*i.e.*, Government-contracted TMCs) outside of the eTS, while another agency stated that if the definition of a TMS were expanded, agencies would have flexibility to move to a system that might not require the intervention of a travel agency. GSA's response is that an agency may choose to incorporate a non eTS-provided TMC into eTS or use the eTS provided TMC services. However, the intent of eTS is not to replace an agency's Government-contracted TMC, but to deliver a unified, simplified service that delivers a cost effective travel experience, supports excellent travel management, and results in superior customer satisfaction. The eTS contractors must accommodate agency-contracted TMCs. GSA has revised the notes to sections 301–73.100 and 301–73.106 to better reflect this intent.

Adoption/Delay of Implementation. One agency asked if their agency should develop its own eTS or wait for the Governmentwide eTS. GSA's response is that use of the Governmentwide eTS is a requirement for all agencies subject to the FTR, with the exception of the Department of Defense and the Government of the District of Columbia. GSA has cautioned agencies against investing in new systems that will be agency-specific and non-transferable to the Governmentwide eTS.

One agency stated that GSA should change the agency's full deployment date of eTS from September 30, 2006 to December 31, 2007, and implementation from December 31, 2004 to December 31, 2005, while another agency stated that the required use of eTS should be delayed, or waivers granted, until eTS is tested and costs are known and benefits are shown. GSA's response is that migrating to eTS will improve internal efficiency and effectiveness throughout the Federal Government. In support of the President's Management Agenda for fiscal year 2002, representatives from twenty-seven agencies serving on the QuickSilver Task Force identified web-based travel management services as a high impact initiative. These benefits have been validated through business case analysis published under OMB 300/Exhibit 53 which outlines the funding for each agency to use for migration and full deployment to eTS. This information may be obtained through your agency's Chief Information Officer. Delayed migration to the eTS would unnecessarily delay cost savings and service benefits to agencies; for that reason, GSA is committed to its scheduled migration/full deployment dates.

eTS and DTS. One individual asked if the eTS will replace the DTS. GSA's response is no. Although the eTS is available for use by the Department of Defense (DOD), DOD has developed the DTS for its use.

Small Agencies/(eTS and International Travel/Training on eTS). One agency asked how eTS will incorporate small commissions/agencies, handle international travel, and if training will be provided on the program's application. The eTS will support all agencies, large and small. As a commercially hosted service, eTS is well-positioned to serve small agencies with a minimum investment and no IT overhead. If a small commission/agency receives travel management services (electronic authorizations and/or vouchers) from a larger cross-servicing agency, GSA recommends the small agency to work with the large agency to understand the large agency's plan and timeline for migrating to eTS. A small agency may determine there is value in continuing a relationship with the servicing agency, or it may migrate to eTS independently of the large agency.

Processing international travel through the eTS will be the same as processing domestic travel. Travelers will have access to an online booking engine with the ability to view and book international reservations (air, hotel, rental, car, etc.) without calling a travel agent. The eTS also includes traditional travel agency services should a traveler require the assistance of a travel agent for more complex international (or domestic) trips. (**Note:** An agency may continue to use its own TMC in conjunction with eTS, or it may use the TMC provided by its eTS vendor.)

The eTS vendors are required to provide training on the standard migration services. Additionally, each vendor may provide supplemental training services at the agency's option.

Migration to eTS. One agency asked what GSA means by the term "migration." GSA defines "migration" as when an agency is actively moving from its current travel management service to the eTS. Migration begins when an agency submits its migration plan to the eTravel PMO and ends when an agency has fully deployed the eTS.

One agency stated that it would submit its migration plan and schedule within three months, once the eTS vendors are selected and they know what steps need to be taken. As long as this agency submits its migration plan and schedule to the eTravel PMO no later than March 31, 2004, it will be in compliance with this regulation. Migration plans are the roadmap for agencies to migrate to eTS. The migration plan represents tasks and key decisions each agency must map out in order to make an informed and intelligent decision regarding its eTS migration.

One agency asked whether all bureaus within an agency have to begin migration to eTS for an agency to receive credit for beginning migration. GSA's response is yes. An agency's migration to the eTS begins when it submits to the eTravel PMO the agency's plan to migrate all bureaus/activities to eTS. Agencies are strongly encouraged to submit a task order that will include the handling of all activities under its organization (*i.e.*, a task order signed by the designated authority at a Department (for cabinet-level agencies) or the head of an Independent Agency that will apply to all its sub-organizations under its Department or Independent agency).

One agency asked what the eTS PMO will do if an agency does not have funds to migrate to the eTS. The eTS PMO has been working with the Office of Management and Budget (OMB) and Federal financial officers to identify funds for migration to the eTS during fiscal year 2004/2005 budget cycles. The OMB has indicated that its resource management officers are working with agencies to allocate funding for all E-Government Initiatives launched in support of the President's Management Agenda published in FY 2002. The note in section 301–73.101 of this regulation provides guidance to agencies on the importance of allocating budgets and establishing personnel resources to support the migration to eTS.

Funds. One agency stated that agencies may incur expenses to end or modify contracts with TMCs in order to migrate to eTS. That agency asked if the eTS PMO will subsidize or account for such costs. GSA's response is, expenses incurred as a result of contractual actions related to orders for travel management services are the responsibility of the ordering agency. This applies for orders placed under GSA contract vehicles, as well as orders under other agency contracts. When an agency prepares its migration plan, it should identify the types of constraints it may encounter and take steps to mitigate any risk by coordinating eTS migration schedules to address risk mitigation strategies, such as the expiration of contract option periods. We note that this FTR amendment does permit an agency to continue using its existing TMC in conjunction with eTS.

One agency asked, if GSA will publish eTS metrics and baseline costs per transaction so that agencies have a benchmark to determine if it would be impractical from a cost perspective to migrate to eTS. GSA's response is yes. The eTS PMO will provide a contractor-pricing schedule that will identify transactional costs for reservations, online voucher services costs and charges for other services to assist agencies in comparing their current systems to eTS.

One agency stated that GSA should identify and publish the cost it plans to charge agencies/bureaus for the eTS. The eTS PMO will provide the Industrial Funding Fee (IFF) and contractor price schedules.

FPLP. One agency stated that its employees have found that they can stay at an FPLP lodging facility at a greatly reduced fee if they do not identify themselves as a Federal traveler, and that rooms can be obtained at rates at a significantly lower rate than the Government published rate. When selecting a commercial lodging facility, first consideration must be given to the commercial lodging facilities contracted by GSA under the FPLP that meet the fire safety requirements, where available, unless certain conditions exist under section 301–50.6 of this regulation. However, when a traveler can obtain a lower rate at an FPLP lodging facility, the employee is encouraged to do so. This is consistent with the long-standing policy that employees should exercise the same standards of care when incurring expenses on official business that a prudent person would exercise if traveling on personal business. During a sluggish economy, hotels are deeply discounting rooms forecasted not to sell within a short window of time. However, in a better economy, hotels need not reduce rates, and may increase them. When companies and Government agencies negotiate long term discounted lodging rates for their preferred lodging programs, these rates are based on a year-long commitment not subject to changes in the economy, and these rates provide overall better value to travelers.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 300–3, 301–50, 301–52, 301–70, and 301–73

Government employees, Travel and transportation expenses.

Dated: December 8, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set out in this preamble, 41 CFR parts 300–3, 301–50, 301–52, 301–70, and 301–73 are amended as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for 41 CFR part 300–3 is revised to read as follows:

Authority: 5 U.S.C. 5707; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; 40 U.S.C. 121(c); 49 U.S.C. 40118; E.O. 11609, 3 CFR, 1971–1975 Comp., p.586.

■ 2. Amend § 300–3.1 by removing the term and definition "Travel Management System (TMS)"; and adding in alphabetical order the terms and definitions, "eTravel Service (eTS)" and "Travel Management Service (TMS)" to read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

eTravel Service (eTS)—The Government-contracted, end-to-end travel management service that automates and consolidates the Federal travel process in a self-service Web-centric environment, covering all aspects of official travel, including travel planning, authorization, reservations, ticketing, expense reimbursement, and travel management reporting. The eTS provides the services of a Federal travel management program as specified in § 301–73.1(a), (b), and (e) of this title.

* * * * *

Travel Management Service (TMS)—A service for booking common carrier (*e.g.*, air, rail, and bus confirmations and seat assignments), lodging accommodations, and car rental services; fulfilling (*i.e.* ticketing) reservations; providing basic management information on those activities; and meeting other requirements as specified in § 301–73.106 of this title. A TMS may include a travel management center (TMC), Commercial Ticket Office (CTO), an electronically available system, other commercial methods of arranging travel, or an in-house system.

* * * * *

PART 301–50—ARRANGING FOR TRAVEL SERVICES

■ 3. Revise part 301–50 to read as follows:

Sec.
301–50.1 To whom do the pronouns "I", "you", and their variants throughout this part refer?
301–50.2 How must I arrange my travel?
301–50.3 Must I use the eTravel Service to arrange my travel?
301–50.4 May I be granted an exception to the required use of the eTravel Service?
301–50.5 What is my liability if I do not use my agency's TMS or the eTravel Service, and an exception has not been approved?
301–50.6 Are there any limits on travel arrangements I may make?

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c).

§ 301–50.1 To whom do the pronouns "I", "you", and their variants throughout this part refer?

In this part, the pronouns "I", "you", and their variants refer to the employee.

§ 301–50.2 How must I arrange my travel?

You must arrange your travel as designated by your agency and in accordance with this part.

§ 301–50.3 Must I use the eTravel Service to arrange my travel?

Yes, if you are an employee of an agency as defined in § 301–1.1 of this chapter, you must use the eTravel

Service when your agency makes it available to you. Until then, you must use your agency's existing Travel Management System (TMS) to make your travel arrangements. If you are an employee of the Department of Defense (DoD) or of the Government of the District of Columbia, you must arrange your travel in accordance with your agency's TMS.

§ 301–50.4 May I be granted an exception to the required use of the eTravel Service?

Your agency head or designee(s) may grant case-by-case exceptions to the use of eTS when it—

(a) Causes an unreasonable burden on your agency mission accomplishment(s) (*e.g.*, emergency travel (and eTS is not accessible), invitational travel, necessity of disability accommodations or special needs (in accordance with part 301–13 of this chapter));

(b) Compromises a national security interest; or

(c) May endanger the life of the traveler (*e.g.*, an individual traveling under the Federal witness protection program, or threatened law enforcement/investigative personnel traveling in accordance with part 301–31 of this chapter).

§ 301–50.5 What is my liability if I do not use my agency's TMS or the eTravel Service, and an exception has not been approved?

If you do not have an approved exception under §§ 301–50.4 or 301–73.104 of this chapter, you are responsible for any additional costs resulting from the failure to use the TMS or eTravel Service, including service fees, cancellation penalties, or other additional costs (*e.g.*, higher airfares, rental car charges, or hotel rates). In addition, your agency may take appropriate disciplinary action.

§ 301–50.6 Are there any limits on travel arrangements I may make?

Yes, there are limits on travel arrangements you may make for common carrier, commercial lodging, and car rental accommodations. Such limitations include, but are not limited to the following:

(a) *Common carrier accommodations.* (1) If your agency is a mandatory user of the General Services Administration's city-pair contracts for air passenger transportation services, you must use the contract carrier, unless you have an approved exception (see §§ 301–10.107 and 301–10.108 of this chapter);

(2) You may use premium-class accommodations only under §§ 301–10.121 through 301–10.124, 301–10.162, and 301–10.183 of this chapter; and

(3) You must always use a U.S. Flag Air Carrier unless your travel circumstances meet one of the exceptions in §§ 301–10.131 through 301–10.143 of this chapter.

(b) *Lodging accommodations.* (1) You should always stay in a "fire safe" facility. This is a facility that meets the fire safety requirements of the Hotel and Motel Fire Safety Act of 1990, as amended (see 5 U.S.C. 5707a).

(2) When selecting a commercial lodging facility, first consideration must be given to the commercial lodging facilities contracted by GSA under the Federal Premier Lodging Program (FPLP) (a list of FPLP facilities may be found on the Internet at *http://www.gsa.gov*), all of which meet fire safety requirements, unless one or more of the following conditions exist:

(i) An FPLP facility is not available at the location you need (*e.g.*, there are no FPLP facilities under contract within a reasonable proximity of your temporary duty station, or there are no vacancies at the FPLP facilities at that location). (Your agency's TMS or eTravel Service (eTS) must provide you with a list of alternative facilities that meet the fire safety requirements of the Act).

(ii) Your agency has other contractual arrangements with commercial lodging facilities that meet the FEMA fire safety requirements at a lower cost than FPLP properties.

(iii) Your agency determines on an individual case-by-case basis that it is not practical to use FPLP facilities to meet mission requirements.

(iv) You are attending a conference with prearranged lodging accommodations and are required to book lodging directly with the lodging facility.

(v) Your travel is OCONUS.

(c) *Car rental accommodations.* When authorized to use a rental vehicle under § 301–10.450 of this chapter, you must rent a vehicle from a vendor that participates in the Military Traffic Management Command (MTMC) U.S. Government Car Rental Agreement, unless you are OCONUS and no agreement is in place for your TDY location. MTMC has negotiated rental car agreements that include automatic unlimited mileage, collision damage insurance, and ceiling rates.

PART 301–52—CLAIMING REIMBURSEMENT

■ 4. Revise the authority citation for 41 CFR part 301–52 to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2., Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

■ 5. Revise § 301–52.3 to read as follows:

§ 301–52.3 Am I required to file a travel claim in a specific format and must the claim be signed?

As soon as your agency migrates to the eTravel Service (eTS), you must use the eTS to file all your travel claims. (Agencies are required to migrate to the eTS no later than September 30, 2006.) Until that time, you must file your travel claim in the format prescribed by your agency. If the prescribed travel claim is hardcopy, the claim must be signed in ink. Any alterations or erasures to your hardcopy travel claim must be initialed. If your agency has electronic processing, use your electronic signature where required.

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 6. Revise the authority citation for 41 CFR part 301–70 to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note.)

■ 7. Revise § 301–70.1 to read as follows:

§ 301–70.1 How must we administer the authorization and payment of travel expenses?

When administering the authorization and payment of travel expenses, you—

(a) Must limit the authorization and payment of travel expenses to travel that is necessary to accomplish your mission in the most economical and effective manner, under rules stated throughout this chapter;

(b) Should give consideration to budget constraints, adherence to travel policies, and reasonableness of expenses;

(c) Should always consider alternatives, including teleconferencing, prior to authorizing travel; and

(d) Must require employees to use the eTS to process travel authorizations and claims for travel expenses once you migrate to the eTS, but no later than September 30, 2006, unless an exception has been granted under §§ 301–73.102 or 301–73.104 of this chapter.

PART 301–73—TRAVEL PROGRAMS

■ 8. Revise the authority citation for 41 CFR part 301–73 to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c).

■ 9. Amend Part 301–73 by revising subparts A and B to read as follows:

PART 301–73— TRAVEL PROGRAMS

Subpart—General Rules

Sec.

301–73.1 What does the Federal travel management program include?

301–73.2 What are our responsibilities as participants in the Federal travel management program?

Subpart B—eTravel Service and Travel Management Service

301–73.100 Must we require employees to use the eTravel Service?
301–73.101 How must we prepare to implement the eTravel Service?
301–73.102 May we grant a traveler an exception from the use of the eTravel Service?
301–73.103 What must we do when we approve an exception to the use of the eTravel Service?
301–73.104 May further exceptions to the required use of the eTravel Service be approved?
301–73.105 What are the consequences of an employee not using the eTravel Service or the TMS?
301–73.106 What are the basic services that should be covered by a TMS?

* * * * *

Subpart A—General Rules

§ 301–73.1 What does the Federal travel management program include?

The Federal travel management program includes—

(a) A travel authorization and claim system that implements the related requirements of the Federal Travel Regulation. (*See* §§ 301–2.1 and 301–52.3 and part 301–71 of this chapter for those requirements);

(b) A TMS that provides reservation and ticketing support and management reports on reservation and ticketing activities. (*See* § 301–73.106 for specific services that should be provided by a TMS);

(c) A Travel payment system for paying travel service providers in accordance to §§ 301–73.300 and 301–73.301 of this chapter;

(d) Contracts and similar arrangements, with transportation and lodging providers (*e.g.* Government-contract air carriers, rental car companies, trains, hotels (*e.g.*, Federal Premier Lodging Program (FPLP) properties), etc.) that give preferential rates and other benefits to Federal travelers on official business; and

(e) A Travel Management Reporting System that covers financial and other travel characteristics required by the biennial Travel Survey (*see* §§ 300–70.1 through 300–70.4 of this title).

Note to § 301–73.1: The eTravel Service (eTS) fulfills the requirements of paragraphs (a), (b), and (e) of this section.

§ 301–73.2 What are our responsibilities as participants in the Federal travel management program?

As a participant in the Federal travel management program, you must—

(a) Designate an authorized representative to administer the program including leading your agency's migration of eTS;

(b) Ensure that you have internal policies and procedures in place to govern use of the program including a plan and timeline to implement eTS no later than December 31, 2004, with agency-wide migration to eTS completed no later than September 30, 2006;

(c) Establish a plan that will measure direct and indirect cost savings and management efficiencies through the use of eTS once deployed. This plan must include your migration plan and schedule which must be submitted by March 31, 2004 to the eTravel Program Management Office (PMO) (*see* § 301–73.101);

(d) Require employees to use eTS in lieu of your TMS as soon as it becomes available in your agency (unless an exception has been granted in accordance with §§ 301–73.102 or 301–73.104), but no later than September 30, 2006; and

(e) Ensure that any agency-contracted travel agency services (TMS) complement and support eTS in an efficient and cost effective manner.

Subpart B—eTravel Service and Travel Management Service

§ 301–73.100 Must we require employees to use the eTravel Service?

Yes, unless you have an exception to the use of the eTS (*see* §§ 301–73.102 and 301–73.104), you must have fully deployed the eTS across your agency and require employees to use the eTS for all temporary duty travel no later than September 30, 2006. Agencies must submit their eTS migration plans and schedules by March 31, 2004 to the eTravel PMO, (*see* § 301–73.101). You must implement the eTS no later than December 31, 2004, and require employees to use the eTS as soon as it becomes available in your agency. The Department of Defense and the Government of the District of Columbia are not subject to this requirement.

Notes to § 301–73.100: (1) You have the option to use the contracted travel agent service(s) of your choice (through the eTS or other contract vehicles). You have the responsibility for ensuring agency-contracted travel agent services complement and support the eTS in an efficient and cost effective manner. (2) Award of a task order to a vendor on the eTS Master Contract constitutes eTS implementation. Agency-wide use of the eTS for all travel management processes and travel claim submission constitutes complete migration.

§ 301–73.101 How must we prepare to implement the eTravel Service?

You must prepare to implement the eTS as expeditiously as possible by—

(a) Developing a migration plan and schedule to deploy eTS across your agency as early as possible with full deployment required no later than September 30, 2006; and

(b) Submitting your eTS migration plan and schedule by March 31, 2004 to the U.S. General Services Administration, Attention: eTravel PMO.

Note to § 301–73.101: Your agency should work with the Office of Management and Budget to allocate budget and personnel resources to support eTS migration and data exchange. Your agency is responsible for providing the funds required to establish interfaces between the eTS standard data output and applicable business systems (*e.g.*, financial, human resources, *etc.*).

§ 301–73.102 May we grant a traveler an exception from the use of the eTravel Service?

Your agency head or his/her designee may grant individual case-by-case exceptions to the use of eTS when such use—

(a) Causes an unreasonable burden on mission accomplishment(s) (*e.g.*, emergency travel (and eTS is not accessible), invitational travel, necessity of disability accommodations or special needs in accordance with part 301-13 of this chapter);

(b) Compromises a national security interest;

(c) May endanger the life of the traveler (*e.g.*, an individual traveling under the Federal witness protection program or threatened law enforcement/investigative personnel traveling in accordance with part 301–31 of this chapter); or

(d) Is consistent with any contractual terms applicable to your agency (*i.e.*, you must insure that any exceptions do not cause a breach of contract).

§ 301–73.103 What must we do when we approve an exception to use of the eTravel Service?

The head of your agency or his/her designee must approve an exception to the use of the eTS under § 301–73.102 in writing or through electronic means.

§ 301–73.104 May further exceptions to the required use of the eTravel Service be approved?

(a) The Administrator of General Services or his/her designee may grant an agency-wide exception (or exempt a component thereof) from the required use of eTS when requested by the head of a Department (cabinet-level agency) or head of an Independent agency when—

(1) The agency has presented a business case analysis to the General Services Administration that proves that it has an alternative TMS to the eTS that is in the best interest of the Government and the taxpayer (*i.e.*, the agency has evaluated the economic and service values offered by the eTS contractor(s) compared to those offered by the agency's current Travel Management System (TMS) and has determined that the agency's current TMS is a better value);

(2) The agency has security, secrecy, or protection of information issues that cannot be mitigated through security provided by the eTS contractors;

(3) The agency lacks the technology necessary to access eTS; or

(4) The agency has critical and unique technology or business requirements that cannot be accommodated by the eTS contractors at all or at an acceptable and reasonable price (*e.g.*, majority of travel is group-travel).

(b) As a condition of receiving an exception, the agency must agree to conduct annual business case reviews of its TMS and must provide to the eTravel PMO data elements required by the eTravel PMO in a format prescribed by the eTravel PMO.

(c) Requests for exceptions should be sent to the Administrator, General Services Administration, 1800 F Street, NW., Washington, DC 20405 with full justification and/or analysis addressing paragraphs (a)(1), (a)(2), (a)(3), or (a)(4) of this section.

§ 301–73.105 What are the consequences of an employee not using the eTravel Service or the TMS?

If an employee does not use the eTS (when available) or your agency's designated TMS, he/she is responsible for any additional costs (see § 301–50.5 of this chapter) resulting from the failure to use the eTS or your TMS. In addition, you may take appropriate disciplinary actions.

§ 301–73.106 What are the basic services that should be covered by a TMS?

The TMS must, at a minimum—

(a) Include a Travel Management Center (TMC), commercial ticket office (CTO), an in-house system, an electronically available system, or other method(s) of arranging travel, which has the ability to provide the following as appropriate to the agency's travel needs:

(1) Booking and fulfillment of common carrier arrangements (*e.g.*, flight confirmation and seat assignment, compliance with the Fly America Act, Governmentwide travel policies, contract city-pair fares, electronic ticketing, ticket delivery, *etc.*).

(2) Lodging information (*e.g.*, room availability, reservations and confirmation, compliance with Hotel/Motel Fire Safety Act, availability of Federal Premier Lodging Program properties, per diem rate availability, *etc.*).

(3) Car rental and rail information (*e.g.*, availability of Military Traffic Management Command (MTMC) Government agreement rates where applicable, confirmation of reservations, *etc.*).

(b) Provide basic management information, such as—

(1) Number of reservations by type of service (common carrier, lodging, and car rental);

(2) Extent to which reservations are in compliance with policy and reasons for exceptions;

(3) Origin and destination points of common carrier usage;

(4) Destination points for lodging accommodations;

(5) Number of lodging nights in approved accommodations;

(6) City or location where car rentals are obtained; and

(7) Other tasks, *e.g.*, reconciliation of charges on centrally billed accounts and processing ticket refunds.

Note to § 301–73.106: The eTS fulfills the basic services of a TMS. You have the option to use the contracted travel agent service(s) of your choice through eTS or other contract vehicles. You have the responsibility to ensure that agency-contracted-for travel agent services complement and support the eTS in an efficient and cost effective manner. (See § 301–73.2).

[FR Doc. 03–31225 Filed 12–19–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409081–3154–02; I.D. 032103B]

RIN 0648–AQ72

Fisheries of the Northeastern United States; Magnuson-Stevens Fishery Conservation and Management Act Provisions; Northeast (NE) Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of continuation of regulations.

SUMMARY: The regulations contained in the emergency rule published on June 27, 2003, in order to reduce overfishing and continue conservation measures, are continued for an additional 180 days, after which subsequent Secretarial action may be taken to ensure that sufficient measures to reduce overfishing remain in place, or until Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) is implemented (on or about May 1, 2004), whichever occurs first. Amendment 13 will implement rebuilding plans for several groundfish stocks and address capacity issues in the fishery. This notice is necessary to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) regarding the continuation of emergency measures.

DATES: The final emergency rule published June 27, 2003, at 68 FR 38234, which became effective July 28, 2003, continues in effect until superseded by a future rule action to be published in the **Federal Register**.

ADDRESSES: Copies of the small entity compliance guide prepared for the June 27, 2003, final emergency rule are available from Patricia A. Kurkul, Regional Administrator, NE Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The letter is also accessible via the Internet at *http://www.nero.noaa.gov*. Copies of the June 27, 2003, final emergency rule, including the Environmental Assessment/ Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and public comments and responses are available upon request from the Regional Administrator. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, (978) 281–9218, fax (978) 281–9135, e-mail *Susan.Chinn@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2002, NMFS published an interim final rule (67 FR 50292) that implemented interim measures intended to reduce overfishing on species managed under the FMP. The August 1, 2002, interim final rule was in response to a Remedial Order issued on May 23, 2002, by the U.S. District Court for the District of Columbia (Court). The interim rule completed implementation of restrictions specified in a Settlement Agreement, which was ordered to be implemented by the Court.

Based on the May 23, 2002, Court Order, the management measures implemented by the August 1, 2002, interim rule and its extension, must remain in effect until implementation of Amendment 13 to the FMP, which is scheduled to be in effect no later than May 1, 2004. On January 22, 2003, NMFS published a Notice of Continuation of Regulations in the **Federal Register** (68 FR 2919) to inform the public of the continuance of the interim regulations for a second 180–day period. Under the Magnuson-Stevens Act, however, the authority to implement interim regulations is limited to two consecutive 180–day periods. The second 180–day period ended on July 27, 2003.

Because the schedule for implementation of Amendment 13 was extended until May 1, 2004, emergency Secretarial action was necessary to continue the current management measures from July 28, 2003, until the implementation of Amendment 13 (on or about May 2004). Due to the need to continue the regulations until May 1, 2004, a proposed emergency rule, soliciting public comment, was published on April 24, 2003 (68 FR 20096), and subsequently corrected on May 9, 2003 (68 FR 24914), followed by a final emergency rule (68 FR 38234), published on June 27, 2003, implementing emergency measures intended to reduce overfishing on species managed under the FMP and to continue most interim conservation measures specified in the Settlement Agreement until Amendment 13 is implemented. These measures included a freeze on days-at-sea (DAS) at the highest annual level used from fishing years 1996–2000 and a 20–percent cut from that level; a freeze on the issuance of new open access Hand-gear permits; gear restrictions for certain gear types, including gillnets, hook-gear and trawl nets; modifications and additions to the closure areas; and restrictions on yellowtail flounder catch. In addition, in response to public comment on the proposed rule, the final emergency rule implemented measures pertaining to haddock, including reducing the haddock minimum size limit for private recreational and party/charter vessels to 21 inches (52.5 cm), and relaxing the haddock trip limit (also known as bag limit) for charter/party and open access Handgear permit vessels.

Pursuant to section 305(c) of the Magnuson-Stevens Act, the June 27, 2003, emergency rule may remain in effect for 180 days and may be extended through publication in the **Federal Register**, for one additional period of 180 days, provided the public has had an opportunity to comment on the emergency rule. The public was given such opportunity to comment in the form of a proposed rule before the final emergency rule was published. NMFS has determined that it is necessary to continue this emergency rule to reduce overfishing and to comply with the Court Order. Because the management measures implemented by the June 27, 2003, final emergency rule were written in such a way as to be effective indefinitely, no formal regulatory action is necessary. Instead, to comply with section 305(c) of the Magnuson-Stevens Act, it is necessary only to publish in the **Federal Register** a Notice of Continuation of Regulations to inform the public that NMFS has decided to continue these regulations. The impacts of continuing the Settlement Agreement measures, with some modifications, were analyzed in the Environmental Assessment completed for the June 27, 2003, final emergency rule.

The June 27, 2003, final emergency rule was determined to be significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 16, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–31484 Filed 12–17–03; 2:56 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031015257–3308–02 ; I.D. 101603A]

RIN 0648–AQ79

Fisheries of the Northeastern United States; 2004 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final Rule - 2004 fishing quotas for Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs.

SUMMARY: NMFS is required pursuant to 50 CFR 648.71 to specify annual catch quotas for the Atlantic surfclam and ocean quahog fisheries. In order to meet this regulatory requirement, NMFS issues this rule to set final quotas for the Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2004. These regulations specify allowable harvest levels of Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone and an allowable harvest level of Maine mahogany ocean quahogs from Atlantic waters north of 43 50' N. lat. in 2004.

DATES: Effective from January 1, 2004, through December 31, 2004.

ADDRESSES: Copies of the surfclam and ocean quahog quota specifications document for 2004, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, and other supporting documents, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. A copy of the EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.gov/ro/doc/nr.htm.*

FOR FURTHER INFORMATION CONTACT: Susan W. Chinn, Fishery Management Specialist, 978–281–9218, *susan.chinn@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs (locally known as mahogany quahogs) to the management unit and provided that a small artisanal fishery for ocean quahogs in the waters north of 43° 50′ N. lat. has an annual quota with an initial amount of 100,000 Maine bu (35,240 hectoliters (hL)) within a range of 17,000 to 100,000 Maine bu (5,991 hL to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the preamble to the proposed rule published at 68 FR 60324, October 22, 2003, and is not repeated here. The comment period for that rule ended on November 21, 2003. One comment was received during the comment period.

The final quotas for the 2004 Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries, which are unchanged from those in the proposed rule, are shown in the table below. The status quo level of 2003 for the surf clam fishery will be increased by 4.6 percent (from 3.25 to 3.4 million bu) and the ocean quahog quota will be increased by 11.1 percent (from 4.5 to 5.0 million bu). Finally, this rule makes no changes to the Marine ocean quahog quota from the 2003 level of 100,000 Maine bushels.

FINAL 2004 SURFCLAM/OCEAN QUAHOG QUOTAS

Fishery	2004 final quotas (bu)	2004 final quotas (hL)
[1]Surfclam	3,400,000	1,810,000
[1]Ocean quahog	5,000,000	2,662,000
[2]Maine mahogany ocean quahog	100,000	35,240

[1] 1 bushel = 1.88 cubic ft. = 53.24 liters

[2] 1 bushel = 1.2445 cubic ft. = 35.24 liters

Comments and Responses

The deadline for receiving comments on the proposed rule was November 21, 2003. One comment was received on the proposed rule during the comment period.

Comment: The commenter expressed concern that the determination of OYs is biased by industry and politics and that they are set too high; asserted that NMFS fails to protect the stocks; and voiced general support for establishing marine protected areas and reducing any quotas by at least 50 percent. The commenter also objected to NMFS not accepting comments via e-mail on this action.

Response: This rule implements measures designed to provide for improved utilization of the Federal commercial surfclam and ocean quahog resource, and to improve efficiency of this fishery. The OYs used to determine the quotas for each fishery are based on the best scientific information available, and have been vetted through the SARC, NOAA's Northeast Fisheries Science Center (Center), and peer reviewers, without dispute. None of the stocks are overfished, and overfishing is not occurring. The areas most affected by the surfclam and ocean quahog industry operations are high-energy, sandy areas that are only temporarily impacted by fishing operations under this FMP; as such, there is no immediate need for MPAs as a result of this fishery. Finally, the recommended quotas will allow sustainable fishing to continue at these quota levels for at least 10 years for surfclams and 30 years for ocean quahogs.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A delay in the effective date of this rule would cause a disruption in the ordinary commerce of the surfclam and ocean quahog fisheries. Individual Transferable Quota (ITQ) shareholders each receive a portion of the overall quota for these two species. An allocation holder receives an amount of cage tags equivalent to his/her share of the overall quota. Fishing for surfclams and ocean quahogs begins on January 1, regardless of the publication of the annual quota. Historically, allocations have been transferred either permanently or temporarily to meet changing economic circumstances in the fishery right from the commencement of these fisheries. For example, vessel owners who enter into a supply contract with a processor may experience vessel breakdowns that thwart performance of their contractual obligations. In this situation, it is imperative that the vessel owner have the ability to request that NMFS transfer temporarily part of his/her allocation to another harvester who is willing to fulfill the terms of the supply contract in time for the start of the 2004 fishing year. Further, and of more immediate concern is that five banks currently hold twenty-nine allocations between the surfclam and ocean quahog fisheries. These allocations are held by the banks as security for loans made by the banks to fishermen in these two fisheries. This entails the permanent transfer of the individual allocation to the bank as collateral for the pendency of the loan. The banks request NMFS on an annual basis to transfer the cage tags associated with the allocation back to the borrower. This transaction is characterized as a temporary transfer of the allocation pursuant to the regulations. This temporary transfer of allocation enables the borrower to begin fishing at the beginning of the fishing year in order to generate income with which to discharge the loan. NMFS has received several such requests from the banks holding allocations for the 2004 fishing year. More requests are expected in the near future. Without a quota in effect, NMFS cannot make a transfer of part or the entirety of an allocation either permanently or temporarily. This inability on the part of NMFS to make such transfers effective would preclude the intended recipients of such transfers from fishing, thereby engendering a negative economic impact on the surfclam and ocean quahog fisheries. Therefore, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delayed effectiveness period for the implementation of the 2004 surfclam, ocean quahog, and Maine mahogany quahog quotas.

A description of the reasons why this action is being taken by the Agency and the objectives of this final rule are explained in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and the economic analyses completed in support of this action. A copy of the IRFA is available from the Council (*see* **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

One comment was received during the comment period on the proposed rule, although it did not pertain to the economic impacts of this rule. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comment received, refer to the section above titled "Comments and Responses."

Description and Estimate of Number of Small Entities to which Rule Will Apply

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is only summarized here.

All of the affected businesses (fishing vessels) are considered small entities under the standards described by the Small Business Administration because they have annual returns (revenues) that do not exceed $3.5 million annually. This rule could affect any vessel holding an active Federal permit for either species. However, the commercial use of the permit is limited to vessels fishing under an individual fishing quota or fishing in the Maine mahogany fishery. In 2002, a total of 54 vessels reported harvesting surfclams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. There were 35 vessels in 2002 that fished under the federal limited access Maine mahogany quahog permit for Maine ocean quahogs.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Economic impacts on small entities have been minimized within the constraints of the FMP. Specification of commercial quotas is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). It is not possible to further mitigate economic impacts on small entities because the Council selected the alternative with the most positive economic impacts relative to the other alternatives determined to achieve the biological objectives.

This rule establishes a 4.6–percent increase in the surfclam quota, an 11.1–percent increase in the ocean quahog quota, and no change in the 2004 quota for Maine mahogany ocean quahogs from their 2003 quotas. Since 2002 harvest levels of 3.133 and 3.871 million bu (1.668 and 2.061 million hL) for surfclams and ocean quahogs, respectively, were below the 2004 proposed quotas, NMFS and the Council believe that the final 2004 quotas may yield a surplus quota available to vessels participating in all these fisheries. This is especially likely to occur in the ocean quahog fishery. In the case of a surplus quota, vessels would not be constrained from harvesting additional product, thus allowing them to increase their revenues.

The Council identified four surfclam quota alternatives in addition to the selected quota of 3.400 million bu (1.810 million hL), including 1.850, 3.135, 3.250, and 3.325 million bu (0.985, 1.669, 1.730 and 1.771 million hL). The Council and NMFS determined that the only alternative that would significantly negatively impact revenues to vessels is the 1.850–million bu (0.985–million hL) alternative for surfclams. The 3.135–million bu (1.669–million hL) and status quo alternative would be restrictive and have a slight to moderate impact on revenues. The 3.325–million bu (1.771–million hL) and 3.400 million bu (1.810 million hL) alternatives would yield increases relative to the actual 2002 landings, so increased revenues would be likely to occur. The industry believes it can utilize the additional product from the 4.6–percent increase in landings and thus have a beneficial impact for the Nation.

The Council analyzed four ocean quahog quota alternatives in addition to the selected quota of 5.000–million bu (2.662–million hL), including 4.000, 4.250, 4.500, and 6.000 million bu (2.129, 2.263, 2.396, and 3.195 million hL). Adoption of a 4.000–million bu (2.129–million hL) or a 4.250–million bu (2.263–million hL) quota would represent a 12–percent or a 10–percent decrease, respectively, from the 2003 quota level and would result in the fewest economic benefits available to the ocean quahog fishery. Given the current biological status of the quahog resource, the Council does not believe that a quota reduction is warranted at this time. Adoption of the 4.500–million bu (2.396–million hL) quota would most likely have a limited impact on small entities, since it results in no change from status quo. The 5.000–million bu (2.662–million hL) quota allows for an 11.1–percent increase in quota from 4.500 million bu (2.396 million hL), and a 29–percent increase to the 2002 ocean quahog landings. Adopting the maximum allowable quota of 6.000 million bu (3.195 million hL) for ocean quahogs would represent a 33–percent increase in allowable harvest and a 55–percent increase in landings from 2002, assuming all the quota were harvested. However, the industry does not have a market available to absorb such a large increase in landings and may not have the vessel capacity necessary to harvest a quota this large. Since all alternatives, including the selected quota, would yield increases relative to the actual 2002 landings, increased revenues would be likely to occur, albeit at various percentage differences.

The quota for Maine mahogany ocean quahogs is specified at a maximum 100,000 bu (35,240 hL). The FMP specifies that upward adjustments to the quota would require a scientific survey and stock assessment of the Maine mahogany ocean quahog resource. However, no survey or assessment has been conducted. The Council considered two alternative quotas for the Maine mahogany ocean quahog fishery, in addition to the preferred alternative of 100,000 bu (35,240 hL), including 50,000 bu and 84,700 bu (17,620 and 29,847 hL). Any quota the Council would have recommended below the 1999 landing level of 93,938 Maine bu (33,104 hL) would most likely have resulted in a decrease in revenues to individual vessels.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam and ocean quahog fishery permits. The guide will also be available on the Internet at *http://www.nero.noaa.gov.* Copies of the guide can also be obtained from the Regional Administrator (*see* **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: December 16, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–31487 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325–0063–02; I.D. 100699A]

Fisheries of the Exclusive Economic Zone off Alaska; North Pacific Halibut and Sablefish IFQ Cost Recovery Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of standard prices and fee percentage for North Pacific halibut and sablefish Individual Fishing Quota (IFQ) cost recovery program.

SUMMARY: The National Marine Fisheries Service publishes IFQ standard prices and notification of adjustment of the IFQ fee percentage for the IFQ Cost Recovery Program in the halibut and sablefish fisheries of the North Pacific. This action is required by regulations and is intended to provide holders of halibut and sablefish IFQ permits information to calculate the payments required for IFQ cost recovery fees due by January 31, 2004.

DATES: Effective December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Hayes, Fee Coordinator, 907–586–7344.

SUPPLEMENTARY INFORMATION:

Background

NMFS, Alaska Region, administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ Programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ Programs began in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended (by Pub. L. 104–297) to require the Secretary of Commerce to, among other things, "collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program" (section 304(d)(2)(A)). Section 304(d)(2) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

On March 20, 2000, NMFS published regulations implementing the IFQ Cost Recovery Program (65 FR 14919), which are set forth at 50 CFR 679.45. Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Fee Percentage

Three percent of the ex-vessel value of IFQ halibut and IFQ sablefish harvested is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. Regulations at § 679.45(d) allow the Administrator, Alaska Region, NMFS (Regional Administrator) to reduce the fee percentage if actual management and enforcement costs could be recovered through a lesser percentage. In this event, the Regional Administrator will publish a notification of any adjustment of the IFQ fee percentage in the **Federal Register** pursuant to § 679.45(d)(4).

For 2003, the Regional Administrator has determined that a fee of 1.4 percent is necessary to recover the actual management and enforcement costs. Therefore, the Regional Administrator is adjusting the cost recovery fee applicable to year 2003 IFQ landings from 3.0 percent to 1.4 percent.

Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish during the year. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: "actual ex-vessel value" and "standard ex-vessel value." "Actual ex-vessel value" is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. "Standard ex-vessel value" is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using "IFQ actual ex-vessel value" if they can satisfactorily document those values.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted ("net") weight for halibut. NMFS calculates the standard prices to reflect, as closely as possible, by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings. The standard prices for IFQ halibut and IFQ sablefish are listed in the following table. Data from ports are combined as necessary to protect confidentiality of data submissions.

REGISTERED BUYER STANDARD EX-VESSEL PRICESBY LANDING LOCATION FOR 2003 IFQ SEASON

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARDEX-VESSEL PRICE	SABLEFISH STANDARD EX-VESSEL PRICE
CORDOVA	March 31 April 30	$2.72	$2.34

REGISTERED BUYER STANDARD EX-VESSEL PRICESBY LANDING LOCATION FOR 2003 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARDEX-VESSEL PRICE	SABLEFISH STANDARD EX-VESSEL PRICE
DUTCH HARBOR	May 31	$2.68	$2.36
	June 30	$2.87	
	July 31	$2.97	
	August 31	$3.14	
	September 30		
	October 31		
	November 30		
HOMER	March 31		
	April 30	$2.70	
	May 31	$2.58	$2.09
	June 30	$2.67	$2.21
	July 31	$2.80	$2.16
	August 31	$2.89	$2.15
	September 30	$2.84	$2.16
	October 31	$2.84	$2.16
	November 30	$2.84	$2.16
KETCHIKAN	March 31	$2.95	
	April 30	$2.84	
	May 31	$2.88	
	June 30	$2.94	
	July 31	$2.48	$2.37
	August 31	$3.19	
	September 30	$3.25	
	October 31	$3.25	
	November 30	$3.25	
KODIAK	March 31		
	April 30		
	May 31		
	June 30		
	July 31		
	August 31		
	September 30	$3.07	
	October 31	$3.07	
	November 30	$3.07	
PETERSBURG	March 31	$2.76	$2.37
	April 30	$2.68	$2.34
	May 31	$2.55	$2.27
	June 30	$2.67	$2.32
	July 31	$2.84	
	August 31	$3.01	$2.35
	September 30	$3.06	$2.33
	October 31	$3.06	$2.33
	November 30	$3.06	$2.33
SEWARD	March 31		
	April 30	$2.82	
	May 31	$2.74	
	June 30	$2.89	
	July 31	$2.94	
	August 31	$3.06	
	September 30	$3.09	
	October 31	$3.09	
	November 30	$3.09	
SITKA	March 31	$2.68	$1.96
	April 30	$2.77	$2.38
	May 31	$2.65	$2.29
	June 30	$2.82	$2.43
	July 31	$2.78	
	August 31		
	September 30		
	October 31		
	November 30		
	March 31		
	April 30		
	May 31		
	June 30		
	July 31	$2.96	
	August 31	$3.03	
	September 30	$3.07	
	October 31	$3.07	

REGISTERED BUYER STANDARD EX-VESSEL PRICESBY LANDING LOCATION FOR 2003 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARDEX-VESSEL PRICE	SABLEFISH STANDARD EX-VESSEL PRICE
	November 30	$3.07	
[1]BERING SEA	March 31	$2.62	$1.99
	April 30	$2.61	$1.95
	May 31	$2.56	$2.41
	June 30	$2.64	$2.39
	July 31	$2.81	$2.42
	August 31	$2.89	$2.29
	September 30	$2.95	$2.25
	October 31	$2.95	$2.25
	November 30	$2.95	$2.25
[2]CENTRAL GULF	March 31	$2.80	$2.20
	April 30	$2.76	$2.33
	May 31	$2.67	$2.31
	June 30	$2.90	$2.38
	July 31	$2.78	$2.14
	August 31	$3.08	$2.35
	September 30	$3.17	$2.32
	October 31	$3.17	$2.32
	November 30	$3.17	$2.32
[3]SOUTHEAST	March 31	$2.93	$2.35
	April 30	$2.92	$2.34
	May 31	$2.80	$2.39
	June 30	$2.95	$2.40
	July 31	$2.99	$2.41
	August 31	$3.08	$2.41
	September 30	$3.11	$2.56
	October 31	$3.11	$2.56
	November 30	$3.11	$2.56
[4]ALL	March 31	$2.83	$2.26
	April 30	$2.82	$2.32
	May 31	$2.68	$2.33
	June 30	$2.84	$2.39
	July 31	$2.83	$2.28
	August 31	$3.01	$2.36
	September 30	$3.10	$2.42
	October 31	$3.10	$2.42
	November 30	$3.10	$2.42

[1] *Landing locations Within Port Group—Bering Sea*: Adak, Akutan. Akutan Bay, Atka, Bristol Bay, Chefornak. Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk. Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska.

[2] *Landing Locations Within Port Group—Central Gulf of Alaska*: Anchor Point, Anchorage, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Alitak, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier.

[3] *Landing Locations Within Port Group—Southeast Alaska*: Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat.

[4] *Landing Locations Within Port Group— All*: For Alaska: All landing locations included in 1, 2, and 3. For California: Eureka, Fort Bragg, Other California. For Oregon: Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. For Washington: Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Ranier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. For Canada: Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada.

Dated: December 16, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31486 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 245
Monday, December 22, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 60

[Doc. No. LS–04–04]

RIN 0581–AC26

Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of comment period; correction.

SUMMARY: On October 30, 2003, the Agricultural Marketing Service (AMS) published a proposed rule (68 FR 61944) for the mandatory country of origin labeling program as mandated by the Farm Security and Rural Investment Act of 2002 (Farm Bill) and the 2002 Supplemental Appropriations Act (Appropriations Act), which amended the Agricultural Marketing Act of 1946 (Act) to require retailers to notify their customers of the country of origin of covered commodities beginning September 30, 2004. AMS is extending the comment period to February 27, 2004, at the request of industry trade associations to provide interested parties with additional time to file comments. In addition, AMS is making corrections to the "Analysis of Benefits and Costs" section of the preliminary cost-benefit assessment of the proposed rule in order to correct minor transcription errors. The estimated recordkeeping and implementation costs as well as the estimated overall impact to the economy as a result of the proposed rule remain unchanged.

DATES: Comments must be submitted on or before February 27, 2004, to be assured of consideration.

ADDRESSES: Send written comments to: Country of Origin Labeling Program, Room 2092–S, Agricultural Marketing Service (AMS), USDA, STOP 0249, 1400 Independence Avenue, SW., Washington, DC 20250–0249, or by facsimile to 202–720–3499, or by e-mail to *cool@usda.gov*. Comments received will be posted to the AMS Web site at: *http://www.ams.usda.gov/cool/*. Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Keeney, Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by telephone on 202–720–4722, or via e-mail at: *robert.keeney@usda.gov;* or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by telephone on (202) 720–5705, or via e-mail at: *william.sessions@usda.gov*.

SUPPLEMENTARY INFORMATION: The Farm Bill and the Appropriations Act amended the Act to require retailers to notify their customers of the country of origin of covered commodities beginning September 30, 2004. The law also requires the Department of Agriculture to issue regulations to implement a mandatory COOL program not later than September 30, 2004.

On October 30, 2003, AMS published a proposed rule in the **Federal Register** (68 FR 61944) for the mandatory country of origin labeling program. The comment period was originally scheduled to end on December 29, 2003. However, industry trade organizations have requested additional time to study the proposed regulation to develop more meaningful comments. Because the proposed rule will significantly impact a large number of entities, AMS has determined that there is sufficient justification for extending the comment period 60 days until February 27, 2004.

In accordance with Executive Order 12866, as part of the rulemaking process AMS examined the economic impact of the proposed rule for the mandatory COOL program, which was published in the October 30, 2003, **Federal Register** (68 FR 61944). Due to transcription errors, several numerical values were reported incorrectly in the section of the economic impact assessment that addressed effects of the proposed rule on the economy. The transcription errors occurred on pages 61970 and 61971 of the October 30, 2003, **Federal Register** notice, Docket Number LS–03–04. The last sentence beginning at the bottom of the first column of page 61970 was published as follows:

"The results of our analysis indicate that U.S. production of all the covered commodities combined will decline from 0.15 percent to 0.92 percent and that the overall price level for these commodities (a weighted average index of the prices received by suppliers for their commodities) will increase by 0.06 percent to 0.64 percent."

The originally published sentence should be replaced with the following sentence, which replaces three incorrectly reported numerical values:

"The results of our analysis indicate that U.S. production of all the covered commodities combined will decline from 0.12 percent to 0.30 percent and that the overall price level for these commodities (a weighted average index of the prices received by suppliers for their commodities) will increase by 0.06 percent to 0.25 percent."

On page 61971, four numbers were reported incorrectly in Table 9—Estimated Impact of Proposed Rule on U.S. Production, Prices, and Trade of Impacted Sectors. As initially published, percentage changes in the volume of exports of hogs, beef and lamb, pork, and fish under the Low Incremental Cost scenario were incorrectly reported. Initially published and corrected values for the affected cells of Table 9 are as follows:

Corrected numerical values for Table 9.—Estimated impact of proposed rule on U.S. production, prices and trade of impacted sectors

	Exports percent change from the base year	
	As initially published	Replace with
Low Incremental Cost:		
Hogs	−0.05	−0.09
Beef and Lamb	−0.05	−0.13
Pork	−0.09	−0.16
Fish	−0.12	−0.27

It should be noted that Table 10—Estimated Changes in U.S. Production, Prices, and Trade for Affected

Commodities, which translates the percentage changes shown in Table 9 into unit values, is correct as initially published on page 61972.

The transcription errors relate to incorrectly reported outcomes of the analysis and in no way impact the analysis itself. The estimated costs to the U.S. economy after a decade of adjustment remain unchanged from the range of $138 million to $596 million in reduced consumers' purchasing power. Moreover, the estimated recordkeeping and implementation costs remain unchanged.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: December 17, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31492 Filed 12–17–03; 4:03 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–255–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, and C–9 (military) airplanes, that would have superseded an existing AD that currently requires repetitive ultrasonic or magnetic particle inspections to detect cracking of the engine pylon aft upper spar straps (caps); and if necessary, replacement of the strap with a new strap, or modification of the engine pylon rear spar straps, which constitutes terminating action for the repetitive inspections. The proposed AD also would have required new, improved repetitive ultrasonic inspections, and corrective actions if necessary. The proposed AD also would have required, among other items, a terminating action for the repetitive inspection requirements. This new action revises the proposed rule by adding airplanes to the applicability. The actions specified by this new proposed AD are intended to detect and correct such fatigue cracking, which could result in major damage to the adjacent structure of the pylon aft upper spar cap, and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 99–NM–255–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–255–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, and C–9 (military) airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 10, 2000 (65 FR 30025). That NPRM proposed to supersede AD 78–01–16, amendment 39–3117 (43 FR 1300, January 9, 1978), which is applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, and C–9 (military) airplanes. That NPRM would have continued to require repetitive ultrasonic or magnetic particle inspections to detect cracking of the engine pylon aft upper spar straps (caps); and if necessary, replacement of the strap with a new strap, or modification of the engine pylon rear spar straps, which constitutes terminating action for the repetitive inspections. That NPRM would have added new, improved repetitive ultrasonic inspections, and corrective actions, if necessary. That NPRM also would have required, among other items, a terminating action for the repetitive inspection requirements. That NPRM was prompted by additional reports of fatigue cracking in the subject area of these airplanes. Such fatigue cracking, if not corrected, could result in major damage to the adjacent structure of the pylon aft spar upper cap, and consequent reduced structural integrity of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the manufacturer has advised the FAA that the identified unsafe condition may also occur on additional airplanes with a certain configuration of the left and right pylon aft upper caps.

Explanation of New Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin (ASB) DC9–54A031, Revision 09, dated September 3, 2002. That ASB describes procedures for new repetitive ultrasonic or magnetic particle inspections of the engine pylon aft upper spar straps (caps) to detect cracking; and corrective actions if necessary. The corrective actions include reapplication of a sealant; modification of the rear spar upper strap (cap); and replacement of the bearing of the spar strap (cap) with a new annular groove bearing if necessary. Revision 09 contains information that is essentially the same as Revision 08, which was referenced in the previous NPRM as one of the applicable sources of service information. However, Revision 09 specifically references Boeing Service Bulletin DC9–54–031, Revision 05, dated April 25, 2003, as an additional source of service information.

We have also reviewed and approved Boeing Service Bulletin DC9–54–031, Revision 05, dated April 25, 2003. The service bulletin describes procedures for modification of the rear spar upper strap (cap), which would eliminate the need for the repetitive inspections specified in Boeing ASB DC9–54A031, Revision 09, dated September 3, 2002, discussed above. The modification includes installation of access doors on the pylon rear spars, if applicable; replacement of the strap on the pylon upper rear spar cap with a new strap having an annular groove bearing installed using new close tolerance attaching parts; and modification of the pylon-to-vibration isolator link. That service bulletin also adds airplanes to the effectivity of the service bulletin.

Accomplishment of the actions specified in the service bulletins described above is intended to adequately address the identified unsafe condition.

Comments Received

Due consideration has been given to the comments received in response to the NPRM:

Request To Revise and Update Service Information

One commenter requests that Revision 4 of "McDonnell Douglas Service Bulletin 54–031" be revised to specify the bearing part number (P/N) in conjunction with the pylon spar strap P/N.

Since the issuance of the original NPRM, we have reviewed and approved Revision 05, dated April 25, 2003, of Boeing Service Bulletin DC9–54–031, which specifies the bearing P/N. We have referenced Revision 05 of that service bulletin in this supplemental NPRM as a source of service information.

Request for Clarification of Terminating Action

One commenter, an airline operator, states that multiple paragraphs in the original NPRM specify that modification per Revision 4 of "McDonnell Douglas Service Bulletin 54–031" constitutes terminating action of the repetitive requirements of the AD. The commenter notes, however, that AD 78–01–16, amendment 39–3117, requires replacement of the pylon strap with a heavy gauge lug and does not require use of the annular groove bearing. The commenter states that this contradicts Revision 4 of the service bulletin and paragraph (m) of the original NPRM, which specify installation of the annular groove bearing. The commenter requests clarification.

We acknowledge that clarification is necessary. We are aware that some operators of the subject airplanes have accomplished the actions specified in Revision 4 of McDonnell Douglas DC–9 Service Bulletin 54–31 or have had production equivalent installations of the spar strap (cap) with a pin-staked bearing. For those airplanes having a spar strap (cap) with a pin-staked bearing, paragraph (l) of this supplemental NPRM would require inspections for cracking, and modification if necessary, per Revision 05 of Boeing Service Bulletin DC9–54–031, dated April 25, 2003.

Request To Clarify Modification as a Terminating Action

That same commenter requests clarification of whether accomplishment of the modification using a pin-staked bearing, as described in Revision 4 of McDonnell Douglas DC–9 Service Bulletin 54–31, requires re-implementation of inspections of pylon straps until such time as the annular groove bearing is installed.

We agree that clarification is needed. As explained in the previous comment section, those airplanes having a spar strap (cap) with a pin-staked bearing would require inspections for cracking, and modification if necessary, in accordance with Revision 05 of Boeing Service Bulletin DC9–54–031, dated April 25, 2003. We have revised paragraph (l) of this supplemental NPRM to specify that the actions are to be accomplished per Revision 05, which describes installation of the annular groove bearing.

Request To Clarify Compliance Times for the Modification

Another commenter, also an airline operator, notes that paragraph (h) of the NPRM specifies compliance times for airplanes that have not had the modification to the spar cap accomplished and that have not had the spar cap replaced. The commenter further notes that paragraph (i) of the NPRM specifies compliance times for aircraft that have not had the modification of the spar cap accomplished but have had the spar cap replaced. The commenter points out that neither of those configurations apply to its fleet, since the spar cap has been modified on its fleet. The commenter assumes that if the spar caps have been previously modified, the NPRM would not be applicable to those airplanes. The commenter states that the reader of the NPRM should not have to make an assumption regarding applicability, and requests that the FAA clarify that the modified spar caps are not subject to the requirements of the NPRM.

We agree that clarification is needed. Paragraph (l) of this supplemental NPRM would require that, for airplanes (specified in Revision 05 of DC–9 Service Bulletin 54–031 as "Group 12" airplanes) on which the spar strap (cap) with a pin staked bearing per DC–9 Service Bulletin 54–31 has been installed or that have a production equivalent installed, it is necessary to perform an inspection of the pylon upper rear spar strap (cap) for bearing migration and correct staking and follow-on modification, if necessary, per Revision 05 of DC–9 Service Bulletin 54–031.

We also have further clarified paragraphs (k) and (l) of this supplemental NPRM to specify that if any cracking is detected, modification of the rear spar upper strap (cap) is required per Revision 05. We further specify in paragraph (n) of this supplemental NPRM that accomplishment of that modification per Revision 05 constitutes terminating action for the repetitive inspection requirements of the AD. As explained in the "Explanation of New Service Information" section of this supplemental NPRM, Boeing has also issued Alert Service Bulletin DC9–54A031, Revision 09, dated September 3, 2002, to reference accomplishment of the actions specified in Revision 05 of Service Bulletin DC9–54–031.

Request To Clarify the Intent of Paragraph (f) and (n) of the NPRM

One commenter questions whether paragraph (f)(2)(ii) of the NPRM is acceptable as terminating action for the requirements of the AD. The commenter requests that, if paragraph (f)(2)(ii) of the NPRM is acceptable as terminating action for the requirements of the AD, that such provision be added to paragraph (o) of the NPRM. (Paragraph (o) of the NPRM states that accomplishment of the modification required by paragraph (l) or (n) of the NPRM constitutes compliance with AD 96–10–11, amendment 39–9618 (61 FR 24675, May 16, 1996) and AD 72–09–01, amendment 39–2844 (42 FR 11235, February 28 1977).) For that same reason, the commenter also requests that a statement be added to paragraph (f)(2)(ii) of the NPRM indicating that, if the requirements of paragraph (f)(2)(ii) of the NPRM are accomplished, no further action is required by the AD. The commenter states that clarifying paragraph (f)(2)(ii) of the NPRM would eliminate any confusion as to whether further rework is required for previously modified airplanes. Additionally, the commenter states that paragraph (n) of the NPRM does not clearly specify that it does not apply to airplanes on which the modification specified in paragraph (f)(2)(ii) of the NPRM has been accomplished.

The FAA agrees that clarification of the intent of paragraphs (f) and (n) of the NPRM is necessary. The modification specified in paragraph (f)(2)(ii) of the NPRM does not specify or include certain actions that are described in Revision 05 of Boeing Service Bulletin DC9–54–031, which was described previously in this supplemental NPRM. We have determined that the actions specified in Revision 05 must be accomplished in order to terminate the actions specified in this supplemental NPRM. We have revised paragraph (f)(2)(ii) of this supplemental NPRM to clearly specify that accomplishment of the modification specified in that paragraph only terminates the inspections specified in paragraph (f)(2)(i) of this supplemental NPRM. For those reasons, no change in this regard is necessary to paragraph (o) of the supplemental NPRM. Additionally, we have revised paragraph (n) of this supplemental NPRM to clarify that all airplanes must accomplish the modification specified in paragraph (n) of this supplemental NPRM, regardless of whether or not the modification specified in paragraph (f)(2)(ii) of this supplemental NPRM has been accomplished previously.

Explanation of Change to Applicability

We have revised the applicability of the original NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models. This change also is reflected in the Cost Impact section of this supplemental NPRM. In addition, the Cost Impact section has been updated to reflect the correct number of affected airplanes in the worldwide and U. S. fleet.

Conclusion

Since these changes expand the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD (*i.e.*, paragraph (p)(1) of this supplemental NPRM). Note 6 of the original NPRM, which discusses AMOCs approved previously, has been incorporated into paragraph (p)(2) of this supplemental NPRM. Accordingly, Note 1, Note 5, and paragraph (g) of the original NPRM have been removed from this supplemental NPRM.

Change in Labor Rate Estimate

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, has been revised to reflect the increase in the specified hourly labor rate.

Cost Impact

There are approximately 577 Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 350 airplanes of U.S. registry would be affected by this proposed AD.

The ultrasonic inspection that is currently required by AD 78–01–16, and retained in this proposed AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $195 per airplane, per inspection cycle.

The new ultrasonic inspection that is proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new ultrasonic inspection proposed by this AD on U.S. operators is estimated to be $260 per airplane, per inspection cycle.

The new modification of the rear spar upper strap (cap) that is proposed in this AD action would take between approximately 349 and 412 work hours to accomplish (depending on the configuration of the affected airplane), at an average labor rate of $65 per work hour. The cost of required parts would be between approximately $1,865 and $7,947 per airplane. Based on these figures, the cost impact of the new modification proposed by this AD on U.S. operators is estimated to be between $24,550 and $34,727 per airplane.

For certain airplanes, the repetitive visual inspections of the upper rear spar (cap) for bearing migration and correct pin staking would take approximately 20 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of that inspection is estimated to be $1,300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the optional magnetic particle inspection that would be provided by this AD action, it would take approximately 7 work hours to accomplish it, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this action would be $455 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–3117 (43 FR 1300, January 9, 1978), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–255–AD. Supersedes AD 78–01–16, Amendment 39–3117.

Applicability: Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes, as listed in Boeing Service Bulletin DC9–54–031, Revision 05, dated April 25, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking, which could result in major damage to the adjacent structure of the pylon aft spar upper cap, and consequent reduced structural integrity of the airplane; accomplish the following:

Restatement of Certain Requirements of AD 78–01–16, Amendment 39–3117

Compliance Times

(a) For airplanes that have accumulated 35,000 or more total landings as of February 13, 1978 (the effective date of AD 78–01–16): Within 600 landings after February 13, 1978, unless already accomplished within the last 1,800 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(b) For airplanes that have accumulated between 30,000 and 34,999 total landings inclusive, as of February 13, 1978: Within 900 landings after February 13, 1978, unless already accomplished within the last 1,500 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(c) For airplanes that have accumulated between 25,000 and 29,999 total landings inclusive, as of February 13, 1978: Within 1,200 landings after February 13, 1978, unless already accomplished within the last 1,200 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(d) For airplanes that have accumulated between 15,000 and 24,999 total landings inclusive, as of February 13, 1978: Within 2,000 landings after February 13, 1978, unless already accomplished within the last 400 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(e) For airplanes that have accumulated less than 15,000 total landings as of February 13, 1978: Within 2,000 landings after the accumulation of 15,000 total landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

Repetitive Inspections and Corrective Actions

(f) For airplanes having fuselage numbers 1 through 851 inclusive: At the times specified in paragraphs (a) through (e) of this AD, except as provided by paragraph (l) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps), part number (P/N) 9958154–5/–6 or P/N 9958154–37/–38, to detect cracking; in accordance with paragraph 2.B of McDonnell Douglas DC–9 Service Bulletin A54–31, Revision 1, dated December 22, 1976; or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(1) If there is evidence of cracking, the magnetic particle inspection specified in paragraph 2.C of the service bulletin may be used to confirm the evidence of cracking.

(2) If any cracking is detected, prior to further flight, accomplish either paragraph (f)(2)(i) or (f)(2)(ii) of this AD in accordance with the service bulletin.

(i) Replace the strap with a new strap, P/N 9958154–5/–6 or P/N 9958154–37/–38, and repeat the inspection thereafter at intervals not to exceed 15,000 landings. Or,

(ii) Modify the engine pylon rear spar straps (caps) in accordance with McDonnell Douglas DC–9 Service Bulletin 54–31, dated August 24, 1976. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements specified only in paragraph (f)(2)(i) of this AD.

Note 1: Modification of the engine pylon rear spar straps (caps) accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A54–31, Revision 2, dated December 22, 1977; Revision 3, dated June 20, 1986; Revision 4, dated March 26, 1987; Revision 5, dated March 25, 1991; or Revision 6, dated November 23, 1992; is considered acceptable for compliance with the requirements of paragraph (f)(2)(ii) of this AD.

Note 2: Ultrasonic or magnetic particle inspection of the engine pylon aft upper spar straps (caps) accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A54–31, Revision 2, dated December 22, 1977; Revision 3, dated June 20, 1986; Revision 4, dated March 26, 1987; Revision 5, dated March 25, 1991; or Revision 6, dated November 23, 1992; is considered acceptable for compliance with the inspection requirements of paragraph (f) of this AD, as applicable.

New Requirements of This AD

Ultrasonic Inspections

(g) For airplanes on which the modification/replacement specified in paragraph (n) of this AD has not been accomplished, and on which the spar strap replacement specified in paragraph (f)(2)(i) of this AD has not been accomplished: Except as provided by paragraph (m) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps) to detect cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–54A031, Revision 09, September 3, 2002; at the time specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD, as applicable. Accomplishment of the ultrasonic inspection constitutes terminating action for the repetitive inspection requirements of paragraphs (a) through (f), including paragraph (f)(2)(i) of this AD.

(1) For airplanes that have accumulated less than 25,000 total landings as of the effective date of this AD: After the accumulation of 15,000 total landings but before the accumulation of 25,000 total landings, or within 2,000 landings or 6 months after the effective date of this AD, whichever occurs latest.

(2) For airplanes that have accumulated 25,000 to 29,999 total landings as of the effective date of this AD: Within 1,200 landings or 6 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated 30,000 to 34,999 total landings as of the effective date of this AD: Within 900 landings or 6 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have accumulated 35,000 or more total landings as of the effective date of this AD: Within 600 landings or 6 months after the effective date of this AD, whichever occurs later.

(h) For airplanes on which the modification/replacement specified in paragraph (n) of this AD has not been accomplished, and on which the spar strap replacement specified in paragraph (f)(2)(i) of this AD has been accomplished: Except as provided by paragraph (m) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps) to detect cracking, in accordance with Boeing Alert Service Bulletin DC9–54A031, Revision 09, dated September 3, 2003; at the time specified in paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this AD, as applicable. Accomplishment of the ultrasonic inspection constitutes terminating action for the repetitive inspection requirements of paragraphs (a) through (f) of this AD.

(1) For airplanes that have accumulated less than 25,000 total landings since installation of the new spar strap (cap): After the accumulation of 15,000 landings since installation of the new spar strap (cap) but before the accumulation of 25,000 landings since installation of the new spar strap (cap), or within 2,000 landings or 6 months after the effective date of this AD, whichever occurs latest.

(2) For airplanes that have accumulated between 25,000 and 29,999 landings since installation of the new spar strap (cap): Within 1,200 landings or 6 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated between 30,000 and 34,999 landings since installation of the new spar strap (cap): Within 900 landings or 6 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have accumulated 35,000 or more landings since installation of the new spar strap (cap): Within 600 landings or 6 months after the effective date of this AD, whichever occurs later.

Note 3: Ultrasonic or magnetic particle inspection of the engine pylon aft upper spar straps (caps) accomplished prior to the effective date of this AD per McDonnell Douglas DC–9 Alert Service Bulletin DC9–54A031, Revision 07, dated August 26, 1999; or Revision 08, dated January 31, 2000; is considered acceptable for compliance with the requirements of paragraph (g) or (h) of this AD, as applicable.

If No Cracking Is Detected—Repetitive Inspections

(i) If no cracking is detected during the ultrasonic inspection required by paragraph (g) or (h) of this AD, before further flight, reapply sealant that was removed to accomplish those inspections, per Boeing Alert Service Bulletin DC9–54A031, Revision 09, dated September 3, 2002. Thereafter, repeat the inspection specified in paragraph (g) or (h) of this AD, as applicable, at intervals not to exceed 2,400 landings until the modification of the rear spar upper strap (cap) specified in paragraph (n) of this AD has been accomplished.

If Cracking Is Suspected

(j) If any evidence of cracking is suspected during any inspection required by paragraph (g) or (h) of this AD, before further flight, confirm the existence of cracking by accomplishing the actions specified in paragraph (m) of this AD.

If Cracking Is Detected

(k) If any cracking is detected during any inspection required by paragraph (g) or (h) of this AD, before further flight, modify the rear spar upper strap (cap) in accordance with paragraph (n) of this AD. Accomplishment of the modification constitutes terminating action for the requirements of paragraphs (g) and (h) of this AD.

Inspection for Migration of Bearings

(l) For airplanes identified as Group 12 airplanes in Boeing Service Bulletin DC9–54–031, Revision 05, April 25, 2003, on which the modification specified in paragraph (n) of this AD has not been accomplished: Perform a general visual inspection for migration of the bearings and the correct pin staking, per the service bulletin at the time specified in paragraph (g) or (h) of this AD, as applicable.

Note 4: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If none of the bearings have migrated and the pin staking is correct, repeat the general visual inspection at intervals not to exceed 2,400 landings until the straps are modified per Boeing Service Bulletin DC9–54–031, Revision 05, April 25, 2003.

(2) If any bearing has migrated or the pin staking is incorrect, before further flight, accomplish the modification specified in paragraph (n) of this AD. Accomplishment of that modification constitutes terminating action for the repetitive inspection requirements of this AD.

Acceptable Method of Compliance

(m) At the times specified in the applicable paragraph of this AD, it is permissible to perform a magnetic particle inspection of the engine pylon aft upper spar strap (cap) for cracks in lieu of accomplishing the ultrasonic inspection required by paragraph (g) or (h) of this AD; in accordance with Boeing Alert Service Bulletin DC9–54A031, Revision 09, dated September 3, 2002.

(1) If no cracking is detected, before further flight, replace the bearing on the spar strap (cap) with a new annular groove bearing, in accordance with the service bulletin. Thereafter, repeat the inspection specified in paragraph (g) or (h) of this AD, as applicable, at intervals not to exceed 2,400 landings until the modification of the rear spar upper strap (cap) specified in paragraph (n) of this AD has been accomplished.

(2) If any cracking is detected, before further flight, accomplish the modification of the rear upper spar strap (cap) required by paragraph (n) of this AD.

Terminating Modification

(n) For all airplanes: Prior to the accumulation of 100,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the rear spar upper strap (cap) in accordance with Boeing Service Bulletin DC9–54–031, Revision 05, dated April 25, 2003. Accomplishment of the modification described in Revision 05 of that service bulletin constitutes terminating action for the repetitive inspection requirements of this AD.

Compliance With Certain Other Airworthiness Directives

(o) Accomplishment of the modification required by paragraph (n) of this AD constitutes compliance with the following:

(1) The actions specified in McDonnell Douglas Service Bulletin 54–27, Revision 4, dated April 2, 1990, that are required by AD 96–10–11, amendment 39–9618 (which references "DC–9/MD80 Aging Aircraft Service Action Requirements Document" (SARD), McDonnell Douglas Report MDC K1572, Revision B, dated January 15, 1993, as the appropriate source of service information for accomplishment of the modification); and,

(2) The requirements of AD 72–09–01, amendment 39–2844 (which references McDonnell Douglas Service Bulletin 54–31, dated August 24, 1976; and McDonnell Douglas Service Bulletin 54–27, Revision 4, dated April 2, 1990; as appropriate sources of service information for accomplishment of the modification).

Alternative Methods of Compliance

(p)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD

78–01–06, amendment 39–3117, are approved as alternative methods of compliance with the corresponding provisions of this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31440 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–04–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; A300 C4–605R Variant F Airplanes; and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and A300 B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; A300 C4–605R Variant F airplanes; and A310 series airplanes. This proposal would require, for certain airplanes, identifying the part number of the landing gear selector valves. For all airplanes, this proposal would require repetitive maintenance tasks or operational tests of the landing gear selector valves, and replacing discrepant valves with certain new valves. This action is necessary to prevent failure of the landing gear selector valves, which could result in residual pressure on the retraction chamber side of the electro-hydraulic selector, and consequent uncommanded retraction of the landing gear when the airplane is on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 21, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–04–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–04–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300 B2 and A300 B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; A300 C4–605R Variant F airplanes; and A310 series airplanes. The DGAC advises that a review of in-service experience, data, and failure consequences of the landing gear selector valve on these airplanes has indicated that a landing gear selector valve that is operated beyond its certified operational life of 32,000 total flight cycles could fail. Failed selector valves, if not corrected, could result in residual pressure on the retraction chamber side of the electro-hydraulic selector, and consequent uncommanded retraction of the landing gear when the airplane is on the ground.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–32–0438, Revision 01, dated November 20, 2001 (for Model A300 B2 and A300 B4 series airplanes); A300–32–6082, Revision 01, dated November 20, 2001 (for Model A300–600 series airplanes and Model A300 C4–605R Variant F airplanes); and A310–32–2118, Revision 01, dated November 20, 2001 (for Model A310 series airplanes).

Service Bulletin A300–32–0438 describes procedures for determining the part number of the landing gear selector valve; replacing discrepant valves with new valves having a specified part number; and performing repetitive operational test maintenance tasks (for airplanes not modified per Airbus Modification 3083), or performing repetitive operational tests of the selector valves and replacing failed valves with new valves (for modified airplanes).

Service Bulletins A300–32–6082 and A310–32–2118 describe procedures for repetitive operational tests of the selector valve, and for replacing failed valves with new valves.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2001–603(B), dated December 12, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in and in accordance with the applicable service bulletins described previously, except as discussed below.

Difference Between Proposed AD and the Service Bulletins

Although the service bulletins describe procedures for reporting inspection results, this proposed AD would not require those actions.

Cost Impact

The following table provides the estimated costs to do the actions specified in this proposed AD.

Model	Action	Work hours	Average hourly labor rate (dollars)	Cost per airplane (dollars)	Number of U.S. airplanes	Fleet cost (dollars)
A300 B2	Part number identification	1	65	65	32	2,080
A300 B4	MPD task	1	65	65, per task cycle	32	2,080, per task cycle
	Operational test	1	65	65, per test cycle	32	2,080, per test cycle
A300–600	Operational test	1	65	65, per test cycle	89	5,785, per test cycle
A300 C4–605R Variant F						
A310	Operational test	1	65	65, per test cycle	47	3,055, per test cycle

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–04–AD.

Applicability: All Model A300 B2 and A300 B4 series airplanes; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600) series airplanes; A300 C4–605R Variant F airplanes; and A310 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the landing gear selector valves, which could result in residual pressure on the retraction chamber side of the electro-hydraulic selector, and consequent uncommanded retraction of the landing gear when the airplane is on the ground, accomplish the following:

Part Number Identification

(a) For Model A300 B2 and A300 B4 series airplanes: Before the accumulation of 32,000 total flight cycles on the landing gear selector valves, or within 600 flight hours after the effective date of this AD, whichever occurs later, do the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect to determine whether any selector valve having part number (P/N) A25199–0–2 is installed.

(2) Replace any selector valve having P/N A25199–0–2 with a new selector valve having P/N A25199–0–3, in accordance with

Airbus Service Bulletin A300–32–0438, Revision 01, dated November 20, 2001.

Operational Test

(b) For airplanes installed with selector valves having P/N A25199–0–3 only: Before the accumulation of 32,000 total flight cycles on the landing gear selector valves, or within 600 flight hours after the effective date of this AD, whichever occurs later, perform an operational test of the selector valves. Do the test in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–32–0438 (for Model A300 B2 and A300 B4 series airplanes), A300–32–6082 (for Model A300–600 series airplanes and Model A300 C4–605R Variant F airplanes), and A310–32–2118 (for Model A310 series airplanes); all Revision 01, dated November 20, 2001; as applicable. Before further flight, replace any valve that fails the operational test with a new valve having P/N A25199–0–3, in accordance with the applicable service bulletin.

Follow-on and Corrective Actions

(c) For Model A300 B2 and A300 B4 series airplanes that have not been modified in accordance with Airbus Modification 3083 (Airbus Service Bulletin A300–32–0269): Within 3,000 flight hours after the accumulation of 32,000 total flight cycles on the valve, or within 3,000 flight hours after performing the operational test required by paragraph (b) of this AD, whichever occurs later, do task 323112–0503–2 of the Airbus A300 Maintenance Planning Document (MPD). Repeat the MPD task thereafter at intervals not to exceed 3,000 flight hours.

(d) For Model A300 B2 and A300 B4 series airplanes that have been modified in accordance with Airbus Modification 3083 (Airbus Service Bulletin A300–32–0269), and for Model A300–600 and A310 series airplanes and Model A300 C4–605R Variant F airplanes: Repeat the operational test specified in paragraph (b) of this AD at the later of the times specified by paragraphs (d)(1) and (d)(2) of this AD. Thereafter, repeat the test at intervals not to exceed 18 months or 2,800 flight cycles, whichever occurs first.

(1) Within 18 months or 2,800 flight cycles, whichever occurs first, after the accumulation of 32,000 total flight cycles on the valve.

(2) Within 18 months or 2,800 flight cycles, whichever occurs first, after performing the initial operational test required by paragraph (b) of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2001–603(B), dated December 12, 2001.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31442 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–89–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 757 series airplanes. For certain affected airplanes, this proposal would require repetitive testing of the secondary brakes of the horizontal stabilizer trim actuator (HSTA). For all affected airplanes, this proposal would require repetitive overhauls of the primary brake, ballscrew assembly, and differential assembly of the HSTA, which would constitute terminating action for the repetitive testing of the secondary brake. This action is necessary to prevent grease contamination on the primary HSTA brake and consequent loss of the primary brake function, which, in combination with the loss of the secondary HSTA brake function, could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2003–NM–89–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6468; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–89–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the primary brake of a horizontal stabilizer trim actuator (HSTA) removed from a Boeing Model 757–200 series airplane did not perform at the expected level during a pre-overhaul test at a repair facility. The HSTA brake system is made up of one primary brake and two secondary brakes; these brakes are used to hold the stabilizer against air loads. The secondary brakes provide a backup function to the primary brake.

Investigation revealed that the diminished brake performance was caused by grease from the thrust bearings, which was found on the primary brake surface. Since the first report of grease contamination, the FAA has also received reports of grease contamination on the HSTA primary brake(s) during overhaul on several Model 757–200 series airplanes. In addition, the FAA has received reports that all ballscrew assemblies on HSTAs that have been recently overhauled showed corrosion or wear; and that corrosion or cracking was found during HSTA overhaul in some differential assemblies.

Grease contamination on the primary HSTA brake, if not corrected, could result in the loss of the primary brake function, which, in combination with the loss of the secondary HSTA brake function, could result in loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin, 757–27A0142, Revision 2, dated October 23, 2003 (for Model 757–200, –200CG, and –200PF series airplanes), which describes procedures for repetitive testing of the secondary HSTA brakes, and repetitive overhauls of the primary brake, ballscrew assembly, and differential assembly of the HSTA. The service bulletin recommends compliance times for the overhaul that range between two years and five years depending upon the total hours accumulated on the HSTA since delivery or since the most recent overhaul of the primary brake, ballscrew assembly, and differential assembly.

The FAA has also reviewed and approved Boeing Alert Service Bulletin 757–27A0143, Revision 1, dated October 23, 2003 (for Model 757–300 series airplanes), which describes procedures for repetitive overhauls of the primary brake, ballscrew assembly, and differential assembly of the HSTA.

Accomplishment of the actions specified in the service bulletins are intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between the Proposed Rule and Service Bulletin 757–27A0142

The manufacturer has noted that Boeing Alert Service Bulletin, 757–27A0142, Revision 2, dated October 23, 2003 contains an inadvertent misstatement of compliance times in paragraph D. of Table 1.E., "Compliance." The statement "Test the HSTA secondary brake when the HSTA reaches 24,000 hours (4C) (this is currently a scheduled maintenance task)," should state: "For HSTAs that have accumulated 15,000 to 23,999 hours, test the HSTA secondary brake when the HSTA reaches 24,000 hours (4C) (this is currently a scheduled maintenance task), or within 500 hours after the effective date of this AD, whichever occurs later." Paragraph D. of the table should also include, as the second bulleted item, the following statement: "For HSTAs that have accumulated 24,000 to 29,999 hours, test the HSTA secondary brake within 500 hours."

Clarification Between Proposed Rule and Service Bulletins

Both service bulletins state that no more work is necessary on airplanes changed per previous releases of the service bulletins. We find this statement to be incorrect because it contradicts the procedures specified in those service bulletins. Both service bulletins added new procedures for overhaul of the ballscrew assembly and differential assembly of the HSTA that were not specified in the previous releases. Therefore, more work is necessary on airplanes changed per previous releases of the service bulletins.

Further, Boeing Service Bulletin 757–27A0142 states that the total hours accumulated on the HSTA should be calculated "since delivery (of the airplane)." However, paragraph (d) of this proposed AD would require compliance "prior to the accumulation of the applicable number of flight hours since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first." This decision is based on our determination that different operators may interpret "since delivery" differently. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

Cost Impact

There are approximately 1,085 airplanes of the affected design in the worldwide fleet. The FAA estimates that 754 airplanes of U.S. registry would be affected by this proposed AD; 722 of the affected airplanes of U.S. registry are Model 757–200, –200PF, and –200CB series airplanes, and 32 are Model 757–300 series airplanes.

For the affected Model 757–200 and Model 757–300 series airplanes, the FAA estimates that it would take approximately 96 work hours per airplane to accomplish the proposed overhaul, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,704,960, or $6,240 per airplane, per overhaul cycle.

For the affected Model 757–200 series airplanes, the FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed test of the HSTA secondary brake, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $46,930, or $65 per airplane, per secondary brake test.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–89–AD.

Applicability: All Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent grease contamination on the primary HSTA brake and consequent loss of the primary brake function, which, in combination with the loss of the secondary HSTA brake function, could result in loss of control of the airplane, accomplish the following:

For Model 757–200, –200CB, and –200PF Series Airplanes: Repetitive Overhauls and Tests

(a) For Model 757–200, –200CB, and –200PF series airplanes: Except as provided by paragraph (c), (d), and (e) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 757–27A0142, Revision 2, dated October 23, 2003; including the compliance time "since the most recent overhaul of the primary brake, the ballscrew assembly, and the differential assembly"; do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Test the secondary brakes of the HSTA per Part 2 of the Accomplishment Instructions of the service bulletin. If any secondary brake fails, before further flight, replace with a serviceable brake or overhaul per Part 2 of the Accomplishment Instructions of the service bulletin.

(2) Overhaul the primary brake, ballscrew assembly, and differential assembly of the horizontal stabilizer trim actuator (HSTA) per Part 1 of the Accomplishment Instructions of the service bulletin. Accomplishment of the overhaul constitutes terminating action for the repetitive tests of the secondary brake required by paragraph (a)(1) of this AD.

(b) Repeat the overhaul of the primary brake, ballscrew assembly, and differential assembly of the HSTA at intervals not to exceed 30,000 flight hour intervals, per the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0142, Revision 2, dated October 23, 2003.

(c) Where the service bulletin specified in paragraph (a) of this AD specifies a date from which the initial compliance time interval starts as being the date of the initial release of the service bulletin, this AD requires compliance within the applicable initial compliance time after the effective date of this AD.

(d) Where the service bulletin specified in paragraph (a) of this AD states "total hours since delivery," this AD requires compliance prior to the accumulation of the applicable number of flight hours since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(e) Where paragraph D. of the table in paragraph 1.E., "Compliance," of the service bulletin specified in paragraph (a) of this AD states: "Test the HSTA secondary brake when the HSTA reaches 24,000 hours (4C) (this is currently a scheduled maintenance task)"; this AD requires testing secondary brakes that have accumulated between 15,000 and 23,999 flight hours when the HSTA reaches 24,000 flight hours or within 500 flight hours after the effective date of this AD, whichever occurs later. For HSTAs that have accumulated between 24,000 and 29,999 flight hours, this AD requires testing the secondary brake within 500 flight hours after the effective date of this AD. All testing should be done in accordance with the service bulletin.

For Model 757–300 Series Airplanes: Repetitive Overhauls

(f) For Model 757–300 series airplanes: Prior to the accumulation of 30,000 total flight hours, overhaul the primary brake, ballscrew assembly, and differential assembly of the HSTA per the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0143, Revision 1, dated October 23, 2003. Repeat the overhaul thereafter at intervals not to exceed 30,000 flight hours.

Overhauls Accomplished Per Previous Issues of Service Bulletins

(g) Overhauls of the primary brake and tests of the secondary brakes accomplished before the effective date of this AD per Boeing Alert Service Bulletin 757–27A0142, dated February 13, 2003, or, Revision 1, dated April 10, 2003; and overhauls of the primary brake accomplished before the effective date of this AD per Boeing Alert Service Bulletin 757–27A0143, dated February 13, 2003; are considered acceptable for compliance with the overhaul of the primary brake only and tests of the secondary brakes specified in this AD.

Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31443 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–350–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require an inspection to determine the part number of the filter/regulator on the fire extinguishing system installed in the lower cargo compartment of the airplane, and replacement of the filter/regulator with a new filter/regulator, if necessary. This action is necessary to prevent leakage of fire extinguishing agent through the filter/regulator of the cargo fire extinguishing system, which could result in the inability of the fire extinguishing system to suppress a fire in the cargo compartment of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–

350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–350–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Marcia G. Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–350–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a certification flight test on a Boeing Model 777–300 series airplane, the Halon 1301 fire extinguishing agent flowed through the metered portion of the cargo fire extinguishing system in less than the predicted time. When the cargo fire extinguishing system was checked for leakage, it was determined that the filter/regulator was the source of the leakage. Further investigation found that the original design called for an inadequate heat treatment of the filter/regulator housing which, during production, resulted in an out-of-tolerance O-ring seat. This out-of-tolerance condition could cause the filter/regulator to leak and to fall out of calibration during operation.

Leakage of fire extinguishing agent through the filter/regulator of the cargo fire extinguishing system, if not corrected, could result in the inability of the fire extinguishing system to suppress a fire in the cargo compartment of the airplane.

The cargo fire extinguishing system on certain Model 777–200 series airplanes are identical to those on the affected 777–300 series airplanes. Therefore, both of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 777–26–0028, dated November 2, 2000, which contains procedures for replacing the filter/regulator with a new filter/regulator. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing Service Bulletin 777–26–0028 also refers to the following Water Kidde Service Bulletins as additional sources of service information for accomplishment of the proposed replacement: 473494–26–405, Revision 1, dated November 1, 2000; 473494–26–422, dated April 13, 2000; 473857–26–406, Revision 1, dated November 1, 2000; 473857–1–26–423, dated April 13, 2000; 473995–1–26–424, dated April 13, 2000; and 473995–26–408, Revision 2, dated November 1, 2000.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Although the service bulletin does not require an inspection to determine the part number of the filter/regulator on the fire extinguishing system installed in the cargo compartment, the proposed AD would require such an inspection so that operators can determine if it is necessary to replace the filter/regulator.

Operators should note that, although the service bulletin does not recommend a compliance time for the proposed inspection and replacement, if necessary, the FAA has determined that an interval of within 60 months after the effective date of this AD addresses the unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection and replacement, if necessary (two hours). In light of all of these factors, the FAA finds a 60-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators should also note that the service bulletin assumes that the actions described in Boeing Service Bulletin 777–26–0020, dated May 13, 1999; and in Boeing Service Bulletin 777–26–0024, dated May 13, 1999; have been accomplished previously, or will be accomplished concurrently with the replacement required by the proposed

AD. However, this AD does not mandate that those actions be accomplished before or concurrent with the requirements of this proposed AD. These two service bulletins give instructions for an optional upgrade of the lower cargo compartment's fire suppression system capability to 240 minutes. The airplane operators requested instructions for this optional upgrade, and the manufacturer provided the instructions to them through the service bulletins. All affected airplanes, whether they incorporate the optional upgrade or not, are still required to comply with the requirements of this proposed AD.

Cost Impact

There are approximately 289 airplanes of the affected design in the worldwide fleet. The FAA estimates that 83 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,395, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–350–AD.

Applicability: Model 777–200 and 777–300 series airplanes, line numbers 002 through 290 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of fire extinguishing agent through the filter/regulator of the cargo fire extinguishing system, which could result in the inability of the fire extinguishing system to suppress a fire in the cargo compartment of the airplane, accomplish the following:

Note 1: The Accomplishment Instructions of Boeing Service Bulletin 777–26–0028, dated November 2, 2000, also refer to the following Water Kidde Service Bulletins as additional sources of service information for accomplishment of the replacement: 473494–26–405, Revision 1, dated November 1, 2000; 473494–26–422, dated April 13, 2000; 473857–26–406, Revision 1, dated November 1, 2000; 473857–1–26–423, dated April 13, 2000; 473995–1–26–424, dated April 13, 2000; and 473995–26–408, Revision 2, dated November 1, 2000.

Inspection and Replacement, If Necessary

(a) Within 60 months after the effective date of this AD: Inspect the lower cargo fire extinguishing filter/regulator to determine the part number (P/N). Instead of inspecting the part, a review of airplane maintenance records is acceptable if the P/N of the part can be positively determined from that review.

(1) If no filter regulator P/N 473494–1 (with or without a suffix A), P/N 473857–1 (with or without a suffix A), or P/N 473995–1 (with or without a suffix A) is found, no further action is required by this paragraph.

(2) If any filter/regulator having P/N 473494–1 (with or without a suffix A), P/N 473857–1 (with or without a suffix A), or P/N 473995–1 (with or without a suffix A) is found, within 60 months after the effective date of this AD, replace the filter/regulator with a new filter/regulator, per the Accomplishment Instructions of Boeing Service Bulletin 777–26–0028, dated November 2, 2000.

Parts Installation

(b) As of the effective date of this AD, no person may install on any airplane a filter/regulator with any of the following Walter Kidde Aerospace P/Ns: P/N 473494–1 (with or without a suffix A), P/N 473857–1 (with or without a suffix A), or P/N 473995–1 (with or without a suffix A).

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31444 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–404–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –200CB Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that currently requires modifications to the attachment installation of the forward lavatory. This action would add airplanes to the applicability of the existing AD. The actions specified by the proposed AD are intended to prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 5, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–404–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2000–NM–404–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: David Crotty, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6422; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–404–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–404–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 19, 1999, the FAA issued AD 99–09–13, amendment 39–11146 (64 FR 20146, April 26, 1999), applicable to certain Boeing Model 757–200 series airplanes, to require modifications to the attachment installation of the forward lavatory. That action was prompted by a stress analysis report indicating that the forward lavatory could break free from the upper and/or lower attachments during an emergency landing. The requirements of that AD are intended to prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has issued Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000. The modifications described in this revision are the same as that described in the original service bulletin, which was referenced in AD 99–09–13 as the appropriate source of service information for accomplishing the required actions in that AD. However, Revision 1 of the service bulletin adds additional passenger airplanes to the effectivity listing that are subject to the identified unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000, which describes procedures for installation of a doubler to the upper attachment installation of the forward lavatory on passenger airplanes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–09–13 to continue to require modifications to the attachment installation of the forward lavatory. The proposed AD also would expand the applicability of the existing AD to include additional airplanes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 694 airplanes of the affected design in the worldwide fleet. The FAA estimates that 355 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed modification, at an average labor rate of $65 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $127,800, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD.

As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11146 (64 FR 20146, April 26, 1999) and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–404–AD. Supersedes AD 99–09–13, Amendment 39–11146.

Applicability: Model 757–200 and –200CB series airplanes; as listed in Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000; and as listed in Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment installation of the forward lavatory during an emergency landing, which could result in injury to the crew and passengers, accomplish the following:

Restatement of Requirements of AD 99–09–13

(a) For passenger airplanes identified in Boeing Service Bulletin 757–25–0181, dated June 26, 1997: Within 24 months or 3,000 flight cycles after June 1, 1999 (the effective date of AD 99–09–13, amendment 39–11146), whichever occurs first, install a doubler to the upper attachment installation of the forward lavatory, in accordance with Boeing Service Bulletin 757–25–0181, dated June 26, 1997.

(b) For freighter airplanes identified in Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997: Within 24 months or 3,000 flight cycles after June 1, 1999, whichever occurs first, install floor panel inserts, a retention fitting assembly, and a doubler assembly to the lower attachment installation of the forward lavatory, in accordance with Boeing Alert Service Bulletin 757–25A0187, dated September 18, 1997.

New Requirements of This AD

(c) For passenger airplanes identified in Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000, other than those identified in paragraph (a) of this AD: Within 24 months after the effective date of this AD, install a doubler to the upper attachment installation of the forward lavatory, in accordance with the Work Instructions of Boeing Special Attention Service Bulletin 757–25–0181, Revision 1, dated November 21, 2000.

Parts Installation

(d) As of the effective date of this AD, no person shall install a floor panel, part number 141N5410–12 or 141N5410–28, on any airplane.

Note 1: Floor panels having part numbers 141N5410–12 and 141N5410–28 are only installed on freighter airplanes and are not used on passenger airplanes.

Installations Accomplished Per Previous Issues of Service Bulletin

(e) Installations accomplished before the effective date of this AD per the original issue of Boeing Special Attention Service Bulletin 757–25–0181, dated June 26, 1997, are considered acceptable for compliance with the actions specified in paragraph (c) of this AD.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Alternative methods of compliance, approved previously per AD 99–09–13, amendment 39–11146, that provide for the installation of an oversize doubler to the upper attachment installation of the forward lavatory, are approved as alternative methods of compliance with this AD.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31445 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16282; Airspace Docket No. 03–AEA–06]

Proposed Amendment to Class E Airspace; Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Philadelphia, PA. The development of Standard Instrument Approach Procedures (SIAP) based on area navigation (RNAV) to serve flights into Spitfire Aerodrome (7N7) under Instrument Flight Rules (IFR) has made this proposal necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 21, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16282/Airspace Docket No. 03–AEA–06 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–16282/Airspace Docket No. 03–AEA–06." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E Airspace area at Philadelphia, PA. The development of SIAPs to serve flights operating IFR into Spitfire Aerodrome make this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Philadelphia, PA (Revised)

Philadelphia International Airport
(lat.39°52′19″N., long.75°14′28″W.)
Chester County G.O. Carlson Airport, PA
(lat.39°58′44″N., long.75°51′56″W.)
New Castle County Airport, DE
(lat.39°40′43″N., long.75°36′24″W.)
Summit Airpark, DE
(lat.39°31′13″N., long.75°43′14″W.)
Millville Municipal Airport, NJ
(lat.39°22′05″N., long.75°04′25″W.)

That airspace extending upward from 700 feet above the surface within a 31-mile radius of Philadelphia International Airport extending clockwise from a 225° bearing to a 307° bearing from the airport and within a 37-mile radius of Philadelphia International Airport extending from a 307° bearing to a 053° bearing from the airport and within a 33-mile radius of Philadelphia International Airport extending from a 053° bearing to a 173° bearing from the airport and within a 16-mile radius of Philadelphia International Airport extending from a 173° bearing from the airport to a 225° bearing from the airport and within a 7-mile radius of Chester County G.O. Carlson Airport and within a 6.7-mile radius of New Castle County Airport and within a 8-mile radius of Summit Airpark and within a 6.5-mile radius of Millville Municipal Airport, excluding the airspace that coincides with the Wrightstown, NJ; Pittstown, NJ; Reading, PA; and Allentown, PA Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on October 28, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31417 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–13–M

PEACE CORPS

22 CFR Part 302

Organization

AGENCY: Peace Corps.

ACTION: Proposed rule.

SUMMARY: The Peace Corps is proposing to remove regulations which set out information regarding the Peace Corps' organization. The regulations are outdated and unnecessary. Information on the Peace Corps' organization is already published and updated annually in the *United States Government Manual*, a special **Federal Register** publication.

DATES: Comments must be received by January 21, 2004.

ADDRESSES: Comments should be submitted to Suzanne B. Glasow, Associate General Counsel, Office of the General Counsel, 8th Floor, 1111 20th Street, NW., Washington, DC 20526.

FOR FURTHER INFORMATION CONTACT: Tyler S. Posey, General Counsel, (202) 692–2150.

SUPPLEMENTARY INFORMATION: The Peace Corps is proposing to remove 22 CFR part 302 from the Code of Federal Regulations because it is outdated and unnecessary. Information on Peace Corps' organization is annually updated and published in the **Federal Register's** "United States Government Manual." *See* FOIA Update, Summer 1992 (Office of Information and Privacy, Department of Justice).

Matters of Regulatory Procedure. Executive Order 12866. The Peace Corps has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

Regulatory Flexibility Act. Pursuant to section 605(b) of the Regulatory Flexibility Act, the Peace Corps certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, no regulatory flexibility analysis is required.

List of Subjects 22 CFR Part 302

Organization and functions; government agencies.

For the reasons set forth in the preamble and under the authority of 22 U.S.C. 2503(b), the Peace Corps proposes to amend title 22 of the CFR by removing part 302.

Dated: December 16, 2003.

Tyler S. Posey,

General Counsel.

[FR Doc. 03–31396 Filed 12–19–03; 8:45 am]

BILLING CODE 6015–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1813 Through 1817

RIN 2700–AC83

Re-Issuance of NASA FAR Supplement Parts 1813 Through 1817

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: Comments should be submitted on or before February 20, 2004, to be considered in formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546 or via the Internet at *Celeste.M.Dalton@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2)." FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements)." Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This proposed rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register.** NFS regulations that require public comment are issued as chapter 18 of title 48 CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1813 Through 1817

Government procurement.

Tom Luedtke,
Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1813 through 1817 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1813 through 1817, continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1813—SIMPLIFIED ACQUSITION PROCEDURES

2. Amend Part 1813 by removing Subpart 1813.1 and sections 1813.301, 1813.301–70, 1813.301–71, 1813.301–72, 1813.701–73, 1813.302, 1813.302–1, 1813.302–70, 1813.303, 1813.303–3, and 1813.307.

PART 1814—SEALED BIDDING

3. Amend Part 1814 by removing sections 1814.201, 1814.201–5, and Subpart 1814.4.

PART 1815—CONTRACTING BY NEGOTIATION

4. Amend Part 1815 by —

(a) Removing sections 1815.201, 1815.203, 1815.203–70, 1815.203–71, 1815.204, 1815.204–2, 1815.204–5, 1815.204–70;

(b) In the first sentence of paragraph (b) of section 1815.208 removing "(see 1872.705–1 paragraph VII)";

(c) Removing sections 1815.300, 1815.300–70, 1815.303, 1815.304, 1815.304–70, 1815.305, 1815.305–71, 1815.306(d)(3), 1815.307, 1815.308, 1815.370, 1815.403–1, 1815.403–3, 1815.403–4, 1815.404, 1815.404–2, 1815.404–4, 1815.404–470, 1815.404–471–1, 1815.404–471–2, 1815.404–471–3, 1815.404–471–4, 1815.404–471–5, 1815.404–471–6, 1815.406, 1815.406–1, 1815.406–170, 1815.406–171, 1815.406–172, 1815.406–3;

(d) Removing "in 1816.603" in the last sentence of section 1815.504; removing sections 1815.506, 1815.506–70;

(e) In section 1815.604, redesignating paragraph (a) as (a)(6); and

(f) Removing sections 1815.606(b) and 1815.7002.

PART 1816—TYPES OF CONTRACTS

5. Amend Part 1816 by —

(a) Removing Subpart 1816.1, sections 1816.203, 1816.203–4, 1816.306, 1816.307(b) and (d), 1816.504, 1816.505, 1816.505–70, and Subpart 1816.6;

(b) In section 1816.307, redesignating paragraphs (a) and (g) as (a)(1) and (g)(1) respectively; and

(c) In section 1816.402, deleting the period at the end of the introductory sentence and adding a colon in its place; and

(d) In paragraph (e) of section 1816.402–270, deleting the period at the end of the introductory sentence and adding a colon in its place.

PART 1817—SPECIAL CONTRACTING METHODS

6. Amend Part 1817 by removing Subpart 1817.1, sections 1817.203, 1817.204, 1817.206, 1817.207, Subparts 1817.4, 1817.5, 1817.70, 1817.72, 1817.7301, 1817.7301–1, 1817–7301–2, 1817.7301–3, 1817.7301–4,1817.7301–5; and in section 1817.7302 removing "described in 1817.7301–5" in the first sentence of paragraphs (a) and (b).

[FR Doc. 03–31408 Filed 12–19–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1819 and 1822 Through 1825

RIN 2700–AC84

Re-Issuance of NASA FAR Supplement Subchapter D

AGENCY: National Aeronautics And Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: Comments should be submitted on or before February 20, 2004, to be considered in formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546 or via the Internet at *Celeste.M.Dalton@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2)." FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements)." Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This proposed rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as chapter 18 of title 48 CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1819 and 1822 Through 1825

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1819, and 1822 through 1825 are amended as follows:

1. The authority citation for 48 CFR parts 1819, and 1822 through 1825, continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1819—SMALL BUSINESS PROGRAMS

2. Amend part 1819 by removing paragraphs (c), (d), and (f) in section 1819.201, subparts 1819.5, 1819.6, sections 1819.705–2, 1819.705–4, 1819.705–470, subpart 1819.8, sections 1819.7000, and 1819.7002.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Amend part 1822 by—

(a) Removing sections 1822.000–70, 1822.101, 1822.101–1, 1822.101–3, 1822.101–4, 1822.101–70, 1822.103, 1822.103–4, subparts 1822.3, 1822.4, 1822.6, 1822.8, 1822.10, 1822.13, 1822.14, and 1822.15; and

(b) Revising section 1822.103–5 to read as follows:

1822.103–5 Contract clause.

Insert the clause at 52.222–1, Notice to the Government of Labor Disputes, in all solicitations and contracts that exceed the simplified acquisition threshold.

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

4. Amend part 1823 by—

(a) Removing sections 1823.203, 1823.270, and subparts 1823.3 and 1823.4;

(b) Amending section 1823.570 by deleting subsection header "1823.570–1 Scope." and "Section 1823.570 to 1823.570–4 set" from the beginning of the text following the header, and adding "This section sets";

(c) Redesignating sections 1823.570–2 through 1823.570–4 as 1823.570–1 through 1823.570–3, respectively;

(d) In the first paragraph of the redesignated section 1823.570–1, remove "1823.570–4" and add "1823.570–3" in its place; and

(e) Removing subpart 1823.7 and section 1823.7102.

PART 1824—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

5. Amend part 1824 by removing subpart 1824.2.

PART 1825—FOREIGN ACQUISITION

6. Amend part 1825 by—

(a) In section 1825.103, removing paragraph (a)(i) and redesignating paragraphs (a)(ii) and (a)(iii) as (a)(i) and (a)(ii), respectively; and

(b) Removing section 1825.903, and subparts 1825.10 and 1825.70.

[FR Doc. 03–31407 Filed 12–19–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–16487 Notice 1]

Federal Motor Vehicle Safety Standards; Denial of Petition For Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: Based on the agency's evaluation, NHTSA denies a petition for rulemaking from the Alliance of Automobile Manufacturers (AAM) to amend S4(d) and S4(f)(4) of Federal Motor Vehicle Safety Standard (FMVSS) No. 214, "Side impact protection," which specifies the travel distance of the loading device in the quasi-static door crush test. NHTSA believes that the rulemaking is unnecessary because granting the proposed amendments would not result in a substantive change in the performance requirements of the standard nor change the way that both the manufacturers and the agency may test the vehicle.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590:

For non-Legal Issues: Mr. Philip Oh, Office of Crashworthiness Standards, NVS–112, telephone (202) 493–0195, facsimile (202) 493–2290, electronic mail: *philip.oh@nhtsa.dot.gov.*

For Legal Issues: Ms. Deirdre Fujita, Office of the Chief Counsel, NCC–112, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Background

Sections S3 and S4 of Federal Motor Vehicle Standard (FMVSS) No. 214, "Side impact protection," establish quasi-static door crush resistance requirements and the associated test procedures. The current specifications require the door crush test device to displace over a full 457 millimeters (mm) (18 inches), the average force to be calculated at 152 mm (6 inches) and 305 mm (12 inches), and the peak crush resistance to be determined over the entire 457 mm (18 inches) of crush. Currently, the minimum requirement for the peak crush resistance is 3.5 times the curb weight of the vehicle or 53,397 Newtons (N) (12,000 lb.), whichever is less (2 times or 31,148 N (7,000 lb.) if the seats are removed).

AAM Petition

On August 27, 2002, AAM submitted a petition for rulemaking concerning the travel distance of the loading device in the quasi-static door crush test. The test procedure described in S4(d) of FMVSS No. 214 requires the loading device in the quasi-static door crush test to be displaced over a full 457 mm (18 inches) of travel. AAM asserts that for vehicles with stiffer side door structures designed for dynamic side impact protection, the requirement for the peak crush resistance is often attained well before 457 mm (18 inches) of travel. Therefore, if the requirement for the peak crush resistance is attained before the full 457 mm (18 inches) of travel, AAM contends that any further door crush test is unnecessary. In addition, AAM points out that NHTSA's Office of Vehicle Safety Compliance's (OVSC) test procedure already allows for the flexibility in its testing. The test procedure states that "if after 12 inches of loading device travel, the peak crush resistance has been obtained, the test may be stopped if prior approval has been obtained from the OVSC Contracting Officer Technical Representative (COTR)."

AAM petitioned the agency to amend S4(d) by rewording the second sentence as: If the peak crush resistance of either S3.1.3 or S3.2.3 is not attained within 12 inches of loading device travel, continue the loading device application until the peak crush resistance is attained or until 18 inches of travel is reached, whichever comes first." Also, to be consistent with the proposed change to S4(d), AAM petitioned that S4(f)(4) also be amended as: "The peak crush resistance is the largest force recorded over the entire distance traveled to comply with S4(d)." AAM believes that these amendments would improve the objectivity and practicability of the standard and are consistent with motor vehicle safety.

Analysis

NHTSA agrees that vehicles with stiff side door structures often attain the peak resistance requirement before 457 mm (18 inches) of travel. However, the suggested amendments would not lead to a substantive change to the standard's performance requirements and do not warrant the agency resources that would be needed to undertake rulemaking on this matter. As stated in the standard, the door is to be crushed a full 457 mm (18 inches) to allow for the required peak crush resistance to be attained. To comply with the safety standard, manufacturers are required to ensure this performance requirement is met using the test procedure written in the regulatory text. However, the agency does not regulate the procedure used by manufacturers to ensure compliance of the vehicle. Manufacturers may choose to stop the test procedure at any point if they believe it is sufficient to ensure compliance to the requirements of the standard using the regulatory text test procedure.

As AAM noted, OVSC may stop the test if, after 305 mm (12 inches) of crush, the peak resistance requirement is met and prior approval from the COTR is obtained. OVSC may stop the test if they believe enough data has been gathered to determine compliance or non-compliance under the regulatory test procedure. For example, OVSC may elect to do this to preserve the remaining structure of the vehicle for other compliance test purposes. However, under the same test procedure, OVSC may instead elect to conduct the test over the full 457 mm (18 inches) for agency research or other purposes.

AAM argued that the peak force is often attained within 305 mm (12 inches) of loading device travel, and that continuation of side structure loading after the peak force is reached results in unrepresentative deformation and loading of the door components. AAM did not provide any data to substantiate this claim, nor does NHTSA have any. In any event, the agency does not see why the deformation of the vehicle subsequent to cessation of the test is relevant to the petitioner's requested amendment.

In accordance with 49 CFR part 552, this completes the agency's review of the petition for rulemaking. NHTSA believes that the suggested amendments would not change the performance requirements, nor change the way that both the manufacturers and the agency may test the vehicle. Thus, after considering the allocation of agency resources and agency priorities, NHTSA has decided that the rulemaking requested by the petitioner is not warranted. Accordingly, rulemaking on the petition is denied.

Authority: 49 U.S.C. 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: December 17, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–31490 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 121103D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 22; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold public hearings to solicit comments on Draft Amendment 22 to the Reef Fish Fishery Management Plan of the Gulf of Mexico (Draft Amendment 22) that contains alternatives for red snapper to: Redefine the biological reference points of maximum sustainable yield (MSY) and optimum yield (OY); set status determination criteria including maximum fishing mortality threshold (MFMT) and minimum stock size threshold (MSST); establish a rebuilding schedule that is consistent with the Sustainable Fisheries Act of 1996 (SFA); and establish a standardized methodology to collect bycatch information.

DATES: The meetings will be held in January 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times. Comments on the amendment should be received by January 9, 2004.

ADDRESSES: Written comments should be sent to, and copies of the scoping document are available from, the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Stu Kennedy, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings to solicit comments on Draft Amendment 22. Draft Amendment 22 contains alternatives for red snapper to: (1) redefine the biological reference points of MSY and OY; (2) set status determination criteria including MFMT and MSST; (3) establish a rebuilding schedule that is consistent with the SFA; and (4) establish a standardized methodology to collect bycatch information.

The red snapper stock is in an overfished condition and subject to overfishing. Currently this stock is under a rebuilding program to restore the stock to 20 percent spawning potential ratio (SPR) by 2019. However, this plan is inconsistent with NMFS' National Standard Guidelines (NSG) for setting definitions of overfishing and the overfished condition of stocks that are consistent with SFA and for setting the maximum rebuilding time. Definitions of stock size, the overfished threshold, and yield must be biomass based, but overfishing definitions can be based on SPR. Therefore, before the rebuilding plan can be revised, overfished and overfishing targets and thresholds that are consistent with SFA and the NSG must be specified so that rebuilding goals are known.

For overfished stocks, a recovery plan must be developed to restore the stocks to the biomass level capable of producing MSY on a continuing basis (BMSY). This is more conservative than the current overfishing definition of 20 percent SPR, which is estimated to be the minimal level needed to prevent future declines in the stock. Rebuilding periods are to be as short as possible, but not to exceed 10 years unless the conditions dictate otherwise. For red snapper, even in the absence of fishing mortality, it would take more than 10 years to rebuild the stock. Therefore, NOAA Fisheries' NSG allows for a maximum recovery period in the absence of fishing mortality (12 years) plus the mean generation time (19.6 years), or 31.6 years for red snapper. A recovery plan adopted by the Council under the new guidelines in 2001 would have to reach its recovery target during the year 2032 or earlier. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that FMPs establish a standardized methodology to assess the amount and type of bycatch occurring in the fishery. An additional requirement of the Magnuson-Stevens Act is to identify and implement conservation measures that, to the extent practicable, minimize bycatch. These actions have not been addressed by the Council for the Gulf reef fish fishery and must be considered.

The public hearings will be held at the following locations and dates from 7 p.m. - 10 p.m.:

1. Monday, January 5, 2004, Laguna Madre Learning Center, Port Isabel High School, Highway 100, Port Isabel, TX 78578; telephone: 956–943–0052;
2. Monday, January 5, 2004 , Mississippi Department of Marine Resources, 1141 Bayview Drive, Biloxi, MS 39530; telephone: 228–374–5000;
3. Tuesday, January 6, 2004, Port Aransas Civic Center, 710 West Avenue A, Port Aransas, TX 78373; telephone: 361–749–4111;
4. Tuesday, January 6, 2004, Hilton Beachfront Garden Inn, 23092 Perdido Beach Boulevard, Orange Beach, AL 36561; telephone: 334–974–1600;
5. Wednesday, January 7, 2004, San Luis Resort, 5222 Seawall Boulevard, Galveston Island, TX 77551; telephone: 409–744–1500;
6. Wednesday, January 7, 2004, Destin Community Center, 101 Stahlman Avenue, Destin, FL 32541; telephone: 850–654–5184;
7. Thursday, January 8, 2004, New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA 70062; telephone: 504–469–5000; and
8. Thursday, January 8, 2004, Holiday Inn, 15208 Gulf Boulevard, Madeira Beach, FL 33708; telephone: 727–392–2257.

Public comments on the draft amendment that are received in the Council office by 5 p.m., January 9, 2004, will be presented to the Council.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (see **ADDRESSES**) by December 29, 2003.

Dated: December 16, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31488 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 245
Monday, December 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 63–2003]

Foreign-Trade Zone 119—Minneapolis, MN; Application for Subzone Expansion and Permanent Authority—Subzone 119B; Wirsbo Company Plant, Apple Valley, Minnesota (Polyethylene Tubing)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign Trade Zone Commission (Minneapolis, Minnesota), grantee of FTZ 119, requesting authority to expand the boundary of Subzone 119B, at the Wirsbo Company plant in Apple Valley, Minnesota, and requesting that the authority for subzone status be extended on a permanent basis. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 12, 2003.

Subzone 119B was approved by the Board in 1993 with temporary authority granted for the manufacture of polyethylene tubing at Wirsbo's manufacturing plant (135,000 sq.ft./10.5 acres) in Apple Valley, Minnesota (Board Order 640, 58 FR 30143, 5–26–93). Activity at the facility (180 employees) includes product development, manufacturing, testing, warehousing, and distribution of cross-linked polyethylene (PEX) tubing for residential and commercial indoor/outdoor hydronic radiant heating systems. The plant produces up to 300 million feet of tubing under FTZ procedures annually.

The applicant is now requesting authority to expand the subzone boundaries to include an additional site located at 2300 West Highway 13, Burnsville (Dakota County), Minnesota, about nine miles northwest of the existing subzone site. The proposed Site 2 would include a 22-acre parcel containing a 413,000 square foot facility (125 employees) used for warehousing and distribution of production materials and finished tubing. The applicant also requests removal of the time restriction on FTZ manufacturing authority pursuant to Board Order 640, which authorized the manufacture of PEX tubing under FTZ procedures for an initial three-year period, subject to extension.

Foreign-sourced materials used in the manufacture of tubing (about 35 percent of total purchases) include: polyethylene (HDPE) resins (7.1% duty rate). The company also admits certain parts and materials used in constructing the radiant heating systems. Such warehouse distribution items include: thermostats, brass and copper fittings, aluminum pipe, polyethylene pipe, various polymers and resins in primary form, plastic foil, insulation, packaging materials, other articles of plastic and rubber, polyester tape, fittings, fasteners, mounting tracks, valves, transformers, fuses, relays, junction boxes, metal fittings, flow meters, regulators (duty rates: free—8.6%).

FTZ procedures exempt Wirsbo from Customs duty payments on the foreign resin used in export tubing production (1% of shipments). On its domestic shipments and exports to NAFTA markets, the company is able to choose the duty rate that applies to finished PEX tubing (3.1%) for the foreign-origin resin noted above. Duties would continue to be paid on the warehouse items entered from the subzone for U.S. distribution. The request indicates that the savings from FTZ procedures will continue to help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 20, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 8, 2004).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Franklin Court Building—Room 4100W, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC 20005.

Dated: December 12, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–31476 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; In the Matter of: ABO (USA) INC., 2653 NW 20th Street, Miami, FL 33142, Respondent

Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having notified ABO (USA) Inc. ("ABO") of its intention to initiate an administrative proceeding against ABO pursuant to § 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2003)) ("Regulations"), and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. sections 2401–2420 (2000)) ("Act,"),[1] based on the proposed charging letter issued to ABO that alleged ABO committed two violations of the Regulations. Specifically, the charges are:

1. One Violation of 15 CFR 764.2(d)—Conspiracy—Conspiracy to Export Night Vision Scopes to Japan without the Required Licenses: Beginning in 1995 and continuing into 1997, ABO

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[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA.

conspired and acted in concert with others, known and unknown, to violate the former regulations and Regulations. The goal of the conspiracy was to evade Department of Commerce export licensing requirements relating to night vision scopes and to export night vision scopes from the United States to Japan without the required Department of Commerce licenses. To accomplish the conspiracy, the conspirators, including ABO, took actions in furtherance of the conspiracy, including falsifying invoices and shipping documents and disassembling the night vision scopes before exporting them from the United States to Japan to avoid detection by U.S. authorities, including the Department of Commerce.

2. One Violation of 15 CFR 764.2(a)—Engaging in Prohibited Conduct—Export of Night Vision Scopes Without the Required Licenses. On or about February 28, 1997, ABO exported or caused to be exported items subject to the Regulations, specifically night vision scopes, models Night Ranger 150 and Night Ranger 250; from the United States to Japan without the required Department of Commerce license. An export license was required for the export of the Night Vision scopes, which were classified under ECCN 6A002.c on the Commerce Control List, from the United States to Japan by § 742.6 of the regulations.

BIS and ABO having entered into a Settlement Agreement pursuant to Section 766.18(a) of the regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered:

First, that a civil penalty of $20,000 is assessed against ABO, which shall be paid to the U.S. Department of Commerce within 30 days from the date of the entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (21 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, ABO will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of two years from the date of this Order, ABO (USA) Inc., 2653 NW 20th Street, Miami, FL 33142, its successors or assigns, and when acting for or on behalf of ABO, its officers, representatives, agents or employees ("denied person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States to any destination other than Canada, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document relating to any destination other than Canada;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States to any destination other than Canada, that is subject to the regulations, or in any other activity subject to the regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States to any destination other than Canada, that is subject to the regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport other than to Canada, to or on behalf of the denied person any item subject to the regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to any destination other than Canada, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States to any destination other than Canada;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to any destination other than Canada; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to any destination other than Canada, and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to any destination other than Canada. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to ABO by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that, as authorized by § 766.18(c) of the regulations, the $20,000 civil penalty set forth above shall be suspended in its entirety for one year fro the date of this Order, and shall thereafter be waived, provided that during the period of suspension, ABO has committed no violation of the Act or any regulation, order or license issued thereunder.

Eighth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 15th day of December 2003.

Julie L. Myers,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 03–31411 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Court Decision and Amended Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand.

SUMMARY: On September 15, 2003, the United States Court of International Trade (CIT) affirmed the Department of Commerce's redetermination on remand of the final results of the fifth administrative review of the antidumping duty order on canned pineapple fruit from Thailand. *See Maui Pineapple Company, Ltd.* v. *United States,* Slip Op. 03–120 (September 15, 2003), Court No. 01–01017 (*Maui Pineapple*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), on October 1, 2003, the Department of Commerce (the Department) notified the public that *Maui Pineapple* and the CIT's earlier opinion in this case were "not in harmony" with the Department's original results. *See Notice of Decision of the Court of International Trade: Canned Pineapple Fruit from Thailand,* 68 FR 56619 (October 1, 2003) (*Notice of Decision*). No party has appealed the CIT's decision within the 60-day time period provided and the Department is now issuing these amended final results reflecting the CIT's decision.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: David Layton or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 2001, the Department published a notice of the final results of the fifth administrative review of canned pineapple fruit from Thailand. See Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part: Canned Pineapple Fruit From Thailand, 66 FR 52744 (October 17, 2001) (Final Results). Maui Pineapple Company, Ltd. filed a lawsuit challenging these results and the CIT issued an Order and Opinion dated April 16, 2003 remanding two issues to the Department. *See Maui Pineapple Company, Ltd.* v. *United States,* 264 F.Supp.2d 1244 (CIT 2003) (September 15, 2003). Pursuant to the CIT's April 16, 2003 Order and Opinion, the Department filed its remand results on June 16, 2003. On September 15, 2003, the CIT affirmed the Department's final results of redetermination in Maui Pineapple. On October 1, 2003, the Department published the Notice of CIT Decision consistent with the Federal Circuit decision in Timken. The time period for appealing the CIT's decision has expired and no party has appealed the CIT's affirmation of the Departments final results of redetermination.

Amendment To Final Determinations

Pursuant to section 516A(e) of the Tariff Act of 1930, as amended, as there is now a final and conclusive court decision, we are now amending the final results of the antidumping duty administrative review to reflect a revised weighted average margin for Dole Food Company, Dole Packaged Foods and Dole Thailand (collectively, Dole). *See Final Results.* We determine that the following revised weighted-average margin exists for Dole for the period of July 1, 1999 through June 30, 2000 :

Manufacturer/Exporter	Margin (percent)
Dole	0.98

Accordingly, the Department will determine and the U.S. Customs and Border Protection (CBP) will assess appropriate antidumping duties on the relevant entries of subject merchandise covered by the review period listed above. The Department will issue appraisement instructions directly to the CBP within 15 days of the publication of this notice.

Dated: 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00606 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-855]

Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results and Partial Rescission of the 2001–2002 Administrative Review, and Final Results of the New Shipper Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results and Partial Rescission of the 2001–2002 Administrative Review, and Final Results of the New Shipper Review.

SUMMARY: We have determined that sales of certain non-frozen apple juice concentrate from the People's Republic of China were not made below normal value during the period June 1, 2001, through May 31, 2002. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations for all of the reviewed companies. The final weighted-average dumping margins for these firms are listed below in the section entitled "*Final Results of Review.*" Changsha Industrial Products & Minerals Import and Export Co., Ltd. did not respond to the Department's questionnaire and will receive the facts available rate. See "*Use of Fact Otherwise Available*" section, below. Based on these final results of review, we will instruct U.S. Customs and Border Protection to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho, or John Brinkmann, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3534, (202) 482–3798, and (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the Department published the preliminary results of this review of certain non-frozen apple juice concentrate ("AJC") from the People's Republic of China ("PRC"). *See Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and New Shipper Review, and Partial Rescission of Review,* 68 FR 40244 (July 7, 2003) ("*Preliminary Results*"). The period of review ("POR") is June 1, 2001, through May 31, 2002. This review covers the following producers or exporters (referred to collectively as "the respondents"): Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. ("Haisheng"), SDIC Zhonglu Juice Group Co., Ltd. ("Zhonglu"), Yantai Oriental Juice Co., Ltd. ("Oriental"), Sanmenxia Lakeside Fruit Juice Co., Ltd. ("Lakeside"), and Changsha Industrial Products & Minerals Import and Export Co., Ltd. ("Changsha"). On July 26, 2002, Gansu Tongda Fruit Juice and Beverage Company ("Gansu Tongda") agreed to align the new shipper review with the second administrative review; therefore, the concurrent new shipper review covers one producer/exporter: Gansu Tongda.

In September 2003, we conducted verification of the questionnaire responses submitted by Gansu Tongda. We issued a verification report on October 8, 2003.

We invited parties to comment on the *Preliminary Results* and the Verification Report. On October 20, 2003, we received a combined case brief from Haisheng, Zhonglu, Oriental, and Gansu Tongda. No rebuttal briefs were submitted. No hearing was held because respondents withdrew their request for a hearing in a letter dated October 23, 2003.

On October 22, 2003, the Department published in the **Federal Register** a *Notice of Extension of Time Limit for the Final Results of the Second Administrative Review and New Shipper Review*, 68 FR 60338.

The Department has conducted this administrative review and new shipper review in accordance with section 751 of the the Tariff Act of 1930, as amended ("the Act").

Scope of Review

The product covered by this order is certain non-frozen apple juice concentrate ("NFAJC"). Certain NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of Review in Part

As noted in the *Preliminary Results*, Shandong Foodstuffs Import and Export Corporation ("Shandong"), Shaanxi Gold Peter Natural Drink Co., Ltd. ("Gold Peter"), Qingdao Nannan Foods Co., Ltd. ("Nannan"), Shaanxi Machinery and Equipment Import and Export Corporation ("SAAME"), Shaanxi Hengxing Fruit Juice Co., Ltd. ("Hengxing"), Xian Asia Qin Fruit Co., Ltd. ("Xian Asia"), and Xian Yang Fuan Juice Co., Ltd. ("Xian Yang") reported no shipments of subject merchandise to the United States during the POR. Entry data provided by U.S. Customs and Border Protection ("CBP") confirm that there were no POR entries from Shandong, Gold Peter, Nannan, SAAME, Hengxing, Xian Asia, and Xian Yang of AJC. Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to Shandong, Gold Peter, Nannan, SAAME, Hengxing, Xian Asia, and Xian Yang. (*See* 19 CFR 351.213(d)(3); *see, also, Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).)

Use of Facts Otherwise Available

As discussed in detail in the *Preliminary Results*, we have determined that companies which did not respond to the Department's questionnaire in this proceeding should not receive separate rates and, thus, are viewed as part of the PRC-wide entity. Moreover, as noted in the *Preliminary Results*, we determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for companies which did not respond to our requests for information. No party in this proceeding has commented on these issues since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the PRC-wide rate of 51.74 percent to Changsha Industrial Products & Minerals Import and Export Co. and other companies subject to the PRC-wide rate.

Analysis of Comments Received

All issues raised in the case brief by parties to this review are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary, Import Administration, dated December 15, 2003, ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://www.ia.ita.doc.gov/frn/summary/list.htm under the heading "China PRC." The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received, verification, and a reexamination of surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the Decision Memorandum or in the referenced final calculation memorandum:

All Companies

Overhead, SG&A, and Profit: We have revised the overhead, SG&A and profit ratios based on the full English translation of the Agros Holding Incorporated financial statement submitted by respondents in their August 18, 2003 "2nd; Surrogate Value Submission" at Exhibit 2. The revised overhead percentage is 7.11. The revised SG&A percentage is 50.24. The revised profit percentage is 4.46. *See* Comment 2 of the *Decision Memorandum.*

Domestic Brokerage and Handling: In the *Preliminary Results*, domestic brokerage and handling was based on a single brokerage and handling rate. For these final results the Department has calculated the surrogate brokerage and handling value by averaging this brokerage and handling rate with two additional freight forwarder quotes which were used by the Department in recent cases.

We have continued to remove Terminal Handling Charges from the calculation because we have information from both Maersk Sealand and UML Shipping Agency Ltd. indicating that Terminal Handling Charges were not in effect in the PRC until the first quarter of 2002.

The prices are from 1999. Therefore, we have inflated them to the POR. The resulting value is US$3.65/MT. *See* Comment 3 of the *Decision Memorandum.*

Gansu Tongda

Ocean Freight for Gansu Tongda's Market Economy Purchase: Gansu Tongda purchased aseptic bags in U.S. dollars from a market economy supplier. Since the charge did not include ocean freight we have added ocean freight charges to the bag cost. *See* December 15, 2003, "Final Results Calculation Memorandum for Gansu Tonga Fruit Juice & Beverage Company."

Final Results of Reviews

We determine that the following dumping margins exist for the following companies for the period June 1, 2001, through May 31, 2002:

SECOND ADMINISTRATIVE REVIEW

Exporter/manfacturer/producer	Weighted-average margin percentage
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00
SDIC Zhonglu Juice Group Co., Ltd. (a.k.a. Shandong Zhonglu Juice Group Co., Ltd., Rushan Shangjin-Zhonglu Foodsuff Co., Ltd., Shandong Luling Fruit Juice Co., Ltd.).	0.00
Yantai Oriental Juice Co., Ltd.	0.00
PRC-wide rate (including Changsha Industrial Products & Minerals Import and Export Co., Ltd.)	51.74

NEW SHIPPER REVIEW

Exporter	Producer/manufacturer	Weighted-average margin percentage
Gansu Tongda Fruit Juice and Beverage Company	Gansu Tongda Fruit Juice and Beverage Company	0.00

The PRC-wide rate applies to all entries of the subject merchandise, including entries from Changsha Industrial Products & Minerals Import and Export Co., Ltd., except for entries from exporters that are identified individually above.

Assessment Rates

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection ("CBP") within 15 days of publication of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order the Customs Service to liquidate without regard to antidumping duties. All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty cash deposit rate in place at the time of entry.

An injunction prevented us from liquidating entries from Oriental, Lakeside, Haisheng, Zhonglu, and Changsha. On December 12, 2003, we published a "Timken Notice", announcing the Court of International Trade's final judgement in *Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al. See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Court Decision and Suspension of Liquidation*, 68 FR 69377. Should no party appeal this decision we will liquidate these companies' entries in accordance with the language of the "Timken Notice".

Cash Deposit Requirements for Administrative Review

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms indicated above; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 51.74 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Cash Deposit Requirements for New Shipper Review

Bonding will no longer be permitted to fulfill security requirements for shipments from Gansu Tongda of non-frozen apple juice concentrate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review.

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and (a)(2)(B) of the Act: (1) the cash deposit rate for Gansu Tongda (*i.e.*, for subject merchandise manufactured and exported by Gansu Tongda) will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity and for subject merchandise exported by Gansu Tongda but not manufactured by them will continue to be the PRC-wide rate (*i.e.*, 51.74 percent); and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in ccordance with section 751(a)(1), 751(a)(2)(B), and 777(i) of the Act.

Dated: December 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: The Department's use of Poland as the primary surrogate country is contrary to law and unsupported by the administrative record.

Comment 2: The Department should revise its surrogate ratio calculations derived from the Agros financial statement.

Comment 3: The Department should revise its surrogate value for domestic brokerage and handling.

[FR Doc. 03–31481 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Final Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of new shipper review.

SUMMARY: We have determined that sales of certain non-frozen apple juice concentrate from the People's Republic of China were made below normal value during the period June 1, 2002, through November 30, 2002.

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculation for Yantai Golden Tide Fruits and Vegetable Food Co., Ltd. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margin for Yantai Golden Tide Fruits and Vegetable Food Co., Ltd. is listed below in the section entitled "Final Results of Review." Based on these final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or John Brinkmann, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3534, or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2003, the Department published in the **Federal Register** the preliminary results of this new shipper review of non-frozen apple juice concentrate ("AJC") from the People's Republic of China ("PRC") for Yantai Golden Tide Fruits and Vegetable Food Co., Ltd. ("Golden Tide"), (*see Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of New Shipper Review*, 68 FR 44741 (July 30, 2003) ("*Preliminary Results*")).

In September 2003, we conducted verification of the questionnaire responses submitted by Golden Tide. We issued a verification report on October 5, 2003.

We invited parties to comment on the *Preliminary Results* and the verification report. On October 15, 2003, we received a case brief from Golden Tide. No rebuttal briefs were received. No hearing was held because none was requested.

On October 22, 2003, the Department published in the **Federal Register** a *Notice of Extension of Time Limit for the Final Results of the New Shipper Review*, 68 FR 60337.

The Department has conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended, ("the Act").

Scope of Order

The product covered by this order is certain non-frozen apple juice concentrate ("NFAJC"). Certain NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case brief to this new shipper review are addressed in the "Issues and Decision Memorandum" from Jeffrey May, Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary, Import Administration, dated December 15, 2003, ("*Decision Memorandum*"), which is hereby adopted by this notice.

Attached to this notice as an Appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://www.ia.ita.doc.gov/frn/summary/list.htm* under the heading "China PRC." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received, the verification, and a reexamination of surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memorandum* or in the December 15, 2003 "Final Results Calculation Memorandum for Yantai Golden Tide Fruits & Vegetable Co., Ltd." ("*Calc Memo*").

Domestic Brokerage and Handling: In the *Preliminary Results*, domestic brokerage and handling was based on a single brokerage and handling rate. For these final results the Department has calculated the surrogate brokerage and handling value by averaging this brokerage and handling rate with two additional freight forwarder quotes which were used by the Department in recent cases.

The prices are from 1999. Therefore, we have inflated them to the POR. The resulting value is US$8.78/MT. *See* Comment 3 of the *Decision Memorandum*.

Overhead, SG&A, and Profit: We have revised the overhead, SG&A and profit ratios based on the full English translation of the Agros Holding Incorporated financial statement submitted by the respondent in its August 18, 2003 "2nd Surrogate Value Submission" at Exhibit 2. The revised overhead percentage is 7.11. The revised SG&A percentage is 50.24. The revised profit percentage is 4.46. *See* Comment 2 of the *Decision Memorandum*.

Aseptic Bags: Golden Tide purchased aseptic bags from a market economy supplier slightly before the POR. Therefore, we have inflated the price of the bags to the POR. The resulting price is business proprietary. *See Calc Memo*.

Final Results of Review

For the reasons discussed in our *Preliminary Results* and above, we determine that the following weighted-average margin percentage exists for Golden Tide during the period June 1, 2002, through November 30, 2002:

Manufacturer/Producer/Exporter	Margin (percentage)
Yantai Golden Tide Fruits & Vegetable Food Co., Ltd ...	7.70
PRC Wide	51.74

Assessment Rates

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection ("CBP") within 15 days of publication of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was *de minimis*, we will order the Customs Service to liquidate without regard to antidumping duties.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Golden Tide of non-frozen apple juice concentrate from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review.

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and (a)(2)(B) of the Act: (1) The cash deposit rate for Golden Tide (*i.e.*, for subject merchandise manufactured and exported by Golden Tide) will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity and for subject merchandise exported by Golden Tide but not manufactured by them will continue to be the PRC-wide rate (*i.e.*, 51.74 percent); and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act and 19 CFR 351.214.

Dated: December 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: The Department's use of Poland as the primary surrogate country is contrary to law and unsupported by the administrative record.

Comment 2: The Department should revise its surrogate ratio calculations derived from the Agros financial statement.

Comment 3: The Department should revise its surrogate value for domestic brokerage and handling.

[FR Doc. 03–31482 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–844]

Steel Concrete Reinforcing Bars From the Republic of Korea: Notice of Postponement of Final Results of Antidumping Duty Administrative Review

AGENCY: AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: ACTION:Notice of Postponement of Final Results of Administrative Review.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Johns at (202) 482–2305 or Mark Manning at (202) 482–5253, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUMMARY: The Department of Commerce (the Department) is postponing the final results of the administrative review of Steel Concrete Reinforcing Bar (rebar) from the Republic of Korea (Korea). This review covers the period from January 30, 2001 through August 31, 2002.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested, and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days from the date of publication of the preliminary determination.

Background

On October 24, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on rebar from Korea (67 FR 65336). The preliminary results were published on October 7, 2003. *See Steel Concrete Reinforcing Bars from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 57883 (October 7, 2003). The final results are currently due no later than February 4, 2004.

Extension of Time Limit for Final Results of Review

The Department has determined that it is not practicable to complete the final results of this review within the original time limit. *See* Decision Memorandum from Tom Futtner, Acting Director, Office IV, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Postponement of Final Results and Extension of Provisional Measures," dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the final results until no later than April 4, 2004.

This notice is issued and published pursuant to section 751(a)(3)(A) of the Act.

Dated: December 15, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–31477 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-449–804]

Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 15, 2003, the Department of Commerce (the Department) published the preliminary results of its first administrative review of the antidumping duty order on steel concrete reinforcing bars (rebar) from Latvia. The review covers one producer of the subject merchandise. The period of review (POR) is January 30, 2001, through August 31, 2002. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: James Kemp or Daniel O'Brien, at (202) 482–5346 or (202) 482–1376, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 2003, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on rebar from Latvia. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia*, 68 FR 48880 (August 15, 2003) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On September 15, 2003, we received case briefs from the sole respondent, Joint Stock Company Liepajas Metalurgs (Liepajas Metalurgs), and the petitioner, the Rebar Trade Action Coalition. Both parties submitted rebuttal briefs on September 22, 2003. A public hearing was not held, as none was requested.

Scope of the Order

For purposes of this order, the product covered is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum* to James J. Jochum, Assistant Secretary for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in Room B-099 of the main

Commerce building, and can also be accessed directly on the Web at *www.ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made one adjustment to the methodology used in calculating the final dumping margin in this proceeding. The adjustment is discussed in detail in the *Decision Memorandum*. For the final results, we have continued to use non-adverse facts available in lieu of certain missing information. Specifically, we have now matched the U.S. sales without identical matches to sales of similar merchandise in the home market, instead of using constructed value.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of January 30, 2001, through August 31, 2002:

Producer	Weighted-Average Margin (Percentage)
Joint Stock Company Liepajas Metalurgs	0.87

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Since the delivery terms for all of Liepajas Metalurgs' U.S. sales were FOB Latvian seaport, we calculated entered value using the gross unit price reported in the U.S. sales database. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposits

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of rebar from Latvia entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 17.21 percent, the "All Others" rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

Comment 1: The Use of Adverse Facts Available or an Alternative Neutral Facts Available in the Final Results

Comment 2: Ministerial Error

[FR Doc. E3–00605 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–825]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Sebastian Wright at (202) 482–5254, or Mark Hoadley at (202) 482–3148; Office of AD/CVD Enforcement 7, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that wax and wax/resin thermal transfer ribbons (TTR) from France are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). Because the sole respondent involved in this investigation, Armor, S.A. (Armor), withdrew its participation in the investigation, the preliminary margin assigned to Armor is based on adverse facts available (AFA). The estimated margin of sales at LTFV is shown in the *Suspension of Liquidation* section of this notice.

Interested parties are invited to comment on this preliminary determination. Unless extended, we will make our final determination not later than 75 days after the date of this preliminary determination.

Case History

This investigation was initiated on June 19, 2003.[1] *See Notice of Initiation of Antidumping Duty Investigation: Thermal Transfer Ribbons From France, Japan and the Republic of Korea*, 68 FR 38305 (June 27, 2003) (Initiation Notice). Since the initiation of the investigation, the following events have occurred.

On July 14, 2003, the United States International Trade Commission (ITC) preliminarily determined that "there is a reasonable indication that an industry in the United States is materially injured by reason of imports from France, Japan, and Korea of certain wax and wax/resin thermal transfer ribbons." *See Certain Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and Korea*, 68 FR 42759 (July 18, 2003).

On July 14, 2003, counsel for Armor met with the Department to discuss product characteristics. On July 17, 2003, Armor submitted comments regarding product characteristics and the Department's upcoming tour of petitioner's TTR production facilities in New York. On July 21, 2003, the Department toured these facilities and met with petitioner to discuss product characteristics.

On August 4, 2003, August 6, 2003, and August 18, 2003, petitioner submitted comments regarding the model match criteria. On August 5, 2003, and August 6, 2003, Armor submitted comments regarding the model match criteria. Additional model match comments were submitted by other interested parties on this record, as follows: Illinois Tool Works Inc. and ITW Specialty Films Co., Ltd. (collectively, ITW), on July 21, 2003, and August 4, 2003; Dai Nippon Printing Company, Ltd., on August 5, 2003; and Brother International Corporation, on August 6, 2003. On August 8, 2003, the Department issued its model match criteria via sections B and C of the questionnaire. On August 28, 2003, the Department clarified its model match criteria. On September 4, 2003, petitioner submitted additional comments regarding model match criteria. On October 9, 2003, the Department met with petitioner's counsel to discuss its model match comments.

On July 28 and July 30, 2003, petitioner submitted comments regarding the scope of the investigation. On August 7, 2003, General Company Limited, an interested party, submitted comments regarding the scope of the investigation. On September 2, 2003, petitioner submitted a "test" description to the Department, for the purpose of determining whether a product should be classified as a wax, resin enhanced wax, or wax/resin ribbon. On September 9, 2003, Armor submitted comments on petitioner's September 2 test proposal. On September 11, 2003, the Department issued a clarification to the scope of this investigation. *See Memorandum from Edward C. Yang, Director, Office of AD/CVD Enforcement 9, to Joseph A. Spetrini, Deputy Assistant Secretary: Antidumping Investigation on Certain Wax and Wax/Resin Thermal Transfer Ribbon from France, Japan and Korea: Scope Clarification*. The Department removed the word "pure" from the section discussing the exclusion of resin TTR in the scope language.

On November 4, 2003, petitioner submitted a letter to the Department correcting a typographical error in the color specification of the scope, as written in the petition and initiation notice. Petitioner stated that "−20>a*<35" should read, "−20<a*<35."

On August 1, 2003, the Department issued section A of its questionnaire to Armor, the only known French producer/exporter of TTR to the United States.[2] As mentioned above, on August 8, 2003, the Department issued sections B through E of its questionnaire, including model match criteria. On August 20, 2003, the Department, pursuant to Armor's request, extended the deadlines for responding to all sections of the questionnaire, to September 5 for section A, and to September 24 for sections B through E. On September 5, 2003, the Department received a response to section A of its questionnaire. On September 22, 2003, the Department again extended the deadlines for sections B through E to September 29, again at Armor's request. On September 29, 2003, the Department received a response to sections B and C. On September 26, 2003, pursuant to a third extension request from Armor, the Department again extended the deadline for sections D and E until October 2, 2003. On October 14, 2003, petitioner submitted comments on Armor's section B and C responses.

On September 4, 2003, the Department met with Armor's counsel to discuss various issues regarding its forthcoming cost reporting. On September 5, 2003, Armor submitted documents to the Department used in the September 4 meeting for illustrative purposes. On September 10, 2003, petitioner submitted comments on these cost reporting issues. On September 12, 2003, the Department issued its positions on Armor's cost reporting issues. *See Letter to Armor, S.A. from Sally Gannon, Program Manager, Office of AD/CVD Enforcement 7; Regarding Antidumping Duty Investigation of Certain Wax and Wax/Resin Thermal Transfer Ribbons from France; Clarification of Cost Reporting*. The Department received a response to sections D and E on October 2, 2003. On October 20, 2003, petitioner submitted comments on the section D and E responses.

On October 22, 2003, the Department issued a supplemental questionnaire to Armor pertaining to its section A through C responses. In the questionnaire, we also asked Armor to consider rebracketing significant portions of all sections of its questionnaire response, reducing the amount of information it claimed to be business proprietary. On October 27, 2003, pursuant to Armor's request, we granted deadline extensions to Armor, to October 28 for rebracketing, and to November 7 for answering supplemental questions. On October 29 and 30, 2003, the Department issued supplemental questionnaires pertaining to Armor's section D and E responses, respectively.

On October 3, 2003, petitioner made a timely request for a forty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On October 21, 2003, we postponed the preliminary determination until no later than December 16, 2003. *See Wax and Wax/Resin Thermal Transfer Ribbons from France, Japan, and the Republic of Korea; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 68 FR 60085 (October 21, 2003).

On October 30, 2003, Armor withdrew from the investigation, requesting that all business proprietary copies of its questionnaire responses be returned or destroyed. It cited "the burdensome nature and extreme expense of participating" in the investigation as its reason for withdrawing. On December 16, 2003, the Department notified Armor that it had destroyed all business proprietary copies of its questionnaire responses. *See Letter to Armor, S.A. from Sally Gannon, Program Manager, Office of AD/CVD Enforcement 7.*

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

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[1] The petitioner in this investigation is International Imaging Materials, Inc. (IIMAK).

[2] *See* VII–1 of the preliminary report of the ITC, publication 3613, July 2003, for proprietary information concerning Armor's share of French production and exports.

During the period of investigation (POI), only Armor was identified as a producer/exporter of subject merchandise from France. Therefore, we selected Armor as the sole respondent in the investigation of TTR from France.

Period of Investigation

The POI is April 1, 2002, through March 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition (*i.e.*, June 2003) involving imports from a market economy, and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

This investigation covers wax and wax/resin thermal transfer ribbons (TTR), in slit or unslit ("jumbo") form originating from France with a total wax (natural or synthetic) content of all the image side layers, that transfer in whole or in part, of equal to or greater than 20 percent by weight and a wax content of the colorant layer of equal to or greater than 10 percent by weight, and a black color as defined by industry standards by the CIELAB (International Commission on Illumination) color specification such that $L^*<35$, $-20<a^*<35$, and $-40<b^*<31$, and black and near-black TTR. TTR is typically used in printers generating alphanumeric and machine-readable characters, such as bar codes and facsimile machines.

The petition does not cover resin TTR, and finished thermal transfer ribbons with a width greater than 212 millimeters (mm), but not greater than 220 mm (or 8.35 to 8.66 inches) and a length of 230 meters (m) or less (*i.e.*, slit fax TTR, including cassetted TTR), and ribbons with a magnetic content of greater than or equal to 45 percent, by weight, in the colorant layer.The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) at heading 3702 and subheadings 3921.90.40.25, 9612.10.90.30, 3204.90, 3506.99, 3919.90, 3920.62, 3920.99 and 3926.90. The tariff classifications are provided for convenience and Customs and Border Protection (CBP) purposes; however, the written description of the scope of the investigation is dispositive.

On October 28, 2003 and November 21, 2003, petitioner submitted documents it claims suggest the respondents in the TTR investigations are attempting to circumvent a potential TTR antidumping order by slitting subject merchandise jumbo rolls in a third country. Petitioner contends that the country of origin of slit TTR should be determined by the country of origin of the jumbo TTR roll from which it was slit, regardless of where the slitting occurred. Petitioner argues that slitting subject merchandise jumbo TTR rolls does not involve a substantial transformation, and therefore, does not change the country of origin of slit TTR rolls.

On November 26, 2003, Armor submitted comments regarding petitioner's allegation. Armor argues that the further manufacturing process does in fact substantially transform the jumbo TTR rolls, and, thus, does change the country of origin of the merchandise. On December 5, 2003, petitioner submitted a response to Armor's November 26 submission. On December 12, 2003, Armor submitted additional comments regarding this issue.

We have reviewed petitioner's and Armor's comments. However, since a determination of whether or not slitting jumbo TTR rolls constitutes substantial transformation and changes the country of origin of the merchandise may affect the scope of this investigation and future proceedings, it is necessary to provide interested parties the opportunity to comment on this issue. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). Therefore, the Department encourages all interested parties to submit such comments. Comments are due within 14 days of the publication of this notice. Rebuttal comments must be filed within five days after the deadline for the submission of the initial country of origin comments. We remind parties that case and rebuttal briefs, whether commenting on this country of origin issue, or any other issue, must be limited to the facts already on the record in accordance with section 351.301 of the Department's regulations.

Facts Available

For the reasons discussed below, we determine that the use of AFA is appropriate for the preliminary determination with respect to Armor.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. As stated above, Armor has informed the Department that it will no longer participate in this investigation and has requested that all of its responses be returned or destroyed. Therefore, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for this party. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2) of the Act, we have based Armor's margin rate on the facts available.

B. Application of Adverse Inferences for Facts Available

In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) (SAA). Furthermore, "{a}ffirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997). In this case, Armor has failed to cooperate to the best of its ability by withdrawing its responses to the Department's antidumping questionnaires and declining any further participation in this investigation. We note that the Department granted all four of Armor's extension requests (as discussed above), albeit not necessarily always for the full extension requested by Armor. Therefore, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where respondent failed to respond to the antidumping questionnaires).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c); SAA at 829–831. In this case, because we are unable to calculate margins for the respondent in this investigation, we are assigning to Armor the highest margin from the proceeding, which is the highest margin alleged for France in the petition, 60.60 percent. *See Initiation Notice*, 68 FR at 38307.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d); *see also* SAA at 870.

To assess the reliability of the petition margin for the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. *See Antidumping Investigations Initiation Checklist; Wax and Wax/Resin Thermal Transfer Ribbon From France, Japan, and South Korea*, pages 5 through 7 (June 25, 2003) (*Initiation Checklist*). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the constructed export price (CEP) and normal value (NV) calculations on which the highest margin in the petition was based.[3]

1. Corroboration of Constructed Export Price

To calculate constructed export price (CEP) petitioner obtained pricing information for sales by Armor of certain wax and wax/resin products sold in the United States, comparable to products sold in the home market. Petitioner made certain adjustments to this selling price for specific expenses that would be incurred by foreign producers of the subject merchandise for sales made in the United States. Because petitioner was unable to obtain actual data for selling expenses incurred by respondents in the United States, petitioner obtained price quotes as a basis for its estimates of certain expenses, and also based its estimates of such expenses on actual figures incurred in the course of its own selling activities. Petitioner claimed this approach is a reasonable and appropriate way to calculate CEP because the selling process for TTR is uniform within the United States, and the selling activities performed by respondent's U.S. affiliates for their U.S. customers are largely the same as those performed by petitioner for its U.S. customers. Where known differences between petitioner's and respondent's operations exist, petitioner adjusted selling expenses accordingly to account for such differences.

With respect to selling expenses incurred in France, petitioner indicated there is no basis to believe that such expenses would differ for TTR destined for the United States versus merchandise sold in the home market. Therefore, according to petitioner, it is reasonable to consider such expenses to be equal for sales to the United States and in the home market.

As detailed in the *Initiation Checklist*, the petition contained documentation supporting the figures used in this CEP calculation, which was analyzed by the Department and revised by petitioner through answers to supplemental questions issued by the Department.

2. Corroboration of Normal Value

With respect to normal value (NV), petitioner relied on foreign market research to obtain price estimates for TTR sold in the home market. Petitioner obtained foreign market research relating to two grades of TTR sold in the French market. This sales information is contemporaneous with the sales information used as the basis for CEP and represents sales of products that are either identical or similar to those products for which petitioner obtained U.S. sales information.

As detailed in the *Initiation Checklist*, the petition contained documentation supporting the figures used in this NV calculation, which was analyzed by the Department and revised by petitioner through answers to supplemental questions issued by the Department.

All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and facts available margins to establish that "All Others" rate. Where the data do not permit weight-averaging such rates, the SAA provides that we use other reasonable methods. *See* SAA at 873. The petition contained only information relating to U.S. sales by Armor, compared against home market sales prices and cost. Since Armor is the only known French producer/exporter of subject merchandise, it is reasonable to use the sales by Armor used in the petition. Accordingly, we have applied a margin of 44.93 percent, a simple average of the two margins based on price and the one margin based on constructed value contained in the petition, as the "All Others" rate.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of TTR from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing CBP to require a cash deposit or the posting of a bond equal to the dumping margins as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are as follows:

Producer/exporter	Margin (percentage)
Armor, S.A	60.60

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[3] The petition contains three margins. Two are comparisons of CEP to NV based on home market sales, and the third is based on a comparison of CEP to constructed value. The highest margin is one of the two that bases NV on home market sales.

Producer/exporter	Margin (percentage)
All Others	44.93

International Trade Commission Notification

In accordance with section 733(*f*) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of TTR from France are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs within 50 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). Unless extended, the Department will make its final determination no later than 75 days after the date of this preliminary determination. However, as this date falls on a weekend, the due date will fall on the next business day, March 1, 2004.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: December 16, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31478 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–863]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Werner at (202) 482–2667, or Paul Walker at (202) 482–0413; Office of AD/CVD Enforcement IX, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that wax and wax/resin thermal transfer ribbons (TTR) from Japan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The preliminary margins assigned to Union Chemicar Company Limited (UC) and Dai Nippon Printing Company Limited (DNP) are based on adverse facts available (AFA). The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

In addition, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of subject merchandise from UC and DNP, but not from all other Japanese manufacturers/exporters.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

Case History

This investigation was initiated on June 19, 2003.[1] *See Notice of Initiation of Antidumping Duty Investigation: Thermal Transfer Ribbons From France, Japan and the Republic of Korea*, 68 FR 38305 (June 27, 2003) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On July 14, 2003, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from France, Japan, and Korea of certain wax and wax/resin thermal transfer ribbons. *See Certain Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and Korea*, 68 FR 42759 (July 18, 2003) (*ITC Prelim*).

On July 14, 2003, counsel for Armor S.A. (Armor), respondent in the antidumping duty investigation of TTR from France, met with the Department to discuss product characteristics. On July 17, 2003, Armor submitted comments regarding product characteristics and the Department's upcoming tour of the Petitioner's TTR production facilities in New York. On July 21, 2003, the Department toured these facilities and met with the Petitioner to discuss product characteristics.

On August 4, 2003, August 6, 2003 and August 18, 2003, the Petitioner submitted comments regarding the model match criteria. On August 5, 2003 and August 6, 2003, Armor submitted comments regarding the model match criteria. Additional model match comments were submitted by other interested parties on this record, as follows: Illinois Tool Works Inc. and ITW Specialty Films Co., Ltd. (collectively, ITW), respondents in the antidumping duty investigation of TTR from the Republic of Korea, on July 21, 2003, and August 4, 2003; DNP, on August 5, 2003; and Brother

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[1] The Petitioner in this investigation is International Imaging Materials, Inc. (IIMAK).

International Corporation, on August 5, 2003. On August 8, 2003, the Department issued its model match criteria via sections B and C of the questionnaire (refer to below). On August 28, 2003, the Department clarified its model match criteria. On September 4, 2003, the Petitioner submitted additional comments regarding model match criteria. On October 9, 2003, the Department met with the Petitioner's counsel to discuss its model match comments.

On July 28, 2003 and July 30, 2003, the Petitioner submitted comments regarding the scope of the investigation. On August 7, 2003, General Company Limited, an interested party, submitted comments regarding the scope of the investigation. On September 2, 2003, the Petitioner submitted a "test" description to the Department, for the purpose of determining whether a product should be classified as a wax, resin enhanced wax, or wax/resin ribbon. On September 9, 2003, Armor submitted comments on the Petitioner's September 2 test proposal. On September 11, 2003, the Department issued a clarification to the scope of this investigation. *See Memorandum from Edward C. Yang, Office Director to Joseph A. Spetrini, Deputy Assistant Secretary; Antidumping Investigation on Certain Wax and Wax/Resin Thermal Transfer Ribbon from France, Japan and Korea: Scope Clarification.* The Department removed the word "pure" from the section discussing the exclusion of resin TTR in the scope language.

On November 4, 2003, the Petitioner submitted a letter to the Department correcting a typographical error in the color specification of the scope, as written in the petition and initiation notice: "−20>a*<35" should read, "−20<a*<35".

On August 1, 2003, the Department issued section A of its questionnaire to UC and DNP. On August 18, 2003, UC informed the Department that it declined to respond to the questionnaire. On August 7, 2003, the Department, pursuant to DNP's request, extended its deadline for responding to section A of the questionnaire, to September 5. On September 5, 2003, the Department received a response to section A of its questionnaire. On September 15, 2003, the Department received a revised quantity and value chart, pursuant to the Department's September 11, 2003 scope ruling. On September 22, 2003, the Petitioner submitted comments on DNP's response to section A of the questionnaire.

On September 24, 2003, the Department issued its first supplemental section A questionnaire to DNP. On October 7, 2003, the Department extended the deadline for certain questions in the first supplemental section A questionnaire to October 8, 2003, and the remaining questions to October 10, 2003, at DNP's request. On October 8, 2003 and October 10, 2003, the Department received responses to the first supplemental section A questionnaire. On October 14, 2003, the Department requested DNP to respond to 28 questions from the first supplemental section A questionnaire it had failed to answer in full in its October 8, 2003 and October 10, 2003 responses. On October 17, 2003, the Department received a response to the 28 questions from the first supplemental section A questionnaire.

On September 26, 2003, the Department issued its second supplemental A questionnaire to DNP. On October 3, 2003, the Department received a response to the second supplemental A questionnaire. On October 7, 2003, the Department also requested that DNP provide a complete response to its September 26, 2003, second supplemental A questionnaire. On October 8, 2003, the Department received a response to its October 7, 2003 request.

On October 10, 2003, the Department issued its third supplemental A questionnaire to DNP. On October 15, 2003, the Department received a response to the third supplemental A questionnaire.

On August 8, 2003, the Department issued sections B through E of its questionnaire to UC and DNP. On August 14, 2003, the Department, pursuant to DNP's request, extended its deadline for responding to sections B through E of the questionnaire, to September 22, 2003. On September 17, 2003, the Department again extended the deadlines for sections B through E to September 23 for Section B, and September 25 for sections C and E, again at DNP's request. On September 23, 2003, the Department received a response to section B and on September 25, 2003, the Department received a response to sections C and E of the questionnaire. On October 3, 2003, the Petitioner submitted comments on DNP's response to section B of the questionnaire. On October 6, 2003, the Department rejected DNP's September 24, 2003 section B response and September 26, 2003 sections C and E responses in accordance with section 777(b)(1)(B) of the Act. On October 8, 2003, DNP resubmitted its responses to sections B, C, and E of the questionnaire. On October 10, 2003, the Petitioner submitted comments on DNP's response to section C of the questionnaire. On October 17, 2003, the Petitioner submitted comments on DNP's response to section E of the questionnaire.

On October 21, 2003, the Department issued its supplemental B questionnaire to DNP based on DNP's October 8, 2003 third country sales response. On October 23, 2003, the Department issued its supplemental C questionnaire to DNP. On November 3, 2003, the Department issued its supplemental E questionnaire to DNP.

On September 26, 2003, the Department requested a Section B response based on DNP's Japanese home market sales of merchandise under investigation. On October 6, 2003, the Department extended the deadline for filing market viability allegations, at the Petitioner's request. On October 10, 2003, DNP requested the Department rescind its request for a Section B response based on DNP's Japanese home market sales of merchandise under investigation. On October 14, 2003, the Department extended the deadline for DNP's Section B response based on its Japanese home market sales to October 23, 2003, at DNP's request. On October 20, 2003, the Petitioner submitted comments on DNP's home market viability. On October 21, DNP submitted comments on home market viability and again requested the Department rescind its request for a Section B response based on DNP's Japanese home market sales of merchandise under investigation. On October 23, 2003, the Department again extended the deadline for DNP's Section B response based on its Japanese home market sales to November 3, 2003, again at DNP's request.

On September 12, 2003, the Department issued its positions on Armor's cost reporting issues, which we released to DNP. *See Memorandum from Cheryl Werner, Case Analyst through James C. Doyle, Program Manager, to the File; Antidumping Duty Investigation of Certain Wax and Wax/Resin Thermal Transfer Ribbons ("TTR") from Japan: Clarification of Cost Reporting,* dated September 29, 2003 ("*Cost Clarification Memorandum*"). In the *Cost Clarification Memorandum,* the Department stated that in the event of a sales below cost allegation for DNP's merchandise under investigation, DNP would be subject to the clarifications in reporting of cost information discussed in this letter. *Id.* On October 14, 2003, the Petitioner alleged that DNP's third country sales were made at prices below DNP's cost of production.

On November 3, 2003, DNP declined the opportunity to respond to the supplemental questionnaires issued by the Department on October 21 and 23, 2003, and withdrew from the investigation. DNP requested that all business proprietary copies of its questionnaire responses be returned or destroyed. On November 17, 2003, the Department notified DNP that it had destroyed all business proprietary copies of its questionnaire responses. On November 17, 2003, the Department also requested all parties subject to the administrative protective order ("APO") of this proceeding certify to the return or destruction of DNP's business proprietary information released under the Department's June 4, 2003, administrative protective order. On November 18, 19, and 20, the Department received such certifications from all parties subject to the Department's June 4, 2003, administrative protective order.

On October 3, 2003, the Petitioner made a timely request for a forty-day extension of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On October 21, 2003 we postponed the preliminary determination until no later than December 16, 2003. *See Wax and Wax/Resin Thermal Transfer Ribbons from France, Japan, and the Republic of Korea; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 68 FR 60085 (October 21, 2003).

On November 26, 2003, the Petitioner filed a formal critical circumstances allegation in accordance with 19 CFR 351.206(c)(2)(iii). On December 12, 2003, DNP filed company-specific import data and comments in response to the Petitioner's allegation of critical circumstances for imports of TTR from Japan. For a more detailed discussion, please see the "Critical Circumstances" section below.

On December 5, 2003, the Petitioner filed comments for the preliminary determination.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

We received quantity and value information from all seven[2] known producers of the subject merchandise from Japan. UC and DNP were the producers accounting for the largest volume of exports to the United States during the period of investigation (POI). Therefore, on July 31, 2003, we selected UC and DNP as the Respondents in the investigation of wax and wax/resin TTR from Japan. *See Memorandum from Edward C. Yang, Office Director to Richard O. Weible, Acting Deputy Assistant Secretary; Antidumping Investigation on Thermal Transfer Ribbon from Japan: Selection of Respondents.*

Period of Investigation

The POI is April 1, 2002, through March 31, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition (*i.e.*, June 2003) involving imports from a market economy, and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

This investigation covers wax and wax/resin thermal transfer ribbons (TTR), in slit or unslit ("jumbo") form originating from Japan with a total wax (natural or synthetic) content of all the image side layers, that transfer in whole or in part, of equal to or greater than 20 percent by weight and a wax content of the colorant layer of equal to or greater than 10 percent by weight, and a black color as defined by industry standards by the CIELAB (International Commission on Illumination) color specification such that L[ast]<35,–20<=a[ast]<35 and–40<b[ast]<31, and black and near-black TTR. TTR is typically used in printers generating alphanumeric and machine-readable characters, such as bar codes and facsimile machines.

The petition does not cover resin TTR, and finished thermal transfer ribbons with a width greater than 212 millimeters (mm), but not greater than 220 mm (or 8.35 to 8.66 inches) and a length of 230 meters (m) or less (*i.e.*, slit fax TTR, including cassetted TTR), and ribbons with a magnetic content of greater than or equal to 45 percent, by weight, in the colorant layer.The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) at heading 3702 and subheadings 3921.90.40.25, 9612.10.90.30, 3204.90, 3506.99, 3919.90, 3920.62, 3920.99 and 3926.90. The tariff classifications are provided for convenience and Customs and Border Protection (CBP) purposes; however, the written description of the scope of the investigation is dispositive.

On October 28, 2003, November 21, 2003, and December 5, 2003, the Petitioner submitted documents it claims suggest the respondents in the TTR investigations are attempting to circumvent a potential TTR antidumping order by slitting subject merchandise jumbo rolls in a third country. The Petitioner contends that the country of origin of slit TTR should be determined by the country of origin of the jumbo TTR roll from which it was slit, regardless of where the slitting occurred. The Petitioner argues that slitting subject merchandise jumbo TTR rolls does not involve a substantial transformation, and therefore, does not change the country of origin of slit TTR rolls.

On November 26, 2003, and December 12, 2003, Armor submitted comments regarding the Petitioner's allegation. Armor argues that the further manufacturing process does in fact substantially transform the jumbo TTR rolls, and, thus, does change the country of origin of the merchandise.

We have reviewed the Petitioner's and Armor's comments. However, as a determination of whether slitting jumbo TTR rolls constitutes a substantial transformation and therefore changes the country of origin of the merchandise, and as such a change may affect the scope of this investigation and future proceedings, it is necessary to provide interested parties the opportunity to comment on this issue. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments. Comments are due within 14 days of the publication of this notice. Rebuttal comments must be filed within five days after the deadline for the submission of the initial country of origin comments. We remind parties that case and rebuttal briefs, whether commenting on this country of origin issue, or any other issue, must be limited to the facts already on the record in accordance with section 19 CFR 351.309 of the Department's regulations.

Facts Available

For the reasons discussed below, we determine that the use of AFA are appropriate for the preliminary determination with respect to UC and DNP.

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[2] The seven producers are: Dynic Corporation (Dynic), Sony Chemicals Corporation (Sony), Ricoh Company Limited (Ricoh), General Company Limited (General), Fujicopian Company Limited (Fujicopian), UC and DNP.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. As stated above, UC informed the Department at the outset that it would not participate in this investigation. DNP has informed the Department that it will no longer participate in this investigation and has requested that all of its responses be returned or destroyed. Since UC and DNP withheld information requested by the Department, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for these parties, pursuant to section 776(a)(2) of the Act.

B. Application of Adverse Inferences for Facts Available

In applying facts otherwise available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, at 870 (1994) (SAA). Furthermore, "{a}ffirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997). In this case, UC has failed to cooperate to the best of its ability by not responding to the Department's antidumping questionnaires. DNP has failed to cooperate to the best of its ability by withdrawing its responses to the Department's antidumping questionnaires and declining any further participation in this investigation. Therefore, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where respondent failed to respond to the antidumping questionnaires).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c); SAA at 829–831. In this case, because there is insufficient information on the record for the Department to calculate margins for the Respondents in this investigation, we are relying on information derived from the petition in applying AFA. We preliminarily assign to UC and DNP the highest margin from the proceeding, which is the highest margin alleged for Japan in the petition, 147.30 percent. *See Initiation Notice*, 68 FR at 38308.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR § 351.308(d); *see also* SAA at 870.

To assess the reliability of the petition margin for the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. *See Antidumping Investigations Initiation Checklist; Wax and Wax/Resin Thermal Transfer Ribbon From France, Japan, and South Korea*, pages 7 through 9 (June 25, 2003) (*Initiation Checklist*). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the constructed export price (CEP) and normal value (NV) calculations on which the highest margin in the petition was based.

1. Corroboration of Constructed Export Price

To calculate constructed export price (CEP) the Petitioner obtained pricing information for certain wax and wax/resin products sold to unaffiliated parties in the United States, and comparable to the products sold in Japan. The Petitioner made certain adjustments to this selling price for specific expenses that would be incurred by foreign producers of the subject merchandise for sales made in the United States. Because the Petitioner was unable to obtain actual data for selling expenses incurred by respondents in the United States, the Petitioner obtained price quotes as a basis for its estimation of certain expenses, and, where appropriate, also based its estimates for such expenses on actual figures incurred in the course of its own selling activities. The Petitioner indicates this approach is a reasonable and appropriate way to calculate CEP because the selling process for TTR is uniform within the United States, and the selling activities performed by respondents' U.S. affiliates for their U.S. customers are largely the same as those performed by the Petitioner for its customers in the United States. Where known differences between the Petitioner's and respondents' operations exist, the Petitioner adjusted selling expenses accordingly to account for such differences.

With respect to selling expenses incurred in Japan, the Petitioner indicated there is no basis to believe that such expenses would differ for TTR destined for the United States versus merchandise sold in the home market. Therefore, according to the Petitioner, it is reasonable to consider such expenses to be equal for sales to the United States and in the home market.

As detailed in the *Initiation Checklist*, the petition contained documentation supporting the figures used in this CEP calculation, which was analyzed by the Department and revised by the Petitioner through answers to supplemental questions issued by the Department.

2. Corroboration of Normal Value

With respect to normal value (NV), the Petitioner relied on foreign market research to obtain price estimates for TTR sold in the home market. The

Petitioner obtained foreign market research relating to two grades of TTR sold in the Japanese market. This sales information is contemporaneous with the sales information used as the basis for CEP and represents sales of products that are either identical or similar to those products for which the Petitioner obtained U.S. sales information.

As detailed in the *Initiation Checklist*, the petition contained documentation supporting the figures used in this NV calculation, which was analyzed by the Department and revised by the Petitioner through answers to supplemental questions issued by the Department.

All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and facts available margins to establish that "All Others" rate. Where the data do not permit weight-averaging such rates, the SAA provides that we use other reasonable methods. *See* SAA at 873. The petition contained only information relating to U.S. sales by DNP, compared against home market sales prices and cost. Since DNP is the largest Japanese producer/exporter of subject merchandise, it is reasonable to use a margin based on its U.S. sales as the "All Others" rate. The estimated dumping margin for subject merchandise from Japan, based on comparisons of CEP and NV, range between 65.9 and 147.3 percent, in the *Initiation Notice*. Accordingly, we calculated a simple average of these two dumping margins in the *Initiation Notice*, and applied this margin of 106.60 percent as the "All Others" rate.

Critical Circumstances

On November 26, 2003, the Petitioner alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of TTR from Japan. In accordance with 19 CFR § 351.206(c)(2)(i), because the Petitioner submitted critical circumstances allegations exactly 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 19 CFR 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 19 CFR § 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 19 CFR § 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

Because we are not aware of any antidumping order in any country on TTR from Japan, we do not find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise. Therefore, we must look to the second criterion for determining importer knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the TTR at less than fair value, the Department's normal practice is to consider margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China (PRC Plate)*, 62 FR 31972, 31978 (June 11, 1997). In the instant case, the mandatory respondents, UC and DNP did not respond to the Department's questionnaire and we have applied, as AFA, the highest of the dumping margins presented in the petition and corroborated by the Department. This is consistent with section 776 of the Act and with Department practice. *See Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan (Vector Supercomputers)*, 62 FR 45623 (August 28, 1997). UC and DNP's assigned dumping margins of 147.30 percent are greater than 15 percent. Therefore, we have imputed knowledge of dumping to importers of subject merchandise from these companies.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for all identified countries. *See ITC Prelim*. As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of subject merchandise from Japan.

In determining whether there are "massive imports" over a "relatively short period," the Department normally compares the import volume of the subject merchandise for three months immediately preceding and following the filing of the petition. Imports normally will be considered massive when imports have increased by 15 percent or more during this "relatively short period."

On December 12, 2003, DNP filed company-specific import data and comments. However, these comments and information were submitted too late for consideration in this preliminary determination. Because we do not have verifiable data from the two uncooperative Japanese companies, the

Department must base its "massive imports" determination as to these companies on the facts available, pursuant to section 776(a) of the Act.[3] Because these companies failed to cooperate by not acting to the best of their ability to respond to the Department's questionnaires, we may make an adverse inference in selecting the facts available. Therefore, consistent with Department practice, we have adversely inferred, as facts available, that there were massive imports from UC and DNP over a relatively short period. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan (Collated Roofing Nails From Taiwan)*, 62 FR 51427 (October 1, 1997).

Based on our determination that there is a reasonable basis to believe or suspect that importers knew or should have known that exporters UC and DNP were selling TTR from Japan at less than fair value, that there was likely to be material injury by reason of such dumped imports, and that there have been massive imports of TTR from these producers over a relatively short period, we preliminarily determine that critical circumstances exist for imports from Japan of wax and wax/resin TTR produced by UC and DNP.

It is the Department's normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9741 (March 4, 1997) (*Rebars from Turkey*) (the Department found that critical circumstances existed for the majority of the companies investigated, and therefore concluded that critical circumstances also existed for companies covered by the "all others" rate). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "all others" rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied the traditional critical circumstances criteria to the "all others" category for the antidumping investigations of TTR from Japan.

First, in determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the TTR at less than fair value, we look to the "all others" rate, which is based, in the instant case, on facts available. The dumping margin for the "all others" category in the instant case, 106.60 percent, exceeds the 15 percent threshold necessary to impute knowledge of dumping. Second, based on the ITC's preliminary material injury determination, we also find that importers knew or should have known that there would be material injury from the dumped merchandise.

Finally, with respect to massive imports, we are unable to base our determination on our findings for the mandatory respondents, because our determinations for all of the respondents were based on facts available. We have not inferred, as facts available, that massive imports exist for "all others" because, unlike UC and DNP, the "all others" companies have not failed to cooperate in this investigation. Therefore, an adverse inference with respect to shipment levels by the "all others" companies is not appropriate. Instead, consistent with the approach taken in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan* (*Hot-Rolled Steel from Japan*), 64 FR 24239 (May 6, 1999) and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand* (*Cold-Rolled Steel from Japan*) 65 FR 5220, 5227 (February 4, 2000), we examined U.S. Customs data on overall imports from Japan for the five months preceding and the five months following the filing of the petition in order to see if we could ascertain whether an increase in shipments of greater than 15 percent or more occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. However, information on the record indicates that these data cover numerous HTS categories that include merchandise other than subject merchandise. The U.S. Customs data also is reported in multiple units of measure. Therefore, we cannot rely on these data in determining whether there were massive imports for the "all others" category.[4]

Based on our determination that massive imports of TTR from the producers included in the "all others" category did not occur and, consequently, that the third criterion necessary for determining affirmative critical circumstances has not been met, we have preliminarily determined that critical circumstances do not exist for imports from Japan of TTR for companies in the "all others" category.

Suspension of Liquidation

For UC and DNP, as indicated above, we have made a preliminary affirmative critical circumstances finding. Therefore, in accordance with section 733(d)(2) of the Act, we are directing Customs to suspend liquidation of all entries of subject merchandise from UC or DNP that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. We are directing Customs to suspend liquidation of all entries of subject merchandise from companies other than UC or DNP that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the dumping margin as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are as follows:

Producer/exporter	Margin (percentage)
Union Chemicar Company Limited	147.30
Dai Nippon Printing Company Limited	147.30
All Others	106.60

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of TTR from Japan are materially injuring, or threaten material injury to, the U.S. industry.

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[3] Because the two respondents did not respond to the questionnaire, they are non-cooperating respondents and accordingly we did not request monthly shipment data from these companies.

[4] *See Preliminary Determinations of Critical Circumstances: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and South Africa*, 65 FR 12509, 12511 (March 9, 2000) (where the Department determined that massive imports did not exist for imports from companies in the "all others" category because it could not rely on the U.S. Customs data). *See also Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa* 65 FR 25907, 25908 (May 4, 2000).

Public Comments

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs within 50 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 75 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: December 16, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31479 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–853]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at not less than fair value.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924, or Robert James at (202) 482–0649; AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that wax and wax/resin thermal transfer ribbons (TTR) from the Republic of Korea (Korea) are not being, nor are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Tariff Act).

Interested parties are invited to comment on this preliminary determination. Unless extended, we will make our final determination not later than 75 days after the date of this preliminary determination.

Case History

The Department initiated this investigation on June 19, 2003.[1] See Notice of Initiation of Antidumping Duty Investigation: Thermal Transfer Ribbons From France, Japan and the Republic of Korea, 68 FR 38305 (June 27, 2003) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On July 14, 2003, the United States International Trade Commission (the Commission) preliminarily determined that "there is a reasonable indication that an industry in the United States is materially injured by reason of imports from France, Japan, and Korea of certain wax and wax/resin thermal transfer ribbons." *See Certain Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and Korea*, 68 FR 42759 (July 18, 2003).

On July 21, 2003, the Department toured the petitioner's production facilities in New York, and met with petitioner to discuss product characteristics. *See* Memorandum to the File dated July 30, 2003, on file in room B–099 of the Department of Commerce building.

On July 28, 2003, and July 30, 2003, petitioner submitted comments regarding the scope of the investigation. On August 7, 2003, General Company Limited, an interested party, also commented on the scope of the investigation. On September 2, 2003, petitioner submitted a "test" description to the Department, for the purpose of determining whether a product should be classified as a wax, resin enhanced wax, or wax/resin ribbon. On September 9, 2003, Armor submitted comments on petitioner's September 2, 2003 test proposal. On September 11, 2003, the Department issued a clarification to the scope of this investigation. *See* Memorandum from Edward C. Yang, Office Director to Joseph A. Spetrini, Deputy Assistant Secretary; Antidumping Investigation on Certain Wax and Wax/Resin Thermal Transfer Ribbon from France, Japan and Korea: Scope Clarification, on file in room B–099 of the Department of Commerce building. The Department removed the word "pure" from the section discussing the exclusion of resin TTR in the scope language.

On November 4, 2003, petitioner submitted a letter to the Department correcting a typographical error in the color specification of the scope, as written in the petition and initiation notice: "−20>a*<35" should read, "−20<a*<35."

On July 21, 2003, Illinois Tool Works, Inc. (ITW), the only known Korean producer/exporter of TTR to the United States, submitted comments about model match criteria. On July 30, 2003 the Department sent a letter to interested parties soliciting comments on model match criteria. On August 4, 2003, August 18, 2003, and September 4, 2003 petitioner submitted comments regarding the model match criteria. On August 4, 2003, ITW submitted additional comments regarding the model match criteria. Additional model match comments were submitted by other interested parties on this record, as follows: Armor, S.A., on August 5,

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[1] The petitioner in this investigation is International Imaging Materials, Inc. (IIMAK).

2003 and August 6, 2003; Dai Nippon Printing Company, Ltd., on August 5, 2003; and Brother International Corporation, on August 6, 2003. On August 28, 2003, the Department issued a letter to interested parties in which it clarified its model match criteria. On October 9, 2003, the Department met with petitioner's counsel to discuss its model match comments. *See* Memorandum to the file dated October 10, 2003 on file in room B–099 of the Department of Commerce building.

On August 1, 2003, the Department issued section A of its questionnaire to ITW. On August 8, 2003, the Department issued sections B, C and E of its questionnaire, including model match criteria. On September 5, 2003, ITW submitted its section A response. On September 8, 2003, ITW submitted a supplemental section A response, consisting of the section A response of an affiliated U.S. reseller (Reseller 1).[2] We received ITW's sections B, C, and E responses on September 24, 2003. ITW also submitted on September 24, 2003, a supplemental section C response consisting of the section C response of Reseller 1.

On October 1, 2003 the Department returned ITW's section A response to ITW with a request that it rebracket numerous sections of the response because the Department determined that numerous portions of its submission for which ITW had requested proprietary treatment did not merit proprietary treatment. ITW submitted a rebracketed section A response on October 8, 2003. On November 12, 2003 the Department returned ITW's sections B, C, and E responses and its supplemental sections A and C responses (*i.e.*, the responses of Reseller 1) with a request that it rebracket portions of those submissions because the Department determined that numerous portions for which ITW had requested proprietary treatment did not merit proprietary treatment. ITW submitted rebracketed versions on November 20, 2003.

On November 3, 2003 the Department requested that ITW submit an additional section B response in order to report all of its home market sales of slit TTR. (In its September 24, 2003 section B response ITW had submitted only its home market sales of jumbo roll TTR.) Also on November 3, 2003 the Department requested that ITW submit section C responses from two additional affiliated U.S. resellers (Reseller 2 and Reseller 3). (The actual names of these resellers are business proprietary information.) We received all three of these responses on November 21, 2003.

On October 15, 2003 petitioner made a submission alleging that ITW had made sales in its home market below their cost of production, and requested that the Department initiate a below-cost investigation of ITW's home market sales. On October 29, 2003 the Department requested that petitioner revise its cost allegation. *See* Memorandum from Laurens van Houten to the File dated October 29, 2003, on file in room B–099 of the Department of Commerce building. On November 5, 2003 petitioner submitted a revised cost allegation. The Department initiated a below-cost sales investigation on November 19, 2003. *See* Memorandum from Neal Halper to Richard Weible dated November 19, 2003 on file in room B–099 of the Department of Commerce building. On November 20, 2003 the Department requested that ITW respond to section D of the Department's August 8, 2003 questionnaire. The due date for ITW's section D response is now December 16, 2003.

On September 30, 2003, we received comments from petitioner about ITW's and Reseller 1's section A responses. On November 7, 2003, we received comments from petitioner concerning ITW's and Reseller 1's section C responses, and ITW's sections B and E responses. On November 28, 2003, the Department issued to ITW a supplemental questionnaire concerning its section E response. ITW's response to this supplemental questionnaire is due December 18, 2003. On December 1, 2003, the Department issued to ITW a supplemental questionnaire about its sections A, B, and C responses and Reseller 1's sections A and C responses. ITW's response to this supplemental questionnaire is due December 22, 2003. On December 8, 2003 petitioner submitted additional comments concerning the proper calculation of ITW's dumping margin in the preliminary determination. ITW responded to petitioner's comments in a submission dated December 10, 2003.

On October 3, 2003, the petitioner made a timely request for a forty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Tariff Act. On October 21, 2003, we postponed the preliminary determination until no later than December 16, 2003. *See Wax and Wax/Resin Thermal Transfer Ribbons from France, Japan, and the Republic of Korea; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 68 FR 60085 (October 21, 2003).

Selection of Respondents

Section 777A(c)(1) of the Tariff Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

During the period of investigation (POI), only ITW was identified as a producer/exporter of subject merchandise from Korea. Therefore, we selected ITW as the sole respondent in the investigation of TTR from Korea.

Period of Investigation

The POI is April 1, 2002, through March 31, 2003. This period corresponds to the four most recently completed fiscal quarters as of the month prior to the month of filing of the petition (*i.e.*, June 2003) involving imports from a market economy, and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

This investigation covers wax and wax/resin thermal transfer ribbons (TTR), in slit or unslit ("jumbo") form originating from Korea with a total wax (natural or synthetic) content of all the image side layers, that transfer in whole or in part, of equal to or greater than 20 percent by weight and a wax content of the colorant layer of equal to or greater than 10 percent by weight, and a black color as defined by industry standards by the CIELAB (International Commission on Illumination) color specification such that $L^*<35$, $-20<a^*<35$ and $-40<b^*<31$, and black and near-black TTR. TTR is typically used in printers generating alphanumeric and machine-readable characters, such as bar codes and facsimile machines.

The petition does not cover pure resin TTR, and finished thermal transfer ribbons with a width greater than 212 millimeters (mm), but not greater than 220 mm (or 8.35 to 8.66 inches) and a length of 230 meters (m) or less (*i.e.*, slit fax TTR, including cassetted TTR), and ribbons with a magnetic content of greater than or equal to 45 percent, by weight, in the colorant layer. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) at heading 3702 and subheadings 3921.90.40.25, 9612.10.90.30, 3204.90, 3506.99, 3919.90, 3920.62, 3920.99 and 3926.90. The tariff classifications are provided for convenience and Customs and Border Protection (CBP) purposes; however, the written description of the scope of the investigation is dispositive.

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[2] The actual name of this reseller has been afforded treatment as business proprietary information.

On October 29, 2003 and November 24, 2003, the petitioner submitted documents it claims suggest the respondents in the TTR investigations are attempting to circumvent a potential TTR antidumping order by slitting subject merchandise jumbo rolls in a third country. The petitioner contends the country of origin of slit TTR should be determined by the country of origin of the jumbo TTR roll from which it was slit, regardless of where the slitting occurred. The petitioner argues that slitting subject merchandise jumbo TTR rolls does not involve a substantial transformation, and therefore, does not change the country of origin of slit TTR rolls.

On November 26, 2003 and December 12, 2003, Armor S.A. (respondent in the antidumping investigation of TTR from France) submitted comments regarding the petitioner's allegation. Armor S.A. (Armor) argues the further manufacturing process does in fact substantially transform the jumbo TTR rolls, and thus does change the country of origin of the merchandise. On December 5, 2003, petitioner made a response to Armor's November 26, 2003 submission.

We have reviewed the petitioner's and Armor's comments. However, as a determination of whether or not slitting jumbo TTR rolls constitutes a substantial transformation and, therefore, changes the country of origin of the merchandise for purposes of administering the antidumping law, and as such a change may affect the scope of this investigation and future proceedings, it is necessary to provide interested parties the opportunity to comment on this issue. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). The due date for such comments is two weeks after publication of this notice. The due date for any rebuttal comments is five days later.

We remind parties that case and rebuttal briefs, whether commenting on this country of origin issue, or any other issue, must be limited to the facts already on the record in accordance with section 351.301 of the Department's regulations.

Constructed Export Price

In accordance with section 772(a) of the Tariff Act, export price (EP) is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Tariff Act, constructed export price (CEP) is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Tariff Act. For purposes of this investigation ITW has classified its sales as CEP sales. *See* ITW's September 24, 2003 section C response, at C–7.

ITW states that all of its U.S. sales were imported by its U.S. affiliate, ITW Thermal Films (ITWTF), and that it made all of its U.S. sales through ITWTF. *See* September 5, 2003, section A response at A–2 and A–18. Based on this information, we preliminarily determine that ITW's U.S. sales are CEP sales.

For purposes of this preliminary determination, we used the U.S. sales listings submitted by ITWTF and Reseller 1 on September 24, 2003, and by Reseller 2 and Reseller 3 on November 21, 2003. We calculated CEP in accordance with section 772(b) of the Tariff Act. We based CEP on packed prices from ITWTF, Reseller 1, Reseller 2, or Reseller 3 for shipment to distributors, converters, original equipment manufacturers, and end-users in the U.S. market. We made adjustments for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, brokerage and handling, international freight, U.S. inland freight, and U.S. Customs duties. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including warehousing, commissions, warranty expenses, discounts, U.S. repacking, inventory carrying costs, and indirect selling expenses. We made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act. Because we do not have total cost data on the record of this investigation, we calculated profit using data from ITWTF's financial statement. *See* the preliminary determination analysis memorandum dated December 16, 2003 for details of our calculation. We added duty drawback to the U.S. starting price in accordance with section 772(c)(1)(B) of the Tariff Act, and made additional upward adjustments to the U.S. starting price for freight revenue and revenues ITW reported as "additional revenues." We made an adjustment for further manufacturing in accordance with 772(d)(2) of the Tariff Act.

Normal Value

In accordance with section 773(a)(1)(C) of the Tariff Act, to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared ITW's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Because ITW's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the normal course of trade.

Since no information on the record indicates that ITW made any sales to affiliates in its home market, we did not use an arm's-length test for comparison market sales.

On November 19, 2003 the Department initiated a below-cost sales investigation with respect to ITW's home market sales. The due date for ITW's section D questionnaire response is December 16, 2003. Since the due date of ITW's cost submission makes it impossible for the Department to perform a cost analysis for purposes of this preliminary determination, we intend to issue an analysis of ITW's cost data following publication of this preliminary determination and allow parties an opportunity to comment on that analysis.

For purposes of this preliminary determination, we used the home market sales listing ITW submitted with its November 21, 2003 section B supplemental questionnaire response. We calculated NV based on prices to unaffiliated customers in the home market. We made an adjustment for rebates in accordance with 19 CFR 351.401(c). We made an adjustment for inland freight pursuant to section 773(a)(6)(B) of the Tariff Act. We also made circumstance-of-sale adjustments for imputed credit expenses in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. Since ITW has reported commissions in its U.S. market but not in its home market, we deducted home market indirect selling expenses, including inventory carrying costs, but limited the deduction to the amount of commissions paid in the U.S. market in accordance with 19 CFR 351.410(e). Finally, we deducted home market packing costs and added U.S. packing costs in accordance with subsections 773(a)(6)(A) and (B) of the Tariff Act.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer. Moreover, for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit, pursuant to section 772(d) of the Tariff Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

To determine whether the comparison-market sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV LOT is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act. *See, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value,* 62 FR 61731 (November 19, 1997).

In applying these principles in this investigation, we asked ITW to identify the specific differences and similarities in selling functions and support services between all phases of marketing in the home market and the United States. ITW identified one channel of distribution in the home market (direct sales to unaffiliated customs), and therefore claimed only one level of trade in the home market. *See* ITW's September 24, 2003 section B response, at B–9. However, ITW also identified three different customer categories in the home market: distributors, OEM dealers, and converters. *See* September 5, 2003 section A response, at A–15 and its September 24, 2003 section B response, at B–8. Our August 1, 2003 questionnaire requested (at page A–8) that ITW provide a list of selling activities performed for each combination of distribution channel and customer category. Instead, for the home market ITW provided such a list only for its one channel of distribution. *See* ITW's September 5, 2003 section A response at attachment A–9–B. Therefore, because we do not have a list of selling expenses for each combination of customer category and channel of distribution, we are unable to determine whether only one level of trade exists in the home market. ITW requested a CEP offset, but because we are unable to determine the home market level of trade at this time, we cannot determine whether a CEP offset is warranted. Therefore, in this preliminary determination we have made no level-of-trade adjustment, and have denied ITW's claimed CEP offset. In our December 1, 2003 supplemental questionnaire, we requested additional information about ITW's selling activities for its customer categories. Based on our analysis of ITW's response (due December 22, 2003), for the final determination we will consider whether a level-of-trade adjustment or CEP offset is warranted in this case.

Suspension of Liquidation

The dumping margins are as follows:

Producer/exporter	Margin (percentage)
ITW	1.27
All Others	1.27

Because the estimated weighted-average dumping margin for the examined company is *de minimis,* we are not directing U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of TTR from Korea.

International Trade Commission Notification

In accordance with section 733(f) of the Tariff Act, we have notified the Commission of our determination. If the final determination in this proceeding is affirmative, the Commission will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of TTR from Korea are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs within 50 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). The Department, at its discretion, may extend the filing date for case and rebuttal briefs. Any such extension will be announced in writing and placed on the public record of this proceeding. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 75 days after the date of issuance of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: December 16, 2003.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31480 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032801B]

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Crab Species Covered by the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of qualifying bidders and voters.

SUMMARY: NMFS issues this notice to inform the public of persons who prospectively qualify to bid, vote, or both in the fishing capacity reduction program for the crab species covered by the Fishery Management Plan for Bering Sea/Aleutian Islands king and tanner crabs.

DATES: Comments may be submitted on or before January 21, 2004.

ADDRESSES: Send comments about this notice to Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

Any person who wants to contact NMFS' Restricted Access Management Program (which issues crab species licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable,(301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. General

Section 144(d) of Division B of Public Law 106–554, as amended, authorized this fishing capacity reduction program. The program's objective is reducing harvesting capacity in the Bering Sea/Aleutian Islands crab fishery. This will help financially stabilize this limited-entry fishery and manage its fish.

This is a voluntary program. In exchange for reduction payments, program participants will permanently relinquish their fishing licenses and their fishing vessels' catch histories and fishing privileges.

The program's maximum cost cannot exceed $100 million. A 30–year loan will finance 100 percent of whatever the cost turns out to be. Future crab landing fees will repay the loan.

In summary, the program will proceed as follows.

NMFS will publish an invitation to bid in a **Federal Register** notification, along with a bidding form and terms of capacity reduction agreement. This notification will specify bid opening and closing dates. NMFS will mail a bidding package to each person then on the qualifying bidder list. Qualified bidders will bid, along with co-bidders where appropriate. NMFS will score each bid amount against the bidder's past ex-vessel revenues during a bid scoring period. NMFS will, in a reverse auction, then accept bids whose amounts are the lowest percentages of the revenues. This will create reduction contracts.

Next, NMFS will conduct a referendum about the loan repayment fees. The reduction contracts will become inoperable unless at least two thirds of the votes cast in this referendum approve the fees.

If the referendum is successful, NMFS will publish a 30–day reduction payment tender notification in the **Federal Register**. Afterwards, NMFS will tender reduction payments and complete the program.

NMFS published proposed program regulations on December 12, 2002 (67 FR 76329. It published final program regulations on December 12, 2003 (68 FR 69331. Interested persons should review these for further program details.

The final regulations require NMFS to publish this notification before inviting bids. Any person who wants to comment about this notification may do so prior to January 21, 2004. Comments may address:

(1) Persons who appear on a list but should not,

(2) Persons who do not appear on a list but should,

(3) Persons whose names and/or business mailing addresses are incorrect, and

(4) Any other pertinent matter.

NMFS will update the lists, as necessary, immediately before using them either for mailing invitations to bid or referendum ballots. Mailed invitations and ballots will be accompanied by NMFS' detailed bidding and voting guidance.

The difference between the qualifying bidder list and the qualifying voter list is that the latter includes the holders of interim crab licenses and the former does not.

NMFS based these lists upon the Restricted Access Management Program's crab license holder records for holders which meet the requirements of 50 CFR 679.4(k)(5) as well as the requirements of the program's final regulations.

II. Qualifying bidder and voter lists

(1) Qualifying bidder List:

QUALIFYING BIDDERS

NAME	MAILING ADDRESS	NON-INTERIM CRAB LICENSE NO.
57 DEGREES NORTH, LLC	1445 NW 56TH ST, SEATTLE, WA 98107	LLC3554
AIREDALE LLC	916 DELANEY ST, ANCHORAGE, AK 99501	LLC2275
ALASKA BOAT COMPANY	PO BOX 5030, SEATTLE, WA 98105	LLC2039
ALASKA CHALLENGER L.L.C.	PO BOX 5030, SEATTLE, WA 98105	LLC3667
ALASKA SEA, INC.	18509 8TH AVE NW, SEATTLE, WA 98177–3153	LLC1607
ALASKA SEAFOOD PRODUCERS, INC.	PO BOX 1027, NEWPORT, OR 97365	LLC2187
ALASKAN BEAUTY, LLC	C/O FMS INC, 620 SIXTH ST S, KIRKLAND, WA 98033.	LLC3301
ALEUTIAN BALLAD, INC.	112 HARRISON AVE, CENTRALIA, WA 98531	LLC3170
ALEUTIAN MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3587
ALEUTIAN SHELLFISH, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC1971

QUALIFYING BIDDERS—Continued

NAME	MAILING ADDRESS	NON-INTERIM CRAB LICENSE NO.
ALEUTIAN SPRAY FISHERIES, INC.	5470 SHILSHOLE AVE NW, STE 300, SEATTLE, WA 98107.	LLC2095
ALEUTIAN SPRAY FISHERIES, INC.	5470 SHILSHOLE AVE NW, STE 300, SEATTLE, WA 98107.	LLC2099
ALEUTIAN SPRAY FISHERIES, INC.	5470 SHILSHOLE AVE NW, STE 300, SEATTLE, WA 98107.	LLC2097
ALEUTIAN SPRAY REVERSE LLC	2621 EASTLAKE AVE EAST, SEATTLE, WA 98102.	LLC2555
ALEUTIAN SPRAY, LLC	101 NICKERSON, STE 340, C/O PUGET SOUND ACCOUNTING, SEATTLE, WA 98109.	LLC3861
AMATULI ENTERPRISES	PO BOX 1404, EDMONDS, WA 98020–1404	LLC2260
AMERICAN STAR & OWNERS	16 COLUMBIA KEY, BELLEVUE, WA 98006	LLC3200
AMERICAN WAY FISHERIES, INC.	4044 CLIFFSIDE RD, KODIAK, AK 99615	LLC1658
ANDRONICA, INC.	19239 40TH PL NE, SEATTLE, WA 98155	LLC3809
ARCHIE GOULD	PO BOX 347, KING COVE, AK 99612	LLC3031
ARCTIC BARUNA, LLC	2629 NW 54TH, SEATTLE, WA 98072	LLC2088
ARCTIC BARUNA, LLC	2629 NW 54TH, SEATTLE, WA 98072	LLC2087
ARCTIC MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3585
ARCTIC SUN FISHERIES, INC.	11825 SE EASTBOURNE LANE, PORTLAND, OR 97236.	LLC2366
ARCTIC VENTURES, INC.	101 NICKERSON ST, STE 340, SEATTLE, WA 98109.	LLC3047
ARTHUR W. FOX	PO BOX 1713, KODIAK, AK 99615	LLC1716
ATLANTICO, INC.	PO BOX 129, SISTERS, OR 97759	LLC2471
AUTUMN DAWN PARTNERSHIP	1445 NW 56TH ST, SEATTLE, WA 98107–3726	LLC1808
BARBARA J PARTNERSHIP	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3824
BEAUTY BAY, INC.	1223 PARKWAY DR, RICHMOND, CA 94803	LLC3618
BELLA K OF SEATTLE, LLC	PO BOX 17911, SEATTLE, WA 98107	LLC2020
BERING FIVE, INC	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC4743
BERING STAR, LLC	C/O H.A.S., P.O. BOX 17012, SEATTLE, WA 98107–0712.	LLC3889
BERING STAR, LLC	C/O H.A.S., P.O. BOX 17012, SEATTLE, WA 98107–0712.	LLC3965
BIG BLUE FISHERIES	PO BOX 663, CATHLAMET, WA 98612	LLC1766
BLUE ATTU, LLC	2930 WESTLAKE AVE N, #300, SEATTLE, WA 98109.	LLC3974
BLUE BOATS CORP.	5470 SHILSHOLE AVE NW, STE 500, SEATTLE, WA 98107.	LLC2093
BREKKAA FISHERIES, INC.	1707 NW 56TH, SEATTLE, WA 98107	LLC3278
BRISTOL FIVE, INC.	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC1891
BRISTOL MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3579
BRUCE E. JOYCE	3535 SE CORA DR, PORTLAND, OR 91202	LLC2701
CAPRICE, INC.	164 PELICAN WAY, FRIDAY HARBOR, WA 98250	LLC2753
CASCADE MARINER, LLC	5470 SHILSHORE AVE NW #410, SEATTLE, WA 98107.	LLC3459
CELTIC SEAS, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC4860
CHARLES G. JOHNSON	PO BOX 813, KODIAK, AK 99615	LLC2058
CHARLES G. JOHNSON	PO BOX 813, KODIAK, AK 99615	LLC3680
CONTROLLER BAY, JOINT VENTURE	1 DOGWOOD PL, EDMONDS, WA 98020	LLC3342
COREY K. WILSON	PO BOX 267, KING COVE, AK 99612	LLC3127
COUGAR INDUSTRIES, INC.	4711 CHEROKEE LANE, NEWPORT, OR 97365	LLC2514
COURAGEOUS SEAFOODS	4502 14TH AVE NW, SEATTLE, WA 98107	LLC1577
DAR-JEN, INC.	PO BOX 3128, KODIAK, AK 99615	LLC3093
DEBRA D, INC.	16559 KAMB RD, MOUNT VERNON, WA 98273	LLC3850
DECEPTION FISHERIES	PO BOX 1144, PETERSBURG, AK 99833	LLC3290
DEEP SEA HARVESTER, INC.	3900 RAILWAY AVE, EVERETT, WA 98201	LLC2888
DENNIS DEAVER	1223 PARKWAY DR, RICHMOND, CA 94803	LLC1923
DESTINATION, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC3328
DIAMOND HEAD, INC.	3955 NIELSON CIRCLE, STE A, HOMER, AK 99603–7714.	LLC1947
DIAMONDBACK SEAFOODS, INC.	916 DELANEY ST, ANCHORAGE, AK 99501	LLC1156
DIAMONDBACK SEAFOODS, INC.	916 DELANEY ST, ANCHORAGE, AK 99501	LLC2345
DIAMONDBACK SEAFOODS, INC.	916 DELANEY ST, ANCHORAGE, AK 99501	LLC1380
DONA MARTITA LLC	20308 DAYTON AVE N, SHORELINE, WA 98133	LLC2788
EARLY DAWN LLC	7215 156TH ST SOUTHWEST, EDMONDS, WA 98026.	LLC3193
ELIZABETH F, INC.	PO BOX 1275, KODIAK, AK 99615	LLC1274

QUALIFYING BIDDERS—Continued

NAME	MAILING ADDRESS	NON-INTERIM CRAB LICENSE NO.
ENTRANCE POINT, INC.	3543 LOWER HONOAPITLANI, LAHAINA, HI 96761.	LLC1782
ERLA-N, LLC	18509 8TH AVE NW, SEATTLE, WA 98177	LLC2215
ESTATE OF CARL A KOSO	PO BOX 237, KING COVE, AK 99612	LLC3484
EVENING STAR, INC.	4019 21ST AVE W, SEATTLE, WA 98199	LLC3903
EVENING STAR, INC.	4019 21ST AVE W, SEATTLE, WA 98199	LLC3905
EXCELLER FISHERIES, INC.	PO BOX 5993, BELLINGHAM, WA 98227	LLC1314
F. JAMES KOCH	PO BOX 1243, LEWISTON, ID 83501	LLC2742
F/V AJ, LLC	2200 6TH AVE, SUITE 710, SEATTLE, WA 98121	LLC3655
F/V ARCTIC WIND, LLC	5470 SHILSHOLE AVE NW, STE 500, SEATTLE, WA 98107.	LLC4010
F/V KATIE K & OWNERS	1101 EMERALD HILLS DR. EDMONDS, WA 98020.	LLC3687
F/V KETA, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC3632
F/V LADY BLACKIE, LLC	916 DELANEY ST, ANCHORAGE, AK 99501	LLC1960
F/V MAVERICK, LLC	BOOKEEPERS PLUS, 4875 ASH ST, ASTORIA, OR 97103.	LLC3196
F/V NORTH WIND, INC.	1441 NORTHLAKE WAY, SEATTLE, WA 98103	LLC1639
F/V PINNACLE, INC.	19618 61ST AVE SE, SNOHOMISH, WA 98290	LLC3356
F/V SEA ERN & OWNERS	10761 E LAKE JOY DR NE, CARNATION, WA 98014.	LLC3224
F/V SEABROOKE ENTERPRISES, LLC	83972 EASTSIDE RD, MILTON-FREEWATER, OR 97862.	LLC2925
FAIRWEATHER FISHERIES, INC.	2225 OCEANVIEW DR, NEWPORT, OR 97365	LLC1733
FAIRWEATHER FISHERIES, INC.	2225 OCEANVIEW DR, NEWPORT, OR 97365	LLC2943
FANNINGS DENALI, INC.	164 PELICAN WAY, FRIDAY HARBOR, WA 98250	LLC3334
FAR NORTH FISHERMEN, INC.	6947 COAL CREEK PARKWAY SE, STE 238, NEW CASTLE, WA 98059.	LLC1285
FARWEST LEADER PARTNERSHIP	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC2941
FIERCE ALLEGIANCE, LLC	7215 156TH ST SOUTHWEST, EDMONDS, WA 98026.	LLC3472
FLYING CLOUD PARTNERSHIP	TRIDENT SEAFOODS, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2206
FOUR DAUGHTERS, INC.	RT 8, BOX 113, MANKATO, MN 56001	LLC3383
FRANCIS M NW, LLC	164 PELICAN WAY, FRIDAY HARBOR, WA 98250	LLC4681
FRANK MCFARLAND	PO BOX 364, NOME, AK 99762	LLC2770
FURY GROUP, INC.	6401 26TH AVE NW, SEATTLE, WA 98107	LLC1539
FURY GROUP, INC.	6401 26TH AVE NW, SEATTLE, WA 98107	LLC2621
FURY GROUP, INC.	6401 26TH AVE NW, SEATTLE, WA 98107	LLC2540
FY FISHERIES, INC.	PO BOX 352, NEWPORT, OR 97365	LLC2790
GENE E. WATSON	949 WILDWOOD RD, CURTIS, WA 98538	LLC3297
GLACIER BAY FISHERIES, LLC	C/O FMS, INC, 620 SIXTH STREET SOUTH, KIRKLAND, WA 98033.	LLC3733
GLEN EVANS	583 S MICHAEL WAY, CAMANO ISLAND, WA 98292.	LLC3382
GOLDEN DAWN, LLC	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3735
GOLDEN PISCES, INC.	PO BOX 1523, NEWPORT, OR 97365	LLC3856
GOLDEN SHAMROCK, INC.	FISHERMEN'S TERMINAL, 4005 20TH AVE W, STE 218, SEATTLE, WA 98199.	LLC2063
GORDON E. GILES	PO BOX 127, SELDOVIA, AK 99663	LLC1434
GREAT WEST SEAFOODS, L.P.	511 W COMSTOCK ST, SEATTLE, WA 98119	LLC1849
GULF WINDS LLC	3600 15 TH AVE W, SEATTLE, WA 98119	LLC3135
GUNN SEA VENTURE, LLC	1445 NW 56TH ST, SEATTLE, WA 98107–3726	LLC3559
GUNN-WIDING ENTERPRISES	PO BOX 1404, EDMONDS, WA 98020	LLC3218
GUSTAFSON FISHERIES, INC.	PO BOX 8573, KODIAK, AK 99615	LLC3598
HAERLING ENTERPRISES, INC.	....	....
HAL LEWIS	2209 THEA COURT, MILTON, WA 98354	LLC3283
HARLAN DEAN	PO BOX 920571, DUTCH HARBOR, AK 99692	LLC3700
HARVESTER ENTERPRISES, LLC	PO BOX 61, STRYKER, MT 59933	LLC2808
	C/O PUDGET SOUND ACCOUNTING, 101 NICKERSON ST #340, SEATTLE, WA 98109.	LLC2326
HENRY W. STREICH	18496 43RD AVE NE, LAKE FOREST PARK, WA 98155.	LLC3705
HEUKER BROS., INC.	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC1814
HEUKER BROS., INC.	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC3590
HIGHLAND LIGHT SEAFOODS LLC.	3600 15TH AVE W, STE 300, SEATTLE, WA 98119.	LLC3952
HJELLE ENTERPRISES, INC.	PO BOX 17012, SEATTLE, WA 98127	LLC3319
HORIZON FISHERIES, LLC	5470 SHILSHOLE AVE N, STE 500, SEATTLE, WA 98107.	LLC3844

QUALIFYING BIDDERS—Continued

NAME	MAILING ADDRESS	NON-INTERIM CRAB LICENSE NO.
HUSKY CO-OWNERS	PO BOX C–5030, SEATTLE, WA 98105	LLC3664
ICELANDER, INC.	PO BOX 2074, KODIAK, AK 99615	LLC2874
ICICLE SEAFOODS, INC.	4019 - 21ST AVE W, SEATTLE, WA 98199	LLC2351
ICICLE SEAFOODS, INC.	4019 - 21ST AVE W, SEATTLE, WA 98199	LLC2699
ICY BAY, INC.	C/O PUGET SOUND ACCOUNTING, 101 NICKERSON, STE 340, SEATTLE, WA 98109.	LLC1725
ILDHUSO FISHERIES, INC.	101 NICKERSON, STE 340, SEATTLE, WA 98109	LLC1997
INCENTIVE FISHERIES, LLC	PO BOX 4008, KODIAK, AK 99615	LLC3249
JAMES R. NIEMELA	PO BOX 2382, HOMER, AK 99603	LLC2362
JEFF T. STEELE	PO BOX 1732, KODIAK, AK 99615	LLC2762
JEFF T. STEELE	PO BOX 1732, KODIAK, AK 99615	LLC2817
JOSE RAUL CASTILLO	PO BOX 568, UNALASKA, AK 99685	LLC2570
JOSE RAUL CASTILLO	PO BOX 568, UNALASKA, AK 99685	LLC3527
K H COLBURN, INC	3117 E AMES LAKE DR NE, REDMOND, WA 98053.	LLC3657
KARI MARIE FISHERIES, LLC	9784 MARINE VIEW DR, MUKILTEO, WA 98275	LLC3553
KATRINA-EM, INC.	PO BOX 3065, KODIAK, AK 99615	LLC2778
KDS, INC.	PO BOX 308, SILVANA, WA 98287	LLC3716
KDS, INC.	PO BOX 308, SILVANA, WA 98287	LLC2775
KENDRICK BAY LTD. PARTNERS	PO BOX 5030, SEATTLE, WA 98105	LLC3675
KENNETH M. SIMPSON	PO BOX 240449, ANCHORAGE, AK 99524–0449	LLC1279
KEVIN SUYDAM	PO BOX 980, KODIAK, AK 99615	LLC3264
KEVIN SUYDAM	PO BOX 980, KODIAK, AK 99615	LLC3337
KEVIN SUYDAM	PO BOX 980, KODIAK, AK 99615	LLC5383
KEVLEEN K, LLC	4241 21ST AVE W, STE 100, SEATTLE, WA 98199.	LLC3462
KIRSTEN MARIE FISHERIES, LLC	9784 MARINE VIEW DR, MUKILTEO, WA 98275	LLC1729
KISKA SEA PARTNERSHIP	3859 YAQUINA BAY RD, NEWPORT, OR 97365	LLC3116
KODIAK QUEEN, INC.	349 NW 137TH ST, SEATTLE, WA 98177	LLC3879
KRISTIAN E. POULSEN ENT., INC.	1143 NW 45TH ST, SEATTLE, WA 98107	LLC1863
KRISTIAN E. POULSEN ENT., INC.	1143 NW 45TH ST, SEATTLE, WA 98107	LLC1885
KRISTIAN E. POULSEN ENT., INC.	1143 NW 45TH ST, SEATTLE, WA 98107	LLC1882
L.T.D., INC.	PO BOX 3415, KODIAK, AK 99615	LLC1450
LABRADOR GROUP	PO BOX C–5030, SEATTLE, WA 98105	LLC2037
LADY HELEN LLC	606 N 178TH ST, SHORELINE, WA 98133	LLC3737
LADY JOANNE, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC2223
LANGESATER FISHERIES, INC.	19731 21ST AVE NW, SEATTLE, WA 98177	LLC2695
LARRY J. SHAISHNIKOFF	PO BOX 45, UNALASKA, AK 99685	LLC2007
LARRY O. HENDRICKS	PO BOX 17701, SEATTLE, WA 98107	LLC2546
LIBERATOR FISHERIES, LLC	5470 SHILSHOLE AVE NW, STE 300, SEATTLE, WA 98107.	LLC3638
LIGHTSHIP, INC.	PO BOX 1404, EDMONDS, WA 98020	LLC3107
LONGRICH ENTERPRISES, INC.	PO BOX 2494, KODIAK, AK 99615	LLC1453
LUDGER DOCHTERMANN	PO BOX 714, KODIAK, AK 99615	LLC2750
MAR DEL SUD, LTD.	PO BOX 1573, KODIAK, AK 99615	LLC2646
MARCY J., INC.	1217 KOUSKOV, KODIAK, AK 99615	LLC2279
MARGUN ENTERPRISES, LLC	101 NICKERSON STE 340, SEATTLE, WA 98109	LLC3629
MARK I, INC.	511 W COMSTOCK ST, SEATTLE, WA 98119	LLC2638
MARK MARING II, INC.	130 NICKERSON ST, STE 212, SEATTLE, WA 98109.	LLC3954
MARWIN, INC.	PO BOX 509, PETERSBURG, AK 99833	LLC1801
MATTHEW HEGGE	PO BOX 3388, KODIAK, AK 99615	LLC2106
MATTSEN FISHERIES, INC.	PO BOX 2686, POULSBO, WA 98370	LLC2577
MATTSEN FISHERIES, INC.	PO BOX 2686, POULSBO, WA 98370	LLC3541
MICHEAL K. KING	PO BOX 238, MAGNOLIA SPRINGS, AL 36555	LLC3020
MISTY BLUE, INC.	NORTHERN LIGHTS HAVEN, YAKUTAT, AK 99689.	LLC1485
NEPTUNE, LLC	2615 4TH AVE, STE 700, SEATTLE, WA 98121	LLC2156
NEWMAN FISHERIES, INC.	PO BOX 165, KING COVE, AK 99612	LLC3922
NINILICHIK LTD. PARTNERSHIP	12000 INDUSTRY WA N3, ANCHORAGE, AK 99515.	LLC3931
NORDIC MARINE, INC.	200 W 34TH AVE, STE 981, ANCHORAGE, AK 99503.	LLC3274
NORDIC MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC2309
NORDIC STAR FISHERIES, INC.	4224 S DRIFTWOOD DR, SPOKANE, WA 99206	LLC2629
NORDIC VIKING, LLC	PO BOX 129, SISTERS, OR 97759	LLC3989
NORQUEST SEAFOODS, INC.	5245 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3331
NORQUEST SEAFOODS, INC.	5245 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3698
NORQUEST SEAFOODS, INC.	5245 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3696
NORSEMAN FISHERIES, INC.	11524 3RD AVE NW, SEATTLE, WA 98199	LLC1243
NORTH AMERICAN, INC.	250 NW 39TH ST, STE 5, SEATTLE, WA 98107	LLC3087

QUALIFYING BIDDERS—Continued

NAME	MAILING ADDRESS	NON-INTERIM CRAB LICENSE NO.
NORTH PACIFIC, LLC	C/O FMS INC, 620 SIXTH ST S, KIRKLAND, WA 98033.	LLC3256
NORTHERN MARINER, LLC	5470 SHILSHOLE AVE NW #410, SEATTLE, WA 98107.	LLC3581
NORTHERN ORION, INC.	130 NICKERSON ST, STE 212, SEATTLE, WA 98109.	LLC3035
NORTHPOINT FISHERIES	PO BOX 714, KODIAK, AK 99615	LLC2288
OBSESSION LIMITED PARTNERSHIP	12000 INDUSTRY WAY N3, ANCHORAGE, AK 99515.	LLC3934
OCEAN BALLAD, INC.	112 HARRISON ST, CENTRALIA, WA 98531	LLC3195
OCEAN BALLAD, INC.	112 HARRISON ST, CENTRALIA, WA 98531	LLC3914
OCEAN BALLAD, INC.	112 HARRISON ST, CENTRALIA, WA 98531	LLC3916
OCEAN FISHERIES, LLC	7216 INTERLAAKEN DR, LAKEWOOD, WA 98499	LLC3945
OCEAN OLYMPIC LLC	C/O FMS INC, 620 SIXTH ST S, KIRKLAND, WA 98033.	LLC3941
OCEAN VIKING LLC	7216 INTERLAAKEN DR SW, LAKEWOOD, WA 98499.	LLC1229
ODIAK MARITIME	PO BOX 135, CORDOVA, AK 99574	LLC3061
OLUF K. VEDOY	10825 159TH ST SE, SNOHOMISH, WA 98290	LLC1946
PAC MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3583
PACIFIC DRAGGERS, INC.	PO BOX 352, NEWPORT, OR 97365	LLC3494
PACIFIC STAR FISHERIES, LLC	620 6TH STREET SOUTH, KIRKLAND, WA 98033	LLC4857
PAR-PAC, INC.	3711 CARNEGIE DR SE, OLYMPIA, WA 98503	LLC2252
PAUL GRONHOLDT	PO BOX 288, SAND POINT, AK 99661	LLC3384
PAVLOF, INC.	4024 22ND AVE W, SEATTLE, WA 98199	LLC1740
PENINSULA SALMON, INC.	164 PELICAN WAY, FRIDAY HARBOR, WA 98250	LLC3401
POINT FIVE, INC	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC1937
POLAR SEA PARTNERSHIP	17010 12TH AVE NW, SHORELINE, WA 98177–3825.	LLC1826
PORT LYNCH, INC.	6920 ROOSEVELT WAY NE ınumsign;M3, SEATTLE, WA 98115.	LLC5663
PROVIDER, INC.	PO BOX 37, KODIAK, AK 99615	LLC2781
PROWLER, LLC	PO BOX 1364, PETERSBURG, AK 99833	LLC3682
Q & S ENTERPRISES, INC.	PO BOX 70591, SEATTLE, WA 98107	LLC1817
R.W. BARK CORP.	375 SKI HILL, LEAVENWORTH, WA 98826	LLC1994
RAGNVALD SVINO	16905 13TH AVE NW, SHORELINE, WA 98177	LLC1391
RAINIER INVESTMENTS, INC.	605 12TH AVE N, EDMONDS, WA 98020	LLC2170
RAINIER INVESTMENTS, INC.	605 12TH AVE N, EDMONDS, WA 98020	LLC2172
RAINIER INVESTMENTS, INC.	605 12TH AVE N, EDMONDS, WA 98020	LLC3417
RETRIEVER CO-OWNERS	PO BOX 5030, SEATTLE, WA 98105–0030	LLC3669
RICHARD L. SHELFORD	PO BOX 12946, MILL CREEK, WA 98082–2946	LLC3091
ROBERT J. GUNDERSON	PO BOX 344, KODIAK, AK 99615	LLC1720
ROBERT NEHUS	PO BOX 1002, UNALASKA, AK 99685	LLC3010
ROMANZOF FISHING COMPANY LLC	4502 14TH AVE NW, SEATTLE, WA 98107	LLC1579
RONALD J. TENNISON	4248 UPPAL DR, BELLINGHAM, WA 98226	LLC3114
RONALD K. KECHTER	PO BOX 68, PORT ANGELES, WA 98362	LLC2195
RONALD R. BRILL	5470 SHISHOLE AVE NW #410, SEATTLE, WA 98107.	LLC3956
RONDYS, INC.	5349 229TH AVE SE, ISSAQUAH, WA 98029	LLC2884
RONDYS, INC.	5349 229TH AVE SE, ISSAQUAH, WA 98029	LLC3898
ROYAL AMERICAN FISHERIES, LLC	511 W COMSTOCK ST, SEATTLE, WA 98119	LLC1754
ROYAL PACIFIC, LLC	9784 MARINE VIEW DR, MUKILTEO, WA 98275	LLC1731
ROYAL VIKING, INC.	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC2236
ROYAL VIKING, INC.	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC2625
ROYAL VIKING, INC.	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC2601
RSD FISHERIES, LLC	PO BOX 12946, MILL CREEK, WA 98082	LLC1973
RSD FISHERIES, LLC	PO BOX 12946, MILL CREEK, WA 98082	LLC1975
RUFF & REDDY, INC.	PO BOX 129, SISTERS, OR 97759	LLC3982
SAGAKA FISHING, INC.	PO BOX 8101, KODIAK, AK 99615	LLC2078
SAN JUAN SEAFOODS, INC	PO BOX 220, BELLINGHAM, WA 98225	LLC3742
SAN JUAN SEAFOODS, INC	PO BOX 220, BELLINGHAM, WA 98225	LLC3757
SAN JUAN SEAFOODS, INC	PO BOX 220, BELLINGHAM, WA 98225	LLC3750
SCANDIES LTD PARTNERSHIP	2442 NW MARKET ST #656, SEATTLE, WA 98107.	LLC3336
SEA FISHER LLC	1120 NW 51ST ST, SEATTLE, WA 98107	LLC3917
SEA ROVER, LLC	1136 VISTA PL, EDMONDS, WA 98020	LLC3723
SEA SPRAY, LLC	1900 W NICKERSON ST #213, SEATTLE, WA 98119.	LLC2289
SEA STORM LIMITED PARTNERSHIP	400 N 34TH ST, STE 306, SEATTLE, WA 98103	LLC1896
SEVENTH SON, INC.	15209 72ND AVE NE, KENMORE, WA 98028	LLC3930

QUALIFYING BIDDERS—Continued

NAME	MAILING ADDRESS	NON-INTERIM CRAB LICENSE NO.
SHISHALDIN, LLC	1445 NW 56TH ST, SEATTLE, WA 98107	LLC1734
SIBERIAN SEA PARTNERSHIP	3859 YAQUINA BAY RD, NEWPORT, OR 97365	LLC3197
SILENT LADY, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC3326
SILVER SPRAY SEAFOODS, LLC	PO BOX 129, SISTERS, OR 97759	LLC3984
SNOW KING, INC.	1917 N BEAVER CK RD, SEAL ROCK, OR 97376	LLC3213
SPIRIT OF THE NORTH FISHERIES, INC.	355 NE GOLF COURSE DR, NEWPORT, OR 97365.	LLC1673
SULTAN, LLC	2930 WESTLAKE AVE N #300, SEATTLE, WA 98109.	LLC3848
SUSITNA MARITIME, INC.	PO BOX 54, HOMER, AK 99603	LLC3457
TAMARACK VENTURES, LLC	17640 SE 295TH ST, KENT, WA 98042	LLC3690
TEMPEST FISHERIES II, LLC	2930 WESTLAKE AVE N #300, SEATTLE, WA 98109.	LLC4843
THREE RIVERS, INC. OF ANACORTES	9119 DISTRICT LINE RD, BURLINGTON, WA 98233.	LLC3670
TIME BANDIT, LLC	PO BOX 3643, HOMER, AK 99603	LLC1625
TIMOTHY J. KENNEDY	C/O BLUE ALEUTIAN LLC, 2930 WESTLAKE AVE N. #300, SEATTLE, WA 98109.	LLC2818
TIMOTHY J. KENNEDY	C/O BLUE ALEUTIAN LLC, 2930 WESTLAKE AVE N. #300, SEATTLE, WA 98109.	LLC3330
TODD HINER	PO BOX 671, KODIAK, AK 99615	LLC3354
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2267
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2515
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC3788
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2538
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2269
TYNES ENTERPRISES, INC.	F/V AMERICAN EAGLE AND OWNERS, 1212 NW CULBERTSON DR, SEATTLE, WA 98177.	LLC2544
VESTERAALEN L.L.C.	4225 23 AVE W # 100, SEATTLE, WA 98119	LLC3530
VIEKODA BAY, LLC	PO BOX 3282, KODIAK, AK 99615	LLC3775
VIEKODA BAY, LLC	PO BOX 3282, KODIAK, AK 99615	LLC3777
WAHL FISHERIES, LLC	100 PORT DOCK RD, REEDSPORT, OR 97467	LLC3479
WAHL FISHERIES, LLC	100 PORT DOCK RD, REEDSPORT, OR 97467	LLC3557
WARDS COVE PACKING CO.	PO BOX 5030, SEATTLE, WA 98105–0030	LLC3003
WESTERN MARINER, LLC	5470 SHILSHOLE AVE NW 410, SEATTLE, WA 98107.	LLC2321
WILLIAM C. WILLIAMS	720 11TH ST, B1, BELLINGHAM, WA 98225	LLC3911
WILLIAM T. GILBERT	PO BOX 5705, BELLINGHAM, WA 98225	LLC1906
WINDY BAY, INC.	C/O PUGET SOUND ACCOUNTING, 101 NICKERSON, STE 340, SEATTLE, WA 98109.	LLC2061
WIZARD FISHERIES, INC.	2442 NW MARKET ST.Number 438, SEATTLE, WA 98107.	LLC1481

(2) Qualifying Voter List:

QUALIFYING VOTERS

NAME	MAILING ADDRESS	INTERIM OR NON-INTERIM CRAB LICENSE NO.
57 DEGREES NORTH, LLC	1445 NW 56TH ST, SEATTLE, WA 98107	LLC3554
AIREDALE LLC	916 DELANEY ST, ANCHORAGE, AK 99501	LLC2275
ALASKA BOAT COMPANY	PO BOX 5030, SEATTLE, WA 98105	LLC2039
ALASKA CHALLENGER L.L.C.	PO BOX 5030, SEATTLE, WA 98105	LLC3667
ALASKA SEA, INC.	18509 8TH AVE NW, SEATTLE, WA 98177–3153	LLC1607
ALASKA SEAFOOD PRODUCERS, INC.	PO BOX 1027, NEWPORT, OR 97365	LLC2187
ALASKA TROJAN FISHERIES	3859 YAQUINA BAY RD, NEWPORT, OR 97365	LLC3873
ALASKAN BEAUTY, LLC	C/O FMS INC, 620 SIXTH ST S, KIRKLAND, WA 98033.	LLC3301
ALEUTIAN BALLAD, INC.	112 HARRISON AVE, CENTRALIA, WA 98531	LLC3170
ALEUTIAN MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3587
ALEUTIAN SHELLFISH, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC1971
ALEUTIAN SPRAY FISHERIES, INC.	5470 SHILSHOLE AVE NW, STE 300, SEATTLE, WA 98107.	LLC2095

QUALIFYING VOTERS—Continued

NAME	MAILING ADDRESS	INTERIM OR NON-INTERIM CRAB LICENSE NO.
ALEUTIAN SPRAY FISHERIES, INC.	5470 SHILSHOLE AVE NW, STE 300, SEATTLE, WA 98107.	LLC2099
ALEUTIAN SPRAY FISHERIES, INC.	5470 SHILSHOLE AVE NW, STE 300, SEATTLE, WA 98107.	LLC2097
ALEUTIAN SPRAY REVERSE LLC	2621 EASTLAKE AVE EAST, SEATTLE, WA 98102.	LLC2555
ALEUTIAN SPRAY, LLC	101 NICKERSON, STE 340, C/O PUGET SOUND ACCOUNTING, SEATTLE, WA 98109.	LLC3861
AMATULI ENTERPRISES	PO BOX 1404, EDMONDS, WA 98020–1404	LLC2260
AMERICAN STAR & OWNERS	16 COLUMBIA KEY, BELLEVUE, WA 98006	LLC3200
AMERICAN WAY FISHERIES, INC.	4044 CLIFFSIDE RD, KODIAK, AK 99615	LLC1658
ANDRONICA, INC.	19239 40TH PL NE, SEATTLE, WA 98155	LLC3809
ARCHIE GOULD	PO BOX 347, KING COVE, AK 99612	LLC3031
ARCTIC BARUNA, LLC	2629 NW 54TH, SEATTLE, WA 98072	LLC2087
ARCTIC BARUNA, LLC	2629 NW 54TH, SEATTLE, WA 98072	LLC2088
ARCTIC EAGLE, LLC	1212 NW CULBERTSON DR, SEATTLE, WA 98177.	LLC3891
ARCTIC MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3585
ARCTIC SUN FISHERIES, INC.	11825 SE EASTBOURNE LANE, PORTLAND, OR 97236.	LLC2366
ARCTIC VENTURES, INC.	101 NICKERSON ST, STE 340, SEATTLE, WA 98109.	LLC3047
ARTHUR W. FOX	PO BOX 1713, KODIAK, AK 99615	LLC1716
ATLANTICO, INC.	PO BOX 129, SISTERS, OR 97759	LLC2471
AUTUMN DAWN PARTNERSHIP	1445 NW 56TH ST, SEATTLE, WA 98107–3726	LLC1808
BARBARA J PARTNERSHIP	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3824
BEAUTY BAY, INC.	1223 PARKWAY DR, RICHMOND, CA 94803	LLC3618
BELLA K OF SEATTLE, LLC	PO BOX 17911, SEATTLE, WA 98107	LLC2020
BELLA K OF SEATTLE, LLC	PO BOX 17911, SEATTLE, WA 98107	LLC3661
BERING FIVE, INC	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC4743
BERING STAR, LLC	C/O H.A.S., P.O. BOX 17012, SEATTLE, WA 98107–0712.	LLC3889
BERING STAR, LLC	C/O H.A.S., P.O. BOX 17012, SEATTLE, WA 98107–0712.	LLC3965
BIG BLUE FISHERIES	PO BOX 663, CATHLAMET, WA 98612	LLC1766
BLUE ALEUTIAN, LLC	2930 WESTLAKE AVE N, #300, SEATTLE, WA 98109.	LLC3849
BLUE ATTU, LLC	2930 WESTLAKE AVE N, #300, SEATTLE, WA 98109.	LLC3974
BLUE BOATS CORP.	5470 SHILSHOLE AVE NW, STE 500, SEATTLE, WA 98107.	LLC2093
BLUE DUTCH, LLC	2930 WESTLAKE AVE N, #300, SEATTLE, WA 98109.	LLC3846
BOWLDEN, INC.	12616 25TH SE, EVERETT, WA 98208	LLC4019
BREKKAA FISHERIES, INC.	1707 NW 56TH, SEATTLE, WA 98107	LLC3278
BRISTOL FIVE, INC.	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC1891
BRISTOL MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3579
BRUCE E. JOYCE	3535 SE CORA DR, PORTLAND, OR 91202	LLC2701
CAPRICE, INC.	164 PELICAN WAY, FRIDAY HARBOR, WA 98250	LLC2753
CASCADE MARINER, LLC	5470 SHILSHORE AVE NW #410, SEATTLE, WA 98107.	LLC3459
CELTIC SEAS, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC4860
CHARLES G. JOHNSON	PO BOX 813, KODIAK, AK 99615	LLC2058
CHARLES G. JOHNSON	PO BOX 813, KODIAK, AK 99615	LLC3680
CHARLES REHDER	PO BOX 2065, HOMER, AK 99603	LLC3340
COLLINS FISHERIES, INC.	PO BOX 736, OAK HARBOR, WA 98277	LLC3947
CONTROLLER BAY, JOINT VENTURE	1 DOGWOOD PL, EDMONDS, WA 98020	LLC3342
COREY K. WILSON	PO BOX 267, KING COVE, AK 99612	LLC3127
COUGAR INDUSTRIES, INC.	4711 CHEROKEE LANE, NEWPORT, OR 97365	LLC2514
COURAGEOUS SEAFOODS	4502 14TH AVE NW, SEATTLE, WA 98107	LLC1577
DAR-JEN, INC.	PO BOX 3128, KODIAK, AK 99615	LLC3093
DEBRA D, INC.	16559 KAMB RD, MOUNT VERNON, WA 98273	LLC3850
DECEPTION FISHERIES	PO BOX 1144, PETERSBURG, AK 99833	LLC3290
DEEP SEA FISHERIES, INC.	3900 RAILWAY AVE, EVERETT, WA 98201	LLC1418
DEEP SEA HARVESTER, INC.	3900 RAILWAY AVE, EVERETT, WA 98201	LLC2888
DENNIS DEAVER	1223 PARKWAY DR, RICHMOND, CA 94803	LLC1923
DESTINATION, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC3328

QUALIFYING VOTERS—Continued

NAME	MAILING ADDRESS	INTERIM OR NON-INTERIM CRAB LICENSE NO.
DIAMOND HEAD, INC.	3955 NIELSON CIRCLE, STE A, HOMER, AK 99603–7714.	LLC1947
DIAMONDBACK SEAFOODS, INC.	916 DELANEY ST, ANCHORAGE, AK 99501	LLC1156
DIAMONDBACK SEAFOODS, INC.	916 DELANEY ST, ANCHORAGE, AK 99501	LLC1380
DIAMONDBACK SEAFOODS, INC.	916 DELANEY ST, ANCHORAGE, AK 99501	LLC2345
DONA MARTITA LLC	20308 DAYTON AVE N, SHORELINE, WA 98133	LLC2788
EARLY DAWN LLC	7215 156TH ST SOUTHWEST, EDMONDS, WA 98026.	LLC3193
ELIZABETH F, INC.	PO BOX 1275, KODIAK, AK 99615	LLC1274
ENTRANCE POINT, INC.	3543 LOWER HONOAPITLANI, LAHAINA, HI 96761.	LLC1782
ERLA-N, LLC	18509 8TH AVE NW, SEATTLE, WA 98177	LLC2215
ERLA-N, LLC	18509 8TH AVE NW, SEATTLE, WA 98177	LLC3857
ESTATE OF CARL A KOSO	PO BOX 237, KING COVE, AK 99612	LLC3484
EVENING STAR, INC.	4019 21ST AVE W, SEATTLE, WA 98199	LLC3903
EVENING STAR, INC.	4019 21ST AVE W, SEATTLE, WA 98199	LLC3905
EXCELLER FISHERIES, INC.	PO BOX 5993, BELLINGHAM, WA 98227	LLC1314
F. JAMES KOCH	PO BOX 1243, LEWISTON, ID 83501	LLC2742
F/V AJ, LLC	2200 6TH AVE, SUITE 710, SEATTLE, WA 98121	LLC3655
F/V ARCTIC WIND, LLC	5470 SHILSHOLE AVE NW, STE 500, SEATTLE, WA 98107.	LLC4010
F/V KATIE K & OWNERS	1101 EMERALD HILLS DR, EDMONDS, WA 98020.	LLC3687
F/V KETA, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC3632
F/V LADY BLACKIE, LLC	916 DELANEY ST, ANCHORAGE, AK 99501	LLC1960
F/V MAVERICK, LLC	BOOKEEPERS PLUS, 4875 ASH ST, ASTORIA, OR 97103.	LLC3196
F/V NORTH WIND, INC.	1441 NORTHLAKE WAY, SEATTLE, WA 98103	LLC1639
F/V PINNACLE, INC.	19618 61ST AVE SE, SNOHOMISH, WA 98290	LLC3356
F/V SEA ERN & OWNERS	10761 E LAKE JOY DR NE, CARNATION, WA 98014.	LLC3224
F/V SEABROOKE ENTERPRISES, LLC	83972 EASTSIDE RD, MILTON-FREEWATER, OR 97862.	LLC2925
FAIRWEATHER FISHERIES, INC.	2225 OCEANVIEW DR, NEWPORT, OR 97365	LLC1733
FAIRWEATHER FISHERIES, INC.	2225 OCEANVIEW DR, NEWPORT, OR 97365	LLC2943
FANNINGS DENALI, INC.	164 PELICAN WAY, FRIDAY HARBOR, WA 98250	LLC3334
FAR NORTH FISHERMEN, INC.	6947 COAL CREEK PARKWAY SE, STE 238, NEW CASTLE, WA 98059.	LLC1285
FARWEST LEADER PARTNERSHIP	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC2941
FIERCE ALLEGIANCE, LLC	7215 156TH ST SOUTHWEST, EDMONDS, WA 98026.	LLC3472
FLYING CLOUD PARTNERSHIP	TRIDENT SEAFOODS, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2206
FOUR DAUGHTERS, INC.	RT 8, BOX 113, MANKATO, MN 56001	LLC3383
FRANCIS M NW, LLC	164 PELICAN WAY, FRIDAY HARBOR, WA 98250	LLC4681
FRANK MCFARLAND	PO BOX 364, NOME, AK 99762	LLC2770
FURY GROUP, INC.	6401 26TH AVE NW, SEATTLE, WA 98107	LLC1539
FURY GROUP, INC.	6401 26TH AVE NW, SEATTLE, WA 98107	LLC2621
FURY GROUP, INC.	6401 26TH AVE NW, SEATTLE, WA 98107	LLC2540
FY FISHERIES, INC.	PO BOX 352, NEWPORT, OR 97365	LLC2790
GENE E. WATSON	949 WILDWOOD RD, CURTIS, WA 98538	LLC3297
GLACIER BAY FISHERIES, LLC	C/O FMS, INC, 620 SIXTH STREET SOUTH, KIRKLAND, WA 98033.	LLC3733
GLEN EVANS	583 S MICHAEL WAY, CAMANO ISLAND, WA 98292.	LLC3382
GOLDEN DAWN, LLC	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3735
GOLDEN PISCES, INC.	PO BOX 1523, NEWPORT, OR 97365	LLC3856
GOLDEN SHAMROCK, INC.	FISHERMEN'S TERMINAL, 4005 20TH AVE W, STE 218, SEATTLE, WA 98199.	LLC2063
GORDON E. GILES	PO BOX 127, SELDOVIA, AK 99663	LLC1434
GREAT WEST SEAFOODS, L.P.	511 W COMSTOCK ST, SEATTLE, WA 98119	LLC1849
GULF WINDS LLC	3600 15 TH AVE W, SEATTLE, WA 98119	LLC3135
GUNN SEA VENTURE, LLC	1445 NW 56TH ST, SEATTLE, WA 98107–3726	LLC3559
GUNN-WIDING ENTERPRISES	PO BOX 1404, EDMONDS, WA 98020	LLC3218
GUSTAFSON FISHERIES, INC.	PO BOX 8573, KODIAK, AK 99615	LLC3598
HAERLING ENTERPRISES, INC.	2209 THEA COURT, MILTON, WA 98354	LLC3283
HAL LEWIS	PO BOX 920571, DUTCH HARBOR, AK 99692	LLC3700
HANSEN ENTERPRISES, INC.	18361 8TH AVE NW, SEATTLE, WA 98177	LLC3276
HARLAN DEAN	PO BOX 61, STRYKER, MT 59933	LLC2808
HARVESTER ENTERPRISES, LLC	C/O PUDGET SOUND ACCOUNTING, 101 NICKERSON ST #340, SEATTLE, WA 98109.	LLC2326

QUALIFYING VOTERS—Continued

NAME	MAILING ADDRESS	INTERIM OR NON-INTERIM CRAB LICENSE NO.
HENRY W. STREICH	18496 43RD AVE NE, LAKE FOREST PARK, WA 98155.	LLC3705
HEUKER BROS., INC.	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC1814
HEUKER BROS., INC.	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC3590
HIGH SPIRIT, INC.	PO BOX 1523, C/O DENNIS P. MCMANUS JR CPA, NEWPORT, OR 97365.	LLC4845
HIGHLAND LIGHT SEAFOODS LLC.	3600 15TH AVE W, STE 300, SEATTLE, WA 98119.	LLC2834
HIGHLAND LIGHT SEAFOODS LLC.	3600 15TH AVE W, STE 300, SEATTLE, WA 98119.	LLC3952
HJELLE ENTERPRISES, INC.	PO BOX 17012, SEATTLE, WA 98127	LLC3319
HJELLE ENTERPRISES, INC.	PO BOX 17012, SEATTLE, WA 98127	LLC3887
HORIZON FISHERIES, LLC	5470 SHILSHOLE AVE N, STE 500, SEATTLE, WA 98107.	LLC3844
HUSKY CO-OWNERS	PO BOX C–5030, SEATTLE, WA 98105	LLC3664
ICELANDER, INC.	PO BOX 2074, KODIAK, AK 99615	LLC2874
ICICLE SEAFOODS, INC.	4019 21ST AVE W, SEATTLE, WA 98199	LLC2351
ICICLE SEAFOODS, INC.	4019 21ST AVE W, SEATTLE, WA 98199	LLC2699
ICY BAY, INC.	C/O PUGET SOUND ACCOUNTING, 101 NICKERSON, STE 340, SEATTLE, WA 98109.	LLC1725
ILDHUSO FISHERIES, INC.	101 NICKERSON, STE 340, SEATTLE, WA 98109	LLC1997
INCENTIVE FISHERIES, LLC	PO BOX 4008, KODIAK, AK 99615	LLC3249
JAMES R. NIEMELA	PO BOX 2382, HOMER, AK 99603	LLC2362
JEFF T. STEELE	PO BOX 1732, KODIAK, AK 99615	LLC2762
JEFF T. STEELE	PO BOX 1732, KODIAK, AK 99615	LLC2817
JOSE RAUL CASTILLO	PO BOX 568, UNALASKA, AK 99685	LLC2570
JOSE RAUL CASTILLO	PO BOX 568, UNALASKA, AK 99685	LLC3527
K H COLBURN, INC	3117 E AMES LAKE DR NE, REDMOND, WA 98053.	LLC3657
KALDESTAD FISHERIES LTD.	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3577
KARI MARIE FISHERIES, LLC	9784 MARINE VIEW DR, MUKILTEO, WA 98275	LLC3553
KARIN LYNN FISHERIES, INC.	3900 RAILWAY AVE, EVERETT, WA 98201	LLC3332
KATRINA-EM, INC.	PO BOX 3065, KODIAK, AK 99615	LLC2778
KDS, INC.	PO BOX 308, SILVANA, WA 98287	LLC3716
KDS, INC.	PO BOX 308, SILVANA, WA 98287	LLC2775
KENDRICK BAY LTD. PARTNERS	PO BOX 5030, SEATTLE, WA 98105	LLC3675
KENNETH M. SIMPSON	PO BOX 240449, ANCHORAGE, AK 99524–0449	LLC1279
KEVIN SUYDAM	PO BOX 980, KODIAK, AK 99615	LLC3264
KEVIN SUYDAM	PO BOX 980, KODIAK, AK 99615	LLC3337
KEVIN SUYDAM	PO BOX 980, KODIAK, AK 99615	LLC4552
KEVIN SUYDAM	PO BOX 980, KODIAK, AK 99615	LLC5383
KEVIN SUYDAM	PO BOX 980, KODIAK, AK 99615	LLC3894
KEVLEEN K, LLC	4241 21ST AVE W, STE 100, SEATTLE, WA 98199.	LLC3462
KIRSTEN MARIE FISHERIES, LLC	9784 MARINE VIEW DR, MUKILTEO, WA 98275	LLC1729
KISKA SEA PARTNERSHIP	3859 YAQUINA BAY RD, NEWPORT, OR 97365	LLC3116
KODIAK QUEEN, INC.	349 NW 137TH ST, SEATTLE, WA 98177	LLC3879
KRISTIAN E. POULSEN ENT., INC.	1143 NW 45TH ST, SEATTLE, WA 98107	LLC1863
KRISTIAN E. POULSEN ENT., INC.	1143 NW 45TH ST, SEATTLE, WA 98107	LLC1882
KRISTIAN E. POULSEN ENT., INC.	1143 NW 45TH ST, SEATTLE, WA 98107	LLC1885
L.T.D., INC.	PO BOX 3415, KODIAK, AK 99615	LLC1450
LABRADOR GROUP	PO BOX C–5030, SEATTLE, WA 98105	LLC2037
LADY HELEN LLC	606 N 178TH ST, SHORELINE, WA 98133	LLC3737
LADY JOANNE, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC2223
LANGESATER FISHERIES, INC.	19731 21ST AVE NW, SEATTLE, WA 98177	LLC2695
LARRY J. SHAISHNIKOFF	PO BOX 45, UNALASKA, AK 99685	LLC2007
LARRY O. HENDRICKS	PO BOX 17701, SEATTLE, WA 98107	LLC2546
LEE ROSE, INC.	PO BOX 712, GRAYLAND, WA 98547	LLC4730
LIBERATOR FISHERIES, LLC	5470 SHILSHOLE AVE NW, STE 300, SEATTLE, WA 98107.	LLC3638
LIGHTSHIP, INC.	PO BOX 1404, EDMONDS, WA 98020	LLC3107
LISA MARIE FISHERIES, LLC	301 CALISTA COURT, ANCHORAGE, AK 99518	LLC1671
LONGRICH ENTERPRISES, INC.	PO BOX 2494, KODIAK, AK 99615	LLC1453
LUDGER DOCHTERMANN	PO BOX 714, KODIAK, AK 99615	LLC2750
MAR DEL SUD, LTD.	PO BOX 1573, KODIAK, AK 99615	LLC2646
MARCY J., INC.	1217 KOUSKOV, KODIAK, AK 99615	LLC2279
MARGUN ENTERPRISES, LLC	101 NICKERSON STE 340, SEATTLE, WA 98109	LLC3629
MARK F. DONOVICK	PO BOX 1638, WESTPORT, WA 98595	LLC4875

QUALIFYING VOTERS—Continued

NAME	MAILING ADDRESS	INTERIM OR NON-INTERIM CRAB LICENSE NO.
MARK I, INC.	511 W COMSTOCK ST, SEATTLE, WA 98119	LLC2638
MARK MARING II, INC.	130 NICKERSON ST, STE 212, SEATTLE, WA 98109.	LLC3954
MARWIN, INC.	PO BOX 509, PETERSBURG, AK 99833	LLC1801
MATTHEW HEGGE	PO BOX 3388, KODIAK, AK 99615	LLC2106
MATTSEN FISHERIES, INC.	PO BOX 2686, POULSBO, WA 98370	LLC2577
MATTSEN FISHERIES, INC.	PO BOX 2686, POULSBO, WA 98370	LLC3541
MELANIE, INC.	PO BOX 557, DEPOE BAY, OR 97341	LLC2763
MGF FISHERIES, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC3295
MICHEAL K. KING	PO BOX 238, MAGNOLIA SPRINGS, AL 36555	LLC3020
MISTY BLUE, INC.	NORTHERN LIGHTS HAVEN, YAKUTAT, AK 99689.	LLC1485
NEPTUNE, LLC	2615 4TH AVE, STE 700, SEATTLE, WA 98121	LLC2156
NEW ERA PARTNERSHIP	3901 LEARY AVE NW, STE 9, SEATTLE, WA 98107.	LLC3968
NEWMAN FISHERIES, INC.	PO BOX 165, KING COVE, AK 99612	LLC3922
NINILICHIK LTD. PARTNERSHIP	12000 INDUSTRY WA N3, ANCHORAGE, AK 99515.	LLC3931
NORDIC MARINE, INC.	200 W 34TH AVE, STE 981, ANCHORAGE, AK 99503.	LLC3274
NORDIC MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC2309
NORDIC STAR FISHERIES, INC.	4224 S DRIFTWOOD DR, SPOKANE, WA 99206	LLC2629
NORDIC VIKING, LLC	PO BOX 129, SISTERS, OR 97759	LLC3989
NORQUEST SEAFOODS, INC.	5245 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3331
NORQUEST SEAFOODS, INC.	5245 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3698
NORQUEST SEAFOODS, INC.	5245 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC3696
NORSEMAN FISHERIES, INC.	11524 3RD AVE NW, SEATTLE, WA 98199	LLC1243
NORTH AMERICAN, INC.	250 NW 39TH ST, STE 5, SEATTLE, WA 98107	LLC3087
NORTH PACIFIC, LLC	C/O FMS INC, 620 SIXTH ST S, KIRKLAND, WA 98033.	LLC3256
NORTHERN MARINER, LLC	5470 SHILSHOLE AVE NW #410, SEATTLE, WA 98107.	LLC3581
NORTHERN ORION, INC.	130 NICKERSON ST, STE 212, SEATTLE, WA 98109.	LLC3035
NORTHERN ORION, INC.	130 NICKERSON ST, STE 212, SEATTLE, WA 98109.	LLC5166
NORTHPOINT FISHERIES	PO BOX 714, KODIAK, AK 99615	LLC2288
NOTORIOUS PARTNERSHIP	1445 NW 56TH ST, SEATTLE, WA 98107–3726	LLC3613
NUKA ISLAND, INC.	PO BOX 2486, KODIAK, AK 99615	LLC3813
OBSESSION LIMITED PARTNERSHIP	12000 INDUSTRY WAY N3, ANCHORAGE, AK 99515.	LLC3934
OCEAN BALLAD, INC.	112 HARRISON ST, CENTRALIA, WA 98531	LLC3195
OCEAN BALLAD, INC.	112 HARRISON ST, CENTRALIA, WA 98531	LLC3914
OCEAN BALLAD, INC.	112 HARRISON ST, CENTRALIA, WA 98531	LLC3916
OCEAN CAPE, LLC	PO BOX 17701, SEATTLE, WA 98107	LLC3644
OCEAN FISHERIES, LLC	7216 INTERLAAKEN DR, LAKEWOOD, WA 98499	LLC3945
OCEAN OLYMPIC LLC	C/O FMS INC, 620 SIXTH ST S, KIRKLAND, WA 98033.	LLC3941
OCEAN STORM FISHERIES, INC.	2273 66TH AVE SE, MERCER ISLAND, WA 98040.	LLC3659
OCEAN VIKING LLC	7216 INTERLAAKEN DR SW, LAKEWOOD, WA 98499.	LLC1229
ODIAK MARITIME	PO BOX 135, CORDOVA, AK 99574	LLC3061
OLUF K. VEDOY	10825 159TH ST SE, SNOHOMISH, WA 98290	LLC1946
OSTROM FISHERIES, INC.	PO BOX 1957, PRIEST RIVER, ID 83856	LLC3646
PAC MARINER, LLC	5470 SHILSHOLE AVE NW, STE 410, SEATTLE, WA 98107.	LLC3583
PACIFIC DRAGGERS, INC.	PO BOX 352, NEWPORT, OR 97365	LLC3494
PACIFIC RIM FISHERIES, INC.	410 BELLEVUE WAY SE, STE 304, BELLEVUE, WA 98004.	LLC3230
PACIFIC STAR FISHERIES, LLC	620 6TH STREET SOUTH, KIRKLAND, WA 98033	LLC4857
PAR-PAC, INC.	3711 CARNEGIE DR SE, OLYMPIA, WA 98503	LLC2252
PAUL GRONHOLDT	PO BOX 288, SAND POINT, AK 99661	LLC3384
PAVLOF, INC.	4024 22ND AVE W, SEATTLE, WA 98199	LLC1740
PENINSULA SALMON, INC.	164 PELICAN WAY, FRIDAY HARBOR, WA 98250	LLC3401
POINT FIVE, INC	62975 NE TUMALT RD, CASCADE LOCKS, OR 97014.	LLC1937
POLAR SEA PARTNERSHIP	17010 12TH AVE NW, SHORELINE, WA 98177–3825.	LLC1826

QUALIFYING VOTERS—Continued

NAME	MAILING ADDRESS	INTERIM OR NON-INTERIM CRAB LICENSE NO.
PORT LYNCH, INC.	6920 ROOSEVELT WAY NE #M3, SEATTLE, WA 98115.	LLC5663
PROFS. FISHERMEN'S ASSOC., INC.	PO BOX 669, BELLINGHAM, WA 98227	LLC3106
PROVIDER, INC.	PO BOX 37, KODIAK, AK 99615	LLC2781
PROWLER, LLC	PO BOX 1364, PETERSBURG, AK 99833	LLC3682
Q & S ENTERPRISES, INC.	PO BOX 70591, SEATTLE, WA 98107	LLC1817
R.W. BARK CORP.	375 SKI HILL, LEAVENWORTH, WA 98826	LLC1994
RAGNVALD SVINO	16905 13TH AVE NW, SHORELINE, WA 98177	LLC1391
RAINIER INVESTMENTS, INC.	605 12TH AVE N, EDMONDS, WA 98020	LLC2170
RAINIER INVESTMENTS, INC.	605 12TH AVE N, EDMONDS, WA 98020	LLC3417
RAINIER INVESTMENTS, INC.	605 12TH AVE N, EDMONDS, WA 98020	LLC2172
RAYMOND L. BELLAMY	62084 SKYLINE DR, HOMER, AK 99603	LLC3338
RELIANCE, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC3333
RETRIEVER CO-OWNERS	PO BOX 5030, SEATTLE, WA 98105–0030	LLC3669
RICHARD L. SHELFORD	PO BOX 12946, MILL CREEK, WA 98082–2946	LLC3091
RICHARD NEWBY	2510 ASPEN DR, ANCHORAGE, AK 99517	LLC1966
ROBERT J. GUNDERSON	PO BOX 344, KODIAK, AK 99615	LLC1720
ROBERT NEHUS	PO BOX 1002, UNALASKA, AK 99685	LLC3010
ROMANZOF FISHING COMPANY LLC	4502 14TH AVE NW, SEATTLE, WA 98107	LLC1579
RONALD J. TENNISON	4248 UPPAL DR, BELLINGHAM, WA 98226	LLC3114
RONALD K. KECHTER	PO BOX 68, PORT ANGELES, WA 98362	LLC2195
RONALD PETERSON	101 NICKERSON ST, STE 340, SEATTLE, WA 98177.	LLC3967
RONALD R. BRILL	5470 SHISHOLE AVE NW #410, SEATTLE, WA 98107.	LLC3956
RONDYS, INC.	5349 229TH AVE SE, ISSAQUAH, WA 98029	LLC3898
RONDYS, INC.	5349 229TH AVE SE, ISSAQUAH, WA 98029	LLC2884
ROY RASMUSSEN	15825-2 VILLAGE GREEN DR, MILL CREEK, WA 98012.	LLC3960
ROYAL AMERICAN FISHERIES, LLC	511 W COMSTOCK ST, SEATTLE, WA 98119	LLC1754
ROYAL PACIFIC, LLC	9784 MARINE VIEW DR, MUKILTEO, WA 98275	LLC1731
ROYAL VIKING, INC.	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC2236
ROYAL VIKING, INC.	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC2625
ROYAL VIKING, INC.	5303 SHILSHOLE AVE NW, SEATTLE, WA 98107	LLC2601
RSD FISHERIES, LLC	PO BOX 12946, MILL CREEK, WA 98082	LLC1973
RSD FISHERIES, LLC	PO BOX 12946, MILL CREEK, WA 98082	LLC1975
RUFF & REDDY, INC.	PO BOX 129, SISTERS, OR 97759	LLC3982
SAGAKA FISHING, INC.	PO BOX 8101, KODIAK, AK 99615	LLC2078
SAN JUAN SEAFOODS, INC	PO BOX 220, BELLINGHAM, WA 98225	LLC3742
SAN JUAN SEAFOODS, INC	PO BOX 220, BELLINGHAM, WA 98225	LLC3750
SAN JUAN SEAFOODS, INC	PO BOX 220, BELLINGHAM, WA 98225	LLC3757
SANKO FISHERIES, LLC	3900 RAILWAY AVE, EVERETT, WA 98201	LLC3806
SCANDIES LTD PARTNERSHIP	2442 NW MARKET ST ınumsign;656, SEATTLE, WA 98107.	LLC3336
SEA FISHER LLC	1120 NW 51ST ST, SEATTLE, WA 98107	LLC3917
SEA ROVER, LLC	1136 VISTA PL, EDMONDS, WA 98020	LLC3723
SEA SPRAY, LLC	1900 W NICKERSON ST #213, SEATTLE, WA 98119.	LLC2289
SEA STORM LIMITED PARTNERSHIP	400 N 34TH ST, STE 306, SEATTLE, WA 98103	LLC1896
SEVENTH SON, INC.	15209 72ND AVE NE, KENMORE, WA 98028	LLC3930
SHELIKOF MARITIME, INC.	2629 NW 54TH, SEATTLE, WA 98107	LLC2120
SHISHALDIN, LLC	1445 NW 56TH ST, SEATTLE, WA 98107	LLC1734
SIBERIAN SEA PARTNERSHIP	3859 YAQUINA BAY RD, NEWPORT, OR 97365	LLC3197
SILENT LADY, INC.	PO BOX 17701, SEATTLE, WA 98107	LLC3326
SILVER SPRAY SEAFOODS, LLC	PO BOX 129, SISTERS, OR 97759	LLC3984
SITKIN ISLAND, INC.	130 NICKERSON ST, STE 212, SEATTLE, WA 98109.	LLC3033
SITKIN ISLAND, INC.	130 NICKERSON ST, STE 212, SEATTLE, WA 98109.	LLC5162
SNOW KING, INC.	1917 N BEAVER CK RD, SEAL ROCK, OR 97376	LLC3213
SPIRIT OF THE NORTH FISHERIES, INC.	355 NE GOLF COURSE DR, NEWPORT, OR 97365.	LLC1673
ST. GEORGE MARINE, INC.	6439 NE 188TH ST, KENMORE, WA 98028	LLC3379
SULTAN, LLC	2930 WESTLAKE AVE N #300, SEATTLE, WA 98109.	LLC3848
SUSITNA MARITIME, INC.	PO BOX 54, HOMER, AK 99603	LLC3457
TAMARACK VENTURES, LLC	17640 SE 295TH ST, KENT, WA 98042	LLC3690
TEMPEST FISHERIES II; LLC	2930 WESTLAKE AVE N #300, SEATTLE, WA 98109.	LLC4843

QUALIFYING VOTERS—Continued

NAME	MAILING ADDRESS	INTERIM OR NON-INTERIM CRAB LICENSE NO.
THOMAS G. ANGLIN	C/O KONA KAI PUGET SOUND ACCOUNTING, 101 NICKERSON, STE 340, SEATTLE, WA 98109.	LLC3996
THREE RIVERS, INC. OF ANACORTES	9119 DISTRICT LINE RD, BURLINGTON, WA 98233.	LLC3670
TIME BANDIT, LLC	PO BOX 3643, HOMER, AK 99603	LLC1625
TIMOTHY J. KENNEDY	C/O BLUE ALEUTIAN LLC, 2930 WESTLAKE AVE N. #300, SEATTLE, WA 98109.	LLC2818
TIMOTHY J. KENNEDY	C/O BLUE ALEUTIAN LLC, 2930 WESTLAKE AVE N. #300, SEATTLE, WA 98109.	LLC3330
TODD HINER	PO BOX 671, KODIAK, AK 99615	LLC3354
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2267
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC3788
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2538
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2515
TRIDENT SEAFOODS CORPORATION	ATTN: ALASKA SUPPORT, 5303 SHILSHOLE AVE NW, SEATTLE, WA 98107.	LLC2269
TYNES ENTERPRISES, INC.	F/V AMERICAN EAGLE AND OWNERS, 1212 NW CULBERTSON DR, SEATTLE, WA 98177.	LLC2544
VESTERAALEN L.L.C.	4225 23 AVE W #; 100, SEATTLE, WA 98119	LLC3530
VICTOR J. MULLEN	PO BOX 2713, KODIAK, AK 99615	LLC1792
VIEKODA BAY, LLC	PO BOX 3282, KODIAK, AK 99615	LLC3775
VIEKODA BAY, LLC	PO BOX 3282, KODIAK, AK 99615	LLC3777
WAHL FISHERIES, LLC	100 PORT DOCK RD, REEDSPORT, OR 97467	LLC3479
WAHL FISHERIES, LLC	100 PORT DOCK RD, REEDSPORT, OR 97467	LLC3557
WARDS COVE PACKING CO.	PO BOX 5030, SEATTLE, WA 98105–0030	LLC3003
WESTERN MARINER, LLC	5470 SHILSHOLE AVE NW 410, SEATTLE, WA 98107.	LLC2321
WILLIAM C. WILLIAMS	720 11TH ST, B1, BELLINGHAM, WA 98225	LLC3911
WILLIAM CHOQUETTE	629 L ST, STE 101, ANCHORAGE, AK 99501	LLC3711
WILLIAM R. RENFRO	PO BOX 627, CATHLAMET, WA 98612	LLC3296
WILLIAM T. GILBERT	PO BOX 5705, BELLINGHAM, WA 98225	LLC1906
WINDANCE FISHERIES, INC.	355 NE GOLF COURSE D, NEWPORT, OR 97365	LLC3191
WINDY BAY, INC.	C/O PUGET SOUND ACCOUNTING, 101 NICKERSON, STE 340, SEATTLE, WA 98109.	LLC2061
WIZARD FISHERIES, INC.	2442 NW MARKET ST, #438, SEATTLE, WA 98107.	LLC1481
ZOLOTOI PARTNERSHIP	PO BOX 1064, SITKA, AK 99835	LLC2920

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117

Dated: December 16, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–31485 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121503C]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on January 12–15, 2004.

ADDRESSES: These meetings will be held at the Omni Austin Hotel Downtown, 700 San Jacinto at 8th Street, Austin, TX; telephone: 512–476–3700.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

January 14, 2004

8:30 a.m.--Convene.

8:45 a.m. - 3:30 p.m.--Receive public testimony on the Cooperative Texas Shrimp Closure, Secretarial Reef Fish Amendment 1, and Draft Reef Fish amendment 22 (Red Snapper Rebuilding Plan).

3:30 p.m. - 5 p.m.--Receive the Reef Fish Management Committee report.

5 p.m. - 5:30 p.m.--(Closed Session) - Receive the report of the Joint Personnel/Administrative Policy Committee.

January 15, 2004

8:30 a.m. - 9 a.m.--Receive the Habitat Protection Committee report.

9 a.m. - 9:15 a.m.--Receive the Shrimp Management Committee report.

9:15 a.m. - 9:45 a.m.--Receive the Mackerel Management Committee report.

9:45 a.m. - 10 a.m.--Receive the Joint Reef Fish/Mackerel/Red Drum Management Committee report.

10 a.m. - 10:15 a.m.--Receive the Joint Reef Fish/Mackerel Management Committee Report.

10:15 a.m. - 10:30 a.m.--Receive the Red Drum Management Committee report.

10:30 a.m. - 10:45 a.m.--Receive the Joint Personnel/Administrative Policy Committee report.

10:45 a.m. - 11 a.m.--Receive the Law Enforcement Committee report.

11 a.m. - 11:15 a.m.--Receive the South Atlantic Fishery Management Council (SAFMC) Liaison Report.

11:15 a.m. - 11:30 a.m.--Receive a report on the Gulf Safety Committee.

11:30 a.m. - 11:45 a.m.--Receive a report on the Joint Council meeting.

11:45 a.m. - 12 noon--Receive Enforcement Reports.

12 noon - 12:15 p.m.--Receive the NMFS Regional Administrator's Report.

12:15 p.m. - 12:30 p.m.--Receive Director's Reports.

12:30 p.m. - 12:45 p.m.--Other Business

Committees

January 12, 2004

8:30 a.m. - 9:30 a.m.--Convene a joint meeting of the Personnel and Administrative Policy Committees to consider contracting a court reporter and to discuss personnel issues.

9:30 a.m. - 11:30 a.m.--Convene the Joint Reef Fish/Mackerel/Red Drum Management committees to review and approve the Aquaculture Amendment Scoping Document, select scoping hearing sites, and receive a presentation on a cage culture study.

1 p.m. - 5:30 p.m.--Convene the Reef Fish Management Committee to review the Vermilion Snapper Draft Amendment 23 that contains alternatives for arresting overfishing of that stock by commercial and recreational fishermen. The committee will also review and take final action on the Secretarial Reef Fish Amendment 1 that contains alternatives for arresting overfishing of red grouper by the commercial and recreational fishermen; as well as review and take final action on the Draft Reef Fish Amendment 22 that contains alternatives for a red snapper rebuilding plan. The species groupings for status determination criteria will also be discussed. The Committee will also review the Proposed Rule for Reef Fish Amendment 21 and address their intent on the definition of surface trolling. The Committee will address their intent on Reef Fish Amendment 21's definition of surface trolling. The Committee will develop recommendations for consideration by full Council on Wednesday afternoon.

January 13, 2004

8:30 a.m. - 9:30 a.m.--Convene the Shrimp Management Committee to review Draft Shrimp Amendment 13/EA that includes alternatives for status criteria and benchmarks as well as a revised standardized bycatch reporting methodology. The Committee will also review Texas Closure analyses.

9:30 a.m. - 10:30 a.m.--Convene the Red Drum Management Committee to hear the issue of shipping of stock across the EEZ and to discuss overfishing of the stock.

10:30 a.m. - 12 noon--Convene the Mackerel Management Committee to review the Options Paper for Amendment 15, discuss trip limit revisions, and select scoping meeting sites.

1:30 p.m. - 2:30 p.m.--Convene the Joint Reef Fish/Mackerel Committees will meet to review a scoping document for joint reef fish/mackerel limited access program and select sites for scoping hearings.

2:30 p.m. to 3 p.m.--Convene the Law Enforcement Committee to review the issue of criminal penalties under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)

3 p.m. to 5:30 p.m.--Convene the Habitat Protection Committee to review the comments/response section of the Environmental Impact Statement (EIS) for the Generic Essential Fish Habitat (EFH) Amendment; and to hear comments from the Texas Habitat Protection Advisory Panel meeting.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by January 5, 2004.

Dated: December 16, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00600 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121503B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The Shrimp AP meeting is scheduled to begin at 8:30 a.m. on Friday, January 9, 2004.

ADDRESSES: The meeting will be held at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone: (504) 469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Shrimp AP will receive reports from NMFS on the status and health of the shrimp stocks as well as a report on the biological and economic aspects of the 2003 Cooperative Shrimp Closure with the state of Texas. The Shrimp AP may make recommendations for a cooperative closure with Texas for 2004. The Shrimp AP will also review Draft Amendment 13 to the Shrimp Fishery Management Plan (FMP) addressing maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT) for shrimp stocks, as well as improved effort alternatives and standardized bycatch reporting methodologies. The Shrimp AP will also review an Options Paper for Amendment 14 that includes alternatives for vessel monitoring systems (VMS), additional bycatch reduction measures, and measures to reduce effort in order to achieve OY.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see* **ADDRESSES**) by December 29, 2003.

Dated: December 16, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00601 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121503A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Red Snapper Advisory Panel (AP) and the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) from January 6 through January 7, 2004.

DATES: The Council's Red Snapper AP and SSC will convene jointly at 2 p.m. on Tuesday, January 6, 2004, to receive a presentation on the vermilion snapper and make recommendations. The AP and SSC will hold separate meetings to discuss Draft Reef Fish Amendment 22 (a red snapper rebuilding plan) beginning at 8:30 a.m. on Wednesday, January 7, 200, and will conclude by 3 p.m.

ADDRESSES: The meetings will be held at the Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and SSC will meet jointly on Tuesday, January 6 2004 to receive a presentation on the vermilion snapper catch-per-unit-effort (CPUE) indices from the NOAA Fisheries Southeast Fisheries Science Center. Vermilion snapper were recently declared to be overfished by the NOAA Fisheries Regional Office, which triggers a requirement that the Council develop a rebuilding plan. However, the most recent vermilion snapper stock assessment was conducted in 2001 using data through 1999, and some fishermen feel that it may not be representative of the current status of the stock. The updated CPUE analyses, which uses data through 2002, will show if there has been any change in catch rates since 1999, but it is not a full stock assessment. Based on the results of the new CPUE analyses, the AP and SSC will each be asked to recommend whether the Council should request a new vermilion snapper stock assessment from NOAA Fisheries. The SSC will also be asked to evaluate the scientific validity of the new CPUE analyses. If a new stock assessment is requested, the earliest it could be done is 2005, and it would replace a scamp assessment that is currently scheduled for that year. Scamp, one of the most commonly caught grouper species after red grouper and gag, has never had a stock assessment done, and its status is unknown.

On Wednesday, January 7, 2004, the AP and SSC will convene separately to discuss Draft Reef Fish Amendment 22, a red snapper rebuilding plan. Although there is a red snapper rebuilding plan currently in place, that plan was developed prior to implementation of the Sustainable Fisheries Act of 1996 (SFA), and it is not in full compliance with provisions of the SFA. Draft Amendment 22 will create a new rebuilding plan that is in compliance by establishing status determination criteria (minimum stock size threshold, maximum fishing mortality rate, maximum sustainable yield, and optimum yield). Draft Amendment 22 will also contain alternatives to select a rebuilding strategy that will restore the red snapper stock within the time frame allowed under SFA (the recovery time in the absence of fishing mortality plus one generation time, equal to 32 years for red snapper). The amendment will also contain alternatives to implement or revise bycatch reporting methodologies in the commercial and recreational red snapper fisheries.

The recommendations of the AP and SSC will be presented to the Gulf Council at its January 12–15, 2004 meeting in Austin, TX. At that meeting, the Council will decide whether to request a vermilion snapper stock assessment in place of a scamp assessment in 2005, and will take final action on selection of proposed alternatives for Amendment 22.

Copies of the updated vermilion snapper CPUE analyses and Draft Reef Fish Amendment 22 can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844), or can be downloaded from the Council website (*http://www.gulfcouncil.org*).

Although other non-emergency issues not on the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to

Trish Kennedy at the Council (*see* **ADDRESSES**) by December 29, 2003.

Dated: December 16, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00602 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 17, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Group II is being increased for special swing from Category 369-S, decreasing the limit for Category 369-S to account for the special swing being applied to Group II.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68569, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 17, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on December 23, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Levels in Group I	
369–S[2]	740,745 kilograms.
Group II	
200, 201, 220, 224–227, 237, 239pt.[3], 300, 301, 331pt.[4], 332, 333, 352, 359pt.[5], 360–362, 603, 604, 611–620, 624–629, 631pt.[6], 633, 638, 639, 643–646, 652, 659pt.[7], 666pt.[8], 845, 846 and 852, as a group	191,947,246 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00608 Filed 12–19–03 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denying Entry to Textiles and Textile Products Allegedly Manufactured by a Certain Factory in El Salvador

December 16, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection to deny entry to shipments allegedly manufactured by a certain factory in El Salvador.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The U.S. Bureau of Customs and Border Protection has conducted on-site verification of textile and apparel production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies. (*See*

Federal Register notice 64 FR 41395, published on July 30, 1999). In order to secure compliance with U.S. law, including section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the Bureau of Customs and Border Protection to deny entry, for two years, to textile and textile products allegedly manufactured by Daewoo El Salvador, S.A. de C.V. The Bureau of Customs and Border Protection has informed CITA that this company was found to have been illegally transhipping, closed, or unable to produce records to verify production.

Should CITA determine that this decision should be amended, such amendment will be published in the **Federal Register**.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 16, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Bureau of Customs and Border Protection has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, the Bureau of Customs and Border Protection has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the Bureau of Customs and Border Protection to issue regulations regarding the denial of entry of shipments from such companies (see directive dated July 27, 1999 (64 FR 41395), published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the Commissioner of the Bureau of Customs and Border Protection, effective for goods exported on and after December 22, 2003 and extending through December 21, 2005, to deny entry to textiles and textile products allegedly manufactured by the factory, Daewoo El Salvador, S.A. de C.V. The Bureau of Customs and Border Protection has informed CITA that this company was found to have been illegally transshipping, closed, or unable to produce records to verify production.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00598 Filed 12–19–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Institute of Education Sciences; Overview Information; Small Business Innovation Research Program—Phase I Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.305S

Dates:

Applications Available: December 22, 2003.

Deadline for Transmittal of Applications: 8 p.m. Eastern time, February 19, 2004.

Eligible Applicants: Each organization submitting an application must qualify as a small business concern as defined by the Small Business Administration (SBA) at the time of the award. This definition is included in the application package.

Firms with strong research capabilities in educational technologies, science, or engineering in any of the priority areas listed in the application package are encouraged to participate. Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make a Small Business Innovation Research (SBIR) award until the SBA makes a determination.

Estimated Available Funds: Approximately $3,000,000 for this competition for Phase I awards from the Institute of Education Sciences (Institute). The National Institute on Disability and Rehabilitation Research will announce another Phase I competition later in the fiscal year.

Estimated Range of Awards: $75,000 to $100,000.

Estimated Average Size of Awards: Approximately $100,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 6 months.

Estimated Number of Awards: 30 to 35.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months for Phase I awards. Full Text of Announcement.

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to stimulate technological innovation, strengthen the role of small business in meeting Department of Education research or research and development (R/R&D) needs, and increase the commercial application of innovations derived from Department-supported research or research and development.

For FY 2004, applicants must present activities that focus on priorities listed in the Priorities section of this application notice.

Priorities:

For FY 2004, we have selected two priorities for the SBIR program. An application must be limited to one priority listed in this notice. Duplicate applications will be returned without review. When an application is relevant to more than one priority, the applicant must decide which priority is most relevant and submit it under that priority only. However, there is no limitation on the number of different applications that an applicant may submit under this competition, even to the same priority. A firm may submit separate applications on different priorities, or different applications on the same priority, but each application should respond to only one priority.

Priorities

We invite applications that meet one of the following priorities. Awards for each priority will be made for amounts up to $100,000.

Priority 1—Services

This priority supports research to develop effective business consulting services that can better serve the education community at both the local and State levels. The Institute's SBIR program invites proposals that seek to develop a plan or a business model for the provision of such services. More details about this priority can be found in the application package.

Priority 2—Products

This priority supports the development of empirically derived educational products in the areas of reading, mathematics, science or character/pro-social development at the pre-kindergarten through postsecondary levels, including products that support teachers and administrators as well as products that are used directly by students. More details about this priority can be found in the application package.

Successful applicants will be expected to collect some empirical evidence as to the effectiveness of the service or product they are proposing, or, at a minimum, to incorporate a plan for measuring its efficacy and usefulness.

Program Authority: The Small Business Reauthorization Act of 2000, Pub. L. 106–554 (15 U.S.C. 631 and 638) and the Education Sciences Reform Act of 2002, Title I of Pub. L. 107–279 (20 U.S.C. 9501 *et seq.*).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 81, 82, 85, 86, 97, 98 and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.211, 75.217, 75.219, 75.220, and 75.230.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: Approximately $3,000,000 for Phase I awards for this competition from the Institute. The National Institute on Disability and Rehabilitation Research will announce another Phase I competition later in the fiscal year.

Estimated Range of Awards: $75,000 to $100,000.

Estimated Average Size of Awards: Approximately $100,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 6 months.

Estimated Number of Awards: 30 to 35.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months for Phase I awards.

III. Eligibility Information

1. *Eligible Applicants:* Each organization submitting an application must qualify as a small business concern as defined by the SBA at the time of the award. This definition is included in the application package.

Firms with strong research capabilities in educational technologies, science, or engineering in any of the priority areas listed in the application package are encouraged to participate. Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* The application package is available at: *http://www.ed.gov/programs/edresearch/applicant.html.*

You may address questions regarding this application package to: Joe Teresa, U.S. Department of Education, Institute of Education Sciences, 555 New Jersey Avenue, NW., room 608f, Washington, DC 20208. Telephone: (202) 219–2046 or by e-mail: *joe.teresa@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with information about the forms you must submit, are in the application package for this program. The application package is available at: *http://www.ed.gov/programs/edresearch/applicant.html.*

3. *Submission Dates and Times:*

Applications Available: December 22, 2003.

Deadline for Transmittal of Applications: 8 p.m. Eastern time, February 19, 2004. The date and time for the transmittal of electronic applications are in the application package for this program.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications for grants under the Institute's FY 2004 SBIR Phase I competition be submitted electronically to the following Web site: *http://ies.constellagroup.com.*

Information on the software to be used will also be available at this site.

V. Application Review Information

Selection Criteria: The evaluation criteria for this competition are: Significance—25 points; Quality of the Project Design—50 points; Quality of Project Personnel—15 points; and Adequacy of Resources—10 points.

More information about the evaluation criteria and about other application requirements can be found in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as required by the Institute. The report should identify the purpose of the research, and include a brief description of the research carried out, the research findings or results, and the potential applications of the research. You must submit this project summary without restriction on publication. The

project summary may be published by the U.S. Department of Education.

VII. Agency Contact

For Further Information Contact: Joe Teresa, U.S. Department of Education, Institute of Education Sciences, 555 New Jersey Avenue, NW., room 608f, Washington, DC 20208. Telephone: (202) 219–2046 or by e-mail: *joe.teresa@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 17, 2003.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–31446 Filed 12–19–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on April 11, 2003, an arbitration panel rendered a decision in the matter of *Joseph Urbanek* v. *South Carolina Commission for the Blind (Docket No. R-S/01-7).* This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Joseph Urbanek.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged failure of the South Carolina Commission for the Blind, the State licensing agency (SLA), to properly administer the vendor selection process regarding a military mess hall dining facility at Fort Jackson, South Carolina, in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: Complainant, Joseph Urbanek, is a licensed Randolph-Sheppard vendor with the South Carolina Commission for the Blind. In June 2000, the SLA posted a bid notice with a closing date of June 9 for the dining facility at Fort Jackson, South Carolina.

Complainant and four other vendors applied for the Fort Jackson opening. The SLA's selection committee interviewed all candidates, including Mr. Urbanek, on June 26, 2000. After the interviews, one of the other vendors was awarded the Fort Jackson dining facility.

Complainant alleged that the SLA misapplied its selection criteria by refusing to select him to receive the Fort Jackson dining facility and instead awarded the location to another experienced blind vendor in violation of State rules and regulations. Complainant also alleged that the SLA was biased against him in pre-selecting the vendor who was awarded the Fort Jackson facility resulting in a denial of his right to due process.

The complainant requested a State fair hearing, which was held on November 27, 2000. On February 5, 2001, the hearing officer affirmed the SLA's denial of complainant's bid for the Fort Jackson dining facility.

Arbitration Panel Decision

The issue heard by the panel was whether the South Carolina Commission for the Blind violated the Act, 20 U.S.C. 107 *et seq.*, the implementing regulations in 34 CFR part 395, and the State regulations by allegedly improperly denying complainant's bid on the military mess hall dining facility at Fort Jackson, South Carolina.

After reviewing all of the records and hearing testimony of witnesses, the panel ruled that the SLA's selection committee was not biased against the complainant's bid for the Fort Jackson dining facility.

Specifically, the complainant alleged that the SLA selection committee was biased against him by adding to the five-factor selection criteria to include information on each applicant's creditworthiness, financial status, prior experience outside the blind vending program, and personal references. Also, the complainant objected to Mr. Johnson, the successful applicant, serving on a study committee that considered and recommended changes in the selection criteria for the Fort Jackson dining facility.

The panel concluded that, based on the evidence and testimony presented, the additional information requested by the study committee did not have the effect of favoring either applicant. Furthermore, the panel determined that Mr. Johnson's decision to serve on the study committee at the same time he was submitting a bid for the Fort Jackson dining facility did not advance or hinder Mr. Urbanek's bid for the same facility. In addition, the panel found that the SLA had a legitimate basis to review and improve the selection criteria given that the Fort Jackson facility was an important breakthrough for the SLA.

Finally, the panel determined that the selection committee had justification for the final ratings for the bidders. According to the panel only three of the rating factors involved judgment. All five members rated the complainant lower overall than Mr. Johnson.

The panel found that there was nothing in the unanimous judgment of the selection committee in selecting the blind vendor that required a remedy. Both bidders were qualified, but the committee found Mr. Johnson to be more qualified. According to the panel, the committee's selection of Mr. Johnson was a matter committed to its sound discretion. On this basis, the panel denied plaintiff's claim.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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Dated: December 16, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–31395 Filed 12–19–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Orders Granting, Amending, and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2003, it issued Orders granting, amending, and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 20, 2003.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting Import/Export Authorizations

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE docket No.	Import volume	Export volume	Comments
1854–A	10–7–03	Total Gas & Power North America, Inc. (Formerly TotalFinaElf Gas & Power North America, Inc.) 03–07–NG.			Name Change.
1899	10–7–03	Pacific Gas and Electric Company; 03–52–NG.	600 Bcf		Import natural gas from Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1900	10–7–03	Northeast Gas Markets LLC; 03–55–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1901	10–7–03	Avista Energy, Inc.; 03–54–NG	269 Bcf		Import natural gas from Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1902	10–8–03	MASSPOWER; 03–56–NG	20 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on October 22, 2003, and extending through October 21, 2005.
1903	10–8–03	FUSI LLC; 03–59–NG	75 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on October 8, 2003, and extending through October 7, 2005.
1828–A	10–8–03	Fortuna (U.S.) Inc. 02–80–NG			Vacate blanket import and export authority.
1904	10–9–03	Energy Trust Marketing Ltd.; 03–58–NG.	3 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on October 1, 2003, and extending through September 30, 2005.
1905	10–9–03	Energetix, Inc.; 03–61–NG	15 Bcf		Import natural gas from Canada, beginning on October 1, 2003, and extending through September 30, 2005.
1906	10–9–03	Reef Ventures, L.P.; 03–62–NG.	400 Bcf		Import and export a combined total of natural gas from and to Mexico, beginning on November 1, 2003, and extending through October 31, 2005.
1907	10–23–03	Wisconsin Public Service Corporation; 03–57–NG.	36.5 Bcf		Import natural gas from Canada, beginning on October 1, 2003, and extending through September 30, 2005.
1908	10–23–03	Middleton Energy Management Ltd.; 03–63–NG.	100 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2003, and extending through October 31, 2005.

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE docket No.	Import volume	Export volume	Comments
1909	10–27–03	American Crystal Sugar Company; 03–64–NG.	10.4 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1910	10–27–03	Dynegy Marketing and Trade; 03–65–NG.	600 Bcf	330 Bcf	Import and export natural gas from and to Canada and Mexico, beginning on October 31, 2003, and extending through October 30, 2005.
1911	10–27–03	Enbridge Gas Services (U.S.) Inc.; 03–66–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1912	10–27–03	Omimex Canada, Ltd.; 03–67–NG.	15 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on December 1, 2003, and extending through November 30, 2005.
1913	10–27–03	Yankee Gas Services Company; 03–68–NG.	3.5 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1914	10–27–03	Ontario Energy Savings Corp.; 03–70–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1915	10–31–03	Pittsfield Generating Company L.P.; 03–73–NG.	25.5 Bcf	25.5 Bcf	Import and export natural gas from and to Canada, beginning on October 30, 2003, and extending through October 29, 2005.
1916	10–31–03	Dominion Energy Clearinghouse Canada Partnership; 03–72–NG.	20 Bcf		Import natural gas from Canada, beginning on November 1, 2003, and extending through October 31, 2005.

[FR Doc. 03–31453 Filed 12–19–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Transmission Policy-Level Environmental Impact Statement

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: BPA proposes to adopt a comprehensive policy to guide its transmission business activities. This transmission policy-level Environmental Impact Statement (EIS) will address the planning, construction, operation, and marketing of BPA's Transmission Business Line. BPA is taking this opportunity to further enhance and inform its decisionmaking by providing a comprehensive and cumulative analysis of the potential impacts that can result from its transmission-related policy decisions.

BPA owns and operates the Federal Columbia River Transmission System (FCRTS) and is the leading provider of high-voltage electric transmission in the Pacific Northwest. In addition to this regional transmission network, BPA operates large inter-regional transmission lines that connect to Canada, California, the Southwest, and eastern Montana. New challenges to transmission activities continue to emerge, contributing to the difficulty of solving existing policy issues. To address these challenges, and in support of BPA's transmission business decisions, the EIS will examine a broad and comprehensive range of policy alternatives.

DATES: Written comments are due to the BPA Communications address below no later than March 31, 2004. Comments may also be made at EIS scoping meetings to be held in January 2004, at the addresses below. Public EIS scoping meetings will be held January 13, 2004, in Portland, Oregon; January 14, 2004, in Seattle, Washington; and January 15, 2004, in Spokane, Washington. Details are yet to be determined on other meetings that may be held in Idaho and Montana. Information about all public meetings will be published on an Internet site dedicated to this transmission policy EIS, at *http://www2.transmission.bpa.gov/PlanProj/Policy_EIS/*.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS, and requests to be placed on the project mailing list, to Communications, Bonneville Power Administration—DM–7, Attn: Transmission Policy EIS, P.O. Box 14428, Portland, Oregon, 97293–4428. You may also call BPA's toll-free comment line at 1–800–622–4519, naming this project, to record your comments. Comments may also be sent to the BPA Internet address at *comment@bpa.gov* or through the above-mentioned Internet site.

On Tuesday, January 13, 2004, a formal scoping meeting will be held from 4 p.m. to 7 p.m. in Room 120C at the Oregon State Office Building, 800 NE Oregon Street, Portland. On Wednesday, January 14, 2004, a formal scoping meeting will be held from 4 p.m. to 7 p.m. at the Comfort Suites Downtown/Seattle Center, at 601 Roy Street, Seattle, Washington. On Thursday, January 15, 2004, a formal scoping meeting will be held from 4 p.m. to 7 p.m. at the Quality Inn Oakwood, 7919 N. Division Street, Spokane, Washington. At these meetings, information will be provided about the objectives of the EIS. BPA's EIS team members will also be available to discuss potential issues, the process, and timeline for completing the document. Written and oral comments may also be submitted.

FOR FURTHER INFORMATION, CONTACT: Mike Mayer or Rick Yarde, NEPA project managers, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; e-mail addresses *msmayer@bpa.gov* or *rryarde@bpa.gov*.

SUPPLEMENTARY INFORMATION: BPA owns and operates approximately three-quarters of the high-voltage electric grid in the Pacific Northwest. These 15,000 miles of transmission lines carry energy from dams and other power-generating facilities to public and private utility customers and direct-service industries. BPA's transmission system also includes transmission lines that connect to Canada, California, the Southwest, and eastern Montana.

BPA's transmission business consists of more than just the construction, operation, and maintenance of transmission lines; it includes all of the activities necessary to manage a regional system to deliver electricity, such as marketing of capacity and setting rates to recover costs in accordance with sound business principles. This requires participation with regional and national stakeholders in discussions regarding reliability, environmental concerns, congestion management, conservation measures, industry restructuring, and national standards, among other issues. This policy-level EIS will further enhance BPA's understanding of the impacts that transmission-related activities have on the human environment, and will help further inform the public of these impacts.

Several Federal statutes guide BPA's transmission business line. The Bonneville Project Act § 2(b) states that "* * * the administrator is authorized and directed to provide, construct, operate, maintain, and improve such electric transmission lines and substations, 3 and facilities and structures * * * as he finds necessary, desirable, or appropriate. * * *." In addition, the Federal Columbia River Transmission System Act, §§ 4(a)–(d) directs the administrator to operate and maintain the system for stability and reliability, among other objectives. The Pacific Northwest Electric Power Planning and Conservation Act, § 2(2) requires the administrator to assure an adequate, efficient, economical, and reliable power supply for the Northwest.

In addition to these statutory obligations, BPA's transmission business is operated separately from its power business, because BPA voluntarily complies with the open access policies of the Federal Energy Regulatory Commission (FERC). Although BPA is not subject to FERC's jurisdiction concerning these policies, BPA has adopted and currently implements an Open Access Transmission Tariff for the FCRTS that is generally consistent with FERC's *pro forma* open access tariff. This course of action demonstrates BPA's commitment to non-discriminatory access to its transmission system and ensures that BPA will receive non-discriminatory access to the transmission systems of utilities that are subject to FERC's jurisdiction.

FERC has fostered several industry-restructuring initiatives, in which BPA has participated. To promote competitive wholesale power markets through standards of practice, FERC has proposed a Standard Market Design. Key features of this Market Design include the formation of regional transmission organizations (RTOs) and sound wholesale market rules. Over the years, BPA has been part of regional discussions regarding the potential creation of an RTO in the Pacific Northwest, to discuss BPA's possible role in an RTO and ensure that its formation provides coordinated benefits to BPA's customers and the Northwest.

As part of addressing its many transmission policy issues, BPA is also involved in several agency and regional processes. For example, in early 2003, BPA initiated a roundtable for discussion of "non-wire" solutions to transmission capacity issues. Round table meetings considered transmission line alternatives such as energy efficiency programs, demand reduction initiatives, pricing strategies, and distributed generation. The agency has also been meeting with customers regarding available transfer capability (ATC). These discussions described the methodology for determining ATC, and the effects the methodology would have on contracting and scheduling.

BPA will use the previously mentioned processes, among others related to transmission issues, to help shape the development of this policy-level EIS. BPA expects that this EIS will enhance the transmission issues discussed in BPA's 1995 Business Plan EIS (DOE/EIS–0183). The Business Plan EIS included an evaluation of the environmental impacts potentially resulting from the full range of the agency's business policies, including its power, transmission, and fish and wildlife activities. This transmission EIS will provide a policy-level analysis that is more focused on transmission issues, similar to the way BPA's recently completed Fish and Wildlife Implementation Plan EIS provides a policy-level analysis that is more focused on the agency's administration of its fish and wildlife responsibilities.

This EIS is being prepared to consider and assess various potential policy directions for the planning, construction, operation, and marketing of BPA's transmission activities. This document will allow BPA's decisionmakers and the public to be better informed about the potential cumulative impacts that can be expected from BPA's transmission-related policy decisions. This EIS is intended to support and facilitate a number of decisions regarding BPA's transmission activities.

This transmission EIS will identify a broad range of alternative policy directions structured around key transmission policy considerations such as reliability, cost, contractual obligations, regulatory requirements, and "non-wire" solutions. The EIS will also provide an assessment of potential impacts on the human environment associated with each of the alternatives. During this scoping period, the public is invited to provide comments and suggestions on potential alternatives to be included in the EIS. BPA is in the process of defining these alternatives, and is interested in receiving public input before fully defining the range of alternatives to be considered in the EIS. The public also is invited to comment on potential key issues and environmental impacts to be considered in the EIS.

Issued in Portland, Oregon, on December 15, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–31452 Filed 12–19–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–228–000, *et al.*]

Conemaugh Power LLC, *et al.*; Electric Rate and Corporate Filings

December 12, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Conemaugh Power LLC, Constellation Power Source Generation, Inc., PPL Montour, LLC, PSEG Fossil LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC and UGI Development Company

[Docket Nos. EG01–228–000, EG00–179–000, EG00–44–000, EG00–3–000, EG00–24–000, EG00–24–000 and EG99–241–000]

Take notice that on December 3, 2003, Conemaugh Power LLC, Constellation Power Source Generation, Inc., PPL Montour, LLC, PSEG Fossil LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC and UGI Development Company (Conemaugh EWG Owners) tendered for filing a Notification of Change in Facts Not Affecting Exempt Wholesale Generator Status.

The Conemaugh EWG Owners have served copies of the foregoing on the Pennsylvania Public Utility Commission and the Securities and Exchange Commission.

Comment Date: December 24, 2003.

2. NRG Power Marketing Inc.; Arthur Kill Power LLC; Astoria Gas Turbine Power LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; Conemaugh Power LLC; Connecticut Jet Power LLC; Devon Power LLC; Dunkirk Power LLC; Huntley Power LLC; Indian River Power LLC; Keystone Power LLC; Louisiana Generating LLC; LSP Energy Limited Partnership; LSP-Kendall Energy; LLC; LSP-Nelson Energy LLC; LSP-Pike Energy LLC; Meriden Gas Turbines LLC; Middletown Power LLC; Montville Power LLC; NEO California Power LLC; NEO Chester-Gen LLC; NEO Freehold-Gen LLC; NM Colton Genco LLC; NM Mid Valley Genco LLC; NM Milliken Genco LLC; Norwalk Power LLC; NRG Ashtabula Generating LLC; NRG Audrain Generating LLC; NRG Energy Center Dover LLC; NRG Ilion LP; NRG Lake Shore Generating LLC; NRG Marketing Services LLC; NRG McClain LLC; NRG New Jersey Energy Sales LLC; NRG Northern Ohio Generating LLC; NRG Rockford LLC; NRG Rockford II LLC; NRG Sterlington Power LLC; Oswego Harbor Power LLC; Somerset Power LLC; and Vienna Power LLC

[Docket Nos. ER97–4281–013; ER99–2161–004; ER99–3000–002; ER02–1572–001; ER02–1571–001; ER00–2810–002; ER99–4359–001; ER99–4358–001; ER99–2168–004; ER99–2162–004; ER00–2807–002; ER00–2809–002; ER00–1259–002; ER98–2259–003; ER99–2602–003; ER00–2448–002; ER02–538–001; ER02–566–001; ER99–4355–001; ER99–4356–001; ER01–1558–001; ER00–3160–002; ER03–320–004; ER03–321–004; ER03–322–004; ER99–4357–001; ER02–1055–001; ER01–2969–002; ER00–2313–002; ER02–1395–001; ER02–1056–001; ER03–955–003; ER02–68–002; ER02–2032–001; ER02–1054–001; ER02–1396–001; ER02–1412–001; ER00–3718–002; ER99–3637–002; ER99–1712–004; and ER00–2808–002]

Take notice that on December 8, 2003, NRG Power Marketing Inc. and the above-captioned affiliates tendered for filing an updated market power study in compliance with the Commission's orders granting each entity market-based rate authorization.

Comment Date: December 29, 2003.

3. American Transmission Company LLC

[Docket No. ER03–1211–002]

Take notice that on December 10, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a revised Generation-Transmission Interconnection Agreement between ATCLLC and Fox Energy Company LLC (Second Revised Service Agreement No. 233) consisting of amendments to Exhibit 11 and otherwise remaining as originally filed and accepted by the Commission by Letter Order dated March 20, 2002, subject to a previous amendment accepted by the Commission on May 29, 2003. ATCLLC requests retention of the original effective date of January 15, 2002. ATCLLC states that this is a refiling of the same revisions contained in ATCLLC's August 14, 2003 filing in a format complying with the Commission's conditional acceptance in its September 23, 2003 Letter Order and deleting certain extraneous documents.

Comment Date: December 31, 2003.

4. DC Tie, Inc.

[Docket No. ER04–105–001]

Take notice that on December 9, 2003, DC Tie, Inc. submitted for filing a Notice of Cancellation of its market-based rate authority under Docket No. ER91–435–000. DC Tie, Inc. is requesting an effective date of October 28, 2003.

Comment Date: December 30, 2003.

5. New York Independent System Operator, Inc.

[Docket No. ER04–230–000]

Take notice that on November 26, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing revisions to the ISO Market Administration and Control Area Services Tariff (the Services Tariff) and its Open Access Transmission Tariff proposing a number of tariff revisions associated with the implementation of new Real-Time Scheduling software and related market improvements. On December 1, 2003, NYISO submitted revision to its Market Administration and Control Area Services Tariff and Open Access Transmission Tariff to update their table of contents which the Commission noticed in Docket No. ER04–230–001on December 5, 2003.

The NYISO states it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, on the New York Public Service Commission, and on the electric utility regulatory agencies of New Jersey and Pennsylvania, and in addition, the complete filing has been posted on the NYISO's Web site at *www.nyiso.com* and will make a paper copy available to any interested party that requests one.

Comment Date: December 22, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER04–261–001]

Take notice that on December 9, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a revised Interconnection Service Agreement (ISA) among PJM, American Project Development Corp/American Hydro Power Company/American Hydro Power Partners, L.P., and Pennsylvania Electric Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a November 4, 2003 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements, the state regulatory commissions within the PJM region, and the official service list compiled by the Secretary in this proceeding.

Comment Date: December 30, 2003.

7. DeSoto County Generating Co., LLC, Carolina Power & Light Company, Progress Ventures, Inc., Effingham County Power, LLC, MPC Generating, LLC, Rowan County Power, LLC, Walton County Power, LLC, and Washington County Power, LLC

[Docket No. ER04–269–000]

Take notice that, on December 8, 2003, Progress Energy, Inc. (Progress Energy), on behalf of the Progress Energy subsidiaries listed in the above caption (Progress Energy Subsidiaries), submitted amendments to the market-based rate tariffs of the Progress Energy Subsidiaries providing that they will not engage in market-based sales within Peninsular Florida under those tariffs without making a separate filing pursuant to Section 205 of the Federal Power Act.

Progress Energy states that copies of the filing were served on the official service lists in Docket Nos. ER03–1383–000 and ER03–1389–000, each entity operating a control area in Peninsular Florida, and the Florida Public Service Commission.

Comment Date: December 29, 2003.

8. Virginia Electric and Power Company

[Docket No. ER04–270–000]

Take notice that on December 9, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to North Carolina Electric Membership Corporation, designated as Service Agreement Number 376, under Dominion Virginia Power's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers dated June 7, 2000.

Dominion Virginia Power respectfully requests an effective date of January 1, 2004, as requested by the Customer.

Comment Date: December 30, 2003.

9. Virginia Electric and Power Company

[Docket No. ER04–271–00]

Take notice that on December 9, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a Service Agreement for Network Integration Transmission Service and Network Operating Agreement by Dominion Virginia Power to Washington Gas Energy Services, Inc., designated as Service Agreement Number 377, under Dominion Virginia Power's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers dated June 7, 2000.

Dominion Virginia Power respectfully requests a waiver of the Commission's regulations to permit an effective date of November 9, 2003, as requested by the customer.

Comment Date: December 30, 2003.

10. American Electric Power Service Corporation

[Docket No. ER04–273–000]

Take notice that on December 9, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulation, 18 CFR Section 35.15, a Notice of Termination of an executed Interconnection and Operation Agreement between Ohio Power Company and Biomass Energy, LLC., designated as Service Agreement No. 514 under AEP Companies' Open Access Transmission Service Tariff (OATT). AEP requests an effective date of December 8, 2003.

AEPSC states that a copy of the filing was served upon Biomass Energy, LLC and the Public Utilities Commission of Ohio.

Comment Date: December 30, 2003.

11. PacifiCorp

[Docket No. ER04–274–000]

Take notice that on December 10, 2003, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Notice of Cancellation of PacifiCorp's Rate Schedule No. 423 with Springfield Utility Board. The Notice of Cancellation is effective November 30, 2003.

PacifiCorp states that copies of this filing were supplied to Springfield Utility Board; the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: December 31, 2003.

12. Twin Cities Power Generation

[Docket No. ER04–275–000]

Take notice that on December 10, 2003, Twin Cities Power Generation, (Twin Cities) submitted for filing a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority, Rate Schedule FERC No. 1.

Comment Date: December 31, 2003.

13. American Electric Power Service Corporation

[Docket No. ER04–276–000]

Take notice that on December 10, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing First Amendment to an Amended Interconnection and Operation Agreement between Ohio Power Company and Lima Energy Company. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) and designated as First Revised Service Agreement No. 463, effective date July 13, 2002, to the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6. AEP requests an effective date of February 9, 2004.

AEPSC states a copy of the filing was served upon Lima Energy Company and the Public Utilities Commission of Ohio.

Comment Date: December 31, 2003.

14. Alcoa Power Generating, Inc.

[Docket No. ER04–277–000]

Take notice that on December 10, 2003, Alcoa Power Generating, Inc. (APGI) tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Notice of Termination of APGI's Rate Schedule No. 11 with PacifiCorp. APGI requests waiver of the Commission's prior notice requirements so that the termination may be effective June 30, 2003.

APGI states that copies of this filing were supplied to PacifiCorp, Public Utility District No. 1 of Chelan County; the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: December 31, 2003.

15. Milford Power Limited Partnership

[Docket No. ER04–278–000]

Take notice that on December 10, 2003, Milford Power Limited Partnership (Milford) filed with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act an Application for Order Accepting Initial Market-Based Rate Schedule and Granting Certain Waivers and Blanket Approvals, which would allow Milford to engage in the sale of electric energy, capacity and ancillary services at market-based rates. Milford states that it is engaged in the business of owning and operating a generation facility located in Milford, New Jersey, with a nameplate capacity of 30.5 MW. Milford seeks certain waivers and blanket approvals under the Commission's regulations. Milford also seeks expedited review and a waiver of the 60-day pre-filing requirement under 18 CFR 35.3 (2003).

Comment Date: December 31, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The

Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.

[FR Doc. E3–00599 Filed 12–19–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7340–3]

National Pollution Prevention and Toxics Advisory Committee; Notice of Public Meeting Change of Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (Public Law 92–463), EPA gives notice of a change of date to the January meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the NPPTAC is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

DATES: The meeting will be held on January 7, 2004, from 10 a.m. to 5:30 p.m. only. The NPPTAC will not meet January 8, 2004, as announced on December 3, 2003, in the **Federal Register**.

ADDRESSES: The meeting will be held at the Four Points by Sheraton Hotel, 1201 K Street, NW., Washington, DC.

For address information concerning registration, the submission of written comments, and requests to present oral comments, refer to the December 3, 2003 **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Mary Hanley, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individuals, groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0001. The official public docket consists of the documents specifically related to the NPPTAC, any public comments received, and other information related to the NPPTAC. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

List of Subjects

Environmental protection, NPPTAC, Pollution prevention, Toxics, Toxic chemicals, Chemical health and safety.

Dated: December 17, 2003.

Charles M. Auer,
Director, Office of Pollution, Prevention, and Toxics.

[FR Doc. 03–31571 Filed 12–18–03; 1:46 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Lagoon Drive Chemical Removal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comments.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent ("AOC," Region 9, Docket No. 2004–0001) pursuant to Section 122(h) of CERCLA concerning the Lagoon Drive Chemicals Removal Site (the "Site"), located in Chula Vista, California. The respondent to the AOC is Gary Rasmussen ("Rasmussen"). The AOC provides Rasmussen with a covenant not to sue and contribution protection for the removal action at the Site. To date, EPA has incurred approximately $49,000.00 in response costs related to the Site. Rasmussen is reimbursing $5,000.00 of the incurred response costs to EPA, consistent with EPA's determination of Rasmussen's ability to pay. For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed AOC. The Agency's response to any comments will be available for public inspection at EPA's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before January 21, 2004.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Environmental Protection Specialist, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the Lagoon Drive Chemicals Superfund Removal Site, Chula Vista, California, and USEPA Docket No. 2004–0001

FOR FURTHER INFORMATION CONTACT: J. Andrew Helmlinger, Office of Regional Counsel, telephone (415) 972–3904, USEPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Dated: December 9, 2003.

Daniel A. Meer,

Chief Response, Planning & Assessment Branch, Superfund Division (SFD–9).

[FR Doc. 03–31472 Filed 12–19–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–3907]

First Meeting of the Advisory Committee for the 2007 World Radiocommunication Conference (WRC–07 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the initial meeting of the WRC–07 Advisory Committee will be held on January 30, 2004, at the Federal Communications Commission. The purpose of the meeting is to begin preparations for the 2007 World Radiocommunication Conference.

DATES: January 30, 2004; 10 a.m.–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: As it initiates preparations for the next World Radiocommunication Conference that has been preliminarily scheduled for the year 2007 (WRC–07), the Federal Communications Commission (FCC) has amended the charter of its Advisory Committee for the 2003 Radiocommunication Conference. The Advisory Committee has been renamed the Advisory Committee for the 2007 Radiocommunication Conference (or simply, WRC–07 Advisory Committee), and its scope of activities have been amended to address issues contained in the agenda for WRC–07. The Federal Communications Commission (FCC) established the WRC–07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC–07).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the first meeting of the WRC–07 Advisory Committee. The WRC–07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the first meeting is as follows:

Agenda

First Meeting of the WRC–07 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

January 30, 2004; 10 a.m.–12 noon

1. Opening Remarks
2. Approval of Agenda
3. Advisory Committee Structure
4. Report on Recent WRC–07 Preparatory Meetings
5. WRC–07 Preparatory Process Timeline
6. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 03–31388 Filed 12–19–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974, as Amended; Addition of a New System of Records

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed addition of a new system of records.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing public notice of its intent to add a new category of records to its Privacy Act system of records. This action is necessary to meet the requirement of the Privacy Act of 1974, as amended, for the publication in the **Federal Register** of notices identifying the various systems of records maintained by the FDIC. The new system of records is named "Beneficial Ownership Filings (Securities Exchange Act)."

DATES: Comments on the addition of this new system of records, including comments concerning the proposed routine uses included in this notice, must be received by the FDIC on or before January 21, 2004. The amendments, revisions and consolidations that are the subject of this notice will become effective 45 days following publication in the **Federal Register**, unless a superseding notice to the contrary is published before that date.

ADDRESSES: You may submit comments by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on this Web site.
- Email: *comments@fdic.gov.* Include "Beneficial Ownership Filings (Securities Exchange Act)" in the subject line.
- Mail: Fredrick L. Fisch, Supervisory Counsel, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.

Instructions: All submissions should refer to "Beneficial Ownership Filings (Securities Exchange Act)". Comments may be posted without change to the FDIC internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Comments may also be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street NW., Washington, DC 20434, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Fredrick L. Fisch, Supervisory Counsel, FOIA/Privacy Act Group, FDIC, 550 17th Street NW., Washington, DC 20429, (202) 736–0526.

SUPPLEMENTARY INFORMATION: Section 16 of the Securities Exchange Act of 1934 ("Exchange Act") requires that insiders of FDIC-insured depository institutions with a class of securities registered under section 12 of the Exchange Act file reports regarding their beneficial ownership of securities. In general, under section 16, an "insider" is a director, officer or beneficial owner of more than 10% of an issuer's equity securities. Under section 12(i) of the Exchange Act, (15 U.S.C. 78l), the FDIC and the other Federal banking agencies are authorized to enforce all provisions of section 16 of the Exchange Act that are applicable to securities issued by FDIC-insured depository institutions. Historically, these reports have been filed on paper. Pursuant to section 403 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), which amended section 16 of the Exchange Act, the FDIC has established an electronic filing system on its public Internet website to receive beneficial ownership filings from filers and to display them to the public. The FDIC's public Internet website permits the electronic search and retrieval of these reports. The search can be by date, or by name or location of the related financial institution. The FDIC intends to upgrade the search capability in the near future to allow for a search by name of a reporting person. In addition to requiring the electronic filing and display of these reports, section 403 of Sarbanes-Oxley accelerated the time for making certain beneficial ownership filings, and establishes the time period in which they must be made accessible to the public.

During a transitional period, beneficial ownership reports will continue to be filed in paper form. This provision for paper filing will be phased out, except for limited "hardship" exceptions. Except where indicated, this notice describes the system as it will exist when paper filing, except for "hardship" paper filing, is eliminated. There are three types of electronically filed forms accessible through the Beneficial Ownership Filings system on the FDIC's public Internet Web site. They are titled: "Initial Statement of Beneficial Ownership of Securities," "Statement of Changes in Beneficial Ownership of Securities" and "Annual Statement of Beneficial Ownership of Securities."

Comments: FDIC will consider comments received within 30 days of the publication of this Notice. A revised notice of changes made in response to comments will be forthcoming, if applicable.

30—64—0025

SYSTEM NAME:

Beneficial Ownership Filings (Securities Exchange Act).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The records are stored at the Accounting & Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Any director or officer of an FDIC-insured depository institution with a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934, and (2) Any person who is directly or indirectly the beneficial owner of greater than 10% of a class of equity securities issued by an FDIC-insured depository institution that are registered under section 12 of the Securities Exchange Act of 1934; including any trust, trustee, beneficiary or settlor required to report pursuant to Securities and Exchange Commission Rule 16a–8.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reporting persons submit electronically or on paper reports on any of the following three forms: "Initial Statement of Beneficial Ownership of Securities," "Statement of Changes in Beneficial Ownership of Securities" and "Annual Statement of Beneficial Ownership of Securities." Reporting persons are required to use these forms to disclose ownership and transactional information relative to their beneficial ownership of securities of FDIC-insured depository institutions with securities registered under the Securities Exchange Act of 1934. Under section 403 of the Sarbanes-Oxley Act of 2002, these forms must be submitted in electronic form and must be made available to the public on a Federal agency's external Internet Web site. The forms require disclosure of the name of the financial institution, relationship of reporting person to the financial institution, reporting person's name and street address, date of form or amendment, and filer's signature and date. A description of the securities' terms and transactional information including transaction date, type of transaction, amount of securities acquired or disposed, price, aggregate amount of securities beneficially owned, and form and nature of beneficial ownership must also be disclosed on the forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 12(i) and 16(a) of the Securities Exchange Act of 1934 (respectively, 15 U.S.C. 78l(i) and 78p(a)).

PURPOSES:

In accordance with section 16(a) of the Securities Exchange Act of 1934, as amended by section 403 of the Sarbanes-Oxley Act of 2002, this information is being made available to the public on the FDIC's external Internet website in order to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and bank regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in this system of records is publicly accessible. Additionally, as routine uses subject to the Privacy Act of 1974, the FDIC may disclose information maintained in this system to:

(1) An appropriate governmental or self-regulatory organization when relevant and necessary to the organization's regulatory or supervisory responsibilities or if the information is relevant to a known or suspected violation of a law or licensing standard within that organization's jurisdiction;

(2) The Department of Justice, a court, an adjudicative body, a party in litigation, or a witness if the FDIC determines that the information is relevant and necessary to a proceeding in which the FDIC, any FDIC employee in his or her individual capacity represented by the Department of Justice or the FDIC, or the United States is a party or has an interest;

(3) A congressional office when the information is relevant to an inquiry made at the request of the individual about whom the record is maintained; or

(4) A contractor or agent who needs to have access to this system of records to perform an assigned activity.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media or on paper format in file folders.

RETRIEVABILITY:

Electronically filed reports are indexed and retrieved by the name of the reporting party. Paper-filed reports are indexed by the name of the depository institution issuing the securities being reported, with sub-indexing by the filer's name.

SAFEGUARDS:

Access to the information in this electronic system of records is unrestricted. The filing and amendment of electronic records is restricted to authorized users who have been issued non-transferable user id's and passwords.

RETENTION AND DISPOSAL:

Electronic media and paper files will be retained for fifteen years from the date of filing and then will be deleted or destroyed in accordance with the FDIC's publicly available Records Retention Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Accounting & Securities Disclosure Section, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals with access to the Internet may directly enter the interagency Beneficial Ownership Filings system in order to determine if they are named in this system of records as well as to obtain the records maintained in this system. Individuals may also do so by submitting their request in writing to the Accounting & Securities Disclosure Section, Room F–6043, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

RECORDS ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

The filer may directly amend information maintained in the interagency Beneficial Ownership Filings system by submitting an amended beneficial ownership filing. The original filing remains in the Beneficial Ownership Filings system and continues to be accessible through the FDIC's external Web site. In the alternative, pursuant to 12 CFR 310.7, individuals to whom the information pertains may submit requests for the amendment of records in writing to the Federal Deposit Insurance Corporation, FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429. Under 12 CFR 310.8, such requests will be reviewed by the system manager of the system of records. Denials of requests for amendments may be appealed to the General Counsel of the FDIC as provided in 12 CFR 310.9.

RECORD SOURCE CATEGORIES:

Information originates from (1) any director or officer of an FDIC-insured depository institution with a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934; and (2) any beneficial owner of greater than 10% of an FDIC-insured depository institution with a class of equity securities registered under the Securities Exchange Act of 1934, including any trust, trustee, beneficiary or settlor required to report pursuant to SEC Rule 16a–8.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 2nd day of December 2003.

Robert E. Feldman,

Executive Secretary,

[FR Doc. 03–31402 Filed 12–19–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Clearance Officer Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202)452–3829.

OMB Desk Officer Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB Control number: 7100–0286.

Frequency: Semiannual.

Reporters: Large U.S. dealers of over–the–counter (OTC) derivatives.

Annual reporting hours: 1,400.

Estimated average hours per response: 100.

Number of respondents: 7.

General description of report: This information collection is voluntary (12 U.S.C. §§ 248(a), 353–359, and 461) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The FR 2436 collects derivatives market statistics from seven large U.S. dealers of over–the–counter (OTC) derivatives. Data are collected on notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, equity– and commodity–linked over–the–counter derivatives contracts across a range of underlying currencies, interest rates, and equity markets.

This collection of information complements the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. As with the FR 3036, the Federal Reserve conducts this report in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements (BIS), which publishes global market statistics that are aggregations of national data.

2. *Report title:* Domestic Branch Notification.

Agency form number: FR 4001.

OMB Control number: 7100–0097.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 599 hours.

Estimated average hours per response: 30 minutes for expedited notifications; 1 hour for nonexpedited notifications.

Number of respondents: 474 expedited; 362 nonexpedited.

General description of report: This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to establish a domestic branch. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

Final approval under OMB delegated authority of the implementation of the following report:

Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity.

Agency form number: FR 3036.

OMB control number: 7100–0285.

Frequency: One–time.

Reporters: Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

Annual reporting hours: 3,945.

Estimated average hours per response: Turnover survey: 51 hours; outstandings survey: 15 hours for FR 2436 reporters, 60 hours for non–FR 2436 reporters.

Number of respondents: 60.

General description of report: This information collection is voluntary (12 U.S.C. 248(a), 353–359, and 461) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The FR 3036 is the U.S. part of a global data collection that is conducted by central banks every three years. More than fifty central banks plan to conduct the survey in 2004. The Bank for International Settlements (BIS) compiles national data from each central bank to produce global market statistics.

The Federal Reserve System and other government agencies use the survey to monitor activity in the foreign exchange and derivatives markets. Respondents use the published data to gauge their market share.

Board of Governors of the Federal Reserve System, December 16, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E3–00603 Filed 12–19–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30303:

1. *Community Bancshares of Mississippi, Inc.*, Brandon, Mississippi; to acquire 100 percent of the voting shares of Security Bancshares, Inc., and thereby indirectly acquire Security Bank of Amory, both of Amory, Mississippi.

Board of Governors of the Federal Reserve System, December 17, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00607 Filed 12–19–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–04–17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210. CDC is requesting an emergency clearance for this data collection with a two week public comment period. CDC is requesting OMB approval of this package 7 days after the end of the public comment period.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Project: State-based Evaluation of the Alert Notification Component of CDC's Epidemic Information Exchange (Epi-X) Secure Public Health Communications Network—New—Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC). Great attention has been focused on improving secure public health communications networks for the dissemination of critical disease outbreak and/or bioterrorism-related events, which may have multi-jurisdictional involvement and cause disease and death within a short time-frame.

CDC proposes an information gathering training exercise to evaluate the extent to which new registrants and currently authorized users of the Epidemic Information Exchange (Epi-X) are able to utilize alert notification functionality to minimize or prevent unnecessary injury or disease-related morbidity and mortality through the use of secure communications and rapid notification systems. In this case, notification alerts would be sent to targeted public health professionals through a "barrage" of office and cell phones, home telephones, and pager calls to rapidly inform key health authorities from multidisciplinary backgrounds and multiple jurisdictions of evolving and critical public health information, to assist in a decision making process.

Presently, the necessity of this evaluation process is timely because of the threat of a national influenza epidemic in the coming months. Information will be gathered through an online questionnaire format. The information will help evaluate user comprehension and facility with the notification and rapid alerting functionalities of Epi-X. The questionnaire will consist of both closed- and open-ended items, and will be administered through Zoomerang, an online questionnaire program. If these measures fail, respondents will be contacted by telephone.

During the first 6 months, approximately 500 Epi-X users from every state of the union will be asked to volunteer input (in a 5–10 question format) about their experiences using the alert notification functionalities of the Epi-X communications system. There will be no cost to respondents, participation will be voluntary.

Respondents	No. of respondents	No. of responses per respondnet	Average burden per response (in hours)	Total burden (in hours)
State and Local Health Professionals	500	1	15/60	125
Total				125

Dated: December 16, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31434 Filed 12–19–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following advisory committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–4 p.m., February 5, 2004.

Place: Centers for Disease Control and Prevention, Roybal Campus, 1600 Clifton Road, NE, Auditorium B, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 350 people.

Purpose: The committee will provide advice to CDC Director on strategic and other broad issues facing CDC.

Matters to Be Discussed: Agenda items will include discussion of the CDC Futures Initiative and updates on CDC priorities with discussions of program activities including updates on CDC scientific and programmatic activities.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Robert Delaney, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S D–14, Atlanta, Georgia 30333. Telephone 404/639–7000.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 14, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31433 Filed 12–19–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995 (Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed grant information collection activity or to obtain a copy of the data collection plan and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for proper performance of grantee functions including whether the information will have practical utility; (b) the accuracy of the burden estimate of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the information collection burden on respondents, including the use of automated collection methods or other types of information technology.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Title II Grant Application Supplements: In Use Without Approval

The CARE Act (codified under Title XXVI of the Public Health Service Act) was first enacted by Congress in 1990, and reauthorized in 1996 and 2000. It addresses the unmet health needs of persons living with HIV disease by funding primary health care and support services that enhance access to and retention in care. The CARE Act funded services reach over 500,000 individuals; after Medicaid and Medicare, it is the largest single source of Federal funding for HIV/AIDS care for low-income, uninsured, and underinsured Americans. The Title II Care Grant Program (CGP) provides formula grants to all 50 States; the District of Columbia; the Commonwealth of Puerto Rico; the Territories of the Virgin Islands, Guam, and American Samoa; the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. Funding is disbursed to these grantees by HRSA based on a Congressionally mandated formula.

The purpose of the Title II CGP is to assist States and Territories in developing and/or enhancing access to a comprehensive continuum of high quality, community based care for low-income individuals and families living with HIV. Grantees may allocate funds to five legislatively authorized program components: (1) HIV Care Consortia, to provide comprehensive outpatient health and support services, such as early intervention services, outpatient medical care, case management, substance abuse treatment, mental health services, transportation; (2)

Home- and Community-Based Care; (3) Health-Insurance Continuation, including risk pools; (4) Provision of Treatments for HIV disease or to prevent the serious deterioration of health arising from HIV disease; and (5) State Direct Services, which are HIV/AIDS outpatient health or support service provided through State delivery mechanisms determined by the grantee to be more effective than providing the service(s) through consortia.

The Title II Grant Application Supplements have been designed to collect information from States and Territories in a consistent, standard way when they apply for a grant. This information is needed to determine that funds are being used as intended by the Congress and in compliance with CARE Act mandates. This includes requirements that grantees: (a) Obligate Title II funds quickly, closely monitor their use, and ensure that they are used as the payer of last resort (Supplement 1); (b) satisfy the Maintenance of Effort requirement and ensure that Title II funds are used to supplement, and not supplant, existing State expenditures for HIV-related care and treatment services (Supplement 2); (c) include a determination of the size and demographics of the population of people living with HIV in the State/Territory (Supplement 3); and (d) have prepared a comprehensive plan describing the organization and delivery of HIV health care and support services to be funded under Title II that is based on the size and demographics of the population of individuals with HIV and their needs, the availability of other non-governmental and governmental resources (including Medicaid and SCHIP), any capacity development needs resulting from disparities in the availability of HIV-related services in historically underserved communities and rural communities, and the efficiency of the administrative mechanism of the State for rapidly allocating funds to areas of greatest need within the State/Territory).

In addition, HRSA uses the collected information as a benchmark for monitoring grantee performance during the fiscal year; to identify individual and cross cutting grantee technical assistance needs; and to detect emerging HIV/AIDS care services issues that may require changes in existing program policies or procedures.

The Title II Application Supplements will be transmitted by mail and electronically to all States and Territories and made available through the HRSA web site. Applicants will submit the Supplements electronically along with Form PHS–5161–1 (Revised 7/00), SF–424 and the program narrative portion of their application, using the Grants Management electronic transmission mechanisms established by HRSA. The Supplements will include check box responses; fields for reporting numeric fiscal and epidemiological data; and text boxes for describing other required information. The Supplements will automatically generate totals when appropriate, and have other automated fields to minimize the time required to insert identifying information.

The Supplements will require Title II applicants/grantees to report local epidemiological information and some fiscal and programmatic data collected from Title II funded contractors (sub-grantees), which grantees have been collecting and reporting since FY 1995 or earlier. The approximate response burden for applicants/grantees is estimated as:

Estimated number of grantee respondents	Estimated responses per grantee	Total number of responses	Hours per response	Estimated total hour burden
59	1	59	8	472

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 16, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31428 Filed 12–19–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995 (Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed grant information collection activity or to obtain a copy of the data collection plan and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for proper performance of grantee functions including whether the information will have practical utility; (b) the accuracy of the burden estimate of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the information collection burden on respondents, including the use of automated collection methods or other types of information technology.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Title I Grant Application Supplements: In Use Without Approval

The CARE Act (codified under Title XXVI of the Public Health Service Act) was first enacted by Congress in 1990, and reauthorized in 1996 and 2000. It addresses the unmet health needs of persons living with HIV disease by funding primary health care and support services that enhance access to and retention in care. The CARE Act funded services reach over 500,000 individuals; after Medicaid and Medicare, it is the largest single source of Federal funding for HIV/AIDS care for low-income, uninsured, and underinsured Americans. Title I under the CARE Act provides emergency assistance to eligible metropolitan areas (EMAs) that have been most severely affected by the HIV epidemic, for the purpose of developing or enhancing a continuum of high quality, community-based care for low-income individuals and families. HRSA disburses approximately one-half of the Title I funds among 51 EMAs based on a Congressionally mandated formula. The remaining funds are available on a competitive basis to those same EMAs that demonstrate severe need for supplemental assistance to combat the HIV epidemic, and an ability to disburse and use supplemental resources in a manner that is immediately responsive to the local epidemic and cost effective.

The CARE Act requires local planning councils to establish Title I priorities and allocate funds, taking into account critical factors. These include the: size and demographics of the local HIV epidemic; demonstrated (or probable) cost effectiveness and outcome effectiveness of proposed strategies and interventions; priorities of the communities with HIV disease for whom the services are intended; coordination of HIV care services delivery with HIV prevention programs and programs for the prevention and treatment of substance abuse; availability of other governmental and nongovernmental resources; and capacity development needs resulting from disparities in the availability of treatment and services in underserved communities. Other planning council duties include developing a comprehensive plan for the delivery of services and evaluating the effectiveness of administrative mechanisms used by the grantee to disburse (contract) the funds locally.

The *Title I Grant Application Supplements* have been designed to collect information from EMAs in a consistent, standard way when they apply for new or competing continuation grant funds in a combined formula and supplemental grant application. This information is needed to determine that funds are being used as intended by the Congress and in compliance with CARE Act mandates, and that supplemental funds are awarded to grantees on the basis of objective criteria consistent with CARE Act requirements. This includes requirements that grantees demonstrate: (a) Severity of need for emergency assistance to combat the HIV epidemic, including the unmet needs of persons who know their HIV status but are not yet in care, (Supplements 1, 4 and 5); (b) a functioning planning council that is in conformance with statutory membership requirements and carrying out mandated duties and responsibilities, (Supplement 2); (c) an ability to use Title I grant resources in a manner that is immediately responsive to the local epidemic and cost effective, and in compliance with payer of last resort, maintenance of effort and related requirements, (Supplements 3 and 6); and (d) a comprehensive plan for the delivery of HIV/AIDS care services that is responsive to the local epidemic and unmet needs, (Supplements 7 and 8).

In addition, HRSA uses the collected information as a benchmark for monitoring grantee performance during the fiscal year; to identify individual and cross-cutting grantee technical assistance needs; and to detect emerging HIV/AIDS care services issues that may require changes in existing program policies or procedures.

The *Title I Application Supplements* will be transmitted by mail and electronically to all Title I EMAs and made available through the HRSA web site. Applicants will submit the Supplements electronically along with Form PHS–5161–1 (Revised 7/00), SF–424 and the program narrative portion of their application, using the Grants Management electronic transmission mechanisms established by HRSA. The Supplements will include check box responses; fields for reporting numeric fiscal and epidemiological data; and text boxes for describing other required information. The Supplements will automatically generate totals when appropriate, and have other automated fields to minimize the time required to insert identifying information.

The Supplements will require Title I applicants/grantees to report local epidemiological information and some fiscal and programmatic data collected from Title I funded contractors (sub-grantees), which grantees have been collecting and reporting since FY 1995 or earlier. The approximate response burden for applicants/grantees is estimated as:

Estimated number of grantee respondents	Estimated responses per grantee	Total number of responses	Hours per response	Estimated total hour burden
51	1	51	16	816

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 day of this notice.

Dated: December 16, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31429 Filed 12–19–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps Scholarship Program Deferment Request Forms and Associated Reporting Requirements (OMB No. 0915–0179)—Revision

The National Health Service Corps (NHSC) Scholarship Program was established to assure an adequate supply of trained primary care health professionals (allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC program, other health professionals), to provide services in Health Professional Shortage Areas (HPSAs) throughout the United States. Under the Program, the Secretary has entered into contracts with health professions students agreeing to pay the total school tuition, required fees and a stipend for living expenses. In exchange, the scholarship recipients agreed to provide full-time clinical services at a site in a federally designated HPSA.

To assure that scholars are adequately trained to provide primary health services to the underserved, individuals receiving a degree from a school of medicine (allopathic or osteopathic) are required by law to request a deferment of their service obligation to complete primary care postgraduate training (*e.g.*, a residency) approved by the NHSC. Scholars in other disciplines (*e.g.*, dentistry) may request a deferment of their service obligation to pursue postgraduate training approved by the NHSC. The Deferment Request Form solicits information (including the period and type of training for which the deferment is requested), so that the NHSC is able to annually determine if a deferment will be approved. In special circumstances (*e.g.*, switching residency programs, requesting a chief residency position, etc.), the scholar may also be asked to submit additional documentation (*e.g.*, a letter from the new program director, a description of the chief residency position and how it would benefit the NHSC, etc.)

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Deferment Request Forms	600	1	1	600
Letters of Intent and Request	100	1	1	100
Total	700			700

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 16, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31430 Filed 12–19–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The National Health Service Corps Scholarship Program In-School Worksheets (OMB No. 0915–0250)—Revision

The National Health Service Corps (NHSC) Scholarship Program was established to help alleviate the geographical maldistribution of physicians and other health practitioners in the United States. Under this program, health professions students are offered scholarships in return for future services in a federally-designated Health Professional Shortage Area. If awarded an NHSC scholarship, the program will require the scholar and the scholar's school to review and complete relevant data collection worksheets for each year that the student is an NHSC scholar.

The *Data Sheet Form* requests that the NHSC scholar review the form for accuracy of pertinent information such as, social security number, contact information, current curriculum, and date of graduation. If scholars find the printed information to be accurate, they must sign the form and return it to the NHSC Scholarship Program in the envelope provided. If NHSC scholars find the information to be inaccurate, they are to make the necessary changes directly on the form. If the inaccurate information pertains to their curriculum or date of graduation, the scholars are also asked to include written supporting documentation from their schools.

The *Verification Sheet Form* is sent to the schools along with a list of the NHSC scholars that are enrolled at their school for the current academic year. The schools are asked to verify and/or correct the enrollment status of each of the scholars on the list, sign and date the form, and return it to the NHSC Scholarship Program in the envelope provided.

The *Contact Sheet Form* is sent to the schools and it requests the contact information of pertinent school officials. This information is used by the NHSC Scholarship Program for future contacts with the schools.

The estimated burden is as follows:

Form name	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Data Sheet	800	1	10 mins	134
Verification Sheet	800	1	10 mins	134
Contact Sheet	800	1	10 mins	134
Total	2400			402

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 16, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31431 Filed 12–19–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following Federal advisory committee meeting. The meeting will be open to the public.

Name: National Advisory Council on the National Health Service Corps

Date and Time: January 29, 2004; 5 p.m.–7 p.m. January 30, 2004; 8:30 a.m.–5 p.m. January 31, 2004; 9 a.m. to 5:30 p.m. February 1, 2004; 8 a.m.–10:30 a.m.

Place: Sheraton Premier at Tysons Corner, 8661 Leesburg Pike, Vienna, Virginia 22182, (703) 448–1234.

Agenda: The Council will be meeting in conjunction with the 2004 National Health Service Corps Placement Cycle Conference. This meeting will provide an opportunity to meet with program participants and gain greater understanding of the placement process.

For Further Information Contact: Tira Robinson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 594–4140.

Dated: December 16, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31427 Filed 12–19–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The Atherosclerosis Risk in Communities Study (ARIC)

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 14, 2003, pages 41591–41592, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: The Atherosclerosis Risk in Communities Study (ARIC). *Type of Information Collection Request:* Revision of a currently approved collection (OMB No. 0925–0281). *Need and Use of Information Collection:* This project involves annual follow-up by telephone of participants in the ARIC study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women. *Frequency of Response:* The participants will be contacted annually. *Affected Public:* Individuals or households: Businesses or other for profit; Small Businesses or organizations. *Type of Respondents:* Middle aged and elderly adults; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows: Estimated Number of Respondents: 13,640; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 0.1667; and *Estimated Total Annual Burden Hours Requested;* 6,865. The annualized cost to respondents is estimated at $25,808, assuming respondents' time at the rate of $16.50 per hour for family and patient respondents, and $75 per hour for physicians. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Participant Follow-up	13,050	1.0	0.1667	6,525
Physician, hospital, nursing home staff [1]	180	1.0	0.2500	135
Participant's next-of-kin [1]	410	1.0	0.1667	205
Total	13,640	1.0		6,865

[1] Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Merle Myerson, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number 301–435–0707 or e-mail your request, including your address to: *MyersonM@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: December 11, 2003.

Peter Savage,

Director, DECA, NHLBI, National Institutes of Health.

[FR Doc. 03–31403 Filed 12–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Mutants of Human Insulin-Like Growth Factor Binding Protein-3 (IGFBP–3) in Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the Food and Drug Administration and the Department of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in International Patent Application PCT/US02/40561, "Use of Mutants of Human Insulin-Like Growth Factor Binding Protein-3 (IGFBP–3) in Treatment of Cancer", by Matthew Rechler, filed on December 17, 2002, and claiming priority to U.S. provisional patent application 60/341,920 filed December 17, 2001, to Actis Biologics Inc., which is located in Livermore, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics for the treatment of prostate and breast cancers.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before February 20, 2004 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Brenda J. Hefti, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; E-mail: *heftib@od.nih.gov.*

SUPPLEMENTARY INFORMATION: In this invention, human IGFBP–1 has been genetically modified so that its affinity for IGF–I and IGF–II is greatly reduced, and it can act only through a novel direct mechanism. These human IGFBP–3 mutants still can inhibit DNA synthesis and stimulate apoptosis, and have been shown to induce apoptosis in human prostate cancer cells. The current invention could selectively exert anti-proliferative action without interfering with IGF actions, and may have therapeutic uses as an anti-tumor agent.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 16, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31404 Filed 12–19–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Directorate of Science and Technology; Notice of Establishment of Homeland Security Science and Technology Advisory Committee (HSSTAC)

AGENCY: Office of the Undersecretary for Science and Technology, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Section 311 of the Homeland Security Act of 2002, Pub. L. 107–296, established within the Department of Homeland Security the Homeland Security Science and Technology Advisory Committee (HSSTAC). The mission of the HSSTAC is to be a source of independent, scientific and technical planning advice for the Under Secretary for Science and Technology.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Taylor, Director, Office of Studies and Analysis, Department of Homeland Security Science and Technology Directorate, Washington, DC 20528, telephone (202) 205–5041, fax (202) 772–9916.

SUPPLEMENTARY INFORMATION:

Purpose

The HSSTAC shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation. The HSSTAC is to be a source of independent, scientific and technical planning advice for the Under Secretary for Science and Technology.

Membership

The HSSTAC consists of 20 members appointed by the Under Secretary for Science and Technology. The HSSTAC members are (1) eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting; (2) selected solely on the basis of established records of distinguished service; (3) not employees of the Federal Government; and, (4) selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

Meetings

The HSSTAC will meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing.

Duration

The HSSTAC is expected to be needed on a continuing basis. However, the HSSTAC will terminate on November 25, 2005, pursuant to section 311(j) of the Homeland Security Act of 2002 unless extended.

Dated: December 16, 2003.

Charles E. McQueary,

Under Secretary for Science and Technology, Department of Homeland Security.

[FR Doc. 03–31447 Filed 12–19–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Directorate of Science and Technology; Notice of Homeland Security Science and Technology Advisory Committee (HSSTAC) Vacancy and Call for Applications

AGENCY: Office of the Undersecretary for Science and Technology, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Pursuant to section 311 of the Homeland Security Act of 2002, Pub. L. 107–296, the Secretary of the Department of Homeland Security is seeking nominations to fill a vacant seat on the Homeland Security Science and Technology Advisory Committee (HSSTAC). Section 311(b)(1) of the statute requires that the committee include among its membership "Representatives of citizens groups, including economically disadvantaged communities." Therefore, we are requesting qualified individuals that meet this criterion and are interested in serving on this committee to apply for membership. Nominees should send a letter of interest and brief biography to *hsstac@dhs.gov* or fax to the attention of Dr. Ron Taylor at 202–772–9916. Applicants selected for appointment will be required to pass an appropriate security background check prior to appointment to the committee.

DATES: Your letter of interest and brief biography should reach the Department of Homeland Security on or before January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Taylor, Director, Office of Studies and Analysis, Department of Homeland Security Science and Technology Directorate, telephone 202–205–5041, fax 202–772–9916.

SUPPLEMENTARY INFORMATION:

Purpose

The HSSTAC shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation. The HSSTAC is to be a source of independent, scientific and technical planning advice for the Under Secretary for Science and Technology.

Membership

The HSSTAC consists of 20 members appointed by the Under Secretary for Science and Technology. The HSSTAC also includes emergency first-responders or representatives of organizations or associations of emergency first-responders. (We are not requesting applicants for these positions in this notice.) The HSSTAC also includes representatives of citizens groups, including economically-disadvantaged communities. The HSSTAC members are (1) eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting; (2) selected solely on the basis of established records of distinguished service; (3) not employees of the Federal Government; and, (4) selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

Members will serve terms of office of 3 years. However, to permit orderly turnover of the committee's membership, the original members of the HSSTAC will be appointed to three groups of approximately equal numbers each, and their terms of office will be staggered. One group will have a term of 1 year, 1 a term of 2 years, and the other a term of 3 years.

While attending meetings or otherwise engaged in Committee business, Committee members are authorized travel and subsistence or *per diem* allowances (as appropriate) in accordance with Federal government regulations.

Meetings

The HSSTAC will meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing.

Duration

The HSSTAC is expected to be needed on a continuing basis. However, the HSSTAC will terminate on November 25, 2005, pursuant to section 311(j) of the Homeland Security Act of 2002 unless extended.

Dated: December 16, 2003.

Charles E. McQueary,

Under Secretary for Science and Technology, Department of Homeland Security.

[FR Doc. 03–31448 Filed 12–19–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16728]

Maritime Security Directives (MARSEC Directives) 104–1, 104–2, 104–3, 104–4, 105–1, 105–2, 105–3 and 106–1; Performance Standards for Cruise Ships and Facilities, Passenger Vessels/Ferryboats and Facilities, Cargo/Other Commercial Vessels and Facilities, Mobile Oil Drilling Units/Off-Shore Supply Vessels, and Outer Continental Shelf (OCS) Facilities

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of MARSEC Directives 104–01, 104–02, 104–03, 104–4, 105–01, 105–02, 105–03, and 106–1. The MARSEC Directives provide performance standards to assist facility and vessel owners/operators with developing facility and vessel security plans that comport with national maritime security initiatives. Information within the MARSEC Directives is designated sensitive security information (SSI) and is not subject to public release.

DATES: The MARSEC Directives listed above will be available on December 22, 2003.

ADDRESSES: The MARSEC Directives listed above are available at the following U.S. Coast Guard Marine Safety Offices:

Boston; Tel (617) 223–3000, 455 Commercial St., Boston, MA 02109–1096.
Portland; Tel (207) 780–3251, 103 Commercial St., Portland, ME 04101–4726.
Providence; Tel (401) 435–2300, 20 Risho Ave. East, Providence, RI 02914–1208.
Group/MSO Long Island Sound; Tel (203) 468–4400, 120 Woodward Ave., New Haven, CT 06512–3698.
New York; Tel (718) 354–4003 212, Coast Guard Dr, Staten Ils, NY 10305.
Baltimore; Tel (410) 576–2561, 2401 Hawkins Point Rd, Baltimore, MD 21226–5000.
Philadelphia; Tel (215) 271–4800, One Washington Ave., Philadelphia, PA 19147–4395.
Hampton Roads; Tel (757) 668–5510, Norfolk Federal Bldg., 200 Granby Mall, Suite 700, Norfolk, VA 23510–1888.
Wilmington; Tel (910) 772–2200, 400 Medical Center Dr., Wilmington, NC 28405–1816.
Miami; Tel (305) 535–8705, 100 MacArthur Cswy, Miami, FL 33139.
Tampa; Tel (813) 228–2191, 155 Columbia Dr., Tampa, FL 33606–3598.
Jacksonville; Tel (904) 232–2640, 7820 Arlington Expy. Suite 400, Jacksonville, FL 32211–7445.
Savannah; Tel (912) 652–4353, Juliette G. Low Federal Bldg., 100 W. Oglethorpe Ave., Suite 1017, Savannah, GA 31401.
Charleston; Tel (843) 724–7683, 196 Tradd St., Charleston, SC 29401–1817.
San Juan; Tel (787) 706–2400, P.O. Box 71526, San Juan, PR 00936–8626.
St. Louis; Tel (314) 539–3091, 1222 Spruce St., St. Louis, MO 63103–2835.
Memphis; Tel (901) 544–3941, 200 Jefferson Ave., Suite 1301, Memphis, TN 38103–2300.
Paducah; Tel (270) 442–1621, 225 Tully St. Paducah, KY 42003–0170.
Pittsburgh; Tel (412) 644–5808, Suite 1150, Kossman Bldg., 100 Forbes Ave., Pittsburgh, PA 15222–1371.
Huntington; Tel (304) 529–5524, 1415 6th Ave., Huntington, WV 25701–2420.
Louisville; Tel (502) 582–5194, 600 Martin Luther King Jr. Place Rm. 360, Louisville, KY 40202–2230.
Mobile; Tel (251) 441–5201, South Broad St., Bldg. 102, Mobile, AL 36615–1390.
Corpus Christi; Tel (361) 888–3162, 555 N. Carancahua Street, Suite 500, Corpus Christi, TX 78478.
Port Arthur; Tel (409) 723–6509, Federal Bldg, 2875 Jimmy Johnson Blvd., Port Arthur, TX 77640–2099.
Houston-Galveston; Tel (713)671–5199, 9640 Clinton Drive, Galena Park, TX 77029.
New Orleans; Tel (504) 589–6196, 1615 Poydras St. #77, New Orleans, LA 70112–1254.
Morgan City; Tel (985) 380–5305, 800 David Dr., Rm. 232 Morgan City, LA 70380–1304.
Sault Ste. Marie; Tel (906) 635–3220, 337 Water Street, Sault Ste. Marie, MI 49783–9501.
Chicago; Tel (630) 986–2155, 215 West 83rd St., Suite D, Burr Ridge, IL 60521–7059.
Milwaukee; Tel (414) 747–7155, 2420 S. Lincoln Memorial Dr., Milwaukee, WI 53207–1997.
Detroit; Tel (313) 568–9580, 110 Mt. Elliott Ave., Detroit, MI 48207–4380.
Toledo; Tel (419) 259–6372, 420 Madison Ave., Suite 700, Toledo, OH 43604–1265.
Cleveland; Tel (216) 937–0111, 1055 East Ninth St., Cleveland, OH 44114–1092.
Buffalo; Tel (716) 843–9570, 1 Fuhrmann Blvd., Buffalo, NY 14203–3189
Duluth; Tel (218) 720–5286, 600 S. Lake Ave., Duluth, MN 55802–2352.
San Diego; Tel (619) 683–6500, 2716 North Harbor Dr., San Diego, CA 92101–1064.
San Francisco Bay; Tel (510) 437–3135, Coast Guard Island, Bldg. 14 Alameda, CA 94501–5100.
Los Angeles-Long Beach; Tel (562) 980–4429, 1001 S. Seaside Ave, Bldg 20, San Pedro, CA 90731–0208.
Portland; Tel (503) 240–9310, 6767 N. Basin Ave., Portland, OR 97217–3992.
Puget Sound; Tel (206) 217–6200, 1519 Alaskan Way South Bldg. 1, Seattle, WA 98134–1192.
Honolulu; Tel (808) 522–8251, 433 Ala Moana Blvd., Pier 4, Honolulu, HI 96813–4909.
Guam; Tel (671) 339–2001, PSC 455, Box 176, FPO AP 96540–1056.
Anchorage; Tel (907) 271–6700, 510 L. St., Suite 100, Anchorage, AK 99501–1946.
Juneau; Tel (907) 463–2450, 2760 Sherwood Lane, Suite 2A, Juneau, AK 99801–8545.
Prince William Sound; Tel (907) 835–7200, P.O. Box 486, 105 Clifton Dr., Valdez, AK 99686–0486.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, call LT Bruce Walker, U.S. Coast Guard, telephone 202–267–4148.

SUPPLEMENTARY INFORMATION:

What Action Is the Coast Guard Taking?

The Coast Guard is promulgating MARSEC Directives for those owners and operators of vessels and facilities subject to 33 CFR parts 104, 105, or 106.

(a) MARSEC Directives 104–1 and 104–2 applies to U.S. and foreign cruise ships, passenger vessels, and ferryboats that are subject to 33 CFR Part 104 that operate in U.S. waters.

(b) MARSEC Directive 104–3 applies to U.S. cargo, towing, and other commercial vessels subject to 33 CFR Part 104 that operate in U.S. waters. Foreign cargo and other commercial vessels subject to the International Ship and Port Facility Security (ISPS) Code are not subject to the MARSEC Directives; however, implementation of their security plans will be reviewed during Port State Control examinations.

(c) MARSEC Directive 104–4 applies to U.S. Mobile Offshore Drilling Units and offshore supply vessels subject to 33 CFR part 104 that operate in waters subject to U.S. jurisdiction.

(d) MARSEC Directive 105–1 applies to facilities in the U.S. subject to 33 CFR part 105 that receive U.S. and foreign cruise ships.

(e) MARSEC Directive 105–2 applies to facilities in the U.S. subject to 33 CFR part 105 that receive U.S. and foreign passenger vessels and ferryboats.

(f) MARSEC Directive 105–3 applies to cargo and other commercial facilities in the U.S. subject to 33 CFR Part 105 that receive vessels and barges subject to 33 CFR 104.105.

(g) MARSEC Directive 106–1 applies to Outer Continental Shelf facilities operating in U.S. waters and not subject to 33 CFR part 104.

Owners and operators have the primary responsibility for ensuring the security of their vessels and facilities. Owners and operators must include the performance standards listed in the MARSEC Directives in their vessel and facility security plans.

The performance standards do not impose new industry requirements but provide supplemental direction to assist with the development of vessel and facility security plans required by 33 CFR parts 104, 105, and 106.

To ensure these performance standards are disseminated efficiently and consistently, Coast Guard Area/District Commanders and COTPs will notify appropriate owners and operators of vessels and/or facilities regulated under 33 CFR parts 104, 105 and 106. The COTP or Area/District Commander will confirm, prior to distributing the MARSEC Directive, that the individual(s) is a "covered person" with a "need to know", and that the MARSEC Directive will be safeguarded as SSI as defined in 49 CFR part 1520.

Owners/operators of vessels and facilities regulated under 33 CFR parts 104, 105, and 106 may also contact the local COTP to obtain a copy of the applicable MARSEC Directive. Local COTP contact information can be found in the **ADDRESSES** section of this notice.

Why Is the Coast Guard Taking This Action?

The Coast Guard is issuing these MARSEC Directives to assist owners and operators of the affected maritime industries in developing vessel and security plans required by 33 CFR parts 104 through 106.

Each MARSEC Directive contains SSI. If disclosed, the SSI could be used to subvert or exploit the security programs of vessels, facilities, or ports. Therefore, the MARSEC Directives are not subject to public disclosure, in accordance with 46 U.S.C. 40119.

Since MARSEC Directives 104–1 thru 104–4, 105–1 thru 105–3, and 106–1 are issued to protect national security and to preserve the rights and obligations of the U.S. with regards to maritime security, the Coast Guard has determined that the issuance of these MARSEC Directives do not fall within the requirements of the Administrative Procedure Act by virtue of the military and foreign affairs exemption (5 U.S.C. 553(a)(1)). Furthermore, the basis for the MARSEC Directives would also constitute "good cause" within the meaning of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B) and (d)(3)) regarding notice and comment rulemaking and effective dates since it would be contrary to the public interest and impracticable to provide SSI relating to maritime security and methods of detection, deterrence, and response in a public forum.

Dated: December 15, 2003.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Director of Port Security.

[FR Doc. 03–31390 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16682]

Interpretations of Vessel Tonnage Measurement Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: This notice addresses the use of a Marine Safety Center Technical Note (MTN) for interpreting the Coast Guard's vessel tonnage measurement regulations. While the regulations provide the necessary framework for assigning gross and net tonnages and registered dimensions to vessels, detailed interpretations of the regulations must be periodically made and disseminated to organizations authorized to perform tonnage measurement on the Coast Guard's behalf. This notice advises the public on how an MTN on tonnage measurement may be obtained and the process by which this MTN is periodically updated.

EFFECTIVE DATE: This notice is effective on December 22, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Peter Eareckson, Chief, Tonnage Division, United States Coast Guard, (202) 366–6502. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Comments

If you have comments on how the Marine Safety Center Technical Note (MTN) on tonnage measurement may be obtained and the process by which the MTN is periodically updated, please submit your comments, identified by Coast Guard docket number USCG–2003–16682, to the Docket Management Facility located at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: (202) 493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

Viewing Comments and Documents

To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background

The Coast Guard is responsible for maintaining regulations for assigning gross and net tonnages and registered dimensions to vessels. These regulations are found in title 46, Code of Federal Regulations (CFR), part 69, Measurement of Vessels. As was true for predecessor Federal agencies responsible for interpreting the tonnage measurement regulations, the Coast Guard has found it necessary to establish interpretations of these regulations to respond to novel situations, on a case-by-case basis, through policy decisions. Periodically, these policy decisions are evaluated as to their appropriateness for incorporation into the tonnage measurement regulations.

MTN 01–99, Tonnage Technical Policy

MTN 01–99, Tonnage Technical Policy, is the current vehicle for ensuring that policy decisions are available to organizations authorized to perform tonnage measurement on behalf of the Coast Guard. MTNs are policy documents developed and issued by the Coast Guard Marine Safety Center (MSC), a Coast Guard headquarters unit responsible for tonnage measurement, plan review, and a number of other technical functions. All MTNs, including MTN 01–99, are posted on the MSC's Web site at *www.uscg.mil/hq/msc.* A copy of the current version of MTN 01–99 is available in the docket (*see* "Viewing Comments and Documents," above.) While MTN 01–99 is intended for use by organizations authorized to perform tonnage measurement on behalf of the Coast Guard, we recognize that it contains information that may affect decisions on vessel designs and that the public may benefit by our making it widely available to parties other than authorized measurement organizations.

Changes to MTN 01–99

The MSC periodically issues changes to MTN 01–99 to keep it up-to-date with relevant policy decisions. Since it was first published in 1999, MTN 01–99 has undergone six changes. The current version of the document (MTN 01–99 Change 6) includes interpretations summarized as follows:

1. Clarifications on the treatment of uncovered spaces with high sides under the convention measurement system.
2. Interpretations of the International Maritime Organization (IMO) Tonnage Measurement Circular (TM. 5/Circ. 5), dated June 10, 1994.
3. Interpretations relating to methods of calculating volumes that are considered to be accepted naval architectural practice.
4. Novel Craft interpretations for offshore supply vessels (OSVs) that provide for ignoring uncovered cargo deck-space when determining the total volume of all enclosed space.
5. Clarifications on the number of allowed "zero area" tonnage stations under the standard measurement system.
6. Criteria for tonnage length termination points.
7. Criteria relative to ordinary frames including, maximum frame spacing and treatment of the frame openings and other discontinuities.
8. Interpretations on establishing breadth measurements under the standard measurement system for multi-hull vessels.
9. Interpretations eliminating the prohibition against using tonnage openings to exempt passenger space that is located on the uppermost complete deck.
10. Interpretations relative to the progression of open space in structures under the standard measurement system.
12. A procedure for calculating the tonnage of exemptible under-deck water-ballast spaces.
13. Clarification that a two-deck vessel cannot be assigned single tonnages under the dual measurement system, unless a load line is assigned.
14. Interpretations relative to hull measurement termination points under the simplified measurement system.
15. Clarifications addressing the treatment of various atypical shapes under the simplified measurement system, such as pontoon hulls, cathedral/multi-"vee" hulls, and drydocks.

To provide a mechanism for notification when a change to the MTN has been issued, the MSC's Web site has been recently updated to allow members of the public to add their e-mail addresses to an electronic mailing list for such notification. Also, in the future, we will notify the public via a notice in the **Federal Register** of changes to MTN 01–99 that are believed to be of significant interest to the maritime industry.

Dated: December 16, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–31389 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Proposed Collection; Comments Requested

Action: 30-day notice of information collection under review: Arrival Record, Form I–94AOT.

The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** at 68 FR 55408 on September 25, 2003, allowing for a 60-day public review and comment period. No comments were received by DHS.

A second notice was published in the **Federal Register** at 68 FR 69713 on December 15, 2003, allowing for an additional 30 days for public review and comment. The second notice incorrectly listed Immigration and Customs Enforcement (ICE) as the DHS component responsible for this information collection. The second notice should have listed CBP as the DHS component responsible for this information collection. Accordingly, the public has 30 days until January 21, 2004 to submit comments. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Homeland Security Officer, 725–17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Arrival Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–94AOT, U.S. Customs and Border Protection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. The information collected is captured electronically as part of a pilot program established by the legacy Immigration and Naturalization Service in cooperation with two participating carriers to streamline document handling and data processing. The information collected will be used by DHS to document an alien's arrival and departure to and from the United States and may be evidence of registration under certain provisions of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 3 minutes (.05 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms

Services Division, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, PRA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 44636–26, Washington, DC 20202.

Dated: December 17, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security.

[FR Doc. 03–31449 Filed 12–19–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning State Administrative Plans for the Hazard Mitigation Grant Program (HMGP).

SUPPLEMENTARY INFORMATION: The development of the State Administrative Plan is required as a condition of receiving HMGP funding under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988. Section 404 mandates that FEMA must approve the plan before awarding any project grant assistance to a community or State applicant. The regulations for the State Administrative Plan are codified in 44 CFR 206.437, implementing the provisions to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288 as amended.

Collection of Information

Title: State Administrative Plan for the Hazard Mitigation Grant Program.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0026.

Abstract: The State Administrative Plan is a procedural guide that details how the State will administer the HMGP funding. The Administrative Plan may take any form including a chapter within a comprehensive State mitigation program strategy. The State may forward an Administrative Plan to the Regional Director for approval at any time or prior to or immediately after the request for a disaster declaration. Independent of the frequency of disaster declarations, each State should review and update the plan at least annually.

Affected Public: State, local, or tribal government, and Federal government.

Estimated Total Annual Burden Hours: 383.

Estimated Cost: The estimated annual wage rates cost to States and territories for the burden hours associated with State Administrative Plan updates is $9,141 ($23.88 per hour x 383 total annual burden hours).

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments via mail, email or facsimile to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, or e-mail address: *InformationCollections@dhs.gov*, or facsimile number (202) 646–3347.

FOR FURTHER INFORMATION CONTACT: Contact Kathleen Wissmann, Program Specialist, Mitigation Division, (202) 646–4372 for additional information. You may contact Ms. Anderson for copies of the proposed information collection at the above e-mail address or facsimile number.

Dated: December 12, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–31394 Filed 12–19–03; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: Fire Administration (USFA), FEMA, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice of open meeting via conference call.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: January 29, 2004.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: January 29, 2004, 2–4 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. The meeting is open to the public; however, teleconference lines are limited. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before January 23, 2004. Dial-in information will be provided to those wishing to participate via telephone.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S.

Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: December 5, 2003.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 03–31393 Filed 12–19–03; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–102]

Notice of Proposed Information Collection: Comment Request; Customer Satisfaction Surveys

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: February 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Q, Department or Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374(this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Customer Satisfaction Surveys.

OMB Control Number, if applicable: 2535–New.

Respondents: Individuals, Business, or other for-profit, Not-for profit institutions, State, Local or Tribal Government.

Description of the need for the information and proposed use: Executive Order 12862, "Setting Customer Service Standards" requires that Federal agencies provide the highest quality service to our customers by identifying them and determining what they think about our services. The surveys covered in the request for a generic clearance will provide HUD a means to gather this data directly from our customers.

Agency form numbers, if applicable: None.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The burden hours per response will vary with each survey; however, we estimate an average burden of sixty minutes for each survey. We estimate that HUD will survey respondents on occasion. Therefore, the total annual estimate is one burden hour per respondent.

Status of the proposed information collection: This is a new collection.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 12, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–31400 Filed 12–19–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–103]

Notice of Submission of Proposed Information Collection to OMB: Rural Housing and Economic Development Grant Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The proposed information collection is to be used for selection of applicants for Rural Housing and Economic Development program grant funds to develop the capacity for housing and economic development activities in rural areas and for innovative grants for housing and economic development.

DATES: Comments Due Date: January 21, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2506–0169) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Rural Housing and Economic Development Grant Application.

OMB Approval Number: 2506–0169.

Form Numbers: SF 424, HUD.

Description of the Need for the Information and Its Proposed Use: The proposed information collection is to be used for selection of applicants for Rural Housing and Economic Development program grant funds to develop the capacity for housing and economic development activities in rural areas and for innovative grants for housing and economic development.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	627	1,047	....	42	....	43,590

Status: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 15, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–31401 Filed 12–19–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4882–N–02]

America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Proposals for Incentive Criteria on Barrier Removal in HUD's Funding Allocations; Extension of Public Comment Deadline

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: On November 25, 2003, HUD published a notice that announced HUD's intention to establish in the majority of its FY2004 Notices of Funding Availability (NOFAs), including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers. This new policy priority will be added to the list of policy priorities that HUD traditionally includes in its NOFAs. As a policy priority (and like the other policy priorities), higher rating points will be available to governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing, and to nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. HUD also solicited comment on the November 25, 2003, notice. The purpose of this notice is to announce that the public comment due date has been extended to January 12, 2004.

DATES: *Comment Due Date:* January 12, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 8 a.m. to 5 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Room 10282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–1793 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: As noted in the Summary portion of this notice, on November 25, 2003 (68 FR 66294), HUD announced its intention to establish in the majority of its FY2004 Notices of Funding Availability (NOFAs), including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers. The November 25, 2003, notice describes in detail the proposal and also solicited public comment, and provided a public comment through December 29, 2003. The purpose of this notice published in today's **Federal Register** is to announce that the public comment due date has been extended to January 12, 2004.

Dated: December 16, 2003.

A. Bryant Applegate,

Senior Counsel and Director of America's Affordable Communities Initiative.

[FR Doc. 03–31399 Filed 12–19–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Programs Eligible for Inclusion in Fiscal Year 2004 Annual Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2004 annual funding agreements with self-governance tribes and lists programmatic targets for each of the non-BIA bureaus, pursuant to section 405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2004.

ADDRESSES: Inquiries or comments regarding this notice may be directed to the Office of Self-Governance (MS–2548, MIB), 1849 C Street, NW., Washington, DC 20240–0001. Telephone (202) 219–0240 or to the bureau points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination and Education Assistance Act Amendments of 1994 (Pub. L. 103–413, the "Self-Governance Act" or the "Act") instituted a permanent tribal self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is "otherwise available to Indian tribes or Indians," can be administered by a tribal government through a self-governance agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracting under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). Section 403(b)(2) also specifies that "nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law."

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities, or portions thereof, that are of "special geographic, historical, or cultural significance" to a self-governance tribe.

Under section 403(k) of the Self-Governance Act, annual agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, we will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

Response to Comments

The Department provided the proposed list to the Self-Governance Tribes on April 23, 2003 for their review and comment. No comments were received. Several minor editorial and technical changes provided by Interior's bureaus were incorporated.

II. Annual Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior

A. Bureau of Land Management (none)

B. Bureau of Reclamation (4)
- Gila River Indian Community
- Chippewa Cree Tribe of the Rocky Boy's Reservation
- Karuk Tribe of California
- Yurok Tribe

C. Minerals Management Service (none)

D. National Park Service (4)
- Grand Portage Band of Lake Superior Chippewa Indians
- Lower Elwha S'Klallam Tribe
- Tanana Chiefs Conference, Inc.
- Yurok Tribe

E. Office of Surface Mining and Reclamation Enforcement (none)

F. U.S. Fish and Wildlife Service (none)

G. U.S. Geological Survey (none)

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance annual funding agreements because they are either "otherwise available to Indians" under Title I and not precluded by any other law, or may have "special geographic, historical, or cultural significance" to a participating tribe. The lists represent the most current information on programs potentially available to Tribes under a Self-Governance agreement.

The Department will also consider for inclusion in annual funding agreements other programs or activities not included below, but which, upon request of a self-governance tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Programs of the Bureau of Land Management (BLM)

BLM management responsibilities cover a wide range of areas, such as recreational activities, timber, range and minerals management, wildlife habitat management and watershed restoration. In addition, BLM is responsible for the survey of certain Federal and tribal lands. Two programs provide tribal services: (1) Tribal and allottee minerals management; and (2) Survey of tribal and allottee lands.

BLM carries out some its activities in the management of public lands through contracts and cooperative agreements. These and other activities, dependent upon availability of funds, the need for specific services, and the Self-Governance tribe demonstrating a special geographic, cultural, or historical connection, may also be available for inclusion in self-governance agreements. Once a tribe has made initial contact with BLM, more specific information will be provided by the respective BLM State office.

Tribal Services

1. *Minerals Management.* Inspection and enforcement of Indian oil and gas operations, and inspection, enforcement and production verification of Indian coal and sand and gravel operations: are already available for contracts under Title I of the Act and therefore may be available for inclusion in an annual funding agreement.

2. *Cadastral Survey.* Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and therefore may be available for inclusion in an annual funding agreement.

Other Activities

1. *Cultural Heritage.* Cultural heritage activities, such as research and inventory, may be available in specific States.

2. *Forestry Management.* Activities, such as environmental studies, tree planting, thinning and similar work, may be available in specific States.

3. *Range Management.* Activities, such as re-vegetation, noxious weed control, fencing, construction and maintenance of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. *Riparian Management.* Activities, such as facilities construction, erosion control, rehabilitation, and similar activities, may be available in specific States.

5. *Recreation Management.* Activities, such as facilities construction and

maintenance, interpretive design and construction, and similar activities, may be available in specific States.

6. *Wildlife and Fisheries Habitat Management.* Activities, such as construction and maintenance, interpretive design and construction, habitat protection and improvement projects, and similar activities, may be available in specific States.

7. *Wild Horse Management.* Activities such as wild horse round ups, removal, and disposition, including operation and maintenance of wild horse facilities may be available in specific States.

The above programs under "Other Activities" are available in many states for competitive contracting. However, if they are of special geographic, historical or cultural significance to a participating Self-Governance tribe, they may be available for annual funding agreements. Tribes may also discuss additional BLM-funded activities with the relevant State office in relation to negotiating specific self-governance agreements.

For questions regarding Indian Self-Governance, contact Jerry Cordova, Bureau of Land Mangement, 1849 C Street, NW., Washington, DC 20240–0001, telephone: (202) 452–7756, fax: (202) 452–7701. General information on all contracts available in a given year through the BLM can be obtained from the BLM National Business Center, P.O. Box 25047, Bldg 50, Denver Federal Center, Denver, CO 80225–0047.

B. Eligible Programs of the Bureau of Reclamation

Reclamation operates a wide range of water resource management projects for irrigation, hydroelectric power generation, municipal and industrial water supplies, flood control, outdoor recreation, enhancement of fish and wildlife habitats, and research. Most of Reclamation's activities involve construction, operations and maintenance, and management of water resources projects and associated facilities. Components of the following water resource management and construction projects may be eligible for inclusion in self-governance agreements.

1. Klamath Project—CA, OR
2. Trinity River Restoration Program—CA
3. Central Valley Project (Trinity Division)—CA
4. Central Arizona Project—AZ, NM
5. Colorado River Front Work/Levee System—AZ, CA, NV
6. Lower Colorado Indian Water Management Study—AZ, CA, NV
7. Yuma Area Projects—AZ, CA
8. Middle Rio Grande Project—NM
9. Rocky Boy's/North Central Montana Regional Water System—MT
10. Indian Water Rights Settlement Projects—as Congressionally authorized.

For questions regarding self-governance contact Barbara White, Reclamation Self-Governance Coordinator, Native American Affairs Office, Bureau of Reclamation (W–6100), 1849 C Street, NW., Washington, DC 20240–0001, telephone: (202) 513–0631, fax: (202) 513–0311.

C. Eligible Programs of the Minerals Management Service (MMS)

MMS provides stewardship of America's offshore resources and collects revenues generated from mineral leases on Federal and Indian lands. MMS is responsible for the management of the Federal Outer Continental Shelf, which are submerged lands off the coasts that have significant energy and mineral resources. Within the offshore minerals management program, environmental impact assessments and statements, and environmental studies, may be available if a self-governance tribe demonstrates a special geographic, cultural, or historical connection.

MMS also offers mineral-owning tribes other opportunities to become involved in MMS's Minerals Revenue Management functions. These programs address the intent of Indian self-governance but are available regardless of self-governance intentions or status and are a good prerequisite for assuming other technical functions. Generally, minerals revenue management programs are available to tribes because of their status as Indians. Minerals revenue management programs that may be available to self-governance tribes are as follows:

1. *Audit of tribal royalty payments.* Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in MMS delegated audits, this program is offered as an optional alternative.)

2. *Verification of tribal royalty payments.* Financial compliance verification and monitoring activities, production verification, and appeals research and analysis.

3. *Tribal royalty reporting, accounting and data management.* Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. *Tribal royalty valuation.* Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

5. *Royalty Management of Allottee Leases.* Royalty management of allottee leases, provided that MMS consults with and obtains written approval from affected individual Indian mineral owners to delegate this responsibility to the Tribe.

6. *Online monitoring of royalties and accounts.* Online computer access to reports, payments, and royalty information contained in MMS accounts. MMS will install equipment at tribal locations, train tribal staff, and assist tribe in researching and monitoring all payments, reports, accounts, and historical information regarding their leases.

7. *Royalty Internship Program.* An orientation and training program for auditors and accountants from mineral producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance agreement but have not yet acquired mineral revenue expertise via a FOGRMA section 202 contract.

For questions regarding self-governance contact David Izon, Royalty Liaison Office, Minerals Management Service (MS–4241), 1849 C Street, NW., Washington, DC 20240–0001, telephone: (202) 208–3512, fax: (202) 208–3982.

D. Eligible Programs of the National Park Service (NPS)

The National Park Service administers the National Park System made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. NPS maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of these programs may be eligible for inclusion in a self-governance annual funding agreement. The listing below was developed considering the geographic proximity to, and/or traditional association of a self-governance tribe with, units of the National Park system, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement. This listing is not all inclusive, but is representative of the types of programs which may be eligible for tribal participation through annual funding agreements.

1. *Ongoing Programs and Activities.* Components of the following programs are potentially eligible for inclusion in a self-governance annual funding agreement.

a. Archeological surveys
b. Comprehensive management planning
c. Cultural resource management projects
d. Ethnographic studies
e. Erosion control
f. Fire protection
g. Gathering baseline subsistence data—AK
h. Hazardous fuel reduction
i. Housing construction and rehabilitation
j. Interpretation
k. Janitorial services
l. Maintenance
m. Natural resource management projects
n. Operation of campgrounds
o. Range assessment—AK
p. Reindeer grazing—AK
q. Road repair
r. Solid waste collection and disposal
s. Trail rehabilitation
t. Watershed restoration and maintenance

2. *Special Programs.* Aspects of these programs may be available if a self-governance tribe demonstrates a geographical, cultural, or historical connection.

a. Beringia Research
b. Elwha River Restoration

Locations of National Park System Units in Close Proximity to Self-Governance Tribes. Aspects of ongoing programs and activities may be available at park units with known geographic, cultural, or historical connections with a self-governance tribe.

1. Lake Clark National Park and Preserve—AK
2. Katmai National Park and Preserve—AK
3. Glacier Bay National Park and Preserve—AK
4. Klondike Gold Rush National Historical Park—AK
5. Sitka National Historical Park—AK
6. Kenai Fjords National Park—AK
7. Wrangell-St. Elias National Park & Preserve—AK
8. Western Arctic Parklands—AK
9. Gates of the Arctic National Park& Preserve—AK
10. Yukon-Charley Rivers National Preserve—AK
11. Casa Grande Ruins National Monument—AZ
12. Joshua Tree National Park—CA
13. Redwood National Park—CA
14. Whiskeytown National Recreation Area—CA
15. Hagerman Fossil Beds National Monument—ID
16. Bear Paw Battlefield, Nez Perce National Historical Park—ID
17. Boston Harbor Islands, a National Park Area—MA
18. Cape Cod National Seashore—MA
19. New Bedford Whaling National Historical Park—MA
20. Sleeping Bear Dunes National Lakeshore—MI
21. Voyageurs National Park—MN
22. Grand Portage National Monument—MN
23. Glacier National Park—MT
24. Great Basin National Park—NV
25. Bandelier National Monument—NM
26. Fort Stanwix National Monument—NY
27. Cuyahoga Valley National Park—OH
28. Hopewell Culture National Historical Park—OH
29. Chickasaw National Recreation Area—OK
30. Effigy Mounds National Monument—IA
31. Olympic National Park—WA
32. San Juan Islands National Historic Park—WA
33. Mt. Rainier National Park—WA
34. Ebey's Landing National Historical Reserve—WA

For questions regarding self-governance contact Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service (Org. 2560), 1849 C Street, NW., Washington, DC 20240–0001; telephone: (202) 354–6965, fax: (202) 371–6609.

E. Eligible Programs of the Office of Surface Mining and Reclamation Enforcement (OSM)

OSM regulates surface coal mining and reclamation operations, and reclaims abandoned coal mines, in cooperation with States and Indian tribes.

1. *Abandoned Mine Land Reclamation Program.* This program which restores eligible lands mined and abandoned or left inadequately restored is available to Indian tribes.

2. *Control of the Environmental Impacts of Surface Coal Mining.* This program includes analyses, NEPA documentation, technical reviews, and studies. Where surface coal mining exists on Indian land, certain regulatory activities that are not inherently Federal are available to Indian tribes.

For questions regarding self-governance contact Maria Mitchell, Office of Surface Mining Reclamation and Enforcement (MS–210–SIB), 1951 Constitution Ave., NW., Washington, D.C. 20240, telephone: (202) 208–2865, fax: (202) 291–3111.

F. Eligible Programs of the U.S. Fish and Wildlife Service (FWS)

The mission of FWS is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. FWS also has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Self-Governance Act.

Some elements of the following programs may be eligible for inclusion in a self-governance annual funding agreement. The listing below was developed considering the proximity of an identified self-governance tribe to a National Wildlife Refuge or National Fish Hatchery, and the types of programs that have components that may be suitable for contracting through a self-governance annual funding agreement. This listing is not all-inclusive but is representative of the types of programs which may be eligible for tribal participation through an annual funding agreement.

1. *Subsistence Programs within Alaska*
2. *Fish & Wildlife Technical Assistance, Restoration & Conservation*
   a. Fish & wildlife population surveys
   b. Habitat surveys
   c. Sport fish restoration
   d. Capture of depredating migratory birds
   e. Fish & wildlife program planning
   f. Habitat restoration activities
3. *Endangered Species Program*
   a. Cooperative management of conservation programs
   b. Development and implementation of recovery plans
   c. Conducting status surveys for high priority candidate species
   d. Participation in the development of habitat conservation plans, as appropriate
4. *Education Programs*
   a. Interpretation
   b. Outdoor classrooms
   c. Visitor center operations
   d. Volunteer coordination efforts on- and off-refuge
5. *Environmental Contaminants Program*
   a. Analytical devices
   b. Removal of underground storage tanks
   c. Specific cleanup activities

   d. Natural resource economic analysis
   e. Specific field data gathering efforts
6. *Hatchery Operations*
   a. Egg taking
   b. Rearing/feeding
   c. Disease treatment
   d. Tagging
   e. Clerical/facility maintenance
7. *Wetland & Habitat Conservation and Restoration*
   a. Construction
   b. Planning activities
   c. Habitat monitoring and management
8. *Conservation Law Enforcement*
   a. All law enforcement efforts under cross-deputization
9. National Wildlife Refuge Operations & Maintenance
   a. Construction
   b. Farming
   c. Concessions
   d. Maintenance
   e. Comprehensive management planning
   f. Biological program efforts
   g. Habitat management
   h. Fire Management

Locations of Refuges and Hatcheries with close proximity to Self-Governance Tribes

1. Alaska National Wildlife Refuges—AK
2. Alchesay National Fish Hatchery—AZ
3. Humboldt Bay National Wildlife Refuge—CA
4. Kootenai National Wildlife Refuge—ID
5. Agassiz National Wildlife Refuge—MN
6. Mille Lacs National Wildlife Refuge—MN
7. Rice Lake National Wildlife Refuge—MN
8. National Bison Range—MT
9. Ninepipe National Wildlife Refuge—MT
10. Pablo National Wildlife Refuge—MT
11. Mescalero National Fish Hatchery—NM
12. Sequoyah National Wildlife Refuge—OK
13. Tishomingo National Wildlife Refuge—OK
14. Bandon Marsh National Wildlife Refuge—OR
15. Dungeness National Wildlife Refuge—WA
16. Makah National Fish Hatchery—WA
17. Nisqually National Wildlife Refuge—WA
18. Quinault National Fish Hatchery—WA
19. San Juan Islands National Wildlife Refuge—WA

For questions regarding self-governance contact Patrick Durham, Fish and Wildlife Service (MS3012), 1849 C Street NW., Washington, DC 20240–0001, telephone: (202) 208–4133, fax: (202) 501–3524.

G. Eligible Programs of the U.S. Geological Survey (USGS)

The mission of the U.S. Geological Survey is to provide information on biology, geology, hydrology, and cartography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. Information includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure and dynamic processes of the earth. Information on these scientific issues is developed through extensive research, field studies, and comprehensive data collection to: evaluate natural hazards such as earthquakes, volcanoes, landslides, floods, droughts, subsidence and other ground failures; assess energy, mineral, and water resources in terms of their quality, quantity, and availability; evaluate the habitats of animals and plants; and produce geographic, cartographic, and remotely-sensed information in digital and non-digital formats. No USGS programs are specifically available to American Indians or Alaska Natives. Components of the following programs may have a special geographic, cultural, or historical connection with a self-governance tribe:

1. *Mineral, Environmental, and Energy Assessments.*
2. *USGS Earthquake Hazards Reduction Program.*
3. *Water Resources Data Collection and Investigations.*
4. *Biological Resources Inventory, Monitoring, Research and Information Transfer Activities.*

For questions regarding self-governance contact Sue Marcus, American Indian/Alaska Native Liaison, U.S. Geological Survey, 104 National Center, Reston, VA 20192, telephone: (703) 648–4437, fax: (703) 648–5470., e-mail address: *smarcus@usgs.gov.*

IV. Programmatic Targets

During Fiscal Year 2004, upon request of a self-governance tribe each non-BIA bureau will negotiate annual funding agreements for its eligible programs beyond those already negotiated.

Dated: December 5, 2003.

William A. Sinclair,

Director, Office of Self-Governance.

[FR Doc. 03–31162 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 05, 2004.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist Federal, State and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on February 5, 2004 at 4:30 p.m. at Mendon Town Hall located at 20 Main Street, Mendon, MA for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Financial Budget
5. Public Input

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director, BRVNHCC.

[FR Doc. 03–31435 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Conservation Plan and Summary for the Alamosa-Monte Vista National Wildlife Refuges Complex, Alamosa, CO

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the final Comprehensive Conservation Plan (CCP) and Summary are available for the Alamosa-Monte Vista National Wildlife Refuges Complex. This CCP, prepared

pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage the Complex for the next 15 years.

ADDRESSES: Requests for copies of the CCP or Summary should be addressed to: Alamosa-Monte Vista NWR, 7393 El Rancho Lane, Alamosa, Colorado 81101. Requests may also be submitted via electronic mail to: *adam_misztal@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Misztal, Planning Team Leader at (303) 236–4383; fax (303) 236–4792 or Mike Blenden, Complex Manager, Alamosa/Monte Vista National Wildlife Refuge Complex (719) 589–4021; fax (719) 587–0595.

SUPPLEMENTARY INFORMATION:

Background: Alamosa and Monte Vista National Wildlife Refuges were established under the authority of the Migratory Bird Conservation Act "* * * for use as inviolate sanctuaries, or for any other management purpose, for migratory birds." The purpose for managing habitats on the Alamosa and Monte Vista National Wildlife Refuge (the Complex) is to provide a biologically diverse area that complements the San Luis Valley (SLV) ecosystem.

Ten different plant communities/habitat types exist on the Complex: upland shrub, tall-emergent, short-emergent, saltgrass, short-grass, shallow seasonal wetland, semipermanent wetland, riparian, riverine, and agriculture. These habitats support a variety of mammals, reptiles, amphibians, and birds. Mammals include coyote, red fox, black bear, mountain lion, bobcat, elk, mule deer, pronghorn, raccoon, mink, American badger, and other small mammals. Birds commonly seen on these Refuges include numerous waterfowl species, including ten that nest on the Complex: mallard, gadwall, cinnamon, green-winged and blue-winged teal, northern pintail, northern shoveler, American wigeon, redheads, and ruddy ducks, and one species of goose (Canada). The Monte Vista NWR (MVNWR) has one of the highest densities of nesting waterfowl in the continent. On average, 15,000 ducks are produced on MVNWR annually, which constitutes a major contribution to the State's population and, subsequently, to the Central Flyway's duck population.

Other birds using the Complex include great blue heron, little blue heron, snowy and cattle egret, sandhill crane, northern harrier, Swainson's hawk, ring-necked pheasant, Ross' goose, black-bellied plover, greater yellowlegs, willet, and Wilson's phalarope. Two endangered species, the whooping crane and southwestern willow flycatcher, and one threatened species, the bald eagle, utilize the Complex. In addition, five species of management concern to the U.S. Fish and Wildlife Service's National Migratory Bird Office also use the Complex: American bittern, black tern, burrowing owl, ferruginous hawk, and white-faced ibis.

The CCP identifies the proposed management of the Alamosa and Monte Vista National Wildlife Refuges in the San Luis Valley of southwestern Colorado. The CCP describes how the habitat management tools, water management, rest, prescribed burning, prescribed grazing, farming, and habitat protection will be used to provide wildlife habitat. Also described is the management of public use, cultural resources, and elk.

Water Management: efforts would focus on improving efficiency of surface water application, monitoring of water usage, better understanding of water rights, historical processes, subsurface and surface interactions, and improving knowledge of groundwater and its role in maintaining wetlands. Better methods and capabilities for monitoring habitat responses to water application will be developed to facilitate an adaptive habitat management program.

Efforts will be taken to restore meandering streambeds and their associated hydrology and riparian habitats on Refuge lands. Although such actions will not have major impacts on either the unconfined or confined aquifers of the Valley, they can positively impact localized groundwater tables and artesian wells, and increase efficiency of irrigation during the following season.

Irrigation systems in all Refuge units will be upgraded as funding allows to enact more precise and efficient management of irrigation water. Currently, wetland vegetation is maintained using flood irrigation practices where water is applied at the highest elevation of a unit from a supply ditch or well head and is allowed to flow across the unit to lower elevations.

Rest: The ratio of periods of rest to disturbance in order to provide the optimum cover of vegetation for nesting ducks and other species is largely unknown for the San Luis Valley and needs to be examined. A successful program will help managers determine when areas of either Refuge need disturbance, the most effective tool to use, and when. An active adaptive management strategy would be implemented. This program would be based on monitoring of prescribed rest to document how different vegetation types respond to different rest strategies. This will allow for increasingly effective application of rest to meet habitat goals.

Prescribed Burning: Management will implement two new initiatives. First, formation of an interagency fire team would be pursued. This idea has been discussed among the various State and Federal land management agencies, but no action has been taken. This team would be responsible for conducting prescribed burns and suppressing wildfires on member agency lands. Secondly, Refuge management will pursue the hiring of additional staff to develop a burn monitoring program and detailed burn criteria in an effort to better understand the impacts of prescribed burning and to better implement its use in meeting management objectives.

Prescribed Grazing: Future use of prescribed grazing on the Refuges will be largely dictated by the results of research currently being conducted. In the future, if and when grazing is used, prescriptions will delineate the location of the site to be grazed and specific objectives and purposes of the tool such as to control weeds, increase new growth, and provide a competitive advantage to certain vegetation. This site-by-site evaluation and planning will allow for maximum control and flexibility of this tool as well as ensuring that only delineated sites are affected by the tool and that all factors and interests are considered.

Farming: Migrating birds will be provided with the same amount of small grain food from crops currently provided. The existing mixed organic/non-organic farming program operated by Refuge staff will be converted to a cooperative farming program. Farming will continue but Refuge staff will only be responsible for irrigation of the crops. The cooperating farmer would continue the crop rotation of two years of small grains followed by two years of alfalfa and then one year fallow.

The cooperating farmer will be allowed to keep all or a portion of the alfalfa crop based on yields of the small grain crops.

Refuge staff will also augment the farming program with a moist soil plant management program to diversify the types of feed available to the birds. The farming and moist soil plant programs would be monitored and managed through the adaptive management concept. Research will be encouraged to help identify the amount and kinds of high energy food sources the Refuge could and should be providing for migrating and wintering avian species.

Habitat Protection: Current support for the Service's Partners for Wildlife program will continue in order to ensure the program's growth and success. The Refuge will also continue to be an active partner in Colorado Wetlands Initiative Legacy project led by the Colorado Division of Wildlife.

Public Use: Educating the public as to the nature and value of wetlands will focus on contrasting the intensely managed wetlands of Monte Vista NWR with the more natural aspects on the Alamosa NWR wetlands. To assure compliance with public use minimum standards, money will be targeted for projects through RONS (Refuge Operating Needs System) and MMS (Maintenance Management System). Currently, funding proposals are developed for projects that will improve the quality of visitor experiences.

Hunting: Current waterfowl and small game hunting will continue to be supported and encouraged. To the extent feasible, the hunting experience will be further tailored to meet the desires of hunters using the Refuges based on periodic questioning of waterfowl hunters and other public input. The limited amount of overnight use currently available in parking lots during waterfowl hunting seasons will be continued.

Fishing: The shallow water in Refuge wetlands does not support a viable fishery. Wetlands either dry up or freeze solid annually which eliminates all fish that have entered the system. Therefore, fishing is not allowed on the Refuges.

Wildlife Observation: Support for the Crane Festival will continue. On the Monte Vista NWR, public and scientific input will be sought regarding the seasonal expansion of the auto tour route, development of wildlife observation sites at Parker Pond, and development of wildlife observation decks along County Road 3E. Opinion and information will also be sought regarding the development of an observation deck adjacent to the Refuge Headquarters at the Alamosa NWR and near the proposed visitor center and education facility at the Monte Vista NWR.

Wildlife Photography: Photography will continue to be allowed, with no additional Refuge support provided to photographers.

Interpretation: A multi-purpose education and visitor center facility on the Monte Vista NWR is the highest educational priority for the Complex. Also, the Refuge staff will implement an interpretation program centered around the cultural resources found on the Complex and around the Valley. Interpretation of past human use will focus on the theme that humans have always, and still depend upon natural resources for survival.

Environmental Education: Volunteer and/or contractor led environmental education programs for local schools will continue to be provided, both as Refuge field trips and classroom presentations.

Universal Access and Design: Developments will include new rest room facilities and wildlife observation blinds and/or platforms. Universally accessible hunting blinds will be built on both Refuges. All of these projects will follow the Americans with Disabilities Accessibility Guidelines.

Cultural Resources: Archaeological work on the Complex will be expanded to include work needed to determine the eligibility of four documented sites for nomination to the National Register of Historic Places. Management will also include a sample archaeological inventory of Refuge lands over a 15-year period.

Elk Management: The resident elk will be managed to discourage their use of Monte Vista NWR in large numbers with the intent to prevent habitat degradation.

Dated: August 29, 2003.

John A. Blankenship,

Deputy Regional Director, Region 6, Denver, Colorado.

[FR Doc. 03–31436 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Revised Recovery Plan for the ’Alalā (*Corvus hawaiiensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: The U.S. Fish and Wildlife Service ("we") announces the availability of a draft revised recovery plan for the ’Alalā, or Hawaiian Crow (*Corvus hawaiiensis*) for public review. This endemic Hawaiian bird, a member of the family Corvidae, is now believed to be extinct in the wild and survives only in captivity. The ’Alalā was listed as an endangered species in 1967 (32 FR 4001). The original recovery plan for the ’Alalā was published in 1982.

DATES: Comments on the draft revised recovery plan must be received on or before February 20, 2004 to receive our consideration.

ADDRESSES: Copies of the draft revised recovery plan are available for inspection, but appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850 (telephone 808–792–9400) and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Honolulu address. An electronic copy of the draft revised recovery plan is also available at: *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Jay Nelson, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not pronounce the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Comments may result in changes to the plan. Comments regarding recovery plan implementation will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The Hawaiian Crow, or ’Alalā, is an omnivorous, forest-dwelling bird endemic to dry and mesic forests on the island of Hawaii. Although ’Alalā were still abundant in the 1890's, their numbers decreased sharply throughout the twentieth century despite legal protection conferred by the Territory of Hawaii in 1931, the Act in 1973, and the State of Hawaii Endangered Species Act in 1982. Progressive range reduction and population fragmentation have characterized the decline. By 1987, the wild 'Alalā population was reduced to a single bird in north Kona, and an unknown number in central Kona, on the west slope of Mauna Loa volcano, Hawaii. The last reproduction of birds in the wild was in 1996, and the wild population declined from 12 birds in 1992 to 2 birds (possibly 3) in 2002, and apparent extinction in the wild in 2003.

Today, the 'Allalā is believed to survive only in captivity. Small population size and inbreeding are the primary threats to the species at present, fertility and hatching success in captivity are currently low, and the incidence of congenital abnormalities is increasing.

Many factors contributed to the decline of 'Allalā in the wild. Destruction of most of the lowland forests restricted the bird's ability to follow seasonal fruiting up and down the mountains. The upland forests have been thinned and fragmented, and many fruiting plants lost, due to logging, ranching, and the effects of grazing by feral pigs, cattle, and sheep. Mongooses, cats, and rats prey on 'Allalā eggs and fledglings. Diseases carried by introduced mosquitoes may have cause the mortality of many 'Allalā, as they did other forest birds. The role of 'Io in this decline, however, is unknown, despite their known effect on released birds. However, 'Io densities are higher, and vulnerability of 'Allalā may be greater, in areas where ungulate grazing has reduced understory cover.

The overall objective of this plan is to provide a framework for the recovery of the 'Allalā so that its protection under the Act is no longer necessary. Recovery is contingent upon protecting and managing suitable habitat for reintroduction of 'Allalā. Recovery actions include measures to protect habitat where the taxa occurred and habitat where the species is not known to have occurred but which may be suitable, restoration of degraded habitat, removal of feral ungulates from habitat areas, predator control, captive propagation and reintroduction, development of strategies to reduce mortality of reintroduced 'Allalā by 'Io predation, and the development of means to address threats of avian disease. Key to recovery will be propagation of 'Allalā in captivity; removal of feral ungulates that degrade forest habitat, spread introduced nonnative plant species, and create breeding sites for disease-carrying mosquitoes; control of introduced rodents; removal of feral cats that carry toxoplasmosis; and control of invasive plant species. Habitat management and restoration will increase foods available to released 'Allalā and provide better cover for escape in areas with 'Io.

Significant features of the 'Allalā's life history, behavior, ecological interactions, and habitat needs remain unknown. These unknowns, combined with the pressing need to successfully maintain and augment the last remaining population of the species in captivity, led us to develop a draft revised recovery plan that focuses primarily on actions to conserve the 'Allalā in the short-term while working within the framework of a broader long-term recovery strategy. This draft revised recovery plan is therefore presented in three sections: (1) An Introduction and Overview provides information on the biology of the species; (2) a Strategic Plan outlines the overall long-term goals and broad strategies which we anticipate shall remain effective throughout the recovery process for this species; and (3) a 5-year Implementation Plan which sets short-term goals for recovery efforts and research essential to conservation of the species. It is anticipated that new Implementation Plans will be prepared and published as addenda to the revised recovery plan every 3 to 5 years as we gain further knowledge of the 'Allalā and are better able to determine the parameters and techniques for the effective recovery of this species in the wild.

Public Comments Solicited

We solicit written comments on the draft revised recovery plan described. All comments received by the date specified above will be considered in developing a final revised recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 16, 2003.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03-31467 Filed 12-19-03; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Proposed Commercial Development in Palm Beach County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Jupiter Island Development Company (Applicant) requests an incidental take permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking one family of the threatened Florida scrub-jay (*Aphelocoma coerulescens*) incidental to the clearing of 0.85 acre of occupied habitat associated with the development of a commercial facility. The proposed commercial development would occur in section 31, Township 40 South, Range 43 East, in the town of Jupiter, Palm Beach County, Florida. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (*see* **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 60 days from the date of this notice. This notice is provided pursuant to section 10 of the Act and NEPA regulations (40 CFR 1506.6).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*.

Please submit comments over the Internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the Service that we have received your Internet message, contact us directly at either telephone number listed below (*see* **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the permit application, supporting documentation, EA and HCP should be sent to the Service's Regional Office (*see* **ADDRESSES**) and should be received on or before February 20, 2004.

ADDRESSES: Persons wishing to review the application, supporting documentation, EA, and HCP, may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559. Written data or comments concerning the application, supporting documentation, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE065793–0 in such comments, or in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Coordinator, (*see* **ADDRESSES** above), telephone: (404) 679–7313, facsimile: (404) 679–7081; or Ms. Sharon Tyson, South Florida Ecological Services Field Office (*see* **ADDRESSES** above), telephone: (772) 562–3909 extension 324.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the Western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in southeastern Florida has been greater than in most other regions of the State. Southeastern Florida has experienced tremendous urban growth in the past 50 years and much of commercial and residential development has occurred on the dry soils which historically supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east Florida occurs along a narrow stretch of historic sand dunes that are situated on a north-south axis from Dade to Flagler County. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Scrub-jays using the Project site and adjacent lands are considered part of a larger complex of scrub-jays that occupy xeric uplands of southeastern Florida. This complex of scrub-jay families ranges from about east-central Martin County south to northeastern Palm Beach County. The majority of scrub-jays within this complex are found within Jonathan Dickinson State Park which is located about eight miles north of the Project site. The continued survival of scrub-jays in this area may depend on the maintenance of suitable habitat and the restoration of unsuitable habitat in northeastern Palm Beach and southeastern Martin counties.

Scrub-jay use of the Project site and adjacent lands has been assessed on several occasions. In February 1998, field investigations by Fish and Wildlife Service staff determined that one scrub-jay family comprising three individual birds used portions of the Project site as well as adjacent lands. Systematic surveys conducted by the Applicant subsequently found scrub-jays using 0.85 acre of the 1.00-acre Project site.

The Project site represents one of the few remaining undeveloped private parcels supporting scrub-jays in northern Palm Beach County. Several tracts of public conservation lands are also located in the vicinity of the Project site, but much of the remaining landbase has been developed for commercial or residential uses. The Project site is bounded on two sides by major roadways and on another by commercial development. The Project site and surrounding lands have been negatively influenced by previous land clearing activities, off-road vehicle use, and invasion by exotic species. Due to the proximity of the Project site to existing commercial development and urban infrastructure, fire has been actively excluded because of safety concerns. As a result, the condition of the xeric habitat within the Project site is degraded; periodic fire or land management practices that mimic fire are required to maintain habitat conditions suitable for the scrub-jay.

Land clearing in preparation for commercial construction will destroy habitat and result in death of, or injury to, scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed commercial development will reduce the availability of feeding, nesting, and sheltering habitat for scrub-jays.

The Applicant's HCP and the Service's EA describes the following minimization and mitigation strategy to be employed by the Applicant to offset the impacts of the Project to the scrub-jay:

- The Applicant agrees to contribute $95,978 to the Florida Scrub-jay Conservation Fund for use in conservation of this species.
- The Applicant agrees to avoid land clearing activities during the scrub-jay nesting season.

The EA considers the environmental consequences of one action alternative which would result in issuance of the Permit. The no action alternative (not issue the Permit) would ultimately result in loss of scrub-jay habitat within the Project site due to habitat degradation. The no action alternative may also expose the Applicant under

Section 9 of the Act. The preferred alternative would affect about 0.85 acre of occupied scrub-jay habitat. The Applicant's financial contribution to the Florida Scrub-jay Conservation Fund would provide funding to assist in the conservation of this species by assisting in land acquisition and/or habitat management.

The proposed action alternative is issuance of the Permit according to the HCP as submitted and described above. Under the proposed alternative, the effect of the proposed minimization and mitigation measures will be a contribution of funding for scrub-jay conservation. The contribution of mitigation funding will provide the Service opportunities to protect and manage other suitable habitat in southeastern Florida. Mitigation funding will likely be used in combination with other matching sources of money to target the purchase of larger tracts of habitat. As a result, the immediate acquisition of habitat with the mitigation funding provided by the Applicant is not anticipated. However, any future acquisition made with all or portions of this funding is expected to benefit scrub-jays since habitat protection and management has been identified as one of the most important conservation tasks for this species.

As stated above, the Service has made a preliminary determination that the issuance of the Permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) Permit complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the Permit.

Dated: December 3, 2003.

Jackie Parrish,

Acting Regional Director.

[FR Doc. 03–31437 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Skokomish Tribe of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 3.0 acres, of land into trust for the Skokomish Tribe of Washington on December 8, 2003. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–4543 MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR part 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On December 8, 2003, the Assistant Secretary—Indian Affairs decided to accept approximately 3.0 acres, of land into trust for the Skokomish Tribe of Washington under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 3.0 acre parcel is located within the exterior boundaries of the Skokomish Indian Tribe in Mason County, Washington. The parcel is currently used for the Tribe's gaming facility. No change in use is anticipated following conveyance of the parcel to the United States in trust for the Tribe.

The real property consists of a 3.0 acre tract known as "Parcel 1 of the Jackpot Property" situated in Mason County, Washington. The legal description of the property is as follows:

All that portion of the East half (E½) Northeast quarter (NE¼) of the Northwest quarter (NW¼) of the Southwest quarter (SW¼) of Section two (2), Township twenty-one (21) North, Range four (4) West, W.M., lying Easterly of the Easterly right-of-way line of U.S. Highway No. 101.

Excepting therefrom all that portion thereof which lies Southerly of the Northerly line of a tract of land particularly described as follows:

The Northerly 210 feet of the Southerly 401 feet of the East half (E½) Northeast quarter (NE¼) of the Northwest quarter (NW¼) of the Southwest quarter (SW¼) of Section two (2), Township twenty-one (21) North, Range four (4) West, W.M., lying Easterly of the Easterly right-of-way line of U.S. Highway No. 101, more particularly described as follows:

Commencing at the centerwest sixteenth corner of said Section two (2), which is an iron pipe; thence South 1°10′50″ West, 215.95 feet, along the East line of the Northeast quarter (NE¼) of the Northwest quarter (NW¼) of the Southwest quarter (SW¼) of said Section two (2), to the point of beginning of the tract of land hereby described; thence continuing South 1°10′50″ West, along said East line, 210.00 feet; thence North 88°50′03″ West, parallel with the South line of said Northeast quarter (NE¼) of the Northwest quarter (NW¼) of the Southwest quarter (SW¼), 244.14 feet, more or less, to the Easterly right-of-way line of U. S. Highway No. 101, as located on August 31, 1972; thence North 0°46′28″ East, along said Easterly right-of-way line, 210.00 feet, thence South 88°50′03″ East, 245.61 feet, more or less, to the point of beginning.

Also, excepting therefrom road rights-of-way.

Parcel No. 42102 32 00000.

Dated: December 8, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–31473 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state gaming compacts.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compacts between the Santa Ysabel Band of Diegueno Mission Indians and the La Posta Band of Mission Indians and the State of California. The Compacts authorize a 350 machine Gaming Facility on the tribes' existing

reservations, requires a 5% payment of net win from the operation of gaming devices to the State for the exclusive right to operate Class III gaming devices in the State of California, and as part of the Tribes' commitment to mitigate any significant, adverse impacts resulting from the casino development, the Tribes and the State, through San Diego County, have agreed to conclude one or more written agreements. All such agreements shall be concluded prior to the commencement of the Project, and shall provide for the identification and implementation of feasible mitigation measures and feasible project alternatives concerning problem and pathological gambling and significant environmental effects.

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 9, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–31474 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–4N–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: December 29, 2003, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1059 (Preliminary) (Hand Trucks from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on December 29, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before January 6, 2004.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: December 17, 2003

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31509 Filed 12–17–03; 4:33 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: eForm 6 Access Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 122, page 37865 on June 25, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 21, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* eForm 6 Access Request.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F 5013.3. Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Respondents must complete the eForm 6 Access Request form in order to receive a user ID and password to obtain access to ATF's eForm 6 system. The information is used by the Government to verify the identity of the end users prior to issuing passwords.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete the form in approximately 18 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 150 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: December 16, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–31413 Filed 12–19–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,738]

Aaden Aaberg Setnet Operation, Anchorage, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 8, 2003 in response to a petition filed by a company official on behalf of workers of the Aaden Aaberg setnet operation, Anchorage, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 10th day of December 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31466 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,797]

Alcatel, Allen, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 11, 2003, in response to a worker petition filed on behalf of workers at Alcatel, Allen, Texas.

The petitioners did not supply information sufficient to create a valid petition. The product affected by imports was not identified. Allegations regarding job loss due to imports at Allen, Texas, are also omitted. Thus, the petition is invalid and the investigation has been terminated.

Signed at Washington, DC, this 8th day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31455 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,522]

Avery Dennison, Office Products Group, Flowery Branch, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 13, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Avery Dennison, Office Products Group, Flowery Branch, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31459 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 2, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 2, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of November 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—PETITION INSTITUTED BETWEEN 11/10/2003 AND 11/14/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
53,493	Derby Industries, LLC (Comp)	Galesburg, IL	11/10/2003	10/30/2003
53,494	Avery Dennison (Comp)	Chicopee, MA	11/10/2003	11/07/2003
53,495	Fisher Controls International, LLC (Wkrs)	Sherman, TX	11/10/2003	11/05/2003
53,496	Pass and Seymour (Comp)	San Antonio, TX	11/10/2003	11/03/2003
53,497	Eljer Plumbing Ware (Comp)	Salem, OH	11/10/2003	11/07/2003
53,498	Anadarko Petroleum Corp. (Comp)	The Woodlands, TX	11/10/2003	10/31/2003
53,499	Supreme Elastic Corp. (Comp)	Hickory, NC	11/10/2003	11/02/2003

APPENDIX.—PETITION INSTITUTED BETWEEN 11/10/2003 AND 11/14/2003—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
53,500	Intertape Polymer Group (Comp)	Green Bay, WI	11/10/2003	11/09/2003
53,501	Fishing Vessel (F/V) Exception (Comp)	Homer, AK	11/12/2003	11/01/2003
53,502	D'Vron Ceramic Studio, Inc. (Comp)	New Castle, PA	11/12/2003	10/22/2003
53,503	NTN—BCA Corporation (Comp)	Greensburg, IN	11/12/2003	11/11/2003
53,504	Coe Manufacturing (IBT)	Tigard, OR	11/12/2003	11/10/2003
53,505	Hunt Corporation (Comp)	Statesville, NC	11/12/2003	11/07/2003
53,506	Romac Industries, Inc. (Comp)	Sultan, WA	11/12/2003	11/10/2003
53,507	Northern Aluminum Foundry (Wkrs)	N. Fond Du Lac, WI	11/12/2003	11/11/2003
53,508	Paper Magic Group, Inc. (The) (Comp)	Troy, PA	11/12/2003	11/07/2003
53,509	Armstrong Floor Co. (AR)	Warren, AR	11/12/2003	11/10/2003
53,510	CB and I (Wkrs)	Provo, UT	11/12/2003	11/10/2003
53,511	Rusch, Inc. (Comp)	Decatur, GA	11/12/2003	11/04/2003
53,512	Plus Mark, Inc. (UNITE)	Greenville, TN	11/12/2003	11/07/2003
53,513	Amphenol Backplane Systems (Wkrs)	Nashua, NH	11/12/2003	11/05/2003
53,514	Art Leather Mfg. Co., Inc. (Comp)	Elmhurst, NY	11/13/2003	10/29/2003
53,515	Thomasville Furniture Ind., Inc. (Comp)	Thomasville, NC	11/13/2003	11/07/2003
53,516	Delphi Mechatronic Systems (Wkrs)	Downers Grove, IL	11/13/2003	11/12/2003
53,517	Howell-Penncraft (Wkrs)	Howell, MI	11/13/2003	10/28/2003
53,518	S. Lichtenberg and Co., Inc. (GA)	Waynesboro, GA	11/13/2003	11/10/2003
53,519	Field Container (Comp)	Bellwood, IL	11/13/2003	11/10/2003
53,520	Giddings and Lewis (Wkrs)	Fond Du Lac, WI	11/13/2003	11/11/2003
53,521	Perry Judd's (Comp)	Waterloo, WI	11/13/2003	11/12/2003
53,522	Avery Dennison Office Products (Comp)	Flowery Branch, GA	11/13/2003	10/31/2003
53,523	Wellington Leisure Products, Inc. (Comp)	Madison, GA	11/13/2003	11/03/2003
53,524	Overly Door Company (Wkrs)	Greensburg, PA	11/13/2003	10/15/2003
53,525	Rene Composite (Wkrs)	Pearisburg, VA	11/13/2003	11/12/2003
53,526	Royal Home Fashions (Wkrs)	Mebane, NC	11/13/2003	10/31/2003
53,527	Vandorn Demag (Wkrs)	Strongsville, OH	11/13/2003	11/12/2003
53,528	Ferndale Fasteners/Textron Fastening Sys (UAW)	Madison Hgts., MI	11/13/2003	11/11/2003
53,529	General Binding Corp. (GBC) (Comp)	Booneville, MS	11/14/2003	11/03/2003
53,530	Stone County Garment (Comp)	Crane, MO	11/14/2003	11/04/2003
53,531	GDX Automotive (Wkrs)	Salisbury, NC	11/14/2003	11/12/2003
53,532	Pen-Ro Group (MA)	Pittsfield, MA	11/14/2003	11/07/2003
53,533	International Paper (Comp)	Bucksport, ME	11/14/2003	11/05/2003
53,534	International Paper (Comp)	Augusta, ME	11/14/2003	10/29/2003
53,535	International Paper (Comp)	Auburn, ME	11/14/2003	10/29/2003
53,536	Istonish, Inc. (Wkrs)	Austin, TX	11/14/2003	10/30/2003
53,537	Pacific Rim Log Scaling Bureau (Wkrs)	Lacey, WA	11/14/2003	11/06/2003
53,538	Allegheny Ludlum Corp. (Comp)	Brackenridge, PA	11/14/2003	11/03/2003
53,539	El Mansure (SC)	Clinton, SC	11/14/2003	11/11/2003
53,540	Teikoko Chem Pump (Wkrs)	Warrington, PA	11/14/2003	10/31/2003

[FR Doc. 03–31454 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,369]

Fishing Vessel (F/V) Darlin Michele, Hoonah, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 29, 2003, in response to a petition filed by a company official on behalf of workers of F/V Darlin Michele, Hoonah, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31456 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,628]

G & R Transport, St. Joseph, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 25, 2003 in response to a worker petition filed by a company official on behalf of workers at G & R Transport, St. Joseph, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31462 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,656]

Halliburton Energy Services, Screens Manufacturing Facility, Houston, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 28, 2003 in response to a petition filed on behalf of workers of Halliburton Energy Services, Screen Manufacturing Facility, Houston, Texas.

The petitioning group of workers is covered by an active certification issued, and which remains in effect until July 15, 2004 (TA–W–41,091E). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of December, 2003.

Linda G. Poole

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31464 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,672]

Learjet, Inc., A Division of Bombardier, Inc., Wichita, KS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 1, 2003 in response to a petition filed by an official of the International Association of Machinists and Aerospace Workers, Lodge No. 70, on behalf of workers at Learjet, Inc., a division of Bombardier, Inc., Wichita, KS.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31465 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,432]

Millennium A.R. Haire, Thomasville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 4, 2003, in response to a petition filed by a company official on behalf of workers at Millennium A.R. Haire, Thomasville, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31457 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,626]

P & R Trucking Services, Inc., St. Joseph, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 25, 2003 in response to a worker petition filed by a company official on behalf of workers at P & R Trucking Services, Inc., St. Joseph, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31460 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,521]

Perry Judd's, Waterloo, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 13, 2003, in response to a petition filed by a company official on behalf of workers at Perry Judd's, Waterloo, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31458 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,629]

Twitchell Corp., Dothan, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 25, 2003 in response to a worker petition filed by a company official on behalf of workers at Twitchell Corporation, Dothan, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31463 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,627]

The Washout Co., St. Joseph, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 25, 2003 in response to a worker petition filed by a company official on behalf of workers at The Washout Company, St. Joseph, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31461 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Services

Funding Opportunity: Incarcerated Veterans Transition Program (IV–TP) Pilot Competitive Grants for FY 2004

Announcement Type: Initial announcement of availability of funds and Solicitation for Grant Applications (SGA) for Incarcerated Veteran Transition Programs.

Funding Opportunity Number: SGA 04–01.

Catalogue of Federal Assistance Number: 17–805.

Dates: Applications are due on January 21, 2004. Period of Performance is February 24, 2004, through February 23, 2005.

Application and Amendments: If copies of the standard forms are needed, they can be downloaded from *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

To receive amendments to this solicitation (please reference SGA 04–01) all applicants must register their name and address with the Grant Officer at below listed address.

Cassandra Willis, Department of Labor: Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 693–4570.

Summary: Applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS), announces a grant competition for up to four pilot programs that comply with the requirements of 38 U.S.C. section 2022, as added by section 5 of Pub. L. 107–95. Pub. L. 107–95, the Homeless Veterans Comprehensive Assistance Act (HVCAA) of 2001 requires the Department of Labor and the Department of Veteran Affairs to partner in the development, support, and operation of at least six demonstration projects designed to support incarcerated veterans at risk of homelessness. This demonstration is being funded under the authority of the Homeless Veterans Reintegration Program, 38 U.S.C. section 2021.

Applicants will be required to design programs which assist eligible veterans (who are incarcerated and at risk of homelessness) that provide career counseling, employment training, job search assistance, and life skills support services.

Under this solicitation, VETS anticipates that up to $250,000 will be available for each of the grant awards in fiscal year (FY) 2004 and expects to award up to four (4) grants. Projects will be selected that provide services to incarcerated veterans at one or more levels of the correctional system, *i.e.*, Federal, State and local. This notice contains all of the necessary information and forms needed to apply for grant funding.

The Incarcerated Veterans Transition Programs (IV–TP) are to be designed to be flexible in addressing the national, regional, and/or local issues that prevent previously incarcerated veterans from reintegrating into the workforce.

VETS will seek applicants that provide direct services through a case management approach that networks with Federal, State, and local resources for veteran support programs that have clear strategies for employment and retention and/or life skills treatment of the previously incarcerated veteran.

I. Funding Opportunity Description (Background)

Section 5 of Pub. L. 107–95, the Homeless Veterans Comprehensive Assistance Act (HVCAA) of 2001 amended title 38, United States Code, "to revise, improve, and consolidate provisions of law providing benefits and services for homeless veterans' and required that the Department of Labor and Department of Veteran Affairs partner in at least six (6) demonstration projects to serve incarcerated veterans at risk of homelessness. The Homeless Veterans' Reintegration Project (HVRP) was the first nationwide Federal program that concentrated on placing homeless veterans into jobs. This extension of the HVRP project, designed to support and evaluate programs that focus principally on previously incarcerated veterans, will provide invaluable information on approaches that assist in the prevention of homelessness among that population.

II. Award Information

Under this solicitation, VETS anticipates that up to $250,000 will be available for each grant awarded in Fiscal Year (FY) 2004 and expects to award up to four (4) grants.

Projects will be selected that provide services to incarcerated veterans at one or more levels of the correctional system, *i.e.*, Federal, State and local, in order for the participants to transition into the workforce. VETS will seek applicants that provide direct services through a case management approach that networks with Federal, State, and local resources for veteran support programs that have clear strategies for employment and retention and/or life skills treatment of the previously incarcerated veteran.

We anticipate awarding at least one (1) grant for each type of correctional facility program (Federal, State, and local).

III. Eligibilty Information

1. Eligible Applicants

Applications for funds will be accepted from State and local Workforce Investment Boards (WIBS), public agencies, for-profit/commercial entities, and nonprofit organizations, including faith-based and community organizations, who are familiar with the population to be served and can demonstrate expertise in administering an effective program. Eligible applicants will fall into one of the following categories:

A. State and local Workforce Investment Boards (WIBS), established under section 111 and 117 of the Workforce Investment Act.

B. Public agencies meaning any public agency of a State or of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties.) A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through partnerships or sub-awards, experienced public agencies, private nonprofit organizations, private businesses and faith-based and community organizations that have an understanding of unemployment and the barriers to employment unique to previously incarcerated veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

C. For-profit/commercial entities and private nonprofit organizations that have operated a VWIP, HVRP or similar employment and training program for the homeless or veterans and have a proven competence to manage grants and have or will provide the necessary linkages with other service providers.

D. Non-profit organizations that have received 501(c) (3) status from the Internal Revenue Service (IRS). If claiming 501(c) (3) status, the IRS statement indicating 501(c) (3) status approval must be submitted.

Entities described in section 501(c)(4) of the Internal Revenue Codes that engage in lobbying activities are not eligible to receive funds under this announcement as section 18 of the Lobbying Disclosure Act of 1995, Pub. L. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities.

2. Cost Sharing

Cost sharing and matching funds are not required for this SGA.

3. Other

A. Funding Levels

The total funding available for this solicitation is up to $1,000,000. It is anticipated that up to four (4) awards will be made under this solicitation. Awards are expected to range from $200,000 to a maximum of $250,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the $250,000 will be considered non-responsive.

B. Period of Performance

The period of performance will be for twelve (12) months from date of award unless modified. It is expected that successful applicants will begin program operations under this solicitation on February 24, 2004. Program funds must be obligated by February 23, 2005; however, a limited amount of funds should be reserved for follow-up activities and closeout.

C. Optional Year Funding

Should there be action by Congress to appropriate additional funds for this purpose, optional year funding may be considered. The Government does *not*, however, guarantee optional year funding for any Grantee. Should VETS decide that an optional year funding be exercised, the Grantees' performance during the previous period of operations will be taken into consideration (*see* IV. 5.C.).

IV. Application and Submission Information

1. Address To Request Application

Application announcements or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. In addition, a copy of this notice and the application requirements may be downloaded from the Veterans Employment and Training Services Web site at *http://www.dol.gov/vets*. If additional copies of the standard forms are needed, they can also be downloaded from: *http://www.whitehouse.gov/omb/grants/grants_forms.html*.

2. Content and Form of Application Submission

A. A cover letter, an original, and two (2) copies of the proposal must be submitted to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attn: Cassandra Willis, Washington, DC 20210; Phone (202) 693–4570.

It is recommended that applicants confirm application receipt by contacting the above listed point of contact prior to the closing date (this is not a toll-free number). Applicants are advised that postal reaction to anthrax contamination of U.S. mail occasionally caused mail delivery delays that must be considered when taking into account the application deadline.

B. The proposal must consist of two (2) separate and distinct parts, the Technical Proposal and the Cost Proposal as well as the Standard Form 424. All proposals will include:

(1) One completed, blue ink-signed original SF 424, Application for Federal Assistance;

(2) An original and two (2) copies of the Technical Proposal; including proposed Technical Performance Goals Form in Appendix D; and

(3) An original and two (2) copies of the Cost Proposal.

C. The information provided in these two parts is essential to gain an understanding of the programmatic and fiscal contents of the grant proposal.

1. *Part 1—The Technical Proposal* consists of a narrative proposal that demonstrates: the applicant's knowledge of the need for this particular grant program, an understanding of the services and activities proposed to obtain successful outcomes for the ex-offender veterans served; and evidence of the applicant's ability to accomplish the expected outcomes of the proposed project design. The technical proposal narrative must not exceed fifteen (15) pages double-spaced, font size no less than 11 pt., and typewritten on one side of the paper only. (The applicant also must complete the forms, *i.e.*, Technical Performance Goals chart provided in the SGA, Appendix D.)

Note: Resumes, charts, standard forms, transmittal letters, MOUs, agreements, lists of contracts and grants and letters of support are not included in the page count. If provided, include these documents as attachments to the technical proposal.

The proposal must include an outreach component that uses either DVOP/LVER staff or a trained outreach cadre and must include correctional personnel to provide information and "inreach" within the correctional institution. Coordination with the Department of Veterans' Affairs Regional Benefits Office, DVOPs and LVERs in the jurisdiction is required. Programs must be "employment focused". The services provided will be directed toward: (a) Increasing the employability of incarcerated veterans through training or arranging for the provision of services which will enable them to work after release; and (b) matching veteran ex-offenders with potential employers. The following format for the technical proposal is strongly recommended:

(a) *Need for the program*. The applicant must identify the geographical area to be served and provide an estimate of the number of incarcerated veterans in the designated area. Include poverty and unemployment rates in the area and identify the disparities in the local community infrastructure that exacerbate the employment barriers faced by the targeted veterans. Indicate how the project would respond to these obstacles and include labor market information (LMI) on the prospect for job opportunities in emerging areas, *i.e.*, service area.

(b) *Approach or strategy to increase employment and job retention:* Applicants must be responsive to the Rating Criteria contained in section IX and address all of the rating factors as thoroughly as possible in the narrative. The applicant must: (a) Indicate the type(s) of training available to include its applicability to the jobs that are in demand, length of training, training curriculum and how the training will improve the eligible veterans' employment opportunities within that geographical area; (b) describe the specific supportive, employment and training services to be provided under this grant and the sequence or flow of such services—flow charts may be provided; (c) provide a follow-up plan that addresses retention after 30, 90 and 180 days with participants who have entered employment (*see* discussion on results in section V.c.); and (d) include the required chart of proposed performance goals and planned expenditures listed in Appendix D.

(c) *Linkages with correctional programs, services and facilities that serve the homeless veterans:* Describe program and resource linkages with correctional services and facilities that will be involved in identifying potential clients for this program. Describe any networks with other related resources and/or other programs of a correctional nature that serves incarcerated veterans. Indicate how the program will be coordinated with any correctional efforts that are conducted by public and private agencies in the community. If a Memoranda of Understanding (MOU) or other service agreements exist with service providers, copies should be provided.

(d) *Linkages with other providers of employment and training services to the homeless veterans:* Describe the networks the program will have with other providers of services to homeless veterans other than the IV–TP grant; include a description of the relationship with other employment and training programs such as DVOP, the Local Veterans' Employment Representative (LVER) program, and programs under the Workforce Investment Act; and list the type of services that will be provided by each. Note the type of agreement in place, if applicable. Linkages with the workforce development system must be delineated. Describe any networks with any other resources and/or other programs for incarcerated veterans. Indicate how the program will be coordinated with any efforts for the homeless that are conducted by agencies in the community. If a Memoranda of Understanding (MOU) or other service agreements exists with other service providers, copies should be provided.

(e) *Linkages with other Federal agencies:* Describe program and resource linkages with Department of Housing and Urban Development (HUD), Department of Health and Human Services (HHS), and Department of Veterans Affairs (VA) for the veteran population to include the Compensated Work Therapy (CWT) and Per Diem programs. Indicate how the applicant will coordinate with any "continuum of care" efforts for the homeless among agencies in the community. If a Memoranda of Understanding (MOU) or other service agreements exists with other service providers, copies should be provided.

(f) *Proposed supportive service strategy for veterans:* Describe how supportive service resources for veterans will be obtained and used. If resources are provided by other sources or linkages, such as Federal, State, local or faith-based and community programs, the applicant must fully explain the use of these resources and how they will be applied. If a Memoranda of Understanding (MOU) or other service agreements exists with other service providers, copies should be provided.

(g) *Organizational capability to provide required program activities:* The applicant's relevant current or prior experience in operating employment and training programs should be clearly described. A summary narrative of program experience and employment and training performance outcomes is required. The applicant must provide information showing outcomes of all past programs in terms of enrollments and placements. An applicant that has operated a HVRP, other Homeless Employment and Training program, or VWIP program, must include the final or most recent technical performance reports. The applicant must also provide evidence of key staff capability. It is preferred that grantees be well-established and not in the start-up phase or process. If claiming 501(c)(3) status, the Internal Revenue Service statement indicating 501(c)(3) status approval must be submitted.

(h) *Proposed housing strategy for previously incarcerated veterans:* Describe how housing resources for incarcerated veterans will be obtained or accessed. These resources must be from linkages or sources other than the IV–TP grant such as HUD, HHS, community housing resources, VA leasing, or other programs.

2. *Part 2—The Cost Proposal must contain:*

a. Standard Form (SF) 424, "Application for Federal Assistance", (original and signed in blue-ink) in Appendix A; and

b. The organizational unit section of Block 5 of the SF 424 must contain the Dun and Bradstreet number of the applicant. Please note that beginning October 1, 2003, all applicants for Federal grant funding opportunities are required to include a Dun and Bradstreet (DUNS) number with their application. *See* OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants' DUNS numbers should be entered into Block 5 of SF 424. The DUNS number is a nine digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS number (although it may take 14–30 days). To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com/* or call 1–866–705–5711. Requests for exemption from the DUNS number requirement must be made to OMB; and

c. Standard Form (SF) 424A "Budget Information Sheet" in Appendix B; and

d. A detailed cost break out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative" and ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative; and

e. Direct Cost Description for Applicants and Sub-Applicants in Appendix E.

f. A completed Survey on Ensuring Equal Opportunity for Applicants in Appendix F; and

g. Assurance and Certification signature page (original signed in blue ink) in Appendix C.

Copies of all required forms with instructions for completion are provided as appendices to this SGA.

All applicants must submit evidence of satisfactory financial management capability, which must include recent financial and/or audit statements. Grantees are required to utilize Generally Accepted Accounting Practices, maintain a separate accounting for these grant funds, and have a checking account. The Catalog of Federal Domestic Assistance number for this program is 17.805. It must be entered on the SF 424, Block 10.

All applicants must include, as a separate appendix, a list of all government employment and training grants and contracts that it has had in the past three (3) years, including grant/contract officer contact information. Veterans' Employment and Training Service reserves the right to have a DOL representative within each State review and verify this data. *Applicants can expect that the cost proposal will be reviewed for allocations, allowances, and reasonableness.*

3. *The Cost Proposal Narrative Information:* As an attachment to the Budget Information Sheet (SF 424A), the applicant must provide, at a minimum, and on separate sheet(s), the following information:

(a) Breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including Sub-grantees) (Appendix E);

(b) Explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages), if necessary;

(c) Explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, sub-grants/contracts, and any other costs. The applicant must include costs of any required travel described in this Solicitation. Mileage charges may not exceed 36 cents per mile, or the current federal rate;

(d) All associated costs, for retaining participant information pertinent to a follow-up survey, six (6) months after the program performance period ends;

(e) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(f) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services. If resources/matching funds and/or the value of in-kind contributions are made available please show in section B of the Budget Information Sheet.

(g) Complete the Survey on Ensuring Equal Opportunity for Applicants (Appendix F).

3. Submission Dates and Times (Acceptable Methods of Submission)

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 p.m. e.s.t., January 21, 2004, will not be considered unless it is received before the award is made and:

A. It was sent by registered or certified mail not later than the fifth calendar day before January 21, 2004; or

B. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to January 21, 2004; and

C. It is determined by the government that the late receipt was due solely to mishandling by the government after receipt at the U.S. Department of Labor at the address indicated.

4. Intergovernmental Review

N/A.

5. Funding Restrictions

A. Funding Levels

The total funding available for this solicitation is up to $1,000,000. It is anticipated that up to four (4) awards will be made under this solicitation. Awards are expected to range from $200,000 to a maximum of $250,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding the $250,000 will be considered non-responsive. Further, there will not be reimbursement of pre-award costs.

B. Period of Performance

The period of performance will be for twelve (12) months from date of award unless modified. It is expected that successful applicants will begin program operations under this solicitation on February 24, 2004. Program funds must be obligated by February 23, 2005; however, a limited amount of funds should be reserved for follow-up activities and closeout.

C. Optional Year Funding

Should there be action by Congress to appropriate additional funds for this purpose, optional year funding may be considered. The government does *not*, however, guarantee optional year funding for any Grantee. Should VETS decide that an optional year funding be exercised, the Grantees' performance during the previous period of operations will be taken into consideration as follows:

(1) The Grantee must meet at minimum 85% of planned goals for Federal expenditures, enrollments, and placements in each quarter; and

(2) The Grantee must be in compliance with all terms identified in the Solicitation for Grant Application (SGA) general and special provisions.

(3) All program and fiscal reports must have been submitted by the established due date and must be verifiable for accuracy.

(4) All instructions for modifications and announcement of fund availability will be issued at a later date.

D. Limitation on Indirect Costs

(1) Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated approved, and signed indirect cost negotiation agreement must be submitted with the application.

(2) If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

(3) Indirect cost rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

6. Other Submission Requirements

a. The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

b. The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

c. The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted.

d. All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission, that is, if, because of these mail problems, the Department does not receive an application or receives it too late to give proper consideration, even if it was timely mailed, the Department is not required to consider the application.

V. Application Review Information

1. Criteria

A. Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential Grantees. Although the government reserves the right to award on the basis of the initial proposal submissions, the government may establish a competitive range and/or a minimum qualifying score, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs, *e.g.*, cost per enrollment and placement, demonstration models, and geographic service areas. While points will not be awarded for cost issues, cost per entered employment will be given serious consideration in the selection of awardees. The Grant Officer's determination for award under SGA 04-01 is the final agency action.

B. Program Concept and Emphasis

The Incarcerated Veterans Transition Program (IV–TP) pilot program grants under section 5 of the Homeless Veterans Comprehensive Assistance Act (HVCAA) of 2001 are intended to address two objectives, (1) To provide services to assist in reintegrating incarcerated veterans into meaningful employment within the labor force, and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing ex-offender veterans. The Incarcerated Veterans Transition Program (IV–TP) is designed to be flexible in addressing the national, regional, and/or local issues that prevent previously incarcerated veterans from reintegrating into the workforce. VETS in Fiscal Year (FY) 2004 will seek applicants that provide direct services through a case management approach that networks with Federal, State, and local resources for veteran support programs that have clear strategies for employment and retention of the previously incarcerated.

C. Community Awareness Activities

In order to promote networking between the program and local service providers (and thereby eliminate gaps or duplication in services and enhance the provision of assistance to participants), the Grantee must provide project orientation workshops and/or program awareness activities that it determines are the most feasible for the providers listed below. Grantees are encouraged to demonstrate strategies for incorporating small faith-based and community organizations (defined as organizations with social services budgets of approximately $300,000 or 7 or fewer full-time employees) into their outreach plans. Project orientation workshops conducted by Grantees have been an effective means of sharing information and informing the community of the availability of other services; they are encouraged but not mandatory. Rather, the Grantee will have the flexibility to attend service provider meetings, seminars, and conferences, to outstation staff, and to develop individual service contracts as well as to involve other agencies in program planning. The Grantee will be responsible for providing project awareness, program information, and orientation activities to the following:

(1) Direct providers of services to veterans and ex-offenders to include but not be limited to inmate families, jail and prison ministry groups, shelter and soup kitchen operators to make them aware of the services available to incarcerated veterans to make them job-ready and to aid their placement into jobs.

(2) Federal, State and local entitlement service such as the Social Security Administration (SSA), Department of Veterans' Affairs (VA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate WIA, Labor Exchange, and other employment and social services), mental health services, and healthcare detoxification facilities to familiarize them with the nature and needs of previously incarcerated veterans.

(3) Civic and private sector groups in particular Veterans' Service Organizations (VSOs), inmate family support groups, job training and employment services, and community-based organizations (including faith-based organizations) to portray previously incarcerated veterans and their needs.

D. Scope of Program Design

(1) Outreach, intake, assessment, peer counseling to the degree practical, and employment services. Outreach must be provided in the subject correctional institutions. Program staff providing outreach services should have experience in dealing with, and an understanding of the needs of the incarcerated and/or ex-offender veterans. Applicants proposing to use peer counselors who are themselves veterans will be awarded five (5) of the available points in the scoring criteria.

(2) Coordination with veterans' services programs, including Disabled Veterans' Outreach Program Specialists (DVOPs), Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the workforce development system's One-Stop Centers, as well as Veterans' Workforce Investment Programs (VWIPs) and Homeless Veteran Reintegration Programs (HVRP), Department of Veterans' Affairs (VA) services, including its Health Care for Homeless Veterans, Domiciliary Care, Regional Benefits Assistance Program, and Transitional Housing under Homeless Provider Grant and *per diem* programs.

(3) Grantees will perform a preliminary assessment of each participants' eligibility for Department of Veterans Affairs (DVA) service connected disability, compensation, and/or pension benefits. As appropriate, grantees will work with the Veterans Service Organizations (VSO) or refer the participants to DVA in order to file a claim for compensation or pension. Grantees will track progress of claim and report outcome in case management records.

(4) Association with Veteran Service Organizations such as the American Legion, Disabled American Veterans, the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS).

(5) Coordination with offender re-entry and transitional programs, such as pre-release facilities, work/training release facilities, halfway houses, community supervision, and community justice offices.

(6) Referral as necessary to health care, counseling and rehabilitative services, including, but not limited to: Alcohol and drug rehabilitation; Therapeutic; Post Traumatic Stress Disorder; Mental Health Services; Coordinating with McKinney Homeless Assistance Act (MHAA) Title VI programs for health care for the homeless or health care programs under the HVCAA.

(7) Referral to housing assistance, as appropriate, provided by: Local shelters; Federal Emergency Management Administration (FEMA) food and shelter programs; Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV (and under HVCAA); Permanent housing programs for the handicapped homeless funded under MHAA Title IV (and under HVCAA); and

(8) Employment and training services such as: Basic skills instruction; Remedial education activities; Job search activities, including job search workshops; Job counseling; Job preparatory training, including resume writing and interviewing skills; Subsidized trial employment (Work Experience); On-the-Job Training; Classroom Training; Job placement in unsubsidized employment, Placement follow-up services; and Services provided under WIA.

E. Panel Review Criteria

(1) *Need for the project:* 15 points.

The applicant will document the need for this project, as demonstrated by: (a) the number of previously and/or current incarcerated veterans in the proposed project area, (b) the rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (c) the extent of the obstacles in the local infrastructure to effectively address the employment barriers that characterize the target population.

(2) *Overall strategy to reduce recidivism by increasing employment and retention:* 30 points.

The application must include a description of the approach to providing comprehensive employment and training services, including job training, job development, obtaining employer commitments to hire, placement, and post-placement follow up services. Applicants must address how they will target occupations in emerging industries. Supportive services provided as part of the strategy of promoting job readiness and job retention must be indicated. The applicant must identify the local services and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (including DVOP and LVER Programs), One-stops, VWIP, other WIA programs, and Workforce Investment or Development Boards or entities where in place, must be specified. The application must also include a description of the relationship, if any, with correctional facilities or services to be involved with this project, at the institutional and/or community levels. Applicant must indicate how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant must complete the chart of proposed program outcomes to include participants served, placement/entered employments and job retention. (*See* Appendix D). Of the 30 points possible in the strategy to increase employment and retention, 5 points will be awarded to grant proposals that demonstrate the ability to maintain a six-month employment retention rate of 50 percent or greater. Applicants proposing to use peer counselors who are themselves veterans will be awarded five (5) of the available points in the scoring criteria.

(3) *Quality and extent of linkages with other providers of services to incarcerated veterans:* 15 points.

The application must provide information on the quality and extent of the linkages this program will have with other providers of services to benefit previously incarcerated veterans in the local community other than the IV-TP grant. For each service, the applicant must specify who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe, to the extent possible, how the project would be incorporated into the community's continuum of care approach to respond to homelessness and show any linkages to HUD, HHS or VA programs that will be advantageous to the proposed program.

(4) *Demonstrated capability in providing required program services including programmatically reporting and participant tracking:* 25 points.

The applicant must describe its relevant prior experience in operating employment and training programs and providing services to participants similar to those that are proposed under this solicitation. Specific outcomes previously achieved by the applicant must be described, such as job placements, benefits secured, network coalitions, etc. The applicant must also address its capacity for timely startup of the program, programmatic reporting, and participant tracking. The applicant should describe its staff experience and ability to manage the administrative, programmatic and financial aspects of a grant program. Include a recent (within the last 12 months), financial statement or audit. Final or most recent technical reports for other relevant programs must be submitted if applicable. Because prior grant experience is not a requirement for this grant, some applicants will not have any technical reports to submit.

(5) *Quality of Overall Housing Strategy:* 15 points.

The application must demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources, HUD, VA lease, or other means. IV–TP funds may not be used to purchase housing or vehicles.

F. Results-Oriented Model

No specific model is mandatory, but the applicant must design a program that is responsive to the needs of the local community, and achieves the objectives of the program—to successfully reintegrate ex-offender veterans into the workforce and stimulate the development of effective service delivery systems that will address the complex problems facing ex-offender veterans.

A data management system to assess ex-offenders is an important element of this program. Data elements to be considered for each program participant include: health, employment and disability status, demographics, veteran's benefits usage, type of most recent criminal conviction, previous criminal history, system entry and discharge, length of time in the program and recidivism measures. Factors to be considered by the review panel are:

(1) Efficient and effective communication between agencies (Department of Labor, Department of Veterans' Affairs, state/local courts, police, other service providers, etc.).

(2) Effective assessment of costs, interventions offered and services provided.

(3) Data standardization/compatibility.

(4) System flexibility, functionality, scalability and ease of use.

(5) Reporting system design and modification.

Under the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than program processes.

The suggested conceptual design of the Incarcerated Veterans Transition Program (IV–TP) is shown in Figure 1. Definitions of the elements and Incarcerated Veterans Transition Program (IV–TP) performance goals follow.

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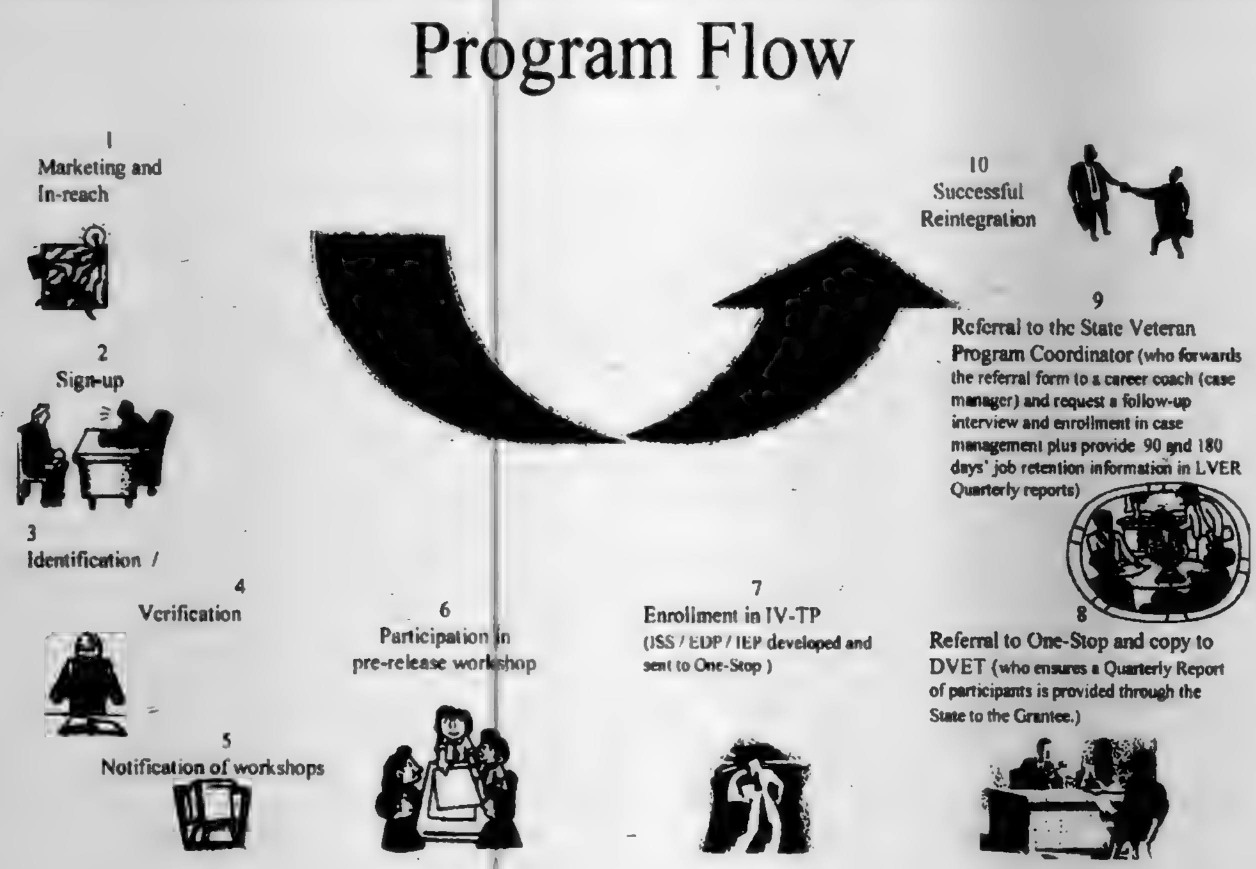
Program Flow
1
Marketing and In-reach
2
Sign-up
3
Identification /
4
Verification
5
Notification of workshops
6
Participation in pre-release workshop
7
Enrollment in IV-TP
(ISS / EDP / IEP developed and sent to One-Stop)
8
Referral to One-Stop and copy to DVET (who ensures a Quarterly Report of participants is provided through the State to the Grantee.)
9
Referral to the State Veteran Program Coordinator (who forwards the referral form to a career coach (case manager) and request a follow-up interview and enrollment in case management plus provide 90 and 180 days' job retention information in LVER Quarterly reports)
10
Successful Reintegration

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Figure 1: IV–TP Concept Flowchart

1. *Inreach:* The process of providing veteran benefit information to inmates in correctional facilities to facilitate incarcerated veterans attendance at pre-release transition workshops and/or assessment interviews.

2. *Sign-up:* Initial contact with individual inmates to provide additional information and collect information from inmates who express interest in the program.

3. *Identification:* Reviewing information provided by inmates who completed the sign-up in step two.

4. *Verification:* Verification of information and eligibility of inmates who expressed interest and are attempting to sign up for the program.

5. *Notification of Workshops:* Provide Incarcerated Veterans Transition Program (IV–TP) transition schedule and information to eligible veterans in the incarcerated population.

6. *Workshops:* Addresses the supportive services and employability and training needs of individuals before enrolling them in an IV–TP program. Includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

7. *Enrollment* in IV–TP: A client is recorded as having been enrolled when the Intake Form has been completed, and either an Individual Support System (ISS), Employment Development Plan (EDP) or Individual Employment Plan (IEP) has been developed with participant. Referral of participant to One-Stop and copy of referral form to DVET (DVET ensures referral follow-up at One-Stop to obtain 30, 90, 180 day job progress report). There should be an unduplicated count over the year: *i.e.*, each participant is recorded only once, regardless of the number of times she or he receives assistance. Other elements of enrollment/services provided which are counted include:

A. Referral to or receiving services from the Department of Veterans' Affairs.

B. Placement into transitional or permanent housing: permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by IV–TP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

C. Direct placements into unsubsidized employment: direct placement into unsubsidized employment is a referral and placement made by an IV–TP-funded staff member (or DVOP/LVER at the One-Stop office the participant was referred to) with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

D. Assisted placements into unsubsidized employment: assisted placements into unsubsidized employment should be recorded when the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the IV–TP referred the homeless veteran, such as a One-Stop Career Center.

E. Cost per placement: the cost per placement into unsubsidized employment is obtained by dividing the total IV–TP funds expended by the total number of direct placements plus assisted placements.

F. Number retaining job for 30 days: to be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

G. Number retaining job for 90 days: to be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

H. Number retaining job for 180 days: to be counted as retaining a job for 180 days, continuous employment with one or more employers for at least 180 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 180 days as long as the client has been steadily employed for that length of time.

I. Rate of placement into unsubsidized employment: the rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

J. Average hourly wage at placement: the average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

K. Employability development services. This includes services and activities that will develop or increase the employability of the participant. Includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a Sub-grantee, contractor or another source such as the local Job Partnership Training Act program or the DVOP personnel or LVERs. Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

L. Total planned expenditures (total funds requested): identification of projected expenditures needed for each fiscal quarter.

M. Administrative costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of Sub-grantees and contractors.

N. Participant services costs. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

The outcome measurement established for IV–TP grants is for Grantees to meet a minimum entered employment rate of 56%, determined by dividing the number of entered employments by the number of enrollments. (These outcomes will be reported quarterly on Technical Performance Goals Form, Appendix D.) While entered employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs.

The following program discussion must be considered in a results-oriented model. The first phase of activity must consist of the level of outreach necessary to introduce the program to eligible incarcerated veterans. This includes "inreach" into prisons and jails to find eligible veterans in the inmate population. Outreach also includes establishing contact with other agencies that encounter ex-offender veterans.

After "inreach", the incarcerated veteran must sign-up for enrollment into the program by assisting the Grantee in obtaining verification of eligibility for said program. The program operator may enroll participant in pre-release workshop (National Veterans' Training Institute will provide a model if needed) then enroll in referral program outside of facility or provide direct assessment and referral program outside of facility.

Once the eligible participants have been identified, an assessment must be made of the individual's abilities, interests, needs, and barriers to employment. In some cases, participants may require referrals to services such as rehabilitation, drug or alcohol treatment or a temporary shelter before they can be enrolled into core training.

When the individual is "work ready", the assessment should concentrate on the employability of the individual and the individual's enrollment into the program. A determination should be made as to whether the individual would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, or possibly an initial entry into the job market through temporary jobs. Additionally, sheltered work environments, classroom training and/or on-the-job training must be evaluated. Such services should be noted in an Employability Development Plan to facilitate the staff's successful monitoring of the plan.

Entry into full-time employment or a specific job-training program should follow. Supportive services may assist the participant at this point or even earlier. Job development is a crucial part of the employability process and IV–TP participants will be referred to a One-Stop for career counseling and coaching.

Wherever possible, DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment or who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans' Training Institute and have as a priority, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

The subsequent program discussion emphasizes the importance of tracking program participants. It begins with the One-Stop referral and continues with the 30, 90, and 180-day follow-up periods after entering employment to determine whether the veteran is in the same or similar job. It is important that the Grantee maintain contact with the veterans after placement to assure that employment related problems are addressed. The 30, 90, and 180-day follow-ups are fundamental to assessing the results of the program success. Grantees need to budget for this activity so that follow-up can and will occur for those placed at or near the end of the grant performance period. Grantees, prior to the end of the grant performance period, must obligate funds to ensure that follow-up activities are completed. Such results will be reported in the final technical performance report.

2. Program Activity Process

There are nine program activities that all applications should consider under this SGA. Programs must be "employment focused" with emphasis on referral to counseling services to address employment barriers. These activities are:

a. Marketing and Inreach;
b. Sign-up;
c. Identification;
d. Verification;
e. Notification of workshops and /or assessment interview;
f. Participation in pre-release workshop and or assessment interview;
g. Enrollment in IV–TP including ISS/EDP/IEP development;
h. Referral to One-Stop/VA facility and copy of the referral sent to DVET who assists the Program Operator by compiling the Quarterly Report of participants;
i. Referral to the State Veteran Program Coordinator (who ensures participant referral follow-up within 30 days and maintains 30, 90, and 180-day job progress reports).

Note the program activities under the flowchart provided above.

3. Anticipated Announcement and Award

N/A.

VI. Award Administration Information

1. Award Notices

A. Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, VETS may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

B. A Post-Award conference will be held for those Grantees awarded FY 2004 IV–TP funds from the competition. It is expected to be held in February or March 2004. At least two representatives must be present; a financial and a program representative are recommended. The site of the Post-Award conferences have not yet been determined, for planning and budgeting purposes, please use five days and use Denver, Colorado as the conference site. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and also include best practices from past projects. Costs associated with attending this conference for up to two Grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs must be charged as administrative costs and reflected in the proposed budget.

2. Administrative and National Policy

A. Limitations on Administrative and Indirect Costs

(1) Indirect costs claimed by the applicant must be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application.

(2) If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

(3) Rates traceable and trackable through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

B. Administrative Standards and Provisions

Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition. All grants will be subject to the following administrative standards and provisions, if applicable:

(1) 29 CFR part 93—Lobbying.

(2) 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, and with Commercial Organizations.

(3) 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

(4) 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(5) 29 CFR part 98—Federal standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

(6) 29 CFR part 99—Audit of States, Local Governments, and Non-profit Organization.

(7) 29 CFR parts 30, 31, 32, 33 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally-Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs and Activities; and Nondiscrimination on the basis of sex in Education programs receiving or benefiting from Federal Financial Assistance.

3. Reporting

The Grantee will submit the reports and documents listed below:

A. Financial Reports

The Grantee must report outlays, program income, and other financial information on a quarterly basis using SF 269A, Financial Status Report, Short Form. This form will cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter (*i.e.*, October 30, January 30, April 30 and July 30) during the grant period.

B. Program Reports

Grantees must submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter to the DVET that contains the following:

(1) A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

(2) An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action that will be taken to meet the planned goals, if required; and (ii) a timetable for accomplishment of the corrective action.

C. 90 Day Follow-Up Report

The Grantee must submit no later than 120 days after the grant performance expiration date a report containing the following:

(1) Financial Status Report (SF–269A) (copy to be provided following grant awards); and

(2) Technical Performance Report—(Program Goals).

D. Six (6) Month Follow-Up/Closeout Report

(1) Final Financial Status Report (SF–269A); and

(2) Final Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans

placed during the entire grant period; (b) the number of veterans still employed after the 6 month follow-up period; (c) if the veterans are still employed at the same or similar job, if not what are the reasons; (d) if the training received was applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

VII. Agency Contacts

For questions concerning this solicitation please contact: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Cassandra Willis, Reference SGA 04–01, Washington, DC 20210; Phone: (202) 693–4570.

VIII. Other Information

To be eligible for participation in the Incarcerated Veterans Transition Program (IV–TP), a veteran must be within 18 months of release from a participating correctional facility; a veteran is defined as follows:

A. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable. (Title 38 U.S.C. 101(2))

B. A veteran transitioning from incarceration means a person, as defined in A. above, who is within 18 months of release from a correctional institution or facility.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, VETS may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

Signed in Washington, DC this 12th day of December, 2003.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet SF 424A

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: Survey on Ensuring Equal Opportunity for Applicants

Appendix G: Glossary of Terms

Appendix H: List of Common Acronyms

BILLING CODE 4910–79–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ **Construction**	☐ **Construction**
☐ **Non-Construction**	☐ **Non-Construction**

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ____________________

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				

Cost Per Placement				
Number Retaining Jobs For 90 Days				
Number Retaining Jobs For 180 Days	▨	▨	▨	
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
____________				
____________				
____________				
____________				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total ____________ ____________

Administration Program

Fringe Benefits For All Positions ____________ ____________

Contractual ____________ ____________

Travel ____________ ____________

Indirect Costs ____________ ____________

Equipment ____________ ____________

Supplies ____________ ____________

Total Costs ------------------------------------ ____________ ____________

Administration Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided

DEPARTMENT OF LABOR
UNITED STATES OF AMERICA

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

☐ 3 or Fewer
☐ 4-5
☐ 6-14
☐ 15-50
☐ 51-100
☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

☐ Less Than $150,000
☐ $150,000 - $299,999
☐ $300,000 - $499,999
☐ $500,000 - $999,999
☐ $1,000,000 - $4,999,999
☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

U.S. Department of Labor
Veterans' Employment and Training Service

GLOSSARY OF TERMS

Adequate Employment – See Unsubsidized Employment.

Administrative Costs - Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of sub-recipients and contractors.

Adult Basic Education - Education for adults whose inability to speak, read, or write the English language or to effectively reason mathematically, constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level, of education of such individuals with a view to making them less likely to become dependent on others, to improve their ability to benefit from occupational training and otherwise increase their opportunities for more productive and profitable employment, and to make them better able to meet their adult responsibilities.

Ancillary Services – Employment and training related activities other than core training that may enhance a participant's employability.

Apprenticeship Training – A formal occupational training program that combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. It may be registered or unregistered.

Assessment/Intake - A process for screening individual applicants for program eligibility making the level of need determinations; making an initial determination what services or programs can best benefit the applicants; providing information about services, program eligibility, and the availability of those services, and the routing or selecting individual applicants for particular service delivery or program participation.

Assisted Placements Into Unsubsidized Employment - Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the homeless veteran was referred to.

Average Hourly Wage At Placement - The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

Assurance and Certifications - The act of signifying intent to comply with applicable federal and State laws and regulations as a condition for receiving and expanding USDOL grant funds.

Barriers to Employment - Characteristics that may hinder an individual's hiring promotion or participation in the labor force. Identification of these barriers will vary by location and labor market. Some examples of individuals who may face barriers to employment include: single parents, women, displaced homemakers, youth, public assistance recipients, older workers, substance abusers, teenage parents, certain veterans, ethnic minorities, and those with limited English speaking ability or a criminal record or with a lack of education, work experience, credential, child care arrangements, transportation or alternative working parents.

Campaign Badge veteran - A veteran who served on active duty during the war (e.g., WWII), action (e.g., Korea, Vietnam), in a campaign, or an expedition for which a campaign badge of an expeditionary medal has been authorized (e.g. Bosnia, Grenada, Haiti, Panama, Southeast Asia, and Somalia).

Case Management - A client centered approach in the delivery of intensive services, designed to prepare and coordinate comprehensive employment plans for participants, to assure access to the necessary training and supportive services, and to provide support during program participation and after job placement.

Case Manager - One who coordinates, facilitates or provides direct services to a client or trainee from application through placement, post placement follow-up, or other case closing, exclusively, through periodic contact and the provision of appropriate assistance.

Classroom Training – Any training of the type normally conducted in an institutional setting, including vocational education, which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, throughout the provision of courses such as remedial education, training in the primary language of persons with limited English language proficiency, or English as a second language training.

Close Out – Grant close out is the process by which the Federal grantor agency (in the case of VETS grants, Department of Labor) determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

Cognizant Federal Agency - The federal agency that is assigned audit or indirect cost rate approval responsibility for a particular recipient organization by the Office of Management and Budget (OMB Circular A-87 and A-102 [20 CFR, Part 97]).

Community Based Organization – means a private non-profit organization that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce investment.

Core Training – Core Training activities are employment-focused interventions which address basic vocational skills deficiencies that prevent the participant from accessing appropriate jobs and/or occupations.

Cost Per Placement - The cost per placement into unsubsidized employment is obtained by dividing the total funds expended by the total of direct placements plus assisted placements.

Counseling - A form of assistance which provides guidance in the development of a participant's vocational goals and the means to achieve those goals; and/or assist a participant with the solution to one or more individual problems which may pose a barrier (s) to sustained employment.

Counselor - (Employment/Vocational): A trained and qualified professional authorized to provide direct assistance (beyond advising and informing) through planning, testing, training and otherwise readying an individual for sustained employment.

Customized Training – A training program designed to meet the special requirements of an employer who has entered into an agreement with a Service Delivery Area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or may be provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

Direct Placements Into Unsubsidized Employment - A direct placement into unsubsidized employment must be a placement made directly by staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

Disabled Veteran - A veteran who is entitled to compensation under laws administered by the Veterans Administration; or an individual who was medically discharged or otherwise released from active duty, due to service-connected disability.

Disallowed Costs – Disallowed costs are those charges to a grant that the grantor agency (or its representative) determines to be unallowable in accordance with the applicable Federal Cost Principles or other conditions in the grant.

Disabled Veterans' Outreach Program (DVOP) - A program of Federal assistance through grants to States to staff and support in accordance with 38 U.S.C. 4103A, appointed to perform a number of duties chief among which are direct employer contact, particularly with Federal contractors, Federal employers using individualized job development techniques, and with veterans (particularly with disabled veterans) using a case management approach to client-centered services.

Economically Disadvantaged – An individual who (a) receives, or is a member of a family which receives, cash welfare payments under a Federal, state, or local welfare program; (b) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673 (2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), or (ii) 70 percent of the lower living standard income level; (c) is receiving (or has been determined within the 6-month period prior to the application for program involved to be eligible to receive) food stamps pursuant to the Food Stamp At of 1977; (d) qualifies as a homeless individual under section 103 of the Stewart B. McKinney Homeless Assistance Acct; (e) is a foster child on behalf of whom state or local government payments are made or (f) in cases permitted by regulations of the Secretary, is an individual with a disability whose income meets the requirements of clause (a) or (b), but who is a member of a family whose income does not meet such requirements.

Eligible - Meeting the minimum requisite qualifications to be considered for the provision of services or entry into a position under a funded program or as required by law.

Employability Development Services (EDS) - This includes services and activities that will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a Sub-grantee, contractor or another source such as the local Workforce Investment Act program or the DVOP personnel or LVERs. Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

Employment Development Plan (EDP) – An individualized written plan or intervention strategy for serving an individual which, as a result of an assessment of the veteran's economic needs, vocational interests, aptitudes, work history, etc., defines a reasonable vocational or employment goal and the developmental services or steps required to reach the goal and which documents the accomplishments made by the individual.

Employment Service – the state level organization or public labor exchange system affiliated with the Department of Labor's United States Employment Service.

Enlistments - Individuals who have expressed an interest, signed up for a workshop or enrollment in the program.

Entered Employment - Applicants for service who were placed in jobs or otherwise obtained employment as a result of services used or received.

Entered Employment Rate – This is a method used to determine the percentage of participants who become employed. The percentage is calculated by dividing the number of total participants who were enrolled in the program by the number of participants who were placed or entered employment through the program.

Enrolled Veteran – Shall be synonymous with the term participant. A veteran who has been determined eligible for services at intake and who is receiving or scheduled to receive core training.

Follow-up - The tracking of clients for a period of time up to 180 days after initial placement, last referral date for services or completion of training programs to determine current status, outcome or whether to offer additional services (such as additional referral, job retention advisement, etc.).

Full-Time Equivalent (FTE) – a personnel charge to the grant equal to 2,080 hours per year.

FY - Fiscal Year. For federal government purposes, any twelve month period beginning on October 1 and ending on September 30.

General Equivalency Diploma (GED) – A high school equivalency diploma that is obtained by passing the General Educational Diploma Equivalency Test that measures the application of skills and knowledge generally associated with four (4) years of traditional high school instruction.

Grant Officer's Technical Representative (GOTR) - An individual (usually the DVET) serving on behalf of the Grant Officer who maintains and ensures the integrity of the approved grant agreement by reviewing and making recommendations regarding technical matters not involving a change in scope, cost, or conditions.

Homeless or homeless individual – includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. [Reference 42 U.S.C., Section 11302 (a)].

Indirect cost - A cost that is incurred for a common or joint purpose benefiting more than one cost objective and that is not readily assignable to the cost objective specifically benefited.

In-kind Services – Property or services which benefit federally assisted project or program and which are contributed without charge to the grantee.

Institutional Skills Training – training conducted in an institutional setting and designed to ensure that individuals acquire the skills, knowledge, and abilities necessary to perform a job or group of jobs in an occupation for which there is a demand.

Intake – A process for screening individual applicants for eligibility; making an initial determination whether the program can benefit the applicants; providing information about the program, its services and the availability of those services; and selecting individual applicants for participation in the program.

Intensive Services - The provision of concentrated staff services to clients who indicate the need for facilitation or interventions to secure lasting employment. The case management approach to service delivery is a viable model for successfully providing such services and obtaining the clients goals.

Job Club Activities – A form of job search assistance provided in a group setting. Usually job clubs provide instruction and assistance in completing job applications and developing resumes and focus on maximizing employment opportunities in the labor market and developing job leads. Many job clubs use telephone banks and provide group support to participants before and after they interview for job openings.

Job Development - The process of marketing a program participant to employers, including informing employers about what the participant can do and soliciting a job interview for that individual with the employer (targeted job development); and the development of one or more job openings or training opportunities with one or more employers using a variety of techniques and means of contact.

Job Placement Services – Job placement services are geared towards placing participants in jobs and may involve activities such as job search assistance, training, or job development. These services are initiated to enhance and expedite participants' transition from training to employment.

Job Search Assistance - An activity, which focuses on building practical skills and knowledge to identify and initiate employer contact and conduct successful interview with employers. Various approaches may be used to include participation in a job club, receive instruction in identifying personal strengths and goals, resume application preparation, learn interview techniques, and receive labor market information. Job search assistance is often self-service activity in which individuals obtain information about specific job openings or general jobs or occupational information.

Labor Exchange - Refers to the services provided to job seekers and employers by the State Employment Services Agencies, or other designated entities. Preparatory services to job seekers may include assessment, testing, counseling, provision of labor market information, targeted job development, resulting in job referral and follow-up with former applicants and prospective employers. Employer-oriented services may include accepting job orders, screening applicants, referring qualified applicants and providing follow-up to foster job retention and develop additional job openings or training opportunities.

Labor Exchange Delivery System (LEDS) - Describes the system of matching jobs and training opportunities with applicants operating with Federal employment and job training funds.

Labor Force - The sum of all civilians classified as employed and unemployed and members of the Armed Forces stationed in the United States. [Bureau of Labor Statistics Bulletin 2175].

Labor Market Area – an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

Literacy and Bilingual Training – See Adult Basic Education.

Local Veterans' Employment Representative (LVER) Program - A program of Federal assistance through grants to States to staff in accordance with 38 U.S.C.4104 to perform a number of duties, chief among which are the provision of intensive (case management) services to targeted eligible veterans with emphasis on VA, VR&E, and to functionally supervise without necessarily exercising line supervisor authority over the provision of services to veterans by SDP staff.

Minimum Economic Need – the level of wages paid to a program participant that will enable that participant to become economically self-sufficient.

Minority Veterans – for the purposes of the HVRP and VWIP programs, veterans who are Workforce Investment Act (WIA) eligible and are members of the following ethnic categories: African American, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander.

National Veterans' Training Institute (NVTI) - An agency contracted with USDOL/VETS to develop and provide skills development and enhancement training to individuals who are determined by the Assistant Secretary for Veterans' Employment and Training and who deliver or monitor the provision of employment and training services to veterans (38 U.S.C. 4109).

Number Retaining Job for 90 Days -To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

Number Retaining Job For 180 Days - To be counted as retaining a job for 180 days, continuous employment with one or more employers for at least 180 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 180 days as long as the client has been steadily employed for that length of time.

Occupational Skills Training – Includes both (1) vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training.

Offender – Any adult or juvenile who has been subject to any stage of the criminal justice process for whom services under this program may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

On-the-Job Training (OJT) – means training by an employer that is provided to a paid participant while engaged in productive work in a job that: (a) provides knowledge or skill essential to the full and adequate performance of the job; (b) provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate. Usually in the OJT agreement, there is a promise on the part of the employer to hire the trainee upon successful completion of the training.

On-Site Industry-Specific Training – This is training which is specifically tailored to the needs of a particular employer and/or industry. Participants may be trained according to specifications developed by an employer for an occupation or group of occupations at a job site. Such training is usually presented to a group of participants in an environment or job site representative of the actual job/occupation, and there is often an obligation on the part of the employer to hire a certain number of participants who successfully complete the training.

Outreach - An active effort by program staff to encourage individuals in the designated service delivery area to avail themselves of program services.

Outside Funds – Resources pledged to the grant program that have a quantified dollar value. Such resources may include training funds from programs such as WIA Title I that are put aside for the exclusive use by participants enrolled in a program. Outside funds do not include in-kind services.

Participant – means an individual who has been determined to be eligible to participate in and who is receiving services (except follow-up services) under the program. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the individual began receiving subsidized employment, training, or other services provided under the program. An individual who receives only outreach and/or intake assessment services does not meet this definition.

Participants Enrolled - A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, and/or employment has been received through the program. This should be an unduplicated count over the year, i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

Participants Services - This cost includes supportive, training, or social rehabilitation services, which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Placed Into Transitional Or Permanent Housing - A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

Placement – the act of securing unsubsidized employment for or by a participant.

Placement Rate - This is a method used to determine the percentage of participants who become employed. The figure is calculated by dividing the number of total participants who were registered for services or enrolled in the program by the number of applicants or program participants who were placed or otherwise entered employment.

Pre-apprenticeship Training – Any training designed to increase or upgrade specific academic, or cognitive, or physical skills required as a prerequisite for entry into a specific trade or occupation.

Pre-enrollment Assessment – The process of determining the employability and training needs of individuals before enrolling them into the program. Individual factors usually addressed during pre-enrollment assessment include: an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, and personal circumstances.

Preference - The application of priorities in the consideration and selection through appointment or assignment of staff to funded positions, or in the provision of direct services and order of referral to listed openings in the order designated by statute regulation, and grant agreement.

Program Resources – Includes the total of both program or grant and outside funds.

Program Year (PY) - The 12-month period beginning July 1 in the fiscal year for which the appropriation is made, and ending on the following June 30.

Qualified - An individual who has been determined to possess the requisite knowledge, skills, and abilities for positions within the context of the selection process used to identify and rank persons possessing those attributes.

Rate of Placement Into Unsubsidized Employment - The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment, plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

Recently Separated Veteran - Refers to an individual who applies for program participation or assistance within 48 months of separation from active U.S. military service [29 U.S.C. 1503 (27) (c)].

Remedial Education – Education instruction, particularly in basic skills, to raise an individual's general competency level in order to succeed in vocational education or skill training programs, or employment.

Service Connected Disabled - Refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs, or (2) an individual who was discharged or released from active duty because of a service-connected disability (38 U.S.C. 4211 (3); 29 U.S.C., Chapter 19, section 1503 (27) (C)

Service Delivery Point (SDP) - Includes offices of the public employment delivery system operated directly or by contract with the State Workforce Agency as grantee within a State and may include One –Stop Career Centers, local employment service offices, and any satellite or itinerant offices at which labor exchange services are available.

Solicitation for Grant Applications (SGA) - A document which provides the requirements and instructions for the submission by eligible applicants identified in the document's text of requests for Federal domestic assistance (funds) for one or more programs or grants-in-aid.

State Workforce Agency (SWA) - The State level organization, as affiliated with the former United States Employment Service.

Subgrant – An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

Subgrantee – The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Suitable Employment – See "Unsubsidized Employment".

Substance Abuser – An individual dependent on alcohol or drugs, especially narcotics, whose dependency constitutes or results in a substantial barrier to employment.

Targeted Job Development - The identification and marketing of a group of qualified applicants with similar occupations or employment barriers requiring personal visitation/phone contact with those employers likely to employ these individuals.

Supportive Services – means services which are necessary to enable an individual eligible for training, but who cannot afford to pay for such services, to participate in a training program funded under the grant. Such supportive services may include transportation, health care, financial assistance (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services and materials for individuals with disabilities, job coaches, child care and dependent care, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

Total Planned Expenditures - Identified forecasted financial needs to accomplish programmatic objectives broken down into fiscal quarters.

Unsubsidized Employment – Employment not financed from funds provided under the grant. In the grant program the term "adequate" or "suitable" employment is also used to mean placement in unsubsidized employment which pays an income adequate to accommodate the participants' minimum economic needs.

Upgrading or Retraining – Training given to an individual who needs such training to advance above an entry level or dead-end position. This training shall include assisting veterans in acquiring needed state certification to be employed in the same field as they were trained in the military (i.e., Commercial Truck Driving License (CDL), Emergency Medical Technician (EMT), Airframe & Power Plant (A&P), Teaching Certificate, etc.)

Veteran - An individual who served in the United States active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable (29 U.S.C. Chapter 19, section 1503 (27) (A) [for WIA, Section 168 (VWIP) and WIA, Title I training/services]).

Veterans' Workforce Investment Program (VWIP) – Competitively awarded employment and training grants to meet the needs of veterans with significant barriers to employment; with service-connected disabilities; who served on active duty in the armed forces during a campaign or expedition for which a campaign badge has been authorized; and recently separated veterans. The U.S. Department of Labor, Veterans' Employment and Training Service awards VWIP grants as authorized under the Workforce Investment Act (WIA), Section 168.

Vocational Exploration Training – Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Vocational Guidance - The provision of information, suggestions, and advice through discussion with individuals who are considering a geographical or vocational choice or change, relating to their career decision.

Wartime Veteran - See "campaign veteran above."

Welfare and/or Public Assistance recipient – An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, state, or local welfare program.

Workforce Investment Act (WIA) – The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the Assistant Secretary for Veterans' Employment and Training to consult with the Secretary of the Department of Veterans Affairs to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign, and recently separated veterans and are coordinated, to the maximum extent feasible, with related programs and activities.

Work Experience – A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wage are wholly paid for under WIA, the participant may not receive this training under a private, for profit employer.

Youth – An individual between 20 and 24 years of age.

USDOL/VETS

LIST OF COMMON ACRONYMS

ADVET	Assistant Director for Veterans' Employment and Training
ASVET	Assistant Secretary (of Labor) for Veterans' Employment and Training
CAP	Corrective Action Plan
CFR	Code of Federal Regulations
CWT	Compensated Work Therapy
DOD	Department of Defense
DV	Disabled Veteran
DVA	Department of Veterans Affairs (see also VA)
DVET	Director for Veterans' Employment and Training Service
DVOP	Disabled Veterans' Outreach Program
DTAP	Disabled Veterans' Transition Assistance Program
EDP	Employment Development Plan
ES	Employment Service
ETA	Employment and Training Administration
FARS	Financial Accounting and Reporting System
FCJL	Federal Contractor Job Listing
FCP	Federal Contracting Program
FEMA	Federal Emergency Management Administration
FY	Fiscal Year
GOTR	Grant Officer's Technical Representative
GPRA	Government Performance and Results Act of 1994
HHS	Department of Health and Human Services
HHS/PMS	Health and Human Services/Payment Management System
HUD	Department of Housing and Urban Development
HVCAA	Homeless Veterans' Comprehensive Assistance Act - Title 38 USC, Section 2001
HVRP	Homeless Veterans' Reintegration Project
IEP	Individual Employment Plan
ISS	Individual Support System
IV-TP	Incarcerated Veterans' Transition Program
LEDS	Labor Exchange Delivery System
LESO	Local Employment Service Office
LMI	Labor Market Information
LVER	Local Veterans' Employment Representative
MHAA	McKinney-Vento Homeless Assistance Act - Title 42 USC, Section 11302(a)
MOU	Memorandum of Understanding
NOGA	Notice of Grant Award
NVTI	National Veterans' Training Institute
OASAM	Office of the Assistant Secretary for Administration and Management
OASVET	Office of the Assistant Secretary (of Labor) for Veterans' Employment and Training
OCD	Office of Cost Determination
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OJT	On-the-Job-Training
PAC	Post Award Conference
PB	Personnel Benefits
PL	Public Law
PS	Personal Services
PY	Program Year

RAVET	Regional Administrator for Veterans' Employment and Training
SDP	Service Delivery Point
SDV	Special Disabled Veteran
SF	Standard Form
SGA	Solicitation For Grant Applications
SSA	Social Security Administration
SWA	State Workforce Agency
TAP	Transition Assistance Program
UCX	Unemployment Compensation (Insurance) for ex-service members
UI	Unemployment Insurance
USC	United States Code
USDOL	United States Department of Labor
VA	Department of Veterans Affairs
VARO	Veterans' Administration Regional Office
VAMC	Veterans' Administration Medical Center
VETS	Veterans' Employment and Training Service
VEV	Vietnam-Era Veteran
VOE	Veterans and Other Eligible Persons
VPL	Veterans Program Letter
VR&E	Vocational Rehabilitation and Employment (formerly VR&C)
VSO	Veteran Service Organization
VWIP	Veterans' Workforce Investment Program (WIA, Section 168)
WIA	Workforce Investment Act of 1998
WIB	Workforce Investment Board

[FR Doc. 03–31201 Filed 12–19–03; 8:45 am]

BILLING CODE 4510–79–C

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2003–4]

Notice of New Copyright Office Seal

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of New Copyright Office Seal.

SUMMARY: The Copyright Office of the Library of Congress is adopting a new official seal to authenticate copyright registrations, certifications of documents and other official documents. This new seal will replace the seal used by the Copyright Office since January 1, 1978.

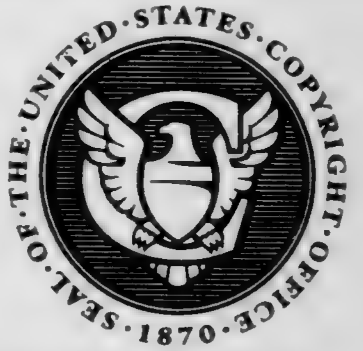
DATES: The new official seal will become effective on January 1, 2004.

ADDRESSES: Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic: (202) 707–8380.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to section 701(c) of title 17 of the United States Code, as enacted by Pub. L. 94–553 and amended by Pub. L. 105–304, the Register of Copyrights has adopted a new seal to authenticate all official documents issued by the Copyright Office. The new seal will become effective on January 1, 2004, and all documents bearing this seal issued by the Copyright Office will be authenticated and shall be judicially noticed.

The new Copyright Office seal is circular and consists of a capital letter C in a circle with stylized representation of an eagle and shield perched on the lower limb of the C. The eagle and the C are depicted on a field of horizontal bands enclosed by the circle. This group is encircled by the words "Seal of the United States Copyright Office" and the date 1870 set in the Zealand Bold type font. A representation of the new seal is shown immediately below.


SEAL OF THE UNITED STATES COPYRIGHT OFFICE
1870

The previous seal used by the Copyright Office from January 1, 1978, until December 31, 2003, will continue to serve as an identifying mark of the Copyright Office.

Dated: December 17, 2003.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 03–31475 Filed 12–19–03; 8:45 am]

BILLING CODE 1410–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8903]

Notice of Receipt of License Amendment Request From the Homestake Mining Company To Request an Extension of Reclamation Milestones for Its Grants, New Mexico Facility, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of license and opportunity to request a hearing.

DATES: A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: William von Till, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6251; Fax: (301) 415–5955; and/or by email: *rwv@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U. S. Nuclear Regulatory Commission (NRC) has received, by letters dated October 28, 2003 (ML033030501), and October 29, 2003 (ML033040196), a request from Homestake Mining Company (HMC) for approval of a license amendment to Materials License SUA–1471 to extend its reclamation milestones.

The Homestake facility is an inactive uranium recovery fuel cycle facility that is undergoing surface reclamation and groundwater remediation. Milestones for reclamation are outlined in the Homestake Source Material License SUA–1471 in condition 36A and B. Surface reclamation milestones are dependent on groundwater remediation at the site. Homestake proposes to extend the milestones due to active groundwater remediation activities. Groundwater remediation at the site is under the oversight of the NRC per Source Material License SUA–1471 (10 CFR part 40) and the U.S. Environmental Protection Agency (EPA) under the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA). A Memorandum of Understanding dated December 14, 1993, outlines the NRC and EPA roles in the clean-up of groundwater at the site. Surface reclamation activities are under the oversight of the NRC. HMC proposes to extend the reclamation milestones for the large tailings pile (LTP) and small tailings pile (STP) as follows:

LTP—Final radon barrier placement—top of pile from December 31, 2003, to December 31, 2012.

LTP—Erosion protection layer placement—top of pile from September 30, 2004, to September 30, 2013.

STP—Final radon barrier placement from December 31, 2012, to September 30, 2013.

STP—Erosion protection layer placement from September 30, 2013, to December 31, 2013.

Corrective Action Plan completion from May 1, 2010, to December 31, 2011.

The NRC staff will review HMC's request to extend reclamation milestones with 10 CFR part 40, using NUREG–1620 Rev. 1, "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act of 1978" and other applicable agency regulations and guidance. If the NRC approves HMC's request, the approval will be documented in an amendment to HMC's license. The NRC staff will consult with the EPA since the proposed milestones included groundwater corrective action completion.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing

Proceedings' of the NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or by email to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Homestake Mining Company, 6719–D Academey Road, NE., Albuquerque, New Mexico 87109, Attention: Mr. Alan D. Cox; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by email to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the application for amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*.

Dated in Rockville, Maryland, this 12th day of December, 2003.

For the Nuclear Regulatory Commission.

William von Till,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–31426 Filed 12–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8838–MLA–2; ASLBP No. 04–819–04–MLA]

United States Army; Jefferson Proving Ground Site; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: United States Army, Jefferson Proving Ground Site, Madison, Indiana, (Materials License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a request for hearing submitted on November 26, 2003, by Save the Valley, Inc. The request was filed in response to an October 21, 2003, notice of consideration and opportunity for a hearing regarding a September 22, 2003, request from the United States Army to amend its 10 CFR part 40 source material license, which was published in the **Federal Register** on October 28, 2003 (68 FR 61471). The requested license amendment would create a five-year renewable possession-only license for the Army's Jefferson Proving Ground site.

The Presiding Officer in this proceeding is Administrative Judge Alan S. Rosenthal. All correspondence, documents, and other materials shall be filed with Judge Rosenthal in accordance with 10 CFR 2.1203. His address is: Alan S. Rosenthal, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued in Rockville, Maryland, this 16th day of December, 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–31423 Filed 12–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc.; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix E, Section IV.F.2.c for renewed Facility Operating Licenses Nos. DPR–53 and DPR–69, issued to Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPPI or the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2, located in Calvert County, Maryland. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action, as described in the licensee's application for a one-time exemption to the requirements of 10 CFR Part 50, Appendix E, Section F.2.c, dated November 24, 2003, would allow the licensee to reschedule the planned offsite full-participation emergency exercise from 2003 to 2004 and subsequent exercises would be scheduled biennially from the year 2003.

The Need for the Proposed Action

The proposed exemption from 10 CFR Part 50, Appendix E, Section IV.F.2.c is needed because the planned full-participation exercise scheduled for October 21, 2003, was not able to be performed. Preparation for Hurricane Isabel and subsequent recovery efforts had consumed Maryland Emergency Management Agency (MEMA) and other local and State agencies having a role under the Emergency Response Plan such that full-participation was not able to be performed.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed exemption will not present an undue risk to the public health and safety. The details of the staff's Safety Evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation. The action relates to the exercising of the emergency response plan which has no effect on the operation of the facility.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types, or amounts of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

In regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant (CCNPP) dated April 1973 or the Final Environmental Impact Statement for licence renewal for the CCNPP dated October 1999.

Agencies and Persons Consulted

On December 4, 2003, the staff consulted with the Maryland State official, Richard McLean of the Maryland Department of the Environment, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 24, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of December 2003.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Chief, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31424 Filed 12–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, LLC and Midamerican Energy Company; Quad Cities Nuclear Power Station, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 50.75(h)(2) for Facility Operating License Nos. DPR–29 and DPR–30, issued to Exelon Generation Company, LLC (Exelon) and MidAmerican Energy Company (MEC) (the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed is an exemption to the requirements of 10 CFR 50.75(h)(2), as requested by MEC by letter dated November 21, 2003. The proposed action would exempt MEC from compliance with requirements of the new regulation until MEC's amended nuclear decommissioning trusts are approved by the Illinois Commerce Commission.

The Need for the Proposed Action

The proposed exemption from 10 CFR 50.75(h)(2) is needed because MEC may not obtain approval of the amended nuclear decommissioning trusts from the Illinois Commerce Commission prior to December 24, 2003.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that the proposed exemption will not present an undue risk to the public health and safety. The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the MEC approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Quad Cities Power Station, Units 1 and 2 dated September 1972 and the draft Supplemental Environmental Impact Statement (NUREG–1437 Supplement 16) dated November 2003.

Agencies and Persons Consulted

On December 10, 2003, the staff consulted with the Illinois State official, Frank Niziiolek, of the Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 21, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 15th day of December, 2003.

For the Nuclear Regulation Commission.

Lawrence W. Rossbach,

Project Manager, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31425 Filed 12–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 2; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Entergy Operations, Inc. (Entergy) has submitted an application for renewal of Facility Operating License NPF–6 for an additional 20 years of operation at Arkansas Nuclear One, Unit 2 (ANO–2). ANO–2 is located in Pope County, Arkansas, approximately 6 miles west-northwest of Russellville, Arkansas. The operating license for ANO–2 expires on July 17, 2018. The application for renewal was received on October 15, 2003, pursuant to 10 CFR part 54. A notice of receipt and availability of the application, including the environmental report (ER), was published in the **Federal Register** on October 24, 2003 (68 FR 61020). A notice of acceptance for docketing and notice of opportunity for hearing regarding renewal of the facility operating license was published in the **Federal Register** on November 24, 2003 (68 FR 65963). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Entergy submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852 or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Public Electronic Reading Room (PERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/ano-2.html.* In addition, the Ross Pendergraft Library at Arkansas Tech University, located at 305 West Q Street, Russellville, Arkansas, 72801 has agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the ANO–2 operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. Section 51.95 of 10 CFR requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate, from detailed study, those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Entergy Operations, Inc.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the ANO–2 license renewal supplement to the GEIS. The scoping meetings will be held at the Holiday Inn, 2407 North Arkansas, Russellville, Arkansas, on Tuesday, February 3, 2004. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Holiday Inn. No comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Thomas J. Kenyon, by telephone at 1–800–368–5642, extension 1120, or by e-mail to the NRC at *ANOEIS@nrc.gov* no later than January 28, 2004. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register.

Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Kenyon will need to be contacted no later than January 28, 2004, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the ANO–2 license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, 20852 from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by February 20, 2004. Electronic comments may be sent by e-mail to the NRC at *ANOEIS@nrc.gov*. Electronic submissions should be sent no later than February 20, 2004, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (68 FR 65963). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Kenyon at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 17th day of December 2003.

For the Nuclear Regulatory Commission

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31568 Filed 12–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on January 14–15, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss General Electric (GE) proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday and Thursday, January 14–15, 2004—8:30 a.m. until the conclusion of business.

The Subcommittee will review the staff draft SER on the use of the TRAC-G computer code to perform analyses of the Economic Simplified Boiling Water Reactor (ESBWR). The Subcommittee will hear presentations by and hold discussions with representatives of General Electric and the NRC staff regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–1813) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: December 15, 2003.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–31421 Filed 12–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on January 13, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 13, 2004—8:30 a.m. until the conclusion of business.

The purpose of this meeting is to discuss the ACR–700 design features and the related pre-application reviews. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, AECL Technologies Inc., and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 5 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: December 12, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–31422 Filed 12–19–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules; A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 2003, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Division for Human Resources Products and Services, Office of Personnel Management, 1900 E Street, NW., Room 2469, Washington, DC 20415, or by calling (202) 606–2575.

The following exceptions were current on June 30, 2003:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) (Reserved).

(g) (Reserved).

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring needs exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions:

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under § 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment;

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110 but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement assistance under § 353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under § 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) (Reserved).

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associate ship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointment under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons who have been certified by state vocational rehabilitation agencies as likely to succeed. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing instruction issued by the Office.

(u) Positions when filled by severely physically handicapped persons who: (1) under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or

(2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive Order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj–kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full-time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 15 positions at grades GS–5/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms. No new appointments may be made after February 28, 1997.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)–(f) (Reserved).

(g) *Bureau of Population, Refugees, and Migration.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) *Bureau of Administration.* (1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(3) Not to exceed 50 positions in the Office of the Under Secretary (Enforcement).

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)–(5) (Reserved).

(6) Three hundred positions of Criminal Investigator for special assignments and 10 positions for oversight policy and direction of sensitive law enforcement activities.

(7)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a

senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: *Provided,* that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely,

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Acquisitions University.* (1) The Provost and professors.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.*

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) *Asia-Pacific Center for Security Studies, Honolulu, Hawaii.* (1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

Section 213.3107 Department of the Army

(a)–(c) (Reserved).

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved).

(g) *Defense Language Institute.* (1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, PA.* (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) *General.* (1)–(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Scientific and technical positions, GS–13/15, in the Office of Naval Research International Field Office which covers satellite offices within the Far East, Africa, Europe, Latin America, and the South Pacific. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) One hundred forty positions, serviced by Hill Air Force Base, Utah, engaged in interdepartmental activities in support of national defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) *Air Force Office of Special Investigations.* (1) Positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15, in the Air Force Office of Special Investigations.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of Professor, Instructor, or Lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved).

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended in one-year increments for the duration of the in-country program.

(b) *Immigration and Naturalization Service.* (1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) *National Drug Intelligence Center.* All positions.

Section 213.3111 Department of Homeland Security

(a) Up to 50 positions at the GS–5 through 15 grade levels at the Department of Homeland Security. No new appointments may be made under this authority after March 30, 2004.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided*, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) (Reserved).

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided*, that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for sub professional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided*, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of § 213.3102 or positions within the Forest Service.

(6)–(7) (Reserved).

(b)–(c) (Reserved).

(d) *Farm Service Agency.* (1) (Reserved).

(2) Members of State Committees: *Provided*, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Rural Development.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved).

(l) *Food Safety and Inspection Service.* (1)–(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Grain Inspection, Packers and Stockyards Administration.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) *Alternative Agricultural Research and Commercialization Corporation.* (1) Executive Director.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)–(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.* (1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1)–(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) *General.* (1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) *Public Health Service.* (1) (Reserved).

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved).

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) (Reserved).

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved).

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)–(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 Broadcasting Board of Governors

(a) *International Broadcasting Bureau.* (1) Not to exceed 200 positions at grades GS–15 and below in the Office of Cuba Broadcasting. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

Section 213.3133 Federal Deposit Insurance Corporation

(a)–(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3146 Selective Service System

(a) State Directors.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

Section 213.3155 Social Security Administration

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

Section 213.3162 The President's Crime Prevention Council

(a) Up to 7 positions established in the President's Crime Prevention Council office created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after March 31, 1998.

Section 213.3165 Chemical Safety and Hazard Investigation Board

(a) (Reserved).

(b) Seven positions of either Chemical Incident Investigators or Chemical Safety Recommendation Specialists, in the Office of Investigations and Safety Programs. No new appointments may be made under this authority after October 15, 2002, or until the seventh person (who was given an offer of employment on September 13, 2002, and is waiting a physical examination clearance) is appointed, whichever is later.

Section 213.3166 Court Services and Offender Supervision Agency of the District of Columbia

(a) All positions, except for the Director, established to create the Court Services and Offender Supervision Agency of the District of Columbia. No new appointments may be made under this authority after September 30, 2003.

Section 213.3174 Smithsonian Institution

(a) (Reserved). (b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, one Environmental Change & Security Studies Program Administrator, one United States Studies Program Administrator, and two Social Science Program Administrators.

Section 213.3178 Community Development Financial Institutions Fund

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 23, 1998.

Section 213.3180 Utah Reclamation and Conservation Commission

(a) Executive Director.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

Section 213.3190 African Development Foundation

(a) One Enterprise Development Fund Manager. Appointment authority is limited to four years unless extended by the Office.

Section 213.3191 Office of Personnel Management

(a)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) (Reserved).

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)–(d) (Reserved).

(e) *Maritime Administration.* (1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency; or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile

Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

Positions on the staffs of temporary organizations, as defined in 5 U.S.C. 3161(a). Appointments may not exceed 3 years, but temporary organizations may extend the appointments for 2 additional years if the conditions for extension are related to the completion of the study or project.

Schedule B

Section 213.3202 Entire Executive Civil Service

(a) *Student Educational Employment Program—Student Temporary Employment Program.* (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High School Diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree

* * * * *

[The remaining text of provisions pertaining to the Student Temporary Employment Program can be found in 5 CFR 213.3202(a).]

(b) *Student Educational Employment Program—Student Career Experience Program.* (1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

[The remaining text of provisions pertaining to the Student Career Experience Program can be found in 5 CFR 213.3202(b).]

* * * * *

(c)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105–339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved).

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved).

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

(e) Positions, grades GS–5 through 12, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years and 120 days.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs,

and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

(g) *Defense Security Assistance Agency.* All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–15, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b)–(c) (Reserved).

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210. Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved).

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Foreign Agricultural Service.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) (Reserved).

(b)–(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Chair and a maximum of four additional Members, Administrative Review Board.

(b) (Reserved).

(c) *Bureau of International Labor Affairs.* (1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3240 National Archives and Records Administration

(a) Executive Director, National Historical Publications and Records Commission.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3255 Social Security Administration

(a) Temporary and time-limited positions in the Ticket to Work and Work Incentives Advisory Panel. No employees may be appointed after November 17, 2007.

Section 213.3274 Smithsonian Institution

(a) (Reserved).

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require indepth knowledge of a discipline of the humanities.

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C

Section 213.3303 Executive Office of the President

Council of Economic Advisers

CEGS60001	Confidential Assistant to the Chairman, Council of Economic Advisers
CEGS60004	Confidential Assistant to the Chairman, Council of Economic Advisers
CEGS60005	Administrative Operations Assistant to the Member (Council of Economic Advisers)

Council on Environmental Quality

EQGS00011	Associate Director for Global Environmental Affairs to the Chairman (Council on Environmental Quality)
EQGS60010	Associate Director for Communications to the Chairman (Council on Environmental Quality)
EQGS60012	Research Assistant to the Chairman (Council on Environmental Quality)
EQGS60017	Special Assistant to the Chairman (Council on Environmental Quality)

Office of Management and Budget

BOGS00022	Confidential Assistant to the Executive Associate Director
BOGS00038	Legislative Analyst to the Associate Director for Legislative Affairs
BOGS60004	Associate Administrator to the Administrator, Office of Information and Regulatory Affairs
BOGS60015	Public Affairs Officer to the Associate Director for Communications
BOGS60020	Special Assistant to the Associate Director for E-Government and Information Technology
BOGS60021	Counselor to the Deputy Director for Management to the Deputy Director for Management
BOGS60026	Confidential Assistant to the Assistant Director for Administration
BOGS60028	Legislative Assistant to the Associate Director for Legislative Affairs
BOGS60030	Confidential Assistant to the Associate Director for E-Government and Information Technology
BOGS60032	Public Affairs Specialist to the Associate Director for Communications

BOGS60035 Confidential Assistant to the Controller, Office of Federal Financial Management
BOGS60037 Associate General Counsel to the General Counsel
BOGS60141 Deputy to the Associate Director for Legislative Affairs (Senate) to the Associate Director for Legislative Affairs
BOGS60143 Deputy to the Associate Director for Legislative Affairs (House) to the Associate Director for Legislative Affairs
BOGS60146 Special Assistant to the Chief Transportation Branch
BOGS60148 Confidential Assistant to the Associate Director for National Security and International Affairs
BOGS60149 Confidential Assistant to the Associate Director for Legislative Affairs

Office of National Drug Control Policy

QQGS00010 Special Assistant to the Director
QQGS00011 Writer-Editor (Speech-Writer) to the Director, Public Affairs
QQGS00013 Project Coordinator to the Chief of Staff
QQGS00014 Confidential Counsel to the Deputy Director, Demand Reduction to the Deputy Director for Demand Reduction
QQGS00015 Associate Deputy Director, State and Local Affairs to the Deputy Director for State and Local Affairs
QQGS00082 Legislative Analyst to the Associate Director, Legislative Affairs
QQGS60002 Legislative Analyst (White House Liaison) to the Associate Director, Legislative Affairs
QQGS60003 Deputy Press Secretary to the Director
QQGS60005 Press Secretary (Assistant Director) to the Director
QQGS60006 Special Assistant to the Director
QQGS60007 Special Assistant to the Director

Office of the United States Trade Representative

TNGS00055 Deputy Assistant United States Trade Representative for Congressional Affairs to the Assistant United States Trade Representatives for Congressional Affairs
TNGS00070 Deputy Assistant United States Trade Representative for Congressional Affairs to the Assistant United States Trade Representatives for Congressional Affairs
TNGS60011 Confidential Assistant to the Chief of Staff
TNGS60013 Confidential Assistant to the Chief Agriculture Negotiator
TNGS60019 Special Textile Negotiator to the United States Trade Representative
TNGS60046 Public Affairs Specialist to the Associate United States Trade Representative for Policy and Communications

Office of Science and Technology Policy

TSGS60005 Executive Assistant for Policy and Intergovernmental Affairs to the Associate Director, Science
TSGS60017 Executive Director, President's Council of Advisors on Science and Technology and Counsel to the Associate Director, Science
TSGS60021 Confidential Assistant to the Chief of Staff
TSGS60022 Confidential Assistant (Director's Office) to the Deputy to the Associate Director Science
TSGS60028 Assistant to the Director for Communications to the Deputy to the Associate Director, Science

Section 213.3304 Department of State

BWGS60001 Confidential Assistant to the Assistant Secretary Oceans, International Environment and Science Affairs
DSGS00142 Program Support Assistant to the Chief of Protocol
DSGS00425 Foreign Affairs Officer to the Assistant Secretary Bureau of Politico-Military Affairs
DSGS60009 Special Assistant to the Secretary of State
DSGS60043 Foreign Affairs Research Analyst to the Assistant Secretary for International and Research
DSGS60098 Program Officer (Director of Press Center) to the Principal Deputy Assistant Secretary
DSGS60105 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60106 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60107 Member, Policy Planning Staff to the Director, Policy Planning Staff
DSGS60110 Special Assistant to the Principal Deputy Assistant Secretary
DSGS60111 Public Affairs Specialist to the Principal Deputy Assistant Secretary
DSGS60112 Staff Assistant to the Director, Policy Planning Staff
DSGS60118 Special Assistant to the Deputy Secretary
DSGS60119 Special Advisor to the Assistant Secretary for East Asian and Pacific Affairs
DSGS60123 Special Assistant to the Office Director
DSGS60126 Staff Assistant to the Deputy Secretary
DSGS60128 Protocol Officer to the Chief of Protocol
DSGS60131 Special Assistant to the Legal Adviser
DSGS60132 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60133 Public Affairs Specialist to the Principal Deputy Assistant Secretary
DSGS60146 Public Affairs Specialist to the Principal Deputy Assistant Secretary
DSGS60152 Supervisory Foreign Affairs Officer to the Under Secretary for Global Affairs
DSGS60153 Staff Assistant to the Secretary of State
DSGS60154 Assistant Chief of Protocol for Ceremonials to the Chief of Protocol
DSGS60156 Confidential Assistant to the Secretary of State
DSGS60159 Staff Assistant to the Assistant Secretary Oceans, International Environment and Science Affairs
DSGS60160 Staff Assistant to the Assistant Secretary for Democracy Human Rights and Labor
DSGS60161 Staff Assistant to the Ambassador-At-Large (War Crimes)
DSGS60162 Staff Assistant to the Assistant Secretary
DSGS60166 Attorney Advisor to the Deputy Assistant Secretary for Equal Employ Opportunity
DSGS60177 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60182 Special Assistant to the Assistant Secretary for African Affairs
DSGS60184 Special Assistant to the Deputy Secretary
DSGS60191 Senior Policy Advisor to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60192 Staff Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60194 Senior Advisor to the Under Secretary for Arms Control and Security Affairs
DSGS60195 Special Assistant to the Assistant Secretary
DSGS60201 Staff Assistant to the Under Secretary for Global Affairs
DSGS60216 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS60224 Senior Advisor to the Assistant Secretary for South Asian Affairs
DSGS60248 Senior Advisor to the Coordinator for International Information Programs
DSGS60249 Staff Assistant to the Deputy Secretary
DSGS60264 Public Affairs Specialist to the Principal Deputy Assistant Secretary

DSGS60267 Foreign Affairs Officer to the Principal Deputy Assistant Secretary
DSGS60292 Special Assistant to the Chief Financial Officer
DSGS60315 Senior Advisor to the Assistant Secretary for Democracy Human Rights and Labor
DSGS60317 Senior Policy Advisor to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60319 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60327 Staff Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60345 Public Affairs Specialist to the Principal Deputy Assistant Secretary
DSGS60355 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60357 Protocol Officer (Visits) to the Deputy Chief of Protocol
DSGS60360 Senior Advisor to the Deputy Assistant Secy for Public Affairs
DSGS60367 Special Advisor to the Under Secretary for Arms Control and Security Affairs
DSGS60370 Program Officer to the Principal Deputy Assistant Secretary
DSGS60371 Staff Assistant to the Under Secretary for Management
DSGS60375 Correspondence Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60380 Public Affairs Specialist to the Principal Deputy Assistant Secretary
DSGS60381 Supervisory Protocol Officer (Visits) to the Deputy Chief of Protocol
DSGS60388 Special Assistant to the Deputy Assistant Secretary
DSGS60389 Senior Advisor to the Assistant Secretary
DSGS60390 Special Assistant to the Chief Financial Officer
DSGS60393 Special Assistant to the Deputy Assistant Secretary
DSGS60394 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60395 Director, Art in Embassies Program to the Deputy Assistant Secretary
DSGS60396 Program Officer to the Assistant Secretary
DSGS60399 Confidential Assistant to the Secretary of State
DSGS60409 Public Affairs Specialist to the Assistant Secretary for Western Hemispheric Affairs
DSGS60410 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs
DSGS60419 Staff Assistant to the Chief Financial Officer
DSGS60420 Special Assistant to the Assistant Secretary
DSGS60421 Member, Policy Planning Staff to the Director, Policy Planning Staff
DSGS60429 Special Assistant to the Under Secretary for Arms Control and Security Affairs
DSGS60430 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60434 Special Assistant to the Senior Advisor to the Secretary and White House Liaison
DSGS60437 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60441 Special Assistant to the Principal Deputy Coordinator
DSGS60445 Special Advisor to the Assistant Secretary for Democracy Human Rights and Labor
DSGS60447 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
DSGS60450 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
DSGS60454 Member, Policy Planning Staff to the Director, Policy Planning Staff
DSGS60455 Special Assistant to the Deputy Secretary
DSGS60456 Staff Assistant to the Assistant Secretary for East Asian and Pacific Affairs
DSGS60466 Foreign Affairs Officer to the Assistant Secretary for Western Hemispheric Affairs
DSGS60474 Public Affairs Specialist to the Assistant Secretary for International Organizational Affairs
DSGS60477 Special Assistant to the Assistant Secretary for African Affairs
DSGS60479 Senior Technical Advisor to the Office Director
DSGS60481 Administrative Officer to the Under Secretary for Management
DSGS60486 Foreign Affairs Officer to the Assistant Secretary for Democracy Human Rights and Labor
DSGS60490 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison
DSGS60493 Special Assistant to the Assistant Secretary for African Affairs
DSGS60498 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs
DSGS60499 Senior Advisor to the Assistant Secretary
DSGS60500 Foreign Affairs Officer to the Assistant Secretary for European and Canadian Affairs
DSGS60503 Special Assistant to the Assistant Secretary for East Asian and Pacific Affairs
DSGS60505 Resource, Plans and Policy Advisor to the Chief Financial Officer
DSGS60510 Special Assistant to the Chief Financial Officer
DSGS60514 Foreign Affairs Officer to the Assistant Secretary for International and Research
DSGS60519 Public Affairs Specialist to the Principal Deputy Assistant Secretary
DSGS60520 Director, Office of Public Liaison to the Assistant Secretary for Public Affairs
DSGS60526 Special Assistant to the Assistant Secretary for African Affairs
DSGS60528 Special Assistant to the Chief of Protocol
DSGS60542 Public Affairs Specialist to the Assistant Secretary for Public Affairs
DSGS60556 Special Advisor to the Assistant Secretary for International Organizational Affairs
DSGS60567 Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs
DSGS60587 Special Assistant to the Assistant Secretary Bureau of Politico-Military Affairs
DSGS60589 Special Adviser to the Assistant Secretary for International Organizational Affairs
DSGS60591 Public Affairs Specialist (Press Officer) to the Principal Deputy Assistant Secretary

Section 213.3305 Department of the Treasury

DYGS00321 Financial Analyst to the Director, Office of Specialized Development Institutions
DYGS00328 Deputy Assistant Secretary (Policy Coordination) to the Assistant Secretary (Economic Policy)
DYGS00356 Director, Critical Infrastructure Policy and Compliance Policy to the Deputy Assistant Secretary (Critical Infrastructure Protection and Compliance Policy)
DYGS00375 Director of Legislative and Governmental Affairs to the Director of the Mint
DYGS00377 Special Assistant to the Chief of Staff
DYGS00400 Special Assistant to the Assistant Secretary (Management) and Chief Financial Officer
DYGS00416 Special Assistant to the Deputy Assistant Secretary for Management and Budget
DYGS00423 Special Assistant to the Director of Strategic Planning, Scheduling and Advance

DYGS00424 Senior Advisor to the Assistant Secretary (Economic Policy)

DYGS00425 Special Assistant to the Assistant Secretary (Deputy Under Secretary) International Affairs

DYGS00429 Executive Assistant to the Secretary

DYGS00430 Senior Advisor to the Under Secretary for Domestic Finance

DYGS00431 Senior Advisor to the Deputy Assistant Secretary for Management and Budget

DYGS00432 Special Assistant to the Deputy Assistant Secretary and Chief Human Capital Officer

DYGS60139 Director of Strategic Planning, Scheduling and Advance to the Chief of Staff

DYGS60230 Public Affairs Specialist to the Director, Public Affairs

DYGS60250 Director, Public Affairs to the Deputy Assistant Secretary (Public Affairs)

DYGS60277 Speechwriter to the Assistant Secretary (Public Affairs and Public Liaison)

DYGS60307 Special Assistant to the Treasurer of the United States

DYGS60317 Public Affairs Specialist to the Director, Public Affairs

DYGS60318 Deputy to the Assistant Secretary to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs

DYGS60351 Public Affairs Specialist to the Director, Public Affairs

DYGS60359 Senior Advisor for Latin American and Caribbean Nations to the Assistant Secretary (Deputy Under Secretary) International Affairs

DYGS60362 Special Assistant to the Assistant Secretary (Financial Institutions)

DYGS60364 Deputy Assistant Secretary to the Assistant Secretary (Financial Institutions)

DYGS60381 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs

DYGS60395 Deputy Executive Secretary for Policy Coordination to the Executive Secretary

DYGS60396 Senior Advisor to the Deputy Assistant Secretary (Public Liaison) to the Deputy Assistant Secretary (Public Liaison)

DYGS60401 Special Assistant for Advance to the Director of Strategic Planning, Scheduling and Advance

DYGS60404 Senior Advisor to the Assistant Secretary (Financial Institutions)

DYGS60405 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs

DYGS60411 Special Assistant to the Assistant Secretary (Public Affairs and Public Liaison)

DYGS60412 Special Assistant for Advance to the Director of Strategic Planning, Scheduling and Advance

DYGS60417 Senior Advisor to the Principal Deputy Assistant Secretary (Government Financial Policy)

DYGS60418 Special Assistant to the Deputy Chief of Staff

DYGS60421 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs

DYGS61059 Tax Legislative Advisor to the Assistant Secretary (Tax Policy)

Section 213.3306 Office of the Secretary of Defense

DDGS00463 Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller) and Deputy Under Secretary of Defense (Management Reform)

DDGS00612 Special Assistant to the Director, Program Analysis and Evaluation to the Director, Program Analysis and Evaluation

DDGS00658 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)

DDGS00661 Staff Assistant to the Assistant Secretary of Defense (International Secretary Policy)

DDGS00663 Staff Assistant and Regional Director for the Levant to the Deputy Under Secretary of Defense (Special Plans and Near East/South Asian Affairs)

DDGS00664 Staff Assistant to the Assistant Secretary of Defense (International Secretary Policy)

DDGS00665 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (Special Operations/Low Intensity Conflict)

DDGS00673 Staff Assistant to the Deputy Under Secretary of Defense (Special Plans and Near East/South Asian Affairs)

DDGS00682 Staff Assistant to the Deputy Assistant Secretary of Defense (Asia and Pacific)

DDGS00685 Staff Assistant to the Deputy Under Secretary of Defense (Special Plans and Near East/South Asian Affairs)

DDGS00688 Special Assistant to the Principal Deputy Under Secretary of Defense for Policy to the Principal Deputy Under Secretary of Defense for Policy

DDGS02518 Chief of Staff to the Inspector General

DDGS16620 Staff Specialist to the Director, Small and Disadvantaged Business Utilities

DDGS16638 Special Advisor to the Under Secretary of Defense (Policy) to the Under Secretary of Defense for Policy

DDGS16648 Confidential Assistant to the Assistant Secretary of Defense (Command, Control, Community and Intelligence)

DDGS16651 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16652 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16653 Protocol Officer to the Director of Protocol

DDGS16654 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia)

DDGS16657 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16660 Director of Assessments to the Deputy Under Secretary of Defense (International Technology Security)

DDGS16666 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16667 Public Affairs Specialist to the Deputy Assistant Secretary of Defense for Public Affairs (Communications)

DDGS16668 Special Assistant to the Assistant Secretary of Defense (Public Affairs)

DDGS16669 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16670 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16679 Staff Specialist to the Deputy Under Secretary of Defense (Logistics and Materiel Readiness)

DDGS16683 Staff Assistant to the Deputy Under Secretary of Defense (Special Plans and Near East/South Asian Affairs)

DDGS16685 Administrative Assistant to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16689 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16693 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS16707 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

DDGS60001 Staff Specialist to the Under Secretary of Defense (Acquisition, Technology, and Logistics)

Section 213.336 Office of the Secretary of Defense

DDGS60003 Special Assistant to the Deputy Under Secretary of Defense (International Technology Security)

DDGS60007 Personal and Confidential Assistant to the Assistant to the Secretary of Defense (Nuclear,

Chemical and Biological Defense Programs)
DDGS60033 Personal Secretary to the Deputy Secretary of Defense
DDGS60270 Confidential Assistant to the Executive Secretary to the Senior Executive Council
DDGS60271 Private Secretary to the Assistant Secretary of Defense (Reserve Affairs)
DDGS60273 Civilian Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60274 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60275 Confidential Assistant to the Assistant Secretary of Defense (Force Management Policy)
DDGS60278 Special Assistant to the Inspector General
DDGS60280 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS60283 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS60305 Personal and Confidential Assistant to the Under Secretary of Defense (Personnel and Readiness)
DDGS60307 Confidential Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DDGS60312 Director, Cooperative Threat Reduction to the Assistant Secretary of Defense (International Secretary Policy)
DDGS60314 Coordinator of Reserve Integration to the Principal Deputy Assistant Secretary of Defense (Reserve Affair)
DDGS60317 Director of Protocol to the Special Assistant to the Secretary and Deputy Secretary of Defense
DDGS60318 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60319 Confidential Assistant to the Deputy Secretary of Defense
DDGS60320 Personal and Confidential Assistant to the Secretary of Defense
DDGS60332 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs)
DDGS60333 Speechwriter to the Special Assistant for Speechwriting
DDGS60368 Personal and Confidential Assistant to the Assistant Secretary of Defense (Legislative Affairs)
DDGS60454 Special Assistant to the Director of Net Assessment
DDGS60456 Director, Management Initiatives to the Under Secretary of Defense (Personnel and Readiness)
DDGS60457 Special Assistant (Joint Chiefs of Staff) to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60469 Special Assistant (Communications) to the Principal Deputy Assistant Secretary of Defense (Legal Affairs)
DDGS60470 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60471 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)
DDGS60473 Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Affairs)
DDGS60474 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Special Operations/Low Intensity Conflict)
DDGS60475 Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy)
DDGS60518 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS60520 Special Assistant to the Deputy Assistant Secretary of Defense (Prisoners of War/Military Police)/ Director, Prisoners of War Missing Persons Office
DDGS60530 Writer-Editor to the Public Affairs Specialist
DDGS60580 Staff Assistant to the Assistant Secretary of Defense (International Secretary Policy)
DDGS60584 Writer-Editor to the Assistant Secretary of Defense Public Affairs
DDGS60585 Special Assistant to the Assistant Secretary of Defense Public Affairs
DDGS60611 Personal and Confidential Assistant to the Secretary of Defense
DDGS60615 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60620 Speech Writer to the Special Assistant for Speechwriting
DDGS60621 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60623 Public Affairs Specialist to the Assistant Secretary of Defense Public Affairs
DDGS60625 Executive Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60643 Personal and Confidential Assistant to the Under Secretary of Defense (Acquisition, Technology, and Logistics)
DDGS60650 Electronic Commerce Specialist to the Deputy Assistant Secretary of Defense (Deputy Chief Information Officer)
DDGS60651 Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller)
DDGS60668 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)
DDGS60669 Public Affairs Specialist to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)
DDGS60672 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60677 Research Assistant to the Deputy Assistant Secretary of Defense (Strategic Communications Planning)
DDGS60680 Confidential Assistant to the Deputy Secretary of Defense
DDGS60686 Personal and Confidential Assistant to the General Counsel
DDGS60687 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60690 Personal and Confidential Assistant to the Secretary of Defense
DDGS60691 Special Policy Advisor to the Under Secretary of Defense for Policy
DDGS60694 Staff Assistant to the Assistant Secretary of Defense (International Security Affairs)
DDGS60695 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60697 Deputy White House Liaison to the Special Assistant to the Secretary of Defense for White House Liaison
DDGS60699 Special Advisor to the Under Secretary of Defense for Policy

Section 213.3307 Department of the Army

DWGS00080 Confidential Assistant to the General Counsel
DWGS00081 Assistant for Water Resources Policy to the Deputy Assistant Secretary of the Army (Legislation)
DWGS00085 Personal and Confidential Assistant to the Assistant Secretary Army (Installations, Logistics and Environment)
DWGS60001 Executive Staff Assistant to the Secretary of the Army
DWGS60002 Special Assistant to the Secretary of the Army
DWGS60003 Special Assistant to Army General Counsel
DWGS60005 Confidential Assistant to the Under Secretary of the Army
DWGS60006 Special Assistant to the Assistant Secretary of the Army (Installations, Logistics and Environment)
DWGS60025 Personal and Confidential Assistant to the Assistant Secretary of the Army (Financial Management and Comptroller)
DWGS60026 Special Assistant to the General Counsel

Section 213.3308 Department of the Navy

DNGS00064 Confidential Assistant to the Assistant Secretary of Navy (Installations and Environment)
DNGS00070 Confidential Assistant to the Assistant Secretary of the Navy (Research Development and Acquisition)
DNGS60001 Residence Manager and Social Secretary to the Deputy Assistant Secretary of the Navy (Installations and Facilities)
DNGS60056 Confidential Assistant to the Assistant Secretary Financial Management
DNGS60066 Staff Assistant to the Secretary of the Navy
DNGS60071 Special Assistant to the Secretary of the Navy

Section 213.3309 Department of the Air Force

DFGS60007 Confidential Assistant to the Assistant Secretary (Financial Management and Comptroller)
DFGS60042 Special Assistant for Community Relations to the Special Assistant for Policy and Planning
DFGS60044 Confidential Assistant to the Secretary

Section 213.3310 Department of Justice

DJGS00030 Research Assistant to the Director, Office of Public Affairs
DJGS00031 Special Assistant to the Assistant Attorney General Criminal Division
DJGS00032 Public Affairs Specialist to the Director, Office of Public Affairs
DJGS00033 Counsel to the Assistant Attorney General
DJGS00035 Counsel (Senior Attorney) to the Administrator, Drug Enforcement Administration
DJGS00076 Public Affairs Specialist to the United States Attorney
DJGS00101 Special Assistant to the Director, Office of Public Affairs
DJGS00116 Special Assistant to the Director
DJGS00141 Special Assistant to the Assistant Attorney General Criminal Division
DJGS00191 Counsel to the Assistant Attorney General Civil Division
DJGS00216 Special Assistant to the Director of the Bureau of Justice Assistance
DJGS00218 Special Assistant to the Assistant Attorney General for Justice Programs

Section 213.3310 Department of Justice

DJGS00219 Principal Deputy Director to the Director of the Bureau of Justice Assistance
DJGS00235 Senior Advisor to the Director, Office of Public Affairs
DJGS00275 Counsel to the Assistant Attorney General (Legal Policy)
DJGS00282 Special Assistant to the Assistant Attorney General (Legal Policy)
DJGS00330 Special Assistant to the Director
DJGS00332 Special Assistant to the Assistant Attorney General
DJGS00380 Principal Deputy Director to the Director, Office of Public Affairs
DJGS00440 Staff Assistant to the Assistant Attorney General Tax Division
DJGS00441 Counsel to the Assistant Attorney General Tax Division
DJGS60014 Deputy Administrator to the Administrator Juvenile Justice Delinquency Prevention
DJGS60015 Deputy Director to the Director, National Institute of Justice
DJGS60016 Staff Assistant to the Director, Bureau of Justice Statistics
DJGS60017 Special Assistant to the Director, Office of Domestic Preparedness
DJGS60019 Special Assistant to the Chairman
DJGS60020 Director, Office of Police Corps and Law Enforcement Education to the Principal Deputy Assistant Attorney General
DJGS60023 Special Assistant for International Protocol to the Director, Office of International Affairs
DJGS60024 Special Assistant to the Administrator, Drug Enforcement Administration
DJGS60038 Secretary (Office Automation) to the United States Attorney
DJGS60040 Secretary (Office Automation) to the United States Attorney
DJGS60070 Attorney Advisor to the Assistant Attorney General Civil Division
DJGS60115 Special Assistant to the Director
DJGS60129 Special Counsel to the Assistant Attorney General
DJGS60144 Special Assistant to the Solicitor General
DJGS60165 Counsel to the Associate Attorney General to the Associate Attorney General
DJGS60172 Secretary (Office Automation) to the United States Attorney
DJGS60173 Secretary (Office Automation) to the United States Attorney
DJGS60174 Secretary (Office Automation) to the United States Attorney
DJGS60176 Public Affairs Specialist to the Director, Office of Public Affairs
DJGS60187 Counsel to the Assistant Attorney General Civil Division
DJGS60188 Attorney Advisor to the Assistant Attorney General Civil Division
DJGS60189 Attorney Advisor to the Assistant Attorney General Civil Division
DJGS60190 Senior Counsel to the Assistant Attorney General (Legal Policy)
DJGS60198 Special Assistant to the Assistant Attorney General Criminal Division
DJGS60199 Counsel to the Director, Office of International Affairs
DJGS60208 Confidential Assistant to the Director, Office of Public Affairs
DJGS60233 Attorney Advisor to the Assistant Attorney General Civil Division
DJGS60242 Attorney Advisor to the Assistant Attorney General Civil Division
DJGS60246 Counsel to the Assistant Attorney General Environment and Natural Resources
DJGS60256 Senior Counsel for Voting Reform to the Assistant Attorney General
DJGS60266 Press Aide to the Director, Office of Public Affairs
DJGS60267 Counsel to the Assistant Attorney General to the Assistant Attorney General
DJGS60268 Counsel to the Assistant Attorney General
DJGS60270 Special Assistant to the Assistant Attorney General
DJGS60272 Deputy Director and Counsel, Faith-Based Task Force to the Principal Deputy Assistant Attorney General
DJGS60277 Director of Scheduling and Advance to the Attorney General
DJGS60279 Deputy Director to the Senior Counsel to the Assistant Attorney General
DJGS60293 Special Assistant to the Deputy Attorney General
DJGS60322 Counsel to the Assistant Attorney General (Legal Policy)
DJGS60346 Deputy Director and Senior Advisor to the Director, Office of Public Affairs
DJGS60367 Confidential Assistant to the Attorney General
DJGS60383 Assistant to the Attorney General, Scheduling and Advance to the Director of Scheduling and Advance
DJGS60388 Staff Assistant to the Director
DJGS60406 Public Affairs Spec to the Director, Office of Public Affairs
DJGS60409 Staff Assistant to the Assistant Attorney General for Justice Programs
DJGS60417 Public Affairs Specialist to the United States Attorney

DJGS60418 Secretary (Office Automation) to the United States Attorney
DJGS60420 Secretary (Office Automation) to the United States Attorney
DJGS60423 Secretary (Office Automation) to the United States Attorney
DJGS60426 Secretary (Office Automation) to the United States Attorney
DJGS60427 Secretary (Office Automation) to the United States Attorney
DJGS60429 Secretary (Office Automation) to the United States Attorney
DJGS60430 Secretary (Office Automation) to the United States Attorney
DJGS60436 Secretary (Office Automation) to the United States Attorney
DJGS60437 Secretary (Office Automation) to the United States Attorney
DJGS60439 Senior Advisor to the Assistant Attorney General Tax Division
DJGS60445 Special Assistant to the Director, Community Relations Service
DJGS60448 Secretary (Office Automation) to the United States Attorney

Section 213.3311 Department of Homeland Security

DMGS00002 Scheduler to the Secretary of the Department of Homeland Security
DMGS00004 Executive Assistant to the Secretary of the Department of Homeland Security
DMGS00005 Executive Assistant to the Secretary of the Department of Homeland Security
DMGS00009 White House Liaison to the Chief of Staff
DMGS00010 Deputy White House Liaison to the White House Liaison
DMGS00012 Special Assistant for Special Projects to the Chief of Staff
DMGS00013 Special Assistant to the Assistant Secretary for Public Affairs
DMGS00014 Special Assistant to the Assistant Secretary for Public Affairs
DMGS00015 Speechwriter to the Assistant Secretary for Public Affairs
DMGS00016 Assistant Press Secretary to the Assistant Secretary for Public Affairs
DMGS00017 Executive Assistant to the Inspector General
DMGS00018 Special Assistant to the Under Secretary for Border and Transportation Security
DMGS00019 Executive Secretariat to the Under Secretary for Border and Transportation Security
DMGS00021 Press Secretary to the Assistant Secretary for Public Affairs
DMGS00022 Advance Representative to the Chief of Staff
DMGS00024 Business Liaison to the Special Assistant
DMGS00026 Staff Assistant to the Special Assistant
DMGS00027 Scheduler to the Secretary of the Department of Homeland Security
DMGS00028 Personal Assistant to the Secretary of the Department of Homeland Security
DMGS00029 Research Assistant to the Assistant Secretary for Public Affairs
DMGS00041 Executive Assistant to the Under Secretary for Science and Technology
DMGS00043 Policy Analyst to the Under Secretary for Border and Transportation Security
DMGS00044 Special Assistant to the Assistant Secretary for Infrastructure Protection
DMGS00045 Staff Assistant to the Under Secretary for Science and Technology
DMGS00046 Information Technology Specialist (Internet) to the Assistant Secretary for Public Affairs
DMGS00047 Staff Assistant to the Director, State and Local Affairs
DMGS00049 Press Secretary (Science and Technology) to the Assistant Secretary for Public Affairs
DMGS00050 Director of Speechwriting to the Assistant Secretary for Public Affairs
DMGS00051 Business Analyst to the Special Assistant
DMGS00056 Scheduler to the Under Secretary for Management
DMGS00057 Director, Local Affairs to the Director, State and Local Affairs
DMGS00058 Special Assistant to the Director, Bureau of Citizenship and Immigration Services
DMGS00059 Director for State Affairs to the Director, State and Local Affairs
DMGS00060 Executive Assistant to the Assistant Secretary for Plans, Programs and Budgets
DMGS00061 Press Assistant to the Assistant Secretary for Public Affairs
DMGS00063 Business Liaison to the Special Assistant
DMGS00066 Associate Executive Secretary (Internal Coordination) to the Executive Secretary
DMGS00067 Deputy Press Secretary to the Assistant Secretary for Public Affairs
DMGS00068 Staff Assistant to the Deputy Secretary of the Department of Homeland Security
DMGS00069 Special Assistant to the Under Secretary for Management
DMGS00073 Staff Assistant to the Executive Secretary
DMGS00080 Director of Communications for Immigration and Customs Enforcement to the Assistant Secretary for Public Affairs
DMGS00081 Executive Assistant to the Executive Director, Homeland Security Advisory Council
DMGS00085 Confidential Assistant to the Assistant Secretary for Information Analysis
DMGS00089 Executive Assistant to the Under Secretary for Emergency Preparedness and Response
DMGS70008 Deputy Chief of Staff/ White House Liaison to the Director, Federal Emergency Management Agency
DMGS70009 Special Assistant to the Chief Information Officer to the Assistant Director/Chief Information Officer
DMGS70011 Advisor for Media Affairs to the Director
DMGS70014 Special Assistant to the Division Director
DMGS70015 Special Assistant to the Deputy Director, Federal Emergency Management Agency
DMGS70018 Special Assistant (Coordination/Advance) to the Director, Federal Emergency Management Agency
DMGS70019 Executive Assistant to the Assistant Director
DMGS70020 Staff Assistant to the Assistant Director
DMGS70023 Assistant Division Director, Congressional and Intergovernmental Affairs to the Director, Congressional and Intergovernmental Affairs
DMGS72017 Deputy Director, Public Affairs Division to the Director

Section 213.3312 Department of the Interior

DIGS01000 Special Assistant to the Director Minerals Management Service
DIGS01001 Special Assistant—Scheduling and Advance to the Director of Scheduling and Advance
DIGS01003 Special Assistant—Lewis and Clark to the Director, External and Intergovernmental Affairs
DIGS01009 Press Secretary to the Director, Office of Communications
DIGS01010 Special Advisor for Economic Policy to the Deputy Assistant Secretary—Insular Affairs
DIGS01013 Special Assistant to the White House Liaison
DIGS01016 Counselor to the Assistant Secretary—Indian Affairs to the Assistant Secretary of Indian Affairs

DIGS01017 Hispanic Media Outreach Coordinator to the Director, Office of Communications
DIGS60019 Deputy Director to the Director, External and Intergovernmental Affairs
DIGS60025 Special Assistant to the Secretary
DIGS60037 Hispanic Media Outreach Coordinator to the Director, Office of Communications
DIGS60068 Associate Director to the Director, Congressional and Legislative Affairs
DIGS60073 Speechwriter to the Director, Office of Communications
DIGS60075 Chief, Congressional and Legislative Affairs to the Director, External and Intergovernmental Affairs
DIGS60086 Special Assistant to the Director Minerals Management Service
DIGS60091 Special Assistant to the Director, External and Intergovernmental Affairs
DIGS60092 Special Assistant to the Director, External and Intergovernmental Affairs
DIGS60095 Special Assistant-Communications to the Assistant Secretary of Indian Affairs
DIGS60103 Special Assistant to the Assistant Secretary of Indian Affairs
DIGS60118 Counselor to Assistant Secretary-Indian Affairs to the Assistant Secretary of Indian Affairs
DIGS60124 Special Assistant to the Director, United States Fish and Wildlife Service
DIGS60129 Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks
DIGS60141 Director of Scheduling and Advance to the Chief of Staff
DIGS60150 Special Assistant to the Assistant Secretary Policy Management and Budget
DIGS60151 Special Assistant to the Deputy Secretary of the Interior
DIGS60490 Special Assistant (Advance) to the Deputy Chief of Staff
DIGS60518 Special Assistant to the Director Bureau of Land Management
DIGS60525 Special Assistant to the Assistant Secretary-Land and Minerals Management
DIGS60526 Special Assistant to the Chief of Staff
DIGS60531 Special Assistant to the Solicitor
DIGS60535 Special Assistant to the Assistant Secretary for Water and Science
DIGS60551 Special Assistant for Scheduling and Advance to the Deputy Chief of Staff
DIGS60559 Special Assistant for Scheduling and Advance to the Deputy Chief of Staff
DIGS60560 Associate Director—Senate to the Director, Congressional and Legislative Affairs
DIGS60561 Special Assistant to the Secretary for Alaska to the Chief of Staff
DIGS60567 White House Liaison to the Chief of Staff

Section 213.3313 Department of Agriculture

DAGS00139 Director of External Affairs to the Administrator for Risk Management
DAGS00154 Special Assistant to the Chief of Staff
DAGS00155 Deputy Executive Director, Center for Nutrition Policy and Promotion to the Executive Director, Center for Nutrition Policy and Promotion
DAGS00157 Special Assistant to the Under Secretary for Research, Education and Economics
DAGS00158 Director of Constituent Affairs to the Deputy Chief of Staff
DAGS00160 Special Assistant to the Administrator to the Administrator, Farm Service Agency
DAGS00161 Confidential Assistant to the Chief to the Chief, Natural Research Conservation Service
DAGS00164 Director of Web Design to the Deputy Chief of Staff
DAGS00165 Special Assistant for the Office of Homeland Security to the Secretary
DAGS00166 Confidential Assistant to the Confidential Assistant
DAGS00169 Director of Hispanic Outreach to the Deputy Chief of Staff
DAGS00170 Confidential Assistant to the Administrator to the Administrator for Risk Management
DAGS00171 Confidential Assistant to the Under Secretary for Rural Development
DAGS00172 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00174 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00176 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00178 Confidential Assistant to the Under Secretary for Marketing and Regulatory Programs
DAGS00179 Special Assistant to the Administrator for Risk Management
DAGS00181 Special Assistant to the Under Secretary for Natural Resources and Environment
DAGS00182 Special Assistant to the Chief to the Chief, Natural Research Conservation Service
DAGS00183 Director, Tobacco Programs to the Deputy Administrator
DAGS00184 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00185 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS00186 White House Liaison to the Secretary
DAGS00187 Confidential Assistant to the Deputy Secretary
DAGS00188 Special Assistant to the Director, Intergovernmental Affairs
DAGS00189 Director, Native American Programs to the Assistant Secretary for Administration
DAGS00191 Special Assistant to the Administrator, Farm Service Agency
DAGS60035 Staff Assistant to the Administrator for Risk Management
DAGS60105 Confidential Assistant to the Chief of Staff
DAGS60110 Confidential Assistant to the Secretary
DAGS60111 Confidential Assistant to the Under Secretary for Marketing and Regulatory Programs
DAGS60114 Confidential Assistant to the Deputy Secretary
DAGS60116 Confidential Assistant to the Under Secretary for Rural Development
DAGS60119 Director, Legislative and Intergovernmental Affairs to the Under Secretary for Research, Education and Economics
DAGS60121 Confidential Assistant to the Chief Financial Officer
DAGS60123 Special Assistant to the Under Secretary for Natural Resources and Environment
DAGS60127 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS60129 Special Assistant to the Administrator for Risk Management
DAGS60130 Confidential Assistant to the Deputy Assistant Secretary for Administration
DAGS60131 Director of Advance to the Director of Communications
DAGS60132 Special Assistant to the Under Secretary for Food Safety
DAGS60135 Confidential Assistant to the Administrator, Foreign Agricultural Service
DAGS60137 Special Assistant to the Administrator
DAGS60138 Special Assistant to the Administrator
DAGS60140 Confidential Assistant to the Director, Office of Small and Disadvantaged Business Utilization
DAGS60147 Confidential Assistant to the Administrator, Rural Housing Service
DAGS60151 Special Assistant to the Administrator for Risk Management
DAGS60159 Special Assistant to the Administrator, Foreign Agricultural Service

DAGS60231 Director, Legislative and Public Affairs Staff to the Deputy Under Secretary for Rural Development
DAGS60263 Special Assistant to the Chief, Natural Research Conservation Service
DAGS60275 Confidential Assistant to the Assistant Secretary for Congressional Relations
DAGS60332 Confidential Assistant to the Administrator
DAGS60355 Director of Speech Writing to the Director of Communications
DAGS60369 Staff Assistant to the Deputy Chief of Staff
DAGS60377 Confidential Assistant to the Administrator
DAGS60384 Confidential Assistant to the Secretary
DAGS60386 Special Assistant to the Administrator
DAGS60415 Confidential Assistant to the Administrator
DAGS60422 Confidential Assistant to the Administrator, Farm Service Agency
DAGS60427 Confidential Assistant to the Chief of Staff
DAGS60436 Confidential Assistant to the Administrator
DAGS60451 Special Assistant to the Administrator, Farm Service Agency
DAGS60486 Deputy Press Secretary to the Deputy Chief of Staff
DAGS60534 Confidential Assistant to the Director of Communications
DAGS60556 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
DAGS60565 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
DAGS60566 Confidential Assistant to the Administrator
DAGS60592 Special Assistant to the Administrator, Farm Service Agency

Section 213.3314 Department of Commerce

DCGS00072 Director, Intergovernmental Affairs to the Deputy Assistant Secretary for Programs Research and Evaluation
DCGS00160 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00237 Special Assistant to the Assistant Secretary for Trade Development
DCGS00252 Confidential Assistant to the Director, Executive Secretariat
DCGS00267 Confidential Assistant to the Under Secretary for Export Administration
DCGS00275 Special Assistant to the Director, Office of Business Liaison
DCGS00321 Director, Office of Public Affairs to the Under Secretary for International Trade
DCGS00368 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
DCGS00380 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00388 Confidential Assistant to the Executive Director, Office of Export Assistance and Business Outreach
DCGS00444 Senior Advisor to the Assistant Secretary for Economic Development
DCGS00452 Confidential Assistant to the Chief of Staff
DCGS00462 Senior Counsel to the Assistant Secretary and Commissioner of Patents and Trademarks
DCGS00488 Special Assistant to the Director, Executive Secretariat
DCGS00507 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services
DCGS00529 Policy Advisor to the Deputy Assistant Secretary for Energy, Environment and Materials
DCGS00531 Confidential Assistant to the Deputy Assistant Secretary for Transportation and Machinery
DCGS00536 Speechwriter to the Director for Speechwriting
DCGS00540 Confidential Assistant to the Deputy Chief of Staff
DCGS00570 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS00611 Senior Advisor to the Under Secretary for International Trade
DCGS00623 Special Assistant to the Assistant Secretary for Market Access and Compliance
DCGS00631 Policy Advisor to the Director, Office of Legislative Affairs
DCGS00652 Confidential Assistant to the Director of Public Affairs
DCGS00653 Deputy Director, Office of Public Affairs to the Director of Public Affairs
DCGS00658 Confidential Assistant to the Under Secretary for International Trade
DCGS00684 Director for Speechwriting to the Director of Public Affairs
DCGS00686 Director of Advance to the Chief of Staff
DCGS00689 Special Assistant to the Director, Office of External Affairs
DCGS60004 Deputy Director to the Director, Executive Secretariat
DCGS60173 Senior Advisor to the Assistant Secretary for Economic Development
DCGS60181 Senior Advisor to the Assistant Secretary for Telecommunications and Information
DCGS60189 Special Assistant to the Assistant Secretary for Telecommunications and Information
DCGS60193 Special Assistant to the Deputy Assistant Secretary for Service Industries, Tourism and Finance
DCGS60194 Special Assistant to the Chief of Staff
DCGS60225 Director, Congressional and Public Affairs to the Under Secretary for Export Administration
DCGS60228 Special Assistant for National Marine Fisheries Service to the Director, Office of Legislative Affairs
DCGS60232 Chief Counsel to the Assistant Secretary for Economic Development
DCGS60261 Deputy Communications Director to the Director of Communications
DCGS60276 Executive Assistant to the Under Secretary for Economic Affairs
DCGS60282 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DCGS60287 Confidential Assistant to the Assistant Secretary for Export Administration
DCGS60289 Intergovernmental Affairs Specialist to the Director—Office of Organization and Management Systems
DCGS60290 Special Assistant to the Director, Office of Business Liaison
DCGS60291 Public Affairs Specialist to the Deputy Director, Office of Public Affairs
DCGS60292 Legislative Affairs Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs
DCGS60302 Director of External Affairs to the Director, Office of Public and Constituent Affairs
DCGS60308 Special Assistant to the Executive Director, Office of Export Assistance and Business Outreach
DCGS60309 Senior Advisor to the Director, Minority Business Development Agency
DCGS60317 Confidential Assistant to the Assistant Secretary for Trade Development
DCGS60326 Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations
DCGS60330 Special Assistant to the Director Advocacy Center
DCGS60342 Deputy Director to the Director, Office of White House Liaison
DCGS60343 Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Services

DCGS60354 Public Affairs Specialist to the Assistant Secretary for Telecommunications and Information
DCGS60372 Senior Policy Advisor to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)
DCGS60384 Public Affairs Specialist to the Assistant Director for Operations
DCGS60385 Senior Analyst to the Director
DCGS60387 Confidential Assistant to the Director, Office of Legislative Affairs
DCGS60393 Legislative Affairs Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs
DCGS60396 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
DCGS60402 Chief of Staff to the Under Secretary Oceans and Atmosphere (Administrator National Oceanic and Atmospheric Administration)
DCGS60409 Confidential Assistant to the Executive Assistant
DCGS60410 Executive Assistant to the Under Secretary for International Trade
DCGS60412 Director of Communications to the Assistant Secretary for Trade Development
DCGS60415 Congressional Affairs Specialist to the Director, Office of Legislative Affairs
DCGS60423 Special Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks
DCGS60424 Legislative Affairs Specialist to the Under Secretary for International Trade
DCGS60445 Public Affairs Specialist to the Assistant Secretary for Economic Development
DCGS60446 Senior Advisor to the Under Secretary for Export Administration
DCGS60448 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS60490 Director of Scheduling to the Chief of Staff
DCGS60494 Deputy Press Secretary to the Director of Public Affairs
DCGS60512 Special Advisor to the Under Secretary for Export Administration
DCGS60527 Executive Assistant to the Secretary
DCGS60532 Senior Counsel to the General Counsel
DCGS60533 Confidential Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks
DCGS60544 Senior Advisor to the Under Secretary for International Trade
DCGS60551 Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Affairs
DCGS60573 Special Assistant to the Assistant Secretary and Director General of United States/For Commercial Services
DCGS60583 Special Assistant to the Assistant Secretary for Administrator and Chief Financial Officer
DCGS60589 Policy Advisor to the Director of Public Affairs
DCGS60604 Associate Under Secretary for Communications to the Under Secretary for Economic Affairs
DCGS60646 Public Affairs Specialist to the Deputy Director, Office of Public Affairs
DCGS60648 Press Secretary to the Director of Public Affairs
DCGS60659 Director, Office of White House Liaison to the Chief of Staff
DCGS60677 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
DCGS60681 Special Assistant to the Assistant Secretary for Market Access and Compliance
DCGS60688 Confidential Assistant to the Assistant Secretary for Market Access and Compliance
DCGS60690 Special Assistant to the Assistant Secretary for Market Access and Compliance
DCGS60694 Chief, Congressional Affairs to the Under Secretary for Economic Affairs

Section 213.3315 Department of Labor

DLGS00160 Staff Assistant to the Director of Public Liaison
DLGS60007 Special Assistant to the Secretary of Labor
DLGS60009 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60011 Staff Assistant to the Chief Financial Officer
DLGS60015 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60017 Senior Legislative Officers to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60041 Staff Assistant to the Secretary of Labor
DLGS60044 Attorney Advisor (Labor) to the Solicitor of Labor
DLGS60055 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60076 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60077 Special Assistant to the Chief Financial Officer
DLGS60089 Staff Assistant to the Executive Secretary
DLGS60091 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60093 Special Assistant to the Secretary of Labor
DLGS60094 Director of Media Affairs to the Assistant Secretary for Public Affairs
DLGS60099 Special Assistant to the Deputy Assistant Secretary for Employment and Training
DLGS60101 Chief of Staff to the Assistant Secretary for Employment Standards
DLGS60103 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60104 Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60107 Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60110 Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60111 Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60112 Secretary's Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60113 Special Assistant to the Deputy Assistant Secretary
DLGS60118 Staff Assistant to the Secretary of Labor
DLGS60120 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60121 Special Assistant to the Secretary of Labor
DLGS60123 Special Assistant to the Deputy Assistant Secretary
DLGS60125 Special Assistant to the Chief of Staff
DLGS60126 Staff Assistant to the Wage and Hour Administrator
DLGS60127 Staff Assistant to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60130 Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60131 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60132 Special Assistant to the Director of Public Liaison

DLGS60133 Special Assistant to the Director of the Women's Bureau
DLGS60138 Chief of Staff to the Assistant Secretary for Mine Safety and Health
DLGS60139 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60144 Special Assistant to the Executive Assistant to the Secretary
DLGS60145 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60147 Attorney-Advisor (Labor) to the Solicitor of Labor
DLGS60152 Deputy Director to the Director of the Women's Bureau
DLGS60154 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60159 Special Assistant to the Deputy Under Secretary for International Affairs
DLGS60161 Staff Assistant to the Assistant Secretary for Public Affairs
DLGS60163 Special Assistant to the Assistant Secretary for Occupational Safety and Health
DLGS60168 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60169 Deputy Director, Executive Secretariat to the Executive Secretary
DLGS60170 Special Assistant to the Secretary of Labor
DLGS60171 Special Assistant to the Secretary of Labor
DLGS60173 Chief of Staff to the Assistant Secretary for Disability Employment Policy
DLGS60175 Associate Assistant Secretary for Policy to the Assistant Secretary for Policy
DLGS60177 Speech Writer to the Assistant Secretary for Public Affairs
DLGS60180 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60182 Special Assistant to the Deputy Secretary of Labor
DLGS60185 Deputy Director to the Director, Office of Faith Based and Community Initiatives
DLGS60187 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60190 Research Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60191 Chief Economist to the Assistant Secretary for Policy
DLGS60192 Chief of Staff to the Assistant Secretary for Employee Benefits Security Administration
DLGS60194 Director of Scheduling and Advance to the Secretary of Labor
DLGS60197 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60198 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60199 Staff Assistant to the Assistant Secretary for Public Affairs
DLGS60203 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60204 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60205 Special Assistant to the Secretary of Labor
DLGS60208 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60209 Special Assistant to the Assistant Secretary for Veterans Employment and Training
DLGS60210 Special Assistant to the Director, Office of Faith Based and Community Initiatives
DLGS60211 Special Assistant to the Executive Secretary
DLGS60214 Staff Assistant to the Secretary of Labor
DLGS60215 Special Assistant to the Assistant Secretary for Occupational Safety and Health
DLGS60217 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60218 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60222 Special Assistant to the Assistant Secretary for Disability Employment Policy
DLGS60225 Staff Assistant to the Assistant Secretary for Public Affairs
DLGS60229 Special Assistant to the Assistant Secretary for Disability Employment Policy
DLGS60232 Special Assistant to the Assistant Secretary for Administration and Management
DLGS60234 Chief of Staff to the Assistant Secretary for Policy
DLGS60235 Senior Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60237 Special Assistant to the Secretary of Labor
DLGS60239 Associate Deputy Secretary to the Deputy Secretary of Labor
DLGS60240 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DLGS60243 Staff Assistant to the Assistant Secretary for Policy
DLGS60245 Special Assistant to the Secretary of Labor
DLGS60246 Staff Assistant to the Secretary of Labor
DLGS60248 Special Assistant to the Director of Public Liaison
DLGS60252 Counsel to the Deputy Secretary of Labor
DLGS60255 Staff Assistant to the Secretary of Labor
DLGS60256 Special Assistant to the Deputy Assistant Secretary for Labor-Management Programs
DLGS60260 Special Assistant to the Director of Public Liaison
DLGS60261 Special Assistant to the Assistant Secretary for Mine Safety and Health
DLGS60262 Special Assistant to the Deputy Assistant Secretary for Federal Contract Compliance
DLGS60263 Special Assistant to the Assistant Secretary for Employment Standards
DLGS60264 Special Assistant to the Wage and Hour Administrator
DLGS60266 Chief of Staff to the Deputy Under Secretary for International Affairs
DLGS60267 Special Assistant to the Assistant Secretary for Public Affairs
DLGS60269 Special Assistant to the Secretary of Labor
DLGS60270 Special Assistant to the Assistant Secretary for Employment and Training
DLGS60273 Special Assistant to the Assistant Secretary for Administration and Management

Section 213.3316 Department of Health and Human Services

DHGS00034 Executive Assistant to the Principal Deputy Assistant Secretary for Health
DHGS00268 Special Assistant to the Executive Secretary to the Executive Secretary to the Department
DHGS00492 Deputy White House Liaison for Boards and Committees to the Chief of Staff
DHGS00632 Special Outreach Coordinator to the Executive Secretary to the Department
DHGS60002 Special Assistant to the Chief of Staff
DHGS60014, Director, Correspondence Control Center to the Executive Secretary to the Department
DHGS60017 Director of Scheduling to the Chief of Staff
DHGS60055 Senior Advisor to the Assistant Secretary for Legislation to the Assistant Secretary for Legislation
DHGS60187 Special Assistant to the Deputy Assistant Secretary for Legislative (Congressional Liaison)
DHGS60204 Special Assistant to the Executive Assistant to the White House Liaison for Political Personnel Boards and Commission

DHGS60236 Secretary's Regional Representative for Intergovernmental Affairs to the Director of Intergovernmental Affairs

DHGS60237 Regional Director, New York, New York, Region II to the Director of Intergovernmental Affairs

DHGS60240 Regional Director, Dallas, Texas, Region VI to the Director of Intergovernmental Affairs

DHGS60243 Regional Representative, Atlanta, Georgia, Region IV to the Director of Intergovernmental Affairs

DHGS60247 Secretary's Regional Representative, Philadelphia, Pennsylvania to the Director of Intergovernmental Affairs

DHGS60252 Regional Director, Denver, Colorado, Region VIII to the Director of Intergovernmental Affairs

DHGS60255 Regional Director, Chicago, Illinois-Region V to the Director of Intergovernmental Affairs

DHGS60269 Special Assistant to the Director, Center for Faith-Based and Community Initiatives

DHGS60293 Special Assistant to the Commissioner Administration for Children Youth and Families

DHGS60315 Special Assistant to the Director of Intergovernmental Affairs

DHGS60331 Special Assistant to the Director, Executive Operations

DHGS60332 Associate Commissioner Children's Bureau to the Commissioner Administration for Children Youth and Families

DHGS60336 Special Assistant to the Deputy Assistant Secretary for Legislative (Congressional Liaison)

DHGS60347 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislative (Congressional Liaison)

DHGS60359 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislative (Congressional Liaison)

DHGS60361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislative (Congressional Liaison)

DHGS60374 Confidential Assistant to the Executive Secretary to the Department

DHGS60383 Special Assistant to the Administrator, Health Resources and Services Administration

DHGS60399 Special Assistant to the Commissioner Administration for Children Youth and Families

DHGS60412 Regional Director, San Francisco, California, Region IX to the Director of Intergovernmental Affairs

DHGS60417 Regional Director, Kansas City, Missouri, Region VII the Director of Intergovernmental Affairs

DHGS60418 Confidential Assistant to the Deputy Assistant Secretary for Planning and Evaluation (Science and Data Policy)

DHGS60427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary Administrator for Children and Families

DHGS60436 Associate Commissioner to the Assistant Secretary Administrator for Children and Families

DHGS60485 Director of Communications to the Assistant Secretary, Health

DHGS60497 Special Assistant for International and Immigration Issues to the Assistant Secretary Administrator for Children and Families

DHGS60525 Confidential Assistant to the Director, Executive Operations

DHGS60541 Special Assistant to the Deputy Director Office of Child Support Enforcement

DHGS60553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Communications)

DHGS60558 Confidential Assistant to the Administrator, Health Resources and Services Administration

DHGS60570 Confidential Assistant (Advance) to the Director of Scheduling

DHGS60628 Special Assistant to the Administrator, Substance Abuse and Mental Health Service

DHGS60636 Senior Advisor to the Director, Indian Health Service

DHGS60638 Special Assistant to the Chief of Staff

DHGS60659 Counselor to the Deputy Secretary, Department of Health and Human Services

DHGS60661 Special Assistant to the Deputy Secretary

DHGS60664 Deputy Director of Intergovernmental Affairs (Operations) to the Director of Intergovernmental Affairs

DHGS60665 Deputy Director for Policy to the Director of Intergovernmental Affairs

DHGS60667 Confidential Assistant to the Executive Secretary to the Department

DHGS60672 Deputy Director of Scheduling to the Director of Scheduling

DHGS60675 Special Assistant for Aging to the Assistant Secretary for Aging (Commissioner for Aging)

DHGS60682 Executive Director, President's Advisory Commission and White House Initiative on Asian Americans and Pacific Islanders to the Assistant Secretary, Health

Section 213.3317 Department of Education

DBGS00081 Special Assistant to the Director, Faith-Based and Community Initiatives Center

DBGS00094 Special Assistant to the Deputy Assistant Secretary for Regional Services

DBGS00184 Confidential Assistant to the Special Assistant

DBGS00192 Special Assistant to the Chief of Staff

DBGS00198 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services

DBGS00200 Special Assistant to the Senior Advisor to the Secretary

DBGS00202 Deputy Assistant Secretary for Policy to the Assistant Secretary for Elementary and Secondary Education

DBGS00204 Special Assistant to the Chief Financial Officer

DBGS00205 Special Assistant to the Assistant Secretary for Management

DBGS00208 Special Assistant to the Director, White House Initiative on Hispanic Education

DBGS00209 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs

DBGS00211 Special Assistant to the Associate Deputy Under Secretary

DBGS00212 Confidential Assistant to the Special Assistant

DBGS00213 Special Assistant to the Deputy Assistant Secretary for Regional Services

DBGS00216 Deputy Secretary's Regional Representative, Region X to the Assistant Secretary for Intergovernmental and Interagency Affairs

DBGS00219 Confidential Assistant to the Special Assistant

DBGS00223 Special Assistant to the Deputy Under Secretary for Innovation and Improvement

DBGS00224 Special Assistant to the Deputy Under Secretary for Innovation and Improvement

DBGS00225 Confidential Assistant to the Deputy Under Secretary for Innovation and Improvement

DBGS00230 Confidential Assistant to the Deputy Under Secretary for Innovation and Improvement

DBGS00231 Confidential Assistant to the Assistant Secretary for Vocational and Adult Education

DBGS00232 Confidential Assistant to the Director, Faith-Based and Community Initiatives Center

DBGS00235 Associate Deputy Under Secretary for Improvement and Reform to the Deputy Under Secretary for Innovation and Improvement

DBGS00236 Secretary's Regional Representative to the Assistant

Secretary for Intergovernmental and Interagency Affairs
DBGS00237 Executive Assistant to the General Counsel
DBGS00239 Confidential Assistant to the Special Assistant
DBGS00240 Special Assistant to the Chief of Staff
DBGS00241 Deputy Secretary's Regional Representative-Region III to the Deputy Assistant Secretary for Regional Services
DBGS00242 Special Assistant to the Under Secretary
DBGS00244 Special Assistant to the Special Assistant
DBGS00245 Confidential Assistant to the Special Assistant
DBGS00246 Confidential Assistant to the Deputy Assistant Secretary
DBGS00247 Special Assistant to the Special Assistant
DBGS00248 Confidential Assistant to the Special Assistant
DBGS00249 Special Assistant to the Assistant Secretary for Postsecondary Education
DBGS00250 Confidential Assistant to the Director, White House Liaison
DBGS00251 Special Assistant to the Special Assistant
DBGS00252 Special Assistant to the Associate Deputy Under Secretary
DBGS00255 Special Assistant to the Chief of Staff
DBGS00256 Special Assistant to the Assistant Secretary for Civil Rights
DBGS00257 Confidential Assistant to the Assistant Secretary for Postsecondary Education
DBGS00259 Confidential Assistant to the Chief of Staff
DBGS00260 Deputy Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services
DBGS00261 Deputy Secretary's Regional Representative—Region VII to the Deputy Assistant Secretary for Regional Services
DBGS00262 Confidential Assistant to the Chief of Staff
DBGS00263 Deputy Director of Communications, Office of Public Affairs to the Director Office of Public Affairs (Communications Director)
DBGS00265 Special Assistant to the Assistant Secretary for Management/Chief Information Officer
DBGS00267 Confidential Assistant to the Special Assistant (Executive Assistant)
DBGS00268 Special Assistant (White House Liaison) to the Chief of Staff
DBGS00269 Special Assistant to the Deputy Assistant Secretary
DBGS00270 Confidential Assistant to the Deputy Chief of Staff for Operations
DBGS00271 Special Assistant to the Chief of Staff
DBGS00272 Special Assistant to the Chief of Staff to the Under Secretary
DBGS00277 Special Assistant to the Special Assistant
DBGS00278 Special Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS00281 Confidential Assistant to the Chief of Staff to the Under Secretary
DBGS06227 Special Assistant to the Chief of Staff
DBGS06229 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS60002 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs
DBGS60003 Confidential Assistant to the Chief of Staff
DBGS60006 Confidential Assistant to the Chief of Staff to the Under Secretary
DBGS60011 Steward to the Chief of Staff
DBGS60015 Special Assistant to the Deputy Assistant Secretary for Regional Services
DBGS60016 Confidential Assistant to the Chief of Staff
DBGS60021 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
DBGS60025 Executive Assistant to the Deputy Secretary of Education
DBGS60028 Deputy Secretary's Regional Representative, Region VI to the Secretary's Regional Representative
DBGS60032 Confidential Assistant to the Director, Office of Scheduling and Briefing
DBGS60033 Deputy Assistant Secretary for Regional Services to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS60037 Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS60038 Secretary's Regional Representative, Region I, Boston, Massachusetts to the Deputy Assistant Secretary for Regional Services
DBGS60048 Special Assistant to the General Counsel
DBGS60052 Deputy Director to the Director
DBGS60055 Secretary's Regional Representative, Region VIII to the Deputy Assistant Secretary for Regional Services
DBGS60059 Special Assistant to the Chief of Staff
DBGS60060 Press Secretary to the Director Office of Public Affairs (Communications Director)
DBGS60063 Confidential Assistant to the Counselor to the Secretary
DBGS60064 Secretary's Regional Representative, Region II to the Deputy Assistant Secretary for Regional Services
DBGS60068 Special Assistant to the Chief of Staff to the Deputy Secretary
DBGS60069 Special Assistant to the Chief of Staff to the Under Secretary
DBGS60073 Special Assistant to the Commissioner Rehabilitation Services Administration
DBGS60075 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS60077 Special Assistant to the Director, Office of Scheduling and Briefing
DBGS60078 Special Assistant to the Deputy Assistant Secretary for Regional Services
DBGS60079 Confidential Assistant to the Director, Office of Scheduling and Briefing
DBGS60080 Confidential Assistant to the Chief of Staff to the Deputy Secretary
DBGS60083 Special Assistant to the Chief of Staff
DBGS60084 Confidential Assistant to the Director Office of Public Affairs (Communications Director)
DBGS60085 Secretary's Regional Representative, Region IX to the Deputy Assistant Secretary for Regional Services
DBGS60088 Special Assistant to the Deputy Secretary of Education
DBGS60093 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
DBGS60096 Special Assistant to the Deputy Assistant Secretary for Regional Services
DBGS60103 Special Assistant to the Deputy Assistant Secretary
DBGS60113 Special Assistant to the Director Office of Public Affairs (Communications Director)
DBGS60115 Secretary's Regional Representative, Region X to the Deputy Assistant Secretary for Regional Services
DBGS60119 Special Assistant to the Chief of Staff
DBGS60120 Director, Office of Scheduling and Briefing to the Chief of Staff
DBGS60122 Secretary's Regional Representative, Region VII to the Deputy Assistant Secretary for Regional Services
DBGS60124 Special Assistant to the Assistant Secretary for Postsecondary Education

DBGS60125 Special Assistant (Executive Assistant) to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS60126 Deputy Secretary's Regional Representative, Region I to the Secretary's Regional Representative, Region I, Boston, MA
DBGS60127 Special Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS60129 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services
DBGS60130 Special Assistant to the Director
DBGS60137 Special Assistant to the Chief of Staff
DBGS60139 Deputy Chief of Staff for Strategy/Policy to the Chief of Staff
DBGS60140 Deputy Chief of Staff for Operations to the Chief of Staff
DBGS60142 Secretary's Regional Representative, Region IV to the Deputy Assistant Secretary for Regional Services
DBGS60143 Confidential Assistant to the Chief of Staff
DBGS60145 Confidential Assistant to the Deputy Director
DBGS60146 Confidential Assistant to the Chief of Staff
DBGS60150 Special Assistant to the Chief of Staff
DBGS60151 Special Assistant to the Chief of Staff
DBGS60154 Director, Faith-Based and Community Initiatives Center to the Chief of Staff
DBGS60155 Special Assistant to the Director, White House Initiative on Hispanic Education
DBGS60163 Confidential Assistant to the Chief of Staff to the Under Secretary
DBGS60164 Confidential Assistant to the Chief of Staff to the Under Secretary
DBGS60166 Executive Assistant to the Assistant Secretary for Postsecondary Education
DBGS60168 Special Assistant to the Director, Office of Educational Technology
DBGS60171 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs
DBGS60173 Special Assistant to the Chief of Staff to the Deputy Secretary
DBGS60174 Special Assistant to the Chief Financial Officer
DBGS60175 Special Assistant to the Assistant Secretary for Vocational and Adult Education
DBGS60176 Confidential Assistant to the Deputy Assistant Secretary
DBGS60178 Special Assistant to the Chief of Staff to the Under Secretary
DBGS60181 Special Assistant to the Chief Financial Officer
DBGS60182 Confidential Assistant to the Director of the Institute of Education Sciences
DBGS60185 Special Assistant to the Director Office of Public Affairs (Communications Director)
DBGS60187 Special Assistant to the Deputy Chief of Staff for Operations
DBGS60189 Confidential Assistant to the Assistant Secretary for Civil Rights
DBGS60191 Special Assistant to the Assistant Secretary for Civil Rights
DBGS60193 Special Assistant to the Secretary
DBGS60194 Special Assistant to the Director, White House Initiative on Hispanic Education
DBGS60196 Special Assistant to the Director, Office of Educational Technology
DBGS60197 Confidential Assistant to the Deputy Chief of Staff for Operations
DBGS60199 Special Assistant to the Assistant Secretary for Postsecondary Education
DBGS60206 Deputy Secretary's Regional Representative, Region IX to the Deputy Assistant Secretary for Regional Services

Section 213.3318 Environmental Protection Agency

EPGS00922 Associate Assistant Administrator to the Assistant Administrator for Research and Development
EPGS03300 Public Affairs Specialist to the Associate Assistant Administrator for Public Affairs
EPGS03400 Program Advisor to the Associate Administrator to the Associate Assistant Administrator for Public Affairs
EPGS03500 Senior Policy Advisor to the Deputy Assistant Administrator for Water
EPGS03604 Supervisory Program Analyst to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS12701 Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS30301 Assistant Associate Administrator/Press Secretary to the Associate Assistant Administrator for Public Affairs
EPGS60001 Special Assistant (Advance Person) to the Administrator
EPGS60005 Director of Information and Special Initiatives to the Associate Administrator for Communications, Education and Media Relations
EPGS60039 Special Assistant to the Associate Administrator for Communications, Education and Media Relations
EPGS60042 Director of Scheduling to the Deputy Associate Administrator for the Office of Public Affairs
EPGS60050 Program Assistant to the Assistant Administrator for Air and Radiation
EPGS60054 Special Assistant to the Associate Administrator for Communications, Education and Media Relations
EPGS60055 Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS60060 Chief of Staff to the Assistant Administrator for Air and Radiation
EPGS60062 Public Liaison Specialist to the Associate Administrator for Communications, Education and Media Relations
EPGS60063 Special Assistant to the Deputy Administrator
EPGS60064 Associate Assistant Administrator to the Assistant Administrator for Prevention Pesticides and Toxic Substances
EPGS60065 Recycling Communications Advisor to the Deputy Director, Office of Solid Waste
EPGS60068 Associate Assistant Administrator to the Principal Deputy Assistant Administrator for Solid Waste and Emergency Response
EPGS60069 Special Assistant for Communications to the Assistant Administrator for Water
EPGS60071 Senior Advisor to the Assistant Administrator for International Activities
EPGS60072 Director, Office of Regional Operations to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS60074 Policy Analyst to the Assistant Administrator for Air and Radiation
EPGS60075 Deputy Associate Administrator to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS60076 Senior Counsel to the Associate Administrator for Congressional and Intergovernmental Relations
EPGS60077 Special Counsel to the General Counsel to the Associate General Counsel (Pesticides and Toxic Substances)
EPGS60078 Program Advisor (Advance Person) to the Administrator
EPGS60081 Director of Advance Staff to the Associate Administrator for Communications, Education and Media Relations

EPGS60082 Special Assistant to the Administrator
EPGS60083 Director, Long Term Communication Planning to the Associate Administrator for Communications, Education and Media Relations
EPGS60089 Senior Advisor to the Chief Financial Officer

Section 213.3323 Federal Communications Commission

FCGS03051 Deputy Director, Office of Media Relations to the Chief of Staff
FCGS60005 Special Assistant to the Director, Office of Legislative Affairs
FCGS60006 Deputy Director to the Director, Office of Legislative Affairs

Section 213.3323 Overseas Private Investment Corporation

PQGS00015 Program Specialist to the President
PQGS60018 Executive Assistant to the President
PQGS60019 Confidential Assistant to the President
PQGS60020 Executive Assistant to the Executive Vice President
PQGS60021 Confidential Assistant to the President

Section 213.3325 United States Tax Court

JCGS60040 Secretary Confidential Assistant to the Chief Judge
JCGS60041 Secretary (Confidential Assistant) to the Chief Judge
JCGS60042 Secretary (Confidential Assistant) to the Chief Judge
JCGS60043 Secretary (Confidential Assistant) to the Chief Judge
JCGS60044 Secretary (Confidential Assistant) to the Chief Judge
JCGS60045 Secretary (Confidential Assistant) to the Chief Judge
JCGS60046 Secretary (Confidential Assistant) to the Chief Judge
JCGS60047 Secretary (Confidential Assistant) to the Chief Judge
JCGS60048 Secretary (Confidential Assistant) to the Chief Judge
JCGS60049 Secretary (Confidential Assistant) to the Chief Judge
JCGS60050 Secretary (Confidential Assistant) to the Chief Judge
JCGS60051 Secretary (Confidential Assistant) to the Chief Judge
JCGS60052 Secretary (Confidential Assistant) to the Chief Judge
JCGS60053 Secretary (Confidential Assistant) to the Chief Judge
JCGS60054 Secretary (Confidential Assistant) to the Chief Judge
JCGS60056 Secretary (Confidential Assistant) to the Chief Judge
JCGS60059 Secretary (Confidential Assistant) to the Chief Judge
JCGS60060 Secretary (Confidential Assistant) to the Chief Judge
JCGS60061 Secretary (Confidential Assistant) to the Chief Judge
JCGS60062 Secretary (Confidential Assistant) to the Chief Judge
JCGS60063 Secretary (Confidential Assistant) to the Chief Judge
JCGS60064 Secretary (Confidential Assistant) to the Chief Judge
JCGS60065 Secretary (Confidential Assistant) to the Chief Judge
JCGS60066 Trial Clerk to the Chief Judge
JCGS60067 Trial Clerk to the Chief Judge
JCGS60068 Trial Clerk to the Chief Judge
JCGS60069 Trial Clerk to the Chief Judge
JCGS60070 Trial Clerk to the Chief Judge
JCGS60071 Trial Clerk to the Chief Judge
JCGS60073 Trial Clerk to the Chief Judge
JCGS60074 Trial Clerk to the Chief Judge
JCGS60077 Trial Clerk to the Chief Judge
JCGS60078 Trial Clerk to the Chief Judge
JCGS60082 Secretary (Confidential Assistant) to the Chief Judge

Section 213.3327 Department of Veterans Affairs

DVGS60005 Special Assistant to the Secretary of Veterans Affairs
DVGS60008 Special Assistant to the Dean, Veterans Affairs Learning University
DVGS60011 Special Assistant to the Deputy Assistant Secretary for Public Affairs
DVGS60015 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60030 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60034 Director, Congressional Affairs to the Assistant Secretary for Congressional and Legislative Affairs
DVGS60056 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60073 Special Assistant (Deputy White House Liaison) to the Deputy Assistant Secretary for Public Affairs
DVGS60075 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60081 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60085 Special Assistant (Supervisory Regional Veterans Service Liaison Officer) to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60095 Special Assistant to the Assistant Secretary for Human Resources and Administration
DVGS60096 Special Assistant to the Special Assistant (Supervisory Regional Veterans Service Liaison Officer)
DVGS60099 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
DVGS60106 Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs

Section 213.3328 Broadcasting Board of Governors

IBGS00009 Special Assistant to the Chairman, Broadcasting Board of Governors
IBGS00011 Special Assistant to the Chairman, Broadcasting Board of Governors
IBGS00012 Special Assistant to the Chairman, Broadcasting Board of Governors
IBGS60002 Special Assistant to the Executive Director
IBGS60003 Chief of Staff to the Director Office of Cuba Broadcasting
IBGS60005 Senior Projects Officer to the Director, Voice of America

Section 213.3330 Securities and Exchange Commission

SEOT60002 Confidential Assistant to a Commissioner
SEOT60004 Director of Legislative Affairs to the Director of Communications
SEOT60005 Confidential Assistant to a Commissioner
SEOT60006 Confidential Assistant to a Commissioner
SEOT60008 Secretary (Office Automation) to the Chief Accountant
SEOT60009 Secretary to the Gen Counsel of the Commission
SEOT60011 Staff Assistant to the Managing Executive for External Affairs
SEOT60014 Secretary to the Dir, Div of Market Regulation
SEOT60016 Secretary to the Dir, Div of Enforcement
SEOT60018 Secretary to the Dir—Div of Investment Management
SEOT60019 Secretary to the Director
SEOT60028 Confidential Assistant to the Chairman
SEOT60029 Secretary to the Director, Division of Market Regulation
SEOT60040 Senior Adviser to the Chairman to the Chairman

SEOT60041 Senior Advisor for Legislative Affairs to the Director of Communications

SEOT60051 Managing Executive for External Affairs to the Chairman

Section 213.3331 Department of Energy

DEGS00267 Special Assistant to the Assistant Secretary for Fossil Energy

DEGS00281 Senior Policy Advisor to the Chief Information Officer

DEGS00291 Deputy Chief of Staff to the Deputy Secretary to the Deputy Secretary of Energy

DEGS00293 Special Assistant to the Secretary, Department of Energy

DEGS00296 Special Assistant to the Director Office of Economic Impact and Diversity

DEGS00297 Policy Advisor to the Assistant Secretary for Fossil Energy

DEGS00298 Executive Assistant to the Assistant Secretary for Fossil Energy

DEGS00299 Senior Policy Advisor to the Assistant Secretary for International Affairs

DEGS00303 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS00305 Senior Policy Advisor to the Director, Office of Civilian Radioactive Waste Management

DEGS00306 Special Assistant to the Chief Financial Officer/Director, Office of Management, Budget and Evaluation

DEGS00310 Deputy Director, Office of Scheduling and Advance to the Director, Office of Scheduling and Advance

DEGS00311 Special Assistant to the Assistant Secretary (Conservation and Renewable Energy)

DEGS00313 Senior Policy Advisor to the Secretary, Department of Energy

DEGS00315 Deputy White House Liaison to the Deputy Chief of Staff/White House Liaison

DEGS00317 Senior Policy Advisor to the Secretary, Department of Energy

DEGS00318 Advisor, Legislative Affairs to the Assistant Secretary (Conservation and Renewable Energy)

DEGS00319 Senior Advisor to the Assistant Secretary (Conservation and Renewable Energy)

DEGS00321 Director, Office of Climate Change Programs to the Deputy Assistant Secretary for National Energy Policy

DEGS00322 Special Assistant for Intergovernmental Affairs to the Assistant Secretary of Energy (Environmental Management)

DEGS00323 Chief of Staff/Senior Policy Advisor for North American Affairs to the Assistant Secretary for International Affairs

DEGS00324 Special Assistant to the Director, Office of Scheduling and Advance

DEGS00326 Special Assistant to the Director, Public Affairs

DEGS00327 Special Assistant to the Director, Public Affairs

DEGS00328 Special Assistant to the Assistant Secretary for International Affairs

DEGS00329 Congressional Relations Specialist to the Deputy Administrator for Defense Programs, National Nuclear Security Administration

DEGS00330 Confidential Assistant to the Assistant Secretary for Environment, Safety and Health

DEGS00331 Advance and Trip Coordinator to the Director, Office of Scheduling and Advance

DEGS00332 Senior Advance Representative to the Director, Office of Scheduling and Advance

DEGS00333 Senior Advance Representative to the Director, Office of Scheduling and Advance

DEGS00334 Special Assistant to the Secretary to the Secretary, Department of Energy

DEGS60121 Special Assistant to the Director, Office of Scheduling and Advance

DEGS60134 Special Assistant to the Assistant Secretary for Fossil Energy

DEGS60140 Senior Advisor to the Director, Nuclear Energy

DEGS60151 Special Projects Officer to the Senior Policy Advisor

DEGS60173 Senior Policy Advisor to the Secretary, Department of Energy

DEGS60180 Deputy Director, Public Affairs to the Director, Public Affairs

DEGS60204 Special Assistant to the Assistant Secretary for Fossil Energy

DEGS60206 Chief of Staff to the Assistant Secretary (Conservation and Renewable Energy)

DEGS60212 Senior Advisor, Communications to the Assistant Secretary (Conservation and Renewable Energy)

DEGS60213 Legislative Counsel to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60217 Director, Press Office to the Director, Public Affairs

DEGS60220 Policy Advisor to the Secretary, Department of Energy

DEGS60221 Senior Policy Advisor to the Assistant Secretary of Energy (Environmental Management)

DEGS60222 Special Assistant to the Secretary, Department of Energy

DEGS60225 Senior Policy Advisor for Middle East Affairs to the Assistant Secretary for International Affairs

DEGS60226 Senior Advisor to the Secretary, Department of Energy

DEGS60228 Chief of Staff to the Director Office of Economic Impact and Diversity

DEGS60233 Special Assistant to the Assistant Secretary for International Affairs

DEGS60238 Deputy Director to the Director Office of Economic Impact and Diversity

DEGS60242 Policy Advisor to the Director Office of Worker and Community Transition

DEGS60244 Congressional Affairs Officer to the Assistant Secretary for Fossil Energy

DEGS60245 Senior Policy Advisor to the Assistant Secretary for Fossil Energy

DEGS60247 Advance and Trip Coordinator to the Director, Office of Scheduling and Advance

DEGS60248 Deputy Director of Advance for Strategic Initiatives to the Director, Office of Scheduling and Advance

DEGS60250 Confidential Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60251 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60253 Director of Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60254 Senior Policy Advisor to the Assistant Secretary of Energy (Environmental Management)

DEGS60256 Intergovernmental Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60257 Deputy Assistant Secretary for National Security to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60259 Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60261 Associate Deputy Assistant Secretary to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60262 Deputy Assistant Secretary for Budget and Appropriations to the Assistant Secretary for Congressional and Intergovernmental Affairs

DEGS60264 Senior Policy Advisor to the Chief Financial Officer/Director, Office of Management, Budget and Evaluation

DEGS60265 Senior Advisor, Congressional and Intergovernmental Affairs to the Director, Office of Science

DEGS60266 Senior Advisor to the Assistant Secretary of Energy (Environmental Management)
DEGS60268 Senior Manager of Public Affairs to the Assistant Secretary for Fossil Energy
DEGS60269 Confidential Advisor to the Director, Office of Science
DEGS60271 Executive Assistant to the Assistant Secretary for Fossil Energy
DEGS60272 Senior Policy advisor to the Secretary, Department of Energy
DEGS60276 Senior Policy Advisor to the Director, Office of Science
DEGS60277 Special Assistant to the Director, Office of Scheduling and Advance
DEGS60278 Special Assistant to the Director, Office of Economic Impact and Diversity
DEGS60283 Daily Scheduler to the Director, Office of Scheduling and Advance
DEGS60284 Special Assistant to the Assistant Secretary for International Affairs
DEGS60288 Daily Scheduler to the Director, Office of Scheduling and Advance

Section 213.3331 Federal Energy Regulatory Commission

DRGS60001 Regulatory Policy Analyst to the Director, Markets, Tariffs, and Rates
DRGS60003 Confidential Assistant to the Member-Federal Energy Regulatory Commission (Department of Energy)

Section 213.3332 Small Business Administration

SBGS00202 Speech Writer to the Associate Administrator for Communications/Public Liaison
SBGS60003 National Director for Native American Affairs to the Associate Deputy Administrator for Entrepreneurial Development
SBGS60004 Senior Advisor to the Inspector General
SBGS60010 Special Assistant to the Chief Operating Officer
SBGS60012 Director of Advisory Councils to the Associate Administrator for Communications/Public Liaison
SBGS60018 Special Assistant to the Administrator
SBGS60019 Special Assistant to the Deputy Administrator to the Deputy Administrator
SBGS60020 Senior Advisor to the Associate Deputy Administrator for Government Contracting and Business Development
SBGS60037 Special Assistant to the Administrator
SBGS60039 Assistant Administrator for Public Communications to the Associate Administrator for Communications/Public Liaison
SBGS60043 Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs
SBGS60058 Special Assistant to the Chief of Staff to the Chief of Staff
SBGS60063 Special Assistant to the Associate Deputy Administrator for Capital Access
SBGS60075 Senior Advisor to the Associate Administrator for Investment
SBGS60076 Special Assistant to the Administrator
SBGS60084 Director of International Trade to the Administrator
SBGS60092 Special Assistant (Scheduling) to the Administrator
SBGS60098 Staff Assistant to the Associate Administrator for Communications/Public Liaison
SBGS60105 Special Assistant to the Administrator
SBGS60113 Director, Executive Secretariat to the Chief of Staff
SBGS60143 Policy Advisor to the Associate Administrator for Communications/Public Liaison
SBGS60145 Senior Advisor for International Trade to the Director, Intergovernmental Affairs
SBGS60146 Special Assistant to the Director of International Trade
SBGS60153 Deputy Director to the District Director
SBGS60157 Senior Advisor to the Administrator
SBGS60160 Senior Advisor to the District Director
SBGS60165 Special Assistant to the Associate Administrator for Field Operations
SBGS60168 Director of Intergovernmental Affairs to the Associate Administrator for Communications/Public Liaison
SBGS60169 Regional Administrator, Region I, Boston, MA to the Special Assistant to the Administrator
SBGS60170 Regional Administrator, Region VIII, Denver Colorado to the Assistant Inspector General for Inspections and Evaluation
SBGS60172 Regional Administrator (Kansas City) to the District Director
SBGS60173 Regional Administrator, Region VI, Dallas, Texas to the District Director
SBGS60175 Regional Administrator to the District Director
SBGS60176 Regional Administrator, Region II, New York, NY to the District Director Boston
SBGS60178 Regional Administrator, Region III, Philadelphia, Pennsylvania to the Associate Administrator for Field Operations
SBGS60183 Press Secretary to the Associate Administrator for Communications/Public Liaison
SBGS60188 Regional Administrator, Region IX, San Francisco to the Administrator
SBGS60189 Regional Administrator, Region 10, Seattle Washington to the Associate Administrator for Field Operations
SBGS60194 Assistant Scheduler to the Administrator
SBGS60206 National Director-Matchmaking to the Associate Deputy Administrator for Government Contracting and Business Development
SBGS60208 Special Assistant to the Associate Deputy Administrator for Entrepreneurial Development
SBGS60216 Senior Policy Advisor to the Administrator to the Administrator
SBGS60535 Senior Advisor to the Associate Deputy Administrator for Entrepreneurial Development

Section 213.3334 Federal Trade Commission

FTGS60001 Director, Office of Public Affairs to the Chairman
FTGS60002 Congressional Liaison Specialist to the Director, Office of Congressional Relations
FTGS60003 Secretary, Bureau of Competition to the Director Bureau of Competition
FTGS60004 Deputy Director to the Director, Office of Public Affairs
FTGS60005 Consumer Liaison Specialist to the Deputy Director Bureau of Consumer Protection
FTGS60023 Special Assistant to a Commissioner
FTGS60026 Confidential Assistant to a Commissioner
FTGS60027 Confidential Assistant to a Commissioner

Section 213.3337 General Services Administration

GSGS00084 Special Assistant to the Regional Administrator, Region VI Kansas City
GSGS00088 Special Assistant to the Regional Administrator, Northwest Artic Region to the Regional Administrator, Region 10, Auburn, Washington
GSGS00099 Senior Advisor to the Regional Administrator, Region 3, Philadelphia, Pennsylvania
GSGS00122 Congressional Relations Analyst to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60044 Senior Policy Advisor to the Administrator
GSGS60058 Director of Administration to the Administrator

GSGS60069 Events Management Specialist to the Director of External Affairs
GSGS60078 Senior Advisor to the Regional Administrator National Capital Region
GSGS60082 Senior Advisor to the Regional Administrator, Regional 4, Atlanta, Georgia
GSGS60089 Confidential Assistant to the Administrator
GSGS60094 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60095 White House Liaison to the Chief of Staff
GSGS60100 Senior Advisor to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60103 Confidential Assistant to the Chief of Staff
GSGS60113 Special Assistant to the Regional Administrator Region 1, Boston
GSGS60119 Senior Advisor to the Deputy Regional Administrator
GSGS60120 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60121 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSGS60127 Associate Administrator for Small Business Utilization to the Administrator
GSGS60131 Director of External Affairs to the Deputy Associate Administrator for Communications

Section 213.3339 United States International Trade Commission

TCGS00007 Staff Assistant to a Commissioner
TCGS60006 Staff Assistant (Economics) to a Commissioner
TCGS60015 Executive Assistant to the Vice Chairman
TCGS60019 Senior Economist to a Commissioner
TCGS60022 Staff Assistant to the Vice Chairman
TCGS60030 Confidential Assistant to a Commissioner
TCGS60036 Executive Assistant to the Chairman

Section 213.3340 National Archives and Records Administration

NQGS60003 Archivist of the United States to the Archivist of the United States

Section 213.3341 National Labor Relations Board

NLGS06574 Executive Assistant to the Chairman to the Chairman

Section 213.3342 Export-Import Bank

EBGS60044 Special Assistant to the Special Assistant to Chairman and Coordinator of African Programs
EBGS60053 Administrative Assistant to the Member Board of Directors
EBGS60054 Special Assistant to the Vice President—Operations

Section 213.3343 Farm Credit Administration

FLOT00028 Director, Congressional and Legislative Affairs to the Chairman, Farm Credit Administration Board
FLOT00051 Chief Operating Officer to the Chairman, Farm Credit Administration Board
FLOT00058 Executive Assistant to Chairman of the Board to the Chairman, Farm Credit Administration Board
FLOT00080 Executive Assistant to Member to the Chairman, Farm Credit Administration Board
FLOT60012 Congressional and Public Affairs Specialist to the Director, Congressional and Legislative Affairs
FLOT60015 Public Affairs Specialist to the Director, Congressional and Legislative Affairs

Section 213.3346 Selective Service System

SSGS00001 Public Affairs Specialist to the Deputy Director

Section 213.3348 National Aeronautics and Space Administration

NNGS60018 Confidential Assistant to the Administrator
NNGS60019 Senior Policy Analyst to the Assistant Administrator for Public Affairs
NNGS60020 Writer-Editor to the Assistant Administrator for Public Affairs
NNGS60021 Industrial Relations Specialist to the Associate Administrator for External Relations
NNGS60022 Media Relations Specialist to the Assistant Administrator for Public Affairs

Section 213.3351 Federal Mine Safety and Health Review Commission

FRGS60017 Confidential Assistant to the Chairman
FRGS60024 Confidential Assistant to the Chairman

Section 213.3353 Merit Systems Protection Board

MPGS60009 Attorney Advisor to the Chairman
MPGS60010 Confidential Assistant to the Chairman

Section 213.3355 Social Security Administration

SZGS60001 Special Assistant to the Deputy Commissioner for Legislation and Congressional Affairs
SZGS60005 Special Assistant to the Deputy Commissioner for Disability and Income Security Programs
SZGS60006 Confidential Assistant to the Chief of Staff
SZGS60007 Special Assistant to a Commissioner
SZGS60008 Special Assistant to the Chief of Staff
SZGS60009 Executive Assistant to the Deputy Commissioner for Communications

Section 213.3356 Commission on Civil Rights

CCGS00017 Special Assistant to a Commissioner
CCGS60001 Special Assistant to the Vice-Chairman
CCGS60006 Special Assistant to the Vice-Chairman
CCGS60010 Special Assistant to the Staff Director
CCGS60011 Special Assistant to a Commissioner
CCGS60012 Special Assistant to a Commissioner
CCGS60013 Special Assistant to a Commissioner
CCGS60016 Special Assistant to a Commissioner
CCGS60031 Special Assistant to the Staff Director
CCGS60033 Special Assistant to a Commissioner

Section 213.3357 National Credit Union Administration

CUOT01191 Executive Assistant to the Vice Chair
CUOT01192 Executive Assistant to a Member
CUOT60009 Staff Assistant to the Chairman, National Credit Union Board
CUOT60018 Special Assistant for Legislative Affairs to the Chairman, National Credit Union Board
CUOT60026 Special Assistant for Public Affairs to the Chairman, National Credit Union Board

Section 213.3360 Consumer Product Safety Commission

PSGS60001 Special Assistant (Legal) to a Commissioner
PSGS60003 Special Assistant to a Commissioner
PSGS60006 Executive Assistant to the Chairman, Consumer Product Safety Commission
PSGS60007 Director, Office of Congressional Relations to the Chairman, Consumer Product Safety Commission

PSGS60012 Executive Assistant to the Chairman, Consumer Product Safety Commission
PSGS60014 General Counsel to the Chairman, Consumer Product Safety Commission
PSGS60050 Executive Assistant to a Commissioner
PSGS60061 Executive Assistant to a Commissioner
PSGS60062 Special Assistant (Legal) to a Commissioner
PSGS60063 Special Assistant (Legal) to a Commissioner
PSGS60064 Special Assistant (Legal) to a Commissioner
PSGS60066 Supervisory Public Affairs Specialist to the Executive Director

Section 213.3365 Chemical Safety and Hazard Investigation Board

FJGS60001 Special Assistant to the Chief Operating Officer

Section 213.3367 Federal Maritime Commission

MCGS60003 Counsel to the Commissioner to a Member
MCGS60041 Special Advisor to a Member
MCGS60042 Counsel to the Counsel to the Commissioner

Section 213.3376 Appalachian Regional Commission

APGS00003 Confidential Policy Advisor to the Federal Co-Chairman

Section 213.3377 Equal Employment Opportunity Commission

EEGS60004 Confidential Assistant to the Legal Counsel
EEGS60008 Confidential Assistant to the Chairman, Equal Employment Opportunity Commission
EEGS60032 Senior Advisor to the Member, Equal Employment Opportunity Commission

Section 213.3379 Commodity Futures Trading Commission

CTGS60001 Administrative Assistant to a Chief of Staff
CTGS60002 Administrative Assistant to a Chairperson
CTGS60003 Administrative Assistant to a Commissioner
CTGS60004 Administrative Assistant to a Commissioner
CTGS60006 Administrative Assistant to a Commissioner
CTGS60012 Special Assistant to a Commissioner
CTGS60014 Special Assistant to a Commissioner

Section 213.3382 National Endowment for the Arts

NAGS00004 Director of Development to the Senior Deputy Chairman
NAGS00025 General Counsel to the Chairman, National Endowment for the Arts
NAGS00074 Speechwriter to the Chairman, National Endowment for the Arts
NAGS60002 Special Assistant to the Chairman, National Endowment for the Arts
NAGS60077 Director of Communications to the Chairman, National Endowment for the Arts
NAGS60080 Deputy Director to the Congressional and White House Liaison Officer National Endowment for the Humanities
NHGS60060 General Counsel to the Chairman
NHGS60065 Special Assistant to the Chairman
NHGS60075 Director of Communications to the Deputy Chairman

Section 213.3384 Department of Housing and Urban Development

DUGS00020 Deputy Assistant Secretary for Policy Development to the Assistant Secretary for Policy Development and Research
DUGS00021 Staff Assistant to the Senior Advisor to the Deputy Secretary
DUGS00022 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS00029 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS00030 Special Assistant to the Assistant Secretary for Community Planning and Development
DUGS00031 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS00035 Special Assistant to the Assistant Deputy Secretary for Field Policy and Management
DUGS00038 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS00040 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS00041 Advance Coordinator to the Assistant Secretary for Administration
DUGS00044 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity
DUGS00046 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS00170 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS00249 Staff Assistant to the Assistant Deputy Secretary for Field Policy and Management
DUGS00370 Special Assistant to the Assistant Secretary for Public and Indian Housing
DUGS00445 Special Assistant to the Assistant Secretary for Community Planning and Development
DUGS00548 Deputy Assistant Secretary for Public Housing and Voucher Programs to the Assistant Secretary for Public and Indian Housing
DUGS60033 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60036 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60039 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60060 Director of Executive Scheduling and Operations to the Assistant Secretary for Administration
DUGS60066 Special Assistant to the General Counsel
DUGS60068 Special Assistant to the Assistant Secretary for Public Affairs
DUGS60114 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60137 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60151 Staff Assistant to the Assistant Secretary for Public Affairs
DUGS60172 Special Assistant to the Assistant Secretary for Public and Indian Housing
DUGS60184 Deputy Assistant Secretary to the Assistant Secretary for Administration
DUGS60187 Special Assistant to the Assistant Secretary for Public Affairs
DUGS60205 Deputy Assistant Secretary for Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60206 Intergovernmental Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60212 Staff Assistant to the Assistant Secretary for Community Planning and Development
DUGS60216 Deputy Assistant Secretary for Special Needs to the Assistant Deputy Secretary for Field Policy and Management
DUGS60224 Regional Director, Seattle, Washington to the Deputy Secretary, Housing and Urban Development
DUGS60238 Special Assistant to the Assistant Secretary for Administration
DUGS60249 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60259 Administrator of Manufactured Housing Programs to the Assistant Secretary for

Community Planning and Development
DUGS60266 Staff Assistant to the President, Government National Mortgage Association
DUGS60268 Staff Assistant to the Deputy Secretary, Housing and Urban Development
DUGS60272 Deputy Assistant Secretary for Economic Affairs to the Regional Director
DUGS60276 Staff Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60281 Special Projects Officer to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60286 Staff Assistant to the General Deputy Assistant Secretary for Policy Development Research
DUGS60361 Regional Director, Denver Colorado to the Assistant to the Secretary/White House Liaison
DUGS60379 Deputy Director for Scheduling to the Director of Executive Scheduling and Operations
DUGS60387 Advance Coordinator to the Director of Executive Scheduling and Operations
DUGS60417 Special Assistant to the Assistant Secretary for Administration
DUGS60419 Special Assistant (Speech Writer) to the Assistant Secretary for Community Planning and Development
DUGS60420 Deputy White House Liaison to the Assistant to the Secretary/White House Liaison
DUGS60431 Regional Director, Kansas City, Kansas to the Deputy Assistant Secretary for Congressional Relations
DUGS60434 Staff Assistant to the Assistant Deputy Secretary for Field Policy and Management
DUGS60452 Deputy Director for Advance to the Director of Executive Scheduling and Operations
DUGS60458 Intergovernmental Relations Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60462 Special Assistant to the Assistant Secretary for Community Planning and Development
DUGS60464 Special Projects Coordinator to the Assistant Deputy Secretary for Field Policy and Management
DUGS60469 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60472 Deputy Assistant Secretary to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60477 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
DUGS60518 Special Assistant to the Deputy Secretary, Housing and Urban Development
DUGS60522 Deputy Assistant Secretary for Special Initiatives to the Secretary, Housing and Urban Development
DUGS60529 Special Assistant to the Assistant Secretary for Administration
DUGS60542 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60558 Special Assistant to the Deputy Assistant Secretary
DUGS60588 Staff Assistant to the Director of Executive Scheduling and Operations
DUGS60595 Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60598 Special Counsel to the General Counsel
DUGS60601 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations
DUGS60603 Staff Assistant to the General Deputy Assistant Secretary for Policy Development Research Section

Section 213.3388 Presidents Commission on White House Fellowships

WHGS00010 Staff Assistant (Office Automation) to the Director, President's Commission on White House Fellowships
WHGS00011 Education and Special Projects Director to the Director, President's Commission on White House Fellowships
WHGS60007 Associate Director to the Director, President's Commission on White House Fellowships

Section 213.3389 National Mediation Board

NMGS60056 Confidential Assistant to the Chairman

Section 213.3391 Office of Personnel Management

PMGS00025 Special Assistant to the Director, Office of Communications
PMGS00029 Special Assistant to the Director, Office of Communications
PMGS00030 Attorney Advisor to the General Counsel
PMGS00032 White House Liaison to the Chief of Staff
PMGS00033 Chief, Office of Senate Affairs to the Director, Office of Congressional Relations
PMGS00034 Confidential Assistant/Scheduler to the Chief of Staff
PMGS00035 Deputy Chief of Staff to the Chief of Staff
PMGS00036 Special Assistant to the Director, Office of Communications
PMGS00037 Chief, Office of House Affairs to the Director, Office of Congressional Relations
PMGS00038 Confidential Assistant to the Director, Office of Congressional Relations
PMGS60003 Special Assistant to the Director, Office of Communications
PMGS60004 Special Assistant to the Chief, Office of House Affairs
PMGS60005 Special Assistant to the Director, Office of Congressional Relations
PMGS60010 Special Initiatives Coordinator to the Director, Office of Communications
PMGS60011 Deputy General Counsel to the General Counsel
PMGS60013 Special Assistant to the Director, Office of Communications
PMGS60016 Special Assistant to the Deputy Director
PMGS60017 Special Counselor to the General Counsel
PMGS60018 Special Assistant to the Director, Office of Communications
PMGS60022 Deputy Director, Office of Communications to the Director, Office of Communications
PMGS60024 Policy Analyst to the Director

Section 213.3393 Pension Benefit Guaranty Corporation

BGGS60003 Assistant Executive Director for Legislative Affairs to the Executive Director

Section 213.3394 Department of Transportation

DTGS00114 Senior Policy Advisor to the Administrator
DTGS60003 Special Assistant to the Secretary and Deputy Director for Scheduling and Advance
DTGS60020 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60025 Special Assistant to the Under Secretary of Transportation for Security
DTGS60055 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60060 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60069 Director, Office of Public and Consumer Affairs to the Administrator
DTGS60128 Special Assistant to the Administrator
DTGS60141 Special Assistant to the Chief of Staff
DTGS60151 Assistant to the Secretary for Policy to the Secretary

DTGS60156 Deputy Assistant Secretary to the Assistant Secretary for Aviation and International Affairs
DTGS60175 Counselor to the Assistant Secretary for Aviation and International Affairs
DTGS60198 Special Assistant to the Chief Counsel
DTGS60229 Special Assistant to the Administrator
DTGS60239 Director, Office of Congressional and Public Affairs to the Administrator
DTGS60243 Speechwriter to the Associate Director for Speechwriting
DTGS60254 White House Liaison to the Chief of Staff
DTGS60257 Deputy Director to the Assistant to the Secretary and Director of Public Affairs
DTGS60258 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60276 Special Assistant to the Administrator
DTGS60277 Staff Assistant to the Administrator

Section 213.3394 Department of Transportation

DTGS60279 Associate Director for Speechwriting to the Assistant to the Secretary and Director of Public Affairs
DTGS60285 Special Assistant to the Administrator
DTGS60288 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60294 Counselor to the Associate Deputy Secretary
DTGS60295 Executive Assistant to the Associate Deputy Secretary
DTGS60301 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60324 Director for Scheduling and Advance to the Chief of Staff
DTGS60338 Special Assistant to the Associate Administrator for Policy
DTGS60339 Director of Public Affairs to the Administrator
DTGS60341 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs
DTGS60351 Counselor to the Deputy Secretary
DTGS60357 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DTGS60358 Special Assistant to the Director for Scheduling and Advance
DTGS60365 Special Assistant to the Assistant Secretary for Transportation Policy

Section 213.3396 National Transportation Safety Board

TBGS60001 Counselor to the Chairman
TBGS60025 Special Assistant to the Vice Chairman
TBGS60032 Special Assistant to a Member
TBGS60034 Director, Office of Family Affairs to the Chairman
TBGS60102 Special Assistant to the Vice Chairman
TBGS60105 Confidential Assistant to the Vice Chairman

Section 213.3397 Federal Housing Finance Board

FBOT00003 Special Assistant for External Affairs to the Chairman
FBOT00005 Staff Assistant to the Chairman
FBOT60001 Special Assistant to the Chairman
FBOT60002 Counsel to the Chairman
FBOT60004 Chief Counsel to the Board Director
FBOT60006 Special Assistant to the Board Director
FBOT60007 Special Assistant to the Board Director

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–31406 Filed 12–19–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48926; File No. SR–NASD–2003–182]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to "TRACE-Eligible Security" and an Exemption to Trade Reporting

December 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to: (1) Amend Rule 6210(a) to clarify certain terms used in the definition, "TRACE-eligible security"; (2) amend NASD Rule 6230(e)(2) to expand the trade reporting exemption to qualifying transactions in any TRACE-eligible security that is listed and quoted on the Nasdaq Stock Market, Inc. ("Nasdaq"); and (3) make conforming amendments to the defined term, "reportable TRACE transaction," in Rule 6210(c). Rules 6210 and 6230 are part of the Trade Reporting and Compliance Engine ("TRACE") rules. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

6200. Trade Reporting and Compliance Engine (TRACE)

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in NASD's By-Laws and Rules unless otherwise specified.

(a) The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private *issuers* [corporations]; and: (1) registered *under the Securities Act of 1933* [with the Securities and Exchange Commission] or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased and sold pursuant to Rule 144A of the Securities Act of 1933. The term "TRACE-eligible security" excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule 6200 Series, the term "money market instrument" means a debt security that at issuance has a maturity of one year or less.

(b) No Change.

(c) The term "reportable TRACE transaction" shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly, or transactions in [convertible debt] *TRACE-eligible* securities that are listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(d) through (i) No Change.

* * * * *

6230. Transaction Reporting

(a) through (d) No Change.

(e) Transactions [Not Required To Be Reported] *Exempt From Reporting.*

The following types of transactions shall not be reported:

(1) Transactions that are part of a primary distribution by an issuer.[;]

(2) Transactions in *TRACE-eligible* securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and transactions in [convertible debt] *TRACE-eligible* securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.[; and]

(3) No Change.

(f) No Change.

* * * * *

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

"*TRACE-Eligible Security.*" NASD proposes to amend Rule 6210(a) to clarify two terms in the definition, "TRACE-eligible security." First, NASD proposes to replace "registered with the Securities and Exchange Commission" in Rule 6210(a) with "registered under the Securities Act of 1933" to clarify the intended scope of that term.

Second, NASD proposes to clarify that TRACE-eligible securities include the debt securities of all U.S. and foreign private issuers generally, by substituting the word "issuers" for "corporations." Although most issuers of securities are organized as corporations, this amendment makes clear that the debt securities of issuers that use another form of business organization are TRACE-eligible securities, provided that all the other conditions set forth in Rule 6210(a) are met.

Trade Reporting Exemption for Nasdaq-Listed Debt Securities. NASD has determined that the exemption from trade reporting in Rule 6230(e)(2), relating to debt securities listed and quoted on Nasdaq, is inappropriately narrow. The proposed amendment to Rule 6230(e)(2) will clarify and expand the exemption for certain transactions in TRACE-eligible debt securities that are listed on Nasdaq. NASD is also proposing conforming changes to Rule 6210(c).

Currently, Rule 6230(e)(2) provides, in relevant part, that a transaction in a TRACE-eligible security is exempt from reporting if the transaction is in a convertible debt security that is listed and quoted on Nasdaq, the transaction is reported to Nasdaq, and the transaction information is disseminated publicly. The proposed amendment to Rule 6230(e)(2) will exempt a member from reporting to TRACE a transaction in *any* TRACE-eligible security that is listed and quoted on Nasdaq, rather than only convertible debt securities, provided that the other two requirements for the exemption are also present (*i.e.*, the transaction is reported to Nasdaq and the transaction information is disseminated publicly).

The purpose of the provision is to exempt from the TRACE reporting requirements a transaction in a TRACE-eligible security if the transaction in the Nasdaq-listed and -quoted security is already subject to regulatory reporting, and the information reported is being made available to the public through dissemination.[3] At the time that the provision relating to Nasdaq was adopted, the provision was limited to Nasdaq-listed and -quoted *convertible debt securities* because it was believed that these were the only debt securities at issue. As the market in equity-linked debt securities has developed, NASD believes that the language of the exemption should be broader to clarify that the same types of transactions in these and similar securities that may be listed and quoted on Nasdaq should also be exempt from reporting. NASD also proposes to make conforming changes to the defined term, "reportable TRACE transaction," in Rule 6210(c).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change, if approved, will provide NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with appropriate capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, for the protection of investors and in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

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[3] Rule 6230(e)(2) also includes an exemption from reporting for transactions in TRACE-eligible securities that are listed on a national securities exchange, when the transactions are executed on and reported to the exchange, and transaction information is disseminated publicly.

[4] 15 U.S.C. 78o–3(b)(6).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–182. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2003–182 and should be submitted by January 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31451 Filed 12–19–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P018]

U.S. Virgin Islands

As a result of the President's major disaster declaration for Public Assistance on December 9, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that St. Croix, St. John, and St. Thomas, including Water Island, in the U.S. Virgin Islands constitute a disaster area due to damages caused by severe storms, flooding, landslides and mudslides occurring on November 10 through November 16, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 9, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

For Physical Damage

Non-profit organizations without credit available elsewhere—3.061%

Non-profit organizations with credit available elsewhere—4.875%

The number assigned to this disaster for physical damage is P01806.

(Catalog of Federal Domestic Assistance Program Nos. 59008.)

Dated: December 11, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–31387 Filed 12–19–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Termination of the Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The decision to terminate this waiver of the Nonmanufacturer Rule is based on evidence provided to the SBA that there are small businesses which manufacturer items within this class of product. Terminating this waiver will require recipients of contracts set aside for small or 8(a) businesses to provide the product of domestic small business manufacturers or processors where this class of product is required. A notice to terminate a waiver of the Nonmanufacturer Rule appeared in the **Federal Register** on October 29, 2003 (FR 68 209). Comments from this notice were received from small business manufacturers. Our knowledge of the existence of small business manufacturers requires us to terminate the waiver of the Nonmanufacturer for Small Arms Manufacturing, NAICS 332994, in accordance with 13 CFR 121.1204(a)(7).

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416 Tel: (202) 619–0422

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–31409 Filed 12–19–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Termination of the Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The decision to terminate this waiver of the Nonmanufacturer Rule is based on evidence provided to the SBA that there are small businesses which manufacturer items within this class of product. Terminating this waiver will require recipients of contracts set aside for small or 8(a) businesses to provide the product of domestic small business manufacturers or processors where this class of product is required. A notice to terminate a waiver of the Nonmanufacturer Rule appeared in the **Federal Register** on October 29, 2003 (FR 68 209). Comments from this notice were received from small business manufacturers. Our knowledge of the existence of small business manufacturers requires us to terminate the waiver of the Nonmanufacturer for Ammunition (Except Small Arms) manufacturing, NAICS 332993, in accordance with 13 CFR 121.1204(a)(7).

EFFECTIVE DATE: December 22, 2003.

FOR FURTHER INFORMATION: Edith Butler, Program Analyst, U.S. Small Business

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[5] 17 CFR 200.30–3(a)(12).

Administration, 409 3rd Street SW., Washington DC, 20416 Tel:(202) 619–0422.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months.

The SBA defines "class of products" based on a six digit North American Industry Classification System (NAICS) and the four digist Product and Service Code established by the Federal Procurement Data System.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–31410 Filed 12–19–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new system of records and proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled *Electronic Disability Claim File, 60–0320,* hereinafter referred to as the *eDib Claim File,* and routine uses applicable to the system of records. We also are issuing notice that we may disclose personally identifiable information from the *eDib Claim File* to consumer reporting agencies in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e). We invite public comment on this proposal.

DATES: We filed a report of the proposed *eDib Claim File* and the applicable routine uses with the Chairwoman of the Senate Committee on Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 16, 2003. The proposed *eDib Claim File* system of records and the proposed routine uses will become effective on January 25, 2004, unless we receive comments warranting that they not be effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Christine W. Johnson, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–C–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, e-mail address at *chris.w.johnson@ssa.gov,* or by telephone at (410) 965–8563.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New *eDib Claim File* System of Records

A. General Background

The Agency currently receives the application and supporting claims information via a number of means (*i.e.,* field offices, teleclaims, and Internet application) and converts submitted information into paper-based records. SSA and the State Disability Determination Services (DDS) receive, review and transfer the paper folders between offices responsible for developing and adjudicating the claim. Claims representatives, disability examiners, quality assurance reviewers, hearing clerks, judges, etc., work through the paper file while reviewing the evidence. More paper is added at each review stage. After the Agency reaches a decision on a person's entitlement to benefits, the folder is mailed to a component responsible for storing and retrieving folders for subsequent actions. In the paper process, SSA incurs significant costs from maintaining, handling, moving, housing and reconstructing paper files. This paper bound process includes initial adjudication, the administrative appeals process and continuing eligibility to benefits.

The proposed *eDib Claim File* will allow the electronic collection, transfer, access and processing of disability claims information in a more efficient and less costly manner through improved hardware/software systems and automated programs such as:

- Internet applications that allow the collection of disability claims medical information from the public via the Internet;
- Electronic disability collect system (EDCS) that allows SSA field personnel to electronically collect information and transfer data to the electronic folder;
- Electronic folder infrastructure and document management architecture (DMA) that stores electronic versions of all information previously housed in the paper folder (*e.g.,* data, images, work documents, hearing recordings, etc.) and shares those items electronically among all components in the disability process;
- Automated case processing and management system that builds upon existing products and projects within the Office of Hearings and Appeals including interface with the electronic folder; and
- Systems migration from current Disability Determination Services case processing systems to technology that is better able to handle *eDib* activities.

To this end, the *eDib Claim File* will encompass all disability cases from the initial intake process through the administrative appeals process and include the continuing disability review process. All materials from the disability folder will be created, maintained and stored electronically and case processing systems throughout SSA and the state DDSs will interface with the *eDib Claim File* to support the paperless process.

Because SSA will maintain and retrieve information from the proposed *eDib Claim File* using Social Security numbers (SSN) and/or names, the proposed *eDib Claim File* will constitute a "system of records" under the Privacy Act.

B. Collection and Maintenance of Data in the eDib Claim File System of Records

The *eDib Claim File* will include identifying information about claimants, applicants, beneficiaries and potential claimants for disability benefits and payments administered by the Social Security Administration. See the "Categories of Records" section of the notice below for a full description of the data that will be maintained in the system of records.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed *eDib Claim File* System of Records

A. Proposed Routine Use Disclosures

We are proposing to establish the following routine use disclosures of information that will be maintained in the proposed new *eDib Claim File* system of records:

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to the *eDib Claim File*. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to the *eDib Claim File*. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS) or IRS Regulations.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed system of records or when the United States is a party to litigation and SSA has an interest in the litigation.

4. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

We will disclose information under this routine use only as necessary to enable SSA to obtain information that will assist in determining individuals' entitlement to or management of benefits under the Social Security program.

5. To third party contacts, where necessary, to establish or verify information provided by representative payees or payee applicants.

We will disclose information under this routine use only as necessary to assist SSA in the administration of the Representative Payee program provisions of section 205(j) and 1631(a) of the Social Security Act (Act).

6. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls, *i.e.*,

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls, but only for information concerning the facts relevant to the interest of each party in a claim.

We will disclose information under this routine use to a person(s) on the rolls only in situations involving the subsequent filing of a claim that negatively affects the benefit status of the person already on the rolls.

7. To employers or former employers for correcting or reconstructing earnings records and for Social Security tax purposes only.

We will disclose information under this routine use only for the purpose of assisting in the correction and reconstruction of earning records for Social Security tax purposes only.

8. To the Department of Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Act (including SSN verification services); or

(b) Investigating alleged theft, forgery or unlawful negotiation of Social Security checks.

We will disclose information under this routine use only for the purpose of assisting the Department of Treasury in the collection of Social Security taxes and for investigating the unlawful receipt and/or negotiation of Social Security checks.

9. To the United States Postal Services for investigating the alleged forgery, theft or unlawful negotiation of Social Security checks.

We will disclose information under this routine use only to the extent necessary to assist SSA in the investigation of unlawful receipt and negotiation of Social Security checks.

10. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Commissioner, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

We will disclose information under this routine use, only as necessary, to enable DOJ to represent SSA in matters concerning violations of the Act, to represent the Commissioner of Social

Security and to investigate issues of fraud by SSA officers or employees or violation of civil rights.

11. To the Department of State and its agents for administering the Act in foreign countries through facilities and services of that agency.

The Department of State acts as SSA's agent in administering Social Security affairs in foreign countries. We contemplate disclosing to the Department of State, as necessary, to administer the Social Security program for individuals residing in foreign countries.

12. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through facilities and services of that organization.

The American Institute of Taiwan acts as SSA's agent in administering Social Security affairs in Taiwan. We contemplate disclosing to the American Institute of Taiwan, as necessary, to administer the Social Security program for individuals residing in Taiwan.

13. To the Department of Veterans Affairs, Philippines Regional Office and its agents, for administering the Act in the Philippines through facilities and services of that agency.

The Department of Veterans Affairs, Philippines Regional Office, acts as SSA's agent in administering Social Security affairs in the Philippines. We contemplate disclosing to that agency as necessary to administer benefits for individuals residing in the Philippines.

14. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through facilities and services of that agency.

The Department of Interior acts as SSA's agent in administering Social Security affairs in the Northern Mariana Islands. We contemplate disclosing to the Department of Interior, as necessary, to administer the Social Security program for individuals residing in the Northern Mariana Islands.

15. To State Social Security Administrators for administration of agreements pursuant to section 218 of the Act.

We will disclose information under this routine use only for the purpose of administering agreements pursuant to section 218 of the Act.

16. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency acting in accord with sections 221 or 1633 of the Act.

We will disclose information under this routine use only for the purpose of evaluating the results of consultative medical examinations or vocational assessments to assist SSA in the development of disability determinations pursuant to sections 221 or 1633 of the Act.

17. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e) of the Act.

We will disclose information under this routine use only for the purpose of assisting SSA in the verification of information necessary for the effective and efficient administration of SSA programs pursuant to section 1631(e) of the Act.

18. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e)(3) of the Act and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

We will disclose information under this routine use only for the purpose of verifying eligibility for payment as authorized by section 1611(e)(3) of the Act and regulations issued by the Special Action Office for Drug Abuse Prevention.

19. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and to representative payees when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

We will disclose information under this routine use, only to the extent necessary, to pursue Social Security claims and assist SSA in administration of the representative payee program.

20. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 460 of the Act.

We will disclose information under this routine use only in accordance with the child support and alimony obligations set out in sections 459 and 460 of the Act.

21. To Federal, State or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The VA for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State agencies for making determinations of Medicaid eligibility; and

(e) State agencies for making determinations of food stamp eligibility under the food stamp program;

(f) To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations; and expenditures of Federal funds by the State in support of the DDSs;

(g) To State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review; and

(h) To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222 and 1615 of the Act.

We will disclose information under this routine use only for the purpose of supporting other government agencies that administer programs which have the same compatible purposes as SSA programs, e.g., eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.

22. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

We will disclose information under this routine use where information from SSA's records is needed by a foreign Social Security agency to implement a provision of an agreement other than adjudicating a claim for benefits.

23. To the Internal Revenue Service (IRS), Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code (IRC) of 1986, as amended.

This proposed routine use would allow the IRS to audit SSA's maintenance of earnings and wage information in the eDib Claim File to ensure that SSA complies with the safeguard requirements of the IRC.

24. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

We will disclose information under this routine use only in situations in which SSA requires third party assistance to collect overpayments material to the Social Security program.

25. To the Department of Homeland Security (Bureau of Citizenship and Immigration Services (BCIS)), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

We will disclose information under this routine use only for the purpose of identifying and locating illegal aliens pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

26. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

SSA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. SSA must be able to give a contractor whatever information the Agency can legally provide in order for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

27. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

Under this routine use we will disclose address only information to the Secretary of Education for the purpose of locating beneficiaries that are obligated on loans held by the Secretary.

28. To student volunteers and other workers, who technically do not have the status of Federal employees when they are performing work for SSA as authorized by law and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. An example of such statutes and programs includes: 5 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in this system to perform their assigned agency duties.

29. To Federal, State and local law enforcement agencies and private security contractors as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and customers, the security of SSA workplace and the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

We will disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate or prevent activities that jeopardize the security and safety of SSA customers, employees or workplaces or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating Federal or local law in connection with such activities.

30. Non-tax return information which is not restricted from disclosure by Federal law to the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. SSA's Regulations at 20 CFR 401.150(c) permits us to disclose information under a routine use where necessary to carry out SSA programs. SSA's Regulations at 20 CFR 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 24, 26, 28 and 29 above will ensure efficient administration of SSA programs administered through the proposed *eDib Claim File;* the disclosures that would be made under routine uses number 25, 27, and 30 are required by law. The proposed routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Disclosure to Consumer Reporting Agencies

The Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(12)) permits Federal agencies to disclose certain information to consumer reporting agencies in accordance with 31 U.S.C. 3711(e) without the consent of the individuals to whom the information pertains. The purpose of this disclosure is to provide an incentive for individuals to pay any outstanding debts they owe to the Federal government by including information about these debts in the records relating to those persons maintained by consumer reporting agencies. This is a practice commonly used by the private sector. The information disclosed will be limited to that which is needed to establish the identity of the individual debtor, the amount, status, and history of the debt, and the agency or program under which the debt arose.

We have added the following statement at the end of the routine uses section of the proposed system of records:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*) as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

IV. Records Storage Medium and Safeguards for the Proposed eDib Claim File System of Records

The *eDib Claim File* is a repository. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

Contractor personnel having access to data in the *eDib Claim File* will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

V. Effect of the Proposed eDib Claim File System of Records on the Rights of Individuals

The proposed new *eDib Claim File* system of records will maintain only that information that is necessary for the efficient and effective control and processing of disability applications from the initial phase through the appeals process and includes the CDR process. Security measures will be employed that protect access to and preclude unauthorized disclosure of records in the proposed system of records. Therefore, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

Dated: December 16, 2003.

Jo Anne B. Barnhart,

Commissioner.

SYSTEM NAME:

Electronic Disability (eDib) Claim File, Social Security Administration, Deputy Commissioner for Disability and Income Security Programs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The *eDib* claim files are virtually established in Social Security field offices when claims for benefits are filed, or a lead is expected to result in a claim, and maintained in the National Computer Center at SSA Headquarters. The computerized records and database are maintained at Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

Other authorized Federal and State agencies that have access to the current paper disability folder will also have electronic access as needed to the *eDib* claim file. State agencies process disability and vocational rehabilitation determinations. Contact the system manager for address information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries and potential claimants for disability benefits and payments administered by the Social Security Administration (*e.g.*, Title II and XVI disability claims).

CATEGORIES OF RECORDS IN THE SYSTEM:

The *eDib Claim File* contains the name and Social Security number (SSN) of the claimant or potential claimant and may contain the application for benefits; supporting evidence and documentation for initial and continuing entitlement; payment documentation; correspondence to and from claimants and/or representatives; information about representative payees; and leads information from third parties such as social service agencies, Internal Revenue Service, Veterans Administration and mental institutions.

The eDib claim file also may contain data collected as a result of inquiries or complaints and evaluation and measurement studies of the effectiveness of claims policies. Separate files may be maintained of certain actions, which are entered directly into the electronic processes. These relate to reports of changes of address, work status, and other post-adjudicative reports. Separate abstracts also are maintained for statistical purposes *i.e.*, disallowances, technical denials, and demographic and statistical information relating to disability decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, and 1840 of the Social Security Act (42 U.S.C. 402–405, 423, 426, 428, 1382, 1383, 1395i–2, 1395o and 1395s

PURPOSE(S):

The electronic disability claim file contains material related to the request for or continuation of benefit payments under Titles II and XVI of the Social Security Act. *eDib* claim file information is used throughout SSA for purposes of pursuing claims; collecting, documenting, organizing and maintaining information and documents for making determinations of eligibility for disability benefits, the amount of benefits, the appropriate payee for benefits; reviewing continuing eligibility; holding hearings or administrative review processes; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

eDib claim files may be referred to State Disability Determination Service (DDS) agencies or vocational rehabilitation agencies. They may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below. However, disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is party to litigation or has an interest in such litigation and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Disclosure of any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS Regulations.

4. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

5. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

6. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls, *i.e.*,

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls; but only for information concerning the facts relevant to the interest of each party in a claim.

7. To employers or former employers for correcting or reconstructing earnings records and for Social Security tax purposes only.

8. To the Department of Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Act (including SSN verification services); or

(b) Investigating alleged theft, forgery, or unlawful negotiation of Social Security checks.

9. To the United States Postal Services for investigating the alleged forgery, theft or unlawful negotiation of Social Security checks.

10. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Commissioner, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

11. To the Department of State and its agents for administering the Act in foreign countries through facilities and services of that agency.

12. To the American Institute of Taiwan and its agents for administering the Act in Taiwan through facilities and services of that organization.

13. To the Department of Veterans Affairs, Philippines Regional Office and its agents for administering the Act in the Philippines through facilities and services of that agency.

14. To the Department of Interior and its agents for administering the Act in the Northern Mariana Islands through facilities and services of that agency.

15. To State Social Security Administrators for administration of agreements pursuant to section 218 of the Act.

16. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency acting in accord with sections 221 or 1633 of the Act.

17. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e) of the Act.

18. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e)(3) of the Act and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

19. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and to representative payees when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

20. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 460 of the Act.

21. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The VA for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State agencies for making determinations of Medicaid eligibility; and

(e) State agencies for making determinations of food stamp eligibility under the food stamp program;

(f) To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations; and expenditures of Federal funds by the State in support of the Disability Determination Services (DDS);

(g) To State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review; and

(h) To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222 and 1615 of the Act.

22. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered into between the United States and the other country, pursuant to section 233 of the Act.

23. To the IRS, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

24. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

25. To the Department of Homeland Security (Bureau of Citizenship and Immigration Services (BCIS)), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

26. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

27. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

28. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

29. To Federal, State and local law enforcement agencies and private security contractors, as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and customers, the security of SSA workplace and the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

30. Non-tax return information which is not restricted from disclosure by Federal law to the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and § 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*) as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically.

RETRIEVABILITY:

eDib claim files are retrieved electronically by SSN and alphabetically by name.

SAFEGUARDS:

eDib claim files are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed in SSA confidentiality rules as a part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

The retention schedule for the new *eDib Claim File* will be incorporated in the Social Security media neutral claim file retention schedule. The schedule includes authoritative instructions for the retention or destruction of existing and future disability claim file records under Title II and Title XVI of the Social Security Act.

The retention periods for disability claim file records are as follows:

A. Title II Domestic Disability Insurance (DI) Claim Files

Files for Title II claims based on disability will be deleted/destroyed 7 years after the date of adjudication of the most recently awarded claim if: (1) The person has attained full retirement age; or (2) the medical reexamination date is scheduled to occur after attainment of full retirement age.

Files for Title II DI claims denied or terminated for medical reasons will be deleted/destroyed 5 years after the Agency's final denial or termination decision. Title II DI files denied or terminated for non-medical reasons, including death, will be deleted/destroyed 2 years after the Agency's final denial or termination decision.

B. Title II International DI Claim Files

Files for Title II DI claims based on disability for persons receiving payments will be retained until the claim is terminated. Title II DI files for persons not receiving payments (denied or terminated) will be deleted/destroyed (including underpayment records) 5 years after the Agency's final denial or termination decision.

Files for Title II DI claims not based on disability for persons receiving payments will be retained until the claim is terminated. Title II DI files for persons not receiving payments (denied or terminated) will be deleted/destroyed (including underpayment records) 5 years after the Agency's final denial or termination decision.

C. Supplemental Security Income Claim Files

Files for SSI disability claims will be deleted/destroyed 7 years after the adjudication date of the most recently awarded claim if: (1) The person attains age 65; or (2) the medical reexamination date is scheduled to occur after attainment of age 65.

Files for claims denied or terminated for medical reasons will be deleted/destroyed 5 years after the Agency's final denial or termination decision. Files for claims denied or terminated for non-medical reasons will be deleted/destroyed 2 years after the Agency's final denial or termination decision.

All paper claim files are disposed of by shredding or the application of heat when the retention periods have expired.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Commissioner, Disability and Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

When requesting notification, the individual should provide the type of claim he or she filed (DI and/or SSI). If more than one claim is filed, each should be identified, whether he/she is or has been receiving benefits, whether payments are being received under his or her own SSN, and if not, the name and SSN under which received, if benefits have not been received, the approximate date and place the claim was filed, and his/her address and/or telephone number. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth, along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses, is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

An individual who requests access to his or her medical records shall be given direct access to those records unless SSA determines that it is likely that direct access would adversely affect the individual. If SSA determines that direct access to the medical record(s) would likely adversely affect the individual, he or she must designate a responsible representative who is capable of explaining the contents of the medical record(s) to him or her and who would be willing to provide the entire record(s) to the individual. These procedures are in accordance with SSA Regulations (20 CFR 401.55).

A parent or guardian who requests notification of or access to a minor's medical record shall, at the time he/she makes the request, designate a physician or other health professional (other than a family member) who is capable of explaining the contents of the medical record(s) to him or her and who would be willing to provide the entire record(s) to the individual. These procedures are in accordance with SSA Regulations (20 CFR 401.55).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources to support factors of entitlement and continuing eligibility or to provide leads information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 03–31432 Filed 12–19–03; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed Between November 10 and December 5, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Agreements filed during the week ending November 14, 2003.

Docket Number: OST–2003–16525.

Date Filed: November 13, 2003.

Parties: Members of the International Air Transport Association.

Subject: PAC/Reso/421 dated August 12, 2003, Finally Adopted Resolutions r1–r42, Minutes—PAC/Meet/179 dated August 12, 2003, Intended effective date: January 1, 2004.

Agreements filed during the week ending November 21, 2003.

Docket Number: OST–2003–16541.

Date Filed: November 17, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC31 N&C/CIRC 0253 dated 17 October 2003, Circle Pacific Resolutions 002, 073c, PTC31 N&C/CIRC 0254 dated 17 October 2003, North and Central Pacific Areawide Resolutions, PTC31 N&C/CIRC 0255 dated 17 October 2003, TC3 (except Japan)-North America, Caribbean Resolutions except between Korea (Rep. of), Malaysia-USA, PTC31 N&C/CIRC 0256 dated 17 October 2003, Japan-North America, Caribbean Resolutions, PTC31 N&C/CIRC 0257 dated 17 October 2003, TC3–Central America, South America Resolutions, PTC31 N&C/CIRC 0258 dated 17 October 2003, Korea (Rep. of), Malaysia-USA Resolutions r1–r75, Minutes—PTC31 N&C/CIRC 0259 dated 14 November 2003, Tables—PTC31 N&C/CIRC Fares 0114 dated 21 October 2003, Japan-North America, Caribbean Specified Fares Tables, PTC31 N&C/CIRC Fares 0115 dated 21 October 2003, Circle Pacific Specified Fares Tables, PTC31 N&C/CIRC Fares 0116 dated 21 October 2003, TC3–Central America, South America Specified Fares Tables, PTC31 N&C/CIRC Fares 0117 dated 21 October 2003, TC3 (except Japan)-North America, Caribbean Specified Fares Tables, Intended effective date: 1 April 2004.

Docket Number: OST–2003–16542.

Date Filed: November 17, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR 0537 dated 14 November 2003, Within Europe Expedited Resolutions r1–r9, Intended effective date: 1 January 2004.

Docket Number: OST–2003–16559.

Date Filed: November 20, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 339, PTC23 EUR–SEA 0176 dated 18 November 2003, Resolution 010b Special Amending Resolution between Europe and South East Asia, Intended effective date: 1 April 2004.

Docket Number: OST–2003–16562.

Date Filed: November 21, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 342, PTC3 0678 dated 25 November 2003, TC3 Special Passenger Amending Resolution 010e between Japan, Korea and South East Asia r1–r5, Intended effective date: 1 December 2003.

Agreements filed during the week ending November 28, 2003.

Docket Number: OST–2003–16565.

Date Filed: November 24, 2003.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0460 dated 21 November 2003, Mail Vote 343—Resolution 010cc, TC2/12 Special Cargo Amending Resolution, Intended effective date: 1 May 2004.

Docket Number: OST–2003–16583.

Date Filed: November 28, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 344, PTC3 0679 dated 2 December 2003, TC3 Special Passenger Amending Resolution 010f, between Japan, Korea and South East Asia r1–r9, Intended effective date: 15 December 2003.

Agreements filed during the week ending December 5, 2003.

Docket Number: OST–2003–16588.

Date Filed: December 1, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0680 dated 2 December 2003, Within South Asian Subcontinent, Expedited Resolution 002ad, PTC3 0681 dated 2 December 2003, Within South East Asia except between Malaysia and Guam Expedited Resolutions 002ap, 070uu, PTC3 0682 dated 2 December 2003 between South East Asia and South Asian Subcontinent Expedited Resolutions 002bc, 070tt, 085ii PTC3 0683 dated 2 December 2003 between South Asian Subcontinent and South West Pacific Expedited Resolution 002bi, PTC3 0684 dated 2 December 2003 between South East Asia and South West Pacific except between Malaysia and American Samoa, Expedited Resolution 002bn, PTC3 0685 dated 2 December 2003 between Japan, Korea and South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands Expedited Resolution 002dm r1–r23, Intended effective date: 15 January 2004.

Docket Number: OST–2003–16589.

Date Filed: December 1, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SWP 0080 dated 2 December 2003, Europe-South West Pacific Expedited Resolution 002bw rl, Intended effective date: 1 January 2004.

Docket Number: OST–2003–16615.

Date Filed: December 2, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SASC 0114 dated 28 November 2003, TC23 Europe-South Asian Subcontinent, Expedited Resolution 002ca r1, Intended effective date: 1 January 2004.

Docket Number: OST–2003–16616.

Date Filed: December 2, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR 0538 dated 21 November 2003, Within Europe Resolutions r1–r26 , PTC2 EUR 0539 dated 21 November 2003 Within Europe Resolutions r27–r28, PTC2 EUR 0540 dated 21 November 2003 Within Europe Resolutions r29, Minutes—PTC2 EUR 0541 dated 28 November 2003, Tables—PTC2 EUR Fares 0092 (Part 1 Pages 1–360) dated 21 November 2003, PTC2 EUR Fares 0092 (Part 2 Pages 361–687) dated 21 November 2003, Intended effective date: 1 March 2004, 1 April 2004, 1 June 2004.

Docket Number: OST–2003–16633.

Date Filed: December 4, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SWP 0081 dated 5 December 2003, Europe-South West Pacific Expedited Resolutions 002cj, 071rr r1–r3, Intended effective date: 15 January 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–31414 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) Filed With the Department Between November 24 and December 5, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Applications Filed During Week Ending November 28, 2003

Docket Number: OST–2003–14073.

Date Filed: November 26, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 17, 2003.

Description: Application of Kuwait Airways Corporation, pursuant to 49 U.S.C. Section 41302, part 211 and subpart B, requesting that its foreign air carrier permit be amended to include authority to provide additional nonstop operations between Kuwait and New York, NY and to add the intermediate point of Athens, Greece in addition to the current intermediate point of Amsterdam, The Netherlands in the conduct of service between Chicago, IL and Kuwait.

Applications Filed During Week Ending December 5, 2003

Docket Number: OST–2003–16626.

Date Filed: December 3, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 24, 2003.

Description: Emergency Application of Midway Airlines Corporation and Ascent Airlines, Inc., pursuant to 49 U.S.C. section 41105 and Subpart B, seeking approval of the transfer of Midway's operating authority to Ascent.

Andrea M. Jenkins,

Program Manager Docket Operations, Federal Register Liaison.

[FR Doc. 03–31415 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Gerald R. Ford International Airport, Grand Rapids, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of 3 parcels of land totaling approximately 16.33 acres. Current use and present condition is vacant grassland. The land was acquired under FAA Project Nos. 8–26–0039–02 and 91–2–3–26–0039–1292. There are no impacts to the airport by allowing the airport to dispose of the property. The proposal concerns selling the land to the County of Kent, Michigan to provide a right-of-way for the proposed 36th Street extension in the northeast quadrant of the airport. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence C. King, Project Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO 607, 11677 South Wayne Road, Romulus, Michigan 48174. Telephone Number (734) 229–2933/ FAX Number (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Gerald R. Ford International Airport, Grand Rapids, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Grand Rapids, Kent County, Michigan, and described as follows:

Parcel A

Part of the southwest ¼ of section 21, T6N, R10W, Cascade Township, Kent County, Michigan, described as: Commencing at the south ¼ corner of said section; thence north 00° 48′ 27″ west along the north-south ¼ line of said section 1318.86 feet to the north line of the south ½ of the southwest ¼ line of said section; thence south 89° 32′ 08″ west along the north line of the south ½ of the southwest ¼ of said section 1492.97 feet to the place of beginning of this description; thence south 00° 27′ 52″ east 145.72 feet; thence south 54° 03′ 19″ west 93.21 feet to the northeasterly right of way line of relocated Thornapple River Drive (120.00 feet wide); thence northwesterly 238.56 feet along the northeasterly right of way of relocated Thornapple River Drive and a 1,213.24 foot radius curve to the right, the long chord of which bears north 33° 25′ 49″ west 238.17 feet to the north line of the south ½ of the southwest ¼ of said section; thence north 89° 32′ 08″ east along the north line of the south ½ of the southwest ¼ of said section 205.50 feet to the place of beginning. Parcel contains 26,993.56 square feet or 0.620 acres.

Parcel B

Part of the northwest ¼ of section 20, the northeast ¼ of section 20, and the southwest ¼ of section 17, all in T6N, R10W, Cascade Township, Kent County, Michigan, the centerline of proposed 36th Street (120.00 feet wide) is described as: Commencing at the east ¼ corner of said section 20; thence north 00° 46′ 17″ west along the east line of said section 20, 739.36 feet; thence north 45° 58′ 30″ west 105.69 feet to the west right of way line of Thornapple River Drive (150.00 feet wide) and the place of beginning of said centerline; thence north 45° 58′ 30″ west 1019.63 feet; thence northwesterly 1584.53 feet along a 2864.79 foot radius curve to the left, the long chord of which bears north 61° 49′ 13″ west 1564.41 feet; thence north 77° 39′ 56″ west 482.26 feet to a point on the east lie of the northwest ¼ of said section 20 (said point being 302.15 feet south 00° 46′ 47″ east from the northeast corner of the northwest ¼ of said section 20); thence north 77° 39′ 56″ west 948.25 feet; thence westerly 397.82 feet along a 2,864.79 foot radius curve to the left, the long chord of which bears north 84° 19′ 08″ west 397.50 feet to the east line of the west ½ of the northwest ¼ of said section 20, the place of ending of said centerline. Parcel contains 12.21 acres, more or less.

Parcel C

Part of the northeast ¼ of section 20, T6N, R10W, Cascade Township, Kent County, Michigan, described as: Commencing at the northeast corner of said section; thence south 00° 46′ 17″ east along the east line of the northeast ¼ of said section 1658.17 feet; thence South 89° 13′ 43″ west 75.00 feet to the intersection of the westerly right of way line of Thornapple River Drive (150.00 feet wide) and the southwesterly line of Highway I–96 right of way, the place of beginning of this description; thence south 00° 46′ 17″ east along the westerly right of way line of Thornapple River Drive 98.19 feet to a point 60.00 feet northeasterly (perpendicular measure) from the centerline of proposed 36th Street; thence north 45° 58′ 30″ west parallel with the centerline of proposed 36th Street 960.05 feet; thence northwesterly 1084.69 feet parallel with the centerline of proposed 36th Street and along a 2,924.79 foot radius curve to the left, the long chord of which bears north 56° 35′ 58″ west 1078.48 feet; thence north 38° 40′ 44″ east 167.39 feet to the southwesterly line of Highway I–96 right of way; thence southwesterly 644.15 feet along the southwesterly line of Highway I–96 right of way and a 11,309.16 foot radius curve to the right, the long chord of which bears south 49° 41′ 21″ east 644.07 feet; thence south 89° 39′ 26″ east along the southwesterly line of highway I–96 right of way 70.61 feet; thence southwesterly 292.07 feet along the southwesterly line of highway I–96 right of way and a 11,356.16 foot radius curve to the right, the long chord of which bears south 47° 03′ 15″ east 292.07 feet; thence south 46° 19′ 03″ east along the southwesterly right of way of highway I–96 right of way 980.68 feet to the place of beginning of this description. Parcel contains 3.50 acres.

Total acres to be released are 16.33, more or less.

Issued in Romulus, Michigan on December 4, 2003.

Winsome A. Lenfert,

Acting Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 03–31418 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–76]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 21, 2004.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–2003–15659) by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 16, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–15659.

Petitioner: F & E Aircraft Maintenance, L.L.C.

Section of 14 CFR Affected: 14 CFR 145.35 and 145.37.

Description of Relief Sought: To permit F & E Aircraft Maintenance, L.L.C. to obtain an airframe rating on its repair station certificate without meeting the housing and facility requirements of §§ 145.35 and 145.37.

[FR Doc. 03–31416 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16720]

Notice of Receipt of Petition for Decision That Nonconforming 1996 Audi S6 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996 Audi S6 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996 Audi S6 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 21, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 1996 (volume 65, number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Export Auto Sales, Inc. of Chicopee, Massachusetts J.K. Technologies of Baltimore, Maryland ("Export Auto Sales") (Registered Importer 01–284) has petitioned NHTSA to decide whether 1996 Audi S6 passenger cars are eligible for importation into the United States. The vehicles which

Export Auto Sales believes are substantially similar are 1996 Audi S6 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1996 Audi S6 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Export Auto Sales submitted information with its petition intended to demonstrate that non-U.S. certified 1996 Audi S6 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1996 Audi S6 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity, and* 302 *Flammability of Interior Materials*.

Petitioner states that the vehicles also comply with the Bumper Standard found at 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "Brake" on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with one that reads in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies, which incorporate rear sidemarker lamps; (c) inspection of all vehicles and installation of a U.S.-model high mounted stop lamp on any vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inspection of all vehicles and replacement of the passenger side rearview mirror with a U.S.-model component on any vehicles that are not already so equipped.

Standard No. 114 *Theft Protection:* inspection of all vehicles and installation of a key microswitch and warning buzzer on any vehicles that are not already so equipped.

Standard No. 118 *Power-Operated Window Systems:* inspection of all vehicles and installation, on any vehicles that are not already so equipped, of a relay to prevent the window transport from operating with the ignition switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) inspection of all vehicles and installation, on any vehicles that are not already so equipped, of U.S.-model airbags, knee bolsters, airbag control unit, sensors, and seat belts. The petitioner states that the vehicles are equipped with automated restraint systems consisting of dual front air bags and knee bolsters. The petitioner also states that the vehicles are equipped with combination lap and shoulder belts at the front and rear outboard designated seating positions that are self-tensioning and release by means of a single red pushbutton, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles and installation of U.S.-model door bars on any vehicles that are not already so equipped.

The petitioner states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.) It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 17, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–31419 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16719]

Notice of Receipt of Petition for Decision That Nonconforming 1979–1980 Volkswagen Transporter Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1979–1980 Volkswagen Transporter multipurpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1979–1980 Volkswagen Transporter MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 21, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, 202–366–3151.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and that the vehicle is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Eurotech Imports of South Burlington, Vermont ("Eurotech") (Registered Importer 02–313) has petitioned NHTSA to decide whether 1979–1980 Volkswagen Transporter MPVs are eligible for importation into the United States. The vehicles that Eurotech believes are substantially similar are 1979–1980 Volkswagen Vanagon MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1979–1980 Volkswagen Transporter MPVs to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Eurotech submitted information with its petition intended to demonstrate that non-U.S. certified 1979–1980 Volkswagen Transporter MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1979–1980 Volkswagen Transporter MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic and Electric Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of the word "Brake" for the ECE warning symbol as a marking for the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate seat belt symbol; (c) recalibration of the speedometer/odometer to show speed in miles per hour and distance traveled in miles.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps certified to DOT requirements; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Vehicles Other Than Passenger Cars:* Installation of a tire information placard.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line.

Petitioner states that a vehicle identification number (VIN) plate must be affixed to the vehicles so that it is readable from outside the driver's windshield pillar, and a reference and certification label must be affixed to the edge of the driver's side door or to the latch post nearest the driver to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 17, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–31420 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–16699; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin), has determined that certain tires it manufactured do not comply with S4.3(d) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New pneumatic tires." Michelin has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Michelin's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Michelin produced approximately 8,568 Michelin Pilot XGT H4 tires, size P195/65R15, whose sidewall labeling, on one side of the tire only, incorrectly describes the generic name of the cord material in one of the plies in the tread area. These tires were marked on one side indicating the Polyamide ply in the tread area is composed of Polyamide/Steel while they are actually composed of Polyamide only. Therefore, they do not comply with FMVSS No. 109 S4.3(d), which requires that "each tire shall have permanently molded into or onto both sidewalls . . . (d) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire."

Michelin believes that this noncompliance is inconsequential to motor vehicle safety. It asserts that in all other respects, the tires meet or exceed the requirements of FMVSS No. 109, including all of the performance requirements. It further asserts that the noncompliance with S4.3(d) will have no impact on the performance of the tire on a motor vehicle, or upon motor vehicle safety.

Michelin further states:

> The Agency has consistently found that ply labeling noncompliances have an inconsequential effect on motor vehicle safety, and have regularly granted exemption petitions for similar ply labeling noncompliances. See *e.g.*, 67 FR 1399 (January 10, 2002) finding use of word "Rayon" instead of "Polyester" inconsequential; 66 FR 63090 (December 4, 2001) finding understatement of number of plies inconsequential; 66 FR 49254 (September 26, 2001) finding overstatement of number of plies inconsequential; 66 FR 47518 (September 12, 2001) finding overstatement of number of plies inconsequential; and 66 FR 41931 (August 9, 2001) finding overstatement of number of plies inconsequential.

Michelin states that NHTSA recently reviewed the impact of tire label information on safety in the context of its rulemaking efforts under the Transportation Recall, Enhancement, Accountability and Documentation Act, and that the analysis concluded that tire construction information is not relied upon by dealers and consumers in the purchasing or selling of tires and has an inconsequential impact on motor vehicle safety. Michelin says that NHTSA's review included both a solicitation of comments on a proposed tire labeling rulemaking, and related focus group surveys. According to Michelin, commenters on NHTSA's Advanced Notice of Proposed Rulemaking issued on December 1, 2000 (65 FR 75222) indicated that the tire construction labeling requirements of FMVSS No. 109 S4.3(d) and (e) provide little or no safety value to the general public since most consumers do not understand tire construction technology. Michelin says the consumer focus groups found that very few consumers had any knowledge of tire information beyond the tire brand name, tire size, and tire pressure and did not have information or knowledge on the relationship between tire construction specifications and tire durability and strength. According to Michelin, NHTSA concluded from these comments and focus groups that it is likely that few consumers are influenced by the tire construction labeling information when making a motor vehicle or tire purchase decision, and that such information is not relied upon by consumers in evaluating the strength and durability of tires.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be considered. All comments and supporting materials received after the closing date will also be filed and considered to the extent possible. When the petition is granted or denied, a notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 21, 2004.

Authority: (49 U.S.C. 301118, 301120; delegations of authority at CFR 1.50 and 501.8).

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–31392 Filed 12–19–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–601 (Sub–No. 1X)]

Pine Belt Southern Railroad Company, Inc.—Abandonment Exemption—in Lee and Chambers Counties, AL

Pine Belt Southern Railroad Company, Inc. (PBRR) has filed a notice of exemption under 49 CFR 1152 Subpart *F—Exempt Abandonments* to abandon a 17.4-mile line of railroad between milepost T–322.40 at Roanoke Junction and milepost T–339.66 at Lafayette, in Lee and Chambers Counties, AL.[1] The line traverses United States Postal Service Zip Codes 36801, 36802, 36803, 36804 and 36862.

PBRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employees adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protect affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 21, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 2, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 12, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

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[1] The City of Opelika (City) filed a request for imposition of a public use condition and for issuance of a notice of interim trail use for the entire line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the City's public use and trail use requests, and any others that may be filed, in a subsequent decision.

A copy of any petition filed with the Board should be sent to PBRR's representative: G. Richard Abernathy, P.O. Box 1317, Shelbyville, TN 37162.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

PBRR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 23, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PBRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PBRR's filing of a notice of consummation by December 22, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 10, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–31082 Filed 12–19–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Department of the Treasury.

ACTION: Notice of proposed guidance.

SUMMARY: The U.S. Department of the Treasury publishes for public comment proposed policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons. This policy guidance is intended to replace policy guidance published March 7, 2001, and republished on March 7, 2002, *See* 66 FR 13829 and 67 FR 10477.

DATES: Comments must be submitted on or before January 21, 2004. The Department of the Treasury will review all comments and will determine what modifications, if any, to this policy guidance are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Mariam Harvey, Acting Director, Workforce Development and Equal Opportunity Division, Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 6071 Metropolitan Square, Washington, DC 20220. Comments may also be submitted by e-mail to: *OEOPWEB@do.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Pamela Proctor at the Workforce Development and Equal Opportunity Division, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 6071 Metropolitan Square, Washington, DC 20220; (202) 622–1170 voice, (202) 622–0367 fax, (202) 622–7104 TTY. Arrangements to receive the policy in an alternative format may be made by contacting Ms. Proctor.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* provides that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance.

This document was originally published on March 7, 2001. *See* 66 FR 13829. The document was based on the policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." 65 FR 50123 (August 16, 2000).

On October 26, 2001 and January 11, 2002, the Assistant Attorney General for Civil Rights issued to Federal departments and agencies guidance memoranda which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities, and which clarified and answered certain questions raised regarding the August 16th publication. In furtherance of those memoranda, the Department of the Treasury republished its guidance for the purpose of obtaining additional public comment on March 7, 2002. *See* 67 FR 10477.

On March 14, 2002, following republication of Treasury's policy guidance, the Office of Management and Budget (OMB) issued a Report to Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the Department of Justice (DOJ) published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). To the extent appropriate, the proposed guidance is consistent with the model LEP guidance document published by DOJ.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administration Procedure Act, 5 U.S.C. 553. It has also been determined that this guidance document is not subject to the requirements of Executive Order 12866.

The text of the complete proposed guidance document appears below.

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[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Dated: November 20, 2003.

Teresa Mullett Ressel,

Assistant Secretary for Management and Chief Financial Officer, United States Department of the Treasury.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria Treasury will use in evaluating whether recipients are in compliance with Title VI.

Before discussing these criteria in greater detail, it is important to note two basic underlying principles. First, we must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal Government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department of the Treasury, in conjunction with the Department of Justice (DOJ), plans to continue to provide assistance and guidance in this important area. In addition, Treasury plans to work with its recipients and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, Treasury intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web Site, *http://www.lep.gov*, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. Treasury and Department of Justice have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall "on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity "to effectuate the provisions of (section 601) * * * by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d–1.

Agency regulations promulgated pursuant to Section 602 of Title VI universally forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." *See, e.g.*, 28 CFR 42.104(b)(2) (DOJ), 7 CFR 15.3(b)(2) (Department of Agriculture), 34 CFR 100.3(b)(2)(Department of Education), 45 CFR 80.3(b)(2) (Department of Health and Human Services), and 45 CFR 1110.3(b)(2) (National Endowment for the Arts and Humanities). Treasury has not yet, but intends to, issue regulations implementing Title VI. These will be consistent with this long-standing federal policy prohibiting the use of criteria or methods of administration which have the effect of discriminating on the basis of race, color, or national origin.

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[1] Treasury recognizes that many recipients may have had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI requires that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including language identical to that quoted above, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In Lau, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000). Under that order,every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect on subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency," 65 FR 50123 (August 16, 2000) ("DOJ LEP Guidance"). Subsequently, federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval*. On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ Lep Guidance in light of *Sandoval*.[3] The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force. This Guidance is thus published pursuant to Executive Order 13166.

III. Who Is Covered?

Recipients of federal financial assistance from Treasury are required to provide meaningful access to LEP persons.[4] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of assistance from Treasury typically include, but are not limited to, for example:

- Nonprofit organizations engaged in taxpayer education,
- Financial institutions serving distressed communities.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient. This is true even if only one part of the recipient receives the federal assistance.[5] Coverage extends to a recipient's entire program or activity; *i.e.*, to all parts of a recipient's operations.

Some recipients may operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP," entitled to language assistance with respect to a particular type of service, benefit, or encounter. Examples of populations likely to include LEP persons who are encountered and/or served by Treasury's recipients and should be considered when planning language services include, but are not limited to:

- Persons participating in taxpayer education programs conducted by assisted non-profit organizations, and,
- Members of distressed communities seeking fiscal services from assisted financial institutions.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balance the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered b the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or services provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

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[3] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that aplies to federally assisted programs and activities. *See, e.g., Sandoval*, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are inspired by, at the service of, and inseparably intertwined with Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid."). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations.

[4] Pursuant to Executive Order 13166, the meaningful access of Title VI and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the federally conducted programs and activities of federal agencies, including Treasury.

[5] However, if federal agency were to decide to terminate federal funds based on noncompliance with Title VI, only funds directed to the particular program or activity that is out of compliance would be terminated. 41 U.S.C. 2000d–1.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. Treasury's recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) *The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population.* One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a precinct in the case of a law enforcement entity or a school in the case of an educational system serves a large LEP population, the appropriate service area is most likely the precinct or school, and not the entire population served by the recipient. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients providing educational services to minor LEP students should also include the students' LEP parent(s) or primary caretakers among those likely to be encountered.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[6] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) *The Frequency With Which LEP Individuals Come in Contract With the Program.* Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily.

It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) *The Nature and Importance of the Program, Activity, or Service Provided by the Program.* The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, the obligations of a federally assisted school or hospital to LEP constituents are generally far grater than those of a federally assisted zoo or theater. A recipient needs to determine whether denial or delay of access to service or information could have serious or even life-threatening implications for the LEP individual. Decisions by a federal, state, or local entity to make an activity compulsory, such as a particular educational program, can serve as strong evidence of the program's importance. While all situations must of course be analyzed on a case-by-case basis, the following general observations may be helpful to Treasury's recipients considering the implications of applying this factor of the four-factor test to their respective programs:

Examples

- An assisted financial institution in a city with a large Hispanic population including a significant number of LEP members should consider translating account and loan applications into Spanish (or implementing a procedure through which Spanish-speaking LEP persons could be served by Spanish-speaking officers).

With respect to the importance of a program, activity, or service provided by one of the Agency's recipients, the obligation to provide translation services will most likely be greatest in educational/training situations or in connection with the provision of law enforcement services. As an aid in applying this guidance to their own programs or activities, entities that receive federal financial assistance from either the Department of Education or Department of Justice and Treasury may rely on the more particularized LEP Guidance of the Department of Education (in the case of a school-based educational program) or the Department of Justice (in the case of a law enforcement entity) to ensure compliance with the obligation to provide meaningful access in those respective contexts.

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[6] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

(4) *The Resources Available to the Recipient and Costs.* A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[7] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

Treasury is well aware of the fact that some of its grant recipients may experience difficulties with resource allocation. Treasury emphasizes that reasonable translation and interpretation costs are appropriately included in grant and award budget requests.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner.

- *Competence of Interpreters.* When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information derectly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification may be helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[8] and, if applicable, understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.
- Understand and adhere to their role as interpreters without deviating into any other role such as counselor or advisor.

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translation, the use of certified interpreters is strongly encouraged. Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in information about completion of tax forms, for example, must be quite high while the quality and accuracy of language services in translation of a brochure about the history of money need not meet the same exacting standards. Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

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[7] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

[8] Many languages have"regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some terms, the interpreter should be aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

- *Hiring Bilingual Staff.* When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients and subrecipients can, for example, fill public contact positions with staff who are bilingual and competent to communicate directly with LEP persons in their language and at the appropriate level of competency. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual member of a formal review panel adjudicating allegations of program or fiscal noncompliance would probably not be able to perform effectively the role of interpreter and adjudicator at the same time, even if the bilingual employee were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.
- *Hiring Staff Interpreters.* Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.
- *Contracting for Interpreters.* Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.
- *Using Telephone Interpreter Lines.* While of limited value for live performances or museum exhibits, telephone interpreter service lines often offer speedy interpreting assistance in many different languages in other public-contract situations. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical terms specific to a particular program that may be important parts of the conversation. Nuances in languages and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.
- *Using Community Volunteers.* In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules, if any. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.
- *Use of Family Members or Friends as Interpreters.* Although recipients should not plan to rely on an LEP person's family members, friends, or other informal; interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations. Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.

While issues of competency, confidentiality, and conflict of interest in the use of family members or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. If the importance and nature of the activity is relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy, and the resources needed and costs of providing language services are high, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Notices advising LEP persons of free language assistance.
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
- Applications to participate in a recipient's program or activity or to receive recipient benefits, grants, or services.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It my also be the case when the title and phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be make, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipient regarding the requirements for translation of written materials. A "safe harbor" mean that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) dies not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor Guides. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b)If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

Treasury provides assistance to a range of programs and activities serving different geographic areas with varying populations. Moreover, as noted above, the obligation to consider translations applies only to a recipient's vital documents having a significant impact on access rather than all types of documents used or generated by a recipient in the course of its activities, For these reasons, a strict reliance on the numbers or percentages set out in the safe harbor standards may not be appropriate for all of Treasury's recipients and for all their respective programs or activities. While the safe harbor standards outlined above offer a common guide, the decision as to what documents should be translated should ultimately be governed by the underlying obligation under Title VI to provide meaningful access by LEP persons by ensuring that the lack of appropriate translations of vital documents does not adversely impact upon an otherwise eligible LEP persons ability to access its programs or activities.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translation is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[9] Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "black translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[10]

Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no significant consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Lanuage Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing inportant input into this planning process from the beginning. The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

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[9] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[10] For instance, there may be languages which do not have an appropriate direct translation of some terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations or similar material by the recipient, other recipient, other recipients, or federal agencies may be helpful.

(1) *Identifying LEP Individuals Who Need Language Assistance.* The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact. One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) *Language Assistance Measures.* An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) *Training Staff.* Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) *Providing Notice to LEP Persons.* Once and organization has decided, based on the four factors, that it will provide language services, it is important for the recipients to let LEP persons know that those services are available are that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[11]

- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

(5) *Monitoring and Updating the LEP Plan.* Recipients should, where appropriate, have a process for determining, on and ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to the employee. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community. In their reviews, recipients may want to consider assessing changes in :

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is implemented by Treasury through complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. Upon publication of Treasury's Title VI regulations, the enforcement procedures in those regulations will be applicable to this program.

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[11] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htmwww.ssa.gov/multilanguage/langlist1.htm* These signs could, for example, be modified for recipient use.

Treasury will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, Treasury will inform the recipient in writing of this determination, including the basis for the determination. Treasury will use voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, Treasury will inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, Treasury will secure compliance through the termination of federal assistance after the recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. Treasury will engage in voluntary compliance efforts and provide technical assistance to recipients at all stages of an investigation. During these efforts, Treasury will propose reasonable timetables for achieving compliance and consult with and assist recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, Treasury's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, Treasury acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, Treasury will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

In cases where a recipient of federal financial assistance from Treasury also receives assistance from one or more other federal agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans. Treasury, in discharging its compliance and enforcement obligations under Title VI, will look to analyses performed and plans developed in response to similar detailed LEP guidance issued by other federal agencies. Accordingly, as an adjunct to this Guidance, recipients may, where appropriate, also rely on guidance issued by other agencies in discharging their Title VI LEP obligations.

In determining a recipient entity's compliance with Title VI, Treasury's primary concern is to ensure that the entity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient entity's appropriate use of the methods and options discussed in this policy guidance is viewed by Treasury as evidence of that entity's willingness to comply voluntarily with its Title VI obligations.

IX. Complaint Process

Anyone who believes that he/she has been discriminated against because of race, color or national origin in violation of Title VI may file a complaint with Treasury within 180 days of the date on which the discrimination took place.

The following information should be included:

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required);
- A general description of the person(s) or class of persons injured by the alleged discriminatory act(s);
- The name and location of the organization or institution that committed the alleged discriminatory act(s);
- A description of the alleged discriminatory act(s) in sufficient detail to enable the Office of Workforce Development and Equal Opportunity (OEOP) to understand what occurred, when it occurred, and the basis for the alleged discrimination.
- The letter or form must be signed and dated by the complainant or by someone authorized to do so on his or her behalf.

A recipient may not retaliate against any person who has made a complaint, testified, assisted or participated in any manner in an investigation or proceeding under the statutes governing Federal financial assistance programs.

Civil rights complaints should be filed with: Department of the Treasury, Office of Workforce Development and Equal Opportunity, 1500 Pennsylvania Avenue, NW, Room 6071 Metropolitan Square, Washington, DC 20220.

DEPARTMENTAL OFFICES—FY 2004 SALARIES AND EXPENSES

[Program Office: DAS Management & Budget]

Spending category	Financial plan[1]	YTD spending	Balance remaining	% of YTD spending	% of balance remaining
				Target: 0%	Target: 100%
FUNDED POSITIONS	27.0		27.0	0.0	100.0
Salaries	2,203,433.0		2,203,433	0.0	100.0
Benefits	484,755		484,755	0.0	100.0
Overtime				0.0	0.0
Awards	25,545		25,545	0.0	100.0

DEPARTMENTAL OFFICES—FY 2004 SALARIES AND EXPENSES—Continued

[Program Office: DAS Management & Budget]

Spending category	Financial plan [1]	YTD spending	Balance remaining	% of YTD spending	% of balance remaining
				Target: 0%	Target: 100%
Subtotal, Personnel	2,713,733		2,713,733	0.0	100.0
Travel	7,500		7,500	0.0	0.0
Transportation				0.0	0.0
Rents, Comm. & Utilities	1,920		1,920	0.0	100.0
Printing & Reprodution				0.0	0.0
Other Services	46,560		46,450	0.0	100.0
Supplies	7,585		7,585	0.0	100.0
Equipment	2,880		2,880	0.0	100.0
Other				0.0	0.0
Subtotal, Non-Personnel	66,445		66,445	0.0	100.0
Grand Total	2,780,178		2,780,178	0.0	100.0

Notes:

[1] Financial plan reflects the current financial plan.

Office of Financial Management Division
Budget Analyst: Angela Brown
Telephone #: 622–1032

[FR Doc. 03–31397 Filed 12–19–03; 8:45 am]

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Corrections

Federal Register
Vol. 68, No. 245
Monday, December 22, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110896–98]

RIN 1545–AW35

Charitable Remainder Trusts; Application of Ordering Rule

Correction

In proposed rule document 03–29042 beginning on page 65419 in the issue of Thursday, November 20, 2003, make the following corrections:

1. On page 65419, in the second column, in the second paragraph, in the fifth line from the bottom, “under “”” should read “under §”.

2. On the same page, in the third column, in the third paragraph, in the 11th line, “[DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]” should read “November 20, 2003”.

[FR Doc. C3–29042 Filed 12–19–03; 8:45 am]

BILLING CODE 1505–01–D

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Tomatoes grown in—
  - Florida; published 12-19-03

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- Grain inspection equipment; official performance requirements:
  - Tolerance for dividers; regulation removed; published 10-23-03

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National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - North Pacific halibut and sablefish program; published 12-22-03

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- Air pollution control:
  - State operating permit programs—
    - Ohio; published 11-20-03
- Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
  - Oregon; published 10-21-03
- Water pollution; effluent guidelines for point source categories:
  - Centralized waste treatment industry; published 12-22-03

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

- Mortgage and loan insurance programs:
  - Single family mortgage insurance—
    - FHA Technology Open To Approved Lenders (TOTAL) mortgage scorecard use; requirements and procedures; published 11-21-03

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- Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
  - Approved spent fuel storage casks; list; published 10-7-03
    - Correction; published 12-17-03

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  - Boeing and McDonnell Douglas; published 11-17-03

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- Engineering and traffic operations:
  - Uniform Traffic Control Devices Manual for streets and highways; revision; 2003 edition; incorporation by reference; published 11-20-03

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National Highway Traffic Safety Administration

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  - Child restraint systems—
    - Improved test dummies, updated test procedures, and extended child restraints standards for children up to 65 pounds; published 6-24-03

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- Currency and foreign transactions; financial reporting and recordkeeping requirements:
  - Bank Secrecy Act; implementation—
    - Futures commission merchants and introducing brokers in commodities; definition as financial institutions; suspicious transaction reporting requirements; published 11-20-03

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Agricultural Marketing Service

- Labeling; country of origin:
  - Beef, lamb, pork, fish, perishable agricultural commodities, and peanuts; mandatory labeling definitions, requirements, and recordkeeping responsibilities; comments due by 12-29-03; published 10-30-03 [FR 03-27249]
- Organic producers and marketers; exemption from assessments for market promotion activities; comments due by 1-2-04; published 12-2-03 [FR 03-29958]

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- Biological agents and toxins; possession, use, and transfer:
  - Agricultural Bioterrorism Protection Act of 2002; implementation—
    - Provisional registration certificates for individuals and entities and provisional grants of access to biological agents and toxins for individuals; comments due by 1-2-04; published 11-3-03 [FR 03-27640]
- Plant related quarantine; domestic:
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- National Construction Safety Team Act; implementation; comments due by 12-29-03; published 11-28-03 [FR 03-29615]

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    - Hawaii State waters; sea turtle interactions with fishing activities; environmental impact statement and scoping meeting; comments due by 12-31-03; published 9-22-03 [FR 03-23994]
- Fishery conservation and management:
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- Ocean and coastal resource management:
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  - Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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LIST OF PUBLIC LAWS

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H.R. 2297/P.L. 108–183
Veterans Benefits Act of 2003 (Dec. 16, 2003; 117 Stat. 2651)

H.R. 3491/P.L. 108–184
National Museum of African American History and Culture Act (Dec. 16, 2003; 117 Stat. 2676)

H.J. Res. 82/P.L. 108–185
Making further continuing appropriations for the fiscal year 2004, and for other purposes. (Dec. 16, 2003; 117 Stat. 2684)

S. 811/P.L. 108–186
To support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes. (Dec. 16, 2003; 117 Stat. 2685)

S. 877/P.L. 108–187
Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (Dec. 16, 2003; 117 Stat. 2699)

H.J. Res. 63/P.L. 108–188
Compact of Free Association Amendments Act of 2003 (Dec. 17, 2003; 117 Stat. 2720)

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141-199	(869-050-00055-5)	58.00	Apr. 1, 2003
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20 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

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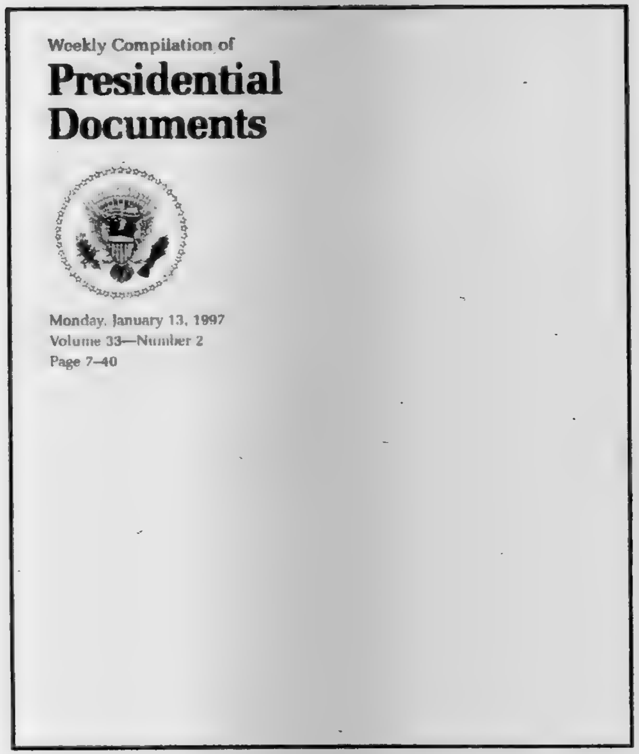

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

12–22–03
Vol. 68 No. 245
Monday
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Book 2 of 4 Books

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part II

Regulatory Information Service Center

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

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REGULATORY INFORMATION SERVICE CENTER

Introduction to The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions.

SUMMARY: The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas describing regulatory actions they are developing (5 U.S.C. 602). Executive Order 12866 "Regulatory Planning and Review," signed September 30, 1993 (58 FR 51735) and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies' agendas, including specific types of information for each entry. Section 4 of Executive Order 12866 also directs that each agency prepare, as part of its submission to the fall edition of the Unified Agenda, a regulatory plan of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year.

The Regulatory Plan (Plan) and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** (Unified Agenda) help agencies fulfill these requirements. This publication contains the plans of 28 Federal agencies and the regulatory agendas for these and 33 other Federal agencies.

ADDRESSES: Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3033, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the Agency Contact listed for each entry.

To provide comment on or to obtain further information about this publication, contact: Ronald C. Kelly, Executive Director, Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3033, Washington, DC 20405, (202) 482-7340. You may also send comments to us by e-mail at:

RISC@gsa.gov

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INTRODUCTION TO THE REGULATORY PLAN AND THE UNIFIED AGENDA OF FEDERAL REGULATORY AND DEREGULATORY ACTIONS

I. What Are The Regulatory Plan and the Unified Agenda?

The Regulatory Plan serves as a defining statement of the Administration's regulatory and deregulatory policies and priorities. The Plan is part of the fall edition of the Unified Agenda. Each participating agency's regulatory plan contains: (1) A narrative statement of the agency's regulatory priorities and, for most agencies, (2) a description of the most important significant regulatory and deregulatory actions that the agency reasonably expects to issue in proposed or final form during the upcoming fiscal year. This edition includes the regulatory plans of 28 agencies.

The Unified Agenda provides information, in a uniform format, about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983. This edition includes regulatory agendas from 61 Federal agencies. Agencies of the United States Congress are not included.

The Regulatory Information Service Center (the Center) compiles the Plan and the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of Executive Order 12866. The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

The activities included in the Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. The agendas do not contain regulations that were excluded under Executive Order 12866, such as those concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters.

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. **The Regulatory Plan** and the Unified Agenda do not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.

II. Why Are The Regulatory Plan and the Unified Agenda Published?

The Regulatory Plan and the Unified Agenda help agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

Regulatory Flexibility Act

The *Regulatory Flexibility Act* requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610). Executive Order 13272 entitled "Proper Consideration of Small Entities in Agency Rulemaking," signed August 13, 2002 (67 FR 53461) provides additional guidance on compliance with the Act.

Executive Order 12866

Executive Order 12866 entitled "Regulatory Planning and Review," signed September 30, 1993 (58 FR 51735) requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their "most important significant regulatory actions," which appears as part of the fall Unified Agenda.

Executive Order 13132

Executive Order 13132 entitled "Federalism," signed August 4, 1999 (64 FR 43255) directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications" as defined in the Order. Under the Order, an agency that is proposing regulations with federalism implications, which either preempt State law or impose nonstatutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the

Office of Management and Budget a federalism summary impact statement for such regulations, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

Unfunded Mandates Reform Act of 1995

The *Unfunded Mandates Reform Act of 1995* (Pub. L. 104-4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions "that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more . . . in any 1 year . . . ." The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

Executive Order 13211

Executive Order 13211 entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," signed May 18, 2001 (66 FR 28355) directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for "those matters identified as significant energy actions." As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

Small Business Regulatory Enforcement Fairness Act

The *Small Business Regulatory Enforcement Fairness Act* (Pub. L. 104-121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 et seq.), which defers, unless exempted, the effective date of a "major" rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is "major" if it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

III. How Are The Regulatory Plan and the Unified Agenda Organized'

The Regulatory Plan appears in part II of this edition of the **Federal Register**. The Plan is a single document beginning with an introduction, followed by a table of contents, followed by each agency's section of the Plan. Following the Plan, each agency's agenda appears as a separate part. The sections of the Plan and the parts of the Unified Agenda are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority (Agenda only); and independent regulatory agencies. Agencies may in turn be divided into subagencies.

Each agency's section of the Plan contains a narrative statement of regulatory priorities and, for most agencies, a description of the agency's most important significant regulatory and deregulatory actions. Each agency's part of the Agenda begins with a preamble providing information specific to that part followed by a table of contents. For each agency that requests it, the table of contents includes a section listing entries that the agency is reporting as withdrawn, duplicate, merged, or transferred. Following the table of contents is a description of the agency's regulatory and deregulatory actions.

In the Agenda, each agency presents its entries under one of five headings according to the rulemaking stage of the entry. In the Plan, only the first three stages are applicable. The stages are:

1. *Prerule Stage* — actions agencies will undertake to determine whetheror how to initiate rulemaking. Such actions occur prior to a Noticeof Proposed Rulemaking (NPRM) and may include Advance Notices ofProposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. *Proposed Rule Stage* — actions for which agencies plan to publish a Noticeof Proposed Rulemaking as the next step in their rulemaking processor for which the closing date of the NPRM Comment Period is the nextstep.

3. *Final Rule Stage* — actions for which agencies plan to publish a finalrule or an interim final rule or to take other final action as thenext step.

4. *Long-Term Actions* — items under development but for which the agency doesnot expect to have a regulatory action within the 12 months afterpublication of this edition of the Unified Agenda. Some of the entriesin this section may contain abbreviated information.

5. *Completed Actions* — actions or reviews the agency has completed or withdrawnsince publishing its last agenda. This section also includes itemsthe agency began and completed between issues of the Agenda.

In the Agenda, an agency may use subheadings to identify regulations that it has grouped according to particular topics. When these subheadings are used, they appear above the title of the first regulation in each group.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the Unified Agenda for the first time.

All entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. This sequence number is used as the reference in the table of contents and in all indexes to enable readers to find entries. Entries in the Plan are also in the Unified Agenda with the same Regulation Identifier Number (RIN) but with different sequence numbers. For these entries, the Plan sequence number is used as the reference in all indexes.

This publication contains six indexes.

- Index A lists regulatory actions for which agencies have indicated that they are conducting a periodic review under section 610(c) of the Regulatory Flexibility Act.
- Index B lists the regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis.
- Index C lists additional regulatory actions for which agencies have chosen to indicate that some impact on small entities is likely even though a Regulatory Flexibility Analysis may not be required.

- Index D lists regulatory actions that agencies believe may have effects on levels of government.
- Index E lists regulatory actions that agencies believe may have federalism implications as defined in Executive Order 13132.
- Index F is a subject index based on the **Federal Register Thesaurus of Indexing Terms**.

IV. What Information Appears for Each Entry'

All entries in the Unified Agenda contain uniform data elements including, at a minimum, the following information:

Title of the Regulation — a brief description of the subject of the regulation, possibly including section 610 review designation. The notation "Section 610 Review" following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews.

Priority — an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

(1) Economically Significant

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of $100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The definition of an "economically significant" rule is similar but not identical to the definition of a "major" rule under 5 U.S.C. 801 (Pub. L. 104-121). (See below.)

(2) Other Significant

A rulemaking that is not Economically Significant but is considered Significant by the agency. This category includes rules that the agency anticipates will be reviewed under Executive Order 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

(3) Substantive, Nonsignificant

A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

(4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

(5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

In addition, if a rule is "major" under 5 U.S.C. 801 (Pub. L. 104-121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act, this is indicated under the "Priority" heading. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

Unfunded Mandates — whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate. If the agency believes the entry is not subject to the Act, this data element will not be printed.

Legal Authority — the section(s) of the United States Code (U.S.C.) or Public Law (Pub. L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

CFR Citation — the section(s) of the Code of Federal Regulations that will be affected by the action.

Legal Deadline — whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

Abstract — a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

Timetable — the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date printed in the form 02/00/04 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is "To Be Determined." "Next Action Undetermined" indicates the agency does not know what action it will take next.

Regulatory Flexibility Analysis Required — whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

Small Entities Affected — the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

Government Levels Affected — whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Federalism — whether the action has "federalism implications" as defined in Executive Order 13132. This term refers to actions "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." If the action does not have federalism implications, this data element will not be printed. Independent regulatory agencies are not required to supply this information.

Agency Contact — the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, e-mail address, and TDD for each agency contact.

Some agencies have provided the following optional information:

URL for More Information — the Internet address of a site that provides more information about the entry.

URL for Public Comments — the Internet address of a site that will accept public comments on the entry. Alternatively, timely public comments may be submitted at the governmentwide e-rulemaking site, **http://www.regulations.gov**.

Additional Information — any information an agency wishes to include that does not have a specific data element.

Compliance Cost to the Public — the estimated gross compliance cost of the action.

Affected Sectors — the industrial sectors that the action may most affect, either directly or indirectly. Affected Sectors are identified by North American Industry Classification System (NAICS) codes.

Energy Effects — an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," signed May 18, 2001 (66 FR 28355).

Related RINs— one or more past or current RINs associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

Entries appearing in **The Regulatory Plan** include one or more of the following additional data elements, but will, at a minimum, include information in Statement of Need:

Statement of Need — a description of the need for the regulatory action.

Summary of the Legal Basis — a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

Alternatives — a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of E.O. 12866.

Anticipated Costs and Benefits — a description of preliminary estimates of the anticipated costs and benefits of the action.

Risks — a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

V. Abbreviations

The following abbreviations appear throughout this publication:

ANPRM — An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register**, announcing that an agency is considering a regulatory action. An agency may issue an ANPRM before it develops a detailed proposed rule. An ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

CFR — The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the agencies of the Federal Government. The Code is divided into 50 titles, each title covering a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

EO — An Executive order is a directive from the President to Executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

FR — The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal agencies.

FY — The Federal fiscal year runs from October 1 to September 30.

NPRM — A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

- a statement of the time, place, and nature of the public rulemaking proceeding;
- a reference to the legal authority under which the rule is proposed; and
- either the terms or substance of the proposed rule or a description of the subjects and issues involved.

PL (or Pub. L.) — A Public Law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 108-4 is the fourth public law of the 108th Congress.

RFA — A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

RIN — The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in **The Regulatory Plan** and the Unified Agenda, as directed by E.O. 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

Seq. No. — The Sequence Number identifies the location of an entry in this publication. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers in different editions of **The Regulatory Plan** and the Unified Agenda.

USC — The United States Code is a consolidation and codification of all general and permanent laws of the United States. The USC is divided into 50 titles, and each title covers a broad area of Federal law.

VI. How Can Users Get Copies of the Plan and the Agenda'

Printed copies of this edition of the Federal Register are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, (202) 512-1800.

Copies of individual agency materials may be available directly from the agency or may be found on the agency's website. Please contact the particular agency for further information.

All editions of **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** since Fall 1995 are also available in electronic form. You can search the Agenda and the Plan at:

http://reginfo.gov

You may also search the Agenda and the Plan on the Government Printing Office's GPO Access website at:

http://www.gpoaccess.gov/ua/index.html

Dated: December 5, 2003.

Ronald C. Kelly

Executive Director.

Federal Register
Vol. 68, No. 245
Monday, December 22, 2003

The Regulatory Plan

INTRODUCTION TO THE FALL 2003 REGULATORY PLAN

Federal regulation is a fundamental instrument of national policy. It is one of the three major tools — in addition to spending and taxing — used to implement policy. It is used to advance numerous public objectives, including homeland security, environmental protection, educational quality, food safety, transportation safety, health care quality, equal employment opportunity, energy security, immigration control, and consumer protection. The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) is responsible for overseeing and coordinating the Federal Government's regulatory policies.

The Regulatory Plan is published as part of the fall edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions, and serves as a statement of the Administration's regulatory and deregulatory policies and priorities. The purpose of the Plan is to make the regulatory process more accessible to the public and to ensure that the planning and coordination necessary for a well-functioning regulatory process occurs. The Plan identifies regulatory priorities and contains information about the most significant regulatory actions that agencies expect to undertake in the coming year. An accessible regulatory process enables citizen centered service, which is a vital part of the President's Management Agenda.

Federal Regulatory Policy

The Bush Administration supports Federal regulations that are sensible and based on sound science, economics, and the law. Accordingly, the Administration is striving for a regulatory process that adopts new rules when markets fail to serve the public interest, simplifies and modifies existing rules to make them more effective or less costly or less intrusive, and rescinds outmoded rules whose benefits do not justify their costs. In pursuing this agenda, OIRA has adopted an approach based on the principles of regulatory analysis and policy espoused in Executive Order 12866, signed by President Clinton in 1993.

Effective regulatory policy is not uniformly pro-regulation or anti-regulation. It begins with the authority granted under the law. Within the discretion available to the regulating agency by its statutory authority, agencies apply a number of principles articulated in Executive Order 12866 (as well as other orders, such as Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," signed May 18, 2001, 66 FR 28355), in order to design regulations that achieve their ends in the most efficient way. This means bringing to bear on the policy problem sound economic principles, the highest quality information, and the best possible science. This is not always an easy task, as sometimes economic and scientific information may point in very different directions, and therefore designing regulations does not mean just the rote application of quantified data to reach policy decisions. In making regulatory decisions, we expect agencies to consider not only benefit and cost items that can be quantified and expressed in monetary units, but also other attributes and factors that cannot be integrated readily in a benefit-cost framework, such as fairness and privacy. However, effective regulation is the result of the careful use of all available high-quality data, and the application of broad principles established by the President.

In pursuing this goal of establishing an effective, results-oriented regulatory system, the Bush Administration has increased the level of public involvement and transparency in its review and clearance of new and existing regulations. First, in 2002 OMB sought public comment on a major regulatory reform initiative. In response to this public solicitation, OMB received recommendations on 316 distinct rules, guidance documents, and paperwork requirements from over 1,700 commenters. In its review of the 316 nominations, OMB found that 109 of the reform ideas were already being addressed by agencies, and another 51 ideas were referred to independent agencies for their consideration. Of the 156 reform nominations that OMB determined were ripe for consideration by Cabinet-level agencies and the Environmental Protection Agency, agencies have decided to pursue 34 rules and 11 guidance documents for reform, are undecided about 26 rules and 4 guidance documents, and have decided not to pursue reform of 62 rules and 19 guidance documents at this time.

Second, OIRA has enhanced the transparency of OMB's regulatory review process to the public. OIRA's website now enables the public to find information on rules that are formally under review at OMB, have recently been cleared, or have been returned to agencies for reconsideration. OIRA has also increased the amount of information available on its website. In addition to information on meetings and correspondence, OIRA makes available communications from the OIRA Administrator to agencies, including "prompt letters," "return letters," and "post clearance letters," as well as the Administrator's memorandum to the President's Management Council (September 20, 2001) on presidential review of agency rulemaking by OIRA.

Third, the Bush Administration has moved aggressively to establish basic quality performance goals for all information disseminated by Federal agencies, including information disseminated in support of proposed and final regulations. The Federal agencies issued guidelines on October 1, 2002 under the Information Quality Law to ensure the "quality, objectivity, utility, and integrity" of all information disseminated by Federal agencies. Under these guidelines, Federal agencies are taking appropriate steps to incorporate the information quality performance standards into agency information dissemination practices, and developing pre-dissemination review procedures to substantiate the quality of information before it is disseminated. Under the agency information quality guidelines, "affected persons" can request that the agencies correct information if they believe that scientific, technical, economic, statistical or other information disseminated does not meet the agency and OMB standards. If the requestor is dissatisfied with the initial agency response to a correction request, an appeal opportunity is provided by the agencies. To date, agencies have received and responded to approximately 30 complaints that appear to be stimulated by the Information Quality Law. Although we are still in the early phases of implementation, agencies are aware that ensuring the high quality of government information disseminations is a high priority of the Administration.

As part of its efforts to improve the quality, objectivity, utility, and integrity of information disseminated by the Federal agencies, OMB recently issued a proposed bulletin to realize the benefits of meaningful peer review of the most important science disseminated by the Federal government regarding regulatory topics. Through the combination of ongoing agency commitment, public interaction with the agencies, and OMB oversight, the underlying information and resulting analyses that agencies rely upon in developing regulations can become even more effective and reliable.

Fourth, the Administration is currently increasing the impact of OMB's analytical perspective. The OIRA Administrator is using the "prompt letter" to agencies as a new way to suggest promising regulatory priorities, and highlight issues that may warrant regulatory attention. Though not meant to have legal authority, these prompt letters are designed to bring issues to the attention of agencies in a transparent manner that permits public scrutiny and debate. Prompt letters may highlight regulations that should be pursued, rescinded, revised, or further investigated. For example, OIRA's first set of prompts has suggested lifesaving opportunities at FDA, NHTSA, OSHA and EPA. In a letter to FDA, OIRA suggested that priority be given to completing a promising rulemaking (started in the previous Administration), to require that food labels report the trans-fatty acid content of foods. (Trans-fats are now recognized as a significant contributor to coronary heart disease.) FDA has now issued a final rule that will require the disclosure of trans-fat content in food labels. Similarly, OSHA has responded to an OIRA prompt letter by notifying each employer in the country of the lifesaving effects and cost-effectiveness of automatic defibrillators, a lifesaving technology designed to save lives during sudden cardiac arrest.

In addition to increasing the level of public involvement and transparency in its review of regulations, the Bush Administration has sought to enhance the role of analysis in the development of effective regulations. OIRA, for example, recently issued revised guidance to agencies on regulatory analysis[1] Key features of the revised guidance include more emphasis on cost-effectiveness and more careful evaluation of qualitative and intangible values. OIRA was very interested in updating the guidance in light of these and other innovations now commonplace in the research community. The 2003 Regulatory Plan continues OIRA's effort to ensure coordination across Federal agencies in pursuing analytically sound regulatory policies.

The Administration's 2003 Regulatory Priorities

With regard to Federal regulation, the Bush Administration's objective is quality, not quantity. Those rules that are adopted promise to be more effective, less intrusive, and more cost-effective in achieving national objectives while demonstrating greater durability in the face of political and legal attack. The Regulatory Plan is integral to enhancing the quality of Federal regulations, and OMB seeks to ensure that the public is provided with the information needed to understand and comment on the Federal regulatory agenda. Accordingly, the 2003 Regulatory Plan highlights the following themes:

1. regulations that are related to the events of September 11, 2001;

2. regulations that are of particular concern to small businesses;

3. regulations that were among those nominated by the public as reform candidates last year (see OMB's 2003 Report to Congress on the Costs and Benefits of Federal Regulations); and

4. issues that have been the subject of an OIRA "prompt letter."

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[1] See Circular A-4, "Regulatory Analysis," published as part of OMB's 2003 Report to Congress on the Costs and Benefits of Federal Regulations. The report is available on OMB's website at: http://www.whitehouse.gov/omb/inforeg/2003__cost-ben__final__rpt.pdf

Specifically, the Administration's regulatory priorities can be grouped into five national policy objectives: (1) strengthening economic performance; (2) reducing barriers to the growth of small businesses; (3) improving public health and safety; (4) enhancing environmental protection; and (5) ensuring homeland security. The Administration is committed to pursuing regulatory actions that achieve each of these goals. Below are examples of regulatory priorities in the upcoming year that address each objective.

Strengthening Economic Performance

One of the Administration's primary goals is to strengthen the country's economic performance. Agencies across the Federal Government are actively pursuing this goal through regulatory changes.The Department of Housing and Urban Development is undertaking rulemakings on simplifying and improving the process of obtaining mortgages to reduce settlement costs to consumers. The rule simplifies the mortgage application process and allows a greater understanding of the upfront and long-term costs of a mortgage. The rule should strengthen market competition among mortgage providers and ultimately lower costs to consumers.

Similarly, the Department of Transportation will conclude a review of its Computer Reservations System Regulations. The Department regulates computer reservations systems owned by airlines or airline affiliates that are used by travel agencies. The current rules were designed to prevent the systems from unreasonably prejudicing the competitive position of other airlines and to ensure that travel agencies would provide accurate and unbiased information to the public. The Department is reexamining its rules to see whether they should be readopted and, if so, whether they should be changed in response to greater use of the Internet in airline reservations and ticketing and changes in the industry.

Reducing Barriers to the Growth of Small Business

This Administration has endeavored to encourage the growth of small businesses in our economy. As President George W. Bush has noted, "Wealth is created by Americans — by creativity and enterprise and risk-taking. But government can create an environment where businesses and entrepreneurs and families can dream and flourish." To assist small businesses, the Small Business Administration (SBA) will work to decrease the complexity of small business size standards, thereby encouraging small businesses to participate in the Federal Government's small business programs. The SBA intends to reduce the number of different size standards levels. This restructuring will simplify the identification of small businesses and the use of size standards in Federal small business programs.

Improving Public Health and Safety

The Federal Government's role in improving public health and safety is broad in scope. The Administration's 2003 regulatory priorities include a Department of Labor rulemaking on child labor. This regulation will set forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specify the number of hours in a day and in a week, and time periods within a day, that such minors may be employed.

The Department of Health and Human Services' Food and Drug Administration (FDA) will issue a rule on Reducing Medical Errors and Enhancing

Patient Safety. An upcoming final rule will require human drug products to have a scannable bar code that will reduce medication errors.

Enhancing Environmental Protection

Environmental protection is an integral consideration in U.S. policies concerning natural resources, human health, economic growth, energy, transportation, agriculture, industry, and international trade. These factors are similarly considered in establishing environmental policy. The Administration is dedicated to enhancing environmental protection through smart regulations, based on the best scientific data available.

The Environmental Protection Agency (EPA) has proposed a rule to reduce the particulate matter and nitrogen oxide emissions from diesel-powered non-road vehicles and equipment. Non-road engines emit significant amounts of fine particles and nitrogen oxide emissions; these pollutants are associated with a variety of adverse health effects, ranging from lost work days and greater numbers of hospital admissions to premature mortality. The proposal will evaluate not only new emission control devices that would be required for new engines, but also the reductions in sulfur levels that are likely to be needed to enable the control systems to operate effectively. This comprehensive systems approach is similar to that taken for the heavy-duty diesel highway rule for trucks and buses that takes effect in the 2006-2007 timeframe. EPA plans to publish a final rule in spring 2004.

EPA has promulgated two companion rules designed to protect drinking water against the risks of both microbial pathogens and the disinfectants that are used to control them. The rules will enhance existing monitoring and treatment requirements to ensure that risks from disinfection byproducts, which have been linked to various adverse health effects, are minimized, without compromising the important protection they provide against pathogens.

Ensuring Homeland Security

In its continued efforts to prevent future security threats and provide relief for individuals affected by the tragedies of the September 11, 2001 terrorist attacks, the Federal Government is revisiting and establishing practices and procedures to strengthen homeland security. Several agencies, including the Departments of Justice, Transportation, Labor, Health and Human Services, Commerce, the Office of Personnel Management, Small Business Administration, and the Office of Management and Budget, issued new regulations. Furthermore, these agencies are working to coordinate their rulemaking activities with those from the Department of Homeland Security.

The Administration will continue to pursue regulatory actions necessary to ensure homeland security. The Department of Homeland Security will conclude work on a Trade Act regulation that will require the submission of arrival and departure manifests electronically in advance of an aircraft or vessel's arrival in or departure from the United States. The Department will also work on a regulation for the critical infrastructure program, which will determine the receipt, care, and storage procedures of critical infrastructure information voluntarily submitted by the public. The protection of critical infrastructure reduces the vulnerability of the United States to acts of terrorism. Furthermore, the Department will propose a rule which will provide critical incentives for the development and deployment of antiterrorism technologies.

Conclusion

Smarter regulatory policies, created through public participation, transparency, and cooperation across Federal agencies, seek to accomplish these five national objectives. Some of the following department or agency plans provide information on regulatory priorities in the context of these specific programs and initiatives. All agencies' plans are a reflection of the Administration's Federal Regulatory Policy objectives, which aim at implementing an effective and results-oriented regulatory system.

DEPARTMENT OF AGRICULTURE

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
1	National Organic Program: Add Standards for the Organic Certification of Wild Captured Aquatic Animals (TM–01–08)	0581–AB97	Prerule Stage
2	National Dairy Promotion and Research Program (DA–02–03)	0581–AC16	Proposed Rule Stage
3	Livestock Mandatory Reporting Program-Lamb Amendment (LS–01–08)	0581–AB98	Final Rule Stage
4	Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Fish, Perishable Agricultural Commodities, and Peanuts (LS–03–04)	0581–AC26	Final Rule Stage
5	Chronic Wasting Disease in Elk and Deer; Interstate Movement Restrictions and Payment of Indemnity	0579–AB35	Proposed Rule Stage
6	Bovine Spongiform Encephalopathy: Minimal Risk Regions and Importation of Commodities	0579–AB73	Proposed Rule Stage
7	Foot-and-Mouth Disease; Payment of Indemnity	0579–AB34	Final Rule Stage
8	Agricultural Bioterrorism Protection Act of 2002; Possession, Use, and Transfer of Biological Agents and Toxins	0579–AB47	Final Rule Stage
9	Multi-Family Housing (MFH) Reinvention	0575–AC13	Final Rule Stage
10	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions to WIC Food Packages	0584–AD39	Prerule Stage
11	Commodity Supplemental Food Program (CSFP): Plain Language, Program Accountability, and Program Flexibility	0584–AC84	Proposed Rule Stage
12	Food Stamp Program: Simplification and State Flexibility	0584–AD22	Proposed Rule Stage
13	FSP: High Performance Bonuses	0584–AD29	Proposed Rule Stage
14	FSP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002	0584–AD30	Proposed Rule Stage
15	FSP: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002	0584–AD32	Proposed Rule Stage
16	Senior Farmers' Market Nutrition Program (SFMNP)	0584–AD35	Proposed Rule Stage
17	FSP: Discretionary Quality Control Provisions of Title IV of Public Law 107–171	0584–AD37	Proposed Rule Stage
18	Child and Adult Care Food Program: Improving Management and Program Integrity	0584–AC24	Final Rule Stage
19	Food Stamp Program: Vehicle and Maximum Excess Shelter Expense Deduction Provisions of Public Law 106–387	0584–AD13	Final Rule Stage
20	FSP: Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171	0584–AD31	Final Rule Stage
21	Performance Standards for Bacon	0583–AC49	Proposed Rule Stage
22	Egg and Egg Products Inspection Regulations	0583–AC58	Proposed Rule Stage
23	Elimination of Chilling Time and Temperature Requirements for Ready-To-Cook Poultry	0583–AC87	Proposed Rule Stage
24	Emergency Regulations To Prevent Meat Food and Meat Products That May Contain the BSE Agent From Entering Commerce	0583–AC88	Proposed Rule Stage
25	Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems	0583–AD00	Proposed Rule Stage
26	Performance Standards for Ready-To-Eat Meat and Poultry Products	0583–AC46	Final Rule Stage
27	Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products	0583–AC60	Final Rule Stage
28	National Forest System Land Management Planning	0596–AB86	Final Rule Stage
29	National Security Emergency	0570–AA48	Proposed Rule Stage
30	Renewable Energy Systems and Energy Efficiency Improvements	0570–AA50	Proposed Rule Stage
31	Conservation Security Program	0578–AA36	Proposed Rule Stage

DEPARTMENT OF COMMERCE

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
32	Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP)	0648–AN17	Proposed Rule Stage

DEPARTMENT OF DEFENSE

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
33	Programmatic Regulations for the Comprehensive Everglades Restoration Plan	0710–AA49	Final Rule Stage

DEPARTMENT OF EDUCATION

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
34	Reauthorization of the Individuals With Disabilities Education Act	1820–AB54	Prerule Stage

DEPARTMENT OF ENERGY

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
35	Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces	1904–AA78	Prerule Stage
36	Energy Efficiency Standards for Electric Distribution Transformers	1904–AB08	Prerule Stage
37	Energy Efficiency Standards for Commercial Central Air Conditioning Units and Heat Pumps Rated 65–240 kBtus/Hr	1904–AB09	Prerule Stage
38	Worker Safety and Health	1901–AA99	Proposed Rule Stage
39	Radiation Protection of the Public and the Environment	1901–AA38	Final Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
40	Health Insurance Portability and Accountability Act—Enforcement	0991–AB29	Proposed Rule Stage
41	Requirements Governing the Use of Seclusion and Restraint in Certain Nonmedical Community-Based Facilities for Children and Youth	0930–AA10	Proposed Rule Stage
42	Prevention of Salmonella Enteritidis in Shell Eggs	0910–AC14	Proposed Rule Stage
43	Exception From General Requirements for Informed Consent; Request for Comments and Information	0910–AC25	Proposed Rule Stage
44	Toll-Free Number for Reporting Adverse Events on Labeling for Human Drugs	0910–AC35	Proposed Rule Stage
45	Definition of “Serious Adverse Health Consequences” Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002	0910–AF06	Proposed Rule Stage
46	Use of Ozone-Depleting Substances: Removal of Essential Use Designation; Albuterol	0910–AF18	Proposed Rule Stage
47	Labeling for Human Prescription Drugs; Revised Format	0910–AA94	Final Rule Stage
48	Safety Reporting Requirements for Human Drug and Biological Products	0910–AA97	Final Rule Stage
49	CGMP for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection (Lookback)	0910–AB76	Final Rule Stage

DEPARTMENT OF HEALTH AND HUMAN SERVICES (Continued)

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
50	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements	0910–AB88	Final Rule Stage
51	Bar Code Label Requirements for Human Drug Products and Blood	0910–AC26	Final Rule Stage
52	Administrative Detention of Food for Human or Animal Consumption Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002	0910–AC38	Final Rule Stage
53	Establishment and Maintenance of Records Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002	0910–AC39	Final Rule Stage
54	Smallpox Vaccine Injury Compensation Program: Administrative Implementation	0906–AA61	Final Rule Stage
55	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P)	0938–AG82	Proposed Rule Stage
56	Hospital Conditions of Participation: Requirements for Approval and Reapproval of Transplant Centers To Perform Organ Transplants (CMS–3835–P)	0938–AH17	Proposed Rule Stage
57	Organ Procurement Organization Conditions for Coverage (CMS–3064–P)	0938–AK81	Proposed Rule Stage
58	Use of Restraint and Seclusion in Medicare and Medicaid Participating Facilities That Provide Inpatient or Residential Care (CMS–2130–P)	0938–AL26	Proposed Rule Stage
59	Prospective Payment System for Inpatient Psychiatric Facilities FY 2004 (CMS–1213–F)	0938–AL50	Proposed Rule Stage
60	Hospital Patients' Rights CoP-Standard Safety Compliance Committees (CMS–3120–P)	0938–AM39	Proposed Rule Stage
61	Use of Restraint and Seclusion in Residential Treatment Facilities Providing Inpatient Psychiatric Services to Individuals Under Age 21 (CMS–2065–F)	0938–AJ96	Final Rule Stage
62	Revisions to the Medicare Appeals Process (CMS–4004–FC)	0938–AL67	Final Rule Stage
63	Revisions to the Appeals Process for Initial Claim Determinations (CMS–4064–F)	0938–AM73	Final Rule Stage

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
64	Treble Damages for Failure To Engage in Loss Mitigation (FR–4553)	2501–AC66	Proposed Rule Stage
65	The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac (FR–4790)	2501–AC92	Proposed Rule Stage
66	American Dream Downpayment Initiative (FR–4832)	2501–AC93	Final Rule Stage
67	Disposition of HUD-Owned Single Family Assets in Asset Control Areas (FR–4471)	2502–AH40	Proposed Rule Stage
68	Revisions to FHA Credit Watch Termination Initiative (FR–4625)	2502–AH60	Final Rule Stage
69	Lender Accountability for Appraisals (FR–4722)	2502–AH78	Final Rule Stage
70	Community Development Block Grant Program Revision of CDBG Eligibility and National Objective Regulations (FR–4699)	2506–AC12	Proposed Rule Stage
71	Capital Fund Program (FR–4880)	2577–AC50	Proposed Rule Stage

DEPARTMENT OF THE INTERIOR

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
72	Endangered Species and Pesticide Regulation	1018–AI95	Proposed Rule Stage
73	Snowmobile Regulations for Yellowstone and Grand Teton National Parks and JDR Parkway	1024–AD11	Final Rule Stage
74	Relief or Reduction in Royalty Rates—Deep Gas Provisions	1010–AD01	Final Rule Stage

DEPARTMENT OF JUSTICE

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
75	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities	1190–AA44	Proposed Rule Stage
76	Nondiscrimination on the Basis of Disability in State and Local Government Services	1190–AA46	Proposed Rule Stage

DEPARTMENT OF LABOR

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
77	Family and Medical Leave Act of 1993	1215–AB35	Proposed Rule Stage
78	Child Labor Regulations, Orders, and Statements of Interpretation (ESA/W–H)	1215–AA09	Final Rule Stage
79	Defining and Delimiting the Term "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity" (ESA/W–H)	1215–AA14	Final Rule Stage
80	Trade Adjustment Assistance for Workers	1205–AB32	Proposed Rule Stage
81	Labor Certification Process for the Permanent Employment of Aliens in the United States	1205–AA66	Final Rule Stage
82	Senior Community Service Employment Program	1205–AB28	Final Rule Stage
83	Rulemaking Relating to Termination of Abandoned Individual Account Plans	1210–AA97	Proposed Rule Stage
84	Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996	1210–AA54	Final Rule Stage
85	Rulemaking Relating to Notice Requirements for Continuation of Health Care Coverage	1210–AA60	Final Rule Stage
86	Prohibiting Discrimination Against Participants and Beneficiaries Based on Health Status	1210–AA77	Final Rule Stage
87	Asbestos Exposure Limit	1219–AB24	Proposed Rule Stage
88	Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners	1219–AB29	Final Rule Stage
89	Occupational Exposure to Hexavalent Chromium (Preventing Occupational Illness: Chromium)	1218–AB45	Prerule Stage
90	Occupational Exposure to Crystalline Silica	1218–AB70	Prerule Stage
91	Assigned Protection Factors: Amendments to the Final Rule on Respiratory Protection	1218–AA05	Final Rule Stage
92	Fire Protection in Shipyard Employment (Part 1915, Subpart P) (Shipyards: Fire Safety)	1218–AB51	Final Rule Stage
93	Standards Improvement (Miscellaneous Changes) for General Industry, Marine Terminals, and Construction Standards (Phase II)	1218–AB81	Final Rule Stage
94	Uniformed Services Employment and Reemployment Rights Act Regulations	1293–AA09	Proposed Rule Stage

DEPARTMENT OF TRANSPORTATION

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
95	Computer Reservations System Regulations Comprehensive Review	2105–AC65	Final Rule Stage
96	Flight Simulation Device Qualification	2120–AH07	Final Rule Stage
97	Reforming the Automobile Fuel Economy Standards Program	2127–AJ17	Prerule Stage
98	Side Impact Protection Upgrade—Standard 214	2127–AJ10	Proposed Rule Stage

DEPARTMENT OF THE TREASURY

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
99	Revision of Brewery Regulations and Issuance of Regulations for Taverns on Brewery Premises (Brewpubs)	1513–AA02	Proposed Rule Stage

DEPARTMENT OF VETERANS AFFAIRS

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
100	Enrollment-Provision of Hospital and Outpatient Care to Veterans-Subpriorities of Priority Categories 7 and 8 and Enrollment Level Decision	2900–AL51	Final Rule Stage

ENVIRONMENTAL PROTECTION AGENCY

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
101	Endocrine Disruptor Screening Program; Priority Setting Criteria	2070–AD59	Prerule Stage
102	Electric Utility Steam Generating Unit MACT Regulation	2060–AJ65	Proposed Rule Stage
103	Implementation Rule for PM–2.5 NAAQS	2060–AK74	Proposed Rule Stage
104	Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Allowables Plantwide Applicability Limit (PAL), Aggregation, and Debottlenecking	2060–AL75	Proposed Rule Stage
105	Lead-Based Paint Activities; Training and Certification for Renovation and Remodeling	2070–AC83	Proposed Rule Stage
106	Pesticides; Emergency Exemption Process Revisions	2070–AD36	Proposed Rule Stage
107	Acceptability of Research Using Human Subjects	2070–AD57	Proposed Rule Stage
108	Endocrine Disrupter Screening Program; Implementing the Screening and Testing Phase	2070–AD61	Proposed Rule Stage
109	NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors	2050–AE01	Proposed Rule Stage
110	Standards for the Management of Coal Combustion Wastes Generated by Commercial Electric Power Producers	2050–AE81	Proposed Rule Stage
111	Increase Metals Reclamation From F006 Waste Streams	2050–AE97	Proposed Rule Stage
112	Standards and Practices for Conducting “All Appropriate Inquiry”	2050–AF04	Proposed Rule Stage
113	Regulatory Amendments to the F019 Hazardous Waste Listing To Exclude the Wastewater Treatment Sludges From the Chemical Conversion Coating Process (Zinc Phosphating) of Automobile Bodies of Aluminum	2050–AG15	Proposed Rule Stage
114	Watershed Rule: Total Maximum Daily Load (TMDL) Program Revisions	2040–AD82	Proposed Rule Stage
115	NESHAP: Plywood and Composite Wood Products	2060–AG52	Final Rule Stage
116	NESHAP: Reciprocating Internal Combustion Engine	2060–AG63	Final Rule Stage
117	NESHAP: Industrial, Commercial, and Institutional Boilers and Process Heaters	2060–AG69	Final Rule Stage
118	NESHAP: Surface Coating of Automobiles and Light-Duty Trucks	2060–AG99	Final Rule Stage
119	Implementation Rule for 8-hour Ozone NAAQS	2060–AJ99	Final Rule Stage
120	Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel	2060–AK27	Final Rule Stage
121	Hazardous Waste Manifest Regulation	2050–AE21	Final Rule Stage
122	Management of Cement Kiln Dust (CKD)	2050–AE34	Final Rule Stage
123	Standardized Permit for RCRA Hazardous Waste Management Facilities	2050–AE44	Final Rule Stage
124	Office of Solid Waste Burden Reduction Initiative	2050–AE50	Final Rule Stage
125	Recycling of Cathode Ray Tubes (CRTs) and Mercury-Containing Equipment: Changes to Hazardous Waste Regulations	2050–AE52	Final Rule Stage
126	National Primary Drinking Water Regulations: Groundwater Rule	2040–AA97	Final Rule Stage
127	National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule	2040–AD37	Final Rule Stage
128	National Primary Drinking Water Regulations: Stage 2 Disinfection Byproducts Rule	2040–AD38	Final Rule Stage
129	Effluent Guidelines and Standards for the Construction and Development Industry	2040–AD42	Final Rule Stage
130	Minimizing Adverse Environmental Impact From Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 2	2040–AD62	Final Rule Stage

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
131	Coordination of Retiree Health Benefits With Medicare and State Health Benefits	3046–AA72	Final Rule Stage

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
132	Federal Records Management	3095–AB16	Prerule Stage

PENSION BENEFIT GUARANTY CORPORATION

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
133	Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets	1212–AA55	Proposed Rule Stage

RAILROAD RETIREMENT BOARD

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
134	Electronic Filing of Applications and Claims for Benefits Under the Railroad Unemployment Insurance Act	3220–AB57	Proposed Rule Stage
135	Application for Annuity or Lump Sum	3220–AB55	Final Rule Stage

SMALL BUSINESS ADMINISTRATION

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
136	Small Business Lending Companies Regulations	3245–AE14	Proposed Rule Stage
137	Small Business Size Standards; Restructuring of Size Standards	3245–AF11	Proposed Rule Stage

SOCIAL SECURITY ADMINISTRATION

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
138	Privacy and Disclosure of Official Records and Information (711P)	0960–AE88	Proposed Rule Stage
139	Federal Salary Offset (Withholding a Portion of a Federal Employee's Salary To Collect a Delinquent Debt Owed to the Social Security Administration) (721P)	0960–AE89	Proposed Rule Stage
140	Representative Payment Under Titles II, VIII, and XVI of the Social Security Act (949F)	0960–AF83	Proposed Rule Stage
141	Elimination of Clothing From the Definitions of Income and In-Kind Support and Maintenance, Exclusions of One Automobile, and Household Goods and Personal Effects Under SSI From Resources (950P)	0960–AF84	Proposed Rule Stage
142	Evidence Requirement for Assignment of Social Security Numbers (SSNs); Assignment of SSNs to Foreign Students (960P)	0960–AF87	Proposed Rule Stage

SOCIAL SECURITY ADMINISTRATION (Continued)

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
143	Amendments to the Ticket to Work and Self-Sufficiency Program (967P)	0960–AF89	Proposed Rule Stage
144	Elimination of Parent-to-Child Deeming for Individuals Who No Longer Meet the Definition of Spouse of the Natural or Adoptive Parent (793P)	0960–AF96	Proposed Rule Stage
145	Administrative Wage Garnishment (To Repay a Debt Owed to the Social Security Administration) (724F)	0960–AE92	Final Rule Stage
146	OASDI and SSI; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration (737F)	0960–AE97	Final Rule Stage
147	Revised Medical Criteria for Evaluating Impairments of the Digestive System (800F)	0960–AF28	Final Rule Stage
148	Continuation of Benefit Payment to Certain Individuals Who Are Participating in a Program of Vocational Rehabilitation Services, Employment Services, or Other Support Services (925F)	0960–AF86	Final Rule Stage
149	Administrative Review Process; Incorporation by Reference of Oral Findings of Fact and Rationale in Wholly Favorable Written Decisions (964I)	0960–AF92	Final Rule Stage

NATIONAL INDIAN GAMING COMMISSION

Sequence Number	Title	Regulation Identification Number	Rulemaking Stage
150	Technical Standards for Game Classifications, Gaming Machines, and Gaming Systems	3141–AA29	Proposed Rule Stage

DEPARTMENT OF AGRICULTURE (USDA)

Statement of Regulatory Priorities

In 2004, USDA plans to issue a variety of regulations that address a wide range of agricultural issues. Our principle focus will be the continued implementation of the Farm Security and Rural Investment Act of 2002 (Farm Bill) as farmers, ranchers, and other USDA customers participate in new and existing Federal farm programs. While the Farm Bill and other future legislative initiatives are implemented, the Department is working to reduce the regulatory burden on program participants by focusing as much as possible on outcome-based regulation through implementing more efficient and simplified information collections and continuing to migrate to efficient electronic services and capabilities. Important areas of activity include the following:

- USDA will develop new regulations and review existing ones that address the potential threats posed by domestic outbreaks of exotic animal diseases such as Foot-and-Mouth Disease (FMD) and Bovine Spongiform Encephalopathy (BSE).
- In the area of food safety, the Department will continue to refine existing regulations to assist industry in implementing a consistent, science-based process control system that yields the best outcomes. Further, USDA is developing new regulations that address emerging and exotic threats to the safety of the Nation's meat, poultry, and egg products supply.
- The Department is also improving regulations that serve rural communities. Regulations are being streamlined and simplified so that they will be more customer friendly, while providing for more efficient and effective program management.
- Nutrition programs are being improved to strengthen dietary quality for children and low-income participants, while also improving the efficiency and integrity of program operations.
- The Department will continue to develop regulations that support alternative markets for agricultural products and activities, such as biobased products and bioenergy processes.

Reducing Paperwork Burden on Customers

The Department has made substantial progress in implementing the goal of the Paperwork Reduction Act of 1995 to reduce the burden of information collection on the public. To meet the requirements of the Government Paperwork Elimination Act (GPEA), agencies across the Department are providing electronic alternatives to their traditionally paper-based customer transactions. The Farm Service Agency, Natural Resources Conservation Service, Rural Development, and Risk Management Agency continue supporting the objectives of the Freedom to E-File Act through their efforts to comply with GPEA. [Freedom to E-File directed the agencies, to the maximum extent practicable, to modify forms into user-friendly formats with user instructions and to permit those forms to be downloaded and submitted via facsimile, mail, or similar means.] As a result, producers should have the option to electronically file forms and all other documentation. Complimentary to the activities to comply with GPEA, the Department is implementing an electronic authentication capability that allows customers to "sign-on" once and conduct business with all USDA agencies. Underlying these efforts will be analyses to identify and eliminate redundant data collections and streamline collection instructions. The end result of implementing these initiatives will be better service to our customers so that they can choose when and where to conduct business with USDA.

The Role of Regulations

The programs of the Department are diverse and far reaching, as are the regulations that attend their delivery. Regulations codify how the Department will conduct its business, including the specifics of access to, and eligibility for, USDA programs. Regulations also specify the responsibilities of State and local governments, private industry, businesses, and individuals that are necessary to comply with their provisions.

The diversity in purpose and outreach of our programs contributes significantly to the USDA being near the top of the list of departments that produce the largest number of regulations annually. These regulations range from nutrition standards for the school lunch program, to natural resource and environmental measures governing national forest usage and soil conservation, to regulations protecting American agribusiness (the largest dollar value contributor to exports) from the ravages of domestic or foreign plant or animal pestilence, and they extend from farm to supermarket to ensure the safety, quality, and availability of the Nation's food supply.

Many regulations function in a dynamic environment, which requires their periodic modification. The factors determining various entitlement, eligibility, and administrative criteria often change from year to year. Therefore, many significant regulations must be revised annually to reflect changes in economic and market benchmarks.

Almost all legislation that affects departmental programs has accompanying regulatory needs, often with a significant impact. The Farm Security and Rural Investment Act of 2002, Public Law 107-171, has had considerable regulatory consequences. This key legislation affects most agencies of USDA and resulted in the addition of new programs, the deletion of others, and modification to still others. In addition, the Agricultural Risk Protection Act of 2000, Public Law 106-224, provides further assurances that agricultural programs will continue to achieve long-term improvements, particularly in reforms to the crop insurance programs. The 2002 legislation also provides for improvements in market loss and conservation assistance, crop and livestock disease pest protection, marketing program enhancements, child nutrition program measures, pollution control, and research and development for biomass.

Major Regulatory Priorities

Nine agencies are represented in this regulatory plan. They include the Farm Service Agency, the Food and Nutrition Service, the Food Safety and Inspection Service, the Animal and Plant Health Inspection Service, the Agricultural Marketing Service, the Forest Service, the Natural Resources Conservation Service, the Rural Housing Service, and the Rural Business-Cooperative Service. This document represents summary information on prospective significant regulations as called for in Executive Order 12866. A brief comment on each of the eight agencies appears below, which summarizes the Agency mission and its key regulatory priorities. The Agency summaries are followed by the regulatory plan entries.

Farm Service Agency

Mission: The Farm Service Agency's (FSA) mission is to stabilize farm income, assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources, provide credit to new or disadvantaged farmers and ranchers, and help farm operations recover from the effects of disaster, as prescribed by various statutes.

Priorities: FSA's priority for 2004 will be to continue implementing the 2002 Farm Bill, the Farm Security and Rural Investment Act of 2002. The 2002 Farm Bill governs Federal farm programs for 2003 through 2007. Among its major provisions, it provides income support for wheat, feed grains, upland cotton, rice, and oilseeds through three programs: Direct payments, counter-cyclical payments, and marketing loans. Support for peanuts changed from a price support program with marketing quotas to a program with marketing loans, counter-cyclical payments, direct payments, and a quota buyout. These new programs required complete revision of the existing program regulations. The Agency's focus will be to implement the changes in such a way as to provide benefits while minimizing program complexity and regulatory burden for program participants. Opportunities will be taken to clarify, simplify, and reduce confusion whenever possible. However, the Agency's ability to promote new policy initiatives when implementing these regulations is limited, due to the need to adhere to legislative intent. Therefore, due to their economic magnitude, they are noted here to acknowledge their significance in the overall USDA regulatory plan but are not further listed in the body of the plan that appears below.

The 2002 Farm Bill exempts most of the new programs from the requirements of the Paperwork Reduction Act of 1995. However, FSA is still committed to the Act's goal of reducing the information collection burden on the public. New information collections are being designed to minimize our customers' time and cost to participate in the programs, while maintaining program integrity. In addition, FSA is streamlining its existing farm loan making and servicing regulations and reducing the information collection burden associated with the programs. FSA plans to reduce the number of CFR parts containing its farm loan program regulations by approximately 70 percent. FSA also hopes to achieve a significant reduction in the total number of CFR pages by removing administrative provisions and internal policy and eliminating duplicative material. Furthermore, FSA intends to improve the clarity of the farm loan program regulations by following the guidelines established in the Plain Language in Government Writing Initiative.

As part of this project, all farm loan program regulations and internal Agency directives will be completely rewritten.

FSA has completed the streamlining of the Guaranteed Loan Program, the Indian Tribal Land Acquisition Loan Program, the Emergency Loan Program, and portions of the Direct Loan Program. The balance of the Direct Loan Program will be published in two separate rulemaking packages, one streamlining the loan-making process for farm ownership and operating loans and servicing of direct loans, and another streamlining special loan programs, including boll weevil eradication, drainage and irrigation, and grazing associations.

Finally, FSA continues to be a full participant in the USDA Electronic Access Initiative and continues to work with other USDA County-Based Agencies to implement the Government Paperwork Elimination Act as we migrate to an environment where a greater proportion of information exchange and transaction processing occurs through off-site alternatives. Key components include: Providing farm program information, availability, and eligibility requirements electronically; providing on-line information collection and transaction processing capability; and developing information collection and management partnerships to integrate information collection and sharing mechanisms among service providers. In a continuing effort to accomplish these goals, all FSA information collections, forms, and procedures are reviewed for their applicability to electronic submission and collection. FSA has identified and made accessible on-line approximately the majority of the forms used by farm program and farm loan program customer groups. Most of these forms are available for electronic submission. The Agency intends to provide full electronic access and submission capabilities to the commodity operations customer group in 2003.

Food and Nutrition Service

Mission: FNS increases food security and reduces hunger in partnership with cooperating organizations by providing children and low-income people access to food, a healthful diet, and nutrition education in a manner that supports American agriculture and inspires public confidence.

Priorities: In addition to responding to provisions of legislation authorizing and modifying Federal nutrition assistance programs, FNS' 2004 regulatory plan supports the broad goals and objectives in the Agency's strategic plan that include:

Improved nutrition of children and low-income people. This goal represents FNS' efforts to improve nutrition by providing access to program benefits (Food Stamps, WIC food packages, commodities, and State administrative funds), nutrition education, and quality meals and other benefits. It includes three major objectives: 1) improved food security, which reflects nutrition assistance benefits issued to program participants; 2) healthy food choices among FNS program participants, which represents our efforts to improve nutrition knowledge and behavior through nutrition education and breastfeeding promotion, and to support healthy eating and physical activity to address the epidemic of overweight and obesity; and 3) improved nutritional quality of meals, food packages, commodities, and other program benefits, which represents our efforts to ensure that program benefits meet the appropriate nutrition standards to effectively improve nutrition for program participants.

In support of this goal, FNS plans to publish proposed rules and develop final rules implementing provisions of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), as well as under other authorities, that will give States additional new flexibility to streamline complex rules, simplify program administration, support work, and improve access to benefits. This includes provisions to restore food stamp eligibility to legal immigrants who have lived in this country for at least 5 years, as well as immigrant children and disabled, without a waiting period, and other changes that will reduce reporting burden on working families. The Agency also plans to issue an advance notice of proposed rulemaking addressing possible changes to the food packages provided in WIC.

Improved Stewardship of Federal Funds. This goal represents FNS' ongoing commitment to maximize the accuracy of benefits issued, maximize the efficiency and effectiveness of program operations, and minimize participant and vendor fraud. It includes two major objectives: 1) improved benefit accuracy and reduced fraud, which represents the Agency's effort to reduce participant and Agency errors, and to control Food Stamp trafficking and Food Stamp and WIC participant, vendor, and administrative fraud; and 2) improved efficiency of program administration, which represents our efforts to streamline program operations and improve program structures as necessary to maximize their effectiveness.

In support of this goal, FNS plans to publish proposed rules and develop final rules implementing provisions of Public Law 107–171 that give States substantial new flexibility to streamline some of the Food Stamp Program's complex rules, making it easier to administer, less error-prone, and more accessible to those eligible for its benefits. Another pair of rules implementing this law will offer most States relief from costly sanctions related to Food Stamp payment errors, allowing them to focus on program improvements, and will introduce new incentives to reward States for high performance on a variety of important program outcomes. FNS also plans to publish an implementing rule, making changes in Child and Adult Care Food Program (CACFP) rules designed to improve management and financial integrity in this important program.

Food Safety and Inspection Service

Mission: The Food Safety and Inspection Service (FSIS) is responsible for ensuring that meat, poultry, and egg products in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged.

Priorities: FSIS is committed to developing and issuing science-based regulations intended to ensure that meat, poultry, and egg products are wholesome and not adulterated or misbranded. FSIS continues to review its existing authorities and regulations to ensure that emerging food safety challenges are adequately addressed, to streamline excessively prescriptive regulations, and to revise or remove regulations that are inconsistent with the Agency's hazard analysis and critical control point regulations.

In addition to undertaking regulatory amendments based on the results of its review activities, FSIS has been developing regulations for emergency use. Such regulations are an outcome of the Agency's proactive, risk-based policy toward emerging and exotic threats to the safety of the Nation's meat, poultry, and egg product supply.

Following are some of the Agency's recent and planned initiatives:

In February 2001, FSIS proposed a rule to establish food safety performance standards for all processed ready-to-eat (RTE) meat and poultry products and for partially heat-treated meat and poultry products that are not ready-to-eat. The proposal contained provisions addressing post-lethality contamination of RTE products with Listeria monocytogenes. In June 2003, FSIS published an interim final rule requiring establishments that produce RTE products to apply verified control measures to prevent such product contamination. The Agency is planning further action with respect to other elements of the 2001 proposal.

FSIS intends to propose regulations to prohibit for use as human food certain materials from cattle. Scientific studies have demonstrated that such materials from cattle presenting clinical signs of bovine spongiform encephalopathy (BSE) contain the agent that causes the disease. To date, no cases of BSE have been found in the United States cattle herd. However, the USDA response to BSE has been proactive and preventive. In this proposed rule, FSIS seeks to mitigate a foreseeable risk.

FSIS has proposed a rule clarifying requirements for meat produced using advanced recovery systems by replacing the compliance program parameters in the current regulations with non-compliance criteria for bone solids, bone marrow, and neural tissue. Establishments would have to have process control procedures in place before labeling or using the product derived by use of such systems.

FSIS will propose removing from the poultry products inspection regulations the requirement for ready-to-cook poultry products to be chilled to 40 °F or below within certain time periods according to the weight of the dressed carcasses.

In addition, FSIS is planning to propose requirements for federally inspected egg product plants to develop and implement HACCP systems and sanitation standard operating procedures. The Agency will be proposing pathogen reduction performance standards for egg products. Further, the Agency will be proposing to remove requirements for approval by FSIS of egg-product plant drawings, specifications, and equipment prior to use, and to end the system for pre-marketing approval of labeling for egg products.

FSIS will also propose to remove provisions that prescribe the substances and amounts of such substances that must be used to produce pumped bacon. FSIS will propose to replace these prescriptive provisions with an upper limit for nitrite and a performance standard that establishments producing pumped bacon would be required to meet.

Besides the foregoing initiatives, FSIS has proposed requirements for the nutrition labeling of ground or chopped meat and poultry products and single-ingredient products. This proposed rule would require nutrition labeling, on the label or at the point-of-purchase, for the major cuts of single-ingredient, raw products and would require nutrition information on the label of ground or chopped products.

Post-September 11, 2001, initiatives: FSIS has not proposed new regulations in response to the September 11, 2001, events. In 2001, however, FSIS issued non-regulatory security guidelines for food plants within the Agency's jurisdiction, and in August this year, the Agency issued similar guidelines for the transportation and distribution of meat, poultry, and egg products.

Small business concerns: Nearly all FSIS regulations affect small businesses in some way because the majority of FSIS-inspected establishments and other FSIS-regulated entities are small businesses. FSIS makes available to small and very small establishments technical materials and guidance on how to comply with FSIS regulations. The Agency's post-September 11, 2001, security guidance materials were prepared especially for the benefit of small firms involved in the production, transportation, and distribution of meat, poultry, and egg products.

Animal and Plant Health Inspection Service

Mission: The major part of the mission of the Animal and Plant Health Inspection Service (APHIS) is to protect U.S. animal and plant resources from destructive pests and diseases. APHIS conducts programs to prevent the introduction of exotic pests and diseases into the United States and monitors and manages pests and diseases existing in this country. These activities enhance agricultural productivity and competitiveness and contribute to the national economy and the public health.

Priorities: APHIS is reviewing its existing regulations and developing new regulatory initiatives to strengthen the protection provided to plant resources. Planned initiatives include revisions to the regulations for the introduction of organisms and products altered or produced through genetic engineering to reflect new consolidated authorities under the Plant Protection Act and revisions to the regulations for the importation of nursery stock (plants, roots, seeds, bulbs, and other propagative materials) to reduce the pest risk posed by imported propagative material.

The Agency is proceeding with plans to amend the regulations for the importation of unmanufactured wood by adopting an international standard for treatment of solid wood packing material.

In recognizing the need to minimize impediments to trade while providing necessary protection to plant resources, APHIS is developing a proposal to streamline the process for approving new fruits and vegetables for importation.

APHIS has regulatory initiatives to ensure that a comprehensive framework is in place to address the threats posed to animal resources. These include initiatives to ensure the adequate valuation of animals and materials, as well as the payment of indemnity, should an outbreak of foot-and-mouth disease occur in the United States, as well as several initiatives related to the group of neurological diseases known as transmissible spongiform encephalopathies, including scrapie (a disease of sheep and goats), bovine spongiform encephalopathy (BSE, which affects cattle), and chronic wasting disease (a disease of deer and elk). BSE-related projects include rulemaking to address the relatively low risks posed by certain imports from countries such as Canada, where BSE has been detected but where effective measures have been in place to prevent its spread through the animal and human food chain. Also, following receipt of comments on an advance notice of proposed rulemaking published earlier this year, APHIS, in coordination with the Department's Food Safety and Inspection Service, is considering various options for addressing the disease risks that may be presented by the disposal of nonambulatory animals and dead stock should BSE be introduced into the United States.

APHIS is also continuing to work with the Centers for Disease Control and Prevention to implement and amend, as necessary, regulations for the possession, use, and transfer of biological agents and toxins that could pose a severe disease or pest risk to animals and plants or their products.

APHIS documents published in the **Federal Register** and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agricultural Marketing Service

Mission: The Agricultural Marketing Service (AMS) facilitates the marketing of agricultural products in domestic and international markets, while ensuring fair trading practices and promoting a competitive and efficient marketplace to the benefit of producers, traders, and consumers of U.S. food and fiber products.

Priorities: (1) On October 27, 2003, AMS published a proposed rule in the Federal Register to amend the Livestock Mandatory Reporting regulations to modify the requirements for the submission of information on domestic and imported boxed lamb cuts sales. This action would amend the definition of "carlot-based" by adding language to limit carlot-based sales of boxed lamb cuts to transactions between a buyer and a seller consisting of 1,000 pounds or more of one or more individually boxed lamb items and amend the definition of "importer" by reducing the volume level of annual lamb imports establishing a person as an importer from 5,000 metric tons of lamb meat products per year to 2,500 metric tons. These amendments would improve AMS' ability to publish meaningful market information on sales of imported and domestic lamb cuts.

(2) As mandated by the 2002 Farm Bill, AMS is establishing a mandatory country of origin program for beef, lamb, pork, fish, perishable agricultural commodities, and peanuts. Under current Federal laws and regulations, country of origin labeling is not universally required for these commodities. In particular, labeling of U.S. origin is not mandatory, and labeling of imported products at the consumer level is required only in certain circumstances. Thus, consumers desiring to purchase products based on country of origin are not fully able to do so. A proposed rule was developed based on interim voluntary guidelines also required by the 2002 Farm Bill that were issued on October 8, 2002, and related input from listening sessions held throughout the country during 2003. The proposed rule was published in the Federal Register on October 30, 2003.

(3) On April 12, 2003, Congress amended the Organic Foods Production Act (OFPA) to authorize certification of wild seafood. In response to this, AMS plans to amend the National Organic Program (NOP) regulations to add practice standards for organic certification of wild-caught and aquatic farm raised species. Under the OFPA, an organic certification program must be established for producers and handlers of agricultural products that have been produced using organic methods. The NOP has been reviewing organic certification of fish including wild-caught and aquaculture operations in response to a FY 2000 congressional mandate to develop regulations for the certification of seafood. The NOP has engaged in public meetings and workshops and conducted public comment proceedings on this subject.

(4) Under the 2002 Farm Bill, the Federal Agriculture Improvement and Reform Act (1996 Farm Bill) was amended to exempt any person that produces and markets solely 100 percent organic products from paying assessments under a commodity promotion law. The 1996 Farm Bill governs all research and promotion programs and certain marketing order programs. AMS plans to issue two proposed rules to implement this requirement. Currently, there are 16 existing national research and promotion programs and 28 marketing order programs that contain market promotion provisions.

AMS Program Rulemaking Pages: All of AMS' rules, as published in the **Federal Register**, are available on the Internet at http://www.ams.usda.gov/rulemaking. This site also includes commenting instructions and addresses, links to news releases and background material, and comments received on various rules.

Forest Service

Mission: The mission of the Forest Service is to sustain the health, productivity, and diversity of the Nation's forests and rangelands to meet the needs of present and future generations. This includes protecting and managing National Forest System lands; providing technical and financial assistance to States, communities, and private forest landowners; and developing and providing scientific and technical assistance.

Priorities:The Forest Service's priority for fall 2003 is to publish final regulations at 36 CFR part 219, subpart A, to establish a framework for National

Forest System land management planning. The final rule reaffirms an emphasis on sustainability to provide for multiple uses over time and reaffirms an adaptive cycle of land management planning, including detailed project planning, plan implementation, monitoring, evaluation, and plan amendment or revision. The final rule is based on the principle that plans provide a framework for subsequent detailed project analysis and that analysis and disclosure are continuous throughout the adaptive planning cycle. A proposed rule was published in the **Federal Register** on December 6, 2002 (67 FR 72770).

Natural Resources Conservation Service

Mission: As a part of USDA Natural Resources Conservation Service (NRCS) works to improve natural resources conditions on working lands. NRCS helps farmers, ranchers, and operators by providing technical and financial assistance for adopting conservation practices on their lands.

Priorities: A key priority for NRCS is to implement the Conservation Security Program (CSP), authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171, May 13, 2002) (the Act) amended the Food Security Act of 1985 (16 U.S.C. 3801 et seq.). The CSP is a voluntary program that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and range land, as well as forested land and other non-cropped areas that are an incidental part of the agriculture operation.

Rural Housing Service

Mission: As a part of USDA Rural Development, Rural Housing Service (RHS) works to improve the quality of life in rural areas. RHS helps rural communities and individuals by providing loans and grants for housing and community facilities. The Agency provides funding for single-family homes, apartments for low-income persons or the elderly, housing for farm laborers, childcare centers, fire and police stations, hospitals, libraries, nursing homes, and schools.

Priorities: A key priority for RHS is to identify ways to improve customer service, ensure borrower accountability and performance, and streamline the administration of its Multi-Family Housing (MFH) programs. These programs include the section 515 Rural Rental Housing (RRH) loan program, the section 514/516 Farm Labor Housing loan and grant programs, and the section 521 Rental Assistance (RA) program.

The new regulation substantially updates the current regulations and programs to current industry practices. Many of the current regulations had not been substantially updated for over 15 years. The new regulation consolidates the 13 current regulations that govern the programs. The new regulation and three handbooks substantially reduce the number of pages published in the Code of Federal Regulations.

Significant automation initiatives have been implemented since the current regulations were written. The regulation addresses the permanent implementation of several pilot automation projects along with other innovative e-government improvements.

The regulation focuses on the challenge of the Agency's aging portfolio. Areas such as conducting comprehensive needs analyses, reserve account administration, financial statement standards, and tenant quality of life issues are addressed.

As part of the regulatory process, RHS has solicited input from MFH program stakeholders, including borrowers (who are also owners of the projects), management agents, tenant representatives, State housing finance agencies, accounting firms and the USDA, Office of Inspector General (OIG). The Agency has held several stakeholders meetings on issues that needed to be considered before proposing to revise the regulations. Stakeholders concurred with RHS that the MFH regulations were in need of a substantial revision, particularly with regard to asset management, housing preservation, and financial reporting.

The new regulation was published in the **Federal Register** as a proposed rule on June 2, 2003. We received 2,965 comments from 136 respondents. The Agency is now reviewing those comments and preparing the Final Rule Document for an estimated publication date of June 30, 2004.

Rural Business-Cooperative Service

Mission: The mission of the Rural Business-Cooperative Service is to enhance the quality of life for rural Americans by providing leadership in building competitive businesses including sustainable cooperatives that can prosper in the global marketplace.

We meet these goals by:

Investing financial resources and providing technical assistance to businesses and cooperatives located in rural communities; and

Establishing strategic alliances and partnerships that leverage public, private, and cooperative resources to create jobs and stimulate rural economic activity.

Priorities: The key regulatory priority for the fall 2003 regulatory plan is the RBS Renewable Energy Systems and Energy Efficiency Improvements Proposed Rule.

Renewable Energy Systems and Energy Efficiency Improvements.

This proposed rule resulted from section 9006 of the Farm Security and Rural Investment Act of 2002 (Act), which requires that the Secretary establish a program to "make loans, loan guarantees, and grants to farmers, ranchers, and rural small businesses to purchase renewable energy systems and make energy efficiency improvements." The Act directs that, in funding such projects, USDA direct and guaranteed loans and grant financing is not to exceed 50 percent of the cost of the activity and grant-only funding is not to exceed 25 percent of the cost of the activity.

Since this is a new program, guidelines need to be established concerning the nature of the program and the delivery model to be used, so that a full set of implementation policies can be developed. The Office of General Counsel has mandated that regulations must be in place to operate the program. The proposed rule will establish regulations to implement the direct and guaranteed loan and grant program. These regulations will allow for the integration of all program authorities and permit full attention to all of the potential contingencies and issues.

USDA—Agricultural Marketing Service (AMS)

PRERULE STAGE

1. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR THE ORGANIC CERTIFICATION OF WILD CAPTURED AQUATIC ANIMALS (TM–01–08)

Priority:

Other Significant

Legal Authority:

7 USC 6501 through 6522

CFR Citation:

7 CFR 205

Legal Deadline:

None

Abstract:

AMS is revising regulations pertaining to labeling of agricultural products as organically produced and handled (7 CFR part 205). The term "aquatic animal" will be incorporated in the definition of livestock and to establish production and handling standards for operations that capture aquatic animals from the wild. AMS has defined "aquatic animal" as any finfish or shellfish used for human consumption, whether taken from regulated but free roaming marine and fresh water populations (wild captured) or propagated and raised in a controlled or selected environment (aquaculture). Production standards for operations producing aquatic animals will incorporate requirements for livestock origin, feed ration, health care, living conditions, and recordkeeping. Handling standards for such operations will address prevention of commingling of organically produced commodities and prevention of contact between organically produced and prohibited substances.

Statement of Need:

This amendment to the National Organic Program is intended to facilitate interstate commerce and marketing of fresh and processed aquatic animals that are organically produced and to assure consumers that such products meet consistent, uniform standards. This amendment will establish national standards for the production and handling of organically produced aquatic animals and products, including a national list of substances approved and prohibited for use in organic production and handling.

Summary of Legal Basis:

This amendment is proposed under the Organic Foods Production Act of 1990 (OFPA). OFPA includes fish for food in its definition of livestock. Additionally, on April 12, 2003, Congress amended OFPA section 2107 (7 U.S.C. 6506) to authorize certification of wild seafood.

Alternatives:

AMS is fulfilling a congressional mandate to proceed with rulemaking for the establishment of national standards for the organic production and handling of aquatic animals.

Other options are to do nothing or to proposed regulations prohibiting the labeling of aquatic animals as organically produced. Neither alternative is viable inasmuch as Congress has amended OFPA to authorize certification of wild seafood and is expecting the USDA to engage in rulemaking to establish standards for the production, handling, and labeling of organic aquatic animals.

Anticipated Cost and Benefits:

Potential benefits to consumers include more information on organic aquatic animals and protection from false and misleading organic claims. This proposal will address the problem of existing certifying agents using different standards. This proposal will also resolve the issue of whether aquatic animals can be labeled as organically produced.

The costs of this proposed regulation are the direct costs to comply with the specific standards. USDA—accredited certifying agents potentially will incur additional costs of accreditation should they opt to certify producers and handlers of aquatic animals. New applicants for accreditation to certify producers and handlers of aquatic animals under the National Organic Program will incur fees for accreditation. Producers and handlers of organically produced and handled aquatic animals will incur costs for certification levied by USDA—accredited certifying agents. USDA would not levy any fees on the certified operations. Producers and handlers will face numerous provisions that will regulate their production and handling methods. Retailers would not be directly regulated but would be subject to the same requirements for organic animals and products as they are currently for other foods under the NOP. AMS believes this action will have a minimal impact on retailers. Certified handlers will have to comply with requirements regarding the approved use of labels. The USDA, states operating State programs, and certifying agents will incur costs for enforcement of these new organic standards. Certifying agents, producers, and handlers would incur costs for reporting and recordkeeping. Certifying agents will be required to file reports and documents with the USDA and to maintain records regarding their accreditation and the certification of their clients. Certified operations will be required to develop and annually update an organic system plan and to maintain records regarding their certification and the administration of their operation.

Risks:

None.

Timetable:

Action	Date	FR Cite
ANPRM	04/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, Local, State, Tribal

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USDA—AMS

PROPOSED RULE STAGE

2. NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM (DA-02-03)

Priority:

Other Significant

Legal Authority:

7 USC 4501 et seq

CFR Citation:

7 CFR 1150

Legal Deadline:

Final, Statutory, August 2002, Final.

Abstract:

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) amended the Dairy Production and Stabilization Act of 1983 (the authorizing legislation for the National Dairy Promotion and Research Program) concerning implementation of mandatory 15-cent per hundred weight assessment on dairy products imported into the 48 contiguous States and other related amendments.

Statement of Need:

The National Dairy Promotion and Research Program must be amended to conform with the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), which amended the Dairy Promotion and Research Program. The amendments relate to implementation of a mandatory 15-cent per hundred weight assessment on dairy products imported into the 48 contiguous States and other related amendments.

Summary of Legal Basis:

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) mandated changes to the National Dairy Promotion and Research Program.

Alternatives:

None.

Anticipated Cost and Benefits:

The incremental costs associated with the assessments collection on imported dairy products by U.S. Customs will be paid from the program assessments collected. It is estimated that the fees will be approximately $60,000 monthly after start-up. The annual assessment collected will be approximately $9.5 million.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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USDA—AMS

FINAL RULE STAGE

3. LIVESTOCK MANDATORY REPORTING PROGRAM—LAMB AMENDMENT (LS-01-08)

Priority:

Other Significant

Legal Authority:

7 USC 1621

CFR Citation:

7 CFR 59

Legal Deadline:

None

Abstract:

The Agricultural Marketing Service is amending the Livestock Reporting Act of 1999 regulations. The amendments would: (1) Amend regulations requiring lamb packers to report negotiated purchases of live lamb and sales of carcass lamb; (2) adjust requirements for reporting of imported and domestic boxed lamb sales; and (3) make adjustments to input data collection forms. The Act was implemented April 2, 2001, and requires packers to report purchase and sales transactions for cattle, swine, sheep, boxed beef, and lamb meat.

Statement of Need:

These proposed amendments and adjustments to the lamb reporting requirements of the Livestock Mandatory Reporting (LMR) regulations are necessary to ensure that consistent, accurate, and easily understood information on the marketing of domestic and imported boxed lamb cuts is available to producers, packers, and other lamb market participants. The amendment is intended to address problems that have occurred in the collection and publishing of lamb market information in the period since the implementation of the LMR on April 2, 2001.

Summary of Legal Basis:

The Livestock Mandatory Act of 1999 (Act) was enacted into law on October 22, 1999 (Pub. L. 106-78; 113 Stat. 1188; 7 U.S.C. 1635 to 1636(h)) as an amendment to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.). The Act gives USDA the latitude to require mandatory reporting of market information on lamb transactions.

Alternatives:

None.

Anticipated Cost and Benefits:

The Agricultural Marketing Service believes that the lamb industry would be better served by decreasing the lamb importer threshold to 2,500 metric tons of lamb meat products and redefining carlot of boxed lamb cuts to increase the ability to report import product and reduce the volume of inappropriate or incompatible data.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	10/27/03	68 FR 61141
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

State

Federalism:

This action may have federalism implications as defined in EO 13132.

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USDA—AMS

4. • MANDATORY COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, FISH, PERISHABLE AGRICULTURAL COMMODITIES, AND PEANUTS (LS-03-04)

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

7 USC 1621 through 1627, Agricultural Marketing Act of 1946

CFR Citation:

7 CFR 60

Legal Deadline:

Final, Statutory, September 30, 2004, Final.

Abstract:

The Agricultural Marketing Services (AMS) issued a proposed rule on October 30, 2003, to implement a mandatory country of origin labeling program for covered commodities as mandated by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). The Farm Security and Rural Investment Act amended the Agricultural Marketing Act of 1946 to require retailers to notify their customers of the country of origin labeling program not later than September 30, 2004. Covered commodities include muscle cuts of beef (including veal), lamb, and pork; ground beef, ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts.

Statement of Need:

Under current Federal laws and regulations, country of origin labeling is not universally required for the covered commodities. In particular, labeling of U.S. origin is not mandatory, and labeling of imported products at the consumer level is required only in certain circumstances. Thus, consumers generally do not have the ability to purchase products based on country of origin. This intent of the law is to provide consumers with additional information on which to base their purchasing decisions.

Summary of Legal Basis:

Section 10816 of Public Law 107–171 amended the Agricultural Marketing Act of 1946 to require retailers to inform consumers of the country of origin for covered commodities beginning September 30, 2004, and requires USDA to promulgate requirements for the mandatory labeling program no later than September 30, 2004.

Alternatives:

Various methods are being considered by which the objectives of this law could be accomplished. The proposed rule specifically invites comment on several alternatives including alternative definitions for "processed food item," alternative labeling of mixed origin, and alternatives to using "slaughtered" on the label. The proposed rule provides for a 60–day comment period which closes on December 29, 2003. In formulating the final mandatory regulations, the Agency will analyze all of the public comments that were received and will give due consideration to any alternatives brought forth by the commenters.

Anticipated Cost and Benefits:

USDA has examined the economic impact of the proposed rule as required by Executive Order 12866. The estimated benefits associated with this rule are likely to be negligible. The estimated first-year incremental cost for growers, producers, processors, wholesalers, and retailers ranges from $582 million to $3.9 billion. The estimated cost to the U.S. economy in higher food prices and reduced food production in the tenth year after implementation of the rule ranges from $138 million to $596 million. AMS has invited further comment on start up costs and maintenance costs for the first year and beyond for firms directly affected by the proposed rule.

Risks:

AMS has not identified any risks at this time.

Timetable:

Action	Date	FR Cite
NPRM	10/30/03	68 FR 61944
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

State

Federalism:

This action may have federalism implications as defined in EO 13132.

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USDA—Animal and Plant Health Inspection Service (APHIS)

PROPOSED RULE STAGE

5. CHRONIC WASTING DISEASE IN ELK AND DEER; INTERSTATE MOVEMENT RESTRICTIONS AND PAYMENT OF INDEMNITY

Priority:

Other Significant

Legal Authority:

7 USC 8301 to 8316

CFR Citation:

9 CFR 55; 9 CFR 81

Legal Deadline:

None

Abstract:

This rulemaking would establish requirements for the interstate movement of farmed elk and deer and provide indemnity for the depopulation of farmed elk and deer that have been infected with, or exposed to, chronic wasting disease (CWD).

Statement of Need:

CWD has been confirmed in free-ranging deer and elk in a limited number of counties in northeastern Colorado and southeastern Wyoming and has also been diagnosed in farmed elk herds in South Dakota, Nebraska, Oklahoma, Montana, and Colorado. This project includes an interim rule to establish indemnity for voluntary depopulation of CWD-affected herds, followed by rulemaking to establish a voluntary certification program and interstate movement restrictions on captive elk and deer. APHIS believes that establishing restrictions on the interstate movement of infected and exposed farmed elk and deer, coupled with the payment of some level of indemnity for infected and exposed animals, will encourage producers who are not yet engaging in surveillance activities to begin doing so. To date, the level of support from States and the farmed cervid industry for such a program has been high. Without a Federal program in place to depopulate infected and exposed animals, the movement of infected animals into new herds and States with no known infection will continue or may even accelerate. APHIS needs to take action to document the prevalence of the disease and to prevent its further spread.

Summary of Legal Basis:

The Secretary of Agriculture, either independently or in cooperation with other Federal agencies, States or political subdivisions of States, national governments of foreign countries, local governments of foreign countries, domestic or international organizations, domestic or international associations, Indian tribes, and other persons, may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock of the United States, including the payment of claims arising out of the destruction of any animal, article, or means of conveyance, if necessary to prevent the dissemination of the pest or disease of livestock (7 U.S.C. 8305 to 8306, 8308, 8310, and 8315).

Alternatives:

APHIS has identified two additional alternatives to our selected action. The first—to maintain the status quo—was rejected because it would not address the animal disease risks associated with CWD. The second option would have been to provide financial and technical assistance to the cervid industry for continuation and expansion of a variety of herd management practices to reduce or eliminate CWD. Although this option may be less costly than the option chosen by APHIS, this option was not selected because it would not advance CWD eradication as quickly or effectively as the chosen option. However, APHIS will continue to work with industry to develop voluntary herd management practices to preserve and increase the reduction in CWD levels that the proposed program is expected to achieve.

Anticipated Cost and Benefits:

The presence of CWD in elk and deer causes significant economic and market losses to U.S. producers. Recently, Canada has begun to require, as a condition for importing U.S. elk into Canada, that the animals be accompanied by a certificate stating that the herd of origin is not located in Colorado or Wyoming, and CWD has never been diagnosed in the herd of origin. The Republic of Korea recently suspended the importation of deer and elk and their products from the United States and Canada. Fear of CWD can severely affect the domestic prices for deer and elk, as it is more difficult for producers to sell cervid that are associated with any hint of exposure to the disease.

Risks:

Aggressive action in controlling this disease now will decrease the chance of having to deal with a much larger, widespread, and costly problem later, such as the situation with bovine spongiform encephalopathy ("mad cow disease") in Europe. Although there is currently no evidence that CWD is linked to disease in humans, or in domestic animals other than deer and elk, a theoretical risk of such a link exists.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/08/02	67 FR 5925
Interim Final Rule Comment Period End	04/09/02	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

Additional Information:

APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

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USDA—APHIS

6. ● BOVINE SPONGIFORM ENCEPHALOPATHY: MINIMAL RISK REGIONS AND IMPORTATION OF COMMODITIES

Priority:

Other Significant

Legal Authority:

7 USC 450; 7 USC 1622; 7 USC 7701 to 7772; 7 USC 8301 to 8317; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation:

9 CFR 93 to 95

Legal Deadline:

None

Abstract:

This rulemaking would amend the regulations regarding the importation of animals and animal products to recognize a category of regions that present a minimal risk of introducing bovine encephalopathy (BSE) into the United States via live ruminants and ruminant products and would add Canada to this category.

Statement of Need:

BSE is a progressive neurological disorder of cattle that results from infection by an unconventional transmissible agent and is not known to exist in the United States. It appears that BSE is spread primarily through the use of ruminant feed containing protein and other products from ruminants infected with BSE. The regulations in 9 CFR parts 93, 94, 95, and 96 have prohibited the importation of live ruminants and certain ruminant products and byproducts from two categories of regions: Those regions in which BSE is known to exist, and those regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance. Based on a review of the risk presented by regions in which a BSE-affected animal has been diagnosed, but in which precautionary measures have been taken that reduce the risk of BSE being introduced into the United States by imports from such regions, we are developing a rule that would recognize an additional category of regions—the BSE minimal—risk region. The rule would allow the importation of certain live ruminants and ruminant products and byproducts from minimal risk regions under certain conditions and would designate Canada as a minimal-risk region. This action is based on our assessment that the rule would continue to protect against the introduction of BSE into the United States while removing unnecessary prohibitions on certain commodities from Canada and other regions that qualify as BSE minimal-risk regions.

Summary of Legal Basis:

The Animal Health Protection Act (7 U.S.C. 8301 to 8317) provides that regulation of animals and other articles by the Secretary of Agriculture is necessary to prevent and eliminate burdens on interstate and foreign commerce; to effectively regulate interstate commerce and foreign commerce; and to protect the agriculture, environment, economy, and health and welfare of the people of the United States.

Alternatives:

Alternatives to this rulemaking would be to continue to prohibit certain ruminants and ruminant products from entering from Canada or to allow these commodities to enter under less restrictive conditions than are being considered. To continue to prohibit these imports from Canada, when feasible precautionary measures are available, would be contrary to trade policies called for in the World Trade Organization's "Agreement on Sanitary and Phytosanitary Measures." On the other hand, importations without appropriate mitigation measures would subject the United States to an unacceptable risk of BSE introduction. APHIS is committed to ensuring that the ruminant populations of the United States are fully protected from the introduction of BSE and believes that this rule is a balanced, science-based response to the detection of BSE in Canada, given Canada's actions since detection of the disease and the rule's inclusion of appropriate risk mitigation requirements.

Anticipated Cost and Benefits:

On August 8, 2003, the Secretary announced that certain ruminant-derived products would be allowed to enter the United States from Canada under permit. Several of the items included in the announcement are also covered by this rulemaking. The most important one is boneless beef from cattle less than 30 months of age. APHIS has analyzed the potential effects of the importation of commodities covered by the rule, including ones, such as boneless beef, that could be imported under permit on or after August 8, 2003, by comparing U.S. markets with and without these imports from Canada. Slaughter cattle, feeder cattle, and beef would be the main commodities affected by reinstatement of the importation of ruminant and ruminant products from Canada. In the near term, the additional supplies would cause prices to fall. Percentage price declines indicated by the results of the analyses for slaughter, cattle, feeder cattle, and beef suggest that near-term effects on affected entities would not be significant. The price declines would be accompanied by an increase in the number of cattle slaughtered and a decrease in the number of slaughtered cattle supplied by U.S. entities. These changes translate into a positive net benefit in the near term. It is emphasized that the estimated effects would be near term, occurring during the first year or so following the reestablishment of imports. In the longer term, production and marketing adjustments by U.S. and Canadian firms, and those in other countries in response to changed market conditions, would create new price-quantity equilibriums. Also, if other countries do not accept the age restrictions and other precautionary measures as adequate safeguards, U.S. exports of those commodities could be affected.

Risks:

On May 20, 2003, the Canadian Food Inspection Agency reported a case of BSE in a beef cow in northern Alberta. To prevent the introduction of BSE into the United States, APHIS published an interim rule on May 29, 2003 (68 FR 31939–31940, Docket No. 03–058–1), effective retroactively to May 20, 2003, to add Canada to the list of regions where BSE exists. As a result of that action, the importation of ruminants that have been in Canada and the importation of meat, meat products, and certain other products and byproducts of ruminants that have been in Canada are prohibited or restricted. This rulemaking would relieve restrictions on the importation of ruminants and ruminant products and byproducts from Canada by establishing Canada as a BSE minimal-risk region based on an analysis of the conditions considered for such a designation and the information available regarding how Canada meets those conditions. The risk document, "Risk Analysis: BSE Risk From Importation of Designated Ruminants and Ruminant Products From Canada Into the United States, September 5, 2003," also identifies the measures that APHIS believes are necessary to mitigate any BSE risk that specific commodities imported from Canada might present to the United States.

Timetable:

Action	Date	FR Cite
NPRM	11/04/03	68 FR 62386
NPRM Comment Period End	01/05/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal

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USDA—APHIS

FINAL RULE STAGE

7. FOOT-AND-MOUTH DISEASE; PAYMENT OF INDEMNITY

Priority:

Other Significant

Legal Authority:

7 USC 8301 to 8317

CFR Citation:

9 CFR 53

Legal Deadline:

None

Abstract:

This rule would amend the regulations for the cooperative control and eradication of foot-and-mouth disease (FMD) and other serious diseases, including both cooperative programs and extraordinary emergencies. The purpose of this rule is to remove possible sources of delay in eradicating foot-and-mouth disease, should an occurrence of that disease occur in this country, so that eligible claimants will be fully compensated while at the same time protecting the U.S. livestock population from the further spread of this highly contagious disease.

Statement of Need:

APHIS has reviewed these regulations to determine their sufficiency, should an occurrence of foot-and-mouth disease occur in the United States. This review was prompted, in part, by a series of outbreaks of foot-and-mouth disease that occurred in the United Kingdom and elsewhere around the world. Based on this review, APHIS has determined that changes to the regulations are needed with regard to the valuation of animals and materials, as well as the payment of an indemnity to those persons who suffer loss of property as a result of foot-and-mouth disease.

Summary of Legal Basis:

The Secretary of Agriculture, either independently or in cooperation with other Federal agencies, States or political subdivisions of States, national governments of foreign countries, local governments of foreign countries, domestic or international organizations, domestic or international associations, Indian tribes, and other persons, may carry out operations and measures to detect, control, or eradicate any pest or disease of livestock that threatens the livestock of the United States, including the payment of claims arising out of the destruction of any animal, article, or means of conveyance, if necessary to prevent the dissemination of the pest or disease of livestock (7 U.S.C. 8306, 8308, 8310, and 8315).

Alternatives:

The rule comprises several regulatory changes, each of which is intended to facilitate the control and eradication of foot-and-mouth disease, should an outbreak of this disease occur in the United States. Reasonable alternatives to the rule would be to not make any changes at all and rely on the current regulations as applied to cooperative programs and extraordinary emergencies.

Anticipated Cost and Benefits:

The rule is expected to affect livestock operations and Federal and State government agencies. The vast majority of livestock operations are small entities. The potential costs and benefits would depend upon the characteristics of the outbreak and mitigation strategy. The proposed changes would strengthen programs for the control and eradication of FMD by broadening USDA's options. The changes would also lessen the chances that FMD's eradication would be delayed.

Risks:

The changes contained in the rule would be particularly important in removing sources of delay in achieving FMD eradication, should an outbreak of foot-and-mouth disease occur in the United States. An effective response in the early stages of such an outbreak greatly reduces the risk of the disease's wider dissemination.

Timetable:

Action	Date	FR Cite
NPRM	05/01/02	67 FR 21934
NPRM Comment Period Extended	06/28/02	67 FR 43566
NPRM Comment Period End	07/01/02	
NPRM Comment Period End	07/31/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, State

Additional Information:

APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

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USDA-APHIS

8. AGRICULTURAL BIOTERRORISM PROTECTION ACT OF 2002; POSSESSION, USE, AND TRANSFER OF BIOLOGICAL AGENTS AND TOXINS

Priority:

Other Significant

Legal Authority:

7 USC 8401

CFR Citation:

7 CFR 331; 9 CFR 121

Legal Deadline:

None

Abstract:

In accordance with the Agricultural Bioterrorism Protection Act of 2002, APHIS has established, by regulation, a list of biological agents and toxins determined to have the potential to pose a severe threat to animal or plant health or to animal or plant products, as well as regulations concerning the possession, use, and transfer of listed biological agents and toxins.

Statement of Need:

Section 212 of the Public Health Security and Bioterrorism Response Act of 2002 (Pub. L. 107-188) requires the Secretary of Agriculture to establish regulations for the possession, use, and transfer of biological agents and toxins that she determines have the potential to pose a severe threat to animal or plant health or to animal or plant products. Among other things, the Act requires the regulations to require registration with the Secretary and include appropriate safeguard and security measures, including database checks by the Attorney General of individuals and facilities seeking to register with the Secretary.

Summary of Legal Basis:

The President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 on June 12, 2002. Title II of Public Law 107-188 "Enhancing Controls on Dangerous Biological Agents and Toxins" (sections 201 through 231) provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201 to 204) and the Department of Agriculture (subtitle B, sections 211 to 213) and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). Subtitle D (section 231) provides for criminal penalties regarding certain biological agents and toxins. For the Department of Health and Human Services, the Centers for Disease Control and Prevention has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture.

Alternatives:

APHIS' Veterinary Services and Plant Protection and Quarantine programs have had regulations in place for some years that require prior authorization from APHIS for the importation or interstate movement of certain animal disease agents and plant pests. Those regulations further require that appropriate safeguards be applied to the handling and containment of those animal disease agents and plant pests.

While the biological agents and toxins that the Secretary has determined have the potential to pose a severe threat to animal or plant health or to animal or plant products have historically fallen within the scope of the existing regulations, those regulations do not contain the individual/facility registration requirements, physical security, and other considerations that the Public Health Security and Bioterrorism Response Act of 2002 requires the Agency to address.

Anticipated Cost and Benefits:

While the costs associated with this rule could be considerable, some of those impacts are somewhat offset by previous requirements, funding from other sources for upgrades that would otherwise be mandated by this rule, and flexibility in the rules that allow for site-specific needs to be met in the most cost-effective manner possible. In addition, these costs are greatly outweighed by the benefits of preventing a deliberate introduction of a listed agent or toxin into the United States. Should any listed agent or toxin be intentionally introduced, the consequences would be significant as is demonstrated by natural outbreaks that have occurred. Consequences could include costs of eradiation efforts, disruption of markets, difficulties in sustaining an adequate food and fiber supply, and the potential spread of disease infestations over large areas. Deliberate introduction greatly increases the probability of an agent or toxin becoming established and causing wide-ranging and devastating impacts on the economy, disruption to society, diminished confidence in public and private institutions, and possible loss of life.

Risks:

The regulations include safeguard and security requirements for persons possessing, using, or transferring a listed agent or toxin commensurate with the risk such agent or toxin poses to public health and safety (including the risk of use in domestic or international terrorism).

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/12/02	67 FR 52383
Interim Final Rule Effective	08/12/02	
Interim Final Rule Comment Period End	10/11/02	
Second Interim Final Rule	12/13/02	67 FR 76908
Second Interim Final Rule Comment Period End	02/11/03	
Second Interim Final Rule Effective	02/11/03	
Third Interim Final Rule; Provisional Registration	11/03/03	68 FR 62218
Third Interim Final Rule Effective	11/03/03	
Third Interim Final Rule Comment Period End	01/02/04	
Fourth Interim Final Rule; Amending Overlap Toxin Exclusion	12/00/03	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, State

Additional Information:

APHIS documents published in the Federal Register, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

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USDA—Rural Housing Service (RHS)

FINAL RULE STAGE

9. MULTI–FAMILY HOUSING (MFH) REINVENTION

Priority:

Other Significant

Legal Authority:

5 USC 301; 42 USC 1490a; 7 USC 1989; 42 USC 1475; 42 USC 1479; 42 USC 1480; 42 USC 1481; 42 USC 1484; 42 USC 1485; 42 USC 1486

CFR Citation:

7 CFR 1806 subpart A; 7 CFR 1955 subpart B; 7 CFR 1955 subpart C; 7 CFR 1956 subpart B; 7 CFR 1965 subpart B; 7 CFR 1965 subpart E; 7 CFR 1930 subpart C; 7 CFR 1944 subpart D; 7 CFR 1944 subpart E; 7 CFR 1951 subpart C; 7 CFR 1951 subpart D; 7 CFR 1951 subpart K; 7 CFR 1951 subpart N; 7 CFR 1955 subpart A

Legal Deadline:

None

Abstract:

The Rural Housing Service (RHS) proposes to consolidate regulations pertaining to section 515 Rural Rental Housing, section 514 Farm Labor Housing Loans, section 516 Farm Labor Housing Grants, and section 521 Rental Assistance Payments. Fourteen published regulations will be reduced to one regulation and handbooks for program administration. This will simplify loan origination and portfolio management for applicants, borrowers, and housing operators, as well as Rural Development field staff. This will also provide flexibility for program modifications to reflect current and foreseeable changes. It will also reduce regulations that address solely internal Agency program administration. Finally, the regulation will be more customer friendly and responsive to the needs of the public.

Statement of Need:

The new regulation for the program known as the Multi-Family Housing Loan and Grant Programs will be more user friendly for lenders, borrowers, and Agency staff. These changes are essential to allow for improved service to the public and for an expanded program with increased impact on rural housing opportunities without a corresponding expansion in Agency staff. The regulations will be shorter, better organized, and more simple and clear. Many documentation requirements will be eliminated or consolidated into more convenient formats.

Summary of Legal Basis:

The existing statutory authority for the MFH programs was established in title V of the Housing Act of 1949, which gave authority to the RHS (then the Farmers Home Administration) to make housing loans to farmers. As a result of this Act, the Agency established single-family and multifamily housing programs. Over time, the sections of the Housing Act of 1949 addressing MFH have been amended a number of times. Amendments have involved issues such as the provision of interest credit, broadening definitions of eligible areas and populations to be served, participation of limited profit entities, the establishment of a rental assistance program, and the imposition of a number of restrictive use provisions and prepayment restrictions.

The MFH program, as it exists today, began in the 1960s. Its first loans were primarily for small rental projects. In the mid-sixties, the program expanded and changed from making small rural rental housing loans to individuals to making larger loans to organizations, such as limited partnerships. Regulations for the program have been amended several times over the years to reflect statutory changes and to revise the Agency's procedures for administering the program. The most recent significant regulatory revisions took place after the Appropriations Act of 1997 directed the Agency to implement six reforms to the MFH program. This was accomplished with the publication of a final rule for the reforms on December 23, 1997. Reforms addressed such items as equity skimming, review of other Government assistance, the maximum loan terms, and the use of a Notice of Funding Availability and competitive process to award funds for new projects.

Statistics show that the MFH program fills a significant need for rural Americans. Two primary types of households occupy RHS-financed, section 515 rental housing—elderly households who have decided that they prefer renting over continued ownership of their own dwellings and younger female and male headed households that do not have sufficient resources available to purchase their own home. Additionally, the sections 514/516 Farm Labor Housing loan and grant programs are the only Federal programs available for the provision of housing to farmworkers, one of the most chronically underhoused populations within America.

Alternatives:

The proposed rule is important to all program participants, beneficiaries, and agency staff. Funding for rehabilitation, preservation, and future new construction is being addressed through the budget process. To not publish the rule would substantially restrict RHS' ability to effectively administer the programs and cost the Agency significant credibility with the public and oversight organizations.

Current regulations include standards for physical condition, maintenance, and reserve levels to address the physical condition of the property. However, projects are experiencing physical maintenance problems due to their average age. One of the sources of this problem is that project reserves are inadequate to cover ongoing capital needs. Current regulations require that borrowers contribute initially 1 percent annually of total development costs toward a reserve for project improvements until a total of 10 percent is reached. While borrowers are permitted to request adjustments to their reserve contributions, there is no systematic provision for reevaluating reserves over the life of the project. A recent study found that while an average MFH project has accumulated $5,000 in reserves per unit at the end of 10 years and maintained at that level thereafter, the full cost of rehabilitation is likely to be close to $16,000 per unit. When rehabilitation is needed and the reserve is inadequate to meet the need, the project owner usually applies for a subsequent loan, which, if received, requires that rents be increased. In recent years, RHS has been experiencing a growing number of requests for subsequent loans and rent increases to cover costs of rehabilitation, while funding for such loans has been limited.

RHS is taking several steps to link reserve levels more closely to projects' capital needs. The proposed rule allows a life cycle costs analysis to be used to establish the initial reserve amount needed to meet the capital needs for new projects. For existing projects, the proposed rule requires that any servicing action that involves additional agency funds must take into account physical needs of the project, based on a capital needs assessment. The proposed rule also allows borrowers with existing projects to include the cost of capital needs assessments in their budgets, which is expected to focus attention on the use of such assessments.

Anticipated Cost and Benefits:

Based on analysis of the proposed rule, the following impacts may occur, some of which could be considered significant:

There would be cost savings due to reduced paperwork, estimated to be about $1.8 million annually for the public and about $10.1 million for the Government.

Rents for about half the 459,000 units in MFH projects would likely be increased by an average of about $15 per month. This estimate combines the impacts on rents of two different changes—an increase in reserve requirements for project improvements from $5,000 to $10,000 per unit and a change in RHS' policies relating to the investment of funds in reserves accounts. The latter change is expected to increase interest earnings on reserve accounts from 2 percent currently earned to 6 percent, with 25 percent of the earnings becoming eligible to be taken out of the accounts for owners to pay taxes and the rest remaining for improvements.

Government costs for rental assistance payments would increase by at least $23 million annually, and those for section 8 project-based assistance would increase by about $4 million annually.

Tenants of an estimated 79,500 units, about half the 159,000 units that do not receive rental assistance payments or similar assistance from HUD, would have to pay higher rents of about 5 percent. This amounts to an annual cost of about $14 million for these tenants. Most of these tenants are expected to remain in the projects because rents would remain competitive.

Increasing the reserve requirements would provide additional funds for improving projects. However, the full impact of this change is not expected to be reached until 10 years after it is implemented. Thus, projects that are in need of immediate rehabilitation will likely remain short of adequate funds for making needed improvements in the near term.

Project owners who have or soon will meet the 20-year restriction on the use of their projects for low-income housing will have a clearer picture of RHS' policies in trying to maintain these projects in the program. In particular, establishment of a 15-month limit on waiting for incentives to be offered to them to stay in a program should help them make decisions on either staying in the program or prepaying their loans and possibly converting the projects to other uses.

Risks:

The risk associated with this regulatory initiative is that some program participants may be faced with increased replacement reserve requirements without sufficient cashflow in the property to make the deposits. The Agency believes that the need to adequately address project physical replacement needs offsets this risk. The Agency also believes that for the three-quarters of the properties that have deep tenant subsidies, this impact will be mitigated as rents can be increased in those situations without impacting the affordability of the units to eligible program beneficiaries.

The primary risk to the Agency is if the proposed rule is not implemented. Without the streamlining, program improvements and focus on current industry practices, including the increased use of third-party funds to rehabilitate program properties that are included in the regulation, the underlying assets for the loans and grants made under the programs will deteriorate as the properties age. This will cause a decrease in the ability of the Agency to provide safe, decent, and sanitary housing to program beneficiaries.

The loans made to recipients will become undersecured as the properties' values decrease. Lastly, there will be a greater propensity of borrowers to elect to either default on their loans or to pay off loans and remove their properties from the stock of affordable housing.

Timetable:

Action	Date	FR Cite
NPRM	06/02/03	68 FR 32872
NPRM Comment Period End	08/01/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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USDA—Food and Nutrition Service (FNS)

PRERULE STAGE

10. • SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): REVISIONS TO WIC FOOD PACKAGES

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

42 USC 1786

CFR Citation:

7 CFR 246

Legal Deadline:

None

Abstract:

Through this Advance Notice of Proposed Rulemaking (ANPRM), the Department is seeking public comment on the nutritional needs of the diverse WIC population and how health and development outcomes could best be improved via revision of regulations governing the WIC food packages. The Department will use comments received through this ANPRM and science from the Institute of Medicine, Food and Nutrition Board to develop a Notice of Proposed Rulemaking. (03–002)

Statement of Need:

The WIC Program provides supplemental foods designed to provide specific nutrients shown by research to be lacking in the WIC population's diet. WIC food packages and nutrition education are the chief means by which WIC affects the dietary quality and habits of participants. WIC food packages were designed to supplement participants' diets with nutritionally dense foods that prevent iron-deficiency anemia; complement the eating patterns of pre-school children; and address the special nutrition requirements of pregnant and breastfeeding women. The WIC food packages were last revised in 1980. While WIC has been successful in many areas, obesity and inappropriate dietary patterns have become equal, if not greater, problems for many in WIC's target population. In light of emerging nutrition-related health issues and the new research-based Dietary Reference Intakes through this Notice, the Department is soliciting public comments to determine if the food packages can and should be revised to meet the nutritional needs of participants more effectively. And if so, what specific changes should be made to the food packages and why. Public comment will inform decisions and bolster the scientific and programmatic integrity of any rule that is proposed as a result of this process.

Summary of Legal Basis:

Public Law 95–627, enacted in November 1976, defined supplemental foods as those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary of Agriculture. The program direction stipulated by that law remains in effect today (42 U.S.C. 1786(b)(14)). The law also directs the Secretary in section 17(f)(11) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(11)), to assure that, to the degree possible, the fat, sugar, and salt contents of WIC foods are appropriate. The law provides substantial latitude to the Department to prescribe by regulation the most appropriate supplemental foods. Historically, the Department has based its prescriptions of WIC foods on sound nutritional research and input from State and local agencies, the health and scientific communities, industry, and the general public. Current WIC food package regulations were published in 1980 (45 FR 74854, November 12, 1980) that are consistent with the direction provided in Public Law 95–627.

In recent years, the Department has received numerous requests from WIC State agencies and participants to modify the current food packages to permit greater substitution of foods or introduction of new foods. Requests for revisions to the WIC food packages have also been received from Congress and other organizations with interests in the welfare of WIC participants.

Specifically, Congress requested through appropriations report language for fiscal years 2001–2002 (H.R. 106–619, S.R. 106–288, H.R. 107–116, and S.R. 107–41) that the Department develop a WIC food package rule that includes fruits and vegetables and that allows for cultural accommodations.

Alternatives:

The September 15, 2003, ANPRM includes 11 questions seeking alternatives, information, and supporting rationale. In the rulemaking process, the Department wishes to respond to the congressional request, as well as requests from other interested entities within the WIC community (including the National Advisory Council on Maternal, Infant, and Fetal Nutrition; the National WIC Association; and the American Dietetic Association) by soliciting recommendations from the public for scientifically based revisions to the WIC food packages that do not significantly increase the cost to the program or change the supplemental nature of the program. The Department is dedicated to addressing the many implications of a comprehensive revision of WIC food packages, specifically: Cultural and ethnic food preferences; commercial availability, variety, and appeal of foods; versatility in food preparation; feasibility of apportionment into daily servings for an individual over a month's time; State and local agency flexibility to design the food prescription; administrative feasibility and manageability by the State and local agencies and vendors; and burden and incentive for participants, potential participants, and their families.

The Department has enlisted the Food and Nutrition Board to provide independent technical experts to review comments submitted in response to this Notice, as well as available science, and to develop recommendations on revising the WIC food packages for the Department's consideration. The Department will then use the results of this independent review to shape a proposed rulemaking containing specific modifications to the WIC food packages.

Anticipated Cost and Benefits:

No cost/benefit information is necessary for this ANPRM. A detailed regulatory impact analysis outlining the specific costs and benefits of each proposed change to the WIC food packages will be developed and issued along with the proposed rulemaking, including response to the comments on the ANPRM.

Risks:

By issuing the ANPRM, the Department is minimizing the risk of inadvertently omitting or misrepresenting issues that may be critical to the best possible revision of the WIC food packages. The ANPRM offers the public an opportunity to participate in the Department's promulgation of a proposed rulemaking to revise the WIC food packages. The public will have a subsequent opportunity to submit comments on such revisions when the proposed rule is published.

Timetable:

Action	Date	FR Cite
ANPRM	09/15/03	68 FR 53903
ANPRM Comment Period End	12/15/03	
NPRM	06/00/05	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

URL For More Information:

www.fns.usda.gov/wic/whatsnew.htm

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USDA—FNS

PROPOSED RULE STAGE

11. COMMODITY SUPPLEMENTAL FOOD PROGRAM (CSFP): PLAIN LANGUAGE, PROGRAM ACCOUNTABILITY, AND PROGRAM FLEXIBILITY

Priority:

Other Significant

Legal Authority:

PL 101–624; PL 104–127

CFR Citation:

7 CFR 247

Legal Deadline:

None

Abstract:

This rule will rewrite regulations pertaining to the Commodity Supplemental Food Program (7 CFR part 247) in "plain language." It will also amend regulatory provisions in this part to increase program accountability and flexibility for program operators, and incorporate legislative provisions that have been implemented through program policy. (99–005)

Statement of Need:

This rule is necessary to amend regulatory provisions in 7 CFR part 247 to increase program accountability and flexibility for program operators and incorporate legislative provisions that have been implemented through program policy.

Summary of Legal Basis:

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The proposed rule meets these requirements. This proposed rule also incorporates legislative amendments found in sections 1771(d) and 1771(e) of the Food, Agriculture, Conservation, and Trade Act of 1990; section 402(b) of the Federal Agriculture Improvement and Reform Act of 1996; section 4201(b) of the Farm Security and Rural Investment Act of 2002; and the Single Audit Act Amendments of 1996.

Alternatives:

No alternatives available.

Anticipated Cost and Benefits:

Changes in the proposed rule reduce the burden imposed on State and local agencies while ensuring program accountability, and are generally insignificant to the costs or overall operations of the program.

Risks:

There are no risks involved with this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/31/03	68 FR 62164
NPRM Comment Period End	12/30/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State, Tribal

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USDA—FNS

12. FOOD STAMP PROGRAM: SIMPLIFICATION AND STATE FLEXIBILITY

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

7 USC 2011 to 2036

CFR Citation:

7 CFR 272; 7 CFR 273

Legal Deadline:

None

Abstract:

This action will 1) propose to streamline the regulations by removing unnecessary or redundant provisions and reorganizing several sections; 2) propose to increase State flexibility by moving overly prescriptive regulations; 3) re-propose several provisions that were proposed in a previous rule, the Noncitizen Eligibility Certification Provisions (NECP) of Public Law 104–193, as amended by Public Laws 104–208, 105–33, and 105–185, published on February 29, 2000, but were not accepted in the final NECP rule published on November 21, 2001; 4) propose to remove or revise several provisions that were finalized in the NECP final rule; and 5) propose to incorporate current policy from the Food Stamp Program's Policy Interpretation Response System (PIRS). (01–018)

Statement of Need:

This rule is discretionary in nature. However, it simplifies the food stamp regulations and allows State flexibility in administering the program.

Summary of Legal Basis:

The legal basis for this rule is Public Law 104–193, as amended by Public Laws 104–208, 105–33, and 105–185.

Alternatives:

This rule is discretionary in nature; therefore it is not mandatory that we publish it.

Anticipated Cost and Benefits:

Undetermined

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide-working families, eligible non-citizens, and elderly and disabled individuals. Many low-income families don't earn enough money and many elderly and disabled individuals don't receive enough in retirement or disability benefits to meet all of their expenses and purchase healthy and nutritious meals. The FSP serves a vital role in helping these families and individuals achieve and maintain self-sufficiency and purchase a nutritious diet. This rule is intended to simplify the regulations and allow State flexibility in administering the program, thus decreasing barriers to access benefits.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	
Final Action	05/00/05	
Final Action Effective	07/00/05	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

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USDA—FNS

13. FSP: HIGH PERFORMANCE BONUSES

Priority:

Other Significant

Legal Authority:

PL 107–171

CFR Citation:

7 CFR 272; 7 CFR 275

Legal Deadline:

None

Abstract:

This action will propose implementation of the high performance bonuses as provided for in the Farm Security and Rural Investment Act of 2002 for States that demonstrate high or improved performance in administration of the Food Stamp Program. This action will propose the measurement criteria for fiscal year 2005 and beyond. (02–006)

Statement of Need:

This rule is mandated by Public Law 107–171 to implement the performance measures used to award high performance bonuses for fiscal years 2005 and beyond.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107–171.

Alternatives:

This rule is mandated by law. Therefore, there are no alternatives.

Anticipated Cost and Benefits:

Undetermined

Risks:

The law mandates that we publish the performance measures for the high performance bonuses for FY 2005 and beyond. If we did not publish this proposed rule, we would be unable to publish a final rule, thus making us out of compliance with a legislative mandate.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

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USDA—FNS

14. FSP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 107–171, secs 4101 to 4109, 4114, 4115, and 4401

CFR Citation:

7 CFR 273

Legal Deadline:

None

Abstract:

This proposed rule will amend Food Stamp Program regulations to implement the food stamp eligibility and certification provisions of Public Law 107–171, the Farm Security and Rural Investment Act of 2002. The rule allows States, at their option, to treat legally obligated child support payments to a non-household member as an income exclusion rather than a deduction (as provided in current law); allows a State option to exclude certain types of income that are not counted under the State's Temporary Assistance for Needy Families (TANF) cash assistance or Medicaid programs; replaces the current, fixed standard deduction with a deduction that varies according to household size and is adjusted annually for cost-of-living increases; allows States to simplify the Standard Utility Allowance (SUA) if the States elect to use the SUA rather than actual utility costs for all households; allows States to use a standard deduction from income of $143 per month for homeless households with some shelter expenses; allows States to disregard reported changes in deductions during certification periods except for changes associated with a new residence or earned income until the next recertification; increases the resource limit for households with a disabled member from $2,000 to $3,000 consistent with the limit for households with an elderly member; allows States to exclude certain types of resources that the State does not count for TANF or Medicaid (section 1931); allows States to extend semiannual reporting of changes to all households not exempt from periodic reporting; requires State agencies that have a website to post applications on these sites in the same languages that the State uses for its written applications; allows States to extend from the current 3 months up to 5 months the period of time households may receive transitional food stamp benefits when they lose TANF cash assistance; and restores food stamp eligibility to qualified aliens who are otherwise eligible AND who (1) are receiving disability benefits regardless of date of entry (current law requires them to have been in the country on August 22, 1996)—effective October 1, 2002, (2) are under 18 regardless of date of entry (current law limits eligibility to children who were in the country on August 22, 1996)—effective October 1, 2003, and beyond, or (3) have lived in the U.S. for 5 years as a qualified alien beginning on date of entry—effective April 1, 2003. (02–007)

Statement of Need:

The rule is needed to implement the food stamp certification and eligibility provisions of Public Law 107–171, the Farm Security and Rural Investment Act of 2002.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107–171, the Farm Security and Rural Investment Act of 2002.

Alternatives:

This proposed rule deals with changes required by Public Law 107–171, the Farm Security and Rural Investment Act of 2002. The Department has limited discretion in implementing provisions of that law. Most of the provisions in this rule are effective October 1, 2002, and must be implemented by State agencies prior to publication of this rule.

Anticipated Cost and Benefits:

The provisions of this rule will simplify State administration of the Food Stamp Program, increase eligibility for the program among certain groups, increase access to the program among low-income families and individuals, and increase benefit levels. The provisions of Public Law 107–171 implemented by this rule will have a 5-year cost of approximately $1.9 billion.

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide-working families, eligible non-citizens, and elderly and disabled individuals. Many low-income families don't earn enough money and many elderly and disabled individuals don't receive enough in retirement or disability benefits to meet all of their expenses and purchase healthy and nutritious meals. The FSP serves a vital role in helping these families and individuals achieve and maintain self-sufficiency and purchase a nutritious diet. This rule is intended to implement the certification and eligibility provisions of Public Law 107–171, the Farm Security and Rural Investment Act of 2002. It will simplify State administration of the Food Stamp Program, increase eligibility for the program among certain groups, increase access to the program among low-income families and individuals, and increase benefit levels. The provisions of this rule will increase benefits by approximately $1.95 billion over 5 years. When fully effective in FY 2006, the provisions of this rule will add approximately 415,000 new participants.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Action	Date	FR Cite
Final Action	12/00/04	
Final Action Effective	02/00/05	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

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USDA—FNS

15. FSP: EMPLOYMENT AND TRAINING PROGRAM PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 107–171

CFR Citation:

7 CFR 273.7

Legal Deadline:

None

Abstract:

This proposed rule will implement revisions to the Food Stamp Employment and Training (E&T) Program funding requirements. (02–009)

Statement of Need:

This rule is necessary to implement statutory revisions to E&T Program funding provisions.

Summary of Legal Basis:

All provisions of this proposed rule are mandated by Public Law 107–171.

Alternatives:

The alternative is not to revise current funding rules. This is not practical. The current rules have been superseded by changes brought about by Public Law 107–171. These changes were effective on May 13, 2002, the date of enactment of Public Law 107–171.

Anticipated Cost and Benefits:

None.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	
Final Action	12/00/04	
Final Action Effective	02/00/05	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

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USDA—FNS

16. SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP)

Priority:

Other Significant

Legal Authority:

PL 107–171, sec 4306

CFR Citation:

7 CFR 249

Legal Deadline:

None

Abstract:

This proposed rule will implement the provision of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) that gives the Department the authority to promulgate regulations for the operation and administration of the SFMNP. The purposes of the SFMNP are to provide fresh, nutritious, unprepared locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture programs to low-income seniors and to increase the consumption of agricultural commodities by expanding, developing, and/or aiding in the development of domestic farmers' markets, roadside stands, and community supported agriculture programs. (02–012)

Statement of Need:

The SFMNP has been administered since fiscal year 2001 as a competitive grant program in which State agencies, interested in receiving a grant to operate the program, submitted an application for SFMNP grant funds to USDA's Food and Nutrition Service. Such grants were reviewed and ranked against a set of explicit criteria, and SFMNP grants were then awarded to those State agencies whose applications received the highest scores. Public Law 107–171 authorized funding for the SFMNP through FY 2007 and also gave the Department the authority to promulgate regulations for the future operation and administration of the SFMNP. This legislative action establishes the SFMNP as a permanent nutrition assistance program and eliminates the need for State agencies to participate in an annual competition for program funds. Therefore, this proposed rulemaking converts the SFMNP from a competitive grant program to a permanent FNS-administered nutrition assistance program.

Summary of Legal Basis:

Public Law 107–171 (section 4306) authorized funding for the SFMNP through FY 2007 and also gave the Department the authority to promulgate regulations for the future operation and administration of the SFMNP.

Alternatives:

USDA considered a variety of alternatives when constructing the regulation for the SFMNP. Primarily, the proposed regulation is modeled after the WIC Farmers' Market Nutrition Program and the Senior Farmers' Market Nutrition Pilot Programs. Consistency lends to administrative ease among the State agencies, localities, and USDA, as well as provides continuity to beneficiaries and farmers who have been operating the pilot programs since 2001. Nevertheless, USDA addressed seven specific alternatives: Type of grant structure, eligible grantees and recipients, the use of community-supported agriculture programs, provision of administrative funding, eligibility requirements, verification procedures, and benefit levels. Each of these alternatives is explored in detail in the preamble to the proposed rulemaking.

Anticipated Cost and Benefits:

The funding level for the SFMNP is expected to remain stable through FY 2007. Therefore, the Department does not anticipate significant changes to the costs/benefits of the SFMNP as a result of the publication of this proposed rule.

Risks:

The proposed rule carries a 90-day comment period, during which interested parties may submit comments on any and all provisions contained in the rulemaking. Once the comment period has expired, all comments received will be carefully considered in the development of the final rule. Opportunities for training on and discussion of the SFMNP regulations (in both their proposed and final forms) will be offered to State agencies and other entities with a vested interest in the operation and administration of the SFMNP.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	05/00/04	
Final Action	09/00/04	
Final Action Effective	10/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

URL For More Information:

www.fns.usda.gov

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USDA—FNS

17. FSP: DISCRETIONARY QUALITY CONTROL PROVISIONS OF TITLE IV OF PUBLIC LAW 107–171

Priority:

Other Significant

Legal Authority:

7 USC 2011 to 2032; PL 107–171

CFR Citation:

7 CFR 271; 7 CFR 273; 7 CFR 275; 7 CFR 277

Legal Deadline:

None

Abstract:

This proposed rule will implement several quality control changes to the Food Stamp Act required by sections 4118 and 4119 of title IV of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). The provisions in this rule affect the following areas: 1) The elimination of enhanced funding; 2) revisions to the time frames for completing individual case reviews; 3) extending the time frames in the procedures for households that refuse to cooperate with QC reviews; 4) procedures for adjusting liability determinations following appeal decisions; and 5) conforming and technical changes. (02-015)

Statement of Need:

The rule is needed to implement several food stamp quality control provisions of Public Law 107–171 The Farm Security and Rural Investment Act of 2002. Elimination of enhanced funding is required by the Act. The Act also requires the Department to propose rules for adjusting liability determinations following appeals decisions. The remaining changes are either conforming changes resulting from the required changes or policy changes already in effect but not updated in the regulations.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107–171 The Farm Security and Rural Investment Act of 2002.

Alternatives:

This rule deals in part with changes required by title IV of Public Law 107–171 The Farm Security and Rural Investment Act of 2002. The Department has no discretion in eliminating enhanced funding for fiscal years 2003 and beyond. The provision addressing results of appeals is required to be regulated by Public Law 107–171. The remaining changes amend existing regulations and are required to make technical changes resulting from these changes or to update policy consistent with current requirements.

Anticipated Cost and Benefits:

The provisions of this rule are not anticipated to have any impact on benefit levels. The provisions of this rule are anticipated to reduce administrative costs.

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide. The quality control system measures the accuracy of States providing food stamp benefits to the program recipients. This rule is intended to implement some of the quality control provisions of title IV of Public Law 107–171 The Farm Security and Rural Investment Act of 2002. The provisions of this rule will eliminate enhanced funding for low payment error rates. It will revise the system for determining State agency liabilities and sanctions for high payment error rates following appeal decisions.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period Ends	05/00/04	
Final Action	12/00/04	
Final Action Effective	01/00/05	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

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USDA—FNS

FINAL RULE STAGE

18. CHILD AND ADULT CARE FOOD PROGRAM: IMPROVING MANAGEMENT AND PROGRAM INTEGRITY

Priority:

Other Significant

Legal Authority:

42 USC 1766; PL 103–448; PL 104–193; PL 105–336

CFR Citation:

7 CFR 226

Legal Deadline:

None

Abstract:

This rule amends the Child and Adult Care Food Program (CACFP) regulations. The changes in this rule result from the findings of State and Federal program reviews and from audits and investigations conducted by the Office of Inspector General. This rule will revise: State agency criteria for approving and renewing institution applications; program training and other operating requirements for child care institutions and facilities; and State- and institution-level monitoring requirements. This rule also includes changes that are required by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104–193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336).

The changes are designed to improve program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify program requirements for State agencies and institutions. (95–024)

Statement of Need:

In recent years, State and Federal program reviews have found numerous cases of mismanagement, abuse, and in some instances, fraud by child care institutions and facilities in the CACFP. These reviews revealed weaknesses in management controls over program operations and examples of regulatory noncompliance by institutions, including failure to pay facilities or failure to pay them in a timely manner; improper use of program funds for non-program expenditures; and improper meal reimbursements due to incorrect meal counts or to miscategorized or incomplete income eligibility statements. In addition, audits and investigations conducted by the Office of Inspector General (OIG) have raised serious concerns regarding the adequacy of financial and administrative controls in CACFP. Based on its findings, OIG recommended changes to CACFP review requirements and management controls.

Summary of Legal Basis:

Some of the changes proposed in the rule are discretionary changes being made in response to deficiencies found in program reviews and OIG audits. Other changes codify statutory changes made by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104–193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105–336).

Alternatives:

In developing the proposal, the Agency considered various alternatives to minimize burden on State agencies and institutions while ensuring effective program operation. Key areas in which alternatives were considered include State agency reviews of institutions and sponsoring organization oversight of day care homes.

Anticipated Cost and Benefits:

This rule contains changes designed to improve management and financial integrity in the CACFP. When implemented, these changes would affect all entities in CACFP, from USDA to participating children and children's households. These changes will primarily affect the procedures used by State agencies in reviewing applications submitted by, and monitoring the performance of, institutions which are participating or wish to participate in the CACFP. Those changes which would affect institutions and facilities will not, in the aggregate, have a significant economic impact.

Data on CACFP integrity is limited, despite numerous OIG reports on individual institutions and facilities that have been deficient in CACFP management. While program reviews and OIG reports clearly illustrate that there are weaknesses in parts of the program regulations and that there have been weaknesses in oversight, neither program reviews, OIG reports, nor any other data sources illustrate the prevalence and magnitude of CACFP fraud and abuse. This lack of information precludes USDA from estimating the amount of money lost due to fraud and abuse or the reduction in fraud and abuse the changes in this rule will realize.

Risks:

Continuing to operate the CACFP under existing provisions of the regulations that do not sufficiently protect against fraud and abuse in CACFP puts the program at significant risk. This rule includes changes designed to strengthen current program regulations to reduce the risk associated with the program.

Timetable:

Action	Date	FR Cite
NPRM	09/12/00	65 FR 55103
NPRM Comment Period End	12/11/00	
Interim Final Rule	05/00/04	
Interim Final Rule Effective	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

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USDA—FNS

19. FOOD STAMP PROGRAM: VEHICLE AND MAXIMUM EXCESS SHELTER EXPENSE DEDUCTION PROVISIONS OF PUBLIC LAW 106–387

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 106–387

CFR Citation:

7 CFR 273.8; 7 CFR 273.9

Legal Deadline:

None

Abstract:

This proposed rule will (1) implement a revision of the Food Stamp Program's resource eligibility standards regarding vehicle ownership and (2) set the maximum excess shelter expense deduction for fiscal year 2001 and, for future years, index it to the Consumer Price Index. (01–006)

Statement of Need:

This rule is necessary to implement revisions to the Food Stamp Program's resource eligibility standards regarding vehicle ownership and maximum excess shelter expense deduction.

Summary of Legal Basis:

All provisions of this proposed rule are mandated by Public Law 106–387.

Alternatives:

The alternative would be not to revise current rules, which have been superseded by changes brought about by Public Law 106–387.

Anticipated Cost and Benefits:

Low-income households will benefit by claiming larger income deductions for shelter expenses, thereby obtaining higher food stamp benefits. The new vehicle ownership provisions will make more low-income households eligible for food stamps and make it easier for them to own a reliable vehicle. States will benefit by having more flexibility and simpler administrative options for determining the effect of vehicle ownership upon food stamp eligibility.

Risks:

Not implementing this proposed rule would ignore the mandates contained in Public Law 106–387.

Timetable:

Action	Date	FR Cite
NPRM	08/29/03	68 FR 51932
NPRM Comment Period End	10/28/03	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

URL For Public Comments:

www.fns.usda.gov/fsp/rules/regulations/default.htm

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USDA—FNS

20. FSP: NON-DISCRETIONARY QUALITY CONTROL PROVISIONS OF TITLE IV OF PUBLIC LAW 107–171

Priority:

Other Significant

Legal Authority:

7 USC 2011 to 2032; PL 107–171

CFR Citation:

7 CFR 273; 7 CFR 275

Legal Deadline:

None

Abstract:

This interim rule will implement several quality control changes to the Food Stamp Act required by sections 4118 and 4119 of title IV of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171). The provisions in this rule affect the following areas: 1) Timeframes for completing quality control reviews; 2) timeframes for completing the arbitration process; 3) timeframes for determining final error rates; 4) the threshold for potential sanctions and time period for sanctions; 5) the calculation of State error rates; 6) the formula for determining States' liability amounts; 7) sanction notification and method of payment; and 8) corrective action plans. (02–014)

Statement of Need:

The rule is needed to implement the food stamp quality control provisions of Public Law 107–171, the Farm Security and Rural Investment Act of 2002.

Summary of Legal Basis:

The legal basis for this rule is Public Law 107–171, the Farm Security and Rural Investment Act of 2002.

Alternatives:

This interim rule deals with changes required by Public Law 107–171, the Farm Security and Rural Investment Act of 2002. The Department has no discretion in implementing these provisions of that law. The provisions in this rule are effective for the fiscal year 2003 quality control review period and must be implemented by FNS and State agencies during fiscal year 2003.

Anticipated Cost and Benefits:

The provisions of this rule are not anticipated to have any impact on benefit levels or administrative costs.

Risks:

The FSP provides nutrition assistance to millions of Americans nationwide. The quality control system measures the accuracy of States providing food stamp benefits to the program recipients. This rule is intended to implement the quality control provisions of Public Law 107–701, the Farm Security and Rural Investment Act of 2002. It will significantly revise the system for determining State agency liabilities and sanctions for high payment error rates.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/16/03	68 FR 59519
Interim Final Rule Effective	12/15/03	
Interim Final Rule Comment Period End	01/14/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State

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RIN: 0584–AD31

USDA—Food Safety and Inspection Service (FSIS)

PROPOSED RULE STAGE

21. PERFORMANCE STANDARDS FOR BACON

Priority:

Other Significant

Legal Authority:

21 USC 601 et seq

CFR Citation:

9 CFR 424.22(b)

Legal Deadline:

None

Abstract:

FSIS is proposing to revise the regulatory provisions concerning the production and testing of pumped bacon (9 CFR 424.22(b)). FSIS is proposing to remove provisions that prescribe the substances and amounts of such substances that must be used to produce pumped bacon. FSIS is proposing to replace these provisions with an upper limit for nitrite and a performance standard that establishments producing pumped bacon must meet. To meet the proposed performance standard, the process used to produce pumped bacon would be required to limit the presence of nitrosamines when the product is cooked.

Statement of Need:

FSIS is proposing to replace restrictive provisions concerning the processing of pumped bacon with an upper limit for nitrite and a performance standard. The proposed performance standard concerns limiting the presence of volatile nitrosamines in pumped bacon. These proposed changes are necessary to make the regulations concerning pumped bacon consistent with those governing Hazard Analysis and Critical Control Point (HACCP) systems.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (21 U.S.C. 601 to 695), a meat or meat food product is adulterated "if it bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health" (21 U.S.C. 601(m)(1)). Volatile nitrosamines are deleterious because they are carcinogenic, and though not added directly to pumped bacon, they may be produced when the pumped bacon is fried. Processors can control the levels of nitrosamines that may be present when the product is fried by controlling the levels of ingoing nitrite and ingoing curing accelerators that are used in the production of pumped bacon. In 1978, USDA stated that nitrosamines present at confirmable levels in pumped bacon after preparation for eating were deemed to adulterate the product. FSIS still maintains that pumped bacon with confirmable levels of nitrosamines after preparation for eating is adulterated. Under this proposed rule, processors meeting the performance standard would control the levels of nitrosamines in the finished product by complying with a performance standard.

Alternatives:

No action; performance standards for all types of bacon (not just pumped bacon, as proposed).

Anticipated Cost and Benefits:

Because FSIS is proposing to convert existing regulations to a performance standard and is not proposing any new requirements for establishments producing pumped bacon, FSIS does not anticipate that this proposed rule would result in any significant costs or benefits. Pumped bacon processing establishments whose HACCP plans do not currently address nitrosamines as hazards reasonably likely to occur may incur some costs. Also, establishments that choose to test their products for nitrosamines after this rule becomes effective may incur some costs. Because this rule provides establishments the flexibility to develop new procedures for producing bacon, this rule may result in profits to processors who develop cheaper means of producing product or who develop a pumped bacon product with wide consumer appeal.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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USDA—FSIS

22. EGG AND EGG PRODUCTS INSPECTION REGULATIONS

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 1031 to 1056

CFR Citation:

9 CFR 590.570; 9 CFR 590.575; 9 CFR 590.146; 9 CFR 590.10; 9 CFR 590.411; 9 CFR 590.502; 9 CFR 590.504; 9 CFR 590.580; 9 CFR 591; ...

Legal Deadline:

None

Abstract:

The Food Safety and Inspection Service (FSIS) is proposing to require shell egg packers and egg products plants to develop and implement Hazard Analysis and Critical Control Points (HACCP) systems and Sanitation Standard Operating Procedures (SOPs). FSIS also is proposing pathogen reduction performance standards that would be applicable to pasteurized shell eggs and egg products. Plants would be expected to develop HACCP systems that ensure products meet the pathogen reduction performance standards. Finally, FSIS is proposing to amend the Federal egg and egg products inspection regulations by removing current requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment prior to their use in official plants. The Agency also plans to eliminate the prior label approval system for egg products.

The actions being proposed are part of FSIS' regulatory reform effort to improve FSIS' egg and egg products food safety regulations, better define the roles of Government and the regulated industry, encourage innovations that will improve food safety, remove unnecessary regulatory burdens on inspected egg products plants, and make the egg and egg products regulations as consistent as possible with the Agency's meat and poultry products regulations. FSIS is also taking these actions in light of changing inspection priorities and recent findings of Salmonella in pasteurized egg products.

Statement of Need:

FSIS is proposing to require shell egg packers and egg products plants to develop and implement HACCP systems and sanitation SOPs. FSIS also is proposing pathogen reduction performance standards that would be applicable to pasteurized eggs and egg products. Plants would be expected to develop HACCP systems that ensure that these products meet the lethality required by the pathogen reduction performance standards. In addition, FSIS is proposing to amend the Federal shell egg and egg products inspection regulations by removing current requirements for approval by FSIS of egg product plant drawings, specifications, and equipment prior to their use in official plants. Finally, the Agency plans to eliminate the pre-marketing label approval system for egg products but to require safe-handling labels on all shell eggs.

The actions being proposed are part of FSIS' regulatory reform effort to improve FSIS' shell egg and egg products food safety regulations, better define the roles of Government and the regulated industry, encourage innovations that will improve food safety, remove unnecessary regulatory burdens on inspected egg products plants, and make the shell egg and egg products regulations as consistent as possible with the Agency's meat and poultry products regulations. FSIS also is taking these actions in light of changing inspection priorities and recent findings of Salmonella in pasteurized egg products.

This proposal is directly related to FSIS' PR/HACCP initiative.

Summary of Legal Basis:

This proposed rule is authorized under the Egg Products Inspection Act (21 U.S.C. 1031 to 1056). It is not the result of any specific mandate by the Congress or a Federal court.

Alternatives:

A team of FSIS economists and food technologists is conducting a cost-benefit analysis to evaluate the potential economic impacts of several alternatives on the public, the shell egg and egg products industry, and FSIS. These alternatives include: (1) Taking no regulatory action; (2) requiring all inspected egg products plants to develop, adopt, and implement written sanitation SOPs and HACCP plans; and (3) converting to a lethality-based pathogen reduction performance standard many of the current highly prescriptive egg products processing requirements. The team will consider the effects of a uniform, across-the-board standard for all egg products; a performance standard based on the relative risk of different classes of egg products; and a performance standard based on the relative risks to public health of different production processes.

Anticipated Cost and Benefits:

FSIS is analyzing the potential costs of this proposed rulemaking to industry, FSIS and other Federal agencies, State and local governments, small entities, and foreign countries. The expected costs to industry will depend on a number of factors. These costs include the required lethality, or level of pathogen reduction, and the cost of HACCP plan and sanitation SOP development, implementation, and associated employee training. The pathogen reduction costs will depend on the amount of reduction sought and in what classes of product, product formulations, or processes.

Relative enforcement costs to FSIS and Food and Drug Administration may change because the two agencies share responsibility for inspection and oversight of the egg industry and a common farm-to-table approach for shell egg and egg products food safety. Other Federal agencies and local governments are not likely to be affected.

FSIS has cooperative agreements with six States and the Commonwealth of Puerto Rico under which they provide inspection services to egg processing plants under Federal jurisdiction. FSIS reimburses the States for staffing costs and expenses for full-time State inspectors. HACCP implementation may result in a reduction of staffing resource requirements in the States and a corresponding reduction of the Federal reimbursement. As a result, some States may decide to stop providing inspection services and convert to Federal inspection of egg products plants.

Egg and egg product inspection systems of foreign countries wishing to export eggs and egg products to the U.S. must be equivalent to the U.S. system. FSIS will consult with these countries, as needed, if and when this proposal becomes effective.

This proposal is not likely to have a significant impact on small entities. The entities that would be directly affected by this proposal would be the approximately 75 federally inspected egg products plants, most of which are small businesses, according to Small Business Administration criteria. If necessary, FSIS will develop compliance guides to assist these small firms in implementing the proposed requirements.

Potential benefits associated with this rulemaking include: Improvements in human health due to pathogen reduction; improved utilization of FSIS inspection program resources; and cost savings resulting from the flexibility of egg products plants in achieving a lethality-based pathogen reduction performance standard. Once specific alternatives are identified, economic analysis will identify the quantitative and qualitative benefits associated with each.

Human health benefits from this rulemaking are likely to be small because of the low level of (chiefly post-processing) contamination of pasteurized egg products. In light of recent scientific studies that raise questions about the efficacy of current regulations, however, it is likely that measurable reductions will be achieved in the risk of foodborne illness.

Risks:

FSIS believes that this regulatory action may result in a further reduction in the risks associated with egg products. The development of a lethality-based pathogen reduction performance standard for egg products, replacing command-and-control regulations, will remove unnecessary regulatory obstacles to, and provide incentives for, innovation to improve the safety of egg products.

To assess the potential risk-reduction impacts of this rulemaking on the public, an intra-Agency group of scientific and technical experts is conducting a risk management analysis. The group has been charged with identifying the lethality requirement sufficient to ensure the safety of egg products and the alternative methods for implementing the requirement. The egg products processing and distribution module of the Salmonella enteritis Risk Assessment, made public June 12, 1998, will be appropriately modified to evaluate the risk associated with the regulatory alternatives.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, State

Federalism:

Undetermined

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USDA—FSIS

23. ELIMINATION OF CHILLING TIME AND TEMPERATURE REQUIREMENTS FOR READY-TO-COOK POULTRY

Priority:

Other Significant

Legal Authority:

21 USC 451 to 470

CFR Citation:

9 CFR 381.66

Legal Deadline:

None

Abstract:

FSIS is proposing to eliminate the time and temperature requirements for chilling ready-to-cook poultry carcasses and giblets. The Agency is taking this action because the requirements are inconsistent with the Agency's Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) System regulations, with its final rule further restricting retained water in raw meat and poultry, and with the Agency's regulatory reform program. Moreover, because of these regulations, the meat and poultry industries receive disparate regulatory treatment: No regulations that apply to the chilling of poultry apply to the chilling of meat. This proposal responds to longstanding petitions by industry trade associations.

Statement of Need:

This proposed rule addresses Federal regulations that are inconsistent with the PR/HACCP regulations because they restrict the ability of poultry processors to choose appropriate and effective measures to eliminate, reduce, or control biological hazards identified in their hazard analyses. The regulations also complicate efforts by establishments to comply with the terms of the January 9, 2001, final rule further restricting the amount of water that may be retained in raw meat or poultry products after post-evisceration processing; some establishments may have to use chilling procedures that result in higher levels of retained water in carcasses than may be necessary to achieve the same food safety objective. For example, establishments that operate automated chillers may have to subject poultry carcasses to higher agitation rates or longer dwell times in the chillers. Also, as discussed above, the time/temperature chilling regulations for poultry are inconsistent with the PR/HACCP regulations, the retained water regulations, and the meat inspection regulations.

Summary of Legal Basis:

This regulatory action is authorized under the Poultry Products Inspection Act (21 U.S.C. 451 to 470).

Alternatives:

FSIS evaluated five regulatory alternatives: (1) Taking no regulatory action; (2) replacing the command-and-control requirements with a performance standard; (3) requiring meatpackers, as well as poultry processors, to comply with such a performance standard; (4) requiring all establishments that prepare raw meat or poultry products or handle, transport, or receive the products in transportation to comply with a performance standard; or (5) removing the command-and-control requirements from the poultry products inspection regulations. The Agency chose the fifth alternative.

Anticipated Cost and Benefits:

Poultry processors would gain the flexibility to choose the best processing techniques and procedures for achieving production efficiencies, meeting HACCP food safety objectives, and preventing economic adulteration of raw product with retained water in amounts greater than unavoidable for food-safety purposes. They would be able to operate with a wider range of chilling temperatures consistently with the requirements of the PR/HACCP regulations. The poultry products industry could achieve energy efficiencies resulting in annual savings of as much as $2.8 million. The industry could also reduce carcass "dwell times" in immersion chillers and thereby reduce the amount of water absorbed and retained by the carcasses. The reduction in dwell time might enable some establishments, particularly those currently operating at the throughput capacity of their chillers, to increase production by installing additional evisceration lines.

Poultry establishments would therefore be able to operate more efficiently to provide consumers with product that is not adulterated. FSIS also would gain some flexibility by being able to reallocate some inspection resources from measuring the temperature of chilled birds to such activities as HACCP system verification.

This proposed rule would directly impose no new costs on the regulated industry. It would relieve burdens arising from the disparate impacts of the current regulations on the meat and poultry industries.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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USDA—FSIS

24. EMERGENCY REGULATIONS TO PREVENT MEAT FOOD AND MEAT PRODUCTS THAT MAY CONTAIN THE BSE AGENT FROM ENTERING COMMERCE

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

21 USC 601 et seq

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

FSIS is proposing to amend the meat inspection regulations to add emergency regulations to prevent meat and meat food products that may contain the bovine spongiform encephalopathy (BSE) agent from entering commerce. The emergency regulations would become effective when, and if, BSE is diagnosed in native cattle in the United States. FSIS may also propose to issue certain regulations in the absence of BSE as preventive measures. The proposed regulations provide for periodic review by FSIS to determine their effectiveness and to evaluate the need to modify or remove some measures or impose additional measures.

Statement of Need:

FSIS is proposing to amend the meat inspection regulations to add provisions to prevent meat and meat products that may contain the BSE agent from entering commerce in the event that BSE is diagnosed in native cattle in the U.S. Any final rule that is developed as a result of this proposal will become effective if, and when, a native case of BSE is detected in the U.S.

BSE is a chronic, degenerative, neurological disorder of cattle. Worldwide, there have been more than 185,000 cases since the disease was first diagnosed in 1986 in Great Britain. There have been no cases of BSE detected in the United States despite 10 years of active surveillance for the disease. Recent laboratory and epidemiological research indicate that there is a causal association between BSE and variant Creutzfeldt-Jakob Disease (vCJD), a slow degenerative disease that affects the central nervous system of humans. Like BSE, vCJD has not been detected in the United States. Both BSE and vCJD are always fatal.

Although BSE has not been detected in the U.S., USDA policy in regard to BSE has been to be proactive and preventive. Therefore, FSIS is proposing these regulations so that the Agency will have an immediate regulatory response in the event that BSE is detected in the U.S. Once finalized, the proposed measures will be incorporated in the meat inspection regulations but would only become effective if, and when, BSE is detected in native cattle. The proposed regulations would: (1) Prohibit certain materials that have been shown to contain the BSE agent in BSE-infected cattle to be used for human food or in the production of human food; (2) prescribe handling, storage, and transportation requirements for such materials; (3) prohibit slaughter procedures that may cause potentially infective tissues to migrate to edible tissues; (4) impose restrictions on the use of the vertebral column as a source material in the production of meat produced using advanced meat recovery systems (AMRS) and in the production of “Mechanically Separated (Beef)” (MS(Beef)) meat food product; (5) prescribe requirements for the slaughtering and processing of cattle whose materials are most likely to contain the BSE agent if the animal is infected with BSE; and (6) prescribe requirements for the sanitation or disposal of plant equipment that may be contaminated with the BSE agent. The proposed regulations provide for periodic review by FSIS to determine their effectiveness and to evaluate the need to modify or remove some measures or impose additional measures.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (21 U.S.C. 601 to 695), FSIS issues regulations governing the production of meat and meat food products. The regulations, along with FSIS inspection programs, are designed to ensure that meat food products are safe, not adulterated, and properly marked, labeled, and packaged.

Alternatives:

As an alternative to the proposed requirements, FSIS considered taking no action. FSIS rejected this option because, as previously mentioned, USDA policy in regard to BSE has been to be proactive and preventive. Publishing a proposed rule will inform the public of the type of regulatory response it can expect from FSIS when, and if, BSE is detected in native cattle.

In addition to the proposed requirements, FSIS is considering taking actions prior to the detection of BSE in the U.S. to minimize human exposure to materials from cattle that could potentially contain the BSE agent. The measures under consideration are targeted at the materials of cattle that are most likely to contain the BSE agent, if such animals have been infected with BSE, and those cattle that have consumed feed prohibited by Food and Drug Administration's (FDA) regulations (i.e., mammalian meat and bone meal in ruminant feed).

Anticipated Cost and Benefits:

If issued as a final rule, this proposal would result in costs to the regulated industry. FSIS expects to minimize the costs by targeting the regulations to apply to those cattle whose materials are most likely to contain the BSE agent if the animal is infected with BSE. Banning certain materials, such as brain and spinal cord, for use as human food may require additional staff and time to remove such materials. Materials prohibited for use as human food could not be sold domestically or exported. Companies may be required to find new ways to handle and dispose of these materials, which would impose additional costs. Prohibiting the use of bovine vertebral column as a source material in AMRS and systems used to produce MS (Beef) product could result in a decrease in product yield and may require companies that use these systems to produce boneless beef and beef products to find other uses for bovine vertebral column. Establishments whose equipment may have been contaminated with the BSE agent may have costs associated with sanitation or disposal of plant equipment.

FSIS may incur costs to increase inspection and compliance activities to ensure that the measures taken to prevent meat and meat food products that may contain the BSE agent from entering commerce are effective. Producers may receive lower prices from processors, and some of their stock may be condemned outright. The price consumers pay for meat may rise or fall depending on how the discovery of BSE in the U.S. would affect consumer demand for beef.

The main benefit of this proposed rule is the prevention of vCJD in the United States. There have been over 100 definite and probable cases of vCJD detected worldwide since the disease was first identified in 1986 in the United Kingdom. While vCJD is still considered a rare condition, the extent or occurrence of a vCJD epidemic in the United Kingdom cannot be determined because of the long incubation period (up to 25 years). Thus, if issued as a final rule, this proposal could have widespread public health benefits if it serves to prevent a vCJD epidemic from developing in the U.S. Even if vCJD remains a rare condition, this proposed rule will still have public health benefits because of the severity of the symptoms associated with vCJD and the fact that vCJD is always fatal.

This proposed rule may benefit the meat industry by helping to restore confidence in the domestic meat supply when and if a native case of BSE is detected in the U.S. This may limit losses to meat slaughter and processing operations in the long run.

Risks:

Although vCJD is a rare condition, the symptoms are severe, and it is always fatal. This proposed rule is intended to reduce the risk of humans developing vCJD in the U.S. in the event BSE is detected in native cattle. The measures proposed by FSIS are intended to minimize human exposure to materials from cattle that could potentially contain the BSE agent. In April 1998, USDA entered into a cooperative agreement with Harvard University's School of Public Health to conduct a risk analysis to assess the potential pathways for entry into U.S. cattle and the U.S. food supply, to evaluate existing regulations and policies, and to identify any additional measures that could be taken to protect human and animal health. FSIS will use the findings of the risk assessment to evaluate the level of risk reduction associated with the proposed measures.

Unlike bacterial and viral pathogens that may be found in or on meat food products, the BSE agent cannot be destroyed by conventional methods, such as cooking or irradiation. Also, although it is rare, vCJD, the human disease associated with exposure to the BSE agent, is generally more severe than the human illnesses associated with exposure to bacterial and viral pathogens. Thus, if BSE were detected in the U.S., additional measures to reduce the risk of human exposure to the BSE agent are necessary to protect public health.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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USDA—FSIS

25. • MEAT PRODUCED BY ADVANCED MEAT/BONE SEPARATION MACHINERY AND MEAT RECOVERY SYSTEMS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

21 USC 601 to 695

CFR Citation:

9 CFR 301.2; 9 CFR 318.24 (Revision); 9 CFR 3

Legal Deadline:

None

Abstract:

In 1994, the Food Safety and Inspection Service (FSIS) amended its regulations to recognize that products resulting from advanced meat/bone separation machinery comes within the definition of meat when recovery systems are operated to assure that the characteristics and composition of the resulting product are consistent with those of meat. Subsequent compliance problems and other concerns have made it apparent that the regulations are inadequate to prevent misbranding and economic adulteration. Therefore, FSIS is developing a rule to clarify the regulations and supplement the rules for assuring compliance.

Statement of Need:

In 1998, FSIS proposed to clarify the meat inspection regulations regarding mechanically separated meat contained in a final rule issued in December 1994. The rule would replace the present compliance program parameters with non-compliance criteria for bone and bone-related material.

The rule would require, as a prerequisite to labeling or using product derived by mechanically separating skeletal muscle tissue from cattle and swine bones as meat, that establishments implement and document procedures for ensuring that their production process is in control. The proposed rule was published in 1998. FSIS intends to implement more rigid measures for central nervous system tissue and prohibiting the use of vertebral columns in the AMR final product unless the establishment can demonstrate effective process control to ensure that no spinal cord and dorsal root ganglia will be present in the final AMR product. Current FSIS policy prohibits the presence of spinal cord in AMR products but not the presence of DRG or the use of vertebral columns. In January 2002, FSIS began the first of two surveys on AMR products derived from non-vertebral and vertebral beef and pork columns.

Summary of Legal Basis:

This action is authorized under the Federal Meat Inspection Act (21 U.S.C. 601 to 695).

Alternatives:

No action.

Anticipated Cost and Benefits:

Although the 1998 proposed rule was determined to be not economically significant, FSIS restudied the projected costs using data from various FSIS databases and other sources to develop an improved estimate of the benefits and costs of implementing the final rule. To date, it appears that the final rule will not be economically significant, but data evaluation continues. The benefit of enforcing the misbranding provisions will ensure that the product does not contain materials not consistent with boneless, comminuted meat.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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USDA–FSIS

FINAL RULE STAGE

26. PERFORMANCE STANDARDS FOR READY-TO-EAT MEAT AND POULTRY PRODUCTS

Priority:

Economically Significant

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 451 et seq; 21 USC 601 et seq

CFR Citation:

9 CFR 317; 9 CFR 381; 9 CFR 430

Legal Deadline:

None

Abstract:

FSIS has proposed to establish pathogen reduction performance standards for all ready-to-eat (RTE) and partially heat-treated meat and poultry products. The performance standards spell out the objective level of pathogen reduction that establishments must meet during their operations in order to produce safe products but allow the use of customized, plant-specific processing procedures other than those prescribed in the earlier regulations. Along with HACCP, food safety performance standards will give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls, while providing objective, measurable standards that can be verified by Agency inspectional oversight. This set of performance standards will include and be consistent with standards already in place for certain ready-to-eat meat and poultry products.

Statement of Need:

The Food Safety and Inspection Service (FSIS) has proposed to amend the Federal meat and poultry inspection regulations by establishing food safety performance standards for all ready-to-eat and all partially heat-treated meat and poultry products. The proposed performance standards set forth both levels of pathogen reduction and limits on pathogen growth that official meat and poultry establishments must achieve during their operations in order to produce unadulterated products but allow the use of customized, plant-specific processing procedures. The proposed performance standards apply to ready-to-eat meat and poultry products, categorized as follows: Dried products (e.g., beef or poultry jerky); salt-cured products (e.g., country ham); fermented products (e.g., salami and Lebanon bologna); cooked and otherwise processed products (e.g., beef and chicken burritos, corned beef, pastrami, poultry rolls, and turkey franks); and thermally processed, commercially sterile products (e.g., canned spaghetti with meat balls and canned corned beef hash).

Although FSIS routinely samples and tests some ready-to-eat products for the presence of pathogens prior to distribution, there are no specific regulatory pathogen reduction requirements for most of these products. The proposed performance standards will help ensure the safety of these products; give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls; and provide objective, measurable standards that can be verified by Agency oversight.

The proposal also contained provisions addressing Listeria monocytogenes in RTE products. An Interim Final Rule on this subject was published June 6, 2003 (68 FR 34208).

FSIS also has proposed to eliminate its regulations that require that both ready-to-eat and not-ready-to-eat pork and products containing pork be treated to destroy trichinae (Trichinella spiralis). These requirements are inconsistent with HACCP, and some will be unnecessary if FSIS makes final the proposed performance standards for ready-to-eat meat and poultry products.

Summary of Legal Basis:

Under the Federal Meat Inspection Act (21 U.S.C. 601 to 695) and the Poultry Product Inspection Act (21 U.S.C. 451 to 470), FSIS issues regulations governing the production of meat and poultry products prepared for distribution in commerce. The regulations, along with FSIS inspection programs, are designed to ensure that meat and poultry products are safe, not adulterated, and properly marked, labeled, and packaged.

Alternatives:

As an alternative to all of the proposed requirements, FSIS considered taking no action. As alternatives to the proposed performance standard requirements, FSIS considered end-product testing and requiring "use-by" date labeling on ready-to-eat products.

Anticipated Cost and Benefits:

Benefits are expected to result from less contaminated products entering commercial food distribution channels as a result of improved sanitation and process controls and in-plant verification. FSIS believes that the benefits of the rule would exceed the total costs of implementing its provisions.

The main provisions of the proposed rule are: Lethality performance standards for Salmonella and E. coli 0157:H7 and stabilization performance standards for C. perfringens that firms must meet when producing RTE meat and poultry products. Most of the costs of these requirements would be associated with one-time process performance validation in the first year of implementation of the rule and with revision of HACCP plans. Total industry-wide costs are estimated to be $7.1 million. Benefits are expected to result from the entry into commercial food distribution channels of product with lower levels of contamination resulting from improved in-plant process verification and sanitation.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	02/27/01	66 FR 12590
NPRM Comment Period End	05/29/01	
NPRM Comment Period Extended	07/03/01	66 FR 35112
NPRM Comment Period End	09/10/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

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USDA—FSIS

27. NUTRITION LABELING OF GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS AND SINGLE-INGREDIENT PRODUCTS

Priority:

Other Significant

Legal Authority:

21 USC 601 et seq; 21 USC 451 et seq

CFR Citation:

9 CFR 317; 9 CFR 381

Legal Deadline:

None

Abstract:

FSIS will require nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products, either on their label or at their point-of-purchase. FSIS will also require nutrition information on the label of ground or chopped meat and poultry products. The requirements for ground or chopped products will be consistent with those for multi-ingredient products.

In this final rule, FSIS will also provide that when a ground or chopped product does not meet the regulatory criteria to be labeled "low fat," a lean percentage claim may be included on the label or in labeling, as long as a statement of the fat percentage also is displayed on the label or in labeling.

Statement of Need:

The Agency will require that nutrition information be provided for the major cuts of single-ingredient, raw meat and poultry products, either on their label or at their point-of-purchase, because during the most recent surveys of retailers, the Agency did not find significant participation in the voluntary nutrition labeling program for single-ingredient, raw meat and poultry products. Without the nutrition information for the major cuts of single-ingredient, raw meat and poultry products that would be provided if significant participation in the voluntary nutrition labeling program existed, FSIS has concluded that these products would be misbranded.

Because consumers cannot easily estimate the level of fat in ground or chopped meat and poultry products and because producers are able to formulate precisely the fat content of ground or chopped products, FSIS has concluded that ground or chopped meat and poultry products that do not bear nutrition information on their labels would also be misbranded.

Finally, FSIS will amend the nutrition labeling regulations to provide that when a ground or chopped product does not meet the criteria to be labeled "low fat," a lean percentage claim may be included on the product as long as a statement of the fat percentage is also displayed on the label or in labeling. FSIS will include these provisions in the final nutrition labeling regulations because many consumers have become accustomed to this labeling on ground beef products and because this labeling provides a quick, simple, accurate means of comparing all ground or chopped meat and poultry products.

Summary of Legal Basis:

This action is authorized under the Federal Meat Inspection Act (21 U.S.C. 601 to 695) and the Poultry Products Inspection Act (21 U.S.C. 451 to 470).

Alternatives:

No action; nutrition labels required on all single-ingredient, raw products (major cuts and non-major cuts) and all ground or chopped products; nutrition labels required on all major cuts of single-ingredient, raw products (but not non-major cuts) and all ground or chopped products; nutrition information at the point-of-purchase required for all single-ingredient, raw products (major and non-major cuts) and for all ground or chopped products.

Anticipated Cost and Benefits:

Costs will include the equipment for making labels, labor, and materials used for labels for ground or chopped products. The cost of providing nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products should not be significant, because retail establishments would have the option of providing nutrition information through point-of-purchase materials.

Benefits of the nutrition labeling rule would result from consumers modifying their diets in response to new nutrition information concerning ground or chopped products and the major cuts of single-ingredient, raw products. Reductions in consumption of fat and cholesterol are associated with reduced incidence of cancer and coronary heart disease.

FSIS has concluded that the quantitative benefits will exceed the quantitative costs of the rule.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4970
NPRM Comment Period End	04/18/01	
Extension of Comment Period	04/20/01	66 FR 20213
NPRM Comment Period End	07/17/01	
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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USDA—Forest Service (FS)

FINAL RULE STAGE

28. NATIONAL FOREST SYSTEM LAND MANAGEMENT PLANNING

Priority:

Other Significant

Legal Authority:

16 USC et seq; 5 USC 301

CFR Citation:

36 CFR 219, subpart A

Legal Deadline:

None

Abstract:

The Forest Service proposed changes to the National Forest System Land and Resource Management Planning Rule adopted November 9, 2000. The proposed rule was published December 6, 2002 (67 FR 72770). The proposed changes are a result of a review conducted by Forest Service personnel at the direction of the Office of the Secretary.

The final rule shall respond to internal review and comments received after the draft rule published December 6, 2002. This proposed rule is intended to improve upon the 2000 rule by providing a planning process that is more readily understood, is within the Agency's capability to implement, is within anticipated budgets and staffing levels, and recognizes the programmatic nature of planning.

Statement of Need:

The President's environmental program includes natural resource planning for all units of the National Forest System. In support of that effort, the Forest Service is adopting a final rule at 36 CFR part 219, subpart A, to revise the land management planning rule, published on November 9, 2000, governing how future changes in land management planning direction will be made and how those changes will be documented. The proposed rule was published in the Federal Register on December 6, 2002, for a 90-day public comment period. The comment period was extended 30 days to April 7, 2003. The proposed rule continued to support the major principles of the 2000 rule, which are the underlying concepts of sustainability, monitoring and evaluation, collaboration, and use of science. The proposed rule, however, improved the clarity of the 2000 rule, characterized planning as a continuous process, offered two options to provide for diversity of plant and animal communities, and provided for plan analysis to be categorically excluded from National Environmental Policy Act (NEPA) documentation. The Agency received over 195,000 comments on the proposed rule. Consideration of these comments should lead to a final rule that better enables the Forest Service to be good land stewards by providing the clean air and water and wildlife protection the public expects. This goal would be accomplished by shifting from a complex, cumbersome, and expensive up front planning process, to a streamlined process that better involves the public, and shifts resources to land management and continual monitoring and evaluation.

Summary of Legal Basis:

The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 et seq.), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949 et seq.), requires the Secretary to promulgate regulations under the principles of the Multiple-Use Sustained-Yield Act of 1960 that set out the process for the development and revision of land management plans (16 U.S.C. 1604(g)).

Alternatives:

The Forest Service considered and compared the final planning rule to both the 1982 and the 2000 planning regulations. Land management plans prepared under the 1982 rule were difficult to prepare, took 5 to 7 years to complete, and required detailed analytical requirements that were of limited use due to the high degree of uncertainty of the projections. The 2000 planning rule requires a number of detailed analytical requirements, lacks clarity regarding many of these requirements, is not flexible enough, and lacks recognition of the limits of agency budgets and personnel needed to implement it.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits focused on key activities in land and resource management planning for which costs could be estimated under the 1982, 2000, and final planning rules. Based on costs that can be quantified, this final rule is estimated to save an average of $9.8 million annually, compared to the expected costs under the 1982 rule, and about $36 million per year compared to the 2000 rule. The discounted value of the cost savings over the 15-year planning horizon is estimated to be $92 million for the final rule when compared to the 1982 rule and approximately $324 million when compared to the 2000 rule.

In addition to the anticipated cost savings, numerous intangible benefits are expected to result from the final rule. The overall goal of the final rule is to develop a planning framework that fosters stewardship of the National Forest System lands and improves the likelihood of contributing toward the ecological, social, and economic components of sustainability. Better decisions provide sustained goods, services, and values without impairment of the health of the land. These improvements will be based on better collaboration with the public, improved monitoring and evaluation, integration of science, and a more flexible process that reduces the burden on both the public and the Agency. A planning process that addresses public concerns and leads to improved health of the public lands has value beyond the cost savings estimated in the analysis.

Risks:

The final planning rule will help to reduce the risks of natural resource management on National Forest System lands by strengthening the Forest Service's ability to respond quickly and effectively to a variety of continually changing issues, such as the development of new scientific information, new listing of species, the effects of wildfire, changes in demographics or the economy, and unforeseen effects of plan implementation activities. The final planning rule allows for a more flexible approach to planning and reducing risks by providing for a continual and adaptive planning cycle involving on-the-ground project proposal, analysis, and implementation; monitoring and evaluation; and plan adjustment. The final planning rule would allow flexible implementation of projects to avoid and reduce risks; for example, projects to implement the Agency's hazardous fuels reduction program.

Timetable:

Action	Date	FR Cite
NPRM	12/06/02	67 FR 72770
NPRM Comment Period End	03/24/03	
Final Action	11/00/03	
Final Action Effective	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—Rural Business-Cooperative Service (RBS)

PROPOSED RULE STAGE

29. • NATIONAL SECURITY EMERGENCY

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

7 USC 1963

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Rural Business-Cooperative Service (RBS) proposes to streamline procedures for loans and grants for existing business and industry direct and guarantee loan programs. This rulemaking will also establish emergency regulations for the community facilities program currently administered within the Rural Housing Service (RHS).

We are concurrently undertaking to prepare draft emergency legislation to expand both the nature of authorized financial assistance and the eligible applicant pool to assure maximum flexibility on the part of the Secretary in helping to alleviate the economic distress in rural areas when a national security emergency is declared. In the event this standby legislation is enacted, the scope of this rulemaking will be modified accordingly.

The proposed rule will include the following changes to current procedures for existing programs:

—The proposed rule will provide that the Agency may waive credit requirements that would otherwise apply to processing direct loans and guarantees.

—The proposed rule will provide that the Agency may substitute a "best efforts" test in allowing substitutions for application requirements. For example, if credit history documentation has been destroyed or is not available, an affidavit from a creditor familiar with the borrower's payment history prior to the emergency might suffice.

—We anticipate that environmental review requirements will be streamlined—most notably in the areas of public notice and comment periods.

—We will substitute "to the best of my knowledge" certifications for firm documentation requirements where reasonable and appropriate.

—We will provide exceptions to the requirements of the Paperwork Reduction Act that allow flexibility to USDA in the form and nature of information collections allowed under emergency conditions.

Statement of Need:

Executive Order 12656 directs the Secretary of Agriculture to develop plans to provide for the continuation of agricultural production, food processing, storage, and distribution through the wholesale level in national security emergencies and to provide for the domestic distribution of seed, feed, fertilizer, and farm equipment to agricultural producers.

In section 14(a) of USDA Departmental Regulation 1800–1 (Departmental Emergency Programs Responsibilities), the Secretary provides that RBS will, in cooperation with other government agencies at all levels: Promote economic development in affected rural areas by developing strategies that respond to the conditions created by an emergency; provide financial aid for needed community facilities; and provide business development assistance.

Absent supplemental legislation, if an emergency occurs, the financial resources that RBS will be able to deploy (expedited or not) will be a function of remaining appropriation levels across a spectrum of stove-piped program authorizations—where the types of assistance, eligible borrowers and eligible purposes must all be administered in accordance with different requirements. The best an emergency regulation can do under those circumstances is provide for expedited deployment of these remaining financial resources.

The intent and expectation is that the rulemaking will ultimately reflect supplemental legislation that accords maximum discretion to the Secretary in alleviating the capital needs of businesses in rural areas created by the emergency.

Summary of Legal Basis:

Section 323 of the Consolidated Farm and Rural Development Act [9 U.S.C. 1963] (Con Act) provides for direct or insured emergency loans for any purpose already authorized under subtitles A or B of the Con Act.

Alternatives:

In the case of a national security emergency, without this rulemaking, RBS would strive to execute the current programs within the then remaining appropriation levels as expeditiously as possible.

As discussed above, we expect to pursue standby legislation that will provide authorization for both grant and loan authority, a broad spectrum of eligible purposes and applicants, and include appropriations as well. This standby legislation would be effective as and when a national security emergency were declared and pertain only to the geographic areas affected.

Anticipated Cost and Benefits:

Absent standby emergency legislation that augments existing program budget authority, there is no incremental budget impact presented by this rulemaking. This regulation will only be effective upon the declaration of a National Security Emergency as contemplated by Executive Order 12656.

The streamlining of some processing requirements will facilitate faster deployment of RBS program funds, and in the case of RHS, the remaining available appropriations for essential community facilities.

Risks:

The greatest risk associated with streamlined processing and waivers of credit evaluation criteria is that of nonperforming loans resulting from this emergency regulation that otherwise would not have been made in the first place. The historic experience of RBS in the case of several natural disasters, however, is that the loan portfolios made under challenging conditions have actually out-performed the rest of the portfolio. It is not possible to know how future emergency loan performance will compare with the rest of the loan portfolio exposure.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—RBS

30. • RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

7 USC 8106

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

Section 9006 of the Farm Bill directs the implementation of a direct and guaranteed loan and grant program for renewable energy systems and energy efficiency improvements for farmers, ranchers, and rural small businesses. For fiscal year (FY) 2003, a Notice of Funds Availability was published on April 8 for the grant program.

The proposed rule will establish regulations to implement the direct and guaranteed loan and grant program. These regulations will allow for the integration of all program authorities and permit full attention to all of the potential contingencies and issues.

Statement of Need:

Section 9006 of the Farm Security and Rural Investment Act of 2002 (Act) requires that the Secretary establish a program to "make loans, loan guarantees, and grants to farmers, ranchers, and rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The Act directs that in funding such projects, USDA direct and guaranteed loans and grant financing is not to exceed 50 percent of the cost of the activity, and grant-only funding is not to exceed 25 percent of the cost of the activity. For 5 years, beginning in FY 2003, the Commodity Credit Corporation is to provide $23 million in budget authority annually for these purposes. Since this is a new program, guidelines need to be established concerning the nature of the program and the delivery model to be used, so that a full set of implementation policies can be developed. The Office of General Counsel has mandated that regulations must be in place to operate the program.

Summary of Legal Basis:

The Act mandates that assistance under section 9006 of the Act begin in FY 2003, with funds from the Commodity Credit Corporation, and continue for 5 fiscal years.

Alternatives:

None.

Anticipated Cost and Benefits:

The proposed action will have no financial impact on the public or the Government. However, it will have a positive impact for farmers, ranchers, and rural small businesses; improve the delivery of USDA's energy-oriented assistance; and be in the best interest of the Government and public.

Risks:

The only risk is, if the regulation is not done, fiscal year 2004 funding would be lost.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

None

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USDA—Natural Resources Conservation Service (NRCS)

PROPOSED RULE STAGE

31. CONSERVATION SECURITY PROGRAM

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

16 USC 3838

CFR Citation:

7 CFR 1470

Legal Deadline:

None

Abstract:

Under the Conservation Security Program (CSP) NRCS is authorized to provide financial and technical assistance to owners and operators of agricultural operations to promote conservation and improvement of the quality of soil, water, air, energy, plant and animal life, and other conservation purposes.

Statement of Need:

USDA intends that CSP will recognize those farmers and ranchers, the land stewards, who meet the highest standards of conservation and environmental management. By managing all of the natural resources on their farms and ranches in a sustainable fashion to these high standards, stewards of the land benefit themselves, their communities, and society as a whole. CSP can be an important tool for those stewards and others who strive towards the highest standards of conservation and environmental management. CSP helps sustain the economic well-being of those farmers and ranchers who reach this pinnacle of good land stewardship and enhance the ongoing production of clean water and clean air on their farms and ranches, which are valuable commodities to all Americans.

The fundamental philosophy and intent of CSP is to support ongoing conservation stewardship of working agricultural lands by providing payments and assistance to producers to maintain and enhance the condition of the resources. To implement the Secretary's vision, the program will reward owners and operators of agricultural lands for their conservation stewardship efforts and assist them with the implementation and maintenance of additional conservation measures that can improve the natural resource conditions of their agriculture operations. CSP particularly targets producers and activities that can provide the greatest additional benefits for the resource concerns identified in this rule and in CSP signup announcements. NRCS is additionally encouraging those who do not meet the sign-up requirements for CSP to initiate a review of the natural resource conditions on their land and begin or continue moving toward achieving the minimum conservation requirements to enter CSP at a later signup. Other USDA programs may be available for technical or financial assistance to help them achieve their resource management goals.

Summary of Legal Basis:

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, May 13, 2002) (the Act) amended the Food Security Act of 1985 (16 U.S.C. 3801 et seq.) to authorize the Conservation Security Program (CSP). The program is administered by USDA's Natural Resources Conservation Service (NRCS). The CSP is a voluntary program that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant, and animal life and other conservation purposes on tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and range land, as well as forested land and other non-cropped areas that are an incidental part of the agriculture operation.

As originally enacted, the Conservation Security Program was an entitlement program where many producers would have received payments if they were eligible. Subsequent to the enactment of the 2002 Act, the Omnibus Bill of 2003 amended the Act to limit CSP's total expenditures to a total of $3.77 billion over 11 years (fiscal year 2003 through fiscal year 2013). When developing the regulations to implement CSP, USDA confronted several challenges. The greatest challenge, however, was to design a new conservation entitlement program with a cap on its total expenditures over multiple years. Statute did not provide direction as to how the Secretary should implement a broad entitlement program with the statutory fiscal constraints.The limits imposed by the budget cap greatly reduce the potential scope of the program. For example, USDA's Economic Research Service (ERS) estimates that over 1.8 million farms and ranches may be eligible for CSP, using the land eligibility criteria found in the authorizing legislation. If all of these agricultural operations were enrolled, the cost of the program would exceed the $3.77 billion cap potentially in the first sign-up. In contract, NRCS estimates that the budget cap would allow less than 50,000 total agricultural operations to participate over the life of the program. Estimates derived from a variety of analyses indicate that the average Tier III contract, based on nationally averaged data, could be near $15,000 per year. If contracts were an average of 7 years in duration, the statutory funding could support an estimated 30,000 Tier III contracts. The average Tier I and Tier II contracts could be near $7,000 annually. If contracts were to average 5 years in duration, the statutory funding could support an estimated 90,000 Tier I and II contracts.

Furthermore, NRCS expects that a large number of producers will seek participation in CSP and ask for assistance to determine their potential eligibility for the program. Thus the statutory cap on technical assistance of 15 percent becomes another limiting factor for implementing CSP. By law, NRCS cannot incur technical assistance costs for NRCS employees or approved technical assistance providers in excess of 15 percent of the available funds.

Alternatives:

NRCS Preferred Approach:

1. Limit sign-ups: Conduct periodic CSP sign-ups.

2. Eligibility: Criteria should be sufficiently rigorous to ensure that participants are committed to conservation stewardship. Additionally, eligibility criteria should ensure that the most pressing resource concerns are addressed.

3. Contracts requirements should be sufficiently rigorous to ensure that participants undertake and maintain high levels of stewardship.

4. Prioritize funding to ensure that those producers with the highest commitment to conservation are funded first.

5. Structure payments to ensure that environmental benefits will be achieved.

Alternative Approaches:

1. Prioritize funding based on environmental considerations (e.g., high priority watersheds) with consideration given to past historical conservation.

2. Apportion the limited budget according to a formula of some kind, for example by discounting each participant's contract payments equally (i.e., prorate payments).

3. Close signup once available fund are exhausted (i.e., first come, first served).

4. Limit the number of tiers of participation offered.

5. Only allow historic stewards to participate-only those who have already completed the highest conservation achievement would be funded.

Anticipated Cost and Benefits:

NRCS developed a simulation model to analyze CSP benefits and costs. The model assesses producer participation and the overall benefits and costs to society associated with that participation. The model is based on a series of composite farms, replicating the process of calculating the CSP participation decision. Given farm-level estimates of participation, enrolled acreage, payments, and costs, the model estimates on-site and environmental (off-site) benefits, net economic costs, Government costs, Government-to-producer transfer payments, net benefit to society, and the benefit-cost ratio.

The model calculates the overall CSP payment by calculating several payment components individually, and then by summing the results of: The base payment, cost-sharing for installation of new structural practices and adoption of new land management practices, cost-sharing for maintenance of existing structural and land management practices, and enhancement payments. The Net Present Value (NPV) of each payment is determined by a payment rate per acre, the number of acres to which the payment applies, contract years in which the payment is made (i.e., whether the payment is made on a one-time or annual basis), discounted to the present using a 7 percent annual discount rate. Payments for structural and land management practices were calculated using a methodology similar to that used for the Environmental Quality Incentives Program (EQIP) Benefit/Cost Analysis, Final Report, May 29, 2003.

Although the analysis provides estimates of the social net benefits of each alternative examined, its primary value is to illustrate the relative order of the identified alternatives, rather than provide accurate estimates of the costs and benefits. NRCS based its estimates on a number of assumptions because of substantial data gaps. There is, for example, no available information on the benefits associated with major program elements, such as enhancement activities above and beyond the non-degradation level. Instead, the RIA used estimates generated from experience with EQIP, CRP, and other USDA conservation programs. NRCS also assumes that producers would enroll in CSP if the program provided any positive net benefit to them (i.e., even as small as $1). This assumption does not take into consideration producers' cash flow constraints, which along with other factors could affect participation. Since the analysis does not have information on the behavioral response of producers to the incentives provided by CSP, the benefits analysis provided in the RIA is largely a hypothetical construct and does not reflect the benefits of the proposed program and the identified alternatives. NRCS intends to refine the analysis for the final rule.

Risks:

By issuing the proposed rule, NRCS builds upon the public input it received during the comment period associated with its ANPRM and is obtaining additional public comment on the implementation of a new, innovative conservation program. The proposed rule provides the public an opportunity to participate in the NRCS formation of program policies and procedures prior to NRCS publishing a final rule for the program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

Federalism:

Undetermined

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DEPARTMENT OF COMMERCE (DOC)

Statement of Regulatory and Deregulatory Priorities

Enhancing long-term economic growth is a central focus of the President's policies and priorities. The mission of the Department of Commerce is to promote job creation, economic growth, technological competitiveness, sustainable development, and improved living standards for all Americans by working in partnership with businesses, universities, communities, and workers to:

Build for the future and promote U.S. economic competitiveness in the global marketplace by strengthening and safeguarding the Nation's economic infrastructure;

Keep America competitive with cutting-edge science and technology and an unrivaled information base; and

Provide effective management and stewardship of our Nation's resources and assets to ensure sustainable economic opportunities.

The DoC mission statement, containing our three strategic themes, provides the vehicle for understanding the Department's aims, how they interlock, and how they are to be implemented through our programs. This statement was developed with the intent that it serve as both a statement of departmental philosophy and as the guiding force behind the Department's programs

The importance that this mission statement and these strategic themes have for the Nation is amplified by the vision they pursue for America's communities, businesses, and families. Commerce is the smallest Cabinet agency, yet our presence is felt, and our contributions are found, in every State.

The DOC touches Americans, daily, in many ways—we make possible the weather reports that all of us hear every morning; we facilitate the technology that all of us use in the workplace and in the home each day; we support the development, gathering, and transmitting of information essential to competitive business; we make possible the diversity of companies and goods found in America's (and the world's) marketplace; and we support environmental and economic health for the communities in which Americans live.

The DOC has a clear and powerful vision for itself, for its role in the Federal Government, and for its roles supporting the American people, now and in the future. We confront the intersection of trade promotion, civilian technology, economic development, sustainable development, and economic analysis, and we want to provide leadership in these areas for the Nation.

We work to provide programs and services that serve our country's businesses, communities, and families, as initiated and supported by the President and the Congress. We are dedicated to making these programs and services as effective as possible, while ensuring that they are being delivered in the most cost-effective ways. We seek to function in close concert with other agencies having complementary responsibilities so that our collective impact can be most powerful. We seek to meet the needs of our customers quickly and efficiently, with programs, information, and services they require and deserve.

As a permanent part of the Federal Government, but serving an Administration and Congress that can vary with election results, we seek to serve the unchanging needs of the Nation, according to the priorities of the President and the Congress. The President's priorities for the Department range from issues concerning the economy to the environment. For example, the President directs the Department to promote electronic commerce activities; encourage open and free trade; represent American business interests abroad; and assist small businesses to expand and create jobs. We are able to address these priorities effectively by functioning in accordance with the legislation that undergirds our programs and by working closely with the President and the committees in Congress, which have programmatic and financial oversight for our programs.

The Department has taken steps to ensure that all of the President's priorities, particularly those that concern small business, are implemented. On August 13, 2002, the President issued Executive Order 13272, which directs the Department to take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations during the rulemaking process. In accordance with the Executive order, the Department published guidelines that establish procedures and policies to promote compliance with the Executive order and the Regulatory Flexibility Act. This guidance ensures that the Department properly considers the impact of its rules on small entities prior to implementation.

The DOC also promotes and expedites American exports, helps nurture business contacts abroad, protects U.S. firms from unfair foreign competition, and makes how-to-export information accessible to small and mid-sized companies throughout the Nation, thereby ensuring that U.S. market opportunities span the globe.

The DOC encourages development in every community, clearing the way for private-sector growth by building and rebuilding economically deprived and distressed communities. We promote minority entrepreneurship to establish businesses that frequently anchor neighborhoods and create new job opportunities. We work with the private sector to enhance competitive assets.

As the Nation looks to revitalize its industries and communities, the DOC works as a partner with private entities to build America with an eye on the future. Through technology, research and development, and innovation, we are making sure America continues to prosper in the short-term, while also helping industries prepare for long-term success.

The DOC's considerable information capacities help businesses understand clearly where our national and world economies are going and take advantage of that knowledge by planning the road ahead. Armed with the Department's economic and demographic statistics, businesses can undertake the new ventures, investments, and expansions that make our economy grow.

The DOC has instituted programs and policies that lead to cutting-edge, competitive, and better paying jobs. We work every day to boost exports, to deregulate business, to help smaller manufacturers battle foreign competition, to advance the technologies critical to our future prosperity, to invest in our communities, and to fuse economic and environmental goals.

The DOC is American business' surest ally in job creation, serving as a vital resource base, a tireless advocate, and its Cabinet-level voice.

The Regulatory Plan directly tracks these policy and program priorities, only a few of which involve regulation of the private sector by the Department.

Responding to the Administration's Regulatory Philosophy and Principles

The vast majority of the Department's programs and activities do not involve regulation. Of the Department's 12 primary operating units, only two—the Bureau of Industry and Security (BIS) and the National Oceanic and Atmospheric Administration (NOAA)—plan significant preregulatory or regulatory actions for this Regulatory Plan year. Of all the significant actions planned by the Department, NOAA plans to complete an action, entitled Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP), which rises to the level of "most important" of the Department's "significant regulatory actions". Further information on this action is provided below.

Though not principally a regulatory agency, the DOC has long been a leader in advocating and using market-oriented regulatory approaches in lieu of traditional command-and-control regulations when such approaches offer a better alternative. All regulations are designed and implemented to maximize societal benefits while placing the smallest possible burden on those being regulated.

The DOC is also refocusing on its regulatory mission by taking into account, among other things, the President's regulatory principles. To the extent permitted by law, all preregulatory and regulatory activities and decisions adhere to the Administration's statement of regulatory philosophy and principles, as set forth in section 1 of Executive Order 12866. Moreover, we have made bold and dramatic changes, never being satisfied with the status quo. We have emphasized, initiated, and expanded programs that work in partnership with the American people to secure the Nation's economic future. At the same time we have downsized, cut regulations, closed offices, and eliminated programs and jobs that are not part of our core mission. The bottom line is that, after much thought and debate, we have made many hard choices needed to make this Department "state of the art."

The Secretary has prohibited the issuance of any regulation that discriminates on the basis of race, religion, gender, or any other suspect category and requires that all regulations be written so as to be understandable to those affected by them. The Secretary also requires that the Department afford the public the maximum possible opportunity to participate in departmental rulemakings, even where public participation is not required by law.

National Oceanic and Atmospheric Administration

The National Oceanic and Atmospheric Administration (NOAA) establishes and administers Federal policy for the conservation and management of the Nation's oceanic, coastal, and atmospheric resources. It provides a variety of essential environmental services vital to public safety and to the Nation's economy, such as weather forecasts and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving the departmental goal of promoting stewardship by providing assessments of the global environment.

Recognizing that economic growth must go hand-in-hand with environmental stewardship, the Department, through NOAA, conducts programs designed to provide a better understanding of the connections between environmental health, economics, and national security. Commerce's emphasis on "sustainable fisheries" is saving fisheries and confronting short-term economic dislocation, while boosting long-term economic growth. The Department is where business and environmental interests intersect, and the classic debate on the use of natural resources is transformed into a "win-win" situation for the environment and the economy.

Three of NOAA's major components, the National Marine Fisheries Services (NMFS), the National Ocean Service (NOS), and the National Environmental Satellite, Data, and Information Service (NESDIS), exercise regulatory authority.

NMFS oversees the management and conservation of the Nation's marine fisheries, protects marine mammals, and promotes economic development of the U.S. fishing industry. NOS assists the coastal states in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the Nation's national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy. NESDIS administers the civilian weather satellite program and licenses private organizations to operate commercial land-remote sensing satellite systems.

The Administration is committed to an environmental strategy that promotes sustainable economic development and rejects the false choice between environmental goals and economic growth. The intent is to have the Government's economic decisions guided by a comprehensive understanding of the environment. The Department, through NOAA, has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development, and technology with environmental issues. NOAA has the primary Federal responsibility for providing sound scientific observations, assessments, and forecasts of environmental phenomena on which resource management and other societal decisions can be made.

In the environmental stewardship area, NOAA's goals include: rebuilding U.S. fisheries by refocusing policies and fishery management planning on increased scientific information; increasing the populations of depleted, threatened, or endangered species of marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: modernizing the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

Magnuson-Stevens Act Rulemakings

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. 3-to-200-mile Exclusive Economic Zone (EEZ). Among the several hundred rulemakings that NOAA plans to issue in the Regulatory Plan year, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NMFS by which it must exercise its rulemaking responsibilities.

While most of these rulemakings will be minor, involving only the opening or closing of a fishery under an existing FMP, one action concerning the Northeastern Multispecies Fishery Management Plan is of particular significance and we designate it as one of the "most important" of the Department's "significant regulatory actions". In this action NMFS plans to amend its regulations to implement provisions of Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). The principal objectives of Amendment 13 include measures to implement a formal rebuilding program for overfished stocks and to end overfishing on those stocks where it is occurring and to bring the FMP into full compliance with the Magnuson-Stevens Act. In addition, this rule would implement provisions that respond to the requirements of the Court Orders in the lawsuits of *Conservation Law Foundation, et al. v. Donald Evans, et al. (CLF v. Evans)*and *American Oceans Campaign, et al. v. William M. Daley, et al. (AOC v. Daley)*. Additional information concerning this rule is found below.

The Magnuson-Stevens Act, which is the primary legal authority for Federal regulation to conserve and manage fishery resources, establishes eight regional FMCs, responsible for preparing FMPs and FMP amendments. NMFS issues regulations to implement FMPs and FMP amendments. FMPs address a variety of fishery matters, including depressed stocks, overfished stocks, gear conflicts, and foreign fishing. One of the problems that FMPs may address is preventing overcapitalization (preventing excess fishing capacity) of fisheries. This may be resolved by limiting access to those dependent on the fishery in the past and/or by allocating the resource through individual transferable quotas, which can be sold on the open market to other participants or those wishing access. Quotas set on sound scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds, and establishing seasonal and area closures to protect fishery stocks.

The FMCs provide a forum for public debate and, using the best scientific information available, make the judgments needed to determine optimum yield on a fishery-by-fishery basis. Optional management measures are examined and selected in accordance with the national standards set forth in the Magnuson-Stevens Act. This process, including the selection of the preferred management measures, constitutes the development, in simplified form, of an FMP. The FMP, together with draft implementing regulations and supporting documentation, is submitted to NMFS for review against the national standards set forth in the Magnuson-Stevens Act, in other provisions of the Act, and other applicable laws. The same process applies to amending an existing approved FMP.

The Magnuson-Stevens Act contains ten national standards against which fishery management measures are judged. NMFS has supplemented the standards with guidelines interpreting each standard, and has updated and added to those guidelines. One of the national standards requires that management measures, where practicable, minimize costs and avoid unnecessary duplication. Under the guidelines, NMFS will not approve management measures submitted by an FMC unless the fishery is in need of management. Together, the standards and the guidelines correspond to many of the Administration's principles of regulation as set forth in section 1(b) of Executive Order 12866. One of the national standards establishes a qualitative equivalent to the Executive Order's "net benefits" requirement'one of the focuses of the Administration's statement of regulatory philosophy as stated in section 1(a) of the Executive order.

Bureau of Industry and Security

The Bureau of Industry and Security (BIS) promotes U.S. national and economic security and foreign policy interests by managing and enforcing the Department's security-related trade and competitiveness programs. BIS plays a key role in challenging issues involving national security and nonproliferation, export growth, and high technology. The Bureau's continuing major challenge is combating the proliferation of weapons of mass destruction while furthering the growth of U.S. exports, which are critical to maintaining our leadership in an increasingly competitive global economy. BIS strives to be the leading innovator in transforming U.S. strategic trade policy and programs to adapt to the changing world.

Major Programs and Activities

The Export Administration Regulations (EAR) provide for export controls on dual use goods and technology (primarily commercial goods that have potential military applications) not only to fight proliferation, but also to pursue other national security, short supply, and foreign policy goals (such as combating terrorism). Simplifying and updating these controls in light of the end of the Cold War has been a major accomplishment of BIS.

BIS is also responsible for:

Enforcing the export control and antiboycott provisions of the Export Administration Act (EAA), as well as other statutes such as the Fastener Quality Act. The EAA is enforced through a variety of administrative, civil, and criminal sanctions.

Analyzing and protecting the defense industrial and technology base, pursuant to the Defense Production Act and other laws. As the Defense Department increases its reliance on dual-use high technology goods as part of its cost-cutting efforts, ensuring that we remain competitive in those sectors and subsectors is critical to our national security.

Helping Ukraine, Kazakstan, Belarus, Russia, and other newly emerging countries develop effective export control systems. The effectiveness of U.S. export controls can be severely undercut if "rogue states" or terrorists gain access to sensitive goods and technology from other supplier countries.

Working with former defense plants in the Newly Independent States to help make a successful transition to profitable and peaceful civilian endeavors. This involves helping remove unnecessary obstacles to trade and investment and identifying opportunities for joint ventures with U.S. companies.

Assisting U.S. defense enterprises to meet the challenge of the reduction in defense spending by converting to civilian production and by developing export markets. This work assists in maintaining our defense industrial base as well as preserving jobs for U.S. workers.

DOC—National Oceanic and Atmospheric Administration (NOAA)

PROPOSED RULE STAGE

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32. AMENDMENT 13 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN (FMP)

Priority:

Economically Significant

Legal Authority:

16 USC 1801 et seq

CFR Citation:

50 CFR 648

Legal Deadline:

Final, Judicial, May 1, 2004, Final.

Final, Statutory, Final.

Abstract:

This action would amend the FMP to address the Magnuson-Stevens Act requirement to implement a stock rebuilding program for all of the regulated multispecies. Management measures may include a days-at-sea reduction, gear reductions, and area management.

Statement of Need:

On December 28, 2001, a decision was rendered by the U.S. District Court for the District of Columbia on a lawsuit brought by the Conservation Law Foundation (CLF), Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (CLF v. Evans, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding, and bycatch provisions of the Magnuson-Stevens Act (16 U.S.C 1801, et seq.) as amended by the Sustainable Fisheries Act (SFA). The court granted plaintiffs' motion for summary judgment on all counts, but did not impose a remedy. Instead, the court asked the parties to the lawsuit to propose remedies consistent with the court's findings. Shortly thereafter, several additional parties were allowed to intervene in the lawsuit for purposes of proposing the appropriate remedy. These parties (intervenors) included the States of Maine, New Hampshire, Massachusetts, and Rhode Island, and three industry groups. Additional background on the lawsuit is contained in the preambles to the interim rules published by NMFS on April 29, 2002 (67 FR 21140), May 6, 2002 (67 FR 30331), and June 5, 2002 (67 FR 38608), and in the proposed interim rule published July 1, 2002 (67 FR 44139).

From April 5–9, 2002, plaintiffs, defendants and intervenors engaged in court-sponsored mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the court as an appropriate remedy. Although these discussions ended with no agreement, several of the parties continued mediation and filed a settlement agreement with the court on April 16, 2002. In addition to NMFS, the parties signing the agreement include CLF, which is one of the plaintiff conservation groups, all four state intervenors, and two of three industry intervenors.

In order to ensure the implementation of protective management measures by May 1, 2002, NMFS, notwithstanding that the court had then not yet issued its remedial order, filed an interim final rule with the Office of the Federal Register on April 25, 2002, for publication on April 29, 2002. The interim final rule that was published on April 29, 2002, implemented measures identical to the short-term measures contained in the settlement agreement filed with the court.

On April 26, 2002, the court issued a remedial order that ordered the promulgation of two specific sets of management measures—one to be effective from May 1, 2002, to July 31, 2002, and the other from August 1, 2002, until promulgation of Amendment 13 to the FMP. The court-ordered measures for the first set of measures were, in the majority, identical with those contained in the settlement agreement and the measures contained in NMFS' April 29, 2002, interim final rule. However, the court-ordered measures included additional provisions and an accelerated schedule of effectiveness for all measures, which were not contained in either the settlement agreement or the April 29, 2002, interim final rule. According to the court, these additional provisions were included to strengthen the settlement agreement provisions "in terms of reducing overfishing and minimizing bycatch without risking the lives of fishers or endangering the future of their communities and their way of life." Remedial order, p. 13. Further, the court ordered that NMFS publish in the Federal Register, as quickly as possible, an "amended interim rule and an amended second interim rule" that would "include the departures from the Settlement Agreement incorporated in the Remedial Order." To comply with the court order, NMFS published a second interim final rule (amended interim rule) to modify the measures implemented through the April 29, 2002, interim final rule and to accelerate the effectiveness of the gear restrictions, as required by the remedial order. Because the court's remedial order was not entirely consistent with the terms of the settlement agreement, NMFS, CLF, and the intervenors filed motions for reconsideration with the court requesting that the court implement the terms of the settlement agreement without change.

On May 23, 2002, the court issued an order, in the case of CLF v. Evans, granting the motions for reconsideration on the basis that "the important changes made by the Court in the complex and carefully crafted Settlement Agreement Among Certain Parties ... would produce unintended consequences." The court ordered that the settlement agreement be implemented according to its terms; that the Secretary of Commerce (Secretary) publish an interim rule, effective no later than June 1, 2002, to reduce overfishing in the first quarter of the 2002–2003 fishing year; that the Secretary publish another interim rule to be effective no later than August 1, 2002, to reduce overfishing beginning with the second quarter of the 2002–2003 fishing year, and continuing until implementation of Amendment 13 to the FMP, which complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and that, no later than August 22, 2003, the Secretary promulgate such an amendment to the FMP. The court further ordered that the Secretary shall make public the most current scientific information to enable completion of the FMP Amendment no later than December 1, 2002, provide at least 5 percent observer coverage, and inform the court of the steps taken to comply with the order no later than September 5, 2002. The order relating to observer coverage differs from the settlement agreement in that it requires a minimal level of 5 percent at first and 10 percent by May 1, 2003, unless it can be established by scientific information that an increase is not necessary. NMFS implemented a program to provide at least 5 percent observer coverage in the multispecies fishery for the period August 1, 2002, to April 30, 2003, and thereafter, at a level of at least 5 percent depending on statistical need.

In response to the May 23, 2002, court order, on May 31, 2002, NMFS filed an interim final rule with the Federal Register on June 5, 2002 (67 FR 38608) that implemented regulations for the June 1 through July 31, 2002, period, consistent with the settlement agreement. On July 1, 2002, NMFS published a proposed interim rule (67 FR 44139) for measures ordered by the court to be effective August 1, 2002; public comments were accepted through July 16, 2002. The interim final rule published August 1, 2002 (67 FR 50292) implemented management measures for the period August 1, 2002, through the implementation of Amendment 13, in accordance with the settlement agreement and the remedial order. Amendment 13, which will bring the FMP into full compliance with the SFA, is under development by NMFS and the New England Fishery Management Council (Council) and was intended to be implemented by August 22, 2003. The interim final rule is an interim action necessary to reduce overfishing consistent with and pursuant to section 305(c) of the Magnuson-Stevens Act while Amendment 13 is being developed. Under the provisions of section 305(c)(3) of the Magnuson-Stevens Act, interim measures shall remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the Federal Register for one additional period of not more than 180 days, provided that the public has had an opportunity to comment on the interim measures. On January 22, 2003, NMFS published a notice of continuation of these regulations (68 FR 2919) announcing the continuation of the management measures to reduce overfishing through July 27, 2003. NMFS and two of the plaintiffs filed a motion with the court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. The court granted an extension of the court—ordered timeline for Amendment implementation until May 1, 2004. On April 24, 2003, NMFS published a proposed emergency action (68 FR 20097) requesting comments on measures to ensure that the regulations governing the Northeast Multispecies Fishery continued to be in compliance with the court's order. On June 27, 2003, NMFS published a final emergency rule (68 FR 38234) continuing most of the measures contained in the settlement agreement ordered by the court. This emergency action is necessary to ensure that there exist measures to reduce overfishing until implementation of Amendment 13.

Summary of Legal Basis:

The regulations implementing measures contained in the Northeast Multispecies FMP are governed by the Magnuson-Stevens Act. The Magnuson-Stevens Act mandates that action be taken if the size of a fish stock declines below a specified level or if the annual harvest rate is too high. Although the numbers of fish of many of the 15 groundfish species (20 stocks) have increased substantially in recent years and harvest rates have gradually declined, for many stocks the rate of increase must be accelerated to comply with the law, and for other stocks the harvest rate must be reduced. As a result of the CLF v. Evans, a Federal judge ruled that the Northeast Multispecies FMP does not comply with the Magnuson-Stevens Act and ordered that Amendment 13 measures must bring the FMP into compliance with the Magnuson-Stevens Act. In addition to this lawsuit, Amendment 13 includes alternatives to address the court—ordered remedy in the case of AOC v. Daley. In this case the Court ruled that elements of the amendment adopted to comply with the essential fish habitat provisions of the Magnuson-Stevens Act were not in compliance with the National Environmental Policy Act. Therefore, Amendment 13 will bring the Northeast Multispecies FMP into compliance with the Magnuson-Stevens Act and respond to the requirements of the court orders in the lawsuits of CLF v. Evans and AOC v. Daley.

Alternatives:

The principal objectives of Amendment 13 include rebuilding overfished stocks, ending overfishing, reducing unused effort in the fishery, addressing administrative issues, maintaining flexibility in the fishery, reducing bycatch, and minimizing the impact of the fishery on fish habitat and protected species such as whales and turtles. There are three major categories of impacts considered for each measure—biological, economic, and social impacts. The impacts on bycatch, habitat, and enforcement are also considered. The public has opportunities to provide comments on the proposed alternatives under consideration. On August 29, 2003, the Notice of Availability (NOA) for the draft supplemental environmental impact statement was published in the Federal Register. This document provides an analysis of alternatives under consideration in Amendment 13. This document also contains a preliminary regulatory economic evaluation of the alternatives. The comment period on this document closes on October 15, 2003. The public will also be provided with an opportunity to provide comments during formal Secretarial review of Amendment 13. An NOA for the Amendment and the proposed rule will be published in the Federal Register with comment periods specific to each. The Secretary will approve, disapprove, or partially approve the Amendment within 30 days of the close of the comment period on the NOA. A final rule implementing any approved portions of the Amendment will be published in the Federal Register.

Anticipated Cost and Benefits:

The Magnuson-Stevens Act is designed to realize the full potential of the fishery resources over the long term for the benefit of the Nation and the fishing industry. The process of achieving this goal can, and does, have serious impacts on fishermen and dependent communities. NMFS and the Council are fully aware of potential impacts from proposed management measures and work to ensure not only the long-term sustainability of groundfish resources, but also the economic vitality of New England fishing communities. There are likely short-term costs to the New England fishing industry in order to obtain long-term benefits to all users of the groundfish resource.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	02/00/04	
Final Action	04/00/04	
Final Action Effective	05/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, State

Additional Information:

The National Marine Fisheries Service (NMFS) amends its regulations to implement provisions of Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). The principal objectives of Amendment 13 include measures to implement a formal rebuilding program for overfished stocks and to end overfishing on those stocks where it is occurring and to bring the FMP into full compliance with the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act). In addition, this rule implements provisions that respond to the requirements of the Court Orders in the lawsuits of Conservation Law Foundation et al. v. Donald Evans et al. (CLF v. Evans) and American Oceans Campaign, et al. v. William M. Daley, et al. (AOC v. Daley).

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DEPARTMENT OF DEFENSE (DOD)

Statement of Regulatory Priorities

Background

The Department of Defense (DoD) is the largest Federal department consisting of 3 military departments (Army, Navy, and Air Force), 9 unified combatant commands, 16 Defense agencies, and 7 DoD field activities. It has over 1,400,000 military personnel and 670,000 civilians assigned as of May 31, 2003, and over 200 large and medium installations in the continental United States, U. S. territories, and foreign countries. The overall size, composition, and dispersion of the Department of Defense, coupled with an innovative regulatory program, presents a challenge to the management of the Defense regulatory efforts under Executive Order 12866 "Regulatory Planning and Review" of September 30, 1993.

Because of its diversified nature, DoD is impacted by the regulations issued by regulatory agencies such as the Departments of Energy, Health and Human Services, Housing and Urban Development, Labor, Transportation, and the Environmental Protection Agency. In order to develop the best possible regulations that embody the principles and objectives embedded in Executive Order 12866, there must be coordination of proposed regulations among the regulating agencies and the affected Defense components. Coordinating the proposed regulations in advance throughout an organization as large as DoD is straightforward, yet a formidable undertaking.

DoD is not a regulatory agency but occasionally issues regulations that have an impact on the public. These regulations, while small in number compared to the regulating agencies, can be significant as defined in Executive Order 12866. In addition, some of DoD's regulations may affect the regulatory agencies. DoD, as an integral part of its program, not only receives coordinating actions from the regulating agencies, but coordinates with the agencies that are impacted by its regulations as well.

The regulatory program within DoD fully incorporates the provisions of the President's priorities and objectives under Executive Order 12866. Promulgating and implementing the regulatory program throughout DoD presents a unique challenge to the management of our regulatory efforts.

Coordination

Interagency

DoD annually receives regulatory plans from those agencies that impact the operation of the Department through the issuance of regulations. A system for coordinating the review process is in place, regulations are reviewed, and comments are forwarded to the Office of Management and Budget. The system is working in the Department, and the feedback from the Defense components is most encouraging, since they are able to see and comment on regulations from the other agencies before they are required to comply with them. The coordination process in DoD continues to work as outlined in Executive Order 12866.

Internal

Through regulatory program points of contact in the Department, we have established a system that provides information from the Administrator of the Office of Information and Regulatory Affairs (OIRA) to the personnel responsible for the development and implementation of DoD regulations. Conversely, the system can provide feedback from DoD regulatory personnel to the Administrator, OIRA. DoD continues to refine its internal procedures, and this ongoing effort to improve coordination and communication practices is well received and supported within the Department.

Overall Priorities

The Department of Defense needs to function at a reasonable cost, while ensuring that it does not impose ineffective and unnecessarily burdensome regulations on the public. The rulemaking process should be responsive, efficient, cost-effective, and both fair and perceived as fair. This is being done in the Department while it must react to the contradictory pressures of providing more services with fewer resources. The Department of Defense, as a matter of overall priority for its regulatory program, adheres to the general principles set forth in Executive Order 12866 as amplified below.

Problem Identification

Congress typically passes legislation to authorize or require an agency to issue regulations and often is quite specific about the problem identified for correction. Therefore, DoD does not generally initiate regulations as a part of its mission.

Conflicting Regulations

Since DoD plans to issue just two significant regulations this year, the probability of developing conflicting regulations is low. Conversely, DoD is impacted to a great degree by the regulating agencies. From that perspective, DoD is in a position to advise the regulatory agencies of conflicts that appear to exist using the coordination processes that exist in the DoD and other Federal agency regulatory programs. It is a priority in the Department to communicate with other agencies and the affected public to identify and proactively pursue regulatory problems that occur as a result of conflicting regulations both within and outside the Department.

Alternatives

DoD will identify feasible alternatives that will obtain the desired regulatory objectives. Where possible, the Department encourages the use of incentives to include financial, quality of life, and others to achieve the desired regulatory results.

Risk Assessment

Assessing and managing risk is a high priority in the DoD regulatory program. The Department is committed to risk prioritization and an "anticipatory" approach to regulatory planning, which focuses attention on the identification of future risk. Predicting future regulatory risk is exceedingly difficult due to rapid introduction of new technologies, side effects of Government intervention, and changing societal concerns. These difficulties can be mitigated to a manageable degree through the incorporation of risk prioritization and anticipatory regulatory planning into DoD's decisionmaking process, which results in an improved regulatory process and increases the customer's understanding of risk.

Cost-Effectiveness

One of the highest priority objectives of DoD is to obtain the desired regulatory objective by the most cost-effective method available. This may or may not be through the regulatory process. When a regulation is required, DoD considers incentives for innovation to achieve desired results, consistency in the application of the regulation, predictability of the activity outcome (achieving the expected results), and the costs for regulation development, enforcement, and compliance. These will include costs to the public, Government, and regulated entities, using the best available data or parametric analysis methods, in the cost-benefit analysis and the decisionmaking process.

Cost-Benefit

Conducting cost-benefit analyses on regulation alternatives is a priority in the Department of Defense so as to ensure that the potential benefits to society outweigh the costs. Evaluations of these alternatives are done quantitatively or qualitatively or both, depending on the nature of the problem being solved and the type of information and data available on the subject. DoD is committed to considering the most important alternative approaches to the problem being solved and providing the reasoning for selecting the proposed regulatory change over the other alternatives.

Information-Based Decisions

The Defense Department uses the latest technology to provide access to the most current technical, scientific, and demographic information in a timely manner through the worldwide communications capabilities that are available on the Internet. Realizing that increased public participation in the rulemaking process improves the quality and acceptability of regulations, DoD is committed to exploring the use of information technology (IT) in rule development and implementation. IT provides the public with easier and more meaningful access to the processing of regulations. Furthermore, the Department endeavors to increase the use of automation in the Notice and Comment rulemaking process in an effort to reduce time pressures and increase public access in the regulatory process. Notable progress has been made in the Defense acquisition regulations area toward achieving the Administration's E-government initiative of making it simpler for citizens to receive high-quality service from the Federal Government, inform citizens, and allow access to the development of rules.

Performance-Based Regulations

Where appropriate, DoD is incorporating performance-based standards that allow the regulated parties to achieve the regulatory objective in the most cost-effective manner.

Outreach Initiatives

DoD endeavors to obtain the views of appropriate State, local, and tribal officials and the public in implementing measures to enhance public awareness and participation both in developing and implementing regulatory efforts. Historically, this has included such activities as receiving comments from the public, holding hearings, and conducting focus groups. This reaching out to organizations and individuals that are affected by or involved in a particular regulatory action remains a significant regulatory priority of the Department and, we feel, results in much better regulations.

The Department is actively engaged in addressing the requirements of the Government Paperwork Elimination Act (GPEA) in implementing electronic government and in achieving IT accessibility for individuals with disabilities. This is consistent with the Administration's strategy of advancing E-government as expressed in "The President's Management Agenda."

Coordination

DoD has enthusiastically embraced the coordination process between and among other Federal agencies in the development of new and revised regulations. Annually, DoD receives regulatory plans from key regulatory agencies and has established a systematic approach to providing the plans to the appropriate policy officials within the Department. Feedback from the DoD components indicates that this communication among the Federal agencies is a major step forward in improving regulations and the regulatory process, as well as in improving Government operations.

Minimize Burden

In the regulatory process, there are more complaints concerning burden than anything else. In DoD, much of the burden is in the acquisition area. Over the years, acquisition regulations have grown and become burdensome principally because of legislative action. But, in coordination with Congress, the Office of Federal Procurement Policy, and the public, DoD is initiating significant reforms in acquisition so as to effect major reductions in the regulatory burden on personnel in Government and the private sector. DoD has implemented a multi-year strategy for reducing the paperwork burden imposed on the public. This plan shows that DoD has met and will exceed the goals set forth in the Paperwork Reduction Act. It is the goal of the Department of Defense to impose upon the public the smallest burden viable, as infrequently as possible, and for no longer than absolutely necessary.

Plain Language

Ensuring that regulations are simple and easy to understand is a high regulatory priority in the Department of Defense. All too often, the regulations are complicated, difficult to understand, and subject to misinterpretation, all of which can result in the costly process of litigation. The objective in the development of regulations is to write them in clear, concise language that is simple and easy to understand.

DoD recognizes that it has a responsibility for drafting clearly written rules that are reader-oriented and easily understood. Rules will be written for the customer using natural expressions and simple words. Stilted jargon and complex construction will be avoided. Clearly written rules will tell our customers what to do and how to do it. DoD is committed to a more customer-oriented approach and uses plain language rules thereby improving compliance and reducing litigation.

In summary, the rulemaking process in DoD should produce a rule that: Addresses an identifiable problem, implements the law, incorporates the President's policies defined in Executive Order 12866, is in the public interest, is consistent with other rules and policies, is based on the best information available, is rationally justified, is cost-effective, can actually be implemented, is acceptable and enforceable, is easily understood, and stays in effect only as long as is necessary. Moreover, the proposed rule or the elimination of a rule should simply make sense.

Regulations Related to the Events of September 11, 2001

The Department of Defense promulgated two acquisition regulations relating to the events of September 11, 2001. Defense Federal Acquisition Regulation Supplement (DFARS) Case 2002-D026, Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical, or Radiological Attack, implements sections 852 through 856 of the Homeland Security Act of 2002. Sections 852 through 856 provide new authorities for acquisitions by or for an executive agency of property or services that are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. An interim rule was published in the **Federal Register** on January 27, 2003, as part of Federal Acquisition Circular (FAC 2001-012) (68 FR 4048).

DFARS Case 2002-D042, Contractor Performance of Security-Guard Functions, implements section 332 of the National Defense Authorization Act of Fiscal Year 2003. Section 332 provides temporary authority for contractor performance of security-guard functions to meet increased requirement since September 11, 2001.

An interim rule was published in the **Federal Register** on February 14, 2003 (68 FR 7443).

Suggestions From the Public for Reform'Status of DoD Items

In the report entitled "Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities," there were two regulations and two guidance documents from the Army Corps of Engineers (Corps) that were nominated for reform.

Two commenters suggested that the Corps' nationwide permit program should be modified. One of these commenters stated that the nationwide permits make it easier to dredge and fill wetlands. This commenter also expressed concern that recently issued guidance on mitigation places too much discretion in the hands of local Corps personnel to determine mitigation requirements for activities authorized by Corps permits. This commenter said that the nationwide permits should be made more restrictive to ensure that they authorize only activities with minimal impacts. In contrast, the other commenter stated that the acreage limits for nationwide permits are too low, and require more project proponents to obtain individual permits, which results in construction delays. This commenter indicated that the acreage limits for the nationwide permits should be reevaluated and the nationwide permit program should be modified to minimize paperwork and prevent unnecessary delays at all levels of government.

The latest issuance of the nationwide permits was published in the January 15, 2002, issue of the **Federal Register** (67 FR 2020), and those nationwide permits expire on March 18, 2007. The nationwide permits are not classified as regulations. They are permits that authorize certain minor activities in waters of the United States that result in minimal adverse effects on the aquatic environment, individually and cumulatively. Although the nationwide permits are not regulations, the Corps coordinated the issuance package with the Office of Management and Budget, who subsequently vetted the submission with other Federal agencies interested in the Army's Regulatory Program. The nationwide permits that were published on January 15, 2002, reflect the result of this interagency coordination.

The acreage limits for nationwide permits are established so that those permits can be used to authorize most activities that have minimal adverse effects on the environment. Every 5 years, the terms and conditions of the nationwide permits are subject to a public notice and comment process, to ensure that the nationwide permits authorize only those activities with minimal individual and cumulative adverse environmental effects. Mitigation may be required to ensure that authorized activities result in minimal adverse environmental effects. Mitigation requirements are determined by local Corps personnel to account for regional differences in aquatic resources.

One commenter recommended that the Corps and Environmental Protection Agency (EPA) revisit the revisions to the Clean Water Act regulatory definitions of "fill material" and "discharge of fill material" that were published on May 9, 2002 (67 FR 31129). This commenter said that an Environmental Impact Statement should be prepared to fully examine the implications of changing these regulatory definitions. This commenter also stated that a more thorough regulatory impact analysis should be conducted under E.O. 12866. The changes to the regulatory definitions of "fill material" and "discharge of fill material" that were published in the May 9, 2002, **Federal Register** resulted from the public notice and comment process required by the Administrative Procedures Act. The Corp does not agree that these changes require an Environmental Impact Statement, because the revised definitions will not significantly affect the quality of the human environment. The revised definitions provide consistency between the Corps' and EPA's regulations governing discharges of fill material into waters of the United States.

One of the guidance documents recommended for reform is the joint guidance issued by the Corps and EPA on January 19, 2001, concerning the U.S. Supreme Court decision in the Solid Waste Agency of Northern Cook County vs. U.S. Army Corps of Engineers, 531 U.S. 159 (2001) (SWANCC). The commenter stated this joint guidance inappropriately limits the U.S. Supreme Court's ruling in that case. In the January 15, 2003, issue of the **Federal Register**, the Corps and EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) to obtain early comment on issues related to the scope of waters subject to Clean Water Act jurisdiction in light of the SWANCC decision by the U.S. Supreme Court. In appendix A of this ANPRM, there is a joint memorandum issued by the Corps and EPA that provides clarifying guidance regarding the U.S. Supreme Count's decision in SWANCC. This joint memorandum supercedes the January 19, 2001, guidance document cited by the commenter. The comments received in response to the ANPRM will be used to develop a proposed rule that addresses Clean Water Act jurisdiction in light of the SWANCC decision.

Other guidance documents recommended for reform relate to wetland delineation, especially the 1987 "Corps of Engineers Wetlands Delineation Manual" (1987 Manual). The 1987 Manual contains the procedures the Corps uses for identifying the boundaries of wetlands. One commenter stated that rulemaking procedures should be applied to the 1987 Manual, as well as the criteria used to identify jurisdictional wetlands and other waters of the United States. Another commenter indicated that wetland regulation has impeded real estate development. The Corps has begun an effort to update and clarify the 1987 Manual. This effort may also include the development of regional wetland delineation manuals. Any proposed changes to the 1987 Manual, or the issuance of regional wetland delineation manuals, will be subject to the public notice and comment procedures required by the Administrative Procedures Act.

Specific Priorities

For this regulatory plan, there are three specific DoD priorities, all of which reflect the established regulatory principles. One of these, "U.S. Army Corps of Engineers, Directorate of Civil Works," addresses one significant regulatory action as defined by Executive Order 12866. In those areas where rulemaking or participation in the regulatory process is required, DoD has studied and developed policy and regulations that incorporate the provisions of the President's priorities and objectives under the Executive order.

DoD has focused its regulatory resources on the most serious environmental, health, and safety risks. Perhaps most significant is that each of the three priorities described below promulgates regulations to offset the resource impacts of Federal decisions on the public or to improve the quality of public life, such as those regulations concerning civil functions of the U.S. Army Corps of Engineers, acquisition, and installations and the environment.

U.S. Army Corps of Engineers, Directorate of Civil Works

Preserve the Quality of Water and the Quality and Quantity of Wetlands

During fiscal year (FY) 2004, the U.S. Army Corps of Engineers is proposing to complete one significant regulation as defined by Executive Order 12866. Although not economically significant, the "Programmatic Regulations for the Comprehensive Everglades Restoration Plan" has been classified as significant ("other significant") because of the novel legal and policy issues that have arisen and will continue to arise over the 30-year implementation period. The Office of the Assistant Secretary of the Army (Civil Works) and the Corps, in conjunction with the Environmental Protection Agency (EPA), may propose a new regulation to provide additional clarification to the regulatory definition of "waters of the United States" for the purposes of the Clean Water Act.

The U.S. Army Corps of Engineers was directed by Congress in section 601 of the Water Resources Development Act of 2000 (Pub. L. 106-541, 114 Stat. 2680) to develop a Comprehensive Everglades Restoration Plan (Plan) to restore and preserve south Florida's natural ecosystem, while enhancing water supplies and maintaining flood protection. To guide the development of the Plan, Congress also directed the Secretary of the Army, after notice and opportunity for public comment, to develop and implement programmatic regulations within 2 years (not later than December 11, 2002). The programmatic regulations will establish a process for developing project implementation reports, project cooperation agreements, and project operating manuals that will ensure the goals and the objectives of the Plan are achieved. The regulations also will establish procedures for developing and using any new information resulting from ecosystem changes or unforeseen circumstances in accordance with the principles of adaptive management contained in the Plan. Finally, the programmatic regulations will facilitate the re-establishment of and protection of the natural system consistent with the interim and final goals of the Plan while providing thorough evaluation points during the 30-year project implementation schedule. The Office of Management and Budget (OMB) is facilitating development of the rule. On July 10, 2003, the Acting Secretary of the Army submitted the final programmatic regulations to OMB for final Administration review. OMB will vet the final programmatic regulations with appropriate Federal agencies and hold several interagency meetings before clearing the final regulations for publication in **Federal Register**. The final programmatic regulations require the concurrence of the Governor of Florida and the Secretary of the Interior and consultation with the Seminole Tribe of Indians of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, and the Secretary of Commerce.

The Department of the Army and the Environmental Protection Agency completed one Advance Notice of Proposed Rulemaking (ANPRM) in 2003. In a notice published in the January 15, 2003, issue of the **Federal Register** (68 FR 1991) the Army and EPA requested early comment on issues associated with the scope of waters that are subject to the Clean Water Act, in light of the U.S. Supreme Court decision in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001) (SWANCC). The ANPRM solicited information or data from the public, scientific community, and Federal and State resource agencies on the implications of the SWANCC decision on issues of regulatory jurisdiction under the Clean Water Act. In response to the ANPRM, approximately 150,000 comments were received. The Army and EPA are in the process of reviewing those comments to develop a Notice of Proposed Rulemaking that may be issued later this year.

National Historic Preservation Act'Army's Regulatory Program

More than 20 years ago, the Army Corps of Engineers published as appendix C of 33 CFR part 325, a rule that governs compliance with the National Historic Preservation Act (NHPA) for the Army's Regulatory Program. Over the years, there have been significant changes in policy, and the Act was amended in 1992, leading to the publication in December 2000 of new implementing regulations, at 36 CFR part 800, developed by the Advisory Council on Historic Preservation (ACHP). Thus, on March 8, 2002, the Corps published a notice in the **Federal Register** (67 FR 10822), requesting comments on the implementation of the Army's regulatory program in view of the new ACHP regulations at 36 CFR part 800. Forty-one comments were received in response to this notice. After completing its review of those comments, the Corps may propose, in fiscal year 2004, changes to 33 CFR part 325, appendix C, to bring the regulation into conformance with the new ACHP at 36 CFR part 800, or work with the ACHP to develop other Federal agency program alternatives, to comply with the requirements of the NHPA and other historic preservation laws.

Defense Procurement and Acquisition Policy

Defense Procurement and Acquisition Policy launched a major transformation initiative to identify dramatic improvements and reductions to procurement policies, procedures, and processes in the Defense Federal Acquisition Regulation Supplement (DFARS). The focus of the DFARS will be clear requirements/procedures of law, mandatory DoD-wide policy, deviations from the FAR, and delegations of authority. Procedures and guidance internal to DoD will be contained in a non-regulatory second book that is electronically linked to the DFARS. This approach can foster an environment of flexibility and innovation, supporting a more rapid and responsive change process. The DFARS Transformation Task Force recommended more than 700 noncomplex changes and approximately 83 significant proposals, including proposed changes to the Federal Acquisition Regulation (FAR) and legislative changes. We have opened more than 75 new DFARS cases to implement the noncomplex proposals and the "first wave" of DFARS proposals. Some of these proposals include:

- Implement a proposal to mark all Government property in the hands of a contractor with a unique item identifier and to establish a value for such property.
- Eliminate application of the Balance of Payments Program to DoD acquisition except as a reporting requirement.
- Standardize payment and billing instructions in the DFARS.
- Delete the requirement to conduct periodic risk assessments and production surveillance of contractors that do not have Government contracts with criticality designators A or B, unless specifically requested by the Contracting Officer.

In addition, the Department of Defense continuously reviews the FAR and continues to lead Government efforts to simplify the following acquisition processes:

- Consider FAR and DFARS changes to facilitate timely contract closeout.

- Require contractors to submit electronic representations and certifications via the Business Partner Network.
- Clarify labor standards for contracts involving construction.
- Consider policies and procedures to provide contractors an adequate share of savings from cost efficiencies and rationalization over a not-to-exceed 5-year period.
- Rewrite FAR part 27, Patents, Data and Copyrights, to clarify, streamline, and update guidance and clauses on patents, data, and copyrights.
- Review various FAR cost principles to determine whether certain FAR cost principles are still relevant in today's business environment, whether they place an unnecessary administrative burden on contractors and the Government, and whether they can be streamlined or simplified.
- Revise policy on the applicability of cost accounting standards. The goal of this initiative is to modify and streamline the applicability of Federal cost accounting standards.
- Revise the FAR part 45, Government Property, to organize and streamline the property disposal procedures and incorporate into the FAR, the DoD deviations relating to Government property rental and special tooling.

Defense Installations and the Environment

The Department is committed to reducing the total ownership costs of the military infrastructure while providing the Nation with military installations that efficiently support the warfighter in: Achieving military dominance, ensuring superior living and working conditions, and enhancing the safety of the force and the quality of the environment. DoD has focused its regulatory priorities on explosives safety, human health, and the environment. These regulations provide means for the Department to provide information about restoration activities at Federal facilities and to take public advice on the restoration activities.

Restoration Advisory Boards

Section 324(a) of Public Law 104-106, which amended section 2705 of title 10, United States Code, requires the Secretary of Defense to "prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards." Section 324(a) also stated that DoD's issuance of regulations shall not be a precondition to the establishment of Restoration Advisory Boards (RABs) (amended section 2705(d)(2)(B)).

The Department of Defense recognizes the importance of public involvement at military installations and formerly used defense sites that require environmental restoration. RABs provide an expanded opportunity for stakeholder input into the environmental restoration process at operating and closing DoD installations. They also act as a forum for the discussion and exchange of restoration program information between agencies and the community, as well as providing an opportunity for RAB members to review progress and participate in a dialogue with the installation's decisionmakers.

In August 1996, the Department proposed and requested public comments on regulations regarding the characteristics, composition, funding, and establishment of Restoration Advisory Boards. The Boards were not subject to the Federal Advisory Committee Act (FACA), because DoD did not want to subject community members to the FACA requirements, such as financial disclosure. The General Services Administration did not agree that RABs are not subject to FACA. DoD continued its RABs but did not publish a final rule.

In the fall of 2001, the RAB regulations were raised in a case before the 9th Circuit. On the RAB rule issue, the Judge indicated that he would dismiss without prejudice and give the Department of Defense 18 months to promulgate a rule. The Judge was not inclined to grant the plaintiff's request that he order DoD to promulgate the rule, stating that the plaintiff could bring the matter back to the Court if the Department of Defense had not completed the rulemaking in 18 months. Accordingly, DoD is preparing a new RAB rule to meet this requirement and plans on publishing the rule in 2004.

Munitions Response Site Prioritization Protocol

Section 2710(b)(1) of title 10, United States Code, directs the Secretary of Defense to develop, in consultation with representatives of the States and Indian tribes, a proposed protocol for assigning to each defense site a relative priority for munitions response activities. Section 2710 provides for public notice and comment on the proposed protocol and requires that the proposed protocol be available for public comment on or before November 30, 2002. DoD is directed to issue a final protocol to be applied to defense sites listed in the Department's munitions response site inventory.

The proposed rule will be called the "Munitions Response Site Prioritization Protocol" and will be used to assign a relative response priority for all sites addressed under the Military Munitions Response Program (MMRP) category of the Defense Environmental Restoration Program (DERP). The protocol will be a qualitative methodology to sequence environmental restoration activities. The tool will make use of limited data and reflect the overall conditions at the site. It will be used to assign a relative priority based on an evaluation of factors relating to safety and environmental hazard potential.

The proposed Munitions Site Prioritization Protocol Rule was developed by a defense working group with input from other Federal agencies and State members of the Munitions Response Committee in consultation with tribal representatives. A notice was published in the **Federal Register** in March 2002 announcing DoD's intent to develop the protocol and requesting input from the public on the factors promulgated by Congress. Working documents are on the World Wide Web. The Department met with State and tribal representatives during preparation of the proposed rule published in August 2003. DoD plans to evaluate comments and publish a final rule in 2004.

DOD—U.S. Army Corps of Engineers (COE)

FINAL RULE STAGE

33. PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

Priority:

Other Significant

Legal Authority:

PL 106–541

CFR Citation:

33 CFR 385

Legal Deadline:

Final, Statutory, December 11, 2002, Final.

Abstract:

The U.S. Army Corps of Engineers was directed by Congress in section 601 of the Water Resources Development Act of 2000 (Pub. L. 106–541, 114 Stat.

2680) to develop a Comprehensive Everglades Restoration Plan (Plan) to restore and preserve south Florida's natural ecosystem, while enhancing water supplies and maintaining flood protection. To guide the development of the Plan, Congress also directed the Secretary of the Army, after notice and opportunity for public comment, to develop and implement programmatic regulations within 2 years (NLT December 11, 2002). The programmatic regulations will establish a process for developing project implementation reports, project cooperation agreements, and project operating manuals that will ensure the goals and the objectives of the Plan are achieved. The regulations also will establish procedures developing and using any new information resulting from ecosystem changes or unforeseen circumstances in accordance with the principles of adaptive management contained in the Plan. Finally, the programmatic regulations will facilitate the re-establishment and protection of the natural system consistent with the interim and final goals of the Plan while providing thorough evaluation points during the 30-year project implementation schedule.

Statement of Need:

The programmatic regulations will fulfill the intent of Congress to establish explicit guidance on how this project, and its constituent parts, will be developed and implemented, with full public and Agency participation.

Summary of Legal Basis:

Specifically, the programmatic regulations will implement the following sections of the Water Resources Development Act of 2000:

Section 601(h)(3)(A), requires programmatic regulations to be completed not later than 2 years after enactment;

Section 601(h)(3)(B), the Secretary of the Interior and the Governor shall provide the Secretary of the Army with a written statement of concurrence or nonconcurrence not later than 180 days after the end of the comment period;

Section 601(h)(3)(C), the regulations shall establish a process for the development of project implementation reports, project cooperation agreements, and operating manuals; ensure that new information resulting from changed or unforeseen circumstances, new science, or technical information developed through adaptive management are integrated into the implementation of the Plan; and ensure the protection of the natural system consistent with the goals and purposes of the Plan;

Section 601(h)(3)(D), all project implementation reports approved before the date of promulgation of the programmatic regulations shall be consistent with the Plan;

Section 601(h)(3)(E), at least every 5 years, the Secretary of the Army shall review the programmatic regulations for consistency with Plan goals and purposes.

Alternatives:

None.

Anticipated Cost and Benefits:

There are no economic costs, per say, attributed to the promulgation of the programmatic regulations. The regulations will help ensure that the $8 billion estimated Federal investment will result in ecosystem restoration benefits identified as individual projects are developed and implemented over a 30-year construction period.

Risks:

There are no risks associated with the programmatic regulations. Promulgation of the regulations will help ensure that the Army Corps of Engineers follows agreed upon project development and implementation procedures, designed to achieve the environmental restoration and protection benefits outlined in the Plan. Although no regulatory impacts with other Federal, Tribal, State, or local regulations have been identified to date, the Corps will take comments on impacts as part of the public and agency comment period and address them in the final regulations. The draft programmatic regulations have been drafted so as not to conflict with existing laws and regulations. Any oversights will be corrected in the final version.

Timetable:

Action	Date	FR Cite
NPRM	08/02/02	67 FR 50540
NPRM Comment Period End	10/01/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

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DEPARTMENT OF EDUCATION (ED)

Statement of Regulatory and Deregulatory Priorities

General

We support States, local communities, institutions of higher education, and others to improve education nationwide. Our roles include providing leadership and financial assistance for education to agencies, institutions, and individuals in situations in which there is a national interest; monitoring and enforcing Federal civil rights laws in programs and activities that receive Federal financial assistance; and supporting research, evaluation, and dissemination of findings to improve the quality of education.

To connect our customers to a "one-stop-shopping" center for information about our programs and initiatives, we instituted 1-800-USA-LEARN (1-800-872-5327). We also set up 1-800-4FED-AID (1-800-433-3243) for information on student aid, and we provide an on-line library of information on education legislation, research, statistics, and promising programs at the following Internet address: http://www.ed.gov

More than 757,500 people take advantage of these resources every week. We have forged effective partnerships with customers and others to develop policies, regulations, guidance, technical assistance, and approaches to compliance. We have a record of successful communication and shared policy development with affected persons and groups, including parents, students, educators, representatives of State and local governments, neighborhood groups, schools, colleges, special education and rehabilitation service providers, professional associations, advocacy organizations, business, and labor.

In particular, we continue to seek greater and more useful customer participation in our rulemaking activities through the use of consensual rulemaking and new technology. If we determine that the development of regulations is absolutely necessary, we seek customer participation at all stages in advance of formal rulemaking, during rulemaking, and after rulemaking is completed in anticipation of further improvements through statutory or regulatory changes. We have expanded our outreach efforts through the use of satellite broadcasts, electronic bulletin boards, and teleconferencing. For example, we invite comments on all proposed regulations through the Internet.

We are streamlining information collections, reducing burden on information providers involved in our programs, and making information maintained by us easily available to the public. We are looking into coordinating similar information collections across programs as one possible approach to reduce overlapping or inconsistent paperwork requirements. To the extent permitted by statute, we will revise regulations to eliminate barriers that inhibit coordination across programs (such as by creating common definitions). This should help reduce the frequency of reports and eliminate unnecessary data requirements.

We have piloted two Internet-based software applications, e-Application and e-Reports. These enable applicants, grantees, and grant teams to file and process applications and performance reports online. We have received positive feedback from participants in the pilot programs. Our goal over time is to encourage applicants and grantees to make electronic commerce, or the process of conducting business over the Internet, their preferred method of doing business.

New Initiatives

The Secretary's initiatives include One-ED, a new way of doing business for the Department of Education. One-ED represents the culmination of a series of changes that will transform the Department into a flexible, high-performing, high-integrity workplace focused on program outcomes and management excellence. One-ED is an integrated, 5-year human capital, strategic sourcing and restructuring plan that builds on the President's Management Agenda and the Department's Strategic Plan, Culture of Accountability Report and Blueprint for Management Excellence, and will provide employee learning and achievement opportunities.

Some One-Ed changes involve employees learning new skills so that staff can help the Department's partners achieve key education outcomes. Implementing One-ED also means making organization structure changes to coordinate policymaking and avoid duplication. One-ED clients and partners will find knowledgeable people arrayed in a structure that is easy to access and navigate.

Moving to One-ED also involves re-engineering work processes; i.e., changing how Department staff performs its work by reducing paperwork, introducing technology, and removing unnecessary steps. In some cases, through competitions and cost comparisons, the Department may find it less costly to provide high quality services by contracting with private sector organizations. In such cases, re-training and restructuring may become necessary.

No Child Left Behind

The No Child Left Behind Act of 2001, which reauthorized the Elementary and Secondary Education Act of 1965, increases accountability for States, school districts, and schools; provides greater choice for parents and students, particularly those attending low-performing schools; provides more flexibility for States and local educational agencies in the use of Federal education dollars; and places a stronger emphasis on reading, especially for our youngest children.

Each State, Puerto Rico, and the District of Columbia has submitted an accountability plan, and each plan was approved by the Department'a major milestone achieved in record time. Educators and parents across the country have embraced the principles of this law and are working hard to implement it in their communities.

The Department will now focus on helping States place a highly qualified teacher in every classroom; expanding the opportunities for qualified students to receive tutoring and other supplemental services; and identifying schools in need of improvement and making sure they are getting the assistance they need to get back on track.

Principles for Regulating

Our Principles for Regulating determine when and how we will regulate. Through aggressive application of the following principles, we have eliminated outdated or unnecessary regulations and identified situations in which major programs could be implemented without any regulations or with only limited regulations.

We will regulate only if regulating improves the quality and equality of services to our customers, learners of all ages. We will regulate only if absolutely necessary and then in the most flexible, most equitable, and least burdensome way possible.

Whether to regulate:

- When essential to promote quality and equality of opportunity in education.

- When a demonstrated problem cannot be resolved without regulation.
- When necessary to provide legally binding interpretation to resolve ambiguity.
- Not if entities or situations to be regulated are so diverse that a uniform approach does more harm than good.

How to regulate:

- Regulate no more than necessary.
- Minimize burden and promote multiple approaches to meeting statutory requirements.
- Encourage federally funded activities to be integrated with State and local reform activities.
- Ensure that benefits justify costs of regulation.
- Establish performance objectives rather than specify compliance behavior.
- Encourage flexibility so institutional forces and incentives achieve desired results.

Regulatory and Deregulatory Priorities for the Next Year

Reauthorization of the Individuals with Disabilities Education Act (IDEA), parts C and D, will make changes considered to be needed to improve the implementation of the early intervention program for infants and toddlers with disabilities under part C and the effectiveness of national discretionary grants, contracts, and cooperation agreements in improving the education of children with disabilities under part D. The Secretary solicited public comment on the reauthorization of IDEA using the underlying framework of the President's principles of education reform to ensure that no child is left behind.

ED—Office of Special Education and Rehabilitative Services (OSERS)

PRERULE STAGE

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34. REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

20 USC 1400 to 1487

CFR Citation:

34 CFR ch III

Legal Deadline:

None

Abstract:

These regulations would implement changes made by the anticipated reauthorization of the Individuals With Disabilities Education Act. This action is a notice that, if regulations are necessary, ED would review the regulations in 34 CFR chapter III under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of this review would be to determine if these regulations should be continued without change, or should be amended or rescinded, to minimize any significant economic impact upon a substantial number of small entities. We would request comments on the continued need for the regulations; the complexity of the regulations; the extent to which they overlap, duplicate, or conflict with other Federal, State, or local government regulations; and the degree to which technology, economic conditions, or other relevant factors have changed since the regulations were promulgated.

Statement of Need:

These regulations may be necessary to implement new legislation. ED would also complete its review of these regulations under 610(c) of the Regulatory Flexibility Act. In developing any regulations, the Department would seek to reduce regulatory burden and increase flexibility to the maximum extent possible.

Summary of Legal Basis:

New legislation.

Alternatives:

In addition to implementing the anticipated reauthorization of the Individuals with Disabilities Education Act, the purpose of this review would be to determine whether there are appropriate alternatives.

Anticipated Cost and Benefits:

Existing regulatory provisions may be eliminated or improved as a result of this review.

Risks:

These regulations would not address a risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Notice	01/10/02	67 FR 1411
ANPRM	08/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Undetermined

Government Levels Affected:

Undetermined

Federalism:

Undetermined

URL For Public Comments:

www.regulations.gov

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BILLING CODE 4000–01–S

DEPARTMENT OF ENERGY (DOE)

Statement of Regulatory and Deregulatory Priorities

The Department makes vital contributions to the Nation's welfare through its extraordinary scientific and technical capabilities in energy research, environmental remediation, and national security. The Department's mission is to:

- Foster a secure and reliable energy system that is environmentally and economically sustainable;
- Provide responsible stewardship of the Nation's nuclear weapons;
- Clean up the Department's facilities;
- Lead in the physical sciences and advance the biological, environmental and computational sciences; and,
- Provide premiere instruments of science for the Nation's research enterprise.

The Department of Energy's regulatory plan reflects the Department's continuing commitment to enhance safety, cut costs, reduce regulatory burden, and increase responsiveness to the public. While not primarily a major Federal regulatory agency, the Department's regulatory activities are essential to achieving its critical mission and to implementing major initiatives in the President's National Energy Plan.

Energy Efficiency Program for Consumer Products and Commercial Equipment

The Department's ongoing rulemaking activities related to energy efficiency standards and determinations have been categorized as high, medium, or low priority. These priorities, established with significant input from the public, are reflected in the rulemaking schedules set forth in **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions**.

During the coming year, the Department expects to revise the energy efficiency standards for residential furnaces, boilers, and mobile home furnaces; electric distribution transformers; commercial unitary air conditioners and heat pumps rated 65-240 kBtu/hr; and for small duct high velocity residential air conditioning. Additional information and timetables for these high priority actions can be found below. In addition, the Department will continue working on the analyses required to revise the standards for packaged terminal air conditioners and heat pumps, oil- and gas-fired commercial packaged boilers, 3-phased air conditioners and heat pumps rated less than 65 kBtu/hr, single package vertical air conditioners and heat pumps, and tankless gas-fired instantaneous water heaters.

The Department plans to publish final rules concerning test procedures for clothes washers, residential central air conditioners and heat pumps, electric distribution transformers, commercial warm air furnaces and air conditioning equipment, package boilers, and commercial water heaters. Information and timetables concerning these actions, medium and low priority standards rulemakings, and other test procedures can be found in the Department's regulatory agenda, which appears elsewhere in this issue of the **Federal Register**.

Nuclear Safety Regulations

The Department is committed to openness and public participation as it addresses one of its greatest challenges-managing the environment, health, and safety risks posed by its nuclear activities. A key element in the management of these risks is to establish the Department's expectations and requirements relative to nuclear safety and to hold its contractors accountable for safety performance. The 1988 Price-Anderson Amendments Act revisions to the Atomic Energy Act of 1954 (AEA) provide for the imposition of civil and criminal penalties for violations of DOE nuclear safety requirements. As a result, new nuclear safety requirements were initiated with the publication of four notices of proposed rulemaking for review and comment in 1991. The Department's nuclear safety procedural regulations (10 CFR part 820) were published as a final rule in 1993. The Department's substantive nuclear safety requirements (10 CFR parts 830 and 835) were finalized in 2001 and 1998, respectively. The remaining action, 10 CFR part 834, Radiation Protection and the Environment, is scheduled for publication by the end of 2003. In addition, the Department will be proposing in December 2003, to add a new part, 10 CFR 851, Worker Safety and Health, that would establish basic requirements to ensure workers are protected from safety and health hazards at DOE facilities.

DOE—Energy Efficiency and Renewable Energy (EE)

PRERULE STAGE

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35. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES, BOILERS, AND MOBILE HOME FURNACES

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 6295

CFR Citation:

10 CFR 430

Legal Deadline:

Final, Statutory, January 1, 1994, Final.

Abstract:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for most types of major residential appliances and generally requires DOE to undertake two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended.

This is the initial review of the statutory standards for furnaces, boilers and mobile home furnaces.

Statement of Need:

This rulemaking is required by statute. Experience has shown that the choice of residential appliances and commercial equipment being purchased by both builders and building owners is generally based on the initial cost rather than on life-cycle costs. Thus, the law requires minimum energy efficiency standards for appliances to eliminate inefficient appliances and equipment from the market.

Summary of Legal Basis:

EPCA establishes initial energy efficiency standard levels for most types of major residential appliances and certain commercial equipment. EPCA generally requires DOE to undertake rulemakings, at specified times, to determine whether the standard for a covered product should be made more stringent.

Alternatives:

The statute requires the Department to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of the alternative standard levels, including the existing standard, based on criteria specified by statute. The process improvements that were announced (61 FR 36974, July 15, 1996) further enhance the analysis of alternatives in the appliance standards development process. For example, under this process, the Department will ask stakeholders and private sector technical experts to review its analyses of the likely impacts, costs and benefits of alternative standard levels. In addition, the Department will solicit and consider information on nonregulatory approaches for encouraging the purchase of energy efficient products.

Anticipated Cost and Benefits:

The specific costs and benefits of these rulemakings have not been established because the final standard levels have not been determined. Nevertheless, existing appliance standards are projected to save 23 quadrillion Btus of energy from 1993 to 2015, resulting in estimated consumer savings of $1.7 billion per year in 2000 and estimated annual emission reductions of 107 million tons of carbon dioxide and 280 thousand tons of nitrogen oxides in that year. Under the existing standards, the discounted energy savings for consumers are 2.5 times greater than the upfront price premium paid for the appliance.

Risks:

Without appliance standards, energy use will continue to increase with resulting damage to the environment caused by atmospheric emissions. Enhancing appliance energy efficiency reduces atmospheric emissions such as CO2 and NOx. Establishing standards that are too stringent could result in excessive increases in the cost of the product and possible reductions in product utility. It might also place an undue burden on manufacturers that could result in loss of jobs or other adverse economic impacts.

Timetable:

Action	Date	FR Cite
ANPRM	09/08/93	58 FR 47326
Framework Workshop	07/17/01	
Venting Workshop	05/08/02	
ANPRM	02/00/04	
NPRM	01/00/05	
Final Action	09/00/05	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Local, State

Additional Information:

The Department published a notice in the Federal Register on July 8, 2003, to announce that its statement in the semiannual regulatory agenda, 68 FR 30192, 30195 (May 27, 2003), to reclassify the activity on Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces to a low priority was inadvertent and that the Department remains committed to involving stakeholders per the Process Rule. The Department is currently completing its economic analyses for potential new standards and expects to publish an ANPRM for public review and comment by February 2004. This action is a high priority, and the Department is working actively on this action.

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DOE—EE

36. ENERGY EFFICIENCY STANDARDS FOR ELECTRIC DISTRIBUTION TRANSFORMERS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 6317

CFR Citation:

10 CFR 430

Legal Deadline:

None

Abstract:

The Energy Policy and Conservation Act, as amended, (EPCA) establishes initial energy efficiency standard levels for certain types of major residential appliances and certain types of commercial equipment. EPCA contains no energy efficiency standards for distribution transformers. This rulemaking will determine whether it is appropriate to establish such standards.

Statement of Need:

This rulemaking is required by statute. Experience has shown that the choice of residential appliances and commercial equipment being purchased by both builders and building owners is generally based on the initial cost rather than on life-cycle cost. Thus, the law requires minimum energy efficiency standards for appliances to eliminate inefficient appliances and equipment from the market.

Summary of Legal Basis:

EPCA establishes initial energy efficiency standard levels for certain types of major residential appliances and certain types of commercial equipment and generally requires DOE to undertake rulemakings, at specified times, to establish the standards for those covered products without statutory standards.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of alternative standard levels, including the existing standard, based on criteria specified by statute. The process improvements that were announced (61 FR 36974, July 15, 1996) further enhance the analysis of alternative standards. For example, DOE will ask stakeholders and private sector technical experts to review its analyses of the likely impacts, costs, and benefits of alternative standard levels. In addition, the Department will solicit and consider information on nonregulatory approaches for encouraging the purchase of energy efficient products.

Anticipated Cost and Benefits:

The specific costs and benefits for these rulemakings have not been established because the final standard levels have not been determined. Nevertheless, existing appliance standards are projected to save 23 quadrillion Btus of energy from 1993 to 2015, resulting in estimated consumer savings of $1.7 billion per year in the year 2000 and estimated annual emission reductions of 107 million tons of carbon dioxide and 280 thousand tons of nitrogen oxides in the year 2000. Under the existing standards, the discounted energy savings for consumers are 2.5 times greater than the up-front price premium paid for the appliance.

Risks:

Without appliance efficiency standards, energy use will continue to increase with resulting damage to the environment caused by atmospheric emissions. Enhancing appliance energy efficiency reduces atmospheric emissions of carbon dioxide and nitrogen oxides. Establishing standards that are too stringent could result in excessive increases in the cost of the product, possible reductions in product utility and may place an undue burden on manufacturers that could result in a loss of jobs or other adverse economic impacts.

Timetable:

Action	Date	FR Cite
Determination Notice	10/22/97	62 FR 54809
ANPRM	11/00/03	
NPRM	11/00/04	
Final Action	05/00/05	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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RIN: 1904–AB08

DOE—EE

37. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL CENTRAL AIR CONDITIONING UNITS AND HEAT PUMPS RATED 65–240 KBTUS/HR

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 6293

CFR Citation:

10 CFR 431

Legal Deadline:

None

Abstract:

The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for certain types of major residential appliances and certain types of commercial equipment. EPCA requires DOE to amend the standards for products whenever ASHRAE amends its standards.

Statement of Need:

These rulemakings are required by statute. Experience has shown that the choice of residential appliances and commercial equipment being purchased by both builders and building owners is generally based on the initial cost rather than on life-cycle cost. Thus, the law requires minimum energy efficiency standards for appliances to eliminate inefficient appliances and equipment from the market.

Summary of Legal Basis:

EPCA establishes initial energy efficiency standard levels for certain types of major residential appliances and certain types of commercial equipment and requires DOE to amend the standard for this product when ASHRAE amends its standards, as recently occurred.

Alternatives:

The statute requires DOE to conduct rulemakings to review standards and to revise standards to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. In making this determination, the Department conducts a thorough analysis of alternative standard levels, including the existing standard, based on criteria specified by statute. The process improvements that were announced (61 FR 36974, July 15, 1996) further enhance the analysis of alternative standards. For example, DOE will ask stakeholders and private sector technical experts to review its analyses of the likely impacts, costs, and benefits of alternative standard levels. In addition, the Department will solicit and consider information on nonregulatory approaches for encouraging the purchase of energy efficient products.

Anticipated Cost and Benefits:

The specific costs and benefits for this rulemaking has not been established because the final standard levels have not been determined.

Risks:

Without energy efficiency standards, energy use will continue to increase with resulting damage to the environment caused by atmospheric emissions. Enhancing energy efficiency reduces atmospheric emissions of carbon dioxide and nitrogen oxides. Establishing standards that are too stringent could result in excessive increases in the cost of the product, possible reductions in product utility and may place an undue burden on manufacturers that could result in a loss of jobs or other adverse economic impacts.

Timetable:

Action	Date	FR Cite
Screening Workshop	10/01/01	66 FR 43123
ANPRM	11/00/03	
NPRM	11/00/04	
Final Action	05/00/05	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

None

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DOE—Departmental and Others (ENDEP)

PROPOSED RULE STAGE

38. WORKER SAFETY AND HEALTH

Priority:

Other Significant

Legal Authority:

42 USC 2011; 42 USC 5801 to 5911; 42 USC 7101 to 7352

CFR Citation:

10 CFR 851

Legal Deadline:

Final, Statutory, December 2, 2003, Final.

Abstract:

This action would add a new 10 CFR 851 regulation to DOE's regulations establishing a body of rules setting forth basic requirements to ensure workers are protected from safety and health hazards at DOE facilities.

Statement of Need:

The purpose of this rule is to ensure that the Department's obligation to protect the safety and health of its workers is fulfilled and to provide, if needed, a basis for the imposition of civil penalties consistent with section 3173 of the Bob Stump National Defense Authorization Act of 2003. This action is consistent with the Department's commitment to the issuance of safety and health requirements using notice and comment rulemaking.

Summary of Legal Basis:

Under the Atomic Energy Act of 1954 (AEA), as amended, the Department of Energy has the authority to regulate activities at facilities under its jurisdiction. On December 2, 2002, section 3173 of the National Defense Authorization Act amended the AEA to add section 234C (codified as 42 U.S.C. 2282c). Section 234C requires the Department to promulgate regulations for industrial and construction safety and health at DOE contractor facilities for contractors covered by an agreement of indemnification. The regulation must provide a level of protection to workers at such facilities that is substantially equivalent to the level of protection currently being provided to workers. Section 234C also makes DOE contractors that violate the safety and health regulations subject to civil penalties or a reduction of fees and other payments under its contract with DOE.

Alternatives:

None

Anticipated Cost and Benefits:

The incremental costs of the proposed rules should be minimal because contractors are currently bound by comparable contractual obligations.

Risks:

The proposed rule would allow DOE to assess penalties as directed by Congress for noncompliance. Therefore, contractors will be put at risk id they violate the safety and health requirements of the rule. The proposed rule may also reduce the injuries and illnesses of workers due to increased emphasis on complaint programs.

Timetable:

Action	Date	FR Cite
NPRM	12/08/03	68 FR 68276
NPRM Comment Period End	02/06/04	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DOE—ENDEP

FINAL RULE STAGE

39. RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Priority:

Other Significant

Legal Authority:

42 USC 2201; 42 USC 7191

CFR Citation:

10 CFR 834

Legal Deadline:

None

Abstract:

This action would add a new 10 CFR 834 to DOE's regulations establishing a body of rules setting forth the basic requirements for ensuring radiation protection of the public and environment in connection with DOE nuclear activities. These requirements stem from the Department's ongoing effort to strengthen the protection of health, safety, and the environment from the nuclear and chemical hazards posed by these DOE activities. Major elements of the proposal included a dose limitation system for protection of the public; requirements for liquid discharges; reporting and monitoring requirements; and residual radioactive material requirements.

Statement of Need:

The purpose of this rule is to ensure that the Department's obligation to protect health and safety is fulfilled and to provide, if needed, a basis for the imposition of civil and criminal penalties consistent with the Price-Anderson Amendments Act of 1988. This action is consistent with the Department's commitment to the issuance of nuclear safety requirements using notice and comment rulemaking.

Summary of Legal Basis:

Under the Atomic Energy Act of 1954, as amended, the Department of Energy has the authority to regulate activities at facilities under its jurisdiction. The Department is committed to honoring its obligation to ensure the health and safety of the public and workers affected by its operations and the protection of the environs around its facilities.

Alternatives:

The Department could continue to impose nuclear safety requirements through directives made applicable to DOE contractors through the terms of their contracts.

Anticipated Cost and Benefits:

The incremental costs of the proposed rules should be minimal because contractors are currently bound by comparable contractual obligations. Full compliance by contractors with nuclear safety standards will result in substantial societal benefits.

Risks:

This rulemaking should reduce the risk of nuclear safety problems by clarifying safety requirements applicable to DOE contractors and improving compliance.

Timetable:

Action	Date	FR Cite
NPRM	03/25/93	58 FR 16268
Second NPRM	08/31/95	60 FR 45381
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal

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BILLING CODE 6450–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Statement of Regulatory Priorities

The Department of Health and Human Services (HHS) is responsible for a vast array of programs designed to protect and promote the health and the social and economic well being of the American public. These programs especially affect some of the Nation's most vulnerable populations, including children, the elderly, and persons with disabilities. And, in one way or another, HHS activities touch the lives of virtually every person in our country, citizens and noncitizens alike.

HHS's programs and activities include: Medicare, Medicaid, support for public health preparedness, biomedical research, substance abuse and mental health treatment, assuring safe and effective drugs and other medical products, food safety, financial assistance to low income families, Head Start, services to older Americans, and direct health services delivery. These programs and services are essential to the well being of tens of millions of Americans of every age, in every location, and in every walk of life.

To improve the administration and conduct of these programs and activities, Secretary Thompson has made it clear that the Department must develop and issue regulations in a culture of responsiveness, where listening and responding to those we serve and those we regulate is our cornerstone. From health care to public health preparedness to food safety, the Secretary is committed to widening communication with consumers, beneficiaries and all regulated entities. Furthermore, the Secretary wishes to ensure that all HHS regulations are readily understandable, are clear and concise, and grounded both in law and common sense.

Since the attacks of September 11, 2001, the Department has placed a renewed emphasis on taking action to prepare and protect all Americans from acts of terrorism and other public health emergencies. In addition, consistent with the Secretary's priorities, the Department has taken important actions to enhance coordination of regulations across all its components.

FY 2004 Regulatory Themes

The Secretary has adopted four overarching regulatory themes for FY 2004:

- Improving the Nation's ability to prepare for and/or respond to public health emergencies and disasters;
- Reducing medical errors and enhancing patient safety;
- Modernizing Medicare, especially through issuing regulations emanating from Medicare-reform legislation, and
- Protecting America's consumers

Most of the Department's regulatory priorities for this fiscal year will fall under these themes. It should be noted, however, that the Secretary's overall priorities go beyond these four regulatory categories and include, for example, increasing the percentage of the Nation's children and adults with access to regular health care; enhancing the capacity and productivity of the Nation's health-science research enterprise; and supporting efforts to increase the independence of low-income families, the disabled, and older Americans.

Improving the Department's Ability to Respond to Emergencies and Disasters

HHS is responsible for directing and coordinating the medical and public health response to terrorism, natural disasters, major accidents and other events that can result in mass casualties. Timely and well-focused responses to such events are key to limiting death and injury. The Department and its partners must be able to react quickly, and tailor responses to the specific emergency without being encumbered by unnecessary or counter-productive activities.

Regulations in the Plan designed to help ensure that HHS has appropriate authority and flexibility to address emergencies and disasters include:

- Two final rules to improve readiness to respond to threats of food-safety bioterrorism, by ordering the detention of perishable food items, and by requiring the maintenance of certain food-handling records;
- A proposed rule to define a key term in the food-safety regulations so that FDA may move quickly and consistently in responding to a threatened or actual attack on the U.S. food supply;
- A proposed rule providing for an exception from the general requirement for informed consent in the use of investigational devices to identify chemical, biological, radiological or nuclear agents in a potential terrorist threat or other public health emergency; and
- A final rule for implementing a compensation program for individuals adversely affected by smallpox immunizations.

Reducing Medical Errors and Enhancing Patient Safety

Medical errors and other patient safety risks have been the subject of many recent studies and reports. The Secretary has directed that actions be taken to reduce these risks. Regulatory actions included in the Plan that are related to this category include:

- A final rule requiring human drug products to have a scanable bar code that will reduce medication errors;
- A final rule requiring that drug labels contain a toll-free number in order to report adverse events;
- A final rule requiring improvements in the format and content requirements of the "professional" labeling of drug products, enabling health care practitioners to prescribe drugs more safely; and
- A final rule to enhance and make more timely the safety reporting on drugs and biologics.

Modernizing Medicare

Medicare provides health care coverage for 41 million Americans. The Secretary is working with the Congress on legislation that will provide new options for America's seniors under Medicare. The provisions of the Medicare-reform legislation were still under discussion at the deadline for submissions to The Regulatory Plan, but issuing the regulations required under the legislation will be among the Secretary's top priorities.

The following regulatory actions, supported by already existing statutory authority, will also effect important improvements in Medicare:

- A final rule to expedite the Medicare coverage appeals;
- Two regulatory proposals to establish clearer performance standards under Medicare for organ procurement organizations, and a new mechanism for reapproval of organ transplant centers; and
- A proposed rule under which current requirements for Medicare reimbursement for services to persons with End Stage Renal Disease would be completely overhauled and simplified.

Protecting America's Consumers

Consumer health and safety is a major concern for the public and the Secretary. Consumers are inundated each year with an availability of new products and ingredients. Providing consumers with information about these products is a matter of great interest to the Secretary. Every year, tens of thousands of Americans become sick and some die from food borne pathogens, and the size of vulnerable populations (e.g., the elderly and those with compromised immune systems) is growing. The Secretary is especially interested in identifying opportunities that exist to make patient care and the food supply safer.

Regulations under this theme include:

- A final rule to standardize the manufacturing and packaging of dietary supplements; and
- A proposed rule to strengthen safety requirements for the storage and distribution of eggs.

Public Comments and Reactions

The Secretary welcomes comments not only on specific regulations as they are published in the Federal Register, but also on the themes he has established for 2003, as well as the regulatory principles noted above. Such comments, as well as ideas and specific suggestions for regulatory improvements and initiatives, should be sent to Secretary Tommy G. Thompson, c/o Ann C. Agnew, Executive Secretary to the Department, Room 603, Hubert H. Humphry Building, 200 Independence Avenue SW., Washington, DC 20201.

REGULATIONS BY THEME

1. Improving the Department's Ability to Respond to Emergencies and Disasters:
   - Smallpox Injury Compensation Program
   - Definition of "Serious Adverse Health Consequences" under the Public Health Security and Bioterroism Preparedness and Response Act of 2002
   - Establishment and Maintenance of Food Product Records
   - Administrative Detention of Food for Human or Animal Consumption
   - Exception from General Requirements for Informed Consent
2. Reducing Medical Errors and Enhancing Patient Safety:
   - Bar Code Label Requirements for Human Drug Products
   - Toll-free Number for Reporting Adverse Drug Events
   - Use of Restraint and Seclusion in Medicare and Medicaid Facilities
   - Notification of Consignees and Transfusion Recipients receiving Blood and Blood Components at Risk of Transmitting Hepatitis C virus
   - "Professional" Labeling for Prescription Drugs
   - Safety Reporting on Drugs and Biologics
3. Modernizing Medicare
   - Revisions to the Medicare Appeals Process
   - End Stage Renal Disease Conditions for Coverage
   - Prospective Payment System for Psychiatric Hospitals
4. Protecting America's Consumers:
   - Manufacturing and Packaging of Dietary Supplements;
   - Review of National Medicare Coverage Determinations
   - Control of Salmonella Enteriditis in Shell Eggs

HHS—Office of the Secretary (OS)

PROPOSED RULE STAGE

40. • HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT—ENFORCEMENT

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

Subtitle F of title II of PL 104–191; 42 USC 1320d–5

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This rulemaking would seek to establish a framework for enforcing compliance with the "administrative simplification" provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996—subtitle F of title II of Public Law 104–191 (42 U.S.C. 1320d–5).

Statement of Need:

The civil money penalty provisions of the above-cited statute provide, together with the criminal penalties authorized by 42 U.S.C. 1320d–6, the means by which the Federal Government may ensure compliance with the national standards adopted by the HHS Secretary under this statute. Regulation is needed to enable the Department to: 1) determine a basis for and amounts of civil money penalties that may be levied pursuant to the above-cited statute; and 2) establish procedures for the conduct of investigations and hearings with respect to the imposition of such penalties.

Summary of Legal Basis:

This regulation will implement provisions of 42 U.S.C. 1320d–5 and 42 U.S.C. 1320a–7a relating to the imposition of civil money penalties by the Secretary for violations of the rules adopted by the Secretary pursuant to subtitle F.

Alternatives:

The proposed procedural provisions of the rule would generally follow the civil money penalty procedures adopted by the Department's Office of the Inspector General (OIG) with respect to the conduct of investigation and hearings regarding the imposition of civil money penalties in cases of fraud and abuse. These procedures are codified at 45 C.F.R. parts 1003, 1005, and 1006. While the Department considered adopting different procedures, it decided not to do this for several reasons: the statutory language in section 1320d–5 specifically referring to the procedures adopted under section 1320a–7a (i.e., the OIG rules); the extensive experience of industry with the OIG rules; and the general agreement within the Department that the OIG rules provide workable procedures.

Anticipated Cost and Benefits:

The costs of this rule will consist primarily of the costs incurred by both the Department and any covered entities that are attributable to the investigation and hearing processes. These costs are expected to be minimal. Costs associated with compliance by entities subject to the HIPAA Administrative Simplification standards are not attributable to this rule.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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RIN: 0991–AB29

HHS—Substance Abuse and Mental Health Services Administration (SAMHSA)

PROPOSED RULE STAGE

41. REQUIREMENTS GOVERNING THE USE OF SECLUSION AND RESTRAINT IN CERTAIN NONMEDICAL COMMUNITY-BASED FACILITIES FOR CHILDREN AND YOUTH

Priority:

Other Significant

Legal Authority:

PL 106–310

CFR Citation:

Not Yet Determined

Legal Deadline:

NPRM, Statutory, April 2001, NPRM.

Abstract:

The Secretary is required by statute to publish regulations governing States that license nonmedical, community-based residential facilities for children and youth. The regulation requires States to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance; requires States to develop and implement such licensing rules and implementation requirements within one year; and ensures that States require such facilities to have adequate staff, and that the States provide training for professional staff.

Statement of Need:

In recent years, media, Government, and consumer reports of deaths and injuries occurring due to the use of seclusion and restraints have heightened concern about these mechanisms as interventions. The appropriate use of seclusion and restraint has been debated and regulated in various health care settings for many years. Researchers have examined the use of seclusion and restraint related injuries and deaths, and potential alternatives to address safety and care concerns while posing less inherent risk to the individual. Patient advocates, States and others have lobbied for reduced and more highly regulated use. States, health care facilities and professionals have examined mechanisms for reduction, and some have implemented training programs addressing alternatives as well as to promote applications that will minimize patient risk.

Summary of Legal Basis:

Sections 595 through 595B of the Public Health Service (PHS) Act (42 U.S.C. 290jj–290jj–2) as amended by the Children's Health (CHA) Act of 2000 (Pub. L. 106–310), section 3207, part I.

Alternatives:

No other regulatory alternatives were considered. The CHA requires the Secretary to promulgate regulations after consultation with appropriate State, local, public and private protection and advocacy organizations, health care professionals, social workers, facilities, and patients. Current regulations do exist, in some form, for hospitals and residential treatment facilities, while nursing homes and ICFs/MR use survey guidelines. The statutory language required that regulations be promulgated within one year of its enactment. This proposed rule is currently two years behind its mandated time of publication.

Anticipated Cost and Benefits:

The anticipated benefits include enhanced patient safety and better consumer protections. Increases in staff education and training are expected to lead to treatment alternatives and decreases in the use of seclusion and restraint as a means of intervention, which then leads to less traumatic experiences for both consumers and staff. The regulation creates a change in facility practices and policies on the use of seclusion and restraint. The regulation will create standard criteria for nonmedical community-based facilities for children and youth who receive PHS Act funds that will establish an industrywide effect on consumers who are receiving services within these facilities. The regulation creates consistent criteria for staff training and certification, facility staffing, and defining and reporting on seclusion and restraint.

The anticipated cost is based on regulations that will place requirements on all States as well as a projected estimate of 500 facilities. At this time, the extent of potential facilities is unattainable until the notice of proposed rulemaking is issued. It is estimated that the cost will be $7 million a year. The proposed rule will specifically solicit comments on actual staff training and reporting costs, and it is assumed this cost will decrease since a number of States and/or facilities have existing training and reporting requirements.

Risks:

The risk in implementing the regulation—

1. Increase in cost for States and facilities in staff training, however, most facilities that currently use seclusion and restraint have some general staff training requirements. The CHA will only expand the content of this training.

2. Increase possibility of States having their PHS funding status in jeopardy due to noncompliance with regulations. States and industry may raise concern that the CHA's enforcement aspect is too harsh.

3. Confusion regarding what facilities are covered or not by the regulations as well as different standards for similar facilities based if they are or are not recipients of PHS Act funding.

The risk in not implementing the regulation—

1. Continued unregulated seclusion and restraint in certain Federally funded facilities.

2. Continued incidence as well as under reporting of deaths as a result of seclusion and restraint, or deaths that occur within 24 hours after an individual has been secluded or restrained, or where it is reasonable to assume that the individual's death was caused by being placed in seclusion or restraints.

3. Barrage of continued concerns from advocacy groups, the media and the Congress to publish this regulation, as well as requests from facilities for guidance.

4. Lack of protection for special needs populations, such as children, adolescents, persons with mental illness, developmental disabilities, or co-occurring mental retardation who are disproportionately affected by the

usage of seclusion or restraints as a common form of intervention.

5. Lack of direction to organizations, advocacy groups, and more than 500 facilities for common definitions, industry language, and minimum criteria on staff training.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

State

Federalism:

This action may have federalism implications as defined in EO 13132.

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HHS—Food and Drug Administration (FDA)

PROPOSED RULE STAGE

42. PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

21 USC 321; 21 USC 342; 21 USC 371; 21 USC 381; 21 USC 393; 42 USC 243; 42 USC 264; 42 USC 271; ...

CFR Citation:

21 CFR 16; 21 CFR 116; 21 CFR 118

Legal Deadline:

None

Abstract:

In July 1999, the Food and Drug Administration (FDA) and the Food Safety Inspection Service (FSIS) committed to developing an action plan to address the presence of salmonella enteritidis (SE) in shell eggs and egg products using a farm-to-table approach. FDA and FSIS held a public meeting on August 26, 1999, to obtain stakeholder input on the draft goals, as well as to further develop the objectives and action items for the action plan. The Egg Safety Action Plan was announced on December 11, 1999. The goal of the Action Plan is to reduce egg-related SE illnesses by 50 percent by 2005 and eliminate egg-related SE illnesses by 2010.

The Egg Safety Action Plan consists of eight objectives covering all stages of the farm-to-table continuum as well as support functions. On March 30, 2000 (Columbus, OH), April 6, 2000 (Sacramento, CA), and July 31, 2000 (Washington, DC), joint public meetings were held by FDA and FSIS to solicit and discuss information related to the implementation of the objectives in the Egg Safety Action Plan.

In accordance with discussions at the public meetings, FDA intends to publish a proposed rule to require that shell eggs be produced under a plan that is designed to prevent transovarian SE from contaminating eggs at the farm during production.

FDA intends to discuss in its proposal certain provisions of the 1999 Food Code that are relevant to how eggs are handled, prepared, and served at certain retail establishments. In addition, the agency plans to consider whether it should require provisions for certain retail establishments that serve populations most at risk of egg-related illness (i.e., the elderly, children, and the immunocompromised).

Statement of Need:

FDA is proposing regulations as part of the farm-to-table safety system for eggs outlined by the President's Council on Food Safety in its Egg Safety Action Plan. FDA intends to propose these regulations because of the continued reports of outbreaks of foodborne illness and death caused by SE that are associated with the consumption of shell eggs. The agency believes these regulations can have significant effect in reducing the risk of illness from SE-contaminated eggs and will contribute significantly to the interim public health goal of the Egg Safety Action Plan of a 50 percent reduction in egg-related SE illness by 2005.

Summary of Legal Basis:

FDA's legal basis for the proposed rule derives in part from sections 402(a)(4), and 701(a) of the Federal Food, Drug and Cosmetic Act (the Act) ((21 U.S.C. 342(a)(4) and 371(a)). Under section 402(a)(4) of the Act, a food is adulterated if it is prepared, packed, or held in insanitary conditions whereby it may have been contaminated with filth or may have been rendered injurious to health. Under section 701(a) of the Act, FDA is authorized to issue regulations for the efficient enforcement of the Act. FDA also intends to rely on section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264), which gives FDA authority to promulgate regulations to control the spread of communicable disease.

Scientific reports in published literature and data gathered from existing voluntary egg quality assurance programs indicate that measures designed to prevent SE from entering a poultry house (e.g., rodent/pest control, use of chicks from SE-monitored breeders, and biosecurity programs) can be very effective in reducing SE-contamination of eggs and related foodborne illness.

Alternatives:

There are several alternatives that the agency intends to consider in the proposed rule. The principal alternatives include: (1) no new regulatory action; (2) alternative testing requirements; (3) alternative on-farm prevention measures; (4) alternative retail requirements; and (5) HACCP.

Anticipated Cost and Benefits:

The benefits from the proposed regulation to control Salmonella Enteritidis in shell eggs on the farm derive from better farming practices. Improved practices reduce contamination and generate benefits measured as the value of the human illnesses prevented. FDA has produced preliminary estimates of costs and benefits for a number of options. The mitigations considered include on-farm rodent control, changes in retail food preparation practices, diversion of eggs from infected flocks to pasteurization, record keeping, refrigeration, and feed testing. The actual costs and benefits of the proposed rule will depend upon the set of mitigations chosen and the set of entities covered by the proposed rule.

Risks:

Any potential for contamination of eggs with SE and its subsequent survival or growth must be considered a very serious risk because of the possibility that such contamination, survival, and growth could cause widespread foodborne illness, including some severe long-term effects and even loss of life. FDA made a decision to publish a proposed rule that would include SE prevention measures, based on a considerable body of evidence, literature, and expertise in this area. In addition, this decision was also based on the USDA risk assessment on SE in shell eggs and egg products and the identified public health benefits associated with controlling SE in eggs at the farm and retail levels.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—FDA

43. EXCEPTION FROM GENERAL REQUIREMENTS FOR INFORMED CONSENT; REQUEST FOR COMMENTS AND INFORMATION

Priority:

Other Significant

Legal Authority:

21 USC 321; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360; 21 USC 360bbb; 21 USC 360c; 21 USC 360d; 21 USC 360e; 21 USC 360f; 21 USC 360h; 21 USC 360i; 21 USC 360j; 21 USC 371; 21 USC 381

CFR Citation:

21 CFR 50.23

Legal Deadline:

None

Abstract:

FDA is proposing an amendment to the exception from the general requirement for informed consent in certain circumstances involving the use of investigational in vitro diagnostic devices to identify chemical, biological, radiological, or nuclear agents in a potential terrorist event or other public health emergency.

Statement of Need:

The agency is proposing this action because it is concerned that, during a potential terrorism event or other public health emergency, delaying testing of specimens to obtain informed consent may threaten the life of the subjects or others who have been exposed to or who may be at risk of exposure to a chemical, biological, radiological, or nuclear agent.

Summary of Legal Basis:

FDA has already determined that the statutory authority provided in the Federal Food, Drug, and Cosmetic Act (the Act) allows a limited exception to the requirement of obtaining informed consent in life-threatening situations such as those considered here. Section 520(g)(3)(D) of the Act provides specifically for an exception from informed consent for investigational devices, subject to such conditions as the agency may prescribe. That section requires informed consent of the subject unless the clinical investigator determines in writing that: 1) there exists a life-threatening situation involving the human subject of such testing which necessitates the use of the investigational device; 2) it is not feasible to obtain informed consent from the subject; and 3) there is not sufficient time to obtain such consent from his or her representative. Further, a licensed physician uninvolved in the testing must agree in writing with this three-part determination before the product is used unless immediate use of the device is required to save the life of the human subject of such testing and there is not sufficient time to get such concurrence. The investigator must submit the required documentation to the IRB within 5 days after the use of the device.

Alternatives:

The other option available to the agency is to work within the existing regulatory scheme. FDA believes that this option may result in delayed, improper or no diagnosis, and delayed, improper or no treatment for persons exposed to these agents because health professionals may not use these investigational products in a timely way or may not use them at all because of their inability to obtain informed consent.

Anticipated Cost and Benefits:

The minimal burdens imposed by this rule are offset by the fact that, in the absence of this rule, the investigator may be required to obtain informed consent, which is just as burdensome, if not more so. The rule would permit use of investigational products without which patients' lives might be threatened. Because of uncertainty about the nature or extent of any chemical or biological terrorism event or other public health emergency, FDA cannot estimate the extent of the benefits of this rule.

Risks:

The primary risk addressed by this rule is the risk that patients may go untreated or may be improperly treated including receiving delayed treatment, because health professionals may not use an investigational product in the absence of informed consent. FDA cannot determine the extent of this risk without knowing the nature or extent of any chemical or biological terrorism event.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HHS—FDA

44. TOLL-FREE NUMBER FOR REPORTING ADVERSE EVENTS ON LABELING FOR HUMAN DRUGS

Priority:

Other Significant

Legal Authority:

21 USC 355b

CFR Citation:

21 CFR 201; 21 CFR 208; 21 CFR 209

Legal Deadline:

Final, Statutory, January 4, 2003, Final.

Abstract:

To require the labeling of human drugs approved under section 505 of the Federal Food, Drug, and Cosmetic Act to include a toll-free number for reports of adverse events, and a statement that the number is to be used for reporting purposes only and not to receive medical advice.

Statement of Need:

Consumers may not be aware of FDA's adverse event reporting program under Medwatch. This requirement will promote FDA's mission to protect the public health by informing consumers of FDA's Medwatch system.

Summary of Legal Basis:

Section 17 of the Best Pharmaceuticals for Children Act (BPCA) requires a final rule to issue within one year of the date of its enactment on January 4, 2002.

Alternatives:

This rule is required by section 17 of the BPCA. FDA has considered alternatives within the scope of the statutory requirements, in particular, ways to reach the broadest consumer audience and to minimize costs to the pharmacy profession.

Anticipated Cost and Benefits:

Anticipated costs are to drug manufacturers and authorized dispensers of drug products, including pharmacies. The BPCA contains a provision requiring the Secretary to seek to minimize the cost to the pharmacy profession. Anticipated benefits are to obtain information about adverse events from consumers, which may inform FDA of trends in reported adverse events and result in a review of the safety and/or effectiveness of particular drug products on the market.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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HHS—FDA

45. • DEFINITION OF "SERIOUS ADVERSE HEALTH CONSEQUENCES" UNDER THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

21 USC 334(h)(1)(A); 21 USC 335a(b)(3); 21 USC 343(v); 21 USC 350c(a) and (b); 21 USC 371; 21 USC 374(a)(1); 21 USC 381(j)(1) and (m)(2)(B)(ii); 21 USC 398(a)

CFR Citation:

21 CFR 1.3(c)

Legal Deadline:

None

Abstract:

The proposed rule would define the term "serious adverse health consequences" for purposes of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and any implementing regulations and guidance. The term is used to describe the standard that is the basis for FDA to exercise certain authorities provided in sections 303, 304, 306, 307, 308, and 310 of title III (Protecting Safety and Security of the Food and Drug Supply), subtitle A (Protection of Food Supply), of the Bioterrorism Act.

Statement of Need:

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which was signed into law on June 12, 2002. The Bioterrorism Act contains the term "serious adverse health consequences" to describe the standard relating to exercising many of the new authorities provided therein. Together with the final rules implementing sections 303, 306, and 307 of the Bioterrorism Act, and the other sections of the Bioterrorism Act incorporating the "serious adverse health consequences" term, a definition of the term will further enable FDA to act quickly and consistently in responding to a threatened or actual terrorist attack on the U.S. food supply or to other food-related, public health emergencies. A definition of the "serious adverse health consequences" term will promote uniformity and consistency across FDA in understanding of the term and determining an appropriate response. In addition, a definition of the term will inform the public and stakeholders about what FDA considers to be a serious adverse health consequence under the Bioterrorism Act.

Summary of Legal Basis:

FDA is relying on section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371) in issuing this proposed rule. FDA is also relying on the following sections of the Bioterrorism Act which the term "serious adverse health consequences" appears: Section 303(a) (21 U.S.C. 334(h)(1)(A)), Section 303(c) (21 U.S.C. 381(j)(1)), Section 304(a)(2)(C) (21 U.S.C. 335a(b)(3)), Section 306(a) (21 U.S.C. 350c(a) and (b)), Section 306(b) (21 U.S.C. 374(a)(1)), Section 307(a) (21 U.S.C. 381(m)(2)(B)(ii)), Section 308(b) (21 U.S.C. 343(v)), and Section 310 (21 U.S.C. 398(a)).

Alternatives:

In the interests of quickly providing the agency's interpretation of "serious adverse health consequences" to the public, FDA considered explaining the term in guidance. The agency concluded, however, that this option is neither effective nor efficient because guidance does not have the force and effect of law. If the definition or its application is ever challenged, guidance will receive less deference than if the definition were in a regulation.

FDA also considered explaining the term in guidance followed by a regulation at a later date. This option was considered because it offers the advantage of rapidly informing the public about the agency's position while the agency gathers more information and experience in applying the definition. The agency concluded that guidance followed by a regulation was undesirable. First, as to the initial guidance, FDA would meet the same problems described above for the "guidance only" option. Second, this option creates a burdensome process for FDA by doubling the agency's responsibilities—first, to publish guidance, and second, to engage in notice and comment rulemaking. FDA resources will be conserved by avoiding this two-step process. Further, there is the possibility that once guidance publishes, a regulation might not follow. As a result, the definition might never have the force and effect of law.

FDA also considered defining or explaining "serious adverse health consequences" in preambles to rules promulgated under the Bioterrorism Act. However, implementing regulations are not required for all sections of the Bioterrorism Act that incorporate the term. Thus, the term would not be publicly addressed in the context of all of the applicable sections of the Bioterrorism Act. Second, because preambles are not codified and incorporated into the Code of Federal Regulations, the context and interpretation of the term eventually may become disassociated from the codified regulations. Finally, the rule ing of the Bioterrorism Act had already been published or were going to be published soon when this option was considered. Thus, there was insufficient time to include this discussion in the preambles to the current proposed rules for these sections.

FDA also considered adopting one of the two similar definitions for "serious adverse health consequences" or the definition for "serious injury" in the medical devices regulations to promote consistency within the agency and avoid confusion. (In the medical devices reporting regulations, the preamble to the final rule states that "the agency intends for 'serious adverse health consequences' to have the same meaning as 'serious injury' under the [Medical Device Reporting] rule.") This option could promote greater consistency within the agency, avoid confusion, and also save time. However, the agency believes that a broader definition must be used for foods and feeds in order to satisfy Congressional intent. Specifically, it must be clear that the definition of "serious adverse health consequences," for purposes of the Bioterrorism Act, (1) expressly includes vulnerable populations, and (2) expressly apply to food for humans and animals. In addition, there are terms incorporating the concept of "serious" in CDER and CDRH regulations. The definitions of these terms are not entirely consistent because they are tailored to the needs of each Center and apply only to specific portions of the applicable regulations, i.e., they have specific uses and contexts. Thus, a specific definition for "serious adverse health consequences" under the Bioterrorism Act is necessary in order to avoid confusion among differing definitions of "serious," "serious injury," or "serious adverse health consequences" in other regulations, and the context in which these terms are defined and applied. The proposed definition would apply to: (1) all foods and feeds in bioterrorist events and other public health emergencies; and (2) all populations, vulnerable or healthy, effectively having very wide applicability in a wide variety of emergency situations. Finally, FDA considered leaving the term undefined, thereby providing maximum flexibility for determining what constitutes "serious adverse health consequences" on a case-by-case basis. By not defining, the agency could avoid the potential consequences of a definition that is either too broad or too narrow. However, leaving the term undefined could cause confusion and inconsistency in implementation. Moreover, if an agency action under the Act is challenged, an undefined term will be left to a court's interpretation. A court, however, is not the most appropriate or expert body to decide the meaning of "serious adverse health consequences."

Anticipated Cost and Benefits:

The impact of this proposed rule will depend on how FDA decides to define the term "serious adverse health consequences," which is used as a standard for taking action under the administrative detention, record keeping, and prior notice provisions of the Bioterrorism Act. The broader the definition, the greater the cost and benefits associated with it. For example, if "serious adverse health consequences" were defined to include any case of foodborne illness, then foods would be administratively detained more often than if the definition were limited to cases resulting in death. A broader definition will mean the term is used more frequently in conjunction with the provisions of the Bioterrorism Act; and therefore, there will be more costs, but there will also be more benefits.

Risks:

Regulations implementing legislation to protect the health of citizens against bioterrorism and other public health emergencies would advance the development, organization, and enhancement of public health prevention systems and tools. The magnitude of the risks addressed by such systems and tools is at least as great as the other risk reduction efforts within HHS' jurisdiction. This proposed rule would support those regulations by defining a key term contained therein, thereby improving FDA's ability to act quickly and consistently in responding to a threatened or actual terrorist attack on the U.S. food supply or to other food-related, public health emergencies.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—FDA

46. • USE OF OZONE-DEPLETING SUBSTANCES: REMOVAL OF ESSENTIAL USE DESIGNATION; ALBUTEROL

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

15 USC 402; 15 USC 409; 21 USC 321; 21 USC 331; 21 USC 335; 21 USC 342; 21 USC 343; 21 USC 346a; 21 USC 348; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360b; 21 USC 361; 21 USC 362; 21 USC 371; 21 USC 372; 21 USC 374; 42 USC 7671 et seq

CFR Citation:

21 CFR 2.125

Legal Deadline:

None

Abstract:

Under the Clean Air Act, the Food and Drug Administration (FDA) within the U.S. Department of Health and Human Services, in consultation with the Environmental Protection Agency, is required to determine whether an FDA-regulated product that releases an ozone-depleting substance (ODS) is essential. The two agencies have tentatively determined that the two currently marketed non-ODS metered-dose inhalers (MDIs) will be satisfactory alternatives to albuterol MDIs that contain ODS, and are proposing to remove the essential use designations for albuterol MDIs. If the essential use designation is removed, albuterol MDIs that contain an ODS could not be marketed after a suitable transition period. The proposed rule will specifically ask for comments on which phase-out period length will best ensure a smooth transition and minimize any adverse affects on the public health.

Statement of Need:

Chlorofluorocarbons (CFCs) are organic compounds that contain carbon, chlorine, and fluorine atoms. CFCs were first used commercially in the early 1930's and were later found to be useful as propellants in self-pressurized aerosol products, such as MDIs. CFCs are very stable in the troposphere—the lowest part of the atmosphere. They move to the stratosphere, a region that begins about 10–16 kilometers (km) (6–10 miles) above Earth's surface and extends up to about 50 km (31 miles) altitude. Within the stratosphere there is a zone about 15 to 40 km (10–25 miles) above the Earth's surfaces in which ozone is relatively highly concentrated. The zone in the stratosphere is generally called the ozone layer. Once in the stratosphere, CFCs are broken down by strong ultraviolet light, where they release chlorine atoms that then deplete stratospheric ozone. Depletion of stratospheric ozone by CFCs and other ODS will lead to higher UVB levels, which in turn will cause increased skin cancers and cataracts and potential damage to some marine organisms, plants, and plastics.

The link between CFCs and the depletion of stratospheric ozone was discovered in the mid-1970's. Since 1978, the U.S. government has pursued a consistent policy of limiting the production and use of ODS, including CFCs.

Summary of Legal Basis:

The Clean Air Act and EPA's implementing regulations contain general prohibitions on the use and manufacture of ODS, such as CFCs. Exceptions to these bans are provided for specific medical products that FDA, in consultation with EPA, has found to be essential. FDA's essential use determinations have been contained in 21 C.F.R. section 2.125.

FDA published a new 21 C.F.R. section 2.125 in the Federal Register on July 24, 2002 (67 FR 48370), (corrected in the Federal Registers of July 30, 2002 (67 FR 49396) and September 17, 2002 (67 FR 58678)). Section 2.125 provides criteria for determining when a use is essential and when a use is no longer essential. The procedures to determine when a use is no longer essential were implemented to better carry out responsibilities under both the Clean Air Act and the Montreal Protocol on Substances that Deplete the Ozone Layer, (September 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I. L. M. 1541 (1987)).

Fran Du Melle, Executive Vice President of the American Lung Association, submitted a citizen petition on behalf of the U.S. Stakeholders Group on MDI Transition on January 29, 2003 (Docket No. 03P-0029/CP1). The petition requested that FDA initiate rulemaking to remove the essential use of albuterol MDIs. After evaluating the petition, comments submitted in response to the petition, and other information, FDA has tentatively determined that albuterol MDIs meet the criteria in section 2.125 for removal of an essential use.

Alternatives:

In the proposed rule, FDA will specifically request comments on the best effective date for any final rule to remove the essential use status of albuterol. FDA will consider which dates will allow manufacturers to obtain the capacity to produce adequate numbers of non-ODS albuterol MDIs. FDA will also consider which dates might minimize any financial burden on patients who would have to switch to non-ODS albuterol MDIs.

Anticipated Cost and Benefits:

The expected benefit from this rulemaking, as part of an overall policy to eliminate production and use of ODSs, is the preservation of the Earth's stratospheric ozone.

Currently there are generic versions of ODS albuterol MDIs, while there are no generic non-ODS albuterol MDIs. This rulemaking could force patients to switch from lower-priced generic versions of ODS albuterol MDIs to higher-priced non-ODS albuterol MDIs.

Risks:

FDA is concerned about the possibility that some patients might stop using needed drugs because the prices of non-ODS albuterol MDIs might be higher than those of ODS albuterol MDIs.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	06/00/04	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 0910–AF18

HHS—FDA

FINAL RULE STAGE

47. LABELING FOR HUMAN PRESCRIPTION DRUGS; REVISED FORMAT

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

CFR Citation:

21 CFR 201

Legal Deadline:

None

Abstract:

This regulation is one component of the Secretary's initiative to reduce medical errors. The regulation would amend the regulations governing the format and content of professional labeling for human prescription drug and biologic products, 21 C.F.R. 201.56 and 201.57. The regulation would require that professional labeling include a section containing highlights of prescribing information, and a section containing an index to prescribing information; reorder currently required information and make minor changes to its content, and establish minimum graphical requirements for professional labeling.

Statement of Need:

The current format and content requirements in sections 201.56 and 201.57 were established to help ensure that labeling includes adequate information to enable health care practitioners to prescribe drugs safely and effectively. However, various developments in recent years, such as technological advances in drug product development, have contributed to an increase in the amount, detail, and complexity of labeling information. This has made it harder for practitioners to find specific information and to discern the most critical information in product labeling.

FDA took numerous steps to evaluate the usefulness of prescription drug labeling for its principal audience and to determine whether, and how, its format and content can be improved. The agency conducted focus groups and a national survey of office-based physicians to ascertain how prescription drug labeling is used by health care practitioners, what labeling information is most important to practitioners, and how professional labeling should be revised to improve its usefulness to prescribing practitioners.

Based on the concerns cited by practitioners in the focus groups and physician survey, FDA developed and tested two prototypes of revised labeling formats designed to facilitate access to important labeling information. Based on this testing, FDA developed a third revised prototype that it made available to the public for comment. Ten written comments were received on the prototype. FDA also presented the revised prototype at an informal public meeting held on October 30, 1995. At the public meeting, the agency also presented the background research and provided a forum for oral feedback from invited panelists and members of the audience. The panelists generally supported the prototype.

The proposed rule described format and content requirements for prescription drug labeling that incorporate information and ideas gathered during this process. The agency has received several comments on the proposal and the comment period was extended until June 22, 2001.

Summary of Legal Basis:

The agency has broad authority under sections 201, 301, 501, 502, 503, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 321, 331, 351, 352, 353, 355, and 371) and section 351 of the Public Health Service Act (42 U.S.C. 262) to regulate the content and format of prescription drug labeling to help ensure that products are safe and effective for their intended uses. A major part of FDA's efforts regarding the safe and effective use of drug products involves FDA's review, approval, and monitoring of drug labeling. Under section 502(f)(1) of the Act, a drug is misbranded unless its labeling bears "adequate directions for use" or it is exempted from this requirement by regulation. Under section 201.100 (21 C.F.R. 201.100), a prescription drug is exempted from the requirement in section 502(f)(1) only if, among other things, it contains the information required, in the format specified, by sections 201.56 and 201.57.

Under section 502(a) of the Act, a drug product is misbranded if its labeling is false or misleading in any particular. Under section 505(d) and 505(e) of the Act, FDA must refuse to approve an application and may withdraw the approval of an application if the labeling for the drug is false or misleading in any particular. Section 201(n) of the Act provides that in determining whether the labeling of a drug is misleading, there shall be taken into account not only representations or suggestions made in the labeling, but also the extent to which the labeling fails to reveal facts that are material in light of such representations or material with respect to the consequences which may result from use of the drug product under the conditions of use prescribed in the labeling or under customary usual conditions of use.

These statutory provisions, combined with section 701(a) of the Act and section 351 of the Public Health Service Act, clearly authorize FDA to promulgate a final regulation designed to help ensure that practitioners prescribing drugs (including biological products) will receive information essential to their safe and effective use in a format that makes the information easier to access, read, and use.

Alternatives:

The alternatives to the final rule include not amending the content and format requirements in sections 201.56 and 201.57 at all, or amending them to a lesser extent. The agency has determined that although drug product labeling, as currently designed, is useful to physicians, many find it difficult to locate specific information in labeling, and some of the most frequently consulted and most important information is obscured by other information. In addition, the agency's research showed that physicians strongly support the concept of including a highlights section of the most important prescribing information, an index and numbering system that permits specific information to be easily located, and other requirements, such as the requirement for a minimum type size. Thus, the agency believes that the requirements in the final rule will greatly facilitate health care practitioners' access and use of prescription drug and biological labeling information.

Anticipated Cost and Benefits:

The expected benefits from the final rule include reduced time needed for health care professionals to read or review labeling for desired information, increased effectiveness of treatment, and a decrease in adverse events resulting from avoidable drug-related errors. For example, the proposed revised format is expected to significantly reduce the time spent on reading labeling by highlighting often used information at the beginning of labeling and facilitating access to detailed information.

The potential costs associated with the final rule include the cost of redesigning labeling for previously approved products to which the proposed rule would apply and submitting the new labeling to FDA for approval. In addition, one-time and ongoing incremental costs would be associated with printing the longer labeling that would result from additional required sections. These costs would be minimized by applying the amended requirements only to newer products and by staggering the implementation date for previously approved products.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/22/00	65 FR 81082
NPRM Comment Period End	03/22/01	
NPRM Comment Period Reopened	03/30/01	
NPRM Comment Period Reopening End	06/22/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—FDA

48. SAFETY REPORTING REQUIREMENTS FOR HUMAN DRUG AND BIOLOGICAL PRODUCTS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 216; 42 USC 241; 42 USC 242a; 42 USC 262; 42 USC 263; 42 USC 263a–n; 42 USC 264; 42 USC 300aa; 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360b–j; 21 USC 361a; 21 USC 371; 21 USC 374; 21 USC 375; 21 USC 379e; 21 USC 381

CFR Citation:

21 CFR 310; 21 CFR 312; 21 CFR 314; 21 CFR 320; 21 CFR 600; 21 CFR 601; 21 CFR 606

Legal Deadline:

None

Abstract:

This regulation is one component of the Secretary's initiative to reduce medical errors. The proposed rule would amend the expedited and periodic safety reporting regulations for human drugs and biological products to revise certain definitions and reporting formats as recommended by the International Conference on Harmonisation and to define new terms; to add to or revise current reporting requirements; to revise certain reporting time frames; and propose other revisions to these regulations to enhance the quality of safety reports received by FDA.

Statement of Need:

FDA currently has safety reporting requirements in section 21 C.F.R. 312.32 for sponsors of investigational drugs for human use. FDA also has safety reporting requirements in sections 21 C.F.R. 310.305, 314.80, 314.98 and 600.80 and 600.81 for applicants, manufacturers, packers, and distributors of approved human drug and biological products. FDA has undertaken a major effort to clarify and revise these regulations to improve the management of risks associated with the use of these products. For this purpose, the agency is proposing to implement certain definitions and reporting formats and standards recommended by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) to provide more effective and efficient safety reporting to regulatory authorities worldwide. Currently, the United States, European Union, and Japan require submission of safety information for marketed drug and biological products using different reporting formats and different reporting intervals.

Summary of Legal Basis:

The agency has broad authority under sections 505 and 701 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 355 and 371) and section 351 of the Public Health Service Act

(42 U.S.C. 262) to monitor the safety of drug and biological products for human use.

Alternatives:

The alternatives to the proposal include not amending our existing safety reporting requirements. This alternative would be inconsistent with FDA's efforts to harmonize its safety reporting requirements with international initiatives and with its mission to protect public health.

Anticipated Cost and Benefits:

Manufacturers of human drug and biological products currently have limited incentives to invest capital and resources in standardized global safety reporting systems because individual firms acting alone cannot attain the economic gains of harmonization. This proposed rule would harmonize FDA's safety reporting requirements with certain international initiatives, thereby providing the incentive for manufacturers to modify their safety reporting systems. Initial investments made by manufacturers to comply with the rule are likely to ultimately result in substantial savings to them over time.

The impact on industry includes costs associated with revised safety reporting and recordkeeping requirements. The benefits of the proposed rule are public health benefits and savings to the affected industries. The expected public health benefits would result from the improved timeliness and quality of the safety reports and analyses, making it possible for health care practitioners and consumers to expedite corrective actions and make more informed decisions about treatments. Savings to the affected industry would accrue from more efficient allocation of resources resulting from international harmonization of the safety reporting requirements.

Risks:

None

Timetable:

Action	Date	FR Cite
NPRM	03/14/03	68 FR 12406
NPRM Comment Period Extended	06/18/03	
NPRM Comment Period End	07/14/03	
NPRM Comment Period Extension End	10/14/03	
Comment Review End	09/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

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HHS—FDA

49. CGMP FOR BLOOD AND BLOOD COMPONENTS: NOTIFICATION OF CONSIGNEES AND TRANSFUSION RECIPIENTS RECEIVING BLOOD AND BLOOD COMPONENTS AT INCREASED RISK OF TRANSMITTING HCV INFECTION (LOOKBACK)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263a; 42 USC 264

CFR Citation:

21 CFR 606; 21 CFR 610

Legal Deadline:

None

Abstract:

This rulemaking is one of a number of actions being taken to amend the biologics regulations to remove, revise, or update the regulations applicable to blood, blood components, and blood derivatives. These actions are based on FDA's comprehensive review of the biologics regulations and on reports by the U.S. House of Representatives Committee on Government Reform and Oversight's, Subcommittee on House Resources and Intergovernmental Relations, the General Accounting Office, and the Institute of Medicine, as well as on public comments. In this rulemaking, FDA will amend the biologics regulations to require that blood establishments prepare and follow written procedures for appropriate action when it is determined that blood and blood components pose an increased risk for transmitting hepatitis C virus (HCV) infection because they have been collected from a donor who, at a later date, tested reactive for evidence of HCV. The HIV lookback regulations will be amended for consistency.

Statement of Need:

In the Federal Register of June 22, 1999 (64 FR 33309), FDA announced the availability of guidance, which updated previous guidance, providing recommendations for donor screening and further testing for antibodies to HCV, notification of consignees, transfusion recipient tracing and notification, and counseling by physicians regarding transfusion with blood components at increased risk for transmitting HCV (these activities are often called "lookback"). FDA believes that regulations should be established consistent with the previous recommendations, to assure that there is clear enforcement authority in case deficiencies in an establishment's lookback program are found and to provide clear instructions for continuing lookback activities.

Summary of Legal Basis:

The Public Health Service Act (42 U.S.C. 201 et seq.) and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.) authorize FDA to regulate biological products and to ensure that the products are safe, pure, potent, and effective. The Public Health Service Act also contains authority under which FDA can promulgate regulations to prevent the spread of communicable diseases. This rulemaking would assure that appropriate action is taken when blood has been collected which may potentially be capable of transmitting HCV; that persons who have been transfused with such blood components are notified so that they receive proper counseling and treatment; and that infected donors are notified. These regulations will therefore help prevent the further transmission of HCV.

Alternatives:

FDA has considered permitting continued voluntary compliance with the recommendations that have already been issued. However, lookback will remain appropriate for the foreseeable future, and FDA believes that the procedures should be clearly established in the regulations.

Anticipated Cost and Benefits:

FDA is in the process of analyzing the costs related to the rulemaking. Monetary burdens will be associated with the tracing of previous donations of donors, quarantining in-date products, identifying the recipients of previous blood donations, and notifying these recipients, as appropriate. FDA believes that these costs will be more than balanced by the public health benefits, including benefits related to the notification of past transfusion recipients who may be unaware that they may be infected with HCV.

Risks:

FDA believes that there are minimum risks posed by requiring that appropriate lookback procedures for HCV be prepared and followed.

Timetable:

Action	Date	FR Cite
NPRM	11/16/00	65 FR 69377
NPRM Comment Period End	02/14/01	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—FDA

50. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

21 USC 321; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371; 21 USC 374; 21 USC 381; 21 USC 393; 42 USC 264

CFR Citation:

21 CFR 111

Legal Deadline:

None

Abstract:

The Food and Drug Administration proposed in the Federal Register of March 13, 2003 (68 FR 12158), current good manufacturing practice (CGMP) regulations for dietary ingredients and dietary supplements. The proposed rule was published to establish the minimum CGMPs necessary to ensure that, if firms engage in activities related to manufacturing, packaging, or holding dietary ingredients of dietary supplements, they do so in a manner that will not adulterate and misbrand such dietary ingredients or dietary supplements. FDA also proposed to require manufacturers to evaluate the identity, purity, quality, strength, and composition of their dietary ingredients and dietary supplements. The proposed rule also responds to concerns that such regulations are necessary to ensure that consumers are provided with dietary supplement products which have not been adulterated as a result of manufacturing, packing, or holding; which have the identity and provide the quantity of dietary ingredients declared in labeling; and which meet the quality specifications that the supplements are represented to meet FDA.

Statement of Need:

FDA intends to publish a rule to establish CGMP for dietary supplements and dietary ingredients for several reasons. First, FDA is concerned that some firms may not be taking appropriate steps during the manufacture of dietary supplements and dietary ingredients to ensure that products are not adulterated as a result of manufacturing, packing, or holding. There have been cases of misidentified ingredients harming consumers using dietary supplements. FDA is also aware of products that contain potentially harmful contaminants because of apparently inadequate manufacturing controls and quality control procedures. The agency believes that a system of CGMPs is the most effective and efficient way to ensure that these products will not be adulterated during manufacturing, packing, or holding.

Summary of Legal Basis:

If CGMP regulations were adopted by FDA, failure to manufacture, pack, or hold dietary supplements or dietary ingredients under CGMP regulations would render the dietary supplement or dietary ingredients adulterated under section 402(g) of the Act.

Alternatives:

The two principal alternatives to comprehensive CGMPs are end product testing and Hazard Analysis Critical Control Points (HACCP). The agency asked whether different approaches may be better able to address the needs of the broad spectrum of firms that conduct one or more distinct operations, such as the manufacture of finished products, or solely the distribution and sale of finished products at the wholesale or retail level.

Anticipated Cost and Benefits:

The costs of the regulation will include the value of resources devoted to increased sanitation, process monitoring and controls, testing, and written records. The benefits of the proposed regulation are to improve both product safety and quality. We estimate that the proposed regulation will reduce the number of sporadic human illnesses and rare catastrophic illnesses from contaminated products. The current quality of these products is highly variable, and consumers lack information about the potential hazards and variable quality of these products. The product quality benefits occur because there will be fewer product recalls and more uniform products will reduce consumer search for preferred quality products. The proposed rule will have a significant impact on a substantial number of small businesses, so it will be significant under the Regulatory Flexibility Act. We anticipate that small businesses will bear a proportionately larger cost than large businesses.

Risks:

Any potential for consumers to be provided adulterated (e.g., contaminated with industrial chemicals, pesticides, microbial pathogens, or dangerous misidentified ingredients or toxic components of ingredients) products must be considered a very serious risk because of the possibility that such contamination could be widespread, affecting whole segments of the population, causing some severe long-term effects and even loss of life. Dietary supplements are used by a large segment of the American public. Moreover, they are often used by segments of the population that are particularly vulnerable to adulterated products, such as the elderly, young children, pregnant and nursing women, and persons who may have serious illnesses or are taking medications that may adversely interact with dietary supplements. FDA has adopted or proposed manufacturing controls for a number of foods and commodities that present potential health hazards to consumers if not processed properly, including seafood, juice products, and fruits and vegetables, and it is appropriate that FDA consider whether manufacturing controls are necessary to assure consumers that dietary supplements are not adulterated during the manufacturing, packing, or holding process.

Timetable:

Action	Date	FR Cite
ANPRM	02/06/97	62 FR 5700
ANPRM Comment Period End	06/06/97	
NPRM	03/13/03	68 FR 12157
NPRM Comment Period End	08/11/03	
Comment Review End	01/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—FDA

51. BAR CODE LABEL REQUIREMENTS FOR HUMAN DRUG PRODUCTS AND BLOOD

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

CFR Citation:

21 CFR 201.25; 21 CFR 601.67

Legal Deadline:

None

Abstract:

This regulation is one component of the Secretary's initiative to reduce medical errors. The final rule would require human drug products and biological products to have a bar code. The bar code would contain certain information about the product, and when used in conjunction with bar code scanners and computer equipment, would help reduce the number of medication errors. The final rule would also require the use of machine-readable information on blood and blood component container labels.

Statement of Need:

In 1999, the Institute of Medicine (IOM) report titled, "To Err Is Human: Building a Safer Health System," cited studies and articles estimating that between 44,000 and 98,000 Americans may die each year due to medical mistakes made by health care professionals, with many deaths attributable to medication errors. The report also indicated that, between 1983 and 1993, the medication error rate leading to a patient's death may have increased by over 2.5 times. While later medical articles have questioned the IOM's estimates, other studies have indicated that, regardless of the medication error rate, many medication errors are or were preventable.

Medication errors are a significant economic cost to the United States. An article published in 1995 estimated the direct cost of preventable drug-related mortality and morbidity to be $76.6 billion, with drug-related hospital admissions accounting for much of the cost. The authors suggested that indirect costs, such as those relating to lost productivity, might be two to three times greater than the direct costs, making the total cost of all preventable drug-related mortality and morbidity range from $138 to $182 billion. Another article, published in 2001, used updated cost estimates derived from current medical and pharmaceutical literature to revise the $76.6 billion estimate to exceed $177.4 billion; hospital admissions accounted for $121.5 billion in costs, and long-term care admissions accounted for another $32.8 billion.

Various organizations and health professional associations have advocated the use of bar codes as a method for reducing medication errors. For example, if a health professional could use a bar code scanner to compare the bar code on a human drug product to a specific patient's drug regimen, the health professional would be able to verify that the patient is receiving the right drug, at the right dose, at the right time. Most organizations and associations have recommended that the bar code contain, at a minimum, a unique numerical code identifying the manufacturer, product, and package size or type. In addition, some have advocated including the lot number and expiration date.

FDA proposed to require certain drug products to be bar coded. The bar code would contain certain information about the product, such as its National Drug Code number. The bar code, when used in conjunction with bar code scanners and computer equipment, will enable health professionals to decrease the medication error rate.

For blood and blood components intended for transfusion, FDA proposed to require the use of machine-readable informatin in a format approved by the Director of the Center for Biologics Evaluation and Research.

Summary of Legal Basis:

Section 502 of the Federal Food, Drug, and Cosmetic Act (the Act) considers a drug to be misbranded unless it bears a label containing (in part) the name of the manufacturer and the drug's name (see sections 502(b) and 502(e)(1)(A) of the Act). 502(a) of the Act prohibits the false or misleading labeling of drugs. 502(f) of the Act requires drug labeling to have adequate directions for use, adequate warnings against use by patients where its use may be dangerous to health, as well as adequate warnings against unsafe dosage or methods or duration of administering in such a manner and form as necessary to protect uses.

Section 501(a)(1) of the Act considers a drug to be adulterated if, among other things, the methods used in, or the facilities and controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of the Act as to safety and "has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess...."

Section 701(a) of the Act, in turn, authorizes FDA to issue regulations for the efficient enforcement of the Act.

A bar code requirement for human drug products and biological products would be consistent with, and aid in the efficient enforcement of, sections 501 and 502 of the Act. For example, if the bar code merely contained the drug's National Drug Code number, the bar code would identify the manufacturer and the drug, and this would be consistent with sections 502(b) and 502(e)(1)(A) of the Act. If the bar code contained other information, such as lot number and expiration date (pieces of information required under FDA's good manufacturing practice regulations (see 21 C.F.R. 211.130 and 211.137), this would be consistent with section 501(a)(1) of the Act.

Therefore, using its general rulemaking authority at section 701(a) of the Act, the agency has sufficient authority to propose requiring human drug products to have a bar code.

Alternatives:

FDA considered a voluntary bar coding program, but this would be akin to a "no action" alternative as many products are not bar coded or not coded in a manner that would help health professionals. A voluntary bar coding system might also lead to the adoption of multiple incompatible bar coding formats on human drug products and biological products, thereby deterring hospitals and health care professionals from buying bar code scanners and computer equipment.

FDA also considered allowing the use of automatic identification technologies either in place or in addition to the bar code. However, use of incompatible or expensive technologies could deter hospitals and health care professionals from buying scanning or reading equipment.

Anticipated Cost and Benefits:

FDA is continuing to examine the potential costs and benefits associated with bar coding. The anticipated costs may vary greatly depending on the amount of information required in a bar code and the products to be bar coded. FDA's preliminary estimate is that the rule would cost approximately $78 million over a 20-year period.

The rule's principal benefit would be a reduction in the number of medication errors, including reduced mortality and morbidity. FDA's preliminary estimate is that the reduced mortality and morbidity will yield a benefit of $44.8 billion over a 20-year period.

Risks:

The proposed rule invited comment on whether the final rule should contain a general exemption provision. There is a risk that an exemption provision could result in many exemption requests which, if granted, could reduce the rule's effectiveness.

Timetable:

Action	Date	FR Cite
NPRM	03/14/03	68 FR 12500
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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HHS—FDA

52. ADMINISTRATIVE DETENTION OF FOOD FOR HUMAN OR ANIMAL CONSUMPTION UNDER THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

21 USC 334; 21 USC 331; 21 USC 381; 21 USC 371

CFR Citation:

21 CFR 1; 21 CFR 10.45(d); 21 CFR 16.1(b)(1)

Legal Deadline:

None

Abstract:

This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism. Section 303 of the Bioterrorism Act authorizes the Secretary, through FDA, to order the detention of food if an officer or qualified employee of FDA has credible evidence or information indicating an article of food presents a threat of serious adverse health consequences or death to humans or animals. The Act requires the Secretary, through FDA, to issue final regulations to expedite certain enforcement actions (i.e., seizures and injunctions) against perishable foods.

FDA intends to implement section 303 of the Act by issuing a regulation to provide for: 1) a detention procedure; 2) expedited procedures for enforcement actions with respect to perishable foods; 3) security procedures for detained foods including moving them to a secure facility, as appropriate; and 4) an appeals procedure for detained goods.

Statement of Need:

The events of September 11, 2001 highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188), which was signed into law on June 12, 2002. The proposed regulation would implement section 303 of the Bioterrorism Act.

Summary of Legal Basis:

The Bioterrorism Act, section 303, amended the Federal Food, Drug, and Cosmetic Act (FFDCA) by adding section 304(h) (21 U.S.C. 334(h)), which authorizes the Secretary to order the detention of domestic and imported food and specifies an appeals process that includes an opportunity for an informal hearing. Section 303 of the Bioterrorism Act also amends section 301 of the FFDCA (21 U.S.C. 331) by making it a prohibited act to transfer an article of food in violation of a detention order or to remove or alter any required mark or label identifying the article as detained.

Alternatives:

FDA's decision to promulgate a regulation is based primarily on clear statutory directive to establish regulations, and also on need. The Bioterrorism Act, section 303, clearly states that the Secretary must provide by regulation for procedures for instituting enforcement actions with respect to perishable foods on an expedited basis.

Section 303 of the Bioterrorism Act also specifies an appeals process that requires the Secretary, after providing for opportunity for an informal hearing, to confirm or terminate a detention order within five days of an appeal. Section 201(x) of the FFDCA (21 U.S.C. 321(x), defines "informal hearing" and describes the requirements necessary for informal hearings. 21 C.F.R. part 16 outlines FDA's informal hearing procedures in greater detail. Part 16 allows minimum timeframes to request and hold an informal hearing, but provides no requirements or limitations on the length of the informal hearing. FDA is finalizing a rule tailored to the administrative detention provisions in the Bioterrorism Act which necessitates some modifications to the provisions in part 16. If FDA were to include the minor modifications in a guidance document, FDA would not be able to enforce the new provisions because guidance documents are not binding (21 C.F.R. 10.115(d)). If FDA chose simply to follow part 16, the agency would run the risk of not providing the presiding officer sufficient time to consider and weigh the evidence for the informal hearing within the statutory timeframes required by the Bioterrorism Act.

Anticipated Cost and Benefits:

In the analysis of the proposed rule, we estimated that this rule would result in social costs of $0 to $38 million per year due to product transportation, storage, loss of product value during storage, marking or labeling, and the cost of appeals. We may need to revise these estimates after reviewing the comments we received on the proposed rule. Administrative detention would generate benefits because it improves our ability to respond to outbreaks from accidental and deliberate contamination of food, and to deter deliberate contamination. We have insufficient information to estimate benefits.

Risks:

Regulations implementing legislation to protect the health of citizens against bioterrorism would advance the development, organization, and enhancement of public health prevention systems and tools. The magnitude of the risks addressed by such systems and tools is at least as great as the other risk reduction efforts within HHS' jurisdiction. These regulations will improve the ability to address credible threats of serious adverse health consequences or death to humans or animals.

Timetable:

Action	Date	FR Cite
NPRM	05/09/03	68 FR 25242
NPRM Comment Period End	07/08/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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RIN: 0910–AC38

HHS—FDA

53. ESTABLISHMENT AND MAINTENANCE OF RECORDS PURSUANT TO THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

PL 107–188, sec 306

CFR Citation:

21 CFR 1

Legal Deadline:

None

Abstract:

This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism. Section 414(b) of the Federal Food, Drug and Cosmetic Act (FFDCA), which was added by section 306 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Act), authorizes the Secretary, through FDA, to promulgate final regulations by December 12, 2003. The Act authorizes regulations that require the establishment and maintenance of records, for not longer than two years, that would allow the Secretary to identify the immediate previous sources and the immediate subsequent recipients of food, including its packaging. The required records would be those that are needed by FDA in order to address credible threats of serious adverse health consequences or death to humans or animals. Specific covered entities are those that manufacture, process, pack, transport, distribute, receive, hold, or import food. Farms and restaurants are excluded. The Secretary is directed to take into account the size of a business in promulgating these regulations. Section 306 of the Act also added section 414(a) and amended section 704(a) of FFDCA to permit FDA to inspect these records and other information if the Secretary has a reasonable belief that an article of food is adulterated and presents a threat of serious adverse health consequences or death to humans or animals.

Statement of Need:

The events of September 11, 2001, highlighted the need to enhance the security of the U.S. food supply. Congress responded by passing the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which was signed into law on June 12, 2002. The regulations will implement section 306 of the Bioterrorism Act.

Summary of Legal Basis:

Section 306 of the Bioterrorism Act amended the FFDCA by adding section 414(b), which authorizes the Secretary to establish by regulation requirements for the creation and maintenance of records. That section of the Bioterrorism Act also added section 414(a) and amended section 704(a) of the FFDCA to permit FDA to inspect records and other information under certain circumstances. In addition, section 306 of the Bioterrorism Act also amends section 301 of the Federal Food, Drug, and Cosmetic Act by making the failure to establish or maintain any record required by the new regulations, or refusal to permit access to those records or other information as required by the new regulations, a prohibited act.

Alternatives:

None.

Anticipated Cost and Benefits:

The records provisions will be classified as significant under Executive Order 12866 (having an annual effect on the economy of over $100 million). The recordkeeping provisions would impose a substantial cost on industry. A first estimate is that the proposed provisions will cost the food industry approximately $235 million in the first year, approximately $510 million in the second year, and approximately $220 million every year there after.

The provisions will improve substantially FDA's ability to respond to outbreaks from deliberate and accidental contamination of food. FDA will use data collected by the Center for Disease Control (CDC) and FDA on past outbreaks to estimate the benefit of improved documentation in standard tracing investigations. Of the 1,344 food-borne illness outbreaks CDC identified in 1999, only 368 (27 percent) had a confirmed etiology. A host of factors contribute to the inability to identify the cause of an outbreak, but many investigations are hampered by the lack of adequate records identifying the chain of custody of foods. While, it is not possible to directly estimate the benefits of averting a terrorist attack, as we do not know what form an attack might take or the probability of an attack occurring, FDA uses data collected by the agency on past outbreaks to estimate the benefit of the recordkeeping provisions on standard traceback investigations. Specifically we estimate the extent to which improved recordkeeping practices will facilitate faster traceback investigations.

Risks:

Regulations implementing legislation to protect the health of citizens against bioterrorism would advance the development, organization, and enhancement of public health prevention systems and tools. The magnitude of the risks addressed by such systems and tools is at least as great as the other risk reduction efforts within HHS' jurisdiction. These regulations will improve the ability to address credible threats of serious adverse health consequences or death to humans or animals.

Timetable:

Action	Date	FR Cite
NPRM	05/09/03	68 FR 25188
NPRM Comment Period End	07/08/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

URL For More Information:

www.fda.gov/oc/bioterrorism/bioact.html

URL For Public Comments:

www.fda.gov/ohrms/dockets/02n0277/02n0277.htm

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HHS—Health Resources and Services Administration (HRSA)

FINAL RULE STAGE

54. • SMALLPOX VACCINE INJURY COMPENSATION PROGRAM: ADMINISTRATIVE IMPLEMENTATION

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

PL 108-20, 117 Stat 638

CFR Citation:

42 CFR 102

Legal Deadline:

None

Abstract:

To provide benefits to certain persons harmed as a result of receiving smallpox covered countermeasures, including the smallpox vaccine, or as a result of contracting vaccinia through accidental exposure to certain persons. The Secretary may also provide death benefits to certain survivors of people who died as a direct result of these injuries.

Statement of Need:

This interim final rule will meet the need to set out the administrative policies, procedures, and requirements governing the Smallpox Vaccine Injury Compensation Program (the SVIC Program). Thus, the rule will describe the categories of eligible requesters under the SVIC Program (smallpox vaccine recipients, vaccinia contacts, survivors of deceased smallpox vaccine recipients or vaccinia contacts, and representatives of the estates of deceased smallpox vaccine recipients or vaccinia contacts), as well as the types of benefits available (medical benefits, benefits for lost employment income, and death benefits). It will also detail how requesters can submit medical documentation concerning eligibility, concerning whether their injuries are included among those listed in the Table of Injuries published in the Federal Register on August 27, 2003, and the time frames for the onset of those injuries, nontable injuries, and injuries from other covered countermeasures (e.g., cidofovir and vaccinia immune globulin). The rule will describe the filing deadlines and the documentation needed for the Secretary to make both eligibility and benefits determinations. In addition, the regulation will provide a detailed explanation as to how each type of benefit will be calculated, the limitations imposed on such benefits, and the method of payment.

Summary of Legal Basis:

The SVIC Program was authorized by the Smallpox Emergency Personnel Protection Act of 2003, Public Law 108-20, 117 Stat. 638.

Alternatives:

In order to implement the statute, the Department is clearly obligated to take the kinds of steps described above.

Anticipated Cost and Benefits:

The SVIC Program is designed to provide benefits to certain persons harmed as a direct result of receiving smallpox-covered countermeasures, including the smallpox vaccine, or as a direct result of contracting vaccinia through certain accidental exposures. Minimal administrative costs are associated with this rulemaking.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HHS—Centers for Medicare & Medicaid Services (CMS)

PROPOSED RULE STAGE

55. END STAGE RENAL DISEASE (ESRD) CONDITIONS FOR COVERAGE (CMS–3818–P)

Priority:

Other Significant

Legal Authority:

42 USC 1395rr

CFR Citation:

42 CFR 400; 42 CFR 405; 42 CFR 406; 42 CFR 409; 42 CFR 410; 42 CFR 412; 42 CFR 488; 42 CFR 489; 42 CFR 494; 42 CFR 413; 42 CFR 414

Legal Deadline:

None

Abstract:

This proposed rule would revise the requirements that end stage renal disease (ESRD) facilities must meet to be certified under the Medicare program.

Statement of Need:

The proposed rule is a complete overhaul of the current ESRD conditions for coverage in order to reduce unnecessary process and procedural requirements and focus on the patient and the results of the care provided to the patient. The proposed conditions for ESRD facilities would include, among other things, new infection control guidelines; updated water quality standards; new fire safety standards; as well as patient assessment, care planning, quality improvement, and electronic data reporting provisions that reflect the current advances in dialysis technology and standard care practices. The ESRD conditions were last published in their entirety in 1976.

Summary of Legal Basis:

Section 1881 (42 U.S.C. 1395rr) of the Social Security Act (the Act) authorizes benefits for individuals who have been determined to have end stage renal disease as provided in section 226 of the Act. Section 1881(b) of the Act authorizes payments on behalf of such individuals to providers of services and renal dialysis facilities "which meet requirements as the Secretary shall by regulation prescribe." ESRD conditions for coverage may be revised as needed under the Secretary's rulemaking authority in section 1881.

Alternatives:

Retain the current conditions. CMS has undertaken various quality improvement initiatives, e.g., the Dialysis Facility Compare website and the CMS Clinical Performance Measures Project that have improved beneficiaries' quality of care. However, these initiatives lack the potential impact of an overall regulatory change.

Anticipated Cost and Benefits:

Undetermined.

Risks:

Failure to update would leave CMS with ESRD conditions for coverage that are over 26 years old and that do not reflect current medical practices or scientific advances in the field.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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HHS—CMS

56. HOSPITAL CONDITIONS OF PARTICIPATION: REQUIREMENTS FOR APPROVAL AND REAPPROVAL OF TRANSPLANT CENTERS TO PERFORM ORGAN TRANSPLANTS (CMS–3835–P)

Priority:

Other Significant

Legal Authority:

42 USC 1302; 42 USC 1395hh

CFR Citation:

42 CFR 482

Legal Deadline:

None

Abstract:

This proposed rule would establish conditions of participation for Medicare-covered transplants.

Statement of Need:

CMS' present criteria for heart, liver, and lung transplantation centers were developed at a time when the Department's policies were intended to promote long-term survival of transplanted organs through use of patient selection policies that avoided selection of high risk patients and use of unadjusted actuarial survival as a measure of outcome and experience. More than 64,000 Americans are waiting for organ transplants, yet only about 20,000 receive organs annually.

About 4,000 persons die each year waiting for an organ to become available. We consider of paramount importance our role in promoting awareness of the organ transplant situation, encouraging increased organ donation, fostering proper stewardship of this scarce national resource, and ensuring that Federal policies result in equitable distribution of organs. While the goal of promoting long-term survival is laudable, we have subsequently concluded that such criteria deter transplantation of high-risk patients, may not promote equitable distribution of organs, and may potentially increase deaths awaiting transplant.

The existing transplant notices address patient selection, patient management, commitment, facility plans, experience and survival rates, maintenance of data, organ procurement, laboratory services, and billing. All policies require facilities to have a minimum of 2 years transplantation experience before applying for Medicare approval. The issue of setting the standards for Medicare-approved transplant facilities is complex and difficult. On one hand, CMS wants to ensure that Medicare beneficiaries are treated only in facilities that provide quality care. As CMS limits the number of centers CMS approve, however we could create limited access to this lifesaving technology. CMS strives to strike a balance between organ allocation and quality of care. While CMS expects facilities to continue to be responsible for appropriate organ transplant policies and protocols for these components, CMS does not believe it is essential for facilities to report the details of these polices. CMS strongly believes that successful organ transplantation requires the skills and experience of an interdisciplinary team. Therefore, CMS intends to focus regulations on the actual care being furnished and outcomes of that care. Consequently, CMS is proposing to evaluate facility survival rates and experience. CMS proposes to retain only requirements that are directly related to patient outcomes or that are necessary for data purposes. These requirements are: (1) volume—have performed 20 transplants minimum during the past 4 complete calendar years; (2) data submission—data on numbers of transplants date of transplant, patient diagnosis, patient status, donor types, date of most recent ascertained survival, and length of survival over the past 4 years; (3) outcomes—unadjusted actuarial 1-year patient survival is equal to or greater than the mean risk adjusted for 1-year patient survival for all transplant centers in the Nation less 10 percent points calculated during the last reapproved period. CMS believes these standards requirements are in concert with the Department's commitment to the equitable organ allocation initiative.

In developing the proposed rule, CMS has given serious consideration to the recommendations from the Institute of Medicine as well as from the panel of the CMS Town Hall Meeting held in December 1999. These recommendations have captured the latest thinking in outcome measures of transplant centers and they entail aspects of facilities linked to coverage, methodologies for measuring outcomes at transplant centers, data used for approving centers, and thresholds for approving centers.

Summary of Legal Basis:

Section 1102 of the Social Security Act (the Act) authorizes the Secretary to make and publish rules and regulations, as may be necessary to the efficient administration of Section 1871 of the Act states, "The Secretary shall prescribe such regulations as may be necessary to carry out the administration of insurance programs under this title." Given the concern that the Department has in ensuring proper stewardship of the Nation's limited organ supply and the concern that CMS has in ensuring the Medicare beneficiaries are afforded high quality health care, CMS believes it is appropriate for the Secretary to use this broad authority to regulate Medicare payment for organ transplantation.

Alternatives:

For the most part, Medicare transplant center criteria have been implemented through a series of notices in the Federal Register. The exception is the kidney transplant criteria that have been implemented at 42 C.F.R. part 405, subpart U. The use of Federal Register notices to announce the criteria has proven difficult for hospitals desiring to become Medicare approved transplant centers. Hospitals have difficulty in researching the approved criteria and, once it is located, do not know if it is current. CMS believes it is important to codify the requirements for Medicare approval of transplant centers in regulations. Therefore, CMS is proposing to include the transplant center criteria as a component of the hospital conditions of participation. Thus, the criteria for all five transplant types (heart, liver, lung, kidney, and pancreas) would be located in the same area, for ease of reference and understanding. Another option is to update the current scattered transplant policies and maintain the process-oriented standards without focusing on patient outcomes. However, based on the rationale discussed, CMS believes it is important to promulgate this rule to fulfill our commitment to equitable organ allocation and optimal patient outcomes.

Anticipated Cost and Benefits:

The expected benefits from the proposed rule include easy references and a better understanding of the criteria used by facilities, improved patient outcomes, and facilitation of the most equitable and medically effective use of organs that are donated in trust for transplantation.

CMS has not yet quantified the costs. Response to the proposed rule should help to determine the cost of there requirements.

Risks:

If the CoP Criteria for Approval of Facilities to Perform Medicare-Covered Transplants are not promulgated, the current transplant policies will not allow CMS to take advantage of continuing advances in the health care delivery field or to keep current with growing demands for services, and the distribution of organs will remain inequitable.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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HHS—CMS

57. ORGAN PROCUREMENT ORGANIZATION CONDITIONS FOR COVERAGE (CMS–3064–P)

Priority:

Other Significant

Legal Authority:

42 USC 1320b–8(b)(1)(A)(i); 42 USC 273(b)(2)

CFR Citation:

42 CFR 486.301

Legal Deadline:

Final, Statutory, January 1, 2002, Final.

Abstract:

This rule would establish conditions for coverage for organ procurement organizations (OPOs) to be certified by the Secretary to receive payment from Medicare and Medicaid for organ procurement costs, and to be designated by the Secretary for a specific geographic service area. The Organ Procurement Organization Certification Act of 2000 requires CMS to increase the certification cycle for OPOs from two years to four years and to promulgate new performance standards for OPOs.

Statement of Need:

This proposed rule contains new conditions for coverage for OPOs, including new performance standards. This proposed rule would also increase the recertification cycle for OPOs from two years to four years.

Summary of Legal Basis:

Section 1138(b) of the Social Security Act (the Act) provides the statutory qualifications and requirements that an OPO must meet in order to receive payment for organ procurement costs associated with procuring organs for hospitals under the Medicare and Medicaid programs. This section gives the Secretary broad authority to establish performance-related standards for OPOs. Under this authority, the Secretary established conditions for coverage for OPOs at 42 CFR 486.301, et seq. Section 1138(b) of the Act specifies that an OPO must be certified or rectified by the Secretary as meeting the standards to be a qualified OPO as described in section 371(b) of the Public Health Service (PHS) Act. The PHS Act requirements were established by the National Organ Transplant Act of 1984 and include provisions for OPO board membership, staffing, agreements with hospitals, and membership in the OPTN. The Organ Procurement Organization Certification Act of 2000 (section 701 of Pub. L. 106–505, 42 U.S.C. section 273(b)(1)(D)) amended section 371(b) of the PHS Act to require CMS to increase the certification cycle for OPOs from two years to four years and promulgate new performance standards for OPOs.

Alternatives:

CMS is considering various alternatives in the development of performance measures and additional conditions for coverage, and will solicit public comments in order to identify additional alternatives.

Anticipated Cost and Benefits:

While this rule is expected to improve OPO performance and organ donations, CMS is uncertain at this time about the rule's economic impact on OPOs.

Risks:

Failure to publish new outcome performance standards would violate section 701 of Public Law 106–505, which amended the Public Health Service Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/28/01	66 FR 67109
NPRM	05/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—CMS

58. USE OF RESTRAINT AND SECLUSION IN MEDICARE AND MEDICAID PARTICIPATING FACILITIES THAT PROVIDE INPATIENT OR RESIDENTIAL CARE (CMS–2130–P)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

PL 105–554, Children's Health Act of 2000

CFR Citation:

42 CFR 101; 42 CFR 418; 42 CFR 482; 42 CFR 483; 42 CFR 485; ...

Legal Deadline:

None

Abstract:

This proposed rule would implement provisions of the Children's Health Act of 2000 (CHA) related to the use of restraints or seclusion for individuals receiving services in health care facilities that receive Federal funding. The rule would establish common terminology and basic expectations for the use of restraints and seclusion for health care facilities that furnish inpatient or residential care and receive Medicare or Medicaid funding.

Statement of Need:

In recent years, media, Government, and consumer reports of deaths and injuries occurring due to the use of restraint or seclusion have heightened concern about these mechanisms as interventions. Concern about use is nothing new, however; the appropriate use of restraint and seclusion has been debated and regulated in various health care settings for many years. Researchers have examined the use of restraint and seclusion, related injuries and deaths, and potential alternatives to address safety and care concerns while posing less inherent risk to the individual. Patient advocates have lobbied for reduced and more highly regulated use. Health care facilities and professionals have examined mechanisms for reduction, and some have implemented training programs to promote safe application and use. Reports of injuries and deaths, however, have brought concerns about care and safety to the forefront. The issue has gained national attention, with a call for regulation across health care settings.

Several highly publicized newspaper articles and Federal reports are the impetus for this regulation. The CHA established a significant collaboration of several important children's health bills. CMS has responsibility for part H, which established certain requirements related to the rights of residents of certain facilities receiving Federal funds. SAMHSA intends to publish a notice of proposed rulemaking to implement part I, which sets forth requirements related to the rights of residents of certain nonmedical, community-based facilities for children and youth. The CHA establishes for certain facilities common definitions, staff training standards, reporting requirements, and strict enforcement criteria.

Summary of Legal Basis:

The Children's Health Act of 2000 (Pub. L. 106–310), section 3207, part H.

Alternatives:

No other regulatory alternatives were considered. Nevertheless, current regulations exist, in some form, for hospitals and residential treatment facilities, while nursing homes and ICFs/MR use survey guidelines. The CHA's intent is to develop consistency in requirements across all Federally-funded patient or residential care facilities. The statutory language required that regulations be promulgated within one year of its enactment. This proposed rule is currently two years behind its mandated time of publication.

Anticipated Cost and Benefits:

The anticipated benefits include enhanced patient safety and better consumer protections. Increases in staff education and training are expected to lead to treatment alternatives and decreases in the use of restraint and seclusion as a means of intervention, which then leads to less traumatic experiences for both beneficiaries and staff. The regulation creates a change in facility practices and policies on the use of restraint or seclusion as a treatment mechanism. The regulation will create standard criteria for patient or residential care facilities that receive Federal funds, which will establish an industry wide effect on beneficiaries who are receiving services within these Federal facilities. The regulation creates consistent criteria for staff training, and defining and reporting on restraint or seclusion.

The anticipated cost is based on regulations that will affect more than 32,350 Medicare and Medicaid funded facilities. At this time, however, the extent of potential facilities affected is unattainable until comments are received from other HHS agencies. It is estimated that the cost will be roughly $0.5 billion a year for Federal Medicaid, and $2.5 to $3 billion for all payers. The proposed rule will specifically solicit comments on actual staff training and reporting costs, and it is assumed this cost will decrease since the majority of facilities currently have training and reporting requirements.

Risks:

The risk in implementing the regulation—

1. Increase in cost for facilities in staff training, however, facilities that currently use restraint or seclusion as a form of intervention have some general staff training requirements. The CHA will only expand the content of this training.

2. Increase possibility of facilities having their Federal funding status placed in jeopardy due to noncompliance with regulations. Industry may raise concern that the CHA's enforcement aspect is too harsh. For nursing homes, argument may occur that the CHA's enforcement goes against the intent of the Congress and its OBRA '87 language to devise other alternative sanctions besides termination from the Medicare or Medicaid programs.

3. Concern from facilities that currently do not have any regulations governing the use of restraints or seclusion (e.g., nursing homes, hospice inpatient facilities, critical access hospitals, however nursing homes have requirements in their survey guidance materials).

The risk in not implementing the regulation—

1. Continued unregulated use of restraint and seclusion in certain Federally funded facilities.

2. Continued under reporting of deaths as a result of restraint or seclusion, or deaths that occur within 24 hours after an individual has been restrained or in seclusion, or where it is reasonable to assume that the individual's death was caused by being placed in restraints or in seclusion.

3. Barrage of continued concerns from advocacy groups and the Congress to publish this regulation, as well as requests from facilities for guidance.

4. Lack of protection for special needs populations, such as children, adolescents, persons with mental illness, developmental disabilities, or co-occurring mental retardation who are disproportionately affected by the usage of restraint or seclusion as a common form of intervention.

5. Lack of direction to organizations, advocacy groups and more than 32,350 facilities for developing common definition.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—CMS

59. PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT PSYCHIATRIC FACILITIES FY 2004 (CMS–1213–F)

Priority:

Other Significant

Legal Authority:

PL 106–113; Sec 124 of the Social Security Act ; Sec 1886 of the Social Security Act

CFR Citation:

42 CFR 412, subpart N

Legal Deadline:

NPRM, Statutory, October 1, 2002, NPRM.

Abstract:

This rule sets forth a prospective payment system (PPS) for inpatient psychiatric facilities and psychiatric units.

Statement of Need:

This rule sets forth a PPS for psychiatric hospitals and psychiatric part units. It would replace the current TEFRA payment mechanism for inpatient psychiatric facilities (IPF).

Summary of Legal Basis:

Section 124 of Balanced Budget Refinement Act of 1999 mandated implementation of an IPF, PPS.

Alternatives:

An IPF PPS is required by statute.

Anticipated Cost and Benefits:

The statute requires us to implement this PPS in a budget-neutral fashion, however, there will be CMS administrative costs associated with its implementation.

Risks:

Redistributional effects inherent in a budget-neutral payment system may adversely affect certain classes of facilities.

Timetable:

Action	Date	FR Cite
NPRM	11/28/03	68 FR 66919
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

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HHS—CMS

60. HOSPITAL PATIENTS' RIGHTS COP-STANDARD SAFETY COMPLIANCE COMMITTEES (CMS–3120–P)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 1395bb; 42 USC 1395x; 42 USC 1396d

CFR Citation:

42 CFR 482

Legal Deadline:

None

Abstract:

This proposed rule would allow hospitals to waive the current requirement that a physician or licensed independent practitioner perform a one-hour face-to-face evaluation of a patient in restraint or seclusion for the purpose of behavior management. Under this proposed rule, a hospital could choose to have the one-hour assessment performed by another practitioner, such as a registered nurse, if that hospital established a Protections Compliance Committee to oversee the use of restraint or seclusion

Statement of Need:

The hospital patients' rights regulation was published in the Federal Register as an interim final rule on July 2, 1999 and became effective on August 2, 1999 (see 42 C.F.R. 482.13). Since then, the hospital industry and physicians have asserted that the requirement that a physician or licensed independent practitioner (LIP) evaluate a patient within one hour of the initiation of an intervention, contained at section 482.13(f)(3)(ii)(C), is too burdensome. In the interim final rule, we stated "in situations where a restraint must be used for behavior management, increased vigilance is required because of the heightened potential for harm or injury as the patient struggles or resists. Furthermore, there is an immediate need for assessment of what has triggered this behavior and for continuous monitoring of the patient's condition." Therefore, we specified that a physician or LIP evaluate the patient face-to-face within one hour of the application of restraint or the use of seclusion.

This proposed rule would allow a hospital to waive the current requirement that a physician or LIP perform a face-to-face evaluation of a patient in restraint or seclusion for behavior management within one hour of the initiation of restraint or seclusion. In lieu of the one hour face-to-face evaluation by a physician or LIP, the hospital would be able to designate a registered nurse (RN) to perform the evaluation if the hospital also creates a Protections Compliance Committee (PCC) to oversee the hospital's use of restraint or seclusion.

Summary of Legal Basis:

Hospitals must meet certain conditions to participate in the Medicare program that are intended to protect patient health and safety and ensure that high-quality care is provided. Hospitals receiving payment under Medicaid must meet the CoPs in Medicare. The statute (42 U.S.C. 1302 and 42 U.S.C. 1395hh) authorizes promulgation of regulations in the interest of the health and safety of individuals who are furnished services in the institution.

Alternatives:

We considered modifying the current CoP that requires a physician to perform the one-hour evaluation to allow an appropriately trained RN to perform the evaluation without the added PCC. However, in response to advocacy group concerns that this would lessen the protections already afforded patients in hospitals, we opted not to use this approach.

Anticipated Cost and Benefits:

Because the provisions of this rule would be voluntary and we have no data to indicate how many hospitals would participate, it is difficult to determine the amount of any economic impact on an individual hospital. We would expect that a hospital, in choosing this option, would weigh costs and benefits of requiring a physician or LIP to perform the one hour evaluation versus the costs and benefits of forming a Protections Compliance Committee.

Risks:

This proposed rule is intended to encourage the emphasis of patient safety in hospitals, while offering some relief from perceived burden.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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HHS—CMS

FINAL RULE STAGE

61. USE OF RESTRAINT AND SECLUSION IN RESIDENTIAL TREATMENT FACILITIES PROVIDING INPATIENT PSYCHIATRIC SERVICES TO INDIVIDUALS UNDER AGE 21 (CMS–2065–F)

Priority:

Other Significant

Legal Authority:

42 USC 1302; 42 USC 1396d

CFR Citation:

42 CFR 441; 42 CFR 483

Legal Deadline:

None

Abstract:

This final rule addresses standards of practices that residential treatment facilities providing inpatient psychiatric services for individuals under age 21 must meet with regard to the use of restraints and seclusion.

Statement of Need:

The standards were developed to eliminate the risk to children and adolescents from inappropriate restraint and seclusion that were substantiated by reports of deaths and injuries that occurred in these facilities. This final rule will clarify and revise the regulations in response to public comments that were received on the previous interim final rules.

Summary of Legal Basis:

Section 1902(a)(9)(A) of the Social Security Act (the Act) requires the State health agency or other State medical agency to establish and maintain health standards for private and public institutions in which recipients of medical assistance, under the State plan, may receive care or services. Section 1905(h) of the Act defines the term "impatient psychiatric hospital services for individuals under age 21" as inpatient services that are provided in an institution (or distinct part hereof) that is a psychiatric hospital or in another in patient setting that the Secretary has specified in regulations. In this final rule, we are defining "psychiatric residential treatment facilities" as an inpatient setting in conformity with the definition of an institution as set forth in section 1905(h)of the Act.

The Children's Health Act (CHA) of 2000 (Pub. L. 106–310), which amended the Public Health Section of the Act to require the health care facilities receiving support in any form from any program supported in whole or in part with funds appropriated to any Federal department or agency shall protect and promote the rights of each resident of the facility, including the right to be free from any restraints or involuntary seclusion imposed for purposes of discipline or convenience. The Children's Health Act permits the Secretary to issue regulations that afford residents greater protections regarding restraint and seclusion than the standards published in the new law. Our final rule provides greater protections than those required in section 3207 of the Children's Health Act.

Alternatives:

None.

Anticipated Cost and Benefits:

The average costs for psychiatric residential treatment facilities to implement this rule are estimated to be around $65 million per year for the first 5 years.

We believe that requirements of this rule will have a direct impact on the use of restraint and seclusion in residential treatment facilities. Specifically, we are limiting the use of restraint and seclusion to emergency safety situations only and have specifically defined an emergency safety situation for purposes of this rule. By limiting the use of restraint and seclusion we expect to better protect residents from the use of restraint and seclusion as a means of coercion, discipline, staff convenience, or retaliation.

Risks:

There is the potential for great risks to facility residents if the current regulations are not revised and reports of inappropriate restraint and seclusion practices continue.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/22/01	66 FR 7148
60-Day Delay of Effective Date To 05/22/2001	03/21/01	66 FR 15800
Interim Final Rule Comment Period End	03/23/01	
Interim Final Rule Effective	03/23/01	
Interim Final Rule Amendment with Clarification	05/22/01	66 FR 28110
Interim Final Rule Comment Period End	07/23/01	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HHS—CMS

62. REVISIONS TO THE MEDICARE APPEALS PROCESS (CMS-4004-FC)

Priority:

Other Significant

Legal Authority:

Sec 521 of BIPA

CFR Citation:

42 CFR 405

Legal Deadline:

NPRM, Statutory, October 1, 2002, NPRM.

Abstract:

This final regulation with comment incorporates recommendations from a Social Security Administration (SSA)/Health and Human Services (HHS) workgroup to improve the Administrative Law Judge (ALJ) hearing process. ALJ-conducted hearings for Medicare fee-for-service and managed care cases are governed by SSA disability regulations which apply to SSA disability cases, not to Medicare. Regulations improve the integrity of the appeals process, because they are specific to the adjudication of Medicare cases. They also incorporate the revisions to appeals policy required by section 521 of Benefits Improvement and Protection Act of 2000 (BIPA).

Statement of Need:

This regulation is necessary to implement section 1869(b)(1)(f) of the Social Security Act (the Act), which requires the establishment of an expedited appeals process enabling beneficiaries to appeal discharges from provider settings. This process will apply to provider discharges and service terminations by skilled nursing facilities, home health agencies, and comprehensive outpatient rehabilitation facilities. The process will be similar to the expedited review process that will be available to Medicare+Choice enrollees beginning in January under our April 4, 2003 final rule. Quality improvement organizations will likely conduct these reviews.

Summary of Legal Basis:

Section 1869(b)(1)(F) of the Act, as amended by section 521 of the Benefits Improvement & Protection Act of 2000, requires the Secretary to implement appeal procedures by October 1, 2002.

Alternatives:

None, the changes are required by the statute.

Anticipated Cost and Benefits:

The cost of implementing this rule will be $34.2 million to the Federal Government. The benefit will result in new and expanded appeal rights for beneficiaries.

Risks:

The failure to publish this regulation will result in further delay of a new expedited appeals process for beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	11/15/02	67 FR 69312
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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HHS—CMS

63. • REVISIONS TO THE APPEALS PROCESS FOR INITIAL CLAIM DETERMINATIONS (CMS-4064-F)

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

Sec 521 of BIPA

CFR Citation:

42 CFR 405

Legal Deadline:

None

Abstract:

This final rule will revise the Medicare appeals process by adding five-tiered (five levels) of review. It will remove the distinction between the processing of initial determination and appeals under part A and part B required by section 521 of Benefits Improvement and Protection Act of 2000 (BIPA).

Statement of Need:

This regulation is necessary to implement section 1869 of the Social Security Act (the Act). Major provisions include the following:

1. The implementation of identical rules for Medicare part A and B claims appeals.
2. The establishment of qualified independent contractors (QICs), with panels of physicians making medical necessity determinations.
3. Shorter time frames at all appeal levels.
4. Other improvements to the Medicare claims appeals process.

Key components of the final rule include new notice and evidence submission standards, the procedures for adjudicating escalated cases, the promulgation of Medicare-specific regulations for administrative law judge hearings, the feasibility of telephone and in-person appeals under the new BIPA timeframes, reopening rules, and transition policies for the move from the existing appeals procedures.

Summary of Legal Basis:

Section 1869(b) of the Act, as amended by section 521 of Benefits Improvement & Protection Act of 2000, requires the Secretary to implement claims appeal procedures by October 1, 2002.

Alternatives:

None, the changes are required by the statute.

Anticipated Cost and Benefits:

None, the changes are required by the statute.

Risks:

None, the changes are required by the statute.

Timetable:

Action	Date	FR Cite
Final Action	07/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Undetermined

Government Levels Affected:

Federal

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BILLING CODE 4150–24–S

DEPARTMENT OF HOMELAND SECURITY (DHS)

Statement of Regulatory Priorities

The President signed the Homeland Security Act on November 25, 2002. DHS officially "stood up" as an agency on January 24, 2003, and most of its component agencies transferred in on March 1, 2003. The final components and agencies were in place within DHS by July 1, 2003. The Homeland Security Act created a new executive department of the United States with the following missions:

- Prevent terrorist attacks within the United States;
- Reduce America's vulnerability to terrorism;
- Minimize the damage and assist in the recovery from terrorist attacks that do occur within the United States;
- Carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;
- Ensure that the functions of entities transferred to the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;
- Ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and
- Monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

The first and overriding priority of the Department is to prevent, detect, disrupt, and dismantle terrorism while preserving constitutional liberties. To fulfill this mission, the Department is devoting all the resources necessary and utilizing all legal authorities. Accordingly, the Department has issued a comprehensive suite of maritime security regulations that strengthen and add additional protective layers of defense to the Nation's port security. The regulations specify requirements for security assessments, development of security plans, mandate access control, security monitoring, and implement physical, passenger, persons, baggage and cargo security measures. Our skies are safer by requiring security programs for aircraft weighing 12,500 pounds or more. Additionally, the Department is requiring private charter security rules. These rules will require that individuals and their accessible property are screened before boarding and that flight crews have criminal history background checks. Our borders are safer through the implementation of many security-based measures including the Student and Exchange Visitor Information System that provides for tracking and monitoring functionality and for maintaining current information on nonimmigrant students and exchange visitors; and through the proposed implementation of a new entry-exit system, the U.S. Visitor and Immigrant Status Indication Technology System, designed to make entering the United States easier for legitimate tourist, student, and business travelers while making it more difficult to enter the United States illegally through the implementation of biometrically authorized documents. The Department, also, is promulgating advanced cargo reporting regulations to facilitate timely targeting of shipments of goods for heightened scrutiny. These rules are intended to facilitate both commerce and security by speeding decision-making and enhancing certainty for the trade community. The Department is also facilitating antiterrorism initiatives through various rulemaking projects, including the implementing regulations under the Support Antiterrorism by Fostering Effective Technologies Act of 2002. This rule provides incentives to persons to develop antiterrorism technologies. The Department is encouraging the public, through rulemaking, to voluntarily submit information regarding security vulnerabilities that will assist the Department in developing strategies for protecting critical infrastructure.

DHS continues to fulfill its charge to carry out functions within the Department that are not directly related to securing the homeland. Most notably, the proposed rulemakings for disaster relief that will provide Federal assistance to individuals and households affected by natural and manmade disasters, and the issuing of proposed standards for living organisms in Ship's ballast water discharged in the United States. In the trade arena, DHS issued regulations that facilitated free trade in implementing various Andean, Caribbean, and African preference programs enacted last year by Congress. These rules provide the framework in which traders make investment-backed decisions to avail free trade.

BILLING CODE 4410–10–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Statement of Regulatory Priorities

The regulatory plan for the Department of Housing and Urban Development for fiscal year (FY) 2004 highlights the Department's most significant regulations and policy initiatives, as established by Secretary Martinez, for the upcoming fiscal year. This regulatory plan reflects HUD's role as the primary Federal agency responsible for expanding homeownership, increasing access to affordable housing free from discrimination, improving and developing the Nation's communities, and addressing the housing needs of our Nation's most vulnerable. HUD's commitment to expand homeownership is achieved by underwriting homeownership for lower- and moderate-income families through its mortgage insurance programs, and by enforcing fair housing laws that operate to eliminate housing discrimination. HUD is also committed to breaking down the barriers that keep too many families—especially minorities—from owning their own home. Toward this goal, HUD has taken significant steps to make the homebuying process less confusing and less expensive, and has and will continue to reduce predatory lending practices while enhancing accountability in the home purchase process.

While HUD is passionate about its mission to increase the ranks of America's homeowners, its agenda is broad and covers every aspect of single-family and multifamily housing, the special needs of vulnerable citizens and urban and economic development. Touching America's communities, HUD is committed to providing the capital and resources to improve economic conditions in distressed communities and helping local organizations access the resources they need to make their communities more livable. Touching the lives of individuals and families with special needs, HUD is committed to ending chronic homelessness, and ensuring adequate housing for the elderly, persons with disabilities, and people living with HIV/AIDS. HUD's mission is also to promote affordable housing and improve the physical quality and management accountability of public and assisted housing.

Under the leadership of Secretary Martinez, HUD's regulatory plan for FY 2004 builds upon the successes of the previous fiscal year through regulations that are designed to expand homeownership opportunities, promote decent affordable housing for all, particularly the most vulnerable Americans, and strengthen America's communities.

Priority: Expanding Homeownership—Through Revitalization of Communities

HUD is committed to expanding homeownership opportunities, particularly among racial and ethnic minorities and families with disabilities. Homeownership helps families establish strong roots, which in turn strengthens communities. One way in which HUD will expand homeownership opportunities for minorities is through implementation of section 204 of the National Housing Act, as recently amended. The stated purpose of this authority is to make HUD-held single-family homes, as well as formerly insured mortgages on single-family properties, referred to as eligible assets, available for sale in a manner that promotes the revitalization of certain areas through expanded homeownership opportunities. Through this authority, HUD, together with local government and nonprofit organizations, can revitalize distressed areas and increase homeownership opportunities.

Regulatory Action: Disposition of HUD-Owned Single-Family Assets in Asset Control Areas

This rule would make available HUD-held single-family homes and mortgage assets for sale to governmental and nonprofit organizations, among others, for use in homeownership programs to revitalize certain areas. By statute, governmental and nonprofit organizations are to be given a preference. Under this program, revitalization areas would be identified by applying specified economic and housing criteria. Eligible purchasers would be able to establish an Asset Control Area within a revitalization area identified by the Secretary, and would commit by contract to purchase all HUD-owned single-family homes or mortgages that become available in that area for a time frame specified by the contract. These purchasers would then make available the assets in accordance with a HUD-approved plan to encourage homeownership and revitalize the area.

Priority: Expanding Homeownership—Enhancing Accountability in the Home Purchase Process

HUD continues its commitment to reduce predatory lending practices and enhance accountability in the home purchase process. Predatory lending may be undertaken by creditors, brokers, or home improvement contractors. It involves deception or fraud, manipulating the borrower through aggressive sales tactics, or taking unfair advantage of a borrower's lack of understanding about loan terms. While no one set of abusive lending practices or terms characterizes a predatory mortgage loan, a loan can be predatory when lenders or brokers undertake one or more of the following practices: charge borrowers excessive, often hidden fees; successively refinance loans at no benefit to the borrower; make loans without regard to a borrower's ability to repay; and engage in high-pressure sales tactics or outright fraud and deception. Predatory lending poses a barrier to expanding homeownership, barring significant numbers of Americans from owning a piece of the American Dream. Predatory lending also threatens homeownership by placing on borrowers loans that are so expensive or have such high rates that borrowers are unable to pay and therefore risk default on their loans.

To combat predatory lending, HUD will continue to pursue regulations that enhance lender accountability for appraisals, establish criteria by which home inspectors are placed on and removed from the Federal Housing Administration (FHA) Inspector Roster, and strengthen FHA's Credit Watch Initiative. Other rules will enhance accountability of nonprofits participating in the Section 203(k) Rehabilitation Program and enhance lender compliance and accountability.

Regulatory Action: Revisions to FHA Credit Watch

Under the FHA Credit Watch Termination Initiative, FHA systematically reviews mortgagees' early default and claim rates, that is, defaults and claims on mortgagees' loans during the initial 24 months following endorsement. Mortgagees with excessive default and claim rates are considered to be on Credit Watch status and, in cases of more severe performance deficiencies, HUD may terminate the mortgagee's loan origination approval authority. This final rule will amend HUD's regulations for the FHA Credit Watch Termination Initiative and provide greater safeguards for the FHA mortgage insurance fund. Among the revisions to be made, this rule will provide for a fully computerized Credit Watch notification process through use of the FHA Neighborhood Watch Early Warning System. As a result, a mortgagee will be considered to be on Credit Watch status if, at any time, it has a default and claim rate of higher than 150 percent of the normal rate, and its origination approval agreement has not been terminated. The rule will also prohibit a mortgagee that has received a notice of proposed termination of its origination approval agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination.

Regulatory Action: Single-Family Mortgage Insurance; Lender Accountability for Appraisals

The success of the FHA single-family mortgage insurance program, and HUD's ability to protect the FHA Insurance Fund, begins with the quality of appraisals on properties that secure FHA mortgages. Most appraisers perform appraisals in accordance with FHA standards. There are some instances, however, in which some lenders tacitly require appraisers to make the appraisal computations match the sales price to ensure that a home sale and mortgage loan closes for the appraiser to obtain additional business. Other instances have occurred, including recent episodes of predatory lending activity in several areas of the country, whereby lenders, realtors, investors, and others have participated in so-called property "flipping" schemes to inflate home prices and perpetuate sales that generate fees and charges to participants in the transaction. There are additional examples of fraudulent activity that could have been prevented if the underwriters had properly reviewed the appraisal reports. This rule will clarify and strengthen HUD's regulations concerning the responsibilities of lenders approved by the FHA in the selection of appraisers to perform appraisals on properties that will be the security for FHA-insured mortgages. Among other things, the rule will provide that lenders are responsible for the quality of appraisals on properties securing FHA-insured mortgages. Lenders that knowingly submit appraisals to HUD that do not meet FHA requirements will be subject to the imposition of sanctions by the HUD Mortgagee Review Board. HUD believes these changes will help protect the FHA Insurance Fund, ensure better compliance with appraisal standards, and help to ensure that homebuyers receive an accurate statement of appraised value.

Priority: Expanding Homeownership—Helping Existing Homeowners Keep Their Homes

It is not enough to help more families become homeowners. HUD is also increasing the focus on assisting new homeowners to maintain their homeownership status. Among the ways HUD is advancing this goal is through homeownership counseling, foreclosure prevention activities, and better monitoring of appraisals. In particular, the requirement imposed on FHA lenders to engage in loss mitigation has proven a successful strategy for assisting homeowners to keep their homes and will be strengthened.

Regulatory Action: Treble Damages for Failure To Engage in Loss Mitigation

The HUD Appropriations Act for fiscal year 1999 amended the National Housing Act (NHA) to add a triple penalty for failure to engage in appropriate loss mitigation to the existing civil money penalty system. Section 230(a) of title II of the NHA, as amended, makes it mandatory for the mortgagee, upon the default of a single-family mortgage, to engage in loss mitigation actions, including, but not limited to, special forbearance, loan modification, and deeds in lieu of foreclosure, for the purpose of providing alternatives to foreclosure. This proposed rule would amend HUD's civil money penalty regulations to reflect HUD's authorization to impose treble damages on a mortgagee for any mortgage for which the mortgagee had a duty but failed to engage in appropriate loss mitigation actions. The proposed rule follows publication of an advanced notice of proposed rulemaking (ANPRM) and takes into consideration public comments received on the ANPRM.

Priority: Expanding Homeownership—Making the Home Purchase Process Less Complicated and Less Costly

Homeownership plays a vital role in creating strong communities, generating wealth for families, and providing financial security for millions of Americans. Homeownership also helps to strengthen families and provide a positive, stable environment for children. Indeed, in areas where homeownership flourishes, neighborhoods are more stable, residents are more civic-minded, schools are better, and crime rates decline. Homeownership has a positive and pronounced effect on the nation's economy. Under the leadership of Secretary Martinez, HUD is determined to simplify the home buying process and, in doing so, expand homeownership to thousands of first-time American homebuyers. HUD is committed to streamlining the home mortgage finance process and making loan shopping and settlement simpler, so consumers have the information necessary to make informed decisions regarding mortgage costs.

HUD's rulemaking on RESPA (RESPA: Simplifying and Improving the Process of Obtaining Mortgages To Reduce Settlement Costs to Consumers) was commenced to achieve these objectives. HUD's rule on RESPA has proposed to simplify and improve the process of obtaining home mortgages and reduce settlement costs for consumers by creating a more "transparent" settlement process to facilitate consumers' understanding of the true costs of a mortgage and the functions of an originator. Specifically, the rule would: (1) address the issue of loan originator compensation, namely the problem of lender payments to mortgage brokers, by fundamentally changing the way in which these payments in brokered mortgage transactions are recorded and reported to consumers; (2) significantly improve HUD's Good Faith Estimate (GFE) settlement cost disclosure and HUD's related RESPA regulations to make the GFE firmer and more usable, to facilitate shopping for mortgages, to make mortgage transactions more transparent, and to prevent unexpected charges to consumers at settlement; and (3) remove regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to consumers, and to permit consumers to shop for financing and further reduce settlement costs.

Priority: Expanding Homeownership—The American Dream Downpayment Initiative

HUD is committed to helping greater numbers of lower-income and minority families realize the American dream. Census figures indicate that while nearly 70 percent of all American households are homeowners, less than half of all African-American and Hispanic families own their own homes. To remove the barriers that cause this discrepancy, HUD intends to provide downpayment assistance through its American Dream Downpayment Initiative. The initiative will provide grants to States and local governments under HUD's HOME Investment Partnership program. Enacted into law in 1992, the HOME program has successfully helped to expand the supply of decent, affordable housing for deserving families by providing funds to communities to address housing shortages and needs. HUD believes that reducing homebuying costs will help people achieve the American dream of homeownership and help to sustain the momentum in our nation's housing boom.

Regulatory Action: The HOME Investment Partnerships Program; American Dream Downpayment Initiative

This rule establishes regulations for a new homebuyer assistance initiative under the HOME Program, which is known as the American Dream Downpayment Initiative (ADDI). The purpose of the ADDI is to assist participating jurisdictions to address one of the most formidable barriers to homeownership by low-income families—the cost of the downpayment necessary for purchase of a home. Through the ADDI, HUD will make formula grants to HOME participating jurisdictions for the purpose of providing downpayment assistance to low-income families. HUD must make the ADDI funds available in accordance with a formula. This rule will codify the formula for allocation of ADDI funds to HOME participating jurisdictions, identify eligible activities and costs under the ADDI, and establish other applicable requirements.

Priority: Establishing Housing Goals for Fannie Mae and Freddie Mac

Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, HUD is required to establish housing goals for Fannie Mae and Freddie Mac (collectively, the Government Sponsored Enterprises or GSEs). The current goals, promulgated by regulation in 2000, cover the calendar years 2001 through 2003. The Secretary is therefore establishing new goals for future years. The new goals may be higher than the current goals; in the past, each new set of goals has in fact been higher than its predecessor. The purpose of the housing goals is to ensure that the two GSEs more fully address the housing finance needs of low- and moderate-income families and residents of underserved areas, and thereby to more fully realize their public purposes.

Regulatory Action: The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac (Government Sponsored Enterprises)

Through this rule, HUD will issue new housing goal levels for the purchase of mortgages by Fannie Mae and Freddie Mac for future years. The Department is required by statute to establish housing goals for the GSEs. The new goals to be established by this rule will have the benefit of increasing homeownership opportunities and affordable housing units for very low-, low-, and moderate-income families, and will ensure that the GSEs carry out their statutory responsibilities.

Priority: Supporting Community and Economic Development

Under Secretary Martinez's leadership, HUD has refocused its energy toward its core missions. One core mission is community and economic development. Community development activities include many different programs that provide assistance to a variety of grantees. One program, the Community Development Block Grant (CDBG) program, provides annual grants on a formula basis to entitled cities, urban counties, and States for the purpose of developing viable urban communities providing decent housing and a suitable living environment. The CDBG program is also designed to expand economic opportunities, principally for low- and moderate-income persons. Another program, the Community Renewal Initiative for Renewal Communities/ Empowerment Zones/ Enterprise Communities (RC/EZ/EC), offers an innovative approach to revitalization. Underlying each of these programs is the strong belief that economic development improves communities and the citizens of those communities.

Regulatory Action: CDBG Funding for Brownfields Activities

This proposed rule would revise the CDBG program regulations to clarify the eligibility of brownfields cleanup, development or redevelopment within existing program eligibility categories. As a result, the rule will improve the ability of entitlement communities and States' grant recipients to use CDBG funds for brownfields activities. By making the cleanup and development of environmentally contaminated properties eligible for funding, the Department will move toward achieving one of the objectives under the CDBG Program, which is eliminating slums or blighting conditions.

Priority: Improving the Quality of Public and Assisted Housing

A central HUD objective is to help low-income working families acquire skills that will move them toward self-sufficiency. Combined with this objective is HUD's goal to improve the quality of the housing opportunities provided to families in public and assisted housing. To do this, HUD will focus on improving the management accountability and physical conditions of public and assisted housing through the following regulations.

Regulatory Action: Capital Fund Program

Section 519 of QHWRA amended section 9 of the United States Housing Act of 1937 (1937 Act) to provide a Capital Fund, to be established by HUD for the purpose of making assistance available to public housing authorities (PHAs) to carry out capital and management improvement activities. This proposed rule would establish the full regulatory framework for the Capital Fund Program. The Capital Fund Program addresses the capital and management improvement needs of PHAs and replaces the Comprehensive Grant Program and the Comprehensive Improvement Assistance Program. This proposed rule would complement the final rule that ensures the effective and timely obligation and expenditure of funds under the Public Housing Capital Fund Program.

The Priority Regulations that Comprise HUD's FY 2004 Regulatory Plan

A more detailed description of the priority regulations that comprise HUD's FY 2004 regulatory plan follows.

HUD—Office of The Secretary (HUDSEC)

PROPOSED RULE STAGE

64. TREBLE DAMAGES FOR FAILURE TO ENGAGE IN LOSS MITIGATION (FR–4553)

Priority:

Other Significant

Legal Authority:

12 USC 1715u; 12 USC 1735f–14; 12 USC 1701q–1; 12 USC 1703; 1735f–15; 15 USC 1717a; 28 USC 2641 note; 12 USC 1709; 12 USC 1710; 12 USC 1715b; 42 USC 3535(d)

CFR Citation:

24 CFR 30; 24 CFR 203

Legal Deadline:

None

Abstract:

This rule would implement sections 601(f), (g), and (h) of the fiscal year 1999 HUD Appropriations Act (Pub. L. 105–276, approved October 21, 1998). These sections amend the National Housing Act, which establishes the basic framework for HUD's single family mortgage insurance programs. Specifically, section 601(f) amends section 230 of the National Housing Act (42 U.S.C. 1715u) (entitled Authority to Assist Mortgagors in Default) to provide that, upon default of an insured single family mortgage, lenders must engage in loss mitigation activities for the purpose of providing an alternative to foreclosure. Further, sections 601(g) and (h) amend section 536 of the National Housing Act (12 U.S.C. 1735f–14) (entitled Civil Money Penalties Against Mortgagees, Lenders, and Other Participants in FHA Programs) to provide for the imposition of treble civil money penalties on lenders that fail to engage in loss mitigation activities, as required under amended section 230.

Statement of Need:

This rule implements a law that allows HUD to assess civil money penalties for specific types of mortgage lender violations, including failure to engage in loss mitigation. The law also directs HUD to implement regulations as it determines necessary to implement the civil money penalty provisions. This rule is necessary to encourage certain lenders that rarely engage in loss mitigation activities to do so. Failure to engage in loss mitigation leads to additional claims on FHA's insurance funds. Greater emphasis by certain lenders on loss mitigation will act to reduce those claims and enhance the health of the funds.

Summary of Legal Basis:

Section 230 of the National Housing Act (NHA), (12 U.S.C. 1715u), requires mortgage lenders utilizing FHA-insured financing to engage in loss mitigation actions upon the default of any insured mortgage. Section 536(b)(1)(I) of the NHA (12 U.S.C. 1735f–14(b)(1)(I)) includes failure to engage in loss mitigation among the activities for which HUD may assess civil penalties. Section 536(a) of the NHA (12 U.S.C. 1735f–14(a)) provides that in the case of failure to engage in loss mitigation, the penalty may be tripled. Section 536(h) of the NHA (12 U.S.C. 1735f–14(h)) provides that HUD shall issue regulations to implement these provisions as it determines is appropriate.

Alternatives:

This action is a rule of general applicability and future effect that does not fall into any of the rulemaking exceptions.

Anticipated Cost and Benefits:

This rule will penalize lenders that have particularly poor records in the area of loss mitigation. By encouraging these lenders to engage in loss mitigation activities upon default, this rule will provide benefits to the insurance fund in the form of reduced claims on the insurance fund and hence reduced payouts.

Risks:

This rule imposes no risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
ANPRM	12/06/00	65 FR 76520
ANPRM Comment Period End	02/05/01	
NPRM	01/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HUD—HUDSEC

65. THE SECRETARY OF HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC (FR–4790)

Priority:

Other Significant

Legal Authority:

12 USC 1451 et seq; 12 USC 1716 to 1723i; 12 USC 4501 to 4641; 28 USC 2641 note; 42 USC 3535(d); 42 USC 3601 to 3619

CFR Citation:

24 CFR 81

Legal Deadline:

None

Abstract:

Through this rule, the Department will propose housing goals for the purchase of mortgages by Fannie Mae and Freddie Mac (collectively, the Government Sponsored Enterprises, or GSEs) for calendar year 2004 forward and make any necessary revisions to HUD's GSE rules to ensure that the GSEs meet the laws' requirements and carry out their public missions. In accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), this rule would establish new goals for the GSEs' purchase of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, rural areas, and other underserved areas. This rule would clarify, as necessary, HUD's guidelines for counting different types of mortgage purchases toward those goals. The current housing goals apply through 2003. The Secretary of HUD has general regulatory power over each GSE and is required to make such rules and regulations as shall be necessary to ensure that the purposes of FHEFSSA and the GSEs' charters are accomplished. HUD's current GSE regulations implement FHEFSSA's provisions and include fair housing, new program approval, reporting and access to information requirements. This rule will propose any necessary revisions to HUD's rules to implement FHEFSSA and carry out the Secretary's regulatory responsibilities.

Statement of Need:

In the absence of new goals, the goals already established for 2003 remain in place, but the Secretary intends to establish goals going forward with the objective of ensuring that the two enterprises fully address the housing finance needs of very low-, low-, and moderate-income families and residents of underserved areas, and thus realize more fully their public purposes. FHEFSSA sets forth the Secretary's responsibilities regarding the GSEs and the GSEs' charters specify their public missions. Under FHEFSSA, the Secretary must make necessary rules and regulations to ensure that the purposes of FHEFSSA and the GSEs' charters are accomplished.

Summary of Legal Basis:

The Department is required to establish housing goals for the GSEs pursuant to the Federal Housing Enterprises Financial Safety and Soundness Act of

1992 (12 U.S.C. 4501 et seq.). HUD also has general regulatory power over each GSE (12 U.S.C. 4541) and is required to make such rules and regulations as are necessary to ensure that the purposes of FHEFSSA and the GSEs' charters are accomplished. (See 12 USC 4501–4641.)

Alternatives:

The Department considered the alternative of leaving the housing goals unchanged. However, HUD takes very seriously its obligations under the law to establish the housing goals using the most current data and information.

The alternative of leaving other provisions of the GSE rules unchanged also has been considered, but it is not evident that the existing rules will ensure that the purposes of the law are accomplished.

Anticipated Cost and Benefits:

This rule will have the benefit of increasing homeownership opportunities and affordable housing units for low- and moderate-income families and underserved communities and it will ensure that the GSEs otherwise carry out their responsibilities under FHEFSSA. However, there is no indication that these objectives would be costly for the GSEs. HUD's analyses have consistently indicated that meeting housing goals will have little impact on the GSEs' financial returns or on the safety and soundness of GSE operations. Additionally, increased GSE activity in the affordable lending arena has not adversely affected traditional portfolio lenders

Risks:

This rule poses no risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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HUD—HUDSEC

FINAL RULE STAGE

66. AMERICAN DREAM DOWNPAYMENT INITIATIVE (FR–4832)

Priority:

Other Significant

Legal Authority:

42 USC 3535(d); 42 USC 12701 to 12839

CFR Citation:

24 CFR 92

Legal Deadline:

None

Abstract:

This rule establishes regulations for the American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD will make formula grants to participating jurisdictions under the HOME Investment Partnerships program for the purpose of assisting low-income families achieve homeownership. HUD must make the ADDI funds available in accordance with a formula. This rule codifies the formula for allocation of ADDI funds to HOME participating jurisdictions, identifies eligible activities and costs under the ADDI, and establishes other applicable requirements. This rule specifies that ADDI funds may be used for downpayment assistance towards the purchase of single family housing by low-income families.

Statement of Need:

Increasing homeownership opportunities is an important national goal. As noted in the National Affordable Housing Act, there is a critical need to increase the supply of decent, safe, and sanitary housing for all Americans, particularly among low-income families. ADDI will play an important role in providing increased homeownership opportunities and in meeting Secretary Martinez's commitment of adding 5.5 million new minority homeowners by 2010. This rule will codify the formula for the allocation of ADDI funds to HOME participating jurisdictions.

Summary of Legal Basis:

Title II of the National Affordable Housing Act authorizes, through the HOME program, funding to participating jurisdictions for various housing purposes, including strengthening public-private partnerships to increase the supply of affordable housing, including homeownership opportunities. The ADDI is a statutorily created homebuyer assistance initiative under the HOME program. The purpose of the initiative is to assist participating jurisdictions to address one of the most formidable barriers to homeownership by low-income families — the cost associated with the purchase of a home.

Alternatives:

The ADDI will be incorporated as part of the HOME program regulations, which require rulemaking.

Anticipated Cost and Benefits:

Additional administrative costs of this rule should be minimal since the formula allocation of this program is similar to the existing HOME formula allocation. The benefits of increased homeownership opportunities to the economy, the stability of communities, and to families who are currently under—housed, on the other hand, are high.

Risks:

This rule imposes no risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HUD—Office of Housing (OH)

PROPOSED RULE STAGE

67. DISPOSITION OF HUD–OWNED SINGLE FAMILY ASSETS IN ASSET CONTROL AREAS (FR–4471)

Priority:

Other Significant

Legal Authority:

12 USC 1710(h); 42 USC 3535(d)

CFR Citation:

24 CFR 291

Legal Deadline:

None

Abstract:

This rule would implement a new program to make available HUD-held single family assets for sale to governmental organizations and nonprofits for use in homeownership programs to revitalize certain areas. Under the new program, HUD would identify revitalization areas by applying specified economic and housing criteria. Eligible purchasers, that is, units of general local government and nonprofit organizations, may establish an Asset Control Area within a revitalization area and commit by contract to purchase all HUD-owned single family homes or mortgages that become available in that area for a time frame specified by the contract. By statute, these purchasers are to be given preference. The entities would then make available the assets pursuant to a HUD-approved plan to encourage homeownership and revitalize the area.

Statement of Need:

The authorizing statute requires HUD to issue regulations for this program through rulemaking in accordance with the procedures established under section 553 of title 5, United States Code.

Summary of Legal Basis:

Section 602 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub.L. 105–276) added a new subsection (h) to section 204 of the National Housing Act to authorize this program.

Alternatives:

Administration of this program under a generally applicable rule will provide all interested parties with a level playing field and notice of what requirements must be followed in order to participate. This is more efficient than proceeding on a case-by-case basis.

Anticipated Cost and Benefits:

The costs of this rule will mainly be borne by the Department, since the discounts offered on eligible assets could represent a loss to the Mutual Mortgage Insurance Fund. The benefits are those related to the revitalization of, and increased homeownership within, the designated areas.

Risks:

This rule poses no risk to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Agency Contact:

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HUD—OH

FINAL RULE STAGE

68. REVISIONS TO FHA CREDIT WATCH TERMINATION INITIATIVE (FR–4625)

Priority:

Other Significant

Legal Authority:

12 USC 1703; 12 USC 1709; 12 USC 1715b; 42 USC 3535(d)

CFR Citation:

24 CFR 202

Legal Deadline:

None

Abstract:

This rule would make several amendments to HUD's regulations for the Federal Housing Administration (FHA) Credit Watch Termination Initiative. Under the Credit Watch Termination Initiative, HUD identifies mortgagees with unsatisfactory performance levels and takes ameliorative action at an early stage. The rule states that mortgagees will be responsible for using HUD's Electronic Neighborhood Watch Early Warning System to monitor their performance. Among other changes, the rule also prohibits a mortgagee that has received a notice of proposed termination of its origination approval agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination. The rule also establishes that the default and claim thresholds underlying the Credit Watch Termination Initiative apply to both underwriting and originating mortgagees.

Statement of Need:

Credit Watch is intended to increase lender accountability. Under Credit Watch, HUD reviews the number of defaults and claims on mortgages originated by each mortgagee in the geographic area served by a HUD field office. Mortgages with excessive default and claim rates are placed on Credit Watch Status and, in cases of more severe performance deficiencies, HUD may terminate the mortgagee's loan origination approval authority. This rule will strengthen HUD's oversight of mortgages, providing for electronic notification of Credit Watch Status and ensuring that mortgages whose loan origination authority has been revoked do not evade this action by establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the termination notice.

Summary of Legal Basis:

HUD has authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 203.3.

Alternatives:

The changes made by this final rule would modify regulatory requirements and, therefore, must also be promulgated through regulation.

Anticipated Cost and Benefits:

This rule should have minimal impact for mortgagees that have in place, and are effectively using, an adequate quality control plan for loan origination. Credit watch will eliminate, from the FHA program, mortgagees that have default and claims rates that significantly exceed the national rate. As a result, the rule will help protect the FHA Insurance Fund, and benefit the public and most FHA mortgagees.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/01/03	68 FR 15906
NPRM Comment Period End	06/02/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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HUD—OH

69. LENDER ACCOUNTABILITY FOR APPRAISALS (FR–4722)

Priority:

Other Significant

Legal Authority:

12 USC 1708 to 1710; 12 USC 1715b; 12 USC 1715u; 12 USC 1735f–14; 42 USC 3535(d)

CFR Citation:

24 CFR 25; 24 CFR 203

Legal Deadline:

None

Abstract:

This rule clarifies and strengthens HUD's regulations concerning the responsibilities of lenders approved by the Federal Housing Administration (FHA) in the selection of appraisers to perform appraisals on properties that will be the security for FHA-insured mortgages. First, the rule provides that lenders are responsible for the quality of appraisals on properties securing FHA-insured mortgages. Further, the rule specifically provides that lenders that knowingly submit appraisals to HUD that do not meet FHA requirements are subject to the imposition of sanctions by the HUD Mortgagee Review Board. The rule applies to both sponsor lenders, who underwrite loans, and loan correspondent lenders, who originate loans on behalf of their sponsors. HUD believes these changes will help protect the FHA Insurance Fund, ensure better compliance with appraisal standards, and help to ensure that homebuyers receive an accurate statement of appraised value. This final rule follows publication of a January 13, 2003, proposed rule and takes into consideration the public comments on the proposed rule.

Statement of Need:

The success of the FHA single family mortgage insurance program, and HUD's ability to protect the FHA Insurance Fund, begins with the quality of appraisals on properties that secure FHA mortgages. HUD believes that it is in the public interest to adopt rules that require lenders to be held responsible for the accuracy and quality of appraisals. Adopting such rules would also help to protect first-time and low- and moderate-income homebuyers from acquiring over valued property and/or property in poor condition.

Summary of Legal Basis:

The National Housing Act provides the method for calculating the maximum mortgage amount that FHA can insure. The calculations required by the statute are based on the appraised value of the property that is security for the mortgage. This authority includes establishing appraisal standards as the Secretary may prescribe.

Alternatives:

Nonregulatory initiatives to date have not proven to be sufficiently successful in addressing the issue of ensuring consistently accurate, high-quality appraisals.

Anticipated Cost and Benefits:

This rulemaking will provide that lenders are responsible for the quality of appraisals on properties securing FHA insured mortgages. HUD believes these changes will protect the FHA Insurance Fund, ensure better compliance with appraisal standards, and help to ensure that homebuyers receive an accurate statement of appraised value.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/13/03	68 FR 1766
NPRM Comment Period End	03/14/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

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HUD—Office of Community Planning and Development (CPD)

PROPOSED RULE STAGE

70. COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM REVISION OF CDBG ELIGIBILITY AND NATIONAL OBJECTIVE REGULATIONS (FR–4699)

Priority:

Other Significant

Legal Authority:

42 USC 3535(d); 42 USC 5301 et seq

CFR Citation:

24 CFR 570

Legal Deadline:

None

Abstract:

This rule will improve the ability of entitlement communities and States' grant recipients to use Community

Development Block Grant (CDBG) funds for brownfields activities. The rule will clarify the eligibility of activities involving the cleanup and development of environmentally contaminated properties under section 105(a) of the Housing and Community Development Act of 1974. The rule also will increase CDBG recipients' flexibility to undertake activities meeting the national objective of preventing or eliminating slums or blighting conditions. The criteria for meeting the slum/blight national objective will be revised to specifically recognize economic obsolescence of buildings and the presence of environmental contaminants as blighting influences on an area or property. This rule will further clarify the list of activities that may be undertaken to address the slum/blight national objective criteria on a spot basis. Finally, this rule makes corresponding changes in the eligibility regulations governing the Section 108 Loan Guarantee component of the CDBG program.

Statement of Need:

The purpose of the CDBG Program is to provide decent housing, a suitable living environment and expanded economic opportunities, primarily for persons of low and moderate income. This rule does not add any new eligibility categories to section 105 of the Housing and Development Act of 1974, but rather would expand the scope of the current listing of eligible activities to include environmental remediation and development of contaminated sites. HUD believes that these changes will facilitate the use of CDBG funds for economic development objectives, reduce the administrative burden on grantees and focus efforts on assisting the residents of low- and moderate-income neighborhoods.

Summary of Legal Basis:

Section 104 of the Housing and Community Development Act of 1974 establishes certain national objectives for CDBG-assisted activities. Among other goals, section 104 makes the prevention or elimination of slums or blight a national objective for the CDBG program.

Alternatives:

The changes made by this rule would modify regulatory requirements and, therefore, must also be promulgated through regulation.

Anticipated Cost and Benefits:

Grantees will gain the flexibility to use CDBG funds to assist in redeveloping a larger universe of properties whose conditions negatively influence the condition of the surrounding area. This change will stimulate economic development through the redevelopment of contaminated industrial properties furthering activities that meet the objective of preventing or eliminating slums or blighting conditions.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

Agency Contact:

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HUD—Office of Public and Indian Housing (PIH)

PROPOSED RULE STAGE

71. ● CAPITAL FUND PROGRAM (FR–4880)

Priority:

Other Significant

Legal Authority:

42 USC 1437g; 42 USC 1437z–7; 42 USC 3535(d)

CFR Citation:

24 CFR 905

Legal Deadline:

None

Abstract:

This rule will implement the new Capital Fund Program for the capital and management improvement needs of public housing agencies. This rule will implement the regulatory framework for the Capital Fund Program that will govern the use of the assistance made available from the Capital Fund formula. The new rule at part 905 will replace and remove several other rules that currently govern a PHA's use of HUD assistance including part 941—Public Housing Development, and part 968—Public Housing Modernization. This rule will continue and expand the streamlining of procedures and requirements initiated under the Comprehensive Grant and Comprehensive Improvement programs at part 968.

Statement of Need:

Assistance under the Capital Fund Program is the primary, regular source of funding made available by HUD to a PHA for its capital activities, including modernization and development of public housing. This rule will implement the requirements for the use of assistance made available under the Capital Fund program. The regulations will provide the appropriate notice of the legal framework for the program, and clear and uniform guidance for program operation.

Summary of Legal Basis:

Sections 518, 519, and 539 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (referred to as QHWRA), amending sections 9 and 5, and adding section 35(g) of the U.S. Housing Act of 1937.

Alternatives:

The changes made by this rule would modify existing regulatory requirements and, therefore, must also be promulgated through regulations.

Anticipated Cost and Benefits:

The costs of the program as administered with one fund from which a PHA will fund all of its capital needs is the same as under existing provisions. The benefits of having one funding mechanism for all such needs, and the provision of additional flexibility to PHAs to manage their physical assets provides increased benefits to the PHAs. Likewise, uniform program administration of these funds will provide increased benefits to the PHAs.

Risks:

This rule poses no threat to public safety, health, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 2577–AC50

BILLING CODE 4210–01–S

DEPARTMENT OF THE INTERIOR (DOI)

Statement of Regulatory Priorities

The Department of the Interior (DOI) is the principal Federal steward of our Nation's public lands and resources, including many of our cultural treasures. We serve as trustee to Native Americans and Alaska natives and also are responsible for relations with the island territories under United States jurisdiction. We manage more than 450 million acres of Federal lands, including 388 park units, 540 wildlife refuges, 24,000 miles of trails, and approximately 1.7 billion acres submerged in offshore waters. The Department protects natural, historic, and cultural resources; recovers endangered species; manages water projects; manages forests and fights wildland fires; leases public lands for coal, oil and gas production to meet the Nation's energy needs; educates children in Indian schools; and provides recreational opportunities for almost 300 million visitors annually in our national parks. To fulfill these responsibilities, the Department generates scientific information relating to land and resource management.

The Department is committed to achieving its stewardship objectives in partnership with States, communities, landowners, and others through consultation, cooperation, and communication.

We will review and update the Department's regulations and policies to ensure that they are effective and efficient and promote accountability. Special emphasis will be given to regulations and policies that:

- Adopt performance-based approaches focusing on achieving results in the most cost-effective and timely manner;
- Incorporate the best available science and utilize peer review where appropriate;
- Promote partnerships with States, other groups, and individuals;
- Provide incentives for private landowners to achieve conservation goals; and
- Minimize regulatory and procedural burdens, promoting fairness, transparency, and accountability by agency regulators while maintaining performance goals.

Major Regulatory Areas

Among the Department's bureaus and offices, the Office of Surface Mining, Reclamation and Enforcement (OSM) has a significant concentration of regulatory responsibilities. OSM, in partnership with the States and Indian tribes, establishes and enforces environmental standards for coal mining and reclamation operations. In addition, OSM administers the abandoned mine land reclamation program, which is funded by a fee assessed on each ton of coal produced. Money from these fees is placed in a fund that, subject to appropriation, is used to reclaim lands and waters impacted by historic mining activities conducted before the enactment of the Surface Mining Control and Reclamation Act of 1977. Authority to collect the fee is scheduled to expire in September 2004 unless reauthorized by Congress. Other DOI bureaus rely on regulations to implement legislatively mandated programs that focus on the management of natural resources and public or trust lands. Some of these regulatory activities include:

- Management of migratory birds and preservation of certain marine mammals and endangered species;
- Management of dedicated lands, such as national parks, wildlife refuges, and American Indian trust lands;
- Management of public lands open to multiple use;
- Leasing and oversight of development of Federal energy, minerals, and renewable resources;
- Management of revenues from American Indian and Federal minerals;
- Fulfillment of trust and other responsibilities pertaining to American Indian tribes;
- Natural resource damage assessments; and
- Management of financial and nonfinancial assistance programs.

Regulatory Policy

How DOI Regulatory Procedures Relate to the Administration's Regulatory Policies

Within the requirements and guidance in Executive Orders 12866, 12630, and 13132, DOI's regulatory programs seek to:

- Fulfill all legal requirements as specified by statutes or court orders;
- Perform essential functions that cannot be handled by non-Federal entities;
- Minimize regulatory costs to society while maximizing societal benefits; and
- Operate programs openly, efficiently, and in cooperation with Federal and non-Federal entities.

DOI bureaus have taken the initiative in working with other Federal agencies, non-Federal government agencies, and public entities to make our regulations easier to comply with and understand. Regulatory improvement is a continuing process that requires the participation of all affected parties. We strive to include all affected entities in the decisionmaking process and to issue rules efficiently. To better manage and review the regulatory process, we have revised our internal rulemaking and information quality guidance. Our regulatory process ensures that bureaus share ideas on how to reduce regulatory burdens while meeting the requirements of the laws they enforce and improving their stewardship of the environment and resources under their purview. Results have included:

- Increased bureau awareness of and responsiveness to the needs of small businesses and better compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA);
- A Departmentwide effort to evaluate the economic effects of planned rules and regulations;
- Issuance of guidance in the Departmental Manual to ensure the use of plain language;
- Issuance of new guidance in the Departmental Manual to ensure that Departmental National Environmental Policy Act reforms are institutionalized; and
- In the Natural Resources Damage Assessment Program, deemphasizing actions stemming from litigation while increasing outreach to involved parties and stressing cooperation and restoration of affected sites.

Implementing the President's National Energy Policy

The President's National Energy Policy promotes "dependable, affordable, and environmentally sound production and distribution of energy for the future." The Department of the Interior plays a vital role in implementing the President's energy policy goals. The lands and facilities managed by the Department account for nearly 30 percent of all the energy produced in the United States.

The Department is taking over 100 actions to implement the President's energy policy, including several regulatory actions. The Bureau of Land Management recently completed a final rule that provides a comprehensive set of regulations for managing oil and gas leases in the National Petroleum Reserve B Alaska. The Minerals Management Service proposed a rule in March that would provide an incentive for development of deep gas resources offshore in order to encourage drilling of these high-risk wells and help tap into an important new source of natural gas supply. The final rule is expected in the fall. The Office of Surface Mining will propose regulations that will create a stable regulatory environment in order to encourage the development of better mining and reclamation practices that will reduce environmental damages associated with coal operations, while maintaining coal production. OSM anticipates that Congress will reauthorize the Abandoned Mine Land Fee, which is scheduled to expire in September 2004. However, OSM is making contingency rulemaking plans should Congress decide otherwise. These and other regulatory actions within the Department are designed to streamline permitting processes and encourage environmentally sound energy production.

Encouraging Responsible Management of the Nation's Resources

The Department's mission includes protecting and providing access to our Nation's natural and cultural heritage and honoring our trust responsibilities to tribes. We are committed to this mission and to applying laws and regulations fairly and effectively. The Department's priorities include protecting public health and safety, restoring and maintaining public lands, ameliorating land and resource-management problems on public lands, and ensuring accountability and compliance with Federal laws and regulations.

The Department is continuing to work together with State and local governments, landowners, conservation groups, and the business community to conserve species and habitat. Building on successful approaches such as habitat conservation plans, safe harbor agreements, and candidate conservation agreements, the Department is reviewing its policies and regulations to identify opportunities to streamline the regulatory process where possible, consistent with protection of wildlife, and to enhance incentive-based programs to encourage landowners and others to implement voluntary conservation measures. For example, the Fish and Wildlife Service has issued guidance to promote the establishment of conservation banks as a tool to offset adverse impacts to species listed under the Endangered Species Act and restore habitat.

The Department is improving incentives through administrative flexibility under the Endangered Species Act. Released for public comment in September are proposed rule changes intended to provide greater clarity of what is allowable under incidental take permits and provide greater private landowner protections under safe harbor agreements. The first improvements of procedures relate to enhancement of survival permits (actions intended to improve survival or habitat of a species) and will refine and clarify the application requirements. The second, which relates to the issuing of safe harbor permits, will make the process easier to understand and will provide participating landowners greater certainty. Comments are expected in October. A final rule will follow several weeks later.

The Department is also developing a uniform code of scientific conduct and policy on research. The code describes ethical conduct for all Department employees who are engaged in conducting scientific activities on behalf of the Department. The primary reason for developing the code is to implement a Federal policy on research misconduct as required by the Office of Management and Budget. The policy applies to all Federal agencies and federally funded research, whether conducted in-house or by partners at universities or in nongovernmental organizations. This policy meets the expectations of the Secretary regarding the conduct of scientific activities with honesty, integrity, and accuracy; to make decisions based on the best science available; and is consistent with professional codes of conduct of other organizations.

In 2002, Secretaries Norton and Veneman signed an historic agreement with 17 western governors, county commissioners and other affected parties on a plan to make communities safer from wildfires through coordinating Federal, State and local action. Under the 10-year Comprehensive Strategy Implementation Plan, Federal wildfire agencies, affected States, counties, and local governments agreed to the same goals, implementation outcomes, performance measures and tasks that need to be accomplished by specific deadlines. The plan covers all phases of the fire program, including fire preparedness, suppression and prevention, hazardous fuels management, restoration of burned areas, community assistance and monitoring of progress.

On August 22, 2002, the President announced a new initiative that will significantly reduce the damage caused by catastrophic wildfires, by removing unnecessary regulatory obstacles that hinder active forest management to improve forest health. He also called upon Congress to work with his Administration to pass legislation that addresses the unhealthy forest crisis by expediting procedures for forest thinning and restoration projects. In May 2003, the Administration completed implementation of the administrative improvements President Bush called for as part of his Healthy Forests Initiative. These improvements will reduce complex procedures, provide more timely decisions and provide great flexibility in emergency situations. These include the use of a "categorical exclusion"—established by rule—of administrative means to focus necessary but administrative requirements for addressing fires; streamlined and focused "model EA" template to ensure concise environmental assessments for fuels treatment projects; and proposed changes, via rule, to ESA regulations designed to allow agencies that regularly and routinely achieve "findings of no adverse impacts" the ability to make a determination that the fuels treatment project will not adversely impact species.

The National Park Service has completed a Supplemental Environmental Impact Statement regarding snowmobile management in Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr. Memorial Parkway. The Record of Decision was signed in March 2003. The ROD requires the use of new snowmobile engine technology, otherwise known as Best Available Technology, in machines entering the parks. The new technology will likely improve air quality problems associated with high numbers of users and the use of older machines. The proposed regulations will likely reduce adverse economic impact projected to result if snowmobiles were to be completely prohibited in all three parks.

The Bureau of Land Management is working on a grazing administration rule that would ensure grazing decision rules conform with the Administrative Procedure Act, comply with recent court decisions regarding conservation use permits, require BLM to consider social and economic factors when considering changes to grazing use, and offer other improvements to grazing activities on public lands.

Minimizing Regulatory Burdens

We are using the regulatory process to ease the burdens on various entities throughout the country while improving results. For instance, the Endangered Species Act (ESA) allows for the delisting of threatened and endangered species if they no longer need the protection of the ESA. We have identified approximately 40 species for which delisting or downlisting (reclassification from endangered to threatened) may be appropriate.

We use performance standards in a variety of regulations to improve compliance and achievement of regulatory goals. These allow the affected entity to choose the most economical method to accomplish a goal provided it meets the requirements of the regulations. An example of this is Minerals Management Service's (MMS) training rule, which will allow companies with operations in the Outer Continental Shelf (OCS) to select their own training courses or programs for employees. The new rule will allow lessees and contractors to properly train the employees by any method they choose as long as the employees are competent. We anticipate that this will result in new and innovative training techniques and allow companies added flexibility in tailoring their training to employees' specific duties.

Over the past year, the Department has worked extensively with the Federal Energy Regulatory Commission (FERC), along with the Departments of Commerce and Agriculture, to establish a new integrated licensing process that will reduce both the time and cost of obtaining a FERC hydropower license. In July 2003 FERC issued its new rules.

Encouraging Public Participation and Involvement in the Regulatory Process

The Department is encouraging increased public participation in the regulatory process to improve results by ensuring that regulatory policies take into account the knowledge and ideas of our customers, regulated community, and other interested participants. The Department is reaching out to communities to seek public input on a variety of regulatory issues. For example, every year FWS establishes migratory bird hunting seasons in partnership with "flyway councils," which are made up of State fish and wildlife agencies. As the process evolves each year, FWS holds a series of public meetings to give other interested parties, including hunters and other groups, opportunities to participate in establishing the upcoming season's regulations.

Similarly, the Bureau of Land Management (BLM) uses Resource Advisory Councils (RACs) made up of affected parties to help prepare land management plans and regulations that it issues under the Rangeland Reform Act.

In addition, the Department has recently completed a review of its NEPA compliance program and proposed new procedures aimed at improving public participation and reducing excess paperwork and redundancy of effort in the field. This has led to concrete reform measures. On August 29, 2003, a draft of the new NEPA reforms was sent to the **Federal Register** for notice and public comment. Once the public comments are complete, the changes will be codified in the Department and bureau handbooks. The reforms cover a number of areas. They include: consensus based management, public participation, community based training, use of integrated analysis, adaptive management, and tiered and transferred analysis. Each of these concepts is aimed at ensuring the field staff have the tools to tailor their approach to the NEPA process to local needs and interests. Along with the departmental manual changes, policy guidance was distributed to bureaus earlier this year on how to implement the major reforms.

We encourage public consultation during the regulatory process. For example:

- OSM is continuing its outreach to interested groups to improve the substance and quality of rules and, to the greatest extent possible, achieve consensus on regulatory issues;
- The Bureau of Indian Affairs is finalizing its roads program rule that was developed using the negotiated rulemaking process, which has resulted in a rule that better serves the diverse needs of the Native American community, reflecting the importance of the roads program to the individual tribes and the varying needs of the tribal governments;
- The National Park Service has granted cooperating agency status to three States and several local governments surrounding Yellowstone and Grand Teton National Parks to participate in the development of a sustainable winter use management plan that has included two phases of snowmobile regulations, the last of which will be concluded this winter.

Regulatory Actions Related to the Events of September 11, 2001

The Bureau of Reclamation is responsible for protecting 348 reservoirs and more than 500 Federal dams, 58 hydroelectric plants, and over 8 million acres of Federal property. Public Law 107-69 granted Reclamation law enforcement authority for its lands. Reclamation finalized an interim rule published in April 2002 for one year that implements this authority. It has since been extended through 2005.

Rules of Particular Interest to Small Businesses

The National Park Service snowmobiling rule for Yellowstone and Grand Teton National Parks and the John D. Rockefeller Memorial Parkway is of great interest to small business in the area of the parks, in particular those who rent snowmobiles. A draft economic analysis and a visitor survey each point towards economic benefit to businesses in gateway communities, with some costs incurred by non-snowmobile users of the parks.

The Future of DOI

Interior has developed a new Departmentwide strategic plan in response to congressional, OMB and other appraisals indicating that Interior's ten separate strategic planning documents are too long and lack the appropriate agency-level focus. The process of developing the new strategic plan provides the Secretary with an opportunity to:

- Incorporate key Administration and Secretarial priorities into Interior's goals and performance measures,
- Consult with key interested constituents on the future direction of the Department, and
- Make Interior programs more "results-oriented" and accountable to citizens.

Interior also intends to use the single Strategic Plan as the basis for preparing a single Departmentwide annual performance plan beginning with the plan for FY 2004. The Interior bureaus will continue to prepare internal plans to support their budget initiatives and to meet management excellence and accountability needs. However, we plan to submit only Departmentwide strategic and annual plans to the Congress.

Bureaus and Offices Within DOI

The following brief descriptions summarize the regulatory functions of DOI's major regulatory bureaus and offices.

Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA) is responsible for managing trust responsibilities to the Indian tribes and encouraging tribal governments to assume responsibility for BIA programs.

The Bureau's rulemaking and policy development processes are designed to foster public and tribal awareness of the standards and procedures that directly affect them. The processes also encourage the public and the tribes to participate in developing these standards and procedures. The goals of BIA regulatory policies are to: (a) Ensure consistent policies within BIA that result in uniform interactions with the tribal governments; (b) facilitate tribal involvement in managing, planning, and evaluating BIA programs and services; and (c) ensure continued protection of tribal treaties and statutory rights.

Bureau of Land Management

The Bureau of Land Management manages approximately 262 million acres of land surface and about 700 million acres of Federal mineral estate. These lands consist of extensive grasslands, forests, mountains, arctic tundra, and deserts. Resources on the lands include energy and minerals, timber, forage, wild horse and burro populations, habitat for fish and wildlife, wilderness areas, and archeological and cultural sites. BLM manages these lands and resources for multiple purposes and the sustained yield of renewable resources. Primary statutes under which the agency must operate include: the Federal Land Policy and Management Act of 1976; the General Mining Law of 1872; the Mineral Leasing Act of 1920; the Recreation and Public Purposes Act; the Taylor Grazing Act; and the Wild, Free-Roaming Horses and Burros Act.

The regulatory program mirrors statutory responsibilities and agency objectives, which include:

- Providing for a wide variety of public uses while maintaining the long-term health and diversity of the land and preserving significant natural, cultural, and historical resource values;
- Understanding the arid, semi-arid, arctic, and other ecosystems we manage and committing to using the best scientific and technical information to make resource management decisions;
- Understanding the needs of the public that use BLM-managed lands and providing them with quality service;
- Committing to recovering a fair return for using publicly owned resources and avoiding the creation of long-term liabilities for American taxpayers; and
- Resolving problems and implementing decisions in cooperation with other agencies, States, tribal governments, and the public.
- The regulatory program objectives include preparing regulations that:
- Are the product of communication, coordination and consultation with all affected members of the public;
- Are understandable to the general public, especially those to whom they are directly applicable; and
- Are subject to periodic review to determine whether BLM still needs them, whether they need to be updated to reflect statutory and policy changes, and whether they are achieving desired results.

The regulatory priorities of BLM include:

- Completing the revision of the regulations on grazing administration exclusive of Alaska to remove provisions found unlawful in Federal court. This revision will: Make our procedures more responsive to the needs of livestock operators; protect the public interest in sustained yield use of these lands; and protect the environment.
- Completing the revision of the regulations on administration of rights-of-way on the public lands to increase cost recovery to levels that properly compensate BLM for our administrative and monitoring costs and to raise the cap on strict liability for right-of-way holders to a reasonable level in light of costs for environmental cleanup.

All BLM regulations affect small businesses because many, if not most, business entities that operate on public lands meet the definition of a small business established by the Small Business Administration (SBA). No BLM regulation is specifically targeted at small business. All BLM regulations apply equally to entities not qualified as small businesses.

Of the high priority regulations listed above, the mining and grazing regulation projects are probably of particular concern to small businesses. Most livestock operators and mining companies are small businesses, as classified by SBA.

The grazing rule will amend in several respects the grazing regulations that BLM promulgated on February 22, 1995 (59 FR 29206). It will not fundamentally change them. When published, the proposed rule will rely on a regulatory flexibility analysis prepared by BLM for the 1995 final rule. At that time, we determined that the 1995 rule would not have a significant impact on a substantial number of small entities. That analysis still applies.

Minerals Management Service

The Minerals Management Service (MMS) has two major responsibilities. The first is timely and accurate collection, distribution, accounting for, and auditing of revenues owed by holders of Federal onshore, offshore, and tribal land mineral leases in a manner that meets or exceeds Federal financial integrity requirements and recipient expectations. The second is management of the resources of the Outer Continental Shelf in a manner that provides for safety, protection of the environment, and conservation of natural resources. These responsibilities are carried out under the provisions of the Federal Oil and Gas Royalty Management Act, the Minerals Leasing Act, the Outer Continental Shelf Lands Act, the Indian Mineral Leasing Act, and other related statutes.

Our regulatory philosophy is to develop clear, enforceable rules that support the missions of each program. For the Offshore Minerals Management program, as authorized by the Deep Water Royalty Relief Act, we are finalizing a rule to revise current regulations at 30 CFR part 203. The rule will provide temporary incentives in the form of royalty suspension volumes for deep wells (at least 15,000 feet below sea level) in the Gulf of Mexico that explore for or produce gas. We will also continue to review rules and issue amendments in response to new technology and new industry practices.

We also plan to continue to review existing regulations and to issue rules to refine the Minerals Revenue Management (MRM) regulations in chapter II of 30 CFR. MRM is in the process of issuing regulations to: (1) Revise its oil valuation regulations for Indian leases; (2) codify provisions in the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996; and (3) implement new financial and compliance procedures resulting from a major reengineering initiative.

Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement (OSM) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to "strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy."

The principal regulatory provisions contained in title V of SMCRA set minimum requirements for obtaining a permit for surface coal mining operations, set standards for those operations, require land reclamation once mining ends, and require rules and enforcement procedures to ensure that the standards are met. Under SMCRA, OSM is the primary enforcer of SMCRA's provisions until the States achieve "primacy;" that is, until they demonstrate that their regulatory programs meet all the specifications in SMCRA and have regulations consistent with those issued by OSM.

When a primacy State takes over the permitting, inspection, and enforcement activities of the Federal Government, OSM then changes its role from regulating mining activities directly to overseeing and evaluating State programs. Today, 24 of the 26 key coal-producing States have primacy. In return for assuming primacy, States are entitled to regulatory grants and to grants for reclaiming abandoned mine lands. In addition, under cooperative agreements, some primacy States have agreed to regulate mining on Federal lands within their borders. Thus, OSM regulates mining directly only in nonprimacy States, on Federal lands in States where no cooperative agreements are in effect, and on Indian lands.

SMCRA charges OSM with the responsibility of publishing rules as necessary to carry out the purposes of the Act. The fundamental mechanism for ensuring that the purposes of SMCRA are achieved is the basic policy and guidance established through OSM's permanent regulatory program and related rulemakings. This regulatory framework is developed, reviewed, and applied according to policy directives and legal requirements.

Litigation by the coal industry and environmental groups is responsible for some of the rules now being considered by OSM. Others are the result of efforts by OSM to address areas of concern that have arisen during the course of implementing OSM's regulatory program, and two are the result of legislation.

OSM has sought to develop an economical, safe, and environmentally sound program for the surface mining of coal by providing a stable, consistent regulatory, results-focused framework. At the same time, however, OSM has recognized the need: (a) To respond to local conditions; (b) to provide flexibility to react to technological change; (c) to be sensitive to geographic diversity; and (d) to eliminate burdensome recordkeeping and reporting requirements that over time have proved unnecessary to ensure an effective regulatory program.

Major regulatory objectives regarding the mining of surface coal include:

- Regulatory certainty so that coal companies know what is expected of them and citizens know what is intended and how they can participate;
- Continuing consultation, cooperation, and communication with interest groups during the rulemaking process in order to increase the quality of the rulemaking, and, to the greatest extent possible, reflect consensus on regulatory issues.

U.S. Fish and Wildlife Service

The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. Four principal mission goals include:

- The sustainability of fish and wildlife populations. We conserve, protect, restore, and enhance fish, wildlife, and plant populations entrusted to our care. We carry out this mission goal through migratory bird conservation at home and abroad; native fisheries restoration; recovery and protection of threatened and endangered species; prevention and control of invasive species; and work with our international partners.
- Habitat conservation'a network of lands and waters. Cooperating with others, we strive to conserve an ecologically diverse network of lands and waters of various ownership that provide habitat for fish, wildlife, and plant resources. This mission goal emphasizes two kinds of strategic actions: (1) the development of formal agreements and plans with partners who provide habitat for multiple species, and (2) the actual conservation work necessary to protect, restore, and enhance those habitats vital to fish and wildlife populations. Our habitat conservation strategy uses an ecosystem approach to focus on the interaction and balance of people, lands, and waters and fish and wildlife.
- Public use and enjoyment. We provide opportunities to the public to enjoy, understand, and participate in the use and conservation of fish and wildlife resources. The Service directs activities on national wildlife refuges and national fish hatcheries that increase opportunities for public involvement with fish and wildlife resources. Such opportunities include hunting, fishing, wildlife observation and photography, and environmental education and interpretation, as well as hands-on experiences through volunteer conservation activities on Service lands.
- Partnerships in natural resources. We support and strengthen partnerships with tribal, State, and local governments and others in their efforts to conserve and enjoy fish, wildlife, and plants and habitats. We administer Federal grants to States and territories for restoration of fish and wildlife resources and have a continuing commitment to work with tribal governments. We also promote partnerships with other Federal agencies where common goals can be developed.

The Service carries out these mission goals through several types of regulations. The Service works continually with foreign and State governments, affected industries and individuals, and other interested parties to minimize any burdens associated with Service-related activities while carrying out our responsibility to protect the natural resources entrusted to our care. In carrying out our assistance programs, we administer regulations to help interested parties obtain Federal assistance and then comply with applicable laws and Federal requirements. Some Service regulations permit activities otherwise prohibited by law. These regulations allow possession, sale, or trade, scientific research, and educational activities involving fish and wildlife and their parts or products. In general, these regulations supplement State regulations and cover activities that involve interstate or foreign commerce.

We enforce regulations that govern public access, use, and recreation on 540 national wildlife refuges and in national fish hatcheries. We authorize only uses that are compatible with the purpose for which each area was established, are consistent with State and local laws where practical, and afford the public appropriate economic and recreational opportunity.

We administer regulations to manage migratory bird resources. Annually, the Service issues a regulation on migratory bird hunting seasons and bag limits that is developed in partnership with the States, tribal governments, and the Canadian Wildlife Service. These regulations are necessary to permit migratory bird hunting that would otherwise be prohibited by various international treaties.

We also implement regulations to fulfill our statutory obligation to identify and conserve species faced with extinction under the Endangered Species Act (ESA), and to conserve certain mammals under the Marine Mammal Protection Act. The basis for determining endangered and threatened species under the ESA is limited to biological considerations. Regulations enhance the conservation of ESA-listed species and help other Federal agencies comply with the ESA. Under section 7 of the ESA, all Federal agencies must consult with the Service on actions that may jeopardize their continued existence or result in the destruction or adverse modification of their critical habitats. In designating critical habitat for listed species, the Service considers biological information and economic and other impacts of the designation. Areas may be excluded if the benefits of exclusion outweigh the benefits of inclusion, provided that such exclusion will not result in the extinction of the species. The Department is currently reviewing guidance for designation of critical habitat. The guidance will provide policy direction and a process for developing critical habitat designations. The intent is that this guidance be used in the field for 6 months to ensure that it provides the outcome intended. If the field testing is successful, we anticipate developing a rule to put the guidelines in place permanently.

In support of the President's Healthy Forests Initiative, the Service and the National Marine Fisheries Service are proposing counterpart regulations that will provide for an alternative consultation process under section 7 of the ESA for those projects that support the National Fire Plan (NFP). These proposed counterpart regulations should significantly accelerate planning, review, and implementation of NFP actions, and by doing so, should contribute to achieving the habitat management and ecosystem restoration activities contemplated in the NFP. These proposed regulations will be equally protective of listed species as the current process because the standards for determining adverse effects remain unchanged.

We are also working with the Environmental Protection Agency and the National Oceanic and Atmospheric Administration on counterpart consultation regulations for ESA Section 7 consultations on pesticide registrations. Currently, EPA registers pesticides through a lengthy process that considers a number of environmental factors. The volume of registrations and reregistrations and the fact that the EPA registration process differs significantly from most of the Service's usual consultations require that we develop a particular process that addresses the special circumstance of these agency actions. An advance notice of proposed rulemaking was published in the **Federal Register** on January 24, 2003 (68 FR 3785) on this issue.

National Park Service

The National Park Service is dedicated to conserving the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. The Service also manages a great variety of national and international programs designed to help extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world.

There are 388 units in the National Park System, including national parks and monuments; scenic parkways, preserves, trails, riverways, seashores, lakeshores, and recreation areas; and historic sites associated with important movements, events, and personalities of the American past. The NPS develops and implements park management plans and staffs the areas under its administration. It relates the natural values and historical significance of these areas to the public through talks, tours, films, exhibits, and other interpretive media. It operates campgrounds and other visitor facilities and provides, usually through concessions, lodging, food, and transportation services in many areas.

The NPS also administers the following programs: the State portion of the Land and Water Conservation Fund; Federal Lands to Parks; nationwide outdoor recreation coordination and information, and State Comprehensive Outdoor Recreation Planning; Rivers, Trails and Conservation Assistance; National Trails System; Hydropower Recreation Assistance; National Register of Historic Places; National Historic Landmarks; National Natural Landmarks; American Battlefield Protection; National Maritime Heritage Grants; Native American Graves Protection and Repatriation; Tribal Heritage Preservation Grants; Technical Preservation Services; Historic American Buildings Survey; Historic American Engineering Record; Historic American Landscapes Survey; and Interagency Archeological Services.

The NPS's regulatory activities focus on management of the National Park System and management of the programs assigned to it by Congress (and listed in the previous paragraph). Park-related regulations are designed to protect park resources while encouraging appropriate uses of the parks, consistent with each park's mission. Those regulations help ensure safe and sustainable public use, access, and recreation in the parks. Program-related regulations establish the procedures and standards by which the NPS will implement its legislated program responsibilities regarding, for example, the National Register Program and the Native American Graves Protection and Repatriation Act. The NPS regulatory program develops and reviews regulations for consistency with statutory law, current Administration priorities, and Service-wide policies.

Bureau of Reclamation

The Bureau of Reclamation's mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, Reclamation applies management, engineering, and scientific skills that result in effective and environmentally sensitive solutions.

Reclamation projects provide for some or all of the following concurrent purposes: Irrigation water service, municipal and industrial water supply, hydroelectric power generation, water quality improvement, groundwater management, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, system optimization, and related uses. Reclamation has increased security at its facilities and is implementing its law enforcement authorization received in November 2001.

Reclamation's regulatory program is designed to ensure that its mission is carried out expeditiously, efficiently, and with an emphasis on cooperative problemsolving.

Office of the Secretary, Natural Resource Damage Assessment and Restoration Program

The regulatory functions of the Natural Resource Damage Assessment and Restoration Program (Restoration Program) stem from requirements under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Section 301(c) requires the development of natural resource damage assessment rules and the biennial review and revisions, as appropriate, of these rules. Rules have been promulgated for the optional use of natural resource trustees to assess compensation for damages to natural resources caused by hazardous substances. The Restoration Program is overseeing the study and possible promulgation of additional rules pursuant to section 301(c)(2) and the review and possible revision of the existing rule in compliance with section 301(c)(3).

In undertaking DOI's responsibilities under section 301(c), the Restoration Program is striving to meet three regulatory objectives: (a) Make the regulation user-friendly through the use of plain language so that the assessment and restoration process can be followed by all interested parties; (b) move towards a restoration approach for determining compensation rather than monetizing economic damages; and (c) facilitating negotiated settlements rather than litigation over natural resource damages.

DOI—United States Fish and Wildlife Service (FWS)

PROPOSED RULE STAGE

72. ENDANGERED SPECIES AND PESTICIDE REGULATION

Priority:

Other Significant

Legal Authority:

16 USC 1531 et seq

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

This proposed rulemaking announces the intention of the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the U.S. Environmental Protection Agency to conduct rulemaking to promulgate "counterpart regulations" under the Endangered Species Act (ESA) for completing ESA section 7 consultation on EPA pesticide registration actions.

Statement of Need:

We are working with the Environmental Protection Agency and the National Oceanic and Atmospheric Administration on counterpart consultation regulations for ESA section 7 consultations on pesticide registrations. Currently, EPA registers pesticides through a lengthy process that considers a number of environmental factors. The volume of registrations and reregistrations and the fact that the EPA registration process differs significantly from most of the Service's usual consultations requires that we develop a particular process that addresses the special circumstance of these agency actions. An advance notice of rulemaking was published in the Federal Register on January 24, 2003 (68 FR 3785) on this issue.

Timetable:

Action	Date	FR Cite
ANPRM	01/24/03	68 FR 3786
NPRM	11/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal

Federalism:

Undetermined

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DOI—National Park Service (NPS)

FINAL RULE STAGE

73. SNOWMOBILE REGULATIONS FOR YELLOWSTONE AND GRAND TETON NATIONAL PARKS AND JDR PARKWAY

Priority:

Other Significant

Legal Authority:

16 USC 1; 16 USC 3; 16 USC 462k; 16 USC 9a; 16 USC 460(q); ...

CFR Citation:

36 CFR 7.13; 36 CFR 7.21; 36 CFR 7.22

Legal Deadline:

Final, Judicial, December 15, 2003, Final.

The NPS entered into a Settlement Agreement with the International Snowmobile Manufacturers Association and others in June 2001. The agreement was a result of a lawsuit initiated by ISMA disputing provisions of snowmobile regulations issued at the end of the Clinton Administration. The agreement has been amended and final regulations are required by December 15, 2003.

Abstract:

This is the final phase of a series of regulations modifying the use restrictions for snowmobiles and snowcoaches in Yellowstone and Grand Teton National Parks. This regulation, when published as a final rule, will implement new provisions for snowmobile and snowcoach management that arose from the Record of Decision signed March 25, 2003. The NPS will be working to have the final rule in effect before the start of the 2003–2004 winter use season.

Statement of Need:

The rulemaking is necessary as a result of legal action taken by the International Snowmobile Manufacturers Association (ISMA) and others in June 2001. The NPS agreed to reevaluate the impacts of the existing regulations on local economies and to analyze and incorporate provisions for new technology snowmobile engines into the existing Winter Use Management Plan.

Summary of Legal Basis:

The National Park Service entered into a settlement agreement with ISMA and others in June 2001. This agreement was a result of a lawsuit initiated by ISMA disputing provisions of the snowmobile regulations written at the end of the Clinton Administration. The settlement agreement required publication of a final rule, if necessary, by November 15, 2002. That settlement agreement was amended and final regulations are now required by December 15, 2003.

Alternatives:

The only alternative to these regulations would be to allow provisions of the existing regulations for the parks go into effect for the winter use season 2003–2004. The result would be a 50 percent reduction in snowmobiles allowed into Yellowstone and Grand Teton National Parks with each entrance station being allotted a set number of users to enter per day. Those snowmobiles would not be required to be cleaner or quieter.

Anticipated Cost and Benefits:

For the purposes of the benefit-cost analysis, the 2002 "delay rule" (alternative 1b in the SEIS) represents the baseline against which other alternatives were compared. Under this baseline, most snowmobile use would be prohibited in the parks as of the winter of 2004–2005, with restrictions on snowmobile use phased in during the winter of 2003–2004. Alternatives 2–4 should provide greater economic benefits to snowmobile riders and businesses that support them since they are less restrictive relative to the baseline. The primary group that would incur costs under alternatives 2–4 would be the park visitors who do not ride snowmobiles and the businesses that provide services to these visitors as well as members of the general public who place a value on protecting park resources from the negative externalities associated with snowmobile use. Of the alternatives that allow for snowmobile use, alternative 3 is expected to impose the lowest cost on non-snowmobile users. Alternative 4 is expected to impose only slightly higher costs on non-snowmobile users than alternative 3.

Risks:

If the rulemaking were not to proceed, the gateway communities surrounding Yellowstone and Grand Teton National Parks would experience a decrease in snowmobile use by 50 percent beginning during the winter use season 2003–2004. Allowing the existing regulations to become effective would cause adverse economic impacts to the local communities and surrounding three-State area.

Timetable:

Action	Date	FR Cite
NPRM	08/27/03	68 FR 51526
NPRM Comment Period End	10/14/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DOI—Minerals Management Service (MMS)

FINAL RULE STAGE

74. RELIEF OR REDUCTION IN ROYALTY RATES—DEEP GAS PROVISIONS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

43 USC 1331 et seq

CFR Citation:

30 CFR 203

Legal Deadline:

None

Abstract:

Declines in outer continental shelf production from existing fields need to be offset by new sources to keep up with growing demand. Very little of the deep gas potential in shallow water areas of the Gulf of Mexico has yet been explored. Extensive infrastructure already exists in shallow water, unlike in deep water, so new production could reach market quickly. Because the most prospective tracts in shallow water are already under lease, most of the deep gas potential in shallow water may already have been acquired. This rule proposes temporary incentives in the form of royalty suspension volumes for deep wells (at least 15,000 feet below significant energy action level) on existing leases that explore for or produce gas.

Statement of Need:

Very little of the deep gas potential in shallow water areas of the Gulf of Mexico has yet been explored. Extensive infrastructure already exists in shallow water, unlike in deep water, so new production could reach market quickly. Because the most productive tracts in shallow water are already under lease, most of the deep gas potential in shallow water may already have been acquired. This rule would accelerate exploration and production of deep gas by providing temporary incentives in the form of royalty suspension volumes for deep wells on existing leases that explore for or produce gas.

Summary of Legal Basis:

The OCS Lands Act is the basis for our regulations on suspending or lowering royalties on "producing" OCS leases. The Deep Water Royalty Relief Act, which amended the OCS Lands Act, is the basis for regulations to reduce or eliminate royalty on "nonproducing" leases in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude. It gives the Secretary of the Interior the authority to (1) promote development or increased production on producing and nonproducing leases, or (2) encourage production of marginal resources on producing and nonproducing leases.

Alternatives:

There are two alternatives—providing incentives only through the lease sale process, or through an application process. Reserving the deep gas incentive only for new leases issued in future sales will not encourage exploration and production of much of the deep gas potential that underlies existing leases. Many of the best blocks have not been through a sale in decades. Also, new leases would be less able to use the existing infrastructure than existing leases so additional gas production would be delayed. Granting royalty relief on a case-by-case basis to existing leases would better protect against unnecessary royalty relief but is unlikely to encourage much additional production. The unavoidable complexity and delays in a system like we use in the discretionary deep water royalty relief program would discourage many lessees and delay the desired activity by those that would apply.

Risks:

The risk of not offering royalty relief provided in this rulemaking action is that some deep gas resources in shallow water will not be developed, at least not during a period when growing demand and declines in traditional sources for natural gas will lead to volatile prices.

Timetable:

Action	Date	FR Cite
NPRM	03/26/03	68 FR 14867
NPRM Comment Period End	05/27/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

Agency Contact:

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DEPARTMENT OF JUSTICE (DOJ)

Statement of Regulatory Priorities

The first and overriding priority of the Department of Justice is to prevent, detect, disrupt and dismantle terrorism while preserving constitutional liberties. To fulfill this mission, the Department is devoting all the resources necessary and utilizing all legal authorities to eliminate terrorist networks, to prevent terrorist attacks, and to bring to justice those who kill Americans in the name of murderous ideologies. It is engaged in an aggressive arrest and detention campaign of lawbreakers with a single objective: To get terrorists off the street before they can harm more Americans. In addition to using investigative, prosecutorial, and other law enforcement activities, the Department is also using the regulatory process to enhance its ability to prevent future terrorist acts and safeguard our borders while ensuring that America remains a place of welcome to foreigners who come here to visit, work, or live peacefully.

On March 1, 2003, pursuant to the Homeland Security Act of 2002 (HSA), the responsibility for providing immigration-related services and benefits such as naturalization and work authorization was transferred from the Justice Department's Immigration and Naturalization Service (INS) to the Bureau of Citizenship and Immigration Services (BCIS) in the Department of Homeland Security (DHS). The Attorney General has a continuing role in supervising removal and bond cases (conducted by the immigration judges and the Board of Immigration Appeals in the Executive Office for Immigration Review (EOIR)), as well as civil litigation and criminal prosecutions relating to the immigration laws.

The Department of Justice's regulatory priorities focus in particular on two regulatory initiatives in the areas of civil rights. However, in addition to these specific initiatives, several other components of the Department carry out important responsibilities through the regulatory process. Although their regulatory efforts are not singled out for specific attention in this regulatory plan, those components carry out key roles in implementing the Department's anti-terrorism and law enforcement priorities.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issues regulations to enforce the Federal laws relating to the manufacture and commerce of firearms and explosives. ATF's mission and regulations are designed to:

- Curb illegal traffic in, and criminal use of, firearms, and to assist State, local, and other Federal law enforcement agencies in reducing crime and violence;
- Facilitate investigations of violations of Federal explosives laws and arson-for-profit schemes;
- Regulate the firearms and explosives industries, including systems for licenses and permits;
- Assure the collection of all National Firearms Act (NFA) firearms taxes and obtain a high level of voluntary compliance with all laws governing the firearms industry; and
- Assist the States in their efforts to eliminate interstate trafficking in, and the sale and distribution of, cigarettes and alcohol in avoidance of Federal and State taxes.

ATF will continue, as a priority during fiscal year 2004, modifications to its regulations governing commerce in explosives. ATF continues analysis of its regulations governing storage requirements for explosives, including fireworks explosive materials. ATF plans to issue final regulations implementing the provisions of the Safe Explosives Act, title XI, subtitle C, of Public Law 107-296, the Homeland Security Act of 2002 (enacted November 25, 2002).

Drug Enforcement Administration

The Drug Enforcement Administration (DEA) is responsible for controlling abuse of narcotics and dangerous drugs, while ensuring adequate supplies for legitimate medical purposes, by regulating the aggregate supply of those drugs. However, now, the growing combination of drug trafficking and terrorism serves to call us even more urgently to action. DEA accomplishes its objectives through coordination with State, local, and other Federal officials in drug enforcement activities, development and maintenance of drug intelligence systems, regulation of legitimate controlled substances, and enforcement coordination and intelligence-gathering activities with foreign government agencies. DEA continues to develop and enhance regulatory controls relating to the diversion control requirements and to the requirements of the Comprehensive Methamphetamine Control Act of 1996 and the Methamphetamine Anti-Proliferation Act of 2000, which regulate certain drug products that are being diverted for the production of methamphetamine.

Civil Rights

The Department and its Civil Rights Division are deeply committed to the rigorous enforcement of this Nation's civil rights laws. In keeping with that commitment, although not a part of the regulatory process, since September 11, 2001, the Civil Rights Division has been and remains committed to the investigation and prosecution of incidents involving violence or threats of violence against people of Middle-Eastern origin, including Arab Americans, Muslim Americans, Sikh Americans, and South-Asian Americans. The Division is also actively involved in outreach efforts to individuals and organizations to provide information about government services to vulnerable communities.

Additionally, the Division will review and update its regulations implementing the Americans with Disabilities Act of 1990 (ADA), as well as issue a rule pertaining to the Department's authority to review police departments for a pattern or practice of unlawful conduct under the Violent Crime Control and Law Enforcement Act of 1994.

The Department is planning to revise its regulations implementing titles II and III of the ADA to amend the ADA Standards for Accessible Design (28 CFR part 36, appendix A) to be consistent with the revised ADA accessibility guidelines proposed by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) in November 1999 and in final draft form in April 2002. Title II of the ADA prohibits discrimination on the basis of disability by public entities, and title III prohibits such discrimination by places of public accommodation and requires accessible design and construction of places of public accommodation and commercial facilities. In implementing these provisions, the Department of Justice is required by statute to publish regulations that include design standards that are consistent with the guidelines developed by the Access Board. The Access Board has been engaged in a multiyear effort to revise and amend its accessibility guidelines. The goals of this project have been: 1) to address issues such as unique State and local facilities (e.g., prisons, courthouses), recreation facilities, play areas, and building elements specifically designed for children's use that were not addressed in the initial guidelines; 2) to promote greater consistency between the Federal accessibility requirements and the model codes; and 3) to provide greater consistency between the ADA guidelines and the guidelines that implement the Architectural Barriers Act. The Access Board has proposed and/or adopted guidelines that address all of these issues. Therefore, to comply with the ADA requirement that the ADA standards remain consistent with the Access Board's guidelines, the Department will propose to adopt the revised ADA Accessibility Guidelines as the ADA Standards for Accessible Design when the revised guidelines have been published in final form.

The Department also plans to review its regulations implementing title II and title III (28 CFR parts 35 and 36) to ensure that the requirements applicable to new construction and alterations under title II are consistent with those applicable under title III, to review and update the regulations to reflect the current state of law, and to ensure the Department's compliance with section 610 of the Small Business Regulatory Enforcement Fairness Act (SBREFA).

The Department is planning to adopt and interpret the Access Board's revised and amended guidelines in two parts. The first part will be a proposed rule adopting the Access Board's revised and amended guidelines as enforceable standards, which will, in addition to revising the current ADA Standards for Accessible Design, supplement the standards with specifications for prisons, jails, court houses, legislative facilities, building elements designed for use by children, play areas, and recreation facilities. The second part will be an advanced notice of proposed rulemaking seeking public comment on two discrete sets of issues: (i) The Department's interpretation of the new ADAAG and (ii) the section 610 review of the ADA regulations under SBREFA. The Department's revised and supplemented regulations under the ADA will affect small businesses, small governmental jurisdictions, and other small organizations (together, small entities). The Access Board has prepared regulatory assessments (including cost impact analyses) to accompany its new guidelines, which estimate the annual compliance costs that will be incurred by covered entities with regard to construction of new facilities. These assessments include the effect on small entities and will apply to new construction under the Department's revised and supplemented regulations. With respect to existing facilities, the Department will prepare an additional regulatory assessment of the estimated annual cost of compliance with regard to existing facilities. In this process, the Department will give careful consideration to the cost effects on small entities, including the solicitation of comments specifically designed to obtain compliance data relating to small entities.

Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. section 14141 (section 14141), the Attorney General is authorized to file lawsuits seeking court orders to reform police departments engaging in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured by the Constitution or laws of the United States. To date, the Department of Justice has conducted reviews of police departments pursuant to section 14141 using informal procedures. The Department plans to issue a rule to formalize the procedures by which the Department reviews police departments for a pattern or practice of unlawful conduct.

Office of Justice Programs

The Office of Justice Programs is developing International Terrorism Victim Compensation Program regulations (RIN 1121-AA63 to implement the International Terrorism Victim Compensation Program. This program is contained in the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 104-208), which directs the Office of Victims of Crime Director to compensate victims of acts of international terrorism that occur outside the United States for expenses associated with that victimization.

Regulations Published or Being Developed Because of September 11, 2001

Bureau of Prisons

- RIN 1120-AB08 "National Security; Prevention of Acts of Violence and Terrorism" (BOP 1116). This rule imposed special administrative measures with respect to specified inmates, where it has been determined to be necessary to prevent the dissemination either of classified information that could endanger the national security or of other information that could lead to acts of violence and terrorism.

Executive Office for Immigration Review

- RIN 1125-AA47 (formerly, 1115-AG41) "Review of Custody Determinations." This rule amended EOIR regulations to expand an existing regulatory provision for a temporary automatic stay of an immigration judge's decision to order an alien's release in any case in which a district director has ordered that the alien be held without bond or has set a bond of $10,000 or more. The detention of an alien during the pendency of proceedings ensures removal by preventing the alien from fleeing and protects the public from potential harm.
- RIN 1125-AA38 "Protective Orders in Immigration Administrative Proceedings" (EOIR 133). In this post-September 11, 2001, era, the highest priority of the Department is to prevent, detect, disrupt and dismantle terrorism while preserving constitutional liberties. Disclosures of sensitive information could allow terrorists to discern patterns in an investigation, enabling them to evade detection in the future. Accordingly, the Department published the rule "Protective Orders in Immigration Administrative Proceedings," authorizing immigration judges to issue protective orders and seal records relating to law enforcement or national security information.

DOJ—Civil Rights Division (CRT)

PROPOSED RULE STAGE

75. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 28 USC 509; 28 USC 510; 42 USC 12186(b)

CFR Citation:

28 CFR 36

Legal Deadline:

None

Abstract:

In 1991, the Department of Justice published regulations to implement title III of the Americans with Disabilities Act of 1990 (ADA). Those regulations include the ADA Standards for Accessible Design, which establish requirements for the design and construction of accessible facilities that are consistent with the ADA Accessibility Guidelines (ADAAG) published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). In the time since the regulations became effective, the Department of Justice and the Access Board have each gathered a great deal of information regarding the implementation of the Standards. The Access Board is currently in the process of revising ADAAG, and it published a Notice of Proposed Rulemaking (NPRM) on November 16, 1999, and an Availability of Draft Final Guidelines on April 2, 2002. In order to maintain consistency between ADAAG and the ADA Standards, the Department is reviewing its title III regulations and expects to propose, in one or more stages, to adopt the revisions proposed by the Access Board and to make related revisions to the Department's title III regulations. In addition to maintaining consistency between ADAAG and the Standards, the purpose of this review and these revisions will be to more closely coordinate with voluntary standards; to clarify areas which, through inquiries and comments to the Department's technical assistance phone lines, have been shown to cause confusion; to reflect evolving technologies in areas affected by the Standards; and to comply with section 610 of the Regulatory Flexibility Act, which requires agencies once every 10 years to review rules that have a significant economic impact upon a substantial number of small entities.

The adoption of revised ADAAG will also serve to address changes to the ADA Standards previously proposed in RIN 1190–AA26 and RIN 1190–AA38, which have been withdrawn. These changes will include technical specifications for facilities designed for use by children and accessibility standards for State and local government facilities that have previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department will issue as the first stage of the above described title III rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title III regulation, this notice will propose to adopt revised ADAAG as the ADA Standards for Accessible Design. The second stage will initiate the review of the regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Statement of Need:

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including title III. Section 306(c) of the ADA requires the Attorney General to promulgate regulations implementing title III that are consistent with the Access Board's ADA guidelines. Because this rule will adopt standards that are consistent with the minimum guidelines issued by the Access Board, this rule is required by statute. Similarly, the Department's review of its title III regulation is being undertaken to comply with the requirements of the Regulatory Flexibility Act, as amended by SBREFA.

Summary of Legal Basis:

The summary of the legal basis of authority for this regulation is set forth above under Legal Authority and Statement of Need.

Alternatives:

The Department is required by the ADA to issue this regulation. Pursuant to SBREFA, the Department's title III regulation will consider whether alternatives to the currently published requirements are appropriate.

Anticipated Cost and Benefits:

The Access Board has analyzed the effect of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they constitute a significant regulatory action for purposes of Executive Order 12866. The Access Board's determination will apply as well to the revised ADA standards published by the Department. The Department's proposed procedural amendments will not have a significant impact on small entities.

As part of its November 1999 NPRM, the Access Board published a summary of the regulatory assessment that it had prepared, including a cost impact analysis and a discussion of regulatory alternatives considered. The Access Board will prepare and publish in summary form an updated regulatory assessment to accompany the final revised ADAAG. The Access Board's regulatory assessment will also apply to the Department's proposed adoption of revised ADAAG as ADA standards insofar as the standards apply to new construction and alteration. The Department will also prepare an additional regulatory assessment of the estimated annual cost of compliance with the revised standards with regard to existing facilities.

Risks:

Without the proposed changes to the Department's title III regulation, the ADA Standards will fail to be consistent with the ADAAG.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

Additional Information:

RIN 1190–AA44, which will effect changes to 28 CFR 36 (the Department's regulation implementing title III of the ADA), is related to another rulemaking of the Civil Rights Division, RIN 1190–AA46, which will effect changes to 28 CFR 35 (the Department's regulation implementing title II of the ADA).

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DOJ—CRT

76. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

5 USC 301; 28 USC 509 to 510; 42 USC 12134; PL 101–336

CFR Citation:

28 CFR 35

Legal Deadline:

None

Abstract:

On July 26, 1991, the Department published its final rule implementing title II of the Americans with Disabilities Act (ADA). On November 16, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its first comprehensive review of the ADA Accessibility Guidelines, which form the basis of the Department's ADA Standards for Accessible Design. The Access Board published an Availability of Draft Final Guidelines on April 2, 2002. The ADA (section 204(c)) requires the Department's standards to be consistent with the Access Board's guidelines. Therefore, the Department will publish a Notice of Proposed Rulemaking (NPRM) proposing to adopt the revisions proposed by the Access Board. The Department will also, in one or more stages, review its title II regulations for purposes of section 610 of the Regulatory Flexibility Act and make related changes to its title II regulations.

In addition to the statutory requirement for the rule, the social and economic realities faced by Americans with disabilities dictate the need for the rule. Individuals with disabilities cannot participate in the social and economic activities of the Nation without being able to access the programs and services of State and local governments. Further, amending the Department's ADA regulations will improve the format and usability of the ADA Standards for Accessible Design; harmonize the differences between the ADA Standards and national consensus standards and model codes; update the ADA Standards to reflect technological developments that meet the needs of persons with disabilities; and coordinate future ADA Standards revisions with national standards and model code organizations. As a result, the overarching goal of improving access for persons with disabilities so that they can benefit from the goods, services, and activities provided to the public by covered entities will be met.

The timetable set forth below refers to the notice of proposed rulemaking that the Department will issue as the first stage of the above described title II rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title II regulation, this notice will propose to eliminate the Uniform Federal Accessibility Standards (UFAS) as an alternative to the ADA Standards for Accessible Design and to adopt revised ADAAG as the ADA Standards.

Statement of Need:

Section 504 of the ADA requires the Access Board to issue supplemental minimum guidelines and requirements for accessible design of buildings and facilities subject to the ADA, including title II. Section 204(c) of the ADA requires the Attorney General to promulgate regulations implementing title II that are consistent with the Access Board's ADA guidelines. Because this rule will adopt standards that are consistent with the minimum guidelines issued by the Access Board, this rule is required by statute. Similarly, the Department's review of its title II regulations is being undertaken to comply with the requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Summary of Legal Basis:

The summary of the legal basis of authority for this regulation is set forth above under Legal Authority and Statement of Need.

Alternatives:

The Department is required by the ADA to issue this regulation as described in the Statement of Need above. Pursuant to SBREFA, the Department's title II regulation will consider whether alternatives to the currently published requirements are appropriate.

Anticipated Cost and Benefits:

The Administration is deeply committed to ensuring that the goals of the ADA are met. Promulgating this amendment to the Department's ADA regulations will ensure that entities subject to the ADA will have one comprehensive regulation to follow. Currently, entities subject to title II of the ADA (State and local governments) have a choice between following the Department's ADA Standards for title III, which were adopted for places of public accommodation and commercial facilities and which do not contain standards for common State and local government buildings (such as courthouses and prisons), or the Uniform Federal Accessibility Standards (UFAS). By developing one comprehensive standard, the Department will eliminate the confusion that arises when governments try to mesh two different standards. As a result, the overarching goal of improving access to persons with disabilities will be better served.

The Access Board has analyzed the effect of applying its proposed amendments to ADAAG to entities covered by titles II and III of the ADA and has determined that they constitute a significant regulatory action for purposes of Executive Order 12866. The Access Board's determination will apply as well to the revised ADA Standards published by the Department. The Department's proposed procedural amendments will not have a significant impact on small entities.

As part of its November 1999 NPRM, the Access Board published a summary of the regulatory assessment that it had prepared, including a cost impact analysis and a discussion of regulatory alternatives considered. The Access Board will prepare and publish in summary form an updated regulatory assessment to accompany the final revised ADAAG. The Access Board's regulatory assessment will also apply to the Department's proposed adoption of revised ADAAG as ADA standards insofar as the standards apply to new construction and alteration. The Department will also prepare an additional regulatory assessment of the estimated annual cost of compliance with the revised standards with regard to existing facilities.

The Access Board has made every effort to lessen the impact of its proposed guidelines on State and local governments but recognizes that the guidelines will have some federalism effects. These affects are discussed in the Access Board's regulatory assessment, which also applies to the Department's proposed rule.

Risks:

Without this amendment to the Department's ADA regulations, regulated entities will be subject to confusion and delay as they attempt to sort out the requirements of conflicting design standards. This amendment should eliminate the costs and risks associated with that process.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Governmental Jurisdictions

Government Levels Affected:

Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

RIN 1190–AA46, which will effect changes to 28 CFR 35 (the Department's regulation implementing title II of the ADA), is related to another rulemaking of the Civil Rights Division, RIN 1190–AA44, which will effect changes to 28 CFR 36 (the Department's regulation implementing title III of the ADA). By adopting revised ADAAG, this rulemaking will, among other things, address changes to the ADA Standards previously proposed in RINs 1190–AA26, 1190–AA36, and 1190–AA38, which have been withdrawn and merged into this rulemaking. These changes include accessibility standards for State and local government facilities that had been previously published by the Access Board (RIN 1190–AA26) and the timing for the compliance of State and local governments with the curb-cut requirements of the title II regulation (RIN 1190–AA36). In order to consolidate regulatory actions implementing title II of the ADA, on February 15, 2000, RINs 1190–AA26 and 1190–AA38 were merged into this rulemaking and on March 5, 2002, RIN 1190–AA36 was merged into this rulemaking.

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DEPARTMENT OF LABOR (DOL)

2003 Regulatory Plan

Executive Summary: Protecting America's Workers

Since its creation in 1913, the Department of Labor has been guided by the idea that workers deserve safe and healthy workspaces, as well as protection of their wages and pensions. Protecting America's workers is a top priority of the Secretary of Labor. The Department works to enforce laws and regulations to ensure the health and safety of the American workforce. The vast majority of employers work hard to keep their employees and workplaces safe and secure. The Department is committed to aggressively enforcing the laws which protect employees. DOL also strives to provide employers with the knowledge and tools they need to carry out their legal obligations. The Secretary has made protecting workers through the coupling of compliance assistance and tough enforcement one of her top priorities. Her compliance assistance initiative is based on the proven success that comes when government, employers, unions and employees work together.

Compliance assistance works to prevent injuries before they occur. Educating and encouraging employers helps workers far more than enforcement alone, since no enforcement process can possibly identify every violation of the law, and fines and penalties can never fully redress losses of life, health, and economic well being.

DOL has responsibilities beyond worker protection. It recognizes that workers need constant updating of skills to compete in a changing marketplace. DOL helps employers and workers bridge the gap between the requirements of new high-technology jobs and the skills of the workers who are needed to fill them. Workers also need information about protection of their health insurance and pension benefits. The rights of workers returning to their jobs after military service must also be protected.

The Secretary of Labor's Regulatory Plan for Accomplishing These Objectives

In general, DOL tries to help employees and employers meet their needs in a cooperative fashion. DOL will maintain health and safety standards and protect employees working with the regulated community. DOL considers the following proposals to be proactive, common sense approaches to the issues most clearly needing regulatory attention.

The Department's Regulatory Priorities

DOL has identified 19 high priority items for regulatory action. Seven of them address health and safety issues, which are central to DOL's mission and which represent a major focus of the Secretary. Two agencies, the Mine Safety and Health Administration (MSHA) and the Occupational Safety and Health Administration (OSHA), are responsible for these initiatives.

MSHA administers the Federal Mine Safety and Health Act of 1977 (Mine Act). The agency is committed to ensuring safer and healthier workplaces for the nation's miners in a number of ways, and will continue to concentrate on improving existing health standards and addressing emerging health hazards in mining.

MSHA is considering lowering the permissible exposure limit (PEL) for asbestos at metal and nonmetal and coal mines, addressing take-home contamination, and reevaluating the method used for sample analysis (RIN 1219-AB24). MSHA conducted a series of public meetings early in 2002 to allow early participation by interested parties in the rulemaking. MSHA will continue to evaluate those comments as it prepares a notice of proposed rulemaking.

MSHA also continues its rulemaking on Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners (RIN 1219-AB29). A proposed rule was published in August 2003. MSHA will address several provisions of the final standard, including changing the diesel particulate matter surrogate from total carbon to elemental carbon establishing the hierarchy of controls that MSHA applies to metal and nonmetal mines pursuant to its enforcement policy for exposure-based health standards, and addressing the diesel particulate matter control plan.

The comment period for MSHA's two coal mine dust rules (AB14 and AB18) has been extended in order to obtain information and data on personal dust monitors, a potentially promising technology currently being tested by NIOSH. These proposed rules will remain on the regulatory agenda. MSHA will be collaborating with NIOSH, miners' representatives, industry, and manufacturers in the in-mine testing of personal dust monitors. The results of this collaborative effort will guide MSHA in determining how to use these devices and the need for revisions to the coal mine dust sampling requirements.

The Occupational Safety and Health Administration oversees a wide range of measures in the public and private sectors. OSHA is committed to establishing clear and sensible priorities, and to continuing to reduce occupational deaths, injuries, and illnesses.

Four of OSHA's high-priority initiatives address health standards. The first, a revision to the Respiratory Protection Standard, will address Assigned Protection Factors for different types of respirators (RIN 1218-AA05). This action will improve respiratory protection for employees required to wear respirators and will make it easier for employers to choose the appropriate respirator for a given task. OSHA published an NPRM on June 6, 2003, and has scheduled an informal public hearing to begin on January 28, 2004.

OSHA's second initiative in the area of health standards addresses worker exposures to crystalline silica (RIN 1218-AB70). This substance is one of the most widely found in workplaces, and data indicate that exposure to it may cause silicosis, a debilitating respiratory disease, and perhaps cancer as well. OSHA is currently obtaining input from small businesses about regulatory approaches through a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel. This rule was discussed in the 2002 OMB Report to Congress on the Costs and Benefits of Regulations.

OSHA's third health initiative addresses worker exposure to hexavalent chromium (RIN 1218-AB45). Approximately one million workers are exposed to this substance in general industry, maritime, construction and agriculture. Exposure to hexavalent chromium is associated with lung cancer and dermatoses. OSHA intends to initiate the SBREFA panel process in January 2004. This standard was discussed in OMB's 2002 Report to Congress on the Costs and Benefits of Regulation.

The fourth health initiative, OSHA's Standards Improvement Project, will streamline a number of health standards by removing language that is outdated, duplicative, unnecessary or inconsistent (RIN 1218-AB81). These changes will reduce the time and effort needed to understand and comply with these standards. An NPRM was published October 31, 2002. A hearing was held in July 2003, and OSHA is currently preparing its final rule.

OSHA also has an initiative in the area of safety standards, Fire Protection in Shipyard Employment (RIN 1218-AB51). An NPRM was published on December 12, 2002, and a final rule is currently being prepared. This rule will provide a comprehensive approach to dealing with fires in shipyard environments to help prevent deaths and injuries.

Protection of pension and health benefits continues to be a priority of the Secretary. She has played a role in strengthening the retirement security of workers by supporting enhanced disclosure of their pension rights, increased freedom for workers to diversify their retirement savings, expanded access to investment advice, advance notice of 401(k) plan blackout periods, and restrictions on insider trading of employer stock during blackout periods. The last two proposals were enacted as part of the Sarbanes-Oxley Act of 2002. DOL adopted regulations implementing the blackout notice changes to the Employee Retirement Income Security Act (ERISA) in January 2003.

Consistent with the Secretary's priorities for FY 2004, the Employee Benefits Security Administration (EBSA) will focus on compliance assistance for pension and group health plans. Specific initiatives for group health plans include regulations concerning the application of the COBRA continuation of coverage notice provisions (RIN 1210-AA60); HIPAA access, portability and renewability provisions (RIN 1210-AA54); and HIPAA nondiscrimination provisions of ERISA (RIN 1210-AA77). With respect to pension plans, the Department will focus on the development of standards to facilitate the payment of benefits from 401(k) and other defined contribution plans that have been abandoned by their sponsors (RIN 1210-AA97).

ERISA's requirements affect an estimated 730,000 private sector employee pension benefit plans (covering approximately 99 million participants); an estimated 2.5 million group health benefit plans (covering 131 million participants and dependents); and 3.4 million other welfare benefits plans (covering approximately 190 million participants).

The Secretary's emphasis on meeting the needs of the 21st century workforce is reflected in the plan of the Employment and Training Administration (ETA) to issue regulations reflecting recent changes to the Trade Adjustment Assistance (TAA) program, as enacted in the Trade Act of 2002 (RIN 1205-AB32). The proposed rule would address the many new features of the TAA program: consolidation of the TAA and NAFTA-TAA programs; more rapid services to workers to facilitate more rapid reemployment; expanded eligibility; increased benefits, including health care assistance; and an Alternative TAA Program for older workers. The new regulations will be in plain English, making them easier to read and use.

ETA's second regulatory initiative also focuses on meeting the needs of our workforce by improving the quality of the community service employment program provided to low-income senior citizens under the Older Americans Act (RIN 1205-AB28). These individuals often need assistance in developing skills and obtaining work experience so that they can obtain unsubsidized work. This rule will also improve performance accountability and enhance the ability of the States to coordinate services.

In its third initiative, ETA proposes to re-engineer the permanent labor certification process (RIN 1205-AA66). ETA's goals are to make fundamental changes that will streamline the process; save resources; improve the effectiveness of the program; and better serve the Department of Labor's customers. This rule was discussed in the 2002 OMB Report to Congress on the Costs and Benefits of Regulations.

The Employment Standards Administration (ESA) has set forth four priority regulatory initiatives. ESA's first initiative updates the child labor rules issued under the Fair Labor Standards Act (FLSA) to address changes in the nature of the workplace and situations in which minors may operate certain kinds of machinery (RIN 1215-AA09). While young workers need employment experiences that will help them gain the skills needed to find and hold good jobs later in life, they also need to focus on obtaining a high-quality education, and the assurance that their work hours are reasonable will help them in doing so.

ESA's second initiative revises and clarifies the criteria that define the minimum wage and overtime exemptions for "executive," "administrative," "professional," and "outside sales" employees under the FLSA (RIN 1215-AA14). These regulations were discussed in OMB's 2001 and 2002 Reports to Congress on the Costs and Benefits of Regulations. An NPRM was published on March 31, 2003. In developing proposed changes, ESA is carefully examining the issues raised by various interested parties. Changes to these rules will help employers meet their obligations and will enhance workers' understanding of their rights and benefits.

ESA's third initiative pertains to regulations issued under the Family and Medical Leave Act (FMLA) that were also discussed in OMB's 2001 and 2002 Reports to Congress on the Costs and Benefits of Regulations. Revisions will be proposed to the FMLA's implementing regulations to address issues raised by the decision of the U.S. Supreme Court in *Ragsdale v. Wolverine World Wide, Inc.*, 122 S. Ct. 1155 (2002), and the decisions of other courts.

ESA's fourth initiative involves programs administered by its Office of Labor-Management Standards (OLMS). The statutes administered by OLMS require labor organizations in the private sector and the Federal sector to file annual financial reports with the Department.' OLMS' initiative proposes revising the reporting forms (Forms LM-2, LM-3, and LM-4) and the creation of a new Form T-1 for trusts involving labor organizations in order to improve the transparency and accountability of labor organizations to their members, the public, and the government.' An NPRM was published on December 27, 2002 (RIN 1215-AB34).

Finally, the Secretary's commitment to protecting the employment rights of servicemembers as they return to the civilian workforce is reflected by the Veterans' Employment and Training Service's initiative to promulgate regulations implementing the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA provides employment and reemployment protections for members of the uniformed services, including veterans and members of the Reserve and National Guard. The Department has not previously issued implementing regulations under USERRA. Authoritative written guidance interpreting USERRA will ensure that our servicemembers serve secure in the knowledge that they will be able to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on military duty.

DOL—Employment Standards Administration (ESA)

PROPOSED RULE STAGE

77. FAMILY AND MEDICAL LEAVE ACT OF 1993

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 2654

CFR Citation:

29 CFR 825

Legal Deadline:

None

Abstract:

The U.S. Supreme Court, in Ragsdale v. Wolverine World Wide, Inc., 122 S. Ct. 1155 (2002), invalidated regulatory provisions issued under the Family and Medical Leave Act (FMLA) pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Department intends to propose revisions to the FMLA regulations to address issues raised by this and other judicial decisions.

Statement of Need:

The FMLA requires covered employers to grant eligible employees up to 12 workweeks of unpaid, job-protected leave a year for specified family and medical reasons, and to maintain group health benefits during the leave as if the employees continued to work instead of taking leave. When an eligible employee returns from FMLA leave, the employer must restore the employee to the same or an equivalent job with equivalent pay, benefits, and other conditions of employment. FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA.

The FMLA regulations require employers to designate if an employee's use of leave is counting against the employee's FMLA leave entitlement, and to notify the employee of that designation (29 CFR section 825.208). Section 825.700(a) of the regulations provides that if an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against the employee's 12 weeks of FMLA leave entitlement.

On March 19, 2002, the U.S. Supreme Court issued its decision in Ragsdale v. Wolverine World Wide, Inc., 122 S. Ct. 1155 (2002). In that decision, the Court invalidated regulatory provisions pertaining to the effects of an employer's failure to timely designate leave that is taken by an employee as being covered by the FMLA. The Court ruled that 29 CFR section 825.700(a) was invalid absent evidence that the employer's failure to designate the leave as FMLA leave interfered with the employee's exercise of FMLA rights. This proposed rule is being prepared to address issues raised by this and other judicial decisions.

Summary of Legal Basis:

This rule is issued pursuant to section 404 of the Family and Medical Leave Act, 29 U.S.C. section 2654.

Alternatives:

After completing a review and analysis of the Supreme Court's decision in Ragsdale and other judicial decisions, regulatory alternatives will be developed for notice-and-comment rulemaking.

Anticipated Cost and Benefits:

The costs and benefits of this rulemaking action are not expected to exceed $100 million per year or otherwise trigger economic significance under Executive Order 12866.

Risks:

This rulemaking action does not directly affect risks to public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Undetermined

Federalism:

Undetermined

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RIN: 1215–AB35

DOL—ESA

FINAL RULE STAGE

78. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESA/W–H)

Priority:

Other Significant

Legal Authority:

29 USC 203(l)

CFR Citation:

29 CFR 570

Legal Deadline:

None

Abstract:

Section 3(l) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to minors between 14 and 16 years of age ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being. The Secretary is also directed to designate occupations that are particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. The Department has invited public comment in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders, and whether changes are needed in some of the applicable hazardous occupation orders. Comment has also been solicited on whether revisions should be considered in the permissible hours and time-of-day standards for 14- and 15-year-olds. Comment has been sought on appropriate changes required to implement school-to-work transition programs. Additionally, Congress enacted Public Law 104–174 (August 6, 1996), which amended FLSA section 13(c) and requires changes in the regulations under Hazardous Occupation Order No. 12 regarding power-driven paper balers and compactors, to allow 16- and 17-year-olds to load, but not operate or unload, machines meeting applicable American National Standards Institute (ANSI) safety standards and certain other conditions. Congress also passed the Drive for Teen Employment Act, Public Law 105–334 (October 31, 1998), which prohibits minors under age 17 from driving automobiles and trucks on public roads on the job and sets criteria for 17-year-olds to drive such vehicles on public roads on the job.

Statement of Need:

Because of changes in the workplace and the introduction of new processes and technologies, the Department is undertaking a comprehensive review of the regulatory criteria applicable to child labor. Other factors necessitating a review of the child labor regulations are changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences.

Under the Fair Labor Standards Act, the Secretary of Labor is directed to provide by regulation or by order for the employment of youth between 14 and 16 years of age under periods and conditions which will not interfere with their schooling, health and well-being. The Secretary is also directed to designate occupations that are particularly hazardous for youth between the ages of 16 and 18 years or detrimental to their health or well-being. The Secretary has done so by specifying, in regulations, the permissible industries and occupations in which 14- and 15-year-olds may be employed, and the number of hours per day and week and the time periods within a day in which they may be employed. In addition, these regulations designate the occupations declared particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being.

Public comment has been invited in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders or necessitate revision to some of the existing hazardous orders. Comment has also been invited on whether revisions should be considered in the permissible hours and time-of-day standards for the employment of 14- and 15-year-olds, and whether revisions should be considered to facilitate school-to-work transition programs. When issuing the regulatory proposals (after review of public comments on the advance notice of proposed rulemaking), the Department's focus was on assuring healthy, safe and fair workplaces for young workers, and at the same time promoting job opportunities for young people and making regulatory standards less burdensome to the regulated community.

The Department will also be considering what additional revisions to the hazardous occupation orders will be undertaken to address recommendations of the National Institute for Occupational Safety and Health in its May 2002 report to the Department.

Summary of Legal Basis:

These regulations are issued under sections 3(l), 11, 12, and 13 of the Fair Labor Standards Act, 29 U.S.C. sections 203(l), 211, 212, and 213 which require the Secretary of Labor to issue regulations prescribing permissible time periods and conditions of employment for minors between 14 and 16 years old so as not to interfere with their schooling, health, or well-being, and to designate occupations that are particularly hazardous or detrimental to the health or well-being of minors under 18 years old.

Alternatives:

Regulatory alternatives developed based on recent legislation and the public comments responding to the advance notice of proposed rulemaking included specific proposed additions or modifications to the paper baler, teen driving, explosive materials, and roofing hazardous occupation orders, and proposed changes to the permissible cooking activities that 14- and 15-year-olds may perform in retail establishments.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits of this regulatory action indicated that the rule was not economically significant. Benefits will include safer working environments and the avoidance of injuries with respect to young workers.

Risks:

The child labor regulations, by ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education as required by the statute, produce positive benefits by reducing health and productivity costs employers may otherwise incur from higher accident and injury rates to young and inexperienced workers. Given the limited nature of the changes in the proposed rule, a detailed assessment of the magnitude of risk was not prepared.

Timetable:

Action	Date	FR Cite
Final Action	11/20/91	56 FR 58626
Final Action Effective	12/20/91	
ANPRM	05/13/94	59 FR 25167
ANPRM Comment Period End	08/11/94	59 FR 40318
NPRM	11/30/99	64 FR 67130
NPRM Comment Period End	01/31/00	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1215–AA09

DOL—ESA

79. DEFINING AND DELIMITING THE TERM "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY" (ESA/W–H)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 213(a)(1)

CFR Citation:

29 CFR 541

Legal Deadline:

None

Abstract:

These regulations set forth the criteria for exemption from the Fair Labor Standards Act's minimum wage and overtime requirements "executive," "administrative," "professional," and "outside sales employees." To be exempt, employees must meet certain tests relating to duties and responsibilities and be paid on a salary basis at specified levels. A final rule increasing the salary test levels was published on January 13, 1981 (46 FR 3010), to become effective on February 13, 1981, but was indefinitely stayed on February 12, 1981 (46 FR 11972). On March 27, 1981, a proposal to suspend the final rule indefinitely was published (46 FR 18998), with comments due by April 28, 1981. As a result of numerous comments and petitions from industry groups on the duties and responsibilities tests, and as a result of case law developments, the Department concluded that a more comprehensive review of these regulations was needed. An ANPRM reopening the comment period and broadening the scope of review to include all aspects of the regulations was published on November 19, 1985, with the comment period subsequently extended to March 22, 1986.

The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the Fair Labor Standards Act (FLSA), the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6.5 times the applicable minimum wage. Also, in 1992 the Department issued a final rule which modified the exemption's requirement for payment on a "salary basis" for otherwise exempt public sector employees.

Statement of Need:

These regulations contain the criteria used to determine if an employee is exempt from the FLSA as an "executive,", "administrative," "professional," or "outside sales" employee. The existing salary test levels used in determining which employees qualify as exempt were adopted in 1975 on an interim basis. These salary level tests are outdated and offer little practical guidance in applying the exemption. In addition, numerous comments and petitions have been received from industry groups regarding the duties and responsibilities tests in the regulations, requesting a review of these regulations.

These regulations have been revised to deal with specific issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also in 1991, the Department undertook separate rulemaking on another aspect of the regulations, the definition of "salary basis" for public-sector employees. Because of the limited nature of these revisions, the regulations are still in need of updating and clarification.

Summary of Legal Basis:

These regulations are issued under the statutory exemption from minimum wage and overtime pay provided by section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), which requires the Secretary of Labor to issue regulations that define and delimit the terms "any employee employed in a bona fide, executive, administrative, or professional capacity... or in the capacity of outside salesman..." for purposes of applying the exemption to employees who meet the specified criteria.

Alternatives:

The Department will involve affected interest groups in developing regulatory alternatives. Following completion of these outreach and consultation activities, full regulatory alternatives will be developed.

Although legislative proposals have been introduced in Congress to address certain aspects of these regulations, the Department continues to believe revisions to the regulations are the appropriate response to the concerns raised. Alternatives likely to be considered range from particular changes to address "salary basis" and salary level issues to a comprehensive overhaul of the regulations that also addresses the duties and responsibilities tests.

Anticipated Cost and Benefits:

Some 19 to 26 million employees are estimated to be within the scope of these regulations. Legal developments in court cases are changing the guiding interpretations under this exemption and creating law without considering a comprehensive analytical approach to current compensation concepts and workplace practices. Clear, comprehensive, and up-to-date regulations would provide for central, uniform control over the application of these regulations and ameliorate many concerns. In the public sector, State and local government employers contend that the rules are based on production workplace environments from the 1940s and 1950s that do not readily adapt to contemporary government functions. The Federal Government also has concerns regarding the manner in which the courts and arbitration decisions are applying the exemption to the Federal workforce. Resolution of confusion over how the regulations are to be applied in the public sector will ensure that employees are protected, that employers are able to comply with their responsibilities under the law, and that the regulations are enforceable. Preliminary estimates of the specific costs and benefits of this regulatory action will be developed once the various regulatory alternatives are identified.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Indefinite Stay of Final Rule	02/12/81	46 FR 11972
Proposal To Suspend Rule	03/27/81	46 FR 18998
ANPRM	11/19/85	50 FR 47696
Extension of ANPRM Comment Period	01/17/86	51 FR 2525
ANPRM Comment Period End	03/22/86	
NPRM	03/31/03	68 FR 15560
NPRM Comment Period End	06/30/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, Local, State

Federalism:

This action may have federalism implications as defined in EO 13132.

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RIN: 1215–AA14

DOL—Employment and Training Administration (ETA)

PROPOSED RULE STAGE

80. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

Priority:

Other Significant

Legal Authority:

19 USC 2320; Secretary's Order No. 3–81, 46 FR 31117

CFR Citation:

29 CFR 90; 20 CFR 617; 20 CFR 618; 20 CFR 666; 20 CFR 672; ...

Legal Deadline:

None

Abstract:

The Trade Act of 2002, enacted on August 6, 2002, contains provisions amending title 2, chapter 2 of the Trade Act of 1974, entitled Adjustment Assistance for Workers. The amendments, effective 90 days from enactment (November 4, 2002), make additions to where and by whom a petition may be filed, expand eligibility to workers whose production has been shifted to certain foreign countries and to worker groups secondarily affected, and make substantive amendments regarding trade adjustment assistance (TAA) program benefits.

Although published as a final rule, comments were requested on several material changes, which were not included in the proposed rule. Comments were received and will be considered and included in the final rule implementing the amendments under the Trade Act of 2002.

Furthermore, it is the agency's intention to create a new 20 CFR part 618 to incorporate the amendments and be written in plain English, while amending WIA regs at 20 CFR parts 666 and 672 regarding Rapid Response and National Emergency Grants as they relate to the TAA program.

Statement of Need:

The Trade Act of 2002, enacted August 6, 2002, repeals the North American Free Trade Agreement-Transitional Adjustment Assistance provisions for workers affected by the NAFTA Implementation Act and adds significant amendments to worker benefits under Trade Adjustment Assistance for Workers, as provided for in the Trade Act of 1974.

The Department is mandated to implement the amendments in 90 days from enactment, November 4, 2002. The 2002 Trade Act amends where and by whom a petition may be filed. Program benefits for TAA eligible recipients are expanded to include for the first time a health care tax credit, and eligible recipients now include secondarily affected workers impacted by foreign trade. Income support is extended by 26 weeks and by up to one year under certain conditions. Waivers of training requirements in order to receive income support are explicitly defined. Job search and relocation benefit amounts are increased. Within one year of enactment, the amendments offer an Alternative TAA Program for Older Workers that targets older worker groups at firms who are certified as TAA eligible and provides the option of a wage supplement instead of training, job search, and income support.

State agencies rely on the regulations to make determinations as to individual eligibility for TAA program benefits. TAA program regulations as written have been described as complicated to interpret. With the new TAA program benefit amendments contained in the Trade Act of 2002, it is imperative that the regulations be in an easy to read and understandable format.

Summary of Legal Basis:

These regulations are authorized by the Trade Act of 2002 amendments to the Trade Act of 1974.

Alternatives:

The public will be afforded an opportunity to provide comments on the TAA program changes when the Department publishes the interim final rule in the Federal Register.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

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DOL—ETA

FINAL RULE STAGE

81. LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Priority:

Other Significant

Legal Authority:

29 USC 49 et seq; 8 USC 1182(a)(5)(A), 1189(p)(1)

CFR Citation:

20 CFR 656

Legal Deadline:

None

Abstract:

The Employment and Training Administration (ETA) is in the process of reengineering the permanent labor certification process. ETA's goals are to make fundamental changes and refinements that will streamline the process, save resources, improve the effectiveness of the program and better serve the Department of Labor's (DOL) customer.

Statement of Need:

The labor certification process has been described as being complicated, costly and time consuming. Due to the increases in the volume of applications received and a lack of adequate resources, it can take up to 2 years or more to complete processing an application. The process also requires substantial State and Federal resources to administer and is reportedly costly and burdensome to employers as well. Cuts in Federal funding for both the permanent labor certification program and the U.S. Employment Service have made it difficult for State and Federal administrators to keep up with the process. ETA, therefore, is taking steps to improve effectiveness of the various regulatory requirements and the application processing procedures, with a view to achieving savings in resources both for the Government and employers, without diminishing protections now afforded U.S. workers by the current regulatory and administrative requirements.

Summary of Legal Basis:

Promulgation of these regulations is authorized by section 212(a)(5)(A) of the Immigration and Nationality Act.

Alternatives:

Regulatory alternatives are now being developed by the Department. The public was afforded an opportunity to comment on the Department's plans for streamlining the permanent labor certification process in a notice of proposed rulemaking which was published in the Federal Register on May 6, 2002.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits have not been determined at this time. Preliminary estimates will be developed after a decision is made as to what regulatory amendments are necessary and after the implementing forms and automated systems to support a streamlined permanent labor certification process have been developed.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	05/06/02	67 FR 30465
NPRM Comment Period End	07/05/02	67 FR 30466
Final Action	11/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, State

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DOL—ETA

82. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

42 USC 3056(b)(2)

CFR Citation:

20 CFR 641

Legal Deadline:

None

Abstract:

The Employment and Training Administration will implement new regulations to govern the Senior Community Service Employment Program (SCSEP) under title V of the Older Americans Act Amendments of 2000. SCSEP is the only federally sponsored job creation program targeted to low-income older Americans. The program subsidizes part-time community service jobs for low-income persons age 55 years and older who have poor employment prospects. Approximately 100,000 program enrollees annually work in a wide variety of community service jobs, including nurse's aides, teacher aides, librarians, clerical workers and day care assistants. The Department of Labor allocates funds to operate the program to State agencies on aging and to national organizations.

Proposed regulations will improve integration of SCSEP with the broader workforce investment system and introduce performance measures and sanctions.

Statement of Need:

As the baby boom generation ages, the demand for employment and training services and income support for low-income older persons will increase. Low-income seniors generally must continue working and many may not be able to find employment without work experience and additional training. The basic goals of the SCSEP are to provide community service employment for older workers with few skills and little work experience, and to move many of those seniors into unsubsidized employment. The Employment and Training Administration will issue regulations and other guidance, provide technical assistance, and establish performance standards that will drive State and national grantees' efforts towards the program's goals.

Summary of Legal Basis:

Promulgation of these regulations is authorized by section 502(b)(2) of Pub. L. 106-501 of the Older Americans Act Amendments of 2000.

Alternatives:

The public provided comments on changes to the statute due to the Older Americans Act Amendments of 2000 during Town Hall meetings held throughout the country in spring 2001. The public also will be afforded an opportunity to comment on the Department's plans for implementing the Amendments in a notice of proposed rulemaking that will be published in the Federal Register.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

Risks:

This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	04/28/03	68 FR 22520
NPRM Comment Period End	06/12/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

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DOL—Employee Benefits Security Administration (EBSA)

PROPOSED RULE STAGE

83. • RULEMAKING RELATING TO TERMINATION OF ABANDONED INDIVIDUAL ACCOUNT PLANS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

29 USC 1135

CFR Citation:

29 CFR 2591

Legal Deadline:

None

Abstract:

This rulemaking will establish a procedure and standards for distributing the benefits of individual account plans that have been abandoned by their sponsoring employers or plan administrators.

Statement of Need:

Thousands of individual account plans have, for a variety of reasons, been abandond by their sponsors, creating problems for plan participants, administrators, financial institutions (e.g., banks, insurance companies, mutual funds), the courts and the Federal government. At present, the potential liability and costs attendant to terminating such plans and distributing the assets inhibits financial institutions and others from taking on this responsibility. Due to on-going administrative costs and other factors, the continued maintenance of such plans is often not in the interest of the participants and beneficiaries. This rulemaking will establish a procedure for a financial institution that holds the assets of such a plan to terminate the plan and distribute its assets to the participants and beneficiaries. The rulemaking will also include standards for determining when plans may be terminated pursuant to this procedure and for carrying out the functions necessay to distribute benefits and shut down plan operation.

Summary of Legal Basis:

Section 505 of ERISA provides that the Secretary may prescribe such regulations as the Secretary finds necessary and appropriate to carryout the provisions of Title I of the Act. Section 403(d)(1) provides that, upon termination of such a plan, the assets shall be distributed generally in accordance with the provisions that apply to defined benefit plans, "except as otherwise provided in regulations of the Secretary." ERISA section 3(16)(A) permits the Secretary to issue regulations designating an administrator for a plan where the plan document makes no designation and the plan sponsor cannot be identified. ERISA section 110 to establish an alternate means of compliance with ERISA's reporting and disclosure provisions.

Alternatives:

Alternatives will be considered following a determination of the scope and nature of the regulatory guidance needed by the public.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed, as appropriate, following a determination regarding the alternatives to be considered.

Risks:

Failure to provide guidance in this area will leave the retirement benefits of participants and beneficiaries in abandoned plans at risk of being significantly diminished by ongoing plan administrative expenses, rather than distributed to participants and beneficiaries in connection with a timely and orderly termination of the plan.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

None

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RIN: 1210–AA97

DOL—EBSA

FINAL RULE STAGE

84. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1171; 29 USC 1172; 29 USC 1191c

CFR Citation:

29 CFR 2590

Legal Deadline:

Other, Statutory, April 1, 1997, Other.

Abstract:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA by adding a new part 7, designed to improve health care access, portability and renewability. This rulemaking will provide regulatory guidance to implement these provisions.

Statement of Need:

In general, the health care portability provisions in part 7 of ERISA provide for increased portability and availability of group health coverage through limitations on the imposition of any preexisting condition exclusion and special enrollment rights in group health plans after loss of other health coverage or a life event. Plan sponsors, administrators and participants need guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis:

Part 7 of ERISA specifies the portability and other requirements for group health plans and health insurance issuers. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA. In addition, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Risks:

Failure to provide guidance concerning Part 7 of ERISA may impede compliance with the law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Effective	06/07/97	
Interim Final Rule Comment Period End	07/07/97	
Request for Information	10/25/99	64 FR 57520
Comment Period End	01/25/00	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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RIN: 1210–AA54

DOL—EBSA

85. RULEMAKING RELATING TO NOTICE REQUIREMENTS FOR CONTINUATION OF HEALTH CARE COVERAGE

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 1135; 29 USC 1166

CFR Citation:

29 CFR 2590

Legal Deadline:

None

Abstract:

This rulemaking will provide guidance concerning the notification requirements pertaining to continuation coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Section 606 of ERISA requires that group health plans provide employees notification of the continuation coverage provisions of the plan and imposes notification obligations upon plan administrators, employers, employees, and qualified beneficiaries relating to certain qualifying events.

Statement of Need:

Part 6 of title I of ERISA requires that group health plans provide employees with notice of the continuation of health care coverage provisions of the plan; it imposes notification requirements upon employers, employees, plan administrators, and qualified beneficiaries in connection with certain qualifying events. The public needs guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis:

Section 606 of ERISA specifies the respective notification requirements for employers, employees, plan administrators, and qualified beneficiaries in connection with group health plan provisions relating to continuation of health care coverage. Section 606(a) of ERISA specifically refers to regulations to be issued by the Secretary of Labor clarifying these requirements. Section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Alternatives:

Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which is needed by the public.

Anticipated Cost and Benefits:

Preliminary estimates of the anticipated costs and benefits will be developed once decisions are reached regarding the alternatives to be considered.

Risks:

Failure to provide guidance to the public concerning their notification obligations under section 606 of ERISA may complicate compliance by the public with the law and may reduce the availability of continued health care coverage in certain commonly encountered situations.

Timetable:

Action	Date	FR Cite
ANPRM	09/23/97	62 FR 49894
ANPRM Comment Period End	11/24/97	
NPRM	05/28/03	68 FR 31832
NPRM Comment Period End	07/28/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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RIN: 1210–AA60

DOL—EBSA

86. PROHIBITING DISCRIMINATION AGAINST PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1182; 29 USC 1191c; 29 USC 1194

CFR Citation:

29 CFR 2590.702

Legal Deadline:

None

Abstract:

Section 702 of the Employee Retirement Income Security Act of

1974, amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes that a group health plan or a health insurance issuer may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. These provisions are also contained in the Internal Revenue Code under the jurisdiction of the Department of the Treasury, and the Public Health Service Act under the jurisdiction of the Department of Health and Human Services.

On April 8, 1997, the Department, in conjunction with the Departments of the Treasury and Health and Human Services (collectively, the Departments) published interim final regulations implementing the nondiscrimination provisions of HIPAA. These regulations can be found at 26 CFR 54.9802-1 (Treasury), 29 CFR 2590.702 (Labor), and 45 CFR 146.121 (HHS). That notice of rulemaking also solicited comments on the nondiscrimination provisions and indicated that the Departments intend to issue further regulations on the nondiscrimination rules. This rulemaking contains additional regulatory interim guidance under HIPAA's nondiscrimination provisions. In addition, the rulemaking contains proposed guidance on bona fide wellness programs.

Statement of Need:

Part 7 of ERISA provides that group health plans and health insurance issuers may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. Plan sponsors, administrators, and participants need additional guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis:

Section 702 of ERISA specifies the respective nondiscrimination requirements for group health plans and health insurance issuers. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 ERISA. In addition, section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Risks:

Failure to provide guidance concerning part 7 of ERISA may impede compliance with the law.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period	07/07/97	
NPRM	01/08/01	66 FR 1421
NPRM Comment Period End	04/09/01	
Second Interim Final Rule	01/08/01	66 FR 1378
Interim Final Rule Comment Period	04/09/01	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Undetermined

Additional Information:

This item has been split off from RIN 1210-AA54.

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RIN: 1210-AA77

DOL—Mine Safety and Health Administration (MSHA)

PROPOSED RULE STAGE

87. ASBESTOS EXPOSURE LIMIT

Priority:

Other Significant

Legal Authority:

30 USC 811; 30 USC 813

CFR Citation:

30 CFR 56; 30 CFR 57; 30 CFR 71

Legal Deadline:

None

Abstract:

MSHA's permissible exposure limit (PEL) for asbestos applies to surface (30 CFR part 56) and underground (30 CFR part 57) metal and nonmetal mines and to surface coal mines and surface areas of underground coal mines (30 CFR part 71) and is over 20 years old. MSHA is considering rulemaking to lower the PEL in order to reduce the risk of miners developing asbestos-induced occupational disease. A recent report by the Office of the Inspector General (OIG) recommended that MSHA lower its existing permissible exposure limit for asbestos to a more protective level, and address take-home contamination from asbestos. It also recommended that MSHA use Transmission Electron Microscopy to analyze fiber samples that may contain asbestos.

Statement of Need:

Current scientific data indicate that the existing asbestos PEL is not protective of miners' health. MSHA's asbestos regulations date to 1967 and are based on the Bureau of Mines (MSHA's predecessor) standard of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau proposed a 2 mppcf and 12 fibers/ml standard. This standard was promulgated in 1969. In 1970, the Bureau proposed to lower the standard to 5 fibers/ml, which was promulgated in 1974. MSHA issued its current standard of 2 fibers/ml in 1976 for coal mining (41 FR 10223) and 1978 for metal and nonmetal mining (43 FR 54064). During inspections, MSHA routinely takes samples, which are analyzed for compliance with its standard.

Other Federal agencies have addressed this issue by lowering their PEL for asbestos. For example, the Occupational Safety and Health Administration, working in conjunction with the Environmental Protection Agency, enacted a revised asbestos standard in 1994 that lowered the permissible exposure limit to an 8-hour time-weighted average limit of 0.1 fiber per cubic centimeter of air and the excursion limit to 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected increased asbestos-related disease risk to asbestos-exposed workers.

Summary of Legal Basis:

Promulgation of this regulation is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

The Agency has increased sampling efforts in an attempt to determine current miners' exposure levels to asbestos, including taking samples at all existing vermiculite, taconite, talc, and other mines to determine whether asbestos is present and at what levels. In early 2000, MSHA began an intensive sampling effort at operations with potential asbestos exposure. These efforts continue. While sampling, MSHA staff discussed with miners and mine operators the potential hazards of asbestos and the types of preventive measures that could be implemented to reduce exposures. The course of action MSHA takes in addressing asbestos hazards to miners will, in part, be based on these sampling results.

Anticipated Cost and Benefits:

MSHA will develop a preliminary regulatory economic analysis to accompany any proposed rule that may be developed.

Risks:

There is concern that miners could be exposed to the hazards of asbestos during mine operations where the ore body contains asbestos. There is also potential for exposure at facilities in which installed asbestos-containing material is present. Overexposure to asbestos causes asbestosis, mesothelioma, and other forms of cancers.

Timetable:

Action	Date	FR Cite
ANPRM	03/29/02	67 FR 15134
Notice of Public Meetings	03/29/02	
Notice of Change to Public Meetings	04/18/02	67 FR 19140
ANPRM Comment Period End	06/27/02	
NPRM	05/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

The Office of the Inspector General's "Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana," was issued in March 2001.

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DOL—MSHA

FINAL RULE STAGE

88. DIESEL PARTICULATE MATTER EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS

Priority:

Other Significant

Legal Authority:

30 USC 811

CFR Citation:

30 CFR 57

Legal Deadline:

None

Abstract:

On January 19, 2001, MSHA published a final rule addressing diesel particulate matter (DPM) exposure of underground metal and nonmetal miners (66 FR 5706). The final rule established new health standards for underground metal and nonmetal mines that use equipment powered by diesel engines. The rule establishes an interim concentration limit of 400 micrograms of total carbon per cubic meter of air that became applicable July 20, 2002, and a final concentration limit of 160 micrograms to become applicable after January 19, 2006. Industry challenged the rule and organized labor intervened in the litigation. Settlement negotiations with the litigants have resulted in further regulatory actions on several requirements of the rule. One final rule has been published (67 FR 9180). This new rulemaking will address the remaining issues. MSHA issued an ANPRM on September 25, 2002 to obtain additional information and to develop a proposed rule in 2003.

Statement of Need:

As a result of the first partial settlement with the litigants, MSHA published two documents in the Federal Register on July 5, 2001. One document delayed the effective date of 57.5066(b) regarding the tagging provisions of the maintenance standard; clarified the effective dates of certain provisions of the final rule; and gave correction amendments.

The second document was a proposed rule to clarify 57.5066(b)(1) and (b)(2) of the maintenance standards and to add a new paragraph (b)(3) to 57.5067 regarding the transfer of existing diesel equipment from one underground mine to another underground mine. The final rule on these issues was published February 27, 2002, and became effective March 29, 2002.

As a request of the second partial settlement agreement, MSHA also agreed to proposed specific changes to the 2001 DPM final rule. On September 25, 2002, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) (67 FR 60199). In response to commenters, MSHA intends at this time to propose changes only to the interim DPM standard of 400 micrograms per cubic meter of air. In a separate rulemaking, the Agency will propose a rule to revise the final concentration limit of 160 micrograms per cubic meter of air pursuant to the DPM settlement agreement. The scope of both rulemakings is limited to the settlement agreement. The current rulemaking addresses the following provisions:

57.5060(a)—Propose to change the existing DPM surrogate from total carbon to elemental carbon; propose that a single personal sample of miner's exposure would be an adequate basis for MSHA compliance determinations; and propose the current hierarchy of controls that MSHA applies in its existing metal and nonmetal exposure based health standards for abating violations.

57.5060(c)—Propose to adapt to the interim limit the existing provision that allows mine operators to apply to the Secretary for additional time to come into compliance with the final concentration limit. MSHA also agreed to propose to include consideration of economic feasibility, and to allow for annual renewals of such special extensions.

57.5060(d)—This existing provision permits miners to engage in certain activities in concentrations exceeding the interim and final limits upon application and approval from the Secretary. MSHA asked commenters if this provision should be removed since the Agency agreed to propose the existing hierarchy of controls.

57.5060(e)—MSHA agreed to propose to remove the existing prohibition on the use of personal protective equipment.

57.5060(f)—MSHA agreed to propose to remove the prohibition on the use of administrative controls.

57.5061(b)—MSHA is proposing to change the reference from "total carbon" to "elemental carbon."

57.5061(c)—MSHA is proposing to delete the references to "area" and "occupational" sampling for compliance.

57.5062—MSHA agreed to propose revisions to the existing diesel control plan.

Summary of Legal Basis:

Promulgation of these regulations is authorized by sections 101 and 103 of the Federal Mine Safety and Health Act of 1977.

Alternatives:

This rulemaking action is a result of the parties' settlement agreement. This action will not decrease protection for miners.

Anticipated Cost and Benefits:

MSHA's preliminary economic analysis indicates minimum costs to the mining industry.

Risks:

Several epidemiological studies have found that exposure to diesel exhaust presents potential health risk to the miners. These potential adverse health effects range from headaches and nausea to respiratory disease and cancer. In the confined space of the underground mining environment, occupational exposure to diesel exhaust may present a greater hazard due to ventilation limitations and the presence of other airborne contaminants, such as toxic mine dusts or mine gases. We believe that the health evidence forms a reasonable basis for reducing miners' exposure to diesel particulate matter. Proceeding with rulemaking on the provisions discussed above will more effectively reduce miners exposure to DPM.

Timetable:

Action	Date	FR Cite
ANPRM	09/25/02	67 FR 60199
ANPRM Comment Period End	11/25/02	
NPRM	08/14/03	68 FR 48668
NPRM Comment Period End	10/14/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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DOL—Occupational Safety and Health Administration (OSHA)

PRERULE STAGE

89. OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910

Legal Deadline:

NPRM, Judicial, October 4, 2004, NPRM.

Abstract:

In July 1993, the Occupational Safety and Health Administration (OSHA) was petitioned for an emergency temporary standard (ETS) to reduce the permissible exposure limit (PEL) for occupational exposures to hexavalent chromium (CrVI). The Oil, Chemical, and Atomic Workers International Unions (OCAW) and Public Citizen's Health research Group (HRG) petitioned OSHA to promulgate an ETS to lower the PEL for CrVI compounds to 0.5 micrograms per cubic meter of air (ug/mg3) as an eight-hour, time-weighted average (TWA). The current PEL in general industry is a ceiling value of 100 ug/m3, measured as CrVI and reported as chromic anhydride (CrO3). The amount of CrVI in the anhydride compound equates to a PEL of 52 ug/m3. The ceiling limit applies to all forms of CrVI, including chromic acid and chromates, lead chromate, and zinc chromate. The current PEL of CrVI in the construction industry is 100 ug/m3 as a TWA PEL, which also equates to a 52 ug/m3. After reviewing the petition, OSHA denied the request for an ETS and initiated a section 6(b)(5) rulemaking

OSHA began collecting data and performing preliminary analyses relevant to occupational exposure to CrVI. However, in 1997, OSHA was sued by HRG for unreasonable delay in issuing a final CrVI standard. The 3rd Circuit, U.S. Court of Appeals ruled in OSHA's favor and the Agency continued its data collection and analytic efforts on CrVI. In 2002, OSHA was sued again by HRG for continued unreasonable delay in issuing a final CrVI standard. In August, 2002 OSHA published a Request for Information on CrVI to solicit additional information on key issues related to controlling exposures to CrVI and on December 4, 2002 OSHA announced its intent to proceed with developing a proposed standard. On December 24, 2002, the 3rd Circuit, U.S. Court of Appeal ruled in favor of HRG and ordered the Agency to proceed expeditiously with a CrVI standard. A subsequent order from the court on April 2, 2003 established an October 4, 2004 deadline for publication of a proposed standard and a January 18, 2006 deadline for publication of the final standard.

The major illnesses associated with occupational exposure to CrVI are lung cancer and dermatoses. OSHA estimates that approximately one million workers are exposed to CrVI on a regular basis in all industries. The major uses of CrVI are: as a structural and anticorrosive element in the production of stainless steel, ferrochromium, iron and steel, and in electroplating, welding and painting.

Statement of Need:

Approximately one million workers are exposed to CrVI in general industry, maritime, construction, and agriculture. Industries or work processes that could be particularly affected by a standard for CrVI include: Electroplating, welding, painting, chromate production, chromate pigment production, ferrochromium production, iron and steel production, chromium catalyst production, and chromium dioxide and sulfate production. Exposure to CrVI has been shown to produce lung cancer, an often fatal disease, among workers exposed to CrVI compounds. The International Agency for Research on Cancer (IARC) classifies CrVI compounds as a Group 1 Carcinogen: Agents considered to be carcinogenic in humans. The Environmental Protection Agency (EPA) and the American Conference of Governmental Hygienists (ACGIH) have also designated CrVI compounds as known and confirmed human carcinogens, respectively. Similarly, the National Institute for Occupational Safety and Health (NIOSH) considers CrVI compounds to be potential occupational carcinogens. OSHA's current standards for CrVI compounds, adopted in 1971, were established to protect against nasal irritation. Therefore, there is a need to revise the current standard to protect workers from lung cancer.

Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of lung cancer and dermatoses and that rulemaking is needed to substantially reduce the risk.

Alternatives:

OSHA had considered non-regulatory approaches, including the dissemination of guidance on its web site. However, OSHA has determined that rulemaking is a necessary step to ensure that workers are protected from the hazards of CrVI and the Agency has been ordered by the U.S. Court of Appeals to move forward with a final rule. The Agency is currently evaluating several options for the scope of the rulemaking.

Anticipated Cost and Benefits:

The scope of the proposed rulemaking is still under development, and estimates of the costs and benefits have not been developed.

Risks:

A detailed risk analysis has not yet been completed for this rule.

Timetable:

Action	Date	FR Cite
Request for Information	08/22/02	67 FR 54389
Comment Period End	11/20/02	
Initiate SBREFA Process	12/00/03	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

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DOL—OSHA

90. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

Legal Deadline:

None

Abstract:

Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite. Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal. The current OSHA permissible exposure limit (PEL) for general industry is based on a formula recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1971 (PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and maritime (derived from ACGIH's 1962 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend a 50ug/m3 exposure limit for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. The American Society for Testing and Materials (ASTM) has published a recommended standard for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance.

In developing a proposed standard, OSHA is currently considering several options ranging from proposing comprehensive standards simultaneously for general industry, construction, and maritime, to focusing the proposal on one or more specific issues, such as modernizing the construction and maritime PELs or standardizing sampling and analytical methods to ensure that employers and employees are receiving reliable data on employee exposures. OSHA is continuing to coordinate closely with the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) in collecting and developing information for a proposed standard. The Advisory Committee for Construction Safety and Health has also formed a silica working group to assist the Agency in addressing construction-related issues during the development of the proposed rule.

Statement of Need:

Over two million workers are exposed to crystalline silica dust in general industry, construction and maritime industries. Industries that could be particularly affected by a standard for crystalline silica include: foundries, industries that have abrasive blasting operations, paint manufacture, glass and concrete product manufacture, brick making, china and pottery manufacture, manufacture of plumbing fixtures, and many construction activities including highway repair, masonry, concrete work, rock drilling, and tuckpointing. The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur; between 1990 and 1996, 200 to 300 deaths per year are known to have occurred where silicosis was identified on death certificates as an underlying or contributing cause of death. It is likely that many more cases have occurred where silicosis went undetected. In addition, the International Agency for Research on Cancer (IARC) has designated crystalline silica as a known human carcinogen. Exposure to crystalline silica has also been associated with an increased risk of developing tuberculosis and other nonmalignant respiratory diseases, as well as, renal and autoimmune respiratory diseases. Exposure studies and OSHA enforcement data indicate that some workers continue to be exposed to levels of crystalline silica far in excess of current exposure limits. Congress has included compensation of silicosis victims on Federal nuclear testing sites in the Energy Employees' Occupational Illness Compensation Program Act of 2000. There is a particular need for the Agency to modernize its exposure limits for construction and maritime, and to address some specific issues that will need to be resolved to propose a comprehensive standard.

Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary determination that workers are exposed to a significant risk of silicosis and other serious disease and that rulemaking is needed to substantially reduce the risk. In addition, the proposed rule will recognize that the PELs for construction and maritime are outdated and need to be revised to reflect current sampling and analytical technologies.

Alternatives:

Over the past several years, the Agency has attempted to address this problem through a variety of non-regulatory approaches, including initiation of a Special Emphasis Program on silica in October 1997, sponsorship with NIOSH and MSHA of the National Conference to Eliminate Silicosis, and dissemination of guidance information on its Web site. OSHA has determined that rulemaking is a necessary step to ensure that workers are protected from the hazards of crystalline silica. The Agency is currently evaluating several options for the scope of the rulemaking.

Anticipated Cost and Benefits:

The scope of the proposed rulemaking and estimates of the costs and benefits are still under development.

Risks:

A detailed risk analysis has not yet been completed for this rule.

Timetable:

Action	Date	FR Cite
Complete SBREFA Report	01/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Undetermined

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DOL—OSHA

FINAL RULE STAGE

91. ASSIGNED PROTECTION FACTORS: AMENDMENTS TO THE FINAL RULE ON RESPIRATORY PROTECTION

Priority:

Other Significant

Legal Authority:

29 USC 655(b); 29 USC 657

CFR Citation:

29 CFR 1910.134

Legal Deadline:

None

Abstract:

In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134), except for reserved provisions on assigned protection factors (APFs) and maximum use concentrations (MUCs). APFs are numbers that describe the effectiveness of the various classes of respirators in reducing employee exposure to airborne contaminants (including particulates, gases, vapors, biological agents, etc.). Employers, employees, and safety and health professionals use APFs to determine the type of respirator to protect the health of employees in various hazardous environments. Maximum use concentrations establish the maximum airborne concentration of a contaminant in which a respirator with a given APF may be used.

Currently, OSHA relies on the APFs developed by NIOSH in the 1980s unless OSHA has assigned a different APF in a substance-specific health standard. However, many employers follow the more recent APFs published in the industry consensus standard, ANSI Z88.2–1992. For some classes of respirators, the NIOSH and ANSI APFs vary greatly.

This rulemaking action will complete the 1998 standard, reduce compliance confusion among employers, and provide employees with consistent and appropriate respiratory protection. On June 6, 2003, OSHA published an NPRM on Assigned Protection Factors in the Federal Register at 68 FR 34036 containing a proposed APF table, and requesting public comment. The extended comment period ended October 2, 2003.

Statement of Need:

About five million employees wear respirators as part of their regular job duties. Due to inconsistencies between the APFs found in the current industry consensus standard (ANSI Z88.2–1992) and in the NIOSH Respirator Decision Logic, employers, employees, and safety and health professionals are often uncertain about what respirator to select to provide protection against hazardous air contaminants. Several industry and professional groups have asked OSHA to proceed with this rulemaking to resolve these inconsistencies and provide reliable protection of employees' health in cases where respirators must be worn.

Summary of Legal Basis:

The legal basis for this proposed rule is the determination that assigned protection factors and maximum use concentrations are necessary to complete the final Respiratory Protection standard and provide the full protection of that standard.

Alternatives:

OSHA has considered allowing the current situation to continue, in which OSHA generally enforces NIOSH APFs but many employers follow the more recent consensus standard APFs. However, allowing the continuation of this situation results in inconsistent enforcement, lack of guidance for employers, and the potential for inadequate employee protection.

Anticipated Cost and Benefits:

The estimated compliance costs for OSHA's proposed APF rule are $4.6 million. The APFs proposed in this rulemaking help to ensure that the benefits attributed to proper respiratory protection under 29 CFR 1910.134 are achieved, as well as provide an additional degree of protection.

Risks:

The preamble to the final Respiratory Protection rule (63 FR 1270, Jan. 8, 1998) discusses the significance of the risks potentially associated with the use of respiratory protection. No independent finding of significant risk has been made for the APF rulemaking, since it only addresses a single provision of the larger rule.

Timetable:

Action	Date	FR Cite
ANPRM	05/14/82	47 FR 20803
ANPRM Comment Period End	09/13/82	
NPRM	11/15/94	59 FR 58884
Final Rule	01/08/98	63 FR 1152
Final Rule Effective	04/08/98	
NPRM	06/06/03	68 FR 34036
NPRM Comment Period End	09/04/03	
Other/NPRM Comment Period Extended	10/02/03	68 FR 53311
Public Hearing on 01/28/2004	11/12/03	68 FR 64036
Final Rule: Revocation of Respiratory Protection M. TB	12/00/03	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

At the time of the revision of the 1972 standard, OSHA decided that because its proposed standard for occupational exposure to tuberculosis (TB), published three months earlier, included a comprehensive respiratory protection provision, the agency would allow compliance with the previous respirator standard for TB protection until completion of the TB rulemaking. Thus, pending conclusion of the TB rulemaking, OSHA redesignated the old respiratory protection standard in a new section entitled "Respiratory Protection for M. Tuberculosis." Because OSHA has decided to withdraw its proposed TB standard, the agency is revoking the designated respiratory protection standard, and will begin applying the general industry respiratory protection standard (29 CFR 1910.134) to respiratory protection against TB.

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DOL—OSHA

92. FIRE PROTECTION IN SHIPYARD EMPLOYMENT (PART 1915, SUBPART P) (SHIPYARDS: FIRE SAFETY)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

29 USC 655

CFR Citation:

29 CFR 1915, subpart P

Legal Deadline:

None

Abstract:

The rule will update and revise an important but outdated part of OSHA's shipyard rules. The original rule was adopted by OSHA in 1971 and has remained unchanged since then. A negotiated rulemaking committee was convened on October 15, 1996. Members of the committee included: OSHA, State government, Federal agency, small and large shipyard employers, and maritime and firefighter union representatives. The committee completed work in February 2002, and recommended proposal requirements to OSHA. The Agency has published an NPRM based on their recommendations.

Statement of Need:

Fires in the shipyard environment may cause death and serious injuries in this 100,000-employee work force. Updating OSHA's outdated shipyard requirements for fire extinguishers, sprinkler systems, detection systems, alarm systems, and fire brigades will facilitate compliance by employers and employees and reduce these fire-related injuries and fatalities.

Summary of Legal Basis:

The legal basis for this proposed rule is a preliminary determination that an unacceptable risk of fire-related injuries and fatalities exists in the shipyard industry.

Alternatives:

OSHA has considered but rejected the alternative of allowing the existing rule to remain in place, because the Agency believes that doing so would contribute to the unacceptable number of fire-related accidents occurring in shipyards every year.

Anticipated Cost and Benefits:

The Agency has estimated annual costs of the NPRM to be $4.3 million, and that there will be cost savings of $6.2 million, in addition to avoiding fatalities and injuries.

Risks:

The Agency has estimated that compliance with the NPRM would prevent one fatality and 102 lost workday injuries annually.

Timetable:

Action	Date	FR Cite
NPRM	12/11/02	67 FR 76213
Comment Period End	03/11/03	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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DOL—OSHA

93. STANDARDS IMPROVEMENT (MISCELLANEOUS CHANGES) FOR GENERAL INDUSTRY, MARINE TERMINALS, AND CONSTRUCTION STANDARDS (PHASE II)

Priority:

Other Significant

Legal Authority:

29 USC 655(b)

CFR Citation:

29 CFR 1910, subpart Z; 29 CFR 1910.1001 to 1910.1052; 29 CFR 1910.142; 29 CFR 1910.178; 29 CFR 1910.219; 29 CFR 1910.261; 29 CFR 1910.265; 29 CFR 1910.410; 29 CFR 1917.92; 29 CFR 1926.1101; 29 CFR 1926.1127; 29 CFR 1926.1129; 29 CFR 1926.60; 29 CFR 1926.62

Legal Deadline:

None

Abstract:

The Occupational Safety and Health Administration (OSHA) is proposing to remove or revise provisions in its health standards that are out of date, duplicative, unnecessary, or inconsistent. The Agency is proposing these changes to reduce the burden imposed on the regulated community by these requirements. In this document, substantive changes are proposed for standards that will revise or eliminate duplicative, inconsistent, or unnecessary regulatory requirements without diminishing employee protections. Phase I of this Standards Improvement process was completed in June 1998 (63 FR 33450). OSHA plans to initiate Phase III of this project at a future date to address problems in various safety and health standards.

Statement of Need:

Some parts of OSHA's standards are out of date, duplicative, unnecessary, or inconsistent. The Agency needs to periodically review its standards and make needed corrections. This effort results in standards that are easier for employers and employees to follow and comply with, and thus enhances compliance and worker protection.

Summary of Legal Basis:

The legal basis for the proposed rule is a preliminary finding that the OSHA standards need to be updated to bring them up to date, reduce inconsistency, and remove unneeded provisions.

Alternatives:

OSHA has considered updating each standard as problems are discovered, but has determined that it is better to make such changes to groups of standards so it is easier for the public to comment on like standards. OSHA has also considered the inclusion of safety standards that need to be updated. However, the Agency has decided to pursue a separate rulemaking for safety issues because the standards to be updated are of interest to different stakeholders.

Anticipated Cost and Benefits:

This revision of OSHA's standards is a deregulatory action. It will reduce employers' compliance obligations.

Risks:

The project does not address specific risks, but is intended to improve OSHA's standards by bringing them up do date and deleting unneeded provisions. The anticipated changes will have no negative effects on worker safety and health.

Timetable:

Action	Date	FR Cite
NPRM	10/31/02	67 FR 66493
NPRM Comment Period End	12/20/02	
NPRM Comment Period Extended	01/08/03	68 FR 1023
Second NPRM Comment Period End	01/30/03	
Public Hearing	07/08/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 1218–AB81

DOL—Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

PROPOSED RULE STAGE

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94. UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT REGULATIONS

Priority:

Other Significant

Legal Authority:

38 USC 4331(a)

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The Secretary's commitment to protecting the employment rights of servicemembers as they return to the civilian work force is reflected by the initiative to promulgate regulations implementing the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA provides employment and reemployment protections for members of the uniformed services, including veterans and members of the Reserve and National Guard. The Department has not previously issued implementing regulations under USERRA, albeit the law dates back to 1994. Authoritative written guidance interpreting USERRA will ensure that our servicemembers serve secure in the knowledge that they will be able to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on military duty.

Statement of Need:

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301–4333, provides employment and reemployment rights for members of the uniformed services, including veterans and members of the Reserve and National Guard. Under USERRA, service members who leave their civilian jobs for military service can perform their duties with the knowledge that they will be able to return to their jobs with the same pay, benefits, and status they would have attained had they not been away on duty. USERRA also assures that they will not suffer discrimination in employment because of their military service.

The Department has not issued implementing regulations under USERRA. In the absence of regulations, VETS has engaged in significant compliance assistance efforts, including a Non-Technical Resource Guide to USERRA, briefings for service members and employers, a web-based elaws Advisor and other web-based aids such as FAQs, a toll-free help line for basic USERRA questions, and informal email responses to electronic inquiries. VETS has also issued about 40 memoranda interpreting issues that have arisen under USERRA. In addition, VETS has prepared a draft USERRA Handbook as part of its compliance assistance efforts. A copy of the draft Handbook is attached.

Approximately 300,000 members of the National Guard and Reserve have been called up since the President's declaration of a national emergency following the attacks of September 11, 2001. As service members conclude their tours of duty and return to civilian employment, it is important for employers to recognize that USERRA requires that returning veterans receive many important benefits of employment that they would have attained had they been continuously employed. It is also important for service members to know what their rights and responsibilities are under the law, and how the Department can assist them in enforcing these rights.

In the past year, the Department has experienced a tremendous increase in the number of inquiries from employers and members of the Reserves. The Department has responded to over 9,500 requests for technical assistance, and has provided USERRA briefings to nearly 50,000 persons, including members of the National Guard, Reserve and employer groups. These numbers are conservative, as not all instances of technical assistance have been documented. The volume of technical assistance requests indicates a strong public interest in authoritative written guidance from the Department. The complexity of the issues raised demonstrates the value of such guidance.

Another consideration is the possibility of the call to active duty of a large number of additional National Guard and Reserve members. The ongoing war on terrorism is widely expected to last for a significant period of time. Persons currently mobilized are serving for much longer periods of time than those who served in Desert Storm, thereby causing greater concerns among the Reserve and employer communities. Any escalation of the use of National Guard and Reserve personnel will cause a corresponding increase in the need for USERRA information among Reservists, employers and the public. Authoritative written USERRA guidance will ensure that the capability of VETS' staff to respond promptly is not exceeded and that the information provided is uniform and correct.

The high volume of requests for technical assistance received by the Department since September 2001 indicates that there is a significant need for authoritative USERRA guidance. USERRA regulations would provide authoritative guidance by codifying the Department's interpretations of the law and the Department's procedures for enforcing the law.

Summary of Legal Basis:

USERRA authorizes the Secretary of Labor, in consultation with the Secretary of Defense, to issue regulations implementing USERRA with regard to States, local governments and private employers. 38 U.S.C. 4331(a).

Alternatives:

In lieu of regulations, the Department could choose to continue its compliance assistance efforts, and could issue interpretations of USERRA in the form of the USERRA Handbook, policy memoranda or other less formal means. These would not benefit from broad-based public input, nor would they receive the same level of deference as regulations. See United States v. Mead Corp., 533 U.S. 218, 230 (2001).

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected:

Federal, Local, State

Agency Contact:

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BILLING CODE 4510–23–S

DEPARTMENT OF TRANSPORTATION (DOT)

Statement of Regulatory Priorities

The Department of Transportation (DOT) consists of nine operating administrations, the Bureau of Transportation Statistics and the Office of the Secretary, each of which has statutory responsibility for a wide range of regulations. For example, DOT regulates safety in the aviation, motor carrier, railroad, mass transit, motor vehicle, commercial space, and pipeline transportation areas. DOT regulates aviation consumer and economic issues and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, and motor vehicle safety. It writes regulations carrying out such disparate statutes as the Americans with Disabilities Act and the Uniform Time Act. Finally, DOT has responsibility for developing policies that implement a wide range of regulations that govern internal programs such as acquisition and grants, access for the disabled, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, and the use of aircraft and vehicles.

The Department has adopted a regulatory philosophy that applies to all its rulemaking activities. This philosophy is articulated as follows: DOT regulations must be clear, simple, timely, fair, reasonable, and necessary. They will be issued only after an appropriate opportunity for public comment, which must provide an equal chance for all affected interests to participate, and after appropriate consultation with other governmental entities. The Department will fully consider the comments received. It will assess the risks addressed by the rules and their costs and benefits, including the cumulative effects. The Department will consider appropriate alternatives, including nonregulatory approaches. It will also make every effort to ensure that legislation does not impose unreasonable mandates.

The Department's regulatory policies and procedures provide a comprehensive internal management and review process for new and existing regulations and ensure that the Secretary and other appropriate appointed officials review and concur in all significant DOT rules. DOT continually seeks to improve its regulatory process. The Department's development of regulatory process and related training courses for its employees; creation of an electronic, Internet-accessible docket that can also be used to submit comments electronically; a "list serve" that allows the public to sign up for email notification when the Department issues a rulemaking document; creation of an electronic rulemaking tracking and coordination system; the use of direct final rulemaking; and the use of regulatory negotiation are a few examples of this.

In addition, the Department continues to engage in a wide variety of activities to help cement the partnerships between its agencies and its customers that will produce good results for transportation programs and safety. The Department's agencies also have established a number of continuing partnership mechanisms in the form of rulemaking advisory committees.

The Department also actively engaged in the review of existing rules to determine whether they need to be revised or revoked. These reviews are in accordance with section 610 of the Regulatory Flexibility Act, the Department's regulatory policies and procedures, and Executive Order 12866. This includes determining if the rules would be more understandable if they are written using a plain language approach. Appendix D to our Regulatory Agenda highlights our efforts in this area.

One of the Department's primary efforts during the past year was to overhaul and expedite the rulemaking process and to move long-pending rulemaking projects to completion. To achieve these goals, the Department took a number of steps. For example, the Department created an effective tracking system for significant rulemakings to ensure that rules are either completed in a timely manner or that delays are identified and fixed. Through this tracking system, a monthly report is generated. To make its efforts more transparent, the Department has made this report internet-accessible. By doing this, the Department is providing valuable information concerning our rulemaking activity and is providing information necessary for the public to evaluate the Department's progress in meeting its commitment to completing rulemakings in a timely manner.

The Department also conducted a review of the current status of all rulemakings pending within the Department. This review helped to identify and resolve problems with delay of older rulemakings, and has resulted in a significant increase in our rulemaking productivity. Furthermore, in a concerted effort to "clean up" the Department's Regulatory Agenda, we also identified a number of proceedings for which no action had been taken in a number of years. Those proceedings for which no further action was contemplated were withdrawn or terminated in a July 2003 notice published in the Federal Register.

The Department will continue to place great emphasis on the need to complete high quality rulemakings by involving senior Departmental officials in regular meetings to resolve issues expeditiously.

Office of the Secretary of Transportation (OST)

The Office of the Secretary (OST) oversees the regulatory process for the Department. OST implements the Department's regulatory policies and procedures and is responsible for ensuring the involvement of top management in regulatory decisionmaking. Through the General Counsel's office, OST is also responsible for ensuring that the Department complies with Executive Order 12866 and other legal and policy requirements affecting rulemaking, including new statutes and Executive Orders. Although OST's principal role concerns the review of the Department's significant rulemakings, this office has the lead role in the substance of projects concerning aviation economic rules and those affecting the various elements of the Department.

OST provides guidance and training regarding compliance with regulatory requirements and process for use by personnel throughout the Department. OST also plays an instrumental part in the Department's efforts to improve our economic analyses, risk assessments, and regulatory flexibility analyses.

OST also leads and coordinates the Department's response to Administration and congressional proposals that concern the regulatory process. The General Counsel's Office works closely with representatives of other agencies, the Office of Management and Budget, the White House, and congressional staff to provide information on how various proposals would affect the ability of the Department to perform its safety, infrastructure, and other missions.

During fiscal year 2004, OST expects to complete work on a final rule on

Computer Reservation Systems. OST also expects to publish two NPRMs to implement provisions of the Aviation Investment and Reform Act for the 21st Century, signed into law in April 2000. One NPRM will seek to amend 14 CFR part 382, DOT's Air Carrier Access Act (ACAA) implementing rule, to cover foreign carriers operating to and from the United States or code sharing with the U.S. carriers. Another NPRM will propose to require air carriers to file with DOT detailed information on the disability-related complaints they receive to be used for enforcement, educational and other relevant purposes by DOT, disabled air travelers, and Congress. OST also expects to substantially complete work on a final rule on these reporting requirements during FY 2004.

Federal Aviation Administration (FAA)

The FAA issues regulations to provide a safe, secure, and efficient global aviation system for civil aircraft. In an effort to make sure their rules are concise and easy to understand, the FAA reexamined the use of plain language in its regulations. The initial result of this review was revisions to 14 CFR part 11, which delineates the process for rulemaking changes. We have extended this initiative to include plain language revisions to our regulatory documents, advisory material, handbook guidance, and all reports and correspondence we prepare. Other actions include:

Supporting the FAA's Safety Agenda on Safer Skies. This agenda is based on a comprehensive review of the causes of aviation accidents and is designed to bring about a five-fold(80 percent) reduction in fatal accidents. Projects related to controlled flight into terrain, loss of control of an aircraft, uncontained engine failures, runway incursions, weather, pilot decisionmaking, and cabin safety are some of the focus areas identified that may result in rulemaking advisory and guidance materials.

Continuing to involve the aviation community early in the regulatory process. The Aviation Rulemaking Advisory Committee completed numerous reports and recommendations, leading to the publication of seven regulatory actions and issuance of several advisory circulars and other guidance materials. The FAA Aging Transport Nonstructural Systems Plan addresses concerns with potential safety issues associated with problems that may develop in transport category airplanes systems as a result of wear and degradation in service. One important component of the plan is use of the Aging Transport Nonstructural Systems Rulemaking Advisory Committee to provide a mechanism for public input to FAA activities. The FAA will continue to receive recommendations from the Committee in the form of regulations, guidance materials, and training requirements supporting enhanced airworthiness for airplane systems.

Continuing to harmonize the U.S. aviation regulations with those of other countries. The harmonization of the U.S. regulations with the European Joint Aviation Regulations (JAR) is the FAA's most comprehensive long-term rulemaking effort. The differences worldwide in certification standards, practice and procedures, and operating rules must be identified and minimized to reduce the regulatory burden on the international aviation system. The differences between the FAA regulations and the requirements of other nations impose a heavy burden on U.S. aircraft manufacturers and operations. Harmonization and standardization should help the U.S. aerospace industry remain internationally competitive. While the overall effort to achieve this is global, it will be accomplished by many small, individual, nonsignificant rulemaking projects. The FAA has published 41 regulations based on recommendations of ARAC that will lead to harmonizing FAA regulations and Joint Aviation Requirements.

Continuing to recognize the needs of small entities by complying with the Small Business Regulatory Enforcement Fairness Act and addressing small entity concerns whenever appropriate in rulemaking documents. In response the Act, the FAA has established a Small Entity Contact, a Web site on FAA's home page, a toll-free number, and an email address for receipt of inquiries.

Ensuring that the congressional mandates for rulemaking deadlines established by the FAA Reauthorization Act of 1996 are met. One mandate is the issuance of a final rule 16 months after the close of the comment period on the proposed rule.

Top regulatory priorities for 2003-2004 include final rules concerning certification of airports and flight simulation device requirements.

Federal Highway Administration (FHWA)

The FHWA anticipates that its priority for fiscal year 2004 will be the ongoing regulatory implementation of the Transportation Equity Act for the 21st Century, which reauthorizes the surface transportation programs administered by the FHWA. The FHWA will continue to implement this legislation in the least burdensome and restrictive way possible consistent with the FHWA's mission. The FHWA will continue to pursue regulatory reform in areas where project development can be streamlined or accelerated, duplicative requirements can be consolidated, recordkeeping requirements can be reduced or simplified, and the decisionmaking authority of our State and local partners can be increased.

Federal Motor Carrier Safety Administration (FMCSA)

FMCSA commenced operations on January 2, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106 173;159), as codified at 49 U.S.C. 167; 113, to improve the administration of the Federal motor carrier safety program. The agency's primary mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. Since its inception, FMCSA has developed a strong Safety Action Plan to guide it toward reducing the number of large truck- and bus-involved fatalities. DOT's safety goal for all its surface transportation agencies is to reduce the fatality rate by 41% during a period from 1996 to 2008. Although any life lost in a traffic crash is too many, FMCSA will strive to meet and exceed this safety goal. For example, regulations relating to performance standards for vehicles, drivers and motor carriers will help achieve this goal. In MCSIA, Congress put special emphasis on the importance of timely rulemaking as a way to achieve reductions in the number and severity of large truck-involved crashes. FMCSA is committed to developing an effective and efficient regulatory program that meets the expectations of Congress, its stakeholders and partners, and the general public. To improve both the quality and timeliness of the agency's rulemakings, FMCSA established a rulemaking process for the development of its motor carrier safety regulations.

In fiscal year 2004, FMCSA must issue the following final rules pursuant to the settlement agreement entered into by the parties and the court's order in In re Citizens for Reliable and Safe Highways, et al., No. 02-1363 (D.C. Cir.) (February 21, 2003): Safety Performance History of New Drivers (03/2004); Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor

Requirements (03/2004); Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators 05/2004); and Hazardous Materials Safety Permits (06/2004). It also continues to expedite a number of other important rulemakings.

National Highway Traffic Safety Administration (NHTSA)

The statutory responsibilities of the National Highway Traffic Safety Administration (NHTSA) relating to motor vehicles include reducing the number of, and mitigating the effects of, motor vehicle crashes and related fatalities and injuries; providing safety performance information to aid prospective purchasers of vehicles, child restraints, and tires; and improving automotive fuel efficiency. NHTSA pursues policies that encourage the development of nonregulatory approaches when feasible in meeting its statutory mandates. It issues new standards and regulations or amendments to existing standards and regulations when appropriate. It ensures that regulatory alternatives reflect a careful assessment of the problem and a comprehensive analysis of the benefits, costs, and other impacts associated with the proposed regulatory action. Finally, it considers alternatives consistent with the Administration's regulatory principles.

NHTSA has identified two high priority vehicle safety areas, vehicle compatibility and rollover mitigation, and released reports in 2003 analyzing problems in each of those areas and describing actions to address them. An important regulatory priority, upgrading side impact protection, will aid efforts in both of these areas. Another regulatory priority for NHTSA is reforming the automobile fuel economy standards program (CAFE). In addition, NHTSA has published its plan for vehicle safety rulemaking priorities, NHTSA Vehicle Safety Rulemaking Priorities and Supporting Research: 2003-2006. The plan highlights the agency's priority rulemaking actions to help address the most significant vehicle safety needs.

In addition to numerous programs that focus on the safe performance of motor vehicles, the Agency is engaged in a variety of programs to improve driver and occupant behavior. These programs emphasize the human aspects of motor vehicle safety and recognize the important role of the States in this common pursuit. NHTSA has identified two high priority areas, safety belt use and impaired driving. It released a report in 2003 analyzing safety belt use problems and describing actions to address them. A report addressing impaired driving is expected later this year. Other behavioral efforts include encouraging initiatives in such areas as child safety-seat use, activities aimed at combating aggressive driving, and consumer information activities.

Federal Railroad Administration (FRA)

The Federal Railroad Administration (FRA) exercises regulatory authority over all areas of railroad safety.

Fashioning regulations that have favorable benefit-to-cost ratios and that, where feasible, incorporate flexible performance standards, requires cooperative action by all affected parties. In order to foster an environment of collaborative rulemaking, FRA established the Railroad Safety Advisory Committee (RSAC). The purpose of RSAC is to develop consensus recommendations for regulatory action on issues referred to it by FRA. Where consensus is achieved, and FRA believes the consensus recommendations serve the public interest, the resulting rule is very likely to be better understood, more widely accepted, more cost-beneficial, and more correctly applied. Where consensus cannot be achieved, however, FRA will fulfill its regulatory role without the benefit of RSAC's recommendations.

The RSAC has met on a quarterly basis so far and currently has working groups addressing the following tasks: 1) the review of FRA regulations for their applicability to historic railroads; 2) the development of safety standards for locomotive crashworthiness; 3) the development of safety standards for locomotive working conditions; 4) the development of locomotive event recorder accident survivability standards; 5) the development of regulations governing the use of processor-based signal and train control systems; 6) the revision of FRA's blue signal protection requirements for workers performing certain duties on, under or between rolling equipment; and 7) the revision of FRA's standards for the safety of cars used by railroad carriers to transport passengers.

Federal Transit Administration (FTA)

The Federal Transit Administration (FTA) provides financial assistance to State and local governments for mass transportation purposes. The regulatory activity of FTA focuses on establishing the terms and conditions of Federal financial assistance available under the Federal transit laws.

FTA's policy regarding regulations is to:

Implement statutory authorities in ways that provide the maximum net benefits to society;

Keep paperwork requirements to a minimum;

Allow for as much local flexibility and discretion as is possible within the law;

Ensure the most productive use of limited Federal resources;

Protect the Federal interest in local investments; and

Incorporate good management principles into the grant management process.

As mass transportation needs have changed over the years, so have the requirements for Federal financial assistance under the Federal transit laws and related statutes. FTA's regulatory priorities for 2003-2004 are to continue to issue rulemakings required under the Transportation Equity Act for the 21st Century (TEA-21), to amend existing regulations as needed, and to update existing regulations for plain language.

Maritime Administration (MARAD)

MARAD administers Federal laws and programs designed to promote and maintain a U.S. merchant marine capable of meeting the Nation#s shipping needs for both national security and domestic and foreign commerce.

MARAD's regulatory objectives and priorities reflect the Agency's responsibility of ensuring the availability of adequate and efficient water transportation services for American shippers and consumers. To advance these objectives, MARAD issues regulations, which are principally administrative and interpretive in nature, when appropriate, in order to provide a net benefit to the U.S. maritime industry.

MARAD's regulatory priorities are to update existing regulations and to reduce unnecessary burden on the public.

Research and Special Programs Administration (RSPA)

The Research and Special Programs Administration (RSPA) has responsibility for rulemaking under two programs. Through the Associate Administrator for Hazardous Materials Safety, RSPA administers regulatory programs under Federal hazardous materials transportation law and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. Through the Associate Administrator for Pipeline Safety, RSPA administers regulatory programs under the Federal pipeline safety laws and the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990.

In the area of hazardous materials transportation, the regulatory priority is to clarify through rulemaking the applicability of regulations to the loading, unloading, and storage of hazardous materials incidental to their movement in commerce. Clarifying the applicability of the regulations will facilitate compliance with them and also clarify when other requirements of Federal, State, local, and tribal governments apply.

Bureau of Transportation Statistics (BTS)

The Bureau of Transportation Statistics (BTS) is responsible for collecting, compiling, analyzing, and making accessible information on the Nation's transportation systems; identifying needs for new information and analysis and implementing programs to meet those needs; and enhancing the quality and effectiveness of the Department's statistical programs through the development of guidelines, coordination with related information-gathering activities conducted by other Federal agencies, and the promotion of improvements in data acquisition, archiving, dissemination, and use.

BTS#s Office of Airline Information (OAI) collects airline financial and operating statistical data, covering both passenger and cargo traffic. This information gives the Government consistent and comprehensive economic and market data on individual airline operations and is used, for instance, in supporting policy initiatives, negotiating international bilateral aviation agreements, awarding international route authorities, and meeting international treaty obligations. The aviation, travel, and tourism communities value this information for a variety of purposes, such as conducting analyses of on-time performance, denied boardings, market trends, and economic analyses.

In conjunction with the Office of the Secretary, BTS# long-range regulatory priority in the aviation area is to conduct a complete review and modernization of the Passenger Origin and Destination Survey. BTS can make significant improvements by providing data to meet the needs of DOT and other users in a way that takes advantage of the information revolution and matches the dramatically changing airline industry.

BTS, in conjunction with the Office of the Secretary, is in the process of performing a zero-base review of the financial and traffic data to determine what, if any, revisions can be made to the current data collections to ensure that these collections fully support the Department's mandated aviation responsibilities. Moreover, the review will seek to identify potential savings to the affected air carriers and the Government that can be accomplished through the application of advanced information technologies to the collection, processing, validation, and dissemination of aviation data. BTS#s review and modernization of the Passenger Origin and Destination Survey will be incorporated as part of this zero-base review.

Saint Lawrence Seaway Development Corporation (SLSDC)

The Saint Lawrence Seaway Development Corporation (SLSDC) is a wholly owned Government corporation created by Congress in 1954. The primary operating service of the SLSDC is to ensure the safe transit of commercial and noncommercial vessels through the two U.S. locks and navigation channels of the Saint Lawrence Seaway System. The SLSDC works jointly with its Canadian counterpart to operate and maintain this deep draft waterway between the Great Lakes and the Atlantic Ocean. The SLSDC also works jointly with its Canadian counterpart on all matters related to rules and regulations, overall operations, vessel inspection, traffic control, navigation aids, safety, operating dates, and trade development programs.

The regulatory priority of the SLSDC is to provide its customers with the safest, most reliable, and most efficient Seaway System possible.

DOT—Office of the Secretary (OST)

FINAL RULE STAGE

95. +COMPUTER RESERVATIONS SYSTEM REGULATIONS COMPREHENSIVE REVIEW

Priority:

Other Significant

Legal Authority:

49 USC 41712; 49 USC 40101(a); 49 USC 40113(a); 49 USC 40105

CFR Citation:

14 CFR 255; 14 CFR 399

Legal Deadline:

Final, Statutory, December 31, 1997.

Abstract:

The Department has regulated computer reservations systems owned by airlines or airline affiliates that are used by travel agencies. The current rules are designed to prevent the systems from unreasonably prejudicing the competitive position of other airlines and to ensure that travel agencies can provide accurate and unbiased information to the public. The Department is reexamining its rules to see whether they should be readopted and, if so, whether they should be changed in response to greater use of the Internet in airline reservations and ticketing and changes in the industry. The Department is also reviewing its policies on the requirements for disclosing fares and travel agency service fees by travel agencies. The Department has issued a notice of proposed rulemaking that tentatively concluded that most of the rules should be readopted, possibly with changes, for comment on other options, including terminating most or all of the rules. As part of this action, we are looking at ways to lessen impacts on small entities.

Statement of Need:

The Department's existing rules require the Department to reexamine whether the rules are necessary and effective. In addition, two developments since the Department's last review of rules necessitate a reexamination. Those developments are the growing role of the Internet in airline distribution and the decline in airline control of the systems. A number of airlines obtain a large share of their bookings from their own Web sites, online travel agencies account for a significant share of all airline bookings, and no system operating in the United States is controlled by any U.S. airline.

Summary of Legal Basis:

The Department has the authority under 49 U.S.C. 41712 to prohibit unfair and deceptive practices and unfair methods of competition in the sale of air transportation by airlines and ticket agents. The Department accordingly may prohibit conduct by airlines and ticket agents that is likely to cause deception or violate the antitrust laws or antitrust principles. The original CRS rules were affirmed in United Air Lines v. CAB, 766 F.2d 1107 (7th Cir. 1985).

Alternatives:

The Department will consider alternatives ranging from allowing some or all of the rules to expire at their sunset date to readopting the rules with some additional provisions. The Department has issued a notice of proposed rulemaking asking for comment on whether the Department should readopt most of the existing rules, except the rules prohibiting systems from charging airlines discriminatory fees and the rule requiring airlines with a system ownership interest to sell their services through competing systems. The Department also asked for comment on whether the rules should be phased out or eliminated, and on whether the rules should be strengthened in several respects.

Anticipated Cost and Benefits:

The Department included a preliminary regulatory evaluation in its notice of proposed rulemaking.

Risks:

The Department found in its last overall review of the rules that the systems had the ability and potential incentives to engage in conduct that could prejudice airline competition and cause consumers and their travel agents to receive misleading and inaccurate information on airline services. Systems had also been able to engage in practices that would deny airlines and travel agencies a reasonable opportunity to use alternative electronic services that would provide information and booking capabilities. The rules could also impose excessive costs on the systems and airlines. The Department asked for comment on whether the risks still exist in light of on-going industry developments and, if so, whether the costs imposed by the rules outweigh the benefits provided by the rules.

Timetable:

Action	Date	FR Cite
ANPRM	09/10/97	62 FR 47606
Notice Extending Comment Period	10/30/97	62 FR 58700
Request for Comments	11/07/97	62 FR 60195
ANPRM Comment Period End	11/10/97	
Extended Comment Period End	12/09/97	
Notice Extending Reply Comment Period	01/23/98	63 FR 3491
Extended Comment Period End	02/03/98	
SANPRM	07/24/00	65 FR 45551
SANPRM Comment Period End	09/22/00	
SANPRM Reply Comment Period End	10/23/00	
NPRM	11/15/02	67 FR 69366
NPRM Extension of Comment Period	12/09/02	67 FR 72869
NPRM Notice of Petition Response Date	01/09/03	
NPRM Comment Period End	01/14/03	
NPRM Reply Comment Period End	02/13/03	
Extended Comment Period End	03/16/03	
NPRM Comment Period Extended	05/09/03	68 FR 24896
Extended Reply Comment Period End	05/15/03	
Comment Period End	06/09/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

Additional Information:

The extensions for the existing rule are under RINs 2105–AC75 and 2105–AD00 and AD09.

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RIN: 2105–AC65

DOT—Federal Aviation Administration (FAA)

FINAL RULE STAGE

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96. +FLIGHT SIMULATION DEVICE QUALIFICATION

Priority:

Other Significant

Legal Authority:

49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation:

14 CFR 1; 14 CFR 11; 14 CFR 60; 14 CFR 61; 14 CFR 63; 14 CFR 141; 14 CFR 142

Legal Deadline:

None

Abstract:

This action will amend the regulations establishing flight simulation device qualification requirements for all certificate holders in a new part. The basis of these requirements currently exists in different parts of the FAA's regulations and in advisory circulars. The proposed changes would consolidate and update flight simulation device requirements. This action is significant because of substantial public interest.

Statement of Need:

It is important to consolidate and update flight simulation device requirements to ensure that users of flight simulation devices receive the best possible training in devices that closely match the performance and handling characteristics of the aircraft being simulated.

Summary of Legal Basis:

Section 44701, title 49 of the United States Code states that the Administrator shall promote safety of flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety.

Alternatives:

The FAA chartered an Aviation Rulemaking Committee to develop alternative rule language to Notice No. 02–11.

Anticipated Cost and Benefits:

The FAA has placed a Draft Regulatory Evaluation of the NPRM in the docket.

Risks:

The purpose of this rulemaking is to ensure that users of flight simulation devices receive the best possible training in devices that closely match the performance and handling characteristics of the aircraft being simulated.

Timetable:

Action	Date	FR Cite
NPRM	09/25/02	67 FR 20284
NPRM Comment Period Extended	11/15/02	67 FR 69149
Notice of On-Line Public Forum	11/21/02	67 FR 70184
NPRM Comment Period End	12/24/02	
NPRM Extended Comment Period End	02/24/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 2120-AH07

DOT—National Highway Traffic Safety Administration (NHTSA)

PRERULE STAGE

97. • +REFORMING THE AUTOMOBILE FUEL ECONOMY STANDARDS PROGRAM

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

49 USC 32910

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

Through this action, the agency intends to begin a public discussion on potential ways, within current statutory authority, to update the Corporate Average Fuel Economy (CAFE) Program and to make it more consistent with our public policy objectives. The agency will seek comments on a number of possible concepts and measures, and invite the public to present additional concepts not presented here. The discussion is not intended to address the stringency of proposed CAFE standards in the future, but rather the basic structure of the CAFE program. The agency is interested in any suggestions towards revamping the CAFE program in such a way as to enhance overall fuel economy while protecting occupant safety and American jobs.

The potential changes range from modest changes to existing definitions separating passenger cars from light trucks (i.e., vans, pickup trucks and SUVs) to more significant structural changes to light truck fuel economy standards. The definitional changes could potentially expand the definition of light truck to include larger SUV's that are not currently subject to fuel economy standards, add criteria to existing definitions of light trucks and ensure that vehicles subject to the lower fuel economy standards applicable to trucks have sufficient functionality to be properly classified as trucks. The advance notice also requests comment on changing the existing approach to setting light truck fuel economy standards from one of setting a fixed standard applicable to all sizes of trucks in the light truck fleet to one of setting a standard that changes in relationship to a selected attribute of trucks in the fleet. Under such an attribute-based standard, the required fuel economy would change in relationship to either the weight of the vehicle, the size of the vehicle, or both.

Statement of Need:

There are four prominent criticisms of the light truck CAFE program. They relate to energy security, traffic safety, employment of American workers, and modernization of the definition and classification of light trucks. First, concern has been raised that the energy-saving potential of the CAFE program is hampered by the current regulatory structure. Second, concern has been raised that the current light truck CAFE standards could create safety risks by encouraging vehicle manufacturers to achieve greater fuel economy by downweighting their light truck offerings. A third reason for considering CAFE reform relates to the adverse economic impacts that may result from such future increases in the stringency of CAFE standards. A fourth reason for considering CAFE reform is to modernize the definitions and classifications of light trucks within the program. The markets for, and designs of, cars and light trucks have changed substantially since the inception of the CAFE program in the late 1970's.

Summary of Legal Basis:

Section 32910(d) of Title 49 of the United States Code provides that the Administrator may prescribe regulations necessary to carry out his duties under Chapter 329, Automobile fuel economy.

Alternatives:

The advanced notice of proposed rulemaking sets forth a number of alternative courses of action that could be pursued singly or in combination. In addition to these, the agency could simply choose not to pursue any changes to the CAFE program.

Anticipated Cost and Benefits:

The costs and benefits of the potential changes addressed in this action have not yet been assessed. Given the wide variety of actions that could be taken, calculating, estimating or predicting the costs and benefits for the potential changes would be extremely speculative.

Risks:

Changes to the structure of the CAFE standards or changes to the definitions of light trucks may have positive or negative safety impacts. Given the wide variety of actions that could be taken, calculating, estimating or predicting safety impacts for the potential changes would be extremely speculative.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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DOT—NHTSA

PROPOSED RULE STAGE

98. ● +SIDE IMPACT PROTECTION UPGRADE–STANDARD 214

Priority:

Other Significant

Legal Authority:

49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation:

49 CFR 571.214

Legal Deadline:

None

Abstract:

Two Federal motor vehicle safety standards (FMVSS) No. 201, "Occupant Protection in Interior Impact" and No. 214, "Side Impact Protection," specify requirements for side impact protection. At present, FMVSS No. 214 specifies a moving deformable barrier (MDB) test addressing mainly the chest injury problem. The head injury reduction is partially addressed in FMVSS No. 201. The agency is considering amending FMVSS No. 214 to add a vehicle-to-pole impact test to reduce the number of fatal and serious head injuries not addressed in FMVSS No. 201.

Statement of Need:

While the side impact protection standard currently specifies a MDB test for the purpose of reducing chest injuries, the head injury problem in side crashes is not addressed by the standard. In 1990, when the standard was published, no safety countermeasures were available to address this problem effectively. In 1995, the agency amended the occupant protection in the interior impact standard (FMVSS No. 201) to add an in-vehicle component test for enhanced upper interior head impact protection. However, head impacts with exterior objects, such as trees, poles, and narrow rigid structures, are not addressed in the requirements of FMVSS No. 201. These head impacts constitute a serious safety problem today. On the other hand, there are readily available countermeasures now, such as advanced inflatable head protection systems, which would provide occupant protection in these crashes. The agency plans to address this safety problem by amending the side impact protection standard (FMVSS No. 214) to add a vehicle-to-pole test.

Summary of Legal Basis:

Section 30111, title 49 of the USC, states that Secretary shall prescribe motor vehicle safety standards. As part of the House of Representatives Conference Report 104–785, to accompany H.R. 3675, the National Highway Traffic Safety Administration was directed on September 16, 1996, to conduct research to improve the side impact standard.

Alternatives:

The agency will examine existing test procedures developed by various organizations, conduct research on the development of a new MDB and advanced dummy test devices, and keep abreast of the development of new head protection systems.

Anticipated Cost and Benefits:

The agency is evaluating the benefits and costs associated with requiring a vehicle-to-pole test in FMVSS No. 214.

Risks:

Current motor vehicles provide numerous occupant protection systems, such as air bags, safety seat belts, and strategically placed energy absorption padding. Nevertheless, approximately 1,440 fatal and 2,400 serious head injuries involving nearside occupants occur annually in non-rollover side crashes without full occupant ejections. "Nearside occupants" are those sitting on the struck side of the vehicle in which they are riding.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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DEPARTMENT OF THE TREASURY (TREAS)

Statement of Regulatory Priorities

The primary missions of the Department of the Treasury are:

- To promote prosperous and stable American and world economies, including promoting domestic economic growth and maintaining our Nation's leadership in global economic issues, supervising national banks and thrift institutions, and helping to bring residents of distressed communities into the economic mainstream.
- To manage the Government's finances by protecting the revenue and collecting the correct amount of revenue under the Internal Revenue Code, overseeing customs revenue functions, financing the Federal Government and managing its fiscal operations, and producing our Nation's coins and currency.
- To safeguard our financial systems by enforcing laws relating to Federal Government securities and developing regulations to combat money laundering.

Consistent with these missions, most regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by the Congress and signed by the President. Unless circumstances require otherwise, it is the policy of the Department to issue a notice of proposed rulemaking and carefully consider public comments before adopting a final rule. Also, in particular cases, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed, and holds public hearings to discuss proposed rules.

In response to the events of September 11, 2001, the President signed the USA PATRIOT Act of 2001 into law on October 26, 2001. Over the past two years, the Department of the Treasury has accorded the highest priority to developing and issuing regulations to implement the provisions in this historic legislation that target money laundering and terrorist financing. These efforts, which will continue during the coming year, are reflected in the regulatory priorities of the Financial Crimes Enforcement Network (FinCEN).

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002. The purpose of this legislation is to address disruptions in the market for terrorism risk insurance. The new law established a temporary Federal reinsurance program under which the Federal Government will share the risk of losses associated with certain types of terrorist acts with commercial property and casualty insurers. Over the past year, the Department of the Treasury has accorded the highest priority to developing and issuing regulations to implement the provisions of this Act. These efforts, which will continue during the coming year, are reflected in the regulatory priorities of the Terrorism Risk Insurance Program Office.

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Order 12866, and to develop regulations that maximize aggregate net benefits to society while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

Terrorism Risk Insurance Program Office

The Office of the Assistant Secretary for Financial Institutions is responsible for developing promulgating regulations implementing the Terrorism Risk Insurance Act of 2002 (TRIA). The Terrorism Risk Insurance Program Office, which is part of the Office of the Assistant Secretary for Financial Institutions, is responsible for operational implementation of the Act. The purposes of this legislation, which was enacted as a consequence of the events of September 11, 2001, are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections. TRIA established a temporary Federal reinsurance program under which the Federal Government will share the risk of losses associated with certain types of terrorist acts with commercial property and casualty insurers.

Over the past year, the Office of the Assistant Secretary has worked quickly to implement TRIA by issuing both informal guidance and formal regulations. The regulations issued to date set forth key definitions that Treasury will use in implementing the Program as well as procedures insurers must follow to comply with the requirements of TRIA. During fiscal year 2004, the Office will focus on developing regulations to implement the procedures and policies associated with filing claims under TRIA.

Customs Revenue Functions

On November 25, 2002, the President signed the Homeland Security Act of 2002 (the Act), establishing the Department of Homeland Security (DHS). The Act transferred the United States Customs Service from the Department of the Treasury to the DHS, where it is now known as the Bureau of Customs and Border Protection (BCBP). Notwithstanding the transfer of the Customs Service to DHS, the Act provides that the Secretary of the Treasury retains sole legal authority over the customs revenue functions. The Act also authorizes the Secretary of the Treasury to delegate any of the retained authority over customs revenue functions to the Secretary of Homeland Security. By Treasury Department Order No. 100-16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any such regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs and the establishment of recordkeeping requirements relating thereto.

During fiscal year 2003, Treasury and CBP issued several regulations involving the customs revenue functions not delegated to DHS. Among these were the following interim regulations that implement the trade benefit provisions of the Trade Act of 2002:

- The Andean Trade Promotion and Drug Eradication Act
- The Caribbean Basin Economic Recovery Act
- The African Growth and Opportunity Act

During fiscal year 2004, Treasury and BCBP plan to finalize these interim regulations. In addition, Treasury and BCBP plan to finalize regulations that will implement a provision of the Tariff and Suspension Act of 2000 by establishing procedures for allowing the duty-free entry of prototypes that are to be used exclusively in product development, testing, evaluation or quality control.

Treasury and BCBP also plan to continue moving forward with amendments to improve its regulatory procedures began under the authority granted by the Customs Modernization provisions of the North American Free Trade Implementation Act (Customs Mod Act). These efforts, in accordance with the principles of Executive Order 12866, have involved and will continue to involve significant input from the importing public. BCBP will also continue to test new programs to see if they work before proceeding with proposed rulemaking to permanently establish the programs.

Community Development Financial Institutions Fund

The Community Development Financial Institutions Fund (Fund) was established by the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*). The primary purpose of the Fund is to promote economic revitalization and community development through investments in, and assistance to, community development financial institutions (CDFIs), principally through the CDFI Program. In fiscal year 2004, the CDFI Program will comprise two components: the Financial Assistance Component and the Technical Assistance Component. In addition, the Fund administers the Native American CDFI Development (NACD) Program, which provides capacity building grants to promote the development of CDFIs that serve Native American, Alaska Native, and Native Hawaiian communities; and the Bank Enterprise Award (BEA) Program, which encourages insured depository institutions to engage in eligible development activities and to make equity investments in CDFIs. In fiscal year 2004, the Fund also plans to administer the Native American CDFI Assistance (NACA) Program, which will provide financial assistance awards and technical assistance grants (including operating grants and grants to purchase goods and services) to CDFIs that serve Native American, Alaska Native, and Native Hawaiian communities, or "sponsor organizations" (i.e., nonprofits or tribes or tribal entities that will form CDFIs that serve Native American, Alaska Native, and/or Native Hawaiian communities).

In addition, the Fund administers the New Markets Tax Credit (NMTC) Program in coordination with Treasury's Office of Tax Policy and the Internal Revenue Service. The NMTC Program is intended to spur investments in businesses located in low-income communities. Under the NMTC Program, taxpayers are provided a credit against Federal income taxes for qualified investments made to acquire stock or other equity interests in designated Community Development Entities (CDEs). Substantially all of the proceeds of qualified investments must in turn be used by the CDE to make qualified investments in low-income communities.

The Fund's fiscal year 2004 regulatory priority will focus on the NMTC Program, by developing guidance and/or regulations regarding aspects of the administration and operation of the program.

Financial Crimes Enforcement Network

The regulations of the Financial Crimes Enforcement Network (FinCEN) constitute the core of Treasury's anti-money laundering initiatives and are an essential component of Treasury's anti-narcotics effort. FinCEN's regulations implement the Bank Secrecy Act (BSA), as amended in October 2001 by the USA PATRIOT Act. The BSA authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures. FinCEN is working closely with the Treasury Offices of the General Counsel, Terrorism/Violent Crimes, and Financial Institutions to develop regulations to implement the amendments to the BSA made by the USA PATRIOT Act that target money laundering and terrorist financing.

FinCEN's regulatory priorities for fiscal year 2004 include the following projects, all of which are related to the events of September 11, 2001:

- *Due Diligence for Correspondent Accounts and Private Banking Accounts.* This final rule implements section 312 of the USA PATRIOT Act, which requires certain financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private baking accounts established or maintained for non-U.S. persons.
- *Anti-Money Laundering Programs.* These final and proposed rules implement section 352 of the USA PATRIOT Act, under which financial institutions must adopt anti-money laundering programs. FinCEN expects to finalize interim final rules issued in April 2002 for banks and other depository institutions, casinos, securities broker-dealers, futures commissionmerchants, mutual funds, operators of credit card systems, and money services businesses. FinCEN also expects to finalize rules proposed in September 2002 for insurance companies and unregistered investment companies, rules proposed in February 2003 for dealers in precious metals, stones, or jewels, and rules proposed in May 2003 for investment advisers and commodity trading advisers. FinCEN will issue a proposed rule for loan or finance companies (including pawnbrokers). Finally, FinCEN expects to determine whether to issue a series of proposed rules for other financial institutions'vehicles sellers; persons involved in real estate closings and settlements; and travel agencies'after reviewing comments received in response to a series of advance notices of proposed rulemaking.
- *Suspicious Activity Reporting.* FinCEN expects to finalize rules proposed under section 356(b) of the USA PATRIOT Act, which requires futures commission merchants to report suspicious transactions. FinCEN also expects to finalize several rules proposed under 31 U.S.C. 5318(g) equiring insurance companies, mutual funds, and futures commission merchants to report suspicious transactions.

Internal Revenue Service

The Internal Revenue Service, working with the Office of the Assistant Secretary (Tax Policy), promulgates regulations that interpret and implement the Internal Revenue Code and related tax statutes. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible.

Most Internal Revenue Service regulations interpret tax statutes to resolve ambiguities or fill gaps in the tax statutes. This includes interpreting particular words, applying rules to broad classes of circumstances, and resolving apparent and potential conflicts between various statutory provisions.

During fiscal year 2004 the Internal Revenue Service will accord priority to the following regulatory projects:

- *Application of the Repeal of the General Utilities Doctrine in the Context of Consolidated Returns.* The IRS and Treasury intend to issue additional regulatory guidance on the application of the repeal of the *General Utilities* doctrine in the context of consolidated returns. The repeal of *General Utilities* is intended to preserve the integrity of the corporate tax base by ensuring that corporate level tax is ultimately paid on the net income of taxable corporations and the net appreciation in their assets. This project involves ensuring that this result occurs in the context of consolidated returns. Consolidated returns have a system in which the tax basis in the stock of subsidiary members is adjusted to reflect income earned by the subsidiary. Under this system, when the group starts out with more basis in the stock of a subsidiary than the subsidiary has in its assets—for example, when the group buys the stock of a corporation at a price that reflects the unrealized appreciation in the corporation's assets—it may be possible to structure transactions that undermine the intended effect of *General Utilities* repeal.

The IRS and Treasury issued temporary regulations (26 CFR 1.337(d)-2T) that disallow certain losses that have the effect of offsetting the taxable income or gain that should exist under *General Utilities* repeal. During the coming fiscal year, the IRS and Treasury plan to reexamine these regulations and issue new regulatory guidance (of a type to be determined once the project is well under way).

- *Safe Harbor Methodology for Determining the Fair Market Value of Financial Instruments that are Marked to Market.* Section 475 of the Internal Revenue Code requires dealers in stocks, evidences of indebtedness, derivative financial instruments, and other securities to mark those securities to market at the end of each tax year. That is, those dealers must compute their taxable income by either including those securities in inventory, or treating them as having been sold, for their fair market value at the end of the tax year. Certain dealers in commodities and traders in securities or commodities may elect to mark those securities or commodities to market under section 475. There have been disagreements between the IRS and some taxpayers about how to determine the fair market value of some securities, including certain derivative financial instruments. The IRS and Treasury are considering whether to publish proposed regulations that would allow dealers in securities (and perhaps dealers in commodities and traders in securities or commodities) to use a safe harbor method to satisfy the statutory requirement to determine the fair market value of items marked to market. As a first step in this process, the IRS and Treasury issued an advance notice of proposed rulemaking (ANPRM) on May 5, 2003, describing and explaining a possible framework for a safe harbor that might allow taxpayers to use as fair market value for section 475 purposes the value used on certain financial statements. That ANPRM stated certain broad principles that any safe harbor finally adopted would have to meet (including the importance of maintaining and furnishing to the IRS appropriate records) and requested both general and specific comments concerning the adoption of a financial statement conformity (or other) safe harbor. It also requested comments on the scope of any safe harbor, concerning which taxpayers could use it, what financial statements would qualify, and what securities (or commodities) would be covered.

Whether this regulation is of particular concern to small business depends on decisions to be made in the future about whether to limit the scope of the project to dealers in securities or to extend it to traders. Few if any dealers in securities are small businesses, but many traders in securities or commodities may be small businesses.

- *Capitalization of Interest and Carrying Charges Properly Allocable to Straddles.* Sections 1092 and 263(g) were enacted in 1981 to address tax abuses caused by straddles in commodity futures contracts but are broadly worded to deal with other abusive straddles. Section 1092 limits loss recognition on a position in a straddle where there are two or more offsetting positions in the same personal property. Section 263(g) disallows a deduction for interest and carrying charges properly allocable to personal property that is part of a straddle. In general, a straddle arises when a taxpayer holds offsetting positions with respect to personal property. The positions are described as offsetting because the taxpayer's risk of loss in one position is substantially diminished due to the second position.

The IRS and Treasury will issue final regulations clarifying the circumstances in which a taxpayer must capitalize interest and carrying charges incurred to purchase or carry personal property that is part of a straddle. The regulations will address the definition of personal property for purposes of section 263(g), the types of expenses to be subject to capitalization, and the operation of the capitalization rules. In addition, the regulations will indicate when a debt obligation will be treated as a position in personal property that is part of a straddle. The regulations will also clarify the application of the straddle anti-abuse rules to various financial instruments and straddle transactions that have been developed since 1981.

- *Deduction and Capitalization of Costs to Create Intangible Assets.* Section 162 of the Internal Revenue Code allows a current deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under section 263(a), however, no immediate deduction is allowed for expenditures to acquire, create, or enhance property with a useful life that extends substantially beyond the taxable year. Such expenditures are capital expenditures that generally may be recovered only in future taxable years, as the property is used in the taxpayer's trade or business. In recent years, there has been much uncertainty and controversy regarding whether expenditures to acquire, create, or enhance intangible assets or benefits are currently deductible under section 162, or are capital expenditures under section 263(a). The IRS and Treasury issued proposed regulations on December 19, 2002, that provide rules to clarify the circumstances in which taxpayers must capitalize expenditures to acquire, create, or enhance intangible assets or benefits. During fiscal year 2004, the IRS and Treasury intend to finalize these regulations.

- *Credit for Household and Dependent Care Services.* Section 21 of the Internal Revenue Code allows a credit for an amount equal to a percentage of employment-related expenses paid by an individual who maintains a household that includes a qualifying individual (usually a child under age 13). Section 21, originally enacted in 1976, has been amended repeatedly. The 2001 amendments increased the credit significantly. The regulations, currently found under section 1.44A of the Income Tax Regulations, have not been amended or updated since 1984. This regulation project will update the regulations to reflect the statutory changes and will clarify issues relating to payments for certain services.

- *International Restructurings.* Multinational businesses operating in a global economy undergo acquisitions, mergers, consolidations, and other reorganizations involving entities in different countries. A number of technical issues have arisen concerning the Federal income tax treatment of these international restructurings. These issues include, for example, the treatment under section 368(a)(1)(A) of statutory mergers and consolidations that involve one or more foreign corporations, including transactions involving a disregarded entity; the application of the international provisions to section 304 transactions and other guidance in light of the 1997 amendments to section 304; the interaction of cross border restructurings and the dual consolidated loss rules under section 1503(d); and the effect of international reorganizations on earnings and profits, including previously taxed earnings and profits. The IRS and Treasury expect to issue regulations that will address these issues during fiscal year 2004.
- *Dividends from Qualified Foreign Corporations Eligible for 15 Percent Rate.* The Jobs and Growth Tax Relief Reconciliation Act of 2003 affords the 15 percent rate to certain dividends received by individuals from "qualified foreign corporations." A number of technical issues have arisen concerning the application of this provision. These issues include, for example, which treaties qualify as comprehensive income tax treaties that have been determined satisfactory for purposes of this provision, including an exchange of information program; what is the test of whether stock is readily tradable on an established securities market in the United States; and the interaction of this provision and various anti-deferral regimes. The IRS and Treasury expect to issue regulations that will interpret and address issues arising under this provision during fiscal year 2004.
- *R&E Credit.* Section 41 of the Internal Revenue Code provides a credit for increasing research expenditures. The R&E Credit has been the subject of significant controversy between the Internal Revenue Service and taxpayers. In December 2001, the IRS and Treasury issued proposed regulations that clarify the types of research expenditures eligible for the credit. After a full review of the comments received from taxpayers, the IRS and Treasury expect to issue further guidance in FY 2004.
- *Partnership Equity for Services.* Like other businesses, partnerships frequently issue interests in partnership equity to service providers. Although there currently is some guidance on a partnership's issuance of a profits interest to a service provider, there is little guidance on the Federal income tax consequences (to the service provider and the partnership) on the issuance, in connection with the performance of services, of an interest in partnership capital or an option to acquire such an interest. More specifically, uncertainty exists as to whether the principles of section 83 apply to the issuance of such interests and whether the partnership recognizes gain on the issuance of a capital interest to, or the exercise of an option by, a service provider. In this project, the IRS and Treasury will provide guidance on these and related issues.
- *Corporate Estimated Tax.* Section 6655 of the Internal Revenue Code sets forth the requirements for the payment of estimated income taxes by corporations. The existing regulations under section 6655 do not reflect significant changes to the tax law since 1984. The IRS and Treasury expect to issue proposed regulations that will reflect changes to the tax law since 1984 and that will provide clear rules for taxpayers to follow and the Internal Revenue Service to administer. Among other issues, the proposed regulations will address the alternative methods for computing quarterly installments of estimated tax and the treatment of certain items when computing quarterly installments of estimated tax.
- *Minimum Required Distributions.* Section 401(a)(9) of the Internal Revenue Code requires tax-qualified retirement plans to begin distributions to participants and beneficiaries upon the occurrence of certain events, such as attainment of age 70½ and termination of employment. Final regulations providing guidance on these requirements as they apply to defined contribution plans were published in the Federal Register on April 17, 2002. The IRS and Treasury will issue regulations providing guidance on the requirements of section 401(a)(9) as they apply to defined benefit plans.
- *Incentive Stock Options.* Employers provide various types of stock options to their employees. Certain stock options, known as incentive stock options, are eligible for special tax benefits that are not available for other stock options. Specifically, if certain requirements are satisfied, the employee is not taxed on the grant or the exercise of the option, but only when the stock subject to the option is sold. Moreover, if these requirements are satisfied, the employee is taxed at capital gains rates, rather than ordinary income rates. The IRS and Treasury will issue final regulations providing comprehensive guidance on the requirements applicable to incentive stock options. Proposed regulations providing guidance on these requirements were published in the Federal Register on June 9, 2003.

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises national banks to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. The substantive content of the OCC's regulations reflects four organizing principles that support this mission:

- The OCC's regulations help ensure safety and soundness by establishing standards that set the limits of acceptable conduct for national banks.
- The OCC's regulations promote competitiveness by facilitating a national bank's ability to develop new lines of business, subject to any safeguards that are necessary to ensure that the bank has the expertise to manage risk effectively and adapt its business practices to deal responsibly with its customers.
- Regulations can also affect national banks' ability to compete by contributing significantly to their costs. The OCC's goal is to improve efficiency and reduce burden by updating and streamlining its

regulations and eliminating those that no longer contribute significantly to the fulfillment of its mission.

- The OCC's regulations help assure fair access to financial services for all Americans by removing unnecessary impediments to the flow of credit to consumers and small businesses, by encouraging national banks' involvement in community development activities, and by implementing Federal laws designed to protect consumers of financial services.

The OCC's regulatory workload and plans are affected directly by new statutes. Possible statutory changes are not addressed in this regulatory plan, but may affect some of the planned rules directly, and likely would affect how the OCC prioritizes its regulatory workload.

Important final rules issued during fiscal year 2003 include:

- *Debt Cancellation Contracts and Debt Suspension Agreements (12 CFR Part 37).* The OCC published a final rule that addresses debt cancellation contracts and debt suspension agreements. The purposes of the customer protections are to facilitate customers' informed choice about whether to purchase debt cancellation contracts and debt suspension agreements, based on an understanding of the costs, benefits, and limitations of the products and to discourage inappropriate or abusive sales practices. The final rule also promotes safety and soundness by requiring national banks that provide these products to maintain adequate loss reserves.
- *Customer Identification Programs for Banks, Savings Associations, and Credit Unions (31 CFR 103 and 12 CFR 21).* The Department of the Treasury, through the Financial Crimes Enforcement Network, the OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration published a final rule implementing section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Section 326 requires a regulation that contains minimum standards that financial institutions must implement: 1) to verify the identity of any person seeking to open an account; 2) to maintain records of the information used to verify the person's identity; and 3) to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any Government agency.
- *Rules, Policies, and Procedures for Corporate Activities (Electronic Filings) (12 CFR Part 5).* The OCC published an interim rule with request for comment that would make revisions to part 5 filing requirements to facilitate electronic filings for certain applications. The purpose of these changes is to permit national banks to file certain classes of applications electronically and to inform national banks where they may find detailed procedural information on electronic filings. The rule clarifies circumstances under which the OCC may adopt filing procedures different from those otherwise required by part 5.
- *Removal, Suspension, and Debarment of Accountants From Performing Audit Services (12 CFR Part 19).* The OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, published a final rule implementing the agencies' authority to suspend or debar accountants and accounting firms from performing the annual independent audits that are required by section 36 of the Federal Deposit Insurance Act (12 U.S.C. 1831m). The final rule establishes rules of practice and procedure to implement this authority and reflect the agencies' increasing concern with the quality of audits and internal controls for financial reporting at insured depository institutions. The final rule enhances the agencies' ability to address misconduct by accountants who perform annual audit and attestation services.
- *Community and Economic Development Entities, Community Development Projects and Other Public Welfare Investments (12 CFR Part 24).* The OCC published a final rule amending part 24, the regulation governing national bank investments that are designed primarily to promote the public welfare. The final rule updates the regulation to reflect the additional types of public welfare investment structures that have become more common in recent years and that are permissible under the governing statute. It also clarifies the statutory standard that applies to the activities of those entities; simplifies the standards for making public welfare investments; clarifies how a national bank calculates the value of its public welfare investments for purposes of complying with the rule's investment limits; simplifies the regulation's investment self-certification and prior approval processes; and expands the list of examples of qualifying public welfare investments that satisfy the rule's requirements.

The OCC's regulatory priorities for fiscal year 2004 include projects in the following areas:

- *Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets (12 CFR Part 3).* The Office of the Comptroller of the Currency, together with the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, are planning to amend their risk-based capital standards by providing an interim treatment for assets in asset-backed commercial paper (ABCP) programs that are consolidated onto the balance sheets of sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). Specifically, the interim capital treatment allows sponsoring banking organizations to remove consolidated ABCP program assets from their risk-weighted asset base for the purpose of calculating their risk-based capital ratios. This interim capital treatment will be in effect only for the regulatory reporting periods ending September 30 and December 31, 2003, and March 31, 2004. This interim rule is planned to be issued in conjunction with a joint agency notice of proposed rulemaking that would also require banking organizations to hold risk-based capital against liquidity facilities provided to ABCP programs with an original maturity of one year or less, and a risk-based capital charge for early amortization risk associated with certain types of revolving securitizations.
- *Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord (12 CFR Part 3).* The OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision published an advance notice of proposed rulemaking

(ANPRM) soliciting industry comments on a proposed framework for implementing the New Basel Capital Accord in the United States. In particular, this ANPRM describes significant elements of the Advanced Internal Ratings-Based approach for credit risk and the Advanced Measurement Approaches for operational risk (together, the advanced approaches). The ANPRM specifies criteria that would be used to determine banking organizations that would be required to use the advanced approaches, subject to meeting certain qualifying criteria, supervisory standards, and disclosure requirements. Other banking organizations that meet the criteria, standards, and requirements also would be eligible to use the advanced approaches. Under the advanced approaches, banking organization would use internal estimates of certain risk components as key inputs in the determination of their regulatory capital requirements.

- *Capital; Securities Borrowing Transactions (12 CFR Part 3).* This final rule generally would lower the capital requirements for certain qualifying securities borrowing transactions by permitting the collateralized portion of the securities borrowing transactions to be subject to the market risk capital requirements at 12 CFR part 3, appendix B, as opposed to the risk-based capital requirements at 12 CFR part 3, appendix A. Among other things, in order to qualify for the lower market risk capital requirement under this joint interim rule, a bank must be subject to the market risk capital requirements, and the securities borrowing transaction must result in a receivable that arises from the posting of the cash collateral. Only the portion of the receivable collateralized by the market value of the securities borrowed qualifies for the lower market risk capital requirement; noncollateralized portions must continue to be risk weighted under the risk-based capital guidelines.
- *Recordkeeping Requirements for Bank Exceptions from Securities Broker or Dealer Registration (12 CFR To Be Determined).* The OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision are planning to issue a joint notice of proposed rulemaking that contains recordkeeping requirements that implement section 204 of the Gramm-Leach-Bliley Act. Section 204 directs the Federal banking agencies to establish recordkeeping requirements for banks relying on exceptions to the definitions of "broker" and "dealer" contained in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934.
- *Fair Credit Reporting Act (12 CFR Part 41).* The OCC, along with the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, are planning to publish a revised notice of proposed rulemaking concerning a rule that would implement the affiliate-sharing provisions of the Fair Credit Reporting Act. This rulemaking would clarify the notice and opt-out obligations arising from the sharing of consumer information with affiliates.
- *Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals (12 CFR Parts 3, 5, 6, 7, 9, 28, and 34).* The OCC published a notice of proposed rulemaking that proposed to amend several of its regulations to update and clarify them in various respects. Proposed revisions to parts 5 and 7 would implement new authority provided to national banks by sections 1204, 1205, and 1206 of the American Homeownership and Economic Opportunity Act of 2000. Section 1204 permits national banks to reorganize directly to be controlled by a holding company. Section 1205 increases the maximum term of service for national bank directors, permits the OCC to adopt regulations allowing for staggered terms for directors, and permits national banks to apply for permission to have more than 25 directors. Section 1206 permits national banks to merge with one or more of their nonbank affiliates, subject to OCC approval. In order to clarify issues that have arisen in connection with the scope of OCC's visitorial powers, the proposal would revise part 7. The proposal also contains other amendments to parts 5, 7, 9, and 34, as well as several technical corrections.
- *Community Reinvestment Act (CRA) Regulations (12 CFR Part 25).* The OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, published an advance notice of proposed rulemaking soliciting comments on ways to improve the CRA regulation. Based on the comments received, the OCC and other agencies will consider the need for changes to the CRA rules and will propose such changes as are deemed appropriate.
- *Maintenance of Records (12 CFR Part 7).* The OCC plans to issue a notice of proposed rulemaking that would invite comment on a revision to part 7 that would require entities subject to the jurisdiction of the OCC to establish and maintain accurate and complete documentation and records, and allow the OCC timely access to such records. The proposed revision would also provide that when a bank discloses documents and records to the OCC during the supervisory process, such a disclosure is not voluntary and is not made to an adversary.
- *Rules, Policies, and Procedures for Corporate Activities; International Banking Activities (12 CFR Parts 5 and 28).* The OCC issued a notice of proposed rulemaking proposing to amend its regulations pertaining to the foreign operations of national banks, and of Federal branches and agencies of foreign banks operating in the United States. The OCC is clarifying or revising a number of application procedures, including the standards for approval that would apply. It permits Federal branches and agencies to operate with one license in the United States, with a license issued only for the initial Federal branch or agency, rather than requiring each office of a foreign bank to have a separate license. It also permits a Federal branch to operate a loan production office as part of its branch license. In addition, the OCC proposes to implement through its regulation a number of OCC interpretations regarding the capital equivalency deposit required of Federal branches and agencies. The OCC also proposes to revise several definitions.
- *Interagency Guidelines Establishing Standards for Safety and Soundness (12 CFR Part 30).* The OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, plan to issue a notice of proposed rulemaking to amend their Interagency Guidelines to add a new subsection, pursuant to which a depository institution should establish and maintain new policies and standards designed to ensure an effective system of corporate governance. This amendment is intended to address potential weaknesses in management and corporate governance practices.
- *Change in Business Plans (12 CFR Part 5).* The OCC intends to seek

comment on a proposed rule that would require national banks to notify the OCC of material changes in business plans.

- *Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules (12 CFR Parts 11 and 16).* The OCC published a notice of proposed rulemaking to revise its regulations to reflect amendments to the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act). These amendments to the Exchange Act give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act. The OCC is also proposing to make conforming revisions to its rules that prescribe securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of the Securities Act of 1933.
- *Bank Activities and Operations; Real Estate Lending and Appraisals (12 CFR Parts 7 and 34).* The OCC issued a notice of proposed rulemaking to amend parts 7 and 34 of its regulations to add provisions clarifying the applicability of state law to national banks. These provisions would identify types of State laws that are preempted, as well as types of State laws that generally are not preempted, in the context of national bank lending, deposit-taking, and other authorized activities.
- *Rules, Policies, and Procedures for Corporate Activities (12 CFR Part 5).* The OCC plans to issue a notice of proposed rulemaking that will require national banks to receive OCC approval before selling or otherwise disposing of all or substantially all of its assets. This proposed rule also provides that the OCC will apply the same standards as it applies to the establishment of a de novo bank to notices to acquire control of such bank.
- *Electronic Filing and Disclosure of Beneficial Ownership Reports (12 CFR Part 11).* The OCC plans to issue an interim rule with request for comments that implements provisions enacted in the Sarbanes-Oxley Act of 2002 requiring the electronic filing of certain beneficial ownership reports by officers, directors, and major shareholders (insiders) that have equity securities registered under the Securities Exchange Act of 1934. Insiders of registered national banks must file these reports with the OCC. This interim rule requires that, in addition to the statutory requirements, all beneficial ownership reports required to be filed with the OCC must be filed electronically and posted on a registered national bank's Web site, if it has one. The Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation are imposing similar requirements.

Office of Thrift Supervision

As the primary Federal regulator of the thrift industry, the Office of Thrift Supervision (OTS) has established regulatory objectives and priorities to supervise thrift institutions effectively and efficiently. These objectives include maintaining and enhancing the safety and soundness of the thrift industry; a flexible, responsive regulatory structure that enables savings associations to provide credit and other financial services to their communities, particularly housing mortgage credit; and a risk-focused, timely approach to supervision.

OTS continues to work with the other Federal banking agencies on regulations where the agencies share the responsibility to implement statutory requirements. The agencies are working to update capital standards to maintain, and, where necessary, improve consistency in the agencies' rules. Regulatory projects in this area include the following:

- *Implementation of a Revised Basel Capital Accord.* This initiative was published, along with draft supervisory guidance, as an advance notice of proposed rulemaking, introducing the domestic implementation of the New Basel Capital Accord (Basel II). It included an introduction to the advanced internal ratings-based (IRB) approach to credit risk, and included modifications to the current U.S. domestic capital framework.
- *Capital Adequacy.* The four Federal banking agencies plan to issue a joint notice of proposed rulemaking seeking comment on ways to modify the capital adequacy framework for all banking organizations. Among the elements of the proposal will be consideration of a uniform regulatory structure, elimination of outdated requirements, reallocation of certain assets to more appropriate risk weights, and general streamlining and burden reduction.

OTS and the other Federal banking agencies anticipate reproposing a rule implementing provisions of the Fair Credit Reporting Act (FCRA) concerning information sharing with affiliates. The agencies informed those institutions potentially affected by the rulemaking that any final rule would not apply to privacy notices sent before the effective date of the final FCRA rule.

The banking agencies are considering changes to the Community Reinvestment Act (CRA) rules, based upon the comments received on the joint advance notice of proposed rulemaking seeking comments on how to improve the CRA regulations, and will propose such changes as are deemed appropriate.

OTS plans to issue a final rule conforming its regulations on transactions with affiliates to Regulation W and implementing additional restrictions imposed on savings associations under section 11(a) of the Home Owners' Loan Act. Also, OTS plans to adopt as final an interim rule that amended its annual independent audit requirements for small, nonpublic, highly rated savings associations that voluntarily obtain independent audits. Additionally, OTS is issuing a final rule amending its regulation governing agency offices of Federal savings associations to conform that regulation to recent changes to OTS' fiduciary activities regulations.

Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to enforce the Federal laws relating to the manufacture and commerce of alcohol products, tobacco products, and the Federal excise tax on firearms and ammunition. TTB's mission and regulations are designed to:

- Regulate the alcohol and tobacco industries, including systems for licenses and permits;
- Assure the collection of all alcohol, tobacco, and firearms and ammunition taxes, and obtain a high level of voluntary compliance with all laws governing those industries;
- Suppress commercial bribery, consumer deception, and other prohibited practices in the alcoholic beverage industry; and
- Assist the States and other Federal agencies in their efforts to eliminate

interstate trafficking in, and the sale and distribution of, cigarettes in avoidance of State taxes.

In 2004, TTB will continue its multi-year plan to revise its regulations in plain language. TTB will update and revise regulations to be more clear and concise, using the principles of plain language. TTB began the groundwork for this priority in 2002 by starting recodifications in title 27 of the Code of Federal Regulations. These changes reorganize TTB regulations into a more logical sequence. The plain language revisions will make TTB rules more accessible to small businesses and to the public.

Bureau of the Public Debt

The Bureau of the Public Debt (BPD) administers regulations:

- Governing transactions in Government securities by Government securities brokers and dealers under the Government Securities Act of 1986 (GSA), as amended.
- Implementing Treasury's borrowing authority, including rules governing the sale and issue of savings bonds, marketable Treasury securities, and State and local Government securities.
- Setting out the terms and conditions by which Treasury may redeem (buy back) outstanding, unmatured marketable Treasury securities through debt buyback operations.
- Governing the acceptability and valuation of all collateral pledged to secure deposits of public monies and other financial interests of the Federal Government.

Treasury's GSA rules govern financial responsibility, the protection of customer funds and securities, recordkeeping, reporting, audit, and large position reporting for all government securities brokers and dealers, including financial institutions. During fiscal year 2004, BPD will give priority to developing technical conforming amendments to the customer protection requirements in the GSA regulations based on the recent changes made by the Securities and Exchange Commission to its customer protection rules for brokers and dealers. The modifications will allow for the expansion of the categories of collateral registered Government securities brokers and dealers may pledge when borrowing securities from customers. BPD also plans to give priority to expanding an exemption in the GSA regulations to include savings associations regulated by the Office of Thrift Supervision that hold Government securities in a fiduciary and custodial capacity.

The rules setting out the terms and conditions for the sale and issue of marketable book-entry Treasury bills, notes, and bonds are known as the Uniform Offering Circular. During fiscal year 2004, BPD will accord priority to issuing the Uniform Offering Circular in plain language. This will communicate the auction rules in a more direct and effective manner.

Financial Management Service

The Financial Management Service (FMS) issues regulations to improve the quality of Government financial management and to administer its payments, collections, debt collection, and Governmentwide accounting programs.

During fiscal year 2004, FMS' regulatory priorities will include several ongoing initiatives in the following areas:

- *Payment of Federal Taxes and the Treasury Tax and Loan Program (TT&L) (31 CFR Part 203)*: FMS will revise this rule to support operational changes to the system used for the collection of corporate withholding taxes. FMS will streamline this rule and write it in plain language.
- *Automated Clearing House (ACH) (31 CFR Part 210)*: FMS will continue to update this rule that establishes standards for Federal Government payments and collections via the ACH system. FMS will revise this rule in order to stay current with private industry rules and to facilitate the continued expansion of electronic commerce.
- *Checks Drawn on the United States Treasury (31 CFR Part 240)*: FMS will issue a final rule governing the indorsement and payment of checks drawn on the United States Treasury. Last fiscal year, FMS proposed revisions that relate to, among other things, finality of payment; liability for checks bearing material defects or alterations, and the use of powers of attorney.
- *Debt Collection Improvement Act of 1996 (DCIA) (31 CFR Part 285)*: FMS will issue a final rule governing the offset of Federal Government payments to collect delinquent nontax debt owed to Federal agencies. Last fiscal year, FMS issued an interim rule (with request for comments) clarifying the policies and procedures applicable to the collection of such debt through the Treasury Offset Program.

TREAS—Alcohol and Tobacco Tax and Trade Bureau (TTB)

PROPOSED RULE STAGE

99. REVISION OF BREWERY REGULATIONS AND ISSUANCE OF REGULATIONS FOR TAVERNS ON BREWERY PREMISES (BREWPUBS)

Priority:

Other Significant

Legal Authority:

26 USC 5051 to 5057; 26 USC 5401 to 5418; 27 USC 205

CFR Citation:

27 CFR 7; 27 CFR 25

Legal Deadline:

None

Abstract:

TTB intends to streamline regulations applying to breweries. TTB will eliminate obsolete regulatory provisions. A formula system for manufactured beer products will replace statements of process attached to the brewers notice. The annual notice for small brewers to pay the reduced rate of tax will be eliminated. Separate regulations for brewpubs will be added to part 25. A section will be added to part 25 to authorize and regulate the alternating use of brewery premises by different brewers. Regulations authorizing the operation of brew-on-premises facilities will be added to part 25.

Statement of Need:

TTB intends to streamline its regulations applying to the brewing industry. These changes will simplify brewery reports and operations and eliminate obsolete regulatory provisions. Specific changes would include the implementation of a formula system for the breweries to replace the statement of process; the establishment of a separate subpart containing simplified regulations for brewpubs; authorizing alternating brewery premises among different proprietors; eliminating the annual notice to pay the reduced rate of tax for most breweries; authorizing brewers to file the Brewer's Report of Operations on a quarterly basis; and authorizing many brewers to take inventories quarterly rather than monthly. The rule will also propose minimum production standards for beer thereby reducing formula filings and a revised statement of net contents requirement for certain container sizes.

Summary of Legal Basis:

TTB has undertaken this review of brewery regulations as part of the President's Regulatory Initiative. These regulations are issued under the general authority of the Secretary of the Treasury to promulgate regulations to implement the Internal Revenue Code and the Federal Alcohol Administration Act.

Alternatives:

Not applicable. TTB believes that industry will support these regulatory changes because they will streamline regulatory requirements applying to the brewing industry.

Anticipated Cost and Benefits:

The proposed regulations will benefit the brewing industry by reducing required inventories, notices, and other submissions to TTB.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

Transferred from RIN 1512–AB37

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DEPARTMENT OF VETERANS AFFAIRS (VA)

Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) administers benefit programs that recognize the important public obligations to those who served this Nation. VA's regulatory responsibility is almost solely confined to carrying out mandates of the laws enacted by Congress relating to programs for veterans and their beneficiaries. VA's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by VA involve at least one of three VA components: The Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery Administration. The primary mission of the Veterans Benefits Administration is to provide high-quality and timely nonmedical benefits to eligible veterans and their beneficiaries. The primary mission of the Veterans Health Administration is to provide high-quality health care on a timely basis to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The primary mission of the National Cemetery Administration is to bury eligible veterans, members of the Reserve components, and their dependents in VA National Cemeteries and to maintain those cemeteries as national shrines in perpetuity as a final tribute of a grateful Nation to honor the memory and service of those who served in the Armed Forces.

VA's regulatory priorities include a special project to undertake a comprehensive review and improvement of its existing regulations. The first portion of this project is devoted to reviewing, reorganizing, and rewriting the VA's compensation and pension regulations found in part 3 of 38 CFR. The goal of the Regulation Rewrite Project is to improve the clarity and logical consistency of these regulations in order to better inform veterans and their family members of their entitlements.

The Department of Veterans Affairs' 2003 regulatory plan contains one rulemaking action from the Veterans Health Administration. The Veterans Health Administration rulemaking is RIN 2900-AL51 "Enrollment'Provision of Hospital and Outpatient Care to Veterans Subpriorities of Priority Categories 7 and 8 and Annual Enrollment Level Decision," which amends the Department's medical regulations to protect the quality and improve the timeliness of care provided to veterans in higher enrollment-priority categories.

VA

FINAL RULE STAGE

100. ENROLLMENT—PROVISION OF HOSPITAL AND OUTPATIENT CARE TO VETERANS—SUBPRIORITIES OF PRIORITY CATEGORIES 7 AND 8 AND ENROLLMENT LEVEL DECISION

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

PL 104–262

CFR Citation:

38 CFR 17.36

Legal Deadline:

None

Abstract:

As required by Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, the Secretary of the Department of Veterans Affairs must make an annual decision concerning enrollment in VA's health care system in order to ensure that medical services provided are both timely and acceptable in quality. This document amends existing regulations to establish subpriorities within priority categories 7 and 8 and to publish FY 2003 enrollment decision as determined by the Secretary.

Statement of Need:

Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, requires the Secretary of Veterans Affairs to make annual decisions concerning enrollment in VA's health care system in order to ensure that resources are available to provide medical services that are both timely and acceptable in quality. This document announces the enrollment decision to suspend the enrollment of additional veterans who are in the lowest statutory enrollment category (priority category 8). This also amends existing regulations to establish additional subpriorities within priority categories 7 and 8.

Summary of Legal Basis:

38 CFR 17.36(c) requires that the Secretary determine which categories of veterans are eligible to be enrolled and that the Secretary notify eligible enrollees of the determination by announcing it in the Federal Register.

Alternatives:

The Department had to consider placing additional enrollees on waiting lists and extending the waiting period for eligible enrollees seeking appointments for care as alternatives.

Anticipated Cost and Benefits:

By suspending enrollment of additional priority category 8 veterans, VA would avoid significant additional medical benefits costs and begin to bring demand in line with capacity, which will reduce the number of veterans on waiting lists. Without action to suspend new enrollment, the cost projection for FY 2003 is $23.455 billion. This is based on the projected average enrollment for FY 2003 of 6,991,405, together with the projected expenditures that would be needed to provide the medical benefits package to all enrollees. Suspending new enrollment would reduce enrollment in priority category 8 by 164,367 in FY 2003, which is expected to grow to over 520,000 by FY 2005.

Risks:

Without action to suspend new enrollment, patient safety and quality and access to care would be adversely affected.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/17/03	68 FR 2670
Interim Final Rule Effective	01/17/03	
Interim Final Rule Comment Period End	03/18/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 2900–AL51

BILLING CODE 8320–01–S

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Statement of Priorities

OVERVIEW

The U.S. Environmental Protection Agency (EPA) is the leading Federal agency responsible for protecting environmental quality and controlling the effects of pollution on human health. Since its creation in 1970, EPA has taken actions that have led to measurable improvements in air and water quality, significant reductions in solid and hazardous wastes, and limitations on the use of harmful pesticides.

EPA fulfills its mission using a variety of tools, such as technical assistance, funding, voluntary partnerships, research, and education. And in carrying out its statutory responsibilities, EPA also develops regulations that provide protection against a variety of environmental risks. In the coming year, EPA's top regulatory priority is supporting passage and implementation of the Clear Skies Initiative, a legislative proposal of the Bush Administration that would reduce emissions of the three most harmful air pollutants, nitrogen oxides, sulfur dioxides, and mercury, at levels 70 percent below year 2000 levels. Other regulatory priorities include completing rules that will reduce emissions from off-road diesel engines and reduce the risks from microbial pathogens, especially cryptosporidium, in drinking water.

Sound Science and Economic Analysis

These and other regulatory activities are supported by a strong commitment to sound science and economic analysis. EPA conducts scientific and economic research on an ongoing basis, independently and in collaboration with others, to obtain the base of knowledge that is needed to understand and solve complex ecological and human health problems.

EPA's priorities for scientific research align with the Agency's five strategic goals. For Clean Air, science priorities focus on emissions, fate and transport, exposures, mechanisms of injury, and health effects of criteria air pollutants. Science priorities for Clean and Safe Water address water quality and drinking water. The science priorities for Land Preservation and Restoration focus on improving characterization, measuring, and monitoring methods; enhancing methods and models for estimating ecological effects; reducing uncertainty in human health and ecological risks; and developing more cost-effective and reliable remediation and treatment technologies. The science priorities for Healthy Communities and Ecosystems are wide ranging and comprise a variety of priorities among multiple program offices, as well as basic research. The science priorities for Compliance and Environmental Stewardship are pollution prevention practices; new technology development; socioeconomics; and decisionmaking related to compliance, enforcement, incentives, monitoring, and innovative approaches to environmental stewardship. In addition, EPA has identified cross-cutting science priorities that span several programs and help the Agency accomplish multiple science objectives. These are aggregate and cumulative risk assessment, genomics, computational toxicology, environmental indicators and susceptible subpopulations as high-priority cross-cutting activities. Advances in these areas will improve EPA's capability to predict and reduce potential human health and ecological risks under all five of the Agency's goals.

EPA's emphasis on economic and policy analysis supports the Agency's continuing dedication to quantifying the costs and benefits of its air, land and water regulations, policies and programs. In the coming year, EPA will expand its economic research programs to improve the measurement of environmental benefits, focusing on efforts to value the benefits of preserving goods and services provided by ecological systems. EPA will continue to undertake studies to quantify the social benefits and costs of established and new economically significant rules, including preparation of a revised comprehensive evaluation of the economic benefits and costs of programs established under the Clean Air Act.

Innovative Approaches

Increasingly, EPA's regulations reflect innovative approaches that go beyond traditional technology-based standards and aim to improve performance and cut costs. Some of the innovations likely to influence EPA's regulations in fiscal year (FY) 2004 include market-based incentives that harness the power of economics to drive decisionmaking, flexible implementation options that provide regulated entities with more choices in deciding how to achieve an environmental goal, and information provisions that highlight environmental performance and provide an impetus for improvement. EPA will also support environmental technology innovation by allowing use of innovative technologies in its regulations. For example, through a national environmental technology competition, EPA is conducting demonstrations of innovative technologies for removing arsenic from drinking water to enable small drinking water systems to cost-effectively comply with EPA's new standards. The first twelve of over twenty planned demonstrations will begin by December 2003.

Another innovative approach for achieving environmental results is fostering voluntary action. Today EPA manages a suite of voluntary programs, such as WasteWise and Energy Star, that help organizations achieve measurable environmental improvements. While these programs are designed to support efforts to reduce pollution in ways that are not required by regulation, they often have the secondary effect of improving the quality of regulations. For example, by working closely with trade associations and other organizations, EPA has been able to develop regulations that meet environmental goals while also being responsive to special needs, interests, and circumstances surrounding a particular issue. Given the potential to improve the quality of regulations and, in some cases, to eliminate the need for regulation altogether, EPA will continue to promote and support development of voluntary programs.

Regulatory flexibility, cost reduction, information transfer, and technology development are all objectives fueling EPA's innovation investments. However, before any innovation is adopted, EPA conducts pilot tests to ensure feasibility and evaluate the results. In the coming year, EPA will explore innovative approaches in cooperation with many partners. In particular, EPA will work with States through the Joint Agreement on Regulatory Innovation, the newly established State Innovation Grant program, and other mechanisms. To realize the greatest value from each innovation, EPA will also work to expand use of proven innovations on the broadest possible scale. This includes working with States to apply Massachusetts's highly successful Environmental Results Program to improve environmental compliance and accountability among priority small business sectors.

Attention to Small Businesses

Helping small businesses improve environmental performance is a top priority for EPA. EPA offers a variety of services for small businesses, including a toll-free hotline, a semiannual newsletter, online expert systems, and for some sectors, compliance assistance centers that focus on the unique environmental management issues facing specific industries. EPA also maintains a Small Business Ombudsman which provides a point of contact for small businesses and ensures compliance with the Small Business Paperwork Relief Act of 2002.

In FY 2003, EPA updated its Small Business Strategy to unify its many small business services and help small businesses fulfill their environmental responsibilities. The strategy focuses on improving EPA's understanding of small business issues, and improving small businesses' understanding of EPA. The strategy also aims to involve small businesses earlier in the regulatory development process and to develop alternative regulatory approaches - such as self-certification procedures - that work better for small businesses. Other objectives include developing compliance tools to make it easier for small businesses to comply as well as rewards that recognize small businesses for their environmental stewardship.

In FY 2004, EPA will focus on implementing the Small Business Strategy. By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burden to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs.

A number of rules included in this plan may be of particular interest to small businesses. The following are intended to provide regulatory relief:

Office of Solid Waste Burden Reduction Project Final Rule

Increase Metals Reclamation from F006 Waste Streams Proposed Rule

Standardized Permit for RCRA Hazardous Waste Management Facilities Final Rule

Recycling of Cathode Ray Tubes and Mercury-Containing Equipment: Changes to Hazardous Waste Regulations Final Rule

Other rules in this plan may potentially have significant impacts on small businesses. They include:

Standards and Practices for Conducting "All Appropriate Inquiry" Proposed Rule

Groundwater Rule

Lead-Based Paint Activities: Training and Certification for Renovation and Remodeling

Effluent Guidelines and Standards for the Construction and Development Industry

Long-Term 2 Enhanced Surface Water Treatment Rule

Stage 2 Disinfection Byproducts Rule

Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel

National Security

EPA is one of many Federal agencies with responsibilities related to national security. This new priority is affecting the structure of EPA's programs, the Agency's budget, and its regulatory agenda. Virtually every office within EPA has had to extend its reach above EPA's core environmental mission to encompass this new priority. Some offices are working to prevent future terrorist attacks and enhance preparedness through the research of water and building security, and through teams devoted to counterterrorism law enforcement support, water and wastewater infrastructure protection, building air protection, food security, and information infrastructure security. Other programs have focused on improving various ways to respond in the event of an incident, including EPA's extensive emergency response network (including chemical, biological, and radiological emergency response), the EPA Emergency Operations Center, and National Decontamination Teams. These many activities highlight EPA's new priority and help to ensure that the nation is better protected and prepared for a terrorist event.

As this new priority has such broad implications for the Agency, a need was seen by the Administrator for a central office to ensure that EPA's policies regarding terrorism incident preparedness and response promote efficiency, collaboration, and reduction of gaps. This new office formed in February 2003 as the Administrator's Office of Homeland Security (OHS), which has the major responsibilities of leading and coordinating homeland security activities and policy development across the Agency. The office is working to ensure that, while EPA continues to meet its core environmental protection mission, the Agency is also evolving to meet its homeland security responsibilities, assuring that EPA's new priority receives the necessary attention.

HIGHLIGHTS OF EPA'S REGULATORY PLAN

Office of Air and Radiation

The principal regulatory priority of EPA's Office of Air and Radiation (OAR) for FY 2004 is to protect public health and the environment from the harmful effects of fine particulate matter and ozone, the two air pollutants that persist widely in the Nation's air in amounts that exceed Clean Air Act health standards. Exposure to these pollutants is associated with numerous harmful effects on human health, including respiratory problems, heart and lung disease, and premature death. OAR is also continuing with priority efforts to address cancer-causing air toxics pollution by implementing a toxics-control program under the Clean Air Act. OAR is also working to increase the effectiveness and efficiency of its permitting programs, which are the main mechanisms through which these protections are implemented. These efforts are described briefly below.

OAR's principal vehicle to address the continuing problem of particulate and ozone pollution is the Clear Skies legislative proposal, which would achieve large reductions in the emissions that cause particulate and ozone pollution through use of a "cap-and-trade" system similar to the one that has proved so successful in EPA's Acid Rain program. This pollution, largely from electric powerplants and large industrial boilers, is transported on the wind over long distances from the Midwest to the east coast, and is a major factor in the pollution problems of eastern cities. The plan also describes a rulemaking to address emissions of off-road vehicles, which are significant sources of ozone and particulate pollution. Nonroad engines are used in construction equipment and other vehicles that do not normally travel on roads and highways. The nonroad rule will set new emission standards for these engines, and will also greatly lower the amount of sulfur in diesel fuel, which will reduce sulfur pollution in the air and also ensure that the engines' pollution controls are not prevented from working properly by being "fouled" with high-sulfur fuel.

EPA continues to address toxic air pollution under authority of the Clean Air Act Amendments of 1990 by implementing the Maximum Achievable Control Technology (MACT) program, which has the goal of controlling toxic air pollution from major emitters nationwide. Toxic air pollution is a term that covers a large number of industrial chemicals and other substances that have been shown to cause cancer, birth defects, and developmental problems in children. To date, EPA's air toxics program has focused primarily on reducing emissions from large industrial sources, such as petroleum refineries and chemical manufacturing plants, through technology-based standards. When fully implemented, the overall MACT program will reduce more than one million tons of toxic air emissions per year. The rules listed in this year's Regulatory Plan-covering electric utilities, industrial boilers, institutional/commercial boilers, wood manufacturing, reciprocating engines, and automobile painting operations—are among the most significant remaining categories to be regulated under this program. While working on these standards, OAR is beginning to evaluate those sources with standards already in place to determine if the remaining risk from those sources warrants additional regulation.

Since many air quality programs are administered through permitting programs, OAR continues to work toward improving these programs to increase efficiency and reduce regulatory burden. Currently, OAR is developing several rulemakings to streamline and improve its two principal permitting programs. The first effort, to revise the New Source Review program, will clarify the circumstances under which companies must obtain construction permits before building new facilities or significantly modifying existing facilities. These revisions will provide more regulatory certainty by clarifying compliance requirements, and will also make the program easier to administer while maintaining its environmental benefits. The second effort will streamline and simplify the Operating Permits program, which requires that all operating facilities have a valid permit assuring that they meet all applicable air-pollution regulations. In both cases, OAR is drawing upon many years of intense involvement with major stakeholders, who have helped shape a suite of reforms that are expected to both improve the environmental effectiveness of these programs and make them easier to comply with.

The annual report on the costs and benefits of regulations, entitled Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities, that is prepared by the Office of Management and Budget (OMB) and submitted to Congress each year, included several nominations for reform from the public. In FY 2004, OAR expects to address through regulatory action one of the areas raised: New Source Review (Comments #16, 30, 77, 187, 188, 189, and 196). (For a copy of these comments, go to OMB's compilation of the comments at http://www.whitehouse.gov/omb/inforeg/key_comments.html.)

Office of Water

EPA's Office of Water has established five regulatory priorities for the coming year. They include rules affecting cooling water intakes, industrial and municipal wastewater pollution, the Total Maximum Daily Load (TMDL) Program, and drinking water.

EPA intends to issue a final rule to control the adverse environmental impacts associated with cooling water intakes. Many power plants and factories withdraw large volumes of water from rivers, lakes, or other water bodies to cool their production equipment. As required by the CWA, EPA must ensure that the location, design, construction, and capacity of these cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. EPA intends to issue a final rule addressing cooling water intake structures at large steam electric power plants. These facilities (and to a small degree, household ratepayers) will bear the costs of this rule. The expected benefits would be significant reductions in aquatic organisms killed or injured by impingement (being pinned against screens or other parts of a cooling water intake structure) or entrainment (being drawn into cooling water systems and subjected to thermal, physical, or chemical stresses).

EPA also will issue regulations to help control industrial and municipal wastewater pollution. EPA expects to issue final effluent guidelines that would reduce the discharge of pollutants contained in storm water runoff from construction sites. These requirements are expected to result in significant improvements in water quality as a result of construction site owners and operators using best management practices.

EPA plans to propose a rule establishing a new framework for accomplishing the water quality planning and management provisions of the TMDL program. EPA believes this framework, based on the watershed approach, will allow more jurisdictions, i.e., States, territories, and tribes, to use the program to contribute more effectively to improving the Nation's water quality. The proposal recognizes that the major responsibility for water quality management resides with these jurisdictions. The proposed new framework seeks to increase TMDL program flexibility, enhance stakeholder participation, promote opportunities for trading, and increase efficiencies in establishing, approving, and implementing TMDLs.

Finally, EPA is developing three rules to protect the safety of drinking water. First, EPA is developing a final Long-Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR). This rule would reduce risks from microbial pathogens, especially Cryptosporidium, in public water systems that use surface water sources. LT2ESWTR provisions would target systems where current standards do not provide sufficient protection, including both filtered systems with elevated source water pathogen levels and unfiltered systems. Second, EPA plans to finalize the Groundwater Rule, a rule that addresses fecal contamination in public water systems served by groundwater sources. Finally, EPA is developing a final Stage 2 Disinfectants and Disinfection Byproducts Rule to control exposure to disinfection byproducts beyond the requirements of the Stage 1 Disinfectants and Disinfection Byproducts Rule. This rule will respond to new data the Agency has received on: disinfection byproduct occurrence; bladder, colon, and rectal cancer; and possible reproductive and developmental health effects.

Office of Prevention, Pesticides, and Toxic Substances

Evidence suggests that environmental exposure to man-made chemicals that mimic hormones (endocrine disruptors) may cause adverse health effects in human and wildlife populations. The Food Quality Protection Act directed EPA to develop a chemical screening program (the Endocrine Disruptor Screening Program, EDSP), using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. EPA is implementing recommendations from a scientific advisory committee, which was established to advise EPA on the EDSP, by developing and validating test systems for determining whether a chemical may have effects similar to those produced by naturally occurring hormones. As part of this program EPA is also designing a framework for procedures and processes to use when implementing the EDSP, and is developing an initial list of chemicals for which testing will be required. A proposed chemical selection approach for this initial list of chemicals was published in the **Federal Register** in December 2002 for public comment, and the comment period ended April 1, 2003. A notice on the final approach is expected to be published in early 2004.

To address high production volume (HPV) chemicals, the Agency launched the HPV Initiativein April 1998, which is a data collection and development program established by OPPTS for existing U.S. HPV chemicals. Under this initiative, HPV chemicals are defined as organic chemicals manufactured (including imported) at or above 1 million pounds per year based on information submitted under the 1990 Inventory Update Rule established pursuant to the Toxic Substances Control Act (TSCA). Through the HPV Initiative, which includes a voluntary component (the HPV Challenge Program) for certain international efforts and rulemaking under TSCA, basic screening level hazard datanecessary to provide critical information about the environmental fate and potential hazards associated with HPV chemicals will be collected or, where necessary, developed. Data collected and/or developed under the HPV Initiative will provide critical basic information about the environmental fate and potential hazards associated with these chemicals which, when combined with information about exposure and uses, will allow the Agency and others to evaluate and prioritize potential health and environmental effects and take appropriate follow up action. Of the estimated 2,800 HPV chemicals included in the HPV Initiative, under the voluntary HPV Challenge Program component, EPA received commitments from 338 companies individually or through consortia and the International Council of Chemical Associations (ICCA) to sponsor 2,165. As of August 2003, EPA has received 225 test plans covering 1,055 chemicals either individually or as part of a chemical category. EPA plans to issue a final rule to require testing for a number (30 or so) of the HPV chemicals that were not sponsored as part of the voluntary HPV Challenge Program.

Childhood lead poisoning is a pervasive problem in the United States, with almost a million young children having more than 10 ug/dl of lead in their blood (Center for Disease Control's level of concern). Although there have been dramatic declines in blood-lead levels due to reductions of lead in paint, gasoline and various food sources, remaining lead-based paint in older houses continues to be a significant source of childhood lead poisoning. Section 402(c) of the Toxic Substances Control Act (TSCA) directs EPA to address renovation and remodeling activities in these older houses by first conducting a study of the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular basis. Section 402(c) further directs the Agency to revise the lead-based paint activities regulations (40 CFR part 745 subpart L) to include renovation or remodeling activities that create lead-based paint hazards. In order to determine which contractors are engaged in such activities, the Agency is directed to utilize the results of the study and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in health effects, and others. Given the significant number of older houses affected, such a rule is likely to have a potentially significant economic impact. In an effort to minimize that impact, the Agency is working with stakeholders to explore the development of non-rulemaking approaches for reducing the potential creation of lead-based paint hazards from renovation or remodeling activities. The lead-based paint program activities are intended to insure that the individuals and firms conducting lead-based paint activities will do so in a way that safeguards the environment and protects the health of building occupants, especially children under six years old.

The Agency will be announcing revisions to its pesticide emergency exemption program, under which States and other Federal agencies may obtain permission to temporarily use a pesticide not in accordance with registration requirements under emergency conditions. In response to State concerns, EPA has already reduced the review time for emergency exemptions significantly. Other changes that EPA is considering have the potential for further streamlining the exemption program and allowing more flexibility in its applicability.

EPA anticipates it will develop a policy or regulation setting forth criteria and standards the Agency would use in deciding the extent to which it will rely on certain kinds of human research to support its actions to protect public health and the environment. In developing a future policy or rule, EPA will consider the public comments received in response to the advance notice of proposed rulemaking published in the **Federal Register** on May 7, 2003 (68 FR 24410), and will also carefully consider advice from the National Academy of Sciences expected in December 2003. The policy or rule would establish rigorous scientific and ethical standards that EPA would apply in its analysis of various types of research involving people exposed to toxicants to identify or quantify their effects. The Agency will particularly focus on "third-party intentional dosing human studies," but recognizes that standards applicable to these studies may also be applicable to other types of studies. "Third party studies" refers to research not conducted or supported by EPA or other federal agencies, and therefore not governed by the regulation for Protection of Human Subjects, widely referred to as the Common Rule (40 CFR part 26).

Office of Solid Waste and Emergency Response

The Office of Solid Waste and Emergency Response (OSWER) has a number of regulatory priorities aimed at improving environmental quality. Protection of public health and the environment and environmental stewardship are two key themes, as is reducing burden on the regulated community where environmental protections are maintained.

During the 1990s, EPA determined that additional control is needed for cement kiln dust, a high-volume byproduct material of the cement manufacturing process that potentially contains hazardous constituents, such as lead, cadmium and chromium. EPA also committed to develop regulations that would be tailored to protect human health and the environment while limiting burden on the regulated community. EPA proposed a comprehensive set of standards for the management of cement kiln dust in 1999, and plans to finalize standards soon.

Likewise, in response to an earlier determination that coal combustion wastes could pose significant risks to human health and the environment if they are not properly managed, EPA is developing standards for the management of coal combustion wastes generated by commercial electric power producers. When implemented, the standards will prevent contamination or damage to groundwaters and surface waters.

EPA will further promote and protect air quality by reducing emissions of arsenic, beryllium, cadmium, chromium, dioxins and furans, hydrogen chloride, lead, manganese, and mercury, all of which cause adverse health effects. EPA plans to propose national emission standards for these hazardous air pollutants for hazardous waste combustors. This proposal will also contain a response to the Cement Kiln Recycling Coalition petition of the Administrator to withdraw Agency policy and technical guidance concerning site-specific risk assessments for hazardous waste combustors and re-issue them as regulations, if EPA continues to believe that they are necessary. This proposal also supports a reform nomination for site-specific risk assessments in the Resource Conservation and Recovery Act (RCRA) that was mentioned in OMB's 2002 Report to Congress on the Costs and Benefits of Regulations.

EPA is determining whether wastes from the manufacturing of dyes and pigments present a hazard to human health and the environment. If so, EPA will propose their listing under RCRA subtitle C.

OSWER's Environmental Stewardship priority promotes revitalizing the land, including cleaning up and redeveloping Brownfields. The Small Business Liability Relief and Brownfields Revitalization Act addresses the need for bona fide prospective purchasers, contiguous property owners, and innocent landowners to conduct "all appropriate inquiry" into prior ownership and use of the property at the time the party acquires the property. EPA is seeking to provide purchasers of contaminated property with clarity regarding the procedures and standards for conducting an "all appropriate inquiry" so as to limit CERCLA liability.

To further promote environmental stewardship, EPA is encouraging recycling. One of the largest hazardous waste streams amenable to recycling is the wastewater treatment sludges from electroplating operations (waste code F006). EPA is considering changes to the existing RCRA regulations to encourage safe recycling and waste management practices of wastewater treatment sludges from electroplating operations. These electroplating sludges are sufficiently high in metal(s) and sufficiently low in other toxic constituents.

EPA also seeks to remove unnecessary regulatory barriers to recycling of Cathode Ray Tubes. These tubes, which are found in televisions and computer monitors, contain lead to protect users from X-rays.

To reduce burden on the regulated community, Agency efforts are underway to eliminate duplicative and non-essential paperwork burden imposed by RCRA reporting and recordkeeping requirements. This rule will eliminate or streamline paperwork requirements that are unnecessary because they add little to the protectiveness of the RCRA regulations.

EPA also intends to reduce burden on the regulated community by revising the current RCRA regulations that apply to the wastewater treatment sludges from the chemical conversion coating (zinc phosphating) of aluminum. The current Federal regulations require that the wastewater treatment sludges generated from this conversion coating process be managed as a RCRA hazardous waste. Yet, such sludges do not contain the constituents for which the F019 hazardous waste was originally listed (cyanide and chromium).

EPA also plans to streamline both the RCRA permit and hazardous waste manifest processes. The Agency is creating a standardized permit for RCRA facilities that generate hazardous waste and routinely manage the waste on-site in tanks, containers, and containment buildings. This standardized permit process would allow facilities to obtain and modify permits more easily while maintaining the protectiveness currently existing in the individual RCRA permit process.

Likewise, the Agency plans to reduce paperwork burden by standardizing the Uniform Hazardous Waste Manifest, which is a multi-copy form used to identify the quantity, composition, origin, routing, and destination of RCRA hazardous waste during its transportation. EPA plans to specify one format for the manifests that may be used in all States. EPA is working toward standard requirements for tracking rejected wastes, container residues, and international shipments of hazardous wastes.

Office of Environmental Information

The top regulatory priority of EPA's Office of Environmental Information (OEI) will be to finalize the Cross-Media Electronic Reporting and Recordkeeping Rule (CROMERRR). This rule will address electronic reporting by companies regulated under all of EPA's programs—air, water, pesticides, toxic substances, wastes, and emergency response. CROMERRR will remove existing regulatory obstacles to electronic reporting, and it will set requirements for companies choosing to report electronically. In addition, this rule will set the conditions for allowing electronic reporting under State, tribal, or local environmental programs that operate under EPA authorization.

CROMERRR is intended to make electronic reporting as simple, efficient, and cost-effective as possible for regulated companies, while ensuring that a transition from paper to electronic reporting does not compromise EPA's compliance and enforcement programs. Consequently, the Agency's strategy is to impose as few specific requirements as possible, and to keep those requirements neutral with respect to technology, so the rule will pose no obstacles to adopting new technologies as they emerge.

To ensure that authorized programs at the State, tribal, and local levels meet CROMERRR's goals, the rule would specify a set of criteria that these programs must satisfy as they initiate electronic reporting or recordkeeping. The final rule would specify a process for certifying that these programs meet the criteria. EPA is on schedule to finalize CROMERRR by the third quarter of FY 2004. In response to public comment, a decision was made to focus the final rule on electronic reporting only, and to defer coverage of electronic recordkeeping until a later time. Also, in response to comments, EPA currently is exploring a streamlined process to review State programs for electronic reporting.

Finally, EPA has implemented an integrated system to support the electronic reporting needs of EPA media programs, known as Central Data Exchange (CDX). CDX currently provides electronic reporting services to more than 14,000 users in six major media programs and is on track to provide electronic reporting services for all significant environmental data collections over the next two years. All but one of the major environmental data exchanges with States will be operational through CDX by the end of 2004, and the outstanding data exchange will be operational by the end of FY 2005. In addition, beginning in the spring of 2002, Toxics Release Inventory (TRI) reporters were able to useTRI - Made Easy (TRI-ME) software to submit their forms electronically over the Internet through CDX. However, reporters still had to submit a paper certification letter. Beginning in the spring of 2003, TRI reporters no longer need to submit paper certification letters; instead, they are now able to use the TRI-ME software to submit data over the Internet using CDX with electronic signature.

EPA

PRERULE STAGE

101. ENDOCRINE DISRUPTOR SCREENING PROGRAM; PRIORITY SETTING CRITERIA

Priority:

Other Significant

Legal Authority:

15 USC 2603 TSCA; 21 USC 346(a) FFDCA; 42 USC 300(a)(17) SDWA; 7 USC 136 FIFRA

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

EPA published a proposed policy statement in the Federal Register setting forth the Endocrine Disruptor Screening Program on December 28, 1998. In that FR Notice, the Agency described the major elements of the Program EPA had developed to comply with the requirements of FFDCA section 408(p) as amended by FQPA. One of those elements is priority setting which was defined as the collection, evaluation, and analysis of relevant information to determine the general order in which chemical substances and mixtures will be subjected to screening and testing. Under this current action, EPA is developing a priority setting approach to be used by the Agency to identify the initial list of chemicals for which tier 1 testing will be required. On December 30, 2002, EPA published in the Federal Register for public comment a proposed chemical selection approach for this initial list of chemicals. The public comment period on this proposed approach was extended to April 1, 2003 in a Federal Register notice dated February 26, 2003. Following consideration of comments on this proposed approach, EPA will issue a Federal Register notice setting forth its final approach. Although this action is not a rulemaking, the Agency has included it in the Regulatory Agenda to help inform the public.

Statement of Need:

The Endocrine Disruptor Screening Program fulfills the statutory direction and authority to screen pesticide chemicals and drinking water contaminants for their potential to disrupt the endocrine system and adversely affect human health.

Summary of Legal Basis:

The mandate to screen pesticide chemicals for estrogenic effects that may affect human health is the Federal Food, Drug and Cosmetic Act (FFDCA) as amended in the Food Quality Protection Act (21 U.S.C. 346a(p)). FFDCA also provides EPA authority to require testing of substances that may have an effect that is cumulative to that of a pesticide chemical. Discretionary authority to test contaminants in sources of drinking water is in the Safe Drinking Water Act as amended in 1996 (42 U.S.C. 300j–17). General authority to require testing of chemicals and pesticides is in TSCA (15 U.S.C. 2603) and FIFRA (7 U.S.C. 136) respectively.

Alternatives:

A federal role is mandated under cited authority. There is no alternative to role of the Federal government on this issue to ensure that pesticides, commercial chemicals and contaminants are screened and tested for endocrine disruption potential. A limited amount of testing may be conducted voluntarily but this will fall far short of the systematic screening which is necessary to protect public health and the environment and ensure the public that all important substances have been adequately evaluated.

Anticipated Cost and Benefits:

None.

Risks:

Evidence is continuing to mount that wildlife and humans may be at risk from exposure to chemicals operating through a endocrine mediated pathway. Preliminary studies show decreases on IQ tests and increases in aggression in children. Severe malformations of the genitals of boys has increased steadily over the last two decades. Wildlife effects have been more thoroughly documented. Abnormalities in birds, marine mammals, fish and shellfish have been documented in the United States, Europe, Japan, Canada, and Australia which have been linked to specific chemical exposures. Evidence is sufficient for the United States to proceed on a two track strategy: research on the basic science regarding endocrine disruption and screening to identify which chemicals are capable of interacting with the endocrine system. The combination of research and test data developed by this program will enable EPA to take action to reduce chemical risks.

Timetable:

Action	Date	FR Cite
Notice RfC	12/30/02	67 FR 79611
Notice ECP	02/26/03	68 FR 8901
Notice Final	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

Additional Information:

SAN 4727.

Split from RIN 2070–AD26.

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RIN: 2070–AD59

EPA

PROPOSED RULE STAGE

102. ELECTRIC UTILITY STEAM GENERATING UNIT MACT REGULATION

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

42 USC 7412

CFR Citation:

40 CFR 63

Legal Deadline:

NPRM, Judicial, December 15, 2003, NPRM.

Final, Judicial, December 15, 2004, Final.

Abstract:

In December 2000, the EPA determined that regulation of hazardous air pollutant emissions (HAP) from oil- and coal-fired electric utility steam generating units was necessary and appropriate. This finding was based on the results of the study mandated by section 112(n)(1)(A) of the Clean Air Act, as amended. The regulation(s) will be developed under section 112 and will result in standards based on the use of maximum achievable control technology (MACT). The primary benefit will be the reduction of mercury emissions to the atmosphere from coal-fired units but other HAP will also be reduced. Small businesses and State/local/tribal governments could be impacted (particularly those governments owning or operating oil- or coal-fired electric generation facilities).

Statement of Need:

Oil and coal-fired electric utility steam generating units were added (December 20, 2000) to the list of source categories to be regulated under section 112 of the Clean Air Act, as amended.

Summary of Legal Basis:

Section 112 of the Clean Air Act, as amended.

Alternatives:

Alternatives will be identified as the proposal is developed.

Anticipated Cost and Benefits:

It is anticipated that this rule will result in significant costs to the affected industry, including Federal, State, and local entities that own/operate electric utility steam generating units. These costs will be identified as the proposal is developed.

Risks:

Risk information will become available as the proposal is developed.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, State, Local, Tribal

Additional Information:

SAN 4571.

Sectors Affected:

221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ65

EPA

103. IMPLEMENTATION RULE FOR PM–2.5 NAAQS

Priority:

Other Significant

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

42 USC 7410; 42 USC 7501 et seq

CFR Citation:

40 CFR 51

Legal Deadline:

None

Abstract:

In 1997, EPA promulgated revised National Ambient Air Quality Standards (NAAQS) for fine particulate matter (PM–2.5). The rule described in this paragraph—the Implementation Rule for PM–2.5 NAAQS—will include requirements and guidance for State and local air pollution agencies to develop and submit State implementation plans (SIPs) designed to bring the areas into attainment with the 1997 standards. These SIP-development activities include conducting technical analyses to identify effective strategies for reducing emissions contributing to PM–2.5 levels, and adopting regulations as needed in order to attain the standards. Ambient air quality monitoring for 1999–2001 shows that areas exceeding the standards are located throughout the eastern half of the United States and in California. Estimates show that compliance with the standards will prevent thousands of premature deaths from heart and lung disease, tens of thousands of hospital admissions and emergency room visits, and millions of absences from school and work every year.

Statement of Need:

This rule is needed in order to provide guidance to State and local agencies in preparing State implementation plans (SIPs) designed to bring areas into attainment with the 1997 PM–2.5 standards. The implementation requirements for nonattainment areas are generally described in subpart 1 of section 172 of the Clean Air Act. This rule provides further interpretation of those requirements for the PM–2.5 standards.

Summary of Legal Basis:

42 USC 7410 and 42 USC 7501 et seq.

Alternatives:

Alternatives will be explored as the proposal is developed.

Anticipated Cost and Benefits:

This information will be provided as the proposal is developed.

Risks:

The risks addressed by this rule are those addressed by the 1997 NAAQS rule—i.e., the health and environmental risks associated with nonattainment of the NAAQS. These risks were summarized in detail in the analyses accompanying the 1997 NAAQS rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN 4752.

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RIN: 2060–AK74

EPA

104. • PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): ALLOWABLES PLANTWIDE APPLICABILITY LIMIT (PAL), AGGREGATION, AND DEBOTTLENECKING

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

42 USC 7401 et seq

CFR Citation:

40 CFR 51.165; 40 CFR 51.166; 40 CFR 52.21

Legal Deadline:

None

Abstract:

EPA recently promulgated NSR rules for a Plantwide Applicability Limit (PAL) based on actual emissions that applies to existing major stationary sources. This year, EPA will propose an allowables PAL provision based on a facility's allowable emissions. If a company commits to keep its facility emissions below Allowables PAL level, then these regulations will allow the plant owners to avoid the NSR permitting process when they make changes at individual units at the plant, as long as the total emissions from the facility will not increase. This package will also include an aggregation provision which will propose that, for the purposes of NSR applicability, a project is considered separate and independent from any other project unless the project is dependent upon another project to be economically or technically viable, or if the project is intentionally split from other projects to avoid NSR. The package will also include a debottlenecking provision which addresses emissions from units that change as a result of a physical or operational change to another unit at the facility. EPA will propose that, when calculating actual emissions associated with a physical change or change in the method of operation, sources generally should look only at the unit undergoing the change. Emissions from units "upstream" or "downstream" of the unit being changed should be considered only when the permitted emissions limit of the upstream or downstream unit would be exceeded or increased as a result of the change.

Statement of Need:

The current New Source Review program provides for emissions from multiple projects to be aggregated (aggregation) as one single project under certain circumstances. Similarly, when making a PSD applicability calculation, emissions from units whose effective capacity and potential to emit have been increased as a result of a modification to another unit (debottlenecked units), must be included in the initial PSD applicability calculations. Specific questions regarding the application of these two terms have been addressed on a case-by-case basis. By completing this rulemaking, regulated entities and regulatory agencies will be provided an additional level of certainty in addressing applicability issues. We recently promulgated NSR rules for a Plantwide Applicability Limit (PAL) based on actual emissions that applies to existing major stationary sources. In 2003, we will propose an allowables PAL based on a facility's allowable emissions mainly for greenfield sources. If a company commits to keep its facility emissions below Allowables PAL level, then these regulations will allow the plant owners to avoid the NSR permitting process when they make changes at individual units at the plant, as long as the total emissions from the facility will not increase. This would provide flexibility for sources to respond rapidly to market changes without compromising environmental protection.

Summary of Legal Basis:

42 USC 7411(a)(4)

Alternatives:

Alternatives will be developed as the rulemaking proceeds.

Anticipated Cost and Benefits:

Cost and benefit information will be developed as appropriate as the rulemaking proceeds.

Risks:

Risk information will be developed as appropriate as the rulemaking proceeds.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN 4793.

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RIN: 2060–AL75

EPA

105. LEAD-BASED PAINT ACTIVITIES; TRAINING AND CERTIFICATION FOR RENOVATION AND REMODELING

Priority:

Other Significant. Major under 5 USC 801.

Unfunded Mandates:

Undetermined

Legal Authority:

15 USC 2682 TSCA 402

CFR Citation:

40 CFR 745

Legal Deadline:

Final, Statutory, October 28, 1996.

Abstract:

Under section 402(c)(2) of the Toxic Substances Control Act (TSCA) title IV, EPA conducted a study of the extent to which persons engaged in renovation and remodeling activities in target housing are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard. EPA must use the results of this study and consult with interested parties to determine which categories of renovation and remodeling activities require training and certification. EPA must then revise the training and certification regulations originally developed for individuals performing lead-based paint abatement under section 402(a) of TSCA title IV to apply them to the renovation and remodeling categories. If EPA determines that any category does not require certification, EPA must publish an explanation of the basis for that determination.

Statement of Need:

Childhood lead poisoning is a pervasive problem in the United States, with almost a million young children having more than 10 ug/dl of lead in their blood, (Center for Disease Control's level of concern). Although there have been dramatic declines in blood-lead levels due to reductions of lead in paint, gasoline, and food sources, remaining paint in older houses continues to be a significant source of childhood lead poisoning. These rules will help insure that individuals and firms conducting lead-based paint activities will do so in a way that safeguards the environment and protects the health of building occupants, especially children under 6 years old.

Summary of Legal Basis:

This regulation is mandated by TSCA section 402(c). TSCA section 402(c) directs EPA to address renovation and remodeling activities by first conducting a study of the extent to which persons engaged in various typed of renovation and remodeling activities are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard on a regular basis. Section 402(c) further directs the Agency to revise the lead-based paint activities regulations (40 CFR part 745 subpart L) to include renovation or remodeling activities that create lead-based paint hazards. In order to determine which contractors are engaged in such activities the Agency is directed to utilize the results of the study and consult with the representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, experts in health effects, and others.

Alternatives:

TSCA section 402(c) states that should the Administrator determine that any category of contractors engaged in renovation or remodeling does not require certification; the Administrator may publish an explanation of the basis for that determination.

Anticipated Cost and Benefits:

EPA's quantitative cost estimates fall into four categories: Training Costs, Work Practice Costs, Clearance Testing Costs, and Administrative Costs. The estimates vary depending upon the option selected. In most cases we expect that requirements related to Clearance Testing and Work Practices will contribute the most to overall rule cost. The benefits analysis will not provide direct quantitative measures of each (or any) option. EPA does not have a complete risk assessment (with dose-response functions) that would permit direct quantitative estimates. We do have other data, such as estimated loadings of Pb generated by renovation work, number and type of renovation events, demographics of the exposed population, and the costs of various health effects previously linked to Pb exposure. With the available information we are able to utilize several qualitative approaches to frame the benefits associated with an effective renovation rule.

Risks:

These rules are aimed at reducing the prevalence and severity of lead poisoning, particularly in children. The Agency has concluded that many R&R work activities can produce or release large quantities of lead and may be associated with elevated blood lead levels. These activities include, but are not limited to: sanding, cutting, window replacement, and demolition. Lead exposure to R&R workers appears to be less of a problem than to building occupants (especially young children). Some workers (and homeowners) are occasionally exposed to high levels of lead. Any work activity that produces dust and debris may create a lead exposure problem.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	
Final Action	10/00/06	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

Additional Information:

SAN 3557.

Sectors Affected:

23599 All Other Special Trade Contractors; 23551 Carpentry Contractors; 53111 Lessors of Residential Buildings and Dwellings; 23322 Multifamily Housing Construction; 23521 Painting and Wall Covering Contractors; 531311 Residential Property Managers; 23321 Single Family Housing Construction; 54138 Testing Laboratories

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RIN: 2070-AC83

EPA

106. PESTICIDES; EMERGENCY EXEMPTION PROCESS REVISIONS

Priority:

Other Significant

Legal Authority:

7 USC 136p; 7 USC 136w

CFR Citation:

40 CFR 166

Legal Deadline:

None

Abstract:

EPA will publish a Notice of Proposed Rulemaking in the Federal Register proposing several improvements to the pesticide emergency exemption process under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Two of these potential improvements are currently being tested through a limited pilot, and are based on recommendations from the States which are the primary applicants for emergency exemptions. EPA has established regulations under section 18 of FIFRA which allow a Federal or State agency to apply for an emergency exemption to allow an unregistered use of a pesticide for a limited time when such use is necessary to alleviate an emergency condition.

Statement of Need:

In 1996, stakeholders, including States and Federal agencies, identified a number of issues related to improving the emergency exemption process. States and Federal agencies are the only applicants for emergency exemptions. Representatives of States have recommended modifications to the current process for application, review and approval of emergency exemptions. If adopted, the changes would reduce unnecessary burden to both applicants and EPA, and expedite decisions on applications (which is critical in emergency situations).

Summary of Legal Basis:

FIFRA section 18 authorizes EPA to temporarily exempt States from the requirements of registration to alleviate an emergency condition.

Alternatives:

Several measures for streamlining or improving the emergency exemption process are being considered by the Agency. EPA has analyzed these measures and has received considerable comment, both formally and informally, from stakeholders, including specific recommendations from a group representing States' interests. Since the modifications would generally constitute regulatory relief, and are not expected to cause any economic impact, options with varying cost do not apply.

Anticipated Cost and Benefits:

These procedural improvements are not expected to increase existing costs related to this program. In fact, this action is likely to provide reduced burden and cost to states and federal agencies that apply for emergency exemptions and reduced burden to EPA. Indirect benefits may accrue to users of pesticides under emergency exemptions if changes result in faster review and approval, or greater availability of pesticides. Although not required, EPA expects to assess the potential economic impacts of this action.

Risks:

In general, the measures being considered are primarily intended to reduce burdens for States and EPA and achieve efficiencies in the program. No impact on risk is anticipated.

Timetable:

Action	Date	FR Cite
Notice	04/24/03	68 FR 20145
NPRM	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN 4216.

Sectors Affected:

9241 Administration of Environmental Quality Programs

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RIN: 2070-AD36

EPA

107. ACCEPTABILITY OF RESEARCH USING HUMAN SUBJECTS

Priority:

Other Significant

Legal Authority:

5 USC 301; 7 USC 136a; 7 USC 136w; 15 USC 2603; 21 USC 346a; 42 USC 300v-1(b); 42 USC 7601; 33 USC 1361; 42 USC 9615; 42 USC 11048; 42 USC 6912; 42 USC 300j-9

CFR Citation:

40 CFR 26 (Revision)

Legal Deadline:

None

Abstract:

EPA is evaluating its current policy with respect to the protection of human research subjects in testing not conducted or supported by the Federal government. Current EPA regulations in 40 CFR part 26 apply to research conducted or supported by the Agency or "otherwise subject to regulation." No action has been taken yet to give effect to the "otherwise subject to regulation" phrase. In addition, EPA has asked the advice of the National Academy of Sciences (NAS) on several issues surrounding the acceptability and interpretation of third party studies involving deliberate dosing of human subjects for the purpose of defining or quantifying toxic endpoints. EPA will seek public comment on issues related to Agency use of human research data in its regulatory decisionmaking. EPA believes the process being initiated will serve two important Agency goals: ensuring the availability of sound and appropriate scientific data in its decisions, and protection of the interests, rights and safety of human research subjects. EPA may issue one or more documents, which may include policy statements, rulemaking or requests for public comment.

Statement of Need:

In July 1998, the Agency committed that EPA would not consider human research in its regulatory decisions unless a policy were in place that could assure any such studies met the highest scientific and ethical standards. The Agency convened a special joint subcommittee of the FIFRA Scientific Advisory Panel and the EPA Science Advisory Board to advise on this policy. The subcommittee completed its report in September 2000. In December 2001 the Agency sought the advice of the National Academy of Sciences on several difficult issues. A report from the NAS is expected in December 2003. In December 2001 the Agency clarified its interim policy, committing, subject to certain exceptions, not to consider or rely on any third party studies involving intentional dosing of human subjects with toxicants for the purpose of defining or quantifying their effects until a final policy is in place, and clarifying that this interim policy applies across all Agency programs. In June 2003, in response to a challenge of the interim policy, the U.S. Court of Appeals vacated the interim policy and stated that as a consequence of the Agency's "previous practice of considering third party human studies on a case-by-case basis, applying statutory requirements, the Common Rule, and high ethical standards as a guide," was reinstated "until it is replaced by a lawfully promulgated regulation." If ultimately deemed acceptable for consideration, some human research could significantly affect the Agency's risk assessments of some pesticides and other toxicants.

Summary of Legal Basis:

Several statutes contain provisions that involve Agency regulatory decisions that are or may be based on testing not conducted or supported by the Agency. For example, FIFRA section 3 directs EPA to define data requirements supporting pesticide decisions and to establish guidelines for conducting research to support pesticide decisions; and FFDCA section 408 directs EPA to, among other things, consider available and reliable data in support of pesticide tolerance decisions. FIFRA sec. 4(g)(1) directs the Administrator to "conduct a thorough examination" of "all data submitted under this section (section 4)" and of "all other available data found by the Administrator to be relevant."

Alternatives:

Still to be identified.

Anticipated Cost and Benefits:

No analysis has been performed yet.

Risks:

No analysis has been performed yet.

Timetable:

Action	Date	FR Cite
ANPRM	05/07/03	68 FR 24410
NPRM	10/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

Additional Information:

SAN 4610.

Sectors Affected:

32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD57

EPA

108. ENDOCRINE DISRUPTER SCREENING PROGRAM; IMPLEMENTING THE SCREENING AND TESTING PHASE

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

15 USC 2603 TSCA; 21 USC 346(a) FFDCA; 42 USC 300(a)(17) SDWA; 7 USC 136 FIFRA

CFR Citation:

Not Yet Determined

Legal Deadline:

None

Abstract:

The screening and testing phase of the Endocrine Disruptor Screening Program (EDSP) potentially will encompass a broad range of types of chemicals, including pesticide chemicals, TSCA chemicals, chemicals that may be found in sources of drinking water, chemicals that may have an effect that is cumulative to the effect of a pesticide chemical, chemicals that are both pesticide chemicals and TSCA chemicals, and other chemicals that are combinations of these types of chemicals. EPA may publish in the Federal Register the procedures and processes that the Agency will use when implementing the screening and testing phase of the EDSP. Specifically, depending on decisions that the Agency makes regarding implementation of the testing phase of the EDSP, the action will describe the authorities that EPA may invoke to require testing and, if necessary, establish the process that the Agency will use to require the testing.

Statement of Need:

The Endocrine Disruptor Screening Program Implementation of the Screening and Testing Phase fulfills the statutory direction and authority to screen pesticide chemicals and drinking water contaminants for their potential to disrupt the endocrine system and adversely affect human health.

Summary of Legal Basis:

The screening and testing phase of the Endocrine Disruptor Screening Program (EDSP) potentially will encompass a broad range of types of chemicals, including pesticide chemicals, TSCA chemicals, chemicals that may be found in sources of drinking water, chemicals that may have an effect that is cumulative to the effect of a pesticide chemical, chemicals that are both pesticide chemicals and TSCA chemicals, and other chemicals that are combinations of these types of chemicals. As discussed in the Proposed Statement of Policy, EPA has a number of authorities at its disposal to require testing of these types of chemicals. The Federal Food, Drug, and Cosmetics Act (FFDCA) section 408(p) provides EPA authority to require testing of all pesticide chemicals and any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if EPA determines that a substantial population may be exposed to the substance. 21 U.S.C. section 346(a)(p). Likewise, the Safe Drinking Water Act (SDWA) provides EPA with authority to require testing of any substance that may be found in sources of drinking water if EPA determines that a substantial population may be exposed to the substance. 42 U.S.C. section 300j–17. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides EPA with authority to require testing of pesticides if EPA determines that additional data are required to maintain in effect an existing registration. 7 U.S.C. section 136a(c)(2)(B). The Toxic Substances Control Act (TSCA) provides authority for EPA to require testing of TSCA chemicals, provided that it makes certain hazard and/or exposure findings. 15 U.S.C. section 2603. In addition, EPA has authority to issue consent orders to require testing when interested parties agree on an acceptable testing program. 51 FR 23706 (June 30, 1986).

Alternatives:

A federal role is mandated under cited authority. There is no alternative to role of the Federal government on this issue to ensure that pesticides, commercial chemicals and contaminants are screened and tested for endocrine disruption potential. A limited amount of testing may be conducted voluntarily but this will fall far short of the systematic screening which is necessary to protect public health and the environment and ensure the public that all important substances have been adequately evaluated.

Anticipated Cost and Benefits:

It is too early to project the costs and benefits of this program accurately. However, as a rough estimate, the screening battery is estimated to cost $200,000 per chemical. It is also too early to quantify the benefits of this program mathematically. The goal of the program is to reduce the risks identified in paragraph 22 below.

Risks:

Evidence is continuing to mount that wildlife and humans may be at risk from exposure to chemicals operating through a endocrine mediated pathway. Preliminary studies show decreases on IQ tests and increases in aggression in children. Severe malformations of the genitals of boys has increased steadily over the last two decades. Wildlife effects have been more thoroughly documented. Abnormalities in birds, marine mammals, fish and shellfish have been documented in the United States, Europe, Japan, Canada, and Australia which have been linked to specific chemical exposures. Evidence is sufficient for the United States to proceed on a two track strategy: research on the basic science regarding endocrine disruption and screening to identify which chemicals are capable of interacting with the endocrine system. The combination of research and test data developed by this program will enable EPA to take action to reduce chemical risks.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

SAN 4728. Split from RIN 2070–AD26. In August 2000, the Agency submited the required Status Report to Congress. In March 2002, the Agency submitted the requested status report to Congress on the Endocrine Disruptor Methods Validation subcommittee under the National Advisory Council on Environmental Policy and Technology.

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RIN: 2070–AD61

EPA

109. NESHAPS: STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR HAZARDOUS WASTE COMBUSTORS

Priority:

Other Significant

Legal Authority:

42 USC 6924 "RCRA 3004"; 42 USC 6925 "RCRA 3005"; 42 USC 7412 "CAA 112"; 42 USC 7414 "CAA 114"

CFR Citation:

40 CFR 60; 40 CFR 63; 40 CFR 260; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270

Legal Deadline:

NPRM, Judicial, March 31, 2004.

Final, Judicial, June 15, 2005.

Abstract:

On September 30, 1999, EPA promulgated standards to control emissions of hazardous air pollutants from incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste (referred to as the phase I rule). A number of parties, representing interests of both industry and the environmental community, sought judicial review of the rule. The Court ruled against EPA and vacated the phase I rule. On October 19, 2001, EPA, together with all petitioners, filed a joint motion asking the Court to stay the issuance of its mandate to allow them time to develop interim standards. These stop-gap interim standards were promulgated on February 13 and 14, 2002. They replace the vacated standards temporarily, until revised replacement standards are promulgated by June 15, 2005. This rulemaking will propose and finalize the Phase I replacement standards. Also, in this rulemaking effort, we are developing emission standards for hazardous waste burning industrial, institutional, commercial boilers, process heaters, and hydrochloric acid production furnaces. These sources are referred to as phase II sources because the standards were originally scheduled to be promulgated after phase I source standards were finalized; however, a separate consent decree now requires us to finish developing emission standards for the phase II sources by the same date as those for phase I (June 15, 2005). EPA is developing options for calculating the emission standards that are considered to be consistent with both the statutory requirements and the opinion of the Court. Potential costs and benefits are not yet available, because emission standards must be selected before the cost/benefit analyses begin.pl and phase II sources in December of 2003.

Statement of Need:

Section 112 of the Clean Air Act requires that the EPA promulgate regulations requiring the control of hazardous air pollutants from major and certain area sources. The control of hazardous air pollutants is achieved through promulgation of emission standards under sections 112(d) and (f) and, in appropriate circumstances, work practice standards under section 112(h).

On September 30, 1999 EPA promulgated standards to control emissions of hazardous air pollutants from incinerators, cement kilns, and lightweight aggregate kilns that burn hazardous waste (referred to as the phase I rule). A number of parties, representing interests of both industry and the environmental community, sought judicial review of the rule. The Court ruled against EPA and vacated the phase I rule.

Summary of Legal Basis:

On October 19, 2001, EPA, together with all petitioners, filed a joint motion asking the Court to stay the issuance of its mandate to allow time to develop interim standards. These stop-gap interim standards were promulgated on February 13 and 14, 2002. They replace the vacated standards temporarily, until revised replacement standards are promulgated by June 14, 2005. EPA is working towards promulgation by this date. EPA is also developing emission standards for hazardous waste burning industrial, institutional, commercial boilers, process heaters, and hydrochloric acid production furnaces. These sources are referred to as phase II sources because the standards were originally scheduled to be promulgated after phase I source standards were finalized; however, a separate consent decree now requires us to finish developing emission standards for the phase II sources by the same date as those for phase I (June 14, 2005).

Alternatives:

EPA is developing options for calculating the emission standards that are considered to be consistent with both the statutory requirements and the opinion of the Court.

Anticipated Cost and Benefits:

Potential costs and benefits are not yet available, because emission standards must be selected before the cost/benefit analyses can be completed. EPA plans to propose emission standards and compliance provisions for both the phase I and phase II sources in March 2004.

Risks:

For the 1999 rule, we estimated the avoided incidence of mortality and morbidity associated with reductions in particulate matter (PM) emissions. Estimates of cases of mortality and morbidity avoided were made for children and the elderly, as well as the general population, using concentration-response functions derived from human epidemiological studies. Morbidity effects included respiratory and cardiovascular illnesses requiring hospitalization, as well as other illnesses not requiring hospitalization, such as acute and chronic bronchitis and acute upper and lower respiratory symptoms. For this rule, we are comparing characteristics of the sources covered by the 1999 rule to the sources covered by the replacement rule that are related to risk. These characteristics include emissions, stack characteristics, meteorology, and population. Based on the results of the statistical comparisons, we will infer whether the risks will be about the same, less than, or greater than the 1999 rule. Risk inferences for boilers and HCl production furnaces will be based on comparisons with incinerators for the 1999 rule.

Timetable:

Action	Date	FR Cite
NPRM–CK	04/19/96	61 FR 17358
Final—Fasttrack	06/19/98	63 FR 33782
Final—CK	09/30/99	64 FR 52828
NODA	07/27/00	65 FR 39581
DF 1	07/03/01	66 FR 35087
NPRM—Phase1	07/03/01	66 FR 35126
Parallel Proposal	07/03/01	66 FR 35124
Direct Final Action	10/15/01	66 FR 52361
Final Compliance Extension	12/06/01	66 FR 63313
Interim Final Action	02/13/02	67 FR 6792
Final HAP	02/14/02	67 FR 6968
NPRM	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN 3333. For information on the Phase I portion of this effort, see SAN 4418, RIN 2050–AE79.

Sectors Affected:

3335 -; 3343 Audio and Video Equipment Manufacturing; 3251 Basic Chemical Manufacturing; 3273 Cement and Concrete Product Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3328 Coating, Engraving, Heat Treating and Allied Activities; 3342 Communications Equipment Manufacturing; 3341 Computer and Peripheral Equipment Manufacturing; 2211 Electric Power Generation, Transmission and Distribution; 45431 Fuel Dealers; 3332 Industrial Machinery Manufacturing; 3274 Lime, Gypsum and Gypsum Product Manufacturing; 3327 Machine Shops, Turned Product, and Screw, Nut and Bolt Manufacturing; 3362 Motor Vehicle Body and Trailer Manufacturing; 3361 Motor Vehicle Manufacturing; 3363 Motor Vehicle Parts Manufacturing; 2123 Non-Metallic Mineral Mining and Quarrying; 3259 Other Chemical Product Manufacturing; 3329 Other Fabricated Metal Product Manufacturing; 3339 Other General Purpose Machinery Manufacturing; 3279 Other Nonmetallic Mineral Product Manufacturing; 3255 Paint, Coating, Adhesive, and Sealant Manufacturing; 3253 Pesticide, Fertilizer and Other Agricultural Chemical Manufacturing; 3241 Petroleum and Coal Products Manufacturing; 4227 Petroleum and Petroleum Products Wholesalers; 3254 Pharmaceutical and Medicine Manufacturing; 3231 Printing and Related Support Activities; 5629 Remediation and Other Waste Management Services; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing; 3344 Semiconductor and Other Electronic Component Manufacturing; 22132 Sewage Treatment Facilities; 5622 Waste Treatment and Disposal

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RIN: 2050–AE01

EPA

110. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS

Priority:

Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

42 USC 6907(a)(3); 42 USC 6944(a)

CFR Citation:

40 CFR 257

Legal Deadline:

None

Abstract:

This action is for the development of nonhazardous waste regulations under subtitle D of the RCRA statute. The regulations will apply to landfill and surface impoundment facilities that manage coal combustion wastes generated by steam electric power generators, i.e., electric utilities and independent power producers. This action results from EPA's regulatory determination for fossil fuel combustion wastes (see 65 FR 32214, May 22, 2000), which concluded that waste management regulations under RCRA are appropriate for certain coal combustion wastes. The utility industry has made significant improvement in its waste management practices over recent years, and most state regulatory programs are similarly improving. However, public comment and other analyses have convinced the Agency that coal combustion wastes could pose significant risks to human health and the environment if they are not properly managed. There is sufficient evidence that adequate controls may not be in place. For example, 62 percent of existing utility impoundments do not have groundwater monitoring; thus, their impact on ground and surface waters cannot be evaluated in light of numerous damage cases identified by the Agency that involve management of these wastes. The intended benefits of this action will be to prevent contamination or damage to ground waters and surface waters, thereby avoiding risk to human health and the environment, including ecological risks. The Agency is currently analyzing the human health and ecological risks, costs, and economic impact of this action as it develops the proposed regulation. The Agency has considered alternatives to this action, including regulating these wastes as hazardous wastes under subtitle C of RCRA, but has rejected this approach as discussed in the regulatory determination (see 65 FR 32214, May 22, 2000). EPA has also considered issuing guidance instead of regulations to industry and state and local governments to focus on these remaining waste management issues but concluded that there will probably continue to be some gaps in practices and controls and is concerned at the possibility that these will go undressed. The Agency also believes the timeframe for improvement of current practices is likely to be longer in the absence of federal regulation.

Statement of Need:

Public comment and other analyses have convinced the Agency that coal combustion wastes could pose significant risks to human health and the environment if they are not properly managed. There is sufficient evidence that adequate controls may not be in place, including for ground water monitoring, lining of waste management units, and mismanagement of the wastes in sand and gravel pits and similar geologies. A significant number of environmental damage cases indicate that past management practices were insufficient. The intended benefits of this regulatory action will be to prevent contamination or damage to ground waters and surface waters, and to prevent ecological risks.

Summary of Legal Basis:

The rules that are being developed pursuant to RCRA subtitle D are not mandated by statute or court order. Rather, the Agency concluded from its finding in the required RCRA section 3001 (b) determination that, while RCRA subtitle C regulations for hazardous wastes are not warranted, RCRA nonhazardous waste regulations are necessary. The nonhazardous waste regulations will address gaps in existing Federal and State requirements for the management of these wastes in order to protect human health and the environment.

Alternatives:

The Agency has considered regulating these wastes as hazardous wastes under subtitle C of RCRA or a nonhazardous wastes under subtitle D of RCRA. The Agency also has considered issuing guidance instead of regulations to industry and state and local government to focus on the key waste management issues. However, the Agency concluded that some gaps in waste management practices would likely continue and is concerned that these gaps would continue to go unaddressed. The Agency concluded that non-hazardous waste regulations under subtitle D of RCRA are most appropriate.

Anticipated Cost and Benefits:

The costing, economics, and benefits analyses are under study pending results of the risk assessment. Costs will include direct costs to the generators of coal combustion wastes for management according to the regulation. Benefits will include damage avoidance to ground water and surface water resources, including sources of drinking water that could affect human health. No additional information is available at this time.

Risks:

The Agency has a comprehensive risk analysis underway to determine the cross-media impacts of managing these wastes, with a focus on impacts to ground waters and surface waters and their human health implications. The risk analysis will also identify ecological impacts of waste management. While the risk analysis is nearing completion, no quantitative measures of risk are available yet, and, thus, no information of risk magnitude or risk reduction efforts is available at this time.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

Undetermined

Additional Information:

SAN 4470. This rule may also impact Federal, State, local or tribal governments that own coal-burning commercial electric power generating facilities.

Sectors Affected:

221112 Fossil Fuel Electric Power Generation

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RIN: 2050-AE81

EPA

111. INCREASE METALS RECLAMATION FROM F006 WASTE STREAMS

Priority:

Other Significant

Unfunded Mandates:

Undetermined

Legal Authority:

Not Yet Determined

CFR Citation:

40 CFR 261

Legal Deadline:

None

Abstract:

Many metal finishers and other industrial sectors generate an electroplating sludge as part of their production process that is amenable to recycling, i.e., the sludge contains economically recoverable amounts of metals such as copper, nickel, zinc, etc. Currently, these sludges (F006) are listed hazardous wastes subject to RCRA regulations. Many generators continue to send these sludges for treatment and disposal when they could be recycled. Similarly, generators currently sending their sludges for recycling receive no economic benefit for this practice. Since the mid-1990's, EPA has been working with industry and the States to create incentives for safe recycling and has promulgated rules to foster this practice. However, EPA is interested in exploring whether further regulatory changes are warranted.

EPA is currently evaluating several options that would provide regulatory relief to generators and handlers of F006. All options would reduce regulatory costs to generators and handlers relative to the current RCRA subtitle C regulatory program.

Statement of Need:

F006 represents one of the largest hazardous waste streams amenable to recycling. Currently, there is no differentiation in regulatory requirements the land disposal and recycling of F006 electroplating sludges. This effort seeks to evaluate different regulatory options that would eliminate existing disincentives to the safe recycling of F006 with the ultimate objective of possibly proposing changes to the existing regulatory framework. Potential benefits to be achieved include increasing the economic competitiveness of small businesses, increasing the waste minimization and recycling of F006, increased natural resource conservation by reducing emissions from landfills and surface waters.

Summary of Legal Basis:

RCRA sections 2002, 3001–3004, 42 U.S.C. 6912, 6921 to 6924. No aspect of this action is required by statutory or court order.

Alternatives:

Regulatory options being examined would affect generators and possibly other handlers of F006, i.e., consolidators, commercial hazardous waste recyclers and mineral processing facilities. EPA is also considering various options for the minimum amount of recoverable metals contained in F006 electroplating sludges.

Anticipated Cost and Benefits:

This rule is designed to provide regulatory relief to generators and possibly other handlers of F006. Potential benefits to be achieved include increasing the economic competitiveness of small businesses, increasing the waste minimization and recycling of F006 and increasing natural resource conservation by reducing emissions from landfills and surface waters.

Risks:

Options being evaluated would ensure that the risks posed from recycling F006 would not increase. These risks include storage and management of the materials throughout the recycling process, as well as any nonrecyclable constituents included in the F006.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Federalism:

Undetermined

Additional Information:

SAN 4651.

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RIN: 2050–AE97

EPA

112. STANDARDS AND PRACTICES FOR CONDUCTING "ALL APPROPRIATE INQUIRY"

Priority:

Other Significant

Legal Authority:

42 USC 9601 et seq

CFR Citation:

40 CFR 312

Legal Deadline:

Final, Statutory, January 11, 2004, Final.

Abstract:

The Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields Law) amended a number of provisions in CERCLA including section 101(35)(B) and includes, among other things, new provisions regarding limitations on CERCLA liability for certain landowners. As part of these provisions, the Brownfields Law addresses the need for bona fide prospective purchasers, contiguous property owners, and innocent landowners to conduct "all appropriate inquiry" into prior ownership and use of the property at the time the party acquires the property.

In the Brownfields Law, Congress directed EPA to promulgate regulations establishing standards and practices for conducting "all appropriate inquiry." Section 101 (35)(B)(iii) of the law includes criteria that EPA is required to address in setting these standards and practices. This regulation will establish the Federal standards for conducting "all appropriate inquiry," pursuant to the Act. Recipients of

Brownfields Assessment Grants will be regulated by the final action. Purchasers of contaminated properties who wish to assert certain limitations on CERCLA liability may choose to follow the promulgated procedures and standards.

EPA is developing the Federal standard for all appropriate inquiry under a negotiated rulemaking process. EPA established a FACA committee charged with negotiating a Federal standard in accordance with the statutory criteria.

Statement of Need:

The need for this action is the congressional mandate in the Small Business Liability Relief and Brownfields Revitalization Act. Section 101(35)(B)(ii) of the law, Congress directs the EPA Administrator to establish (by regulation) standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries. Congressional intent or "need" is that purchasers of potentially contaminated property must conduct an inquiry or investigation into the environmental conditions of a property prior to purchasing the property to ensure an understanding of the extent of prior and ongoing environment conditions to establish liability.

Summary of Legal Basis:

In Section 101(35)(B)(ii) of the Small Business Liability Relief and Brownfields Revitalization Act Congress directs the EPA Administrator to establish (by regulation) standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries.

Alternatives:

EPA may consider alternative standards for specific portions of the regulatory requirements, if viable and suitable alternatives are identified by the FACA committee chartered to negotiate the rulemakings. No such alternatives have been identified to date.

Anticipated Cost and Benefits:

Costs associated with the new Federal standard may include incremental costs, associated with using the new Federal standard, that are over and above the costs associated with the privately developed standards currently employed in conducting all appropriate inquiry for the purposes of real estate transaction. This rulemaking will not impose new mandatory requirements on any entities, other than recipients of Federal brownfields grants provided for the purpose of assessing or characterizing brownfields sites. Other than these grant recipients, the standards will be applicable to purchasers of contaminated properties who wish to assert certain limitations on CERCLA liability. The benefits of the regulation may include providing purchasers of contaminated property with clarity regarding the procedures and standards for the conduct of "all appropriate inquiry" required to assert certain limitations on CERCLA liability.

Risks:

This regulatory action will not directly address risks to human health or the environment.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN 4739. State, local and Tribal governments affected if they are grant recipients.

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RIN: 2050–AF04

EPA

113. • REGULATORY AMENDMENTS TO THE F019 HAZARDOUS WASTE LISTING TO EXCLUDE THE WASTEWATER TREATMENT SLUDGES FROM THE CHEMICAL CONVERSION COATING PROCESS (ZINC PHOSPHATING) OF AUTOMOBILE BODIES OF ALUMINUM

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

42 USC 1006 et seq

CFR Citation:

40 CFR 261.31; 40 CFR 302.4

Legal Deadline:

None

Abstract:

Automobile manufacturers are adding aluminum or aluminized components to automobiles to reduce the weight of vehicles to increase fuel economy. When aluminum components are added to the automobile assembly process, the current federal regulations require that the wastewater treatment sludges generated from this conversion coating process be managed as a hazardous waste under the Resource Conservation and Recovery Act. EPA intends to reduce burden on the regulated community by revising the current RCRA regulations that apply to the wastewater treatment sludges from the chemical conversion coating (zinc phosphating) of aluminum.

Statement of Need:

This action when finalized will reduce the burden on the automobile industry from treating sludges from the process of zinc phosphating of aluminum as hazardous wastes. The applicable listed hazardous waste (F019) was listed as such because it contains cyanide and chromium. The sludges from the zinc phosphating of aluminum do not contain any of these constituents.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

Additional Information:

SAN 4834.

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RIN: 2050–AG15

EPA

114. WATERSHED RULE: TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM REVISIONS

Priority:

Other Significant

Legal Authority:

33 USC 1313; 33 USC 1329; 33 USC 1342; 33 USC 1256

CFR Citation:

40 CFR 9; 40 CFR 122; 40 CFR 124; 40 CFR 130

Legal Deadline:

None

Abstract:

Amend regulations governing the TMDL program to ensure that it is effective, allows for active participation by all stakeholders including local governments and communities. The amendments will address: the scope and content of the list of impaired waters required by section 303(d) of the Clean Water Act, the scope and content of TMDLs, EPA's role in helping States establish 303(d) lists and TMDLs so that impaired waters are restored, and the framework for implementing TMDLs provided by State CPPs and watershed plans. EPA is also proposing revision to the NPDES permitting regulations.

Statement of Need:

This action will propose a new framework for accomplishing the water quality planning and management provisions of the Clean Water Act (CWA). EPA believes that this framework based on the watershed approach will allow jurisdictions, i.e., States, territories and authorized tribes, to use the Total Maximum Daily Load (TMDL) program to more effectively contribute to improving the Nation's water quality. The proposal recognizes that the major responsibility for water quality management resides with these jurisdictions. The goal of the proposal is to provide jurisdictions with a tailored yet flexible approach to water quality management that meets the unique needs and situation of each jurisdiction and of local communities while at the same time ensuring that progress is made towards restoring the Nation's waters so that they attain and maintain water quality standards. The proposal revitalizes and strengthens the Continuing Planning Process (CPP) as a focus for a variety of jurisdiction's water quality planning and implementation activities. The proposal seeks to increase TMDL program flexibility and enhance stakeholder participation, promote opportunities for trading, and increase efficiencies in establishing, approving, and implementing TMDLs. EPA is also proposing revisions to the NPDES permit regulations.

Summary of Legal Basis:

These revisions to EPA's TMDL rules are authorized by, among others, section 303(d) and (e) of the CWA that: (1) Require States to identify impaired waters within their boundaries and establish TMDLs for those waters at levels necessary to implement water quality standards, and (2) require States to have a continuing planning process resulting in a plan for all navigable waters that EPA reviews from time to time.

Anticipated Cost and Benefits:

Estimates under development.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State, Tribal

Additional Information:

SAN 4623.

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RIN: 2040–AD82

EPA

FINAL RULE STAGE

115. NESHAP: PLYWOOD AND COMPOSITE WOOD PRODUCTS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 7412(d)

CFR Citation:

40 CFR 63

Legal Deadline:

Final, Statutory, November 15, 2000.

Final, Judicial, February 27, 2004.

Abstract:

This project is to develop national emission standards for hazardous air pollutants (NESHAP) by establishing maximum achievable control technology (MACT) for facilities manufacturing wood panels and engineered wood products. MACT standards are under development to reduce the release of hazardous air pollutants (HAP) from all industries to protect the public health and environment. Emissions of HAP from this industry have been associated with, but are not limited to, the drying of wood and binders. This rule is anticipated to apply to the manufacture of products involving wood and some kind of binder or bonding agent. This project may include, but is not limited to, facilities that manufacture hardboard, oriented strandboard (OSB), medium density fiberboard (MDF), particleboard, hardwood and softwood plywood, glue-laminated lumber, laminated veneer lumber, and engineered wood products. The source category may also include lumber drying kilns at sawmills. The project may also include some coatings operations. The name of the source category was formerly Plywood and Particleboard MACT.

Statement of Need:

Plywood and composite wood products is a source category listed to be regulated under section 112 of the Clean Air Act.

Summary of Legal Basis:

Clean Air Act section 112.

Alternatives:

The principal alternatives are to set standards at or beyond the "floor" level of stringency. The "floor" is the minimum stringency implied by the congressionally-given formula in section 112 of the Clean Air Act.

Anticipated Cost and Benefits:

In section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide. In addition, an Economic Impact Analysis and Regulatory Impact Analysis have been prepared.

Risks:

In section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide.

Timetable:

Action	Date	FR Cite
NPRM	01/09/03	68 FR 1276
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

None

Additional Information:

SAN 3820.

Sectors Affected:

32121 Veneer, Plywood, and Engineered Wood Product Manufacturing

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RIN: 2060–AG52

EPA

116. NESHAP: RECIPROCATING INTERNAL COMBUSTION ENGINE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 7412 CAA 112; PL 101–549

CFR Citation:

40 CFR 63

Legal Deadline:

Final, Statutory, November 15, 2000.

Final, Judicial, February 27, 2004.

Abstract:

The stationary reciprocating internal combustion engine source category is listed as a major source of hazardous air pollutants (HAPs) under section 112 of the Clean Air Act (CAA). A major source is one which emits more than 10 tons/yr of one HAP or more than 25 tons/yr of a combination of 189 HAPs. The reciprocating internal combustion engine (RICE) MACT was published in the Federal Register on December 19, 2002. A public hearing was held on January 21, 2003 and the public comment period closed on February 18, 2003. Comments and data received during the comment period are being evaluated. The anticipated date of the final RICE rule being signed by the Administrator is February 27, 2004.

Statement of Need:

Reciprocating internal combustion engines is a source category listed to be regulated under section 112 of the Clean Air Act.

Summary of Legal Basis:

Section 112 of the Clean Air Act.

Alternatives:

The principal alternatives are to set standards at or beyond the "floor" level of stringency. The "floor" is the minimum stringency implied by the congressionally given formula in section 112 of the Clean Air Act.

Anticipated Cost and Benefits:

In section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide. Therefore, separate cost/benefit analyses are not conducted for individual rulemakings within the MACT program. Total annualized cost for rule is $248 million, average cost/facility $62,000 for 4600 existing sources and 20,000 new sources.

Risks:

In section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide.

Timetable:

Action	Date	FR Cite
NPRM	12/19/02	67 FR 77830
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Local, State

Additional Information:

SAN 3656.

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RIN: 2060–AG63

EPA

117. NESHAP: INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 7412

CFR Citation:

40 CFR 63

Legal Deadline:

Final, Statutory, November 15, 2000.

Final, Judicial, February 27, 2004.

Abstract:

The Clean Air Act, as amended in 1990, requires EPA to develop emission standards for sources of hazardous air pollutants (HAPs). Industrial boilers, institutional/commercial boilers and process heaters are among the potential source categories to be regulated under section 112 of the CAA. Emissions of HAPs will be addressed by this rulemaking for both new and existing sources. EPA promulgated an NSPS for these source categories in 1987 and 1990. The standards for the NESHAP are to be technology-based and are to require the maximum achievable control technology (MACT) as described in section 112 of the CAA.

Statement of Need:

Industrial boilers, institutional/commercial boilers, and process heaters are source categories listed to be regulated under section 112 of the Clean Air Act.

Summary of Legal Basis:

Section 112 of the Clean Air Act.

Alternatives:

The principal alternatives are to set standards at or beyond the "floor" level of stringency. The "floor" is the minimum stringency implied by the congressionally given formula in section 112 of the Clean Air Act.

Anticipated Cost and Benefits:

Implementation of the rulemaking would reduce nationwide emissions of air toxics by 58,000 tons per year in the fifth year. Mercury emissions would be reduced by almost 2 tons per year. Those reductions would lower ambient air concentrations and levels of exposure. In addition to HAP emissions reductions, reductions in criteria pollutant emissions (i.e., particulate matter, sulfur dioxide) would also be realized. The total nationwide capital costs for the rulemaking as proposed is about $1.7 billion, with an annualized cost of $840 million.

Risks:

In section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide. The risks from this industry are those normally associated with combustion, such as exposure to particulate matter and sulfur oxides.

Timetable:

Action	Date	FR Cite
NPRM	01/13/03	68 FR 1660
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Local

Additional Information:

SAN 3837.

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RIN: 2060–AG69

EPA

118. NESHAP: SURFACE COATING OF AUTOMOBILES AND LIGHT–DUTY TRUCKS

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 7412

CFR Citation:

40 CFR 63

Legal Deadline:

Final, Judicial, February 27, 2004.

Abstract:

The Clean Air Act, as amended in 1990, requires EPA to develop emission standards for sources of hazardous air pollutants (HAPs). The surface coating of new automobiles and light-duty trucks is among the source categories to be regulated under section 112 of the CAA. Emissions of HAPs will be addressed by this rulemaking for both new and existing sources. EPA promulgated an NSPS for this source categorie in 1980. The standards for the NESHAP are to be technology-based are are to require the maximum achievable control technology as described in section 112 of the CAA.

Statement of Need:

Surface coating of automobiles and light-duty trucks is a source category listed to be regulated under section 112 of the CAA.

Summary of Legal Basis:

Section 112 of the Clean Air Act

Alternatives:

The principal alternatives are to set standards at or beyond the "floor" level of stringency. The "floor" is the minimum stringency implied by the congressionally given formula in section 112 of the Clean Air Act.

Anticipated Cost and Benefits:

The estimated total annual costs, including costs for recordkeeping and reporting, to the affected industry of the rule is $150 million. The rule is projected to reduce emissions of hazardous air pollutants by 6,000 tons per year. A regulatory impact analysis will accompany the proposed rule.

Risks:

In section 112 of the Clean Air Act, Congress found that there is sufficient evidence of risk to warrant a broad, technology-based MACT program to reduce toxic emissions nationwide. The risks from this industry are those normally associated with surface coating operations, such as exposure to coating solvents which are hazardous air pollutants.

Timetable:

Action	Date	FR Cite
NPRM	12/24/02	67 FR 78612
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State

Additional Information:

SAN 3907.

Sectors Affected:

33611 Automobile and Light Duty Motor Vehicle Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 336211 Motor Vehicle Body Manufacturing

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RIN: 2060-AG99

EPA

119. IMPLEMENTATION RULE FOR 8-HOUR OZONE NAAQS

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 7408; 42 USC 7410; 42 USC 7501 to 7511f; 42 USC 7601(a)(1)

CFR Citation:

40 CFR 51; 40 CFR 50; 40 CFR 81

Legal Deadline:

None

Abstract:

This rule would provide specific requirements for State and local air pollution control agencies and tribes to prepare State implementation plans (SIPs) and Tribal Implementation Plans (TIPs) under the 8-hour national ambient air quality standard (NAAQS) for ozone, published by EPA on July 18, 1997. The Clean Air Act (CAA) requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards. The 1997 standards were challenged in court, but in February 2001, the Supreme Court determined that EPA has authority to implement a revised ozone standard, but ruled that EPA must reconsider its implementation plan for moving from the 1-hour standard to the revised standard. The Supreme Court identified conflicts between different parts of the CAA related to implementation of a revised NAAQS, provided some direction to EPA for resolving the conflicts, and left it to EPA to develop a reasonable approach for implementation. Thus, this rulemaking must address the requirements of the CAA and the Supreme Court's ruling. This rule would provide detailed provisions to address the CAA requirements for SIPs and TIPs and would thus affect States and Tribes. States with areas that are not attaining the 8-hour ozone NAAQS will have to develop—as part of their SIPs—emission limits and other requirements to attain the NAAQS within the timeframes set forth in the CAA. Tribal lands that are not attaining the 8-hour ozone standard may be affected, and could voluntarily submit a TIP, but would not be required to submit a TIP. In cases where a TIP is not submitted, EPA would have the responsibility for planning in those areas.

Statement of Need:

This action is needed in response to the U.S. Supreme Court's ruling in February 2001 (Whitman v. American Trucking Assoc., 121 S.Ct.903) that stated that EPA has the authority to implement a revised ozone NAAQS but that EPA could not ignore the provisions of subpart 2 when implementing the 8-hour NAAQS. The Supreme Court identified several portions of subpart 2 that are ill-fitted to the revised NAAQS but left it to EPA to develop a reasonable implementation approach. Consequently, EPA is developing a rule to implement the 8-hour ozone NAAQS under the provisions of subpart 2 of the CAA.

Summary of Legal Basis:

Title I of the Clean Air Act.

Alternatives:

This entry comprises the action the Agency plans to take to implement the 8-hour ozone NAAQS. The major alternatives facing the Agency is whether the 8-hour O3 NAAQS should be implemented under the less prescriptive part of the Clean Air Act (title I, part D, subpart 1) or the more prescriptive part of the Act (subpart 2). Another major set of alternatives concern the kind of transition EPA should make from implementation of the current 1-hour ozone standard to the new 8-hour ozone standard.

Anticipated Cost and Benefits:

EPA prepared a regulatory impact analysis for the final ozone NAAQS, and has prepared a cost analysis for the proposed implementation rule. The benefits of the rule are those associated with attainment of the ozone NAAQS including significant improvements in premature mortality, chronic asthma, chronic and acute bronchitis, upper and lower respiratory symptoms, work days lost, decreased worker productivity, visibility in urban and suburban areas, and increases in yields of commercial forests currently exposed to elevated ozone levels.

Risks:

The risks addressed by this action are the likelihood of experiencing increased health and environmental effects associated with nonattainment of the National Ambient Air Quality Standard for ozone. These effects are briefly described above in the "costs and benefits" section, and they were outlined in detail in the Regulatory Impact Analysis for the ozone NAAQS rulemaking. The results are summarized in the Federal Register notice for that rulemaking (62 FR 38856, July 18, 1997).

Timetable:

Action	Date	FR Cite
NPRM	06/02/03	68 FR 32802
Final Action	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State, Tribal

Additional Information:

SAN 4625.

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RIN: 2060–AJ99

EPA

120. CONTROL OF EMISSIONS OF AIR POLLUTION FROM NONROAD DIESEL ENGINES AND FUEL

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

15 USC 2002

CFR Citation:

40 CFR 89

Legal Deadline:

None

Abstract:

On May 23, 2003, EPA proposed new emission controls for nonroad diesel engines, which are generally used in industrial, mining, and agricultural applications. The control strategies proposed focused around the use of advanced exhaust aftertreatment technologies for the first time in these applications. This technology reduces emissions of NOx, NMHC, and PM of over 90 percent. The standards would phase-in between 2008 and 2014, with different implementation schedules applicable to each of the five engine horsepower categories. Less stringent standards would apply to the smallest horsepower category. Coupled with these proposed engine standards is a two-step reduction in fuel sulfur levels, going from uncontrolled levels to 500 ppm in 2007 and then to 15 ppm in 2010. All nonroad diesel fuel, including that used in locomotive and marine applications, is covered in the first step while locomotive and marine fuel is not involved in the second step. This overall program builds on the successful 2007 highway diesel program the Agency completed in 2000.

Statement of Need:

Ozone and particulate pollution pose a serious threat to the health and well-being of millions of Americans and a large burden to the U.S. economy. This rulemaking will address additional national control measures to reduce emissions, including emissions of nitrogen oxides, hydrocarbons and particulate matter, from nonroad heavy-duty diesel engines, and will also require reduced sulfur levels in nonroad diesel fuel, in order to protect the public health and welfare.

Summary of Legal Basis:

CAA title II part A sections 213 and 217.

Alternatives:

Eleven separate alternatives were analyzed as part of the proposal. Estimated cost impacts and benefits were estimated where possible. The alternatives looked at varying implementation dates or control strategies of both the fuel and engine standards. In addition, controlling sulfur levels to 15 ppm in 2010 for locomotive and marine diesel fuel was also analyzed.

Anticipated Cost and Benefits:

The total cost (engine and fuel standards) estimate of the proposed requirements was approximately $1.5 billion per year. In 2030, when the full effects of the rule would be in place, the quantifiable benefits would be approximately $81 billion per year. This estimate includes the impacts of reducing 9,600 cases of premature mortality, almost a million work lost days, and improvements to recreational visibility.

Risks:

The risks addressed by this program are primarily those associated with nonattainment of the National Ambient Air Quality Standards for ozone and particulate matter. There are also serious public health and environmental problems associated with toxic air pollution, acid rain, reduced visibility, and nitrogen loading of estuaries.

Timetable:

Action	Date	FR Cite
NPRM	05/23/03	68 FR 28327
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, Local, State

Additional Information:

SAN 4675.

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RIN: 2060–AK27

EPA

121. HAZARDOUS WASTE MANIFEST REGULATION

Priority:

Other Significant

Legal Authority:

42 USC 6922 RCRA 3002; 42 USC 6923 RCRA 3003; 42 USC 6924 RCRA 3004; 42 USC 6926 RCRA 3006; PL 105–277; Government Paperwork Elimination Act 17

CFR Citation:

40 CFR 260; 40 CFR 262; 40 CFR 263; 40 CFR 264; 40 CFR 265; 40 CFR 271

Legal Deadline:

None

Abstract:

The Uniform Hazardous Waste Manifest (Form 8700–22) is a multi-copy form used to identify the quantity, composition, origin, routing, and destination of hazardous waste during its transportation. Waste handlers (e.g., generators and transporters) are required to use the manifest, and States may not require a different manifest in its place. However, the manifest has State blocks which allow States, at their option, to require the entry of additional specific information to serve their State's regulatory needs. Under the current regulations more than 20 States print the manifest form in accordance with the format specified in federal regulations. However, the variability among State manifest programs associated with state optional blocks, different copy distribution schemes, and the manifest hierarchical acquisition scheme has drawn complaints from the regulated community. Variability among States' Manifest programs and the manifest system's current reliance on paper result in significant paperwork and cost burden to waste handlers and States who choose to collect manifest information. The Agency intends to standardize further the manifest form elements, and to specify one format for the manifests that may be used in all states. In addition, the Agency intends to announce standard requirements for tracking rejected wastes, container residues, and international shipments of hazardous wastes. Finally, the Agency intends to pursue an optional approach that would use information technologies to conduct the manifest process electronically, thereby reducing paperwork burden, and improving the speed and accuracy of preparing, transmitting, and recordkeeping the manifest form. However, the Agency will bifurcate the manifest rule so that the form revisions may be expedited, while additional analysis on the e-manifest continues.

Statement of Need:

Since the adoption of the Uniform Manifest by EPA and the Department of Transportation (DOT) in 1984, the regulated community and authorized states have pressed EPA to adopt changes that would simplify and further reduce the variability among the hazardous waste manifest forms required and distributed by the states. In addition, the recent focus on electronic government has highlighted the potential advantages of an electronic manifest system in terms of reduced paperwork burdens and more timely waste tracking. This action responds to these needs with a truly universal set of manifest data elements and a manifest format that will be identical in all states, as well as standards that will allow the manifest data to be completed, signed, transmitted, and recorded electronically.

Summary of Legal Basis:

EPA's regulations implementing the manifest are based on section 3002(a)(5) of the RCRA statute, which requires that EPA include in its hazardous waste generator regulations requirements addressing the "use of a manifest system and ony other reasonable means necessary" to assure that all such hazardous waste is designated for and designated for and arrives at treatment, storage, or disposal facilities that have been permitted under RCRA subtitle C requirements. Secion 3003(a)(3) of the Act requires transporters of hazardous waste to comply with the manifest system, while section 3004(a)(2) requires compliance with the manifest system by treatment, storage, and disposal facilities. Moreover, according to section 1004(12) of the Act, the manifest is defined as the "form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage." The manifest also serves as teh "shipping paper" meeting DOT requirements for the transportation of hazardous materials under the Federal Hazardous Materials laws and regulations.

EPA's current manifest regulations require generators to obtain manifest froms from the authorized States. The generator must complete the paper form by identifying the type and quantity of hazardous waste in off-site shipments, as well as the identities of the transporters and waste receiving facilities that will manage the waste. The regulations require waste handlers to sign the manifest form by hand when they receive a waste shipment, and to retain copies of the signed manifests that document the chain of custody of a shipment, and any discrepancies.

EPA and DOT have authority to eliminate variability among state manifests, since DOT's hazardous materials laws generally call for uniformity in the use of hazardous materials shipping papers such as the manifest, and EPA must regulate transportation consistently with DOT. EPA and DOT consented in 1984 to the inclusion of several "optional" data fields, but our experience with the manifest system has demonstrated that the inclusion of optional fields introduces excessive variability and burden for waste handlers. EPA also has authority to automate the waste tracking functions of the manifest, since the Act states that EPA can employ any reasonable means necessary to track waste shipments under a manifest system. There is nothing in the statute that precludes EPA from establishing standards allowing electronic manifesting of shipments, as well as use of the traditional paper forms.

Alternatives:

The form revisions part of the rulemaking examines alternatives to the current system that allows authorized states to print and distribute slightly varying manifest forms (typically for a fee) to waste handlers generating or shipping waste in a particular state.

This rule would establish a precise Federal specification for the manifest that would preclude variability in manifest forms, wherever they are used. This option was proposed in May 2001, and was supported by the great preponderance of commenters who submitted written comments to the docket.

The rule also examines alternative electronic formats for completing electronic manifests, and alternative methods for signing manifests electronically. Moreover, EPA has been examining in response to comments whether electronic manifest systems should be developed in a decentralized fashion by private companies in adherence with standards announced by EPA (the proposed approach), or, developed and hosted centrally in a national system. We expect that additional stakeholder outreach will be necessary to determine the appropriate design and functionality of the e-manifest approach for the final rule. Therefore, the e-manifest part of the rulemaking has been separated from the form revisions part of the rule, so that final action on the form revisions will not be delayed by future outreach and analysis conducted in connection with the e-manifest.

Anticipated Cost and Benefits:

The baseline manifest system results in annual paperwork burdens of 4.6 million hours and annual costs of about $193 million. In developing the May 2001, proposed rule, EPA estimated that the proposed revisions to the hazardous waste manifest system (form changes and electronic manifest) would reduce the paperwork burdens impoosed by the manifest by 765,000 to 1.24 million hours annually, and would reduce annual costs by $24–$37 million. The rule should also eliminate much of the complexity that arises from having to obtain and comply with states' slightly varying manifest forms, and the burden and complexity of having to supply information to satisfy the current so-called "optional" state fields. The ability to complete and transmit manifest data electronically should improve the accuracy of manifest data, and the timeliness and effectiveness of waste shipment tracking.

Risks:

This rule addresses only administrative requirements for tracking waste shipments. The rule does not address risks posed by particular substances or waste management activities, and no risk assessments have been prepared to support this action.

Timetable:

Action	Date	FR Cite
NPRM	05/22/01	66 FR 28240
Final Action	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN 3147. Because of significant issues identified during the public comment period on the electronic manifest part of the rule, this part of the rule has been separated from the form revisions part of the rule for purposes of publishing a final action. The form revisions part of the rule will be finalized first, while final action on the electronic manifest must await further stakeholder outreach and analysis.

Sectors Affected:

325 Chemical Manufacturing; 2211 Electric Power Generation, Transmission and Distribution; 332 Fabricated Metal Product Manufacturing; 2122 Metal Ore Mining; 2111 Oil and Gas Extraction; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 323 Printing and Related Support Activities; 3221 Pulp, Paper, and Paperboard Mills; 482 Rail Transportation; 484 Truck Transportation; 5621 Waste Collection; 5622 Waste Treatment and Disposal; 483 Water Transportation

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RIN: 2050–AE21

EPA

122. MANAGEMENT OF CEMENT KILN DUST (CKD)

Priority:

Other Significant

Legal Authority:

42 USC 6912(a) RCRA 2002(a); 42 USC 6921(a) RCRA 3001(a)

CFR Citation:

40 CFR 256; 40 CFR 259; 40 CFR 261; 40 CFR 264

Legal Deadline:

None

Abstract:

In December 1993, EPA submitted a report to Congress with its findings on the nature and management practices associated with cement kiln dust (CKD). In 1995, EPA determined that some additional control of CKD was needed and published a regulatory determination (60 FR 7366, 2/7/95). On August 20, 1999, EPA issued a proposed rule (64 FR 45632) outlining the Agency's preferred regulatory approach (i.e., an exemption from hazardous waste listing for properly managed CKD) and several optional approaches including requirements solely under RCRA Subtitle D. On July 25, 2002, the Agency published a notice (67 FR 48648) to announce the availability for public inspection and comment of recently acquired data on CKD.

The Agency is now considering an approach whereby it would finalize the proposed option of issuing the protective CKD management standards as described in the August 20, 1999 proposal as a RCRA subtitle D rule. The Agency would temporarily suspend its active consideration of the proposed listing of mismanaged CKD as a hazardous waste, and assess how CKD management practices and state regulatory programs evolve over the next three to five years. Based on this assessment, EPA will then proceed to either formally withdraw or promulgate the portion of the 1999 proposal that classifies as a RCRA hazardous waste CKD that has been egregiously mismanaged.

EPA will be promoting pollution prevention, recycling, and safer disposal of CKD by considering finalization of protective management standards for this waste. The Agency believes that these management standards are a creative, affordable, and common sense approach that can protect human health and the environment without imposing unnecessary regulatory burdens on the cement kiln industry. These standards provide a new, tailored framework that safeguards ground water and limits risk from releases of dust to air.

Statement of Need:

EPA issued a regulatory determination finding that additional control of CKD was warranted. The Agency stated that its concerns about the potential harm to human health and the environment posed by some CKD suggest the need for some level of regulation under RCRA subtitle C authority. The Agency is now considering an approach whereby it would finalize protective CKD management standards. Active consideration of the proposed mismanagement-based listing would be temporarily suspended for a period of three to five years. During this time EPA would collect data to evaluate the effectiveness of CKD management practices and States' regulatory programs. If after its evaluation the Agency deems CKD management practices and States' regulatory programs to be effective in protecting human health and the environment, the Agency would formally withdraw the subtitle C portion of the 1999 proposal and would revisit the 1995 CKD regulatory determination. Otherwise, if the Agency deems CKD management practices and State regulatory programs to be ineffective after this period, the Agency would pursue regulation of mismanaged CKD under RCRA subtitle C.

Summary of Legal Basis:

There are no applicable statutory or judicial deadlines for the CKD rulemaking effort. However, section 3001(b)(3)(C) of RCRA contemplates a rule in light of the Administrator's 1995 determination that further regulation of CKD was warranted.

Alternatives:

In the 1995 Regulatory Determination, the Agency stated its concerns about the potential harm to human health and the environment posed by some CKD suggest the need for some level of regulation under RCRA subtitle authority. Although the Agency is considering issuing the protective CKD management standards as a RCRA subtitle D rule, if after a three to five year evaluation period the Agency deems CKD management practices and State regulatory programs to be ineffective, the Agency would pursue regulation of mismanagement CKD under RCRA subtitle C.

Anticipated Cost and Benefits:

The Agency estimated the proposed rule would effect the economy by less than $100 million per year. EPA also estimated that the proposed rule may result in a reduced risk of).0004 to 0.003 cancer cases per year (best estimate—0.0006) and 29 to 315 fewer persons (best estimate—43) exposed to potential noncancer health effects due to food chain exposures (i.e., vegetables, beef, and/or milk) to "backyard" gardeners and subsistence farmers. In addition, the population analysis indicated that between 669—5,895 recreational fishers (best estimate—999) would avoid exposure to contaminant levels that may result in noncancer health effects. The population analysis indicated that 18 to 4,118 individuals (best estimate 2,378) would avoid exposure to particulate matter in excess of the National Ambient Air Quality Standards (NAAQS). The rule should also help prevent contaminated CKD leachate from impacting groundwater resources.

Risks:

For the 1993 Report to Congress and 1995 Regulatory Determination, the Agency modeled individual risks from direct and indirect pathways for 83 plants. The Agency concluded that the risks from direct pathways (i.e., drinking water ingestion, incidental ingestion, and chemical inhalation) were low or negligible. The Agency caveated these conclusions by noting that: (1) About half of the plants are underlain by limestone formations in areas of karst landscape and may be susceptible to fissures and hydraulic characteristics that allow leachate to directly enter groundwater without dilution or attenuation and cannot be modeled with current techniques; (2) empirical evidence indicated groundwater contamination in areas of both karst and non-karst terrain; and (3) modeling results for fine particulate emissions for 28 cement plants out of 52 modeled may have exceedances of NAAQS at plant boundaries and may result in risks from fine particulate inhalation at nearby residences.

For the indirect pathways, the Agency concluded that releases from about 12 percent of the 83 plants studied may result in cancer risks greater than 1x10–5 for highly exposed individuals (i.e., subsistence fishers and subsistence farmers). Similarly, the Agency concluded that releases from about 12 percent of the 83 plants may result in noncancer hazard ratios greater than 1.0 for highly exposed individuals.

Timetable:

Action	Date	FR Cite
Notice 1	02/07/95	60 FR 7366
NPRM	08/20/99	64 FR 45632
Notice 2	07/25/02	67 FR 48648
Notice 3	11/08/02	67 FR 68130
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN 3856.

Sectors Affected:

32731 Cement Manufacturing

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RIN: 2050–AE34

EPA

123. STANDARDIZED PERMIT FOR RCRA HAZARDOUS WASTE MANAGEMENT FACILITIES

Priority:

Other Significant

Legal Authority:

42 USC 6905; 42 USC 6912; 42 USC 6924; 42 USC 6925; 42 USC 6927; 42 USC 6974

CFR Citation:

40 CFR 124; 40 CFR 267; 40 CFR 270

Legal Deadline:

None

Abstract:

EPA has proposed creating a new type of general permit, called a standardized permit, for facilities that generate waste and routinely manage the waste onsite in tanks, containers, and containment buildings. Under the standardized permit, facility owners and operators would certify compliance with generic design and operating conditions set on a national basis. The permitting agency would review the certifications submitted by the facility owners and operators. The permitting agency would also be able to impose additional site-specific terms and conditions for corrective action or other purposes, as called for by RCRA. Ensuring compliance with the standardized permit's terms and conditions would occur during inspection of the facility after the permit has been issued. The standardized permit should streamline the permit process by allowing facilities to obtain and modify permits more easily while maintaining the protectiveness currently existing in the individual RCRA permit process. EPA estimates that the potential average annual cost savings to eligible facilities from implementation of this rule will range from approximately $100 to $5,800 (i.e., 2 to 140 burden hours) per permit action, depending on such things as the type of permit and the type of storage equipment. The proposal raised issues for public comment on how all facilities receiving RCRA permits can satisfy RCRA corrective action requirements under appropriate alternative state cleanup programs and on financial assurance issues. The Agency is developing a final rule addressing this topic.

Statement of Need:

The Agency convened a special task force in 1994 to look at permitting activities throughout its different programs and to make specific recommendations to improve these permitting programs. This task force, known as the Permits Improvement Team (PIT), spent two years working with stakeholders from the Agency, State permitting agencies, industry, and the environmental community. The PIT stakeholders mentioned, among other things, that permitting activities should be commensurate with the complexity of the activity. The stakeholders felt that current Agency permitting programs were not flexible enough to allow streamlined procedures for routine permitting activities. Currently, facilities that store, treat, or dispose of hazardous waste must obtain site-specific "individual" permits prescribing conditions for each "unit" (e.g., tank, container area, etc.) in which hazardous waste is managed. Experience gained by the Agency and states over the past 165 years has shown that not all the waste management activities are at the same level of complexity. Some activities, such as thermal treatment or land disposal of hazardous wastes, are more complex than storage of hazardous waste. The Agency believes that thermal treatment and land disposal activities continue to warrant "individual" permits, prescribing unit-specific conditions. However, the Agency believes that some accommodation can be made for hazardous waste management practices in standardized units such as tanks, container storage areas, and containment buildings. In April 1996, the PIT tentatively recommended, among other things, that regulations be developed to allow "standardized permits" for onsite storage and nonthermal treatment of hazardous waste in tanks, containers, and containment buildings. On October 12, 2001, the Agency proposed revising the RCRA regulations to allow for this type of permit, and is preparing to finalize the rule.

Summary of Legal Basis:

Facilities that manage hazardous waste are required under RCRA to obtain a permit and carry out corrective action as necessary (see: RCRA Section 3004, 3005, 3008, and 3010). EPA has discretion under these statutory provisions to apply different permitting procedures to different types of facilities. No aspect of this streamlining action is required by court order.

Alternatives:

EPA considered several options regarding RCRA permits and corrective action alternatives. The Agency proposed to limit the scope of the rule to facilities that generate waste and manage it onsite, but asked for comment on whether to expand that scope to facilities that manage wastes generated offsite. The Agency also asked for comment on the option of allowing a facility's RCRA corrective action activities to be postponed if corrective action is being carried out under an approved state remedial program.

Anticipated Cost and Benefits:

The RCRA standardized permit is an optional rule designed to streamline the regulatory burden to EPA/States, as well as to private sector facilities covered by the rule, by reducing the amount of information collected, submitted, and reviewed for RCRA hazardous waste permit actions (i.e., new permit applications, permit modifications, and permit renewals). Because the rule proposed to streamline existing RCRA regulation, rather than add new RCRA regulation, implementation of the rule by the EPA and by States with EPA-authorized permitting programs is expected to result in economic benefits in the form of national cost savings from reducing both government and private sector resources required for the RCRA permit process. The national workload level of RCRA permit actions involving onsite hazardous waste storage and nonthermal treatment units has averaged 92 permit determinations per year over the 10-year period 1990–1999. Relative to this average annual workload, EPA estimates that the potential average annual cost savings to eligible facilities from implementation of this rule will range from approximately $100 to $5,800 (i.e., 2 to 140 burden hours) per permit action, depending on such things as the type of permit and the type of storage equipment. On a national basis, the rule is expected to generate a minimum of $0.36 to $0.53 million in average annual paperwork cost savings, based on the scope of the proposed rule, which was limited to on-site waste management facilities. However, the final rule may expand the initial scope of eligible facilities, which could easily double or triple the national cost savings benefits (i.e., $1.1 to $1.6 million per year in cost savings).

Risks:

The purpose of this rule is to streamline existing RCRA permit application and issuance procedures to achieve national paperwork burden reduction. Because of the facts that facilities covered by this rule: (a) are currently already required to obtain RCRA permits, and (b) are relatively simple to design, install/construct, operate, and clean-close, this rule is expected to have minimal incremental effects on existing levels of human health and environmental risk for these types of hazardous waste management facilities.

Timetable:

Action	Date	FR Cite
NPRM	10/12/01	66 FR 52191
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, State

Additional Information:

SAN 4028.

Sectors Affected:

3251 Basic Chemical Manufacturing; 332813 Electroplating, Plating, Polishing, Anodizing and Coloring; 32551 Paint and Coating Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32411 Petroleum Refineries; 325211 Plastics Material and Resin Manufacturing; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing

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RIN: 2050–AE44

EPA

124. OFFICE OF SOLID WASTE BURDEN REDUCTION INITIATIVE

Priority:

Other Significant

Legal Authority:

42 USC 6907; 42 USC 6912(a); 42 USC 6921 to 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937 to 6939; 42 USC 6944; 42 USC 6949(a); 42 USC 6974; PL 104–13

CFR Citation:

40 CFR 261.38; 40 CFR 264.16; 40 CFR 264.52; 40 CFR 264.56; 40 CFR 264.73; 40 CFR 264.98 et seq; 40 CFR 265.16; 40 CFR 265.52; 40 CFR 265.56; 40 CFR 265.73; 40 CFR 265.98 et seq; 40 CFR 266.103; 40 CFR 261.4; 40 CFR 268.7; 40 CFR 268.9

Legal Deadline:

None

Abstract:

EPA plans to reduce the burden imposed by the RCRA reporting and recordkeeping requirements to help meet the Federal Governmentwide goal established by the Paperwork Reduction Act (PRA).

In June 1999, EPA published a Notice of Data Availability (NODA) in the Federal Register (64 FR 32859) to seek comment on a number of burden reduction ideas. After reviewing the comments received on the NODA, EPA proposed (67 FR 2518, 1/17/02) to implement many of these ideas. The proposal was designed to eliminate duplicative and nonessential paperwork. EPA is planning to issue a notice to seek further input on a number of changes we proposed. EPA will then finalize this burden reduction effort.

Statement of Need:

The Paperwork Reduction Act of 1995 establishes a Federal Governmentwide goal to reduce the paperwork and reporting burden it imposes. The RCRA Burden Reduction Initiative Proposed rulemaking makes the regulatory changes necessary to meet this goal.

Summary of Legal Basis:

This action is not required by statute or court order.

Alternatives:

Reducing recordkeeping and reporting will require changes in our regulations. There was no alternative to doing a rulemaking. The Agency sought opinions from the regulated community on various burden reduction possibilities.

Anticipated Cost and Benefits:

Our cost-benefit analysis showed a savings of $120 million and 929,000 hours for the final rule. The rule will have minimal impact on the protectiveness of the RCRA regulations. It will eliminate or streamline paperwork requirements that are unnecessary because they add little to the protectiveness of the RCRA regulations.

Risks:

The rule will have no risk impacts.

Timetable:

Action	Date	FR Cite
Notice of Data Availability	06/18/99	64 FR 32859
NPRM	01/17/02	67 FR 2518
NODA	10/29/03	68 FR 61662
Final Action	05/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN 4084. Applicable SIC codes: Chemicals and Allied Products (28), Primary Metal Industries (33), Fabricated Metals (34), Industrial Machinery and Equipment (35), Electrical Equipment (36), Transportation Equipment (37), Other Manufacturing, Transportation and Utilities (40–49), Wholesale Trade (50–51), Services (70–89) and Other SIC Groups

Sectors Affected:

325 Chemical Manufacturing; 334 Computer and Electronic Product Manufacturing; 332 Fabricated Metal Product Manufacturing; 324 Petroleum and Coal Products Manufacturing; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 323 Printing and Related Support Activities; 562 Waste Management and Remediation Services

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RIN: 2050–AE50

EPA

125. RECYCLING OF CATHODE RAY TUBES (CRTS) AND MERCURY–CONTAINING EQUIPMENT: CHANGES TO HAZARDOUS WASTE REGULATIONS

Priority:

Other Significant

Legal Authority:

42 USC 6912(a); 42 USC 6921 to 6925

CFR Citation:

40 CFR 261; 40 CFR 273

Legal Deadline:

None

Abstract:

This action will ultimately revise the existing Federal hazardous waste regulations to encourage recycling and better management of Cathode Ray

Tubes (CRTs) by providing a conditional exclusion from the definition of solid waste for CRTs being recycled. A CRT is the display component of a television or computer monitor. A CRT is made largely of specialized glasses, some of which contain lead to protect the user from X-rays inside the CRT. Due to the lead, when they are disposed of or reclaimed, some CRTs are hazardous wastes under the Federal Resource Conservation and Recovery Act (RCRA) regulations. This rule will also streamline RCRA requirements for managing mercury-containing equipment by adding such equipment to the universal waste rule. This rule is planned in response to a June 9, 1998 recommendation on CRT recycling from the Common Sense Initiative (CSI) Council to the Environmental Protection Agency (EPA), and in response to a petition from the Utilities Solid Waste Activities Group regarding mercury-containing equipment. The goal of this action is to improve management and encourage recycling, thereby minimizing disposal of mercury, increasing resource recovery, and enhancing protection of human health and the environment. The mercury-containing equipment rule will be published at a later date.

Statement of Need:

This rule is needed to respond to recommendations of the Electronics Subcommittee of the CSI Council regarding CRT recycling, and also to respond to a petition from the Utilities Solid Waste Activities Group regarding management of mercury-containing equipment. It is also needed to streamline RCRA requirements for these materials to encourage better management and recycling.

Summary of Legal Basis:

This action is not required by statute or court order.

Alternatives:

EPA solicited comments on alternative management requirements, including notification and tracking, accumulation requirements, requirements for CRT glass processors, export requirements, and disposal requirements.

Anticipated Cost and Benefits:

EPA estimates that, if finalized, this action would result in annual savings of up to $3 million to reduce administrative, transportation, and management costs compared to current regulations.

Risks:

The risks are undetermined.

Timetable:

Action	Date	FR Cite
NPRM	06/12/02	67 FR 40507
Final Action	05/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN 4092.

Sectors Affected:

334411 Electron Tube Manufacturing

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RIN: 2050-AE52

EPA

126. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUNDWATER RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

42 USC 300 g-1"SDWA 1412 (b)(8)"

CFR Citation:

40 CFR 141; 40 CFR 142

Legal Deadline:

Other, Statutory, Other.

Abstract:

EPA has proposed a targeted risk-based regulatory strategy for all public water systems served by groundwater. The proposed requirements provide a meaningful opportunity to reduce public health risk associated with the consumption of waterborne pathogens from fecal contamination for a substantial number of people served by ground water sources. The proposed strategy addresses risks through a multiple-barrier approach that relies on five major components: periodic sanitary surveys of ground water systems requiring the evaluation of eight elements and the identification of significant deficiencies; hydrogeologic assessments to identify wells sensitive to fecal contamination source water monitoring for systems drawing from sensitive wells without treatment or with other indications of risk; a requirement for correction of significant deficiencies and fecal contamination through the following actions: eliminate the source of contamination, correct the significant deficiency, provide an alternative source water, or provide a treatment which achieves at least 99.99 percent (4-log) inactivation or removal of viruses, and compliance monitoring to insure disinfection treatment is reliably operated where it is used.

Statement of Need:

Public water systems (PWSs) that use ground water as their sole source of water, as opposed to surface water PWSs, are not federally regulated as to treatment for microorganisms. There is data that indicates that a number of ground water PWSs are contaminated with microorganisms of fecal origin that can and have caused illness.

Summary of Legal Basis:

Section 1412(b)(8) of the Safe Drinking Water Act requires that EPA develop regulations specifying the use of disinfectants for groundwater systems as necessary and "...(as part of the regulations) promulgate criteria...to determine whether disinfection shall be required as a treatment technique for any public water system served by groundwater."

Alternatives:

EPA considered four regulatory alternatives in the development of the GWR proposal; the proposed regulatory alternative (multi-barrier option), the sanitary survey option, the sanitary survey and triggered monitoring option, and the across-the-board disinfection option. All options include the sanitary survey provision. The sanitary survey option would require the primacy agency to perform surveys every three to five years, depending on the type of system. If any significant deficiency is identified, a system is required to correct it. The sanitary survey and triggered monitoring option adds a source water fecal indicator monitoring requirement triggered by a total coliform positive sample in the distribution system. The multi-barrier option, which was proposed by EPA, adds a hydrogeologic sensitivity assessment to these elements which, if a system is found to be sensitive, results in a routine source water fecal indicator monitoring requirement. The multi-barrier option and the sanitary survey and triggered monitoring options are targeted regulatory approaches designed to identify wells that are fecally contaminated or are at a high risk for contamination. These across-the-board disinfection option would require all systems to install treatment instead of trying to identify only the high risk systems; therefore, it has no requirement for sensitivity assessment or microbial monitoring.

Anticipated Cost and Benefits:

EPA estimates the cost of the proposed GWR will be $183 million dollars per year (using a 3 percent discount rate). More than half of the estimated costs are for corrective actions which systems will be required to take to fix or prevent fecal contamination. The remainder of the costs are due to increased scope and frequency of sanitary surveys, hydrogeologic sensitivity assessments and source water monitoring. System costs are expected to be $162 million per year for implementation of the GWR. States are expected to incur costs of $21 million per year. Cost estimates do not include land acquisition, public notification or the potential cost of illness due to exposure to disinfection by-products. The total estimated value of these benefits is $205 million per year, $139 million from avoided illness and $66 million from avoided deaths. These benefits are monetized based on a cost of illness and a value of statistical life. These estimates do not include pain and suffering associated with viral and bacterial illness avoided outbreak response costs (such as the costs of providing public health warnings and boiling drinking water), and possibly the avoided costs of averting behavior and reduced uncertainty about drinking water quality.

Risks:

EPA estimates that currently over 200,000 illnesses and 18 deaths occur each year due to viral and bacterial contamination of public groundwater systems. Children, the elderly, and the immunocompromised are particularly sensitive to the waterborne pathogens and account for between 20 and 30 percent of the illnesses and deaths. As proposed, the GWR is expected to reduce the total number of illness by 115,000 and the total number of deaths by 11 each year. The GWR in conjunction with the Surface Water Treatment Rule (SWTR), Total Coliform Rule (TCR) the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Filter Backwash Rule (FBR) and the Long Term Enhanced Surface Water Treatment Rules (LT1ESWTR & LT2ESWTR) will provide protections to the consumers of public water supply systems from waterborne pathogens.

Timetable:

Action	Date	FR Cite
NPRM	05/10/00	65 FR 30194
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

SAN 2340. Statutory deadline for final rule: After August 6, 1999, but not later than the Administrator promulgates a Stage II rulemaking for disinfection byproducts (currently scheduled for October 2004).

Sectors Affected:

22131 Water Supply and Irrigation Systems

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RIN: 2040-AA97

EPA

127. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

42 USC 300f; 42 USC 300g-1; 42 USC 300g-2; 42 USC 300g-3; 42 USC 300g-4; 42 USC 300g-5; 42 USC 300g-6; 42 USC 300j-4; 42 USC 300j-9; 42 USC 300j-11

CFR Citation:

40 CFR 141 to 142; 40 CFR 9

Legal Deadline:

None

Abstract:

The Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) will control risk from microbial pathogens in drinking water. It is being developed simultaneously with the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) which will address risk caused by the use of disinfectants in drinking water. This rule could affect all public water systems that use surface water as a source. Promulgating the LT2ESWTR and the Stage 2 DBPR as a paired rulemaking is necessary to ensure that adequate protection from microbial risk is maintained while EPA manages risk from disinfection byproducts. In developing the LT2ESWTR, EPA has analyzed a significant body of new survey data on microbial pathogens in source and finished waters, as well as data on parameters which could serve as indicators of microbial risk. This survey data, which was collected under the Information Collection Rule (ICR), Supplemental Surveys to the ICR, and additional research projects, has provided a substantially more comprehensive and complete picture of the occurrence of waterborne pathogens than was available previously. EPA has also used significant new data on the efficiency of treatment processes for the removal and inactivation of microorganisms, as well as new information on the pathogenicity of certain pathogens, to determine effective regulatory requirements for controlling microbial risk. On March

30, 1999 EPA established a committee of stakeholders under the Federal Advisory Committee Act (FACA) to assist in the development of these rules; an agreement in principle was signed in September 2000 outlining the proposed rule options.

Statement of Need:

The purpose of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) is to reduce health risks posed by cryptosporidium and other microbial pathogens in drinking water. Cryptosporidium is a protozoa which causes cryptosporidiosis, a severe gastrointestinal disease. While cryptosporidiosis is generally self limiting in healthy individuals, it can be fatal for people with compromised immune systems. Cryptosporidium is removed to a degree by filtration but is highly resistant to conventional drinking water disinfectants, including chlorine and chloramines. EPA has recently collected a significant amount of data on occurrence of cryptosporidium in drinking water sources through the Information Collection Rule (ICR) and ICR Supplemental Surveys. These data indicate that a subset of drinking water systems have an unacceptably high risk for cryptosporidium in their treated water. The LT2ESWTR is intended to identify systems at high risk for cryptosporidium through monitoring and prescribe an appropriate level of additional treatment. In addition, the LT2ESWTR will be promulgated simultaneously with the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR). This will help to ensure that drinking water utilities do not compromise adequate microbial protection while they take steps to control DBPs.

Summary of Legal Basis:

Section 1412(b)(7)(A) of SDWA allows the Administrator to promulgate a national primary drinking water regulation that requires the use of a treatment technique in establishing a maximum contaminant level if the Administrator makes a finding that it is not feasible to ascertain the level of the contaminant. The MCLG for Cryptosporidium is zero and it is not feasible for public water systems to measure Cryptosporidium concentrations in treated water. Consequently, under Section 1412(b)(1)(A), the Administrator may establish a treatment technique for Cryptosporidium if this presents a meaningful opportunity for health risk reduction. Although the 1996 Amendments do not require EPA to finalize a Long Term 2 Enhanced Surface Water Treatment Rule along with the Stage 2 Disinfectants and Disinfection Byproducts Rule, Congress did emphasize the importance of ensuring proper balance between microbial and DBP risks and, therefore, EPA believes it is important to finalize these rules together.

Alternatives:

EPA is considering various rule scenarios to reduce risk from cryptosporidium. These scenarios include treatment requirements that would apply to all systems, such as requiring all conventional plants to achieve 2-log inactivation of cryptosporidium. Alternative scenarios have involved assigning systems to bins based on mean crypto source water concentrations. Additional treatment requirements would then depend on the bin to which a system was assigned. Issues associated with the binning approach include: amount of monitoring necessary to assign systems to bins, appropriate crypto concentrations to demarcate bin boundaries, and appropriate level of additional treatment for a given bin. EPA is exploring analyses that evaluate the impact of these issues on costs and benefits. EPA has also considered options to reduce the impact on small systems.

Anticipated Cost and Benefits:

EPA estimates that the LT2ESWTR, as proposed will have an annual cost of $73 to $111 million per year. The majority of people (approximately 67 percent) are served by public water systems that use a surface water or ground water under the direct influence of surface water. Thus, a large number of people will benefit from the LT2ESWTR. EPA estimates that the proposed LT2ESWTR would prevent up to 1,020,000 cases of cryptosporidiosis annually with an economic benefit of up to $1.4 billion. In addition, EPA has recently identified UV light as a technology that can achieve high levels of cryptosporidium inactivation at relatively low cost.

Risks:

Approximately 67 percent of consumers are served by drinking water systems that use surface water sources or ground water under the direct influence of surface water. Survey data indicate that cryptosporidium is prevalent in drinking water sources and current levels of treatment may not be adequate to control highly resistant pathogens like cryptosporidium. Cryptosporidiosis is a potentially fatal disease in people with weak immune systems, such as infants, the elderly, people with AIDS, and people taking immune suppressing drugs like cancer and transplant patients. By requiring additional treatment for those systems with the highest concentrations of cryptosporidium in their source waters, EPA expects to significantly reduce current risk.

Timetable:

Action	Date	FR Cite
NPRM	08/11/03	68 FR 47639
Final Action	07/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

SAN 4341.

Sectors Affected:

22131 Water Supply and Irrigation Systems

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RIN: 2040-AD37

EPA

128. NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE 2 DISINFECTION BYPRODUCTS RULE

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect State, local or tribal governments and the private sector.

Legal Authority:

42 USC 300f; 42 USC 300g–2; 42 USC 300g–3; 42 USC 300g–4; 42 USC 300g–5; 42 USC 300g–6; 42 USC 300j–4; 42 USC 300j–9; 42 USC 300j–11

CFR Citation:

40 CFR 141 to 142; 40 CFR 9

Legal Deadline:

Final, Statutory, July 14, 2003.

Abstract:

This regulation, along with a Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) that will be promulgated simultaneously, is intended to expand existing public health protections and address concerns about risk trade-offs between pathogens and disinfection byproducts. This rule could affect all public water systems that add a disinfectant to the drinking water during any part of the treatment process although the impacts may be limited to community water systems (CWSs) and nontransient noncommunity water systems (NTNCWSs). Promulgating the LT2ESWTR and the Stage 2 DBPR as a paired rulemaking is necessary to ensure that adequate protection from microbial risk is maintained while EPA manages risk from disinfection byproducts. In developing the Stage 2 DBPR, EPA analyzed a significant body of new survey data on source water quality parameters, treatment data and disinfection byproduct occurrence. This survey data, which was collected under the Information Collection Rule (ICR), Supplemental Surveys to the ICR, and additional research projects, provide a substantially more comprehensive and complete picture of the occurrence of DBPs and microbiological pathogens than was available previously. EPA also used new information on the health effects of exposure to DBPs to determine effective regulatory requirements for controlling risk. On March 30, 1999, EPA reconvened a committee of stakeholders under the Federal Advisory Committee Act (FACA) to assist in the development of these rules; an Agreement in Principle was signed in September 2000 outlining the proposed rule options.

Statement of Need:

The purpose of the Stage 2 Disinfectants/Disinfection Byproducts Rule (DBPR) is to reduce potential health risks posed by disinfection byproducts (DBPs). Certain DBPs have been shown in laboratory tests to be carcinogens or to cause adverse reproductive and developmental health effects. In addition, epidemiology studies have indicated that exposure to chlorinated water may increase the risk of bladder cancer, miscarriage, and certain developmental defects. The Stage 2 DBPR is designed to reduce peak events in DBP exposure in order to mitigate these potential health risks.

Summary of Legal Basis:

Section 1412(b)(2)(C) of SDWA, as amended in 1996, requires EPA to promulgate a Stage 2 Disinfectants/Disinfection Byproducts Rule no later than July 14, 2003. Although the 1996 Amendments do not require EPA to finalize a Long Term 2 Enhanced Surface Water Treatment Rule along with the Stage 2 Disinfectants and Disinfection Byproducts Rule, Congress did emphasize the importance of ensuring proper balance between microbial and DBP risks and, therefore, EPA believes it is important to finalize these rules together.

Alternatives:

EPA is considering various rule scenarios to achieve reductions in disinfection byproduct exposure. These alternatives include: decreasing the standard set in the Stage 1 DBPR (0.080 mg/L total trihalomethanes (TTHM) and 0.060 mg/L the sum of 5 haloacetic acids (HAA5)) by half and maintaining a running annual average compliance calculation; maintaining 80/60 TTHM/HAA5 standards but revising the compliance calculation to a stricter locational running annual average; setting the 80/60 TTHM/HAA5 standard as a never to be exceeded maximum; and revising the standard for bromate which is currently 0.010 mg/L. EPA has also considered options to reduce the impact on small systems.

Anticipated Cost and Benefits:

EPA estimates that the Stage 2 DBPR will have an annual economic impact of $59–65 million. Over 200 million people are served by public water systems that apply a disinfectant (e.g., chlorine) to water in order to provide protection against microbial contaminants and potentially exposed to DBPs. Thus, a large number of people will benefit from the Stage 2 DBPR.

Risks:

Over 200 million people are served by public water systems that apply a disinfectant (e.g., chlorine) to water in order to provide protection against microbial contaminants. Due to the large number of people exposed to DBPs, there is a substantial concern for any risks associated with DBPs that may impact public health. EPA estimates that the Stage 2 DBPR will decrease exposure to DBPs on average but more importantly, the rule will significantly reduce exposure to peak occurrences of DBPs.

Timetable:

Action	Date	FR Cite
NPRM	08/18/03	68 FR 49548
Final Action	07/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, Local, State, Tribal

Federalism:

This action may have federalism implications as defined in EO 13132.

Additional Information:

SAN 4342.

Sectors Affected:

22131 Water Supply and Irrigation Systems

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RIN: 2040–AD38

EPA

129. EFFLUENT GUIDELINES AND STANDARDS FOR THE CONSTRUCTION AND DEVELOPMENT INDUSTRY

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

33 USC 1311 CWA 301; 33 USC 1314 CWA 304; 33 USC 1316 CWA 306; 33 USC 1318 CWA 308; 33 USC 1342 CWA 402; 33 USC 1361 CWA 501

CFR Citation:

40 CFR 450; 40 CFR 122

Legal Deadline:

NPRM, Judicial, May 15, 2002.

Final, Judicial, March 31, 2004.

Abstract:

The effluent guidelines would apply to some construction activities associated with new development, as well as to those associated with redevelopment activities. The regulations would address storm water runoff from construction sites during the active phase of construction. Construction activity is a major source of sediment and other pollutants discharged to the nation's waters. Industries potentially affected by this rulemaking include land developers, home builders, builders of commercial and industrial property, and other private and public sector construction site owners and operators. EPA proposed design criteria for erosion and sediment controls. These requirements would be implemented in NPDES storm water permits issued to construction site owners and operators.

Statement of Need:

The 2000 National Water Quality Inventory Report to Congress indicates that 39 percent of assessed rivers and streams are impaired for one or more uses. Siltation is the leading pollutant causing water quality problems in 31 percent of these impaired rivers and streams. Storm water discharges from construction and development projects contain sediment that contribute to water quality impairment. There is currently wide variation in existing requirements across the nation designed to control construction site storm water discharges. The effluent guidelines would provide a national set of criteria for the selection, design, installation, and maintenance of erosion and sediment controls to control storm water discharges from construction sites. These requirements are expected to significantly reduce the discharge of sediment from construction sites and improve water quality.

Summary of Legal Basis:

The Clean Water Act authorizes EPA to establish effluent limitations guidelines and standards to limit the pollutants discharged from point sources. In addition, EPA is bound by a provision in a consent decree entered in settlement of Natural Resources Defense Council et al. v. Reilly (D.D.C. No.89–2980) to propose regulations for this industry by May 15, 2002, and to take final action by March 31, 2004.

Alternatives:

The Clean Water Act directs EPA to establish a technology basis for the effluent guidelines. Limitations are based on the performance of specific technology levels, such as the best available technology economically achievable. EPA is considering a range of pollution control technologies and is also considering construction site size exemptions to reduce the impact on small dischargers.

Anticipated Cost and Benefits:

The annualized costs of the proposed effluent guidelines are estimated to range from $130 million to $505 million and the annualized monetized benefits are expected to range from $10 million to $22 million. The costs include capital costs to install erosion and sediment controls as well as operation and maintenance costs. The benefits from the effluent guidelines are expected to occur by reducing discharges of sediment to water bodies. In addition to the monetized benefits, EPA expects there to be significant nonquantified and nonmonetized benefits to aquatic habitat and aquatic resources.

Risks:

The effluent guidelines are expected to result in a reduction of the discharge of pollutants to surface waters, primarily sediment. Sediment discharges to surface waters present a significant risk to aquatic resources.

Timetable:

Action	Date	FR Cite
NPRM	06/24/02	67 FR 42644
Final Action	03/00/04	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN 4280.

For more information on the construction and development rule visit Web site.

Sectors Affected:

233 Building, Developing and General Contracting; 234 Heavy Construction

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RIN: 2040–AD42

EPA

130. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 2

Priority:

Economically Significant. Major under 5 USC 801.

Unfunded Mandates:

This action may affect the private sector under PL 104-4.

Legal Authority:

33 USC 1311 CWA 301; 33 USC 1316 CWA 306; 33 USC 1326 CWA 316; 33 USC 1361 CWA 501

CFR Citation:

40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Legal Deadline:

NPRM, Judicial, February 28, 2002.

Final, Judicial, February 16, 2004.

Abstract:

This rulemaking affects, at a minimum, existing electricity generating facilities that employ cooling water intake structures and whose intake flow levels exceed a minimum threshold to be determined by EPA during the rulemaking. Section 316(b) of the Clean Water Act provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. A primary purpose of the rulemaking is to minimize any adverse environmental impact that may be associated with the impingement and entrainment of fish and other aquatic organisms by cooling water intake structures. Impingement refers to trapping fish and other aquatic life on intake screens or similar devices where they may be injured or killed. Entrainment occurs when smaller aquatic organisms, eggs, and larvae are drawn into a cooling system, and then pumped back out, often with significant injury or mortality due to heat, physical stress, or exposure to chemicals.

Statement of Need:

In the absence of national regulations, permit directors have implemented cooling water intake limitations incompletely and inconsistently and, in some cases, permit issuance or reissuance has been significantly delayed. This regulation may have substantial ecological benefits. By court order, EPA must propose and take final action on this regulation.

Summary of Legal Basis:

This action is required under an Amended Consent Decree in Riverkeeper Inc. et al. v. Whitman, 93 Civ. 0314 (AGS) (U.S. District Court, Southern District of New York, November 21, 2000).

Alternatives:

The analysis will cover various sizes, types of potentially regulated facilities, and control technologies. EPA is considering whether to regulate site-by-site, nationally, or on the basis of broad categories of water body types.

Anticipated Cost and Benefits:

Based on a notice of data availability, costs are estimated to be $265 million annually. The benefits of the proposed rule include quantifiable increases in commercial and recreational fisheries and difficult-to-quantify nonuse benefits. Costs and benefits are expected to be smaller at facilities that use smaller amounts of cooling water.

Risks:

Cooling water intake structures may pose significant risks for aquatic ecosystems.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17122
NODA	03/19/03	68 FR 13522
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses

Government Levels Affected:

Federal, Local, State, Tribal

Additional Information:

SAN 4474. Split from RIN 2040–AC34.

Sectors Affected:

2211 Electric Power Generation, Transmission and Distribution

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RIN: 2040–AD62

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Statement of Regulatory and Deregulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission, or Agency) is to ensure equality of opportunity in employment by vigorously enforcing six Federal statutes. These statutes are: Title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex, religion, or national origin); the Equal Pay Act of 1963, as amended; the Age Discrimination in Employment Act of 1967 (ADEA), as amended; title I of the Americans with Disabilities Act of 1990, as amended, and sections 501 and 505 of the Rehabilitation Act of 1973, as amended (disability); and the Government Employee Rights Act of 1991, which extends protections against employment discrimination to certain employees who were not previously covered.

The significant action of a regulatory nature now under consideration is amending regulations governing age discrimination in employment to exempt from the prohibitions of the Age Discrimination in Employment Act (ADEA) the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable State retiree health benefits. This rule will ensure that the application of the ADEA does not discourage employers from providing health benefits to their retirees. The Commission does not believe that the proposed exemption will have a significant impact on small business entities under the Regulatory Flexibility Act because it imposes no economic or reporting burdens on such firms.

Consistent with section 4(c) of Executive Order 12866, this statement was reviewed and approved by the Chair of the Agency. The statement has not been reviewed or approved by the other members of the Commission.

EEOC

FINAL RULE STAGE

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131. COORDINATION OF RETIREE HEALTH BENEFITS WITH MEDICARE AND STATE HEALTH BENEFITS

Priority:

Other Significant

Legal Authority:

29 USC 628

CFR Citation:

29 CFR 1625

Legal Deadline:

None

Abstract:

The Commission proposes to exempt from the prohibitions of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 et seq. (ADEA or Act), the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable State retiree health benefits.

Statement of Need:

In August 2001, the Commission announced that it would consider the relationship between the ADEA and employer-sponsored retiree health benefit plans that alter, reduce, or eliminate benefits upon eligibility for Medicare or a comparable State-sponsored retiree health benefits program. There has been a decline in the number of employers providing retiree health benefits over the last 10 years. Various factors have contributed to this erosion, including the increased cost of health care coverage, an increased demand for such coverage as large numbers of workers near retirement age, and changes in the way accounting rules treat the long-term costs of providing retiree health benefits. Another factor has been employer concern about the potential application of the ADEA to employer-sponsored retiree health benefits. The Commission is proposing a narrowly drawn ADEA exemption that permits the practice of coordinating employer-provided retiree health coverage with eligibility for Medicare or a State-sponsored retiree health benefits program, so that the ADEA does not discourage employers from providing, or continuing to provide, health benefits to their retirees.

Summary of Legal Basis:

Pursuant to section 9 of the ADEA, the Commission is authorized to establish reasonable exemptions to and from any or all provisions of the Act as it may find necessary and proper in the public interest.

Alternatives:

The Commission considered various alternatives in developing this proposal. The Commission will consider all alternatives offered by the public commenters.

Anticipated Cost and Benefits:

The Commission recognizes that while employers are under no legal obligation to offer retiree health benefits, some employers choose to do so in order to maintain a competitive advantage in the marketplace, using these and other benefits to attract and retain the best talent available to work for their organizations. The proposed rule will ensure that the application of the ADEA does not discourage employers from providing, or continuing to provide, health benefits to their retirees who otherwise would have to obtain such coverage in the private individual marketplace at significant personal expense. The Commission believes that it is in the best interest of both employers and employees for the Commission to pursue a policy that permits employers to offer these benefits to the greatest extent possible. It is not anticipated that the proposal will result in increased costs.

Risks:

The proposed regulatory action will reduce the risks of liability for noncompliance with the statute by exempting certain employer practices from regulation. This proposal does not address risks to public safety or the environment.

Timetable:

Action	Date	FR Cite
NPRM	07/14/03	68 FR 41542
NPRM Comment Period End	09/12/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal, Local, State

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BILLING CODE 6570–01–S

GENERAL SERVICES ADMINISTRATION (GSA)

Statement of Regulatory and Deregulatory Priorities

The General Services Administration (GSA) establishes Governmentwide policy for construction and operation of buildings, procurement and distribution of supplies, travel and transportation, acquisition, electronic commerce, management of advisory committees, and utilization and disposal of real and personal property.

GSA's fiscal year 2004 regulatory priorities are to complete conversion of the Federal Property Management Regulations to the Federal Management Regulation (FMR) and to complete the rewrite of the Federal Travel Regulation (FTR).

GSA is writing the FMR and FTR so that its regulations are consistent and sensible and limit the regulatory burden placed on Government officials and the public. GSA has adopted a question and answer format to make them easier to read and understand, and non-regulatory guidance is being moved into other, less-formal publications such as customer service guides.

As necessary, GSA will prepare its regulations so that they address national health and security concerns, particularly those created as a result of the events of September 11, 2001.

BILLING CODE 6820-34-S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

Statement of Regulatory Priorities

The National Aeronautics and Space Administration (NASA) was established by the National Aeronautics and Space Act of 1958 (the Act), 42 United States Code (U.S.C.) 2451 et seq., which laid the foundation for NASA's mission. The Act authorizes NASA, among other things, to conduct space activities devoted to peaceful purposes for the benefit of humankind; to preserve the leadership of the United States in aeronautics and space science and technology; and to expand knowledge of the Earth and space. To carry out this mission, NASA is authorized to conduct research for the solution of problems of flight within and outside the Earth's atmosphere; to develop, construct, test, and operate aeronautical and space vehicles for research purposes; to operate space transportation systems, including the Space Shuttle and the International Space Station; and to perform such other activities as may be required for the exploration of space. NASA conducts activities required for the exploration of space with human-tended, robotic, and expendable vehicles and arranges for the most effective utilization of the scientific and engineering resources of the United States with other nations engaged in aeronautical and space activities for peaceful purposes.

NASA's mission, as documented in its 2003 Strategic Plan, is to understand and protect our home planet, to explore the universe and search for life, and to inspire the generation of explorers as only NASA can.

Our mission is driven by science, exploration, and discovery, and it will be carried out with a firm commitment to fiscal responsibility. We will study climate change and the natural and human-induced hazards to Earth's ecosystem. We will help to counter the threat of international terrorism by developing technologies that can improve the security and safety of our air transportation system. We will lead the world into a new understanding of our planet, our solar system, and the universe around us, and in so doing, we will begin to understand whether life may have developed elsewhere in the cosmos.

The following are narrative descriptions of the most important regulations being planned for publication in the **Federal Register** during fiscal year (FY) 2004.

The Federal Acquisition Regulation (FAR), 48 CFR chapter 1, contains procurement regulations that apply to NASA and other Federal agencies. NASA implements and supplements FAR requirements through the NASA FAR Supplement (NFS), 48 CFR chapter 18. Major revisions are not expected in FY 2004, except to conform to FAR changes that are currently being promulgated in part 27, Patents, Data, and Copyrights, and part 47, Transportation. In a continuing effort to keep the NFS current with NASA initiatives and Federal procurement policy, minor revisions to the NFS will be published.

Re-issuance of the NFS is planned for FY 2004. As part of this re-issuance, the NFS is being reviewed to identify and remove from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet.

Additionally, changes to policy and guidance in the NFS and Grant and Cooperative Agreement Handbook (14 CFR 1260 and 14 CFR 1274) are being considered with the aim of introducing further competition in support of competitive sourcing activities at NASA.

To reduce the time and cost spent by the Agency and our industry partners in the procurement of basic and applied research under cooperative agreements, NASA is focusing on streamlining our processes. To go forward in this effort, policy and guidance associated with the generation and review of Cooperative Agreements Notices (CAN) is being considered. Additionally, changes necessary for implementing a common format for grant announcements and addressing other internal management practices will be made.

NASA is continuing consideration of revisions to the cross-waiver of liability regulation at 14 CFR part 1266. Specifically, NASA is considering implementation of the cross-waiver of liability provision of the intergovernmental agreement of the International Space Station and refinement and clarification of contractual cross-waivers in NASA agreements involving launch services.

BILLING CODE 7510-01-S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

Statement of Regulatory Priorities

Overview

The National Archives and Records Administration (NARA) issues regulations directed to other Federal agencies and to the public. Records management regulations directed to Federal agencies concern the proper management and disposition of Federal records. Through the Information Security Oversight Office (ISOO), NARA also issues Governmentwide regulations concerning information security classification and declassification programs. NARA regulations directed to the public address access to and use of our historically valuable holdings, including archives, donated historical materials, Nixon Presidential materials, and Presidential records. NARA also issues regulations relating to the National Historical Publications and Records Commission (NHPRC) grant programs.

NARA has three regulatory priorities for fiscal year 2004. The first, included in The Regulatory Plan, is to complete the review of our records management regulations in 36 CFR ch. XII, subchapter B, and begin revising and updating the regulations. We anticipate that we will be proposing a new organizational framework for the records management regulations to make them easier to use. This regulatory activity is part of a major NARA initiative to review and redesign our records management program that started in 2000.

The second priority is to complete the necessary actions relating to the review of our records center facility standards regulation in 36 CFR part 1228, subpart K. This regulation affects small businesses and is discussed in greater detail in the following section.

Our third priority regulatory action is completing the revision of our research room regulations and restrictions on access regulations in 36 CFR parts 1254 and 1256, including writing them in plain language. NARA's mission is to ensure ready access to the essential evidence that documents the rights of American citizens, the actions of Federal officials, and the national experience. NARA research rooms receive more than 270,000 research visits per year from individuals using our archival holdings. We also respond to nearly 477,000 inquiries about our archival holdings annually. The regulations in 36 parts 1254 and 1256 address how we serve these researchers.

NARA does not have any planned regulatory actions that relate to the events of September 11, 2001.

Regulations of Particular Concern to Small Businesses

NARA's regulation specifying facility standards for records storage facilities that house Federal records (RIN 3095-AA81) has been identified as being of particular concern to small businesses. The regulation went into effect in 2000 and was among the public reform nominations in the Office of Management and Budget's (OMB) 2002 Report to Congress on the Costs and Benefits of Regulations. OMB referred this regulation to NARA for evaluation. Because of the stated concerns that the regulation places a burden on small businesses, we are reviewing the regulation to identify possible modifications to the regulation that will still ensure protection of Federal records while reducing the burden on records centers that are small businesses. This review may result in further rulemaking activity.

NARA

PRERULE STAGE

132. FEDERAL RECORDS MANAGEMENT

Priority:

Other Significant

Legal Authority:

44 USC 2104(a); 44 USC ch 21; 44 USC ch 29; 44 USC ch 33

CFR Citation:

36 CFR 1220 to 1238

Legal Deadline:

None

Abstract:

As part of its initiative to redesign Federal records management, NARA is reviewing its records management regulations in 36 CFR ch. XII, subchapter B to ensure that the regulations are appropriate, effective, and clear. Where needed, we are developing updated regulations.

Statement of Need:

NARA's records management program was developed in the 20th century in a paper environment. This program has not kept up with a Federal Government that creates and uses most of its records electronically. Today's Federal records environment requires different management strategies and techniques.

The revision of NARA's records disposition policies, processes, and tools is identified in our Strategic Plan as a key Strategy to meet the primary goal that "essential evidence will be created, identified, appropriately scheduled, and managed for as long as needed." Without effective records management, records needed to document citizens rights, actions for which Federal officials are responsible, and the historical experience of our Nation will be at risk of loss, deterioration, or destruction.

Summary of Legal Basis:

Under the Federal Records Act, the Archivist of the United States is responsible for: 1)providing guidance and assistance to Federal agencies to ensure adequate and proper documentation of the policies and transactions of the Federal Government and ensuring proper records disposition (44 U.S.C. 2904); 2) approving the disposition of Federal records (44 U.S.C. ch. 33); and 3) preserving and making available the Federal records of continuing value that have been transferred to the National Archives of the United States (44 U.S.C. ch. 21).

The Federal Records Act also makes the heads of Federal agencies responsible for making and preserving records containing adequate and proper documentation of the organization, functions, policies, decisions procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. 3101). Agency heads must also have an active, continuing records management program (44 U.S.C. 3102).

Alternatives:

None.

Anticipated Cost and Benefits:

The revision of NARA's records disposition policies and processes, of which this regulation review is a part, is intended to reduce the burden on agencies and NARA in the area of records disposition activities.

Risks:

None.

Timetable:

Action	Date	FR Cite
Begin Review	09/17/02	
ANPRM	02/00/04	
ANPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

URL For More Information:

www.archives.gov/records_management/initiatives/strategic_directions.html

URL For Public Comments:

www.regulations.gov

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OFFICE OF PERSONNEL MANAGEMENT (OPM)

Statement of Regulatory Priorities

The Office of Personnel Management (OPM) is the human resources (HR) and personnel manager for the President and the Federal Government. The primary focus of OPM's regulatory efforts in the coming year will continue to be the modernization and improvement of HR management to support the President's goal of creating a Government that is citizen-centered, results-oriented and market-based. To this end, OPM's primary regulatory objective is to implement improvements to HR management that will enable the Federal Government to recruit, manage, and retain the high quality, diverse workforce that departments and agencies require to carry out their respective missions.

The President's Management Agenda recognizes the critical role that human resources management must play in reforming Government by identifying the Strategic Management of Human Capital as the first of its five core Governmentwide initiatives. OPM is the managing partner on this Presidential Initiative and has aggressively implemented a program to assist other agencies in achieving success in this area through aligning human resources management practices with agency missions and objectives. OPM will implement this initiative by way of regulation as necessary and appropriate during the coming year.

Department of Homeland Security

The Homeland Security Act (HSA) authorized the creation of the Department of Homeland Security (DHS) through the combination of components of 22 other departments and agencies. In addition, the HSA granted the President flexibility in the management of the Department's human resources that are directly engaged in critical security functions. OPM has been working with DHS to design a personnel system that incorporates the HR flexibilities required to protect national security and to identify and address regulatory changes that will create an HR system that is responsive to the critical needs of the Department. Given the urgent mission of DHS, it is certain that this regulatory activity will continue to be a priority for OPM in the coming year.

Compensation Reform

OPM continues to study compensation reform and to gather information from stakeholders following the publication of OPM Director Kay Coles James' white paper on Federal compensation reform: A Fresh Start for Federal Pay: The Case for Modernization. In addition, a proposal to establish a $500 million Human Capital Performance Fund (HCPF) was included in the President's budget for fiscal year 2004. Pending final legislative action, OPM will be prepared to promulgate regulations to implement its provisions. In addition, because compensation reform is a necessary element of improving the management of human capital—a central goal of the President's Management Agenda—OPM anticipates making promulgation of compensation reform regulations a priority in 2004.

e-Government

OPM has been designated as the managing partner on 5 of the 24 e-Government initiatives in the President's Management Agenda. Specifically, OPM is the managing partner for Recruitment One Stop, e-Clearance, e-Training, e-Payroll, and e-Enterprise HR Integration (e-EHRI). In addition, the Office of Management and Budget (OMB) have asked OPM to submit a business case for a sixth e-Government initiative, electronic Human Resource Information Systems (e-HRIS). OMB has indicated that OPM would be the managing partner of this initiative if OMB decides to go forward with the project. These initiatives will require promulgation of new or modified regulations.

No FEAR Regulations

In July, the President delegated responsibility for promulgating regulations pursuant to title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 to OPM. The provisions of title II relate to reimbursement of the judgment fund, notice and training for applicants and employees, and reporting requirements by agencies. Additionally, OPM will promulgate regulations for completing a comprehensive study on disciplinary actions and issuing guidance on best practices that agencies can adopt.

OPM will continue to improve the Federal Government's human resources management systems in order to preserve the merit-based civil service system, promote fairness and diversity, and provide a workforce that allows the Government to achieve results for the American taxpayer.

Human Resources Flexibilities

OPM implemented five new HR authorities enacted in the HSA through interim regulations. In February 2003, OPM published Voluntary Separation Incentive Program regulations that provided agencies with Governmentwide buyout authority. Upon OPM approval, agencies may use this authority as an important workforce reshaping tool in support of their human capital needs.

In June 2003, OPM provided agencies with four additional flexibilities. These new authorities provide agencies with: increased flexibility in assessing applicants using alternative (category-based) rating and selection procedures; the ability to select qualified candidates for competitive service positions using direct-hire procedures; authority to pay or reimburse academic degree training costs from appropriated or other available funds and increased flexibility in academic degree training to address agency-specific human capital objectives; and revised voluntary early retirement authority criteria to address reshaping and restructuring issues. The authorities provide agencies with additional tools to recruit, retain, and reshape their workforce to meet critical mission goals and objectives. These five interim regulations allowed agencies immediate access to these new tools while simultaneously soliciting comments on potential program improvements. OPM is currently reviewing the comments received and will publish final regulations during the coming year.

BILLING CODE 6325-44-S

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

PBGC Insurance Programs

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private defined benefit plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. The PBGC protects the pensions of nearly 44 million working men and women in about 32,000 private defined benefit plans, including about 1,700 multiemployer plans.

The PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by the PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, the PBGC must issue regulations interpreting such matters as the termination process, establishment of procedures for the payment of premiums, and assessment and collection of employer liability.

Single-employer Program

Under the single-employer program, the PBGC pays guaranteed and certain other pension benefits to participants and beneficiaries if their plan terminates with insufficient assets (distress and involuntary terminations). At the end of fiscal year 2002, the PBGC was trustee of about 3,100 plans and paid $1,537 million in benefits to about 362,000 people during 2002. Another 326,000 people will receive benefits when they retire in the future.

Most terminating single-employer plans terminate with sufficient assets to pay all benefits. The PBGC has administrative responsibility for these terminations (standard terminations), but its role is limited to seeing that proper procedures are followed and participants and beneficiaries receive their plan benefits.

The private defined benefit pension system has been under pressure for some time and has become a matter of public concern. In July 2003, the Administration proposed legislative changes to: (1) improve the accuracy of pension liability measurements by modifying the discount interest rate; (2) increase the transparency of pension plan information and make public pension underfunding information provided to PBGC for companies with over $50 million in underfunding; and (3) require immediate funding of accruals, benefit increases, and lump sum payments in certain situations involving a financially distressed company. The PBGC's guarantee limit would be fixed as of the date a plan sponsor files for bankruptcy. The Administration is exploring additional funding reforms to protect workers' retirement security.

Other Administration proposals before the Congress are: (1) reduced premiums for new plans and plans of small employers; (2) expansion of the Missing Participants program to terminated multiemployer plans and terminated defined contribution plans; (3) acceleration of benefit determinations in terminated underfunded single-employer plans by streamlining the valuation of recoveries on due and unpaid contributions and employer liability claims and simplifying benefit determinations for substantial owners; and (4) payment of interest on premium refunds.

Multiemployer Program

The multiemployer program (which covers about 9.5 million workers and retirees in about 1,700 insured plans) is funded and administered separately from the single-employer program and differs in several significant ways. The multiemployer program covers only collectively bargained plans involving more than one unrelated employer. The PBGC provides financial assistance (in the form of a repayable loan) to the plan if the plan is unable to pay benefits at the guaranteed level. Guaranteed benefits are less than single-employer guaranteed benefits.

Objectives and Priorities

PBGC regulatory objectives and priorities are developed in the context of the statutory purposes of title IV: (1) to encourage voluntary private pension plans, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) to maintain the premiums that support the insurance programs at the lowest possible levels consistent with carrying out the PBGC's statutory obligations (ERISA section 4002(a)).

The PBGC implements its statutory purposes by developing regulations designed: (1) to assure the security of the pension benefits of workers, retirees, and beneficiaries; (2) to improve services to participants; (3) to ensure that the statutory provisions designed to minimize losses for participants and PBGC in the event of plan termination are effectively implemented; (4) to encourage the establishment and maintenance of voluntary private pension plans; (5) to facilitate the collection of monies owed to plans and to the PBGC, while keeping the related costs and burdens as low as possible; and (6) to simplify the termination process.

Regulatory Priorities

The PBGC has focused on changes that would simplify the rules and reduce regulatory burden.

Relief for Plans and Sponsors Affected by the September 11, 2001, Terrorist Attacks

In response to the needs of covered plans and sponsors affected by the September 11, 2001, terrorist attacks, PBGC provided the following relief for plans in designated federal disaster areas and others affected by the disaster:

Waived penalties for late payment of PBGC premiums.

- Extended the deadlines for fully funded terminating plans to give notices to participants and the PBGC and to transfer to the PBGC payments for missing participants.
- Extended the deadline for issuing the notice to participants that certain underfunded plans are required to provide to inform participants of plan funding levels and limitations on PBGC guarantees.
- Extended the deadlines for reporting certain Reportable Events.
- Extended the deadline for requesting reconsideration or appealing PBGC determinations under the PBGC's administrative review regulation.
- Provided case-by-case relief in other cases.

Relief for Small Businesses

A large percentage of the plans insured by the PBGC are small or maintained by small employers. The PBGC takes the special needs and concerns of small entities into account in developing its regulatory policies. For example, in recent years, the PBGC made the following changes, which are very helpful to small plans and their sponsors:

- Extended the time limits for various actions required to terminate a fully funded single-employer plan in a standard termination.

- Simplified its premium forms by introducing a new "Form 1-EZ" for use by single-employer plans that are exempt from the PBGC's variable-rate premium.
- Extended the filing date for PBGC premiums to match the latest Form 5500 filing date.
- Reduced penalties for late premiums that are paid before the PBGC notifies the plan of the delinquency.
- *Other Regulatory Simplifications and Relief*
- PBGC has provided additional regulatory simplifications and relief. Specifically, the PBGC:
- Stopped the reduction of monthly benefits under its actuarial recoupment method once the nominal amount of the benefit overpayment is repaid.
- Provided participants with benefits valued up to $5,000 in PBGC-trusteed plans with the choice of receiving their benefit in the form of an annuity or a lump sum.
- Encouraged self-correction of premium underpayments by making it easier to qualify for safe-harbor penalty relief.
- Published a proposed penalty policy to provide guidance on assessment and review of penalties and on what constitutes "reasonable cause" for a penalty waiver.
- Simplified its valuation assumptions by adopting a single set of assumptions for allocation purposes.
- Decided to continue to calculate and publish its lump sum interest rates indefinitely and amended its regulations to make it easier for practitioners to refer to those rates.
- Amended its premium regulation to allow plan administrators to pay a prorated premium for a short plan year rather than paying a full year's premium and requesting a refund.
- Amended its premium regulation to simplify and narrow the definition of "participant" for PBGC premium purposes.
- Amended its benefit payments regulations to give participants more choices of annuity benefit forms, to clarify what it means to be able to "retire" under plan provisions for certain purposes under title IV of ERISA, and to add rules on who will get certain payments the PBGC owes to a participant at the time of death.
- Amended its administrative review regulation to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

In FY 2003, the PBGC issued a proposed rule that would: (1) remove requirements that might limit electronic filing with PBGC or electronic issuances to others; (2) simplify and consolidate PBGC's rules on filing and issuance methods, determining filing and issuance dates, and computing various periods of time for filings and issuances; and (3) provide rules for maintaining records by electronic means. (The PBGC implemented these changes in a final rule issued in early FY 2004.)

The PBGC is continuing to review its regulations to look for further simplification opportunities. The PBGC's regulatory plan for October 1, 2003, to September 30, 2004, consists of one significant regulatory action.

PBGC

PROPOSED RULE STAGE

133. ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS; VALUATION OF BENEFITS AND ASSETS

Priority:

Other Significant

Legal Authority:

29 USC 1302(b)(3); 29 USC 1341; 29 USC 1301(a); 29 USC 1344; 29 USC 1362

CFR Citation:

29 CFR 4044, subpart B

Legal Deadline:

None

Abstract:

The Pension Benefit Guaranty Corporation is considering amending its benefit valuation and asset allocation regulations by adopting more current mortality tables and otherwise simplifying and improving its valuation assumptions and methods.

Statement of Need:

The PBGC's regulations prescribe rules for valuing a terminating plan's benefits for several purposes, including (1) determining employer liability and (2) allocating assets to determine benefit entitlements. The PBGC's interest assumption for valuing benefits, when combined with the PBGC's mortality assumption, is intended to reflect the market price of single-premium, nonparticipating group annuity contracts for terminating plans. In developing its interest assumptions, the PBGC uses data from surveys conducted by the American Council of Life Insurers. The PBGC currently uses a mortality assumption based on the 1983 Group Annuity Mortality Table in its benefit valuation and asset allocation regulations (29 CFR parts 4044 and 4281).

In May 1995, the Society of Actuaries Group Annuity Valuation Table Task Force issued a report that recommends new mortality tables for a new Group Annuity Reserve Valuation Standard and a new Group Annuity Mortality Valuation Standard. In December 1996, the National Association of Insurance Commissioners adopted the new tables as models for determining reserve liabilities for group annuities. The PBGC is considering incorporating these tables into its regulations and making other modifications.

Summary of Legal Basis:

The PBGC has the authority to issue rules and regulations necessary to carry out the purposes of title IV of ERISA.

Alternatives:

Not yet determined.

Anticipated Cost and Benefits:

Cost estimates are not yet available. However, the PBGC expects that this regulation will not have a material effect on costs.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
ANPRM	03/19/97	62 FR 12982
ANPRM Comment Period End	05/19/97	
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required:

No

Government Levels Affected:

None

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BILLING CODE 7708–01–S

RAILROAD RETIREMENT BOARD (RRB)

Statement of Regulatory and Deregulatory Priorities

The Railroad Retirement Board (Board) administers a retirement program for railroad workers and their families under the Railroad Retirement Act of 1974 and an unemployment and sickness benefit program for railroad workers under the Railroad Unemployment Insurance Act. Regulations issued by the Board under these two statutes and certain Governmentwide statutes are contained in chapter II of title 20 of the Code of Federal Regulations.

The Board has been involved in a multiyear project to review, revise, and update its regulations. During this project, the Board has published final rules amending nearly all of its regulations. In addition, there are several regulations actively under consideration by the Board at this time. The Board's short-term plan is to publish final regulations to complete the total review and revision project undertaken previously. The agency has also initiated a systematic review of its regulations to assess the need for changes that may be required by the Railroad Retirement and Survivors' Improvement Act of 2001.

The regulations issued by the Railroad Retirement Board are designed to be informative and to assist the agency's constituents in the railroad industry with an understanding of the benefit systems administered by the Board. In promulgating regulations, the agency is mindful of the burdens that may be imposed on the public and crafts its regulations in such a way as to impose the least possible burden on the public. In addition, through regulation, the Board makes every effort to simplify and streamline administration of the programs it administers. We believe the Board's regulatory review program is consistent with the priorities and objectives of the Administration.

The Board has not implemented regulations related to the events of September 11, 2001, and is unlikely to do so. The agency does, however, follow the guidelines and regulations instituted by other Government agencies that have Homeland Security authority for establishing such regulations. Examples of those areas would be: Federal agency facility management and security, and computer security awareness.

It is highly unlikely that any regulations in the regulatory plan of this agency would be of particular concern to small businesses.

RRB

PROPOSED RULE STAGE

134. ELECTRONIC FILING OF APPLICATIONS AND CLAIMS FOR BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Priority:

Other Significant

Legal Authority:

45 USC 355; 45 USC 362(l)

CFR Citation:

20 CFR 321

Legal Deadline:

None

Abstract:

The Railroad Retirement Board amends its regulations to add a new part 321 to permit the electronic filing of applications and claims under the Railroad Unemployment Insurance Act via the Internet in accordance with the provisions of the Government Paperwork Elimination Act.

Statement of Need:

Sections 1701–1710 of the Government Paperwork Elimination Act, Public Law 205–277 (codified as 44 U.S.C. sec. 3504n), require Federal agencies to provide for the option of electronic maintenance, submission, or disclosure of information as a substitute for paper, when practicable. The addition of part 321 to the Board's regulations will provide our constituents with an option to electronically file applications and claims under the Railroad Unemployment Insurance Act via the Internet in accordance with the provisions of the Government Paperwork Elimination Act.

Summary of Legal Basis:

The general authority for the issuance of regulations under the Railroad Retirement Act (RRA) is provided for in section 7(b)(5) of the RRA (45 U.S.C. 231f(b)(5)); under the Railroad Unemployment Insurance Act (RUIA), the general authority for the issuance of regulations is found in section 5(a) (45 U.S.C. 355(a)) of the RUIA.

Alternatives:

None.

Anticipated Cost and Benefits:

While this regulation may result in modest savings in administrative costs due to the streamlining of procedures, the benefits are those extended to the agency's constituents by offering an alternative means to file for benefits.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/07/03	68 FR 63041
NPRM Comment Period End	01/06/04	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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RRB

FINAL RULE STAGE

135. APPLICATION FOR ANNUITY OR LUMP SUM

Priority:

Other Significant

Legal Authority:

45 USC 231d; 45 USC 231f

CFR Citation:

20 CFR 217.5; 20 CFR 217.6; 20 CFR 217.15 to 217.18

Legal Deadline:

None

Abstract:

The Railroad Retirement Board amends its regulations to permit the filing of applications for annuity or lump sum payment electronically via the Internet in accordance with the provisions of the Government Paperwork Elimination Act.

Statement of Need:

Sections 1701–1710 of the Government Paperwork Elimination Act, Public Law 205–277 (codified as 44 U.S.C. sec. 3504n), require Federal agencies to provide for the option of electronic maintenance, submission, or disclosure of information, when practicable, as a substitute for paper. The proposed changes to part 217 of the Board's regulations will permit the filing of applications under the Railroad Retirement Act electronically via the Internet.

Summary of Legal Basis:

The general authority for the issuance of regulations under the Railroad Retirement Act (RRA) is provided for in section 7(b)(5) of the RRA (45 U.S.C. 231f(b)(5)).

Alternatives:

None.

Anticipated Cost and Benefits:

While this amendment should result in modest savings in administrative costs due to the streamlining of procedures, the benefits are those extended to the agency's constituents who may file applications for benefits electronically via the Internet.

Risks:

None anticipated.

Timetable:

Action	Date	FR Cite
NPRM	12/18/02	67 FR 77448
NPRM Comment Period End	02/18/03	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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SMALL BUSINESS ADMINISTRATION (SBA)

Statement of Regulatory Priorities

Overview

The Small Business Administration (SBA) is America's small business resource. SBA's mission is to promote and deliver financial and business development programs to America's entrepreneurs in the most efficient and effective manner possible.

With a portfolio of guaranteed business and disaster loans, SBA is the Nation's largest single financial backer of small businesses. Through our financial assistance programs SBA seeks to serve small companies by facilitating access to capital and credit. The SBA also helps entrepreneurs to start and grow their businesses through its resource-partner programs.

SBA is committed to:

- Listening to small businesses to ensure SBA is meeting the needs of the small business community;
- Working with its financial partners to improve small business access to capital through SBA's loan and venture capital programs;
- Providing technical assistance and guidance through its entrepreneurial development partners 24 hours a day;
- Establishing new and strengthening existing public and private partnerships to encourage greater contracting and business opportunities for small businesses; and
- Measuring outcomes, such as revenue growth, job creation, and business longevity, to ensure SBA operates its programs in an efficient and effective manner.

SBA's regulatory priorities for the coming year will focus on strengthening SBA's management of its programs, and improving conditions for small business. All of SBA's rule concern small businesses and programs promoting small businesses.

SBA's Regulatory Plan

Small Business Lending Company Regulations

SBA is currently drafting proposed regulations that will strengthen the Agency's management and oversight of the Small Business Lending Company (SBLC) Program. SBA guarantees loans through approximately 7,000 lenders, of which 14 are SBLCs that are not otherwise regulated by Federal or State authorities. Further, consistent with congressional and Administration policy, certain SBA lenders are delegated authority to make credit decisions on loans guaranteed by SBA. At the present time, all of the SBLCs are preferred lenders with authority to make such credit decisions. The SBLCs hold approximately 20 percent of the outstanding loans guaranteed by SBA and are subject to safety and soundness examinations by SBA on a 12- to 24-month cycle. This rulemaking will clarify and strengthen the existing rules governing SBLCs in the areas of monitoring, oversight and enforcement, safe and sound operations, and compliance with SBA regulations.

Prime Contracting Assistance; Contract Bundling

SBA's regulations revise the definition of contract bundling to expressly include contracting bundling multiple award contract vehicles and task and delivery orders under such vehicles that were not currently addressed in existing regulations. The regulation requires procuring activities, well in advance of public notice, to coordinate their proposed acquisition strategies or plans contemplating award of a contract or order above specified dollar thresholds ($7 million for DOD, $5 million for NASA, DOE, and GSA, and $2 million for other civilian agencies) with agency Small Business Specialists (SBS). The SBS in turn, is required to notify the Office of Small and Disadvantaged Business Utilization (OSDBU) when those strategies include contract bundling that is unnecessary, unjustified, or not identified as such by the procuring activity. Activities are now required to provide bundling justification documentation to the agency OSDBU when the threshold for "substantial bundling" is met. In addition, the agencies' OSDBUs will perform certain oversight functions regarding bundled contracts. This regulation implements the recommendations of the Office of Management and Budget (OMB) in its report entitled "Contract Bundling, A strategy for Increasing Federal Contracting Opportunities for Small Businesses." It has the potential of supplying millions of dollars of additional contracting opportunities to small businesses.

Small Business Size Standard; Restructuring of Size Standards

SBA is drafting a proposed regulation to restructure small business size standards by reducing the number of different size standards levels. SBA has established size standards for each private sector by industry. Under the current structure, one of 37 different size standard levels has been established for 1,151 industries. Some users find the SBA's small business size standards complex and therefore difficult to understand and use for their purposes. Small businesses will benefit from a simpler set of size standards because they will find it easier to determine if they are a small business and they will be subject to fewer different size standards. Federal Government contracting officers and commercial lenders will benefit because a reduced number of size standard levels will be easier to administer in their contracting and loan activities.

SBA

PROPOSED RULE STAGE

136. SMALL BUSINESS LENDING COMPANIES REGULATIONS

Priority:

Other Significant

Legal Authority:

15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(b)

CFR Citation:

13 CFR 120.470

Legal Deadline:

None

Abstract:

This rulemaking would amend 13 CFR 120.470 to clarify and strengthen the rules regarding Small Business Lending Companies (SBLCs) monitoring and oversight for safety and soundness, compliance, and related areas.

Statement of Need:

Section 7(a) of the Small Business Act states that the Small Business Administration (SBA) may provide financing to small businesses "directly or in cooperation with banks or other financial institutions." Presently, SBA guarantees loans through approximately 7,000 lenders. Of these lenders, about 14 are Small Business Lending Companies (SBLCs) that are not otherwise regulated by Federal or State chartering, licensing, or similar regulatory control. SBA examines or audits these SBLCs periodically. Congressional and Administration policy to privatize SBA lending and levels in loan volume require that SBA increase its SBLC oversight. To that end, SBA will draft regulations that strengthen the Agency's management of the SBLC Program.

Summary of Legal Basis:

Not required by statute or court order.

Alternatives:

This rulemaking amends and expands SBA's existing regulations on the SBLC Program.

Anticipated Cost and Benefits:

This rulemaking is designed to strengthen SBA's regulations regarding the SBLC Program. Some additional costs associated with additional reporting by the SBLCs to the SBA is anticipated.

Risks:

This regulation poses no risks to the public health and safety or to the environment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required:

Undetermined

Small Entities Affected:

Businesses

Government Levels Affected:

None

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SBA

137. ● SMALL BUSINESS SIZE STANDARDS; RESTRUCTURING OF SIZE STANDARDS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

15 USC 632

CFR Citation:

13 CFR 121

Legal Deadline:

None

Abstract:

The SBA proposes to restructure its small business size standards by reducing the number of different size standards levels. This restructuring will simplify the identification of which businesses are small and the use of size standards in Federal small business programs.

Statement of Need:

Some users find the SBA's small business size standards complex and therefore difficult to understand and use for their purposes. This apparent complexity may also discourage some small businesses from participating in Federal Government small business programs. To address this concern, the SBA intends to restructure and simplify its size standards by reducing the overall number of different size standards levels.

Summary of Legal Basis:

The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. The Act also requires that small business definitions vary to reflect industry differences.

Alternatives:

The SBA considered establishing a single size standard for a broad grouping of industries, such as entire industry sectors or subsector. The SBA does not believe this is a practical alternative, because the characteristics of industries within a sector or subsector vary too widely to support one size standard.

Anticipated Cost and Benefits:

Costs to the Federal Government will be negligible. There will be savings to the Federal Government because of reduced administrative costs. Neither the costs nor the savings are quantifiable. Small businesses will benefit because they will find it easier to determine if they are a small business and they will be subject to fewer different size standards. Federal Government contracting officers and commercial lenders will benefit because size standards will be easier to administer in their contracting and loan activities.

Risks:

Simplification may affect some businesses' eligibility for Federal Government small business programs. The SBA believes that they will be few in number. Also, new, simplified size standards are at risk of being considered inappropriate. The SBA is addressing these issues in the development of its proposal.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required:

Yes

Government Levels Affected:

None

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BILLING CODE 8025-01-S

SOCIAL SECURITY ADMINISTRATION (SSA)

Statement of Regulatory Priorities

The Social Security Administration (SSA) administers the retirement, survivors', and disability insurance programs under title II of the Social Security Act (the Act) and the Supplemental Security Income (SSI) program under title XVI of the Act. Our regulations codify the requirements for eligibility and entitlement to benefits under the programs that we administer. Generally, SSA's regulations do not impose burdens on the private sector or on State or local governments.

Our 12 entries for The Regulatory Plan represent areas of major importance to the administration of the retirement, survivors', disability, and SSI benefit programs. Each individual initiative is described more fully after this Statement of Regulatory Priorities.

Serve the Public

Providing the best service possible to the public remains a principal objective of SSA. To that end, we have included in the Plan three initiatives to improve public service.

One is a final rule on Expansion of the Use of Video Teleconference Technology in Hearings Before Administrative Law Judges of the Social Security Administration. We expect that expanding the availability of this technology will improve service by providing faster access to a hearing. On February 03, 2003 (68 FR 5210), we published a final rule to do so, and also requested further comments from the public. We are preparing another final rule responding to the public comments we received.

Furthermore, we plan to revise our regulations to permit an Administrative Law Judge to incorporate into the written decision, when wholly favorable, the findings and reasons stated orally at a hearing, if they remain applicable. We believe this revision may reduce the time needed to issue wholly favorable decisions after a hearing.

In addition, we are including a proposed rule that would describe additional safeguards against inappropriate disclosure of personal information and set out special procedures concerning access to medical records.

Improve the Disability Process

As the continued improvement of the disability program is an area of vital interest to SSA, we have included on the Plan three final rules that address disability.

One final rule will update the medical listings used to evaluate digestive impairments. The revisions will ensure that the listings reflect advances in medical knowledge, treatment, and methods of evaluating these impairments.

Another final rule will provide for continued benefit payments to certain individuals who recover medically while participating in certain vocational rehabilitation programs.

A proposed rule would revise several areas of our regulations on the Ticket to Work program to improve the support of disabled individuals who want and need assistance to return to the workforce.

Improve Stewardship

SSA bears a responsibility to ensure we are effective stewards of the public trust placed in us. We are including in the Plan several regulatory initiatives designed to strengthen our stewardship and program integrity activities; some also reflect the goal to improve financial performance contained in the President's Management Agenda.

We plan to clarify our rules for assigning Social Security Numbers to add evidentiary requirements for foreign academic students classified "F-1" by the Bureau of Citizenship and Immigration Services.

For beneficiaries who are not able to manage their own benefits due to legal incompetence or medical infirmity, we must assure that benefits paid to representatives on their behalf are used properly. We are developing final rules that reflect provisions of various laws intended to strengthen our oversight of the representative payee program. We have also included rules that provide us with additional tools to strengthen the integrity of the Social Security and SSI programs.

The Debt Collection Improvement Act of 1996, as amended by the Foster Care Independence Act of 1999, provided SSA with new tools for our efforts in collecting debts, including the use of administrative wage garnishment. We are developing a final rule that will enable us to collect qualifying, delinquent title II and XVI debts owed by former beneficiaries who are currently employed in other-than-Federal employment. We are also developing a proposed rule on Federal salary offset to provide the same authority for similar debts owed by former beneficiaries who are currently employed by the Federal government.

Simplify the SSI Program

SSA is proposing two rules that would simplify our SSI regulations.

One proposal would modify three rules concerning what we consider as income or resources available to an applicant or recipient. We propose to no longer consider gifts of clothing as income when we decide whether a person can receive SSI benefits or when we compute the amount of benefits. We also propose to exclude, from our determination of resources, one automobile if it is used for transportation, without consideration of its value. Finally, we propose to no longer count household goods and personal effects as resources when we decide whether a person can receive SSI benefits.

Another proposed rule would change our rules for deeming of income and resources from a stepparent to an eligible child when the child resides with a stepparent but not the natural or adoptive parent. We believe this change will simplify the rules concerning deeming under these circumstances.

SSA

PROPOSED RULE STAGE

138. PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION (711P)

Priority:

Other Significant

Legal Authority:

5 USC 552; 5 USC 552a; 42 USC 1306(a); 42 USC 902(a)(5)

CFR Citation:

20 CFR 401.30; 20 CFR 401.45; 20 CFR 401.55; 20 CFR 401.150; 20 CFR 401.180

Legal Deadline:

None

Abstract:

We propose to revise our privacy and disclosure rules to:

1. More fully describe the role and function of the Privacy Officer;

2. Describe safeguards against inappropriate disclosure of personal information when individuals request information about themselves by

electronic means (e.g., through the Internet);

3. Conform to special procedures on an individual's access to medical records; and

4. Add a new section to grant direct access to a minor's medical records by the minor's parent or legal guardian acting on the minor's behalf.

Statement of Need:

These revised regulations are necessary to:

1. Provide the expanded regulatory support for the existing responsibilities and functions of the Privacy Officer as required by the Privacy Act and related Office of Management and Budget (OMB) guidelines;

2. Articulate the safeguards that ensure the appropriate procedures for access to and disclosure of personally identifiable information in the electronic environment;

3. Conform the regulations to our practice and systems of records, which set out special procedures under which individuals whose medical records may potentially present an adverse effect may have access to this information; and

4. Conform to the special procedures in our systems of records for access to medical records.

Summary of Legal Basis:

Revisions are needed to incorporate into the regulations special procedures for providing individuals access to their medical records to ensure the ultimate disclosure of the records to the requesting individual, as set out in our systems of records.

Alternatives:

None.

Anticipated Cost and Benefits:

1. Revised role of Privacy Officer:

Cost—None.

Benefit—Increased public awareness of the privacy officer's role and responsibility in protecting the privacy and disclosure of the information SSA collects and maintains; general oversight to the Agency on privacy and disclosure activities.

2. Description of safeguards against inappropriate disclosure of personal information by electronic means:

Cost—None.

Benefit—Increase public awareness of the safeguards employed by SSA to maintain the security, confidentiality, and integrity of the information we collect and maintain.

3. Conform to special procedures on an individual's access to medical records; and

4. Add a new section to grant direct access to a minor's medical records by the minor's parent or legal guardian acting on the minor's behalf:

Cost—None.

Benefit—Regulatory guidelines will facilitate access for individuals whose medical records may have adverse effects.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

139. FEDERAL SALARY OFFSET (WITHHOLDING A PORTION OF A FEDERAL EMPLOYEE'S SALARY TO COLLECT A DELINQUENT DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (721P)

Priority:

Other Significant

Legal Authority:

42 USC 404; 42 USC 405; 42 USC 902; 42 USC 1383; 5 USC 5514

CFR Citation:

20 CFR 422

Legal Deadline:

None

Abstract:

This initiative would enable the Social Security Administration (SSA) to collect from Federal salaries qualifying, delinquent title II and title XVI overpayments debts and administrative debts owed by individuals who are currently Federal employees. The debt collection would be accomplished by the partial reduction of the employee's disposable salary.

Statement of Need:

This regulation is required by 5 U.S.C. 5514(b) and by regulations of the Department of the Treasury (Treasury) and the Office of Personnel Management (OPM) in order for SSA to participate in the Federal Salary Offset program. Treasury's regulation is 31 CFR 285.7; OPM's regulation is 5 CFR 550.1104.

Summary of Legal Basis:

SSA's use of the Federal Salary Offset program is authorized by 42 U.S.C. 404(f), 42 U.S.C. and 5 U.S.C. 5514.

Alternatives:

None. SSA must have regulations, approved by OPM, in order to use Federal salary offset to collect debts owed by Federal employees. See 5 U.S.C. 5514(b) and 5 C.F.R. 550.1104.

Anticipated Cost and Benefits:

Undetermined at this time.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Federal

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SSA

140. REPRESENTATIVE PAYMENT UNDER TITLES II, VIII, AND XVI OF THE SOCIAL SECURITY ACT (949F)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

42 USC 401(j); 42 USC 902(a)(5); 43 USC 1383(a)(2); 42 USC 1383(d)(1); 42 USC 404(f); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 405(j); 42 USC 421; 42 USC 425; 42 USC 1007; 42 USC 1010

CFR Citation:

20 CFR 404.902; 20 CFR 404.2011; 20 CFR 404.2021; 20 CFR 404.2022; 20 CFR 404.2024; 20 CFR 404.2025; 20 CFR 404.2030; 20 CFR 404.2040(a); 20 CFR 404.2041; 20 CFR 404.2050; 20 CFR 404.2065; 20 CFR 416.611; 20 CFR 416.621; 20 CFR 416.622; 20 CFR 416.624; 20 CFR 416.625; 20 CFR 416.630; 20 CFR 416.635; 20 CFR 416.640(a); 20 CFR 416.641; 20 CFR 416.650; 20 CFR 416.665; 20 CFR 416.1402; 20 CFR 408.601; 20 CFR 408.610; 20 CFR 408.611; 20 CFR 408.615; 20 CFR 408.620; 20 CFR 408.621; 20 CFR 408.622; 20 CFR 408.624; 20 CFR 408.625; 20 CFR 408.630; 20 CFR 408.635; 20 CFR 408.640; 20 CFR 408.641; 20 CFR 408.645; 20 CFR 408.650; 20 CFR 408.655; 20 CFR 408.660; 20 CFR 408.665

Legal Deadline:

None

Abstract:

Effective stewardship of SSA programs requires mechanisms to assure that benefits are used to meet the needs of beneficiaries judged incapable of managing or directing someone else to manage their benefits. Congress determined that improvements to the representative payment procedures were needed to assure program integrity. These regulations are required to further our program integrity efforts.

Statement of Need:

These regulations, which reflect certain provisions of Public Law 101–508, 103–296, 104–121, 105–33, 106–169 and 106–170, modify existing representative payee procedures by: (1) requiring the Social Security Administration to do a more extensive investigation of representative payee applicants, generally limiting to 1 month the deferral or suspension of direct payment of benefits pending selection of a payee; (2) providing stricter standards in determining the fitness of representative payee applicants to manage benefit payments on behalf of beneficiaries; (3) requiring SSA to repay the beneficiary or an alternate payee, an amount equal to any misused funds resulting from SSA's negligent failure to investigate or monitor a representative payee; (4) granting certain payees the authority to collect a fee from beneficiaries; (5) changing how SSA treats persons with a drug addiction or an alcohol condition; and (6) requiring SSA to compile and maintain a centralized file of certain beneficiary and payee information.

Summary of Legal Basis:

These regulations implement section 5105 of Public Law 101–508, section 201 of Public Law 103–296, section 105 of Public Law 104–121, section 5525 of Public Law 105–33, section 251 and 1136 of Public Law 106–169, and section 401 of Public Law 106–70.

Alternatives:

None.

Anticipated Cost and Benefits:

Any costs associated with these regulations are reflected in the President's budget as part of legislative implementation. They are required to further our program integrity efforts.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	09/25/03	68 FR 55323
NPRM Comment Period End	11/24/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Governmental Jurisdictions, Organizations

Government Levels Affected:

Local, State

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SSA

141. ELIMINATION OF CLOTHING FROM THE DEFINITIONS OF INCOME AND IN–KIND SUPPORT AND MAINTENANCE, EXCLUSIONS OF ONE AUTOMOBILE, AND HOUSEHOLD GOODS AND PERSONAL EFFECTS UNDER SSI FROM RESOURCES (950P)

Priority:

Other Significant

Legal Authority:

Sec 1612 of the Social Security Act; Sec 1613(a)(2)(A) of the Social Security Act

CFR Citation:

20 CFR 416.1102 to 416.1104; 20 CFR 416.1121; 20 CFR 416.1124; 20 CFR 416.1130; 20 CFR 416.1133; 20 CFR 416.1140; 20 CFR 416.1142; 20 CFR 416.1144 to 416.1145; 20 CFR 416.1147 to 416.1149; 20 CFR 416.1157; 20 CFR 416.1210; 20 CFR 416.1216; 20 CFR 416.1218

Legal Deadline:

None

Abstract:

We propose to make the following changes to our rules on determining income and resources under the Supplemental Security Income (SSI) program.

1. We propose to remove clothing from the definition of income and from the definition of in-kind support and maintenance. As a result, we generally will not count gifts of clothing as income when we decide whether a person can receive SSI benefits or when we compute the amount of benefits.

2. We propose to simplify our rules on how we exclude an automobile in determining the resources of a SSI applicant or recipient. Specifically, we propose to exclude one automobile from resources if it is used for transportation, without consideration of its value.

3. We propose to change our resources counting rules in the SSI program by eliminating the dollar value limit for the exclusion of household goods and personal effects. As a result, we would not count household goods and personal effects as resources when we decide whether a person can receive SSI benefits.

Statement of Need:

These changes will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow, and thereby reducing the potential for payment errors. These changes also will make SSI financial eligibility rules more consistent with those of other means-tested Federal programs. The changes also will eliminate the need to ask claimants, beneficiaries, and other members of their households certain questions that have been viewed as intrusive. By no longer counting gifts of clothing as income, we will remove a disincentive for family members to help needy relatives.

Summary of Legal Basis:

None.

Alternatives:

Clothing—

None.

Automobile—

We considered revising the regulations to provide that SSA will assume that the recipient's automobile meets the use requirements for total exclusion of one automobile, absent evidence to the contrary. We did not select this option because it would not change the rule but only how we apply it. It does not go far enough in simplifying the SSI program. By revising the use requirements to exclude a car if it is used for transportation, thus replacing the four present specific transportation exclusion criteria, we will simplify the process.

We considered excluding the value of one automobile, regardless of use. We did not select this option because it would allow for the routine exclusion of an automobile even if it were not used for transportation. Such an approach would exclude an inoperable vehicle, a vehicle not being used at all, or a vehicle only used for recreation (such as a dune buggy). We maintain that it is unreasonable to exclude from resources the value of a vehicle that is not used for transportation.

We also considered increasing the excludable value of an automobile not meeting the use test to $11,000. We did not select this option because it would not simplify the SSI program.

Household Goods and Personal Effects—

Instead of excluding the entire value of household goods and personal effects, we considered raising the excludable limit to $10,000 from the current level of $2,000. We decided not to pursue this option because it would not provide any policy simplification. It would increase the amount excluded but it would not eliminate the need for the current time-consuming and complex procedures for determining the market value of an individual's household goods and personal effects.

Anticipated Cost and Benefits:

We estimate that the program costs and administrative costs for these regulatory changes would be negligible.

The proposed rules will simplify the administrative process of valuing noncash items. The change to the household goods and personal effects exclusion would simplify our rules and improve work efficiency by eliminating the need to inventory an individual's household goods and personal effects and determine their current market value. The proposed changes would also serve to make our rules less intrusive and more protective of the dignity of individuals seeking SSI benefits.

Risks:

These proposed changes would simplify complex SSI rules without disadvantaging SSI applicants or recipients or significantly increasing program or administrative costs.

Clothing—

There are no significant concerns.

Automobile—

Our experience shows that most SSI beneficiaries do not own expensive cars. Still, it is possible that a beneficiary may, under our proposal, own an automobile that is used for transportation (and therefore excluded) and that is worth a considerable amount of money.

Household Goods and Personal Effects—

Under the proposed change to the household goods and personal effects exclusion, we would continue to recognize that individuals applying for SSI may own items that have investment value and which may be quite valuable. Such items as gems, jewelry, and collectibles would still be considered countable resources and subject to the SSI resource limit. Thus, the proposed exclusion for household goods and personal effects would not create an unintended exclusion for items that have investment value.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

142. EVIDENCE REQUIREMENT FOR ASSIGNMENT OF SOCIAL SECURITY NUMBERS (SSNS); ASSIGNMENT OF SSNS TO FOREIGN STUDENTS (960P)

Priority:

Other Significant

Legal Authority:

42 USC 405

CFR Citation:

20 CFR 422.105; 20 CFR 422.107

Legal Deadline:

None

Abstract:

We propose to clarify our rules for assigning Social Security Numbers (SSNs) to foreign academic students in the Bureau of Citizenship and Immigration Services (BCIS, formerly the Immigration and Naturalization Service or INS) classification status F–1. Specifically, we propose to add additional evidentiary requirements for F–1 students who apply for SSNs. In addition to meeting SSA's requirement to provide evidence of age, identity, legal alien status, and work authorization, an F–1 student who does not have a valid BCIS-issued Employment Authorization Document (EAD) will be required to present evidence that on-campus employment has been secured before we will assign an SSN.

Statement of Need:

These revised regulations are necessary to further enhance the integrity of SSA's enumeration processes for assigning SSNs. By clarifying the evidence requirements for assignment of SSNs, we intend to reduce the opportunity for fraud through misuse and/or improper attainment of SSNs.

Summary of Legal Basis:

None.

Alternatives:

We considered just requiring schools to certify the number of on-campus jobs available (including as a subset those being held for F–1 students) and the number of F–1 students who want to work. However, we do not believe it adequately addresses our need to ensure that the individual student applicant for an SSN is working or has obtained a job before we will assign him or her an SSN. As such, this alternative would do little to achieve our objective in making the regulations changes, which is to reduce the opportunity for fraud through misuse and/or improper attainment of SSNs.

Anticipated Cost and Benefits:

The program costs associated with these revised regulations are negligible. Also, there are negligible administrative costs (i.e., less than 25 work years and less than $2 million). Benefits to SSA include enhancing the integrity of SSA's enumeration processes and helping to alleviate the proliferation of SSNs thereby resulting in fewer opportunities for SSN fraud, including the fraud associated with identity theft.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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RIN: 0960–AF87

SSA

143. AMENDMENTS TO THE TICKET TO WORK AND SELF–SUFFICIENCY PROGRAM (967P)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

42 USC 902(a)(5)

CFR Citation:

20 CFR 411.115; 20 CFR 411.125 to 411.140; 20 CFR 411.150 to 411.155; 20 CFR 411.171; 20 CFR 411.350 to 411.375; 20 CFR 411.385 to 411.395; 20 CFR 411.500 to 411.510; 20 CFR 411.525 to 411.565; 20 CFR 411.575 to 411.585

Legal Deadline:

None

Abstract:

These proposed rules are intended to amend the final rules implementing the Ticket to Work and Self-Sufficiency Program under section 1148 of the Social Security Act: to expand beneficiary eligibility to receive tickets under this program; to clarify the rules for assignment of a beneficiary ticket to a State vocational rehabilitation (VR) agency; to revise the rules for payment when a beneficiary receives services from both a State VR agency and an employment network (EN); and, consistent with the Commissioner's authority in section 1148(h) of the Act, to revise the rules for milestone and outcome payments to ENs, in order to increase the incentives for providers of employment and other support services to participate in this program.

Statement of Need:

This proposed regulatory action is necessary to respond to our experience and recommendations we have received since we began implementation of the Ticket to Work and Self-Sufficiency Program in February 2002, in order to increase the incentives for providers of employment services, vocational rehabilitation services, and other support services to participate in this program, and to expand the options available to beneficiaries with disabilities to obtain services to assist them to go to work and attain self-sufficiency.

Summary of Legal Basis:

None.

Alternatives:

We considered not revising the current regulations implementing the Ticket to Work program. However, we believe that these revisions to eligibility to receive a ticket, to clarify the rules for assignment of a ticket to a State VR agency, and to amend the rules for paying ENs are necessary to increase participation in the Ticket to Work program by providers of services and by beneficiaries with disabilities, in order to ensure that these beneficiaries can seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.

Anticipated Cost and Benefits:

We anticipated initial costs to increase due to up-front payments to ENs, and potential savings in later years as ENs are encouraged to serve additional beneficiaries and assist them to achieve self-sufficiency and reduce their dependency on cash benefit programs, including the Supplemental Security Income and Social Security Disability Insurance programs.

Risks:

At this time, we have not identified any risks associated with this proposal.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Undetermined

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SSA

144. • ELIMINATION OF PARENT–TO–CHILD DEEMING FOR INDIVIDUALS WHO NO LONGER MEET THE DEFINITION OF SPOUSE OF THE NATURAL OR ADOPTIVE PARENT (793P)

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority:

Sec 1614(f)(2) of the Social Security Act

CFR Citation:

20 CFR 416.1101; 20 CFR 416.1160; 20 CFR 416.1202; 20 CFR 416.1851; 20 CFR 416.1856

Legal Deadline:

None

Abstract:

We propose to change the Supplemental Security Income (SSI) parent-to-child deeming rules to no longer consider the income and resources of a stepparent when an eligible child resides in the household with a stepparent, but not his or her natural or adoptive parent. We will clarify that a stepparent no longer meets the definition of a "parent" when his or her spouse dies or leaves the household. Thus, an eligible child is not subject to deeming from a stepparent unless the child lives with both his or her natural or adoptive parent and the stepparent. We also propose changing the age at which an individual is no longer considered an ineligible child for purposes of deeming from 21 to 22. We believe this change will simplify our rules for both the public and our public contact employees.

Statement of Need:

The U.S. Court of Appeals, Second Circuit, ruled on a case involving a natural parent who abandoned the family home leaving her spouse with sole physical custody of an eligible child. Social Security Acquiescence Ruling 99–1(2) currently applies the Court's decision to the States of Connecticut, Vermont, and New York. The proposed rules will set uniform national policy with respect to this issue. Further, changing the definition of "ineligible child" for purposes of deeming will make uniform all regulatory definitions of "child" for SSI purposes. This will simplify our rules, making them less cumbersome to administer and easier for the public to understand and follow.

Summary of Legal Basis:

None.

Alternatives:

None.

Anticipated Cost and Benefits:

We estimate that the program costs and administrative costs for these regulatory changes would be negligible.

Risks:

These proposed rules will ensure our parent-to-child deeming rules are consistent with respect to our current regulatory definition of "parent" and "child." Policy will uniformly be set nationwide and will make our rules less difficult for the public to understand.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

FINAL RULE STAGE

145. ADMINISTRATIVE WAGE GARNISHMENT (TO REPAY A DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (724F)

Priority:

Other Significant

Legal Authority:

31 USC 3720D; 42 USC 405; 42 USC 902; 42 USC 1383

CFR Citation:

20 CFR 404.527; 20 CFR 404.903; 20 CFR 416.590; 20 CFR 416.1403; 20 CFR 422.401 to 422.403; 20 CFR 422.405; 20 CFR 422.410; 20 CFR 422.415; 20 CFR 422.420; 20 CFR 422.425; 20 CFR 422.430; 20 CFR 422.435; 20 CFR 422.440; 20 CFR 422.445

Legal Deadline:

None

Abstract:

This initiative will enable the Social Security Administration (SSA) to use administrative wage garnishment to collect administrative debts and to collect qualifying, delinquent titles II and XVI overpayment debts owed by individuals who are now employed in other than Federal employment. Administrative wage garnishment allows SSA to order an employer to deduct a percentage of the disposable pay earned by the worker/debtor and to send that amount to SSA as payment toward satisfying the delinquent debt. Administrative wage garnishment does not require a court judgment to impose the withholding order.

Statement of Need:

This regulation is necessary in order for SSA to use administrative wage garnishment as a tool in its debt collection process.

Summary of Legal Basis:

SSA is authorized to use administrative wage garnishment by 31 U.S.C. 3720D.

Alternatives:

None. Without regulatory authority SSA would be unable to proceed with administrative wage garnishment in a manner that addresses SSA's particular needs and processes. SSA must either adopt by reference the Treasury Department's regulations on wage garnishment hearings or prescribe SSA regulations regarding such hearings consistent with those Treasury Department regulations. See 31 CFR 285.11(f)(1).

Anticipated Cost and Benefits:

The administrative costs for the first year of implementation, including systems start-up costs, will be about 25 work years (WY) and $2 million in fiscal year (FY) 2003. Ongoing costs, once the regulation is fully implemented, are estimated to be about 65 WYs and $5 million per year, with higher costs of 80 WYs and $6 million for FY 2005 as older cases are cleared.

The estimated overpayment collections that we could receive for the title II program will be nothing in FY 2003, $25 million in FYs 2004 and 2005, and $15 million in FYs 2006 and 2007. The estimated collections for the title XVI program will be less than $2.5 million in FYs 2003 and 2004, and $10 million in FYs 2005, 2006, and 2007.

Risks:

At this time we have not identified any risks associated with the proposal.

Timetable:

Action	Date	FR Cite
NPRM	11/15/02	67 FR 69164
NPRM Comment Period End	01/14/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

Businesses, Organizations

Government Levels Affected:

Federal, Local, State, Tribal

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SSA

146. OASDI AND SSI; ADMINISTRATIVE REVIEW PROCESS; VIDEO TELECONFERENCING APPEARANCES BEFORE ADMINISTRATIVE LAW JUDGES OF THE SOCIAL SECURITY ADMINISTRATION (737F)

Priority:

Other Significant

Legal Authority:

42 USC 205(a); 42 USC 205(b); 42 USC 902(a)(5); 42 USC 1383

CFR Citation:

20 CFR 404.929; 20 CFR 404.936; 20 CFR 404.938; 20 CFR 404.950; 20 CFR 416.1429; 20 CFR 416.1436; 20 CFR 416.1438; 20 CFR 416.1450

Legal Deadline:

None

Abstract:

These final rules consider and respond to public comments received on final rules with request for comment that we published on February 3, 2003, to authorize us to conduct hearings before an Administrative Law Judge (ALJ) at which a party or parties to the hearing and/or a witness or witnesses may appear before the ALJ by video teleconference (VTC). The final rules with request for comment provide that if we schedule a hearing as one at which a party would appear by VTC, rather than in person, and the party objects to use of that procedure, we will reschedule the hearing as one at which the party may appear in person. We requested public comment on the final rules of February 3, 2003, because they made a significant change in a provision included in our notice of proposed rulemaking for these rules. Unlike the proposed rules, which would have given claimants the right to veto the use of VTC to take their own testimony and the testimony of expert witnesses, the final rules with request for comment give claimants the right to veto the use of VTC only for the purpose of taking their own testimony.

Statement of Need:

We received public comments on the final rules with request for comment. We must publish final rules to state our responses to the comments and our decision regarding whether to make changes in the final rules of February 3, 2003, which authorized our use of VTC to conduct appearances at ALJ hearings effective March 5, 2003.

Summary of Legal Basis:

None.

Alternatives:

None.

Anticipated Cost and Benefits:

Improved public service by providing faster access to a hearing.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	01/05/01	66 FR 1059
NPRM Comment Period End	03/06/01	
Final Rule with Request for Comment	02/03/03	68 FR 5210
Final Rule Effective	03/05/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

147. REVISED MEDICAL CRITERIA FOR EVALUATING IMPAIRMENTS OF THE DIGESTIVE SYSTEM (800F)

Priority:

Economically Significant. Major under 5 USC 801.

Legal Authority:

42 USC 405; 42 USC 1302; 42 USC 1383

CFR Citation:

20 CFR 404.1500, app 1

Legal Deadline:

None

Abstract:

Listings 5.00 and 105.00 of appendix 1 to the disability regulation at 20 CFR part 404, subpart P describe those digestive impairments that are considered severe enough to prevent a person from doing any gainful activity or, for a child claiming SSI payments under title XVI, that are considered severe enough to result in marked and severe functional limitations. Comprehensive revisions to these listings are being made to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medicine. The SSI program incorporates by reference and uses the same medical criteria as the old-age, survivors, and disability insurance program.

Statement of Need:

These regulations are necessary to update the digestive listings to reflect advances in medical knowledge, treatment, and methods of evaluating digestive impairments. They ensure that determinations of disability have a sound medical basis, that claimants receive equal treatment through the use of specific criteria, and that people who are disabled can be readily identified and awarded benefits if all other factors of entitlement or eligibility are met.

Summary of Legal Basis:

Administrative—not required by statute or court order.

Alternatives:

We considered not revising the listings, or making only minor technical changes and thus, continuing to use our current criteria. However, we believe that proposing these revisions is preferable because of the medical advances that have been made in treating and evaluating these types of impairments. The current listings are now over 15 years old. Medical advances in disability evaluation and treatment and our program experience make clear that the current listings do not reflect state-of-the-art medical knowledge and technology.

Since there would be no changes or only minor technical changes in using this alternative, the program and administrative costs would be the same as under the current rules. However, the program savings associated with the proposed rules would not be achieved.

Anticipated Cost and Benefits:

1. Title II

We estimate that, if finalized, these proposed rules would result in reduced program outlays resulting in the following savings (in millions of dollars) to the title II program ($295 million total in a 5-year period beginning in FY 2003).

2. Title XVI

We estimate that, if finalized, these proposed rules will result in reduced program outlays resulting in the following savings (in millions of dollars) to the SSI program ($85 million in a 5-year period beginning in FY 2003). (Note: 5-year total may not be equal to the sum of the annual totals due to rounding-out.)

(Note: Federal SSI payments due on October 1st in fiscal years 2006 and 2007 are included with payments for the prior fiscal year.)

Program Costs—

We do not expect any program costs to result from these proposed regulations.

Administrative Savings—

We do not expect any administrative savings to result from these proposed regulations.

Administrative Costs—

We expect that, if finalized, there will be some administrative costs associated with these proposed rules. If finalized, the proposed rules are expected to result in administrative costs less than 25 work years and less than $2 million per year.

Risks:

None.

Timetable:

Action	Date	FR Cite
NPRM	11/14/01	66 FR 57009
NPRM Comment Period End	01/14/02	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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SSA

148. CONTINUATION OF BENEFIT PAYMENT TO CERTAIN INDIVIDUALS WHO ARE PARTICIPATING IN A PROGRAM OF VOCATIONAL REHABILITATION SERVICES, EMPLOYMENT SERVICES, OR OTHER SUPPORT SERVICES (925F)

Priority:

Other Significant

Legal Authority:

42 USC 902(a)(5)

CFR Citation:

20 CFR 404.316; 20 CFR 404.327 (New); 20 CFR 404.328 (New); 20 CFR 404.337; 20 CFR 404.352; 20 CFR 404.902; 20 CFR 404.1586; 20 CFR 404.1596; 20 CFR 404.1597; 20 CFR 416.1321; 20 CFR 416.1331; 20 CFR 416.1338; 20 CFR 416.1402

Legal Deadline:

None

Abstract:

These final rules revise the regulations that provide for the continuation of benefit payments to certain individuals who recover medically while participating in a vocational rehabilitation program with a State vocational rehabilitation agency. We are revising these regulations because of statutory amendments, which extend eligibility for these continued benefit payments to certain individuals who recover medically while participating in another appropriate program of vocational rehabilitation services. These include individuals participating in the Ticket to Work and Self-Sufficiency Program or another program of vocational rehabilitation services, employment services, or other services approved by the Commissioner of Social Security.

Prior to November 1991, the Social Security Act provided for the continuation of payment of Social Security Disability Insurance and Supplemental Security Income disability and blindness benefits to individuals whose disability or blindness ended for medical reasons while they were participating in an approved State vocational rehabilitation program under title I of the Rehabilitation Act of 1973, if the Commissioner of Social Security determined that completion or continuation of the program would increase the likelihood of the individual's permanent removal from the disability benefits rolls. The Omnibus Budget Reconciliation Act of 1987 extended eligibility for continued benefits to individuals who receive Supplemental Security Income benefits based on blindness. (We implemented this change by issuing operating instructions effective April 1, 1988, the effective date of the amendment.) The Omnibus Budget Reconciliation Act of 1990 extended eligibility for continued benefits to individuals participating in an approved non-State vocational rehabilitation program at the time their disability ended. (We implemented this change by issuing operating instructions effective November 1991, the effective date of the amendments.) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires the redetermination of eligibility based on disability of individuals who attain age 18, based on the rules for determining initial eligibility for adults. These redeterminations are not continuing disability reviews, however, we are revising our regulations to provide that an individual whose disability has ended as a result of an age—18 redetermination may qualify for continued benefits based on participation in an approved program and increased likelihood of permanent removal from the disability rolls, if the individual meets all other requirements for continued benefits. The Ticket to Work and Work Incentives Improvement Act of 1999 authorizes continued benefits for a person who medically recovers while participating in a program consisting of the Ticket to Work program or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security, provided that the other requirements for benefit continuation are met.

These rules will explain what we mean by "an appropriate program of vocational rehabilitation services, employment services, or other support services." They will explain when an individual will be considered to be "participating" in the program. They will explain how we will determine whether an individual's completion of or continuation in an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that the individual will not have to return to the disability rolls. They will also explain that, for students age 18 through 21, "an appropriate program of vocational rehabilitation services, employment services, or other support services" includes an individualized education plan developed under polices and procedures approved by the Secretary of Education for assistance to States for the education of child under the Individuals with Disabilities Act, as amended.

Statement of Need:

These final regulations are necessary to conform our regulations to amendments enacted in the Ticket to Work and Work Incentives Improvement Act of 1999, as well as the amendments enacted in the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1987; and as the result of a provision enacted in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Summary of Legal Basis:

None.

Alternatives:

None.

Anticipated Cost and Benefits:

For the 5-year period from fiscal year 2004 through 2008, the estimated effects on Federal Supplemental Security Income payments for increased payments for children range from $4 million in fiscal year 2004 to $46 million in fiscal year 2008. The estimated impact on the Federal share of Medicaid payments during this 5-year period range from $3 million in fiscal year 2004 to $41 million in fiscal year 2008.

Risks:

At this time, we have not identified any risks associated with this proposal.

Timetable:

Action	Date	FR Cite
NPRM	08/01/03	68 FR 45180
NPRM Comment Period End	09/30/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

State

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SSA

149. ADMINISTRATIVE REVIEW PROCESS; INCORPORATION BY REFERENCE OF ORAL FINDINGS OF FACT AND RATIONALE IN WHOLLY FAVORABLE WRITTEN DECISIONS (964I)

Priority:

Other Significant

Legal Authority:

42 USC 405(a); 42 USC 405(b); 42 USC 902(a)(5); 42 USC 1383

CFR Citation:

20 CFR 404.953; 20 CFR 416.1453

Legal Deadline:

None

Abstract:

These interim final rules revise our regulations to provide that if an Administrative Law Judge (ALJ) enters a wholly favorable, oral decision into the record of a hearing, the ALJ may subsequently issue a written decision that gives the findings and reasons for the decision by incorporating by reference the findings and reasons stated orally at the hearing, provided that the ALJ does not determine subsequent to the hearing that the oral findings and reasons should be changed.

Statement of Need:

In fiscal year 2002, we announced a number of short-term actions to reduce delays in processing requests for ALJ hearings. One of these actions was to allow ALJs to issue oral decisions from the bench at the close of the hearing. We have found that ALJs are not frequently issuing oral decisions from the bench because of the duplication of work involved in issuing the oral decision and then subsequently issuing a written decision that fulfills existing provisions of our regulations requiring ALJs to issue written decisions that give the findings of fact and the reasons for the decision. We believe we can make it easier to use the bench decision procedure to reduce the time required to issue wholly favorable decisions by amending our regulations to explicitly authorize ALJs to issue wholly favorable written decisions that incorporate by reference the findings and rational stated orally in a bench decision.

Summary of Legal Basis:

None.

Alternatives:

Interpret our existing regulations to allow ALJs to issue written, wholly favorable decisions that give the findings of fact and rationale for the decision by incorporating by reference the findings and rationale stated in an oral decision that the ALJ entered into the record at the hearing.

Anticipated Cost and Benefits:

Improved public service by facilitating use of the oral decision procedure to reduce the time required to issue wholly favorable decisions.

Risks:

None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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FEDERAL HOUSING FINANCE BOARD (FHFB)

Statement of Regulatory and Deregulatory Priorities

The Federal Housing Finance Board (Finance Board) is an independent agency that is charged under the Federal Home Loan Bank Act (Bank Act) with supervising and regulating the Nation's Federal Home Loan Bank (Bank) System. The Bank System comprises 12 regional cooperative Banks that are owned by their respective member financial institutions. The Banks provide wholesale credit to members and certain nonmembers to be used for mortgage lending and related community lending activities. The Banks also acquire mortgage assets from members as a means of advancing their housing finance mission. The Bank System also includes the Office of Finance, which issues Bank System consolidated obligations. The Finance Board is required to prepare a regulatory plan pursuant to section 4 of Executive Order 12866. At this time, the Finance Board does not anticipate taking any significant regulatory or deregulatory actions during 2004 that would be required to be included in a regulatory plan.

The Finance Board's highest regulatory priorities during 2004 continue to be to ensure the safety and soundness of the Bank System and to ensure that the Banks fulfill their housing finance and community investment mission. In furtherance of these statutory mandates, the Finance Board expects to consider regulations that will:

- Revise the acquired member asset (AMA) regulation to place greater responsibility with each Bank to design and manage its AMA program, subject to ongoing supervisory review by the Finance Board;
- More clearly delineate the responsibilities and the accountability of the board of directors for governance of a Bank, thereby strengthening the role of the boards in the Banks' operations;
- Streamline the Finance Board's review of new business activities proposed by a Bank to more clearly focus the regulatory review process on ensuring that a new product, service, or activity will not endanger the continued safe and sound operation of the Bank;
- Streamline the community support requirements to eliminate unnecessary regulatory burden, while preserving the statutory intent of ensuring that members' access to long-term advances reflects such factors as their record of performance under the Community Reinvestment Act and their record of lending to first-time homebuyers;
- Improve the operations and efficiency of the Affordable Housing Program by more clearly delineating the Banks' responsibilities for program administration and for satisfying the statutory directive that the subsidy benefit very low-income, low-income, and moderate-income households;
- Improve public disclosure by the Banks including addressing the requirements of the Securities Exchange Act of 1934, as that Act is interpreted and applied by the SEC; and
- Develop, based on its analysis of recently solicited comments and other research, an appropriate regulatory response to possible renewed requests that a single financial institution be permitted to become a member of more than one Bank.

BILLING CODE 6725-01-S

FEDERAL MARITIME COMMISSION (FMC)

Statement of Regulatory and Deregulatory Priorities

The Federal Maritime Commission's (Commission) regulatory objectives are guided by the Agency's basic mission. The Commission's mission is to administer the shipping statutes as effectively as possible to provide an efficient, competitive, secure, market-driven, and nondiscriminatory ocean transportation system in an environment free of unfair foreign maritime trade practices and market-distorting activities. The Commission's regulations are designed to implement each of the statutes the Agency administers in a manner consistent with this mission and in a way that minimizes regulatory costs, fosters economic efficiencies, relies on the marketplace to determine industry growth, and promotes international harmony.

The Ocean Shipping Reform Act of 1998 (OSRA) continues to impact the Federal regulatory scheme regarding international ocean shipping. The legislation required new regulations, as well as the revision of many of the Commission's substantive regulations. One of the principal changes was the elimination of the requirement that carriers file tariffs with the Commission listing their rates and charges. Carriers are now required to publish their rates in private automated systems. The Commission continues to assess its regulations implementing this requirement, as well as other requirements of the new legislation.

Common carriers remain concerned as to the content requirements of agreements filed with the Commission. Carriers have expressed a desire for better delineation as to what matters do or do not have to be filed and have suggested that the Commission's rules should provide protections for confidential business information, provide maximum flexibility for carriers to modify cooperative arrangements, and include guidance tailored for different types of agreements. The Commission previously initiated an inquiry to solicit comments from the ocean transportation industry and the general public to assist the Commission in formulating new rules governing content requirements. This matter continues to be assessed and will be considered during calendar year 2003, along with current requirements applicable to agreement carriers' filing of operating data and minutes of meetings. The Commission also oversees the financial responsibility of passenger vessel operators to indemnify passengers and other persons in cases of death or injury, and to indemnify passengers for nonperformance of voyages. The Commission has been updating its nonperformance coverage requirements to correspond more closely with current industry conditions and, in calendar year 2003, will be assessing public comments on changes it previously proposed.

The principal objective or priority of the Agency's current regulatory plan will be to continue to assess major existing regulations for continuing need, burden on the regulated industry, and clarity. The Commission issued its 2-year study of OSRA in September 2001. It still is possible that findings and conclusions from that report could result in consideration of specific issues for rulemaking proposals.

The Commission's review of existing regulations exemplifies its objective to regulate fairly and effectively while imposing a minimum burden on the regulated entities, following the principles stated by the President in Executive Order 12866.

Description of the Most Significant Regulatory Actions

The Commission currently has no actions under consideration that constitute "significant regulatory actions" under the definition in Executive Order 12866.

BILLING CODE 6730-01-S

FEDERAL TRADE COMMISSION (FTC)

Statement of Regulatory Priorities

I. REGULATORY PRIORITIES

Background

The Federal Trade Commission (FTC or Commission) is an independent agency charged with protecting American consumers from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. The Commission strives to ensure that consumers benefit from a vigorously competitive marketplace. The Commission's work is rooted in a belief that free markets work—that competition among producers and information in the hands of consumers bring the best products at the lowest prices for consumers, spur efficiency and innovation, and strengthen the economy.

The Commission pursues its goal of promoting competition in the marketplace through two different, but complementary, approaches. First, for competition to thrive, curbing deception and fraud is critical. Through its consumer protection activities, the Commission seeks to ensure that consumers receive accurate, not false or misleading, information in the marketplace. At the same time, for consumers to have a choice of products and services at competitive prices and quality, the marketplace must be free from anticompetitive business practices. Thus, the second part of the Commission's basic mission—antitrust enforcement—is to prohibit anticompetitive mergers or other anticompetitive business practices without unduly interfering with the legitimate activities of businesses. These two complementary missions make the Commission unique insofar as it is the Nation's only Federal agency to be given this combination of statutory authority to protect consumers.

The Commission is, first and foremost, a law enforcement agency. It pursues its mandate primarily through case-by-case enforcement of the Federal Trade Commission Act and other statutes. The Commission, however, is also charged with the responsibility of issuing and enforcing regulations under a number of statutes. Pursuant to the FTC Act, for example, the Commission currently has in place thirteen trade regulation rules. The Commission also has adopted a number of voluntary industry guides. Most of the regulations and guides pertain to consumer protection matters, and are generally intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions.

Regulatory Actions Related to Events of September 11, 2001

On October 25, 2001, President Bush signed the USA PATRIOT Act of 2001, Pub. L. 107-56, 115 Stat. 272, which contains provisions that have a significant impact on the Telemarketing Sales Rule (TSR). The TSR, 16 CFR part 310, which was adopted pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (Telemarketing Act), 15 USC 6101-6108, requires telemarketers to disclose certain material information; prohibits misrepresentations; limits the times of day telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services. Sec. 1011 of the USA PATRIOT Act, also referred to as the Crimes Against Charitable Americans Act of 2001, 15 U.S.C. 6101 note, amends the Telemarketing Act to extend the coverage of the TSR to charitable fund raising conducted by for-profit telemarketers for, or on behalf of, charitable organizations.

After amending the Telemarketing Sales Rule (TSR), 16 CFR part 310, 68 Fed. Reg. 4580 (Jan. 29, 2003), to establish a national "do not call" registry, the Commission opened the registry on June 26, 2003. Consumers can register for free in two ways: online at DONOTCALL.GOV or by telephone at 1(888) 382-1222. As of October 1, 2003, it became illegal for most telemarketers to call a number listed on the registry. Also, the Commission issued additional amendments on July 31, 2003, imposing fees on entities accessing the "do not call" registry. *See* 68 FR 45134 (July 31, 2003). The rule changes require sellers to pay the annual fee for access to the national registry; impose an annual fee of $25 per area code, with the maximum annual fee of $7,375; allow access to up to five area codes for free; and set October 1, 2003, as the effective date for the "do-not-call" provisions of the amended TSR. To comply with the amended TSR's "do not call" provisions by this effective date, all covered sellers are required to access the registry for the first time between September 1 and September 30, 2003.

Industry Self-Regulation, Textile Leniency Policy and Compliance Partnerships With Industry

The Commission continues to be committed to protecting consumers by means that burden businesses the least. To that end, it has encouraged industry self-regulation, developed a corporate leniency policy for certain rule violations, and established compliance partnerships where appropriate.

The Commission has issued reports that encourage industry self-regulation in several areas. In the entertainment industry, the Commission has urged self-regulation for violent media products marketed to children. *See, e.g.,*Federal Trade Commission, Marketing Violent Entertainment to Children: A Twenty-One Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries (June 2002), http://www.ftc.gov/reports/violence/mvecrpt0206.pdf. The Commission also continues to encourage companies in the alcohol industry to engage in self-regulation to ensure that advertising for products containing alcohol is not directed at underage youths.

In addition, in the weight-loss product advertising area, the Commission has proposed a strengthened self-regulatory response from the industry and more media responsibility to address the widespread problem of blatantly false efficacy claims. Also, with respect to the Children's Online Privacy Protection Act (COPPA), the Commission has approved the safe harbor programs of three organizations whose self-regulatory guidelines and programs protect children's privacy to the same or greater extent as COPPA.

Recently, the Commission announced the Textile Corporate Leniency Policy Statement for minor and inadvertent violations of the Textile or Wool Rules that are self-reported by the company. 67 FR 71566 (Dec. 2, 2002). Generally, the purpose of the Textile Corporate Leniency Policy is to help increase overall compliance with the rules while also minimizing the burden on business of inadvertent labeling errors that are not likely to cause injury to consumers. Under this policy, the Commission announced the factors that staff will consider in allowing the mislabeled goods to be sold without relabeling. The policy follows the Commission's Civil Penalty Leniency Program for small businesses, but is not limited to small businesses or situations involving civil penalties.

The Commission has also engaged industry in compliance partnerships in at least two areas involving the funeral and franchise industries. Specifically, the Commission's Funeral Rule Offender Program (FROP), conducted in partnership with the National Association of Funeral Directors (NAFD), is designed to educate funeral home operators found in violation of the requirements of the Funeral Rule, 16 CFR part 453, so that they can meet the rule's disclosure requirements. Approximately 200 funeral homes have participated in the program since its inception in 1996. In addition, the Commission established the Franchise Rule Alternative Law Enforcement Program in partnership with the International Franchise Association (IFA), a nonprofit organization that represents both franchisors and franchisees. This program is designed to assist franchisors found to have a minor or technical violation of the Franchise Rule, 16 CFR part 436, in complying with the rule. (Violations involving fraud or other Section 5 violations are not candidates for referral to the program.) The IFA trains the franchisor how to comply with the rule and monitors its business for a period of years. Where appropriate, the program will offer franchisees the opportunity to mediate claims arising from the law violations. Since December 1998, eleven companies have agreed to participate in the program.

Ten-Year Review Program

In 1992, the Commission implemented a program to review its rules and guides regularly. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 USC 601 *et seq.*Under the Commission's program, however, rules have been reviewed on a ten-year schedule as resources permit. For many rules this has resulted in more frequent reviews than is generally required by section 610 of the Regulatory Flexibility Act. This program is also broader than the review contemplated under the Regulatory Flexibility Act, in that it provides the Commission with an ongoing systematic approach for seeking information about the costs and benefits of its rules and guides and whether there are changes that could minimize any adverse economic effects, not just a "significant economic impact upon a substantial number of small entities." The program's goal is to ensure that all of the Commission's rules and guides remain beneficial and in the public interest.

As part of its continuing ten-year plan, the Commission examines the effect of rules and guides on small businesses and on the marketplace in general. These reviews often lead to the revision or rescission of rules and guides to ensure that the Commission's consumer protection and competition goals are achieved efficiently and at the least cost to business. In a number of instances, the Commission has determined that existing rules and guides were no longer necessary nor in the public interest. As a result of the review program, the Commission has repealed 48 percent of its trade-regulation rules and 55 percent of its guides since 1992.

Calendar Year 2003 Reviews

In early 2004, the Commission plans to publish a Federal Register notice announcing which rules and guides it will begin to review that year. In publishing the regulatory review schedule each year, the Commission indicates that the tentative timetable may be modified in the future to incorporate new legislative rules or to respond to external factors, such as changes in the law, or other considerations. *See, e.g.,*68 FR 2465 (Jan. 17, 2003).

All of the new matters currently under review pertain to consumer protection and are intended to ensure that consumers receive the information necessary to evaluate competing products and make informed purchasing decisions. During 2003, the Commission announced its intention to begin the review of one rule regarding Rules and Regulations Under the Hobby Protection Act, 16 CFR part 304, two industry guides regarding Guides Concerning Use of Endorsements and Testimonials in Advertising, 16 CFR part 255, and Tire Advertising and Labeling Guides, 16 CFR part 228, and the Statement of General Policy or Interpretations Under the Fair Credit Reporting Act, 16 CFR part 600.

We discuss below some of the highlights of the actions already taken or that we propose to take.

Rules and Regulations Under the Hobby Protection Act: The Commission requested public comments on March 3, 2003, about the economic impact and benefits of the Rules and Regulations Under the Hobby Protection Act and whether changes in the relevant technologies—such as e-mail and the Internet—affect the Rule since it was issued. *See*68 FR 9856 (Mar. 3, 2003). After assessing public comments, staff expects to forward its recommendation to the Commission by the end of 2003.

Guides Concerning Use of Endorsements and Testimonials in Advertising: The staff expects to forward to the Commission its recommendation that the Commission issue a notice during late 2003 or early 2004, seeking public comment about, among other things, whether there is a continuing need for the Guides Concerning Use of Endorsements and Testimonials in Advertising and what changes, if any, should be made to the Guides to increase the benefits of the Guides.

Tire Advertising and Labeling Guides: The Commission issued a notice seeking public comment about, among other things, whether there is a continuing need for the Tire Advertising and Labeling Guides and what changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers. 68 FR 50984 (Aug. 25, 2003).

Statement of General Policy or Interpretations Under the Fair Credit Reporting Act: Staff plans to recommend that the Commission issue a notice requesting comments on the Statement of General Policy or Interpretations Under the Fair Credit Reporting Act in Spring 2004, or after the Congress amends the Fair Credit Reporting Act because part of the Act expires on December 31, 2003.

Ongoing Reviews

As part of the Commission's ten-year review program, in 2003 the Commission continued reviews of six rules. First, in the review of the R-Value Rule for home insulation, 16 CFR part 460, the Commission reviewed the comments received on the Advance Notice of Proposed Rulemaking (ANPRM) and issued a notice of Proposed Rulemaking (NPRM) which announced a number of proposed amendments to the rule. *See* 68 FR 41872 (July 15, 2003). After assessing the public comments, staff expects to forward its recommendation to the Commission regarding substantive amendments to the Rule by early 2004.

Second, with respect to the Premerger Notification and Report Form, in addition to the final rules issued by the Commission and described under Final Actions below, in late 2003, the staff anticipates forwarding its recommendation to the Commission to allow parties to file the premerger notification and report form electronically via the Internet. Staff also plans to forward its recommendation to the Commission in spring or summer 2004 concerning issuance of an NPRM to revise its treatment of non-corporate entities.

Third, in the review of the Franchise Rule, 16 CFR part 436, the Commission accepted comments on an NPRM with the text of a revised rule until December

21, 1999, and rebuttal comments until January 31, 2000. The proposal addresses issues that include: (1) changing the timing for making disclosures; (2) clarifying the application of the Rule to international franchise sales; (3) expanding the rule to require additional disclosures, including pending franchiser-initiated lawsuits involving the franchise relationship, franchiser use of gag clauses, and, in some instances, trademark specific franchisee associations; (4) permitting disclosures through electronic media, including the Internet; and (5) expanding the Rule's exemptions to address sophisticated investors. In June 2001, Bureau of Consumer Protection staff issued *Franchise and Business Opportunity Program Review 1993-2000: A Review of the Complaint Data, Law Enforcement and Consumer Education*.Staff expects to forward its report on the rulemaking to the Commission by early 2004.

Fourth, the Commission's review of the Pay-Per-Call Rule, 16 CFR part 308, is proceeding. The Commission has held workshops to discuss proposed amendments to this rule including provisions to combat telephone bill "cramming"—inserting unauthorized charges on consumers' phone bills—and other abuses in the sale of products and services that are billed to the telephone including voicemail, 900-number services, and other telephone based information and entertainment services. The most recent workshop focused on discussions of the use of 800 and other toll-free numbers to offer pay-per-call services, the scope of the Rule, the dispute resolution process, the requirements for a presubscription agreement, and the need for obtaining express authorization from consumers before placing charges on their telephone bills. Staff anticipates forwarding its recommendation to the Commission during the spring of 2004.

Fifth, the Commission's review of the Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Regulations), 16 CFR part 307, is proceeding. Issued to implement the requirements of the Comprehensive Smokeless Tobacco Health Education Act of 1986, the Smokeless Regulations govern the format and display of statutorily mandated health warnings on all packages and advertisements for smokeless tobacco. In fiscal year 2000, the Commission undertook its periodic review of the Smokeless Regulations to determine whether the Regulations continue to effectively meet the goals of the Act and to seek information concerning the Regulations' economic impact in order to decide whether they should be amended. Staff is currently assessing the public comments and anticipates forwarding its recommendations to the Commission during the winter of 2004.

Finally, the Commission began its regulatory review of certain aspects of the Funeral Industry Practices Rule (Funeral Rule or Rule), 16 CFR part 453, in 1999. The Funeral Rule, which became effective in 1984, and was amended in 1994, requires providers of funeral goods and services to give consumers itemized lists of funeral goods and services that not only state prices and descriptions, but also contain specific disclosures. The Rule enables consumers to select and purchase only the goods and services they want, except for those which may be required by law and a basic services fee. Also, funeral providers must seek authorization before performing some services, such as embalming. In addition to an assessment of the Rule's overall costs and benefits and continuing need for the Rule, the review will examine whether changes in the funeral industry warrant broadening the scope of the Rule to include non-traditional providers of funeral goods or services and revising or clarifying certain prohibitions in the Rule. *See*64 FR 24249 (May 5, 1999). In response to requests of industry members, the Commission determined to extend the comment period. A public workshop conference was subsequently held to explore issues raised in the comments submitted. Staff expects to forward its recommendation to the Commission early in 2005.

Final Actions

Since publication of the 2002 Regulatory Plan, the Commission has taken final actions on three rulemakings. After amending the Telemarketing Sales Rule (TSR), 16 CFR part 310 (68 FR 4580, Jan. 29, 2003), to establish a national "do not call" registry, the Commission opened the registry on June 26, 2003. Consumers can register for free in two ways: online at DONOTCALL.GOV or by telephone at 1(888) 382-1222. As of October 1, 2003, it became illegal for most telemarketers to call a number listed on the registry. Also, the Commission issued additional amendments on July 31, 2003, that imposed fees on entities accessing the "do not call" registry. *See*68 FR 45134 (July 31, 2003). The rule changes required sellers to pay the annual fee for access to the national registry; imposed an annual fee of $25 per area code, with the maximum annual fee of $7,375; allowed access to up to five area codes for free; and set October 1, 2003, as the effective date for the "do not call" provisions of the amended TSR. To comply with the amended TSR's "do not call" provisions by this effective date, all covered sellers were required to access the registry for the first time between September 1 and September 30, 2003.

For the Premerger Notification Rules and Report Form, the Commission announced final amendments to parts 801 and 803 of the interim rules on January 17, 2003. On February 1, 2001, the Commission published interim and proposed rules amending the Hart-Scott-Rodino Rules (HSR Rules) contained in 16 CFR parts 801, 802, and 803. The interim rules took effect upon publication and implemented amendments to section 7A of the Clayton Act, 66 FR 8679 (Feb. 1, 2001). The proposed rules set forth other changes improving and updating the HSR Rules. 66 FR 8723 (Feb. 1, 2001). This current action was in response to comments that had been received during the comment period for the interim final rules. The Commission also received other comments in response to the February 1, 2001, Federal Register notices that were not relevant to the changes promulgated by either the interim or proposed rules issued during 2001. These additional comments remain under consideration and may be addressed by future rulemaking.

For the Appliance Labeling Rule, the Commission granted a conditional exemption from certain EnergyGuide testing and labeling requirements on certain home appliances for the remainder of the calendar year of 2003 to allow manufacturers to use the new (J1) test procedure immediately instead of waiting until the beginning of 2004. *See*68 FR 36458 (June 18, 2003). The Commission also amended the Rule to require explanatory language on EnergyGuide labels for all models beginning January 1, 2004.

Summary

In both content and process, the FTC's ongoing and proposed regulatory actions are consistent with the President's priorities. The actions under consideration inform and protect consumers and reduce the regulatory burdens on businesses. The Commission will continue working toward these goals. The Commission's ten-year review program is patterned after provisions in the Regulatory Flexibility

Act and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's ten-year program also is consistent with section 5(a) of Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), which directs executive branch agencies to develop a plan to reevaluate periodically all of their significant existing regulations. In addition, the Telemarketing Sales Rule, 16 CFR part 310 (2003), is consistent with the President's Statement of Regulatory Philosophy and Principles, Executive Order 12866, section 1(a), which directs agencies to promulgate only such regulations as are, *inter alia*,required by law or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public.

As set forth in Executive Order 12866, the Commission continues to identify and weigh the costs and benefits of proposed actions and possible alternative actions, and to receive the broadest practicable array of comment from affected consumers, businesses, and the public at large. As stated above, since 1992 the Commission has repealed 48 percent of its trade regulation rules and 55 percent of its industry guides that existed in 1992 because they had ceased to serve a useful purpose. In sum, the Commission's regulatory actions are aimed at efficiently and fairly promoting the ability of "private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." Executive Order 12866, section 1.

II. REGULATORY ACTIONS

The Commission does not plan to propose any rules that would be a "significant regulatory action" under the definition in Executive Order 12866.

BILLING CODE 6750-01-S

NATIONAL INDIAN GAMING COMMISSION (NIGC)

Statement of Regulatory Priorities

The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC or the Commission). The stated purpose of the Commission is to regulate the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. It is the Commission's intention to provide regulation of Indian gaming to adequately shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players.

The regulatory priorities for the next fiscal year reflect the Commission's commitment to upholding the principles of IGRA. The gaming industry changes rapidly with advancements in machine technology. It is crucial for the vitality of Indian gaming that regulators have the ability to respond quickly to these changes. To that end, the Commission has decided that the development of technical standards for game classifications, gaming machines, and related gaming systems is an important initiative for the promotion and protection of tribal gaming.

Additionally, the Commission will be making technical amendments to the minimal internal control standards. These amendments will correct isolated problems that have been brought to the Commission's attention by tribal gaming operators and regulators.

The Commission has been innovative in using active outreach efforts to inform its generic policy development and its rulemaking efforts. For example, the Commission has had great success in using regional meetings, both formal and informal, with tribal governments to gather views on current and proposed Commission initiatives. The Commission anticipates that these consultations with regulated tribes will play an important role in the development of technical standards.

NIGC

PROPOSED RULE STAGE

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150. • TECHNICAL STANDARDS FOR GAME CLASSIFICATIONS, GAMING MACHINES, AND GAMING SYSTEMS

Priority:

Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates:

Undetermined

Legal Authority:

25 USC 2706

CFR Citation:

25 CFR 501

Legal Deadline:

None

Abstract:

It is necessary for the National Indian Gaming Commission (NIGC) to promulgate regulations establishing technical standards for game classifications because of the distinction between class II and class III gaming set forth in IGRA. Technical changes make it difficult for regulators to keep up with the gaming industry. By establishing technical standards, tribal gaming commissions, the primary regulators of tribal gaming, will more easily be able to distinguish between class II and class III machines. Further, it is necessary for the Commission to establish technical standards for the actual operation of gaming machines and systems and the equipment related to their operation.

Statement of Need:

Technical standards are needed to assure that regulators can determine game classifications and so that machine games are operated in a manner that ensures uniformity and integrity in tribal gaming.

Summary of Legal Basis:

It is the goal of the NIGC to provide regulation of Indian gaming to shield it from organized crime and other corrupting influences as well as assuring that gaming is conducted fairly and honestly. (25 U.S.C. 2702). The Commission is charged with the responsibility of monitoring gaming conducted on Indian lands. (25 U.S.C. 2706(b)(1)). IGRA expressly authorizes the Commission to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of the (Act)." (25 U.S.C. 2706(b)(10)). The Commission relies on these sections of the statute to authorize the promulgation of technical standards for game classifications and for gaming machines to ensure uniformity and integrity in tribal gaming.

Alternatives:

The Commission can either: (1) issue a rule establishing technical standards for game classifications and gaming machines, or (2) continue evaluating classifications on a case-by-case basis.

Anticipated Cost and Benefits:

The development of technical standards will reduce the cost of regulation to the Federal Government. Additionally, technical standards will aid tribal governments in the regulations of their gaming activities as well as prevent loss associated with defective or substandard gaming devices. The only anticipated cost will be to gaming machine manufacturers.

Risks:

There are no known risks to this regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Tribal

Federalism:

Undetermined

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Monday,
December 22, 2003

Part III

Department of Agriculture

Semiannual Regulatory Agenda

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitle A, Chs. I–VII, IX–XII, XIV–XVIII, XXI, XXIV–XXIX

9 CFR Chs. I–IV

36 CFR Ch. II

41 CFR Ch. 4

Semiannual Regulatory Agenda, Fall 2003

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Order 12866 "Regulatory Planning and Review." The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96–354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

For this edition of the USDA regulatory agenda, the most significant regulatory actions are included in part II of this issue of the Federal Register. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

FOR FURTHER INFORMATION CONTACT: For further information on any specific entry shown in this agenda, please contact the person listed for that action. Requests for copies of the agenda should include a self-addressed, stamped envelope and be directed to: Regulatory Agenda, OBPA, Office of the Secretary, Room 118–E, Jamie Whitten Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–1272.

Dated: October 23, 2003.

Geraldine Broadway,

Chief, Legislative and Regulatory Staff.

Agricultural Marketing Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
151	National Organic Program: Add Standards for the Organic Certification of Wild Captured Aquatic Animals (TM–01–08) **(Reg Plan Seq No. 1)**	0581–AB97

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Agricultural Marketing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
152	Changes in Fees for Federal Grading and Certification of Livestock for Chicago Mercantile Exchange Futures Deliveries	0581–AB66
153	Mango Promotion, Research, and Information Order (FV–01–707)	0581–AC05
154	Quality Systems Verification Program (LS–02–10)	0581–AC12
155	Exemption of Organic Producers From Research and Promotion/Marketing Order Assessment (PY–02–006 and FV–03–900–1)	0581–AC15
156	National Dairy Promotion and Research Program (DA–02–03) **(Reg Plan Seq No. 2)**	0581–AC16
157	Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading (PY–02–003)	0581–AC25
158	Plant Variety Protection Services (ST–02–02)	0581–AC31
159	Voluntary Federal Dairy Grading and Inspection Fees (DA–03–03)	0581–AC32
160	Voluntary Shell Egg Grading Regulation–Facilities and Equipment (PY–03–005)	0581–AC33

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Agricultural Marketing Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
161	Livestock Mandatory Reporting Program—Lamb Amendment (LS–01–08) **(Reg Plan Seq No. 3)**	0581–AB98
162	Removal of Cottonseed Chemist Licensing Program and Amendments to Regulations Pertaining to Commodity Testing Laboratories (ST–02–03)	0581–AC18
163	Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Fish, Perishable Agricultural Commodities, and Peanuts (LS–03–04) **(Reg Plan Seq No. 4)**	0581–AC26

Agricultural Marketing Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
164	Good Guidance Practices for the National Organic Program (TM–03–03)	0581–AC30

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Agricultural Marketing Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
165	Revision of Regulations Governing the Inspection and Grading Service of Manufactured or Processed Dairy Products (DA–00–08)	0581–AB93
166	National Organic Program: Add Standards for Mushroom, Apiculture, Greenhouse, and Hydroponic Production Systems and the Handling of Honey (TM–01–09)	0581–AB96
167	Flue-Cured Tobacco Advisory Committee: Amendment to Regulations (TB–02–14)	0581–AC11
168	Voluntary Federal Meat Grading and Certification Services (LS–02–06)	0581–AC13
169	User Fees for 2003 Crop Cotton Classification Services (CN–02–006)	0581–AC17
170	National Organic Program, Amendment to the National List of Allowed and Prohibited Substances	0581–AC19
171	PACA: Coating or Battering Fruits and Vegetables Does Not Alter Their Character (FV–02–369)	0581–AC21
172	USDA “Produced From” Grademark for Shell Eggs (PY–02–007)	0581–AC24
173	National Organic Program: Amendments to the National List (2nd list)	0581–AC27

Farm Service Agency—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
174	Amendments to the Standards for Approval of Warehouses for Commodity Credit Corporation Storage Contracts	0560–AE50
175	Selection of FSA State and County Committees	0560–AG90

Farm Service Agency—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
176	Elimination of 30-Day Past-Due Period for Farm Loan Program Borrowers	0560–AG50
177	2002 Farm Bill Regulations–Loan Eligibility With Prior Debt Forgiveness	0560–AG81

Farm Service Agency—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
178	Amendments to the Debt Settlement Policies and Procedures To Conform to the Debt Collection Improvement Act of 1996	0560–AF22
179	Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs	0560–AF60
180	Emergency Conservation Program	0560–AG26
181	Interest Assistance Program	0560–AG46
182	Ocean Freight Claims Administrative Appeal Process	0560–AG49
183	Tobacco Marketing Quota, Cards, Penalty Provisions, Recordkeeping and Reporting	0560–AG52
184	Rescheduling Guaranteed Loans With Balloon Payments, Clarification of Annual Analysis Requirements for Guaranteed Lenders, and Subordination Requirements	0560–AG53
185	Servicing Minor Farm Loan Program Loans	0560–AG67
186	2002 Farm Bill Regulations—Conservation Reserve Program	0560–AG74
187	2002 Farm Bill Regulations—Assistance for Livestock Producers	0560–AG76
188	2002 Farm Bill Regulations—Tree Assistance Program	0560–AG83
189	Revision of Indian Tribal Land Acquisition Program Loan Regulations	0560–AG87

Farm Service Agency—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
190	Clarification of Informal Appeals Procedures	0560–AG88
191	2003—Crop Marketing Quotas and Price Support Levels for Five Kinds of Tobacco	0560–AG92
192	Revisions to Direct Farm Loan Programs Appraisal Regulations	0560–AH01
193	Environmental Compliance and Related Concerns	0560–AH02
194	Outside Storage of Extra Long Staple Loan Cotton	0560–AH03

Farm Service Agency—Completed Actions

Sequence Number	Title	Regulation Identification Number
195	Deletion of FSA Regulations Regarding Colorado River Basin Salinity Control Program	0560–AE54
196	Prompt Disaster Set-Aside Consideration and Primary Loan Servicing	0560–AG56
197	2002—Crop Marketing Quotas and Price Support Levels for Five Kinds of Tobacco	0560–AG58
198	2002—Crop Marketing Quota and Price Support Level for Burley Tobacco	0560–AG59
199	2002—Crop Marketing Quota and Price Support Level for Flue-Cured Tobacco	0560–AG60
200	Producer Disqualification for Crop Insurance Fraud	0560–AG70
201	2002 Farm Bill Regulations–Bioenergy Program	0560–AG84
202	2002 Farm Bill Regulations–Income Limits	0560–AG86
203	Providing Farm Loans in a National Security Emergency	0560–AG89
204	2003—Crop Marketing Quota and Price Support Level for Flue-Cured Tobacco	0560–AG91
205	2003—Crop Marketing Quota and Price Support Level for Burley Tobacco	0560–AG93
206	Crop Insurance Linkage	0560–AG94
207	2003 Agricultural Assistance Act—Crop Disaster Program, Livestock Assistance Program, and Weather-Related Losses for Sugar Beets	0560–AG95
208	Cottonseed Payment Program	0560–AG97
209	Hurricane Assistance for Sugarcane Producers and Processors	0560–AG98
210	Technical Changes to Citizenship Definition and Loan Eligibility Regulations	0560–AG99
211	Sugar Beet Disaster Program	0560–AH04
212	Removal of Obsolete Regulations	0560–AH05
213	Purchase of Crop Insurance for Tobacco Price Support Eligibility	0560–AH06

Animal and Plant Health Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
214	Plum Pox Compensation	0579–AB19
215	Animal Welfare: Marine Mammals; Nonconsensus Language and Interactive Programs	0579–AB24
216	Chronic Wasting Disease in Elk and Deer; Interstate Movement Restrictions and Payment of Indemnity **(Reg Plan Seq No. 5)**	0579–AB35
217	Karnal Bunt Compensation	0579–AB45
218	Cost-Sharing for Animal and Plant Health Emergency Programs	0579–AB50
219	Trichinae Certification Program	0579–AB52
220	Methyl Bromide; Authorization as Official Quarantine Use	0579–AB54
221	Bovine Spongiform Encephalopathy: Minimal Risk Regions and Importation of Commodities **(Reg Plan Seq No. 6)**	0579–AB73

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Animal and Plant Health Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
222	Animal Welfare; Inspection, Licensing, and Procurement of Animals **(Section 610 Review)**	0579–AA94
223	Importation of Unmanufactured Wood Articles From Mexico	0579–AB02
224	Blood and Tissue Collection at Slaughtering Establishments	0579–AB13

Animal and Plant Health Inspection Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
225	Phytosanitary Certificates for Imported Fruits and Vegetables	0579–AB18
226	Bees and Related Articles **(Section 610 Review)**	0579–AB20
227	Veterinary Diagnostic User Fees—5-Year Plan for Fees **(Section 610 Review)**	0579–AB22
228	Foot-and-Mouth Disease; Payment of Indemnity **(Reg Plan Seq No. 7)**	0579–AB34
229	Infectious Salmon Anemia; Payment of Indemnity	0579–AB37
230	Animal Welfare; Policy on Training and Handling of Potentially Dangerous Animals	0579–AB39
231	Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity **(Section 610 Review)**	0579–AB42
232	Agricultural Bioterrorism Protection Act of 2002; Possession, Use, and Transfer of Biological Agents and Toxins **(Reg Plan Seq No. 8)**	0579–AB47
233	Importation of Solid Wood Packing Material; Adoption of International Standards	0579–AB48
234	Animal Welfare; Transportation of Animals on International Carriers	0579–AB51
235	Procedures for Reestablishing a Region as Free of a Disease	0579–AB53
236	Animal Welfare; Definition of Animal	0579–AB69

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Animal and Plant Health Inspection Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
237	Plant Pest Regulations; Update of Current Provisions **(Section 610 Review)**	0579–AA80
238	Importation of Fuji Variety Apples From the Republic of Korea	0579–AA93
239	Pseudorabies in Swine; Payment of Indemnity	0579–AB10
240	Importation Prohibitions Because of Bovine Spongiform Encephalopathy	0579–AB26
241	Animals Destroyed Because of Tuberculosis; Payment of Indemnity	0579–AB29
242	Importation of Milk and Milk Products From FMD Countries	0579–AB38
243	Risk Reduction Strategies for Potential BSE Pathways Involving Downer Cattle and Dead Stock of Cattle and Other Species	0579–AB43
244	Amend Regulations To Harmonize Our Import Requirements With Proposed National Tuberculosis Eradication Program	0579–AB44
245	Gypsy Moth; Interstate Movement of Regulated Articles **(Section 610 Review)**	0579–AB55

Animal and Plant Health Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
246	Importation of Unmanufactured Wood Articles; Solid Wood Packing Material	0579–AA99
247	Nursery Stock Regulations **(Completion of a Section 610 Review)**	0579–AB23
248	Salmonella Enteritidis Phage—Type 4; Remove Import Restrictions and Salmonella Enteritidis Serotype Enteritidis; Remove Regulations	0579–AB31
249	Low Pathogenic Avian Influenza; Payment of Indemnity	0579–AB46
250	Flag Smut Import Prohibitions on Wheat and Related Products	0579–AB49
251	Agricultural Inspection and AI User Fees Along the U.S./Canada Border	0579–AB70

Cooperative State Research, Education, and Extension Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
252	CSREES Agricultural Extension Formula Programs—Administrative Provisions	0524–AA26
253	CSREES Agricultural Research Formula Programs—Administrative Provisions	0524–AA27

Cooperative State Research, Education, and Extension Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
254	Matching Requirements for Formula Funds for Agricultural Research and Extension Activities at the 1890 Land-Grant Institutions and at the 1862 Land-Grant Institutions in Insular Areas	0524–AA25
255	CSREES Non–Formula Grant Programs–Administrative Provisions	0524–AA28

Rural Housing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
256	Civil Rights Compliance Requirements—1901–E to 1940–D	0575–AA83
257	National Flood Insurance Regulations	0575–AC07
258	Servicing Community Programs Loans and Grants	0575–AC12
259	Self-Help Technical Assistance Grants	0575–AC20
260	Community Facilities Direct Loan Program—Consolidate, Simplify, and Update Regulations	0575–AC27
261	Planning and Performing Construction and Other Development	0575–AC55
262	Environmental Policies and Procedures	0575–AC56

Rural Housing Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
263	Multi–Family Housing (MFH) Reinvention **(Reg Plan Seq No. 9)**	0575–AC13
264	Guaranteed Single–Family Housing	0575–AC18
265	Operating Assistance for Migrant Farmworker Projects	0575–AC24
266	Technical Assistance To Encourage the Development of Domestic and Migrant Farm Labor Housing	0575–AC25
267	Guaranteed Rural Rental Housing Program—Secondary Mortgage Market Participation	0575–AC28
268	Fire and Rescue and Other Community Facility Projects	0575–AC53
269	3550 Regulation	0575–AC54

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Rural Housing Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
270	Environmental Program	0575–AB98

Federal Crop Insurance Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
271	General Administrative Regulations; Subpart D; Application for Crop Insurance	0563–AB00
272	General Administrative Regulations; Movement of Business Among Insurance Providers	0563–AB71
273	General Administrative Regulations; Sanctions	0563–AB73
274	Common Crop Insurance Regulations; Nursery Crop Insurance Provisions	0563–AB80
275	General Administrative Regulations; Actual Production History (APH)	0563–AB83
276	General Administrative Regulations; Subpart L—Reinsurance Agreement–Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years	0563–AB86
277	General Administrative Regulations; Quality Assurance and Performance Measurement System for the Federal Crop Insurance Program	0563–AB88
278	Common Crop Insurance Regulations; Processing Tomato Crop Insurance Provisions	0563–AB90
279	Common Crop Insurance Regulations; Pecan Revenue Crop Insurance Provisions	0563–AB91

Federal Crop Insurance Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
280	General Administrative Regulations; Nonstandard Underwriting Classification System	0563–AB66
281	General Administrative Regulations; Premium Reductions; Payments of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-Controlling Entities	0563–AB70
282	Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions	0563–AB76
283	Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations; Basic Provisions	0563–AB81
284	General Administrative Regulations; Submission of Policies and Provisions of Policies and Rates of Premiums	0563–AB84
285	Common Crop Insurance Regulations	0563–AB87
286	Common Crop Insurance Regulations; Sunflower, Coarse Grains, Safflower, Dry Pea, Rice, and Dry Bean Crop Insurance Provisions	0563–AB89

Federal Crop Insurance Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
287	Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions and Wheat Winter Coverage Endorsement	0563–AB63
288	Common Crop Insurance Regulations; Basic Provisions and General Administrative Regulations, Subpart T, Regulations for Implementation	0563–AB85

Grain Inspection, Packers and Stockyards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
289	Livestock Purchase or Sale: Prohibit Nonreporting of Price	0580–AA65
290	Prohibition on Disguising Grain Quality	0580–AA77
291	Fees for Official Inspection and Official Weighing Services	0580–AA80
292	Process Verification Service and Associated Fees	0580–AA85

Grain Inspection, Packers and Stockyards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
293	Tolerances for Dividers	0580–AA57
294	Review Inspection Requirements	0580–AA58
295	Fees for Processed Commodity Analytical Services	0580–AA84

Grain Inspection, Packers and Stockyards Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
296	Swine Packer Marketing Contracts	0580–AA71
297	Exceptions to Geographic Areas for Official Agencies Under the USGSA	0580–AA76
298	Fees for Official Inspection and Weighing Services	0580–AA81
299	Fees for Rice Inspection Services	0580–AA82

Food and Nutrition Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
300	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions to WIC Food Packages **(Reg Plan Seq No. 10)**	0584–AD39

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food and Nutrition Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
301	Disqualified Recipient Reporting and Computer Matching Requirements That Affect the Food Stamp Program	0584–AB51
302	Commodity Supplemental Food Program (CSFP): Plain Language, Program Accountability, and Program Flexibility **(Reg Plan Seq No. 11)**	0584–AC84
303	Food Stamp Program: Administrative Cost Reimbursement	0584–AC86
304	Food Distribution Program on Indian Reservations: Resource Limits and Exclusions, Extended Certification Periods, and Transitional Benefits	0584–AD12
305	Child and Adult Care Food Program (CACFP): At-Risk Afterschool Suppers	0584–AD15
306	Food Stamp Program: Administrative Sanctions Imposed Against Violating Electronic Benefits Transfer (EBT) Stores	0584–AD18
307	Food Stamp Program: Simplification and State Flexibility **(Reg Plan Seq No. 12)**	0584–AD22
308	Food Stamp Program: Clarifications and Corrections to Recipient Claim Establishment and Collection Standards	0584–AD25
309	FSP: High Performance Bonuses **(Reg Plan Seq No. 13)**	0584–AD29
310	FSP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002 **(Reg Plan Seq No. 14)**	0584–AD30
311	FSP: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002 **(Reg Plan Seq No. 15)**	0584–AD32
312	Senior Farmers' Market Nutrition Program (SFMNP) **(Reg Plan Seq No. 16)**	0584–AD35
313	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Miscellaneous Vendor–Related Provisions	0584–AD36
314	FSP: Discretionary Quality Control Provisions of Title IV of Public Law 107–171 **(Reg Plan Seq No. 17)**	0584–AD37
315	National School Lunch Program (NSLP) Allowable Costs	0584–AD38
316	Child Nutrition Programs: National School Lunch Program: Serving Fruits and Vegetables as Afterschool Snacks	0584–AD40
317	WIC Farmers' Market Nutrition Program (FMNP): Funding Formula Rule	0584–AD41

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food and Nutrition Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
318	Special Supplemental Food Program for Women, Infants, and Children (WIC): Miscellaneous Provisions	0584–AB10
319	Child and Adult Care Food Program: Improving Management and Program Integrity **(Reg Plan Seq No. 18)**	0584–AC24
320	Food Stamp Program Regulatory Review: FSP Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer Systems	0584–AC37
321	National School Lunch Program: Reimbursement for Snacks in Afterschool Care Programs	0584–AC72
322	FSP: Civil Rights Data Collections	0584–AC75
323	Special Nutrition Programs: Disclosure of Children's Eligibility Information Under the Child Nutrition Programs	0584–AC95
324	Food Stamp Program: Vehicle and Maximum Excess Shelter Expense Deduction Provisions of Public Law 106–387 **(Reg Plan Seq No. 19)**	0584–AD13
325	Special Nutrition Programs: Uniform Federal Assistance Regulations; Nondiscretionary Technical Amendments	0584–AD16
326	Privacy Act: Revision of an Existing System of Records	0584–AD24
327	Afterschool Snacks Under the Child and Adult Care Food Program	0584–AD27
328	FSP: EBT and Retail Food Stores Provisions of the Farm Security and Rural Investment Act of 2002	0584–AD28
329	FSP: Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171 **(Reg Plan Seq No. 20)**	0584–AD31

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

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Food and Nutrition Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
330	Child and Adult Care Food Program: Implementing Legislative Reforms To Strengthen Program Integrity	0584–AC94

Food and Nutrition Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
331	WIC: Requirements for and Evaluation of WIC Program Requests for Bids for Infant Formula Rebate Contracts	0584–AB52
332	FSP: Electronic Benefit Transfer (EBT) Systems Interoperability and Portability	0584–AC91
333	Improving Access to the Food Stamp Program for Persons With Limited English Proficiency	0584–AD06
334	Determining Eligibility for Free and Reduced Price Meals in Schools–Verification Reporting and Recordkeeping Requirements	0584–AD20
335	Food Stamp Program: Administrative Review Requirements–Food Retailers/Wholesalers	0584–AD23
336	Commodity Supplemental Food Program (CSFP)–Allocation of Administrative Funds	0584–AD33

Food Safety and Inspection Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
337	Nutrition Labeling of Meat and Poultry Products **(Section 610 Review)**	0583–AC95

Food Safety and Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
338	Performance Standards for Bacon **(Reg Plan Seq No. 21)**	0583–AC49
339	Egg and Egg Products Inspection Regulations **(Reg Plan Seq No. 22)**	0583–AC58
340	Labeling–Generic Approval and Regulation Consolidation	0583—AC59
341	Food Standards; General Principles and Food Standards Modernization	0583–AC72
342	Performance Standards for On-Line Antimicrobial Reprocessing of Pre-Chill Poultry Carcasses	0583–AC73
343	Petitions for Rulemaking	0583–AC81
344	Classes of Poultry Updating Poultry Class Standards	0583–AC83
345	Elimination of Chilling Time and Temperature Requirements for Ready-To-Cook Poultry **(Section 610 Review) (Reg Plan Seq No. 23)**	0583–AC87
346	Emergency Regulations To Prevent Meat Food and Meat Products That May Contain the BSE Agent From Entering Commerce **(Reg Plan Seq No. 24)**	0583–AC88
347	Addition of San Marino to the List of Countries Eligible To Export Meat and Meat Products to the United States	0583–AC91
348	Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems **(Reg Plan Seq No. 25)**	0583–AD00
349	Addition of Mexico to the List of Countries Eligible for the Importation of Slaughtered (Fresh) Poultry and Egg Products Into the United States	0583–AD01

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food Safety and Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
350	Beef or Pork With Barbecue Sauce; Revision of Standards	0583–AC09
351	Performance Standards for Ready-To-Eat Meat and Poultry Products **(Reg Plan Seq No. 26)**	0583–AC46
352	Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products **(Reg Plan Seq No. 27)**	0583–AC60
353	Agency Organization	0583–AC78

Food Safety and Inspection Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
354	Prohibition on the Use of Air-injection Stunners for the Slaughter of Cattle	0583–AD03

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food Safety and Inspection Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
355	Food Standards: Requirements for Substantive Standardized Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term	0583–AC82
356	Ante-Mortem and Post-Mortem Inspection of Livestock and Poultry	0583–AD02

Food Safety and Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
357	Transportation, Storage, and Other Handling of Potentially Hazardous Foods	0583–AC05
358	Ante-Mortem and Post-Mortem Inspection of Livestock and Poultry	0583–AC43
359	Requirements for Disposition and Disposal of Inspected Raw Meat and Poultry Products	0583–AC44
360	Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems	0583–AC51
361	Reworking of Meat and Poultry Carcasses Accidentally Contaminated During Evisceration	0583–AC53
362	Reform of Regulations on Imported Meat and Poultry Products	0583–AC56
363	Food Labeling; Nutrient Content Claims, Definition of the Term Healthy	0583–AC65
364	Elimination of Requirements for Total Quality Control Systems	0583–AC68
365	Incorporation of Food and Color Additives Into 21 CFR	0583–AC69
366	Poultry Inspection: Revision of Finished Product Standards With Respect to Ingesta	0583–AC77
367	Addition of Mexico to the List of Countries Eligible for the Importation of Slaughtered (Fresh) Poultry and Egg Products Into the United States	0583–AC92
368	Standards and Labeling Requirements for Mechanically Separated Species and Products in Which It Is Used **(Completion of a Section 610 Review)**	0583–AC93
369	Changes in Fees for Meat, Poultry, and Egg Products Inspection Service	0583–AC94
370	Use of Any Safe and Suitable Binder or Antimicrobial Agent in Meat and Poultry Products With Standards of Identity or Composition	0583–AC96
371	Addition of Australia and New Zealand to the List of Countries Eligible To Export Ratites and Ratite Products Into the United States	0583–AC97

Foreign Agricultural Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
372	Program To Provide Technical Assistance To Promote U.S. Agricultural Exports to Emerging Markets (Emerging Markets Program)	0551–AA62
373	New Provisions and Revisions to Sugar Reexport Programs Under 7 CFR 1530	0551–AA65

Foreign Agricultural Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
374	CCC Supplier Credit Guarantee Program	0551–AA30
375	Facility Guarantee Program	0551–AA35

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Foreign Agricultural Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
376	Program To Assist U.S. Producers in Developing Domestic Markets for Value-Added Wheat Gluten and Wheat Starch Products	0551–AA60
377	Technical Assistance for Specialty Crops	0551–AA63
378	McGovern-Dole International Food for Education and Child Nutrition Program	0551–AA64
379	Trade Adjustment Assistance for Farmers (TAA)	0551–AA66
380	Clarification of Certain Provisions Contained in the Export Sales Reporting Requirements	0551–AA67

Forest Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
381	Hydropower Applications	0596–AA47
382	Indian Allotments on National Forest System Lands	0596–AA52
383	Landownership Adjustments; Conveyance of Small Tracts	0596–AA79
384	Species Surplus to Domestic Manufacturing Needs	0596–AB27
385	Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands	0596–AB45
386	Law Enforcement Support Activities	0596–AB61
387	Noncompetitive Sale of Timber; Timber Substitution	0596–AB70
388	Sale and Disposal of National Forest System Timber; Timber Export and Substitution Restrictions	0596–AB75
389	Land Uses; Prohibitions; Paleontological Resources	0596–AB91
390	Forest Service Trails Accessibility Guidelines	0596–AB92
391	Forest Service Outdoor Recreation Accessibility Guidelines	0596–AB93
392	Objection Process; Land Management Planning (Interim Directive, Forest Service Manual, Chapter 1920)	0596–AB97
393	Locatable Minerals	0596–AB98
394	Sawtooth National Recreation Area–Private Lands; Increasing Residential Outbuilding Size	0596–AC00
395	National Forest System Land Management Planning Directives (Proposed Directives, Forest Service Manual (FSM) 1920 and Forest Service Handbook (FSH) 1909.12)	0596–AC02
396	Special Areas; Roadless Area Conservation; Applicability to National Forest System Lands in Alaska	0596–AC05
397	State Petitions For Roadless Management	0596–AC10
398	Use and Prohibitions of Motor Vehicles Off National Forest System Roads	0596–AC11
399	Grazing Permit Administration	0596–AC12
400	National Forest System Appeals and Litigation	0596–AC13
401	Proposed Revision of Timber Sale Contracts (FS–2400–6 and FS–2400–6T)	0596–AC14

Forest Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
402	Sale and Disposal of National Forest Timber; Cancellation of Timber Sale Contracts	0596–AB21
403	Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance With Special Use Authorizations	0596–AB36
404	Sale and Disposal of National Forest System Timber; Extension of Timber Sale Contracts To Permit Urgent Removal of Timber From Other Lands	0596–AB48
405	National Environmental Policy Act Documentation Needed for Certain Special Uses Permit Actions (Final Interim Directive to FSH 1909.15, Chapter 30)	0596–AB73
406	Land Uses; Special Uses Requiring Authorizations	0596–AB74
407	Special Forest Products and Forest Botanical Products	0596–AB81
408	Determining Fair Market Value for Recreation Residence Use Authorizations	0596–AB83
409	National Forest System Land Management Planning **(Reg Plan Seq No. 28)**	0596–AB86
410	Revisions to Road Management Policy (Forest Service Manual Chapter 7710)	0596–AB90
411	Forest Land Enhancement Program	0596–AB95
412	Community and Private Land Forest Fire Assistance Program	0596–AB96
413	National Forest System Land and Resource Management Planning; Extension of Compliance Deadline for Site-Specific Projects	0596–AC01
414	Stewardship End Result Contracting (Notice of Interim Guidelines)	0596–AC03

Forest Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
415	Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska	0596–AC04
416	Delegation of Authority To Approve Free Use by Individuals	0596–AC09

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Forest Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
417	Preference for Visitor Service; Alaska National Forest Conservation System Units	0596–AB57
418	National Environmental Policy Act Documentation Needed For Limited Timber Harvest on National Forest System Lands (Forest Service Handbook 1909.15, Chapter 30)	0596–AB88
419	Notice, Comment, and Appeal Procedures for Projects and Activities on National Forest System Lands	0596–AB89
420	National Environmental Policy Act Documentation Needed for Fire Management Activities (Interim Directive to Forest Service Handbook 1909.15, Chapter 30)	0596–AB99

Office of Chief Financial Officer—Completed Actions

Sequence Number	Title	Regulation Identification Number
421	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0505–AA11

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
422	Guidelines for Designating Biobased Products for Federal Reference	0503–AA26

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
423	General Nonprocurement Regulations	0503–AA21

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
424	Outreach and Assistance for Disadvantaged Farmers and Ranchers	0503–AA22
425	Adjudications Under Section 741	0503–AA24

Rural Business–Cooperative Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
426	Affirmative Fair Housing Marketing Plan	0570–AA24
427	Business and Industry Guaranteed Loan Program—Financing Cooperative Stock	0570–AA26

Rural Business–Cooperative Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
428	Rural Business Enterprise Grant Program	0570–AA28
429	Annual Renewal Fee	0570–AA34
430	Rural Business Investment Program	0570–AA35
431	Business and Industry Loan Program–Rewrite of Program Regulations	0570–AA41
432	National Security Emergency **(Reg Plan Seq No. 29)**	0570–AA48
433	Tangible Net Equity	0570–AA49
434	Renewable Energy Systems and Energy Efficiency Improvements **(Reg Plan Seq No. 30)**	0570–AA50

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Rural Business–Cooperative Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
435	Rural Economic Development Loan and Grant Program	0570–AA19
436	Rural Business Enterprise Grant Program—Farm Bill Changes	0570–AA36
437	B&I Guaranteed Loan Program Farm Bill Changes—Expanded Eligibility Criteria	0570–AA39
438	Value-Added Producer Grants and Agriculture Innovation Centers	0570–AA40
439	Intermediary Relending Program	0570–AA42
440	Fiscal Transfer Agent–Secondary Market Sales of Guaranteed Loans	0570–AA47

Rural Business–Cooperative Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
441	Allocation Formulas	0570–AA30
442	Business and Industry Guaranteed Loan Program—Domestic Lamb Industry Adjustment Assistance Program Set-Aside	0570–AA31

Rural Utilities Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
443	Telecommunications Standards and Specifications for Materials, Equipment, and Construction	0572–AB40
444	Servicing of Water Programs Loans and Grants	0572–AB59
445	Technical Assistance Grants	0572–AB75
446	Special Equipment Contract (Not Including Installation), RUS Form 398	0572–AB76
447	Accounting Requirements for RUS Telecommunications Borrowers	0572–AB77
448	Guarantees for Bonds and Notes Issued for Electrification Purposes	0572–AB83
449	Sale or Transfer of Capital Assets	0572–AB84
450	High Energy Cost Rural Community Grants **(Section 610 Review)**	0572–AB91
451	RUS Electric Distribution & G&T Borrowers' Requirements for Assuring the Homeland Security of the Rural Electric Infrastructure	0572–AB92

Rural Utilities Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
452	Electric Program Standard Contract Forms	0572–AB67
453	Telecommunications Program Specification	0572–AB69
454	General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Loans	0572–AB72
455	Seismic Safety	0572–AB74

Rural Utilities Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
456	Launching Our Communities Access to Local Television Act of 2000	0572–AB82
457	Exemption of Certain Borrowers From Controls	0572–AB85

Rural Utilities Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
458	Settlement of Debt	0572–AB61

Rural Utilities Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
459	Environmental Policies and Procedures	0572–AB73
460	Extensions of Payments of Principal and Interest	0572–AB79
461	Useful Life of Facility Determination	0572–AB80
462	Emergency and Imminent Community Water Assistance Grants	0572–AB90

Natural Resources Conservation Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
463	Emergency Watershed Protection Program	0578–AA30
464	Conservation Security Program **(Reg Plan Seq No. 31)**	0578–AA36
465	Grassland Reserve	0578–AA38

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Natural Resources Conservation Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
466	Wetland Categorical Minimal Effects Exemptions	0578–AA27
467	Technical Service Provider Assistance	0578–AA35

Natural Resources Conservation Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
468	Highly Erodible Land and Wetland Conservation	0578–AA17
469	NRCS Equitable Relief Procedures	0578–AA39

Natural Resources Conservation Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
470	Environmental Quality Incentives Program	0578–AA31
471	Agricultural Management Assistance Program	0578–AA32

Natural Resources Conservation Service—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
472	Farm and Ranch Lands Protection Program	0578–AA37

Office of Procurement and Property Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
473	Office of Procurement and Property Management (OPPM); Uniform Procedures for the Acquisition and Transfer of Excess Federal Property	0599–AA10

Department of Agriculture (USDA) Prerule Stage
Agricultural Marketing Service (AMS)

151. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR THE ORGANIC CERTIFICATION OF WILD CAPTURED AQUATIC ANIMALS (TM–01–08)

Regulatory Plan: This entry is Seq. No. 1 in part II of this issue of the **Federal Register**.

RIN: 0581–AB97

Department of Agriculture (USDA) Proposed Rule Stage
Agricultural Marketing Service (AMS)

152. CHANGES IN FEES FOR FEDERAL GRADING AND CERTIFICATION OF LIVESTOCK FOR CHICAGO MERCANTILE EXCHANGE FUTURES DELIVERIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 to 1627

CFR Citation: 7 CFR 53

Legal Deadline: None

Abstract: The purpose of this action is to amend the rate and procedures used to charge applicants for Federal grading and certification of livestock inspected for deliveries on commodity futures contracts.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: John E. Van Dyke,
Branch Chief, Department of
Agriculture, Agricultural Marketing
Service, Room 2619—South, L&S, 14th
& Independence Avenue SW,
Washington, DC 20250
Phone: 202 720–6231
Fax: 202 690–3732
Email: john.vandyke@usda.gov

RIN: 0581–AB66

153. MANGO PROMOTION, RESEARCH, AND INFORMATION ORDER (FV–01–707)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 7411 through 7425

CFR Citation: 7 CFR 1206

Legal Deadline: None

Abstract: Under the Mango Promotion, Research, and Information Order (Order), an industry board appointed by the Secretary of Agriculture will conduct a program of promotion, research, and information in order to increase consumption of mangos in the United States. Domestic handlers and importers will pay an assessment of one half cent per pound on the mangos they handle and import, respectively, to fund the program. The board will be supervised by USDA and pay a user fee to USDA to cover the cost of USDA oversight.

Timetable:

Action	Date	FR Cite
NPRM	08/26/02	67 FR 54907
NPRM Comment Period End	10/25/02	
Second NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Kathie Birdsell,
Research and Promotion Branch,
Department of Agriculture, Agricultural
Marketing Service, Room 2535—South,
Stop 0244, Fruit and Vegetable
Program, 14th and Independence
Avenue SW, Washington, DC
20250–0244
Phone: 888 720–9917
Fax: 202 205–2800

Email: kathie.birdsell@usda.gov

RIN: 0581–AC05

154. QUALITY SYSTEMS VERIFICATION PROGRAM (LS–02–10)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621

CFR Citation: 7 CFR 62

Legal Deadline: None

Abstract: The Agricultural Marketing Service is moving the responsibility for the administration of the Quality Systems Certification program from the Livestock and Seed Program's Meat Grading and Certification Branch to the Audit, Review, and Compliance Branch; establishing a new user-fee schedule for the program; expanding the scope of the program to include all agricultural commodities; and changing the name of the program to the Quality Systems Verification Program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: James L. Riva, Chief, Audit, Review, and Compliance Branch, Department of Agriculture, Agricultural Marketing Service, STOP 0252, Room 2627—South, USDA, AMS, LS, ARC Branch, 1400 Independence Avenue SW, Washington, DC 20250–2052
Phone: 202 720–1124
Fax: 202 690–3428
Email: james.riva@usda.gov

RIN: 0581–AC12

155. EXEMPTION OF ORGANIC PRODUCERS FROM RESEARCH AND PROMOTION/MARKETING ORDER ASSESSMENT (PY–02–006 AND FV–03–900–1)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–171, sec 10607

CFR Citation: 7 CFR 900; 7 CFR 1150; 7 CFR 1160; 7 CFR 1205; 7 CFR 1207; 7 CFR 1209; 7 CFR 1210; 7 CFR 1215; 7 CFR 1216; 7 CFR 1218; 7 CFR 1219; 7 CFR 1220; 7 CFR 1230; 7 CFR 1240; 7 CFR 1250; 7 CFR 1260; 7 CFR 1280; ...

Legal Deadline: Final, Statutory, May 13, 2003, Final.

Abstract: Under the 2002 Farm Bill, section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) was amended on May 13, 2002. The amendment exempts any person that produces and markets solely 100 percent organic products from paying assessments under a commodity promotion law. The FAIR Act governs all research and promotion programs and certain marketing order programs. Therefore, the Department of Agriculture is proposing amendments to the 16 research and promotion regulations and 28 applicable marketing order programs for which it has oversight. These amendments will be handled in two separate regulatory actions that will be published simultaneously.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Angela C. Snyder, Agricultural Marketing Specialist, Department of Agriculture, Agricultural Marketing Service, STOP 0256, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–4476
Fax: 202 720–5631

RIN: 0581–AC15

156. NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM (DA–02–03)

Regulatory Plan: This entry is Seq. No. 2 in part II of this issue of the **Federal Register**.

RIN: 0581–AC16

157. ADMINISTRATIVE REQUIREMENTS FOR VOLUNTARY SHELL EGG, POULTRY, AND RABBIT GRADING (PY–02–003)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 through 1627

CFR Citation: 7 CFR 56; 7 CFR 70

Legal Deadline: None

Abstract: The Agricultural Marketing Service is updating the administrative requirements for Federal voluntary egg, poultry, and rabbit grading. The regulations, in effect since the 1950s, contain some outdated terms, references, and phrases that need updating to make them current and clear.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Rex A. Barnes, Chief, Grading Branch, Department of Agriculture, Agricultural Marketing Service, Stop 0258, Poultry Programs, 14th & Independence Avenue SW, Washington, DC 20090–6456
Phone: 202 720–3271
Fax: 202 690–3165
Email: rex.barnes@usda.gov

RIN: 0581–AC25

158. • PLANT VARIETY PROTECTION SERVICES (ST–02–02)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 2321; 7 USC 2401

CFR Citation: 7 CFR 97

Legal Deadline: None

Abstract: This rule will establish a new fee schedule covering various administrative services that stakeholders are not currently charged for by the Plant Variety Protection (PVP) Office. PVP, as provided by the Agricultural Marketing Service is a voluntary, user-fee service, conducted under the authority of the PVP Act of 1970. The Act requires reasonable fees be collected from applicants for plant variety protection in order to cover program expenses. Program obligations and administrative costs have increased and user fees have been falling short of projections. Based on current level of activity, new service fees will generate approximately $169,000 of new revenue in fiscal year 2003.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Dr. Paul Zankowski, Commissioner, Plant Variety Protection

Office, Department of Agriculture,
Agricultural Marketing Service, 10301
Baltimore Blvd., Room 401, National
Agricultural Library, Beltsville, MD
20705
Phone: 301 504–5518

RIN: 0581–AC31

159. • VOLUNTARY FEDERAL DAIRY GRADING AND INSPECTION FEES (DA–03–03)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1621 through1627

CFR Citation: 7 CFR 58; 7 CFR 54.

Legal Deadline: None

Abstract: This rule would revise the regulations to increase the fees charged users of dairy inspection and grading services. The increased fees are necessary to recover the increases costs of Federal employee pay and location adjustment as well as increases in operational costs. Also the fee increase would provide a limited amount of funding to automate business practices to improve program efficiency and effectiveness. These changes would also increase the fees charged to applicants for the review of meat and poultry processing equipment.

Timetable:

Action	Date	FR Cite
NPRM	10/03/03	68 FR 57382
NPRM Comment Period End	11/03/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Duane R. Spomer,
Associate Deputy Administrator for
Standards and Grading, Department of
Agriculture, Agricultural Marketing
Service, Rm. 2746—South, Dairy
Programs, P.O. Box 96456, Washington,
DC 20090
Phone: 202 720–7473
Fax: 202 720–2643
Email: duane.spomer@usda.gov

RIN: 0581–AC32

160. • VOLUNTARY SHELL EGG GRADING REGULATION—FACILITIES AND EQUIPMENT (PY–03–005)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1621 through 1627

CFR Citation: 7 CFR 56

Legal Deadline: None

Abstract: The Agricultural Marketing Service (AMS) reviewed the Voluntary Grading of Shell Egg regulations and identified changes necessary to bring the regulations up-to-date. AMS is proposing to update and clarify the voluntary shell egg grading regulations for facilities required for grading service, the operating requirements of plants utilizing the grading service, and the methods by which the grading service is provided.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rex A. Barnes, Chief,
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Service, Stop 0258, Poultry Programs,
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Email: rex.barnes@usda.gov

RIN: 0581–AC33

Department of Agriculture (USDA) Final Rule Stage
Agricultural Marketing Service (AMS)

161. LIVESTOCK MANDATORY REPORTING PROGRAM—LAMB AMENDMENT (LS–01–08)

Regulatory Plan: This entry is Seq. No. 3 in part II of this issue of the **Federal Register**.

RIN: 0581–AB98

162. REMOVAL OF COTTONSEED CHEMIST LICENSING PROGRAM AND AMENDMENTS TO REGULATIONS PERTAINING TO COMMODITY TESTING LABORATORIES (ST–02–03)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1622 through 1624

CFR Citation: 7 CFR 91; 7 CFR 96

Legal Deadline: None

Abstract: The Agricultural Marketing Service (AMS) is removing the Cottonseed Chemist Licensing Program and the related official grading program. This rule will also update various commodity testing laboratory addresses and will adopt two sheilds that indicate that products have been tested and approved by AMS.

Timetable:

Action	Date	FR Cite
NPRM	08/13/03	68 FR 48322
NPRM Comment Period End	09/12/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James V. Falk,
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20250
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RIN: 0581–AC18

163. • MANDATORY COUNTRY OF ORIGIN LABELING OF BEEF, PORK, LAMB, FISH, PERISHABLE AGRICULTURAL COMMODITIES, AND PEANUTS (LS–03–04)

Regulatory Plan: This entry is Seq. No. 4 in part II of this issue of the **Federal Register**.

RIN: 0581–AC26

164. • GOOD GUIDANCE PRACTICES FOR THE NATIONAL ORGANIC PROGRAM (TM–03–03)

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 6501 through 6522

CFR Citation: 7 CFR 205

Legal Deadline: None

Abstract: This action amends the U.S. Department of Agriculture's National Organic Program (NOP) regulations by codifying policies and procedures for the development, issuance, and use of guidance documents. The intended effect of this regulation is to make the NOP's procedures for development, issuance, and use of guidance documents clear to the public.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Richard H. Mathews, Program Manager, Department of Agriculture, Agricultural Marketing Service, Rm. 2510—South, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720–3252
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Email: richard.mathews@usda.gov

RIN: 0581–AC30

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS)
Completed Actions

165. REVISION OF REGULATIONS GOVERNING THE INSPECTION AND GRADING SERVICE OF MANUFACTURED OR PROCESSED DAIRY PRODUCTS (DA–00–08)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 58

Completed:

Reason	Date	FR Cite
Withdrawn	08/25/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Duane R. Spomer
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RIN: 0581–AB93

166. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR MUSHROOM, APICULTURE, GREENHOUSE, AND HYDROPONIC PRODUCTION SYSTEMS AND THE HANDLING OF HONEY (TM–01–09)

Priority: Other Significant

CFR Citation: 7 CFR 205

Completed:

Reason	Date	FR Cite
Withdrawn	08/29/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Tribal, State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Richard H. Mathews
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RIN: 0581–AB96

167. FLUE-CURED TOBACCO ADVISORY COMMITTEE: AMENDMENT TO REGULATIONS (TB–02–14)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 29

Completed:

Reason	Date	FR Cite
Final Action	05/13/03	68 FR 25484

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John P. Duncan
Phone: 202 205–0567
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Email: john.duncan3@usda.gov

RIN: 0581–AC11

168. VOLUNTARY FEDERAL MEAT GRADING AND CERTIFICATION SERVICES (LS–02–06)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 54

Completed:

Reason	Date	FR Cite
Final Action	07/03/03	68 FR 39805

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Larry R. Meadows
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RIN: 0581–AC13

169. USER FEES FOR 2003 CROP COTTON CLASSIFICATION SERVICES (CN–02–006)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 28

Completed:

Reason	Date	FR Cite
Final Action	05/22/03	68 FR 27897
Final Action Effective	07/01/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Norma Randall McDill
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Fax: 202 690–1718
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RIN: 0581–AC17

170. NATIONAL ORGANIC PROGRAM, AMENDMENT TO THE NATIONAL LIST OF ALLOWED AND PROHIBITED SUBSTANCES

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 205

Completed:

Reason	Date	FR Cite
NPRM	04/16/03	68 FR 18556
Final Action	10/31/03	68 FR 61987
Final Action Effective	11/03/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Richard H. Mathews
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RIN: 0581–AC19

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171. PACA: COATING OR BATTERING FRUITS AND VEGETABLES DOES NOT ALTER THEIR CHARACTER (FV–02–369)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 46

Completed:

Reason	Date	FR Cite
Final Action	05/02/03	68 FR 23377

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James R. Frazier
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RIN: 0581–AC21

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172. USDA “PRODUCED FROM” GRADEMARK FOR SHELL EGGS (PY–02–007)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 56

Completed:

Reason	Date	FR Cite
Final Action	05/13/03	68 FR25484
Final Action Effective	06/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0581–AC24

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173. • NATIONAL ORGANIC PROGRAM: AMENDMENTS TO THE NATIONAL LIST (2ND LIST)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 6501 through 6522

CFR Citation: 7 CFR 205

Legal Deadline: None

Abstract: This rule would amend regulations pertaining to the National Organic Program National List to reflect recommendations submitted by the National Organic Standards Board. This rule would add five substances, along with any restrictive annotations.

Timetable:

Action	Date	FR Cite
NPRM	05/22/03	68 FR 27941
NPRM Comment Period End	06/02/03	
Final Action	11/03/03	68 FR 62215
Final Action Effective	11/04/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Richard H. Mathews, Program Manager, Department of Agriculture, Agricultural Marketing Service, Rm. 2510—South, 14th & Independence Avenue SW, Washington, DC 20250
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RIN: 0581–AC27

BILLING CODE 3410–05–S

Department of Agriculture (USDA)
Farm Service Agency (FSA)
Proposed Rule Stage

174. AMENDMENTS TO THE STANDARDS FOR APPROVAL OF WAREHOUSES FOR COMMODITY CREDIT CORPORATION STORAGE CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 714 et seq

CFR Citation: 7 CFR 1421; 7 CFR 1423; 7 CFR 1427

Legal Deadline: None

Abstract: This action will amend the regulations governing the standards that warehouse operators must meet to enter into storage contracts with CCC to allow additional financial institutions the ability to provide irrevocable letters of credit to CCC to satisfy deficiencies that some warehouse operators may have in meeting their required net worth and provide for the collection of fees to defray the costs incurred by CCC in conducting examinations of non-U.S. Warehouse Act facilities as a result of warehouse operators modifying existing contracts. Costs of about $50,000 will be incurred by CCC to defray examination costs. Separate rules will be promulgated for each CFR part amended.

Timetable:

Action	Date	FR Cite
Reinstated by Agency	10/08/03	
NPRM	11/20/03	68 FR 65412
NPRM Comment Period End	01/20/04	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250–0572
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RIN: 0560–AE50

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175. SELECTION OF FSA STATE AND COUNTY COMMITTEES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–171

CFR Citation: 7 CFR 7; 7 CFR 710

Legal Deadline: None

Abstract: This action will amend the regulations to implement the provisions of the 2002 Farm Bill relating to the establishment of FSA county, area, and local committees. The statute provides that committees shall have from three to five members, that they shall be representative of the producers in the area, and that the term of office shall not exceed 3 years. It also provides that the Secretary shall solicit nominations from organizations representing the interests of socially disadvantaged groups and, if determined necessary, promulgate uniform guidelines for conducting elections that will ensure fair representation of socially disadvantaged groups. The Secretary may also ensure inclusion of socially disadvantaged farmers by appointing one additional voting member to a committee. The rule will provide for election procedures, including nominations, opening of ballots and reporting of results.

Further, the rule will eliminate community committees from the existing regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 11 Agriculture, Forestry, Fishing, and Hunting

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250–0572
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RIN: 0560–AG90

Department of Agriculture (USDA) Farm Service Agency (FSA)

Final Rule Stage

176. ELIMINATION OF 30-DAY PAST-DUE PERIOD FOR FARM LOAN PROGRAM BORROWERS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 31 USC 3716; 42 USC 1480

CFR Citation: 7 CFR 1951

Legal Deadline: None

Abstract: Currently, borrowers are considered "past due" for the first 30 days after a missed Farm Loan Program (FLP) payment and are then "delinquent." This is not consistent with the terminology used by Farm Programs (FP), which considers borrowers "delinquent" immediately after a missed payment. This action will eliminate the 30-day past due period prior to delinquency. In addition to clarification and consistency, this change would allow FLP borrowers to receive debt write-down on the day after a missed payment, assuming all other primary loan servicing criteria are met, instead of waiting 31 days. This change will also clarify the use of the word delinquent with regard to all servicing and offsets. The rule will not affect the statutorily required "90 days past due" criteria that is currently used to determine the onset of primary loan servicing. This rule will not significantly affect costs for either the Government or borrowers.

Timetable:

Action	Date	FR Cite
NPRM	01/09/03	68 FR 1170
NPRM Comment Period End	03/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0560–AG50

177. 2002 FARM BILL REGULATIONS—LOAN ELIGIBILITY WITH PRIOR DEBT FORGIVENESS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–171

CFR Citation: 7 CFR 1941

Legal Deadline: None

Abstract: This action will seek to clarify language needed to implement the 2002 Farm Bill provisions relating to borrowers who received debt forgiveness and a change in the eligibility requirements for direct farm ownership loans: (1) The legislation provides that borrowers who received debt forgiveness may also be eligible for new direct or guaranteed operating loans if forgiveness resulted from a declared major emergency or natural disaster. However, besides areas designated as natural disasters, low-interest emergency loans are also available in areas under plant or animal quarantines. This rule will obtain public comments on the types of emergencies or natural disasters to be considered eligible. (2) The legislation changes an eligibility requirement for direct farm ownership loans from persons who "operated" a farm to persons who "participated in the operation of" a farm. This rule will obtain public comments on the meaning of the new term. The expected cost is minimal.

Timetable:

Action	Date	FR Cite
NPRM	04/09/03	68 FR 17316
NPRM Comment Period End	06/09/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250–0572
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RIN: 0560–AG81

178. AMENDMENTS TO THE DEBT SETTLEMENT POLICIES AND PROCEDURES TO CONFORM TO THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

Priority: Other Significant

CFR Citation: 7 CFR 792; 7 CFR 1403; 7 CFR 1404

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560-AF22

179. REGULATORY STREAMLINING OF THE FARM SERVICE AGENCY'S DIRECT FARM LOAN PROGRAMS

Priority: Other Significant

CFR Citation: 7 CFR 7; 7 CFR 18

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560-AF60

180. EMERGENCY CONSERVATION PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 701

Timetable:

Action	Date	FR Cite
NPRM	08/01/02	67 FR 49879
NPRM Comment Period End	09/30/02	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560-AG26

181. INTEREST ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 762

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560-AG46

182. OCEAN FREIGHT CLAIMS ADMINISTRATIVE APPEAL PROCESS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1405; 7 CFR 1499; 22 CFR 211

Timetable:

Action	Date	FR Cite
NPRM	03/03/03	68 FR 9944
NPRM Comment Period End	04/02/03	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560-AG49

183. TOBACCO MARKETING QUOTA, CARDS, PENALTY PROVISIONS, RECORDKEEPING AND REPORTING

Priority: Other Significant

CFR Citation: 7 CFR 723

Timetable:

Action	Date	FR Cite
NPRM	01/13/03	68 FR 1556
NPRM Comment Period End	02/12/03	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560-AG52

184. RESCHEDULING GUARANTEED LOANS WITH BALLOON PAYMENTS, CLARIFICATION OF ANNUAL ANALYSIS REQUIREMENTS FOR GUARANTEED LENDERS, AND SUBORDINATION REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 762

Timetable:

Action	Date	FR Cite
NPRM	08/19/03	68 FR 49723
NPRM Comment Period End	10/20/03	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560-AG53

185. SERVICING MINOR FARM LOAN PROGRAM LOANS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 772; 7 CFR 1901-E; 7 CFR 1942-A; 7 CFR 1951-E and F; 7 CFR 1956-C

Timetable:

Action	Date	FR Cite
NPRM	04/09/03	68 FR 17320
NPRM Comment Period End	06/09/03	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560-AG67

186. 2002 FARM BILL REGULATIONS—CONSERVATION RESERVE PROGRAM

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 7 CFR 701; 7 CFR 1410

Timetable:

Action	Date	FR Cite
Notice of Availability of Draft Environmental Impact Statement	09/06/02	67 FR 56979
Comment Period End	10/21/02	
Interim Final Rule	05/08/03	68 FR 24829
Interim Final Rule Comment Period End	07/07/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG74

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187. 2002 FARM BILL REGULATIONS—ASSISTANCE FOR LIVESTOCK PRODUCERS

Priority: Other Significant

CFR Citation: 7 CFR 1439

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG76

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188. 2002 FARM BILL REGULATIONS—TREE ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 783

Timetable:

Action	Date	FR Cite
NPRM	08/11/03	68 FR 47499
NPRM Comment Period End	10/10/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0560–AG83

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189. REVISION OF INDIAN TRIBAL LAND ACQUISITION PROGRAM LOAN REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 770

Timetable:

Action	Date	FR Cite
NPRM	03/14/03	68 FR 12309
NPRM Comment Period End	05/14/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Phillip Elder
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RIN: 0560–AG87

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190. CLARIFICATION OF INFORMAL APPEALS PROCEDURES

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 780

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Phillip Elder
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RIN: 0560–AG88

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191. 2003—CROP MARKETING QUOTAS AND PRICE SUPPORT LEVELS FOR FIVE KINDS OF TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 1464

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG92

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192. • REVISIONS TO DIRECT FARM LOAN PROGRAMS APPRAISAL REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1480; 5 USC 301; 7 USC 1989

CFR Citation: 7 CFR 1910; 7 CFR 1941; 7 CFR 1965

Legal Deadline: None

Abstract: This rule proposes to amend the Farm Service Agency's (FSA) regulations governing real estate and chattel appraisals. In the loan making process, the rule proposes to allow FSA to obtain appraisals after loan funds become available and the applicant is determined eligible. Also, the rule proposes to increase the dollar threshold that determines when a real estate appraisal is required. In loan servicing, the rule proposes to raise the dollar threshold for real estate appraisals in partial release situations, and allow the Agency to release real estate security without appraising the retained real estate in some cases. All these changes will reduce FSA's appraisal costs and enhance the timeliness of program delivery of certain loan making and servicing actions.

Timetable:

Action	Date	FR Cite
NPRM	08/21/03	68 FR 50479
NPRM Comment Period End	10/20/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Sectors Affected: 11 Agriculture, Forestry, Fishing, and Hunting

Agency Contact: Phillip Elder, Agricultural Economist, Department of Agriculture, Farm Service Agency, MS

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RIN: 0560–AH01

193. • ENVIRONMENTAL COMPLIANCE AND RELATED CONCERNS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 U.S.C. 4321 et seq

CFR Citation: 7 CFR 799

Legal Deadline: None

Abstract: This action will provide the Farm Service Agency (FSA) with an environmental compliance regulation that improves and clarifies its requirements to comply with the National Environmental Policy Act, the National Historic Preservation Act and numerous other environmental and cultural resource laws, regulations, and Executive Orders.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250–0572
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RIN: 0560–AH02

194. • OUTSIDE STORAGE OF EXTRA LONG STAPLE LOAN COTTON

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 7213; 15 USC 714b; PL 106–387

CFR Citation: 7 CFR 1427

Legal Deadline: None

Abstract: The Farm Service Agency (FSA) is amending regulations governing loan eligibility to permit outside storage of extra long staple (ELS) loan cotton by producers at facilities meeting certain requirements. Current policy requires that cotton must be stored inside a warehouse to be eligible for a loan. This rule change will reduce storage costs for producers able to meet the technical requirements for outside storage. These storage savings should enable that cotton to be sold at a more competitive price in domestic and export markets. ELS cotton loans are nonrecourse marketing assistance loans that are repaid in full based on an interest rate 1 percent above CCC's cost of borrowing. CCC does not pay any storage or other charges associated with the loan and charges producers a loan-servicing fee. USDA estimates that there will be no increase in ELS cotton production as a result of this rule, and so no increase in loan forfeitures is foreseen. However, the quantity of ELS cotton placed under loan may increase by producers that use outside storage. Thus, some increase in loan volume and gross loan outlays is estimated, but net loan outlays or forfeitures to CCC are estimated as unchanged.

Timetable:

Action	Date	FR Cite
NPRM	08/18/03	68 FR 49327
NPRM Comment Period End	09/17/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 11192 Cotton Farming

URL For More Information: www.fsa.usda.gov/

URL For Public Comments: www.regulations.gov/

Agency Contact: Phillip Elder, Agricultural Economist, Department of Agriculture, Farm Service Agency, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 690–8104
Fax: 202 720–5233
Email: phillip__elder@wdc.usda.gov

RIN: 0560–AH03

Department of Agriculture (USDA) Completed Actions

Farm Service Agency (FSA)

195. DELETION OF FSA REGULATIONS REGARDING COLORADO RIVER BASIN SALINITY CONTROL PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 702; 7 CFR 703; 7 CFR 752

Completed:

Reason	Date	FR Cite
Withdrawn	07/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AE54

196. PROMPT DISASTER SET-ASIDE CONSIDERATION AND PRIMARY LOAN SERVICING

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1951

Completed:

Reason	Date	FR Cite
Final Action	09/25/03	68 FR 55299

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG56

197. 2002—CROP MARKETING QUOTAS AND PRICE SUPPORT LEVELS FOR FIVE KINDS OF TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Withdrawn—No further action to be taken	11/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205–5851
Fax: 202 720–5233
Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AG58

198. 2002—CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Withdrawn	11/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205–5851
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Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AG59

199. 2002—CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Withdrawn	11/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205–5851
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RIN: 0560–AG60

200. PRODUCER DISQUALIFICATION FOR CROP INSURANCE FRAUD

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1405

Completed:

Reason	Date	FR Cite
Final Action	07/02/03	68 FR 39447

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Phillip Elder
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RIN: 0560–AG70

201. 2002 FARM BILL REGULATIONS—BIOENERGY PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 1424

Completed:

Reason	Date	FR Cite
Final Action	05/07/03	68 FR 24596

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG84

202. 2002 FARM BILL REGULATIONS—INCOME LIMITS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1400

Completed:

Reason	Date	FR Cite
Final Action	06/04/03	68 FR 33341

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG86

203. PROVIDING FARM LOANS IN A NATIONAL SECURITY EMERGENCY

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 763; 7 CFR 775

Completed:

Reason	Date	FR Cite
Withdrawn	11/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Phillip Elder
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Fax: 202 720–5233
Email: phillip_elder@wdc.usda.gov

RIN: 0560–AG89

204. 2003—CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Withdrawn	11/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205–5851
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RIN: 0560–AG91

205. 2003—CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Withdrawn—No further action to be taken	11/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205–5851
Fax: 202 720–5233
Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AG93

206. CROP INSURANCE LINKAGE

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1405

Completed:

Reason	Date	FR Cite
Withdrawn	11/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205–5851
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Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AG94

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207. 2003 AGRICULTURAL ASSISTANCE ACT—CROP DISASTER PROGRAM, LIVESTOCK ASSISTANCE PROGRAM, AND WEATHER-RELATED LOSSES FOR SUGAR BEETS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 1412; 7 CFR 1480

Completed:

Reason	Date	FR Cite
Final Action	06/26/03	68 FR 37936

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205–5851
Fax: 202 720–5233
Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AG95

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208. COTTONSEED PAYMENT PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1427

Completed:

Reason	Date	FR Cite
Final Action	04/25/03	68 FR 20331

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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Fax: 202 720–5233
Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AG97

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209. HURRICANE ASSISTANCE FOR SUGARCANE PRODUCERS AND PROCESSORS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1435

Completed:

Reason	Date	FR Cite
Final Action	08/07/03	68 FR 47010

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AG98

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210. • TECHNICAL CHANGES TO CITIZENSHIP DEFINITION AND LOAN ELIGIBILITY REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1981

CFR Citation: 7 CFR 762; 7 CFR 764; 7 CFR 1943; 7 CFR 1941

Legal Deadline: None

Abstract: The Farm Service Agency (FSA is amending its regulations governing loan eligibility to conform with recent changes in other regulations and statutes. Specifically, this rule will change the term "citizenship" according to that now used by the United States Department of Homeland Security, Immigration and Naturalization Service, (2) allow a loan to an applicant that is operating in accordance with a confirmed bankruptcy plan, (3) prohibit operating loans to an applicant that is delinquent on an FSA guaranteed loan, (4) remove provisions for making non-farm enterprise loans, which are no longer authorized, (5) remove provisions for annual production loans to delinquent borrowers, which are no longer authorized, (6) correct the definition for socially disadvantaged applicant, and (7) amend the regulation covering installment schedules for balloon payments.

Timetable:

Action	Date	FR Cite
Final Action	11/03/03	68 FR 62221

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 11 Agriculture, Forestry, Fishing, and Hunting

Agency Contact: Phillip Elder, Agricultural Economist, Department of Agriculture, Farm Service Agency, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0560–AG99

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211. • SUGAR BEET DISASTER PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 108–7; 15 USC 714

CFR Citation: 7 CFR 1481

Legal Deadline: None

Abstract: This rule implements provisions of the Agricultural Assistance Act of 2003, Public Law 108–7, related to the Sugar Beet Disaster Program. This program will assist sugar beet producers who suffered production losses for either the 2001 or 2002 crop year due to weather related disasters which resulted in the prevention of planting or the reduction of quantity or quality while the beets were in the field. Outlays were $60 million.

Timetable:

Action	Date	FR Cite
Final Action	08/18/03	68 FR 49325

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 111 Crop Production

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
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Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AH04

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212. • REMOVAL OF OBSOLETE REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 714; PL 106–113; PL 106–387; PL 106–224

USDA—FSA Completed Actions

CFR Citation: 7 CFR 1411; 7 CFR 1439; 7 CFR 1447; 7 CFR 1464; 7 CFR 1469; 7 CFR 1476; 7 CFR 1477; 7 CFR 1478; 7 CFR 1479; ...

Legal Deadline: None

Abstract: This action removes regulations that have been rendered obsolete by expiration of their statutory authority and the ending of their respective programs. There are no impacts on past or current program operations.

Timetable:

Action	Date	FR Cite
Final Action	10/28/03	68 FR 61324

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250–0572
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RIN: 0560–AH05

213. • PURCHASE OF CROP INSURANCE FOR TOBACCO PRICE SUPPORT ELIGIBILITY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1421; 15 USC 714

CFR Citation: 7 CFR 1464

Legal Deadline: None

Abstract: This action amends the Tobacco Loan Program regulations to reflect changes in the law requiring that tobacco must be insured to be eligible for price support loans and to revise various organizational titles and OMB control numbers associated with information collections needed to implement this part.

Timetable:

Action	Date	FR Cite
Final Action	11/20/03	68 FR 65385

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 11191 Tobacco Farming

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, Room 0339 South Building, MS 0572, 1400 Independence Avenue SW, Washington, DC 20250–0572
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RIN: 0560–AH06

BILLING CODE 3410–34–S

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS) Proposed Rule Stage

214. PLUM POX COMPENSATION

Priority: Other Significant

Legal Authority: 7 USC 7701 to 7772; sec 301.75–15 also issued under sec 204, title II. PL 106–113; 113 Stat 1501A–293; sec 301.75–15 and 301.75.16 also issued under sec 203; title II, PL 106–224, 114 Stat 400 (7 USC 1421 note)

CFR Citation: 7 CFR 301.74–5

Legal Deadline: None

Abstract: This rulemaking provides for the payment of compensation to the owners of commercial stone fruit orchards and fruit tree nurseries who had stone fruit trees or nursery stock destroyed in order to control plum pox. The payment of these funds is necessary in order to reduce the economic impact of the plum pox quarantine on affected commercial stone fruit growers and fruit tree nursery owners.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/14/00	65 FR 55431
Interim Final Rule Comment Period End	11/13/00	
NPRM	10/16/03	68 FR 59548
NPRM Comment Period End	12/15/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Stephen R. Poe, Operations Officer, Program Support Staff, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 134, 4700 River Road, Riverdale, MD 20737–1236
Phone: 301 734–8247

RIN: 0579–AB19

215. ANIMAL WELFARE: MARINE MAMMALS; NONCONSENSUS LANGUAGE AND INTERACTIVE PROGRAMS

Priority: Other Significant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 3

Legal Deadline: None

Abstract: The U.S. Department of Agriculture regulates the treatment of certain marine mammals under the Animal Welfare Act. The present standards for treatment of these animals have been in effect for over 10 years. During this time, advances have been made and new information has been developed with regard to the housing and care of marine mammals. We intend to develop amendments to the marine mammal standards on which consensus was not reached during negotiated rulemaking conducted between September 1995 and July 1996. The amendments would be to standards affecting variances, indoor facilities, outdoor facilities, space requirements, and water quality, as well as swim-with-the-dolphin programs. These actions appear necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

Timetable:

Action	Date	FR Cite
ANPRM	05/30/02	67 FR 37731
ANPRM Comment Period End	07/29/02	
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737–1234
Phone: 301 734–7833

RIN: 0579–AB24

216. CHRONIC WASTING DISEASE IN ELK AND DEER; INTERSTATE MOVEMENT RESTRICTIONS AND PAYMENT OF INDEMNITY

Regulatory Plan: This entry is Seq. No. 5 in part II of this issue of the **Federal Register**.

RIN: 0579–AB35

217. KARNAL BUNT COMPENSATION

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 7711 to 7712; 7 USC 7714; 7 USC 7731; 7 USC 7735; 7 USC 7751 to 7754

CFR Citation: 7 CFR 301

Legal Deadline: None

Abstract: We are amending the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who are not currently eligible for compensation, for certain wheat grown outside the regulated area that was commingled with wheat grown in regulated areas, and for other parties affected by the Karnal bunt regulations. The payment of compensation is necessary in order to encourage the participation of, and obtain cooperation from, affected individuals in our efforts to contain and reduce the prevalence of Karnal bunt.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/01/02	67 FR 21561
Interim Final Rule Comment Period End	07/01/02	
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Robert G. Spaide, Senior Program Manager, Surveillance and Emergency Programs Planning and Coordination, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 134, 4700 River Road, Riverdale, MD 20737–1236
Phone: 301 734–7819

RIN: 0579–AB45

218. COST-SHARING FOR ANIMAL AND PLANT HEALTH EMERGENCY PROGRAMS

Priority: Other Significant

Legal Authority: 7 USC 7701 to 7772; 7 USC 8301 to 8317

CFR Citation: 7 CFR 373; 9 CFR 60

Legal Deadline: None

Abstract: This action would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States. The cost-sharing arrangements provided in this rule would apply to most emergency program activities, other than the payment of compensation, that are authorized under the Plant Protection Act and the Animal Health Protection Act. The intent of this action would be to facilitate long-term resource planning and funding decisions by cooperators.

Timetable:

Action	Date	FR Cite
NPRM	07/08/03	68 FR 40541
NPRM Comment Period End	11/07/03	
Next Action Undetermined	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Kevin Shea, Deputy Administrator, Policy and Program Development, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 116, Unit 20, 316–E J. L. Whitten Builidng, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–8015

RIN: 0579–AB50

219. TRICHINAE CERTIFICATION PROGRAM

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8317; 7 USC 1622; 15 USC 1828

CFR Citation: 9 CFR 149; 9 CFR 160 to 161

Legal Deadline: None

Abstract: APHIS is considering establishing a voluntary Trichinae Certification Program for U.S. pork that has been produced under disease-prevention conditions. Under the program, APHIS would certify pork production sites that follow prescribed good production practices that reduce, eliminate, or avoid the risk of exposure of animals to the zoonotic parasite Trichinella spiralis, a disease of swine. Such a program should enhance the marketing of pork and pork products both in the United States and in export markets.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Dave Pyburn, National Trichinae Coordinator, PCMS, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Room 891, 210 Walnut Street, Room 891, Des Moines, IA 50309
Phone: 515 284–4122

RIN: 0579–AB52

220. METHYL BROMIDE; AUTHORIZATION AS OFFICIAL QUARANTINE USE

Priority: Other Significant

Legal Authority: 7 USC 7719

CFR Citation: 7 CFR 304

Legal Deadline: None

Abstract: This rule would establish regulations to provide for the submission of requests by State, local, or tribal authorities for a determination whether methyl bromide treatments or applications required by the State, local, or tribal authorities to prevent the introduction, establishment, or spread of plant pests (including diseases) or noxious weeds should be authorized as official quarantine uses. The regulations are necessary to comply with a recent amendment to the Plant Protection Act that requires the Secretary to publish and maintain a registry of authorized State, local, and tribal requirements for methyl bromide treatments or applications. The rule would establish a process by which State, local, or tribal authorities could request and, if warranted, receive, authorization for their methyl bromide requirements as official quarantine uses.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local, Tribal

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Elna Hunter, Senior Regulatory Coordinator, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Suite C Unit 118, Unit 141, 4700 River Road, Riverdale, MD 20737
Phone: 301 734–5289

RIN: 0579–AB54

221. • BOVINE SPONGIFORM ENCEPHALOPATHY: MINIMAL RISK REGIONS AND IMPORTATION OF COMMODITIES

Regulatory Plan: This entry is Seq. No. 6 in part II of this issue of the **Federal Register**.

RIN: 0579–AB73

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS)

Final Rule Stage

222. ANIMAL WELFARE; INSPECTION, LICENSING, AND PROCUREMENT OF ANIMALS

Priority: Other Significant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 1 to 2

Legal Deadline: None

Abstract: This action would make several amendments to the Animal Welfare Act regulations to clarify them and improve their enforceability. In addition, it would amend a number of administrative procedures to make them more efficient. We believe these actions are necessary to help ensure compliance with the regulations and the Animal Welfare Act.

Timetable:

Action	Date	FR Cite
NPRM	08/04/00	65 FR 47908
NPRM Comment Period End	10/03/00	
NPRM Comment Period Reopened and Extended	10/19/00	65 FR 62650
NPRM Comment Period End	11/20/00	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737–1234
Phone: 301 734–7833

RIN: 0579–AA94

223. IMPORTATION OF UNMANUFACTURED WOOD ARTICLES FROM MEXICO

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7711 to 7714; 7 USC 7718; 7 USC 7731 to 7732; 7 USC 7751 to 7754; 21 USC 136 to 136a

CFR Citation: 7 CFR 319

Legal Deadline: None

Abstract: This action would add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from Mexico. These wood articles from Mexico would have to meet certain treatment and handling requirements to be eligible for importation into the United States. We believe this action is necessary to prevent the introduction into the United States of dangerous plant pests, including forest pests, with unmanufactured wood articles from Mexico.

Timetable:

Action	Date	FR Cite
NPRM	06/11/99	64 FR 31512
NPRM Comment Period End	08/10/99	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Hesham A. Abuelnaga, Import Specialist, PIM, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 140, Riverdale, MD 20737
Phone: 301 724–6799

RIN: 0579–AB02

224. BLOOD AND TISSUE COLLECTION AT SLAUGHTERING ESTABLISHMENTS

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: 9 CFR 71

Legal Deadline: None

Abstract: We are considering establishing requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, sheep, and swine) and poultry at slaughter establishments when it is necessary for disease surveillance. Under this proposal, any person who moves an animal interstate for slaughter could only move the animal to a slaughter establishment that has been approved by the Administrator. The Administrator would approve a slaughter establishment after determining that it is not necessary to conduct testing at the establishment or determining that it is necessary to conduct testing at the establishment and the establishment provides space and facilities to collect blood and tissue samples for disease testing. This collection of blood and tissue samples would enable us to identify animals at slaughter that are affected by various communicable diseases. This change would affect persons moving animals interstate for slaughter, slaughter plants that receive animals in interstate commerce, and in cases where an animal that tests positive can be successfully traced back to its herd or flock of origin, the owners of such herds or flocks. The long-term effects of this change would be to improve surveillance programs for animal diseases and to contribute to the eventual control or eradication of such diseases.

Timetable:

Action	Date	FR Cite
NPRM	11/27/02	67 FR 70864
NPRM Comment Period End	01/27/03	
NPRM Comment Period Extended	03/28/03	68 FR 3826
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Diane Sutton, Senior Staff Veterinarian, VS, National Animal Health Programs, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737–1231
Phone: 301 7344–44363

RIN: 0579–AB13

225. PHYTOSANITARY CERTIFICATES FOR IMPORTED FRUITS AND VEGETABLES

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 7701 to 7772; 21 USC 136 to 136a

CFR Citation: 7 CFR 319.56 to 319.56–8

Legal Deadline: None

Abstract: Currently APHIS does not require a phytosanitary certificate to accompany fruits and vegetables imported into the United States except for certain fruits and vegetables grown in designated foreign regions. This rule would amend our regulations to require that a phytosanitary certificate accompany all fruits and vegetables imported into the United States, with certain exceptions. The rule would include commercial produce imported into the United States, as well as fruits and vegetables brought in by travelers.

Timetable:

Action	Date	FR Cite
NPRM	08/29/01	66 FR 45637
NPRM Comment Period End	10/29/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Wayne D. Burnett, Senior Import Specialist, PIM, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737–1236
Phone: 301 734–6799

RIN: 0579–AB18

226. BEES AND RELATED ARTICLES

Priority: Other Significant

Legal Authority: 7 USC 281; 7 USC 450; 7 USC 7701 to 7772; 21 USC 136 to 136a

CFR Citation: 7 CFR 319; 7 CFR 322

Legal Deadline: None

Abstract: This rule would revise the regulations for the importation of honeybees and honeybee semen. Among other things, it would allow, under certain conditions, the importation into the United States of honeybees from Australia and honeybees and honeybee germ plasm from New Zealand. It also would make these regulations more consistent with standards established by the Office International des Epizooties, update them to reflect current research and terminology, and simplify them and make them more useful.

In addition, the rule would combine the regulations for the importation of honeybees and honeybee semen with the regulations established to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. This change would make the regulations more useful by consolidating all of the requirements related to the importation of bees, beekeeping byproducts, and used beekeeping equipment into one part.

Timetable:

Action	Date	FR Cite
NPRM	08/19/02	67 FR 53844
NPRM Comment Period End	11/18/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Wayne Wehling, Permits and Risk Assessment, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 141, 4700 River Road, Riverdale, MD 20737-1228
Phone: 301 734-8757

RIN: 0579-AB20

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227. VETERINARY DIAGNOSTIC USER FEES—5-YEAR PLAN FOR FEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5542; 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 to 136a; 31 USC 3701; 31 USC 3716 to 3717; 31 USC 3719; 31 USC 3720A

CFR Citation: 9 CFR 130

Legal Deadline: None

Abstract: We are proposing user fees for multiple fiscal years for APHIS' Veterinary Services' veterinary diagnostic user fee goods and services. We are proposing this action in order to ensure that we recover the full costs of providing these goods and services.

Timetable:

Action	Date	FR Cite
NPRM	07/24/03	68 FR 43661
NPRM Comment Period End	09/22/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Donna Ford, User Fee Section Head, FSSB, BASE, MRPBS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-8351

RIN: 0579-AB22

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228. FOOT-AND-MOUTH DISEASE; PAYMENT OF INDEMNITY

Regulatory Plan: This entry is Seq. No. 7 in part II of this issue of the **Federal Register**.

RIN: 0579-AB34

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229. INFECTIOUS SALMON ANEMIA; PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: 9 CFR 53

Legal Deadline: None

Abstract: This rule amended the regulations regarding the control and eradication of certain communicable diseases of livestock or poultry to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to infectious salmon anemia. Because depopulation is necessary to control infectious salmon anemia, a successful control program will provide for indemnification of depopulated fish to gain producer support. This action will, therefore, increase the effectiveness of our efforts to control infectious salmon anemia in Maine and prevent further outbreaks of the disease.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/11/02	67 FR 17605
Interim Final Rule Comment Period End	06/10/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Otis Miller Jr., National Aquaculture Coordinator, NAHP, Veterinary Services, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 36, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-6188

RIN: 0579-AB37

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230. ANIMAL WELFARE; POLICY ON TRAINING AND HANDLING OF POTENTIALLY DANGEROUS ANIMALS

Priority: Other Significant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 3

Legal Deadline: None

Abstract: APHIS's Animal Welfare Act regulations require exhibitors and other regulated entities that handle potentially dangerous animals to provide a sufficient number of adequately trained personnel to handle and care for the animals and to provide adequate protection from risk for the general public when animals are exhibited.

APHIS sought comment on a policy statement to provide guidance to exhibitors and other regulated entities for the training and handling of potentially dangerous animals, adequate experience and training of trainers, handlers, and attendants, and points to consider when developing emergency contingency plans. After reviewing the comments received and considering alternative ways to provide guidance and promote compliance with the regulations, APHIS has decided not to proceed with a final policy statement.

Timetable:

Action	Date	FR Cite
Draft Policy Statement	02/18/00	65 FR 8318
Comment Period End	04/18/00	
Agency Decision	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737–1234
Phone: 301 734–7833

RIN: 0579–AB39

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231. BRUCELLOSIS IN SHEEP, GOATS, AND HORSES; PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8316

CFR Citation: 9 CFR 51

Legal Deadline: None

Abstract: This rule would amend the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis. This action would make it easier to eliminate affected herds/flocks and infected animals as sources of infection by encouraging herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/13/01	66 FR 47593
NPRM Comment Period End	11/13/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737–1231
Phone: 301 734–7708

RIN: 0579–AB42

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232. AGRICULTURAL BIOTERRORISM PROTECTION ACT OF 2002; POSSESSION, USE, AND TRANSFER OF BIOLOGICAL AGENTS AND TOXINS

Regulatory Plan: This entry is Seq. No. 8 in part II of this issue of the **Federal Register**.

RIN: 0579–AB47

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233. IMPORTATION OF SOLID WOOD PACKING MATERIAL; ADOPTION OF INTERNATIONAL STANDARDS

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7711 to 7714; 7 USC 7718; 7 USC 7731 to 7732; 7 USC 7751 to 7754; 21 USC 136 to 136a

CFR Citation: 7 CFR 319

Legal Deadline: None

Abstract: This rule would amend the regulations for the importation of unmanufactured wood articles to adopt an international standard entitled "Guidelines for Regulating Wood Packaging Material in International Trade" that was approved by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention on March 15, 2002. The standard calls for wood packaging material to be either heat treated or fumigated with methyl bromide, in accordance with the Guidelines, and marked with an approved international mark certifying treatment. The rule would adopt the IPPC Guidelines because recent analyses of pest interceptions at ports show an increase in pests associated with certain wood packaging material. This increase in pests was found in wood packaging material that does not meet the IPPC Guidelines' (e.g., wood packaging material from everywhere except China, which must already be treated due to past pest interceptions). There has been a decrease in pests associated with wood packaging material from China, however, since we began requiring that material be treated prior to importation. This change would affect all persons using wood packaging material in connection with importing goods into the United States.

Timetable:

Action	Date	FR Cite
NPRM	05/20/03	68 FR 27480
NPRM Comment Period End	07/21/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Hesham A. Abuelnaga, Import Specialist, PIM, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 140, Riverdale, MD 20737
Phone: 301 724–6799

RIN: 0579–AB48

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234. ANIMAL WELFARE; TRANSPORTATION OF ANIMALS ON INTERNATIONAL CARRIERS

Priority: Other Significant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 1 to 3

Legal Deadline: None

Abstract: This document gives notice that we intend to begin consistently and routinely applying the standards in the Animal Welfare Act regulations for the humane transportation of animals in commerce to international carriers operating with the United States, its territories, possessions, or the District of Columbia. While these standards have been enforced on domestic carriers, international carriers, for the most part, have not been held to the same requirements, and there have been instances of foreign carriers arriving in the United States with sick, dying, or dead animals, possibly as a result of improper handling or transportation conditions. This action will ensure that any animal covered by the Animal Welfare Act, whether coming into, traveling from point to point in, or leaving the United States, its territories, possessions, or the District of Columbia, will be provided the protection of the Animal Welfare Act while in transportation.

Timetable:

Action	Date	FR Cite
Determination to Regulate	10/10/03	68 FR 58575
Comment Period End	12/09/03	
Determination to Regulate Effective	04/07/04	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, Unit 84, 4700 River Road, Riverdale, MD 20737
Phone: 301 734–7586

RIN: 0579–AB51

235. PROCEDURES FOR REESTABLISHING A REGION AS FREE OF A DISEASE

Priority: Other Significant

Legal Authority: 7 USC 8301 to 8317

CFR Citation: 9 CFR 92

Legal Deadline: None

Abstract: This rule would establish procedures that APHIS will follow when a region that we recognize as free of a disease experiences an outbreak of that disease. The procedures include steps we would take to prevent the introduction of disease from that region and steps we would take to further assess the region's animal health status. The procedures would allow for timely reinstatement of the region's disease-free status if supported by the reassessment.

Timetable:

Action	Date	FR Cite
NPRM	06/24/03	68 FR 37426
NPRM Comment Period End	08/25/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Gary Colgrove, Assistant Director, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 38, 4700 River Road, Riverdale, MD 20737–1231
Phone: 301 734–4356

RIN: 0579–AB53

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236. • ANIMAL WELFARE; DEFINITION OF ANIMAL

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 1

Legal Deadline: None

Abstract: We are amending the Animal Welfare Act (AWA) regulations to reflect an amendment to the Act's definition of the term animal. The Farm Security and Rural Investment Act of 2002 amended the definition of animal to specifically exclude birds, rats of the genus Rattus, and mice of the genus Mus bred for use in research. While the definition of animal in the regulations excludes rats of the genus Rattus and mice of the genus Mus bred for use in research, that definition also excludes all birds (i.e., not just those bred for use in research). To make the definition of animal in the regulations consistent with the definition of animal in the AWA, this final rule amends the regulations by narrowing of the scope of the exclusion for birds to only those birds bred for use in research. This final rule is intended only to make the definition of animal in the regulations consistent with the definition of animal in the AWA. We do not intend to immediately begin regulating birds not bred for use in research as a result of this action.

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, Unit 84, 4700 River Road, Riverdale, MD 20737
Phone: 301 734–7586

RIN: 0579–AB69

237. PLANT PEST REGULATIONS; UPDATE OF CURRENT PROVISIONS

Priority: Other Significant

CFR Citation: 7 CFR 330

Timetable:

Action	Date	FR Cite
ANPRM	09/27/96	61 FR 50767
ANPRM Comment Period End	12/26/96	
NPRM	10/09/01	66 FR 51340
NPRM Comment Period End	02/06/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Flanders
Phone: 301 734–5930

RIN: 0579–AA80

238. IMPORTATION OF FUJI VARIETY APPLES FROM THE REPUBLIC OF KOREA

Priority: Other Significant

CFR Citation: 7 CFR 319.56–2cc

Timetable:

Action	Date	FR Cite
NPRM	04/26/00	65 FR 24423
NPRM Comment Period End	06/26/00	
NPRM Comment Period Extended	08/22/00	65 FR 50937
NPRM Comment Period End	10/23/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Wayne D. Burnett
Phone: 301 734–6799

RIN: 0579–AA93

239. PSEUDORABIES IN SWINE; PAYMENT OF INDEMNITY

Priority: Other Significant

CFR Citation: 9 CFR 52

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/12/99	64 FR 2545
Interim Final Rule Comment Period End	04/16/99	
Interim Final Rule	04/18/00	65 FR 20706
Interim Final Rule Comment Period End	06/19/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Adam G. Grow
Phone: 301 734–3752

RIN: 0579–AB10

240. IMPORTATION PROHIBITIONS BECAUSE OF BOVINE SPONGIFORM ENCEPHALOPATHY

Priority: Other Significant

CFR Citation: 9 CFR 94.18; 9 CFR 95.1; 9 CFR 95.4; 9 CFR 95.29 (New)

Timetable:

Action	Date	FR Cite
IRM Retroactively Effective	12/07/00	
Interim Final Rule	08/14/01	66 FR 42595
Sec 95.29 Effective	08/14/01	
Comment Period End	10/15/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Donna L. Malloy
Phone: 301 734–3277

RIN: 0579–AB26

241. ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS; PAYMENT OF INDEMNITY

Priority: Other Significant

CFR Citation: 9 CFR 50

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/20/02	67 FR 7583
Interim Final Rule Comment Period End	04/22/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Terry Beals
Phone: 301 734–5467

RIN: 0579–AB29

242. IMPORTATION OF MILK AND MILK PRODUCTS FROM FMD COUNTRIES

Priority: Other Significant

CFR Citation: 9 CFR 94

Timetable:

Action	Date	FR Cite
NPRM	02/18/03	68 FR 7722
NPRM Comment Period End	04/21/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen A. James-Preston
Phone: 301 734–4356

RIN: 0579–AB38

243. RISK REDUCTION STRATEGIES FOR POTENTIAL BSE PATHWAYS INVOLVING DOWNER CATTLE AND DEAD STOCK OF CATTLE AND OTHER SPECIES

Priority: Other Significant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
ANPRM	01/21/03	68 FR 2703
ANPRM Comment Period End	03/24/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa Ferguson
Phone: 301 734–8073

RIN: 0579–AB43

244. AMEND REGULATIONS TO HARMONIZE OUR IMPORT REQUIREMENTS WITH PROPOSED NATIONAL TUBERCULOSIS ERADICATION PROGRAM

Priority: Other Significant

CFR Citation: 9 CFR 93

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: S. Anne Goodman

Phone: 301 734–4929

RIN: 0579–AB44

245. GYPSY MOTH; INTERSTATE MOVEMENT OF REGULATED ARTICLES

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 301; 7 CFR 319

Timetable:

Action	Date	FR Cite
NPRM	05/23/03	68 FR 28157
NPRM Comment Period End	07/22/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Weyman Fussell
Phone: 301 734–5705

RIN: 0579–AB55

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS)
Completed Actions

246. IMPORTATION OF UNMANUFACTURED WOOD ARTICLES; SOLID WOOD PACKING MATERIAL

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 319

Completed:

Reason	Date	FR Cite
Replaced by 0579–AB48	08/25/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Robert Flanders
Phone: 301 734–5930

RIN: 0579–AA99

247. NURSERY STOCK REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 450; 7 USC 7701 to 7772; 21 USC 136 to 136a

CFR Citation: 7 CFR 300; 7 CFR 319

Legal Deadline: None

Abstract: This rule amended the regulations for importing nursery stock to require additional treatment certifications for imported niger seed and lilac, to reflect changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. The rule also made several changes to update and clarify the regulations and improve their effectiveness.

Timetable:

Action	Date	FR Cite
NPRM	12/28/01	66 FR 67123
NPRM Comment Period End	02/26/02	
Final Action	08/20/03	68 FR 50039
Final Action Effective	09/19/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: William Thomas, Import Specialist, PIM, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Unit 140, Riverdale, MD 20737–1236
Phone: 301 734–6799

RIN: 0579–AB23

248. SALMONELLA ENTERITIDIS PHAGE—TYPE 4; REMOVE IMPORT RESTRICTIONS AND SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS; REMOVE REGULATIONS

Priority: Other Significant

CFR Citation: 9 CFR 71; 9 CFR 82; 9 CFR 94

Completed:

Reason	Date	FR Cite
Final Action	06/20/03	68 FR 36898
Final Action Effective	06/20/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael David
Phone: 301 734–8093

RIN: 0579–AB31

249. LOW PATHOGENIC AVIAN INFLUENZA; PAYMENT OF INDEMNITY

Priority: Other Significant

CFR Citation: 9 CFR 53

Completed:

Reason	Date	FR Cite
Final Action	07/18/03	68 FR 42565
Final Action Effective	07/18/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Cheryl Hall
Phone: 301 734–4924

RIN: 0579–AB46

250. FLAG SMUT IMPORT PROHIBITIONS ON WHEAT AND RELATED PRODUCTS

Priority: Other Significant

CFR Citation: 7 CFR 319

Completed:

Reason	Date	FR Cite
ANPRM Comment Period End	04/08/03	
Withdrawn	11/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeanne Van Dersal
Phone: 301 734–8537

RIN: 0579–AB49

251. • AGRICULTURAL INSPECTION AND AI USER FEES ALONG THE U.S./CANADA BORDER

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 450; 7 USC 7701 to 7772; 7 USC 8301 to 8317; 21 USC 136 and 136a; 49 USC 80503

CFR Citation: 7 CFR 319; 7 CFR 354

Legal Deadline: None

Abstract: We are amending the foreign quarantine and user fee regulations by removing the exemptions from inspection for agricultural products imported from Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers entering the United States from Canada. As a result of this action, agricultural products imported from Canada will be subject to inspection, and the commercial conveyances in which they are moved, as well as airline passengers arriving on flights from Canada, will be subject to inspection user fees. We are taking this action because recent inspections along the U.S./Canada border resulted in numerous interceptions of prohibited regulated material that originated in regions other than Canada that presents a high risk of introducing plant pests or animal diseases into the United States. This action is necessary to prevent the introduction of plant pests and animal diseases through unauthorized importations into the United States through Canada.

Timetable:

Action	Date	FR Cite
Withdrawn	11/20/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Alan S. Green, Assistant Director, Quarantine Policy Analysis and Support, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 36, Riverdale, MD 20737
Phone: 301 734–8295

RIN: 0579–AB70

BILLING CODE 3410–09–S

Department of Agriculture (USDA) Proposed Rule Stage
Cooperative State Research, Education, and Extension Service (CSREES)

252. CSREES AGRICULTURAL EXTENSION FORMULA PROGRAMS—ADMINISTRATIVE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 341 et seq; 7 USC 1444

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Passage of the Farm Security and Rural Investment Act of 2002, sections 7212 and 7213, has resulted in the need for CSREES to clarify its distribution of funding, matching requirements, carryover provisions, and reporting requirements for Extension programs at 1862 Land-Grant Institutions and 1890 Land-Grant Institutions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ellen Danus, Policy Specialist, Department of Agriculture, Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Avenue SW, Washington, DC 20250–2299
Phone: 202 401–4325
Fax: 202 401–7752
Email: edanus@reeusda.gov

RIN: 0524–AA26

253. CSREES AGRICULTURAL RESEARCH FORMULA PROGRAMS—ADMINISTRATIVE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 361a et seq; 7 USC 1445; 7 USC 1622; 16 USC 582a et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Passage of the Farm Security and Rural Investment Act of 2002, sections 7202, 7204, 7212, and 7213, has resulted in the need for CSREES to clarify its distribution of funding, matching requirements, carryover provisions, and reporting requirements for the Hatch Act funds, Hatch Multi-State Research funds, Evans-Allen Program funds, McIntire-Stennis Cooperative Forestry Act funds, and Animal Health and Disease Research funds.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ellen Danus, Policy Specialist, Department of Agriculture, Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Avenue SW, Washington, DC 20250–2299
Phone: 202 401–4325
Fax: 202 401–7752
Email: edanus@reeusda.gov

RIN: 0524–AA27

Department of Agriculture (USDA)
Cooperative State Research, Education, and Extension Service (CSREES)

Final Rule Stage

254. MATCHING REQUIREMENTS FOR FORMULA FUNDS FOR AGRICULTURAL RESEARCH AND EXTENSION ACTIVITIES AT THE 1890 LAND-GRANT INSTITUTIONS AND AT THE 1862 LAND-GRANT INSTITUTIONS IN INSULAR AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 361a et seq; 7 USC 341 et seq; 7 USC 1449

CFR Citation: 7 CFR 3419

Legal Deadline: None

Abstract: Passage of the Farm Security and Rural Investment Act of 2002, sections 7212 and 7213, has changed the matching requirements for the 1890 Land-Grant Institutions and the 1862 Land-Grant Institutions in insular areas. Issues regarding the use of matching funds, sources of matching funds, and matching waivers for the Insular 1862 Land-Grant Institutions need to be clarified.

Timetable:

Action	Date	FR Cite
NPRM	04/29/03	68 FR 23014
NPRM Comment Period End	06/30/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ellen Danus, Policy Specialist, Department of Agriculture, Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Avenue SW, Washington, DC 20250–2299
Phone: 202 401–4325
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Email: edanus@reeusda.gov

RIN: 0524–AA25

255. CSREES NON-FORMULA GRANT PROGRAMS—ADMINISTRATIVE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 450i; PL 101–624; PL 105–185; PL 104–127; ...

CFR Citation: 7 CFR 3427; 7 CFR 3400; 7 CFR 3402; 7 CFR 3405; 7 CFR 3406; ...

Legal Deadline: None

Abstract: CSREES plans to propose one administrative provision that contains the elements common to all of the competitive and noncompetitive grant programs it administers. In a relatively short period of time, this will allow the Agency to apply basic rules to grant programs that are currently operating without them, including new non-formula grant programs created by the passage of the Farm Security and Rural Investment Act of 2002.

Timetable:

Action	Date	FR Cite
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Erin Daly, Policy Specialist, Department of Agriculture, Cooperative State Research, Education, and Extension Service, STOP 2299, 1400 Independence Avenue SW, Washington, DC 20250–2299
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Fax: 202 401–7752
Email: edaly@reeusda.gov

RIN: 0524–AA28

BILLING CODE 3410–XV–S

Department of Agriculture (USDA)
Rural Housing Service (RHS)

Proposed Rule Stage

256. CIVIL RIGHTS COMPLIANCE REQUIREMENTS—1901–E TO 1940–D

Priority: Other Significant

Legal Authority: PL 100–259; 29 USC 794; PL 94–135; 42 USC 6101 et seq; PL 94–239; 15 USC 1601 et seq; EO 11246; PL 88–352; 42 USC 2000d et seq; PL 90–284; 42 USC 3601 to 3619; PL 100–430; PL 92–318; 20 USC 1681 et seq; PL 93–112; EO 12898

CFR Citation: 7 CFR 15; 12 CFR 202; 28 CFR 42; 45 CFR 90; 41 CFR 60 to 64; 24 CFR 14; 7 CFR 1940 subpart D; 7 CFR 1901 subpart E

Legal Deadline: None

Abstract: The Agency intends to publish a proposed rule to effectuate a comprehensive civil rights regulation implementing the following laws: The Equal Credit Opportunity Act (ECOA); title VI of the Civil Rights Act of 1964; title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (The Fair Housing Act); section 504 Federally Conducted and Federally Assisted Programs; title IX of the Education Amendments of 1972; Age Discrimination Act of 1975; and Executive Orders 11246 and 12898 (Environmental Justice). The revised regulations will provide detailed guidelines for field offices for improved enforcement and compliance with these laws, which heavily impact the Agency's programs. Mechanisms for monitoring compliance by field offices and recipients of Federal financial assistance at all levels will decrease the Agency's vulnerability that exists due to noncompliance with recently enacted Civil Rights legislation.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	
NPRM Comment Period End	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carlton L. Lewis, Chief, Program Compliance Branch, Department of Agriculture, Rural Housing Service, STOP 0703, 1400 Independence Avenue SW, Washington, DC 20250
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TDD Phone: 202 692–0107
Fax: 202 692–0305
Email: carlton.lewis@usda.gov

RIN: 0575–AA83

257. NATIONAL FLOOD INSURANCE REGULATIONS

Priority: Other Significant

Legal Authority: 7 USC 1989; 42 USC 1480; 42 USC 4012a; 42 USC 4104b; 42 USC 4106; 42 USC 4128; PL 91–152; PL 93–234; PL 103–325; ...

CFR Citation: 7 CFR 1926, subpart B; 7 CFR 1806, subpart B

Legal Deadline: None

Abstract: The Agency is rewriting its regulations to conform to the requirements of the National Flood Insurance Reform Act of 1994 (NFIRA).

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Linda Rodgers, Senior Environmental Protection Specialist, Program Support Staff, Department of Agriculture, Rural Housing Service, Room 6900/Stop 0761, 1400 Independence Avenue SW,
Washington, DC 20250
Phone: 202 720–9647

RIN: 0575–AC07

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258. SERVICING COMMUNITY PROGRAMS LOANS AND GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 31 USC 3711; 42 USC 1480

CFR Citation: 7 CFR 3570 subpart E; 7 CFR 1951 subpart E; 7 CFR 1951 subpart O; 7 CFR 1955 subpart A; 7 CFR 1955 subpart B; 7 CFR 1955 subpart C; 7 CFR 1956 subpart C; 7 CFR 1951 subpart F

Legal Deadline: None

Abstract: The Agency is combining seven regulations affecting the servicing of Community Programs loans and grants into one regulation. There are no policy or procedural changes. The published regulation will be simplified by removing the administrative portion and will only contain the information affecting the public.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth Jones, Loan Specialist, Community Programs Division, Department of Agriculture, Rural Housing Service, Room 0183/Stop 0787, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–1498
Email: beth.jones@usda.gov

RIN: 0575–AC12

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259. SELF-HELP TECHNICAL ASSISTANCE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 1480

CFR Citation: 7 CFR 1944; 7 CFR 3551

Legal Deadline: None

Abstract: The regulations for 7 CFR 1944–I "Self-Help Technical Assistance Grants" is being rewritten and renumbered to 7 CFR 3551. Changes are proposed for clarification of policy and procedures relative to the: 1) Application procedure, which is changing to an annual competitive grant process; 2) labor contribution of participating families; 3) monitoring of grantee progress through Self-Help Automated Reporting and Evaluation System (SHARES); and 4) define the roles of Technical and Management Assistance Contractors.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carolyn Bell, Single Family Housing Direct Loan Division, Department of Agriculture, Rural Housing Service, Stop 0783, 1400 Independence Avenue SW,
Washington, DC 20250
Phone: 202 720–1532
Fax: 202 720–2232

RIN: 0575–AC20

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260. COMMUNITY FACILITIES DIRECT LOAN PROGRAM—CONSOLIDATE, SIMPLIFY, AND UPDATE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1926

CFR Citation: 7 CFR 1942, subpart A; 7 CFR 1942, subpart C

Legal Deadline: None

Abstract: Community Programs, a division of the Rural Housing Service, is seeking to consolidate, simplify, and update the Agency's regulations used to administer the Community Facilities Direct Loan Program. This effort will produce a user-friendly tool to help constituents and rural communities seeking to develop their essential community facilities for public use. The proposed action will have no financial impact on the public or agency.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Angela Lausman, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Room 0183/STOP 0787, 1400 Independence Avenue SW,
Washington, DC 20250
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Email: angela.lausman@usda.gov

RIN: 0575–AC27

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261. • PLANNING AND PERFORMING CONSTRUCTION AND OTHER DEVELOPMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1926; 42 USC 1472; 42 USC 1476; 42 USC 1479; 42 USC 1490

CFR Citation: 7 CFR 1924, subpart A; 7 CFR 1924, subpart C; 7 CFR 1942, subpart A

Legal Deadline: None

Abstract: The Rural Housing Service (RHS) an Agency in Rural Development is consolidating, simplifying, and updating the Agency standards for planning and developing sites and buildings to bring them in line with contemporary industry standards. This Agency regulation will contain the policies and procedures for planning and developing sites and buildings proposed for RHS financial assistance. This effort will produce a user-friendly tool to help program constituents, rural communities and Agency personnel. The consolidation effort will also being the requirements of these two regulations in line with the Agency's

Single Family Housing, Multi-Family Housing, Community Programs, and Business and Industry regulations and handbooks. This action will have no financial impact on the public or Agency. These consolidations and technical revisions are in the best interest of the Government and public. This is a positive and needed action in RHS program delivery and will add value to the access and delivery of the Agency's programs.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
NPRM Comment Period End	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Keith A. Suerdieck, Deputy Director, Program Support Staff, Department of Agriculture, Rural Housing Service, 6th Floor, Room 6900/Stop 0761, 1400 Independence Avenue SW, Washington, DC 20250
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Fax: 202 690-4335
Email: keith.suerdieck@usda.gov

RIN: 0575-AC55

262. • ENVIRONMENTAL POLICIES AND PROCEDURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 1794; 7 CFR 1940, subpart G

Legal Deadline: None

Abstract: The Rural Development Agencies (Rural Housing Service, Rural Utilities Service and Rural Business-Cooperative Service) are seeking to consolidate, simplify, and update the different Agency environmental requirements into a common environmental regulation. This Rural Development regulation will replace 7 CFR 1794, the current RUS environmental regulation and 7 CFR 1940-G, the current RHS/RBS environmental regulation. This consolidation effort will produce a single user-friendly tool to help the program constituents, rural communities and personnel of the Rural Development Agencies and bring the environmental requirements of Agency actions in line with the environmental requirements of other Federal programs for similar actions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Rodgers, Senior Environmental Protection Specialist, Program Support Staff, Department of Agriculture, Rural Housing Service, Room 6900/Stop 0761, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-9647

RIN: 0575-AC56

Department of Agriculture (USDA)
Rural Housing Service (RHS)

Final Rule Stage

263. MULTI-FAMILY HOUSING (MFH) REINVENTION

Regulatory Plan: This entry is Seq. No. 9 in part II of this issue of the **Federal Register**.

RIN: 0575-AC13

264. GUARANTEED SINGLE-FAMILY HOUSING

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 3555; 7 CFR 1980, subpart D

Legal Deadline: None

Abstract: The Rural Housing Service is rewriting the regulations governing the Guaranteed Single-Family Housing program to provide better clarity and consistency within the program. The action is taken to update the regulations to current mortgage industry standards and provide more guidance on program oversight and monitoring.

Timetable:

Action	Date	FR Cite
NPRM	12/15/99	64 FR 70124
NPRM Comment Period End	02/14/00	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Agency Contact: Robert Keyes, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Room 2248/STOP 0784, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0575-AC18

265. OPERATING ASSISTANCE FOR MIGRANT FARMWORKER PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1989; 42 USC 1484; 42 USC 1486; 42 USC 1490a; PL 105-276, sec 599c

CFR Citation: 7 CFR 1944, subpart D; 7 CFR 1930, subpart C

Legal Deadline: None

Abstract: Regulation implements the provisions of Public Law 105-276, enacted October 21, 1998, which amended section 521 of the Housing Act of 1949. This amendment provides that, for migrant farmworker housing projects financed under section 514 or 516 of the Housing Act, the Secretary may, at the request of the owner, permit amounts provided for rental assistance under section 521 to be used to provide assistance for the costs of operating the project.

Timetable:

Action	Date	FR Cite
NPRM	11/02/00	65 FR 65790

Action	Date	FR Cite
NPRM Comment Period End	01/02/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas MacDowell,
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RIN: 0575–AC24

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266. TECHNICAL ASSISTANCE TO ENCOURAGE THE DEVELOPMENT OF DOMESTIC AND MIGRANT FARM LABOR HOUSING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1484; 42 USC 1486

CFR Citation: 7 CFR 1944, subpart D

Legal Deadline: None

Abstract: Section 514 of title V of the Housing Act of 1949 authorizes USDA to make loans for farm labor housing. Section 516 of the Act authorizes USDA to make grants for the same purpose. These authorities are implemented through 7 CFR part 1944, subpart D. Section 516 also authorizes USDA to provide financial assistance to private and public nonprofit agencies to encourage the development of farm labor housing. Recipients of this financial assistance, in turn, assist other organizations to obtain loans and grants for the construction of farm labor housing. This regulation change will incorporate the "technical assistance" provision of the statute into 7 CFR 1944. The amount of assistance is limited by statute to 10 percent of the total section 516 allocation.

Timetable:

Action	Date	FR Cite
NPRM	06/01/01	66 FR 29739
NPRM Comment Period End	07/31/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas MacDowell,
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RIN: 0575–AC25

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267. GUARANTEED RURAL RENTAL HOUSING PROGRAM—SECONDARY MORTGAGE MARKET PARTICIPATION

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 3565

Legal Deadline: None

Abstract: Section 538 of title V of the Housing Act of 1949 authorizes USDA to make commitments to guarantee loans for the development of housing and related facilities. By this authority, the Rural Housing Service (RHS) administers the Guaranteed Rural Rental Housing Program. The RHS, through consultation with industry and government experts in the loan guarantee field, has identified barriers to the success of the program. In the case of default, regulations will be revised to allow for a timely payment to the investor. In addition, lenders will be allowed to submit a claim for "estimated" losses. The RHS also intends to lower the annual guarantee fee from 50 to 25 basis points.

Timetable:

Action	Date	FR Cite
NPRM	06/10/03	68 FR 34552
NPRM Comment Period End	08/11/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas MacDowell,
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Fax: 202 690–3444
Email: douglas.macdowell@usda.gov

RIN: 0575–AC28

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268. ● FIRE AND RESCUE AND OTHER COMMUNITY FACILITY PROJECTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1926

CFR Citation: 7 CFR 1942

Legal Deadline: None

Abstract: The Agency proposes to publish a Direct Final Rule which would allow essential community facility projects currently defined under 7 CFR 1942, subpart A to be processed under 7 CFR 1942, subpart C if these projects are $300,000 and under. This action will streamline the existing regulation by not requiring a preapplication for all projects $300,000 and under.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dan Riggs, Loan
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Rural Housing Service, Stop 0787, 1400
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Washington, DC 20250
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RIN: 0575–AC53

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269. ● 3550 REGULATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1472

CFR Citation: 7 CFR 3550

Legal Deadline: None

Abstract: Rural Housing Service intends to revise the definitions of new and existing dwellings to remove the reference to a 10-year warranty plan; remove requirement that all CLT imposed restrictions terminate upon foreclosure by the Agency; remove dollar limits and use 1 percent of insurance coverage on loss deductible clauses with the objective of recognizing the increasing cost of home ownership insurance due to higher cost of home purchase; and require homeowner education for new home buyers.

Timetable:

Action	Date	FR Cite
Direct Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ethen Gillesppie, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Stop 0783, 1400 Independence Avenue SW, Washington, DC 20250
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Email: ethen.gillespie@usda.gov

RIN: 0575–AC54

Department of Agriculture (USDA)
Rural Housing Service (RHS)

Completed Actions

270. ENVIRONMENTAL PROGRAM

Priority: Other Significant

CFR Citation: 40 CFR 300; 40 CFR 260; 40 CFR 700; 40 CFR 400; 7 CFR 1940

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Rodgers
Phone: 202 720–9647

RIN: 0575–AB98

BILLING CODE 3410–08–S

Department of Agriculture (USDA)
Federal Crop Insurance Corporation (FCIC)

Proposed Rule Stage

271. GENERAL ADMINISTRATIVE REGULATIONS; SUBPART D; APPLICATION FOR CROP INSURANCE

Priority: Other Significant

Legal Authority: 7 USC 1506(l)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation amends the General Administrative Regulations by revising the "Collection of Information and Data (Privacy Act)" statement found on the general crop insurance application. The proposed amendments to the statement include defining "substantial beneficial interest" as those persons whose interest in the policyholder is in excess of 10 percent. Other minor changes have been made to more fully comply with provisions of the Privacy Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB00

272. GENERAL ADMINISTRATIVE REGULATIONS; MOVEMENT OF BUSINESS AMONG INSURANCE PROVIDERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To ensure that the interests of policyholders are protected and that the policies and policyholder data are transferred in an orderly manner, the Risk Management Agency is providing comprehensive regulations that will apply to agents, managing general agents, policy-issuing companies, and reinsured companies. The objective of this regulation is to prescribe uniform administrative requirements for the movement or assumption of crop insurance policies.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250
Phone: 202 720–4232

RIN: 0563–AB71

273. GENERAL ADMINISTRATIVE REGULATIONS; SANCTIONS

Priority: Other Significant

Legal Authority: 7 USC 1506(l); PL 106–224

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: RMA plans to supplement the existing sanction authority found at 7 CFR 400.451 in order to include the revised sanctions available for offenses which occur after June 20, 2001, the date of passage of the Agricultural Risk Protection Act of 2000. This action will supplement the existing regulations which remain effective for all offenses occurring before June 20, 2000. This rule will contain guidelines for the level of sanctions that may be imposed, waiver authority on the part of the Administrator or designee, examples of sanctionable offenses, and the evidentiary standards to be followed.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Crockett, Sanction Officer, Department of Agriculture, Federal Crop Insurance Corporation, 430 G Street, Suite 4167, Davis, CA 95616–4167
Phone: 530 792–5864

RIN: 0563–AB73

274. COMMON CROP INSURANCE REGULATIONS; NURSERY CROP INSURANCE PROVISIONS

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this proposed rule is to solicit public comments on FCIC's proposed action to revise the Nursery Crop Provisions (99–073) for the 2005 crop year to: Specify that container grown and field grown plants are separate crops, provide optional units by location for field grown nursery plants, incorporate the "lower of" rule into section 6 of the provisions, permit insureds to purchase insurance coverage on a year–round basis, and incorporate provisions to provide a rehabilitation payment for plants damaged by an insured cause of loss.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB80

275. GENERAL ADMINISTRATIVE REGULATIONS; ACTUAL PRODUCTION HISTORY (APH)

Priority: Other Significant

Legal Authority: 7 USC 1506 (l); 7 USC 1506 (p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To revise actual production history regulations to reflect changes in calculation of approved APH yields as mandated by the Agricultural Risk Protection Act of 2000. Revisions will include: Assigned yields for crops produced on land not farmed before (added land), rotations to crops not previously produced (new crops), and for prevented planting acreage if planted to a substitute crop; adjustments for successful pest control efforts and for organic crops destroyed to maintain organic certification; and substitution of 60 percent of the transitional yield for low actual yields if producers elect that option.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB83

276. GENERAL ADMINISTRATIVE REGULATIONS; SUBPART L—REINSURANCE AGREEMENT—STANDARDS FOR APPROVAL; REGULATIONS FOR THE 1997 AND SUBSEQUENT REINSURANCE YEARS

Priority: Other Significant

Legal Authority: 7 USC 1508

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) proposes to amend its General Administrative Regulations to publish the terms of the Standard Reinsurance Agreement (SRA) in the Federal Register. This will improve the integrity of the public/private partnership by avoiding ad hoc changes to important definitions and terms during negotiations involving compensation paid to each insurance provider. The current SRA has not been published in the Federal Register; therefore, the intent of this proposal is to codify the definitions and terms.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250
Phone: 202 720–4232

RIN: 0563–AB86

277. GENERAL ADMINISTRATIVE REGULATIONS; QUALITY ASSURANCE AND PERFORMANCE MEASUREMENT SYSTEM FOR THE FEDERAL CROP INSURANCE PROGRAM

Priority: Other Significant

Legal Authority: 7 USC 1506(l), 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) proposes a regulation to amend its General Administrative Regulations that includes an additional subpart which contains the Quality Assurance and Performance Measurement System for private sector delivery of the Federal Crop Insurance program.

This regulation will establish a standard of measure for determining acceptable and unacceptable levels of performance by private insurance providers. It will define how monetary errors will be identified, classified, and reported. It will also establish a system of incentives and sanctions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250
Phone: 202 720–4232

RIN: 0563–AB88

278. COMMON CROP INSURANCE REGULATIONS; PROCESSING TOMATO CROP INSURANCE PROVISIONS

Priority: Routine and Frequent

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this rule is to amend the Common Crop Insurance Policy: Processing Tomato Crop Insurance Provisions to clarify that producers who have production contracts with tomato brokers are eligible for insurance. Current provisions do not clearly relay this intent. The proposed rule requires a tomato broker to have all licenses and permits required by the state in which it operates, and to have a long term agreement in writing with a processor to purchase and deliver processing tomatoes.

Timetable:

Action	Date	FR Cite
NPRM	11/14/03	68 FR 64570
NPRM Comment Period End	01/13/04	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB90

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279. COMMON CROP INSURANCE REGULATIONS; PECAN REVENUE CROP INSURANCE PROVISIONS

Priority: Routine and Frequent

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this proposed rule is to solicit public comments on FCIC's proposed action to convert the pecan revenue pilot crop insurance program to a permanent insurance program for the 2004 and succeeding crop years. The pilot was initiated for the 1998 crop year for selected counties in Georgia, New Mexico, and Texas and covered only the improved pecan varieties. On September 19, 2002, FCIC's Board of Directors voted to expand the pilot pecan program into 79 additional counties in Georgia for the 2003 crop year and to convert the program to a permanent program effective for the 2004 crop year. As a result of the pilot review, several changes were made to the policy as follows: Changed the cancellation and termination dates, end of insurance date, and sales closing date to better meet the needs of the pecan producer; removed language that prohibited insurance to be provided by written agreement only for counties where the pecan actuarial documents have been filed; and removed language that is a duplication of the Basic Provisions language.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB91

Department of Agriculture (USDA)
Federal Crop Insurance Corporation (FCIC)

Final Rule Stage

280. GENERAL ADMINISTRATIVE REGULATIONS; NONSTANDARD UNDERWRITING CLASSIFICATION SYSTEM

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: Nonstandard Underwriting Classification System (NCS): NCS was criticized by producers and their representatives for several years and became a major issue with the repetitive floods in the upper Midwest and multi-year droughts in the Southwest. Complaints included claims that the NCS procedures: 1) Did not adequately exclude widespread causes of loss (disaster adjustment); 2) failed to recognize diverse conditions within a county; 3) unfairly hit new or struggling producers caught by repetitive disasters; and 4) set too high a premium for those producers listed. Additionally, administration of the NCS process was complicated, sometimes subjective, and labor intensive.

The Advanced Notice of Proposed Rulemaking that was published in the Federal Register in September 1997 sought comments from the public on options to improve NCS. Twenty-two comments were received in response to the advanced notice. RMA decided to replace NCS with a process that charged appropriate rates for those producers with adverse loss experience and less than average production histories.

RMA examined increasing premium rates based on producers' lower APH yields and using a surcharge based on use of the yield floor (or some other identifiable indicator of adverse experience) to determine if these measures would adequately address the need to increase premiums for those producers with the most adverse loss histories based on the frequency and severity of losses. After reviewing past NCS experience on the existing book of business, it was determined that appropriate rate increases for those producers whose APH yields were less than average would compensate entirely for the elimination of NCS.

RMA implemented the following actions to accomplish the goal of replacing NCS beginning with the 1999 crop year:

— Removed and reserved the current NCS regulation (7 CFR part 400, subpart O) by publishing a proposed rule in the Federal Register. The final rule is pending clearance; however, the Agency proceeded with the process and has waived NCS since 1999.

— Developed and implemented appropriate rate adjustments to offset the removal of NCS.

Timetable:

Action	Date	FR Cite
ANPRM	09/17/97	62 FR 48798
ANPRM Comment Period End	10/17/97	
NPRM	09/02/98	63 FR 46703
NPRM Comment Period End	10/19/98	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB66

281. GENERAL ADMINISTRATIVE REGULATIONS; PREMIUM REDUCTIONS; PAYMENTS OF REBATES, DIVIDENDS, AND PATRONAGE REFUNDS; AND PAYMENTS TO INSURED-OWNED AND RECORD-CONTROLLING ENTITIES

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p); 7 USC 1508(e)(3)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To allow approved insurance providers to apply to the Federal Crop Insurance Corporation for authority to reduce the premium charged producers in accordance with section 508(e)(3) of the Federal Crop Insurance Act, as amended, and to provide the limitations and requirements applicable to the payment of rebates, dividends, and patronage refunds to insureds and payments to insured-owned and record-controlling entities.

Timetable:

Action	Date	FR Cite
NPRM	05/12/99	64 FR 25464
NPRM Comment Period End	07/12/99	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250
Phone: 202 720–4232

RIN: 0563–AB70

282. COMMON CROP INSURANCE REGULATIONS; BLUEBERRY CROP INSURANCE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this rule is to solicit public comments on FCIC's proposed action to convert the blueberry pilot insurance program to a permanent insurance program. The pilot was initiated for the 1995 crop year for selected counties in Michigan, Mississippi, New Jersey, and North Carolina and covered highbush and rabbiteye blueberry varieties.

Timetable:

Action	Date	FR Cite
NPRM	07/30/03	68 FR 44668
NPRM Comment Period End	09/29/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB76

283. CATASTROPHIC RISK PROTECTION ENDORSEMENT; GROUP RISK PLAN OF INSURANCE REGULATIONS; BASIC PROVISIONS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 7 USC 1506(l), 1506(p)

CFR Citation: 7 CFR 402; 7 CFR 407; 7 CFR 457

Legal Deadline: Final, Statutory, June 30, 2000, Final.

Abstract: The Federal Crop Insurance Corporation (FCIC) amends the Catastrophic Risk Protection Endorsement (7 CFR part 402), the Group Risk Plan of Insurance Regulations (7 CFR part 407), and the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) to revise those provisions affected by the changes in the administrative fees and subsidies and the substitution of yields in the producer's actual production history mandated by the Agricultural Risk Protection Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	06/28/00	65 FR 40483
Interim Final Rule	06/30/00	65 FR 40483
Interim Final Rule Comment Period End	08/29/00	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB81

284. GENERAL ADMINISTRATIVE REGULATIONS; SUBMISSION OF POLICIES AND PROVISIONS OF POLICIES AND RATES OF PREMIUMS

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: Minor revisions will be made to the regulation for clarification and other revisions will be made as specified: Remove the need to publish policies from 508(h) submissions as a Notice of Availability in the Federal Register; information will be made available electronically to producers and approved insurance providers; confidential information may be withheld from the public under the standard for privileged or confidential information pertaining to trade secrets and commercial or financial information even after approval by the

Board; there will be an expert review of submissions; the applicant will be notified in writing at least 30 days prior to the Board disapproving a submission, if the Board intends to disapprove the submission; a submission will be deemed approved by the Board if the Board fails to make a determination within a prescribed time period; applicants will be reimbursed for research and developmental costs and maintenance costs; and companies selling the product will pay fees to the developer of the product after the fourth year of the applicant being paid maintenance costs unless maintenance for the product is transferred to FCIC.

Timetable:

Action	Date	FR Cite
NPRM	07/16/01	66 FR 36951
NPRM Comment Period End	08/15/01	
Interim Final Rule	09/17/01	66 FR 47949
Interim Final Rule Comment Period End	11/16/01	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB84

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285. COMMON CROP INSURANCE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 7 USC 1506(l), 7 USC 1506(p)

CFR Citation: 7 CFR 457.101; 7 CFR 457.161

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Small Grains Crop Provisions (7 CFR section 457.101), and Canola and Rapeseed Crop Insurance Provisions (7 CFR section 457.161) to implement the quality loss adjustment procedures contained in section 10003 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171).

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	06/26/02	
Interim Final Rule	06/28/02	67 FR 43525
Interim Final Rule Comment Period End	08/27/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB87

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286. COMMON CROP INSURANCE REGULATIONS; SUNFLOWER, COARSE GRAINS, SAFFLOWER, DRY PEA, RICE, AND DRY BEAN CROP INSURANCE PROVISIONS

Priority: Routine and Frequent

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this rule is to amend policies for the crops listed above, to implement the quality loss adjustment procedures contained in section 10003 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) that allows quality determinations to be made by warehouse operators that are licensed under State law or are not licensed under State law but are in compliance with State law regarding warehouses, provided they have entered into a storage agreement with the Commodity Credit Corporation. The sunflower and coarse grain crop provisions currently provide for the samples to be analyzed by a grader licensed to grade the crop under the authority of the United States Grain Standards Act or the United States Warehouse Act, and the safflower, dry pea, rice, and dry bean crop provisions currently provide for the samples to be analyzed by a grader licensed to grade the crop under the authority of the Agricultural Marketing Act or the United States Warehouse Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	08/28/02	67 FR 55689
Interim Final Rule	08/30/02	67 FR 55689
Interim Final Rule Comment Period End	10/29/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926–7743

RIN: 0563–AB89

Department of Agriculture (USDA) Completed Actions
Federal Crop Insurance Corporation (FCIC)

287. COMMON CROP INSURANCE REGULATIONS; SMALL GRAINS CROP INSURANCE PROVISIONS AND WHEAT WINTER COVERAGE ENDORSEMENT

Priority: Other Significant

CFR Citation: 7 CFR 457.101; 7 CFR 457.102

Completed:

Reason	Date	FR Cite
Final Action Effective	06/04/03	68 FR 34261
Final Action	06/09/03	68 FR 34261

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann
Phone: 816 926–7743

RIN: 0563–AB63

288. COMMON CROP INSURANCE REGULATIONS; BASIC PROVISIONS AND GENERAL ADMINISTRATIVE REGULATIONS, SUBPART T, REGULATIONS FOR IMPLEMENTATION

Priority: Other Significant

CFR Citation: 7 CFR 400; 7 CFR 457

Completed:

Reason	Date	FR Cite
Final Action	06/25/03	68 FR 37697

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann
Phone: 816 926–7743

RIN: 0563–AB85

BILLING CODE 3410–EN–S

Department of Agriculture (USDA) Proposed Rule Stage
Grain Inspection, Packers and Stockyards Administration (GIPSA)

289. LIVESTOCK PURCHASE OR SALE: PROHIBIT NONREPORTING OF PRICE

Priority: Other Significant

Legal Authority: 7 USC 204; 7 USC 228

CFR Citation: 9 CFR 201.54

Legal Deadline: None

Abstract: Following a review of comments received in response to the ANPRM, the Agency is proposing a regulation that would make purchasing or selling livestock with the condition that the price not be reported a violation of the Packers and Stockyards Act.

Timetable:

Action	Date	FR Cite
ANPRM	09/10/98	63 FR 48450
ANPRM Comment Period End	12/09/98	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0580–AA65

290. PROHIBITION ON DISGUISING GRAIN QUALITY

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.61

Legal Deadline: None

Abstract: The Agency proposes to revise regulations under the U.S. Grain Standards Act to prohibit the disguising of grain quality by adding various substances during post-harvest marketing.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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RIN: 0580–AA77

291. FEES FOR OFFICIAL INSPECTION AND OFFICIAL WEIGHING SERVICES

Priority: Other Significant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.71

Legal Deadline: None

Abstract: GIPSA is proposing several changes in the way the Agency charges fees for official inspection and weighing services performed in the United States, under the United States Grain Standards Act. Currently, GIPSA assesses fees by using hourly and unit rates and by assessing an administrative tonnage fee. The proposed action will increase the hourly and unit rates. GIPSA is also proposing to increase the administrative tonnage fee and adopt a new, regional fee structure.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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RIN: 0580–AA80

292. • PROCESS VERIFICATION SERVICE AND ASSOCIATED FEES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1621

CFR Citation: 7 CFR 868.31

Legal Deadline: None

Abstract: GIPSA is proposing to establish a process verification service for grain, rice, pulses and processed commodities derived there from, and associated user fees under the authority of the AMA of 1946. This service is being proposed to provide United States Agriculture assistance in facilitating the marketing of grain and similar commodities. GIPSA also proposes to remove regulations which prohibit crop year, variety, and origin statements because the process verification program could serve as an industry tool for identifying these traits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None.

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, STOP 3604, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0580–AA85

Department of Agriculture (USDA) Final Rule Stage
Grain Inspection, Packers and Stockyards Administration (GIPSA)

293. TOLERANCES FOR DIVIDERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 801.10

Legal Deadline: None

Abstract: GIPSA proposes to remove section 801.10, Tolerance for Dividers, from the CFR. Since GIPSA no longer tests dividers, the rule is no longer needed. By using the direct final rule process, GIPSA will give the public general notice of its intent to remove the rule and provide interested persons an opportunity to participate in the rulemaking through submission of comments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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RIN: 0580–AA57

294. REVIEW INSPECTION REQUIREMENTS

Priority: Other Significant

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 800.125; 7 CFR 800.135; 7 CFR 800.87

Legal Deadline: None

Abstract: The Agency is proposing to revise regulations under the U.S. Grain Standards Act to allow interested persons to stipulate the quality factors that would be redetermined during a reinspection or appeal inspection for grade. Currently reinspections and appeal inspections for grade must include a review for all factors that: (1) may determine the grade; (2) are reported on the original certificate; or (3) are required to be shown. The Agency has determined that mandating all quality factors be reexamined during a review inspection is inefficient, time consuming, and costly. Further, such a complete review of the preceding inspection service is usually not needed to confirm the true quality of the grain. This proposed action will allow interested parties to specify which official factors should be redetermined during the reinspection or appeal inspection service. However, to safeguard against inadvertent misgrading, official personnel may determine other factors, when deemed necessary.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54136
NPRM Comment Period End	10/21/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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RIN: 0580–AA58

295. • FEES FOR PROCESSED COMMODITY ANALYTICAL SERVICES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1621 et seq

CFR Citation: 7 CFR 868.90

Legal Deadline: None

Abstract: The Grain Inspection, Packers and Stockyards Administration is proposing to increase fees for the analytical testing of processed commodities and remove certain tests from the fee schedule for services that are no longer requested. These tests apply only to official processed commodity testing services performed under the Agricultural Marketing Act of 1946. These changes are needed to generate revenue sufficient to cover, as nearly as practicable, rising fixed costs and the 4.1 percent January 2003 Federal pay increase.

Timetable:

Action	Date	FR Cite
NPRM	07/18/03	68 FR 42644
NPRM Comment Period End	09/16/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers

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RIN: 0580–AA84

Department of Agriculture (USDA) Completed Actions
Grain Inspection, Packers and Stockyards Administration (GIPSA)

296. SWINE PACKER MARKETING CONTRACTS

Priority: Other Significant

CFR Citation: 9 CFR 206

Completed:

Reason	Date	FR Cite
Final Action	08/11/03	68 FR 47802

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: H. Tess Butler
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RIN: 0580–AA71

297. EXCEPTIONS TO GEOGRAPHIC AREAS FOR OFFICIAL AGENCIES UNDER THE USGSA

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 800.81; 7 CFR 800.99; 7 CFR 800.116 to 800.118; 7 CFR 800.185; 7 CFR 800.196

Completed:

Reason	Date	FR Cite
Final Action	04/18/03	68 FR 19137

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Tess Butler
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RIN: 0580–AA76

298. FEES FOR OFFICIAL INSPECTION AND WEIGHING SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 800.71

Completed:

Reason	Date	FR Cite
Final Action	06/02/03	68 FR 32623

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Tess Butler
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RIN: 0580–AA81

299. FEES FOR RICE INSPECTION SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 868.91

Completed:

Reason	Date	FR Cite
Final Action	05/09/03	68 FR 24859

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Tess Butler
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RIN: 0580–AA82

BILLING CODE 3410–30–S

Department of Agriculture (USDA) Prerule Stage
Food and Nutrition Service (FNS)

300. • SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): REVISIONS TO WIC FOOD PACKAGES

Regulatory Plan: This entry is Seq. No. 10 in part II of this issue of the **Federal Register**.

RIN: 0584–AD39

301. DISQUALIFIED RECIPIENT REPORTING AND COMPUTER MATCHING REQUIREMENTS THAT AFFECT THE FOOD STAMP PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552(a) Computer Matching and Privacy Protection Act; 7 USC 2015(b) Food Stamp Act

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: This proposed rule describes requirements for State agencies to report information on individuals disqualified from the program for intentional program violations to FNS and codifies prisoner verification and death master file matching mandated by legislation and previously implemented through agency directive. (89–010)

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	
Final Action	06/00/05	
Final Action Effective	09/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 918, Alexandria, VA 22302
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Email: sheri.ackerman@fns.usda.gov

RIN: 0584–AB51

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302. COMMODITY SUPPLEMENTAL FOOD PROGRAM (CSFP): PLAIN LANGUAGE, PROGRAM ACCOUNTABILITY, AND PROGRAM FLEXIBILITY

Regulatory Plan: This entry is Seq. No. 11 in part II of this issue of the **Federal Register**.

RIN: 0584–AC84

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303. FOOD STAMP PROGRAM: ADMINISTRATIVE COST REIMBURSEMENT

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: PL 105–185, sec 502

CFR Citation: 7 CFR 277

Legal Deadline: Final, Statutory, October 1, 1998, Final.

Abstract: This rule will allow State agencies to charge the FSP for its share of common costs for determining eligibility of Temporary Assistance for Needy Families (TANF) households for FSP in accordance with new HHS policy and approved cost allocation plans. (99–007)

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	
Final Action	02/00/05	
Final Action Effective	07/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Federalism: Undetermined

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 918, Alexandria, VA 22302
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RIN: 0584–AC86

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304. FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS: RESOURCE LIMITS AND EXCLUSIONS, EXTENDED CERTIFICATION PERIODS, AND TRANSITIONAL BENEFITS

Priority: Other Significant

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 253; 7 CFR 254

Legal Deadline: None

Abstract: This proposed rule would amend FDPIR regulations by: 1) Bringing the maximum level of allowable resources in line with the Food Stamp Program by: a) Establishing a new resource limit of $3,000 for households with a disabled member, and b) increasing the resource limit from $1,750 to $2,000 for households without elderly or disabled members; 2) allowing a resource exclusion for the first $1,500 of the value of one prepaid funeral arrangement per household member; 3) allowing households in which all members are elderly or disabled to be certified for up to 24 months; and 4) allowing State agencies the option to provide transitional benefits to households that leave the Temporary Assistance Program for Needy Families. The above provisions are modeled after Food Stamp Program provisions. (01–005)

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period Ends	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 918, Alexandria, VA 22302
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Email: sheri.ackerman@fns.usda.gov

RIN: 0584–AD12

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305. CHILD AND ADULT CARE FOOD PROGRAM (CACFP): AT-RISK AFTERSCHOOL SUPPERS

Priority: Other Significant

Legal Authority: PL 106–224, sec 243(i)

CFR Citation: 7 CFR 226

Legal Deadline: None

Abstract: This proposed rule would revise the Child and Adult Care Food Program (CACFP) regulations to allow reimbursement of suppers provided by at-risk afterschool care programs in seven States. Six States were initially authorized by the Agricultural Risk Protection Act (Pub. L. 106–224); the seventh State was authorized by fiscal year 2002 appropriation legislation. At-risk suppers in these States (Delaware, Illinois, Pennsylvania, Michigan, Missouri, New York, and Oregon) are reimbursed under the same conditions set forth in the National School Lunch Act (NSLA) for at-risk snacks in the CACFP. Children who are 18 or younger and enrolled in qualifying afterschool programs located in the seven States may receive free suppers. To qualify, afterschool care programs must be located in low-income areas, provide care to children, and have an educational or enrichment purpose. (01–007)

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	
NPRM Comment Period End	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 918, Alexandria, VA 22302
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RIN: 0584–AD15

306. FOOD STAMP PROGRAM: ADMINISTRATIVE SANCTIONS IMPOSED AGAINST VIOLATING ELECTRONIC BENEFITS TRANSFER (EBT) STORES

Priority: Other Significant

Legal Authority: 12 USC 2021; 13 USC 2022

CFR Citation: 7 CFR 278.6

Legal Deadline: None

Abstract: The United States Department of Agriculture, Food and Nutrition Service (FNS), is proposing to revise section 278.6 of the Food Stamp Program Regulations entitled "Disqualification of Retail Food Stores and Wholesale Food Concerns and Imposition of Civil Money Penalties In Lieu of Disqualifications." This section of the regulation is being revised as a result of the implementation of the Electronic Benefits Transfer (EBT) system. This section of the regulations addresses the administrative sanctions (i.e., imposing a period of disqualification or assessing a monetary penalty) that may be imposed by FNS against retail food stores and wholesale food concerns that are found violating the Food Stamp Program. (01–012)

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 918, Alexandria, VA 22302
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RIN: 0584–AD18

307. FOOD STAMP PROGRAM: SIMPLIFICATION AND STATE FLEXIBILITY

Regulatory Plan: This entry is Seq. No. 12 in part II of this issue of the **Federal Register**.

RIN: 0584–AD22

308. FOOD STAMP PROGRAM: CLARIFICATIONS AND CORRECTIONS TO RECIPIENT CLAIM ESTABLISHMENT AND COLLECTION STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2011 to 2036

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: Section 13 of the Food Stamp Act of 1977, as amended, requires State agencies to pursue collection of recipient overissuances in the Food Stamp Program. On July 6, 2000, FNS published a major rule that revised many of the processes and procedures in this area. This proposed rule provides clarifications and corrections to the July 6, 2000, rulemaking. (02–003)

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

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RIN: 0584–AD25

309. FSP: HIGH PERFORMANCE BONUSES

Regulatory Plan: This entry is Seq. No. 13 in part II of this issue of the **Federal Register**.

RIN: 0584–AD29

310. FSP: ELIGIBILITY AND CERTIFICATION PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Regulatory Plan: This entry is Seq. No. 14 in part II of this issue of the **Federal Register**.

RIN: 0584–AD30

311. FSP: EMPLOYMENT AND TRAINING PROGRAM PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Regulatory Plan: This entry is Seq. No. 15 in part II of this issue of the **Federal Register**.

RIN: 0584–AD32

312. SENIOR FARMERS' MARKET NUTRITION PROGRAM (SFMNP)

Regulatory Plan: This entry is Seq. No. 16 in part II of this issue of the **Federal Register**.

RIN: 0584–AD35

313. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): MISCELLANEOUS VENDOR-RELATED PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: This proposed rule amends the WIC regulations to clarify issues that have arisen subsequent to the publication of the WIC Food Delivery Systems final rule. It includes the following provisions: Allows the release of vendor information such as telephone numbers, e-mail/website addresses, store type, and whether the vendor has been disqualified; requires State agencies to document the number of cans of infant formula purchased by participants; prohibits provision of incentive items solely to WIC participants; protects State agencies against loss of revenue due to vendor nonselection; and provides for an abbreviated administrative review when a State agency issues a civil money penalty in lieu of a reciprocal WIC disqualification. The rule also increases the maximum fine for theft or fraud from $10,000 to $25,000, in accordance with Public Law 105-336. (02-013)

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	03/00/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, Local, State, Tribal

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RIN: 0584-AD36

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314. FSP: DISCRETIONARY QUALITY CONTROL PROVISIONS OF TITLE IV OF PUBLIC LAW 107-171

Regulatory Plan: This entry is Seq. No. 17 in part II of this issue of the **Federal Register**.

RIN: 0584-AD37

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315. NATIONAL SCHOOL LUNCH PROGRAM (NSLP) ALLOWABLE COSTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1752

CFR Citation: 7 CFR 210

Legal Deadline: None

Abstract: Update NSLP regulations 7 CFR 210 regarding the use of federal funds for the provision of meals for school children under the NSLP. This rule will prohibit school food authorities (SFA) from using funds in the non-profit school food service account for expenditures made under any cost reimbursable provision of a contract that permits the contractor to receive payments in excess of the contractor's actual net allowable costs. The expected result is that regulatory language will ensure optimum utilization of funds in the non-profit school food service account. (03-001)

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: Undetermined

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RIN: 0584-AD38

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316. • CHILD NUTRITION PROGRAMS: NATIONAL SCHOOL LUNCH PROGRAM: SERVING FRUITS AND VEGETABLES AS AFTERSCHOOL SNACKS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et. seq.)

CFR Citation: 7 CFR 210.10

Legal Deadline: None

Abstract: This proposed rule would require that a fresh vegetable or a fresh/dried fruit be one of the components served in the afterschool snack service under the National School Lunch Program and that it be served at least three times per 5-day week. The U.S. Department of Agriculture is establishing this requirement to promote the health of the Nation's school children by encouraging them to consume more fruits and vegetables. (03-003)

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

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RIN: 0584-AD40

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317. • WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP): FUNDING FORMULA RULE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 248

Legal Deadline: None

Abstract: The FMNP is a fixed grant program with limited funds. Funding increases are not guaranteed from year to year. Section 17(m) of the Child Nutrition Act of 1966, as amended, sets forth broad funding requirements for the FMNP. By law, after base grants are provided to current State agencies, i.e., total Federal funds received in the prior fiscal year, the remaining funds are divided so that 75 percent is provided for expansion funds for current State agencies and 25 percent is provided for new State agencies. Currently, beyond the division of funds noted above, there are no requirements for how to allocate funds for expansion and new State agencies when funds requested exceed the amount of available funds. This proposed regulation would amend 7 CFR Part 248 to set forth a funding formula in cases where FMNP funds requested exceed available funds to allocate. The proposed methodology would provide a base funding level for each State agency. Funding above the base level would be based on the individual State agency's need relative to all other State agencies' needs. (03-004)

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, Local, State, Tribal

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RIN: 0584–AD41

Department of Agriculture (USDA) Food and Nutrition Service (FNS)

Final Rule Stage

318. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): MISCELLANEOUS PROVISIONS

Priority: Other Significant

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: This final rule amends certain provisions of the WIC program regulations in response to issues raised by WIC State agencies and incorporates longstanding program policies into regulations, with the intention to strengthen services to WIC participants, improve Program administration, and increase State agency flexibility in managing the Program. It also takes into consideration comments received on the proposed rule, which was published on December 12, 2002 (67 FR 71774). (89–515)

Timetable:

Action	Date	FR Cite
NPRM	12/02/02	67 FR 71774
NPRM Comment Period End	04/01/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State, Tribal

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RIN: 0584–AB10

319. CHILD AND ADULT CARE FOOD PROGRAM: IMPROVING MANAGEMENT AND PROGRAM INTEGRITY

Regulatory Plan: This entry is Seq. No. 18 in part II of this issue of the **Federal Register**.

RIN: 0584–AC24

320. FOOD STAMP PROGRAM REGULATORY REVIEW: FSP STANDARDS FOR APPROVAL AND OPERATION OF FOOD STAMP ELECTRONIC BENEFIT TRANSFER SYSTEMS

Priority: Other Significant

Legal Authority: 7 USC 2011 to 2034

CFR Citation: 7 CFR 274.12

Legal Deadline: None

Abstract: This rule proposes revisions to food stamp regulations affecting the standards and administration of EBT systems for food stamp issuance. Current regulations at 7 CFR 274.12 delineate the standards that EBT systems must meet in order to be approved for operation. This rule will revise those regulations to provide the State agency more flexibility in implementing and operating those systems. Clarifications and FNS settlement improvements will also be incorporated into the rule. (96–016)

Timetable:

Action	Date	FR Cite
NPRM	07/12/01	66 FR 36495
NPRM Comment Period End	09/10/01	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0584–AC37

321. NATIONAL SCHOOL LUNCH PROGRAM: REIMBURSEMENT FOR SNACKS IN AFTERSCHOOL CARE PROGRAMS

Priority: Other Significant

Legal Authority: PL 105–336

CFR Citation: 7 CFR 210; 7 CFR 235; 7 CFR 245

Legal Deadline: None

Abstract: The William F. Goodling Child Nutrition Reauthorization Act of 1998 amended the Richard B. Russell National School Lunch Act to authorize reimbursement for snacks served under the NSLP in afterschool care programs operated by schools. The afterschool program must be organized primarily to provide care for children and have an educational or enrichment purpose. Additionally, the statute mandates free snacks for all children enrolled in afterschool care programs operated by schools in areas served by a school in which at least 50 percent of the enrolled children are certified for free or reduced price meals. (98–007)

Timetable:

Action	Date	FR Cite
NPRM	10/11/00	65 FR 60502
NPRM Comment Period End	01/09/01	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

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RIN: 0584–AC72

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322. FSP: CIVIL RIGHTS DATA COLLECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 88–352, sec 601

CFR Citation: 7 CFR 272

Legal Deadline: None

Abstract: Title VI of the Civil Rights Act of 1964 requires the collection of racial/ethnic data for all programs utilizing Federal funds. State agencies are required to collect the data by racial/ethnic categories set by the Federal Government. In 1997, those categories changed. This proposed rule would change the racial categories for State Food Stamp Program reporting to comply with the new Federal racial categories. (98–010)

Timetable:

Action	Date	FR Cite
NPRM	11/27/02	67 FR 70861
NPRM Comment Period End	01/27/03	
Final Action	09/00/04	
Final Action Effective	10/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

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RIN: 0584–AC75

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323. SPECIAL NUTRITION PROGRAMS: DISCLOSURE OF CHILDREN'S ELIGIBILITY INFORMATION UNDER THE CHILD NUTRITION PROGRAMS

Priority: Other Significant

Legal Authority: PL 106–224, sec 242; PL 103–448, sec 108

CFR Citation: 7 CFR 215; 7 CFR 225; 7 CFR 226; 7 CFR 245

Legal Deadline: Final, Statutory, October 20, 2000.

Abstract: This rule establishes requirements for the disclosure of children's free and reduced price meal and free milk eligibility information by agencies that make the free and reduced price meal or free milk determination under the National School Lunch Program, the School Breakfast Program, the Special Milk Program, the Child and Adult Care Food Program, and the Summer Food Service Program. The rule responds to amendments to the Richard B. Russell National School Lunch Act, which allow limited disclosure of children's free and reduced price meal or free milk eligibility information, Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, Public Law 106–224, the Agricultural Risk Protection Act of 2000, comments received on the July 25, 2000, proposed rule on "Disclosure of Children's Eligibility Information" (65 FR 45725 issued under RIN 0584–AC21), and comments received on the January 11, 2001, interim rule on "Disclosure of Children's Eligibility Information to State Medicaid and the State Children's Health Insurance Program" (66 FR 2195 issued under RIN 0584–AC95). This rule incorporates the proposed rule and interim rule into one final rule. Therefore, RIN 0584–AC21 is withdrawn, and the final provisions will be issued under RIN 0584–AC95. The final rule will adopt or modify as necessary many of the provisions mandated by the statute and required by the interim rule. Many of these same provisions were presented as recommendations in the proposed rule. The objective is to provide consistency in procedures when determining agencies' option to disclose children's eligibility information and to provide some protection against unauthorized disclosures and misuse of personal information, regardless of whether the disclosure is to Medicaid or SCHIP or to an education or other program. (00–004)

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	
Interim Final Rule	01/11/01	66 FR 2195
Interim Final Rule Comment Period End	04/11/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

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RIN: 0584–AC95

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324. FOOD STAMP PROGRAM: VEHICLE AND MAXIMUM EXCESS SHELTER EXPENSE DEDUCTION PROVISIONS OF PUBLIC LAW 106–387

Regulatory Plan: This entry is Seq. No. 19 in part II of this issue of the **Federal Register**.

RIN: 0584–AD13

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325. SPECIAL NUTRITION PROGRAMS: UNIFORM FEDERAL ASSISTANCE REGULATIONS; NONDISCRETIONARY TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 503, 111, and 7501; PL 98–502; PL 104–156

CFR Citation: 7 CFR 210, 215, 220, 225, and 235

Legal Deadline: None

Abstract: This final rule makes a number of technical changes to the regulations governing the National School Lunch Program, the Special Milk Program for Children, the School Breakfast Program, the Child and Adult Care Food Program, the Summer Food Service Program, and State Administrative Expense Funds. The United States Department of Agriculture (USDA) is revising its grants management regulations in order to bring the entitlement programs it administers under the same regulations that already apply to nonentitlement programs and to identify exceptions to these general rules that apply only to entitlement programs. (01–008)

Timetable:

Action	Date	FR Cite
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

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RIN: 0584–AD16

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326. PRIVACY ACT: REVISION OF AN EXISTING SYSTEM OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2011 to 2036; PL 100–103

CFR Citation: 7 CFR 273

Legal Deadline: None

Abstract: This is a revision to the existing system of records entitled "Claims Against Food Stamp Recipients—USDA/FNS-3." The revision is being made to comply with the requirements of Treasury Offset Program. This notice announces that FNS will now share data with private sources for the purpose of obtaining addresses to locate individuals who may owe delinquent food stamp recipient claims and employment information for administrative wage garnishment. (02–002)

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	
Final Action Effective	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

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RIN: 0584–AD24

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327. AFTERSCHOOL SNACKS UNDER THE CHILD AND ADULT CARE FOOD PROGRAM

Priority: Other Significant

Legal Authority: PL 105–336

CFR Citation: 7 CFR 226

Legal Deadline: None

Abstract: The William F. Goodling Child Nutrition Reauthorization Act of 1998 amended the Richard B. Russell National School Lunch Act to authorize reimbursement for snacks served under CACFP in afterschool care programs operated by at-risk centers. The afterschool program must be organized primarily to provide care for children and have an educational or enrichment purpose. All snacks are served free to participants because at-risk centers are located in eligible areas (that is, areas served by a school in which at least 50 percent of the enrolled children are certified for free or reduced price meals). (02–004)

Timetable:

Action	Date	FR Cite
NPRM	10/11/00	65 FR 60502
NPRM Comment Period End	01/09/01	
Final Action	07/00/04	
Final Action Effective	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

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RIN: 0584–AD27

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328. FSP: EBT AND RETAIL FOOD STORES PROVISIONS OF THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–171, secs 4108, 4110, 4113, and 4117

CFR Citation: 7 CFR 274.12; 7 CFR 278; 7 CFR 279

Legal Deadline: Other, Statutory, May 13, 2002, Other.
Other, Statutory, October 1, 2002, Other.

Abstract: Section 4108—This rule allows alternate methods for issuing food stamp benefits during disasters when reliance on electronic benefit transfer systems (EBT) is impracticable.

Section 4110—This rule eliminates the requirement that Federal costs for electronic benefit transfer systems cannot exceed the costs of the paper systems they replace.

Section 4113—This rule allows group homes and institutions to redeem EBT benefits directly through banks in areas where EBT has been implemented rather than going through authorized wholesalers or other retailers.

Section 4117—This rule allows the Secretary of Agriculture to use mailing methods other than certified mail when notifying retailers of the above mentioned adverse actions so long as the method provides evidence of delivery. (02–005)

Timetable:

Action	Date	FR Cite
NPRM	05/06/03	68 FR 23927
NPRM Comment Period End	07/07/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0584–AD28

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329. FSP: NON-DISCRETIONARY QUALITY CONTROL PROVISIONS OF TITLE IV OF PUBLIC LAW 107–171

Regulatory Plan: This entry is Seq. No. 20 in part II of this issue of the **Federal Register**.

RIN: 0584–AD31

Department of Agriculture (USDA)
Food and Nutrition Service (FNS)

Long-Term Actions

330. CHILD AND ADULT CARE FOOD PROGRAM: IMPLEMENTING LEGISLATIVE REFORMS TO STRENGTHEN PROGRAM INTEGRITY

Priority: Other Significant

CFR Citation: 7 CFR 226

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/27/02	67 FR 43448
Interim Final Rule Effective	07/29/02	
Final Action	12/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 0584–AC94

Department of Agriculture (USDA)
Food and Nutrition Service (FNS)

Completed Actions

331. WIC: REQUIREMENTS FOR AND EVALUATION OF WIC PROGRAM REQUESTS FOR BIDS FOR INFANT FORMULA REBATE CONTRACTS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 246

Completed:

Reason	Date	FR Cite
Withdrawn—Reevaluating current provisions	11/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Sharon Ackerman
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RIN: 0584–AB52

332. FSP: ELECTRONIC BENEFIT TRANSFER (EBT) SYSTEMS INTEROPERABILITY AND PORTABILITY

Priority: Other Significant

CFR Citation: 7 CFR 272.1; 7 CFR 274.12

Completed:

Reason	Date	FR Cite
Final Action	06/25/03	68 FR 37693
Final Action Effective	07/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon Ackerman
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RIN: 0584–AC91

333. IMPROVING ACCESS TO THE FOOD STAMP PROGRAM FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Priority: Other Significant

CFR Citation: 7 CFR 272.4(b)

Completed:

Reason	Date	FR Cite
Withdrawn No activity anticipated	08/15/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Sharon Ackerman
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RIN: 0584–AD06

334. DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS IN SCHOOLS—VERIFICATION REPORTING AND RECORDKEEPING REQUIREMENTS

Priority: Other Significant

CFR Citation: 7 CFR 245

Completed:

Reason	Date	FR Cite
Final Action	09/11/03	68 FR 53483
Final Action Effective	10/14/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

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RIN: 0584–AD20

335. FOOD STAMP PROGRAM: ADMINISTRATIVE REVIEW REQUIREMENTS—FOOD RETAILERS/WHOLESALERS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 278; 7 CFR 279

Completed:

Reason	Date	FR Cite
Final Action	07/10/03	68 FR 41051
Final Action Effective	09/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0584–AD23

336. COMMODITY SUPPLEMENTAL FOOD PROGRAM (CSFP)—ALLOCATION OF ADMINISTRATIVE FUNDS

Priority: Other Significant

CFR Citation: 7 CFR 247.10

Completed:

Reason	Date	FR Cite
Final Action	08/28/03	68 FR 51675

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

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RIN: 0584–AD33

BILLING CODE 3410–DM–S

Department of Agriculture (USDA) — Prerule Stage
Food Safety and Inspection Service (FSIS)

337. NUTRITION LABELING OF MEAT AND POULTRY PRODUCTS

Priority: Other Significant

Legal Authority: 5 USC 610; 21 USC 601; 21 USC 453; ...

CFR Citation: 9 CFR 317; 9 CFR 318; 9 CFR 381

Legal Deadline: Other, Statutory, June 2004, Other.
Section 610 of the RFA mandates that this review be concluded within 12 months after its commencement date.

Abstract: On January 6, 1993, the Department of Agriculture, Food Safety and Inspection Service (FSIS) amended the Federal meat and poultry products inspection regulations with promulgation of the aforementioned final rule (58 FR 632) to (1) permit voluntary nutrition labeling on single-ingredient, raw meat and poultry products; and (2) to establish mandatory nutrition labeling requirements for all other meat and poultry products, notwithstanding specific exceptions.

Promulgation Purpose and Legal Basis:

Sections 1(n) of the Federal Meat Inspection Act (FMIA), and 4(h) of the Poultry Products Inspection Act (PPIA) establish the Secretary of Agriculture's statutory responsibility for ensuring that meat and meat food products, prepared and intended to be distributed in commerce, are not adulterated, misbranded, or improperly marked, labeled, and packaged (21 U.S.C. 601(n)(1); 21 U.S.C. 453(4)(h)).

On November 8, 1990, the Nutrition Labeling and Education Act of 1990 (NLEA) was enacted by Public Law 101.535 (104 Stat. 2353). The statute amended certain provisions of the Federal Food, Drug, and Cosmetic Act and required: (1) Mandatory nutrition labeling for most of the Food and Drug Administration's (FDA) regulated packaged food products; and (2) issuance of voluntary nutrition guidelines to food retailers for providing nutrition information on 20 of each most frequently consumed during a year varieties of raw vegetables, raw fruits, and raw fish. However, if food retailers failed to substantially comply with the voluntary guidelines, the NLEA requires FDA to issue mandatory requirements.

FSIS' final rule entitled, "Nutrition Labeling of Meat and Poultry Products," will be reviewed under the Regulatory Flexibility Act's section 610 provisions within the succeeding 12 months. Accordingly, the FSIS invites all interested parties to submit comments on: (1) The continued need for the rule; (2) the complexity of the rule; (3) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, and local rules; (4) the nature of complaints or comments received concerning the rule from the public; and (5) the technology and economic conditions, or other factors, which have changed the specific area affected by the rule.

Timetable:

Action	Date	FR Cite
Final Rule	01/06/93	58 FR 632
End Review	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW,
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Phone: 202 205-0279

RIN: 0583-AC95

Department of Agriculture (USDA) — Proposed Rule Stage
Food Safety and Inspection Service (FSIS)

338. PERFORMANCE STANDARDS FOR BACON

Regulatory Plan: This entry is Seq. No. 21 in part II of this issue of the **Federal Register**.

RIN: 0583-AC49

339. EGG AND EGG PRODUCTS INSPECTION REGULATIONS

Regulatory Plan: This entry is Seq. No. 22 in part II of this issue of the **Federal Register**.

RIN: 0583-AC58

340. LABELING—GENERIC APPROVAL AND REGULATION CONSOLIDATION

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 451 to 470; 21 USC 601 to 695

CFR Citation: 9 CFR 317; 9 CFR 327; 9 CFR 381; 9 CFR 412

Legal Deadline: None

Abstract: This rulemaking will continue an effort initiated several years ago by amending FSIS's regulations to expand the types of labeling that are generically approved. FSIS plans to propose that the submission of labeling for approval prior to use be limited to certain types of labeling, as specified in the regulations. In addition, FSIS plans to reorganize and amend the regulations by consolidating the nutrition labeling rules that currently are stated separately for livestock products and poultry products (in part 317, subpart B, and part 381, subpart Y, respectively) and by amending their provisions to set out clearly various circumstances under which these products are misbranded.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

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RIN: 0583-AC59

341. FOOD STANDARDS; GENERAL PRINCIPLES AND FOOD STANDARDS MODERNIZATION

Priority: Other Significant

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) are proposing to modernize their food standards. The agencies are proposing a set of guiding principles for food standards. The adherence to these principles will result in standards that will better promote honesty and fair dealing in the interest of consumers, protect the public, allow for technological advances in food production, are consistent with international food standards, and are clear, simple, and easy to use for both manufacturers and the agencies that enforce compliance with the standards. The proposed guiding principles will establish the criteria that the Agnencies will use in considering whether a petition to establish, revise, or eliminate a food standard will be the basis for a proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW,
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RIN: 0583–AC72

342. PERFORMANCE STANDARDS FOR ON-LINE ANTIMICROBIAL REPROCESSING OF PRE-CHILL POULTRY CARCASSES

Priority: Other Significant

Legal Authority: 21 USC 451 to 470

CFR Citation: 9 CFR 381; 9 CFR 424

Legal Deadline: None

Abstract: This rule is proposing to allow, on a voluntary basis, the on-line reprocessing of pre-chill poultry carcasses that are accidentally contaminated with digestive tract contents during slaughter. The treated carcasses must meet a standard at pre-chill, in addition to pre-chill standards for generic E. coli and Salmonella already prescribed.

Timetable:

Action	Date	FR Cite
NPRM	12/01/00	65 FR 75187
NPRM Comment Period End	04/02/01	
Second NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0583–AC73

343. PETITIONS FOR RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553

CFR Citation: 9 CFR 392

Legal Deadline: None

Abstract: FSIS is proposing to amend its regulations to add a new part that prescribes procedures for the submission, consideration, and disposition of petitions for rulemaking. The proposal also describes the Agency's expectations for the type of documentation that should be submitted in support of a petition and that will facilitate regulatory development. FSIS is proposing this action to provide clear guidance to those who would like to participate in the rulemaking process by petitioning FSIS to issue, amend, or repeal a rule administered by the Agency.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 0583–AC81

344. CLASSES OF POULTRY UPDATING POULTRY CLASS STANDARDS

Priority: Other Significant

Legal Authority: 21 USC 451

CFR Citation: 9 CFR 381.170(a)

Legal Deadline: None

Abstract: FSIS is proposing to amend the official U.S. classes of poultry so that they more accurately and clearly describe the characteristics of poultry in the market today. Poultry classes are defined primarily in terms of age and sex of the bird. Genetic improvements and new poultry management techniques have reduced the grow-out period for some poultry classes while extensive cross breeding has produced poultry with higher meat yields but blurred breed distinctions. This action is being taken to ensure that poultry products are labeled in a truthful and non-misleading manner.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW,
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RIN: 0583–AC83

USDA—FSIS

Proposed Rule Stage

345. ELIMINATION OF CHILLING TIME AND TEMPERATURE REQUIREMENTS FOR READY-TO-COOK POULTRY

Regulatory Plan: This entry is Seq. No. 23 in part II of this issue of the **Federal Register**.

RIN: 0583–AC87

346. EMERGENCY REGULATIONS TO PREVENT MEAT FOOD AND MEAT PRODUCTS THAT MAY CONTAIN THE BSE AGENT FROM ENTERING COMMERCE

Regulatory Plan: This entry is Seq. No. 24 in part II of this issue of the **Federal Register**.

RIN: 0583–AC88

347. ADDITION OF SAN MARINO TO THE LIST OF COUNTRIES ELIGIBLE TO EXPORT MEAT AND MEAT PRODUCTS TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 601 to 695

CFR Citation: 9 CFR 327

Legal Deadline: None

Abstract: FSIS is proposing to add San Marino to the list of countries from which meat or meat food products may be imported into the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 0583–AC91

348. ● MEAT PRODUCED BY ADVANCED MEAT/BONE SEPARATION MACHINERY AND MEAT RECOVERY SYSTEMS

Regulatory Plan: This entry is Seq. No. 25 in part II of this issue of the **Federal Register**.

RIN: 0583–AD00

349. ● ADDITION OF MEXICO TO THE LIST OF COUNTRIES ELIGIBLE FOR THE IMPORTATION OF SLAUGHTERED (FRESH) POULTRY AND EGG PRODUCTS INTO THE UNITED STATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: FSIS is proposing to add Mexico to the list of countries from which fresh slaughtered poultry and egg products may be imported into the United States

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Daniel L. Engeljohn, Executive Associate, Office of Policy & Program Development, Department of Agriculture, Food Safety and Inspection Service, Room 402 Cotton Annex Building, 1400 Independence Avenue SW,
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RIN: 0583–AD01

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS)

Final Rule Stage

350. BEEF OR PORK WITH BARBECUE SAUCE; REVISION OF STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 319

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations by removing a meat yield requirement for the standardized products "Beef With Barbecue Sauce" and "Pork With Barbecue Sauce." Current regulations for these products require that the product contain not less than 50 percent of the species identified on the label and that the weight of the cooked pork or beef not exceed 70 percent of the uncooked weight of the meat. The first requirement is consistent with other meat and sauce requirements, but the second requirement is not. The petitioner asserts that the product standard (promulgated in 1952) does not reflect current production practices or the commercial marketability of beef or pork with barbecue sauce. The petitioner further states that producers of these products are at a competitive disadvantage with other meat and sauce producers, because other meat and sauce producers do not have a 70 percent yield requirement. For example, producers of the standardized products "Beef with Gravy," "Meat Pies," and "Spaghetti with Meat and Sauce" and similar standardized products do not have any meat yield requirements.

FSIS has determined that the petitioner's request should be granted. This action would permit fair competition between meat and barbecue sauce producers, and poultry and sauce producers, and would provide consistent requirements in both the meat and poultry inspection regulations.

Timetable:

Action	Date	FR Cite
NPRM	09/03/97	62 FR 46450
NPRM Comment Period End	11/03/97	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583-AC09

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351. PERFORMANCE STANDARDS FOR READY-TO-EAT MEAT AND POULTRY PRODUCTS

Regulatory Plan: This entry is Seq. No. 26 in part II of this issue of the **Federal Register**.

RIN: 0583-AC46

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352. NUTRITION LABELING OF GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS AND SINGLE-INGREDIENT PRODUCTS

Regulatory Plan: This entry is Seq. No. 27 in part II of this issue of the **Federal Register**.

RIN: 0583-AC60

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353. AGENCY ORGANIZATION

Priority: Info./Admin./Other

Legal Authority: 21 USC 451 to 470; 21 USC 601 to 695; 21 USC 1031 to 1056

CFR Citation: 9 CFR 300; 9 CFR 301; 9 CFR 306; 9 CFR 320; 9 CFR 381; 9 CFR 590

Legal Deadline: None

Abstract: This rulemaking will amend FSIS's regulations adopted under the FMIA, PPIA, and EPIA by updating and consolidating organizational provisions.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0583-AC78

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354. • PROHIBITION ON THE USE OF AIR-INJECTION STUNNERS FOR THE SLAUGHTER OF CATTLE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Federal Meat Inspection Act; ...

CFR Citation: 9 CFR 313

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to prohibit the use of penetrative captive bolt stunning devices that deliberately inject air into the cranial cavity of cattle. This rulemaking responds to the findings of a risk assessment on bovine spongiform encephalopathy (BSE) conducted by the Harvard Center for Risk Analysis (referred to as the Harvard study) and is part of a series of actions that the USDA is taking to strengthen its BSE prevention programs.

BSE has never been detected in the United States (U.S.) despite active surveillance for the disease by the USDA since May 1990. Furthermore, the Harvard study found that, owing to already ongoing Federal programs, the U.S. is highly resistant to the introduction and spread of the disease. Even so, the USDA response to BSE has always been proactive and preventive. Therefore, FSIS is taking this action to address the potential risk posed by stunning devices that may force visible pieces of brain, known as macro-emboli, into the circulatory system of stunned cattle.

Timetable:

Action	Date	FR Cite
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

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RIN: 0583-AD03

355. FOOD STANDARDS: REQUIREMENTS FOR SUBSTANTIVE STANDARDIZED MEAT AND POULTRY PRODUCTS NAMED BY USE OF AN EXPRESSED NUTRIENT CONTENT CLAIM AND A STANDARDIZED TERM

Priority: Other Significant

CFR Citation: 9 CFR 381.172; 9 CFR 319.10

Timetable:

Action	Date	FR Cite
NPRM	12/29/95	60 FR 67474
NPRM Comment Period End	02/27/96	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Post
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RIN: 0583-AC82

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356. • ANTE-MORTEM AND POST-MORTEM INSPECTION OF LIVESTOCK AND POULTRY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 601 to 695 et seq; 7 USC 138 et seq; 21 USC 450 et seq; 21 USC 451 to 470 et seq; 7 CFR 2.18 to 2.53 et seq

CFR Citation: 9 CFR 309; 9 CFR 310; 9 CFR 381

Legal Deadline: None

Abstract: FSIS is proposing to reform the regulations governing ante-mortem and post-mortem inspection of livestock and poultry. A number of the current regulations are no longer appropriate for the conditions under which meat and poultry products are produced and distributed today (e.g., splitting of sterna, prohibition of inflating carcasses). Others are duplicative regulations (e.g., those dealing with bruises and contamination) applying separately to meat and to poultry that could be combined into single regulations applying to both meat and poultry. Most emphasize the procedures for achieving regulatory objectives rather than the objectives themselves. This proposal would remove these prescriptive, detailed, or obsolete regulations or convert them to performance standards that are consistent with FSIS requirements for establishment-operated hazard analysis and critical control points (HACCP) systems and with the Agency's food safety regulatory strategy.

Under the proposal, the current ante-mortem requirements, listing objectionable diseases or conditions and corresponding actions to be taken, would be replaced by performance standards intended to ensure that only "normal," healthy animals that do not pose an evident hazard to public health are permitted to enter a slaughtering establishment. "Normal" animals would include those, for example, that are not running a temperature or that do not exhibit lesions of disease or behaviors characteristic of central nervous system disorders. Similarly, the post-mortem regulations, with their lists of conditions and detailed, command-and-control procedures, would be streamlined. The prescriptive provisions would be replaced by performance standards relating to food safety.

This proposal would also recodify the ante-mortem and post-mortem inspection regulations for livestock and poultry. To the extent possible, consistent with the Federal Meat Inspection Act and the Poultry Products Inspection Act, regulations concerning livestock and meat carcasses and parts, and those concerning poultry carcasses and parts, would be designated to the same parts and sections of the Code of Federal Regulations. These changes would be part of the ongoing Agency effort to make the regulations more streamlined and user-friendly.

This proposal would focus on the performance standards that establishments should meet through operation of their HACCP systems for slaughtering and dressing operations. It would remove impediments to the development and operation of HACCP plans by making the current regulations compatible with the HACCP approach to food safety.

Besides the proposed action, FSIS considered the alternative of no rulemaking and the alternative of eliminating all regulations on livestock, poultry, and the carcasses and parts of livestock and poultry, affected by specific diseases and conditions. The first alternative would leave in place numerous detailed prescriptions and procedural requirements inconsistent with, or duplicative of, HACCP systems. The second would risk exposing the public to products that may be unwholesome or otherwise adulterated.

The Agency believes the alternative represented by this proposal—converting to performance standards the ante-mortem and post-mortem inspection regulations—would offer the best prospect for the efficient and effective implementation of HACCP. It would also maximize the flexibility establishments have to adopt technological innovations that would increase the assurance of food safety.

Timetable:

Action	Date	FR Cite
NPRM	08/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 0583-AD02

357. TRANSPORTATION, STORAGE, AND OTHER HANDLING OF POTENTIALLY HAZARDOUS FOODS

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: 9 CFR 308; 9 CFR 317; 9 CFR 325; 9 CFR 381

Completed:

Reason	Date	FR Cite
Withdrawn because the Agency has published guidelines on these matters	08/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC05

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358. ANTE-MORTEM AND POST-MORTEM INSPECTION OF LIVESTOCK AND POULTRY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 9 CFR 309; 9 CFR 310; 9 CFR 381

Completed:

Reason	Date	FR Cite
Despite the merit of this matter, withdrawn because of competing Agency priorities	08/11/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

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RIN: 0583–AC43

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359. REQUIREMENTS FOR DISPOSITION AND DISPOSAL OF INSPECTED RAW MEAT AND POULTRY PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 9 CFR 311; 9 CFR 314; 9 CFR 320; 9 CFR 325; 9 CFR 381; 9 CFR 428; 9 CFR 455

Completed:

Reason	Date	FR Cite
Despite the merit of this matter, withdrawn because of competing Agency priorities	08/11/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

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RIN: 0583–AC44

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360. MEAT PRODUCED BY ADVANCED MEAT/BONE SEPARATION MACHINERY AND MEAT RECOVERY SYSTEMS

Priority: Other Significant

CFR Citation: 9 CFR 301.2; 9 CFR 318.24 (Revision); 9 CFR 320.1(b)(10)

Completed:

Reason	Date	FR Cite
Withdrawn	08/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC51

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361. REWORKING OF MEAT AND POULTRY CARCASSES ACCIDENTALLY CONTAMINATED DURING EVISCERATION

Priority: Other Significant

CFR Citation: 9 CFR 310; 9 CFR 381; 9 CFR 433

Completed:

Reason	Date	FR Cite
Despite the merit of this matter, withdrawn because of competing Agency priorities	08/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC53

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362. REFORM OF REGULATIONS ON IMPORTED MEAT AND POULTRY PRODUCTS

Priority: Other Significant

CFR Citation: 9 CFR 327; 9 CFR 381

Completed:

Reason	Date	FR Cite
Despite the merit of this matter, withdrawn because of competing Agency priorities	08/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC56

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363. FOOD LABELING; NUTRIENT CONTENT CLAIMS, DEFINITION OF THE TERM HEALTHY

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 317; 9 CFR 381

Completed:

Reason	Date	FR Cite
Despite the merit of this matter, withdrawn because of competing Agency priorities	08/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Post
Phone: 202 205–0279

RIN: 0583–AC65

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364. ELIMINATION OF REQUIREMENTS FOR TOTAL QUALITY CONTROL SYSTEMS

Priority: Other Significant

CFR Citation: 9 CFR 317; 9 CFR 318; 9 CFR 381

Completed:

Reason	Date	FR Cite
Despite the merit of this matter, withdrawn because of competing Agency priorities	08/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 0583–AC68

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365. INCORPORATION OF FOOD AND COLOR ADDITIVES INTO 21 CFR

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 318.7; 9 CFR 381.147

Completed:

Reason	Date	FR Cite
Despite the merit of this matter, withdrawn because of competing Agency priorities	08/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Post
Phone: 202 205–0279

RIN: 0583–AC69

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366. POULTRY INSPECTION: REVISION OF FINISHED PRODUCT STANDARDS WITH RESPECT TO INGESTA

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 9 CFR 381

Completed:

Reason	Date	FR Cite
Despite the merit of this matter, withdrawn because of competing Agency priorities	08/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC77

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367. ADDITION OF MEXICO TO THE LIST OF COUNTRIES ELIGIBLE FOR THE IMPORTATION OF SLAUGHTERED (FRESH) POULTRY AND EGG PRODUCTS INTO THE UNITED STATES

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 381

Completed:

Reason	Date	FR Cite
Withdrawn	08/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC92

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368. STANDARDS AND LABELING REQUIREMENTS FOR MECHANICALLY SEPARATED SPECIES AND PRODUCTS IN WHICH IT IS USED

Priority: Info./Admin./Other

Legal Authority: 5 USC 610(c)

CFR Citation: 9 CFR 317.2(j)(13)(ii); 9 CFR 318.18; 9 CFR 319.5

Legal Deadline: Other, Statutory, May 2003, Other.
Provisions of the RFA mandate that this review conclude within 12 months after the initial announcement.

Abstract: On June 29, 1982, the Department of Agriculture amended the Federal meat inspection regulations with promulgation of the final rule (47 FR 28214) to (1) modify the definition, standard, and permitted uses for the finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses, and the labeling requirements for meat food products in which it is used as an ingredient; and (2) to establish labeling requirements for such products.

Promulgation Purpose and Legal Basis:

Sections 1(m), (n), 7, and 10 of the Federal Meat Inspection Act (FMIA) establishes the Secretary of Agriculture's statutory responsibility for ensuring that meat and meat food products, prepared and intended to be distributed in commerce, are not adulterated, misbranded, or improperly marked, labeled, and packaged. (21 U.S.C. 601(m)(n), 607, 610) The final rule governing the production and use of mechanically separated species was issued in 1978 (43 FR 26416). However, despite the availability of technology and raw materials, a potential food source was not being made available to the general public. In the interim, the Pacific Coast Meat Association (PCMA) and the American Meat Institute (AMI) contended that its failure to market products containing Mechanically Processed (Species) Product (MP(S)P) was due to regulatory requirements that extended beyond the perimeters necessary to protect the public, and argued that they were effectively precluded from producing or marketing mechanically deboned beef, pork, or veal or lamb by the misleading labeling and the unreasonable compositional standards imposed by the regulations. PCMA and the AMI petitioned the agency to reconsider the requirements in light of information compiled since the promulgation of the 1978 regulations. PCMA and AMI submitted a report on a series of consumer focus group's sessions exploring attitudes towards various types of meat food product labeling, and an analysis of the economic impacts of the 1978 regulations. Based on the original petition's argument, data compiled since 1978, and the Agency's internal review and reevaluation of its regulations in accordance with Executive Order 12291 (now Executive Order 12866), the Department decided to amend the requirements and issue a new final rule entitled "Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used."

This regulation has been reviewed under the Regulatory Flexibility Act's section 610 provisions. The Food Safety and Inspection Service (FSIS) intends to publish the results of its mandatory review in the Federal Register by May 31, 2003.

Timetable:

Action	Date	FR Cite
End Review	06/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0583–AC93

369. CHANGES IN FEES FOR MEAT, POULTRY, AND EGG PRODUCTS INSPECTION SERVICE

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 391; 9 CFR 590; 9 CFR 592

Completed:

Reason	Date	FR Cite
Final Action	06/26/03	68 FR 37954

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC94

370. • USE OF ANY SAFE AND SUITABLE BINDER OR ANTIMICROBIAL AGENT IN MEAT AND POULTRY PRODUCTS WITH STANDARDS OF IDENTITY OR COMPOSITION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 138f; 7 USC 450, 1901 to 1906; 21 USC 451 to 470; 21 USC 601 to 695; 7 CFR 2.17, 2.55; 7 CFR 2.18, 2.53

CFR Citation: 9 CFR 319 and 381

Legal Deadline: None

Abstract: FSIS is amending its regulations to permit the use of any safe and suitable binder or antimicrobial agent in the production of meat and poultry products that are subject to a standard of identity or composition that provides for the use of such ingredients.

Timetable:

Action	Date	FR Cite
Final Action	04/29/03	68 FR 22576

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW,
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RIN: 0583–AC96

371. • ADDITION OF AUSTRALIA AND NEW ZEALAND TO THE LIST OF COUNTRIES ELIGIBLE TO EXPORT RATITES AND RATITE PRODUCTS INTO THE UNITED STATES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 138f, 450; 21 USC 451 to 470; 7 CFR 2.18, 2.53

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: FSIS will add Australia and New Zealand to the list of countries eligible to import poultry products (ratite only) into the U.S.

Timetable:

Action	Date	FR Cite
Final Action	06/23/03	68 FR 37069

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clark Danford, Acting Director, Import Export Programs Staff, Office of International Affairs, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW,
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RIN: 0583–AC97

BILLING CODE 3410–10–S

Department of Agriculture (USDA) Foreign Agricultural Service (FAS)

Proposed Rule Stage

372. PROGRAM TO PROVIDE TECHNICAL ASSISTANCE TO PROMOTE U.S. AGRICULTURAL EXPORTS TO EMERGING MARKETS (EMERGING MARKETS PROGRAM)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This rule proposes to establish regulations applicable to the Emerging Markets Program, currently authorized by the Food, Agriculture, Conservation, and Trade Act of 1990 and amended by the Federal Agriculture Improvement and Reform Act of 1996. The Emerging Markets Program currently operates under agency guidelines. The proposed rule would amend and codify the existing guidelines. Codification of the guidelines should not change program administration noticeably. Because the program is already in operation under agency guidelines, this proposal would have no significant impact on the U.S. economy.

The proposed rule will provide specific regulations concerning program administration. Significant provisions include definitions of emerging market and country eligibility, program objectives and priorities, eligible organizations, qualification requirements, application and review processes, decisions and appeals, reimbursement rules and procedures, reporting requirements, evaluations, and program controls.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kimberly Chisley, Regulatory Coordinator, Department of

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RIN: 0551–AA62

373. NEW PROVISIONS AND REVISIONS TO SUGAR REEXPORT PROGRAMS UNDER 7 CFR 1530

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 19 USC 1202; 19 USC 3314

CFR Citation: 7 CFR 1530

Legal Deadline: None

Abstract: This regulation governs the importation of world price sugar and its subsequent use as a refined reexport, product ingredient, or input into the production of polyhydric alcohols. The proposed amendments and/or modifications are principally aimed at reorganizing and simplifying the complexity of the current Regulation; clarifying certain definitions, including the coverage of beet and cane sugar, extending the scope of the Regulation to specially include toll operations which was inadvertently omitted; establishing a reexport program for raw sugar; and implementing Mexico-NAFTA legal commitments. The proposed action will provide for increased operational efficiencies and promote the Government's objectives regarding regulatory simplification.

Timetable:

Action	Date	FR Cite
ANPRM	05/01/03	68 FR 23230
ANPRM Comment Period End	06/02/03	
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kimberly Chisley, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 6087, South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0551–AA65

Department of Agriculture (USDA) Foreign Agricultural Service (FAS) Long-Term Actions

374. CCC SUPPLIER CREDIT GUARANTEE PROGRAM

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 7 CFR 1493

Timetable:

Action	Date	FR Cite
NPRM	07/19/95	60 FR 37025
NPRM Comment Period End	09/18/95	
Interim Final Rule	07/01/96	61 FR 33825
Interim Final Rule Effective	08/30/96	
Interim Final Rule Comment Period End	12/30/96	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0551–AA30

375. FACILITY GUARANTEE PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 17; 7 CFR 1493

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/01/93	58 FR 11786
Interim Final Rule Comment Period End	06/01/93	
Interim Final Rule	08/08/97	62 FR 42651
Interim Final Rule Comment Period End	10/07/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0551–AA35

Department of Agriculture (USDA)
Foreign Agricultural Service (FAS)

Completed Actions

376. PROGRAM TO ASSIST U.S. PRODUCERS IN DEVELOPING DOMESTIC MARKETS FOR VALUE-ADDED WHEAT GLUTEN AND WHEAT STARCH PRODUCTS

Priority: Other Significant

CFR Citation: 7 CFR 1482

Completed:

Reason	Date	FR Cite
Withdrawn	05/07/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0551–AA60

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377. TECHNICAL ASSISTANCE FOR SPECIALTY CROPS

Priority: Other Significant

CFR Citation: 7 CFR 1487

Completed:

Reason	Date	FR Cite
Final Action	07/18/03	68 FR 42563

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kimberly Chisley
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RIN: 0551–AA63

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378. MCGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 1499

Completed:

Reason	Date	FR Cite
Final Action	06/20/03	68 FR 36885

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 0551–AA64

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379. TRADE ADJUSTMENT ASSISTANCE FOR FARMERS (TAA)

Priority: Other Significant

CFR Citation: 7 CFR 1580

Completed:

Reason	Date	FR Cite
NPRM	04/23/03	68 FR 20062
Final Action	08/20/03	68 FR 50048

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0551–AA66

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380. • CLARIFICATION OF CERTAIN PROVISIONS CONTAINED IN THE EXPORT SALES REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 101–624; PL 96–72

CFR Citation: 7 CFR 20

Legal Deadline: None

Abstract: This final rule amends the Export Sales Reporting requirements Regulation to clarify certain definitions and terms of reporting as they relate to the list of commodities subject to this regulation to ensure the accuracy of U.S. Export Sales and incorporate new technologies. Under this final rule, exporters are still required to report on a weekly basis information concerning the quantity, country of destination, and marketing period of shipment for their export sales. Information collected is aggregated and included in the weekly "U.S. Export Sales" report published by the Foreign Agricultural Service (FAS). In addition, the rule responds to comments on electronic reporting. Electronic submission, including the use of ASCII comma delimited files, for all reportable commodities is another option given to program participants. (Reference, Federal Register, Vol. 66, No. 197, October 11, 2001, "Electronic Submission of Export Sales Reporting Requirements.")

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/03/03	68 FR 62214

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0551–AA67

BILLING CODE 3410–11–S

Department of Agriculture (USDA)
Forest Service (FS)

Proposed Rule Stage

381. HYDROPOWER APPLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 551; 43 USC 1761

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: The Forest Service is revising its current policy and procedures, implemented in February 1987, concerning administration of hydropower authorizations and the processing of proposals for hydropower projects affecting National Forest System lands. These revisions are necessary to make Agency policy and procedures consistent with regulatory changes by the Federal Energy Regulatory Commission (FERC). The proposed policy was published in the Federal Register on May 22, 1995 (60

FR 27153), for a 60-day public comment period, which was extended for another 45 days (60 FR 36401). As a result of the comments received, substantial changes were made to the proposed policy (60 FR 36401). Therefore, the Forest Service is publishing a revised proposed policy for public comment.

Timetable:

Action	Date	FR Cite
NPRM	05/22/95	60 FR 27153
NPRM Comment Period Extended	07/17/95	60 FR 36401
NPRM Comment Period End	09/05/95	
Second NPRM	06/00/04	
Second NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AA47

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382. INDIAN ALLOTMENTS ON NATIONAL FOREST SYSTEM LANDS

Priority: Other Significant

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 1603; 43 USC 1740; 25 USC 337

CFR Citation: 36 CFR 254

Legal Deadline: None

Abstract: This proposed rule sets forth the Forest Service role and procedures in the conveyance of Indian allotments on National Forest System (NFS) lands. The Indian Allotment Act of 1910, as amended, authorizes the Secretary of the Interior to make allotments of NFS lands to American Indians for homesteading and agricultural and grazing purposes, but only after a determination by the Secretary of Agriculture that the lands are more valuable for agriculture or grazing than for timber. The Forest Service has relied upon U.S. Department of the Interior rules and procedures at 43 CFR 2533 to govern its involvement in Indian allotment cases. Litigation and a decision by the Interior Board of Land Appeals require the Forest Service to set forth its own regulations. This proposed rule clarifies the role of the Forest Service in the allotment process. It preserves the rights of affected individual American Indians who wish to apply for allotments on NFS lands. An earlier version of this proposed rule was published in the Federal Register on June 22, 1987 (52 FR 23473). Very few comments were received on the 1987 proposed rule, and this revision of the proposed rule makes only limited changes needed to update the rule due to the passage of 15 years since publication of the first version of the proposed rule. Because of the amount of time that has elapsed since the earlier version of the proposed rule was published, the agency believes that it is in the public interest to publish a revised proposed rule and request comment prior to adopting a final rule.

Timetable:

Action	Date	FR Cite
NPRM	06/22/87	52 FR 23473
NPRM Comment Period End	07/22/87	
Second NPRM Comment Period End	02/00/04	
Second NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AA52

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383. LANDOWNERSHIP ADJUSTMENTS; CONVEYANCE OF SMALL TRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 521(c) to 521(i)

CFR Citation: 36 CFR 254

Legal Deadline: None

Abstract: This proposed rule would reorganize the current rule for conveyance of small tracts at 36 CFR part 254 into more logical subject matter groupings, make editorial changes to clarify requirements, and add new provisions to facilitate the processing of applications for persons seeking a conveyance of small tracts.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andria D. Weeks, Regulatory Analyst, Department of Agriculture, Forest Service, MS 1134, ATTN: ORMS, D&R, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0596–AA79

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384. SPECIES SURPLUS TO DOMESTIC MANUFACTURING NEEDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 620 et seq

CFR Citation: 36 CFR 223.200

Legal Deadline: None

Abstract: This proposed rule would amend 36 CFR 223.200 to list species proposed to be surplus to domestic manufacturing needs. This proposed rule would implement a portion of section 620a(b) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 et seq.). Section 620a(a) of the Act provides that no person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber from the United States, unless such timber has been determined under subsection (b) to be surplus to the needs of timber manufacturing facilities in the United States. Section 620a(b) of the Act provides that the prohibition contained in section (a) shall not apply to specific quantities of grades and species of unprocessed timber originating in Federal lands which the Secretary determines, through rulemaking, to be surplus to domestic manufacturing needs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Andria D. Weeks, Regulatory Analyst, Department of Agriculture, Forest Service, MS 1134, ATTN: ORMS, D&R, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0596–AB27

385. APPEAL OF DECISIONS RELATING TO OCCUPANCY AND USE OF NATIONAL FOREST SYSTEM LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472; 16 USC 551

CFR Citation: 36 CFR 251; 36 CFR 214

Legal Deadline: None

Abstract: The Forest Service is publishing a proposed rule to redesignate appeals of decisions relating to occupancy and use of National Forest System lands from 36 CFR part 251 to 36 CFR part 214, thus placing all appeal rules in close proximity. The current rule at 36 CFR part 251 also needs to be updated for conformance with the Appeal Reform Act. The proposed rule would revise a number of existing provisions. For example, changes to part 251 would remove the review of decisions subject to the National Environmental Policy Act and place this kind of appeal under 36 CFR 215, thus narrowing the scope of part 251 subpart C to actions that administer existing special use authorizations, such as written decisions that modify, suspend, or cancel an authorization. Additionally, the proposed rule would clarify that this is the appropriate part for appeal of decisions related to locatable mining operations. Among specific changes being proposed are establishing the Regional Forester as the appellate level for review of both District Ranger and Forest Supervisor decisions; eliminating the discretionary review option; establishing timeframes for scheduling oral presentations; clarifying that decisions to deny permits for noncommercial group use are not subject to appeal, but rather are immediately subject to judicial review; and making changes to conform terminology and definitions with 36 CFR part 215.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andria D. Weeks, Regulatory Analyst, Department of Agriculture, Forest Service, MS 1134, ATTN: ORMS, D&R, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0596–AB45

386. LAW ENFORCEMENT SUPPORT ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1011(f); 16 USC 472; 16 USC 551; 16 USC 559(a) to 559(g); 40 USC 484(m)

CFR Citation: 36 CFR 262

Legal Deadline: None

Abstract: On February 16, 1994 (59 FR 7880), the Forest Service published a proposed rule for 36 CFR part 261, Prohibitions, and part 262, Law Enforcement Support Activities. Due to the high level of interest in and comment on part 261, the decision was made to publish second proposed rules separately for each part.

The Forest Service is proceeding with publication of a second proposed rule for part 262, Law Enforcement Support Activities. The proposed revisions to part 262 are narrow in scope and are meant to clarify specific administrative provisions. In particular, they address the limitations and conditions for paying rewards in connection to fire or property prosecution; clarify the rules regarding the purchase of information or evidence in furtherance of investigations; and clarify certain actions and regulations regarding the impoundment, removal, and disposition of animals and personal property from National Forest System lands. The proposed rule also responds to comments concerning part 262 that were received in response to the proposed rule published in 1994. The majority of those comments referred to how the rule defines certain terms; to address those comments in this second proposed rule, the agency proposes to add a new section for definitions.

Timetable:

Action	Date	FR Cite
NPRM	02/16/94	59 FR 7880
NPRM Comment Period End	05/18/94	
Second NPRM	11/00/03	
Second NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB61

387. NONCOMPETITIVE SALE OF TIMBER; TIMBER SUBSTITUTION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472(a)

CFR Citation: 36 CFR 223.85

Legal Deadline: None

Abstract: This proposed rule would revise 36 CFR 223.85 by removing references to section 2001(k) of Public Law 104–19 (109 Stat. 246) and defining the conditions under which forest officers, without advertisement, could make modifications to existing timber sale contracts and forest product sales contracts, which result in the substitution of timber or forest products from outside the sale area specified in the contract. Under the proposed rule, substitute timber or forest products would have to come from the same administrative national forest and meet Agency requirements for compliance with the National Environmental Policy Act and other environmental laws. Forest Service officials would be authorized to propose timber sale modifications and to enter into discussions with purchasers on such modifications. However, timber purchasers would not be compelled to accept any modifications offered under this rule.

To the extent that timber sale cancellations and partial cancellations are avoided, the effect of this proposed rule would be to reduce future damage claims on timber sales.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB70

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388. SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER; TIMBER EXPORT AND SUBSTITUTION RESTRICTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 620

CFR Citation: 36 CFR 223; 36 CFR 261

Legal Deadline: None

Abstract: This proposed rule for timber export and substitution restrictions would implement the provisions of the Forest Resources Conservation and Shortage Relief Act of 1990, as amended. The proposed rule defines the certain terms necessary to facilitate uniform compliance; prohibits transfer of unprocessed private timber for export by a person who possesses or acquires unprocessed Federal timber; prohibits export of such unprocessed private timber by a third or successive party; prescribes procedures for reporting the acquisition and disposition of National Forest System (NFS) and private timber requiring domestic processing, including transfers; prescribes procedures for identifying unprocessed NFS and private timber requiring domestic processing; and establishes procedures for assessing civil and criminal penalties and applying administrative remedies for violations of the Act, its implementing regulations, and contracts subject to the Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 0596–AB75

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389. LAND USES; PROHIBITIONS; PALEONTOLOGICAL RESOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 551; 18 USC 641

CFR Citation: 36 CFR 251.51; 36 CFR 251.53; 36 CFR 261.2; 36 CFR 261.9(i)

Legal Deadline: None

Abstract: This proposed rule consists of several technical changes to the Agency's special uses and prohibited acts regulations regarding fossil collecting. First, the proposed rule would revise 36 CFR 251.50 to make clear that special use permits for collecting vertebrate paleontological resources are authorized under the Act of 1897. Noncommercial vertebrate fossil collecting by academic and other similar institutions would be added as an activity that requires a special use authorization. The commercial collection of paleontological resources would not be authorized on National Forest System Lands. Second, this proposed rule would revise the definition for "paleontological resource" at 36 CFR 261.2 to make it scientifically correct and to make clear that mineral resources are excluded from the definition. The revised definition for "paleontological resource" would be added to 36 CFR 251.51. Third, the prohibitions related to paleontology at 36 CFR 261.9 would be revised to reflect the changes at 36 CFR part 251. Other conforming amendments to 36 CFR parts 251 and 261 will be made to accommodate the changes identified in this abstract. This proposed rule is consistent with the Forest Service's stated commitment to develop a unified policy for management of fossil resources on Federal and Indian lands in accordance with the seven principles established in the May 2000 Secretary of the Interior's Report to the Senate.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB91

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390. FOREST SERVICE TRAILS ACCESSIBILITY GUIDELINES

Priority: Other Significant

Legal Authority: 49 USC 4151; 29 USC 794; 7 CFR 15e

CFR Citation: None

Legal Deadline: None

Abstract: The Architectural Barriers Act of 1968, section 504 of the Rehabilitation Act of 1973, and 7 CFR 15e require that new or reconstructed facilities be accessible. The Forest Service Trails Accessibility Guidelines in this proposed policy amending Forest Service Manual (FSM) 2350, Trail, River, and Similar Recreation Opportunities, would establish clear agency guidelines to provide the highest level of accessibility to pedestrian/hiker trails for the greatest number of people, including persons with disabilities, while not fundamentally altering the environment and recreational setting. The proposed policy also would incorporate the definition of a wheelchair and clarify direction that a mobility device that meets that definition of a wheelchair may be used anywhere foot travel is permitted. Comments will be considered in development of the final guidelines.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Andria D. Weeks, Regulatory Analyst, Department of Agriculture, Forest Service, MS 1134, ATTN: ORMS, D&R, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0596–AB92

391. FOREST SERVICE OUTDOOR RECREATION ACCESSIBILITY GUIDELINES

Priority: Other Significant

Legal Authority: 42 USC 4151; 29 USC 794; 7 CFR 15e

CFR Citation: None

Legal Deadline: None

Abstract: The Architectural Barriers Act of 1968, section 504 of the Rehabilitation Act of 1973, and 7 CFR 15e require that new or reconstructed facilities be accessible. The Forest Service Outdoor Recreation Accessibility Guidelines in this proposed policy amending Forest Service Manual (FSM) chapter 2330, Publicly Managed Recreation Opportunities, would establish clear agency guidelines to provide the highest level of accessibility for the greatest number of people, including persons with disabilities, while not fundamentally altering the environment and recreational setting. Outdoor recreation facilities include campgrounds, picnic areas, beach access and other access routes, and so on. The proposed policy also would clarify direction regarding existing requirements for the Golden Access Passport eligibility and documentation utilized by all Federal agencies under the 1980 amendment to the Land and Water Conservation Fund Act. Comments will be considered in development of the final guidelines.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB93

392. OBJECTION PROCESS; LAND MANAGEMENT PLANNING (INTERIM DIRECTIVE, FOREST SERVICE MANUAL, CHAPTER 1920)

Priority: Substantive, Nonsignificant

Legal Authority: 36 CFR 219

CFR Citation: None

Legal Deadline: None

Abstract: The Agency is proposing to issue an interim directive (ID) to Forest Service Manual chapter 1920, Land and Resource Management Planning to provide Agency-wide guidance on objections filed against land and resource management plan decisions. The pre-decisional objection process is authorized in the National Forest System Land and Resource Management Planning rule at 36 CFR 219.32 (65 FR 65714, November 9, 2000). The 2000 Planning Rule is currently being revised to address concerns raised regarding the Agency's ability to implement some portions of the rule's provisions. Nevertheless, this objection process is a viable tool for field units to use to attempt to resolve issue(s) prior to making a final Agency decision on land and resource management plans. Therefore, it is prudent to provide interim direction on the objection process in order to ensure Agency-wide consistency in its implementation. Upon issuance of this ID, notice will be given in the Federal Register with a request for public comment. Comments will be reviewed and considered in developing the final policy on the objection process.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB97

393. LOCATABLE MINERALS

Priority: Other Significant

Legal Authority: 30 USC 21 to 54; 30 USC 612

CFR Citation: 36 CFR 228, subpart A

Legal Deadline: None

Abstract: This revision follows recommended changes developed by GAO and OIG audits and recommendations in the National Research Council's 1999 report titled "Hardrock Mining on Federal Lands." The proposed rule would improve the administration of the locatable minerals program. The proposed rule's objectives are to improve the process for modifying, suspending, and terminating plans of operation; improve the process of reviewing and adjusting reclamation bonds to cover the full cost of reclamation; improve the process of managing temporary closures; define proper occupancy and use; and improve noncompliance and enforcement actions. This proposed rule revision will increase the efficiency of locatable minerals administration and protect the public from funding mine reclamation.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Action	Date	FR Cite
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

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RIN: 0596–AB98

394. SAWTOOTH NATIONAL RECREATION AREA—PRIVATE LANDS; INCREASING RESIDENTIAL OUTBUILDING SIZE

Priority: Substantive, Nonsignificant

Legal Authority: PL 92–400

CFR Citation: 36 CFR 292.16

Legal Deadline: None

Abstract: The Forest Service is proposing a limited amendment to the rules at 36 CFR 292.16(e)(2)(ii) applicable to private lands on the Sawtooth National Recreation Area in Idaho. This proposed rule would revise the standard for residential outbuildings on the SNRA to a maximum area of 850 square feet (currently, 400 square feet) and would limit such outbuildings to one story. This change would accommodate the storage needs for residents within the SNRA. The new standard would facilitate replacement of the temporary structures and also the unsightly, unprotected outdoor storage of materials, equipment, and vehicles. In general the residents within the SNRA are supportive of the proposed amendment, which should be considered as noncontroversial based on comments previously received in response to an environmental assessment prepared in 2000 for a proposed revision of the Sawtooth National Forest land and resource management plan. At that time, numerous comments stated that the existing standard for the size of outbuildings is inadequate, and they expressed support for revising the outbuilding standard.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC00

395. NATIONAL FOREST SYSTEM LAND MANAGEMENT PLANNING DIRECTIVES (PROPOSED DIRECTIVES, FOREST SERVICE MANUAL (FSM) 1920 AND FOREST SERVICE HANDBOOK (FSH) 1909.12)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC et seq, 5 USC 301

CFR Citation: None

Legal Deadline: None

Abstract: The Forest Service is proposing to revise its directives issued to the Forest Service Manual (FSM) 1900, Planning, and Forest Service Handbook (FSH) 1909.12, Land and Resource Management Planning Handbook. These directives would provide the detailed direction to agency employees necessary to implement the provisions in the final rule to be adopted at 36 CFR part 219 governing land and resource management planning. The proposed rule was published on December 6, 2002 (67 FR 72770).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	
Final Rule	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC02

396. • SPECIAL AREAS; ROADLESS AREA CONSERVATION; APPLICABILITY TO NATIONAL FOREST SYSTEM LANDS IN ALASKA

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 1604 ; 42 USC 4321

CFR Citation: 36 CFR 294

Legal Deadline: Other, Judicial, August 10, 2003, Other.
As required by a settlement agreement signed on June 10, 2003, between the U.S. Department of Justice and the State of Alaska, the Forest Service must publish this advance notice of proposed rule in the **Federal Register** within 60 days of the signing of the settlement agreement. .

Abstract: The Forest Service is publishing a proposed rule to seek further public comment on possible amendments to 36 CFR 294.14(d) that would permanently exempt the Tongass and Chugach National Forests in Alaska from the scope and applicability of the Roadless Area Conservation final rule (the "roadless rule") published in the Federal Register on January 12, 2001, which established prohibitions on road construction, road reconstruction, and timber harvesting in inventoried roadless areas at 36 CFR part 294 (66 FR 3244). Since publication, the roadless rule has been challenged by nine lawsuits filed in six judicial districts, including the Alaska district, and in four Federal circuits. On May 10, 2001, a Federal judge issued a preliminary injunction order preventing the Department from implementing the roadless rule. On April 14, 2003, the injunction order was reversed by the Ninth Circuit Court of Appeals. On July 14, 2003, a Federal district judge in the Tenth Circuit issued a permanent injunction order which is now pending appeal before the Tenth Circuit Court of Appeals.

On June 10, 2003, a settlement agreement was signed between the U.S. Department of Justice and the State of Alaska to resolve the suit filed by the

State of Alaska and other plaintiffs. As required by the settlement agreement, an advance notice of proposed rulemaking (ANPRM) was published on July 15, 2003 (68 FR 41864). This proposed rule is being prepared after evaluation and consideration of public comments received on the advance notice of proposed rulemaking published in July.

As further stipulated by the settlement agreement, the agency also published on July 15, 2003 (68 FR 41865), a proposed amendment to the roadless rule that would exclude the Tongass National Forest from its applicability until USDA promulgates a revised final roadless rule as announced in the July 10, 2001, advance notice of proposed rulemaking (66 FR 35918).

Timetable:

Action	Date	FR Cite
ANPRM	07/15/03	68 FR 41864
ANPRM Comment Period End	08/14/03	
ANPRM Comment Period Extended	08/18/03	68 FR 49395
ANPRM Comment Period End	09/02/03	
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
www.roadless.fs.fed.us

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RIN: 0596–AC05

397. • STATE PETITIONS FOR ROADLESS MANAGEMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 36 CFR 231

Legal Deadline: None

Abstract: On January 12, 2001, the Forest Service published the Roadless Area Conservation final rule (the "roadless rule") in the Federal Register establishing prohibitions on road construction, road reconstruction, and timber harvesting in inventoried roadless areas at 36 CFR part 294, subpart B (66 FR 3244). Since publication, the roadless rule has been challenged by nine lawsuits filed in six judicial districts and in four Federal circuits. On July 14, 2003, the U.S. District Court for the District of Wyoming issued a permanent injunction order enjoining the Department from implementing the roadless rule. That ruling has been appealed.

Due to the continued legal uncertainty of providing protection for roadless areas through the application of the roadless rule, the agency is proposing a separate procedural rule at 36 CFR part 231 that will set out an administrative process for Governors of States to petition the Secretary of Agriculture to establish or adjust management direction for roadless within their State. Such petitions would be evaluated and, if agreed to, addressed by the Secretary in subsequent rulemaking on a State-by-State basis.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC10

398. • USE AND PROHIBITIONS OF MOTOR VEHICLES OFF NATIONAL FOREST SYSTEM ROADS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 36 CFR 261 and 295

Legal Deadline: None

Abstract: The Forest Service is publishing an advance notice of proposed rule that would amend 36 CFR part 295 to update language in current usage, coordinate the rule with other Forest Service programs that have been updated or are in the process of being updated to complement those changes, and incorporate current guidance on off-highway vehicle management. The proposed changes would also clarify definitions and direction, and improve consistency in management of off-highway vehicles on National Forest System lands in an effort to blend broad agency policy with local decisionmaking. These changes would ensure that collaborative efforts at the local level are integrated into decisionmaking.

The proposed rule would also amend 36 CFR part 261 to update language in current usage, consistent with the proposed changes in 36 CFR part 295, and to add prohibitions not currently covered in existing regulations that would clarify the management and use of off-highway vehicles on National Forest System lands.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC11

399. • GRAZING PERMIT ADMINISTRATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: Updated national direction is needed to ensure the agency is both current and consistent in working with grazing permittees in all Forest Service Regions. The Forest Service is proposing to issue amendments to certain chapters and sections of Forest Service Manual (FSM) title 2200, Rangeland Management, and to all chapters of Forest Service Handbook (FSH) 2209.13, Grazing Permit Administration. The last substantive amendments to both FSM 2200 and FSH 2209.13 were made in 1985. Clarifications and adjustments in policy are necessary to respond to changing needs of both the Forest Service and the livestock industry and to make the agency's policy current with legislation, court decisions, and agency management. The Forest Service has determined that two chapters in FSH 2209.13 require public notice and comment before the amendments can be finalized: chapter 10, Permits With Term Status, and chapter 20, Grazing Agreements. Both chapters contain substantive changes to agency operating procedures that affect how the Forest Service does business with permittees, grazing associations, and applicants for livestock grazing authorizations.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC12

400. • NATIONAL FOREST SYSTEM APPEALS AND LITIGATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: The Forest Service is proposing to revise its directives issued to the Forest Service Manual (FSM) 1570, Appeals and Litigation, to reestablish the Forest Service Handbook (FSH) for appeals filed pursuant to notice, comment, and appeal procedures for National Forest System projects and activities at 36 CFR part 215. These proposed directives would provide additional direction to agency employees necessary to implement the provisions in 36 CFR part 215, adopted on June 4, 2003 (68 FR 33582).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC13

401. • PROPOSED REVISION OF TIMBER SALE CONTRACTS (FS–2400–6 AND FS–2400–6T)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 36 CFR 223.110–223.117

CFR Citation: None

Legal Deadline: None

Abstract: The Forest Service is proposing to revise timber sale contracts FS–2400–6 for scaled sales procedures and FS–2400–6T for tree measurement timber sale procedures. A notice with request for public comment is being published in the Federal Register to seek public input on the proposed changes to these contracts, which include: (1) Clarifying the remedies available when contracts are suspended, modified, or terminated for environmental reasons; (2) incorporating special provisions that are required by the National Forest Management Act and Forest Service regulations at 36 CFR part 223; (3) correcting inconsistencies and clarifying ambiguous language in the existing contract provisions; and (4) making organizational and editorial changes intended to eliminate duplicative and unnecessary provisions. These proposed contracts will be available for public review electronically via the Internet, as well as in paper copy at the Forest and Rangeland Staff office. Public comments received will be considered in the preparation of the final revised timber sale contracts.

These timber sale contracts were originally brought into use in the early 1970s. Contract revisions were made to FS–2400–6 in September 1973 and to FS–2400–6T in October of 1973. From that time until July 2001, new legislation and policy changes were incorporated into these contracts by adding new provisions and making existing provisions nonapplicable. There is now a need to reduce the complexity of the contracts, make the above changes part of the standard contracts, and include needed changes that affect the rights and obligations of the Forest Service and purchasers.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC14

402. SALE AND DISPOSAL OF NATIONAL FOREST TIMBER; CANCELLATION OF TIMBER SALE CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472a; 16 USC 551; 16 USC 618

CFR Citation: 36 CFR 223.30; 36 CFR 223.40; 36 CFR 223.116

Legal Deadline: None

Abstract: The Forest Service is issuing a final rule to revise current Agency regulations regarding cancellation of timber sale contracts, permits, and other such instruments authorizing the sale or harvest of timber or other forest products. This rule is needed to clarify when, why, and by whom contracts may be cancelled to remove redundant provisions and to provide a new formula for compensation when the Government must cancel timber sale contracts. The Forest Service takes every precaution before authorizing a particular activity on National Forest System lands to ensure that its authorization conforms with existing laws and with existing conditions on the ground at the time of the authorization. The current regulations place an inappropriate amount of financial liability on the Forest Service when the agency must, for reasons of public policy, judicial decision, or statutory direction, cancel a timber sale contract or permit. The regulatory changes are necessary because the Forest Service is unable to continue bearing the majority of the financial risk and burden of contract cancellations. This rule would more reasonably allocate the risk between the Government and private parties. Establishing these reasonable limits to the Government's exposure to financial liability and burden of risk in the event of contractual changes or contract cancellations is critical to protecting the public's financial interests.

Timetable:

Action	Date	FR Cite
NPRM	12/30/96	61 FR 68690
NPRM Comment Period End	02/13/97	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596-AB21

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403. LAND USES; SPECIAL USES; RECOVERY OF COSTS FOR PROCESSING SPECIAL USE APPLICATIONS AND MONITORING COMPLIANCE WITH SPECIAL USE AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1764; 30 USC 181

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: This final rule, as authorized by the Mineral Leasing Act and the Federal Land Policy and Management Act, would provide for recovering costs associated with processing applications for special use authorizations to use and occupy National Forest System (NFS) lands and with monitoring compliance with these special use authorizations. The action is needed to provide timely reviews and evaluations of special use applications; to ensure that forest resources are adequately protected; and to ensure that holders comply with the terms and conditions of their authorization. Promulgation of this rule would comply with requirements of OMB Circular A-27, section 7, which directs that user charges be instituted through promulgation of agency regulations implementing the authority for Federal agencies to recover costs under the Independent Officers Appropriations Act (IOAA). The rule would also respond to recommendations in GAO reports RCED-96-84 (April 1996) and RCED 97-16 (December 1996) that the Forest Service (1) operate its special uses program in a more cost-efficient and businesslike manner and (2) promulgate regulations allowing the Agency to exercise existing authority to recover from applicants and holders the Agency's costs to process special-use applications and monitor compliance with those authorizations. This rule would also make Forest Service procedures and fees related to cost recovery consistent with the Bureau of Land Management's (BLM) rules at 43 CFR parts 2800, 2880, and 2930.

Timetable:

Action	Date	FR Cite
NPRM	11/24/99	64 FR 66341
NPRM Comment Period Extended	12/29/99	64 FR 72971
NPRM Comment Period End	02/04/00	
NPRM Comment Period Extended	02/25/00	65 FR 10042
NPRM Comment Period End	03/09/00	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Cost reimbursement for processing special use applications and administration of special use authorizations was originally included under RIN 0596-AA36. All provisions pertaining to the special use application and administration process were merged into the final rule published November 30, 1998 (63 FR 65950, RIN 0596-AB35). Thus, this rulemaking addresses only the cost-reimbursement provisions.

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RIN: 0596-AB36

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404. SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER; EXTENSION OF TIMBER SALE CONTRACTS TO PERMIT URGENT REMOVAL OF TIMBER FROM OTHER LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472a; 16 USC 618; 16 USC 620

CFR Citation: 36 CFR 223.50; 36 CFR 223.53

Legal Deadline: None

Abstract: The Forest Service is issuing a final rule to provide for extension of National Forest System (NFS) timber sale contracts when such an extension will permit the prompt removal and utilization of non-NFS timber damaged by catastrophic events. This rule defines the responsibilities of the parties for requesting and approving such extensions and specify when such extensions should be approved. This rule also allows for the use of scarce timber resources and the recovery of economic benefits from timber that might otherwise be lost because of contractual obligations to harvest undamaged timber. This rule provides the regulatory foundation for extending existing contracts.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/21/02	67 FR 70166
Interim Final Rule Comment Period End	01/21/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 0596–AB48

405. NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTATION NEEDED FOR CERTAIN SPECIAL USES PERMIT ACTIONS (FINAL INTERIM DIRECTIVE TO FSH 1909.15, CHAPTER 30)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 to 4346

CFR Citation: None

Legal Deadline: None

Abstract: In April 1997, the Forest Service completed a reengineering study of its special uses program. One finding in that study was that the Forest Service is conducting extensive National Environmental Policy Act (NEPA) analysis and documentation for the renewal or transfer of ownership of special use authorizations having no significant effect on the human environment, either individually or cumulatively. This level of NEPA compliance is costly, time consuming, and not commensurate with the risk attributed to the activity. Therefore, the Forest Service is adding a new category of categorical exclusions from NEPA documentation at sections 31.1b and 31.2 of FSH 1909.15, Environmental Policy and Procedures Handbook. This action gives clearer direction regarding the NEPA obligation when issuance of a special use authorization is a purely ministerial action and no changes are proposed in permitted activities or facilities.

The proposed policy, published September 20, 2001 (66 FR 48412), also contained a proposed revision to section 30.3 to clarify documentation that is needed for a categorical exclusion when extraordinary circumstances exist. This revision to section 30.3 regarding extraordinary circumstances was incorporated as a separate action in RIN 0596–AB94, and the final policy was published August 23, 2002 (67 FR 54622).

Timetable:

Action	Date	FR Cite
NPRM	09/20/01	66 FR 48412
NPRM Comment Period End	11/19/01	
Final Action	02/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB73

406. LAND USES; SPECIAL USES REQUIRING AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 477 to 482; 16 USC 551; 43 USC 1761 to 1771

CFR Citation: 36 CFR 251, 261, 295

Legal Deadline: None

Abstract: In April 1997, the Forest Service completed a reengineering study of its special uses program on how to manage the program in a more businesslike, customer-service-oriented way. The Agency plans to promulgate a final rule at 36 CFR 251.50 that would implement recommendations from this study. The study determined that many units are issuing special use authorizations unnecessarily, thereby increasing workloads. The study concluded that the Agency should clarify the special uses rules at section 251.50(a) to make explicitly clear that special use authorizations should not be issued for activities that are addressed by other Forest Service regulations; for example, those governing the disposal of timber (part 223); minerals (part 228); and the grazing of livestock (part 222). The study also concluded that section 251.50(e) should be added to direct that special use authorizations should not be issued where such authorization would serve no land or resource management objective and would have nominal effects on National Forest System lands; for example, where activities are adequately regulated by other governmental entities or where an authorized officer determines that normal operation and maintenance by the holder is within the scope of a right-of-way, easement, or other valid existing real property interest. Further, the rule at section 251.50(d) would clarify requirements regarding authorizations for special uses involving National Forest System roads and trails. The current regulation requires the issuance of closure orders for regulation of special uses on NFS roads and trails. The revised regulation would eliminate the necessity of individual closure orders for common public service permit programs.

Timetable:

Action	Date	FR Cite
NPRM	01/22/03	68 FR 2948
NPRM Comment Period End	03/24/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB74

407. SPECIAL FOREST PRODUCTS AND FOREST BOTANICAL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106–113

CFR Citation: 36 CFR 223

Legal Deadline: None

Abstract: The Forest Service proposes to promulgate regulations for managing special forest products and forest botanical products. The regulations will guide the Forest Service in the administration of the broader category of special forest products. The proposed rule also implements Public Law 106–113, which authorizes a pilot program of charges and fees for harvest of forest-botanical products (Appropriations Act H.R. 3423, section 339, Forest Botanical Products). Forest botanical products include products, such as herbs, berries, seeds, and wildflowers that are not wood products. The intended effect of this rule is to give guidance and consistency for the sustainability and sale of special forest products including forest botanical products.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	
Interim Final Rule Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0596–AB81

408. DETERMINING FAIR MARKET VALUE FOR RECREATION RESIDENCE USE AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 497; PL 106–291, title VI

CFR Citation: None

Legal Deadline: None

Abstract: The Appropriations Act for the Department of the Interior and Related Agencies for Fiscal Year 2001 (Pub. L. 106–291) contains provisions in title VI "Cabin User Fee Fairness Act of 2000" to ensure consistent and fair processes for appraising the fee simple value of recreation residence lots on National Forest System (NFS) lands. The Forest Service is adopting final regulations at 36 CFR part 251, subpart B, and final policy in the Forest Service Manual (FSM) 2347 and FSM 2721, and Forest Service Handbook (FSH) 2709.11, section 33, and FSH 5409.12, chapter 6, that would provide the regulatory framework and Agency management direction necessary to implement the provisions of the act. The proposed policies and proposed rule were published on May 13, 2003 (68 FR 25748), with a 60-day comment period ending August 11, 2003. The proposed rule and proposed policy included provisions for establishing a base annual fee and a new appraisal cycle, conducting inventories of recreation residence lots, and setting out appeal and judicial review processes and appraisal guidelines for appraising the fee simple value of recreation residence lots. An estimated 2,500 comments were received, the majority of which were submitted by permit holders or organized associations of permit holders. The comments are being analyzed and will be considered in development of the final rule and policy. There are approximately 15,000 recreation residences nationally on NFS lands. Recreation residence permit holders and their immediate families and friends are particularly interested in the outcome of this rule and policymaking, as well as a few specific members of Congress. A cursory review of the comments received suggests that most of the substantive concerns either can be accommodated with minor changes in the draft policy revisions and rulemaking or, alternatively, can be addressed in the preamble to the final rulemaking and policymaking documents. The general nature of the comments do suggest the need for major, substantive changes to the draft of the proposed rule and policy, as published on May 13, 2003.

Timetable:

Action	Date	FR Cite
NPRM	05/13/03	68 FR 25748
NPRM Comment Period End	08/11/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 0596–AB83

409. NATIONAL FOREST SYSTEM LAND MANAGEMENT PLANNING

Regulatory Plan: This entry is Seq. No. 28 in part II of this issue of the **Federal Register**.

RIN: 0596–AB86

410. REVISIONS TO ROAD MANAGEMENT POLICY (FOREST SERVICE MANUAL CHAPTER 7710)

Priority: Other Significant

Legal Authority: 16 USC 551; 23 USC 205

CFR Citation: 36 CFR 212

Legal Deadline: None

Abstract: On January 12, 2001 (66 FR 3205), the Forest Service adopted a new road management policy to improve the analysis and decisionmaking of the National Forest System road system. As part of a Governmentwide review of recently adopted rules and policies announced January 20, 2001, the Chief conducted an internal review of the new road management policy. As a consequence, the Agency identified several changes to be made to Forest Service Manual (FSM) chapter 7710. The first of these was to issue an interim directive (ID No. 7710–2001–1) to redelegate the authority for extending deadlines for completion of forest-scale analysis from the Chief to the Regional Foresters. Additionally, the ID granted all units an additional year to complete road inventories and analysis. This ID was effective May 31, 2001. Upon issuance, the Agency gave notice in the Federal Register with a request for comment. The Agency later determined that the interim requirements of the road management policy limiting road construction in inventoried roadless and contiguous unroaded areas were not relevant to the road management policy; rather, these requirements should be dealt with in the context of overall management planning of roadless areas. Moreover, field units were generally finding it difficult to determine how to define and map contiguous unroaded areas consistently. In some recent cases, the interim requirements were resulting in EIS's for minimal road construction or reconstruction along the edge of inventoried roadless areas and contiguous unroaded areas, with resultant delays in project decisions. Therefore, the Agency issued a second ID effective December 14, 2001 (ID No. 7710–2001–3), to rescind these interim requirements from FSM chapter 7710 and simultaneously issued a third ID (ID No. 1920–2001–1) to relocate these roadless requirements to FSM chapter 1920, Land and Resource Management Planning. Although the second ID was immediately effective, a notice with a request for comment was published in the Federal Register on December 20, 2001 (66 FR 65796). The direction previously issued in ID No. 7710–2001–3 was reissued, without substantive change, as ID No. 7710–2003–1, effective June 12, 2003. Comments on ID No. 7710–2001–1 and ID No. 7710–2001–3 have been considered in developing the next appropriate steps concerning the road management policy.

Timetable:

Action	Date	FR Cite
NPRM	12/20/01	66 FR 65796
NPRM Comment Period End	02/19/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB90

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411. FOREST LAND ENHANCEMENT PROGRAM

Priority: Other Significant

Legal Authority: PL 107–171

CFR Citation: 36 CFR 230, subpart C (New)

Legal Deadline: None

Abstract: The Forest Service is adopting a final rule for the implementation of the Forest Land Enhancement Program (FLEP) authorized in the 2002 Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) through an amendment to the Cooperative Forestry Assistance Act (16 U.S.C. 2103). The FLEP program was implemented through an interim final rule published on June 9, 2003 (68 FR 25748). The final rule focuses on guidance needed to allow State forestry agencies to implement the program throughout its existence. In developing the final rule, the Department is considering comments on the interim rule, information and experience gained during the first year of implementing FLEP, and consultation with other State and Federal government agencies.

The goals of FLEP are to: (1) enhance the productivity of timber, fish and wildlife habitat, soil and water quality, wetland, recreational resources, and aesthetic values of private nonindustrial private forestland (NIPF); and (2) establish, manage, maintain, enhance, and restore such forests. The act requires establishing a coordinated and cooperative Federal, State, and local grants program directed to achieve sustainable forestry; assisting owners of nonindustrial private forestlands to more actively manage these lands and related resources; and encouraging such owners to use State, Federal, and private sector resource management expertise, financial assistance, and educational programs. The FLEP program replaces two previous conservation incentives programs: The Stewardship Incentive Program (SIP) and the Forestry Incentives Program (FIP). It is very similar to other cooperative grant and agreement programs that the Forest Service has managed over the past 50 years.

Program funding is expected to remain at an average of about $20 million annually over a 5-year period (FY 2003 through FY 2007). The FLEP program is administered by the Forest Service through State forestry agencies and the Forest Service State and Private Forestry (S&PF) Deputy Area.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/09/03	68 FR 34309
Interim Final Rule Comment Period End	08/08/03	
Final Action	06/00/04	
Final Action Effective	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 0596–AB95

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412. COMMUNITY AND PRIVATE LAND FOREST FIRE ASSISTANCE PROGRAM

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 107–171

CFR Citation: 36 CFR 230, subpart D (new)

Legal Deadline: None

Abstract: The Farm Security and Rural Investment Act of 2002 directs the Secretary of Agriculture to establish a Community and Private Land Fire Assistance Program, to be administered by the Forest Service and implemented through the State Foresters. The Forest Service is issuing an interim rule to provide for the implementation and administration of the program, which would allow the following activities on both Federal and non-Federal lands: Fuel hazard mitigation and prevention, invasive species management, multi-resource wildfire planning, community protection planning, community and landowner education, market development and expansion, improved wood utilization, and special restoration projects.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	
Interim Final Rule Comment Period End	02/00/04	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0596–AB96

413. NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING; EXTENSION OF COMPLIANCE DEADLINE FOR SITE-SPECIFIC PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 16 USC et seq

CFR Citation: 36 CFR 219.35(d)

Legal Deadline: None

Abstract: On November 9, 2000 (65 FR 67514), a rule substantially revising National Forest System land and resource management planning was adopted. Previous planning regulations to implement the National Forest Management Act applied only to the development, revision, and amendment of land and resource management plans. The November 2000 rule also applied to site-specific project decisions. Section 219.35 of that rule provided for the transition from the 1982 planning rule to the 2000 rule. November 9, 2003, is the date by which all site-specific decisions must be in conformance with the provisions of the 2000 rule. However, early in 2001, the Department determined that the November 2000 planning regulation needed to be revised in order to improve its implementation by field personnel. On December 6, 2002, the Forest Service published a proposed planning rule (67 FR 72770). Like the 1982 planning regulation, this proposed rule would not apply the provisions of the planning regulations to site-specific project decisions. The revised planning rule was not completed by November 9, 2003; thus the Department needs to extend the compliance deadline in 36 CFR 219.35(d) regarding site-specific project decisions until the adoption of a final planning rule. This action is needed immediately because planning for site-specific projects often begins at least 6 to 9 months before an anticipated decision. It is necessary to grant relief to field units of the National Forest System from being held to the provisions of the 2000 rule for site-specific project decisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/10/03	68 FR 53294
Interim Final Rule Comment Period End	11/10/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC01

414. STEWARDSHIP END RESULT CONTRACTING (NOTICE OF INTERIM GUIDELINES)

Priority: Substantive, Nonsignificant

Legal Authority: PL 108–7

CFR Citation: None

Legal Deadline: None

Abstract: The Forest Service is developing proposed interim directives to set out the detailed policy and procedures in Forest Service Manual 2400 and Related Handbooks needed to implement the provisions for stewardship contracting projects authorized for a period of 10 years by section 323 of the Consolidated Appropriations Act for Fiscal Year 2003 (Pub. L. 108–7). The expanded authority for these projects would provide for collaboration with the States and local communities; opportunities for local communities to respond to contract proposals; agreements and contracts with private or other public entities; the exchange of goods for services; use of receipts for land restoration and enhancement efforts; and contract awards based on "best value."

Comments received on the proposed interim directives would be considered in the development of final directives.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/27/03	68 FR 38285
Interim Final Rule Comment Period End	07/28/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AC03

415. • SPECIAL AREAS; ROADLESS AREA CONSERVATION; APPLICABILITY TO THE TONGASS NATIONAL FOREST, ALASKA

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 1604; 42 USC 4321

CFR Citation: 36 CFR 294

Legal Deadline: NPRM, Judicial, August 10, 2003, NPRM.
As required by a settlement agreement signed on June 10, 2003, between the U.S. Department of Justice and the State of Alaska, the Forest Service must publish this proposed rule in the **Federal Register** within 60 days of the signing of the settlement agreement.

Abstract: The Forest Service is adopting a final rule at 36 CFR 294.14(d) to exempt the Tongass National Forest in Alaska from the scope and applicability of the prohibitions in the Roadless Area

Conservation final rule (the "roadless rule") until USDA promulgates a revised final roadless rule as announced in the July 10, 2001, advance notice of proposed rulemaking (66 FR 35918). This final rule will provide a more balanced approach for the management of roadless areas on the Tongass National Forest.

On January 12, 2001, the Forest Service published the roadless rule in the Federal Register establishing prohibitions on road construction, road reconstruction, and timber harvesting in inventoried roadless areas at 36 CFR part 294, subpart B (66 FR 3244). Since publication, the roadless rule has been challenged by nine lawsuits filed in six judicial districts, including the Alaska district, and in four Federal circuits. On May 10, 2001, a Federal judge issued a preliminary injunction order preventing the Department from implementing the roadless rule. On April 14, 2003, the injunction order was reversed by the Ninth Circuit Court of Appeals. On July 14, 2003, a Federal district judge in the Tenth Circuit issued a permanent injunction order which is now pending appeal before the Tenth Circuit Court of Appeals.

On June 10, 2003, a settlement agreement was signed by the United States and the State of Alaska to resolve the suit filed by the State of Alaska and other plaintiffs. As required by the settlement agreement, a proposed rule was published on July 15, 2003 (68 FR 41865), with a 30-day comment period ending August 14, 2003. Subsequently, a notice was published on August 18, 2003, extending the comment period to September 2, 2003 (68 FR 49395). In developing this final rule, the Department is reviewing the public comments received on the proposed rule, along with the existing information, including the 2003 Supplemental EIS for the Revised Tongass Forest Plan, and evaluating the existing situation in Southeast Alaska.

As further stipulated by the settlement agreement, the agency also published on July 15, 2003 (68 FR 41864), an advance notice of proposed rulemaking to seek public comment on a proposal that would permanently exclude National Forest System lands in Alaska (that is, the Tongass and Chugach National Forests) from the prohibitions established by the roadless rule.

Timetable:

Action	Date	FR Cite
NPRM	07/15/03	68 FR 41865
NPRM Comment Period End	08/14/03	
NPRM Comment Period Extended	08/18/03	68 FR 49395
NPRM Comment Period End	09/02/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: www.roadless.fs.fed.us

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RIN: 0596-AC04

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416. • DELEGATION OF AUTHORITY TO APPROVE FREE USE BY INDIVIDUALS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 36 CFR 223.8

Legal Deadline: None

Abstract: The Forest Service is developing an interim final rule to revise the current regulations at 36 CFR 223.8 to increase the value of timber and special forest products on National Forest System lands made available for free use. The current regulation, which has not been updated for over 30 years, provides for free use of timber up to $20 in value in any one fiscal year. Forest Supervisors may grant permits of material not exceeding $100 in value. Regional Foresters may approve permits for larger amounts , and in times of emergency may delegate authority to Forest Supervisors for up to $500 in value. Prior approval is required by the Chief if the amount exceeds $5,000 in value. The market value of timber and special forest products has increased, however, and therefore, the regulation needs to be updated to reflect current values. This increase will authorize Forest Supervisors and Regional Foresters to provide free use of timber and special forest products up to $5,000 and $10,000 in value respectively.

The interim final rule will be published in the Federal Register with request for public comment. Comments received will be considered in the development of the final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Department of Agriculture (USDA)
Forest Service (FS)

Completed Actions

417. PREFERENCE FOR VISITOR SERVICE; ALASKA NATIONAL FOREST CONSERVATION SYSTEM UNITS

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 251

Completed:

Reason	Date	FR Cite
Final Action	06/11/03	68 FR 35116
Final Action Effective	07/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB57

418. NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTATION NEEDED FOR LIMITED TIMBER HARVEST ON NATIONAL FOREST SYSTEM LANDS (FOREST SERVICE HANDBOOK 1909.15, CHAPTER 30)

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	07/29/03	68 FR 44598
Final Action Effective	07/29/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB88

419. NOTICE, COMMENT, AND APPEAL PROCEDURES FOR PROJECTS AND ACTIVITIES ON NATIONAL FOREST SYSTEM LANDS

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 215 (Revision)

Completed:

Reason	Date	FR Cite
Final Action	06/04/03	68 FR 33582
Final Action Effective	07/07/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB89

420. NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTATION NEEDED FOR FIRE MANAGEMENT ACTIVITIES (INTERIM DIRECTIVE TO FOREST SERVICE HANDBOOK 1909.15, CHAPTER 30)

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	06/05/03	68 FR 33814
Final Action Effective	06/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB99

BILLING CODE 3410–90–S

Department of Agriculture (USDA)
Office of Chief Financial Officer (OCFO)

Completed Actions

421. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 3017 and 3021

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66534

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

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RIN: 0505–AA11

BILLING CODE 3410–90–S

Department of Agriculture (USDA)
Office of the Secretary (AgSEC)

Proposed Rule Stage

422. GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL REFERENCE

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–171, sec 9002

CFR Citation: 7 CFR 2902

Legal Deadline: NPRM, Statutory, October 10, 2002, NPRM.

Abstract: These proposed regulations are for purposes of establishing guidelines for biobased products that would be afforded federal procurement preference. The guidelines would provide for establishment of a new program for the purchase of biobased products by Federal agencies. These purchases are intended to stimulate production of new biobased products and to energize the emerging markets for these products.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0503–AA26

Department of Agriculture (USDA) Office of the Secretary (AgSEC) Final Rule Stage

423. GENERAL NONPROCUREMENT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 901 et seq

CFR Citation: 7 CFR 3020

Legal Deadline: None

Abstract: USDA published 7 CFR part 3015, Uniform Federal Assistance Regulations, in 1981 to establish and codify departmentwide policies and standards for administering grants and cooperative agreements to governmental and nongovernmental entities. Since that time, the Office of Management and Budget has led efforts to establish Governmentwide common rules for governmental and nongovernmental recipients of grants and cooperative agreements. Consequently, over the years, USDA has codified its Governmentwide common rules in other parts of title 7 of the CFR. This has resulted in corresponding amendments to part 3015 to revise its scope accordingly. We are proposing to remove part 3015 and to add part 3020 to parts of title 7. We are proposing to include other administrative requirements that were never codified. The alternative would be to continue to work with the disjointed, outdated part 3015. Expected results are that the new part 3020 will be more clear and concise and will only contain those cross-cutting requirements not included in other USDA departmentwide administrative regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/16/03	68 FR 41947
NPRM Comment Period End	08/15/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Federalism: Undetermined

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RIN: 0503–AA21

Department of Agriculture (USDA) Office of the Secretary (AgSEC) Completed Actions

424. OUTREACH AND ASSISTANCE FOR DISADVANTAGED FARMERS AND RANCHERS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 26

Completed:

Reason	Date	FR Cite
Withdrawn	10/30/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0503–AA22

425. ADJUDICATIONS UNDER SECTION 741

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 15f

Completed:

Reason	Date	FR Cite
Withdrawn	11/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Day
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RIN: 0503–AA24

BILLING CODE 3410–XY–S

Department of Agriculture (USDA) Rural Business-Cooperative Service (RBS) Proposed Rule Stage

426. AFFIRMATIVE FAIR HOUSING MARKETING PLAN

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 1703 subpart B; 7 CFR 1942 subpart G; 7 CFR 4284 subpart D; 7 CFR 4287, subpart B; 7 CFR 4279, subpart B; 7 CFR 4274, subpart D; 7 CFR 4280, subpart A; 7 CFR 4287, subpart H

Legal Deadline: None

Abstract: This action will incorporate the requirement for housing-related projects (such as apartment buildings, nursing homes, group homes, and assisted living type facilities) to develop an Affirmative Fair Housing Marketing Plan (plan) when receiving funding from the Intermediary Relending Program, Rural Business

Enterprise Grant Program, Rural Business Opportunity Grant Program, Rural Economic Development Loan and Grant Programs, and the Business and Industry Direct and Guaranteed Loan Programs. The plan will describe strategies to attract applications from all groups in a housing market area and efforts to reach those persons in the market area who traditionally would not be expected to apply for housing. The Rural Housing Service Multifamily Housing Program regulations currently include this borrower requirement.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Agency Contact: Nichelle Daniels, Loan Specialist, B&I Servicing Branch, Department of Agriculture, Rural Business-Cooperative Service, Room 6858/Stop 3224, Room 6858/Stop 3224, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA24

427. BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM—FINANCING COOPERATIVE STOCK

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 4279, subpart A; 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: The Agency proposes to revise the Business and Industry Program regulations to incorporate additional guidance and eliminate or reduce certain requirements when financing cooperative stock.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	11/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

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RIN: 0570–AA26

428. RURAL BUSINESS ENTERPRISE GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1932; 7 USC 1989; 16 USC 1005

CFR Citation: 7 CFR 1942; 7 CFR 4284

Legal Deadline: None

Abstract: The Rural Business-Cooperative Service proposes to completely rewrite and renumber 7 CFR 1942, subpart G to 7 CFR part 4284, subpart B. This rewrite will incorporate public law changes and clarify administrative regulatory procedures and guidelines in order to improve program administration.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Amy Cavanaugh, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Stop 3225, Room 6868/Stop 3225, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA28

429. ANNUAL RENEWAL FEE

Priority: Other Significant

Legal Authority: 7 USC 1932

CFR Citation: 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: The Rural Business-Cooperative Service is amending its regulation for Business and Industry Guaranteed Loans to provide for an annual renewal fee. The intended effect of this rule is to reduce the subsidy rate and its associated budget authority dollar level, which will result in a greater level of assistance to the public (i.e., higher supportable loan level).

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 0570–AA34

430. RURAL BUSINESS INVESTMENT PROGRAM

Priority: Other Significant

Legal Authority: PL 107–171, sec 6029

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action will implement the provisions of section 6029 of the Farm Security and Rural Investment Act, which amended the Consolidated Farm and Rural Development Act by adding "Subtitle H—Rural Business Investment Program." Section 6029 provides that the Secretary "shall" establish the program and provides mandatory no-year funding out of the Commodity Credit Corporation at a level sufficient to guarantee $280 million of debentures and $44 million in grants. The purpose of the program is the establishment of equity capital investment in Rural Business Investment Companies and other entities through a combination of grants and guarantees of debentures with the objective of fostering economic development in rural areas. By law, the program is required to be administered by another Federal agency that has considerable expertise in operating a similar program; the joint Explanatory Statement of the Conference Committee refers to the Small Business

Administration (SBA) in this context. The Rural Business-Cooperative Service is currently working with SBA to develop the program; negotiations are ongoing.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
NPRM Comment Period End	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 0570–AA35

431. BUSINESS AND INDUSTRY LOAN PROGRAM—REWRITE OF PROGRAM REGULATIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 4279, subpart A; 7 CFR 4279, subpart B; 7 CFR 4287, subpart B

Legal Deadline: None

Abstract: The regulations are being completely rewritten to make changes that will ultimately reduce delinquencies, enhance program effectiveness, correct minor inconsistencies, and make the regulations more clear and easier to understand.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	11/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, Tribal

Federalism: Undetermined

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RIN: 0570–AA41

432. ● NATIONAL SECURITY EMERGENCY

Regulatory Plan: This entry is Seq. No. 29 in part II of this issue of the **Federal Register**.

RIN: 0570–AA48

433. ● TANGIBLE NET EQUITY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1932(a)

CFR Citation: 7 CFR 1980; 7 CFR 4279

Legal Deadline: None

Abstract: This proposed rulemaking amends 7 CFR parts 4279 and 1980 by modifying the equity requirement considered in the underwriting of business and industry loans by guaranteed lenders and/or the Rural Business-Cooperative Service as follows:

— In the case of direct or guaranteed refinancing loans only, apply an adjusted equity requirement, where tangible net equity is modified by (i) including asset value to the extent of the difference between the depreciated book value of real property assets and current market value supported by an independent appraisal, or the original loan amount, whichever is less and (ii) family capital subordinated debt, where the subordinated debt is held by and represents a cash infusion to the business by the owner or close family member, and the repayment terms are such that repayment is not ahead of Agency direct and/or guaranteed loan exposure.

— Increase the equity requirement for energy loans to 40 percent for existing businesses (in existence for three years) and 50 percent for new businesses. Construction financing is not an eligible energy loan purpose; energy project that produce biomass fuel, biogas, fuel cells or batteries as an output must have completed two operating cycles at design performance levels acceptable to the Agency.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Hagy, Deputy Administrator, Business Programs, Department of Agriculture, Rural Business-Cooperative Service, Room 5050/Stop 3220, Room 5811/Stop 3220, 1400 Independence Avenue SW,
Washington, DC 20250
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RIN: 0570–AA49

434. ● RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS

Regulatory Plan: This entry is Seq. No. 30 in part II of this issue of the **Federal Register**.

RIN: 0570–AA50

435. RURAL ECONOMIC DEVELOPMENT LOAN AND GRANT PROGRAM

Priority: Other Significant

Legal Authority: 7 USC 940c

CFR Citation: 7 CFR 1703, subpart B; 7 CFR 4280, subpart A

Legal Deadline: None

Abstract: This action is part of a reinvention laboratory initiative of the Department of Agriculture and Rural Business-Cooperative Service. The regulations will be written in a "plain language" style. The regulation will be simpler and improve the ease of use by the public and program beneficiaries. The regulation will be written in a question and answer format from the perspective of questions from the applicant under this program. The regulations will simplify the application format, review and selection process, and recipient's recordkeeping requirements. It will also add a section on the appeal of adverse decisions. The comment period on the proposed rule ended February 14, 2000. The Agency received 28 written comments. The Agency conducted a meeting, which was open to the public on August 2, 2000, to allow the Agency to listen to oral presentations from the general public on the proposed rule. The Agency will respond to the comments made at the meeting in the preamble to the final rule as part of the rulemaking processing under the Administrative Procedures Act.

Timetable:

Action	Date	FR Cite
NPRM	12/15/99	64 FR 69937
NPRM Comment Period End	02/14/00	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane Berger, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Room 6867, Room 6868/Stop 3225, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570-AA19

436. RURAL BUSINESS ENTERPRISE GRANT PROGRAM—FARM BILL CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1932

CFR Citation: 7 CFR 1942

Legal Deadline: None

Abstract: President Bush signed the Farm Bill May 13, 2002, changing the definition of rural and rural area in the Consolidated Farm and Rural Development Act for certain programs including the Rural Business Enterprise Grant (RBEG) program. The definition now reads "any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such as a city or town." The previous definition of rural and rural, area was "any area that is not within the outer boundary of any city having a population of 50,000 or more and its immediately adjacent urbanized and urbanizing areas with a population density of more than 100 persons per square mile." Therefore, the RBEG program, which is authorized under the Consolidated Farm and Rural Development Act, must be changed to reflect the current definition.

The Consolidated Farm and Rural Development Act also amended the definition of small and emerging private business enterprise to include nonprofit entities and other tax exempt organizations who have a principal office located on land of an existing or former Native American reservation in a city, town, or unincorporated area that has a population of not more than 5,000 inhabitants as an eligible small and emerging business regardless of the number of employees or operating capital of the enterprise.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/20/02	67 FR 77907
Interim Final Rule Comment Period End	02/18/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Amy Cavanaugh, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Stop 3225, Room 6868/Stop 3225, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1400
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RIN: 0570-AA36

437. B&I GUARANTEED LOAN PROGRAM FARM BILL CHANGES—EXPANDED ELIGIBILITY CRITERIA

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: Section 6013 of the Act adds other renewable energy systems as an eligible loan purpose. Section 6017 expands eligibility criteria for loans to cooperatives and loan guarantees in nonrural areas under certain conditions and expands eligibility and relaxes financial reporting requirements for the B&I Cooperative Stock Purchase Program. It also allows the Agency to require specialized appraisals for the B&I program. Section 6019 requires the Agency to provide a short, simplified application form for guarantees of $400,000 or less initially. 7 CFR part 4279, subpart B, must be changed to incorporate these provisions of the statute.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brenda Griffin, Loan Specialist, Processing Division, Department of Agriculture, Rural Business-Cooperative Service, Room 6847/Stop 3224, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570-AA39

438. VALUE—ADDED PRODUCER GRANTS AND AGRICULTURE INNOVATION CENTERS

Priority: Other Significant

Legal Authority: PL 107-171, sec 6401; PL 107-171, sec 6402

CFR Citation: 7 CFR 4284

Legal Deadline: None

Abstract: This action sets forth the policies and procedures for awarding value—added producer grants and grants for establishing pilot agricultural innovation centers

Timetable:

Action	Date	FR Cite
NPRM	06/13/03	68 FR 35321
NPRM Comment Period End	08/12/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Department of Agriculture, Rural Business-Cooperative Service, MS 3250, Stop 3250, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA40

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439. INTERMEDIARY RELENDING PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9812(a)

CFR Citation: 7 CFR 4274

Legal Deadline: None

Abstract: This regulatory action is to effectively clarify, simplify, and strengthen the existing regulations.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

Agency Contact: Lori Washington, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Stop 3225, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA42

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440. • FISCAL TRANSFER AGENT—SECONDARY MARKET SALES OF GUARANTEED LOANS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 1988; 7 USC 1989

CFR Citation: 7 CFR 4279–A; 7 CFR 4279–C

Legal Deadline: None

Abstract: Section 338(b)(2)(A) of the CONACT authorizes the Secretary, either directly or through a market maker, to issue pool certificates representing ownership of part or all of the guaranteed portion of any loan guaranteed by the Secretary for certain guaranteed programs. The sale of Government guaranteed loan portions to investors in the secondary market increases earnings, liquidity, and the capital available to lenders. Lenders in the Small Business Administration (SBA) 7(a) loan program are selling loans by using an SBA-approved Fiscal Transfer Agent (FTA) that pools and markets loans on the secondary market. Rural Development seeks to use Section 338(b)(2)(A) of the CONACT to provide the same service to lenders.

Timetable:

Action	Date	FR Cite
NPRM	08/06/03	68 FR 46509
NPRM Comment Period End	10/06/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local, Tribal

Federalism: Undetermined

Agency Contact: Pandor H. Hadjy, Assistant Deputy Administrator, Business Programs, Department of Agriculture, Rural Business-Cooperative Service, Room 5811/Stop 3220, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA47

Department of Agriculture (USDA)
Rural Business-Cooperative Service (RBS)

Completed Actions

441. ALLOCATION FORMULAS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1940, subpart L

Completed:

Reason	Date	FR Cite
Final Action	03/26/03	68 FR 14527

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0570–AA30

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442. BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM—DOMESTIC LAMB INDUSTRY ADJUSTMENT ASSISTANCE PROGRAM SET-ASIDE

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 4279, subpart B

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Debi Raygor
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RIN: 0570–AA31

BILLING CODE 3410–15–S

443. TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) proposes to amend 7 CFR 1755 to include requirements presently contained in RUS Bulletin 345–3. This rule would establish and codify provisions for the inclusion and removal for products from I.P. 344–2. This rule also proposes to integrate the existing section on field trials in the procedures for product acceptance and inclusion in this codification, as well as clarifying and reorganizing the field trials section.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Richard Annan, Acting Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, Room 5168, South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0572–AB40

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444. SERVICING OF WATER PROGRAMS LOANS AND GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 7 CFR 1782; 7 CFR 1951; 7 CFR 1955; 7 CFR 1956

Legal Deadline: None

Abstract: This proposed action combines nine existing loan-servicing regulations of Water Programs into one. The new regulations will codify and clarify Water Programs policy relating to loan-servicing by incorporating simplified language without significantly changing any of the Agency's servicing policies or procedures.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB59

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445. TECHNICAL ASSISTANCE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 16 USC 1005

CFR Citation: 7 CFR 1775

Legal Deadline: None

Abstract: RUS proposes to amend the regulation to separate the technical assistance and training grant and solid waste management grant programs for clarification purposes and to bring the regulation in line with revisions to OMB circulars. Additionally, it eliminates the requirement that applicants submit a pre-application when applying for grant funds and transfers grant processing and servicing from the National Office to Rural Development State Offices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB75

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446. SPECIAL EQUIPMENT CONTRACT (NOT INCLUDING INSTALLATION), RUS FORM 398

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 CFR 6941 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: RUS is amending its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction to revise RUS Form 398, Special Equipment Contract (Not Including Installation).

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, Room 5168, South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0572–AB76

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447. ACCOUNTING REQUIREMENTS FOR RUS TELECOMMUNICATIONS BORROWERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1770

Legal Deadline: None

Abstract: RUS proposes to revise subpart B, Uniform System of Accounts, to reflect changes to 47 CFR part 32, Uniform System of Accounts, by the Federal Communications Commission.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB77

448. GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION PURPOSES

Priority: Other Significant

Legal Authority: PL 107–171

CFR Citation: 7 CFR 1720

Legal Deadline: NPRM, Statutory, January 8, 2003, NPRM.

Abstract: The Farm Security and Rural Investment Act of 2002 (Farm Bill) amends the Rural Electrification Act of 1936 to include section 313A: Guarantees For Bonds And Notes Issued For Electrification Or Telephone Purposes. The Farm Bill became law on May 13, 2002, and requires the Secretary of Agriculture to promulgate regulations that carry out the amendments within 180 days. Furthermore, the implementation of the amendments shall take effect no later than 240 days.

The new section 313A: Guarantees for Bonds And Notes Issued For Electrification Or Telephone Purposes, states that the Secretary shall guarantee payments on bonds or notes issued by cooperative or other lenders organized on a not-for-profit basis. Section 313A provides limits to the amount of guarantees, the purpose for the guarantee, and qualifications of eligible lenders seeking a guarantee of a bond or note. The section also provides for a fee to be charged to lenders that receive a guarantee under section 313A, which will be deposited in the Rural Economic Development Subaccount.

The Rural Utilities Service (RUS) is proposing the development of rules that carry out the amendments made by section 313A. The rules will establish regulations that allow the Secretary to comply with the requirements outlined and set the limitations provided for in the Farm Bill.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB83

449. • SALE OR TRANSFER OF CAPITAL ASSETS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 to 950(b), 1981; PL 99–591; 100 Stat. 3341–16, PL 103–354

CFR Citation: 7 CFR 1717

Legal Deadline: None

Abstract: The RUS will amend 7 CFR 1717, subpart M, Operational Controls, to codify the regulatory policy and procedures of RUS Bulletin 115–1 "Sales of Capital Assets by Electric Borrowers." RUS is proposing this change to regulation as a part of its ongoing effort to minimize administrative burden, and update regulations to reflect current requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB84

450. • HIGH ENERGY COST RURAL COMMUNITY GRANTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 106–472; title III, sec 301, 7 USC 918a

CFR Citation: 7 CFR 1709

Legal Deadline: None

Abstract: This rule sets forth the policies and procedures for awarding grants to rural communities with very high energy costs. The grants may be used to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB91

451. • RUS ELECTRIC DISTRIBUTION & G&T BORROWERS' REQUIREMENTS FOR ASSURING THE HOMELAND SECURITY OF THE RURAL ELECTRIC INFRASTRUCTURE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Undetermined

CFR Citation: 1730

Legal Deadline: None

Abstract: The RUS will amend the CFR to establish RUS policy requiring Electric Program distribution and Generation and Transmission borrowers to expand their currently required Electric Restoration Plans to include Homeland Security concerns of preventive measures and emergency recovery from physical and cyber attacks to their electric systems and core businesses.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, Room 5168, South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0572–AB92

Department of Agriculture (USDA)
Rural Utilities Service (RUS)

Final Rule Stage

452. ELECTRIC PROGRAM STANDARD CONTRACT FORMS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1724; 7 CFR 1726; 7 CFR 1755

Legal Deadline: None

Abstract: RUS will amend its regulations to revise its standard forms of contracts that borrowers are required to use when contracting for construction and procurement financed through loans made or guaranteed by RUS, in accordance with applicable RUS regulations.

Timetable:

Action	Date	FR Cite
ANPRM	09/16/98	63 FR 49503
ANPRM Comment Period End	11/16/98	
NPRM	07/02/02	67 FR 44396
NPRM Comment Period End	10/30/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB67

453. TELECOMMUNICATIONS PROGRAM SPECIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) is proposing to amend its regulations to update telecommunications field trial requirements and update the listing of contract forms for use in telecommunications systems of RUS borrowers.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, Room 5168, South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0572–AB69

454. GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED LOANS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: RUS is amending its regulations to clarify that the purchase or acquisition of existing electric facilities and implementation of demand side management and energy conservation programs, and on-grid and off-grid renewable energy systems are eligible loan purposes under the Rural Electrification Act, as amended. The rule also makes several technical corrections to conform the language of the regulations to existing law and to correct a typographical error.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB72

455. SEISMIC SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 42 USC 7701 et seq

CFR Citation: 7 CFR 1792–C

Legal Deadline: None

Abstract: The revision to the existing CFR is made to update the requirements of the Agency. The direct final rule provides RUS borrowers, grant recipients, Rural Telephone Bank (RTB) borrowers, and the public with updated rules for compliance with seismic safety requirements for new building construction using RUS or RTB loan, grant, or guaranteed funds or funds provided through lien accommodations or subordinations approved by RUS or RTB.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan,
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RIN: 0572–AB74

456. LAUNCHING OUR COMMUNITIES ACCESS TO LOCAL TELEVISION ACT OF 2000

Priority: Other Significant

Legal Authority: 47 USC 1101 et seq; PL 106–553; PL 107–171

CFR Citation: 7 CFR 2200; 7 CFR 2201

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS), on behalf of the Local Television Loan Guarantee Board, is proposing to draft regulations to implement title X, Local TV Act, of H.R. 5548. The purpose of this Act is to facilitate access, on a technology neutral basis, to signals of local television stations for households located in non-served and under-served areas.

Timetable:

Action	Date	FR Cite
NPRM	08/15/03	68 FR 48814
NPRM Comment Period End	09/15/03	
NPRM Comment Period End (ICR)	10/14/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan,
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RIN: 0572–AB82

457. • EXEMPTION OF CERTAIN BORROWERS FROM CONTROLS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 7 CFR 1717

Legal Deadline: None

Abstract: RUS is removing section 1717.656(a)(3) in its entirety. This section exempts certain borrowers from controls, became effective October 23, 1995. Effective January 29, 1996, RUS established new loan contract requirements that conflict with this section. This administrative action is taken to eliminate confusion in the rule and provide consistency to the regulation.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan,
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RIN: 0572–AB85

Department of Agriculture (USDA) Rural Utilities Service (RUS) Long-Term Actions

458. SETTLEMENT OF DEBT

Priority: Other Significant

CFR Citation: 7 CFR 1717

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0572–AB61

Department of Agriculture (USDA) Rural Utilities Service (RUS) Completed Actions

459. ENVIRONMENTAL POLICIES AND PROCEDURES

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1794

Completed:

Reason	Date	FR Cite
Final Action	08/01/03	68 FR 45157

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Annan
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RIN: 0572–AB73

460. EXTENSIONS OF PAYMENTS OF PRINCIPAL AND INTEREST

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1721

Completed:

Reason	Date	FR Cite
Final Action	06/26/03	68 FR 37952

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Annan
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RIN: 0572–AB79

461. USEFUL LIFE OF FACILITY DETERMINATION

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1710

Completed:

Reason	Date	FR Cite
Final Action	05/07/03	68 FR 24335

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Annan
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RIN: 0572–AB80

462. • EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 7 USC 1989; 16 USC 1005

CFR Citation: 7 CFR 1778

Legal Deadline: None

Abstract: The Rural Utilities Service is amending its regulation governing Emergency Community Water Assistance Grants (ECWAG) to allow eligibility for the program to be extended to situations where an emergency is considered imminent.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/05/03	68 FR 46077
Direct Final Rule Effective	09/19/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Annan, Acting Director, Program Development and Regulatory Analysis, Department of Agriculture, Rural Utilities Service, 1400 Independence Avenue SW, Stop 1522, Washington, DC 20250
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RIN: 0572–AB90

BILLING CODE 3410–16–S

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS)

Proposed Rule Stage

463. EMERGENCY WATERSHED PROTECTION PROGRAM

Priority: Economically Significant

Legal Authority: PL 81–516; 33 USC 701; PL 95–334; PL 104–127; 16 USC 2203

CFR Citation: 7 CFR 624

Legal Deadline: None

Abstract: A revision is necessary to incorporate changes in the program, which have resulted from the passage of the 1996 Farm Bill; to fulfill a desire to make the program more responsive and efficient; and to respond to concerns of the public and the Agency. The rule is being reorganized and several items added.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Victor Cole, National EWP Leader, Department of Agriculture, Natural Resources Conservation Service, Room 6019–S, PO Box 2890, Washington, DC 20013
Phone: 202 690–4575
Fax: 202 720–2143
Email: vcole@usda.gov

RIN: 0578–AA30

464. CONSERVATION SECURITY PROGRAM

Regulatory Plan: This entry is Seq. No. 31 in part II of this issue of the **Federal Register**.

RIN:

465. GRASSLAND RESERVE

Priority: Other Significant

Legal Authority: PL 107–171; 16 USC 3838

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Under Grassland Reserve Program (GRP) the Department enters into easement or rental agreements with owners of grazing land to protect and restore such lands. The Department will designate payment for cost share to restore the functions and values of grasslands.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leslie Deavers, Watersheds and Wetlands Division, Department of Agriculture, Natural Resources Conservation Service, Washington, DC 20013
Phone: 202 720–1067
Fax: 202 720–2143
Email: leslie.deavers@usda.gov

RIN: 0578–AA38

Department of Agriculture (USDA) — Final Rule Stage
Natural Resources Conservation Service (NRCS)

466. WETLAND CATEGORICAL MINIMAL EFFECTS EXEMPTIONS

Priority: Other Significant

Legal Authority: 16 USC 3821

CFR Citation: 7 CFR 12

Legal Deadline: None

Abstract: The 1985 Farm Bill, as amended, gives producers a major incentive to conserve wetlands by tying eligibility for most USDA program benefits to conservation of wetlands. However, producers can convert wetlands based on available exemptions, including a minimal effect exemption. A minimal effect applies if the action, individually and cumulatively, will have minimal effect on the functional hydrological and biological value of the wetlands in the area. A categorical minimal effect is one that, when carried out, will always have a minimal effect on the hydrologic and biological functions of wetlands in the area. These activities will be identified on a regional basis.

Timetable:

Action	Date	FR Cite
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Floyd Wood, Department of Agriculture, Natural Resources Conservation Service, Watersheds and Wetlands Division, PO Box 2890, Washington, DC 20013–2890
Phone: 202 690–1588
Fax: 202 720–2143
Email: floyd.wood@usda.gov

RIN: 0578–AA27

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467. TECHNICAL SERVICE PROVIDER ASSISTANCE

Priority: Other Significant

Legal Authority: 16 USC 3842

CFR Citation: 7 CFR 652

Legal Deadline: None

Abstract: Third Party Vendor assistance will allow producers to obtain technical services from the department or entities by a certification process. This process will distinguish between certification of an individual working under his or her own auspices and that of an organization such as a corporation or a public agency which has individuals working on its behalf. Certification of an individual means the individual has the requisite education and technical expertise to perform the technical services. Certification of an entity or public agency means that the organization may receive payment for the services provided by individuals working under its auspices, but the work must be performed or warranted by certified individuals and the organization must assume the liability for the quality of work performed.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/21/02	67 FR 70119
Interim Final Rule Comment Period End	02/19/03	
Interim Final Rule Effective	03/01/03	
Interim Final Rule	03/24/03	68 FR 14131
Interim Final Rule Comment Period End	06/23/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Melissa Hammond, Coordinator, Technical Service Providers, Department of Agriculture, Natural Resources Conservation Service, Room 5205–S, P.O. Box 2890, Washington, DC 20013
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Fax: 202 720–3052
Email: melissa.hammond@usda.gov

RIN: 0578–AA35

Department of Agriculture (USDA) — Long-Term Actions
Natural Resources Conservation Service (NRCS)

468. HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

Priority: Other Significant

CFR Citation: 7 CFR 12

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/96	61 FR 47019
Interim Final Rule Comment Period End	11/05/96	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Martha Joseph
Phone: 202 720–7157
Fax: 202 720–2143
Email: martha.joseph@usda.gov

RIN: 0578–AA17

469. • NRCS EQUITABLE RELIEF PROCEDURES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 7996

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Equitable Relief Procedures are set forth in title I, section 1613, of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) and is relief to participants in certain cases for certain Natural Resources Conservation Service and Commodity Credit Corporation programs. The relief applies to cases where the applicant for relief took action to the applicant's detriment based on bad information from departmental officials. Also, it covers where the applicant simply, but in good faith, failed to fully comply with program requirements. The rule is intended to implement a statutory requirement that the Agencies provide relief to producers who took action to their detriment based on bad information from officials.

Timetable:

Action	Date	FR Cite
ANPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Schuler, Equitable Relief Specialist, Department of Agriculture, Natural Resources Conservation Service, 1004 Pebble Brook, Nashville, TN 57221
Phone: 615 646–9741
Fax: 615–673–6705

Email: beth.schuler@usda.gov
RIN: 0578–AA39

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS)

Completed Actions

470. ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 1466

Completed:

Reason	Date	FR Cite
Final Action	05/30/03	68 FR 32337

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas W. Christensen
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RIN: 0578–AA31

471. AGRICULTURAL MANAGEMENT ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1465

Completed:

Reason	Date	FR Cite
Final Action	04/09/03	68 FR 17272

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dave Mason
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RIN: 0578–AA32

472. FARM AND RANCH LANDS PROTECTION PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1491

Completed:

Reason	Date	FR Cite
Final Action	05/16/03	68 FR 26461

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas J. Lawrence
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RIN: 0578–AA37

BILLING CODE 3410–98–S

Department of Agriculture (USDA)
Office of Procurement and Property Management (OPPM)

Final Rule Stage

473. OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT (OPPM); UNIFORM PROCEDURES FOR THE ACQUISITION AND TRANSFER OF EXCESS FEDERAL PROPERTY

Priority: Info./Admin./Other

Legal Authority: 7 USC 2206a; 7 USC 301 note; 7 USC 321 et seq; 20 USC 1059c(b)

CFR Citation: 7 CFR 3200

Legal Deadline: None

Abstract: The Office of Procurement and Property Management (OPPM) is amending its procedures for the acquisition and transfer of excess personal property to 1994 Institutions (as defined in section 532 of the Equity in Education Land Grant Status Act of 1994); Hispanic-Serving Institutions (as defined in section 316(b) of the Higher Education Act of 1965); and any college or university eligible to receive funds under the Act of August 30, 1890. This amendment clarifies administrative rules regarding equipment transfer and reduces the administrative burden placed on recipient institutions.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathleen N. Fay, Property Utilization Specialist, Department of Agriculture, Office of Procurement and Property Management, Mail Stop 9304, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–9779
Email: kathy.fay@usda.gov

RIN: 0599–AA10

[FR Doc. 03–27997 Filed 12–19–03; 8:45 am]

BILLING CODE 3410–98–S

Federal Register

Monday,
December 22, 2003

Part IV

Department of Commerce

Semiannual Regulatory Agenda

DEPARTMENT OF COMMERCE (DOC)

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Ch. III

15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI

19 CFR Ch. III

37 CFR Chs. I, IV, and V

48 CFR Ch. 13

50 CFR Chs. II, III, IV, and VI

Fall 2003 Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Commerce.

ACTION: Semiannual regulatory agenda.

SUMMARY: In compliance with Executive Order 12866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act, as amended, the Department of Commerce (Department), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the spring 2003 agenda. The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, or issued by the Department. The agenda is intended to facilitate comments and views by interested members of the public.

The Department's fall 2003 regulatory agenda includes regulatory activities that are expected to be conducted during the period October 1, 2003, through September 30, 2004.

FOR FURTHER INFORMATION CONTACT:

Specific: For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

General: Comments or inquiries of a general nature about the agenda should be directed to Daniel Cohen, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230; telephone: 202-482-3151.

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this order. By memorandum of July 31, 2003, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the fall 2003 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to publish, in the spring and fall of each year, a regulatory flexibility agenda which contains a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities. The agenda also identifies those entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

Explanation of Information Contained in the Agenda

Within the Department, the Office of the Secretary and various operating units may issue regulations. Operating units, such as the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark Office issue the greatest share of the Department's regulations.

A large number of regulatory actions reported in the agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of the NMFS programs, a section on "Explanation of Information Contained in NMFS Regulatory Entries" is provided below.

Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Act) governs the management of fisheries within the Exclusive Economic Zone (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. Fishery Management Plans (FMPs) are to be prepared for fisheries, which require conservation and management measures. Regulations implementing these FMPs regulate domestic fishing and foreign fishing where permitted. Foreign fishing can be conducted in a fishery in which there is no FMP only if a preliminary fishery management plan has been issued to govern that foreign fishing. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs or amendments to FMPs for fisheries within their respective areas. In the development of such plans or amendments and their implementing regulations, the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

The Department's fall 2003 regulatory agenda follows.

Theodore W. Kassinger,
General Counsel.

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
474	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	0690–AA30
475	Employee Responsibilities and Conduct; Removal of Obsolete Regulations	0690–AA32

DOC

Bureau of Economic Analysis—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
476	Quarterly Surveys of International Trade in Services Between U.S. and Foreign Persons	0691–AA49
477	BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons	0691–AA51
478	Benchmark Survey of U.S. Direct Investment Abroad—2004	0691–AA52
479	International Services Surveys: BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons	0691–AA53
480	International Services Surveys: BE–25, Quarterly Survey of Transactions With Unaffiliated Foreign Persons in Selected Services and in Intangible Assets	0691–AA54

Bureau of Economic Analysis—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
481	Annual Survey of Foreign Direct Investment in the United States	0691–AA48

Bureau of Economic Analysis—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
482	International Services Surveys: BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons	0691–AA50

Bureau of Economic Analysis—Completed Actions

Sequence Number	Title	Regulation Identification Number
483	Economic Development Administration Regulations	0691–AA47

Bureau of the Census—Prerule Stage

Sequence Number	Title	Regulation Identification Number
484	Full Mandatory Automated Export System (AES) Filing for Export Shipments	0607–AA38

Bureau of the Census—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
485	Annual Trade Survey	0607–AA40

Bureau of the Census—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
486	Cutoff Dates for Recognition of Boundary Changes for Census 2000 and for the Intercensal Period	0607–AA35

Bureau of the Census—Completed Actions

Sequence Number	Title	Regulation Identification Number
487	Special Services and Studies by the Bureau of the Census; Amendments to Age Search Procedures	0607–AA24
488	Automated Export System (AES) Mandatory Filing for All Items on the Commerce Control List (CCL) and the United States Munitions List (USML) That Currently Require a Shipper's Export Declaration (SED)	0607–AA34
489	Mandatory Automated Export System (AES) for Exports (Re-Exports) of Rough Diamonds	0607–AA39

Economic Development Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
490	Economic Development Administration Regulations	0610–AA63

General Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
491	Public Information, Freedom of Information and Privacy	0605–AA14
492	Governmentwide Debarment and Suspension (Nonprocurement)	0605–AA16

International Trade Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
493	Commercial Availability of Fabric and Yarn	0625–AA59

International Trade Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
494	Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders	0625–AA51
495	Import of Certain Worsted Wool Fabric: Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000	0625–AA58
496	Changes in the Insular Possessions Watch, Watch Movement, and Jewelry Program	0625–AA63

Bureau of Industry and Security—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
497	Chemical Weapons Convention Regulations	0694–AB06
498	Mandatory Electronic Filing of License Applications, Classification Requests, and License Exceptions Notifications via BIS's Simplified Network Application Process (SNAP)	0694–AC20
499	Export Administration Regulations: Penalty Guidance in the Settlement of Administrative Enforcement Cases	0694–AC92

Bureau of Industry and Security—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
500	Exports and Reexports to Sudan	0694–AC05

Bureau of Industry and Security—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
501	Revisions and Clarifications to the Export Administration Regulations (EAR)	0694–AC24
502	Removal of Licensing Exemption for Exports and Reexports of Missile Technology–Controlled Items Destined to Canada	0694–AC48
503	Elimination of "National Security" as a Reason for Control for Certain Items on the Commerce Control List	0694–AC54
504	Protective Equipment Export License Jurisdiction	0694–AC64
505	License Application Denial Policy, "Red Flag" Indicators of Possible Inappropriate End-Use, End-User, or Destination	0694–AC68
506	Revisions of Aircraft Export Licensing Jurisdiction Based on Review of the United States Munitions List	0694–AC74
507	Revisions of Energetic Material Export Licensing Jurisdiction Based on Review of the United States Munitions List	0694–AC75
508	Revisions to the Export Administration Regulations Based on the 2002 Missile Technology Control Regime Plenary Agreements	0694–AC76
509	Export and Reexport Controls on Iraq	0694–AC84
510	Lifting of UN Sanctions Against UNITA	0694–AC86
511	Amendment to the Export Administration Regulations: Revision to Export Control Classification Number 1C355	0694–AC87
512	Best Practices for Exporters/Re-Exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual–Use Items	0694–AC89
513	Clarification of Export Controls on Parts for Military Vehicles	0694–AC91

Bureau of Industry and Security—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
514	Administration of State Log Exports Ban	0694–AB25
515	Clarification of License Exception GFT (Humanitarian Donations)	0694–AB49
516	Export Administration Regulations: Support Documentation	0694–AC04
517	Expansion of License Exception GOV; Exports and Reexports to International Organizations	0694–AC15
518	De Minimis Expansion of Eligibility: U.S. Origin Software Incorporated Into Foreign–Made Retail Commodities	0694–AC17
519	Revision to the Export Administration Regulations: Replacement Licenses	0694–AC23
520	Short Supply Controls: Crude Oil Exports	0694–AC25
521	Crime Control Items: Revisions to the Commerce Control List	0694–AC31
522	License Exception AVS: Cuba, Libya, and Serbia	0694–AC33
523	Clarifications to Part 753: Special Comprehensive License Requirements	0694–AC34
524	Chemical Weapons Convention: Revisions to the Export Administration Regulations	0694–AC35
525	Addition and Revision of Missile Projects in the Export Administration Regulations	0694–AC46
526	Revision, Suspension, or Prohibition of Use of "No License Required" Provisions	0694–AC47
527	Computer Technology and Software Eligible for Export or Reexport Under License Exception TSR	0694–AC63
528	License Exception APR for Reexports To, From, and Among Countries in Country Group A:1	0694–AC69
529	Revisions to License Exception TSR: Expansion to Scope of Eligible Countries	0694–AC71
530	Addition of East Timor, Netherlands Antilles, and Aruba to the Export Administration Regulations	0694–AC77
531	Imposition of Foreign Policy Controls on Surreptitious Communications Intercepting Devices	0694–AC82
532	December 2002 Wassenaar Arrangement Plenary Agreement Implementation: Revisions to Categories 1, 2, 3, 4, 5, 6, and 7 of the Commerce Control List, and Reporting Requirements	0694–AC85
533	Addition of Kazakhstan to the Nuclear Suppliers Group (NSG), and Other Revisions	0694–AC90

Bureau of Industry and Security—Completed Actions

Sequence Number	Title	Regulation Identification Number
534	Transfer of Dual-Use Items From U.S. Munitions List to the Commerce Control List	0694–AA52
535	Change the Commerce Control List To Revise Controls on Communication Intercepting Devices (Export Commerce Control Number ECCN 5A980)	0694–AB41
536	Exports of Technology and Software; Release of Technology or Source Code to Foreign Nationals in the United States	0694–AB59
537	Entity List Revision: Khan Research Laboratories	0694–AB60
538	India and Pakistan Sanctions	0694–AB73

Bureau of Industry and Security—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
539	Exports and Reexports of Explosive Detection Systems; Expansion of Foreign Policy Controls	0694–AB87
540	Expansion of License Exception CIV Eligibility for Microprocessors Controlled by ECCN 3A001	0694–AB90
541	Export of Technology and Software Through Electronic Transmissions, Downloads, and Programming Onto Hardware	0694–AB97
542	Antiterrorism Controls on Iraq	0694–AC06
543	Revisions to the Export Administration Regulations Related to the Missile Technology Control Regime (MTCR)	0694–AC22
544	Offsets in Military Exports	0694–AC27
545	Entity List: Additions and Revisions	0694–AC28
546	Revisions to Encryption Items	0694–AC32
547	Exports to Afghanistan (the Taliban) and Liberia: Imposition of Foreign Policy Controls	0694–AC45
548	Exports to the Federal Republic of Yugoslavia: Lifting of Sanctions	0694–AC57
549	Imposition and Expansion of Controls on Designated Persons	0694–AC60
550	Revisions and Clarifications to the Export Administration Regulations—Chemical and Biological Weapons Controls: Australia Group (June 2002 Plenary Meeting)	0694–AC70
551	General Order Suspending License Requirement for Exports and Reexports in Support of United Nation Security Counsel Resolution(s) Mandating Inspections in Iraq	0694–AC73
552	Export Administration Regulations: Encryption Clarifications and Revisions	0694–AC78
553	General Order on Exports to Iraq	0694–AC79
554	General Order Removing License Requirements for the Export or Reexport to Iraq of Certain Items Subject to the Export Administration Regulations	0694–AC80
555	Export Clearance—Conformance of Export Administration Regulations With Foreign Trade Statistics Regulations	0694–AC81
556	Addition of Aruba, Democratic Republic of Congo, Republic of Congo, Democratic Republic of East Timor, and Netherlands Antilles to the Export Administration Regulations	0694–AC83

National Institute of Standards & Technology—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
557	Procedures for Implementation of the National Construction Safety Team Act	0693–AB53

National Institute of Standards & Technology—Completed Actions

Sequence Number	Title	Regulation Identification Number
558	Procedures for Implementation of the National Construction Safety Team Act	0693–AB52

National Oceanic and Atmospheric Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
559	Fleet Capacity Control for U.S. Troll Albacore Tuna Fishing in Canadian Waters	0648–AQ22
560	Amendment 1 to the Spiny Dogfish Fishery Management Plan	0648–AQ86
561	Amendment 2 to the Atlantic Herring Fishery Management Plan	0648–AQ87
562	Weakfish: Increase in Incidental Catch per Amendment 4	0648–AR11
563	Endangered Species and Pesticide Regulation	0648–AQ69
564	Designate Critical Habitat; Withdraw Previous Designations	0648–AQ77

DOC

National Oceanic and Atmospheric Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
565	Amendment 4 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands	0648–AG87
566	Regulatory Amendment To Require Mandatory Observer Coverage in the At-Sea Processing Sector of the Whiting Fishery	0648–AK26
567	Adjustment of Management Program: Bottomfish Fisheries in the Hawaiian Islands	0648–AK82
568	Revise Exempted Fishing Regulations To Specify Compensatory Fishing Under Exempted Fishing	0648–AK84
569	Amendment 11 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region	0648–AL67
570	Fishery Management Plan for Calico Scallop Fishery in the South Atlantic Region (FMP)	0648–AL78
571	Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP)	0648–AM23
572	Amendment 7 to the Fishery Management Plan for the Bottomfish Fisheries of the Western Pacific Region	0648–AM98
573	Amendment 7 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic FMP	0648–AN08
574	Amendment 18 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico	0648–AN09
575	Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan	0648–AN16
576	Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP) **(Reg Plan Seq No. 32)**	0648–AN17
577	Amendment 9 to the Fishery Management Plan Amendment for the Pelagic Fisheries of the Western Pacific Region	0648–AN76
578	Regulatory Amendment Modifying the Gulf of Mexico BRD Protocol Under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP)	0648–AN84
579	Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic, Caribbean, and Gulf of Mexico (FMP) of the Atlantic	0648–AO63
580	Regulatory Amendment Under the Fishery Management Plan for Gulf of Mexico Reef Fish (FMP) To Establish a Red Snapper Stock Rebuilding Plan and To Set Red Snapper Overfishing Targets and Thresholds	0648–AP02
581	Amendment 13A to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region	0648–AP03
582	Revision of American Lobster Regulations for the EEZ	0648–AP18
583	Regulatory Amendment To Implement Permit Stacking in the Limited-Entry Fixed-Gear Sablefish Fishery in 2002 and Beyond	0648–AP38
584	Implementation of Fishery Management Plan for Highly Migratory Species Fisheries Off the West Coast	0648–AP42
585	Regulatory Amendment Under the Coastal Migratory Pelagics Fishery Management Plan	0648–AP50
586	Comprehensive Amendment Addressing Sustainable Fisheries Act Requirements Regarding Overfishing, Bycatch, Fishing Communities and Provisions for Fishery Management Plans for the Caribbean	0648–AP51
587	Atlantic Surf Clam and Ocean Quahog Fisheries; Amendment 13	0648–AP57
588	Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 9	0648–AP60
589	Implementation of the Regulatory Changes Resulting From the Amendments and Extension of the South Pacific Tuna Act	0648–AP61
590	Revise Community Development Quota Program Administration and Allocation Regulations—BSAI FMP Amendment 71	0648–AP67
591	Full Retention of Demersal Shelf Rockfish in Gulf of Alaska Area 650	0648–AP73
592	Amendment to Fishery Management Plan for Reef Fish Resources of Gulf of Mexico to Set 10–Year Rebuilding Plan for Red Grouper	0648–AP95
593	Regulatory Amendment to Section 679 Permits or Permit-Related Issues	0648–AQ07
594	Regulatory Amendment To Adjust Permit Renewal Requirements and Transferability Restrictions in NWHI's Hoomalu Zone and Mau Limited Access Programs	0648–AQ20
595	Fleet Capacity Control for U.S. Tuna Purse Seine Fisheries in the Eastern Pacific Ocean	0648–AQ21
596	Amendment 2 to Monkfish Fishery Management Plan	0648–AQ25
597	Amendment 1 to the Atlantic Herring Fishery Management Plan (FMP) and Amendment 2 to the Atlantic Salmon FMP to Address Essental Fish Habitat Conservation Measures	0648–AQ27
598	Atlantic Highly Migratory Species (HMS); Bigeye Tuna and Swordfish Trade Statistical Document Programs	0648–AQ37
599	Fisheries of the United States; National Standard 1	0648–AQ63
600	Atlantic Highly Migratory Species: Billfish and Swordfish Recreational Fishing	0648–AQ65
601	Annual Specifications for the Surf Clam and Ocean Quahog Fisheries for 2004	0648–AQ79
602	Annual Specifications for the Summer Flounder, Scup, and Black Sea Bass Fisheries for 2004	0648–AQ80
603	Specifications for the 2004–2005 Fishing Year for the Spiny Dogfish Fishery	0648–AQ81
604	Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fishery for Fishing Year 2004	0648–AQ82
605	Annual Specifications for the Atlantic Mackerel, Squid, and Butterfish Fisheries for 2004	0648–AQ83
606	Annual Specifications for the Atlantic Herring Fishery for 2004	0648–AQ84
607	Annual Specifications for the Atlantic Bluefish Fishery for 2004	0648–AQ85
608	"Other Species" CDQ Reserve Management	0648–AQ88
609	Adjustment of Management Program; Pelagic Fisheries in the Western Pacific Region	0648–AQ91

National Oceanic and Atmospheric Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
610	Amendment 11 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (American Samoa Limited Access Program)	0648–AQ92
611	Eastern Pacific Tuna Controls	0648–AQ93
612	Announcement of the Optimum Yield and Harvest Limit for Pacific Sardine	0648–AQ97
613	Amendment 66 to the Fishery Management Plan for the Groundfish of the Gulf of Alaska	0648–AQ98
614	Amendment 62 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska and Amendment 62 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area	0648–AR06
615	Port Codes Integration in Table 14	0648–AR07
616	Regulatory Amendment To Change Reporting Areas 620 and 630	0648–AR08
617	Regulatory Rulemaking To Revise Accounting for Externally Tagged Halibut	0648–AR09
618	Atlantic Highly Migratory Species; Trade Restrictive Measures	0648–AR10
619	Atlantic Highly Migratory Species (HMS); Bluefin Tuna Season and Size Limit Adjustments	0648–AR12
620	Catcher Vessel Electronic Report	0648–AR30
621	Atlantic Striped Bass Fisheries in the EEZ; Modification of Federal Regulations	0648–AR33
622	Consideration of a Control Date for Bottomfishing Vessels in the EEZ Around Guam and Commonwealth of the Northern Mariana Islands	0648–AR37
623	Amendment 13B to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region	0648–AR38
624	Maximum Retainable Amount	0648–AR41
625	Framework 4 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP)	0648–AR44
626	Establish Referendum Procedures and a Vote Weighting Formula for the Gulf of Mexico Red Snapper Individual Fishing Quota (IFQ) Program	0648–AR48
627	Implement Electronic Dealer Reporting and Adjustments to Vessel Reporting Requirements	0648–AR49
628	Framework 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery	0648–AR50
629	Annual Specifications for the Surf Clam and Ocean Quahog Fishery for Fishing Year 2005	0648–AR52
630	Pacific Coast Groundfish Fishery; Announcement of the 2004 Groundfish Fishery Specifications and Management Measures	0648–AR54
631	Framework 16 to the Atlantic Sea Scallop Fishery Management Plan and Framework Adjustment 39 to the Northeast Multispecies Fishery Management Plan	0648–AR55
632	Annual Specifications for the Deep–Sea Red Crab Fishery for Fishing Year 2004	0648–AR58
633	Atlantic Highly Migratory Species (HMS); Amendment 2 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks	0648–AR60
634	Atlantic Highly Migratory Species (HMS); Amendment 2 to the Atlantic Billfish Fishery Management Plan	0648–AR61
635	Framework 4 to the Summer Flounder, Scup, and Black Sea Bass Fishery	0648–AR62
636	Amendment 10 to the Pacific Coast Groundfish Fishery Management Plan	0648–AR63
637	Regulatory Amendment to Prohibited Species Catch Donation Regulations To Allow Processing of Heads and Guts	0648–AR64
638	Amendment 8 to the Fishery Management Plan for the Bottomfish Fisheries of the Western Pacific Region	0648–AR65
639	Amendment 21 to the Reef Fish Fishery Management Plan	0648–AR66
640	Amend Regulations Governing the Taking and Importing of Marine Mammals	0648–AH83
641	North Atlantic Whale Protection	0648–AM85
642	Preventing Harassment From Human Activities Directed at Marine Mammals in the Wild	0648–AN43
643	Endangered and Threatened Species: Permit Exemptions	0648–AO37
644	Captive Steller Sea Lions	0648–AO61
645	Taking Marine Mammals Incidental to Rocket Launches From the Kodiak Launch Complex, Kodiak Island, Alaska	0648–AP62
646	Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Conducting Oil and Gas Exploration Activities in the Gulf of Mexico	0648–AQ71
647	Alaska Transient Killer Whales (AT1 Group) Designated as Depleted	0648–AR14
648	Zero Mortality Rate Goal	0648–AR15
649	Regulations Implementing the Bottlenose Dolphin Take Reduction Plan	0648–AR39
650	Implement a Prohibition on Shallow Style Longline Sets	0648–AR53
651	Revision of Overflight Regulations	0648–AI91
652	Interagency Consultation for the National Marine Sanctuary Program	0648–AL06
653	Gray's Reef National Marine Sanctuary	0648–AQ41
654	Regulatory Amendment To Correct Effective Dates for Regulatory Changes in 67 FR 79692 (December 30, 2002)	0648–AR13
655	Amendment 16–2 to the Pacific Coast Groundfish Fishery Management Plan	0648–AR35

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Oceanic and Atmospheric Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
656	Proposed Highly Migratory Species Process	0648–AK40
657	Enhanced Measures To Mitigate Seabird Bycatch in the Alaska Longline Fisheries (Hook-and-Line)	0648–AM30
658	Implementation of Western Pacific Coral Reef Ecosystem Fishery Management Plan (FMP)	0648–AM97
659	Fishery Management Plan (FMP) for Sargassum Habitat of the South Atlantic	0648–AN87
660	Atlantic Highly Migratory Species; Exempted Fishing Permits Procedures	0648–AO79
661	Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs	0648–AP25
662	Amendment to Regulations for Observer At-Sea Electronic Communication Equipment Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries	0648–AP66
663	IFQ Recordkeeping and Reporting Requirements for Catcher Vessels; BSAI Amendment 72 and GOA Amendment 64	0648–AP92
664	Atlantic Highly Migratory Species (HMS); 2003 Bluefin Tuna Quota Specifications and Effort Controls	0648–AQ38
665	Rulemaking To Correct the Salmon Fishery Coordinates as Implemented in the Amendment 3 to the Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska	0648–AQ48
666	Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Vessel Monitoring System	0648–AQ58
667	Continuation of Measures To Reduce Fishing Mortality in the Northeast Multispecies Fishery and Implement a DAS Leasing Program	0648–AQ72
668	Changes to Eligibility Criteria for Bering Sea and Aleutian Islands Crab License Limitation Program	0648–AQ73
669	Atlantic Highly Migratory Species; Atlantic Swordfish Quotas	0648–AQ90
670	Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures	0648–AQ95
671	Announcement of the Optimum Yield and Harvest Limit for Pacific Mackerel	0648–AQ96
672	Amendment 77 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area	0648–AR31
673	Modification of Housing Requirements for Observers	0648–AR32
674	Amendment 16–1 to the Pacific Coast Groundfish Fishery Management Plan	0648–AR36
675	Emergency Rule To Close the Federal Tilefish Fishery	0648–AR40
676	Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan; Framework Adjustment 3	0648–AR43
677	Fisheries of the Exclusive Economic Zone off Alaska; Revisions to Observer Program in the North Pacific Groundfish Fisheries; Correction	0648–AR46
678	Atlantic Large Whale 2002 Seasonal Area Management (SAM) Program	0648–AP68
679	Provide Regulations for Permits for Capture, Transport, Import, and Export of Protected Species for Public Display, and for Maintaining a Captive Marine Mammal Inventory	0648–AH26
680	Taking of the Cook Inlet, Alaska, Stock of Beluga Whales by Alaska Natives	0648–AO16
681	Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 12-Month Finding	0648–AP94
682	Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations	0648–AQ13
683	Access to Tissue Specimen Samples From the National Marine Mammal Tissue Bank	0648–AQ51
684	Joint Counterpart Regulations With FS, BLM, BIA, FWS, NPS, and NOAA Fisheries Under Section 7 of the ESA	0648–AR05
685	Coastal Zone Management Act Federal Consistency Regulations	0648–AR16

National Oceanic and Atmospheric Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
686	Annual Specifications for Fishing Year 2005 for the Summer Flounder, Scup, and Black Sea Bass Fishery	0648–AR51
687	Annual Specifications for the Atlantic Mackerel, Squid, and Butterfish Fishery for Fishing Year 2005	0648–AR56
688	Annual Specifications for the Atlantic Bluefish Fishery for Fishing Year 2005	0648–AR57
689	Annual Specifications for the Deep-Sea Red Crab Fishery for Fishing Year 2005	0648–AR59
690	Interagency Policy on the Prescription of Fishways Under Section 18 of the Federal Power Act	0648–AO70
691	Policy for Review of Mandatory Conditions Developed by the Departments of the Interior and Commerce in the Context of Hydropower Licensing	0648–AO84
692	Designated Critical Habitat: Proposed Critical Habitat for Northern California Steelhead	0648–AO04
693	Installing and Maintaining Commercial Submarine Cables in National Marine Sanctuaries	0648–AO36
694	Procedural Changes to the Federal Consistency Process	0648–AP98
695	Regional Marine Research Program	0648–AF20

National Oceanic and Atmospheric Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
696	Establish Central Registry for Limited Access System Permits	0648–AJ77
697	Regulatory Amendment To Allocate Pacific Halibut to the Charter Boat Fleet	0648–AK17
698	Regulatory Amendment To Reinstate 6,000-Pound Trip Limit of Halibut in Area Northeast of the Bering Sea	0648–AL97
699	Crustaceans, Bottomfish, and Pelagics FMP Amendments Regarding Overfishing Definitions	0648–AN79
700	Management Measures for the Northeast Skate Complex	0648–AO10
701	Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Incidental Catch	0648–AO75
702	American Lobster Fishery; Revisions to Lobster Trap Limits, Conservation Equivalency in New Hampshire Waters, and Clarification of Lobster Management Boundaries per Addendum 1	0648–AP15
703	Bottomfish and Pelagics Fisheries FMP Amendments Regarding Bycatch Provisions	0648–AP54
704	Bottomfish, Crustaceans, Pelagics, and Precious Corals Fisheries FMP Amendments Regarding Fishing Communities	0648–AP55
705	Antarctic Marine Living Resources Vessel Monitoring System and Catch Documentation Scheme	0648–AP74
706	Extension of an Emergency Interim Rule To Implement 2002 Steller Sea Lion Protection Measures and Harvest Specifications for the Bering Sea/Aleutian Islands Area and the Gulf of Alaska	0648–AQ02
707	Subsistence Fishery for Pacific Halibut in Waters Off Alaska	0648–AQ09
708	Capital Construction Fund Procedures	0648–AQ16
709	2003–2004 Management Measures for Commercial, Recreational, and Treaty Indian Salmon Fisheries Off the Coasts of Washington, Oregon, and California	0648–AQ17
710	Secretarial Amendment 2 to Reef Fish Fishery Management Plan To Set Greater Amberjack Sustainable Fisheries Act Targets and Thresholds and To Set Rebuilding Plan	0648–AQ24
711	Annual Specifications for the Atlantic Bluefish Fishery for Fishing Year 2003	0648–AQ26
712	Framework 2 to the Monkfish Fishery Management Plan	0648–AQ29
713	Recreational Specifications for the Summer Flounder, Scup, and Black Sea Bass Fishery for Fishing Year 2003	0648–AQ32
714	Specifications for the 2003–2004 Fishing Year for the Spiny Dogfish Fishery	0648–AQ34
715	Framework 37 to the Northeast Multispecies Fishery Management Plan	0648–AQ35
716	Atlantic Highly Migratory Species (HMS); Large and Small Coastal Shark Commercial Management Measures	0648–AQ39
717	EFH Amendments to the Bottomfish, Crustaceans, and Precious Corals FMPs	0648–AQ43
718	Increase in Allowable Percentage of Pollock Roe	0648–AQ44
719	Opening Waters to Pacific Cod Pot Fishing Off Cape Barnabas and Caton Island in the Gulf of Alaska	0648–AQ45
720	Framework 3 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan	0648–AQ57
721	Amendment 17 to the Pacific Coast Groundfish Fishery Management Plan	0648–AQ68
722	Corrected Amendment for a Charter Vessel/Headboat Permit Moratorium Amending the Gulf Reef Fish and Coastal Pelagics FMPs	0648–AQ70
723	Notice of Technical Revision to Right Whale Nomenclature and Taxonomy Under the U.S. Endangered Species Act	0648–AQ74
724	Revise Eligibility Criteria for BSAI Pacific Cod Endorsements to Groundfish Licenses Issued Under the License Limitation Program (LLP)	0648–AQ75
725	Framework Adjustment 38 to the Northeast Multispecies Fishery Management Plan (FMP)	0648–AQ76
726	Implement BSAI FMP Amendment 75—Delaying Implementation of Improved Retention/Improved Utilization of Flatfish	0648–AQ78
727	Control Date for the Small Mesh Multispecies (Silver Hake, Offshore Hake, and Red Hake) Fishery	0648–AQ89
728	West Coast Coastal Pelagic Fisheries Sardine Allocation System Change	0648–AQ94
729	Commercial Shrimp Fishery of the Gulf of Mexico; Establish a Control Date	0648–AR00
730	Notice of a Control Date for Loligo and Illex Squid	0648–AR01
731	Correction to Regulatory Amendment To Redefine Vessel Length Overall	0648–AR04
732	Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring Systems (VMS)	0648–AR29
733	Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements	0648–AR34
734	Effectiveness of Collection-of-Information Requirements	0648–AR42
735	Implement a 30 Fathom Boundary Line Off Southern California for the Pacific Coast Groundfish Commercial Non-Trawl and Recreational Fisheries	0648–AR47
736	Fishing Capacity Reduction Program in the Pacific Coast Groundfish Fishery	0648–AQ99
737	Endangered and Threatened Species: Take of Threatened Southern Oregon/Northern California Coast Evolutionarily Significant Unit (ESU) of Coho Salmon	0648–AJ91
738	Draft Policy for Evaluation of Conservation Efforts in Making Listing Decisions	0648–AL91
739	Restrictions on Pound Net Leaders To Enhance Turtle Protection in Virginia; Threatened and Endangered Sea Turtle Conservation	0648–AP81
740	Designating the Eastern North Pacific Southern Resident Stock of Killer Whales as Depleted	0648–AQ00
741	Designation of Critical Habitat for Gulf Sturgeon	0648–AQ03

DOC

National Oceanic and Atmospheric Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
742	Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations	0648–AQ04
743	Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations	0648–AQ42
744	Endangered and Threatened Species; Finding for a Petition To Revise Critical Habitat for Northern Right Whales	0648–AQ53
745	List of Fisheries for 2003	0648–AQ60
746	Taking and Importing of Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Activities by the U.S. Navy at San Nicolas Island, California	0648–AQ61
747	Technical Amendment to the Atlantic Large Whale Take Reduction Plan	0648–AR02
748	Natural Resource Damage Assessments Under the Oil Pollution Act of 1990	0648–AM80
749	New Management Plan and Regulations for the Gray's Reef National Marine Sanctuary	0648–AR03
750	Florida Keys National Marine Sanctuary: Establishment of Temporary No-Entry Zone in the White Bank Dry Rocks Area	0648–AR17
751	Policies and Procedures Regarding Use of the NOAA Space-Based Data Collection Systems	0648–AQ55

Patent and Trademark Office—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
752	Rules of Practice Before the Board of Patent Appeals and Interferences	0651–AB32
753	Changes in Trademark Rules of Practice in Inter Partes Proceedings Before the Trademark Trial and Appeal Board	0651–AB56
754	Fast Track Examination	0651–AB62
755	Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan	0651–AB64
756	Changes in Requirements for Amendment and Correction of Trademark Registrations	0651–AB67
757	Revision of United States Patent and Trademark Office Practice for Handling Patent Applications Filed Without the Appropriate Fees	0651–AB69
758	Revision of Patent and Trademark Fees for Fiscal Year 2005	0651–AB70

Patent and Trademark Office—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
759	Changes To Implement the 2002 Inter Partes Reexamination and Other Technical Amendments to the Patent Statute	0651–AB57
760	Revision of Search and Preliminary Examination Fees for International Applications	0651–AB61
761	Changes Related to Assignments of Patents and Trademarks	0651–AB63

Patent and Trademark Office—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
762	Processing Fee for Use of Paper Forms for Submission of Applications for Registration and Other Documents	0651–AB52
763	Changes To Implement Patent-Related Provisions of the United States Patent and Trademark Fee Modernization Act of 2003	0651–AB54
764	Changes to Representation of Others Before the United States Patent and Trademark Office	0651–AB55

Patent and Trademark Office—Completed Actions

Sequence Number	Title	Regulation Identification Number
765	Elimination of Continued Prosecution Application Practice as to Utility and Plant	0651–AB37
766	Madrid Protocol Implementation Act Rules Change	0651–AB45
767	Changes To Promote Quality Enhancement and Pendency	0651–AB50
768	Changes To Implement Electronic Maintenance of Official Patent Application Records	0651–AB59
769	Revision of Patent and Trademark Fees for Fiscal Year 2004	0651–AB60
770	Reorganization of Correspondence and Other General Provisions in 37 CFR Chapter 1	0651–AB68

Technology Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
771	Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements	0692–AA14
772	Acquisition and Protection of Foreign Rights in Inventions	0692–AA15
773	Amendment to Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements	0692–AA18

Department of Commerce (DOC)
Office of the Secretary (OS)

Completed Actions

474. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d–7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 15 CFR 8; 15 CFR 8b; 15 CFR 8c; 15 CFR 20

Legal Deadline: None

Abstract: The Department of Commerce proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of The Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Lawrence N. Self, Acting Director, Office of Civil Rights, Department of Commerce, Office of the Secretary, HCHB Room 6010, 14th and Pennsylvania Avenue NW.,
Washington, DC 20230
Phone: 202 482–0625
Fax: 202 482–5375

RIN: 0690–AA30

475. EMPLOYEE RESPONSIBILITIES AND CONDUCT; REMOVAL OF OBSOLETE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 7301; 5 USC 7353; 26 USC 7214(b); EO 12731; ...

CFR Citation: 15 CFR

Legal Deadline: None

Abstract: The Department of Commerce issues this final rule to remove obsolete sectors of the Commerce and Foreign Trade Regulation concerning the policies and procedures relating to employee responsibilities and conduct.

Timetable:

Action	Date	FR Cite
Final Action	05/09/03	68 FR 24878

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Christopher Cox, Attorney Advisor, Ethics Division, Department of Commerce, HCHB Room 5709, 14th Street & Constitution Avenue, NW., Washington, DC 20230
Phone: 202 482–2442
Email: wcox@doc.gov

RIN: 0690–AA32

476. QUARTERLY SURVEYS OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101–3108

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 801.9 to require quarterly reporting of trade in services between U.S. and foreign persons for a number of services that up to now have been reported annually. The collection of quarterly information on international services activity is needed to support a Government initiative to provide more timely data on trade in the largest and most volatile services.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	
Final Action	01/00/04	
Final Action Effective	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Obie G. Whichard, Acting Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE–50, 14th & Pennsylvania Avenue NW.,
Washington, DC 20230
Phone: 202 606–9890
Fax: 202 606–5318
Email: obie.whichard@bea.gov

RIN: 0691–AA49

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477. • BE–80, BENCHMARK SURVEY OF FINANCIAL SERVICES TRANSACTIONS BETWEEN U.S. FINANCIAL SERVICES PROVIDERS AND UNAFFILIATED FOREIGN PERSONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 801.11 to provide for the conduct of the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons—2004, as required in the International Investment and Trade in Services Survey Act, 22 USC 3101 to 3108 (see especially section 4(b) of the Act). The existing rule covers a similar survey for 1999, which has been completed and which the new survey will update.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
NPRM Comment Period End	09/00/04	
Final Action	11/00/04	
Final Action Effective	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Obie G. Whichard, Acting Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE–50, 14th & Pennsylvania Avenue NW.,
Washington, DC 20230
Phone: 202 606–9890
Fax: 202 606–5318
Email: obie.whichard@bea.gov

RIN: 0691–AA51

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478. • BENCHMARK SURVEY OF U.S. DIRECT INVESTMENT ABROAD—2004

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 806.16 to provide for the conduct of the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2004, as required in the International Investment and Trade in Services Survey Act, 22 USC 3101 to 3108 (see especially section 4(b) of the Act). The existing rule covers a similar survey for 1999 which has been completed and which the new survey will update.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	
Final Action	10/00/04	
Final Action Effective	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Obie G. Whichard, Acting Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE–50, 14th & Pennsylvania Avenue NW.,
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Email: obie.whichard@bea.gov

RIN: 0691–AA52

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479. • INTERNATIONAL SERVICES SURVEYS: BE–45, QUARTERLY SURVEY OF INSURANCE TRANSACTIONS BY U.S. INSURANCE COMPANIES WITH FOREIGN PERSONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: The Bureau of Economic Analysis (BEA) amends 15 CFR Part 801 to institute a new survey, BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, to be conducted by BEA.

The survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act. Data from the proposed BE–45 survey are needed to monitor trade in insurance services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on insurance services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The survey will cover the same insurance services presently covered by the BE–48, Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies with Foreign Persons, and auxiliary insurance services presently covered by the Benchmark and Annual Surveys of Selected Services Transactions with Unaffiliated Foreign Persons (Forms BE–20 and BE–22).

Timetable:

Action	Date	FR Cite
NPRM	09/23/03	68 FR 55202
NPRM Comment Period End	11/24/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Obie G. Whichard, Acting Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE–50, 14th & Pennsylvania Avenue NW.,
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RIN: 0691–AA53

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480. • INTERNATIONAL SERVICES SURVEYS: BE–25, QUARTERLY SURVEY OF TRANSACTIONS WITH UNAFFILIATED FOREIGN PERSONS IN SELECTED SERVICES AND IN INTANGIBLE ASSETS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: The Bureau of Economic Analysis (BEA) amends 15 CFR Part 801 to institute a new survey, BE–25, Quarterly Survey of Transactions with Unaffiliated Foreign Persons in Selected Services and in Intangible Assets, to be conducted by the BEA.

Data from the proposed BE–25 survey are needed to monitor trade in services and intangible assets, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government and public uses.

The proposed survey will cover some of the selected services presently covered by the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The selected services covered by the BE–25 survey will be removed from the BE–22 survey after the survey for 2003 is conducted. The BE–22 survey will continue to be conducted for those services that were not moved to the BE–25 survey. The proposed survey will also cover construction, engineering, architectural, and surveying services presently covered by the BE–47, Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons, and will cover the same transactions in intangible assets presently covered by the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons; both of these annual surveys would be discontinued, following a final data collection for 2003.

Timetable:

Action	Date	FR Cite
NPRM	09/23/03	68 FR 55204
NPRM Comment Period End	11/24/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Obie G. Whichard, Acting Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE–50, 14th & Pennsylvania Avenue NW.,
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RIN: 0691–AA54

Department of Commerce (DOC)
Bureau of Economic Analysis (BEA)

Final Rule Stage

481. ANNUAL SURVEY OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend existing rule CFR 806.15 to raise the threshold for reporting on the BE–15, Annual Survey of Foreign Direct Investment in the United States, and to bring the survey into conformity with the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2002.

Timetable:

Action	Date	FR Cite
NPRM	08/29/03	68 FR 51942
NPRM Comment Period End	10/28/03	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0691–AA48

Department of Commerce (DOC) Long-Term Actions
Bureau of Economic Analysis (BEA)

482. • INTERNATIONAL SERVICES SURVEYS: BE–85, QUARTERLY SURVEY OF FINANCIAL SERVICES TRANSACTIONS BETWEEN U.S. FINANCIAL SERVICES PROVIDERS AND UNAFFILIATED FOREIGN PERSONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 22 USC 3101 to 3108; 15 USC 4908

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: This rule would amend 15 CFR part 801 to institute a new survey, BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and unaffiliated Foreign Persons, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The BE–85 survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988. The first survey conducted under this rule will cover transactions in the first quarter of 2004.

The BE–85 survey will cover the same financial services presently covered by the BE–82, Annual Survey of Financial Service Transaction Between U.S. Financial Service Providers and Unaffiliated Foreign Person. Following a final annual data collection for 2003, the BE–85 survey would replace the BE–82.

Data from the BE–85 survey are needed to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

Timetable:

Action	Date	FR Cite
NPRM	08/29/03	68 FR 51939
NPRM Comment Period End	10/28/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0691–AA50

Department of Commerce (DOC) Completed Actions
Bureau of Economic Analysis (BEA)

483. ECONOMIC DEVELOPMENT ADMINISTRATION REGULATIONS

Timetable:

Action	Date	FR Cite
Duplicate of RIN 0610-AA63	11/26/03	

Agency Contact: Benjamin Erulkar, Department of Commerce, Bureau of Economic Analysis,
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RIN: 0691–AA47

Department of Commerce (DOC) Prerule Stage
Bureau of the Census (CENSUS)

484. FULL MANDATORY AUTOMATED EXPORT SYSTEM (AES) FILING FOR EXPORT SHIPMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–228, sec 404

CFR Citation: 15 CFR 30

Legal Deadline: None

Abstract: The Bureau of the Census is amending the Foreign Trade Statistics Regulations to require mandatory filing through the Automated Export System (AES) of all export information, including information for shipments where filing of a Shipper's Export Declaration was formerly required. The AES is an electronic method by which export information is transmitted. This amendment will specify the provisions and filing responsibilities of parties exporting commodities from the United States.

Timetable:

Action	Date	FR Cite
ANPRM	10/22/03	68 FR 60301
ANPRM Comment Period End	11/21/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Ruth Mangaroo, Regulations, Outreach, & Education Branch, Foreign Trade Division, Department of Commerce, Bureau of the Census, Room 3125, FB–3, 4700 Silver Hill Road, Washington, DC 20233
Phone: 301 763–2238
Fax: 301 457–3765
Email: ruth.d.mangaroo@census.gov

RIN: 0607–AA38

Department of Commerce (DOC)
Bureau of the Census (CENSUS)

Proposed Rule Stage

485. • ANNUAL TRADE SURVEY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 13 USC 182; 13 USC 224; 13 USC 225

CFR Citation: None

Legal Deadline: None

Abstract: The Bureau of the Census (Census Bureau) is proposing to expand the 2003 Annual Trade Survey (ATS) to include manufacturers' sales branches and offices (MSBO). The Census Bureau proposes this expansion at the request of the Bureau of Economic Analysis (BEA). The BEA considers this information vital to its accurate measurement of sales and inventories for wholesale trade. These data are important inputs to BEA's preparation of National Income and Product accounts and its annual input-output tables.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mr. John Trimble, Chief, Annual Trade and Special Projects Branch, Service Sector Statistics Div., Department of Commerce, Bureau of the Census, 4700 Silver Hill Road, Room 2682 FB–3, Washington, DC 20233
Phone: 301 763–7223
Email: john.r.trimble@census.gov

RIN: 0607–AA40

Department of Commerce (DOC)
Bureau of the Census (CENSUS)

Final Rule Stage

486. CUTOFF DATES FOR RECOGNITION OF BOUNDARY CHANGES FOR CENSUS 2000 AND FOR THE INTERCENSAL PERIOD

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(b)(3)(A); 5 USC 604(a); 44 USC 35

CFR Citation: 15 CFR 70

Legal Deadline: None

Abstract: The Bureau of the Census (Census Bureau) is establishing cutoff dates for recognition of boundary changes to geographic entities for which the Census Bureau reports data in various surveys, estimates, censuses, programs, compilations, and publications throughout the period between decennial censuses (years 2001 through 2009).

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3631
NPRM Comment Period End	02/25/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Carol Van Horn, Acting Chief, Geography Division, Department of Commerce, Bureau of the Census, Stop 7400, Stop 7400, 4700 Silver Hill Road, Washington, DC 20233
Phone: 301 457–2131

RIN: 0607–AA35

Department of Commerce (DOC)
Bureau of the Census (CENSUS)

Completed Actions

487. SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS; AMENDMENTS TO AGE SEARCH PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1256; 13 USC 8

CFR Citation: 15 CFR 50.1(d); 15 CFR 80.1(c); 15 CFR 80.1(g); 15 CFR 50.5

Legal Deadline: None

Abstract: Chapter 1, part 50.1(d) should be amended to read as follows: If a search is unsuccessful and additional information for a further search is requested by the Bureau, such information must be received within 90 days of the request or the case will be considered closed. Additional information received after 90 days must be accompanied by a new fee and will be considered a new request. Chapter 1, part 80.1(c): Change the address from Pittsburg, Kansas 66762 to Jeffersonville, Indiana 47131. Chapter 1, part 80.1(g): The language may be clarified by changing it to read: Census information will not be furnished to another person unless the person to whom the information relates authorizes such release in the space provided on the Form BC–600. Chapter 1, part 50.5: The note following the chart of the fee structure can be eliminated since we have not had a fee increase since February 1993.

Timetable:

Action	Date	FR Cite
NPRM	09/17/01	66 FR 48013
NPRM Comment Period End	10/17/01	
Final Action	07/18/03	68 FR 42585

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stanley M. Domzalski, Assistant Chief (Services), National Processing Center, Department of Commerce, Bureau of the Census, 1201 East 10th Street, Jeffersonville, IN 47132
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Fax: 812 218–3293

RIN: 0607–AA24

488. AUTOMATED EXPORT SYSTEM (AES) MANDATORY FILING FOR ALL ITEMS ON THE COMMERCE CONTROL LIST (CCL) AND THE UNITED STATES MUNITIONS LIST (USML) THAT CURRENTLY REQUIRE A SHIPPER'S EXPORT DECLARATION (SED)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106–113, title XII

CFR Citation: 15 CFR 30

Legal Deadline: None

Abstract: The Bureau of the Census is amending the Foreign Trade Statistics Regulations to specify the Requirement for the Mandatory Automated Export System (AES) filing for all items on the Department of Commerce's Commerce Control List (CCL) and the United States Munitions List (USML) of the Department of State. The AES is an electronic method by which export information can be transmitted. This amendment will specify the provisions and the responsibilities of parties exporting commodities identified on the CCL and USML via AES.

Timetable:

Action	Date	FR Cite
NPRM	10/09/02	67 FR 62911
NPRM Comment Period End	12/09/02	
Final Action	07/17/03	68 FR 42534

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0607–AA34

489. MANDATORY AUTOMATED EXPORT SYSTEM (AES) FOR EXPORTS (RE-EXPORTS) OF ROUGH DIAMONDS

Priority: Other Significant

Legal Authority: PL 108–19; EO 13312

CFR Citation: 15 CFR 30

Legal Deadline: None

Abstract: The Bureau of the Census is amending the Foreign Trade Statistics Regulations to incorporate requirements for the mandatory electronic filing via the Automated Export System (AES) of exports (re-exports) of specific classifications of rough diamonds in accordance with the Kimberley Process. The Kimberley Process is a certification scheme designed to control worldwide trade in illicit rough diamonds. Filing information on exports (re-exports) of rough diamonds through the AES is designed to control movement of and stem trading in illicit trade of rough or "conflict" diamonds, often linked to the finance of armed conflicts in certain world areas.

Timetable:

Action	Date	FR Cite
Final Action	10/20/03	68 FR 59877

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0607–AA39

Department of Commerce (DOC) Prerule Stage
Economic Development Administration (EDA)

490. • ECONOMIC DEVELOPMENT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 3121 et seq; 19 USC 3121 et seq; 42 USC 6701; 42 USC 184; 42 USC 5141; 42 USC 3123; 42 USC 6709; 42 USC 6101; 20 USC 1681; 29 USC 794; 42 USC 2000d–1; . . .

CFR Citation: 13 CFR 300 to 318

Legal Deadline: None

Abstract: The Economic Development Administration will be reviewing and reissuing all regulations in order to make them more user friendly and effective, and in order to more directly align them with the reissued version of the Public Works and Economic Development Act of 1965, currently before Congress. EDA plans to have the regulations drafted within three months of reauthorization.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	
Interim Final Rule	01/00/04	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Myriah Jordan,
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RIN: 0610–AA63

Department of Commerce (DOC)
General Administration (ADMIN)

Completed Actions

491. PUBLIC INFORMATION, FREEDOM OF INFORMATION AND PRIVACY

Priority: Other Significant

Legal Authority: 5 USC 301; 5 USC 552 to 553; 44 USC 3101; 44 USC 3717; Reorganization Plan No. 5 of 1950

CFR Citation: 15 CFR 4; 15 CFR 4a; 15 CFR 4b

Legal Deadline: None

Abstract: The Department of Commerce plans to amend the regulations pertaining to the Freedom of Information Act, Privacy Act, and declassification and public availability of national security information. The proposed rule contains new provisions implementing the Electronic Freedom of Information Act Amendment of 1996, reflects the principles established by the President and Attorney General in the FOIA Policy Memoranda of October 4, 1993, incorporates updated cost figures to be used in charging fees, and streamlines and clarifies the present regulations at 15 CFR parts 4, 4a and 4b.

Timetable:

Action	Date	FR Cite
NPRM	05/31/00	65 FR 34606
Final Action	12/20/01	66 FR 65631

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: None.

Agency Contact: Andy McCready, Attorney Advisor, Department of Commerce, 14th & Pennsylvania Ave., N.W., Washington, DC 20230
Phone: 202 482-8044

RIN: 0605-AA14

492. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; PL 103-355, sec 2455; 31 USC 6101; EO 12549; EO 12689

CFR Citation: 15 CFR 26

Legal Deadline: None

Abstract: Periodically, OMB amends the Governmentwide common rule for suspension and debarment of contractors and assistance participants who threaten the integrity of Federal programs because of criminal misconduct or poor performance. Agencies must issue changes to their individual codified versions to conform to the common rule. Recently, the Interagency Suspension and Debarment Coordinating Committee prepared recommendations for comprehensive changes to the common rule to conform to changes made in the Federal Acquisition Regulation (FAR) as a result of the Federal Acquisition Streamlining Act. In addition, several other proposals to improve or change the rule are included.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/23/02	
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Robert Kugelman, Director, Office of Executive Budgeting and Assistance Management, Department of Commerce, HCHB Room 6022, 14th & Constitution Avenue, NW., Washington, DC 20230
Phone: 202 482-4115
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RIN: 0605-AA16

Department of Commerce (DOC)
International Trade Administration (ITA)

Proposed Rule Stage

493. COMMERCIAL AVAILABILITY OF FABRIC AND YARN

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-200, sec 112(b)(5)(B); PL 106-200, sec 211; EO 13191; PL 107-210, sec 3103

CFR Citation: 15 CFR 345

Legal Deadline: None

Abstract: The proposed rule implements certain provisions of the Trade and Development Act of 2000 (the Act). Title I of the Act (the African Growth and Opportunity Act or AGOA) and title II of the Act (the United States-Caribbean Basin Trade Partnership Act or CBTPA) and title XXXI of the Trade Act of 2002 (the Andean Trade Promotion and Drug Eradication Act, or ATPDEA) provide for quota and duty-free treatment for qualifying apparel products from designated beneficiary countries. AGOA and CBTPA authorize quota and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more designated beneficiary countries from yarn or fabric that is not formed in the United States or a beneficiary country, provided it has been determined that such yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner. The President has delegated to the Committee for the Implementation of Textile Agreements (the Committee), which is chaired by Commerce, the authority to determine whether yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA, and the CBTPA, and has authorized the Committee to extend quota and duty-free treatment to apparel of such yarn or fabric. The proposed rule provides the procedure for interested parties to submit a request alleging that a yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner, the procedure for public comments, and relevant factors that will be considered in the Committee's determination. The proposed rule also outlines the factors to be considered by the Committee in extending quota- and duty-free treatment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Janet Heinzen, International Trade Specialist, Department of Commerce, International Trade Administration, 3106, Office of Textiles and Apparel, Washington, DC 20230
Phone: 202 482–4006

RIN: 0625–AA59

Department of Commerce (DOC)
International Trade Administration (ITA)
Final Rule Stage

494. PROCEDURES FOR CONDUCTING FIVE-YEAR (SUNSET) REVIEWS OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 1671 et seq; 19 USC 1673 et seq; 19 USC 1303

CFR Citation: 19 CFR 351

Legal Deadline: None

Abstract: On May 19, 1997 (62 FR 27296), the Department of Commerce (the Department) published final rules on, inter alia, procedures for conducting antidumping and countervailing duty proceedings to conform the Department's existing regulations to the Uruguay Round Agreements Act (URAA). Although these regulations contain provisions on the conduct of sunset reviews, the Department is planning to amend the regulations to provide more guidance on the procedures for conducting sunset reviews. Specifically, the Department proposes to amend the procedural regulations for participation in, and conduct of, sunset reviews to add two definitions to provide shorthand expressions for 120-day and 240-day sunset reviews; provide deadlines for certain submissions; clarify the information to be provided by parties participating in a sunset review; clarify when the Department will conduct a 120-day or a 240-day sunset review; and provide time limits for actions to be taken by the Department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/98	63 FR 13516
Interim Final Rule Effective	03/20/98	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stacy Ettinger, Attorney, Department of Commerce, International Trade Administration, Room 3828, 14th & Pennsylvania Ave., N.W., Washington, DC 20230
Phone: 202 482–4618

RIN: 0625–AA51

495. IMPORT OF CERTAIN WORSTED WOOL FABRIC: IMPLEMENTATION OF TARIFF RATE QUOTA ESTABLISHED UNDER TITLE V OF THE TRADE AND DEVELOPMENT ACT OF 2000

Priority: Other Significant

Legal Authority: PL 106–200, sec 501–504; Title V of the Trade and Development Act of 2000; Presidential Proclamation No. 7383 (December 1, 2000)

CFR Citation: 15 CFR 335; 15 CFR 340

Legal Deadline: None

Abstract: On January 22, 2001, the Department of Commerce issued interim regulations implementing section 501(e) and section 504(b) of the Trade and Development Act of 2000 (the Act). Section 501(e) requires the President to fairly allocate tariff rate quotas on the import of certain worsted wool fabrics, tariff rate quotas which were established by sections 501(a) and 501(b) of the Act. Section 504(b) authorizes the President to modify the limitations on worsted wool fabric imports under the tariff rate quotas. The President has delegated to the Secretary of Commerce the authority to allocate the quantity of imports under the tariff rate quotas and to determine whether the limitations on the quantity of imports under the tariff rate quotas should be modified. Final regulations will be issued after the period for notice and comment has expired.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/22/01	66 FR 6459
Interim Final Rule Comment Period End	03/23/01	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Sergio Botero, Industry Economist, Department of Commerce, International Trade Administration, HCHB Room 3119, Office of Textiles and Apparel, 14th and Constitution Avenue NW., Washington, DC 20230
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RIN: 0625–AA58

496. • CHANGES IN THE INSULAR POSSESSIONS WATCH, WATCH MOVEMENT, AND JEWELRY PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 97–446

CFR Citation: 15 CFR 303

Legal Deadline: None

Abstract: The Departments propose amending their regulations governing watch duty-exemptions and the watch and jewelry duty-refund benefits for producers in the United States insular possession (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The proposed rule would amend ITA regulations, due to changes in the industry, by updating the watch assembly requirements for purposes of the duty refund. We also propose amending 15 CFR 303 to reflect the new designations that were created with the addition of the Department of Homeland Security.

Timetable:

Action	Date	FR Cite
NPRM	08/01/03	68 FR 45177
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Faye Robinson, Acting Director, Statutory Import Programs Staff, Department of Commerce, International Trade Administration, FCB Suite 4100W, FCB

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Phone: 202 482–3526

RIN: 0625–AA63

Department of Commerce (DOC)
Bureau of Industry and Security (BIS)

Proposed Rule Stage

497. CHEMICAL WEAPONS CONVENTION REGULATIONS

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 710 et seq

Legal Deadline: None

Abstract: The final rule will make effective the proposed rule published July 21, 1999. The purpose of the regulation is to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) and the Chemical Weapons Convention Implementation Act of 1998, requiring private facilities to submit information on certain activities involving toxic chemicals, and to make certain private facilities subject to periodic inspection by the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to administer the Convention and to monitor compliance by States Parties.

Timetable:

Action	Date	FR Cite
NPRM	07/21/99	64 FR 39193
Interim Final Rule	12/30/99	64 FR 73744
Second NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
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RIN: 0694–AB06

498. MANDATORY ELECTRONIC FILING OF LICENSE APPLICATIONS, CLASSIFICATION REQUESTS, AND LICENSE EXCEPTIONS NOTIFICATIONS VIA BIS'S SIMPLIFIED NETWORK APPLICATION PROCESS (SNAP)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401; 50 USC 1701; 18 USC 2510; 22 USC 3201; EO 12058; EO 12851; EO 12938; EO 13026; EO 13222; 66 FR 56965; 67 FR 53721; EO 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; EO 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; ...

CFR Citation: 15 CFR 740; 15 CFR 742; 15 CFR 743; 15 CFR 748; 15 CFR 754; 15 CFR 772

Legal Deadline: None

Abstract: This rule would change the Export Administration Regulations as needed to implement a revised version of the Bureau of Industry and Security's Simplified Network Application Processing (SNAP) system. This rule also would make use of that system mandatory for all filings of Export License applications (except Special Comprehensive Licenses and deemed export licenses), Reexport Authorization requests, Classification requests, Encryption Review requests, and License Exception AGR notifications unless the Bureau of Industry and Security authorizes paper filing for a particular user or transaction. This rule also would authorize SNAP filing for special reports of certain items controlled under the Wassenaar Arrangement. This rule also would eliminate all provisions of the regulations associated with earlier versions of SNAP and other electronic filing systems that the Bureau of Industry and Security has used in the past, as use of those systems would be terminated upon introduction of the new version of SNAP (SNAP 2002). Those eliminated provisions include the requirements regarding personal identification numbers (PINs) and the requirement for users to keep logs of items filed electronically. This rule also would require that requests for advisory opinions include the Export Control Classification Number of the item(s) at issue, revise emergency license application procedures, set the value of all aircraft licensed for temporary sojourn abroad to zero and correct some omissions, misstatements and typographical errors.

Timetable:

Action	Date	FR Cite
NPRM	11/12/03	68 FR 64009
NPRM Comment Period End	01/12/04	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Arvin, Department of Commerce, Bureau of Industry and Security, HCHB Room 2096, 14th and Pennsylvania Avenue, NW., Washington, DC 20230
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RIN: 0694–AC20

499. • EXPORT ADMINISTRATION REGULATIONS: PENALTY GUIDANCE IN THE SETTLEMENT OF ADMINISTRATIVE ENFORCEMENT CASES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC app 2401; 50 USC 1701; EO 13222

CFR Citation: 15 CFR 764; 15 CFR 766

Legal Deadline: None

Abstract: As an essential part of its administration of the export control system, the Bureau of Industry and Security (BIS) brings administrative enforcement actions for violations of the Export Administration Regulations (EAR). Many administrative enforcement cases are resolved through settlements between BIS and the respondent.

The rule proposes to incorporate guidance in the EAR on how BIS determines what penalty is appropriate for the settlement of an administrative enforcement case. This guidance would appear in a new Supplement No. 1 to part 766 of the EAR. The proposed guidance identifies both general factors, such as the destination for the export and degree of willfulness involved in violations, and specific mitigating and aggravating factors which BIS typically takes into account in determining an appropriate penalty. The proposed guidance also describes factors that BIS's Office of Export Enforcement (OEE) typically considers in describing whether a violation should be addressed in a warning letter, rather than in an administrative enforcement case. The guidance would not apply to antiboycott matters arising under part 760 of the EAR.

In part 764, the rule proposes to amend section 764.5(e) to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case regarding violations reported in a voluntary self-disclosure under section 764.5, and what administrative sanctions to seek in settling such a case.

In part 766, the rule proposes to amend section 766.3(a) to state that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the issuance of charging letters, other than in antiboycott matters under part 760. The rule proposes to amend section 766.18 to add a new paragraph (f), stating that Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding the terms under which it is willing tsettle particular cases, other than antiboycott matters under part 760.

Timetable:

Action	Date	FR Cite
NPRM	09/17/03	68 FR 54402
NPRM Comment Period End	11/17/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC92

Department of Commerce (DOC) Final Rule Stage
Bureau of Industry and Security (BIS)

500. EXPORTS AND REEXPORTS TO SUDAN

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect the imposition of economic sanctions on Sudan, as a result of the issuance of Executive Order 13067 on November 3, 1997. The Executive order delegates implementation responsibility to the Department of the Treasury's Office of Foreign Assets Control, including authority for exports and certain reexports. In addition, this rule makes editorial revisions to the EAR relating to embargoes and antiterrorism controls.

Timetable:

Action	Date	FR Cite
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC05

501. REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS (EAR)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730; 15 CFR 732; 15 CFR 734; 15 CFR 736; 15 CFR 740; 15 CFR 746; 15 CFR 748; 15 CFR 752; 15 CFR 758; 15 CFR 772; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations by making certain revisions and clarifications and, in some cases, inserts material inadvertently omitted from previous rules.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC24

502. REMOVAL OF LICENSING EXEMPTION FOR EXPORTS AND REEXPORTS OF MISSILE TECHNOLOGY—CONTROLLED ITEMS DESTINED TO CANADA

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 10 USC 7420; 10 USC 7430(e); 18 USC 2501 et seq; ...

CFR Citation: 15 CFR 738; 15 CFR 742

Legal Deadline: None

Abstract: This rule revises the existing license exemption in the Export Administration Regulations for the export of missile technology controlled items to Canada. It implements recommendations contained in the General Accounting Office report entitled Export Controls: Regulatory Change Needed to Comply with Missile Technology Licensing Requirements (GA-01-530).

Timetable:

Action	Date	FR Cite
ANPRM	12/20/01	66 FR 65666
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694-AC48

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503. ELIMINATION OF "NATIONAL SECURITY" AS A REASON FOR CONTROL FOR CERTAIN ITEMS ON THE COMMERCE CONTROL LIST

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; 18 USC 2510; EO 13222; EO 12058; ...

CFR Citation: 15 CFR 742; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the Commerce Control List (CCL) to eliminate "National Security" as a reason for control with respect to certain items. This rule is needed to make the CCL conform to Section 5(c)(6)(A) of the Export Administration Act (the Act), which provides that unilateral national security controls expire six months after enactment of the Act or of the control (whichever is later) unless a determination has been made under section 5 of the Act that there is no foreign availability of the items or unless the President is pursuing negotiations to end such availability. All but four of the items affected by this rule are moved to other Export Control Classification Numbers (ECCNs) on the CCL. Two of the items that are removed from the CCL (bayonets and technology for the design, production or use of bayonets) are transferred to the United States Munitions List. The other two items (muzzle-loading firearms and technology for the design, production or use of muzzle-loading firearms) are now EAR99.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694-AC54

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504. PROTECTIVE EQUIPMENT EXPORT LICENSE JURISDICTION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 15 CFR 774

Legal Deadline: None

Abstract: Export Control Classification Number (ECCN) 1A004 in the Commerce Control List (CCL) provides that protection and detection equipment and components not specially designed for military use are subject to the licensing authority of the Department of State, Office of Defense Trade Controls (DTC). The Bureau of Industry and Security (BIS) has received information suggesting that the existing rule commits to DTC authority a number of items that have primarily civil end uses. This proposed rule draws a distinction between items subject to DTC control and items subject to the Export Administration Regulations (EAR) by modifying ECCN 1A004 and creating a new ECCN 1A995.

Timetable:

Action	Date	FR Cite
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694-AC64

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505. LICENSE APPLICATION DENIAL POLICY, "RED FLAG" INDICATORS OF POSSIBLE INAPPROPRIATE END-USE, END-USER, OR DESTINATION

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401; 50 USC 1701; EO 13026; EO 13222; 22 USC 3201; 42 USC 2139a; EO 12058; EO 12851; EO 12938; EO 12947; EO 13026; EO 13099; EO 13222; EO 13224

CFR Citation: 15 CFR 732; 15 CFR 744.11

Legal Deadline: None

Abstract: This rule makes explicit BIS's policy of denying export license applications when a sanction imposed on a party pursuant to a statute requires such denial. Such sanctions are imposed for activities contrary to United States foreign policy interests or that contribute to the proliferation of weapons of mass destruction. This rule also makes the imposition of such sanctions or publication of a party's name on the BIS "Unverified List" a "red flag" triggering a need for heightened scrutiny when dealing with such parties in transactions that are subject to the Export Administration Regulations.

Timetable:

Action	Date	FR Cite
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

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RIN: 0694-AC68

506. REVISIONS OF AIRCRAFT EXPORT LICENSING JURISDICTION BASED ON REVIEW OF THE UNITED STATES MUNITIONS LIST

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401; 50 USC 1701; EO 13026; EO 13222

CFR Citation: 15 CFR 748; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) to implement decisions to move export licensing jurisdiction of certain types of cargo aircraft and parts therefor from the Department of State, Office of Defense Trade Controls (DTC) to the Department of Commerce, Bureau of Industry and Security (BIS) and to move export licensing jurisdiction for certain jet trainer aircraft and specially designed component parts from BIS to DTC. A complementary rule amending the International Traffic in Arms Regulations will be published by the Department of State. This rule implements decisions reached in the ongoing review of the United States Munitions List that is part of the Defense Trade Security Initiative. That initiative, announced on May 24, 2000 at a NATO ministerial meeting by the Secretary of State, includes annual review of portions of the United States Munitions List with the objective of reviewing the entire list every four years.

Timetable:

Action	Date	FR Cite
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC74

507. REVISIONS OF ENERGETIC MATERIAL EXPORT LICENSING JURISDICTION BASED ON REVIEW OF THE UNITED STATES MUNITIONS LIST

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401; 50 USC 1701; 18 USC 2510; 22 USC 3201; 42 USC 2139a; PL 106–387; PL 107–56; EO 12058; EO 12851; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 742; 15 CFR 770; 15 CFR 748

Legal Deadline: None

Abstract: This final rule amends the Export Administration Regulations (EAR) to implement decisions to move export licensing jurisdiction of certain types of energetic materials and other chemicals from the Department of State, Office of Defense Trade Controls (DTC) to the Department of Commerce, Bureau of Industry and Security (BIS) and to move such jurisdiction for other chemicals from BIS to DTC. This rule along with a complementary rule published by the Department of State (67 FR 70839, November 27, 2002) implements decisions reached in an ongoing review of the USML that is part of the Defense Trade Security Initiative. That initiative, announced on May 24, 2000 at a NATO ministerial meeting by the Secretary of State, includes annual review of portions of the USML with the objective of reviewing the entire list every four years.

Timetable:

Action	Date	FR Cite
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC75

508. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS BASED ON THE 2002 MISSILE TECHNOLOGY CONTROL REGIME PLENARY AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; EO 13222; EO 13026; 18 USC 2510; ...

CFR Citation: 15 CFR 772; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulation Commerce Control List (CCL) to reflect changes to the Missile Technology Control Regime (MTCR) Annex agreed to at the September 2002 Plenary in Warsaw, Poland. New definitions for range and payload were added to provide clarity in determining whether systems fall under Category I MTCR controls. All other revisions/additions were made to insure that items which are useable in missiles of MTCR concern are appropriately controlled.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC76

509. • EXPORT AND REEXPORT CONTROLS ON IRAQ

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC app 2401; 50 USC 1701; 10 USC 7420; 10 USC 7430; 18 USC 2510; 22 USC 287; 22 USC 3201; 22 USC 6004; 30 USC 185; 42 USC 2139; 42 USC 6212; 43 USC 1354; 46 USC 466; 50 USC app 5; PL 106–387; PL 107–56; EO 13026; EO 13222

CFR Citation: 15 CFR 732; 15 CFR 738; 15 CFR 740; 15 CFR 742; 15 CFR 744;

15 CFR 746; 15 CFR 750; 15 CFR 752; 15 CFR 758; 15 CFR 762; 15 CFR 774

Legal Deadline: None

Abstract: This rule establishes the new export control policy for exports to Iraq under the licensing responsibility of the Bureau of Industry and Security. The new export control policy reflects the changed circumstances in Iraq and is consistent with changes in U.S. legal authorities concerning Iraq and actions taken by the United Nations Security Council with respect to the embargo against Iraq.

Timetable:

Action	Date	FR Cite
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

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RIN: 0694–AC84

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510. • LIFTING OF UN SANCTIONS AGAINST UNITA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC app 2401; 50 USC 1701; 10 USC 7420; 10 USC 7430(e); 10 USC 2510; 22 USC 287c; 22 USC 3201; 22 USC 6004; 30 USC 185(s), 185(u); 42 USC 6212; 43 USC 1354; 46 USC app 466c; 50 USC app 5; PL 106–387; PL 107–56; EO 13026; EO 13222; 42 USC 2139a; ...

CFR Citation: 15 CFR 732; 15 CFR 738; 15 CFR 740; 15 CFR 746

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) by removing from the EAR references to sanctions on Angola administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC). In response to United Nations Security Council (UNSC) resolutions regarding the conflict in Angola, the President, by Executive order, directed the Department of the Treasury to maintain sanctions on the National Union for the Total Independence of Angola (UNITA). On December 9, 2002, the UNSC terminated the sanctions previously imposed on UNITA. On May 6, 2003, consistent with the UNSC action, the President terminated the relevant Executive orders, effectively ending U.S. sanctions. This rule amends the EAR to remove certain references to the sanctions which had been maintained by OFAC with respect to UNITA.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

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RIN: 0694–AC86

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511. • AMENDMENT TO THE EXPORT ADMINISTRATION REGULATIONS: REVISION TO EXPORT CONTROL CLASSIFICATION NUMBER 1C355

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 10 USC 7420; 10 USC 7430; 18 USC 2510 et seq; 22 USC 287c; 22 USC 3201 et seq; 22 USC 6004; 30 USC 185; 42 USC 2139a; 42 USC 6212; 43 USC 1354; 46 USC app 466c; 50 USC app 5; PL 106–387; PL 107–56; EO 13026; EO 13222

CFR Citation: 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the "List of Items Controlled" Section of Export Control Classification Number 1C355 (Supp. No. 1 to part 744) to conform with the schedule of precursor chemicals in Supp. No. 1 to part 745.

Timetable:

Action	Date	FR Cite
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

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RIN: 0694–AC87

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512. • BEST PRACTICES FOR EXPORTERS/RE-EXPORTERS AND TRADE FACILITATION/FREIGHT FORWARDING COMPANIES REGARDING THE TRANSIT, TRANSSHIPMENT, AND REEXPORT OF DUAL-USE ITEMS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC app 2401; 50 USC 1701; EO 13026; EO 13222

CFR Citation: None

Legal Deadline: None

Abstract: The Bureau of Industry and Security plans to publish guidance entitled, "Best Practices for Exporters/Re-exporters and Trade Facilitation/Freight Forwarding Companies Regarding the Transit, Transshipment, and Reexport of Dual-Use Items." These "best practices" will appear as Supplement No. 4 to part 732 of the Export Administration Regulations. Although the best practices will be published in title 15 of the Code of Federal Regulations, they will be guidance with which the public has no legal obligation to comply, and compliance with them will not be a defense against a charge (either administrative or criminal) of violating export control laws.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC89

513. • CLARIFICATION OF EXPORT CONTROLS ON PARTS FOR MILITARY VEHICLES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC app. 2401; 50 USC 1701; 10 USC 7420; 10 USC 7430; 18 USC2510; 22 USC 287; 22 USC 3201; 22 USC 6004; 30 USC 185; 42 USC 2139a; 42 USC 6212; 43 USC 1354; 46 USC app. 466c; 50 USC app. 5; PL 106–387; PL 107–56; EO 13026; EO 13222

CFR Citation: 15 CFR 770; 15 CFR 774 supp. no. 1

Legal Deadline: None

Abstract: This rule amends Export Control Classification Number (ECCN) 9A018 to make clear that it includes components for the certain vehicles covered by that ECCN, to update that ECCN to cover a class of vehicles recently added to the International Munitions List and also to make clear that it does not include vehicles and components that are subject to the export licensing jurisdiction of the Department of State, Office of Defense Trade Controls. This rule also amends the interpretation in section 770(h) to provide guidance based on the International Munitions List for distinguishing military vehicles from other vehicles and to assist in distinguishing military vehicles subject to the export licensing jurisdiction of the Department of State, Office of Defense Trade Controls from those subject to the export licensing jurisdiction of the Department of Commerce, Bureau of Industry and Security. The International Munitions List is published by the Wassenaar Arrangement.

Timetable:

Action	Date	FR Cite
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC91

Department of Commerce (DOC) Long-Term Actions
Bureau of Industry and Security (BIS)

514. ADMINISTRATION OF STATE LOG EXPORTS BAN

Priority: Other Significant

CFR Citation: 15 CFR 754

Timetable:

Action	Date	FR Cite
ANPRM	06/07/95	60 FR 30030
ANPRM Comment Period End	07/07/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

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RIN: 0694–AB25

515. CLARIFICATION OF LICENSE EXCEPTION GFT (HUMANITARIAN DONATIONS)

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB49

516. EXPORT ADMINISTRATION REGULATIONS: SUPPORT DOCUMENTATION

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 748

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 0694–AC04

517. EXPANSION OF LICENSE EXCEPTION GOV; EXPORTS AND REEXPORTS TO INTERNATIONAL ORGANIZATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman
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RIN: 0694–AC15

518. DE MINIMIS EXPANSION OF ELIGIBILITY: U.S. ORIGIN SOFTWARE INCORPORATED INTO FOREIGN-MADE RETAIL COMMODITIES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC17

519. REVISION TO THE EXPORT ADMINISTRATION REGULATIONS: REPLACEMENT LICENSES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 748 to 750

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC23

520. SHORT SUPPLY CONTROLS: CRUDE OIL EXPORTS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 750; 15 CFR 754

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC25

521. CRIME CONTROL ITEMS: REVISIONS TO THE COMMERCE CONTROL LIST

Priority: Other Significant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/13/00	65 FR 55177
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC31

522. LICENSE EXCEPTION AVS: CUBA, LIBYA, AND SERBIA

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC33

523. CLARIFICATIONS TO PART 753: SPECIAL COMPREHENSIVE LICENSE REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 700 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC34

524. CHEMICAL WEAPONS CONVENTION: REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 700 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Willard Fisher
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RIN: 0694–AC35

525. ADDITION AND REVISION OF MISSILE PROJECTS IN THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC46

526. REVISION, SUSPENSION, OR PROHIBITION OF USE OF “NO LICENSE REQUIRED” PROVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 732; 15 CFR 738; 15 CFR 758

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC47

527. COMPUTER TECHNOLOGY AND SOFTWARE ELIGIBLE FOR EXPORT OR REEXPORT UNDER LICENSE EXCEPTION TSR

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 774

Timetable:

Action	Date	FR Cite
ANPRM	06/10/02	67 FR 39675
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC63

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528. LICENSE EXCEPTION APR FOR REEXPORTS TO, FROM, AND AMONG COUNTRIES IN COUNTRY GROUP A:1

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740

Timetable:

Action	Date	FR Cite
ANPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC69

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529. REVISIONS TO LICENSE EXCEPTION TSR: EXPANSION TO SCOPE OF ELIGIBLE COUNTRIES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 774

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC71

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530. ADDITION OF EAST TIMOR, NETHERLANDS ANTILLES, AND ARUBA TO THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740; 15 CFR 738

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC77

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531. • IMPOSITION OF FOREIGN POLICY CONTROLS ON SURREPTITIOUS COMMUNICATIONS INTERCEPTING DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; EO 13026; EO 13222; EO 12938; ...

CFR Citation: 15 CFR 738; 15 CFR 740; 15 CFR 742; 15 CFR 746; 15 CFR 752; ...

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by imposing export and reexport controls on communications intercepting devices primarily useful for surreptitious interception of wire, oral or electronic communications classified under Export Control Classification Number (ECCN) 5A980. In this rule, BIS also imposes controls on related software and technology by creating ECCNs 5D980 and 5E980, the classifications for software and technology designed or modified for the "development," "production" or "use" of equipment controlled under 5A980. The items controlled under ECCNs 5A980, 5D980 and 5E980 are controlled for crime control (CC) and antiterrorism (AT) reasons.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC82

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532. • DECEMBER 2002 WASSENAAR ARRANGEMENT PLENARY AGREEMENT IMPLEMENTATION: REVISIONS TO CATEGORIES 1, 2, 3, 4, 5, 6, AND 7 OF THE COMMERCE CONTROL LIST, AND REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; EO 13026; EO 13222; EO 13206; ...

CFR Citation: 15 CFR 740; 15 CFR 743; 15 CFR 774

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5 Part I (telecommunications), 5 Part II (information security), 6, and 7 to conform with changes in the List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

The purpose of this final rule is to make the necessary changes to the Commerce Control List to implement revisions to the Wassenaar List that were agreed upon in the December 2002 meeting and to make necessary revisions to reporting requirements, and License Exception GOV restrictions.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC85

533. • ADDITION OF KAZAKHSTAN TO THE NUCLEAR SUPPLIERS GROUP (NSG), AND OTHER REVISIONS

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC 2401; 50 USC 1701; 10 USC 7420; 18 USC 2510; ...

CFR Citation: 15 CFR 738; 15 CFR 740; 15 CFR 772

Legal Deadline: None

Abstract: As a result of the admission of Kazakhstan to the Nuclear Suppliers Group (NSG), this rule amends the Export Administration Regulations (EAR) to add Kazakhstan to Country Group A, Column A:4, which identifies the member countries of the NSG, and to the definition of "Nuclear Suppliers Group." The NSG member countries have agreed to establish export licensing procedures for the transfer of items identified on the Annex to the "Nuclear-Related Dual-Use Equipment, Materials, and Related Technology List," which is published by the International Atomic Energy Agency.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Room 2096, Washington, DC 20230
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RIN: 0694–AC90

Department of Commerce (DOC)
Bureau of Industry and Security (BIS)
Completed Actions

534. TRANSFER OF DUAL-USE ITEMS FROM U.S. MUNITIONS LIST TO THE COMMERCE CONTROL LIST

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 774 Supplement No. 1

Legal Deadline: None

Abstract: The former COCOM Industrial List (IL) controls so-called dual-use items, which have both civil and military uses. There is not a direct correspondence between the IL and BIS's Commerce Control List (CCL) because some IL items are controlled by the State Department in the U.S. Munitions List. In his November 15, 1990, memorandum of disapproval of H.R. 4653, the President determined that, "By June 1, 1991, the United States will remove from the U.S. Munitions List all items contained on the COCOM dual-use list unless significant U.S. national security interests would be jeopardized." This rule will implement BIS controls through the CCL on those items removed from the U.S. Munitions List as a result of the President's decision.

Timetable:

Action	Date	FR Cite
Transfer of Communications Satellites	10/23/92	57 FR 48312
Navigation and Avionics	06/23/93	58 FR 34211
Final Rule—Transfer of Commercial Communication Satellites	09/08/93	58 FR 47322
Transfer of Items From the USMI to the CCL; Imposition of Certain Foreign Policy Controls	10/26/93	58 FR 57549
Satellite Fuel	09/29/97	62 FR 50865
Final Rule	09/29/97	62 FR 50856

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Nilsson, Acting Director/STFPC, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482–4196

RIN: 0694–AA52

535. CHANGE THE COMMERCE CONTROL LIST TO REVISE CONTROLS ON COMMUNICATION INTERCEPTING DEVICES (EXPORT COMMERCE CONTROL NUMBER ECCN 5A980)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 799

Legal Deadline: None

Abstract: Validated licenses are required for the export or reexport of all communication interception devices to all destinations (including Canada). The Export Administration Regulations specify that such exports or reexports will only be issued to: (1) a provider of wire or electronic communication service or an officer, agent or employee of or person under contract with such a provider in the normal course of the business of providing that wire or electronic communication service; or (2) officers, agents, or employees of, or person under contract with the United States, one of the 50 States, or a political subdivision thereof, when engaged in the normal course of government activities. Commerce will need to make changes to the Commerce Control List and the Export Administration Regulations to clarify the requirements for issuing export licenses.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Nilsson, Acting Director/STFPC, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482–4196

RIN: 0694–AB41

536. EXPORTS OF TECHNOLOGY AND SOFTWARE; RELEASE OF TECHNOLOGY OR SOURCE CODE TO FOREIGN NATIONALS IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 730 to 799

Legal Deadline: None

Abstract: This final rule will modify the Department of Commerce's current "deemed export" rule covering foreign nationals working on controlled U.S. high technology or source code in the United States or abroad.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Room 2096, Washington, DC 20230
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RIN: 0694–AB59

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537. ENTITY LIST REVISION: KHAN RESEARCH LABORATORIES

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 744

Legal Deadline: None

Abstract: The Export Administration Regulations (EAR) provide that the Bureau of Industry and Security (BIS) may inform the public, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contain a list of such entities called the Entity List. This rule revises the entry for Abdul Qader Khan Research Laboratories, located in Kahuta, Pakistan. Abdul Qader Khan Research Laboratories is also known as Khan Research Laboratories. Because Khan Research Laboratories has changed its name to Institute of Industrial Control Systems (IICS), this rule adds Institute of Industrial Control Systems (IICS) as an a.k.a. under the entity Abdul Qader Khan Research Laboratories. In addition, this rule makes a revision to clarify that when BIS publishes in the Federal Register information regarding entities in the Entity List that it is informing not only exporters but the public.

Timetable:

Action	Date	FR Cite
Addition to Entity List	05/16/97	62 FR 26922
Addition to Entity List	06/30/97	62 FR 35334
Addition to Entity List	06/30/97	62 FR 35335
Revision to Entity List	10/01/97	62 FR 51369
Addition to Entity List—Russian Entities	07/29/98	63 FR 40363
Revisions and Additions to Entity List	05/14/01	66 FR 24264
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Room 2096, Washington, DC 20230
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RIN: 0694–AB60

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538. INDIA AND PAKISTAN SANCTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: On June 18, 1998, the Administration announced additional details of the sanctions imposed on India and Pakistan in response to their recent detonation of nuclear devices. The President had previously determined and reported to Congress, under the authority of section 102 of the Arms Export Control Act, that the Indian and Pakistani activities had violated the Act and sanctions were required.

Under the provisions of the Arms Export Control Act, the Department of Commerce's Bureau of Industry and Security (BIS) is revising the Export Administration Regulations (EAR) to expand the license requirements and set forth licensing policy for exports and reexports of most items controlled for nuclear nonproliferation and missile technology to India and Pakistan. Under the provisions of the Export Administration Act (EAA), BIS is revising the EAR to expand the license requirements and set forth licensing policy for exports and reexports of high performance computers to India and Pakistan. In addition, Indian and Pakistani government entities involved in nuclear or missile activities will be added to the Entity List. Additional military and private entities located in India and Pakistan will be added to the Entity List in the near future.

Timetable:

Action	Date	FR Cite
Interim Final Rule—India and Pakistan Sanctions and Other Measures	11/19/98	63 FR 64322
Interim Final Rule—Correction to India and Pakistan Sanctions and Other Measures	11/27/98	63 FR 65352
Final Rule	03/17/00	65 FR 14444
Final Action	07/26/00	65 FR 45842
Final Action Effective	07/26/00	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AB73

539. EXPORTS AND REEXPORTS OF EXPLOSIVE DETECTION SYSTEMS; EXPANSION OF FOREIGN POLICY CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations by expanding the current scope of control of explosive detection systems controlled by Export Control Classification Number (ECCN) 2A993 to include all types of systems that detect the presence of explosives or explosive residue. This rule also expands the control of these explosive detection systems to Iraq. In addition, this rule establishes a new licensing requirement on the export and reexport of software designed or modified for the development, production, or use of explosive detection systems to Iran, Iraq, Sudan, and Syria for antiterrorism reasons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/03/03	68 FR 16208

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security, 14th and Pennsylvania Avenue, NW., HCHB Room 2096, Washington, DC 20230
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RIN: 0694-AB87

540. EXPANSION OF LICENSE EXCEPTION CIV ELIGIBILITY FOR MICROPROCESSORS CONTROLLED BY ECCN 3A001

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13222; EO 13026

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements. Consistent with technological changes, this interim rule adjusts the License Exception CIV eligibility level for microprocessors controlled by Export Control Classification Number (ECCN) 3A001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/08/99	64 FR 36779
Interim Final Rule	11/26/99	64 FR 66372
Interim Final Rule	06/13/00	65 FR 37039

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Hillary Hess, Director, Regulatory Policy Division, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Washington, DC 20230
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RIN: 0694-AB90

541. EXPORT OF TECHNOLOGY AND SOFTWARE THROUGH ELECTRONIC TRANSMISSIONS, DOWNLOADS, AND PROGRAMMING ONTO HARDWARE

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is reviewing technology and software export issues as they pertain to electronic transmissions and downloads, as well as programming onto hardware. BIS is considering how export controls on such technology transfers affect U.S. exporters. Specifically, BIS is seeking to gain a better understanding of how these transfers actually take place so that the Export Administration Regulations may be clarified in a manner that meets the export control objectives of the regulations while increasing the utility of the regulations to the public. BIS is particularly interested in the comments of those who have direct experience in the area of technology and software exports.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Room 2096, Washington, DC 20230
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RIN: 0694-AB97

542. ANTITERRORISM CONTROLS ON IRAQ

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations to impose foreign policy controls on Iraq for antiterrorism reasons.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security, 14th and Pennsylvania Avenue, NW., HCHB Room 2096, Washington, DC 20230
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RIN: 0694-AC06

543. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS RELATED TO THE MISSILE TECHNOLOGY CONTROL REGIME (MTCR)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 740; 15 CFR 774; 15 CFR 742

Legal Deadline: None

Abstract: Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to amend the Commerce Control List to reflect the reformatted Missile Technology Control Regime (MTCR) Annex of October 14, 1999 (Noordwijk/TEM). This final rule also amends Country Group A:2, MTCR, to add the Czech Republic, Korea (Republic of), Poland, Turkey, and Ukraine.

Timetable:

Action	Date	FR Cite
Final Action	04/02/03	68 FR 16144

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Room 2096, Washington, DC 20230
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RIN: 0694–AC22

544. OFFSETS IN MILITARY EXPORTS

Priority: Other Significant

Legal Authority: PL 102–558, title I, sec 124; 106 Stat. 4207; 50 USC app 2099

CFR Citation: 15 CFR 701

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) proposes to amend the National Security Industrial Base Regulations to refine current defense offset reporting requirements. These changes will allow BIS to more accurately address the impact of offsets on the defense preparedness, industrial competitiveness, employment, and trade of the United States. These changes will also further standardize the data collection framework, thus reducing the burden of reporting requirements on U.S. firms.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brad Botwin, Director, Trade Analysis Division, Department of Commerce, Bureau of Industry and Security, Room 3878, 14th & Pennsylvania Avenue NW., Washington, DC 20230
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RIN: 0694–AC27

545. ENTITY LIST: ADDITIONS AND REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 799

Legal Deadline: None

Abstract: The Export Administration Regulations (EAR) provide that the Bureau of Industry and Security (BIS) may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contain a list of such entities called the Entity List. This rule makes additions, modifications and corrections to the Entity List.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Room 2096, Washington, DC 20230
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RIN: 0694–AC28

546. REVISIONS TO ENCRYPTION ITEMS

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 730 to 799

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) and implements the July 17 White House announcement to allow the export and reexport of most encryption items, including U.S. products that use open cryptographic interface (OCI), to European Union (EU) member states, Australia, Czech Republic, Hungary, Japan, New Zealand, Norway, Poland and Switzerland under License Exception ENC.

Timetable:

Action	Date	FR Cite
Final Action	10/19/00	65 FR 62600

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian Nilsson, Acting Director/STFPC, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482–4196

RIN: 0694–AC32

547. EXPORTS TO AFGHANISTAN (THE TALIBAN) AND LIBERIA: IMPOSITION OF FOREIGN POLICY CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) to implement United Nations Security Council (UNSC) Resolutions 1333 of December 19, 2000, and 1343 of March 7, 2001, which mandated embargoes on the sale or supply of arms-related items, including technical assistance, and training, to the Taliban and to Liberia, respectively. These steps taken by the Bureau of Industry and Security (BIS) supplement controls implemented by the Department of State on exports of defense articles and services to the Taliban and to Liberia under the International Traffic in Arms Regulations. BIS already requires a license for the export and reexport to Afghanistan and Liberia of most of the items subject to the EAR that fall within the scope of the UNSC-mandated ban on arms-related items (e.g., items controlled for regional stability and crime control reasons).

Timetable:

Action	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman,
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RIN: 0694–AC45

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548. EXPORTS TO THE FEDERAL REPUBLIC OF YUGOSLAVIA: LIFTING OF SANCTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; EO 13026; EO 13222; EO 12854; . . .

CFR Citation: 15 CFR 732; 15 CFR 738; 15 CFR 746; 15 CFR 758

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) by removing the license requirements imposed on the Federal Republic of Yugoslavia on July 14, 1998. Under the EAR, controls have been maintained on arms and related material to the Federal Republic of Yugoslavia (Serbia and Montenegro) consistent with the UNSC Resolution 1160. On September 10, 2001, in Resolution 1367, the UNSC terminated the international arms embargo against the Federal Republic of Yugoslavia established by Resolution 1160. This rule implements UNSC Resolution 1367.

Timetable:

Action	Date	FR Cite
Final Rule	11/25/02	67 FR 70545
Final Action	06/30/03	68 FR 38591

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC57

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549. IMPOSITION AND EXPANSION OF CONTROLS ON DESIGNATED PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; 22 USC 3201; EO 13099; EO 13222; . . .

CFR Citation: 15 CFR 744; 15 CFR 772

Legal Deadline: None

Abstract: This final rule amends the Export Administration Regulations (EAR) by imposing a license requirement on the export and reexport of any item subject to the EAR by a U.S. person or non-U.S. person to persons blocked and designated pursuant to Executive Order 13224 of September 23, 2001. In response to grave acts of terrorism and threats of terrorism, Executive Order 13224 blocks the property and interests in property of persons who commit, threaten to commit or support terrorism, and prohibits U.S. persons or applicable non-U.S. persons from engaging in any transactions with such blocked persons. The Department of the Treasury's Office of Foreign Assets Control (OFAC) maintains the list of blocked persons newly designated Specially Designated Global Terrorists (SDGTs) in appendix A to 31 CFR chapter V pursuant to Executive Order 13224 and identified by the bracketed initials [SDGT]. This rule also amends the EAR by expanding reexport controls on Specially Designated Terrorists (SDTs) and foreign controls on Specially Designated Terrorists (SDTs) and Foreign Terrorist Organizations (FTOs). OFAC also maintains the lists of SDTs and FTOs found in appendix A to 31 C.F.R. chapter V and identified by the bracketed initials [SDT] and [FTO], respectively.

Timetable:

Action	Date	FR Cite
Final Action	06/06/03	68 FR 34192

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman,
Export Policy Analyst, Department of Commerce, Bureau of Industry and Security, 14th and Pennsylvania Avenue, NW., HCHB Room 2096,
Washington, DC 20230
Phone: 202 482–5347
Email: squarter@bis.doc.gov

RIN: 0694–AC60

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550. REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS—CHEMICAL AND BIOLOGICAL WEAPONS CONTROLS: AUSTRALIA GROUP (JUNE 2002 PLENARY MEETING)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401; 50 USC 1701; 8 USC 2510; 22 USC 3201; 42 USC 2139a; PL 106–387; PL 107–56; EO 12058; EO 12851; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 742; 15 CFR 744; 15 CFR 745; 15 CFR 774

Legal Deadline: None

Abstract: This rule implements understandings reached at the June 2002 AG plenary meeting, makes corrections in two Commerce Control List entries that contain AG-controlled items, and updates the list of countries that are States Parties to the Chemical Weapons Convention (CWC).

Timetable:

Action	Date	FR Cite
Final Rule	06/10/03	68 FR 34526

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Willard Fisher,
Export Administration Specialist,
Department of Commerce, Bureau of
Industry and Security, 14th &
Pennsylvania Avenue NW.,
Washington, DC 20230
Phone: 202 482-2440
Fax: 202 482 3355
Email: wfisher@bis.doc.gov

RIN: 0694-AC70

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551. • GENERAL ORDER SUSPENDING LICENSE REQUIREMENT FOR EXPORTS AND REEXPORTS IN SUPPORT OF UNITED NATION SECURITY COUNSEL RESOLUTION(S) MANDATING INSPECTIONS IN IRAQ

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC 2401; 50 USC 1701; EO12938; EO 13020; EO 13026; EO 13222

CFR Citation: 15 CFR 736

Legal Deadline: None

Abstract: This rule adds a new General Order No. 4 to Supplement No. 1, part 736. General Order No. 4 authorize exports and reexports of items subject to the EAR to any country for use by or for the International Atomic Energy Agency or the United Nations Monitoring, Verification and Inspection Commission to carry out inspections of Iraq pursuant to United Nations Security Council Resolution 1441 of November 8, 2002, and other resolutions that may be issued with respect to such inspections.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman,
Export Policy Analyst, Department of
Commerce, Bureau of Industry and
Security, 14th and Pennsylvania
Avenue, NW., HCHB Room 2096,
Washington, DC 20230
Phone: 202 482-5347
Email: squarter@bis.doc.gov

RIN: 0694-AC73

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552. EXPORT ADMINISTRATION REGULATIONS: ENCRYPTION CLARIFICATIONS AND REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; EO 12938; EO 13020; EO 13026; ...

CFR Citation: 15 CFR 734; 15 CFR 740; 15 CFR 742; 15 CFR 748; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) to clarify when encryption commodities and software may be given de minimis treatment, when short-range wireless devices incorporating encryption may be given mass market or retail treatment, and to provide guidance on when exporters are required to submit encryption review requests. It also expands the authorizations for which travelers departing the United States may take encryption for their personal use. Finally this rule implements changes to the Wassenaar Arrangement List of dual-use items that eliminate from Export Control Classification Number (ECCN) 5A002 certain types of "Personalized smart cards" and equipment specially designed and limited to controlling access to copyright protected data.

Timetable:

Action	Date	FR Cite
Final Action	06/17/03	68 FR 35783
Final Action Effective	06/17/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy
Analyst, Department of Commerce,
Bureau of Industry and Security,
2096/MS 2705, 14th & Pennsylvania
Avenue NW., Room 2096, Washington,
DC 20230
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bis.doc.gov

RIN: 0694-AC78

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553. GENERAL ORDER ON EXPORTS TO IRAQ

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; Notice of Aug. 14, 2002, 67 FR 53721 (Aug.16, 2002); EO 12938; EO 13020; EO 13026

CFR Citation: 15 CFR 736

Legal Deadline: None

Abstract: The Bureau of Industry and Security is amending the EAR by adding new General Order No. 4 to Supplement No. 1, part 736. General Order No. 4 removes license requirements for the export or reexport to Iraq of commodities and software contained in two export control categories on the Commerce Control List. This general order is intended to facilitate humanitarian activities in Iraq by State Department accredited nongovernmental organizations.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy
Analyst, Department of Commerce,
Bureau of Industry and Security,
2096/MS 2705, 14th & Pennsylvania
Avenue NW., Room 2096, Washington,
DC 20230
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bis.doc.gov

RIN: 0694-AC79

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554. • GENERAL ORDER REMOVING LICENSE REQUIREMENTS FOR THE EXPORT OR REEXPORT TO IRAQ OF CERTAIN ITEMS SUBJECT TO THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; EO 12938; EO 13020; EO 13222

CFR Citation: 15 CFR 736

Legal Deadline: None

Abstract: The Bureau of Industry and Security, U.S. Department of Commerce, is issuing General Order No. 4 to remove license requirements for the export or reexport to Iraq of the following items in order to facilitate humanitarian activities in Iraq by State Department accredited non-governmental organizations (NGOs):

Items controlled under Export Control Classification Numbers (ECCNs) 5A002 and 5D002.

Please note that many other items needed for humanitarian activities in

Iraq, including food, medicine, clothing, and shelter materials, do not require a Department of Commerce license for export or reexport to Iraq.

The Iraqi Sanctions Regulations (31 CFR part 575), administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC), continue to apply to exports and reexports to Iraq. Any export or reexport made on the basis of this general order must nonetheless be authorized by OFAC. The reexport from Iraq of items listed herein may be subject to license requirements under the EAR.

Timetable:

Action	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Matthew Blaskovich, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security, MS 2705, 14th & Pennsylvania Ave., N.W., Washington, DC 20230
Phone: 202 482–2440
Fax: 202 482–3355
Email: mblaskov@bis.doc.gov

RIN: 0694–AC80

555. • EXPORT CLEARANCE—CONFORMANCE OF EXPORT ADMINISTRATION REGULATIONS WITH FOREIGN TRADE STATISTICS REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401; 50 USC 1701; EO 13222

CFR Citation: 15 CFR 758

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) to add references to the Automated Export System (AES) and to conform the EAR to certain provisions of the Foreign Trade Statistics Regulations (FTSR (15 CFR Part 30)) including provisions related to AES promulgated at 68 FR 42534 on July 17, 2003. It also conforms some terminology in part 758 to that found elsewhere in the EAR and updates references to another government agency to reflect a name change.

Timetable:

Action	Date	FR Cite
Final Action	08/21/03	68 FR 50470
Final Action Effective	09/22/03	68 FR 50740

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Arvin, Department of Commerce, Bureau of Industry and Security, HCHB Room 2096, 14th and Pennsylvania Avenue, NW., Washington, DC 20230
Phone: 202 482–2440
Fax: 202 482–3355
Email: warvin@bis.doc.gov

RIN: 0694–AC81

556. • ADDITION OF ARUBA, DEMOCRATIC REPUBLIC OF CONGO, REPUBLIC OF CONGO, DEMOCRATIC REPUBLIC OF EAST TIMOR, AND NETHERLANDS ANTILLES TO THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; 18 USC 2510; 22 USC 3201; 43 USC 1354; ...

CFR Citation: 15 CFR 738; 15 CFR 740

Legal Deadline: None

Abstract: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by adding a number of countries to the Commerce Country Chart. This rule adds the Democratic Republic of East Timor (East Timor), to reflect East Timor's status as a newly independent and sovereign State; Aruba and Netherlands Antilles, in order to streamline the regulatory process for these dependant nations; and the Democratic Republic of Congo, (Congo, Democratic Republic of), and the Republic of Congo (Congo, Republic of), to reflect their status as successor nations to the former country of Zaire. This final rule makes Aruba, East Timor, Congo, Democratic Republic of, Congo, Republic of, and Netherlands Antilles as separate destinations on the Commerce Country Chart for export licensing purposes.

Timetable:

Action	Date	FR Cite
Withdrawn	09/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Matthew Blaskovich, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security, MS 2705, 14th & Pennsylvania Ave., N.W., Washington, DC 20230
Phone: 202 482–2440
Fax: 202 482–3355
Email: mblaskov@bis.doc.gov

RIN: 0694–AC83

Department of Commerce (DOC)
National Institute of Standards & Technology (NIST)

Proposed Rule Stage

557. PROCEDURES FOR IMPLEMENTATION OF THE NATIONAL CONSTRUCTION SAFETY TEAM ACT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 7301 et seq

CFR Citation: 15 CFR 270

Legal Deadline: None

Abstract: The Director of the National Institute of Standard and Technology (NIST), Technology Administration (TA), U.S. Department of Commerce (DOC), requests comments on proposed regulations pertaining to the implementation of the National Construction Safety Team Act (Act). The proposed rule establishes procedures regarding the establishment and deployment of National Construction Safety Teams and for the conduct of investigations under the Act.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. James E. Hill, Deputy Director, Department of Commerce, National Institute of Standards & Technology, Mail Stop 8600, Building and Fire Research Laboratory, Gaithersburg, MD 20899–8600
Phone: 301 975–5900

RIN: 0693–AB53

Department of Commerce (DOC)
National Institute of Standards & Technology (NIST)

Completed Actions

558. PROCEDURES FOR IMPLEMENTATION OF THE NATIONAL CONSTRUCTION SAFETY TEAM ACT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 7301 et seq; 5 USC 553

CFR Citation: 15 CFR 270

Legal Deadline: None

Abstract: The Director of the National Institute of Standard and Technology (NIST), Technology Administration, U.S. Department of Commerce, requests comments on an interim final rule pertaining to the implementation of the National Construction Safety Team Act (Act). This rule with a request for public comments contains general provisions regarding implementation of the Act and establishes procedures for the collection, preservation, and protection of evidence obtained and information created as part of investigations conducted pursuant to the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/03	68 FR 4693
Interim Final Rule Comment Period End	03/03/03	
Final Action	05/07/03	68 FR 24343

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. James E. Hill, Deputy Director, Department of Commerce, National Institute of Standards & Technology, Mail Stop 8600, Building and Fire Research Laboratory, Gaithersburg, MD 20899–8600
Phone: 301 975–5900

RIN: 0693–AB52

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)

Prerule Stage

NATIONAL MARINE FISHERIES SERVICE

559. FLEET CAPACITY CONTROL FOR U.S. TROLL ALBACORE TUNA FISHING IN CANADIAN WATERS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rule will implement limits on albacore tuna fishing by vessels of the United States in Canadian waters pursuant to the U.S.-Canada Albacore Fishing Treaty. In accordance with recent amendments to that Treaty, the United States is obliged to ensure that U.S. vessels do not fish for more than a set number of days each year 2003–2005. This will require methods to monitor fishing effort and notify U.S. vessel owners/operators of the date on which further U.S. fishing must cease. In turn, U.S. vessel operators/owners will be required to furnish reports of entry to and exit from Canadian waters and to provide points of contact for notices of closures. In addition, the Treaty requires that the United States exchange fishery data each year. The rule will require maintenance and submission of logbooks of fish catch and fishing effort in Canadian and U.S. waters each year.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/04	
ANPRM Comment Period End	03/00/04	
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980–4040

RIN: 0648–AQ22

560. AMENDMENT 1 TO THE SPINY DOGFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would revise the rebuilding program and other management measures in the FMP.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/04	
ANPRM Comment Period End	03/00/04	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ86

561. AMENDMENT 2 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement a limited access program and make other adjustment to the FMP.

Timetable:

Action	Date	FR Cite
ANPRM	08/00/04	
ANPRM Comment Period End	09/00/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ87

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562. • WEAKFISH: INCREASE IN INCIDENTAL CATCH PER AMENDMENT 4

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 5101 et seq

CFR Citation: 50 CFR 697

Legal Deadline: None

Abstract: The National Marine Fisheries Service (NOAA Fisheries) has proposed regulations that would modify management restrictions in the Federal weakfish fishery in a manner consistent with the recommendations made by the Atlantic States Marine Fisheries Commission in Amendment 4 of the Commission's Interstate Fisheries Management Plan for the species. In short, the proposed Federal regulatory change would increase the permitted non-directed incidental catch of the species from 150 pounds to 300 pounds per day or trip. Analysis of the best available data suggests that the proposed increase would not alter current fishing practices or effort, or increase the number of weakfish caught—the 150 pound increase simply converts 150 pounds of weakfish, which would be caught and discarded at sea dead regardless, into 150 pounds of weakfish caught and landed. Accordingly, no significant impact is found and the environmental analysis that would support such a finding is set forth herein

Timetable:

Action	Date	FR Cite
NPRM	07/01/03	68 FR 39048
NPRM Comment Period End	07/31/03	
End Review	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Agency Contact: Thomas Meyer, Fisheries Biologist, Office of Intergovernmental/Recreational Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 425, 8484 Georgia Avenue, Silver Spring, MD 20910
Phone: 301 427–2014

RIN: 0648–AR11

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563. ENDANGERED SPECIES AND PESTICIDE REGULATION

Priority: Other Significant

Legal Authority: 16 USC 1536

CFR Citation: 50 CFR 402.04

Legal Deadline: None

Abstract: NOAA, FWS, and EPA are jointly explores the issuance of "counterpart regulations." Issued under the authority of the Endangered Species Act, these regulations would establish a separate section 7 consultation process for EPA, relative to pesticides actions under the Federal Insecticides, Fungicide and Rodentcide Act (FIFRA) that may affect endangered and threatened species.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tanya Dobrzynski, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2289

RIN: 0648–AQ69

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564. DESIGNATE CRITICAL HABITAT; WITHDRAW PREVIOUS DESIGNATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226; 50 CFR 424

Legal Deadline: None

Abstract: This rule: (1) describes an approach for developing these critical habitat designations; (2) announces the NOAA Fisheries intent to conduct a series of public workshops to review a pilot area designation; (3) solicits public comment on the proposed designation approach and information to support the critical habitat designations; and (4) amends the Code of Federal Regulations to withdraw the previous critical habitat designations for 19 of the ESUs which were vacated by court order in April 2002.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/04	
ANPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AQ77

NATIONAL MARINE FISHERIES SERVICE

565. AMENDMENT 4 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 4 would restrict the use of gillnets, fish traps, and other gear in the reef fish fishery in the Caribbean exclusive economic zone. Amendment 4 would address the possible need for permitting in the fish trap fishery.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AG87

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566. REGULATORY AMENDMENT TO REQUIRE MANDATORY OBSERVER COVERAGE IN THE AT-SEA PROCESSING SECTOR OF THE WHITING FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final.

Abstract: Regulations would require observer coverage on vessels in the at-sea processing sector of the whiting fishery.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, BIN C15700, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150

RIN: 0648–AK26

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567. ADJUSTMENT OF MANAGEMENT PROGRAM: BOTTOMFISH FISHERIES IN THE HAWAIIAN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final.

Abstract: The adjustment will establish eligibility criteria for new entry into the NWHIs Mau Zone limited access system and process for issuance of limited access permits under a community development program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AK82

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568. REVISE EXEMPTED FISHING REGULATIONS TO SPECIFY COMPENSATORY FISHING UNDER EXEMPTED FISHING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 600

Legal Deadline: None

Abstract: This action would revise current exempted fishing regulations to specifically authorize the use of an exempted fishing permit as the method of allowing the compensation of private vessels for their conduct of resource assessment. Specific methodology for vessel compensation would be developed on a fishery-by-fishery basis. The rule would also make other minor changes in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1917
Email: john.dunnigan@noaa.gov

RIN: 0648–AK84

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569. AMENDMENT 11 TO THE FISHERY MANAGEMENT PLAN FOR THE CRUSTACEAN FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 2 would add the exclusive economic zone waters off the U.S. Pacific Island Remote Areas and the Commonwealth of the Northern Mariana Islands as crustaceans management areas.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814

Phone: 808 973–2985

RIN: 0648–AL67

570. FISHERY MANAGEMENT PLAN FOR CALICO SCALLOP FISHERY IN THE SOUTH ATLANTIC REGION (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: The FMP could include the following measures: (1) Definitions of management unit, MSY, OY, and overfishing; (2) requirement for a vessel permit to harvest or possess calico scallops in or from the South Atlantic EEZ; (3) designation of essential fish habitat for calico scallops; (4) prohibition on harvest of calico scallops in the area bounded to the west by 80 degrees W. longitude, to the north by 28 degrees 30 minutes N. latitude, to the south by 27 degrees 30 minutes N. latitude, and to the east by the 100 fathom depth contour; and (5) requirement for use of transponders by calico scallop vessels.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AL78

571. AMENDMENT 10 TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 10 would extend the FMP requirements for using bycatch reduction devices in shrimp trawls in the exclusive economic zone from Cape San Blas, Florida, east and south to the boundary line (in South Florida) between the areas of jurisdiction of the Gulf of Mexico and South Atlantic Fishery Management Councils.

Timetable:

Action	Date	FR Cite
Notice	08/14/03	68 FR 48592
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AM23

572. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE BOTTOMFISH FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 7 would facilitate and enable adjustments to management measures for the bottomfish fisheries in Guam. Possible regulatory changes include closed areas, gear restrictions, seasons, permit and notification/reporting requirements, etc.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Alvin Katekaru,
Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AM98

573. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC FMP

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 640

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 7 would address issues regarding the impacts of the FMP's tailing permit provisions on State spiny lobster conservation efforts.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AN08

574. AMENDMENT 18 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 18 would address the need for improved conservation of grouper stocks in the Gulf of Mexico by addressing effort capacity control, using VMS, addressing the use of reef fish as bait, addressing longline and buoy gear phase-out, establishing closed areas, modifying TAC Framework procedures and grouper allocations, defining grouper and amberjack status determination criteria, developing Nassau and goliath grouper rebuilding plans, and incorporating the SEDAR process into the TAC Framework procedures.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AN09

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575. AMENDMENT 10 TO THE ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 10 would implement a management strategy that would incorporate rotational closed areas for rebuilding the sea scallop resource and address essential fish habitat issues. This action may replace or modify the current DAS reduction schedule.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AN16

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576. AMENDMENT 13 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN (FMP)

Regulatory Plan: This entry is Seq. No. 32 in part II of this issue of the **Federal Register**.

RIN: 0648–AN17

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577. AMENDMENT 9 TO THE FISHERY MANAGEMENT PLAN AMENDMENT FOR THE PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final.

Abstract: This amendment would prevent or mitigate and conserve, manage, and allow full utilization of sharks.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AN76

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578. REGULATORY AMENDMENT MODIFYING THE GULF OF MEXICO BRD PROTOCOL UNDER THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: In accordance with the FMP's framework procedure for regulatory adjustments, the Gulf Council requested that NMFS develop alternative data collection procedures and statistical tests to certify bycatch reduction devices (BRDs) for use in the shrimp fishery of the Gulf of Mexico. The regulation would provide additional flexibility in sampling procedures to facilitate BRDs meeting the testing/certifying protocol's requirements while maintaining the scientific and statistical credibility in achieving the FMP's established bycatch reduction criterion for certified BRDs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AN84

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579. FISHERY MANAGEMENT PLAN FOR THE DOLPHIN AND WAHOO FISHERY OF THE ATLANTIC, CARIBBEAN, AND GULF OF MEXICO (FMP) OF THE ATLANTIC

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: This new FMP, as prepared by the South Atlantic Fishery Management Council, is to provide a comprehensive management program for dolphin and wahoo in the Atlantic Ocean exclusive economic zone.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast

Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AO63

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580. REGULATORY AMENDMENT UNDER THE FISHERY MANAGEMENT PLAN FOR GULF OF MEXICO REEF FISH (FMP) TO ESTABLISH A RED SNAPPER STOCK REBUILDING PLAN AND TO SET RED SNAPPER OVERFISHING TARGETS AND THRESHOLDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: This plan amendment under the FMP's framework procedure would establish a revised red snapper stock rebuilding plan and red snapper overfishing targets and thresholds, all intended to meet requirements of the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act of 1996. In addition, this amendment will address bycatch reporting requirements of the reeffish fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AP02

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581. AMENDMENT 13A TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: NPRM, Statutory, NPRM.

Abstract: Amendment 13A will evaluate alternatives to extend the prohibition on fishing for and possessing Snapper-Grouper species within the oculina experimental closed area for an additional period of time, that prohibition which was implemented in 1996 through amendment 6 to the Snapper-Grouper FMP, is scheduled to sunset in June 2004.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AP03

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582. REVISION OF AMERICAN LOBSTER REGULATIONS FOR THE EEZ

Priority: Other Significant

Legal Authority: 16 USC 5101 et seq

CFR Citation: 50 CFR 697

Legal Deadline: None

Abstract: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Act), 16 U.S.C. et seq., NMFS announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for the Exclusive Economic Zone in response to recommendations from the Atlantic States Marine Fisheries Commission to NMFS in Addenda II and III to Amendment 3 to the Interstate Fishery Management Plan for American Lobster (ISFMP). This ANPR/NOI proposes to develop regulations relative to Addendum III to the ISFMP, and combine those with Addendum II (ANPR and NOI published May and September of 2001, respectively) into a single environmental impact statement. Addendum II management measures would include minimum gauge size increases in five of the seven Lobster Conservation Management Areas (LCMA), lobster trap gear modifications, a four-year lobster trap reduction schedule for LCMA 3, and a logbook requirement for LCMA 3 lobster vessels. Addendum III would further modify Addendum II's gauge increase schedule and include new management measures for the majority of the LCMAs.

Timetable:

Action	Date	FR Cite
ANPRM	05/24/01	66 FR 28726
ANPRM Comment Period End	06/25/01	
ANPRM	09/05/02	67 FR 56800
ANPRM Comment Period End	10/07/02	
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Agency Contact: Thomas Meyer, Fisheries Biologist, Office of Intergovernmental/Recreational Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 425, 8484 Georgia Avenue, Silver Spring, MD 20910
Phone: 301 427–2014

RIN: 0648–AP18

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583. REGULATORY AMENDMENT TO IMPLEMENT PERMIT STACKING IN THE LIMITED-ENTRY FIXED-GEAR SABLEFISH FISHERY IN 2002 AND BEYOND

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, NPRM.

Abstract: This regulatory amendment would implement the following Amendment 14 provisions: permit owners will be required to provide detailed ownership information to ensure that no person has ownership interest in or holds more than three permits; current permit owners who were not permit owners before November 1, 2000, will be required to be on board the vessel fishing against the sablefish cumulative limits associated with that vessel's permit(s); vessels landing sablefish against their primary season limits will be required to contact enforcement officials before making sablefish landings; vessel owners wishing to freeze sablefish at sea will be required to provide proof of a history of freezing sablefish at sea in the years 1998, 1999, or 2000.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: D. Robert Lohn,
Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1,
Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AP38

584. IMPLEMENTATION OF FISHERY MANAGEMENT PLAN FOR HIGHLY MIGRATORY SPECIES FISHERIES OFF THE WEST COAST

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would implement the Fishery Management Plan (FMP) for Highly Migratory Species Fisheries off the West Coast. The FMP is currently under development by the Pacific Fishery Management Council (Council) under the terms of the Magnuson-Stevens Act and other applicable law. The FMP will both establish a process for implementing regulations as deemed necessary in the future and provide a basis for initial regulation of selected fishery sectors (e.g., drift gillnet and longline) to ensure conservation of the fish stocks involved and protection of species of special concern such as sea turtles and seabirds. The FMP will include substantial environmental and economic analyses consistent with the requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12296 and other laws and orders. Steps for reviewing and implementing approved elements of the FMP are set forth in the Magnuson-Stevens Act and include provisions for publication of proposed and final rules within certain time periods.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	
Final Action Effective	01/00/04	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Svein Fougner,
Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration,
Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980–4040

RIN: 0648–AP42

585. REGULATORY AMENDMENT UNDER THE COASTAL MIGRATORY PELAGICS FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 622

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: In accordance with the FMP's framework procedure for regulatory adjustments, this action would establish biomass-based stock status criteria such as maximum-sustainable yield (MSY), optimum yield (OY), and definitions of overfishing and overfished using default control rules as required by the Magnuson-Stevens Fishery Conservation and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AP50

586. COMPREHENSIVE AMENDMENT ADDRESSING SUSTAINABLE FISHERIES ACT REQUIREMENTS REGARDING OVERFISHING, BYCATCH, FISHING COMMUNITIES AND PROVISIONS FOR FISHERY MANAGEMENT PLANS FOR THE CARIBBEAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: NMFS proposes regulations to implement those provisions of the Comprehensive Amendment Addressing Sustainable Fishery Act (SFA) definitions and other required provision of the Magnuson-Stevens Act in the FMP of the U.S. Caribbean (Comprehensive SFA Amendment) that would modify and/or add framework procedures to the FMPs for reef fish, corals and reef associated plants and invertebrates, queen conch, and spiny lobster. These FMP framework modifications/additions would allow timely modification/addition of required stock parameters and management measures related to preventing overfishing and rebuilding overfished stocks. The intended effect is to provide a more efficient mechanism for implementation of improved estimates of stock parameters and necessary management measures as better information becomes available.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Action	Date	FR Cite
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AP51

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587. ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES; AMENDMENT 13

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 40 CFR 648

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 13 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries would describe gear impacts on essential fish habitat, revise the surf clam overfishing definition, establish multi-year quotas, and add/revise other measures.

Timetable:

Action	Date	FR Cite
Notice	08/25/03	68 FR 50998
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AP57

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588. ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES; AMENDMENT 9

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final.

Abstract: Amendment 9 to the Fishery Management Plan for the Atlantic mackerel, squid and butterfish fisheries would establish a controlled access program for mackerel, address essential fish habitat, and revise the Illex quota procedures.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AP60

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589. IMPLEMENTATION OF THE REGULATORY CHANGES RESULTING FROM THE AMENDMENTS AND EXTENSION OF THE SOUTH PACIFIC TUNA ACT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rulemaking would implement the regulatory changes resulting from the recently renegotiated Treaty on Fisheries between the Government of Certain Pacific Island States and the Government of the United States of America, as authorized under the South Pacific Tuna Act. These changes include the implementation of an electronic vessel monitoring system for U.S. purse seine vessels licensed to fish within the Treaty Area. The location information will be provided to the Forum Fisheries Agency, located in Honiara Solomon Islands, as well as NOAA Fisheries. This rule would eliminate the prohibition of duly authorized U.S. longline vessels from fishing in the high seas areas within the Treaty Area. Additionally, it will impose minor modifications in the various reporting requirements, as well as modify the areas of fishing allowed in the exclusive economic zones of the Solomon islands and Papua New Guinea.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700
Phone: 808 973–2985

RIN: 0648–AP61

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590. REVISE COMMUNITY DEVELOPMENT QUOTA PROGRAM ADMINISTRATION AND ALLOCATION REGULATIONS—BSAI FMP AMENDMENT 71

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action will revise regulations governing the process under which a portion of the Bering Sea and Aleutian Islands quotas for groundfish, prohibited species, crab, and halibut are allocated to groups representing Western Alaska communities eligible for the Community Development Quota (CDQ) Program. The action also will revise administrative regulations for the economic development aspects of the CDQ Program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National
Oceanic and Atmospheric
Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AP67

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591. FULL RETENTION OF DEMERSAL SHELF ROCKFISH IN GULF OF ALASKA AREA 650

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory rule would require full retention of demersal shelf rockfish (DSR) in the hook-and-line fisheries in the Gulf of Alaska, Regulatory Area 650. If approved, this rule would eliminate the maximum retainable bycatch limit for DSR, and require that all DSR caught by Federally permitted vessels using fixed gear in the Southeast Outside be retained, landed, weighted, and reported. When DSR is closed to directed fishing, fishermen would be allowed to retain the proceeds from the sale of any DSR not in excess of 10 percent of the aggregate round weight equivalence of IFQ Pacific halibut and groundfish species that are landed during the same fishing trip, or 1 percent of sablefish landed. Any DSR landed in excess of these limits could be retained for any use except sale, barter, or trade. This could include personal consumption or donation to a nonprofit charitable organization.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National
Oceanic and Atmospheric
Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
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RIN: 0648–AP73

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592. AMENDMENT TO FISHERY MANAGEMENT PLAN FOR REEF FISH RESOURCES OF GULF OF MEXICO TO SET 10-YEAR REBUILDING PLAN FOR RED GROUPER

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: None

Abstract: In October 2000, the National Marine Fisheries Service (NMFS) issued a determination that the Gulf of Mexico red grouper stock is overfished and undergoing overfishing. This determination was based on the results of a 1999 red grouper stock assessment. Once a stock is determined to be overfished the Magnuson-Stevens Act requires the Gulf of Mexico Fishery Management Council within one year to submit a plan to NMFS to end overfishing and rebuild the stock to a level capable of sustaining maximum sustainable yield on a continuing basis. The proposed rebuilding plan contains alternatives that would implement a 10-year rebuilding plan for red grouper including a recreational and commercial shallow-water grouper closed season, recreational bag limits, movement of the commercial longline gear boundary, and a reduction of the shallow-water grouper quota by an amount consistent with a 45 percent reduction in commercial red grouper harvest. The rebuilding plan also contains alternatives for establishing red grouper sustainable fishing parameters (e.g., maximum sustainable yield, optimum yield, maximum fishing mortality rate, minimum stock size threshold).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast
Region, Department of Commerce,
National Oceanic and Atmospheric
Administration, National Marine
Fisheries Service, 9721 Executive
Center Drive N., St. Petersburg, FL
33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AP95

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593. REGULATORY AMENDMENT TO SECTION 679 PERMITS OR PERMIT-RELATED ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This rulemaking would revise several sections of regulations that pertain to permits or permit-related issues by technical edits and clarifications to existing requirements, removal of obsolete text, and clarification and simplification of text. In addition, this rulemaking would combine the registered buyer permit with the Federal processor permit when a shoreside processor does both IFQ and groundfish. This would be accomplished by adding an endorsement to the Federal processor permit.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National
Oceanic and Atmospheric
Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ07

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594. REGULATORY AMENDMENT TO ADJUST PERMIT RENEWAL REQUIREMENTS AND TRANSFERABILITY RESTRICTIONS IN NWHI'S HOOMALU ZONE AND MAU LIMITED ACCESS PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This measure would remove the annual landings requirement for permit renewal retroactive to December 4, 2000, which is the date the Northwestern Hawaiian Islands Reserve (NWHI) was established and when restrictions on fishing in the NWHI became uncertain.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700
Phone: 808 973–2985

RIN: 0648–AQ20

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595. FLEET CAPACITY CONTROL FOR U.S. TUNA PURSE SEINE FISHERIES IN THE EASTERN PACIFIC OCEAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 951 to 961; 16 USC 971 et seq

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rule will implement a tuna fishery management recommendation of the Inter-American Tropical Tuna Commission (IATTC), of which the United States is a party. The rule will establish procedures by which the United States will limit tuna purse seine fleet capacity consistent with the limits in the IATTC recommendation, which has been approved by the Department of State pursuant to the Tuna Conventions Act. Fleet capacity is necessary to prevent overcapitalization and achieve sustainable tuna fisheries in the eastern Pacific Ocean. Excessive fleet capacity threatens the ability of the IATTC and its member states to take effective action to control overall fishing mortality and maintain healthy stocks that will support economically viable fisheries, including U.S. tuna fisheries in the region.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980–4040

RIN: 0648–AQ21

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596. AMENDMENT 2 TO MONKFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: Amendment 2 to the Monkfish Fishery Management Plan would address essential fish habitat and bycatch issues and revise the management program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ25

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597. AMENDMENT 1 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN (FMP) AND AMENDMENT 2 TO THE ATLANTIC SALMON FMP TO ADDRESS ESSENTAL FISH HABITAT CONSERVATION MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: These amendments would address essential fish habitat conservation measures.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ27

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598. ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); BIGEYE TUNA AND SWORDFISH TRADE STATISTICAL DOCUMENT PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This proposed rule is to comply with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to establish statistical document programs for trade of swordfish and bigeye tuna. This regulation will require all dealers, who export or import swordfish or bigeye tuna, complete a statistical document and ensure the document accompanies the shipment. The purpose of the ICCAT recommendation and this regulation is to assist in the conservation of swordfish and bigeye tuna, improve the reliability of statistical information of catches, and to assist ICCAT with the elimination of illegal, unreported, and unregulated fishing operations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1917
Email: john.dunnigan@noaa.gov

RIN: 0648–AQ37

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599. FISHERIES OF THE UNITED STATES; NATIONAL STANDARD 1

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 600

Legal Deadline: None

Abstract: NMFS is considering revisions to the national standard guidelines for national standard 1 that specify criteria for determining overfishing and establishing rebuilding schedules. There have been concerns expressed by the scientific community, fisheries managers, the fishing industry, and environmental groups regarding the appropriateness of some aspects of these guidelines.

Timetable:

Action	Date	FR Cite
ANPRM	02/14/03	68 FR 7492
Other/Comment Period Extended	03/03/03	68 FR 9967
ANPRM Comment Period End	03/17/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark Millikin, Fishery Management Specialist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2341

RIN: 0648–AQ63

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600. ATLANTIC HIGHLY MIGRATORY SPECIES: BILLFISH AND SWORDFISH RECREATIONAL FISHING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq; 16 USC 971 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This rule implements domestic management measures based upon recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding billfish and swordfish. The rule would limit domestic recreational landings of Atlantic blue and white marlin to 250 fish, combined, on an annual basis. Also, the rule would provide for adjustments for any landings above or below the annual cap to the following year's recreational marlin landings cap. The Atlantic blue and white marlin measures are necessary to comply with ICCAT obligations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910
Phone: 301 713–2334

RIN: 0648–AQ65

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601. ANNUAL SPECIFICATIONS FOR THE SURF CLAM AND OCEAN QUAHOG FISHERIES FOR 2004

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Surf Clam and Ocean Quahog Fisheries for fishing year 2004.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ79

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602. ANNUAL SPECIFICATIONS FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERIES FOR 2004

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Summer Flounder, Scup, and Black Sea Bass Fisheries for fishing year 2004.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ80

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603. SPECIFICATIONS FOR THE 2004–2005 FISHING YEAR FOR THE SPINY DOGFISH FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement specifications for the 2003–2004 fishing year for the spiny dogfish fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ81

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604. RECREATIONAL MEASURES FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY FOR FISHING YEAR 2004

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement recreational measures for the 2004 fishing year for the summer flounder, scup, and black sea bass fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ82

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605. ANNUAL SPECIFICATIONS FOR THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES FOR 2004

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Atlantic Mackerel, Squid, and Butterfish Fisheries for fishing year 2004.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ83

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606. ANNUAL SPECIFICATIONS FOR THE ATLANTIC HERRING FISHERY FOR 2004

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Atlantic Herring Fishery for fishing year 2004.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ84

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607. ANNUAL SPECIFICATIONS FOR THE ATLANTIC BLUEFISH FISHERY FOR 2004

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Atlantic Bluefish Fishery for fishing year 2004.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ85

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608. "OTHER SPECIES" CDQ RESERVE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory amendment would revise how NMFS manages the "other species" CDQ reserve. Although 7.5 percent of the "other species" would still be allocated to the "other species" CDQ reserve, the reserve would not be allocated to individual CDQ groups. "Other species" CDQ would initially be closed to directed fishing, and CDQ fishery participants would be subject to maximum retainable amount standards in relation to their "other species" CDQ catch. Once the aggregate "other species" CDQ catch reaches the annual 7.5 percent CDQ reserve amount, "other species" CDQ would be placed on prohibited species catch status. Further restrictions would not occur unless the harvest of "other species" by both CDQ and non-CDQ fisheries approached the overfishing level of this species complex.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	
NPRM Comment Period End	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ88

609. ADJUSTMENT OF MANAGEMENT PROGRAM; PELAGIC FISHERIES IN THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This regulatory action would revise certain sea turtle mitigation provisions for participants in the non-longline, hook-and-line, pelagic fisheries.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AQ91

610. AMENDMENT 11 TO THE FISHERY MANAGEMENT PLAN FOR THE PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION (AMERICAN SAMOA LIMITED ACCESS PROGRAM)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: Amendment 11 would establish a limited access program for the pelagic longline fishery for the EEZ around American Samoa.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AQ92

611. EASTERN PACIFIC TUNA CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 955 to 961; 16 USC 971 et seq

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rule will implement tuna fishery conservation and management measures recommended by the Inter-American Tropical Tuna Commission (IATTC) and approved by the Department of State for 2003. Historically, the IATTC takes action in June each year and the member nations (including the United States) implement the actions as soon as practicable thereafter. Among the actions anticipated is a quota for yellowfin tuna or a similar conservation measure to limit effort (e.g., a seasonal closure) and prevent overfishing of the yellowfin stock in the eastern Pacific.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AQ93

612. ANNOUNCEMENT OF THE OPTIMUM YIELD AND HARVEST LIMIT FOR PACIFIC SARDINE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, January 2004, Final.

Abstract: This rule will announce the annual harvest guidelines for Pacific sardine in the exclusive economic zone off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to establish an annual harvest guideline for Pacific sardine based on a formula in the FMP. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AQ97

613. • AMENDMENT 66 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUNDFISH OF THE GULF OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This rulemaking would modify the Individual Fishing Quota (IFQ) Program by revising the definition of an eligible quota share holder to allow eligible communities in the Gulf of Alaska (GOA) to purchase and hold halibut and sablefish quota share (QS) for lease to, and use by, community residents as defined by specific elements of the proposed action.

Timetable:

Action	Date	FR Cite
Notice	09/02/03	68 FR 52173
Comment Period End	11/03/03	
NPRM	11/00/03	
Final Action	05/00/04	
Final Action Effective	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ98

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614. • AMENDMENT 62 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUNDFISH FISHERY OF THE GULF OF ALASKA AND AMENDMENT 62 TO THE FMP FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This rulemaking would redefine the flexibility of AFA-qualified inshore floating processors to relocated between reporting weeks rather than between fishing years for the purpose of processing targeted BSAI pollock.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR06

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615. • PORT CODES INTEGRATION IN TABLE 14

Priority: Info./Admin./Other

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: Table 14 to 50 CFR part 679 presents codes for ports of landing in Alaska, Washington, Oregon, California, and the western coast of Canada. Two codes are given for most ports. A three-digit numerical code is used in the NMFS Alaska Region Individual Fishing Quota Program when reporting landings of Pacific halibut and sablefish. A three-digit alphabetic code is used when reporting groundfish landings on State of Alaska, Department of Fish and Game fish tickets and in the NMFS Alaska Region Shoreside Processor Electronic Logbook Report. This regulatory amendment will revise table 14 numerical port codes to remove ports that have not been reported on a frequent basis and to combine certain geographically close ports under one code.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR07

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616. • REGULATORY AMENDMENT TO CHANGE REPORTING AREAS 620 AND 630

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: The boundary between Gulf of Alaska (GOA) reporting areas 620 and 630 near Kodiak Island, Alaska, is 154 W. longitude from the south side of the Alaska Peninsula, southward to the limits of the EEZ off Alaska. On Kodiak Island, this line of longitude bisects Alitak/Deadman Bay, a large, deep bay on the south end of the island. Frequently, there is a great amount of pollock in this bay, and consequent pollock fishing.

When either of the two reporting areas is open to pollock fishing, and the other reporting area is closed, vessels will fish in the bay on the "open" side of the line. The area of the Alitak/Deadman Bay of Kodiak Island would be much more efficiently enforced if the bay were either all open or all closed. Because the mouth of the bay is totally contained within reporting area 620, the pollock found in the bay are arguably associated with the 620 stocks.

The Alitak/Deadman Bay of Kodiak Island is one body of water basically enclosed by Kodiak Island but divided superficially into two reporting areas by 154 degrees W. longitude. This division of the bay into two separate reporting areas is impractical for quota management and enforcement purposes. The mouth of the bay is totally contained in reporting area 620 and logically should be included in area 620. This action corrects that error by revising the descriptions of reporting areas 620 and 630 in figure 3 to part 679.

The description of reporting area 620 in figure 3 is revised by adding "except that all waters of the Alitak/Deadman Bay of Kodiak Island are included in this reporting area." The description of reporting area 630 in figure 3 is revised by removing "Excluding Area 649" and adding in its place "Excluding all waters of the Alitak/Deadman Bay of Kodiak Island and Area 649."

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR08

617. • REGULATORY RULEMAKING TO REVISE ACCOUNTING FOR EXTERNALLY TAGGED HALIBUT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This rulemaking would revise accounting procedures when deducting halibut catch from the Individual Fishing Quota (IFQ). Only those halibut with external tags are excluded from IFQ quota deduction.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR09

618. • ATLANTIC HIGHLY MIGRATORY SPECIES; TRADE RESTRICTIVE MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This rule would implement the trade restrictive measures recommended at the 2002 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The proposed rule would lift the import prohibition on Atlantic bigeye tuna from Honduras and conditionally from St. Vincent and the Grenadines and Belize, depending on decisions at the 2003 ICCAT meeting. Bigeye tuna imports from Sierra Leone and Bolivia would be banned. The import prohibitions on Atlantic bluefin tuna and Atlantic swordfish would be lifted from Honduras and conditionally from Belize, depending on decisions at the 2003 ICCAT meeting. Bluefin tuna and swordfish imports from Sierra Leone would be banned. The proposed rule would also prohibit imports from vessels on the ICCAT negative list and would require prior notification from NOAA Fisheries before a U.S. documented or registered vessel enters a chartering arrangement with another country.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John H. Dunnigan,
Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910
Phone: 301 713–2334

RIN: 0648–AR10

619. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); BLUEFIN TUNA SEASON AND SIZE LIMIT ADJUSTMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq; 16 USC 971

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS proposes changes to start and end dates and size tolerances for certain commercial fishery sectors. Quota and fishing effort for these fisheries will remain within the bounds of previously established management programs. A recommendation from the International Commission for the Conservation of Atlantic Tunas providing additional quota for incidental longline BFT catches in certain areas is clarified.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: John H. Dunnigan,
Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910
Phone: 301 713–2334

RIN: 0648–AR12

620. • CATCHER VESSEL ELECTRONIC REPORT

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: Paper daily fishing logbooks are required from catcher vessels greater than 60 feet in length overall. Requirements for completion and submittal of the logbooks exist in the regulations at 50 CFR part 679. Recently, electronic capability to record information required in catcher vessel logbooks occurred. Electronic logbooks or reports occurred first as a pilot project and now as a pre-approval project. The operator of a catcher vessel has the option of using an NMFS-approved electronic version of the logbook in place of the paper logbook. The electronic logbooks are not required by NMFS. However, the current regulations are changed to reflect the differences in submitting data by electronic means versus paper logsheet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR30

621. • ATLANTIC STRIPED BASS FISHERIES IN THE EEZ; MODIFICATION OF FEDERAL REGULATIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1851

CFR Citation: 50 CFR 697

Legal Deadline: None

Abstract: NMFS announces that it is considering, and seeking public comment on, revisions to Federal Atlantic striped bass regulations for the U.S. Exclusive Economic Zone (EEZ) in response to recommendations from the Atlantic States Marine Fisheries Commission (Commission) to the Secretary of Commerce (Secretary). The Commission recommended that the Secretary remove the moratorium on the harvest of Atlantic striped bass in the EEZ after a 13-year closure; implement a 28-inch minimum size limit for the recreational and commercial Atlantic striped bass fisheries in the EEZ; and allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdiction. NMFS is soliciting comments with this notice regarding possible management measures and issues that NMFS should consider relative to these recommendations. These regulations would be developed under section 9 of the Atlantic Striped Bass Conservation Act, Pub. L. 100–589 (16 U.S.C. 1851 note), which requires the Secretary to promulgate regulations on fishing for Atlantic striped bass in the EEZ that the Secretary determines: (1) are consistent with the national standards in Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1851); (2) are compatible with the Plan and each Federal moratorium in effect on fishing for Atlantic striped bass within the coastal waters of a coastal State; (3) ensure the effectiveness of State regulations on fishing for Atlantic striped bass within the coastal waters of a coastal State; and (4) are sufficient to assure the long-term conservation of Atlantic striped bass populations. In developing the regulations, the Secretary is to consult with the Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State and local government entity.

CONTROVERSY: This ANPRM is considered controversial because NOAA Fisheries expects interest from Congress, environmental groups, portions of the fishing industry, and States. Currently, four Atlantic coast States consider Atlantic striped bass to be a game fish in their State waters and will likely be against commercial fishing in the EEZ.

Timetable:

Action	Date	FR Cite
ANPRM	07/21/03	68 FR 43074
ANPRM Comment Period End	08/20/03	
Comment Period Extended	08/26/03	68 FR 51232
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Agency Contact: Thomas Meyer, Fisheries Biologist, Office of Intergovernmental/Recreational Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 425, 8484 Georgia Avenue, Silver Spring, MD 20910
Phone: 301 427–2014

RIN: 0648–AR33

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622. • CONSIDERATION OF A CONTROL DATE FOR BOTTOMFISHING VESSELS IN THE EEZ AROUND GUAM AND COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: On June 13, 2003, the Western Pacific Fishery Management Council (Council) adopted a "control date" of June 13, 2003, as a notice to persons contemplating entering the fisheries for bottomfish species in the U.S. exclusive economic zone around Guam and the neighboring Commonwealth of the Northern Mariana Islands. This action would not impose any restrictions on the public, but is intended solely to notify persons interested in joining these fisheries after June 13 that they might be excluded if restrictions are adopted in the future under the Magnuson-Stevens Fishery Conservation and Management Act. Although the "control date" is a signal that the Council is likely to consider limiting entry to any or all of these bottomfish fisheries, neither the Council or NMFS have made any decision yet. They might decide to limit new entry to some or all of these fisheries or might decide to take no action at all.

Timetable:

Action	Date	FR Cite
ANPRM	08/28/03	68 FR 51763
ANPRM Comment Period End	09/29/03	
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AR37

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623. • AMENDMENT 13B TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC REGION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: None

Abstract: Amendment 13B will: (1) redefine, as needed, the snapper-grouper fishery management unit (FMU) and FMU sub-units; (2) define biomass-based estimates of biological reference points and status determination criteria for all stocks/complexes that comprise the FMU; (3) establish rebuilding schedules based on biomass-based estimates of status determination criteria for all overfished stocks/complexes in the FMU; (4) establish control rules and implement management measures, as needed, to end overfishing and rebuild overfished stocks; (5) review the implementation of the Logbook/Atlantic Coastal Cooperative Statistics Program bycatch reporting program in the context of its consistency with the MSFCMA requirement to establish a standardized bycatch reporting methodology; and (6) assess the practicability of additional bycatch reduction measures.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast
Region, Department of Commerce,
National Oceanic and Atmospheric
Administration, National Marine
Fisheries Service, 9721 Executive
Center Drive N., St. Petersburg, FL
33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AR38

624. • MAXIMUM RETAINABLE AMOUNT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory amendment would revise the maximum retainable allowance (MRA) accounting to an offload to offload basis for pollock caught with trawl gear in the BSAI. The objective of this action is to increase retention of pollock taken as incidental catch in the directed fisheries for other, non-pollock groundfish species, but without increasing the overall amount of pollock that has been historically caught as incidental catch in such fisheries.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National
Oceanic and Atmospheric
Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR41

625. • FRAMEWORK 4 TO THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERY MANAGEMENT PLAN (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: The action proposes to extend the moratorium on entry to the Illex fishery. This extension is needed because the Illex moratorium program is set to expire in July of 2004.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul,
Regional Administrator, Northeast
Region, NMFS, Department of
Commerce, National Oceanic and
Atmospheric Administration, One
Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR44

626. • ESTABLISH REFERENDUM PROCEDURES AND A VOTE WEIGHTING FORMULA FOR THE GULF OF MEXICO RED SNAPPER INDIVIDUAL FISHING QUOTA (IFQ) PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: None

Abstract: Pursuant to the policies established by the Administrative Procedure Act, NOAA Fisheries is submitting a proposed rule, to establish referendum procedures and a vote weighting formula for the Gulf of Mexico Red Snapper Individual Fishing Quota (IFQ) Program, for public review and comment.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast
Region, Department of Commerce,
National Oceanic and Atmospheric
Administration, National Marine
Fisheries Service, 9721 Executive
Center Drive N., St. Petersburg, FL
33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AR48

627. • IMPLEMENT ELECTRONIC DEALER REPORTING AND ADJUSTMENTS TO VESSEL REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement electronic dealer reporting and adjustments to vessel reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul,
Regional Administrator, Northeast
Region, NMFS, Department of
Commerce, National Oceanic and
Atmospheric Administration, One
Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR49

628. • FRAMEWORK 5 TO THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would establish the ability to set multiyear specifications for the summer flounder, scup and black sea bass fishery.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR50

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629. • ANNUAL SPECIFICATIONS FOR THE SURF CLAM AND OCEAN QUAHOG FISHERY FOR FISHING YEAR 2005

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the surf clam and ocean quahog fisheries for fishing year 2005.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR52

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630. • PACIFIC COAST GROUNDFISH FISHERY; ANNOUNCEMENT OF THE 2004 GROUNDFISH FISHERY SPECIFICATIONS AND MANAGEMENT MEASURES

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This rulemaking will implement the 2004 annual specifications and management measures for the Pacific Coast Groundfish Fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	02/00/04	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AR54

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631. • FRAMEWORK 16 TO THE ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN AND FRAMEWORK ADJUSTMENT 39 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: These frameworks would establish access program for scallopers in the groundfish closed areas.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR55

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632. • ANNUAL SPECIFICATIONS FOR THE DEEP-SEA RED CRAB FISHERY FOR FISHING YEAR 2004

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Deep-Sea Red Crab Fishery for fishing year 2004.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR58

633. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR ATLANTIC TUNAS, SWORDFISH, AND SHARKS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: Amendment 2 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks is intended to address issues regarding quota allocation of Atlantic bluefin tuna, swordfish, and sharks among and within domestic fishing categories, examine management alternatives to improve and streamline the current limited access permit program, conduct a five-year review of essential fish habitat identifications, and address exempted fishing and scientific research permitting issues consistent with rebuilding plans, the Magnuson-Stevens Fishery Conservation and Management Act, Atlantic Tunas Convention Act, and other relevant Federal laws.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910
Phone: 301 713–2334

RIN: 0648–AR60

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634. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); AMENDMENT 2 TO THE ATLANTIC BILLFISH FISHERY MANAGEMENT PLAN

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: Amendment 2 to the Atlantic Billfish Fishery Management Plan is intended to conduct a five-year review of essential fish habitat identifications, and address other issues as necessary consistent with rebuilding plans, the Magnuson-Stevens Fishery Conservation and Management Act, Atlantic Tunas Convention Act, and other relevant Federal laws.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1917
Email: john.dunnigan@noaa.gov

RIN: 0648–AR61

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635. • FRAMEWORK 4 TO THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: Framework 4 proposes to allow, under certain circumstances, the at-sea transfer of scup from one vessel to another. The intent of this proposed action is to minimize discards of scup that may occur when a vessel exceeds its possession limit on a large tow of scup.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR62

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636. • AMENDMENT 10 TO THE PACIFIC COAST GROUNDFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: The need for implementing a permanent monitoring program in the shore-based Pacific whiting (whiting) fishery is to provide for a full retention fishery by enabling the shore-based whiting fleet, comprised exclusively of catcher vessels, to deliver unsorted catch to processing plants. This practice is necessary to ensure that whiting landings are of market quality, while abiding by Federal groundfish regulations and those implementing the Pacific Coast salmon and groundfish fishery management plans (FMPs). The treatment and disposition of salmon in the groundfish trawl fisheries, specifically the shore-based whiting fishery, was last addressed by the Pacific Fishery Management Council (Pacific Council) at their October 21 to 25, 1996, meeting in San Francisco, California. At that meeting, the Pacific Council discussed the retention of salmon in the shore-based whiting fishery and took action to maintain a viable shore-based whiting fishery by using exempted fishing permits (EFPs). These EFPs allowed the shore-based whiting fleet to temporarily deliver unsorted catch to processing plants and provided for the monitoring of incidentally taken salmon until a permanent monitoring program could be implemented. In keeping with the Pacific Council's recommendation, NMFS is proceeding with implementing a monitoring program for the shore-based whiting fishery. This action will aid in the sustainable management of Pacific Coast salmon and groundfish fisheries while providing an important economic opportunity to those associated with the harvest, processing, and selling of whiting taken by the shore-based whiting fleet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AR63

637. • REGULATORY AMENDMENT TO PROHIBITED SPECIES CATCH DONATION REGULATIONS TO ALLOW PROCESSING OF HEADS AND GUTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 60 CFR 679

Legal Deadline: None

Abstract: This regulatory amendment would allow the sale of certain products to be made from the heads and guts of salmon and halibut taken incidentally in groundfish fisheries. This action would revise our prohibited species donation rules to allow processors to convert the heads and guts of salmon and halibut into fish meal, fish oil or bone meal, and retain the proceeds of the sale of these products.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR64

638. • AMENDMENT 8 TO THE FISHERY MANAGEMENT PLAN FOR THE BOTTOMFISH FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: Amendment 8 would add the exclusive economic zone off the U.S. Pacific Remote Island areas as bottomfish management areas.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AR65

639. • AMENDMENT 21 TO THE REEF FISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: None

Abstract: The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 21 to the subject FMP to the National Marine Fisheries Service (NOAA Fisheries) for Secretarial review. The amendment was approved by the Council by a vote of 10 to 5 (two absentees) at its July 2003 meeting. It proposes to: (1) extend the marine reserves at Madison-Swanson and Steamboat Lumps for an additional six years; (2) allow surface trolling only for coastal migratory pelagics and highly migratory species (HMS) in the marine reserves during May through October; (3) prohibit all fishing in the marine reserves during November through April; and (4) prohibit the possession of reef fish within the reserves except for vessels transiting the reserves in accordance with the same requirements as implemented for the Tortugas South and North closed fishing areas (Reef Fish Amendment 19). Additionally, the Council will send a letter to the Highly Migratory Species Division of NOAA Fisheries requesting that they implement regulations compatible with the proposals in this amendment for species under their jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AR66

640. AMEND REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1371(a)(6)

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: This action implements certain changes in the prohibitions on importing or exporting marine mammals or marine mammal parts and products that occurred with the enactment of the Marine Mammal Protection Act Amendments of 1994 (Pub. L. 104–238). This action prohibits the export of marine mammals or marine mammal products for purposes other than public display, scientific research, or enhancing the survival of a species or stock and establishes three new categories of exceptions to the prohibition on importing marine mammal parts and products. This is a noncontroversial action that is not significant as it will have only minor effects on a small number of people, most of whom will benefit by the new exceptions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tanya Dobrzynski, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2289

RIN: 0648–AH83

641. NORTH ATLANTIC WHALE PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq; 16 USC 1531 et seq

CFR Citation: 50 CFR 216; 50 CFR 222

Legal Deadline: None

Abstract: This action investigates the need to adopt regulations to decrease negative action of whale watching.

Timetable:

Action	Date	FR Cite
ANPRM	01/04/00	65 FR 270
ANPRM Comment Period End	03/06/00	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Trevor Spradlin, Marine Mammal Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2289
Email: trevor.spradlin@noaa.gov

RIN: 0648–AM85

642. PREVENTING HARASSMENT FROM HUMAN ACTIVITIES DIRECTED AT MARINE MAMMALS IN THE WILD

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: This rule would prohibit the public from swimming with or otherwise interacting with dolphins and other marine mammals in the wild.

Timetable:

Action	Date	FR Cite
ANPRM	01/30/02	67 FR 4379
ANPRM Comment Period End	04/01/02	
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Trevor Spradlin, Marine Mammal Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2289
Email: trevor.spradlin@noaa.gov

RIN: 0648–AN43

643. ENDANGERED AND THREATENED SPECIES: PERMIT EXEMPTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq; 16 USC 742a et seq; 31 USC 9701

CFR Citation: 50 CFR 222

Legal Deadline: None

Abstract: NMFS is providing exceptions to prohibitions to allow Federal and State employees to perform conservation activities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: LaMont Jackson, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1401
Fax: 301 713–0376
Email: terri.jordan@noaa.gov

RIN: 0648–AO37

644. CAPTIVE STELLER SEA LIONS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 to 1543; 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: This rule is to provide exception to captive Steller sea lions (those captured before listing) to assist the public display community in commerce involving these animals.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jennifer Lyn Skidmore, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13710, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2289
Fax: 301 713–0376
Email: jennifer.skidmore@noaa.gov

RIN: 0648–AO61

645. TAKING MARINE MAMMALS INCIDENTAL TO ROCKET LAUNCHES FROM THE KODIAK LAUNCH COMPLEX, KODIAK ISLAND, ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS has received a request from the Alaska Aerospace Development Corporation (AADC) for a Letter of Authorization (LOA) to take small numbers of marine mammals incidental to rocket launches from the Kodiak Launch Complex (KLC), Kodiak

Island, Alaska. As a result of that request, NMFS is proposing regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue such regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence uses.

Timetable:

Action	Date	FR Cite
ANPRM	11/05/01	66 FR 55909
ANPRM Comment Period End	12/05/01	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Kenneth Hollingshead, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Room 13600, Silver Spring, MD 20910
Phone: 301 713–2322
Fax: 301 713–0376
Email: ken.hollingshead@noaa.gov

RIN: 0648–AP62

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646. TAKING AND IMPORTING MARINE MAMMALS: TAKING MARINE MAMMALS INCIDENTAL TO CONDUCTING OIL AND GAS EXPLORATION ACTIVITIES IN THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1371(a)(5)(A)

CFR Citation: 50 CFR 216.101–108

Legal Deadline: None

Abstract: The National Marine Fisheries Service has received an application from the U.S. Minerals Management Service for regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) to authorize the taking of marine mammals incidental to conducting oil and gas exploration activities by U.S. citizens in the Gulf of Mexico. Without this authorization, the taking of marine mammals is prohibited by the MMPA. In order to authorize the taking and issue authorizations, NMFS must, through regulations, determine that the proposed activity will have no more than a negligible impact on the affected species and stocks of marine mammals.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kenneth R. Hollingshead, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713–2055
Email: ken.hollingshead@noaa.gov

RIN: 0648–AQ71

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647. • ALASKA TRANSIENT KILLER WHALES (AT1 GROUP) DESIGNATED AS DEPLETED

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: NPRM, Statutory, June 16, 2003, NPRM.

Abstract: After reviewing a petition received from members of the public, NMFS is proposing to designate the AT1 group of Alaska Transient Killer Whales as a depleted population stock pursuant to the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Laurie K. Allen, Acting Director, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713–2332

RIN: 0648–AR14

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648. • ZERO MORTALITY RATE GOAL

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: None

Abstract: NMFS is clarifying through regulation the definition of "insignificant levels approaching a zero mortality and serious injury rate," which is a part of the Zero Mortality Rate Goal of the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
ANPRM	07/09/03	
ANPRM Comment Period End	09/08/03	
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Laurie K. Allen, Acting Director, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713–2332

RIN: 0648–AR15

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649. • REGULATIONS IMPLEMENTING THE BOTTLENOSE DOLPHIN TAKE REDUCTION PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: NPRM, Statutory, September 2003, NPRM.
Final, Statutory, January 2004, Final.
There is a deadline under the MMPA, but noting that we cannot meet this deadline because of requirements related to compliance with other laws, such as NEPA and the Regulatory Flexibility Act.

Abstract: Regulations implementing the Bottlenose Dolphin Take Reduction Plan; measures to reduce incidental mortality and serious injury of Western

North Atlantic coastal bottlenose dolphins in Atlantic fisheries.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Agency Contact: Laurie K. Allen, Acting Director, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713–2332

RIN: 0648–AR39

650. • IMPLEMENT A PROHIBITION ON SHALLOW STYLE LONGLINE SETS

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: This rulemaking would implement a prohibition on shallow style longline sets of the type normally used to target swordfish in the West Coast longline fishery to protect sea turtles.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Laurie K. Allen, Acting Director, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713–2332

RIN: 0648–AR53

NATIONAL OCEAN SERVICE/OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

651. REVISION OF OVERFLIGHT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1431 et seq

CFR Citation: 15 CFR 922

Legal Deadline: None

Abstract: These regulations are being revised to clarify that they are for resource protection purposes.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Debra Malek, National Marine Sanctuary Program, Department of Commerce, National Oceanic and Atmospheric Administration, N ORM 6, 1305 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–3125

RIN: 0648–AI91

652. INTERAGENCY CONSULTATION FOR THE NATIONAL MARINE SANCTUARY PROGRAM

Priority: Other Significant

Legal Authority: 16 USC 1434(d)

CFR Citation: 15 CFR 922

Legal Deadline: None

Abstract: This action would implement the Federal agency consultation requirements of the National Marine Sanctuaries Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Helen Golde, Department of Commerce, National Oceanic and Atmospheric Administration, Room 11536, Marine Sanctuaries Division, 1305 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–3145

RIN: 0648–AL06

653. GRAY'S REEF NATIONAL MARINE SANCTUARY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1434; 16 USC 1439

CFR Citation: 15 CFR 922.90 to 922.92

Legal Deadline: None

Abstract: This action will amend regulations and designation document for the Gray's Reef National Marine Sanctuary to clarify that the sanctuary boundary includes submerged lands; revise regulations on placing structures on the seabed, fishing, anchoring, discharges, and cultural resources; and revise procedure for issuing sanctuary permits.

Timetable:

Action	Date	FR Cite
NPRM	10/31/03	68 FR 62033
NPRM Comment Period End	12/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Reed Bohne, Manager, Gray's Reef National Marine Sanctuary, Department of Commerce, National Oceanic and Atmospheric Administration, 10 Ocean Science Circle, Savannah, GA 31411
Phone: 912 598–2345
Fax: 912 598–2367
Email: reed.bohne@noaa.gov

RIN: 0648–AQ41

654. • REGULATORY AMENDMENT TO CORRECT EFFECTIVE DATES FOR REGULATORY CHANGES IN 67 FR 79692 (DECEMBER 30, 2002)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: The EFFECTIVE DATES section of the preamble of 67 FR 79692 (December 30, 2002) inadvertently was written in such a way that all the regulatory revisions expire on December 31, 2007. NMFS' intention was to have all of the regulatory revisions made as permanent changes except for section 679.50. Section 679.50 is to be effective through December 31, 2007. This proposed rule corrects the language of the EFFECTIVE DATES section of the preamble.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR13

655. • AMENDMENT 16–2 TO THE PACIFIC COAST GROUNDFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, November 2003, NPRM.
Final, Statutory, January 2004, Final.

Abstract: Amendment 16–2 to the Pacific Coast Groundfish Fishery Management Plan (FMP) would implement overfished species rebuilding plans for canary rockfish, darkblotched rockfish, lingcod, and Pacific ocean perch through a fishery management plan amendment and federal regulations. Amendment 16–2 is intended to ensure that Pacific coast groundfish overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act,) in particular National Standard 1 on overfishing and section 304(e), which addresses rebuilding overfished fisheries. Amendment 16–2 is also intended to partially respond to a court order in Natural Resources Defense Council, Inc. et al., v. Donald Evans, Secretary of Commerce, et al., 168 F. Supp. 2d 1149 (N.D. Cal 2001) in which NOAA Fisheries was ordered to implement Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. This action has been analyzed under the National Environmental Policy Act with an Environmental Impact Statement. NMFS has been implementing rebuilding measures for these species for several years and the agency does not consider this action significant

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AR35

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)

Final Rule Stage

NATIONAL MARINE FISHERIES SERVICE

656. PROPOSED HIGHLY MIGRATORY SPECIES PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq; 16 USC 971 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS proposes to revise the administrative procedures it follows to prepare and issue highly migratory species (HMS) fishery management plans (FMPs), FMP amendments and implementing regulations for the Atlantic Ocean, Gulf of Mexico and Caribbean Sea in response to recent amendments to the Magnuson-Stevens Fishery Management Act.

Timetable:

Action	Date	FR Cite
NPRM	09/18/97	62 FR 48990
NPRM Comment Period End	10/15/97	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1917
Email: john.dunnigan@noaa.gov

RIN: 0648–AK40

657. ENHANCED MEASURES TO MITIGATE SEABIRD BYCATCH IN THE ALASKA LONGLINE FISHERIES (HOOK-AND-LINE)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final.

Abstract: This regulatory amendment would enhance measures designed to mitigate seabird bycatch in the longline fisheries off Alaska.

Timetable:

Action	Date	FR Cite
NPRM	02/07/03	68 FR 6386
NPRM Comment Period End	03/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National
Oceanic and Atmospheric
Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AM30

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658. IMPLEMENTATION OF WESTERN PACIFIC CORAL REEF ECOSYSTEM FISHERY MANAGEMENT PLAN (FMP)

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final.

Abstract: This action would implement the Western Pacific Coral Reef Ecosystem FMP. Possible initial management measures include permit and reporting requirements, framework procedures, gear restrictions, harvest limits/restrictions, marine protected areas, no anchoring zones, etc.

Timetable:

Action	Date	FR Cite
NPRM	09/24/02	67 FR 59824
Correction	10/22/02	67 FR 64861
NPRM Comment Period End	10/24/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Alvin Katekaru,
Assistant Regional Administrator,
Sustainable Fisheries, Department of
Commerce, National Oceanic and
Atmospheric Administration, 1601
Kapiolani Boulevard, Honolulu, HI
96814
Phone: 808 973–2985

RIN: 0648–AM97

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659. FISHERY MANAGEMENT PLAN (FMP) FOR SARGASSUM HABITAT OF THE SOUTH ATLANTIC

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final.

Abstract: The regulatory action implementing measures in the FMP would: (1) establish a total prohibition of all harvest and possession of Sargassum from the South Atlantic exclusive economic zone (EEZ) south of 34 degrees N latitude; (2) allow a limited annual harvest of 5,000 pound landed wet weight of Sargassum from the South Atlantic EEZ 100 miles seaward of the shore between 34 degrees N latitude and the latitude line representing the North Carolina/Virginia border during the months of November through June; (3) require an official observer to be present on each Sargassum harvesting trip; and (4) require that nets used to harvest Sargassum be constructed of four-inch stretch mesh or larger fitted to a frame no larger than 4 feet by 6 feet. Restricting the harvest of Sargassum may result in the one small business entity ceasing business operations. The firm qualifies as a small business entity because its gross revenues do not exceed $3.0 million annually. The value of the 1997 harvest (the last documented year in which harvest occurred) was estimated to be $36,000. The average annual value of the harvest from 1976 to 1997 was estimated to be $61,000. Additionally, there is no indication that harvest has occurred since 1997. Therefore, the SAFMC concluded that the indirect benefits of increased productivity of marine life and non-consumptive, non-use social benefits that would result from reduced harvest levels would greatly outweigh the direct impacts to the one intermittently operating business.

Timetable:

Action	Date	FR Cite
Notice	04/17/03	68 FR 18942
Comment Period Extended	05/05/03	68 FR 23686
NPRM	05/30/03	68 FR 32450
NPRM Comment Period End	06/16/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast
Region, Department of Commerce,
National Oceanic and Atmospheric
Administration, National Marine
Fisheries Service, 9721 Executive
Center Drive N., St. Petersburg, FL
33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AN87

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660. ATLANTIC HIGHLY MIGRATORY SPECIES; EXEMPTED FISHING PERMITS PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS amends procedures for issuing exempted fishing permits for fishing activities that are otherwise prohibited, and for scientific research permits.

Timetable:

Action	Date	FR Cite
NPRM	12/06/02	67 FR 72629
NPRM Comment Period End	01/06/03	
NPRM Comment Period Extended	01/10/03	68 FR 1430
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Dunnigan,
Director, Office of Sustainable
Fisheries, Department of Commerce,
National Oceanic and Atmospheric
Administration, 1315 East-West
Highway, Silver Spring, MD 20910
Phone: 301 713–1917
Email: john.dunnigan@noaa.gov

RIN: 0648–AO79

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661. FISHING CAPACITY REDUCTION PROGRAM FOR THE CRAB SPECIES COVERED BY THE FISHERY MANAGEMENT PLAN FOR THE BERING SEA/ALEUTIAN ISLANDS KING AND TANNER CRABS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 16 USC 1861a; 46 USC 1279f; PL 106–554

CFR Citation: 50 CFR 600

Legal Deadline: Final, Statutory, May 1, 2001, Final.
Other, Statutory, December 31, 2001, Other.

Abstract: This action establishes a fishing capacity reduction program in the fishery for the crab species covered by the Fishery Management Plan for the

Bering Sea/Aleutian Islands King and Tanner Crabs. The crab reduction program makes payments for revoking crab licenses in, and withdrawing fishing vessels from, the crab fishery. Reducing the number of crab licenses and vessels in the crab fishery increases post-reduction harvesting productivity, helps conserve and manage the crab resources, and fosters the potential for rationalizing crab fishery harvesting effort. The regulations add a new section 600.1018 to the fishing capacity reduction framework regulations contained in subpart L to 50 CFR part 600.

Timetable:

Action	Date	FR Cite
NPRM	12/12/02	67 FR 76329
Correction	12/30/02	67 FR 79550
NPRM Comment Period End	01/28/03	
Comment Period Extended	01/29/03	68 FR 4161
NPRM Comment Period Reopened	04/15/03	68 FR 18185
Second NPRM Comment Period End	04/30/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Michael L. Grable, Chief, Financial Services Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2390
Email: michael.grable@noaa.gov

RIN: 0648–AP25

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662. AMENDMENT TO REGULATIONS FOR OBSERVER AT-SEA ELECTRONIC COMMUNICATION EQUIPMENT REQUIREMENTS FOR VESSELS AND SHORESIDE PROCESSORS IN THE NORTH PACIFIC GROUNDFISH FISHERIES

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: NPRM, Statutory, NPRM.

Abstract: This rulemaking would refine requirements for the facilitation of observer data transmission and improve support for observers. The rulemaking is intended to assure continued collection of high-quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

Timetable:

Action	Date	FR Cite
NPRM	07/25/02	67 FR 48604
NPRM Comment Period End	08/26/02	
Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AP66

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663. IFQ RECORDKEEPING AND REPORTING REQUIREMENTS FOR CATCHER VESSELS; BSAI AMENDMENT 72 AND GOA AMENDMENT 64

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: Amendments 72/64 will revise the submittal time limit for the individual fishing quotas (IFQ) prior notice of landing; will combine the IFQ shipment report into the groundfish product transfer report; will remove the vessel clearance requirement; will remove authorized IFQ ports of landing from Table 14; and will revise the IFQ departure report.

Timetable:

Action	Date	FR Cite
Notice	10/29/02	67 FR 65941
Comment Period End	12/27/02	
NPRM	01/24/03	68 FR 3485
NPRM Comment Period End	02/24/03	
Final Action	07/29/03	68 FR 44473
Correction	08/28/03	68 FR 51711
Correction	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AP92

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664. ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); 2003 BLUEFIN TUNA QUOTA SPECIFICATIONS AND EFFORT CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS proposes specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas and General category effort controls for the 2003 fishing year. This action will implement the U.S. annual BFT quota as recommended by the International Commission on Conservation of Atlantic Tunas and allocate that quota among the domestic fishing categories. Effort controls for the General category will allocate monthly quotas and set certain restricted fishing days.

Timetable:

Action	Date	FR Cite
NPRM	07/10/03	68 FR 41103
NPRM Comment Period End	08/08/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1917
Email: john.dunnigan@noaa.gov

RIN: 0648–AQ38

665. RULEMAKING TO CORRECT THE SALMON FISHERY COORDINATES AS IMPLEMENTED IN THE AMENDMENT 3 TO THE FISHERY MANAGEMENT PLAN FOR THE SALMON FISHERIES IN THE EEZ OFF THE COAST OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This rulemaking will change the area coordinates for the salmon fishery in the EEZ off Alaska to agree with the coordinates implemented by Amendment 3 to the Fishery Management Plan for the Salmon Fishery in the EEZ off Alaska.

Timetable:

Action	Date	FR Cite
NPRM	07/23/03	68 FR 43483
NPRM Comment Period End	08/22/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National
Oceanic and Atmospheric
Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
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RIN: 0648–AQ48

666. PACIFIC COAST GROUNDFISH FISHERY; PACIFIC COAST GROUNDFISH VESSEL MONITORING SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, NPRM.

Abstract: This regulation would require vessels participating in the Pacific Coast groundfish fishery off the coasts of WA, OR, and CA to carry and use vessel monitoring systems (VMS) transmitters. This action is necessary to enhance monitoring of compliance with large-scale depth-based closures that are proposed to be used to prohibit most fishing activities across much of the continental shelf. In addition, this action is intended to further the conservation goals and objectives of the Pacific Coast Groundfish FMP by allowing fishing to continue in areas and with gear that can harvest healthy stocks with little incidental catch of overfished and low abundance species. This action will also require certain vessels legally fishing within the otherwise closed area to notify NMFS when they will be fishing in the closed areas.

Timetable:

Action	Date	FR Cite
Notice	05/22/03	68 FR 27972
NPRM	06/13/03	68 FR 35354
NPRM Comment Period End	07/28/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: D. Robert Lohn,
Regional Administrator, Northwest
Region, NMFS, Department of
Commerce, National Oceanic and
Atmospheric Administration, 7600
Sand Point Way NE, Building 1,
Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AQ58

667. CONTINUATION OF MEASURES TO REDUCE FISHING MORTALITY IN THE NORTHEAST MULTISPECIES FISHERY AND IMPLEMENT A DAS LEASING PROGRAM

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: NPRM, Judicial, July 27, 2003, NPRM.

Abstract: The action proposes to continue management measures currently in place, which are intended to reduce overfishing on species managed under the Northeast Multispecies Fishery Management Plan (FMP) while the New England Fishery Management Council completes development of Amendment 13 to the FMP. In addition, a days-at-sea leasing program is proposed that would allow leasing of DAS by limited access permit holders in order to increase flexibility in the fishery and enable some participants to remain economically viable.

Timetable:

Action	Date	FR Cite
NPRM	04/24/03	68 FR 20096
Correction	05/09/03	68 FR 24914
Comment Period Extended	05/23/03	68 FR 28188
NPRM Comment Period End	05/27/03	
Correction	06/20/03	68 FR 36970
Final Rule	06/27/03	68 FR 38234
Final Rule	07/14/03	68 FR 41549
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul,
Regional Administrator, Northeast
Region, NMFS, Department of
Commerce, National Oceanic and
Atmospheric Administration, One
Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ72

668. CHANGES TO ELIGIBILITY CRITERIA FOR BERING SEA AND ALEUTIAN ISLANDS CRAB LICENSE LIMITATION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This rulemaking will amend eligibility criteria for Bering Sea and Aleutian Islands (BSAI) crab species licenses issued under the License Limitation Program which are necessary to participate in the BSAI crab fisheries. This action is necessary to allow participation in the BSAI crab fisheries in a manner intended by the North Pacific Fishery Management Council. The intended effect of this action is to prevent unnecessary restriction on the participation of vessels in the BSAI crab fisheries.

Timetable:

Action	Date	FR Cite
NPRM	04/30/03	68 FR 22667
NPRM Comment Period End	05/14/03	
Final Action	08/05/03	68 FR 46117
Correction	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,

Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ73

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669. ATLANTIC HIGHLY MIGRATORY SPECIES; ATLANTIC SWORDFISH QUOTAS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: The proposed rule would implement catch quotas for North and South Atlantic swordfish based on recommendations made by the International Commission for the Conservation of Atlantic Tunas at its 2002 meeting.

Timetable:

Action	Date	FR Cite
NPRM	06/20/03	68 FR 36967
NPRM Comment Period End	08/04/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910
Phone: 301 713–2334

RIN: 0648–AQ90

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670. ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); ATLANTIC SHARK MANAGEMENT MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This rule would implement management measures to amend some of the shark regulations currently issued under the Fishery Management Plan for Atlantic tunas, swordfish and sharks. Management measures that could change include commercial fishing quotas, recreational retention limits, minimum sizes, prohibited species, and the process for issuing permits for highly migratory species caught for display purposes. These changes would affect fishermen fishing for highly migratory species in the Atlantic, Gulf of Mexico, and Caribbean Sea.

Timetable:

Action	Date	FR Cite
Notice	11/15/02	67 FR 69180
NPRM	08/01/03	68 FR 45196
NPRM Comment Period End	09/30/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910
Phone: 301 713–2334

RIN: 0648–AQ95

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671. ANNOUNCEMENT OF THE OPTIMUM YIELD AND HARVEST LIMIT FOR PACIFIC MACKEREL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, July 2003, Final.
The Coastal Pelagics Fisheries regulations require that the annual specifications for Pacific mackerel will be published in the FR before July 1, the start of the fishing season.

Abstract: This rule will announce the annual harvest guidelines for Pacific mackerel in the exclusive economic zone off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to establish an annual harvest guideline for Pacific mackerel based on a formula in the FMP. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast.

Timetable:

Action	Date	FR Cite
NPRM	07/29/03	68 FR 44518
NPRM Comment Period End	08/13/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AQ96

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672. • AMENDMENT 77 TO THE FMP FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory action would supersede Amendment 64, the regulations for which are scheduled to expire on December 31, 2003. Amendment 77 continues to apportion the fixed gear allocation of total allowable catch (TAC) for Pacific cod in the Bering Sea among sectors of the fixed gear fleet (i.e., hook-and-line catcher vessels, catcher processors, pot vessels, and catcher vessels under 60 feet in length). Amendment 77 would for the first time split the pot sector, allocating the TAC further between pot catcher vessels and pot catcher/processors. Its implementing regulations would also change the provisions for unused portions of BSAI Pacific cod TAC allocated to the jig gear sector, which would be reallocated to catcher vessels under 60 feet in length on a seasonal basis.

Timetable:

Action	Date	FR Cite
Notice	07/22/03	68 FR 43342
Comment Period End	09/22/03	
NPRM	08/18/03	68 FR 49416

Action	Date	FR Cite
NPRM Comment Period End	10/02/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR31

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673. • MODIFICATION OF HOUSING REQUIREMENTS FOR OBSERVERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory rulemaking will amend the current observer regulations by modifying the housing requirements for observers. This modification of the regulations will provide flexibility in the deployment of observers and ensure the continued collection of high quality observer data.

Timetable:

Action	Date	FR Cite
NPRM	09/03/03	68 FR 52378
NPRM Comment Period End	10/03/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR32

674. • AMENDMENT 16–1 TO THE PACIFIC COAST GROUNDFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, August 2003, NPRM.
Final, Statutory, November 2003, Final.

Abstract: Amendment 16–1 to the Pacific Coast Groundfish Fishery Management Plan (FMP) would set the process and standards by which the Pacific Fishery Management Council (Council) will specify rebuilding plans for groundfish stocks declared overfished by the Secretary of Commerce. Amendment 16–1 is intended to ensure that Pacific Coast groundfish overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act,) in particular National Standard 1 on overfishing and § 304(e), which addresses rebuilding overfished fisheries. Amendment 16–1 is also intended to partially respond to a court order in Natural Resources Defense Council, Inc. et al., v. Donald Evans, Secretary of Commerce, et al., 168 F. Supp. 2d 1149 (N.D. Cal 2001) in which NOAA Fisheries was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. Amendment 16–1 will be followed by Amendment 16–2, which will implement rebuilding plans for canary rockfish, darkblotched rockfish, lingcod, and Pacific ocean perch. This action has been analyzed under the National Environmental Policy Act with an Environmental Assessment. This action is primarily administrative in nature and NMFS does not consider the action significant.

Timetable:

Action	Date	FR Cite
Notice	08/18/03	68 FR 49415
NPRM	09/05/03	68 FR 52732
NPRM Comment Period End	10/06/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AR36

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675. • EMERGENCY RULE TO CLOSE THE FEDERAL TILEFISH FISHERY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 usc 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would close the directed tilefish fishery based on projections that the overall quota of 1.995 million pounds has been reached. A recent court decision in Hadaja v. Evans (May 15, 2003), set aside the regulations found at 50 CFR 648(a)(12) which contain the Federal permitting requirements for the tilefish fishery, including the qualification criteria for the limited access permit system. As a result, there is currently no Federal permit requirement for a vessel that wishes to target tilefish in Federal waters. In addition, the quota system established for the tilefish fishery is divided among three limited access permit categories, which can be closed once the quota for a particular permit category is projected to be reached. Because there are technically no longer separate limited access permit categories as a result of the Court's decision, NMFS no longer has the authority to close the Federal tilefish fishery once the quota is projected to be reached since that authority was based on the limited access permit categories. As a result, NMFS is taking this emergency action under the authority of 16 USC 1824 section 305(c) to close the Federal tilefish fishery because the overall tilefish quota of 1.995 million pounds is projected to be reached prior to the end of the tilefish fishing year on October 31, 2003.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648-AR40

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676. • SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY MANAGEMENT PLAN; FRAMEWORK ADJUSTMENT 3

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: Framework 3 proposes a process to allow unused commercial scup quota from the Winter I period to be rolled over to the quota for the Winter II period. Commercial possession limits for the Winter II period also would be adjusted, based on the amount rolled over. Framework 3 also proposes a mechanism, for years when the Winter I commercial scup quota is completely harvested and the Winter I fishery is closed prior to April 15, and upon a State's written request, to allow for commercial landings of scup by State-only permitted vessels in that State that occur from April 15 through April 30 to be counted against that State's summer quota allocation.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648-AR43

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677. • FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA; REVISIONS TO OBSERVER PROGRAM IN THE NORTH PACIFIC GROUNDFISH FISHERIES; CORRECTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 60 CFR 679

Legal Deadline: None

Abstract: This action amends a December 30, 2002, final rule that implemented changes to regulations governing the American Fisheries Act (AFA). This final rule included revisions to the North Pacific Groundfish Observer Program (Observer Program). The action is necessary to correct an error in replacement text that occurred in the final rule.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648-AR46

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678. ATLANTIC LARGE WHALE 2002 SEASONAL AREA MANAGEMENT (SAM) PROGRAM

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: NPRM, Judicial, November 23, 2001, NPRM. Final, Judicial, December 31, 2001, Final.

Abstract: NMFS is preparing regulations to implement a SAM program for the 2002 fishing year, which was identified as a measure under the RPA that resulted from the biological opinions prepared for the Northeast multispecies, monkfish, spiny dogfish, and American lobster fisheries. The 2002 SAM program is intended as an incremental step to provide endangered western North Atlantic right whales protection from entanglement with fishing gear used in those fisheries. NMFS is preparing an EIS for more comprehensive SAM regulations for 2003 and beyond, in accordance with the National Environmental Policy Act (NEPA), to analyze the impacts on the human environment of the management alternatives under consideration. The measures that have been identified for the 2002 SAM proposed rulemaking requires reduction, elimination, and/or modification of certain types of fixed gear (i.e., gillnets and lobster traps) in specific areas off the Atlantic coast of the United States during times of the year when right whales are known to be present in significant concentrations.

Timetable:

Action	Date	FR Cite
ANPRM	10/03/01	66 FR 50390
ANPRM Comment Period End	11/02/01	
NPRM	11/28/01	66 FR 59394
NPRM Comment Period End	12/13/01	
Interim Final Rule	01/09/02	67 FR 1142
Interim Final Rule Comment Period End	02/08/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648-AP68

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679. PROVIDE REGULATIONS FOR PERMITS FOR CAPTURE, TRANSPORT, IMPORT, AND EXPORT OF PROTECTED SPECIES FOR PUBLIC DISPLAY, AND FOR MAINTAINING A CAPTIVE MARINE MAMMAL INVENTORY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1372 (c)

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: This rule will revise and simplify criteria and procedures specific to permits for taking, transporting, importing, and exporting protected species for public display and provide convenient formats for reporting marine mammal captive holdings and transports as required by amendments made in 1994 to the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35209
NPRM Comment Period Extended	08/22/01	66 FR 44109
NPRM Comment Period End	09/04/01	
Comment Period Extended	11/02/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tanya Dobrzynski, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2289

RIN: 0648–AH26

680. TAKING OF THE COOK INLET, ALASKA, STOCK OF BELUGA WHALES BY ALASKA NATIVES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1371

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS is regulating subsistence harvest of Cook Inlet Beluga to ensure that the harvest is sustainable and does not substantially delay the recovery of this marine mammal stock. Specific harvest levels and distribution of the harvest will be based upon cooperative agreements with Alaska native organizations.

Timetable:

Action	Date	FR Cite
NPRM	10/04/00	65 FR 59164
NPRM Comment Period End	11/27/00	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Governmental Jurisdictions

Government Levels Affected: Tribal, Federal

Agency Contact: Thomas C. Eagle, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13725, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2055
Fax: 301 713–4060
Email: tom.eagle@noaa.gov

RIN: 0648–AO16

681. LISTING ENDANGERED AND THREATENED WILDLIFE AND DESIGNATING CRITICAL HABITAT; 12-MONTH FINDING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, announces the 90-day finding for a petition to reclassify the Northern and Florida Panhandle nesting subpopulations of the loggerhead (Caretta caretta) sea turtle from threatened to endangered and designate critical habitat under the Endangered Species Act (ESA). The Services find that the petition to reclassify presents substantial scientific information indicating that the petitioned action may be warranted. The Services find that the petition to designate critical habitat did not provide substantial scientific information to warrant further review. The Services will conduct a status review of the loggerhead turtle to determine whether the petitioned action is warranted. To ensure a comprehensive review, the Services are soliciting information and comments pertaining to this species from any interested party.

Timetable:

Action	Date	FR Cite
NPRM	06/04/02	67 FR 38459
NPRM Comment Period End	08/05/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Therese Conant, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, Silver Spring, MD 20910
Phone: 301 713–1431
Fax: 301 713–0376

RIN: 0648–AP94

682. TAKING OF THREATENED OR ENDANGERED SPECIES INCIDENTAL TO COMMERCIAL FISHING OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 222; 50 CFR 223

Legal Deadline: None

Abstract: The National Marine Fisheries Service (NMFS) proposes to prohibit drift gillnet fishing in U.S. ocean waters off of southern California south of Point Conception (34 degrees 27 minutes N) and west to 120 degrees W longitude from August 15 to August 31, and from January 1 to January 31, during El Nino events.

Timetable:

Action	Date	FR Cite
NPRM	09/20/02	67 FR 59243
NPRM Comment Period End	10/21/02	
Interim Final Rule	12/24/02	67 FR 78388
Interim Final Rule Comment Period End	02/07/03	
Comment Period Extended	02/12/03	68 FR 7080
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Therese Conant, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, Silver Spring, MD 20910
Phone: 301 713–1431
Fax: 301 713–0376

RIN: 0648–AQ13

683. ACCESS TO TISSUE SPECIMEN SAMPLES FROM THE NATIONAL MARINE MAMMAL TISSUE BANK

Priority: Substantive, Nonsignificant

Legal Authority: 16 CFR 1361

CFR Citation: 50 CFR 216.22

Legal Deadline: None

Abstract: The National Marine Tissue Bank (NMMTB) proposes to make available tissue specimen samples to the scientific community for research that is consistent with the goal of the NMMTB. The intent of this proposed rule is to allow the scientific community the opportunity to comment on the protocol for requests for tissue specimen samples.

Timetable:

Action	Date	FR Cite
NPRM	11/12/02	67 FR 68553
NPRM Comment Period End	12/12/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AQ51

684. • JOINT COUNTERPART REGULATIONS WITH FS, BLM, BIA, FWS, NPS, AND NOAA FISHERIES UNDER SECTION 7 OF THE ESA

Priority: Info./Admin./Other

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 402

Legal Deadline: None

Abstract: The notice of proposed rulemaking will modify the way section 7 consultations are conducted under the Endangered Species Act. This modification will apply to activities that support the National Fire Plan (NFP) and would eliminate the need to obtain written concurrence when an action agency determines that an action that implements the NFP is not likely to adversely affect a listed species.

Timetable:

Action	Date	FR Cite
NPRM	06/05/03	68 FR 33805
NPRM Comment Period End	08/04/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Phil Williams, Chief, Endangered Species Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1401
Fax: 301 713–0376

RIN: 0648–AR05

NATIONAL OCEAN SERVICE/OFFICE OF MINERAL ENERGY

685. • COASTAL ZONE MANAGEMENT ACT FEDERAL CONSISTENCY REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1451

CFR Citation: 15 CFR 930

Legal Deadline: None

Abstract: The National Oceanic and Atmospheric Administration revises the Federal Consistency regulations under the Coastal Zone Management Act. This rule addresses the CZMA-related recommendations of the Report of the National Energy Policy Development Group (Energy Report) as described in NOAA's July 2, 2002 Advanced Notice of Proposed Rulemaking (67 FR 44407). This rule seeks to make improvements to the Federal Consistency regulations to clarify some sections and to provide greater transparency and predictability to the Federal Consistency regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/11/03	68 FR 34851
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David W. Kaiser, Federal Consistency Coordinator, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910
Phone: 301 713–3155
Fax: 301 713–4367
Email: david.kaiser@noaa.gov

RIN: 0648–AR16

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)
Long-Term Actions

NATIONAL MARINE FISHERIES SERVICE

686. • ANNUAL SPECIFICATIONS FOR FISHING YEAR 2005 FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would establish annual specifications for the summer flounder, scup and black sea bass fishery for fishing year 2005.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	
NPRM Comment Period End	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930

Phone: 978 281–9200

RIN: 0648–AR51

687. • ANNUAL SPECIFICATIONS FOR THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERY FOR FISHING YEAR 2005

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Atlantic Mackerel, Squid & Butterfish Fishery for fishing year 2005.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	
NPRM Comment Period End	11/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR56

688. • ANNUAL SPECIFICATIONS FOR THE ATLANTIC BLUEFISH FISHERY FOR FISHING YEAR 2005

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Atlantic Bluefish Fishery for fishing year 2005.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	
NPRM Comment Period End	11/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR57

689. • ANNUAL SPECIFICATIONS FOR THE DEEP-SEA RED CRAB FISHERY FOR FISHING YEAR 2005

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Deep-Sea Red Crab Fishery for fishing year 2005.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	
NPRM Comment Period End	01/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR59

690. INTERAGENCY POLICY ON THE PRESCRIPTION OF FISHWAYS UNDER SECTION 18 OF THE FEDERAL POWER ACT

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 385.713

Timetable:

Action	Date	FR Cite
Notice	12/22/00	65 FR 80898
Notice Comment Period End	02/20/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kathryn Conant
Phone: 301 713–2325
Fax: 301 713–1043
Email: kathryn.conant@noaa.gov

RIN: 0648–AO70

691. POLICY FOR REVIEW OF MANDATORY CONDITIONS DEVELOPED BY THE DEPARTMENTS OF THE INTERIOR AND COMMERCE IN THE CONTEXT OF HYDROPOWER LICENSING

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 385.713

Timetable:

Action	Date	FR Cite
Notice	12/13/00	65 FR 77889
Notice Comment Period End	01/03/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Kathryn Conant
Phone: 301 713–2325
Fax: 301 713–1043
Email: kathryn.conant@noaa.gov

RIN: 0648–AO84

692. DESIGNATED CRITICAL HABITAT: PROPOSED CRITICAL HABITAT FOR NORTHERN CALIFORNIA STEELHEAD

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 226

Timetable:

Action	Date	FR Cite
NPRM	12/19/00	65 FR 79328
NPRM Comment Period End	02/20/01	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barry Thom
Phone: 301 713–1401
Email: barry.thom@noaa.gov

RIN: 0648–AO04

DOC—NOAA Long-Term Actions

NATIONAL OCEAN SERVICE/OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

693. INSTALLING AND MAINTAINING COMMERCIAL SUBMARINE CABLES IN NATIONAL MARINE SANCTUARIES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 922

Timetable:

Action	Date	FR Cite
ANPRM	08/23/00	65 FR 51264
ANPRM Comment Period End	10/23/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Helen Golde
Phone: 301 713–3145

RIN: 0648–AO36

694. PROCEDURAL CHANGES TO THE FEDERAL CONSISTENCY PROCESS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 930

Timetable:

Action	Date	FR Cite
ANPRM	07/02/02	67 FR 44407
ANPRM Comment Period End	09/03/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: David W. Kaiser
Phone: 301 713–3155
Fax: 301 713–4367
Email: david.kaiser@noaa.gov

RIN: 0648–AP98

OFFICE OF THE ADMINISTRATOR

695. REGIONAL MARINE RESEARCH PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Don Scavia
Phone: 301 713–3060

RIN: 0648–AF20

Department of Commerce (DOC) National Oceanic and Atmospheric Administration (NOAA) Completed Actions

696. ESTABLISH CENTRAL REGISTRY FOR LIMITED ACCESS SYSTEM PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 600

Legal Deadline: None

Abstract: This action will establish a central registry for limited access system permits as required by the Magnuson-Stevens Fishery Conservation and Management Act section 305(h).

Timetable:

Action	Date	FR Cite
ANPRM	05/07/97	62 FR 24897
ANPRM Comment Period End	08/05/97	
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Charles L. Cooper, Program Leader, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2396
Email: charles.cooper@noaa.gov

RIN: 0648–AJ77

697. REGULATORY AMENDMENT TO ALLOCATE PACIFIC HALIBUT TO THE CHARTER BOAT FLEET

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 773c

CFR Citation: 50 CFR 300

Legal Deadline: Final, Statutory, Final.

Abstract: This action establishes measures to manage the halibut charter boat industry off Alaska.

Timetable:

Action	Date	FR Cite
NPRM	01/28/02	67 FR 3867
NPRM Comment Period End	02/27/02	
Final Action	08/08/03	68 FR 47264

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AK17

698. REGULATORY AMENDMENT TO REINSTATE 6,000-POUND TRIP LIMIT OF HALIBUT IN AREA NORTHEAST OF THE BERING SEA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final.

Abstract: This regulatory amendment would reinstate a 6000-pound halibut trip limit in the halibut management area northeast of the Bering Sea.

Timetable:

Action	Date	FR Cite
NPRM	10/15/02	67 FR 63600
NPRM Comment Period End	11/14/02	
Final Action	03/03/03	68 FR 9902

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AL97

699. CRUSTACEANS, BOTTOMFISH, AND PELAGICS FMP AMENDMENTS REGARDING OVERFISHING DEFINITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved overfishing definitions and bycatch provisions and fishing community definitions (0648–AP54, 0648–AP55).

Timetable:

Action	Date	FR Cite
Notice	04/07/03	68 FR 16754
Comment Period End	06/06/03	
Final Action	08/05/03	68 FR 46112

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AN79

700. MANAGEMENT MEASURES FOR THE NORTHEAST SKATE COMPLEX

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final.

Abstract: This action would establish a fishery management plan for the seven species of skates found in the Northeast. Management measures would be established to end overfishing on two of the seven species of skate and to provide basic protection for the remaining five species.

Timetable:

Action	Date	FR Cite
Notice	05/01/03	68 FR 23275
NPRM	06/04/03	68 FR 33432
Comment Period End	06/30/03	
NPRM Comment Period End	07/07/03	
Final Action	08/19/03	68 FR 49693
Final Action Effective	09/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AO10

701. ATLANTIC HIGHLY MIGRATORY SPECIES FISHERIES; ATLANTIC BLUEFIN TUNA INCIDENTAL CATCH

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS is considering rulemaking on modifications to the target catch requirements for the incidental longline fishery for Atlantic bluefin tuna (BFT). NMFS requests comments on possible changes to Atlantic tuna regulations prior to drafting proposed changes to those regulations.

Timetable:

Action	Date	FR Cite
ANPRM	11/17/00	65 FR 69492
ANPRM Comment Period End	12/14/00	
Comment Period Extended	01/16/01	
NPRM	12/24/02	67 FR 78404
NPRM Comment Period End	02/07/03	
Final Action	05/30/03	68 FR 32414

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Rogers, Chief for Highly Migratory Species, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13563, Bldg. SSMC3, Stop F/SF1, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2347
Fax: 301 713–1917

RIN: 0648–AO75

702. AMERICAN LOBSTER FISHERY; REVISIONS TO LOBSTER TRAP LIMITS, CONSERVATION EQUIVALENCY IN NEW HAMPSHIRE WATERS, AND CLARIFICATION OF LOBSTER MANAGEMENT BOUNDARIES PER ADDENDUM 1

Priority: Other Significant

Legal Authority: 16 USC 5101 et seq

CFR Citation: 50 CFR 697

Legal Deadline: None

Abstract: NMFS announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for Federal permit holders associated with Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP). Addendum I to Amendment 3 of the ISFMP, approved by the Atlantic States Marine Fisheries Commission (ASMFC) on August 3, 1999, provides for the control of fishing effort as determined by historical participation in the American lobster trap fisheries in offshore waters of the Exclusive Economic Zone (EEZ) and areas of the EEZ closer to shore between New York and North Carolina. The addendum also clarifies lobster management area boundaries in Massachusetts waters. In addition, the ISFMP calls for the implementation of conservation equivalent trap limits in New Hampshire waters.

Timetable:

Action	Date	FR Cite
NPRM	01/03/02	67 FR 282
Comment Period Extended	02/19/02	67 FR 4697
NPRM Comment Period End	02/19/02	
Final Action	03/27/03	68 FR 14902

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Federal

Agency Contact: Thomas Meyer, Fisheries Biologist, Office of Intergovernmental/Recreational Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 425, 8484 Georgia Avenue, Silver Spring, MD 20910
Phone: 301 427–2014

RIN: 0648–AP15

703. BOTTOMFISH AND PELAGICS FISHERIES FMP AMENDMENTS REGARDING BYCATCH PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved bycatch provisions.

Timetable:

Action	Date	FR Cite
Notice	04/07/03	68 FR 16754
Comment Period End	06/06/03	
Final Action	08/05/03	68 FR 46112

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AP54

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704. BOTTOMFISH, CRUSTACEANS, PELAGICS, AND PRECIOUS CORALS FISHERIES FMP AMENDMENTS REGARDING FISHING COMMUNITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved categorization of the State of Hawaii as a fishing community.

Timetable:

Action	Date	FR Cite
Notice	04/07/03	68 FR 16754
Comment Period End	06/06/03	
Final Action	08/05/03	68 FR 46112

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 973–2985

RIN: 0648–AP55

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705. ANTARCTIC MARINE LIVING RESOURCES VESSEL MONITORING SYSTEM AND CATCH DOCUMENTATION SCHEME

Priority: Other Significant

Legal Authority: 16 USC 2341 et seq

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rule would lengthen the duration of the permit required to enter a Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Ecosystem Monitoring Program (CEMP) site from one year to five years. The rule would define the CCAMLR fishing season and require the use of an automated satellite-linked vessel monitoring system (VMS) for U.S. vessels harvesting Antarctic marine living resources (AMLR) in the area of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The rule would also require a non-resident consignee to designate a resident agent; prohibit the importation of Dissostichus species declared as harvested in certain high seas areas outside the Convention area; prohibit the import of Dissostichus species issued a Specially Validated Dissostichus Catch Document (SVDCD); provide guidance on the disposition of AMLR seized by law enforcement personnel; and propose regulations to modify requirements for U.S. receivers and importers of Dissostichus species harvested in all waters, including those under the jurisdiction of CCAMLR. This rule is intended to implement U.S. obligations as a member of CCAMLR and to conserve Antarctic and Patagonian toothfish by preventing and discouraging unlawful harvest and trade in these species.

Timetable:

Action	Date	FR Cite
NPRM	10/22/02	67 FR 64853
NPRM Comment Period End	11/18/02	
Final Action	05/01/03	68 FR 23224

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Dean Swanson, Chief, International Fisheries Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2276
Email: dean.swanson@noaa.gov

RIN: 0648–AP74

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706. EXTENSION OF AN EMERGENCY INTERIM RULE TO IMPLEMENT 2002 STELLER SEA LION PROTECTION MEASURES AND HARVEST SPECIFICATIONS FOR THE BERING SEA/ALEUTIAN ISLANDS AREA AND THE GULF OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 773 et seq; 16 USC 1801 et seq; 16 USC 3631 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Other, Statutory, July 8, 2002, Other.

Abstract: The extension of an emergency interim rule continues to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. This action also extends final 2002 harvest specifications and associated management measures for the groundfish fisheries of the Bering Sea and Aleutian Islands management area and the Gulf of Alaska through December 31, 2002.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/02	67 FR 34860
Correction	10/18/02	67 FR 64315

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ02

707. SUBSISTENCE FISHERY FOR PACIFIC HALIBUT IN WATERS OFF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 773–773k

CFR Citation: 50 CFR 300; 50 CFR 679

Legal Deadline: None

Abstract: NMFS proposes regulations to authorize a subsistence fishery for Pacific halibut in waters off Alaska. These regulations are necessary to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a noncommercial manner. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Timetable:

Action	Date	FR Cite
NPRM	08/26/02	67 FR 54767
NPRM Comment Period End	09/25/02	
Final Action	04/15/03	68 FR 18145
Correction	05/15/03	68 FR 26230

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ09

708. CAPITAL CONSTRUCTION FUND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 1177

CFR Citation: 50 CFR 259

Legal Deadline: None

Abstract: This action simplifies and clarifies program regulations and eases restrictions on reconstructions to promote fleet safety, reliability, and efficiency.

Timetable:

Action	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles L. Cooper, Program Leader, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2396
Email: charles.cooper@noaa.gov

RIN: 0648–AQ16

709. 2003–2004 MANAGEMENT MEASURES FOR COMMERCIAL, RECREATIONAL, AND TREATY INDIAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, May 2003, Final.

Abstract: The annual management measures for the 2003–2004 fishing year specify allowable ocean harvest levels (including quotas), allocations, management boundaries and zones, minimum size limits, gear definitions, seasons, selective fisheries, and in-season notice procedures.

Timetable:

Action	Date	FR Cite
Final Action	05/06/03	68 FR 23913

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AQ17

710. SECRETARIAL AMENDMENT 2 TO REEF FISH FISHERY MANAGEMENT PLAN TO SET GREATER AMBERJACK SUSTAINABLE FISHERIES ACT TARGETS AND THRESHOLDS AND TO SET REBUILDING PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: NPRM, Statutory, December 2002, NPRM.
Final, Statutory, January 2003, Final.

Abstract: The greater amberjack resource in the Gulf of Mexico was declared overfished by the National Marine Fisheries Service (NMFS) on February 9, 2001. This determination was based on the 2000 greater amberjack stock assessment conducted by the NMFS Southeast Fisheries Science Center (SEFSC) (Turner et al. 2000) and the December 2000 Report of the Reef Fish Stock Assessment Panel (RFSAP) (GMFMC 2000). The results of several analyses indicated that the stock biomass was below the level needed to sustain harvest at maximum sustainable yield (MSY), with the best estimate indicating that the stock biomass was at less than half the biomass needed to sustain MSY, below the minimum level allowed under the 1998 NMFS National Standard Guidelines.

Currently, the Reef Fish Fishery Management Plan (FMP) requires that overfished stocks be restored to a level of 20 percent transitional spawning potential ratio (SPR) within one and a half generation times. A generation time is the average time it would take a year class in an unfished population to replace itself. However, in order to comply with the requirements of the NMFS National Standard Guidelines (NSG), new biomass based targets and recovery time frame parameters need to be implemented. The greater amberjack resource is not considered by NMFS to be undergoing overfishing at this time due to Council actions taken in 1997 and 1998 as cited in section 3.0 (1998 is the final year of data in the stock assessment). Consequently, actions to further reduce fishing mortality are not needed at this time.

This secretarial amendment proposes no changes to the current fishing regulations for greater amberjack, but does propose to establish new biomass based targets and thresholds as well as the establishment of a ten-year rebuilding plan. These measures would be in compliance with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, Sustainable Fisheries Act (SFA), NMFS NSGs, and NMFS technical guidance on implementing National Standard 1 (Restrepo et al. 1998).

Timetable:

Action	Date	FR Cite
NPRM	03/14/03	68 FR 12344
NPRM Comment Period End	05/13/03	
Final Action	07/03/03	68 FR 39898

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AQ24

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711. ANNUAL SPECIFICATIONS FOR THE ATLANTIC BLUEFISH FISHERY FOR FISHING YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement the annual specifications for the Atlantic Bluefish Fishery for fishing year 2003.

Timetable:

Action	Date	FR Cite
NPRM	01/06/03	68 FR 533
NPRM Comment Period End	01/21/03	
Final Action	05/12/03	68 FR 25305

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ26

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712. FRAMEWORK 2 TO THE MONKFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This framework would amend the overfishing criteria in the Monkfish Fishery Management Plan and establish measures for fishing year 2003–2004.

Timetable:

Action	Date	FR Cite
NPRM	03/07/03	68 FR 11023
NPRM Comment Period End	03/24/03	
Final Action	04/28/03	68 FR 22325
Correction	06/20/03	68 FR 36946

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ29

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713. RECREATIONAL SPECIFICATIONS FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY FOR FISHING YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement recreational measures for the 2003 fishing year for the summer flounder, scup, and black sea bass fishery.

Timetable:

Action	Date	FR Cite
NPRM	05/21/03	68 FR 27768
NPRM Comment Period End	06/05/03	
Final Action	07/28/03	68 FR 44232

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ32

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714. SPECIFICATIONS FOR THE 2003–2004 FISHING YEAR FOR THE SPINY DOGFISH FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement specifications for the 2003–2004 fishing year for the spiny dogfish fishery.

Timetable:

Action	Date	FR Cite
NPRM	03/10/03	68 FR 11346
NPRM Comment Period End	03/25/03	
Final Action	04/18/03	68 FR 19160

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ34

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715. FRAMEWORK 37 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This framework action would establish year-4 measures for the whiting fishery.

Timetable:

Action	Date	FR Cite
NPRM	02/25/03	68 FR 8731
NPRM Comment Period End	03/27/03	
Final Action	06/28/03	68 FR 22333

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ35

716. ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); LARGE AND SMALL COASTAL SHARK COMMERCIAL MANAGEMENT MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: The rule would address large and small coastal shark commercial management measures based on new stock assessments.

Timetable:

Action	Date	FR Cite
Emergency Rule	12/27/02	67 FR 78990
Final Action	05/29/03	68 FR 31987

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1917
Email: john.dunnigan@noaa.gov

RIN: 0648–AQ39

717. EFH AMENDMENTS TO THE BOTTOMFISH, CRUSTACEANS, AND PRECIOUS CORALS FMPS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, February 2003, NPRM.
Final, Statutory, May 2003, Final.

Abstract: Amendment 8, to the Bottomfish FMP, Amendment 12 to the Crustaceans FMP, and Amendment 6 to the Precious Corals FMP would revise the Essential Fish Habitat portions of the subject FMPs and include the Commonwealth of the Northern Mariana Islands and the Pacific Remote Island Areas exclusive economic zones under Western Pacific Fishery Management Council developed management plans.

Timetable:

Action	Date	FR Cite
Withdrawn	08/22/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700
Phone: 808 973–2985

RIN: 0648–AQ43

718. INCREASE IN ALLOWABLE PERCENTAGE OF POLLOCK ROE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 773 et seq; 16 USC 1801 et seq; 16 USC 3631 et seq; PL 106–31; PL 105–277

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory amendment would increase from 7 to 9 percent the percentage of pollock roe that may be retained by operators of catcher/processors and motherships processing pollock harvested in the BSAI. This action is necessary because catcher/processors and motherships have been able to increase their pollock roe recovery rate since the passage of the American Fisheries Act through cooperative fishing practices and more precise timing of fishing activity.

Timetable:

Action	Date	FR Cite
NPRM	02/11/03	68 FR 6865
NPRM Comment Period End	03/13/03	
Final Action	07/09/03	68 FR 40812

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ44

719. OPENING WATERS TO PACIFIC COD POT FISHING OFF CAPE BARNABAS AND CATON ISLAND IN THE GULF OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action would remove restriction on directed fishing for Pacific cod by federally permitted vessels using pot gear in waters within 3 nautical miles of Cape Barnabas and Caton Island Steller sea lion haulouts in the Gulf of Alaska. This action is necessary to provide consistency between State of Alaska and Federal fishing regulations.

Timetable:

Action	Date	FR Cite
NPRM	02/18/03	68 FR 7750
NPRM Comment Period End	03/20/03	
Final Action	05/28/03	68 FR 31629

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ45

720. FRAMEWORK 3 TO THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: The action will extend the moratorium on entry to the Illex fishery while the Mid-Atlantic Fishery Management Council addresses the moratorium issue in Amendment 9 to the Atlantic Mackerel, Squid, and Butterfish FMP. This extension is needed because the Illex moratorium program expires in July 1, 2003.

Timetable:

Action	Date	FR Cite
NPRM	03/26/03	68 FR 14571
NPRM Comment Period End	04/10/03	
Final Action	05/29/03	68 FR 31988

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ57

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721. AMENDMENT 17 TO THE PACIFIC COAST GROUNDFISH FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, February 2003, NPRM.

Abstract: Since 1990, the Pacific Fishery Management Council (Council) has annually developed its recommendations for specifications and management measures in a two-meeting process (usually its September and November meetings) followed by a NMFS final action published in the Federal Register and made available for public comment and correction after the effective date of the action. In 2001, NMFS was challenged on this process in Natural Resources Defense Council, Inc. v. Evans, 2001 168 F.Supp. 2d 1149 (N.D. Cal. 2001) and the court ordered NMFS to provide prior public notice and allow public comment on the annual specifications. Amendment 17 would respond to the court's order by revising the FMP's framework for developing specifications and management measures to incorporate NMFS publication of a proposed rule for the specifications and management measures, followed by a public comment period and a final rule. Amendment 17 would also respond to NMFS regulatory streamlining initiatives by implementing a biennial specifications and management measures process for Pacific Coast groundfish. Finally, it allows additional time for Council development of the management measures.

Timetable:

Action	Date	FR Cite
NPRM	06/13/03	68 FR 35354
NPRM Comment Period End	07/28/03	
Final Action	09/04/03	68 FR 52519

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AQ68

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722. CORRECTED AMENDMENT FOR A CHARTER VESSEL/HEADBOAT PERMIT MORATORIUM AMENDING THE GULF REEF FISH AND COASTAL PELAGICS FMPS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, June 1, 2003, Final.

Abstract: The National Marine Fisheries Service (NOAA Fisheries) promulgated the charter moratorium regulations (FR 67, 43558, June 28, 2002) to implement Amendment 14 to the Fishery Management Plan for the Coastal Migratory Fishery of the Gulf of Mexico and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. However, after reviewing the administrative record, NOAA General Counsel, NOAA Fisheries and the Gulf of Mexico Fishery Management Council (Council) determined that the amendment contained an error that did not correctly reflect the actions approved by the Council. Thus, the regulations implementing the amendment also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations. In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendment, and to fully comply with Magnuson-Stevens Fishery Conservation and Management Act requirements, NOAA Fisheries is submitting this corrected amendment for Secretarial review to address this error and, as such, to reflect the actions approved by the Council. Specifically, this corrected amendment will eliminate one eligibility criteria in the final rule which states that the charter vessel headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to an owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002).

Timetable:

Action	Date	FR Cite
Notice	03/04/03	68 FR 10180
NPRM	03/12/03	68 FR 11794
NPRM Comment Period End	03/27/03	
Final Action	05/15/03	68 FR 26291
Correction	06/27/03	68 FR 38232

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AQ70

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723. NOTICE OF TECHNICAL REVISION TO RIGHT WHALE NOMENCLATURE AND TAXONOMY UNDER THE U.S. ENDANGERED SPECIES ACT

Priority: Info./Admin./Other

Legal Authority: 16 USC 1531 to 1543; 16 USC 1361 et seq

CFR Citation: 50 CFR 222; 50 CFR 226

Legal Deadline: None

Abstract: NOAA Fisheries is revising the nomenclature and taxonomy for the northern right whale, Balaena glacialis, as it was listed in the List of Endangered and Threatened Wildlife revised October 1, 1999. With this revision, the northern right whale will now be classified as two separate species, the North Atlantic right whale, Eubalaena glacialis, and the North Pacific right whale, Eubalaena japonica. This revision is being made to reflect the currently accepted nomenclature for the genus as well as the genetic distinctiveness now recognized between Pacific and Atlantic right whale populations in the northern hemisphere. NOAA Fisheries is also updating the formerly used genus Balaena to the genus Eubalaena to conform to the scientific name currently accepted by the scientific community and supported by the scientific literature.

Timetable:

Action	Date	FR Cite
Final Action	04/10/03	68 FR 17560

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tanya Dobrzynski, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2289

RIN: 0648–AQ74

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724. REVISE ELIGIBILITY CRITERIA FOR BSAI PACIFIC COD ENDORSEMENTS TO GROUNDFISH LICENSES ISSUED UNDER THE LICENSE LIMITATION PROGRAM (LLP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory amendment would correct the eligibility criteria for a Pacific cod endorsement for the hook-and-line or pot gear fisheries so that a person may use BSAI Pacific cod harvests to meet the eligibility criteria for the Pacific cod endorsement if the person owned the qualifying fishing history which gave rise to a valid LLP groundfish license at the time he or she harvested Pacific cod to meet the eligibility criteria for a Pacific cod endorsement.

Timetable:

Action	Date	FR Cite
NPRM	04/24/03	68 FR 20360
NPRM Comment Period End	05/27/03	
Final Action	07/30/03	68 FR 44666

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ75

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725. FRAMEWORK ADJUSTMENT 38 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This adjustment would modify existing multispecies regulations to establish a seasonal whiting grate raised footrope trawl fishery in the inshore Gulf of Maine.

Timetable:

Action	Date	FR Cite
NPRM	05/21/03	68 FR 27774
NPRM Comment Period End	06/05/03	
Final Action	07/09/03	68 FR 40808
Correction	08/08/03	68 FR 47264

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ76

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726. IMPLEMENT BSAI FMP AMENDMENT 75—DELAYING IMPLEMENTATION OF IMPROVED RETENTION/IMPROVED UTILIZATION OF FLATFISH

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This amendment would delay the effective date of requirements for 100 percent retention and utilization of rock sole and yellowfin sole from January 1, 2003, until June 1, 2004. The North Pacific Fishery Management Council (Council) submitted Amendment 75 to provide the Council and the affected industry with additional time to develop and assess alternatives to address groundfish discards in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area.

Timetable:

Action	Date	FR Cite
NPRM	03/28/03	68 FR 15144
NPRM Comment Period End	05/12/03	
Final Action	09/02/03	68 FR 52142

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AQ78

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727. CONTROL DATE FOR THE SMALL MESH MULTISPECIES (SILVER HAKE, OFFSHORE HAKE, AND RED HAKE) FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would announce that the New England Fishery Management Council intends to develop a new amendment to address limited access in the small mesh multispecies fishery. A new control date would reflect current participation levels, should the Council require such a benchmark when developing a new limited access program. The new control date would enable the Council to inform the industry that the Council is considering future action to control the number of participants in the fishery and that anyone entering the fishery after the control date will not be assured of future access, should a management regime that limits the number of participants in the fishery be prepared and implemented.

Timetable:

Action	Date	FR Cite
Final Action	03/25/03	68 FR 14388

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul,
Regional Administrator, Northeast
Region, NMFS, Department of
Commerce, National Oceanic and
Atmospheric Administration, One
Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AQ89

728. WEST COAST COASTAL PELAGIC FISHERIES SARDINE ALLOCATION SYSTEM CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, July 2003, Final.
Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This rule will implement changes in the allocation process and criteria for Pacific sardine under the Fishery Management Plan for Coastal Pelagic Species Fisheries off the West Coast. The annual quota is set for all fishing coast wide, but the allocation system recognizes that there is seasonality in the availability of the fish to different portions of the coast. The current allocation system is being reviewed because some interests believe it unnecessarily restricts the fisheries and prevents achievement of the full allowable harvest of Pacific sardine. However, the current system was intended to ensure that fishing interests with long-standing involvement in the fishery would not be unfairly disadvantaged relative to new entrants into the fishery. The fishery has recently expanded to waters off Oregon and Washington, and these new entrants would like better opportunity to ensure that the full quota will be taken each year. Southern interests are concerned that there is too little known about the relationship between the northern component of the sardine stock and the southern component. Research is planned to address this point. However, a temporary adjustment in the allocation system may be warranted while this research is being conducted.

Timetable:

Action	Date	FR Cite
NPRM	06/26/03	68 FR 37995
NPRM Comment Period End	07/28/03	
Final Action	09/04/03	68 FR 52523

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Svein Fougner,
Assistant Regional Administrator for
Sustainable Fisheries, Department of
Commerce, National Oceanic and
Atmospheric Administration,
Southwest Region, 501 W. Ocean
Boulevard, Long Beach, CA 90802
Phone: 562 980–4040

RIN: 0648–AQ94

729. • COMMERCIAL SHRIMP FISHERY OF THE GULF OF MEXICO; ESTABLISH A CONTROL DATE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: None

Abstract: The Gulf of Mexico Fishery Management Council (GMFMC) voted unanimously to establish a control date effective December 6, 2003, for Federally permitted shrimp vessels fishing in the exclusive economic zone of Gulf of Mexico (Gulf EEZ). The GMFMC anticipates that future action may be necessary to control effort and the number of participants engaged in the commercial shrimp fishery of the Gulf EEZ. Consideration of a control date does not commit the GMFMC or NMFS to any particular management regime for entry into the commercial shrimp fishery. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. The GMFMC subsequently may choose a different control date or they may choose a management regime that does not make use of a control date. The GMFMC also may choose to take no further action to control entry or access to the fisheries, in which case the control date may be rescinded.

Timetable:

Action	Date	FR Cite
Final Action	04/29/03	68 FR 22667

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Crabtree,
Regional Administrator, Southeast
Region, Department of Commerce,
National Oceanic and Atmospheric
Administration, National Marine
Fisheries Service, 9721 Executive
Center Drive N., St. Petersburg, FL
33702–2432
Phone: 727 570–5305
Fax: 727 570–5583

RIN: 0648–AR00

730. • NOTICE OF A CONTROL DATE FOR LOLIGO AND ILLEX SQUID

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Other, Statutory, May 30, 2003, Other.

Abstract: NMFS announces that it is considering, and is seeking public comment on proposed rulemaking to control future access to the Illex (Illex illecebrosus)and Loligo (Loligo pealei) fisheries under the Magnuson-Stevens Fishery Conservation and Management Act. This announcement is intended, in part, to discourage speculative entry and increases in effort or capacity in these fisheries while the Mid-Atlantic Fishery Management Council and NMFS consider alternative allocation schemes and whether and how to control capacity in the Illex and Loligo fisheries.

Timetable:

Action	Date	FR Cite
Final Action	05/21/03	68 FR 27774

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Kurkul,
Regional Administrator, Northeast
Region, NMFS, Department of
Commerce, National Oceanic and
Atmospheric Administration, One
Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9200

RIN: 0648–AR01

731. ● CORRECTION TO REGULATORY AMENDMENT TO REDEFINE VESSEL LENGTH OVERALL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action would correct figure 6 to part 679 published in the final rule of September 12, 2001 (66 FR 47416), which implemented changes to the definition of length overall (LOA) of a vessel. This action corrects errors in the figure.

Timetable:

Action	Date	FR Cite
Final Action	04/24/03	68 FR 20083
Correction	05/06/03	68 FR 23925

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249

RIN: 0648–AR04

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732. ● ATLANTIC HIGHLY MIGRATORY SPECIES (HMS) FISHERIES; VESSEL MONITORING SYSTEMS (VMS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: On May 28, 1999, the National Marine Fisheries Service (NMFS) issued a regulation (64 FR 29090) codified at 50 CFR 635.69(a), requiring all commercial pelagic longline vessels fishing for Atlantic HMS to install a NMFS-approved VMS unit. Due to litigation, the requirement was stayed indefinitely on October 1, 2000 (66 FR 1907, January 10, 2001). On October 15, 2002, the U.S. District Court for the District of Columbia issued a final order upholding the VMS regulation. This rule would amend the effective date for the requirement to have a NOAA-approved, VMS unit installed and operating on any vessel leaving port to fish for HMS with pelagic longline gear on board to September 1, 2003.

Timetable:

Action	Date	FR Cite
Final Action	08/01/03	68 FR 45169

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910
Phone: 301 713–2334

RIN: 0648–AR29

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733. ● ENDANGERED AND THREATENED WILDLIFE; SEA TURTLE CONSERVATION REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531; 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: NMFS intends to publish a proposed rule amending the regulation requiring certain kinds of turtle excluder devices (TEDs) in shrimp fisheries. Sea turtles, listed pursuant to the Endangered Species Act, drown when caught in shrimp trawl gear. NMFS and fishermen have developed several models of TEDs, which in different fashions exclude sea turtles. On February 21, 2003 (68 FR 8456), NMFS issued a regulation requiring TEDs with larger openings that would allow leatherback and larger loggerhead sea turtles to escape. The rule becomes effective in the Gulf of Mexico on August 21 of this year. One of the provisions is that those who shrimp in offshore waters in the Gulf of Mexico may as of August 21 no longer use the popular Coulon TED. Louisiana fishermen developed this TED and many like it because it retains shrimp but excludes not only sea turtles but also other fish. Because the Gulf shrimp trawlers wanted to continue using the Coulon TED, the agency tested a modified Coulon TED, based on its regulatory protocols (50 CFR 223.207(e)) for approving the use of new TEDs, and determined that a modified Coulon TED both met the protocol requirements and excluded the larger turtles. Agency scientists describe this modified Coulon TED as the best they have ever seen at excluding smaller turtles. The agency now wishes to amend the newest TED rule to permit shrimp trawlers to use the Coulon TED as one option in offshore waters.

This amendment to the TED rule is not expected to be controversial, as it permits offshore Gulf of Mexico shrimp trawlers to retain a popular option. Further, because the modified Coulon TED permits larger turtles to escape as well as making escape for smaller turtles very easy, environmental groups should also find this amendment acceptable.

Timetable:

Action	Date	FR Cite
NPRM	07/30/03	68 FR 44722
NPRM Comment Period End	08/14/03	
Final Action	08/27/03	68 FR 51508

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Agency Contact: Laurie K. Allen, Acting Director, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713–2332

RIN: 0648–AR34

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734. ● EFFECTIVENESS OF COLLECTION-OF-INFORMATION REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: A final rule that implemented the measures contained in Amendment 61/61/13/8 was published in the Federal Register on December 30, 2002 (67 FR 79692), and most of the measures were effective January 29, 2003. A final rule that implemented the measures contained in Amendment 69 was published in the Federal Register on February 11, 2003 (68 FR 6833), and most of the measures were effective March 13, 2003. However, because OMB approval of the reporting requirements contained in these amendments had not yet been received as of the effective date of each rule, effectiveness of the requirements contained in the amendments was delayed.

Timetable:

Action	Date	FR Cite
Final Action	08/25/03	68 FR 51146

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger,
Administrator, Alaska Region,
Department of Commerce, National
Oceanic and Atmospheric
Administration, NMFS, P.O. 21668,
Juneau, AK 99802
Phone: 907 586–7221
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RIN: 0648–AR42

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735. • IMPLEMENT A 30 FATHOM BOUNDARY LINE OFF SOUTHERN CALIFORNIA FOR THE PACIFIC COAST GROUNDFISH COMMERCIAL NON-TRAWL AND RECREATIONAL FISHERIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: The emergency rule would move the conservation boundary line affecting the commercial non-trawl fisheries and the recreational fishery from 20 fathoms to 30 fathoms south of 34 degrees 27 minutes north latitude to the U.S./Mexico border. This increases the area in which the fishery can take place and decreases the closed area that was implemented to protect overfished species of groundfish. This management change would cause the optimum yield (the harvest target) for bocaccio rockfish for 2003 of less than 20 metric tons to be exceeded by approximately 2 metric tons. This action was recommended by the State of California and the Pacific Fishery Management Council (Council). The Council and NMFS concluded that this change was appropriate based on a new stock assessment released in May 2003 by NMFS Southwest Fisheries Science Center that shows increased biomass and productivity for the southern stock of bocaccio. (Based on the new stock assessment and rebuilding analysis, the Council adopted a preliminary range of optimum yields for bocaccio for 2004 of 199 to 526 metric tons, significantly higher than the less than 20 metric tons optimum yields adopted in 2003.) The change in the closed area boundary is intended to provide some relief in 2003 to the severely constrained commercial and recreational fishers in southern California based on the new bocaccio stock assessment and rebuilding analysis. The effects of using this new boundary line were not previously analyzed under the National Environmental Policy Act; so NMFS has prepared an Environmental Assessment for this action. This regulation is being prepared as an emergency action under the Magnuson Act not because it has significant impacts, but rather because the action does not fit within the framework established for inseason actions under the Groundfish Fishery Management Plan. While some environmental groups may not support this action, NMFS does not consider the action significant.

Timetable:

Action	Date	FR Cite
Final Action	09/05/03	68 FR 52703

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: D. Robert Lohn,
Regional Administrator, Northwest
Region, NMFS, Department of
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Sand Point Way NE, Building 1,
Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426

RIN: 0648–AR47

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736. • FISHING CAPACITY REDUCTION PROGRAM IN THE PACIFIC COAST GROUNDFISH FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1861a (b) to 1861a (e); PL 107–206; PL 108–7

CFR Citation: 50 CFR 600

Legal Deadline: NPRM, Statutory, April 10, 2003, NPRM.
Final, Statutory, May 21, 2003, Final.

Abstract: Establishes a fishing capacity reduction program in the Pacific Coast groundfish fishery by Federal Register notice rather than regulation. The maximum reduction cost is $46 million, funded by a $10 million appropriation and a $36 million loan to be repaid by landing fees for those participants remaining in the fishery. Eligible parties volunteer for reduction by submitting bids in a reverse auction where bid prices are scored by the value of bidders' past harvests. The groundfish reduction program makes payments for relinquishing all Federal fishing permits, as well as state permits for Washington, Oregon, and California Dungeness crab and pink shrimp. Participating fishing vessels can never fish again anywhere in the world. Reducing capacity will increase post-reduction harvesters' productivity, financially stabilize the fishery, and help conserve and manage Pacific Coast groundfish.

Timetable:

Action	Date	FR Cite
NPRM	05/28/03	68 FR 31653
NPRM Comment Period End	06/27/03	
Final Action	07/18/03	68 FR 42613
Final Action Effective	07/18/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Federalism: Undetermined

Agency Contact: Michael L. Grable,
Chief, Financial Services Division,
Department of Commerce, National
Oceanic and Atmospheric
Administration, 1315 East-West
Highway, Silver Spring, MD 20910
Phone: 301 713–2390
Email: michael.grable@noaa.gov

RIN: 0648–AQ99

737. ENDANGERED AND THREATENED SPECIES: TAKE OF THREATENED SOUTHERN OREGON/NORTHERN CALIFORNIA COAST EVOLUTIONARILY SIGNIFICANT UNIT (ESU) OF COHO SALMON

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 742a et seq; 31 USC 9701 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: On May 6, 1997, NMFS listed the Southern Oregon/Northern California Coast Evolutionary Significant Unit (ESU) of coho salmon as threatened. NMFS is now issuing protective regulations under section 4(d) of the ESA which will apply section 9(a) prohibitions to all activities within this ESU unless: in compliance with section 10 or other exemptions under the ESA; in accordance with a timely application for a permit for scientific purposes to enhance propagation or survival of the species; or within carefully circumscribed harvest hatchery, research and monitoring, or habitat restoration activity exceptions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/18/97	62 FR 38479
Withdrawn	08/15/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Barry Thom, Fishery Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1401
Email: barry.thom@noaa.gov

RIN: 0648–AJ91

738. DRAFT POLICY FOR EVALUATION OF CONSERVATION EFFORTS IN MAKING LISTING DECISIONS

Priority: Info./Admin./Other

Legal Authority: 16 USC 1531

CFR Citation: 50 CFR 424

Legal Deadline: None

Abstract: This draft policy evaluates conservation efforts in making listing decisions under the Endangered Species Act (ESA). The policy identifies considerations to be used in determining whether conservation plans and agreements, management plans or other efforts provide sufficient protections to preclude or remove the need to list a species under the ESA.

Timetable:

Action	Date	FR Cite
NPRM	06/13/00	65 FR 37102
Final Action	03/28/03	68 FR 15100

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Additional Information: This document was published under RINS: 1018–AF55, 0648–XA48

Agency Contact: Margaret C. Lorenz, ESA Policy Coordinator, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–1401
Email: margaret.lorenz@noaa.gov

RIN: 0648–AL91

739. RESTRICTIONS ON POUND NET LEADERS TO ENHANCE TURTLE PROTECTION IN VIRGINIA; THREATENED AND ENDANGERED SEA TURTLE CONSERVATION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 222; 50 CFR 223; 50 CFR 224

Legal Deadline: None

Abstract: This action involves prohibiting the use of all pound net leaders measuring 12 inches or greater stretched mesh and all pound nets with stringer leaders in the Virginia waters of the mainstem Chesapeake Bay and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary from May 8 to June 30. This action also includes a provision to extend the regulation if NMFS believes that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30. Should an extension of the prohibition of pound net leaders measuring 12 inches or greater stretched mesh and leaders with stringers be necessary, NMFS will file a notification with the Office of the Federal Register explicitly stating the duration of the extension. Additionally, this action incorporates a measure that if high strandings start to occur and/or monitoring of pound net leaders reveals new information about sea turtle interactions with pound net leaders less than 12 inches stretched mesh, NMFS may determine that additional restrictions are necessary. Should this occur, NMFS will immediately file a final rule with the Office of the Federal Register which explicitly states the mandatory gear modification as well as the affected area and the time period. Such additional restrictions may include prohibiting the use of all pound net leaders measuring 8 inches or greater stretched mesh or prohibiting the use of all pound net leaders regardless of mesh size in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from the date of publication to June 30.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15160
NPRM Comment Period End	04/15/02	
Interim Final Rule	06/17/02	67 FR 41196
Interim Final Rule Comment Period End	07/17/02	
Final Action	07/16/03	68 FR 41944

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary A. Colligan, Assistant Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS/Protected Resources, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281–9116
Fax: 978 281–9394

RIN: 0648–AP81

740. DESIGNATING THE EASTERN NORTH PACIFIC SOUTHERN RESIDENT STOCK OF KILLER WHALES AS DEPLETED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1383b

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS anticipates promulgating regulations to designate the Eastern North Pacific, Southern Resident stock of killer whales as depleted under the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
ANPRM	06/28/02	67 FR 43586
ANPRM Comment Period End	08/30/02	
NPRM	01/30/03	68 FR 4719
NPRM Comment Period End	03/31/03	
Final Action	05/29/03	68 FR 31980

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas C. Eagle, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13725, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2055
Fax: 301 713-4060
Email: tom.eagle@noaa.gov

RIN: 0648-AQ00

741. DESIGNATION OF CRITICAL HABITAT FOR GULF STURGEON

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 226

Legal Deadline: NPRM, Judicial, May 23, 2002, NPRM.
Final, Judicial, February 28, 2003, Final.

Abstract: The National Marine Fisheries Service and U.S. Fish and Wildlife Service (collectively, the Services) jointly listed the Gulf sturgeon as "threatened" under the Endangered Species Act (ESA) in 1991. The ESA requires that critical habitat be designated for any listed species. On June 6, 2002, the Services proposed designating critical habitat for the Gulf sturgeon. The proposed designation includes seven freshwater and seven estuarine/marine units in the Gulf of Mexico as critical habitat. All of the units proposed as critical habitat are areas presently occupied by Gulf sturgeon during part of its life cycle. On August 8, 2002, the Services announced the availability of a draft economic analysis of the proposed designation, and extended the public comment period for the proposal to October 7, 2002. A final designation must be filed by February 28, 2003, per a court settlement agreement.

Timetable:

Action	Date	FR Cite
NPRM	06/06/02	67 FR 39106
Comment Period Extended	08/08/02	67 FR 51530
NPRM Comment Period End	10/07/02	
Final Action	03/19/03	68 FR 13419

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stephania Bolden, Fisheries Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, F/SER3, 9721 Executive Center Drive North, St. Peterburg, FL 33702
Phone: 727 570-5312

RIN: 0648-AQ03

742. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS; ATLANTIC LARGE WHALE TAKE REDUCTION PLAN REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: None

Abstract: This proposed regulatory action is related to RIN 0648-AN88, a final rule which amended the regulations that implement the Atlantic Large Whale Take Reduction Plan and established a Dynamic Area Management (DAM) program. This proposed regulatory action involves the identification of acceptable fishing practices and gear which could be used under the DAM program.

Timetable:

Action	Date	FR Cite
NPRM	03/04/03	68 FR 10195
NPRM Comment Period End	04/03/03	
Final Action	08/26/03	68 FR 51195

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary A. Colligan, Assistant Regional Administrator, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS/Protected Resources, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9116
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RIN: 0648-AQ04

743. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS; ATLANTIC LARGE WHALE TAKE REDUCTION PLAN REGULATIONS

Timetable:

Action	Date	FR Cite
Duplicate of 0648-AR02	08/22/03	

RIN: 0648-AQ42

744. ENDANGERED AND THREATENED SPECIES; FINDING FOR A PETITION TO REVISE CRITICAL HABITAT FOR NORTHERN RIGHT WHALES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 226

Legal Deadline: None

Abstract: The National Marine Fisheries Service announces the receipt of a petition to revise critical habitat for the endangered western North Atlantic right whales. NMFS finds that the petition presents substantial scientific information indicating that this action may be warranted and is soliciting public comment and information on the petition. NMFS will determine how to proceed with the petitioned action within 12 months after receiving the petition.

Timetable:

Action	Date	FR Cite
Notice	11/19/02	67 FR 69708
Comment Period End	01/21/03	
Finding	08/28/03	68 FR 51758

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648-AQ53

745. LIST OF FISHERIES FOR 2003

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: NPRM, Statutory, January 2, 2003, NPRM.
Final, Statutory, April 1, 2003, Final.

Abstract: The National Marine Fisheries Service (NMFS) proposes to amend the 2003 List of Fisheries (LOF), as required by the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1387(c)(1)), to update the status of commercial fisheries to reflect new information on the interaction with marine mammals. Under the MMPA, NMFS must place each commercial fishery on the LOF into one of three categories based upon the level of serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/10/03	68 FR 1414
NPRM Comment Period End	02/10/03	
Final Action	07/15/03	68 FR 41725

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tanya Dobrzynski, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–2289

RIN: 0648–AQ60

746. TAKING AND IMPORTING OF MARINE MAMMALS; TAKING MARINE MAMMALS INCIDENTAL TO MISSILE LAUNCH ACTIVITIES BY THE U.S. NAVY AT SAN NICOLAS ISLAND, CALIFORNIA

Priority: Routine and Frequent

Legal Authority: 16 USC 1371(a)(5)(A)

CFR Citation: 50 CFR 216.101 to 216.108

Legal Deadline: None

Abstract: The National Marine Fisheries Service has received an application from the U.S. Navy for regulations under section 101(a)(5)(A) of the MMPA to take non-endangered seals and sea lions incidental to conducting missile launch operations from San Nicolas Island, California. Target missile launches are used to support test and training activities associated with the Naval Air Warfare Center's Point Mugu Sea Range. In order to authorize the taking and issue authorizations, NMFS must, through regulations, determine that the proposed activity will have no more than a negligible impact on the affected species and stocks of marine mammals.

Timetable:

Action	Date	FR Cite
NPRM	05/09/03	68 FR 24905
NPRM Comment Period End	06/23/03	
Final Action	09/02/03	68 FR 42132

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kenneth R. Hollingshead, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713–2055
Email: ken.hollingshead@noaa.gov

RIN: 0648–AQ61

747. • TECHNICAL AMENDMENT TO THE ATLANTIC LARGE WHALE TAKE REDUCTION PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS is amending the regulations that implement the Atlantic Large Whale Take Reduction Plan, specifically with regard to the straight set of gillnets in the southeast U.S. Restricted Area in waters off the coasts of Georgia and Florida. The intent of this proposed rule is to prohibit straight sets of gillnets at night from November 15 through March 31, annually to reduce the risk of entanglement of large whales, including the western North Atlantic right whale.

This rule was published on March 27, 2002, in the Federal Register under RIN 0648–AN88.

Timetable:

Action	Date	FR Cite
Final Action	04/21/03	68 FR 19464

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laurie K. Allen, Acting Director, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713–2332

RIN: 0648–AR02

748. NATURAL RESOURCE DAMAGE ASSESSMENTS UNDER THE OIL POLLUTION ACT OF 1990

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2706(e)

CFR Citation: 15 CFR 990

Legal Deadline: None

Abstract: This action amends the natural resource damage assessment rule under the Oil Pollution Act of 1990, codified at 15 CFR 990, due to court remand (General Electric vs. Commerce, 128 F. 3d 767. DC Cir. 1997).

Timetable:

Action	Date	FR Cite
NPRM	07/31/01	66 FR 39464
Final Action	10/01/02	67 FR 61483

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eli Reinharz, Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, NOAA/DAC, Room 10218, 1305 East-West Highway, Silver Spring, MD 20910
Phone: 301 713–3038
Fax: 301 713–4387

RIN: 0648–AM80

DOC—NOAA

Completed Actions

749. Sequence Number Intentionally Skipped

750. ● FLORIDA KEYS NATIONAL MARINE SANCTUARY: ESTABLISHMENT OF TEMPORARY NO-ENTRY ZONE IN THE WHITE BANK DRY ROCKS AREA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1431

CFR Citation: 15 CFR 922

Legal Deadline: None

Abstract: The National Oceanic and Atmospheric Administration (NOAA) issues a temporary rule prohibiting all entry into two areas off the east side of Key largo within Federal waters of the Florida Keys National Marine Sanctuary. The combined areas are approximately .50 square mile in size. This rule is necessary to prevent injury to, and destruction of, living coral from stress to diseased coral within the closed areas, and to protect healthy coral from human-causes contamination.

Timetable:

Action	Date	FR Cite
Final Action	07/01/03	68 FR 39005

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Billy Causey, Superintendent, Florida Keys National Marine Sanctuary, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 500368, Marathon, FL 33050
Phone: 305 743–2437

RIN: 0648–AR17

751. POLICIES AND PROCEDURES REGARDING USE OF THE NOAA SPACE-BASED DATA COLLECTION SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 313; 49 USC 44720; 15 USC 1525; 7 USC 450b; 5 USC 552

CFR Citation: 15 CFR 911

Legal Deadline: None

Abstract: NOAA is issuing a revision to its policies and procedures for the use of NOAA data collection systems (DCS) that operate on NOAA's Geostationary Operational Environmental Satellites and on its Polar-orbiting Operational Environmental Satellites. The changes will allow expanded use of the NOAA DCS for government interests and permit greater flexibility in utilizing these assets in support of homeland security, national security, law enforcement, and humanitarian operations.

Timetable:

Action	Date	FR Cite
Final Action	08/01/03	68 FR 45160

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kay Metcalf, NOAA GOES DCS Program Manager, Department of Commerce, National Oceanic and Atmospheric Administration, NESDIS, 5200 Auth Road, FB4, Room 3320, Suitland, MD 20746
Phone: 301 467–5681
Fax: 301 457–5620

RIN: 0648–AQ55

Department of Commerce (DOC)
Patent and Trademark Office (PTO)

Proposed Rule Stage

752. RULES OF PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2; 35 USC 3; 35 USC 6; 35 USC 10; 35 USC 22; 35 USC 23; 35 USC 25; 35 USC 32; 35 USC 41; 35 USC 135; ...

CFR Citation: 37 CFR 1; 37 CFR 41; ...

Legal Deadline: None

Abstract: The United States Patent and Trademark Office proposes to amend its rules of practice before the Board of Patent Appeals and Interferences in appeals and contested cases to clarify the rules and to simplify proceedings.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey V. Nase, Administrative Patent Judge, Department of Commerce, Patent and Trademark Office, Board of Patent Appeals and Interferences, P. O. Box 1450, Alexandria, VA 22313
Phone: 703 308–9797
Fax: 703 305–0942
Email: bpai.rules@uspto.gov

RIN: 0651–AB32

753. CHANGES IN TRADEMARK RULES OF PRACTICE IN INTER PARTES PROCEEDINGS BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1067; 35 USC 2(8)(2)(A)

CFR Citation: 37 CFR 2.120(a); 37 CFR 2.120(d) to (g); 37 CFR 2.120 (i) to (j);

37 CFR 2.121 (a) to (b); 37 CFR 2/127 (e)

Legal Deadline: None

Abstract: The United States Patent and Trademark Office proposes to amend its rules of practice in connection with inter partes proceedings before the Trademark Trial and Appeal Board to require initial disclosure of certain information.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James David Sams, Chief Administrative Trademark Judge, Department of Commerce, Patent and Trademark Office, ST–9A03, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202
Phone: 703 308–9300
Fax: 703 308–9092
Email: david.sams@uspto.gov

RIN: 0651–AB56

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754. • FAST TRACK EXAMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1123; 35 USC 2; ...

CFR Citation: 37 CFR 2.2; 37 CFR 2.6; 37 CFR 2.22; 37 CFR 2.23; 37 CFR 2.62; ...

Legal Deadline: None

Abstract: The United States Patent and Trademark Office proposes to amend its rules to permit an applicant to obtain examination of an application for registration of a mark at a reduced fee if the applicant files a complete application through the Trademark Electronic Application System (TEAS), responds to Office actions within two months of the mailing date, files communications regarding the application through TEAS, and authorizes the Office to send communications concerning the application by electronic mail. The Office also proposes to charge graduated fees for filing trademark applications, based upon the costs the Office incurs in processing the application.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary E. Hannon, Staff Attorney, Department of Commerce, Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202
Phone: 703 308–8900
Fax: 703 872–9280
Email: mary.hannon@uspto.gov

RIN: 0651–AB62

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755. • CHANGES TO SUPPORT IMPLEMENTATION OF THE UNITED STATES PATENT AND TRADEMARK OFFICE 21ST CENTURY STRATEGIC PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (Office) has established a 21st Century Strategic Plan to transform the Office into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. The Office is proposing to revise the rules of practice to support the implementation of the 21st Century Strategic Plan, which involves improving the patent application and examination process by promoting quality enhancement, reducing patent pendency, and using information technology to simplify the patent application process. The more notable changes being proposed in this notice involve permitting typewritten signatures on documents submitted by facsimile, streamlining the requirements for incorporation by reference of priority applications, and clarifying the qualifications for claiming small entity status for purposes of paying reduced patent fees. These changes to the patent application and examination process are necessary for the Office to be able to process the long-term trend of increasing number of applications within a reasonable time frame.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Rule	03/00/04	
Effective Date	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: robert.bahr@uspto.gov

URL For Public Comments: ab 64.comment@uspto.gov

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Office of the Deputy Commissioner for Patent Examination Policy, P.O. Box 1450, Alexandria, VA 22313
Phone: 703 305–8850
Fax: 703 305–6916
Email: robert.bahr@uspto.gov

RIN: 0651–AB64

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756. • CHANGES IN REQUIREMENTS FOR AMENDMENT AND CORRECTION OF TRADEMARK REGISTRATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1123; 35 USC 2

CFR Citation: 37 CFR 2.173; 37 CFR 2.174; 37 CFR 2.175

Legal Deadline: None

Abstract: The United States Patent and Trademark Office proposes to amend its rules to: (1)eliminate the requirement that a request for amendment or correction of a trademark registration be accompanied by the original certificate of registration or a certified copy thereof; and (2) add a requirement that a request for correction of a mistake in a registration be filed within one year of the date of registration.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary E. Hannon, Staff Attorney, Department of Commerce, Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202
Phone: 703 308–8900
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Email: mary.hannon@uspto.gov

RIN: 0651–AB67

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757. • REVISION OF UNITED STATES PATENT AND TRADEMARK OFFICE PRACTICE FOR HANDLING PATENT APPLICATIONS FILED WITHOUT THE APPROPRIATE FEES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 35 USC 2(b)(2) ; 35 USC 41

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: Among other changes to patent and trademark fees, the United States Patent and Trademark Office Fee Modernization Act of 2003 would (if enacted) split the patent application filing fee into a separate filing fee, search fee and examination fee. The United States Patent and Trademark Office Fee Modernization Act of 2003 would (if enacted) also require an additional fee for any application whose specification and drawings, excluding any sequence listing or computer program listing filed in the prescribed electronic medium, exceed 100 sheets of paper. This notice proposes changes in United States Patent and Trademark Office practice for handling patent applications filed without the appropriate fees in view of the revised patent fee structure set forth in the United States Patent and Trademark Office Fee Modernization Act of 2003. The United States Patent and Trademark Office will implement the changes to the patent fees provided in the United States Patent and Trademark Office Fee Modernization Act of 2003 in a separate rule making.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/01/03	
Final Action	03/00/04	
Final Action Effective	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Office of the Deputy Commissioner for Patent Examination Policy, P.O. Box 1450, Alexandria, VA 22313
Phone: 703 305–8850
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Email: robert.bahr@uspto.gov

RIN: 0651–AB69

758. • REVISION OF PATENT AND TRADEMARK FEES FOR FISCAL YEAR 2005

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 35 USC 41; 15 USC 1115; 35 USC 376; 15 USC 1051; 15 USC 1113; 15 USC 1123; 35 USC 2(b)(2)

CFR Citation: 37 CFR 1.16 to 1.21; 37 CFR 1.26; 37 CFR 1.445; 37 CFR 1.482; 37 CFR 1.492; 37 CFR 2.6

Legal Deadline: Final, Statutory, October 1, 2004, Final.

Abstract: This rulemaking revises certain patent and trademark fees to reflect fluctuations in the Consumer Price Index (CPI) consistent with PL 105–358, as amended by PL 106–113.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
Final Action	08/00/04	
Final Action Effective	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Matthew Lee, Financial Systems Analyst, Department of Commerce, Patent and Trademark Office, PK1–802, PK1–802, Washington, DC 20231
Phone: 703 305–8051
Email: matthew.lee@uspto.gov

RIN: 0651–AB70

Department of Commerce (DOC)
Patent and Trademark Office (PTO)

Final Rule Stage

759. CHANGES TO IMPLEMENT THE 2002 INTER PARTES REEXAMINATION AND OTHER TECHNICAL AMENDMENTS TO THE PATENT STATUTE

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2); PL 107–273

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The 21st Century Department of Justice Appropriations Authorization Act contains a title relating to intellectual property. The patent—related provisions in the intellectual property title of the 21st Century Department of Justice Appropriations Authorization Act include provisions permitting a third party requester in an inter partes reexamination proceeding to appeal a final decision by the Board of Patent Appeals and Interferences to the U.S. Court of Appeals for the Federal Circuit, and to participate in the patent owner's appeal of a final decision by the Board of Patent Appeals and Interferences to the U.S. Court of Appeals for the Federal Circuit. Also included are technical amendments to statutory provisions directed to inter partes reexamination, eighteen—month publication of patent applications and provisional rights, and issuance of patents. The United States Patent and Trademark Office (Office) is in this notice proposing changes to the rules of practice to implement the patent—related provisions of the 21st Century Department of Justice Appropriations Authorization Act, and other miscellaneous changes related to appeals in reexamination proceedings.

Timetable:

Action	Date	FR Cite
NPRM	04/28/03	68 FR 22343
NPRM Comment Period End	06/27/03	
Final Action	11/00/03	
Final Action Effective	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
kenneth.schor@uspto.gov

URL For Public Comments:
ab57.comments@uspto.gov

Agency Contact: Robert W. Bahr,
Senior Patent Attorney, Department of
Commerce, Patent and Trademark
Office, Office of the Deputy
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Policy, P.O. Box 1450, Alexandria, VA
22313
Phone: 703 305–8850
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Email: robert.bahr@uspto.gov

RIN: 0651–AB57

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760. REVISION OF SEARCH AND PRELIMINARY EXAMINATION FEES FOR INTERNATIONAL APPLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2); 35 USC 376; ...

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (Office) is proposing to adjust the international search and international preliminary examination fees for international applications filed under the Patent Cooperation Treaty (PCT). The Office is planning to outsource the international search under PCT chapter I for international applications. The Office is proposing to adjust the international search and international preliminary examination fees to more closely reflect the estimated cost of obtaining a PCT chapter I search and conducting the international preliminary examination under the new process. The Office is also proposing miscellaneous changes to the rules of practice in patent cases that relate to the United States Patent and Trademark Fee Modernization Act of 2003.

Timetable:

Action	Date	FR Cite
NPRM	05/30/03	68 FR 32441
NPRM Comment Period End	06/30/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
robert.bahr@uspto.gov

URL For Public Comments:
ab61.comment@uspto.gov

Agency Contact: Robert W. Bahr,
Senior Patent Attorney, Department of
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RIN: 0651–AB61

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761. • CHANGES RELATED TO ASSIGNMENTS OF PATENTS AND TRADEMARKS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1123; 35 USC 2(b)(2); ...

CFR Citation: 37 CFR 1; 37 CFR 3; ...

Legal Deadline: None

Abstract: The United States Patent and Trademark (Office) is proposing changes to the rules of practice to allow for more efficient electronic routing of assignment documents within the Office. Specifically, the Office proposes to discontinue the current Office practice of returning patent and trademark assignment documents submitted for recording (in the assignments database) by mail, and to dispose of the documents according to a record retention schedule after scanning. Further, only certain paper sizes for assignment documents will be accepted for recording. In addition, the Office proposes to clarify what assignment information is available to the public. Finally, the Office proposes to modify the practice relating to issuance of a patent to an assignee by providing that after payment of an issue fee, a request for a certificate of correction must be filed to obtain issuance of the patent to an assignee.

Timetable:

Action	Date	FR Cite
NPRM	06/27/03	68 FR 38258
NPRM Comment Period End	08/26/03	
Final Action	11/00/03	
Final Action Effective	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
robert.bahr@uspto.gov

URL For Public Comments:
ab63.comment@uspto.gov

Agency Contact: Robert W. Bahr,
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Commerce, Patent and Trademark
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RIN: 0651–AB63

Department of Commerce (DOC)
Patent and Trademark Office (PTO)
Long-Term Actions

762. PROCESSING FEE FOR USE OF PAPER FORMS FOR SUBMISSION OF APPLICATIONS FOR REGISTRATION AND OTHER DOCUMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 2.6(a)

Timetable:

Action	Date	FR Cite
NPRM	05/12/02	67 FR 35081
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Craig Morris
Phone: 703 308–3910

RIN: 0651–AB52

763. CHANGES TO IMPLEMENT PATENT-RELATED PROVISIONS OF THE UNITED STATES PATENT AND TRADEMARK FEE MODERNIZATION ACT OF 2003

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr
Phone: 703 305–8850
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Email: robert.bahr@uspto.gov

RIN: 0651–AB54

764. CHANGES TO REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1; 37 CFR 2; 37 CFR 10; 37 CFR 11

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Harry I. Moatz
Phone: 703 306–4097

RIN: 0651–AB55

Department of Commerce (DOC)
Patent and Trademark Office (PTO)

Completed Actions

765. ELIMINATION OF CONTINUED PROSECUTION APPLICATION PRACTICE AS TO UTILITY AND PLANT

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The American Inventors Protection Act of 1999 (AIPA) enacted provisions for the continued examination of a utility or plant application at the request of the applicant (request for continued examination or RCE practice). Therefore, there no longer appears to be a need for continued prosecution application (CPA) practice as to utility and plant applications. Thus, the Office is eliminating CPA practice as to utility and plant applications. An applicant for a utility or plant patent may also continue to effectively obtain further examination of the application by filing a continuing application under section 1.53(b). Since RCE practice does not apply to design applications, CPA practice will remain in place for design applications.

Timetable:

Action	Date	FR Cite
NPRM	07/09/01	66 FR 35763
NPRM Comment Period End	09/07/01	
Final Action	05/30/03	68 FR 32376
Final Action Effective	07/14/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Office of the Deputy Commissioner for Patent Examination Policy, P.O. Box 1450, Alexandria, VA 22313
Phone: 703 305–8850
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RIN: 0651–AB37

766. MADRID PROTOCOL IMPLEMENTATION ACT RULES CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1123; 35 USC 2

CFR Citation: 37 CFR 2; 37 CFR 7

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (USPTO) proposes to amend 37 CFR part 2 and to add a new 37 CFR part 7 to implement the Madrid Protocol Implementation Act of 2002, Pub. L. 107–273, 116 Stat. 1758, 1913 to 1921 (15 U.S.C. 1051) (MPIA). MPIA permits the owner of a United States trademark application or registration to file an international trademark application with the International Bureau of the World Intellectual Property Organization through the USPTO. It also permits the holder an international registration to request an extension of protection of that registration to the United States.

Timetable:

Action	Date	FR Cite
NPRM	03/28/03	68 FR 15119
NPRM Comment Period End	05/27/03	
Final Action	09/26/03	68 FR 55748

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary E. Hannon, Staff Attorney, Department of Commerce, Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202
Phone: 703 308–8900
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RIN: 0651–AB45

767. CHANGES TO PROMOTE QUALITY ENHANCEMENT AND PENDENCY

Timetable:

Action	Date	FR Cite
Duplicate of RIN 0651-AB64	08/26/03	

RIN: 0651–AB50

768. CHANGES TO IMPLEMENT ELECTRONIC MAINTENANCE OF OFFICIAL PATENT APPLICATION RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (Office) has established a 21st Century Strategic

Plan to transform the Office into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One priority of the 21st Century Strategic Plan is the beginning-to-end electronic processing of patent applications. The Office is proposing changes to the rules of practice in this notice to adapt to a patent electronic image management system. Specifically, the changes proposed in this notice facilitate electronic data capture and processing, streamline the patent application process, and simplify and clarify the pertinent provisions of the rules of practice.

Timetable:

Action	Date	FR Cite
NPRM	03/24/03	68 FR 14365
NPRM Comment Period End	04/24/03	
Final Action	06/30/03	68 FR 38611
Final Action Effective	07/30/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Office of the Deputy Commissioner for Patent Examination Policy, P.O. Box 1450, Alexandria, VA 22313
Phone: 703 305–8850
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RIN: 0651–AB59

769. REVISION OF PATENT AND TRADEMARK FEES FOR FISCAL YEAR 2004

Priority: Routine and Frequent

Legal Authority: 35 USC 41; 15 USC 1115; 35 USC 376; 15 USC 1051; 15 USC 1113; ...

CFR Citation: 37 CFR 1.16 to 1.21; 37 CFR 1.26; 37 CFR 1.445; 37 CFR 1.482; 37 CFR 1.492; ...

Legal Deadline: Final, Statutory, October 1, 2003, Final.

Abstract: This rulemaking revises certain patent and trademark fees to reflect fluctuations in the Consumer Price Index (CPI) consistent with PL 105–358, as amended by PL 106–113.

Timetable:

Action	Date	FR Cite
NPRM	04/30/03	68 FR 23092
Final Action	07/14/03	68 FR 41532
Final Action Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Matthew Lee, Financial Systems Analyst, Department of Commerce, Patent and Trademark Office, PK1–802, PK1–802, Washington, DC 20231
Phone: 703 305–8051
Email: matthew.lee@uspto.gov

RIN: 0651–AB60

770. • REORGANIZATION OF CORRESPONDENCE AND OTHER GENERAL PROVISIONS IN 37 CFR CHAPTER 1

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 35 USC 52; 15 USC 1123

CFR Citation: 37 CFR 1; 37 CFR 2

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (Office) is amending its rules to remove Trademark-related references from 37 CFR part 1 and consolidate them with other Trademark provisions in part 2.

Timetable:

Action	Date	FR Cite
Final Rule	08/13/03	68 FR 48286
Final Rule Effective	09/12/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary E. Hannon, Staff Attorney, Department of Commerce, Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202
Phone: 703 308–8900
Fax: 703 872–9280
Email: mary.hannon@uspto.gov

RIN: 0651–AB68

Department of Commerce (DOC)
Technology Administration (TA)

Final Rule Stage

771. RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Priority: Other Significant

Legal Authority: 35 USC 206

CFR Citation: 37 CFR 401

Legal Deadline: None

Abstract: This rule is issued to authorize the electronic reporting of inventions and the filing of provisional patent applications.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/14/95	60 FR 41811
Interim Final Rule Comment Period End	09/13/95	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Karen Laney-Cummings, Director, Technology Competitiveness, Department of Commerce, Technology Administration, 14th & Pennsylvania Ave. NW., Washington, DC 20230
Phone: 202 482–2100
Fax: 202 219–8667

RIN: 0692–AA14

772. ACQUISITION AND PROTECTION OF FOREIGN RIGHTS IN INVENTIONS

Priority: Substantive, Nonsignificant

Legal Authority: EO 10096; 15 USC 3710d

CFR Citation: 37 CFR 101; 37 CFR 501

Legal Deadline: None

Abstract: On August 7, 1996, 37 CFR part 101 was abolished and 37 CFR part

501 expanded to cover foreign rights of inventions made by Federal employees.

We are evaluating the comments received on the interim final rule and will be making minor changes to the regulation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/07/96	61 FR 40997
Interim Final Rule Effective	08/07/96	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John H. Raubitschek, Patent Counsel, Department of Commerce, Technology Administration, HCHB Room 4613, 14th & Pennsylvania Avenue, NW., HCHB Room 4835, Washington, DC 20230
Phone: 202 482–8010
Fax: 202 273–0607
Email: jraubits@doc.gov

RIN: 0692–AA15

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773. AMENDMENT TO RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 206

CFR Citation: 37 CFR 401

Legal Deadline: NPRM, Statutory, June 30, 2000, NPRM.

Abstract: This would require certain support contractors to license their rights if they make an invention under a Cooperative Research and Development Agreement.

Timetable:

Action	Date	FR Cite
NPRM	09/11/00	65 FR 54826
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John H. Raubitschek, Patent Counsel, Department of Commerce, Technology Administration, HCHB Room 4613, 14th & Pennsylvania Avenue, NW., HCHB Room 4835, Washington, DC 20230
Phone: 202 482–8010
Fax: 202 273–0607
Email: jraubits@doc.gov

RIN: 0692–AA18

[FR Doc. 03–27068 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part V

Department of Defense

Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE (DOD)

DEPARTMENT OF DEFENSE

32 CFR Chs. I, V, VI, and VII

33 CFR Ch. II

36 CFR Ch. III

48 CFR Ch. II

Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Defense (DoD).

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Defense (DoD) is publishing this semiannual agenda of regulatory documents, including those that are procurement-related, for public information and comments under Executive Order 12866 "Regulatory Planning and Review." This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under the Executive order and other regulatory guidance. It contains DoD issuances initiated by DoD components that may have economic and environmental impact on State, local, or tribal interests under the criteria of Executive Order 12866. Although most DoD issuances listed in the agenda are of negligible public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process.

For this edition of the Department of Defense's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

This agenda updates the report published on May 19, 2003, and includes regulations expected to be issued and under review over the next 12 months. The next agenda is scheduled to be published in the spring of 2004, with the next regulatory plan scheduled to be published in the fall of 2004. In addition to this agenda, DoD components also publish rulemaking notices pertaining to their specific statutory administration requirements as required.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD regulatory improvement program and for general semiannual agenda information, contact Mr. Robert Cushing, telephone 703-604-6269, or write to Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, or e-mail: robert.cushing@dior.whs.mil.

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600, or call 703-697-2714.

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Mr. Dan Cragg, telephone 703-601-4722, or write to Directives and Records Division, Directorate for Correspondence and Directives, Washington Headquarters Services, Suite 501, 1111 Jefferson Davis Highway, Arlington, Virginia 22202, or e-mail: dcragg@cd.whs.mil.

For general information on Office of the Secretary agenda items which are procurement-related, contact Ms. Michele Peterson, telephone 703-602-0311, or write to Defense Acquisition Regulations Directorate, 3062 Defense Pentagon, Washington, DC 20301-3062, or e-mail: michele.peterson@osd.mil.

For general information on Department of the Army regulations, contact Ms. Luz D. Ortiz, telephone 703-806-3708, or write to the U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, 6000 6th Street, Stop 5603, Fort Belvoir, Virginia 22060-5603, or e-mail: luz.ortiz@rmda.belvoir.army.mil.

For general information on the U.S. Army Corps of Engineers regulations, contact Mr. Chip Smith, telephone 703-693-3644, or write to Office of the Deputy Assistant Secretary of the Army (Policy and Legislation), 108 Army Pentagon, Room 2E569, Washington, DC 20310-0108, or e-mail: chip.smith@hqda.army.mil.

For general information on Department of the Navy regulations, contact Major Edward McDonnell, telephone 703-601-3631, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374-5066, or e-mail: edward.mcdonnell@navy.mil.

For general information on Department of the Air Force regulations, contact Mrs. Pamela D. Fitzgerald, telephone 703-601-2835, or write to Department of the Air Force, AF-CIO/RR, 1155 Air Force Pentagon, Washington, DC 20330-1155, or e-mail: pamela.fitzgerald@pentagon.af.mil.

For specific agenda items, contact the appropriate individual indicated in each DoD component report.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions is composed of the regulatory status reports, including procurement-related regulatory status reports, from the Office of the Secretary of Defense (OSD) and the Departments of the Army, Navy, and Air Force. Included also is the regulatory status report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of Executive Order 12866 and involve water resource projects and regulation of activities in waters of the United States.

DoD issuances range from DoD directives (reflecting departmental policy) to implementing instructions and regulations (largely internal and used to implement directives). The OSD agenda section contains the primary directives under which DoD components promulgate their implementing regulations.

To ease identification and to differentiate among the variety of issuances reported, they are identified by their DoD internal numbering system, which denotes component level of authority and type of issuance, in addition to the required CFR number.

In addition, this agenda, although published under the reporting requirements of Executive Order 12866, continues to be the DoD single-source reporting vehicle, which identifies issuances that are currently applicable under the various regulatory reform programs in progress. Therefore, DoD components will identify those rules which come under the criteria of the:

1. Regulatory Flexibility Act;

2. Paperwork Reduction Act of 1995;

3. Unfunded Mandates Reform Act of 1995.

Those DoD issuances, which are directly applicable under these statutes, will be identified in the agenda and their action status indicated. Generally, the regulatory status reports in this agenda will contain five sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) completed actions; and (5) long-term actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)).

Although not a regulatory agency, DoD will continue to participate in regulatory initiatives designed to reduce economic costs and unnecessary environmental burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD component representatives identified in the regulatory status reports. Although sensitive to the needs of the public, as well as regulatory reform, DoD reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission. The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

Dated: September 25, 2003.

Howard G. Becker,

Deputy Director, Administration and Management.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
774	Development of a Munitions Response Site Prioritization Protocol	0790–AG94
775	Defense Contract Management Agency Freedom of Information Act (FOIA) Program	0790–AH00
776	Provision of Early Intervention and Special Education Services to Eligible DoD Dependents	0790–AH70
777	Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Service Members, and Former Service Members	0790–AH73

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
778	National Security Education Program (NSEP) Grants to Institutions of Higher Education (DoD Instruction 1025.5)	0790–AF59
779	Restoration Advisory Boards (RABs)	0790–AG31
780	Settling Personnel and General Claims and Processing Advance Decision Requests	0790–AG47
781	Personnel Security Policies for Granting Access to Classified Information	0790–AG54
782	National Policy on Reciprocity of Facilities and Guidelines for Implementation of Reciprocity	0790–AG55
783	National Policy on Technical Surveillance Countermeasures	0790–AG56
784	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	0790–AG76
785	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug–Free Workplace (Grants)	0790–AG86
786	Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests	0790–AG89
787	Waiver of Debts Resulting From Erroneous Payments of Pay and Allowances (DoD Directive 1340.21)	0790–AG90
788	Waiver Procedures for Debts Resulting From Erroneous Payments of Pay and Allowances (DoD Instruction 1340.23)	0790–AG91
789	National Security Agency/Central Security Service (NSA/CSS) Freedom of Information Act Program	0790–AG96
790	Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects	0790–AG97
791	Review of the Manual for Courts–Martial (DoD Directive 5500.17)	0790–AG99
792	Implementation of Section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century and Section 1051 of the National Defense Authorization Act for Fiscal Year 2003	0790–AH02

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
793	Former Spouse Payments From Retired Pay; Amendment (DoD Directive 1340.16 and DoD 7000.14–R, Vol 7, Part B)	0790–AG22

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
794	Closed, Transferred, and Transferring Ranges Containing Military Munitions	0790–AG46
795	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	0790–AG83
796	Stars and Stripes (S&S) Newspaper	0790–AG84
797	Department of Defense Newspapers, Magazines, and Civilian Enterprise Publications	0790–AG85
798	DoD Grant and Agreement Regulations	0790–AG87
799	Voluntary State Tax Withholding From Retired Pay	0790–AG93
800	Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects	0790–AH01

Defense Acquisition Regulations Council—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
801	Patent Rights–Ownership by the Contractor (Large Business) (DFARS Case 2001–D015)	0750–AD72
802	Fish, Shellfish, or Seafood Products (DFARS Case 2002–D034)	0750–AD91
803	Protests, Disputes, and Appeals (DFARS Case 2003–D010)	0750–AE01
804	Improper Business Practices, Organizational Conflicts of Interest, and Debarment (DFARS Case 2003–D012)	0750–AE02
805	Protection of Privacy and Freedom of Information (DFARS Case 2003–D038)	0750–AE03
806	Contractor Qualifications Relating to Contract Placement (DFARS Case 2003–D011)	0750–AE06
807	Government Source Inspection Requirements (DFARS Case 2002–D032)	0750–AE08
808	Cost Accounting Standards (DFARS Case 2003–D015)	0750–AE10
809	Geographic Use of the Term "United States" (DFARS Case 2001–D003)	0750–AE12
810	Laws Inapplicable to Commercial Subcontracts (DFARS Case 2003–D018)	0750–AE14
811	Berry Amendment—Exception for Fabrics and Fibers (DFARS Case 2003–D022)	0750–AE15

Defense Acquisition Regulations Council—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
812	Incremental Funding, Fixed-Price Contracts (DFARS Case 1990–037)	0750–AA07
813	Competition Requirements for Purchases From a Required Source (DFARS Case 2002–D003)	0750–AD57
814	Electronic Submission and Processing of Payment Requests (DFARS Case 2002–D001)	0750–AD70
815	Codification and Modification of Berry Amendment (DFARS Case 2002–D002)	0750–AD76
816	Indian Incentive Clause—Contract Types (DFARS Case 2002–D013)	0750–AD78
817	Approval of Service Contracts and Task Orders (DFARS Case 2002–D024)	0750–AD81
818	Provisional Award Fee Payments (DFARS Case 2001–D013)	0750–AD83
819	Payment Withholding (DFARS Case 2002–D017)	0750–AD85
820	Information Assurance (DFARS Case 2002–D020)	0750–AD86
821	Purchase Card Internal Controls (DFARS Case 2002–D025)	0750–AD87
822	Follow-On Production Contracts for Products Developed Pursuant to Prototype Projects (DFARS Case 2002–D023)	
823	Indian Incentive Program–Commercial Items (DFARS Case 2002–D033)	0750–AD88
824	Multiyear Procurement Authority for Environmental Services for Military Installations (DFARS Case 2003–D004)	0750–AD97
825	DoD Activity Address Codes in Contract Numbers (DFARS Case 2003–D005)	0750–AD99
826	Buy-to-Budget Acquisition of End Items (DFARS Case 2002–D036)	0750–AE00
827	Multiyear Contracting Authority Revisions (DFARS Case 2002–D041)	0750–AE04
828	Production Surveillance and Reporting (DFARS Case 2002–D015)	0750–AE05
829	Unique Item Identification and Property Valuation (DFARS Case 2003–D081)	0750–AE07
830	Central Contractor Registration (DFARS Case 2003–D040)	0750–AE09
		0750–AE11

Defense Acquisition Regulations Council—Completed Actions

Sequence Number	Title	Regulation Identification Number
831	Foreign Acquisition (DFARS Case 2002–D009)	0750–AD73
832	Payment Bonds on Cost-Reimbursement Contracts (DFARS Case 2002–D030)	0750–AD79
833	Efficiency Savings (DFARS Case 2002–D022)	0750–AD80
834	Contractor Performance of Security-Guard Functions (DFARS Case 2002–D042)	0750–AD82
835	Liability for Loss Under Vessel Repair and Alteration Contracts (DFARS Case 2002–D016)	0750–AD84
836	Transportation of Supplies by Sea–Commercial Items (DFARS Case 2002–D019)	0750–AD89
837	Contracting With Federal Prison Industries (DFARS Case 2002–D040)	0750–AD95
838	Extension of Contract Goal for Small Disadvantaged Businesses and Certain Institutions of Higher Education (DFARS Case 2002–D038)	0750–AD96
839	Competitiveness Demonstration Codes Update (DFARS Case 2003–D003)	0750–AD98
840	Caribbean Basin Country–Dominican Republic (DFARS Case 2003–D007)	0750–AE13
841	Reporting Requirements Update (DFARS Case 2003–D002)	0750–AE16
842	Deletion of Federal Prison Industries Clearance Exception (DFARS Case 2003–D006)	0750–AE17

Department of the Army—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
843	Foreign Acquisition	0702–AA38
844	Solicitation Provisions and Contract Clauses	0702–AA39

Department of the Army—Completed Actions

Sequence Number	Title	Regulation Identification Number
845	United States Soldiers' and Airmen's Home	0702–AA37

U.S. Army Corps of Engineers—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
846	Environmental Quality; Procedures for Implementing the National Environmental Policy Act (NEPA)	0710–AA42
847	Clean Water Act Regulatory Definition of "Waters of the United States"	0710–AA50
848	Regulatory Program of the Army Corps of Engineers and Historic Properties	0710–AA51

U.S. Army Corps of Engineers—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
849	Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers	0710–AA47
850	Programmatic Regulations for the Comprehensive Everglades Restoration Plan **(Reg Plan Seq No. 33)**	0710–AA49
851	Civil Monetary Penalty Inflation Adjustment Rule	0710–AA54

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

U.S. Army Corps of Engineers—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
852	Regulatory Programs of the Corps of Engineers, Endangered Species Act; Scope of Analysis	0710–AA43

U.S. Army Corps of Engineers—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
853	Cost-Sharing Requirements Under the Ability To Pay Provisions	0710–AA44
854	Special Events Rule	0710–AA53

U.S. Army Corps of Engineers—Completed Actions

Sequence Number	Title	Regulation Identification Number
855	Regulatory Programs of the Corps of Engineers	0710–AA30
856	Regulatory Programs of the Corps of Engineers—Wetland Delineator Certification Program	0710–AA38

Department of the Navy—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
857	Policies and Responsibilities for Implementation of the National Environmental Policy Act Within the Department of the Navy	0703–AA51

Department of the Navy—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
858	Shipbuilding Capability Preservation Agreements	0703–AA50

Department of the Navy—Completed Actions

Sequence Number	Title	Regulation Identification Number
859	Use of Department of the Navy Aviation Facilities by Other Than United States Department of Defense Aircraft	0703–AA48

Office of Assistant Secretary for Health Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
860	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Hospital Payment for Ambulatory Care	0720–AA20
861	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Exception to the CHAMPUS Dual Compensation/Conflict of Interest Provisions	0720–AA41
862	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Prosthetic Devices	0720–AA49
863	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Double Coverage	0720–AA50
864	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Establishment of an Appeals Process for TRICARE Claimcheck Denials	0720–AA56
865	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Methodology for Coverage of NIH-Sponsored Clinical Trials	0720–AA57
866	CHAMPUS/TRICARE; Implementation of the Pharmacy Benefits Program	0720–AA63
867	Civilian Health and Medical Program of the Uniformed Services; Individual Case Management Program for Persons With Extraordinary Conditions (ICMP-PEC)	0720–AA65
868	TRICARE; Prime Remote for Active Duty Family Members	0720–AA68
869	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Voluntary Disenrollment From the TRICARE Retiree Dental Program (TRDP)	0720–AA69

Office of Assistant Secretary for Health Affairs—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
870	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS): Enuretic Devices, Breast Reconstructive Surgery, PFPWD Valid Authorization Period, Early Intervention Services	0720–AA70
871	TRICARE; Waiver of Certain TRICARE Deductibles; Clarification of the TRICARE Prime Enrollment Period	0720–AA72
872	TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers	0720–AA73
873	TRICARE; CHAMPUS; Appeals and Hearings Procedures, Formal Review	0720–AA74
874	TRICARE Program; Special Supplemental Food Program for Women, Infants, and Children Overseas	0720–AA75
875	TRICARE Program; Inclusion of Anesthesiologist's Assistants as Authorized Providers; Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabilitation Facilities	0720–AA76
876	TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02) and a Technical Correction Included in the NDAA–03	0720–AA77
877	TRICARE: Individual Case Management: Program for Persons With Disabilities: Extended Benefits for Disabled Family Members of Active Duty Service Members: Custodial Care	0720–AA78
878	TRICARE; Elimination of Nonavailability Statement and Referral Authorization Requirements and Elimination of Specialized Treatment Services Program	0720–AA79
879	TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2003 (NDAA–03)	0720–AA85

Office of Assistant Secretary for Health Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
880	TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Eligibility and Payment Procedures for CHAMPUS Beneficiaries Age 65 and Over	0720–AA66
881	TRICARE; Coordination of Benefits Between TRICARE and the Department of Veterans Affairs	0720–AA86

Department of Defense (DOD)
Office of the Secretary (OS)
Proposed Rule Stage

774. DEVELOPMENT OF A MUNITIONS RESPONSE SITE PRIORITIZATION PROTOCOL

Priority: Other Significant

Legal Authority: 10 USC 2710

CFR Citation: 32 CFR 179

Legal Deadline: None

Abstract: In response to section 311 of the Fiscal Year 2002 National Defense Authorization Act, the Office of the Deputy Under Secretary of Defense (Installations & Environment), U.S. Department of Defense (DoD), proposes to develop a site prioritization protocol for assigning to each defense site (hereinafter, munitions response site) a relative priority for response activities related to unexploded ordnance, discarded military munitions, and munitions constituents. Section 311 lists specific factors to be included in the protocol. DoD is requesting input from interested parties on: (a) These factors; (b) any additional factors to consider in developing a site prioritization protocol; (c) how the proposed protocol should incorporate such factors as they relate to safety and environmental hazards; and (d) recommendations on any existing prioritization methods, models, or tools that should be evaluated.

Timetable:

Action	Date	FR Cite
ANPRM	03/20/02	67 FR 12937
ANPRM Comment Period End	05/20/02	
NPRM	08/22/03	68 FR 50900
NPRM Comment Period End	11/20/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia Ferrebee, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 695–6107

RIN: 0790–AG94

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775. DEFENSE CONTRACT MANAGEMENT AGENCY FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 32 CFR 289

Legal Deadline: None

Abstract: This rule implements the Freedom of Information Act, as amended. It assigns responsibility for responding to written requests made pursuant to the Act and provides for the review required to determine the appropriateness of classification.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cathy Alphin, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 428–1453

RIN: 0790–AH00

776. • PROVISION OF EARLY INTERVENTION AND SPECIAL EDUCATION SERVICES TO ELIGIBLE DOD DEPENDENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 10 USC 301

CFR Citation: 32 CFR 57

Legal Deadline: None

Abstract: This rule implements the Individuals with Disabilities Education Act, as amended in 1997. The rule integrates into one policy both CFR part 57 (which concerned provision of early intervention and special education to eligible DoD dependents in overseas areas) and CFR part 80 (which concerned provision of early intervention and special education services in domestic Department of Defense schools).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. Posante, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696–4493

RIN: 0790–AH70

777. • CRIMINAL JURISDICTION OVER CIVILIANS EMPLOYED BY OR ACCOMPANYING THE ARMED FORCES OUTSIDE THE UNITED STATES, SERVICE MEMBERS, AND FORMER SERVICE MEMBERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 18 USC 3261

CFR Citation: 32 CFR 153

Legal Deadline: None

Abstract: This rule establishes policies and procedures, and assigns responsibilities, under the Military Extraterritorial Jurisdiction Act (MEJA), for exercising extraterritorial criminal jurisdiction over certain military personnel, former service members of the United States Armed Forces, and over civilians employed by or accompanying the Armed Forces outside the United States (as specifically defined in section 3267 of MEJA).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Robert E. Reed, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 695–1055

RIN: 0790–AH73

Department of Defense (DOD)
Office of the Secretary (OS)

Final Rule Stage

778. NATIONAL SECURITY EDUCATION PROGRAM (NSEP) GRANTS TO INSTITUTIONS OF HIGHER EDUCATION (DOD INSTRUCTION 1025.5)

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1141(a)

CFR Citation: 32 CFR 206

Legal Deadline: Final, Statutory, April 5, 1994, Final.

Abstract: The National Security Education Act provided for the National Security Education Program, the National Security Education Board, and a trust fund in the U.S. Treasury to provide all resources for the program. Under the Act, the Secretary is directed to carry out a program to award undergraduate scholarships, graduate fellowships, and grants to institutions of higher education. This rule is to inform those concerned with institutional grants to be offered under the 1994–1995 pilot grants program of the preliminary guidelines.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	05/05/94	59 FR 26116
Interim Final Rule	05/19/94	59 FR 26116
Interim Final Rule Comment Period End	07/18/94	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Steve Door, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696–1991
Email: nsep@nsep.policy.osd.mil

RIN: 0790–AF59

779. RESTORATION ADVISORY BOARDS (RABS)

Priority: Other Significant

Legal Authority: 5 USC 551 et seq; 10 USC 2705

CFR Citation: 32 CFR 202

Legal Deadline: NPRM, Statutory, September 15, 1996, NPRM.

Abstract: In accordance with the National Defense Authorization Acts for 1995 and 1996, the Department has prepared this rule for Restoration Advisory Boards (RABs). DoD has established RABs at over 200 installations and formerly used Defense sites that have environmental restoration programs for cleanup of contaminated sites. The purpose of the RAB is to facilitate public participation in restoration activities at operating and closing installations. The proposed rule is based on DoD's current policies for RABs, as well as DoD's experience in establishing and operating RABs over the past 2 years.

Timetable:

Action	Date	FR Cite
NPRM	08/06/96	61 FR 40764
NPRM Comment Period End	11/04/96	61 FR 40765
NPRM Extension of Comment Period	11/19/96	61 FR 58803
NPRM Comment Period End	01/20/97	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Agency Contact: Patricia Ferrebee, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 695-6107

RIN: 0790-AG31

780. SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Priority: Other Significant

Legal Authority: 10 USC 2575; 10 USC 2771; 10 USC 4712; 10 USC 9712; 24 USC 420; 31 USC 3529; 31 USC 3702; 32 USC 714; 37 USC 554; ...:

CFR Citation: 32 CFR 281

Legal Deadline: None

Abstract: This rule proposes policy and assigns responsibilities for settling personnel and general claims and for processing requests for an advance decision. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

Timetable:

Action	Date	FR Cite
NPRM	11/14/02	67 FR 68956
NPRM Comment Period End	01/13/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Pending analysis of public comments and issuance of final regulations, DOHA intends to use the procedures and practices applicable to claims and waiver applications before the effective dates of the transfers of authority, June 30, 1996, and December 18, 1996, respectively, which are published in title 4, Code of Federal Regulations, chapter 1, subchapters C and G. See also 61 FR 50285, September 25, 1996; and 62 FR 5387, February 5, 1997.

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696-8510

RIN: 0790-AG47

781. PERSONNEL SECURITY POLICIES FOR GRANTING ACCESS TO CLASSIFIED INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 147

Legal Deadline: None

Abstract: This rule is published to streamline security practices throughout the Government. Uniform adjudicative guidelines, investigative standards, and guidelines for temporary access are being established. This initiative will simplify security processing and allow the deserving public to obtain a security clearance in a faster, more efficient manner.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/98	63 FR 4572
Interim Final Rule Effective	03/24/98	
Interim Final Rule Comment Period End	03/31/98	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 602-9969

RIN: 0790-AG54

782. NATIONAL POLICY ON RECIPROCITY OF FACILITIES AND GUIDELINES FOR IMPLEMENTATION OF RECIPROCITY

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 148

Legal Deadline: None

Abstract: This rule is published to make physical facilities available for reciprocal use in the storage of classified information. Once a facility has been certified as suitable for classified use by one organization, it may also be used by another for like purposes.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/16/97	63 FR 4580
Interim Final Rule	01/30/98	63 FR 4580
Interim Final Rule Comment Period End	03/31/98	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 602–9969

RIN: 0790–AG55

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783. NATIONAL POLICY ON TECHNICAL SURVEILLANCE COUNTERMEASURES

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 149

Legal Deadline: None

Abstract: This rule is published to limit the use of technical surveillance countermeasures within the boundaries of the U.S. to cases where there is a reasonable showing of threat.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/16/97	63 FR 4582
Interim Final Rule	01/30/98	63 FR 4582
Interim Final Rule Comment Period End	03/31/98	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 602–9969

RIN: 0790–AG56

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784. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 10 USC 113

CFR Citation: 32 CFR 22; 32 CFR 32

Legal Deadline: None

Abstract: This rulemaking is the Department of Defense portion of a multiple-agency action. The agencies are amending their rules implementing Office of Management and Budget (OMB) Circular A–110 "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." The amendments to the rules incorporate updated language in Circular A–110 requiring Federal awarding agencies to ensure that all data produced under awards subject to the Circular are made available to the public through the procedures established under the Freedom of Information Act (FOIA). OMB updated the Circular language in this way in October 1999, in response to a provision in Public Law 105–277. With this rule amendment to 32 CFR parts 22 and 32, the Department of Defense therefore will maintain policies on access to data produced under awards subject to Circular A–110 that are consistent with the policies of other executive departments and agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14405
Interim Final Rule Effective	04/17/00	
Interim Final Rule Comment Period End	05/15/00	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Herbst, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696–0372
Email: herbstm@acq.osd.mil

RIN: 0790–AG76

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785. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549; EO 12689; PL 103–355

CFR Citation: 32 CFR 25; 32 CFR 26

Legal Deadline: None

Abstract: The Department of Defense (DoD) proposes to adopt two updated common rules, on nonprocurement debarment and suspension and on drug-free workplace requirements for grants and agreements. In adopting these rules, the Office of the Secretary of Defense, Military Departments, Defense Agencies, and DoD Field Activities will maintain uniform policies and procedures that are consistent with those of other executive departments and agencies.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	67 FR 3267
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Herbst, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696–0372
Email: herbstm@acq.osd.mil

RIN: 0790–AG86

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786. PROCEDURES FOR SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Priority: Other Significant

Legal Authority: 5 USC 552a; 10 USC 2575; 10 USC 2771; 10 USC 4712; 10 USC 9712; 24 USC 420; 31 USC 3529; 31 USC 3702; 32 USC 714; 37 USC 554; . . .

CFR Citation: 32 CFR 282

Legal Deadline: None

Abstract: This rule proposes policy and prescribes procedures for processing and settling personnel and general claims and for processing requests for an advance decision. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignments of the Comptroller General's former duties within the Department of Defense with little impact on the public.

Timetable:

Action	Date	FR Cite
NPRM	11/14/02	67 FR 68957
NPRM Comment Period End	01/13/03	67 FR 68958
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696–8510

RIN: 0790–AG89

787. WAIVER OF DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES (DOD DIRECTIVE 1340.21)

Priority: Other Significant

Legal Authority: 5 USC 5584; 10 USC 2774; 32 USC 716

CFR Citation: 32 CFR 283

Legal Deadline: None

Abstract: This rule proposes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian DoD employees. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

Timetable:

Action	Date	FR Cite
NPRM	11/14/02	67 FR 68963
NPRM Comment Period End	01/13/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696–8510

RIN: 0790–AG90

788. WAIVER PROCEDURES FOR DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES (DOD INSTRUCTION 1340.23)

Priority: Other Significant

Legal Authority: 5 USC 552a; 5 USC 2104; 5 USC 2105; 5 USC 5584; 10 USC 2774; 32 USC 716; ...

CFR Citation: 32 CFR 284

Legal Deadline: None

Abstract: This rule proposes policy and prescribes procedures for considering waiver applications. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

Timetable:

Action	Date	FR Cite
NPRM	11/14/02	67 FR 68965
NPRM Comment Period End	01/13/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696–8510

RIN: 0790–AG91

789. NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE (NSA/CSS) FREEDOM OF INFORMATION ACT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 32 CFR 299

Legal Deadline: None

Abstract: This rule implements the Freedom of Information Act, as amended. It assigns responsibility for responding to written requests made pursuant to the Act and provides for the review required to determine the appropriateness of classification.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	08/05/02	
Interim Final Rule	05/23/03	68 FR 28132
Interim Final Rule Comment Period End	07/22/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Pamela Phillips, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 301 688–6527

RIN: 0790–AG96

790. TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103–160

CFR Citation: 32 CFR 3

Legal Deadline: None

Abstract: This rule implements section 822 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107. Section 822 provides for award of a follow-on production contract to traditional Defense contractors, without further competition, when the Other Transaction agreement for the prototype project provided for at least one-third non-Federal cost-share, consistent with law, and the Other Transaction agreement for the prototype project satisfies certain additional conditions of law.

Timetable:

Action	Date	FR Cite
NPRM	05/20/03	68 FR 27497
NPRM Comment Period End	07/21/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Boyd, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 697–6710

RIN: 0790–AG97

791. REVIEW OF THE MANUAL FOR COURTS-MARTIAL (DOD DIRECTIVE 5500.17)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12473; 10 USC 47

CFR Citation: 32 CFR 152

Legal Deadline: None

Abstract: The Department of Defense promulgates procedures implementing Executive Order 12473, dated July 13, 1984, calling upon the Secretary of Defense to cause an annual review of the Manual for Courts-Martial (MCM) and to recommend to the President any appropriate amendments. Through the annual review process, the Secretary of Defense assists the President in fulfilling his rulemaking responsibilities under article 36 of the Uniform Code of Military Justice (UCMJ; chapter 47 of title 10, United States Code). Under the direction of the General Counsel of the Department of Defense, a Joint Service Committee on Military Justice (JSC) is established with responsibility to conduct the annual review and propose MCM amendments. The JSC also proposes amendments to the UCMJ, as necessary.

This rule updates part 152 to title 32, Code of Federal Regulations, "Review of the Manual for Courts-Martial," to reflect practice and procedures for conducting annual reviews and to change the annual review cycle from concluding with an annual report due to the General Counsel by December 31, instead of May 1. The change in the annual review cycle is due to legislative requirements on affecting JSC responsibilities. This interim rule is provided to afford a 60-day opportunity for public comment prior to issuing a final rule. This rule is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	05/03/03	68 FR 36915
Interim Final Rule	06/20/03	68 FR 36915
Interim Final Rule Comment Period End	08/19/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert E. Reed, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 695–1055

RIN: 0790–AG99

792. IMPLEMENTATION OF SECTION 740 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY AND SECTION 1051 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

Priority: Substantive, Nonsignificant

Legal Authority: PL 106–181; PL 107–314

CFR Citation: 32 CFR 207

Legal Deadline: None

Abstract: This rule prescribes regulations to implement section 740 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Pub. L. 106–181) and section 1051 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314). The regulations will establish procedures for the sale of excess Department of Defense aircraft to persons or entities that provide oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/22/03	68 FR 27904
Interim Final Rule Effective	05/22/03	
Interim Final Rule Comment Period End	07/21/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Debra Bennett, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 604–0098

RIN: 0790–AH02

Department of Defense (DOD) Office of the Secretary (OS) Long-Term Actions

793. FORMER SPOUSE PAYMENTS FROM RETIRED PAY; AMENDMENT (DOD DIRECTIVE 1340.16 AND DOD 7000.14–R, VOL 7, PART B)

Priority: Substantive, Nonsignificant

CFR Citation: 32 CFR 63

Timetable:

Action	Date	FR Cite
NPRM	04/06/95	60 FR 17507
NPRM Comment Period End	06/06/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Fiti Malufau
Phone: 703 607–5061
Email: malufauf@cleveland.dfas.mil

RIN: 0790–AG22

Department of Defense (DOD) Office of the Secretary (OS) Completed Actions

794. CLOSED, TRANSFERRED, AND TRANSFERRING RANGES CONTAINING MILITARY MUNITIONS

Priority: Other Significant

Legal Authority: 10 USC 172 et seq; 10 USC 2701 et seq; 42 USC 9601 et seq; EO 12580

CFR Citation: 32 CFR 178

Legal Deadline: None

Abstract: The proposal for this Department of Defense (DoD) rule addresses the unique explosives safety considerations associated with military munitions (including UXO) and the need for environmental protection, and it does so under DERP, 10 U.S.C. 172 et seq., and CERCLA authorities.

Timetable:

Action	Date	FR Cite
NPRM	09/26/97	62 FR 50796
Public Meetings Begin	10/22/97	
Public Meetings End	12/10/97	
NPRM Comment Period End	12/26/97	
Withdrawn	09/05/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: COL John Selstrom, Department of Defense, Office of the Secretary, 3E787, Deputy Under Secretary of Defense (Environmental Security), 3400 Defense Pentagon, Washington, DC 20301–3400
Phone: 703 697–5372

RIN: 0790–AG46

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795. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d–7; 42 USC 6101 to 6107; EO 12250

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department of Defense proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department of Defense's title VI, section 504, and Age Discrimination Act regulations. The Department of Defense's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/26/03	68 FR 51334
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jerry Anderson, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 695–0105

RIN: 0790–AG83

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796. STARS AND STRIPES (S&S) NEWSPAPER

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 113

CFR Citation: 32 CFR 246

Legal Deadline: None

Abstract: This rule establishes policies and assigns responsibilities for the Stars and Stripes (S&S) newspaper operations. It designates the Secretary of the Army as the DoD Executive Agent for nonappropriated fund support to S&S and designates the successor-in-interest to S&S.

Timetable:

Action	Date	FR Cite
Withdrawn	09/05/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. Oleszewski, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 428–0629

RIN: 0790–AG84

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797. DEPARTMENT OF DEFENSE NEWSPAPERS, MAGAZINES, AND CIVILIAN ENTERPRISE PUBLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 113

CFR Citation: 32 CFR 247

Legal Deadline: None

Abstract: This rule establishes policy, assigns responsibilities, and prescribes procedures concerning authorized DoD Appropriated Funded (APF) newspapers and magazines and Civilian Enterprise (CE) newspapers, magazines, guides, and installation maps (hereafter referred to as DoD publications) in support of the DoD Internal Information Program.

Timetable:

Action	Date	FR Cite
Withdrawn	09/05/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. Oleszewski, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 428–0629

RIN: 0790–AG85

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798. DOD GRANT AND AGREEMENT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 10 USC 113

CFR Citation: 32 CFR 21; 32 CFR 22; 32 CFR 32; 32 CFR 34; 32 CFR 37

Legal Deadline: None

Abstract: The Department of Defense (DoD) is adding a new part 37 to the DoD Grant and Agreement Regulations (DoDGARs) to incorporate policies and procedures for the award and administration of Technology Investment Agreements (TIAs). TIAs are a relatively new class of assistance instruments. DoD components use TIAs to support or stimulate defense research projects involving for-profit firms, especially commercial firms that do business primarily in the commercial marketplace. The new part 37 therefore gives DoD agreements officers greater flexibility to negotiate award provisions in areas that can present barriers to those commercial firms (e.g., intellectual property, audits, and cost principles). This rule also provides revisions to parts 21, 22, 32, and 34 of the DoDGARs to conform the rest of the DoDGARs with the new part 37.

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21486
NPRM Comment Period End	07/01/02	
Final Action	08/07/03	68 FR 47150
Final Action Effective	09/08/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Herbst, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 696–0372
Email: herbstm@acq.osd.mil

RIN: 0790–AG87

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799. VOLUNTARY STATE TAX WITHHOLDING FROM RETIRED PAY

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 1045

CFR Citation: 32 CFR 78

Legal Deadline: None

Abstract: This rule amends 32 CFR part 78, Voluntary State Tax Withholding From Retired Pay, to comply with the Treasury Financial Manual, Volume 1, section 5060f.

Timetable:

Action	Date	FR Cite
Final Rule	06/20/03	68 FR 36914

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter Dragon, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 604–6350

RIN: 0790–AG93

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800. TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103–160

CFR Citation: 32 CFR 3

Legal Deadline: None

Abstract: This final rule establishes the Department's audit policy for prototype projects that use "other transaction" authority. Representatives of the military departments, Defense agencies, and other DoD activities have agreed on a final rule that amends the proposed rule as a result of comments received.

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency, and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants, or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects.

Part 3 to 32 CFR was established to codify policy pertaining to prototype "other transactions" that have a significant impact on the public and are subject to rulemaking. Additional guidance on prototype "other transactions" directed at Government officials can be found at the Defense Procurement web site at: http://www.osd.dp.mil

Timetable:

Action	Date	FR Cite
NPRM	11/21/01	66 FR 58422
NPRM Comment Period End	01/22/02	
Public Meeting	03/27/02	67 FR 9632
Final Action	05/20/03	68 FR 27452
Final Action Effective	06/19/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Boyd, Department of Defense, Office of the Secretary, Office of the Secretary, Defense Pentagon, Washington, DC 20301
Phone: 703 697–6710

RIN: 0790–AH01

Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC)
Proposed Rule Stage

801. PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (LARGE BUSINESS) (DFARS CASE 2001–D015)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 227.3; 48 CFR 252.227

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to add a contract clause on patent rights to replace a FAR clause that has been proposed for deletion.

Timetable:

Action	Date	FR Cite
Case Opened	10/09/01	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD72

802. FISH, SHELLFISH, OR SEAFOOD PRODUCTS (DFARS CASE 2002–D034)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–248, sec 8136

CFR Citation: 48 CFR 225.7002–2; 48 CFR 252.212–7001; 48 CFR 252.225–7012

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 8136 of the Fiscal Year 2003 Defense Appropriations Act. Section 8136 requires the acquisition of domestic fish, shellfish, and seafood.

Timetable:

Action	Date	FR Cite
Case Opened	10/28/02	
Interim Final Rule	02/14/03	68 FR 7441
Interim Final Rule Comment Period End	04/15/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD91

803. • PROTESTS, DISPUTES, AND APPEALS (DFARS CASE 2003–D010)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 233

Legal Deadline: None

Abstract: Amends part 233 of the Defense FAR Supplement (DFARS) to implement proposals resulting from the DFARS Transformation Initiative that pertain to protests, disputes, and appeals.

Timetable:

Action	Date	FR Cite
Case Opened	06/16/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE01

804. • IMPROPER BUSINESS PRACTICES, ORGANIZATIONAL CONFLICTS OF INTEREST, AND DEBARMENT (DFARS CASE 2003–D012)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 203; 48 CFR 209

Legal Deadline: None

Abstract: Amends parts 203 and 209 of the Defense FAR Supplement (DFARS) to implement proposals resulting from the DFARS Transformation Initiative that pertain to improper business practices, organizational conflicts of interest, and debarment.

Timetable:

Action	Date	FR Cite
Case Opened	06/16/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
Phone: 703 602–0131
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RIN: 0750–AE02

805. • PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION (DFARS CASE 2003–D038)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 224

Legal Deadline: None

Abstract: Amends part 224 of the Defense FAR Supplement (DFARS) to implement proposals resulting from the DFARS Transformation Initiative that pertain to protection of privacy and freedom of information.

Timetable:

Action	Date	FR Cite
Case Opened	07/28/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE03

806. • CONTRACTOR QUALIFICATIONS RELATING TO CONTRACT PLACEMENT (DFARS CASE 2003–D011)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 209; 48 CFR 252.209

Legal Deadline: None

Abstract: Amends part 209 of the Defense FAR Supplement (DFARS) to implement proposals resulting from the DFARS Transformation Initiative that relate to contractor qualification requirements and contract placement.

Timetable:

Action	Date	FR Cite
Case Opened	06/16/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE06

807. • GOVERNMENT SOURCE INSPECTION REQUIREMENTS (DFARS CASE 2002–D032)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 246.4

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to limit Government source inspection requirements for contracts below $250,000. This change will permit contract administration offices to devote more resources to high-risk contracts.

Timetable:

Action	Date	FR Cite
Case Opened	10/25/02	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE08

808. • COST ACCOUNTING STANDARDS (DFARS CASE 2003–D015)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 230

Legal Deadline: None

Abstract: Amends part 230 of the Defense FAR Supplement (DFARS) to implement noncomplex proposals resulting from the DFARS Transformation Initiative that pertain to Cost Accounting Standards.

Timetable:

Action	Date	FR Cite
Case Opened	07/01/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE10

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809. • GEOGRAPHIC USE OF THE TERM "UNITED STATES" (DFARS CASE 2001–D003)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 204; 48 CFR 208; 48 CFR 209; 48 CFR 212; 48 CFR 213; 48 CFR 215; 48 CFR 219; 48 CFR 252; . . .

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to standardize the use of geographic terms, in accordance with definitions found in the FAR.

Timetable:

Action	Date	FR Cite
Case Opened	02/13/01	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE12

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810. • LAWS INAPPLICABLE TO COMMERCIAL SUBCONTRACTS (DFARS CASE 2003–D018)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 212.504

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement (DFARS) to remove the Buy American Act and the Trade Agreements Act from the list of laws inapplicable to commercial subcontracts. This change implements a proposal resulting from the DFARS Transformation Initiative.

Timetable:

Action	Date	FR Cite
Case Opened	07/02/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE14

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811. • BERRY AMENDMENT–EXCEPTION FOR FABRICS AND FIBERS (DFARS CASE 2003–D022)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement (DFARS) to clarify the exception to the Berry Amendment that permits the acquisition of small amounts of cotton, other natural fibers, and wool from foreign sources and expands the exception to apply to all fabrics and fibers. This change implements a proposal resulting from the DFARS Transformation Initiative.

Timetable:

Action	Date	FR Cite
Case Opened	07/02/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE15

Department of Defense (DOD) Final Rule Stage
Defense Acquisition Regulations Council (DARC)

812. INCREMENTAL FUNDING, FIXED-PRICE CONTRACTS (DFARS CASE 1990–037)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 232.7; 48 CFR 252.232

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to permit the use of incremental funding of fixed-price contracts in certain situations.

Timetable:

Action	Date	FR Cite
Case Opened	09/26/90	
Interim Final Rule	09/01/93	58 FR 46091
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AA07

813. COMPETITION REQUIREMENTS FOR PURCHASES FROM A REQUIRED SOURCE (DFARS CASE 2002–D003)

Priority: Other Significant

Legal Authority: PL 107–107, sec 811; PL 107–314, sec 819

CFR Citation: 48 CFR 208.6; 48 CFR 210.0; 48 CFR 219.5; 48 CFR 252.219

Legal Deadline: NPRM, Statutory, March 2, 2003, NPRM.
Final, Statutory, May 31, 2003, Final.
The legal deadlines described above are imposed by section 819 of Public Law 107–314.

Abstract: Amends the Defense FAR Supplement to implement section 811 of the Fiscal Year 2002 National Defense Authorization Act and section 819 of the Fiscal Year 2003 National Defense Authorization Act. These laws require DoD to conduct market research before purchasing a product from Federal Prison Industries (FPI) to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector.

Timetable:

Action	Date	FR Cite
Case Opened	01/08/02	
Interim Final Rule	04/26/02	67 FR 20687
Interim Final Rule Comment Period End	06/25/02	
NPRM	05/15/03	68 FR 26265
NPRM Comment Period End	07/14/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD57

814. ELECTRONIC SUBMISSION AND PROCESSING OF PAYMENT REQUESTS (DFARS CASE 2002–D001)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106–398, sec 1008

CFR Citation: 48 CFR 232.70; 48 CFR 252.212–7001; 48 CFR 252.232–7003; 48 CFR 252.246–7000

Legal Deadline: Final, Statutory, October 1, 2002, Final.

Abstract: Amends the Defense FAR Supplement to implement section 1008 of the Fiscal Year 2001 National Defense Authorization Act, which requires that any claim for payment be submitted and processed electronically.

Timetable:

Action	Date	FR Cite
Case Opened	01/09/02	
NPRM	05/31/02	67 FR 38057
NPRM Comment Period End	07/30/02	
Interim Final Rule	02/21/03	68 FR 8450
Interim Final Rule Comment Period End	04/22/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD70

815. CODIFICATION AND MODIFICATION OF BERRY AMENDMENT (DFARS CASE 2002–D002)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–107, sec 832

CFR Citation: 48 CFR 225.7002; 48 CFR 252.212–7001; 48 CFR 252.225–7012

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 832 of the Fiscal Year 2002 National Defense Authorization Act. Section 832 codifies and makes minor modifications to the provision of law known as the Berry Amendment, which requires the acquisition of certain items from domestic sources.

Timetable:

Action	Date	FR Cite
Case Opened	01/08/02	
Interim Final Rule	04/26/02	67 FR 20697
Interim Final Rule Comment Period End	06/25/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD76

816. INDIAN INCENTIVE CLAUSE–CONTRACT TYPES (DFARS CASE 2002–D013)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 252.226–7001

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to clarify that the clause permitting incentive payments for use of Indian organizations as subcontractors can be applied to all contract types.

Timetable:

Action	Date	FR Cite
Case Opened	06/11/02	
NPRM	11/22/02	67 FR 70389
NPRM Comment Period End	01/21/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD78

817. APPROVAL OF SERVICE CONTRACTS AND TASK ORDERS (DFARS CASE 2002–D024)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–107, sec 801(b)

CFR Citation: 48 CFR 237.170

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 801(b) of the Fiscal Year 2002 National Defense Authorization Act. Section 801(b) requires DoD to establish and implement a management structure for the procurement of services.

Timetable:

Action	Date	FR Cite
Case Opened	08/02/02	
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD81

818. PROVISIONAL AWARD FEE PAYMENTS (DFARS CASE 2001–D013)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 216.405–2

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to address the use of provisional award fee payments under cost-plus-award-fee contracts.

Timetable:

Action	Date	FR Cite
Case Opened	08/29/01	
NPRM	11/22/02	67 FR 70388
NPRM Comment Period End	01/21/03	
Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD83

819. PAYMENT WITHHOLDING (DFARS CASE 2002–D017)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 232.111; 48 CFR 252.232

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to remove the requirement for a contracting officer to routinely withhold 5 percent of payments due under a time-and-materials or labor-hour contract.

Timetable:

Action	Date	FR Cite
Case Opened	06/18/02	
NPRM	02/28/03	68 FR 9627
NPRM Comment Period End	04/29/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD85

820. INFORMATION ASSURANCE (DFARS CASE 2002–D020)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 239.71; 48 CFR 252.239–7000

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to address requirements for information assurance in the acquisition of information technology.

Timetable:

Action	Date	FR Cite
Case Opened	06/25/02	
NPRM	05/23/03	68 FR 28187
NPRM Comment Period End	07/22/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD86

821. PURCHASE CARD INTERNAL CONTROLS (DFARS CASE 2002–D025)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 213.3

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to add policy on internal controls for proper use of the Governmentwide commercial purchase card.

Timetable:

Action	Date	FR Cite
Case Opened	08/02/02	
NPRM	12/20/02	67 FR 77955
NPRM Comment Period End	02/18/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD87

822. FOLLOW-ON PRODUCTION CONTRACTS FOR PRODUCTS DEVELOPED PURSUANT TO PROTOTYPE PROJECTS (DFARS CASE 2002-D023)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-107, sec 822

CFR Citation: 48 CFR 206.001

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 822 of the Fiscal Year 2002 National Defense Authorization Act. Section 822 provides for award of a follow-on production contract, without competition, to participants in an "other transaction" agreement for a prototype project under certain conditions.

Timetable:

Action	Date	FR Cite
Case Opened	07/24/02	
NPRM	06/03/03	68 FR 33057
NPRM Comment Period End	08/04/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
Phone: 703 602-0131
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RIN: 0750-AD88

823. INDIAN INCENTIVE PROGRAM-COMMERCIAL ITEMS (DFARS CASE 2002-D033)

Priority: Substantive, Nonsignificant

Legal Authority: 107-248, sec 8021

CFR Citation: 48 CFR 226.1; 48 CFR 252.212-7001; 48 CFR 252.226-7001

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 8021 of the Fiscal Year 2003 Defense Appropriations Act. Section 8021 revises the criteria for application of the Indian Incentive Program to DoD contracts.

Timetable:

Action	Date	FR Cite
Case Opened	10/25/02	
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750-AD97

824. • MULTIYEAR PROCUREMENT AUTHORITY FOR ENVIRONMENTAL SERVICES FOR MILITARY INSTALLATIONS (DFARS CASE 2003-D004)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107-314, sec 827

CFR Citation: 48 CFR 217.1

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 827 of the Fiscal Year 2003 National Defense Authorization Act. Section 827 provides authority for DoD to enter into multiyear contracts for environmental remediation services for military installations.

Timetable:

Action	Date	FR Cite
Case Opened	03/31/03	
Interim Final Rule	07/22/03	68 FR 43332
Interim Final Rule Comment Period End	09/22/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750-AD99

825. • DOD ACTIVITY ADDRESS CODES IN CONTRACT NUMBERS (DFARS CASE 2003-D005)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 204.70

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to prescribe use of DoD activity address codes in the first six positions of solicitation and contract numbers. This change will provide consistency in the method of identifying DoD activities.

Timetable:

Action	Date	FR Cite
Case Opened	04/15/03	
NPRM	06/11/03	68 FR 34879
NPRM Comment Period End	08/11/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750-AE00

826. • BUY-TO-BUDGET ACQUISITION OF END ITEMS (DFARS CASE 2002-D036)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107-314, sec 801

CFR Citation: 48 CFR 207.70

Legal Deadline: Final, Statutory, April 1, 2003, Final.

Abstract: Amends the Defense FAR Supplement to implement section 801 of the Fiscal Year 2003 National Defense Authorization Act. Section 801 authorizes DoD to acquire a higher quantity of an end item than the quantity specified in a law providing for the funding of the acquisition, under certain conditions.

Timetable:

Action	Date	FR Cite
Case Opened	12/05/02	
Interim Final Rule	07/22/03	68 FR 43331
Interim Final Rule Comment Period End	09/22/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE04

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827. • MULTIYEAR CONTRACTING AUTHORITY REVISIONS (DFARS CASE 2002–D041)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107–314, sec 820

CFR Citation: 48 CFR 217.1

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 820 of the Fiscal Year 2003 National Defense Authorization Act. Section 820 restricts the use of multiyear contracts for supplies to only those for complete and usable end items and restricts the use of advance procurement to only those long-lead items necessary to meet a planned delivery schedule for complete major end items.

Timetable:

Action	Date	FR Cite
Case Opened	12/05/02	
Interim Final Rule	08/21/03	68 FR 50474
Interim Final Rule Comment Period End	10/20/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE05

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828. • PRODUCTION SURVEILLANCE AND REPORTING (DFARS CASE 2002–D015)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 242.1104

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to eliminate requirements for DoD contract administration offices to perform production surveillance on contractors that have only Criticality Designator C (low-urgency) contracts. This change will permit contract administration offices to devote more resources to critical and high–risk contracts.

Timetable:

Action	Date	FR Cite
Case Opened	06/17/03	
NPRM	08/21/03	68 FR 50495
NPRM Comment Period End	10/20/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
Phone: 703 602–0131
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Email: gail.cruz@osd.mil

RIN: 0750–AE07

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829. • UNIQUE ITEM IDENTIFICATION AND PROPERTY VALUATION (DFARS CASE 2003–D081)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 204.7104; 48 CFR 211.2; 48 CFR 212.301; 48 CFR 252.211

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to add requirements for DoD contractors to provide unique identification for property items delivered to DoD, through the use of item identification marking. In addition, this change adds requirements for DoD contracts to identify the acquisition cost of all items built or acquired by the contractor and subsequently delivered to DoD under the contract. This change will improve management of DoD assets.

Timetable:

Action	Date	FR Cite
Case Opened	08/07/03	
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE09

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830. • CENTRAL CONTRACTOR REGISTRATION (DFARS CASE 2003–D040)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 204; 48 CFR 212.3; 48 CFR 213.1; 48 CFR 252.204

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to remove Central Contractor Registration (CCR) requirements, upon incorporation of CCR requirements into the FAR.

Timetable:

Action	Date	FR Cite
Case Opened	07/28/03	
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE11

Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC)
Completed Actions

831. FOREIGN ACQUISITION (DFARS CASE 2002–D009)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 206.303; 48 CFR 208.7203; 48 CFR 212.301; 48 CFR 225; 48 CFR 242.302; 48 CFR 252.212; 48 CFR 252.225

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to simplify and clarify policy pertaining to the acquisition of supplies and services from foreign sources.

Timetable:

Action	Date	FR Cite
Case Opened	03/22/02	
NPRM	10/07/02	67 FR 62590
NPRM Comment Period End	12/06/02	
Final Rule	03/31/03	68 FR 15616
Final Rule Effective	04/30/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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Email: gail.cruz@osd.mil

RIN: 0750–AD73

832. PAYMENT BONDS ON COST–REIMBURSEMENT CONTRACTS (DFARS CASE 2002–D030)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 228.102

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to permit the use of alternative payment protections for fixed-price construction subcontracts between $25,000 and $100,000 issued under cost-reimbursement contracts.

Timetable:

Action	Date	FR Cite
Case Opened	10/03/02	
NPRM	02/14/03	68 FR 7490
NPRM Comment Period End	04/15/03	
Final Rule	06/20/03	68 FR 36944

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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Email: gail.cruz@osd.mil

RIN: 0750–AD79

833. EFFICIENCY SAVINGS (DFARS CASE 2002–D022)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 242.76

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to add policies and procedures for the negotiation of advance agreements to permit DoD to share efficiency savings with contractors.

Timetable:

Action	Date	FR Cite
Case Opened	07/23/02	
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD80

834. CONTRACTOR PERFORMANCE OF SECURITY-GUARD FUNCTIONS (DFARS CASE 2002–D042)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–314, sec 332

CFR Citation: 48 CFR 237.1

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 332 of the Fiscal Year 2003 National Defense Authorization Act. Section 332 provides temporary authority for contractor performance of security-guard functions at military installations or facilities to meet the increased need for such functions since September 11, 2001.

Timetable:

Action	Date	FR Cite
Case Opened	12/12/02	
Interim Final Rule	02/14/03	68 FR 7443
Interim Final Rule Comment Period End	04/15/03	
Final Rule	08/21/03	68 FR 50476

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD82

835. LIABILITY FOR LOSS UNDER VESSEL REPAIR AND ALTERATION CONTRACTS (DFARS CASE 2002–D016)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 252.217–7012

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to increase a contractor's liability for loss or damage under vessel repair and alteration contracts from $5,000 to $50,000 per incident. The increased dollar ceiling is based on adjustments for inflation, the need to provide a financial incentive for contractors to minimize loss and damage, and common insurance practices.

Timetable:

Action	Date	FR Cite
Case Opened	06/17/02	
NPRM	02/14/03	68 FR 7491
NPRM Comment Period End	04/15/03	
Final Rule	08/21/03	68 FR 50477

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD84

836. TRANSPORTATION OF SUPPLIES BY SEA–COMMERCIAL ITEMS (DFARS CASE 2002–D019)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 2631

CFR Citation: 48 CFR 252.212–7001

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to add an alternate version of a clause, pertaining to the transportation of supplies by sea, for use in contracts for commercial items at or below the simplified acquisition threshold.

Timetable:

Action	Date	FR Cite
Case Opened	06/24/02	
NPRM	10/25/02	67 FR 65528
NPRM Comment Period End	12/24/02	
Final Rule	06/03/03	68 FR 33026

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD89

837. CONTRACTING WITH FEDERAL PRISON INDUSTRIES (DFARS CASE 2002–D040)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–314, sec 819

CFR Citation: 48 CFR 208.6

Legal Deadline: NPRM, Statutory, March 2, 2003, NPRM.
Final, Statutory, May 31, 2003, Final.

Abstract: Amends the Defense FAR Supplement to implement section 819 of the Fiscal Year 2003 National Defense Authorization Act. Section 819 contains requirements regarding the acquisition of products from Federal Prison Industries.

Timetable:

Action	Date	FR Cite
Case Opened	12/05/02	
Merged With 0750–AD57	04/28/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: This case was closed and combined with DFARS Case 2002–D003, RIN 0750–AD57.

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD95

838. EXTENSION OF CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESSES AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION (DFARS CASE 2002–D038)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–314, sec 816

CFR Citation: 48 CFR 219.0; 48 CFR 226.70

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to implement section 816 of the Fiscal Year 2003 National Defense Authorization Act. Section 816 extends, through September 30, 2006, the 5 percent goal for DoD contract awards to small disadvantaged businesses, historically black colleges and universities, and minority institutions.

Timetable:

Action	Date	FR Cite
Case Opened	12/05/02	
Final Rule	03/31/03	68 FR 15381

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AD96

839. ● COMPETITIVENESS DEMONSTRATION CODES UPDATE (DFARS CASE 2003–D003)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 219.1005

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to update the industry categories designated for enhanced small business participation under the Small Business Competitiveness Demonstration Program.

Timetable:

Action	Date	FR Cite
Case Opened	03/25/03	
Final Rule	08/21/03	68 FR 50476

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
Phone: 703 602–0131
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Email: gail.cruz@osd.mil

RIN: 0750–AD98

840. • CARIBBEAN BASIN COUNTRY–DOMINICAN REPUBLIC (DFARS CASE 2003–D007)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 252.225–7021

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to reinstate treatment of products of the Dominican Republic as eligible products in acquisitions subject to the Trade Agreements Act, in accordance with a determination of the U.S. Trade Representative.

Timetable:

Action	Date	FR Cite
Case Opened	05/19/03	
Final Rule	08/21/03	68 FR 50477

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE13

841. • REPORTING REQUIREMENTS UPDATE (DFARS CASE 2003–D002)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 253.204

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to update DoD contract action reporting requirements for fiscal year 2004.

Timetable:

Action	Date	FR Cite
Case Opened	03/25/03	
Final Rule	06/20/03	68 FR 36945
Final Rule Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
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RIN: 0750–AE16

842. • DELETION OF FEDERAL PRISON INDUSTRIES CLEARANCE EXCEPTION (DFARS CASE 2003–D006)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 208.606

Legal Deadline: None

Abstract: Amends the Defense FAR Supplement to delete obsolete text pertaining to an exception from requirements for purchase of products from Federal Prison Industries.

Timetable:

Action	Date	FR Cite
Case Opened	05/16/03	
Final Rule	06/20/03	68 FR 36944

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Noranzie (Gail) Cruz, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3C132, OUSD AT&L, 3062 Defense Pentagon, Washington, DC 20301–3062
Phone: 703 602–0131
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Email: gail.cruz@osd.mil

RIN: 0750–AE17

Department of Defense (DOD)
Department of the Army (DOA)
Final Rule Stage

843. • FOREIGN ACQUISITION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 10 USC 2202; FAR 1.301; DFARS 201.3; DODD 5000.35; ...

CFR Citation: 48 CFR 5125

Legal Deadline: None

Abstract: To increase consistency in Army contracts that may require deployment of personnel, the Department of the Army is amending 48 CFR chapter 51. This interim rule is a consolidation and summarization of current information available in several documents, some of which are currently in draft form, and does not include new Army contracting policy.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This interim rule is added to incorporate information to facilitate deploying contractor personnel to Iraq and other areas of operations. It also seeks to ease the administrative difficulty for each contractor and contracting office researching current guidance on contractors accompanying the force and to increase consistency among Army contracts. This amendment addresses contractor and Army contracting offices' questions and concerns.

Agency Contact: Luz D. Ortiz, Army **Federal Register** Liaison Officer, Department of Defense, Department of the Army, U.S. Army Records Management and Declassification Agency, Stop 5603, ATTN: TAPC–PDD–RP, 6000 6th Street, Fort Belvoir, VA 22060–5603
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RIN: 0702–AA38

844. • SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 10 USC 2202; FAR 1.301; DOD FAR 201.3; DODD 5000.35; ...

CFR Citation: 48 CFR 5152

Legal Deadline: None

Abstract: To increase consistency in Army contracts that may require deployment of contractor personnel, the Department of the Army is amending 48 CFR part 5152. This interim rule seeks to incorporate information to facilitate the deployment of contractor personnel to Iraq or other areas of operations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rule is a consolidation and summarization of current information available in several documents, some of which are currently in draft form, and does not include new Army contracting policy.

Agency Contact: Luz D. Ortiz, Army **Federal Register** Liaison Officer, Department of Defense, Department of the Army, U.S. Army Records Management and Declassification Agency, Stop 5603, ATTN: TAPC–PDD–RP, 6000 6th Street, Fort Belvoir, VA 22060–5603
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RIN: 0702–AA39

Department of Defense (DOD) Completed Actions
Department of the Army (DOA)

845. • UNITED STATES SOLDIERS' AND AIRMEN'S HOME

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 24 USC 401 to 433; PL 101–510

CFR Citation: 32 CFR 574

Legal Deadline: None

Abstract: This action removes 32 CFR part 574 published in the Federal Register, February 26, 1979 (44 FR 10981). The rule is being removed because it is now obsolete and no longer applies to or governs the policies of the U.S. Soldiers' and Airmen's Home facility.

Timetable:

Action	Date	FR Cite
Final Action	05/23/03	68 FR 28138

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Luz D. Ortiz, Army **Federal Register** Liaison Officer, Department of Defense, Department of the Army, U.S. Army Records Management and Declassification Agency, Stop 5603, ATTN: TAPC–PDD–RP, 6000 6th Street, Fort Belvoir, VA 22060–5603
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RIN: 0702–AA37

Department of Defense (DOD) Proposed Rule Stage
U.S. Army Corps of Engineers (COE)

846. ENVIRONMENTAL QUALITY; PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 et seq; 40 CFR 1500.6

CFR Citation: 33 CFR 230

Legal Deadline: None

Abstract: The purpose of this regulatory revision is to clarify and provide additional guidance for Corps NEPA requirements for activities at Federal water resource development projects and lands.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	07/00/04	
Final Action	10/00/04	
Final Action Effective	02/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Forester Einarsen, Biologist, Department of Defense, U.S. Army Corps of Engineers, Office of Environmental Policy (CECW–PC), 441 G Street NW, Washington, DC 20314
Phone: 202 761–4589

RIN: 0710–AA42

847. CLEAN WATER ACT REGULATORY DEFINITION OF "WATERS OF THE UNITED STATES"

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1361; 33 USC 1362

CFR Citation: 33 CFR 328; 40 CFR 110; 40 CFR 112; 40 CFR 116; 40 CFR 117; 40 CFR 122; 40 CFR 230; 40 CFR 232; 40 CFR 257; 40 CFR 300; 40 CFR 401

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking on the Clean Water Act Regulatory Definition of "Waters of the United States" was published jointly by EPA and the Department of the Army on January 15, 2003. This action solicited public input on aspects of Clean Water Act regulatory jurisdiction that should be addressed in joint rulemaking by EPA and the Department of the Army to clarify the jurisdictional status under the Clean Water Act (CWA) of "isolated intrastate non-navigable waters and wetlands." The existing regulations contain language asserting jurisdiction over isolated intrastate waters, but that regulatory provision has been the subject of a January 9, 2001, U.S. Supreme Court opinion, Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC). In SWANCC, the Court held that the scope of "waters of the United States" protected under the Clean Water Act did not extend to isolated intrastate non-navigable waters based solely on presence of migratory birds. While SWANCC did not actually invalidate regulations under the CWA, the decision does establish limitations on their use. Revision of the regulatory language is necessary to address the Court's decision, improve regulatory clarity, and provide more specificity regarding CWA jurisdiction. Approximately 150,000 comments were received in response to the ANPRM. The Corps and EPA are currently sorting comments by nature and substance to facilitate final review and consideration. The assessment of the comments will be factored into the decision on the need for, and scope of, further rulemaking. Among others things, a rulemaking process would clarify CWA jurisdiction for entities (e.g., industrial, commercial, governmental) that discharge pollutants, including dredged or fill material, to isolated intrastate surface waters or wetlands. Small entities or State/local/tribal governments might be affected by a change in regulatory definition of "waters of the United States" if they either are regulated under or help administer CWA programs affecting such waters; e.g., sections 402, 404, 311. Significant impacts on such entities or governments are not anticipated, as the proposed regulatory revisions would be consistent with the Supreme Court ruling.

Timetable:

Action	Date	FR Cite
ANPRM	01/15/03	68 FR 1991
ANPRM Comment Period End	04/16/03	68 FR 9613
NPRM	05/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Thaddeus J. Rugiel, Regulatory Program Manager, Department of Defense, U.S. Army Corps of Engineers, CECW–OR (3G65), 441 G Street NW, Washington, DC 20314–1000
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RIN: 0710–AA50

848. REGULATORY PROGRAM OF THE ARMY CORPS OF ENGINEERS AND HISTORIC PROPERTIES

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 325

Legal Deadline: None

Abstract: In 1990, the Corps published its final regulations regarding the protection of historic properties and compliance with the National Historic Preservation Act (NHPA) and other historic preservation laws. Since those final regulations were published, the NHPA was amended in 1992, and the Advisory Council on Historic Preservation's implementing regulations at 36 CFR 800 have been revised substantially. The Corps will revise appendix C of 33 CFR 325 to conform to it regulations to the NHPA, as amended.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	
Final Action	12/00/04	
Final Action Effective	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0710–AA51

Department of Defense (DOD) Final Rule Stage
U.S. Army Corps of Engineers (COE)

849. NATURAL DISASTER PROCEDURES: PREPAREDNESS, RESPONSE, AND RECOVERY ACTIVITIES OF THE CORPS OF ENGINEERS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 701

CFR Citation: 33 CFR 203

Legal Deadline: None

Abstract: This revision of 33 CFR 203 is necessary to reflect current policy, add features required by the Water Resources Development Act of 1996 (Pub. L. 104–303), and streamline certain procedures concerning Corps authority for disaster preparedness, response, and recovery activities. Public Law 104–303 additions are the option of a nonstructural alternative to structural levee repairs for damage caused by flood events and the provision of a levee owners' manual. Other changes include a change in the cost share provision for rehabilitation of Federal and non-Federal flood control works, expansion of investigation ability for potential Advance Measures work, and a streamlined approach for requests for assistance from Native American tribes and Alaska Native Corporations.

Timetable:

Action	Date	FR Cite
NPRM	02/26/02	67 FR 8748
NPRM Comment Period End	04/29/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: George Gilmore, Program Manager, Public Law 84–99, Department of Defense, U.S. Army Corps of Engineers, CECW–OE (3F68), 441 G Street NW, Washington, DC 20314–1000
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RIN: 0710–AA47

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850. PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

Regulatory Plan: This entry is Seq. No. 33 in part II of this issue of the **Federal Register**.

RIN: 0710–AA49

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851. • CIVIL MONETARY PENALTY INFLATION ADJUSTMENT RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 33 USC 1319; 33 USC 2104; 28 USC 2461; PL 104–134

CFR Citation: 33 CFR 326.6

Legal Deadline: None

Abstract: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations to adjust its Class I civil penalties under the Clean Water Act and the National Fishing Enhancement Act. The adjustment of civil penalties to account for inflation is required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Since we have not made any adjustments to our Class I civil penalties, we are proposing to make the initial 10 percent increase under this Act. The proposed adjusted Class I civil penalty under the Clean Water Act will not exceed $11,000 per violation, with a maximum civil penalty amount of $27,500. Under the National Fishing Enhancement Act, the proposed adjusted Class I civil penalty will not exceed $11,000 per violation. Increasing the maximum amounts of the Class I civil penalties to account for inflation will maintain the deterrent effects of those penalties.

Timetable:

Action	Date	FR Cite
NPRM	08/20/03	68 FR 50108
NPRM Comment Period End	10/06/03	
Final Action	03/00/04	
Final Action Effective	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
www.usace.army.mil/inet/functions/cw/cecwo/reg/

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RIN: 0710–AA54

Department of Defense (DOD) Long-Term Actions
U.S. Army Corps of Engineers (COE)

852. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS, ENDANGERED SPECIES ACT; SCOPE OF ANALYSIS

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 325

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 0710–AA43

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853. COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 241

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Harry M. Shoudy
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RIN: 0710–AA44

854. • SPECIAL EVENTS RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 460(l)

CFR Citation: 36 CFR 327

Legal Deadline: None

Abstract: The U.S. Army Corps of Engineers (Corps) may propose to amend its special events program regulations at 36 CFR 327.21 to better define the special events program at Corps of Engineers water resources projects. Special events may be held at any Corps of Engineers water resources project provided a permit is obtained by the sponsor in advance of the event. The proposed rule would define what constitutes a special event and when a permit is required to hold an event at a Corps water resources project. This proposed rule would contain new definitions, outline when a fee may be charged to hold an event, describe permitting procedures, and include a sample permit application, event permit, and permit checklist.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Ms. Judy Rice, Department of Defense, U.S. Army Corps of Engineers, Natural Resources Branch (CECW-ON), 441 G Street NW, Washington, DC 20314
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RIN: 0710-AA53

Department of Defense (DOD)
U.S. Army Corps of Engineers (COE)

Completed Actions

855. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 401; 33 USC 403; 33 USC 1344; 33 USC 1413

CFR Citation: 33 CFR 320 to 331

Legal Deadline: None

Abstract: The Corps of Engineers intends to make numerous clarifications to its existing regulations at 33 CFR 320 to 331 to consolidate all permit regulations into one document and to reorganize 33 CFR 325 for clarity. Since the Corps Regulatory Program final regulations were published in the Federal Register on November 13, 1986 (51 FR 41206), there has been a need to clarify several of those provisions. Since 1986, the Corps has adopted two new appendices at 33 CFR 325, appendices B and C, and the Corps has also adopted revisions to the Nationwide Permit Program (33 CFR 330), Class 1 Administrative Civil Penalties (33 CFR 326), and revisions to the definition of discharge of Dredged Material and Fill Material and prior converted croplands. This rulemaking will consolidate all recent changes in one place.

Timetable:

Action	Date	FR Cite
Withdrawn	09/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 0710-AA30

856. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS—WETLAND DELINEATOR CERTIFICATION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1344

CFR Citation: 33 CFR 320; 33 CFR 323; 33 CFR 325; 33 CFR 328; 33 CFR 333

Legal Deadline: None

Abstract: The regulation establishes the procedures for certification under the Corps of Engineers Wetland Delineator Certification Program developed pursuant to section 307(e) of the Water Resources Development Act of 1990.

Timetable:

Action	Date	FR Cite
NPRM	03/14/95	60 FR 13654
NPRM Comment Period End	04/13/95	
Withdrawn	09/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 0710-AA38

Department of Defense (DOD)
Department of the Navy (NAVY)
Final Rule Stage

857. POLICIES AND RESPONSIBILITIES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT WITHIN THE DEPARTMENT OF THE NAVY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 44502

CFR Citation: 32 CFR 775 (Revision)

Legal Deadline: None

Abstract: The Department of the Navy is revising its regulations, which establish the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). This revision clarifies when certain Department of the Navy actions must be studied to determine their effect on the human environment and what types of activities are excluded from the NEPA documentation requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/09/99	64 FR 37069
NPRM Comment Period End	09/07/99	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Egeland, Department of Defense, Department of the Navy, Office of the Assistant Secretary of the Navy (Installations and Environment), 2000 Navy Pentagon, Washington, DC 20350
Phone: 703 614–1173

RIN: 0703–AA51

Department of Defense (DOD)
Department of the Navy (NAVY)
Long-Term Actions

858. SHIPBUILDING CAPABILITY PRESERVATION AGREEMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 5231 (New)

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/97	62 FR 66826
Interim Final Rule Effective	12/22/97	
Interim Final Rule Comment Period End	02/20/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Clarence Belton
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RIN: 0703–AA50

Department of Defense (DOD)
Department of the Navy (NAVY)
Completed Actions

859. USE OF DEPARTMENT OF THE NAVY AVIATION FACILITIES BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1507

CFR Citation: 32 CFR 766

Legal Deadline: None

Abstract: This part establishes the policy and procedures for the use of Navy and Marine Corps aviation facilities by aircraft other than United States Department of Defense aircraft.

Timetable:

Action	Date	FR Cite
NPRM	12/01/94	59 FR 61561
NPRM Comment Period End	01/03/95	
Withdrawn	09/03/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dan Bartlett, Department of Defense, Department of the Navy, N885F, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000
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RIN: 0703–AA48

Department of Defense (DOD)
Office of Assistant Secretary for Health Affairs (DODOASHA)
Final Rule Stage

860. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); HOSPITAL PAYMENT FOR AMBULATORY CARE

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule establishes a new payment method for ambulatory care (other than ambulatory surgery) provided by hospitals to CHAMPUS beneficiaries under which payment amounts would be based on the cost of the service rather than on the billed charge as at present.

Timetable:

Action	Date	FR Cite
NPRM	01/20/94	59 FR 3046
NPRM Comment Period End	03/21/94	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 0720–AA20

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861. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); EXCEPTION TO THE CHAMPUS DUAL COMPENSATION/CONFLICT OF INTEREST PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: Currently, any individual who is a civilian employee of the United States Government cannot be authorized by CHAMPUS as a provider of medical services. We propose to provide an exception to this prohibition to permit these individuals to be authorized CHAMPUS providers if they meet three conditions. First, they must be employed by the Government agency on a part-time basis, that is, less than 20 hours per week. Second, the Agency must certify that unique or special circumstances detrimental to the delivery of quality health care exist that can be overcome only by employing part-time, non-Government physicians. Third, the Agency and the physician must certify that they understand and have taken appropriate measures to avoid violation of Standards of Conduct, dual compensation, and conflict of interest requirements including protection against referral of patients to the employee's private practice.

Timetable:

Action	Date	FR Cite
NPRM	08/26/97	62 FR 45196
NPRM Comment Period End	10/27/97	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 0720–AA41

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862. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); PROSTHETIC DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 702 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85), which authorizes purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The Act changes the existing limited provisions for prosthetic devices, expands coverage to include cost sharing of other prostheses; e.g., noses, ears, and fingers.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	05/20/99	64 FR 45453
Interim Final Rule	08/20/99	64 FR 45453
Interim Final Rule Comment Period End	10/19/99	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Margaret Brown,
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RIN: 0720–AA49

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863. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); DOUBLE COVERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule clarifies our double coverage policy for non-institutional claims for beneficiaries with primary health insurance. TRICARE network, non-network but participating, and non-participating providers are all reimbursed differently under current procedures. This has had the unintended effect of discouraging TRICARE network participation since non-network but participating providers receive the most favorable treatment with respect to double coverage calculations. The Department proposes to revise double coverage reimbursement calculations by reimbursing all providers up to 100 percent of the CHAMPUS Maximum Allowable Charge after the primary health insurance has paid, or 115 percent for nonparticipating providers.

Timetable:

Action	Date	FR Cite
NPRM	06/17/99	64 FR 32451
NPRM Comment Period End	08/16/99	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: LTC Kathleen Larkin,
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RIN: 0720–AA50

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864. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ESTABLISHMENT OF AN APPEALS PROCESS FOR TRICARE CLAIMCHECK DENIALS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 714 of the National Defense Authorization Act for FY 1999, which requires the establishment of an appeals process for denials by TRICARE Claimcheck (TCC) or any similar software system. This rule enhances the current appeals process by adding an additional level of appeal conducted at the TRICARE Management Activity (TMA) and by codifying the entire process in this part.

Timetable:

Action	Date	FR Cite
NPRM	01/13/00	65 FR 2085
NPRM Comment Period End	03/13/00	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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Phone: 303 676–3411

RIN: 0720–AA56

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865. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); METHODOLOGY FOR COVERAGE OF NIH-SPONSORED CLINICAL TRIALS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule modifies the general prohibition against CHAMPUS cost-sharing of unproven drugs, devices, and medical treatments or procedures by adding a provision allowing a waiver of the prohibition in connection with clinical trials sponsored by the National Institutes of Health, if it is determined that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

Timetable:

Action	Date	FR Cite
NPRM	05/31/00	65 FR 34627
NPRM Comment Period End	07/31/00	
Final Rule	01/31/01	66 FR 8365
Final Rule Withdrawn	02/07/01	66 FR 9199
Final Rule Effective	03/02/01	66 FR 8365
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 0720–AA57

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866. CHAMPUS/TRICARE; IMPLEMENTATION OF THE PHARMACY BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule is designed to implement section 701 of the National Defense Authorization Act for Fiscal Year 2000. This rule establishes procedures for the inclusion of pharmaceutical agents on a Uniform Formulary based upon relative clinical effectiveness and cost effectiveness; establishes cost-sharing requirements, including a tiered co-payment structure, for generic, formulary and non-formulary pharmaceutical agents; establishes procedures to assure the availability of pharmaceutical agents not included on the Uniform Formulary to eligible beneficiaries at the non-formulary cost-share tier; establishes procedures to receive pharmaceutical agents not included on the Uniform Formulary, but considered clinically necessary, under the same terms and conditions as an agent on the Uniform Formulary; establishes procedures to assure the availability of clinically appropriate non-formulary pharmaceutical agents to members of the Uniformed Services; establishes procedures for prior authorization when required; and establishes a Department of Defense Pharmacy and Therapeutics Committee (DoD P&T Committee) and a Uniform Formulary Beneficiary Advisory Panel. Other administrative amendments are also made to clarify specific policies that relate to the program.

Timetable:

Action	Date	FR Cite
NPRM	04/12/02	67 FR 17948
NPRM Comment Period End	06/11/02	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mike Kottyan,
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Phone: 303 676–3520

RIN: 0720–AA63

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867. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES; INDIVIDUAL CASE MANAGEMENT PROGRAM FOR PERSONS WITH EXTRAORDINARY CONDITIONS (ICMP–PEC)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: The Department of Defense proposes to amend its regulations of the Individual Case Management Program (ICMP) to implement requirements stipulated by section 703 of the Fiscal Year 2000 National Defense Authorization Act, section 8118 of the Fiscal Year 2000 Defense Appropriations Act, section 701 of the Fiscal Year 2001 National Defense Authorization Act, and section 8100 of the Fiscal Year 2001 Defense Appropriations Act. Other administrative amendments are also proposed to clarify specific policies that relate to the program.

Timetable:

Action	Date	FR Cite
NPRM	08/01/01	66 FR 39699
NPRM Comment Period End	10/01/01	

Action	Date	FR Cite
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Stockdale,
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Phone: 703 681–0039

RIN: 0720–AA65

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868. TRICARE; PRIME REMOTE FOR ACTIVE DUTY FAMILY MEMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements 10 U.S.C. 1079(p), as added by section 722(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. This rule provides coverage for medical care for active-duty family members who reside with an active-duty member of the Uniformed Services assigned to remote areas and eligible for the program known as TRICARE Prime Remote. Active-duty family members who enroll in TRICARE Prime Remote for Active-Duty Family Members (TPRADFM) will enjoy benefits generally comparable to TRICARE Prime enrollees including access standards, benefit coverage, and cost-shares.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/06/02	67 FR 5477
Interim Final Rule Comment Period End	04/08/02	
Interim Final Rule Effective	04/08/02	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LCDR Robert Styron,
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RIN: 0720–AA68

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869. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); VOLUNTARY DISENROLLMENT FROM THE TRICARE RETIREE DENTAL PROGRAM (TRDP)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 726 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which amended 10 U.S.C. 1076c to allow for voluntary disenrollment from the TRICARE Retiree Dental Program in certain circumstances.

Timetable:

Action	Date	FR Cite
NPRM	01/30/02	67 FR 4375
NPRM Comment Period End	04/01/02	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Phone: 303 676–3682

RIN: 0720–AA69

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870. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS): ENURETIC DEVICES, BREAST RECONSTRUCTIVE SURGERY, PFPWD VALID AUTHORIZATION PERIOD, EARLY INTERVENTION SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule removes the exclusion of enuresis alarms, corrects contradictory language as it relates to breast reconstructive surgery, changes the valid period of an authorization for services and items under the Program for Persons with Disabilities, implements section 640 of Public Law 105–17, which establishes the CHAMPUS payment relationship for IDEA part C and items, and revises a statement to the paragraph at 32 CFR 199.4(g)(15)(i)(D).

Timetable:

Action	Date	FR Cite
NPRM	11/15/00	65 FR 68957
NPRM Comment Period End	01/16/01	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0720–AA70

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871. TRICARE; WAIVER OF CERTAIN TRICARE DEDUCTIBLES; CLARIFICATION OF THE TRICARE PRIME ENROLLMENT PERIOD

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 714 of the National Defense Authorization Act for Fiscal Year 2000, which authorizes the Secretary of Defense to waive the TRICARE deductible in certain cases for care provided to a dependent of a member of a Reserve Component or the National Guard who is called to active duty for more than 30 days but less than 1 year. In implementing this rule, we are limiting this to Reserve Component and National Guard members called to active duty in support of contingency operations. The term "contingency operations" is defined at 10 U.S.C. 101(a)(13). This rule also establishes circumstances under which eligible beneficiaries may enroll in TRICARE Prime for a period of less than 1 year.

Timetable:

Action	Date	FR Cite
NPRM	04/18/02	67 FR 19141
NPRM Comment Period End	06/17/02	
Interim Final Rule	07/31/03	68 FR 44882
Interim Final Rule Effective	09/29/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0720–AA72

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872. TRICARE; SUB-ACUTE CARE PROGRAM; UNIFORM SKILLED NURSING FACILITY BENEFIT; HOME HEALTH CARE BENEFIT; ADOPTING MEDICARE PAYMENT METHODS FOR SKILLED NURSING FACILITIES AND HOME HEALTH CARE PROVIDERS

Priority: Other Significant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule partially implements the TRICARE "sub-acute and long-term care program reform" enacted by Congress in the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107, specifically: (1) Establishment of "an effective, efficient, and integrated sub–acute care benefits program," with skilled nursing facility and home health care benefits modeled after those of the Medicare Program; (2) adoption of Medicare payment methods for skilled nursing facility, home health care, and certain other institutional health care providers; (3) adoption of Medicare rules on balance billing of beneficiaries, prohibiting it by institutional providers and limiting it by non-institutional providers; and (4) change in the statutory exclusion of coverage for custodial and domiciliary care.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/13/02	67 FR 40597
Interim Final Rule Comment Period End	08/12/02	
Interim Final Rule Effective	08/12/02	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: David E. Bennett,
Department of Defense, Office of
Assistant Secretary for Health Affairs,
1200 Defense Pentagon, Washington,
DC 20301
Phone: 303 676–3494
Email: david.bennett@tma.osd.mil

RIN: 0720–AA73

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873. TRICARE; CHAMPUS; APPEALS AND HEARINGS PROCEDURES, FORMAL REVIEW

Priority: Info./Admin./Other

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule makes administrative corrections to 32 CFR part 199, section 199.10, "Appeal and Hearing Procedures." These corrections include revising section 199.10, adding paragraphs (c)(1) through (c)(5), and making other minor editorial changes. Paragraphs (c)(1) through (c)(5) were inadvertently omitted when the July 1, 1991, edition of title 32 of the CFR was published. The discovery that the formal review process was missing from section 199.10 occurred at the time TRICARE was tasked to promulgate an appeal process for TRICARE Claimcheck denials. This correction to section 199.10 is necessary to provide the required procedures to any party to an initial determination or reconsideration made by the CHAMPUS contractor and who may want to request formal review.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	05/01/83	
Interim Final Rule Effective	05/01/83	
Correction	03/13/03	68 FR 11973
Interim Final Rule	03/13/03	68 FR 11973
Interim Final Rule	03/31/03	68 FR 15372
Interim Final Rule Comment Period End	05/12/03	68 FR 11973
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gail L. Jones,
Department of Defense, Office of
Assistant Secretary for Health Affairs,
1200 Defense Pentagon, Washington,
DC 20301
Phone: 303 676–3401

RIN: 0720–AA74

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874. TRICARE PROGRAM; SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN OVERSEAS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: In the National Defense Authorization Act for Fiscal Year 2000, Congress mandated that the Department establish and fund a program to provide a special supplemental food and nutrition education program to eligible low-income families overseas whose members have been determined to be at nutritional risk. This program is known as the Women, Infants, and Children Overseas (WIC Overseas) program. This interim final rule implements section 674 of this act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/22/03	68 FR 43299
Interim Final Rule Comment Period End	09/22/03	
Interim Final Rule Effective	10/01/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Danita Hunter, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301
Phone: 703 681–0039

RIN: 0720–AA75

875. TRICARE PROGRAM; INCLUSION OF ANESTHESIOLOGIST'S ASSISTANTS AS AUTHORIZED PROVIDERS; COVERAGE OF CARDIAC REHABILITATION IN FREESTANDING CARDIAC REHABILITATION FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule establishes a new category of provider as an authorized TRICARE provider, and it increases the settings where cardiac rehabilitation can be covered as a TRICARE benefit. It recognizes anesthesiologist's assistants as authorized providers under certain circumstances. It also authorizes cardiac rehabilitation services, which are already a covered TRICARE benefit when provided by hospitals, to be provided in freestanding cardiac rehabilitation facilities.

Timetable:

Action	Date	FR Cite
NPRM	04/03/03	68 FR 16247
NPRM Comment Period End	06/02/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Isaacson, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301
Phone: 303 676–3572
Email: stephen.isaacson@tma.osd.mil

RIN: 0720–AA76

876. TRICARE; CHANGES INCLUDED IN THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002 (NDAA–02) AND A TECHNICAL CORRECTION INCLUDED IN THE NDAA–03

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule proposes several changes to the TRICARE program that were enacted by Congress in the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02), Public Law 107–107 (December 28, 2001). Specifically, (1) revisions to the definition of durable medical equipment (DME); (2) adoption of the same pricing methods for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) as are in effect for the Medicare program; (3) clarification that rehabilitative therapy is a TRICARE benefit; (4) addition of augmentative communication devices (ACD)/speech generating devices (SGD) as a TRICARE benefit; (5) addition of hearing aids for family members of active duty members as a TRICARE benefit; (6) revisions to the definition of prosthetics; (7) permanent authority for transitional health care for certain members separated from active duty; and (8) revisions to the time period of eligibility for transitional health care. This rule also addresses a technical correction found in section 706 of the National Defense Authorization Act for Fiscal Year 2003 (NDAA–03), Public Law 107–62, relating to transitional health care for dependents of certain members separated from active duty.

Timetable:

Action	Date	FR Cite
NPRM	04/16/03	68 FR 18575
NPRM Comment Period End	06/16/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ann N. Fazzini, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301
Phone: 303 676–3803

RIN: 0720–AA77

877. • TRICARE: INDIVIDUAL CASE MANAGEMENT: PROGRAM FOR PERSONS WITH DISABILITIES: EXTENDED BENEFITS FOR DISABLED FAMILY MEMBERS OF ACTIVE DUTY SERVICE MEMBERS: CUSTODIAL CARE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 10 USC chapter 55

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: The Department is publishing this rule to implement requirements enacted by Congress in section 701(g) of the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02), Public Law 107–107, which terminates the Individual Case Management Program. The Department withdraws its proposed rule published at 66 FR 39699 to 39705, August 1, 2001, regarding the Individual Case Management Program. This rule also implements section 701(b) of the NDAA–02, which provides additional benefits for certain eligible active duty dependents by amending the TRICARE regulations at 32 CFR 199.5 governing the Program for Persons With Disabilities. The Program for Persons With Disabilities will now be called the Extended Care Health Option. Other administrative amendments are included to clarify specific policies that relate to the Extended Care Health Option, custodial care, and to update related definitions.

Timetable:

Action	Date	FR Cite
NPRM	08/06/03	68 FR 46526
NPRM Comment Period End	10/06/03	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mike Kottyan, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301

Phone: 303 676–3520

RIN: 0720–AA78

878. • TRICARE; ELIMINATION OF NONAVAILABILITY STATEMENT AND REFERRAL AUTHORIZATION REQUIREMENTS AND ELIMINATION OF SPECIALIZED TREATMENT SERVICES PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 10 USC chapter 55

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 735 of the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02) (Pub. L. 107–107). It also implements section 728 of the National Defense Authorization Act for Fiscal Year 2001 (NDAA–01) (Pub. L. 106–398). Section 735 of NDAA–02 eliminates the requirement for TRICARE Standard beneficiaries who live within a 40-mile radius of a military medical treatment facility (MTF) to obtain a nonavailability statement (NAS) or preauthorization from an MTF before receiving inpatient care (other than mental health services) or maternity care from a civilian provider in order that TRICARE will cost-share for such services. Further, this section eliminates the NAS requirement for specialized treatment services (STSs) for TRICARE Standard beneficiaries who live outside the 200-mile radius of a designated STS facility. This rule portrays the Department's decision to eliminate the STS program entirely. Finally, section 728 of NDAA–01 requires that prior authorization before referral to a specialty care provider that is part of the contractor network be eliminated under any new TRICARE contract.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/31/03	68 FR 44878
Interim Final Rule Comment Period End	09/29/03	68 FR 44879
Final Action	11/00/03	
Interim Final Rule Effective	12/28/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tariq Shahid, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301
Phone: 303 676–3801

RIN: 0720–AA79

879. • TRICARE; CHANGES INCLUDED IN THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003 (NDAA–03)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 10 USC chapter 55

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This interim final rule contains several provisions found in the NDAA–03. Specifically, (1) eliminating the requirement for TRICARE preauthorization of inpatient mental health care for Medicare–eligible beneficiaries where Medicare is primary payer and has already authorized the care; (2) using Medicare certification of individual professional providers as sufficient documentation to also certify individual professional providers under TRICARE; and (3) expanding the TRICARE Dental Program eligibility for dependents of deceased members.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	
Interim Final Rule Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ann N. Fazzini, Department of Defense, Office of Assistant Secretary for Health Affairs, 1200 Defense Pentagon, Washington, DC 20301
Phone: 303 676–3803

RIN: 0720–AA85

Department of Defense (DOD) Completed Actions
Office of Assistant Secretary for Health Affairs (DODOASHA)

880. TRICARE; CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ELIGIBILITY AND PAYMENT PROCEDURES FOR CHAMPUS BENEFICIARIES AGE 65 AND OVER

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: Final, Statutory, October 1, 2001, Final.

Abstract: This rule implements section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Section 712 extends TRICARE eligibility to persons age 65 and over who would otherwise have lost their TRICARE eligibility due to attainment of entitlement to hospital insurance benefits under Part A of Medicare. In order for these individuals to retain their TRICARE eligibility, they must be enrolled in the supplementary medical insurance program under Part B of Medicare. In general, in the case of medical or dental care provided to these individuals for which payment may be made under both Medicare and TRICARE, Medicare is the primary payer and TRICARE will normally pay the actual out–of–pocket costs incurred by the person. This rule prescribes TRICARE payment procedures and makes revisions to TRICARE rules to accommodate Medicare–eligible CHAMPUS beneficiaries. The Department is publishing this rule as an interim final rule in order to meet the statutorily required effective date.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/03/01	66 FR 40601
Interim Final Rule Effective	10/01/01	
Interim Final Rule Comment Period End	10/02/01	

Action	Date	FR Cite
Final Action	04/30/03	68 FR 23030
Correction	05/30/03	68 FR 32361
Final Action Effective	10/01/03	68 FR 23031

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stephen Isaacson,
Department of Defense, Office of
Assistant Secretary for Health Affairs,
1200 Defense Pentagon, Washington,
DC 20301
Phone: 303 676–3572
Email: stephen.isaacson@tma.osd.mil

RIN: 0720–AA66

881. • TRICARE; COORDINATION OF BENEFITS BETWEEN TRICARE AND THE DEPARTMENT OF VETERANS AFFAIRS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 10 USC chapter 55

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: Under current rules, beneficiaries who are eligible for both TRICARE and the Veterans Administration benefits may use only one program for care but cannot use both at the same time. This rule changes that policy to establish a Veterans Administration benefits as double coverage under TRICARE, so that beneficiaries may use TRICARE benefits to augment or replace services being provided through the Veterans Administration.

Timetable:

Action	Date	FR Cite
NPRM	08/19/03	68 FR 49732
NPRM Comment Period End	10/20/03	
Withdrawn	08/28/03	68 FR 51705

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Isaacson,
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RIN: 0720–AA86

[FR Doc. 03–25124 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part VI

Department of Education

Semiannual Regulatory Agenda

DEPARTMENT OF EDUCATION (ED)

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitles A and B

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, Education.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Secretary of Education publishes a semiannual agenda of Federal regulations. The agenda is issued under the authority of section 4(b) of Executive Order 12866 "Regulatory Planning and Review." The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Questions or comments related to preparation of this agenda should be directed to Sandy Jablonski, Division of Regulatory Services, Office of the General Counsel, Department of Education, Room 6C109, FB-6, 400 Maryland Avenue SW., Washington, DC 20202-2241; telephone: (202) 401-8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in October and April of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract that includes a description of the problemto be addressed, any principal alternatives being considered, andpotential costs and benefits of the action.
- An indication of whether the planned action is likelyto have significant economic impact on a substantial number of smallentities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).
- A reference to where a reader can find the current regulationsin the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contactperson at ED from whom a reader can obtain additional informationregarding the planned action.

In accordance with ED's Principles for Regulating listed in its regulatory plan, ED is committed to regulation that improves the quality and equality of services to its customers, learners of all ages. ED will regulate only when absolutely necessary and then in the most flexible, most equitable, least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on the regulation listed in this agenda that is designated for periodic review under the Regulatory Flexibility Act (5 U.S.C. 610).

This publication in the **Federal Register** does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here, and regulatory action in addition to the items listed is not precluded. Dates of future regulatory actions are subject to revision in subsequent agendas.

For this edition of ED's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**.The Regulatory Plan entry is listed in the table of contents below and is denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.gpoaccess.gov/nara/index.html

Dated: August 29, 2003.

Brian W. Jones,

General Counsel.

Office of Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
882	Student Rights in Research, Experimental Programs, and Testing	1880–AA66

ED

Office of the Chief Financial Officer—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
883	Direct Grant Programs—E-Application Regulations	1890–AA09
884	Direct Grant Programs and State-Administered Programs	1890–AA11

Office of the Chief Financial Officer—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
885	Protection of Human Subjects (Classified Research)	1890–AA08

Office of the Chief Financial Officer—Completed Actions

Sequence Number	Title	Regulation Identification Number
886	Governmentwide Requirement for Drug-Free Workplace (Financial Assistance) and Governmentwide Debarment and Suspension (Nonprocurement)	1890–AA07

Office for Civil Rights—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
887	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance	1870–AA11
888	Boy Scouts of America Equal Access Act	1870–AA12

Office of Elementary and Secondary Education—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
889	Impact Aid Programs	1810–AA96

Office of Elementary and Secondary Education—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
890	Title I—Improving the Academic Achievement of the Disadvantaged	1810–AA95

Office of Elementary and Secondary Education—Completed Actions

Sequence Number	Title	Regulation Identification Number
891	Indian Education Discretionary Grant Program	1810–AA93

Office of Special Education and Rehabilitative Services—Prerule Stage

Sequence Number	Title	Regulation Identification Number
892	Reauthorization of the Individuals With Disabilities Education Act **(Section 610 Review) (Reg Plan Seq No. 34)** ...	1820–AB54

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Innovation and Improvement—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
893	Family Educational Rights and Privacy Act	1855–AA00
894	Magnet Schools Assistance Program	1855–AA01

Department of Education (ED)
Office of Management (OM)

Proposed Rule Stage

882. STUDENT RIGHTS IN RESEARCH, EXPERIMENTAL PROGRAMS, AND TESTING

Priority: Other Significant

Legal Authority: 20 USC 1232h

CFR Citation: 34 CFR 98

Legal Deadline: None

Abstract: These regulations are needed to implement section 1017 of the Goals 2000: Educate America Act (Pub. L. 103–227, 20 U.S.C. 1232h). This section amends the Protection of Pupil Rights Amendment (PPRA) to require schools, in certain instances, to make specific educational materials available to parents for inspection. The provision also amends the PPRA to prohibit schools from requiring a student to submit to certain surveys, analyses, or evaluations without prior parental consent. The regulations are being developed in accordance with the Department's Principles for Regulating. New legislation amending the PPRA passed as part of the No Child Left Behind Act of 2001. As our next action we will issue a new NPRM based on this legislation.

Timetable:

Action	Date	FR Cite
NPRM	08/28/95	60 FR 44696
NPRM Comment Period End	10/27/95	
Second NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Ellen Campbell, Family Policy Compliance Office, Department of Education, Room 2W100, Room 2W117, FB–6, 400 Maryland Avenue SW, Washington, DC 20202–4605
Phone: 202 260–3887

RIN: 1880–AA66

Department of Education (ED)
Office of the Chief Financial Officer (OCFO)

Proposed Rule Stage

883. DIRECT GRANT PROGRAMS—E-APPLICATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1221e–3 and 3474

CFR Citation: 34 CFR 75

Legal Deadline: None

Abstract: These regulations would amend 34 CFR part 75 governing the process for submitting discretionary grant applications for the Direct Grant Programs of the Department of Education. These regulations would revise the regulations governing the deadline date for applications to provide for electronic submission of applications.

Timetable:

Action	Date	FR Cite
NPRM	10/30/03	68 FR 61779
NPRM Comment Period End	12/29/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Blanca Rodriguez, Department of Education, Office of the Chief Financial Officer, Room 3652, Room 3652, ROB–3, 400 Maryland Avenue SW, Washington, DC 20202–4248
Phone: 202 260–0172

RIN: 1890–AA09

884. • DIRECT GRANT PROGRAMS AND STATE-ADMINISTERED PROGRAMS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 20 USC 1221e–3; 20 USC 3474; 20 USC 6511(a); 20 USC

8065a; 20 USC 1221e–3(a)(1); OMB Circulars A–10 and A–02

CFR Citation: 34 CFR 74; 34 CFR 75; 34 CFR 76; 34 CFR 80

Legal Deadline: None

Abstract: The Education Department General Administrative Regulations (EDGAR) governing direct grant programs; State-administered programs; the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations; and the uniform administrative requirements for grants and cooperative agreements to State and local governments of the Department would be amended. The amendments would clarify that faith-;based organizations are eligible to participate in programs on the same basis as other private organizations, with respect to programs for which such organizations are eligible.

Timetable:

Action	Date	FR Cite
NPRM	09/30/03	68 FR 56418
NPRM Comment Period End	12/01/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: John J. Porter, Director, Center for Faith-Based and Community Initiatives, Department of Education, Office of the Secretary, Suite 410, 555 New Jersey Avenue NW, Washington, DC 20208–8300
Phone: 202 219–1741

RIN: 1890–AA11

Department of Education (ED) Long-Term Actions
Office of the Chief Financial Officer (OCFO)

885. PROTECTION OF HUMAN SUBJECTS (CLASSIFIED RESEARCH)

Priority: Substantive, Nonsignificant

CFR Citation: 34 CFR 97

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Helene Deramond
Phone: 202 260–5353

RIN: 1890–AA08

Department of Education (ED) Completed Actions
Office of the Chief Financial Officer (OCFO)

886. GOVERNMENTWIDE REQUIREMENT FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE) AND GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Other Significant

CFR Citation: 34 CFR 84; 34 CFR 85; 34 CFR 668; 34 CFR 682

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66534

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Wathen-Dunn
Phone: 202 401–6700

RIN: 1890–AA07

Department of Education (ED) Proposed Rule Stage
Office for Civil Rights (OCR)

887. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Other Significant

Legal Authority: 20 USC 1681; 20 USC 1682

CFR Citation: 34 CFR 106

Legal Deadline: None

Abstract: The Department is considering changes to the regulations implementing title IX of the Education Amendments of 1972. In the event changes are made, such changes would amend existing regulations to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels. The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. Amendments would be designed to permit appropriate latitude for innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the purposes of title IX.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

ED—OCR Proposed Rule Stage

Small Entities Affected: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Sandra G. Battle, Department of Education, Office for Civil Rights, Room 5036, Switzer Building, 400 Maryland Avenue SW, Washington, DC 20202–1100
Phone: 202 205–5526

RIN: 1870–AA11

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888. BOY SCOUTS OF AMERICA EQUAL ACCESS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 7905

CFR Citation: 34 CFR ch I

Legal Deadline: None

Abstract: These regulations would implement a new law, the Boy Scouts of America Equal Access Act (Boy Scouts Act), which is part of the amendments to the Elementary and Secondary Education Act of 1965 enacted as the No Child Left Behind Act of 2001. Under the Boy Scouts Act, no public elementary school, public secondary school, or State or local educational agency that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or other specified patriotic youth groups.

Timetable:

Action	Date	FR Cite
ANPRM	11/15/02	67 FR 69456
ANPRM Comment Period End	12/16/02	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Sandra G. Battle, Department of Education, Office for Civil Rights, Room 5036, Switzer Building, 400 Maryland Avenue SW, Washington, DC 20202–1100
Phone: 202 205–5526

RIN: 1870–AA12

Department of Education (ED)
Office of Elementary and Secondary Education (OESE) Proposed Rule Stage

889. • IMPACT AID PROGRAMS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 20 USC 7701 to 7714

CFR Citation: 34 CFR 222

Legal Deadline: None

Abstract: These regulations would implement the Impact Aid discretionary construction program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The program would provide competitive grants for emergency repairs and modernization of school facilities to certain eligible school districts that receive Impact Aid formula funds. These regulations would incorporate statutory requirements and provide guidance for applying and qualifying for, as well as spending, the Federal funds provided under this program. These regulations would apply to the grant competitions after fiscal year 2002.

Timetable:

Action	Date	FR Cite
NPRM	10/22/03	68 FR 60598
NPRM Comment Period End	11/21/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: NPRM published erroneously as RIN 1810—AA96.

URL For Public Comments: www.regulations.gov

Agency Contact: Marilyn Hall, Impact Aid Program, Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue SW, Washington, DC 20202–6244
Phone: 202 205–8724

RIN: 1810–AA96

Department of Education (ED)
Office of Elementary and Secondary Education (OESE) Final Rule Stage

890. TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

Priority: Other Significant

Legal Authority: PL 107–110

CFR Citation: 34 CFR 200

Legal Deadline: None

Abstract: These regulations would clarify statutory provisions regarding State, LEA, and school accountability for the academic achievement of students with the most significant cognitive disabilities and are needed to implement changes to title I of the Elementary and Secondary Education Act of 1965, as amended, made by the No Child Left Behind Act of 2001.

Timetable:

Action	Date	FR Cite
NPRM	03/20/03	68 FR 13796
NPRM Comment Period End	05/19/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: www.regulations.gov

ED—OESE **Final Rule Stage**

Agency Contact: Jacquelyn Jackson, Acting Director, Student Achievement and Student Accountability Programs, Department of Education, Office of Elementary and Secondary Education, Room 3W230, 400 Maryland Avenue SW, Washington, DC 20202–6132
Phone: 202 260–0826

RIN: 1810–AA95

Department of Education (ED) Completed Actions
Office of Elementary and Secondary Education (OESE)

891. INDIAN EDUCATION DISCRETIONARY GRANT PROGRAM

Priority: Other Significant

CFR Citation: 34 CFR 263

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43639

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cathie Martin
Phone: 202 260–1683

RIN: 1810–AA93

Department of Education (ED) Prerule Stage
Office of Special Education and Rehabilitative Services (OSERS)

892. REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Regulatory Plan: This entry is Seq. No. 34 in part II of this issue of the **Federal Register**.

RIN: 1820–AB54

Department of Education (ED) Final Rule Stage
Office of Innovation and Improvement (OII)

893. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1232g

CFR Citation: 34 CFR 99

Legal Deadline: None

Abstract: These regulations are needed to implement the Department's interpretation of the Family Educational Rights and Privacy Act (FERPA) identified through administrative experience as necessary for proper program operation. These regulations would provide general guidelines for accepting "signed and dated written consent" under FERPA in electronic format.

Timetable:

Action	Date	FR Cite
NPRM	07/28/03	68 FR 44420
NPRM Comment Period Ends	09/26/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1880–AA80

URL For More Information: www.regulations.gov

Agency Contact: Kathleen Wolan, Family Policy Compliance Office, Department of Education, Room 2W100, FB–6, 400 Maryland Avenue SW, Washington, DC 20202–4605
Phone: 202 260–3887

RIN: 1855–AA00

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894. • MAGNET SCHOOLS ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 20 USC 7231 to 7231f

CFR Citation: 34 CFR 280

Legal Deadline: None

Abstract: These regulations amend the Magnet Schools Assistance Program regulations to reflect changes made to the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Steven L. Brockhouse, Department of Education, Office of Innovation and Improvement, Room 3E122, FB–6, 400 Maryland Avenue SW, Washington, DC 20202–6140
Phone: 202 260–2476

RIN: 1855–AA01

[FR Doc. 03–24020 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part VII

Department of Energy

Semiannual Regulatory Agenda

DEPARTMENT OF ENERGY (DOE)

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

48 CFR Ch. 9

Regulatory Agenda

AGENCY: Department of Energy.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Energy has prepared and today is publishing its semiannual regulatory agenda pursuant to Executive Order 12866 "Regulatory Energy Planning and Review," 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601–612 (1988).

FOR FURTHER INFORMATION CONTACT: For further information about any particular item on the regulatory agenda, please contact the individual listed under that item. For further information on the regulatory agenda in general, please contact: Richard L. Farman, Room 6E–078, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8145.

SUPPLEMENTARY INFORMATION: Entries appended to this notice reflect the status of activities as of approximately September 15, 2003. They are divided into categories first by subagencies and then according to their stage of rulemaking action: prerule, proposed rulemaking, final rulemaking, long-term action, or completed action.

For this edition of the Department of Energy's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

A draft of this regulatory agenda has been transmitted to the Chief Counsel for Advocacy of the U.S. Small Business Administration for comment, if any, pursuant to 5 U.S.C. 602(b).

Issued in Washington, DC, on October 31, 2003.

Lee Liberman Otis,

General Counsel.

Energy Efficiency and Renewable Energy—Prerule Stage

Sequence Number	Title	Regulation Identification Number
895	Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces **(Reg Plan Seq No. 35)**	1904–AA78
896	Determination for Small Electric Motors	1904–AA87
897	Energy Efficiency Standards for Electric Distribution Transformers **(Reg Plan Seq No. 36)**	1904–AB08
898	Energy Efficiency Standards for Commercial Central Air Conditioning Units and Heat Pumps Rated 65–240 kBtus/Hr **(Reg Plan Seq No. 37)**	1904–AB09

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Energy Efficiency and Renewable Energy—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
899	Energy Efficiency Code for New Federal Residential Low–Rise Buildings	1904–AA53
900	State and Local Incentives Program: Alternative Fuels	1904–AA66
901	Test Procedures for Electric Distribution Transformers	1904–AA85
902	Energy Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings	1904–AB13
903	Coverage of Certain Types of Commercial Refrigeration Equipment (Reach-In Freezers, Reach-In Refrigerators, Vending Machines, and Beverage Merchandisers)	1904–AB14
904	Coverage of Certain Incandescent Reflector Lamps, Torchieres, and Ceiling Fans	1904–AB15
905	Energy Conservation Program for Consumer Products: Test Procedures for Clothes Washers	1904–AB43
906	Energy Conservation Standards for Small Duct, High Velocity Central Air Conditioning, and Heat Pump Systems	1904–AB45

Energy Efficiency and Renewable Energy—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
907	Test Procedures for Residential Central Air Conditioners and Heat Pumps—Amendments	1904–AA46
908	Test Procedures for Commercial Water Heaters	1904–AA95
909	Test Procedures for Commercial Warm Air Furnaces	1904–AA96
910	Test Procedures for Commercial Air Conditioning Equipment	1904–AA97
911	Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets	1904–AA98
912	Test Procedures for Commercial Package Boilers	1904–AB02

Energy Efficiency and Renewable Energy—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
913	Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for 3-Phase Air Conditioners and Heat Pump Less Than 65 kBtu/h; Tankless Gas-Fired Instantaneous Water Heaters	1904–AB16
914	Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Packaged Terminal Air Conditioners and Heat Pumps; and Oil- and Gas-Fired Commercial Package Boilers	1904–AB17
915	Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Single Packaged Vertical Air-Conditioners and Commercial Single Packaged Vertical Heat Pumps	1904–AB44

Energy Efficiency and Renewable Energy—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
916	National Voluntary Residential Energy Efficiency Rating Guidelines	1904–AA74
917	Determination for High-Intensity Discharge Lamps	1904–AA86
918	Energy Efficiency Standards for Clothes Dryers and Dishwashers	1904–AA89
919	Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment	1904–AA90
920	Energy Efficiency Standards for 1–200 HP Electric Motors	1904–AA91
921	Energy Efficiency Standards for Fluorescent and Incandescent Lamps	1904–AA92

Energy Efficiency and Renewable Energy—Completed Actions

Sequence Number	Title	Regulation Identification Number
922	Test Procedures for Dishwashers—Amendment	1904–AB10

Defense and Security Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
923	Computer Security; Access to Information on National Nuclear Security Administration Computer Systems	1992–AA27
924	Criteria and Procedures for Nonprejudicial Restriction of Access Authorization	1992–AA32
925	Initial Parts of NNSA Acquisition Regulation (NAR)	1992–AA34

Defense and Security Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
926	Physical Protection of Security Interests	1992–AA23
927	Procedural Rules for the Assessment of Civil Penalties for Security Violations	1992–AA28
928	Human Reliability Program	1992–AA29
929	Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material, Subpart A	1992–AA31
930	Polygraph Examination Regulations	1992–AA33

Departmental and Others—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
931	Freedom of Information Act	1901–AA32
932	Research Misconduct	1901–AA89

DOE

Departmental and Others—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
933	Occupational Radiation Protection	1901–AA95
934	Worker Safety and Health **(Reg Plan Seq No. 38)**	1901–AA99
935	Low Density Discount	1901–AB12

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Departmental and Others—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
936	Radiation Protection of the Public and the Environment **(Reg Plan Seq No. 39)**	1901–AA38
937	Economic Development Transfers of Real Property	1901–AA82
938	Guidelines for Voluntary Greenhouse Gas Reporting	1901–AB11

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Departmental and Others—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
939	Annotation of Land Records for Remediated Properties in the Uranium Mill Tailings Remedial Action Project (UMTRA)	1901–AA57

Departmental and Others—Completed Actions

Sequence Number	Title	Regulation Identification Number
940	Nondiscrimination in Federally Assisted Programs or Activities	1901–AA86
941	Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites: Technical Amendments	1901–AA88
942	Compliance With Floodplain and Wetland Environmental Review Requirements	1901–AA94
943	Safety Net Cost Recovery Adjustment Rate Proceeding	1901–AA96
944	Transmission Rate Proceeding	1901–AA97
945	Collection of Claims Owed the United States	1901–AA98

Office of Procurement and Assistance Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
946	New and Revised DEAR Clauses	1991–AB60
947	DEAR: Make or Buy Plans	1991–AB63
948	DEAR Changes to Provisions for Facilities Management, Work Authorization, Contractor's Organization, Contractor Relations, and Laws, Regulations, and Directives	1991–AB65

Office of Procurement and Assistance Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
949	Organizational Conflict of Interest Disclosure	1991–AB52
950	Acquisition Regulation: Payment of Fee Relating to Security Issues/Conditional Payment of Fee	1991–AB54
951	Financial Assistance Regulation: Administrative Requirements Related to For-Profit Organizations	1991–AB57

Office of Procurement and Assistance Management—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
952	Department of Energy Acquisition Regulation: Management Contractor Compensation for Personal Services	1991–AB61
953	Technical Amendment of the Department of Energy Acquisition Regulation	1991–AB62
954	DEAR: Work for Others	1991–AB64
955	Financial Assistance Regulations: Implementation of OMB Grants Management Policies	1991–AB66

Office of Procurement and Assistance Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
956	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	1991–AB56
957	Energy Department Motor Vehicle Fleet Fuel Efficiency	1991–AB59

Office of General Counsel—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
958	Conduct of Employees	1990–AA19
959	Claims for Damages Against Department of Energy Employees	1990–AA26

Office of General Counsel—Completed Actions

Sequence Number	Title	Regulation Identification Number
960	Collection of Claims Owed the United States	1990–AA28

Department of Energy (DOE) — Prerule Stage

Energy Efficiency and Renewable Energy (EE)

895. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES, BOILERS, AND MOBILE HOME FURNACES

Regulatory Plan: This entry is Seq. No. 35 in part II of this issue of the **Federal Register**.

RIN: 1904–AA78

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896. DETERMINATION FOR SMALL ELECTRIC MOTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 431

Legal Deadline: Other, Statutory, April 24, 1995, Other.

Abstract: The Energy Policy Act of 1992 requires the Department to prescribe test procedures for small electric motors for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

Timetable:

Action	Date	FR Cite
Determination Notice	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The Department's regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority and the Department is gathering information and conducting analyses in preparation for a determination under 42 U.S.C. 6317(b).

Agency Contact: James Raba, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–8654
Email: jim.raba@ee.doe.gov

RIN: 1904–AA87

DOE—EE **Prerule Stage**

897. ENERGY EFFICIENCY STANDARDS FOR ELECTRIC DISTRIBUTION TRANSFORMERS

Regulatory Plan: This entry is Seq. No. 36 in part II of this issue of the **Federal Register**.

RIN: 1904–AB08

898. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL CENTRAL AIR CONDITIONING UNITS AND HEAT PUMPS RATED 65–240 KBTUS/HR

Regulatory Plan: This entry is Seq. No. 37 in part II of this issue of the **Federal Register**.

RIN: 1904–AB09

Department of Energy (DOE)
Energy Efficiency and Renewable Energy (EE)

Proposed Rule Stage

899. ENERGY EFFICIENCY CODE FOR NEW FEDERAL RESIDENTIAL LOW—RISE BUILDINGS

Priority: Other Significant

Legal Authority: 42 USC 6834

CFR Citation: 10 CFR 435

Legal Deadline: Final, Statutory, October 24, 1994, Final.

Abstract: Title III of the Energy Conservation and Production Act as amended by the Energy Policy Act of 1992 directs DOE to establish Federal building energy standards that require in new Federal buildings those energy efficiency measures that are technologically feasible and economically justified. The standards for Federal buildings are intended to parallel closely the voluntary building energy codes of the Energy Policy Act for private sector construction. Interim energy performance standards which DOE had issued before enactment of the Energy Policy Act are to remain in effect for the Federal sector until the new Federal building energy standards become effective.

Timetable:

Action	Date	FR Cite
NPRM	05/02/97	62 FR 24164
NPRM Comment Period End	07/14/97	
Supplemental NPRM	03/00/04	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stephen P. Walder, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–9209

RIN: 1904–AA53

900. STATE AND LOCAL INCENTIVES PROGRAM: ALTERNATIVE FUELS

Priority: Other Significant

Legal Authority: 42 USC 13235

CFR Citation: 10 CFR 409

Legal Deadline: Final, Statutory, April 24, 1993, Final.

Abstract: The Energy Policy Act of 1992 requires DOE to issue regulations establishing the State and Local Incentives Program. Under this program DOE may grant financial assistance to States for projects in DOE-approved State plans to promote use of alternative fuels and alternative-fueled vehicles. With the publication of an integrated State Energy Program (61 FR 35890), the alternative fuel grant programs may be a part of the State grant special projects, depending on funding availability. The next action will be a cancellation notice of any separate State grant program.

Timetable:

Action	Date	FR Cite
NPRM	03/21/95	60 FR 15020
Withdraw NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Dorothy Wormley, Office of Weatherization and Intergovernmental Programs, Department of Energy, Energy Efficiency and Renewable Energy, EE–2K, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–7028

RIN: 1904–AA66

901. TEST PROCEDURES FOR ELECTRIC DISTRIBUTION TRANSFORMERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 430

Legal Deadline: Other, Statutory, April 24, 1995, Other.

Abstract: The Energy Policy Act of 1992 requires the Department to prescribe testing requirements for electric distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

Timetable:

Action	Date	FR Cite
Determination Notice	10/22/97	62 FR 54809
NPRM	11/12/98	63 FR 63359
Supplemental NPRM	11/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority, and the Department is working actively on this action.

Agency Contact: Bryan Berringer, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–0371

Fax: 202 586–4617
Email: bryan.berringer@ee.doe.gov

RIN: 1904–AA85

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902. ENERGY STANDARDS FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6834

CFR Citation: 10 CFR 434

Legal Deadline: None

Abstract: Section 305(a)(1) of the Energy Conservation and Production Act, as amended, requires the Department to establish by rule building energy efficiency standards for all new Federal commercial and multi-family high-rise residential (over three stories in height above ground) buildings. In developing this rule, DOE is directed to consult with other Federal agencies as well as private, State, and other appropriate entities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cyrus Nasseri, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–9138
Email: cyrus.nasseri@ee.doe.gov

RIN: 1904–AB13

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903. COVERAGE OF CERTAIN TYPES OF COMMERCIAL REFRIGERATION EQUIPMENT (REACH-IN FREEZERS, REACH-IN REFRIGERATORS, VENDING MACHINES, AND BEVERAGE MERCHANDISERS)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6311; 42 USC 6312

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA) section 341 allows the Secretary to include a type of industrial equipment as covered equipment. DOE is undertaking an analysis of reach-in refrigerators/freezers and beverage merchandisers/vending machines to determine whether to classify this equipment as "covered." If this equipment is covered, DOE will undertake rulemakings for test procedures.

Timetable:

Action	Date	FR Cite
NPRM—Coverage of Certain Commercial Equipment	02/00/04	
Final Rule—Coverage of Certain Commercial Equipment	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Graves, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–1851
Email: linda.graves@ee.doe.gov

RIN: 1904–AB14

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904. COVERAGE OF CERTAIN INCANDESCENT REFLECTOR LAMPS, TORCHIERES, AND CEILING FANS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6291; 42 USC 6292

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA) section 322 allows the Secretary to classify additional consumer products as "covered products." DOE is undertaking an analysis of elliptical reflector and bulged reflector incandescent lamps, torchieres, and ceiling fans to determine whether to classify these products as "covered." If these products are covered, DOE will undertake rulemakings for test procedures. The Secretary is required to define "household" as part of the coverage process.

Timetable:

Action	Date	FR Cite
NPRM—Coverage of Residential Products	02/00/04	
Final Rule—Coverage of Residential Products	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Graves, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–1851
Email: linda.graves@ee.doe.gov

RIN: 1904–AB15

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905. • ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS: TEST PROCEDURES FOR CLOTHES WASHERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 6291 et seq

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: This action would amend the clothes washer test procedure that is to take effect January 1, 2004, concurrent with the new energy efficiency standards for clothes washers. A proposed rule is being published in concert with the direct final rule, in case adverse comments are received.

Timetable:

Action	Date	FR Cite
NPRM	10/31/03	68 FR 62205
Direct Final Rule	10/31/03	68 FR 62198
NPRM Comment Period End	12/01/03	
Final Action Effective	01/01/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Twigg, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000

Independence Avenue SW.,
Washington, DC 20585
Phone: 202 586–8714
Email: barbara.twigg@ee.doe.gov

RIN: 1904–AB43

906. • ENERGY CONSERVATION STANDARDS FOR SMALL DUCT, HIGH VELOCITY CENTRAL AIR CONDITIONING, AND HEAT PUMP SYSTEMS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline: Final, Statutory, January 1, 1994, Final.

Abstract: The Energy Policy and Conservation Act, as amended, establishes initial energy-efficiency standard levels for most types of major residential appliances and generally requires DOE to undertake two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended. The initial review of the statutory standards for central air conditioners and heat pumps was published on May 23, 2002 (67 FR 36368). At that time DOE did not have an analytical basis to set standards for small duct high velocity systems and deferred setting those standards to a later date. This rulemaking will establish those standards.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Raymond, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW.,
Washington, DC 20585
Phone: 202 586–9611
Email: michael.raymond@ee.doe.gov

RIN: 1904–AB45

Department of Energy (DOE)

Energy Efficiency and Renewable Energy (EE)

Final Rule Stage

907. TEST PROCEDURES FOR RESIDENTIAL CENTRAL AIR CONDITIONERS AND HEAT PUMPS—AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: These revisions to the test procedures for central air conditioners and heat pumps in accordance with the Energy Policy and Conservation Act will reorganize the test procedure regulations to place them in a logical order and also will update the references. The revisions include an updated nomenclature compatible with the test procedure for combined (domestic hot water and central air conditioners or heat pumps) appliances, additional tables listing test tolerances, a clearer specification for the demand defrost credit, and test methods for ECM (electronically commutated motor) blowers and history-dependent defrosts.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6768
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Raymond, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW.,
Washington, DC 20585
Phone: 202 586–9611
Email: michael.raymond@ee.doe.gov

RIN: 1904–AA46

908. TEST PROCEDURES FOR COMMERCIAL WATER HEATERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial water heating products, prescribes test procedures, and requires labeling for such equipment. This action would promulgate by regulation the energy conservation standards and test procedures established in EPCA for these products. This action will incorporate by reference energy conservation standards and test procedures, as promulgated by EPCA and as revised by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE).

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48852
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mohammed Kahn, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW.,
Washington, DC 20585
Phone: 202 586–7892
Email: mohammed.kahn@ee.doe.gov

RIN: 1904–AA95

909. TEST PROCEDURES FOR COMMERCIAL WARM AIR FURNACES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial furnaces, prescribes test procedures, and authorizes labeling for such equipment. This action would promulgate by regulation the energy conservation standards and test procedures established in EPCA for commercial furnaces. This action will also incorporate by reference energy conservation standards and test procedures for commercial furnaces, as revised by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), and will also include enforcement and other provisions for commercial products generally.

Timetable:

Action	Date	FR Cite
NPRM	12/13/99	64 FR 69597
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mohammed Kahn, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–7892
Email: mohammed.kahn@ee.doe.gov

RIN: 1904–AA96

910. TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONING EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial air conditioning equipment, prescribes test procedures, and authorizes labeling for such equipment. This action would promulgate by regulation the energy conservation standards and test procedures established in EPCA for these products. This action will also incorporate by reference energy conservation standards and test procedures, as promulgated by EPCA and as revised by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ARI/ASHRAE).

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48828
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mohammed Kahn, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–7892
Email: mohammed.kahn@ee.doe.gov

RIN: 1904–AA97

911. ALTERNATIVE FUELED VEHICLE ACQUISITION REQUIREMENTS FOR PRIVATE AND LOCAL GOVERNMENT FLEETS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 13257

CFR Citation: 10 CFR 490

Legal Deadline: NPRM, Statutory, May 1, 1999, NPRM.
Final, Statutory, April 1, 2000, Final.

Abstract: The Energy Policy Act of 1992 (the Act) requires DOE to initiate a rulemaking to determine whether a private and local fleet program is deemed necessary to meet the fuel replacement goals of the Act. The criteria for making this determination are mandated by the Act.

DOE has completed the proposed rule and anticipates publication of the final rule in late 2003.

Timetable:

Action	Date	FR Cite
ANPRM	04/17/98	63 FR 19372
Notice of Public Workshops	07/20/00	65 FR 44987
NPRM	03/04/03	68 FR 10320
NPRM Comment Period End	06/02/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Local

Agency Contact: Dana O'Hara, Office of Freedomcar and Vehicle Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, EE–2G, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–8063
Email: dana.o'hara@ee.doe.gov

RIN: 1904–AA98

912. TEST PROCEDURES FOR COMMERCIAL PACKAGE BOILERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial boilers, prescribes test procedures, and authorizes labeling for such equipment. This action would promulgate by regulation these provisions. It would also incorporate by reference energy conservation standards and test procedures, as promulgated by EPCA.

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48838
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mohammed Kahn, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–7892
Email: mohammed.kahn@ee.doe.gov

RIN: 1904–AB02

913. ENERGY EFFICIENCY PROGRAM FOR COMMERCIAL AND INDUSTRIAL EQUIPMENT: EFFICIENCY STANDARDS FOR 3-PHASE AIR CONDITIONERS AND HEAT PUMP LESS THAN 65 KBTU/H; TANKLESS GAS-FIRED INSTANTANEOUS WATER HEATERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 6311 to 6316; 42 USC 6313(a)

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The efficiency requirements in the statute correspond to the levels in ASHRAE/IESNA Standard 90.1 as in effect on October 24, 1992. The statute further provides that if the efficiency levels in ASHRAE/IESNA Standard 90.1 are amended after that date for any of the covered products, as recently occurred, the Secretary of Energy must establish an amended uniform national standard for such equipment at the new minimum level for each effective date specified in ASHRAE/IESNA 90.1, unless he determines that a more stringent standard is technologically feasible and economically justified and would result in significant additional energy conservation. Additionally, the Secretary may not prescribe any amended standard that increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product.

Timetable:

Action	Date	FR Cite
Workshop	02/00/04	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority and the Department is working actively on this action.

Agency Contact: Maureen Murphy, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, Office of Building Technologies, U.S. Department of Energy, 1000 Independence Avenue SW.,
Washington, DC 20585
Phone: 202 586–0598
Fax: 202 586–4617
Email: maureen.murphy@ee.doe.gov

RIN: 1904–AB16

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914. ENERGY EFFICIENCY PROGRAM FOR COMMERCIAL AND INDUSTRIAL EQUIPMENT: EFFICIENCY STANDARDS FOR PACKAGED TERMINAL AIR CONDITIONERS AND HEAT PUMPS; AND OIL- AND GAS-FIRED COMMERCIAL PACKAGE BOILERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 6311 to 6316; 42 USC 6313(a)

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The efficiency requirements in the statute correspond to the levels in ASHRAE/IESNA Standard 90.1 as in effect on October 24, 1992. The statute further provides that if the efficiency levels in ASHRAE/IESNA Standard 90.1 are amended after that date for any of the covered products, as recently occurred, the Secretary of Energy must establish an amended uniform national standard for such equipment at the new minimum level for each effective date specified in ASHRAE/IESNA 90.1, unless he determines that a more stringent standard is technologically feasible and economically justified and would result in significant additional energy conservation. Additionally, the Secretary may not prescribe any amended standard that increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product

Timetable:

Action	Date	FR Cite
Workshop	02/00/04	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority and the Department is working actively on this action.

Agency Contact: Maureen Murphy, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, Office of Building Technologies, U.S. Department of Energy, 1000 Independence Avenue SW.,
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RIN: 1904–AB17

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915. • ENERGY EFFICIENCY PROGRAM FOR COMMERCIAL AND INDUSTRIAL EQUIPMENT: EFFICIENCY STANDARDS FOR COMMERCIAL SINGLE PACKAGED VERTICAL AIR-CONDITIONERS AND COMMERCIAL SINGLE PACKAGED VERTICAL HEAT PUMPS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 6311 to 6316; 42 USC 6313(a)

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The efficiency requirements in the statute correspond to the levels in ASHRAE/IESNA Standard 90.1 as in effect on October 24, 1992. The statute further provides that if the efficiency levels in ASHRAE/IESNA Standard 90.1 are amended after that date for any of the covered products, as recently occurred, the Secretary of Energy must establish an amended uniform national standard for such equipment at the new minimum level for each effective date specified in ASHRAE/IESNA 90.1, unless he determines that a more stringent standard is technologically feasible and economically justified and would result in significant additional energy conservation. Additionally, the Secretary may not prescribe any amended standard that increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product.

Timetable:

Action	Date	FR Cite
Workshop	02/00/04	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority and the Department is working actively on this action.

Agency Contact: Maureen Murphy, EE–2J, Office of Building Technologies Program, Department of Energy, Energy Efficiency and Renewable Energy, Office of Building Technologies, U.S. Department of Energy, 1000 Independence Avenue SW.,
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Email: maureen.murphy@ee.doe.gov

RIN: 1904–AB44

Department of Energy (DOE) Long-Term Actions
Energy Efficiency and Renewable Energy (EE)

916. NATIONAL VOLUNTARY RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 437

Timetable:

Action	Date	FR Cite
NPRM	07/25/95	60 FR 37949
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: David Boomsma, EE–3B
Phone: 202 586–7086
Fax: 202 586–1233
Email: david.boomsma@ee.doe.gov

RIN: 1904–AA74

917. DETERMINATION FOR HIGH-INTENSITY DISCHARGE LAMPS

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 430

Timetable:

Action	Date	FR Cite
Determination Notice	11/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bryan Berringer, EE–2J
Phone: 202 586–0371
Fax: 202 586–4617
Email: bryan.berringer@ee.doe.gov

RIN: 1904–AA86

918. ENERGY EFFICIENCY STANDARDS FOR CLOTHES DRYERS AND DISHWASHERS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 10 CFR 430.32

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Barbara Twigg, EE–2J
Phone: 202 586–8714
Email: barbara.twigg@ee.doe.gov

RIN: 1904–AA89

919. ENERGY EFFICIENCY STANDARDS FOR POOL HEATERS AND DIRECT HEATING EQUIPMENT

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 10 CFR 430

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Cyrus Nasseri, EE–2J
Phone: 202 586–9138
Email: cyrus.nasseri@ee.doe.gov

RIN: 1904–AA90

920. ENERGY EFFICIENCY STANDARDS FOR 1–200 HP ELECTRIC MOTORS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 10 CFR 431

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Raba
Phone: 202 586–8654
Email: jim.raba@ee.doe.gov

RIN: 1904–AA91

921. ENERGY EFFICIENCY STANDARDS FOR FLUORESCENT AND INCANDESCENT LAMPS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 10 CFR 430.32

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Ronald Lewis
Phone: 202 586–8423
Email: ronald.lewis@ee.doe.gov

RIN: 1904–AA92

Department of Energy (DOE) Completed Actions
Energy Efficiency and Renewable Energy (EE)

922. TEST PROCEDURES FOR DISHWASHERS—AMENDMENT

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 430

Completed:

Reason	Date	FR Cite
Final Action	08/29/03	68 FR 51887

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barbara Twigg, EE–2J

Phone: 202 586–8714
Email: barbara.twigg@ee.doe.gov

RIN: 1904–AB10

Department of Energy (DOE)
Defense and Security Affairs (DSA)
Proposed Rule Stage

923. COMPUTER SECURITY; ACCESS TO INFORMATION ON NATIONAL NUCLEAR SECURITY ADMINISTRATION COMPUTER SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7101 et seq; 42 USC 2011 et seq; 50 USC 2425; 50 USC 2483(c)

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, January 3, 2000, NPRM.

Abstract: This action would codify rules governing access by any individual to information on National Nuclear Security Administration computer systems.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Catherine McCulloch, Department of Energy, National Nuclear Security Administration, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–2515

RIN: 1992–AA27

924. CRITERIA AND PROCEDURES FOR NONPREJUDICIAL RESTRICTION OF ACCESS AUTHORIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2165; 42 USC 2201; EO 10450; 42 USC 5814; 42 USC 5815

CFR Citation: 3 CFR 1949 to 1953 Comp., p. 936; 3 CFR 1959 to 1963 Comp., p. 398; 3 CFR ch IV, sec 104(c)

Legal Deadline: None

Abstract: This action would amend the Department's regulations to allow for the automatic restriction of DOE access authorizations when cleared individuals are subject to a proposed involuntary separation from employment due to reduction in force, workforce restructuring, or other cause not predicated upon the personal actions of the individual. The proposed amendment would also allow for limited restoration of access to classified matter in order for essential work to continue.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Interim Final Rule	01/00/04	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary E. Gallion, Department of Energy, SO–112, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 301 903–6545
Email: mary.gallion@hq.doe.gov

RIN: 1992–AA32

925. • INITIAL PARTS OF NNSA ACQUISITION REGULATION (NAR)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 486(c); 50 USC 2402

CFR Citation: 48 CFR ch 11

Legal Deadline: NPRM, Statutory, December 1, 2003, NPRM.

Abstract: This action would initiate the implementation of an acquisition regulation for National Nuclear Security Administration (NNSA).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ed Lovett, Director, Procurement and Assistance Policy, Department of Energy, 1000 Independence Avenue, SW., Washington , DC 20585
Phone: 202 586–8257
Email: ed.lovett@nnsa.doe.gov

RIN: 1992–AA34

Department of Energy (DOE)
Defense and Security Affairs (DSA)
Final Rule Stage

926. PHYSICAL PROTECTION OF SECURITY INTERESTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011; 42 USC 7101

CFR Citation: 10 CFR 1046 subpart A; 10 CFR 1046 subpart B

Legal Deadline: None

Abstract: 10 CFR part 1046, subparts A and B, establishes DOE contractor requirements in the areas of protective force medical, physical fitness, and firearms qualifications and training. The proposed revisions are to update administrative and organizational information for clarification purposes.

Timetable:

Action	Date	FR Cite
NPRM	04/14/03	68 FR 17886
NPRM Correction	04/18/03	68 FR 19166

Action	Date	FR Cite
NPRM Comment Period End	06/13/03	
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ronnie M. Edge, Department of Energy, Office of Security, Germantown, MD 20874
Phone: 301 903–4247

RIN: 1992–AA23

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927. PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR SECURITY VIOLATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011 et seq; 42 USC 7101 et seq; 42 USC 2282(b)

CFR Citation: 10 CFR 824

Legal Deadline: None

Abstract: This action would define the process for the imposition of civil penalties on contractors for violations relating to the safeguarding or security of classified or sensitive data.

Timetable:

Action	Date	FR Cite
NPRM	04/01/02	67 FR 15339
NPRM Comment Period End	07/01/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Geralyn C. Praskievicz, Department of Energy, Office of Security, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–4451

RIN: 1992–AA28

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928. HUMAN RELIABILITY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 10 CFR 710; 10 CFR 711; 10 CFR 712

Legal Deadline: None

Abstract: This action would establish a Human Reliability Program that would consolidate the Department's Personnel Security Assurance Program (PSAP) and its Personnel Assurance Program (PAP). PSAP is an access authorization program for individuals who apply for or occupy certain positions that are critical to the national security. The PSAP requires an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review of all applicants or incumbents. The PAP is a nuclear explosives safety program using many of the evaluations of the PSAP to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives.

Timetable:

Action	Date	FR Cite
NPRM	07/12/02	67 FR 46912
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynn Gebrowsky, Office of Security, Department of Energy, 19902 Germantown Road, Germantown, MD 20874
Phone: 301 903–6637

RIN: 1992–AA29

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929. CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL, SUBPART A

Priority: Info./Admin./Other

Legal Authority: EO 12968; 42 USC 2201

CFR Citation: 10 CFR 710, subpart A

Legal Deadline: None

Abstract: This action would update the responsibilities and authorities to reflect organizational changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: A. Barry Dalinsky, Personnel Security Specialist, Department of Energy, Office of Security, Germantown, MD 20874–1290
Phone: 301 903–5010

RIN: 1992–AA31

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930. POLYGRAPH EXAMINATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011 et seq; 42 USC 7101 et seq; 42 USC 7383h–1

CFR Citation: 10 CFR 709

Legal Deadline: None

Abstract: The purpose of this action is to promulgate new counterintelligence polygraph regulations consistent with section 3152 of the National Defense Authorization Act for fiscal year 2002.

Timetable:

Action	Date	FR Cite
NPRM	04/14/03	68 FR 17886
Correction to NPRM	04/18/03	68 FR 19166
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas Hinckley, Program Director, Department of Energy, Office of Counterintelligence, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–5901

RIN: 1992–AA33

931. FREEDOM OF INFORMATION ACT

Priority: Other Significant

Legal Authority: 5 USC 552

CFR Citation: 10 CFR 1004

Legal Deadline: None

Abstract: The Freedom of Information Act (FOIA), as amended, permits any person to request access to agency records. The DOE has promulgated a regulation at part 1004 of title 10 of the Code of Federal Regulations to implement the FOIA. The DOE will revise its FOIA regulation to reflect current procedures for processing requests for information that are submitted to the agency, to ensure compliance with the Electronic Freedom of Information Act Amendments of 1996, and to make the regulation more user friendly.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Abel Lopez, Director, FOIA and Privacy Act Division, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-5955
Email: abel.lopez@hq.doe.gov

RIN: 1901-AA32

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932. RESEARCH MISCONDUCT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7101 et seq; 50 USC 2401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action would establish policies and procedures for handling research misconduct allegations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William J. Valdez, Director, Office of Planning and Analysis, Department of Energy, Office of Science, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-9942
Fax: 202 586-7719
Email: bill.valdez@science.doe.gov

RIN: 1901-AA89

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933. OCCUPATIONAL RADIATION PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7191

CFR Citation: 10 CFR 835

Legal Deadline: None

Abstract: This action would amend the Department of Energy's occupational radiation protection regulations to provide additional flexibility in meeting requirements, to update the dosimetric models and dose terms, to establish certain concentration values and limits, and to clarify requirements for radioactive material transportation not subject to DOT regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter O'Connell, Department of Energy, Office of Worker Protection Policy and Programs, 1000 Independence Avenue S.W., Washington, DC 20585
Phone: 301 903-5641

RIN: 1901-AA95

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934. WORKER SAFETY AND HEALTH

Regulatory Plan: This entry is Seq. No. 38 in part II of this issue of the **Federal Register**.

RIN: 1901-AA99

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935. ● LOW DENSITY DISCOUNT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 839e(d)(1)

CFR Citation: None

Legal Deadline: None

Abstract: Pursuant to section 7(d)(1) of the Northwest Power Act, in order to avoid adverse impacts on retail rates of BPA wholesale customers with low system densities, BPA offers low density discounts (LDD) through the Administrator's power rates. When BPA revised the LDD in BPA's 2002 power rate case, BPA changed part of its General Rate Schedule Provisions (GRSPs). The GRSPs now base part of the LDD calculation on a customer's "Total Retail Load," instead of its "total electric energy requirements." This change may have the inadvertent effect of allowing certain utilities to be eligible for the LDD based on their sales for resale, which are not a proper basis for the discount. BPA has not yet decided, but may revise the LDD in a section 7(i) hearing to correct this anomaly. The LDD is an intraclass allocation of costs. BPA's LDD costs would be slightly lower if revised as described.

Timetable:

Action	Date	FR Cite
Proposed Record of Decision	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kurt Casad, Department of Energy, Bonneville Power Administration, P.O. Box 3621-LP-7, Portland, OR 97208
Phone: 503 230-4024

RIN: 1901-AB12

Department of Energy (DOE)
Departmental and Others (ENDEP)
Final Rule Stage

936. RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Regulatory Plan: This entry is Seq. No. 39 in part II of this issue of the **Federal Register**.

RIN: 1901–AA38

937. ECONOMIC DEVELOPMENT TRANSFERS OF REAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: PL 105–85, sec 3158

CFR Citation: 10 CFR 770

Legal Deadline: None

Abstract: This action would establish procedures for indemnifying and disposing of real property by sale or lease at the Department's defense nuclear facilities for the purpose of permitting economic development. It would also establish procedures for reporting actions to Congress, informing those acquiring the property of the availability of indemnification for injury to people or property from releases or threatened releases of hazardous materials, requesting indemnification, and making claims for indemnification.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/29/00	65 FR 10685
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew Duran, Realty Officer, ME–90, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–4548
Email: andrew.duran@hq.doe.gov

RIN: 1901–AA82

938. • GUIDELINES FOR VOLUNTARY GREENHOUSE GAS REPORTING

Priority: Other Significant

Legal Authority: 42 USC 13385(b)

CFR Citation: 10 CFR 300

Legal Deadline: None

Abstract: This action would revise the procedures and reporting requirements for the Voluntary Greenhouse Gas Reporting Program. The revisions would enhance the measurement accuracy, reliability, and verifiability of reported data.

Timetable:

Action	Date	FR Cite
NPRM	12/05/03	68 FR 68204
NPRM Comment Period End	02/03/04	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Friedrichs, Office of Policy and International Affairs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585
Phone: 202 586–0124

RIN: 1901–AB11

Department of Energy (DOE)
Departmental and Others (ENDEP)
Long-Term Actions

939. ANNOTATION OF LAND RECORDS FOR REMEDIATED PROPERTIES IN THE URANIUM MILL TAILINGS REMEDIAL ACTION PROJECT (UMTRA)

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	04/14/89	54 FR 29732
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Christopher J. Clayton
Phone: 202 586–9034

RIN: 1901–AA57

Department of Energy (DOE)
Departmental and Others (ENDEP)
Completed Actions

940. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 1040

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon Wyatt
Phone: 202 586–2256
Fax: 202 586–0888
Email: sharon.wyatt@hq.doe.gov

RIN: 1901–AA86

941. REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES: TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 765

Completed:

Reason	Date	FR Cite
Final Rule	06/03/03	68 FR 32955

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David E. Mathes
Phone: 301 903–7222

RIN: 1901–AA88

942. COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 1022

DOE—ENDEP **Completed Actions**

Completed:

Reason	Date	FR Cite
Final Action	08/27/03	68 FR 51429

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carolyn Osborne
Phone: 202 586–4600

RIN: 1901–AA94

943. SAFETY NET COST RECOVERY ADJUSTMENT RATE PROCEEDING

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Record of Decision	07/10/03	68 FR 41114

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Byron G. Keep
Phone: 503 230–5660

RIN: 1901–AA96

944. TRANSMISSION RATE PROCEEDING

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Record of Decision	05/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barry Bennett
Phone: 503 230–4053

RIN: 1901–AA97

945. COLLECTION OF CLAIMS OWED THE UNITED STATES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 1015

Completed:

Reason	Date	FR Cite
Direct Final Rule	08/14/03	68 FR 48531

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Helen O. Sherman
Phone: 202 586–4860

RIN: 1901–AA98

Department of Energy (DOE)
Office of Procurement and Assistance Management (PR)

Proposed Rule Stage

946. NEW AND REVISED DEAR CLAUSES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7254

CFR Citation: 48 CFR 970; 48 CFR 901 to 952

Legal Deadline: None

Abstract: This action would revise part 970 and related parts of DEAR to eliminate provisions that are unnecessary, obsolete, or duplicated elsewhere in title 48.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Fischetti, Procurement Analyst, ME–61, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–8192

RIN: 1991–AB60

947. DEAR: MAKE OR BUY PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7101; 50 USC 2401

CFR Citation: 48 CFR 901; 48 CFR 970

Legal Deadline: None

Abstract: The requirement for detailed Make or Buy Plans under all DOE management contracts is being eliminated. Make or buy analysis will be retained for major systems acquisitions. A new clause entitled Performance Improvement and Collaboration is being added. It provides for collaboration among DOE's management contractors and the Department to identify possible improvements in contract performance.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Irma Brown, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, ME–61, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–8455
Email: irma.brown@hq.doe.gov

RIN: 1991–AB63

948. • DEAR CHANGES TO PROVISIONS FOR FACILITIES MANAGEMENT, WORK AUTHORIZATION, CONTRACTOR'S ORGANIZATION, CONTRACTOR RELATIONS, AND LAWS, REGULATIONS, AND DIRECTIVES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 7101; 50 USC 2401

CFR Citation: 48 CFR 907; 48 CFR 952; 48 CFR 970

Legal Deadline: None

Abstract: This action would delete 10 CFR part 970.5237–2, Facilities Management; add new clauses dealing with work authorization and government-contractor relations; and incorporate other revisions that would emphasize the contractor's responsibility for effective cost management in flowing down prime contract requirements to its subcontractors.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Fischetti, Procurement Analyst, ME–61, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–8192

RIN: 1991–AB65

Department of Energy (DOE)
Office of Procurement and Assistance Management (PR)

Final Rule Stage

949. ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 909; 48 CFR 970

Legal Deadline: None

Abstract: This action would amend provisions that cover organizational conflicts of interest and purchases from affiliated sources to protect the Department in transactions involving a DOE M&O contractor and its affiliates.

Timetable:

Action	Date	FR Cite
NPRM	10/13/99	64 FR 55453
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–8264

RIN: 1991–AB52

950. ACQUISITION REGULATION: PAYMENT OF FEE RELATING TO SECURITY ISSUES/CONDITIONAL PAYMENT OF FEE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: This action would make the payment of fees to the Department's major operating contractors conditional on meeting safeguard and security requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/01/01	66 FR 8560
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael L. Righi, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–8175

RIN: 1991–AB54

951. FINANCIAL ASSISTANCE REGULATION: ADMINISTRATIVE REQUIREMENTS RELATED TO FOR–PROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7173

CFR Citation: 10 CFR 600

Legal Deadline: None

Abstract: This action seeks comments on whether to issue a rule that prescribes administrative requirements for financial assistance awards tailored specifically to for–profit organizations.

Timetable:

Action	Date	FR Cite
ANPRM	05/08/01	66 FR 23197
NPRM	08/26/02	67 FR 54850
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Trudy Wood, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–5625
Email: trudy.wood@pr.doe.gov

RIN: 1991–AB57

952. DEPARTMENT OF ENERGY ACQUISITION REGULATION: MANAGEMENT CONTRACTOR COMPENSATION FOR PERSONAL SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7101; 50 USC 2401

CFR Citation: 48 CFR 970.22; 48 CFR 970.31; 48 CFR 970.52

Legal Deadline: None

Abstract: This action would amend the policy and procedures regarding compensation for personal services under contracts for management of Department of Energy facilities.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–8247
Email: richard.langston@pr.doe.gov

RIN: 1991–AB61

953. TECHNICAL AMENDMENT OF THE DEPARTMENT OF ENERGY ACQUISITION REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7101; 50 USC 2401

CFR Citation: 48 CFR 030; 48 CFR 952; 48 CFR 970

Legal Deadline: None

Abstract: This action would make technical amendments and corrections to various parts of the Department of Energy Acquisition Regulations.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen Zvolensky, Department of Energy, Office of Procurement and Assistance Management, ME–61, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–5936
Email: stephen.zvolensky@hq.doe.gov

RIN: 1991–AB62

954. DEAR: WORK FOR OTHERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7101; 50 USC 2401

CFR Citation: 48 CFR 970.1707; 48 CFR 970.5217–1

Legal Deadline: None

Abstract: This action would amend the Department of Energy Acquisition Regulations (DEAR) to provide policies and procedures regarding work for non-DOE entities performed by DOE contractors who manage and operate DOE owned or leased facilities. These procedures are being relocated from the DOE Directives to the DEAR as part of a larger effort to decrease overly prescriptive guidance. The contractor requirements previously found in DOE order 481.1B are being relocated to the DEAR.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: A. Scott Geary, Program Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–3299

RIN: 1991–AB64

955. • FINANCIAL ASSISTANCE REGULATIONS: IMPLEMENTATION OF OMB GRANTS MANAGEMENT POLICIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 106–107

CFR Citation: 10 CFR 600

Legal Deadline: None

Abstract: This action would revise 10 CFR 600.8 to implement the Governmentwide standard format for announcing Federal funding opportunities and the posting of synopses on the Grants.gov FIND Internet site.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Trudy Wood, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–5625
Email: trudy.wood@pr.doe.gov

RIN: 1991–AB66

Department of Energy (DOE)
Office of Procurement and Assistance Management (PR)

Completed Actions

956. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 1036

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Yee
Phone: 202 586–1140

RIN: 1991–AB56

957. ENERGY DEPARTMENT MOTOR VEHICLE FLEET FUEL EFFICIENCY

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 947; 48 CFR 970.52

Completed:

Reason	Date	FR Cite
Final Action	09/02/03	68 FR 52129

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard B. Langston
Phone: 202 586–8247
Email: richard.langston@pr.doe.gov

RIN: 1991–AB59

Department of Energy (DOE)
Office of General Counsel (OGC)

Final Rule Stage

958. CONDUCT OF EMPLOYEES

Priority: Info./Admin./Other

Legal Authority: 42 USC 7211 et seq; PL 103–160, sec 3161; EO 12674

CFR Citation: 10 CFR 1010; 5 CFR 2635

Legal Deadline: None

Abstract: The DOE regulation on conduct of employees needs to be revised to reflect the issuance of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635) and the repeal of conflict-of-interest provisions formerly applicable to DOE employees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/05/96	61 FR 35085
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Susan Beard, Acting Assistant General Counsel for General Law, Department of Energy, Office of General Counsel, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–1522

RIN: 1990–AA19

959. CLAIMS FOR DAMAGES AGAINST DEPARTMENT OF ENERGY EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 2672; 42 USC 7101 et seq

CFR Citation: 10 CFR 1014

Legal Deadline: None

Abstract: This action would provide for the indemnification of employees or former employees of the Department of Energy who are personally liable to pay damages for their official acts or omissions as a result of an adverse judgment or settlement.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Susan Beard, Acting Assistant General Counsel for General Law, Department of Energy, Office of General Counsel, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–1522

RIN: 1990–AA26

Department of Energy (DOE)
Office of General Counsel (OGC)

Completed Actions

960. • COLLECTION OF CLAIMS OWED THE UNITED STATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 31 USC 3720A; PL 98–369; 98 Stat. 1153

CFR Citation: 10 CFR 1015; 10 CFR 1018

Legal Deadline: None

Abstract: This action revised the Department of Energy's debt collection standards to clarify and simplify the standards and reflect procedural changes made by the Debt Collection Improvement Act of 1996 and the General Accounting Office Act of 1996.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/14/03	68 FR 48531

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Helen O. Sherman, Director, Office of Finance and Accounting Policy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–4860

RIN: 1990–AA28

[FR Doc. 03–28902 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part VIII

Department of Health and Human Services

Semiannual Regulatory Agenda

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

21 CFR Ch. I

42 CFR Chs. I-V

45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII

Regulatory Agenda

AGENCY: Office of the Secretary, HHS.

ACTION: Semiannual agenda.

SUMMARY: The Regulatory Flexibility Act of 1980 and Executive Order 12866 require the semiannual publication of an inventory of all rulemaking actions under development or review, known as the regulatory agenda. The purpose of this effort is to encourage public participation in the regulatory process by providing, at an early stage, summarized information about regulatory actions that the Department is working on. Citizens interested in communicating to the Department their views on the rulemakings prospectively outlined below are invited to do so.

FOR FURTHER INFORMATION CONTACT: Ann C. Agnew, Executive Secretary, Department of Health and Human Services, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: The capsulized information provided below reflects an effort to present for public scrutiny a forecast of the rulemaking activities that the Department expects to undertake over the foreseeable future. We focus primarily on those areas of work expected to result in publication of a notice of proposed rulemaking, or a final rule within the next 12 months. Also included in the Long-Term Action sections below are summaries of actions that are under development, but which we will probably not complete within the next 12 months.

We welcome hearing the views of all concerned with regard to these planned regulatory or deregulatory actions. Comments may be directed to the agency officials cited in each of the summaries. Or, if early attention at the Secretary#146;s level is seen as warranted, comments should be sent to: Ann C. Agnew, Executive Secretary to the Department, Room 603H, 200 Independence Avenue SW., Washington, DC 20201.

The Office of Management and Budget requires that fall editions of the agenda be augmented by a regulatory plan, highlighting the most important regulatory issues across the executive branch. The HHS portion of the Plan appears in part II of this issue of the **Federal Register** with those of other Departments and Agencies. Our Plan entries are included in the table of contents below, denoted by a bracketed bold reference to the appropriate sequence number in part II.

Dated: October 17, 2003.

Ann C. Agnew,

Executive Secretary to the Department.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
961	Safe Harbor for Arrangements Involving Federally Qualified Health Centers	0991–AB06
962	Claims Collection	0991–AB18
963	Salary Offset	0991–AB19
964	Health Insurance Portability and Accountability Act–Enforcement **(Reg Plan Seq No. 40)**	0991–AB29

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
965	Shared Risk Exception to the Safe Harbor Provisions	0991–AA91
966	Safe Harbor for Waiver of Beneficiary Coinsurance and Deductible Amounts for a Medicare SELECT Policy	0991–AB16
967	Tax Refund Offset	0991–AB17
968	Implementation of the Equal Access to Justice Act in Agency Proceedings	0991–AB22
969	Clarification of Terms and Application of Program Exclusion Authority for Submitting Claims Containing Excessive Charges	0991–AB23

Office of the Secretary—Long-term Actions

Sequence Number	Title	Regulation Identification Number
970	Revisions to Regulations Addressing the OIG's Authority to Impose Civil Money Penalties and Assessments	0991–AB03
971	Amending the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, Sex, and Age To Conform to the Civil Rights Restoration Act of 1987	0991–AB10

HHS

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
972	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0991–AB12

Substance Abuse and Mental Health Services Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
973	Requirements Governing the Use of Seclusion and Restraint in Certain Nonmedical Community-Based Facilities for Children and Youth **(Reg Plan Seq No. 41)**	0930–AA10
974	Mandatory Guidelines for the Federal Workplace Drug Testing Program	0930–AA12

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Substance Abuse and Mental Health Services Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
975	Substance Abuse and Mental Health Services Administration (SAMHSA) Charitable Choice	0930–AA11

Centers for Disease Control and Prevention—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
976	Amendments to Quality Assurance and Administrative Provision for Approval of Respiratory Protective Devices	0920–AA04

Centers for Disease Control and Prevention—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
977	Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employee Occupational Illness Compensation Act of 2000	0920–AA07

Food and Drug Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
978	Over-the-Counter (OTC) Drug Review	0910–AA01
979	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food (Part 110) **(Section 610 Review)**	0910–AC58
980	Health Claims	0910–AF09
981	Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures; Derivatives of Blood	0910–AF16

Food and Drug Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
982	Foreign and Domestic Establishment Registration and Listing Requirements for Drugs and Biologics	0910–AA49

Food and Drug Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
983	Blood Initiative	0910–AB26
984	Applications for FDA Approval To Market a New Drug; Complete Response Letter; Amendments To Unapproved Applications	0910–AB34
985	Current Good Manufacturing Practice for Medicated Feeds	0910–AB70
986	Requirements Pertaining to Sampling Services and Private Laboratories Used in Connection With Imported Food	0910–AB96
987	Prevention of Salmonella Enteritidis in Shell Eggs **(Reg Plan Seq No. 42)**	0910–AC14
988	Institutional Review Boards: Registration Requirements	0910–AC17
989	Use of Materials Derived From Bovine and Ovine Animals in FDA-Regulated Products	0910–AC19
990	Chronic Wasting Disease: Control of Food Products and Cosmetics Derived From Exposed Animal Populations	0910–AC21
991	Exception From General Requirements for Informed Consent; Request for Comments and Information **(Reg Plan Seq No. 43)**	0910–AC25
992	Medical Devices; Anesthesiology Devices; Proposed Reclassification of Pressure Regulators for Use With Medical Oxygen	0910–AC30
993	Toll-Free Number for Reporting Adverse Events on Labeling for Human Drugs **(Reg Plan Seq No. 44)**	0910–AC35
994	Food Labeling: Trans Fatty Acids in Nutrition Labeling: Consumer Research To Consider Nutrient Content and Health Claims and Possible Footnote or Disclosure Statements	0910–AC50
995	Submission of Standardized Electronic Study Data From Clinical Studies Evaluating Human Drugs and Biologics	0910–AC52
996	Medical Gas Containers and Closures; Current Good Manufacturing Practice Requirements	0910–AC53
997	Food Standards: General Principles and Food Standards Modernization	0910–AC54
998	Positron Emission Tomography Drugs; Current Good Manufacturing Practices	0910–AC55
999	Revision of the Requirements for Spore-Forming Microorganisms	0910–AC57
1000	Reporting Information Regarding Falsification of Data	0910–AC59
1001	Definition of "Serious Adverse Health Consequences" Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 **(Reg Plan Seq No. 45)**	0910–AF06
1002	Quality Standard Regulation Establishing Allowable Level for Arsenic in Bottled Water	0910–AF10
1003	Content and Format of Labeling for Human Prescription Drugs and Biologics; Requirements for Pregnancy and Lactation	0910–AF11
1004	Cochineal Extract and Carmine Label Declaration	0910–AF12
1005	Charging for Investigational Drugs	0910–AF13
1006	Treatment Use of Investigational Drugs	0910–AF14
1007	Human Subject Protection; Foreign Clinical Studies Not Conducted Under an Investigational New Drug Application	0910–AF15
1008	Use of Ozone-Depleting Substances: Removal of Essential Use Designation; Albuterol **(Reg Plan Seq No. 46)**	0910–AF18

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food and Drug Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1009	Infant Formula: Requirements Pertaining to Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports	0910–AA04
1010	Investigational New Drugs: Export Requirements for Unapproved New Drug Products	0910–AA61
1011	Determination That Informed Consent Is Infeasible or Is Contrary to the Best Interest of Recipients	0910–AA89
1012	Labeling for Human Prescription Drugs; Revised Format **(Reg Plan Seq No. 47)**	0910–AA94
1013	Safety Reporting Requirements for Human Drug and Biological Products **(Reg Plan Seq No. 48)**	0910–AA97
1014	Supplements and Other Changes to an Approved Application	0910–AB61
1015	CGMP for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV Infection (Lookback) **(Reg Plan Seq No. 49)**	0910–AB76
1016	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements **(Reg Plan Seq No. 50)**	0910–AB88
1017	Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format	0910–AB91
1018	Additional Safeguards for Children in Clinical Investigations of FDA-Regulated Products	0910–AC07
1019	Bar Code Label Requirements for Human Drug Products and Blood **(Reg Plan Seq No. 51)**	0910–AC26
1020	Medical Devices; Patient Examination and Surgeons' Gloves; Adulteration	0910–AC32
1021	Amendments to the Performance Standard for Diagnostic X-Ray Systems and Their Major Components	0910–AC34
1022	Administrative Detention of Food for Human or Animal Consumption Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 **(Reg Plan Seq No. 52)**	0910–AC38

Food and Drug Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1023	Establishment and Maintenance of Records Pursuant to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 **(Reg Plan Seq No. 53)**	0910–AC39
1024	Registration of Food and Animal Feed Facilities	0910–AC40
1025	Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002	0910–AC41
1026	Requirements for Liquid Medicated Feed and Free-Choice Medicated Feed	0910–AC43
1027	Presubmission Conferences	0910–AC44
1028	Biological Products; Bacterial Vaccines and Toxoids; Implementation of Efficacy Review	0910–AC56
1029	Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Revision of Certain Labeling Controls	0910–AF08

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Food and Drug Administration—Long-term Actions

Sequence Number	Title	Regulation Identification Number
1030	Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products	0910–AB27
1031	Current Good Tissue Practice for Human Cell, Tissue, and Cellular and Tissue-Based Products Establishments; Inspection and Enforcement	0910–AB28
1032	Requirements for Submission of In Vivo Bioequivalence Data	0910–AC23
1033	Food Labeling: Food Allergen Ingredient Labeling	0910–AF07

Food and Drug Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1034	Investigational Use New Animal Drug Regulations **(Completion of a Section 610 Review)**	0910–AB02
1035	Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims	0910–AB66
1036	Aluminum in Large- and Small-Volume Parenterals Used in Total Parenteral Nutrition	0910–AC18
1037	Regulation of Carcinogenic Compounds Used in Food-Producing Animals; Definition of "No Residue"	0910–AC45
1038	Applications for FDA Approval To Market a New Drug: Patent Listing Requirements and Application of 30-Month Stays on Approval of Abbreviated New Drug Applications	0910–AC48

Health Resources and Services Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1039	National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Medical Malpractice Payments Reporting Requirements	0906–AA41
1040	Designation of Medically Underserved Populations and Health Professional Shortage Areas	0906–AA44

Health Resources and Services Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1041	Interim Final Rule for the Smallpox Emergency Personnel Protection Program: Smallpox (Vaccinia) Vaccine Injury Table	0906–AA60
1042	Smallpox Vaccine Injury Compensation Program: Administrative Implementation **(Reg Plan Seq No. 54)**	0906–AA61

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Health Resources and Services Administration—Long-term Actions

Sequence Number	Title	Regulation Identification Number
1043	National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Reporting Adverse and Negative Actions	0906–AA57

Indian Health Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1044	Indian Child Protection and Family Violence Prevention Act Minimum Standards of Character	0917–AA02

National Institutes of Health—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1045	Undergraduate Scholarship Program Regarding Professions Needed by the National Institutes of Health (NIH)	0925–AA10
1046	National Institutes of Health Training Grants	0925–AA28
1047	Standards for a National Chimpanzee Sanctuary System	0925–AA31
1048	National Institutes of Health AIDS Research Loan Repayment Program	0925–AA32
1049	National Institutes of Health Extramural Loan Repayment Program for Clinical Researchers	0925–AA33
1050	National Institutes of Health Pediatric Research Loan Repayment Program	0925–AA34
1051	National Institutes of Health Loan Repayment Program for Health Disparities Research	0925–AA35
1052	National Institutes of Health Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds	0925–AA36
1053	National Institute of Child Health and Human Development Contraception and Infertility Research Loan Repayment Program	0925–AA41

National Institutes of Health—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1054	National Institutes of Health Loan Repayment Program for Research Generally	0925–AA18
1055	Scientific Peer Review of Research Grant Applications and Research and Development Contract Projects	0925–AA20
1056	National Institutes of Health Center Grants	0925–AA24

Office of Public Health and Science—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1057	Public Health Service Policies on Research Misconduct	0940–AA04
1058	Human Subjects Protection Regulations: Institutional Review Boards Registration Requirements	0940–AA06
1059	Human Subjects Protection Regulations: Training and Education Requirements for Institutional Officials, Institutional Review Board Members and Staff, Human Protections Administrators, and Investigator	0940–AA08

Office of Public Health and Science—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1060	Public Health Service Standards for the Protection of Research Misconduct Whistleblowers.	0940–AA01

Centers for Medicare & Medicaid Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1061	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS–3818–P) **(Section 610 Review) (Reg Plan Seq No. 55)**	0938–AG82
1062	Hospital Conditions of Participation: Requirements for Approval and Reapproval of Transplant Centers To Perform Organ Transplants (CMS–3835–P) **(Reg Plan Seq No. 56)**	0938–AH17
1063	Hospice Care—Conditions of Participation (CMS–3844–P)	0938–AH27
1064	Supplier Standards for Home Oxygen, Therapeutic Shoes, and Home Nutrition Therapy (CMS–6010–P)	0938–AJ98
1065	Health Insurance Reform: Claims Attachments Standards (CMS–0050–P)	0938–AK62
1066	Organ Procurement Organization Conditions for Coverage (CMS–3064–P) **(Reg Plan Seq No. 57)**	0938–AK81
1067	Use of Restraint and Seclusion in Medicare and Medicaid Participating Facilities That Provide Inpatient or Residential Care (CMS–2130–P) **(Reg Plan Seq No. 58)**	0938–AL26
1068	Prospective Payment System for Inpatient Psychiatric Facilities FY 2004 (CMS–1213–F) **(Reg Plan Seq No. 59)**	0938–AL50
1069	Provider Reimbursement Determinations and Appeals (CMS–1727–P)	0938–AL54
1070	Health Coverage Portability's Request for Information on Benefit–Specific Waiting Periods (CMS–2150–NC)	0938–AL64
1071	DMERC Service Areas and Related Matters (CMS–1219–P)	0938–AL76
1072	Revisions to Conditions for Coverage for Ambulatory Surgical Centers (CMS–3887–P)	0938–AL80
1073	Health Coverage Portability: Tolling Certain Time Periods and Interactions With Family and Medical Leave Act (CMS–2158–P)	0938–AL88
1074	Criteria for Determining Whether a Drug is Considered Usually Self–Administered (CMS–1228–P)	0938–AM13
1075	Procedures for Maintaining Code Lists in the Negotiated National Coverage Determinations for Clinical Diagnostic Laboratory Services (CMS–3119–PN)	0938–AM36
1076	Hospital Patients' Rights CoP—Standard Safety Compliance Committees (CMS–3120–P) **(Reg Plan Seq No. 60)**	0938–AM39
1077	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2005 (CMS–1249–N)	0938–AM46
1078	Modifications to Electronic Transactions and Code Sets (CMS–0009–P)	0938–AM50
1079	Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures (CMS–6146–P)	0938–AM54
1080	Requirements for Nursing Homes To Identify the Number of Licensed and Unlicensed Nurses (CMS–3121–P)	0938–AM55
1081	Changes to the Hospital Outpatient Prospective System and Calendar Year 2005 Payment Rates (CMS–1427–P)	0938–AM75
1082	Changes to the Hospital Inpatient Prospective Payment System and FY 2005 Rates (CMS–1428–P)	0938–AM80
1083	Covered Outpatient Drugs Under the Medicaid Drug Rebate Program (CMS–2174–P)	0938–AM81
1084	Prospective Payment System for Inpatient Rehabilitation Facilities for FY 2005 (CMS–1360–P)	0938–AM82
1085	Prospective Payment System for Long-Term Care Hospitals: Annual Payment Rate Updates and Policy Changes (Effective 7/1/04) (CMS–1263–P)	0938–AM84
1086	Payment Error Rate Measurement (PERM) Program (CMS–2186–P)	0938–AM86
1087	Requirements for Long-Term Care Facilities: Hospice Services (CMS–3140–P)	0938–AM87
1088	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2005 (CMS–1429–P)	0938–AM90
1089	Home Health Prospective Payment System Rate Update FY 2005 (CMS–1265–P)	0938–AM93
1090	Revisions to Cost Sharing Regulations (CMS–2144–P)	0938–AM94

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Centers for Medicare & Medicaid Services—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1091	Home Health Agency (HHA) Conditions of Participation (CoPs) (CMS–3819–FC)	0938–AG81
1092	Requirements for Establishing and Maintaining Medicare Billing Privileges (CMS–6002–F)	0938–AH73
1093	Health Insurance Reform: Standard Unique Health Care Provider Identifier (CMS–0045–F)	0938–AH99
1094	Appeals of Carrier Determination That a Supplier Fails To Meet the Requirements for Medicare Billing Privileges (CMS–6003–F)	0938–AI49
1095	Coverage of Religious Nonmedical Health Care Institutions (CMS–1909–F)	0938–AI93
1096	Medicare Outcome and Assessment Information Set (OASIS) Data Reporting Requirements (CMS–3006–F)	0938–AJ10
1097	Rural Health Clinics: Amendments to Participation Requirements and Payment Provisions and Establishment of a Quality Assessment and Improvement Program (CMS–1910–F)	0938–AJ17
1098	Hospital Conditions of Participation: Laboratory Services (CMS–3014–F)	0938–AJ29
1099	Medicare Hospice Care Amendments (CMS–1022–F)	0938–AJ36
1100	Use of Restraint and Seclusion in Residential Treatment Facilities Providing Inpatient Psychiatric Services to Individuals Under Age 21 (CMS–2065–F) **(Reg Plan Seq No. 61)**	0938–AJ96
1101	All Provider Bad Debt Payment (CMS–1126–F)	0938–AK02

Centers for Medicare & Medicaid Services—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1102	Review of National Coverage Determinations and Local Coverage Determinations (CMS–3063–F)	0938–AK60
1103	Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships—Phase II (CMS–1810–FC)	0938–AK67
1104	Rate of Reimbursement of Photocopy Expenses for Quality Improvement Organizations (CMS–3055–F)	0938–AK68
1105	Elimination of Statement of Intent Procedures for Filing Medicare Claims (CMS–1185–F)	0938–AK79
1106	Extending Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity (CMS–4018–F)	0938–AK94
1107	Medicare Program; Interest Calculation (CMS–6014–F)	0938–AL14
1108	Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers (CMS–2151–F)	0938–AL43
1109	Permitting Premium Reductions as Additional Benefits Under Medicare+Choice Plans (CMS–6016–F)	0938–AL49
1110	Revisions to the Medicare Appeals Process (CMS–4004–FC) **(Reg Plan Seq No. 62)**	0938–AL67
1111	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates (CMS–1471–F)	0938–AL91
1112	Electronic Medicare Claims Submission (CMS–0008–F)	0938–AM22
1113	Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for Calendar Year 2004 (CMS–8016–N)	0938–AM31
1114	Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2004 (CMS–8017–N)	0938–AM32
1115	Part A Premiums for Calendar Year 2004 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (CMS–8018–N)	0938–AM33
1116	Grants to States for Operation of Qualified High Risk Pools (CMS–2179–F)	0938–AM42
1117	Fee Schedule for Payment of Ambulance Services Update for Calendar Year 2004 (CMS–1232–FC)	0938–AM44
1118	Non-Federal Governmental Plans Exempt From HIPAA Title I Requirements (CMS–2033–F)	0938–AM71
1119	Revisions to the Appeals Process for Initial Claim Determinations (CMS–4064–F) **(Reg Plan Seq No. 63)**	0938–AM73
1120	More Flexible Requirements for Powered-Operated Vehicles (CMS–3017–FC)	0938–AM74
1121	Hospice Wage Index FY 2005 (CMS–1264–N)	0938–AM78
1122	Ticket to Work: Defining Individuals with Potentially Severe Disabilities (CMS–2172–N)	0938–AM79
1123	Hospital Conditions of Participation: Requirements For History and Physical Examinations; Authentication of Verbal Orders, Securing Medications and Post-Anesthesia Evaluations (CMS–3122–F)	0938–AM88
1124	Disproportionate Share Hospital (DSH) Payments Institutions for Mental Disease (IMDs) (CMS–2062–N)	0938–AM89

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Centers for Medicare & Medicaid Services—Long-term Actions

Sequence Number	Title	Regulation Identification Number
1125	Standard Unique National Health Plan Identifiers (CMS–6017–P)	0938–AH87
1126	Exclusion of Medicare Benefits for Aliens Not Lawfully Present in the United States (CMS–1222–FC)	0938–AM47
1127	Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility (CMS–1262–F)	0938–AM72

Centers for Medicare & Medicaid Services—Completed Actions

Sequence Number	Title	Regulation Identification Number
1128	Conditions of Participation of Intermediate Care Facilities for Persons With Mental Retardation (CMS–3046–P)	0938–AK23
1129	Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications (CMS–2226–CN)	0938–AK24
1130	Fire Safety Requirements for Certain Health Care Facilities (CMS–3047–F)	0938–AK35
1131	Hospital Conditions of Participation: Quality Assessment and Performance Improvements (QAPI) (CMS–3050–F)	0938–AK40
1132	Revised Process for Making Medicare National Coverage Determinations (CMS–3062–N)	0938–AK61
1133	Modifications to Medicare Managed Care Rules (CMS–4041–F)	0938–AK71
1134	Inpatient Disproportionate Share Hospital (DSH) Adjustment: Calculation of Medicaid Patient and Total Patient Days in the Medicare DSH Adjustment (CMS–1171–P)	0938–AK77
1135	Modifications to the State Children's Health Insurance Program (SCHIP) (CMS–2006–F)	0938–AL00
1136	Requirements for Paid Feeding Assistants in Long-Term Care Facilities (CMS–2131–F)	0938–AL18

Centers for Medicare & Medicaid Services—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1137	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; Changes to Payment Suspension for Unfiled Cost Reports; Correction to Final Rule (CMS–1206–CN2)	0938–AL19
1138	Payment for Respiratory Assist Devices With Bi-Level Capability and a Back-Up Rate (CMS–1167–F)	0938–AL27
1139	Interim Final Amendment for Mental Health Parity (CMS–2152–IFC)	0938–AL44
1140	Electronic Submission of Cost Reports (CMS–1199–F)	0938–AL51
1141	Exclusions from the Definition of "Optional Targeted Low-Income Child" and Purchase of Family Coverage—Benefit Flexibility in Parent Coverage (CMS–2148–P)	0938–AL62
1142	State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals; Federal FY 2002 (CMS–2136–FN)	0938–AL79
1143	Medicaid Coverage Rules for Inmates of Public Institutions (CMS–2077–P)	0938–AL85
1144	Targeted Case Management (CMS–2061–P)	0938–AL87
1145	Changes to the Hospital Inpatient Prospective Payment System and FY 2004 Rates (CMS–1470–F)	0938–AL89
1146	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2004 (CMS–1469–F)	0938–AL90
1147	Prospective Payment System for Long-Term Care Hospitals for FY 2004 (CMS–1472–P)	0938–AL92
1148	Home Health Prospective Payment System Rate Update for FY 2004 (CMS–1473–NC)	0938–AL94
1149	Prospective Payment System for Inpatient Rehabilitation Hospitals for FY 2004 (CMS–1474–F)	0938–AL95
1150	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004 (CMS–1476–P)	0938–AL96
1151	Nondiscrimination In Post-Hospital Referral to Home Health Agencies and Other Entities (CMS–1224–F)	0938–AM01
1152	Update of the List of Covered Procedures for Ambulatory Surgical Centers (CMS–1885–FC)	0938–AM02
1153	Medicaid Home and Community Based Services Waivers (CMS–2162–P)	0938–AM05
1154	Payment Reform for Part B Drugs (CMS–1229–F)	0938–AM12
1155	Nondiscrimination in Health Coverage in the Group Market (CMS–2022–F)	0938–AM14
1156	Bona Fide Wellness Programs (CMS–2078–F)	0938–AM15
1157	Time Limitation on Recalculations and Disputes Under the Drug Rebate Program (CMS–2175–FC)	0938–AM20
1158	Medicaid Estate Recoveries (CMS–2083–P)	0938–AM30
1159	Application of the Emergency Medical Treatment and Labor Act (EMTALA) (CMS–1063–F)	0938–AM34
1160	Physician Ownership in Specialty Hospitals (CMS–1240–P)	0938–AM35
1161	Approval of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for Deeming Authority for Hospices (CMS–2177–FN)	0938–AM38
1162	Hospital Cost-to-Charge Ratios Used To Calculate Cost Outlier Payments Under the Medicare Short-Term Inpatient Prospective Payment System (CMS–1243–F)	0938–AM41
1163	Ambulance Fee Schedule Condition Codes (CMS–1247–P)	0938–AM45
1164	Hospice Wage Index for FY 2004 (CMS–1233–N)	0938–AM56
1165	Announcement of Applications From Hospitals Requesting Waivers for Organ Procurement Service Areas in Calendar Year 2003 (CMS–1246–NC)	0938–AM59
1166	Centers for Medicare and Medicaid Services Action on Liability Insurance Regulations (CMS–1475–FC)	0938–AM64

Administration for Children and Families—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1167	Safeguarding Child Support and Expanded Federal Parent Locator Services (FPLS) Information	0970–AC01
1168	Developmental Disabilities and Bill of Rights Act	0970–AC07
1169	Administrative Costs for Children in Title IV–E Foster Care	0970–AC14
1170	Administrative Cost Sharing Under TANF	0970–AC15

Administration for Children and Families—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1171	Child Support Enforcement for Indian Tribes	0970–AB73
1172	Child Support Enforcement Program; Federal Tax Refund Offset	0970–AC09
1173	Charitable Choice Provisions Applicable to the Temporary Assistance for Needy Families Program	0970–AC12

Administration for Children and Families—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1174	Community Services Block Grant Charitable Choice	0970–AC13

Administration for Children and Families—Completed Actions

Sequence Number	Title	Regulation Identification Number
1175	Construction and Major Renovation of Head Start and Early Head Start Facilities	0970–AB54
1176	Child Support Enforcement Program Omnibus Conforming Regulation	0970–AB81
1177	Technical Revision of Head Start Regulations To Make Them Conform to Recent Statutory Revisions	0970–AC00
1178	Child Support Enforcement Program; Expenditures for Caseworker Costs	0970–AC11

Administration on Aging—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1179	Grants for State and Community Programs on Aging, Training, Research, and Discretionary Programs; Vulnerable Elder Rights; Grants to Indians and Native Hawaiians	0985–AA00

Department of Health and Human Services (HHS) Office of the Secretary (OS)

Proposed Rule Stage

961. SAFE HARBOR FOR ARRANGEMENTS INVOLVING FEDERALLY QUALIFIED HEALTH CENTERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 100–93, sec 14(a)

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This rule would set forth a new anti-kickback safe harbor addressing remuneration between federally qualified health centers and certain service providers where a significant community benefit exists.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619–0089

RIN: 0991–AB06

962. CLAIMS COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3711; 31 CFR 900 to 904

CFR Citation: 45 CFR 30

Legal Deadline: None

Abstract: The Department will amend part 30 of title 45 of the Code of Federal Regulations (CFR) to reflect the amendments to the Federal Claims Collection Act made by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321 to 1358, as implemented by the Department of the Treasury at 31 CFR 900–904. The proposed rule will prescribe the standards and procedures for the Department's use in the administrative collection, offset, compromise, and suspension or termination of debts owed to the Department. The proposed rule is required in order to bring the Department's claims collection provisions in compliance with the Department of the Treasury regulations.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619–0150

RIN: 0991–AB18

963. SALARY OFFSET

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 5514; 5 CFR 550

CFR Citation: 45 CFR 33

Legal Deadline: None

Abstract: The Department will add a new part 33 to title 45 of the Code of Federal Regulations (CFR) to implement the salary offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321 to 1358, codified at 5 U.S.C. 5514, as implemented by the Office of Personnel Management at 5 CFR part 550, subpart K. The proposed rule is required in order to bring the Department's salary offset provisions in compliance with Governmentwide regulations published by the Office of Personnel Management.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	
Final Rule	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

RIN: 0991-AB19

964. • HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT—ENFORCEMENT

Regulatory Plan: This entry is Seq. No. 40 in part II of this issue of the **Federal Register.**

RIN: 0991-AB29

Department of Health and Human Services (HHS) Final Rule Stage
Office of the Secretary (OS)

965. SHARED RISK EXCEPTION TO THE SAFE HARBOR PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1320a900-7b; 42 USC 1395hh; PL 104-191, sec 216(b)

CFR Citation: 42 CFR 1001

Legal Deadline: Final, Statutory, January 1, 1997, Final.

Abstract: This final rule establishes a new statutory exception for risk-sharing arrangements under the Federal health care programs' anti-kickback provisions. The rule sets forth an exception from liability for remuneration between an eligible organization and an individual or entity providing items or services in accordance with a written agreement between these parties. The rule allows remuneration between an organization and an individual or entity if a written agreement places the individual or entity at "substantial financial risk" for the cost or utilization of the items or services that the individual or entity is obligated to provide.

Timetable:

Action	Date	FR Cite
ANPRM	05/23/97	62 FR 28410
ANPRM Comment Period End	06/09/97	
Interim Final Rule	11/19/99	64 FR 63504
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

RIN: 0991-AA91

966. SAFE HARBOR FOR WAIVER OF BENEFICIARY COINSURANCE AND DEDUCTIBLE AMOUNTS FOR A MEDICARE SELECT POLICY

Priority: Substantive, Nonsignificant

Legal Authority: PL 100-93, sec 14(a)

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This final rule will expand the existing safe harbor for certain waivers of beneficiary coinsurance and deductible amounts to benefit the policyholders of Medicare SELECT supplemental insurance. Specifically, the amended safe harbor will protect waivers of coinsurance and deductible amounts under part A or part B of the Medicare program owed by beneficiaries covered by a Medicare SELECT policy issued in accordance with section 1882(t)(1) of the Social Security Act, if the waiver is in accordance with a price reduction agreement covering such policyholders between the Medicare SELECT issuer and the provider or supplier offering the waiver.

Timetable:

Action	Date	FR Cite
NPRM	09/25/02	67 FR 60202
NPRM Comment Period End	10/25/02	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

RIN: 0991-AB16

967. TAX REFUND OFFSET

Priority: Other Significant

Legal Authority: 31 USC 3720A; 31 CFR 285.2

CFR Citation: 45 CFR 31

Legal Deadline: None

Abstract: The Department will amend part 31 to title 45 of the Code of Federal Regulations (CFR) to reflect amendments to 31 U.S.C. 3720A made by the tax refund offset provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321-1358, as implemented by the Department of the Treasury at 31 CFR 285.2. The proposed rule revises the process by which the Department collects its debts. The proposed rule is required in order to bring the Department's tax refund offset provisions in compliance with the Department of the Treasury regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/04/02	67 FR 72128
NPRM Comment Period End	02/03/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 4760, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619–0150

RIN: 0991–AB17

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968. IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Priority: Other Significant

Legal Authority: 5 USC 504(c)(1)

CFR Citation: 45 CFR 13

Legal Deadline: None

Abstract: The Equal Access to Justice Act requires agencies to pay fees to parties prevailing against the Government in certain administrative proceedings. The Act has been amended several times since its 1980 enactment, most recently by the Contract with America Advancement Act of 1996, which increased the amount of the hourly fees payable. The proposed rule revises 45 CFR part 13 (HHS's regulation implementing the Equal Access to Justice Act) to conform with statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	06/19/87	52 FR 23311
NPRM Comment Period End	08/18/87	
Second NPRM	08/13/02	67 FR 52696
Second NPRM Comment Period End	10/12/02	
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 0990–AA02

Agency Contact: Katherine M. Drews, Associate General Counsel, Department of Health and Human Services, Office of the Secretary, Office of the General Counsel, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619–0150

RIN: 0991–AB22

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969. CLARIFICATION OF TERMS AND APPLICATION OF PROGRAM EXCLUSION AUTHORITY FOR SUBMITTING CLAIMS CONTAINING EXCESSIVE CHARGES

Priority: Substantive, Nonsignificant

Legal Authority: Sec 112B (6) (6)(A) of the Social Security Act

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This proposed rule would amend the OIG exclusion regulations at 42 CFR 1001.701, addressing excessive claims, by including definitions for the terms "substantially in excess" and "usual charges," and by clarifying the "good cause" exception set forth in this section.

Timetable:

Action	Date	FR Cite
NPRM	09/15/03	68 FR 53939
NPRM Comment Period End	11/14/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619–0089

RIN: 0991–AB23

Department of Health and Human Services (HHS)
Office of the Secretary (OS)

Long-Term Actions

970. REVISIONS TO REGULATIONS ADDRESSING THE OIG'S AUTHORITY TO IMPOSE CIVIL MONEY PENALTIES AND ASSESSMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1320a–7a; 42 USC 1395mm; 42 USC 1395w–27; 42 USC 1396b; 42 USC 1396u–2

CFR Citation: 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule would revise part 1003, addressing the Office of Inspector General's authority to propose the imposition of civil money penalties and assessments, by reorganizing and simplifying existing regulatory text and eliminating obsolete references contained in the current regulations. Among the proposed revisions, this rule would establish separate subparts within part 1003 for various categories of violations; modify the current definition for the term "claim;" update various references to managed care organization authorities; and clarify the application of section 1140 of the Social Security Act with respect to the misuse of certain Departmental symbols, emblems, or names through Internet and e-mail communications.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619–0089

RIN: 0991–AB03

HHS—OS **Long-Term Actions**

971. AMENDING THE REGULATIONS GOVERNING NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, SEX, AND AGE TO CONFORM TO THE CIVIL RIGHTS RESTORATION ACT OF 1987

Priority: Other Significant

Legal Authority: PL 100–259, Civil Rights Restoration Act of 1987

CFR Citation: 45 CFR 80; 45 CFR 84; 45 CFR 86; 45 CFR 90; 45 CFR 91

Legal Deadline: None

Abstract: The Secretary proposes to amend the Department's regulations implementing title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975, as amended. The principal proposed conforming change is to amend the regulations to add the definitions of "program or activity" or "program" that correspond to the statutory definitions enacted under the Civil Rights Restoration Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal, Tribal

Agency Contact: Robinsue Frohboese, Principal Deputy Director, Office for Civil Rights, Department of Health and Human Services, Office of the Secretary, 200 Independence Avenue SW., Washington, DC 20202
Phone: 202 619–0403

RIN: 0991–AB10

Department of Health and Human Services (HHS) Completed Actions
Office of the Secretary (OS)

972. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 76; 45 CFR 82

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane Osterhus
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RIN: 0991–AB12

Department of Health and Human Services (HHS) Proposed Rule Stage
Substance Abuse and Mental Health Services Administration (SAMHSA)

973. REQUIREMENTS GOVERNING THE USE OF SECLUSION AND RESTRAINT IN CERTAIN NONMEDICAL COMMUNITY-BASED FACILITIES FOR CHILDREN AND YOUTH

Regulatory Plan: This entry is Seq. No. 41 in part II of this issue of the **Federal Register**.

RIN: 0930–AA10

974. • MANDATORY GUIDELINES FOR THE FEDERAL WORKPLACE DRUG TESTING PROGRAM

Priority: Other Significant

Legal Authority: PL 100–71; 5 USC 7301

CFR Citation: None

Legal Deadline: NPRM, Statutory, December 2003, NPRM.

Abstract: HHS is proposing to establish scientific and technical guidelines for the testing of hair, sweat, and oral fluid specimens in addition to urine specimens; scientific and technical guidelines for using on-site tests to test urine and oral fluids at the collection site; requirements for the certification of instrumented initial test facilities; and added standards for collectors, on-site testers, and medical review officers.

Timetable:

Action	Date	FR Cite
Notice	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Joseph Denis Faha, Director, DLEA, SAMHSA, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Room 12C–15, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 443–7017
Fax: 301 443–1450
Email: jfaha@samhsa.gov

RIN: 0930–AA12

Department of Health and Human Services (HHS) Final Rule Stage
Substance Abuse and Mental Health Services Administration (SAMHSA)

975. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA) CHARITABLE CHOICE

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 54, sec 54.1–13; 42 CFR 54a, sec 54a.1–14

Legal Deadline: None

Abstract: This proposed rule would implement the Charitable Choice statutory provisions of section 581–584 and section 1955 of the Public Health Service Act, applicable to the Substance Abuse Prevention and Treatment (SAPT) Block Grant Program, the Project for Assistance in Transition from Homelessness (PATH) formula grant program, insofar as recipients provide substance abuse services, and to SAMHSA discretionary grants for substance abuse treatment or prevention services, which are all administered by SAMSHA of the U.S. Department of Health and Human Services.

Timetable:

Action	Date	FR Cite
NPRM	12/17/02	67 FR 77350
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Winnie Mitchell, Public Health Analyst, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 12C–05, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 443–2324
Fax: 301 443–0247

RIN: 0930–AA11

Department of Health and Human Services (HHS) Proposed Rule Stage
Centers for Disease Control and Prevention (CDC)

976. AMENDMENTS TO QUALITY ASSURANCE AND ADMINISTRATIVE PROVISION FOR APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

Priority: Other Significant

Legal Authority: 29 USC 651 et seq; 30 USC 3; 30 USC 5; 30 USC 7; 30 USC 811; 30 USC 842(h); 30 USC 844

CFR Citation: 42 CFR 84

Legal Deadline: None

Abstract: NIOSH plans to modify the Administrative/Quality Assurance sections of 42 CFR part 84, Approval of Respiratory Protective Devices. Areas for potential modification in this module are: 1) upgrade of quality assurance requirements; 2) ability to use private sector quality auditors and private sector testing laboratories in the approval program; 3) revised approval label requirements; 4) updated and restructured fee schedule; and 5) fee retention in the respirator program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roland Berry Ann, Acting Chief, Respirator Branch, National Personal Protection Technology Laboratory, Department of Health and Human Services, Centers for Disease Control and Prevention, NIOSH, P.O. Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236
Phone: 412 386–4000

RIN: 0920–AA04

Department of Health and Human Services (HHS) Final Rule Stage
Centers for Disease Control and Prevention (CDC)

977. PROCEDURES FOR DESIGNATING CLASSES OF EMPLOYEES AS MEMBERS OF THE SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEE OCCUPATIONAL ILLNESS COMPENSATION ACT OF 2000

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7384g; EO 13179

CFR Citation: 42 CFR 83

Legal Deadline: None

Abstract: Pursuant to the Energy Employees Occupational Illness Compensation Program Act, HHS plans to finalize procedures to petition the Secretary to be added to the Special Exposure Cohort.

Timetable:

Action	Date	FR Cite
NPRM	06/25/02	67 FR 42962
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry Elliott, Director, Office of Compensation Analysis and Support, Department of Health and Human Services, Centers for Disease Control and Prevention, NIOSH, R44, 5555 Ridge Avenue, Cincinnati, OH 45213
Phone: 513 841–4498

RIN: 0920–AA07

978. OVER-THE-COUNTER (OTC) DRUG REVIEW

Priority: Routine and Frequent

Legal Authority: 21 USC 321p; 21 USC 351 to 353; 21 USC 355; 21 USC 360a; 21 USC 371a; 21 USC 331; 21 USC 360; 21 USC 360b; 21 USC 361; 21 USC 371

CFR Citation: 21 CFR 201; 21 CFR 310; 21 CFR 330 to 350

Legal Deadline: None

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed.

SMALL ENTITIES AFFECTED: The effects, if any, vary depending on the individual rulemaking. However, the Agency anticipates that the rules would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Timetable:

Anorectal Products (0910–AC65)
Final Action (Amendment) 08/26/03 (68 FR 51167)
Antidiarrheal Products (0910–AC82)
NPRM (Amendment) (Trav. Diar) 04/17/03 (68 FR 18915)
Final Action (Amendment) (Trav. Diar) 04/00/04
Antiemetic Products (0910–AC71)
Final Action (Amendment) (Warning) 12/06/02 (67 FR 72555)
Antiperspirant Products (0910–AC89)
Final Action 06/09/03 (68 FR 34273)
Cough/Cold (Antihistamine) Products (0910–AD31)
Final Action (Amendment)(Common Cold) 04/00/04
Cough/Cold (Antitussive) Products (0910–AD24)
Final Action (Amendment)(Warning) 12/06/02 (67 FR 72555)
Cough/Cold (Bronchodilator) Products (0910–AD33)
NPRM (Amendment) 06/00/04
Cough/Cold (Combination) Products (0910–AD25)
Final Action 12/23/02 (67 FR 78158)
NPRM (Amendment) 06/00/04
Cough/Cold (Nasal Decongestant) Products (0910–AD43)
NPRM (Phenylephrine Bitartrate) 04/00/04
NPRM (Phenylpropanolamine) 04/00/04
NPRM (Amendment) (Sinusitis Claim) 06/00/04
External Analgesic Products (0910–AD06)
Final Action (Amendment)(Warning) 12/06/02 (67 FR 72555)
NPRM (Amendment) (Patches) 07/17/03 (68 FR 42324)
Ingrown Toenail Relief Products (0910–AD21)
NPRM 10/04/02 (67 FR 62218)
Final Action 05/07/03 (68 FR 24347)
Internal Analgesic Products (0910–AD07)
NPRM (Amendment)(Ibuprofen) 08/21/02 (67 FR 54139)
NPRM (Amendment) (Labeling) 04/00/04
NPRM (Amendment) (Pediatric) 04/00/04
Labeling of Drug Products for OTC Human Use (0910–AD47)
NPRM (Convenience Sizes) 02/00/04
NPRM (Sodium Labeling) 02/00/04
Final Action (Sodium Labeling) 02/00/04
Final Action (Ca/Mg/K/Na) 02/00/04
Laxative Drug Products (0910–AC85)
NPRM (Amendment) (Psyllium Granular Dosage Form) 08/05/03 (68 FR 46133)
Nighttime Sleep Aid Products (0910–AD11)
Final Action (Amendment)(Warning) 12/06/02 (67 FR 72555)
Ophthalmic Products (0910–AC72)
NPRM (Emergency First Aid Eyewashes) 02/19/03 (68 FR 7951)
Final Action (Technical Amendment) 02/19/03 (68 FR 7919)
Final Action (Name Change) 06/03/03 (68 FR 32981)
Oral Health Care Products (0910–AC98)
ANPRM (Plaque/Gingivitis) 05/29/03 (68 FR 32232)
Pediculicide Products (0910–AC79)
NPRM (Labeling Amendment) 05/10/02 (67 FR 31739)
Final Action (Labeling Amendment) 02/00/04
Salicylate (Reye's Syndrome) (0910–AD13)
Final Action (Warning) 04/17/03 (68 FR 18861)
Skin Protectant Products (0910–AC96)
Final Action 06/04/03 (68 FR 33362)
NPRM (Astringent) 06/13/03 (68 FR 35346)
Final Action (Astringent) 06/13/03 (68 FR 35290)
Final Action (Astringent) (Confirm Effective Date) 10/09/03 (68 FR 58273)
Final Action (Technical Amendment) 12/00/03
Sunscreen Products (0910–AC68)
Final Action (Names) 06/20/02 (67 FR 41821)
ANPRM (and Insect Repellent) 04/00/04
NPRM (UVA/UVB) 04/00/04
Vaginal Contraceptive Products (0910–AD19)
NPRM (Amendment) 01/16/03 (68 FR 2254)
Final Action (Warnings) 06/00/04
Weight Control Products (0910–AC93)
NPRM (Phenylpropanolamine) 04/00/04

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gerald M. Rachanow, Regulatory Counsel, Division of Over-the-Counter Drug Products, Department of Health and Human Services, Food and Drug Administration, HFD-560, Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857
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Fax: 301 827-2315
Email: rachanow@cder.fda.gov

RIN: 0910–AA01

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979. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD (PART 110)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 342; 21 USC 371; 21 USC 374; 42 USC 264

CFR Citation: 21 CFR 110

Legal Deadline: None

Abstract: Part 110 (21 CFR part 110) describes regulations for current good manufacturing practice in manufacturing, packing, and holding human food. Part 110 contains regulations describing sanitary practices for personnel, buildings and facilities, and equipment. It also includes regulations on production and process controls for manufacturing practices and on defect action levels for natural or unavoidable defects in food for human use that present no health hazard. FDA is undertaking a review of part 110 under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine whether the regulations in part 110 should be continued without change, or whether they should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on, the following: (1) the continued need for the regulations in part 110; (2) the nature of complaints or comments received concerning the regulations in part 110; (3) the complexity of the regulations in part 110; (4) the extent to which the regulations in part 110 overlap, duplicate, or conflict with other Federal, State, or governmental rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulations in part 110.

The section 610 review will be carried out along with a regulatory review under section 5 of Executive Order 12866, which calls for agencies to periodically review existing regulations to determine whether any should be modified or eliminated so as to make the agency's regulatory program more effective in achieving its goals, less burdensome, or in greater alignment with the President's priorities and the princples set forth in the Executive order. The combined effect of the two reviews will be to determine if it is possible to redesign current good manufacturing practices in ways that will maintain or increase the effectiveness of preventive and sanitary controls, and, at the same time, reduce compliance and other costs associated with the regulations.

Timetable:

Action	Date	FR Cite
Begin Review	05/01/03	
End Review	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Richard A. Williams, Director, Division of Market Studies, OSAS, CFSAN, FDA, HHS, Department of Health and Human Services, Food and Drug Administration, HFS–725, 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–1989
Fax: 301 436–2626
Email: richard.williams@cfsan.fda.gov

RIN: 0910–AC58

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980. • HEALTH CLAIMS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 343; 21 USC 371

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This advance notice of proposed rulemaking (ANPRM) was signaled in the July 11, 2003 (68 FR 41387) notice that announced the availability of the Report of Task Force on Consumer Health Information for Better Nutrition (the Task Force) and two guidance documents. The July 11, 2003, notice states that in the near future, the agency intends to publish an ANPRM consistent with the recommendations of the Task Force.

Timetable:

Action	Date	FR Cite
ANPRM	11/25/03	68 FR 66040
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Paulette Gaynor, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS–800, 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–1450
Fax: 301 436–2636
Email: pgaynor@cfsan.fda.gov

RIN: 0910–AF09

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981. • PRESCRIPTION DRUG MARKETING ACT OF 1987; PRESCRIPTION DRUG AMENDMENTS OF 1992; POLICIES, REQUIREMENTS, AND ADMINISTRATIVE PROCEDURES; DERIVATIVES OF BLOOD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 351 to 353; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 203.3(q); 21 CFR 203.22(h); 21 CFR 205.3(h)

Legal Deadline: Other, Statutory, April 1, 2004, Other.
Date final rule takes effect: ?Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures.".

Abstract: FDA is proposing to amend the implementing regulation of the Prescription Drug Marketing Act of 1987, as modified by the Prescription Drug Amendments of 1992 and the FDA Modernization Act of 1997. The final rule (12/3/99; 64 FR 67720), does not allow a registered blood establishment that provides health care services related to its activities as a blood establishment to concurrently distribute derivatives of blood. The effective date of that rule is April 1, 2004. FDA is amending the final rule to allow a registered blood establishment that concurrently provides health care services to also distribute derivatives of blood.

Timetable:

Action	Date	FR Cite
ANPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kathleen E. Swisher, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Biologics Evaluation and Research, 1401 Rockville Pike Suite 200N, Rockville, MD 20852
Phone: 301 827–6210
Fax: 301 827–9434

RIN: 0910–AF16

Department of Health and Human Services (HHS) Food and Drug Administration (FDA)

Proposed Rule Stage

982. FOREIGN AND DOMESTIC ESTABLISHMENT REGISTRATION AND LISTING REQUIREMENTS FOR DRUGS AND BIOLOGICS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360; 21 USC 360b; 21 USC 371; 21 USC 374; 42 USC 262; 42 USC 264; 42 USC 271

CFR Citation: 21 CFR 20; 21 CFR 201; 21 CFR 207; 21 CFR 314; 21 CFR 330; 21 CFR 514; 21 CFR 515; 21 CFR 601; 21 CFR 607; 21 CFR 610; 21 CFR 1271

Legal Deadline: None

Abstract: The proposed rule would amend FDA regulations on the registration of producers of drugs and the listing of drugs in commercial distribution. The proposed revisions would reorganize, consolidate, clarify, and modify current regulations concerning who must register establishments and list drug or biologics regulated as drugs. The proposal describes when, how, and where to register and list, and what information must be submitted for registration and listing. The proposed regulations would also revise the requirements for the National Drug Code number and would require the electronic submission of most registration and listing information.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Mary H. Keyes, Office of Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD–7), Center for Drug Evaluation and Reserach, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594–2041
Fax: 301 827–5562

RIN: 0910–AA49

983. BLOOD INITIATIVE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 263a; 42 USC 264

CFR Citation: 21 CFR 600; 21 CFR 601; 21 CFR 606; 21 CFR 607; 21 CFR 610; 21 CFR 630; 21 CFR 640; 21 CFR 660; 21 CFR 680

Legal Deadline: None

Abstract: In multiple rulemakings, the Food and Drug Administration (FDA) is amending the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, Source Plasma, and blood-derivative products to be more consistent with current practices and to remove unnecessary or outdated requirements. This action is based on FDA's comprehensive review of the biologics regulations. It is also based on reports by the U.S. House of Representatives Committee on Government Reform and Oversight's, Subcommittee on House Resources and Intergovernmental Relations, the General Accounting Office, and the Institute of Medicine, as well as on public comments. The remaining subjects intended to be addressed in the rulemakings include: labeling of blood and blood components and donor eligibility requirements. These actions are intended to help ensure the continued safety of the Nation's blood supply.

Timetable:

Albumin (Human), Plasma Protein Fraction (Human) and Immune Globulin (Human); Revision of Requirements (0910–AE95)
- NPRM 05/14/99 (64 FR 26344)
- Direct Final Rule 05/14/99 (64 FR 26282)
- Direct Final Rule—Confirmation in Part and Technical Amendment 03/14/00 (65 FR 13678)
- Final Action 08/28/00 (65 FR 52016)

General Requirements for Blood, Blood Components, and Plasma Derivatives; Notification of Deferred Donors (0910–AE99)
- NPRM 08/19/99 (64 FR 45355)
- Final Action 06/11/01 (66 FR 31165)

Plasma Derivatives and Similar Recombinant-Based Products; Requirements for Notification of Recalls and Withdrawals (0910–AF02)
- ANPRM 08/19/99 (64 FR 45383)

Regulations for Human Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use (0910–AF00)
- NPRM 11/00/04

Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents (0910–AE98)
- NPRM 08/19/99 (64 FR 45340)
- Final Action 06/11/01 (66 FR 31146)

Revisions to Labeling and Storage Requirements for Blood and Blood Components, Including Source Plasma (0910–AE96)
- NPRM 07/30/03 (68 FR 44678)
- Correction Notice 10/27/03 (68 FR 61172)
- NPRM Comment Period End 10/30/03
- Final Action 10/00/04

Revisions to the Requirements Applicable to Blood, Blood Components, and Source Plasma (0910–AE89)
- NPRM 08/19/99 (64 FR 45375)
- Direct Final Rule 08/19/99 (64 FR 45366)
- Direct Final Rule—Confirmation in Part and Technical Amendment 01/10/01 (66 FR 1834)
- Final Action 08/06/01 (66 FR 40886)

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM–17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448
Phone: 301 827–6210
Fax: 301 827–9434

RIN: 0910–AB26

984. APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG; COMPLETE RESPONSE LETTER; AMENDMENTS TO UNAPPROVED APPLICATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 371; 21 USC 374; 21 USC 379e

CFR Citation: 21 CFR 312; 21 CFR 314

Legal Deadline: None

Abstract: The proposed rule would amend the regulations on marketing approval of new drugs to discontinue the use of approvable and not approvable letters when taking action on a marketing application and instead use complete response letters. The proposed rule would also amend the regulations on extension of the review clock because of amendments to applications.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Brian L. Pendleton, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD–7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594–5649
Fax: 301 827–5562
Email: pendletonb@cder.fda.gov

RIN: 0910–AB34

985. CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 351; 21 USC 352; 21 USC 360b; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 225

Legal Deadline: None

Abstract: This proposal is in response to a citizen petition request to merge the separate requirements of the current good manufacturing practice (CGMP) regulations, 21 CFR part 225 applicable to licensed and unlicensed feed manufacturing facilities, respectively. The merger would produce a single set of updated, streamlined CGMPs that apply to all medicated feed manufacturers. This consolidation of existing CGMPs would preserve and strengthen food safety, be more appropriate given the changing structure of the medicated feed industry, and enhance uniformity and enforcement.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: George Graber, Director, Division of Animal Feeds, Department of Health and Human Services, Food and Drug Administration, HFV–220, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827–6651
Email: ggraber@cvm.fda.gov

RIN: 0910–AB70

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986. REQUIREMENTS PERTAINING TO SAMPLING SERVICES AND PRIVATE LABORATORIES USED IN CONNECTION WITH IMPORTED FOOD

Priority: Routine and Frequent

Legal Authority: 21 USC 331 to 334; 21 USC 335b; 21 USC 335c; 21 USC 341 to 344; 21 USC 348; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 361; 21 USC 362; 21 USC 371; 21 USC 372; 21 USC 374; 21 USC 376; 21 USC 381; 21 USC 393; 42 USC 262; 42 USC 264

CFR Citation: 21 CFR 59

Legal Deadline: None

Abstract: The proposed rule would establish requirements for importers and other persons who use sampling services and private laboratories in connection with imported food. For example, the proposal would pertain to persons who use sample collection services and private laboratories, and would describe some responsibilities for such persons, sample collection services, and private laboratories. These responsibilities would include recordkeeping requirements to ensure that the correct sample is collected and analyzed, and a notification requirement if a person intends to use a private laboratory in connection with imported food. The proposed rule is intended to help insure the integrity and scientific validity of data and results submitted to FDA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15–61 (HF–23), Office of Policy and Planning, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 827–0587
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Email: pchao@oc.fda.gov

RIN: 0910–AB96

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987. PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS

Regulatory Plan: This entry is Seq. No. 42 in part II of this issue of the **Federal Register**.

RIN: 0910–AC14

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988. INSTITUTIONAL REVIEW BOARDS: REGISTRATION REQUIREMENTS

Priority: Info./Admin./Other

Legal Authority: 21 USC 321; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b to 263n

CFR Citation: 21 CFR 56.106

Legal Deadline: None

Abstract: The proposed rule would require institutional review boards (IRB) to register with FDA. The registration information would include the name of the IRB, the name of the institution operating the IRB, and names, addresses, phone numbers, facsimile (fax) numbers, and electronic mail (e-mail) addresses of the senior officer of the institution and IRB chair or contact, the range of active protocols (small, medium, or large) involving FDA-regulated products reviewed in the previous calendar year, and a description of the types of FDA-regulated products reviewed. The proposed rule would make it easier for FDA to inspect IRBs and to convey information to IRBs.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15–61 (HF–23), Office of Policy and Planning, 5600 Fishers Lane, Rockville, MD 20857
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Fax: 301 827–4774
Email: pchao@oc.fda.gov

RIN: 0910–AC17

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989. USE OF MATERIALS DERIVED FROM BOVINE AND OVINE ANIMALS IN FDA-REGULATED PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The U.S. Department of Agriculture's Animal and Plant Health Inspection Service maintains, by regulation in 9 CFR 94.18(a), a list of countries: 1) where bovine spongiform encephalopathy (BSE) exists; and 2) that present an undue risk of introducing BSE into the United States. This proposed rule would restrict, in FDA-regulated products, the use of most materials derived from bovine and ovine animals born, raised, or slaughtered in a country listed in 9 CFR 94.18(a). In addition, there would be a waiver provision that could be used under appropriate criteria.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Rebecca Buckner, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS–306, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC19

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990. CHRONIC WASTING DISEASE: CONTROL OF FOOD PRODUCTS AND COSMETICS DERIVED FROM EXPOSED ANIMAL POPULATIONS

Priority: Other Significant

Legal Authority: 42 USC 264; 21 USC 301 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to prohibit the use of cervids (deer, elk) for food, including dietary supplements, and cosmetics if the cervids have been exposed to chronic wasting disease (CWD). FDA is proposing this regulation because of potential risks to health.

In addition to this proposed rule, FDA intends to issue guidance within the next few months on the use in animal feed or material from deer and elk that are positive for CWD or are at high risk of CWD.

CWD is a type of transmissible spongiform encephalopathy (TSE), a group of fatal, neurodegenerative diseases that include bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep and goats, and Creutzfeldt-Jakob disease (CJD) in humans. The disease has been identified in wild and farmed elk and wild deer populations.

CWD has been found in cervid populations in certain areas of Wisconsin, Colorado, Nebraska, Wyoming, Kansas, Montana, Oklahoma, South Dakota, New Mexico, Minnesota, and Canada. In 1999, the World Health Organization said there is no evidence that CWD transmits to humans. However, it also suggested any part of a deer or elk believed to be diseased should not be eaten. Results of some studies using in vitro techniques have suggested that transmission to humans could possibly occur. However, if it does occur, it is likely to be through a very inefficient process.

Currently, there are no validated analytical tests to identify animals in the preclinical phase of CWD, or any other TSE. In addition, no test exists to ensure food safety. CWD typically exhibits a long incubation period, during which time animals appear normal but are potentially infectious. Therefore, FDA is proposing to require that food or cosmetic products derived from animals exposed to CWD not enter into commerce.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0910–AC21

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991. EXCEPTION FROM GENERAL REQUIREMENTS FOR INFORMED CONSENT; REQUEST FOR COMMENTS AND INFORMATION

Regulatory Plan: This entry is Seq. No. 43 in part II of this issue of the **Federal Register**.

RIN: 0910–AC25

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992. MEDICAL DEVICES; ANESTHESIOLOGY DEVICES; PROPOSED RECLASSIFICATION OF PRESSURE REGULATORS FOR USE WITH MEDICAL OXYGEN

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 351; 21 USC 352; 21 USC 360c(e)(1); 21 USC 371

CFR Citation: 21 CFR 868.2700; 21 CFR 868.5905

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to reclassify pressure regulators for use with medical oxygen from class I to class II and to establish a special control for oxygen pressure regulators to address problems of fire and explosion associated with use of these devices. The special control will be a guidance document that includes standardized testing, performance, and labeling guidance for industry. Devices that meet the special control will be exempt from the premarket notification requirements of the act. The agency believes it is taking a least burdensome approach for industry. This proposed rule will phase-in a compliance approach that will minimize the cost. FDA seeks to reclassify these devices under section 513(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(e)(1)).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0910-AC30

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993. TOLL-FREE NUMBER FOR REPORTING ADVERSE EVENTS ON LABELING FOR HUMAN DRUGS

Regulatory Plan: This entry is Seq. No. 44 in part II of this issue of the **Federal Register**.

RIN: 0910-AC35

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994. FOOD LABELING: TRANS FATTY ACIDS IN NUTRITION LABELING: CONSUMER RESEARCH TO CONSIDER NUTRIENT CONTENT AND HEALTH CLAIMS AND POSSIBLE FOOTNOTE OR DISCLOSURE STATEMENTS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 343; 21 USC 371

CFR Citation: 21 CFR 101

Legal Deadline: None

Abstract: The Food and Drug Administration issued an advance noitce of proposed rulemaking (ANPRM) on July 11, 2003 (68 FR 41507), to solicit information and data that potentially could be used to establish new nutrient content claims about trans fatty acids; to establish qualifying criteria for trans fat in current nutrient content claims for saturated fat and cholesterol, lean and extra lean claims, and health claims that contain a message about cholesterol-raising lipids; and, in addition, to establish disclosure and disqualifying criteria to help consumers make heart-healthy food choices. The agency also requested comments on whether it should consider statements about trans fat, either alone or in combination with saturated fat and cholesterol, as a footnote in the Nutrition Facts panel or as a disclosure statement in conjunction with claims to enhance consumers' understanding about such cholesterol-raising lipids and how to use the information to make healthy food choices. Information and data obtained from comments and from consumer studies that will be conducted by FDA also may be used to help draft a proposed rule that would establish criteria for certain nutrient content or health claims or require the use of a footnote, or other labeling approach, about one or more cholesterol-raising lipids in the Nutrition Facts panel to assist consumers in maintaining healthy dietary practices.

Timetable:

Action	Date	FR Cite
ANPRM	07/11/03	68 FR 41507
ANPRM Comment Period End	10/09/03	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Julie Schrimpf, Department of Health and Human Services, Food and Drug Administration, (HFS-832), HFS-800, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910-AC50

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995. SUBMISSION OF STANDARDIZED ELECTRONIC STUDY DATA FROM CLINICAL STUDIES EVALUATING HUMAN DRUGS AND BIOLOGICS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 355; 21 USC 371; 42 USC 262

CFR Citation: 21 CFR 314.50; 21 CFR 601.12; 21 CFR 314.94

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend the regulations governing the format in which clinical study data (CSD) are required to be submitted for new drug applications (NDAs), biological license applications (BLAs), and abbreviated new drug applications (ANDAs). The proposal would revise our regulations to require CSD submitted for NDAs, ANDAs, BLAs, and their supplements and amendments be provided in electronic format and require the use of standard data structure, terminology, and code sets. The proposal would improve the efficiency of the exchange of information from clinical studies through the adoption of standards for study data submitted in an electronic form that FDA can process, review, and archive.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Agency Contact: Nicole K. Mueller, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Room 3037, (HFD-7), 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910-AC52

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996. MEDICAL GAS CONTAINERS AND CLOSURES; CURRENT GOOD MANUFACTURING PRACTICE REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321; 21 USC 351; 21 USC 353

CFR Citation: 21 CFR 201.161(a); 21 CFR 210.3(b); 21 CFR 211.94

Legal Deadline: None

Abstract: The Food and Drug Administration is proposing to amend its current good manufacturing practice regulations and other regulations to clarify and strengthen requirements for the label, color, dedication, and design of medical gas containers and closures. Despite existing regulatory requirements and industry standards for medical gases, there have been repeated incidents in which cryogenic containers of harmful industrial gases have been connected to medical oxygen supply systems in hospitals and nursing homes, and subsequently administered to patients. These incidents have resulted in death and serious injury. There have also been several incidents involving high-pressure medical gas cylinders that have resulted in death and injuries to patients. These proposed amendments, together with existing regulations, are intended to ensure that the types of incidents that have occurred in the past, as well as other types of foreseeable and potentially deadly medical gas mixups, do not occur in the future.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Elaine H. Tseng, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD–7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AC53

997. FOOD STANDARDS: GENERAL PRINCIPLES AND FOOD STANDARDS MODERNIZATION

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 336; 21 USC 341; 21 USC 343; 21 USC 371

CFR Citation: 21 CFR 130.5

Legal Deadline: None

Abstract: In 1995, the FDA and FSIS reviewed their regulatory procedures and requirements for food standards to determine whether any were still needed, and if so, whether any should be modified or streamlined. To request public comment to assist them in their review of the need for food standards, both agencies published advance notices of proposed rulemaking (ANPRMs) on food standards in December 1995 (61 FR 47453 and 61 FR 67492). These ANPRMs discussed the agencies' regulations and policy governing food standards, the history of food standards, and the possible need to revise the food standards. Several comments in response to the ANPRMs recommended that the agencies establish general principles or a fundamental philosophy for reviewing food standards and revising them. The agencies agreed with these comments and determined that it would be appropriate to develop general principles for reviewing and revising food standards regulations. The agencies also agreed with the comments that stated that the agencies should work in concert to develop consistent food standards regulations. FDA and FSIS are now proposing a set of general principles that define how modern food standards should be structured. If this proposed rule is adopted, FDA and FSIS will require that a citizen petition for establishing, revising, or eliminating a food standard in 21 CFR parts 130 to 169 and 7 CFR part 410 be submitted in accordance with the general principles. Conversely, the agencies may find deficient a petition to establish, revise, or eliminate a food standard that does not follow these general principles.

Timetable:

Action	Date	FR Cite
ANPRM	12/29/95	60 FR 67492
ANPRM Comment Period End	04/29/96	
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Ritu Nalubola, Staff Fellow, Department of Health and Human Services, Food and Drug Administration, HFS–820, Center for Food Safety and Applied Nutrition, Harvey Wiley Building, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC54

998. POSITRON EMISSION TOMOGRAPHY DRUGS; CURRENT GOOD MANUFACTURING PRACTICES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 105–115, sec 121

CFR Citation: 21 CFR 220

Legal Deadline: Final, Statutory, November 21, 1999, Final.

Abstract: Section 121 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) directs FDA to establish requirements for current good manufacturing practices (CGMPs) for positron emission tomography (PET) drugs, a type of radiopharmaceutical. The proposed rule would adopt CGMPs that reflect the unique characteristics of PET drugs.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

URL For More Information: www.fda.gov/cder/regulatory/pet

Agency Contact: Wayne H. Mitchell, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD–7), Suite 3037 (HFD–7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AC55

999. REVISION OF THE REQUIREMENTS FOR SPORE-FORMING MICROORGANISMS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360i; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 263a; 42 USC 264; 42 USC 300aa–25

CFR Citation: 21 CFR 600.10(c); 21 CFR 600.11(e)

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is issuing a direct final rule and a companion proposed rule to amend the biologics regulations by providing options to the existing requirement for separate, dedicated facilities and equipment for work with spore-forming microorganisms. FDA is taking this action due to advances in facility, system and equipment design, and sterilization technologies, that would allow work with spore-forming microorganisms to be performed in multi-product manufacturing areas.

Timetable:

Action	Date	FR Cite
NPRM—Companion to Direct Final Rule	04/00/04	
Direct Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Valerie Butler, Consumer Safety Officer, Department of Health and Human Services, Food and

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RIN: 0910–AC57

1000. REPORTING INFORMATION REGARDING FALSIFICATION OF DATA

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 341 to 343; 21 USC 348; 21 USC 349; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360b; 21 USC 360c; 21 USC 360e; 21 USC 360i to 360k; 21 USC 361; 21 USC 371; 21 USC 379e; 42 USC 262

CFR Citation: 21 CFR 70.3; 21 CFR 71.1; 21 CFR 170.3; 21 CFR 171.1; 21 CFR 312.3; 21 CFR 312.56; 21 CFR 510.3; 21 CFR 511.1; 21 CFR 812.46

Legal Deadline: None

Abstract: The proposed rule would require sponsors to promptly report any information indicating that any person has or may have falsified data in the course of proposing, designing, performing, recording, supervising, or reviewing research, or in reporting research results.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD–7), Suite 3059 (HFD–7), Center for Drug Evaulation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AC59

1001. • DEFINITION OF "SERIOUS ADVERSE HEALTH CONSEQUENCES" UNDER THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002

Regulatory Plan: This entry is Seq. No. 45 in part II of this issue of the **Federal Register**.

RIN: 0910–AF06

1002. • QUALITY STANDARD REGULATION ESTABLISHING ALLOWABLE LEVEL FOR ARSENIC IN BOTTLED WATER

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321; 21 USC 341; 21 USC 343; 21 USC 343–1; 21 USC 348; 21 USC 349; 21 USC 371; 21 USC 379e

CFR Citation: 21 CFR 165.110(b)

Legal Deadline: Final, Statutory, July 27, 2005, Final.

Abstract: Under section 410 of the Federal Food, Drug, and Cosmetic Act (the Act), not later than 180 days before the effective date of a National Primary Drinking Water Regulation (NPDWR) issued by the Environmental Protection Agency (EPA) for a contaminant under section 1412 of the Safe Drinking Water Act, the Food and Drug Administration (FDA) is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. The effective date for any such standard of quality regulation is to be the same as the effective date of the NPDWR. On January 22, 2001, EPA published a final rule revising the existing 0.05 mg/L maximum contaminant level (MCL) for arsenic in public drinking water to 0.01 mg/L (10 ppb). The effective date for this rule was temporarily delayed for 60 days from March 23, 2001, to a new effective date of May 22, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan" (66 FR 7701; January 24, 2001). On May 22, 2001, EPA announced that it would further delay the effective date for the rule until February 22, 2002, to allow time to complete a reassessment of the information on which the revised arsenic standard is based. On February 22, 2002, the arsenic MCL of 0.01 mg/L in public drinking water rule became effective and water systems must comply with the new standard for arsenic in public drinking water by January 23, 2006. In accordance with section 410 of the Act, FDA is required to issue a standard of quality regulation for arsenic in bottled drinking water by July 27, 2005, with an effective date of January 23, 2006, or make a finding that such a regulation is not necessary to protect the public health.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	11/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0910–AF10

1003. • CONTENT AND FORMAT OF LABELING FOR HUMAN PRESCRIPTION DRUGS AND BIOLOGICS; REQUIREMENTS FOR PREGNANCY AND LACTATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360(b); 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

CFR Citation: 21 CFR 201.57

Legal Deadline: None

Abstract: The proposed rule would amend FDA regulations concerning the format and content of the "Pregnancy," "Labor and Delivery," and "Nursing

Mothers" subsections of the "Use in Specific Populations" section of the labeling for human prescription drugs. The proposal would require that labeling include a summary of the risks of using a drug during pregnancy and lactation and a discussion of the data supporting that summary.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD–7), Suite 3059 (HFD–7), Center for Drug Evaulation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AF11

1004. ● COCHINEAL EXTRACT AND CARMINE LABEL DECLARATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 379e(b)

CFR Citation: 21 CFR 73.100 (d); 21 CFR 73.1100 (c); 21 CFR 73.2087 (c); 21 CFR 101.22 (k); 21 CFR 701.3; 21 CFR 740.20

Legal Deadline: None

Abstract: The purpose of this proposed rule is to protect consumers who have allergies to the color additives carmine and cochineal extract by requiring label declaration on products under FDA jurisdiction. This action responds to adverse event reports received by FDA and to a citizen petition submitted to FDA.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

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RIN: 0910–AF12

1005. ● CHARGING FOR INVESTIGATIONAL DRUGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 371; 42 USC 262

CFR Citation: 21 CFR 312.7; 21 CFR 312.8

Legal Deadline: None

Abstract: The proposed rule would amend FDA's investigational new drug application regulations concerning charging for investigational drugs. The proposed rule describes the types of investigational uses for which a sponsor may be able to charge, including uses for which charging was not previously expressly permitted, and the criteria for allowing charging for the identified investigational uses. The proposed rule would also describe the types of costs that can be recovered when charging for an investigational drug.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD–7), Suite 3059 (HFD–7), Center for Drug Evaulation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AF13

1006. ● TREATMENT USE OF INVESTIGATIONAL DRUGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 353; 21 USC 355; 21 USC 371; 42 USC 262

CFR Citation: 21 CFR 312.42; 21 CFR 312.400; 21 CFR 312.405; 21 CFR 312.410; 21 CFR 312.415; 21 CFR 312.420; 21 CFR 312.425; 21 CFR 312.430; 21 CFR 312.435

Legal Deadline: None

Abstract: The proposed rule would amend FDA regulations governing investigational new drug applications (INDs) to describe the way patients may obtain investigational drugs for treatment use. Treatment use of investigational drugs would be available to: (1) individual patients, including in emergencies; (2) intermediate size patient; and (3) larger populations under a treatment protocol or IND.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD–7), Suite 3059 (HFD–7), Center for Drug Evaulation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AF14

1007. ● HUMAN SUBJECT PROTECTION; FOREIGN CLINICAL STUDIES NOT CONDUCTED UNDER AN INVESTIGATIONAL NEW DRUG APPLICATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 355(d)(5); 21 USC 355(i); 21 USC 371(a); 42 USC 262(a)(2)(A); 42 USC 262(a)(2)(B)(i)(I)

CFR Citation: 21 CFR 312.120

Legal Deadline: None

Abstract: The proposed rule would update the standards for the acceptance of foreign clinical studies not conducted under an investigational new drug application (IND) as support for an IND or marketing application for a drug or biological product. We are proposing to replace the requirement in 21 CFR 312.120 that non-IND foreign clinical studies be conducted in accordance with ethical principles stated in the Declaration of Helsinki. We would replace that with a requirement that such studies be conducted in accordance with good clinical practice (GCP), including review and approval by an independent ethics committee. The proposed GCP standard is consistent with the standard of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use for GCP and is sufficiently flexible to accommodate differences in how countries regulate the conduct of clinical research and obtain the informed consent of patients.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Brian L. Pendleton, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD–7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AF15

1008. • USE OF OZONE-DEPLETING SUBSTANCES: REMOVAL OF ESSENTIAL USE DESIGNATION; ALBUTEROL

Regulatory Plan: This entry is Seq. No. 46 in part II of this issue of the **Federal Register**.

RIN: 0910–AF18

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Final Rule Stage

1009. INFANT FORMULA: REQUIREMENTS PERTAINING TO GOOD MANUFACTURING PRACTICE, QUALITY CONTROL PROCEDURES, QUALITY FACTORS, NOTIFICATION REQUIREMENTS, AND RECORDS AND REPORTS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 350a; 21 USC 371; ...

CFR Citation: 21 CFR 106; 21 CFR 107

Legal Deadline: None

Abstract: The agency published a proposed rule on July 9, 1996, that would establish current good manufacturing practice regulations, quality control procedures, quality factors, notification requirements, and records and reports for the production of infant formula. This proposal was issued in response to the 1986 Amendments to the Infant Formula Act of 1980. On April 28, 2003, FDA reopened the comment period to update comments on the proposal. The comment period was extended on June 27, 2003, to end on August 26, 2003.

Timetable:

Current Good Mfg. Practices; Qual. Control Proc.; Quality Factors (0910–AD81)
NPRM 07/09/96 (61 FR 36154)
NPRM Comment Period End 12/06/96
NPRM Comment Period Reopened 04/28/03 (68 FR 22341)
NPRM Comment Period Extended 06/27/03 (68 FR 38247)
NPRM Comment Period End 08/26/03
Final Action 09/00/04

Infant Form Cons Comp, Micro Test & Recd Retention Req (0910–AD80)
NPRM 01/26/89 (54 FR 3783)
NPRM Comment Period End 03/27/89
Final Rule 12/24/91 (56 FR 66566)

Infant Formula Quality Factors (0910–AD77)
NPRM Comment Period End 12/06/96
NPRM Comment Period Reopened 04/28/03 (68 FR 22341)
NPRM Comment Period Extended 06/27/03 (68 FR 38247)
NPRM Comment Period End 08/26/03
Final Action 09/00/04

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0910–AA04

1010. INVESTIGATIONAL NEW DRUGS: EXPORT REQUIREMENTS FOR UNAPPROVED NEW DRUG PRODUCTS

Priority: Routine and Frequent

Legal Authority: 21 USC 321; 21 USC 381; 21 USC 382; 21 USC 393; 42 USC 241; 42 USC 243; 42 USC 262; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 371

CFR Citation: 21 CFR 312.110

Legal Deadline: None

Abstract: The final rule would amend the regulations on the exportation of unapproved new drug products, including biological products, for investigational use. In general, the rule would provide four different routes for exporting an unapproved new drug product for investigational use. One route would permit exportation, if the drug is the subject of an investigational new drug application (IND) and is being exported for use in the investigation. A second route would permit exportation, without prior Food and Drug Administration (FDA) approval and without an IND, if the product is to be exported for use in a clinical investigation and has received marketing authorization in certain developed countries. The third route would permit exportation, without prior FDA approval and without an IND, if the product is to be exported for use in a clinical investigation in certain specified developed countries. The fourth route would permit exportation without an IND, to any country provided that the exporter sends a written certification to FDA at the time the drug is first exported. Drugs exported under any of the first three routes would, however, be subject to certain statutory requirements, such as not conflicting with the foreign country's laws and not being sold or offered for sale in the United States. Drugs exported under either the second or third routes would be subject to additional statutory requirements, such as being in substantial conformity with the current good manufacturing practices and certain labeling requirements. These provisions would implement changes in FDA's export authority resulting from the FDA Export Reform and Enhancement Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	06/19/02	67 FR 41642
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0910–AA61

1011. DETERMINATION THAT INFORMED CONSENT IS INFEASIBLE OR IS CONTRARY TO THE BEST INTEREST OF RECIPIENTS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b to 263n

CFR Citation: 21 CFR 50; 21 CFR 312

Legal Deadline: None

Abstract: The final rule would establish criteria and standards for the President to apply in making a determination that informed consent is not feasible or is contrary to the best interest of military personnel engaged in specific military operations. Under Federal law, the President is authorized to waive the Federal Food, Drug, and Cosmetic Act's informed consent requirements in military operations, if the President finds that obtaining consent is infeasible, contrary to the best interests of recipients, or contrary to national security interests.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/05/99	64 FR 54180
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15–61 (HF–23), Office of Policy and Planning, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AA89

1012. LABELING FOR HUMAN PRESCRIPTION DRUGS; REVISED FORMAT

Regulatory Plan: This entry is Seq. No. 47 in part II of this issue of the **Federal Register**.

RIN: 0910–AA94

1013. SAFETY REPORTING REQUIREMENTS FOR HUMAN DRUG AND BIOLOGICAL PRODUCTS

Regulatory Plan: This entry is Seq. No. 48 in part II of this issue of the **Federal Register**.

RIN: 0910–AA97

1014. SUPPLEMENTS AND OTHER CHANGES TO AN APPROVED APPLICATION

Priority: Other Significant

Legal Authority: 21 USC 356a

CFR Citation: 21 CFR 314

Legal Deadline: None

Abstract: Section 116 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) added section 506A to the Food, Drug, and Cosmetic Act (21 U.S.C. 356a). Pursuant to section 116, the rulemaking will revise current procedures for approving manufacturing changes and generally classify such changes into four categories. Major manufacturing changes, which are of a type determined by the Secretary to have a substantial potential to adversely affect the identity, strength, quality, purity, and potency of the drug as they may relate to the safety and effectiveness of a drug, require prior approval of a supplemental application. A second category of changes may be made if FDA has not notified the company within 30 days after the submission of a supplement that prior approval is required. A third category of changes may be made upon submission of a supplement to the agency. The rule will also identify another category of changes that may be made without the submission of a supplement but which must be reported in an annual report.

Timetable:

Action	Date	FR Cite
NPRM	06/28/99	64 FR 34608
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Howard P. Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD–7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AB61

1015. CGMP FOR BLOOD AND BLOOD COMPONENTS: NOTIFICATION OF CONSIGNEES AND TRANSFUSION RECIPIENTS RECEIVING BLOOD AND BLOOD COMPONENTS AT INCREASED RISK OF TRANSMITTING HCV INFECTION (LOOKBACK)

Regulatory Plan: This entry is Seq. No. 49 in part II of this issue of the **Federal Register**.

RIN: 0910–AB76

1016. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS

Regulatory Plan: This entry is Seq. No. 50 in part II of this issue of the **Federal Register**.

RIN: 0910–AB88

1017. REQUIREMENTS FOR SUBMISSION OF LABELING FOR HUMAN PRESCRIPTION DRUGS AND BIOLOGICS IN ELECTRONIC FORMAT

Priority: Other Significant

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 262; ...

CFR Citation: 21 CFR 314; 21 CFR 601

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend its regulations governing the format in which certain labeling in new drug applications, abbreviated new drug applications, certain biological license applications, supplements, and annual reports are required to be submitted. The rule would require that certain labeling content described under section 201.100(d)(3) be submitted to FDA in electronic format.

Timetable:

Action	Date	FR Cite
NPRM	05/03/02	67 FR 22367
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Nicole K. Mueller, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Room 3037, (HFD–7), 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AB91

1018. ADDITIONAL SAFEGUARDS FOR CHILDREN IN CLINICAL INVESTIGATIONS OF FDA-REGULATED PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 343; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 350a; 21 USC 350b; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 41 USC 216; 41 USC 241; 41 USC 262; 41 USC 263b to 263n

CFR Citation: 21 CFR 50; 21 CFR 56

Legal Deadline: Other, Statutory, April 17, 2001, Other.

Abstract: The final rule will finalize the interim rule that published in April 2001, providing additional protections for children involved as subjects in clinical investigations of FDA-regulated products, as required by the Children's Health Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Rule	04/24/01	66 FR 20589
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carol Drew, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD–7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AC07

1019. BAR CODE LABEL REQUIREMENTS FOR HUMAN DRUG PRODUCTS AND BLOOD

Regulatory Plan: This entry is Seq. No. 51 in part II of this issue of the **Federal Register**.

RIN: 0910–AC26

1020. MEDICAL DEVICES; PATIENT EXAMINATION AND SURGEONS' GLOVES; ADULTERATION

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 800.20

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend the sampling plans, test method, and acceptable quality levels in 21 CFR 800.20. As prescribed by this regulation, FDA samples patient examination and surgeons' gloves and examines them for visual defects and water leaks. Glove lots are considered adulterated if they do not meet specified quality levels. This proposal would clarify sampling plans and the scoring of defects, lower acceptance rates for leaking gloves, raise rejection rates for leaking gloves, and add tightened inspection schemes for reexamined glove lots. The rule is intended to facilitate industry compliance and enhance the safety and effectiveness of gloves.

Timetable:

Action	Date	FR Cite
NPRM	03/31/03	68 FR 15404
NPRM Comment Period End	06/30/03	
Final Rule	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ–215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
Phone: 301 827–2974
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RIN: 0910–AC32

1021. AMENDMENTS TO THE PERFORMANCE STANDARD FOR DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 351; 21 USC 352; 21 USC 360e to 360j; 21 USC

360hh to 360ss; 21 USC 371; 21 USC 381

CFR Citation: 21 CFR 1020.30; 21 CFR 1020.31; 21 CFR 1020.32

Legal Deadline: None

Abstract: This rule amends the performance standard for diagnostic x-ray systems and their components in 21 CFR 1020.30, 1020.31, and 1020.32 to address the changes in technology and practice and to fully utilize the currently accepted metric system.

Timetable:

Action	Date	FR Cite
NPRM	12/10/02	67 FR 76056
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ–215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
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RIN: 0910–AC34

1022. ADMINISTRATIVE DETENTION OF FOOD FOR HUMAN OR ANIMAL CONSUMPTION UNDER THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002

Regulatory Plan: This entry is Seq. No. 52 in part II of this issue of the **Federal Register**.

RIN: 0910–AC38

1023. ESTABLISHMENT AND MAINTENANCE OF RECORDS PURSUANT TO THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002

Regulatory Plan: This entry is Seq. No. 53 in part II of this issue of the **Federal Register**.

RIN: 0910–AC39

1024. REGISTRATION OF FOOD AND ANIMAL FEED FACILITIES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: PL 107–188, sec 305

CFR Citation: 21 CFR 1

Legal Deadline: Final, Statutory, December 12, 2003, Final.
The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, section 305, directs the Secretary, through FDA, to issue a final regulation establishing registration requirements by December 12, 2003. The statute is self-implementing on this date if FDA does not issue a final regulation that is effective by December 12, 2003.

Abstract: This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism and other foodborne illness emergencies. Section 415 of the Federal Food, Drug, and Cosmetic Act (FFDCA), which was added by section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), directs the Secretary to require any facility engaged in manufacturing, processing, packing, or holding of food for consumption by humans or animals in the United States to be registered with the Secretary through FDA. Section 415 directs the Secretary, through FDA, to promulgate final regulations implementing the requirements by December 12, 2003. The owner, operator, or agent in charge of the facility must submit the registration. Foreign facilities must include the name of the United States agent for the facility. The registration must include the name and address of each facility at which, and all trade names under which, the registrant conducts business. If FDA determines it is necessary through guidance, the registration must include the general food category (as identified under 21 CFR 170.3) of foods manufactured, processed, packed, or held at the facility. The registrant is required to notify the Secretary of changes to the registration in a timely manner. Under the proposed rule, upon receipt of the completed registration form, FDA would notify the registrant of receipt of the registration and assign a unique registration number to the facility. The Bioterrorism Act requires the Secretary to compile and maintain an up-to-date list of registered facilities. This list and any registration documents submitted to the Secretary are not subject to disclosure under the Freedom of Information Act. For purposes of section 415, "facility" includes any factory, warehouse, or establishment engaged in the manufacturing, processing, packing, or holding of food. Exempt from the registration requirement are farms, restaurants, other retail food establishments, nonprofit food establishments in which food is prepared for or served directly to the consumer, and fishing vessels (except those engaged in processing as defined in 21 CFR 123.3(k)). Foreign facilities required to register include only those from which food is exported to the United States without further processing or packaging outside the United States. The Bioterrorism Act provides that if food from an unregistered foreign facility is offered for import into the United States without having registered, the food will be held at the port of entry or at a secure facility, until the foreign facility has registered.

Timetable:

Action	Date	FR Cite
NPRM	02/03/03	68 FR 5377
Interim Final Rule	10/10/03	68 FR 58894
Interim Final Rule Comment Period Reopened	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Leslye M. Fraser, Associate Director for Regulations, Office of Regulations and Policy, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC40

1025. PRIOR NOTICE OF IMPORTED FOOD UNDER THE PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 107–188, sec 307

CFR Citation: 21 CFR 1.276 et seq

Legal Deadline: Final, Statutory, December 12, 2003, Final.
The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, section 307, directs the Secretary, through FDA, to issue final regulations establishing prior notice requirements for all imported food by December 12, 2003. If FDA fails to issue final regulations by this date, the statute is self-executing on this date, and requires FDA to receive prior notice of not less than eight hours, nor more than five days until final regulations are issued.

Abstract: This rulemaking is one of a number of actions being taken to improve FDA's ability to respond to threats of bioterrorism. Section 801(m) of the Federal Food, Drug, and Cosmetic Act (FFDCA), which was added by section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, authorizes the Secretary, through FDA, to promulgate final regulations by December 12, 2003. Section 801(m) requires notification to FDA prior to the entry of imported food. The required prior notice would provide the identity of the article of food; the manufacturer; the shipper; the grower, if known at the time of notification; the originating country; the shipping country; and the anticipated port of entry. The regulation identifies the parties responsible for providing the notice and explains the information that the prior notice is required to contain, the method of submission of the notice, and the minimum and maximum period of advance notice required. Section 307 also states that if FDA does not receive prior notice or receives inadequate prior notice, the imported food shall be refused admission and held at the port of entry until proper notice is provided.

Timetable:

Action	Date	FR Cite
NPRM	02/03/03	68 FR 5428
Interim Final Rule	10/10/03	68 FR 58974
Interim Final Rule Comment Period Reopened	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Mary Ayling, Lead, Inspection and Compliance Team, Food Safety Staff, Department of Health and Human Services, Food and Drug Administration, HFS–32, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC41

1026. REQUIREMENTS FOR LIQUID MEDICATED FEED AND FREE-CHOICE MEDICATED FEED

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 360b; 21 USC 371

CFR Citation: 21 CFR 558.5; 21 CFR 510.455

Legal Deadline: None

Abstract: In response to a citizen petition filed by the American Feed Industry Association, the Food and Drug Administration (FDA) is proposing to amend the requirements for liquid medicated animal feed to clarify what information and data are required to demonstrate chemical and positional stability. The amended regulations would also clarify the provisions for the submission of such data through a master file and the reference to master files by subsequent applicants. Additionally, FDA is proposing to amend the regulations for free-choice medicated feed to ensure consistency with the requirements for liquid medicated feed. Finally, FDA is proposing to amend the regulations for free-choice medicated feed and liquid medicated feed so that these provisions comply with the terms of the Animal Drug Availability Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	05/28/03	68 FR 31645
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William D. Price, Special Assistant, Department of Health and Human Services, Food and Drug Administration, HFV–200, HFV–220, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827–6652
Fax: 301 594–4512

RIN: 0910–AC43

1027. PRESUBMISSION CONFERENCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 360b

CFR Citation: 21 CFR 514

Legal Deadline: None

Abstract: This rule will implement section 512(b)(3) of the Federal Food, Drug, and Cosmetic Act (the Act). This section of the Act states that any person intending to file a new animal drug application or supplemental new animal drug application, or to investigate a new animal drug is entitled to one or more conferences with the agency prior to submission to reach an agreement establishing a submission or investigational requirement. This rule would describe how to request a presubmission conference and describe the procedures for the conduct of presubmission conferences.

Timetable:

Action	Date	FR Cite
NPRM	08/25/00	65 FR 51782
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Gail Schmerfeld, Special Assistant, Department of Health and Human Services, Food and Drug Administration, HFV–100, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827–0205

RIN: 0910–AC44

1028. BIOLOGICAL PRODUCTS; BACTERIAL VACCINES AND TOXOIDS; IMPLEMENTATION OF EFFICACY REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b to 360d; 21 USC 360h; 21 USC 360i; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 372; 21 USC 374; 21 USC 381; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 264

CFR Citation: 21 CFR 201.59; 21 CFR 610.21

Legal Deadline: None

Abstract: The final rule amends the FDA biologics regulations in response to the report and recommendations of the Panel on Review of Bacterial Vaccines and Toxoids with Standards of Potency (the Panel). The Panel reviewed the safety, efficacy, and labeling of bacterial vaccines and toxoids with standards of potency, bacterial antitoxins, and immune globulins. On the basis of the Panel's findings and recommendations, FDA is classifying these products as Category I (safe, effective, and not misbranded), Category II (unsafe, ineffective, or misbranded), or Category IIIB (off the market pending completion of studies permitting a determination of effectiveness).

Timetable:

Action	Date	FR Cite
NPRM	12/13/85	50 FR 51002
NPRM Comment Period End	03/13/86	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Astrid L. Szeto, Senior Regulatory Review Officer, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM–17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448
Phone: 301 827–6210
Fax: 301 827–9434

RIN: 0910–AC56

1029. • CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS; REVISION OF CERTAIN LABELING CONTROLS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: 21 CFR 211.122

Legal Deadline: None

Abstract: The proposed rule would amend the packaging and labeling control provisions of the current good manufacturing practice regulations for human and veterinary drug products by limiting the application of special control procedures for the use of cut labeling to immediate container labels, individual unit cartons, or multiunit cartonscontaining immediate containers that are not packaged in individual unit cartons. The proposal would also permit the use of any automated technique, including differentiation by labeling size and shape, that physically prevents incorrect labeling from being processed by labeling and packaging equipment when cut labeling is used.

Timetable:

Action	Date	FR Cite
NPRM	07/29/97	62 FR 40489
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Howard P. Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD–7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AF08

Department of Health and Human Services (HHS) Long-Term Actions
Food and Drug Administration (FDA)

1030. ELIGIBILITY DETERMINATION FOR DONORS OF HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS

Priority: Other Significant

Legal Authority: 42 USC 216; 42 USC 243; 42 USC 263a; 42 USC 264; 42 USC 271

CFR Citation: 21 CFR 210.1(c); 21 CFR 210.2(a); 21 CFR 210.2(b); 21 CFR 211.1(b); 21 CFR 820.1(a)(1); 21 CFR 820.1(c); 21 CFR 1271

Legal Deadline: None

Abstract: The Food and Drug Administration is requiring certain manufacturers of human cells, tissues, and cellular and tissue-based products (HCT/Ps) to screen and test the donors of cells and tissues used in those products for evidence of, or risk factors for, relevant communicable disease. As part of this action, the agency is amending the current good manufacturing practice regulations that apply to HCT/Ps regulated as drugs, medical devices, and/or biological products to incorporate the new donor eligibility requirements into existing good manufacturing practice regulations for those products.

Timetable:

Action	Date	FR Cite
NPRM	09/30/99	64 FR 52696
NPRM Comment Period End	12/29/99	
NPRM Comment Period Reopened	04/18/00	65 FR 20774
NPRM Comment Period Reopened End	07/17/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food

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Evaluation and Research, 1401
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RIN: 0910–AB27

1031. CURRENT GOOD TISSUE PRACTICE FOR HUMAN CELL, TISSUE, AND CELLULAR AND TISSUE-BASED PRODUCTS ESTABLISHMENTS; INSPECTION AND ENFORCEMENT

Priority: Other Significant

Legal Authority: 42 USC 216; 42 USC 243; 42 USC 263a; 42 USC 264; 42 USC 271

CFR Citation: 21 CFR 1270; 21 CFR 1271

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is requiring human cell, tissue, and cellular and tissue-based products (HCT/P) establishments to follow current good tissue practice (CGTP), which governs the methods used in, and the facilities and controls used for, the manufacture of HCT/Ps, recordkeeping, and the establishment of a quality program. FDA is also issuing regulations pertaining to labeling, reporting, inspections, and enforcement.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1508
NPRM Comment Period End	05/08/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM–17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448
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RIN: 0910–AB28

1032. REQUIREMENTS FOR SUBMISSION OF IN VIVO BIOEQUIVALENCE DATA

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 355a; 21 USC 356; 21 USC 356a to 356c; 21 USC 371; 21 USC 374; 21 USC 379

CFR Citation: 21 CFR 314.96(a)(1); 21 CFR 314.94(a)(7); 21 CFR 320.21(b)(1)

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend its regulations on submission of bioequivalence (BE) data to require an abbreviated new drug application (ANDA) applicant to submit data from all BE studies the applicant conducts on a drug product formulation submitted for approval. In the past, ANDA applicants have submitted BE studies demonstrating that a generic product meets BE criteria for FDA to approve the ANDA but have not typically submitted additional BE studies conducted on the same drug product formulation. FDA is proposing to require ANDA applicants to submit information, in either a complete or summary report, from all additional passing and nonpassing BE studies conducted on the same drug product formulation submitted for approval.

Timetable:

Action	Date	FR Cite
NPRM	10/29/03	68 FR 61640
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Aileen Ciampa, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, HFD–7, Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20857
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RIN: 0910–AC23

1033. • FOOD LABELING: FOOD ALLERGEN INGREDIENT LABELING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321 ; 21 USC 331; 21 USC 342; 21 USC 343; 21 USC 371

CFR Citation: 21 CFR 101

Legal Deadline: None

Abstract: The purpose of this rulemaking is to reduce mortality and morbidity by providing sensitive individuals with additional food allergen information to help them protect themselves from serious allergic reactions, including life-threatening anaphylactic shock. The eight most common food allergens are: 1) peanuts; 2) soybeans; 3) milk; 4) eggs; 5) fish; 6) crustacea (e.g., lobster, crab, shrimp); 7) tree nuts (e.g., almonds, chestnuts, macadamia nuts, pecans, walnuts, hazelnuts or filberts, cashews, brazil nuts, pistachios, pine nuts); and 8) wheat. The rule would propose to require that foods that contain certain protein ingredients include information on the label in plain English terms that clearly identifies the presence of these ingredients.

The agency is also proposing to require food allergen labeling on spices, flavors, noncertified colors and incidental additives found in foods as ingredients that contain certain allergic proteins. Currently, section 403(i) of the Federal Food, Drug, and Cosmetic Act allows spices, flavors and noncertified colors used as ingredients of foods to be declared collectively on the label without naming each one. Federal regulations at 21 C.F.R. 101.100(a)(3) exempt incidental additives from ingredient declaration on the label if they are present in the food at an insignificant amount and do not have any technical or functional effect in the finished food.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Rhonda Rhoda Kane M.S., R.D., Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS–820, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AF07

Department of Health and Human Services (HHS) **Completed Actions**

Food and Drug Administration (FDA)

1034. INVESTIGATIONAL USE NEW ANIMAL DRUG REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321; 21 USC 351 to 353; 21 USC 360b; 21 USC 371

CFR Citation: 21 CFR 511

Legal Deadline: None

Abstract: FDA initiated a review of 21 C.F.R. 511.1 under section 610 of the Regulatory Flexibility Act. The purpose of the section 610 review was to determine if the rule should be amended to minimize adverse economic impacts on small entities. FDA solicited and considered comments on the following: 1) the continued need for the rule; 2) the nature of complaints or comments received concerning the rule; 3) the complexity of the rule; 4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and 5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Timetable:

Action	Date	FR Cite
ANPRM	11/21/96	61 FR 59209
ANPRM Comment Period End	01/21/97	
Begin Review	04/03/00	
End Review	06/02/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Marty Schoenemann, Department of Health and Human Services, Food and Drug Administration, HFV–126, HFV–100, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827–0220

RIN: 0910–AB02

1035. FOOD LABELING: TRANS FATTY ACIDS IN NUTRITION LABELING, NUTRIENT CONTENT CLAIMS, AND HEALTH CLAIMS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 21 CFR 101

Completed:

Reason	Date	FR Cite
Final Rule	07/11/03	68 FR 41434

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Julie Schrimpf
Phone: 301 436–2373
Fax: 301 436–2639
Email: julie.schrimpf@cfsan.fda.gov

RIN: 0910–AB66

1036. ALUMINUM IN LARGE- AND SMALL-VOLUME PARENTERALS USED IN TOTAL PARENTERAL NUTRITION

Priority: Other Significant

CFR Citation: 21 CFR 201.323(c)

Completed:

Reason	Date	FR Cite
Final Action	06/03/03	68 FR 32979

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Christine F. Rogers
Phone: 301 594–2041
Fax: 301 827–5562

RIN: 0910–AC18

1037. REGULATION OF CARCINOGENIC COMPOUNDS USED IN FOOD-PRODUCING ANIMALS; DEFINITION OF "NO RESIDUE"

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 500.80; 21 CFR 500.82; 21 CFR 500.84; 21 CFR 500.88

Completed:

Reason	Date	FR Cite
Final Action	12/23/02	67 FR 78172

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven Brynes
Phone: 301 827–6975
Email: sbrynes@cvm.fda.gov

RIN: 0910–AC45

1038. APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG: PATENT LISTING REQUIREMENTS AND APPLICATION OF 30-MONTH STAYS ON APPROVAL OF ABBREVIATED NEW DRUG APPLICATIONS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 21 CFR 314.52(a)(3); 21 CFR 314.53(b); 21 CFR 314.53(c)(1); 21 CFR 314.53(c)(2); 21 CFR 314.95(a)(3)

Completed:

Reason	Date	FR Cite
Final Rule	06/18/03	68 FR 36676

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jarilyn Dupont
Phone: 301 827–3360
Fax: 301 594–6777
Email: jdupont@oc.fda.gov

RIN: 0910–AC48

Department of Health and Human Services (HHS)
Health Resources and Services Administration (HRSA)

Proposed Rule Stage

1039. NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS: MEDICAL MALPRACTICE PAYMENTS REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11131

CFR Citation: 45 CFR 60.7

Legal Deadline: None

Abstract: This notice of proposed rulemaking (NPRM) proposes to require that, in addition to reporting to the National Practitioner Data Bank medical malpractice payments made where physicians or other health care practitioners are named in medical malpractice actions or claims, judgments, or settlements, payments be reported where they are made for the benefit of physicians or other health care practitioners not named in the judgments or settlements but who furnished or failed to furnish the health care services upon which the actions or claims were based. The purpose of this NPRM is to prevent the evasion of the medical malpractice payment reporting requirement of the Data Bank through the agreement of the parties to a lawsuit to use the corporate health care entity to "shield" practitioners. It would also require malpractice payers, in very limited circumstances, when it is impossible to identify the practitioner who furnished or failed to furnish the health care services upon which the actions or claims were based, to report why the practitioner could not be identified, and to provide the name of the corporate health care entity.

Timetable:

Action	Date	FR Cite
NPRM	12/24/98	63 FR 71255
Second NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John M. Heyob, Director, Division of Practitioner Data Banks, Department of Health and Human Services, Health Resources and Services Administration, Suite 300, 7519 Standish Place, Rockville, MD 20957
Phone: 301 443–2300
Fax: 301 443–6725

RIN: 0906–AA41

1040. DESIGNATION OF MEDICALLY UNDERSERVED POPULATIONS AND HEALTH PROFESSIONAL SHORTAGE AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 254b; 42 USC 254e

CFR Citation: 42 CFR 5; 42 CFR 51c

Legal Deadline: None

Abstract: This rule would consolidate the process for designating areas of health professional shortage and medical underservice that apply in several department programs, and would improve the criteria for designating medically underserved populations and Primary Care Health Professional Shortage Areas. This notice of proposed rulemaking (NPRM) will address issues raised by comments received in a previous NPRM, dated September 1, 1998.

Timetable:

Action	Date	FR Cite
NPRM	09/01/98	63 FR 46538
Second NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andy Jordan, Acting Chief, Shortage Designation Branch, Department of Health and Human Services, Health Resources and Services Administration, Room 8C26, National Center for Health Workforce Analysis, Bureau of Health Professions, Parklawn Building, Rockville, MD 20857
Phone: 301 594–0197
Email: dsd@hrsa.gov

RIN: 0906–AA44

Department of Health and Human Services (HHS)
Health Resources and Services Administration (HRSA)

Final Rule Stage

1041. • INTERIM FINAL RULE FOR THE SMALLPOX EMERGENCY PERSONNEL PROTECTION PROGRAM: SMALLPOX (VACCINIA) VACCINE INJURY TABLE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 108–20, 117 Stat 638

CFR Citation: 42 CFR 102

Legal Deadline: None

Abstract: To establish a table identifying adverse effects (including injuries, disabilities, conditions, and deaths) that shall be presumed to result from the administration of, or exposure to, the smallpox vaccine, and the time interval in which the first symptom or manifestation of each listed injury must manifest in order for such presumption to apply.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/27/03	68 FR 51492
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Vito Caserta, Chief Medical Officer, Department of Health and Human Services, Health Resources and Services Administration, 10th Floor, 4350 East West Highway, Bethesda, MD 20814
Phone: 301 443–4956
Email: smallpox@hrsa.gov

RIN: 0906–AA60

1042. • SMALLPOX VACCINE INJURY COMPENSATION PROGRAM: ADMINISTRATIVE IMPLEMENTATION

Regulatory Plan: This entry is Seq. No. 54 in part II of this issue of the **Federal Register**.

RIN: 0906–AA61

Department of Health and Human Services (HHS) Long-Term Actions
Health Resources and Services Administration (HRSA)

1043. NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS: REPORTING ADVERSE AND NEGATIVE ACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1396r–2

CFR Citation: 45 CFR 60

Legal Deadline: None

Abstract: Public Law 100–93 amended section 1921 of the Social Security Act to require that each State have in effect a system of reporting disciplinary licensure actions taken against all licensed health care practitioners and entities. It also requires States to report any negative action or finding that a peer review organization, private accreditation entity, or a State has concluded against a health care practitioner or entity. Section 1921 directs the Secretary to provide for maximum appropriate coordination in the implementation of these reporting requirements with those of the Health Care Quality Improvement Act of 1986 (title IV of Pub. L. 99–660). Section 1921 requirements will be incorporated into the National Practitioner Data Bank.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: John M. Heyob, Director, Division of Practitioner Data Banks, Department of Health and Human Services, Health Resources and Services Administration, Suite 300, 7519 Standish Place, Rockville, MD 20957
Phone: 301 443–2300
Fax: 301 443–6725

RIN: 0906–AA57

Department of Health and Human Services (HHS) Completed Actions
Indian Health Service (IHS)

1044. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT MINIMUM STANDARDS OF CHARACTER

Priority: Info./Admin./Other

CFR Citation: 42 CFR 36

Completed:

Reason	Date	FR Cite
Withdrawn	11/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Ramona D. Williams
Phone: 301 443–1589

RIN: 0917–AA02

Department of Health and Human Services (HHS) Proposed Rule Stage
National Institutes of Health (NIH)

1045. UNDERGRADUATE SCHOLARSHIP PROGRAM REGARDING PROFESSIONS NEEDED BY THE NATIONAL INSTITUTES OF HEALTH (NIH)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288–4

CFR Citation: 42 CFR 68b

Legal Deadline: None

Abstract: Section 487D of the Public Health Service Act, as added by the National Institutes of Health Revitalization Act of 1993, creates a program offering scholarships, in an amount not to exceed $20,000 per year of academic study, to individuals from disadvantaged backgrounds who are enrolled as full-time students at accredited institutions pursuing academic programs appropriate for careers in professions needed by NIH. For each year of scholarship support, the recipient agrees to service (employment) after graduation, at NIH, for one year. Additionally, the individual agrees to at least 10 consecutive weeks of service (employment) at NIH during which the individual is attending the educational institution and receiving the NIH scholarship. The proposed new regulations will cover this program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA10

1046. NATIONAL INSTITUTES OF HEALTH TRAINING GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 285g–10

CFR Citation: 42 CFR 63a

Legal Deadline: None

Abstract: NIH proposes to amend the training grants regulations to implement the new authority under section 452G of the Public Health Service (PHS) Act. This action is necessitated by enactment of the Children's Act of 2000. Section 1002 of this act adds a new section 452G to the PHS Act that authorizes the Director of the National Institute of Child Health and Human Development in consultation with the Administrator of the Health Resources and Services Administration, to support activities to provide for an increase in the number and size of institutional training grants supporting pediatric training.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard,
Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA28

1047. STANDARDS FOR A NATIONAL CHIMPANZEE SANCTUARY SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 287a–3a

CFR Citation: 42 CFR 9

Legal Deadline: NPRM, Statutory, June 18, 2001, NPRM.

Abstract: NIH proposes to establish standards for operating a national chimpanzee sanctuary system to provide for the retirement of federally-owned or supported chimpanzees no longer needed for research.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard,
Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA31

1048. NATIONAL INSTITUTES OF HEALTH AIDS RESEARCH LOAN REPAYMENT PROGRAM

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 216; 42 USC 288–1

CFR Citation: 42 CFR 68

Legal Deadline: None

Abstract: Section 487A of the Public Health Service Act creates a program through which appropriately qualified health professionals may obtain federally funded repayment of educational loans by conducting AIDS research as NIH employees. NIH is issuing regulations that will govern the program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard,
Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA32

1049. NATIONAL INSTITUTES OF HEALTH EXTRAMURAL LOAN REPAYMENT PROGRAM FOR CLINICAL RESEARCHERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288–5a

CFR Citation: 42 CFR 68g

Legal Deadline: None

Abstract: NIH proposes to establish implementing regulations for the Extramural Loan Repayment Program for Clinical Researchers, authorized under section 487F of the Public Health Service Act. The program provides for the repayment of the existing educational loan debt of qualified health professionals who agree to conduct clinical research.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard,
Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA33

1050. NATIONAL INSTITUTES OF HEALTH PEDIATRIC RESEARCH LOAN REPAYMENT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288–6

CFR Citation: 42 CFR 68e

Legal Deadline: None

Abstract: NIH proposes to establish implementing regulations for Pediatric Research Loan Repayment Program, authorized under section 487F of the Public Health Service Act. The program provides for the repayment of the existing educational loan debt of qualified health professionals who agree to conduct pediatric research.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard,
Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA34

1051. NATIONAL INSTITUTES OF HEALTH LOAN REPAYMENT PROGRAM FOR HEALTH DISPARITIES RESEARCH

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 287c–33

CFR Citation: 42 CFR 68f

Legal Deadline: None

Abstract: NIH proposes to establish implementing regulations for the Loan Repayment Program for Health Disparities Research, authorized under section 485G of the Public Health Service Act. The program provides for the repayment of the existing educational loan debt of qualified health professionals who agree to conduct minority-health or other health-disparities research for a minimum of two years.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA35

1052. NATIONAL INSTITUTES OF HEALTH CLINICAL RESEARCH LOAN REPAYMENT PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288–5

CFR Citation: 42 CFR 68a

Legal Deadline: None

Abstract: NIH proposes to amend the regulations governing the Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds to reflect the new maximum annual loan amount of $35,000 and a change in program eligibility to include qualified health professionals who are not NIH employees, as well as to amend the definition of "disadvantaged."

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA36

1053. • NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT CONTRACEPTION AND INFERTILITY RESEARCH LOAN REPAYMENT PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 216; 42 USC 288–2

CFR Citation: 42 CFR 68c

Legal Deadline: None

Abstract: NIH proposes to amend its current regulations governing the National Institute of Child Health and Human Development Contraception and Infertility Research Loan Repayment Program to make the eligibility requirements of the Program consistent with the eligibility requirements of the other extramural loan repayment programs administered by NIH.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA41

Department of Health and Human Services (HHS)
National Institutes of Health (NIH)
Final Rule Stage

1054. NATIONAL INSTITUTES OF HEALTH LOAN REPAYMENT PROGRAM FOR RESEARCH GENERALLY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288–3

CFR Citation: 42 CFR 68d

Legal Deadline: None

Abstract: Regulations will be issued to govern the awarding of educational loan repayments to qualified health professionals who agree to conduct research as employees of the National Institutes of Health.

Timetable:

Action	Date	FR Cite
NPRM	08/05/02	67 FR 50622
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA18

HHS—NIH **Final Rule Stage**

1055. SCIENTIFIC PEER REVIEW OF RESEARCH GRANT APPLICATIONS AND RESEARCH AND DEVELOPMENT CONTRACT PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 282(b)(6); 42 USC 284(c)(3); 42 USC 289a; 42 USC 290aa–3

CFR Citation: 42 CFR 52h

Legal Deadline: None

Abstract: NIH staff have found ambiguities, misstatements, and voids in the existing peer review regulations. These regulations, which govern the first level of review, are being amended to reflect current policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	09/21/00	65 FR 57132
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA20

1056. NATIONAL INSTITUTES OF HEALTH CENTER GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 284g; 42 USC 285a–6(c)(1)(E); 42 USC 285a–7(c)(1)(G); 42 USC 285b–4; 42 USC 285c–5; 42 USC 285c–8; 42 USC 285d–6; 42 USC 285e–2; 42 USC 285e–3; 42 USC 285e–10a; ...

CFR Citation: 42 CFR 52a

Legal Deadline: None

Abstract: NIH proposes to amend the current center grants regulations to reflect new authorities set forth in sections 409C, 445I, 452E, and 485F of the Public Health Service Act. Section 409C concerns centers of excellence regarding research on autism; section 445I concerns centers of excellence in Alzheimer's disease research and treatment; section 452E concerns centers regarding research on "fragile X;" and section 485F concerns centers of excellence for research education and training for individuals who are members of minority health disparity populations.

Timetable:

Action	Date	FR Cite
NPRM	11/12/02	67 FR 68548
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496–4606
Fax: 301 402–0169
Email: jm40z@nih.gov

RIN: 0925–AA24

Department of Health and Human Services (HHS)
Office of Public Health and Science (OPHS) **Proposed Rule Stage**

1057. PUBLIC HEALTH SERVICE POLICIES ON RESEARCH MISCONDUCT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 241; 42 USC 289b

CFR Citation: 42 CFR 93

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes substantial revisions to the existing regulations at 42 CFR part 50, subpart A, "Responsibilities of Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science," 54 FR 32449, August 8, 1989. The National Institutes of Health Revitalization Act of 1993 (NIH Act), Public Law 103–43, contains provisions that affect the current rule. For example, section 161 of the NIH Act established the Office of Research Integrity (ORI) as an independent entity reporting to the Secretary, and recent organizational changes have also affected the ORI's operations. In addition, the Office of Science and Technology Policy (OSTP) published a Governmentwide policy that applies to federally-funded research and proposals submitted to the Federal agencies for research funding, 65 FR 76260, December 6, 2000. The proposed revised regulation will implement this OSTP policy, which contains a definition of research misconduct and basic guidelines for the response of Federal agencies and research institutions to allegations of research misconduct. The current regulation, which implemented section 493(e) of the Public Health Service Act, would be deleted, and a new part 93, subparts A, B, C, D, and E would be added.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Chris Pascal, Director, Office of Research Integrity, Department of Health and Human Services, Office of Public Health and Science, Suite 750, 1101 Wootten Parkway, Rockville, MD 20852
Phone: 301 443–3400
Fax: 301 443–5351

RIN: 0940–AA04

1058. HUMAN SUBJECTS PROTECTION REGULATIONS: INSTITUTIONAL REVIEW BOARDS REGISTRATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 289

CFR Citation: 45 CFR 46

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes to add subpart F to Department of Health and Human Services (HHS) regulations for protection of human subjects, 45 CFR part 46, to require registration of institutional review boards (IRBs) with HHS. The registration information would include contact information, approximate numbers of active protocols involving research conducted or supported by HHS, accreditation status, IRB membership, and staffing for the IRB. The proposed registration requirements will make it easier for the Office for Human Research Protections (OHRP) to convey information to IRBs, and will support the current IRB registration operated by OHRP. Under the current OHRP IRB registration system, the submission of certain registration information is required by human subjects protection regulations, and certain other information may be submitted voluntarily. This proposed information collection was submitted to the Office of Management and Budget under the Paperwork Reduction Act. Under the proposed rule, all registration information will be required, making the IRB registration system uniform with IRB registration requirements of the Food and Drug Administration (FDA), and creating a single, HHS IRB Registration system. FDA will simultaneously publish a proposed rule regarding FDA IRB registration requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Irene Stith-Coleman Ph.D, Department of Health and Human Services, Office of Public Health and Science, Suite 200, The Tower Building, 1101 Wootten Parkway, Rockville, MD 20852
Phone: 301 496–7005
Fax: 301 402–0527

RIN: 0940–AA06

1059. HUMAN SUBJECTS PROTECTION REGULATIONS: TRAINING AND EDUCATION REQUIREMENTS FOR INSTITUTIONAL OFFICIALS, INSTITUTIONAL REVIEW BOARD MEMBERS AND STAFF, HUMAN PROTECTIONS ADMINISTRATORS, AND INVESTIGATOR

Priority: Other Significant

Legal Authority: 5 USC 301; 42 USC 289

CFR Citation: 45 CFR 46

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes to add subpart E to the Department of Health and Human Services (HHS) regulations for protection of human subjects, 45 CFR part 46, and would require that institutions engaged in human subjects research covered by an assurance of compliance filed with the Office for Human Research Protections ensure that institutional officials, institutional review board (IRB) chairpersons, and human protection administrators receive appropriate training and education about the institution's assurance and that IRB chairpersons and members, IRB staff, investigators, and other personnel involved in the conduct or oversight of human subjects research receive appropriate training and education about relevant human subjects protection requirements. The proposed training and education requirements will help to ensure that responsible individuals at assured institutions understand and meet their regulatory responsibilities for human subjects protection.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael A. Carome MD, Department of Health and Human Services, Office of Public Health and Science, Suite 200, The Tower Building, 1101 Wootten Parkway, Rockville, MD 20852
Phone: 301 496–7005
Fax: 301 402–0527

RIN: 0940–AA08

Department of Health and Human Services (HHS) Final Rule Stage
Office of Public Health and Science (OPHS)

1060. PUBLIC HEALTH SERVICE STANDARDS FOR THE PROTECTION OF RESEARCH MISCONDUCT WHISTLEBLOWERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 241; 42 USC 289b

CFR Citation: 42 CFR 94

Legal Deadline: None

Abstract: To implement section 493(e) of the Public Health Service Act (added by section 163 of the National Institutes of Health Revitalization Act of 1993, Pub. L. 103–43), the Department is proposing to add a new part 94 to title 42 of the Code of Federal Regulations. Under this proposed regulation, covered institutions must follow certain requirements for preventing and responding to occurrences of retaliation against whistleblowers. The purpose of this part is to protect: (1) persons who make a good faith allegation that a covered institution or member thereof engaged in, or failed to respond adequately to an allegation of research misconduct; and (2) persons who cooperate in good faith with an investigation of research misconduct.

Timetable:

Action	Date	FR Cite
NPRM	11/28/00	65 FR 70830
NPRM Comment Period End	01/29/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Chris Pascal, Director, Office of Research Integrity, Department of Health and Human Services, Office of Public Health and Science, Suite 750, 1101 Wootten Parkway, Rockville, MD 20852
Phone: 301 443–3400

Fax: 301 443–5351

RIN: 0940–AA01

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS)

Proposed Rule Stage

1061. END STAGE RENAL DISEASE (ESRD) CONDITIONS FOR COVERAGE (CMS–3818–P)

Regulatory Plan: This entry is Seq. No. 55 in part II of this issue of the **Federal Register**.

RIN: 0938–AG82

1062. HOSPITAL CONDITIONS OF PARTICIPATION: REQUIREMENTS FOR APPROVAL AND REAPPROVAL OF TRANSPLANT CENTERS TO PERFORM ORGAN TRANSPLANTS (CMS–3835–P)

Regulatory Plan: This entry is Seq. No. 56 in part II of this issue of the **Federal Register**.

RIN: 0938–AH17

1063. HOSPICE CARE-CONDITIONS OF PARTICIPATION (CMS–3844–P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395x(dd); 42 USC 1395hh

CFR Citation: 42 CFR 418

Legal Deadline: None

Abstract: This proposed rule revises existing conditions of participation that hospices must meet to participate in the Medicare program. The proposed requirements focus on the actual care delivered to patients and patients' families by hospices and the results of that care, reflect an interdisciplinary view of patient care, allow hospices greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mary Rossi Coajou, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6051

Danielle Shearer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6617

RIN: 0938–AH27

1064. SUPPLIER STANDARDS FOR HOME OXYGEN, THERAPEUTIC SHOES, AND HOME NUTRITION THERAPY (CMS–6010–P)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 424.57

Legal Deadline: None

Abstract: This proposed rule would implement certain provisions in the statute relating to suppliers of durable medical equipment, prosthetics, orthotics, and supplies and establish service standards for suppliers of home oxygen equipment and therapeutic shoes home nutrition therapy. Establishing these standards would ensure that suppliers are qualified to provide the appropriate health care services and help safeguard the Medicare program and its beneficiaries from any instances of fraudulent or abusive billing practices.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Frank Whelan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3–02–16, Center for Medicaid and State Operations, 7500 Security Boulevard, C3–02–16, Baltimore, MD 21244
Phone: 410 786–1302

RIN: 0938–AJ98

1065. HEALTH INSURANCE REFORM: CLAIMS ATTACHMENTS STANDARDS (CMS–0050–P)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 42 USC 1320d–2(a)(2)(B)

CFR Citation: 45 CFR 162

Legal Deadline: Final, Statutory, August 21, 1998, Final.

Abstract: This rule proposes an electronic standard for claims attachments. The standard is required by the Health Insurance Portability and Accountability Act of 1996. It would be used to transmit clinical data, in addition to those data contained in the claims standard, to help establish medical necessity for coverage.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: James Krall, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Health Insurance Portability and Account Act Standards, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6999

RIN: 0938–AK62

1066. ORGAN PROCUREMENT ORGANIZATION CONDITIONS FOR COVERAGE (CMS–3064–P)

Regulatory Plan: This entry is Seq. No. 57 in part II of this issue of the **Federal Register**.

RIN: 0938–AK81

1067. USE OF RESTRAINT AND SECLUSION IN MEDICARE AND MEDICAID PARTICIPATING FACILITIES THAT PROVIDE INPATIENT OR RESIDENTIAL CARE (CMS–2130–P)

Regulatory Plan: This entry is Seq. No. 58 in part II of this issue of the **Federal Register**.

RIN: 0938–AL26

1068. PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT PSYCHIATRIC FACILITIES FY 2004 (CMS–1213–F)

Regulatory Plan: This entry is Seq. No. 59 in part II of this issue of the **Federal Register**.

RIN: 0938–AL50

1069. PROVIDER REIMBURSEMENT DETERMINATIONS AND APPEALS (CMS–1727–P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1878 of the Social Security Act

CFR Citation: 42 CFR 405

Legal Deadline: None

Abstract: This proposed rule would redefine, clarify, and update the guidelines and procedures for Provider Reimbursement Review Board appeals, based on recent court decisions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Morton Marcus, Heal Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, C4–25–02, Baltimore, MD 21244
Phone: 410 786–4477

RIN: 0938–AL54

1070. HEALTH COVERAGE PORTABILITY'S REQUEST FOR INFORMATION ON BENEFIT—SPECIFIC WAITING PERIODS (CMS–2150–NC)

Priority: Info./Admin./Other

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This notice requests information on the use of benefit-specific waiting periods by group health plan and group health insurance issuers.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3–16–26, Center for Medicaid and State Operations, 7500 Security Boulevard, S3–16–26, Baltimore, MD 21244
Phone: 410 786–6851

RIN: 0938–AL64

1071. DMERC SERVICE AREAS AND RELATED MATTERS (CMS–1219–P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1842 of the Social Security Act; Sec 1834(a)(12) of the Social Security Act; Sec 1834(h)(3) of the Social Security Act; Sec 1834(j)(E) of the Social Security Act

CFR Citation: 42 CFR 421.210

Legal Deadline: None

Abstract: This proposed rule would allow flexibility in making changes to the Durable Medical Equipment Regional Carrier contractor structure.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kim Nyland, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S1–14–27, Center for Medicare Management, 7500 Security Boulevard, S1–14–27, Baltimore, MD 21244
Phone: 410 786–2289

RIN: 0938–AL76

1072. REVISIONS TO CONDITIONS FOR COVERAGE FOR AMBULATORY SURGICAL CENTERS (CMS–3887–P)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1832; Social Security Act, sec 1871

CFR Citation: 42 CFR 410; 42 CFR 424; 42 CFR 416; 42 CFR 488; 42 CFR 489

Legal Deadline: None

Abstract: This rule would revise the ambulatory surgical center conditions for coverage to reflect current innovations in healthcare delivery, quality assessment, and performance improvement. The focus would be to improve outcomes of health care and satisfaction for Medicare beneficiaries, while streamlining structural and procedural requirements when possible.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Joan Brooks, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–5526

Jacqueline Morgan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3–02–01, Office of Clinical Standards and Quality, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–4282

RIN: 0938–AL80

1073. HEALTH COVERAGE PORTABILITY: TOLLING CERTAIN TIME PERIODS AND INTERACTIONS WITH FAMILY AND MEDICAL LEAVE ACT (CMS–2158–P)

Priority: Other Significant

Legal Authority: 42 USC 300 gg; PL 104–191

CFR Citation: 45 CFR 146.113; 45 CFR 146.115; 45 CFR 146.117; 45 CFR 146.120; 45 CFR 146.145

Legal Deadline: None

Abstract: This proposed rule would clarify certain portability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. This proposed rule would implement changes made to the Internal Revenue Code, the Employee Retirement Income Security Act, and the Public Health Service Act enacted as part of the Health Insurance Portability and Accountability Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3–16–26, Center for Medicaid and State Operations, 7500 Security Boulevard, S3–16–26, Baltimore, MD 21244
Phone: 410 786–6851

RIN: 0938–AL88

1074. CRITERIA FOR DETERMINING WHETHER A DRUG IS CONSIDERED USUALLY SELF-ADMINISTERED (CMS–1228–P)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec 1861(s)(2)(B) of the Social Security Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed rule would solicit comments on the criteria to determine whether a drug is considered usually self-administered and therefore, not covered under part B of Medicare.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Angela Mason, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, 7500 Security Boulevard, C4–05–17, Baltimore, MD 21244
Phone: 410 786–7452

RIN: 0938–AM13

1075. PROCEDURES FOR MAINTAINING CODE LISTS IN THE NEGOTIATED NATIONAL COVERAGE DETERMINATIONS FOR CLINICAL DIAGNOSTIC LABORATORY SERVICES (CMS–3119–PN)

Priority: Other Significant

Legal Authority: 42 USC 1395h(a); 42 USC 1395e; 42 USC 1395u(a); 42 USC 1395x; 42 USC 1395y(a)(1)(A); 42 USC 1395y(a)(7)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed notice would establish the procedures to be used for maintaining the lists of codes that were included in the national coverage determinations announced in the Federal Register on November 25, 2001 (66 FR 58788). It would also clarify the date of service provisions related to archived speciments from that same final rule.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Jacqueline Sheridan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Boulevard, C1–09–06, Baltimore, MD 21244
Phone: 410 786–4635

RIN: 0938–AM36

1076. HOSPITAL PATIENTS' RIGHTS COP–STANDARD SAFETY COMPLIANCE COMMITTEES (CMS–3120–P)

Regulatory Plan: This entry is Seq. No. 60 in part II of this issue of the **Federal Register**.

RIN: 0938–AM39

1077. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—UPDATE FOR FY 2005 (CMS–1249–N)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: Sec 1888(e) of the Social Security Act

CFR Citation: 42 CFR 413.330 to 413.350

Legal Deadline: NPRM, Statutory, July 30, 2004, NPRM.

Abstract: This annual proposed rule updates the payment rates used under the skilled nursing facilities prospective payment system beginning October 1, 2004.

Timetable:

Action	Date	FR Cite
Notice	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: William Ullman, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4–13–15, Center for Medicaid and State Operations, 7500 Security Boulevard, C5–07–08, Baltimore, MD 21244
Phone: 401 786–5667

RIN: 0938–AM46

1078. MODIFICATIONS TO ELECTRONIC TRANSACTIONS AND CODE SETS (CMS–0009–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1171 to 1179

CFR Citation: 42 CFR 162.1002; 42 CFR 162.1802

Legal Deadline: None

Abstract: This proposed rule would revise the electronic transactions and code set standards mandated by the Health Insurance Portability and Accountability Act of 1966.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Stanley B. Nachimson, Senior Technical Advisor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N2–16–03, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6153

RIN: 0938–AM50

1079. REVISED CIVIL MONEY PENALTIES, ASSESSMENTS, EXCLUSIONS, AND RELATED APPEALS PROCEDURES (CMS–6146–P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 97–35, sec 2105; PL 104–191, sec 231(C); PL 105–33, sec 4311(b); PL 105–33, sec 4317; PL 105–33, sec 4031(a)(2); PL 105–33, sec 4531(b)(2)

CFR Citation: 42 CFR 402, subpart C

Legal Deadline: None

Abstract: This rule proposes revisions to the CMS civil money penalty authorities. These proposed revisions are intended to add the specific exclusion sanction authorities as established in the procedures for imposing civil money penalties, assessments, and exclusions for certain violations of the Medicare and Medicaid programs.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Cohen, Office of Financial Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3–04–06, 7500 Security Boulevard, Baltimore, MD 21244–1850
Phone: 410 786–3349

RIN: 0938–AM54

1080. REQUIREMENTS FOR NURSING HOMES TO IDENTIFY THE NUMBER OF LICENSED AND UNLICENSED NURSES (CMS–3121–P)

Priority: Other Significant

Legal Authority: Sec. 1819(b) of the Social Security Act; 42 USC 1395i–3(b)

CFR Citation: 42 CFR 483

Legal Deadline: None

Abstract: This proposed rule will implement section 941 of the Benefits Improvement and Protection Act of 2000, which requires nursing homes to post daily, for each shift, the number of licensed and unlicensed nursing staff directly responsible for resident care.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Archer, Office of Clinical Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3–05–27, 7500 Security Boulevard, Baltimore, MD 21244–1850
Phone: 410 786–0596

RIN: 0938–AM55

1081. • CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE SYSTEM AND CALENDAR YEAR 2005 PAYMENT RATES (CMS–1427–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1935L; Balanced Budget Act of 1997; Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999; Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, January 1, 2004, NPRM.

Abstract: The proposed rule would revise the Medicare hospital outpatient prospective payment system beginning January 1, 2005. (The statute requires that this proposed rule and subsequent final rule be published by November 1, 2004.)

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Cindy Read, Division Director, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare Mangement, 7500 Security Boulevard, C4–05–07, Baltimore, MD 21244
Phone: 410 786–1852

RIN: 0938–AM75

1082. • CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2005 RATES (CMS–1428–P)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec 1886(d) of the Social Security Act

CFR Citation: 42 CFR 412; 42 CFR 413; 42 CFR 485; 42 CFR 489

Legal Deadline: NPRM, Statutory, April 1, 2004, NPRM.
Final, Statutory, August 1, 2004, Final.

Abstract: We would revise the Medicare acute hospital inpatient prospective payment system for operating and capital-related costs to implement changes arising from our continuing experience with these systems. In addition, in the Addendum, we describe changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes apply to discharges on or after October 1, 2004. We also set forth proposed rate-of-increase limits as well as proposed policy changes for hospitals and hospital units excluded from the prospective payments systems. (The statute requires that this proposed and subsequent final rule be published by August 1, 2004.)

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Tzvi Hefter, Director, Division of Acute Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4–07–07, Center for Medicare Management, 7500 Security Boulevard, C4–07–07, Baltimore, MD 21244
Phone: 410 786–4487

RIN: 0938–AM80

1083. • COVERED OUTPATIENT DRUGS UNDER THE MEDICAID DRUG REBATE PROGRAM (CMS–2174–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1905 (a) (12); Social Security Act, sec 1903 (a); Social Security Act, sec 1902 (a) (54); Social Security Act, sec 1903 (i) (10); Social Security Act, sec 1927; ...

CFR Citation: 42 CFR 441 ; 42 CFR 447

Legal Deadline: None

Abstract: This proposed rule will repropose and request public comments on numerous provisions related to the Medicaid drug rebate program. The agency published a proposed rule on September 19, 1995. However, in light of new issues, the agency seeks an opportunity to propose new provisions and seeks comments.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Marge Watchorn, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, 7500 Security Boulevard, S2–05–16, Baltimore, MD 21244
Phone: 410 786–4361

RIN: 0938–AM81

1084. • PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION FACILITIES FOR FY 2005 (CMS–1360–P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec 1886(j) of the Social Security Act; PL 105–33; PL 106–554; PL 106–113

CFR Citation: 42 CFR 412; 42 CFR 413

Legal Deadline: Final, Statutory, August 1, 2004, Final.

Abstract: This proposed rule would update rates for the prospective payment system for inpatient rehabilitation facilities for FY 2005. (The statute requires that the subsequent final rule be published by August 1, 2004.)

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Kuhl, Division Director, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4–11–06, Center for Medicare Management, 7500 Security Boulevard, C5–06–24, Baltimore, MD 21244
Phone: 410 786–4597

RIN: 0938–AM82

1085. • PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS: ANNUAL PAYMENT RATE UPDATES AND POLICY CHANGES (EFFECTIVE 7/1/04) (CMS–1263–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Sec 123 of BBRA 1999; Sec 307(b) of BIPA 2000

CFR Citation: 42 CFR 412 ; 42 CFR 413

Legal Deadline: Final, Statutory, April 30, 2004, Final.

Abstract: This rule proposes the payment rate update for the 2005 prospective payment system for Medicare long-term care hospitals. The new rates will be based on cost reports from the first long-term care prospective payment system rate year. (The final rule must be published by April 30, 2004, to be effective July 1, 2004.)

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Tzvi Hefter, Director, Division of Acute Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4–07–07, Center for Medicare Management, 7500 Security Boulevard, C4–07–07, Baltimore, MD 21244
Phone: 410 786–4487

RIN: 0938–AM84

1086. • PAYMENT ERROR RATE MEASUREMENT (PERM) PROGRAM (CMS–2186–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sections 1902 (a)(6) of the Social Security Act; Sec 2107 (b)(1) of the Social Security Act; Improper Payments Information Act of 2002 (IPIA) (Public Law 107–300)

CFR Citation: None

Legal Deadline: None

Abstract: Sections 1902(a)(6)and 2107(b)(1) of the Act, governing

Medicaid and SCHIP, respectively, require States to provide to the Secretary information to monitor program performance. This rule would require States under the current statutory provisions and the IPIA and through this regulation to estimate improper payments using the CMS PERM methodolgy for the reporting year in the Medicaid and SCHIP programs. The States are further required to submit payment error rates to CMS for the purpose of calculating a natinal level payment error rate as required by the IPIA.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Wayne Alden Slaughter, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S3–13–15, Baltimore, MD 21244
Phone: 410 786–0038

RIN: 0938–AM86

1087. • REQUIREMENTS FOR long-term CARE FACILITIES: HOSPICE SERVICES (CMS–3140–P)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 1395i–3; 42 USC 1396r

CFR Citation: 42 CFR 483

Legal Deadline: None

Abstract: This proposed rule will clarify the hospice care of residents in long-term care facilities. This rule will reflect the changes in the hospice proposed rule (CMS–3844–P, 42 CFR 418) that is to reflect the interdisciplinary view of resident care and improve the quality of healthcare furnished through the Medicare and Medicaid programs reflect the interdisciplinary view of resident care and improve the quality of health care furnished through the Medicare and Medicaid programs.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Anita Panicker, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Bloulevard, S3–04–26, Baltimore, MD 21244
Phone: 410 786–5646

RIN: 0938–AM87

1088. • REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2005 (CMS–1429–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1395W–4

CFR Citation: 42 CFR 410; 42 CFR 414

Legal Deadline: NPRM, Statutory, June 1, 2004, NPRM.

Abstract: This rule would make several changes affecting Medicare part B payment. (The statute requires that the final rule be published by November 1, 2004.)

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Latesha Walker, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare Management, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–1101

RIN: 0938–AM90

1089. • HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FY 2005 (CMS–1265–P)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1395ff

CFR Citation: None

Legal Deadline: None

Abstract: This proposed rule would set forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies. As part of this proposed rule, we are proposing to rebase and revise the home health market basket to reflect total cost and modifying certain variables for some of the cost categories. (The proposed and final rules must be published by July 1, 2004, to allow three months for systems changes.)

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Randy Throndset, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–0131

RIN: 0938–AM93

1090. • REVISIONS TO COST SHARING REGULATIONS (CMS–2144–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1916; Social Security Act, sec 1902(a)(4)

CFR Citation: 42 CFR 447.51 to 447.56

Legal Deadline: None

Abstract: This proposed rule would revise the cost sharing requirements in our current regulation to allow for the imposition of higher levels of cost sharing and more flexibility in the way in which cost sharing is imposed and administered under current statutory requirements. (The cost sharing requirements have remained unchanged since 1974. States have requested that we update the cost sharing requirements.)

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal, State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Alissa Deboy, Special Assistant, Department of Health and Human Services, Centers for Medicare & Medicaid Services, CMSO, S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6041

RIN: 0938–AM94

Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS)

Final Rule Stage

1091. HOME HEALTH AGENCY (HHA) CONDITIONS OF PARTICIPATION (COPS) (CMS–3819–FC)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395x; 42 USC 1395cc(a); 42 USC 1395hh; 42 USC 1395bb

CFR Citation: 42 CFR 484

Legal Deadline: None

Abstract: This final rule revises the existing CoPs that HHAs must meet to participate in the Medicare program. The requirements focus on the actual care delivered to patients by HHAs, reflect an interdisciplinary view of patient care, allow HHAs greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are an integral part of the Administration's efforts to achieve broad-based improvements and measurements of the quality of care furnished through Federal programs while at the same-time reducing procedural burdens on providers.

Timetable:

Action	Date	FR Cite
NPRM	03/10/97	62 FR 11005
NPRM Comment Period End	06/09/97	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Mercedes Benitex-McCray, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–5716

Scott Cooper, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–9465

RIN: 0938–AG81

1092. REQUIREMENTS FOR ESTABLISHING AND MAINTAINING MEDICARE BILLING PRIVILEGES (CMS–6002–F)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 424

Legal Deadline: None

Abstract: This final rule is needed as part of the Administration's anti-fraud and abuse efforts. It would give us the authority to enroll and re-enroll providers with time frames for re-enrollment.

Timetable:

Action	Date	FR Cite
NPRM	04/25/03	68 FR 22064
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Collett, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Financial Management, C3–02–06, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6121

RIN: 0938–AH73

1093. HEALTH INSURANCE REFORM: STANDARD UNIQUE HEALTH CARE PROVIDER IDENTIFIER (CMS–0045–F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1320D–2(b)(1)

CFR Citation: 42 CFR 160; 42 CFR 162

Legal Deadline: Final, Statutory, February 21, 1998, Final.

Abstract: This final rule establishes a standard unique identifier for all health care providers under the Health Insurance Portability and Accountability Act (HIPAA) of 1966 (Pub. L. 104–191). The rule implements administrative simplification initiatives that have a national scope beyond Medicare and Medicaid.

Timetable:

Action	Date	FR Cite
NPRM	05/07/98	63 FR 25320
NPRM Comment Period End	07/06/98	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: None

Agency Contact: Patricia Peyton, Office of Information Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3–20–05, 7500 Security Boulevard, Baltimore, MD 21224–1850
Phone: 410 786–1812

RIN: 0938–AH99

1094. APPEALS OF CARRIER DETERMINATION THAT A SUPPLIER FAILS TO MEET THE REQUIREMENTS FOR MEDICARE BILLING PRIVILEGES (CMS–6003–F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395u(b)(3)(C); 42 USC 1395ff(b)

CFR Citation: 42 CFR 405.874

Legal Deadline: None

Abstract: This final rule will extend appeal rights to all suppliers whose enrollment applications for Medicare billing privileges are disallowed by a carrier or whose Medicare billing privileges are revoked, except for those suppliers covered under other existing appeals provisions of our regulations. In addition, we will revise certain appeal provisions to correspond with the existing appeal provisions in those other sections of our regulations. CMS will also extend appeal rights to all suppliers not covered by existing regulations to ensure they have a full and fair opportunity to be heard.

Timetable:

Action	Date	FR Cite
NPRM	10/25/99	64 FR 57431
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Ralph Goldberg, Division of Provider and Supplier Enrollment, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–4870

RIN: 0938–AI49

1095. COVERAGE OF RELIGIOUS NONMEDICAL HEALTH CARE INSTITUTIONS (CMS–1909–F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1395i–5; 42 USC 1395x(e); 42 USC 1395x(y); 42 USC 1395x(ss); 42 USC 1302

CFR Citation: 42 CFR 403.736; 42 CFR 403. 738; 42 CFR 489.102

Legal Deadline: Final, Statutory, July 1, 1998, Final.

Abstract: This final rule follows an interm final rule with comment that removed all references in the Medicare regulations to specific religious institutions to broaden Medicare coverage to include all religious nonmedical institutions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/30/99	64 FR 67028
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jean Marie Moore, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare Management, 7500 Security Boulevard, C5–05–05, Baltimore, MD 21244
Phone: 410 786–3508

RIN: 0938–AI93

1096. MEDICARE OUTCOME AND ASSESSMENT INFORMATION SET (OASIS) DATA REPORTING REQUIREMENTS (CMS–3006–F)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 1302; 42 USC 1395(hh)

CFR Citation: 42 CFR 484.11; 42 CFR 484.20; 42 CFR 488.68

Legal Deadline: None

Abstract: This final rule requires home health agencies to electronically report OASIS data as a condition of participation in the Medicare program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/25/99	64 FR 3748
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Aucha Prachanronarong, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Blvd, Baltimore, MD 21244
Phone: 410 786–9614

RIN: 0938–AJ10

1097. RURAL HEALTH CLINICS: AMENDMENTS TO PARTICIPATION REQUIREMENTS AND PAYMENT PROVISIONS AND ESTABLISHMENT OF A QUALITY ASSESSMENT AND IMPROVEMENT PROGRAM (CMS–1910–F)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405; 42 CFR 491

Legal Deadline: None

Abstract: This rule amends the Medicare certification and payment requirements for rural health clinics (RHCs), as required by section 4205 of the Balanced Budget Act of 1997(BBA 1997). It changes the definition of a qualifying rural shortage area in which a Medicare RHC must be located; establishes criteria for identifying RHCs essential to delivery of primary care services that we can continue to approve as Medicare RHCs in areas no longer designated as medically underserved; and limits nonphysician practitioner staffing requirements. This rule imposes payment limits on provider-based RHCs and prohibits the use of RHC space, professional staff, equipment, and other RHC resources by another Medicare entity. The rule also requires RHCs to establish a quality assessment and performance improvement program. (The statute required that this rule be published by January 1, 1999.)

Timetable:

Action	Date	FR Cite
NPRM	02/28/00	65 FR 10450
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: David Worgo, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4–15–18, Center for Medicare Management, 7500 Security Boulevard, C4–15–18, Baltimore, MD 21244
Phone: 410 786–5919

RIN: 0938–AJ17

1098. HOSPITAL CONDITIONS OF PARTICIPATION: LABORATORY SERVICES (CMS–3014–F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 482.27

Legal Deadline: None

Abstract: This rule requires hospitals that transfuse blood and blood products to prepare and follow written procedures for appropriate action when it is determined that blood and blood products the hospital received and transfused are at increased risk for transmitting HCV; quarantine prior collections from a donor who is at increased risk for transmitting HCF infection; notify transfusion recipients, as appropriate, of the need for HCV testing and counseling; and maintain records for at least 10 years.

Timetable:

Action	Date	FR Cite
NPRM	11/16/00	65 FR 69416
Final Rule	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mary Collins, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Boulevard, S3–02–01, Baltimore, MD 21244
Phone: 410 786–3189

RIN: 0938–AJ29

1099. MEDICARE HOSPICE CARE AMENDMENTS (CMS–1022–F)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105–33, sec 1961(dd); PL 105–33, sec 1814(i); PL 105–33, sec 4441 to 4444; PL 105–33, sec 4448 to 4449; PL 106–113, sec 131; PL 106–554, sec 321 to 322

CFR Citation: 42 CFR 418

Legal Deadline: None

Abstract: This final rule revises certain regulations governing coverage and payments for hospice care under the Medicare program as required by the Balanced Budget Act of 1997.

Timetable:

Action	Date	FR Cite
NPRM	11/22/02	67 FR 70363
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Thomas Saltz, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, 7500 Security Boulevard, C4–05–27, Baltimore, MD 21244
Phone: 410 786–4480

RIN: 0938–AJ36

1100. USE OF RESTRAINT AND SECLUSION IN RESIDENTIAL TREATMENT FACILITIES PROVIDING INPATIENT PSYCHIATRIC SERVICES TO INDIVIDUALS UNDER AGE 21 (CMS–2065–F)

Regulatory Plan: This entry is Seq. No. 61 in part II of this issue of the **Federal Register**.

RIN: 0938–AJ96

1101. ALL PROVIDER BAD DEBT PAYMENT (CMS–1126–F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1302; 42 USC 1395f(b); 42 USC 1395g; 42 USC 1395l(a); 42 USC 1395l(i); 42 USC 1395l(n); 42 USC 1395x(v); 42 USC 1395cc; 42 USC 1395hh; 42 USC 1395rr; 42 USC 1395tt

CFR Citation: 42 CFR 413.80; 42 CFR 413.178

Legal Deadline: None

Abstract: This final rule will achieve a consistent bad debt reimbursement policy for all providers currently eligible to receive payments from Medicare for bad debt. It implements a court settlement agreement and removes the cap on End Stage Renal Disease (ESRD) bad debt reimbursement, which limits payment of allowable bad debts to the facility's unrecovered costs.

Timetable:

Action	Date	FR Cite
NPRM	02/10/03	68 FR 6682
NPRM Comment Period End	04/11/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Katie Walker, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare Management, 7500 Security Boulevard, C5–03–03, Baltimore, MD 21244
Phone: 410 786–7278

RIN: 0938–AK02

1102. REVIEW OF NATIONAL COVERAGE DETERMINATIONS AND LOCAL COVERAGE DETERMINATIONS (CMS–3063–F)

Priority: Other Significant

Legal Authority: Sec 522 of the BIPA 2000

CFR Citation: 42 CFR 405

Legal Deadline: NPRM, Statutory, October 1, 2001, NPRM.

Abstract: This final rule would announce a new process for beneficiaries to appeal national and local coverage determinations (LCDs), including the role that the Department Appeals Board and, in the case of LCDs, Administrative Law Judges, will have in reviewing the decisions. It implements section 522 of the Benefits Improvement and Protection Act of 2000 (BIPA).

Timetable:

Action	Date	FR Cite
NPRM	08/22/02	67 FR 54534
NPRM Comment Period End	10/21/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Bossenmeyer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5–16–26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–9317

Email: jbossenmeyer@hcfa.gov

RIN: 0938–AK60

1103. PHYSICIANS' REFERRALS TO HEALTH CARE ENTITIES WITH WHICH THEY HAVE FINANCIAL RELATIONSHIPS—PHASE II (CMS–1810–FC)

Priority: Other Significant

Legal Authority: 42 USC 1877

CFR Citation: 42 CFR 411

Legal Deadline: None

Abstract: This final rule incorporates into regulation certain statutory provisions that preclude payment for services under Medicare if a physician makes a referral to a facility in which he/she has a financial interest. It addresses comments from the January 9, 1998, proposed rule concerning the ownership, investment, and compensation exceptions. It also addresses comments from the January 4, 2001, final rule with comment period.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Joanne Sinsheimer, Technical Advisor, CMM, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, 7500 Security Boulevard, C4–25–02, Baltimore, MD 21244
Phone: 410 786–4620

RIN: 0938–AK67

1104. RATE OF REIMBURSEMENT OF PHOTOCOPY EXPENSES FOR QUALITY IMPROVEMENT ORGANIZATIONS (CMS–3055–F)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1154; Social Security Act, sec 1159; Social Security Act, sec 1866; Social Security Act, sec 1871

CFR Citation: 42 CFR 476.78

Legal Deadline: None

Abstract: This rule increases the rate of reimbursement of photocopy expenses as required by the regulations governing utilization and quality control quality improvement organizations. CMS' current regulations identify the photocopying reimbursement methodology for prospective payment system hospitals.

Timetable:

Action	Date	FR Cite
NPRM	11/22/02	67 FR 70358
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Les Caplan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–7223

RIN: 0938–AK68

1105. ELIMINATION OF STATEMENT OF INTENT PROCEDURES FOR FILING MEDICARE CLAIMS (CMS–1185–F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 424

Legal Deadline: None

Abstract: The final rule would eliminate the written statement of intent procedures for filing Medicare claims from the current Medicare regulation. Providers, suppliers, and other qualified claimants would still have 15 to 27 months to submit valid claims to Medicare.

Timetable:

Action	Date	FR Cite
NPRM	07/25/03	68 FR 44000
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Agency Contact: David Walczak, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Health Plans and Providers, Plan and Provider Purchasing Policy Group, 7500 Security Boulevard, C4–25–02, Baltimore, MD 21244
Phone: 410 786–4475

RIN: 0938–AK79

1106. EXTENDING MEDICARE ENTITLEMENT WHEN DISABILITY BENEFIT ENTITLEMENT ENDS BECAUSE OF SUBSTANTIAL GAINFUL ACTIVITY (CMS–4018–F)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 202 of the TWWIIA of 1999; PL 106–170

CFR Citation: 42 CFR 406.12

Legal Deadline: None

Abstract: This final rule implements the Ticket to Work and Work Incentives Improvement Act of 1999. It provides working disabled individuals with continued Medicare entitlement for an additional 54 months beyond the current limit, for a total of 78 months of Medicare coverage following the 15th month of the extended period of eligibility.

Timetable:

Action	Date	FR Cite
NPRM	07/25/03	68 FR 43998
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Denise Cox, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Health Insurance Specialist, 7500 Security Boulevard, S1–05–06, Baltimore, MD 21244
Phone: 410 786–3195

RIN: 0938–AK94

1107. MEDICARE PROGRAM; INTEREST CALCULATION (CMS–6014–F)

Priority: Other Significant

Legal Authority: Sec 1815(d) of the Social Security Act; Sec 1833 (j) of the Social Security Act

CFR Citation: 42 CFR 405.378

Legal Deadline: None

Abstract: This final rule will change the formula for computing interest on provider and supplier overpayments and underpayments to make it consistent with the new CMS accounting system, Healthcare Integrated General Ledger Accounting System.

Timetable:

Action	Date	FR Cite
NPRM	07/25/03	68 FR 43995
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Nancy Braymer, Financial Management Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3–14–21, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–4323

RIN: 0938–AL14

1108. HEALTH COVERAGE PORTABILITY FOR GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE ISSUERS (CMS–2151–F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 300gg; PL 104–191

CFR Citation: 45 CFR 144.103; 45 CFR 146.111; 45 CFR 146.113; 45 CFR 146.115; 45 CFR 146.117; 45 CFR 146.119; 45 CFR 146.120; 45 CFR 146.125; 45 CFR 146.143; ...

Legal Deadline: None

Abstract: This final rule provides portability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan under the Health Insurance Portability and Accountability Act of 1996. This regulation addresses limitations or preexisting exclusion periods on requests for special enrollments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period End	07/07/97	
Interim Final Rule Effective	07/07/97	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3–16–26, Center for Medicaid and State Operations, 7500 Security Boulevard, S3–16–26, Baltimore, MD 21244
Phone: 410 786–6851

RIN: 0938–AL43

1109. PERMITTING PREMIUM REDUCTIONS AS ADDITIONAL BENEFITS UNDER MEDICARE+CHOICE PLANS (CMS–6016–F)

Priority: Substantive, Nonsignificant

Legal Authority: 606 of BIPA

CFR Citation: 42 CFR 408

Legal Deadline: Final, Statutory, January 1, 2003, Final.

Abstract: This final rule implements section 606 of the Benefits Improvement and Protection Act of 2000 to allow Medicare+Choice organizations to elect a reduction in capitation payments so that these organizations could offer Medicare part B premium reductions to enrollees.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Agency Contact: Michele Sanders, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Financing Management, 7500 Security Boulevard, S1–06–27, Baltimore, MD 21244
Phone: 410 786–0808

RIN: 0938–AL49

1110. REVISIONS TO THE MEDICARE APPEALS PROCESS (CMS–4004–FC)

Regulatory Plan: This entry is Seq. No. 62 in part II of this issue of the **Federal Register**.

RIN: 0938–AL67

1111. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND CALENDAR YEAR 2004 PAYMENT RATES (CMS–1471–F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1395L; Balanced Budget Act of 1997; Medicare, Medicaid, and SCHIP; Balanced Budget Refinement Act of 1999; Medicare, Medicaid, and SCHIP; Benefits Improvement and Protection Act of 2000

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This final rule adjusts payments under the Medicare hospital outpatient payment system beginning January 1, 2004.

Timetable:

Action	Date	FR Cite
NPRM	08/12/03	68 FR 47966
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Cindy Read, Division Director, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare Management, C4–05–07, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–1852

RIN: 0938–AL91

1112. ELECTRONIC MEDICARE CLAIMS SUBMISSION (CMS–0008–F)

Priority: Other Significant

Legal Authority: PL 107–105

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This final rule implements the requirements for electronic submission of Medicare claims, submitted on or after October 16, 2003. In addition, this rule also implements the conditions upon which a waiver could be granted for these requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/15/03	68 FR 48805

Action	Date	FR Cite
Interim Final Rule Comment Period End	10/16/03	
Final Rule	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Stewart Streimer, Director, Division of Operations Standards, Office of Program Administration, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 1–C–6 Meadows East Building, 6325 Security Boulevard, Baltimore, MD 21207
Phone: 410 786–9318

RIN: 0938–AM22

1113. INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS FOR CALENDAR YEAR 2004 (CMS–8016–N)

Priority: Other Significant

Legal Authority: 42 USC 1395e–2(b)(2); Sec 1813(b)(2) of the Social Security Act

CFR Citation: None

Legal Deadline: NPRM, Statutory, September 15, 2003, NPRM.

Abstract: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2004 under medicare's hospital Insurance Program (Medicare part A). The Medicare statute specifies the formulae used to determine these amounts.

Timetable:

Action	Date	FR Cite
Notice	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clare McFarland, Deputy Director, Medicare and Medicaid Cost Estimates Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3–26–00, Office of the Actuary, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6390

RIN: 0938–AM31

1114. MONTHLY ACTUARIAL RATES AND MONTHLY SUPPLEMENTARY MEDICAL INSURANCE PREMIUM RATE BEGINNING JANUARY 1, 2004 (CMS–8017–N)

Priority: Other Significant

Legal Authority: 42 USC 1395r; Sec 1839 of the Social Security Act

CFR Citation: None

Legal Deadline: NPRM, Statutory, September 30, 2003, NPRM.

Abstract: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2004. It announces the monthly SMI premium to be paid by all enrollees during 2004.

Timetable:

Action	Date	FR Cite
Notice	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carter S. Warfield, Deputy Director, Medicare and Medicaid Cost Estimates Group, OACT, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center of Medicaid and State Operations, 7500 Security Boulevard, N3–26–00, Baltimore, MD 21244
Phone: 410 786–6396

RIN: 0938–AM32

1115. PART A PREMIUMS FOR CALENDAR YEAR 2004 FOR THE UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT (CMS–8018–N)

Priority: Other Significant

Legal Authority: 42 USC 1395i–2(d)(2); 42 USC 1395i–2a(d)(2); Sec 1818(d)(2) of the Social Security Act; Sec 1818A(d)(2) of the Social Security Act

CFR Citation: None

Legal Deadline: NPRM, Statutory, September 30, 2003, NPRM.

Abstract: This notice announces the hospital insurance premium for calendar year 2004 under Medicare's Hospital Insurance Program (Part A) for the uninsured aged and for certain disabled individuals who have exhausted other entitlement.

Timetable:

Action	Date	FR Cite
Notice	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clare McFarland, Deputy Director, Medicare and Medicaid Cost Estimates Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3–26–00, Office of the Actuary, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6390

RIN: 0938–AM33

1116. GRANTS TO STATES FOR OPERATION OF QUALIFIED HIGH RISK POOLS (CMS–2179–F)

Priority: Other Significant

Legal Authority: PL 107–210

CFR Citation: 45 CFR 148

Legal Deadline: None

Abstract: This final rule announces a grant program to provide $40 million for FY 2003 and $40 million for FY 2004 to Sates that have qualified high risk pools under the Trade Adjustment Assistance Reform Act of 2002.

Timetable:

Action	Date	FR Cite
Final Rule with Comment	05/02/03	68 FR 23410
Final Rule Comment Period End	07/01/03	
Final Rule Effective	06/02/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: James Mayhew, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, 7500 Security Boulevard, S3–16–26, Baltimore, MD 21244
Phone: 410 786–9244

RIN: 0938–AM42

1117. FEE SCHEDULE FOR PAYMENT OF AMBULANCE SERVICES UPDATE FOR CALENDAR YEAR 2004 (CMS–1232–FC)

Priority: Other Significant

Legal Authority: 42 USC 1395m(1)(1)

CFR Citation: None

Legal Deadline: None

Abstract: This notice updates the fee schedule for ambulance services under the Medicare program, implementing section 1834(1) of the Social Security Act.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Anne Tayloe, Health Insurance Speacialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, 7500 Security Boulevard, C4–07–07, Baltimore, MD 21244
Phone: 410 786–4546

RIN: 0938–AM44

1118. • NON—FEDERAL GOVERNMENTAL PLANS EXEMPT FROM HIPAA TITLE I REQUIREMENTS (CMS–2033–F)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec 2721(b)(2) of the Public Health Service Act

CFR Citation: 45 CFR 146.180

Legal Deadline: None

Abstract: This final rule adopts as final the exemption election requirements that apply to self-funded non-Federal governmental plans. Since we received no public comments on the July 26, 2002, interim final with comment period, this rule finalizes the circumstances under which plan sponsors may exempt these plans from most of the requirements of title XXVII of the Public Health Service Act and provides guidance on the procedures, limitations, and documentation associated with exemption elections.

Timetable:

Action	Date	FR Cite
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Agency Contact: Dave Holstein, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Insurance Standards Team, S3–16–16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–1564

RIN: 0938–AM71

1119. • REVISIONS TO THE APPEALS PROCESS FOR INITIAL CLAIM DETERMINATIONS (CMS–4064–F)

Regulatory Plan: This entry is Seq. No. 63 in part II of this issue of the **Federal Register**.

RIN: 0938–AM73

1120. • MORE FLEXIBLE REQUIREMENTS FOR POWERED-OPERATED VEHICLES (CMS–3017–FC)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec 1102 of the Social Security Act; Sec 1871 of the Social Security Act

CFR Citation: 42 CFR ch IV, sec 410, subpart B; 42 CFR 410.38

Legal Deadline: None

Abstract: This rule will make the requirements to purchase power operated vehicles, functioning as wheelchairs, less stringent.

Timetable:

Action	Date	FR Cite
Final Action with Comment	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lorrie Ballantine, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–7543

RIN: 0938–AM74

1121. • HOSPICE WAGE INDEX FY 2005 (CMS–1264–N)

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 1814(i)(A)

CFR Citation: 42 CFR 418.306(d)

Legal Deadline: Final, Statutory, October 1, 2004, Final.
Wage Index update is effective October 1, of each year.

Abstract: This notice will announce the annual update to the hospice wage index for FY 2005. The wage index is used to reflect local differences in wage levels. The hospice wage index methodology and values are based on recommendations of a negotiated rulemaking advisory committee and were originally published on August 8, 1997.

Timetable:

Action	Date	FR Cite
Notice	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Terri Deutseh, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5–08–28, 7500 Security Blvd, Baltimore, MD 21244
Phone: 410 786–9462

RIN: 0938–AM78

1122. • TICKET TO WORK: DEFINING INDIVIDUALS WITH POTENTIALLY SEVERE DISABILITIES (CMS–2172–N)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Ticket to Work and Work Incentives Improvement Act of 1999

CFR Citation: None

Legal Deadline: None

Abstract: This proposed rule would provide a definition of "medically determinable severe impairment" under the Ticket to Work and Work Incentives Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
Notice	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carey O'Connor, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, 7500 Security Boulevard, S2–14–26, Baltimore, MD 21224
Phone: 410 786–2117

RIN: 0938–AM79

1123. • HOSPITAL CONDITIONS OF PARTICIPATION: REQUIREMENTS FOR HISTORY AND PHYSICAL EXAMINATIONS; AUTHENTICATION OF VERBAL ORDERS, SECURING MEDICATIONS AND POST-ANESTHESIA EVALUATIONS (CMS–3122–F)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1395 x; 42 USC 1396 d; 42 USC 1395 bb

CFR Citation: 42 CFR 482

Legal Deadline: None

Abstract: This final rule will change the existing requirements to decrease the burden on hospitals to conform to current standards of practice. Hospitals must meet these final requirements to participate in the Medicare and Medicaid programs. They must establish and maintain policies and procedures that will ensure their hospital will meet these requirements by using standard practices with regards to history and physical examinations, and completion of the post-anesthesia evaluation.

Timetable:

Action	Date	FR Cite
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Chmielewski, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6899

RIN: 0938–AM88

1124. • DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS INSTITUTIONS FOR MENTAL DISEASE (IMDS) (CMS–2062–N)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the preliminary Federal share disproportionate share hospital (DSH) allotments for Federal fiscal year (FFY) 2002 in accordance with the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000. It also announces the FFY 1999, 2000, and 2001 limitations on aggregate DSH payments that States may make to institutions for mental disease and other mental health facilities. In addition, it specifies a format to be used by States when submitting the annual DSH report mandated by the statute

Timetable:

Action	Date	FR Cite
Notice	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jim Frizzera, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, CMSO, S3–13–15, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–9535

RIN: 0938–AM89

Department of Health and Human Services (HHS) Long-Term Actions
Centers for Medicare & Medicaid Services (CMS)

1125. STANDARD UNIQUE NATIONAL HEALTH PLAN IDENTIFIERS (CMS–6017–P)

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 42 USC 1320d to 1320d–8

CFR Citation: 45 CFR 160; 45 CFR 162

Legal Deadline: Final, Statutory, February 21, 1998, Final.

Abstract: This proposed rule would implement a standard identifier to identify health plans that process and pay certain electronic health care transactions. It would implement one of the requirements for administrative simplification in section 262 of the Health Insurance Portability & Accountability Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Helen Dietrick, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S1–07–17, Office of Information Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–7448

RIN: 0938–AH87

1126. EXCLUSION OF MEDICARE BENEFITS FOR ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES (CMS–1222–FC)

Priority: Other Significant

Legal Authority: Sec 5561 of BBA 1997; Sec 401(b) of the Personal Responsibility and Work Opportunity Act of 1996; 42 USC 1611(b)

CFR Citation: 42 CFR 411.11

Legal Deadline: None

Abstract: This final rule with comment period amends our regulations to prohibit Medicare benefits to an alien who is not lawfully present in the United States. Section 5561 of the Balanced Budget Act amended section 401(b) of the Personal Responsibility and Work Opportunity Act of 1996 to prohibit Medicare payments for services furnished to an alien who is not "lawfully present in the United States" and meets certain other conditions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frederick William Grabau, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center of Medicaid and State Operations, 7500 Security Boulevard, C4–25–02, Baltimore, MD 21244
Phone: 410 786–0206

RIN: 0938–AM47

1127. • CHANGES TO THE CRITERIA FOR BEING CLASSIFIED AS AN INPATIENT REHABILITATION FACILITY (CMS–1262–F)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec 1886 of the Social Security Act; 42 USC 1395cc

CFR Citation: 42 CFR 412

Legal Deadline: None

Abstract: This final rule would revise classification criteria, commonly known as the "75 percent rule," for a hospital to be classified as an inpatient rehabilitation facility (IRF). It would also modify and expand the medical conditions listed in the 75 percent rule regulatory requirements. We are proposing these changes to ensure that patients in IRF settings receive appropriate intensive inpatient rehabilitation services.

Timetable:

Action	Date	FR Cite
NPRM	09/09/03	68 FR 53266
Final Rule	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Robert Kuhl, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–4597

RIN: 0938–AM72

Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS)

Completed Actions

1128. CONDITIONS OF PARTICIPATION OF INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (CMS–3046–P)

Priority: Other Significant

CFR Citation: 42 CFR 400; 42 CFR 435; 42 CFR 440; 42 CFR 441; 42 CFR 483

Completed:

Reason	Date	FR Cite
Withdrawn	08/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Anita Panicker
Phone: 410 786–5646

RIN: 0938–AK23

1129. LABORATORY REQUIREMENTS RELATING TO QUALITY SYSTEMS AND CERTAIN PERSONNEL QUALIFICATIONS (CMS–2226–CN)

Priority: Other Significant

CFR Citation: 42 CFR 493

Completed:

Reason	Date	FR Cite
Correction Notice	08/22/03	68 FR 50722

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cecelia Hinkel
Phone: 410 786–3347

RIN: 0938–AK24

1130. FIRE SAFETY REQUIREMENTS FOR CERTAIN HEALTH CARE FACILITIES (CMS–3047–F)

Priority: Other Significant

CFR Citation: 42 CFR 403; 42 CFR 416; 42 CFR 418; 42 CFR 460; 42 CFR 482; 42 CFR 483

Completed:

Reason	Date	FR Cite
Final Action	01/10/03	68 FR 1374

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Danielle Shearer
Phone: 410 786–6617

RIN: 0938–AK35

1131. HOSPITAL CONDITIONS OF PARTICIPATION: QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENTS (QAPI) (CMS–3050–F)

Priority: Other Significant

CFR Citation: 42 CFR 482.21

Completed:

Reason	Date	FR Cite
Final Rule	01/24/03	68 FR 3435

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Agency Contact: Nancy Archer
Phone: 410 786–0596

RIN: 0938–AK40

1132. REVISED PROCESS FOR MAKING MEDICARE NATIONAL COVERAGE DETERMINATIONS (CMS–3062–N)

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Notice	09/26/03	68 FR 187

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Vadim Lubarsky
Phone: 410 786–0840

RIN: 0938–AK61

1133. MODIFICATIONS TO MEDICARE MANAGED CARE RULES (CMS–4041–F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 42 CFR 409; 42 CFR 417; 42 CFR 422

Completed:

Reason	Date	FR Cite
Final Rule	08/22/03	68 FR 50839

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Tony Hausner
Phone: 410 786–1093

RIN: 0938–AK71

1134. INPATIENT DISPROPORTIONATE SHARE HOSPITAL (DSH) ADJUSTMENT: CALCULATION OF MEDICAID PATIENT AND TOTAL PATIENT DAYS IN THE MEDICARE DSH ADJUSTMENT (CMS–1171–P)

Priority: Other Significant

CFR Citation: 42 CFR 412106

Completed:

Reason	Date	FR Cite
Merged With 0938–AL89	08/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen Phillips
Phone: 410 786–4548

RIN: 0938–AK77

1135. MODIFICATIONS TO THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP) (CMS–2006–F)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 435; 42 CFR 436; 42 CFR 457

Completed:

Reason	Date	FR Cite
Withdrawn	11/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Cheryl Austein-Casnoff
Phone: 410 786–4196

RIN: 0938–AL00

1136. REQUIREMENTS FOR PAID FEEDING ASSISTANTS IN long-term CARE FACILITIES (CMS–2131–F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 42 CFR 483.73; 42 CFR 483.75(c)

Completed:

Reason	Date	FR Cite
Final Rule	09/26/03	68 FR 55528

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Nola Petrovich
Phone: 410 786–4671

RIN: 0938–AL18

1137. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND CALENDAR YEAR 2003 PAYMENT RATES; CHANGES TO PAYMENT SUSPENSION FOR UNFILED COST REPORTS; CORRECTION TO FINAL RULE (CMS–1206–CN2)

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 405; 42 CFR 419

Completed:

Reason	Date	FR Cite
Correction Notice	10/01/03	67 FR 69146
Correction Notice	02/10/03	68 FR 6636

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Cindy Read
Phone: 410 786–1852

RIN: 0938–AL19

1138. PAYMENT FOR RESPIRATORY ASSIST DEVICES WITH BI-LEVEL CAPABILITY AND A BACK-UP RATE (CMS–1167–F)

Priority: Other Significant

CFR Citation: 42 CFR 414

Completed:

Reason	Date	FR Cite
NPRM	08/22/03	68 FR 50 735
Withdrawn	10/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joel Kaiser
Phone: 410 786–4499

RIN: 0938–AL27

1139. INTERIM FINAL AMENDMENT FOR MENTAL HEALTH PARITY (CMS–2152–IFC)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 146.136

Completed:

Reason	Date	FR Cite
Second Interim Final Rule	06/27/03	68 FR 38206
Second Interim Final Rule Effective	07/28/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: David Mlawsky
Phone: 410 786–6851

RIN: 0938–AL44

1140. ELECTRONIC SUBMISSION OF COST REPORTS (CMS–1199–F)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 413.24

Completed:

Reason	Date	FR Cite
Final Action	08/22/03	68 FR 50717

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carol Blackford
Phone: 410 786–5909

RIN: 0938–AL51

1141. EXCLUSIONS FROM THE DEFINITION OF "OPTIONAL TARGETED LOW-INCOME CHILD" AND PURCHASE OF FAMILY COVERAGE—BENEFIT FLEXIBILITY IN PARENT COVERAGE (CMS–2148–P)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 457

Completed:

Reason	Date	FR Cite
Withdrawn	11/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stacey Bush
Phone: 410 786–6102

RIN: 0938–AL62

1142. STATE ALLOTMENTS FOR PAYMENT OF MEDICARE PART B PREMIUMS FOR QUALIFYING INDIVIDUALS; FEDERAL FY 2002 (CMS–2136–FN)

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	08/22/03	68 FR 50790

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Nakielny
Phone: 410 786–4466

RIN: 0938–AL79

1143. MEDICAID COVERAGE RULES FOR INMATES OF PUBLIC INSTITUTIONS (CMS–2077–P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 42 CFR 435.1008; 42 CFR 435.1009; 42 CFR 435.1012; 42 CFR 436.1004

Completed:

Reason	Date	FR Cite
Withdrawn	08/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Tom Shenk
Phone: 410 786–3295

RIN: 0938–AL85

1144. TARGETED CASE MANAGEMENT (CMS–2061–P)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 431; 42 CFR 440; 42 CFR 441

Completed:

Reason	Date	FR Cite
Withdrawn	08/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathy Poisal
Phone: 410 786–5940

RIN: 0938–AL87

1145. CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2004 RATES (CMS–1470–F)

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 412; 42 CFR 413; 42 CFR 485; 42 CFR 489

Completed:

Reason	Date	FR Cite
NPRM	05/19/03	68 FR 27154
Final Action	08/01/03	68 FR 45346

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Tzvi Hefter
Phone: 410 786–4487

Scott Cooper
Phone: 410 786–9465

RIN: 0938–AL89

1146. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—UPDATE FOR FY 2004 (CMS–1469–F)

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 413.330 to 413.350

Completed:

Reason	Date	FR Cite
NPRM	05/16/03	68 FR 26758
Final Rule	08/04/03	68 FR 46036

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William Ullman
Phone: 401 786–5667

RIN: 0938–AL90

1147. PROSPECTIVE PAYMENT SYSTEM FOR long-term CARE HOSPITALS FOR FY 2004 (CMS–1472–P)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 412; 42 CFR 413

Completed:

Reason	Date	FR Cite
Final Action	06/06/03	68 FR 34122

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tzvi Hefter
Phone: 410 786–4487

RIN: 0938–AL92

1148. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FOR FY 2004 (CMS–1473–NC)

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Notice	07/02/03	68 FR 39763

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Randy Throndset
Phone: 410 786–0131

RIN: 0938–AL94

1149. PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION HOSPITALS FOR FY 2004 (CMS–1474–F)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 412; 42 CFR 413

Completed:

Reason	Date	FR Cite
NPRM	05/16/03	68 FR 26786
Final Action	08/01/03	68 FR 45674

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Kuhl
Phone: 410 786–4597

RIN: 0938–AL95

1150. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2004 (CMS–1476–P)

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: 42 CFR Part 410; 42 CFR Part 414

Completed:

Reason	Date	FR Cite
NPRM	08/15/03	68 FR 49029
Final Action	11/07/03	68 FR 63196

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Diane Milstead
Phone: 410 786–3355

RIN: 0938–AL96

1151. NONDISCRIMINATION IN POST-HOSPITAL REFERRAL TO HOME HEALTH AGENCIES AND OTHER ENTITIES (CMS–1224–F)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 482

Completed:

Reason	Date	FR Cite
Withdrawn	11/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Carmody
Phone: 410 786–7533

RIN: 0938–AM01

1152. UPDATE OF THE LIST OF COVERED PROCEDURES FOR AMBULATORY SURGICAL CENTERS (CMS–1885–FC)

Priority: Other Significant

CFR Citation: 42 CFR 416

Completed:

Reason	Date	FR Cite
Final Rule	03/28/03	68 FR 32406
Final Rule Comment Period End	05/28/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bob Cereghino
Phone: 410 786–4645

RIN: 0938–AM02

1153. MEDICAID HOME AND COMMUNITY BASED SERVICES WAIVERS (CMS–2162–P)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 441.300

Completed:

Reason	Date	FR Cite
Withdrawn	10/30/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary Clarkson
Phone: 410 786–5918

RIN: 0938–AM05

1154. PAYMENT REFORM FOR PART B DRUGS (CMS–1229–F)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 42 CFR 405

Completed:

Reason	Date	FR Cite
Merged With 0938–AL96	08/20/03	68 FR 50428

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marjorie Baldo
Phone: 410 786–4617

RIN: 0938–AM12

1155. NONDISCRIMINATION IN HEALTH COVERAGE IN THE GROUP MARKET (CMS–2022–F)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 45 CFR 146.121

Completed:

Reason	Date	FR Cite
Withdrawn	11/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: David Mlawsky
Phone: 410 786–6851

RIN: 0938–AM14

1156. BONA FIDE WELLNESS PROGRAMS (CMS–2078–F)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 45 CFR 146.121(f)

Completed:

Reason	Date	FR Cite
Withdrawn	08/27/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Agency Contact: David Mlawsky
Phone: 410 786–6851

RIN: 0938–AM15

1157. TIME LIMITATION ON RECALCULATIONS AND DISPUTES UNDER THE DRUG REBATE PROGRAM (CMS–2175–FC)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 42 CFR 447.534

Completed:

Reason	Date	FR Cite
Final Rule with Comment	08/29/03	68 FR 51912
Comment Period End	10/28/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State

Agency Contact: Marge Lee Watchorn
Phone: 410 786–4361

RIN: 0938–AM20

1158. MEDICAID ESTATE RECOVERIES (CMS–2083–P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: None

Completed:

Reason	Date	FR Cite
Withdrawn	08/27/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ingrid Osborne
Phone: 410 786–4461

RIN: 0938–AM30

1159. APPLICATION OF THE EMERGENCY MEDICAL TREATMENT AND LABOR ACT (EMTALA) (CMS–1063–F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: Not Yet Determined

Completed:

Reason	Date	FR Cite
Final Rule	09/09/03	68 FR 53222

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Rebecca Hirshorn
Phone: 410 786–3411

RIN: 0938–AM34

1160. PHYSICIAN OWNERSHIP IN SPECIALTY HOSPITALS (CMS–1240–P)

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 411

Completed:

Reason	Date	FR Cite
Withdrawn	08/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jackie Proctor
Phone: 410 786–8852

RIN: 0938–AM35

1161. APPROVAL OF THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS (JCAHO) FOR DEEMING AUTHORITY FOR HOSPICES (CMS–2177–FN)

Priority: Routine and Frequent

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	05/30/03	68 FR 32528

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cindy Melanson
Phone: 410 786–0310

Cathaleen Ahern
Phone: 410 786–4515

RIN: 0938–AM38

1162. HOSPITAL COST-TO-CHARGE RATIOS USED TO CALCULATE COST OUTLIER PAYMENTS UNDER THE MEDICARE SHORT-TERM INPATIENT PROSPECTIVE PAYMENT SYSTEM (CMS–1243–F)

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 412.84; 42 CFR 412.116

Completed:

Reason	Date	FR Cite
Final Action	06/09/03	68 FR 34494

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Stephen Phillips
Phone: 410 786–4548

RIN: 0938–AM41

1163. AMBULANCE FEE SCHEDULE CONDITION CODES (CMS–1247–P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: Not Yet Determined

Completed:

Reason	Date	FR Cite
Withdrawn	11/18/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Anne Tayloe
Phone: 410 786–4546

RIN: 0938–AM45

1164. HOSPICE WAGE INDEX FOR FY 2004 (CMS–1233–N)

Priority: Routine and Frequent

CFR Citation: 42 CFR 418.306(C)

Completed:

Reason	Date	FR Cite
Notice	09/30/03	68 FR 56478

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carol Blackford
Phone: 410 786–5909

RIN: 0938–AM56

1165. ANNOUNCEMENT OF APPLICATIONS FROM HOSPITALS REQUESTING WAIVERS FOR ORGAN PROCUREMENT SERVICE AREAS IN CALENDAR YEAR 2003 (CMS–1246–NC)

Priority: Routine and Frequent

CFR Citation: 42 CFR 486.306

Completed:

Reason	Date	FR Cite
Withdrawn	09/04/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark Horney
Phone: 410 786–4554

RIN: 0938–AM59

1166. • CENTERS FOR MEDICARE AND MEDICAID SERVICES ACTION ON LIABILITY INSURANCE REGULATIONS (CMS–1475–FC)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec 1862(b)(2)(A) of the Social Security Act; 42 USC 1395y

CFR Citation: 42 CFR 411.54(C)(2)(i)

Legal Deadline: None

Abstract: The court ruled that our 1991 regulation is inconsistent with the statutory provision, which prohibits Medicare from making payment when other insurance is available and permits a provider or supplier (including a physician) to seek payment from a liability or a beneficiary's liability settlement. CMS has not removed the unenforceable regulation.

Timetable:

Action	Date	FR Cite
Final Rule with Comment	07/25/03	68 FR 43940
Final Rule Effective	08/25/03	
Final Rule Comment Period End	09/23/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzanne Ripley, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4–25–02, 7500 Security Blvd, Baltimore, MD 21244
Phone: 410 786–0970

RIN: 0938–AM64

Department of Health and Human Services (HHS)
Administration for Children and Families (ACF)

Proposed Rule Stage

1167. SAFEGUARDING CHILD SUPPORT AND EXPANDED FEDERAL PARENT LOCATOR SERVICES (FPLS) INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 652 to 654A; 42 USC 663; 42 USC 1302

CFR Citation: 45 CFR 303.3; 45 CFR 303.21; 45 CFR 303.70

Legal Deadline: None

Abstract: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 made far-reaching amendments to title IV—D of the Social Security Act, which governs the child support enforcement program. The Balanced Budget Act of 1997, the Adoption and Safe Families Act of 1997, and the Child Support Performance and Incentive Act of 1998 further amended title IV–D. A significant result of this legislation is an expansion in the scope of information available to State IV–D child support enforcement agencies. The legislation has rendered obsolete or inconsistent several regulations at 45 CFR chapter III, Office of Child Support Enforcement, including the regulations on the Federal Parent Locator Service, the State Parent Locator Services, offset of Federal payments for purposes of collecting child support, and safeguarding of information. This regulation would update various sections in 45 CFR chapter III to reflect the statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Eileen C. Brooks, Deputy Director, Policy Division, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, OCSE, DPP, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401–5369
TDD Phone: 800 877–8339
Fax: 202 401–4054
Email: ebrooks@acf.hhs.gov

RIN: 0970–AC01

1168. DEVELOPMENTAL DISABILITIES AND BILL OF RIGHTS ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 106–402; USC 15001 et seq

CFR Citation: 45 CFR 1385 to 1388

Legal Deadline: Final, Statutory, October 30, 2001, Final.

Abstract: A notice of proposed rulemaking will be published in the Federal Register to amend current regulations and to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Elsbeth Wyatt, Program Specialist, Department of Health and Human Services, Administration for Children and Families, ADD HHH–300F, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 690–5841

RIN: 0970–AC07

1169. ADMINISTRATIVE COSTS FOR CHILDREN IN TITLE IV–E FOSTER CARE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 672; 42 USC 674; 42 USC 1302

CFR Citation: 45 CFR 1356.60(c)

Legal Deadline: None

Abstract: This notice of proposed rulemaking implements the title IV–E foster care eligibility and administrative cost provisions in sections 472 and 474 of the Social Security Act. We propose to prohibit the reimbursement of administrative costs claimed on behalf of children in unlicensed foster family homes, with the exception of children in relative foster family homes while the State is in the process of licensing the home. We also propose to prohibit the reimbursement of administrative costs claimed on behalf of children in unallowable facilities, with the exception of the month prior to a child's transition into an allowable facility.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Kathleen McHugh, Divison Director, Children's Bureau Policy, Department of Health and Human Services, Administration for Children and Families, Room 2411, 330 C Street SW., Washington, DC 20447
Phone: 202 401–5789
Fax: 202 205–8221
Email: kmchugh@acf.hhs.gov

RIN: 0970–AC14

1170. • ADMINISTRATIVE COST SHARING UNDER TANF

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1302

CFR Citation: 45 CFR 263; 45 CFR 263.14

Legal Deadline: None

Abstract: This proposed rule will enable States (including the District of Columbia) and territories to use either the "primary program" cost allocation methodology previously allowed under the Aid to Families with Dependent Children (AFDC) program to allocate the common administrative costs of determining eligibility in the Temporary Assistance for Needy Families (TANF) program, the Medicaid program, and the Food Stamp programs or to continue to use a "benefiting" cost allocation methodology. Pursuant to a determination by Secretary Thompson, States and territories would be able to elect to use their Federal TANF funds to pay for costs that are common to the administration of the TANF, Medicaid, and Food Stamps Programs, in accordance with the primary program cost allocation methodology previously allowed under the former AFDC program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: April Kaplan, Deputy Director, Office of Family Assistance, Department of Health and Human Services, Administration for Children and Families, 5th Floor East, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-5138
Email: akaplan@acf.hhs.gov

RIN: 0970-AC15

Department of Health and Human Services (HHS) Administration for Children and Families (ACF)

Final Rule Stage

1171. CHILD SUPPORT ENFORCEMENT FOR INDIAN TRIBES

Priority: Other Significant

Legal Authority: 42 USC 655(f)

CFR Citation: 45 CFR 309

Legal Deadline: None

Abstract: This rule specifies how tribes can obtain direct payments from the Department of Health and Human Services for provision of child support enforcement services if they submit a plan meeting the objectives of title IV-D, including establishment of paternity, modification and enforcement of support orders, and location of absent parents.

Timetable:

Action	Date	FR Cite
NPRM	08/21/00	65 FR 50800
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Agency Contact: Paige Biava, Division of Policy and Planning, Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-9386

RIN: 0970-AB73

1172. CHILD SUPPORT ENFORCEMENT PROGRAM; FEDERAL TAX REFUND OFFSET

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 664; 42 USC 1302

CFR Citation: 45 CFR 303.72

Legal Deadline: None

Abstract: This interim final rule will revise existing regulations on collecting child support arrears through the Federal Tax Refund Offset process. The revisions are needed to reflect changes in data processing protocols with the Department of the Treasury. We are also updating the regulation to reflect current business practices and requests from the state child support agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/26/03	68 FR 37978
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Eileen C. Brooks, Deputy Director, Policy Division, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, OCSE, DPP, 370 L'Enfant Promenade SW., Washington, DC 20447
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Email: ebrooks@acf.hhs.gov

RIN: 0970-AC09

1173. CHARITABLE CHOICE PROVISIONS APPLICABLE TO THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 604(a)

CFR Citation: 45 CFR 260.30; 45 CFR 260.34

Legal Deadline: None

Abstract: The proposed rule would implement the Charitable Choice statutory provisions at section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 as amended. It is the policy of the Administration for Children and Families that, within constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for funding under the Temporary Assistance for Needy Families (TANF) program. In addition to giving families a greater choice of TANF-funded providers, these rules ensure that the character of religious providers is not impaired and that the religious freedom of TANF beneficiaries is not impaired.

Timetable:

Action	Date	FR Cite
NPRM	12/17/02	67 FR 77362
NPRM Comment Period End	02/18/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: April Kaplan, Deputy Director, Office of Family Assistance, Department of Health and Human Services, Administration for Children and Families, 5th Floor East, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-5138
Email: akaplan@acf.hhs.gov

RIN: 0970-AC12

1174. COMMUNITY SERVICES BLOCK GRANT CHARITABLE CHOICE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9901; PL 105-285, sec 672; 42 USC 9902; PL 105-285, sec 673

CFR Citation: 45 CFR 1050

Legal Deadline: None

Abstract: This proposed rule would implement the Charitable Choice statutory provisions at section 679 of the Community Services Block Grant Act. These provisions apply to programs authorized under the Act, including the Community Services Block grant program, Training, Technical Assistance and Capacity Building program, Community Food and Nutrition Program, National Youth Sports program, and discretionary grants for economic development, rural community development, and neighborhood innovation, which are all administered by the Administration for Children and Families (ACF). It is ACF's policy that, within the framework of constitutional church-State guidelines, faith-based organizations should be able to compete on an equal footing for funding, and ACF supports the participation of faith-based organizations in these programs.

Timetable:

Action	Date	FR Cite
NPRM	12/17/02	67 FR 77364
NPRM Comment Period End	02/18/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Clarence Carter, Director, Office of Community Services, Department of Health and Human Services, Administration for Children and Families, 5th Floor East, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-9333
Email: ccarter@acf.hhs.gov

RIN: 0970–AC13

Department of Health and Human Services (HHS) Administration for Children and Families (ACF) Completed Actions

1175. CONSTRUCTION AND MAJOR RENOVATION OF HEAD START AND EARLY HEAD START FACILITIES

Priority: Other Significant

CFR Citation: 45 CFR 1309

Completed:

Reason	Date	FR Cite
Final Action	05/01/03	68 FR 23212

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, Tribal

Agency Contact: Douglas Klafehn
Phone: 202 205–8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AB54

1176. CHILD SUPPORT ENFORCEMENT PROGRAM OMNIBUS CONFORMING REGULATION

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 301 to 305

Completed:

Reason	Date	FR Cite
Final Action	05/12/03	68 FR 25293

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Eileen C. Brooks
Phone: 202 401–5369
TDD Phone: 800 877–8339
Fax: 202 401–4054
Email: ebrooks@acf.hhs.gov

RIN: 0970–AB81

1177. TECHNICAL REVISION OF HEAD START REGULATIONS TO MAKE THEM CONFORM TO RECENT STATUTORY REVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1301 to 1303; 45 CFR 1305; 45 CFR 1308

Completed:

Reason	Date	FR Cite
Withdrawn	08/29/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas Klafehn
Phone: 202 205–8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AC00

1178. CHILD SUPPORT ENFORCEMENT PROGRAM; EXPENDITURES FOR CASEWORKER COSTS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 304.23

Completed:

Reason	Date	FR Cite
Withdrawn	08/29/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Sheck Chin
Phone: 202 260–5830
TDD Phone: 800 877–8339
Fax: 202 401–4054
Email: schin@acf.hhs.gov

RIN: 0970–AC11

1179. GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING, TRAINING, RESEARCH, AND DISCRETIONARY PROGRAMS; VULNERABLE ELDER RIGHTS; GRANTS TO INDIANS AND NATIVE HAWAIIANS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3001 et seq

CFR Citation: 45 CFR 1321; 45 CFR 1326; 45 CFR 1328

Legal Deadline: None

Abstract: In response to the reauthorization of the Older Americans Act, Public Law 106–501, the Administration on Aging (AoA) proposes to issue a notice of proposed rulemaking by spring of 2004.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Tribal

Federalism: Undetermined

Agency Contact: Edwin Walker, Deputy Assistant Secretary for Policy and Programs, Department of Health and Human Services, Administration on Aging, Washington, DC 20201
Phone: 202 401–4634

RIN: 0985–AA00

[FR Doc. 03–27071 Filed 12–19–03; 8:45 am]

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Monday,
December 22, 2003

Part IX

Department of Homeland Security

Semiannual Regulatory Agenda

DEPARTMENT OF HOMELAND SECURITY (DHS)

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Chs. I and II

[DHS Docket No. OGC-RP-03-001]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, DHS.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice is given pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980) and Executive Order (E.O.) 12866, "Regulatory Planning and Review" (September 30, 1993), which require the publication of a semiannual agenda of regulations by the Department of Homeland Security (Department or DHS). The regulatory agenda is a semiannual summary of all current and projected rulemakings, and completed actions of the Department. This is the Department's second semiannual agenda and first regulatory plan. Under the Homeland Security Act of 2002, Public Law 107-295 (Homeland Security Act), 22 preexisting agencies or components transferred to DHS.

Although DHS is new, many of its components had active regulatory agendas, such as the legacy Immigration and Nationalization Service (INS), which has been divided into the Bureau of Citizenship and Immigration Services, the Bureau of Immigration and Customs Enforcement, and the Bureau of Customs and Border Protection. Together, the latter components alone comprise half of the DHS regulatory agenda. The legacy INS rulemakings primarily set forth application or other process standards for obtaining benefits, privileges, or other attributes afforded to visa or citizen holders. Other DHS components, such as the U.S. Coast Guard and Transportation Security Administration, have regulatory functions rooted in promulgating safety or security standards. The new Department, considered the most significant transformation of the U.S. Government in over a half-century, continues to transform and realign the current confusing patchwork of Government activities into a single department. Its' greatest regulatory challenge is melding the variant regulatory practices into one centralized regulatory agency embracing the "best practices" of each of its components.

The DHS agenda provides the public with information about the Department's regulatory practices. It is expected that this information will enable the public to more effectively participate in the Department's regulatory activities. The public is also invited to submit comments on any aspect of this agenda.

FOR FURTHER INFORMATION CONTACT:

General -

You should direct all comments and inquiries on the agenda in general to Laticia Argenti, Deputy Associate General Counsel for Regulations, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528.

Specific -

You should direct all comments and inquiries on the particular items in the agenda to the individual listed for the regulation or the general rulemaking contact person for the DHS components.

SUPPLEMENTARY INFORMATION: The semiannual agenda of the Department conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. DHS' Statement of Regulatory Priorities is included in part II.

Dated: October 29, 2003.

Laticia Argenti,

Deputy Associate General Counsel for Regulations.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1180	Procedures for Handling Critical Infrastructure Information	1601–AA14
1181	Supplemental Standards of Conduct for Employees of the Department of Homeland Security	1601–AA17

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1182	Freedom of Information Act and Privacy Act Procedures	1601–AA00
1183	Production or Disclosure of Official Information in Connection With Legal Proceedings	1601–AA01
1184	Regulations Implementing the Support Antiterrorism by Fostering Effective Technologies Act of 2002	1601–AA15
1185	Homeland Security Acquisition Regulation (HSAR)	1601–AA16

DHS

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1186	Classified National Security Information	1601–AA02
1187	Enforcement of Nondiscrimination on the Basis of Disability in Department of Homeland Security Programs or Activities	1601–AA03
1188	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance	1601–AA04
1189	Regulations Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance	1601–AA05
1190	Authority of the Secretary of the Department of Homeland Security; Delegations of Authority; Immigration Laws	1601–AA06
1191	Procedures Relating to Awards Under the Equal Access to Justice Act	1601–AA07
1192	Collection of Non-Tax Debts Owed to the Department of Homeland Security	1601–AA08
1193	Right to Financial Privacy	1601–AA09
1194	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace	1601–AA10
1195	Program Fraud Civil Remedies	1601–AA11
1196	Regulations Imposing Restrictions Upon Lobbying	1601–AA12
1197	National Environmental Policy Act Procedures	1601–AA13
1198	Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	1601–AA18

Bureau of Citizenship and Immigration Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1199	Revised Grounds of Inadmissibility; Exceptions and Waivers for Immigrants and Nonimmigrants	1615–AA00
1200	International Matchmaking Organizations	1615–AA11
1201	Special Immigrant Juvenile Petitions	1615–AA15
1202	Immigrant and Nonimmigrant; Religious Workers	1615–AA16
1203	Dismissal of Asylum Application for Unexcused Failure To Appear and Affect on Eligibility for Employment Authorization	1615–AA18
1204	Special Immigrant Status for Certain NATO Civilian Employees	1615–AA21
1205	Adjustment of Status Under the 1966 Cuban Adjustment Act	1615–AA23
1206	Inadmissibility To Enter the United States for Former U.S. Citizens Who Renounced Citizenship To Avoid Taxation	1615–AA32
1207	Implementation of the Numerical Limit on Asylum Grants and Refugee Admissions Based on Resistance to Coercive Population Control Measures	1615–AA37
1208	Intercountry Adoptions	1615–AA43
1209	Waiver of Fees	1615–AA48
1210	Adjustment of Status Under Section 245(k)	1615–AA54
1211	Implementation of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), the American Competitiveness in the Twenty-First Century Act of 2000 (AC21), and Other Related Bills	1615–AA55
1212	Construction Work and the B Nonimmigrant Visa Classification	1615–AA58
1213	Removal and Adjustment Procedures for Victims of Trafficking and Certain Criminal Activities	1615–AA60
1214	Consent To Reapply for Admission After Removal	1615–AA61
1215	Waivers of the Two-Year Foreign Residence Requirement for Certain Exchange Visitors	1615–AA62
1216	Removal of Limitations on Validity Period for Employment Authorization Documents	1615–AA63
1217	Illegal Entries, Unlawful Presence, and Automatic Voiding of Nonimmigrant Visas	1615–AA64
1218	Medical Examination Requirements and Designation of Civil Surgeons	1615–AA65
1219	Medical Grounds of Inadmissibility and Waivers	1615–AA66
1220	New Classification for Victims of Certain Criminal Activity; Eligibility for the U Nonimmigrant Status	1615–AA67
1221	Judicial Review of Decisions of the Secretary of the Department of Homeland Security	1615–AA71
1222	Termination of Lawful Permanant Resident Status Through Abandonment	1615–AA76
1223	Limiting the Use of Duration of Status for Certain F, J, and I Nonimmigrants	1615–AA80
1224	Petitions for Aliens To Perform Temporary Nonagricultural Services or Labor (H–2B)	1615–AA82
1225	Adjustment of the Immigration Benefit Application Fee Schedule To Recover Costs Associated With Additional Security Checks	1615–AA84
1226	Adjustment of the Appeal and Motion Fee To Recover Full Costs	1615–AA88
1227	Changes to Employment Authorization Eligibility for Certain Applicants and to Standards for Determining a Frivolous Asylum Application	1615–AA89

Bureau of Citizenship and Immigration Services—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1228	Implementation of the Agreement Between the Government of Canada and the Government of the United States Regarding Asylum Claims Made at Land Border Ports-of-Entry and Applicability of Other Asylum Ba	1615–AA91
1229	Waiver of Criminal Grounds of Inadmissibility for Immigrants	1615–AA94
1230	Procedures for Checking Juvenile Criminal Records and Submitting Fingerprints of That Additional Class of Aliens Ineligible for Family Unity	1615–AB01
1231	Removal of Standardized Request for Evidence Processing Timeframe	1615–AB13
1232	Criminal Grounds of Inadmissibility, Exceptions and Waivers for Immigrants and Nonimmigrants, Refugees and Asylees	1615–AB15
1233	Establishment of Fee for Processing Genealogical Research Requests	1615–AB19

Bureau of Citizenship and Immigration Services—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1234	Adjustment of Status to That of Person Admitted for Permanent Residence: Conditional Residents and Fiance(e)s	1615–AA02
1235	Petition To Classify Alien as Immediate Relative of a U.S. Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Alien Spouses and Children	1615–AA03
1236	Definition of the Term "Lawfully Present" for Purposes of Eligibility for Public Benefits	1615–AA05
1237	Affidavit of Support on Behalf of Immigrants	1615–AA06
1238	Implementation of Hernandez v. Reno Settlement Agreement; Certain Aliens Eligible for Family Unity Benefits After Sponsoring Family Member's Naturalization	1615–AA09
1239	Adjustment of Status, Continued Validity of Nonimmigrant Status, and Unexpired Employment Authorization for Applicants Maintaining Nonimmigrant H or L Status	1615–AA12
1240	Verification of Eligibility for Public Benefits	1615–AA13
1241	Fingerprinting Applicants and Petitioners for Immigration Benefits; Establishing a Fee for Fingerprinting by the Department of Homeland Security	1615–AA14
1242	Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries	1615–AA17
1243	Regulations Concerning the Convention Against Torture	1615–AA19
1244	Inadmissibility and Deportability on Public Charge Grounds	1615–AA22
1245	Application for Refugee Status; Acceptable Sponsorship Agreement Guaranty of Transportation	1615–AA24
1246	Battered and Abused Conditional Residents; Termination of Marriage by Conditional Residents	1615–AA29
1247	Revoking Grants of Naturalization	1615–AA30
1248	Entry Requirements for Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau	1615–AA31
1249	Registration and Fingerprinting of Aliens in the United States: Control of Employment of Aliens	1615–AA33
1250	National Interest Waivers for Second Preference Employment-Based Immigrant Physicians Serving in Medically Underserved Areas or at Department of Veterans Affairs Facilities	1615–AA34
1251	Petitioning Requirements for the H–1C Nonimmigrant Classification Under Public Law 106–95	1615–AA35
1252	Waiving the Fingerprinting Requirement for Certain Disabled Naturalization Applicants	1615–AA36
1253	Adding Actuaries and Plant Pathologists to the North American Free Trade Agreement	1615–AA38
1254	Employment Authorization for Certificate of Citizenship Applicants	1615–AA39
1255	Adjustment of Status to That of Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility	1615–AA40
1256	Asylum and Withholding Definitions	1615–AA41
1257	Petition To Classify Alien as Immediate Relative of a U.S. Citizen or Preference Immigrant; Adjustment of Status to That of a Person Admitted for Permanent Residence	1615–AA42
1258	Academic Honorarium for B Nonimmigrant Aliens	1615–AA44
1259	Children Born Outside the United States; Applications for Certificate of Citizenship	1615–AA45
1260	Allowing for the Filing of Form I–140 Visa Petition Concurrently With a Form I–485 Application in Certain Circumstances	1615–AA46
1261	Special Immigrant Visa for Fourth Preference Employment-Based Broadcasters	1615–AA47
1262	Establishing Premium Processing Service for Employment-Based Petitions and Applications	1615–AA49
1263	Adjustment of Status for Certain Nationals of Nicaragua, Cuba, and Haiti	1615–AA51
1264	Adjustment to Lawful Resident Status of Certain Class Action Participants Who Entered Before January 1, 1982, Under the Legal Immigration and Family Equity Act (LIFE Act)	1615–AA52
1265	Nonimmigrant Classes; Spouses and Children of Lawful Permanent Residents; V Classification	1615–AA53

Bureau of Citizenship and Immigration Services—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1266	Adjustment of Status for Certain Syrian Nationals Granted Asylum in the United States	1615–AA57
1267	New Classification for Victims of Severe Forms of Trafficking in Persons Eligible for the T Nonimmigrant Status	1615–AA59
1268	Limiting the Period of Admission for B Nonimmigrant Aliens	1615–AA68
1269	Documentary Requirements for Certain Temporary Residents	1615–AA69
1270	Change in Business Practices; Acceptance of Payments of Fees By Credit Card and Other Electronic Means Where Possible	1615–AA70
1271	Adding and Removing Institutions To and From the List of Recognized American Institutions of Research	1615–AA72
1272	Requiring Change of Status From B to F–1 or M–1 Nonimmigrant Prior To Pursuing a Course of Study	1615–AA73
1273	Restructuring the Nonimmigrant Regulations	1615–AA74
1274	Waivers for Nonimmigrants Under Section 212(d)(3)(A) of the Immigration and Nationality Act	1615–AA75
1275	Registration Requirements and Work Authorization Eligibility for Aliens in the United States	1615–AA78
1276	Procedures for Conducting Examinations and Waiving the Oath of Allegiance for Naturalization Applicants With Disabilities	1615–AA81
1277	Electronic Signature on Applications and Petitions for Immigration and Naturalization Benefits	1615–AA83
1278	Withholding of Adjudication	1615–AA86
1279	Validity Period of Approved Form I–600A, Application for Advanced Processing of Orphan Petition	1615–AA87
1280	Implementation of Amendments Affecting Petitions for Employment Creation Aliens	1615–AA90
1281	Certain Benefits Available to Aliens Under the Provisions of the Child Status Protection Act	1615–AA93
1282	Implementation of the Age Out Protections Afforded Under the Child Status Protection Act	1615–AA95
1283	Eliminating the Numerical Cap on Mexican TN Nonimmigrants	1615–AA96
1284	Filing of Proposals for Designation as a Regional Center Approved To Participate in the Immigrant Investor Pilot Program	1615–AB00
1285	Application for Naturalization by Alternative Application if Citizen Parent has Died	1615–AB08
1286	Sunset of Additional $1,000 Filing Fee and Return to 65,000 Annual Limit on H–1B Nonimmigrant Petition Approvals	1615–AB10
1287	Implementation of the Border Commuter Student Act of 2002	1615–AB11
1288	Requiring Completion of Security Checks Before Issuance of Evidence of Alien Registration	1615–AB12
1289	Classification of Certain Scientists of the Commonwealth of Independent States of the Former Soviet Union and the Baltic States as Employment based Immigrants	1615–AB14
1290	Petitioning Requirements for the O and P Nonimmigrant Classifications	1615–AB17

Bureau of Citizenship and Immigration Services—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1291	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements **(Section 610 Review)**	1615–AA01
1292	Temporary Protected Status Notices	1615–AA04
1293	Employment Verification by Employers That Are Members of a Multi-Employer Association	1615–AA07
1294	Limiting Liability for Certain Technical and Procedural Violations of Paperwork Requirements	1615–AA08
1295	Interim Designation of Acceptable Receipts for Employment Eligibility Verification	1615–AA20
1296	Adoption of Siblings, Adopted Alien Children Less Than 18 Years of Age Considered a “Child”	1615–AA50
1297	K Nonimmigrant Classification; Legal Immigration Family Equity Act (LIFE)	1615–AA56
1298	Availability of Material Under Freedom of Information Act and Privacy Act	1615–AB18

Bureau of Citizenship and Immigration Services—Completed Actions

Sequence Number	Title	Regulation Identification Number
1299	Certification of Certain Health Care Workers	1615–AA10
1300	Nonimmigrant Classes: Q–2 Irish Peace Process Cultural and Training Program Visitor	1615–AA25
1301	Clarification of Parole Authority	1615–AA26
1302	Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens	1615–AA27
1303	Requiring Recertification of All Service-Approved Schools for Enrollment in the Student and Exchange Visitor Information System (SEVIS)	1615–AA77

Bureau of Citizenship and Immigration Services—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1304	Reduced Course Load for Certain F and M Nonimmigrant Students at Border Communities	1615–AA79
1305	Denial and Revocation for Approval of School for Attendance by Nonimmigrant Students	1615–AA85
1306	Readjustment of Immigration Benefit Application Fees	1615–AA97
1307	Conditions on Nonimmigrant Status; Disclosure of Information	1615–AA98
1308	Authorizing Suspension of Employment Authorization Requirements on the Basis of Severe Economic Hardship for F–1 Students and Emergent Circumstances	1615–AA99
1309	Temporary Protected Status (TPS) Notices	1615–AB06
1310	Extension of Validity Period of Approved Form I–600A, Application for Advance Processing of Orphan Petitions	1615–AB07
1311	Extension of the Designation of Burundi Under Temporary Protected Status (TPS) Program	1615–AB16

U.S. Coast Guard—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1312	Claims Procedures Under the Oil Pollution Act of 1990 (CGD 91–035)	1625–AA03
1313	Post Casualty Drug and Alcohol Testing (USCG–2001–8773)	1625–AA27
1314	Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (USCG–2001–10486)	1625–AA32
1315	Marine Events: Permit Procedures (USCG–2001–10713)	1625–AA35
1316	Traffic Separation Schemes: In the Strait of Juan De Fuca and Its Approaches; In Puget Sound and Its Approaches; In Haro Strait, Boundary Pass, and in the Strait of Georgia (USCG–2002–12702)	1625–AA48
1317	Protection for Whistleblowers in the Coast Guard (USCG–2002–13016)	1625–AA50
1318	Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking (USCG–2003–14472)	1625–AA63
1319	Administrative Changes To Numbering of Vessels and Reporting of Casualties (USCG–2003–14963)	1625–AA70
1320	Terms Imposed by States on Numbering of Vessels (USCG–2003–15708)	1625–AA75
1321	Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico (CDG08–03–028)	1625–AA76
1322	Commercial Fishing-Industry Vessels (USCG–2003–16158)	1625–AA77

U.S. Coast Guard—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1323	Safety and Security Zone Regulations	1625–AA00
1324	Special Anchorage Areas/Anchorage Grounds Regulations	1625–AA01
1325	Reporting Marine Casualties (USCG–2000–6927)	1625–AA04
1326	State Access to the Oil Spill Liability Trust Fund (CGD 92–014)	1625–AA06
1327	Handling of Explosives or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities (USCG–1998–4302)	1625–AA07
1328	Regatta and Marine Parade Regulations	1625–AA08
1329	Drawbridge Regulations	1625–AA09
1330	Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan (USCG–1998–4623)	1625–AA17
1331	Outer Continental Shelf Activities (USCG–1998–3868)	1625–AA18
1332	Deepwater Ports (USCG–1998–3884)	1625–AA20
1333	Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, Alaska (CGD–1799–002)	1625–AA23
1334	Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions (USCG–2001–8661)	1625–AA26
1335	Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade (USCG–2001–8825)	1625–AA28
1336	Update of Rules on Aids to Navigation Affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys (USCG–2001–10714)	1625–AA34
1337	Rates for Pilotage on the Great Lakes (USCG–2002–11288)	1625–AA38
1338	Notifications of Arrival and Departure in Ports or Places in the United States (USCG–2001–11865)	1625–AA41
1339	Penalties for Nonsubmission of Ballast Water Management Reports (USCG–2002–13147)	1625–AA51
1340	Mandatory Ballast Water Management Program for U.S. Waters (USCG–2003–14273)	1625–AA52
1341	Country of Origin Codes and Revision of Regulations on Hull Identification Numbers (USCG–2003–14272)	1625–AA53

U.S. Coast Guard—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1342	Allowing Alternatives To Incandescent Lights, and Establishing Standards for New Lights, in Private Aids To Navigation (USCG–2000–7466)	1625–AA55
1343	Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels (USCG–2000–6858)	1625–AA57
1344	Rules of Practice, Procedure, and Evidence for Administrative Proceedings of the Coast Guard (USCG 1998–3472)	1625–AA59
1345	Fire-Suppression Systems and Voyage Planning for Towing Vessels (USCG 2000–6931)	1625–AA60
1346	Approval for Experimental Shipboard Installations of Ballast Water Treatment Systems (USCG–2001–9267)	1625–AA66
1347	Civil Monetary Penalties-Adjustments for Inflation (USCG–2003–15486)	1625–AA73

U.S. Coast Guard—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1348	Discharge-Removal Equipment for Vessels Carrying Oil (CGD 90–068)	1625–AA02
1349	Escort Vessels for Certain Tankers (CGD 91–202)	1625–AA05
1350	Escort Vessels in Certain U.S. Waters (CGD 91–202a)	1625–AA10
1351	Regulated Navigation Areas	1625–AA11
1352	Marine Transportation-Related Facility Response Plans for Hazardous Substances (USCG–1999–5705)	1625–AA12
1353	Tank Vessel Response Plans for Hazardous Substances (USCG–1998–4354)	1625–AA13
1354	Numbering of Undocumented Barges (USCG–1998–3798)	1625–AA14
1355	Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978 (CGD 95–062)	1625–AA16
1356	Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil (USCG–1998–3417)	1625–AA19
1357	Commercial Diving Operations (USCG–1998–3786)	1625–AA21
1358	Improvements to Maritime Safety in Puget Sound-Area Waters (USCG–1998–4501)	1625–AA22
1359	Training and Qualifications for Personnel on Passenger Ships (USCG 1999–5610)	1625–AA24
1360	Cargo Securing on Vessels Operating in U.S. Waters (USCG–2000–7080)	1625–AA25
1361	Electronic Chart Display and Information System (ECDIS) (USCG–2001–8826)	1625–AA29
1362	Federal Requirements for Propeller Injury Avoidance Measures (USCG 2001–10163)	1625–AA31
1363	Drawbridge Operations Regulations; Revisions (USCG–2001–10881)	1625–AA36
1364	Alternate Tonnage Convention: Small Passenger Vessels	1625–AA37
1365	Wearing of Personal Flotation Devices by Persons Operating or Riding on Personal Watercraft or Being Towed Behind Recreational Vessels (USCG–2002–11421)	1625–AA40
1366	Identification Credentials for Maritime Security	1625–AA47
1367	Vessel Traffic Service Lower Mississippi River (USCG–1998–4399)	1625–AA58
1368	Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels (USCG–2000–8589)	1625–AA62
1369	Escort Vessels for Certain Tankers-Crash Stop Criteria (USCG–2003–14734)	1625–AA65

U.S. Coast Guard—Completed Actions

Sequence Number	Title	Regulation Identification Number
1370	Licensing and Manning for Officers of Towing Vessels (USCG 1999–6224)	1625–AA15
1371	Territorial Seas, Navigable Waters, and Jurisdiction (USCG–2001–9044)	1625–AA30
1372	Area Maritime Security (USCG–2003–14733)	1625–AA42
1373	Facility Security (USCG–2003–14732)	1625–AA43
1374	Vessel Security (USCG–2003–14749)	1625–AA46
1375	Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico in Viasca Knoll 915 (CGD08–02–045)	1625–AA54
1376	Automatic Identification System; Vessel Carriage Requirement (USCG–2003–14757)	1625–AA67
1377	Outer Continental Shelf Facility Security (USCG–2003–14759)	1625–AA68
1378	Implementation of National Maritime Security Initiatives (USCG–2003–14792)	1625–AA69
1379	Right To Appeal; Director, Great Lakes Pilotage (USCG–2003–15137)	1625–AA71
1380	Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico in Mississippi Canyon 243	1625–AA72

U.S. Coast Guard—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1381	Basic Rates and Charges on Lake Erie and the Navigable Waters From Southwest Shoal to Port Huron, MI (USCG–2002–12840)	1625–AA74

Bureau of Customs and Border Protection—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1382	Inspection of Persons Applying for Admission; International-to-International User Fee	1651–AA03
1383	Documentary Requirements for Returning Residents	1651–AA09
1384	Contracts With Transportation Lines	1651–AA10
1385	Imposition of Fines for Violations of the Immigration and Nationality Act	1651–AA12
1386	Adjustment of Fees for Dedicated Commuter Lanes and Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) Programs at Land Border Ports of Entry	1651–AA16
1387	Visa Waiver Program: Guam Visa Waiver Program	1651–AA17
1388	Examination of In-Transit Mail Shipments	1651–AA34
1389	Advance Notice Requirements for Aircraft Landings and Arrivals; Revisions to the Private Aircraft Overflight Program	1651–AA41
1390	Prior Disclosure and Lost Duty or Revenue Demands When Penalty Claim Not Issued	1651–AA42
1391	Manifest Discrepancy Reports	1651–AA45
1392	Publication of Administrative Forfeiture Notices	1651–AA48

Bureau of Customs and Border Protection—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1393	Fees for Participation in Dedicated Commuter Lanes at Selected Ports of Entry; Collection of Fees Under the Dedicated Commuter Lane Program	1651–AA01
1394	Suspension of Privilege To Transport Aliens to the United States	1651–AA05
1395	Establishment of Preinspected Automated Lane (PAL) Program	1651–AA06
1396	Amendment of the Regulatory Definition of Arriving Alien	1651–AA07
1397	Elimination of Immigration and Naturalization Service-Issued Mexican and Canadian Border Crossing Cards	1651–AA08
1398	Extension of 25-Mile Limit at Select Arizona Ports-of-Entry	1651–AA11
1399	Expansion of Dedicated Commuter Lanes; Clarification of Driver's License Requirement for Applicants to Dedicated Commuter Lanes and Automated Permit Port Programs	1651–AA13
1400	Update of List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1651–AA14
1401	Adding Colombia to the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1651–AA15
1402	Removing Russia From the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1651–AA18
1403	Removal of Visa and Passport Waiver for Certain Permanent Residents of Canada and Bermuda	1651–AA23
1404	Posting of Security Guard at Gangway of Vessel for Detaining Alien Crewman	1651–AA24
1405	Electronic Arrival-Departure Manifest for Visa Waiver Program	1651–AA25
1406	Removing Indonesia and Malaysia from the Guam Visa Waiver Program	1651–AA26
1407	Automated Inspection Services-Extension of Enrollment Period	1651–AA27
1408	Nonimmigrant Visa Exemption for Nationals of the British Virgin Islands Entering the United States Through St. Thomas, U.S. Virgin Islands	1651–AA29
1409	Patent Surveys	1651–AA36
1410	Passenger and Crew Manifests For Arriving and Departing Vessels and Aircraft	1651–AA37
1411	Access to Customs Security Areas at Airports	1651–AA38
1412	Conditional Release Period and Customs Bond Obligations For Food, Drugs, Devices, and Cosmetics	1651–AA39
1413	Passenger Name Record Information Required For Passengers on Flights in Foreign Air Transportation to or From the United States	1651–AA40
1414	Customs Broker License Examination Dates	1651–AA46
1415	Confidentiality of Commercial Information	1651–AA47

Bureau of Customs and Border Protection—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1416	Required Advance Electronic Presentation of Cargo Information	1651–AA49
1417	Suspension of Immediate and Continuous Transit Agreements	1651–AA50

Bureau of Customs and Border Protection—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1418	Visa Waiver Program	1651–AA00
1419	Establishing Criteria for Determining Countries Whose Citizens Are Ineligible for the Transit Without Visa (TWOV) Program	1651–AA02
1420	Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings	1651–AA04
1421	Restricting Citizens of Bangladesh, India, Pakistan, and Sri Lanka From Participation in the International-to-International (ITI) Program	1651–AA19
1422	Allowing Citizens and Nationals of the People's Republic of China Limited Transit Without Visa (TWOV) Privileges at TWOV-Designated Alaska International Airports	1651–AA20
1423	Limiting the Number of Transit Without Visa (TWOV) Stops in the United States to One	1651–AA22
1424	Adding Georgia to the List of Countries Whose Citizens or Nationals are Ineligible for Transit Without Visa (TWOV) Privileges to the U.S. Under the TWOV Program	1651–AA28
1425	Designated Land Border Crossing Locations for Certain Conveyances	1651–AA32
1426	Simplification of In-Transit Truck Shipments Between Canada and the United States	1651–AA33
1427	Procedures Governing the Border Release Advanced Screening and Selectivity (BRASS) Program	1651–AA35

Bureau of Customs and Border Protection—Completed Actions

Sequence Number	Title	Regulation Identification Number
1428	Carrier Arrival and Departure Electronic Manifest Requirements	1651–AA21
1429	Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made at Land Border Ports of Entry	1651–AA31
1430	Performance of Customs Business by Parent and Subsidiary Corporations	1651–AA43
1431	Confidentiality Protection for Vessel Cargo Manifest Information	1651–AA44
1432	Delegations of Authority: Signature of Customs and Border Protection Regulations Published in the Federal Register	1651–AA52
1433	Tonnage Duties-Revised Amounts	1651–AA53

Transportation Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1434	Background Checks for Airport Workers	1652–AA06
1435	Investigative and Enforcement Procedures	1652–AA07
1436	General Rulemaking Procedures	1652–AA18
1437	Administrative Claims Under the Federal Tort Claims Act	1652–AA19
1438	Marine Vessel Security Standards—Prohibited Items	1652–AA22
1439	Aviation Security-All-Cargo Security Rules	1652–AA23
1440	Federal Flight Deck Officer Program	1652–AA24
1441	Vulnerability Self-Assessments	1652–AA30
1442	Container Security for Maritime and Intermodal Shipments	1652–AA31
1443	CAPPS II-Access to Passenger Reservation Information	1652–AA32
1444	Fees for Security Threat Assessments on Hazmat Drivers	1652–AA33

Transportation Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1445	Imposition and Collection of Passenger Civil Aviation Security Service Fees	1652–AA00
1446	Aviation Security Infrastructure Fees	1652–AA01
1447	Civil Aviation Security Rules	1652–AA02
1448	Security Programs for Aircraft Weighing 12,500 Pounds or More	1652–AA03
1449	Protection of Sensitive Security Information	1652–AA08
1450	Security Compliance Program for Aircraft Operators	1652–AA09
1451	Security Compliance Program for Airports	1652–AA10
1452	Criminal History Records Checks	1652–AA11
1453	Threat Assessments Regarding Citizens of the United States Who Hold or Apply for FAA Certificates	1652–AA12
1454	Threat Assessments Regarding Alien Holders of, and Applicants for, FAA Certificates	1652–AA15
1455	Transportation of Explosives From Canada to the United States via Commercial Motor Vehicle and Railroad Carrier	1652–AA16
1456	Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License	1652–AA17
1457	Maritime and Land Security Directives and Information Circulars	1652–AA26
1458	Maritime Transportation Security Act: Background Checks for Maritime Workers	1652–AA27
1459	Privacy Act of 1974: Implementation of Exemption	1652–AA28
1460	Temporary Suspension of the September 11th Security Fee and the Aviation Security Infrastructure Fee	1652–AA29

Transportation Security Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1461	Private Charter Security Rules	1652–AA04

Transportation Security Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1462	Transportation Security Administration Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes	1652–AA20
1463	Security Threat Assessments for Individuals Who Handle Hazardous Materials in Rail Transportation	1652–AA21

Bureau of Immigration and Customs Enforcement—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1464	Nonimmigrant Classes; S Classification; Law Enforcement Initiatives; Alien Witnesses	1653–AA00
1465	Use of Parole for Humanitarian Reasons or Significant Public Benefit	1653–AA04
1466	Strengthening Control Over Immigration Surety Bonds	1653–AA16
1467	Interest Payments on Cancelled Cash Bonds	1653–AA20
1468	Denial and Revocation for Approval of School for Attendance by Nonimmigrant Students	1653–AA33

Bureau of Immigration and Customs Enforcement—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1469	Agreement Promising Non-Deportation or Other Immigration Benefits	1653–AA02
1470	Requiring Aliens Ordered Removed From the United States To Surrender to the Department of Homeland Security for Removal	1653–AA05
1471	Early Release for Removal of Criminal Aliens in State Custody for Nonviolent Offenses	1653–AA06

Bureau of Immigration and Customs Enforcement—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1472	Power of Secretary of the Department of Homeland Security to Terminate Deportation Proceedings and Initiate Removal Proceedings	1653–AA08
1473	Protection and Assistance for Victims of Trafficking	1653–AA09
1474	Detention of Aliens Subject to Final Orders of Removal	1653–AA13
1475	Custody Procedures	1653–AA14
1476	Address Notification To Be Filed With Designated Applications	1653–AA15
1477	Abbreviation or Waiver of Training for State or Local Law Enforcement Officers Authorized to Enforce Immigration Law During a Mass Influx of Aliens	1653–AA18
1478	Processing, Detention, and Release of Juveniles	1653–AA22
1479	Authorizing Collection of Fee Levied on F, J, and M Nonimmigrant Classifications Under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)	1653–AA23
1480	Revision of the Regulations Concerning F, J, and M Nonimmigrant Classifications	1653–AA24
1481	Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens	1653–AA30
1482	Requiring Recertification of All Service-Approved Schools for Enrollment in the Student and Exchange Visitor Information System (SEVIS)	1653–AA31
1483	Reduced Course Load for Certain F and M Nonimmigrant Students at Border Communities	1653–AA32
1484	Authorizing Suspension of Employment Authorization Requirements on the Basis of Severe Economic Hardship for F–1 Students and Emergent Circumstances	1653–AA34

Bureau of Immigration and Customs Enforcement—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1485	Employer Sanctions Modifications	1653–AA01
1486	Increasing the Number of Officers Authorized To Issue Notices To Appear and Arrest Warrants for Immigration Violations	1653–AA10
1487	Procedures for Detainee Hunger Strikes	1653–AA12

Bureau of Immigration and Customs Enforcement—Completed Actions

Sequence Number	Title	Regulation Identification Number
1488	Filing Factual Statements About Alien Prostitutes	1653–AA03
1489	Expansion of Expedited Removal of Certain Criminal Aliens Held in Federal, State, and Local Jails	1653–AA07
1490	Definitions of "Notice To Appear" and "Arrest Warrant"	1653–AA11
1491	Establishing San Bernardino, Santa Ana, and Ventura Suboffices Under the Jurisdiction of the Los Angeles District Office	1653–AA17
1492	Authority of the Secretary of Homeland Security; Parole Authority	1653–AA25
1493	Powers and Authority of Officers and Employees and Revisions to the Internal Review Process for Alleged Violations of the Standards for Enforcement Activities	1653–AA26

Directorate for Emergency Preparedness and Response—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1494	Disaster Assistance; Fire Management Assistance Grant Program	1660–AA26
1495	National Flood Insurance Program (NFIP); State Renewal of Group Flood Insurance Policy (GFIP)	1660–AA27
1496	National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers	1660–AA28

Directorate for Emergency Preparedness and Response—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1497	National Urban Search and Rescue Response System	1660–AA07
1498	Governmentwide Debarment and Suspension (Nonprocurement)	1660–AA13
1499	Hazard Mitigation Planning and Hazard Mitigation Grant Program	1660–AA17
1500	National Flood Insurance Program (NFIP); Group Flood Insurance Policy (GFIP)	1660–AA22
1501	National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers; Extension of Term of Arrangement	1660–AA29

Directorate for Emergency Preparedness and Response—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1502	Flood Mitigation Assistance Program	1660–AA00
1503	Criminal and Civil Penalties Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act	1660–AA01
1504	Disaster Assistance; Hazard Mitigation Grant Program	1660–AA02
1505	Debt Collection	1660–AA05
1506	National Flood Insurance Program (NFIP); Insurance Coverage and Rates	1660–AA09
1507	Organizational Units, Functions, and Delegations of Authority	1660–AA10
1508	Disaster Assistance; Federal Assistance to Individuals and Households	1660–AA18
1509	Disaster Assistance Definitions; Statutory Change	1660–AA19
1510	Management Costs	1660–AA21
1511	Disaster Assistance; Crisis Counseling Regular Program; Amendment to Regulation	1660–AA23

Directorate for Emergency Preparedness and Response—Completed Actions

Sequence Number	Title	Regulation Identification Number
1512	Administration of Grants: Audits of States, Local Governments, and Nonprofit Organizations	1660–AA08
1513	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	1660–AA12
1514	National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities	1660–AA14
1515	Disaster Assistance; Public Assistance Program and Community Disaster Loan Program Statutory Changes	1660–AA15

Office of the Undersecretary for Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
1516	Availability of Material Under Freedom of Information Act and Privacy Act	1680–AA00
1517	Establishment of Fee for Processing Genealogical Research Requests	1680–AA01

Department of Homeland Security (DHS)
Office of the Secretary (OS)

Proposed Rule Stage

1180. PROCEDURES FOR HANDLING CRITICAL INFRASTRUCTURE INFORMATION

Priority: Other Significant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC ch 1, sec 301

CFR Citation: 6 CFR 29

Legal Deadline: None

Abstract: This notice of proposed rulemaking establishes the procedures necessary to fulfill the provisions of section 214(e) of the Critical Infrastructure Information (CII) Act of 2002. This regulation establishes uniform procedures for the receipt, care, and storage of CII voluntarily submitted to the Federal Government. These procedures apply to all Federal agencies that receive, care for, or store CII voluntarily submitted to the Federal Government pursuant to the CII Act of 2002 (6 U.S.C. 214). In addition, these procedures apply to United States

Government contractors, to foreign, State, and local governments, and Government authorities, pursuant to their express agreements.

Timetable:

Action	Date	FR Cite
NPRM	04/15/03	68 FR 18524
NPRM Comment Period End	12/00/03	
Interim Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Janice Pesyna, Attorney, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
Phone: 202 772–4496
Fax: 202 772–9728
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RIN: 1601–AA14

1181. • SUPPLEMENTAL STANDARDS OF CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOMELAND SECURITY

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 CFR 2625.105

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This regulation will focus on establishing Departmental rules for employees wishing to pursue outside employment or participate as an officer or director of non-Governmental organizations. This regulation will replace the existing regulations of agencies that were incorporated into DHS that have continued to apply to those employees whose duties and organizational structure have remained largely unchanged after their incorporation, as well as to establish any other necessary rules.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robert E. Coyle, (Acting) Legal Advisor for Ethics, Department of Homeland Security, Washington, DC 20528
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RIN: 1601–AA17

Department of Homeland Security (DHS) Final Rule Stage
Office of the Secretary (OS)

1182. FREEDOM OF INFORMATION ACT AND PRIVACY ACT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; 5 USC 552; 5 USC 552a

CFR Citation: 6 CFR ch 1, sec 5

Legal Deadline: None

Abstract: This action establishes procedures for the Department of Homeland Security, Office of the Secretary, necessary to implement the Freedom of Information Act (5 U.S.C. 552) (FOIA) and the Privacy Act (5 U.S.C. 552a) (Privacy Act). Except to the extent a Department component has adopted separate guidance under FOIA or the Privacy Act, the provisions of this subpart shall apply to each component of the Department. FOIA provides for the full disclosure of agency records and information to the public unless that information is exempted under clearly delineated statutory language. The Privacy Act serves to safeguard public interest in informational privacy by delineating the duties and responsibilities of Federal agencies that collect, store, and disseminate personal information about individuals. The procedures established here ensure that the Department fully satisfies its responsibility to the public to disclose departmental information while simultaneously safeguarding individual privacy. The Privacy Act serves to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from Federal agencies' collection, maintenance, use, and disclosure of personal information about them. Agencies are required to issue regulations outlining the agency's rules and procedures for implementation of the Privacy Act and its provisions in the agency. This includes procedures on how individuals may request access to information about themselves, request amendment or correction of those records, and request an accounting of disclosures of their records by the Department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/27/03	68 FR 4056
Interim Final Rule Comment Period End	02/28/03	
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1601–AA00

1183. PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN CONNECTION WITH LEGAL PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; 5 USC 552; 5 USC 552a

CFR Citation: 6 CFR ch 1, sec 5

Legal Deadline: None

Abstract: This action establishes procedures governing the disclosure of information in connection with litigation and certain other types of proceedings.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/27/03	68 FR 4070
Interim Final Rule Comment Period End	02/28/03	
Modification of Interim Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1601–AA01

1184. • REGULATIONS IMPLEMENTING THE SUPPORT ANTITERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 6 CFR 25

Legal Deadline: None

Abstract: This proposed rule would implement subtitle G of title VIII of the Homeland Security Act of 2002–the Support of Antiterrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act). As discussed in the SAFETY Act, through regulations promulgated by the Department of Homeland Security (the Department), will provide critical incentives for the development and deployment of antiterrorism technologies by providing liability protections for Sellers of "qualified antiterrorism technologies" and others.

Timetable:

Action	Date	FR Cite
NPRM	07/11/03	68 FR 41419
NPRM Comment Period End	08/11/03	
Interim Final Rule	10/16/03	68 FR 59683
Interim Final Rule Comment Period End	12/15/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Wendy Howe, Directorate of Science and Technology, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
Phone: 202 772–9887

RIN: 1601–AA15

1185. • HOMELAND SECURITY ACQUISITION REGULATION (HSAR)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 41 USC 418b (a) and (b)

CFR Citation: 48 CFR chapter 30

Legal Deadline: None

Abstract: DHS is proposing to issue the Department of Homeland Security Acquisition Regulation (HSAR) as authorized by 41 U.S.C. 418b. The HSAR is intended as regulatory guidance. This interim rule provides basic policies and general information about the Department of Homeland Security acquisition regulation system and its sub-organizations, including applicability, codification, deviations, contracting authority, and a Board of Contract Appeals designation for DHS. The HSAR reflects recent changes to the Federal Acquisition Regulation (FAR) and it establishes and encourages participation in the DHS Mentor—Protégé Programs. This rulemaking implements uniform policy and contract clauses for agency-specific procurement authorities established by the Homeland Security Act of 2002, Public Law 107–296.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	
Interim Final Rule Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathy Strouss, Department of Homeland Security, Office of the Chief of Procurement, Washington, DC 20528
Phone: 202 205–0141

RIN: 1601–AA16

Department of Homeland Security (DHS)
Office of the Secretary (OS)

Long-Term Actions

1186. CLASSIFIED NATIONAL SECURITY INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; EO 12958; EO 13142; 3 CFR ch 1

CFR Citation: 6 CFR ch 1, sec 7

Legal Deadline: None

Abstract: This interim final rule establishes initial procedures necessary for DHS to fulfill its obligations under Executive Order 12958, as amended, regarding classified national security information. Executive Order 12958, as amended, was issued to update and revise the standards and processes for classifying, safeguarding, and declassifying classified national security information. The rule delegates to the Undersecretary for Information Analysis and Infrastructure Protection responsibility for developing the vast majority of information and internal operating instructions on classified information.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/27/03	68 FR 4073
Interim Final Rule Comment Period End	02/28/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 1601–AA02

1187. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN DEPARTMENT OF HOMELAND SECURITY PROGRAMS OR ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; 29 USC 794

CFR Citation: 6 CFR ch 1, sec 15

Legal Deadline: None

Abstract: This interim final rule establishes for the Department of Homeland Security the necessary procedures for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Department. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. Although this is a policy rule, the Department will examine any impact upon individuals that this policy may create.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/06/03	68 FR 10886
Interim Final Rule Comment Period End	04/06/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Mitrano, Office of Civil Rights/General Law, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA03

1188. NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; 20 USC 1681 to 1683; 20 USC 1685 to 1688

CFR Citation: 6 CFR ch 1, sec 17

Legal Deadline: None

Abstract: This action establishes for the Department of Homeland Security the necessary procedures for effectuating title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these title IX regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/06/03	68 FR 10892
Interim Final Rule Comment Period End	04/06/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Mitrano, Office of Civil Rights/General Law, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA04

1189. REGULATIONS REGARDING NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 310; 42 USC 2000d to 2000d–7

CFR Citation: 6 CFR ch 1, sec 21

Legal Deadline: None

Abstract: This action effectuates the provisions of title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Homeland Security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/06/03	68 FR 10904
Interim Final Rule Comment Period End	04/06/03	
Modification of Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Mitrano, Office of Civil Rights/General Law, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA05

1190. AUTHORITY OF THE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY; DELEGATIONS OF AUTHORITY; IMMIGRATION LAWS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; 8 USC 1101; 8 USC 1103

CFR Citation: 8 CFR ch 1, sec 1; 8 CFR ch 1, sec 2; 8 CFR ch 1, sec 103; 8 CFR ch 1, sec 239

Legal Deadline: None

Abstract: This action amends certain regulations relating to the administration and enforcement of the immigration laws to reflect the authority of the Secretary of the Department of Homeland Security (DHS), and to address delegation of that authority within the Department, as a result of the March 1, 2003, transfer of the Immigration and Naturalization Service of the Department of Justice to DHS.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/06/03	68 FR 10922
Interim Final Rule Comment Period End	04/06/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 1601–AA06

1191. PROCEDURES RELATING TO AWARDS UNDER THE EQUAL ACCESS TO JUSTICE ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; 5 USC 504(c)(1)

CFR Citation: 6 CFR ch 1, sec 13

Legal Deadline: None

Abstract: This action implements the provisions of the Equal Access to Justice Act, which provides for the award of attorney fees and other expenses to eligible individuals, and entities who are parties to certain administrative proceedings before agencies of the Federal Government, including Department of Homeland Security (DHS). The purpose of these rules is to establish procedures for the submission and consideration of applications for awards before DHS.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Mitrano, Office of Civil Rights/General Law, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA07

1192. COLLECTION OF NON-TAX DEBTS OWED TO THE DEPARTMENT OF HOMELAND SECURITY

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; 5 USC 5514; 26 USC 6402; 31 USC 3701; 31 USC 3711; 31 USC 3716 to 3718; 31 USC 3720A; 31 USC 3720B; 31 USC 3720D

CFR Citation: 6 CFR ch 1, sec 23

Legal Deadline: None

Abstract: This interim final rule implements the Department of Homeland Security's (DHS) debt collection regulations to conform to the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (October 25, 1982), as amended by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996), the Federal Claims Collection Standards, 31 CFR chapter IX (parts 900 through 904), and other laws applicable to the collection of non-tax debt owed to the Government. This regulation provides procedures for the collection of non-tax debts owed to DHS entities.

DHS adopts the Governmentwide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS), as revised on November 22, 2000 (65 FR 70390), and supplements the FCCS by prescribing procedures consistent with the FCCS, as necessary and appropriate for DHS operations. DHS entities may, but are not required to, promulgate additional policies and procedures consistent with this regulation, the FCCS, and other applicable Federal laws, policies, and procedures. This regulation also provides the procedures for the collection of debts owed to other Federal agencies when a request for offset is received by DHS.

This regulation does not apply to the collection of tax debts, which is governed by the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.), and regulations, policies, and procedures issued by the Internal Revenue Service or other Federal agency collecting tax debts.

Nothing in this regulation precludes the use of collection remedies not contained in this regulation. For example, DHS entities may collect unused travel advances through setoff of an employee's pay under 5 U.S.C. 5705. DHS entities and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Mitrano, Office of Civil Rights/General Law, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA08

1193. RIGHT TO FINANCIAL PRIVACY

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 3012 USC 3401 et seq, Right to Financial Privacy Act of 1978

CFR Citation: 6 CFR ch 1, sec 25

Legal Deadline: None

Abstract: This regulation establishes procedures for requesting information under the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.). The Act provides for the protection of financial records and information from disclosure by financial institutions. Under certain limited circumstances and procedures, the Act permits law enforcement agencies to request financial records from the holding financial institution. These proposed provisions will authorize Departmental units to request such information under the formal request procedure established by section 1108 of the Act.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 1601–AA09

1194. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; PL 100–690; 41 USC 701

CFR Citation: 6 CFR ch 1, sec 27

Legal Deadline: None

Abstract: This action establishes new procedures under Executive Order 12549, signed February 18, 1986, and Executive Order 12689, signed August 16, 1989. This regulation is similar to rules of other Federal agencies as part of a uniform system of nonprocurement debarment and suspension. The rules are intended to prevent waste, fraud, and abuse, in Federal nonprocurement transactions.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Mitrano, Office of Civil Rights/General Law, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA10

1195. PROGRAM FRAUD CIVIL REMEDIES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 Stat 2135; 5 USC 301; 31 USC 3801 to 3812

CFR Citation: 6 CFR ch 1, sec 19

Legal Deadline: None

Abstract: This action implements the Program Fraud Civil Remedies Act of 1986, which is codified at 31 U.S.C. 3801–3812. This Act imposes through administrative adjudication, civil penalties, and assessments against certain persons making false claims or statements.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Mitrano, Office of Civil Rights/General Law, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA11

1196. REGULATIONS IMPOSING RESTRICTIONS UPON LOBBYING

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296, 116 stat 2135; 5 USC 301; 31 USC 1352, PL 101–121

CFR Citation: 6 CFR ch 1, sec 9

Legal Deadline: None

Abstract: This interim final rule establishes those procedures necessary to fulfill departmental obligations to impose restrictions upon lobbying. Except to the extent a Department component has adopted separate guidance under 31 U.S.C. 1352, the provisions of this subpart shall apply to each component of the Department of Homeland Security (DHS).

This regulation establishes procedures concerning general prohibitions on lobbying, and the use of certain appropriated funds and the appropriate penalties for violations of those prohibitions. The purpose of the procedures is to ensure that neither the recipients of appropriated funds nor the employees of DHS inappropriately solicit for action by the Congress.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/06/03	68 FR 10912
Interim Final Rule Comment Period End	04/06/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robert E. Coyle, (Acting) Legal Advisor for Ethics, Department of Homeland Security, Washington, DC 20528
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RIN: 1601–AA12

1197. NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107–296; 5 USC 301; 42 USC 4321 et seq; 40 CFR 1500 to 1508; EO 12114; EO 12898

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, December 1, 2003, Final.

Abstract: The purpose of this action is to establish the procedures that the Department of Homeland Security (DHS) shall use to comply with section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4332(2)); the Council on Environmental Quality's (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," dated January 4, 1979; and Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," dated February 11, 1994. This publication is to be used in conjunction with the CEQ regulations.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Cathy Mitrano, Office of Civil Rights/General Law, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA13

1198. • UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 31 USC 503; 31 USC 1111; 41 USC 405; Reorganization Plan No. 2 of 1970; EO 11541

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department of Homeland Security is proposing to issue regulations in compliance with requirements and responsibilities of Federal agencies as stipulated under OMB Circular A–110. Federal agencies responsible for awarding and administering grants and other agreements to institutions of higher education, hospitals, and other nonprofit organizations shall adopt the language in the Circular, unless different provisions are required by Federal statute or codified program regulation.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Van Pace, Department of Homeland Security, Office of the Secretary, Washington, DC 20528
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RIN: 1601–AA18

Department of Homeland Security (DHS)
Bureau of Citizenship and Immigration Services (BCIS)
Proposed Rule Stage

1199. REVISED GROUNDS OF INADMISSIBILITY; EXCEPTIONS AND WAIVERS FOR IMMIGRANTS AND NONIMMIGRANTS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 5 USC 552; 8 USC 1158 to 1160; 8 USC 1182 to 1184; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1157

CFR Citation: 8 CFR 103; 8 CFR 207; 8 CFR 208; 8 CFR 210; 8 CFR 212; 8 CFR 240; 8 CFR 241; 8 CFR 245; 8 CFR 245a; 8 CFR 249; 8 CFR 274a; 8 CFR 299; . . .

Legal Deadline: None

Abstract: This rulemaking covers several grounds of inadmissibility applicable to those aliens seeking admission to the United States temporarily or permanently-criminal, security, labor certification, licensure requirements for foreign medical graduates and health care workers, failure to attend a removal proceeding, fraud, improperly issued immigrant visa, permanent ineligibility for U.S. citizenship and miscellaneous grounds. It implements several pieces of legislation. The most significant is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), signed on September 30, 1996, which substantially revised most grounds of inadmissibility under section 212 of the Act and the waivers available to both immigrants and nonimmigrants.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: CIS No. 1413–92

Transferred from RIN 1115–AB45

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA00

1200. INTERNATIONAL MATCHMAKING ORGANIZATIONS

Priority: Other Significant

Legal Authority: 8 USC 1375; PL 104–208

CFR Citation: 8 CFR 207; 28 CFR 68

Legal Deadline: None

Abstract: This rule requires international matchmaking organizations doing business in the United States to provide certain immigration information to any person recruited for matchmaking through these entities. This provision implements section 652 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208.

Timetable:

Action	Date	FR Cite
ANPRM (CIS No. 1838–97)	07/16/97	62 FR 38041
ANPRM Comment Period End	09/15/97	
NPRM (CIS No. 1838–97)	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: CIS No. 1838–97

Transferred from RIN 1115–AE77

Agency Contact: Laura M. Dawkins, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA11

1201. SPECIAL IMMIGRANT JUVENILE PETITIONS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Department proposes to amend its regulations to add eligibility and consent requirements for approvals of special immigrant juvenile petitions (Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant). The proposed rule would require petitioners for special immigrant juvenile classification to demonstrate that a dependency order relating to the juvenile beneficiary (juvenile) was granted on account of abuse, neglect, or abandonment and establish that a court has determined that the juvenile should not be returned to the home country. The proposed rule would also provide that a dependency order may not serve as a precondition to the approval of the petition unless the Attorney General gives his express consent. These changes are necessary to conform the regulations to the statutory eligibility changes made by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1948–98

Transferred from RIN 1115–AF11

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA15

1202. IMMIGRANT AND NONIMMIGRANT; RELIGIOUS WORKERS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: On June 8, 1995, at 60 FR 29751, the Department published a final rule that provided that all persons, other than ministers, immigrating to the U.S. as religious workers must immigrate or adjust status to permanent residence before October 1, 1997. By statute this special immigrant category for religious workers expired on October 1, 2000. Congress extended the category again for an additional three years, until October 1, 2003. This regulation will implement the extension of this category and modify qualifying employment experience requirements for those persons affected by this provision of immigration regulations. In order to maintain consistency in the adjudication of nonimmigrant and special immigrant religious worker classifications, the nonimmigrant religious workers classification will, where appropriate, reflect the special immigration religious worker changes.

Timetable:

Action	Date	FR Cite
NPRM (CIS No. 1436–94)	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1436–94

Transferred from RIN 1115–AF12

Agency Contact: Irene Hoffman, Adjudications Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Suite 3040, 425 I Street NW., Washington, DC 20536
Phone: 202 353–3365

RIN: 1615–AA16

1203. DISMISSAL OF ASYLUM APPLICATION FOR UNEXCUSED FAILURE TO APPEAR AND AFFECT ON ELIGIBILITY FOR EMPLOYMENT AUTHORIZATION

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2; 8 USC 1101; 8 USC 1329a

CFR Citation: 8 CFR 208; 8 CFR 274a

Legal Deadline: None

Abstract: On December 6, 2000, the Department published a final rule to implement the asylum provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rule proposes to amend the current rule to clarify that dismissal of an asylum application will result in ineligibility for asylum-based employment authorization.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2011–99

Transferred from RIN 1115–AF38

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 3rd Floor, 111 Massachusetts Avenue NW., Washington, DC 20536
Phone: 202 305–2663

RIN: 1615–AA18

1204. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO CIVILIAN EMPLOYEES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154

CFR Citation: 8 CFR 204; 8 CFR 214; 8 CFR 245; 8 CFR 274

Legal Deadline: None

Abstract: This rule amends Department regulations by establishing procedures for certain North Atlantic Treaty Organization (NATO) civilian employees and their family members to receive special immigrant status in the United States and become lawful permanent residents of this country. This rule also offers nonimmigrant status to any parent or child of a NATO civilian employee who has been granted special immigrant status. This rule is intended to ensure the qualifying NATO employees and their family members are aware of their opportunity to acquire special immigrant status and adjustment of status or otherwise obtain corresponding nonimmigrant status.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1984–99

Transferred from RIN 1115–AF44

Agency Contact: Donna Crump, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 353–8177

RIN: 1615–AA21

1205. ADJUSTMENT OF STATUS UNDER THE 1966 CUBAN ADJUSTMENT ACT

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255; PL 105–100, sec 202; ...

CFR Citation: 8 CFR 245

Legal Deadline: None

Abstract: This interim rule specifies what effect an alien's arrival in the United States at a place other than an open port of entry will have on the alien's ability to obtain permanent residence under section 1 of the Cuban Adjustment Act of 1966, as amended. This rule is necessary to establish uniform rules relating to both the alien's eligibility for this relief and to the proper exercise of the discretion to grant or deny this relief.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1115–AF48

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754
Email: michael.valverde@usdoj.gov

RIN: 1615–AA23

1206. INADMISSIBILITY TO ENTER THE UNITED STATES FOR FORMER U.S. CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION

Priority: Other Significant

Legal Authority: 8 USC 1182(a)(10); PL 104–208

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends Department regulations by establishing procedures to be followed by DHS personnel and Department of State personnel in determining whether or not an expatriate alien is inadmissible to the United States under section 212(a)(10)(E) of the Immigration and Nationality Act. This ground of inadmissibility relates to former U.S. citizens who renounced U.S. citizenship on or after September 30, 1996, and the Secretary has determined that such renunciation was done for the purpose of avoiding taxation by the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2039–99

Transferred from RIN 1115–AF69

Agency Contact: Mark Rouse, Assistant Director, Office of Adjudications, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA32

1207. IMPLEMENTATION OF THE NUMERICAL LIMIT ON ASYLUM GRANTS AND REFUGEE ADMISSIONS BASED ON RESISTANCE TO COERCIVE POPULATION CONTROL MEASURES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1157; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

CFR Citation: 8 CFR 208; 8 CFR 274a

Legal Deadline: None

Abstract: Section 601(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that, for any fiscal year, not more than a total of 1,000 refugees may be admitted or granted asylum based solely on resistance to coercive population control measures. This rule authorizes the Department of Homeland Security and the Executive Office for Immigration Review to make conditional grants of asylum in those cases in which an applicant is found to merit asylum solely on the basis of resistance to coercive population control measures and establishes a mechanism for converting no more than 1,000 conditional grants per fiscal year to final asylum grants. The rule also establishes procedures for administering a waiting list in those years that the number of conditional grants exceeds the statutory limit for final grants, reserves a certain number of authorization numbers for purposes of refugee admission, and addresses procedures for administering derivative conditional grants, terminating conditional grants, and other procedures specific to this rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2067–00

Transferred from RIN 1115–AF84

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Homeland Security, Bureau of

Citizenship and Immigration Services,
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NW., Washington, DC 20536
Phone: 202 305–2663

RIN: 1615–AA37

1208. INTERCOUNTRY ADOPTIONS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Department proposes to amend its regulations regarding the immigration of children of foreign states adopted by United States citizens. The proposed rule would establish a new definition of child to include children adopted from countries that have implemented the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The proposed rule would also change evidentiary requirements for the immigration of adopted children to state that a certificate of adoption or custody issued by the Secretary of State of the United States is conclusive evidence of the relationship between an adoptive parent and the adoptive child. These changes are necessary to conform the regulations to the Intercountry Adoption Act of 2000 (IAA) (Pub. L. 106–279). The proposed rule would also make other technical changes.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2098–00.

Transferred from RIN 1115–AF96

Agency Contact: Steven Heller, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Suite 3214, 425 I Street NW., Washington, DC 20536
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Email: steve.heller@dhs.gov

RIN: 1615–AA43

1209. WAIVER OF FEES

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252; 8 USC 1252(b); 8 USC 1252(note); 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103; 8 CFR 244

Legal Deadline: None

Abstract: This rule proposes to amend Department regulations concerning the adjudication of requests for fee waivers filed by applicants for DHS benefits pursuant to 8 CFR 103.7(c). This applies to a waiver of fees by an immigration judge for benefit applications, petitions, appeals, motions, or requests in any case when an alien substantiates that they cannot pay the fee. When implemented, this rule will facilitate the adjudication of these requests. This rule also proposes to amend 8 CFR 244.20, which is a waiver of fees for Temporary Protected Status (TPS) applicants, for the same reasons as stated in 8 CFR 103.7(c). The rule will also be implemented in conjunction with the new Form I–912, Request for Fee Waiver Form.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2091–00

Transferred from RIN 1115–AG02

Agency Contact: Irene Hoffman, Adjudications Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Suite 3040, 425 I Street NW., Washington, DC 20536
Phone: 202 353–3365

RIN: 1615–AA48

1210. ADJUSTMENT OF STATUS UNDER SECTION 245(K)

Priority: Other Significant

Legal Authority: PL 105–119

CFR Citation: 9 CFR 245

Legal Deadline: None

Abstract: This rule proposes amending Department regulations for persons using section 245(k) of the Immigration and Nationality Act to adjust status to that of lawful permanent resident (LPR). Section 245(k) of the Act allows an alien with an approved employment-based petition to adjust status to LPR despite violations of status if those violations have lasted no longer than 180 days since the alien's last entry. This rule proposes eligibility criteria and adjustment procedures for persons wishing to use this section of the Act to become an LPR without leaving the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2120–01

Transferred from RIN 1115–AG10

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA54

1211. IMPLEMENTATION OF THE AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998 (ACWIA), THE AMERICAN COMPETITIVENESS IN THE TWENTY-FIRST CENTURY ACT OF 2000 (AC21), AND OTHER RELATED BILLS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1255; . . .

CFR Citation: 8 CFR 103; 8 CFR 202; 8 CFR 212; 8 CFR 214; 8 CFR 245; . . .

Legal Deadline: None

Abstract: The American Competitiveness in the 21st Century

Act. Public Law 106–313, was enacted on October 17, 2000, along with two bills, the Visa Waiver Permanent Program Act, Public Law 106–311, and a bill to increase the fee for certain H–1B petitions. An earlier piece of legislation, the American Competitiveness and Workforce Improvement Act (ACWIA), Public Law 105–277, was enacted to place certain conditions on the employment of H–1B workers. Together, these bills make significant changes to the H–1B classification. Public Law 106–313 increases the numerical H–1B cap to 195,000 for FY 2000–2002 and the percentage of the fees that DHS receives to 4 percent. It exempts certain aliens from the numerical cap, provides for the "portability" of employment authorization, and in certain circumstances extensions of stay for certain aliens who have permanent residence applications pending. Public Law 105–277 imposes penalties for employers violating certain representations and prohibits retaliation against H–1B workers who disclose these violations. Finally, on November 2, 2002, the President approved enactment of Public Law 107–273. The Twenty First Century Department of Justice Appropriations Act (21st Century DOJ Appropriations Act), which codified a provision that amends section 106(a) of AC21. This regulation clarifies several interpretive questions raised by the bills and ensures that the Department practice is consistent with these laws.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DHS rule 1615–AG11 implemented the American Competitiveness and Workforce Improvement Act (ACWIA); it was the result of a prior rule that was overtaken by new legislation relating to H–1B classification. ACWIA increased the numerical cap on H–1B nonimmigrant aliens; required certain dependent employers to make additional attestations to the Department of Labor (DOL); increased the penalties for employers who have been found to be in violation of DOL's rules; and created a "whistleblower" clause to protect H–1B workers who filed complaints against their employer.

In 1190–AA48, the Civil Rights Division, in cooperation with DOL, will implement in the Justice Department's regulations the ACWIA "failure to select" protections-codified in the Immigration and Nationality Act at section 212(n)(5)-by establishing a process under which United States workers may file complaints against employers for denying them employment opportunities by improperly hiring temporary foreign professionals on H–1B visas. Under that process, the Secretary is to receive and review these complaints and then-where there is reasonable cause to believe a complainant's allegations-initiate binding arbitration proceedings through Federal Mediation and Conciliation Service.

Transferred from RIN 1115–AG11

Agency Contact: Molly Johnson, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
Phone: 202 353–8177

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Phone: 202 307–6596

RIN: 1615–AA55

1212. CONSTRUCTION WORK AND THE B NONIMMIGRANT VISA CLASSIFICATION

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: The Department has solicited comments from the public on the issue of aliens admitted to the U.S. as B nonimmigrant visitors whose intent is to engage in construction work during the alien's stay. In particular the Department is exploring the feasibility of defining the term construction as it relates to B nonimmigrant visitors. A standard definition of construction may assist both the public and the Department in determining if an alien admitted as a B nonimmigrant visitor may engage in construction during his or her period of authorized stay. The Department is considering a rulemaking on this subject.

Timetable:

Action	Date	FR Cite
ANPRM	09/19/01	66 FR 48223
ANPRM Comment Period End	11/19/01	
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2126–01

Transferred from RIN 1115–AG15

Agency Contact: Craig Howie, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7869
Fax: 202 514–0198

RIN: 1615–AA58

1213. REMOVAL AND ADJUSTMENT PROCEDURES FOR VICTIMS OF TRAFFICKING AND CERTAIN CRIMINAL ACTIVITIES

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1252; 8 USC 1252a; 8 USC 1255; 22 USC 7101; 22 USC 7105; ...

CFR Citation: 8 CFR 204; 8 CFR 214; 8 CFR 245

Legal Deadline: None

Abstract: This rule sets forth measures by which certain victims of severe forms of trafficking and victims of certain crimes who have been granted T nonimmigrant status may apply for adjustment to permanent resident status in accordance with Public Law 106–386, the Victims of Trafficking and Violence Protection Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2134–01

Transferred from RIN 1115–AG21

Agency Contact: Laura M. Dawkins, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA60

1214. CONSENT TO REAPPLY FOR ADMISSION AFTER REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225 to 1228; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 299

Legal Deadline: None

Abstract: This rule proposes to amend the provisions regarding consent to reapply after removal to conform with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rulemaking intends to remove the provisions contained in 8 CFR 212.2(i) relating to a request for consent to reapply in conjunction with an application for admission at a port-of-entry or with an application for adjustment of status. The proposed removal of section 212.2(i) reflects the overall scope of the changes made by IIRIRA and congressional intent to impose severe penalties on aliens who enter illegally or otherwise violate the U.S. immigration laws, by restricting the relief available to them in the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2147–01

Transferred from RIN 1115–AG28

Agency Contact: Michael Hardin, Assistant Director, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA61

1215. WAIVERS OF THE TWO-YEAR FOREIGN RESIDENCE REQUIREMENT FOR CERTAIN EXCHANGE VISITORS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212 and 299

Legal Deadline: None

Abstract: This rule proposes to amend Department regulations relating to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (Act). The proposed changes would conform to the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and the Department of Justice Appropriations Act, 2000. The proposed rulemaking would affect aliens who enter the United States as J–1 or J–2 nonimmigrant exchange visitors and who are subject to the requirement of section 212(e) of the Act, which stipulates that they must return to their home country for a period of two years before they are eligible to change to a different nonimmigrant classification or apply for lawful permanent residence in the United States.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2158–01

Transferred from RIN 1115–AG31

Agency Contact: Mark Rouse, Assistant Director, Office of Adjudications, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA62

1216. REMOVAL OF LIMITATIONS ON VALIDITY PERIOD FOR EMPLOYMENT AUTHORIZATION DOCUMENTS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; ...

CFR Citation: 8 CFR 103; 8 CFR 274a

Legal Deadline: None

Abstract: This rule proposes to amend DHS regulations by enabling it to issue Employment Authorization Documents (EADs) for those applying for work authorization under 8 CFR 274a.12(c)(9) for a validity period of up to two years. This category is reserved for those applying for adjustment of status, having filed Form I–485, Application to Register Permanent Residence or Adjust Status, with the Department. The rule change would give DHS the flexibility to issue EADs for the length of time it anticipates that adjudication of a given case will take.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2152–01

Transferred from RIN 1115–AG32

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA63

1217. ILLEGAL ENTRIES, UNLAWFUL PRESENCE, AND AUTOMATIC VOIDING OF NONIMMIGRANT VISAS

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1101 to 1103; 8 USC 1182; ...

CFR Citation: 8 CFR 103; 8 CFR 212; 8 CFR 299

Legal Deadline: None

Abstract: This proposed rule defines the categories of aliens who are not eligible to be issued a visa or be admitted if: they are in the United States illegally because they entered without proper inspection at a port-of-entry (section 212(a)(6)(A) of the Act); they accumulated certain periods of unlawful presence because they entered the United States illegally or stayed in the United States longer than authorized (section 212(a)(9)(B) of the Act); or they entered the United States illegally (or attempted an illegal entry) after they accumulated unlawful presence or after they were removed (section 212(a)(9)(C) of the Act). This proposed rule also describes how a nonimmigrant visa becomes automatically void, as provided under section 222(g) of the Act. This proposed rule also explains when the provisions for unlawful presence (sections 212(a)(9)(B) and (C) of the Act) do not apply, and the legal and documentary requirements for a waiver. Promulgation of this rule ensures that the admission to the United States of any ineligible alien would not adversely affect the national welfare, safety, or security of the United States.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split from CIS No. 1413

Transferred from RIN 1115–AG36

Agency Contact: Michael Hardin, Assistant Director, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA64

1218. MEDICAL EXAMINATION REQUIREMENTS AND DESIGNATION OF CIVIL SURGEONS

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1101 to 1103; 8 USC 1222; ...

CFR Citation: 8 CFR 103; 8 CFR 232; 8 CFR 299

Legal Deadline: None

Abstract: This proposed rule defines the medical examination requirements for arriving aliens. It also overhauls the civil surgeon program to create standards for designation, procedures for periodic review of the civil surgeon designation, and specific provisions for revocation, when necessary.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split from CIS No. 1413

Transferred from RIN 1115–AG37

Agency Contact: Mark Rouse, Assistant Director, Office of Adjudications, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA65

1219. MEDICAL GROUNDS OF INADMISSIBILITY AND WAIVERS

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1101 to 1103; 8 USC 1157; ...

CFR Citation: 8 CFR 103, ; 8 CFR 212; 8 CFR 299

Legal Deadline: None

Abstract: This proposed rule describes the medical grounds of inadmissibility under section 212(a)(1) of the Immigration and Nationality Act. It also describes which medical grounds of inadmissibility can be waived and the requirements for those waivers (including conditions for compliance).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split from CIS No. 1413 to move forward as a stand-alone rule.

Transferred from RIN 1115–AG38

Agency Contact: Mark Rouse, Assistant Director, Office of Adjudications, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA66

1220. NEW CLASSIFICATION FOR VICTIMS OF CERTAIN CRIMINAL ACTIVITY; ELIGIBILITY FOR THE U NONIMMIGRANT STATUS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1101 note; 8 USC 1102; ...

CFR Citation: 8 CFR 103; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 299

Legal Deadline: None

Abstract: This rule sets forth application requirements for a new nonimmigrant status. The U classification is for non-U.S. Citizen/Lawful Permanent Resident victims of certain crimes who cooperate with an investigation or prosecution of those crimes. There is a limit of 10,000 principals per year.

This rule establishes the procedures to be followed in order to petition for the U nonimmigrant classifications. Specifically, the rule addresses: the essential elements that must be demonstrated to receive the nonimmigrant classification; procedures that must be followed to make an application; and evidentiary guidance to assist in the petitioning process. Eligible victims will be allowed to remain in the United States.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Action	Date	FR Cite
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: Transferred from RIN 1115–AG39

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Email: laura.dawkins@dhs.gov

RIN: 1615–AA67

1221. JUDICIAL REVIEW OF DECISIONS OF THE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552(a); 5 USC 704; 8 USC 1101; 8 USC 1103; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule clarifies that, if the Administrative Procedure Act provides the authority for judicial review, a person must exhaust all administrative appeals available as a matter of right before the person may seek judicial review of a Department decision under the Immigration and Nationality Act that is within the appellate jurisdiction of the Board of Immigration Appeals or of the Associate Commissioner for Examinations. This amendment is necessary to prevent the filing of premature lawsuits, by ensuring that the proper administrative appellate authority has the opportunity to review and correct any errors in the original decision before the party may seek judicial review.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1785–96

Transferred from RIN 1115–AG49

Agency Contact: Michael Neifach, Attorney, Office of the General Counsel, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1615–AA71

1222. TERMINATION OF LAWFUL PERMANANT RESIDENT STATUS THROUGH ABANDONMENT

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 CFR 211; 22 CFR 42

CFR Citation: 8 CFR 246

Legal Deadline: None

Abstract: This rule establishes procedures to terminate on notice the lawful permanent resident status of an alien who has remained outside the country for a continuous period of over one year since his or her departure from the United States, if it is determined that such alien has abandoned his or her permanent residency and is no longer eligible for admission as a returning resident. This process will allow the Department to terminate the status of a permanent resident due to abandonment when it becomes aware of that fact rather than, as is current practice, having to wait for such alien to present himself or herself for inspection at a port-of-entry.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1115–AG64

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA76

1223. LIMITING THE USE OF DURATION OF STATUS FOR CERTAIN F, J, AND I NONIMMIGRANTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1101 note; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule concerns the duration of status for nonimmigrants in the F (student), J (exchange visitor), and I (media representative) categories. This rule will set forth standards and procedures for the admission of certain nonimmigrants in these categories for a fixed period (subject to extension) rather than for the duration of their course of study, exchange program, or approved employment. This action will allow the Department to more effectively ensure that affected nonimmigrants are engaging in activities consistent with their classification and to take necessary action. By ensuring more effective control over nonimmigrants in the United States, this rule will enhance the integrity of the immigration process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2222–02

Transferred from RIN 1115–AG76

Agency Contact: Maura Deadrick, Assistant Director, Adjudication Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3228

RIN: 1615–AA80

1224. PETITIONS FOR ALIENS TO PERFORM TEMPORARY NONAGRICULTURAL SERVICES OR LABOR (H–2B)

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 2

Legal Deadline: None

Abstract: The Department of Homeland Security, after consulting with the Department of Labor and the Department of State, is proposing significant changes to its regulations that are designed to increase the effectiveness of the H–2B nonimmigrant classification. These proposals will increase the usefulness of the program for United States employers by eliminating certain regulatory barriers, by adding protections for foreign workers, and increasing Government efficiency and coordination.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: CIS No. 2228–02

Transferred from RIN 1115–AG78

Agency Contact: Molly Johnson, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7435

RIN: 1615–AA82

1225. ADJUSTMENT OF THE IMMIGRATION BENEFIT APPLICATION FEE SCHEDULE TO RECOVER COSTS ASSOCIATED WITH ADDITIONAL SECURITY CHECKS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552(a); 8 USC 1101; 8 USC 1103; 8 USC 1304; . . .

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: The rule proposes to adjust the immigration benefit application fee by $5 to recover costs associated with performing additional security checks on all immigration benefit applications. Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account and used to fund the full cost of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. Federal guidelines require the Department of Homeland Security to establish and collect fees to recover the full cost of processing benefit applications. These security checks are necessary to try to protect the United States from future terrorist attacks.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2233–02

Transferred from RIN 1115–AG82

Agency Contact: Paul Schlesinger, Acting Director, Office of Budget, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 5307, 425 I Street NW., Washington, DC 20536
Phone: 202 616–0563
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RIN: 1615–AA84

1226. ADJUSTMENT OF THE APPEAL AND MOTION FEE TO RECOVER FULL COSTS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1304; 8 USC 1356; 31 USC 9701; EO 12356; . . .

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule proposes to raise the fees for filing an appeal or motion to reopen/reconsider any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals, does not have appellate jurisdiction. The fee is being raised from $110 to $368 to recover the full costs associated with the processing of an appeal or motion to reopen/reconsider. Fees collected are deposited into the Immigration Examinations Fee Account and used to fund the full cost of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. Federal guidelines require the Department of Homeland Security to establish and collect fees to recover the full cost of processing immigration benefit applications, rather than supporting these services with tax revenue.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2245–02

Transferred from RIN 1115–AG89

Agency Contact: Paul Schlesinger, Acting Director, Office of Budget, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 5307, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA88

1227. CHANGES TO EMPLOYMENT AUTHORIZATION ELIGIBILITY FOR CERTAIN APPLICANTS AND TO STANDARDS FOR DETERMINING A FRIVOLOUS ASYLUM APPLICATION

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; . . .

CFR Citation: 8 CFR 208; 8 CFR 274a

Legal Deadline: None

Abstract: This rule proposes to amend the employment authorization and asylum regulations to restrict employment authorization for certain applicants facing cancellation of removal status and to modify the standard by which the Immigration Court may find an asylum application frivolous. In addition, the amendment will clarify that the Department's decision to grant employment authorization on the basis of certain pending applications is discretionary. The Department is proposing these amendments to curb abuse of the immigration system by nonbona fide asylum applicants who improperly use the asylum process as a vehicle to be placed in proceedings in Immigration Court to obtain nonasylum-related employment authorization or who submit abusive, fraudulent or clearly baseless asylum applications.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2251-02

Transferred from RIN 1115–AG91

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 3rd Floor, 111 Massachusetts Avenue NW., Washington, DC 20536
Phone: 202 305–2663

RIN: 1615–AA89

1228. IMPLEMENTATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES REGARDING ASYLUM CLAIMS MADE AT LAND BORDER PORTS-OF-ENTRY AND APPLICABILITY OF OTHER ASYLUM BA

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282

CFR Citation: 8 CFR 208

Legal Deadline: None

Abstract: The Department of Homeland Security proposes to amend asylum regulations governing the credible fear process to permit asylum officers to apply certain mandatory bars to asylum during the credible fear interview. The proposed rule is necessary for two reasons. First, the terms of a recently signed agreement between the United States and Canada bar certain categories of aliens arriving from Canada at land border ports of entry and in transit from Canada from formally applying for protection in the United States. Second, national security concerns necessitate a more thorough solicitation and analysis of facts to determine whether aliens in the credible fear process are clearly subject to a bar to asylum based on criminal or terrorist activities. This proposed rule would establish asylum officers' and immigration judges authority to make negative credible fear determinations based on these bars.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2255–03

Transferred from RIN 1115–AG95

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 3rd Floor, 111 Massachusetts Avenue NW., Washington, DC 20536
Phone: 202 305–2663

RIN: 1615–AA91

1229. WAIVER OF CRIMINAL GROUNDS OF INADMISSIBILITY FOR IMMIGRANTS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552(a); 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1304; 8 USC 1356; 31 USC 9701; EO 12356; . . .

CFR Citation: 8 CFR 103; 8 CFR 210; 8 CFR 212; 8 CFR 299

Legal Deadline: None

Abstract: The Department is in the process of reorganizing section 212 of title 8 of the Federal regulations. This regulation will create subsection C of 8 CFR 212, which covers criminal grounds of inadmissibility listed in section 212(a)(2) of the Immigration and Nationality Act (INA). The Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208) revised section 212(a)(2) of the INA, and subsequent laws revised it further. This regulation will implement those sections of law. Previously, this regulation was part of a larger 212 regulation (CIS No. 1413–97, RIN 1615–AA00), but due to the desire for clarity and the need to have different DHS components concentrate on different areas of inadmissibility, these criminal sections have been reported in a separate regulation.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2249–02

Transferred from RIN 1115–AG90

Agency Contact: Michael Hardin, Assistant Director, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA94

1230. PROCEDURES FOR CHECKING JUVENILE CRIMINAL RECORDS AND SUBMITTING FINGERPRINTS OF THAT ADDITIONAL CLASS OF ALIENS INELIGIBLE FOR FAMILY UNITY

Priority: Other Significant

Legal Authority: 18 USC 5031

CFR Citation: 8 CFR 236

Legal Deadline: None

Abstract: This rule describes procedures necessary for DHS Service Centers, District Offices, and Application Support Centers to follow when checking juvenile criminal records and fingerprints of aliens who committed a specific act of juvenile delinquency that, if committed by an adult, would be classified as a felony "crime of violence against another individual." Section 383 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provides that aliens who committed a specific act of juvenile delinquency, as defined in 18 U.S.C. 5031, are ineligible for benefits under the Family Unity Program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: CIS No. 2116–01

Transferred from RIN 1115–AG07

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AB01

1231. • REMOVAL OF STANDARDIZED REQUEST FOR EVIDENCE PROCESSING TIMEFRAME

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1103

CFR Citation: 8 CFR 103

Legal Deadline: NPRM, Statutory, September 1, 2003, NPRM.

Abstract: This rule proposes to remove the standard 12-week timeframe for responding to requests for additional evidence to support an petition or application, replacing it with a flexible response time determined by the Department to be an appropriate period of time for the type of case and the nature of the request.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2287–03

Agency Contact: Efren Hernandez, Director, Business and Trade Branch, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 I Street NW., Washington, DC 20536
Phone: 202 353–8177

RIN: 1615–AB13

1232. • CRIMINAL GROUNDS OF INADMISSIBILITY, EXCEPTIONS AND WAIVERS FOR IMMIGRANTS AND NONIMMIGRANTS, REFUGEES AND ASYLEES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 104–208, Illegal Immigration Reform and Immigrant Responsibility Act; PL 101–649, Miscellaneous and Technical Immigration and Naturalization Amendments of 1991; PL 104–232, Anti-Terrorism and Effective Death Penalty Act of 1996; PL 104–132, International Religious Freedom Act of 1998; ...

CFR Citation: 8 CFR 103; 8 CFR 210; 8 CFR 212; 8 CFR 299

Legal Deadline: None

Abstract: DHS is in the process of reorganizing section 212 of title 8 of the Federal regulations. This regulation will create subsection C of 8 CFR 212, which covers criminal grounds of inadmissibility listed in section 212(a)(2) of the Immigration and Nationality Act (INA). The Illegal Immigration Reform and Immigrant Responsibility Act (Pub. L. 104–208) revised section 212(a)(2) of the INA, and subsequent laws revised it further. This regulation will implement those sections of law. Previously, this regulation was part of a larger 212 regulation (CIS No. 1413–97, RIN 1115–AB45), but due to the desire for clarity and the need to have different DHS components concentrate on different areas of inadmissibility, these criminal sections have been broken out into a separate regulation.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2276–03

Agency Contact: Michael Hardin, Assistant Director, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AB15

1233. ESTABLISHMENT OF FEE FOR PROCESSING GENEALOGICAL RESEARCH REQUESTS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1201; 8 USC 1252; 8 USC 1252b

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: Under the Freedom of Information Act and Privacy Act, the Department of Homeland Security processes all requests for its records including historical and genealogical records. This rule proposes to amend the Department's regulations by establishing the Genealogy Program to process requests for historical records. The Department will charge a fee to recover the cost of searching, locating, retrieving, copying, reviewing, and mailing these records to the requester. The Genealogy Program is necessary to provide a more timely response to requests for genealogical and historical records.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2074–00

Transferred from RIN 1680–AA01

Agency Contact: Ronald Whitelaw, Branch Chief, Office of Records Management, Department of Homeland Security, 425 I Street NW., Washington, DC 20536

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RIN: 1615–AB19

Department of Homeland Security (DHS) Final Rule Stage

Bureau of Citizenship and Immigration Services (BCIS)

1234. ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE: CONDITIONAL RESIDENTS AND FIANCE(E)S

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1257; 8 CFR 2

CFR Citation: 8 CFR 245

Legal Deadline: None

Abstract: This final rule amends Department regulations by clarifying that an alien remains ineligible for adjustment of status after termination of conditional permanent resident status. The clarification is necessary in view of the determination by the Board of Immigration Appeals that the current regulations do not prohibit the adjustment of status of an alien whose conditional resident status has been terminated. This final rule would also modify provisions regulating the adjustment of status of nonimmigrant fiance(e)s to reflect the current statue and to eliminate hardships on certain persons who are unable, despite their good faith intentions, to marry until after the expiration of the alien spouse's period of admission as a nonimmigrant fiance(e).

Timetable:

Action	Date	FR Cite
NPRM	08/20/96	61 FR 43028
NPRM Comment Period End	10/21/96	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: CIS No. 1353–91

Transferred from RIN 1115–AC70

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA02

1235. PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR AS A PREFERENCE IMMIGRANT; SELF-PETITIONING FOR CERTAIN BATTERED OR ABUSED ALIEN SPOUSES AND CHILDREN

Priority: Other Significant

Legal Authority: 8 USC 1101; PL 103–322; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Department published an interim rule on this subject in 1996. This final rule allows battered and abused spouses and children of U.S. citizens and lawful permanent residents to petition for immigrant classification. The consent of the abuser would not be required. The final rule uses the term abused to mean either battered or subjected to extreme cruelty.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/26/96	61 FR 13061
Interim Final Rule Effective	03/26/96	
Interim Final Rule Comment Period End	05/28/96	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: CIS No. 1705–95

Transferred from RIN 1115–AE04

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RIN: 1615–AA03

1236. DEFINITION OF THE TERM "LAWFULLY PRESENT" FOR PURPOSES OF ELIGIBILITY FOR PUBLIC BENEFITS

Priority: Other Significant

Legal Authority: 5 USC 552; 31 USC 9701; EO 12356; 47 FR 14874 to 15557; 3 CFR 1982 comp; 8 CFR 2; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252B; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: Section 401(a) of the Personal Responsibility and Work Reconciliation Act of 1996 (PRWORA) provides that, with limited exceptions, only qualified aliens, as defined under section 431, may receive certain Federal public benefits. Section 401(b)(2) provides an exception that allows aliens who are "lawfully present in the United States" as determined by the Attorney General to receive social security benefits under title II of the Social Security Act. PRWORA, and other laws, use the term "lawfully present" in other benefit-related contexts as well.

The interim final rule published September 6, 1996, amended DHS regulations to define the term "an alien who is lawfully present in the United States" so that the Social Security Administration may determine which aliens are eligible for benefits under title II of the Social Security Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/96	61 FR 47039
Interim Final Rule Comment Period End	11/05/96	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: CIS No. 1792–96

Transferred from RIN 1115–AE51

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA05

1237. AFFIDAVIT OF SUPPORT ON BEHALF OF IMMIGRANTS

Priority: Other Significant

Legal Authority: 8 USC 1183a; PL 104–208; PL 104–193; 8 CFR 2

CFR Citation: 8 CFR 213a; 8 CFR 299

Legal Deadline: None

Abstract: This rule amends DHS regulations by establishing that an individual (the sponsor) who files an affidavit of support under section 213A of the Immigration and Nationality Act (INA) on behalf of an intending immigrant incurs an obligation that may be enforced by a civil action. This rule also specifies the requirements that Federal, State, or local agencies or private entities must meet to request reimbursement from the sponsor for provision of means-tested public benefits and provides procedures for imposing the civil penalty provided for under section 213A of the INA, if the sponsor fails to give notice of any change of address. This rule is necessary to ensure that sponsors of aliens meet their obligations under section 213A of the INA.

Timetable:

Action	Date	FR Cite
Interim Final Rule (CIS No. 1807–96)	10/20/97	62 FR 52346
Interim Final Rule Comment Period End	02/07/98	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1807–96; PL 104–208, title IV; and PL 104–193, title IV

Transferred from RIN 1115–AE58

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3048

RIN: 1615–AA06

1238. IMPLEMENTATION OF HERNANDEZ V. RENO SETTLEMENT AGREEMENT; CERTAIN ALIENS ELIGIBLE FOR FAMILY UNITY BENEFITS AFTER SPONSORING FAMILY MEMBER'S NATURALIZATION

Priority: Other Significant

Legal Authority: 8 USC 1225a note; PL 104–208

CFR Citation: 8 CFR 236.23

Legal Deadline: None

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Department will publish a regulation implementing a new basis of ineligibility for Family Unity benefits for certain juvenile offenders.

Timetable:

Action	Date	FR Cite
Interim Final Rule (CIS No. 1823–96)	07/14/00	65 FR 43677
Interim Final Rule Comment Period End	09/12/00	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1823–96; PL 104–208, title III, section 38; and this regulation will affect 8 CFR 242.5 that will be renumbered 8 CFR 236.25.

Transferred from RIN 1115–AE72

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA09

1239. ADJUSTMENT OF STATUS, CONTINUED VALIDITY OF NONIMMIGRANT STATUS, AND UNEXPIRED EMPLOYMENT AUTHORIZATION FOR APPLICANTS MAINTAINING NONIMMIGRANT H OR L STATUS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1282; 8 CFR 2; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1255; 8 USC 1281

CFR Citation: 8 CFR 214; 8 CFR 245

Legal Deadline: None

Abstract: Over the last several years, the Department has issued numerous policy statements regarding its position on employment authorization, advance parole, and extension of nonimmigrant status for certain skilled nonimmigrant workers who have filed for adjustment to permanent resident status. This interim final rule: 1) codified existing DHS policy statements by incorporating them into the Department's regulations; and 2) eliminated the requirement for permission for overseas travel for adjustment applicants who are maintaining H–1 or L nonimmigrant status. The Department is publishing a final rule in response to public comments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/99	64 FR 29208
Interim Final Rule Comment Period End	08/02/99	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1881–97

Transferred from RIN 1115–AE96

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA12

1240. VERIFICATION OF ELIGIBILITY FOR PUBLIC BENEFITS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1642

CFR Citation: 8 CFR 104

Legal Deadline: NPRM, Statutory, November 3, 1997, NPRM.
Final, Statutory, February 22, 1998, Final.

Abstract: This regulatory action requires entities (other than nonprofit charitable organizations) providing Federal public benefits (with certain exceptions) to verify by examining documents and using a DHS-automated verification system that alien applicants are eligible for the benefits under Federal benefit reform legislation. This rule also sets forth provisions by which State or local governments can verify whether aliens applying for State or local public benefits are eligible for such benefits under Federal laws. In addition, the rule establishes procedures for verifying the U.S. nationality of individuals applying for benefits in a fair and nondiscriminatory manner.

The Interim Verification Guidelines were published as a notice on November 17, 1997, at 62 FR 61344. The guidelines set forth procedures that benefit-granting agencies can use to verify U.S. citizens, non-citizen nationals, and qualified aliens for eligibility under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act prior to issuance of final regulations.

The proposed rule for the Verification of Eligibility for Public Benefits was published on August 4, 1998, at 63 FR 41662. The changes made in response to the comments received on the proposed rule were significant enough and dealt with complex and important issues that another opportunity to comment is warranted. The next version of the rule will be issued as an interim rule, rather than a final rule, in order to implement the statutory directive to promulgate verification regulations and start the subsequent two-year period in which Federal public benefit-granting agencies must come into compliance. The interim rule is in the concurrence process and has not yet been published.

Timetable:

Action	Date	FR Cite
NPRM (CIS No. 1902–98)	08/04/98	63 FR 41662
NPRM Comment Period End	10/05/98	
Interim Final Rule (CIS No. 1902–98)	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Additional Information: CIS No. 1902–98 should be referenced for any inquiries concerning this rulemaking action.

Transferred from RIN 1115–AE99

Agency Contact: Phillip Busch, Senior Counsel, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 6100, Office of General Counsel, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1615–AA13

1241. FINGERPRINTING APPLICANTS AND PETITIONERS FOR IMMIGRATION BENEFITS; ESTABLISHING A FEE FOR FINGERPRINTING BY THE DEPARTMENT OF HOMELAND SECURITY

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252b; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103; 8 CFR 299; 8 CFR 316; 8 CFR 335

Legal Deadline: None

Abstract: This rule amends the Department of Homeland Security (DHS) regulations relating to fingerprinting applicants and petitioners for benefits under the Immigration and Nationality Act by: canceling the Designated Fingerprinting Service program; requiring applicants and petitioners for benefits to be fingerprinted at either a DHS Office, a State, or local law enforcement agency, or at a United States consular or military office; establishing a fee for fingerprinting by the Department; and requiring confirmation from the Federal Bureau of Investigation that a full criminal background check has been completed before adjudication of a naturalization application is completed.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/98	63 FR 12979
Interim Final Rule Effective	03/29/98	
Interim Final Rule Correction	04/09/98	63 FR 17489
Interim Final Rule Comment Period End	05/18/98	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: CIS No. 1891–97

Transferred from RIN 1115–AF03

Agency Contact: Pamela T. Wallace, Staff Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 980, 425 I Street NW., Washington, DC 20536
Phone: 202 514–9475

RIN: 1615–AA14

1242. SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL FOR CERTAIN NATIONALS OF GUATEMALA, EL SALVADOR, AND FORMER SOVIET BLOC COUNTRIES

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1225 to 1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1252a; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1158; 8 USC 1182; 8 USC 1186a; 8 USC 1224

CFR Citation: 8 CFR 103; 8 CFR 208; 8 CFR 240; 8 CFR 246; 8 CFR 274a; . . .

Legal Deadline: None

Abstract: This rule implements section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Public Law No. 105–100, 111 Stat. 2160, 2193 (1997) (as amended by Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105–139, Stat. 2644 (1997)). Section 203 of NACARA provides that certain Guatemalans, Salvadorans, and nationals of former Soviet Bloc countries are eligible to apply for cancellation of removal under the standards for suspension of deportation similar to those that existed prior to enactment of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The rule establishes the authority of DHS asylum officers to adjudicate certain applications under section 203 of NACARA, provides application and adjudication procedures, identifies factors and standards relevant to eligibility, and establishes a rebuttable presumption of extreme hardship for certain NACARA beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM (CIS No. 1915–98)	11/24/98	63 FR 64895
NPRM Comment Period End (CIS No. 1915–98)	01/25/99	
Interim Rule (CIS No. 1915–98)	05/21/99	64 FR 27856
Interim Rule Comment Period End	07/20/99	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: CIS No. 1915–98

Transferred from RIN 1115–AF14

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 3rd Floor, 111 Massachusetts Avenue NW., Washington, DC 20536
Phone: 202 305–2663

RIN: 1615–AA17

1243. REGULATIONS CONCERNING THE CONVENTION AGAINST TORTURE

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282

CFR Citation: 8 CFR 3; 8 CFR 208; 8 CFR 235; 8 CFR 238; 8 CFR 240; 8 CFR 241

Legal Deadline: Other, Statutory, February 18, 1999, Other.

Abstract: This rule implements article 3 of the United Nations Convention Against Torture or Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment for persons who may be subject to removal from the United States under the provisions of the Immigration and Nationality Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/19/99	64 FR 8478
Interim Final Rule Corrections	03/22/99	64 FR 13881
Interim Final Rule Effective	03/22/99	
Interim Final Rule Comment Period End	04/20/99	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1976–99

Transferred from RIN 1115–AF39

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RIN: 1615–AA19

1244. INADMISSIBILITY AND DEPORTABILITY ON PUBLIC CHARGE GROUNDS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1183; ...

CFR Citation: 8 CFR 212; 8 CFR 237

Legal Deadline: None

Abstract: This rule amends Department regulations to establish clear standards governing a determination that an alien is admissible or ineligible to adjust status, or has become deportable, on public charge grounds. This rule is necessary to alleviate growing public confusion over the meaning of the currently undefined term public charge in immigration law and its relationship to the receipt of Federal, State, or local public benefits. By defining public charge, DHS seeks to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

Timetable:

Action	Date	FR Cite
NPRM	05/26/99	64 FR 28676
NPRM Comment Period End	07/26/99	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: CIS No. 1989–99

Transferred from RIN 1115–AF45

Agency Contact: Alice Smith, Assistant General Counsel, Office of General Counsel, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 305–9353

RIN: 1615–AA22

1245. APPLICATION FOR REFUGEE STATUS; ACCEPTABLE SPONSORSHIP AGREEMENT GUARANTY OF TRANSPORTATION

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1157; 8 USC 1158; ...

CFR Citation: 8 CFR 207

Legal Deadline: None

Abstract: Section 207 of the Immigration and Nationality Act authorizes the Attorney General to admit refugees to the United States under certain conditions, including those provided for by regulation. DHS regulations require that sponsorship agreements be secured before an applicant is granted admission as a refugee at a U.S. port-of-entry. The determination of whether or not someone is classified as a refugee is described in the Act as a separate decision from whether a refugee may be admitted to the United States in refugee status. This rule amends Department regulations by removing language that erroneously implies that DHS requires a sponsorship agreement and guarantee of transportation prior to determining whether an applicant is a refugee. This rule is necessary to clarify issues that may appear ambiguous in the existing regulation, and provides more advantageous treatment for the limited number of applicants for refugee status who have their DHS interviews before sponsorship agreements have been secured.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/21/99	64 FR 27660
Interim Final Rule Comment Period End	07/20/99	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1999–99

Transferred from RIN 1115–AF49

Agency Contact: Kathleen Thompson, Staff Officer, Office of International Affairs, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 I Street NW., Washington, DC 20536
Phone: 202 305–2756

RIN: 1615–AA24

1246. BATTERED AND ABUSED CONDITIONAL RESIDENTS; TERMINATION OF MARRIAGE BY CONDITIONAL RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1154; 8 USC 1184; 8 USC 1186a

CFR Citation: 8 CFR 216; 8 CFR 299

Legal Deadline: None

Abstract: Enacted on November 10, 1986, the Immigration Marriage Fraud Amendments of 1986 (IMFA) made a number of changes to the Act to deter aliens from marrying solely to obtain immigration benefits. IMFA established a conditional resident status for aliens who obtained lawful permanent resident status based upon a marriage of less than two years duration. The interim rule published on May 16, 1991, established procedures to allow a conditional resident who married in good faith but whose marriage was terminated by the United States citizen or lawful permanent resident spouse to seek a waiver of the joint filing requirement. The interim rule published on May 16, 1991, also was necessary to provide a method by which a battered conditional resident, or a conditional resident parent of an abused conditional resident child, may apply for removal of the conditional basis of resident status without filing a joint petition. This interim rule implements certain technical changes made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and addresses comments received in response to the interim rule published on May 16, 1991.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/91	56 FR 22635
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Interim Rule for CIS No. 1423–91 published on May 16, 1991.

Transferred from RIN 1115–AF59

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA29

1247. REVOKING GRANTS OF NATURALIZATION

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1443

CFR Citation: 8 CFR 340

Legal Deadline: None

Abstract: This rule amends the DHS regulations relating to administrative revocation of naturalization by changing the burden of proof the Department must satisfy in order to administratively revoke a grant of naturalization and by clarifying the 180-day period for the rendering of the district director's decision. This rule provides that DHS will only initiate revocation proceedings based on clear, unequivocal, and convincing evidence, and that the burden of proof remains with the Department throughout the administrative process.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/31/00	65 FR 17127
Interim Final Rule Comment Period End	05/30/00	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No.1858–97

Transferred from RIN 1115–AF63

Agency Contact: Michael Neifach, Attorney, Office of the General Counsel, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 6100, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA30

1248. ENTRY REQUIREMENTS FOR CITIZENS OF THE REPUBLIC OF THE MARSHALL ISLANDS, THE FEDERATED STATES OF MICRONESIA, AND PALAU

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257; 8 CFR 2

CFR Citation: 8 CFR 211; 8 CFR 212

Legal Deadline: None

Abstract: This rule amends Department regulations by adding documentary requirements for a naturalized citizen of the Marshall Islands, the Federated States of Micronesia, or Palau (Compact Countries) to enter into the United States, lawfully engage in occupations, accept employment, and establish residence as a nonimmigrant in the United States and its territories and possessions. This rule also clarifies the documentary requirements for an adopted child from the Compact Countries who is immigrating to the United States. Without clarification of the documentary requirements for an adopted child from the Compact Countries, the Compact Countries may not consent to the adoption of children by U.S. citizens and legal permanent residents.

Timetable:

Action	Date	FR Cite
NPRM	07/18/01	66 FR 37429
NPRM Comment Period End	08/17/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2047–00

Transferred from RIN 1115–AF65

Agency Contact: Steven Heller, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Suite 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA31

1249. REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES: CONTROL OF EMPLOYMENT OF ALIENS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1201; 8 USC 1201a; 8 USC 1301; 8 USC 1305

CFR Citation: 8 CFR 264; 8 CFR 274a

Legal Deadline: None

Abstract: This rule amends Department regulations governing applications for renewal of 10-year Permanent Resident Cards upon their expiration. This rule adds documents to the acceptable list of registration requirements and clarifies the requirements for lawful permanent residents to file Form I–90, Application to Replace Alien Registration Card, if they are also applying for naturalization. This rule also provides additional methods to verify employment eligibility for those in the process of renewing their expired or expiring Form I–551, Permanent Resident Card. These changes are necessary to facilitate the 10-year Form I–551 renewal process. This rule also clarifies the fingerprinting requirements for lawful permanent residents who reach the age of 14 years.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No.2042–00

Transferred from RIN 1115–AF71

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3048

RIN: 1615–AA33

1250. NATIONAL INTEREST WAIVERS FOR SECOND PREFERENCE EMPLOYMENT-BASED IMMIGRANT PHYSICIANS SERVING IN MEDICALLY UNDERSERVED AREAS OR AT DEPARTMENT OF VETERANS AFFAIRS FACILITIES

Priority: Other Significant

Legal Authority: PL 106–113; 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204; 8 CFR 245

Legal Deadline: None

Abstract: On November 29, 1999, Public Law 106–113 was enacted. Section 117 amended the Immigration and Nationality Act at section 203 to provide national interest waivers to alien physicians agreeing to practice five years in designated medically underserved areas or at Veterans Affairs facilities. The Department proposes an amendment to 8 CFR 204 and 245 in order to implement the new statutory provisions. DHS issued an interim regulation so that applicants may begin to take advantage of the new provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/00	65 FR 53889
Correction to Interim Final Rule	09/27/00	65 FR 57943
Interim Final Rule Effective	10/06/00	
Correction to Interim Final Rule	10/20/00	65 FR 63118
Interim Final Rule Comment Period End	11/06/00	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2048–00

Transferred from RIN 1115–AF75

Agency Contact: Craig Howie, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA34

1251. PETITIONING REQUIREMENTS FOR THE H–1C NONIMMIGRANT CLASSIFICATION UNDER PUBLIC LAW 106–95

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; ...

CFR Citation: 8 CFR 214.2

Legal Deadline: None

Abstract: On November 12, 1999, the Nursing Relief for Disadvantaged Areas Act (NRDAA) was enacted creating a new H–1C nonimmigrant nurse category. This rule amends the Department's regulations in order to implement the NRDAA as it relates to the adjudication petitions for H–1C classification. This rule will facilitate the hiring of alien registered nurses to reduce the shortage of nurses in certain areas of the United States while protecting the rights of U.S. nurses.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/11/01	66 FR 31107
Interim Final Rule Comment Period End	08/10/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2050–00

Transferred from RIN 1115–AF76

Agency Contact: Molly Johnson, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA35

1252. WAIVING THE FINGERPRINTING REQUIREMENT FOR CERTAIN DISABLED NATURALIZATION APPLICANTS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1443; 8 USC 1447; 29 USC 794(a), The Rehabilitation Act of 1973

CFR Citation: 8 CFR 316; 8 CFR 335

Legal Deadline: None

Abstract: Currently, all naturalization applicants filing Form N–400, Application for Naturalization, are required to be fingerprinted on Form FD–258 Applicant Card for the purpose of conducting criminal background checks by the Federal Bureau of Investigation. This rule amends Department regulations by providing a fingerprinting waiver for naturalization applicants who, because of a permanent impairment, are unable to provide any fingerprints. It also provides an alternative method for collecting the required background clearances.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Request for Comments	12/00/03	
Interim Final Rule Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No.2060–00

Transferred from RIN 1115–AF80

Agency Contact: Pamela T. Wallace, Staff Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 980, 425 I Street NW., Washington, DC 20536
Phone: 202 514–9475

RIN: 1615–AA36

1253. ADDING ACTUARIES AND PLANT PATHOLOGISTS TO THE NORTH AMERICAN FREE TRADE AGREEMENT

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 214.6

Legal Deadline: None

Abstract: The rule proposes to amend 8 CFR 214.6 by adding the occupations of actuary and plant pathologists to appendix 1603.D.1. This rule proposes to modify the licensure requirements for Canadian citizens seeking admission to the United States as a TN nonimmigrant category alien. These amendments are being proposed to reflect the agreements made among the three parties to the North American Free Trade Agreement.

Timetable:

Action	Date	FR Cite
NPRM	12/19/00	65 FR 79320
NPRM Comment Period End	02/20/01	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2068–00

Transferred from RIN 1115–AF85

Agency Contact: Craig Howie, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA38

1254. EMPLOYMENT AUTHORIZATION FOR CERTIFICATE OF CITIZENSHIP APPLICANTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1324a; 8 USC 1443; 8 USC 1448; 8 CFR 2

CFR Citation: 8 CFR 274a, 8 CFR 341

Legal Deadline: None

Abstract: This interim final rule amends Department regulations by providing a procedure under which aliens who, believing they are actually citizens, have filed applications for certificates of citizenship (Forms N–600) may obtain employment authorization while their applications are pending. This interim final rule is necessary to establish a uniform procedure to accommodate Form N–600 applicants, without creating a strong incentive for aliens to file applications in bad faith, seeking simply to obtain employment authorization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	
Interim Final Rule Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No.2076–00

Transferred from RIN 1115–AF90

Agency Contact: Kellie LeClair, Staff Officer, Business Process Re-engineering, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 980, 425 I Street, NW., Washington, DC 20536
Phone: 202 307–9919

RIN: 1615–AA39

1255. ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE; TEMPORARY REMOVAL OF CERTAIN RESTRICTIONS OF ELIGIBILITY

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252; 8 USC 1252b; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103; 8 CFR 205; 8 CFR 245

Legal Deadline: None

Abstract: The Department is amending its regulations governing eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act to conform the regulations to existing policy and procedures and to remove language that has been superseded by subsequent legislation. Specifically, this rule conforms the regulations to include the changes made by Public Law 105-119 and Public Law 106-544. It also provides for the changes contained in the Legal Immigration Family Equity Act of 2000 (LIFE Act). As required by the Life Act, this rule changes the sunset date of section 245(i) of the Immigration and Naturalization Act to the new date of April 30, 2001, for filing of qualifying petitions or applications that enable the applicant to apply to adjust status using section 245(i) and clarifies the effect of the new sunset date on eligibility. This means that in order to preserve the ability to apply for adjustment of status under section 245(i), an alien must be the beneficiary of a visa petition for classification under section 204 of the Act or application for labor certification properly filed on or before April 30, 2001, and determined to have approval when filed. This rule also provides guidance on the standard for review of filing for immigrant visa petitions and applications for labor certification on or before April 30, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/26/01	66 FR 16383
Interim Final Rule Effective	03/26/01	
Interim Final Rule Comment Period End	05/25/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2078-00; This rulemaking supersedes RIN 1615-AA85

Transferred from RIN 1115-AF91

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RIN: 1615-AA40

1256. ASYLUM AND WITHHOLDING DEFINITIONS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

CFR Citation: 8 CFR 208

Legal Deadline: None

Abstract: This rule proposes to amend regulations that govern establishing asylum eligibility by providing guidance on certain issues that have arisen in the context of asylum adjudications. The amendments focus on portions of the regulations that deal with the definitions of persecution, membership in a particular social group, and State action. This rule codifies long-standing concepts of the definition of persecution. It clarifies that gender can be a basis for membership in a particular social group. It also clarifies that a person who has suffered or fears domestic violence may be considered a member of a particular social group. The Department of Justice believes this issue required further examination after the Board of Immigration Appeals decision, Matter of R-A. This rule also clarifies that the factors considered in Ninth Circuit case law regarding membership in a particular social group are non-determinative. Finally, the rule offers further guidance on what is required to show a State's inability or unwillingness to control a persecutor. Finally, this rule establishes circumstances under which the Board of Immigration Appeals (BIA) must remand proceedings to the Immigration Judge to resolve questions of fact.

Timetable:

Action	Date	FR Cite
NPRM	12/07/00	65 FR 76588
NPRM Comment Period End	01/22/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2092-00

Transferred from RIN 1115-AF92

Agency Contact: Rebecca Story, Attorney, Office of the General Counsel, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 6100, 425 I Street NW., Washington, DC 20536
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RIN: 1615-AA41

1257. PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR PREFERENCE IMMIGRANT; ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; ...

CFR Citation: 8 CFR 204; 8 CFR 245

Legal Deadline: None

Abstract: This final rule amends regulations of the Department of Homeland Security to provide an exception from the general prohibition against approval of immigration benefits based upon a marriage entered into during removal proceedings. The rule creates a good faith exception to the prohibition. This final rule completes the regulatory implementation of the Immigration Act of 1990.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/20/91	56 FR 28311
Interim Final Rule Comment Period End	07/20/91	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: See CIS No. 1419-91

Transferred from RIN 1115-AF94

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RIN: 1615-AA42

1258. ACADEMIC HONORARIUM FOR B NONIMMIGRANT ALIENS

Priority: Other Significant

Legal Authority: PL 105–277; 8 USC 1182; 8 USC 1184

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: DHS is proposing to amend its regulations relating to the acceptance of academic honoraria by nonimmigrant aliens admitted to the United States as a B visa visitor status. This is necessary to implement changes to section 212 of the Immigration and Nationality Act made by the American Competitiveness and Workforce Improvement Act of 1998. The amendment outlines the proposed procedures necessary for a nonimmigrant alien visiting the United States in valid B visa status to accept honoraria in connection with usual academic activities.

Timetable:

Action	Date	FR Cite
NPRM	05/30/02	67 FR 37727
NPRM Comment Period End	07/29/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2100–00

Transferred from RIN 1115–AF97

Agency Contact: Craig Howie, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA44

1259. CHILDREN BORN OUTSIDE THE UNITED STATES; APPLICATIONS FOR CERTIFICATE OF CITIZENSHIP

Priority: Other Significant

Legal Authority: PL 106–395

CFR Citation: 8 CFR 103; 8 CFR 299; 8 CFR 310; 8 CFR 320; 8 CFR 322; 8 CFR 338; 8 CFR 341; 8 CFR 499; ...

Legal Deadline: Final, Statutory, February 27, 2001, Final.

Abstract: This rule implements title I of the Child Citizenship Act of 2000, Public Law 106–395. First, it amends DHS regulations by adding a new part which addresses application procedures for foreign-born children residing in the United States pursuant to a lawful admission for permanent residence, who acquire citizenship automatically under section 320 of the Immigration and Nationality Act (Act), as amended. This rule established procedures for these foreign-born children, including adopted children, to obtain certificates of citizenship. Second, this rule also addresses application procedures for foreign-born children residing outside the United States, who can acquire citizenship under section 322 of the Act, as amended, by approval of an application and taking the oath of allegiance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/13/01	66 FR 32138
Interim Final Rule Effective	06/13/01	
Interim Final Rule Comment Period End	08/13/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2101-00

Transferred from RIN 1115–AF98

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Phone: 202 305–0539

RIN: 1615–AA45

1260. ALLOWING FOR THE FILING OF FORM I–140 VISA PETITION CONCURRENTLY WITH A FORM I–485 APPLICATION IN CERTAIN CIRCUMSTANCES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204; 8 CFR 245

Legal Deadline: None

Abstract: The current regulations provide that an alien worker who wants to apply for permanent residence by filing the appropriate Form I–485, Application To Register Permanent Residence or Adjust Status, cannot do so until he or she obtains approval of the underlying petition, Form I–140, Immigrant Petition for Alien Worker. This procedure has resulted in aliens experiencing unnecessary delays due to the heavy backlog created by increasing numbers of cases received by the Department of Homeland Security (DHS). This rule amends DHS regulations by allowing the Forms I–140 and I–485 to be filed concurrently when a visa is immediately available, thereby improving the efficiency of the system, as well as customer service. This rule will also allow the alien worker to apply for employment authorization (Form I–765, Application for Employment Authorization) and advance parole authorization (Form I–131, Application for Travel Document) while the Form I–485 is pending.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/31/02	67 FR 49561
Interim Final Rule Effective	07/31/02	
Interim Final Rule Comment Period End	09/30/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2104–00

Transferred from RIN 1115–AG00

Agency Contact: Maurice R. Berez, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 353–8177

RIN: 1615–AA46

1261. SPECIAL IMMIGRANT VISA FOR FOURTH PREFERENCE EMPLOYMENT-BASED BROADCASTERS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This interim final rule amends Department regulations by establishing the procedure under which the International Broadcasting Bureau of the United States Broadcasting Board of Governors (BBG), or a BBG grantee organization, may file special fourth preference immigrant petitions for alien broadcasters. This rule explains the requirements the alien broadcaster must meet in order to be the beneficiary of an immigrant visa petition. This regulatory change is necessary in order to assist the BBG in fulfilling its statutory obligation to hire alien broadcasters.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/11/01	66 FR 51819
Interim Final Rule Effective	11/13/01	
Interim Final Rule Comment Period End	12/10/01	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2106–00

Transferred from RIN 1115–AG01

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Phone: 202 616–7869
Fax: 202 514–0198

RIN: 1615–AA47

1262. ESTABLISHING PREMIUM PROCESSING SERVICE FOR EMPLOYMENT-BASED PETITIONS AND APPLICATIONS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: This rule changes Department of Homeland Security (DHS) regulations to establish premium processing service for certain employment-based petitions and applications. If an individual pays a fee for premium processing service, DHS will process the petition or application in 15 days. Premium Processing Service will give American businesses an option to pay for more rapid processing of petitions and applications to meet their needs for foreign workers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/01	66 FR 29682
Interim Final Rule Effective	06/01/01	
Interim Final Rule Comment Period End	07/31/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2108–01

Transferred from RIN 1115–AG03

Agency Contact: Cindy Keiss, Adjudications Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 10th Floor, 425 I Street, NW., Washington, DC 20536
Phone: 202 305–2300

RIN: 1615–AA49

1263. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS OF NICARAGUA, CUBA, AND HAITI

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255

CFR Citation: 8 CFR 241; 8 CFR 245

Legal Deadline: None

Abstract: This final rule implements the provisions of the Legal Immigration Family Equity Act (LIFE Act) and its technical amendments to both the Nicaraguan Adjustment and Central American Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act (HRIFA) of 1998. Specifically, section 1505 of the amendments to the LIFE Act states that section 241(a)(5) of the INA does not apply to adjustment applicants under NACARA/HRIFA and that the grounds of inadmissibility under section 212(a)(9)(A) and (C) of the INA may be waived for NACARA/HRIFA adjustment applicants. Section 241(a)(5) of the Immigration and Nationality Act (Act) provides for the reinstatement of a removal order against any alien who illegally re-enters the United States after having been removed or after having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act, including any waivers of grounds of inadmissibility necessary for the grant of adjustment of status. Sections 212(a)(9)(A) and 212(a)(9)(C) of the Act are grounds of inadmissibility relating to aliens previously removed and aliens who are unlawfully present in the United States after previous immigration violations, respectively. Section 1505 of the amendments to the LIFE Act also states that an alien who has become eligible for benefits under NACARA/HRIFA as a result of the enactment of the LIFE Act may file a motion to reopen his or her removal proceedings in order to apply for adjustment or to apply for cancellation of removal or suspension of deportation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/31/01	66 FR 29449
Interim Final Rule Comment Period End	05/31/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2113–01

Transferred from RIN 1115–AG05

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RIN: 1615–AA51

1264. ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN CLASS ACTION PARTICIPANTS WHO ENTERED BEFORE JANUARY 1, 1982, UNDER THE LEGAL IMMIGRATION AND FAMILY EQUITY ACT (LIFE ACT)

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1255a; 8 USC 1225a note

CFR Citation: 8 CFR 245a

Legal Deadline: None

Abstract: This interim final rule (CIS No. 2115–01) implements section 1104 of the Legal Immigration Family Equity Act (LIFE Act) and LIFE Act Amendments pertaining to adjustment of status of certain class action participants (specifically, Catholic Social Services v. Meese (CSS), 509 U.S. 43 (1993), League of United Latin American Citizens v. INS (LULAC), 509 U.S. 43 (1993), and Zambrano v. INS, 509 U.S. 918 (1993) class applicants) who entered before January 1, 1982, to that of a person admitted for lawful residence. This rule establishes procedures for a one-year application period to allow CSS, LULAC, and Zambrano class applicants to apply for adjustment of status to that of lawful permanent residence.

CIS No. 2145–01 amends the Department's regulations by establishing procedures to apply for Family Unity benefits for certain spouses and unmarried children of aliens who adjusted to lawful permanent resident (LPR) status pursuant to section 1104 of the Legal Immigration Family Equity (LIFE) Act-known as the LIFE Legalization provision. It applies to those persons who are no longer present in the United States to allow them to apply for Family Unity benefits pursuant to section 1504 of the LIFE Act Amendments. This rule also establishes procedures for certain spouses and unmarried children who previously were granted Family Unity benefits pursuant to section 1504 of the LIFE Act Amendments to apply for an extension of their Family Unity benefits. This rule is necessary to ensure that those aliens eligible to apply for, and extend, Family Unity benefits under the provisions of the LIFE Act Amendments are able to do so in a timely manner.

Timetable:

Action	Date	FR Cite
Interim Final Rule (CIS No. 2115) Life Legalization	06/01/01	66 FR 29661
Interim Final Rule Comment Period End	07/31/01	
Notice	08/29/01	66 FR 45694
Final Action (CIS No. 2115–01)	06/04/02	67 FR 38341
Final Action Effective	06/04/02	
Interim Final Rule (CIS No. 2145) Family Unity Benefits	01/00/04	
Interim Final Rule Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2115–01

CIS No. 2145–01

Transferred from RIN 1115–AG06

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RIN: 1615–AA52

1265. NONIMMIGRANT CLASSES; SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENTS; V CLASSIFICATION

Priority: Other Significant

Legal Authority: 8 USC 1102; PL 106–553

CFR Citation: 8 CFR 103; 8 CFR 204; 8 CFR 205; 8 CFR 212; 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 299

Legal Deadline: None

Abstract: Section 1102 of the LIFE Act of 2000 amends the Immigration and Nationality Act to create a new nonimmigrant classification V for the spouses and children of lawful permanent residents awaiting the availability of an immigrant visa number in the appropriate preference category in accordance with the State Department's monthly Visa Bulletin. Eligible spouses and children of lawful permanent residents residing abroad that obtain the V nonimmigrant visa from the Department of State may work and reside in the United States on the basis of the V classification until they can apply for adjustment of status to that of lawful permanent resident. Certain eligible spouses and children of lawful permanent residents already present in the United States may be granted V classification until they can apply to adjust status to that of lawful permanent resident. This rule sets forth eligibility criteria and procedures for obtaining the V visa classification and related employment authorization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/07/01	66 FR 46697
Interim Final Rule Effective	09/07/01	
Interim Final Rule Comment Period End	11/06/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2117–01

Transferred from RIN 1115–AG08

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RIN: 1615–AA53

1266. ADJUSTMENT OF STATUS FOR CERTAIN SYRIAN NATIONALS GRANTED ASYLUM IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255; 8 CFR 2

CFR Citation: None

Legal Deadline: None

Abstract: On October 27, 2000, the President signed into law Public Law 106–378, Adjustment of Status of

Certain Syrian Nationals, which provides for the adjustment of status to lawful permanent resident of certain Syrian nationals, without regard to the annual numerical limitation requirement. This interim final rule discusses eligibility and sets forth application procedures for persons wishing to adjust status on the basis of Public Law 106–378. The Department issued this action as an interim rule because Public Law 106–378 provided for a one-year application period, which ended on October 26, 2001. Publication of the interim final rule ensured that applicants were provided with as much time as possible to apply for the benefits under Public Law 106–378. The Department is now circulating a final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/17/01	66 FR 27445
Interim Final Rule Effective	05/17/01	
Interim Final Rule Comment Period End	07/17/01	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1115–AG13

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RIN: 1615–AA57

1267. NEW CLASSIFICATION FOR VICTIMS OF SEVERE FORMS OF TRAFFICKING IN PERSONS ELIGIBLE FOR THE T NONIMMIGRANT STATUS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101 to 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1252; 8 USC 1252a; 22 USC 7101; 22 USC 7105; . . .

CFR Citation: 8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299

Legal Deadline: None

Abstract: This rule sets forth application requirements for a new nonimmigrant classification. The T classification was created by 107(e) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106–386. The T nonimmigrant classification was designed for eligible victims of severe forms of trafficking in persons who aid the Government with their case against the traffickers and who can establish that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States after having completed their assistance to law enforcement. The rule establishes application procedures and responsibilities for the Department of Homeland Security and provides guidance to the public on how to meet certain requirements to obtain T nonimmigrant status.

There is a statutory cap for T nonimmigrant status for victims of a severe form of trafficking (principals), which is set at 5,000 per annum. The law also provides that certain family members can derive T status through the principal's application.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/02	67 FR 4784
Interim Final Rule Effective	03/04/02	
Interim Final Rule Comment Period End	04/01/02	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: CIS No. 2132–01; AG Order No. 2554–2002

There is a related rulemaking, CIS No. 2170–01, the new U nonimmigrant status (RIN 1615–AA67).

Transferred from RIN 1115–AG19

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RIN: 1615–AA59

1268. LIMITING THE PERIOD OF ADMISSION FOR B NONIMMIGRANT ALIENS

Priority: Other Significant

Legal Authority: 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1101; 8 USC 1101 note; 8 USC 1102; 8 USC 1103; 8 USC 1182

CFR Citation: 8 CFR 214; 8 CFR 235; 8 CFR 248

Legal Deadline: None

Abstract: This rule eliminates the minimum admission period of a B–2 visitor for pleasure, reducing the maximum admission period of B–1 and B–2 visitors from one year to six months, and establishing greater control over a B visitor's ability to extend the status or to change status to that of a nonimmigrant student. These changes will enhance the Deprtment's authority under sections 214(a) and 248 of the Immigration and Nationality Act and will help lessen the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

Timetable:

Action	Date	FR Cite
NPRM	04/12/02	67 FR 18065
NPRM Comment Period End	05/13/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: CIS No. 2176–01

Transferred from RIN 1115–AG43

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RIN: 1615–AA68

1269. DOCUMENTARY REQUIREMENTS FOR CERTAIN TEMPORARY RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257; 8 CFR 2

CFR Citation: 8 CFR 211

Legal Deadline: None

Abstract: This final rule adds a document to the list of documents that may be presented by certain returning temporary residents in lieu of an immigrant visa. This rule will allow the Form I–797, Notice of Action, issued to certain aliens who have adjusted to temporary resident status pursuant to 8 CFR 245a to be used as an entry document at a port-of-entry. This rule is necessary to ensure that those temporary resident aliens eligible to reenter the United States with a Form I–797 are able to do so.

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2177–01

Transferred from RIN 1115–AG44

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RIN: 1615–AA69

1270. CHANGE IN BUSINESS PRACTICES; ACCEPTANCE OF PAYMENTS OF FEES BY CREDIT CARD AND OTHER ELECTRONIC MEANS WHERE POSSIBLE

Priority: Other Significant

Legal Authority: PL 98–369; 31 USC 3720

CFR Citation: 8 CFR 103.7

Legal Deadline: None

Abstract: The Department of Homeland Security (DHS) proposes to expand the acceptance of credit cards and other electronic means to collect fees from the public. DHS currently accepts fees at seven locations in three of its 33 districts. DHS proposes to implement credit card acceptance at 16 of these districts. The intended benefit is two-fold: to provide the Department with a faster, more efficient collection and record keeping mechanism while affording the customer a convenient alternative payment method.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2181–01

Transferred from RIN 1115–AG48

Agency Contact: Georgia Mayers, Chief of Cash Management, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 6034, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA70

1271. ADDING AND REMOVING INSTITUTIONS TO AND FROM THE LIST OF RECOGNIZED AMERICAN INSTITUTIONS OF RESEARCH

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1443; 8 USC 1447

CFR Citation: 8 CFR 316

Legal Deadline: None

Abstract: This rule amends DHS regulations by adding the Rutgers, Indiana, and Harvard Universities to the list of American institutions of research located in section 316 of the Immigration and Naturalization Act, recognized by the Attorney General for the purpose of preserving residence in the United States for naturalization eligibility. This rule also removes the recently dissolved Harvard Institute for International Development from the same list.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2131–01

Transferred from RIN 1115–AG52

Agency Contact: Gerard Casale, Senior Adjudications Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–0788

RIN: 1615–AA72

1272. REQUIRING CHANGE OF STATUS FROM B TO F–1 OR M–1 NONIMMIGRANT PRIOR TO PURSUING A COURSE OF STUDY

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1184; 8 USC 1258; 8 CFR 2

CFR Citation: 8 CFR 214; 8 CFR 248

Legal Deadline: None

Abstract: The interim final rule amends Department regulations by eliminating the current provision allowing a nonimmigrant visitor for business or pleasure to enroll in a DHS—approved school without first obtaining approval of a change of nonimmigrant status request from the Department. The amendment will ensure that no B nonimmigrant is allowed to begin taking classes until the Department has approved the alien's request to change nonimmigrant status to that of F or M student

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/12/02	67 FR 18061
Interim Final Rule Comment Period End	06/11/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2195–02

Transferred from RIN 1115–AG60

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RIN: 1615–AA73

1273. RESTRUCTURING THE NONIMMIGRANT REGULATIONS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186

CFR Citation: 8 CFR 214; 8 CFR 252

Legal Deadline: None

Abstract: This interim regulation reorganizes the nonimmigrant regulations. It divides existing 8 CFR 214 into several new CFR parts, creating a new part for each major nonimmigrant classification. The regulation does not make significant changes to the regulations, but does rewrite and reorganize them to make them easier to read and follow. In addition the regulation eliminates obsolete provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2218–02

Transferred from RIN 1115–AG62

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Phone: 202 353–8177

RIN: 1615–AA74

1274. WAIVERS FOR NONIMMIGRANTS UNDER SECTION 212(D)(3)(A) OF THE IMMIGRATION AND NATIONALITY ACT

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends regulations pertaining to the process by which waiver requests are referred to DHS by the Department of State for certain nonimmigrants. This rule affects individuals located outside of the United States who are applying for temporary visas. Promulgation of this rulemaking ensures that DHS' rules are consistent with long-standing agency practices.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	
Interim Final Rule Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2200–02

Transferred from RIN 1115–AG63

Agency Contact: Mark Rouse, Assistant Director, Office of Adjudications, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754

RIN: 1615–AA75

1275. REGISTRATION REQUIREMENTS AND WORK AUTHORIZATION ELIGIBILITY FOR ALIENS IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1201a; 8 USC 1301 to 1305; 8 USC 1324a

CFR Citation: 8 CFR 2; 8 CFR 264; 8 CFR 274a

Legal Deadline: None

Abstract: This rule amends DHS regulations regarding employment authorization and registration of aliens. First, this rule broadens the rule that permits the presentation of specified documents to satisfy the employment eligibility verification requirements for a temporary period. Second, this rule broadens the acceptable documentation available to establish that an asylee, or an alien who has applied for asylum, has complied with the requirement to be registered with the Department. Third, this rule clarifies the employment authorization regulations by specifying that certain classes of aliens who are employment authorized incident to status are not required to apply for or obtain an Employment Authorization Document, but are permitted to do so if they wish to have a DHS—issued secure photo identity document. Fourth, this rule implements two new Federal laws enacted on January 16, 2002, involving the employment authorization of the spouses of E and L aliens, by making these classifications employment authorized incident to status, consistent with the provisions of these laws. This rule also provides for restructuring of 8 CFR 274a.12(d).

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	
Interim Final Rule Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2204–02

Transferred from RIN 1115–AG74

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RIN: 1615–AA78

1276. PROCEDURES FOR CONDUCTING EXAMINATIONS AND WAIVING THE OATH OF ALLEGIANCE FOR NATURALIZATION APPLICANTS WITH DISABILITIES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1421; 8 USC 1443; 8 USC 1447; 8 CFR 2.1; ...

CFR Citation: 8 CFR 310; 8 CFR 313; 8 CFR 316; 8 CFR 319; 8 CFR 333; ...

Legal Deadline: None

Abstract: This regulation provides procedures for conducting examinations and waiving the oath of allegiance attachment requirement and the oath requirement for any individual who has a developmental, physical, or mental impairment that makes him or her unable to understand, or communicate an understanding of, the meaning of the oath. The rule incorporates changes made by Public Law 106–448, which authorized the Secretary of the Department Homeland Security (DHS) to waive the oath requirement for such individuals. It also specifies who is authorized to act as a designated representative on behalf of applicants who qualify for the waiver and addresses how DHS will conduct examinations with such representatives to ensure that applicants with disabilities have the opportunity to establish eligibility for naturalization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/04	
Interim Final Rule Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2191–02

Transferred from RIN 1115–AG77

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Phone: 202 307–9919

RIN: 1615–AA81

1277. ELECTRONIC SIGNATURE ON APPLICATIONS AND PETITIONS FOR IMMIGRATION AND NATURALIZATION BENEFITS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 1252 note; ...

CFR Citation: 8 CFR 103

Legal Deadline: Other, Statutory, September 2003, Other.

Abstract: This rule amends DHS regulations concerning the acceptance of electronic signatures on applications and petitions for immigration and naturalization benefits. The change is necessary to allow the Department to begin accepting electronically filed applications and petitions as required by law. By accepting electronically filed applications and petitions, the Department expects to streamline its information collection process, improve customer service, and move towards fulfilling the mandates of the Government Paperwork Elimination Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/29/03	68 FR 23009
Interim Final Rule Effective	05/29/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2224–02

Transferred from RIN 1115–AG79

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RIN: 1615–AA83

1278. WITHHOLDING OF ADJUDICATION

Priority: Other Significant

Legal Authority: 8 USC 552; 8 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1304; 8 USC 1356; 8 USC 1421; 8 USC 1443; 8 USC 1447; ...

CFR Citation: 8 CFR 103; 8 CFR 208; 8 CFR 310; 8 CFR 335; 8 CFR 336

Legal Deadline: None

Abstract: This regulation expands the situations where a director can withhold the adjudication of an application or petition. The director may withhold adjudication at six-month increments while there is an ongoing investigation relating to that application or petition. Any regulatory deadlines will be tolled while adjudication is withheld. The director will give notice of withholding to the petitioner or applicant if it will not prejudice the investigation. The Department is now conducting security checks on all applicants and petitions, so this rule is necessary to ensure that immigration benefits are not granted while there is an ongoing investigation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	
Interim Final Rule Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2234–02

Transferred from RIN 1115–AG86

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RIN: 1615–AA86

1279. VALIDITY PERIOD OF APPROVED FORM I–600A, APPLICATION FOR ADVANCED PROCESSING OF ORPHAN PETITION

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1644

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This rule amends the relevant regulations of the Department by establishing procedures to allow for the extension of the validity period of the Form I–600A, Application for Advance Processing of Orphan Petition. This rule is necessary to ensure that prospective adoptive parents are provided an adequate period of time in which to identify an orphan for inter-country adoption.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/04	
Interim Final Rule Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2230–02

Transferred from RIN 1115–AG88

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RIN: 1615–AA87

1280. IMPLEMENTATION OF AMENDMENTS AFFECTING PETITIONS FOR EMPLOYMENT CREATION ALIENS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; ...

CFR Citation: 8 CFR 204; 8 CFR 216; 8 CFR 245; 8 CFR 299

Legal Deadline: Final, Statutory, March 2, 2003, Final.

Abstract: This rule proposes amendments to the regulations of the Department of Homeland Security to implement changes made by the 21st Century Department of Justice Appropriations Authorization of 2001. This legislation made various changes to the EB–5 Alien immigrant classification. This rule is being issued as an interim rule to comply with the statutory requirement that implementing regulations be issued by the Department within 120 days of enactment, and to ensure that the Department's regulations are consistent with the new legislation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	
Interim Final Rule Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2253–03; Regulatory actions announced in 1115–AF27 are merged with this rulemaking.

Transferred from RIN 1115–AG93

Agency Contact: Maurice R. Berez, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA90

1281. CERTAIN BENEFITS AVAILABLE TO ALIENS UNDER THE PROVISIONS OF THE CHILD STATUS PROTECTION ACT

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154

CFR Citation: 8 CFR 204; 8 CFR 205

Legal Deadline: None

Abstract: This interim final rule amends the relevant regulations of the Department by implementing the provisions of the Child Status Protection Act, Public Law 107–208. This rule is necessary to ensure that the age-out protections afforded to certain alien beneficiaries in the Child Status Protection Act are codified.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2265–03

Transferred from RIN 1115–AG99

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RIN: 1615–AA93

1282. IMPLEMENTATION OF THE AGE OUT PROTECTIONS AFFORDED UNDER THE CHILD STATUS PROTECTION ACT

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; ...

CFR Citation: 8 CFR 204; 8 CFR 205

Legal Deadline: None

Abstract: The Department will promulgate an interim final rule that amends regulations contained in title 8 of the Code of Federal Regulations to implement certain provisions of the Child Status Protection Act (Pub. L. 107–288). The rule will ensure that the age-out protections afforded to certain alien beneficiaries in the Child Status Protection Act are codified.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	
Interim Final Rule Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1115–AH01

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RIN: 1615–AA95

1283. ELIMINATING THE NUMERICAL CAP ON MEXICAN TN NONIMMIGRANTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule eliminates the 5,500 annual limit on the number of Mexican professional admissions under the North American Free Trade Agreement (NAFTA). It also eliminates the associated requirement of a petition on Form I–129 and the certified labor condition application. Rather than submit a petition to DHS, aliens seeking TN classification will apply for a TN visa from the State Department. This rule brings the treatment of Mexican TNs under NAFTA closer to that of Canadian TNs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2266–03

Transferred from RIN 1115–AH02

Agency Contact: Efren Hernandez, Director, Business and Trade Branch, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AA96

1284. FILING OF PROPOSALS FOR DESIGNATION AS A REGIONAL CENTER APPROVED TO PARTICIPATE IN THE IMMIGRANT INVESTOR PILOT PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1154; 8 USC 1182; 8 USC 1186a

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The regulation changes the location for the filing and adjudication of proposals to participate in the Immigrant Investor Pilot Program from Headquarters, Office of Adjudication, to the Texas and California DHS Centers. This change is necessary to ensure the uniform and effective adjudication of these complex proposals related to economic development, export trade, and job creation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/04	
Interim Final Rule Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: CIS No. 1944–98

Transferred from RIN 1115–AF27

Agency Contact: Maurice R. Berez, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AB00

1285. • APPLICATION FOR NATURALIZATION BY ALTERNATIVE APPLICATION IF CITIZEN PARENT HAS DIED

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107–273; 21st Century Department of Justice Appropriations Authorization Act

CFR Citation: 8 CFR 103; 8 CFR 299; 8 CFR 320; 8 CFR 322; 8 CFR 499

Legal Deadline: None

Abstract: One of the changes made by Public Law 107–273 is the addition of the U.S. citizen grandparents and U.S. citizen of legal guardians as eligible to apply for citizenship on behalf of a child born and residing outside the United States pursuant to the Immigration and Nationality Act, section 322. This rule amends DHS regulations to authorize an alternative applicant to file an application for citizenship on behalf of a foreign-born child if the United States citizen parent has died.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2289–03

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RIN: 1615–AB08

1286. • SUNSET OF ADDITIONAL $1,000 FILING FEE AND RETURN TO 65,000 ANNUAL LIMIT ON H–1B NONIMMIGRANT PETITION APPROVALS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 5 USC 552; 5 USC 552a; 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282; 8 USC 1301 to 1305; 8 USC 1356; 8 USC 1372; PL 105–277; PL 106–311; PL 106–313; ...

CFR Citation: 8 CFR 103; 8 CFR 214

Legal Deadline: None

Abstract: The American Competitiveness and Workforce Improvement Act, Public Law 105–277, temporarily increased the number of temporary skilled personnel admitted to the United States under the H–1B program, and imposed an additional fee for petitioning employers. The increase in temporary workers and additional fee sunset on October 1, 2003. Accordingly, this final rule amends DHS regulations by removing references to the additional filing fee for certain H–1B nonimmigrant petitions. This final rule also removes language related to the annual H–1B numerical limit.

Timetable:

Action	Date	FR Cite
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2286–03

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RIN: 1615–AB10

1287. • IMPLEMENTATION OF THE BORDER COMMUTER STUDENT ACT OF 2002

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101; 8 USC 1101 note; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1221; 8 USC 1281; . . .

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule implements recent legislation creating new visa classifications applicable to part-time students who commute across the border. Previously, DHS created an option for F–1 and M–1 nonimmigrant students to enroll in a reduced courseload if the nonimmigrant maintained residence in their home country of Mexico or Canada and commuted to schools within five miles of the border. These special F–1 and M–1 nonimmigrants were required to pursue a full course of study albeit at part-time enrollment. This rule has been drafted to effect Congressional legislation that created new visa classifications, F–3 and M–3, for border commuter student nonimmigrants. The F–3 and M–3 visa categories replace the option of reduced courseload for border commuter students within the F–1 and M–1 visa categories. When this rule is made effective, any student wishing to enroll in a reduced courseload for purposes of commuting must obtain an F–3 or an M–3 visa accordingly. These students, however, will not be required to pursue a full course of study. The F–3 and M–3 visa holders will be tracked in the Student and Exchange Visitor Information System administered by DHS and the Bureau of Immigration and Customs Enforcement.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2290–03

Agency Contact: Efren Hernandez, Director, Business and Trade Branch, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 I Street NW., Washington, DC 20536
Phone: 202 353–8177

RIN: 1615–AB11

1288. • REQUIRING COMPLETION OF SECURITY CHECKS BEFORE ISSUANCE OF EVIDENCE OF ALIEN REGISTRATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1103; 8 USC 1201; 8 USC 1303 to 1305; 8 CFR 2

CFR Citation: 8 CFR 264

Legal Deadline: None

Abstract: This interim rule amends Department of Homeland Security regulations relating to the issuance of evidence of alien registration. Under the amended rule, the Department will not issue evidence of an alien's registration under sections 262 and 264 of the Immigration and Nationality Act until the Department has completed all appropriate security checks. This rule is necessary to minimize the risk that aliens who may present threats to the public safety or national security may escape detection and removal from the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2291–03

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
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RIN: 1615–AB12

1289. • CLASSIFICATION OF CERTAIN SCIENTISTS OF THE COMMONWEALTH OF INDEPENDENT STATES OF THE FORMER SOVIET UNION AND THE BALTIC STATES AS EMPLOYMENT BASED IMMIGRANTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Soviet Scientists Immigration Act of 1992 (SSIA) provided for 750 visas to be provided to eligible scientists and engineers from the former Soviet Union. This Program expired on October 24, 1996. Recent legislation extended the eligibility deadline for filling under the SSIA to September 30 2006, and raised the numerical limit on these visas from 750 to 950. It also required DHS to consult with the Department of State and other agencies regarding previous experiences with the program and their recommendations for making the program more effective. This rule improves administration of the program by requiring each applicant to submit a statement signed by the State Department's Bureau of Nonproliferation (Bureau) regarding his or her qualifications. Because the Bureau has been in close contact with this group of scientists and with the organizations that have employed them for a number of years, the Bureau is in a better position than DHS to assess the individual applicant's qualifications. Accordingly, this signed statement will be submitted for the evidence of qualifications previously required under the program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2277–03

Agency Contact: Efren Hernandez, Director, Business and Trade Branch, Adjudications Division, Department of Homeland Security, Bureau of

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RIN: 1615–AB14

1290. • PETITIONING REQUIREMENTS FOR THE O AND P NONIMMIGRANT CLASSIFICATIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This interim rule amends the regulations of the Department of Homeland Security (DHS) to enable certain petitioners to file O and P nonimmigrant petitions up to one year prior to the petitioners' need for the alien's services. Petitioners frequently plan for an event or performance more than one year in advance when seeking O and/or P nonimmigrant workers for employment in the United States. By extending the filing time requirement for O and P petitions from the current six months to one year, DHS hopes to provide relief and assurance to petitioners that, if approvable, such petitions will be approved prior to the date of the petitioners' need for the alien's services.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

Additional Information: Current filing times combined with processing times often result in an O or P petition being adjudicated at the same time or later than the date of the petitioner's stated need for the alien. This creates a hardship for employers who are seeking to hire the alien based on a scheduled performance, competition, or event, and who may have booked a venue and sold advance tickets. If the petition is not approved by the time of the petitioner's stated need, the petitioner may be required to cancel a scheduled event or performance, may lose funds advanced for booking a venue, and may also be liable for the costs associated with ticket refunds. Since an O or P employer may plan for the competition, event, or performance more than one year in advance, DHS has determined that extending the filing time will provide relief to many such employers. Although this rule may have an impact on small entities, the rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objective. This rule will ensure that certain O and P nonimmigrant petitions are adjudicated well in advance of the date of the employers' stated need, and thus prevent employers from having to cancel an event, competition, or performance either because the petition was denied at the last minute, or because the petition was not adjudicated in advance of the need. Employers will be less likely to lose booking costs or have to issue refunds if they receive a decision on the petition well in advance of the event, competition, or performance. Extending the time requirements for the filing of O and P petitions will provide immediate relief to affected United States employers, and any economic impact on small entities is likely to be positive.

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RIN: 1615–AB17

Department of Homeland Security (DHS) — Long-Term Actions
Bureau of Citizenship and Immigration Services (BCIS)

1291. REDUCTION OF THE NUMBER OF ACCEPTABLE DOCUMENTS AND OTHER CHANGES TO EMPLOYMENT VERIFICATION REQUIREMENTS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 8 USC 1324a; PL 104–208

CFR Citation: 8 CFR 274a

Legal Deadline: Final, Statutory, March 31, 1998, Final.

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 412(a) of IIRIRA requires a reduction in the number of documents that may be accepted in the employment verification process. Section 412(d) clarifies the applicability of section 274A to the Federal Government. Section 610 of the Regulatory Flexibility Act requires agencies to review rules that have a significant economic impact on a substantial number of small entities every 10 years. The Department is conducting this review in conjunction with IIRIRA implementation. The proposed rulemaking published February 12, 1998, implements sections 212(a) and (d) of IIRIRA and proposes other changes to the employment verification process identified through that review. A revised Form I–9 was included with the proposed rulemaking.

The comment period closed on April 3, 1998. The Department is analyzing the comments and taking into consideration issues raised by the Alien Registration Form (I–551) program. It should be noted that this action supersedes the previously published regulatory action titled "Reduction in the Number of Documents Accepted for Employment Verification." In order to avoid confusion, this regulatory action is being referenced under the current RIN, which captures all prior actions related to employment verification.

CIS No. 1947–98, Interim Rule published February 9, 1999 (64 FR 6187). The "Receipt Rule" permits employees to present their employer certain types of "receipts" in lieu of a document listed on the Form I–9.

Timetable:

Action	Date	FR Cite
NPRM (CIS No. 1399 Comment Period End 12/23/93)	11/23/93	58 FR 61846
NPRM (CIS No. 1339S Comment Period End 07/24/95)	06/22/95	60 FR 32472

Action	Date	FR Cite
Notice (CIS No. 1713 Applications Due 01/29/96)	11/30/95	60 FR 61630
Appl. Extension Through 3/8/96; Notice Pilot Demonstration Program (CIS No. 1713)	02/06/96	61 FR 4378
Final Rule (CIS No. 1399E)	09/04/96	61 FR 46534
Interim Final Rule (CIS No. 1818)	09/30/97	62 FR 51001
NPRM (CIS No. 1890–97 Comment Period End 04/03/98)	02/02/98	63 FR 5287
Final Rule	12/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: The deadline for implementing section 412(a) of IIRIRA was extended to March 31, 1998, by Public Law 105–54. This rulemaking has been delayed by the need to coordinate implementation with other provisions of IIRIRA, by several complex policy and regulatory issues that have taken time to resolve, and by the review required by section 610 of the Regulatory Flexibility Act, and by the need to coordinate policy issues with the Border Security Act of 2002 and, more generally, the post-September 11th environment in which document security is of a paramount concern.

CIS No. 1890–97; PL 104–208, title 4.

CIS Nos. 1399 and 1399S–94, Control of Employment of Aliens, Supplemental Rule; Action for CIS Nos. 1399 and 1399S is canceled as a result of IIRIRA requirements.

CIS No. 1399E is an extracted portion of CIS No. 1399, published separately to allow for the production of a new, more secure Employment Authorization Document.

CIS No. 1713–95, Demonstration Project for Electronic I–9.

Interim Rule CIS No. 1818 was published on September 30, 1997, at 62 FR 51001 to maintain the status quo as much as possible until CIS completes the more comprehensive document reduction initiative designated by CIS No. 1890–97.

Transferred from RIN 1115–AB73

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RIN: 1615–AA01

1292. TEMPORARY PROTECTED STATUS NOTICES

Priority: Other Significant

Legal Authority: 8 USC 1103; 5 USC 552; 5 USC 552a; 8 USC 1201; 28 USC 509; 31 USC 9701; 8 USC 1254a; 8 USC 1254a note; 8 USC 1362; 8 USC 1324a; 8 USC 1101; 8 USC 1303; 8 CFR 2; 5 USC 301

CFR Citation: 8 CFR 103; 8 CFR 244; 8 CFR 299

Legal Deadline: None

Abstract: Regulations implement provisions of the Immigration and Nationality Act as established by section 302 of the Immigration Act of 1990, Public Law 101–649, which allow for the establishment and implementation of Temporary Protected Status (TPS). Currently, nationals of countries have been accorded TPS through the publication of separate Federal Register Notices.

Current regulatory actions include:

CIS No. 1608 provides for exceptions to deadlines for registering for TPS and updates the application process.

CIS No. 1612 provides for the removal of obsolete TPS language.

CIS No. 2229 terminates TPS for Sierra Leone.

Timetable:

Action	Date	FR Cite
TPS Final Rule (CIS No. 1612) Removal of Obsolete Sections Covering TPS for Salvadorans	09/10/96	61 FR 47667
TPS Notice (CIS No. 1832–97) Extension and Redesignation of Liberia	04/07/97	62 FR 16608
TPS Notice (CIS No. 1853–97) Extension and Termination of Rwanda Eff. 06/07/97	06/19/97	62 FR 33442
TPS Notice (CIS No. 1862–97) Extension of Bosnia-Herzegovina	08/01/97	62 FR 41420
TPS Notice (CIS No. 1863–97) Extension of Somalia	08/01/97	62 FR 41421
TPS Notice (CIS No. 1878–97) TPS Designation of Montserrat	08/28/97	62 FR 45685
TPS Notice (CIS No. 1775–96) TPS Designation of Burundi	11/04/97	62 FR 59735
TPS Notice (CIS No. 1780–97) TPS Designation of Sudan	11/04/97	62 FR 59737
TPS Notice (CIS No. 1877–97) TPS Designation of Sierra Leone	11/04/97	62 FR 59736
TPS Notice (CIS No. 1910–98) Termination of Designation of Liberia	03/31/98	63 FR 15437
TPS Notice (CIS No. 1929–98) TPS Designation of Province	06/09/98	63 FR 31527
TPS Notice (CIS No. 1945–98) Extension of Designation of Somalia	09/28/98	63 FR 51602
TPS Notice (CIS No. 1953–98) Redesignation of Liberia	09/29/98	63 FR 51958
TPS Notice (CIS No. 1957–98) TPS Extension of Designation of Burundi	11/03/98	63 FR 59334
TPS Notice (CIS No. 1958–98) TPS Extension of Designation of Sierra Leone	11/03/98	63 FR 59336
TPS Notice (CIS No. 1959–98) Extension of Designation of Sudan	11/03/98	63 FR 59337
Final Action, Temporary Protected Status, Exception to Registration Deadlines	11/16/98	63 FR 63593
TPS Notice (CIS No. 1964–98) TPS Designation of Honduras	01/05/99	64 FR 524
TPS Notice (CIS No. 1965–98) TPS Designation of Nicaragua	01/05/99	64 FR 526

Action	Date	FR Cite
TPS Notice (CIS No. 1960–98) TPS Designation of Guinea-Bissau	03/11/99	64 FR 12181
TPS Notice (CIS No. 1986–99) TPS Extension and Redesignation of the Province of Kosovo	06/08/99	64 FR 30542
TPS Notice (CIS No. 1953–99) Termination of TPS Designation of Liberia	07/30/99	64 FR 41463
TPS Notice (CIS No. 2009–99) Extension of the TPS Registration Period for Hondurans and Nicaraguans	08/06/99	64 FR 42991
TPS Notice (CIS No. 2006–99) Extension of TPS Designation of Bosnia-Herzegovina	08/11/99	64 FR 43720
TPS Notice (CIS No. 2010–99) Extension of TPS Designation of Montserrat	09/02/99	64 FR 48190
TPS Notice (CIS No. 2015–99) Extension of TPS Designation of Somalia	09/13/99	64 FR 49511
TPS Notice (CIS No. 2022–99) Extension and Redesignation of Burundi Under Temporary Protected Status	11/09/99	64 FR 61123
TPS Notice (CIS No. 2023–99) Extension and Redesignation of Sudan Under the Temporary Protected Stat	11/09/99	64 FR 61128
TPS Notice (CIS No. 2024–99) Extension and Redesignation of Sierra Leone Under Temporary Protected S	11/09/99	64 FR 61125
TPS Notice (CIS No. 2043–00) Extension and Termination of Designation of Guinea-Bissau Under TPS	03/20/00	65 FR 15016
TPS Notice (CIS No. 2044–00) Designation of Angola Under TPS	03/29/00	65 FR 16634
TPS Notice (CIS No. 2064–00) Extension of Nicaragua Designation	05/11/00	65 FR 30440
TPS Notice (CIS No. 2065–00) Extension of Designation Hondurans	05/11/00	65 FR 30438
TPS Notice (CIS No. 2066–00) Termination of the Kosovo. . .	05/23/00	65 FR 33356
TPS Notice (CIS No. 2064R–00) Extension of Re-Registration for Nicaraguans	06/09/00	65 FR 36729
TPS Notice (CIS No. 2065R–00) Extension of Re-Registration for Hondurans	06/09/00	65 FR 36719
TPS Notice (CIS No. 2079–00) Termination of Bosnia-Herzegovina	08/30/00	65 FR 52789
TPS Notice (CIS No. 2087–00) Extension of Designation of Montserrat Under Temporary Protected Status	10/02/00	65 FR 58806
TPS Notice (CIS No. 2094–00) Extension of Designation of Sudan	11/09/00	65 FR 67407
TPS Notice (CIS No. 2095–00) Extension of Designation of Sierra Leone	11/09/00	65 FR 67405
TPS Notice (CIS No. 2096–00) Extension of Designation of Burundi	11/09/00	65 FR 67404
Correction TPS Notice (CIS No.2090–00) Extension of Designation of Somalia	12/08/00	65 FR 69789
TPS Notice (CIS No. 2125–01) Designation of El Salvador	03/09/01	66 FR 14214
TPS Notice (CIS No. 2114–01) Extension and Redesignation of Angola	04/05/01	66 FR 18111
TPS Notice (CIS No. 2135–01) Extension of Designation of Honduras under TPS	05/08/01	66 FR 23269
TPS Notice (CIS No. 2136–01) Extension of Designation of Nicaragua under TPS	05/08/01	66 FR 23271
TPS Notice (CIS No. 2148–01) Auto. Ext. of Work Authorization for Hondurans & Nicaraguans Under TPS	07/03/01	66 FR 35270
TPS Notice (CIS No. 2146–01) Extension of the Designation of Montserrat under TPS	08/03/01	66 FR 40834
TPS Notice (CIS No. 2162–01) Extension of Designation of Burundi under TPS	08/31/01	66 FR 46027
TPS Notice (CIS No. 2163–01) Extension of the Designation of Sierra Leone under TPS	08/31/01	66 FR 46029
TPS Notice (CIS No. 2164–01) Extension of Designation of Sudan under TPS	08/31/01	66 FR 46031
TPS Notice (CIS No. 2151–01) Extension of Redesignation of Somalia under TPS	09/04/01	66 FR 46288
TPS Notice (CIS No. 2114–01) Extension of the Designation of Angola under TPS	02/01/02	67 FR 4997
TPS Notice (CIS No. 2196–02) Extension of Designation of Nicaragua under TPS	05/03/02	67 FR 22450
TPS Notice (CIS No. 2197–02) Extension of the Designation Honduras under TPS	05/03/02	67 FR 22451
TPS Notice (CIS No. 2212–02) Extension of Designation of El Salvador under TPS	07/11/02	67 FR 46000
TPS Notice (CIS No. 2209–02) Extension of Designation of Montserrat	07/17/02	67 FR 47002
TPS Notice (CIS No. 2209–02) Extension of Designation of Montserrat under TPS	07/17/02	67 FR 47002
TPS Notice (CIS No. 2215–02) Extension of Desgination of Somalia	07/26/02	67 FR 48950
TPS Notice (CIS 2226–02) Extension of the Designation of Sudan under TPS	08/30/02	67 FR 55877
TPS Notice (CIS No. 2225–02) Extension of Designation of Burundi under TPS	08/30/02	67 FR 55875

Action	Date	FR Cite
TPS Notice (CIS No. 2235–02) Designation of Liberia under TPS	10/01/02	67 FR 61664
TPS Notice (CIS No. 2237–02) Extension of TPS for Sierra Leone	10/31/02	67 FR 66423
TPS Notice (CIS No. 2229–02) Extension of Designation of Angola under TPS	01/27/03	68 FR 3896
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The Secretary may designate other countries for TPS.

CIS Nos. 1608, 1612, 1832–97, 1853–97 and 1877–97.

CIS No. 1608 issued as an interim final rule on 11/5/93 at 58 FR 58935

Transferred from RIN 1115–AE26

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RIN: 1615–AA04

1293. EMPLOYMENT VERIFICATION BY EMPLOYERS THAT ARE MEMBERS OF A MULTI-EMPLOYER ASSOCIATION

Priority: Other Significant

Legal Authority: 8 USC 1324a; PL 104–208

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: This proposed action clarifies when an employer, that is a member of a multi-employer association employing an individual under a collective bargaining agreement entered into between one or more employee organizations and the multi-employer association, may rely upon an Employment Eligibility Verification Form (Form I–9) completed for the individual by a previous employer that is a member of the same multi-employer association.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Re CIS No. 1817–96; PL 104–208, title 4

Transferred from RIN 1115–AE67

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Phone: 202 514–2895

RIN: 1615–AA07

1294. LIMITING LIABILITY FOR CERTAIN TECHNICAL AND PROCEDURAL VIOLATIONS OF PAPERWORK REQUIREMENTS

Priority: Other Significant

Legal Authority: 8 USC 1324a; PL 104–208

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: This rule will implement section 411 of IIRIRA, which allows employers that have made a good faith attempt to comply with a particular employment verification requirement to correct technical or procedural failures to meet the requirement before such failures are deemed to be violations of the Act. This rule will explain the good faith rule, define the term technical or procedural failure to meet such requirement, and explain how an employer can correct technical or procedural failures.

Timetable:

Action	Date	FR Cite
NPRM	04/07/98	63 FR 16909
NPRM Comment Period End	06/08/98	
Final Rule	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: CIS No. 1819–96 and Public Law 104–208, title IV

Transferred from RIN 1115–AE70

Agency Contact: Marguerite Przbylski Kleczek, Attorney, Office of General Counsel, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1615–AA08

1295. INTERIM DESIGNATION OF ACCEPTABLE RECEIPTS FOR EMPLOYMENT ELIGIBILITY VERIFICATION

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1324a; 8 CFR 2

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) made several amendments to the employment eligibility verification provisions of the Immigration and Nationality Act (INA). An interim final rule implementing some of these amendments was issued on September 30, 1997. This rule included amendments to the "Receipt Rule," which permits employees to present a "Receipt" in lieu of a document listed on the Employment Eligibility Verification form (Form I–9, Employment Eligibility Verification).

This interim final rule was necessary to facilitate employer and employee compliance with the regulations. The rule revised the amount of time a receipt remains valid where the employee presents a form I–94, Arrival–Departure Record, marked with a temporary I–551 stamp and containing a photograph of the bearer. Where the employee presents a form I–94 marked with a refugee admission stamp, the rule adds form I–688B to the list of documents that the employee can present at the end of the receipt validity period.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/99	64 FR 6187

Action	Date	FR Cite
Interim Final Rule Comment Period End	04/12/99	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1947–98.

Transferred from RIN 1115–AF42

Agency Contact: Marguerite Przbylski Kleczek, Attorney, Office of General Counsel, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1615–AA20

1296. ADOPTION OF SIBLINGS, ADOPTED ALIEN CHILDREN LESS THAN 18 YEARS OF AGE CONSIDERED A "CHILD"

Priority: Other Significant

Legal Authority: PL 106–139; 8 USC 1103; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This proposed rule changes the definition of an adopted "child" or "orphan" from 16 years old to 18 years old in cases where the alien has a younger sibling, under the age of 16, who is also the subject of an orphan petition held by the same U.S. citizen or lawful permanent resident. The change is necessary to conform the regulations to the statutory eligibility changes made by Public Law 106–139. This change allows natural siblings, who might otherwise be separated, to be adopted together into the family of a citizen or lawful permanent resident of the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	
NPRM Comment Period End	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2110–01

Transferred from RIN 1115–AG04

Agency Contact: Steven Heller, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Suite 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7435
Email: steve.heller@dhs.gov

RIN: 1615–AA50

1297. K NONIMMIGRANT CLASSIFICATION; LEGAL IMMIGRATION FAMILY EQUITY ACT (LIFE)

Priority: Other Significant

Legal Authority: PL 106–553

CFR Citation: 8 CFR 212; 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 274a

Legal Deadline: Final, Statutory, December 21, 2000, Final.

Abstract: Section 1103 of the Legal Immigration Family Equity Act (LIFE), Public Law 106–553, creates a new nonimmigrant classification under the Immigration and Nationality Act101(a)(15)(K) for the spouses and children of U.S. citizens who have pending immigrant visa applications. This rule establishes this classification in DHS regulations, including creating filing and adjudication procedures, as well as procedures for adjusting status from this new nonimmigrant classification to that of a lawful permanent resident.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/14/01	66 FR 42587
Interim Final Rule Comment Period End	10/15/01	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: LIFE creates another separate nonimmigrant classification V and also amends the INA for other purposes. Each of these will be addressed in a separate rule. CIS No. 2127–01.

Transferred from RIN 1115–AG12

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3048

RIN: 1615–AA56

1298. AVAILABILITY OF MATERIAL UNDER FREEDOM OF INFORMATION ACT AND PRIVACY ACT

Priority: Other Significant

Legal Authority: 8 USC 552; 8 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This revised regulation is necessary to include the provisions of the Electronic Freedom of Information Act (EFOIA) Amendments of 1996. The EFOIA requires that we maintain, and provide to the public, a record in either paper or electronic format and maintain an electronic reading room. It further updates the timing of responses to requests by extending the response time from 10 to 20 working days. This regulation reflects current procedures for the public to request and obtain access to the Department of Homeland Security records through the Freedom of Information Act and Privacy Act. It is being updated to include the handling of requests referred from another agency to ensure that requesters are not penalized by waiting in another agency's backlog.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: CIS No.1942–98

Transferred from RIN 1680–AA00

Agency Contact: Mildred Carter, FOIA/PA Program Specialist, Department of Homeland Security, Files and Forms Management, 425 I Street NW., Washington, DC 20536
Phone: 202 514–1722

RIN: 1615–AB18

1299. CERTIFICATION OF CERTAIN HEALTH CARE WORKERS

Priority: Other Significant

Legal Authority: 8 USC 1182(a)(5); PL 104–208

CFR Citation: 8 CFR 204; 8 CFR 212; 8 CFR 214.2; 8 CFR 245; 8 CFR 248

Legal Deadline: Other, Statutory, January 19, 2001, Other.

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 343 prohibits the entry of any alien who seeks to enter the United States for the purpose of performing labor as a health care worker (other than a physician) without a certificate as to the alien's qualifications and English ability from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent independent organization approved by the Secretary.

The Department published an interim rule (CIS No. 1879–97) to address shortages in the occupations of nursing and occupational therapy on October 14, 1998. In addition, DHS issued a second interim rule on April 30, 1999, to grant CGFNS authorization to issue certificates to foreign health care workers in the occupations of occupational therapy and physical therapy. This rule also granted the Foreign Credentialing Commission on Physical Therapy the authority to issue certificates to foreign-trained physical therapists. The second interim rule (CIS No. 1979–99) was published under RIN 1115–AF43 and now is consolidated with this Unified Agenda of Federal Regulations entry. A third interim rule (CIS No. 2089–00) was published on January 16, 2001, to address certification requirements for Speech Language Pathologists, Audiologists, Medical Technologists, and Physician Assistants. The Department also published a related rule in response to the passage of the NRDAA, (CIS No. 2050–00). In the rule, DHS announced that it would continue to waive the certification requirements for nonimmigrant nurses, pending the promulgation of new regulations implementing the certification requirements for section 343.

On October 11, 2002, the Department published a proposed rule (CIS No.2080–02) to fully implement section 343, including solicitation of public comments on the requirements relating to the designation of covered health care occupations, the procedures and requirements for certifying organizations, the content of the certificates, and the process for presentation of the certificates and listing approved English language tests and requisite scores. The Department will publish a final rule implementing the proposals and taking into account the comments received in response to the October 11, 2002, proposed rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule (CIS No. 1879)	10/14/98	63 FR 55007
Interim Final Rule Effective (CIS No. 1879)	12/14/98	
Interim Final Rule Comment Period End (CIS No. 1879)	02/11/99	
Interim Final Rule (CIS No. 1979–99)	04/30/99	64 FR 23174
Interim Final Rule Comment Period End (CIS No. 1979–99)	06/29/99	
Interim Final Rule Effective (CIS No. 1979–99)	06/29/99	
Interim Final Rule (CIS No. 2089–00)	01/16/01	66 FR 3440
Interim Final Rule Comment Period End	03/19/01	
Interim Final Rule Effective (CIS No. 2089–00)	03/19/01	
NPRM (CIS No. 2080–02)	10/11/02	67 FR 63313
Final Action	07/25/03	68 FR 43901

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1115–AE73

Agency Contact: Molly Johnson, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7435

RIN: 1615–AA10

1300. NONIMMIGRANT CLASSES: Q–2 IRISH PEACE PROCESS CULTURAL AND TRAINING PROGRAM VISITOR

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1184; 8 USC 1186; 8 USC 1187; ...

CFR Citation: 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 274

Legal Deadline: None

Abstract: This rule amends the regulations to establish a new visa classification, Q–2. Public Law 105–319, also known as the Irish Peace Process Cultural and Training Program Act of 1998, provides the basis for this regulatory change. The Q–2 visa classification identifies those visitors from Northern Ireland and certain designated counties in the Republic of Ireland to come to the United States temporarily for training employment and to experience coexistence and conflict resolution in a diverse society.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/00	65 FR 14774
Interim Final Rule Effective	03/17/00	
Interim Final Rule Comment Period End	05/16/00	
Final Action	06/12/03	68 FR 35151

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2000–99

Transferred from RIN 1115–AF51

Agency Contact: Donna Crump, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 353–8177

RIN: 1615–AA25

1301. CLARIFICATION OF PAROLE AUTHORITY

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends Department regulations concerning the authority to grant the parole of aliens from DHS custody by specifically identifying the scope of that authority to include the Secretary. This action is being taken to clarify which individuals are authorized by the Secretary to grant parole from DHS custody.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/28/00	65 FR 82254
Interim Final Rule Comment Period End	12/28/00	
Interim Final Rule Delay of Effective Date until 03/30/2001	01/26/01	66 FR 7863
Final Action	06/13/03	68 FR 35273

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2004–99

Transferred from RIN 1115–AF53

Agency Contact: Kenneth Leutbecker, Director, Parole and Humanitarian Assistance Branch, Office of International Affairs, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Attn: ULLICO Building, Third Floor, 111 Massachusetts Avenue NW., Washington, DC 20001
Phone: 202 305–2670

RIN: 1615–AA26

1302. EXTENDING THE PERIOD OF DURATION OF STATUS FOR CERTAIN F AND J NONIMMIGRANT ALIENS

Timetable:

Action	Date	FR Cite
Transferred to RIN 1653-AA30	10/29/03	

RIN: 1615–AA27

1303. REQUIRING RECERTIFICATION OF ALL SERVICE-APPROVED SCHOOLS FOR ENROLLMENT IN THE STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS)

Timetable:

Action	Date	FR Cite
Transferred to RIN 1653-AA31	10/29/03	

RIN: 1615–AA77

1304. REDUCED COURSE LOAD FOR CERTAIN F AND M NONIMMIGRANT STUDENTS AT BORDER COMMUNITIES

Timetable:

Action	Date	FR Cite
Transferred to RIN 1653-AA32	10/29/03	

RIN: 1615–AA79

1305. DENIAL AND REVOCATION FOR APPROVAL OF SCHOOL FOR ATTENDANCE BY NONIMMIGRANT STUDENTS

Timetable:

Action	Date	FR Cite
Transferred to RIN 1653-AA33	10/29/03	

RIN: 1615–AA85

1306. READJUSTMENT OF IMMIGRATION BENEFIT APPLICATION FEES

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552(a); 8 USC 1101; 8 USC 1103; 8 USC 1304; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: On January 24, 2003, the Department published an interim final rule in the Federal Register adjusting the immigration benefit application fee schedule by subtracting the applicable amount of surcharges used for asylum and refugee services, fee exemptions and fee waivers. The Department was required to take that action under provisions of section 457 of the Homeland Security Act of 2002, Public Law 107–296. However, Congress has now repealed that section in the Homeland Security Act Amendments of 2003. Accordingly, this rule readjusts the immigration benefit application fee schedule to the levels that existed prior to January 24, 2003. Fees collected from persons filing immigration benefit applications are deposited into the Immigration Examinations Fee Account and recover the cost of processing immigration benefit applications and associated administrative costs and the costs of asylum applications pursuant to law. Federal guidelines require the Department to establish and collect fees to recover the full costs of processing immigration benefit applications.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/27/03	68 FR 8989
Interim Final Rule Effective	02/27/03	
Interim Final Rule Comment Period End	04/28/03	
Withdrawn	09/02/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: CIS No. 2260–03

Transferred from RIN 1115–AH00

Agency Contact: Paul Schlesinger, Office of Budget, Chief, Immigration Services Branch, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 5307, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3410

RIN: 1615–AA97

1307. CONDITIONS ON NONIMMIGRANT STATUS; DISCLOSURE OF INFORMATION

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186A; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule removes the current regulatory language conditioning an alien's nonimmigrant status on his or her providing full and truthful information requested by the Department of Homeland Security, regardless of the requested information's materiality. This rule would clarify that the nonimmigrant's stay is conditioned on, among other things, the provision of all information deemed necessary to ensure that the alien has acquired, and is maintaining, lawful nonimmigrant status during the entire period of his or her stay, or is eligible to receive any other benefit under the Immigration and Nationality Act.

Timetable:

Action	Date	FR Cite
NPRM	06/14/96	61 FR 30188
NPRM Comment Period End	08/13/96	
Withdrawn	08/08/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1732–95

Transferred from RIN 1115–AE17

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3048

RIN: 1615–AA98

1308. AUTHORIZING SUSPENSION OF EMPLOYMENT AUTHORIZATION REQUIREMENTS ON THE BASIS OF SEVERE ECONOMIC HARDSHIP FOR F–1 STUDENTS AND EMERGENT CIRCUMSTANCES

Timetable:

Action	Date	FR Cite
Transferred to RIN 1653-AA34	10/29/03	

RIN: 1615–AA99

1309. • TEMPORARY PROTECTED STATUS (TPS) NOTICES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Immigration and Nationality Act, sec 244; 8 USC 1254a

CFR Citation: None

Legal Deadline: None

Abstract: Regulations implement provisions of the Immigration and Nationality Act as established by section 302 of the Immigration Act of 1990, Public Law 101–649, which allow for the establishment and implementation of Temporary Protected Status (TPS). Currently, nationals of countries have been accorded TPS through the publication of separate Federal Register notices.

Timetable:

Action	Date	FR Cite
Notice (CIS No. 2280–03) Extension of the Designation of Montserrat Under TPS	07/01/03	68 FR 39106
Notice (CIS No. 2284–03) Extension of the Designation of Somalia Under TPS	07/21/03	68 FR 43147
Notice (CIS No. 2292–03) Extension of the Designation of Sudan Under TPS	09/03/03	68 FR 52410
Notice (CIS No. 2294–03) Termination of the Designation of Sierra Leone Under TPS	09/03/03	68 FR 52407

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2280–03

Agency Contact: Jonathan Mills, Adjudications Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754
Email: jonathan.mills@dhs.gov

RIN: 1615–AB06

1310. • EXTENSION OF VALIDITY PERIOD OF APPROVED FORM I–600A, APPLICATION FOR ADVANCE PROCESSING OF ORPHAN PETITIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; ...

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This rule amends the Department of Homeland Security (DHS) regulations governing the processing of applications and petitions relating to the immigration of alien orphans. The amendment to the rule establishes that the Director of the Bureau of Citizenship and Immigration Services may, at his or her discretion, extend the validity period for a decision approving an Application for Advanced Processing of Orphan Petition (Form I–600A), either in an individual case or for any case within a designated class of cases because of delays in completing the adoption process due to public health concerns relating to the incidence of Severe Acute Respiratory Syndrome (SARS). This amendment will permit DHS to more readily accommodate prospective adoptive parents who have been unable to comply with the requirement to file a Petition to Classify Orphan as an Immediate Relative (Form I–600) within 18 months of the Form I–600A approval date.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/07/03	68 FR 46925
Final Action	08/07/03	68 FR 46926

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2288–03

Agency Contact: Steven Heller, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Suite 3214, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7435
Email: steve.heller@dhs.gov

RIN: 1615–AB07

1311. • EXTENSION OF THE DESIGNATION OF BURUNDI UNDER TEMPORARY PROTECTED STATUS (TPS) PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Immigration and Nationality Act, sec 244; 8 USC 1254a

CFR Citation: None

Legal Deadline: None

Abstract: This notice extends the Secretary of Homeland Security's designation of Burundi for 12 months until November 2, 2004, and sets forth procedures necessary for nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) with TPS to reregister and to apply for an extension of their employment authorization documentation for the additional 12-month period.

Timetable:

Action	Date	FR Cite
Notice (CIS No. 2292–03) Extension of the Designation of Burundi Under TPS	09/03/03	68 FR 52405

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2292–03

Agency Contact: Jonathan Mills, Adjudications Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 I Street NW., Washington, DC 20536
Phone: 202 514–4754
Email: jonathan.mills@dhs.gov

RIN: 1615–AB16

Department of Homeland Security (DHS)
U.S. Coast Guard (USCG)

Proposed Rule Stage

1312. CLAIMS PROCEDURES UNDER THE OIL POLLUTION ACT OF 1990 (CGD 91–035)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2713; 33 USC 2714

CFR Citation: 33 CFR 136

Legal Deadline: None

Abstract: This rulemaking implements section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement) of the Oil Pollution Act of 1990. The interim rule provides the requirements for the filing of claims for uncompensated removal costs or damages resulting from the discharge of oil, for the designation of the sources of the discharge, and for the advertisement of where claims are to be filed. The interim rule also included the processing of natural resource damage (NRD) claims. The NRD claims, however, were not processed until September 25, 1997, when the Department of Justice issued an opinion that the Oil Spill Liability Trust Fund (OSLTF) is available without further appropriation to pay trustee NRD claims under the general claims provisions of the Oil Pollution Act (OPA) of 1990, 33 U.S.C. 2712(a)(4). Release of the more comprehensive notice of proposed rulemaking has been delayed while the Coast Guard gained experience on NRD claims, as well as other OPA damages. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/12/92	57 FR 36314
Correction	09/09/92	57 FR 41104
Interim Final Rule Comment Period End	12/10/92	
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: Transferred from RIN 2115–AD90

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Edward A. Blackadar Jr., Project Manager, National Pollution Fund Center, Department of Homeland Security, U.S. Coast Guard, Suite 1000, 4200 Wilson Boulevard, Arlington, VA 22203–1804
Phone: 202 493–6843

RIN: 1625–AA03

1313. POST CASUALTY DRUG AND ALCOHOL TESTING (USCG–2001–8773)

Priority: Other Significant

Legal Authority: PL 105–383, sec 304

CFR Citation: 46 CFR 4

Legal Deadline: None

Abstract: This project will revise the requirements for chemical testing following a serious marine incident. The revision will establish procedures to ensure that alcohol testing be conducted within two hours of a serious marine incident, as required by the Coast Guard Authorization Act of 1998. The rule will also make additional minor procedural changes to the part. This rule supports the Coast Guard strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	02/28/03	68 FR 9622
NPRM Comment Period End	06/30/03	
Notice of Public Meeting; Reopening of Comment Period	08/25/03	68 FR 50992
NPRM; Reopening of Comment Period	10/21/03	68 FR 60073
Comment Period End	11/20/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State

Additional Information: Transferred from RIN 2115–AG07

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Robert C. Schoening, Project Manager, G–MOA–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW, Room 2406, Washington, DC 20593–0001
Phone: 202 267–0684
Email: rschoening@comdt.uscg.mil

RIN: 1625–AA27

1314. STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS (USCG–2001–10486)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 4711

CFR Citation: 33 CFR 151

Legal Deadline: None

Abstract: This rulemaking would add a performance standard to 33 CFR part 151, subpart D, for all ballast water treatment methods being used as alternatives to midocean ballast water exchange. It supports the Coast Guard's strategic goals of marine safety and protection of natural resources. This project is significant due to high interest among several Federal and State agencies.

Timetable:

Action	Date	FR Cite
ANPRM	03/04/02	67 FR 9632
ANPRM Comment Period End	06/03/02	
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG21

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Dr. Richard Everett, Project Manager, Department of Homeland Security, U.S. Coast Guard, Office of Operating & Environmental Standards (G–MSO), 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–2243

RIN: 1625–AA32

1315. MARINE EVENTS: PERMIT PROCEDURES (USCG–2001–10713)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1233

CFR Citation: 33 CFR 100

Legal Deadline: None

Abstract: This rule would revise Coast Guard procedures to expedite approval of organized marine events conducted on the navigable waters of the United States. These new procedures would establish general permits with nationwide or regional applicability and would encourage sponsors to submit information to the Coast Guard by electronic means. These new procedures would reduce the paperwork burden on both the public and the Coast Guard without adversely affecting vessel safety or the environment in the event areas. This project supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG26

Agency Contact: Carlton Perry, Project Manager, G–OPB–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0979

RIN: 1625–AA35

1316. TRAFFIC SEPARATION SCHEMES: IN THE STRAIT OF JUAN DE FUCA AND ITS APPROACHES; IN PUGET SOUND AND ITS APPROACHES; IN HARO STRAIT, BOUNDARY PASS, AND IN THE STRAIT OF GEORGIA (USCG–2002–12702)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223

CFR Citation: 33 CFR 167

Legal Deadline: None

Abstract: This rulemaking will propose amendments to the existing traffic separation schemes (TSS): in the Strait of Juan de Fuca and its approaches; in Puget Sound and its approaches; in Haro Strait, Boundary Pass, and in the Strait of Georgia. These amendments are approved by the International Maritime Organization and have been validated by several recent vessel routing studies. With the amendments in place, commercial vessels would be routed farther offshore when entering or departing the TSS, providing an extra margin of safety and environmental protection in the Olympic Coast National Marine Sanctuary and adjacent waters. This rulemaking will incorporate the modified TSS into the Code of Federal Regulations. This project supports the Coast Guard's strategic goals of safety and protecting the marine environment.

Timetable:

Action	Date	FR Cite
NPRM	08/27/02	67 FR 54981
NPRM Comment Period End	10/28/02	
Supplemental NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Based on comments received in response to the notice of proposed rulemaking (NPRM), the agency has decided to develop and publish a supplemental NPRM.

Transferred from RIN 2115–AG45

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: George Detweiler, Project Manager G–MWV, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0574

RIN: 1625–AA48

1317. PROTECTION FOR WHISTLEBLOWERS IN THE COAST GUARD (USCG–2002–13016)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 1034

CFR Citation: 33 CFR 53

Legal Deadline: None

Abstract: This rulemaking would amend 33 CFR part 53 both by extending coverage to uniformed members of the Coast Guard who make "protected" communications either to an organization within the Department within which the Coast Guard is operating concerned with audit, inspection, or law enforcement, or to any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations to receive such communications, and by extending the nature of protected communications to comprise complaints: (a) of violations of statute or regulation prohibiting sexual harassment; (b) of unlawful discrimination; and (c) of gross mismanagement. This project supports the Coast Guard's five strategic goals of maritime safety and security, protection of natural resources, maritime mobility, and national defense.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG49

Agency Contact: LT Jason Krajewski, Project Manager, G–LGL, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0064

RIN: 1625–AA50

1318. VESSEL DOCUMENTATION: LEASE FINANCING FOR VESSELS ENGAGED IN THE COASTWISE TRADE; SECOND RULEMAKING (USCG–2003–14472)

Priority: Other Significant

Legal Authority: 14 USC 664; 31 USC 9701; 42 USC 9118; 46 USC 2103; 46 USC 2107; 46 USC 2110; 46 USC 12106; 46 USC 12120; 46 USC 12122; 46 USC app 876

CFR Citation: 46 CFR 67

Legal Deadline: None

Abstract: The Coast Guard proposes to amend its regulations on documentation, under the lease-financing provisions, of vessels engaged in the coastwise trade. This rule's provisions would address several issues. One concerns whether the Coast Guard should prohibit or restrict the chartering back of a lease-financed vessel to the parent of the vessel owner or to an affiliate or subsidiary of the parent. The second concerns the question of whether applications for an endorsement under the lease-financing provisions should be reviewed and approved by an independent third party with expertise in vessel chartering. The third concerns limitations on the grandfather provisions. These proposals would amend the final rule (USCG–2001–8825) on vessel documentation under lease financing. This project supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG55

Agency Contact: Patricia Williams, Project Manager, NVDC, Department of Homeland Security, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV 25419
Phone: 304 271–2506

RIN: 1625–AA63

1319. • ADMINISTRATIVE CHANGES TO NUMBERING OF VESSELS AND REPORTING OF CASUALTIES (USCG–2003–14963)

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 9701; 46 USC 2110; 46 USC 4302; 46 USC 4310; 46 USC 6101; 46 USC 6102; 46 USC 12301; 46 USC 12302; 46 USC 12502; PL 100–710; DHS Security Delegation No. 0170.1

CFR Citation: 33 CFR 173; 33 CFR 174; 33 CFR 181

Legal Deadline: None

Abstract: This rulemaking would amend the Coast Guard's rules on States' numbering of undocumented vessels and on the reporting of accidents. It would harmonize terminology governing the Standard Numbering System, the Vessel Identification System, and the Casualty or Accident Report to help us collect better data, process them more efficiently, and use them more effectively to prevent boating accidents. This project supports the Coast Guard's strategic goals of maritime safety and maritime security.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Jeanne Timmons, Project Manager, G–OPB–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 205930001
Phone: 202 267–0857

RIN: 1625–AA70

1320. • TERMS IMPOSED BY STATES ON NUMBERING OF VESSELS (USCG–2003–15708)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 46 USC 12307

CFR Citation: 33 CFR 174, subpart B

Legal Deadline: None

Abstract: This rulemaking would expand the number of conditions that a State may require in order for owners to obtain vessel numbering certificates in that State. Current Federal statutes and regulations limit these conditions to proof of ownership or payment of State or local taxes. The proposed rule would allow any State to impose proof of liability insurance as a condition for obtaining vessel numbering certificates in that State. This project supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Audrey Pickup, Project Manager, G–OPB–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0872

RIN: 1625–AA75

1321. • SAFETY ZONE FOR OUTER CONTINENTAL SHELF FACILITY IN THE GULF OF MEXICO (CDG08–03–028)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 14 USC 85, 43 USC 1333

CFR Citation: 33 CFR 147

Legal Deadline: None

Abstract: The Coast Guard proposes the establishment of a safety zone around a petroleum and gas production facility in Green Canyon 645 of the Outer Continental Shelf in the Gulf of Mexico while the facility is being constructed and after the construction is completed. The construction site and facility need to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around this area would significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed rule would prohibit all vessels from entering or remaining in the specified area around the facility's location except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	09/26/03	68 FR 55557
NPRM Comment Period End	11/25/03	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: LT Kevin Lynn, Commander Eighth District, Department of Homeland Security, U.S. Coast Guard, 501 Magazine Street, New Orleans, LA 70130
Phone: 504 589-6271

RIN: 1625-AA76

1322. • COMMERCIAL FISHING-INDUSTRY VESSELS (USCG-2003-16158)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 46 USC 4502 (a), (d)

CFR Citation: 46 CFR 28

Legal Deadline: None

Abstract: This rulemaking would add new and clarify existing rules for commercial fishing vessels in 46 CFR part 28. It would also establish rules on stability and watertight integrity for fishing vessels under 79 feet in length and institute regulations for the carriage of immersion suits in seasonally cold waters. To improve crew preparedness in case of an emergency, this project would also add requirements such as mandatory logging of already required drills, providing evidence of training, and ensuring that personnel required to be trained are current in their training. The project would amend 46 CFR part 28 to clarify and improve the consistency of the regulatory language so to aid in vessels compliance with the existing rules. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal, Tribal

Agency Contact: David Beach, Project Manager, G-MOC-3, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267-0505

RIN: 1625-AA77

Department of Homeland Security (DHS)
U.S. Coast Guard (USCG)
Final Rule Stage

1323. SAFETY AND SECURITY ZONE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 1225; 33 USC 1226; 33 USC 1231; 33 USC 1233; 50 USC 191

CFR Citation: 33 CFR 100; 33 CFR 165

Legal Deadline: None

Abstract: The Coast Guard uses these routine and frequent regulations to establish control of access to areas to ensure the safety or security of events, vessels, waterfront facilities, or individuals. Many of these zones are of short duration, ranging from a few hours to a few days, and all are geographically limited in area. Safety zones are established for events such as fireworks displays, high speed races, or the transit of dangerous cargoes such as explosives or liquefied petroleum gas. Security zones are established for Presidential or Vice Presidential visits, high profile events such as the Olympics, controversial events such as transport of spent nuclear fuel, and in response to the threat of terrorist attacks. Safety and security zones are promulgated by Captains of the Port or District Commanders. These routine and frequent rulemakings support the Coast Guard's strategic goals of marine safety, mobility, maritime security, and national defense. The total actions expected from November 1, 2003, to October 31, 2004, are 300.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Transferred from RIN 2115-AA97

Agency Contact: James McLeod, Project Manager, G-LRA, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267-6233
Email: jmcleod@comdt.uscg.mil

RIN: 1625-AA00

1324. SPECIAL ANCHORAGE AREAS/ANCHORAGE GROUNDS REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 471; 33 USC 2030; 33 USC 2035; 33 USC 2071

CFR Citation: 33 CFR 110

Legal Deadline: None

Abstract: These routine and frequent regulations are established where maritime and commercial interests require them for safety of navigation. Special anchorage areas are areas in which vessels of not more than 65 feet may anchor without displaying the required lights or sound signals. These special anchorage areas are limited geographically, and depending upon the purpose, establish both long- and short-term anchorages. Anchorage grounds are limited geographically, delineate the types and size of vessel which may use the anchorage, and may place time and other restrictions on its use. Special anchorage areas and anchorage grounds are promulgated by District Commanders in response to requests from appropriate officials. These routine and frequent rulemakings support the Coast Guard's strategic goal of marine safety. The total actions expected from November 1, 2003, to October 31, 2004, are 10.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Transferred from RIN 2115–AA98

Agency Contact: Ed LaRue, Project Manager, G–MWV, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0416
Email: elarue@comdt.uscg.mil

RIN: 1625–AA01

1325. REPORTING MARINE CASUALTIES (USCG–2000–6927)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 6101; 33 USC 1901 et seq

CFR Citation: 33 CFR 151; 46 CFR 4

Legal Deadline: None

Abstract: This action would add to the definition of a reportable marine casualty, "significant harm to the environment." Some casualty reporting requirements are extended to include foreign tank vessels operating in U.S. waters, including the Exclusive Economic Zone. This project supports the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the consequence of pollution incidents and further supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Request for Comments	12/20/94	59 FR 65522
Comment Period End	02/20/95	
NPRM	11/02/00	65 FR 65808
Supplemental NPRM	07/12/01	66 FR 36530
Supplemental NPRM Comment Period End	09/10/01	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AD98

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LCDR Charles Barbee, Project Manager, G–MOA–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–1418

RIN: 1625–AA04

1326. STATE ACCESS TO THE OIL SPILL LIABILITY TRUST FUND (CGD 92–014)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2712

CFR Citation: 33 CFR 133

Legal Deadline: NPRM, Statutory, February 18, 1991, NPRM.

Abstract: Pursuant to the Oil Pollution Act of 1990 (OPA 90), this action specifies how the authority to obligate the pollution trust fund for oil spill response and cleanup efforts and to enter into agreements with the States will be exercised. The Coast Guard is evaluating the performance of the interim rule. This rulemaking supports the Coast Guard's strategic goal of the protection of natural resources.

Timetable:

Action	Date	FR Cite
Interim Rule	11/13/92	57 FR 53968
Interim Final Rule Comment Period End	02/11/93	
Interim Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: The rulemaking priority was downgraded from Other Significant to Substantive Nonsignificant in the November 14, 1994 agenda. However, due to administrative error, the document erroneously reflected Other Significant in subsequent agenda entries.

Transferred from RIN 2115–AE19

Agency Contact: Allen R. Thuring, Project Manager, National Pollution Funds Center, Department of Homeland Security, U.S. Coast Guard, Suite 1000, 4200 Wilson Boulevard, Arlington, VA 22203–1804
Phone: 202 493–6801

RIN: 1625–AA06

1327. HANDLING OF EXPLOSIVES OR OTHER DANGEROUS CARGOES WITHIN OR CONTIGUOUS TO WATERFRONT FACILITIES (USCG–1998–4302)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1231

CFR Citation: 33 CFR 126

Legal Deadline: None

Abstract: This rulemaking was intended to revise existing regulations covering waterfront facilities that handle dangerous cargoes. The present regulations are outdated and do not reflect improved safety procedures and modern transportation methods, such as the use of containers. Where appropriate, the regulations incorporate industry standards regarding the handling of hazardous materials at waterfront facilities. This project supports the Vice Commandant's workload reduction initiative and also supports the Coast Guard's strategic goal of maritime safety by reducing deaths and injuries in the maritime industry.

Timetable:

Action	Date	FR Cite
ANPRM	01/13/93	58 FR 4127
ANPRM Comment Period End	04/13/93	
NPRM	10/29/98	63 FR 57964
NPRM Comment Period End	12/28/98	
NPRM Comment Period Reopened	01/12/99	64 FR 1770
NPRM Comment Period End	03/01/99	
Final Rule	09/26/03	68 FR 55436
Final Rule Effective (Except for section 126.15(a)(3))	10/27/03	

Action	Date	FR Cite
Final Rule for section 126.15(a)(3)	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: An independent study has been completed and incorporated with comments from the public in the preparation of the rulemaking. Old Docket Number CGD 92–026.

The notice of proposed rulemaking was published under the more precisely descriptive title of Handling of Class I (Explosive) Materials or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities.

Transferred from RIN 2115–AE22

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: CDR Mark Prescott, Project Manager, G–MSO, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0225

RIN: 1625–AA07

1328. REGATTA AND MARINE PARADE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 1233

CFR Citation: 33 CFR 100

Legal Deadline: None

Abstract: These routine and frequent special local regulations ensure the safety of participants and spectators during regattas and marine parades. The regulations or rules specify such controls as separate participant and spectator areas, separation schemes for watercraft in the area of the event, and temporary restrictions on waterways to accommodate the event. These rules are short-term in nature, usually applying to a single event not exceeding eight hours in duration, and usually encompass only a small portion of a navigable waterway. These rules are promulgated by District Commanders in response to a request from an event-sponsoring organization. These routine and frequent rulemakings support the Coast Guard's strategic goals of maritime safety and maritime mobility of commercial and recreational vessel traffic. The total actions expected from November 1, 2003, to October 31, 2004, are 35.

Timetable:

Action	Date	FR Cite
Action Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Transferred from RIN 2115–AE46

Agency Contact: Carlton Perry, Project Manager, G–OPB–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0979

RIN: 1625–AA08

1329. DRAWBRIDGE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 499

CFR Citation: 33 CFR 117

Legal Deadline: None

Abstract: These routine and frequent regulations establish operating schedules and notice requirements for drawbridges across navigable waterways. Drawbridge regulations establish the permanent draw operation schedules for bridges and specify what notice mariners must give to request an opening. Short-term deviations from the permanent schedule may be issued for bridge repairs or to test the effectiveness of a proposed new opening schedule. Drawbridge regulations are promulgated by District Commanders usually at the request of the bridge owner or operator, or of local officials or local Coast Guard bridge administration officials. These routine and frequent rulemakings support the Coast Guard's strategic goals of maritime safety and maritime mobility of commercial and recreational vessel traffic. The total actions expected from November 1, 2003, to October 31, 2004, are 150.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Transferred from RIN 2115–AE47

Agency Contact: Alesia Steinberger, Project Manager, G–OPT–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–6215

RIN: 1625–AA09

1330. LIMITED SERVICE DOMESTIC VOYAGE LOAD LINES FOR RIVER BARGES ON LAKE MICHIGAN (USCG–1998–4623)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 51

CFR Citation: 46 CFR 45

Legal Deadline: None

Abstract: This regulatory project will allow certain unmanned dry cargo river barges operating on Lake Michigan to be exempted from the normal Great Lakes load line requirements. Instead, they may qualify for a conditional load line exemption, or for a limited service domestic voyage load line (depending on which Lake Michigan route). This rulemaking pertains to two specific routes: Chicago to Milwaukee, and Chicago to Muskegon. This will allow certain non-hazardous cargoes originating at inland river ports to be transported as far as Milwaukee and Muskegon by river barge, thereby benefiting from the relatively low cost per ton-mile of river barge transportation. Compliance is not mandatory other than for those river barge operators who voluntarily seek to expand their operations onto these routes. This rulemaking supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	11/02/98	63 FR 58679

Action	Date	FR Cite
NPRM Comment Period Extended	12/28/98	63 FR 71411
Comment Period End	01/04/99	
NPRM Comment Period End	03/04/99	
Interim Final Rule	04/23/02	67 FR 19685
Interim Final Rule Effective	05/23/02	
Collection of Information Sections Effective	06/20/02	
Interim Final Rule-Announcement of Effective Date of COI Sections	06/20/02	67 FR 41847
Interim Final Rule Comment Period End	10/23/02	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Old Docket Number CGD 95–015.

Transferred from RIN 2115–AF38

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Thomas Jordan, Project Manager, G–MSE–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–2988

RIN: 1625–AA17

1331. OUTER CONTINENTAL SHELF ACTIVITIES (USCG–1998–3868)

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1333(d)(1); 43 USC 1348(c); 43 USC 1356

CFR Citation: 33 CFR 140 to 147

Legal Deadline: None

Abstract: This project would revise the regulations on Outer Continental Shelf (OCS) activities to: add new requirements for fixed OCS facilities for lifesaving, fire protection, training, hazardous materials used as stores, and accommodation spaces; require foreign vessels engaged in OCS activities to comply with requirements similar to those imposed on U.S. vessels similarly engaged; and allow all mobile inland drilling units to operate on the OCS out to a defined boundary line if they meet requirements for lifesaving, firefighting, and operations similar to those for fixed OCS facilities. This project would affect the owners and operators of facilities and vessels engaged in offshore activities associated with the exploration for, development of, or production of the resources of the OCS. The preliminary estimate of costs imposed by these amendments varies according to the unit. The Coast Guard is consulting with the Minerals Management Service, part of the Department of the Interior. It supports the Coast Guard's strategic goal of marine safety and environmental protection.

Timetable:

Action	Date	FR Cite
Request for Comments	06/27/95	60 FR 33185
Comment Period End	09/25/95	
NPRM	12/07/99	64 FR 68416
NPRM Correction	02/22/00	65 FR 8671
NPRM Comment Period Extended	03/16/00	65 FR 14226
NPRM Comment Period Extended	06/30/00	65 FR 40559
NPRM Comment Period End	11/30/00	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The notice of request for comments published June 27, 1995, was assigned Coast Guard docket number 95–016. Following the request for comments, this docket was terminated. This project continues under Docket No. USCG–1998–3868 and RIN 1625–AA18.

Transferred from RIN 2115–AF39

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: James Magill, Project Manager, G–MSO–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–1082

RIN: 1625–AA18

1332. DEEPWATER PORTS (USCG–1998–3884)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1503

CFR Citation: 33 CFR 148 to 150

Legal Deadline: None

Abstract: The Coast Guard purposes to revise the regulations governing deepwater ports, which are over 25 years old and which were written before any such port existed. The rulemaking will update the regulations with current technology and industry standards, and will align them with regulations for other fixed offshore facilities. In addition, the rulemaking recognizes the requirement of the Maritime Transportation Security Act of 2002 that rules be issued as soon as practicable for the application and issuance of deepwater port licenses to natural gas facilities. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
ANPRM	08/29/97	62 FR 45774
ANPRM Comment Period End	10/13/97	
NPRM	05/30/02	67 FR 37920
NPRM Comment Period End	07/29/02	
NPRM Comment Period Reopened	08/19/02	67 FR 53764
Second NPRM Comment Period End	09/18/02	
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: An advance notice of proposed rulemaking was published under Docket Number USCG–1998–4441. This docket number is replaced with USCG–1998–3884.

Transferred from RIN 2115–AF63

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: CDR Mark Prescott, Project Manager, G–MSO, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001

Phone: 202 267–0225

RIN: 1625–AA20

1333. ANCHORAGE GROUND; SAFETY ZONE; SPEED LIMIT; TONGASS NARROWS AND KETCHIKAN, ALASKA (CGD–1799–002)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 471; 33 USC 1231; 33 USC 2071

CFR Citation: 33 CFR 162; 33 CFR 165; 33 CFR 110

Legal Deadline: None

Abstract: This rulemaking would grant an exemption from the present 7-knot speed limit in Tongass Narrows, Alaska, for float plane take-off and landing and vessels 23 feet in length or less. The geographic area for the speed limit would be expanded. A safety zone used for cruise ship anchorages would be redesignated as an anchorage area to reflect actual usage of the area and transiting vessels would be required to move quickly and directly through the anchorage, without rapid course changes, to increase safety. This project supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	03/25/99	64 FR 14414
NPRM Comment Period End	05/10/99	
Interim Final Rule	06/02/99	64 FR 29554
Interim Final Rule Comment Period End	11/30/99	
Interim Final Rule	04/07/00	65 FR 18242
Interim Final Rule Comment Period End	10/31/00	
Notice to Reopen Comment Period	10/21/03	68 FR 60034
Comment Period End	12/22/03	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AF81

Agency Contact: LT Milo Oritz, Project Manager, Department of Homeland Security, U.S. Coast Guard, 2030 Sealevel Drive, Suite 203, Ketchikan, AK 99901

Phone: 907 225–4496

RIN: 1625–AA23

1334. VESSEL AND FACILITY RESPONSE PLANS FOR OIL: 2003 REMOVAL EQUIPMENT REQUIREMENTS AND ALTERNATIVE TECHNOLOGY REVISIONS (USCG–2001–8661)

Priority: Other Significant

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 153; 33 CFR 154; 33 CFR 155

Legal Deadline: None

Abstract: This rulemaking will propose changes to the Vessel Response Plans and Marine Transportation Facility Response Plans, and revise the language in the Code of Federal Regulations concerning methods and procedures for removing oil from coastal waters. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	10/11/02	67 FR 63331
NPRM Comment Period Extended	11/19/02	67 FR 69697
NPRM Comment Period End	01/09/03	
NPRM Comment Period End	04/08/03	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG05

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Robert Pond, Project Manager, G–MOR–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001

Phone: 202 267–6603

RIN: 1625–AA26

1335. VESSEL DOCUMENTATION: LEASE FINANCING FOR VESSELS ENGAGED IN THE COASTWISE TRADE (USCG–2001–8825)

Priority: Other Significant

Legal Authority: 46 USC 12106; 46 USC 12120; 46 USC 12122

CFR Citation: 46 CFR 67

Legal Deadline: None

Abstract: This rulemaking will amend the regulations on the documentation of vessels engaged in the coastwise trade. It is a spin-off of Vessel Documentation (USCG 1998–4784). These proposals address statutory amendments eliminating certain barriers to seeking foreign financing by lease for U.S. flag vessels. These proposals would clarify the information needed to determine the eligibility of a vessel financed in this manner for a coastwise endorsement. This rulemaking supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	05/02/01	66 FR 21902
NPRM Comment Period Extended to 09/04/2001	05/29/01	66 FR 34603
NPRM Comment Period End	07/02/01	
NPRM Comment Period Reopened	12/14/01	66 FR 64784
Reopened Comment Period End	01/28/02	
Supplemental NPRM	08/09/02	67 FR 51804
Second NPRM Comment Period End	10/08/02	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG08

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Patricia Williams, Project Manager, NVDC, Department of Homeland Security, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV 25419

Phone: 304 271–2506

RIN: 1625–AA28

1336. UPDATE OF RULES ON AIDS TO NAVIGATION AFFECTING BUOYS, SOUND SIGNALS, INTERNATIONAL RULES AT SEA, COMMUNICATIONS PROCEDURES, AND LARGE NAVIGATIONAL BUOYS (USCG–2001–10714)

Priority: Info./Admin./Other

Legal Authority: 14 USC 81; 33 USC 1231; 43 USC 1333; 46 USC 4302

CFR Citation: 33 CFR 60–76

Legal Deadline: None

Abstract: This rulemaking would revise 33 CFR subchapter C–Aids to Navigation, parts 60 through 76. In these parts, it would update technical information concerning buoys, sound signals, international rules at sea, communications procedures, and large navigational buoys. It would also revise these parts using plain language. The proposed changes would update the existing rules both to reflect current practices and to make them easier to understand. This rulemaking supports the Coast Guard's strategic goals of maritime safety and mobility.

Timetable:

Action	Date	FR Cite
NPRM	05/14/03	68 FR 25855
NPRM Comment Period End	08/12/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG25

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Daniel Andrusiak, Project Manager, G–OPN–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0327

RIN: 1625–AA34

1337. RATES FOR PILOTAGE ON THE GREAT LAKES (USCG–2002–11288)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 46 USC 9303(f)

CFR Citation: 46 CFR 401

Legal Deadline: None

Abstract: The Coast Guard conducts an annual review of the Great Lakes Pilotage based on the "Ratemaking Analyses and Methodology" published in the Federal Register on May 9, 1996. Depending on the results of this review, the Coast Guard can make rate adjustments in accordance with 46 CFR part 404, appendix A, step 7; or, if the director determines that pilotage rates are within a reasonable range of their target, make no adjustments. This rulemaking may take place annually. It supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	01/23/03	68 FR 3202
NPRM Comment Period Extended	02/14/03	68 FR 7489
NPRM Comment Period Extended	04/01/03	68 FR 15697
NPRM Correction	04/01/03	
Public Meeting (04/14)	04/01/03	
NPRM Comment Period End	05/01/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG30

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Thomas Lawler, Project Manager, G–MW–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–1241

RIN: 1625–AA38

1338. NOTIFICATIONS OF ARRIVAL AND DEPARTURE IN PORTS OR PLACES IN THE UNITED STATES (USCG–2001–11865)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223(a)(5); 33 USC 1226; 33 USC 1231

CFR Citation: 33 CFR 160

Legal Deadline: None

Abstract: The Coast Guard needs to permanently amend its regulations relating to the Notifications of Arrival (NOA) and Departure (NOD) requirements in 33 CFR part 160 to ensure port safety, security, and environmental protection as well as maintain the uninterrupted flow of commerce. Subsequent to the terrorist attacks of September 2001, we published an emergency temporary final rule (96-hour rule) amending the NOA and NOD requirements for commercial vessels bound for or departing from ports or places in the United States. The temporary final rule terminated on March 31, 2003. In this final rule, most of the changes introduced by the temporary final rule have been made permanent. This rulemaking supports the Coast Guard's strategic goals of maritime safety, maritime security, protection of natural resources, and maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	06/19/02	67 FR 41659
NPRM Comment Period End	08/19/02	
Final Rule	02/28/03	68 FR 9537
Final Rule Effective	04/01/03	
Final Rule Partial Suspension	05/22/03	68 FR 27907
Final Rule Correction	11/10/03	68 FR 63735

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG35

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LTJG Kimberly Andersen, Project Manager, G–MPP, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street NW., Washington, DC 20593
Phone: 202 267–2562

RIN: 1625–AA41

1339. PENALTIES FOR NONSUBMISSION OF BALLAST WATER MANAGEMENT REPORTS (USCG–2002–13147)

Priority: Other Significant

Legal Authority: 16 USC 4711

CFR Citation: 33 CFR 151

Legal Deadline: None

Abstract: This rulemaking would set penalties for vessels that fail to submit ballast water management reports, as required in subpart D of 33 CFR 151. It supports the Coast Guard's strategic goals of protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	01/06/03	68 FR 523
NPRM Comment Period End	04/07/03	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG50

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Bivan Patnaik, Project Manager, G–MSO, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–1744

RIN: 1625–AA51

1340. MANDATORY BALLAST WATER MANAGEMENT PROGRAM FOR U.S. WATERS (USCG–2003–14273)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 4711

CFR Citation: 33 CFR 151

Legal Deadline: None

Abstract: This rulemaking would make ballast water management requirements applicable to all vessels equipped with ballast water tanks entering a port or place in the United States. It supports the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	07/30/03	68 FR 44691
NPRM Comment Period End	10/28/03	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Transferred from RIN 2115–AG52

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Bivan Patnaik, Project Manager, G–MSO, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–1744

RIN: 1625–AA52

1341. COUNTRY OF ORIGIN CODES AND REVISION OF REGULATIONS ON HULL IDENTIFICATION NUMBERS (USCG–2003–14272)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 181.27

Legal Deadline: None

Abstract: By modifying a restriction on U.S. boat manufacturers when they label a boat with a hull identification number (HIN), this proposed rule would make it less expensive for the manufacturers to comply with an international HIN standard for boats they would like to export and thus this rulemaking would support the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	06/20/03	68 FR 36957
NPRM Comment Period End	09/18/03	
Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG53

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Alston Colihan, Project Manager, G–OPB–3, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0981

RIN: 1625–AA53

1342. ALLOWING ALTERNATIVES TO INCANDESCENT LIGHTS, AND ESTABLISHING STANDARDS FOR NEW LIGHTS, IN PRIVATE AIDS TO NAVIGATION (USCG–2000–7466)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 83; 14 USC 85; 43 USC 1333

CFR Citation: 33 CFR 66

Legal Deadline: None

Abstract: The Coast Guard is seeking to let the lighting industry and owners of private aids to navigation take advantage of a recent improvement in technology-one that enables the use of lanterns based on Light-Emitting Diodes (LEDs), which would reduce the consumption of power and simplify the maintenance of the aids. The use of these lanterns should stimulate competition in the industry, reduce maintenance, and therefore operating costs, and allow the marking of the aids in a desirable manner. This rule supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/04/00	65 FR 59124
Direct Final Rule Withdrawn	01/02/01	66 FR 8
NPRM	06/24/02	67 FR 42512
NPRM Comment Period End	08/23/02	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The Coast Guard withdrew the direct final rule because it received an adverse comment. The Coast Guard published a notice of proposed rulemaking to solicit additional comments from the public.

Transferred from RIN 2115–AF98

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Daniel Andrusiak, Project Manager, G–OPN–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0327

RIN: 1625–AA55

1343. ALTERNATE HULL EXAMINATION PROGRAM FOR CERTAIN PASSENGER VESSELS, AND UNDERWATER SURVEYS FOR PASSENGER, NAUTICAL SCHOOL, AND SAILING SCHOOL VESSELS (USCG–2000–6858)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3305; 46 USC 3308

CFR Citation: 46 CFR 71; 46 CFR 115; 46 CFR 167; 46 CFR 169; 46 CFR 176

Legal Deadline: None

Abstract: This regulatory project will establish hull examination alternatives and a drydock extension policy for qualifying passenger vessels that operate exclusively on benign, low-risk environments, and that have limited time under way. In addition, the proposed regulations would provide the option of alternating drydock examinations with underwater surveys for passenger vessels. This project supports the Coast Guard's strategic Marine Safety, Security and Environmental Protection Program's goal of mobility by facilitating commerce and eliminating interruptions and impediments to the economical movement of goods and people.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/29/02	67 FR 21062
Interim Final Rule Effective	06/28/02	
Interim Final Rule Comment Period End	07/29/02	
Collection of Information Interim Rule Sections Effective	08/28/02	
Interim Final Rule; Announcement of Effective Date	08/28/02	67 FR 55162
Interim Rule; Announcement of Effective Date; Correction	10/18/02	67 FR 64315
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This project is split from RIN 2115–AF73. The split was a result of comments received under the notice of proposed rulemaking that was published under RIN 2115–AF73, November 15, 1999, 64 FR 62018, entitled Frequency of Inspection Alternate Hull Exam Program for Certain Passenger Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels.

Transferred from RIN 2115–AF95

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LCDR Martin Walker, Project Manager, G–MOC, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–1047

RIN: 1625–AA57

1344. RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD (USCG 1998–3472)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 7701; 46 USC 7702; 33 USC 1321; 42 USC 9609

CFR Citation: 33 CFR 20; 46 CFR 5

Legal Deadline: None

Abstract: The Coast Guard maintains two separate sets of procedural rules: the administrative adjudication rules against merchant mariners' licenses, certificates of registry, and documents; and those for the adjudication of class II civil penalties. The rules for suspension and revocation, contained in part 5 of title 46 of the Code of Federal Regulations (CFR), date from 1948, and are based on criminal procedure. The rules for class II civil penalties, contained in part 20 of title 33 of the CFR, date from 1994, and are based on the Model Rules of Administrative Procedure and on other modern rules for civil procedure. Neither set implements the authority of the Oil Pollution Act of 1990 (OPA 90), which provides for the temporary suspension of a license, certificate of registry, or document for up to 45 days without a hearing, in certain circumstances, and a hearing within 30 days of any such suspension. This rulemaking would consolidate all procedural rules for administrative adjudications for class II civil penalties, and allow the Coast Guard to promulgate regulations implementing the OPA 90 authority. This project supports the strategic goal of the Coast Guard to promote marine safety. We are in the process of deciding how to respond to comments received.

Timetable:

Action	Date	FR Cite
NPRM	04/06/98	63 FR 16731
NPRM Comment Period End	05/06/98	
NPRM Comment Period Reopened	05/20/98	63 FR 27700
NPRM Comment Period End	06/19/98	
Interim Final Rule	05/24/99	64 FR 28054
Interim Final Rule Effective	06/23/99	
Interim Final Rule Correction	06/28/99	64 FR 34540
Interim Final Rule Comment Period End	07/23/99	
Interim Final Rule Comment Period Reopened	10/05/99	64 FR 53970
Interim Final Rule Comment Period End	04/03/00	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking revises in part the previous docket of CGD 94–101, which was terminated on December 20, 1995.

Transferred from RIN 2115–AF59

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: George Jordan, Project Manager, G–CJ, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–2940

RIN: 1625–AA59

1345. FIRE-SUPPRESSION SYSTEMS AND VOYAGE PLANNING FOR TOWING VESSELS (USCG 2000–6931)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3719; 46 USC 4102

CFR Citation: 33 CFR 157; 46 CFR 27

Legal Deadline: NPRM, Statutory, October 1, 1997, NPRM.

Abstract: The Coast Guard proposes requirements for (a) total-flooding or other installed systems for suppressing fires on existing towing vessels, and (b) voyage-planning. The purpose of this rulemaking is to reduce oil spills from single-hull, non-self-propelled barges because drifting oil barges have run aground and spilled their cargoes, causing considerable damage to marine life and the environment. This project was developed in cooperation with the Towing Safety Advisory Committee. It supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	10/06/97	62 FR 52057
Comment Period End	01/05/98	
Comment Period Reopened	02/27/98	63 FR 9980
Notice of Public Meeting	02/27/98	63 FR 9980
Comment Period End	05/11/98	
Supplemental NPRM	11/08/00	65 FR 66941
Notice of Public Meeting	12/28/00	65 FR 82303
Supplemental NPRM Comment Period End	03/08/01	
Supplemental NPRM; Notice of Mtg. & Second Reopening Comment Period	07/11/01	66 FR 36223
Second Reopened Comment Period End	09/15/01	
Interim Rule	04/29/03	68 FR 22604
Interim Rule Comment Period End	07/28/03	
Interim Rule Effective	08/27/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: This rulemaking was formerly titled "Towing Vessel Safety (Fire Suppression Systems and Other Measures for Towing Vessels)" (CGD 97–064). It originally proposed requirements for three sets of issues relative to the safety of towing vessel safety issues: (1) Fire-suppression systems and other measures; (2) control measures for tank barges; and (3) fire-protection measures for towing vessels. The latter two components have developed into separate rulemakings: Emergency Control Measures for Tank Barges (USCG 1998–4443; RIN 2115–AF65), and Fire Protection Measures for Towing Vessels (USCG 1998–4445; RIN 2115–AF66).

Transferred from RIN 2115–AF53

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Randall Eberly, Project Manager, G–MSE–4, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–1861

RIN: 1625–AA60

1346. APPROVAL FOR EXPERIMENTAL SHIPBOARD INSTALLATIONS OF BALLAST WATER TREATMENT SYSTEMS (USCG–2001–9267)

Priority: Other Significant

Legal Authority: 16 USC 4711

CFR Citation: 33 CFR 151, subpart C; 33 CFR 151, subpart D

Legal Deadline: None

Abstract: This rulemaking would establish a program through which vessel owners could apply for advance, conditional approval of experimental ballast water treatment systems installed and tested onboard their operating vessels. This interim rule would facilitate the development of effective ballast water treatment technology that could serve as an alternative to ballast water exchange, and ensure that U.S. regulations accomplish the intent of Congress to prevent and control the introduction of unwanted aquatic nuisance species as stated in the National Invasive Species Act of 1996.

Timetable:

Action	Date	FR Cite
Request for Comments	05/22/01	66 FR 28213
Notice of Withdrawal	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Dr. Richard Everett, Project Manager, Department of Homeland Security, U.S. Coast Guard, Office of Operating & Environmental Standards (G–MSO), 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–2243

RIN: 1625–AA66

1347. • CIVIL MONETARY PENALTIES-ADJUSTMENTS FOR INFLATION (USCG–2003–15486)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 28 USC 2461 note

CFR Citation: 33 CFR 27.3

Legal Deadline: None

Abstract: To comply with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this rulemaking would adjust for inflation the Coast Guard's civil monetary penalties. This project supports the Coast Guard's strategic goals of maritime safety, maritime security, and protection of natural resources.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Spears, Project Manager, G–MSR–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–1099

RIN: 1625–AA73

1348. DISCHARGE-REMOVAL EQUIPMENT FOR VESSELS CARRYING OIL (CGD 90–068)

Priority: Other Significant

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 155

Legal Deadline: Final, Statutory, August 18, 1992, Final.

Abstract: The Oil Pollution Act of 1990 directed the President by August 18, 1992, to require periodic inspection of discharge-removal equipment to ensure that it is available in an emergency, and to require carriage of discharge-removal equipment by vessels operating in the navigable waters of the United States and carrying oil or hazardous substances. This action implemented those provisions. This project supports the Coast Guard's strategic goal of protection of natural resources. This project is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	08/30/91	56 FR 43534
ANPRM Comment Period End	10/16/91	
NPRM	09/29/92	57 FR 44912
NPRM Comment Period Extended	10/26/92	57 FR 48489
NPRM Comment Period End	10/29/92	
NPRM Comment Period Extended	11/16/92	
Interim Final Rule	12/22/93	58 FR 67988
Interim Final Rule Effective	01/21/94	
Correction	01/26/94	59 FR 3749
Interim Final Rule Comment Period End	02/22/94	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AD66

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: David A. DuPont, Project Manager, G–MSR–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0971

RIN: 1625–AA02

1349. ESCORT VESSELS FOR CERTAIN TANKERS (CGD 91–202)

Priority: Other Significant

Legal Authority: 46 USC 3703

CFR Citation: 33 CFR 168

Legal Deadline: None

Abstract: This rulemaking developed standards that implement section 4116(c) of the Oil Pollution Act of 1990. It addressed the areas of Prince William Sound and Puget Sound and requires a two-vessel escort for single-hull tankers greater than 5,000 gross tons. On November 1, 1994, the crash stop criteria were suspended because of industry concerns about meeting the criteria. On February 1, 1995, a notice of availability of a two-part study assessing the capability of escort tugs to control disabled tankers in Prince William Sound was published. This project supports the Coast Guard's Marine Safety, Security and Environmental Protection program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protecting natural resources. This project is considered significant because of substantial public and State government interest.

Timetable:

Action	Date	FR Cite
NPRM	07/07/92	57 FR 30058
NPRM Comment Period End	09/08/92	
NPRM Comment Period Reopened	03/26/93	58 FR 16391
Notice of Public Hearings	04/29/93	58 FR 25959
Correction	05/19/93	58 FR 29157
NPRM Comment Period End	06/24/93	
Notice of Availability-Part 1 of Study	01/10/94	59 FR 1411
Final Rule	08/19/94	59 FR 42962
Final Rule-Suspension of Crash-Stop Provision	11/01/94	59 FR 54519
Final Rule Effective	11/17/94	
Final Rule-Partial Suspension Effective	11/17/94	
Notice of Availability-Part II of Study	02/01/95	60 FR 6345
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: We are in the process of deciding how to respond to the comments we have received. The Coast Guard, in cooperation with the Prince William Sound Regional Citizens Advisory Council, PWS Tanker Association, and Alaska Pipeline, conducted a disabled-tanker towing study. The results of the study were considered in this rulemaking. Tug escort requirements in areas other than Prince William Sound and Puget Sound are addressed in the project listed under RIN 1625–AA10.

ANALYSIS: Regulatory Evaluation, August 19, 1994, 59 FR 42962

Transferred from RIN 2115–AE10

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LT Sam Stevens, Project Manager, G–MSE–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0173

RIN: 1625–AA05

1350. ESCORT VESSELS IN CERTAIN U.S. WATERS (CGD 91–202A)

Priority: Other Significant

Legal Authority: 46 USC 3703

CFR Citation: 33 CFR 168

Legal Deadline: None

Abstract: This rule would designate those U.S. waters, other than Prince William Sound and Puget Sound, where tankers and other vessels must be escorted by a towing vessel or other appropriate vessel. This project supports the Coast Guard's Marine Safety, Security and Environmental Protection program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protecting natural resources. It is significant because of substantial public and State government interest.

Timetable:

Action	Date	FR Cite
ANPRM	04/27/93	58 FR 25766
Comment Period End	06/28/93	
Request for Comments	12/21/94	59 FR 65741
Comment Period End	02/13/95	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Additional Information: We are in the process of deciding how to respond to the comments we have received. This rulemaking is a companion to RIN 1625–AA05, which concerns Prince William Sound and Puget Sound.

Transferred from RIN 2115–AE56

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LT Sam Stevens, Project Manager, G–MSE–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0173

RIN: 1625–AA10

1351. REGULATED NAVIGATION AREAS

Priority: Routine and Frequent

Legal Authority: 33 USC 1231; 50 USC 191

CFR Citation: 33 CFR 165

Legal Deadline: None

Abstract: These routine and frequent regulations establish operating requirements for vessels within specified geographic areas to ensure safety on the navigable waters where some special or unusual circumstance exists. Regulated navigation areas are limited areas in which the Coast Guard specifies operational or vessel restrictions such as vessel entry, movement or departure, and vessel size, speed, horsepower, or draft limitations. Regulated navigation areas are promulgated by District Commanders, usually at the request of Coast Guard marine safety or local maritime safety officials. These routine and frequent rulemakings support the Coast Guard's strategic goals of waterways management, marine safety, and maritime mobility. The total actions expected from November 1, 2003, to October 31, 2004, are 25.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Routine and frequent rulemakings issued under this RIN will have individual docket numbers.

Transferred from RIN 2115–AE84

Agency Contact: Ed LaRue, Project Manager, G–MWV, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0416
Email: elarue@comdt.uscg.mil

RIN: 1625–AA11

1352. MARINE TRANSPORTATION-RELATED FACILITY RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (USCG–1999–5705)

Priority: Other Significant

Legal Authority: 33 USC 1321(j); PL 101–380

CFR Citation: 33 CFR 154

Legal Deadline: None

Abstract: This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a marine transportation-related facility transferring bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to marine transportation-related facilities that, because of their location, could cause harm to the environment by discharging a hazardous substance into or on the navigable waters or adjoining shoreline. A separate rulemaking, under RIN 1625–AA13, was developed in tandem with this rulemaking and addresses hazardous substances response plan requirements for tank vessels. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources by reducing the consequence of pollution incidents. This action is considered significant because of substantial public and industry interest.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/96	61 FR 20084
Notice of Public Hearings	07/03/96	61 FR 34775
ANPRM Comment Period End	09/03/96	
NPRM	03/31/00	65 FR 17416
NPRM Comment Period End	06/29/00	
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94–048. Public hearings regarding this rulemaking were held in Washington, DC, on July 30, 1996; Houston, TX, on August 5, 1996; and Houston, TX, on February 26 and 27, 1997. Public meetings for the notice of proposed rulemaking were held in New Orleans, LA, on May 10 and 11, 2000.

Transferred from RIN 2115–AE87

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LT Eric Bauer, Project Manager, G–MOR, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0417

RIN: 1625–AA12

1353. TANK VESSEL RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (USCG–1998–4354)

Priority: Other Significant

Legal Authority: 33 USC 1231; 33 USC 1321(j); PL 101–380

CFR Citation: 33 CFR 155

Legal Deadline: None

Abstract: This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a tank vessel carrying bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to vessels operating on the navigable waters or within the Exclusive Economic Zone (EEZ) of the United States that carry bulk hazardous substances. A separate rulemaking, under RIN 1625–AA12, would address hazardous substances response plan requirements for marine transportation-related facilities. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources by reducing the amount of chemicals entering the environment, as well as reducing the consequences of pollution incidents. This project is considered significant because of substantial public and industry interest.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/96	61 FR 20084
Notice of Public Hearings	07/03/96	61 FR 34775
ANPRM Comment Period End	09/03/96	
NPRM	03/22/99	64 FR 13734
Notice of Public Hearing	06/15/99	64 FR 31994
NPRM Comment Period Extended	06/15/99	
NPRM Comment Period End	06/21/99	
NPRM Extended Comment Period End	08/30/99	
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94–032.

Public meetings regarding this rulemaking were held in Washington, DC, on July 30, 1996; Houston, TX, on August 5, 1996; and Houston, TX, on February 26 and 27, 1997. Public meetings for the notice of proposed rulemaking were held in Houston, TX on August 12 and 13, 1999.

Transferred from RIN 2115–AE88

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LT Eric Bauer, Project Manager, G–MOR, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0417

RIN: 1625–AA13

1354. NUMBERING OF UNDOCUMENTED BARGES (USCG–1998–3798)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 12301

CFR Citation: 33 CFR 189

Legal Deadline: None

Abstract: Title 46 U.S.C. 12301, as amended by the Abandoned Barge Act of 1992, requires that all undocumented barges more than 100 gross tons operating on the navigable waters of the United States be numbered. This rulemaking would establish a numbering system for these barges. The numbering of undocumented barges will allow identification of owners of barges found abandoned and help prevent future marine pollution. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Request for Comments	10/18/94	59 FR 52646
Comment Period End	01/17/95	
ANPRM	07/06/98	63 FR 36384
ANPRM Comment Period End	11/03/98	
NPRM	01/11/01	66 FR 2385
NPRM Comment Period End	04/11/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 93–091. In the 2002 spring agenda, we announced that we would be withdrawing this rulemaking but we are currently reevaluating that decision. We are in the process of deciding how to respond to the comments we have received.

Transferred from RIN 2115–AF13

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Patricia Williams, Project Manager, NVDC, Department of Homeland Security, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV 25419
Phone: 304 271–2506

RIN: 1625–AA14

1355. IMPLEMENTATION OF THE 1995 AMENDMENTS TO THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION, AND WATCHKEEPING (STCW) FOR SEAFARERS, 1978 (CGD 95–062)

Priority: Other Significant

Legal Authority: 44 USC 3507; 46 USC 2103; 46 USC 7101; 46 USC 7107

CFR Citation: 46 CFR 10; 46 CFR 12; 46 CFR 15

Legal Deadline: None

Abstract: The International Maritime Organization (IMO) comprehensively amended the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978, in 1995. The amendments came into force on February 1, 1997. This project implements them by revising current rules to ensure that the United States complies with their requirements on: the training of merchant mariners, the documenting of their qualifications, and watch-standing and other arrangements aboard seagoing merchant ships of the United States. This project supports the Coast Guard's strategic goal of maritime safety. It also supports the goal of our directorate for Marine Safety and Environmental Protection for reducing deaths and injuries of crewmembers on domestic merchant vessels and eliminating substandard vessels from the navigable waters of the United States. It is significant because of the potential impact on industry and the potential effect on international interests.

Timetable:

Action	Date	FR Cite
Notice of Meeting	08/02/95	60 FR 39306
Comment Period End	09/29/95	
Notice of Inquiry	11/13/95	60 FR 56970
Comment Period End	01/12/96	
NPRM	03/26/96	61 FR 13284
Notice of Public Meetings	04/08/96	61 FR 15438
Comment Period End	07/24/96	
Notice of Intent	02/04/97	62 FR 5197
Interim Rule	06/26/97	62 FR 34505
Interim Rule Effective	07/28/97	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 95–062.

Transferred from RIN 2115–AF26

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Mark Gould, Project Manager, G–MSO–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–6890

RIN: 1625–AA16

1356. SALVAGE AND MARINE FIREFIGHTING REQUIREMENTS; VESSEL RESPONSE PLANS FOR OIL (USCG–1998–3417)

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 155

Legal Deadline: None

Abstract: Current vessel response plan regulations require that the owners or operators of vessels carrying groups I through V petroleum oil as a primary cargo identify in their response plans a salvage company with expertise and equipment, and a company with firefighting capability that can be deployed to a port nearest to the vessel's operating area within 24 hours of notification (groups I–IV) or a discovery of a discharge (group V). Numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of this requirement difficult. Based on comments received after the Vessel Response Plan final rule publication (61 FR 1052; January 12, 1996) and during a Coast Guard hosted workshop, the Coast Guard intends to better define the terms "salvage expertise and equipment" and "vessel firefighting capability" requirements and will reconsider the 24-hour deployment requirement which was scheduled to go into effect on February 18, 1998. Therefore, the Coast Guard suspended the effective dates of the 24-hour deployment requirements as published in the final rule. The Coast Guard will continue with this project to better define the requirements. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of the natural resources. This rulemaking is also significant because it concerns a matter of substantial public interest or controversy.

Timetable:

Action	Date	FR Cite
Final Rule - Partial Suspension	02/12/98	63 FR 7069
Final Rule - Partial Suspension	01/17/01	66 FR 3876
NPRM	05/10/02	67 FR 31868
Public Meeting 7/9/02, 7/17/02, 7/25/02	06/12/02	67 FR 40254
Public Meeting 9/26/02	08/07/02	67 FR 51159
NPRM Comment Period Extended	08/07/02	
NPRM Comment Period End	10/18/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Partial suspension of regulations created through the Vessel Response Plan final rule, Docket No. 91–034, RIN 2115–AD81. The project was originally titled "Salvage and Firefighting Equipment; Vessel Response Plans." The change was made in order to distinguish this project from other similarly titled projects within the Coast Guard.

Transferred from RIN 2115–AF60

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LT Reed Kohberger, Project Manager, G–MOR–3, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0448

RIN: 1625–AA19

1357. COMMERCIAL DIVING OPERATIONS (USCG–1998–3786)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1509; 43 USC 1333; 46 USC 3306; 46 USC 3703; 46 USC 6101

CFR Citation: 46 CFR 197

Legal Deadline: None

Abstract: This project involves reviewing and updating the commercial diving regulations, which are over 20 years old. A review of the commercial diving regulations is needed to determine what parts should be updated or changed based on the current standards of safety, technology, and industry practices and to evaluate and minimize any significant economic impact of the rules upon small entities. The project supports the Coast Guard Marine Safety, Security and Environmental Protection Program's goal to reduce deaths and injuries on U.S. commercial vessels and the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
ANPRM	06/26/98	63 FR 34840
ANPRM Comment Period Extended	09/23/98	63 FR 50848
ANPRM Comment Period End	11/09/98	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AF64

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: CDR Mark Prescott, Project Manager, G–MSO, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0225

RIN: 1625–AA21

1358. IMPROVEMENTS TO MARITIME SAFETY IN PUGET SOUND-AREA WATERS (USCG–1998–4501)

Priority: Other Significant

Legal Authority: 33 USC 1223 to 1224

CFR Citation: 33 CFR 1

Legal Deadline: None

Abstract: This rulemaking would promulgate measures to improve maritime safety in Puget Sound-Area waters including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the Olympic Coast National Marine Sanctuary. Based on a determination by the Secretary of Transportation regarding the status of maritime safety in the Puget Sound area, the Coast Guard has initiated a comprehensive cost-benefit analysis to study the feasibility of implementing new safety measures, including extended tug escort requirements and a dedicated response vessel. Public input will help focus this cost-benefit analysis and develop any future proposed rules, if deemed necessary. This rulemaking supports the Coast Guard Marine Safety, Security and Environmental Protection Program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protection of natural resources. This is a significant action due to substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	11/24/98	63 FR 64937
ANPRM Comment Period End	05/24/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Transferred from RIN 2115–AF68

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LT Sam Stevens, Project Manager, G–MSE–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0173

RIN: 1625–AA22

1359. TRAINING AND QUALIFICATIONS FOR PERSONNEL ON PASSENGER SHIPS (USCG 1999–5610)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC ch 71; 46 USC ch 73

CFR Citation: 46 CFR 12; 46 CFR 15; 46 CFR 10

Legal Deadline: None

Abstract: This project will implement new amendments to the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) for Seafarers, 1978 that impose requirements for training and qualifications of masters, officers, engineers, and "ratings." The following training courses are mandatory for the personnel on passenger ships other than roll-on, roll-off, carrying more than 12 passengers operating on international voyages: (1) Crisis Management and Human Behavior; (2) Crowd Management; (3) Special Safety; (4) Passenger Safety, with special attention given to disabled persons and others needing assistance; and (5) Special Familiarization. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	06/15/00	65 FR 37507
NPRM Comment Period End	09/13/00	
Interim Final Rule	10/30/02	67 FR 66063
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AF83

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Mark Gould, Project Manager, G–MSO–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–6890

RIN: 1625–AA24

1360. CARGO SECURING ON VESSELS OPERATING IN U.S. WATERS (USCG–2000–7080)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 33 CFR 97

Legal Deadline: None

Abstract: This rulemaking would amend the cargo stowage and securing rules for U.S. vessels operating in U.S. waters. In addition, it would amend rules to require cargo-securing manuals for U.S. or foreign vessels of 500 gross tons or more on international voyages. Its goal is to reduce hazardous material cargo losses from vessels in U.S. waters. It supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	12/01/00	65 FR 75201
NPRM Comment Period End	03/01/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking is being returned to a long-term schedule. In the 2002 spring agenda, we announced we would be withdrawing this rulemaking but we are currently reevaluating that decision.

Transferred from RIN 2115–AF97

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Robert Spears, Project Manager, G–MSR–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–1099

RIN: 1625–AA25

1361. ELECTRONIC CHART DISPLAY AND INFORMATION SYSTEM (ECDIS) (USCG–2001–8826)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223; 33 USC 1231; 46 USC 2103; 46 USC 3703; 46 USC 6101; 46 USC 8502

CFR Citation: 33 CFR 164

Legal Deadline: None

Abstract: This rule would allow commercial vessels the option of using an IMO-approved Electronic Charting Display and Information System (ECDIS) as a primary means of navigation in U.S. waters instead of paper charts. Compliance with this rule would be optional; any vessel choosing not to use such an ECDIS must continue to navigate using corrected and updated printed charts and publications. This rule supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/01	66 FR 21899
ANPRM Comment Period End	07/02/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking is being shifted onto a long-term schedule. In the 2002 spring agenda, we announced that we would be withdrawing this rulemaking. We are currently reevaluating that decision.

Transferred from RIN 2115–AG09

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LCDR James Rocco, Project Manager, G–MWV G–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0550

RIN: 1625–AA29

1362. FEDERAL REQUIREMENTS FOR PROPELLER INJURY AVOIDANCE MEASURES (USCG 2001–10163)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175

Legal Deadline: None

Abstract: This rule would establish Federal requirements for nonplaning recreational houseboats equipped with propeller driven propulsion located aft of the transom. This rule would require owners of these nonplaning recreational houseboats to install either one or two propulsion unit measures (a propeller guard or a jet pump drive) or employ three combined measures (use of an ignition cut-off switch, where installed, and install a swim ladder interlock device and an aft-visibility device). Owners of rental houseboats would have to also install an ignition cut-off switch, if not already installed. These requirements would reduce the number of boaters who are seriously or fatally injured when struck by the propeller of a nonplaning recreational houseboat. This rulemaking would implement recommendations made by the National Boating Safety Advisory Council. It supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63645
NPRM Comment Period End	03/11/02	
NPRM Comment Period Extended	03/26/02	67 FR 13738
NPRM Comment Period End	05/11/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG18

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Carlton Perry, Project Manager, G–OPB–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0979

RIN: 1625–AA31

1363. DRAWBRIDGE OPERATIONS REGULATIONS; REVISIONS (USCG–2001–10881)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 499

CFR Citation: 33 CFR 117

Legal Deadline: None

Abstract: The Coast Guard is proposing changes to its drawbridge regulations that provide guidance for general requirements relating to the use and operation of drawbridges. This project will create a new deviation for short-term closures, provide Coast Guard Eighth District Bridges Administration St. Louis, MO, with a general bridge closure requirement during the winter season when navigation is reduced, and eliminate any unnecessary distinction between commercial and recreational vessels in subpart B. It will also make changes throughout part 117 to remove redundancies, make amendments and technical corrections, and remove special bridge regulations that are no longer functional. Corrections and clarification of these requirements will help to streamline the drawbridge regulatory process and should shorten and simplify part 117 for the reader. This rulemaking supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	04/17/03	68 FR 18922
NPRM Comment Period End	06/02/03	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG27

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: J. Christopher Jaufmann, Project Manager (G–OPT–1), Department of Homeland Security, U.S. Coast Guard, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0377

RIN: 1625–AA36

1364. ALTERNATE TONNAGE CONVENTION: SMALL PASSENGER VESSELS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 14 USC 14104

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rulemaking would amend small passenger vessel regulations retaining the tonnage thresholds based on measurement under 46 U.S.C. 14502, but adding alternate tonnage thresholds based on measurement under 46 U.S.C. 14302. We expect this rulemaking to support the Coast Guard's strategic goals of maritime mobility of commercial vessel traffic and maritime safety. However, we are reviewing our regulatory resource allocation and management strategies to optimize our overall regulatory mission effectiveness. Accordingly, we have decided to continue this item on the agenda, while we consider and balance our statutory obligations and discretionary authority.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: Transferred from RIN 2115–AG29

Agency Contact: Peter D. Eareckson, Project Manager, Marine Safety Center, Department of Homeland Security, U.S. Coast Guard, 400 7th Street SW., Washington, DC 20590–0001
Phone: 202 366–6502

RIN: 1625–AA37

1365. WEARING OF PERSONAL FLOTATION DEVICES BY PERSONS OPERATING OR RIDING ON PERSONAL WATERCRAFT OR BEING TOWED BEHIND RECREATIONAL VESSELS (USCG–2002–11421)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175

Legal Deadline: None

Abstract: This rule would require every person to wear a personal flotation device (PFD)-also called a lifejacket-while operating or riding on personal watercraft (PWC) or being towed behind a recreational vessel. On waters subject to the jurisdiction of the United States within any State or territory, the rule would not preempt any requirement established for such persons as specified by that State. The rule would set a Federal requirement on waters subject to the jurisdiction of the United States within any State or territory. The new requirement would reduce the number of persons who drown while participating in these activities. This project supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: Transferred from RIN 2115–AG32

Agency Contact: Carlton Perry, Project Manager, G–OPB–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0979

RIN: 1625–AA40

1366. IDENTIFICATION CREDENTIALS FOR MARITIME SECURITY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 46 USC 2103

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to update standards and procedures for identifying people aboard vessels, and at ports and facilities on waterfronts. These standards and procedures might include checks of backgrounds for people in security-sensitive positions, but would take account of (and as far as possible be compatible with) efforts to the same effect from international bodies, other Federal agencies, and States.

The purpose of the project would be to deter terrorism. The project would support the Coast Guard's strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: Related docket: Maritime Security Notice, USCG–2002–14069 (67 FR 79742, December 30, 2002).

Transferred from RIN 2115–AG42

Agency Contact: Gerald P. Miante, Project Manager, G–MSE–3, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–2206

RIN: 1625–AA47

1367. VESSEL TRAFFIC SERVICE LOWER MISSISSIPPI RIVER (USCG–1998–4399)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223(a)

CFR Citation: 33 CFR 26; 33 CFR 161; 33 CFR 165

Legal Deadline: None

Abstract: This project proposes to establish a new Vessel Traffic Service (VTS) area in the Lower Mississippi River region. This Vessel Traffic Service Area (VTSA) will span from 20 miles north of Baton Rouge (mile 255 Above Head of Passes (AHP)) out to sea, including the South and Southwest Pass. As part of the VTSA, a VTS Special Area will be designated between mile 93.5 and 95 AHP. Unlike traditional VTSs, which are based on radar and video surveillance and rely on voice communications by VHF-FM radio, when fully operational VTS Lower Mississippi River will use Automatic Identification System transponder technology to perform the majority of both surveillance and information exchange. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	04/26/00	65 FR 24616
NPRM Comment Period End	07/25/00	
NPRM Comment Period Reopened	08/18/00	65 FR 50479
NPRM Comment Period End	12/01/00	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This project was originally entitled "Vessel Traffic Service Lower Mississippi/Automatic Identification System Carriage Requirement." The VTS LMR will retain RIN 1625–AA58. The AIS carriage requirement will be developed in a separate rulemaking (see USCG–2003–14575, RIN 1625–AA67).

Transferred from RIN 2115–AF75

URL For More Information:

dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Jorge Arroyo, Project Manager, G–MWV, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–6277

RIN: 1625–AA58

1368. WEARING OF PERSONAL FLOTATION DEVICES (PFDS) BY CERTAIN CHILDREN ABOARD RECREATIONAL VESSELS (USCG–2000–8589)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175, subpart B

Legal Deadline: None

Abstract: This rule requires every child under the age of 13 to wear a personal flotation device (PFD)-also called a lifejacket-while aboard a recreational vessel under way and while not below decks or in an enclosed cabin. It adopts, on waters subject to the jurisdiction of the United States within any State, any requirement for the wearing of a PFD established by that State for a child under an age specified by that State. The rule also sets, on waters subject to the jurisdiction of the United States within any State lacking any such requirement, its own, comparable requirements. This project supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	05/01/01	66 FR 21717
NPRM Comment Period End	08/29/01	
Final Rule	02/27/02	67 FR 8881
Notice of Withdrawal of Final Rule	03/27/02	67 FR 19643
Withdrawal of Final Rule Effective	03/27/02	
Interim Final Rule	06/24/02	67 FR 42488
Interim Final Rule Comment Period End	08/23/02	
Interim Final Rule Effective	12/23/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: After publication of the final rule, the State Boating Law Administrator (BLA) of Ohio raised a concern about possible adverse impacts due to Federal enforcement of PFD-wearing requirements on vessels not subject to State requirements because of vessels' lengths. The Coast Guard withdrew the final rule before its effective date and later published an interim final rule that allows public comment on a new alternative, which removes the potential differences between Federal and State requirements.

Transferred from RIN 2115–AG04

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Carlton Perry, Project Manager, G–OPB–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0979

RIN: 1625–AA62

1369. ESCORT VESSELS FOR CERTAIN TANKERS-CRASH STOP CRITERIA (USCG–2003–14734)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3703

CFR Citation: 33 CFR 168

Legal Deadline: None

Abstract: This rulemaking will make permanent the suspended "crash stop provision" to the escort vessel regulations. This rulemaking will support the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from 2115–AG51

Agency Contact: LT Sam Stevens, Project Manager, G–MSE–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0173

RIN: 1625–AA65

Department of Homeland Security (DHS)
U.S. Coast Guard (USCG)
Completed Actions

1370. LICENSING AND MANNING FOR OFFICERS OF TOWING VESSELS (USCG 1999–6224)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 633; 44 USC 3507; 46 USC 2103; 46 USC 7101; 46 USC 7106; 46 USC 7107; 46 USC 7701

CFR Citation: 46 CFR 10; 46 CFR 15

Legal Deadline: None

Abstract: This rulemaking is necessary as part of an overall initiative by the Coast Guard to improve navigational safety for towing vessels. It will help ensure that the mariner piloting a towing vessel has the proper training and qualifications to handle the tug and tow. It has introduced a third level of license where there have been only two. Each level requires greater experience and proficiency than the one below. This rulemaking also introduces a requirement for demonstration of proficiency as a prerequisite to being issued an original license. This will be in addition to the current requirements for sea service, physical examination, testing for drugs, and successful testing for competence. This rulemaking supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	06/19/96	61 FR 31332
Correction	07/11/96	61 FR 36608
Correction	08/07/96	61 FR 41208
Notice of Meeting	08/26/96	61 FR 43720
NPRM Comment Period End	10/17/96	
Notice of Intent	12/18/96	61 FR 66642
SNPRM	10/27/97	62 FR 55548

Action	Date	FR Cite
Public Meeting Boston 02/18/98	01/21/98	63 FR 3070
Public Meeting Houston 02/13/98	01/21/98	63 FR 3070
Public Meeting Memphis 02/11/98	01/21/98	63 FR 3070
Public Meeting Seattle 02/24/98	01/21/98	63 FR 3070
SNPRM Comment Period End	02/24/98	
Interim Final Rule	11/19/99	64 FR 63213
Interim Final Rule Comment Period End	02/17/00	
Interim Final Rule	10/27/00	65 FR 64388
Notice Concerning Review	02/09/01	66 FR 9673
Interim Final Rule	04/26/01	66 FR 20931
Interim Final Rule Effective	05/21/01	
Notice of Public Meeting	07/11/01	66 FR 36223
Interim Final Rule Comment Period End	07/25/01	
Final Rule	06/17/03	68 FR 35801
Final Rule Effective	09/15/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94–055.

Transferred from RIN 2115–AF23

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LCDR Luke Harden, Project Manager, G–MSO–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–1838

RIN: 1625–AA15

1371. TERRITORIAL SEAS, NAVIGABLE WATERS, AND JURISDICTION (USCG–2001–9044)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC 3306 to 3307; 46 USC 3703; 49 USC 1804; 49 USC 1655; 14 USC 633; 14 USC 80; . . .

CFR Citation: 33 CFR 2; 33 CFR 26; 33 CFR 62; 33 CFR 64; 33 CFR 95; 33 CFR 100; 33 CFR 165

Legal Deadline: None

Abstract: This project will make substantive changes to current regulations, but only to the extent required to conform to the congressionally mandated changes in the laws administered and enforced by the Coast Guard as listed in section 301 of the Coast Guard Authorization Act of 1998 and sections 104 and 321 of the Maritime Transportation Security Act of 2002. We will redefine the "territorial sea," "navigable waters of the United States," "high seas," "contiguous zone," and "exclusive economic zone" to clarify the varying definitions of those terms under different laws administered and enforced by the Coast Guard, as well as relevant Presidential proclamations. This project supports the Coast Guard's strategic goals of maritime safety and security, and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	08/14/02	67 FR 52906
Correction to NPRM	09/18/02	67 FR 58752
NPRM Comment Period End	11/12/02	
Final Rule	07/18/03	68 FR 42595
Final Rule Effective	08/18/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG13

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Alex Weller, Project Manager (G–LMI), Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–0097

RIN: 1625–AA30

1372. AREA MARITIME SECURITY (USCG–2003–14733)

Priority: Other Significant

Legal Authority: PL 107–295

CFR Citation: 33 CFR 101; 33 CFR 103

Legal Deadline: Other, Statutory, November 25, 2003, Other.

Abstract: This rulemaking will establish security measures commensurate with the level and degree of risk within the marine transportation system, and will affect all users, workers, and property in and adjacent to navigable waters of the United States and waters subject to the jurisdiction of the United States. This rulemaking will include requirements for Port Security Committees, Port Security Assessments, and Port Security Plans. This project will support the Coast Guard's strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable:

Action	Date	FR Cite
Temporary Interim Rule	07/01/03	68 FR 39284
Interim Final Rule Effective	07/01/03	
Interim Final Rule Comment Period End	07/31/03	
Final Rule	10/22/03	68 FR 60472
Final Rule Effective	11/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Related docket: Maritime Security Notice, USCG–2002–14069 (67 FR 79742, December 30, 2002).

Transferred from RIN 2115–AG37

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LCDR Richard Teubner, Project Manager, G–MPS–2, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–4129

RIN: 1625–AA42

1373. FACILITY SECURITY (USCG–2003–14732)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107–295

CFR Citation: 33 CFR 105

Legal Deadline: Other, Statutory, November 25, 2003, Other.

Abstract: This rulemaking will establish security measures commensurate with the level and degree of risk within the marine transportation system, and will affect all users, workers, and property in and adjacent to navigable waters of the United States and waters subject to the jurisdiction of the United States. This rulemaking will include requirements for Facility Security Assessments, Facility Security Plans, and Facility Security Officers. This project is expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and maritime mobility.

Timetable:

Action	Date	FR Cite
Temporary Interim Rule	07/01/03	68 FR 39315
Interim Final Rule Effective	07/01/03	
Interim Final Rule Comment Period End	07/31/03	
Final Rule	10/22/03	68 FR 60515
Final Rule Effective	11/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Related docket: Maritime Security Notice, USCG–2002–14069 (67 FR 79742, December 30, 2002).

Transferred from RIN 2115–AG38

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LT Gregory Purvis, Project Manager, G–MPS, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–1072

RIN: 1625–AA43

1374. VESSEL SECURITY (USCG–2003–14749)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107–295

CFR Citation: 33 CFR 104

Legal Deadline: Other, Statutory, November 25, 2003, Other.

Abstract: The Vessel Security rulemaking will affect owners and operators of U.S. vessels, including Mobile Offshore Drilling Units (MODUs) and public vessels, and foreign vessels calling on U.S. ports. This rulemaking will not cover fixed and floating platforms or other specific excluded vessels. Consistent with the Maritime Transportation Security Act of 2002 and parts A and B of the IMO International Code for Security of Ships and Port Facilities (ISPS Code), the affected vessels will be required to designate security officers, develop vessel security plans based security assessments and surveys, and implement security measures and procedures specific to each vessel's operations and to indicated Maritime Security (MARSEC) levels. Other proposed requirements include provisions for training, record keeping, security equipment maintenance, and communication procedures. This rulemaking supports the Coast Guard's strategic goals of maritime safety, maritime security, protection of natural resources, and maritime mobility.

Timetable:

Action	Date	FR Cite
Temporary Interim Rule	07/01/03	68 FR 39292
Interim Final Rule Effective	07/01/03	
Interim Final Rule Comment Period End	07/31/03	
Final Rule	10/22/03	68 FR 60483
Correction	11/04/03	68 FR 62501
Final Rule Effective	11/21/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Related docket: Maritime Security Notice, USCG–2002–14069 (67 FR 79742, December 30, 2002).

Transferred from RIN 2115–AG41

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LCDR Darnell Baldinelli, Project Manager, G–MP, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–4148

RIN: 1625–AA46

1375. SAFETY ZONE FOR OUTER CONTINENTAL SHELF FACILITY IN THE GULF OF MEXICO IN VIASCA KNOLL 915 (CGD08–02–045)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 85; 43 USC 1333

CFR Citation: 33 CFR 147

Legal Deadline: None

Abstract: The Coast Guard proposes to establish a safety zone around a high-production, manned oil and natural gas facility in the Outer Continental Shelf in the Gulf of Mexico in Viasca Knoll 915. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around the facility will significantly reduce the threat of allisions, oil spills, and releases of natural gas. The proposed regulation would prevent all vessels from entering or remaining in specified areas around the facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander. The proposed safety zone is necessary to protect life, property and the environment and supports the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	02/28/03	68 FR 9611
NPRM Comment Period End	04/29/03	
Final Rule	09/26/03	68 FR 55443
Final Rule Effective	10/27/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2115–AG54

Agency Contact: LT Kevin Lynn, Project Manager (mwm), Department of Homeland Security, U.S. Coast Guard, Eighth Coast Guard District Commander, Hale Boggs Federal Buildings, 501 Magazine Street, New Orleans, LA 70130
Phone: 504 589–6217
Email: klynn@d8.uscg.mil

RIN: 1625–AA54

1376. AUTOMATIC IDENTIFICATION SYSTEM; VESSEL CARRIAGE REQUIREMENT (USCG–2003–14757)

Priority: Other Significant

Legal Authority: PL 107–295

CFR Citation: 33 CFR 161; 33 CFR 164; 33 CFR 165

Legal Deadline: Other, Statutory, November 25, 2003, Other.

Abstract: The Coast Guard will amend certain ports and waterways regulations to reflect vessel carriage requirements, and technical and performance standards for an automatic identification system (AIS). The rule will implement the AIS vessel requirements of the Maritime Transportation Security Act of 2002 (MTSA) and the International Maritime Organization (IMO) requirements adopted under International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended. The changes will require AIS on all SOLAS vessels and certain other commercial vessels. The rule will facilitate vessel communications, enhance good order and predictability, promote safe navigation, expand maritime domain awareness, and improve upon existing operating measures on our nation's waterways. This rulemaking replaces a rulemaking we have withdrawn, RIN 1625–AA61 (Formerly 2115–AG36). We have withdrawn that rulemaking and have replaced it with this one that will specifically respond to the MTSA, including its requirement to publish a temporary interim rule (TIR). The TIR will focus on SOLAS vessels in all waters and domestic vessels operating in Vessel Traffic Service (VTS) and Vessel Movement Reporting System (VMRS) areas only. The public will be provided with an opportunity to comment on the TIR. Separate from this rulemaking, a notice will also be published seeking comments on AIS carriage requirements for non-VTS or non-VMRS areas, such as for other navigable waters per MTSA or domestic vessels over 500 gross tons per SOLAS. This new rulemaking supports Coast Guard strategic goals of maritime safety, maritime security, protection of natural resources and maritime mobility.

Timetable:

Action	Date	FR Cite
Temporary Interim Rule	07/01/03	68 FR 39353
Interim Final Rule Effective	07/01/03	
Interim Final Rule Comment Period End	07/31/03	
Policy Statement	09/29/03	68 FR 55826
Final Rule	10/22/03	68 FR 60559
Final Action Effective	11/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Related docket: Maritime Security Notice, USCG–2002–14069 (67 FR 79742, December 30, 2002), available at http://dms.dot.gov.

Also "Automatic Identification System: Expansion of Carriage Requirements for U.S. Waters" notice and request for comments (USCG–2003–14878)(68 FR 39369, July 1, 2003).

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Jorge Arroyo, Project Manager, G–MWV, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001
Phone: 202 267–6277

RIN: 1625–AA67

1377. OUTER CONTINENTAL SHELF FACILITY SECURITY (USCG–2003–14759)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107–295

CFR Citation: 33 CFR 106

Legal Deadline: Final, Statutory, November 25, 2003, Final.

Abstract: This rulemaking will establish security measures for Outer Continental Shelf (OCS) facilities commensurate with the level and degree of risk within the marine transportation system and will affect all users, workers, and property in and adjacent to navigable waters of the United States and waters subject to the jurisdiction of the United States. This rulemaking will include requirements for OCS Facility Security Assessments, OCS Facility Security Plans, and OCS Facility Security Officers. The Maritime Transportation Security Act of 2002 (MTSA) requires that a temporary interim rule be published followed by a final rule no later than November 25, 2003, one year after the date of enactment of the MTSA. This project supports the Coast Guard's strategic goal of maritime security.

Timetable:

Action	Date	FR Cite
Temporary Interim Rule	07/01/03	68 FR 39338
Interim Final Rule Effective	07/01/03	
Interim Final Rule Comment Period End	07/31/03	
Final Rule	10/22/03	68 FR 60545
Final Rule Effective	11/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: LT Greg Versaw, Project Manager, G–MP, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–4144

RIN: 1625–AA68

1378. IMPLEMENTATION OF NATIONAL MARITIME SECURITY INITIATIVES (USCG–2003–14792)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107–295

CFR Citation: 33 CFR 101 to 103; 33 CFR 105; 33 CFR 161; 33 CFR 164; 33 CFR 165; 46 CFR 104

Legal Deadline: Other, Statutory, November 25, 2003, Other.

Abstract: The Coast Guard is implementing a series of temporary interim rules as required by Public Law 107–295, the Maritime Transportation Security Act of 2002 (MTSA). This series of temporary interim rules addresses security assessments, plans, and specific security measure requirements for Area Maritime Transportation Security, Vessel Security, Facility Security, and Offshore Facility Security. The carriage requirements for Automatic Identification System (AIS) are also included in this series of interim final rules. A comprehensive discussion of the security requirements included in the MTSA is presented in this rulemaking along with a summary of the cost and benefits of the entire suite of temporary interim rules. Discussions are also included on the alignment of domestic maritime security requirements with the International Ship and Port Facility Security (ISPFS) Code and recent amendments to the International Convention for the Safety of Life at Sea (SOLAS). The actual temporary interim rules in this suite limit their preamble discussions to the specific requirements they contain. Under the MTSA, a final rule for each of the six temporary interim rules will be issued before November 25, 2003. This rulemaking provides the elements and discussions common to the suite of related temporary interim rules. The public is encouraged to use this rulemaking as the foundation document for the entire suite. This project supports the Coast Guard's strategic goal of maritime security.

Timetable:

Action	Date	FR Cite
Temporary Interim Rule	07/01/03	68 FR 39240
Interim Final Rule Effective	07/01/03	
Interim Final Rule Comment Period End	07/31/03	
Final Rule	10/22/03	68 FR 60448
Final Rule Effective	11/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: CAPT Kevin Dale, Commandant (G–MPS), Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–0250

RIN: 1625–AA69

1379. • RIGHT TO APPEAL; DIRECTOR, GREAT LAKES PILOTAGE (USCG–2003–15137)

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 46 USC 9303(f)

CFR Citation: 46 CFR 1, 5, 7–10

Legal Deadline: None

Abstract: The Coast Guard is amending its procedures for the appeal of decisions or actions taken by the Director, Great Lakes Pilotage (G–MW–1). It has determined that the Assistant Commandant for Marine Safety, Security and Environmental Protection (G–M) should exercise this authority in place of the Director of Waterways Management (G–MW). This way, G–MW will be able to supervise more closely the work of G–MW–1 without also sitting in judgment on that work. This project supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/23/03	68 FR 37091
Direct Final Rule Comment Period End	07/23/03	
Direct Final Rule Effective	08/22/03	
Confirmation of Effective Date	08/27/03	68 FR 51499

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Thomas Lawler, Project Manager, G–MW–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–1241

RIN: 1625–AA71

1380. • SAFETY ZONE FOR OUTER CONTINENTAL SHELF FACILITY IN THE GULF OF MEXICO IN MISSISSIPPI CANYON 243

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 14 USC 85; 43 USC 1333

CFR Citation: 33 CFR 147

Legal Deadline: None

Abstract: The Coast Guard proposes to establish a safety zone around a high-production, manned oil and natural gas facility in the Outer Continental Shelf in the Gulf of Mexico being constructed in Mississippi Canyon 243. The facility needs to be protected while it is being constructed and after construction is completed from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around the facility will significantly reduce the threat of allisions, oil spills, and releases of natural gas. The proposed regulation would prevent all vessels from entering or remaining in specified areas around the facility except for the following: An attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander. The proposed safety zone is necessary to protect life, property and the environment and supports the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	07/07/03	68 FR 40229
NPRM Comment Period End	09/05/03	
Final Rule	10/14/03	68 FR 59116
Final Rule Effective	11/13/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LT Kevin Lynn, Project Manager (mwm), Department of Homeland Security, U.S. Coast Guard, Eighth Coast Guard District Commander, Hale Boggs Federal

Buildings, 501 Magazine Street, New Orleans, LA 70130
Phone: 504 589–6217
Email: klynn@d8.uscg.mil

RIN: 1625–AA72

1381. • BASIC RATES AND CHARGES ON LAKE ERIE AND THE NAVIGABLE WATERS FROM SOUTHWEST SHOAL TO PORT HURON, MI (USCG–2002–12840)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 46 USC 2104(a); 44 USC 3507

CFR Citation: 46 CFR 401

Legal Deadline: None

Abstract: This rule extends a temporary final rule published on July 19, 2002 (67 FR 47464), which expires on July 21, 2003. This rule would extend the temporary final rule until through December 24, 2003. Extension of the effective period ensures that the pilotage rates in District Two, Area 5, stay at the current rate while the Coast Guard completes its pending ratemaking project. This project supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
Temporary Final Rule Effective	07/18/03	
Temporary Final Rule	07/23/03	68 FR 43470

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The temporary final rule this rule extends appeared as a completed action in the Fall 2002 Unified Agenda as RIN 2115–AG46.

URL For More Information: dms.dot.gov

URL For Public Comments: dms.dot.gov

Agency Contact: Thomas Lawler, Project Manager, G–MW–1, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267–1241

RIN: 1625–AA74

Department of Homeland Security (DHS) Proposed Rule Stage

Bureau of Customs and Border Protection (BCBP)

1382. INSPECTION OF PERSONS APPLYING FOR ADMISSION; INTERNATIONAL-TO-INTERNATIONAL USER FEE

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1356

CFR Citation: 8 CFR 286

Legal Deadline: None

Abstract: This rule proposes to amend Department regulations to require air carriers to charge and collect a user fee from every International-to-International (ITI) passenger arriving in the United States, except those individuals exempted under section 286(e)(1) of the Immigration and Nationality Act. This action is necessary since the Department is required to inspect all aliens who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1757

Transferred from RIN 1115–AE37

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA03

1383. DOCUMENTARY REQUIREMENTS FOR RETURNING RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257

CFR Citation: 8 CFR 211

Legal Deadline: None

Abstract: This rule proposes to amend DHS regulations to specify how an alien admitted for permanent residence, on returning to the United States, may prove that he or she is not to be considered an applicant for admission. This rule is necessary to implement section 101(a)(13)(C) of the Act and to clarify the responsibility for carriers who transport to the United States aliens who claim to be to be returning residents. This rule will ensure that aliens who present themselves as lawful permanent residents are properly documented as such.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1932-98	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1932-98.

Transferred from RIN 1115–AF26

Agency Contact: Michael D. Jones, Acting Director, National Fines Office of Inspections, Department of Homeland Security, Bureau of Customs and Border Protection, Suite 425, 1525 Wilson Boulevard, Arlington, VA 22209
Phone: 202 305–7018

RIN: 1651–AA09

1384. CONTRACTS WITH TRANSPORTATION LINES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1228

CFR Citation: 8 CFR 233

Legal Deadline: None

Abstract: This rule proposes to amend DHS regulations by providing signature authority for forms I-420, Agreement Between Transportation Line and the U.S., I-425, Agreement (Pre-Inspection) Between Transportation Line and the U.S. (At Places Outside U.S.), and I-426, Immediate and Continuous Transit Agreement Between a Transport Line & U.S., to the Commissioner or his delegated representative. This change is required by section 308 of IIRIRA, which amended section 233 (a) of the I&NA by requiring carriers transporting aliens to the United States from all "foreign territory and adjacent islands" to enter into a contract with the United States prior to transportation of such aliens. Another change is to remove the signature authority of the Associate Commissioner for Examinations for the aforementioned Agreements because the position was abolished.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.1994-99

Transferred from RIN 1115–AF46

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA10

1385. IMPOSITION OF FINES FOR VIOLATIONS OF THE IMMIGRATION AND NATIONALITY ACT

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1221; 8 USC 1223; 8 USC 1227; 8 USC 1229

CFR Citation: 8 CFR 280

Legal Deadline: None

Abstract: This rule proposes to amend Department regulations to reflect the actual process used to recommend and impose fines for violations of the Immigration and Nationality Act (Act). Since the publication of 8 CFR part 280, the Deprtment had centralized the fines process and made some adjustments to certain procedures. The 8 CFR part 280 will be renumbered sequentially and reordered to group related issues in one section. This part will also be expanded to provide for fines imposed under section 231A(d)(2) and 274D of the Act and will introduce procedures for detaining vessels and posting bonds, as well as giving the Commissioner discretion in requiring bonds.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2041-00

Transferred from RIN 1115–AF70

Agency Contact: Michael D. Jones, Acting Director, National Fines Office of Inspections, Department of Homeland Security, Bureau of Customs and Border Protection, Suite 425, 1525 Wilson Boulevard, Arlington, VA 22209
Phone: 202 305–7018

RIN: 1651–AA12

1386. ADJUSTMENT OF FEES FOR DEDICATED COMMUTER LANES AND SECURE ELECTRONIC NETWORK FOR TRAVELERS' RAPID INSPECTION (SENTRI) PROGRAMS AT LAND BORDER PORTS OF ENTRY

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule proposes to adjust the fees for the Land Border Inspection Fee Account (LBIFA) for the Form I-823, Application for Alternative Inspection Services at land border ports of entry and related systems cost fees for participants in the Dedicated Commuter Lane (DCL) program. Form I-823 is used by applicants to the Port Passenger Accelerated Service System (PORTPASS) that includes the DCL program and several other land border programs. The Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) Program at certain assigned POEs is part of the overall DCL program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2031-99

Transferred from RIN 1115–AG18

Agency Contact: Penny Pastiva, Budget Analyst, Department of Homeland Security, Bureau of Customs and Border Protection, Room 5236, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 514–6254
Email: penny.pastiva@dhs.gov

RIN: 1651–AA16

1387. VISA WAIVER PROGRAM: GUAM VISA WAIVER PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1182; 8 USC 1184; 8 USC 1187; ...

CFR Citation: 8 CFR 103; 8 CFR 208; 8 CFR 212; 8 CFR 217; 8 CFR 233; ...

Legal Deadline: None

Abstract: On October 30, 2000, the Visa Waiver Permanent Program Act, Public Law 106–396, made the Visa Waiver Pilot Program (VWPP) permanent with some modifications. The VWPP permits nationals from participating countries to apply for admission to the United States for 90 days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. The proposed rule will clarify and explain the new VWP requirements as well as ensure that the VWP removal provisions apply fairly and equally to all inadmissible nonimmigrants regardless of nationality.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Merges actions pending for INS Nos. 1447-91, 1622-94, 1685-95, 1777-96, 1782, 17686, 2002–99, and 2188-02 into INS No. 1799.

See also INS No. 2099-00

Transferred from RIN 1115–AG25

Agency Contact: Marty Newingham, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7992

RIN: 1651–AA17

1388. EXAMINATION OF IN-TRANSIT MAIL SHIPMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624

CFR Citation: 19 CFR 145

Legal Deadline: None

Abstract: Amendment to provide that DHS has the authority to examine and search international mail without regard as to whether it is transiting the United States or the U.S. Virgin Islands, or is being delivered within the Customs territory of the United States or the U.S. Virgin Islands.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AC71

Agency Contact: Glen E. Vereb, Chief, Entry Procedures and Carriers Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8730

RIN: 1651–AA34

1389. ADVANCE NOTICE REQUIREMENTS FOR AIRCRAFT LANDINGS AND ARRIVALS; REVISIONS TO THE PRIVATE AIRCRAFT OVERFLIGHT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendment to require that the owners or operators of commercial aircraft that operate as scheduled airlines and enter the United States from foreign areas who intend to land at landing rights or user fee airports, request from U.S. Customs and Border Protection permission to land in writing at least 30 days before the first flight date and secure customs approval to land before the first flight begins. Amendment would also make the advance notice of arrival requirement applicable to all aircraft. The advance notice of arrival would be required to be given by the aircraft commander directly to the appropriate customs location at least one hour before the aircraft crosses any border or coastline of the United States. Amendment would also modify the application process for the Overflight Program and provide for centralized processing of requests for an overflight exemption.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD10

Agency Contact: Elizabeth Tritt, Operations Officer, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-4434

RIN: 1651–AA41

1390. PRIOR DISCLOSURE AND LOST DUTY OR REVENUE DEMANDS WHEN PENALTY CLAIM NOT ISSUED

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1592; 19 USC 1593a; 19 USC 1624

CFR Citation: 19 CFR 162

Legal Deadline: None

Abstract: Amendment pertaining to prior disclosure and to the procedure for demanding payment of duties, taxes, fees, or revenue for violations of 19 U.S.C. 1592 or 1593a when a penalty claim is not issued. Amendments are designed to encourage participation in the prior disclosure program and to enhance the effectiveness of the duty/revenue demand process.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD13

Agency Contact: Alan Cohen, Senior Attorney, Penalties Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8742

RIN: 1651–AA42

1391. MANIFEST DISCREPANCY REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433; 19 USC 1434; 19 USC 1436; 19 USC 1581; 19 USC 1584; 19 USC 1498; 46 USC app 3; 46 USC app 91

CFR Citation: 19 CFR 4; 19 CFR 18; 19 CFR 113; 19 CFR 122; 19 CFR 123; 19 CFR 146; 19 CFR 158

Legal Deadline: None

Abstract: Amendment concerning the filing of cargo manifest discrepancy reports reflecting that accurate manifest information is required prior to the arrival of carriers transporting cargo into the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD26

Agency Contact: Pete Flores, Inspector, Department of Homeland Security, Bureau of Customs and Border Protection, Manifest and Conveyance Branch, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0333

Jeremy Baskin, Attorney-Advisor, Penalties Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8753

RIN: 1651–AA45

1392. • PUBLICATION OF ADMINISTRATIVE FORFEITURE NOTICES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1592; 19 USC 1593a; 19 USC 1624; 19 USC 1607; 19 USC 1608

CFR Citation: 19 CFR 162

Legal Deadline: None

Abstract: Amendment to raise the value threshold of seized property for which publication of a notice in a newspaper is necessary from $2,500 to $5,000. By changing the requirements for publication of administrative forfeiture notices, amendment would significantly reduce the publication costs, which have often exceeded the value of seized property.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD31

Agency Contact: Greg Olsavsky, Chief, Fines, Penalties and Forfeitures Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-3119

RIN: 1651–AA48

Department of Homeland Security (DHS)
Bureau of Customs and Border Protection (BCBP)

Final Rule Stage

1393. FEES FOR PARTICIPATION IN DEDICATED COMMUTER LANES AT SELECTED PORTS OF ENTRY; COLLECTION OF FEES UNDER THE DEDICATED COMMUTER LANE PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1224 to 1228; 8 USC 1252; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252b; 8 USC 1304; 8 USC 1356; 8 USC 1182; 8 USC 1183

CFR Citation: 8 CFR 103; 8 CFR 235; 8 CFR 286; 8 CFR 299

Legal Deadline: None

Abstract: These rules provide for the collection of a fee at the time of application for participation in a Dedicated Commuter Lane (DCL) program, instead of at the time of approval of the application. The DCL program is a pilot project established at selected land border ports of entry to expedite the transborder movement of eligible, pre-screened, low-risk groups through designated traffic lanes. The first interim final rule clarifies the requirements for the use of the DCL (INS No. 1675). The second interim final rule will set forth the fee required of participants in order to cover the technological costs (INS No. 1794).

INS No. 2058-00 will propose to remove restrictions currently in place that limit the locations where the Department can establish commuter lanes. In addition, the proposed rule will incorporate other projects designed to enhance border security and effective traffic management at port of entry. Finally, the rule may adjust the fee structure in order to administer these projects.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1675 Eff. 9/29/95; Comment Period End 11/28/95	09/29/95	60 FR 50386
Interim Final Rule Comment Period End	11/28/95	
Interim Final Rule (INS No. 1794-96)	10/11/96	61 FR 53303
Final Action (INS No. 1675-94)-Effective 10/16/1996	10/16/96	61 FR 53830
Final Action (INS No. 1794-96)	12/00/03	
NPRM (INS No. 2058-00)	04/00/04	
NPRM Comment Period End (INS No. 2058-00)	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: INS Nos. 1675 and 1794-96

Transferred from RIN 1115–AD82

Agency Contact: Thomas C. Campbell, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4214, 425 I Street NW., Washington, DC 20536
Phone: 202 305–9246

RIN: 1651–AA01

1394. SUSPENSION OF PRIVILEGE TO TRANSPORT ALIENS TO THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1252; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225 to 1227

CFR Citation: 8 CFR 103; 8 CFR 273

Legal Deadline: None

Abstract: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added a provision to the Immigration and Nationality Act that allows DHS to suspend a commercial airline's privilege to transport aliens to the United States if the carrier has a record of bringing in aliens who have fraudulent documents. After consultation with other interested Government agencies, DHS is proposing to implement appropriate standards and procedures governing the use of this power to suspend a carrier's privilege to transport aliens to the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/23/98	63 FR 56869
NPRM Comment Period End	12/22/98	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1809-96.

Transferred from RIN 1115–AE59

Agency Contact: Michael D. Jones, Acting Director, National Fines Office of Inspections, Department of Homeland Security, Bureau of Customs and Border Protection, Suite 425, 1525 Wilson Boulevard, Arlington, VA 22209
Phone: 202 305–7018

RIN: 1651–AA05

1395. ESTABLISHMENT OF PREINSPECTED AUTOMATED LANE (PAL) PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1225; 8 USC 1226; 8 USC 1251; 8 USC 1252; 8 USC 1357; 8 CFR 2

CFR Citation: 8 CFR 287; 8 CFR 299

Legal Deadline: None

Abstract: This rule amends Department regulations by establishing a Preinspected Automated Lane (PAL) Program for the use of eligible persons and vehicles at immigration checkpoints within the United States. This rule will facilitate the passage of people and vehicles through DHS checkpoints while safeguarding the integrity of law enforcement objectives at the checkpoints.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/18/97	62 FR 19024
Interim Final Rule Comment Period End	06/17/97	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1830-97

Transferred from RIN 1115–AE80

Agency Contact: Rudolph J. Miranda, Assistant Chief, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4226, United States Border Patrol, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0931

RIN: 1651–AA06

1396. AMENDMENT OF THE REGULATORY DEFINITION OF ARRIVING ALIEN

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 CFR 2

CFR Citation: 8 CFR 1

Legal Deadline: None

Abstract: This rule amends Department regulations by changing the regulatory definition of an arriving alien. Under section 235(b)(1)(A)(i) of the Immigration and Nationality Act, which was effective on April 1, 1997, certain arriving aliens are subject to expedited removal procedures. The existing regulatory definition of arriving aliens includes parolees. As a matter of policy, the Department has decided that it is appropriate to exempt from the new expedited removal procedures aliens who were paroled into the United States before April 1997. This rule clarifies that these aliens, as well as certain other aliens who were paroled into the United States pursuant to advance parole, will not be subjected to expedited removal upon termination at parole. The rule also makes several changes in the ordering of 1.1(q) to use language that is clearer and more consistent with the wording of the statute.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/20/98	63 FR 19382
Interim Final Rule Comment Period End	06/19/98	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Re: INS No. 1868-97

Transferred from RIN 1115–AE87

Agency Contact: Jerry Liu, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3410

RIN: 1651–AA07

1397. ELIMINATION OF IMMIGRATION AND NATURALIZATION SERVICE-ISSUED MEXICAN AND CANADIAN BORDER CROSSING CARDS

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1228; 8 USC 1252; 8 USC 1304; 8 USC 1356; 8 USC 1304; 8 USC 1356; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1201; 8 USC 1225 to 1227

CFR Citation: 8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 235; 8 CFR 247; 8 CFR 264; 8 CFR 286; 8 CFR 299

Legal Deadline: Final, Statutory, October 1, 2002, Final.

Abstract: This rule amends Department regulations to eliminate the use of Form I-175, Application for Nonresident Alien Canadian Border Crossing Card, and Form I-190, Application for Nonresident Alien Mexican Border Crossing Card. It also terminates the production of Form I-185, Nonresident Alien Canadian Border Crossing Card, and Form I-586, Nonresident Alien Mexican Border Crossing Card. In addition, this rule prohibits the use of Form I-186 (previous version of Mexican Border Crossing Card), Form I-185 and Form I-586 Border Crossing Cards (BCCs) after September 30, 2002, for required use of a card containing a machine readable biometric identifier for entry (such as the fingerprint or handprint of the alien). Under the provisions of this rulemaking, an alien seeking entry into the United States by presentation of a BCC must complete a biometric verification upon each entry.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/02/02	67 FR 71442
Interim Final Rule Effective	10/01/02	
Interim Final Rule Comment Period End	01/31/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1931-98

Transferred from RIN 1115–AF24

Agency Contact: Michael J. Flemmi, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 305–9247

RIN: 1651–AA08

1398. EXTENSION OF 25-MILE LIMIT AT SELECT ARIZONA PORTS-OF-ENTRY

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1183; 8 USC 1201; . . .

CFR Citation: 8 CFR 235

Legal Deadline: None

Abstract: This rule amends Department regulations to extend the distance Mexican nationals with border crossing cards to travel into the United States without obtaining additional Immigration documentation at selected ports-of-entry (POEs) along the United States and Mexico border. The selected POEs are located in the State of Arizona at Sasabe, Nogales, Mariposa, Douglas, and Naco. Once visitors to Arizona meet the inspection requirements of legal entry to the United States, they will be able to travel within the 75-mile border region of Arizona. This rule is intended to promote commerce in the southern Arizona border area while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/08/99	64 FR 68616
Interim Final Rule Comment Period End	02/07/00	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2026-99

Transferred from RIN 1115–AF60

Agency Contact: Jerry Liu, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3410

RIN: 1651–AA11

1399. EXPANSION OF DEDICATED COMMUTER LANES; CLARIFICATION OF DRIVER'S LICENSE REQUIREMENT FOR APPLICANTS TO DEDICATED COMMUTER LANES AND AUTOMATED PERMIT PORT PROGRAMS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1183; 8 USC 1201; . . .

CFR Citation: 8 CFR 235

Legal Deadline: None

Abstract: This interim final rule amends Department regulations governing the Dedicated Commuter Lanes (DCL) and Automated Permit Port programs by establishing DCLs along the northern borders of the United States. The rule proposes to clarify that nondriving passengers who do not have a driver's license, for example, children, certain elderly people, and others who are ineligible to drive or otherwise choose not to drive, are not required to have or present a driver's license before their application is approved.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2058-00

Transferred from RIN 1115–AF77

Agency Contact: Thomas C. Campbell, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4214, 425 I Street NW., Washington, DC 20536
Phone: 202 305–9246

RIN: 1651–AA13

1400. UPDATE OF LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1221; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1229; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 233

Legal Deadline: None

Abstract: This interim final rule (INS No. 2020-99) updates the list of those countries that the Department, acting on behalf of the Secretary and jointly with the Department of State, has determined to be ineligible for participation in the Transit Without Visa (TWOV) program. This rule also removes certain countries from the ineligible listing so that aliens from these countries can have their passport and visa requirements waived. This rule is intended to benefit the traveling public by expanding the number of countries whose citizens or nationals may transit the United States without a visa while preventing an increase in the abuse of the TWOV program by citizens or nationals of countries placed on the ineligible list.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/01	66 FR 1017
Interim Final Rule Delay of Effective Date	02/02/01	66 FR 8743
Interim Final Rule Comment Period End	03/06/01	

Action	Date	FR Cite
Interim Final Rule Effective	04/06/01	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: See also 1651–AA02 (INS No. 2129-01) "Establishing Criteria for Determining Countries Whose Citizens are Ineligible for the Transit Without Visa (TWOV) Program."

Transferred from RIN 1115–AF81

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA14

1401. ADDING COLOMBIA TO THE LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225 to 1228; 8 USC 1252

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa (TWOV) program allows certain aliens to transit the United States en route to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Department of Homeland Security in accordance with section 233(c) of the Act. This interim final rule adds Colombia to the list of those countries that the Department, acting on behalf of the Secreatary and jointly with the Department of State, has determined to be ineligible for participation in the TWOV program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/30/01	66 FR 17321
Interim Final Rule Effective	04/02/01	
Interim Final Rule Comment Period End	05/29/01	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2129-01

Transferred from RIN 1115–AG16

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA15

1402. REMOVING RUSSIA FROM THE LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa (TWOV) Program allows certain aliens to transit the United States en route to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Department of Homeland Security in accordance with section 233 (c) of the Immigration and Nationality Act (Act). This interim final rule removes Russia from the list of those countries that the Department, acting on behalf of the Secretary and jointly with the Department of State, has determined to be eligible for participation in the TWOV program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/15/01	66 FR 32529
Interim Final Rule Comment Period End	08/15/01	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2144-01

Transferred from RIN 1115–AG27

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA18

1403. REMOVAL OF VISA AND PASSPORT WAIVER FOR CERTAIN PERMANENT RESIDENTS OF CANADA AND BERMUDA

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225 to 1227; ...

CFR Citation: 8 CFR 2; 8 CFR 212; 8 CFR 231; 8 CFR 235; 8 CFR 286

Legal Deadline: None

Abstract: Currently, certain permanent residents of Canada and Bermuda are permitted to enter the United States without a passport or visa. Many of these former British Commonwealth countries have high rates of fraud and abuse, and the documents presented by these permanent residents, for entry to the United States, do not meet current document security standards. This rule amends Department regulations by providing that a passport and visa will be required for permanent residents of Canada and Bermuda having a common nationality with Canadian Nationals or with British subjects in Bermuda. These permanent residents of Canada and Bermuda will be required to present a passport and visa to enter the United States. This rule also amends several other sections of the regulations that provide exceptions for these individuals based on the prior passport and visa exemption. DHS is taking this action in conjunction with the

Department of State. This rule is intended to increase security and safeguard the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/03	68 FR 5189
Interim Final Rule Effective	03/17/03	
Interim Final Rule Comment Period End	04/01/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2202-02

Transferred from RIN 1115–AG68

Agency Contact: Joyce Broughman, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3019

RIN: 1651–AA23

1404. POSTING OF SECURITY GUARD AT GANGWAY OF VESSEL FOR DETAINING ALIEN CREWMAN

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1184; 8 USC 1258; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 252

Legal Deadline: None

Abstract: The Immigration and Nationality Act (Act) provides that any immigration officer may revoke the conditional permit to land any alien crewman and require the master or commanding officer of the vessel on which the crewman arrived to receive and detain him or her on board such vessel. This interim final rule amends Department regulations by requiring that, upon request of an immigration officer, the master or commanding officer of a vessel will, in certain cases, not only detain an alien crewman on board the vessel, but will, at his or her own expense, provide the necessary security to ensure that the detained alien crewman does not leave the vessel. This rule is necessary to enhance the security of the United States since a detained alien crewman may seek to leave the vessel on which he or she has been detained and that his or her illegal departure may pose a significant threat to the public safety.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	
Interim Final Rule Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2210-02

Transferred from RIN 1115–AG72

Agency Contact: Andrew Taub, Assistant Chief Inspector, Office of Inspections, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 305–9244

RIN: 1651–AA24

1405. ELECTRONIC ARRIVAL-DEPARTURE MANIFEST FOR VISA WAIVER PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1187

CFR Citation: 8 CFR 2

Legal Deadline: Final, Statutory, October 1, 2002, Final.

Abstract: This rule serves to further implement the automated exit entry control system mandated by section 217 (h) of the Immigration and Nationality Act (Act) by specifying those passenger data elements that must be electronically transmitted to the Department by carriers seeking to transport Visa Waiver Program (VWP) passengers into and out of the United States on or after October 1, 2002. This rule will also ensure that legitimate VWP travel is not disrupted after September 30, 2002, when the Secretary will no longer have the authority to admit applicants for admission under section 217 of the Act who arrive via sea or air unless the carrier transporting such aliens is electronically transmitting specified passenger data that the Secretary has determined is sufficient to track the arrival and departure of VWP aliens. This rule is necessary for the proper identification and monitoring of VWP aliens.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/04	
Interim Final Rule Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2219-02

Transferred from RIN 1115–AG73

Agency Contact: Michael J. Flemmi, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 305–9247

RIN: 1651–AA25

1406. REMOVING INDONESIA AND MALAYSIA FROM THE GUAM VISA WAIVER PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Guam Visa Waiver Program (GVWP) waives the nonimmigrant visa requirement for nationals of certain countries, including Malaysia, who apply for admission as a nonimmigrant visitor for business or pleasure for the sole purpose of visiting Guam for a period not to exceed 15 days. This rule will remove Indonesia and Malaysia from the list of countries authorized to participate in GVWP without significantly restricting legitimate travel to Guam.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	
Interim Final Rule Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1115–AG92

Agency Contact: Marty Newingham, Senior Immigration Inspector, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 305–1063

RIN: 1651–AA26

1407. AUTOMATED INSPECTION SERVICES-EXTENSION OF ENROLLMENT PERIOD

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1183; 8 USC 1201; . . .

CFR Citation: 8 CFR 235

Legal Deadline: None

Abstract: The Department intends to amend the regulations to extend the current enrollment period for the Automated Inspection Services (AIS) from one year to two years. The regulations currently limit the period of approval to the program to one year, requiring applicants to resubmit a new application and fee each year. This is a very burdensome process for both the traveling public and the Federal agencies administering the programs. DHS has determined that it can effectively maintain the security of the program and the border without requiring applicants to undergo a yearly application renewal.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	02/28/03	
Interim Final Rule	03/04/03	68 FR 10143
Interim Final Rule Comment Period End	04/29/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2256-03

Transferred from RIN 1115–AG94

Agency Contact: Thomas C. Campbell, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4214, 425 I Street NW., Washington, DC 20536
Phone: 202 305–9246

RIN: 1651–AA27

1408. NONIMMIGRANT VISA EXEMPTION FOR NATIONALS OF THE BRITISH VIRGIN ISLANDS ENTERING THE UNITED STATES THROUGH ST. THOMAS, U.S. VIRGIN ISLANDS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1252; 8 USC 1102; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Department of Homeland Security's regulations to allow nonimmigrant visitors for business or pleasure who are nationals of the British Virgin Islands to apply for admission to the United States without a visa at the ports-of-entry of St. Thomas, U.S. Virgin Islands. Since visas are no longer issued from the British Virgin Islands by the Department of State, all persons needing a nonimmigrant visa have to either travel or mail their applications to Barbados, the nearest visa-issuing location. The Department's action will facilitate travel to the United States for nationals of the British Virgin Islands while still ensuring that the proper application provisions of the INA are met.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/18/99	64 FR 7989
Interim Final Rule Comment Period End	04/18/99	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Additional Information: INS No. 1956-98

Transferred from RIN 1115–AF28

Agency Contact: Dennis Thompson, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 514–3019

RIN: 1651–AA29

1409. PATENT SURVEYS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624

CFR Citation: 19 CFR 12; 19 CFR 24

Legal Deadline: None

Abstract: Amendment to eliminate patent surveys.

Timetable:

Action	Date	FR Cite
NPRM	03/20/03	68 FR 13636
NPRM Comment Period End	05/19/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AC93

Agency Contact: Louis Alfano, Customs Officer, Commercial Enforcement, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0005

RIN: 1651–AA36

1410. PASSENGER AND CREW MANIFESTS FOR ARRIVING AND DEPARTING VESSELS AND AIRCRAFT

Priority: Economically Significant

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a; 49 USC 44909(c); 19 USC 1431; . . .

CFR Citation: 19 CFR 122; 19 CFR 4; 8 CFR 217; 8 CFR 231; 8 CFR 251

Legal Deadline: None

Abstract: Amendment to implement a provision of the Aviation and Transportation Security Act, which requires that each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States electronically transmit in advance of arrival a passenger and crew manifest that contains certain specified information. The submission of this information is required for purposes of ensuring aviation safety and protecting national security. Amendment also implements a provision of the Border and Security and Visa Reform Act of 2002 which requires the electronic transmission of passenger and crew member manifest information to immigration officers in advance of an aircraft or vessel arrival in, or departure from, the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/01	66 FR 67482
Interim Final Rule Comment Period End	03/01/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AC99

Agency Contact: Tricia Bauer, Program Manager, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Opeations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0530

RIN: 1651–AA37

1411. ACCESS TO CUSTOMS SECURITY AREAS AT AIRPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendments regarding the standards for employee access to customs security areas at airports that accommodate international air commerce. Amendments involve the addition of a biennial access approval reapplication requirement; an expansion of the grounds for denial of an application for access; the addition of a requirement that each employee granted access must report certain changes in the employee's circumstances; the inclusion of several new employer responsibilities; an expansion of the grounds for revocation or suspension of access and for proposed revocation or suspension of access; and a limitation of the opportunity to have a hearing in a revocation or suspension action to only cases in which there is a genuine issue regarding a material fact. The changes are needed to enhance the security areas and are commensurate with the heightened enforcement posture of the Federal Government following the September 11, 2001, terrorist attacks.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/29/02	67 FR 48977
Interim Final Rule Effective	07/29/02	
Interim Final Rule Comment Period End	09/27/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD04

Agency Contact: Elizabeth Tritt, Operations Officer, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-4434

RIN: 1651–AA38

1412. CONDITIONAL RELEASE PERIOD AND CUSTOMS BOND OBLIGATIONS FOR FOOD, DRUGS, DEVICES, AND COSMETICS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1448; 19 USC 1484; 19 USC 1499; 19 USC 1623; 19 USC 1624; 21 USC 381

CFR Citation: 19 CFR 141; 19 CFR 151

Legal Deadline: None

Abstract: Amendment to provide for a specific conditional release period for any food, drug, device, or cosmetic that has been released under bond and for which admissibility is to be determined under the provisions of the Food, Drug, and Cosmetic Act. Amendment also clarifies the amount of liquidated damages that may be assessed when there is a breach of the terms and conditions of the customs bond. Lastly, amendment authorizes any representative of the Food and Drug Administration to obtain a sample of any food, drug, device, or cosmetic, the importation of which is governed by section 801 of the Food, Drug, and Cosmetic Act, as amended.

Timetable:

Action	Date	FR Cite
NPRM	06/07/02	67 FR 39322
NPRM Comment Period End	08/06/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD05

Agency Contact: Jeremy Baskin, Attorney-Advisor, Penalties Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8753

RIN: 1651–AA39

1413. PASSENGER NAME RECORD INFORMATION REQUIRED FOR PASSENGERS ON FLIGHTS IN FOREIGN AIR TRANSPORTATION TO OR FROM THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a; 19 USC 1431; 49 USC 44909(c)

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendment to implement a provision of the Aviation and Transportation Security Act, which requires that air carriers make Passenger Name Record (PNR) information available upon request. The availability of PNR information is necessary for purposes of ensuring aviation safety and protecting national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/25/02	67 FR 42710
Interim Final Rule Effective	06/25/02	
Interim Final Rule Comment Period End	08/26/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD06

Agency Contact: Liliana Quintero, Operations Officer, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2531

RIN: 1651–AA40

1414. CUSTOMS BROKER LICENSE EXAMINATION DATES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 1641

CFR Citation: 19 CFR 111

Legal Deadline: None

Abstract: Amendment to allow the publication of a notice changing the date on which a semiannual written examination for an individual broker's license will be held when the normal date (the first Monday in April and October) conflicts with a hoiliday, religious observance, or other scheduled event.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/29/03	68 FR 31976
Interim Final Rule Effective	05/29/03	
Interim Final Rule Comment Period End	07/28/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD28

Agency Contact: Mike Craig, Operations Officer, Broker Management Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1684

RIN: 1651–AA46

1415. CONFIDENTIALITY OF COMMERCIAL INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 552; 5 USC 552a; 19 USC 66; 19 USC 1431; 19 USC 1624; 19 USC 1628; EO 12600

CFR Citation: 19 CFR 103

Legal Deadline: None

Abstract: Amendment regarding the disclosure procedures followed when commercial information related to customs transactions is provided by a business submitter.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/11/03	68 FR 47453
Interim Final Rule Effective	08/11/03	
Interim Final Rule Comment Period End	10/10/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD29

Agency Contact: Kelly Herman, Attorney, Disclosure Law Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8713

Gregory R. Vilders, Attorney, Disclosure Law Branch, Department of Homeland Security, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8772

RIN: 1651–AA47

1416. • REQUIRED ADVANCE ELECTRONIC PRESENTATION OF CARGO INFORMATION

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433; 19 USC 1434; 19 USC 1624; 46 USC app 3; 46 USC app 91; 46 USC app 883; 19 USC 2071 note

CFR Citation: 19 CFR 4; 19 CFR 103; 19 CFR 113; 19 CFR 122; 19 CFR 123; 19 CFR 192

Legal Deadline: Final, Statutory, October 1, 2003, Final.
Section 343(a) of the Trade Act of 2002, as amended by section 108 of the Maritime Transportation Security Act of 2002 requires that the Secretary endeavor to promulgate final regulations not later than October 1, 2003, that provide for the mandatory collection of electronic cargo information.

Abstract: Amendment to provide that information pertaining to cargo carried by any mode of commercial transportation (sea, air, rail, or truck) must be received, by way of an approved electronic data interchange system, before the cargo is either brought into or sent from the United States. The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified so as to prevent smuggling and ensure cargo safety and security. Amendments are intended to implement the provisions of section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/23/03	68 FR 43574
NPRM Comment Period End	08/22/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD33

Agency Contact: Kimberly Nott, Operations Officer, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0042

RIN: 1651–AA49

1417. • SUSPENSION OF IMMEDIATE AND CONTINUOUS TRANSIT AGREEMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1223; 8 USC 1225; 8 USC 1226; 8 USC 1227; ...

CFR Citation: 8 CFR 212; 8 CFR 214; 8 CFR 231; 8 CFR 233

Legal Deadline: None

Abstract: The Immediate and Continuous Transit program, also known as the Transit Without Visa (TWOV) program and the International-to-International (ITI) program allows an alien to be transported in-transit through the United States to another foreign country without first obtaining a nonimmigrant visa from the Department of State overseas, provided the carrier has entered into an Immediate and Continuous Transit Agreement on Form I-426, pursuant to section 233(c) of the Immigration and Nationality Act (Act). This rule suspends immediate and continuous transit provisions for both the TWOV and ITI programs.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	08/02/03	
Interim Final Rule	08/07/03	68 FR 46926
Interim Final Rule Comment Period End	09/22/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD36

Agency Contact: Kenneth Sava, Director, Air and Sea Passenger Operations, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0530

RIN: 1651-AA50

Department of Homeland Security (DHS)
Bureau of Customs and Border Protection (BCBP)

Long-Term Actions

1418. VISA WAIVER PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1356; 8 USC 1187; 8 USC 1103; 8 CFR 2

CFR Citation: 8 CFR 217

Legal Deadline: None

Abstract: On October 30, 2000, Public Law 106–396, made the Visa Waiver Pilot Program (VWPP) a permanent program. The Visa Waiver Program (VWP), allows nationals of designated countries to apply for admission to the United States at land border ports, air and sea ports, and to enter the United States for business or pleasure for up to 90 days without first obtaining a nonimmigrant visa.

INS Rule No. 1799 finalizes all those VWP countries that were added through the publication of interim regulations. This rule will also incorporate those statutory changes made to section 217 of the Immigration and Nationality Act by the Illegal Immigration Reform and Responsibility Immigration Act.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1406-91 Comment Period End 5/22/91	05/07/91	56 FR 21101
Final Rule-INS No. 1406-91 Eff. 7/18/91*	07/18/91	56 FR 32952
Interim Final Rule-INS No. 1447 Eff. 10/1/91; Comment Period End 10/15/91	09/13/91	56 FR 46716
Interim Final Rule-1622-93; Eff. 7/29/93; Com. End 8/30/93; (To be merged with 1447R-93)*	07/29/93	58 FR 40581
Public Notice-INS No. 1674 Eff. 10/25/94, Comment Period End 09/30/96	02/21/95	60 FR 9699
Interim Final Rule-INS No. 1685 Eff. 4/1/95; Comment Period End 5/30/95	03/28/95	60 FR 15855
Interim Final Rule-INS No. 1777	07/08/96	61 FR 35598
Interim Final Rule-INS No. 1782-96 With Comments (Australia)	07/29/96	61 FR 39721
Interim Final Rule-INS 1786-96 With Comments (Slovenia)	09/30/97	62 FR 50998
Final Rule-INS No. 1799	12/30/98	63 FR 71726
Interim Final Rule-INS 2002–99 With Comments (Portugal, Singapore, and Uruguay)	08/03/99	64 FR 42006
Interim Final Rule-INS 2188-02 (Removing Argentina)	02/21/02	67 FR 7943
Interim Final Rule	03/07/03	68 FR 10954
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 2002–99 interim final rule Adding Portugal, Singapore, and Uruguay to the List of Countries Authorized to Participate in the VISA Waiver Pilot Program published on August 3, 1999, at 64 FR 42006.

INS No. 1447-91, 1622-94, 1685-95, 1777-96, and 1782 are to be consolidated into one final rulemaking, which is designated as INS No. 1799.

Transferred from RIN 1115–AB93

Agency Contact: Marty Newingham, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7992

RIN: 1651–AA00

1419. ESTABLISHING CRITERIA FOR DETERMINING COUNTRIES WHOSE CITIZENS ARE INELIGIBLE FOR THE TRANSIT WITHOUT VISA (TWOV) PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 CFR 2; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1252; 8 USC 1221; 8 USC 1229

CFR Citation: 8 CFR 212; 8 CFR 234.2

Legal Deadline: None

Abstract: This rule proposes to remove from the regulations the list of those countries that are ineligible to participate in the TWOV program. In its place, DHS proposes to publish and update the list of countries that are ineligible to participate in the TWOV program by Federal Register notice. This rule also sets forth a nonexhaustive list of factors that may be considered in determining those countries whose citizens or nationals are ineligible countries and provides for a regular review of all countries to determine their eligibility for participation in the TWOV program. The TWOV program allows the Department of Homeland Security, acting jointly with the Department of State, to waive the passport and visa requirement for aliens from certain countries who request immediate and continuous transit privileges through the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/05/01	66 FR 1053
NPRM Comment Period End	03/05/01	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1696-95

Transferred from RIN 1115–AD96

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA02

1420. INSPECTION AND EXPEDITED REMOVAL OF ALIENS; DETENTION AND REMOVAL OF ALIENS; CONDUCT OF REMOVAL PROCEEDINGS

Priority: Other Significant

Legal Authority: 5 USC 301; 8 USC 1182 to 1185; 8 USC 1186a; 8 USC 1187; 5 USC 552; 5 USC 552a; 8 USC 1101 to 1103; 8 USC 1154; 8 USC 1181; ...

CFR Citation: 8 CFR 1; 8 CFR 213; 8 CFR 214; 8 CFR 216; 8 CFR 217; 8 CFR 221; 8 CFR 223; 8 CFR 3; 8 CFR 103; 8 CFR 204; 8 CFR 207; 8 CFR 209; 8 CFR 211; 8 CFR 212; ...

Legal Deadline: Other, Statutory, March 1, 1997, Other.

Abstract: Many of the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) became effective April 1, 1997. Some provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) that were not superseded by IIRIRA became effective November 1, 1996. On March 6, 1997, DHS and Executive Office of Immigration Review (EOIR) published an interim final rule revising the asylum process; providing a mechanism for the determination and review of certain applicants who demonstrate a credible fear of persecution if returned to their own country; defining the inspection and admission process including new expedited removal procedures for aliens attempting to enter the United States through fraud or misrepresentation by apprehension, detention, and removal of aliens; addressing conduct of removal proceedings; and revising many other sections of the regulations to conform with the new laws. On December 6, 2000, DHS published the rule "Asylum Procedures" (INS No. 1865-97; RIN 1115–AE93), which finalized the asylum portions of this interim rule. The Deparment still intends to publish a final rule to finalize the portions of this rulemaking relating to inspection and expedited removal of aliens, detention and deportation and removal of aliens, and the conduct of removal proceedings.

Timetable:

Action	Date	FR Cite
Final Action-INS No. 1669-94	03/22/96	61 FR 11717
NPRM-INS No. 1788-96 Comment Period End 2/3/97	01/03/97	62 FR 444
Interim Final Rule-INS No. 1788-96 Comment Period End 7/15/97	03/06/97	62 FR 10312
Interim Final Rule Correction (Effective 04/01/97)	04/01/97	62 FR 15362
Interim Final Rule-INS No. 1788-96 Correction	04/09/97	62 FR 17048
Final Rule-INS No. 1920-98	07/22/98	63 FR 39217
Final Action INS No. 1788-96	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1788-96 (Final Action)

INS Rule No. 1920-98 makes a correction to the services regulations that govern the documentary requirements for immigrants and corresponding waivers. This rule relates to changes promulgated by INS 1169-94 and INS No. 1788-96.

INS Rule No. 1865-97, AG Order No. 2340-2000, final rule, Asylum Procedures published on December 6, 2000, at 65 FR 76121, amended portions of the title III IIRIRA governing cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in a particular country by relocating to another area of that country.

Transferred from RIN 1115–AE47

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1651–AA04

1421. RESTRICTING CITIZENS OF BANGLADESH, INDIA, PAKISTAN, AND SRI LANKA FROM PARTICIPATION IN THE INTERNATIONAL-TO-INTERNATIONAL (ITI) PROGRAM

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: 8 CFR 212.1(f)(2)

Legal Deadline: None

Abstract: This regulatory action advises the public that the Department of Homeland Security is amending its policy that allowed citizens from Bangladesh, India, Pakistan, and Sri Lanka the privilege to participate in the International-to-International (ITI) program despite Department regulations at title 8, section 212, part 1(f)(2) barring the citizens of these countries from participation in the Transit Without Visa (TWOV) and ITI programs. This notice proposes to correct this conflict between policy and regulations.

Timetable:

Action	Date	FR Cite
ANPRM	To Be	Determined
ANPRM Comment Period End	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2157-01

Transferred from RIN 1115–AG30

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA19

1422. ALLOWING CITIZENS AND NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA LIMITED TRANSIT WITHOUT VISA (TWOV) PRIVILEGES AT TWOV-DESIGNATED ALASKA INTERNATIONAL AIRPORTS

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa (TWOV) Program allows certain aliens to transit the United States en route to a specified foreign country without passport or visa provided they are traveling on a carrier signatory to an agreement with the Department of Homeland Security in accordance with section 233(c) of the Act and meet certain other requirements as enumerated in Department regulations at 8 CFR 212.1(f) and 214.2(c). This interim final rule allows citizens and nationals of the People's Republic of China limited TWOV privileges at TWOV-designated Alaska international airports provided they meet additional requirements enumerated in the rule. This rule is intended to benefit the economy of Alaska by allowing citizens and nationals of the People's Republic of China to transit the United States without a visa at TWOV-designated Alaska international airports while limiting the risk of abuse of the TWOV program by citizens or nationals of the People's Republic of China by restricting this policy to certain Alaskan ports of entry.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined
Interim Final Rule Comment Period End	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2160-01;

Transferred from RIN 1115–AG33

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA20

1423. LIMITING THE NUMBER OF TRANSIT WITHOUT VISA (TWOV) STOPS IN THE UNITED STATES TO ONE

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 214.2 (c)

Legal Deadline: None

Abstract: The Office of Inspector General (OIG) recently completed a follow-up review of the Department of Homeland Security's (DHS) efforts to improve security of the Transit Without Visa (TWOV) program. The OIG report found that several security concerns described in the original 1993 report continue to exist, specifically the 1) continued allowance for TWOV passengers to make two stops in the United States, with the second stop being a domestic arrival; and 2) lack of carrier standards and accountability for supervising TWOV passengers waiting for their connecting flights in public, domestic areas. This proposed rule informs the public that DHS intends to amend its regulations by limiting the number of transit stops in the United States for TWOV passengers to one stop. These TWOV program modifications will enhance U.S. national security while still providing the traveling public TWOV privileges.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined
NPRM Comment Period End	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1115–AG59

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA22

1424. ADDING GEORGIA TO THE LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE U.S. UNDER THE TWOV PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa (TWOV) program allows certain aliens to transit the United States enroute to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Department of Homeland Security in accordance with section 233(c) of the Immigration and Nationality Act (Act). This interim rule adds Georgia to the list of those countries that the Department, acting on behalf of the Secretary and jointly with the Department of State, has determined to be ineligible for participation in the TWOV program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Action	Date	FR Cite
Interim Final Rule Comment Period End	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2263-03

Transferred from RIN 1115–AG98

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Homeland Security, Bureau of Customs and Border Protection, Room 4064, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1018
Email: robert.hutnick@dhs.gov

RIN: 1651–AA28

1425. DESIGNATED LAND BORDER CROSSING LOCATIONS FOR CERTAIN CONVEYANCES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1431; 19 USC 1433; 19 USC 1459; 19 USC 1624

CFR Citation: 19 CFR 123

Legal Deadline: None

Abstract: Amendment would allow the designation of land border crossing locations for certain traffic and merchandise. At ports of entry with multiple crossing points, port directors would have express authority to require by local instructions that certain trucks and other commercial conveyances enter the United States at specific land border crossing locations within the port of entry designated for the processing and clearance of those conveyances.

Timetable:

Action	Date	FR Cite
NPRM	11/17/97	62 FR 61251
NPRM Comment Period End	01/16/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Transferred from RIN 1515-AC12

Agency Contact: Dennis Dore, Program Analyst, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-3274

RIN: 1651–AA32

1426. SIMPLIFICATION OF IN-TRANSIT TRUCK SHIPMENTS BETWEEN CANADA AND THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1431; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1553; 19 USC 1624

CFR Citation: 19 CFR 123

Legal Deadline: None

Abstract: Amendment to simplify reporting procedures for the in-transit movement of truck shipments between Canada and the United States. Amendment is designed to reduce traffic congestion along the northern border by reducing the number of reporting stops.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AC65

Agency Contact: Raymond Janiszewski, Supervisory Import Specialist, Office of Field Operations, Department of Homeland Security, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0365

RIN: 1651–AA33

1427. PROCEDURES GOVERNING THE BORDER RELEASE ADVANCED SCREENING AND SELECTIVITY (BRASS) PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 24; 19 CFR 123; 19 CFR 132; 19 CFR 142

Legal Deadline: None

Abstract: Amendment to provide for the Border Release Advanced Screening and Selectivity (BRASS) Program, an improved automated and electronic system that will replace the Line Release method of processing certain repetitive and high volume shipments of merchandise into the United States.

Timetable:

Action	Date	FR Cite
NPRM	02/01/02	67 FR 4930
NPRM Comment Period End	04/02/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AC92

Agency Contact: Enrique S. Tamayo, Operations Officer, Trade Programs, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0693

RIN: 1651–AA35

1428. CARRIER ARRIVAL AND DEPARTURE ELECTRONIC MANIFEST REQUIREMENTS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 107-173; PL 106-96; 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1221; 8 USC 1228; 8 USC 1229

CFR Citation: 8 CFR 231

Legal Deadline: Final, Statutory, January 1, 2003, Final.
Public Law 107-173, the Visa Waiver Permanent Program Act (VWPPA), sets a mandatory deadline of October 1, 2002.

Abstract: There are four principal laws that require the Attorney General to develop an automated and integrated entry/exit data system for aliens:

1. The Immigration and Naturalization Service Data Management Improvement Act (DMIA), Public Law 106-21;

2. The Visa Waiver Permanent Program Act (VWPPA), Public Law 106-396;

3. The USA PATRIOT Act, Public Law 107-56; and

4. The Enhanced Border Security and Visa Entry Reform Act (Border Security Act), Public Law 107-173.

Implementation of the relevant provisions in these four laws together will result in the Entry/Exit System. One of the basic legislative mandates is that the system integrate the available alien arrival and departure data that exist in any DHS or Department of State (DOS) data base or system. This necessarily must include the systems that incorporate carrier manifest data on passengers and crew members who are entering or leaving the U.S. via air or sea. Section 231 of the Immigration and Nationality Act (INA) and 8 CFR part 231 state the requirements for carrier manifests.

In section 402 of the Border Security Act, Congress amended the manifest requirements in INA, section 231. The Border Security Act requires the submission of arrival and departure manifests electronically in advance of a commercial aircraft or vessel's arrival in or departure from the United States not later than January 1, 2003. Promulgation of regulations to implement this law will provide the Department with advance notification of information necessary for the identification of passengers and crewmembers on commercial carriers. The contents of the electronic arrival and departure manifest include: (1) complete name; (2) date of birth; (3) citizenship; (4) sex; (5) passport number and country of issuance; (6) country of residence; (7) United States visa number, date, and place of issuance, where applicable; (8) alien registration; (9) United States address while in the United States; and (10) such other information the Secretary, in consultation with the Secretary of State and the Secretary of Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

In October 2000, Congress also amended section 217 of the INA to make the Visa Waiver Pilot a permanent program. The VWPPA also added a specific requirement for a "fully automated entry and exit control system" covering all aliens who enter the United States under the VWP at airports and seaports. The requirements for this system are both narrower and broader, in different respects, than the DMIA automated system requirements. The VWP entry/exit system will be incorporated into the broader Entry/Exit System mandated by DMIA. In addition, the VWPPA states that no alien arriving by air or sea may be granted a visa waiver under INA, section 217, on or after October 1, 2002, unless the carrier is submitting passenger information electronically to the VWP entry/exit system, as required by the Secretary. The Deprtment is separately promulgating regulations to amend 8 CFR part 217 to implement the electronic manifest requirements for VWP purposes.

Timetable:

Action	Date	FR Cite
NPRM	01/03/03	68 FR 292
NPRM Comment Period End	02/03/03	
Merged With RIN 1651-AA37.	06/16/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: INS No. 2182-01

Transferred from RIN 1115-AG57

Sectors Affected: 481 Air Transportation

Agency Contact: Tricia Bauer, Program Manager, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Opeations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0530

RIN: 1651-AA21

1429. • IMPLEMENTATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA REGARDING ASYLUM CLAIMS MADE AT LAND BORDER PORTS OF ENTRY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1158; 8 USC 1188; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228

CFR Citation: 8 CFR 212; 8 CFR 235

Legal Deadline: None

Abstract: Amendment to establish CBP officers' responsibilities to aliens arriving in the United States from Canada at land border ports of entry and in transit from Canada who are seeking asylum pursuant to the U.S.-Canada Safe Third Country Agreement.

Timetable:

Action	Date	FR Cite
Withdrawn	10/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Loveless, Inspector, Immigration Policy and Programs, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2493

RIN: 1651-AA31

1430. PERFORMANCE OF CUSTOMS BUSINESS BY PARENT AND SUBSIDIARY CORPORATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 1641

CFR Citation: 19 CFR 111

Legal Deadline: None

Abstract: Amendment to specify circumstances in which a corporate entity may perform certain customs business on behalf of a parent corporation or subsidiary corporation or sister subsidiary corporation without the need to obtain a customs broker license. It is anticipated that the amendment would improve the operational efficiency of the affected corporate entities and thereby enhance their ability to ensure compliance with applicable customs laws and regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/15/02	67 FR 63576
NPRM Comment Period End	12/16/02	
Final Action	08/11/03	68 FR 47455
Final Action Effective	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD14

Agency Contact: Gina Grier, Attorney, Entry Procedures and Carriers Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8730

RIN: 1651–AA43

1431. CONFIDENTIALITY PROTECTION FOR VESSEL CARGO MANIFEST INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 552; 19 USC 552a; 19 USC 66; 19 USC 1431; 19 USC 1624; 31 USC 9701

CFR Citation: 19 CFR 103

Legal Deadline: None

Abstract: Amendment to provide that, in addition to the importer or consignee, parties that electronically transmit vessel cargo manifest information directly 24 or more hours before cargo is laden aboard the vessel at the foreign port may request confidentiality with respect to the name and address of the importer or consignee, related marks, and identification numbers that reveal their names and addresses, and the names and addresses of their shippers. These parties must submit a letter of authorization signed by the importer or consignee with the request for confidentiality.

Timetable:

Action	Date	FR Cite
NPRM	01/09/03	68 FR 1173
NPRM Comment Period End	02/10/03	
Withdrawn	08/13/03	68 FR 48327

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD18

Agency Contact: Larry L. Burton, Director, International Trade Compliance, Department of Homeland Security, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8728

RIN: 1651–AA44

1432. • DELEGATIONS OF AUTHORITY: SIGNATURE OF CUSTOMS AND BORDER PROTECTION REGULATIONS PUBLISHED IN THE FEDERAL REGISTER

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 6 USC 101; 19 USC 66; 19 USC 1624; 31 USC 321

CFR Citation: 19 CFR 0; 19 CFR 400

Legal Deadline: None

Abstract: Revision of title and structure of title 19 of the Code of Federal Regulations (CFR) to reflect changes caused by the creation of the Department of Homeland Security and the consequent governmental reorganization. Amendment specifies the signatures that indicate the exercise of authority for documents that appear in 19 CFR chapter I. In addition, the rule adds and reserves for future use a chapter under which the agency may issue regulations.

Timetable:

Action	Date	FR Cite
Final Action	08/28/03	68 FR 51868
Final Action Effective	08/28/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD39

Agency Contact: Harold M. Singer, Chief, Regulations Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1651–AA52

1433. • TONNAGE DUTIES-REVISED AMOUNTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433; 19 USC 1434; 19 USC 1624; 46 USC 2107(b); 46 USC 8103; 46 USC 14306; 46 USC 14502; 46 USC 14511; 46 USC 14512; 46 USC 14513; 46 USC 14701; 46 USC 14702; 46 USC app 121; 46 USC app 128

CFR Citation: 19 CFR 4

Legal Deadline: None

Abstract: Amendment of rule dealing with vessels in foreign and domestic trades by revising the amounts of tonnage duties applicable to those entering the United States from a foreign port. Revisions reflect changes in the pertinent statutory provisions.

Timetable:

Action	Date	FR Cite
Final Action	08/13/03	68 FR 48279
Final Action Effective	08/13/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515-AD35

Agency Contact: Glen E. Vereb, Chief, Entry Procedures and Carriers Branch, Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572-8730

RIN: 1651–AA53

Department of Homeland Security (DHS)
Transportation Security Administration (TSA)

Proposed Rule Stage

1434. BACKGROUND CHECKS FOR AIRPORT WORKERS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 40101 et seq; PL 107–71

CFR Citation: 49 CFR 1542; 49 CFR 1544

Legal Deadline: None

Abstract: This action will address criminal history background checks for individuals who regularly have escorted access to secured areas of an airport, individuals who work in sterile areas of an airport, and others.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Transferred from RIN 2110–AA08

Agency Contact: Christine Beyer, Attorney, Regulations Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA06

1435. INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 6002; 28 USC 2461 (note); 49 USC 114; 49 USC 40113; 49 USC 40114; 49 USC 44901 to 44907; 49 USC 46101 to 46107; 49 USC 46109; 49 USC 46110; 49 USC 46301; 49 USC 46305; 49 USC 46311; 49 USC 46313; 49 USC 46314

CFR Citation: 49 CFR 1503

Legal Deadline: None

Abstract: This rulemaking establishes the interim investigative and enforcement procedural rules that the TSA will use to address statutory and regulatory violations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/08/02	67 FR 51480
Interim Final Rule Effective	08/08/02	
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from 2110–AA09

Agency Contact: Quang Nguyen, Attorney, Enforcement Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA07

1436. GENERAL RULEMAKING PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40113; 49 USC 44901 to 44907; 49 USC 44913; 49 USC 44914; 49 USC 44916 to 44918; 49 USC 44935; 49 USC 44936; 44942, 46105

CFR Citation: 49 CFR 1501

Legal Deadline: None

Abstract: TSA is developing general rulemaking procedures to explain to the public the process required to initiate, follow-up, and complete the rulemaking process, and what the agency has to comply with during the process. This is needed because currently TSA does not have a regulation that explains the rulemaking process to the public. Rulemaking procedures are an important way for the public to interact with TSA. Therefore, it is important that these procedures be clearly explained and easy to understand and follow. This proposed rule will layout the process to the public to allow them to understand how TSA processes rulemaking proceedings, and what they can do to have input in that process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Angela Anderson, Senior Rulemaking Analyst, Department of Homeland Security, Transportation Security Administration, TSA Headquarters-West Building, 8th floor, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA18

1437. ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 2672; 28 USC 2675; 49 USC 114; 49 USC 308; 49 USC 40113

CFR Citation: 49 CFR 1512

Legal Deadline: None

Abstract: This proposed rule will require prospective claimants under the Federal Tort Claims Act to follow certain procedures to file their claims to TSA. The rule is needed because the absence of a published rule of procedure may cause problems due to lack of knowledge by some parties on how or where to file claims, and the minimum information needed to file a claim.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gregg Golden, Asst. Chief Counsel, Torts Litigation, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA19

1438. MARINE VESSEL SECURITY STANDARDS-PROHIBITED ITEMS

Priority: Other Significant

Legal Authority: 49 USC 114

CFR Citation: 49 CFR 1576

Legal Deadline: None

Abstract: This proposed regulation would establish lists of "prohibited items" (weapons, explosives, incendiaries, and other dangerous items) that individuals would not be allowed to carry on their person, or in their baggage when they travel onboard one of four categories of passenger vessels.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1652–AA22

1439. AVIATION SECURITY-ALL-CARGO SECURITY RULES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 107–71, sec 110(f)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action develops a comprehensive strategic plan to address air cargo security.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Benjamin Klein, Attorney, Regulations Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA23

1440. FEDERAL FLIGHT DECK OFFICER PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 40113; 49 USC 44921

CFR Citation: 49 CFR 1552

Legal Deadline: None

Abstract: This proposed rule establishes a program to screen, train, deputize, and equip certain commercial airline pilots as Federal law enforcement officers, and to authorize them to transport and carry firearms and to use force, including deadly force, to defend the flight decks of the aircraft against acts of criminal violence or air piracy.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Dion Casey, Attorney, Regulations Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA24

1441. • VULNERABILITY SELF-ASSESSMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107–71

CFR Citation: 49 CFR 1574

Legal Deadline: None

Abstract: This document would cover owners and operators of highway, pipeline, mass transit, and rail facilities or conveyances that are determined by TSA to be at risk of being involved in a transportation security incident and who are informed by TSA that they must conduct vulnerability self-assessments. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. The document would set forth the methodologies that must be used to perform the self-assessment, and would also provide a TSA-developed assessment tool as one means of satisfying the regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Morvarid Zolghadr, Department of Homeland Security, Transportation Security Administration, Office of Maritime & Land Security, HQ, West Bldg, Floor 9, TSA-8, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA30

1442. ● CONTAINER SECURITY FOR MARITIME AND INTERMODAL SHIPMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 107–295; 49 USC 40113

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, January 2004, NPRM.

Abstract: This document would require the development of antiterrorism cargo identification, screening and tracking systems, and performance standards for the physical security of containers shipped between the United States and other countries. Under this regulation, persons who import or export materials in containers, by means of vessels, would be required to meet the performance standards detailed.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Kim Costner-Moore, Program Anlayst, Department of Homeland Security, Transportation Security Administration, Office of Maritime and Land Security, HQ, West Bldg, Floor 10, TSA-8, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA31

1443. ● CAPPS II-ACCESS TO PASSENGER RESERVATION INFORMATION

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 114; 49 USC 40113; 49 USC 44901

CFR Citation: 59 CFR 1560

Legal Deadline: None

Abstract: TSA is proposing to require certain aircraft operators, foreign air carriers, and operators of computer reservation systems to transmit passenger reservation information to TSA for use in aviation security screening. The proposal would require that for any flight transporting passengers to, from, or within the United States, each aircraft operator, foreign air carrier, or reservation system operator that accepts a reservation for a passenger on that flight must transmit the passenger's reservation information to TSA at least 72 hours before the scheduled departure of the flight or at the time the passenger purchases a ticket for the flight, whichever is later. The reservation information transmitted to TSA must include a passenger's full name, home address, home telephone number, and date of birth. The proposal also would require that prior to collecting this information from an individual, an aircraft operator, foreign air carrier, or reservation system operator must take reasonable steps to ensure that the individual is provided notice of the purpose for which the information is collected, the authority under which it is collected, and the consequences of a passenger's failure to provide the information. TSA will use passengers' information to support a more effective version of the current automated system for aviation passenger screening, known as Computer Assisted Passenger Prescreening System II, or CAPPS II.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Brandon B. Straus, Assistant Chief Counsel for Regulations, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA32

1444. ● FEES FOR SECURITY THREAT ASSESSMENTS ON HAZMAT DRIVERS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 108-90, sec 520

CFR Citation: 49 CFR 1522

Legal Deadline: None

Abstract: In response to recent statutory requirements, the Transportation Security Administration proposes to establish fees for security threat assessments that TSA is required to perform on individuals who apply for, renew, or transfer a hazardous materials endorsement for a commercial drivers license.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Dion Casey, Attorney, Regulations Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA33

1445. IMPOSITION AND COLLECTION OF PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 44940

CFR Citation: 49 CFR 1510

Legal Deadline: None

Abstract: The Transportation Security Administration announces the imposition of a security service fee in the amount of $2.50 per emplanement on passengers of domestic and foreign carriers in air transportation, foreign air transportation, and intrastate air transportation originating in the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/01	66 FR 67698
Notice Information Collection	01/31/02	67 FR 4866
Notice Information Collection	02/19/02	67 FR 7582
Interim Final Rule Comment Period End	03/01/02	
Comment Period Reopened	03/28/02	67 FR 14879
Comment Period End	04/30/02	
Disposition of Comments	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2110–AA01

Agency Contact: Randall Fiertz, Chief, Office of Revenue, Department of Homeland Security, Transportation Security Administration, Finance and Administration, HQ, West Bldg, Floor 5, TSA-14, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA00

1446. AVIATION SECURITY INFRASTRUCTURE FEES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 44901; 49 USC 44940

CFR Citation: 49 CFR 1511

Legal Deadline: None

Abstract: TSA announces the imposition of an air carrier fee each fiscal year on air carriers and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation. The fee is necessary to help defray TSA's costs of providing U.S. civil aviation security services.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	02/18/02	
Interim Final Rule	02/20/02	67 FR 7926
Correction	02/22/02	67 FR 8579
Notice Information Collection	02/28/02	67 FR 9355
Interim Final Rule Comment Period End	03/18/02	
Comment Period Extended	03/20/02	67 FR 12954
Comment Period End	04/02/02	
Notice Guidance App A	05/01/02	67 FR 21582
Disposition of Comments	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2110–AA02

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RIN: 1652–AA01

1447. CIVIL AVIATION SECURITY RULES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 40101 et seq (PL 107–71)

CFR Citation: 14 CFR 91; 14 CFR 107 to 109; 14 CFR 121; 14 CFR 129; 14 CFR 135; 14 CFR 139; 14 CFR 191; 49 CFR 1500 to 1550

Legal Deadline: Final, Statutory, February 17, 2002, Final.

Abstract: This action transfers the FAA security rules to the Transportation Security Administration.

Timetable:

Action	Date	FR Cite
Final Rule Effective	02/17/02	
Final Rule	02/22/02	67 FR 8340
Final Rule Comment Period End	03/25/02	
Disposition of Comments	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Transferred from RIN 2110–AA03

Agency Contact: Benjamin Klein, Attorney, Regulations Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA02

1448. SECURITY PROGRAMS FOR AIRCRAFT WEIGHING 12,500 POUNDS OR MORE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40119; 49 USC 44901 to 44907; 49 USC 44913; 49 USC 44914; 49 USC 44916 to 44918; 49 USC 44935; 49 USC 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1540; 49 CFR 1544

Legal Deadline: Final, Statutory, February 17, 2002, Final.

Abstract: This action requires operators of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to implement a Transportation Security Administration-approved security program.

Timetable:

Action	Date	FR Cite
Final Rule	02/22/02	67 FR 8205
Final Rule Comment Period End	04/23/02	
Final Rule Effective	06/24/02	
Notice to Extend Compliance Date	02/05/03	68 FR 5974
Disposition of Comments	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: TSA issued the final security program to affected operators required to comply by April 1, 2003.

Transferred from RIN 2110–AA04

Agency Contact: Lon M. Siro, Security Specialist, Department of Homeland Security, Transportation Security Administration, Aviation Operations, HQ, East Bldg, Floor 11, TSA-7, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA03

1449. PROTECTION OF SENSITIVE SECURITY INFORMATION

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40119; 49 USC 44901 to 44907; 49 USC 44913; 49 USC 44914; 49 USC 44916 to 44918; 49 USC 44935; 49 USC 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1520

Legal Deadline: None

Abstract: TSA is revising its regulation governing the protection of sensitive security information (SSI) in order to implement recent legislative changes that expand TSA's authority to protect SSI related to modes of transportation other than aviation. TSA is issuing revisions to its existing regulation in the form of an interim final rule in order to address the immediate needs of individuals and entities operating in maritime and other modes of transportation as they develop security plans, assessments, procedures, and other measures called for by the Homeland Security Act of 2002 and the Maritime Transportation Security Act of 2002. To that end, TSA is expanding the definition of SSI to include additional types of information related to security in all modes of transportation and to expand the list of persons required to protect SSI. TSA also is requiring that records containing SSI be marked with a protective marking and distribution limitation statement that indicate the record contains SSI, the restrictions on the release of SSI, and the consequences of unauthorized disclosure of the SSI. TSA is requiring disposal of records containing SSI when they are no longer needed.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Transferred from RIN 2110–AA10

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RIN: 1652–AA08

1450. SECURITY COMPLIANCE PROGRAM FOR AIRCRAFT OPERATORS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44901 to 44905; ...

CFR Citation: 49 CFR 1540; 49 CFR 1544

Legal Deadline: None

Abstract: Rules governing civil aviation security were transferred from the Federal Aviation Administration to the Transportation Security Administration (TSA). Part 108 of title 14 of the Code of Federal Regulations (CFR) on Aircraft Operator Security, is now codified in 49 CFR parts 1540 and 1544. TSA will establish a compliance program for aircraft operators to implement and test security contingency plans. The intent is to enhance security for the traveling public, air carriers, and persons employed by or conducting business at public airports by increasing awareness of and compliance with civil aviation security measures.

Timetable:

Action	Date	FR Cite
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2110–AA11

Agency Contact: Christine Beyer, Attorney, Regulations Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA09

1451. SECURITY COMPLIANCE PROGRAM FOR AIRPORTS

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44901 to 44905; ...

CFR Citation: 49 CFR 1540; 49 CFR 1542

Legal Deadline: None

Abstract: Rules governing civil aviation security were transferred from the Federal Aviation Administration to the Transportation Security Administration (TSA). Part 107 of title 14 of the Code of Federal Regulations (CFR) on Airport Security, is now codified in 49 CFR parts 1540 and 1542. TSA will establish a compliance program for airport operators to implement and test security contingency plans. The intent is to enhance security for the traveling public, air carriers, and persons employed by or conducting business at public airports by increasing awareness of and compliance with civil aviation security measures.

Timetable:

Action	Date	FR Cite
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2110–AA12

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RIN: 1652–AA10

1452. CRIMINAL HISTORY RECORDS CHECKS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 114; 49 USC 40113; 49 USC 44936

CFR Citation: 49 CFR 1540; 49 CFR 1542; 49 CFR 1544

Legal Deadline: None

Abstract: This rule, published by the Federal Aviation Administration (FAA), requires each airport operator and aircraft operator that has adopted a security program under 14 CFR parts 107 or 108 to conduct fingerprint-based criminal history record checks for individuals if they have not already undergone criminal history record checks. The rule will ensure that individuals in these positions do not have disqualifying criminal offenses. Rules governing civil aviation security were transferred from the FAA to the Transportation Security Administration (TSA). Parts 107 and 108 of title 14 of the Code of Federal Regulations (CFR) on Airport Security and Aircraft Operator Security, respectively, are now codified in 49 CFR parts 1540, 1542, and 1544. TSA will complete any further action required in this rulemaking.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	12/06/01	66 FR 63474
Comment Period End	01/07/02	
Comment Period Reopened	01/25/02	67 FR 3810
Reopened Comment Period End	03/11/02	
Dispostion of Comments	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: Transferred from RIN 2110–AA11

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RIN: 1652–AA11

1453. THREAT ASSESSMENTS REGARDING CITIZENS OF THE UNITED STATES WHO HOLD OR APPLY FOR FAA CERTIFICATES

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40113; 49 USC 44901 to 44907; 49 USC 44913; 49 USC 44914; 49 USC 44916; 49 USC 44935; 49 USC 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1540

Legal Deadline: None

Abstract: This action provides the process by which the Transportation Security Administration (TSA) will notify a holder of, or an applicant for, a Federal Aviation Administration (FAA) airman certificate, and the FAA, that TSA has determined that the certificate holder or applicant poses a security threat. This process, provides the subject individual notice and the opportunity to be heard before TSA makes a final decision.

Timetable:

Action	Date	FR Cite
Final Rule	01/24/03	68 FR 3756
Comment Period Ends	03/25/03	
Disposition of Comments	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2110–AA14

Agency Contact: Brandon B. Straus, Assistant Chief Counsel for Regulations, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, HQ, West Bldg, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202
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RIN: 1652–AA12

1454. THREAT ASSESSMENTS REGARDING ALIEN HOLDERS OF, AND APPLICANTS FOR, FAA CERTIFICATES

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 40113; 49 USC 44901 to 44907; 49 USC 44913; 49 USC 44914; 49 USC 44916 to 44918; 49 USC 44935; 49 USC 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1540

Legal Deadline: None

Abstract: This action provides the process by which the Transportation Security Administration (TSA) will notify an alien holder of, or an alien applicant for, a Federal Aviation Administration (FAA) airman certificate, and the FAA, that TSA has determined that the certificate holder or applicant poses a security threat. This process, provides, the subject individual notice and the opportunity to be heard before TSA makes a final decision.

Timetable:

Action	Date	FR Cite
Final Rule	01/24/03	68 FR 3762
Comment Period End	03/25/03	
Disposition of Comments	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2110–AA17

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RIN: 1652–AA15

1455. TRANSPORTATION OF EXPLOSIVES FROM CANADA TO THE UNITED STATES VIA COMMERCIAL MOTOR VEHICLE AND RAILROAD CARRIER

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 5103; 49 USC 5103a; 49 USC 40113; 49 USC 46105

CFR Citation: 49 CFR 1570; 49 CFR 1572

Legal Deadline: None

Abstract: This interim final rule addresses security issues regarding transportation of explosives by commercial motor vehicles and railroads. It establishes temporary requirements that all motor carriers, motor private carriers, and railroad carriers not using United States citizens or lawful permanent resident aliens as drivers or railroad crews to transport explosives to the United States, must meet during the period while DOT develops the standards that will apply on a more permanent basis.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/06/03	68 FR 6083
Interim Final Rule Comment Period End	03/10/03	
Amendment to Interim Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 2110–AA18

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RIN: 1652–AA16

1456. SECURITY THREAT ASSESSMENT FOR INDIVIDUALS APPLYING FOR A HAZARDOUS MATERIALS ENDORSEMENT FOR A COMMERCIAL DRIVERS LICENSE

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 49 USC 114; 49 USC 5103a; 49 USC 40113; 49 USC 46105

CFR Citation: 49 CFR 1570; 49 CFR 1572

Legal Deadline: None

Abstract: The Transportation Security Administration (TSA) is amending the Transportation Security Regulations to establish security threat assessment standards for determining whether an individual poses a security threat warranting denial of a hazardous materials endorsement for a commercial drivers license (CDL). TSA is also establishing procedures for seeking a waiver from the standards and appealing a security assessment determination.

TSA is issuing this interim final rule in coordination with a separate interim final rule being issued by the Federal Motor Carrier Safety Administration (FMCSA). The FMCSA rule amends the Federal Motor Carrier Safety Regulations governing commercial drivers licenses to prohibit States from issuing, renewing, transferring, or upgrading a commercial drivers license with a hazardous material endorsement unless the Department of Justice has first conducted a background records check of the applicant, and the TSA has determined that the applicant does not pose a security threat warranting denial of the hazardous materials endorsement. These interim final rules implement the background records check requirements of section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and also establish requirements regarding the transportation of explosives in commerce.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/05/03	68 FR 23851
Interim Final Rule	11/07/03	68 FR 63033

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Transferred from RIN 2110–AA19

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RIN: 1652–AA17

1457. • MARITIME AND LAND SECURITY DIRECTIVES AND INFORMATION CIRCULARS

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 40113; 49 USC 40119

CFR Citation: 49 CFR 1570

Legal Deadline: None

Abstract: This document provides a regulatory framework through which the Transportation Security Administration may issue Security Directives to owners or operators of conveyances, facilities, terminals, or infrastructure assets, involved in all modes of transportation, except aviation. Security Directives, if issued, would require owners or operators of conveyances, facilities, terminals, or infrastructure assets to implement measures specified in the Security Directives to enhance transportation security. Under this framework, TSA may also issue Information Circulars advising operators of possible threats to transportation security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1652–AA26

1458. • MARITIME TRANSPORTATION SECURITY ACT: BACKGROUND CHECKS FOR MARITIME WORKERS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 46 USC 70105

CFR Citation: 49 CFR 1572

Legal Deadline: None

Abstract: This rule will establish procedures for background checks to determine maritime workers' eligibility for unescorted access to restricted areas.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 1652–AA27

1459. • PRIVACY ACT OF 1974: IMPLEMENTATION OF EXEMPTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 114(l)(1); 5 USC 552a(k)

CFR Citation: 49 CFR 1507

Legal Deadline: None

Abstract: This document proposes to establish eight Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. This rule will enable TSA to withhold records in response to requests for information pertaining to active investigations and in other instances where disclosure could reveal sensitive information.

Timetable:

Action	Date	FR Cite
NPRM	08/18/03	68 FR 49410
NPRM Comment Period End	09/17/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Conrad Huygen,
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RIN: 1652–AA28

1460. • TEMPORARY SUSPENSION OF THE SEPTEMBER 11TH SECURITY FEE AND THE AVIATION SECURITY INFRASTRUCTURE FEE

Priority: Other Significant

Legal Authority: PL 108-11

CFR Citation: 49 CFR 1510; 49 CFR 1511

Legal Deadline: None

Abstract: The Transportation Security Administration (TSA) is issuing this rule to temporarily suspend the September 11, 2001, Passenger Civil Aviation Security Service Fees and the Aviation Security Infrastructure Fees (ASIF) during the period beginning June 1, 2003, and ending September 30, 2003, as provided in Public Law 108-11, enacted on April 16, 2003, titled, "Emergency Wartime Supplemental Appropriations Act, 2003" (Appropriations Act).

TSA interprets the Appropriations Act to prohibit TSA from requiring passengers to pay the September 11th Security Fee if they purchase air transportation during the suspension period, regardless of whether the air transportation actually takes place during the suspension period. Accordingly, TSA will not impose the September 11th Security Fee on air transportation purchased from 12:00 a.m., Eastern Daylight Time, on June 1, 2003, through 11:59 p.m., Eastern Daylight Time, on September 30, 2003.

The Appropriations Act also prohibits TSA from imposing the ASIF during the suspension period. Therefore, air carriers and foreign air carriers engaged in air transportation will not incur any obligations to make ASIF payments to TSA for the months of June, July, August, and September of 2003, which otherwise would have been required to be paid to TSA by the last day of July, August, September, and October of 2003, respectively.

Timetable:

Action	Date	FR Cite
Final Rule	05/21/03	68 FR 27747
Notice - Resumption	09/29/03	68 FR 55985

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Randall Fiertz, Chief,
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RIN: 1652–AA29

Department of Homeland Security (DHS) Transportation Security Administration (TSA)

Long-Term Actions

1461. PRIVATE CHARTER SECURITY RULES

Priority: Other Significant

Legal Authority: 49 USC 114; 49 USC 5102; 49 USC 40119; 49 USC 44901 to 44907; 49 USC 44913; 49 USC 44914; 49 USC 44916 to 44918; 49 USC 44935; 49 USC 44936; 49 USC 44942; 49 USC 46105

CFR Citation: 49 CFR 1540; 49 CFR 1544

Legal Deadline: None

Abstract: This rule amends the rules that apply to private charter aircraft. Private charter aircraft with a maximum certificated takeoff weight of 45.5 kg or more, or 61+ seats will now be required to ensure that passengers and their accessible property are screened prior to boarding.

Timetable:

Action	Date	FR Cite
Final Rule	06/19/02	67 FR 41635
Final Rule Comment Period End	07/19/02	
Final Rule Effective	08/19/02	
Final Rule	12/31/02	67 FR 79881
Notice to Extend Compliance Date	02/05/03	68 FR 5975
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The final security program has been issued and affected operators must comply by April 1, 2003.

Transferred from RIN 2110–AA05

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RIN: 1652–AA04

Department of Homeland Security (DHS) Transportation Security Administration (TSA)

Completed Actions

1462. TRANSPORTATION SECURITY ADMINISTRATION TRANSITION TO DEPARTMENT OF HOMELAND SECURITY; TECHNICAL AMENDMENTS REFLECTING ORGANIZATIONAL CHANGES

Priority: Info./Admin./Other

Legal Authority: 6 USC 203; 49 USC 114; 49 USC 40113

CFR Citation: 49 CFR 1500 to 1511; 49 CFR 1540 to 1550

Legal Deadline: None

Abstract: The Homeland Security Act of 2002 transferred the Transportation Security Administration from the Department of Transportation to the newly created Department of Homeland Security. This rule makes conforming technical changes to various parts of the Transportation Security Regulations, chapter XII of title 49, Transportation, of the Code of Federal Regulations, revising, where appropriate, all references to the titles, abbreviations, and acronyms of the "Department of Transportation" and the "Under Secretary of Transportation for Security." This regulation also makes conforming changes to the general definitions sections and revises TSA's address because of TSA Headquarters' physical move to Arlington, Virginia. Because this rule revises existing regulations to reflect organizational changes, it has no substantive effect on the public.

Timetable:

Action	Date	FR Cite
Final Rule	08/19/03	68 FR 49718

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1652–AA20

1463. SECURITY THREAT ASSESSMENTS FOR INDIVIDUALS WHO HANDLE HAZARDOUS MATERIALS IN RAIL TRANSPORTATION

Priority: Other Significant

Legal Authority: 49 USC 114

CFR Citation: 49 CFR 1573

Legal Deadline: None

Abstract: This rule is withdrawn because TSA issued a notice that oulined current procedures that take the place of requiring additional background check standards at this time.

Timetable:

Action	Date	FR Cite
Withdrawn	06/09/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Christine Beyer, Attorney, Regulations Division, Department of Homeland Security,

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RIN: 1652–AA21

Department of Homeland Security (DHS) Proposed Rule Stage
Bureau of Immigration and Customs Enforcement (BICE)

1464. NONIMMIGRANT CLASSES; S CLASSIFICATION; LAW ENFORCEMENT INITIATIVES; ALIEN WITNESSES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1324a; 8 CFR 2; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299; 8 CFR 103

Legal Deadline: None

Abstract: Two regulatory initiatives dealing with the processing of alien witnesses have been prepared by the Department. INS No. 1683-94 provides the application and approval process for the admission of aliens in S nonimmigrant classification. It provides guidance to the various law enforcement agencies needing alien witnesses and informants to complete critical law enforcement initiatives in the United States. INS No. 1728-95 establishes a fee for the processing of Form I-854, Inter-Agency Alien Witness and Informant Record, for Law Enforcement Agency (LEA) requests for S nonimmigrant classification for eligible alien witnesses and informants. The fee recovers the costs of the processing of requests for immigration benefits and is needed to comply with specific Federal immigration laws and Federal user fee statute and regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1683 Eff. 8/25/95; Comment Period End 12/4/95	08/25/95	60 FR 44260
Interim Final Rule-INS No. 1683 Correction	10/05/95	60 FR 52068
Interim Final Rule-INS No. 1683 Correction	10/05/95	60 FR 52248
NPRM-INS No. 1728	04/00/04	
Final Action-INS No.1683	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: INS No. 1683-94; and INS No. 1728-95

Transferred from RIN 1115–AD86

Agency Contact: Lydia St. John-Mellado, Investigator, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 1000, Investigations Division, 425 I Street NW., Washington, DC 20536
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RIN: 1653–AA00

1465. USE OF PAROLE FOR HUMANITARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT

Priority: Other Significant

Legal Authority: 8 USC 1182

CFR Citation: 8 CFR 212

Legal Deadline: NPRM, Statutory, September 11, 1997, NPRM.

Abstract: Changes to the current regulations are necessitated by section 602 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This section has reworded certain parole authority by stipulating parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1840-97	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: INS No. 1840-97

See also (INS No. 2004-99): This interim final rule published on December 28, 2000, amended the regulations concerning the authority to grant the parole of aliens from DHS custody by specifically identifying the scope of that authority to include the Secretary. This action was taken to clarify which individuals are authorized by the Secretary to grant parole from DHS custody.

Transferred from RIN 1115–AE68

Agency Contact: Kenneth Leutbecker, Director, Parole and Humanitarian Assistance Branch, Office of International Affairs, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Attn: ULLICO Building, Third Floor, 111 Massachusetts Avenue NW., Washington, DC 20001
Phone: 202 305–2670

RIN: 1653–AA04

1466. STRENGTHENING CONTROL OVER IMMIGRATION SURETY BONDS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1356; 31 USC 9701; 31 USC 9305; 31 USC 9308; PL 104–208

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: During the past several years the Department has experienced problems collecting funds relating to breached surety bonds. Several surety companies and/or their bonding agents have circumvented administrative remedies to address immigration surety bond claims sent out by the Department and furthermore have evaded the judicial review process.

This rule proposes to strengthen the Department's control over the collection of immigration surety bonds by tightening current DHS procedures relating to the collection of surety bonds and by providing the Department with more powerful enforcement measures. Specifically, this rule will require surety companies and bonding agents to exhaust administrative remedies by using Department appeal procedures as a prerequisite to challenging the Department's actions under the Administrative Procedures Act (5 U.S.C. 701 et seq.) before seeking judicial review of DHS actions. In addition, this rule limits the exposure of the Department in the case of bonding agents who have acted improperly or whose authorities have been denied by their corporate principals; encourages surety companies and bonding agents to respond early if there are any issues or disputes with the Department's claim and formalizes DHS' reporting requirements to the Department of the Treasury (Treasury); provides for notification to the Treasury of high dollar volume of unpaid debt over 90 days; and lastly, adds an enforcement tool to suspend acceptance of surety bonds from bonding agents and/or surety companies that have large unpaid balances or who do not otherwise respond to DHS invoices. This rule is necessary to ensure that the Deprtment receives funds owed by surety companies.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2193-02

Transferred from RIN 1115–AG65

Agency Contact: Jim Landolt, Branch Chief, Policy, Office of Financial Management, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 425 I Street NW., Washington, DC 20536
Phone: 202 353–0229
Fax: 202 514–7898

RIN: 1653–AA16

1467. INTEREST PAYMENTS ON CANCELLED CASH BONDS

Priority: Other Significant

Legal Authority: 8 USC 1103; 31 USC 1322; 31 USC 9308

CFR Citation: 8 CFR 293

Legal Deadline: None

Abstract: When DHS receives a cash bond, it is deposited into an account where interest is accumulated from the date the bond is posted, to the date that the bond is paid out. If a cancelled cash bond is unclaimed after a year, the principal and any accumulated interest are transferred to the U.S. Department of the Treasury, account entitled "Payments of Unclaimed Moneys of Individuals Whose Whereabouts are Unknown." This regulation at 8 CFR 293.1 concerns the computation of interest on cash bonds. It does not mention the Treasury requirement concerning the disposition of funds from unclaimed cash bonds. Since some cash bonds obligors have questioned the curtailment of interest a year after the bond is cancelled, we believe that this regulation should include language that clarifies the Department's requirement to comply with Treasury's regulation.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2258-03

Transferred from RIN 1115–AG97

Agency Contact: Georgia Mayers, Chief of Cash Management, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 6034, 425 I Street NW., Washington, DC, DC 20536
Phone: 202 305–1200
Fax: 202 514–7898

RIN: 1653–AA20

1468. DENIAL AND REVOCATION FOR APPROVAL OF SCHOOL FOR ATTENDANCE BY NONIMMIGRANT STUDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: The Department of Homeland Security (DHS) proposes to amend its regulations to clarify its procedures for denial of applications by schools for approval to enroll nonimmigrant students. DHS also proposes to streamline and align the revocation process with the denial and appeal process. Finally, DHS proposes the authority to suspend a school's approval to issue new forms I-20 during denial or revocation proceedings.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2239-02

Transferred from RIN 1615–AA85

Agency Contact: Jill Drury, Sevis Program Coordinator, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 10th Floor, 801 K Street NW., Washington, DC 20536
Phone: 202 305–0080

RIN: 1653–AA33

1469. AGREEMENT PROMISING NON-DEPORTATION OR OTHER IMMIGRATION BENEFITS

Priority: Other Significant

Legal Authority: 5 USC 301; 28 USC 509; 28 USC 510; 28 USC 515 to 519

CFR Citation: 28 CFR 0.197

Legal Deadline: None

Abstract: This rule will finalize a 1996 interim final rule that requires Federal prosecutors, law enforcement agencies, and other officials to obtain written consent from DHS when entering into a plea agreement, cooperation agreement, or similar agreement promising an alien favorable treatment by DHS. This rule ensures that favorable treatment under the immigration laws is extended only after a full consideration of its effect on overall immigration enforcement, alleviates confusion over the authority to enforce the immigration laws, and prevents the Department from being bound by agreements undertaken without its knowledge and approval.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/13/96	61 FR 48405
Interim Final Rule Comment Period End	11/12/96	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1791-96

Transferred from RIN 1115–AE50

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1653–AA02

1470. REQUIRING ALIENS ORDERED REMOVED FROM THE UNITED STATES TO SURRENDER TO THE DEPARTMENT OF HOMELAND SECURITY FOR REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1231; 8 USC 1253

CFR Citation: 8 CFR 240.13 to 240.19

Legal Deadline: None

Abstract: This rule requires aliens subject to a final order of removal to surrender to the Department. This rule also establishes procedures for surrender and bars persons violating these procedures from obtaining discretionary immigration benefits.

Timetable:

Action	Date	FR Cite
NPRM	09/04/98	63 FR 47205
NPRM Comment Period End	11/03/98	
Supplemental NPRM	05/09/02	67 FR 31157
Supplemental NPRM Comment Period End	06/10/02	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1115–AE82

Agency Contact: Lisa Batey, Associate General Counsel, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 6100, 425 I Street NW., Washington, DC 20536
Phone: 503 353–1825

RIN: 1653–AA05

1471. EARLY RELEASE FOR REMOVAL OF CRIMINAL ALIENS IN STATE CUSTODY FOR NONVIOLENT OFFENSES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1251; 8 USC 1253; 8 USC 1255; 8 USC 1330; 8 CFR 2

CFR Citation: 8 CFR 241

Legal Deadline: None

Abstract: The final rule will establish an administrative process whereby criminal aliens in State custody convicted of nonviolent offenses may be removed prior to completion of their sentence of imprisonment. The rule will implement the authority contemplated by Congress to enhance the ability of the United States to remove criminal aliens.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1848-97	07/12/99	64 FR 37461
NPRM Comment Period End	09/10/99	
Final Action-INS No. 1848-97	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Additional Information: INS No.1848-97

Transferred from RIN 1115–AE83

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1653–AA06

1472. POWER OF SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY TO TERMINATE DEPORTATION PROCEEDINGS AND INITIATE REMOVAL PROCEEDINGS

Priority: Other Significant

Legal Authority: PL 104–208

CFR Citation: 8 CFR 309

Legal Deadline: None

Abstract: This rule proposes to implement section 309(c)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) by affording certain aliens rendered ineligible for relief from deportation by recent changes in the law the opportunity to have their deportation proceedings terminated and removal proceedings initiated in order to apply for relief. Certain permanent resident aliens rendered ineligible for section 212(c) relief by the Antiterrorism and Effective Death Penalty Act and certain nonpermanent resident aliens rendered ineligible for suspension of deportation by the stop-time rule in IIRIRA may apply for "repapering" (as it is commonly known) under this rule. This process would not apply to aliens eligible for 212(c) relief pursuant to the procedures described in the Executive Office for Immigration Review rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	11/30/00	65 FR 71273

Action	Date	FR Cite
NPRM Comment Period End	01/29/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2083-00

Transferred from RIN 1115–AF87

Agency Contact: Roger Sagerman, Chief Counsel, Immigration Enforcement, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1653–AA08

1473. PROTECTION AND ASSISTANCE FOR VICTIMS OF TRAFFICKING

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1104; 8 USC 1252; 22 USC 7101; 22 USC 7105; ...

CFR Citation: 28 CFR 1100

Legal Deadline: Other, Statutory, April 28, 2001, Other.

Abstract: This rule amends 28 CFR and sets forth implementing guidance for section 107(c) of the Victims of Trafficking and Violence Protection Act of 2000. The Secretary and the Secretary of State are promulgating these regulations for law enforcement, Immigration, and Department of State (DOS) officials regarding the protection of victims of severe forms of trafficking who are in custody, the access of such victims to information about their rights and translation services, and the training of appropriate DHS and DOS personnel in identifying and protecting such victims. The rule also addresses the authority of Federal law enforcement officials to permit the continued presence in the United States of certain victims of severe forms of trafficking who are potential witnesses in order to aid prosecutions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/24/01	66 FR 38514

Action	Date	FR Cite
Interim Final Rule Comment Period End	10/22/01	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2133-01

Transferred from RIN 1115–AG20

Agency Contact: Sharon Andrade, Program Analyst, Investigations, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7596

RIN: 1653–AA09

1474. DETENTION OF ALIENS SUBJECT TO FINAL ORDERS OF REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1231; 8 USC 1253; ...

CFR Citation: 8 CFR 241

Legal Deadline: None

Abstract: This rule amends the custody review process governing the detention of aliens who are the subject of a final order of removal, deportation or exclusion (see 8 CFR 241.4) in light of the decision of the U.S. Supreme Court in Zadvydas v. Davis. This rule adds new provisions governing cases for DHS to determine whether there is a significant likelihood that an alien will be removed from the United States in the reasonably foreseeable future, and cases where there are special circumstances justifying the continued detention of certain aliens. This rule also makes conforming changes to the existing postremoval period detention regulations, and provides procedures to implement the statutory provision for the extension of the removal period beyond 90 days if the alien conspires or acts to prevent his or her removal or fails or refuses to assist DHS in obtaining documents necessary to his or her removal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/14/01	66 FR 56967

Action	Date	FR Cite
Interim Final Rule Comment Period End	01/14/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2156-01

Transferred from RIN 1115–AG29

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1653–AA13

1475. CUSTODY PROCEDURES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1225; 8 USC 1226; 8 USC 1251; ...

CFR Citation: 8 CFR 287

Legal Deadline: None

Abstract: This rule amends Department regulations on the period of time after an alien's arrest within which the Department must make a determination whether the alien will be continued in custody or released on bond or recognizance and whether to issue a notice to appear and warrant of arrest. This rule provides that unless voluntary departure has been granted, DHS must make such determinations within 48 hours of arrest, except in the event of emergency or other extraordinary circumstance in which case the Department must make such determinations within an additional reasonable period of time.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/17/01	66 FR 48334
Interim Final Rule Published	09/20/01	66 FR 48334
Interim Final Rule Comment Period End	11/19/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2171-01

Transferred from RIN 1115–AG40

Agency Contact: Michael Nelfach, Special Counsel, Office of General Counsel, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1653–AA14

1476. ADDRESS NOTIFICATION TO BE FILED WITH DESIGNATED APPLICATIONS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1304; ...

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: The proposed rule would amend DHS regulations by requiring every alien who is applying for immigration benefits to acknowledge having received notice that he or she is required to provide a valid current address to the Department, including any change of address within 10 days of the change; that the Department will use the most recent address provided by the alien for all purposes, including the service of a Notice to Appear if the Department initiates removal proceedings; and, if the alien has changed address and failed to provide the new address to DHS, that the alien will be held responsible for any communications sent to the most recent address provided by the alien. This rule will satisfy the requirements or advance notice to the alien of the obligation to provide a current address to the Department, and of the consequences that may result for failure to do so, including the entry of an in absentia removal order against the alien if the alien fails to appear at a removal hearing.

Timetable:

Action	Date	FR Cite
NPRM	07/26/02	67 FR 48818
NPRM Comment Period End	08/26/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2198-02

Transferred from RIN 1115–AG61

Agency Contact: Barry O'Meillin, Legal Advisor, Immigration and Customs Enforcement, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 5113 Leesburg Pike, Falls Church, VA 22041
Phone: 703 756-6257

RIN: 1653–AA15

1477. ABBREVIATION OR WAIVER OF TRAINING FOR STATE OR LOCAL LAW ENFORCEMENT OFFICERS AUTHORIZED TO ENFORCE IMMIGRATION LAW DURING A MASS INFLUX OF ALIENS

Priority: Other Significant

Legal Authority: PL 98-473; 8 USC 1101; PL 102-410

CFR Citation: 28 CFR 65

Legal Deadline: None

Abstract: This rule would amend DHS regulations to authorize the Secretary to waive normally required training requirements in the event that the number of State or local law enforcement officers available to respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens is insufficient to protect public safety, public health, and national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/03	68 FR 8820
Interim Final Rule Effective	02/26/03	
Interim Final Rule Comment Period End	04/28/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: Transferred from RIN 1115–AG84

Agency Contact: Ron Dodson, Supervisory Special Agent, Headquarters Investigations, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 1000, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7310

RIN: 1653–AA18

1478. PROCESSING, DETENTION, AND RELEASE OF JUVENILES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1224 to 1227; 8 USC 1362

CFR Citation: 8 CFR 236.3

Legal Deadline: Final, Judicial, July 31, 1998, Final.
The court-approved settlement agreement in Flores v. Reno (C.D. Cal.) required DHS to initiate action to publish regulations in July 1998. However, the changes brought by AEDPA and IIRIRA delayed issuance of the regulations. DHS later republished the rule for comments.

Abstract: The rule amends Department regulations by establishing the procedures for processing alien juveniles from custody and the detention of unreleased juveniles in State-licensed programs and detention facilities. This rule also governs the transportation and transfer of juveniles in DHS custody.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1906-98	07/24/98	63 FR 39759
NPRM Comment Period End	09/22/98	
NPRM Comment Period Reopened	01/14/02	67 FR 1670
Second NPRM Comment Period End	03/15/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1906-98.

Transferred from RIN 1115–AF05

Agency Contact: Mark A. Matese, Director of Juvenile Affairs, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 8th Floor, 801 I Street NW., Washington, DC 20536
Phone: 202 514–2162

RIN: 1653–AA22

1479. AUTHORIZING COLLECTION OF FEE LEVIED ON F, J, AND M NONIMMIGRANT CLASSIFICATIONS UNDER ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT (IIRIRA)

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; . . .

CFR Citation: 8 CFR 103; 8 CFR 214; 8 CFR 299

Legal Deadline: None

Abstract: This rule amends DHS regulations to establish a fee, pursuant to section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), as amended by Public Law 106-396. In accordance with these statutes, the alien will remit the fee directly to the Secretary of Homeland Security at a time prior to the alien being classified as an F, J, or M nonimmigrant. The rule will outline the fee amounts, who is subject, when the fee must be paid, and the consequences that an F-1, J-1, and M-1 nonimmigrant faces upon failure to pay the fee. This rule is necessary to implement section 641 of the IIRIRA, as amended, as well as authorized under section 103 and 214 of the Immigration and Nationality Act and under 31 U.S.C. 9701.

Timetable:

Action	Date	FR Cite
NPRM	12/21/99	64 FR 71323
NPRM Comment Period End	02/22/00	
Interim Final Rule	10/27/03	68 FR 61148
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1991-99

Transferred from RIN 1115-AF56

Agency Contact: Jill Drury, Sevis Program Coordinator, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 10th Floor, 801 K Street NW.,
Washington, DC 20536
Phone: 202 305-0080

RIN: 1653-AA23

1480. REVISION OF THE REGULATIONS CONCERNING F, J, AND M NONIMMIGRANT CLASSIFICATIONS

Priority: Other Significant

Legal Authority: 5 USC 552, 552(a); 5 USC 552(a); 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252(b); 8 USC 1304; 8 USC 1356; 31 USC 9701; EO 12356; 8 USC part 2; . . .

CFR Citation: 8 CFR 103; 8 CFR 214

Legal Deadline: None

Abstract: This rule lays the foundation for the implementation of the Student and Exchange Visitor Information System (SEVIS), an Internet-based system that provides tracking and monitoring functionality, with access to accurate and current information on nonimmigrant students and exchange visitors. SEVIS is being integrated into the new entry-exit system, which is the U.S. Visitor and Immigrant Status Indication Technology System (U.S. VISIT). The U.S. VISIT is designed to make entering the United States easier for legitimate tourist, students, and business travelers while making it more difficult to enter the United States illegally through the implementation of biometrically authorized documents.

There are three principal laws that require the Secretary to develop an automated system to track foreign students and exchange visitors:

1. Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA);
2. Section 416 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act); and
3. Section 501 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act).

IIRIRA requires the Department to collect current information, on an ongoing basis, from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during their course of stay in the United States. In addition, the USA PATRIOT Act amended section 641 of IIRIRA to require full implementation and expansion of SEVIS prior to January 1, 2003. Furthermore, the Border Security Act clarifies the collection of information required by SEVIS and adds the specific requirement that educational institutions report any failure of an alien to enroll not later than 30 days after the registration deadline of the institution. Finally, Presidential Directive No. 2 and the findings released by the Office of the Inspector General have also had a significant impact on the direction of the student program at the Department.

While this rule implements SEVIS and its requirements, SEVIS is only one component of the Department's Student and Exchange Visitor Program (SEVP). Further rulemakings are a necessary part of the overall reengineering process and success of SEVP, which encompasses the review and registration of all schools and exchange programs in SEVIS prior to January 30, 2003, subsequent recertifications every two years, and the student fee regulation mandated by Congress in IIRIRA to pay for the operation and maintenance of SEVIS.

As part of this ongoing program, the Department published an interim final rule at 67 FR 44344 (July 1, 2002) allowing schools that met certain criteria to preliminarily enroll in SEVIS beginning on July 1, 2002. In early fall, the Department will publish another rule that will require all schools to apply for certification in SEVIS in order to be able to begin accepting or continue accepting foreign students after the SEVIS mandatory compliance date. Additionally, DHS will publish a rule describing the recertification, withdrawal, and denial process for SEVIS. Finally, DHS will reintroduce a rule for the collection of the fee for all F, J, and M nonimmigrants.

Timetable:

Action	Date	FR Cite
NPRM (INS No. 2185-02)	05/16/02	67 FR 34862
NPRM Comment Period End	06/16/02	
Interim Final Rule (INS No. 2211-02)	07/01/02	67 FR 44343
Interim Final Rule Comment Period End	07/31/02	
Final Action (INS No. 2185-02)	12/02/02	67 FR 31184
Final Action (INS No. 2211-02)	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2185-02

Transferred from RIN 1115–AG55

Agency Contact: Jill Drury, Sevis Program Coordinator, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 10th Floor, 801 K Street NW.,
Washington, DC 20536
Phone: 202 305–0080

RIN: 1653–AA24

1481. EXTENDING THE PERIOD OF DURATION OF STATUS FOR CERTAIN F AND J NONIMMIGRANT ALIENS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186; ...

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This interim rule amends Department regulations to provide that the Commissioner may publish a notice to extend the duration of status, under specified conditions, of certain F-1 and J-1 nonimmigrant aliens who may be affected adversely because the numerical limit (cap) on H-1B nonimmigrant aliens has been reached prior to the end of a given fiscal year. This rule is a necessary stop-gap measure because of large number of F-1 and J-1 nonimmigrant aliens seeking a change of nonimmigrant status to that of H-1B after completion of their studies or their program. However, many of these aliens will be unable to change their nonimmigrant status for the remainder of a given fiscal year because of the cap on H-1B petitions. This rule will allow such aliens to avoid a lapse in their status because of a circumstance that is not under their control.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/15/99	64 FR 32146
Interim Final Rule Comment Period End	08/16/99	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 1992-99

Transferred from RIN 1615–AA27

Agency Contact: Jill Drury, Sevis Program Coordinator, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 10th Floor, 801 K Street NW.,
Washington, DC 20536
Phone: 202 305–0080

RIN: 1653–AA30

1482. REQUIRING RECERTIFICATION OF ALL SERVICE-APPROVED SCHOOLS FOR ENROLLMENT IN THE STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS)

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1304; 8 USC 1356; 31 USC 1907; EO 12356

CFR Citation: 8 CFR 103; 8 CFR 214

Legal Deadline: None

Abstract: On October 30, 2001, the President issued Homeland Security Directive No. 2 requiring the Department to conduct periodic reviews of all institutions certified to receive nonimmigrant students. The Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173 enacted May 14, 2002, also requires a periodic review of school approvals.

This rule governs the review and certification process that DHS uses to approve schools to enroll foreign students. It also continues the implementation of the process by which schools may be approved to obtain access to the Student and Exchange Visitor Information System (SEVIS). While the Department has in place an existing process for certifying and decertifying schools, DHS is requiring that all previously approved schools must apply for certification in accordance with these new mandates cited above, prior to being allowed to enroll in SEVIS.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/25/02	67 FR 60107
Interim Final Rule Effective	09/25/02	
Interim Final Rule Comment Period End	11/25/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2217-02

Transferred from RIN 1615–AA77

Agency Contact: Jill Drury, Sevis Program Coordinator, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 10th Floor, 801 K Street NW.,
Washington, DC 20536
Phone: 202 305–0080

RIN: 1653–AA31

1483. REDUCED COURSE LOAD FOR CERTAIN F AND M NONIMMIGRANT STUDENTS AT BORDER COMMUNITIES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1101 note 1; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1221; 8 USC 1281; 48 USC 1901; 48 USC 1931; PL 104–208; ...

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule amends Department regulations governing F and M nonimmigrants. This rule will clarify that nonimmigrant aliens who reside outside the United States and regularly commute across a land border to study may do so on a part-time basis within the F or M nonimmigrant category. It is common for aliens residing outside the United States, such as in Canada or Mexico, to enroll part-time in border educational institutions to enter the United States daily to pursue part-time studies. This rule will prevent the significant disruption of part-time study that has become an accepted fact of life along the border and a settled expectation. Additionally, these changes are being made to facilitate and legitimize certain part-time study along border communities while ensuring that all applicable requirements and safeguards are met.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/27/02	67 FR 54941
Interim Final Rule Comment Period End	10/27/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: CIS No. 2220-02

Transferred from RIN 1615–AA79

Agency Contact: Jill Drury, Sevis Program Coordinator, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 10th Floor, 801 K Street NW., Washington, DC 20536
Phone: 202 305–0080

RIN: 1653–AA32

1484. AUTHORIZING SUSPENSION OF EMPLOYMENT AUTHORIZATION REQUIREMENTS ON THE BASIS OF SEVERE ECONOMIC HARDSHIP FOR F-1 STUDENTS AND EMERGENT CIRCUMSTANCES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule amends DHS regulations applying to on-campus employment, off-campus employment authorization, and duration of status for nonimmigrant F-1 students. The rule permits the Commissioner to suspend some or all of the requirements for on-campus or off-campus employment where emergent circumstances exist as provided through notice in the Federal Register. The rule also amends the regulations to provide that an F-1 student who carries less than a full course of study as a result of this special employment authorization will be deemed to be maintaining status for the duration of the authorization, as long as the student carries a minimum course load of six credit hours if the student is an undergraduate, or three credit hours if the student is in graduate school.

Timetable:

Action	Date	FR Cite
Interim Final Rule-CIS No. 1914-98	06/10/98	63 FR 31871
Interim Final Rule Comment Period End	08/10/98	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: CIS No. 1914-98 (Employment Authorization for Certain F-1 Nonimmigrant Students Whose Means of Financial Support Comes From Indonesia, South Korea, Malaysia, Thailand, or the Philippines).

Transferred from RIN 1615–AA99

Agency Contact: Jill Drury, Sevis Program Coordinator, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 10th Floor, 801 K Street NW., Washington, DC 20536
Phone: 202 305–0080

RIN: 1653–AA34

Department of Homeland Security (DHS)
Bureau of Immigration and Customs Enforcement (BICE)

Long-Term Actions

1485. EMPLOYER SANCTIONS MODIFICATIONS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1324a; 8 CFR 2

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: DHS is considering further changes to streamline the verification and enforcement process requirements related to the Employer Sanctions provisions of the Immigration Reform and Control Act.

The Department published an interim rule in 1996, INS No. 1738, allowing DHS to issue and serve a Warning Notice upon an alleged violator after DHS has determined that a person or entity has violated section 274a of the Act. This rule also allows interested parties to electronically generate blank copies of the Employment Eligibility Verification Form (Form I-9).

On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act was enacted (IIRIRA). Section 411(a) of IIRIRA allows employers who have made a good faith attempt to comply with a particular employment verification requirement to correct technical or procedural failures before such failures are deemed to be violations of the INA. DHS issued a proposed rule on April 7, 1998, INS No. 1819, to implement this provision and is in the process of preparing a final rule. Because the issuance of Warning Notices requires that violation determinations be made, it is being examined in conjunction with INS No. 1819 in light of section 411(a) of IIRIRA. The anticipated publication date of a final rule will not be determined until issues regarding implementation of section 411(a) of IIRIRA are resolved.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1738	10/07/96	61 FR 52235
Correction (Interim Final Rule)	10/29/96	61 FR 55840
Interim Final Rule Comment Period End	11/06/96	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS Nos. 1737 and 1738

Transferred from RIN 1115–AE21

Agency Contact: Joseph Donnelly, Director, Worksite Enforcement, Investigations, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Washington, DC 20536
Phone: 202 514–6057

RIN: 1653–AA01

1486. INCREASING THE NUMBER OF OFFICERS AUTHORIZED TO ISSUE NOTICES TO APPEAR AND ARREST WARRANTS FOR IMMIGRATION VIOLATIONS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1221; 8 USC 1229; 8 CFR 2

CFR Citation: 8 CFR 239; 8 CFR 287

Legal Deadline: None

Abstract: This rule increases the number of officers authorized to issue notices to appear, and warrants of arrest for immigration violations. Currently, the authority to issue notices to appear and to issue arrest warrants for immigration violations, is limited to a small number of DHS officers. The present listing identifies the officers authorized to issue by specific position. This revision increases the number of issuing officers and identifies issuing authority by job title. The action is necessary to improve Department operations since many DHS employees are posted great distances away from the officials who are currently authorized to issue notices to appear and arrest warrants.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2137-01

Transferred from RIN 1115–AG22

Agency Contact: Roger Sagerman, Chief Counsel, Immigration Enforcement, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1653–AA10

1487. PROCEDURES FOR DETAINEE HUNGER STRIKES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1251; 8 USC 1253; ...

CFR Citation: 8 CFR 241.19

Legal Deadline: None

Abstract: This rule proposes standards and procedures for responding to hunger strikes by individuals detained by the Department. All proposed medical treatments in this regulation conform to accepted medical practice. Also, this rule would supersede the Department's Detention Standard on Hunger Strikes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	
NPRM Comment Period End	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2142-01

Transferred from RIN 1115–AG26

Agency Contact: Nik Maravich, Detention and Deportation Officer, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 800, Detention and Removal Operations, 801 I Street NW., Washington, DC 20536
Phone: 202 514–1999

RIN: 1653–AA12

Department of Homeland Security (DHS) Completed Actions
Bureau of Immigration and Customs Enforcement (BICE)

1488. FILING FACTUAL STATEMENTS ABOUT ALIEN PROSTITUTES

Priority: Other Significant

Legal Authority: 18 USC 2424; PL 104–208

CFR Citation: 28 CFR 94

Legal Deadline: None

Abstract: On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted. This law not only amended significant portions of title 8 of the U.S. Code, but also changed the provisions of title 18 U.S. Code (Crimes and Criminal Procedures). Because section 325 amends 18 U.S.C., DHS will publish an implementing regulation dealing with the filing of statements by individuals who keep, maintain, control, support, or harbor alien prostitutes.

Timetable:

Action	Date	FR Cite
Withdrawn	08/27/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1810-96

Transferred from RIN 1115–AE60

Agency Contact: Elizabeth Goyer, Senior Special Agent, Investigations, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 425 I Street NW., Washington, DC 20536
Phone: 202 616–3722

RIN: 1653–AA03

1489. EXPANSION OF EXPEDITED REMOVAL OF CERTAIN CRIMINAL ALIENS HELD IN FEDERAL, STATE, AND LOCAL JAILS

Priority: Other Significant

Legal Authority: 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212; 8 CFR 235

Legal Deadline: None

Abstract: This notice advises the public that DHS intends to apply the expedited removal provisions of section 235(b)(1) of the Immigration and Nationality Act on a pilot basis to certain criminal aliens being held in three correctional facilities in the State of Texas. This action will not become effective until DHS evaluates and addresses public comments and informs the public by notice in the Federal Register when the expedited removal provisions will be implemented. This pilot program will last for a period of 180 days, and will be followed with an evaluation of the program. The Department believes that implementing the expedited removal provisions to persons who have been found by a Federal judge to be guilty of illegal entry and are serving short criminal sentences will result in faster removal of those criminal aliens. This will ensure prompt immigration determinations in those cases and consequently will save DHS detention space and immigration judge and trial attorney resources. The public comments were received and reviewed. DHS elected to study the process to determine if the efficiencies to be gained were still valid, and incorporated its results into the final notice, which is currently being reviewed by the Department.

Timetable:

Action	Date	FR Cite
ANPRM	09/22/99	64 FR 51338
ANPRM Comment Period End	11/22/99	
Withdrawn	08/22/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Additional Information: Transferred from RIN 1115–AF50; INS No. 1998–99

Agency Contact: Robert Evans, Detention and Deportation Officer, Detention and Deportation, Detention and Removal, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Suite 800, 801 I Street NW., Washington, DC 20536
Phone: 202 353–7218

RIN: 1653–AA07

1490. DEFINITIONS OF "NOTICE TO APPEAR" AND "ARREST WARRANT"

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 CFR 2

CFR Citation: 8 CFR 1

Legal Deadline: None

Abstract: This proposed rule adds definitions for the terms "Notice to Appear" and "Arrest Warrant." This proposed revision clarifies what is meant by those terms as they relate to the administration of immigration law. The action is necessary to improve the efficiency of the Department and to clarify how a Notice to Appear and an Arrest Warrant issued pursuant to the Immigration and Nationality Act differ from such documents issued under another statute.

Timetable:

Action	Date	FR Cite
Withdrawn	09/02/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2140-01

Transferred from RIN 1115–AG24

Agency Contact: Donna Kay Barnes, Acting Special Assistant, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 7114, 425 I Street NW., Washington, DC 20536
Phone: 202 616–7488

RIN: 1653–AA11

1491. ESTABLISHING SAN BERNARDINO, SANTA ANA, AND VENTURA SUBOFFICES UNDER THE JURISDICTION OF THE LOS ANGELES DISTRICT OFFICE

Priority: Other Significant

Legal Authority: 8 USC 1103

CFR Citation: 8 CFR 100

Legal Deadline: None

Abstract: This rule amends Department regulations by adding the San Bernardino, Santa Ana, and Ventura suboffices to the listing of internal suboffices. DHS is opening these three suboffices to better serve the residents within the jurisdiction of the Los Angeles District Office. The San Bernardino, Santa Ana, and Ventura Suboffices will enable DHS customers to significantly reduce the commuting distance to a DHS office as well as the wait time for assistance. The intended effect of this regulation is to reallocate Department resources and improve processing efficiency for the Los Angeles District.

Timetable:

Action	Date	FR Cite
Withdrawn	08/11/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2192-02

Transferred from RIN 1115–AG66

Agency Contact: Sharon M. Lucas, Special Assistant, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Room 7114, 425 I Street NW., Washington, DC 20536
Phone: 202 307–3862

RIN: 1653–AA17

1492. • AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY; PAROLE AUTHORITY

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101 ; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: On November 25, 2002, the President signed into Law the Homeland Security Act of 2002 (Pub. L. 107–296) (HSA), which created the Department of Homeland Security (Department or DHS). The functions of the Immigration and Naturalization Service (Service) and all authorities with respect to those functions, transferred to DHS on March 1, 2003, and the Service was abolished on that date, under the HSA and the Department of Homeland Security Reorganization Plan, as modified (Reorganization Plan). DHS is promulgating this rule to continue the process of conforming the text of title 8 of the Code of Federal Regulations to the governmental structures established in the HSA and Reorganization Plan. The rule addresses parole authority under section 212(d)(5) of the Immigration and Nationality Act. Regarding parole authority, the rule implements changes in the field structures of the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement by amending the titles of officers given parole authority.

Timetable:

Action	Date	FR Cite
Final Action	06/12/03	68 FR 35282

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Catherine Muhletaler, Attorney, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Rm 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1653–AA25

1493. • POWERS AND AUTHORITY OF OFFICERS AND EMPLOYEES AND REVISIONS TO THE INTERNAL REVIEW PROCESS FOR ALLEGED VIOLATIONS OF THE STANDARDS FOR ENFORCEMENT ACTIVITIES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101; 8 USC 1103; 5 USC 301; PL 107–296; ...

CFR Citation: 8 CFR 1; 8 CFR 103; 8 CFR 239; 8 CFR 287

Legal Deadline: None

Abstract: On November 25, 2002, the President signed into law the Homeland Security Act (HSA) of 2002 (Public Law 107–296, which created the Department of Homeland Security (Department or DHS). Pursuant to the provisions of the HSA, DHS came into existence on January 24, 2003. The functions of the Immigration and Naturalization Service (Service) and all authorities with respect to those functions, transferred to DHS on March 1, 2003, and the Service was abolished on that date, pursuant to the HSA and the Department of Homeland Security Reorganization Plan, as modified (Reorganization Plan). The transition savings provisions of the HSA, including sections 1512(d) and 1517, provide that references relating to the Service in statutes, regulations, directives or delegations of authority shall be deemed to refer to the appropriate official or component of DHS. DHS is promulgating this rule to continue the process of conforming the text of title 8 of the Code of Federal Regulations to the governmental structures established in the HSA and Reorganization Plan. This rule is not to and does not restrict or otherwise limit the authority of and DHS officer.

Timetable:

Action	Date	FR Cite
Final Action	06/13/03	68 FR 35151

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ICE No. 2274-03

Agency Contact: Catherine Muhletaler, Attorney, Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Rm 6100, 425 I Street NW., Washington, DC 20536
Phone: 202 514–2895

RIN: 1653–AA26

Department of Homeland Security (DHS) Proposed Rule Stage
Directorate for Emergency Preparedness and Response (EP&R)

1494. DISASTER ASSISTANCE; FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 to 5206

CFR Citation: 44 CFR 204

Legal Deadline: None

Abstract: This proposed rule revises the implementing regulations for section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5187, as amended by the Disaster Mitigation Act of 2000, which provides overall program guidance on the operation and administration of the Fire Management Assistance Grant Program (FMAGP). The revisions incorporated into this proposed rule are designed to facilitate the grant application and administration processes of FMAGP, thereby improving the delivery of financial assistance to the State, local, and Indian tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State, Tribal

Agency Contact: Curtis Carleton, Recovery Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA26

1495. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); STATE RENEWAL OF GROUP FLOOD INSURANCE POLICY (GFIP)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 61

Legal Deadline: None

Abstract: FEMA is amending the Group Flood Insurance Policy (GFIP) to allow the States to continue the coverage for individuals insured under the initial GFIP policy after it has expired, provided the States pay the entire premium.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Charles M. Plaxico Jr., Mitigation Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA27

1496. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); ASSISTANCE TO PRIVATE SECTOR PROPERTY INSURERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 62

Legal Deadline: None

Abstract: This proposed rule would amend the Financial Assistance/Subsidy Arrangement between FEMA and the private sector insurers that sell and service flood insurance regarding the rules pertaining to when FEMA is responsible for litigation costs and when the insurers are responsible. It would also clarify issues of jurisdiction and choice of law when the insurers are sued and make some other changes to the Arrangement.

Timetable:

Action	Date	FR Cite
NPRM	10/14/03	68 FR 59146
NPRM Comment Period End	11/13/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Charles M. Plaxico Jr., Mitigation Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA28

Department of Homeland Security (DHS) Directorate for Emergency Preparedness and Response (EP&R)

Final Rule Stage

1497. NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 et seq

CFR Citation: 44 CFR 208

Legal Deadline: None

Abstract: This rule would standardize the financing, administration, and operation of the National Urban Search and Rescue Response System; a cooperative effort of FEMA, participating State emergency management agencies, and local public safety agencies across the country. The proposed rule addresses the relationship between Urban Search & Rescue (US&R) Task Forces and FEMA, and funding for preparedness and response activities, including the acquisition of equipment, supplies, and training.

Timetable:

Action	Date	FR Cite
NPRM	12/18/02	67 FR 77627
NPRM Comment Period End	02/03/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Additional Information: Transferred from RIN 3067-AC93

Agency Contact: Michael Tamillow, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2549
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RIN: 1660–AA07

1498. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: PL 103–355; 31 USC 6101 note

CFR Citation: 44 CFR 17; 44 CFR 20

Legal Deadline: None

Abstract: This common rule would make changes to the existing Governmentwide nonprocurement common rule for debarment and suspension, and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
To Be Withdrawn	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: Transferred from RIN 3067-AD15

Agency Contact: Edward Broyles, Office of General Counsel, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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Fax: 202 646-4536
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RIN: 1660–AA13

1499. HAZARD MITIGATION PLANNING AND HAZARD MITIGATION GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121

CFR Citation: 44 CFR 201; 44 CFR 204; 44 CFR 206

Legal Deadline: None

Abstract: This regulation would clarify the date that local mitigation plans will be required as a condition of receiving project grant funds under the Pre-Disaster Mitigation program in compliance with 44 CFR part 201.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/02	67 FR 8844
Interim Final Rule Effective	02/26/02	
Interim Final Rule Comment Period End	04/29/02	
Interim Final Rule	10/01/02	67 FR 61512
Interim Final Rule Effective	10/01/02	
Interim Final Rule Comment Period End	12/02/02	
Interim Final Rule	10/28/03	68 FR 61368
Interim Final Rule Effective	10/28/03	
Correcting Amendment	11/10/03	68 FR 63738
Correcting Amendment Effective	11/10/03	
Interim Final Rule Comment Period End	12/29/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State, Tribal

Additional Information: Transferred from RIN 3067-AD22

Agency Contact: Karen Helbrecht, Mitigation Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA17

1500. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); GROUP FLOOD INSURANCE POLICY (GFIP)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 61

Legal Deadline: None

Abstract: This interim final rule amends the Group Flood Insurance Policy, as a result of the consolidation of sections 408 and 411 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by section 206 of the Disaster Mitigation Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/02	67 FR 61460
Interim Final Rule Effective	09/30/02	
Interim Final Rule Comment Period End	04/15/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 3067-AD31

Agency Contact: Charles M. Plaxico Jr., Mitigation Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA22

1501. • NATIONAL FLOOD INSURANCE PROGRAM (NFIP); ASSISTANCE TO PRIVATE SECTOR PROPERTY INSURERS; EXTENSION OF TERM OF ARRANGEMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 4001 et seq

CFR Citation: 42 CFR 62

Legal Deadline: None

Abstract: FEMA changed the current Financial Assistance/Subsidy Arrangement (the Arrangement) to extend its term of October 1, 2002, through September 30, 2003, to a term of October 1, 2002, through December 31, 2003. The Arrangement defines the duties and responsibilities of insurers that sell and service insurance under the Write Your Own program. It also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/05/03	68 FR 52700
Interim Final Rule Effective	10/01/03	
Interim Final Rule Comment Period End	10/06/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Charles M. Plaxico Jr., Mitigation Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA29

Department of Homeland Security (DHS)
Directorate for Emergency Preparedness and Response (EP&R)
Long-Term Actions

1502. FLOOD MITIGATION ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4104c; 42 USC 4104d

CFR Citation: 44 CFR 78

Legal Deadline: None

Abstract: This interim final rule implements sections 553 and 554 of the National Flood Insurance Reform Act of 1994, to provide grants under the National Flood Mitigation Fund to States and communities for planning assistance and for mitigation projects that reduce the risk of flood damages to structures covered under contracts for flood insurance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/97	62 FR 13346
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Additional Information: Transferred from RIN 3067-AC45

Agency Contact: Sheila Donahoe, Mitigation Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA00

1503. CRIMINAL AND CIVIL PENALTIES UNDER THE ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5157(d); PL 101-410; 28 USC 2461; PL 104–134, sec 31001(s)

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule would increase the maximum civil penalty under the Robert T. Stafford Disaster Relief and Emergency Assistance Act from $5,000 to $5,500.

Timetable:

Action	Date	FR Cite
NPRM	02/10/97	62 FR 5957
NPRM Comment Period End	04/11/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 3067-AC61

Agency Contact: Jordan Fried, Office of General Counsel, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA01

1504. DISASTER ASSISTANCE; HAZARD MITIGATION GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 et seq

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule would revise the categories of projects eligible for funding under the Hazard Mitigation Grant Program. It emphasizes nonstructural flood mitigation measures to reduce the number of flood-prone structures and clarifies that major structural flood control projects will not be considered for funding under the grant program.

Timetable:

Action	Date	FR Cite
NPRM	05/01/98	63 FR 24143
NPRM Comment Period End	07/01/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 3067-AC69

Agency Contact: Deborah Ingram, Mitigation Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA02

1505. DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720A

CFR Citation: 44 CFR 11

Legal Deadline: None

Abstract: Under this rule, FEMA refers delinquent debts owed to this agency to the Department of the Treasury for collection under the Governmentwide Treasury Offset Program and for tax-refund offsets at the same time. FEMA amends its regulations to allow administrative offset against delinquent debtor States and units of general local Government. FEMA also amends its regulations to change the method for calculating interest, penalty and administrative charges assessed on delinquent debts and to make States and units of general local Government subject to such changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/08/98	63 FR 1063
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: Transferred from RIN 3067-AC77

Agency Contact: Michael Komack, Financial & Acquisition Management Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA05

1506. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); INSURANCE COVERAGE AND RATES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 61

Legal Deadline: None

Abstract: This rule would apply full-risk premium rates under the NFIP to structures: 1) that have suffered multiple flood losses; and 2) whose owners decline an offer of funding to eliminate or reduce future flood damage.

Timetable:

Action	Date	FR Cite
NPRM	08/05/99	64 FR 42632
NPRM Comment Period End	09/07/99	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 3067-AD02

Agency Contact: Thomas Hayes, Mitigation Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA09

1507. ORGANIZATIONAL UNITS, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Priority: Info./Admin./Other

Legal Authority: Reorganization Plan No. 3 of 1978

CFR Citation: 44 CFR 2

Legal Deadline: None

Abstract: This rule revises 44 CFR part 2 to reflect changes in FEMA's organizational structure, functions of new directorates and offices, and delegations of authority.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 3067-AD03

Agency Contact: Michael S. Herman, Office of General Counsel, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA10

1508. DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 5174

CFR Citation: 44 CFR 206

Legal Deadline: Final, Statutory, October 15, 2002, Final.

Abstract: This rule implements section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and changes the title of the provision from "Temporary Housing Assistance" to "Federal Assistance to Individuals and Households."

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3412
NPRM Comment Period End	03/11/02	
Interim Final Rule	09/30/02	67 FR 61446
Interim Final Rule Effective	10/15/02	
Interim Final Rule Comment Period End	04/15/03	
Corrections	10/09/02	67 FR 62896
Corrections Effective	10/09/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: Transferred from RIN 3067-AD25

Agency Contact: Berl Jones, Recovery Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA18

1509. DISASTER ASSISTANCE DEFINITIONS; STATUTORY CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 to 5204(c)

CFR Citation: 44 CFR 206.2

Legal Deadline: None

Abstract: This rule would amend the definitions of "Local government," "State," and "United States," as set forth in the Code of Federal Regulations, to coincide with those definitions established by the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: Transferred from RIN 3067-AD26

Agency Contact: Michael S. Herman, Office of General Counsel, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA19

1510. MANAGEMENT COSTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5165 (b)

CFR Citation: 44 CFR 206; 44 CFR 207

Legal Deadline: None

Abstract: This rule implements the management costs provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, simplifies and clarifies the method by which FEMA contributes to costs incurred by grantees and subgrantees in implementing the Public Assistance and Hazard Mitigation Grant programs, and establishes fixed management cost rates for compensating eligible grantees and subgrantees while adequately protecting Federal financial interests.

Timetable:

Action	Date	FR Cite
NPRM	08/30/02	67 FR 56130
NPRM Comment Period End	09/30/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State, Tribal

Additional Information: Transferred from RIN 3067-AD29

Agency Contact: Jonna M. Long, Administrative & Resource Planning Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA21

1511. DISASTER ASSISTANCE; CRISIS COUNSELING REGULAR PROGRAM; AMENDMENT TO REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 to 5206

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This interim final rule makes a substantive change that in limited circumstances allows the Assistant Associate Director to extend the deadline for the Crisis Counseling Regular Program.

Timetable:

Action	Date	FR Cite
Applicability Date	09/11/01	
Interim Final Rule	03/03/03	68 FR 9899
Interim Final Rule Effective	03/03/03	
Interim Final Rule Comment Period End	05/02/03	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: Transferred from RIN 3067-AD32

Agency Contact: Berl Jones, Recovery Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA23

1512. ADMINISTRATION OF GRANTS: AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 7501

CFR Citation: 44 CFR 14

Legal Deadline: None

Abstract: This rule implements the Single Audit Act of 1996, as amended, on an agencywide basis within FEMA. It requires recipients of financial assistance from FEMA to comply with OMB Circular A-133, which sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and nonprofit organizations expending Federal awards.

Timetable:

Action	Date	FR Cite
Withdrawn	09/09/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Additional Information: Transferred from RIN 3067-AC98

Agency Contact: James Daniels, Office of the Inspector General, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA08

1513. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 44 CFR 7; 44 CFR 16

Legal Deadline: None

Abstract: This rule amends FEMA's regulations implementing title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1972, and the Age Discrimination Act of 1975. Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. This rule explicitly incorporates the Civil Rights Restoration Act definitions of "program or activity" and "program."

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action Effective	08/25/03	
Final Action	08/26/03	68 FR 51333

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Additional Information: Transferred from RIN 3067-AD14

Agency Contact: Pauline C. Campbell, Office of Equal Rights, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA12

1514. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); INSPECTION OF INSURED STRUCTURES BY COMMUNITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 59; 44 CFR 61

Legal Deadline: None

Abstract: This rule amends FEMA regulations to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999, and become eligible for the sale of flood insurance, must participate in the inspection procedure to help communities verify that structures comply with the community's floodplain management ordinance, and to ensure that property owners pay flood insurance commensurate with their flood risk.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/08/02	67 FR 10631
Final Rule	10/14/03	68 FR 59126

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: Transferred from RIN 3067-AD16

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RIN: 1660–AA14

1515. DISASTER ASSISTANCE; PUBLIC ASSISTANCE PROGRAM AND COMMUNITY DISASTER LOAN PROGRAM STATUTORY CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule amends FEMA regulations for the Public Assistance Program and the Community Disaster Loan Program to reflect statutory changes to these programs. Specifically, the rule: 1) changes the Federal contribution for Large in Lieu Contributions also known as "alternate projects;" 2) adds irrigation districts to the list of eligible private nonprofit (PNP) facilities; 3) institutes a loan requirement for certain noncritical PNP facilities; and 4) limits Community Disaster Loans to $5 million and requires that loan applicants not be in arrears on any previous loan.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/04/01	66 FR 22443
Interim Final Rule Comment Period End	07/03/01	
Final Action	06/10/03	68 FR 34545

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 3067-AD20

Agency Contact: James Walke, Recovery Division, Department of Homeland Security, Directorate for Emergency Preparedness and Response, 500 C Street SW., Washington, DC 20472
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RIN: 1660–AA15

Department of Homeland Security (DHS)
Office of the Undersecretary for Management (M)

Completed Actions

1516. AVAILABILITY OF MATERIAL UNDER FREEDOM OF INFORMATION ACT AND PRIVACY ACT

Timetable:

Action	Date	FR Cite
Transferred to RIN 1615-AB18	10/29/03	

RIN: 1680–AA00

1517. ESTABLISHMENT OF FEE FOR PROCESSING GENEALOGICAL RESEARCH REQUESTS

Timetable:

Action	Date	FR Cite
Transferred to RIN 1615-AB19	10/29/03	

RIN: 1680–AA01

[FR Doc. 03–27743 Filed 12–19–03; 8:45 am]

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The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

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Federal Register

Monday,
December 22, 2003

Part X

Department of Housing and Urban Development

Semiannual Regulatory Agenda

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitles A and B

[Docket No. FR–4830–N–02]

Semiannual Regulatory Agenda

AGENCY: Department of Housing and Urban Development.

ACTION: Semiannual regulatory agenda.

SUMMARY: In accordance with section 4(b) of Executive Order 12866, "Regulatory Planning and Review," as amended, HUD is publishing its agenda of regulations already issued or that are expected to be issued over the next several months. The agenda also includes rules currently in effect that are under review, and describes those regulations that may affect small entities as required by section 602 of the Regulatory Flexibility Act. The purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410-0500, (202) 708-3055. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), as amended by Executive Order 13258 (67 FR 9385), requires each agency to publish semiannually an agenda of (1) regulations that the agency has issued or expects to issue, and (2) rules currently in effect that are under agency review. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to publish semiannually a regulatory agenda of rules expected to be proposed or promulgated that are likely to have a significant economic impact on a substantial number of "small entities," meaning small businesses, small organizations, or small governmental jurisdictions.

Executive Order 12866, as amended, and the Regulatory Flexibility Act each permits incorporation of the agenda required by these two authorities with any other prescribed agenda. Therefore, the agenda set out below combines the information required by Executive Order 12866, as amended, and the Regulatory Flexibility Act. In addition, the agenda contains certain information not required by either the Executive Order or by the Regulatory Flexibility Act which the Department considers useful, both better to inform the public and to enhance the Department's own inventory control over its body of regulations.

Section 610(c) of the Regulatory Flexibility Act requires each agency to publish annually a list of the rules that have a significant economic impact on a substantial number of small entities, and that are to be reviewed in accordance with the requirements of section 610 during the succeeding 12 months. Existing regulations that HUD proposes to amend by rules described and published in this agenda are reviewed in accordance with the principles of section 610 of the Regulatory Flexibility Act. The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded. Proposed changes to existing regulations provide the opportunity for the Department to conduct a section 610 review.

The Department also is subject to certain rulemaking requirements set forth in the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that the Secretary transmit to the congressional committees having jurisdictional oversight of HUD (the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking and Financial Services), a semiannual agenda of all rules or regulations which are under development or review by the Department. A rule appearing on the agenda cannot be published for comment before or during the first 15 calendar days after transmittal of the agenda. Section 7(o) provides that if, within that period, either committee notifies the Secretary that it intends to review any rule or regulation which appears on the agenda, the Secretary must submit to both committees a copy of the rule or regulation, in the form it is intended to be proposed, at least 15 calendar days before it is published for comment. The semiannual agenda published today is the agenda transmitted to the committees in compliance with this requirement.

HUD has attempted to list in this agenda all regulations and regulatory reviews pending at the time of publication, except for minor and routine or repetitive actions, but some may have been inadvertently omitted, or may have arisen too late to be included in the published agenda. There is no legal significance to the omission of an item from the agenda. Also, where dates are provided for the next rulemaking actions, the dates are estimates and are not commitments to act on or by the date shown.

In some cases, HUD has withdrawn rules that were placed on previous agendas and for which there has been no publication activity. Withdrawal of a rule does not necessarily mean that HUD will not proceed with the rulemaking. Withdrawal allows HUD to further assess the subject matter and determine whether rulemaking for this subject matter is appropriate. Following this review, the Department may determine that certain rules listed as withdrawn under this agenda are appropriate. If that determination is made, the rules will be included in a succeeding semiannual agenda.

In addition, for a few rules that have been published as proposed or interim rules, and therefore require further rulemaking, HUD has identified the timing of the next action stage as "undetermined." These are rules that are still under review by HUD for which a determination of the next action stage and timing of the next action stage has not yet been made.

The format of the agenda remains unchanged from previous years. HUD's agenda items are divided first by program office. Within each program office, the agenda items are divided into five groups: (i) pre-rulemaking actions; (ii) publication or other implementations of notices of proposed rulemaking; (iii) publications or other implementations of final rules; (iv) long-term rules; and (v) completed actions. Within each grouping, rules are listed in chronological order by the part number of the CFR affected. Where a rule affects multiple parts of the CFR, the rule is listed by the first affected part number.

For this edition of the Department's regulatory agenda, the most important significant regulatory actions are included in the **The Regulatory Plan**, which appears in part II of this issue of the **Federal Register**. **The Regulatory Plan** entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Since the purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the Department's future regulatory actions, HUD invites all interested members of the public to comment on the rules listed in the agenda.

Dated: October 14, 2003.

Alphonso Jackson,

Deputy Secretary.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1518	24 CFR 8 Nondiscrimination Based on Disability; Multifamily Homeownership Projects (FR–4776)	2501–AC87
1519	24 CFR 203 Treble Damages for Failure To Engage in Loss Mitigation (FR–4553) **(Reg Plan Seq No. 64)**	2501–AC66
1520	24 CFR 81 The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac (FR–4790) **(Reg Plan Seq No. 65)**	2501–AC92
1521	24 CFR 92 Home Investment Partnerships Program (FR–4833)	2501–AC94
1522	24 CFR 25 FHA Lenders and Mortgagees; Prohibiting Misleading Words in Names of Non-Federally Supervised Entities and Strengthening Enforcement of Mortgagee Review Board Sanctions (FR–4765)	2501–AC95
1523	24 CFR 5 Streamlining HUD Income Exclusions (FR–4844)	2501–AC96
1524	Providing for Electronic Submission of Grant Applications (FR–4875)	2501–AD02

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1525	Implementation of Requirement for Use of Data Universal Numbering System (DUNS) Identifier (FR–4876)	2501–AD01
1526	24 CFR 888 Fair Market Rents Programs: Increased Fair Market Rents for Certain Areas and Higher Payment Standards (FR–4606)	2501–AC75
1527	24 CFR 92 American Dream Downpayment Initiative (FR–4832) **(Reg Plan Seq No. 66)**	2501–AC93

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1528	24 CFR 84 Adoption of Revisions to OMB Circular A–110 (FR–4573)	2501–AC68
1529	24 CFR 81 The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac; Prohibiting the Purchase of Certain Loans With High Costs and/or Predatory Features (FR–4614)	2501–AC76
1530	24 CFR 5 Electronic Document Retention and Consumer Disclosure Requirements in HUD-Related Transactions (FR–4686)	2501–AC79

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
1531	24 CFR 24 Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (FR–4692)	2501–AC81
1532	24 CFR 40 Accessibility Standards for Design, Construction, and Alteration of Certain Facilities Financed With Public Funds (FR–4317)	2501–AC47
1533	24 CFR 58 Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities (FR–4523)	2501–AC83
1534	Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FR–4695)	2501–AC98

Office of the Secretary—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1535	24 CFR 1 Rule To Conform Regulatory Definitions; Civil Rights Restoration Act (FR–4587)	2501–AC70
1536	24 CFR 92 Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment for All HUD Program Participants (FR–4782)	2501–AC89

Office of Housing—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1537	24 CFR 81 Nonproprietary Data Submitted by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (FR–4796)	2502–AH96

Office of Housing—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1538	24 CFR 25 Single Family Mortgage; Lender Compliance and Accountability (FR–4761)	2502–AH87
1539	24 CFR 202.5 Establishment of Loan Officer Registry and Establishment of Servicing Approval Agreements (FR–4764)	2502–AH88
1540	24 CFR 202.2 Duties and Responsibilities of Loan Correspondents and Sponsors (FR–4762)	2502–AH90
1541	24 CFR 207 HUD Multifamily Accelerated Processing Quality Assurance Enforcement (FR–4836)	2502–AI01
1542	24 CFR 880 Distributions to Nonprofit Owners of Certain HUD-Assisted Multifamily Rental Projects (FR–4602)	2502–AH52
1543	Revised Guidelines for Previous Participation Certification (FR–4870)	2502–AI10
1544	HUD Multifamily Rental and Health Care Facility Closing Documents (FR–4883)	2502–AI11
1545	Revisions to the Single Family Mortgage Insurance Program (FR–4831)	2502–AI03
1546	State Installation Requirements (FR–4877)	2502–AI07
1547	Accelerated Claims and Asset Disposition Program (FR–4887)	2502–AI14
1548	Home Equity Conversion Mortgages (HECM): Long-Term Care Insurance (FR–4857)	2502–AI04
1549	Competitive Sales Procedures—Owner-Occupant Priority Over Nonprofit Organizations(FR–4858)	2502–AI05
1550	Disciplinary Actions Against HUD-Qualified Real Estate Brokers (FR–4871)	2502–AI08
1551	Manufactured Homes Construction Safety Standards (FR–4886)	2502–AI12
1552	Manufactured Housing On-Site Construction (FR–4885)	2502–AI13
1553	24 CFR 291 Disposition of HUD-Owned Single Family Assets in Asset Control Areas (FR–4471) **(Reg Plan Seq No. 67)**	2502–AH40
1554	24 CFR 203.18 Limitation of FHA-Insured Loans to Nonprofit Agencies (FR–4702)	2502–AH71
1555	24 CFR 291, subpart F Disposition of HUD-Acquired Single Family Property; Officer/Teacher Next Door Sales Programs (FR–4712)	2502–AH72
1556	24 CFR 203.50 Up-Front Mortgage Insurance Premiums for Loans Insured Under 24 CFR 203(k) and 234(c) of the National Housing Act (FR–4749)	2502–AH82
1557	24 CFR 203.43 (b)(1) Home Equity Conversion Mortgages (HECM); Cooperative Housing Developments (FR–4777)	2502–AH89
1558	24 CFR 203 E-Endorsement of FHA-Insured Mortgages (FR–4789)	2502–AH95
1559	24 CFR 3285 Manufactured Housing Installation Program (FR–4812)	2502–AH97
1560	24 CFR 3286 Manufactured Housing Dispute Resolution Program (FR–4813)	2502–AH98
1561	24 CFR 212 Housing Counseling Program (FR–4798)	2502–AH99
1562	24 CFR 203 Due Diligence/Quality Control Plans (FR–4846)	2502–AI02

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Housing—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1563	24 CFR 200 Section 223f Supplemental Cost Certification (FR–4793)	2502–AH93
1564	24 CFR 203 Upfront Mortgage Insurance Premiums: Remittance Requirements (FR–4690)	2502–AH67

Office of Housing—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1565	24 CFR 203.49 Eligibility of Adjustable Rate Mortgages (ARMs) (FR–4745)	2502–AH84
1566	24 CFR 203 Eligibility of Mortgages on Hawaiian Homelands Insured Under Section 247 (FR–4779)	2502–AH92
1567	24 CFR 402 Renewal of Expiring Section 8 Project-Based Assistance Contract (FR–4551)	2502–AH47
1568	24 CFR 202 Revisions to FHA Credit Watch Termination Initiative (FR–4625) **(Reg Plan Seq No. 68)**	2502–AH60
1569	24 CFR 206 Insurance for Mortgages To Refinance Existing HECMs (FR–4667)	2502–AH63
1570	24 CFR 236 Section 236 Excess Rental Charges (FR–4689)	2502–AH68
1571	24 CFR 203.60 FHA Inspector Roster (FR–4720)	2502–AH76
1572	24 CFR 203 Lender Accountability for Appraisals (FR–4722) **(Reg Plan Seq No. 69)**	2502–AH78
1573	24 CFR 891 Mixed Finance Development for Supportive Housing for the Elderly or Persons With Disabilities and Other Changes to 24 CFR Part 891 (FR–4725)	2502–AH83
1574	24 CFR 200.54(b) Distribution of Tax Credit Proceeds (FR–4792)	2502–AH91
1575	24 CFR 203 FHA Total Mortgage Scorecard (FR–4835)	2502–AI00

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Housing—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1576	24 CFR 200.208 FHA Appraiser Watch Initiative (FR–4744)	2502–AH81
1577	24 CFR 401 Release of Information to Tenants and Other Parties Pursuant to MAHRA (FR–4531)	2502–AH45
1578	24 CFR 3500 et seq RESPA–Improving the Process for Obtaining Mortgages (FR–4727)	2502–AH85
1579	24 CFR 203 Amendments to the Section 203(k) Rehabilitation Loan Insurance Program (FR–4701)	2502–AH73
1580	24 CFR 401 Mark-to-Market Program Amendments (FR–4751)	2502–AH86

Office of Housing—Completed Actions

Sequence Number	Title	Regulation Identification Number
1581	24 CFR 200 Appraiser Qualifications for Placement on FHA Single Family Appraiser Roster (FR–4620)	2502–AH59
1582	24 CFR 203 Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs (FR–4615)	2502–AH57

Office of Community Planning and Development—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1583	24 CFR 583 Supportive Housing Program (FR–4616)	2506–AC07
1584	Empowerment Zones: Resident Benefit and Economic Development Standards for Grants (FR–4853)	2506–AC16
1585	24 CFR 574 Housing Opportunities for Persons With AIDS (HOPWA) (FR–4708)	2506–AC11
1586	24 CFR 570 Community Development Block Grant Program Revision of CDBG Eligibility and National Objective Regulations (FR–4699) **(Reg Plan Seq No. 70)**	2506–AC12

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Community Planning and Development—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1587	24 CFR 570 CDBG Program for States; Community Revitalization Strategy Requirements and Miscellaneous Technical Amendments (FR–4081)	2506–AB83
1588	Modification of the Community Development Block Grant Definition for Metropolitan City and Other Conforming Amendments (FR–4872)	2506–AC15
1589	24 CFR 570 Prohibition on Use of CDBG Assistance for Job–Pirating Activities (FR–4556)	2506–AC04

HUD

Office of Community Planning and Development—Completed Actions

Sequence Number	Title	Regulation Identification Number
1590	24 CFR 574 HOPWA Shallow Rental Assistance (FR–4822)	2506–AC14
1591	24 CFR 583 Supportive Housing Program—Increasing Operating Cost Percentage (FR–4576)	2506–AC05
1592	24 CFR 598 Designation of Renewal Communities and Third Round Empowerment Zones (FR–4663)	2506–AC09

Government National Mortgage Association—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1593	Removal of Regulation Specifying Minimum Face Value of Ginnie Mae Securities (FR–4856)	2503–AA17

Office of Fair Housing and Equal Opportunity—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1594	24 CFR 115 Certification and Funding of State and Local Fair Housing Enforcement Agencies (FR–4748)	2529–AA90

Office of Fair Housing and Equal Opportunity—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1595	24 CFR 100 Fair Housing Act Regulation; Conforming Amendment; Update To Reflect Current Edition of American National Standards Institute (ANSI) (FR–4554)	2529–AA88

Office of Fair Housing and Equal Opportunity—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1596	24 CFR 135 Economic Opportunities for Low- and Very-Low-Income Persons (FR–2898)	2529–AA49

Office of Fair Housing and Equal Opportunity—Completed Actions

Sequence Number	Title	Regulation Identification Number
1597	24 CFR 100 Fair Housing Act Regulations Amendments: Standards Governing Sexual Harassment (FR–4597)	2529–AA89

Office of Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1598	48 CFR 2401 HUD Acquisition Regulation (FR–4705)	2535–AA26

Office of Public and Indian Housing—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1599	24 CFR 970 Public Housing Program—Demolition or Disposition of Public Housing Projects (FR–4598)	2577–AC20
1600	24 CFR 972 Conversion of Developments From Public Housing Stock; Methodology for Comparing Costs of Public Housing and Tenant-Based Assistance (FR–4718)	2577–AC33
1601	24 CFR 990 Operating Funds for Debt Service (FR–4843)	2577–AC49
1602	24 CFR 1000 NAHASDA Housing Assistance for Native Hawaiians (FR–4668)	2577–AC27
1603	Capital Fund Program (FR–4880) **(Reg Plan Seq No. 71)**	2577–AC50
1604	Section 8 Management Assessment Program (FR–4884)	2577–AC52
1605	24 CFR 983 Project-Based Voucher Program (FR–4636)	2577–AC25
1606	24 CFR 964 Resident Participation in Public Housing (FR–4657)	2577–AC26
1607	24 CFR 1000 Implementation of Statutory Revisions to NAHASDA (FR–4750)	2577–AC37
1608	24 CFR 982 Tenant-Based Assistance: Housing Choice Voucher Program (FR–4838)	2577–AC44

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of Public and Indian Housing—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1609	24 CFR 960 PHA Discretion in Treatment of Over-Income Families (FR–4824)	2577–AC42
1610	24 CFR 982 Housing Choice Voucher Homeownership Program; Pilot Program for Homeownership Assistance for Disabled Families (FR–4661)	2577–AC24
1611	24 CFR 1000 Minimum Funding Under the Indian Housing Block Grant Program (FR–4825)	2577–AC43

Office of Public and Indian Housing—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1612	Operating Fund Allocation Formula (FR–4874)	2577–AC51

Office of Public and Indian Housing—Completed Actions

Sequence Number	Title	Regulation Identification Number
1613	24 CFR 945 Designated Housing (FR–4755)	2577–AC36
1614	24 CFR 882 Up-Front Income Verification for the Public Housing, Housing Choice Voucher, Project-Based Certificate, and Section 8 Moderate Rehabilitation Programs (FR–4804)	2577–AC41
1615	24 CFR 972 Required Conversion of Development From Public Housing Stock (FR–4475)	2577–AC01
1616	24 CFR 972 Voluntary Conversion of Developments From Public Housing Stock (FR–4476)	2577–AC02
1617	24 CFR 982 Housing Choice Voucher Program; Expansion of Payment Standards Protection (FR–4586)	2577–AC18
1618	24 CFR 982 Procedures for HQS Inspections in the Housing Choice Voucher Program (FR–4839)	2577–AC45
1619	24 CFR 984 Self-Sufficiency Performance Indicators (FR–4841)	2577–AC47
1620	24 CFR 990 Operating Fund Allocation Formula (FR–4425)	2577–AB88
1621	24 CFR 905 Public Housing Capital Fund Program (FR–4507)	2577–AC16
1622	24 CFR 902 Changes to the Public Housing Assessment System (PHAS)(FR–4707)	2577–AC32
1623	24 CFR 902 Deregulation for Small Public Housing Agencies (FR–4753)	2577–AC34
1624	24 CFR 982 Housing Choice Voucher Program Homeownership Option: Eligibility of PHA-Owned or Controlled Units (FR–4759)	2577–AC39
1625	24 CFR 990 Phase-Out of Operating Subsidy for Units Approved for Demolition/Disposition (FR–4840)	2577–AC46
1626	24 CFR 990 Calculation of Vacant Units-Operating Subsidy (FR–4842)	2577–AC48

1518. NONDISCRIMINATION BASED ON DISABILITY; MULTIFAMILY HOMEOWNERSHIP PROJECTS (FR-4776)

Priority: Other Significant

Legal Authority: 29 USC 794; 42 USC 3535(d); 42 USC 5309

CFR Citation: 24 CFR 8

Legal Deadline: None

Abstract: This rule clarifies the applicability of HUD's accessibility requirements (nondiscrimination based on disability) to multifamily homeownership projects receiving financial assistance from HUD. In addition, this rule conforms this part to statutory changes by replacing the term "handicap" with "disability" and by removing obsolete references.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl Kent, Special Advisor for Disability Policy, Department of Housing and Urban Development, Office of the Secretary
Phone: 202 708–1734

RIN: 2501–AC87

1519. TREBLE DAMAGES FOR FAILURE TO ENGAGE IN LOSS MITIGATION (FR-4553)

Regulatory Plan: This entry is Seq. No. 64 in part II of this issue of the **Federal Register**.

RIN: 2501–AC66

1520. THE SECRETARY OF HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC (FR-4790)

Regulatory Plan: This entry is Seq. No. 65 in part II of this issue of the **Federal Register**.

RIN: 2501–AC92

1521. HOME INVESTMENT PARTNERSHIPS PROGRAM (FR-4833)

Priority: Other Significant

Legal Authority: 42 USC 12701 to 12839

CFR Citation: 24 CFR 92

Legal Deadline: None

Abstract: This rule will propose various policy changes and clarifications to the HOME Investment Partnerships Program. Program areas where changes will be proposed include: loan guarantees, community housing development organization performance standards, and long-term compliance responsibilities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Virginia Sardone, Director, Program Policy Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708–2470

RIN: 2501–AC94

1522. FHA LENDERS AND MORTGAGEES; PROHIBITING MISLEADING WORDS IN NAMES OF NON-FEDERALLY SUPERVISED ENTITIES AND STRENGTHENING ENFORCEMENT OF MORTGAGEE REVIEW BOARD SANCTIONS (FR-4765)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1703; 12 USC 1708(c); 12 USC 1708(d); 12 USC 1709(s); 12 USC 1715b; 12 USC 1735(f)–14

CFR Citation: 24 CFR 25; 24 CFR 202

Legal Deadline: None

Abstract: This rule would prohibit the use of certain misleading or restricted names used by non-Federally supervised lenders and mortgagees to increase compliance with existing criminal code (18 U.S.C. 709) and to avoid confusion by consumers by lenders and mortgagees who use misleading words in their name to falsely imply that they have some connection with or authorization from the Department of Housing and Urban Development and/or the Federal Housing Administration. In addition, this rule will limit the ability of lenders and mortgagees to evade Mortgagee Review Board sanctions by selling their addresses, names, and assets to another FHA-approved lender or mortgagee.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708–1515

RIN: 2501–AC95

1523. STREAMLINING HUD INCOME EXCLUSIONS (FR-4844)

Priority: Other Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437d; 42 USC 1437f; 42 USC 1437n; 42 USC 3535(d)

CFR Citation: 24 CFR 5

Legal Deadline: None

Abstract: This rule amends the regulation for public housing and Section 8 programs to streamline HUD's income and rent regulations. The rule would include, but not be limited to, the elimination of some income exclusions that do not have a statutory basis.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Agency Contact: Patricia Arnaudo, Senior Program Manager, Public Housing Occupancy and Management Division, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 7th Street SW., Washington, DC 20410
Phone: 202 708–0744

RIN: 2501–AC96

HUD—HUDSEC Proposed Rule Stage

1524. • PROVIDING FOR ELECTRONIC SUBMISSION OF GRANT APPLICATIONS (FR–4875)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106–107

CFR Citation: None

Legal Deadline: None

Abstract: The President's objective for e—government, as contained in the President's Management Agenda, require Federal agencies to allow for electronic application submission. The Department proposes mandatory electronic submission for applications for Federal financial assistance. This rule would provide for public comment on this proposal to require electronic submission.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State, Tribal

Agency Contact: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development
Phone: 202 708–0667
Fax: 202–708–0531
Email: barbara__dorf@hud.gov

RIN: 2501–AD02

Department of Housing and Urban Development (HUD) Office of the Secretary (HUDSEC) Final Rule Stage

1525. • IMPLEMENTATION OF REQUIREMENT FOR USE OF DATA UNIVERSAL NUMBERING SYSTEM (DUNS) IDENTIFIER (FR–4876)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106–107

CFR Citation: 24 CFR 5

Legal Deadline: None

Abstract: This rule implements the requirement for grant applicants to provide a DUN and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for Federal funds through HUD's formula programs and published through NOFAs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Tribal

Agency Contact: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development
Phone: 202 708–0667
Fax: 202—708—0531
Email: barbara__dorf@hud.gov

RIN: 2501–AD01

1526. FAIR MARKET RENTS PROGRAMS: INCREASED FAIR MARKET RENTS FOR CERTAIN AREAS AND HIGHER PAYMENT STANDARDS (FR–4606)

Priority: Economically Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 888; 24 CFR 982; 24 CFR 985

Legal Deadline: None

Abstract: This final rule follows publication of an October 2, 2002, interim rule, and takes into consideration the public comments on the interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/02/00	65 FR 58870
Interim Final Rule Comment Period End	11/16/00	
Interim Final Rule Effective	12/01/00	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Agency Contact: Gerald J. Benoit, Director, Housing Voucher Management and Operations, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708–0477

RIN: 2501–AC75

1527. AMERICAN DREAM DOWNPAYMENT INITIATIVE (FR–4832)

Regulatory Plan: This entry is Seq. No. 66 in part II of this issue of the **Federal Register**.

RIN: 2501–AC93

Department of Housing and Urban Development (HUD) Office of the Secretary (HUDSEC) Long-Term Actions

1528. ADOPTION OF REVISIONS TO OMB CIRCULAR A–110 (FR–4573)

Priority: Other Significant

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 5; 24 CFR 44; 24 CFR 45; 24 CFR 84; 24 CFR 85

Legal Deadline: None

Abstract: This document presents the final revision to the codification, at 24 CFR part 84, of Office of Management and Budget (OMB) Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." OMB issued a final revision to Circular A–110 on September 30, 1999, as required by Public Law 105–227. This rule provides uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations. FR–4258 (RIN 2501–AC39), which makes final an interim rule that adopted revised OMB Circular A–133 to obtain consistency and uniformity among Federal agencies for the audit of States, local governments, and nonprofit organizations expending Federal awards, is also merged with this rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/11/00	65 FR 30498
Interim Final Rule Effective	06/12/00	
Interim Final Rule Comment Period End	07/10/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, Office of Administration
Phone: 202 708–0667

RIN: 2501–AC68

1529. THE SECRETARY OF HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC; PROHIBITING THE PURCHASE OF CERTAIN LOANS WITH HIGH COSTS AND/OR PREDATORY FEATURES (FR–4614)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 12 USC 1451 et seq; 12 USC 1716 et seq; 12 USC 4501 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 81

Legal Deadline: None

Abstract: A report issued in June 2000 by HUD and the Department of Treasury entitled "Curbing Predatory Home Mortgage Lending" noted that by providing a source of funding, entities that purchase or securitize loans with high cost and/or predatory features are, knowingly or unknowingly, supporting the activities of predatory loan originators. The report recommended regulatory restrictions that would prohibit the two Government-Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, from purchasing certain types of loans with high costs and/or predatory features altogether. Through this rulemaking, HUD will establish regulatory restrictions, consistent with the GSEs' voluntary restrictions, that will prohibit the GSEs from purchasing certain loans with high costs and/or predatory features.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sandra Fostek, Director, Office of Government Sponsored Enterprise Oversight, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2224

RIN: 2501–AC76

1530. ELECTRONIC DOCUMENT RETENTION AND CONSUMER DISCLOSURE REQUIREMENTS IN HUD—RELATED TRANSACTIONS (FR–4686)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 12 USC 1715z–13a; 12 USC 2601 to 2617; 15 USC 1701 to 1706; 15 USC 7001 to 7006; ...

CFR Citation: 24 CFR 5

Legal Deadline: None

Abstract: This rule will implement the Electronic Signature Act which allows agencies to issue regulations, pursuant to their existing regulatory authority, interpreting section 101 of ESIGN (15 U.S.C. 7001) and setting performance standards for the accuracy, integrity, and accessibility of electronically retained documents. The rule will set performance standards for the accessibility, integrity and accuracy of electronically retained documents.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Koren McKenzie-John, Attorney-Advisor, Multifamily Mortgage Division, Department of Housing and Urban Development, Office of the General Counsel
Phone: 202 708–4090

RIN: 2501–AC79

Department of Housing and Urban Development (HUD) Completed Actions
Office of the Secretary (HUDSEC)

1531. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FR–4692)

Priority: Other Significant

CFR Citation: 24 CFR 21; 24 CFR 24

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Dane Narode
Phone: 202 708–2350

RIN: 2501–AC81

1532. ACCESSIBILITY STANDARDS FOR DESIGN, CONSTRUCTION, AND ALTERATION OF CERTAIN FACILITIES FINANCED WITH PUBLIC FUNDS (FR–4317)

Priority: Other Significant

CFR Citation: 24 CFR 40; 24 CFR 41

Completed:

Reason	Date	FR Cite
Withdrawn	09/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Milton Turner
Phone: 202 708–2333

RIN: 2501–AC47

1533. ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD'S ENVIRONMENTAL RESPONSIBILITIES (FR–4523)

Priority: Other Significant

CFR Citation: 24 CFR 58; 24 CFR 574; 24 CFR 582; 24 CFR 583; 24 CFR 970; ...

Completed:

Reason	Date	FR Cite
Final Action	09/29/03	68 FR 56116
Final Action Effective	10/29/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Walter Prybyla
Phone: 202 708–1201

RIN: 2501–AC83

1534. • OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS' LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS (FR–4695)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 5

Legal Deadline: None

Abstract: This rule provides for codification of the requirements of Executive Order 13202 (the Executive Order), entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects." The Executive order provides that, to the extent permitted by law, agencies may not permit inclusion of contract conditions requiring or prohibiting entering into or adhering to agreements with a labor organization, or otherwise discriminating against parties entering into or adhering to such agreements, as a condition for award of any federally funded contract or subcontract for construction. The purpose of this rule is to ensure compliance by all HUD grantees, recipients of financial assistance, parties to cooperative agreements, contractors, and subcontractors with the requirements of open competition and government neutrality in awarding federally funded contracts or subcontracts for construction.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/22/03	68 FR 28102
Interim Final Rule Effective	06/23/03	
Interim Final Rule Comment Period End	07/21/03	
Final Action	10/17/03	68 FR 59848
Final Action Effective	11/17/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development
Phone: 202 708–3055

RIN: 2501–AC98

1535. RULE TO CONFORM REGULATORY DEFINITIONS; CIVIL RIGHTS RESTORATION ACT (FR–4587)

Priority: Other Significant

CFR Citation: 24 CFR 1; 24 CFR 8; 24 CFR 146

Completed:

Reason	Date	FR Cite
Withdrawn	09/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Frank
Phone: 202 708–0836

RIN: 2501–AC70

1536. PARTICIPATION IN HUD PROGRAMS BY FAITH—BASED ORGANIZATIONS; PROVIDING FOR EQUAL TREATMENT FOR ALL HUD PROGRAM PARTICIPANTS (FR–4782)

Priority: Other Significant

CFR Citation: 24 CFR 92; 24 CFR 570; 24 CFR 572; 24 CFR 574; 24 CFR 576; 24 CFR 582; 24 CFR 583; 24 CFR 585; ...

Completed:

Reason	Date	FR Cite
Final Action	09/30/03	68 FR 56396
Final Action Effective	10/30/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ryan Streeter
Phone: 202 708–2402

RIN: 2501–AC89

Department of Housing and Urban Development (HUD) — Prerule Stage
Office of Housing (OH)

1537. NONPROPRIETARY DATA SUBMITTED BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC) (FR-4796)

Priority: Other Significant

Legal Authority: 12 USC 1451 et seq; 12 USC 1716 to 1723i; 12 USC 4501 to 4641; 28 USC 2461 note; 42 USC 3535(d); 42 USC 3601 to 3619

CFR Citation: 24 CFR 81

Legal Deadline: None

Abstract: This notice sets forth a Final Order of the Department of Housing and Urban Development which provides that certain loan-level mortgage data submitted by the Federal National Mortgage Association (Fannie Mae, Government-Sponsored Enterprise, or GSE) and the Federal Home Loan Mortgage Corporation (Freddie Mac, Government-Sponsored Enterprise, or GSE) to HUD will be reclassified from proprietary to NON-proprietary and made available to the public.

Timetable:

Action	Date	FR Cite
Notice	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sandra Fostek, Director, Office of Government Sponsored Enterprise Oversight, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2224

RIN: 2502-AH96

Department of Housing and Urban Development (HUD) — Proposed Rule Stage
Office of Housing (OH)

1538. SINGLE FAMILY MORTGAGE; LENDER COMPLIANCE AND ACCOUNTABILITY (FR-4761)

Priority: Other Significant

Legal Authority: 12 USC 1703; 12 USC 1708(c); 12 USC 1708 (d); 12 USC 1709; 12 USC 1709(s); 12 USC 1715(b); 12 USC 1735; 12 UDC 1735(f)-14; 42 USC 3535(d)

CFR Citation: 24 CFR 25; 24 CFR 202

Legal Deadline: None

Abstract: The rule would allow the Department to be more restrictive as to who can be an owner or officer of an FHA-approved lending entity, better hold the owners and principal officers and loan officers accountable for noncompliance, clarify duties and responsibilities of all parties involved in the loan origination process, and update FHA's lender requirements to reflect current operating practices in the mortgage industry.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-1515

RIN: 2502-AH87

1539. ESTABLISHMENT OF LOAN OFFICER REGISTRY AND ESTABLISHMENT OF SERVICING APPROVAL AGREEMENTS (FR-4764)

Priority: Other Significant

Legal Authority: 12 USC 1703; 12 USC 1709; 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 202.5

Legal Deadline: None

Abstract: This rule would authorize the Department to establish a loan officer registry and a servicing approval agreement for FHA-approved lenders. The loan officer registry would limit registration of a loan officer to one FHA-approved lender at a time and give the Department the ability to monitor a loan officer. The rule would provide for sanctions against loan officers for poor performance. Also, the rule would clarify that a loan officers must be an employee of a lender. This rule also would create a servicing approval agreement that would require FHA approval. The Department believes that the servicing agreement would enhance its authority to supervise the servicing of FHA-insured mortgages and to take action against mortgagees that fail to perform required servicing functions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-1515

RIN: 2502-AH88

1540. DUTIES AND RESPONSIBILITIES OF LOAN CORRESPONDENTS AND SPONSORS (FR-4762)

Priority: Other Significant

Legal Authority: 12 USC 1703, 1709, 1710; 12 USC 1715b; 12 USC 1715y; 42 USC 3535(d)

CFR Citation: 24 CFR 202.2; 24 CFR 202.8(b)(7); 24 CFR 207.255(b)(11)

Legal Deadline: None

Abstract: This rule would describe the duties and responsibilities of FHA-approved loan correspondents and sponsors. The Department believes it necessary to delineate clearly the different responsibilities and duties of loan correspondents and sponsors to ensure compliance with FHA program requirements. The rule also would define the terms "origination" and "underwriting."

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip A. Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708–1515

RIN: 2502–AH90

1541. HUD MULTIFAMILY ACCELERATED PROCESSING QUALITY ASSURANCE ENFORCEMENT (FR–4836)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 207; 24 CFR 220; 24 CFR 221; 24 CFR 232

Legal Deadline: None

Abstract: This rule outlines the process for implementing quality control on FHA-insured multifamily housing loans processed using multifamily accelerated processing (MAP). It includes the various controls available for HUD when corrective action is necessary, including warning letters, limited denial of participation, MAP probation, MAP suspension, termination of MAP privileges, and the role of the MAP lender review board.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–1142

RIN: 2502–AI01

1542. DISTRIBUTIONS TO NONPROFIT OWNERS OF CERTAIN HUD-ASSISTED MULTIFAMILY RENTAL PROJECTS (FR–4602)

Priority: Other Significant

Legal Authority: 12 USC 1710 to 1715

CFR Citation: 24 CFR 880; 24 CFR 881; 24 CFR 883

Legal Deadline: None

Abstract: This rule adds an exception to HUD's current Section 8 regulations that prohibit any distributions to nonprofit owners of projects receiving project-based assistance. HUD may now permit distributions of surplus cash to owners of projects with expiring Section 8 project-based assistance contracts who agree to renew their contracts, if distributions are necessary to ensure continued participation of the owners in the Section 8 program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–3000

RIN: 2502–AH52

1543. • REVISED GUIDELINES FOR PREVIOUS PARTICIPATION CERTIFICATION (FR–4870)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1702 to 1715 2—21; 42 USC 3535(d)

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: The purpose of the Previous Participation Certification process is to assure that prospective participants in HUD's Multifamily Housing Programs have a history of carrying out their past financial, legal, and administrative obligations in a satisfactory and timely manner. This revision to 24 CFR 200.217(a) sets the effective date when all participants will be required to file their Previous Participation Certificates, via HUD's secure Internet site into the Active Partner Performance System web application.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William Hill, Director of Policy and Participations Standards Division, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–0614

RIN: 2502–AI10

1544. • HUD MULTIFAMILY RENTAL AND HEALTH CARE FACILITY CLOSING DOCUMENTS (FR–4883)

Priority: Other Significant

Legal Authority: 12 USC 1702 to 1715z–21; 42 USC 3535(d)

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: HUD is publishing for comment a comprehensive set of closing forms and documents for use under the FHA's Multifamily Accelerated Processing (MAP) initiative, and proposing conforming amendments to its multifamily insurance regulations. The purpose of this rule is to develop and adopt a set of instruments to offer the requisite protection to all parties to MAP transactions, consistent with modern real estate and mortgage lending laws and procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gains E. Hopkins, Office of General Counsel, Department of Housing and Urban Development
Phone: 202 708–4090

RIN: 2502–AI11

1545. • REVISIONS TO THE SINGLE FAMILY MORTGAGE INSURANCE PROGRAM (FR–4831)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: In response to a statutory change, this rule would revise certain regulations under Single Family Mortgage Insurance Program that govern actions by mortgagees with respect to mortgages in default. The rule also would amend other regulations under the Program to make them consistent with industry practices. The Department believes that these changes would help to increase the administrative efficiency of the Single Family Mortgage Insurance Program.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–1672

RIN: 2502–AI03

1546. • STATE INSTALLATION REQUIREMENTS (FR–4877)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535(d)

CFR Citation: 24 CFR 203.47f

Legal Deadline: None

Abstract: This rule would make manufactured homes installed to state established permanent installation requirements and manufacturer-approved permanent foundation requirements eligible for FHA mortgage insurance when accompanied by an engineer's certification that the dwelling was installed in accordance with the respective requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Maynard Curry, Office of Insured Single Family Housing, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2676

RIN: 2502–AI07

1547. • ACCELERATED CLAIMS AND ASSET DISPOSITION PROGRAM (FR–4887)

Priority: Other Significant

Legal Authority: 12 USC 1710

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule would make the Accelerated Claims Disposition (ACD) initiative a permanent HUD program. With the alignment of interests between the private and public sectors and with the selection of loans according to criteria for various asset disposition options, the ACD program will assist homeowners to keep their homes through innovative restructuring and disposition of the loans. The ACD program will be one of HUD's programs for processing the majority of its terminal claims and disposing of its financial assets.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kathleen Malone, Director, Asset Sales Staff, Office of Finance and Budget, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2625

RIN: 2502–AI14

1548. • HOME EQUITY CONVERSION MORTGAGES (HECM): LONG-TERM CARE INSURANCE (FR–4857)

Priority: Other Significant

Legal Authority: 12 USC 1715b; 12 USC 1715z to 1720; 42 USC 3535(d)

CFR Citation: 24 CFR 206

Legal Deadline: None

Abstract: This rule would implement a statutory amendment to the National Housing Act that waives payment by a mortgagor of the up-front mortgage insurance premium (MIP) payable at the time of insurance of the mortgage on the mortgagor's property. The amendment authorizes the waiver of the MIP only with respect to a home equity conversion mortgage (HECM) under which the total amount of all future payments to the mortgagor will be used for costs of a qualified long-term care insurance contract that covers the mortgagor or members of the household residing in the property that is subject to the mortgage.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AI04

1549. • COMPETITIVE SALES PROCEDURES — OWNER-OCCUPANT PRIORITY OVER NONPROFIT ORGANIZATIONS (FR–4858)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 42 USC 1441 to 1441a; 42 USC 1551a; 42 USC 3535(d)

CFR Citation: 24 CFR 291

Legal Deadline: None

Abstract: This rule would amend the existing regulations governing the calculation of the "net bid amount" on sales of HUD-owned single family properties to provide that an "acceptable offer" will be received from owner-occupant purchasers in a higher number of sales. This change will increase the number of sales going directly to owner-occupant purchasers as opposed to non-profit purchasers that, in turn, must resell to an owner-occupant.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James C Everett, Office of the Deputy Assistant Secretary for Single Family Housing, Department

of Housing and Urban Development, Office of Housing
Phone: 202 708–1672

RIN: 2502–AI05

1550. • DISCIPLINARY ACTIONS AGAINST HUD-QUALIFIED REAL ESTATE BROKERS (FR–4871)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 42 USC 1441 to 1441a; 42 USC 1551a; 42 USC 3535(d)

CFR Citation: 24 CFR 291

Legal Deadline: None

Abstract: The purpose of this rule is to address real estate broker participation in predatory lending practices targeted at Federal Housing Administration (FHA) borrowers. This rule includes measures to prevent property "flipping," inflated appraisals falsified gift letters, and fraudulent underwriting. This rule is similar to other removal rules for appraisers, 203K consultants, and nonprofits. (Each has a separate approval/removal rule.) It allows HUD to have a shortened procedure for real estate brokers than 24 CFR part 24 Suspension and Debarment procedures.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Wanda Sampedro, Deputy Director, Asset Management Division, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–1672

RIN: 2502–AI08

1551. • MANUFACTURED HOMES CONSTRUCTION SAFETY STANDARDS (FR–4886)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 3280

Legal Deadline: None

Abstract: This rule would allow for miscellaneous revisions to current construction standards and updates to standards incorporated by reference.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–6401

RIN: 2502–AI12

1552. • MANUFACTURED HOUSING ON—SITE CONSTRUCTION (FR–4885)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 3282

Legal Deadline: None

Abstract: This rule would allow limited on—site completion of new manufactured homes without requiring, under certain circumstances, manufacturers to obtain alternate construction approvals under the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–6401

RIN: 2502–AI13

1553. DISPOSITION OF HUD-OWNED SINGLE FAMILY ASSETS IN ASSET CONTROL AREAS (FR–4471)

Regulatory Plan: This entry is Seq. No. 67 in part II of this issue of the **Federal Register**.

RIN: 2502–AH40

1554. LIMITATION OF FHA-INSURED LOANS TO NONPROFIT AGENCIES (FR–4702)

Priority: Other Significant

Legal Authority: 12 USC 1709; 42 USC 3535(d)

CFR Citation: 24 CFR 200; 24 CFR 291

Legal Deadline: None

Abstract: This rule limits the time period that a nonprofit may have in its portfolio at any time 10 or more single family properties that have been acquired in any one fiscal year with FHA insured mortgages; prohibits nonprofits from obtaining FHA insurance for single family properties with more than two living units; and requires participating nonprofits to provide evidence of two years of IRS 501(c) status and two consecutive years of housing development experience within the previous five years.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Margaret Burns, Director, Program Support Division, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–0317

RIN: 2502–AH71

1555. DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY; OFFICER/TEACHER NEXT DOOR SALES PROGRAMS (FR–4712)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 42 USC 1441; 42 USC 1441a; 42 USC 1551a; 42 USC 3535(d)

CFR Citation: 24 CFR 291

Legal Deadline: None

Abstract: This rule codifies the policies and procedures concerning the Teacher Next Door (TND) Sales Program. The TND Sales Program has been operating since December 7, 1999, as a temporary program. This rule establishes the TND Sales Program as a permanent part of HUD's single family property disposition program. Through the TND Sales Program, HUD makes HUD-acquired single family properties available to eligible teachers for purchase at a discount from the list price. The TND Sales Program is closely modelled after HUD's Officer Next Door (OND) Sales Program, which provides the same benefits to eligible law enforcement officers. In addition to codifying the TND Sales Program, the rule would also clarify and revise certain requirements applicable to both the OND and TND Sales Programs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Tribal

Agency Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing, Room 9172
Phone: 202 708–1672

RIN: 2502–AH72

1556. UP—FRONT MORTGAGE INSURANCE PREMIUMS FOR LOANS INSURED UNDER 24 CFR 203(K) AND 234(C) OF THE NATIONAL HOUSING ACT (FR–4749)

Priority: Economically Significant

Legal Authority: 12 USC 1709(c); 42 USC 3535(d)

CFR Citation: 24 CFR 203.50; 24 CFR 203.284; 24 CFR 203.285

Legal Deadline: None

Abstract: This rule amends 24 CFR part 203 to require an up-front payment at the beginning of the loan of the insurance premium for loans insured under sections 203(k) and 234(c) of the National Housing Act. Formerly, these loans required only monthly premium payments.

Timetable:

Action	Date	FR Cite
NPRM	10/07/03	68 FR 58006
NPRM Comment Period End	12/08/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Beavers, Deputy Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH82

1557. HOME EQUITY CONVERSION MORTGAGES (HECM); COOPERATIVE HOUSING DEVELOPMENTS (FR–4777)

Priority: Other Significant

Legal Authority: 12 USC 1715b; 12 USC 1715z to 1720; 42 USC 3535(d)

CFR Citation: 24 CFR 203.43 (b)(1); 24 CFR 206.45 (b)

Legal Deadline: None

Abstract: This rule would expand the Home Equity Conversion Mortgage (HECM) program to cover approved cooperative housing developments. The rule would implement an amendment to the National Housing Act that authorizes HUD to insure HECM mortgages in cooperative housing developments. The expansion of the HECM program, in the Department's view, would contribute to the effort to broaden reverse mortgage financing opportunities for elderly homeowners.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH89

1558. E-ENDORSEMENT OF FHA-INSURED MORTGAGES (FR–4789)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715z–1

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule would implement the Federal Housing Administration (FHA) electronic endorsement program for all mortgages eligible for insurance endorsement under the Direct Endorsement program. The program will reduce FHA's insurance risk by collecting additional information at the loan-level to target loans and lenders for post-endorsement technical reviews, and by employing fraud prevention tools. The program will also reduce government costs derived from storing case binders.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Beavers, Deputy Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH95

1559. MANUFACTURED HOUSING INSTALLATION PROGRAM (FR–4812)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 3535(d); 42 USC 5401 et seq

CFR Citation: 24 CFR 3285

Legal Deadline: Final, Statutory, December 27, 2005, Final.

Abstract: By December 2005, HUD is required under the Manufactured Housing Improvement Act to establish and implement an installation program that includes: (1) Installation standards; (2) the training and licensing of manufactured home installers; and (3) inspection of the installation of manufactured homes. HUD's program will be implemented in States that do not have their own qualifying installation program.

Timetable:

Action	Date	FR Cite
ANPRM	03/10/03	68 FR 11448
ANPRM Comment Period End	04/24/03	
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–6401

RIN: 2502–AH97

1560. MANUFACTURED HOUSING DISPUTE RESOLUTION PROGRAM (FR–4813)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 5401 et seq

CFR Citation: 24 CFR 3286

Legal Deadline: Final, Statutory, December 27, 2005, Final.

Abstract: Under the Manufactured Housing Improvement Act, HUD is required to establish a program for the timely resolution of disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility for defects in manufactured homes, and is also required to establish a paragraph for the issuance of appropriate orders for the correction or repair of defects in manufactured homes.

Timetable:

Action	Date	FR Cite
ANPRM	03/10/03	68 FR 11452
ANPRM Comment Period End	04/24/03	
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–6401

RIN: 2502–AH98

1561. HOUSING COUNSELING PROGRAM (FR–4798)

Priority: Other Significant

Legal Authority: 12 USC 1701; 42 USC 3535(d)

CFR Citation: 24 CFR 214

Legal Deadline: None

Abstract: This rule would establish regulations for the Department's housing counseling program, as authorized by the Housing and Urban Development Act of 1968, and for which, the past several years, notices of funding availability are issued on an annual basis. Establishment of regulations would assist homeowners and tenants in improving their housing conditions and in meeting the responsibilities of homeownership and tenancy. This rule would adopt, without substantive change, the housing counseling program requirements with which grantees and housing counseling agencies are already familiar.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Edwards, Housing Program Specialist, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–0317

RIN: 2502–AH99

1562. DUE DILIGENCE/QUALITY CONTROL PLANS (FR–4846)

Priority: Other Significant

Legal Authority: 12 USC 1709(b); 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This regulation would require all FHA approved mortgagees and Loan Correspondents to have in place and implement a Quality Control Plan for the origination and/or servicing of FHA insured mortgages. The Quality Control Plan would have to contain a due diligence procedure to evaluate whole loans or servicing rights purchases. The due diligence would also include specific procedures for reviewing the source of the loans and require an analysis of portfolio risk through a loan level review and sampling methodology. Appropriate actions if a loan or a percentage of loans is not in compliance with FHA requirements would also be required.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–1672

RIN: 2502–AI02

Department of Housing and Urban Development (HUD) Final Rule Stage
Office of Housing (OH)

1563. SECTION 223F SUPPLEMENTAL COST CERTIFICATION (FR–4793)

Priority: Other Significant

Legal Authority: 12 USC 1701 to 1715z—20

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: This regulation will eliminate the supplemental cost certification requirement for FHA loans insured pursuant to section 223f where repairs are required after endorsement of the loan. This change will eliminate an unnecessary burden to the public. At closing/endorsement, an escrow is established sufficient to complete all repairs, and inspection of repairs is required. Once repairs are completed, the balance of escrow is returned to the owner by the mortgagee. If repairs are not completed, the mortgagee uses the balance of escrow.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–1142

RIN: 2502–AH93

1564. UPFRONT MORTGAGE INSURANCE PREMIUMS: REMITTANCE REQUIREMENTS (FR–4690)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 12 USC 1709

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule will change the remittance period of mortgage insurance premiums. The rule will also implement a more precise definition of when the remittance period begins.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54312
NPRM Comment Period End	10/21/02	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH67

1565. ELIGIBILITY OF ADJUSTABLE RATE MORTGAGES (ARMS) (FR–4745)

Priority: Other Significant

Legal Authority: 12 USC 1715z–16; 42 USC 3535(d)

CFR Citation: 24 CFR 203.49

Legal Deadline: None

Abstract: This rule will implement section 206 of HUD's FY 2002 Appropriations Act and enhance home buying opportunities through additional product offerings, "hybrid ARMs," tailored to the financial conditions of lenders including 7- and 10-year ARMS.

Timetable:

Action	Date	FR Cite
NPRM	03/11/03	68 FR 11730
NPRM Comment Period End	05/12/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH84

1566. ELIGIBILITY OF MORTGAGES ON HAWAIIAN HOMELANDS INSURED UNDER SECTION 247 (FR–4779)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule would amend the regulations that define the terms "native Hawaiian" and "eligibility of mortgagor" to conform them to the revised definitions enacted by a recent statutory change to the National Housing Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH92

1567. RENEWAL OF EXPIRING SECTION 8 PROJECT-BASED ASSISTANCE CONTRACT (FR–4551)

Priority: Other Significant

Legal Authority: 12 USC 1715z–1; 12 USC 1735f–19(b); 42 USC 1437f (c)(8); 42 USC 1437f(t) ; 42 USC 3535(d); 42 USC 1437f note; ...

CFR Citation: 24 CFR 401; 24 CFR 402

Legal Deadline: None

Abstract: This rule will replace interim part 402, which was published on September 11, 1998, together with interim part 401, which established the mark-to-market program. Subsequently HUD decided to separate the two parts and publish final part 401 separately, although the current rule makes minor conforming amendments to part 401 as well. Final part 402 will set forth the regulations governing the renewal of expiring Section 8 project-based assistance contracts, whether the project's rents are above or below market, except for renewals made as part of a mark-to-market restructuring plan under part 401.

Timetable:

Action	Date	FR Cite
Final Rule	04/00/04	
Interim Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–3000

RIN: 2502–AH47

1568. REVISIONS TO FHA CREDIT WATCH TERMINATION INITIATIVE (FR–4625)

Regulatory Plan: This entry is Seq. No. 68 in part II of this issue of the Federal Register.

RIN: 2502–AH60

1569. INSURANCE FOR MORTGAGES TO REFINANCE EXISTING HECMS (FR–4667)

Priority: Other Significant

Legal Authority: 12 USC 1715b; 12 USC 1715z to 1720; 42 USC 3535(d)

CFR Citation: 24 CFR 206

Legal Deadline: None

Abstract: On June 5, 2001, HUD published a proposed rule to implement certain statutory changes to the Home Equity Conversion Mortgage (HECM) Program made by section 201 of the American Homeownership and Economic Opportunity Act of 2000. The HECM Program enables older homeowners to withdraw some of the equity in their home in the form of payments for life, a fixed term, or at intervals through a line of credit. The statutory changes include authorization to offer mortgage insurance for refinancing of existing HECMs, and providing consumers with safeguards for such refinancing. This rule follows publication of the June 5, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule. In addition, this rule requests comments on a provision that implements another statutory change to the HECM program, specifically the initial mortgage insurance premium (MIP) that may be charged on an HECM refinancing.

Timetable:

Action	Date	FR Cite
NPRM	06/05/01	66 FR 30278
NPRM Comment Period End	07/05/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH63

1570. SECTION 236 EXCESS RENTAL CHARGES (FR–4689)

Priority: Other Significant

Legal Authority: 12 USC 1715z–1; 42 USC 3535(d)

CFR Citation: 24 CFR 236

Legal Deadline: None

Abstract: This rule would establish the terms and conditions to permit owners of projects receiving section 236 rental assistance to participate in retaining some or all of their excess charges for project use. In addition, it would permit owners to retain excess charges for non-project use after a determination by HUD that the project is well maintained housing in good condition and that the owner has not engaged in material adverse financial or managerial actions or omissions. This rule follows publication of an August 12, 2002, proposed rule and takes into consideration the public comments on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	08/12/02	67 FR 52526
NPRM Comment Period End	10/11/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janice Nimmer, Housing Project Manager, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–3944

RIN: 2502–AH68

1571. FHA INSPECTOR ROSTER (FR–4720)

Priority: Other Significant

Legal Authority: 12 USC 1709; 42 USC 3535(d)

CFR Citation: 24 CFR 200.170; 24 CFR 200.171; 24 CFR 200.172

Legal Deadline: None

Abstract: This rule establishes the criteria for inclusion on, and removal from, the FHA Inspector Roster. FHA officials will review the credentials of individuals desiring placement on this roster or recertification to the roster. The rule also identifies when a mortgagee must use the services of those individuals appearing on the roster. This rule follows publication of an October 10, 2002, proposed rule and takes into consideration the public comments on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/10/02	67 FR 63198
NPRM Comment Period End	12/09/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH76

1572. LENDER ACCOUNTABILITY FOR APPRAISALS (FR–4722)

Regulatory Plan: This entry is Seq. No. 69 in part II of this issue of the **Federal Register**.

RIN: 2502–AH78

1573. MIXED FINANCE DEVELOPMENT FOR SUPPORTIVE HOUSING FOR THE ELDERLY OR PERSONS WITH DISABILITIES AND OTHER CHANGES TO 24 CFR PART 891 (FR–4725)

Priority: Other Significant

Legal Authority: PL 106–569, sec 831 to 834 (Am. Homeownership & Economic Opportunity Act of 2000)

CFR Citation: 24 CFR 891

Legal Deadline: None

Abstract: This rule permits for-profit limited partners to partner with a nonprofit general partner in developing assisted housing for elderly and disabled using a mixed finance model, where HUD funding and non-Federal funding sources are combined in a single project. This rule would implement this program, providing for rules for the use of different funding sources, application procedures, procedures for the dispersal of funds, and other matters involved in program implementation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/01/03	68 FR 67316
Interim Final Rule Effective	12/31/03	
Interim Final Rule Comment Period End	01/30/04	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Aretha Williams, Housing Project Manager, Department of Housing and Urban Development, Office of Housing, Room 6142, Washington, DC 20410
Phone: 202 708–2866

RIN: 2502–AH83

1574. DISTRIBUTION OF TAX CREDIT PROCEEDS (FR–4792)

Priority: Other Significant

Legal Authority: 12 USC 1702 to 1715z–21; 42 USC 3535(d)

CFR Citation: 24 CFR 200.54(b)

Legal Deadline: None

Abstract: This rule amends 24 CFR 200.54(b) to provide that low-income housing tax credit syndication proceeds and historic tax credit syndication proceeds will be treated in the same manner as funds provided by a grant or loan from a Federal, State, or local government agency or instrumentality to the extent that these proceeds do not have to be fully disbursed before the disbursement of mortgage proceeds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/30/03	68 FR 44844
Interim Final Rule Effective	08/29/03	
Interim Final Rule Comment Period End	09/29/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–1142

RIN: 2502–AH91

1575. FHA TOTAL MORTGAGE SCORECARD (FR–4835)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule will codify policies and procedures that lenders and automated underwriting system vendors must observe to use the FHA Technology Open To All Lenders (TOTAL) mortgage scorecard. The TOTAL scorecard assesses the creditworthiness of prospective borrowers by evaluating certain mortgage application and credit variables that have been statistically proven to accurately predict the likelihood of default on an FHA-insured mortgage. Lenders using the TOTAL scorecard, in accordance with instructions described in the rule, will be afforded certain relief from existing documentation and credit policy requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/21/03	68 FR 65824
Interim Final Rule Effective	12/22/03	
Interim Final Rule Comment Period End	01/20/04	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AI00

Department of Housing and Urban Development (HUD) Office of Housing (OH)

Long-Term Actions

1576. FHA APPRAISER WATCH INITIATIVE (FR–4744)

Priority: Other Significant

Legal Authority: 12 USC 1701 to 1715z–18; 42 USC 3535(d)

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: This rule would establish HUD's regulations for the Federal Housing Administration (FHA) Appraiser Watch Initiative. Modeled on FHA's Credit Watch Termination Initiative, the proposed rule would provide for an electronic, fully computerized Appraiser Watch monitoring system. The Appraiser Watch Initiative establishes and monitors a performance standard that appraisers must meet to maintain their status on the Appraiser Roster. An appraiser may be removed from the Roster for not meeting the performance standard.

Timetable:

Action	Date	FR Cite
ANPRM	07/23/02	67 FR 48344
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH81

1577. RELEASE OF INFORMATION TO TENANTS AND OTHER PARTIES PURSUANT TO MAHRA (FR–4531)

Priority: Other Significant

Legal Authority: 42 USC 1437f note

CFR Citation: 24 CFR 401

Legal Deadline: None

Abstract: The rule is designed to provide tenants and other interested parties with access to the information needed for meaningful participation in the development of a restructuring plan, while ensuring appropriate protection of legitimate interest of project owners in confidential and proprietary business information.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paige Warren, Office of Multifamily Assistance Restructuring, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–0001

RIN: 2502–AH45

1578. RESPA—IMPROVING THE PROCESS FOR OBTAINING MORTGAGES (FR–4727)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 12 USC 2601 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 3500

Legal Deadline: None

Abstract: This rule would establish a new framework for borrower disclosures under RESPA that would: (1) address the issue of mortgage broker compensation, specifically the problem of lender payments to mortgage brokers, by fundamentally changing the way in which such lender payments in brokered mortgage transactions are recorded and reported to borrowers; (2) significantly improve HUD's Good Faith Estimate (GFE) settlement cost disclosure, and amend HUD's related RESPA regulations, to make the GFE firmer and more usable, to facilitate shopping for mortgages, and to avoid unexpected charges to borrowers at settlement; and (3) remove regulatory barriers to allow guaranteed packages of settlement services and mortgages to be made available to borrowers, to make borrower shopping for mortgages easier and further reduce settlement costs.

Timetable:

Action	Date	FR Cite
NPRM	07/29/02	67 FR 49134
NPRM Comment Period End	10/28/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Ivy Jackson, Acting Director, Interstate Land Sales and RESPA Division, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–0502

RIN: 2502–AH85

1579. AMENDMENTS TO THE SECTION 203(K) REHABILITATION LOAN INSURANCE PROGRAM (FR–4701)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535 (d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: On August 21, 2002 (67 FR 54308), HUD published a proposed rule for public comment to amend HUD's regulations for the Section 203(k) Rehabilitation Loan Insurance Program (203(k) Program). The 203(k) Program is the Federal Housing Administration's (FHA's) primary program for the rehabilitation and repair of single family properties. First, the proposed rule would limit 203(k)rehabilitation loan insurance to one-unit structures. The proposed rule would also establish a cap on the total cost of rehabilitation.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54308
NPRM Comment Period End	10/21/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–2121

RIN: 2502–AH73

1580. MARK-TO-MARKET PROGRAM AMENDMENTS (FR–4751)

Priority: Other Significant

Legal Authority: PL 107–116, title VI

CFR Citation: 24 CFR 401

Legal Deadline: None

Abstract: This rule would make conforming changes to the mark-to-market regulations as necessary to fully implement the Mark-to-Market Program Extension Act of 2001, enacted as title VI of Pub. L. 107–116.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marilyn E. Carlson, Senior Advisor—FHA, Office of Multifamily Housing Asset Restructuring, Department of Housing and Urban Development, Office of Housing
Phone: 202 708–0001

RIN: 2502–AH86

Department of Housing and Urban Development (HUD) Completed Actions

Office of Housing (OH)

1581. APPRAISER QUALIFICATIONS FOR PLACEMENT ON FHA SINGLE FAMILY APPRAISER ROSTER (FR–4620)

Priority: Other Significant

CFR Citation: 24 CFR 200

Completed:

Reason	Date	FR Cite
Final Action	05/16/03	68 FR 26946
Final Action Effective	06/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Vance Morris
Phone: 202 708–2121

RIN: 2502–AH59

HUD—OH **Completed Actions**

1582. PROHIBITION OF PROPERTY FLIPPING IN HUD'S SINGLE FAMILY MORTGAGE INSURANCE PROGRAMS (FR–4615)

Priority: Other Significant

CFR Citation: 24 CFR 203

Completed:

Reason	Date	FR Cite
Final Action	05/01/03	68 FR 23370
Final Action Effective	06/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Vance Morris
Phone: 202 708–2121

RIN: 2502–AH57

Department of Housing and Urban Development (HUD)
Office of Community Planning and Development (CPD)

Proposed Rule Stage

1583. SUPPORTIVE HOUSING PROGRAM (FR–4616)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11381; 42 USC 11389; 42 USC 3535(d)

CFR Citation: 24 CFR 583

Legal Deadline: None

Abstract: The Department of Housing and Urban Development is proposing to amend the Supportive Housing Program regulations. The regulations will be updated to clarify existing program requirements and to add new program requirements in accordance with recent statutory changes including requirements for some local matching funds and for permanent housing. Additionally, this rule will make the Supportive Housing Program regulations clearer and allow for the full flexibility of the McKinney Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: John D. Garrity, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708–4300

RIN: 2506–AC07

1584. • EMPOWERMENT ZONES: RESIDENT BENEFIT AND ECONOMIC DEVELOPMENT STANDARDS FOR GRANTS (FR–4853)

Priority: Other Significant

Legal Authority: 26 USC 1391; 42 USC 3535(d)

CFR Citation: 24 CFR 598

Legal Deadline: None

Abstract: This rule proposes to establish review standards for determining whether grant funds provided to Empowerment Zones will provide a sufficient level of benefit to residents and also be used in conjunction with economic development activities consistent with the strategic plan for each Empowerment Zone.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

Agency Contact: John Haines, Empowerment Zone Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708–6339

RIN: 2506–AC16

1585. HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA) (FR–4708)

Priority: Other Significant

Legal Authority: 42 USC 12901 et seq

CFR Citation: 24 CFR 574

Legal Deadline: None

Abstract: The Housing Opportunities for Persons With AIDS (HOPWA) program was authorized in 1992 by title VIII, subtitle D, of the Cranston-Gonzalez National Affordable Housing Act/the AIDS Housing Opportunity Act. The program is designed to provide States and localities with resources and incentives to provide long-term comprehensive strategies for meeting the housing needs of persons with HIV/AIDS. This update to the regulation is intended to respond to the increased program knowledge in administering housing programs for persons living with HIV/AIDS.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Vos, Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708–1934

RIN: 2506–AC11

1586. COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM REVISION OF CDBG ELIGIBILITY AND NATIONAL OBJECTIVE REGULATIONS (FR–4699)

Regulatory Plan: This entry is Seq. No. 70 in part II of this issue of the **Federal Register**.

RIN: 2506–AC12

Department of Housing and Urban Development (HUD) Final Rule Stage
Office of Community Planning and Development (CPD)

1587. CDBG PROGRAM FOR STATES; COMMUNITY REVITALIZATION STRATEGY REQUIREMENTS AND MISCELLANEOUS TECHNICAL AMENDMENTS (FR-4081)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11331 to 11388; 42 USC 12701 to 12711; 42 USC 12741 to 12756; 42 USC 12901 to 12912; 42 USC 3535(d); 42 USC 3601 to 3619; 42 USC 5300 to 5320

CFR Citation: 24 CFR 570; 24 CFR 91

Legal Deadline: None

Abstract: This rule integrates the Community Revitalization Strategies concept with the State CDBG program. This concept will provide States additional flexibility in meeting certain requirements regarding the program's national objectives and public benefit. This rule also makes several technical amendments to correct errors from previous rulemaking and to enhance and clarify the regulation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/22/96	61 FR 54914
Interim Final Rule Effective	11/21/96	
Interim Final Rule Comment Period End	02/16/97	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steve Johnson, Director, State and Small Cities Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1322

RIN: 2506-AB83

1588. • MODIFICATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT DEFINITION FOR METROPOLITAN CITY AND OTHER CONFORMING AMENDMENTS (FR-4872)

Priority: Other Significant

Legal Authority: 42 USC 5301 to 5320; 42 USC 3535(d)

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: This rule revises the Community Development Block Grant (CDBG) program regulations by replacing the obsolete term "central city" with a new term "principal city" in the definition of "metropolitan city" and other CDBG regulations referencing "central city." The described revisions are necessary because of the recent changes to the Office of Management and Budget's (OMB) Standards for defining Metropolitan Statistical Areas (MSAs) and the announcement in 2003 of new definitions for those areas using Census 2000 data. The rule updates the affected CDBG program regulations so that the terminology used by HUD is consistent with OMB standards and the purposes of the Housing and Community Development Act of 1974, as amended.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Valerie Browne, Office of Entitlement Communities Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1577

RIN: 2506-AC15

1589. PROHIBITION ON USE OF CDBG ASSISTANCE FOR JOB-PIRATING ACTIVITIES (FR-4556)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 5301 to 5320

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: This rule will implement section 588 of the Quality Housing and Work Responsibility Act of 1998 by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Section 588 prohibits State and local governments from using CDBG funds for "job pirating" activities that are likely to result in significant job loss. Job pirating, in this context, refers to the use of CDBG funds to lure or attract a business and its jobs from one community to another community. The rule follows publication of an October 24, 2000, proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/24/00	65 FR 63756
NPRM Comment Period End	12/26/00	
Interim Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Richard J. Kennedy, Office of Block Grant Assistance, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-3587

RIN: 2506-AC04

Department of Housing and Urban Development (HUD) Completed Actions
Office of Community Planning and Development (CPD)

1590. HOPWA SHALLOW RENTAL ASSISTANCE (FR-4822)

Priority: Other Significant

CFR Citation: 24 CFR 574

Completed:

Reason	Date	FR Cite
Withdrawn	09/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Vos
Phone: 202 708-1934

RIN: 2506-AC14

1591. SUPPORTIVE HOUSING PROGRAM—INCREASING OPERATING COST PERCENTAGE (FR–4576)

Priority: Substantive, Nonsignificant

CFR Citation: 24 CFR 583

Completed:

Reason	Date	FR Cite
Withdrawn	09/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: John D. Garrity
Phone: 202 708–4300

RIN: 2506–AC05

1592. DESIGNATION OF RENEWAL COMMUNITIES AND THIRD ROUND EMPOWERMENT ZONES (FR–4663)

Priority: Other Significant

CFR Citation: 24 CFR 598; 24 CFR 599

Completed:

Reason	Date	FR Cite
Final Action	10/03/03	68 FR 57604
Final Action Effective	11/03/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Pamela Glekas
Phone: 202 708–6339

RIN: 2506–AC09

Department of Housing and Urban Development (HUD)
Government National Mortgage Association (GNMA)

Proposed Rule Stage

1593. • REMOVAL OF REGULATION SPECIFYING MINIMUM FACE VALUE OF GINNIE MAE SECURITIES (FR–4856)

Priority: Other Significant

Legal Authority: 12 USC 1721(g); 12 USC 1723(a); 42 USC 3535(d)

CFR Citation: 24 CFR 320

Legal Deadline: None

Abstract: This rule would remove the regulation that specifies the current minimum face amount of any security issued by the Government National Mortgage Association (Ginnie Mae). The proposed removal of the regulation would allow Ginnie Mae to offer alternative denominations of its securities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas R. Weakland, Vice President, Department of Housing and Urban Development, Government National Mortgage Association
Phone: 202 708–2884

RIN: 2503–AA17

Department of Housing and Urban Development (HUD)
Office of Fair Housing and Equal Opportunity (FHEO)

Proposed Rule Stage

1594. CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES (FR–4748)

Priority: Other Significant

Legal Authority: 42 USC 3601 to 3619; 42 USC 3535(d)

CFR Citation: 24 CFR 115

Legal Deadline: None

Abstract: The Fair Housing Assistance Program (FHAP) provides assistance to State and local fair housing enforcement agencies to build an intergovernmental enforcement structure to further fair housing. HUD provides assistance to State and local fair housing enforcement agencies that administer fair housing laws that are substantially equivalent to the Fair Housing Act (title VIII of the Civil Rights Act of 1968; 42 USC 3601–3619). The FHAP program provides support for complaint processing, training, technical assistance, education and outreach, data and information systems, and other activities that will further fair housing within the State or local agency's jurisdiction. HUD intends to update its part 115 regulations with respect to both the certification of substantially equivalent agencies and the overall administration of the FHAP program.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Myron Newry, Director, FHIP/FHAP Support Division, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708–0800

RIN: 2529–AA90

Department of Housing and Urban Development (HUD) Final Rule Stage
Office of Fair Housing and Equal Opportunity (FHEO)

1595. FAIR HOUSING ACT REGULATION; CONFORMING AMENDMENT; UPDATE TO REFLECT CURRENT EDITION OF AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) (FR-4554)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3535(d); 42 USC 3600 to 3620

CFR Citation: 24 CFR 100

Legal Deadline: None

Abstract: Subpart D of HUD's Fair Housing Act regulations (24 CFR part 100), which address the accessibility requirements of the Fair Housing Act, has not been updated since 1991. These regulations reference compliance with the building standards of the American National Standards Institute (ANSI), but the reference to the ANSI edition of 1986 has long been superseded by two more recent editions of 1992 and 1998. Although parties subject to the Fair Housing Act regulations may continue to refer to the 1986 edition of ANSI, the regulations need to be updated to also offer compliance with the 1992 and 1998 editions as a safe harbor for compliance. This rule will update the regulations to provide that compliance with the appropriate requirements of the 1986, 1992, or 1998 editions of ANSI A117.1 suffices to satisfy the accessibility requirements of the Fair Housing Act.

Timetable:

Action	Date	FR Cite
Notice	03/23/00	65 FR 15740
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Cheryl Kent, Special Advisor for Disability Policy, Office of Enforcement, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-2333

RIN: 2529-AA88

Department of Housing and Urban Development (HUD) Long-Term Actions
Office of Fair Housing and Equal Opportunity (FHEO)

1596. ECONOMIC OPPORTUNITIES FOR LOW- AND VERY-LOW-INCOME PERSONS (FR-2898)

Priority: Other Significant

Legal Authority: 12 USC 1701u; 42 USC 1450; 42 USC 3301; 42 USC 3535(d)

CFR Citation: 24 CFR 135

Legal Deadline: None

Abstract: The regulations at 24 CFR part 135 were revised substantially to incorporate the statutory amendments in the Housing and Community Development Act of 1992, to reflect certain changes in the design of the Department's programs that are subject to the section 3 regulations, to clarify the obligations of individuals and entities subject to the requirements of section 3, and to simplify the Department's administration of section 3 requirements. The final rule may make further revisions in response to public comment.

Timetable:

Action	Date	FR Cite
NPRM	10/08/93	58 FR 52534
Notice	11/09/93	58 FR 59423
Notice Comment Period End	12/08/93	
Interim Final Rule	06/30/94	59 FR 33886
Interim Final Rule Effective	08/01/94	
Interim Final Rule Comment Period End	08/29/94	
Extension of Effective Period of Interim Rule	05/31/95	60 FR 28325
Extension Effective	06/30/96	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: Linda J Thompson, Office of Economic Opportunity, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-3685

RIN: 2529-AA49

Department of Housing and Urban Development (HUD) Completed Actions
Office of Fair Housing and Equal Opportunity (FHEO)

1597. FAIR HOUSING ACT REGULATIONS AMENDMENTS: STANDARDS GOVERNING SEXUAL HARASSMENT (FR-4597)

Priority: Other Significant

CFR Citation: 24 CFR 100

Completed:

Reason	Date	FR Cite
Withdrawn	09/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Enzel
Phone: 202 619—8046

RIN: 2529-AA89

Department of Housing and Urban Development (HUD)
Office of Administration (OA)

Proposed Rule Stage

1598. HUD ACQUISITION REGULATION (FR-4705)

Priority: Other Significant

Legal Authority: 40 USC 486(c); 41 USC 251; 42 USC 3535(d)

CFR Citation: 48 CFR 2401

Legal Deadline: None

Abstract: This rule will implement miscellaneous changes to the HUD Acquisition Regulation (HUDAR) including but not limited to corrections of regulatory citations due to revisions made to the Federal Acquisition Regulation (FAR) since the last publication of the HUDAR; revisions reflecting changes in the Department's requirements regarding organizational conflict of interest, ratification of unauthorized commitments; and disclosure of information provided to contractors.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edward L. Girovasi Jr., Director, Policy & Field Operations Division, Office of the Chief Procurement Officer, Department of Housing and Urban Development, Office of Administration
Phone: 202 708-0294

RIN: 2535-AA26

Department of Housing and Urban Development (HUD)
Office of Public and Indian Housing (PIH)

Proposed Rule Stage

1599. PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS (FR-4598)

Priority: Other Significant

Legal Authority: 42 USC 1437p; 42 USC 3535(d)

CFR Citation: 24 CFR 970

Legal Deadline: None

Abstract: This rule will revise HUD's regulations regarding demolition and disposition of public housing projects, in accordance with section 531 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276). This rule will establish the general and specific requirements for HUD approval of demolition and disposition applications, relocation of residents, resident participation in the form of consultation and opportunity to purchase, new requirements regarding resident relocation, the PHA Plan and local government consultation and a new authority for a PHA to demolish a small number of their units without a formal application under certain circumstances, referred to as "de minimis" demolition.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ainars Rodins, Director, Special Applications Center, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 312 353-6236

RIN: 2577-AC20

1600. CONVERSION OF DEVELOPMENTS FROM PUBLIC HOUSING STOCK; METHODOLOGY FOR COMPARING COSTS OF PUBLIC HOUSING AND TENANT-BASED ASSISTANCE (FR-4718)

Priority: Other Significant

Legal Authority: 42 USC 1437t; 1437z-5; 3535(d)

CFR Citation: 24 CFR 972

Legal Deadline: None

Abstract: This rule would establish the cost methodology that Public Housing Agencies (PHAs) must use under HUD's programs for the required and voluntary conversion of public housing developments to tenant-based assistance. Both programs require that PHAs, before undertaking any conversion activity, compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing. The cost methodology would be codified as an appendix to HUD's regulations for the required and voluntary conversion programs at 24 CFR part 972. The cost methodology was originally contained in HUD's July 23, 1999, proposed rule on voluntary conversions (although the methodology also applies to required conversions). HUD has decided to significantly revise the proposed cost methodology, based both on the public comments received on the proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD has decided to issue this new rule, which will provide the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

Timetable:

Action	Date	FR Cite
NPRM	09/17/03	68 FR 54624
NPRM Comment Period End	11/17/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bessy Kong, Acting Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577-AC33

1601. OPERATING FUNDS FOR DEBT SERVICE (FR-4843)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1437g; 42 USC 3535(d)

CFR Citation: 24 CFR 990

Legal Deadline: None

Abstract: The Quality Housing and Work Responsibility Act of 1998 authorized Public Housing Agencies to use public housing operating funds to repay debt service on private loans. This regulation would implement that provision.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: Bessy Kong, Acting Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708–0713

RIN: 2577–AC49

1602. NAHASDA HOUSING ASSISTANCE FOR NATIVE HAWAIIANS (FR–4668)

Priority: Other Significant

Legal Authority: 12 USC 1715z–13a; 25 USC 4101 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 1006; 24 CFR 1007

Legal Deadline: Final, Statutory, October 1, 2001, Final.
Section 807 of the American Homeownership and Economic Opportunity Act of 2001 requires that HUD issue final regulations by October 1, 2001.

Abstract: This rule implements the provisions contained in title V, subtitle B of the American Homeownership and Economic Opportunity Act of 2000. These provisions add a new title VIII to the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. Under NAHASDA, HUD provides grants, loan guarantees, and technical assistance to Indian tribes and Alaska Native villages for the development and operation of low—income housing in Indian areas. New title VIII expands the scope of NAHASDA to include housing assistance to Native Hawaiians, and establishes statutory requirements specific to Native Hawaiian assistance. Part 1006 of this rule will implement the Native Hawaiian Housing Block Grant Program. Part 1007 will implement the Native Hawaiian Housing Loan Guarantee Program. HUD will publish both a final rule of the interim rule, and a separate proposed rule with additional program administration requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/13/02	67 FR 40774
Interim Final Rule Effective	07/15/02	
Interim Final Rule Comment Period End	08/12/02	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 401–7914

RIN: 2577–AC27

1603. • CAPITAL FUND PROGRAM (FR–4880)

Regulatory Plan: This entry is Seq. No. 71 in part II of this issue of the **Federal Register**.

RIN: 2577–AC50

1604. • SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (FR–4884)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 985

Legal Deadline: None

Abstract: This rule will revise the way HUD measures PHAs. Many self-certified indicators will be eliminated. The Section 8 Management Assessment Program (SEMAP) certification submitted by the PHA would be eliminated. All remaining indicators would be measured through PIC and other standards sources of data. SEMAP would renamed the Voucher Management Assessment Program (VMAP).

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gerald J. Benoit, Director, Housing Voucher Management and Operations, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708–0477

RIN: 2577–AC52

1605. PROJECT-BASED VOUCHER PROGRAM (FR–4636)

Priority: Other Significant

Legal Authority: 42 USC 1437f(o); 42 USC 3535(d)

CFR Citation: 24 CFR 983

Legal Deadline: None

Abstract: The project-based Voucher Program replaces the project-based Certificate Program that was in existence for many years. Under the project-based Voucher Program, HUD pays rental assistance for eligible families to live in specific housing developments or units. A public housing agency (PHA) that administers a tenant-based housing choice voucher program may "project-base" up to 20 percent of voucher units funded by HUD. The project-based Program was authorized by law in 1998, as part of the statutory merger of the certificate and voucher tenant-based programs. In 2000, the Congress substantially revised the project-based voucher law. The law made a number of changes including permitting a PHA to pay project-based assistance for a term of up to 10 years, permitting a PHA to provide project-based assistance for existing housing that does not need rehabilitation, as well as for newly constructed or rehabilitated housing, and allowing a family to move from a project-based voucher unit after one year and transfer to the PHA's tenant—based voucher program.

Timetable:

Action	Date	FR Cite
Notice	01/16/01	66 FR 3605
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Agency Contact: Gerald J. Benoit, Director, Housing Voucher Management and Operations, Department of Housing

and Urban Development, Office of Public and Indian Housing
Phone: 202 708–0477

RIN: 2577–AC25

1606. RESIDENT PARTICIPATION IN PUBLIC HOUSING (FR–4657)

Priority: Other Significant

Legal Authority: 42 USC 1437c—1; 42 USC 1437r; 42 USC 1437t; 42 USC 1437z–6; 42 USC 3535(d); 42 USC 1437d; 42 USC 1437g; 42 USC 1437l; 42 USC 1437

CFR Citation: 24 CFR 964

Legal Deadline: None

Abstract: This rule would update existing provisions of 24 CFR 964 and incorporate new provisions of the Quality Housing and Work Responsibility Act of 1998 related to resident/tenant participation. In particular, the rule would establish policies, procedures, and requirements for participating in the Resident Opportunities and self-Sufficiency (ROSS) Program. Additionally, the proposed rule contains expanded definitions and other general information sections as part of HUD's long-standing efforts to support resident organizations and resident self-sufficiency.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Stephanie Avery, Acting Director, Supportive Services and Grant Programs, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708–1380

RIN: 2577–AC26

1607. IMPLEMENTATION OF STATUTORY REVISIONS TO NAHASDA (FR–4750)

Priority: Other Significant

Legal Authority: 25 USC 4101 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 1000

Legal Deadline: None

Abstract: This rule would implement statutory amendments made to the Native American Housing Assistance and self-Determination Act of 1996 (25 USC 4101 et seq.) (NAHASDA) by the American Homeownership and Economic Opportunity Act (Pub. L. 106–569, approved December 27, 2000) and the Omnibus Indian Advancement Act (Pub. L. 106–568, approved December 27, 2000). (With minor exceptions, these two laws made identical amendments to NAHASDA.) The rule will update the NAHASDA regulations to conform to self-implementing statutory amendments not reflected in the regulations, as well as certain regulatory revisions related to the Indian Housing Block Grant formula that will occur as the result of negotiated rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Tribal

Agency Contact: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 401–7914

RIN: 2577–AC37

1608. TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM (FR–4838)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982; 24 CFR 985

Legal Deadline: None

Abstract: This rule will revise the Housing Choice Voucher Program to reflect recent legislation covering the use of vouchers in assisted living facilities, use of enhanced vouchers, the calculation of renewal funding and other updating of the regulations to clarify or expand the policy in the regulation based on recent experience in program administration.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Agency Contact: Gerald J. Benoit, Director, Housing Voucher Management and Operations, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708–0477

RIN: 2577–AC44

Department of Housing and Urban Development (HUD) Office of Public and Indian Housing (PIH)

Final Rule Stage

1609. PHA DISCRETION IN TREATMENT OF OVER—INCOME FAMILIES (FR–4824)

Priority: Other Significant

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 960

Legal Deadline: None

Abstract: This rule permits PHAs to evict over—income tenants, subject to certain statutory exemptions permitting in-place tenants to increase their income without penalty.

Timetable:

Action	Date	FR Cite
NPRM	08/01/03	68 FR 45734
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo, Senior Program Manager, Public Housing Occupancy and Management Division, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 7th Street SW., Washington, DC 20410

Phone: 202 708–0744

RIN: 2577–AC42

1610. HOUSING CHOICE VOUCHER HOMEOWNERSHIP PROGRAM; PILOT PROGRAM FOR HOMEOWNERSHIP ASSISTANCE FOR DISABLED FAMILIES (FR–4661)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule follows publication of a June 22, 2001, interim rule, and takes into consideration the public comments received on the interim rule. The June 22, 2001, interim rule established regulations to implement the three-year pilot program authorized by section 302 of the American Homeownership and Economic Opportunity Act of 2000. A public housing agency (PHA) may elect to provide homeownership assistance to a disabled family under the pilot program, rather than under the Housing Choice Voucher Program homeownership option. Under the pilot program, a PHA provides homeownership assistance to a disabled family residing in a home purchased and owned by one or more members of the family. In addition to the amendments implementing section 302, the interim rule also made several clarifying and technical amendments to the regulations for the Housing Choice Voucher program homeownership option.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/22/01	66 FR 33610
Interim Final Rule Effective	07/23/01	
Interim Final Rule Comment Period End	08/21/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gerald J. Benoit, Director, Housing Voucher Management and Operations, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708–0477

RIN: 2577–AC24

1611. MINIMUM FUNDING UNDER THE INDIAN HOUSING BLOCK GRANT PROGRAM (FR–4825)

Priority: Other Significant

Legal Authority: 25 USC 4101 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 1000

Legal Deadline: None

Abstract: This rule revises the current regulation to extend the period for which an Indian tribe may receive a minimum grant amount under the need component of the Indian Housing Block Grant formula. The minimum funding provision in the regulation expired on September 30, 2002. This rule authorizes the extension of the minimum funding provision under the need component through fiscal year 2003 to avoid hardship to the affected tribes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/24/03	68 FR 37660
Interim Final Rule Effective	07/24/03	
Interim Final Rule Comment Period End	08/25/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 401–7914

RIN: 2577–AC43

Department of Housing and Urban Development (HUD) Long-Term Actions
Office of Public and Indian Housing (PIH)

1612. • OPERATING FUND ALLOCATION FORMULA (FR–4874)

Priority: Other Significant

Legal Authority: 42 USC 1437g; 42 USC 3535(d)

CFR Citation: 24 CFR 990

Legal Deadline: None

Abstract: This rule will revise the formula system for allocating funds to public housing agencies for their operation and management of public housing. The current formula system was developed pursuant to section 519 of the Quality Housing and Work Responsibility Act of 1998 (title V of Public Law 105–276, approved October 21, 1998). That statute amended section 9 of the United States Housing Act of 1937 to require development of a new formula that would change the method of determining the payment of operating subsidies to public housing agencies.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Chris Kubacki, Funding and Financial Management Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708–4932

RIN: 2577–AC51

1613. DESIGNATED HOUSING (FR–4755)

Priority: Other Significant

CFR Citation: 24 CFR 945

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo
Phone: 202 708–0744

RIN: 2577–AC36

1614. UP-FRONT INCOME VERIFICATION FOR THE PUBLIC HOUSING, HOUSING CHOICE VOUCHER, PROJECT-BASED CERTIFICATE, AND SECTION 8 MODERATE REHABILITATION PROGRAMS (FR–4804)

Priority: Other Significant

CFR Citation: 24 CFR 882; 24 CFR 960; 24 CFR 982; 24 CFR 983

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Patricia Arnaudo
Phone: 202 708–0744

RIN: 2577–AC41

1615. REQUIRED CONVERSION OF DEVELOPMENT FROM PUBLIC HOUSING STOCK (FR–4475)

Priority: Other Significant

CFR Citation: 24 CFR 972

Completed:

Reason	Date	FR Cite
Final Action	09/17/03	68 FR 54600
Final Action Effective	03/15/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bessy Kong
Phone: 202 708–0713

RIN: 2577–AC01

1616. VOLUNTARY CONVERSION OF DEVELOPMENTS FROM PUBLIC HOUSING STOCK (FR–4476)

Priority: Other Significant

CFR Citation: 24 CFR 972

Completed:

Reason	Date	FR Cite
Final Action	09/17/03	68 FR 54612
Final Action Effective	03/15/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bessy Kong
Phone: 202 708–0713

RIN: 2577–AC02

1617. HOUSING CHOICE VOUCHER PROGRAM; EXPANSION OF PAYMENT STANDARDS PROTECTION (FR–4586)

Priority: Other Significant

CFR Citation: 24 CFR 982

Completed:

Reason	Date	FR Cite
Merged With RIN 2501—AC75 (FR–4606)	09/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gerald J. Benoit
Phone: 202 708–0477

RIN: 2577–AC18

1618. PROCEDURES FOR HQS INSPECTIONS IN THE HOUSING CHOICE VOUCHER PROGRAM (FR–4839)

Priority: Other Significant

CFR Citation: 24 CFR 982

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit
Phone: 202 708–0477

RIN: 2577–AC45

1619. SELF-SUFFICIENCY PERFORMANCE INDICATORS (FR–4841)

Priority: Other Significant

CFR Citation: 24 CFR 984

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: William Russell
Phone: 202 708–1380

RIN: 2577–AC47

1620. OPERATING FUND ALLOCATION FORMULA (FR–4425)

Priority: Other Significant

CFR Citation: 24 CFR 990

Completed:

Reason	Date	FR Cite
Merged With RIN 2577—AC51 (FR–4874)	09/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Kubacki
Phone: 202 708–4932

RIN: 2577–AB88

1621. PUBLIC HOUSING CAPITAL FUND PROGRAM (FR–4507)

Priority: Other Significant

CFR Citation: 24 CFR 905

Completed:

Reason	Date	FR Cite
Final Action	08/01/03	68 FR 45730
Final Action Effective	09/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William Thorson
Phone: 202 708–1640

RIN: 2577–AC16

1622. CHANGES TO THE PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)(FR–4707)

Priority: Other Significant

CFR Citation: 24 CFR 902

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Wanda Funk
Phone: 202 708–4932

RIN: 2577–AC32

1623. DEREGULATION FOR SMALL PUBLIC HOUSING AGENCIES (FR–4753)

Priority: Other Significant

CFR Citation: 24 CFR 902; 24 CFR 903; 24 CFR 985

Completed:

Reason	Date	FR Cite
Final Action	06/24/03	68 FR 37664
Final Action Effective	07/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: Bessy Kong
Phone: 202 708–0713

RIN: 2577–AC34

1624. HOUSING CHOICE VOUCHER PROGRAM HOMEOWNERSHIP OPTION: ELIGIBILITY OF PHA—OWNED OR CONTROLLED UNITS (FR–4759)

Priority: Other Significant

CFR Citation: 24 CFR 982

Completed:

Reason	Date	FR Cite
Final Action	09/17/03	68 FR 54335
Final Action Effective	10/17/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Gerald J. Benoit
Phone: 202 708–0477

RIN: 2577–AC39

1625. PHASE-OUT OF OPERATING SUBSIDY FOR UNITS APPROVED FOR DEMOLITION/DISPOSITION (FR–4840)

Priority: Other Significant

CFR Citation: 24 CFR 990

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: William Russell
Phone: 202 708–1380

RIN: 2577–AC46

1626. CALCULATION OF VACANT UNITS—OPERATING SUBSIDY (FR–4842)

Priority: Other Significant

CFR Citation: 24 CFR 990

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: William Russell
Phone: 202 708–1380

RIN: 2577–AC48

[FR Doc. 03–27070 Filed 12–19–03; 8:45 am]

BILLING CODE 4210–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XI

Department of the Interior

Semiannual Regulatory Agenda

DEPARTMENT OF THE INTERIOR (DOI)

DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Ch. I

30 CFR Chs. II and VII

36 CFR Ch. I

43 CFR Subtitle A, Chs. I and II

48 CFR Ch. 14

50 CFR Chs. I and IV

Semiannual Regulatory Agenda

AGENCY: Office of the Secretary, Interior.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for review or development between fall 2003 and spring 2004. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

ADDRESSES: Unless otherwise indicated, all agency contacts are located at the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You should direct all comments and inquiries with regard to these rules to the appropriate agency contact. You should direct general comments relating to the agenda to the Office of Executive Secretariat, Department of the Interior, at the address above or on 202-208-5257 or 202-208-3071.

SUPPLEMENTARY INFORMATION: With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have such effects.

For this edition of the Department's regulatory agenda, we have included the most important significant regulatory actions in the Regulatory Plan, which appears in part II of today's **Federal Register**. The table of contents below lists the Regulatory Plan entries and denotes them by a bracketed bold reference that directs the reader to the appropriate Sequence Number in part II.

Date: September 23, 2003.

Richard A. Stephan,

Federal Register Liaison Officer.

Assistant Secretary for Policy, Management and Budget—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1627	Natural Resource Damage Assessments: Type B Procedures	1090–AA29
1628	Department Hearings and Appeals; Special Rules Applicable to Public Land Hearings and Appeals	1090–AA68
1629	Department Hearings and Appeals; Procedures Applicable in Adjudications Before the Hearings Division	1090–AA73
1630	Amendment of Authority to Grant Stays of BLM Grazing Decisions	1090–AA84
1631	Mandatory Conditions Review Process	1090–AA91
1632	Special Rules Applicable to Surface Coal Mining Hearings and Appeals	1090–AA92

Assistant Secretary for Policy, Management and Budget—Completed Actions

Sequence Number	Title	Regulation Identification Number
1633	Nondiscrimination in Federally Assisted Programs of the Department of the Interior on the Basis of Race, Color, National Origin, Handicap, or Age	1090–AA77
1634	Nonprocurement Suspension and Debarment; Drug-Free Workplace Grant Requirements	1090–AA79
1635	Amendment of Authority To Grant Stays of Grazing Decisions	1090–AA83

United States Fish and Wildlife Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1636	Partners for Fish and Wildlife Program	1018–AH98
1637	Release of Captive-Reared Mallards	1018–AI05
1638	North American Wetlands Conservation Act and Neotropical Migratory Bird Conservation Act Grant Administration Policies	1018–AI13
1639	Migratory Bird Permits; Regulations Governing Possession of Migratory Birds for Educational Purposes	1018–AI97
1640	Humane and Healthful Transport of Wild Mammals, Birds, Reptiles, and Amphibians to the United States	1018–AJ24
1641	Injurious Wildlife Species; Boiga Snakes	1018–AT28
1642	Migratory Bird Hunting; Approval of Hevi-Steel as a Nontoxic Shot Material for Waterfowl Hunting	1018–AT32
1643	Injurious Wildlife; Bighead Carp (Hypophthalmichthys Nobilis)	1018–AT49

United States Fish and Wildlife Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1644	Seizure and Forfeiture Procedures—50 CFR Part 12	1018–AC89
1645	Convention on International Trade in Endangered Species (CITES)	1018–AD87
1646	Migratory Bird Permits: Scientific Collecting Permits	1018–AE63
1647	U.S. Proposals for CITES Appendix III; American Eel	1018–AF09
1648	Humane and Healthful Transport of Wild Mammals, Birds, Reptiles, and Amphibians to the United States	1018–AF27
1649	Importation, Exportation, and Transportation of Wildlife, 50 CFR Part 14	1018–AF46
1650	Endangered and Threatened Wildlife and Plants; Tibetan Antelope	1018–AF49
1651	Injurious Wildlife; Addition of the Asian Swamp Eel	1018–AF53
1652	Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Straight-Horned Markhor Population of the Torghar Region of Baluchistan, Pakistan, From Endangered to Threatened	1018–AG00
1653	Federal Falconry Standards and Falconry Permitting	1018–AG11
1654	Endangered and Threatened Wildlife and Plants; Delisting the Gulf Coast Distinct Population Segment of the Brown Pelican Population in the Southeastern United States	1018–AG40
1655	Wild Bird Conservation Act: Review of Approved List of Captive-Bred Species	1018–AG64
1656	Injurious Wildlife—Addition of Black Carp	1018–AG70
1657	Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population for the Boulder Darter and the Spotfin Chub in Shoal Creek, Alabama and Tennessee	1018–AH44
1658	Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Gila Trout From Endangered to Threatened	1018–AH57
1659	Export of Live Alligators	1018–AH65
1660	Eagle Permits: New Definitions, Permits for Incidental Taking of Bald Eagles Necessary To Protect Other Interests in Any Particular Locality	1018–AH74
1661	Endangered and Threatened Wildlife and Plants; Revisions to the Regulations Applicable to Permits Issued Under the Endangered Species Act	1018–AH93
1662	Endangered and Threatened Wildlife and Plants; Removal of Two Australian Parakeets From the List of Endangered and Threatened Species	1018–AI04
1663	Subsistence Management Regulations for Public Lands in Alaska, Subpart C—Nonrural Determinations	1018–AI38
1664	Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the American Crocodile From Endangered to Threatened	1018–AI41
1665	Endangered and Threatened Wildlife and Plants; Listing the Southwest Alaskan Distinct Population Segment of the Northern Sea Otter	1018–AI44
1666	Migratory Bird Permits; Eiderdown From Iceland	1018–AI64
1667	Import of Polar Bear Trophies From Canada; Finding for the Gulf of Boothia Population	1018–AI65
1668	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Appalachian Mussels	1018–AI76
1669	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for a Plant, the Lane Mountain Milkvetch	1018–AI78
1670	Endangered and Threatened Wildlife and Plants; Delisting of a Plant, the Arizona Agave	1018–AI79
1671	Endangered and Threatened Wildlife and Plants; Proposed Nonessential Experimental Population of the Northern Aplomado Falcon	1018–AI80
1672	Endangered and Threatened Wildlife and Plants; Downlisting the Wood Bison From Endangered to Threatened	1018–AI83
1673	Safe Harbor Agreements and Candidate Conservation Agreements With Assurances; Revisions to the Regulations	1018–AI85
1674	U.S. Proposals for CITES Appendix III; Black Cohosh	1018–AI91
1675	Migratory Bird Permits; Military Readiness Exemption	1018–AI92
1676	Endangered Species and Pesticide Regulation **(Reg Plan Seq No. 72)**	1018–AI95
1677	Revision of Migratory Bird Hunting Regulations	1018–AI98
1678	Revision of the Regulations Governing the Transport of Eagle Feathers	1018–AJ00
1679	Endangered and Threatened Wildlife and Plants; Delisting the Eastern Distinct Population Segment of the Gray Wolf	1018–AJ03
1680	Endangered and Threatened Wildlife and Plants; Delisting of the Western Distinct Population Segment of the Gray Wolf	1018–AJ04
1681	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Colorado Butterfly Plant	1018–AJ07
1682	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Fish Slough Milk Vetch	1018–AJ09
1683	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Munz's Onion	1018–AJ10
1684	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River Population Segments of Bull Trout	1018–AJ12
1685	Endangered and Threatened Wildlife and Plants; Listing the Salt Creek Tiger Beetle	1018–AJ13
1686	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Mexican Spotted Owl	1018–AJ15
1687	Endangered and Threatened Wildlife and Plants; Removal of the Eggert's Sunflower From the List of Endangered and Threatened Species	1018–AJ17

United States Fish and Wildlife Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1688	Endangered and Threatened Wildlife and Plants; De-designation of Manatee Protection Areas in Florida	1018–AJ23
1689	Injurious Wildlife; Silver Carp (Hypophthalmichthys Molitrix)	1018–AT29
1690	Wild Bird Conservation Act; Review of Regulations To Allow Imports of Exotic Wild Birds	1018–AT30
1691	Endangered and Threatened Wildlife and Plants; Delisting of Mexican Bobcat from List of Endangered Species	1018–AT31
1692	Endangered and Threatened Wildlife and Plants; Removal of the Virginia Roundleaf From the List of Endangered and Threatened Species	1018–AT33
1693	Endangered and Threatened Wildlife and Plants; Proposed Termination of the Southern Sea Otter Translocation Program	1018–AT34
1694	Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Downlisting of the Pahrump Poolfish From the List of Endangered and Threatened Species	1018–AT35
1695	Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Virginia Northern Flying Squirrel From Endangered to Threatened	1018–AT37
1696	Endangered and Threatened Wildlife and Plants; Proposed Removal of the Yellowstone Grizzly Bear Population From the List of Endangered and Threatened Species	1018–AT36
1697	2004–2005 Refuge-Specific Hunting and Sport Fishing Regulations	1018–AT40
1698	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Arroyo Toad	1018–AT42
1699	Endangered and Threatened Wildlife and Plants; Listing the Boreal Toad	1018–AT43
1700	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander Santa Barbara County Distinct Population Segment	1018–AT44
1701	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Riverside Fairy Shrimp	1018–AT45
1702	Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D; 2005–2006 Subsistence Taking of Fish and Shellfish Regulations	1018–AT46
1703	Marine Mammals: Revised Definition of "Authentic Native Articles of Handicrafts and Clothing"	1018–AT48
1704	Revised Definition of "Destruction or Adverse Modification" for Endangered Species Act Section 7 Consultations	1018–AT50
1705	Listing the Miami Blue Butterfly as Endangered; Listing the Cassius Blue, Ceraunus Blue, and Nickerbean (Ammon) Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue	1018–AT51
1706	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Mexican Spotted Owl	1018–AT52

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

United States Fish and Wildlife Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1707	List of Migratory Birds	1018–AB72
1708	General Provisions and General Permit Procedures—50 CFR Part 13	1018–AC57
1709	Endangered and Threatened Wildlife and Plants; Removal of the Bald Eagle Throughout the Lower 48 States From the List of Endangered and Threatened Species	1018–AF21
1710	Importation of Captive-Bred Exotic Birds Into the United States From Breeding Facilities in Other Countries	1018–AF44
1711	Policy on General Conservation Permits	1018–AF63
1712	U.S. Proposals for CITES Appendix III; Certain Turtle Species	1018–AF69
1713	Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Plants From the Mariana Islands and Guam	1018–AG09
1714	Endangered and Threatened Wildlife and Plants; Endangered Status for 12 Species of Picture-Wing Flies From the Hawaiian Islands	1018–AG23
1715	Endangered and Threatened Wildlife and Plants; Delisting the Hoover's Woolly-Star From the List of Endangered and Threatened Species	1018–AG41
1716	National Wildlife Refuge System; Mission, Goals, and Purposes	1018–AG46
1717	Endangered and Threatened Wildlife and Plants; Critical Habitat for Three Coastal California Plants	1018–AG88
1718	Endangered and Threatened Wildlife and Plants; Removal of the Truckee Barberry From the List of Endangered and Threatened Species	1018–AH47
1719	Endangered and Threatened Wildlife and Plants; Removal of the Guam Broadbill and Mariana Mallard From the List of Endangered and Threatened Species	1018–AH50
1720	Endangered and Threatened Wildlife and Plants; Removal of the Johnston's Frankenia From the List of Endangered and Threatened Species	1018–AH53
1721	Endangered and Threatened Plants; Reclassification of the Missouri Bladderpod From Endangered to Threatened	1018–AH59
1722	Addition of the Great White Shark and the Cape Stag Beetles to Appendix III Under CITES	1018–AH66
1723	Audit Resolution Policy	1018–AH69

United States Fish and Wildlife Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1724	Migratory Bird Permits; Regulations Governing Rehabilitation Activities	1018–AH87
1725	Importation of Exotic Wild Birds Into the United States; Adding Blue-Fronted Amazon Parrots From Argentina's Approved Sustainable Use Management Plan to the Approved List of Non-Captive Bred Species	1018–AH89
1726	Marine Mammals: Incidental Take During Specified Activities (Beaufort Sea Polar Bear and Walrus)	1018–AH92
1727	Public Notice for CITES Appendix III Listing of Spanish Cedar and Bigleaf Mahogany by the Government of Peru	1018–AH99
1728	Migratory Bird Hunting and Permits; Regulations for Managing Harvest of Light Goose Populations	1018–AI07
1729	Addition by Indonesia of Ramin to Appendix III Under the Convention on International Trade in Endangered Species of Wild Fauna and Flora	1018–AI08
1730	Endangered and Threatened Wildlife and Plants; Beluga Sturgeon	1018–AI11
1731	Endangered and Threatened Wildlife and Plants; Removal of the Tinian Monarch Flycatcher From the List of Endangered and Threatened Species	1018–AI14
1732	Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for Three Snails and One Amphipod	1018–AI15
1733	Endangered and Threatened Wildlife and Plants; Listing of the Rota Bridled White-Eye	1018–AI16
1734	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Topeka Shiner	1018–AI20
1735	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Ventura Marsh Milkvetch	1018–AI21
1736	Migratory Bird Permits; Regulations for Managing Resident Canada Geese Populations	1018–AI32
1737	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Cactus Ferruginous Pygmy Owl	1018–AI48
1738	Endangered and Threatened Wildlife and Plants; Listing the Slickspot Peppergrass	1018–AI50
1739	Endangered and Threatened Wildlife and Plants; Listing of the Central California Distinct Population Segment of the California Tiger Salamander; Reclassification of the Sonoma County and Santa Barbara	1018–AI68
1740	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Desert Yellowhead	1018–AI69
1741	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the San Diego Fairy Shrimp	1018–AI71
1742	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Gnatcatcher	1018–AI72
1743	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for 11 Mobile River Basin Freshwater Mussels	1018–AI73
1744	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Braun's Rockcress	1018–AI74
1745	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for a Plant, the Pierson's Milkvetch	1018–AI77
1746	Endangered and Threatened Wildlife and Plants; Endangered Status for the Dugong in the Republic of Palau	1018–AI81
1747	Endangered and Threatened Wildlife and Plants; Endangered Status for the Scimitar-Horned Oryx, Addax, and Dama Gazelle	1018–AI82
1748	Subsistence Management Regulations for Public Lands in Alaska, Subparts C and D; 2004–2005 Subsistence Taking of Fish and Shellfish	1018–AI89
1749	Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora	1018–AI90
1750	Endangered Species Act Counterpart Section 7 Consultation Regulations for Implementing the National Fire Plan	1018–AJ02
1751	Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2004–2005 Subsistence Taking of Fish and Wildlife	1018–AJ25
1752	Proposal To Extend Existing Amended 4(d) Rule for Preble's Meadow Jumping Mouse in Colorado and Wyoming	1018–AJ26
1753	Migratory Bird Subsistence Harvest in Alaska; Proposed Spring/Summer Subsistence Annual Harvest Regulations for Migratory Birds in Alaska During the 2004 Subsistence Season	1018–AJ27
1754	Endangered and Threatened Wildlife and Plants; Amendment To Manatee Protection Areas in Florida (Barge Canal Exception)	1018–AT39

United States Fish and Wildlife Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1755	Implementation of the 1994 Amendments to the Marine Mammal Protection Act	1018–AE72
1756	Taking of Marine Mammals by Level B Harassment; Issuance of General Authorization for Scientific Research and Permits for Photography, Educational, and Commercial Purposes	1018–AF26
1757	Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Designation of Critical Habitat for the Gila Chub	1018–AG16
1758	Endangered and Threatened Wildlife and Plants; Listing of the Miami Blue Butterfly	1018–AH30
1759	Interagency Guidance for the Prescription of Fishways Pursuant to Section 18 of the Federal Power Act	1018–AH42

United States Fish and Wildlife Service—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1760	Endangered and Threatened Wildlife; Reclassification of the Marianna Fruit Bat on Guam From Endangered to Threatened	1018–AH55
1761	Endangered and Threatened Wildlife and Plants; Listing the Dolly Varden as a Threatened Species in Washington Due to Similarity of Appearance to Bull Trout	1018–AH68
1762	Corrections to Rights-of-Way Regulations	1018–AI12
1763	Endangered and Threatened Wildlife and Plants; Critical Habitat for 6 Guam Species	1018–AI25
1764	Endangered and Threatened Wildlife and Plants; Listing of the San Miguel Island Fox, Santa Rosa Island Fox, Santa Cruz Island Fox, and Santa Catalina Island Fox	1018–AI28
1765	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Columbia-Klamath Distinct Population Segment of the Bull Trout	1018–AI52
1766	Endangered and Threatened Wildlife and Plants; Conservation Education; 50 CFR 17.21	1018–AI66
1767	Endangered and Threatened Wildlife and Plants; Permits for Foreign Listed Species	1018–AI67
1768	Migratory Bird Permits; Revisions to General Exceptions	1018–AI96
1769	Endangered and Threatened Wildlife and Plants; Prudency Determination and Designation of Critical Habitat for Eggert's Sunflower	1018–AJ08
1770	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Spreading Navarretia and the San Jacinto Valley Crownscale	1018–AJ11
1771	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Red-legged Frog	1018–AJ16
1772	Endangered and Threatened Wildlife and Plants; Proposed Amendment to the Nonessential Experimental Population Rule for the Mexican Gray Wolf	1018–AT36
1773	Land Conservation Planning (Refuge Manual Chapter 602 FW 2)	1018–AT41
1774	Subsistence Management Regulations for Public Lands in Alaska, Subpart A and Subpart B	1018–AT47

United States Fish and Wildlife Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1775	Endangered and Threatened Wildlife and Plants; Removal of the Douglas County, Oregon, Population of the Columbia White-Tailed Deer From the List of Endangered and Threatened Species	1018–AF43
1776	Endangered and Threatened Wildlife and Plants; Critical Habitat for 47 Plants in Hawaii	1018–AH02
1777	Endangered and Threatened Wildlife and Plants; Critical Habitat for Plants of the Northwest Islands, Hawaii	1018–AH09
1778	Endangered and Threatened Wildlife and Plants; Listing of the Sacramento Mountains Checkerspot Butterfly and Proposed Designation of Critical Habitat	1018–AH40
1779	Endangered and Threatened Wildlife; Removal of the San Marcos Gambusia From the List of Endangered and Threatened Species	1018–AH52
1780	Endangered and Threatened Wildlife and Plants; Reproposed Determinations of Prudency and Proposed Designations of Critical Habitat for Plants From Maui and Kahoolawe, Hawaii	1018–AH70
1781	Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Threatened Status of the Sacramento Splittail (Pogonichthys Macrolepidotis)	1018–AH73
1782	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Blackburn's Sphinx Moth	1018–AH94
1783	Civil Procedures; 50 CFR Part 11	1018–AH97
1784	Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana; Removal of Regulations	1018–AI03
1785	Endangered and Threatened Wildlife and Plants; Critical Habitat for 103 Oahu, Hawaii, Plants	1018–AI24
1786	Endangered and Threatened Wildlife and Plants; Critical Habitat for Four Fairy Shrimp and 11 Plants in California	1018–AI26
1787	Migratory Bird Permits; Regulations for Managing Double-Crested Cormorant Damages	1018–AI39
1788	Endangered and Threatened Wildlife and Plants; Reclassification of the Gray Bat From Endangered to Threatened	1018–AI40
1789	Endangered and Threatened Wildlife and Plants; Listing the Mountain Plover With a Special Rule	1018–AI45
1790	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse	1018–AI46
1791	Tribal Wildlife Grants Program Implementation Guidelines for Fiscal Year (FY) 2002	1018–AI58
1792	Tribal Landowner Incentive Program (T–LIP) Implementation Guidelines for Fiscal Year (FY) 2002	1018–AI59
1793	Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Black-Footed Ferret in South-Central South Dakota	1018–AI60
1794	Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003–2004 Subsistence Taking of Wildlife Regulations	1018–AI62
1795	2003–2004 Refuge Specific Hunting and Sport Fishing Regulations	1018–AI63

United States Fish and Wildlife Service—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
1796	Migratory Bird Subsistence Harvest in Alaska; Regulations for the Spring and Summer 2003 Season	1018–AI84
1797	Migratory Bird Hunting; Proposed 2003–2004 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals	1018–AI93
1798	Endangered and Threatened Wildlife and Plants; Removal of the Water Howellia (Howellia aquatilus) From the List of Endangered and Threatened Species	1018–AI94
1799	Revision of Airborne Hunting Regulations	1018–AI99
1800	Fiscal Year 2004 Private Stewardship Grants Program; Program Implementation	1018–AJ01
1801	Endangered and Threatened Wildlife and Plants; Reclassification of the Cui-ui From the List of Endangered and Threatened Species and Establishment of a 4(d) Rule	1018–AJ05
1802	Endangered and Threatened Wildlife and Plants; Designation of Additional Manatee Protection Areas in Florida	1018–AJ06
1803	Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Black-Footed Ferret in Wyoming	1018–AJ18
1804	Endangered and Threatened Wildlife and Plants; Reclassification of the Uncompahgre Fritillary Butterfly From Endangered to Threatened	1018–AJ19
1805	Endangered and Threatened Wildlife and Plants; Removal of Arctic Russian Population of Spectacled Eiders From the List of Endangered and Threatened Species; Classification of U.S. Popul. as Threatened	1018–AJ20
1806	Guidance for the Establishment, Use, and Operation of Conservation Banks	1018–AJ22

National Park Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1807	Big Thicket National Preserve; Personal Watercraft	1024–AC92
1808	Pictured Rocks National Lakeshore; Personal Watercraft	1024–AC93
1809	Fire Island National Seashore; Personal Watercraft	1024–AC94
1810	Gateway National Recreation Area; Personal Watercraft	1024–AC95
1811	Bighorn Canyon National Recreation Area; Personal Watercraft	1024–AC96
1812	Lake Meredith Recreation Area; Personal Watercraft	1024–AC97
1813	Chickasaw Recreation Area; Personal Watercraft	1024–AC98
1814	Curecanti Recreation Area; Personal Watercraft	1024–AC99
1815	Amistad Recreation Area; Personal Watercraft	1024–AD00
1816	Lake Roosevelt Recreation Area; Personal Watercraft	1024–AD01
1817	Native American Graves Protection and Repatriation Act; Future Applicability	1024–AD05
1818	Boating and Water Use Activities	1024–AD07
1819	Alaska Park Units; Special Regulations	1024–AD13
1820	Delaware Water Gap NRA Commercial Vehicle Fees	1024–AD14
1821	Revisions to Right-of-Way Regulations	1024–AD16
1822	Cost Recovery for Special Park Uses	1024–AD18
1823	Ceremonies at First Division Monument	1024–AD19

National Park Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1824	Procedures for State, Tribal, and Local Government Historic Preservation Programs	1024–AC79
1825	Commercial Use Authorizations	1024–AC85
1826	Snowmobile Regulations for Yellowstone and Grand Teton National Parks and JDR Parkway **(Reg Plan Seq No. 73)**	1024–AD11
1827	Rocky Mountain National Park Snowmobile Use	1024–AD15
1828	Use of Service Animals in National Park Areas	1024–AD17

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Park Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1829	Special Regulations of the National Park System; Religious Ceremonial Collection of Golden Eaglets in Wupatki National Monument	1024–AC86
1830	Golden Gate National Recreation Area; Special Regulations	1024–AD03

National Park Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1831	Vehicles and Traffic Safety; Operating Under the Influence of Alcohol or Drugs	1024–AC69
1832	Native American Graves Protection and Repatriation Act Regulations; Civil Penalties	1024–AC84
1833	Virgin Islands Coral Reef National Monument; Special Regulations	1024–AC89
1834	Glen Canyon National Recreation Area; Personal Watercraft	1024–AC90
1835	Assateague Island National Seashore; Personal Watercraft	1024–AD02
1836	Saguaro National Monument Mountain Bike Special Regulations	1024–AD10
1837	Special Regulations; Areas of the National Park System; New River Gorge National River—Hunting	1024–AD12

Bureau of Indian Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1838	Buy Indian Act Regulations	1076–AE07
1839	Tribal Revenue Allocation Plans	1076–AE24
1840	Indian Country Law Enforcement	1076–AE35
1841	Leases and Permits on Indian Trust and Restricted Lands	1076–AE36
1842	Reindeer in Alaska	1076–AE37
1843	Proclamation of Reservations	1076–AE40
1844	Loan Guaranty, Insurance, and Interest Subsidy	1076–AE42
1845	Use or Distribution of Indian Judgment Funds	1076–AE43
1846	Navajo Partitioned Lands Grazing Permits	1076–AE46
1847	Indian Highway Safety Program	1076–AE47
1848	Appeals from Administrative Actions	1076–AE48
1849	No Child Left Behind Act of 2001	1076–AE49

Bureau of Indian Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1850	Irrigation Projects and Systems	1076–AD44
1851	Certificates of Degree of Indian Blood	1076–AD97
1852	Alaska Resupply Operation	1076–AE04
1853	Indian Reservation Roads Program	1076–AE17

Bureau of Indian Affairs—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1854	Indian Electric Power Utilities	1076–AD45
1855	Preparation of Rolls of Indians	1076–AE44
1856	Standards for Approving Tribal Per Capita Distributions	1076–AE45

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Bureau of Indian Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
1857	Protection of Products of Indian Art and Craftsmanship	1076–AE16
1858	Amendment to the List of Courts of Indian Offenses	1076–AE41

Minerals Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1859	Late and Overpayment Interest	1010–AC27
1860	Takes vs. Entitlements Reporting	1010–AC29
1861	Prepayment of Royalties	1010–AC31
1862	Incident Reporting	1010–AC57
1863	Royalty Relief Terms	1010–AC58
1864	Appeals of Minerals Management Service Orders	1010–AC80
1865	Reporting Amendments	1010–AC90
1866	Blowout Prevention for Production Tree Coiled Tubing Workover Operations	1010–AC96
1867	Data Release and Definitions	1010–AC99
1868	Valuation of Oil From Indian Leases	1010–AD00
1869	Reduction to Royalty Relief in Special Circumstances	1010–AD02
1870	Federal Oil Valuation	1010–AD04
1871	Federal Gas Valuation	1010–AD05
1872	Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf	1010–AD06

Minerals Management Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1873	Accounting Relief for Marginal Properties	1010–AC30
1874	Plans and Information	1010–AC47
1875	Proprietary Terms and Data Disclosure	1010–AC81
1876	Documents Incorporated by Reference for Offshore Floating Production Facilities	1010–AC85
1877	Rights-of-Use and Easements and Pipeline Rights-of-Way	1010–AC91
1878	Document Incorporated by Reference–API 510—Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration	1010–AC95
1879	Relief or Reduction in Royalty Rates—Deep Gas Provisions **(Reg Plan Seq No. 74)**	1010–AD01

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Minerals Management Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1880	Dealing With Sustained Casing Pressure	1010–AC83
1881	Definition of Control	1010–AC88
1882	Documents Incorporated by Reference—API RP 14F and API 510	1010–AC89
1883	Fixed Platforms—Documents Incorporated by Reference	1010–AD03
1884	Increase in Maximum Daily Civil Penalty Amount	1010–AD07

Office of Surface Mining Reclamation and Enforcement—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1885	Abandoned Mine Reclamation Fees	1029–AC46

Office of Surface Mining Reclamation and Enforcement—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1886	Abandoned Coal Refuse Sites	1029–AB70
1887	Revegetation	1029–AC02
1888	Placement of Excess Spoil	1029–AC04
1889	Financial Assurances	1029–AC05
1890	Processing State Program Amendments	1029–AC06
1891	Ownership and Control Settlement Rule	1029–AC08

Office of Surface Mining Reclamation and Enforcement—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1892	Indian Lands	1029–AB83
1893	Financing Abandoned Mine Land Reclamation	1029–AC07

Bureau of Reclamation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1894	Public Conduct on Reclamation Lands and Projects	1006–AA45

Bureau of Reclamation—Completed Actions

Sequence Number	Title	Regulation Identification Number
1895	Trespass on Reclamation Lands and Facilities	1006–AA44
1896	Public Conduct on Bureau of Reclamation Lands and Projects; Removal of Expiration Date	1006–AA46

Bureau of Land Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1897	Sales—Federal Land Policy and Management Act	1004–AB77
1898	Desert Land Entries	1004–AC56
1899	Disposal of Reserved Minerals Under the Stock Raising Homestead Act	1004–AC59
1900	Mineral Patent Applications; Adverse Claims, Protests, and Conflicts	1004–AD32
1901	Grazing Administration—Exclusive of Alaska	1004–AD42
1902	Resource Management Planning	1004–AD57

Bureau of Land Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1903	Indian Allotments	1004–AC77
1904	Permits for Recreation on Public Lands	1004–AD45
1905	Wilderness Management	1004–AD46
1906	Oil and Gas Leasing Operations; Bonding	1004–AD56

Bureau of Land Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1907	Leases, Permits, and Easements	1004–AB51
1908	Coalbed Methane Development	1004–AC27
1909	Cost Recovery; Mineral Filings and Operations	1004–AC64
1910	Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act	1004–AC74
1911	Carey Act Grants	1004–AC80
1912	Oil and Gas Leasing and Operations	1004–AC94
1913	Appeals Procedures; Hearings Procedures	1004–AC99
1914	Conservation; Helium Leasing	1004–AD35
1915	Hazardous Materials Compliance	1004–AD38
1916	Supplementary Rules for Public Demonstrations at Grand Staircase-Escalante National Monument	1004–AD40
1917	Mining Claims Under the General Mining Laws; Surface Management	1004–AD53
1918	Wilderness Management	1004–AD54

Bureau of Land Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
1919	Location Recording and Maintenance of Mining Claims and Sites	1004–AD31
1920	Surface Management; Segregated or Withdrawn Lands	1004–AD51

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
1921	Wild and Scenic Rivers	1093–AA08

Department of the Interior (DOI) **Proposed Rule Stage**

Assistant Secretary for Policy, Management and Budget (ASPMB)

1627. NATURAL RESOURCE DAMAGE ASSESSMENTS: TYPE B PROCEDURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 9651(c)

CFR Citation: 43 CFR 11

Legal Deadline: None

Abstract: CERCLA and the Clean Water Act allow natural resource trustees to bring a claim against a potentially responsible party for resources that have been injured by a release of a hazardous substance. CERCLA requires that natural resource damage assessment regulations be promulgated and that the regulations be reviewed, and revised as appropriate, every two years. This rulemaking is the biennial review of the administrative process for conducting assessments as well as the so-called type B procedures for determining injury and damages through scientific and economic studies. This rulemaking will also address the calculation of lost non-use values of natural resources, in compliance with State of Ohio v. Department of the Interior, 880 F.2d 432 (D.C. Cir. 1989), which ordered the Department to allow for the assessment of all reliably calculated values lost as a result of a natural resource injury.

Timetable:

Action	Date	FR Cite
ANPRM	07/16/96	61 FR 37031
ANPRM Comment Period End	09/16/96	
NPRM	05/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Frank DeLuise, Assessment Program, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Room 4449, 1849 C Street NW., Washington, DC 20240
Phone: 202 208–4143

RIN: 1090–AA29

1628. DEPARTMENT HEARINGS AND APPEALS; SPECIAL RULES APPLICABLE TO PUBLIC LAND HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1201

CFR Citation: 43 CFR 4.401(c)(2); 43 CFR 4.403 to 4.408; 43 CFR 4.414; 43 CFR 4.415; 43 CFR 4.422(c)(2); 43 CFR 4.450–5

Legal Deadline: None

Abstract: This document proposes to amend procedural rules governing hearings and appeals in public-lands cases. The amendments are necessary to conform the rules to procedural practices contained in decisions of the Interior Board of Land Appeals. The amended rules would provide parties more complete information and more up-to-date procedures than the existing rules.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Interior Board of Appeals, 801 N. Quincy Street, Suite 300, Arlington, VA 22203
Phone: 703 235–8349

RIN: 1090–AA68

1629. DEPARTMENT HEARINGS AND APPEALS; PROCEDURES APPLICABLE IN ADJUDICATIONS BEFORE THE HEARINGS DIVISION

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 372; 25 USC 373; 25 USC 373a; 25 USC 373b; 25 USC 374; 30 USC 1201 et seq; 43 USC 1201; 5 USC 571 to 583

CFR Citation: 25 CFR 15; 30 CFR 301; 43 CFR 1850; 43 CFR 4

Legal Deadline: None

Abstract: This proposed rule would amend regulations governing case management and case processing by administrative law judges in OHA field offices. The rules are necessary to increase efficiency in case processing.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Charles E. Breece, Deputy Director, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 801 N. Quincy Street, Suite 300, Arlington, VA 22203
Phone: 703 235–3810

RIN: 1090–AA73

1630. AMENDMENT OF AUTHORITY TO GRANT STAYS OF BLM GRAZING DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 315a; 43 USC 1201

CFR Citation: 43 CFR 4.21; 43 CFR 4.470; 43 CFR 4.472; 43 CFR 4.476; 43 CFR 4.477

Legal Deadline: None

Abstract: The Office of Hearings and Appeals is proposing to amend its existing regulations to authorize OHA administrative law judges to decide petitions for a stay of grazing decisions issued by the Bureau of Land Management and requests to place such decisions into immediate effect. The proposal is designed to expedite administrative review by eliminating an inefficient bifurcation of authority.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Interior Board of Appeals, 801 N. Quincy Street, Suite 300, Arlington, VA 22203
Phone: 703 235–8349

RIN: 1090–AA84

1631. • MANDATORY CONDITIONS REVIEW PROCESS

Priority:

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule will update the Department's procedures and requirements relating to mandatory review procedures governing property and acquisition management.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William Bettenberg, Director, Office of Policy Analysis, Department of the Interior, Room 4426 MIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208–5978
Fax: 202 208–4867

RIN: 1090–AA91

DOI—ASPMB **Proposed Rule Stage**

1632. • SPECIAL RULES APPLICABLE TO SURFACE COAL MINING HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1268(f)

CFR Citation: 43 CFR 4

Legal Deadline: None

Abstract: The Office of Hearings and Appeals is amending this rule to state that the Office of Surface Mining has the ultimate burden or persuasion as to whether the individual identified in a company's filings under the Surface Mining Control and Reclamation Act (SMCRA) is a director, officer, or agent of the company.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Interior Board of Appeals, 801 N. Quincy Street, Suite 300, Arlington, VA 22203
Phone: 703 235–8349

RIN: 1090–AA92

Department of the Interior (DOI) Completed Actions
Assistant Secretary for Policy, Management and Budget (ASPMB)

1633. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, OR AGE

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Melvin C. Fowler
Phone: 202 208–3455

RIN: 1090–AA77

1634. NONPROCUREMENT SUSPENSION AND DEBARMENT; DRUG-FREE WORKPLACE GRANT REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 42; 43 CFR 43

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Debra E. Sonderman
Phone: 202 208–6431

RIN: 1090–AA79

1635. AMENDMENT OF AUTHORITY TO GRANT STAYS OF GRAZING DECISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 4.401; 43 CFR 4.410; 43 CFR 4.416; 43 CFR 4.422; 43 CFR 4.450–5; 43 CFR 4190; 43 CFR 5003.1

Completed:

Reason	Date	FR Cite
Final Action	06/05/03	68 FR 33794

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael H. Schwartz
Phone: 202 452–5198
Email: michael__schwartz@blm.gov

RIN: 1090–AA83

BILLING CODE 4310–55–S

Department of the Interior (DOI) Prerule Stage
United States Fish and Wildlife Service (FWS)

1636. PARTNERS FOR FISH AND WILDLIFE PROGRAM

Priority: Info./Admin./Other

Legal Authority: 16 USC 742(a) to 754

CFR Citation: None

Legal Deadline: None

Abstract: Portions of the U.S. Fish and Wildlife Service manual are being revised to update policy on the implementation of the Partners for Fish and Wildlife Program. This program provides private landowners with cost-sharing and restoration expertise to restore fish and wildlife habitat. The program does not acquire lands and is a voluntary incentive program. The revisions update policy, incorporate Office of Inspector General recommendations, and clarify technical assistance and cost-sharing in light of changes in U.S. Department of Agriculture conservation programs.

Timetable:

Action	Date	FR Cite
Notice of Availability	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Hannibal Bolton, Chief, Division of Fish and Wildlife Management and Habitat Restoration, Department of the Interior, United States Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1718

RIN: 1018–AH98

1637. RELEASE OF CAPTIVE-REARED MALLARDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: We are resuming review all aspects of regulations pertaining to the release and harvest of captive-reared mallards.

Timetable:

Action	Date	FR Cite
Notice of Intent	08/28/01	66 FR 45274
Notice of Availability	08/26/03	68 FR 51231
Comment Period End	12/20/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Email: brian__millsap@fws.gov

RIN: 1018–AI05

1638. NORTH AMERICAN WETLANDS CONSERVATION ACT AND NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT GRANT ADMINISTRATION POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4401 et seq

CFR Citation: None

Legal Deadline: None

Abstract: The Grant Administration Policies document is being published as an interim measure to guide the North American Wetlands Conservation Act (NAWCA) grants administration process and to provide advance notice of rulemaking. The Service intends, eventually, to engage in rulemaking to set out its own regulations to guide NAWCA grants administration that will parallel but supersede the Grant Administration Policies.

Timetable:

Action	Date	FR Cite
ANPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Dr. Keith A. Morehouse, Department of the Interior, United States Fish and Wildlife Service, MS 110, U.S. Fish and Wildlife Service, Div. of Bird Habitat Conservation, Arlington Square, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1784
Fax: 703 358–2282
Email: keith__morehouse@fws.gov

RIN: 1018–AI13

1639. MIGRATORY BIRD PERMITS; REGULATIONS GOVERNING POSSESSION OF MIGRATORY BIRDS FOR EDUCATIONAL PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 92 Stat 3112 (16 USC 712(2)); PL 95–616; PL 106–108; 16 USC 668a; 16 USC 703 to 712; ...

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: We propose to amend migratory bird permit regulations to create a new permit category establishing conditions and criteria for obtaining a permit to possess migratory birds, including eagles, for educational purposes. Prior to this rule, this activity has been authorized by a miscellaneous permit category. This request for comments will generate input needed to develop the proposed permit regulation.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Email: brian__millsap@fws.gov

RIN: 1018–AI97

1640. • HUMANE AND HEALTHFUL TRANSPORT OF WILD MAMMALS, BIRDS, REPTILES, AND AMPHIBIANS TO THE UNITED STATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 18 USC 42 ; 16 USC 3371 to 3378

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: The service proposes to publish an advance notice of proposed rulemaking to ask the public for comments and input into the best process and spectrum of updates needed to amend the regulations that establish standards for the humane and healthful transport of wild birds and mammals (not significant, Q301). These have not been amended in more than 10 years and are currently not completely in accordance with the international requirements.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AJ24

1641. • INJURIOUS WILDLIFE SPECIES; BOIGA SNAKES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: FWS will review available economic and biological information on snakes in the genus Boiga for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
ANPRM	09/12/03	68 FR 53705
ANPRM Comment Period End	11/12/03	
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Branch of Invasive Species, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Room 810–B, Arlington, VA 22203
Phone: 703 358–2464
Fax: 703 358–1800
Email: kari__duncan@fws.gov

RIN: 1018–AT28

1642. • MIGRATORY BIRD HUNTING; APPROVAL OF HEVI-STEEL AS A NONTOXIC SHOT MATERIAL FOR WATERFOWL HUNTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 703 to 712; 16 USC 742

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: Environ-Metal has applied to the Service for approval of Hevi-Steel as nontoxic for waterfowl hunting in the United States. The information included in Environ-Metal's application is conclusive as to Hevi-Steel's nontoxicity. We will now evaluate whether we should propose to amend 50 CFR 20.21 by adding hevi-Steel to the list of approved nontoxic shot types. We seek public comment on whether we should pursue approval of Hevi-Steel as nontoxic shot for waterfowl hunting.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Federalism: Undetermined

Agency Contact: John J. Kreilich Jr., Wildlife Biologist, Department of the Interior, United States Fish and Wildlife Service, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Fax: 703 358–2272
Email: john__kreilich@fws.gov

RIN: 1018–AT32

1643. • INJURIOUS WILDLIFE; BIGHEAD CARP (HYPOPHTHALMICHTHYS NOBILIS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: The Service will review economic and biological information on bighead carp for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
ANPRM	09/17/03	68 FR 54409
ANPRM Comment Period End	11/17/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Branch of Invasive Species, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Room 810–B, Arlington, VA 22203
Phone: 703 358–2464
Fax: 703 358–1800
Email: kari__duncan@fws.gov

RIN: 1018–AT49

Department of the Interior (DOI) Proposed Rule Stage
United States Fish and Wildlife Service (FWS)

1644. SEIZURE AND FORFEITURE PROCEDURES—50 CFR PART 12

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3371 et seq

CFR Citation: 50 CFR 12

Legal Deadline: None

Abstract: The Service proposes to amend regulations in 50 CFR part 12 that establish procedures relating to property seized and administrative forfeiture under various laws enforced by the Service. This revision is intended to provide uniform guidance for the bonded release, appraisement, administrative proceeding petition for remission, and disposal of items subject to forfeiture. Also, these revisions are intended to provide for greater consistency of Service seizure and forfeiture procedures with those of the U.S. Customs Service. In August 2000, the Civil Asset Forfeiture Reform Act became law. CAFRA mandated many changes to 50 CFR 12 that are incorporated in this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/27/95	60 FR 58468
Second NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: Kevin Adams, Chief, Office of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, MS–LE–3000, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1949
Fax: 703 358–1947
Email: kevin__adams@fws.gov

RIN: 1018–AC89

1645. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES (CITES)

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This will be a revision to an existing rule that will incorporate decisions/interpretations made at the second through twelfth meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Timetable:

Action	Date	FR Cite
NPRM	05/08/00	65 FR 26663
Correction	06/29/00	65 FR 40167
Second NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AD87

1646. MIGRATORY BIRD PERMITS: SCIENTIFIC COLLECTING PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: This rule would amend the regulations governing permits for scientific collecting of migratory birds under the Migratory Bird Treaty Act. The rule will establish standard conditions and criteria for permit issuance.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Email: brian__millsap@fws.gov

RIN: 1018–AE63

1647. U.S. PROPOSALS FOR CITES APPENDIX III; AMERICAN EEL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99–625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: Listing of native U.S. species in appendix III to CITES for more effective monitoring of trade, to ensure that traded specimens are legally acquired in their State(s) of origin, and to obtain the cooperation of other countries that are parties to CITES, in controlling the trade in such specimens.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Marie Maltese, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Email: marie__maltese@fws.gov

RIN: 1018–AF09

1648. HUMANE AND HEALTHFUL TRANSPORT OF WILD MAMMALS, BIRDS, REPTILES, AND AMPHIBIANS TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42; 16 USC 3371 to 3378

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: The proposed rule contains amendments designed to add numerous transport standards to part 14 for reptiles and amphibians. Standards have already been promulgated for mammals and birds.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AF27

1649. IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE, 50 CFR PART 14

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668, 704, 712, 1382, 1538(d) to (f), and 1540(f); 16 USC 3371 to 3378, 4223 to 4244, and 4901 to 4916; 18 USC 42; 31 USC 9701

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: This proposed rule will revise the importation, exportation, and transportation regulations pertaining to the movement of all wildlife and wildlife products into or out of the United States.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/98	63 FR 38143
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Kevin Adams, Chief, Office of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, MS–LE–3000, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1949
Fax: 703 358–1947
Email: kevin__adams@fws.gov

RIN: 1018–AF46

1650. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; TIBETAN ANTELOPE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Other, Statutory, October 6, 2000, Other.

Abstract: We received a petition to list the Tibetan antelope as endangered. We must determine if status review shows that the petitioned action is warranted. If so, we will propose endangered status for the Tibetan antelope, or chiru (Pantholops hodgsoni). The antelope is a wild ungulate native to Tibet, Kashmir, and north-central China. It is threatened by illegal trade in its wool, known as shahtoosh, which is exceptionally fine. The wool and shawls made from it are in great demand on the black market, resulting in the slaughter of thousands of these animals annually. The species has experienced dramatic declines in recent years despite efforts by range countries to control poaching, as well as a prohibition on international commercial trade through listing in appendix I of CITES.

Timetable:

Action	Date	FR Cite
Notice	04/25/00	65 FR 24171
NPRM	10/06/03	68 FR 57646
NPRM Comment Period End	01/05/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Email: kurt_johnson@fws.gov

RIN: 1018–AF49

1651. INJURIOUS WILDLIFE; ADDITION OF THE ASIAN SWAMP EEL

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: We will review economic and biologic information on the 17 species in the swamp eel family, Synbranchidae, for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Branch of Invasive Species, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Room 810–B, Arlington, VA 22203
Phone: 703 358–2464
Fax: 703 358–1800
Email: kari_duncan@fws.gov

RIN: 1018–AF53

1652. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED RECLASSIFICATION OF THE STRAIGHT-HORNED MARKHOR POPULATION OF THE TORGHAR REGION OF BALUCHISTAN, PAKISTAN, FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We received a petition to reclassify a certain population of the straight-horned markhor from endangered to threatened. We must determine whether a status review shows that the petitioned action is warranted; if so, we will propose to change the classification of the straight-horned markhor population of the Torghar Hills region of Baluchistan Province, Pakistan, from endangered to threatened under the Endangered Species Act of 1973. The markhor is a species of wild goat that occurs in small, isolated populations in rugged, arid mountain habitats in Afghanistan, India, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Email: kurt_johnson@fws.gov

RIN: 1018–AG00

1653. FEDERAL FALCONRY STANDARDS AND FALCONRY PERMITTING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712

CFR Citation: 50 CFR 21.28; 50 CFR 21.29

Legal Deadline: None

Abstract: We will propose changes in the regulations governing the practice of falconry in the United States. We propose substantial reorganization of the current regulations, combining 50 CFR 21.28 and 21.29 and reorganizing the topics in those sections. We will add or change some provisions in the current regulations. The changes will make it easier to understand the requirements for falconry and the procedures for obtaining a falconry permit.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Email: brian_millsap@fws.gov

RIN: 1018–AG11

1654. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING THE GULF COAST DISTINCT POPULATION SEGMENT OF THE BROWN PELICAN POPULATION IN THE SOUTHEASTERN UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the Gulf Coast population of the brown pelican (Texas, Louisiana, Mississippi) from the List of Threatened and Endangered Species.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AG40

1655. WILD BIRD CONSERVATION ACT: REVIEW OF APPROVED LIST OF CAPTIVE-BRED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15

Legal Deadline: None

Abstract: Under the Wild Bird Conservation Act, a species may be exempt from the prohibitions of the Act if it qualifies for inclusion in an approved list. One way for a species to be included is if the species occurs in trade only as captive-bred specimens. We intend to seek information and consider whether to amend this approved list, which was established in 1994.

Timetable:

Action	Date	FR Cite
Notice	05/29/01	66 FR 29072
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Kreger, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: michael__kreger@fws.gov

RIN: 1018–AG64

1656. INJURIOUS WILDLIFE—ADDITION OF BLACK CARP

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: We will review economic and biological information on the black carp (Mylopharyngodon piceus) for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
NPRM	07/30/02	67 FR 49280
NPRM Comment Period Reopened	06/04/03	68 FR 33431
Other/Second NPRM—Notice of draft envir. assess/econ. analysis	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Branch of Invasive Species, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Room 810–B, Arlington, VA 22203
Phone: 703 358–2464
Fax: 703 358–1800
Email: kari__duncan@fws.gov

RIN: 1018–AG70

1657. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION FOR THE BOULDER DARTER AND THE SPOTFIN CHUB IN SHOAL CREEK, ALABAMA AND TENNESSEE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose the establishment of two nonessential experimental populations, the Boulder darter and Spotfin chub, in Shoal Creek, Alabama and Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
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Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AH44

1658. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED RECLASSIFICATION OF THE GILA TROUT FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the Gila trout from endangered to threatened. This action is based on recovery.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick_leonard@fws.gov

RIN: 1018–AH57

1659. EXPORT OF LIVE ALLIGATORS

Priority: Substantive, Nonsignificant

Legal Authority: EO 13112

CFR Citation: 50 CFR 13; 50 CFR 17; 50 CFR 23

Legal Deadline: None

Abstract: This policy will prohibit the export of live American alligators because of invasive species concerns in the countries of destination of the animals.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal, Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter_thomas@fws.gov

RIN: 1018–AH65

1660. EAGLE PERMITS: NEW DEFINITIONS, PERMITS FOR INCIDENTAL TAKING OF BALD EAGLES NECESSARY TO PROTECT OTHER INTERESTS IN ANY PARTICULAR LOCALITY

Priority: Other Significant

Legal Authority: 16 USC 668a

CFR Citation: 50 CFR 22

Legal Deadline: None

Abstract: This rule would allow take of bald eagles under the Bald and Golden Eagle Protection Act, incidental to otherwise lawful activities, in the event the species is removed from the U.S. Endangered Species List.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Email: brian_millsap@fws.gov

RIN: 1018–AH74

1661. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REVISIONS TO THE REGULATIONS APPLICABLE TO PERMITS ISSUED UNDER THE ENDANGERED SPECIES ACT

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 13; 50 CFR 17

Legal Deadline: None

Abstract: Presently, Safe Harbor Agreements and Candidate Conservation Agreements with Assurances only allow incidental take of species. The Service is proposing to clarify the range of activities permittable under section 10(a)(1)(A) of the Endangered Species Act. In addition, the Service is proposing to amend the policies to allow for intentional take of species in association with Safe Harbor Agreements.

Timetable:

Action	Date	FR Cite
NPRM	09/10/03	68 FR 53327
NPRM Comment Period End	11/10/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris_nolin@fws.gov

RIN: 1018–AH93

1662. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF TWO AUSTRALIAN PARAKEETS FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99–625

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to reclassify the turquoise parakeet (Neophema pulchella) and the scarlet-chested parakeet (Neophema splendida) from endangered to threatened under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	09/02/03	68 FR 52169
NPRM Comment Period End	12/01/03	
Other/Final Rule	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Michael Kreger, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: michael_kreger@fws.gov

RIN: 1018–AI04

1663. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C—NONRURAL DETERMINATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rule will revise the rural/nonrural determinations based on the new 2000 Federal census data. This review/revision is called for in 50 CFR 100.15 and 36 CFR 242.15.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William W. Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, AK 99503
Phone: 907 786–3873
Fax: 907 786–3898
Email: bill__knauer@fws.gov

RIN: 1018–AI38

1664. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED RECLASSIFICATION OF THE AMERICAN CROCODILE FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the American crocodile from endangered to threatened. This action is based on the substantial improvement in the species' status and improved understanding of the species' biology and management needs. Since its listing in 1975, the population of the American crocodile in Florida has more than doubled and its distribution has expanded. Land acquisition has also provided protection for many important nesting areas.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AI41

1665. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE SOUTHWEST ALASKAN DISTINCT POPULATION SEGMENT OF THE NORTHERN SEA OTTER

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We may propose listing the southwest Alaskan distinct population segment of the Northern sea otter, found mostly in the Aleutian Islands and the Alaska peninsula and adjacent waters.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI44

1666. MIGRATORY BIRD PERMITS; EIDERDOWN FROM ICELAND

Priority: Substantive, Nonsignificant

Legal Authority: PL 95–616; 16 USC 712(2); PL 106–108

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: This rulemaking will allow the importation into the United States of processed Icelandic eiderdown.

Timetable:

Action	Date	FR Cite
NPRM	09/05/03	68 FR 52727
NPRM Comment Period End	12/04/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Email: brian__millsap@fws.gov

RIN: 1018–AI64

1667. IMPORT OF POLAR BEAR TROPHIES FROM CANADA; FINDING FOR THE GULF OF BOOTHIA POPULATION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 18.30

Legal Deadline: None

Abstract: This rule announces proposed findings on the import of polar bears (Ursus maritimus) taken in sport hunts from the Canadian Gulf of Boothia polar bear population under the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AI65

1668. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR FIVE APPALACHIAN MUSSELS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 19, 2003, NPRM.

Abstract: We will propose designation of critical habitat, if prudent, for five species of Appalachian bivalves, or freshwater mussels (Cumberland elktoe, Cumberland combshell, oyster mussel, rough rabbitsfoot, and purple bean).

Timetable:

Action	Date	FR Cite
NPRM	06/03/03	68 FR 33234
NPRM Technical Correction; Reopening of Comment Period	10/06/03	68 FR 57643
NPRM Comment Period End	12/05/03	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris_nolin@fws.gov

RIN: 1018–AI76

1669. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR A PLANT, THE LANE MOUNTAIN MILKVETCH

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 15, 2003, NPRM.

Abstract: We will propose designation of critical habitat for the Lane Mountain milkvetch, an endangered plant found in California.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
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Email: chris_nolin@fws.gov

RIN: 1018–AI78

1670. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING OF A PLANT, THE ARIZONA AGAVE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the Arizona agave (Agave arizonica) from the list of threatened and endangered species.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
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Fax: 703 358–1735
Email: patrick_leonard@fws.gov

RIN: 1018–AI79

1671. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED NONESSENTIAL EXPERIMENTAL POPULATION OF THE NORTHERN APLOMADO FALCON

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to establish a nonessential experimental population for the Northern aplomado falcon (Falco femoralis septentrionalis), to facilitate the recovery of this endangered species and to ensure that its reintroduction will not impose new restrictions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
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Email: patrick_leonard@fws.gov

RIN: 1018–AI80

1672. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DOWNLISTING THE WOOD BISON FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to publish a proposed rule to downlist the Wood bison from endangered to threatened. This action is being considered because of progress in the recovery of this species.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: roddy_gabel@fws.gov

RIN: 1018–AI83

1673. SAFE HARBOR AGREEMENTS AND CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES; REVISIONS TO THE REGULATIONS

Priority: Other Significant

Legal Authority: 16 USC 1531

CFR Citation: 50 CFR 13.25; 50 CFR 17.22; 50 CFR 17.32

Legal Deadline: None

Abstract: FWS is proposing to revise the implementing regulations for permits issued under Safe Harbor Agreements and Candidate Conservation Agreements With Assurances. These minor regulatory revisions will make SHAs and CCAAs easier to understand and implement. After practical application of the policy and regulations, we see some inconsistencies and a need to refine/define some terminology.

Timetable:

Action	Date	FR Cite
NPRM	09/10/03	68 FR 53320
NPRM Comment Period End	11/10/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

Agency Contact: Marjorie Nelson, Biologist, Department of the Interior, United States Fish and Wildlife Service, Room 435, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2105
Fax: 703 358–2434
Email: marjorie_nelson@fws.gov

RIN: 1018–AI85

1674. U.S. PROPOSALS FOR CITES APPENDIX III; BLACK COHOSH

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99–625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This rule would list black cohosh in appendix III to CITES, for the purposes of more effective monitoring of trade, ensuring that traded specimens are legally acquired in their state(s) of origin, and obtaining the cooperation of other countries that are parties to CITES in controlling the trade in such specimens.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Dr. Patricia S. De Angelis, Botanist, Division of Scientific Authority; Chair, Plant Conserv. All., Medicinal Plant Workg. Gp., Department of the Interior, United States Fish and Wildlife Service, 4401 N Fairfax Dr., Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: patricia_deangelis@fws.gov

RIN: 1018–AI91

1675. MIGRATORY BIRD PERMITS; MILITARY READINESS EXEMPTION

Priority: Other Significant

Legal Authority: PL 107–314

CFR Citation: 50 CFR 21

Legal Deadline: Final, Statutory, December 2, 2003, Final.

Abstract: The 2003 Defense Authorization Bill, signed by the President on December 2, 2002, requires the U.S. Fish and Wildlife Service to develop and issue within one year regulations that exempt the Armed Forces from incidental take of migratory birds during authorized military readiness. The Department of Defense must concur with these regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marie Strassburger, Department of the Interior, United States Fish and Wildlife Service, MS MBSP–4107, Division of Migratory Bird Management, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1813

RIN: 1018–AI92

1676. ENDANGERED SPECIES AND PESTICIDE REGULATION

Regulatory Plan: This entry is Seq. No. 72 in part II of this issue of the **Federal Register**.

RIN: 1018–AI95

1677. REVISION OF MIGRATORY BIRD HUNTING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742a to 742j; PL 106–108

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: We will revise and update a significant portion of the regulations governing migratory game bird hunting. This rule will also use plain language to clarify these regulations.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Agency Contact: Kevin Adams, Chief, Office of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, MS–LE–3000, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1949
Fax: 703 358–1947
Email: kevin_adams@fws.gov

RIN: 1018–AI98

1678. REVISION OF THE REGULATIONS GOVERNING THE TRANSPORT OF EAGLE FEATHERS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668a; 16 USC 703 to 712; 16 USC 1531 to 1544

CFR Citation: 50 CFR 22

Legal Deadline: None

Abstract: We will develop regulations that allow the temporary transport of eagle feathers to and from the United States by Indian people of Canada and regulations that will streamline the permit process that allows transport of eagle feathers to and from Canada and Mexico by members of federally recognized Indian tribes.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Tribal

Agency Contact: Kevin Adams, Chief, Office of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, MS–LE–3000, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1949
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Email: kevin__adams@fws.gov

RIN: 1018–AJ00

1679. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING THE EASTERN DISTINCT POPULATION SEGMENT OF THE GRAY WOLF

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We are planning to propose to remove the eastern Distinct Population Segment (DPS) of the gray wolf, consisting of 21 States, from the list of Endangered and Threatened Species. The reasons for this action are the following: the achievement of all recovery criteria and completion of suitable state wolf management plans by Minnesota, Wisconsin, and Michigan.

Timetable:

Action	Date	FR Cite
ANPRM	04/01/03	68 FR 15876
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
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Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AJ03

1680. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING OF THE WESTERN DISTINCT POPULATION SEGMENT OF THE GRAY WOLF

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the western Distinct Population Segment (DPS) of the gray wolf from the List of Endangered and Threatened Species. The reason for this action is the following: On the basis of estimates compiled in December 2002, we conclude that the wolf population has achieved the required third year of its population recovery criteria.

Timetable:

Action	Date	FR Cite
ANPRM	04/01/03	68 FR 15879
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
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RIN: 1018–AJ04

1681. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE COLORADO BUTTERFLY PLANT

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, December 30, 2003, NPRM.
Final, Judicial, December 30, 2004, Final.

Abstract: We will designate critical habitat for the Colorado butterfly plant. A short-lived perennial, the Colorado butterfly plant is endemic to moist soils in mesic or wet meadows of floodplain areas in northcentral Colorado, extreme western Nebraska, and southeastern Wyoming.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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RIN: 1018–AJ07

1682. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE FISH SLOUGH MILK VETCH

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 15, 2003, NPRM.

Abstract: We will designate critical habitat for the Fish Slough milk-vetch. On October 6, 1998, the Fish Slough milk vetch, a plant species native to California, was listed as a threatened species.

Timetable:

Action	Date	FR Cite
NPRM—proposed critical habitat	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and

Wildlife Service, Room 452, 4401 North
Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AJ09

1683. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE MUNZ'S ONION

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 30, 2004, NPRM.

Abstract: We will designate critical habitat for Munz's onion. On October 13, 1998, the Munz's onion, a plant native to California, was listed as endangered.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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RIN: 1018–AJ10

1684. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE COASTAL-PUGET SOUND, ST. MARY-BELLY RIVER, AND JARBIDGE RIVER POPULATION SEGMENTS OF BULL TROUT

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, October 1, 2003, NPRM.

Abstract: We will designate critical habitat for the Coastal-Puget Sound, St. Mary-Belly River, and Jarbidge River population segments of bull trout. The Coastal-Puget Sound bull trout population segment encompasses all Pacific Coast drainages within Washington, including Puget Sound. The St. Mary-Belly River bull trout population segment occurs in northwest Montana. The Jarbidge River population segment occurs in Nevada.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
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RIN: 1018–AJ12

1685. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE SALT CREEK TIGER BEETLE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 30, 2005, NPRM.

Abstract: We will list the Salt Creek tiger beetle (Cicindela nevadica lincolniana) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies is endemic to eastern Nebraska saline wetlands and associated streams in the northern third of Lancaster County and southern margin of Saunders County in Nebraska.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
Final Action	09/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
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RIN: 1018–AJ13

1686. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE MEXICAN SPOTTED OWL

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, October 13, 2003, NPRM.

Abstract: We will repropose the designation of critical habitat for the Mexican spotted owl. The owl inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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Email: chris__nolin@fws.gov

RIN: 1018–AJ15

1687. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE EGGERT'S SUNFLOWER FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to remove the Eggert's sunflower from the List of Endangered and Threatened Species.

This action is based on the recent completion of population and distribution studies, the commitment of land managers to the protection and management of several populations, and the discovery of previously undocumented populations throughout the species' range.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AJ17

1688. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DE-DESIGNATION OF MANATEE PROTECTION AREAS IN FLORIDA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq.; 16 USC 1361–1407

CFR Citation: 50 CFR 17.108

Legal Deadline: None

Abstract: We intend to propose to de-designate two Manatee Refuges in FL: Pansy Bayou Manatee Refuge, in Sarasota County, and Cocoa Beach Manatee Refuge in Brevard County. These Refuges were designated on November 8, 2002 (67 Federal Register 68450). We will propose to de-designate these Refuges because the State of Florida has instituted additional manatee protection measures at these sites, making federal designation unnecessary.

Timetable:

Action	Date	FR Cite
NPRM	10/22/03	68 FR 60316
NPRM Comment Period End	11/21/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AJ23

1689. • INJURIOUS WILDLIFE; SILVER CARP (HYPOPHTHALMICHTHYS MOLITRIX)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: The Service will review economic and biological information on silver carp for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
ANPRM	07/23/03	68 FR 43482
ANPRM Comment Period End	09/22/03	
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Branch of Invasive Species, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Room 810–B, Arlington, VA 22203
Phone: 703 358–2464
Fax: 703 358–1800
Email: kari__duncan@fws.gov

RIN: 1018–AT29

1690. • WILD BIRD CONSERVATION ACT; REVIEW OF REGULATIONS TO ALLOW IMPORTS OF EXOTIC WILD BIRDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15.41; 50 CFR 15.42

Legal Deadline: None

Abstract: We will review the existing Wild Bird Conservation Act regulations to allow imports of exotic wild birds and make modifications as appropriate. On the basis of our experience and the feedback of applicants, we will streamline procedures and make the regulations more user-friendly.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Michael Kreger, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: michael__kreger@fws.gov

RIN: 1018–AT30

1691. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING OF MEXICAN BOBCAT FROM LIST OF ENDANGERED SPECIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We received a petition to delist the Mexican bobcat (Lynx rufus escuinapae). If we determine as a result of our status review, based on our review of the best available scientific information, that the species does not meet the definitions of endangered or threatened in the ESA (i.e., that delisting is warranted), we will propose a rule to delist the Mexican bobcat (Lynx rufus escuinapae) and remove it from the List of Endangered Species.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Karen L. Anderson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703–358–2276
Email: karen_l_anderson@fws.gov

RIN: 1018–AT31

1692. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE VIRGINIA ROUNDLEAF FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to remove the Virginia roundleaf from the List of Endangered and Threatened Species.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick_leonard@fws.gov

RIN: 1018–AT33

1693. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED TERMINATION OF THE SOUTHERN SEA OTTER TRANSLOCATION PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to propose to terminate the southern sea otter translocation program and change regulations to allow sea otters residing in designated translocation and management zones to remain after the zones are abolished. The southern sea otter translocation program, established under authority of Public Law 99–625, has failed to meet its established goals and objectives. A draft supplemental environmental impact statement (SEIS), to be released for public comment in the fall of 2003, includes a full evaluation of the southern sea otter translocation program and alternatives for the future of the program. The proposed rule describes the actions necessary to implement the proposed action identified in the SEIS. This decision is consistent with recommendations from the southern sea otter recovery team and resolves conflicts that have arisen between Fish and Wildlife Service mandates under the ESA and PL 99–625.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick_leonard@fws.gov

RIN: 1018–AT34

1694. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; WITHDRAWAL OF PROPOSED DOWNLISTING OF THE PAHRUMP POOLFISH FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to withdraw the previous proposed rule to reclassify the Pahrump poolfish from endangered to threatened. Because of a change in status, reclassification is no longer warranted. The species only occurs in three refugia populations, and one of those populations has been recently lost.

Timetable:

Action	Date	FR Cite
NPRM	09/22/93	58 FR 49279
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick_leonard@fws.gov

RIN: 1018–AT35

1695. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED RECLASSIFICATION OF THE VIRGINIA NORTHERN FLYING SQUIRREL FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to propose reclassifying the Virginia northern flying squirrel from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
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Email: patrick__leonard@fws.gov

RIN: 1018–AT37

1696. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED REMOVAL OF THE YELLOWSTONE GRIZZLY BEAR POPULATION FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to propose to delist the Yellowstone population of grizzly bears from the List of Endangered and Threatened Species.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AT38

1697. • 2004–2005 REFUGE-SPECIFIC HUNTING AND SPORT FISHING REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 16 USC 460; 16 USC 664; 16 USC 668dd to 668ee; 16 USC 715(i); . . .

CFR Citation: 50 CFR 32

Legal Deadline: None

Abstract: We propose to open additional national wildlife refuges to hunting and/or sport fishing and to provide refuge-specific regulations for those activities. This is an annual update for the National Wildlife Refuge System that ensures adequate public notice of openings/changes each fall. We operate hunting/fishing programs on national wildlife refuges in furtherance of the implementation of the National Wildlife Refuge System Improvement Act of 1997 directives to facilitate compatible priority wildlife-dependent recreational opportunities.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Local, State

Agency Contact: Leslie Marler, Management Analyst, Department of the Interior, United States Fish and Wildlife Service, Room 670, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2397
Email: leslie__marler@fws.gov

RIN: 1018–AT40

1698. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE ARROYO TOAD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, April 1, 2004, NPRM.

Abstract: We will propose designation of critical habitat for the arroyo toad, an endangered species known from California and Mexico.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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Email: chris__nolin@fws.gov

RIN: 1018–AT42

1699. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE BOREAL TOAD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, September 30, 2005, Final.

Abstract: We plan to issue a proposed listing rule to list the boreal toad (Bufo boreas boreas) pursuant to the Endangered Species Act of 1973, as amended. This subspecies occurs in western North America, in Alaska, Alberta, British Columbia, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the Yukon.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AT43

1700. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE CALIFORNIA TIGER SALAMANDER SANTA BARBARA COUNTY DISTINCT POPULATION SEGMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, January 15, 2004, NPRM.

Abstract: We will propose designation of critical habitat for the Santa Barbara County Distinct Population Segment of the California tiger salamander, an endangered species in California.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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Email: chris_nolin@fws.gov

RIN: 1018–AT44

1701. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE RIVERSIDE FAIRY SHRIMP

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, April 1, 2004, NPRM.

Abstract: We will propose designation of critical habitat for the Riverside fairy shrimp, an endangered species in California.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris_nolin@fws.gov

RIN: 1018–AT45

1702. • SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D; 2005–2006 SUBSISTENCE TAKING OF FISH AND SHELLFISH REGULATIONS

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rule will revise the regulations for seasons, harvest limits, methods, and means for the subsistence taking of fish and shellfish during the 2005–06 regulatory year. This rulemaking is necessary because subpart D is subject to an annual review cycle.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William W. Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, AK 99503
Phone: 907 786–3873
Fax: 907 786–3898
Email: bill_knauer@fws.gov

RIN: 1018–AT46

1703. • MARINE MAMMALS: REVISED DEFINITION OF "AUTHENTIC NATIVE ARTICLES OF HANDICRAFTS AND CLOTHING"

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1631

CFR Citation: 50 CFR 18.3

Legal Deadline: None

Abstract: A proposed rulemaking action that removes language put into place by an FWS interim rule intended to govern the taking of northern sea otters by Alaska Natives for use in creating and selling handicrafts and clothing under section 101(b), the Native exemption section of the Marine Mammal Protection Act (MMPA). Our interim rule revised the definition of "authentic native articles of handicrafts and clothing" in 50 CFR 18.3, to limit takes to the period "on or before December 21, 1972" and precluded the take of sea otters by Alaska Natives for use in creating and selling handicrafts and clothing under section 101(b).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Tribal

Agency Contact: Martin Kodis, Chief, Division of Federal Program Activities, Branch of Management Support, Department of the Interior, United States Fish and Wildlife Service, U.S. Fish and Wildlife Service, 400 ARL SQ, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–5496
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Email: martin_kodis@fws.gov

RIN: 1018–AT48

1704. • REVISED DEFINITION OF "DESTRUCTION OR ADVERSE MODIFICATION" FOR ENDANGERED SPECIES ACT SECTION 7 CONSULTATIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 402.02

Legal Deadline: None

Abstract: Fish and Wildlife Service and National Marine Fisheries Service will revise definition of "destruction or adverse modification" to reflect the 5th Circuit Court of Appeals' 2001 decision that the existing regulation is invalid.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Richard E Sayers Jr., Chief, Branch of Consultation and Habitat Conservation Planning, Department of the Interior, United States Fish and Wildlife Service, ARLSQ–420, 1849 C Street NW, Mailstop ARL–SQ 420, Washington, DC 20240
Phone: 703 358–2106
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RIN: 1018–AT50

1705. • LISTING THE MIAMI BLUE BUTTERFLY AS ENDANGERED; LISTING THE CASSIUS BLUE, CERAUNUS BLUE, AND NICKERBEAN (AMMON) BLUE BUTTERFLIES AS THREATENED DUE TO SIMILARITY OF APPEARANCE TO THE MIAMI BLUE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1361–1407; 16 USC 1531–1544; 16 USC 4201–4245; Pub L 99–625, 100 Stat 3500

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: FWS proposes to emergency list the Miami blue butterfly as endangered under the Endangered Species Act of 1973, as amended. The geographic range of this butterfly, which once extended north along the Florida coasts to about St. Petersburg and Daytona, has been severely reduced and is now restricted to Bahia Honda Key, Monroe County, Florida. The wild population of Miami blue is estimated at 45 to 50 adults, the number found consistently during survey efforts, while the documented range of the population fluctuates between 15 and 135 adults, depending on season and other environmental factors. We also determine the cassius blue butterfly (Leptotes cassius theonus), ceraunus blue butterfly (Hemiargus ceraunus antibubastus or Hemiargus hanno antibubastus), and nickerbean (ammon) blue butterfly (Cyclargus (Hemiargus) ammon ammon) to be threatened due to similarity of appearance to the Miami blue, with a special rule pursuant to section 4(e) of the ESA.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Other/Final Rule—Emergency rule	11/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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Email: chris__nolin@fws.gov

RIN: 1018–AT51

1706. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE MEXICAN SPOTTED OWL

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 7, 2003, NPRM.
Final, Judicial, April 13, 2004, Final.

Abstract: We propose the designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended, for the Mexican spotted owl (Strix occidentalis lucida). The owl inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico. We propose to designate approximately 5.5 million hectares (ha) (13.5 million acres (ac)) of critical habitat in Arizona, Colorado, New Mexico, and Utah, mostly on Federal lands.

Timetable:

Action	Date	FR Cite
NPRM	11/18/03	68 FR 65020
NPRM Comment Period End	12/18/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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Email: chris__nolin@fws.gov

RIN: 1018–AT52

Department of the Interior (DOI)
United States Fish and Wildlife Service (FWS)

Final Rule Stage

1707. LIST OF MIGRATORY BIRDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 704; 16 USC 712

CFR Citation: 50 CFR 10.13

Legal Deadline: None

Abstract: The List of Migratory Birds found at 50 CFR 10.13 is being revised to (1) bring the list into conformity with generally accepted taxonomy and nomenclature—English (common) and scientific names, as reflected in four published supplements to the 6th

(1983) edition of the American Ornithologists' Union Checklist of North American Birds; and (2) add species that are of regular occurrence in the United States that are not included on the current list.

Timetable:

Action	Date	FR Cite
NPRM	05/09/95	60 FR 24686
Second NPRM	10/12/01	66 FR 52281
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
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Email: brian__millsap@fws.gov

RIN: 1018–AB72

1708. GENERAL PROVISIONS AND GENERAL PERMIT PROCEDURES—50 CFR PART 13

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668a; 16 USC 704; 16 USC 712; 16 USC 742j–1; 16 USC 1382; 16 USC 1538(d); 16 USC 1539; 16 USC 1540(f); 16 USC 3374; 16 USC 4901 to 4916; 18 USC 42; 19 USC 1202; 31 USC 9701

CFR Citation: 50 CFR 13

Legal Deadline: None

Abstract: The Service proposes to amend 50 CFR part 13, which provides uniform permit procedures relating to the general administration of Service permits, to update the permit application fee schedule. Permit fees have not been revised since 1982. This change is necessary in order to recover a larger percentage of the cost of processing the permits.

Timetable:

Action	Date	FR Cite
NPRM	08/26/03	68 FR 51222
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Local

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
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RIN: 1018–AC57

1709. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE BALD EAGLE THROUGHOUT THE LOWER 48 STATES FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposal to remove the bald eagle from the List of Endangered and Threatened Species. This action is based on continued recovery gains and increasing population trends.

Timetable:

Action	Date	FR Cite
NPRM	07/06/99	64 FR 36454
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
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RIN: 1018–AF21

1710. IMPORTATION OF CAPTIVE-BRED EXOTIC BIRDS INTO THE UNITED STATES FROM BREEDING FACILITIES IN OTHER COUNTRIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15

Legal Deadline: None

Abstract: We will establish the information requirements and approval criteria for the import of captive-bred wild exotic birds from overseas breeding facilities. This rule applies primarily to species listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which are otherwise prohibited from import by the Wild Bird Conservation Act of 1992. The rule also describes the process for handling petitions to approve qualifying facilities, establishes the duration of approval, provides for the suspension and revocation of approval, and provides for notice of approved facilities in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	03/17/94	59 FR 12784
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: roddy__gabel@fws.gov

RIN: 1018–AF44

1711. POLICY ON GENERAL CONSERVATION PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 1361 et seq; 16 USC 703 et seq

CFR Citation: None

Legal Deadline: None

Abstract: This policy will contain provisions to issue permits under a number of wildlife and plant laws and treaties to qualified organizations to conduct general conservation activities over a specified period of time instead of issuing multiple permits for each activity. This policy recognizes scientific and conservation professionals and institutions as partners in resource conservation and management and provides incentives for them to work with protected species and their habitats.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy	10/28/99	64 FR 58086
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive,
Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AF63

1712. U.S. PROPOSALS FOR CITES APPENDIX III; CERTAIN TURTLE SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This action would add certain native turtle species to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. If adopted, exports of the species would require CITES documentation from the Service to ensure that foreign countries accept the shipments. This action is necessary to monitor the impact of trade on the species in an effort to maintain healthy populations.

Timetable:

Action	Date	FR Cite
NPRM	01/26/00	65 FR 4217
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marie Maltese, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive,
Arlington, VA 22203
Phone: 703 358–1708
Email: marie__maltese@fws.gov

RIN: 1018–AF69

1713. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED ENDANGERED STATUS FOR THREE PLANTS FROM THE MARIANA ISLANDS AND GUAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We, the U.S. Fish and Wildlife Service, propose endangered status pursuant to the Endangered Species Act of 1973, as amended, for three plants (no common names): Nesogenes rotensis, Osmoxylon mariannense, and Tabernaemontana rotensis. Nesogenes rotensis and O. mariannense are found only on the island of Rota in the U.S. Commonwealth of the Northern Mariana Islands. Tabernaemontana rotensis occurs on both Rota and the United States Territory of Guam.

Timetable:

Action	Date	FR Cite
NPRM	06/01/00	65 FR 35025
NPRM Comment Period Reopened	10/30/00	65 FR 64649
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AG09

1714. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR 12 SPECIES OF PICTURE-WING FLIES FROM THE HAWAIIAN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Statutory, January 2002, Final.

Abstract: We propose endangered status pursuant to the Endangered Species Act of 1973, as amended, for 12 species of Hawaiian picture-wing flies—Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera, and D. tarphytrichia. These species are found on one or more of the following Hawaiian Islands: Kauai, Oahu, Molokai, Maui, and Hawaii. These 12 species face substantial threats from one or more of the following: habitat degradation, loss of host plants, biological pest control, and predation from alien arthropods.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3964
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AG23

1715. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING THE HOOVER'S WOOLLY-STAR FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the Hoover's Woolly-Star from the list of Endangered and Threatened Plants because of recovery. This action is based on information that indicates this plant is more widespread and abundant than previously thought, more resilient and less vulnerable to certain activities than previously thought, and adequately protected on public lands.

Timetable:

Action	Date	FR Cite
NPRM	03/06/01	66 FR 13474
Final Action	10/07/03	68 FR 57829

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AG41

1716. NATIONAL WILDLIFE REFUGE SYSTEM; MISSION, GOALS, AND PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668(dd) to 668(ee)

CFR Citation: None

Legal Deadline: None

Abstract: This proposed policy (FWS Manual) will address the mission, goals and purposes of the National Wildlife Refuge System in the context of the National Wildlife Refuge System Improvement Act of 1997. This RIN also reflects Wildlife-Dependent Recreation Uses, Appropriate Refuge Uses, and Wilderness Stewardship.

Timetable:

Action	Date	FR Cite
Proposed Policy	01/16/01	66 FR 3668
Comment Period Extended	03/15/01	66 FR 15136
NPRM Comment Period Reopened	05/15/01	66 FR 26879
NPRM Comment Period Reopened	06/21/01	66 FR 33268
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: James W. Kurth, Deputy Chief, National Wildlife Refuge System, Department of the Interior, United States Fish and Wildlife Service, MS 670 ARLSQ, Washington, DC 20240
Phone: 703 358–1744

RIN: 1018–AG46

1717. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THREE COASTAL CALIFORNIA PLANTS

Priority: Other Significant

Legal Authority: 16 USC 1531 to 1544; 16 USC 1361 to 1407; 16 USC 4201 to 4245; PL 99–625 100 Stat 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 30, 2001, NPRM.

Abstract: We designate critical habitat for three coastal plants in California: LaGraciosa thistle, Lompac Yerba Santa, and Gaviota tarplant.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57559
NPRM Comment Period Reopened	05/07/02	67 FR 30641
Final Action for 2 plants	11/07/02	67 FR 67967
Final Action for 1 plant	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AG88

1718. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE TRUCKEE BARBERRY FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the Truckee barberry from the List of Endangered and Threatened Species. This action is based on new information.

Timetable:

Action	Date	FR Cite
NPRM	09/03/02	67 FR 56254
Final Action	10/01/03	68 FR 56564

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AH47

1719. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE GUAM BROADBILL AND MARIANA MALLARD FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the Guam broadbill and the Mariana mallard from the List of Endangered and Threatened Wildlife because of extinction.

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3675
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735

Email: patrick__leonard@fws.gov

RIN: 1018–AH50

1720. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE JOHNSTON'S FRANKENIA FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the Johnston's frankenia from the List of Endangered and Threatened Plants. This action is based on new information.

Timetable:

Action	Date	FR Cite
NPRM	05/22/03	68 FR 27961
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AH53

1721. ENDANGERED AND THREATENED PLANTS; RECLASSIFICATION OF THE MISSOURI BLADDERPOD FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to reclassify the Missouri bladderpod from endangered to threatened. This action is based on significant progress in finding additional populations and protecting and enhancing known populations.

Timetable:

Action	Date	FR Cite
NPRM	06/10/03	68 FR 34569
Final Action	10/15/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AH59

1722. ADDITION OF THE GREAT WHITE SHARK AND THE CAPE STAG BEETLES TO APPENDIX III UNDER CITES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This action will amend the regulations in 50 CFR part 23 by adding the great white shark and the cape stag beetle to appendix III under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AH66

1723. AUDIT RESOLUTION POLICY

Priority: Substantive, Nonsignificant

Legal Authority: OMB Circular A–133

CFR Citation: 50 CFR 80; 43 CFR 12

Legal Deadline: None

Abstract: We will publish six USFWS Manual chapters regarding Federal Government auditing standards as they pertain to State grantees.

Timetable:

Action	Date	FR Cite
Policy	12/14/01	66 FR 64845
Policy—Request for Comments	10/29/03	68 FR 61681
Policy—Final Chapters	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Agency Contact: Kim Galvan, Management Analyst, Division of Federal Aid, Department of the Interior, United States Fish and Wildlife Service, MS 140, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1851
Email: kim__galvan@fws.gov

RIN: 1018–AH69

1724. MIGRATORY BIRD PERMITS; REGULATIONS GOVERNING REHABILITATION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service will amend the Migratory Bird Permit regulations to create a permit category specifically to authorize rehabilitation of sick and injured migratory birds. Currently these permits are authorized under 50 CFR 21.27, Special Purpose Permits.

Timetable:

Action	Date	FR Cite
NPRM	12/06/01	66 FR 63349
Final Action	10/27/03	68 FR 61123

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714

Email: brian__millsap@fws.gov

RIN: 1018–AH87

1725. IMPORTATION OF EXOTIC WILD BIRDS INTO THE UNITED STATES; ADDING BLUE-FRONTED AMAZON PARROTS FROM ARGENTINA'S APPROVED SUSTAINABLE USE MANAGEMENT PLAN TO THE APPROVED LIST OF NON-CAPTIVE BRED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15

Legal Deadline: None

Abstract: This rule would allow the import into the United States of parrots removed from the wild in Argentina under an approved sustainable use management plan. This is the first such plan that, if approved, would contribute to the goals of the Wild Bird Conservation Act to promote the conservation of exotic birds through sustainable use.

Timetable:

Action	Date	FR Cite
NPRM	08/06/03	68 FR 46559
Other/Comment Period End	10/06/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AH89

1726. MARINE MAMMALS: INCIDENTAL TAKE DURING SPECIFIED ACTIVITIES (BEAUFORT SEA POLAR BEAR AND WALRUS)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: The Marine Mammal Protection Act authorizes issuance of regulations to allow the incidental unintentional take of small numbers of marine mammals in activities (other than commercial fishing) in specific geographical areas. These regulations would authorize incidental take of polar bears and walruses in the Beaufort Sea during oil and gas energy activities for 1 year, after current regulations expire on March 31, 2003.

Timetable:

Action	Date	FR Cite
NPRM	07/25/03	68 FR 44020
NPRM Comment Period End	08/25/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Agency Contact: Dr. Benjamin Tuggle, Chief, Division of Federal Program Activities, Department of the Interior, United States Fish and Wildlife Service, Room 400, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2161
Fax: 703 358–1869
Email: benjamin__tuggle@fws.gov

RIN: 1018–AH92

1727. PUBLIC NOTICE FOR CITES APPENDIX III LISTING OF SPANISH CEDAR AND BIGLEAF MAHOGANY BY THE GOVERNMENT OF PERU

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99–625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This notice advises the public that, by unilateral action provided for in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Government of Peru has listed Spanish cedar and bigleaf mahogany in CITES appendix III. This listing invokes certain permitting requirements to assist Peru in controlling trade in these species.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Pat Ford, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Email: pat__ford@fws.gov

RIN: 1018–AH99

1728. MIGRATORY BIRD HUNTING AND PERMITS; REGULATIONS FOR MANAGING HARVEST OF LIGHT GOOSE POPULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20; 50 CFR 21 subpart E

Legal Deadline: None

Abstract: This rule authorizes new methods of take for light goose hunting under 50 CFR part 20 and revises subpart E of 50 CFR part 21 for the management of overabundant light goose populations. It also modifies the conservation order that will increase take of such populations under the authority of this subpart.

Timetable:

Action	Date	FR Cite
NPRM	10/12/01	66 FR 52077
NPRM Correction	11/07/01	66 FR 56266
NPRM Comment Period Extended	12/10/01	66 FR 63665
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Email: brian__millsap@fws.gov

RIN: 1018–AI07

1729. ADDITION BY INDONESIA OF RAMIN TO APPENDIX III UNDER THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99–625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This direct final rule notifies the public that, by unilateral action provided for in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Government of Indonesia has listed the tree species, Ramin, in CITES appendix III. This listing invokes certain permitting requirements to assist Indonesia in controlling trade in this species.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Pat Ford, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Email: pat__ford@fws.gov

RIN: 1018–AI08

1730. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; BELUGA STURGEON

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99–625

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: On the basis of comments received, we may finalize a rule to list the Beluga sturgeon (Huso huso) as endangered. This species historically inhabited the Caspian, Black, Azov, and Adriatic Seas and all rivers flowing into them. The Adriatic Sea population has been extirpated, and no wild Beluga sturgeon has been found in the Sea of Azov since the mid-1980s. This species has declined due to fishing pressure. This species is highly valued for its caviar and is subject to substantial levels of both legal and illegal fishing. The Beluga sturgeon has also been impacted by dam building and other forms of habitat modification.

Timetable:

Action	Date	FR Cite
Notice	06/20/02	67 FR 41918
NPRM	07/31/02	67 FR 49657
NPRM Comment Period Reopened	11/06/02	67 FR 67586
Other/NPRM Comment Period Reopened	07/02/03	68 FR 39507
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Marie Maltese, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Email: marie__maltese@fws.gov

RIN: 1018–AI11

1731. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE TINIAN MONARCH FLYCATCHER FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to make a final determination on the proposed rule to delist the Tinian monarch flycatcher from the list of endangered and threatened species, due to apparent increases in population numbers and likely improvement of habitat quality. This bird occurs on Tinian Island in the Marianas. The proposed rule was published in the Federal Register on February 22, 1999, page 8533, under RIN 1018–AE40.

Timetable:

Action	Date	FR Cite
NPRM	02/22/99	64 FR 8533
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AI14

1732. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING AND DESIGNATION OF CRITICAL HABITAT FOR THREE SNAILS AND ONE AMPHIPOD

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99–625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 6, 2002, NPRM.

Abstract: We propose to list and designate critical habitat for Koster's tyronia, Noel's amphipod, Pecos assiminea and the Roswell springsnail in New Mexico and Texas.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6459
NPRM Comment Period Reopened	05/31/02	67 FR 38059
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI15

1733. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE ROTA BRIDLED WHITE-EYE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat.3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 18, 2002, NPRM.

Abstract: We propose to list a bird, the Rota bridled white-eye, which occurs in the Mariana Islands.

Timetable:

Action	Date	FR Cite
NPRM	10/03/01	66 FR 50383
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171
Fax: 703 358-1735
Email: chris_nolin@fws.gov

RIN: 1018-AI16

1734. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE TOPEKA SHINER

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, August 13, 2002, NPRM.

Abstract: We propose to designate critical habitat for the fish, the Topeka shiner, which occurs in Iowa, Kansas, Minnesota, Missouri, and South Dakota.

Timetable:

Action	Date	FR Cite
NPRM	08/21/02	67 FR 54261
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171
Fax: 703 358-1735
Email: chris_nolin@fws.gov

RIN: 1018-AI20

1735. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE VENTURA MARSH MILKVETCH

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, October 1, 2002, NPRM.

Abstract: This rule designates critical habitat for the plant, the Ventura Marsh milkvetch, which occurs in California.

Timetable:

Action	Date	FR Cite
NPRM	10/09/02	67 FR 62926
NPRM Comment Period Reopened	03/20/03	68 FR 13663
Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171
Fax: 703 358-1735
Email: chris_nolin@fws.gov

RIN: 1018-AI21

1736. MIGRATORY BIRD PERMITS; REGULATIONS FOR MANAGING RESIDENT CANADA GEESE POPULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: This rule would establish a regulation authorizing State wildlife agencies to conduct indirect and/or direct population control management activities on resident Canada geese, including the take of birds. The intent of this rule is to allow State wildlife management agencies sufficient flexibility to deal with problems caused by resident Canada geese and to guide and direct Canada goose population growth and management activities in the conterminous United States.

Timetable:

Action	Date	FR Cite
NPRM	08/21/03	68 FR 50496
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: brian_millsap@fws.gov

RIN: 1018-AI32

1737. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE CACTUS FERRUGINOUS PYGMY OWL

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, July 13, 2002, NPRM.

Abstract: We will propose a new designation of critical habitat for the Cactus ferruginous pygmy owl distinct population segment found in Arizona.

Timetable:

Action	Date	FR Cite
NPRM	11/27/02	67 FR 71031
NPRM Comment Period Reopened	02/25/03	68 FR 8730
NPRM Comment Period End	04/25/03	
NPRM Comment Period Reopened	04/28/03	68 FR 22353
NPRM Comment Period End	06/27/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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Email: chris__nolin@fws.gov

RIN: 1018–AI48

1738. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE SLICKSPOT PEPPERGRASS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, April 2003, Final.

Abstract: We will propose listing the slickspot peppergrass, a plant found in Idaho, under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	07/15/02	67 FR 46441
NPRM Comment Period Reopened	09/25/02	67 FR 60206
Other/NPRM Comment Period Reopened	07/18/03	68 FR 42666
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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RIN: 1018–AI50

1739. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE CENTRAL CALIFORNIA DISTINCT POPULATION SEGMENT OF THE CALIFORNIA TIGER SALAMANDER; RECLASSIFICATION OF THE SONOMA COUNTY AND SANTA BARBARA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 15, 2003, NPRM.

Abstract: We are proposing to: (1) list the Central California distinct population segment (DPS) of the California Tiger Salamander (Ambystoma californiense) as a threatened species under the Endangered Species Act (ESA); (2) reclassify the Sonoma County and Santa Barbara County DPSs of the California Tiger Salamander from endangered to threatened under the ESA; and (3) exempt, under section 4(d) of the ESA, existing routine ranching activities on private or tribal lands from section 9 prohibitions for the three DPSs of the California tiger salamander.

Timetable:

Action	Date	FR Cite
NPRM	05/23/03	68 FR 28648
NPRM Comment Period Extended	07/03/03	68 FR 39892
NPRM Comment Period Reopened	09/30/03	68 FR 56261
NPRM Comment Period End	10/31/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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RIN: 1018–AI68

1740. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE DESERT YELLOWHEAD

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, March 8, 2003, NPRM.

Abstract: We propose to designate critical habitat for the Desert yellowhead, a threatened plant found in Wyoming.

Timetable:

Action	Date	FR Cite
NPRM	03/14/03	68 FR 12326
NPRM Comment Period End	05/13/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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Email: chris__nolin@fws.gov

RIN: 1018–AI69

1741. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE SAN DIEGO FAIRY SHRIMP

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, April 11, 2003, NPRM.

Abstract: We will propose designation of critical habitat for the endangered San Diego Fairy shrimp, a freshwater crustacean found in southern California.

Timetable:

Action	Date	FR Cite
NPRM	04/22/03	68 FR 19888
NPRM Comment Period End	06/06/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
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RIN: 1018–AI71

1742. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE CALIFORNIA GNATCATCHER

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, April 11, 2003, NPRM.

Abstract: We will propose to designate critical habitat for the Coastal California gnatcatcher, a threatened bird found in southern California.

Timetable:

Action	Date	FR Cite
NPRM	04/24/03	68 FR 20228
NPRM Comment Period End	06/23/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI72

1743. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR 11 MOBILE RIVER BASIN FRESHWATER MUSSELS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, March 17, 2003, NPRM.

Abstract: We will propose to designate critical habitat, if prudent, for three threatened and eight endangered species of Mobile River Basin freshwater mussels.

Timetable:

Action	Date	FR Cite
NPRM	03/26/03	68 FR 14752
NPRM Comment Period Reopened	08/14/03	68 FR 48581
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI73

1744. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR BRAUN'S ROCKCRESS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 19, 2003, NPRM.

Abstract: We will propose designation of critical habitat for Braun's rockcress, an endangered plant found in Kentucky and Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	06/03/03	68 FR 33058
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI74

1745. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR A PLANT, THE PIERSON'S MILKVETCH

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, July 28, 2003, NPRM.

Abstract: We will propose designation of critical habitat for Pierson's milkvetch, a threatened plant found in California.

Timetable:

Action	Date	FR Cite
NPRM	08/05/03	68 FR 46143
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI77

1746. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR THE DUGONG IN THE REPUBLIC OF PALAU

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to reopen the comment period on the proposed listing, as endangered, of the dugong in the Republic of Palau. The proposed rule was published in the Federal Register on August 5, 1993 (58 FR 41688).

Timetable:

Action	Date	FR Cite
NPRM	08/05/93	58 FR 41688
NPRM Comment Period Reopened	12/02/02	67 FR 71529
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The proposed rule was published in the Federal Register on August 5, 1993 (58 FR 41688).

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: roddy__gabel@fws.gov

RIN: 1018–AI81

1747. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR THE SCIMITAR-HORNED ORYX, ADDAX, AND DAMA GAZELLE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to reopen the comment period on the proposed listing of the Scimitar-Horned oryx, addax and the Dama gazelle as endangered. The proposed rule was published in the Federal Register on November 5, 1991.

Timetable:

Action	Date	FR Cite
NPRM	11/05/91	56 FR 56491
NPRM Comment Period Reopened	07/24/03	68 FR 43706
NPRM Comment Period End	10/22/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: roddy__gabel@fws.gov

RIN: 1018–AI82

1748. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS C AND D; 2004–2005 SUBSISTENCE TAKING OF FISH AND SHELLFISH

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rulemaking will revise the regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish in Alaska for subsistence uses during the 2004 regulatory year. This rulemaking is necessary because subpart D of the subsistence management regulations is subject to an annual review cycle. In the Fall 2002 Unified Agenda, this rulemaking appeared under the RIN 1018–AI37, which has been withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	02/12/03	68 FR 7294
NPRM Comment Period End	03/28/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William W. Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, AK 99503
Phone: 907 786–3873
Fax: 907 786–3898
Email: bill__knauer@fws.gov

RIN: 1018–AI89

1749. CHANGES IN LIST OF SPECIES IN APPENDICES TO THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99–625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: We will announce the decisions made by the 12th Meeting of the Conference of the Parties (COP12) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in November 2002 on amendments to appendices I and II, and incorporate those decisions into 50 CFR 23.23.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1708
Fax: 703 358–2276
Email: roddy__gabel@fws.gov

RIN: 1018–AI90

1750. ENDANGERED SPECIES ACT COUNTERPART SECTION 7 CONSULTATION REGULATIONS FOR IMPLEMENTING THE NATIONAL FIRE PLAN

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 402.02; 50 CFR 418 to 423

Legal Deadline: None

Abstract: These counterpart regulations will revise the existing Endangered Species Act consultation procedures by allowing agencies implementing the National Fire Plan to make determinations that proposed actions are "not likely to adversely affect" threatened or endangered species or designated critical habitat without the need to obtain written concurrence from the Fish and Wildlife Service or the National Marine Fisheries Service. The regulation will streamline the consultation process for National Fire Plan projects and is expected to achieve the same protections presently afforded to species protected under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	06/05/03	68 FR 33806
Final Action	10/09/03	68 FR 58292
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Richard E Sayers Jr., Chief, Branch of Consultation and Habitat Conservation Planning, Department of the Interior, United States Fish and Wildlife Service, ARLSQ–420, 1849 C Street NW, Mailstop ARL–SQ 420, Washington, DC 20240
Phone: 703 358–2106
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Email: rick__sayers@fws.gov

RIN: 1018–AJ02

1751. • SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2004–2005 SUBSISTENCE TAKING OF FISH AND WILDLIFE

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 100

Legal Deadline: None

Abstract: This proposed rule will revise the regulations for seasons, harvest limits, methods, and means related to the taking of wildlife for subsistence uses during the 2004–05 regulatory year. This rulemaking is necessary because subpart D is subject to annual review.

Timetable:

Action	Date	FR Cite
NPRM	08/19/03	68 FR 49734
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: William W. Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, AK 99503
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RIN: 1018–AJ25

1752. • PROPOSAL TO EXTEND EXISTING AMENDED 4(D) RULE FOR PREBLE'S MEADOW JUMPING MOUSE IN COLORADO AND WYOMING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531

CFR Citation: 17 CFR 40

Legal Deadline: None

Abstract: On May 22, 2001, the Fish and Wildlife Service adopted special regulations governing take of the threatened Preble's meadow jumping mouse (Zapus hudsonius preblei), which provide exemption from take provisions under section 9 of the Endangered Species Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and existing uses of water. On October 1, 2002, the Service amended those regulations to provide exemptions for certain activities related to noxious weed control and ongoing ditch maintenance activities. This action proposes to extend the regulations, as amended, for 10 years. Current Amended 4(d) rule will expire in May 22, 2004.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AJ26

1753. • MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA; PROPOSED SPRING/SUMMER SUBSISTENCE ANNUAL HARVEST REGULATIONS FOR MIGRATORY BIRDS IN ALASKA DURING THE 2004 SUBSISTENCE SEASON

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 703–712

CFR Citation: 50 CFR 92

Legal Deadline: None

Abstract: The U.S. Fish and Wildlife Service is establishing spring/summer migratory bird subsistence harvest regulations in Alaska for the 2004 subsistence season. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual public review. This rulemaking sets regulations that expire on August 31, 2004, for the spring/summer subsistence harvest of migratory birds in Alaska. Seasons will open after March 11 and will close prior to September 1.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Daniel Engeljohn, Executive Associate, Department of Agriculture, Food Safety and Inspection Service, 300–12th Street, Washington, DC 20250
Phone: 202 720–5627
Fax: 202–690–0486
Email: daniel.engeljohn@usda.gov

Tina Chouinard, Wildlife Biologist, Department of the Interior, United States Fish and Wildlife Service, Lake Ophelia NWR, 401 Island Road, Marksville , LA 71351
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Fax: 318 253–7139
Email: tina__chouinard@fws.gov

RIN: 1018–AJ27

1754. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; AMENDMENT TO MANATEE PROTECTION AREAS IN FLORIDA (BARGE CANAL EXCEPTION)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to make a final determination on the proposed rule (67 FR 18572; April 16, 2002) to create an exception to the regulations governing the Barge Canal manatee refuge in Brevard County, Florida. Under this exception, parties may apply for authorization to conduct otherwise prohibited activities in the refuge if they can demonstrate to the Service that the activity can be pursued in such a manner that manatees will not be taken.

Timetable:

Action	Date	FR Cite
NPRM	04/16/02	67 FR 18572
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
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Email: patrick__leonard@fws.gov

RIN: 1018–AT39

Department of the Interior (DOI)
United States Fish and Wildlife Service (FWS)

Long-Term Actions

1755. IMPLEMENTATION OF THE 1994 AMENDMENTS TO THE MARINE MAMMAL PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1374

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: Section 104 of the Marine Mammal Protection Act authorizes the Director of the Service, acting on behalf of the Secretary of the Interior, to issue permits for activities otherwise prohibited by the Act. Regulations will be developed for issuance of permits and the 1994 amendments to the Act.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AE72

1756. TAKING OF MARINE MAMMALS BY LEVEL B HARASSMENT; ISSUANCE OF GENERAL AUTHORIZATION FOR SCIENTIFIC RESEARCH AND PERMITS FOR PHOTOGRAPHY, EDUCATIONAL, AND COMMERCIAL PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: PL 103—238; 16 USC 1361 to 1407

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: The Service proposes to issue regulations that would allow us to authorize harassment but not injury or death of marine mammals under our jurisdiction, for scientific research and for photography for educational or commercial purposes. This rule would further implement the 1994 Amendments to the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2095
Email: peter__thomas@fws.gov

RIN: 1018–AF26

1757. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATION OF ENDANGERED STATUS AND DESIGNATION OF CRITICAL HABITAT FOR THE GILA CHUB

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Statutory, August 2003, Final.

Abstract: We are proposing endangered status and the designation of critical habitat for the Gila chub.

Timetable:

Action	Date	FR Cite
NPRM	08/09/02	67 FR 51947
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
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RIN: 1018–AG16

1758. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE MIAMI BLUE BUTTERFLY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99–625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will complete a 12-month finding regarding whether the Miami blue butterfly in Florida should be added to the List of Endangered and Threatened Wildlife.

Timetable:

Action	Date	FR Cite
Notice of Petition Finding	01/03/02	67 FR 280
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AH30

1759. INTERAGENCY GUIDANCE FOR THE PRESCRIPTION OF FISHWAYS PURSUANT TO SECTION 18 OF THE FEDERAL POWER ACT

Priority: Other Significant

Legal Authority: 16 USC 791(a) et seq

CFR Citation: None

Legal Deadline: None

Abstract: This will make publicly available, and describe the intent of, internal guidance for us (the Fish and Wildlife Service) and the National Marine Fisheries Service regarding the prescription of fishways under section 18 of the Federal Power Act, for non-Federal hydropower projects licensed by the Federal Energy Regulatory Commission. It will also provide clarification of the terms “fish” and “fishway.” The guidance document will be reviewed following a 2-year trial period, and the information obtained will be used to support a final action.

Timetable:

Action	Date	FR Cite
Notice	12/22/00	65 FR 80898
Notice of Availability	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Dr. Benjamin Tuggle, Chief, Division of Federal Program Activities, Department of the Interior, United States Fish and Wildlife Service, Room 400, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2161
Fax: 703 358–1869
Email: benjamin__tuggle@fws.gov

RIN: 1018–AH42

1760. ENDANGERED AND THREATENED WILDLIFE; RECLASSIFICATION OF THE MARIANNA FRUIT BAT ON GUAM FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to reclassify the Marianna fruit bat on Guam from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AH55

1761. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE DOLLY VARDEN AS A THREATENED SPECIES IN WASHINGTON DUE TO SIMILARITY OF APPEARANCE TO BULL TROUT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to list the Dolly Varden (Salvelinus malma) as threatened under the “Similarity of Appearance” provision of the Endangered Species Act in Washington, due to its similarity of appearance to the bull trout.

Timetable:

Action	Date	FR Cite
NPRM	01/09/01	66 FR 1628
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AH68

1762. CORRECTIONS TO RIGHTS-OF-WAY REGULATIONS

Priority: Info./Admin./Other

Legal Authority: PL 101–475

CFR Citation: 50 CFR 29

Legal Deadline: None

Abstract: The Service proposes to make revisions to the Rights-of-Way General Regulations in 50 CFR 29 subpart B. The revisions will correct the address of our Region 5 Office in 50 CFR 29.21–2(c)(5). We will also implement section 1 of Public Law 101–475 by correcting the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting right-of-way. Finally, the proposed revised regulation will delete the reference to a 60-day waiting period after notification of our intent to grant the right-of-way. (The waiting period was repealed by Congress.)

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Barbara Ann Wyman, Program Manager, Division of Realty, Department of the Interior, United States Fish and Wildlife Service, Room 622, 4401 North Fairfax Drive,
Arlington, VA 22203
Phone: 703 358-1811
Fax: 703 358-2223
Email: barbara_wyman@fws.gov

RIN: 1018-AI12

1763. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 6 GUAM SPECIES

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, October 1, 2004, NPRM.

Abstract: We propose to designate critical habitat for 6 Guam species. These include two mammals, the Little Mariana fruit bat and the Mariana fruit bat, and four birds, the Guam broadbill, the Mariana crow, the Guam Micronesian kingfisher and the Guam bridled white-eye.

Timetable:

Action	Date	FR Cite
NPRM	10/15/02	67 FR 63737
NPRM Comment Period Extended	12/05/02	67 FR 72407
NPRM Comment Period Reopened	01/28/03	68 FR 4159
NPRM Comment Period End	02/18/03	
Final Rule	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171
Fax: 703 358-1735
Email: chris_nolin@fws.gov

RIN: 1018-AI25

1764. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE SAN MIGUEL ISLAND FOX, SANTA ROSA ISLAND FOX, SANTA CRUZ ISLAND FOX, AND SANTA CATALINA ISLAND FOX

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, July 10, 2003, NPRM.

Abstract: We have proposed to list four island fox species, which occur on the Channel Islands off California, as endangered.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63654
Final Action—Final Listing, Proposed Critical Habitat	10/00/04	
Final Action—Final Critical Habitat	10/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171
Fax: 703 358-1735
Email: chris_nolin@fws.gov

RIN: 1018-AI28

1765. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE COLUMBIA-KLAMATH DISTINCT POPULATION SEGMENT OF THE BULL TROUT

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 1, 2002, NPRM.

Abstract: We propose to designate critical habitat for the Columbia-Klamath distinct population segment of the Bull trout.

Timetable:

Action	Date	FR Cite
NPRM	11/29/02	67 FR 71235
NPRM Comment Period Reopened	02/11/03	68 FR 6863
NPRM Comment Period End	05/12/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171
Fax: 703 358-1735
Email: chris_nolin@fws.gov

RIN: 1018-AI52

1766. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CONSERVATION EDUCATION; 50 CFR 17.21

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17.21(g)

Legal Deadline: None

Abstract: Section 17.21(g) of title 50 of the Code of Federal Regulations addresses education as a valid component of Endangered Species Act approved programs. An advanced notice of proposed rulemaking will request public input on conservation education requirements that will be used in the development of a proposed rule that will propose a Service position on conservation education.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy J. Van Norman, Chief, Branch of Permits, International, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2350
Fax: 703 358–2281
Email: tim_vannorman@fws.gov

RIN: 1018–AI66

1767. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PERMITS FOR FOREIGN LISTED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will issue a proposed policy to clarify the process used for issuing Endangered Species Act permits for foreign listed species.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy	08/18/03	68 FR 49512
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy J. Van Norman, Chief, Branch of Permits, International, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2350
Fax: 703 358–2281
Email: tim_vannorman@fws.gov

RIN: 1018–AI67

1768. MIGRATORY BIRD PERMITS; REVISIONS TO GENERAL EXCEPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 95–616; 92 Stat 3112 (16 USC 712(2)); PL 106–108

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: Under this rule, some public institutions which are now exempted from permit requirements would be required to obtain permits in order to possess migratory birds. It would create new exemptions for State and Federal resource managers and it would establish husbandry requirements applicable to exempt facilities.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations, Businesses

Government Levels Affected: State, Federal

Agency Contact: Brian Millsap, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–1714
Email: brian_millsap@fws.gov

RIN: 1018–AI96

1769. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PRUDENCY DETERMINATION AND DESIGNATION OF CRITICAL HABITAT FOR EGGERT'S SUNFLOWER

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, December 29, 2003, NPRM.

Abstract: We will determine the prudency of proposing the designation of critical habitat for the Eggert's sunflower. On May 22, 1997, the Eggert's sunflower was designated as a threatened species. This species is known to occur in Alabama, Kentucky, and Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris_nolin@fws.gov

RIN: 1018–AJ08

1770. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE SPREADING NAVARRETIA AND THE SAN JACINTO VALLEY CROWNSCALE

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, January 30, 2004, NPRM.

Abstract: We will designate critical habitat for the spreading navarettia and San Jacinto Valley crownscale. On October 13, 1998, the spreading navarretia, a plant species native to California and Mexico, was listed as a threatened species, and the San Jacinto Valley crownscale, a plant species endemic to California, was listed as endangered.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris_nolin@fws.gov

RIN: 1018–AJ11

1771. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE CALIFORNIA RED-LEGGED FROG

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, March 31, 2004, NPRM.

Abstract: We will re-propose the designation of critical habitat for the California red-legged frog, a threatened species endemic to California and Baja California, Mexico.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris_nolin@fws.gov

RIN: 1018–AJ16

1772. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED AMENDMENT TO THE NONESSENTIAL EXPERIMENTAL POPULATION RULE FOR THE MEXICAN GRAY WOLF

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is currently exploring a revision to the Mexican wolf nonessential experimental population rule. In 2000, a panel of scientists recommended a proposed revision to the experimental population rule after conducting a 3-year review of the program. The Service intends to propose a revision to the rule allowing for the direct release of wolves into an expanded release area, but still within the area where wolves are currently authorized to occur. The Service also plans to propose a revision to expand upon the designated recovery area, allowing for greater management flexibility when a wolf travels outside of this area.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick_leonard@fws.gov

RIN: 1018–AT36

1773. • LAND CONSERVATION PLANNING (REFUGE MANUAL CHAPTER 602 FW 2)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 668dd to 668ee

CFR Citation: None

Legal Deadline: None

Abstract: This policy chapter provides the process whereby new lands and waters are approved for addition to the National Wildlife Refuge System. The addition of lands and waters includes such methods as fee title acquisition, easements, donation, and transfers, and may apply to the significant expansion of an existing national wildlife refuge or creation of a new national wildlife refuge.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Ross Alliston, Refuge Program Specialist, Department of the Interior, United States Fish and Wildlife Service, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, VA 22204
Phone: 703 358–2388
Email: ross_alliston@fws.gov

RIN: 1018–AT41

1774. • SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART A AND SUBPART B

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rule will revise the saltwater areas of jurisdiction, certain definitions, and clarify portions of the existing regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William W. Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, AK 99503
Phone: 907 786–3873
Fax: 907 786–3898
Email: bill_knauer@fws.gov

RIN: 1018–AT47

1775. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE DOUGLAS COUNTY, OREGON, POPULATION OF THE COLUMBIA WHITE-TAILED DEER FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43647

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
Phone: 703 358–2171
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Email: patrick__leonard@fws.gov

RIN: 1018–AF43

1776. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 47 PLANTS IN HAWAII

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	07/02/03	68 FR 39624

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AH02

1777. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR PLANTS OF THE NORTHWEST ISLANDS, HAWAII

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	05/22/03	68 FR 28054

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AH09

1778. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE SACRAMENTO MOUNTAINS CHECKERSPOT BUTTERFLY AND PROPOSED DESIGNATION OF CRITICAL HABITAT

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	09/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AH40

1779. ENDANGERED AND THREATENED WILDLIFE; REMOVAL OF THE SAN MARCOS GAMBUSIA FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AH52

1780. ENDANGERED AND THREATENED WILDLIFE AND PLANTS: REPROPOSED DETERMINATIONS OF PRUDENCY AND PROPOSED DESIGNATIONS OF CRITICAL HABITAT FOR PLANTS FROM MAUI AND KAHOOLAWE, HAWAII

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	05/14/03	68 FR 25934

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AH70

1781. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REOPENING OF COMMENT PERIOD ON THE THREATENED STATUS OF THE SACRAMENTO SPLITTAIL (POGONICHTHYS MACROLEPIDOTIS)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action—Notice of Remanded Determination of Status	09/22/03	68 FR 55140

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AH73

1782. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR BLACKBURN'S SPHINX MOTH

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	06/10/03	68 FR 34710

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AH94

1783. CIVIL PROCEDURES; 50 CFR PART 11

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 11

Completed:

Reason	Date	FR Cite
Withdrawn	08/28/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kevin Adams
Phone: 703 358–1949
Fax: 703 358–1947
Email: kevin__adams@fws.gov

RIN: 1018–AH97

1784. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF GRIZZLY BEARS IN THE BITTERROOT AREA OF IDAHO AND MONTANA; REMOVAL OF REGULATIONS

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Patrick Leonard
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AI03

1785. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 103 OAHU, HAWAII, PLANTS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	06/17/03	68 FR 35950

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI24

1786. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR FOUR FAIRY SHRIMP AND 11 PLANTS IN CALIFORNIA

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Rule	08/06/03	68 FR 46684

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI26

1787. MIGRATORY BIRD PERMITS; REGULATIONS FOR MANAGING DOUBLE-CRESTED CORMORANT DAMAGES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 21

Completed:

Reason	Date	FR Cite
Other/Notice—FEIS	08/11/03	68 FR 47603
Final Action	10/08/03	68 FR 58022

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Brian Millsap
Phone: 703 358–1714
Email: brian__millsap@fws.gov

RIN: 1018–AI39

1788. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE GRAY BAT FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AI40

1789. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE MOUNTAIN PLOVER WITH A SPECIAL RULE

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	09/09/03	68 FR 53083

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI45

1790. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE PREBLE'S MEADOW JUMPING MOUSE

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	06/23/03	68 FR 37275

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358–2171
Fax: 703 358–1735
Email: chris__nolin@fws.gov

RIN: 1018–AI46

1791. TRIBAL WILDLIFE GRANTS PROGRAM IMPLEMENTATION GUIDELINES FOR FISCAL YEAR (FY) 2002

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	07/28/03	68 FR 44434

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Patrick Durham
Phone: 202 208–4133

RIN: 1018–AI58

1792. TRIBAL LANDOWNER INCENTIVE PROGRAM (T–LIP) IMPLEMENTATION GUIDELINES FOR FISCAL YEAR (FY) 2002

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	07/28/03	68 FR 44424

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Patrick Durham
Phone: 202 208–4133

RIN: 1018–AI59

1793. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF THE BLACK-FOOTED FERRET IN SOUTH-CENTRAL SOUTH DAKOTA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	05/16/03	68 FR 26498

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
Phone: 703 358–2171
Fax: 703 358–1735
Email: patrick__leonard@fws.gov

RIN: 1018–AI60

1794. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2003–2004 SUBSISTENCE TAKING OF WILDLIFE REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 100; 36 CFR 242

Completed:

Reason	Date	FR Cite
Final Action	06/27/03	68 FR 38464

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William W. Knauer
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RIN: 1018–AI62

1795. 2003–2004 REFUGE SPECIFIC HUNTING AND SPORT FISHING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 32

Completed:

Reason	Date	FR Cite
NPRM	08/14/03	68 FR 48583
Final Action	10/02/03	68 FR 57308
Final Action Effective	10/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Leslie Marler
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RIN: 1018–AI63

1796. MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA; REGULATIONS FOR THE SPRING AND SUMMER 2003 SEASON

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 92

Completed:

Reason	Date	FR Cite
Final Action	07/21/03	68 FR 43010

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Donna Dewhurst
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RIN: 1018–AI84

1797. MIGRATORY BIRD HUNTING; PROPOSED 2003–2004 MIGRATORY GAME BIRD HUNTING REGULATIONS (PRELIMINARY) WITH REQUESTS FOR INDIAN TRIBAL PROPOSALS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 50 CFR 20

Completed:

Reason	Date	FR Cite
NPRM	05/06/03	68 FR 24324
Other/Supplemental NPRM	06/23/03	68 FR 37362
Other/Supplemental NPRM	07/17/03	68 FR 42546
Other/Supplemental NPRM	08/08/03	68 FR 47424
Final Action	08/19/03	68 FR 50016
Final Action	08/27/03	68 FR 51658
Final Action	08/28/03	68 FR 51832
Final Action	08/29/03	68 FR 51919
Final Action	09/26/03	68 FR 55784
Final Action	09/29/03	68 FR 56048
Final Action	09/29/03	68 FR 56102

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Ronald Kokel
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RIN: 1018–AI93

1798. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE WATER HOWELLIA (HOWELLIA AQUATILUS) FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
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RIN: 1018–AI94

1799. REVISION OF AIRBORNE HUNTING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 19

Completed:

Reason	Date	FR Cite
Withdrawn	08/28/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Kevin Adams
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RIN: 1018–AI99

1800. FISCAL YEAR 2004 PRIVATE STEWARDSHIP GRANTS PROGRAM; PROGRAM IMPLEMENTATION

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
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Email: patrick__leonard@fws.gov

RIN: 1018–AJ04

1801. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE CUI–UI FROM THE LIST OF ENDANGERED AND THREATENED SPECIES AND ESTABLISHMENT OF A 4(D) RULE

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
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RIN: 1018–AJ05

1802. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF ADDITIONAL MANATEE PROTECTION AREAS IN FLORIDA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
NPRM	04/04/03	68 FR 16602
Final Action	08/26/03	68 FR 46870

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
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RIN: 1018–AJ06

1803. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF BLACK-FOOTED FERRET IN WYOMING

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	08/28/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
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RIN: 1018–AJ18

1804. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE UNCOMPAHGRE FRITILLARY BUTTERFLY FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
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Email: patrick__leonard@fws.gov

RIN: 1018–AJ19

1805. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF ARCTIC RUSSIAN POPULATION OF SPECTACLED EIDERS FROM THE LIST OF ENDANGERED AND THREATENED SPECIES; CLASSIFICATION OF U.S. POPUL. AS THREATENED

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Withdrawn	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Leonard
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RIN: 1018–AJ20

1806. • GUIDANCE FOR THE ESTABLISHMENT, USE, AND OPERATION OF CONSERVATION BANKS

Priority: Info./Admin./Other

Legal Authority: 16 USC 1531 et seq

CFR Citation: None

Legal Deadline: None

Abstract: We are establishing interim guidance for the establishment, use, and operation of conservation banks. Conservation banks are a tool to offset adverse impacts to species listed as threatened or endangered under the Endangered Species Act of 1973, as amended. The purpose of this guidance is to help Service personnel evaluate and approve conservation banks in the context of fulfilling the purposes of the Endangered Species Act.

Timetable:

Action	Date	FR Cite
Notice of Availability	05/08/03	68 FR 24753

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203
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RIN: 1018–AJ22

BILLING CODE 4310–70–S

Department of the Interior (DOI)
National Park Service (NPS)

Proposed Rule Stage

1807. BIG THICKET NATIONAL PRESERVE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.85

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
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Email: kym__hall@nps.gov

RIN: 1024–AC92

1808. PICTURED ROCKS NATIONAL LAKESHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.32

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
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RIN: 1024–AC93

1809. FIRE ISLAND NATIONAL SEASHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.20

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
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RIN: 1024–AC94

1810. GATEWAY NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.29

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
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RIN: 1024–AC95

1811. BIGHORN CANYON NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.92

Legal Deadline: None

Abstract: This proposed rule would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall,
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RIN: 1024–AC96

1812. LAKE MEREDITH RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.57

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall,
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RIN: 1024–AC97

1813. CHICKASAW RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.50

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall,
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RIN: 1024–AC98

1814. CURECANTI RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.51

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall,
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RIN: 1024–AC99

1815. AMISTAD RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.79

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in areas of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	10/22/03	68 FR 60305
NPRM Comment Period End	12/22/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall,
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RIN: 1024–AD00

1816. LAKE ROOSEVELT RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.55

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in areas of the National Park System expired on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall,
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Phone: 202 208–4206
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RIN: 1024–AD01

1817. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT; FUTURE APPLICABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 3001 et seq

CFR Citation: 43 CFR 10.13

Legal Deadline: None

Abstract: This proposed rule relates to one section of the regulations that implement the Native American Graves Protection and Repatriation Act (NAGPRA). This section will clarify the applicability of NAGPRA to museums and Federal agencies following the statutory deadlines for completion of summaries and inventories.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Robbins,
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Park Service, NC340, 1849 C Street
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RIN: 1024–AD05

1818. BOATING AND WATER USE ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 1a–2(h); 16 USC 3

CFR Citation: 36 CFR 3

Legal Deadline: None

Abstract: This part was last updated comprehensively in the early 1980's. This regulation will help to address new and emerging technology, clarify some regulations for the benefit of the public and enforcement staff, implement changes to reduce safety concerns, and make NPS regulations more consistent with State regulations in order to reduce confusion with the public.

Timetable:

Action	Date	FR Cite
NPRM	08/26/03	68 FR 51207
NPRM Comment Period End	12/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Kym A. Hall,
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Washington, DC 20240
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RIN: 1024–AD07

1819. • ALASKA PARK UNITS; SPECIAL REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a; 16 USC 462k

CFR Citation: 36 CFR 13

Legal Deadline: None

Abstract: NPS regulations at 36 CFR 1.5 require the NPS to publish certain closures, designations, activity restrictions or conditions as rulemaking in the Federal Register. This rule will meet this requirement for all national park units in Alaska.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard Fagan,
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Regulations, Department of the Interior,
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RIN: 1024–AD13

1820. • DELAWARE WATER GAP NRA COMMERCIAL VEHICLE FEES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a; 16 USC 462k; PL 104–333, sec 702; ...

CFR Citation: 36 CFR 7.71(e)

Legal Deadline: None

Abstract: Delaware Water Gap NRA's legislation authorizes the NPS to control commercial traffic on Route 209 within the park. This is a very labor-intensive operation, for which the legislation authorized the NPS to charge sufficient fees to make the operation financially self-sustaining. The current regulation will be revised to raise the fees to an adequate level.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Bernard Fagan,
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RIN: 1024–AD14

1821. • REVISIONS TO RIGHT-OF-WAY REGULATIONS

Priority: Other Significant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a; 16 USC 462k

CFR Citation: 36 CFR 14

Legal Deadline: None

Abstract: This rule will revise existing regulations relating to the issuance of right-of-way permits across lands and waters under National Park Service administration. The current regulations are outdated. The new regulations will provide a process for the review, consideration, and approval or denial of requests for rights-of-way.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Bernard Fagan, Deputy Chief, Office of Policy and Regulations, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208–7469
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RIN: 1024–AD16

1822. • COST RECOVERY FOR SPECIAL PARK USES

Priority: Other Significant

Legal Authority: 16 USC 1; 16 USC 1; 16 USC 9a; 16 USC 462k; . . .

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The National Park Service issues special use permits for activities such as special events, commercial photography, and utility rights-of-way in areas of the National Park System. Processing these permit requests is costly, but the NPS has not instituted a system for cost recovery, as is authorized by law. This rule will establish a procedure to enable the NPS to recover its costs from the permit beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard Fagan, Deputy Chief, Office of Policy and Regulations, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
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RIN: 1024–AD18

1823. • CEREMONIES AT FIRST DIVISION MONUMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 14k; 16 USC 9a

CFR Citation: 36 CFR 7.96

Legal Deadline: None

Abstract: This amendment will authorize the official annual Memorial Day and Vewterans Day commemorative wreath-laying ceremonies at the First Division Monument. Currently, such ceremonies are not allowed under 36 CFR 7.96 (g)(3)(i).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard Fagan, Deputy Chief, Office of Policy and Regulations, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
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RIN: 1024–AD19

Department of the Interior (DOI)
National Park Service (NPS)
Final Rule Stage

1824. PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 470 et seq

CFR Citation: 36 CFR 61

Legal Deadline: None

Abstract: The NPS proposes to establish the requirements and procedures by which those Indian tribes that choose to do so can assume State Historic Preservation Officer duties with regard to tribal lands and become eligible for grants-in-aid to carry out those duties.

Timetable:

Action	Date	FR Cite
NPRM	08/12/02	67 FR 52532
NPRM Comment Period End	12/10/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Bryan Mitchell, Division, Department of the Interior, National Park Service, NC330, 1849 C Street NW., Washington, DC 20240
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Email: bryan__mitchell@nps.gov

RIN: 1024–AC79

1825. COMMERCIAL USE AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105–391

CFR Citation: 36 CFR 52

Legal Deadline: None

Abstract: Public Law 105–391 became effective on November 13, 1998. The new Act mandates revised procedures for issuing commercial use authorizations. Section 417 of Public Law 105–391 requires that the Secretary promulgate implementing regulations as soon as practicable after the effective date of the Act. Existing regulations governing commercial use within National Parks are not adequate to administer the provisions of the new statute and must be revised to reflect new requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/27/02	67 FR 70899
NPRM Comment Period End	01/27/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Orlando, Chief of Concessions, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
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RIN: 1024–AC85

1826. SNOWMOBILE REGULATIONS FOR YELLOWSTONE AND GRAND TETON NATIONAL PARKS AND JDR PARKWAY

Regulatory Plan: This entry is Seq. No. 73 in part II of this issue of the **Federal Register**.

RIN: 1024–AD11

1827. • ROCKY MOUNTAIN NATIONAL PARK SNOWMOBILE USE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1; 16 USC 1; 16 USC 9a; 16 USC 462k

CFR Citation: 36 CFR 7.7

Legal Deadline: None

Abstract: The NPS is amending regulations specific to Rocky Mountain National Park that designate snowmobile routes within the park. The routes currently designated are not consistent with the protection of park resources, the requirements of Executive Order 11644, or the NPS general regulation governing snowmobile use. This amendment will eliminate three of the four routes currently in use.

Timetable:

Action	Date	FR Cite
NPRM	01/05/01	66 FR 1069
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street NW., Washington, DC 20240
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RIN: 1024–AD15

1828. • USE OF SERVICE ANIMALS IN NATIONAL PARK AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a; 16 USC 462k; 29 USC 701; ...

CFR Citation: 36 CFR 2.7

Legal Deadline: None

Abstract: The Department of Justice has expanded the concept of "service animals" utilized by persons with disabilities. Many of the animals covered by the expanded definition are now prohibited in national park areas under NPS regulations at 36 CFR 2.15. This rulemaking will bring NPS regulations into conformance with the expanded definition.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard Fagan, Deputy Chief, Office of Policy and Regulations, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
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RIN: 1024–AD17

Department of the Interior (DOI)
National Park Service (NPS)

Long-Term Actions

1829. SPECIAL REGULATIONS OF THE NATIONAL PARK SYSTEM; RELIGIOUS CEREMONIAL COLLECTION OF GOLDEN EAGLETS IN WUPATKI NATIONAL MONUMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 42 USC 1996; 42 USC 2000bb

CFR Citation: 36 CFR 7.101

Legal Deadline: None

Abstract: The NPS has preliminarily determined that under certain circumstances it is appropriate to allow the Hopi Tribe to collect golden eaglets within Wupatki National Monument for religious ceremonial purposes. This rule would authorize this activity upon terms and conditions sufficient to protect park resources against impairment, and consistent with the Bald and Golden Eagle Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6516
NPRM Comment Period End	03/23/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Patricia L. Parker, Chief, American Indian Liaison Office, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 354–6963
Fax: 202 371–6609
Email: pat__parker@nps.gov

RIN: 1024–AC86

1830. GOLDEN GATE NATIONAL RECREATION AREA; SPECIAL REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a

CFR Citation: 36 CFR 7.97

Legal Deadline: None

Abstract: This advance notice of proposed rulemaking will seek public comment on a range of potential management options for addressing appropriate pet management within the Golden Gate National Recreation Area, consistent with protecting national park resources and assuring visitor safety.

Timetable:

Action	Date	FR Cite
ANPRM	01/11/02	67 FR 1424
ANPRM Comment Period End	03/12/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian O'Neill, Superintendent, Department of the Interior, National Park Service, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123–0022
Phone: 415 561–4739
Fax: 415 561–4710
Email: brian__o'neill@nps.gov

RIN: 1024–AD03

Department of the Interior (DOI)
National Park Service (NPS)

Completed Actions

1831. VEHICLES AND TRAFFIC SAFETY; OPERATING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 4.23

Completed:

Reason	Date	FR Cite
Final Action	08/06/03	68 FR 46477

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall
Phone: 202 208–4206
Fax: 202 208–4684
Email: kym__hall@nps.gov

RIN: 1024–AC69

1832. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS; CIVIL PENALTIES

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 10

Completed:

Reason	Date	FR Cite
Final Action	04/03/03	68 FR 16354

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Robbins
Phone: 202 343–3388
Fax: 202 343–5260
Email: john__robbins@nps.gov

RIN: 1024–AC84

1833. VIRGIN ISLANDS CORAL REEF NATIONAL MONUMENT; SPECIAL REGULATIONS

Priority: Other Significant

CFR Citation: 36 CFR 7.103; 36 CFR 7.73

Completed:

Reason	Date	FR Cite
Interim Final Rule	04/04/03	68 FR 16432
Interim Final Rule Effective	05/05/03	
Withdrawn	06/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall
Phone: 202 208–4206
Fax: 202 208–4684
Email: kym__hall@nps.gov

RIN: 1024–AC89

1834. GLEN CANYON NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 7.70

Completed:

Reason	Date	FR Cite
Final Action	09/26/03	68 FR 55448
Final Action Effective	09/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall
Phone: 202 208–4206
Fax: 202 208–4684
Email: kym__hall@nps.gov

RIN: 1024–AC90

1835. ASSATEAGUE ISLAND NATIONAL SEASHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 7.65

Completed:

Reason	Date	FR Cite
Final Action	05/30/03	68 FR 32371

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall
Phone: 202 208–4206
Fax: 202 208–4684
Email: kym__hall@nps.gov

RIN: 1024–AD02

1836. SAGUARO NATIONAL MONUMENT MOUNTAIN BIKE SPECIAL REGULATIONS

Priority: Other Significant

CFR Citation: 36 CFR 7.11

Completed:

Reason	Date	FR Cite
Final Action	08/20/03	68 FR 50073
Final Action Effective	09/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall
Phone: 202 208–4206
Fax: 202 208–4684
Email: kym__hall@nps.gov

RIN: 1024–AD10

1837. • SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM; NEW RIVER GORGE NATIONAL RIVER—HUNTING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a; 16 USC 462k; 16 USC 460m–15 to 18; ...

CFR Citation: 36 CFR 7.89

Legal Deadline: None

Abstract: National Park Service general regulations require that a special regulation be promulgated if hunting is to be allowed to continue at New River Gorge National River. The 2003 hunting program cannot take place unless/until this rulemaking is completed.

DOI—NPS **Completed Actions**

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/25/03	68 FR 55315

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bernard Fagan, Deputy Chief, Office of Policy and Regulations, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208–7469
Fax: 202 219–8835
Email: chick_fagan@nps.gov

RIN: 1024–AD12

BILLING CODE 4310–02–S

Department of the Interior (DOI)
Bureau of Indian Affairs (BIA)

Proposed Rule Stage

1838. BUY INDIAN ACT REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 47; 36 Stat 861; 41 USC 253(c)(5)

CFR Citation: 48 CFR 14 app A

Legal Deadline: None

Abstract: This rule will regulate the implementation of BIA's longstanding policy of contracting with Indian-owned firms on a preferential basis and will regulate the determination of eligibility and availability of Indian firms to perform a specific requirement for products, services, and road construction outside the State of Oklahoma and regulate the authority to deviate from the general policy and will regulate the determination of eligibility throughout contractual performance.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Kim Romine, Management, Department of the Interior, Bureau of Indian Affairs, 2051 Mercator Drive, Reston, VA 20191
Phone: 703 390–6461
Fax: 703 390–6582

RIN: 1076–AE07

1839. TRIBAL REVENUE ALLOCATION PLANS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 2710; 25 USC 9; 5 USC 301

CFR Citation: 25 CFR 290

Legal Deadline: None

Abstract: The Secretary of the Interior is responsible for reviewing tribal plans for allocating revenues from gaming activities. The Secretary must determine whether the proposed rule is sufficient to promote tribal economic development and fund essential tribal programs, benefits, and services. BIA plans to revise the regulations in part 290 to include additional criteria to assist the Secretary in making this determination.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: George Skibine, Director, Indian Gaming Management Staff, Department of the Interior, Bureau of Indian Affairs, MS 2070 MIB, 1849 C Street NW., Washington, DC 20240
Phone: 202 219–4066

RIN: 1076–AE24

1840. INDIAN COUNTRY LAW ENFORCEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 25 USC 2; 25 USC 2802

CFR Citation: 25 CFR 12

Legal Deadline: None

Abstract: BIA plans to amend its regulation governing law enforcement in Indian country by revising section 12.4 of subpart A and by adding new section 12.24 to subpart C to allow tribal law enforcement officials to travel outside Indian country to respond to incidents in another area and to transport evidence to and from locations in Indian country.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, Tribal, Federal

Agency Contact: Peter Maybee, Division of Law Enforcement, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW., MS 4550—MIB, Washington, DC 20240
Phone: 202 208–5787
Fax: 202 208–6170

RIN: 1076–AE35

1841. LEASES AND PERMITS ON INDIAN TRUST AND RESTRICTED LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 380; 25 USC 403; 25 USC 403c; 25 USC 415 to 415d; 25 USC 477; 25 USC 635

CFR Citation: 25 CFR 162

Legal Deadline: None

Abstract: BIA plans to amend its regulations governing leasing of Indian trust and restricted lands by revising subpart A and by adding subpart C and D covering residential leases and business leases on trust and restricted land.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Kayla Danks, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW., MS 4512—MIB, Washington, DC 20240
Phone: 202 208–5954

Fax: 202 219–1065

RIN: 1076–AE36

1842. ● REINDEER IN ALASKA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 500

CFR Citation: 25 CFR 243

Legal Deadline: None

Abstract: This rule will codify procedures for processing requests for reindeer by non-native Alaskans.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Warren Eastland, Wildlife Biologist, Department of the Interior, Bureau of Indian Affairs, P.O. Box 25520, Juneau, AK 99802
Phone: 907 586–7321

RIN: 1076–AE37

1843. ● PROCLAMATION OF RESERVATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 467

CFR Citation: None

Legal Deadline: None

Abstract: This rule will define the procedures and criteria to be used for issuance of reservation proclamations by the Secretary of the Interior.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eufrona Snyder, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW., Washington, DC 20240
Phone: 202 208–3614
Fax: 202 219–1065

RIN: 1076–AE40

1844. ● LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 1496

CFR Citation: 25 CFR 103

Legal Deadline: None

Abstract: We are revising our regulations to comply with the Indian Financing Amendments Act of 2002, specifically 25 U.S.A. 1485(I), which requires the Secretary of the Interior to promulgate regulations to facilitate, administer, and promote transfers of leans and guaranteed and insured portions of loans as intended under the Act. We also are introducing regulations to implement 25 U.S.A. 1497A and 1499, statutory changes dating back to 1988, concerning the guarantee of bonds and supplemental surety bonds. The lack of regulations relating to this subject has inhibited the use of these provisions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David B. Johnson, Department of the Interior, Bureau of Indian Affairs, Office of the Solicitor, Division of Indian Affairs, 1849 C Street NW., Washington, DC 20240
Phone: 202 208–3026

RIN: 1076–AE42

1845. ● USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 1401 et seq

CFR Citation: 25 CFR 87

Legal Deadline: None

Abstract: This rule will update the existing provisions to reflect the changes to the Indian Judgment Funds Distribution Act that were made in 1992 by Public Law 102–572.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Daisy West, Tribal Relations Officer, Department of the Interior, Bureau of Indian Affairs, Room 4603 MIB, 1849 C Street NW., Washington, DC 20240
Phone: 202 513–7626
Fax: 202 219–2327

RIN: 1076–AE43

1846. ● NAVAJO PARTITIONED LANDS GRAZING PERMITS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 301; 25 USC 640d et seq

CFR Citation: 25 CFR 161

Legal Deadline: None

Abstract: This rule will govern the grazing of livestock on the Navajo Partitioned Lands (NPL) of the former Navajo-Hopi Joint Use Area of the 1982 Executive Order reservation. The purpose of these regulations is to conserve the rangelands of the NPL in order to maximize future use of the land for grazing and other purposes.

Timetable:

Action	Date	FR Cite
NPRM	11/12/03	68 FR 64023
NPRM Comment Period End	02/10/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Orwin, Soil Conservationist, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW., MS 3061 MIB, Washington, DC 20240
Phone: 202 208–6464
Fax: 202 219–0006

RIN: 1076–AE46

1847. ● INDIAN HIGHWAY SAFETY PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 402; 25 USC 13

CFR Citation: s5 CFR 181

Legal Deadline: None

Abstract: This rule will streamline the approval and funding process for tribal highway safety projects. These projects are designed to reduce traffic accidents on Indian Reservations and the resulting property damage, injuries, and death. Ten to 30 tribes participate in the program annually.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles L. Jaynes, Program Administrator, Department of the Interior, Bureau of Indian Affairs, Division of Safety Management, 201 Third Street NW., Suite 310,
Albuquerque, NM 87102
Phone: 505 245–2100
Fax: 505 245–2106

RIN: 1076–AE47

1848. • APPEALS FROM ADMINISTRATIVE ACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 9

CFR Citation: 25 CFR 2

Legal Deadline: None

Abstract: This rule will: (1) Clarify who has a right to file and appeal; (2) provide firm deadlines for filing appeals and responses; (3) provide options to appellants if BIA delays making a decision on an appeal; and (4) Provide an expedited process for certain classes of appeals.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cathy Wilson, Supervisory Water Rights Specialist, Department of the Interior, Bureau of Indian Affairs, 400 North 5th Street, 13th Floor, POB 10, MS 420, Two Arizona Center, Phoenix, AZ 85004
Phone: 602 379–6789
Fax: 602 379–6835

RIN: 1076–AE48

1849. • NO CHILD LEFT BEHIND ACT OF 2001

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107–110

CFR Citation: 25 CFR 39; 25 CFR 42

Legal Deadline: NPRM, Statutory, June 8, 2003, NPRM.

Abstract: Under the No Child Left Behind Act of 2001 (Public Law 107–110), the Secretary of the interior must develop regulations using negotiated rulemaking to address the following issues: (1) Defining adequate yearly progress, which is the essential measurement for determining that schools are providing quality education; (2) establishing separate geographic attendance areas for each Bureau-funded school; (3) establishing a formula for determining the minimum amount of funds necessary to fund each Bureau-funded school; (4) establishing a system of direct funding and support of all Bureau-funded schools under the formula established in section 1127 of the Act; (5) establishing guidelines to ensure the constitutional and civil rights of Indian students regrading the right to privacy, freedom of religion and expression, and due process in connection with disciplinary actions (suspension and expulsion); and (6) establishing a method for administering grants to tribally controlled schools.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: Tribal

Agency Contact: Catherine Freels, Designated Federal Official, Department of the Interior, Bureau of Indian Affairs, 500 Gold Ave. SW., Room 7202,
Albuquerque, NM 87102
Phone: 505 248–7240

RIN: 1076–AE49

Department of the Interior (DOI)
Bureau of Indian Affairs (BIA)

Final Rule Stage

1850. IRRIGATION PROJECTS AND SYSTEMS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 385

CFR Citation: 25 CFR 171

Legal Deadline: None

Abstract: BIA is revising this rule to incorporate new procedures on billing and collection of Government debt. Once these changes are made, BIA will publish a new proposed rule for public comment.

Timetable:

Action	Date	FR Cite
NPRM	07/05/96	61 FR 35167
NPRM Comment Period End	09/03/96	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ross Mooney, Civil Engineer, Department of the Interior, Bureau of Indian Affairs, Room 4559, 1849 C Street NW., MS 3543 MIB,
Washington, DC 20240
Phone: 202 208–5480

RIN: 1076–AD44

1851. CERTIFICATES OF DEGREE OF INDIAN BLOOD

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 13; 25 USC 9

CFR Citation: 25 CFR 70

Legal Deadline: None

Abstract: This rule will codify procedures for processing certificates of degree of Indian blood.

DOI—BIA

Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	04/18/00	65 FR 20775
NPRM Comment Period Extended	06/20/00	65 FR 38228
NPRM Comment Period End	07/17/00	
NPRM Comment Period Extended	08/16/00	
NPRM Comment Period Extended	06/25/01	66 FR 33654
NPRM Comment Period End	12/31/01	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Duane Bird Bear, Department of the Interior, Bureau of Indian Affairs, Tribal Government Services, 1951 Constitution Avenue NW., Washington, DC 20240
Phone: 202 513–7641
Fax: 202 513–0679

RIN: 1076–AD97

1852. ALASKA RESUPPLY OPERATION

Priority: Info./Admin./Other

Legal Authority: 25 USC 13; 25 USC 9; 38 Stat. 486; 42 Stat. 208; 5 USC 301; R.S. 463; R.S. 465

CFR Citation: 25 CFR 142

Legal Deadline: None

Abstract: This proposed rule makes technical revisions to reflect terms now in common usage, e.g., Regional Director and Traffic Manager. A new section refers to the application of Indian preference in hiring pursuant to the Indian Reorganization Act of 1934 (25 USC 479).

Timetable:

Action	Date	FR Cite
NPRM	08/03/00	65 FR 47704
NPRM Comment Period End	10/02/00	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Duncan Brown, Regulatory Analyst, Department of the Interior, Bureau of Indian Affairs, Room 7229 MIB, 1849 C Street NW., Washington, DC 20240
Phone: 202 208–4582
Fax: 202 219–2100
Email: duncan_l_brown@ios.doi.gov

RIN: 1076–AE04

1853. INDIAN RESERVATION ROADS PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 202; 5 USC 301

CFR Citation: 25 CFR 170

Legal Deadline: None

Abstract: This establishes policies and procedures governing the Indian Reservation Roads (IRR) Program. It expands transportation activities available to tribes and tribal organizations and provides guidance to tribes and tribal organizations for planning, designing, constructing, and maintaining transportation facilities. This rule also includes a funding formula for allocating IRR Program funds based upon the relative needs of Indian tribes, and reservation or tribal communities, for transportation assistance, and the relative administrative capacities of various tribes.

Timetable:

Action	Date	FR Cite
NPRM	08/07/02	67 FR 51328
NPRM Comment Period End	10/07/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Tribal

Agency Contact: LeRoy Gishi, Chief, Division of Transportation, Department of the Interior, Bureau of Indian Affairs, MS 4058 MIB, 1849 C Street NW., Washington, DC 20240
Phone: 202 208–4359

RIN: 1076–AE17

Department of the Interior (DOI)
Bureau of Indian Affairs (BIA)

Long-Term Actions

1854. INDIAN ELECTRIC POWER UTILITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 385

CFR Citation: 25 CFR 175

Legal Deadline: None

Abstract: This rule contains procedures governing the operation of BIA-owned power utilities. BIA is revising this rule to incorporate new procedures on billing and collection of government debt. Once these changes are made, BIA will publish a new proposed rule for public comment.

Timetable:

Action	Date	FR Cite
NPRM	06/07/96	61 FR 29040
NPRM Comment Period End	08/06/96	
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ross Mooney, Civil Engineer, Department of the Interior, Bureau of Indian Affairs, Room 4559, 1849 C Street NW., MS 3543 MIB, Washington, DC 20240
Phone: 202 208–5480

RIN: 1076–AD45

1855. • PREPARATION OF ROLLS OF INDIANS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 25 CFR 61

Legal Deadline: None

Abstract: This rule will add the enrollment eligibility criteria for individuals who apply to share in the distribution of Western Shoshone Judgment funds. It will also set forth the method for establishing an application deadline date.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Daisy West, Tribal Relations Officer, Department of the Interior, Bureau of Indian Affairs, Room 4603 MIB, 1849 C Street NW.,
Washington, DC 20240
Phone: 202 513–7626
Fax: 202 219–2327

RIN: 1076–AE44

1856. • STANDARDS FOR APPROVING TRIBAL PER CAPITA DISTRIBUTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 117c

CFR Citation: 25 CFR 111

Legal Deadline: None

Abstract: This rule will provide standards for the review and approval of tribal requests for the authority to make per capita distributions from tribal funds held in trust by the Secretary of the Interior under Public Law 98–164, 25 U.S.C. 117a and 117b.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Tribal

Agency Contact: Daisy West, Tribal Relations Officer, Department of the Interior, Bureau of Indian Affairs, Room 4603 MIB, 1849 C Street NW.,
Washington, DC 20240
Phone: 202 513–7626
Fax: 202 219–2327

RIN: 1076–AE45

Department of the Interior (DOI)
Bureau of Indian Affairs (BIA)

Completed Actions

1857. PROTECTION OF PRODUCTS OF INDIAN ART AND CRAFTSMANSHIP

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 309

Completed:

Reason	Date	FR Cite
Final Action	06/12/03	68 FR 35164

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Meridith Stanton
Phone: 202 208–3773

RIN: 1076–AE16

1858. • AMENDMENT TO THE LIST OF COURTS OF INDIAN OFFENSES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 9; 25 USC 13; 25 USC 200

CFR Citation: 25 CFR 11

Legal Deadline: None

Abstract: This rule removes the Paiute—Shoshone Indian tribe of the Fallon Reservation and Colony (Western Region, Nevada) from the listing of Courts of Indian offenses. The tribe reassumed tribal court functions and asked to be removed from the list.

Timetable:

Action	Date	FR Cite
Final Action	07/30/03	68 FR 44614

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Tribal

Agency Contact: Ralph Gonzales, Housing Program Specialist, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW.,
Washington, DC 20240
Phone: 202 513–7629
Fax: 202 208–5113

RIN: 1076–AE41

BILLING CODE 4310–MR–S

Department of the Interior (DOI)
Minerals Management Service (MMS)

Proposed Rule Stage

1859. LATE AND OVERPAYMENT INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 1001 et seq; 25 USC 1301 et seq; 25 USC 1331 et seq; 25 USC 1701 et seq; 25 USC 1735; 25 USC 1801 et seq; 25 USC 181 et seq; 25 USC 2101 et seq; 25 USC 351 et seq; 25 USC 3716; 25 USC 3720a; 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 9701; 5 USC 301 et seq

CFR Citation: 30 CFR 206; 30 CFR 218; 30 CFR 230

Legal Deadline: None

Abstract: This rule allows MMS to pay interest on Federal onshore and offshore oil and gas royalty overpayments and makes interest charges more equitable between the payor and the recipient. Interest will be paid on overpayments related to royalty, rent and estimates resulting from sales of Federal onshore and offshore oil and gas production.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, CO 80225–3211

Phone: 303 231–3211
Fax: 303 231–3385
Email: sharron.gebhardt@mms.gov

RIN: 1010–AC27

1860. TAKES VS. ENTITLEMENTS REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1735

CFR Citation: 30 CFR 205

Legal Deadline: None

Abstract: This rule addresses reporting and payment requirements for production removed and sold from a Federal lease, unit participating area, or communitization agreement beginning September 1996.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, CO 80225–3211
Phone: 303 231–3211
Fax: 303 231–3385
Email: sharron.gebhardt@mms.gov

RIN: 1010–AC29

1861. PREPAYMENT OF ROYALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1735

CFR Citation: 30 CFR 204

Legal Deadline: None

Abstract: This rule allows payors to prepay royalty in lieu of monthly royalty payments for their marginal properties with approval from the affected States. It will establish the criteria used by payors, States, and MMS to calculate, report, and monitor royalty prepayments.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, CO 80225–3211
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RIN: 1010–AC31

1862. INCIDENT REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: There continues to be rapid growth in offshore exploration and production activities in the Gulf of Mexico. Since safety is our top priority, we must upgrade our accident investigation functions. To do this we need accurate and timely information. This rule is the only way to require operators, lessees, and permit holders in the Outer Continental Shelf (OCS) to give us a written report about each OCS accident. It will also establish clearer guidelines for accident reporting thresholds and timing.

Timetable:

Action	Date	FR Cite
NPRM	07/08/03	68 FR 40585
NPRM Comment Period End	12/05/03	
Final Action	12/00/04	
Final Action Effective	01/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC57

1863. ROYALTY RELIEF TERMS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 396 et seq

CFR Citation: 30 CFR 203

Legal Deadline: None

Abstract: This rule amends the circumstances that discontinue the existing royalty relief for end-of-life oil and gas leases and also introduces a categorical royalty relief program for deep gas drilling on existing shallow water tracts.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
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RIN: 1010–AC58

1864. APPEALS OF MINERALS MANAGEMENT SERVICE ORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 242; 30 CFR 290; 43 CFR 4

Legal Deadline: None

Abstract: This rule streamlines the appeals process to facilitate processing appeals within the 33-month deadline required by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA). It also implements the requirements of OMB Circular A–25, which establishes guidelines for Federal agencies to assess fees to cover the costs of Government-provided services or benefits beyond those accruing to the general public.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
NPRM Comment Period End	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Platte Clark, Senior Appeals Specialist, Department of the Interior, Minerals Management Service, 4230 MIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208–2394

RIN: 1010–AC80

1865. REPORTING AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 2107; 25 USC 396; 30 USC 1023; 30 USC 1751(a); 30 USC 189; 30 USC 190; 30 USC 359; 31 USC 3716; 31 USC 9701; 43 USC 1334; 43 USC 1801; 44 USC 3506(a); 5 USC 301 et seq

CFR Citation: 30 CFR 206; 30 CFR 210; 30 CFR 216; 30 CFR 218

Legal Deadline: None

Abstract: MMS is amending its regulations to: (1) update reporting instructions; (2) eliminate unnecessary report forms; (3) add approved information collections previously omitted; (4) remove the extended due date for production reports submitted electronically; (5) require production reporting on leases and agreements until all production has ceased and all inventory has been disposed of; and (6) eliminate certain reporting assessments and electronic reporting options.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, CO 80225–3211
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RIN: 1010–AC90

1866. BLOWOUT PREVENTION FOR PRODUCTION TREE COILED TUBING WORKOVER OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: The rule would upgrade blowout prevention requirements for well workover operations conducted using coiled tubing while the well-head production tree is in place.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC96

1867. DATA RELEASE AND DEFINITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250 subpart A

Legal Deadline: None

Abstract: This rule will amend 30 CFR part 250 by adding a new definition revising the existing definition, clarifying or expanding certain requirements, and making administrative changes. We are adding a new section pertaining to notifying MMS on production status. We are reorganizing the forms data release table and adding entries for three new forms. We are expanding the requirements pertaining to submitting digital data. The proposed rule will provide additional time for exploration and development activities through the use of suspensions of operations for qualified leases in Alaska.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC99

1868. VALUATION OF OIL FROM INDIAN LEASES

Priority: Other Significant

Legal Authority: 25 USC 2101 et seq; 25 USC 396 et seq; 25 USC 396a et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 30 USC 351 et seq; 30 USC 181 et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: This rule would modify the regulations that establish royalty value for oil produced from Indian leases and create a new form for collecting value and differential data. These changes would decrease reliance on oil posted prices and make Indian oil royalty valuation more consistent with the terms of Indian leases.

Timetable:

Action	Date	FR Cite
ANPRM	12/20/95	60 FR 65610
NPRM	02/12/98	63 FR 7089
NPRM Comment Period Extended	04/09/98	
NPRM Comment Period End	05/13/98	
Supplementary NPRM	01/05/00	65 FR 10436
Supplementary NPRM Comment Period End	03/19/00	
NPRM Comment Period Extended	03/20/00	
NPRM Comment Period Extended	11/00/03	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Tribal

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RIN: 1010–AD00

1869. REDUCTION TO ROYALTY RELIEF IN SPECIAL CIRCUMSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 203

Legal Deadline: None

Abstract: The recently published final rule 1010–AC71 created a process for certain leases (those that are inadequately helped by our formal relief systems) to seek special royalty relief. However overly restrictive eligibility criteria may exclude some leases that fulfill statutory purposes while redundant criteria may include other leases that do not fit statutory purposes. This rule will refine the eligibility criteria to include marginal discoveries in the shallow water part of the Gulf of Mexico that may offer meaningful conservation or infrastructure preservation benefits. The revision will also disallow a royalty relief request by a lease or project that does not promote wider program goals or is only temporarily unable to benefit from a formal royalty relief program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AD02

1870. FEDERAL OIL VALUATION

Priority: Other Significant

Legal Authority: 5 USC 301 et seq; 25 USC 396 et seq; 25 USC 396a et seq; 30 USC 181 et seq; 30 USC 1001 et seq

CFR Citation: 30 CFR 206; 30 CFR 210

Legal Deadline: None

Abstract: This rule would amend the existing rule governing valuation for royalty purposes of crude oil produced from Federal leases. These changes would refine several technical aspects of this rule relating to which published market prices are most appropriate to value crude oil not sold at arm's length and what transportation deductions should be allowed.

Timetable:

Action	Date	FR Cite
NPRM	08/20/03	68 FR 50087
NPRM Comment Period End	09/19/03	
NPRM Comment Period Reopened	09/26/03	68 FR 55556
NPRM Comment Period End	11/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

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RIN: 1010–AD04

1871. FEDERAL GAS VALUATION

Priority: Other Significant

Legal Authority: 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 2102 et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: This rule would amend the existing rules governing valuation for royalty purposes of natural gas produced from Federal leases. In evaluating these rules, MMS has identified several issues that warrant further public comment. MMS is therefore proposing these amendments in an effort to improve the current rule and to correct some technical problems.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Gebhardt, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, CO 80225–3211
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RIN: 1010–AD05

1872. • LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rulemaking will rewrite the existing rules at 30 CFR part 256 to make them clearer. The rule has been reorganized and streamlined to better reflect the 5-year and lease sale processes as they have evolved since the last rewrite in the 1980's. There are few substantive changes to the rule.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jane A. Roberts, Paralegal Specialist, Department of the Interior, Minerals Management Service, MS 623, 381 Elden Street, Herndon, VA 22070
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RIN: 1010–AD06

1873. ACCOUNTING RELIEF FOR MARGINAL PROPERTIES

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1735

CFR Citation: 30 CFR 204

Legal Deadline: None

Abstract: This rule allows reporters to seek accounting, reporting, and auditing relief for their marginal properties in accordance with section 117(c) of the Federal Oil and Gas Royalty Management Act of 1982 as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3360
NPRM Comment Period End	03/22/99	
Supplementary NPRM	03/31/03	68 FR 15390
NPRM Comment Period End	05/30/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

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RIN: 1010–AC30

1874. PLANS AND INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 25 CFR 250

Legal Deadline: None

Abstract: MMS requires companies to submit for approval their exploration and development plans for activities on the Outer Continental Shelf. The companies must submit these plans before they can begin any activities, except preliminary activities. This rule would rewrite the requirements into clearer language and organize them into discrete sections by topic, to make them easier to follow.

Timetable:

Action	Date	FR Cite
NPRM	05/17/02	67 FR 35372
Comment Period Extended	12/13/02	67 FR 46616
Final Action	02/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC47

1875. PROPRIETARY TERMS AND DATA DISCLOSURE

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250; 30 CFR 251

Legal Deadline: None

Abstract: This rule would modify the proprietary terms for geophysical data and information and any of their derivatives that MMS acquires under 30 CFR part 251. We propose to change the beginning of the proprietary terms from the date of submission to MMS to the date MMS issues the permit. The rule would also allow selective disclosure of geological and geophysical data and information and allow selective disclosure of data and information generated on a lease to persons with a direct interest in issues concerning field determination and royalty relief eligibility.

Timetable:

Action	Date	FR Cite
NPRM	07/17/02	67 FR 46942
NPRM Comment Period End	09/18/02	
Final Action	02/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC81

1876. DOCUMENTS INCORPORATED BY REFERENCE FOR OFFSHORE FLOATING PRODUCTION FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: We are proposing to amend our regulations to better address floating offshore platforms that, until now, have not been expressly covered. This will require a complete rewrite of subpart I to include floating production systems. These systems are variously described as column-stabilized units; floating production, storage, and offloading facilities; tension-leg platforms; spars; etc. We are also incorporating into our regulations a body of industry standards pertaining to floating productions systems, and this will save the public the costs of developing government standards.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66851
Comment Period Extended to 3/27/2002	02/12/02	67 FR 6453
Comment Period Extended 5/28/2002	03/28/02	67 FR 14902
Final Action	02/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC85

1877. RIGHTS-OF-USE AND EASEMENTS AND PIPELINE RIGHTS-OF-WAY

Priority: Other Significant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: MMS is proposing to modify requirements governing rights-of-use and easement and pipeline rights-of-way in the Outer Continental Shelf. These changes will increase rental rates for pipeline rights-of-way and establish rentals for rights-of-use and easements. The proposed rule will also allow MMS to charge additional payment when the right-of-use and easement or the pipeline right-of-way prevents MMS from making the area available to other companies for exploration and possible development and production. This change is needed because of requests by lessees and pipeline right-of-way holders to use large areas outside of the area covered by their lease and pipeline right-of-way for accessory structures.

Timetable:

Action	Date	FR Cite
NPRM	04/24/03	68 FR 20091
NPRM Comment Period End	05/27/03	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC91

1878. DOCUMENT INCORPORATED BY REFERENCE—API 510—PRESSURE VESSEL INSPECTION CODE: MAINTENANCE INSPECTION, RATING, REPAIR, AND ALTERATION

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rule proposes adding a document to be incorporated by reference into MMS's regulations governing oil and gas and sulphur operations in the outer continental shelf (OCS). This revision will ensure that lessees use the best available and safest technologies while operating in the OCS. The new document, API 510, is titled Pressure Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66848
NPRM Comment Period End	02/25/02	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC95

1879. RELIEF OR REDUCTION IN ROYALTY RATES—DEEP GAS PROVISIONS

Regulatory Plan: This entry is Seq. No. 74 in part II of this issue of the **Federal Register**.

RIN: 1010–AD01

Department of the Interior (DOI) Minerals Management Service (MMS) Completed Actions

1880. DEALING WITH SUSTAINED CASING PRESSURE

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 250

Completed:

Reason	Date	FR Cite
Withdrawn	07/10/03	68 FR 41090

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray
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RIN: 1010–AC83

1881. DEFINITION OF CONTROL

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 206

Completed:

Reason	Date	FR Cite
Withdrawn	08/01/03	·

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Gebhardt
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RIN: 1010–AC88

1882. DOCUMENTS INCORPORATED BY REFERENCE—API RP 14F AND API 510

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 250

Completed:

Reason	Date	FR Cite
Final Action	07/22/03	68 FR 43295
Final Action Effective	08/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray
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RIN: 1010–AC89

1883. FIXED PLATFORMS—DOCUMENTS INCORPORATED BY REFERENCE

Priority: Info./Admin./Other

CFR Citation: 30 CFR 250

Completed:

Reason	Date	FR Cite
Final Action	04/21/03	68 FR 19352
Final Action Effective	05/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AD03

1884. • INCREASE IN MAXIMUM DAILY CIVIL PENALTY AMOUNT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Pub L 101–380

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rule will adjust the maximum civil penalty per day per violation from $25,000 to $30,000 due to inflation.

Timetable:

Action	Date	FR Cite
Final Action	10/29/03	68 FR 61622
Final Action Effective	11/28/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

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RIN: 1010–AD07

BILLING CODE 4310–05–S

Department of the Interior (DOI) Prerule Stage
Office of Surface Mining Reclamation and Enforcement (OSMRE)

1885. • ABANDONED MINE RECLAMATION FEES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1232(b)

CFR Citation: 30 CFR 870

Legal Deadline: Final, Statutory, September 30, 2004, Final.

Abstract: The Surface Mining Control and Reclamation Act (SMCRA) created an abandoned mine land reclamation program funded by a fee assessed on each ton of coal produced. The fees are placed into a fund that is used to reclaim lands and waters adversely impacted by coal mining before enactment of SMCRA. The Energy Policy Act of 1992 requires OSM to transfer interest accumulating on the fund to the United Mine Workers of America Combined Benefit Fund for use in paying health care benefits for former coal miners unassigned to a specific company. The Energy Ploicy Act extended the collection of reclamation fees through September 30, 2004, with a requirement that after that date the fee must be established at a rate adequate to continue to provide for these transfers. This rule will address that requirement, including what the transfer amount and new fees should be, what operations should pay those fees, how the fees should be assessed, and the interval at which the new rate structure should be evaluated.

Timetable:

Action	Date	FR Cite
ANPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Undetermined

Agency Contact: Danny Lytton, Chief, Branch of Program Policy, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, MS 120 –SIB, Washington, DC 20240
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RIN: 1029–AC46

Department of the Interior (DOI) Proposed Rule Stage
Office of Surface Mining Reclamation and Enforcement (OSMRE)

1886. ABANDONED COAL REFUSE SITES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 785; 30 CFR 829; 30 CFR 830; 30 CFR 845; 30 CFR 870

Legal Deadline: None

Abstract: OSM intends to propose new rules governing permitting and performance standards for the recovery of coal from abandoned coal refuse piles. The rules are required to implement section 2503(e) of the Energy Policy Act of 1992.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Art Abbs, Birmingham Field Office Director, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, AL 35209
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RIN: 1029–AB70

1887. REVEGETATION

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 816

Legal Deadline: None

Abstract: This rule will revise the topsoil replacement and revegetation standards. The revisions will encourage species diversity on reclaimed lands, remove a possible impediment to the use of woody vegetation in revegetating mined land, and provide similar revegetation success standards in both areas of more than 26 inches of precipitation and in areas of less than 26 inches of precipitation.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jim Fulton, Chief, Denver Field Division, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202
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RIN: 1029–AC02

1888. PLACEMENT OF EXCESS SPOIL

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 701; 30 CFR 773; 30 CFR 780; 30 CFR 781; 30 CFR 785; 30 CFR 816; 30 CFR 817

Legal Deadline: None

Abstract: This rule will establish permit application requirements and review procedures for applications that propose to place excess spoil from surface coal mining operations into waters of the United States. In addition, it will modify the backfilling and grading regulations to minimize the creation of excess spoil and it will revise the regulations governing surface coal mining operations within 100 feet of a perennial or intermittent stream to more closely track the underlying statutory provisions.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dave Hartos, Physical Scientist, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Three Parkway Center, Pittsburgh, PA 15220
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RIN: 1029–AC04

1889. FINANCIAL ASSURANCES

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 773; 30 CFR 780; 30 CFR 784; 30 CFR 800

Legal Deadline: None

Abstract: We are considering rulemaking to ensure adequate funding for the treatment of unanticipated long-term pollutant discharges including acid or toxic mine drainage, that develop as a result of surface mining operations.

Timetable:

Action	Date	FR Cite
ANPRM	05/17/02	67 FR 35070
ANPRM Comment Period End	10/15/02	67 FR 46617
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

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RIN: 1029–AC05

1890. PROCESSING STATE PROGRAM AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 732

Legal Deadline: None

Abstract: We are proposing revisions to our regulations governing the processing of State program amendments to provide additional assurances that the amendments are processed in a timely manner. An approved State program amendment allows a State to regulate surface coal mining operations within its borders. The existing regulations require us to take over an approved State program when the State fails to amend its program in a timely manner. This can be disruptive to the mining industry, expensive for the Federal Government, and, in many instances, unwarranted by the nature of the outstanding amendment. This rule will allow OSM to take action that is more appropriate in situations where the outstanding amendment does not impair the integrity of the approved State Program.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andy DeVito, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, MS 210 SIB, 1951 Constitution Avenue NW., Washington, DC 20240
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RIN: 1029–AC06

1891. OWNERSHIP AND CONTROL SETTLEMENT RULE

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 701; 30 CFR 773; 30 CFR 774; 30 CFR 778; 30 CFR 843; 30 CFR 847

Legal Deadline: None

Abstract: The National Mining Association (NMA) challenged the final ownership and control rule that we published on December 19, 2000. Under the Federal District Court's supervision, we are conducting settlement discussions with NMA on 23 issues identified for potential litigation. OSM has agreed to publish a proposed rule for public comment that addresses the issues agreed to as result of the negotiations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Agency Contact: Earl Bandy, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 2679 Regency Road, Lexington, KY 40503
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RIN: 1029–AC08

Department of the Interior (DOI)
Office of Surface Mining Reclamation and Enforcement (OSMRE)

Final Rule Stage

1892. INDIAN LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 700; 30 CFR 740; 30 CFR 750

Legal Deadline: None

Abstract: OSM regulates mining on Indian lands and the State regulates mining on non-Indian lands. OSM proposes to amend its regulations to clarify that the definition of "Indian lands" at 30 CFR 700.5 includes individual Indian trust allotments located within an approved tribal land consolidation area. The proposed clarification was required under the terms of a settlement agreement between the Department of the Interior and the Navajo Nation and Hopi Tribe to settle the tribes' challenges to a May 1989 Indian lands rulemaking. OSM has developed a preliminary draft rule that specifies that allotted lands would qualify as Indian lands for purposes of the Surface Mining Control and Reclamation Act when OSM determines, on a case-by-case basis, that the allotments are supervised by an Indian tribe.

Timetable:

Action	Date	FR Cite
NPRM	02/19/99	64 FR 8464
NPRM Comment Period End	06/21/99	64 FR 18585
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

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RIN: 1029–AB83

1893. FINANCING ABANDONED MINE LAND RECLAMATION

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 874

Legal Deadline: None

Abstract: We published a final rule in February 1999 that would conserve abandoned mine land (AML) funds by allowing incidental coal recovered in AML construction projects to be sold to offset the cost of reclamation. This reduced the amount of money needed from the AML fund. The rule was challenged in court. The court upheld the rule but directed us to clarify what types of expenses could be considered in determining what qualifies as a Government-financed AML project. This rule will clarify the ambiguity created by the discussion in the preamble to the 1999 final rule.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Danny Lytton, Chief, Division of Reclamation Support, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240
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RIN: 1029–AC07

BILLING CODE 4310–05–S

Department of the Interior (DOI)
Bureau of Reclamation (RB)

Proposed Rule Stage

1894. PUBLIC CONDUCT ON RECLAMATION LANDS AND PROJECTS

Priority: Other Significant

Legal Authority: 16 USC 460l–31; 43 USC 373b; PL 107–69; 43 USC 373c; 16 USC 4601–31; ...

CFR Citation: 43 CFR 423

Legal Deadline: None

Abstract: This proposed rule would establish regulations regarding public conduct on Reclamation lands and Reclamation projects, waters, and real property subject to the administration of Reclamation or in its custody. The rule is necessary to ensure the safety of the public, Reclamation employees, dams, facilities, and other resources in our jurisdiction. This proposed rule would replace an interim rule that we issued on April 17, 2002, and extended on April 3, 2003.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary L. Anderson, Policy Analyst, Department of the Interior, Bureau of Reclamation, D–5500, Building 67, P.O. Box 25007, Denver, CO 80225
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RIN: 1006–AA45

Department of the Interior (DOI)
Bureau of Reclamation (RB)
Completed Actions

1895. TRESPASS ON RECLAMATION LANDS AND FACILITIES

Priority: Other Significant

CFR Citation: 43 CFR 423

Completed:

Reason	Date	FR Cite
Final Action	04/17/02	67 FR 19092

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry Todd
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Fax: 202 513–0308

RIN: 1006–AA44

1896. PUBLIC CONDUCT ON BUREAU OF RECLAMATION LANDS AND PROJECTS; REMOVAL OF EXPIRATION DATE

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 423

Completed:

Reason	Date	FR Cite
Final Action	04/03/03	68 FR 16214

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary Anderson
Phone: 303 236–1061

RIN: 1006–AA46

BILLING CODE 4310–84–S

Department of the Interior (DOI)
Bureau of Land Management (BLM)
Proposed Rule Stage

1897. SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

Priority: Other Significant

Legal Authority: 43 USC 1701; 43 USC 1713

CFR Citation: 43 CFR 2710

Legal Deadline: None

Abstract: This rule will amend 43 CFR part 2710 to provide for improved administration of sales of public land under the Federal Land Policy and Management Act. It will add a provision to allow the sale of public land to State or local government entities for affordable housing. Such sales may be for less than fair market value.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ted Hudson, Regulatory Analyst, Department of the Interior, Bureau of Land Management, Room 420, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AB77

1898. DESERT LAND ENTRIES

Priority: Other Significant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2520

Legal Deadline: None

Abstract: This rule will transfer much of the regulation on entries of desert land to the BLM Manual if the underlying statute is not repealed as no longer practical.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AC56

1899. DISPOSAL OF RESERVED MINERALS UNDER THE STOCK RAISING HOMESTEAD ACT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 299

CFR Citation: 43 CFR 3814

Legal Deadline: Final, Statutory, October 13, 1993, Final.

Abstract: This rule will establish new procedures for mineral exploration and development under the General Mining Law of 1872 on lands where the surface was patented under the Stock Raising Homestead Act of 1916 and the mineral estate remains reserved to the Federal Government.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

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RIN: 1004–AC59

1900. MINERAL PATENT APPLICATIONS; ADVERSE CLAIMS, PROTESTS, AND CONFLICTS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 22 to 54; 43 USC 1201; 43 USC 1740

CFR Citation: 43 CFR 3730; 43 CFR 3740; 43 CFR 3820; 43 CFR 3860; 43 CFR 3870

Legal Deadline: None

Abstract: This rule will revise the filing and administrative procedures for mineral patent applications. It will also revise the procedures for filing adverse claims or protests against mineral patent applications and for mineral-in-character challenges to nonmineral land entries.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Barbara Gauthier-Warinner, Mineral Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AD32

1901. GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Priority: Other Significant

Legal Authority: 43 USC 118(d); 43 USC 1701 et seq; 43 USC 1901 et seq; 43 USC 315 et seq; 7 USC 1012

CFR Citation: 43 CFR 4100

Legal Deadline: None

Abstract: This rule will remove provisions for conservation use of grazing privileges. These provisions were determined by the Federal Circuit Court to be not consistent with the statutory authority of the Secretary of the Interior. The rule will also: (1) provide a full force and effect provision for grazing decisions; (2) include standards for determining socioeconomic impacts of grazing decisions; (3) include a provision allowing permittees to claim ownership of range improvements under certain circumstances; (4) address circumstances under which a grazing permittee may lose his grazing privileges upon conviction of a crime; and (5) extend the permit term from 3 to 5 years.

Timetable:

Action	Date	FR Cite
ANPRM	03/03/03	68 FR 9964
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

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RIN: 1004–AD42

1902. • RESOURCE MANAGEMENT PLANNING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: 43 CFR 1800

Legal Deadline: None

Abstract: This rule will revise procedures relating to resource management planning.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Michael H. Schwartz, Group Manager, Regulatory Affairs, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AD57

Department of the Interior (DOI)
Bureau of Land Management (BLM)

Final Rule Stage

1903. INDIAN ALLOTMENTS

Priority: Info./Admin./Other

Legal Authority: 25 USC 334; 25 USC 336; 43 USC 1201

CFR Citation: 43 CFR 2530

Legal Deadline: None

Abstract: This rule will convert existing regulations to plain English and remove those portions that relate to procedural matters.

Timetable:

Action	Date	FR Cite
NPRM	10/16/96	61 FR 53887
NPRM Comment Period End	09/13/99	64 FR 38172
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1004–AC77

1904. PERMITS FOR RECREATION ON PUBLIC LANDS

Priority: Other Significant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2930

Legal Deadline: None

Abstract: This rule would add a section on prohibited acts to the regulations on campgrounds and other fee areas to facilitate law enforcement at these sites. The rule would also change the maximum term for a special recreation permit from 5 years to 10 years.

Timetable:

Action	Date	FR Cite
NPRM	10/01/02	67 FR 61746
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1004–AD45

1905. WILDERNESS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 6300

Legal Deadline: None

Abstract: This rule would add provisions on use of fixed anchors for rock climbing in wilderness areas.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Jeff Jarvis, Wilderness Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AD46

1906. OIL AND GAS LEASING OPERATIONS; BONDING

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 189; 30 USC 359; 43 USC 1732; 43 USC 1733; 43 USC 1740

CFR Citation: 43 CFR 3100; 43 CFR 3104; 43 CFR 3154

Legal Deadline: None

Abstract: This rule increases minimum bond amounts for individual lease bonds and Statewide bonds. It changes BLM's current policy of terminating only the period of liability of bonds. Under the new rule, we will cancel bonds after determining that all lease obligations are met. Finally, the rule clarifies the responsibilities of record title holders and operating rights owners. The final rule is based upon a portion of a proposed rule published with the RIN 1004–AC94.

Timetable:

Action	Date	FR Cite
NPRM	12/03/98	63 FR 66840
NPRM Comment Period End	07/19/99	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ian Senio, Regulatory Analyst, Department of the Interior, Bureau of Land Management, MS 401, Regulatory Management Group (WO–630), MS 401, 1849 C Street NW, Washington, DC 20240
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RIN: 1004–AD56

Department of the Interior (DOI) Bureau of Land Management (BLM) Long-Term Actions

1907. LEASES, PERMITS, AND EASEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1732; 43 USC 1740

CFR Citation: 43 CFR 2920

Legal Deadline: None

Abstract: This rule will amend the existing regulations to provide for improved administration of leases, permits and easements under the Federal Land Policy and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	11/21/90	55 FR 48810
NPRM Comment Period End	01/22/91	
Second NPRM	02/09/95	60 FR 7878
Second NPRM Comment Period End	04/10/95	
Final Rule for Minimum Impact Land Use Permits Only	06/24/96	61 FR 32351
Final Rule Effective for Minimum Impact Land Use Permits Only	07/24/96	
Third NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AB51

1908. COALBED METHANE DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13368

CFR Citation: 43 CFR 3170

Legal Deadline: Final, Statutory, October 24, 1995, Final.

Abstract: The rule will implement section 1339 of the Energy Policy Act of 1992. It will prevent conflicts in ownership of coalbed methane from impeding development of that resource by requiring pooling of development and payment of the proceeds into an escrow account until the ownership issue is resolved by a State entity of competent jurisdiction. The rule will also allow States to avoid the Federal regulations by promulgating their own regulations that substantially comply with Federal requirements.

Timetable:

Action	Date	FR Cite
NPRM	09/15/95	60 FR 47920
NPRM Comment Period End	11/14/95	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: David R. Stewart, Mineral Resources, Department of the Interior, Bureau of Land Management, 7450 Boston Blvd., Springfield, VA 22153
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RIN: 1004–AC27

1909. COST RECOVERY; MINERAL FILINGS AND OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1001 et seq; 30 USC 181 et seq; 30 USC 22; 30 USC 351 to 360; 31 USC 9701; 43 USC 1734; 50 USC app 565

CFR Citation: 43 CFR 3100; 43 CFR 3200; 43 CFR 3400; 43 CFR 3500; 43 CFR 3600; 43 CFR 3700; 43 CFR 3800

Legal Deadline: None

Abstract: This rule will amend regulations for user fees for locatable minerals, mineral materials, and leasable minerals (solids and fluids) to adjust current fees or establish new fees in accordance with title V of the Independent Offices Appropriations Act of 1952 (user charges), OMB Circular A–25 User Charges and section 304 of the Federal Land Policy and Management Act of 1976.

Timetable:

Action	Date	FR Cite
NPRM	12/15/00	65 FR 78440
NPRM Comment Period End	02/13/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

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RIN: 1004–AC64

1910. RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES; RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2800; 43 CFR 2880

Legal Deadline: None

Abstract: The rule will amend the regulations governing rights-of-way issued under both the Federal Land Policy and Management Act and the Mineral Leasing Act by revising cost recovery policies and procedures and adjusting cost recovery fees to reflect cost increases since the current regulations became effective in 1987. The rule will also eliminate the automatic exemptions from cost recovery for Federal agencies except when they are exempted by law. It will also establish policies on paying rent in advance and a financial penalty for paying rent late.

Timetable:

Action	Date	FR Cite
NPRM	06/15/99	64 FR 32106
NPRM Comment Period End	10/13/99	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1004–AC74

1911. CAREY ACT GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 641 et seq

CFR Citation: 43 CFR 2610

Legal Deadline: None

Abstract: This rule will update these regulations as they are inconsistent with present-day management policies. Application of these provisions of the Carey Act is rarely feasible due to limited water and suitable lands.

Timetable:

Action	Date	FR Cite
NPRM	09/10/96	61 FR 47725
NPRM Comment Period End	10/10/96	
Supplementary NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1004–AC80

1912. OIL AND GAS LEASING AND OPERATIONS

Priority: Other Significant

Legal Authority: 30 USC 181 et seq

CFR Citation: 43 CFR 3100

Legal Deadline: None

Abstract: This rule will revise BLM's current Federal oil and gas leasing and operations regulations, except those concerning drainage (section 3100.2–2), combined hydrocarbon leasing (part 3140) and oil and gas leasing in the National Petroleum Reserve—Alaska (part 3130). The rule will: (1) Cite industry standards and incorporate them by reference rather than repeat those standards in the rule; (2) incorporate the requirements of the Onshore Oil and Gas Orders and national notices to lessees into the regulations to eliminate overlap with current regulations; (3) use performance standards in certain places instead of prescriptive requirements to allow more flexibility for operators and to protect the environment and Federal royalty interests; and (4) eliminate redundancies, clarify procedures and regulatory requirements and streamline procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/03/98	63 FR 66840
NPRM Comment Period End	07/19/99	64 FR 29256
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: Ian Senio, Regulatory Analyst, Department of the Interior, Bureau of Land Management, MS 401, Regulatory Management Group (WO–630), MS 401, 1849 C Street NW, Washington, DC 20240
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RIN: 1004–AC94

1913. APPEALS PROCEDURES; HEARINGS PROCEDURES

Priority: Info./Admin./Other

Legal Authority: 43 USC 1701; 43 USC 1740

CFR Citation: 43 CFR 1840; 43 CFR 1850

Legal Deadline: None

Abstract: BLM proposes to amend its regulations that govern administrative review procedures for protests of proposed decisions contested appeals of BLM decisions, and hearings on the record. The proposed regulations would provide more consistent procedures for administrative review of BLM decisions, and would clarify when and how BLM decisions go into effect and whether an appeal will stay the effectiveness of a BLM decision.

Timetable:

Action	Date	FR Cite
NPRM	10/17/96	61 FR 54120
NPRM Comment Period End	01/17/97	61 FR 58160
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cynthia Ellis,
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RIN: 1004–AC99

1914. CONSERVATION; HELIUM LEASING

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1701 et seq; 50 USC 167

CFR Citation: 43 CFR 16; 43 CFR 3196

Legal Deadline: None

Abstract: This rule will redesignate, amend, and extend the regulations on conservation of helium to facilitate administration and implementation of provisions in the Helium Privatization Act. The rule will move these regulations to 43 CFR subpart 3196 to consolidate helium-related regulations in one area for ease in finding and complying with them.

Timetable:

Action	Date	FR Cite
ANPRM	12/19/00	65 FR 79325
ANPRM Comment Period End	03/26/01	
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Joseph B. Peterson,
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RIN: 1004–AD35

1915. HAZARDOUS MATERIALS COMPLIANCE

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1701 et seq

CFR Citation: 43 CFR 1890

Legal Deadline: None

Abstract: This rule will clarify the respective responsibilities of BLM and the holders of various BLM authorizations with regard to releases of hazardous materials and other violations of environmental law caused by the holder or the holder's operator on public lands.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Cynthia Ellis,
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RIN: 1004–AD38

1916. SUPPLEMENTARY RULES FOR PUBLIC DEMONSTRATIONS AT GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT

Priority: Substantive, Nonsignificant

Legal Authority: 43 CFR 8365.1–6

CFR Citation: 43 CFR 8365

Legal Deadline: None

Abstract: This interim final rule would require a permit for public demonstrations at Grand Staircase-Escalante National Monument and associated facilities, and establish procedures for obtaining such a permit. It would also provide for some locations to be designated as open for demonstrations, and others to be closed to protect sensitive resources and public health and safety.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/01/00	65 FR 53516
Interim Final Rule Comment Period End	10/02/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1004–AD40

1917. MINING CLAIMS UNDER THE GENERAL MINING LAWS; SURFACE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1280; 30 USC 22; 30 USC 612; 43 USC 1201; 43 USC 1732; 43 USC 1733; 43 USC 1740; 43 USC 1781; 43 USC 1782

CFR Citation: 43 CFR 3809

Legal Deadline: None

Abstract: This rule will amend existing regulations by removing certain provisions of the regulations and restoring others to those in effect on January 19, 2001, intending to prevent unnecessary or undue degradation of BLM-administered lands by mining operations authorized under the mining laws. The approach BLM will take will balance the Nation's need to maintain reliable sources of strategic and industrial minerals, while ensuring protection of the environment and natural resources on public lands. The rule will make the hardrock mining regulations consistent with the recommendations of the National Research Council and protect the Federal Government from financial risk if operators are unable to perform reclamation.

Timetable:

Action	Date	FR Cite
NPRM	10/30/01	66 FR 54863
NPRM Comment Period End	02/15/02	
NPRM Comment Period Reopened	04/12/02	67 FR 17962
NPRM Comment Period End	05/13/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Michael H. Schwartz, Group Manager, Regulatory Affairs, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AD53

1918. WILDERNESS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1133; 43 USC 1733; 43 USC 1740; 43 USC 1782

CFR Citation: 43 CFR 6300

Legal Deadline: None

Abstract: This rule will add provisions on use of timber on mining claims and clarify procedures on issuing patents for mining claims.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff Jarvis, Wilderness Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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RIN: 1004–AD54

Department of the Interior (DOI)
Bureau of Land Management (BLM)

Completed Actions

1919. LOCATION RECORDING AND MAINTENANCE OF MINING CLAIMS AND SITES

Priority: Other Significant

CFR Citation: 43 CFR 3710; 43 CFR 3730; 43 CFR 3810; 43 CFR 3820; 43 CFR 3830; 43 CFR 3840; 43 CFR 3850

Completed:

Reason	Date	FR Cite
Final Action	10/24/03	68 FR 61045
Final Action Effective	11/24/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Roger Haskins
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RIN: 1004–AD31

1920. SURFACE MANAGEMENT; SEGREGATED OR WITHDRAWN LANDS

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 3809

Completed:

Reason	Date	FR Cite
Withdrawn—No further action will be taken at this time.	08/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael H. Schwartz
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RIN: 1004–AD51

BILLING CODE 4310–10–S

Department of the Interior (DOI)
Office of the Secretary (OS)

Completed Actions

1921. WILD AND SCENIC RIVERS

Priority: Other Significant

CFR Citation: 43 CFR 39

Completed:

Reason	Date	FR Cite
Withdrawn—No further action	08/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John Haubert
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RIN: 1093–AA08

[FR Doc. 03–27998 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–10–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XII

Department of Justice

Semiannual Regulatory Agenda

DEPARTMENT OF JUSTICE (DOJ)

DEPARTMENT OF JUSTICE

8 CFR Ch. I

21 CFR Ch. I

27 CFR Ch. II

28 CFR Ch. I

Regulatory Agenda

AGENCY: Department of Justice.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Justice is publishing its fall 2003 regulatory agenda pursuant to Executive Order 12866 "Regulatory Planning and Review," 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601-612 (1988).

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 7236, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 514-8059.

SUPPLEMENTARY INFORMATION For this edition of the Department of Justice's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

The Regulatory Flexibility Act (RFA) requires that, each year, the Department publish a list of those regulations that have a significant economic impact upon a substantial number of small entities and are to be reviewed under section 610 of the Act during the succeeding 12 months. This edition of the Department's unified agenda includes two regulations requiring such a review: "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities" (RIN 1190-AA44) and "Nondiscrimination on the Basis of Disability in State and Local Government Services" (RIN 1190-AA46). In accordance with the RFA, comments are specifically invited on these regulations. Those comments should be addressed to the contact persons listed in the entries for these items.

Dated: October 1, 2003.

Daniel J. Bryant,

Acting Assistant Attorney General, Office of Legal Policy.

Bureau of Prisons—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1922	Drug Abuse Treatment Program: Subpart Revision and Clarification	1120–AB07
1923	Inmate Discipline—Subpart Revision	1120–AB18
1924	Administrative Safeguards for Psychiatric Treatment and Medication	1120–AB20
1925	Progress Reports Rules Revision	1120–AB24

Bureau of Prisons—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1926	Intensive Confinement Centers	1120–AA11
1927	Literacy Program	1120–AA33
1928	Telephone Regulations and Inmate Financial Responsibility	1120–AA39
1929	Telephone Regulations and Inmate Financial Responsibility	1120–AA49
1930	Good Conduct Time	1120–AA62
1931	Designation of Offenses Subject to Sex Offender Release Notification	1120–AA85
1932	Inmate Commissary Account Deposit Procedures	1120–AA86
1933	Drug Abuse Treatment Programs: Disincentives and Enhanced Incentives	1120–AA88
1934	Searches of Housing Units, Inmates, Inmate Work Areas, and Persons Other Than Inmates: Electronic Devices	1120–AA90
1935	Drug Testing Program	1120–AA95
1936	Correspondence: Inspection of Outgoing General Correspondence	1120–AA98
1937	Infectious Disease Management	1120–AB03
1938	Religious Beliefs and Practices: Nomenclature Change	1120–AB04
1939	District of Columbia Educational Good Time Credit	1120–AB05
1940	Suicide Prevention Program	1120–AB06
1941	National Security; Prevention of Acts of Violence and Terrorism	1120–AB08
1942	Inmate Fees for Health Care Services	1120–AB11
1943	Good Conduct Time: Aliens With Confirmed Orders of Deportation, Exclusion, or Removal	1120–AB12
1944	Civil Contempt of Court Commitments: Revision To Accommodate Commitments Under the DC Code	1120–AB13
1945	Central Inmate Monitoring (CIM) System: Streamlining Rules	1120–AB14
1946	Comments on UNICOR Business Operations: Clarification of Addresses	1120–AB15
1947	Admission and Orientation Program: Removal From Rules	1120–AB16
1948	Bureau of Prisons Emergencies	1120–AB17

Bureau of Prisons—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1949	Clarifying of Release Gratuities—Release Transportation Regulations To More Closely Conform to Statutory Provisions	1120–AB21

Bureau of Prisons—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1950	Release of Information	1120–AA96

Bureau of Prisons—Completed Actions

Sequence Number	Title	Regulation Identification Number
1951	Postsecondary Education Programs	1120–AA25
1952	Over-the-Counter (OTC) Medications	1120–AA81
1953	Occupational Educational Programs	1120–AA92
1954	Release Gratuities, Transportation, and Clothing: Aliens	1120–AA99
1955	District of Columbia Youth Rehabilitation Act (DCYRA) Sentences: No Further Benefit Determinations	1120–AB09

Civil Rights Division—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1956	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review) (Reg Plan Seq No. 75)**	1190–AA44
1957	Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review) (Reg Plan Seq No. 76)**	1190–AA46
1958	Nondiscrimination on the Basis of Disability in State and Local Government Services; Public Accommodations and Commercial Facilities; Accessibility Standards; Recreation Facilities	1190–AA47
1959	American Competitiveness and Workforce Improvement Act of 1998 Complaint Process	1190–AA48
1960	Nondiscrimination on the Basis of Disability in State or Local Government Facilities; Public Accommodations and Commercial Facilities; Accessibility Standards; Play Areas	1190–AA50
1961	Amendments to Procedures Advising States and Political Subdivisions Specially Covered Under the Voting Rights Act How To Seek Preclearance From the Attorney General of Proposed Voting Changes	1190–AA51
1962	Amendments to Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs; Implementation of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act 1973	1190–AA52
1963	Procedures To Review Police Departments for a Pattern or Practice of Conduct That Deprives Persons of Rights, Privileges, or Immunities Secured or Protected by the Constitution or Laws of the U.S.	1190–AA53

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Civil Rights Division—Completed Actions

Sequence Number	Title	Regulation Identification Number
1964	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	1190–AA49

Bureau of Alcohol, Tobacco, Firearms and Explosives—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1965	27 CFR 178 Implementation of Public Law 106–58, Treasury and General Government Appropriations Act, 2000	1140–AA07
1966	27 CFR 178 Implementation of Public Law 105–277 Relating to Secure Gun Storage	1140–AA10
1967	Commerce in Firearms and Ammunition—Importation of Firearm Frames, Receivers, and Barrels	1140–AA22

Bureau of Alcohol, Tobacco, Firearms and Explosives—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1968	27 CFR 55 Commerce in Explosives (Including Explosives in the Fireworks Industry) **(Rulemaking Resulting From a Section 610 Review)**	1140–AA01
1969	27 CFR Part 55 Identification Markings Placed on Imported Explosive Materials	1140–AA02
1970	27 CFR 55 Commerce in Explosives—Explosive Pest Control Devices	1140–AA03
1971	27 CFR 178 Commerce in Firearms and Ammunition (Omnibus Consolidated Appropriations Act of 1997)	1140–AA04
1972	27 CFR 178 Residency Requirement for Persons Acquiring Firearms	1140–AA05

Bureau of Alcohol, Tobacco, Firearms and Explosives—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1973	Implementation of the Safe Explosives Act, Title XI, Subtitle C, of Public Law 107–296	1140–AA00
1974	27 CFR 55 Implementation of Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, Relating to the Establishment of a National Repository for Arson and Explosives Information	1140–AA06
1975	27 CFR 178 Public Law 105–277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for FY '99 Relating to Firearms Disabilities for Nonimmigrant Aliens	1140–AA08
1976	27 CFR 178 Commerce in Firearms and Ammunition–Annual Inventory	1140–AA09
1977	Implementation of the Safe Explosives Act, Title XI, Subtitle C, of Public Law 107-296–Delivery of Explosive Materials by Common or Contract Carrier	1140–AA20
1978	Waiver for Firearm Prohibition on Nonimmigrant Visa Holders	1140–AA21

Drug Enforcement Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1979	Guidelines for Providing Controlled Substances to Ocean Vessels	1117–AA40
1980	Exemption From Import/Export Requirements for Personal Medical Use	1117–AA56
1981	Electronic Prescriptions for Controlled Substances	1117–AA61
1982	Security Requirements for Handlers of Pseudoephedrine, Ephedrine, and Phenylpropanolamine	1117–AA62
1983	Reorganization and Clarification of DEA Regulations	1117–AA63
1984	Chemical Mixtures Containing Listed Forms of Phosphorus	1117–AA66
1985	Chemical Registration Waivers; Exemption From Chemical Registration Fees for Certain Persons	1117–AA67
1986	Recordkeeping and Reporting Requirements for Drug Products Containing Gamma Hydroxybutyric Acid (GHB)	1117–AA71
1987	Chemical Registration and Reregistration Fees	1117–AA72
1988	Preventing the Accumulation of Surplus Controlled Substances at Long-Term Care Facilities	1117–AA75
1989	Clarification of Registration Requirements for Individual Practitioners	1117–AA89

Drug Enforcement Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1990	Definition and Registration of Reverse Distributors	1117–AA19
1991	Exemption of Chemical Mixtures	1117–AA31

Drug Enforcement Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1992	Chemical Registration and Reregistration Fees	1117–AA50
1993	Electronic Orders for Schedule I and II Controlled Substances	1117–AA60
1994	Chemical Mixtures Containing Gamma-Butyrolactone	1117–AA64
1995	Authority for Practitioners To Dispense or Prescribe Approved Narcotic (Opiod) Substances for Maintenance or Detoxification Treatment	1117–AA68
1996	Reports by Registrants of Theft or Significant Loss of Controlled Substances	1117–AA73

Drug Enforcement Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1997	Sale by Federal Departments or Agencies of Chemicals Usable To Manufacture a Controlled Substance	1117–AA47
1998	Placement of Gamma-Butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802)	1117–AA52
1999	Control of Red Phosphorus, White Phosphorus, and Hypophosphorous Acid (and Its Salts) as List I Chemicals	1117–AA57
2000	Allowing Central Fill Pharmacies To Fill Prescriptions for Controlled Substances on Behalf of Retail Pharmacies	1117–AA58
2001	Implementation of the Methamphetamine Anti-Proliferation Act: Thresholds for Retailers and for Distributors Required To Submit Reports Under 21 U.S.C. 830(b)(3); Changes to Mail Order Reporting	1117–AA69
2002	Controlled Substances Registration and Reregistration Application Fees	1117–AA70

Executive Office for Immigration Review—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2003	Authority of Immigration Judges To Issue Civil Money Penalties	1125–AA18
2004	Suspension of Deportation and Cancellation of Removal for Certain Battered Spouses and Children; Motions To Reopen for Certain Battered Spouses and Children	1125–AA35
2005	Executive Office for Immigration Review Attorney/Representative Registry	1125–AA39
2006	Definitions; Powers and Authority of DHS Officers and Employees in Removal Proceedings	1125–AA43
2007	Requiring Identity, Background, and Security Checks in Removal Proceedings	1125–AA44
2008	International Matchmaking Organizations; Civil Penalties	1125–AA45
2009	Asylum Claims Made by Aliens Arriving from Canada at Land-Border Ports-of-Entry	1125–AA46
2010	Implementation of the Numerical Limit on Asylum Grants and Refugee Admission Based on Resistance to Coercive Population Control Measures	1125–AA48

Executive Office for Immigration Review—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2011	Suspension of Deportation and Cancellation of Removal	1125–AA25
2012	Authorities Delegated to the Director of the Executive Office for Immigration Review	1125–AA27
2013	Motions To Reopen for Suspension of Deportation and Special Rule Cancellation of Removal Pursuant to Section 1505(c) of the LIFE Act Amendments	1125–AA31
2014	Section 212(c) Relief for Aliens With Certain Criminal Convictions Before April 1, 1997	1125–AA33
2015	Protective Orders in Immigration Administration Proceedings	1125–AA38
2016	Transfer of Jurisdiction Over Appeals of Fines From the Board of Immigration Appeals to the Office of the Chief Administrative Hearing Officer	1125–AA41
2017	Review of Custody Determinations	1125–AA47

Executive Office for Immigration Review—Completed Actions

Sequence Number	Title	Regulation Identification Number
2018	Review of an Arbitrator's Findings and Imposing Remedies Against Employers Hiring H–1B Visa Workers Over Equally or Better Qualified U.S. Workers	1125–AA40

Federal Bureau of Investigation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2019	Implementation of Sections 104 and 109 of the Communications Assistance for Law Enforcement Act	1110–AA00
2020	Implementation of the National Stolen Passenger Motor Vehicle Information System (NSPMVIS)	1110–AA01
2021	Regulations Under the Pam Lychner Sexual Offender Tracking and Identification Act	1110–AA04
2022	National Instant Criminal Background Check System	1110–AA07
2023	Final Notice of Capacity; Supplement To Respond to Remand	1110–AA10

Federal Bureau of Investigation—Completed Actions

Sequence Number	Title	Regulation Identification Number
2024	Claims of Exemptions From Provisions of the Privacy Act as to FBI Records	1110–AA08

Legal Activities—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2025	Motor Vehicle Salvage Regulations	1105–AA71
2026	Participation in Justice Department Programs by Faith-Based Organizations; Providing for Equal Treatment of all Justice Department Program Participants	1105–AA83

Legal Activities—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2027	Certification and Decertification in Connection With Certain Suits Based Upon Acts or Omissions of Federal Employees and Other Persons	1105–AA62
2028	Designation of Agencies To Receive and Investigate Reports Required Under the Protection of Children From Sexual Predators Act	1105–AA65
2029	Ethical Standards for Attorneys for the Government	1105–AA67
2030	Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Amendments Contained in the Department of Justice Appropriations Authorization Act of 2002	1105–AA75
2031	DNA Sampling of Federal Offenders Under the USA Patriot Act of 2001	1105–AA78
2032	Minimum Qualifications for Annuity Brokers in Connection With Structured Settlements Entered Into by the United States	1105–AA82

Legal Activities—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2033	Enhanced Notice and Release Procedures for Owners of Seized Property Pursuant to the CAFRA of 2000; Disposition of Seized Property too Costly To Maintain; Consolidation of Department Regulations	1105–AA74

Legal Activities—Completed Actions

Sequence Number	Title	Regulation Identification Number
2034	Foreign Agents Registration Act; Regulations Revised and Clarified To Reflect Changes in the Law	1105–AA45
2035	Waiver for Firearm Prohibition on Nonimmigrant Visa Holders	1105–AA66

Office of Justice Programs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2036	Public Safety Officers' Benefits Program	1121–AA56
2037	Criminal Intelligence Systems Operating Policies	1121–AA59
2038	Victims of Crime Act (VOCA) Program Regulations for the Victim Compensation Grant Program and Victim Assistance Program	1121–AA61
2039	International Terrorism Victim Compensation Program	1121–AA63

Office of Justice Programs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2040	Correctional Facilities on Tribal Lands Grant Program	1121–AA41
2041	Bulletproof Vest Partnership Grant Acts of 1998 and 2000	1121–AA48
2042	Environmental Impact Review Procedures for the VOI/TIS Grant Program	1121–AA52
2043	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	1121–AA57

Department of Justice (DOJ)
Bureau of Prisons (BOP)

Proposed Rule Stage

1922. DRUG ABUSE TREATMENT PROGRAM: SUBPART REVISION AND CLARIFICATION

Priority: Info./Admin./Other

Legal Authority: 18 USC 3521 to 3528, 4042, 4046, 4081, 4082, 5006 to 5024, 5039; 28 USC 848, 509, 510; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; . . .

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons proposes to amend its regulations on the drug abuse treatment program. We intend this amendment to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in rules text.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AB07

1923. INMATE DISCIPLINE—SUBPART REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 541

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes to amend its Inmate Discipline and Special Housing Unit (SHU) regulations. We intend this amendment to streamline and clarify these regulations, eliminating unnecessary text and obsolete language and removing internal agency procedures (guidance to staff on how to implement disciplinary processes) that need not be in rules text. The changes involve extensive reorganization and updates to obsolete and unnecessary disciplinary codes and processes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi,
Rules Administrator, Department of
Justice, Bureau of Prisons, 320 First
Street NW, HOLC Building,
Washington, DC 20534
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RIN: 1120–AB18

1924. ADMINISTRATIVE SAFEGUARDS FOR PSYCHIATRIC TREATMENT AND MEDICATION

Priority: Other Significant

Legal Authority: 5 USC 301; 10 USC 876b; 18 USC 3621, 3622, 3524, 4001, 4005, 4042, 4045, 4081, 4082; 18 USC 4241 to 4247, 5006 to 5024, 5039; 28 USC 509, 510

CFR Citation: 28 CFR 549

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) amends its regulations on Psychiatric Treatment and Medication. We make several minor word changes to conform more closely with the language of 18 U.S.C. sections 4241 to 4247 on psychiatric hospitalization. We remove from the rule one element of the standard for determining whether treatment or psychotropic medication is necessary because this element is inconsistent with community standards and case law. We also change the rules to conform with statutory authority regarding military prisoners and District of Columbia (DC) Code violators in Bureau custody. Previously, our procedures for involuntary psychiatric treatment and medication did not apply to military prisoners or DC Code violators. Under new statutory authority, military prisoners who are incompetent to stand trial, or who have been found not guilty by reason of lack of mental responsibility may now be committed to the Bureau's custody. Sentenced DC Code offenders may now be involuntarily committed to a Bureau psychiatric hospital. Such military prisoners and DC Code violators are subject to our regulations. We revise the applicability statement accordingly.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi,
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Street NW, HOLC Building,
Washington, DC 20534
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Email: squreshi@bop.gov

RIN: 1120–AB20

1925. • PROGRESS REPORTS RULES REVISION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301 ; 28 USC 509, 510; 21 USC 848; 18 U.S.C. 3521 to 3528; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987); 18 USC 5006 to 5024 (Repealed October 12, 1984, as to offenses committed after that)

CFR Citation: 28 CFR 524.40

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) streamlines rules on Progress Reports by removing internal agency management procedures that need not be stated in regulation.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB24

Department of Justice (DOJ)
Bureau of Prisons (BOP)

Final Rule Stage

1926. INTENSIVE CONFINEMENT CENTERS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4046; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 524.31 to 524.34

Legal Deadline: None

Abstract: This document finalizes procedures for the operation of a specialized program combining features of a military boot camp with the traditional correctional values of the Bureau of Prisons. Inmates who successfully complete this program may be placed in community-based programs for longer periods of time than ordinarily permitted.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/26/96	61 FR 18658
Interim Final Rule Effective	05/28/96	
Interim Final Rule Comment Period End	06/25/96	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi,
Rules Administrator, Department of
Justice, Bureau of Prisons, 320 First
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Washington, DC 20534
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RIN: 1120–AA11

1927. LITERACY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 544.70 to 544.76

Legal Deadline: None

Abstract: This document makes changes to the Bureau's literacy program regulations for the sake of clarification or simplification.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/97	62 FR 50791
Interim Final Rule Effective	11/03/97	
Interim Final Rule Comment Period End	11/25/97	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AA33

1928. TELEPHONE REGULATIONS AND INMATE FINANCIAL RESPONSIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 540

Legal Deadline: None

Abstract: The Bureau of Prisons (Bureau) is withdrawing certain provisions in its rules on telephone regulations and on the inmate financial responsibility program (IFRP) which were published in the Federal Register on April 4, 1994 (59 FR 15812).

In the April 4, 1994, revision of its rules on telephone regulations and on the IFRP, the Bureau delayed the effective date for provisions in sections 540.105(c) and 545.11(d)(10), which imposed limitations on the telephone privileges of inmates refusing to participate in the IFRP. These provisions were to become effective January 3, 1995. Due to ongoing litigation in Washington v. Reno, the effective date for these provisions was further delayed until January 4, 1996 (60 FR 240).

In accordance with the Court-approved settlement in Washington v. Reno, through this rule, the Bureau withdrew these provisions and the reference to the IFRP telephone restrictions in 28 CFR section 540.100(a) and published at 61 FR 92 a new proposed rule to impose a different restriction on the telephone privileges of inmates who refuse to participate in the IFRP. This rule was finalized on December 28, 1999 (64 FR 72798, see RIN 1120–AA49).

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/02/96	61 FR 90
Interim Final Rule Comment Period End	03/04/96	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Washington, DC 20534
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RIN: 1120–AA39

1929. TELEPHONE REGULATIONS AND INMATE FINANCIAL RESPONSIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551; 18 USC 3663; 18 USC 4001; 18 USC 4042; 18 USC 4081; 18 USC 4082; 18 USC 5006 to 5024; 5 USC 552a; 18 USC 1791; 18 USC 3013; 18 USC 3571; 18 USC 3572; 18 USC 3621; 18 USC 3622; 18 USC 3624

CFR Citation: 28 CFR 540.105; 28 CFR 545.11

Legal Deadline: None

Abstract: On January 2, 1996, BOP published an NPRM proposing limitations on telephone privileges and commissary privileges for inmates who refuse to participate in the inmate financial responsibility program (BOP 1050). On December 28, 1999, BOP finalized that portion of the NPRM pertaining to limitations on commissary privileges. BOP is continuing to work on addressing issues raised by its proposed limitations on telephone privileges for inmates who are inmate financial responsibility program refusees. BOP will finalize that portion of its January 1996 NPRM in a separate document (BOP 1102).

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

BOP 1050 (1120–AB22)
  NPRM 01/02/96 (61 FR 92)
  NPRM Comment Period End 03/04/96
  Final Action 12/28/99 (64 FR 72798)
  Final Action Effective 01/27/00

BOP 1102 (1120–AB23)
  Final Action 11/00/03
  Final Action Effective 01/00/04

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA49

1930. GOOD CONDUCT TIME

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3568; 28 USC 509 to 510; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 523

Legal Deadline: None

Abstract: This document notes the statutory requirements for the awarding of good conduct time, including the Bureau's consideration in instances where the inmate does not have a high school diploma or GED and is not making satisfactory progress toward earning a high school diploma or GED.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/97	62 FR 50786
Interim Final Rule Effective	11/03/97	
Interim Final Rule Comment Period End	11/25/97	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA62

1931. DESIGNATION OF OFFENSES SUBJECT TO SEX OFFENDER RELEASE NOTIFICATION

Priority: Other Significant

Legal Authority: 18 USC 3565; 18 USC 5006 to 5024; 18 USC 5031 to 5042; 28 USC 509 to 510; 18 USC 2568 to 3569; 18 USC 3582; 18 USC 3621 to 3622; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 4201 to 4218

CFR Citation: 28 CFR 571

Legal Deadline: None

Abstract: This document designates various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c). The designations ensure that notifications can be made for military offenders, for District of Columbia Code offenders, and for these and other Federal inmates with a sex offense in their criminal history.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/16/98	63 FR 69386
Interim Final Rule Comment Period End	02/16/99	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA85

1932. INMATE COMMISSARY ACCOUNT DEPOSIT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 509 to 510; 31 USC 725; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 506; 28 CFR 540.23; 28 CFR 540.51

Legal Deadline: None

Abstract: This document specifies how an inmate may receive funds from family, friends, and other sources. Any funds sent from family or friends will be sent directly to a centralized inmate commissary account for receipt and posting. Funds received from other sources, such as tax refunds, dividends from stocks, or State benefits, will be forwarded for deposit to the centralized inmate commissary account.

Timetable:

Action	Date	FR Cite
NPRM	04/23/99	64 FR 20126
NPRM Comment Period End	06/22/99	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA86

1933. DRUG ABUSE TREATMENT PROGRAMS: DISINCENTIVES AND ENHANCED INCENTIVES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3521 to 3528; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 18 USC 3621; 18 USC 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4046; 18 USC 4081; 18 USC 4082

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: This document broadens the eligibility criteria for the drug abuse education program. In addition, this document establishes disincentives that may be imposed for the purpose of encouraging inmates to participate in the residential drug treatment program.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56840
NPRM Comment Period End	11/20/00	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA88

1934. SEARCHES OF HOUSING UNITS, INMATES, INMATE WORK AREAS, AND PERSONS OTHER THAN INMATES: ELECTRONIC DEVICES

Priority: Other Significant

Legal Authority: 18 USC 751 to 752; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 18 USC 1791 to 1793; 18 USC 3050; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4012; 18 USC 4042; 18 USC 4081 to 4082

CFR Citation: 28 CFR 511; 28 CFR 552

Legal Deadline: None

Abstract: This document clarifies provisions in the Bureau's regulations that pertain to the use of electronic devices in searches of inmates and persons other than inmates.

Timetable:

Action	Date	FR Cite
NPRM	02/25/99	64 FR 9431

Action	Date	FR Cite
NPRM Comment Period End	04/26/99	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA90

1935. DRUG TESTING PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4251 to 4255; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: This document consolidates into a single drug testing program separately stated regulations on alcohol testing and urine surveillance. The consolidated regulations provide for more flexibility in the use of testing methods.

Timetable:

Action	Date	FR Cite
NPRM	09/21/00	65 FR 57126
NPRM Comment Period End	11/20/00	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA95

1936. CORRESPONDENCE: INSPECTION OF OUTGOING GENERAL CORRESPONDENCE

Priority: Other Significant

Legal Authority: 5 USC 551; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 540.14

Legal Deadline: None

Abstract: This document amends the Bureau's regulations on correspondence to require that outgoing inmate general correspondence at all institutions may not be sealed and may be read and inspected by staff. This amendment is intended to provide for the continued efficient and secure operation of the institution and to protect the public. The requirement does not apply to special mail.

Timetable:

Action	Date	FR Cite
NPRM	07/27/99	64 FR 40718
NPRM Comment Period End	09/27/99	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA98

1937. INFECTIOUS DISEASE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4042; ...

CFR Citation: 28 CFR 549

Legal Deadline: None

Abstract: This document is a proposed rule (split from the interim final rule, RIN 1120–AA23) on the correctional management of tuberculosis, HIV, and hepatitis B. The changes to the regulations address the circumstances under which the Bureau conducts voluntary and involuntary testing.

Timetable:

Action	Date	FR Cite
NPRM	07/12/02	67 FR 46136
NPRM Comment Period End	09/10/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB03

1938. RELIGIOUS BELIEFS AND PRACTICES: NOMENCLATURE CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621; 18 USC 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081; 18 USC 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 42 USC 1996; ...

CFR Citation: 28 CFR 548

Legal Deadline: None

Abstract: This regulation renames the special diet that accommodates inmates' religious dietary practices. The old name was "common fare" and the new name will be "the religious diet menu."

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	
Interim Final Rule Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB04

1939. DISTRICT OF COLUMBIA EDUCATIONAL GOOD TIME CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3568; 18 USC 3621; 18 USC 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081; 18 USC 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 523

Legal Deadline: None

Abstract: This rule establishes procedures for awarding educational good time credit consistent with the DC Code for offenders in Bureau institutions or Bureau contract facilities, under the National Capital Revitalization and Self-Government Improvement Act of 1997, who committed their offenses before August 5, 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/24/02	67 FR 48385
Interim Final Rule Comment Period End	09/23/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB05

1940. SUICIDE PREVENTION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621, 3622, 3624, 4001, 4042, 4081, 4082, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 552

Legal Deadline: None

Abstract: This document revises Bureau regulations on the suicide prevention program for the sake of clarity and in order to remove Agency management procedures that do not need to be stated in regulations. The revised regulations more clearly delineate for the inmate the procedures used to identify and protect inmates deemed to be at risk for suicide.

Timetable:

Action	Date	FR Cite
NPRM	11/13/00	65 FR 67670
NPRM Comment Period End	01/12/01	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB06

1941. NATIONAL SECURITY; PREVENTION OF ACTS OF VIOLENCE AND TERRORISM

Priority: Other Significant

Legal Authority: 5 USC 301; 18 USC 3621, 3622, 3624, 4001, 4042, 4081, 4082, 4161 to 4166, 5006 to 5024; 18 USC 5039; 28 USC 509, 510

CFR Citation: 28 CFR 500, 501

Legal Deadline: None

Abstract: Current Bureau of Prisons regulations on institutional management authorize the Bureau to impose special administrative measures with respect to specified inmates, based on information provided by senior intelligence or law enforcement officials, where it has been determined to be necessary to prevent the dissemination either of classified information that could endanger the national security or of other information that could lead to acts of violence and terrorism.

This rule extends the period of time for which such special administrative measures may be imposed from 120 days to up to 1 year and modifies the standards for approving extensions of such special administrative measures for further increments of time. In addition, in those cases where the Attorney General has certified that reasonable suspicion exists to believe that an inmate may use communications with attorneys or their agents to further or facilitate acts of violence or terrorism, this rule amends the existing regulations to provide that the Bureau is authorized to monitor mail or communications with attorneys in order to deter such acts, subject to specific procedural safeguards, to the extent permitted under the Constitution and laws of the United States. Finally, this rule provides that the head of each component of the Department of Justice that has custody of persons for whom special administrative measures are determined to be necessary may exercise the same authority to impose such measures as the Director of the Bureau of Prisons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/01	66 FR 55062
Interim Final Rule Effective	10/31/01	
Interim Final Rule Comment Period End	12/31/01	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

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RIN: 1120–AB08

1942. INMATE FEES FOR HEALTH CARE SERVICES

Priority: Other Significant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 4001, 4005, 4014, 4042, 4045, 4081 to 4082; 18 USC 4161 to 4166, 4241 to 4247, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 549

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes rules describing procedures we will follow for charging inmates fees for certain kinds of health services, as required under the Federal Prisoner Health Care Copayment Act of 2000 (Pub. L. 106–294, October 12, 2000, 114 Stat. 1038).

Timetable:

Action	Date	FR Cite
NPRM	10/10/02	67 FR 63059
NPRM Comment Period End	12/09/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB11

1943. GOOD CONDUCT TIME: ALIENS WITH CONFIRMED ORDERS OF DEPORTATION, EXCLUSION, OR REMOVAL

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 509 to 510; 5 USC 301; 18 USC 3621 to 3622, 3568, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039

CFR Citation: 28 CFR 523.20

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes to amend its rules in 28 CFR part 523 on Good Conduct Time (GCT). When considering GCT, we propose to allow 54 days GCT for each year served if the inmate is an alien with a confirmed order of deportation, exclusion, or removal from the Immigration and Naturalization Service (INS).

This proposed rule will exempt such inmate aliens from the "satisfactory progress in a literacy program" provision of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA) and/or the Prison Litigation Reform Act of 1995 (PLRA). The Bureau's Literacy Program, described in 28 CFR part 544, subpart H, currently comprises only GED attainment.

This means that inmate aliens who have confirmed orders of deportation, exclusion, or removal, but do not have a high school diploma or GED, will not need to demonstrate satisfactory progress toward earning a GED credential to be considered for the full benefits of GCT.

In this document, we also propose to reorganize the rule for clarity and accuracy. Other than the substantive change regarding sentenced deportable aliens, we make no further substantive changes.

Timetable:

Action	Date	FR Cite
NPRM	06/25/03	68 FR 37776
NPRM Comment Period End	08/25/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB12

1944. CIVIL CONTEMPT OF COURT COMMITMENTS: REVISION TO ACCOMMODATE COMMITMENTS UNDER THE DC CODE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 3568, 3585, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039; 28 USC 509 to 510; DC Code 24–101(a) and (b)

CFR Citation: 28 CFR 522

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) revises its rules on Civil Contempt of Court Commitments to include references to relevant DC Code provisions regarding civil contempt commitments. We make this revision to accommodate DC Code offenders in Bureau institutions or Bureau contract facilities under the National Capital Revitalization and Self-Government Improvement Act of 1997 (DC Revitalization Act), DC Code section 24–101(a) and (b). We also revise this rule to clarify existing provisions by using simpler organization and language. For further simplification, we remove language relating solely to internal agency practices and procedures. We do not, however, make any substantive changes to the current rules.

Timetable:

Action	Date	FR Cite
NPRM	08/05/03	68 FR 46138
NPRM Comment Period End	10/06/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB13

1945. CENTRAL INMATE MONITORING (CIM) SYSTEM: STREAMLINING RULES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 3624, 4001, 4042, 4081 to 4082; 18 USC 223; 18 USC 5006 to 5024, 5039; 28 USC 509 to 510; ...

CFR Citation: 28 CFR 524

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes to streamline its rules on the Central Inmate Monitoring system (CIM). We intend this amendment to streamline our regulations by removing internal agency management procedures that need not be stated in regulation. Bureau policy is a more appropriate vehicle through which to provide instruction and guidance to staff. All the provisions we removed consist of our instruction and guidance to Bureau staff. These provisions relate solely to internal agency management and practice and do not impose obligations or confer any benefits upon our regulated entities (the inmates) or the public. The procedures that were in these regulations will continue to exist, unchanged, in our policy statement on the Admission and Orientation Program. Any requirement imposed on our staff in these rules will remain a Bureau-wide requirement in our policy. It is important to note that we have not changed the substance of the CIM rules.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB14

1946. COMMENTS ON UNICOR BUSINESS OPERATIONS: CLARIFICATION OF ADDRESSES

Priority: Info./Admin./Other

Legal Authority: 18 USC 4126

CFR Citation: 28 CFR 302.1

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) changes the addresses of the Chief Operating Officer and the Board of Directors of Federal Prison Industries, Inc. (also known as UNICOR), to correct and update them.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB15

1947. ADMISSION AND ORIENTATION PROGRAM: REMOVAL FROM RULES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 522

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons (Bureau) proposes to remove its rules on the Admission and Orientation (A&O) Program from the CFR. We intend this amendment to streamline our regulations by removing internal agency management procedures that need not be stated in regulation.

The three rules in 28 CFR subpart E, sections 522.40, 522.41, and 522.43, contained descriptions of the Bureau's A&O Program. Although we are removing these rules from the CFR, we retain the language of these rules in our A&O policy, which is an instructional document for Bureau employees and institutional staff.

Section 522.40 required institutions and staff to "offer each newly committed inmate an orientation to the institution," which includes information on inmate rights, responsibilities, obligations, and the institution's programs and disciplinary system.

Section 522.41 delineated Warden and staff responsibility for conducting the A&O Program. This section required staff involved in the A&O program to develop an outline of information to present during A&O and develop written orientation materials. This section also instructed staff to monitor inmates with significant emotional stress during A&O, so that the institution could provide them with appropriate assistance.

Section 522.42 contained guidelines for institution A&O programs, including such details as location, activities, and length of the program.

All of these rules consist of our instruction and guidance to Bureau staff. These rules relate solely to internal agency management and practice and do not impose obligations or confer any benefits upon our regulated entities (the inmates) or the public.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/04/03	68 FR 5563
Interim Final Rule Comment Period End	04/07/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB16

1948. BUREAU OF PRISONS EMERGENCIES

Priority: Info./Admin./Other

Legal Authority: 5 USC 301; 18 USC 3621 to 3622, 3624, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 501.1

Legal Deadline: None

Abstract: The Bureau of Prisons (Bureau) makes this interim final rule to clarify that, when there is an institutional or system-wide Bureau emergency that the Director or designee, such as a Warden, considers a threat to human life or safety, the Director or designee may suspend the operation of the rules in this chapter as necessary to handle the emergency. This rule clarifies that the Director may suspend Bureau rules as needed in light of any emergency affecting the Bureau, and the Warden may do so to deal with emergencies at the institution level. This rule change clarifying the Director's authority to modify Bureau rules to handle emergencies is especially necessary in light of the recent terrorist attacks, threats to national security, threats of anthrax surrounding mail processing, and other events occurring on and after September 11, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/16/03	68 FR 18544
Interim Final Rule Comment Period End	06/16/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB17

1949. CLARIFYING OF RELEASE GRATUITIES—RELEASE TRANSPORTATION REGULATIONS TO MORE CLOSELY CONFORM TO STATUTORY PROVISIONS

Priority: Other Significant

Legal Authority: 5 USC 301; 18 USC 3565, 3568 to 3569, 3582, 3621 to 3622, 3624, 4001, 4042, 4081 to 4082; 18 USC 4161 to 4166, 4201 to 4218, 5006 to 5024, 5031 to 5042; 28 USC 509, 510; US Cost, Art II, sec 2

CFR Citation: 28 CFR 571.22

Legal Deadline: None

Abstract: This document makes a minor clarifying change to the Bureau of Prisons (Bureau) regulations on release gratuities, transportation, and clothing. The amendment will clarify that the Bureau is authorized, upon an inmate's release, to provide transportation to an inmate's place of conviction or his legal residence only within the United States, under 18 U.S.C. 3624(d)(3). We intend this clarification to remove the misapprehension that the Bureau is authorized to provide transportation outside the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/09/03	68 FR 34301
Interim Final Rule Comment Period End	08/08/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi,
Rules Administrator, Department of
Justice, Bureau of Prisons, 320 First
Street NW, HOLC Building,
Washington, DC 20534
Phone: 202 307–2105
Fax: 202 305–4577
Email: squreshi@bop.gov

RIN: 1120–AB21

Department of Justice (DOJ) Bureau of Prisons (BOP) Long-Term Actions

1950. RELEASE OF INFORMATION

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 513

Timetable:

Action	Date	FR Cite
NPRM	05/13/03	68 FR 25545
NPRM Comment Period End	07/14/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
Phone: 202 307–2105
Fax: 202 305–4577
Email: squreshi@bop.gov

RIN: 1120–AA96

Department of Justice (DOJ) Bureau of Prisons (BOP) Completed Actions

1951. POSTSECONDARY EDUCATION PROGRAMS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 544

Completed:

Reason	Date	FR Cite
Final Action	11/19/03	68 FR 65170
Final Action Effective	12/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
Phone: 202 307–2105
Fax: 202 305–4577
Email: squreshi@bop.gov

RIN: 1120–AA25

1952. OVER-THE-COUNTER (OTC) MEDICATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 549.30 to 549.31

Completed:

Reason	Date	FR Cite
Final Action	08/12/03	68 FR 47847

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
Phone: 202 307–2105
Fax: 202 305–4577
Email: squreshi@bop.gov

RIN: 1120–AA81

1953. OCCUPATIONAL EDUCATIONAL PROGRAMS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 544

Completed:

Reason	Date	FR Cite
Final Action	11/19/03	68 FR 65169
Final Action Effective	12/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
Phone: 202 307–2105
Fax: 202 305–4577
Email: squreshi@bop.gov

RIN: 1120–AA92

1954. RELEASE GRATUITIES, TRANSPORTATION, AND CLOTHING: ALIENS

Priority: Other Significant

CFR Citation: 28 CFR 571.21

Completed:

Reason	Date	FR Cite
Final Action	06/09/03	68 FR 34299

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
Phone: 202 307–2105
Fax: 202 305–4577
Email: squreshi@bop.gov

RIN: 1120–AA99

1955. DISTRICT OF COLUMBIA YOUTH REHABILITATION ACT (DCYRA) SENTENCES: NO FURTHER BENEFIT DETERMINATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 524

Completed:

Reason	Date	FR Cite
Withdrawn	08/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi
Phone: 202 307–2105
Fax: 202 305–4577
Email: squreshi@bop.gov

RIN: 1120–AB09

Department of Justice (DOJ)
Civil Rights Division (CRT)

Proposed Rule Stage

1956. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES

Regulatory Plan: This entry is Seq. No. 75 in part II of this issue of the **Federal Register**.

RIN: 1190–AA44

1957. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

Regulatory Plan: This entry is Seq. No. 76 in part II of this issue of the **Federal Register**.

RIN: 1190–AA46

1958. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS; RECREATION FACILITIES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 12134; 42 USC 12186; PL 101–336

CFR Citation: 28 CFR 35; 28 CFR 36

Legal Deadline: None

Abstract: On September 3, 2002, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) published Final Guidelines to supplement the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. The supplement establishes for the first time accessibility guidelines for the design of recreation facilities, such as health clubs, golf courses, and amusement parks. The ADA (sections 204(c) and 306(c)) requires the Department's accessibility standards to be consistent with the Access Board's guidelines. Therefore, the Department expects to publish a Notice of Proposed Rulemaking proposing to adopt the guidelines adopted by the Access Board and proposing related changes to the Department's regulations with respect to the operation of recreation facilities.

Individuals with disabilities cannot participate in the social and economic realms of the Nation without being able to access public entities and public accommodations throughout the country. Promulgating this amendment to the Department's ADA regulations will ensure that the regulations are consistent with the ADAAG, thereby preventing the confusion that could develop if the Department's regulations were inconsistent with the Access Board guidelines. In addition, amending the Department's ADA regulations will improve the Department's overarching goal of improving access for persons with disabilities. The proposed rule will ensure that new recreation facilities are readily accessible to and usable by individuals with disabilities. As new recreation facilities are designed and constructed to be accessible, individuals with disabilities will enjoy the benefits of these facilities. Operators of recreation facilities will experience increased usage and patronage by individuals with disabilities. Designers and manufacturers will have a clear and consistent set of standards with which to work. Establishing uniform standards for accessibility has resulted in innovation and new designs that are cost effective and beneficial to everyone.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: John L. Wodatch, Chief, Disability Rights Section; Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035
Phone: 800 514–0301
TDD Phone: 800 514–0383
Fax: 202 307–1198

RIN: 1190–AA47

1959. AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998 COMPLAINT PROCESS

Priority: Other Significant

Legal Authority: 8 USC 1182(n)(5); 8 USC 1103(a); 8 USC 1182(n); 8 USC 1324b

CFR Citation: 28 CFR 44.500; 28 CFR 68

Legal Deadline: None

Abstract: The American Competitiveness and Workforce Improvement Act (ACWIA)—enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998—made various changes to the Immigration and Nationality Act (the INA) relating to temporary nonimmigrant professionals. In this rule (RIN 1190–AA48), the Department's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) will implement the ACWIA "failure to select" protections—codified in the INA at section 212(n)(5)—by establishing a process under which U.S. workers may file complaints against certain employers deemed "H–1B dependent" that deny them employment opportunities by improperly hiring temporary foreign professionals on H–1B visas. Under this process, OSC may receive and review these complaints, and then—if there is reasonable cause to believe the allegations—initiate binding arbitration proceedings through the Federal Mediation and Conciliation Service (FMCS). A companion to this rule will include changes to the regulations of the Office of the Chief Administrative Hearing Officer (OCAHO) of the Executive Office for Immigration Review (EOIR) to provide for the review of arbitrators' decisions and, where appropriate, the award of administrative relief. These rules are being coordinated with the Department of Homeland Security (DHS), the Department of Labor (DOL), and the FMCS.

This rule also provides administrative review and the imposition of remedies for a "failure to select" cause of action under the American Competitiveness and Workforce Improvement Act of 1988. This new cause of action allows an aggrieved party to file a complaint against a covered employer when it seeks to hire an H–1B visa holder over an equally or better qualified United States worker who applied for the job. Arbitrators of the Federal Mediation and Conciliation Service will adjudicate the complaints. The regulation also allows the Office of the Chief Administrative Hearing Officer to review the Arbitrator's findings, if necessary, and to impose remedies against the employer.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: ACWIA increased the numerical cap on H–1B nonimmigrant aliens; required certain dependent employers to make additional attestations to the Department of Labor (DOL); increased the penalties for employers who have been found to be in violation of DOL's rules; and created a "whistle blower" clause to protect H–1B workers who filed complaints against their employer.

Agency Contact: Katherine A. Baldwin, Deputy Special Counsel, Department of Justice, Civil Rights Division, Office of Special Counsel for Unfair Employment Practices, Office of Special Counsel for Unfair Immigration Related Employment Practices, 950 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 616–5594
Fax: 202 616–5509

Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1190–AA48

1960. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE OR LOCAL GOVERNMENT FACILITIES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS; PLAY AREAS

Priority: Other Significant

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 12134; 42 USC 12186; PL 101–336

CFR Citation: 28 CFR 35; 28 CFR 36

Legal Deadline: None

Abstract: On October 18, 2000, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) published a final rule to supplement the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. These guidelines establish for the first time accessibility guidelines for the design of play areas. The ADA (sections 204(c) and 306(c)) requires the Department's accessibility standards to be consistent with the Access Board's guidelines. Therefore, the Department expects to publish a Notice of Proposed Rulemaking proposing to adopt the revisions of the Access Board and proposing related changes to the Department's regulations with respect to the operation of play areas.

Persons with disabilities cannot participate in the social and economic realms of the Nation without being able to access public entities and public accommodations throughout the country. Promulgating this amendment to the Department's ADA regulations will ensure that the regulations are consistent with the ADAAG, thereby preventing the confusion that could develop if the Department's regulations were inconsistent with the Access Board Guidelines. In addition, amending the Department's ADA regulations will improve the Department's overarching goal of improving access for persons with disabilities. This rule is designed to ensure that new play areas are readily accessible to and usable by persons with disabilities. As new play areas are designed and constructed to be accessible, persons with disabilities will enjoy the benefits of these areas. Operators of play areas will experience increased usage and patronage by persons with disabilities. Designers and manufacturers will have a clear and consistent set of standards with which to work. Establishing uniform standards for accessibility has resulted in innovation and new designs that are cost effective and beneficial to everyone.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035
Phone: 800 514–0301
TDD Phone: 800 514–0383
Fax: 202 307–1198

RIN: 1190–AA50

1961. AMENDMENTS TO PROCEDURES ADVISING STATES AND POLITICAL SUBDIVISIONS SPECIALLY COVERED UNDER THE VOTING RIGHTS ACT HOW TO SEEK PRECLEARANCE FROM THE ATTORNEY GENERAL OF PROPOSED VOTING CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 1973a(c); 42 USC 1973c

CFR Citation: 28 CFR 51

Legal Deadline: None

Abstract: Section 5 of the Voting Rights Act of 1965 requires certain States and their political subdivisions (covered jurisdictions) obtain "preclearance" from the Federal Government of proposed changes in voting practices and procedures prior to their implementation. Preclearance may be obtained either through litigation in the United States District Court for the District of Columbia or administratively from the Attorney General. In 1971 the Department first issued procedures for the administration of section 5 to inform covered jurisdictions concerning the manner in which they could comply with section 5 in the administrative proceeding before the Attorney General. In subsequent years, the Department has amended these procedures to reflect changes in section 5 law, in the Attorney General's internal practices, and to make the procedures clearer and easier to follow. In the 16 years since the last major amendment to the procedures, there have been significant changes in section 5 law and in the practices employed by the Department in processing submissions, which are not reflected in the existing Procedures.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Joseph D. Rich, Chief, Voting Section, Department of Justice, Civil Rights Division, Room 7254, 1800 G Street NW, Washington, DC 20006
Phone: 202 307–2870

RIN: 1190–AA51

1962. AMENDMENTS TO COORDINATION OF ENFORCEMENT OF NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS; IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND SECTION 504 OF THE REHABILITATION ACT 1973

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000d et seq; 29 USC 706; 29 USC 794; EO 12250

CFR Citation: 28 CFR 42.401 to 42.415; 28 CFR 41.1 to 41.58

Legal Deadline: None

Abstract: In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. In a joint rulemaking described at RIN 1190–AA49, the Department and other Federal agencies are conforming their implementation regulations to the CRRA and to several other statutes.

In the rulemaking described under this RIN (1190–AA52) the Department of Justice proposes to make amendments to its coordination regulations concerning agency enforcement of title VI of the Civil Rights Act of 1964, 28 CFR 42.401 to 42.415, and agency enforcement of section 504 of the Rehabilitation Act of 1972, 28 CFR 41.1 to 41.58. The proposed amendments explicitly incorporate the CRRA's definition of "program or activity" and "program" into the Department's title VI and section 504 coordination regulations.

Further, this joint rule will include similar amendments to the regulations of the Department of Defense and the Department of Housing and Urban Development implementing title VI, section 504, and/or the Age Discrimination Act, which are not participating in the joint rule at 1190–AA49.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Agency Contact: Merrily A. Friedlander, Chief, Coordination and Review Section, Department of Justice, Civil Rights Division, P.O. Box 66560, Washington, DC 20035–6560
Phone: 202 307–2222
TDD Phone: 202 307–2678
Fax: 202 307–0595
Email: merrily.a.friedlander@usdoj.gov

RIN: 1190–AA52

1963. PROCEDURES TO REVIEW POLICE DEPARTMENTS FOR A PATTERN OR PRACTICE OF CONDUCT THAT DEPRIVES PERSONS OF RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED OR PROTECTED BY THE CONSTITUTION OR LAWS OF THE U.S.

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 509

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. section 14141 (section 14141), the Attorney General is authorized to file lawsuits seeking court orders to reform police departments engaging in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured by the Constitution or laws of the United States. To date, the Department of Justice has conducted reviews of police departments pursuant to section 14141 using informal procedures. The purpose of this rule is to formalize the procedures by which the Department reviews police departments for a pattern or practice of unlawful conduct.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Brad Schlozman, Deputy Assistant Attorney General, Department of Justice, Civil Rights Division, Room 5541, Room 3337, 950 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 305–8060

RIN: 1190–AA53

Department of Justice (DOJ) Civil Rights Division (CRT)

Completed Actions

1964. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 42.101 to 42.112; 28 CFR 42.501 to 42.540; 28 CFR 42.700 to 42.736

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51334
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Agency Contact: Merrily A. Friedlander
Phone: 202 307–2222
TDD Phone: 202 307–2678
Fax: 202 307–0595
Email: merrily.a.friedlander@usdoj.gov

RIN: 1190–AA49

Department of Justice (DOJ) Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)

Proposed Rule Stage

1965. IMPLEMENTATION OF PUBLIC LAW 106–58, TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2000

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 931; 44 USC 3504(h)

CFR Citation: 27 CFR 478

Legal Deadline: None

Abstract: ATF will amend the regulations to implement the provision of Public Law 106–58, Treasury and General Government Appropriations Act, 2000, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. The new law allows a licensed pawnbroker to contact the national instant criminal background check system (NICS) prior to taking or receiving a firearm in pawn. If NICS advises the pawnbroker that receipt or possession of the firearm would be in violation of the law, the licensee must advise local law enforcement within 48 hours after receipt of information.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512–AB83

Agency Contact: James Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW, Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA07

1966. IMPLEMENTATION OF PUBLIC LAW 105–277 RELATING TO SECURE GUN STORAGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 931; 44 USC 3504(h)

CFR Citation: 27 CFR 478

Legal Deadline: None

Abstract: ATF will issue a notice of proposed rulemaking amending the regulations to implement the provisions of Public Law 105–277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for fiscal year 1999. Regulations are proposed with regard to: 1) Certification by applicants for dealers' licenses that secure gun storage or safety devices will be available at any place where firearms are sold to nonlicensed individuals and 2) an amended definition of "antique firearm," to include certain muzzle loading firearms.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512–AC67

Agency Contact: James Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW, Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA10

1967. • COMMERCE IN FIREARMS AND AMMUNITION—IMPORTATION OF FIREARM FRAMES, RECEIVERS, AND BARRELS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 18 USC 847; 18 USC 921–931; 44 USC 3504(h)

CFR Citation: 27 CFR 478

Legal Deadline: None

Abstract: This rule amends regulations of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to clarify the provision of the Gun Control Act of 1968 (GCA) that generally prohibits the importation of any frame, receiver, or barrel of a firearm that would be prohibited if assembled. This rule also amends ATF regulations to permit the importation of nonimportable firearm frames, receivers, or barrels under limited circumstances where the importation is solely for repair or replacement and not for the assembly of a new firearm that would be prohibited if assembled.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: James P. Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW, Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA22

Department of Justice (DOJ)

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)

Final Rule Stage

1968. COMMERCE IN EXPLOSIVES (INCLUDING EXPLOSIVES IN THE FIREWORKS INDUSTRY)

Priority: Other Significant

Legal Authority: 18 USC 847

CFR Citation: 27 CFR 555

Legal Deadline: None

Abstract: ATF is proposing to amend the regulations, in part, pursuant to the Regulatory Flexibility Act (RFA), which requires an agency to review within 10 years of publication, rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities. Based on comments received in response to the RFA analysis, this notice proposes amendments to the explosives regulations relating to fireworks. The notice also proposes amendments to the regulations that have been initiated by ATF, as well as amendments that have been proposed by members of the explosives industry

Timetable:

Action	Date	FR Cite
General Notice of Regulatory Review	01/10/97	62 FR 1386
NPRM	01/29/03	68 FR 4406
NPRM Comment Period End	04/29/03	
NPRM Comment Period Reopened	06/23/03	68 FR 37109
NPRM Reopened Comment Period End	07/07/03	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512–AB48

Agency Contact: James Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW, Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA01

1969. IDENTIFICATION MARKINGS PLACED ON IMPORTED EXPLOSIVE MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847

CFR Citation: 27 CFR 555

Legal Deadline: None

Abstract: ATF is proposing to amend the regulations to require licensed importers to identify by marking all imported explosive materials. ATF is also proposing to incorporate into the regulations the provisions of ATF Ruling 75–35, relating to methods of marking containers of explosive materials. In addition, ATF is proposing to amend the regulations to remove the requirement that a licensee or permittee file for an amended license or permit in order to change the class of explosive materials described in their license or permit from a lower to a higher classification.

Timetable:

Action	Date	FR Cite
ANPRM	11/13/00	65 FR 67669
ANPRM Comment Period End	01/12/01	
NPRM	10/16/02	67 FR 63862
NPRM Comment Period End	01/14/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512–AC25

Agency Contact: James Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW, Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA02

1970. COMMERCE IN EXPLOSIVES—EXPLOSIVE PEST CONTROL DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847

CFR Citation: 27 CFR 555

Legal Deadline: None

Abstract: ATF is proposing to amend the explosive regulations to provide a limited exemption from the requirements of part 555 for wildlife pest control devices that are used for agricultural and other pest control operations.

Timetable:

Action	Date	FR Cite
NPRM	01/29/03	68 FR 4402
NPRM Comment Period End	02/28/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512–AC80

Agency Contact: James Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW,
Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA03

1971. COMMERCE IN FIREARMS AND AMMUNITION (OMNIBUS CONSOLIDATED APPROPRIATIONS ACT OF 1997)

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847; 18 USC 921 to 931

CFR Citation: 27 CFR 478

Legal Deadline: None

Abstract: The Omnibus Consolidated Appropriations Act of 1997 contains amendments to the Gun Control Act of 1968 (18 U.S.C. chapter 44). These amendments add to the category of "prohibited persons" anyone convicted of a "misdemeanor crime of domestic violence." The amendments require individuals acquiring handguns from Federal firearms licensees to certify (in accordance with the Brady Handgun Violence Prevention Act) that they have not been convicted of such a crime. The amendments also provide for sales between Federal firearms licensees of curio and relic firearms away from their licensed premises.

Timetable:

Action	Date	FR Cite
NPRM	06/30/98	63 FR 35551
Interim Final Rule	06/30/98	63 FR 35520
NPRM Comment Period End	09/28/98	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512–AB64

Agency Contact: James Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW,
Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA04

1972. RESIDENCY REQUIREMENT FOR PERSONS ACQUIRING FIREARMS

Priority: Other Significant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 931; 44 USC 3504(h)

CFR Citation: 27 CFR 478

Legal Deadline: None

Abstract: The interim rule amends the regulations to provide for a firearms purchaser's affirmative statement of his or her State of residence on ATF Form 4473 (Firearms Transaction Record) and ATF Form 5300.35 (Statement of Intent to Obtain a Handgun) in acquiring a firearm from a Federal firearms licensee. The interim rule also amends the regulations to require that aliens purchasing firearms provide proof of residency through the use of substantiating documentation, such as utility bills or a lease agreement. In addition, the regulations were amended to require that licensees examine a photo identification document from aliens purchasing firearms. These regulations implement firearms initiatives intended to protect the American public from gun violence.

Timetable:

Action	Date	FR Cite
NPRM	04/21/97	62 FR 19446
Interim Final Rule	04/21/97	62 FR 19442
NPRM Comment Period End	07/21/97	
Interim Final Rule Comment Period End	07/21/97	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512–AB66

Agency Contact: James Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW,
Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA05

Department of Justice (DOJ)
Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)
Long-Term Actions

1973. IMPLEMENTATION OF THE SAFE EXPLOSIVES ACT, TITLE XI, SUBTITLE C, OF PUBLIC LAW 107–296

Priority: Other Significant

CFR Citation: 27 CFR 555

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/03	68 FR 13768
Interim Final Rule Comment Period End	06/18/03	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James P. Ficaretta
Phone: 202 927–8203

RIN: 1140–AA00

1974. IMPLEMENTATION OF PUBLIC LAW 104–208, THE OMNIBUS CONSOLIDATED APPROPRIATIONS ACT OF 1997, RELATING TO THE ESTABLISHMENT OF A NATIONAL REPOSITORY FOR ARSON AND EXPLOSIVES INFORMATION

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 555

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57404
NPRM Comment Period End	02/13/02	
Final Rule	12/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: James Ficaretta
Phone: 202 927–8203

RIN: 1140–AA06

1975. PUBLIC LAW 105–277, MAKING OMNIBUS CONSOLIDATED AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FY '99 RELATING TO FIREARMS DISABILITIES FOR NONIMMIGRANT ALIENS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 478

Timetable:

Action	Date	FR Cite
NPRM	02/05/02	67 FR 5426
Interim Final Rule	02/05/02	67 FR 5422
NPRM Comment Period End	05/06/02	
Interim Final Rule Comment Period End	05/06/02	
Final Rule	03/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Ficaretta
Phone: 202 927–8203

RIN: 1140–AA08

1976. COMMERCE IN FIREARMS AND AMMUNITION—ANNUAL INVENTORY

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 478

Timetable:

Action	Date	FR Cite
NPRM	08/28/00	65 FR 52054
NPRM Comment Period End	11/27/00	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Ficaretta
Phone: 202 927–8203

RIN: 1140–AA09

1977. • IMPLEMENTATION OF THE SAFE EXPLOSIVES ACT, TITLE XI, SUBTITLE C, OF PUBLIC LAW 107–296—DELIVERY OF EXPLOSIVE MATERIALS BY COMMON OR CONTRACT CARRIER

Priority: Other Significant

Legal Authority: PL 107–296, title XI, subtitle C

CFR Citation: 27 CFR 555

Legal Deadline: Final, Statutory, May 24, 2003, Final.

Abstract: This rule amends current regulations of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to remove the requirement that common or contract carriers taking possession of explosive materials for delivery to a licensee or permittee complete ATF Form 5400.8 (Explosives Delivery Record) prior to taking possession of explosive materials, regardless of whether they are hired by the distributor or by the distributee. ATF believes that this requirement is unduly burdensome and unnecessary. Furthermore, ATF does not believe that the elimination of this form will result in diversion of explosive materials to criminal or terrorist use. ATF will continue to require distributors of explosive materials to verify the identity of persons accepting possession of explosive materials for common or contract carriers, and will require distributors to record the name of the common or contract carrier and the full name of the driver in their permanent records.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/11/03	68 FR 53509
Interim Final Rule Effective	09/11/03	
Interim Final Rule Comment Period End	10/14/03	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Related to RIN 1140–AA20

Agency Contact: James P. Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW, Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA20

1978. • WAIVER FOR FIREARM PROHIBITION ON NONIMMIGRANT VISA HOLDERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 105–277, sec 121; 18 USC 922

CFR Citation: 28 CFR 478

Legal Deadline: None

Abstract: The Gun Control Act of 1968 established categories of individuals who are prohibited from possessing a firearm. A provision of Public Law 105–277, the Omnibus Appropriations Act of 1999, added aliens in a nonimmigrant classification as an additional prohibited category. In the same Act, the Attorney General was authorized to grant a waiver for individuals disqualified by this new prohibited category. The waiver petition will be granted, inter alia, upon an applicant showing proof of 180 days of residency and a statement of character from the applicant's embassy or consulate and upon a determination by the Attorney General that the waiver should be granted in the interests of justice so as not to jeopardize public safety.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1105–AA66.

Agency Contact: James P. Ficaretta, Program Manager, Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, 650 Massachusetts Avenue NW, Washington, DC 20226
Phone: 202 927–8203

RIN: 1140–AA21

1979. GUIDELINES FOR PROVIDING CONTROLLED SUBSTANCES TO OCEAN VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 871(b)

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is considering whether to propose amending its regulations regarding the supply of controlled substances to ocean vessels to provide a means of supply more consistent with current industry practices for other materials. The decision on whether to propose amendments will be based on the information and comments submitted in response to this notice of proposed rulemaking and DEA's experience with the existing procedures and practices for supplying controlled substances to ocean vessels.

Timetable:

Action	Date	FR Cite
ANPRM	09/18/96	61 FR 49086
ANPRM Comment Period End	11/18/96	
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–142

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA40

1980. EXEMPTION FROM IMPORT/EXPORT REQUIREMENTS FOR PERSONAL MEDICAL USE

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871(b); 21 USC 875; 21 USC 877; 21 USC 956

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is proposing to amend its regulations to restrict to 50 dosage units the total quantity of Schedule II, III, IV, and V controlled substances that may be imported for personal medical use by United States (U.S.) residents entering the U.S. A dosage unit is considered by DEA to be the basic unit used to quantify the amount to be taken in normal usage. The proposed 50 dosage unit limit would not apply to a U.S. resident who has a valid U.S. practitioner's prescription. This proposed rulemaking implements and extends the provisions of the Controlled Substances Trafficking Prohibition Act of 1998.

Timetable:

Action	Date	FR Cite
NPRM	09/11/03	68 FR 53529
NPRM Comment Period End	11/10/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–192

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA56

1981. ELECTRONIC PRESCRIPTIONS FOR CONTROLLED SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 829; 21 USC 871(b)

CFR Citation: 21 CFR 1306

Legal Deadline: None

Abstract: DEA is proposing to revise its regulations to permit DEA-registered prescribers to electronically write, sign, and transmit prescriptions. These proposed regulations would be an addition to, not a replacement of, the existing rules. These regulations are needed to give pharmacies, hospitals, and practitioners the ability to use modern technology for controlled substance prescriptions, while maintaining the closed system of distribution of controlled substances dispensing. The proposed regulations would reduce paperwork and transaction times for DEA registrants who dispense or prescribe controlled substances. The proposed regulations would also reduce the number of prescription errors caused by illegible handwriting and misunderstood oral prescriptions. They would allow pharmacies and hospitals to integrate prescription records into other medical records more directly, increasing efficiency, and would reduce the time patients spend waiting to have prescriptions filled. These proposed regulations are consistent with paperwork reduction mandates. These proposed regulations also respond to the requirements of Public Law 106–229, the "Electronic Signatures in Global and National Commerce Act," while ensuring security and authentication. In a separate related rulemaking (RIN 1117–AA60), DEA is proposing to revise its regulations to provide the option of ordering Schedule I and II controlled substances electronically in a manner consistent with the requirements of the Controlled Substances Act (CSA)(21 U.S.C. 801 et seq.)

Timetable:

Action	Date	FR Cite
ANPRM	03/05/01	66 FR 13274
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: DEA–214

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA61

1982. SECURITY REQUIREMENTS FOR HANDLERS OF PSEUDOEPHEDRINE, EPHEDRINE, AND PHENYLPROPANOLAMINE

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830

CFR Citation: 21 CFR 1309

Legal Deadline: None

Abstract: DEA is proposing to require that manufacturers, distributors, importers, and exporters of pseudoephedrine, ephedrine, and phenylpropanolamine implement security procedures similar to those of Schedules III through V controlled substances to prevent the theft and diversion of these List I chemicals. Pseudoephedrine and ephedrine are used in the illegal manufacture of methamphetamine, and phenylpropanolamine is used in the illegal manufacture of amphetamine.

The vast majority of these clandestine laboratories were producing methamphetamine using over-the-counter regulated drug products. Some of the product found at these clandestine laboratories came from thefts at manufacturers, distributors, importers, and exporters. Almost all of the reports of List I chemical thefts reported to DEA in the past few years have involved pseudoephedrine, ephedrine, or phenylpropanolamine.

Therefore, to address the problem of diversion of pseudoephedrine, ephedrine, and phenylpropanolamine through theft, DEA is proposing that manufacturers, distributors, importers, and exporters of these three chemicals implement security procedures similar to those now used by registrants handling Schedules III through V controlled substances. These procedures include the storage of substances in a secure safe or steel cabinet, cage, or room and installation of a monitored alarm system linked to a central location. DEA will also be seeking input regarding alternative means to effectively prevent the theft and diversion of these products. Keeping pseudoephedrine, ephedrine, and phenylpropanolamine products in such secure areas will limit the opportunity for theft.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–211

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA62

1983. REORGANIZATION AND CLARIFICATION OF DEA REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 871(b)

CFR Citation: 21 CFR 1300; 21 CFR 1301; 21 CFR 1302; 21 CFR 1303; 21 CFR 1304; 21 CFR 1305; 21 CFR 1306; 21 CFR 1307; 21 CFR 1308; 21 CFR 1309; 21 CFR 1310; 21 CFR 1312; 21 CFR 1313; ...

Legal Deadline: None

Abstract: DEA is proposing a revision and reorganization of title 21, Code of Federal Regulations, chapter II. These regulations relate to the manufacture, distribution, dispensing, importation, and exportation of controlled substances and the manufacture, distribution, importation, and exportation of listed chemicals. This action is being taken to further clarify and reorganize the current regulations. The regulations will be drafted in plain language to make them easier to understand.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
NPRM Comment Period End	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–221

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA63

1984. CHEMICAL MIXTURES CONTAINING LISTED FORMS OF PHOSPHORUS

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: In a previous rulemaking, (RIN 1117–AA57) DEA made red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) List I chemicals. By this rulemaking (1117–AA66), DEA is requesting information from interested parties to propose regulations governing chemical mixtures containing the List I chemicals red phosphorus, white phosphorus, and hypophosphorous acid (and its salts). Currently, all chemical mixtures containing red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) are exempt from regulation. These mixtures will remain exempt until publication of rulemakings regarding chemical mixtures (see RIN 1117–AA31). These three List I chemicals are used industrially and have multiple commercial purposes. They are also used in the illicit production of methamphetamine and amphetamine. Information sought will help determine whether there are chemical mixtures containing red phosphorus, white phosphorus, and hypophosphorous acid (and its salts), which should be exempt from the regulations governing listed chemicals.

Timetable:

Action	Date	FR Cite
ANPRM	01/31/03	68 FR 4968
ANPRM Comment Period End	04/01/03	
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–228

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7183

RIN: 1117–AA66

1985. CHEMICAL REGISTRATION WAIVERS; EXEMPTION FROM CHEMICAL REGISTRATION FEES FOR CERTAIN PERSONS

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830; 21 USC 871(b); 21 USC 875; 21 USC 877; 21 USC 958

CFR Citation: 21 CFR 1309; 21 CFR 1310

Legal Deadline: None

Abstract: DEA is proposing amending its regulations to waive the requirement of registration for contract processors, medical/first aid kit providers, distributors of sample packages of drug products, and distributors of research/reference standards. These actions are being taken in response to industry comments and suggestions. DEA has determined that requiring registration for these activities is not necessary for effective enforcement under the Controlled Substances Act (CSA) and waiving the requirement of registration will ease regulatory burdens for the affected industries. DEA is also proposing exempting charitable organizations and governmental entities from initial and renewal registration fees. These fee exemptions will bring the chemical regulations into conformance with the controlled substances regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/25/03	68 FR 66052
NPRM Comment Period End	01/26/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal, Local, State

Additional Information: DEA–189

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA67

1986. RECORDKEEPING AND REPORTING REQUIREMENTS FOR DRUG PRODUCTS CONTAINING GAMMA HYDROXYBUTYRIC ACID (GHB)

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 821; 21 USC 827; 21 USC 829; 21 USC 830; 21 USC 871(b); 21 USC 958; 21 USC 965; ...

CFR Citation: 21 CFR 1304; 21 CFR 1306; 21 CFR 1310

Legal Deadline: None

Abstract: The Drug Enforcement Administration (DEA) is publishing a Notice of Proposed Rulemaking (NPRM) to amend its regulations to require additional recordkeeping and reporting requirements for drug products containing gamma-hydroxybutyric acid (GHB) for which an application has been approved under the Federal Food, Drug, and Cosmetic Act. The Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000 establishes specific reporting and recordkeeping requirements with respect to the distribution and dispensing of drug products containing GHB.

This NPRM proposes recordkeeping requirements for practitioners dispensing Schedule III GHB drug products and reporting requirements for manufacturers and distributors of Schedule III GHB drug products. Specifically, this NPRM would require pharmacies and practitioners dispensing GHB to maintain and make available for inspection the name of the prescribing practitioner, the prescribing practitioner's Federal and State registration numbers with expiration dates, verification that the prescribing practitioner possesses appropriate registration, the patient's insurance provider, if available, as well as the patient's medical need for the drug. This NPRM also proposes to include Schedule III GHB drug products as controlled substances that must be reported under the Automation of Reports and Consolidated Orders System (ARCOS).

Timetable:

Action	Date	FR Cite
NPRM	11/25/03	68 FR 66048
NPRM Comment Period End	01/26/04	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: DEA–234

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA71

1987. CHEMICAL REGISTRATION AND REREGISTRATION FEES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 830; 21 USC 871(b); 21 USC 958

CFR Citation: 21 CFR 1309

Legal Deadline: None

Abstract: On December 1, 1999, DEA published a Notice of Proposed Rulemaking (see RIN 1117–AA50) regarding its chemical registration and reregistration fees. Subsequent to publication of this rule, DEA's investigative activities increased. As has been previously noted elsewhere, costs for investigative activities including, but not limited to, extensive investigation and collection of documentation of violative practices by registrants, attorney review and preparation by DEA's Office of Chief Counsel, staff and attorney time to prepare for proceedings to deny or revoke a registration, and Administrative Law Judge and staff to conduct registration denial hearings were not included in previous fee calculations. Due to the increased costs associated with these investigative activities, DEA is reevaluating the costs of the chemical control program and calculating new fees to incorporate these increased costs.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–235

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA72

1988. PREVENTING THE ACCUMULATION OF SURPLUS CONTROLLED SUBSTANCES AT LONG-TERM CARE FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 821; 21 USC 822; 21 USC 871(b)

CFR Citation: 21 CFR 1300; 21 CFR 1301; 21 CFR 1304; 21 CFR 1307

Legal Deadline: None

Abstract: To address the accumulation of excess controlled substances at long-term care facilities (LTCFs), the Drug Enforcement Administration (DEA) is proposing to permit the use of automated dispensing systems operated by provider pharmacies. Specifically, this proposed rule would permit a DEA-registered pharmacy to register at a LTCF (without any additional registration fees) and to store controlled substances in the automated dispensing system at the LTCF. The use of automated dispensing systems would allow dispensing of single dosage units of prescribed controlled substances, provide electronic records of each dispensing, and mitigate the problem of excess stocks of controlled substances at the LTCF and the disposal of those stocks.

Timetable:

Action	Date	FR Cite
NPRM	11/03/03	68 FR 62255
NPRM Comment Period End	01/02/04	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–240

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA75

1989. • CLARIFICATION OF REGISTRATION REQUIREMENTS FOR INDIVIDUAL PRACTITIONERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 821 ; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871 (b); ...

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is publishing this rule to clarify its registration requirements regarding practitioners practicing in more than one State. There is confusion within the regulated industry regarding whether a practitioner who practices and is registered in one State and wishes to practice and prescribe in another State must register with DEA in the second State. To address the confusion caused by the regulation as currently written, DEA is proposing to amend its regulations to make it clear that when an individual practitioner who practices and is registered in one State seeks to practice and prescribe controlled substances in another State, he/she must obtain a separate DEA registration for the subsequent State.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–224

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA89

Department of Justice (DOJ)
Drug Enforcement Administration (DEA)
Final Rule Stage

1990. DEFINITION AND REGISTRATION OF REVERSE DISTRIBUTORS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871(b); 21 USC 875; 21 USC 877

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: In years past, most pharmaceutical manufacturers and wholesalers, as a service to their customers, accepted returns of outdated/damaged merchandise. Also, agencies such as DEA and State Boards of Pharmacy accepted surrendered drugs or witnessed their disposal by controlled substance registrants. Over the past several years, environmental concerns and regulations have eliminated many of the disposal options that had been available. As a result, drug producers and government agencies alike are increasingly reluctant to be involved in the disposal process. Due to these factors and the time and resources expended by DEA and manufacturers, DEA is establishing this essential link in the legitimate distribution chain.

Timetable:

Action	Date	FR Cite
NPRM	08/23/95	60 FR 43732
NPRM Comment Period End	10/23/95	
Interim Final Rule	07/11/03	68 FR 41222
Interim Final Rule Effective	08/11/03	
Interim Final Rule Comment Period End	09/09/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA–108

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA19

1991. EXEMPTION OF CHEMICAL MIXTURES

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: The Domestic Chemical Diversion Control Act of 1993 removed the exemption from regulation for chemical mixtures. Chemical mixtures are now regulated, unless specifically exempted by the Administrator. In the proposed rule regarding the implementation of the Domestic Chemical Diversion Control Act of 1993, DEA proposed regulations regarding exemption of chemical mixtures. Based on industry comments, the proposed regulations were subsequently withdrawn for reassessment and consultation with industry. Based on extensive consultations with industry, DEA has published proposed regulations intended to establish the least possible burden on industry while remaining consistent with the requirements of the law. Comments received on the proposed regulations are currently being reviewed.

Timetable:

Action	Date	FR Cite
Final Action	05/00/04	

Exemption Chemical Mixtures (1117–AA76)
- NPRM 09/16/98 (63 FR 49506)
- NPRM Comment Period End 04/16/99
- NPRM Comment Period Extended 09/12/99 (64 FR 7144)
- Final Action 05/00/04

Exemption of Chemical Mixtures Containing the List I Chemicals Ephedrine, N-Methylephedrine, N-Methylpseudoephdrine, Norpseudoephedrine, Phenylpropanolamine, and Pseudoephedrine (1117–AA77)
- NPRM 09/16/98 (63 FR 49506)
- NPRM Comment Period End 04/06/99
- NPRM Comment Period Extended 09/12/99 (64 FR 7144)
- Final Action 05/01/03 (68 FR 23195)
- Final Action Effective 06/02/03

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA–137

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7183

RIN: 1117–AA31

1992. CHEMICAL REGISTRATION AND REREGISTRATION FEES

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830; 21 USC 871 (b); 21 USC 875; 21 USC 877; 21 USC 958

CFR Citation: 21 CFR 1309

Legal Deadline: None

Abstract: In December 1999, the Drug Enforcement Administration (DEA) proposed to amend its application fees for registration and reregistration of manufacturers, distributors, importers, and exporters of List I chemicals, as authorized by section 3(a) of the Domestic Chemical Diversion Control Act of 1993 (DCDCA), reducing the fees from $595.00 to $326.00 for initial registration, and the reregistration fees from $477.00 to $171.00. Fees for retail registrants were proposed to increase from $255.00 to $326.00 for registration, and from $116.00 to $171.00 for reregistration. Office of Management and Budget Circular A–25 requires a periodic review of user charges for agency programs. Subsequent to publication, concerns were raised about costs included in this user fee.

As DEA has noted in previous rulemakings on this subject, certain costs for investigative activities have not been included in previous fees. Specifically, costs for investigative activities including, but not limited to, extensive investigation and collection of documentation of violative practices by registrants, attorney review and preparation by DEA's Office of Chief Counsel, staff and attorney time to prepare for proceedings to deny or revoke a registration, and Administrative Law Judge and staff to conduct registration denial hearings were not included in previous fee calculations. Costs for these investigative activities have risen as DEA activities have increased necessitating the re-evaluation of this user fee. Based on these concerns, DEA will be publishing a notice to formally withdraw the rulemaking. For purposes of clarity, DEA will withdraw this rulemaking at the same time as it publishes a new NPRM fee rule (see RIN 1117–AA72).

Timetable:

Action	Date	FR Cite
NPRM	12/01/99	64 FR 67216
NPRM Comment Period End	01/31/00	
Notice Withdrawing Rulemaking	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA–185

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA50

1993. ELECTRONIC ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 827; 21 USC 828; 21 USC 871(b); 21 USC 958(e); 21 USC 965

CFR Citation: 21 CFR 1304; 21 CFR 1305

Legal Deadline: None

Abstract: DEA is proposing to revise its regulations to provide the option of ordering Schedule I and II controlled substances electronically in a manner consistent with the requirements of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). The regulations will propose that this electronic system may also be used for controlled substances in Schedules III, IV, and V. These proposed regulations would be in addition to, not a replacement of, the existing rules. These regulations are needed to give manufacturers, distributors, importers, exporters, pharmacies, and hospitals the option to use modern technology for controlled substance transactions. The proposed regulations would reduce paperwork and transaction times for DEA registrants who distribute, purchase, or handle controlled substances. These proposed regulations are consistent with paperwork reduction mandates. These proposed regulations also respond to the requirements of Public Law 106–229, the "Electronic

Signatures in Global and National Commerce Act," while maintaining a closed system of distribution of controlled substances and ensuring security and authentication. In a separate related rulemaking (RIN 1117–AA61), DEA is proposing to revise its regulations to permit DEA-registered prescribers to electronically write, sign, and transmit prescriptions.

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	
Electronic Orders for Schedule I and II Controlled Substances (1117–AA86)		
ANPRM 03/05/01 (66 FR 13274)		
NPRM 06/27/03 (68 FR 38558)		
NPRM Comment Period End 09/25/03		
Final Action 04/00/04		
Notice of Intent To Conduct Performance Verification Testing of Public Key Infrastructure Enabled Controlled Substance Orders (1117–AA87)		
Notice 01/11/02 (67 FR 1507)		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ANPRM: DEA–214

NPRM: DEA 217

Notice: DEA–224

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA60

1994. CHEMICAL MIXTURES CONTAINING GAMMA-BUTYROLACTONE

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: In previous rulemakings, DEA made gamma-butyrolactone (GBL) a List I chemical and established thresholds for transactions involving this chemical. DEA has requested information from interested persons in order to establish regulations governing chemical mixtures containing gamma-butyrolactone (GBL), a List I chemical. Currently, all chemical mixtures containing GBL are exempt from regulation. These mixtures will remain exempt until publication of rulemakings regarding chemical mixtures (see RIN 1117–AA31). GBL is used in the illicit manufacture of GHB, a Schedule I controlled substance. Specifically, DEA sought information on the types of products containing GBL; the concentration levels of GBL in the product formulations; and the packaging, distribution, use, and commercial availability of these products. This information will help to determine whether there are chemical mixtures containing GBL which should be exempt from the regulations governing listed chemicals.

Timetable:

Action	Date	FR Cite
ANPRM	07/19/02	67 FR 47493
Correction	08/19/02	67 FR 53842
Correction	09/05/02	67 FR 56776
ANPRM Comment Period End	09/17/02	
Interim Final Rule	01/00/04	
Interim Final Rule Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–222

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7183

RIN: 1117–AA64

1995. AUTHORITY FOR PRACTITIONERS TO DISPENSE OR PRESCRIBE APPROVED NARCOTIC (OPIOD) SUBSTANCES FOR MAINTENANCE OR DETOXIFICATION TREATMENT

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 829; 21 USC 871(b); 21 USC 875; 21 USC 877; 21 USC 956; ...

CFR Citation: 21 CFR 1301; 21 CFR 1306

Legal Deadline: None

Abstract: DEA is proposing amendments to its regulations to implement the Drug Addiction Treatment Act of 2000 (DATA). These amendments would allow qualified practitioners to dispense and prescribe narcotic (opiod) controlled substances approved by the Food and Drug Administration (FDA) specifically for use in maintenance or detoxification treatment.

The Controlled Substances Act (CSA) and current regulations require that practitioners who want to conduct maintenance or detoxification treatment using narcotic (opiod) controlled substances be registered with DEA as narcotic treatment programs (NTPS) in addition to the practitioners' personal registrations. The separate NTP registrations authorize the practitioners to dispense or administer, but not prescribe, narcotic (opiod) controlled substances.

These regulations establish an exemption from the separate registration requirement for qualified practitioners dispensing or prescribing Schedule III, IV, and V narcotic (opiod) controlled substances approved by the FDA specifically for use in maintenance or detoxification treatment. This NPRM would allow "qualifying physicians," whether they are already registered as NTPs or not, to dispense and prescribe Schedule III, IV, and V narcotic (opiod) controlled substances or combinations of controlled substances approved by FDA specifically for use in maintenance or detoxification treatment.

Timetable:

Action	Date	FR Cite
NPRM	06/24/03	68 FR 37429
NPRM Comment Period End	09/23/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA–202

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307–7297

RIN: 1117–AA68

DOJ—DEA Final Rule Stage

1996. REPORTS BY REGISTRANTS OF THEFT OR SIGNIFICANT LOSS OF CONTROLLED SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871(b); 21 USC 875; 21 USC 877; ...

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is amending its regulations to clarify its policy regarding reports by registrants of theft or significant loss of controlled substances. There has been some confusion as to what constitutes a significant loss, and when and how initial notice of a theft or loss should be provided to DEA. This Notice of Proposed Rulemaking proposes the clarification of DEA regulations and provides guidance to registrants regarding the theft, significant loss, and explained loss of controlled substances.

Timetable:

Action	Date	FR Cite
NPRM	07/08/03	68 FR 40576
NPRM Comment Period End	09/08/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA 196

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117-AA73

Department of Justice (DOJ) Completed Actions
Drug Enforcement Administration (DEA)

1997. SALE BY FEDERAL DEPARTMENTS OR AGENCIES OF CHEMICALS USABLE TO MANUFACTURE A CONTROLLED SUBSTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 1310; 21 CFR 1316

Completed:

Reason	Date	FR Cite
NPRM	05/08/03	68 FR 24689
Final Action	11/06/03	68 FR 62735
Final Action Effective	12/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Patricia M. Good
Phone: 202 307-7297

RIN: 1117-AA47

1998. PLACEMENT OF GAMMA-BUTYROLACTONE IN LIST I OF THE CONTROLLED SUBSTANCES ACT (21 U.S.C. 802)

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 1310

Completed:

Reason	Date	FR Cite
Final Action	09/10/03	68 FR 53290

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Frank Sapienza
Phone: 202 307-7183

RIN: 1117-AA52

1999. CONTROL OF RED PHOSPHORUS, WHITE PHOSPHORUS, AND HYPOPHOSPHOROUS ACID (AND ITS SALTS) AS LIST I CHEMICALS

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 1310

Completed:

Reason	Date	FR Cite
Final Action	06/24/03	68 FR 37411
Final Action Effective	06/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Frank Sapienza
Phone: 202 307-7183

RIN: 1117-AA57

2000. ALLOWING CENTRAL FILL PHARMACIES TO FILL PRESCRIPTIONS FOR CONTROLLED SUBSTANCES ON BEHALF OF RETAIL PHARMACIES

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 1300; 21 CFR 1301; 21 CFR 1304; 21 CFR 1305; 21 CFR 1306; 21 CFR 1307

Completed:

Reason	Date	FR Cite
Final Action	06/24/03	68 FR 37405
Final Action Effective	07/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia M. Good
Phone: 202 307-7297

RIN: 1117-AA58

2001. IMPLEMENTATION OF THE METHAMPHETAMINE ANTI-PROLIFERATION ACT: THRESHOLDS FOR RETAILERS AND FOR DISTRIBUTORS REQUIRED TO SUBMIT REPORTS UNDER 21 U.S.C. 830(B)(3); CHANGES TO MAIL ORDER REPORTING

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 1300; 21 CFR 1309; 21 CFR 1310

Completed:

Reason	Date	FR Cite
Final Action	10/07/03	68 FR 57799
Final Action Effective	11/06/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia M. Good
Phone: 202 307-7297

RIN: 1117-AA69

2002. CONTROLLED SUBSTANCES REGISTRATION AND REREGISTRATION APPLICATION FEES

Priority: Other Significant

CFR Citation: 21 CFR 1301

Completed:

Reason	Date	FR Cite
Final Action	10/10/03	68 FR 58587
Final Action Effective	12/01/03	

DOJ—DEA **Completed Actions**

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia M. Good
Phone: 202 307-7297

RIN: 1117–AA70

Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR)

Proposed Rule Stage

2003. AUTHORITY OF IMMIGRATION JUDGES TO ISSUE CIVIL MONEY PENALTIES

Priority: Other Significant

Legal Authority: 5 USC 301; 3 CFR, 1949 to 1953 Comp, p 1002; 8 USC 1103; 8 USC 1252 note; 8 USC 1101 note; 8 USC 1362; 28 USC 509; 8 USC 1324b; 28 USC 510; 28 USC 1746; Reorg Plan No 2 of 1950, sec 2

CFR Citation: 8 CFR 1003

Legal Deadline: None

Abstract: This rule proposes to amend the regulations by implementing the statutory authority given to Immigration Judges to sanction by civil money penalty any action or inaction in contempt of the Judge's proper exercise of authority. This statutory authority is derived from section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208 (IIRIRA), September 30, 1996. This rule sets forth the types of conduct for which civil money penalty sanctions may be imposed, the procedures for imposing these sanctions, the affirmative defenses which may excuse the imposition of a civil money penalty sanction, and the procedures for appealing such sanctions. The rule also adds an additional ground for disciplinary sanctions under 8 CFR section 3.102 for engaging in a pattern and practice of conduct which has been found to be in contempt of the Immigration Judge's proper exercise of authority.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA18

2004. SUSPENSION OF DEPORTATION AND CANCELLATION OF REMOVAL FOR CERTAIN BATTERED SPOUSES AND CHILDREN; MOTIONS TO REOPEN FOR CERTAIN BATTERED SPOUSES AND CHILDREN

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1101 note; 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224 to 1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1251a; 8 USC 1252b; 8 USC 1324b; 8 USC 1362; 28 USC 509 to 510; 28 USC 1746; Reorg Plan No 2 of 1950; 3 CFR 1949 to 1953 Comp, sec 2; PL 105-100, sec 202-203; PL 105-277, sec 902; PL 106-386, sec 1506; PL 106-554, sec 1505; PL 106-554, sec 1510; 8 CFR 2; 8 CFR 3; 8 CFR 240

CFR Citation: 8 CFR 1003; 8 CFR 1240

Legal Deadline: None

Abstract: This rule amends Department regulations by establishing procedures incorporating the amended requirements of cancellation of removal for battered spouses and children under 240A(b)(2) of the Immigration and Nationality Act (Act), and suspension of deportation under former section 244(a)(3) of the Act (as it existed before April 1, 1997), which were amended by section 1504 of the Battered Immigrant Women Protection Act of 2000.

This rule also amends Department regulations by establishing procedures for certain battered spouses and children to reopen their removal or deportation proceedings to apply for the relief of cancellation of removal or suspension of deportation under 240(c)(6)(C)(iv) of the Act (as amended by section 1506 of the Battered Immigrant Women Protection Act of 2000).

Additionally, this rule establishes procedures which must be followed by EOIR when an alien applies for a domestic violence victim waiver under section 237(a)(7) of the Act (as amended by section 1505(b) of the Battered Immigrant Women Protection Act of 2000).

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA35

2005. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ATTORNEY/REPRESENTATIVE REGISTRY

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1362

CFR Citation: 8 CFR 1001.1; 8 CFR 1003.0

Legal Deadline: None

Abstract: This proposed rule concerns the Attorney General's authority to authorize practitioners to represent aliens in immigration proceedings pursuant to statute. Under the pertinent statutory provision, aliens in immigration proceedings "shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as he shall choose." 8 U.S.C. 1362

The proposed rule arises out of EOIR's electronic government initiatives which, when fully implemented, will enable electronic case access and filing for individuals in immigration proceedings before EOIR. In essence, the rule amends the current definitions of "attorney" and "representative," the classes of individuals authorized to represent aliens, to include only those persons who have registered with EOIR.

Additionally, the rule delegates authority to the Director to require such a registration, and to establish procedures for registration. In concert with that authority, the rule permits the Director to administratively suspend from practice before EOIR any practitioner who fails to comply with registration procedures and requirements.

Functionally, practitioners will be required to register with EOIR over a secure Internet connection, by providing name, address(es), date-of-birth, last four digits of social security number, and bar admission data. Registered practitioners will be assigned a unique User ID and password that will authorize them to conduct electronic transactions with EOIR from desktop personal computers.

Registration of practitioners assures the functionality, security, and success of EOIR's electronic government initiative, and serves as a prerequisite to electronic case access and filing by practitioners.

The proposed practitioner registration rule furnishes the Attorney General with the optimum measure of adaptability to establish the criteria and procedures for practitioner registration, while also preserving fairness for regulated parties and ensuring efficiency in government operations.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125-AA39

2006. • DEFINITIONS; POWERS AND AUTHORITY OF DHS OFFICERS AND EMPLOYEES IN REMOVAL PROCEEDINGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101, 1103, 1182, 1221, 1225, 1226, 1229,1251, 1252, 1357

CFR Citation: 8 CFR 1001; 8 CFR 1239; 8 CFR 1287

Legal Deadline: None

Abstract: This final rule amends the regulations of the Executive Office for Immigration Review (EOIR) to conform to final regulations issued by the Department of Homeland Security (DHS) in chapter I of title 8 of the CFR (68 FR 35273, 6-13-03). The corresponding DHS regulation amended certain definitions and outlined the powers and authorities of DHS employees to issue charging documents and subpoenas in removal proceedings. Accordingly, this regulation is promulgated to ensure that the changes made by DHS are reflected in chapter V of title 8 of the CFR, relating to the jurisdiction and procedures of EOIR.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125-AA43

2007. • REQUIRING IDENTITY, BACKGROUND, AND SECURITY CHECKS IN REMOVAL PROCEEDINGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 8 USC 1101 note, 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1324b, 1362; 28 USC 509, 510, 1746; sec 2, Reorg Plan No 2 of 1950; 3 CFR, 1949 to 1953 Comp, p 1002; secs 202 and 203 of PL 105-100, 111 Stat 2160, 2193, 2196-200 ; sec 902, PL 105-277, 112 Stat 2681; secs 1506 and 1510 of PL 106-386, 114 Stat 1527-29, 1531-32; sec 1505 of PL 106-554, 114 Stat 2763A-326 to 2763A-328

CFR Citation: 8 CFR 1003

Legal Deadline: None

Abstract: This interim rule amends regulations governing the Executive Office for Immigration Review to ensure completion of identity, background, and security checks before the immigration judges and the Board adjudicate applications for lawful permanent resident status have expired or are otherwise incomplete. This rule is necessary to ensure that all such applicants are not otherwise inadmissible to or deportable from the United States and are eligible for relief from removal, before becoming an asylee or a lawful permanent resident in the United States and to minimize the threats an asylee or lawful permanent resident may present to public safety or national security.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125-AA44

2008. • INTERNATIONAL MATCHMAKING ORGANIZATIONS; CIVIL PENALTIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101, 1103, 1324a, 1324b, 1324c, 1375b; PL 101-410, 104 Stat 890, as amended by PL 104-134, 110 Stat 1321; 5 USC 301, 554

CFR Citation: 8 CFR 1270

Legal Deadline: None

Abstract: This rule amends the Department of Justice regulations by specifying the procedures for adjudicating alleged violations by international matchmaking organizations (IMOs) doing business in the United States, in failing to provide required information to persons recruited for matchmaking through these entities. This rule implements the procedures for the disposition of cases arising under section 652 of Illegal Immigrant Reform and Immigrant Responsibility Act. This rule is necessary to deter fraudulent marriages and the exploitation of recruits by IMOs.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
NPRM Comment Period End	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA45

2009. • ASYLUM CLAIMS MADE BY ALIENS ARRIVING FROM CANADA AT LAND-BORDER PORTS-OF-ENTRY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 8 USC 1101 note, 1102, 1103, 1158, 1182 and note, 1184, 1186a, 1187, 1224, 1225, 1226, 1227, 1228, 1251, 1252, 1252a, 1252b, 1282, 1324b, 1362 ; 28 USC 509, 510, 1746; sec 2, Reorg Plan No 2 of 1950; 3 CFR, 1949 to 1953 Comp, p 1002; sec 202 and 203 of P L 105–100, 111 Stat 2196–200; secs 1506 and 1510 of PL 106–386, 114 Stat 1527–29, 1531–32; sec 1505 of P L 106–554, 114 Stat 2763A–326 to 2763A–328; sec 902, PL 105–277, 112 Stat 2681

CFR Citation: 8 CFR 1003; 8 CFR 1208; 8 CFR 1212; 8 CFR 1240

Legal Deadline: None

Abstract: This proposed rule amends the rules governing removal proceedings and the review of the Department of Homeland Security determinations to implement the terms of a recently signed Safe Third Country Agreement between the United States and Canada. The terms of that Agreement provide that certain categories of aliens arriving from Canada at land border ports of entry or in transit from Canada will be returned to Canada for adjudication of their claims rather than having those claims heard in the United States. This proposed rule would establish the authority of immigration judges to apply this Agreement in removal proceedings and in reviewing negative determinations made by asylum officers.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA46

2010. • IMPLEMENTATION OF THE NUMERICAL LIMIT ON ASYLUM GRANTS AND REFUGEE ADMISSION BASED ON RESISTANCE TO COERCIVE POPULATION CONTROL MEASURES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1101; 1103; 1157; 1158; 1226; 1252; 1282

CFR Citation: 8 CFR 1208

Legal Deadline: None

Abstract: Section 601(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that, for any fiscal year, not more than a total of 1,000 refugees may be admitted or granted asylum based solely on resistance to coercive population control measures. This rule authorizes the Department of Homeland Security and the Executive Office for Immigration Review to make conditional grants of asylum in those cases in which an applicant is found to merit asylum solely on the basis of resistance to coercive population control measures and establishes a mechanism for converting no more than 1,000 conditional grants per fiscal year to final asylum grants. The rule also establishes procedures for administering a waiting list in those years that the number of conditional grants exceeds the statutory limit for final grants, reserves a certain number of authorization numbers for purposes of refugee admission, and addresses procedures for administering derivative conditional grants, terminating conditional grants, and other procedures specific to this rule.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
NPRM Comment Period End	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA48

2011. SUSPENSION OF DEPORTATION AND CANCELLATION OF REMOVAL

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224 to 1227; 8 USC 1251 to 1252; 8 USC 1362; PL 105–100, sec 202

CFR Citation: 8 CFR 1240

Legal Deadline: None

Abstract: This rule amends the regulations of the Executive Office for Immigration Review by eliminating the conditional grant process at 8 CFR 1240.21 and establishing a permanent procedure for processing suspension of deportation and cancellation of removal cases. This rule is necessary to implement the numerical limitation on suspension of deportation and cancellation of removal and adjustment of status imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/98	63 FR 52134
Interim Final Rule Comment Period End	11/30/98	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA25

2012. AUTHORITIES DELEGATED TO THE DIRECTOR OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Priority: Info./Admin./Other

Legal Authority: 5 USC 301; 8 USC 1103; 8 USC 1252 note; 8 USC 1252b; 8 USC 1362; 28 USC 509 to 510; 28 USC 1746

CFR Citation: 8 CFR 1003; 8 CFR 1240

Legal Deadline: None

Abstract: This rule outlines the authorities and powers (and limitations thereto) delegated by the Attorney General to the Director of the Executive Office for Immigration Review (EOIR), the Chairman of the Board of Immigration Appeals (BIA), and the Chief Immigration Judge. These authorities include such managerial responsibilities as: Issuing operational instructions, setting policies, providing for the training of staff, and ensuring the efficient disposition of cases. One of the limitations on the powers of the Director of EOIR, the Chairman of the BIA, and the Chief Immigration Judge is that they cannot direct the result of a case adjudication assigned to someone else.

Additionally, this rule makes technical amendments to better describe EOIR's components: The Board of Immigration Appeals (BIA), the Office of the Chief Immigration Judge (OCIJ), and the Office of the Chief Administrative Hearing Officer (OCAHO).

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81434
NPRM Comment Period End	02/26/01	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA27

2013. MOTIONS TO REOPEN FOR SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL PURSUANT TO SECTION 1505(C) OF THE LIFE ACT AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1103, 1252 note, 1252b, 1324b, 1362; 28 USC 509 to 510; 28 USC 1746; sec 203 of PL 105–100; secs 1506 and 1510 of PL 106–386; sec 1505 of PL 106–554

CFR Citation: 8 CFR 1003

Legal Deadline: None

Abstract: The rule amends the regulations of the Executive Office for Immigration Review (EOIR) by establishing a special procedure for the filing and adjudication of motions to reopen to apply for suspension of deportation and cancellation of removal pursuant to section 1505(c) of the Legal Immigration Family Equity Act Amendments of 2000 (LIFE Act Amendments). Motions to reopen under this rule must have been filed on or before October 16, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/17/01	66 FR 37119
Interim Final Rule Comment Period End	09/17/01	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA31

2014. SECTION 212(C) RELIEF FOR ALIENS WITH CERTAIN CRIMINAL CONVICTIONS BEFORE APRIL 1, 1997

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224 to 1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1252a; 8 USC 1252b; PL 105–110, secs 202 to 203; PL 105–277, sec 902; 8 CFR 2

CFR Citation: 8 CFR 1003

Legal Deadline: None

Abstract: The rule amends the regulations of the EOIR and the Department of Homeland Security (DHS) by establishing procedures for certain lawful permanent residents (LPRs) with certain criminal convictions to apply for a waiver of inadmissibility pursuant to former section 212(c) of the INA. It is only applicable to certain LPRs whose convictions were prior to April 1, 1997. It applies to certain LPRs who have cases pending before EOIR or are under final administrative orders. This rule will broaden eligibility for INA section 212(c) relief in light of the recent

Supreme Court decision in INS v. St. Cyr, 121 (S. Ct. 2271 (2001)).

Timetable:

Action	Date	FR Cite
NPRM	08/13/02	67 FR 52627
Correction	08/22/02	67 FR 54360
NPRM Comment Period End	10/15/02	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA33

2015. PROTECTIVE ORDERS IN IMMIGRATION ADMINISTRATION PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1101 note, 1103, 1231, 1252 note, 1252b, 1324b, 1253, 1362; 28 USC 509, 510, 1746; sec 2, Reorg Plan No 2 of 1950; 3 CFR 1949 to 1953 Comp, p 1002; section 203 of PL 105–100, 111 Stat 2196–200; sections 1506 and 1510 of PL 106–386, 114 Stat 1527–29, 1531–32; section 1505 of PL 106–554, 114 Stat 2763A–326 to 2763A–328

CFR Citation: 8 CFR 1003

Legal Deadline: None

Abstract: This rule amends regulations governing the Executive Office for Immigration Review (EOIR) by authorizing immigration judges to issue protective orders to limit public disclosure of sensitive law enforcement or national defense information during immigration proceedings. The rule is applicable in all proceedings before immigration judges but involves only a small number of cases.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/28/02	67 FR 36799
Interim Final Rule Comment Period End	07/29/02	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA38

2016. TRANSFER OF JURISDICTION OVER APPEALS OF FINES FROM THE BOARD OF IMMIGRATION APPEALS TO THE OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 8 CFR 1003; 8 CFR 1103; 8 CFR 1280

Legal Deadline: None

Abstract: This final rule removes the Board of Immigration Appeals' (Board) jurisdiction over appeals of Department of Homeland Security (DHS) decisions involving administrative fines under part 280 of title 8 CFR, and transfers that authority to Office of the Chief Administrative Hearing Officer (OCAHO). Part 280 governs the administration of fines under a variety of provisions of the Immigration and Nationality Act (INA), most of which pertain to common carriers. Most of the appeals are fines imposed under section 273 of the INA. The transfer is essentially a reallocation of Agency resources within the Executive Office for Immigration Review to improve caseload management by substituting a different set of decision makers, the OCAHO for the Board, while preserving the same procedures for the adjudication of appeals.

Timetable:

Action	Date	FR Cite
NPRM	02/19/02	67 FR 7309
NPRM Comment Period End	03/21/02	
Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA41

2017. • REVIEW OF CUSTODY DETERMINATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301 ; 8 USC 1101 note, 1103, 1252 note, 1252b, 1282, 1324b, 1362; 28 USC 509, 510, 1746; sec 2, Reorg Plan No 2 of 1950; 3 CFR, 1949 to 1953 Comp, p 1002; sec 203 of PL 105–100, 111 Stat 2196–200; secs 1506 and 1510 of PL 106–386; 114 Stat 1527–29, 1531–32; sec. 1505 of PL 106–554, 114 Stat 2763A–326 to 2763A–328

CFR Citation: 8 CFR 1003

Legal Deadline: None

Abstract: This rule amends the regulations of the Executive Office for Immigration Review, by expanding the existing regulatory provision for a temporary automatic stay of an immigration judge's decision to order an alien's release in any case in which a district director has ordered that the alien be held without bond, or has set a bond of $10,000 or more, to maintain the status quo while the Department of Homeland Security seeks expedited review of the custody order by the Board of Immigration Appeals or by the Attorney General.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/29/01	66 FR 54909
Interim Final Rule	10/31/01	66 FR 54909
Interim Final Rule Comment Period End	12/31/01	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Previously reported under RIN 1115–AG41

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041
Phone: 703 305–0470

RIN: 1125–AA47

Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR)

Completed Actions

2018. REVIEW OF AN ARBITRATOR'S FINDINGS AND IMPOSING REMEDIES AGAINST EMPLOYERS HIRING H-1B VISA WORKERS OVER EQUALLY OR BETTER QUALIFIED U.S. WORKERS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 44

Completed:

Reason	Date	FR Cite
Merged With RIN 1190–AA48	09/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch
Phone: 703 305–0470

RIN: 1125–AA40

Department of Justice (DOJ)
Federal Bureau of Investigation (FBI)

Final Rule Stage

2019. IMPLEMENTATION OF SECTIONS 104 AND 109 OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Priority: Other Significant

Legal Authority: PL 103–414 Communications Assistance for Law Enforcement Act; PL 104–208 Omnibus Consolidated Appropriations Act of 1997

CFR Citation: 28 CFR 100

Legal Deadline: Other, Statutory, October 25, 1998, Other.

Abstract: As required by section 109 of the Communications Assistance for Law Enforcement Act (CALEA), the FBI promulgated Cost Recovery Regulations allowing telecommunications carriers to recover certain costs associated with implementing CALEA. The final rule was published on March 20, 1997 (62 FR 13307), and became effective on April 21, 1997. In response to public comment received during this rulemaking, the FBI published an ANPRM on November 19, 1996 (61 FR 58799), which solicited input on the definition of the term "significant upgrade or major modification" as used by CALEA. The "significant upgrade or major modification" NPRM was published on April 28, 1998 (63 FR 23231). The FBI is currently preparing a supplemental notice of proposed rulemaking, which will define the terms "replaced" and "significantly upgraded or otherwise undergone major modification," which when codified will amend the Cost Recovery Regulations.

Additionally, CALEA section 104 requires the Attorney General to publish a Notice of Actual and Maximum Capacity in order to provide telecommunications carriers with the information they will need to meet law enforcement's future simultaneous electronic surveillance requirements. For local exchange, cellular, and broadband PCS, the FBI published an Initial Notice of Capacity on October 16, 1995 (60 FR 53643), and a Second Notice of Capacity on January 14, 1997 (62 FR 1902). The FBI published the Final Notice of Capacity for local exchange, cellular, and broadband PCS on March 12, 1998 (63 FR 12218). Additionally, the FBI published a Notice of Inquiry (NOI) in the Federal Register on December 18, 1998 (63 FR 70160), which solicited information on and suggestions for developing reasonable methodologies for characterizing capacity requirements for telecommunications services and technologies other than local exchange, cellular, and broadband PCS. Comments were due on February 16, 1999. Information gathered in response to the NOI was used in publishing the Further Notice of Inquiry (FNOI) on June 30, 2000 (65 FR 40694). Comments were due August 29, 2000. Information gathered in response to the FNOI will be used in the publication of an Initial Notice of Capacity for developing reasonable capacity methodologies for the paging, mobile satellite, specialized mobile radio, and enhanced specialized mobile radio services.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	
"Significant upgrade or major modification" (1110–AA12)		
ANPRM 11/19/96 (61 FR 58799)		
ANPRM Comment Period End 12/19/96		
NPRM 04/28/98 (63 FR 23231)		
NPRM Comment Period End 06/29/98		
Supplemental NPRM Proposing Definitions 10/05/01 (66 FR 50931)		
Supplemental NPRM Comment Period End 12/04/01		
Final Action 12/00/03		
Cost Recovery Rule (Telecom. Carriers) (1110–AA11)		
NPRM 05/10/96 (61 FR 21396)		
NPRM Comment Period End 07/09/96		
Final Rule 03/20/97 (62 FR 13307)		
Final Rule Effective 04/21/97		
Notice of Actual and Max. Cap.–local exch, cellular, broadb PCS (1110–AA14)		
Initial Notice 10/16/95 (60 FR 53643)		
Second Notice 01/14/97 (62 FR 1902)		
Final Notice 03/12/98 (63 FR 12217)		
Notice of Actual and Max. Cap.–paging, MSS, SMR, ESMR (1110–AA13)		
Notice of Inquiry (Cap Methodology) 12/18/98 (63 FR 70160)		
Further Notice of Inquiry (Cap Methodology) 06/30/00 (65 FR 40694)		
Initial Notice of Capacity 10/00/04		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: STATUTORY DEADLINE CONT: its authority under section 107 of CALEA to grant carriers extensions of this compliance date. As a result of the FCC's order, carriers must now be in compliance with section 103 by June 30, 2000. If compliance is not reasonably achievable through application of available technology, the carrier may petition the FCC for a section 107 extension of up to 2 years. By subsequent FCC orders, the assistance capability compliance date for packet mode communication is November 19, 2001, and for the additional capabilities/"punchlist" capabilities is June 30, 2002. Carriers may again petition the FCC for a section 107 extension. Lastly, as a result of the publication of the Final Notice of Capacity for local exchange, cellular, and broadband PCS carriers, these carriers must be in compliance with section 104 by March 12, 2001.

Transferred from RIN 1105–AA39.

See also RIN 1110–AA10.

Agency Contact: Walter V. Meslar, Unit Chief, Telecommunications Contracts and Audit Unit, Department of Justice, Federal Bureau of Investigation, Suite 300, 14800 Conference Center Drive, Chantilly, VA 20151
Phone: 703 814–4900

Leslie M. Szwajkowski, Unit Chief, Department of Justice, Federal Bureau of Investigation, Suite 300, 14800 Conference Center Drive, Chantilly, VA 20151
Phone: 703 814–4800
Fax: 703 814–4750

RIN: 1110–AA00

2020. IMPLEMENTATION OF THE NATIONAL STOLEN PASSENGER MOTOR VEHICLE INFORMATION SYSTEM (NSPMVIS)

Priority: Other Significant

Legal Authority: 49 USC 33109 to 33111

CFR Citation: 28 CFR 89

Legal Deadline: None

Abstract: The Attorney General is required to establish a National Stolen Passenger Motor Vehicle Information System (NSPMVIS) pursuant to the Anti Car Theft Act of 1992 (49 U.S.C. 33109 to 33111). The FBI is coordinating efforts in this matter and, under delegated authority from the Attorney General, the FBI is issuing this rule to establish a national system to verify the theft status of major motor vehicle component parts and junk or salvage vehicles. The system will include certain information about each passenger motor vehicle reported to a law-enforcement agency as stolen and not recovered. The rule provides how an individual or entity may obtain information from the system on whether a vehicle or part is listed as stolen. The rule also provides verification procedures to be followed by insurance carriers and certain motor vehicle part businesses. In order to verify the theft status of a part or junk or salvage vehicle, an identification number will have to be obtained from the part or vehicle.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17027
NPRM Comment Period End	06/10/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: (RIN 1110–AA01 has been transferred from RIN 1105–AA44.)

The Criminal Division will issue a related regulation to implement the National Motor Vehicle Title Information System (NMVTIS). As required by statute, 49 U.S.C. section 30504(a), the regulation will direct junk yard and salvage yard operators and insurance carriers to file monthly reports with the operator of the NMVTIS concerning vehicles in their possession. (See RIN 1105–AA71.)

Agency Contact: Buffy M. Bonafield, Criminal Info Coordination, Department of Justice, Federal Bureau of Investigation, CJIS Division Module C–3, Clarksburg, WV 26306
Phone: 304 625–2000
Fax: 304 625–3875

RIN: 1110–AA01

2021. REGULATIONS UNDER THE PAM LYCHNER SEXUAL OFFENDER TRACKING AND IDENTIFICATION ACT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: PL 104–236, sec 9

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, October 3, 1999, Other.

Abstract: The FBI is issuing regulations to carry out the Pam Lychner Sexual Offender Tracking and Identification Act of 1996. These regulations include guidelines as to the operation and use of the national sex offender registry established by the FBI and the notice to be provided to the FBI in the event a registered sex offender moves interstate. The Bureau published its proposed rule on February 16, 1999, at 64 FR 7562.

Timetable:

Action	Date	FR Cite
NPRM	02/16/99	64 FR 7562
NPRM Comment Period End	04/19/99	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

Additional Information: Transferred from RIN 1105–AA56.

Agency Contact: Janet Chanaki, Management Analyst, Department of Justice, Federal Bureau of Investigation, CJIS Division MOD C3, 1000 Custer Hollow Road, Clarksburg, WV 26306
Phone: 304 625–2000

RIN: 1110–AA04

2022. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Priority: Other Significant

Legal Authority: 18 USC 922 to 925; 5 USC 605(b); EO 12866; EO 13132; 5 USC 804; ...

CFR Citation: 28 CFR 25(b)(1); 28 CFR 25(b)(2); 28 CFR 25(b)(3); 28 CFR 25.9(b)(4); 28 CFR 25.2; ...

Legal Deadline: Other, Judicial, October 22, 2001, Other.

Abstract: The Department promulgated regulations to govern the National Instant Criminal Background Check System (NICS) in 1998 when the NICS became operational and adopted amendments which became effective on July 3, 2001.

In this proposed rule, the Department published for public comment and further consideration five proposals to make additional changes in the NICS regulations. The proposed changes balance the legitimate privacy interests of law-abiding firearms purchasers and the Department's obligation to enforce the Brady Act and the Gun Control Act to prevent prohibited persons from purchasing firearms.

Timetable:

Action	Date	FR Cite
NPRM	07/06/01	66 FR 35567
NPRM Comment Period End	09/04/01	
NPRM Comment Period Reopened	09/20/01	66 FR 48390
NPRM Reopened Comment Period End	10/22/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Agency Contact: Fanny L. Haslebacher, Attorney Advisor, Access Integrity Unit, Department of Justice, Federal Bureau of Investigation, CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306–0147
Phone: 304 625–2000

RIN: 1110–AA07

DOJ—FBI **Final Rule Stage**

2023. FINAL NOTICE OF CAPACITY; SUPPLEMENT TO RESPOND TO REMAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 1003(a)(1)

CFR Citation: None

Legal Deadline: None

Abstract: As required by section 104 of the Communications Assistance for Law Enforcement Act (CALEA), the FBI published a Notice of Actual and Maximum Capacity in order to provide telecommunications carriers with the information they will need to meet law enforcement's future simultaneous electronic surveillance requirements. The FBI published the Final Notice of Capacity for local exchange, cellular, and broadband PCS on March 12, 1998 (63 FR 12218).

This Notice provided numerical requirements for the "actual" and "maximum" numbers of surveillance that wired and wireless telephone networks should be able to accommodate, broken down by geographic region. The numbers were derived from a survey and analysis of the numbers of surveillance historically conducted at the same time in every region throughout the country.

After its issuance, telecommunications carriers and trade associations challenged the Final Notice on a number of grounds, primarily alleging that the numbers of surveillance stated therein were too high. To summarize, the FBI was directed by the Court of Appeals to provide further explanation on two issues: (1) The decision to treat as "simultaneous" any two or more historical surveillance on the same day and, (2) the decision to set forth only one "actual" and one "maximum" capacity requirement number per region, rather than separate requirements for each type of surveillance.

This Supplemental Notice provides further explanation for the FBI's interpretation of the term "simultaneously," and sets forth a new method of interpreting the existing capacity requirements that will allow carriers to break out the number of communications interceptions from the total requirement. The Supplement also sets forth new guidance that will reduce the requirements for simultaneous communications interceptions applicable to carriers operating in regions with high capacity requirements. This is being done to reduce the concerns raised by the Court of Appeals that such carriers could be unduly burdened with requirements to accommodate an unduly high number of simultaneous interceptions.

Timetable:

Action	Date	FR Cite
Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: See also RIN 1110–AA00.

Agency Contact: Leslie M. Szwajkowski, Unit Chief, Department of Justice, Federal Bureau of Investigation, Suite 300, 14800 Conference Center Drive, Chantilly, VA 20151
Phone: 703 814–4800
Fax: 703 814–4750

RIN: 1110–AA10

Department of Justice (DOJ) **Completed Actions**
Federal Bureau of Investigation (FBI)

2024. CLAIMS OF EXEMPTIONS FROM PROVISIONS OF THE PRIVACY ACT AS TO FBI RECORDS

Priority: Info./Admin./Other

CFR Citation: 28 CFR 16.96

Completed:

Reason	Date	FR Cite
Withdrawn	09/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth Haley
Phone: 202 324–4523

David M. Hardy
Phone: 202 324–3000

RIN: 1110–AA08

Department of Justice (DOJ) **Proposed Rule Stage**
Legal Activities (LA)

2025. MOTOR VEHICLE SALVAGE REGULATIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 30504

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Attorney General is required to issue regulations directing junk yard and salvage yard operators and insurance carriers to file monthly reports with the operator of the National Motor Vehicle Title Information System (NMVTIS) concerning vehicles in their possession. The reports are required by statute, 49 U.S.C. section 30504(a) and (b), to provide the vehicle identification numbers, the date on which the vehicle was obtained, and the name of the individual or entity from whom the vehicle was obtained. Salvage and junk yard operators are also required to provide a statement of whether the automobile was crushed or disposed of for sale or other purposes. Insurance carriers are also required to provide the name of the owner of the automobile at the time the report is filed.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On a related issue, the FBI expects to issue regulations implementing the National Stolen Passenger Motor Vehicle Information System (NSPMVIS). (See RIN 1110–AA01.)

Agency Contact: Deborah Sorkin, Trial Attorney, Department of Justice, Office of Enforcement Operations, Criminal Division, 1301 New York Avenue NW, Washington, DC 20530
Phone: 202 305–4023
Fax: 202 305–0562

RIN: 1105–AA71

2026. • PARTICIPATION IN JUSTICE DEPARTMENT PROGRAMS BY FAITH-BASED ORGANIZATIONS; PROVIDING FOR EQUAL TREATMENT OF ALL JUSTICE DEPARTMENT PROGRAM PARTICIPANTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: EO 13279; 5 USC 301; 8 USC 4001 ; 18 USC 4042; 18 USC 5040; 20 USC 1152; 21 USC 87; 25 USC 3681; 28 USC 509; 42 USC 3701 et seq; 42 USC 3711 et seq; 42 USC 3751; 42 USC 3753; 42 USC 3762b; 42 USC 3782; 42 USC 3796dd–1; 42 USC 3796h ; 42 USC 3797u et seq; 42 USC 3797w; 42 USC 5601 et seq; 42 USC 5611; 42 USC 5672; 42 USC 10604; 42 USC 13705 et seq; 42 USC 14071; 42 USC 3796dd–1 ; 42 USC 3796gg–0b; 42 USC 3796gg–1; 42 USC 3796gg–3; 42 USC 3796ii–2; 42 USC 3797u–3

CFR Citation: 28 CFR 31; 28 CFR 33; 28 CFR 38; 28 CFR 90; 28 CFR 91; 28 CFR 93

Legal Deadline: None

Abstract: This rule implements Justice Department policy that, within the framework of constitutional church-state guidelines, faith-based and community organizations should be able to compete on an equal footing with other organizations for the Department's funding. The Justice Department supports the participation of faith-based and community organizations in its programs. Religious organizations, including religiously affiliated organizations, are an important part of the social services network of the United States, offering a multitude of social services to those in need. In addition to places of worship, religious organizations include small nonprofit organizations created to provide one program or multiple services, as well as neighborhood groups formed to respond to a crisis or to lead community renewal. Religious groups everywhere, either acting alone or as partners with other service providers and government programs, serve the poor, help to reduce crime, addiction, and delinquency, and help to strengthen families and rebuild communities.

All too often, however, Federal policy and programs have not recognized religious groups as resources for providing social assistance. Federal, State, and local governments have often imposed barriers to the participation of religious organizations in social service programs, including unwarranted regulatory barriers.

President Bush has directed Federal agencies, including the Justice Department, to take steps to ensure that Federal policy and programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. The Administration believes that religiously affiliated, or faith-based groups, possess an under-appreciated ability to meet the needs of poor Americans and revitalize distressed neighborhoods. The Administration believes that there should be an equal opportunity for all organizations—both religious and nonreligious—to participate as partners in Federal programs.

Timetable:

Action	Date	FR Cite
NPRM	09/30/03	68 FR 56410
NPRM Comment Period End	12/01/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: Federal

Agency Contact: Patrick Purtill, Director, Department of Justice, Task Force for Faith-Based and Community Initiatives, 950 Pennsylvania Avenue NW, Room 4409, Washington, DC 20530
Phone: 202 305–8283
TDD Phone: 800 877–8339

RIN: 1105–AA83

Department of Justice (DOJ)
Legal Activities (LA)

Final Rule Stage

2027. CERTIFICATION AND DECERTIFICATION IN CONNECTION WITH CERTAIN SUITS BASED UPON ACTS OR OMISSIONS OF FEDERAL EMPLOYEES AND OTHER PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2679(b)

CFR Citation: 28 CFR 15

Legal Deadline: None

Abstract: This rule revises 28 CFR part 15, pertaining to the defense of certain suits against Federal employees, to conform the regulations to changes made by the Federal Employee Liability Reform and Tort Compensation Act, Public Law 100–694. Under prior law, the defense of suits against Federal employees for torts committed in the scope of their employment was limited to claims involving the operation of motor vehicles. Public Law 100–694 expanded the coverage of the immunity provisions to include all common law torts committed by Federal employees in the scope of their employment. This rule conforms the Department's regulations to the expanded coverage of the statute.

Timetable:

Action	Date	FR Cite
NPRM	10/22/02	67 FR 64844
NPRM Comment Period End	12/23/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: CIV 102

Agency Contact: James G. Touhey Jr., Trial Attorney, Torts Branch, Department of Justice, P.O. Box 888,

Benjamin Franklin Station, Washington, DC 20004
Phone: 202 616–4292

RIN: 1105–AA62

2028. DESIGNATION OF AGENCIES TO RECEIVE AND INVESTIGATE REPORTS REQUIRED UNDER THE PROTECTION OF CHILDREN FROM SEXUAL PREDATORS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13032

CFR Citation: 28 CFR 81

Legal Deadline: NPRM, Statutory, April 28, 1999, NPRM.

Abstract: On October 30, 1998, Congress passed the Protection of Children from Sexual Predators Act of 1998 (PCSPA). The PCSPA requires providers of an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, to report incidents of child pornography as defined by sections 2251, 2251A, 2252, 2252A, or 2260 of title 18, United States Code, to the appropriate Federal agency. In order to facilitate effective reporting, the PCSPA requires the Attorney General to "designate an agency" to receive and investigate such reports of child pornography. The proposed rule previously published set forth the Attorney General's proposed designations and certain other matters covered by the PCSPA's reporting requirements.

On November 29, 1999, as part of the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Congress amended 42 U.S.C. 13032 to require providers to report such incidents to the Cyber Tipline at the National Center for Missing and Exploited Children (NCMEC), which shall forward that report to a law enforcement agency or agencies designated by the Attorney General. An interim final rule is being prepared that will reflect the change in the Agency to receive the reports and designating law enforcement agencies with whom NCMEC may share the reports.

Timetable:

Action	Date	FR Cite
NPRM	05/26/99	64 FR 28422
NPRM Comment Period End	07/26/99	
Interim Final Rule	11/04/03	68 FR 62370
Interim Final Rule Effective	12/04/03	
Interim Final Rule Comment Period End	01/05/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section, Department of Justice, 1400 New York Avenue NW, Suite 600, Washington, DC 20530
Phone: 202 514–5780

RIN: 1105–AA65

2029. ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 530B

CFR Citation: 28 CFR 77

Legal Deadline: Final, Statutory, April 19, 1999, Final.

Abstract: This rule supersedes the Department of Justice regulations relating to Communications with Represented Persons and implements 28 U.S.C. 530B pertaining to ethical standards for attorneys for the Government. Under that provision, an attorney for the Government shall be subject to State laws and rules, and local Federal court rules governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State. This rule fulfills the Attorney General's obligation under section 530B and provides guidance to all Department of Justice employees who are subject to section 530B regarding their obligations and responsibilities under this new provision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/19/99	64 FR 19273
Interim Final Rule Comment Period End	06/21/99	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Claudia J. Flynn, Director, Professional Responsibility Advisory Office, Department of Justice, Suite 500, National Theatre Building, 1325 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 514–0458
Fax: 202 353–7491

RIN: 1105–AA67

2030. CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT AMENDMENTS OF 2000; AMENDMENTS CONTAINED IN THE DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT OF 2002

Priority: Other Significant

Legal Authority: 42 USC 2210 note, Radiation Exposure Compensation Act; PL 106–245, Radiation Exposure Compensation Act Amendments of 2000; PL 106–553; PL 107–273, 21st Century Department of Justice Appropriations Authorization Act

CFR Citation: 28 CFR 79

Legal Deadline: Final, Statutory, January 6, 2001, Final.

Abstract: Several recent legislative enactments have revised provisions of the Radiation Exposure Compensation Act, both procedurally and substantively. Many of the revisions have required the issuance of proposed regulations for public notice and comment—other revisions have been technical in nature and have been implemented in a final rulemaking.

On November 2, 2002, the President signed the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. 107–273). Section 11007 of Public Law 107–273 contains amendments to the Radiation Exposure Compensation Act (RECA), that are technical in nature. Although conforming changes need to be made to the regulations implementing RECA to reflect those technical changes, Public Law 107–273 does not impose a deadline for issuing regulations implementing the changes.

On August 7, 2002, the Department issued two related rulemakings to implement amendments to RECA, enacted on July 10, 2000. The first is a final rule (CIV 100) which made changes consistent with the 2000 law. This final rule expands the list of diseases that are compensable for "downwinder" and "onsite participant" claimants; eliminates smoking distinctions; amends the list of geographical areas to provide additional radiation-affected areas for "downwinder" claimants; modifies the burden of proof for purposes of claims processing; allows claimants who have previously been denied compensation to file up to three times; and makes other technical revisions consistent with the changes to the law. As a result of the passage of Public Law 107–273 on November 2, 2002, this final rule requires additional revisions.

The second rulemaking issued on August 7, 2002, is a proposed rule (CIV 101). The public comment period which initially closed on October 7, 2002, was extended for an additional period. That period expired on January 27, 2003. Over 100 comments were received by the Department. The proposed rule describes the expanded population of eligible uranium mine workers created by lowering the radiation exposure threshold for miners; identifies the new uranium mining states with respect to which miners may be eligible for compensation; includes provisions for compensation to aboveground miners; sets forth employment eligibility criteria for the new claimant categories (millers and ore transporters); describes the documentation that would be required to establish proof of employment in a uranium mine or mill or as an ore transporter; describes the medical documentation necessary to establish the existence of renal cancer and chronic renal disease; and revises the provision concerning representation of claimants before the Department with respect to claims brought under the Act. As with the final rule discussed above, passage of Public Law 107–273 on November 2, 2002, requires additional revisions to this proposed rule.

In light of the further technical changes that need to be made to implement Public Law 107–273, the Department intends to issue one final rule that will accomplish several goals: (1) Requisite technical revisions will be made to CIV 100 consistent with Public Law 107–273; (2) discuss comments received on the proposed rule (CIV 101); and (3) reflect relevant changes made by the Department in connection with those comments.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

CIV 100—Technical Amendments (1105–AB02)
Final Action 08/07/02 (67 FR 51422)
CIV 101—Expansion of Coverage (1105–AB03)
NPRM 08/07/02 (67 FR 51440)
NPRM Comment Period End 10/07/02
NPRM Comment Period Reopened 11/27/02 (67 FR 70892)
NPRM Extension of Comment Period End 01/27/03
Final Action 11/00/03

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Phone: 202 616–4129
Fax: 202 616–4313
Email: dianne.spellberg@usdoj.gov

RIN: 1105–AA75

2031. DNA SAMPLING OF FEDERAL OFFENDERS UNDER THE USA PATRIOT ACT OF 2001

Priority: Other Significant

Legal Authority: 28 USC 509; 28 USC 510; 42 USC 14132; 41 USC 14135a; 42 USC 14135b; 10 USC 1565; PL 106–546

CFR Citation: 28 CFR 28

Legal Deadline: Other, Statutory, April 18, 2001, Other.
Final, Statutory, June 17, 2001, Final.

Abstract: Section 3 of Public Law 106–546, the DNA Analysis Backlog Elimination Act of 2000 (the Act), requires the collection of DNA samples from certain categories of Federal offenders. In addition, the Act details the responsibilities of the Bureau of Prisons and Federal probation offices to collect DNA samples from offenders in their custody or supervision, and the responsibility of the FBI to analyze and index DNA samples.

On June 28, 2001, the Department of Justice published an interim rule to implement section 3 and related provisions of Public Law 106–546, the DNA Analysis Backlog Elimination Act of 2000 (66 FR 34363; June 28, 2001). That rule, in part, specified the federal offenses that are treated as "qualifying Federal offenses" for purposes of collecting DNA samples from federal offenders. Subsequent to the publication of that interim rule, Congress enacted Public Law 107–56, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001. Section 503 of the USA PATRIOT Act added three new categories of qualifying Federal offenses for purposes of DNA sample collection: (1) Any offense listed in section 2332b(g)(5)(B) of title 18, United States Code; (2) any crime of violence (as defined in section 16 of title 18, United States Code); and (3) any attempt or conspiracy to commit any of the above offenses. Section 503 authorized the Attorney General to determine which offenses are included in these additional categories. On March 11, 2003, the Department published a proposed rule (68 FR 11481) to revise a section of the existing regulations, 28 CFR 28.2, to add the offenses in these three new categories. The next action to be published by the Department under this rulemaking will be a final rule which will finalize both the June 28, 2001 interim rule and the March 11, 2003 proposed rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/28/01	66 FR 34363
Interim Final Rule Comment Period End	08/27/01	
NPRM	03/11/03	68 FR 11481
NPRM Comment Period End	04/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David J. Karp, Senior Counsel, Department of Justice, Office of Legal Policy, 950 Pennsylvania Avenue NW, Room 4503, Washington, DC 20530
Phone: 202 514–3273

RIN: 1105–AA78

2032. MINIMUM QUALIFICATIONS FOR ANNUITY BROKERS IN CONNECTION WITH STRUCTURED SETTLEMENTS ENTERED INTO BY THE UNITED STATES

Priority: Other Significant

Legal Authority: PL 107–273, sec 11015

CFR Citation: 28 CFR 50

Legal Deadline: Final, Statutory, May 2, 2003, Final.

Abstract: This rule implements section 11015(a) of Public Law 107–273, the 21st Century Department of Justice Appropriations Authorization Act, which was enacted on November 2, 2002. Section 11015(a) provides: "Not later than 6 months after the date of enactment of this Act, the Attorney General shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit such list, and any updates to such list, to all United States Attorneys." The rule sets forth the minimum qualifications for an annuity broker to be included on the list and the procedures to be followed by individual annuity brokers who desire to be listed.

To be considered for inclusion on the initial list to be transmitted to all United States Attorneys, annuity brokers must submit the Declaration set forth on the Civil Division web site to the Department of Justice's Torts Branch at the address provided below by no later than April 24, 2003. (A copy of the Declaration is also included as an appendix to this rule, but will not be included in the Code of Federal Regulations, as it may be revised later. The most current version of the Declaration will be available for download on the Civil Division's Web site.) Submissions received after April 24, 2003, will be considered for inclusion in the next update of the list. The list will be revised periodically, but not more often than twice every calendar year, beginning with calendar year 2004.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/15/03	68 FR 18119
Interim Final Rule Comment Period End	07/14/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kenneth L. Zwick, Director, Office of Management Programs, Department of Justice, Civil Division, Room 3140, 950 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 514–4552
TDD Phone: 888 560–8044

RIN: 1105–AA82

Department of Justice (DOJ) Legal Activities (LA) Long-Term Actions

2033. ENHANCED NOTICE AND RELEASE PROCEDURES FOR OWNERS OF SEIZED PROPERTY PURSUANT TO THE CAFRA OF 2000; DISPOSITION OF SEIZED PROPERTY TOO COSTLY TO MAINTAIN; CONSOLIDATION OF DEPARTMENT REGULATIONS

Priority: Other Significant

CFR Citation: 8 CFR 274; 21 CFR 1316; 28 CFR 8 (Revision); 28 CFR 9 (Revision)

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Hieronymus
Phone: 202 307–7636

Maury V. Taylor
Phone: 202 324–9700

RIN: 1105–AA74

Department of Justice (DOJ) Legal Activities (LA) Completed Actions

2034. FOREIGN AGENTS REGISTRATION ACT; REGULATIONS REVISED AND CLARIFIED TO REFLECT CHANGES IN THE LAW

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 5.5(d)(10); 28 CFR 5.203(a); 28 CFR 5.204(a); 28 CFR 5.205(a); 28 CFR 5.206(b); 28 CFR 5.304(c); 28 CFR 5.306(a); 28 CFR 5.5(d)(11); 28 CFR 5.100(c); 28 CFR 5.100(d); 28 CFR 5.200(b); 28 CFR 5.201(a)(1); 28 CFR 5.201(a)(2); 28 CFR 5.202(b); 28 CFR 5.202(e); ...

Completed:

Reason	Date	FR Cite
Final Action	06/05/03	68 FR 33629
Final Action Effective	07/07/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Marshall R. Williams
Phone: 202 514–1216

RIN: 1105–AA45

2035. WAIVER FOR FIREARM PROHIBITION ON NONIMMIGRANT VISA HOLDERS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 25

Completed:

Reason	Date	FR Cite
Merged With 1140–AA21	09/09/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Frank A.S. Campbell

Phone: 202 514–2283
RIN: 1105–AA66

Department of Justice (DOJ)
Office of Justice Programs (OJP)

Proposed Rule Stage

2036. PUBLIC SAFETY OFFICERS' BENEFITS PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 3711 et seq

CFR Citation: 28 CFR 32

Legal Deadline: None

Abstract: The Bureau of Justice Assistance will be proposing a major, substantive revision of the existing regulations (28 CFR part 32) that govern the Public Safety Officers' Benefits (PSOB) Program to streamline all aspects of the program and relieve claimants of administrative burdens no longer deemed necessary. Further, the program will need to change as BJA moves into a paperless, electronic, Web-based application/review/payment program. The proposed revised regulations will affect all components of the program: Death benefits, disability benefits, education benefits, and the related administrative components governing hearing officers and independent medical examinations.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
NPRM Comment Period End	11/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Camille Cain, Deputy Director for Programs, Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 810 7th Street NW, Washington, DC 20531
Phone: 202 616–6500

RIN: 1121–AA56

2037. CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3711

CFR Citation: 28 CFR 23

Legal Deadline: None

Abstract: The purpose of this regulation is to assure that all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968 are used as authorized by law. This revision of 28 CFR part 23 updates the regulation for modern technological advances, extends the use of criminal intelligence systems for public safety purposes, and is drafted in plainer language.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
NPRM Comment Period End	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Alan M. Fisher, Attorney—Advisor, Department of Justice, Office of Justice Programs, Room 5341, Office of the General Counsel, 810 Seventh Street NW, Washington, DC 20531–0001
Phone: 202 616–3540
Fax: 202 307–1419
Email: fisheral@ojp.usdoj.gov

RIN: 1121–AA59

2038. VICTIMS OF CRIME ACT (VOCA) PROGRAM REGULATIONS FOR THE VICTIM COMPENSATION GRANT PROGRAM AND VICTIM ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 10604, sec 1407(a), Victims of Crime Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Victims of Crime Act (VOCA) funds are obtained from the Crime Victims Fund in the U.S. Treasury, which consists of fines, fees, and bond forfeitures from Federal offenders.

The program regulations for the Victim Compensation Grant Program provide the parameters under which State agencies may use these funds to reimburse crime victims directly for expenses related to crime. Expenses that must be covered are lost wages, medical and mental health costs, and funeral and burial costs. States, at their discretion, may cover loss of support, crime scene cleanup, and other such expenses.

The Victim Assistance Program Regulations provide the parameters under which State agencies may use these funds to award grants to government and nonprofit organizations to provide direct services to crime victims. Local programs include child abuse, homicide survivor, drunk driving, sexual assault, and domestic violence. More than three million crime victims are served through these grants.Costs to States are limited, as the VOCA grant provides for administrative costs for these programs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

OJP–1350 VOCA: Program Regulations for Victim Compensation Grant Program (1121–AA66)
NPRM 06/00/04
NPRM Comment Period End 08/00/04

OJP–1405 VOCA Victim Assistance Program Regulations (1121–AA65)
NPRM 06/00/04
NPRM Comment Period End 08/00/04

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Carol Watkins, Director, Department of Justice, Office of Justice Programs, State Compensation and Assistance Division, 810 7th Street NW, Washington, DC 20531
Phone: 202 514–4696

RIN: 1121–AA61

2039. INTERNATIONAL TERRORISM VICTIM COMPENSATION PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 10603c, sec 1404c; PL 104–208, Victims of Trafficking and Violence Protection Act of 2000

CFR Citation: None

Legal Deadline: None

Abstract: The Office of Justice Programs (OJP) will develop these regulations to implement the International Terrorism Victim Compensation Program provisions contained in the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 104–208), which directs OJP to carry out a program to compensate victims of acts of international terrorism that occur outside the United States, for expenses associated with that victimization.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Barbara Johnson, Program Manager, Department of Justice, Office of Justice Programs, Terrorism and International Victims Unit, Office for Victims of Crime, 810 7th Street NW, Washington, DC 20531
Phone: 202 307–5983

RIN: 1121–AA63

Department of Justice (DOJ) Office of Justice Programs (OJP) — Final Rule Stage

2040. CORRECTIONAL FACILITIES ON TRIBAL LANDS GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13701 et seq

CFR Citation: 28 CFR 91

Legal Deadline: None

Abstract: The Office of Justice Programs is issuing this second Notice of Proposed Rulemaking to amend the title and the definitions of "Indian tribe" and "construction" within 28 CFR part 91, subpart C (which outlines the requirements and procedures to award grants to Indian tribes for constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction). Congress has mandated a new definition of "Indian tribe," and with this broader definition, Federal funds through the Office of Justice Programs are now available to a larger universe of tribal entities. The amendment to the definition of "construction" is simply to expand and clarify the existing definition to assist applicants and grantees in better understanding the allowable scope a project may take.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/24/96	61 FR 49969
Correction	10/18/96	61 FR 54333
Interim Final Rule Comment Period End	10/24/96	
Second Interim Final Rule	12/00/03	
Second Interim Final Rule Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Tribal

Agency Contact: Philip Merkle, Special Advisor to the Director, Department of Justice, Office of Justice Programs, Correction Program Office, 810 7th Street NW, Washington, DC 20531
Phone: 202 305–2550

RIN: 1121–AA41

2041. BULLETPROOF VEST PARTNERSHIP GRANT ACTS OF 1998 AND 2000

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3796ll

CFR Citation: 28 CFR 33

Legal Deadline: NPRM, Statutory, September 14, 1998, NPRM.

Abstract: The Bureau of Justice Assistance (BJA) is publishing final regulations implementing the Bulletproof Vest Partnership Grant Acts of 1998 and 2000, which authorize BJA funds to eligible States, units of local government, and Indian tribes to purchase armored vests for use by law enforcement officers. This final rule reflects the revised process by which eligible jurisdictions may register, apply, and request funding under BJA's Internet-Based Bulletproof Vest Partnership Grant Program.

On September 23, 1998, BJA published an interim final rule, with a request for comments (63 FR 50759). The interim final rule established the process by which BJA would implement the Bulletproof Vest Partnership Grant Act of 1998. BJA did not receive any comments in response to the interim final rule. Nevertheless, BJA initiated numerous outreach efforts, in the form of focus groups and beta testing, to ensure that all affected parties had ample opportunity to review and participate in the program's design and development.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/23/98	63 FR 50759
Interim Final Rule Effective	09/23/98	
Interim Final Rule Comment Period End	11/23/98	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Local, State, Tribal

Agency Contact: Robert T. Watkins, Program Manager, Department of Justice, Office of Justice Programs, 810 7th Street NW, Washington, DC 20053
Phone: 202 514–3447

RIN: 1121–AA48

2042. ENVIRONMENTAL IMPACT REVIEW PROCEDURES FOR THE VOI/TIS GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13701 et seq, as amended by PL 104–134; 42 USC 4321 et seq; 40 CFR 1500 to 1508

CFR Citation: 28 CFR 91

Legal Deadline: None

Abstract: The Office of Justice Programs is issuing this final rule to set forth the procedures that it and the States that are awarded Federal funds under the Violent Offender Incarceration/Truth-in-Sentencing Grants Program must follow in order to comply with the environmental impact review procedures mandated by the National Environmental Policy Act, the Council on Environmental Quality's implementing regulations, and other related Federal environmental impact review requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/08/00	65 FR 48592
Interim Final Rule Effective	08/08/00	
Interim Final Rule Comment Period End	10/10/00	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Philip Merkle, Special Advisor to the Director, Department of Justice, Office of Justice Programs, Correction Program Office, 810 7th Street NW, Washington, DC 20531
Phone: 202 305–2550

RIN: 1121–AA52

2043. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: PL 103–355, sec 2455; EO 12549

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department of Justice will be adopting the proposed common rule on debarment and suspension. The rule, as adopted, would limit the mandatory lower-tier application of an exclusion to the first procurement level under a nonprocurement covered transaction. Second, this proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000. Third, both this proposed rule on debarment and suspension and the proposed rule on drug-free workplace requirements would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. Fourth, the proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3344
NPRM Comment Period End	03/25/02	
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Linda Fallowfield, Attorney-Advisor, Department of Justice, Office of Justice Programs, Office of the General Counsel, 810 7th Street NW, Washington, DC 20531
Phone: 202 305–2534

RIN: 1121–AA57

[FR Doc. 03–27064 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XIII

Department of Labor

Semiannual Regulatory Agenda

DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, IV, V, VI, VII, and IX

29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Department's semiannual agenda of regulations that have been selected for review or development during the coming year. The Department#146;s agencies have carefully assessed their available resources and what they can accomplish in the next twelve months and have adjusted their agendas accordingly.

The agenda complies with the requirements of both Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists all regulations that are expected to be under review or development between November 2003 and November 2004, as well as those completed during the past six months.

FOR FURTHER INFORMATION CONTACT: Kathleen Franks, Director for the Office of Regulatory Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-2312, Washington, DC 20210, (202) 693-5959.

NOTE: Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

SUPPLEMENTARY INFORMATION: Executive Order 12866 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. As permitted by law, the Department of Labor is combining the publication of its agendas under the Regulatory Flexibility Act and Executive Order 12866.

Executive Order 12866 became effective September 30, 1993, and, in substance, requires the Department of Labor to publish an agenda listing all the regulations it expects to have under active consideration for promulgation, proposal, or review during the coming 1-year period. The focus of all departmental regulatory activity will be on the development of effective rules that advance the Department's goals and that are understandable and usable to the employers and employees in all affected workplaces.

The Regulatory Flexibility Act became effective on January 1, 1981, and applies only to regulations for which a notice of proposed rulemaking was issued on or after that date. It requires the Department of Labor to publish an agenda, listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 602).

The Regulatory Flexibility Act (under section 610) also requires agencies to periodically review rules #147;which have or will have a significant economic impact upon a substantial number of small entities#148; and to annually publish a list of the rules that will be reviewed during the succeeding 12 months. The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded.

The next 12-month review list for the Department of Labor is provided below and public comment is invited on the listing. A brief description of each rule, the legal basis for the rule, and the agency contact are provided with each agenda item. Note that the items from the Occupational Safety and Health Administration were on last year#146;s list.

Occupational Safety and Health Administration

Occupational Exposure to Ethylene Oxide (RIN 1218-AB60)

Excavations (RIN 1218-AC02)

Presence Sensing Device Initiation of Mechanical Power Presses (RIN 1218-AC03)

Employee Benefits Security Administration

Prohibited Transaction Exemption Procedures (RIN 1210-AA98)

Statutory Exemption for Loans to Plan Participants (RIN 1210-AA99)

OSHA#146;s Grain Handling Facilities regulation was completed in final last year.

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved, and, of course, to participate in and comment on the review or development of the regulations listed on the agenda.

Elaine L. Chao,

Secretary of Labor.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2044	Production or Disclosure of Information or Materials	1290—AA17

Employment Standards Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2045	Child Labor Regulations, Orders, and Statements of Interpretation	1215—AB44

Employment Standards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2046	Davis Bacon Volunteers Under the Federal Acquisition Streamlining Act	1215—AA96
2047	Amendments to the Fair Labor Standards Act	1215—AB13
2048	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors for Special Disabled Veterans and Veterans of the Vietnam Era	1215—AB24
2049	Stock Options, Stock Appreciation Rights, and Bona Fide Employee Stock Purchase Programs Under the Fair Labor Standards Act	1215—AB31
2050	Family and Medical Leave Act of 1993 **(Reg Plan Seq No. 77)**	1215—AB35
2051	Requirements for Security of Insurance Obligations Under the Longshore and Harbor Workers' Compensation Act	1215—AB38

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employment Standards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2052	Child Labor Regulations, Orders, and Statements of Interpretation (ESA/W—H) **(Reg Plan Seq No. 78)**	1215—AA09
2053	Defining and Delimiting the Term "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity" (ESA/W—H) **(Reg Plan Seq No. 79)**	1215—AA14
2054	Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H—1B Visas in Specialty Occupations and as Fashion Models	1215—AB09
2055	Government Contractors: Nondiscrimination and Affirmative Action Obligations, Executive Order 11246 (ESA/OFCCP) (Revised)	1215—AB28
2056	Obligation of Federal Contractors and Subcontractors, Notice of Employee Rights Concerning Payment of Union Dues or Fees	1215—AB33
2057	Amendments to Title 20 Parts 718 and 725 That Implement the Black Lung Benefits Act	1215—AB40

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employment Standards Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2058	Labor Organization Annual Financial Reports	1215—AB34
2059	Affirmative Action and Nondiscrimination Obligations of Government Contractors, Executive Order 11246; Exemption for Religious Entities	1215—AB39

Employment and Training Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2060	Federal—State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of Information in State UC Records	1205—AB18
2061	Trade Adjustment Assistance for Workers **(Reg Plan Seq No. 80)**	1205—AB32
2062	Post—Adjudication Audits of H—2B Petitions Other than Logging in the United States	1205—AB36

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employment and Training Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2063	Labor Certification Process for the Permanent Employment of Aliens in the United States **(Reg Plan Seq No. 81)**	1205—AA66
2064	Indian and Native American Welfare—to—Work Program	1205—AB16

Employment and Training Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2065	Senior Community Service Employment Program **(Reg Plan Seq No. 82)**	1205—AB28

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employment and Training Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2066	Attestations by Facilities Temporarily Employing H—1C Nonimmigrant Aliens as Registered Nurses	1205—AB27

Employment and Training Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2067	Unemployment Compensation—Trust Fund Integrity Rule: Birth and Adoption Unemployment Compensation; Removal of Regulations	1205—AB33

Employee Benefits Security Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2068	Prohibited Transaction Exemption Procedures **(Section 610 Review)**	1210—AA98
2069	Statutory Exemption for Loans to Plan Participants (Sec. 610 Review)	1210—AA99

Employee Benefits Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2070	Default Rollover Safe Harbor	1210—AA92
2071	Electronic Filing By Investment Advisers	1210—AA94
2072	Suspension of Benefits Regulation	1210—AA96
2073	Rulemaking Relating to Termination of Abandoned Individual Account Plans **(Reg Plan Seq No. 83)**	1210—AA97

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employee Benefits Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2074	Regulations Implementing the Health Care Access, Portability, and Renewability Provisions of the Health Insurance Portability and Accountability Act of 1996 **(Reg Plan Seq No. 84)**	1210—AA54
2075	Rulemaking Relating to Notice Requirements for Continuation of Health Care Coverage **(Reg Plan Seq No. 85)**	1210—AA60
2076	Mental Health Benefits Parity	1210—AA62
2077	Health Care Standards for Mothers and Newborns	1210—AA63
2078	Rulemaking Relating to the Women's Health and Cancer Rights Act of 1998	1210—AA75
2079	Prohibiting Discrimination Against Participants and Beneficiaries Based on Health Status **(Reg Plan Seq No. 86)**	1210—AA77

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Employee Benefits Security Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2080	Adequate Consideration	1210—AA15

Mine Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2081	Respirable Crystalline Silica Standard	1219—AB36

Mine Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2082	Improving and Eliminating Regulations	1219—AA98
2083	Asbestos Exposure Limit **(Reg Plan Seq No. 87)**	1219—AB24
2084	High—Voltage Continuous Mining Machine Standards for Underground Coal Mines	1219—AB34
2085	Training Standards for Shaft and Slope Construction Workers at Underground Mines	1219—AB35
2086	Revising Electrical Product Approval Regulations	1219—AB37

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Mine Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2087	Underground Coal Mine Ventilation—Safety Standards for the Belt Entry as an Intake Air Course	1219—AA76
2088	Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners **(Reg Plan Seq No. 88)**	1219—AB29

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Mine Safety and Health Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2089	Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust	1219—AB14
2090	Determination of Concentration of Respirable Coal Mine Dust	1219—AB18

Mine Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2091	Testing and Evaluation by Independent Laboratories and Non—MSHA Product Safety Standards	1219—AA87
2092	Focused Inspections	1219—AB30
2093	Emergency Evacuation; Emergency Temporary Standard	1219—AB33

Office of the Assistant Secretary for Administration and Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2094	Implementation of the Nondiscrimination and Equal Opportunity Requirements of the Workforce Investment Act of 1998	1291—AA29

Office of the Assistant Secretary for Administration and Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2095	Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance From the Department of Labor	1291—AA21
2096	Department of Labor Acquisition Regulations	1291—AA34

Office of the Assistant Secretary for Administration and Management—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2097	Grants and Agreements	1291—AA30

Office of the Assistant Secretary for Administration and Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
2098	Effectuation of Title VI of the Civil Rights Act of 1964 and Implementation of Section 504 of the Rehabilitation Act of 1973	1291—AA31
2099	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug—Free Workplace (Grants) 29 CFR 98	1291—AA33

Occupational Safety and Health Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2100	Occupational Exposure to Hexavalent Chromium (Preventing Occupational Illness: Chromium) **(Reg Plan Seq No. 89)**	1218—AB45
2101	Confined Spaces in Construction (Part 1926): Preventing Suffocation/Explosions in Confined Spaces	1218—AB47
2102	Occupational Exposure to Ethylene Oxide **(Section 610 Review)**	1218—AB60
2103	Occupational Exposure to Crystalline Silica **(Reg Plan Seq No. 90)**	1218—AB70
2104	Occupational Exposure to Beryllium	1218—AB76
2105	Excavations **(Section 610 Review)**	1218—AC02
2106	Presence Sensing Device Initiation of Mechanical Power Presses **(Section 610 Review)**	1218—AC03
2107	Ionizing Radiation	1218—AC11

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Occupational Safety and Health Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2108	Longshoring and Marine Terminals (Parts 1917 and 1918) — Reopening of the Record (Vertical Tandem Lifts (VTLs))	1218—AA56
2109	General Working Conditions for Shipyard Employment	1218—AB50
2110	Electric Power Transmission and Distribution; Electrical Protective Equipment	1218—AB67

Occupational Safety and Health Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2111	Walking Working Surfaces and Personal Fall Protection Systems (1910) (Slips, Trips, and Fall Prevention)	1218—AB80
2112	Hearing Conservation Program for Construction Workers	1218—AB89
2113	Revision and Update of Subpart S—Electrical Standards	1218—AB95
2114	Updating OSHA Standards Based on National Consensus Standards	1218—AC08
2115	Explosives	1218—AC09

Occupational Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2116	Assigned Protection Factors: Amendments to the Final Rule on Respiratory Protection **(Reg Plan Seq No. 91)**	1218—AA05
2117	Glycol Ethers: 2—Methoxyethanol, 2—Ethoxyethanol, and Their Acetates: Protecting Reproductive Health	1218—AA84
2118	Occupational Exposure to Tuberculosis	1218—AB46
2119	Fire Protection in Shipyard Employment (Part 1915, Subpart P) (Shipyards: Fire Safety) **(Reg Plan Seq No. 92)**	1218—AB51
2120	Standards Improvement (Miscellaneous Changes) for General Industry, Marine Terminals, and Construction Standards (Phase II) **(Reg Plan Seq No. 93)**	1218—AB81
2121	Commercial Diving Operations: Revision	1218—AB97
2122	Controlled Negative Pressure Fit Testing Protocol: Amendment to the Final Rule on Respiratory Protection	1218—AC05
2123	Procedures for Handling Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002	1218—AC10
2124	Procedures for Handling Discrimination Complaints Under Section 6 of the Pipeline Safety Improvement Act of 2002	1218—AC12

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Occupational Safety and Health Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2125	Employer Payment for Personal Protective Equipment	1218—AB77
2126	Cranes and Derricks	1218—AC01

Occupational Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2127	Occupational Injury and Illness Recording and Reporting Requirements	1218—AC06

Office of the Assistant Secretary for Veterans' Employment & Training—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2128	Uniformed Services Employment and Reemployment Rights Act Regulations **(Reg Plan Seq No. 94)**	1293—AA09
2129	Jobs for Veterans Act of 2002: State Grant Funding Formula FY 2005	1293—AA11
2130	Jobs for Veterans Act of 2002: Contract Threshold and Eligibility Groups for Federal Contractor Program	1293—AA12

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of the Assistant Secretary for Veterans' Employment & Training—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2131	Jobs for Veterans Act of 2002: Uniform National Threshold	1293—AA13

Office of the Assistant Secretary for Veterans' Employment & Training—Completed Actions

Sequence Number	Title	Regulation Identification Number
2132	Jobs for Veterans Act of 2002	1293—AA10

Department of Labor (DOL)

Office of the Secretary (OS)

Proposed Rule Stage

2044. PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 552 as amended; 5 USC Reorganization Plan No. 6 of 1950; EO 12600, 52 FR 23781 (June 25, 1987)

CFR Citation: 29 CFR 70

Legal Deadline: None

Abstract: The regulation will incorporate the provisions of the 1996 FOIA amendments. These include extending DOL processing time from 10 to 20 days for most FOIA requests and requiring that all reading room materials created since November 1, 1996, be made available by electronic means such as the Internet.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Miriam McD. Miller, of Legislation and Legislative Counsel, Department of Labor, Office of the Secretary, Room N2428, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693—5500
Email: miller—miriam@dol.gov

RIN: 1290–AA17

Department of Labor (DOL)

Employment Standards Administration (ESA)

Prerule Stage

2045. • CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 203(1)

CFR Citation: 29 CFR 570

Legal Deadline: None

Abstract: The Department of Labor is considering further possible revisions to the hazardous occupation orders that may be undertaken to address recommendations of the National Institute for Occupational Safety and Health in its May 2002 report to the Department on child labor regulations. (See the related Plan entry for RIN: 1215—AA09.)

Timetable:

Action	Date	FR Cite
ANPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State

Federalism: Undetermined

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building Room S3502, Washington, DC 20210
Phone: 202 693—0051
Fax: 202 693—1303

RIN: 1215–AB44

2046. DAVIS BACON VOLUNTEERS UNDER THE FEDERAL ACQUISITION STREAMLINING ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 103—355, 108 Stat. 3243

CFR Citation: 29 CFR 4; 29 CFR 5; 41 CFR 50—201; 41 CFR 50—206

Legal Deadline: NPRM, Statutory, May 11, 1995, NPRM.
Final, Statutory, October 1, 1995, Final.

Abstract: The Federal Acquisition Streamlining Act of 1994, signed on October 13, 1994, amended several acts administered by the Department of Labor: (1) the Contract Work Hours and Safety Standards Act (CWHSSA) to limit its applicability to contracts in an amount of $100,000 or greater; (2) the Davis—Bacon Act (DB) to provide waivers from the Act's prevailing wage requirements under selected laws for volunteers performing services to a State or local government or agency and for volunteers performing services to a public or private nonprofit recipient of Federal assistance; and (3) the Walsh—Healey Public Contracts Act (PCA) to eliminate the requirements that contractors on covered contracts be either manufacturers or regular dealers in the items to be supplied under the contract but retains the Secretary of Labor's authority to define the terms "regular dealer" and "manufacturer." A final rule implementing the CWHSSA and PCA changes was published on August 5, 1996 (61 FR 40714).

Timetable:

Action	Date	FR Cite
NPRM	09/07/95	60 FR 46553
NPRM Comment Period End	10/10/95	
Final Rule	08/05/96	61 FR 40714
Second NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building Room S3502, Washington, DC 20210
Phone: 202 693—0051
Fax: 202 693—1303

RIN: 1215–AA96

2047. AMENDMENTS TO THE FAIR LABOR STANDARDS ACT

Priority: Other Significant

Legal Authority: 29 USC 201 et seq; PL 104—188, sec 2101 to 2105

CFR Citation: 29 CFR 4; 29 CFR 531; 29 CFR 541; 29 CFR 778; 29 CFR 785; 29 CFR 790; 29 CFR 870; 41 CFR 50—202

Legal Deadline: None

Abstract: The Small Business Job Protection Act of 1996 (H.R. 3448) was enacted on August 20, 1996, as Public Law 104—188. Title II of this enactment amended the Portal—to—Portal Act (PA) and the Fair Labor Standards Act (FLSA). The PA amendment excludes (under certain circumstances) from compensable "hours worked" the time spent by an employee in home—to—work travel in an employer—provided vehicle. The FLSA amendments: (1) increase the $4.25 Federal minimum hourly wage by $.90 in two steps over two years (i.e., to $4.75 on October 1, 1996, and to $5.15 on September 1, 1997); (2) provide a $4.25 subminimum wage for youth under age 20 in their first 90 calendar days of employment with an employer; (3) set the employer's direct wage payment obligation for tipped employees at $2.13 per hour (provided such employees receive the balance of the full minimum wage in tips); and (4) set the hourly compensation requirements at no less than $27.63 per hour for certain exempt professional employees in computer—related occupations. Changes will be required in the regulations to reflect these amendments.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building Room S3502, Washington, DC 20210
Phone: 202 693—0051
Fax: 202 693—1303

RIN: 1215–AB13

2048. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Priority: Other Significant

Legal Authority: 38 USC 4211; 38 USC 4212; PL 101—237; PL 102—127; PL 102—16; PL 102—484; PL 105—339; PL 93—508, amended; PL 94—502; PL 95—520; PL 96—466; PL 97—306; PL 98—223

CFR Citation: 41 CFR 60—250

Legal Deadline: None

Abstract: OFCCP proposes to amend the regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) 38 USC 4212, to conform with the Jobs for Veterans Act of 2002 (JFVA). JFVA amended VEVRAA in four ways. First, JFVA raised contract coverage from $25,000 to $100,000. Second, JFVA granted VEVRAA protection to a new group of veterans—those who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985. Third, JFVA changed the definition of "recently separated veteran" to include "any veteran during the three—year period beginning on the date of such veteran's discharge or release from active duty." Fourth, JFVA changed "Special Disabled Veterans" to "Disabled Veterans," expanding the coverage to conform to 38 U.S.C. section 4211 (3). JFVA also superseded changes to VEVRAA from the Veterans Employment Opportunities Act of 1998 (VEOA) and the Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA). This proposal revises these regulations to conform to the requirements of JFVA.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: James I. Melvin, Program Development, OFCCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room N—3422, FP Building, Washington, DC 20210

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RIN: 1215–AB24

2049. STOCK OPTIONS, STOCK APPRECIATION RIGHTS, AND BONA FIDE EMPLOYEE STOCK PURCHASE PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT

Priority: Other Significant

Legal Authority: 29 USC 207(e)(8); PL 106—202, sec 2(e)

CFR Citation: 29 CFR 546; 29 CFR 778

Legal Deadline: None

Abstract: The Worker Economic Opportunity Act, Public Law 106—202 (May 18, 2000), amended section 7(e) of the Fair Labor Standards Act to clarify how certain employer—provided stock option programs are to be treated for purposes of overtime pay. Certain programs meeting prescribed criteria would not have to be factored into the "regular rate" otherwise required when calculating "time—and—one—half" overtime premium pay for overtime hours of work. The legislation calls for regulations to be promulgated as necessary, which will include amendments to some of the existing regulations on overtime pay.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building Room S3502, Washington, DC 20210
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Fax: 202 693—1303

RIN: 1215–AB31

2050. FAMILY AND MEDICAL LEAVE ACT OF 1993

Regulatory Plan: This entry is Seq. No. 77 in part II of this issue of the **Federal Register**.

RIN: 1215–AB35

2051. REQUIREMENTS FOR SECURITY OF INSURANCE OBLIGATIONS UNDER THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 939(a)

CFR Citation: 20 CFR 701 (Revision); 20 CFR 703

Legal Deadline: None

Abstract: The Longshore and Harbor Workers' Compensation Act (LHWCA) makes a covered employer liable for compensation to employees injured in the course of their work. An employer may satisfy this liability by contracting with a private insurance carrier. By statute, an insurance carrier must obtain authorization from the Secretary of Labor to insure compensation, and the Secretary may revoke authorization for good cause. This proposed regulation would require, as a condition to authorization to write LHWCA insurance, an insurance carrier in certain circumstances to establish that its potential LHWCA obligations are sufficiently secured. Obligations would be considered sufficiently secured if funds would be available to cover all workers' compensation claims in the event of adverse market conditions and the carrier's insolvency. A carrier could fully secure its obligations by posting security deposits with the Secretary. Carriers would not, however, be required to make this showing in states which have a guaranty fund that fully and immediately covers LHWCA claims in the event of a carrier's insolvency.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, OWCP, Department of Labor, Employment Standards Administration, Room C4315, 200 Constitution Ave., NW, Room C—4315, FP Building, Washington, DC 20210
Phone: 202 693—0038
Fax: 202 693—1380

RIN: 1215–AB38

Department of Labor (DOL)
Employment Standards Administration (ESA)

Final Rule Stage

2052. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESA/W—H)

Regulatory Plan: This entry is Seq. No. 78 in part II of this issue of the **Federal Register**.

RIN: 1215–AA09

2053. DEFINING AND DELIMITING THE TERM "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY" (ESA/W—H)

Regulatory Plan: This entry is Seq. No. 79 in part II of this issue of the **Federal Register**.

RIN: 1215–AA14

2054. LABOR CONDITION APPLICATIONS AND REQUIREMENTS FOR EMPLOYERS USING NONIMMIGRANTS ON H—1B VISAS IN SPECIALTY OCCUPATIONS AND AS FASHION MODELS

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1101(a)(15)(H)(i)(b); 8 USC 1182(n); 8 USC 1184; PL 102—232; PL 105—277

CFR Citation: 20 CFR 655, subparts H and I

Legal Deadline: None

Abstract: The H—1B visa program of the Immigration and Nationality Act allows employers to temporarily employ nonimmigrants admitted into the United States under the H—1B visa category in specialty occupations and as fashion models, under specified labor conditions. An employer must file a labor condition application with the Department of Labor before the Immigration and Naturalization Service may approve a petition to employ a foreign worker on an H—1B visa. The Department's Employment and Training Administration administers the labor condition application process; the Wage and Hour Division of the Department's Employment Standards Administration handles complaints and investigations regarding labor condition applications. The Department published a proposed rule on January 5, 1999, in response to statutory changes in the H—1B program made by the American Competitiveness and Workforce Improvement Act of 1998 (title IV, Pub. L. 105—277; Oct. 21, 1998). Those changes placed additional obligations on "H—1B—dependent" employers (generally, those with work forces comprised of more than 15 percent H—1B workers) and on willful violators. These employers must recruit for U.S. workers, hire U.S. workers who are at least as qualified as H—1B workers, and not displace U.S. workers by hiring H—1B workers or placing them at another employer's job site. The 1998 amendments also imposed additional obligations on all H—1B employers, such as offering benefits to H—1B workers on the same basis and according to the same criteria as offered to U.S. workers, and payment to H—1B workers during periods they are not working for an employment—related reason. The 1999 proposed rule also requested further public comment on earlier proposed provisions published in October 1995, and on particular interpretations of the statute and of the existing regulations which the Department proposed to incorporate into the regulations. Since publishing the proposed rule, Congress enacted further amendments to the H—1B provisions under the American Competitiveness in the Twenty—First Century Act of 2000 (Pub. L. 106—313; Oct. 17, 2000), the Immigration and Nationality Act — Amendments (Pub. L. 106—311; Oct. 17, 2000), and section 401 of the Visa Waiver Permanent Program Act (Pub. L. 106—396; Oct. 30, 2000).

Timetable:

Action	Date	FR Cite
NPRM	10/31/95	60 FR 55339
NPRM Comment Period End	11/30/95	
NPRM	01/05/99	64 FR 628
NPRM Comment Period End	02/04/99	
Interim Final Rule	12/20/00	65 FR 80110
Interim Final Rule Effective	01/19/01	
Interim Final Rule Comment Period End	04/23/01	66 FR 10865
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: On December 20, 2000, the Department published an interim final rule to implement the recent amendments and clarify the existing rules, and requested further public comment on those provisions.

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building Room S3502, Washington, DC 20210
Phone: 202 693—0051
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RIN: 1215–AB09

2055. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS, EXECUTIVE ORDER 11246 (ESA/OFCCP) (REVISED)

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 793; EO 11758; EO 11246, as amended; 38 USC 4211; PL 94—502; EO 11758; PL 98—223; PL 102—16; PL 102—127; PL 95—520; PL 105—339; 29 USC 706; PL 97—306; PL 102—484; 38 USC 4212; PL 93—508, amended; PL 96—466; PL 101—237

CFR Citation: 41 CFR 60—1 (Revision); 41 CFR 60—250 (Revision); 41 CFR 60—741 (Revision)

Legal Deadline: None

Abstract: The final rule would remove the obligation to visit an establishment during a compliance check, which is currently required by section 60—1.20(a)(3) in order to enhance efficiency in resource allocation. OFCCP proposes also to make the same revision in section 60—250.60(a)(3) of the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). Lastly, OFCCP proposes to conform regulations implementing section 503 of the Rehabilitation Act of 1973, as amended, to the compliance evaluation procedures contained in the regulations implementing Executive Order 11246, as amended, and the affirmative action provisions of VEVRAA, both of which expressly authorize OFCCP to use additional investigative procedures to determine a contractor's compliance with the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/12/00	65 FR 60815
NPRM Comment Period End	12/11/00	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: James I. Melvin, Program Development, OFCCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room N—3422, FP Building, Washington, DC 20210
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RIN: 1215–AB28

2056. OBLIGATION OF FEDERAL CONTRACTORS AND SUBCONTRACTORS, NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

Priority: Other Significant

Legal Authority: EO 13201

CFR Citation: 29 CFR 470

Legal Deadline: None

Abstract: On January 2, 2002, the Federal District Court for the District of Columbia issued a decision in UAW—Labor Employment & Training Corp v. Chao, holding the Executive Order 13201 is invalid because it conflicts with the National Labor Relations Act. The court permanently enjoined the Department of Labor from implementing and enforcing Executive Order 13201. The decision was appealed. On April 22, 2003, the U.S. Court of Appeals for the District of Columbia reversed the January 2, 2002, decision of the Federal District Court for the District of Columbia in UAW—Labor Employment and Training Corp. v. Chao, and directed the lower court to grant summary judgment in favor of the Secretary of Labor.

This regulation would implement E.O. 13201 which requires Government contractors and subcontractors to post notices informing their employees that (1) under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs, and (2) employees who choose not to be union members may object to the use of their compulsory union dues and fees for activities other than collective bargaining, contract administration, and grievance adjustment, and may be entitled to a refund and an appropriate reduction in their future payments. The proposed regulation, in accordance with E.O. 13201, would also require that, where applicable, each Government contracting agency include certain provisions of the Order in its Government contracts, and that Government contractors and subcontractors include these provisions in their nonexempt subcontracts and purchase orders.

Timetable:

Action	Date	FR Cite
Interim Procedural Rule	04/18/01	66 FR 19988
NPRM	10/01/01	66 FR 50010
NPRM Comment Period End	11/30/01	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Don Todd, Programs, Department of Labor, Employment Standards Administration, Room N5605, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693—0122
TDD Phone: 800 877—8339
Fax: 202 693—1340
Email: olms—mail@dol—esa.gov

RIN: 1215–AB33

2057. AMENDMENTS TO TITLE 20 PARTS 718 AND 725 THAT IMPLEMENT THE BLACK LUNG BENEFITS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; Reorganization Plan No. 6 of 1950; 15 FR 3174; 30 USC 901, et seq, 902(f), 934, 936, 945; 33 USC 901 et seq; 42 USC 405; Secretary's Order 7—87; 52 FR 48466; Employment Standards Order No. 90—02; . . .

CFR Citation: 20 CFR 718.2; 20 CFR 725.2; 20 CFR 725.459

Legal Deadline: None

Abstract: The amendments implement National Mining Ass'n v. Department of Labor, 292 F.3d 849 (D.C. Cir. 2002) which invalidated a portion of 20 CFR 725.459 and required several other provisions which became effective in January 2001 to be prospective only in their application.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Department of Labor, Employment Standards Administration, Room C3520, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693—0046
Fax: 202 693—1398
Email: nojld@dol—esa.gov

RIN: 1215–AB40

Department of Labor (DOL)
Employment Standards Administration (ESA)

Completed Actions

2058. LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

Priority: Other Significant

Legal Authority: 29 USC 431; 29 USC 438; 5 USC 7120(d); 22 USC 4117(d)

CFR Citation: 29 CFR 402; 29 CFR 403; 29 CFR 458

Legal Deadline: None

Abstract: This regulation will revise Form LM—2, which will be used by labor organizations with $250,000 or more in annual receipts to file the annual financial reports required under title II of the Labor—Management Reporting and Disclosure Act of 1959 (LMRDA). The proposed revisions will improve the transparency and accountability of labor organizations to their members, increase the information available to labor organization members, and make data disclosed in such reports more understandable and accessible. Among other things, unions filing the revised Form LM—2 will be required to report electronically (unless granted an exemption), to identify certain "major" receipts and disbursements, to allocate disbursements among categories such as representational activities, political activities and lobbying, and union administration, and to report receipts and disbursements of organizations that meet the statutory definition of a "trust in which a labor organization is interested" on a new Form T—1.

Timetable:

Action	Date	FR Cite
NPRM	12/27/02	67 FR 79280
NPRM Comment Period End	03/27/03	
Final Rule	10/09/03	68 FR 58374
Final Rule Effective	01/01/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Don Todd, Programs, Department of Labor, Employment Standards Administration, Room N5605, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693—0122
TDD Phone: 800 877—8339
Fax: 202 693—1340
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RIN: 1215–AB34

DOL—ESA

Completed Actions

2059. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF GOVERNMENT CONTRACTORS, EXECUTIVE ORDER 11246; EXEMPTION FOR RELIGIOUS ENTITIES

Priority: Substantive, Nonsignificant

Legal Authority: EO 13279; EO 11246, as amended

CFR Citation: 41 CFR 60—1.5

Legal Deadline: None

Abstract: On December 12, 2002, President Bush issued Executive Order 13279 regarding faith—based and community organizations that, in part, amends Executive Order 11246. Section 4 of Executive Order 13279 amends section 204 of Executive Order 11246 by adding an exemption for religious entities. The final rule would make religious entities exempt from allegations of discrimination based on religion. OFCCP regulations at 41 CFR 60—1.5 will be amended to add the new religious entity exemption. The new exemption is limited to religious discrimination by religious entities. Religious entities will continue to be precluded from basing employment decisions on race, color, sex, or national origin.

Timetable:

Action	Date	FR Cite
Final Rule	09/30/03	68 FR 56392
Final Rule Effective	10/30/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James I. Melvin, Program Development, OFCCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., Room N—3422, FP Building, Washington, DC 20210
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RIN: 1215–AB39

Department of Labor (DOL)
Employment and Training Administration (ETA)

Proposed Rule Stage

2060. FEDERAL—STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF INFORMATION IN STATE UC RECORDS

Priority: Other Significant

Legal Authority: 26 USC ch 23; 42 USC 1302 (a); 42 USC 1320b—7; 42 USC 503; Secretary's Orders 4—75 and 14—75

CFR Citation: 20 CFR 603

Legal Deadline: None

Abstract: The Employment and Training Administration of the Department of Labor is preparing to issue a notice of proposed rulemaking (NPRM) on confidentiality and disclosure of State UC information. The NPRM would modify and expand the regulations implementing the Income and Eligibility Verification System (IEVS) to include statutory requirements in title III of the Social Security Act and the Federal Unemployment Tax Act concerning confidentiality and disclosure of State UC information. The use of UC wage records and other information under these and other statutes has increased in recent years while privacy and confidentiality issues have not yet been fully addressed.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Formerly RIN 1205—AA74; was taken off regulatory agenda in 1994 due to inactivity. An earlier NPRM was published on 3/23/92 at 57 FR 10063 with comment period ending 5/22/92.

Agency Contact: Gerard Hildebrand, Chief, Division of Legislation, Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Room C—4518, Washington, DC 20210
Phone: 202 693—3038
Email: hildebrand.gerard@dol.gov

RIN: 1205–AB18

2061. TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

Regulatory Plan: This entry is Seq. No. 80 in part II of this issue of the **Federal Register**.

RIN: 1205–AB32

2062. • POST—ADJUDICATION AUDITS OF H—2B PETITIONS OTHER THAN LOGGING IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1101(a)(15)(H)(ii)(b); 8 USC 1184; 29 USC 49 et seq

CFR Citation: 8 CFR 214.2(h)(5); 20 CFR 655.1 to 655.4

Legal Deadline: None

Abstract: Under the redesigned H—2B temporary nonagricultural program employers seeking to import H—2B workers, except for applications filed for employment on Guam or in logging, will file directly with the Department of Homeland Security (DHS). The employer will be required to conduct recruitment before filing its petition. The petition will include a number of attestations concerning labor market and related issues. DHS will administer the petition adjudication process. After adjudication, the Department of Labor (DOL) will audit selected approved petitions. In such audits, DOL will exclusively examine whether the employer has complied with those aspects of the approved petition related to the labor market and other related attestations. Employers will be expected to have documentation available supporting their attestations as specified in the regulation and will be required to provide this supporting documentation to DOL within 30 days from notice of audit. If, after completion of the audit, DOL determines that the employer has failed to comply with the terms of the attestations contained in the DHS petition or made material misrepresentations in its attestation, DOL will, after notice to the employer and opportunity for a hearing, recommend to DHS that the employer be debarred, for a period up to three years.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: William Carlson, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318 FP Building, Washington, DC 20210
Phone: 202 693—3989
Fax: 202 693—2760
Email: carlson.william@dol.gov

RIN: 1205–AB36

Department of Labor (DOL)
Employment and Training Administration (ETA)
Final Rule Stage

2063. LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Regulatory Plan: This entry is Seq. No. 81 in part II of this issue of the **Federal Register**.

RIN: 1205–AA66

2064. INDIAN AND NATIVE AMERICAN WELFARE—TO—WORK PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 612(a)(3)(c)(iii); PL 106—113, Division B, section 1000(a)(4)

CFR Citation: 20 CFR 646

Legal Deadline: Final, Statutory, November 4, 1997, Final.
Other, Statutory, January 1, 2000, Other.

Abstract: These are program regulations needed to implement the Indian and Native American set—aside under the Welfare—to—Work program authorized by section 412(a)(3) of the Social Security Act. New interim final regulations are being issued to implement changes made by the Welfare—to—Work and Child Support Amendments of 1999 and other legislation. The Consolidated Appropriations Act of 2001 authorized the Department to extend welfare—to—work grants an additional two years. Therefore, the grants may operate until September 2004.

The Department received 14 comments on the March 1, 1998 interim final rule, and none would substantively change the regulations. The Department will provide guidance in response to those comments. The March 1, 1998 interim final rule will be adopted as the final rule, subject to the changes made by the new interim final rule implementing the 1999 amendments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/01/98	63 FR 15985
Interim Final Rule Effective	04/01/98	
Interim Final Rule Comment Period End	06/01/98	
To Be Withdrawn	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Additional Information: Congress has changed eligibility criteria. A final rule will be published to conform with the State programs.

Agency Contact: Gregory Gross, Department of Labor, Employment and Training Administration, Room N4641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693—3752
Email: gross.gregory@dol.gov

RIN: 1205–AB16

2065. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Regulatory Plan: This entry is Seq. No. 82 in part II of this issue of the **Federal Register**.

RIN: 1205–AB28

Department of Labor (DOL)
Employment and Training Administration (ETA)
Long-Term Actions

2066. ATTESTATIONS BY FACILITIES TEMPORARILY EMPLOYING H—1C NONIMMIGRANT ALIENS AS REGISTERED NURSES

Priority: Other Significant

Legal Authority: 29 USC 49 et seq; 8 USC 1101(a)(15)(H)(i)(c); 8 USC 1182(m); 8 USC 1184; PL 106—95, 113 Stat. 1312

CFR Citation: 20 CFR 655, subparts L and M

Legal Deadline: Final, Statutory, February 11, 2000, Final.

Abstract: The Nursing Relief for Disadvantaged Areas Act of 1999 (P.L. 106—95; November 12, 1999) amended the Immigration and Nationality Act to create a new temporary visa program for nonimmigrant aliens to work as registered nurses for up to three years in facilities serving health professional shortage areas, subject to certain conditions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/22/00	65 FR 51137
Interim Final Rule Comment Period End	09/21/00	
Interim Final Rule Effective	09/21/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Michael Ginley, Wage and Hour Division, Department of Labor, Employment Standards Administration, Room S3510, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693—0745

RIN: 1205–AB27

Department of Labor (DOL)

Employment and Training Administration (ETA)

Completed Actions

2067. UNEMPLOYMENT COMPENSATION—TRUST FUND INTEGRITY RULE: BIRTH AND ADOPTION UNEMPLOYMENT COMPENSATION; REMOVAL OF REGULATIONS

Priority: Other Significant

Legal Authority: 42 USC 503(a)(2) and 503(a)(5); 42 USC 1302(a); 26 USC 3304(a)(1) and 3304(a)(4); 26 USC 3306

CFR Citation: 20 CFR 604

Legal Deadline: None

Abstract: The Department of Labor is proposing to remove the Birth and Adoption Unemployment Compensation regulations. Those regulations permit states to provide, in the form of UC, partial wage replacement to employees who take approved leave or otherwise leave their employment following the birth or placement for adoption of a child.

Timetable:

Action	Date	FR Cite
NPRM	12/04/02	67 FR 72122
NPRM Comment Period End	02/03/03	
Final Rule	10/09/03	68 FR 58540
Final Rule Effective	11/10/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: No

Agency Contact: Gerard Hildebrand, Chief, Division of Legislation, Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW., Room C—4518, Washington, DC 20210
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RIN: 1205–AB33

Department of Labor (DOL)

Employee Benefits Security Administration (EBSA)

Prerule Stage

2068. • PROHIBITED TRANSACTION EXEMPTION PROCEDURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1108 (a); Reorganization Plan No. 4 or 1978; Secretary of Labor's Order 1—2003

CFR Citation: 29 CFR 2570.30 to 2570.52

Legal Deadline: None

Abstract: EBSA is conducting a review of the prohibited transaction exemption procedures regulation in accordance with the requirements of Section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rules; the nature of complaints or comments received from the public concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate or conflict with other Federal rules and, to the extent feasible, with State and local rules; and the extent to which technology, economic conditions, or other factors have changed in industries affected by the rules. To facilitate the review, EBSA is preparing a Request for Information, which will invite interested persons to submit written comments on these and related matters.

Timetable:

Action	Date	FR Cite
Begin Review	12/00/03	
RFI	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Karen E. Lloyd, Supervisory Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N5649, Washington, DC 20210
Phone: 202 693—8554

RIN: 1210–AA98

2069. • STATUTORY EXEMPTION FOR LOANS TO PLAN PARTICIPANTS (SEC. 610 REVIEW)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1108 (b)(1)

CFR Citation: 29 CFR 2550.408 b—1

Legal Deadline: None

Abstract: EBSA is conducting a review of the participant loan rules under section 408(b)(1) of ERISA in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rules; the nature of complaints or comments received from the public concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate, or conflict with other Federal rules, and to the extent feasible, with State and local rules; and the extent to which technology, economic conditions, or other factors have changed in industries affected by the rules.

Timetable:

Action	Date	FR Cite
Begin Review	12/00/03	
End Review	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

DOL—EBSA **Prerule Stage**

Agency Contact: Rudy F. Nuissl, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Rm N5669, FP Building, Washington, DC 20210
Phone: 202 693—8500

RIN: 1210–AA99

Department of Labor (DOL)
Employee Benefits Security Administration (EBSA)

Proposed Rule Stage

2070. DEFAULT ROLLOVER SAFE HARBOR

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1104(c); 29 USC 1105; PL 107—16, sec 657

CFR Citation: 29 CFR 2550

Legal Deadline: Final, Statutory, June 7, 2004, Final.

Abstract: This regulation would provide safe harbors under which the designation of an institution and investment of funds is deemed to satisfy the fiduciary requirements of sec. 404(a) of ERISA. The Department has issued a request for information in order to obtain additional information from the public to assist it in developing the required safe harbors.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	01/07/03	68 FR 992
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Louis J. Campagna, Supervisory Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5669, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
Phone: 202 693—8500

RIN: 1210–AA92

2071. ELECTRONIC FILING BY INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1002 note; 29 USC 1002(38); 29 USC 1135

CFR Citation: 29 CFR 2510.3—38

Legal Deadline: None

Abstract: Upon adoption, this proposed regulation will clarify that an electronic filing with the Investment Advisers Registration Depository (IARD), a centralized electronic filing system established by the Securities and Exchange Commission in conjunction with the NASD and State securities authorities, will satisfy the filing requirement for investment advisers seeking investment manager status under section 3(38) of ERISA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Florence Novellino—Ott, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693—8500

RIN: 1210–AA94

2072. SUSPENSION OF BENEFITS REGULATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1053(a)(3)(B); 29 USC 1135(a)(3)(B)

CFR Citation: 29 CFR 2530.203—3

Legal Deadline: None

Abstract: This regulation would amend the requirements of 29 CFR 2530.203—3(b)(4) relating to notification of suspension of benefit payments.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Susan G. Lahne, Senior Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5669, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693—8500

RIN: 1210–AA96

2073. • RULEMAKING RELATING TO TERMINATION OF ABANDONED INDIVIDUAL ACCOUNT PLANS

Regulatory Plan: This entry is Seq. No. 83 in part II of this issue of the **Federal Register**.

RIN: 1210–AA97

2074. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Regulatory Plan: This entry is Seq. No. 84 in part II of this issue of the **Federal Register**.

RIN: 1210–AA54

2075. RULEMAKING RELATING TO NOTICE REQUIREMENTS FOR CONTINUATION OF HEALTH CARE COVERAGE

Regulatory Plan: This entry is Seq. No. 85 in part II of this issue of the **Federal Register**.

RIN: 1210–AA60

2076. MENTAL HEALTH BENEFITS PARITY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1182; 29 USC 1194; PL 104—204, 110 Stat. 2944; PL 107—313; 29 USC 1027; 29 USC 1059; 29 USC 1181; 29 USC 1183; 29 USC 1185

CFR Citation: 29 CFR 2590

Legal Deadline: None

Abstract: The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104—204). MHPA amended the Public Health Service Act (PHS Act) and the Employee Retirement Income Security Act of 1974 (ERISA), as amended, to provide for parity in the application of certain mental health benefits with limits on medical surgical benefits. These changes were subsequently added to the Internal Revenue Code (the Code). MHPA provisions are set forth in chapter 100 of subtitle K of the Code, title XXVII of the PHS Act, and part 7 of subtitle B of title I of ERISA. On December 2, 2002, President Bush signed H.R. 5716 (Pub. L. 107—313), the Mental Health Parity Reauthorization Act of 2002. This legislation amended ERISA and the PHS Act to further extend MHPA's original sunset date to December 31, 2003 (the Code provisions already contained a sunset date of December 31, 2003). As a result of this statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor has amended the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the current statutory sunset date of December 31, 2003.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/97	62 FR 66932
Interim Final Rule Amendment Effective	09/30/01	
Interim Final Rule Amendment	09/27/02	67 FR 60859
Interim Final Rule Amendment Effective	12/02/02	68 FR 18048
Interim Final Rule Amendment	04/14/03	68 FR 18048
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark Connor, Supervisory Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room C5331, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693—8335

RIN: 1210–AA62

2077. HEALTH CARE STANDARDS FOR MOTHERS AND NEWBORNS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1185; 29 USC 1191 to 1191c

CFR Citation: 29 CFR 2590.711

Legal Deadline: None

Abstract: The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) was enacted on September 26, 1996 (PL 104—204). NMHPA amended the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act of 1974, as amended, (ERISA) to provide protection for mothers and their newborn children with regard to the length of hospital stays following the birth of a child. NMHPA provisions are set forth in title XXVII of the PHSA and part 7 of subtitle B of title I of ERISA. This rulemaking will provide further guidance with regard to the provisions of the NMHPA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/27/98	63 FR 57546
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Turner, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, Room N5677, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693—8335

RIN: 1210–AA63

2078. RULEMAKING RELATING TO THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 1135; 29 USC 1185; 29 USC 1191c

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted on October 21, 1998 (P.L. 105—277). WHCRA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide protection for patients who elect breast reconstruction in connection with a mastectomy. The WHCRA provisions are set forth in part 7 of subtitle B of title I of ERISA and in title XXVII of the PHS Act. These interim rules will provide guidance with respect to the WHCRA provisions.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	05/28/99	64 FR 29186
Request for Information Comment Period End	06/28/99	
Interim Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elena Lynett, Pension Law Specialist, Department of Labor, Employee Benefits Security

Administration, Room C5331, 200 Constitution Avenue NW, FP Building, C5331, Washington, DC 20210
Phone: 202 693—8335

RIN: 1210–AA75

2079. PROHIBITING DISCRIMINATION AGAINST PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS

Regulatory Plan: This entry is Seq. No. 86 in part II of this issue of the **Federal Register**.

RIN: 1210–AA77

Department of Labor (DOL)
Employee Benefits Security Administration (EBSA)

Long-Term Actions

2080. ADEQUATE CONSIDERATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1002(18); 29 USC 1135

CFR Citation: 29 CFR 2510

Legal Deadline: None

Abstract: The regulation would set forth standards for determining "adequate consideration" under section 3(18) of ERISA for assets other than securities for which there is a generally recognized market.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17632
NPRM Comment Period End	07/17/88	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Morton Klevan, Department of Labor, Employee Benefits Security Administration, N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693—8500

RIN: 1210–AA15

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Prerule Stage

2081. • RESPIRABLE CRYSTALLINE SILICA STANDARD

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 811; 30 USC 813

CFR Citation: 30 CFR 70; 30 CFR 71; 30 CFR 90; 30 CFR 72; 30 CFR 58; ...

Legal Deadline: None

Abstract: Current standards limit exposures to quartz (crystalline silica) in respirable dust. The coal mining industry standard is based on the formula 10mg/m3 divided by the percentage of quartz where the quartz percent is 5.0 percent or greater calculated as an MRE equivalent concentration. The metal and nonmetal mining industry standard is based on the 1973 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values formula: 10 mg/m3 divided by the percentage of quartz plus 2. Overexposure to crystalline silica can result in some miners developing silicosis which may ultimately be fatal. Both formulas are designed to maintain exposures to 0.1 mg/m3 (100 ug) of silica.

The Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers made several recommendations related to reducing exposure to silica. NIOSH and ACGIH recommend a 50ug/ m3 exposure limit for respirable crystalline silica. MSHA is considering several options to reduce miners' exposure to crystalline silica.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor; Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209
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RIN: 1219–AB36

2082. IMPROVING AND ELIMINATING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 811; 30 USC 957

CFR Citation: 30 CFR 1 to 199

Legal Deadline: None

Abstract: This rulemaking will revise text in the CFR to reduce burden or duplication, and to streamline requirements. We have reviewed our current regulations and identified provisions that are outdated, redundant, unnecessary, or otherwise require change. We will be making these changes through notice and comment rulemaking where necessary. We will also consider new regulations that reflect "best practices" in the mining industry. We view this effort to be evolving and ongoing and will continue to accept recommendations from the public. MSHA will propose a rule addressing issues related to portable diesel generators.

Timetable:

Action	Date	FR Cite
NPRM Comment Period End: Methane Testing	11/25/02	67 FR 60611
NPRM: Spring—Loaded Locks	01/22/03	68 FR 2941
Direct Final Rule: Spring—Loaded Locks	01/22/03	68 FR 2879
Withdrawal of Direct Final Rule: Spring—Loaded Locks	03/07/03	68 FR 10965
NPRM: Sanitary Toilets	04/21/03	68 FR 19477
NPRM: Seatbelts	04/21/03	68 FR 19474
Direct Final Rule: Sanitary Toilets	04/21/03	68 FR 19347
Direct Final Rule: Seatbelts	04/21/03	68 FR 19344
Final Rule: Sanitary Toilets	06/23/03	68 FR 37082
Final Rule: Spring—Loaded Locks	06/23/03	68 FR 37077
Final Rule Effective (Confirmation): Seatbelts	06/30/03	68 FR 36913
NPRM: Methane Testing	07/07/03	68 FR 40132
Final Rule: Methane Testing	07/07/03	68 FR 40132
Final Rule Effective: Sanitary Toilets	07/23/03	68 FR 37082
Final Rule Effective: Spring—Loaded Locks	08/22/03	68 FR 37077
NPRM: Portable Diesel Generator	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209
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RIN: 1219–AA98

2083. ASBESTOS EXPOSURE LIMIT

Regulatory Plan: This entry is Seq. No. 87 in part II of this issue of the **Federal Register**.

RIN: 1219–AB24

2084. • HIGH—VOLTAGE CONTINUOUS MINING MACHINE STANDARDS FOR UNDERGROUND COAL MINES

Priority: Other Significant

Legal Authority: 30 USC 811; 30 CFR 957; 30 CFR 961

CFR Citation: 30 CFR 18; 30 CFR 75

Legal Deadline: None

Abstract: Our current standards require that high—voltage and transformers be kept at least 150 feet from coal extraction areas in underground coal mines. These requirements are intended to eliminate an ignition source for methane and coal dust in close proximity to the work area. The use of new mining technology, in the form of high—voltage continuous mining machines, is becoming more widespread in the mining industry. This equipment uses high—voltage electrical equipment and associated cables. Mine operators, however, must apply to MSHA for a petition for modification from the existing standards if they want to use this high—voltage equipment. The proposed rule would eliminate the need for a modification to use this equipment, and would establish safety requirements for its use. The proposed rule would also include design approval requirements for high—voltage continuous mining machines operated in face areas of underground coal mines.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209
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RIN: 1219–AB34

2085. • TRAINING STANDARDS FOR SHAFT AND SLOPE CONSTRUCTION WORKERS AT UNDERGROUND MINES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 811; 30 USC 825

CFR Citation: 30 CFR 48.2; 30 CFR 48.7; 30 CFR 48.8; 30 CFR 48.22; 30 CFR 48.23; 30 CFR 49.28

Legal Deadline: None

Abstract: This rule would remove the language that exempts shaft and slope construction workers from being required to take part 48 training. Shaft and slope construction workers, for training purposes, would be treated like underground and surface extraction and production miners.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209
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RIN: 1219–AB35

DOL—MSHA

Proposed Rule Stage

2086. • REVISING ELECTRICAL PRODUCT APPROVAL REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 18; 30 CFR 22; 30 CFR 23; 30 CFR 27

Legal Deadline: None

Abstract: Part 18 of 30 CFR, entitled "Electric Motor—Driven Mine Equipment and Accessories," sets out the requirements to obtain MSHA approval of electrically operated machines and accessories intended for use in underground mines, as well as other related matters, such as approval procedures, certification of components, and acceptance of flame—resistant hoses and conveyor belts. Aside from minor modifications, part 18 has been largely un changed since it was promulgated in 1968. This update of part 18 is intended to improve the efficiency of the approval process, recognize new technology, add quality assurance provisions, and address existing policies through the rulemaking process.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 2352, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209
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RIN: 1219–AB37

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Final Rule Stage

2087. UNDERGROUND COAL MINE VENTILATION—SAFETY STANDARDS FOR THE BELT ENTRY AS AN INTAKE AIR COURSE

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 961

CFR Citation: 30 CFR 75

Legal Deadline: None

Abstract: The proposed rule would give a coal mine operator the option of using air from a belt entry (belt air) in mines with three or more entries (parallel tunnels), as an intake air course to ventilate working sections and areas where mechanized mining equipment is being installed or removed. Current standards require belt air to be separated from intake and return air courses for mines opened after 1970, unless a mine operator is granted a petition for modification of a safety standard (30 CFR 75.350) as set forth in the Federal Mine Safety and Health Act (Mine Act) of 1977 section 101(c), 30 USC 811(c) (1998). For three or more entry mines, regardless of the date they were opened, the proposed rule would eliminate the need for mine operators to seek a petition for modification to use belt air and establish safety requirements for its use.

Timetable:

Action	Date	FR Cite
NPRM	01/27/88	53 FR 2382
Public Hearing Notice	01/27/03	68 FR 3936
Second NPRM	01/27/03	68 FR 3936
Second NPRM Comment Period End	03/28/03	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

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RIN: 1219–AA76

2088. DIESEL PARTICULATE MATTER EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS

Regulatory Plan: This entry is Seq. No. 88 in part II of this issue of the **Federal Register**.

RIN: 1219–AB29

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Long-Term Actions

2089. VERIFICATION OF UNDERGROUND COAL MINE OPERATORS' DUST CONTROL PLANS AND COMPLIANCE SAMPLING FOR RESPIRABLE DUST

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 813; 30 USC 961; 30 USC 957

CFR Citation: 30 CFR 70; 30 CFR 75; 30 CFR 90

Legal Deadline: None

Abstract: Our current regulations require that all underground coal mine operators develop and follow a mine ventilation plan for each mechanized mining unit that we approve. However, we do not have a requirement that provides for verification of each plan's effectiveness under typical mining conditions. Consequently, plans may be implemented by mine operators that could be inadequate to control respirable dust.

In response to comments received on the July 2000 proposed rule for MSHA to withdraw the rule, MSHA published a new proposed rule on March 6, 2003. The proposed rule would have required mine operators to verify, through sampling, the effectiveness of the dust control parameters for each mechanized mining unit specified in the approved mine ventilation plan.

The use of approved powered air—purifying respirators and/or verifiable administrative controls would have been allowed as a supplemental means of compliance when MSHA had determined that all feasible engineering or environmental controls were exhausted.

Public hearings were held in May 2003, and the rulemaking record originally scheduled to close on June 4, 2003, was extended until July 3, 2003. On June 24, 2003, MSHA announced that all work on the final rule would cease and the rulemaking record would remain open in order to obtain information concerning PDMs being tested by NIOSH. A Federal Register notice was published on July 3, 2003, extending the comment period indefinitely.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 42122
Notice of Hearings; Close of Record	07/07/00	65 FR 42186
Extension of Comment Period; Close	09/08/00	65 FR 49215
NPRM	03/06/03	68 FR 10784
Notice of Public Hearing; Close of Record	03/17/03	68 FR 12641
Extension of Comment Period	05/29/03	68 FR 32005
NPRM Comment Period End	06/04/03	
Extension of Comment Period	07/03/03	68 FR 39881
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: This rulemaking is related to RIN 1219—AB18 (Determination of Concentration of Respirable Coal Mine Dust).

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RIN: 1219–AB14

2090. DETERMINATION OF CONCENTRATION OF RESPIRABLE COAL MINE DUST

Priority: Other Significant

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 72

Legal Deadline: None

Abstract: The National Institute for Occupational Safety and Health and the Mine Safety and Health Administration jointly proposed that a single, full—shift measurement (single sample) will accurately represent the atmospheric condition to which a miner is exposed. The proposed rule addresses the U.S. Court of Appeals' concerns raised in National Mining Association v. Secretary of Labor, 153 3d 1264 (11th Cir. 1998). MSHA and NIOSH reopened the rulemaking record on March 6, 2003, to obtain comments on documents added to the rulemaking record since the proposed rule was published July 7, 2000. Public hearings were held in May 2003 and the rulemaking record, originally scheduled to close on June 4, 2003, was extended until July 3, 2003. However, on June 24, 2003, MSHA announced that all work on the final rule would cease. On August 12, 2003, the Agencies reopened the rulemaking record and extended the comment period indefinitely. MSHA will be collaborating with NIOSH, miners' representatives, industry and the manufacturer in the in—mine testing of production prototype Personal Dust Monitors (PDMs) units. The results of the collaborative effort will guide the Agency in determining the functionality of these real—time dust monitoring devices and need for revisions to the coal respirable dust monitoring requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 42068
Notice of Hearings; Close of Record	07/07/00	65 FR 42185
Extension of Comment Period; Close	09/08/00	65 FR 49215
Reopen Record for Comments	03/06/03	68 FR 10940
Notice of Public Hearings; Close of Record	03/17/03	68 FR 12641
Extension of Comment Period	05/29/03	68 FR 32005
Reopen Record Comment Period End	06/04/03	
Extension of Comment Period; Reopening of Record	08/12/03	68 FR 47886
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: This rulemaking is related to RIN 1219—AB14 (Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust).

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RIN: 1219–AB18

Department of Labor (DOL) Completed Actions
Mine Safety and Health Administration (MSHA)

2091. TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND NON—MSHA PRODUCT SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 18; 30 CFR 19; 30 CFR 20; 30 CFR 22; 30 CFR 23; 30 CFR 27; 30 CFR 33; 30 CFR 35; 30 CFR 36; 30 CFR 6; 30 CFR 7

Legal Deadline: None

Abstract: The proposed rule contains modifications to MSHA's existing product approval requirements for use of products in gassy underground mines. MSHA currently issues product approvals from MSHA's Approval and Certification Center after MSHA tests and evaluates the products based on regulations in 30 CFR parts 7 through 36. The proposed rule would establish alternative requirements for the testing and evaluation of products for MSHA approval. It would permit manufacturers who seek MSHA product approval to use an independent laboratory to perform the necessary product testing and evaluation in lieu of it being performed by MSHA. It also would allow MSHA product approval to be based on equivalent non—MSHA product safety standards.

Timetable:

Action	Date	FR Cite
NPRM	11/30/94	59 FR 61376
NPRM	02/13/95	60 FR 8209
Public Hearing Notice	10/10/95	60 FR 52640
Notice to Reschedule Public Hearing	04/09/96	61 FR 15743
Comment Period End	04/09/96	
Public Hearing Notice	10/17/02	67 FR 64196
Second NPRM	10/17/02	67 FR 64196
Second NPRM Comment Period End	12/31/02	
Final Rule	06/17/03	68 FR 36408
Final Rule Effective	08/18/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

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RIN: 1219–AA87

2092. FOCUSED INSPECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 4

Legal Deadline: None

Abstract: Compliance history and safety and health performance are factors that provide a quantifiable means for focusing MSHA resources. MSHA seeks comment on how best to maximize the effectiveness of resources and to further develop inspection procedures based upon experience. MSHA has withdrawn this item and will address this issue through non—regulatory means.

Timetable:

Action	Date	FR Cite
Withdrawn	08/28/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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RIN: 1219–AB30

2093. EMERGENCY EVACUATION; EMERGENCY TEMPORARY STANDARD

Priority: Other Significant

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 75.1501; 30 CFR 75.1502

Legal Deadline: None

Abstract: The Mine Safety and Health Administration (MSHA) issued an Emergency Temporary Standard (ETS) under the Federal Mine Safety and Health Act of 1977 (Mine Act), section 101(b) in response to the grave danger that underground coal miners are exposed to during mine fires, explosions, and gas or water inundation emergencies. The deaths of 14 miners at two underground coal mines demonstrated the need for MSHA to address proper training and mine emergency evacuation procedures. Under the Mine Act, the ETS, which became effective on December 12, 2002, acts as a proposed rule. MSHA conducted public hearings and accepted written comments on the proposed rule. The Mine Act requires that the Secretary promulgate a final rule no later than 9 months after publication of the ETS as provided for under section 101(b) of the Mine Act.

Timetable:

Action	Date	FR Cite
Emergency Temporary Standard	12/12/02	67 FR 76658
Comment Period End	01/13/03	
Post Hearing Comment End	02/28/03	
Final Rule	09/09/03	68 FR 53037
Final Rule Effective	09/09/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1219–AB33

Department of Labor (DOL)
Office of the Assistant Secretary for Administration and Management (OASAM)

Proposed Rule Stage

2094. IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS OF THE WORKFORCE INVESTMENT ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 2938 Workforce Investment Act

CFR Citation: 29 CFR 37

Legal Deadline: Final, Statutory, August 7, 1999, Final.

Abstract: The Workforce Investment Act of 1998 (WIA) was signed into law by President Clinton on August 7, 1998. Section 188 prohibits discrimination by recipients of financial assistance under title I of WIA on the grounds of race, color, national origin, sex, age, disability, religion, political affiliation or belief, and for beneficiaries only, participant status, and against certain noncitizens. Section 188(e) requires that the Secretary of Labor issue regulations necessary to implement section 188 not later than one year after the date of the enactment of the WIA. Such regulations will include standards for determining compliance and procedures for enforcement that are consistent with the acts referred to in section 188(a)(1), as well as procedures to ensure that complaints filed under section 188 and such acts are processed in a manner that avoids duplication of effort. The reauthorization of WIA is currently under consideration by the Congress. It may include amendments to the nondiscrimination provisions contained in section 188 that would directly impact these regulations. A final rule will be issued after congressional action on the reauthorization of WIA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/12/99	64 FR 61692
Interim Final Rule Comment Period	12/13/99	
NPRM	09/30/03	68 FR 56386
NPRM Comment Period End	12/01/03	
Second Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

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RIN: 1291–AA29

Department of Labor (DOL) Final Rule Stage

Office of the Assistant Secretary for Administration and Management (OASAM)

2095. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6101 et seq, Age Discrimination Act of 1975

CFR Citation: 29 CFR 35

Legal Deadline: NPRM, Judicial, September 10, 1979, NPRM.

Abstract: The proposed regulatory action implements the Age Discrimination Act of 1975 (the Act). The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Act also contains specific exceptions that permit the use of certain age distinctions and factors other than age that meet the Age Act's requirements. This NPRM will be the third republication of an NPRM published on June 10, 2002, with updates to reflect the passage of the Workforce Investment Act of 1998 and to add the term "program or activity" as it is defined in the Civil Rights Restoration Act of 1987. These changes do not alter the substance of the NPRM.

Timetable:

Action	Date	FR Cite
NPRM	12/29/98	63 FR 71714
NPRM Comment Period End	03/01/99	
Second NPRM	06/10/02	67 FR 39829
Second NPRM Comment Period End	08/09/02	
Third NPRM	07/11/03	
Third NPRM Comment Period End	09/09/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

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RIN: 1291–AA21

2096. DEPARTMENT OF LABOR ACQUISITION REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 40 USC 486(C); 5 USC 301

CFR Citation: 48 CFR 2900 to 2999

Legal Deadline: None

Abstract: The Department of Labor's Acquisition Regulations are being completely revised in order to reflect the significant changes made to the Federal Acquisition Regulation over the last 17 years, as well as organizational changes within DOL.

Timetable:

Action	Date	FR Cite
NPRM	08/11/03	68 FR 48996
NPRM Comment Period End	10/14/03	
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1291–AA34

Department of Labor (DOL)

Long-Term Actions

Office of the Assistant Secretary for Administration and Management (OASAM)

2097. GRANTS AND AGREEMENTS

Priority: Other Significant

Legal Authority: PL 105—277

CFR Citation: 29 CFR 95

Legal Deadline: None

Abstract: The Department is joining with other Federal agencies to establish revised regulations for grants. Congress included a two—sentence provision in OMB's appropriation for fiscal year 1999, contained in Public Law 105—277, directing OMB to revise section 95.36 of Circular A—110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." Circular A—110 applies to grants and cooperative agreements with institutions of higher education, hospitals, and nonprofit institutions, from all Federal agencies. OMB finalized the revision on September 30, 1999 (64 FR 54926). This interim final rule amends the agencies' codification of Circular A—110 so they reflect OMB's recent action.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14405
Interim Final Rule Effective	04/17/00	
Interim Final Rule Comment Period	05/15/00	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HHS is the lead agency and will coordinate the next action with

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RIN: 1291–AA30

Department of Labor (DOL)

Completed Actions

Office of the Assistant Secretary for Administration and Management (OASAM)

2098. EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 2000(d)

CFR Citation: 29 CFR 31; 29 CFR 32

Legal Deadline: None

Abstract: This proposal would incorporate into 29 CFR parts 31 and 32 the term "program or activity" and the definition of that term as it was defined in the Civil Rights Restoration Act of 1987. Part 31 effectuates title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs or activities that receive financial assistance from the Department of Labor. Part 32 implements section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs or activities that receive financial assistance from the Department of Labor. The publication of this rule is being coordinated by the Department of Justice and will be published as part of a Governmentwide issuance.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State, Tribal

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RIN: 1291–AA31

2099. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS) 29 CFR 98

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 41 USC 701; 5 USC 301

CFR Citation: 29 CFR 94; 29 CFR 98

Legal Deadline: None

Abstract: This document proposed substantive changes and amendments to the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug—Free Workplace Act of 1988. The most significant changes are: (1) This proposed common rule on debarment and suspension would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction; (2) This proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower—tier procurement transactions with excluded persons at $25,000; (3) Both this proposed rule on debarment and suspension and the proposed rule on drug—free workplace requirements would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. The proposed rules will allow agencies and participants the flexibility to use other means if they so choose, such as award conditions or electronic access to the GSA List on the Internet, to enforce compliance with the rules; and (4) The proposed rule on drug—free workplace requirements would be separated from this proposed rule on debarment and suspension. The drug—free workplace requirements currently are in subpart

F of the debarment and suspension nonprocurement common rule.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Final Rule	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Lead agencies are developing responses to the comments submitted.

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RIN: 1291–AA33

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

Prerule Stage

2100. OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)

Regulatory Plan: This entry is Seq. No. 89 in part II of this issue of the **Federal Register**.

RIN: 1218–AB45

2101. CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUFFOCATION/EXPLOSIONS IN CONFINED SPACES

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.36

Legal Deadline: None

Abstract: In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces (29 CFR 1910.146). This standard does not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined—space protection to construction workers appropriate to their work environment. OSHA intends to issue a proposed rule addressing this construction industry hazard next year.

Timetable:

Action	Date	FR Cite
SBREFA Panel Report	12/00/03	
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB47

2102. OCCUPATIONAL EXPOSURE TO ETHYLENE OXIDE

Priority: Other Significant

Legal Authority: 29 USC 655(b); 5 USC 553; 5 USC 610

CFR Citation: 29 CFR 1910.1047

Legal Deadline: None

Abstract: OSHA has undertaken a review of the ethylene oxide (ETO) standard in accordance with the requirements of the Regulatory Flexibility Act and section 5 of EO 12866. The review is considering the continued need for the rule, the impacts of the rule, comments on the rule received from the public, the complexity of the rule, whether the rule overlaps, duplicates or conflicts with other Federal, State or local regulations, and the degree to which technology, economic conditions or other factors may have changed since the rule was last evaluated. The Agency's findings with respect to this review will be published in a report available to the public in 2004.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/96	
End Review	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB60

2103. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Regulatory Plan: This entry is Seq. No. 90 in part II of this issue of the **Federal Register**.

RIN: 1218–AB70

2104. OCCUPATIONAL EXPOSURE TO BERYLLIUM

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910

Legal Deadline: None

Abstract: In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard by the Paper Allied—Industrial, Chemical, and Energy Workers Union, Public Citizen Health Research Group and others. The Agency denied the petitions but stated its intent to begin data gathering to collect needed information on beryllium's toxicity, risks, and patterns of usage.

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium including: current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected work sites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA is using this infopmation to develop a proposed rule addressing occupational exposure to beryllium. OSHA plans to initiate the SBREFA process could be initiated by September 2004.

Timetable:

Action	Date	FR Cite
Request for Information	11/26/02	67 FR 70707
Initiate SBREFA Process	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB76

2105. EXCAVATIONS

Priority: Other Significant

Legal Authority: 29 USC 651 et seq; 5 USC 610

CFR Citation: 29 CFR 1926.650 to 1926.652

Legal Deadline: None

Abstract: OSHA has undertaken a review of the Agency's trenching and excavations standard (29 CFR 1926.650 to 1926.652) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review is considering the continued need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/01	
Request for Comments	08/21/02	67 FR 54103
Comment Period End	11/19/02	
End Review	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AC02

2106. PRESENCE SENSING DEVICE INITIATION OF MECHANICAL POWER PRESSES

Priority: Other Significant

Legal Authority: 29 USC 651 et seq; 5 USC 610

CFR Citation: 29 CFR 1910.217(h), app A,B,C

Legal Deadline: None

Abstract: OSHA has undertaken a review of the Agency's Presence Sensing Device Initiation of Mechanical Power Presses rule (29 CFR 1910.217) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review is considering among other things, the need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/01	
Request for Comments	08/28/02	67 FR 55181
Comment Period End	01/27/03	
End Review	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AC03

2107. IONIZING RADIATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.109

Legal Deadline: None

Abstract: OSHA is considering amending 29 CFR 1910.1096 that addresses exposure to ionizing radiation. The OSHA regulations were published in 1974, with only minor revisions since that time. The Department of Energy and the Nuclear Regulatory Commission both have more extensive radiation standards that reflect new technological and safety advances. In addition, radiation is now used for a broader variety of purposes, including health care, food safety, mail processing, and baggage screening. OSHA is in the process of reviewing information about the issue, and will determine the appropriate course of action regarding this standard when the review is completed.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AC11

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

2108. LONGSHORING AND MARINE TERMINALS (PARTS 1917 AND 1918) — REOPENING OF THE RECORD (VERTICAL TANDEM LIFTS (VTLS))

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1918.11; 29 CFR 1918.85

Legal Deadline: None

Abstract: OSHA issued a final rule on Longshoring on July 25, 1997 (62 FR 40142). However, in that rule, the Agency reserved provisions related to vertical tandem lifts. Vertical tandem lifts (VTLs) involve the lifting of two or more empty intermodal containers, secured together with twist locks, at the same time. OSHA has continued to work with national and international organizations to gather additional information on the safety of VTLs. The Agency has published an NPRM to address safety issues related to VTLs.

Timetable:

Action	Date	FR Cite
NPRM	06/06/94	59 FR 28594
NPRM Comment Period End	09/23/94	
Final Rule on Longshoring/Marine	07/25/97	62 FR 40142
Public Meeting on VTLs — 1/27/1998	10/09/97	62 FR 52671
Second NPRM	09/16/03	68 FR 54298
NPRM Comment Period End	12/15/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N—3718, FP Building, Washington, DC 20210
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RIN: 1218–AA56

2109. GENERAL WORKING CONDITIONS FOR SHIPYARD EMPLOYMENT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915 subpart F

Legal Deadline: None

Abstract: During the 1980s, OSHA initiated a project to update and consolidate the various OSHA shipyard standards that were applied in the shipbuilding, ship repair, and shipbreaking industries. Publication of a proposal addressing general working conditions in shipyards is part of this project. The operations addressed in this rulemaking relate to general working conditions such as housekeeping, illumination, sanitation, first aid, and lockout/tagout. About 100,000 workers are potentially exposed to these hazards annually.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AB50

2110. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1910.136; 29 CFR 1910.137; 29 CFR 1910.269; 29 CFR 1926 subpart V; 29 CFR 1926.97

Legal Deadline: None

Abstract: Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 30 years old. OSHA is developing a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot protection. This rulemaking will also address fall protection in aerial lifts for power generation, transmission and distribution work. The SBREFA process has now been completed, and OSHA is making changes to the regulatory analysis based on that review.

Timetable:

Action	Date	FR Cite
SBREFA Report	06/30/03	
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution

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RIN: 1218–AB67

2111. WALKING WORKING SURFACES AND PERSONAL FALL PROTECTION SYSTEMS (1910) (SLIPS, TRIPS, AND FALL PREVENTION)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655 (b)

CFR Citation: 29 CFR 1910 subparts D and I

Legal Deadline: None

Abstract: In 1990, OSHA proposed a rule (55 FR 13360) addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems. Since that time, new technologies and procedures have become available to protect employees from these hazards. The Agency has been working to update these rules to reflect current technology. OSHA published a notice to re—open the rulemaking for comment on a number of issues raised in the record for the NPRM, or related to technological advances. OSHA is currently reviewing the comments and the record will be reopened again for comment on the revised analysis.

Timetable:

Action	Date	FR Cite
NPRM	04/10/90	55 FR 13360
NPRM Comment Period End	08/22/90	
Hearing	09/11/90	55 FR 29224
Reopening of Record	05/02/03	68 FR 23527
Comment Period End	07/31/03	
Reopen the Record	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N—3718, FP Building, Washington, DC 20210
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RIN: 1218–AB80

2112. HEARING CONSERVATION PROGRAM FOR CONSTRUCTION WORKERS

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.52

Legal Deadline: None

Abstract: OSHA issued a section 6(b)(5) health standard mandating a comprehensive hearing conservation program for noise—exposed workers in general industry in 1983. However, no rule was promulgated to cover workers in the construction industry. A number of recent studies have shown that many construction workers experience work—related hearing loss. In addition, the use of engineering, administrative and personal protective equipment to reduce exposures to noise is not extensive in this industry. OSHA published an advance notice of proposed rulemaking to gather information on the extent of noise—induced hearing loss among workers in different trades in this industry, current practices to reduce this loss, and additional approaches and protections that could be used to prevent such loss in the future. The Agency has reviewed the comments received and other information to determine the appropriate course of action. In order to get additional public input, stakeholder meetings will be convened.

Timetable:

Action	Date	FR Cite
ANPRM	08/05/02	67 FR 50610
ANPRM Comment Period End	11/04/02	
Stakeholder Meetings	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N—3718, FP Building, Washington, DC 20210
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RIN: 1218–AB89

2113. REVISION AND UPDATE OF SUBPART S—ELECTRICAL STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910 subpart S

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA) is planning to revise and update its 29 CFR 1910 subpart S—Electrical Standards. OSHA will rely heavily on the 2000 edition of the National Fire Protection Association's (NFPA's) 70 E standard for Electrical Safety Requirements for Employee Workplaces. This revision will provide the first update of the General Industry—Electrical Standard since it was originally published in 1981. OSHA intends to complete this project in several stages. The first stage will cover design safety standards for electrical systems, while the second stage will cover safety—related maintenance and work practice requirements and safety requirements for special equipment. It will thus allow the latest technological developments to be considered. Several of these state—of—the—art safety developments will be addressed by OSHA for the first time.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N—3718, FP Building, Washington, DC 20210
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RIN: 1218–AB95

2114. UPDATING OSHA STANDARDS BASED ON NATIONAL CONSENSUS STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918; 29 CFR 1926

Legal Deadline: None

Abstract: Under section 6(a) of the OSH Act, during the first two years of the Act, the Agency was directed to adopt national consensus standards as OSHA standards. Some of these standards were adopted as regulatory text, while others were incorporated by reference. In the thirty years since these standards were adopted by OSHA, the organizations responsible for these consensus standards have issued updated versions of these standards. However, in most cases, OSHA has not revised its regulations to reflect later editions of the consensus standards. OSHA standards also continue to incorporate by reference various consensus standards that are now outdated and, in some cases, out of print.

The Agency is now considering the possibility of initiating rulemaking to update some of these standards. In that regard, OSHA has asked various consensus standards organizations to review their standards, compare the latest versions of these standards to the ones currently adopted by OSHA, and determine which ones are most important for OSHA to update. Additionally, OSHA has asked them to consider whether the changes to these standards would be noncontroversial, and if the new versions would reduce risk. The organizations were enthusiastic about the possibility of updating references to their standards, and they have provided considerable information on priorities and other related issues. OSHA is in the process of evaluating the information it has received in order to determine the best way to proceed. It is possible that a direct final rule may be appropriate to address some of these standards, and others may be more appropriately addressed by an NPRM.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N—3718, FP Building, Washington, DC 20210
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RIN: 1218–AC08

2115. EXPLOSIVES

Priority: Other Significant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.109

Legal Deadline: None

Abstract: OSHA is considering amending 29 CFR 1910.109 that addresses explosives and blasting agents. These OSHA regulations were published in 1974, and many of the provisions do not reflect technological and safety advances made by the industry since that time. Additionally, the standard contains outdated references and classifications. Two trade associations representing many of the employers subject to this rule have petitioned the Agency to consider revising it, and have recommended changes they believe address the concerns they are raising. OSHA is in the process of reviewing the petition and related information about the issue, and will determine the appropriate course of action regarding this standard when the review is completed. OSHA expects to publish an NPRM by July 2004.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AC09

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)
Final Rule Stage

2116. ASSIGNED PROTECTION FACTORS: AMENDMENTS TO THE FINAL RULE ON RESPIRATORY PROTECTION

Regulatory Plan: This entry is Seq. No. 91 in part II of this issue of the **Federal Register**.

RIN: 1218–AA05

2117. GLYCOL ETHERS: 2—METHOXYETHANOL, 2—ETHOXYETHANOL, AND THEIR ACETATES: PROTECTING REPRODUCTIVE HEALTH

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 651; 29 USC 655; 29 USC 657

CFR Citation: 29 CFR 1910.1000; 29 CFR 1910.1031

Legal Deadline: None

Abstract: OSHA published an advance notice of proposed rulemaking (ANPRM) on April 2, 1987 (52 FR 10586). OSHA used the information received in response to the ANPRM, as well as other information and analysis, and published a proposal on March 23, 1993 (58 FR 15526), that would reduce the permissible exposure limits for four glycol ethers and provide protection for approximately 46,000 workers exposed to these substances. OSHA re—opened the record to collect updated information to help determine what action should be taken. Based on the information received and a review of the record, the Agency has decided to withdraw the proposal.

Timetable:

Action	Date	FR Cite
ANPRM	04/02/87	52 FR 10586
ANPRM Comment Period End	07/31/87	
NPRM	03/23/93	58 FR 15526
NPRM Comment Period End	06/07/93	
Reopen Record	08/08/02	67 FR 51524
Comment Period End	11/06/02	
To Be Withdrawn	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N—3718, FP Building, Washington, DC 20210
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RIN: 1218–AA84

2118. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1035

Legal Deadline: None

Abstract: In 1993, the Labor Coalition to Fight TB in the Workplace petitioned the Occupational Safety and Health Administration (OSHA) to develop an occupational health standard to protect workers who care for or oversee patients or others with active tuberculosis (TB) against the transmission of TB. After reviewing the available information, OSHA preliminarily concluded that a significant risk of occupational transmission of TB exists for some workers in some work settings and began rulemaking on a proposed standard. On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). The proposed standard would require employers to protect TB—exposed workers using infection control measures that have been shown to be highly effective in reducing or eliminating work—related TB infections. Such measures include procedures for the early identification of individuals with infectious TB, isolation of individuals with infectious TB using appropriate ventilation, use of respiratory protection in certain situations, and skin testing and training of employees.

Informal public hearings were held in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL. The post—hearing comment period closed on October 5, 1998. On June 17, 1999, OSHA reopened the rulemaking record for 90 days to submit the Agency's report on homeless shelters and certain other documents that became available to the Agency after the close of the post—hearing comment period. During this limited reopening of the rulemaking record, OSHA also requested interested parties to submit comments and data on the Agency's preliminary risk assessment in order to obtain the best, most recent data for providing the most accurate estimates of the occupational risk of tuberculosis.

At the request of Congress, the Institute of Medicine of the National Academy of Sciences (IOM) conducted a study of OSHA's proposal and the need for a TB standard. That study was completed in January 2001. OSHA reopened the record to obtain comment on the IOM study, the draft final risk assessment and the peer reviewers' comment on the risk assessment.

The Agency has decided to withdraw the proposal and terminate the rulemaking.

Timetable:

Action	Date	FR Cite
SBREFA Panel	09/10/96	
NPRM	10/17/97	62 FR 54160
NPRM Comment Period End	02/17/98	62 FR 65388
Post Hearing Comment End	10/05/98	
Record Reopening	06/17/99	64 FR 32447
Second Reopening Comment Period End	06/28/99	64 FR 34625
Reopening Comment Period End	08/02/99	
Third Reopening Comment Period	01/24/02	67 FR 3465
Extension of Comment Period of	03/05/02	67 FR 9934
Reopening Comment Period End	03/25/02	
Comment Period End	05/24/02	
To Be Withdrawn	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1218–AB46

2119. FIRE PROTECTION IN SHIPYARD EMPLOYMENT (PART 1915, SUBPART P) (SHIPYARDS: FIRE SAFETY)

Regulatory Plan: This entry is Seq. No. 92 in part II of this issue of the **Federal Register**.

RIN: 1218–AB51

2120. STANDARDS IMPROVEMENT (MISCELLANEOUS CHANGES) FOR GENERAL INDUSTRY, MARINE TERMINALS, AND CONSTRUCTION STANDARDS (PHASE II)

Regulatory Plan: This entry is Seq. No. 93 in part II of this issue of the **Federal Register**.

RIN: 1218–AB81

2121. COMMERCIAL DIVING OPERATIONS: REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.423; 29 CFR 1910.426

Legal Deadline: None

Abstract: OSHA's Commercial Diving Operations standard (29 CFR 1910.401 to 1910.441) was published in 1977. In the intervening years, major changes in the technology of diving systems and equipment have occurred. In December 1999, OSHA granted a permanent variance to Dixie Divers, Inc., permitting recreational diving instructors employed by that company to comply with the provisions of the variance rather than with paragraphs (b)(2) and (c)(3)(iii) of 1910.423 and paragraph (b)(1) of 1910.426. Since OSHA granted the variance, other employers of recreational diving instructors have asked OSHA to clarify the applicability of the variance to their operations. OSHA published a notice of proposed rulemaking to amend the commercial diving operations standard to reflect the alternative specified in the permanent variance granted to Dixie Divers, Inc. Comments have been received and reviewed, and a final rule is being issued.

Timetable:

Action	Date	FR Cite
NPRM	01/10/03	68 FR 1399
NPRM Comment Period End	04/10/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1218–AB97

2122. CONTROLLED NEGATIVE PRESSURE FIT TESTING PROTOCOL: AMENDMENT TO THE FINAL RULE ON RESPIRATORY PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910.134

Legal Deadline: None

Abstract: In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134). In the final revised respirator standard, OSHA set up a mechanism for OSHA's acceptance of new fit test protocols under Mandatory Appendix A. Any person may submit to OSHA an application for approval of a new fit test protocol, and if the application meets certain criteria, OSHA will initiate a rulemaking proceeding under 6(b)(7) of the OSH Act to determine whether to list the new protocol as an approved fit test protocol in Appendix A. OSHA has been petitioned to allow the use of a modified Controlled Negative Pressure (CNP) fit test protocol.

Employers, employees, and safety and health professionals use fit testing to select respirators. Currently OSHA relies on fit testing methods specified in Appendix A of the final revised Respiratory Protection standard.

When OSHA published the final Respiratory Protection standard in 1998, it allowed for later rulemaking on new fit test methods. This rulemaking action will allow for the incorporation of new fit test methods into 1910.134.

Timetable:

Action	Date	FR Cite
NPRM	06/06/03	68 FR 33887
NPRM Comment Period End	09/04/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

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RIN: 1218–AC05

2123. PROCEDURES FOR HANDLING DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 18 USC 1514A

CFR Citation: 29 CFR 1980

Legal Deadline: None

Abstract: The Sarbanes Oxley Act of 2002, Public Law 107—204 was enacted July 30, 2002. Among other provisions, title VIII, entitled the Corporate and Criminal Fraud Accountability Act of 2002, provides protection for employees of publicly traded companies who provide evidence of fraud to any Federal law enforcement agency, members of Congress, or a person with supervisory authority over the employee. This rule establishes procedures and time frames for the handling of complaints under the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/28/03	68 FR 318859
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Robert Spear, Director, Office of Investigative Assistance, Department of Labor, Occupational Safety and Health Administration, Rm 3603, 200 Constitution Ave., NW, Washington, DC 20210
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RIN: 1218–AC10

2124. • PROCEDURES FOR HANDLING DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

Priority: Other Significant

Legal Authority: 29 USC 60129

CFR Citation: 29 CFR 1981

Legal Deadline: None

Abstract: This rule establishes procedures and timeframes for the handling of complaints under section 6 of the Pipeline Safety Improvement Act of 2002, including investigations by OSHA, appeals to the Administrative Law Judge (ALJ), appeals of ALJ decisions to the Administrative Review Board and judicial review.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1218–AC12

Department of Labor (DOL) **Long-Term Actions**

Occupational Safety and Health Administration (OSHA)

2125. EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT

Priority: Other Significant

Legal Authority: 29 USC 655(b); 29 USC 657; 33 USC 941; 40 USC 333

CFR Citation: 29 CFR 1910.132; 29 CFR 1915.152; 29 CFR 1917.96; 29 CFR 1918.106; 29 CFR 1926.95

Legal Deadline: None

Abstract: Generally, OSHA standards require that protective equipment (including personal protective equipment (PPE)) be provided and used when necessary to protect employees from hazards that can cause them injury, illness, or physical harm. In this discussion, OSHA uses the abbreviation PPE to cover both personal protective equipment and other protective equipment. The Agency continues to consider how to address this issue.

Timetable:

Action	Date	FR Cite
NPRM	03/30/99	64 FR 15401
NPRM Comment Period End	06/14/99	
Informal Public Hearing End	08/13/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State

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RIN: 1218–AB77

2126. CRANES AND DERRICKS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 651(b); 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926

Legal Deadline: None

Abstract: Subpart N addresses hazards associated with various types of hoisting equipment used at construction sites. Such equipment includes cranes and derricks. The existing rule, which dates back to 1971, is based in part on industry consensus standards from 1958, 1968, and 1969. There have been considerable technological changes since those consensus standards were developed. Industry consensus standards for derricks and for crawler, truck and locomotive cranes were updated as recently as 1995.

A cross—section of the industry has asked OSHA to update subpart N. OSHA has determined that the existing rule needs to be revised and has established a negotiated rulemaking committee to develop a draft proposed rule.

Timetable:

Action	Date	FR Cite
Notice of Intent To Establish Negotiated Rulemaking	07/16/02	67 FR 46612
Comment Period Ends	09/16/02	
Request for Comments on Proposed Committee Members	02/27/03	68 FR 9036
Request for Comment Period Ends	03/31/03	68 FR 9036
Establishing Negotiated Rulemaking Committee	06/12/03	68 FR 35172
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AC01

Department of Labor (DOL) **Completed Actions**

Occupational Safety and Health Administration (OSHA)

2127. OCCUPATIONAL INJURY AND ILLNESS RECORDING AND REPORTING REQUIREMENTS

Priority: Other Significant

Legal Authority: 29 USC 553; 29 USC 657

CFR Citation: 29 CFR 1904.10; 29 CFR 1904.12; 29 CFR 1904.29(b)(7)(vi)

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA) issued a final rule on Occupational Injury and Illness Recording and Reporting Requirements (66 FR 5916, January 19,2001), scheduled to become effective on January 1, 2002. Following a thorough regulatory review, the Agency determined that all but two provisions of the final rule, regarding the recording of occupational hearing (1904.10) and musculoskeletal disorders (MSDs) (1904.12), would take effect as scheduled (66 FR 35113, July 3, 2001). Following notice and comment, OSHA published a final rule delaying the effective dates for sections 1904.10, 1910.12 and a note to 1904.29(b)(7)(vi) until January 1, 2003. The same final rule provided interim guidance on recording hearing loss and MSD cases during 2002 (66 FR 52031, October 12, 2001).

OSHA issued a final 1904.10 regulation setting recording criteria for occupational hearing loss (67 FR 44037, July 1, 2002), and simultaneously issued a proposal to delay the requirements for checking a separate hearing loss column on the 300 Log, as well as an additional one—year delay for the 1904.12 MSD requirements (67 FR 44124, July 1, 2002). The final rule on hearing loss and delay of the effective date was published in December of 2002. The final rule on MSD column was issued on June 30, 2003.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35113
NPRM Comment Period End	09/04/01	
Final Rule	10/12/01	66 FR 52031

Action	Date	FR Cite
NPRM	07/01/02	67 FR 44124
Final Rule	07/01/02	67 FR 44037
NPRM Comment Period End	08/30/02	
Final Rule	12/17/02	67 FR 77165
Final Rule	06/30/03	68 FR 38601

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

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RIN: 1218–AC06

Department of Labor (DOL) Proposed Rule Stage
Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

2128. UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT REGULATIONS

Regulatory Plan: This entry is Seq. No. 94 in part II of this issue of the **Federal Register**.

RIN: 1293–AA09

2129. • JOBS FOR VETERANS ACT OF 2002: STATE GRANT FUNDING FORMULA FY 2005

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 4102A (c) (2) (B) as amended by PL 107—288

CFR Citation: 20 CFR 1001.150 to 1001.152

Legal Deadline: None

Abstract: Public Law 107—288, the Jobs for Veterans Act, enacted November 7, 2002 requires establishment of a new grant allocation formula for Disabled Veterans Outreach Program (DVOP) and Local Veterans Employment Representative (LVER) that reflects the ratio of the total number of veterans seeking employment residing in the state to the total number of veterans seeking employment in all states. Congress allowed for the phasing—in of this funding formula requirement "over the three fiscal—year period" beginning October 1, 2002. Because funding for fiscal year 2003 had already been established before enactment of the law, this effectively meant the phase—in of this new funding formula would actually take place over a two—year period — fiscal years 2004 and 2005. To help minimize states' annual funding reductions, allocations will be limited to no more than eighty percent of the prior year's funding allocation, during the two—year phase—in period and ninety percent, after the funding formula is fully implemented.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Ronald Drach, Team Leader, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, 200 Constitution Avenue, NW, Room S1325, FP Building, Washington, DC 20210
Phone: 202 693—4749

RIN: 1293–AA11

2130. • JOBS FOR VETERANS ACT OF 2002: CONTRACT THRESHOLD AND ELIGIBILITY GROUPS FOR FEDERAL CONTRACTOR PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 4212(a) as amended by PL 107—288

CFR Citation: 41 CFR 61—250

Legal Deadline: None

Abstract: The Veterans' Employment and Training Service (VETS) is proposing to issue a notice of proposed rulemaking (NPRM) to implement changes required by the Jobs For Veterans Act (JFVA) of 2002. This act amended the Vietnam Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), by revising the reporting threshold from $25,000 to $100,000. JFVA also eliminated the collection categories of special disabled veterans and veterans of the Vietnam era and added the new collection categories of disabled veterans and armed forces expeditionary medal veterans. JFVA continues the collection for the recently separated veterans category, but changed the definition for that category to include any veteran who served on active duty in the U.S. military ground, naval, or air service during the three—year period beginning on the date of such veteran's discharge or release from active duty. Additionally, Federal contractors and subcontractors will be required to report the total number of all current employees in each of the nine categories and for each hiring location. This proposal will assist VETS in meeting the statutory requirement of annually collecting the VETS—100 Report.

PL 107—288 also requires VETS to establish in regulations a uniform national threshold entered employment rate for veterans receiving service through the public labor exchange. States will be gauged against a national entered employment rate threshold measured considering the state's unemployment rate and the states economic condition. This proposed rule will assist in determining performance deficiencies.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Norm Lance, Chief, Investigations and Compliance, VETS, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, S—1316, 200 Constitution Avenue, NW, Washington, DC 20210
Phone: 202 693—4731
Fax: 202 693—4755

RIN: 1293–AA12

Department of Labor (DOL) Long-Term Actions

Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

2131. • JOBS FOR VETERANS ACT OF 2002: UNIFORM NATIONAL THRESHOLD

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 4102(c) (3) (B) as amended by PL 107—288

CFR Citation: 20 CFR 1001

Legal Deadline: None

Abstract: Public Law 107—288, the Jobs for Veterans Act, enacted November 7, 2002 requires the establishment of a uniform threshold Veterans' Entered Employment Rate (EER). The uniform national threshold Veterans' Entered Employment Rate (EER) is the rate at which veterans enter employment after receiving labor exchange services. A state's EER is considered deficient if it falls below this established national threshold for the preceding program year. As a condition for receipt of funds, the Act stipulates that any state found to be deficient in its EER shall develop a plan to improve its performance.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Ronald Drach, Team Leader, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, 200 Constitution Avenue, NW, Room S1325, FP Building, Washington, DC 20210
Phone: 202 693—4749

RIN: 1293–AA13

Department of Labor (DOL) Completed Actions

Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

2132. JOBS FOR VETERANS ACT OF 2002

Priority: Other Significant

Legal Authority: PL 107—288

CFR Citation: 41 CFR 61—250

Legal Deadline: None

Abstract: The Jobs for Veterans Act requires the Department to establish and phase—in a new funding formula for Disabled Veterans Outreach Program (DVOP) and Local Veterans Employment Representatives (LVER) grants to states over a three—year period beginning October 1, 2002. Because funding for fiscal year 2003 had already been established before enactment of the law, this effectively meant the phase—in of this new funding formual would actually take place over a two—year period — fiscal years 2004 and 2005. The interim final rule applies only to fiscal year 2004. This new formual is based on the ratio of the total number of veterans seeking employment residing in a State to the total number of veterans seeking employment in all States.

Timetable:

Action	Date	FR Cite
Interim Final Rule: State Grant Funding Formula—FY 2004	06/30/03	68 FR 39000
Interim Final Rule Comment Period End: State Grant Funding Formula—FY 2004	06/30/03	
Comments Integrated Into RIN 1293—AA11	10/22/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Ronald Drach, Team Leader, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, 200 Constitution Avenue, NW, Room S1325, FP Building, Washington, DC 20210
Phone: 202 693—4749

RIN: 1293–AA10

[FR Doc. 03–27748 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XIV

Department of State

Semiannual Regulatory Agenda

DEPARTMENT OF STATE (STATE)

DEPARTMENT OF STATE

22 CFR Ch. I

[Public Notice 4476]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of State.

ACTION: Semiannual regulatory agenda.

SUMMARY: Consistent with the Regulatory Flexibility Act of 1980, 5 U.S.C. 602, and OMB guidance to the Department of State pursuant to Executive Order 12866, the fall 2003 regulatory agenda of the Department of State is set forth below. The purpose of this publication is to provide information to the public on the Department's regulatory plans.

FOR FURTHER INFORMATION CONTACT: Jo Brooks, Attorney Adviser for Legislation and General Management, Office of the Legal Adviser, Department of State, Room 3422, 2201 C Street NW., Washington, DC 20520, telephone (202) 647-2318.

Dated: October 1, 2003.

Grant S. Green, Jr.,

Under Secretary of State for Management.

Department of State—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2133	Hague Intercountry Adoption Convention Implementation	1400—AA88
2134	Revision to Department of State Acquisition Regulation (DOSAR)	1400—AB06
2135	Cultural Exchange Program, Summer Work/Travel	1400—AB10
2136	Hague Intercountry Adoption Preservation of Convention Records	1400—AB69
2137	Documentation of Immigrants Under the Immigration and Nationality Act—Electronic Petition for Diversity Immigrant Status	1400—AB84
2138	Availability of Information to the Public	1400—AB85
2139	Child Status Protection Act Beneficiaries	1400—AB87
2140	Documentation of Immigrant and Nonimmigrant Visas—Fingerprint Requirements	1400—AB88

Department of State—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2141	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	1400—AB17
2142	Student Exchange Visitor Information System (SEVIS) Rule	1400—AB45
2143	Elimination of Crew List Visas	1400—AB49
2144	Uncertified Foreign Health Care Workers	1400—AB68

Department of State—Completed Actions

Sequence Number	Title	Regulation Identification Number
2145	Amendment to the ITAR: Mandatory Electronic Filing of Shipper Export Declarations Using the U.S. Customs Automated Export System	1400—AB72
2146	International Traffic in Arms Regulations: Partial Lifting of Embargo Against Rwanda	1400—AB82
2147	Revisions to Grants Management Common Rules on Debarment, Suspension, and Drug Free Workplace Requirements	1400—AB83

Department of State (STATE) **Proposed Rule Stage**

2133. HAGUE INTERCOUNTRY ADOPTION CONVENTION IMPLEMENTATION

Priority: Other Significant

Legal Authority: 42 USC 14901 to 14954

CFR Citation: 22 CFR 96

Legal Deadline: None

Abstract: Regulations will implement accreditation aspects of the Hague Convention for the Protection of Children and Cooperation in Respect of Intercountry Adoption and its implementing legislation.

Timetable:

Action	Date	FR Cite
NPRM	09/15/03	68 FR 54064

Action	Date	FR Cite
NPRM Comment Period End	11/14/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Anna Mary Coburn, Office of Policy Review and Interagency Liaison, Bureau of Consular Affairs, Department of State, 2201 C Street NW, Washington, DC 20520
Phone: 202 312—9726
Fax: 202 312—9744

RIN: 1400–AA88

2134. REVISION TO DEPARTMENT OF STATE ACQUISITION REGULATION (DOSAR)

Priority: Info./Admin./Other

Legal Authority: PL 93—400; PL 96—83

CFR Citation: 48 CFR 6

Legal Deadline: None

Abstract: This revision to the DOSAR will make minor changes to conform the DOSAR to continuing changes in the Federal Acquisition Regulation (FAR).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gladys G. Gines, Procurement Analyst, Office of the Procurement Executive, Department of State, SA—6, Room 603, Washington, DC 20522—0602
Phone: 703 516—1691
Fax: 703 875—6155
Email: ginesgg@state.gov

RIN: 1400–AB06

2135. CULTURAL EXCHANGE PROGRAM, SUMMER WORK/TRAVEL

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101(2)(15)(J), 1182, 1184, 1258; 22 USC 1431 to 1442, 1475e, 2451 to 2460; Foreign Affairs Reform and Restructuring Act, PL 105—277, 112 Stat 2681 et seq; Reorganization Plan No 2 of 1977, 3 CFR, 1977 Comp, p 200; EO 12048 of March 27, 1978, 3 CFR, 1978 Comp, p 168

CFR Citation: 22 CFR 62.32

Legal Deadline: None

Abstract: The Department is adopting specific regulations governing participation in summer work/travel programs conducted by Department—designated sponsors pursuant to Public Law 105—277. These regulations supersede program guidelines promulgated by the USIA and published at 61 FR 13760 (March 28, 1996).

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 3116—AA16.

Agency Contact: Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, Department of State, Bureau of Educational and Cultural Affairs, 301 4th Street SW, Washington, DC 20547
Phone: 202 401—9810
Fax: 202 401—9809
Email: scolvin@pd.state.gov.

RIN: 1400–AB10

2136. • HAGUE INTERCOUNTRY ADOPTION PRESERVATION OF CONVENTION RECORDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 14901 to 14954

CFR Citation: 22 CFR 98

Legal Deadline: None

Abstract: Regulation to implement preservation of records requirements under the Intercountry Adoption Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	09/15/03	68 FR 54119
NPRM Comment Period End	11/14/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Anna Mary Coburn, Office of Policy Review and Interagency Liaison, Bureau of Consular Affairs, Department of State, 2201 C Street NW, Washington, DC 20520
Phone: 202 312—9726
Fax: 202 312—9744

RIN: 1400–AB69

2137. • DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT—ELECTRONIC PETITION FOR DIVERSITY IMMIGRANT STATUS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In this rule, the Department proposes to change the manner in which aliens may petition for the opportunity to participate in the Diversity Visa Program from a standard mail—in system to an entirely electronic system that will utilize a specifically designated Internet website.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ronald L. Acker, Lead Visa Specialist, Department of State, 2401 E Street NW, Washington, DC 20522
Phone: 202 663—1202
Fax: 202 663—3898
Email: ackerrl@state.gov

RIN: 1400–AB84

2138. • AVAILABILITY OF INFORMATION TO THE PUBLIC

Priority: Other Significant

Legal Authority: 22 USC 552.552a; EO 12858, as amended; 68 FR 15313; EO 12600; 55 FR 9318; Ethics in Government Act of 1978, PL 95—521, as amended

CFR Citation: 22 CFR 171

Legal Deadline: None

Abstract: A proposed revision of the regulation that governs access by the public to information that is under the control of the Department in order to reflect changes in the provisions of the basic laws and Executive orders pertaining to access to information.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret Peppe, Chief, Programs and Plans Division of the Office of Information Programs and Services, Department of State, SA—2, Room 6073, Washington, DC 20522
Phone: 202 261—8327
Fax: 202 663—2717

RIN: 1400–AB85

2139. ● CHILD STATUS PROTECTION ACT BENEFICIARIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1104

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The rule implements the Child Status Protection Act of 2002. The Act helps protect certain immigrant visa applicants from being denied immigration benefits due to their reaching the age of 21 and because of delays in legacy INS petition approval and adjustment processing. If an alien is eligible for relief after reaching age 21, his/her age is frozen throughout the pendency of his/her case. The rule sets forth the special formulas for calculating an alien's age for immigrant visa processing purposes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ronald L. Acker, Lead Visa Specialist, Department of State, 2401 E Street NW, Washington, DC 20522
Phone: 202 663—1202
Fax: 202 663—3898
Email: ackerrl@state.gov

RIN: 1400–AB87

2140. ● DOCUMENTATION OF IMMIGRANT AND NONIMMIGRANT VISAS—FINGERPRINT REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 8 USC 1104

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The rule announces the Department's intention to fingerprint certain immigrant and nonimmigrant visa applicants effective upon completion. Pursuant to section 303 of the Enhanced Border Security and Visa Entry Reform Act, on and after October 26, 2004, the Secretary of State will issue to aliens only machine—readable, tamper—resistant visas and travel and entry documents that use biometric identifiers. Fingerprints will be taken for the purpose of establishing a pilot program for meeting the biometric requirement. 22 CFR 41.105 authorizes consular officers to fingerprint visa applicants if the officer considers that necessary for the purposes of investigation or identification.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

RIN: 1400–AB88

Department of State (STATE) Final Rule Stage

2141. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d—7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 22 CFR 141 to 143

Legal Deadline: None

Abstract: The Department of State participated with 21 other Federal agencies to amend regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI, section 504, and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Antoinette St. Clair, Compliance Programs, Department of State, S/EEOCR, Room 4216, 2201 C Street NW, Washington, DC 20520
Phone: 202 647—9295
Fax: 202 647—4969

Email: stclairaf@state.gov

RIN: 1400–AB17

2142. STUDENT EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS) RULE

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 8 USC 1101(a)(15)(j), 1182, 1184, 1258; 22 USC 1431 to 1442, 1475e, 2451 to 2460; Foreign Affairs Reform and Restructuring Act, PL 105—277, 112 Stat 2681 et seq; Reorganization Plan No 2 of 1977, 3 CFR 1977 Comp, p 200; EO 12048 of March 27, 1978, 3 CFR, 1978 Comp, p 168

CFR Citation: 22 CFR 62.15

Legal Deadline: None

Abstract: The Department is amending the Exchange Visitor Program regulations to facilitate the requirements established by section 641 of Public Law 104—208 (as amended) for the INS Student and Exchange Visitor Program (SEVP).

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/12/02	67 FR 76307
Interim Final Rule Comment Period End	01/13/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Agency Contact: Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, Department of State, Bureau of Educational and Cultural Affairs, 301 4th Street SW, Washington, DC 20547
Phone: 202 401—9810
Fax: 202 401—9809
Email: scolvin@pd.state.gov.

RIN: 1400–AB45

2143. ELIMINATION OF CREW LIST VISAS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101(a)(15)(D); 8 USC 1201(f)

CFR Citation: 22 CFR 41.42

Legal Deadline: None

Abstract: Rule proposes to eliminate crew list visas.

Timetable:

Action	Date	FR Cite
NPRM	12/13/02	67 FR 76711
NPRM Comment Period End	02/11/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ronald L. Acker, Lead Visa Specialist, Department of State, 2401 E Street NW, Washington, DC 20522
Phone: 202 663—1202
Fax: 202 663—3898
Email: ackerrl@state.gov

RIN: 1400–AB49

2144. UNCERTIFIED FOREIGN HEALTH CARE WORKERS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 40.53

Legal Deadline: None

Abstract: This regulation outlines requirements for foreign health care workers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/17/02	67 FR 77158
Interim Final Rule Effective	12/17/02	
Interim Final Rule Comment Period End	02/18/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ronald L. Acker, Lead Visa Specialist, Department of State, 2401 E Street NW, Washington, DC 20522
Phone: 202 663—1202
Fax: 202 663—3898
Email: ackerrl@state.gov

RIN: 1400–AB68

Department of State (STATE) Completed Actions

2145. • AMENDMENT TO THE ITAR: MANDATORY ELECTRONIC FILING OF SHIPPER EXPORT DECLARATIONS USING THE U.S. CUSTOMS AUTOMATED EXPORT SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 123

Legal Deadline: None

Abstract: Part 123 of the ITAR will be amended to clarify the procedures and timelines for electronic filing of Shipper's Export Declarations with Census and Customs.

Timetable:

Action	Date	FR Cite
Final Action	10/27/03	68 FR 61098

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Mary F. Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522
Phone: 202 663—2865
Fax: 202 261—8199
Email: sweeneymf@state.gov

RIN: 1400–AB72

2146. • INTERNATIONAL TRAFFIC IN ARMS REGULATIONS: PARTIAL LIFTING OF EMBARGO AGAINST RWANDA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 126

Legal Deadline: None

Abstract: The International Traffic in Arms Regulations clarified that the policy of denial will remain in place for any new license applications, requests for approval, exports or imports of defense articles or defense services destined for or originating in Rwanda other than by the Government of Rwanda.

Timetable:

Action	Date	FR Cite
Final Action	07/30/03	68 FR 44613

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Mary Sweeney, Munitions Control Analyst, Department of State, 12th Floor, 2401 E Street NW, Washington, DC 20522
Phone: 202 663—2865
Fax: 202 261—8199
Email: sweeneymf@state.gov

RIN: 1400–AB82

2147. • REVISIONS TO GRANTS MANAGEMENT COMMON RULES ON DEBARMENT, SUSPENSION, AND DRUG FREE WORKPLACE REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 103—355, sec 2455, 108 Stat 3327; EO 12549, 3 CFR, 1986 Comp, p 189; EO 12689, 3 CFR, 1989 Comp, p 235; 41 USC 701 et seq

CFR Citation: 22 CFR 133; 22 CFR 134

Legal Deadline: None

Abstract: This regulation updates and brings nonprocurement debarment and suspension procedures in line with the debarment and suspension procedures used for procurement. RIN 1400—AB33 was completed in error in 2002.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Agency Contact: Gladys G. Gines, Procurement Analyst, Office of the Procurement Executive, Department of State, SA—6, Room 603, Washington, DC 20522
Phone: 703 516—1691
Fax: 703 875—6155
Email: ginesgg@state.gov

RIN: 1400–AB83

[FR Doc. 03–27067 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XV

Department of Transportation

Semiannual Regulatory Agenda

DEPARTMENT OF TRANSPORTATION (DOT)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

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OST Docket 99-5129

Department Regulatory Agenda; Semiannual Summary

AGENCY: Office of the Secretary, DOT.

ACTION: Semiannual regulatory agenda.

SUMMARY: The regulatory agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. The agenda provides the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of and allow it to more effectively participate in the Department's regulatory activity. The public is also invited to submit comments on any aspect of this agenda.

FOR FURTHER INFORMATION CONTACT:

General

You should direct all comments and inquiries on the agenda in general to Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-4723.

Specific

You should direct all comments and inquiries on particular items in the agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in Appendix B.

Individuals who use a telecommunications device for the deaf (TDD) may call (202) 755-7687.

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SUPPLEMENTARY INFORMATION:

Background

Improvement of our regulations is a prime goal of the Department of Transportation (Department or DOT). There should be no more regulations than necessary and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To help the Department achieve these goals and in accordance with Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735; October 4, 1993) and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), the Department prepares a semiannual regulatory agenda. It summarizes all current and projected rulemaking, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected during the succeeding 12 months or such longer period as may be anticipated or for which action has been completed since the last agenda.

The agendas are based on reports submitted by the offices initiating the rulemaking and are reviewed by the Department Regulations Council. The Department's last agenda was published in the **Federal Register** on May 27, 2003 (68 FR 30604). The next one is scheduled for publication in the **Federal Register** in April 2004.

Under the Homeland Security Act of 2002, the United States Coast Guard (USCG) and the Transportation Security Administration (TSA), and their regulatory authority, have been transferred to the new Department of Homeland Security (DHS). See DHS agency code 1625 for USCG and 1652 for TSA.

The Department has created an Internet site that provides general information about its rulemaking responsibilities and activities. It includes hypertext links to numerous other departmental sites providing helpful information about DOT regulation. The web address for this site is http://regs.dot.gov.

Additionally, the Department has also created a Docket Management System (DMS) List Serve that will automatically provide an email notification when certain documents are put into the dockets. This email notification will provide a link to a document within DMS. The web address to sign-up for this service is http://dms.dot.gov/emailNotification.

Significant/Priority Rulemakings

The agenda covers all rules and regulations of the Department. We have classified rules as a DOT agency priority in the agenda if they are, essentially, very costly, controversial, or of substantial public interest under our Regulatory Policies and Procedures. All DOT agency priority rulemaking documents are subject to review by the Secretary of Transportation. If the Office of Management and Budget (OMB) decides a rule is subject to its review under Executive Order 12866, we have classified it as significant in the agenda.

Explanation of Information on the Agenda

The format for this agenda is required by a fall 2004 memorandum from the Office of Management and Budget.

First, the agenda is divided by initiating offices. Then, the agenda is divided into five categories: (1) prerule stage, (2) proposed rule stage, (3) final rule stage, (4) long-term actions, and (5) completed actions. For each entry, the agenda provides the following information: (1) its "significance;" (2) a short descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (e.g., NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for a decision on whether to take the action; (8) whether the rulemaking will affect small entities and/or levels of government and, if so, which categories; (9) whether a Regulatory Flexibility Act (RFA) analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (With minor exceptions, DOT requires an economic analysis for all its rulemakings.); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act. If there is information that does not fit in the other categories, it will be included under a separate heading entitled "Additional Information."

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), to keep those requirements operationally current, we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the "Timetable" column, we use abbreviations to indicate the particular documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have made a decision to issue a document; it is the earliest date on which we expect to make a decision on whether to issue it. In addition, these dates are based on current schedules. Information received subsequent to the issuance of this agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•;) preceding an entry indicates that the entry appears in the agenda for the first time.

Request for Comments

General

Our agenda is intended primarily for the use of the public. Since its inception, we have made modifications and refinements that we believe provide the public with more helpful information, as well as make the agenda easier to use. We would like you, the public, to make suggestions or comments on how the agenda could be further improved.

Reviews

We also seek your suggestions on which of our existing regulations you believe need to be reviewed to determine whether they should be revised or revoked. We particularly draw your attention to the Department's review plan in Appendix D.

Regulatory Flexibility Act

The Department is especially interested in obtaining information on requirements that have a "significant economic impact on a substantial number of small entities" and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to us, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (Section 610 Review) appears at the end of the title for these reviews. Please see Appendix D for the Department's section 610 review plans.

Federalism

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we encourage State and local governments to provide us with information about how the Department's rulemakings impact them.

Purpose

The Department is publishing this regulatory agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department with regard to any specific item on the agenda. Regulatory action, in addition to the items listed, is not precluded.

Issued in Washington, DC, on November 17, 2003.

Norman Y. Mineta,

Secretary of Transportation.

Appendix A - Instructions for Obtaining Copies of Regulatory Documents

To obtain a copy of a specific regulatory document in the agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most if not all such documents, including the Semiannual Agenda, are available through our Internet-accessible docket at http://dms.dot.gov. See Appendix C for more information.

Federal Highway Administration (FHWA)

(Name of contact person), Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

Federal Motor Carrier Safety Administration (FMCSA)

(Name of contact person), Federal Motor Carrier Safety Administration, 400 7th Street SW., Washington, DC 20590.

Federal Railroad Administration (FRA)

(Name of contact person), Federal Railroad Administration, 400 7th Street SW., Washington, DC 20590.

National Highway Traffic Safety Administration (NHTSA)

(Name of contact person), National Highway Traffic Safety Administration, 400 7th Street SW., Washington, DC 20590.

Federal Transit Administration (FTA)

(Name of contact person), Federal Transit Administration, 400 7th Street SW., Washington, DC 20590.

Saint Lawrence Seaway Development Corporation (SLSDC)

(Name of contact person), Saint Lawrence Seaway Development Corporation, 400 7th Street SW., Room 5424, Washington, DC 20590.

Research and Special Programs Administration (RSPA)

(Name of contact person), Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590.

Maritime Administration (MARAD)

Joel C. Richard, Secretary, Maritime Administration, 400 7th Street SW., Room 7210, Washington, DC 20590, (202) 366-5746.

Bureau of Transportation Statistics (BTS)

(Name of contact person), Bureau of Transportation Statistics,400 7th Street SW., Room 3103, Washington, DC 20590.

Federal Aviation Administration (FAA)

The FAA has a mailing list system for notices and advance notices of proposed rulemaking (NPRMs and ANPRMs). Persons interested in obtaining future copies of all of those documents to be issued by the FAA or only of those concerning certain parts of the Federal Aviation Regulations should request a copy of Advisory Circular No. 11-2, which describes the application procedure, by calling (202) 267-3484 or by writing to: Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591.

Office of the Secretary (OST)

To obtain a copy of a specific regulatory document or to receive future copies of the Department's regulatory agenda write to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General Counsel, Department of Transportation, Washington, DC 20590, (202) 366-4723.

Appendix B - General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

FAA - Donald Byrne, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Avenue SW., Room 915A, Washington, DC 20591; telephone: (202) 267-3073.

FHWA — Julie Downey, Office of Chief Counsel, 400 7th Street SW., Room 4223, Washington, DC 20590; telephone: (202) 366-0761.

FMCSA - Suzanne O'Malley, Office of Chief Counsel, 400 7th Street SW., Room 8201, Washington, DC 20590; telephone: (202) 366-1367.

FRA — Ivornette N. Lynch, Office of Chief Counsel, 400 7th Street SW., Mail Stop 10, Washington, DC 20590; telephone: (202) 493-6030.

NHTSA - Steve Wood, Office of Chief Counsel, 400 7th Street SW., Room 5219, Washington, DC 20590; telephone: (202) 366-2992.

FTA - Richard Wong, Office of Chief Counsel, 400 7th Street SW., Room 9316, Washington, DC 20590; telephone: (202) 366-4011.

SLSDC - Marc Owen, General Counsel's Office, 400 7th Street SW., Room 5424, Washington, DC 20590; telephone: (202) 366-6823.

RSPA — Donna O'Berry, Office of Chief Counsel, 400 7th Street SW., Room 8405, Washington, DC 20590; telephone: (202) 366-4400.

MARAD — Christine Gurland, Office of Chief Counsel, Maritime Administration, 400 7th Street SW., Room 7221, Washington, DC 20590; telephone: (202) 366-5181.

BTS — Robert Monniere SW., Room 3105, Washington, DC 20590; telephone: (202) 366-5498.

OST - Neil Eisner, Office of Regulation and Enforcement, 400 7th Street SW., Room 10424, Washington, DC 20590; telephone: (202) 366-4723.

Appendix C - Public Rulemaking Dockets

The public may review or submit comments to the dockets for all of DOT via the Internet at the following address: http://dms.dot.gov. Examples of documents that may be in the dockets are proposed rules, public comments received, supporting analyses, studies, and reports. The above referenced Internet address allows the public to also sign up for the DOT List Serve to receive notification when certain documents are placed in the dockets.

The public also may review regulatory dockets at, or deliver comments on proposed rulemakings to, the Dockets Office at 400 7th Street SW., Room PL 401, Washington, DC 20590, 1-800-647-5527. Working Hours: 9-5.

Appendix D - Review Plans for Section 610 and Other Requirements

Part I - The Plan

General

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our 1979 Regulatory Policies and Procedures require such reviews. We also have responsibilities under Executive Order 12866 (Regulatory Planning and Review) and section 610 of the Regulatory Flexibility Act to conduct such reviews. This will include the use of plain language techniques in new rules and to consider rewriting existing rules when we have the opportunity and resources permit. The Department is currently conducting a number of reviews of existing rules and is engaged in rulemaking actions resulting from these reviews.

Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that (1) have been published within the last ten years and (2) have a "significant economic impact on a substantial number of small entities" (SEIOSNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. To better comply with section 610, the Department has updated its regulatory review plan published on June 29, 1981, to accomplish a more systematic review of all of its regulations. The Office of the Secretary and each of the Department's Operating Administrations have a 10-year review plan. These reviews are in accordance with section 610 of the Regulatory Flexibility Act.

Other Review Plans

All elements of the Department, except for Federal Aviation Administration (FAA), have also elected to use this 10-year plan process to comply with the review requirements of the Department's Regulatory Policies and Procedures, and Executive Order 12866. FAA is using a different approach, which is described in part II to this Appendix.

Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a Presidentially mandated review. If there is any change to the review plan, we will note the change in the following Unified Agenda. For any section 610 review, we will provide the required notice prior to the review.

Part II - The Review Process

The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ends in the fall of 1999; Year 2 (1999) begins in the fall of 1999 and ends in the fall of 2000; and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have' Any comments concerning the plan or particular analyses can be submitted to the regulatory contacts listed in Appendix B, General Rulemaking Contact Persons.

Section 610 Review

The agency will analyze each of the rules in a given year's group to determine whether any rule has a SEIOSNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability.

Publication of agencies' section 610 analyses list each fall in this Agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to us early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each fall Agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEIOSNOSE, we will give a short explanation (e.g., "these rules only establish petition processes that have no cost impact" or "these rules do not apply to any small entities"). For parts, subparts, or other discrete sections of rules that do have a SEIOSNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, we will add an entry to the Agenda in the prerulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

Other Reviews

The agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each Fall Agenda, the agency will also publish information on the results of the examinations completed during the previous year.

FAA

The Federal Aviation Administration, in addition to reviewing its rules in accordance with the schedule below, has established a process by which the public is asked for its comments on which rules need review the most. Any information that the FAA receives in connection with its annual section 610 analyses would, of course, also be reviewed in the spirit of E.O. 12866. In addition, in response to a recommendation of the White House Commission on Aviation Safety and Security, the FAA has completed a review of all its existing regulations to identify those in need of rewriting as performance-based or plain language regulations. The agency also reviewed ongoing regulatory projects and proposals to identify additional candidates for revision. In all, the agency reviewed 68 parts of the CFR, containing 3,884 sections, appendices, and Special Federal Aviation Regulations. In addition to using plain language in its current and future regulations, the FAA intends to revise those regulations identified in its study when it has the opportunity and resources to do so.

FMCSA

As noted in the Spring 2003 Semiannual Regulatory Agenda, FMCSA re-examined the past method of reviewing its motor carrier safety regulations. While FMCSA's past approach called for a "zero-based" review and rewrite of all its regulations, lack of available resources prevented this. In accordance with Section 610 of the Regulatory Flexibility Act, FMCSA will now use a review process similar to the Department's overall reviews of existing regulations. FMCSA will undertake a 5-year analysis and review of its regulations to eliminate duplication and unnecessary requirements and to clarify rules to help small businesses comply. The agency's 5-year review plan, contained in part III of this Appendix, coincides with the Department's 10-year schedule for meeting Section 610 requirements.

Part III- List of Pending Section 610 Reviews

The Agenda identifies the pending DOT Section 610 Reviews by inserting (Section 610 Review) after the title for the specific entry. Also, a Governmentwide list of section 610 reviews can be located in an index at the end of the Agenda. For further information on the pending reviews, see the Agenda entries.

OFFICE OF THE SECRETARY
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	14 CFR parts 200 through 212	1998	1999
2	14 CFR parts 213 through 232	1999	2000

OFFICE OF THE SECRETARY (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
3	14 CFR parts 234 through 254	2000	2001
4	14 CFR parts 255 through 298 and part 40	2001	2002
5	14 CFR parts 300 through 373	2002	2003
6	14 CFR parts 374 through 398	2003	2004
7	14 CFR part 399 and 49 CFR parts 1 through 11	2004	2005
8	49 CFR parts 17 through 28	2005	2006
9	49 CFR parts 29 through 39 and parts 41 through 89	2006	
10	49 CFR parts 91 through 99, 48 CFR parts 1201 through 1253, and new parts and subparts	2007	2008

Year 3 (2000) List of rules continuing to be analyzed

14 CFR part 240 — Inspection of accounts and property

Year 5 (2002) List of rules continuing to be analyzed

14 CFR part 300 — Rules of conduct in DOT proceedings under this chapter
14 CFR part 314 — Employee protection program
14 CFR part 330 — Procedures for compensation of air carriers

Year 5 (Fall 2002) List of rules analyzed and a summary of the results

14 CFR part 302 — Review of practice in proceedings

- Section 610: No. SEIOSNOSE. The rule does not have asignificant impact on a substantial number of small entities.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.
- General: This section was revised in 2000. If additionalupdates become desirable, changes will be proposed.

14 CFR part 303 — Review of air carrier agreements

- Section 610: No. SEIOSNOSE. The rule does nothave a significant impact on a substantial number of small entities.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.
- General: The last overall revision of this section wasin 1985, with changes to certain specific provisions having beenmade subsequently. If additional updates become desirable, changeswill be proposed.

14 CFR part 313 — Implementation of the Energy Policy and Conservation Act

- Section 610: No. SEIOSNOSE. The rule does nothave a significant impact on a substantial number of small entities.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.
- General: This section was revised in 1995. If additionalupdates become desirable, changes will be proposed.

14 CFR part 323 — Termination, suspensions, and reductions of service

- Section 610: No. SEIOSNOSE. The rule does nothave an economic impact on a substantial number of small entities.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.
- General: Since this section has not been revised for anumber of years, we will propose streamlining by eliminating someoutdated and unnecessary sections.

14 CFR part 325 — Essential air service procedures

- Section 610: No. SEIOSNOSE. The rule does not have aneconomic impact on a substantial number of small entities.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.
- General: Since this section has not been revisedfor a number of years, we will propose streamlining by eliminatingsome outdated and unnecessary sections.

14 CFR part 372 — Overseas military personnel charters

- Section 610: No. SEIOSNOSE. The rule does not have asignificant impact on a substantial number of small entities.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.
- General: While this rule has not been used byany commercial air carrier for 10 years or more, we are reluctantto eliminate it as a possible alternative for military personnelstationed in foreign countries. We are reviewing the rule for desirablechanges.

Year 6 (Fall 2003) List of rules that will be analyzed during the next year

14 CFR part 374 — Implementation of the consumer credit protection act with respect to air carriers and foreign air carriers
14 CFR part 374a — Extension of credit by airlines to Federal political candidates
14 CFR part 375 — Navigation of foreign civil aircraft within the United States
14 — Interstate highway systems

- Section 610: No SEIOSNOSE. These rules applyprimarily to State transportation agencies and have no significantimpact on small entities.
- Plain Language: While FHWA'splain language review of this regulation indicates no need for substantialrevision, the statutory basis for this regulation has been amendedand, as such, the FHWA is considering revising the regulation.

Year 6 (Fall 2003) List of rules to be analyzed during the next year

23 CFR part 500 — Management and monitoring systems

Federal-Aid Highway Program

The FHWA has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-aid highway program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter 1 of title 23 of the USC. Section 145 of title 23 expressly provides that chapter 1 provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to requirements that States must meet to receive Federal funds for the construction and other work related to highways.

Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION SECTION 610 AND OTHER REVIEWS

Regulations To Be Reviewed	Analysis Year	Review Year	
1	None	1998	1999
2	None	1999	2000
3	None	2000	2001
4	None	2001	2002
5	None	2002	2003
6	49 CFR parts 372 subpart A, 381, 386, and 388-389	2003	2004
7	49 CFR parts 325, 350, 355, 382-385, 390-393, and 396-399	2004	2005
8	49 CFR parts 356-357, 370-371, 372 subparts B-C, 373-374, 376, and 379	2005	2006
9	49 CFR parts 360, 365-366, 368, 377-378, and 387	2006	2007
10	49 CFR 375, 395, and new parts and subparts	2007	2008

Year 6 (Fall 2003) List of rules to be analyzed during the next year

49 CFR part 372 subpart A — Exemptions
49 CFR part 381 — Waivers, exemptions and pilot programs
49 CFR part 386 — Rules of practice for motor carrier, broker, freight forwarder
49 CFR part 388 — Cooperative agreements with States
49 CFR part 389 — Rulemaking procedures — Federal Motor Carrier Safety Regulations

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 501 through 526 and 571.213	1998	1999
2	49 CFR parts 571.131, 571.217, 571.220-571.222	1999	2000
3	49 CFR parts 571.101-571.110, and 571.135	2000	2001
4	49 CFR parts 529-579, except 571	2001	2002
5	49 CFR parts 571.111-571.129, and 580-590	2002	2003
6	49 CFR part 571.201-571.212	2003	2004
7	49 CFR parts 571.214-571.219, except 571.217	2004	2005
8	49 CFR parts 591-594	2005	2006
9	49 CFR parts 571.223-571.304, 500, and new parts and subparts under 49 CFR	2006	2007
10	23 CFR parts 1200-1300, and new parts and subparts	2007	2008

Year 5 (Fall 2002) List of rules analyzed and a summary of the results

49 CFR part 529 - Manufacturers of multistage automobiles

- Section 610: No SEIOSNOSE. Some small entitiesmay be affected, but the economic impact on small entities will notbe significant.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.

49 CFR part 531 - Passenger automobiles average fuel economy

- Section 610: No SEIOSNOSE. Some small entities may beaffected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.

49 CFR part 533 - Light truck fuel economy standards

- Section 610: No SEIOSNOSE. Some small entities may beaffected, but the economic impact on small entities will not be significant.

- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.

49 CFR part 535 - 3-year carryforward and carryback of credits for light trucks
- Section 610: No SEIOSNOSE. Some small entities may beaffected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.

49 CFR part 537 - Automobile fuel economy reports
- Section 610: No SEIOSNOSE. Some small entities may beaffected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language hasbeen identified, we will make revisions.

49 CFR part 538 - Manufacturing incentives for alternative fuel vehicles
- Section 610: No SEIOSNOSE. Some small entities may beaffected, but the economic impact on small entities will not be significant.

Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 541 - Federal motor vehicle theft prevention standard
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: This rule is being amended using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 542 - Procedures for selecting lines to be covered by the theft prevention standard
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 543 - Exemption from vehicle theft prevention standard
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 544 - Insurer reporting requirements
- Section 610: No SEIOSNOSE. No small entities are affected.
- Plain Language: This rule is being amended using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 551 - Procedural rules
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 552 - Petitions for rulemaking, defect, and noncompliance orders
- Section 610: No SEIOSNOSE. No small entities are affected.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 553 - Rulemaking procedures
- Section 610: No SEIOSNOSE. No small entities are affected.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 554 - Standards enforcement and defects investigation
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: This rule is revised using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 555 - Temporary exemption from motor vehicle safety and bumper standards
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 556 - Exemption for inconsequential defect or non-compliance
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: This rule is being amended using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 557 - Petitions for hearings on notification and remedy of defects
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 564 - Replaceable light source information
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 565 - Vehicle identification number requirements
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.

- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 566 - Manufacturer identification
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 567 — Certification
- Section 610: No SEIOSNOSE. The rule does not have a significant economic impact on a substantial number of small entities.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 568 - Vehicles manufactured in two or more stages
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 569 - Regrooved tires
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 570 - Vehicle in use inspection standards
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 572 - Anthropomorphic test devices
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 573 - Defect and noncompliance reports
- Section 610: No SEIOSNOSE. These rules impose a low cost on a small number of entities.
- Plain Language: This rule is being revised using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 574 - Tire identification and recordkeeping
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 575 - Consumer information regulations
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: This rule is being amended using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 576 - Record retention
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 577 - Defect and noncompliance notification
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: This rule is being amended using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 578 - Civil penalties
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: This rule is revised using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

49 CFR part 579 - Defect and noncompliance responsibility
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: This rule is being amended using plain language techniques. Where confusing or wordy language has been identified, we will make revisions.

Year 5 (Fall 2002) List of rules continuing to be analyzed

49 CFR parts 571.111 - Rearview mirrors
49 CFR parts 571.112 - [Reserved]
49 CFR parts 571.113 - Hood latch system
49 CFR parts 571.114 - Theft protection
49 CFR parts 571.116 - Motor vehicle brake fluids
49 CFR parts 571.117 - Retreaded pneumatic tires

49 CFR parts 571.118 - Power-operated window, partition, and roof panel systems
49 CFR parts 571.119 - New pneumatic tires for vehicles other than passenger cars
49 CFR parts 571.120 - Tire selection and rims for motor vehicles other than passenger cars
49 CFR parts 571.121 - Air brake systems
49 CFR parts 571.122 - Motorcycle brake systems
49 CFR parts 571.123 - Motorcycle controls and displays
49 CFR parts 571.124 - Accelerator control systems
49 CFR parts 571.125 - Warning devices
49 CFR parts 571.129 - New non-pneumatic tires for passenger cars
49 CFR part 580 - Odometer disclosure requirements
49 CFR part 581 - Bumper standard
49 CFR part 582 - Insurance cost information regulation
49 CFR part 583 - Automobile parts content labeling
49 CFR part 585 - Advanced air bag phase-in reporting requirements
49 CFR part 586 - Side impact phase-in reporting requirements
49 CFR part 587 - Deformable barriers
49 CFR part 588 - Child restraint systems recordkeeping requirements

Year 6 (Fall 2003) list of rules that will be analyzed during the next year

49 CFR parts 571.201 - Occupant protection in interior impact
49 CFR parts 571.202 - Head restraints
49 CFR parts 571.203 - Impact protection for the driver from the steering control system
49 CFR parts 571.204 - Steering control rearward displacement
49 CFR parts 571.205 - Glazing materials
49 CFR parts 571.206 - Door locks and door retention components
49 CFR parts 571.207 - Seating systems
49 CFR parts 571.208 - Occupant crash protection
49 CFR parts 571.209 - Seat belt assemblies
49 CFR parts 571.210 - Seat belt assembly anchorages
49 CFR parts 571.211 - [Reserved]
49 CFR parts 571.212 - Windshield mounting

FEDERAL RAILROAD ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR parts 200 through 201	1998	1999
2	49 CFR parts 207, 209, 211, 215, and 256	1999	2000
3	49 CFR parts 210, 212, 214, and 217	2000	2001
4	49 CFR part 219	2001	2002
5	49 CFR parts 218 and 221	2002	2003
6	49 CFR parts 216 and 228 through 229	2003	2004
7	49 CFR parts 223 and 233	2004	2005
8	49 CFR parts 225, 231, and 234	2005	2006
9	49 CFR parts 235 through 236, 250, 260, and 266	2006	2007
10	49 CFR parts 213, 220, 230, 232, 239, 240, and 265	2007	2008

Year 5 (Fall 2002) List of rules analyzed and a summary of the results

49 CFR part 218 — Railroad operating practices

- Section 610: There is No SEIOSNOSE. The rule applies only to railroads that operate rolling equipment on standard gauge track, which is part of the general railroad system of transportation and exempts railroads that operate only on track inside an installation or rapid transit operations in an urban area not connected with the general railroad system of transportation.
- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: Since the rule prescribes minimum requirements for railroad operating rules and practices, it will provide safety and security for railroad employees.

49 CFR part 221 — Rear End Marking Device — Passenger, Commuter and Freight Trains

- Section 610: There is No SEIOSNOSE. This rule exempts small entities from compliance.
- Plain Language: FRA's plain language review of this rule indicates no need for substantial revision.
- General: Since the rule prescribes minimum requirements for railroads to equip the rear car of passenger, commuter and freight trains with highly visible markers it will provide safety and security not only for railroad employees but also for the general public.

Year 6 (Fall 2003) List of rules that will be analyzed during the next year

49 CFR part 216'Special Notice and Emergency Order Procedures

49 CFR part 228'Hours of Service of Railroad Employees
49 CFR part 229'Railroad Locomotive Safety Standards

FEDERAL TRANSIT ADMINISTRATION SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	None	1998	1999
2	None	1999	2000
3	None	2000	2001
4	49 CFR parts 661 and 665	2001	2002
5	None	2002	2003

FTA has completed all its reviews.

MARITIME ADMINISTRATION SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	46 CFR parts 201 through 207	1998	1999
2	46 CFR parts 221 through 232	1999	2000
3	46 CFR parts 249 through 295	2000	2001
4	46 CFR part 298	2001	2002
5	46 CFR parts 307 through 310	2002	2003
6	46 CFR parts 315 through 339	2003	2004
7	46 CFR parts 340 and 347	2004	2005
8	46 CFR parts 349 through 380	2005	2006
9	46 CFR parts 381 through 387	2006	2007
10	46 CFR parts 390 through 391	2007	2008

Year 5 (Fall 2002) List of rules analyzed and a summary of the results

46 CFR part 307 - Establishment of Mandatory Position Reporting System for Vessels

- Section 610: No SEISNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: MARAD'S review found that the regulation is written in plain language.
- General: In 2000, we amended part 307 to update address information. We will continue to review these regulations and make additional changes when appropriate.

46 CFR part 308 - War Risk Insurance

- Section 610: No SEISNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: MARAD will rewrite the regulation using plain language techniques when the opportunity and resources become available.
- General: We will continue to review these regulations and make additional changes when appropriate.

46 CFR part 309 - Values for War Risk Insurance

- Section 610: No SEISNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: This regulation is written in plain language.
- General: We will continue to review these regulations and make additional changes if necessary.

46 CFR part 310 - Merchant Marine Training

- Section 610: No SEISNOSE. No small entities, only individuals, are affected by this regulation.
- Plain Language: MARAD will rewrite the regulation using plain language techniques when the opportunity and resources become available.
- General: MARAD updated a portion of this regulation in 2001. We will continue to review these regulations and make additional changes when appropriate.

Year 6 (Fall 2003) List of rules that will be analyzed during the next year

46 CFR part 315 — Agency agreements and appointment of agents
46 CFR part 317 — Bonding of ship's personnel
46 CFR part 324 — Procedural rules for financial transactions under Agency agreements
46 CFR part 325 — Procedure to be followed by general agents in preparation of invoices and payment of compensation pursuant to provisions on NSA Order No. 47
46 CFR part 326 — Marine protection and indemnity insurance under agreements with agents
46 CFR part 327 — Seamen's claims; administrative action and litigation

46 CFR part 328 — Slop chests
46 CFR part 329 — Voyage data
46 CFR part 330 — Launch services
46 CFR part 332 — Repatriation of seamen
46 CFR part 335 — Authority and responsibility of general agents to undertake emergency repairs in foreign ports
46 CFR part 336 — Authority and responsibility of general agents to undertake in continental United States ports voyage repairs and service equipment of vessels operated in the account of the National Shipping Authority under general agency agreement
46 CFR part 337 — General agent's responsibility in connection with foreign repair custom's entries
46 CFR part 338 — Procedure for accomplishment of vessel repairs under National Shipping Authority master lump sum repair contract - NSA-LUMPSUMREP
46 CFR part 339 — Procedure for accomplishment of ship repairs under National Shipping Authority master lump sum repair contract - NSA-WORKSMALREP

RESEARCH AND SPECIAL PROGRAMS ADMINSTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	49 CFR sections 171.15, 171.16 (incident reports)	1998	1999
1	49 CFR parts 106 and 107 (hazardous materials safety procedures), 171(general hazmat requirements), 190 (pipeline safety procedures),and 195 (hazardous liquid pipeline corrosion control)	1999	2000
3	49 CFR parts 174, 177 (rail and highway carriage), 191 (gas pipelinetransportation reports), and 192 (gas pipeline corrosion control)	2000	2001
4	49 CFR parts 176 (vessel carriage) and 199 (pipeline employee drug andalcohol testing)	2001	2002
5	49 CFR parts 172, 173, 174, 175, 176, 177, and 178 (radioactive material)	2002	2003
6	49 CFR parts 172, 173, 174, 176, and 178 (explosives), and 193 (liquefiednatural gas facilities), and parts 172, 173, 178, and 180 (cylinders)	2003	2004
7	49 CFR 173 (shipper requirements) and 194 (onshore oil pipeline responseplans)	2004	2005
8	49 CFR parts 110 (training and planning grants), 178 (non-bulk packaging)and 195 (hazardous liquid pipeline transportation)	2005	2006
9	49 CFR parts 178 through 180 (bulk packaging) and 198 (State pipelinesafety grants)	2006	2007
10	49 CFR parts 172 (communications, emergency response, training and hazmattable) and 175 (air carriage)	2007	2008

Year 5 (Fall 2002) List of rules analyzed and a summary of the results

(Note: Those sections of the following parts that pertain to radioactive materials transportation, only.)

49 CFR part 172 — Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements

- Section 610: No SEIOSNOSE. The requirements apply to persons who offer for transportation or transport radioactive materials in commerce. Entities licensed by the Nuclear Regulatory Commission generally do not meet the definition for a small business; most shippers and transporters of small quantities of radioactive materials are small businesses. While the regulations apply to a substantial number of small entities, they do not have a significant economic impact on those entities. The requirements have little or no impact on entry to or exit from the industry. Moreover, requirements generally are consistent with international transportation standards, thereby facilitating international transportation and trade, and the regulations permit shippers to take advantage of exceptions for certain types and amounts of material shipped.
- Plain language: As resources permit, RSPA will rewrite regulations using plain language techniques.
- General: RSPA will consider comments provided by industry.

49 CFR part 173 — Shippers—general requirements for shipments and packagings

- Section 610: No SEIOSNOSE. The requirements apply to persons who offer for transportation or transport radioactive materials in commerce. Entities licensed by the Nuclear Regulatory Commission generally do not meet the definition for a small business; most shippers and transporters of small quantities of radioactive materials are small businesses. While the regulations apply to a substantial number of small entities, they do not have a significant economic impact on those entities. The requirements have little or no impact on entry to or exit from the industry. Moreover, requirements generally are consistent with international transportation standards, thereby facilitating international transportation and trade, and the regulations permit shippers to take advantage of exceptions for certain types and amounts of material shipped.
- Plain language: As resources permit, RSPA will rewrite regulations using plain language techniques.
- General: RSPA will consider comments provided by industry.

49 CFR part 174 — Carriage by rail

- Section 610: No SEIOSNOSE. The requirements apply to persons who offer for transportation or transport radioactive materials in commerce. Entities licensed by the Nuclear Regulatory Commission generally do not meet the definition for a small business; most shippers and transporters of small quantities of radioactive materials are small businesses. While the regulations apply to a substantial number of small entities, they do not have a significant economic impact

on those entities. The requirements have little or no impact on entry to or exit from the industry. Moreover, requirements generally are consistent with international transportation standards, thereby facilitating international transportation and trade, and the regulations permit shippers to take advantage of exceptions for certain types and amounts of material shipped.
- Plain language: As resources permit, RSPA will rewrite regulations using plain language techniques.
- General: RSPA will consider comments provided by industry.

49 CFR part 175 — Carriage by aircraft
- Section 610: No SEIOSNOSE. The requirements apply to persons who offer for transportation or transport radioactive materials in commerce. Entities licensed by the Nuclear Regulatory Commission generally do not meet the definition for a small business; most shippers and transporters of small quantities of radioactive materials are small businesses. While the regulations apply to a substantial number of small entities, they do not have a significant economic impact on those entities. The requirements have little or no impact on entry to or exit from the industry. Moreover, requirements generally are consistent with international transportation standards, thereby facilitating international transportation and trade, and the regulations permit shippers to take advantage of exceptions for certain types and amounts of material shipped.
- Plain language: As resources permit, RSPA will rewrite regulations using plain language techniques.
- General: RSPA will consider comments provided by industry.

49 CFR part 176 — Carriage by vessel
- Section 610: No SEIOSNOSE. The requirements apply to persons who offer for transportation or transport radioactive materials in commerce. Entities licensed by the Nuclear Regulatory Commission generally do not meet the definition for a small business; most shippers and transporters of small quantities of radioactive materials are small businesses. While the regulations apply to a substantial number of small entities, they do not have a significant economic impact on those entities. The requirements have little or no impact on entry to or exit from the industry. Moreover, requirements generally are consistent with international transportation standards, thereby facilitating international transportation and trade, and the regulations permit shippers to take advantage of exceptions for certain types and amounts of material shipped.
- Plain language: As resources permit, RSPA will rewrite regulations using plain language techniques.
- General: RSPA will consider comments provided by industry.

49 CFR part 177 — Carriage by public highway
- Section 610: No SEIOSNOSE. The requirements apply to persons who offer for transportation or transport radioactive materials in commerce. Entities licensed by the Nuclear Regulatory Commission generally do not meet the definition for a small business; most shippers and transporters of small quantities of radioactive materials are small businesses. While the regulations apply to a substantial number of small entities, they do not have a significant economic impact on those entities. The requirements have little or no impact on entry to or exit from the industry. Moreover, requirements generally are consistent with international transportation standards, thereby facilitating international transportation and trade, and the regulations permit shippers to take advantage of exceptions for certain types and amounts of material shipped.
- Plain language: As resources permit, RSPA will rewrite regulations using plain language techniques.
- General: RSPA will consider comments provided by industry.

49 CFR part 178 — Specifications for packagings
- Section 610: No SEIOSNOSE. The requirements apply to persons who offer for transportation or transport radioactive materials in commerce. Entities licensed by the Nuclear Regulatory Commission generally do not meet the definition for a small business; most shippers and transporters of small quantities of radioactive materials are small businesses. While the regulations apply to a substantial number of small entities, they do not have a significant economic impact on those entities. The requirements have little or no impact on entry to or exit from the industry. Moreover, requirements generally are consistent with international transportation standards, thereby facilitating international transportation and trade, and the regulations permit shippers to take advantage of exceptions for certain types and amounts of material shipped.
- Plain language: As resources permit, RSPA will rewrite regulations using plain language techniques.
- General: RSPA will consider comments provided by industry.

Year 6 (Fall 2003) List of rules that will be analyzed during the next year

(Those sections of the following parts that pertain to the transportation of explosives, only):

49 CFR part 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements
49 CFR part 173 - Shippers - general requirements for shipments and packagings
49 CFR part 174 - Carriage by rail
49 CFR part 175 - Carriage by aircraft
49 CFR part 176 - Carriage by vessel
49 CFR part 178 - Specifications for packagings

(Those sections of the following parts that pertain to cylinders, only):

49 CFR part 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements
49 CFR part 173 - Shippers - general requirements for shipments and packagings
49 CFR part 178 - Specifications for packagings

49 CFR part 180 - Continuing qualification and maintenance of packagings
49 CFR part 193 — Liquefied natural gas facilities: Federal safety standards

BUREAU OF TRANSPORTATION STATISTICS SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	14 CFR part 241, form 41	1998	1999
1	14 CFR part 241, schedule T-100, and part 217	1999	2000
2	14 CFR part 298, 49 CFR 1420	2000	2001
3	14 CFR part 241, section 19-7	2001	2002
4	14 CFR part 291	2002	2003
5	14 CFR part 234	2003	2004
6	14 CFR part 249	2004	2005
7	14 CFR part 248	2005	2006
8	14 CFR part 250	2006	2007
9	14 CFR part 374a, ICAO	2007	2008

Year 5 (Fall 2002) List of rules analyzed and a summary of the results

14 CFR part 291, Cargo operations in interstate air transportation.

- Section 610: No SEIONOSE. This data collection applies only to large entities.
- General: This rule was reviewed as part of an overall aviation data requirements review and modernization program. A final rule was issued July 30, 2002, which revised the traffic statistics reported by domestic all-cargo air carriers by requiring these air carriers to report on-flight segment and non-stop market traffic data on BTS Schedule T-100, and fuel consumption data on BTS Schedule P-12(a), Fuel Consumption by Type of Service and Entity. This rule fills a data gap due to a lack of information on non-stop segment data, on-flight market data, and fuel consumption data for domestic all-cargo operations. (See 67 FR 49217; July 30, 2002; RIN 2139-AA08).
- Plain Language: The rulemaking takes into account the plain language initiative.

Year 6 (Fall 2003) List of Rules that will be analyzed during the next year

14 CFR part 234, Airline service quality performance reports

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION SECTION 610 AND OTHER REVIEWS

Year	Regulations To Be Reviewed	Analysis Year	Review Year
1	33 CFR parts 401 through 403	1998	1999

SLSDC has completed all its reviews.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2148	+Aviation Data Requirements Review and Modernization Program	2105—AC71
2149	Nondiscrimination on the Basis of Disability in Air Travel	2105—AC97
2150	+Review of Data Filed by Certificated or Commuter Air Carriers To Support Continuing Fitness Determinations	2105—AD25
2151	Transportation Acquisition Regulation	2105—AD28
2152	Standard Time Zone Boundary in the State of North Dakota: Proposed Relocation of Mercer County	2105—AD31

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2153	Use of Direct Final Rulemaking	2105—AC11
2154	Fees and Charges for Special Services: Reinvention	2105—AC47
2155	+Computer Reservations System Regulations Comprehensive Review **(Reg Plan Seq No. 95)**	2105—AC65
2156	+Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	2105—AC83

Office of the Secretary—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2157	Americans With Disabilities Act Accessibility Standards	2105—AC86
2158	Participation by Disadvantaged Business Enterprises in Department of Transportation Programs	2105—AC91
2159	Over—the—Road Buses: Extension of Due Date for Information Collection	2105—AC98
2160	Reporting Requirement for Air Carriers Regarding Disability—Related Complaints	2105—AD04
2161	Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefitting From Federal Financial Assistance; Transportation Services for Individuals With Disabilities (ADA)	2105—AD05
2162	Maintenance of and Access to Records About Individuals	2105—AD22
2163	Privacy Act of 1974	2105—AD23
2164	Procedures for Transportation Workplace Drug and Alcohol Testing Programs	2105—AD26
2165	Standard Time Zone Boundary in the State of South Dakota: Proposed Relocation of Jones, Mellette, and Todd Counties Into the Central Time Zone	2105—AD30
2166	+Protection of Sensitive Security Information	2105—AD33
2167	Sequence Number Intentionally Skipped	
2168	Sequence Number Intentionally Skipped	

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Office of the Secretary—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2169	+Accessibility of Passenger Vessels to Individuals With Disabilities	2105—AB87
2170	Use of Oxygen by Air Carrier Passengers	2105—AC29
2171	+Domestic Passenger Manifest Information	2105—AC62
2172	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug—Free Workplace Grants	2105—AD01
2173	Mentor/Protege Program	2105—AD20

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
2174	Policy Statement on Airline Preemption	2105—AA46
2175	Overbooking of Flights: Elimination of Airport Notice Signs	2105—AC45
2176	Participation by Minority Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs: Threshold Requirements and Other Technical Revisions	2105—AC89
2177	Nondiscrimination in Federally Assisted Programs	2105—AC96
2178	Standard Time Zone Boundary in the State of North Dakota: Morton County	2105—AD03
2179	Governmentwide Debarment and Suspension (Nonprocurement)/Governmentwide Requirements for Drug—Free Workplace (Financial Assistance)	2105—AD07
2180	Drug and Alcohol Management Information System Reporting	2105—AD14
2181	Standard Time Zone Boundary in the State of North Dakota: Proposed Relocation of Sioux County	2105—AD17
2182	Maintenance of and Access to Records Pertaining to Individuals	2105—AD18
2183	Disadvantaged Business Enterprises (DBE) Airport Concessionaires Size Standards	2105—AD21
2184	+Extension of Computer Reservation Systems (CRS) Regulations	2105—AD24
2185	Procedures for Compensation of Air Carriers	2105—AD27
2186	Establishment of the Chamorro Standard Time Zone	2105—AD32

Federal Aviation Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2187	+National Air Tour Safety Standards	2120—AF07

Federal Aviation Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2188	+Licensing and Safety Requirements for Launch	2120—AG37
2189	+Child Restraint Systems	2120—AG43
2190	Revision of Air Carrier Crewmember and Training Regulations	2120—AG57
2191	Safe, Efficient Use and Preservation of the Navigable Airspace	2120—AH31
2192	Design Standards for Fuselage Doors on Transport Category Airplanes	2120—AH34
2193	Noise Stringency Increase for Single—Engine Propeller—Driven Small Airplanes	2120—AH44
2194	Airworthiness Standards for Classes B and F Cargo Compartment for Transport Category Airplanes	2120—AH47
2195	Establishment of Organization Designation Authorization Procedures	2120—AH79
2196	Refusal To Take a DOT—Required Drug or Alcohol Test	2120—AH82
2197	Performance and Handling Qualities Requirements for Rotorcraft	2120—AH87
2198	+Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations	2120—AH88
2199	Issuance of Standard Airworthiness Certificates for Aircraft Manufactured From Spare and Surplus Parts	2120—AH90
2200	Stage 4 Aircraft Noise Standards	2120—AH99
2201	+Extended Operations (ETOPS) of Multi—Engine Airplanes	2120—AI03
2202	+Aging Aircraft Program (Widespread Fatigue Damage)	2120—AI05
2203	High—Intensity Radiated Fields	2120—AI06
2204	+Service Difficulty Reports	2120—AI08

Federal Aviation Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2205	+Retrofit of Improved Seats in Air Carrier Transport Category Airplanes	2120—AC84
2206	+Aging Aircraft Safety	2120—AE42
2207	Civil Penalty Assessment Procedures	2120—AE84
2208	+Revision of Emergency Evacuation Demonstration Procedures To Improve Participant Safety	2120—AF21
2209	Miscellaneous Cabin Safety Changes	2120—AF77
2210	+Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park	2120—AG34
2211	+Revisions to Digital Flight Data Recorder Regulations for B—737 Airplanes and for Part 125 Operators	2120—AG87
2212	Fire Protection of Electrical System Components on Transport Category Airplanes	2120—AG92
2213	+Airworthiness Standards: Normal, Utility, Acrobatic and Commuter Category Airplanes **(Section 610 Review)**	2120—AG93
2214	+Certification of Airports	2120—AG96
2215	+Flight Simulation Device Qualification **(Reg Plan Seq No. 96)**	2120—AH07
2216	Noise Certification Regulations for Helicopters	2120—AH10
2217	Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities	2120—AH14
2218	+Certification of Aircraft and Airmen for the Operation of Light—Sport Aircraft	2120—AH19
2219	Electrical Installation, Nickel Cadmium Battery Installation, and Nickel Cadmium Battery Storage	2120—AH27
2220	Design and Installation of Electronic Equipment on Transport Category Airplanes	2120—AH28
2221	Electrical Cables	2120—AH29
2222	Public Address System	2120—AH30
2223	Revisions to Various Powerplant Installation Requirements for Transport Category Airplanes	2120—AH37
2224	Miscellaneous Flight Requirements	2120—AH39
2225	Trim Systems and Protective Breathing Equipment	2120—AH40
2226	+Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers	2120—AH43
2227	Powerplant Controls on Transport Category Airplanes, General	2120—AH65
2228	+Transponder Continuous Operation	2120—AH67
2229	Reports by Carriers on Incidents Involving Animals During Air Transport	2120—AH69
2230	+Security Considerations for the Flightdeck on Foreign—Operated Transport Category Airplanes	2120—AH70
2231	+Picture Identification Requirements	2120—AH76
2232	Flight Visibility; Vision Enhancing Equipment	2120—AH78
2233	+Prohibition of Construction or Alteration in the Vicinity of the Private Residence of the President of the United States	2120—AH83
2234	Flightdeck Security on Foreign—Operated Airplanes	2120—AH86
2235	Security Control of Air Traffic	2120—AI04
2236	Sequence Number Intentionally Skipped	

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Federal Aviation Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2237	IFR Altitudes; Miscellaneous Amendments	2120—AA63
2238	Airworthiness Directives	2120—AA64
2239	Standard Instrument Approach Procedures; Miscellaneous Amendments	2120—AA65
2240	Airspace Actions	2120—AA66
2241	+Drug Enforcement Assistance	2120—AD16
2242	Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System	2120—AE81
2243	+Corrosion Control Program	2120—AE92
2244	+Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements	2120—AF63
2245	+False and Misleading Statements Regarding Aircraft Parts	2120—AG08
2246	+Training in the Recognition of Hazardous Material	2120—AG75
2247	Area Navigation (RNAV) and Miscellaneous Amendments	2120—AH77
2248	+Ineligibility for an Airman Certificate Based on Security Grounds	2120—AH84

Federal Aviation Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2249	Objects Affecting Navigable Airspace	2120—AA09
2250	Miscellaneous Amendments	2120—AA50
2251	+Improved Water Survival Equipment	2120—AC72
2252	Type Certificates for Some Surplus Aircraft of the Armed Forces	2120—AE41
2253	Revised Precision Approach Landing Systems Policy	2120—AG16
2254	+Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes	2120—AG91
2255	Special Flight Rules in the Vicinity of Grand Canyon National Park	2120—AG97
2256	+Air Tour Operations in State of Hawaii	2120—AH02
2257	+Fractional Ownership	2120—AH06
2258	Material Strength Properties and Design Values	2120—AH36
2259	Lower Deck Service Compartments on Transport Category Airplanes	2120—AH38
2260	Harmonization of Noise Certification Standards for Propeller—Driven Small Airplanes	2120—AH42
2261	Digital Flight Data Recorder Resolutions Requirements	2120—AH46
2262	Procedures for Reimbursement of Airports, On—Airport Parking Lots, and Vendors of On—Airfield Direct Services to Air Carriers for Security Mandates	2120—AH60
2263	+Reduced Vertical Separation Minimum in Domestic United States Airspace	2120—AH68
2264	Digital Flight Data Recorder Requirements — Exception and Appendix Updates	2120—AH89
2265	Special Flight Rules in the Vicinity of Los Angeles International Airport	2120—AH92
2266	+Flightdeck Security on Large Cargo Airplanes	2120—AH96
2267	Flight Crew Compartment Access and Door Designs	2120—AH97
2268	DOD Commercial Air Carrier Evaluators	2120—AI00
2269	Disposition of Comments: Noise Certification Standards for Subsonic Jet and Subsonic Transport Category Large Airplanes; Transition to an All Stage 3 Fleet Operating in the 48 Contiguous States	2120—AI01
2270	Withdrawal of Proposed Rules: Miscellaneous Amendments; Improved Water Survival Equipment; Objects Affecting Navigable Airspace; Type Certificates for Some Surplus Aircraft of the Armed Forces	2120—AI02

Federal Highway Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2271	Revisions to Highway Bridge Replacement and Rehabilitation Program	2125—AE75
2272	+National Bridge Inspection Standards	2125—AE86
2273	Uniform Relocation Assistance and Real Property Acquisition for Federal Assisted Program	2125—AE97
2274	Manual on Uniform Traffic Control Devices for Streets and Highways; Minimum Retroreflectivity Guidelines for Traffic Signs	2125—AE98
2275	Truck Size and Weight, Route Designations; Length, Width, and Weight Limitations	2125—AE99

Federal Highway Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2276	+Federal Lands Highway Program; Management Systems Pertaining to the National Park Service, Including the Park Roads and Parkways Program	2125—AE52
2277	+Federal Lands Highway Program; Management Systems Pertaining to the Bureau of Indian Affairs, Including the Indian Reservations Road Program	2125—AE53
2278	+Federal Lands Highway Program; Management Systems Pertaining to the Fish and Wildlife Service, Including the Refuge Roads Program	2125—AE54
2279	+Federal Lands Highway Program; Management Systems Pertaining to the Forest Service, Including the Forest Highways Program	2125—AE55
2280	Commercial Vehicle Width Exclusive Devices	2125—AE90
2281	Interstate Highway System	2125—AF00

Federal Highway Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2282	Work Zone Mobility and Safety	2125—AE29

Federal Highway Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2283	Advanced Construction of Federal Aid Projects	2125—AD59
2284	Federal—Aid Highway Systems	2125—AD74
2285	Railroad Highway Projects	2125—AD86
2286	Indian Reservation Road Bridge Program	2125—AE57
2287	Standards for Dedicated Short—Range Communications (DSRC) Applications for Use by Commercial Vehicles in Intelligent Transportation Systems Projects	2125—AE63
2288	Manual on Uniform Traffic Control Devices	2125—AE93
2289	+Designation of Dromedary—Equipped Truck Tractor—Semitrailers as Specialized Equipment	2125—AE94

Federal Motor Carrier Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2290	Commercial Learner Permits	2126—AA03
2291	+Qualification of Drivers; Vision	2126—AA05
2292	+Medical Qualification Requirements as Part of the Commercial Driver's License (CDL) Process	2126—AA10
2293	+Unified Registration System	2126—AA22
2294	Posting of Employee Protections Information	2126—AA68
2295	+Hours of Service of Drivers; Supporting Documents	2126—AA76
2296	Safety Fitness Procedures; Safety Ratings	2126—AA77
2297	Title VI Regulations for FMCSA Financial Assistance Recipients	2126—AA79
2298	Parts and Accessories Necessary for Safe Operation; Fuel Systems	2126—AA80

Federal Motor Carrier Safety Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2299	+Federal Motor Carrier Safety Regulations; Hazardous Materials Safety Permits	2126—AA07
2300	+Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver—Instructor Requirements	2126—AA08

Federal Motor Carrier Safety Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2301	+Minimum Training Requirements for Entry—Level Commercial Motor Vehicle Operators	2126—AA09
2302	Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties	2126—AA15
2303	+Safety Performance History of New Drivers	2126—AA17
2304	+Railroad—Highway Grade Crossing Safety	2126—AA18
2305	General Jurisdiction Over Freight Forwarder Service	2126—AA25
2306	+Transportation of Household Goods; Consumer Protection Regulations **(Rulemaking Resulting From a Section 610 Review)**	2126—AA32
2307	+General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers	2126—AA38
2308	Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures	2126—AA41
2309	+Federal Motor Carrier Safety Regulations; Interstate School Bus Safety	2126—AA53
2310	Parts and Accessories Necessary for Safe Operation; General Amendments	2126—AA61
2311	+Certification of Safety Auditors, Safety Investigators, and Safety Inspectors	2126—AA64
2312	+Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSS)	2126—AA69
2313	+Limitations on Issuance of Commercial Driver's License With Hazardous Materials Endorsement	2126—AA70
2314	Qualifications of Motor Carriers To Self—Insure Their Operations and Fees To Support the Approval and Compliance Process; Withdrawal	2126—AA82
2315	Drug and Alcohol Management Information System (MIS) Reporting	2126—AA83

Federal Motor Carrier Safety Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2316	+Commercial Driver's License Standards; Biometric Identifier	2126—AA01
2317	+Application by Certain Mexico—Domiciled Motor Carriers To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.—Mexico Border	2126—AA34
2318	+Safety Monitoring System and Compliance Initiative for Mexico—Domiciled Motor Carriers Operating in the United States	2126—AA35
2319	Safety Fitness Procedures	2126—AA37
2320	+New Entrant Safety Assurance Process	2126—AA59
2321	+Penalties, Inspection, and Decal Display Requirements for Mexico—Domiciled Motor Carriers	2126—AA72
2322	+Registration Enforcement	2126—AA78

Federal Motor Carrier Safety Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2323	Parts and Accessories Necessary for Safe Operation; Sleeper Berths on Motor Coaches; Withdrawal	2126—AA12
2324	Parts and Accessories Necessary for Safe Operation; Television Receivers and Data Display Units; Withdrawal	2126—AA19
2325	+English Language Requirement; Qualifications of Drivers; Withdrawal	2126—AA31
2326	Out—of—Service Criteria; Withdrawal	2126—AA36
2327	+Safety Requirements for Operators of Small Passenger—Carrying Commercial Motor Vehicles Used in Interstate Commerce	2126—AA52

National Highway Traffic Safety Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2328	Review: Air Bag On—Off Switches	2127—AH12
2329	+Reforming the Automobile Fuel Economy Standards Program **(Reg Plan Seq No. 97)**	2127—AJ17

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Highway Traffic Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2330	Seating Systems Performance	2127—AD08
2331	Certification Requirements of Multistage Vehicles	2127—AE27
2332	Rear Convex Cross—View Mirrors	2127—AG41
2333	Upgrade Roof Crashworthiness	2127—AG51
2334	Motorcycle—Mounted Reflex Reflector Height	2127—AG92
2335	Child Restraints for Older Children	2127—AH14
2336	Upgrade Door Retention Performance	2127—AH34
2337	Administrative Rewrite of the Lighting Requirements Other Than Headlamps	2127—AH37
2338	+Frontal Offset Protection	2127—AH73
2339	Special Purpose Vehicles	2127—AH75
2340	Low—Speed Vehicle Performance Requirements	2127—AH80
2341	Headlamp Glare	2127—AH81
2342	Stowable or Fold—Away Child Restraint Anchorages	2127—AH85
2343	Motorcycle Headlamp System	2127—AH92
2344	Improve Motorcycle Helmet Head Protection	2127—AI03
2345	Reorganize and Harmonize Controls and Displays	2127—AI09
2346	Seat Belt Emergency Locking Retractor	2127—AI38
2347	Adaptation of Instrumented Lower Legs for Hybrid III Male and Female Adult Dummies	2127—AI39
2348	Procedures for Participating In and Receiving Data From the National Driver Registration Problem Driver Pointer System	2127—AI45
2349	Cargo Carrying Capacity	2127—AI50
2350	Horizontal Discharge Trailers	2127—AI56
2351	Allow Roll—Bar During Brake Testing	2127—AI63
2352	Child Restraint System Webbing Strength	2127—AI66
2353	Motorcycle Brake Controls	2127—AI67
2354	GM Petition on Amending FMVSS No. 301 and FMVSS Nos. 208, 212, 219, 303, and 305	2127—AI76
2355	+Federal Motor Vehicle Safety Standards; Child Restraint Systems	2127—AI83
2356	Incorporation of EuroSID II Dummy into 49 CFR Part 572	2127—AI89
2357	Vehicles Built in Two or More Stages — Standard 201 (Petitions for Reconsideration)	2127—AI93
2358	Part 571.3 Definitions, Designated Seating Position	2127—AI94
2359	CRS Registration Rulemaking, FMVSS No. 213 and Part 588	2127—AI95
2360	Buy America Requirements	2127—AJ06
2361	Vehicle Modifications to Accommodate People with Disabilities	2127—AJ07
2362	+Side Impact Protection Upgrade — Standard 214 **(Reg Plan Seq No. 98)**	2127—AJ10
2363	Federal Motor Vehicle Safety Standards Definition of Low Speed Vehicles	2127—AJ12
2364	Amend Regulatory Definition of Motorcycle To Exclude Low—Speed Motorcycles	2127—AJ13
2365	Incorporation of SID—IIs Side Impact Crash Test Dummy into Part 572	2127—AJ16

+ DOT-designated significant regulation
References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Highway Traffic Safety Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2366	Radiator Safety Cap	2127—AE59
2367	Upgrade Fuel Integrity Performance Requirements	2127—AF36
2368	Alternative Geometric Visibility Requirements for Lamps	2127—AF75
2369	Power—Operated Windows: Roof Panels	2127—AF83
2370	Door Latch Exemption for Vehicles Equipped With Wheelchair Lifts and Ramps	2127—AG16
2371	Dealer Notification of Defect or Noncompliance Determination	2127—AG27
2372	Power Window Safety Switches	2127—AG36
2373	Seat Belt Positioning Devices	2127—AG49
2374	Glare Reduction From Daytime Running Lamps	2127—AG86
2375	Administrative Rewrite for Headlamp Requirements	2127—AG87
2376	Signal Lamps Used With Light—Emitting Diodes	2127—AG88
2377	+Allocation of Fuel Economy Credits	2127—AG97
2378	+Upgrade of Head Restraints	2127—AH09

National Highway Traffic Safety Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2379	Upper Interior Impact	2127—AH61
2380	Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards	2127—AH67
2381	Accelerator Control Systems	2127—AH71
2382	Vehicles With Raised Roofs	2127—AH74
2383	Brake Hoses	2127—AH79
2384	Clarify Test Procedures for Brake Fluids	2127—AH96
2385	Label Placement on Rear Impact Guards	2127—AI04
2386	Disposition of Replaced Tires	2127—AI29
2387	+Automotive Fuel Economy Manufacturing Incentive for Alternative Fuel Vehicles	2127—AI41
2388	Expanding the Auto Parts Marking Requirement	2127—AI46
2389	Parking Brakes for Non—School Bus Vehicles	2127—AI47
2390	Heavier Hybrid III Type 6—Year—Old—Size Test Dummy	2127—AI58
2391	Retroactive Certification (Policy Statement)	2127—AI59
2392	Record Retention of Retroactively Certified Vehicles	2127—AI60
2393	Importation of Commercial Motor Vehicles	2127—AI64
2394	FMVSS No. 208 Advanced Air Bag Petitions for Reconsideration (Part 2)	2127—AI82
2395	Warning Label and Additional Conspicuity Features for Low Speed Vehicles	2127—AI84
2396	Use of Seat—Mounted Child Restraints on School Bus Seats	2127—AI88
2397	+Rear Center Lap/Shoulder Belt Requirement — Standard 208	2127—AI91
2398	+Reporting of Information and Documents About Potential Defects	2127—AI92
2399	5th Percentile Dummy Belted Barrier Crash Test Requirements — Standard 208	2127—AI98
2400	Reimbursement Prior to Recall	2127—AJ05
2401	Child Restraint Systems	2127—AJ15
2402	Platform Lift Systems; Petitions for Reconsideration	2127—AJ18
2403	Confidential Business Information	2127—AJ24

National Highway Traffic Safety Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2404	+Review: Side—Impact Protection	2127—AF54
2405	Review: Redesigned Air Bags	2127—AH13
2406	Review: Antilock Brake Systems for Heavy Trucks	2127—AI14
2407	Review: Rear—Impact Guards for Truck Trailers	2127—AI15
2408	Idle Stop Technology Used in Some Hybrid Electric Vehicles	2127—AI43
2409	Convex Mirrors for Commercial Trucks	2127—AI52
2410	Enhanced Passenger—Side Mirror System	2127—AI53
2411	Daytime Running Lamps Intensity Reduction Phase II	2127—AI62
2412	+Event Data Recorders	2127—AI72
2413	FMVSS No. 201 Upper Interior Impact Multi—Stage Vehicle Compliance	2127—AI86
2414	Adaptive Frontal Lighting	2127—AI97
2415	+Tire Pressure Monitoring System	2127—AJ23

National Highway Traffic Safety Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2416	+Crashworthiness Ratings	2127—AA03
2417	+Flammability of Interior Materials—School Buses	2127—AA44
2418	Incorporation of 1996 Revision of the American National Standards Institute (ANSI) Into Glazing Standard	2127—AH08
2419	Heavy Vehicle Antilock Brake System (ABS) Performance Requirement	2127—AH16
2420	Definition of Multifunctional School Activity Bus	2127—AH23
2421	Child Restraint Anchorage Systems — Part 2	2127—AH99
2422	Moving Barrier Tire Specification	2127—AI05

National Highway Traffic Safety Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2423	+Confidential Business Information	2127—AI13
2424	+Improve Tire Safety Information	2127—AI32
2425	Improving the Safety of Child Restraints	2127—AI34
2426	+Operation of Motor Vehicles by Intoxicated Persons	2127—AI44
2427	Compliance for Multistage Manufacturers and Alterers	2127—AI49
2428	+Improved Tire Safety	2127—AI54
2429	+Advanced Air Bag Requirements	2127—AI71
2430	Theft Data for Calendar Year 2000	2127—AI75
2431	+Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Resistance	2127—AI81
2432	List of Nonconforming Vehicles Eligible for Importation	2127—AI87
2433	+Tire Pressure Monitoring System; Petitions for Reconsideration	2127—AI90
2434	High—Theft Lines for Model Year 2004	2127—AI99
2435	Theft Data for Calendar Year 2001	2127—AJ00
2436	Insurer Reporting Requirements for October 2003	2127—AJ01
2437	Selection of Appendix A—Child Restraint Systems—Standard 208	2127—AJ03
2438	Part 587; Offset Deformable Barrier, Petition for Reconsideration	2127—AJ11
2439	List of Nonconforming Vehicles Eligible for Importation	2127—AJ19
2440	Reporting of Information and Documents About Potential Defects	2127—AJ21
2441	Tire Pressure Monitoring System; Vacation of Standard	2127—AJ22

Federal Railroad Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2442	Determination of Minimum Testing Rate for Random Drug and Alcohol Testing	2130—AB31

Federal Railroad Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2443	Locomotive Crashworthiness	2130—AB23
2444	Locomotive Event Recorders	2130—AB34
2445	Reflectorization of Rail Freight Rolling Stock	2130—AB41
2446	Occupational Noise Exposure for Railroad Operating Employees	2130—AB56

Federal Railroad Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2447	+Whistle Bans at Highway—Rail Grade Crossings	2130—AA71
2448	+Standards for Development and Use of Processor—Based Signal and Train Control Systems	2130—AA94
2449	+Application of Random Testing and Other Alcohol and Drug Regulations to Employees of Foreign Railroads	2130—AB39
2450	Retention of Current Monetary Threshold for Reporting Rail Equipment Accidents/Incidents During Calendar Year 2003 and Until Further Amended	2130—AB57
2451	Railroad Locomotive Safety Standards	2130—AB58

Federal Railroad Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2452	Blue Signal and Related Protections	2130—AA90

Federal Railroad Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2453	Small Railroads; Policy Statement on Enforcement Program	2130—AB15
2454	Crane Safety Standards	2130—AB27
2455	Roadway Maintenance Machines	2130—AB28
2456	Revision to Railroad Safety Enforcement Procedures	2130—AB35
2457	Rules of Practice	2130—AB36
2458	+Minimum Standards for Temperature in the Locomotive Cab	2130—AB46

Federal Transit Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2459	+Rail Fixed Guideway Systems; State Safety Oversight	2132—AA76

Federal Transit Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2460	Drug and Alcohol Mangement Information System Reporting	2132—AA77

Federal Transit Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2461	School Bus Operations	2132—AA67

Federal Transit Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2462	State Safety Oversight; Rail Fixed Guideway Systems	2132—AA69

Saint Lawrence Seaway Development Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
2463	Seaway Regulations and Rules: Stem Anchors and Navigation Underway	2135—AA18

Research and Special Programs Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2464	Pipeline Safety: Gas Gathering Line Definition	2137—AB15
2465	Pipeline Safety: Periodic Underwater Inspections	2137—AC54
2466	Hazardous Materials: Revision of Requirements for Carriage by Aircraft	2137—AD18
2467	+Hazardous Materials Safety: Transportation of Oxygen Cylinders and Oxygen Generators Aboard Aircraft	2137—AD33
2468	+Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids	2137—AD36

Research and Special Programs Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2469	Pipeline Safety: Annual Update of Standards Incorporated by Reference	2137—AD68
2470	Hazardous Materials: Security Requirements for Motor Carriers Transporting Hazardous Materials	2137—AD70
2471	Hazardous Materials Regulations: Aluminum Cylinders — Revised Requalification and Use Criteria for the DOT 3 AL Cylinder Made of Aluminum Alloy 6351—TG	2137—AD78
2472	Hazardous Materials: Exemptions into Regulations	2137—AD84
2473	Hazardous Materials: Miscellaneous Amendments	2137—AD87
2474	Sequence Number Intentionally Skipped	
2475	Sequence Number Intentionally Skipped	

Research and Special Programs Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2476	Pipeline Safety: Passage of Internal Inspection Devices	2137—AB71
2477	+Pipeline Safety: Response Plans for Onshore Oil Pipelines	2137—AC30
2478	+Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage	2137—AC68
2479	Hazardous Materials: Revisions to Incident Reporting Requirements and Detailed Hazardous Materials Incident Report DOT Form	2137—AD21
2480	Hazardous Materials: Hazard Communication Requirements—Petitions for Rulemaking and Miscellaneous Amendments	2137—AD28
2481	Pipeline Safety: Periodic Updates to Pipeline Safety Requirements (1999)	2137—AD35
2482	Hazardous Materials: Adoption of Latest IAEA and Other Miscellaneous Revisions and Clarifications	2137—AD40
2483	+Hazardous Materials: Transportation of Lithium Batteries	2137—AD48
2484	Hazardous Materials: Revision of the Requirements for Hazardous Waste Manifests	2137—AD50
2485	+Pipeline Safety: Pipeline Integrity Management in High—Consequence Areas (Gas Transmission Pipeline Operators)	2137—AD54
2486	Pipeline Safety: Hazardous Liquid Pipeline Operator Annual Reports	2137—AD59
2487	Hazardous Materials: Revision to Penalty Guidelines	2137—AD71
2488	Pipeline Safety: Technical Revisions to Agency Procedures	2137—AD77
2489	Hazardous Materials: Enhancing Security of Explosives Transportation	2137—AD79
2490	Pipeline Safety: Liquefied Natural Gas Facilities; and Updating Safety Standards	2137—AD80
2491	Hazardous Materials Regulations: Matter Incorporated by Reference	2137—AD83
2492	Hazardous Materials: Editorial Corrections and Miscellaneous Clarifications	2137—AD85
2493	Hazardous Materials: Suspension of Approval Program for Certain Persons Performing Visual Requalification of DOT Specification Cylinders	2137—AD86

Research and Special Programs Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2494	+Safeguarding Food From Contamination During Transportation	2137—AC00
2495	Hazardous Materials: Cargo Tank Rollover Requirements	2137—AD34
2496	Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization Technical Instructions	2137—AD66

Research and Special Programs Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2497	Pipeline Safety: Further Regulatory Review; Gas Pipeline Safety Standards	2137—AD01
2498	Pipeline Safety: Recommendations To Change Hazardous Liquid Pipeline Safety Standards	2137—AD10
2499	Hazardous Materials: Air Carrier Emergency Telephone Number Requirements	2137—AD29

Research and Special Programs Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2500	Pipeline Safety: Producer—Operated Outer Continental Shelf Gas and Hazardous Liquid Pipelines That Cross Directly Into State Waters	2137—AD42
2501	Hazardous Materials: Miscellaneous Amendments for Unloading IM Portable Tanks on a Transport Vehicle — Petition for Rulemaking	2137—AD44
2502	+Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials	2137—AD67
2503	Hazardous Materials: Miscellaneous Revisions to the Hazardous Materials Regulations	2137—AD73
2504	Pipeline Safety: National Pipeline Mapping System	2137—AD76

Maritime Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2505	+Cargo Preference Regulations—Carriage of Oceangoing Cargo Generated by Government Programs	2133—AB37
2506	Application Fee for Administrative Waivers of the Coastwise Trade Laws	2133—AB50
2507	+Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade; Second Rulemaking	2133—AB51

Maritime Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2508	Administrative Waivers of the Coastwise Trade Laws for Eligible Vessels	2133—AB49
2509	Trading Restrictions on Vessels Transferred to a Foreign Registry: Amendment of List of Prohibited Countries	2133—AB55
2510	Sequence Number Intentionally Skipped	

Maritime Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2511	Regulated Transactions Involving Documented Vessels and Other Maritime Interests: Inflation Adjustment of Civil Monetary Penalty	2133—AB48
2512	Electronic Options for Transmitting Certain Information Collection Responses to MARAD	2133—AB56

Department of Transportation (DOT) — Proposed Rule Stage
Office of the Secretary (OST)

2148. +AVIATION DATA REQUIREMENTS REVIEW AND MODERNIZATION PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 40101; 49 USC 41101; 49 USC 41708; 49 USC 41709; 49 USC 41301; 49 USC 41501; 49 USC 41701

CFR Citation: 14 CFR 241; 14 CFR 250; 14 CFR 298; 14 CFR 374a; 14 CFR 234

Legal Deadline: None

Abstract: The Department is undertaking an aviation data requirements review and modernization program. The review is designed to harmonize the Department's aviation data systems with current regulatory and statutory needs; improve the quality of the Department's aviation data bases; and eliminate obsolete data reporting and processing systems. The ANPRM was the first step in an outreach program to review aviation data collected by the Department and the measures that should be taken to modernize and improve aviation data reporting and processing systems. The Department solicited public comments from aviation data users on the nature, scope, source, and means for collecting, processing, and distributing airline traffic, fare, and financial data. Specifically, the Department invited comments to determine whether existing aviation data should be amended, supplemented, or replaced; whether selected forms and reports should be retained, modified, or eliminated; whether the Department should require all aviation data to be filed electronically; and how the aviation data system should be reengineered to enhance efficiency and to reduce costs for both the Department and airline industry. The Department has reviewed the comments and reply comments and is in the process of redefining the data elements and restructuring the data reporting requirements to be included in an NPRM. This action is significant due to substantial public and industry interest.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/98	63 FR 38128
ANPRM Comment Period End	09/14/98	
Reply Comment Period End	10/13/98	
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: Todd Homan, Industry Economist, Department of Transportation, Office of the Secretary, X—55, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9605

RIN: 2105–AC71

2149. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 41702; 14 USC 41705; 14 USC 41712

CFR Citation: 14 CFR 382

Legal Deadline: None

Abstract: This proposed rule would add coverage under the Air Carrier Access Act to foreign air carriers and comprehensively revise and update 14 CFR part 382. It would also clarify new provisions in such areas as movable aisle armrests, preboarding announcements, and accessibility of carrier web sites.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4723
TDD Phone: 202 755—7687
Email: bob.ashby@ost.dot.gov

RIN: 2105–AC97

2150. +REVIEW OF DATA FILED BY CERTIFICATED OR COMMUTER AIR CARRIERS TO SUPPORT CONTINUING FITNESS DETERMINATIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 401; 49 USC 411; 49 USC 417

CFR Citation: 14 CFR 204.5

Legal Deadline: None

Abstract: This action would address two issues relating to air carrier continuing fitness determinations raised by the Inspector General. The issues relate to (1) public notice of determinations in relation to the reporting requirements of CFR part 204 applicable to certificated and commuter air carriers proposing to undergo a substantial change in operations, ownership, or management and (2) the criteria the Department typically uses to determine actual control of an air carrier when evaluating the citizenship of an air carrier during a continuing fitness review.

Timetable:

Action	Date	FR Cite
ANPRM	07/30/03	
ANPRM Comment Period End	09/29/03	
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jennifer Thibodeau, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh St., SW, C—20, Washington, DC 20590
Phone: 202 366—2509
Email: jennifer.thibodeau@ost.dot.gov

RIN: 2105–AD25

2151. TRANSPORTATION ACQUISITION REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301

CFR Citation: 12 CFR 1201 to 1253

Legal Deadline: None

Abstract: The Department is updating 48 CFR chapter 12 to be in consonance with changes to the Federal Acquisition Regulation (48 CFR chapter 1).

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Elaine Wheeler, Senior Procurement Analyst, Department of Transportation, Office of the Secretary, Room 9401, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4272
Fax: 202 366—7510
Email: elaine.wheeler@ost.dot.gov

RIN: 2105–AD28

2152. • STANDARD TIME ZONE BOUNDARY IN THE STATE OF NORTH DAKOTA: PROPOSED RELOCATION OF MERCER COUNTY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Secs. 1—4, 40 Stat. 450; Sec. 1, 41 Stat. 1446; Sec 2—7, 80 Stat. 107; 100 Stat. 764; Act of Mar. 19, 1918; PL 97—449, 15 U.S.C. 260—267; PL 99—359; PL 106—564, 15 USC 263; 114 Stat. 2811; 49 CFR 1.59(a)

CFR Citation: 49 CFR 71

Legal Deadline: None

Abstract: At the request of the Chairman of the Board of County Commissioners for Mercer County, North Dakota, the U.S. Department of Transportation proposes to relocate the boundary between mountain time and central time in the State of North Dakota. DOT proposes to relocate the boundary in order to move Mercer County from the Mountain Time Zone to the Central Time Zone.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4723

RIN: 2105–AD31

Department of Transportation (DOT) Office of the Secretary (OST) — Final Rule Stage

2153. USE OF DIRECT FINAL RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1657

CFR Citation: 49 CFR 5.21; 49 CFR 5.35

Legal Deadline: None

Abstract: The Department is considering a new rulemaking procedure to expedite the processing of noncontroversial changes to its regulations. Rules that the Secretary judges to be unlikely to result in public comment would be published as direct final rules. Such direct final rules would advise the public that no adverse comment is anticipated and that, unless written adverse comment or notice of intent to submit such comment is received within a specified number of days, the rule will become effective 60 days from the date of publication in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	08/04/95	60 FR 39919
NPRM Comment Period End	10/03/95	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AC11

2154. FEES AND CHARGES FOR SPECIAL SERVICES: REINVENTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 40101; 49 USC 46101; 31 USC 9701

CFR Citation: 14 CFR 389

Legal Deadline: None

Abstract: This action would remove or update obsolete provisions and organizational references, and adjust the fee schedule for certain special services related to aviation economic proceedings that the Department makes available to the public. The regulation has not been comprehensively updated since 1985 and the revisions will take the form of a complete reissuance of part 389.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3229
NPRM Comment Period End	03/22/99	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: John Miller, Analyst, Planning and Special Projects Office, Department of Transportation, Office of the Secretary, X—60, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4868

RIN: 2105–AC47

2155. +COMPUTER RESERVATIONS SYSTEM REGULATIONS COMPREHENSIVE REVIEW

Regulatory Plan: This entry is Seq. No. 95 in part II of this issue of the **Federal Register**.

RIN: 2105–AC65

2156. +UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Other Significant

Legal Authority: 49 USC 322(a)

CFR Citation: 49 CFR 19

Legal Deadline: None

Abstract: This action implements changes to OMB Circular A—110 that were issued by OMB on October 8, 1999, providing uniform guidance for administering grants to institutions of higher education, hospitals, and other nonprofit organizations. The change provides guidance on making data produced under awards available to the public. The regulation is essentially a word—for—word issuance of the requirements in OMB Circular A—110. An interim final rule was issued because of the limited ability to change the requirements from those in the circular. We are awaiting OMB instructions regarding whether there will be any Governmentwide changes to the final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14406
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AC83

2157. AMERICANS WITH DISABILITIES ACT ACCESSIBILITY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a

CFR Citation: 49 CFR 27; 49 CFR 37

Legal Deadline: None

Abstract: This action would amend the Department of Transportation's rules implementing the Americans with

Disabilities Act (ADA) by adopting as its standards revised accessibility guidelines proposed by the Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board published a notice of proposed rulemaking (NPRM) to revise and update the accessibility guidelines for the ADA and the Architectural Barriers Act (ABA) in the November 16, 1999, issue of the Federal Register. This rule would adopt the Access Board's revised and updated ADA guidelines and make a conforming change to the Department's rule implementing the ADA.

Timetable:

Action	Date	FR Cite
NPRM	08/08/00	65 FR 48444
NPRM Comment Period End	09/07/00	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AC86

2158. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 324; 42 USC 2000d et seq; 49 USC 1611, 47107, 47113, 47123; EO 12138; 3 CFR 1951 comp., p. 393, sec 1101 (b); ...

CFR Citation: 49 CFR 2a, subpart G

Legal Deadline: Final, Statutory, June 30, 1993, Final.

Abstract: In May 1997, the Department issued a supplemental notice of proposed rulemaking (SNPRM) to revise its disadvantaged business enterprise (DBE) regulation. The SNPRM included proposals for revising the airport concessions portion of the DBE program. When the Department, in February 1999, issued a final rule based on the SNPRM, we did not publish a final version of the airport concessions proposal.

On September 8, 2000, DOT issued a second SNPRM seeking comments on an airport concessions subpart to part 26. The SNPRM took into account comments on the May 1997 SNPRM, adapted provisions of the rest of part 26 to the concessions context, and proposed options for provisions affecting car rental operations at airports. These options were based in part on a memorandum of understanding between the American Car Rental Association and the Airport Minority Advisory Council making recommendations to the Department on this aspect of the rulemaking. This SNPRM was inadvertently published under RIN 2105—AB92.

This rule would respond to comments on the September 8, 2000, SNPRM and establish a revised 49 CFR part 23.

Timetable:

Action	Date	FR Cite
SNPRM	09/08/00	65 FR 54454
SNPRM Comment Period End	10/23/00	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Local, State

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RIN: 2105–AC91

2159. OVER—THE—ROAD BUSES: EXTENSION OF DUE DATE FOR INFORMATION COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 12101 to 12213; 49 USC 322

CFR Citation: 49 CFR 37

Legal Deadline: None

Abstract: The Department of Transportation is amending its Americans with Disabilities Act regulations concerning accessibility of over—the—road buses with respect to information collection requirements. The amendments would postpone the requirement for bus companies to submit information reporting ridership on accessible fixed route service and the acquisition of buses and would designate the Federal Motor Carrier Safety Administration as the recipient of the data.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/06/01	66 FR 9048
Correction	02/21/01	
Interim Final Rule Comment Period End	03/08/01	
Interim Final Rule Effective	03/08/01	
Interim Final Rule Effective	02/21/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AC98

2160. REPORTING REQUIREMENT FOR AIR CARRIERS REGARDING DISABILITY—RELATED COMPLAINTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41702; 49 USC 41705

CFR Citation: 49 CFR 382

Legal Deadline: Other, Statutory, Other.

Abstract: The rule would require most certificated U.S. air carriers and foreign air carriers operating to and from the U.S. that conduct passenger—carrying service to record and categorize complaints that they receive alleging inadequate accessibility or discrimination on the basis of disability according to the type of disability and nature of complaint, prepare a summary report of those complaints, submit the report annually to the Department of Transportation's Aviation Consumer Protection Division, and retain copies of correspondence and record of action on disability—related complaints for 3 years.

Timetable:

Action	Date	FR Cite
NPRM	02/14/02	67 FR 6892
Extension of Comment Period	04/10/02	67 FR 17308
NPRM Comment Period End	04/15/02	
Extended Comment Period End	06/01/02	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AD04

2161. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE; TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 16(a); 49 USC 16 (d); 49 USC 142; 42 USC 12101 to 12213; 47 USC 225; 49 USC 322; ...

CFR Citation: 44 CFR 27; 44 CFR 37

Legal Deadline: None

Abstract: This rule would create a procedure within the Department to improve coordination of guidance and interpretations related to disability issues.

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 2105–AD05

2162. MAINTENANCE OF AND ACCESS TO RECORDS ABOUT INDIVIDUALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a

CFR Citation: 49 CFR 10, app

Legal Deadline: None

Abstract: This action would provide exemptions from provisions of the Privacy Act for three Privacy Act Systems of Records to be maintained by DOT's Transportation Security Administration.

Timetable:

Action	Date	FR Cite
NPRM	12/24/02	67 FR 78403
NPRM Comment Period End	02/24/03	
To Be Withdrawn	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AD22

2163. PRIVACY ACT OF 1974

Priority: Substantive, Nonsignificant

Legal Authority: PL 93—579; 49 USC 322

CFR Citation: 49 CFR 10

Legal Deadline: None

Abstract: This rulemaking would add a system of records to the list of the Department of Transportation Privacy Act Systems of records that are exempt from one or more provisions of the Privacy Act.

Timetable:

Action	Date	FR Cite
NPRM	01/15/03	68 FR 2002
NPRM Comment Period End	03/17/03	
To Be Withdrawn	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2105–AD23

2164. PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 102; 49 USC 301; 49 USC 322; 49 USC 5331; 49 USC 20140; 49 USC 31306; 49 USC 45101

CFR Citation: 49 CFR 40

Legal Deadline: None

Abstract: This rule would amend the creatinine concentration criterion used for determining when an employee has substituted a urine specimen used for drug testing.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/25/03	68 FR 31624
Interim Final Rule Effective	05/28/03	
Interim Final Rule Comment Period End	08/26/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AD26

2165. • STANDARD TIME ZONE BOUNDARY IN THE STATE OF SOUTH DAKOTA: PROPOSED RELOCATION OF JONES, MELLETTE, AND TODD COUNTIES INTO THE CENTRAL TIME ZONE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 97—449; PL 99—359; 49 CFR 159(a)

CFR Citation: 49 CFR 71

Legal Deadline: None

Abstract: In response to a concurrent resolution of the South Dakota legislature, DOT proposes to relocate the boundary between Mountain Time and Central Time in the State of South Dakota. DOT proposes to all of Jones, Mellette, and Todd Counties into Central Time Zone.

Timetable:

Action	Date	FR Cite
NPRM	08/11/03	68 FR 47533
NPRM Comment Period End	09/25/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AD30

2166. • +PROTECTION OF SENSITIVE SECURITY INFORMATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 46 USC 70102 to 70106; 49 USC 114, 5103, 44901 to 44907; 49 USC 44913 to 44914, 44916 to 44918, 44935 to 44936; 49 USC 44942, 46105

CFR Citation: 49 CFR 15; 49 CFR 1520

Legal Deadline: None

Abstract: This action would amend the regulation governing the protection of sensitive security information (SSI) in order to protect the confidentiality of maritime security measures adopted under the U.S. Coast Guard's regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AD33

2167. Sequence Number Intentionally Skipped

2168. Sequence Number Intentionally Skipped

Department of Transportation (DOT)
Office of the Secretary (OST)
Long-Term Actions

2169. +ACCESSIBILITY OF PASSENGER VESSELS TO INDIVIDUALS WITH DISABILITIES

Priority: Other Significant

Legal Authority: 42 USC 12101 et seq; PL 101—336, Americans with Disabilities Act

CFR Citation: 49 CFR 37

Legal Deadline: None

Abstract: The Department's Americans with Disabilities Act (ADA) final rule, published September 6, 1991 (56 FR 45584), reserved portions of the rule concerning passenger vessels. The ADA covers passenger vessels, but issuing accessibility requirements for vessels involves complex issues unlike those affecting land transportation. This action will address these issues and propose feasible requirements to make passenger vessels accessible to, and usable by, individuals with disabilities. DOT is participating in an ongoing advisory committee effort convened by the Access Board to study passenger vessel accessibility issues. September and November 1998 meetings were held. This rulemaking is considered significant because of substantial public and congressional interest.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 2105–AB87

2170. USE OF OXYGEN BY AIR CARRIER PASSENGERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41705

CFR Citation: 14 CFR 382

Legal Deadline: None

Abstract: The Department is considering the use of regulatory negotiation to seek consensus among air carriers, consumers, airports, equipment manufacturers, oxygen suppliers, and safety regulators concerning the use of oxygen by passengers on air carriers when individuals need special private supplies. The need for action stems from a current situation where not all carriers allow passengers to bring their own oxygen aboard. Issues involve conformance with RSPA and FAA hazardous materials rules and the question of providing oxygen during long layovers. The Department is considering whether to begin a regulatory negotiation.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C—70, 400 7th Street SW., Washington, DC 20590
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RIN: 2105–AC29

2171. +DOMESTIC PASSENGER MANIFEST INFORMATION

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 40101; 49 USC 40113 to 40114; 49 USC 41702; 49 USC 41708 to 41709; 49 USC 41711; 49 USC 46301; 49 USC 46310; 49 USC 46316

CFR Citation: 14 CFR 243

Legal Deadline: None

Abstract: This notice requested comments concerning operational and cost issues related to U.S. air carriers collecting information such as full name, date of birth and/or social security number, emergency contact, and telephone number from passengers traveling on flights within the United States. This notice was issued on the Department's initiative in response to difficulties with notification in the aftermath of domestic aviation disasters and to comply with a recommendation contained in the initial report of the White House Commission on Aviation Safety and Security (1996) that urged the Department to explore immediately the costs and effects of a comprehensive passenger manifest requirement on the domestic aviation system. DOT will review the implementation of the international passenger manifest requirements (RIN 2105—AB78, 2/18/98, 63 FR 8258) as it determines how to proceed with this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	03/13/97	62 FR 11789
ANPRM Comment Period End	05/12/97	
Comment Period Reopened	05/30/97	62 FR 29313
Comment Period End	06/20/97	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Bernestine Allen, Director, Office of International Transportation and Trade, Department of Transportation, Office of the Secretary, X—20, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4368

RIN: 2105–AC62

2172. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103—355; EO 11738; EO 12549; EO 12689

CFR Citation: 49 CFR 29; 49 CFR 32

Legal Deadline: None

Abstract: This action would provide DOT—specific amendments for a uniform Governmentwide rule on debarment and suspension (nonprocurement) and drug—free workplace.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2105–AD01

2173. MENTOR/PROTEGE PROGRAM

Priority: Info./Admin./Other

Legal Authority: PL 95—507

CFR Citation: 13 CFR 124; 49 CFR 26

Legal Deadline: None

Abstract: This rulemaking would provide motivation and encouragement to firms to assist small businesses (SB), including HUBZone small businesses (HUBZone), small disadvantaged businesses (SDB), and small women—owned businesses (WOSB), in enhancing their business operations and increasing their capacities. This action would assist the Department of Transportation in meeting its mandated small business contracts and subcontract goals, foster the establishment of long—term business relationships between these entities and prime contractors, and increase the overall number of these entities that receive DOT contract and subcontract consideration and awards.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

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RIN: 2105–AD20

2174. POLICY STATEMENT ON AIRLINE PREEMPTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41713

CFR Citation: 14 CFR 399

Legal Deadline: None

Abstract: The Civil Aeronautics Board in 1979 issued an interim policy statement on preemption. It discusses the policy of the Department with respect to three areas in which State law has been preempted by the Airline Deregulation Act of 1978: Regulation of commuter air carriers and air taxis, the rights of airport proprietors, and general State authority as it directly or indirectly affects air transportation competition. The Supreme Court has classified that section 105 of the Americans with Disabilities Act (ADA) preempts even indirect State regulation that "has a connection with or reference to" airline rates, routes, or services, but does not preempt State contract law with respect to interpretation and enforcement of agreements voluntarily entered into by air carriers. Other courts continue to issue decisions applying this provision to a multitude of different circumstances. The Department believes that this process of exploring the interpretation of section 105 will continue, and is considering the admissibility of terminating this proceeding.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/79	44 FR 9948
Interim Final Rule Comment Period End	04/16/79	
Final Action	07/24/03	68 FR 43862
Final Action Effective	07/24/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State

Additional Information: PSDR—56, Docket 34684 The 1995 decision issued by the Supreme Court is American Airlines v. Wolens (S. Ct. No. 93—1286).

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RIN: 2105–AA46

2175. OVERBOOKING OF FLIGHTS: ELIMINATION OF AIRPORT NOTICE SIGNS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 401; 49 USC 411; 49 USC 413; 49 USC 417

CFR Citation: 14 CFR 250

Legal Deadline: None

Abstract: Due to significant growth of electronic ticketing in the period since this proposal was issued, the Department cannot rely to the same extent on advance distribution of the Oversales ticket notice. Consequently, we are not prepared to eliminate the requirement for an Oversales airport sign without further review of the matter. Accordingly, the proposal will be withdrawn. This action would eliminate a consumer notice about airline overbooking of flights that is required to appear on signs at airports, city ticket offices, and travel agencies. However, that information would be available to consumers because it must accompany every ticket.

Timetable:

Action	Date	FR Cite
NPRM	06/03/96	61 FR 27818
NPRM Comment Period End	07/18/96	
Final Action	09/08/03	68 FR 52835
Final Action Effective	10/08/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Other rulemakings: RIN 2105—AA88, Simplified Airline Counter—Sign Notices. RIN 2105—AC36, Ticketless Travel: Passenger Notices, Statement of Compliance Policy published 4/22/97, 62 FR 19473.

Agency Contact: Tim Kelly, Aviation Consumer Protection Division, Office of the General Counsel, Department of Transportation, Office of the Secretary, C—75, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5952

RIN: 2105–AC45

2176. PARTICIPATION BY MINORITY BUSINESS ENTERPRISES (DBE) IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS: THRESHOLD REQUIREMENTS AND OTHER TECHNICAL REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105—178, TEA—21; PL 102—581

CFR Citation: 49 CFR 26.11 (Revision); 49 CFR 26.21 (Revision); 49 CFR 26.37 (Revision); 49 CFR 26.45 (Revision); 49 CFR 26.55 (Revision)

Legal Deadline: None

Abstract: This rulemaking changed the threshold requirements for Federal Transit Administration and Federal Aviation Administration recipients to establish DBE programs and overall goals. Each August 1, recipients must submit DBE goals for the following fiscal year. This change reduced burdens on entities receiving smaller Federal grants. This document made technical changes to 49 CFR part 26.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/15/00	65 FR 68949
Interim Final Rule Effective	11/15/00	
Interim Final Rule Comment Period End	01/02/01	
Final Action	06/16/03	68 FR 35542
Final Action Effective	07/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2105–AC89

2177. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d—7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 49 CFR 21; 49 CFR 27

Legal Deadline: None

Abstract: This rule amends DOT's regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this regulation would incorporate the CRRA's definition of "program or activity" and "program" into title VI, section 504, and the Age Discrimination Act regulations. This regulation would also promote consistency and enforceability of these statutes. This is a joint rulemaking with other Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/26/03	68 FR 51334
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 2105–AC96

2178. STANDARD TIME ZONE BOUNDARY IN THE STATE OF NORTH DAKOTA: MORTON COUNTY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 260 to 267

CFR Citation: 49 CFR 71

Legal Deadline: None

Abstract: This rule would relocate Morton County, ND, from mountain time to central time. This action is based on a request from the Chairman of the Board of County Commissioners for Morton County, ND.

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40666
NPRM Comment Period End	09/17/01	
Final Action	07/22/03	68 FR 43336
Withdrawn	08/18/03	68 FR 49373

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4723

RIN: 2105–AD03

2179. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)/ GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant

Legal Authority: EO 11738; EO 12689; EO 12549; PL 103—355; PL 108; 31 USC 6101

CFR Citation: 49 CFR 29; 49 CFR 32

Legal Deadline: None

Abstract: Executive Orders 12549 and 12689 established a Governmentwide system for nonprocurement suspension and debarment. All Federal departments and major agencies codified these requirements as part of a common rule. DOT is joining 34 other departments and major agencies to update those requirements. Part one of this action is separating the drug—free workplace provisions from the existing common rule and placing them in a separate part.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Ladd Hakes, Department of Transportation, Office of the Secretary, Office of the Senior Executive (M—62), 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—4268
Email: ladd.hakes@ost.dot.gov

RIN: 2105–AD07

2180. DRUG AND ALCOHOL MANAGEMENT INFORMATION SYSTEM REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 102, 301, 322, 5331, 20140, 31306, 45101

CFR Citation: 49 CFR 40

Legal Deadline: None

Abstract: This rule revises the management information system forms by standardizing the information collected and to reduce the amount of data reported by transportation employers. Annual drug and alcohol program data is currently submitted by the Federal Motor Carrier Safety Administration, Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Research and Special Programs Administration, and United States Coast Guard.

Timetable:

Action	Date	FR Cite
Final Action	07/25/03	68 FR 43946
Final Action Effective	07/25/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State

Agency Contact: Jim L. Swart, Drug and Alcohol Policy Advisor, Department of Transportation, Office of the Secretary, Room 10403, 400 7th Street SW., Washington, DC 20590
Phone: 202 366—6369
Fax: 202 366—3897
Email: jim.swart@ost.dot.gov

RIN: 2105–AD14

2181. STANDARD TIME ZONE BOUNDARY IN THE STATE OF NORTH DAKOTA: PROPOSED RELOCATION OF SIOUX COUNTY

Priority: Substantive, Nonsignificant

Legal Authority: PL 97—449; PL 99—359; 49 CFR 159(a)

CFR Citation: 49 CFR 71

Legal Deadline: None

Abstract: This action would relocate the boundary between mountain time and central time in the State of North Dakota by moving all of the county east of State Highway 31 into the central time zone.

Timetable:

Action	Date	FR Cite
NPRM	09/17/02	67 FR 58578
NPRM Comment Period End	10/17/02	
Final Rule	07/22/03	68 FR 43334
Final Action	08/18/03	68 FR 49373
Final Rule Effective	10/26/03	
Final Action Effective	10/26/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4723

RIN: 2105–AD17

2182. MAINTENANCE OF AND ACCESS TO RECORDS PERTAINING TO INDIVIDUALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a

CFR Citation: 49 CFR 10

Legal Deadline: Final, Statutory, February 25, 2003, Final.

Abstract: DOT, for the Transportation Security Administration, is establishing a program to train and equip flight crews of scheduled airlines with firearms. This action would exempt the Privacy Act System of Records supporting this program from certain provisions of the Privacy Act.

Timetable:

Action	Date	FR Cite
Terminated	09/22/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert I. Ross, Office of General Counsel, C—10, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9156
Fax: 202 366—9170
Email: bob.ross@ost.dot.gov

RIN: 2105–AD18

2183. DISADVANTAGED BUSINESS ENTERPRISES (DBE) AIRPORT CONCESSIONAIRES SIZE STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 200d et seq; 49 USC 47107 and 47123; EO 12138; 3 CFR; 1979 Comp., p. 393

CFR Citation: 49 CFR 23

Legal Deadline: None

Abstract: Initially DOT had considered handling adjustments to the size standards for current Disadvantaged Business Enterprises (DBE) concessionaires as a separate rulemaking proceeding. However, after further consideration, the proposed rule will be addressed in a comprehensive DBE action under RIN 2105—AC91.

Timetable:

Action	Date	FR Cite
NPRM	12/12/02	67 FR 76327
NPRM Comment Period End	01/27/03	
Merged With RIN 2105—AC91	09/30/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Local, State

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4723
TDD Phone: 202 755—7687
Email: bob.ashby@ost.dot.gov

RIN: 2105–AD21

2184. +EXTENSION OF COMPUTER RESERVATION SYSTEMS (CRS) REGULATIONS

Priority: Other Significant

Legal Authority: 49 USC 41712

CFR Citation: 14 CFR 255

Legal Deadline: None

Abstract: This rulemaking maintains the existing CRS rules while the Department of Transportation completes its reexamination of whether the rules are still necessary. This rulemaking is considered significant because of public and congressional interest.

Timetable:

Action	Date	FR Cite
NPRM	02/13/03	68 FR 7325
NPRM Comment Period End	02/28/03	
Final Action	03/31/03	68 FR 15350
Final Action Effective	03/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas Ray, Office of General Counsel, Department of Transportation, Office of the Secretary, C—30, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4731
Email: tom.ray@ost.dot.gov

RIN: 2105–AD24

2185. PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—42; PL 107—71, sec 124(d)

CFR Citation: 14 CFR 330

Legal Deadline: None

Abstract: This rule adjusts the amount of compensation available to two classes of carriers under the Air Transportation Safety and System Stabilization Act. The effect of the change permits increased compensation for some small air carriers.

Timetable:

Action	Date	FR Cite
Final Action	07/29/03	
Final Action Effective	07/29/03	68 FR 44455

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

DOT—OST **Completed Actions**

Government Levels Affected: None

Agency Contact: Steven Hatley,
Department of Transportation, Office of the Secretary, 6402, 400 7th Street, SW,
Washington, DC 20590
Phone: 202 366—1213

RIN: 2105–AD27

2186. • ESTABLISHMENT OF THE CHAMORRO STANDARD TIME ZONE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec. 1—4, 40 Stat. 450; Sec. 1, 41 Stat. 1446; Sec. 2—7, 80 Stat. 107; 100 Stat. 764; PL 97—449, 15 USC 260—267; PL 99—359; PL 106—564, 15 USC 263, 114 Stat. 2811; 49 CFR 1.59(a)

CFR Citation: 49 CFR 71

Legal Deadline: None

Abstract: By statute, Congress established the Chamorro Standard Time Zone. Geographically this time zone includes Guam and the Commonwealth of the Nothern Mariana Islands. This final rule would revise the Department of Transportation's regulations to reference this time zone.

Timetable:

Action	Date	FR Cite
Final Action	08/19/03	68 FR 49712
Final Action Effective	08/19/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Petrie,
Attorney, Department of Transportation, Office of the Secretary,
400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4723

Jennifer Abdul—Wali, Transportation Specialist, Department of Transportation, 400 Seventh Street SW.,
Washington, DC 20590
Phone: 202 366—6322
Fax: 202 366—9313
Email: jennifer.abdul—wali@ost.dot.gov

RIN: 2105–AD32

Department of Transportation (DOT) **Proposed Rule Stage**

Federal Aviation Administration (FAA)

2187. +NATIONAL AIR TOUR SAFETY STANDARDS

Priority: Other Significant

Legal Authority: 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44702; 49 USC 44705

CFR Citation: 14 CFR 91; 14 CFR 135

Legal Deadline: None

Abstract: FAA will propose new regulations for air tour and sightseeing operations that are currently allowed to operate under less stringent regulations than those applied to other types of commercial operations. Over the past decade the number of these operations and the number of accidents and incidents associated with these operations have increased. Hot air balloons and gliders would not be included in this amendment. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/23/03	68 FR 60571
NPRM Comment Period End	01/20/04	
Final Action	05/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS—91—012R. RIN 2120—AF61 which was proposed as a new item for this agenda was a duplicate of this rulemaking and has been terminated. This rulemaking was previously titled "Sightseeing Operations."

ANALYSIS: Regulatory Evaluation, 07/00/2003

Agency Contact: Alberta Brown, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8321

RIN: 2120–AF07

2188. +LICENSING AND SAFETY REQUIREMENTS FOR LAUNCH

Priority: Other Significant

Legal Authority: 49 USC 70101 to 70119

CFR Citation: 14 CFR 415; 14 CFR 417

Legal Deadline: None

Abstract: This action would establish requirements for licensing the conduct of a launch from a non—Federal launch site. The law requires anyone who proposes to conduct a launch within the United States, or a U.S. citizen proposing to conduct a launch site outside the United States, to obtain a license from DOT. This action would govern obtaining a license to conduct such a launch. Currently, commercial rocket launches take place from Federal Government installations operated by the Department of Defense and NASA. Licensing requirements for those launches are being developed in a related licensing rulemaking (RIN 2120—AF99). In this action, DOT proposes to implement rules regarding obtaining a license to conduct a launch from a commercial launch site, where DOT, rather than NASA or the military, has primary responsibility.

Timetable:

Action	Date	FR Cite
NPRM	10/25/00	65 FR 63922
NPRM Comment Period End	02/22/01	
SNPRM	07/30/02	67 FR 49456
NPRM: Additional Information	08/27/02	67 FR 54978
Supplemental NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project Number: AST—97—088R.

ANALYSIS: Regulatory Evaluation, 10/25/00, 65 FR 63922.

Agency Contact: Rene Rey, Licensing and Safety Division, Office of Commercial Space, Department of Transportation, Federal Aviation

Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 385—4805

RIN: 2120–AG37

2189. +CHILD RESTRAINT SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715 to 44718; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46502

CFR Citation: 14 CFR 91; 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action sought public comment on issues relating to the use of child restraint systems in aircraft during all phases of flight (i.e., taxi, takeoff, landing, or any other time the seat belt sign is illuminated). Specifically, the agency sought information about existing child restraint systems, the development of new and improved child restraint systems, the ease with which existing or new child restraint systems can be used, and the effectiveness of changing the current child restraint system regulations. The advance notice gathered information in response to a recommendation made by the White House Commission on Aviation Safety and Security. Approximately 130 comments were received on the ANPRM. This information is needed so that the FAA can determine the best way to ensure the safety of children while on board aircraft. After such a determination is made, the FAA may issue a Notice of Proposed Rulemaking with specific regulatory proposals that respond to the Commission's recommendations regarding the use of child restraint systems. This action is considered significant because of safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	02/18/98	63 FR 8324
ANPRM Comment Period End	06/18/98	
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: Project Number: AFS—97—261R

Agency Contact: Cindy Nordlie, Office of Rulemaking, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—7627

Nancy L. Claussen, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 2800 44th N. Street, Suite 450, Phoenix, AZ 85008
Phone: 602 379—4864

RIN: 2120–AG43

2190. REVISION OF AIR CARRIER CREWMEMBER AND TRAINING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 60; 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise title 14 of the Code of Federal Regulations part 121 subparts N, O, and P. The proposed revision and creation will address Advanced Qualification Programs and additional training programs. The rulemaking is needed to enhance crew resource management training, to permit rapid changes to training and checking requirements for emerging technologies, to improve safety, and to respond to numerous recommendations from various sources.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS—97—335R.

Agency Contact: Jan Demuth, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8166

RIN: 2120–AG57

2191. SAFE, EFFICIENT USE AND PRESERVATION OF THE NAVIGABLE AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113 to 40114; 49 USC 44502; 49 USC 44701; 49 USC 44718

CFR Citation: 14 CFR 77

Legal Deadline: None

Abstract: This rule would add and amend definitions for terms commonly used during the aeronautical evaluation process. This action would amend obstruction standards for civil airport imaginary surfaces in order to promote and facilitate harmonization with other FAA directives. It also would simplify and clarify the rule language in accordance with the plain language initiative.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ATA—00—490.

Agency Contact: Ellen Crum, Air Traffic Rules Procedures Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3155

RIN: 2120–AH31

2192. DESIGN STANDARDS FOR FUSELAGE DOORS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action would amend the design standards for fuselage doors, hatches, and exits on transport category airplanes. This proposal would relieve a certification burden on industry by eliminating regulatory differences between the air standards of the United States and Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—96—398.

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055—4056
Phone: 425 227—2136

RIN: 2120–AH34

2193. NOISE STRINGENCY INCREASE FOR SINGLE—ENGINE PROPELLER—DRIVEN SMALL AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: The FAA is proposing a change to the noise limits for propeller—driven small airplanes. The FAA, the European Joint Aviation Authorities (JAA), and representatives from the United States and European propeller—driven small airplane industries developed the ICAO Annex 16 noise limit change in a joint effort. The proposed change would provide nearly uniform noise certification standards for airplanes certificated in the United States and in the JAA countries.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE—01—133R.

Agency Contact: Mehmet Marsan, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—7703

RIN: 2120–AH44

2194. AIRWORTHINESS STANDARDS FOR CLASSES B AND F CARGO COMPARTMENT FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to amend the airworthiness standards for transport category airplanes to incorporate revised standards for Class B cargo compartments and establish standards for a new Class F cargo compartment; and to harmonize those requirements with standards proposed for the European Joint Aviation Requirements 25.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—93—725—A.

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055
Phone: 425 227—2142

RIN: 2120–AH47

2195. ESTABLISHMENT OF ORGANIZATION DESIGNATION AUTHORIZATION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40105; 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44715; 49 USC 45303; 49 USC 46105

CFR Citation: 14 CFR 21; 14 CFR 121; 14 CFR 135; 14 CFR 145; 14 CFR 183

Legal Deadline: None

Abstract: This proposed rulemaking would create an Organization Designation Authorization (ODA) Program that would incorporate all organization designee rules within 14 CFR 183. It will expand the approval functions of FAA organization designees, standardize these functions to increase efficiency, and expand eligibility for organization designees, including organizations not eligible under the current rules. These actions would provide the FAA with a more efficient process to delegate certain tasks to external organizations while preserving and increasing aviation safety in an environment where the government is committed to reducing its workforce.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ralph Meyer, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 6500 S. MacArthur Blvd, ARB Room 304A, Oklahoma City, OK 73169
Phone: 405 954—7072

RIN: 2120–AH79

2196. REFUSAL TO TAKE A DOT—REQUIRED DRUG OR ALCOHOL TEST

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 61

Legal Deadline: None

Abstract: The FAA proposes to amend the airman medical standards to disqualify an airman based on a refusal to take a DOT—required drug or alcohol test and to report pre—employment and return—to—duty test refusals to the FA. This action is necessary to ensure that persons who have refused to take a drug or alcohol test do not operate aircraft or perform contract air traffic control tower operations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sherry deVries, Office of Aerospace Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8693

RIN: 2120–AH82

2197. PERFORMANCE AND HANDLING QUALITIES REQUIREMENTS FOR ROTORCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: This action proposes new and revised airworthiness standards for normal and transport category rotorcraft due to technological advances in design and operational trends in normal and transport rotorcraft performance and handling qualities. The changes would enhance the safety standards for performance and handling qualities to reflect the evolution of rotorcraft capabilities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lance T Gant, Air Certification Service, Department of Transportation, Federal Aviation Administration, 2601 Meachum Blvd., Fort Worth, TX 76193—0110
Phone: 817 222—5114

RIN: 2120–AH87

2198. +REVISIONS TO COCKPIT VOICE RECORDER AND DIGITAL FLIGHT DATA RECORDER REGULATIONS

Priority: Other Significant

Legal Authority: 49 USC 100(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 44912; 49 USC 46105; 49 USC 44113

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action proposes to amend the cockpit voice recorder and digital flight data recorder regulations for certain air carriers, operators, and aircraft manufacturers. This proposal is based on recommendations issued by the National Transportation Safety Board following the investigations of several accidents and incidents, and includes other revisions that the FAA has determined are necessary. This proposal would require that all newly manufactured airplanes have CVR installed that receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. This same language is in the proposed certification rules for the CVR and DFDR installations.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Shaver, Branch Aircraft Certification, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 385—4686

RIN: 2120–AH88

2199. ISSUANCE OF STANDARD AIRWORTHINESS CERTIFICATES FOR AIRCRAFT MANUFACTURED FROM SPARE AND SURPLUS PARTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 40105; 49 USC 40113; 40 USC 44701 to 44702; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44713; 49 USC 44715; 49 USC 45303

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: The FAA is considering rulemaking to preclude issuance of standard airworthiness certification to new aircraft under 14 CFR 21.183(d). This action will ask for general comments on both the policy issues and the potential impacts of the change.

Timetable:

Action	Date	FR Cite
ANPRM	04/03/03	68 FR 16217
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank P. Paskeiwicz, Production and Airworthiness Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8361

RIN: 2120–AH90

2200. • STAGE 4 AIRCRAFT NOISE STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 et seq; 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44702; 49 USC 44711; 49 USC 44712; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506; 49 USC 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531, sec 305; PL 96—193; EO 11514; ...

CFR Citation: 14 CFR 36; 14 CFR 93

Legal Deadline: None

Abstract: The FAA is proposing a new noise standard for subsonic jet airplanes and subsonic transport category large airplanes. This noise standard would ensure that the latest available noise reduction technology is incorporated into new aircraft designs. This noise standard, Stage 4, would apply to any person submitting an application for a new airplane type design on and after January 1, 2003. The standard could be chosen voluntarily prior to that date. This noise standard is intended to provide uniform noise certification standards for Stage 4 airplanes certificated in the United States and those airplanes that meet the new Internation Civil Aviation Organization Annex 16 Chapter 4 noise standard.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Laurette Fisher, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3561
Fax: 202—267—5594

RIN: 2120–AH99

2201. ● +EXTENDED OPERATIONS (ETOPS) OF MULTI—ENGINE AIRPLANES

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101 to 44702; 49 USC 44704; 49 USC 44709; 49 USC 44712; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 46105

CFR Citation: 14 CFR 1; 14 CFR 21; 14 CFR 25; 14 CFR 33; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: The FAA proposes to issue regulations governing the design, maintenance, and operation of airplanes and engines for flights that go certain long distances beyond an adequate airport. This proposal would extend some requirements that previously applied only to two—engine airplanes to airplanes with more than two—engines. The proposed rule implements existing best practices and policy, industry recommendations and international standards to assure that long—range flights will operate safely.

Timetable:

Action	Date	FR Cite
NPRM	11/14/03	68 FR 64730
NPRM Comment Period End	01/13/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eric VanOpstal, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20594
Phone: 202 267—3774

RIN: 2120–AI03

2202. ● +AGING AIRCRAFT PROGRAM (WIDESPREAD FATIGUE DAMAGE)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; ...

CFR Citation: 14 CFR 121; 14 CFR 129

Legal Deadline: None

Abstract: The FAA proposes to require incorporation of a program to preclude widespread fatigue damage into the FAA—approved maintenance program of each operator of large transport category airplanes. This action is the result of concern for the continued operational safety of airplanes that are approaching or have exceeded their design service goal. This proposed rulemaking would require a limit of validity in flight cycles or hours of the structural maintenance program, where the operator must incorporate added inspections and/or modification/replacement actions into its maintenance program to allow continued operation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brent Bandley, Department of Transportation, Federal Aviation Administration, 3960 Paramount Boulevard, Lakewood, CA 90712
Phone: 562 627—5237

RIN: 2120–AI05

2203. ● HIGH—INTENSITY RADIATED FIELDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44701; 49 USC 44704

CFR Citation: 14 CFR 23; 14 CFR 25; 14 CFR 27; 14 CFR 29

Legal Deadline: None

Abstract: The FAA proposes to add certification standards for aircraft electrical and electronic systems because of their increased use in aircraft and vulnerability to high—intensity radiated fields (HIRF). The proposed rule would define specific HIRF certification requirements to provide protection against HIRF effects that would apply to any applicant seeking issuance of a type certificate, amended type certificate, or supplemental type certificate for the initial approval of a new type of aircraft design or a change in aircraft type design.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Dimtroff, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 425 227—1371
Email: john.dimtroff@faa.gov

RIN: 2120–AI06

2204. ● +SERVICE DIFFICULTY REPORTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44707; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49

USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135; 14 CFR 145

Legal Deadline: None

Abstract: The FAA is proposing to withdraw a previously published final rule that amends the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems and components. We are proposing withdrawal of this document because of commenters' overwhelming opposition to the rule and for further internal study.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jose E. Figueroa, Department of Transportation, Federal Aviation Administration, 5601 Mariner Street, Suite 310, Tampa, FL 33609
Phone: 813 287—4932

RIN: 2120–AI08

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Final Rule Stage

2205. +RETROFIT OF IMPROVED SEATS IN AIR CARRIER TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: NPRM, Statutory, April 28, 1988, NPRM.

Abstract: This action would require that all seats of transport category airplanes used in air carrier operations and transport category airplanes used in scheduled intrastate service comply with improved crashworthiness standards. The Airport and Airways Safety and Capacity Expansion Act of 1987 directs the Secretary of Transportation to initiate a rulemaking proceeding to consider requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards. The intended effect of this action is to increase passenger protection and survivability in survivable impact accidents. This rulemaking is considered significant because of its safety implications and statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17650
NPRM Comment Period End	10/14/88	
NPRM Comment Period Reopened	10/30/98	63 FR 58331
NPRM Comment Period End	01/08/99	
SNPRM	10/04/02	67 FR 62294
SNPRM Comment Period End	12/03/02	
SNPRM Extension of Comment Period	12/03/02	67 FR 71908
SNPRM Commend Period End	03/03/03	
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: Docket 13464. Project Number: AIR—88—136R.

ANALYSIS: Regulatory Evaluation, 05/17/88, 53 FR 17650

Agency Contact: Hal Jensen, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—9578

RIN: 2120–AC84

2206. +AGING AIRCRAFT SAFETY

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135; 14 CFR 183

Legal Deadline: Other, Statutory, April 24, 1992, Other.

Abstract: On October 5, 1993, the FAA published an NPRM that proposed to require air carriers of certain aircraft used in air transportation to demonstrate that the aircraft's maintenance has been adequate to ensure the highest degree of safety. After further review, and taking into consideration public comments to the NPRM, the FAA withdrew that NPRM. On March 19, 1999, the FAA issued a new NPRM that would ensure the continuing airworthiness of the most significant aging airplanes operating in air transportation by mandating aging aircraft records reviews and inspections for certain air carriers and certain aircraft and also by applying modern damage—tolerance analyses and inspection techniques to older airplane structures that were certificated before such techniques were available. The comment period closed on October 18, 1999. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/05/93	58 FR 51944
NPRM Comment Period End	02/02/94	
Comment Period End 3/4/94	02/08/94	59 FR 5741
NPRM	04/02/99	64 FR 16298
NPRM Comment Period End	08/02/99	
NPRM Comment Period Reopened	08/18/99	64 FR 45090
Comment Period End	10/08/99	
Interim Final Rule; Request for Comments	12/06/02	67 FR 72726
Interim Final Rule: Extension of Comment Period	02/04/03	68 FR 5782
Interim Final Rule Comment Period End	02/04/03	

Action	Date	FR Cite
Interim Final Rule: Extension of Comment Period End	05/05/03	
Interim Final Rule Effective	01/00/04	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number AFS—92—029R.

ANALYSIS: Regulatory Evaluation, 04/02/99, 64 FR 16298

Agency Contact: Frederick Sobeck, Aircraft Maintenance Division, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—7355

RIN: 2120–AE42

2207. CIVIL PENALTY ASSESSMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 6002; 49 USC 106(g); 49 USC 5121 to 5124; 49 USC 40113 to 40114; 49 USC 44103 to 44106; 49 USC 44702 to 44703; 49 USC 44709 to 44710; 49 USC 44713; 49 USC 46101 to 46110; 49 USC 46301 to 46316; 49 USC 46501 to 46502; 49 USC 46504 to 46507; 49 USC 47106; 49 USC 47111; 49 USC 47122

CFR Citation: 14 CFR 13

Legal Deadline: None

Abstract: This action would revise the procedures for the assessment of civil penalties for violations of the Federal Aviation Regulations and other provisions. The procedures proposed would implement the requirements of the FAA Civil Penalty Administrative Assessment Act of 1992, as they modify the procedures for adjudicating a civil penalty against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman.

Timetable:

Action	Date	FR Cite
NPRM	08/05/94	59 FR 40192
NPRM Comment Period End	10/04/94	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AGC—93—076R. This rulemaking was considered significant; however, after receiving only two comments on the NPRM issued in 8/94, and the lack of controversy regarding this rule, the FAA does not consider this a significant rulemaking.

ANALYSIS: Regulatory Evaluation, 08/05/94, 59 FR 40192

Agency Contact: Joyce Redos, Regulations Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—7158

RIN: 2120–AE84

2208. +REVISION OF EMERGENCY EVACUATION DEMONSTRATION PROCEDURES TO IMPROVE PARTICIPANT SAFETY

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25; 49 CFR 1.47

Legal Deadline: None

Abstract: This action would amend part 25 of the FAR by revising appendix J, Emergency Evacuation, to allow certain alternative procedures in conducting full—scale emergency evacuation demonstrations for transport category airplanes. This is in response to recommendations from the Aviation Rulemaking Advisory Committee. The changes, which are intended to make full—scale emergency evacuation demonstrations safer for participants and to codify existing practices, would also affect manufacturers and operators of transport category airplanes. This action is considered significant because of substantial public interest and safety implications. The FAA is also looking at nonregulatory alternatives.

Timetable:

Action	Date	FR Cite
NPRM	07/18/95	60 FR 36932
Correction	08/25/95	60 FR 44387
NPRM Comment Period End	10/16/95	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—94—124A

ANALYSIS: Regulatory Evaluation, 07/18/95, 60 FR 36932

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055—4056
Phone: 425 227—2136

RIN: 2120–AF21

2209. MISCELLANEOUS CABIN SAFETY CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 46105; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise the airworthiness standards for transport category airplanes relating to flight attendant assist space, flight attendant assist handles, door hold open features, outside viewing means, interior compartment doors, and portable oxygen equipment. With one exception, these proposals are not the result of any specific incident or recommendation, but are part of the FAA's continuing effort to upgrade the regulations to improve the overall level of safety in areas where the state—of—the—art and good design practice have indicated that such upgrades are warranted. These proposals would result in both new type design regulations as well as requirements applicable to existing designs implemented via the operating rules.

Timetable:

Action	Date	FR Cite
NPRM	07/24/96	61 FR 38552
NPRM Comment Period End	11/21/96	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANM—90—016R.

ANALYSIS: Regulatory Evaluation, 07/24/96, 61 FR 38552

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055—4056
Phone: 425 227—2136

RIN: 2120–AF77

2210. +NOISE LIMITATIONS FOR AIRCRAFT OPERATIONS IN THE VICINITY OF GRAND CANYON NATIONAL PARK

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40106; 49 USC 40109; 49 USC 40113; 49 USC 44502; 49 USC 44514; 49 USC 44701; 49 USC 44719; 49 USC 46301

CFR Citation: 14 CFR 93

Legal Deadline: None

Abstract: This rulemaking will establish noise limitations for certain aircraft operated in the vicinity of Grand Canyon National Park. This action is one part of an overall strategy to reduce further the impact of aircraft noise on the park environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100—91 to provide for the substantial restoration of natural quiet and experience in Grand Canyon National Park. The supplemental amendment removes two sections from the December 31, 1996, notice of proposed rulemaking (NPRM) that proposed to establish a corridor through the National Canyon area as an incentive route for quiet technology aircraft. The FAA and NPS have determined not to proceed with an air tour route in the vicinity of National Canyon and are presently considering alternatives to this route. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	12/31/96	61 FR 69334
NPRM Comment Period End	03/31/97	
SNPRM	07/15/98	63 FR 38232
SNPRM	03/24/03	68 FR 14276
SNPRM Comment Period End	06/23/03	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: A final rule, which was published on 12/31/96 (61 FR 69302), establishes new operating restrictions at Grand Canyon National Park.

ANALYSIS: Regulatory Evaluation, 12/31/96, 61 FR 69334

Agency Contact: Tom Connor, Office of Energy and Environment, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8933

RIN: 2120–AG34

2211. +REVISIONS TO DIGITAL FLIGHT DATA RECORDER REGULATIONS FOR B—737 AIRPLANES AND FOR PART 125 OPERATORS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 125

Legal Deadline: None

Abstract: The FAA proposes to amend the digital flight data recorder rules for transport category airplanes to add a requirement for all Boeing 737 (B—737) series airplanes to record additional flight data parameters. This amendment is based on safety recommendations issued by the National Transportation Safety Board following the investigation of the 1994 USAir Flight 427 accident. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/18/99	64 FR 63139
NPRM Comment Period End	12/20/99	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AIR—99—272R.

ANALYSIS: Regulatory Evaluation, 11/18/99, 64 FR 63139

Agency Contact: Timothy Shaver, Branch Aircraft Certification, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 385—4686

RIN: 2120–AG87

2212. FIRE PROTECTION OF ELECTRICAL SYSTEM COMPONENTS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 40 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rulemaking will amend the airworthiness standards for transport category airplanes concerning the protection of electrical system components. This action will eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26964
NPRM Comment Period End	07/16/01	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055
Phone: 425 227—2142

Massoud Sadeghi, Aircraft Certification Service, Department of Transportation,

Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055—4056
Phone: 425 227—2117

RIN: 2120–AG92

2213. +AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC AND COMMUTER CATEGORY AIRPLANES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 23

Legal Deadline: None

Abstract: The FAA intends to conduct a 610 review (a review under section 610 of the Regulatory Flexibility Act) of part 23 and RIN 2120—AG93 reflects this review. The FAA has established airworthiness standards for normal, utility, acrobatic and communter category airplanes in part 23. This part will be reviewed to assess the financial impact on small entities.

Timetable:

Action	Date	FR Cite
Review To Be Completed	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Paul Larson, Office of Aviation Policy and Plans, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3296

RIN: 2120–AG93

2214. +CERTIFICATION OF AIRPORTS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44706; 49 USC 44709 to 40711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44719; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 46105

CFR Citation: 14 CFR 121; 14 CFR 139

Legal Deadline: None

Abstract: This action proposes to revise the current airport certification regulation and to establish certification requirements for airports serving scheduled air carrier operations in aircraft with 10 to 30 seats. In addition, changes are proposed to address National Transportation Safety Board recommendations and petitions for exemptions and rulemaking. A section of an air carrier operation regulation also would be amended to conform with proposed changes to airport certification requirements. The FAA believes that these proposed revisions are necessary to ensure safety in air transportation and to provide a comparable level of safety at all certificated airports. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	06/21/00	65 FR 38636
Correction	08/21/00	65 FR 50669
NPRM Comment Period Extended	08/22/00	65 FR 50945
NPRM Comment Period End	09/19/00	
NPRM Extended Comment Period End	11/03/00	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AAS—97—072R.

ANALYSIS: Regulatory Evaluation, 06/21/00

Agency Contact: Linda Bruce, Office of Airport Safety and Standards, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8553

RIN: 2120–AG96

2215. +FLIGHT SIMULATION DEVICE QUALIFICATION

Regulatory Plan: This entry is Seq. No. 96 in part II of this issue of the **Federal Register**.

RIN: 2120–AH07

2216. NOISE CERTIFICATION REGULATIONS FOR HELICOPTERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44715; PL 96—193; EO 11514

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: This proposal is based on a joint effort by the FAA, the European Joint Aviation Authorities (JAA), and the Aviation Rulemaking Advisory Committee (ARAC) to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for helicopters. The proposed changes would provide nearly uniform noise certification standards for helicopters certificated in the U.S., the JAA countries, and other countries that have adopted as their national regulation either the U.S. regulations, the JAA regulations, or the International Civil Aviation Organization standards. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

Timetable:

Action	Date	FR Cite
NPRM	10/05/00	65 FR 59634
NPRM Comment Period End	01/04/01	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sandy Liu, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 493—4864

RIN: 2120–AH10

2217. ANTIDRUG AND ALCOHOL MISUSE PREVENTION PROGRAMS FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC

44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 46301

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise the FAA's Antidrug and Alcohol Misuse Prevention Programs in accordance with changes the Department of Transportation is making to 49 CFR 40. In addition, the FAA proposes some minor revisions to its Antidrug and Alcohol Misuse Prevention Program so that the requirements conform to 14 CFR 67.

Timetable:

Action	Date	FR Cite
NPRM	02/28/02	67 FR 9366
NPRM Comment Period End	05/29/02	
NPRM Comment Period Extended	05/29/02	67 FR 37361
NPRM Extended Comment Period End	07/29/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Diane Wood, Acting Manager, Drug Abatement Branch, Office of Aviation Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,
Washington, DC 20591
Phone: 202 366—6710

RIN: 2120–AH14

2218. +CERTIFICATION OF AIRCRAFT AND AIRMEN FOR THE OPERATION OF LIGHT—SPORT AIRCRAFT

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40105; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 45102 to 45103; 49 USC 45301 to 45303; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 1; 14 CFR 21; 14 CFR 61; 14 CFR 65; 14 CFR 91; 14 CFR 43; 14 CFR 45

Legal Deadline: None

Abstract: The FAA is creating a new rule for the manufacture, certification, operation, and maintenance of light—sport aircraft. Light—sport aircraft weigh less than 1320 pounds and are heavier and faster than ultralight vehicles and include airplanes, gliders, balloons, powered parachutes, weight—shift—control aircraft, and gyroplanes. This action is necessary to address advances in sport and recreational aviation technology, gaps in the existing regulations, several petitions for rulemaking, and petitions for exemptions from existing regulations. The intended effect of this action is to provide for the manufacture of safe and economical certificated aircraft that exceed the limits currently allowed by ultralight regulation, and to allow operations of these aircraft by certificated pilots for sport and recreation to carry a passenger, and to conduct flight training and towing in a safe manner.

Timetable:

Action	Date	FR Cite
NPRM	02/05/02	67 FR 5268
NPRM Comment Period End	05/06/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan Gardner, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8212

RIN: 2120–AH19

2219. ELECTRICAL INSTALLATION, NICKEL CADMIUM BATTERY INSTALLATION, AND NICKEL CADMIUM BATTERY STORAGE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action amends the airworthiness standards for transport category airplanes concerning electrical equipment and nickel cadmium battery installations, and nickel cadmium battery storage. This rulemaking eliminates regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/17/01	66 FR 27582
NPRM Comment Period End	07/16/01	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055—4056
Phone: 425 227—2117

RIN: 2120–AH27

2220. DESIGN AND INSTALLATION OF ELECTRONIC EQUIPMENT ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action amends the airworthiness standards for transport category airplanes concerning the design and installation of electronic equipment. The rule requires that such equipment be designed and installed so that it does not cause essential loads to become inoperative as a result of electrical power supply transients or transients from other causes. Adopting this rulemaking would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26956
NPRM Comment Period End	07/16/01	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen M. Slotte, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055—2315
Phone: 425 227—2315

RIN: 2120–AH28

2221. ELECTRICAL CABLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rule amends the airworthiness standards for transport category airplanes concerning electrical cables. This action harmonizes part 25 and JAR—25 requirements concerning cable installations and clarifies the cable design requirements ensuring that the designer considers the critical conditions, routings, and markings of a proper installation. This rulemaking eliminates regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26942
NPRM Comment Period End	07/16/01	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen M. Slotte, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055—2315
Phone: 425 227—2315

RIN: 2120–AH29

2222. PUBLIC ADDRESS SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to shorten the time for passenger announcements in an emergency in transport category airplanes. This proposal would shorten the time for passenger announcements in an emergency from 10 to 3 seconds between the removal of the microphone from its stowage by a flight crewmember and its operation. Adopting this proposal would eliminate regulatory differences between the airworthiness standards for the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	11/22/02	67 FR 70510
NPRM Comment Period End	01/21/03	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—00—227.

Agency Contact: Kirk Baker, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 3960 Paramount Boulevard, Lakewood, CA 90712
Phone: 562 627—5345

RIN: 2120–AH30

2223. REVISIONS TO VARIOUS POWERPLANT INSTALLATION REQUIREMENTS FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to revise the standards applicable to thrust or power augmentation systems, fuel filling points, designated fire zones, and powerplant instruments. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/31/02	67 FR 4856
NPRM Comment Period End	04/01/02	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—01—467.

Agency Contact: Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055—4056
Phone: 425 227—2133

RIN: 2120–AH37

2224. MISCELLANEOUS FLIGHT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to amend the airworthiness standards for transport category airplanes concerning miscellaneous flight requirements. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/14/02	67 FR 1846
NPRM Comment Period End	03/15/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—00—226.

Agency Contact: Don Stimson, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain

Region, 1601 Lind Avenue SW.,
Renton, WA 98055—4056
Phone: 425 227—1129

RIN: 2120–AH39

2225. TRIM SYSTEMS AND PROTECTIVE BREATHING EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This proposed action would amend airworthiness standards for transport category airplanes concerning trim systems and protective breathing equipment. The proposed action would add language that would require a clearly marked range on the trim indication system where take—off is safe for all center—of—gravity positions. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	10/02/02	67 FR 61836
NPRM Comment Period End	12/02/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—00—567.

Agency Contact: Kenneth Frey, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055—4056
Phone: 425 227—2673

RIN: 2120–AH40

2226. +REVISIONS TO PASSENGER FACILITY CHARGE RULE FOR COMPENSATION TO AIR CARRIERS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40116 to 40117; 49 USC 47111; 49 USC 47114 to 47116; 49 USC 47524; 49 USC 47526

CFR Citation: 14 CFR 158

Legal Deadline: Final, Statutory, June 12, 2004, Final.

Abstract: This rule would amend the passenger facility charge (PFC) rules by changing the amount and basis of compensation an air carrier may receive for collecting, handling, and remitting PFC revenue. This action is necessary because statute mandates that air carriers receive fair and reasonable compensation for their expenses.

Timetable:

Action	Date	FR Cite
NPRM	11/27/02	67 FR 70878
NPRM Comment Period End	01/13/03	
NPRM; Extension of Comment Period	01/14/03	68 FR 1807
NPRM; Extension of Comment Period End	02/12/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: APP—00—672R.

Agency Contact: Joseph Hebert, Passenger Facility Charge Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8902

RIN: 2120–AH43

2227. POWERPLANT CONTROLS ON TRANSPORT CATEGORY AIRPLANES, GENERAL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rulemaking proposes to amend the airworthiness standards for transport category airplanes concerning design requirements for powerplant valves controlled from the flightdeck. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/08/02	67 FR 30820
NPRM Comment Period End	07/08/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055—4056
Phone: 425 227—2133

RIN: 2120–AH65

2228. +TRANSPONDER CONTINUOUS OPERATION

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 45101 to 45105; 49 USC 46105

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: This proposal would amend the instrument and equipment requirements for airplanes operated in domestic, flag, and supplemental operations. Specifically, the FAA proposes to require affected airplanes to be equipped with provisions that would help assure immediate activation of the designated air traffic control (ATC) hijack alert code, and continuous transmission of that code to ATC during the hijack situation. The FAA is proposing this action in response to the heightened threat to U.S. civil action. This action is significant because of substantial public safety interest.

Timetable:

Action	Date	FR Cite
NPRM	01/14/03	68 FR 1942
NPRM Comment Period End	03/17/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Jennings, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1895 Phoenix Boulevard, Suite 450, Atlanta, GA 30349
Phone: 770 703—6090

RIN: 2120–AH67

2229. REPORTS BY CARRIERS ON INCIDENTS INVOLVING ANIMALS DURING AIR TRANSPORT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 1153; 49 USC 40101; 49 USC 40102; 49 USC 40103; 49 USC 40113; 49 USC 41721; 49 USC 44105; 49 USC 44111; 49 USC 44701 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 44906; 49 USC 44912; 49 USC 44914; 49 USC 44936; 49 USC 44938; 49 USC 46103; 49 USC 46105

CFR Citation: 14 CFR 119

Legal Deadline: None

Abstract: This action implements section 710 of P.L. 106—181, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, by requiring air carriers that provide scheduled passenger air transportation to submit monthly to the Secretary of Transportation, through the Animal & Plant Health Inspection Service of the United States Department of Agriculture, a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier.

Timetable:

Action	Date	FR Cite
NPRM	09/27/02	67 FR 61238
NPRM Comment Period Extended to 12/27/2002	10/18/02	67 FR 64331
NPRM Comment Period End	10/28/02	
Final Rule	08/11/03	68 FR 47798
Notice of Effective Date	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Whitlow, Office of the Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3480

RIN: 2120–AH69

2230. +SECURITY CONSIDERATIONS FOR THE FLIGHTDECK ON FOREIGN—OPERATED TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44712; 49 USC 44716 to 44717; 49 USC 44722

CFR Citation: 14 CFR 129

Legal Deadline: None

Abstract: This amendment requires improved flightdeck security and operational procedural changes to prevent unauthorized access to the flightdeck on passenger—carrying aircraft operated by foreign carriers under the provisions of part 129. This amendment applies the same flightdeck security enhancements to foreign air carriers as were previously applied to U.S. air carriers. This action is significant because of safety and substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule	06/21/02	67 FR 42450
Final Rule Effective	06/21/02	
Final Rule Effective Date	12/30/02	
Final Rule; Request for Comments	12/30/02	67 FR 79822
Comment Period End	02/28/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marlene Lovack, International Liaison Staff, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 385—4678

RIN: 2120–AH70

2231. +PICTURE IDENTIFICATION REQUIREMENTS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 61

Legal Deadline: None

Abstract: This rule revises the pilot certificate requirements to require a person to carry a photo identification acceptable to the Administrator when exercising the privileges of a pilot certificate. These measures are intended to address security concerns regarding the identification of pilots. This rulemaking is significant because of safety and substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	10/28/02	67 FR 65858
Final Rule Effective	10/28/02	
Comment Period End	11/27/02	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John D. Lynch, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3844

RIN: 2120–AH76

2232. FLIGHT VISIBILITY; VISION ENHANCING EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46317; 49 USC 44722; 49 USC 46306; 49 USC 46315

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This rule would allow persons who voluntarily equip their airplanes with certain vision enhancing devices to descend below decision height or minimum descent altitude when flight visibility is below minimums, subject to certain training and other requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/10/03	68 FR 6802
NPRM Correction	03/03/03	
NPRM Comment Period End	03/27/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Les Smith, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 385—4586

RIN: 2120–AH78

2233. +PROHIBITION OF CONSTRUCTION OR ALTERATION IN THE VICINITY OF THE PRIVATE RESIDENCE OF THE PRESIDENT OF THE UNITED STATES

Priority: Other Significant

Legal Authority: 49 USC 302; 49 USC 322; 49 USC 324

CFR Citation: 14 CFR 76

Legal Deadline: None

Abstract: This final rule will revise part 76 under title 14 of the Code of Federal Regulations to require notice to be filed with the FAA for the construction or alteration of any object or the alteration of any existing object that would exceed 50 feet above ground level and is within 3 nautical miles of the private residence of the President of the United States. This action also establishes an obstruction standard for those objects within the designated area surrounding the residence. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule With Request for Comments	04/22/03	68 FR 19730
Comment Period End	06/23/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheri Edgett—Baron, Air Traffic Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington,, DC 20591
Phone: 202 267—9354

RIN: 2120–AH83

2234. FLIGHTDECK SECURITY ON FOREIGN—OPERATED AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44701 to 44702; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906

CFR Citation: 14 CFR 129

Legal Deadline: None

Abstract: This final rule excludes airplanes with fewer than 19 passenger seats, eliminates the term "or on overflights," changes the compliance date for affected airplanes, and changes the term "transport category aircraft" to "transport category airplanes."

Timetable:

Action	Date	FR Cite
Request for Comments	12/30/02	67 FR 79822
Comment Period End	02/28/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian Staurseth, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 385—4561

RIN: 2120–AH86

2235. • SECURITY CONTROL OF AIR TRAFFIC

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 106(g); 49 USC 40104; 49 USC 40106; 49 USC 40113; 49 USC 44502; 49 USC 44721

CFR Citation: 14 CFR 99

Legal Deadline: None

Abstract: As a result of a recent review, it was determined that the regulations required minor revisions to be consistent with recently issued congressional legislation and agreements between agencies regarding the security control of air traffic operations in the NAS.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Terry Brown, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8783

RIN: 2120–AI04

2236. Sequence Number Intentionally Skipped

Department of Transportation (DOT)
Federal Aviation Administration (FAA)
Long-Term Actions

2237. IFR ALTITUDES; MISCELLANEOUS AMENDMENTS

Priority: Routine and Frequent

Legal Authority: 49 USC 40120; 49 USC 44502; 49 USC 44514; 49 USC 44719; 49 USC 44721; 49 USC 106(g); 49 USC 40103; 49 USC 40106; 49 USC 40113; 49 USC 40114

CFR Citation: 14 CFR 95

Legal Deadline: None

Abstract: This is a nonsignificant body of regulations which prescribes altitudes for the operation of aircraft under instrument flight rules (IFR) on Federal airways, jet routes, area navigation low or high routes, or other direct routes for which a minimum en route IFR altitude is designated in 14 CFR part 95. In addition, mountainous areas and changeover points are designated. These regulations are an established body of technical requirements that are issued routinely and frequently to maintain operational efficiency. Total actions expected—270. 10/00/2003 — 10/00/2004.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael L. Henry, General Aviation and Commercial Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,
Washington, DC 20591
Phone: 202 267—8212

Don Pate, Mike Monroney Aeronautical Center, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur, Oklahoma City, OK 73125
Phone: 405 954—4161

RIN: 2120–AA63

2238. AIRWORTHINESS DIRECTIVES

Priority: Routine and Frequent

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701

CFR Citation: 14 CFR 39

Legal Deadline: None

Abstract: The FAA issues type certificates for "products," which are aircraft, engines, propellers, and some appliances. The FAA issues a regulation called an Airworthiness Directive (AD) to address an unsafe condition in a type certificated product, if that unsafe condition is likely to exist or develop in products of the same type design. Part 39 of title 14 requires each operator of a product affected by an AD to comply with the terms of the AD, in order to operate that product; the AD may mandate operational limitations, maintenance, or alterations for the affected product. The vast majority of routine and frequent Airworthiness Directives are nonsignificant. Total actions expected—550. 10/00/2003 to 10/00/2004.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Linda Walker, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW,
Washington, DC 20591
Phone: 202 267—9592

RIN: 2120–AA64

2239. STANDARD INSTRUMENT APPROACH PROCEDURES; MISCELLANEOUS AMENDMENTS

Priority: Routine and Frequent

Legal Authority: 49 USC 40103; 49 USC 40106; 49 USC 40113 to 40114; 49 USC 40120; 49 USC 44502; 49 USC 44514; 49 USC 44701; 49 USC 44719; 49 USC 44721 to 44722; 49 USC 106(g)

CFR Citation: 14 CFR 97

Legal Deadline: None

Abstract: Standard Instrument Approach Procedures (SIAP) provide for instrument letdown to airports in the United States. They are a nonsignificant body of regulations that are complex and technical in nature and require routine and frequent rulemaking to maintain efficiency. The FAA issues, revises, and cancels SIAPs by adopting amendments that are incorporated into 14 CFR part 97. Contemporaneously with publication in the Federal Register, the SIAPs are made available to the Aeronautical Charting and Cartography Office in the FAA and other publishers of aeronautical charts where they are published as approach procedure charts or "approach plates." These charts are made available to the members of the aviation community for use by pilots in making instrument approaches. Total actions expected—3,300. 10/00/2003 — 10/00/2004.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael L. Henry, General Aviation and Commercial Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,
Washington, DC 20591
Phone: 202 267—8212

Don Pate, Mike Monroney Aeronautical Center, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur, Oklahoma City, OK 73125
Phone: 405 954—4161

RIN: 2120–AA65

2240. AIRSPACE ACTIONS

Priority: Routine and Frequent

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; EO 10854

CFR Citation: 14 CFR 71; 14 CFR 73; 14 CFR 75

Legal Deadline: None

Abstract: This is a nonsignificant body of regulations which designates airspace areas, airways, routes, and reporting points to facilitate safe navigation. These regulations are technical in nature and are issued routinely and frequently to maintain operational efficiency. Total actions expected—450. 10/00/2003 through 10/00/2004.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Pat Crawford, Manager, Airspace Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—9255

RIN: 2120–AA66

2241. +DRUG ENFORCEMENT ASSISTANCE

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5121 to 5124; 49 USC 40113 to 40114; 49 USC 44101 to 44108; 49 USC 44110 to 44111; 49 USC 44702 to 44703; 49 USC 44704; 49 USC 44709 to 44710; 49 USC 44713; 49 USC 46101 to 46110; 49 USC 46301 to 46316; 49 USC 46501 to 46502; 49 USC 46504 to 46507; 49 USC 47106; 49 USC 47111

CFR Citation: 14 CFR 13; 14 CFR 47

Legal Deadline: Final, Statutory, September 18, 1989, Final.

Abstract: This action would revise certain requirements concerning registration of aircraft, certification of pilots, and penalties associated with registration and certification violations. This notice also announced new procedures for processing major repair and alteration forms which pertain to fuel system modifications. Actions announced in this notice respond to the FAA Drug Enforcement Assistance Act of 1988. The requirements and adopted procedures are intended to assist law enforcement agencies in their efforts to stop drug trafficking in general aviation aircraft. This rulemaking is significant because of substantial public interest. The FAA currently is seeking modifications to the Act.

Timetable:

Action	Date	FR Cite
NPRM	03/12/90	55 FR 9270
NPRM Comment Period End	05/11/90	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project No. AFS—89—035R.

ANALYSIS: Regulatory Evaluation, 03/12/90, 55 FR 9270

Agency Contact: Sharon Ashford, Registry Modernization Staff, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur Boulevard, Oklahoma City, OK 73125—4939
Phone: 405 954—7038

RIN: 2120–AD16

2242. AIR TRAFFIC CONTROL RADAR BEACON SYSTEM AND MODE S TRANSPONDER REQUIREMENTS IN THE NATIONAL AIRSPACE SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would revise the Mode S transponder requirement for all aircraft operating under part 135 and certain aircraft operating under part 121 based on the expected availability of operational capabilities of Mode S ground sensors. For part 121 operators, the action would affect only those aircraft not required to have Traffic Alert and Collision Avoidance System II. An aviation rulemaking advisory committee has recommended that the FAA conduct a study of the installed Mode S ground sensor to determine the extent of the benefits derived and the costs involved in equipage. This action is a relieving action made necessary by the fact that ground sensors are not in place to support the requirement. Further, FAA is studying the need for Mode S transponders in part 135 and certain part 121 operations in light of the fact that transponders may not substantially increase ATC ability to view air traffic.

Timetable:

Action	Date	FR Cite
NPRM	05/23/96	61 FR 26036
NPRM Correction	06/17/96	61 FR 30551
NPRM Comment Period End	07/22/96	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS—92—297R.

ANALYSIS: Regulatory Evaluation, 05/23/96, 61 FR 26036

Agency Contact: Daniel V. Meier Jr., Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3749

RIN: 2120–AE81

2243. +CORROSION CONTROL PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44902

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135

Legal Deadline: None

Abstract: This project would ensure that airplanes used or not used in common carriage in air transportation have a comprehensive corrosion prevention program within their maintenance or inspection programs. In April 1988, a commercial transport airplane experienced an in—flight decompression and separation of approximately 18 feet of the fuselage skin and structure at the top of the airplane. The airplane had been in service for 19 years and had flown almost 90,000 flights. The National Transportation Safety Board concluded that the failure of the airline to detect skin disbonding resulted in corrosion and metal fatigue leading to separation of the airplane's skin structure. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/03/02	67 FR 62142
NPRM Comment Period End	04/01/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS—93—382R

Agency Contact: Frederick Sobeck, Aircraft Maintenance Division, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—7355

RIN: 2120–AE92

2244. +FLIGHT CREWMEMBER DUTY PERIOD LIMITATIONS, FLIGHT TIME LIMITATIONS, AND REST REQUIREMENTS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44701; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This rulemaking would amend the regulations on duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The FAA proposes additional changes in response to comments received on the NPRM. The changes are necessary to ensure that the rules will continue to provide the minimum level of safety. This rulemaking responds to public and congressional interest in regulating flight crewmember rest requirements, NTSB Safety Recommendations, petitions for rulemaking, and scientific data. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	12/20/95	60 FR 65951
NPRM Comment Period End	03/19/96	
NPRM Comment Period Extended to 6/19/96	03/20/96	61 FR 11492
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: Project Number: AFS—94—443R

ANALYSIS: Regulatory Evaluation, 12/20/95, 60 FR 65951

Agency Contact: Kent Stephens, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20951
Phone: 202 267—7493

RIN: 2120–AF63

2245. +FALSE AND MISLEADING STATEMENTS REGARDING AIRCRAFT PARTS

Priority: Other Significant

Legal Authority: 49 USC 44913

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action proposes additional rules that would prohibit certain false or misleading statements regarding civil aircraft, airframes, aircraft engines, propellers, appliances, component parts, and materials, including standard parts, that are used, or may be used, on civil aircraft. The proposals would also permit increased inspection by the FAA of records regarding the quality of aircraft parts. The additional rules are needed to help prevent persons from representing parts as suitable for use on civil aircraft when in fact they may not be. The proposals are intended to provide assurance that aircraft owners and operators, and persons who maintain aircraft, have truthful information on which to determine whether a part may be used in a given civil aircraft application. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/05/03	68 FR 23807
NPRM Comment Period End	08/04/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AVR—94—549R.

ANALYSIS: Regulatory Evaluation 08/00/01

Agency Contact: Beverly Sharkey, Department of Transportation, Federal Aviation Administration, 13873 Park Center Road, Herndon, VA 20172—3223
Phone: 703 661—0583

RIN: 2120–AG08

2246. +TRAINING IN THE RECOGNITION OF HAZARDOUS MATERIAL

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 4711; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 135; 14 CFR 119

Legal Deadline: None

Abstract: The Federal Aviation Administration (FAA) is amending its hazardous materials (hazmat) training requirements for air carriers and commercial operators certificated to operate under part 121 or part 135. In addition, the FAA is requiring that repair stations certificated under part 145 document for the FAA that persons handling hazmat for transportation have been trained as required by the Department of Transportation Hazardous Materials Regulation (HMRs). The FAA is updating its regulations because hazmat transport and the aviation industry have changed significantly since the FAA promulgated its hazmat training regulations over 25 years ago. The rule will set clear training standards and ensure uniform compliance with training requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/08/03	68 FR 24809
NPRM Comment Period End	09/05/03	
Final Action	01/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Wilkening, Office of Security, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—5885

Jan Demuth, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8166

RIN: 2120–AG75

2247. AREA NAVIGATION (RNAV) AND MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103 to 40105; 49

USC 40113; 49 USC 40119 to 40120; 49 USC 41706; 49 USC 44101; 49 USC 44111; 49 USC 44113; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906; 49 USC 44912; 49 USC 46105; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 465504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 1; 14 CFR 91; 14 CFR 95; 14 CFR 97; 14 CFR 121; 14 CFR 129; 14 CFR 135

Legal Deadline: None

Abstract: The FAA is amending its regulations to reflect technological advances that support area navigation (RNAV); make certain terms consistent with those of the International Civil Aviation Organization; remove the middle marker as a required component of instrument landing systems; and clarify airspace terminology. The changes are intended to facilitate the transition from ground—based navigation to new reference sources, enable advancements in technology, and increase efficiency of the National Airspace System.

Timetable:

Action	Date	FR Cite
NPRM	12/17/02	67 FR 77326
NPRM Comment Period End	01/31/03	
NPRM Comment Period Reopened	04/08/03	68 FR 16992
Comment Period End	07/07/03	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lawrence Buehler, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8452

RIN: 2120–AH77

2248. +INELIGIBILITY FOR AN AIRMAN CERTIFICATE BASED ON SECURITY GROUNDS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 61

Legal Deadline: None

Abstract: This action provides the authority to revoke a pilot certificate or deny an application for a pilot certificate based on a written determination by the Under Secretary of Transportation for Security that an individual poses a security risk related to aviation. This final rule addresses the security concerns of who should hold a pilot certificate issued by the FAA and is necessary to enhance security in air transportation. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	01/24/03	68 FR 3772
Final Rule Effective	01/24/03	
Comment Period End	03/25/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter J. Lynch, Office of the Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591
Phone: 202 267—3137

RIN: 2120–AH84

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Completed Actions

2249. OBJECTS AFFECTING NAVIGABLE AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113 to 40114; 49 USC 44502; 49 USC 44701; 49 USC 44718; 49 USC 46101 to 46102; 49 USC 46104

CFR Citation: 14 CFR 77

Legal Deadline: None

Abstract: This action would amend the standards, aeronautical studies, scope, and notice provisions concerning objects affecting navigable airspace. The notice consisted primarily of changes required by recent legislation or recommended by a Government/industry task group of the National Airspace Review Advisory Committee. This action would also cover electromagnetic interference phenomena that could create a hazard to air navigation.

Timetable:

Action	Date	FR Cite
Notice of Review	06/19/78	43 FR 26322
Review Conference	12/08/80	
NPRM	08/03/90	55 FR 31722
NPRM Correction	08/13/90	55 FR 32999
NPRM Correction	08/16/90	55 FR 33577
NPRM Correction	08/28/90	55 FR 35152
NPRM Correction	09/10/90	55 FR 37287
NPRM Comment Period End	12/31/90	
SNPRM	10/16/95	60 FR 53680
SNPRM Comment Period End	11/30/95	
Withdrawn	07/24/03	68 FR 43885

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ATO—85—015R.

ANALYSIS: Regulatory Evaluation, 08/03/90, 55 FR 31722

Agency Contact: Ellen Crum, Air Traffic Rules Procedures Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3155

RIN: 2120–AA09

2250. MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 5103; 49 USC 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44703; 49 USC 44705; 49 USC 44706; 49 USC 44707;

49 USC 44709; 49 USC 44710; 49 USC 44711; 49 USC 44712

CFR Citation: 14 CFR 21; 14 CFR 65; 14 CFR 107; 14 CFR 121; 14 CFR 135; 14 CFR 145

Legal Deadline: None

Abstract: The FAA is withdrawing a previously published notice of proposed rulemaking (NPRM) that proposed to amend various sections of the regulations. The proposal was to clarify language, correct improper or obsolete references, and to relax certain existing requirements. Since publication of the NPRM, many other completed, in—process, or planned actions have addressed or will address many of the issues involved. The FAA has determined that all unresolved issues have been included in more recent actions dealing with the specific sections of the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/03/83	48 FR 45214
NPRM Comment Period End	12/02/83	
Withdrawn	07/24/03	68 FR 43885

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. 23781. Project Number: ARM—81—128R.

ANALYSIS: Regulatory Evaluation, 10/03/83, 48 FR 45214

Agency Contact: Linda L. Williams, Office of Rulemaking, ARM—100, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267—9685

RIN: 2120–AA50

2251. +IMPROVED WATER SURVIVAL EQUIPMENT

Priority: Other Significant

Legal Authority: 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would have added new requirements for water survival equipment carried aboard airplanes and rotorcraft. The requirements would have applied, after specified dates, to U.S.—certificate holders that conduct common—carriage operations with airplanes and rotorcraft. This action is in response to the Airport and Airway Safety and Capacity Enhancement Act of 1987 (PL 100—223) and relates to safety recommendations by the National Transportation Safety Board. The requirements are intended to increase the likelihood of aircraft passengers surviving a crash landing in water and, thus, this rulemaking is significant because of the safety implications. This rulemaking will be withdrawn. Cost and unresolved issues concerning lap—help children are preventing the rulemaking from moving forward.

Timetable:

Action	Date	FR Cite
NPRM	06/30/88	53 FR 24890
NPRM Comment Period End	11/28/88	
Withdrawn	07/24/03	68 FR 43885

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AIR—85—265R.

ANALYSIS: Regulatory Evaluation, 06/30/88, 53 FR 24890

Agency Contact: Hal Jensen, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—9578

RIN: 2120–AC72

2252. TYPE CERTIFICATES FOR SOME SURPLUS AIRCRAFT OF THE ARMED FORCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 40105; 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44713; 49 USC 44715; 49 USC 45303

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: Following World War II, a substantial number of surplus military airplanes were offered for sale to the public in order to meet an increased demand for civilian—use aircraft not being met by the civil aircraft industry. The current regulation permits both type and airworthiness certification for surplus military aircraft based on the particular aircraft's safety record and condition. As military aircraft have become increasingly complex and sophisticated, that practice is no longer acceptable. This action would remove the regulations for issuing type certificates for these surplus aircraft and eliminate references to obsolete standards. Surplus military aircraft would still be certificated in the normal, utility, acrobatic, commuter, transport, and restricted categories upon compliance with the applicable regulations. This rulemaking will be withdrawn. This rulemaking will be incorporated in a rulemaking revision of part 21.

Timetable:

Action	Date	FR Cite
NPRM	04/21/94	59 FR 19114
NPRM Comment Period End	06/20/94	
Comment Period End 08/26/94	07/07/94	59 FR 34779
Withdrawn	07/24/03	68 FR 43885

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Project Number: AIR—91—354R.

ANALYSIS: Regulatory Evaluation, 04/21/94, 59 FR 19114

Agency Contact: Ed Chalpin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—9588

RIN: 2120–AE41

2253. REVISED PRECISION APPROACH LANDING SYSTEMS POLICY

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This statement would provide policy for acquisition, installation, maintenance, and decommissioning of the instrument landing system (ILS) and the microwave landing system (MLS) during the transition to the global positioning system (GPS). The policy statement of December 1989 announced the transition from the ILS to the MLS for precision approach service in the National Airspace System. Since that time, advancement of GPS—based landing system technology has provided a more economical means of providing approach services. FAA plans to withdraw this policy because it is no longer relevant.

Timetable:

Action	Date	FR Cite
Policy Statement	12/27/89	54 FR 53231
Withdrawn	07/24/03	68 FR 43887

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Wedge, Airway Facilities Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—7848

RIN: 2120–AG16

2254. +IMPROVED FLAMMABILITY STANDARDS FOR THERMAL/ACOUSTIC INSULATION MATERIALS USED IN TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This document proposes upgraded flammability standards that specifically address flame propagation and entry of an external fire into the airplane (burnthrough) under realistic fire scenarios. The proposed standards are intended to reduce the incidence and severity of cabin fires, particularly those ignited in inaccessible areas where thermal/acoustic insulation materials are typically installed. Also, the proposed standards would provide an increased level of safety with respect to post—crash fires by delaying the entry of such a fire into the cabin, thereby providing additional time for evacuation and enhancing survivability. The new standards would apply to new type designs, and newly manufactured airplanes entering parts 91, 121, 125, and 135 service. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56992
NPRM Comment Period End	01/18/01	
Final Rule	07/31/03	68 FR 45046
Final Action Effective	09/02/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—99—086R.

ANALYSIS: Regulatory Evaluation 12/00/2002.

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055—4056
Phone: 425 227—2136

RIN: 2120–AG91

2255. SPECIAL FLIGHT RULES IN THE VICINITY OF GRAND CANYON NATIONAL PARK

Timetable:

Action	Date	FR Cite
Duplicate of RIN 2120-AG74	09/24/03	

RIN: 2120–AG97

2256. +AIR TOUR OPERATIONS IN STATE OF HAWAII

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44701; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46502; 49 USC 46504; 49 USC 46506; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47530

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This action proposes to extend SFAR 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii. The FAA intends to issue a national air tour safety proposal in the near future, but until this rulemaking becomes final, there is a need to extend SFAR 71 to ensure the continuing safe environment for conducting air tours in Hawaii. During the 9—year period between 1982 and 1991, there were 11 air tour accidents with 24 fatalities in Hawaii. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. On September 26, 1994, the FAA published an emergency final rule as SFAR 71. The rule established additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the State of Hawaii. SFAR 71 was subsequently extended until October 26, 2003. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/08/03	68 FR 47269
Final Action	10/23/03	68 FR 60831
Final Action Effective	10/26/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8166

RIN: 2120–AH02

2257. +FRACTIONAL OWNERSHIP

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40119; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 61; 14 CFR 91; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: The FAA proposes to update and revise the regulations governing operations by aircraft in fractional ownership programs. Current regulations do not adequately define fractional ownership programs nor clearly allocate responsibility and authority for safety and compliance with the regulations. This proposal will define fractional ownership programs and their participants, allocate responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and ensure that fractional ownership program aircraft operations maintain a high level of safety. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/18/01	66 FR 37520
NPRM Comment Period End	10/16/01	
Final Action	09/17/03	68 FR 54520
Final Action Effective	11/17/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Katherine Hakala Perfetti, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591
Phone: 202 267—3760

RIN: 2120–AH06

2258. MATERIAL STRENGTH PROPERTIES AND DESIGN VALUES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to revise the material strength properties and material design values requirement for transport category airplanes by incorporating changes developed in cooperation with the Joint Aviation Authorities of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee. This proposal is intended to achieve common requirements and language between the requirements of the United States regulations and the Joint Aviation Requirements of Europe, while maintaining at least the level of safety provided by the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/29/02	67 FR 4318
NPRM Comment Period End	04/01/02	
Final Action	08/05/03	68 FR 46427

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—98—300.

Agency Contact: Rich Yarges, Airframe and Airworthiness Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055—4056
Phone: 425 227—2143

RIN: 2120–AH36

2259. LOWER DECK SERVICE COMPARTMENTS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to require that two—way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/24/02	67 FR 3456
NPRM Comment Period End	03/25/02	
Final Action	06/19/03	68 FR 36879

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM—00—5

Agency Contact: Jayson Claar, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055—4056
Phone: 425 227—2194

RIN: 2120–AH38

2260. HARMONIZATION OF NOISE CERTIFICATION STANDARDS FOR PROPELLER—DRIVEN SMALL AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: This final rule harmonizes two technical items with international regulations to provide uniform noise certification standards for airplanes certificated in the United States and JAA (European Joint Aviation Authorities) countries. This will help to simplify airworthiness approvals for import and export purposes. The revisions to these two items will apply only to a small number of older technology airplanes.

Timetable:

Action	Date	FR Cite
Final Action	06/06/03	68 FR 34255

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE—01—134.

Agency Contact: Mehmet Marsan, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—7703

RIN: 2120–AH42

2261. DIGITAL FLIGHT DATA RECORDER RESOLUTIONS REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 44113

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action allows operators of specified airplanes to operate those airplanes under parts 121, 125, or 135 without meeting the resolution requirements for certain parameters of information recorded by flight data recorders. This action is needed to allow operators of these airplanes to continue operating these airplanes with their current recording capabilities until the FAA is able to determine the appropriate remedy for this problem.

Timetable:

Action	Date	FR Cite
Final Rule Effective	08/17/01	
Final Rule; Request for Comments	08/22/01	66 FR 44270
Comment Period End	09/21/01	
Final Action	07/18/03	68 FR 42932

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8166

RIN: 2120–AH46

2262. PROCEDURES FOR REIMBURSEMENT OF AIRPORTS, ON—AIRPORT PARKING LOTS, AND VENDORS OF ON—AIRFIELD DIRECT SERVICES TO AIR CARRIERS FOR SECURITY MANDATES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—71; 115 Stat. 597

CFR Citation: 14 CFR 154

Legal Deadline: None

Abstract: FAA plans to withdraw this action because of the lack of funding. The rule would provide procedures for certain operators to apply for reimbursement of allowable costs incurred to comply with certain security requirements imposed by the FAA or Transportation Security Administration on or after September 11, 2001. These procedures are needed to inform airport operations, on—airport parking lots, and vendors of on—airfield direct services to air carriers how to apply for reimbursement of allowable costs.

Timetable:

Action	Date	FR Cite
NPRM	12/21/01	66 FR 66238
NPRM Comment Period End	01/22/02	
Withdrawn	07/24/03	68 FR 43886

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barry Molar, Manager, Airport Financial Assistance Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3831

RIN: 2120–AH60

2263. +REDUCED VERTICAL SEPARATION MINIMUM IN DOMESTIC UNITED STATES AIRSPACE

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44715; 49 USC 44716; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This action would permit Reduced Vertical Separation Minimum flights in the airspace over the contiguous 48 States of the United States and Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services. This reduction of vertical separation minima would only be applied between those aircraft that meet stringent altimeter and auto—pilot performance requirements. This action would enhance airspace capacity and assist aircraft operators in saving fuel and time.

Timetable:

Action	Date	FR Cite
NPRM	05/10/02	67 FR 31920
NPRM Comment Period End	08/08/02	
Final Rule	10/27/03	68 FR 61304

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Swain, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 385—4576

RIN: 2120–AH68

2264. DIGITAL FLIGHT DATA RECORDER REQUIREMENTS — EXCEPTION AND APPENDIX UPDATES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705 to 44706; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action amends the flight data recorder regulations by expanding the recording ranges for certain data parameters for all covered airplanes; updates the resolution recording requirements for part 135 appendix F; and updates the list of aircraft excepted from the digital flight data recorder requirements. This action is necessary because certain airplanes are unable to record certain flight parameters under the existing resolution criteria and other aircraft are too old to be retrofitted with new recording devices without undergoing unintended and expensive retrofit.

Timetable:

Action	Date	FR Cite
Final Rule	07/18/03	68 FR 42932

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8166

RIN: 2120–AH89

2265. SPECIAL FLIGHT RULES IN THE VICINITY OF LOS ANGELES INTERNATIONAL AIRPORT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 47 USC 44712; 47 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44720; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528

CFR Citation: 14 CFR 91; 14 CFR 93

Legal Deadline: None

Abstract: This action proposes to revise and codify Special Federal Aviation Administration (SFAR) No. 51—1. This action would revise the description of the airspace to require aircraft to operate at a fixed altitude. The FAA is proposing this action to reduce the potential for descent conflicts, to ensure compatibility with current traffic, and to increase overall system efficiency and safety.

Timetable:

Action	Date	FR Cite
NPRM	12/31/02	67 FR 80316
NPRM Comment Period End	02/14/03	
Final Action	07/10/03	68 FR 41211

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ken McElroy, Office of Air Traffic Airspace Management, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—8783

RIN: 2120–AH92

2266. +FLIGHTDECK SECURITY ON LARGE CARGO AIRPLANES

Priority: Other Significant

Legal Authority: USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 45105; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 129

Legal Deadline: None

Abstract: This action provides an optional means of compliance to operators of all—cargo airplanes that are required to have a reinforced security flightdeck door by April 9, 2003. This rule allows those operators to either install reinforced doors or adopt enhanced security procedures approved by the Transportation Security Administration.

Timetable:

Action	Date	FR Cite
Final Action	07/18/03	68 FR 42873

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Scott Crosier, Federal Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—9579

RIN: 2120–AH96

2267. • FLIGHT CREW COMPARTMENT ACCESS AND DOOR DESIGNS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 106(g); 49 USC 1153; 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action supersedes Special Federal Aviation Regulation (SFAR) 92—4, which was published on March 19, 2002, to allow operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. It temporarily authorizes variances from existing design standards for the doors and certain operational rules associated with the modifications; allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration; and prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking devise installed, operative, and in use. This action also extends regulatory relief for all—cargo transport category airplanes and a limited number of passenger airplanes beyond April 9, 2003.

Timetable:

Action	Date	FR Cite
Final Action	04/09/03	68 FR 17513

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Laurette Fisher, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267—3561
Fax: 202—267—5594

RIN: 2120–AH97

2268. • DOD COMMERCIAL AIR CARRIER EVALUATORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 106(g); 49 USC 1153; 49 USC 40101 to 40103; 49 USC 40113; 49 USC 44105 to 44106; 49 USC 44111; 49 USC 44701 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44906; 49 USC 44912; 49 USC 44914; 49 USC 44936; 49 USC 44938; 49 USC 46103; 49 USC 46105

CFR Citation: 14 CFR 119; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This final rule with request for comments clarifies existing regulations as they apply to the Department of Defense (DOD) commercial air carrier evaluators. These amendments are necessary to clarify DOD's congressionally mandated cockpit evaluation mission and authority for the aviation security community and for industry. DOD's Air Mobility Command (AMC) will create and issue a new credential to permit DOD commercial air carrier evaluators uninterrupted access to the cockpit for evaluations. These amendments explicitly clarify existing DOD legal authority and responsibilities.

Timetable:

Action	Date	FR Cite
Final Action	07/10/03	68 FR 41213

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lt. Col. Tom Barrale, US Air Force, Department of Defense Air Mobility Command Liaison Officer to the FAA AFS, Department of Transportation, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591
Phone: 202 267—7088

RIN: 2120–AI00

2269. • DISPOSITION OF COMMENTS: NOISE CERTIFICATION STANDARDS FOR SUBSONIC JET AND SUBSONIC TRANSPORT CATEGORY LARGE AIRPLANES; TRANSITION TO AN ALL STAGE 3 FLEET OPERATING IN THE 48 CONTIGUOUS STATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 14 CFR 21; 14 CFR 36; 14 CFR 91

Legal Deadline: None

Abstract: The FAA is providing response to public comments on three immediately adopted rules. The effect of this action is to close these rulemaking actions. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council to reduce the number of items in the Regulatory Agenda, and to accurately reflect agency initiatives.

Timetable:

Action	Date	FR Cite
Final Action	07/24/03	68 FR 43883

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alicia K. Douglas, Office of Rulemaking, Department of Transportation, Federal Aviation Administration, 800 Independence Ave. S W., Washington, DC 20591
Phone: 202 267—9681

RIN: 2120–AI01

2270. • WITHDRAWAL OF PROPOSED RULES: MISCELLANEOUS AMENDMENTS; IMPROVED WATER SURVIVAL EQUIPMENT; OBJECTS AFFECTING NAVIGABLE AIRSPACE; TYPE CERTIFICATES FOR SOME SURPLUS AIRCRAFT OF THE ARMED FORCES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 14 CFR 21; 14 CFR 61; 14 CFR 65; 14 CFR 77; 14 CFR 107; 14 CFR 109; 14 CFR 121; 14 CFR 135; 14 CFR 145; 14 CFR 154

Legal Deadline: None

Abstract: The FAA is withdrawing several previously published notices of proposed rulemaking (NPRMs). This action is necessary because the proposed actions have been overcome by events, are no longer relevant, or will be addressed in future rulemaking. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council to reduce the number of items in the Regulatory Agenda, and to accurately reflect agency initiatives.

Timetable:

Action	Date	FR Cite
Final Action	07/24/03	68 FR 43885

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alicia K. Douglas, Office of Rulemaking, Department of Transportation, Federal Aviation Administration, 800 Independence Ave. S W., Washington, DC 20591
Phone: 202 267—9681

RIN: 2120–AI02

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Proposed Rule Stage

2271. REVISIONS TO HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 97—424, sec 161; 23 USC 109(a); 23 USC 144(g); PL 105—178, sec 1101(a)(3); 23 USC 109(h); 23 USC 144; 23 USC 151; 23 USC 315; 23 USC 319; 33 USC 401; 33 USC 409 et seq; 33 USC 511 et seq; PL 97—134, sec 4(b); PL 105—206; ...

CFR Citation: 23 CFR 650; 23 CFR 1.32; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The FHWA is proposing to amend its regulation outlining the highway bridge replacement and rehabilitation program (HBRRP). The HBRRP was established in accordance with section 124 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95—599, 92 Stat. 2689). It was established to assist the States in the replacement and rehabilitation of bridges declared unsafe because of structural deficiencies, physical deterioration, or functional obsolescence.

This regulation has not been revised since it was issued in 1979. The FHWA proposes changes to this regulation to better meet the needs of the State and local governments, while simultaneously meeting the national goals of improving the condition of the nation's bridges.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/01	66 FR 49152
ANPRM Comment Period End	12/26/01	
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Raymond McCormick, Director, Office of Bridge Technology, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366—4675

RIN: 2125–AE75

2272. +NATIONAL BRIDGE INSPECTION STANDARDS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 23 USC 109(a); 23 USC 109(h); 23 USC 144; 23 USC 151; 23 USC 315; 23 USC 319; EO 11988; . . .

CFR Citation: 23 CFR 650; 23 CFR 1.32; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The FHWA is proposing to amend and update its regulation on National Bridge Inspection Standards (NBIS). The FHWA asked in an ANPRM whether there is a need to update the regulations to incorporate current, state—of—the—art bridge inspection practices which public authorities may be using. A public authority means a Federal, State, county, town, or township, Indian tribe, municipal, or other local government or instrumentality with the authority to finance, build, operate, or maintain toll or toll—free facilities. The primary purpose of the NBIS is to identify bridges that need work to ensure the safety of the traveling public. The NBIS regulation was last updated 14 years ago. Based on the comments received to the ANPRM, the FHWA will propose a revision of its regulation on the NBIS.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/01	66 FR 49154
ANPRM Comment Period End	12/26/01	
NPRM	09/09/03	68 FR 53063
NPRM Comment Period End	11/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Wade F. Casey, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9487

RIN: 2125–AE86

2273. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL ASSISTED PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4601 et seq; 49 CFR 1.48

CFR Citation: 49 CFR 24

Legal Deadline: None

Abstract: The FHWA is proposing to update general policies and make needed changes to the regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Except for minor adjustments, this regulation has not been revised or updated in 15 years and the FHWA has received numerous requests from Federal and State agencies to update the regulation. The FHWA proposes these changes that will assist individuals and businesses that are relocated as a result of a Federal or Federal—aid project.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Ron Fannin, Team Leader, Professional Development and Training Team, Department of Transportation, Federal Highway Administration, Office of Real Estate Services, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2042

RIN: 2125–AE97

2274. • MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS; MINIMUM RETROREFLECTIVITY GUIDELINES FOR TRAFFIC SIGNS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104; 23 USC 105; 23 USC 109(d); 23 USC 114(a)

CFR Citation: 23 CFR 655; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The FHWA is inviting comments on proposed standards for retroreflectivity of traffic signs. Section 406(a) of the Department of Transportation and Related Agencies Appropriations Act of 1993, requires the Secretary of Transportation to revise the MUTCD to include a standard for a minimum level of retroreflectivity that must be maintained for traffic signs.

The FHWA is interested in establishing standards for nighttime visibility of traffic signs. The FHWA will develop these standards by considering the results of research, engineering practices and comments received in response to this notice of proposed amendments.

Timetable:

Action	Date	FR Cite
Notice of Proposed Amendments	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter Hatzi, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8036

RIN: 2125–AE98

2275. • TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS; LENGTH, WIDTH, AND WEIGHT LIMITATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 23 USC 127; 23 USC 315; 49 USC 31111; 49 USC 31112; 49 USC 31114; 49 CFR 1.48(b)(19)

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The FHWA seeks public comment in response to issues raised in a separate proposed rulemaking that sought public comment on possible changes to current Federal motor carrier size and weight regulations. The FHWA issued an NPRM entitled "Commercial Vehicle Width Exclusive Devices," on July 29, 2002 at 67 FR 48994. The NPRM's proposed changes dealt with devices, attached to the side of commercial motor vehicles for safety or efficiency purposes, that are now allowed a 3—inch exclusion whenever the width of a commercial motor vehicle is checked for compliance with Federal commercial vehicle width limitations. In response to a suggestion that the United States harmonize its width exclusion provision with those maintained by Canada and Mexico, the FHWA proposed that the current U.S. exclusion limit be increased from 3 to 4 inches.

Some respondents to the NPRM raised safety concerns about the 1—inch increase and the lack of information presented by the FHWA on possible consequences. This SNPRM, therefore, is seeking public input from domestic and foreign sources for information from studies or other sources, of the results of similar increases in width exclusion on highway safety. Evidence provided from this SNPRM will help the FHWA more definitively determine if the proposed 1—inch increase would have a significant, detrimental effect on highway safety, or if the increase should be pursued in the name of NAFTA harmonization.

Timetable:

Action	Date	FR Cite
Supplemental NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Robert E.L. Davis, Transportation Analyst, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2997

RIN: 2125–AE99

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Final Rule Stage

2276. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE NATIONAL PARK SERVICE, INCLUDING THE PARK ROADS AND PARKWAYS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 204; 23 USC 315; PL 105—178

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service, and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Six organizations provided comments on the ANPRM pertaining to the National Park Service (NPS) and the park roads and parkways program. The comments generally supported the development of a separate rule for each agency including one for the NPS.

In related NPRMs, the FHWA sought public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA—21) implementing safety, bridge, pavement, and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the NPS. The NPRM was designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47749
ANPRM Comment Period End	11/01/99	
NPRM	01/08/03	68 FR 1080
NPRM Comment Period End	03/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9486

RIN: 2125–AE52

2277. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE BUREAU OF INDIAN AFFAIRS, INCLUDING THE INDIAN RESERVATIONS ROAD PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 315; PL 105—178; 23 USC 134; 23 USC 135; 23 USC 204

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service, and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Eight organizations provided comments on the ANPRM pertaining to the Bureau of Indian Affairs (BIA) and the Indian reservation roads program. The comments generally supported the development of a separate rule for each agency including one for the BIA.

In related NPRMs, the FHWA sought public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA—21), for the proposed safety, bridge, pavement, and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the BIA. The NPRM was designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47746
ANPRM Comment Period End	11/01/99	
NPRM	01/08/03	68 FR 1105
NPRM Comment Period End	03/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9486

RIN: 2125–AE53

2278. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE FISH AND WILDLIFE SERVICE, INCLUDING THE REFUGE ROADS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 204; 23 USC 315; PL 105—178

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service, and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal Land Management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Six organizations provided comments on the ANPRM pertaining to the Fish and Wildlife Service (FWS) and the refuge roads program. The comments generally supported the development of a separate rule for each agency including one for the FWS.

In related NPRMs,the FHWA sought public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA—21) for the proposed safety, bridge, pavement and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the FWS. The NPRM was designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47741
ANPRM Comment Period End	11/01/99	
NPRM	01/08/03	68 FR 1096
NPRM Comment Period End	03/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9486

RIN: 2125–AE54

2279. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE FOREST SERVICE, INCLUDING THE FOREST HIGHWAYS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 135; 23 USC 204; 23 USC 315; PL 105—178; 23 USC 134

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service, and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land management agencies are given the authority to develop safety, bridge pavement, and congestion management systems for roads funded under the Federal lands highways program. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Seven organizations provided comments on the ANPRM pertaining to the Forest Service (FS) and the forest highway program. The comments generally supported the development of a separate rule for each agency including one for the FS.

In related NPRMs, the FHWA sought public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA—21) for the proposed safety, bridge, pavement and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the FS. The NPRM was designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47744
ANPRM Comment Period End	11/01/99	
NPRM	01/08/03	68 FR 1088
NPRM Comment Period End	03/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9486

RIN: 2125–AE55

2280. COMMERCIAL VEHICLE WIDTH EXCLUSIVE DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31111; 49 USC 31113

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: This action responds to two unique requests with respect to the exclusion of certain devices from established truck length and width requirements.

The rulemaking would increase from 3 to 4 inches the distance from the side of a commercial vehicle within which non—cargo carrying devices are excluded from vehicle width measurement.

In a separate matter, the Senate Committee on Appropriations has requested the FHWA consider a special allowance, within reasonable safety limitations, concerning the commercial movement of recreational vehicles (RVs) with incidental appurtenances, such as retractable awnings, that extend beyond current Federal width limitations. A number of States have enacted laws that allow incidental appurtenances on noncommercial RVs to exceed State width limitations.

This rulemaking would make these two changes to its regulation governing truck length and width exclusive devices.

Timetable:

Action	Date	FR Cite
NPRM	07/29/02	67 FR 48994
NPRM Comment Period End	09/27/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Robert E.L. Davis, Transportation Analyst, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2997

RIN: 2125–AE90

2281. ● INTERSTATE HIGHWAY SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 23 USC 103

CFR Citation: 23 CFR 476

Legal Deadline: None

Abstract: The FHWA and the FTA jointly remove part 476 of title 23 of the Code of Federal Regulations that prescribed policies and procedures for implementation of section 103(c)(4) of title 23, United States Code, which permitted the withdrawal of Interstate System segments and the substitution of mass transit or highway projects. The Congress recognized the expiration of this program by elminating the underlying statutory authority for this regulation in section 1106(b) of the Transportation Equity Act for the 21st Century.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald J. West, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—4652

RIN: 2125–AF00

Department of Transportation (DOT) Long-Term Actions
Federal Highway Administration (FHWA)

2282. WORK ZONE MOBILITY AND SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 105; 23 USC 106; 23 USC 109; 23 USC 110; 23 USC 115; 23 USC 315; 23 USC 320; PL 102—240, sec 1051; PL 104—59, sec 358

CFR Citation: 23 CFR 636; 23 CFR 1.32; 49 CFR 1.48; 23 CFR 630

Legal Deadline: None

Abstract: The FHWA proposes to amend its regulations on traffic safety and mobility in highway and street work zones. Section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) required the Secretary of Transportation (Secretary) to develop and implement a highway work zone safety program which would improve work zone safety at highway construction sites. This provision of ISTEA was implemented through non—regulatory action.

A notice published in the Federal Register on October 24, 1995 (60 FR 54562) provided an outline of the work zone safety initiative.

The current proposed regulatory action would further enhance the work zone safety initiative by expanding its focus to include both safety and mobility. The proposed action would incorporate the use of new work zone techniques and technologies, update current policy and regulation, and emphasize issues affecting the safety and mobility of highway workers and highway users.

Timetable:

Action	Date	FR Cite
ANPRM	02/06/02	67 FR 5532
ANPRM Comment Period End	06/06/02	
Notice of Public Meetings	08/09/02	67 FR 51802
NPRM	05/07/03	68 FR 24384
NPRM Comment Period End	09/04/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Scott Battles, Office of Transportation Operations, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4372

RIN: 2125–AE29

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Completed Actions

2283. ADVANCED CONSTRUCTION OF FEDERAL AID PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104 to 106; 23 USC 109; 23 USC 110; 23 USC 113; 23 USC 115; 23 USC 118; 23 USC 120(e); 23 USC 121(c); 23 USC 125; 23 USC 134; 23 USC 315; 23 USC 320

CFR Citation: 23 CFR 630; 23 CFR 1.32; 49 CFR 1.48

Legal Deadline: None

Abstract: The FHWA revises the existing regulations that prescribe policies and procedures for advancing the construction of Federal—aid highway projects without obligating Federal funds apportioned or allocated to the States. These regulations are being revised to conform to changes made to title 23, United States Code, by technical amendments in the Transportation Equity Act of the 21st Century (TEA—21), Pub. L. 105—178, and changes made by the National Highway System Designation Act of 1995 (NHS), Pub. L. 104—59.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/19/95	60 FR 36991
Interim Final Rule Comment Period End	09/18/95	
NPRM	05/01/03	68 FR 23239
NPRM Comment Period End	06/30/03	
Final Action	10/21/03	68 FR 60031
Final Action Effective	11/20/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Max Inman, Office of Budget and Finance, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2853

RIN: 2125–AD59

2284. FEDERAL—AID HIGHWAY SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 103(b); 23 USC 103(c); 23 USC 315

CFR Citation: 23 CFR 470

Legal Deadline: None

Abstract: The FHWA adopts as final the interim final rule issued in 1997. The interim final rule amends 23 CFR 470 in accordance with legislation enacted in 1991, 1995, and 1998. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) rescinded the Federal—aid Primary and Secondary and Urban Systems; established an interim National Highway System (NHS); and defined Federal—aid highways. The NHS Designation Act of 1995 (NHS Act) authorized the initial National Highway System and also authorized the Secretary to approve modifications. The Transportation Equity Act for the 21st Century (TEA—21) authorized the initial NHS connectors to major intermodal terminals and recodified 23 U.S.C. 103 (Federal—aid systems). The action also consolidates in appendices all nonregulatory guidance material issued previously by the FHWA on Federal—aid highway systems.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/19/97	62 FR 33351
Interim Final Rule Effective	07/21/97	
Final Action	05/27/03	68 FR 28752
Final Action Effective	06/26/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The FHWA issued an interim final rule with an opportunity for public comment. This rule amends regulations that the States comply with as part of the Federal—aid highway program. The FHWA has worked closely with the States, and the States have operated under the basic policies covered by this regulation for many years. A number of technical revisions are required as a result of the TEA—21 recodification of 23 U.S.C. 103, including incorporation of the provisions of former 23 U.S.C. 139 (Additions to Interstate System).

Agency Contact: Frank Clark, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5006

RIN: 2125–AD74

2285. RAILROAD HIGHWAY PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 315; 23 USC 109(e); 23 USC 120(c); 23 USC 130

CFR Citation: 23 CFR 140; 23 CFR 646

Legal Deadline: None

Abstract: The FHWA adopts as final the interim final rule that amends its regulations on railroad highway projects. The amendments now require railroads to submit final billings within one year following completion of work, delete the requirements of a State's certification that work was completed, increase the ceiling for lump sum agreements from $25,000 to $100,000 and incorporate changes brought about by ISTEA. The FHWA believes these changes will conform railroad/highway regulations to more recent laws or regulations, and provide State highway agencies clarification and more flexibility in implementing them.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/27/97	62 FR 45326
Interim Final Rule Comment Period End	10/27/97	
Final Action	05/08/03	68 FR 24639
Final Action Effective	06/09/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Debrah Williams Chappell, Department of Transportation, Federal Highway Administration, Office of Highway Safety Information, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—0087

RIN: 2125–AD86

2286. INDIAN RESERVATION ROAD BRIDGE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 120(j) and (k); 23 USC 202; 23 USC 315; PL 105—178, sec 1115; 49 CFR 1.48

CFR Citation: 23 CFR 661

Legal Deadline: None

Abstract: The FHWA adopts as final the interim final rule that implemented the Indian Reservation Roads Bridge Program. Section 1115 of the Transportation Equity Act for the 21st Century established a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserved $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. The FHWA, Federal Lands Highway Office (FLH), and the Bureau of Indian Affairs, Division of Transportation (BIADOT), implemented the IRR bridge program (IRRBP) to promptly address the deficient IRR bridges. Toward that end, the FLH and the BIADOT, in consultation with Indian tribal governments, developed project selection/fund allocation procedures for uniform application of the legislation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/19/99	64 FR 38565
Interim Final Rule Effective	07/19/99	
Final Action	05/08/03	68 FR 24642
Final Action Effective	06/09/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Wade F. Casey, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9487

RIN: 2125–AE57

2287. STANDARDS FOR DEDICATED SHORT—RANGE COMMUNICATIONS (DSRC) APPLICATIONS FOR USE BY COMMERCIAL VEHICLES IN INTELLIGENT TRANSPORTATION SYSTEMS PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 307; 23 USC 315; 23 USC 502 note; PL 102—240, sec 6055(b); PL 105—178, sec 5206(e)

CFR Citation: 23 CFR 1001; 49 CFR 1.48

Legal Deadline: None

Abstract: The FHWA withdraws this proposed rulemaking that proposed to amend its regulations to require the use of Dedicated Short—Range Communications (DSRC) Standards for ITS commercial vehicle projects using Federal funds. DSRC Systems use microwave communications over very short distances to allow moving vehicles to communicate with fixed roadside locations. In commercial motor vehicle applications, DSRC devices can transfer information regarding vehicle safety, performance, regulatory compliance, and credentials from the vehicle to inspection stations.

The use of DSRC standards would promote interoperability among, and enable integration of ITS systems for, North American commercial vehicle applications, such as electronic clearance, automated weight stations, and border crossings. Interoperability would also encourage institutional integration and cooperation. However a de facto standard has emerged within the industry. Therefore, we withdraw this rulemaking action.

Timetable:

Action	Date	FR Cite
NPRM	12/30/99	64 FR 73674
NPRM Comment Period End	02/28/00	
Supplemental NPRM	12/12/00	65 FR 77534
Final Action	07/24/03	68 FR 43888

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William S. Jones, ITS Joint Program Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2128

RIN: 2125–AE63

2288. MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 109(d); 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 655, subpart F

Legal Deadline: None

Abstract: The Manual on Uniform Traffic Control Devices contains the Standards, Guidance, and Options for installing all traffic control devices (signs, traffic signals, and pavement markings) on the nation's roadways opened to public travel. By following the manual drivers, pedestrians, and bicyclists encounter the same uniform signs, traffic signals, and pavement markings, used in identical ways, along their trip. As a result of changes in technology, materials, and management strategies, the devices in the manual and their uses need to be updated and amended on an annual basis.

This amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

Timetable:

Action	Date	FR Cite
Notice of Proposed Amendments	05/21/02	67 FR 35850
Comment Period End	08/19/02	
Final Action	11/20/03	68 FR 65496
Final Action Effective	12/22/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ernest D.L. Huckaby, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9064

RIN: 2125–AE93

2289. +DESIGNATION OF DROMEDARY—EQUIPPED TRUCK TRACTOR—SEMITRAILERS AS SPECIALIZED EQUIPMENT

Priority: Other Significant

Legal Authority: 49 USC 31111(g)

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: This rulemaking amends FHWA's truck size and weight regulations to designate dromedary—equipped truck tractor—semitrailers, when hauling munitions for the Department of Defense (DOD), as specialized equipment. No State would be able to limit this combination to less than 75 feet.

This in response to a petition from the Department of Defense indicating that the change would help expedite the hauling of munitions.

Timetable:

Action	Date	FR Cite
NPRM	10/23/02	67 FR 65056
NPRM Comment Period End	11/22/02	
Final Action	06/26/03	68 FR 37965
Final Action Effective	07/28/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip J. Forjan, Transportation Specialist, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—6817

RIN: 2125–AE94

Department of Transportation (DOT) Proposed Rule Stage
Federal Motor Carrier Safety Administration (FMCSA)

2290. COMMERCIAL LEARNER PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136; PL 99—570; 49 USC 31102

CFR Citation: 49 CFR 383, 384, 386, and 395; 49 CFR 1.73

Legal Deadline: None

Abstract: The FHWA at the time reviewed learner permit practices of the States for processing a driver from the initial non—CDL driver to being a fully licensed CDL driver. A number of variations in state learner permit practices were found. The FHWA planned to establish more uniform practices, such as: Screening drivers before permitting them to initially drive a CMV without having obtained a full CDL; the length of time a State allows the driver to hold a learner's permit; procedures for drivers to obtain CDL training in a State other than their normal residency; supervision requirements for learner permit drivers; and commercial driver license information systems (CDLIS) recordkeeping requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/22/90	55 FR 34478
NPRM Comment Period End	10/22/90	
NPRM Comment Period Extended to 11/30/90	10/23/90	55 FR 42741
Supplemental NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Additional Information: Because other regulatory changes have been made since the NPRM was published in 1990, FMCSA intends to issue a supplemental NPRM to solicit comments on including additional requirements consistent with changes in the CDL program.

ANALYSIS: Regulatory Evaluation, 08/22/90, 55 FR 34478

Agency Contact: Robert Redmond, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ESS, State Programs Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5014

RIN: 2126–AA03

2291. +QUALIFICATION OF DRIVERS; VISION

Priority: Other Significant

Legal Authority: 49 USC 504; 49 USC 31502

CFR Citation: 49 CFR 391

Legal Deadline: None

Abstract: As part of a review of the medical qualification standards applicable to interstate CMV drivers, the agency (then the FHWA) requested comments on the need, if any, to amend the driver qualification requirements relating to the vision standard. A temporary waiver program was initiated and was concluded on March 31, 1996, to permit the agency to observe and collect data on the driving experience of a group of vision—deficient drivers who meet certain preconditions. The agency considered further research to develop comprehensive performance—based visual standards for all commercial drivers. Information about the proposed research plan and public hearing on the subject was published on June 5, 1996. The agency entered into a contract with a medical center to develop medically based recommendations for amending the current Federal vision requirements. Recommendations were delivered in October 1998. The FMCSA, after evaluating and considering these recommendations, has decided to publish an NPRM to amend its regulation governing the visual field requirement in the vision standard. This action is significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/92	57 FR 6793
ANPRM Comment Period End	04/28/92	
Notice Request for Comments	06/05/96	61 FR 28547
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: FHWA adopted a final rule to allow drivers holding valid waivers from both the vision and diabetes standards to continue to operate in interstate commerce after March 31, 1996. See NPRM (61 FR 606, Jan. 8, 1996); Final Rule (61 FR 13338, March 26, 1996); Final Rule; technical correction (61 FR 17253, April 19, 1996). (See notices published February 28, 1992 (57 FR 6793); March 25, 1992 (57 FR 10295); June 3, 1992 (57 FR 22370); October 6, 1994 (59 FR 50887); and November 17, 1994 (59 FR 59386).)

Agency Contact: Sandra L. Zywokarte, Chief of Physical Qualifications Division (MC—PSP), Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSD, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366—4001

RIN: 2126–AA05

2292. +MEDICAL QUALIFICATION REQUIREMENTS AS PART OF THE COMMERCIAL DRIVER'S LICENSE (CDL) PROCESS

Priority: Other Significant

Legal Authority: PL 106—159, sec 215; 49 USC 31305; 49 USC 31502

CFR Citation: 49 CFR parts 383, 384, and 391

Legal Deadline: None

Abstract: This rulemaking would propose to verify a driver's medical qualification to operate a CMV as part of the CDL process. Incorporating medical qualification verification and documentation into State—administered CDL procedures would improve highway safety by preventing medically—unqualified individuals from obtaining a CDL. This action would also eliminate the requirement for CDL operators to carry their medical certificate in addition to their CDL. This rulemaking responds to section 215 of the Motor Carrier Safety Improvement Act of 1999, which directed the agency to initiate a rulemaking to make the medical qualification certificate a part of the CDL process. This action is considered significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/94	59 FR 36338
ANPRM Comment Period End	11/14/94	
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Agency Contact: Teresa Doggett, Physical Qualifications Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSD, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2990

RIN: 2126–AA10

2293. +UNIFIED REGISTRATION SYSTEM

Priority: Other Significant

Legal Authority: PL 104—88; 49 USC 13908

CFR Citation: 49 CFR parts 360, 365, 366, 368, 387, and 390

Legal Deadline: Final, Statutory, January 1, 1998, Final.

Abstract: This action is required by section 103 of the ICC Termination Act of 1995 (49 USC 13908). FMCSA is proposing to replace four current identification and registration systems—the USDOT identification number system, the single—State registration system, the registration/licensing system, and the financial responsibility system—with a single, online Federal system. This action is intended to consolidate and simplify current Federal registration processes and to increase public accessibility to data about interstate and foreign motor carriers, property brokers, and freight forwarders. This action is considered significant because of substantial industry and congressional interest.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/96	61 FR 43816
ANPRM Comment Period End	10/25/96	
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Agency Contact: Robert F. Schultz Jr., Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSD, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4001

RIN: 2126–AA22

2294. POSTING OF EMPLOYEE PROTECTIONS INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: FMCSA is considering requiring employers to display a poster to notify commercial motor vehicle (CMV) operators and other employees of their whistleblower rights under 49 U.S.C. 31105. The poster would also provide information on filing a complaint with the Occupational Safety and Health Administration for investigation.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Goettee, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PRR, Office of Policy Plans and

Regulation, 400 Seventh Street SW.,
Washington, DC 20590
Phone: 202 366—4097

RIN: 2126–AA68

2295. +HOURS OF SERVICE OF DRIVERS; SUPPORTING DOCUMENTS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 103—311, sec 113

CFR Citation: 49 CFR 385, 390, and 395; 49 CFR 1.73

Legal Deadline: Final, Statutory, February 1996, Final.

Abstract: The FMCSA would propose amending the hours—of—service recordkeeping requirements to clarify that the duty of motor carriers is to verify the accuracy of drivers' hours of service (HOS) and records of duty status (RODS) including automatic on—board records, and that the driver's duty is to collect and submit to the motor carrier all supporting documents with the RODS. The agency would also propose to require carriers to maintain supporting documents with the RODS. The agency would propose that a supporting document based self—monitoring system be the primary method for ensuring compliance with the HOS regulations. Recognizing developing technologies, FMCSA would propose to permit use of electronic documents as a supplement to, and in certain instances in lieu of, paper supporting documents. These proposals would be intended to clarify definitions of "supporting documents," "employee," and "driver," and to clarify the current requirement that each motor carrier use a self—monitoring system to verify accuracy of the HOS and RODS including automatic on—board records.

Timetable:

Action	Date	FR Cite
NPRM	04/20/98	63 FR 19457
NPRM Comment Period End	06/19/98	
Supplemental NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jerry Fulnecky, Department of Transportation, Federal Motor Carrier Safety Administration, MC—EC, Office of Enforcement and Compliance, 400 Seventh Street, SW.,
Washington, DC 20590
Phone: 202 366—2096

RIN: 2126–AA76

2296. SAFETY FITNESS PROCEDURES; SAFETY RATINGS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 113

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: The FMCSA proposes to update the safety fitness rating methodology (SFRM), which is used to measure the safety fitness of motor carriers against the safety standard, as outlined in appendix B to the Safety Fitness Procedures regulations. It is necessary to amend the list of acute and critical regulations because the agency has established operating procedures and issued several regulations required by the ICC Termination Act of 1995, the Transportation Equity Act for the 21st Century, and the Motor Carrier Safety Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Mary Pat Woodman, Chief, Enforcement and Compliance Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ECE, Room 8310, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9699

RIN: 2126–AA77

2297. TITLE VI REGULATIONS FOR FMCSA FINANCIAL ASSISTANCE RECIPIENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106—159, sec 106(b); 113 Stat. 1748 and 1757; 42 USC 2000d

CFR Citation: 49 CFR 1.73

Legal Deadline: None

Abstract: This action would propose to clarify and modify the applicability of DOT regulations (49 CFR 21) and FHWA regulations (23 CFR 200) to FMCSA grant recipients. This complies with section 106(b) of the Motor Carrier Safety Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carmen Sevier, Office of Civil Rights, Department of Transportation, Federal Motor Carrier Safety Administration, (MC—CR), 400 Seventh Street, SW, Room 8203,
Washington, DC 20590
Phone: 202 366—4330

RIN: 2126–AA79

2298. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; FUEL SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136 and 31502; and 49 CFR 1.73

CFR Citation: 40 CFR 86; 49 CFR 393

Legal Deadline: None

Abstract: The agency proposes to revise the Federal Motor Carrier Safety Regulations (FMCSRs) concerning fuel tank fill rates for gasoline— and methanol—fueled vehicles to (1) make that provision of the FMCSRs compatible with EPA requirements for vehicles up to 14,000 lbs. GVWR and (2) make permanent the terms of the exemptions previously granted to motor carriers operating certain gasoline—fueled CMVs manufactured by Ford Motor Company and by General Motors. The agency also proposes to incorporate into the FMCSRs previously issued regulatory guidance concerning the applicability of NHTSA fuel system integrity regulations for vehicles subject to 49 CFR 571.301 at the time of manufacture.

Timetable:

Action	Date	FR Cite
NPRM	11/12/03	68 FR 64072
NPRM Comment Period End	01/12/04	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Deborah M. Freund, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4009

RIN: 2126–AA80

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)

Final Rule Stage

2299. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; HAZARDOUS MATERIALS SAFETY PERMITS

Priority: Other Significant

Legal Authority: 49 USC 5105; 49 USC 5109

CFR Citation: 49 CFR parts 385, 390, and 397;and 49 CFR 1.

Legal Deadline: Final, Statutory, November 15, 1991, Final.

Abstract: This rulemaking proposes to establish a safety permit program for motor carriers transporting hazardous materials, such as: Class A or B explosives, liquefied natural gases, hazardous materials designated as extremely toxic by inhalation, and highway route controlled quantity radioactive materials. It also proposes to consider additional acute and critical regulations relevant to determination of a carrier's safety fitness rating and the issuance of a safety permit. In addition, it proposes regulations requiring pre—trip inspection and certification of a motor vehicle used to transport a highway route controlled quantity of a radioactive material. This action is considered significant because it involves safety implications and substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	06/17/93	58 FR 33418
NPRM Comment Period End	08/16/93	
Supplemental NPRM	08/19/03	68 FR 49737
SNPRM/Correction	09/11/03	68 FR 53535
SNPRM Comment Period End	10/20/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: James Simmons, Hazardous Materials Division, MC—ECH, Department of Transportation, Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366—6121

RIN: 2126–AA07

2300. +MINIMUM TRAINING REQUIREMENTS FOR LONGER COMBINATION VEHICLE (LCV) OPERATORS AND LCV DRIVER—INSTRUCTOR REQUIREMENTS

Priority: Other Significant

Legal Authority: 49 USC 31307; PL 102—240, sec 4007(b)

CFR Citation: 49 CFR parts 380 and 391

Legal Deadline: Final, Statutory, December 18, 1993, Final.

Abstract: FMCSA proposes minimum training requirements for operators of longer combination vehicles and requirements for the instructors who train these operators. This action responds to section 4007 of the Intermodal Surface Transportation Efficiency Act of 1991, which directed that training for LCV operators include certification of an operator's proficiency by an instructor who has met the requirements established by the Secretary of DOT. This action is considered significant because of substantial public interest and safety.

Timetable:

Action	Date	FR Cite
ANPRM	01/15/93	58 FR 4638
ANPRM Comment Period End	03/16/93	
NPRM	08/12/03	68 FR 47890
NPRM Comment Period End	10/14/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Robert Redmond, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ESS, State Programs Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5014

RIN: 2126–AA08

2301. +MINIMUM TRAINING REQUIREMENTS FOR ENTRY—LEVEL COMMERCIAL MOTOR VEHICLE OPERATORS

Priority: Other Significant

Legal Authority: PL 102—240, sec 4007

CFR Citation: 49 CFR 380

Legal Deadline: Final, Statutory, December 18, 1993, Final.

Abstract: The FMCSA is proposing standards for mandatory training requirements for entry—level operators of commercial motor vehicles (CMVs) who are required to hold or obtain a commercial driver's license (CDL). This action responds to section 4007 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which directed the Secretary of DOT to promulgate safety regulations for entry—level training of drivers in the heavy truck, motorcoach, and school bus industries. This action is considered significant due to substantial industry and public interest.

Timetable:

Action	Date	FR Cite
ANPRM	06/21/93	58 FR 33874
ANPRM Comment Period End	08/20/93	
Report to Congress	02/05/96	
Notice of Availability of Report	04/25/96	61 FR 18355
NPRM	08/15/03	68 FR 48863
NPRM Comment Period End	10/14/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: In February 1996, the Secretary submitted the report entitled, Assessing the Adequacy of Commercial Motor Vehicle Training: Final Report and the first Cost—Benefit analysis to Congress, as required by the ISTEA. The report is available through the National Technical Information Service (Order No. PB96—141536). For further information, please call 1—800—553—6847.

Agency Contact: Ronald Finn, Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ESS, Office of Safety Programs, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—0647

RIN: 2126–AA09

2302. RULES OF PRACTICE FOR MOTOR CARRIER PROCEEDINGS; INVESTIGATIONS; DISQUALIFICATIONS AND PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 113 and 307

CFR Citation: 49 CFR 385 and 386; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA proposed amending its rules of practice for motor carrier safety, hazardous materials, and other enforcement proceedings, motor carrier safety ratings, driver qualification proceedings and its schedule of penalties for violations of the FMCSRs and the Hazardous Materials Regulations. FMCSA would also propose to add provisions on investigative authority and procedures and general motor carrier responsibilities. These rules would increase the efficiency of the procedures, enhance due process and the awareness of the public and regulated community, and accommodate recent program changes. The rules would apply to all motor carriers, other business entities and individuals involved in motor carrier safety and hazardous materials administrative actions.

Timetable:

Action	Date	FR Cite
NPRM	04/29/96	61 FR 18866
NPRM Comment Period End	07/29/96	
Supplemental NPRM	10/21/96	61 FR 54601
SNPRM Comment Period End	11/20/96	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charlene Sanders, Office of Chief Counsel, Department of Transportation, Federal Motor Carrier Safety Administration, Room 8A06, Federal Bldg., 819 Taylor Street, Fort Worth, TX 76102
Phone: 817 978—3796

RIN: 2126–AA15

2303. +SAFETY PERFORMANCE HISTORY OF NEW DRIVERS

Priority: Other Significant

Legal Authority: 49 USC 508; 49 USC 31133, 31136, 31301 et seq, and 31502; PL 103—311

CFR Citation: 49 CFR parts 390 and 391; and 49 CFR 1.73

Legal Deadline: NPRM, Statutory, January 1999, NPRM.

Abstract: As required by the Hazardous Materials Transportation Authorization Act of 1994, the FHWA proposed changes concerning what minimum safety performance history information new or prospective employers would be required to seek concerning commercial motor vehicle (CMV) drivers and from where that information should be obtained. The Small Business Administration (SBA) requested more in—depth Paperwork Reduction Act and Regulatory Flexibility Act analyses of the NPRM. In response to SBA's comments to the docket and section 4014 of the Transportation Equity Act for the 21st Century (TEA—21), FMCSA published an SNPRM to address issues, such as small business burden, and to incorporate new requirements of limitation of liability and driver privacy protections imposed by TEA—21. The proposed changes are considered significant because of substantial public interest and privacy implications.

Timetable:

Action	Date	FR Cite
NPRM	03/14/96	61 FR 10548
NPRM Comment Period End	05/13/96	
Supplemental NPRM	07/17/03	68 FR 42339
SNPRM Comment Period End	09/02/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary Moehring, Chief, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSD, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366—4001

RIN: 2126–AA17

2304. +RAILROAD—HIGHWAY GRADE CROSSING SAFETY

Priority: Other Significant

Legal Authority: PL 102—240; PL 103—311; 49 USC 5101, 31136, and 31502; 49 CFR 1.73

CFR Citation: 49 CFR 392

Legal Deadline: Final, Statutory, February 26, 1995, Final.

Abstract: This action would prohibit operators of commercial motor vehicles from driving onto a railroad grade crossing unless there is sufficient space to drive completely through the crossing without stopping. This action is required by the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103—311, sec. 112), and it is intended to reduce the incidence of collisions between trains and commercial motor vehicles. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/30/98	63 FR 40691
NPRM Comment Period End	11/27/98	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David M. Lehrman, Regulatory Development Division,

Department of Transportation, Federal Motor Carrier Safety Administration, MC—PRR, Office of Policy Plans and Regulation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—0994

RIN: 2126–AA18

2305. GENERAL JURISDICTION OVER FREIGHT FORWARDER SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 13701

CFR Citation: 49 CFR 373; 49 CFR 1.73

Legal Deadline: None

Abstract: As required by the ICC Termination Act of 1995, this action gives notice of the FMCSA's general jurisdiction over all segments of the freight forwarding industry (not just household good freight forwarders). It proposes changes to existing regulations to comport with those mandated by Congress and clarifies the FMCSA's jurisdiction over freight forwarders in other areas.

Timetable:

Action	Date	FR Cite
NPRM	01/28/97	62 FR 4096
NPRM Comment Period End	03/31/97	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lorena Beauchesne, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, Office of Policy Plans and Regulation (MC—PRR), 400 7th Street, SW., Washington, DC 20590
Phone: 202 366—5043

RIN: 2126–AA25

2306. +TRANSPORTATION OF HOUSEHOLD GOODS; CONSUMER PROTECTION REGULATIONS

Priority: Other Significant

Legal Authority: PL 74—255; PL 104—88; PL 106—59; 49 USC 13101, 13301, 13501 et seq, 14104, 14708, 14901 et seq, and 14912

CFR Citation: 49 CFR parts 375 and 377; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA is amending the regulations governing the interstate transportation of household goods to specify how motor carriers who transport household goods, as defined in 49 USC 13102(10), must assist their individual customers who ship household goods. The intended effect of this interim final rule is to make the regulations easier to read and understand, remove an outdated report, address hostage freight problems (situations where nonbinding estimates are lower than actual charges and the carrier refuses to deliver freight even after 110 percent of the estimate is paid at the time of delivery), modify a consumer protection publication, and make conforming and technical amendments. This action is considered significant because of substantial industry and public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/15/98	63 FR 27126
NPRM Comment Period End	07/14/98	
NPRM Extension and Reopening of Comment Period	08/12/98	63 FR 43128
NPRM Comment Period End	10/13/98	
Interim Final Rule	06/11/03	68 FR 35064
Interim Final Rule Effective	09/09/03	
Interim Final Rule Compliance Date Delayed	09/30/03	68 FR 56208
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Nathaniel Jackson, Household Goods Team Leader, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSD, Insurance Compliance Division, MC—ECI, Office of Enforcement and Compliance, 400 7th Street, SW., Washington, DC 20590
Phone: 202 366—6406

RIN: 2126–AA32

2307. +GENERAL REQUIREMENTS; INSPECTION, REPAIR, AND MAINTENANCE; INTERMODAL CONTAINER CHASSIS AND TRAILERS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 504; 49 USC 31133, 31136, and 31502

CFR Citation: 49 CFR 1.73; 49 CFR 390; 49 CFR 396

Legal Deadline: None

Abstract: In response to a petition for rulemaking filed by the American Trucking Association, Inc. (ATA) and the ATA Intermodal Conference (petitioners), the FHWA at the time agreed to consider revisions to the requirements in parts 390 and 396 of the Federal Motor Carrier Safety Regulations that place upon motor carriers the responsibility for maintaining intermodal container chassis and trailers. These regulations prescribe requirements for the inspection, repair and maintenance of commercial motor vehicles. This action was considered significant because of substantial industry interest.

Timetable:

Action	Date	FR Cite
ANPRM	02/17/99	64 FR 7849
ANPRM Comment Period End	04/19/99	
Comment Period End	05/05/99	64 FR 24128
Comment Period Extended	08/30/99	
NOI To Consider a Reg Neg Process	11/29/02	67 FR 71127
Comment Period End	01/13/03	
Comment Period Extended	02/24/03	68 FR 8580
Comment Period End	04/10/03	
To Be Withdrawn	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Deborah M. Freund, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4009

RIN: 2126–AA38

2308. FEDERAL MOTOR CARRIER SAFETY REGULATIONS; WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS; RULES AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31315; PL 105—178, sec 4007

CFR Citation: 49 CFR 381

Legal Deadline: Final, Statutory, December 9, 1998, Final.

Abstract: The FMCSA is adopting regulations to implement section 4007 of the Transportation Equity Act for the 21st Century (TEA—21), concerning waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), and the administration of pilot programs to evaluate innovative alternatives to the regulations. The regulations establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures FMCSA will use to process the requests for waivers and applications for exemptions. The regulations also codify statutory requirements concerning the agency's administration of pilot programs. This rulemaking is intended to provide procedures to ensure the timely processing of requests for waivers and applications for exemptions, and public disclosure of the procedures the agency would use in initiating and managing pilot programs. The agency (then the FHWA) issued an interim final rule with an opportunity for public comment after publication in order to meet the statutory deadline for issuance of a final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/08/98	63 FR 67600
Interim Final Rule Effective	12/08/98	
Interim Final Rule Comment Period End	02/08/99	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4009

RIN: 2126–AA41

2309. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; INTERSTATE SCHOOL BUS SAFETY

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 105—178, sec 4024

CFR Citation: 49 CFR 390, 391, 392, 393, and 395; 49 CFR 1.73

Legal Deadline: Other, Statutory, December 9, 1998, Other.

Abstract: FMCSA was considering making the Federal Motor Carrier Safety Regulations (FMCSRs) apply to all interstate school transportation operations by local educational agencies. Section 4024 of the Transportation Equity Act for the 21st Century (TEA—21) directed the FMCSA to make a determination whether to make the FMCSRs applicable to such operations. FMCSA requested comments, data, and information to assist the agency in making this determination. The action was considered significant by the public and private sectors if the agency expanded the FMCSRs to cover government—operated school buses in interstate commerce.

Timetable:

Action	Date	FR Cite
ANPRM	10/22/01	66 FR 53373
ANPRM Comment Period End	01/22/02	
To Be Withdrawn	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Philip Hanley, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSB, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—6811

RIN: 2126–AA53

2310. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; GENERAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 102—240, sec 1041(b); 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 392; 49 CFR 393

Legal Deadline: None

Abstract: FMCSA is amending part 393 of the Federal Motor Carrier Safety Regulations, Parts and Accessories Necessary for Safe Operation. The amendments are intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between part 393 and the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards (49 CFR 571); and codify certain FMCSA regulatory guidance concerning the requirements of part 393. Generally, the amendments do not involve the establishment of new or more stringent requirements but a clarification of existing requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/14/97	62 FR 18170
NPRM Comment Period Extended	06/12/97	62 FR 32066
NPRM Comment Period End	06/13/97	
Comment Period End	07/28/97	
Public Meeting	02/20/98	63 FR 8606
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4009

RIN: 2126–AA61

2311. +CERTIFICATION OF SAFETY AUDITORS, SAFETY INVESTIGATORS, AND SAFETY INSPECTORS

Priority: Other Significant

Legal Authority: PL 106—159, sec 211

CFR Citation: 49 CFR 385

Legal Deadline: Final, Statutory, December 9, 2000, Final.

Abstract: This rule would require that any safety inspection, audit, or review be conducted by a certified investigator. It would give the FMCSA authority to decertify an investigator, including a third—party investigator for failure to meet the prescribed certification standards. It is required by section 211 of the Motor Carrier Safety Improvement Act of 1999. This rule is significant because of public and congressional interest in rules required by MCSIA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/19/02	67 FR 12776
IFR Comment Period End	05/20/02	
IFR Effective Date Delayed	06/17/02	67 FR 41196
IFR Date Effective	06/17/02	
Extension of Statutory Compliance Date	07/28/03	68 FR 44378
Notice; Environmental Assessment (EA)	10/02/03	68 FR 56863
EA Comment Period End	11/03/03	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mary Pat Woodman, Chief, Enforcement and Compliance Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ECE, Room 8310, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9699

RIN: 2126–AA64

2312. +CERTIFICATION OF COMPLIANCE WITH FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS)

Priority: Other Significant

Legal Authority: PL 102—240, sec 1041(b); 105 Stat. 1914; 49 USC 31136 and 31502; 49 CFR 1.73

CFR Citation: 49 CFR 393.8

Legal Deadline: None

Abstract: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations so that motor carriers ensure that each commercial motor vehicle (CMV) they operate in interstate commerce displays a label certifying that the vehicle complies with all applicable Federal Motor Vehicle Safety Standards (FMVSS) in effect on the date of manufacture. This rulemaking ensures that all motor carriers operating CMVs in the United States use only vehicles that were certified by the manufacturer as meeting all applicable Federal safety performance requirements. This action is significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12782
NPRM Comment Period End	05/20/02	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah M. Freund, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4009

RIN: 2126–AA69

2313. +LIMITATIONS ON ISSUANCE OF COMMERCIAL DRIVER'S LICENSE WITH HAZARDOUS MATERIALS ENDORSEMENT

Priority: Other Significant

Legal Authority: 49 USC 5103a; PL 107—56, sec 1012

CFR Citation: 49 CFR 383

Legal Deadline: None

Abstract: FMCSA, working in conjunction with the Transportation Security Administration (TSA), amended its regulations to prohibit States from issuing, renewing, transferring, or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless TSA has first conducted a background records check of the applicant and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. FMCSA and TSA published simultaneous interim final rules. This action is considered significant because of substantial industry and public interest and national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/05/03	68 FR 23844
IFR Effective	05/05/03	
IFR Comment Period End	07/07/03	
Delay of Compliance Date	11/05/03	68 FR 63030
Comment Period End	01/06/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Robert Redmond, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ESS, State Programs Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5014

RIN: 2126–AA70

2314. • QUALIFICATIONS OF MOTOR CARRIERS TO SELF—INSURE THEIR OPERATIONS AND FEES TO SUPPORT THE APPROVAL AND COMPLIANCE PROCESS; WITHDRAWAL

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 13906, 31138, and 31139

CFR Citation: 49 CFR 387; and 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA is withdrawing an NPRM that requested comments on the need for additional backup collateral or security to protect the public against uncompensated losses. This action would have amended the regulations governing qualifications of motor carriers seeking authorization to self—insure their transportation operations. This action first appeared under former FHWA RIN 2125—AE06; then was transferred to FMCSA and assigned RIN 2126—AA28. RIN 2126—AA28 was inadvertently deleted in the May 14, 2001 Spring Semiannual Agenda (66 FR 25885). This action is no longer necessary because these issues are now part of RIN 2126—AA22.

Timetable:

Action	Date	FR Cite
To Be Withdrawn	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Valerie Height, Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PRR, Office of Policy Plans and Regulation (MC—PRR), 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—0901

RIN: 2126–AA82

2315. • DRUG AND ALCOHOL MANAGEMENT INFORMATION SYSTEM (MIS) REPORTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 49 CFR part 382

Legal Deadline: None

Abstract: The DOT revised its drug and alcohol testing rules in part 40 (68 FR 43946, July 25, 2003) by replacing the old multiple—page MIS reporting forms with a single one—page form for use by FMCSA, FAA, FTA, FRA, RSPS, and USCG. The form is required by part 40. Accordingly, FMCSA makes conforming amendments to its drug and alcohol testing rules in part 382.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jerry Fulnecky, Department of Transportation, Federal Motor Carrier Safety Administration, MC—EC, Office of Enforcement and Compliance, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366—2096

RIN: 2126–AA83

Department of Transportation (DOT) Federal Motor Carrier Safety Administration (FMCSA) Long-Term Actions

2316. +COMMERCIAL DRIVER'S LICENSE STANDARDS; BIOMETRIC IDENTIFIER

Priority: Other Significant

Legal Authority: PL 100—690, sec 9105

CFR Citation: 49 CFR 383

Legal Deadline: Final, Statutory, December 31, 1990, Final.

Abstract: This action was initiated by section 9105 of the Truck and Bus Safety and Regulatory Reform Act of 1988. It proposes minimum uniform standards for a biometric identification system for commercial motor vehicle (CMV) operators. In 1989, an ANPRM was published by requesting comments on a pilot demonstration project using biometric data including retinal eye scans and fingerprint technologies. After considering the comments, it was determined at the time that technology had not progressed to the point where a nationwide identification system could be cost—effective and provide the benefits for which a system was intended. In 1991, a Notice of Information was published summarizing results of the pilot study and the comments to demonstrate how the technologies studied fell short of the demands of the commercial licensing environment at the time.

In 1998, section 4011(c) of the Transportation Equity Act for the 21st Century, 49 USC 31308 amended, required each commercial driver's license (CDL) issued by the States after January 1, 2001, to have unique identifiers (which may include biometric identifiers). A pilot study was conducted to collect over 16,000 sample digital facial images and sets of fingerprints from volunteers in California, Georgia, and West Virginia; California provided the lead for this study. The pilot study has been completed and a report delivered in November 2002. FMCSA is considering setting biometric storage and transmission standards which States would use if they voluntarily wish to store fingerprint images and transmit such images to other States upon request. Further action on this rulemaking is pending action by TSA. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	05/15/89	54 FR 20875
ANPRM Comment Period End	07/14/89	
Information Notice	03/08/91	56 FR 9925
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Ronald Finn, Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ESS, Office of Safety Programs, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—0647

RIN: 2126–AA01

2317. +APPLICATION BY CERTAIN MEXICO—DOMICILED MOTOR CARRIERS TO OPERATE BEYOND U.S. MUNICIPALITIES AND COMMERCIAL ZONES ON THE U.S.—MEXICO BORDER

Priority: Other Significant

Legal Authority: 5 USC 553 and 559; 16 USC 1456; 49 USC 13101, 13301, and 13901 et seq; 49 USC 31138 and 31144

CFR Citation: 49 CFR 365; 49 CFR 1.73

Legal Deadline: None

Abstract: This action revises the regulations and form, OP—1(MX), governing applications by Mexico—domiciled property and passenger carriers who want to operate within the United States beyond the municipalities adjacent to Mexico in Texas, New Mexico, Arizona, and California, and beyond the commercial zones of such municipalities (border zones). The action is taken in anticipation of a presidential order lifting the current statutory moratorium on authorizing such operations. The form requires additional information about the applicant's business and operating practices to help the FMCSA to determine if the applicant will be able to meet the safety standards established for operating in interstate commerce in the United States. The interim rule included requirements that were not proposed in the NPRM but which were necessary to comply with the FY 2002 DOT Appropriations Act. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22371
NPRM Comment Period End	07/02/01	
Interim Final Rule	03/19/02	67 FR 12702
Interim Final Rule Comment Period End	04/18/02	
Interim Final Rule Effective	05/03/02	
Notice of Intent to prepare an EIS	08/26/03	68 FR 51322
EIS Public Scoping Meetings	10/08/03	68 FR 58162
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Thomas Kozlowski, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ES, Office of Safety Programs, Room 8314, 400 7th Street, SW., Washington, DC 20590
Phone: 202 366—4049

RIN: 2126–AA34

2318. +SAFETY MONITORING SYSTEM AND COMPLIANCE INITIATIVE FOR MEXICO—DOMICILED MOTOR CARRIERS OPERATING IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 49 USC 113, 504, and 521(b)(5)(A); 49 USC 5113; 49 USC 31136, 31144, and 31502; PL 107—87 sec 350

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: This action implements a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico—domiciled motor carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. The rule also establishes suspension and revocation procedures for provisional Certificates of Registration and operating authority, and incorporates criteria to be used by FMCSA in evaluating whether Mexico—domiciled carriers exercise basic safety management controls. The interim rule included requirements that were not proposed in the NPRM, but which are necessary to comply with the FY 2002 DOT Appropriations Act. This action is significant due to public interest and safety—related issues.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22415
NPRM Comment Period End	07/02/01	
Interim Final Rule	03/19/02	67 FR 12758
IFR Comment Period End	04/18/02	
IFR Effective	05/03/02	
Notice of Intent To Prepare an EIS	08/26/03	68 FR 51322
EIS Public Scoping Meetings	10/08/03	68 FR 58162
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mary Pat Woodman, Chief, Enforcement and Compliance Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ECE, Room 8310, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9699

RIN: 2126–AA35

2319. SAFETY FITNESS PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31144

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: The FHWA published a final rule on November 6, 1997 (62 FR 60035), which incorporated the safety fitness rating methodology into 49 CFR 385 as appendix B. In that document, FHWA identified its ultimate goal of creating a more performance—based means of determining the fitness of carriers to conduct commercial motor vehicle (CMV) operations in interstate commerce. The ANPRM requested comments on the future of a rating system that could be used both in making safety fitness determinations and meeting the demands of shippers, insurers and other present and potential users interested in evaluating motor carrier performance.

Timetable:

Action	Date	FR Cite
ANPRM	07/20/98	63 FR 38788
ANPRM Comment Period End	09/18/98	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Bryan Price, Transportation Specialist, PRISM Team, Department of Transportation, Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Federal Building, 1000 Liberty Avenue, Room 305, Pittsburgh, PA 15222
Phone: 412 395—4816

RIN: 2126–AA37

2320. +NEW ENTRANT SAFETY ASSURANCE PROCESS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 106—159, sec 210

CFR Citation: 49 CFR 385; 49 CFR 1.73

Legal Deadline: None

Abstract: This action will establish minimum requirements for new entrant motor carriers to ensure that they are knowledgeable about applicable Federal motor carrier safety standards. After ensuring that they are knowledgeable, the new entrants will operate for 18 months in which time they must pass a safety review in order to receive permanent operating authority. This rule is significant because of public and congressional interest in rules required by MCSIA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/13/02	67 FR 31978
IFR Comment Period End	07/12/02	
IFR Effective	01/01/03	
Final Rule	11/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mary Pat Woodman, Chief, Enforcement and Compliance Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ECE, Room 8310, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9699

RIN: 2126–AA59

2321. +PENALTIES, INSPECTION, AND DECAL DISPLAY REQUIREMENTS FOR MEXICO—DOMICILED MOTOR CARRIERS

Priority: Other Significant

Legal Authority: 49 USC 31136; 49 USC 31502; PL 107—87 sec 350

CFR Citation: 49 CFR 386; 49 CFR 396

Legal Deadline: None

Abstract: FMCSA amends part 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate the requirement, as codified in parts 365 and 385, that all commercial motor vehicles operated by Mexico—domiciled motor carriers holding authority to transport property or passengers beyond the commercial zones of U.S. municipalities on the United States—Mexico border must display a Commercial Vehicle Safety Alliance (CVSA) decal issued by a CVSA—certified inspector. Adding this requirement to part 396 will enable FMCSA to assess civil penalties against Mexico—domiciled long—haul motor carriers that operate vehicles without the necessary CVSA decal. This rule also clarifies that carriers will be required to obtain the necessary inspection decal before proceeding beyond border ports of entry. By providing for more effective enforcement of the inspection and decal requirements, this rule will help to ensure that these motor carriers operate safe vehicles in the United States. This action is considered significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas Kozlowski, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ES, Office of Safety Programs, Room 8314, 400 7th Street, SW., Washington, DC 20590
Phone: 202 366—4049

RIN: 2126–AA72

2322. +REGISTRATION ENFORCEMENT

Priority: Other Significant

Legal Authority: PL 106—159, sec 205; 113 Stat 1762

CFR Citation: 49 CFR 350 and 392; 49 CFR 1.73

Legal Deadline: None

Abstract: This rule prohibits a motor carrier who is subject to the registration requirements under 49 U.S.C. 13902 from operating a commercial motor vehicle in interstate commerce unless it has registered with FMCSA. Motor carriers are also prohibited from operating beyond the scope of their registered authorization. If vehicles are discovered operating in violation of such registration requirements, they will be placed out of service, and the carrier may be subject to additional penalties. This action makes State enforcement of the registration requirements a condition of MCSAP eligibility. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/28/02	67 FR 55162
IFR Effective	09/27/02	
IFR Comment Period End	10/28/02	
Final Rule	11/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Agency Contact: Mary Pat Woodman, Chief, Enforcement and Compliance Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—ECE, Room 8310, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9699

RIN: 2126–AA78

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)

Completed Actions

2323. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; SLEEPER BERTHS ON MOTOR COACHES; WITHDRAWAL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136 and 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: On January 12, 1994, the FHWA published an ANPRM requesting comments on the suitability of existing driver sleeper berth regulations for motor coaches and possible amendment to account for design differences between trucks and motor coaches. Based on its review of the issue and minimal interest by the industry, FMCSA withdrew the ANPRM and terminated this proceeding.

Timetable:

Action	Date	FR Cite
ANPRM	01/12/94	59 FR 1706
ANPRM Comment Period End	03/14/94	
Withdrawn	07/24/03	68 FR 43891

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Philip Hanley, Department of Transportation, Federal Motor Carrier Safety Administration,

MC—PSB, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—6811

RIN: 2126–AA12

2324. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; TELEVISION RECEIVERS AND DATA DISPLAY UNITS; WITHDRAWAL

Priority: Substantive, Nonsignificant

Legal Authority: PL 102—240; 49 USC 31136 and 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: This action proposed amending the regulations regarding television viewers or screens in commercial motor vehicles. FHWA was concerned that current restrictions on the locations of such devices would have the unintended effect of discouraging use of certain Intelligent Transportation System (ITS) technologies, such as collision avoidance and traveler information systems, which could improve the safety and efficiency of commercial vehicle operations. Based on its review of the comments, FMCSA withdrew the NPRM and terminated this proceeding.

Timetable:

Action	Date	FR Cite
NPRM	04/03/96	61 FR 14733
NPRM Comment Period End	06/03/96	
Withdrawn	07/24/03	68 FR 43891

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4009

RIN: 2126–AA19

2325. +ENGLISH LANGUAGE REQUIREMENT; QUALIFICATIONS OF DRIVERS; WITHDRAWAL

Priority: Other Significant

Legal Authority: 49 USC 504; 49 USC 31133, 31136, and 31502

CFR Citation: 49 CFR 391; 49 CFR 1.73

Legal Deadline: None

Abstract: This action was in response to the American Civil Liberties Union (ACLU) letter to the Department, asserting that the regulation, as written, is overly broad and subject to arbitrary enforcement, causing potential interference with constitutional guarantees of due process and equal protection. The current regulation is little changed from the original rule adopted in 1936. The ACLU requested an opportunity to submit a comprehensive analysis of this issue. The ANPRM was intended to provide the ACLU with such an opportunity and to open this issue for public comment. Based on its analysis and comments received, FMCSA withdrew the ANPRM and terminated this proceeding.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/97	62 FR 45200
ANPRM Comment Period End	10/27/97	
Withdrawn	07/24/03	68 FR 43889

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 2125—AE19.

Agency Contact: Mary Moehring, Chief, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSD, Office of Bus and Truck Standards and Operations, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366—4001

RIN: 2126–AA31

2326. OUT—OF—SERVICE CRITERIA; WITHDRAWAL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31133, 31136, 31310, and 31502; PL 104—59

CFR Citation: 49 CFR 395 and 396; 49 CFR 1.73

Legal Deadline: None

Abstract: The FHWA had requested public comments concerning whether the North American Uniform Out—of—Service (OOS) Criteria should be included in the Federal Motor Carrier Safety Regulations. The OOS Criteria are enforcement tolerances used by Federal, State, and local safety inspectors in determining whether to place commercial motor vehicles (CMVs), or their drivers, "out of service." Based on its review of the issues and comments, FMCSA withdrew the ANPRM and terminated this proceeding.

Timetable:

Action	Date	FR Cite
ANPRM	07/20/98	63 FR 38791
ANPRM Comment Period End	09/18/98	
Comment Period Extended	10/09/98	63 FR 54432
Comment Period End	12/08/98	
Withdrawn	07/24/03	68 FR 43893

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4009

RIN: 2126–AA36

2327. +SAFETY REQUIREMENTS FOR OPERATORS OF SMALL PASSENGER—CARRYING COMMERCIAL MOTOR VEHICLES USED IN INTERSTATE COMMERCE

Priority: Other Significant

Legal Authority: 49 USC 13301 and 13902; 49 USC 31132, 31133, 31136, 31502, and 31504; PL 104—88, sec 204

CFR Citation: 49 CFR 1.73; 49 CFR 390

Legal Deadline: Final, Statutory, December 9, 2000, Final.

Abstract: The FMCSA amended the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers who operate commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce, must comply with the FMCSRs when they are directly compensated for such services, and the vehicle is operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work—reporting location. These particular motor carriers, drivers, and vehicles would be subject to the same safety requirements as motorcoach operators, except for the commercial driver's license, controlled substances and alcohol testing regulations. This action is required by sec. 212 of the Motor Carrier Safety Improvement Act of 1999. This action is considered significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	01/11/01	66 FR 2767
NPRM Comment Period End	04/11/01	
Final Rule	08/12/03	68 FR 47860
Final Rule Effective	09/11/03	
Correction; Final Rule Compliance Date	10/27/03	68 FR 61246

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: Motor carriers affected by this final rule must comply with these safety regulations by December 10, 2003.

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC—PSV, Office of Bus and Truck Standards and Operations, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4009

RIN: 2126–AA52

Department of Transportation (DOT) Prerule Stage
National Highway Traffic Safety Administration (NHTSA)

2328. REVIEW: AIR BAG ON—OFF SWITCHES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 40 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This standard allows passenger vehicles to be equipped with an on—off switch for the right front passenger air bag if the rear seat cannot accommodate a rear—facing infant seat. The standard also enables vehicle owners to obtain an on—off switch for their passenger and/or driver air bag if they transport people who should not be exposed to an air bag deployment. The agency will determine, by observation of vehicles in use, the percentage of on—off switches that are being correctly used. This regulation was selected for review because of its public interest and potential benefit.

Timetable:

Action	Date	FR Cite
Begin Review	04/01/98	
End Review	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Preliminary results of the observational survey are that the switches were left on (when they should be off) for 9 percent of infant passengers, 27 percent of child passengers age 1—6, and 56 percent of child passengers age 7—12. They were turned off for 18 percent of teen and adult passengers, depriving them of any potential benefits of air bags.

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RIN: 2127–AH12

2329. ● +REFORMING THE AUTOMOBILE FUEL ECONOMY STANDARDS PROGRAM

Regulatory Plan: This entry is Seq. No. 97 in part II of this issue of the **Federal Register**.

RIN: 2127–AJ17

Department of Transportation (DOT) Proposed Rule Stage
National Highway Traffic Safety Administration (NHTSA)

2330. SEATING SYSTEMS PERFORMANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.207

Legal Deadline: None

Abstract: Environmental Research and Safety Technologists of Flagstaff, AZ, petitioned the agency to reexamine the seatback performance requirements of the standard in rear impact crashes.

Timetable:

Action	Date	FR Cite
ANPRM	10/04/89	54 FR 40896
ANPRM Comment Period End	12/04/89	
Request for Comments	11/23/92	57 FR 54958
Comment Period End	01/22/93	
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Petitions for rulemaking were granted 07/24/89. See a related rulemaking action involving these petitioners under RIN 2127—AC57. The first part of the research is complete. A computer model and a prototype seat were developed. Information on this research is available in the docket along with a report on crash data analysis. The agency is currently evaluating the research results and conducting dynamic seat testing.

Agency Contact: Lori Summers, Division Chief, Department of

Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AD08

2331. CERTIFICATION REQUIREMENTS OF MULTISTAGE VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 567; 49 CFR 568; 49 CFR 1.50

Legal Deadline: None

Abstract: The agency proposed to amend the certification requirements that apply to incomplete vehicles other than chassis—cabs. Incomplete vehicles are vehicles that include at least a frame and chassis structure, power train, steering system, suspension system, and brake system, but need further manufacturing performed on them to become completed vehicles. The agency proposed to extend the certification requirements currently applying to chassis—cabs to all types of incomplete vehicles. The agency recognizes that manufacturers who build vehicles in more than one stage are faced with somewhat different problems than manufacturers who build vehicles in a single stage, especially when it comes to certifying vehicles to meet Federal Motor Vehicle Safety Standards. The agency held a public meeting to listen to the views of these groups and others with respect to improving the vehicle certification process. The agency established a negotiated rulemaking advisory committee to develop recommended amendments to the existing regulations. The agency will publish the findings and recommendations of the negotiated rulemaking advisory committee and request comments from the public.

Timetable:

Action	Date	FR Cite
NPRM	12/03/91	56 FR 61392
NPRM Comment Period End	01/31/92	
Announced Public Meeting	11/17/95	60 FR 57694
Notice of Intent	05/20/99	64 FR 27499
Notice of Formation of Advisory Committee	11/26/99	64 FR 66447
Notice of Meetings	02/07/00	65 FR 5847
Notice	04/19/00	65 FR 20936
SNPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: The agency has published a list of scheduled meetings.

ANALYSIS: Regulatory Evaluation, 12/03/91, 56 FR 61392

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AE27

2332. REAR CONVEX CROSS—VIEW MIRRORS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency requested comments on the issue of rear mounted cross—view mirrors on light and medium duty trucks for the purpose of eliminating the blind spot directly behind the vehicle. The petitioner requested that these mirrors be mandated to eliminate backing crashes where children could be seriously injured or killed. Petition was granted.

Timetable:

Action	Date	FR Cite
Request for Comments	06/17/96	61 FR 30586
Comment Period End	10/15/96	
ANPRM	11/27/00	65 FR 70681
ANPRM Comment Period End	01/26/01	
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Flanigan, General Engineer, NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Visibility & Injury Prevention Division, Office of Crash Avoidance Stds, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720

RIN: 2127–AG41

2333. UPGRADE ROOF CRASHWORTHINESS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.216

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to upgrade the roof crashworthiness particularly since a larger percentage of American vehicles consist of light duty and utility vehicles, a class of vehicles more prone to rollover accidents. Petition was granted.

Timetable:

Action	Date	FR Cite
Request for Comments	10/22/01	66 FR 53376
Comment Period End	12/06/01	
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AG51

2334. MOTORCYCLE—MOUNTED REFLEX REFLECTOR HEIGHT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering allowing a lower minimum mounting height for side reflex reflectors on motorcycles. The intent is to harmonize United States lighting safety standards with European and Asian reflector position regulations and improve the flow of trade by creating "windows of harmonization" that will allow manufacturers to market "common" vehicles in global markets.

Timetable:

Action	Date	FR Cite
Agency Decision	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Hardie, Safety Standards Engineer Office of Crash Avoidance Standards, Department of Transportation, National Highway Traffic Safety Administration, NVS—121, Visibility and Injury Prevention Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
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RIN: 2127–AG92

2335. CHILD RESTRAINTS FOR OLDER CHILDREN

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency requested comments on whether the child restraint standard should be amended to facilitate the production of lap belt—installed booster seats and other child restraints for children weighing over 18 kilograms, such as by allowing use of a tether in some of the compliance tests.

Timetable:

Action	Date	FR Cite
Request for Comment	07/07/99	64 FR 36657
Comment Period End	09/07/99	
Agency Decision	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH14

2336. UPGRADE DOOR RETENTION PERFORMANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.206

Legal Deadline: None

Abstract: Based upon annual average estimates from the 1988 through 1996 Fatal Analysis Reporting System (FARS) and the National Automotive Sampling System (NASS), there is an annual average of 2,515 fatalities and 1,882 serious injuries due to door ejections. Side door ejections are the second leading cause of ejections in all crashes, superseded only by ejections through fixed glazing. One of the activities of agency rollover research focuses on reducing injuries and fatalities resulting from side door ejections. This research has led the agency to identify potential significant solutions to mitigating a substantial number of these fatalities and injuries by improving side door retention performance. Therefore, the agency is proposing to upgrade the door retention requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH34

2337. ADMINISTRATIVE REWRITE OF THE LIGHTING REQUIREMENTS OTHER THAN HEADLAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency is proposing to rewrite the reflective devices and associated equipment requirements to make the standard more readable and understandable. The standard has grown over the last 30 years by the incorporation of dozens of amendments. The document has become unwieldy to use and the agency decided to rewrite it to separate it into sections that address each lighting function separately. These sections will state the basic performance necessary for each lighting function and for lamp installation on various vehicle types. The rewrite will continue to reference Society of Automotive Engineers (SAE) and other standards and recommended practices for test procedures if too lengthy to incorporate changes. Moreover, it will codify various agency interpretations of its rules to make the standard more explicit. The proposed administrative rewrite of the headlamp regulations can be found under RIN 2127—AG87.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David Hines, General Engineer Office of Crash Avoidance Standards, Department of Transportation, National Highway Traffic Safety Administration, NVS—121, 400 7th Street SW., Room 5307, Washington, DC 20590
Phone: 202 493—0245

RIN: 2127–AH37

2338. +FRONTAL OFFSET PROTECTION

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is considering establishing a Federal motor vehicle safety standard for high—speed frontal offset crash testing. The frontal offset test is a crash test for automobiles and light trucks in which the subject vehicles are run into a deformable honeycomb barrier. The barrier contacts only 40 percent of the front of the vehicle, simulating an off—center frontal collision. The agency is considering adding the offset test to the frontal occupant protection standard to measure vehicle structural integrity and reduce the number and severity of lower—body injuries. NHTSA is also examining whether implementing a new offset test might create disbenefits in other crash modes such as side impacts.

Timetable:

Action	Date	FR Cite
Request for Comments	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH73

2339. SPECIAL PURPOSE VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.224

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to amend the standard for new trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or more be equipped with a rear impact guard by revising the definition of "special purpose vehicles." These are vehicles with rear mounted liftgates that operate by swinging through the area or reside in any part of the area that is designated for the horizontal member of the rear impact guard.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH75

2340. LOW—SPEED VEHICLE PERFORMANCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.500

Legal Deadline: None

Abstract: Low—speed vehicles (LSV) have a maximum speed of between 20 and 25 miles per hour (mph). These vehicles are required to have certain equipment some of which does not have any performance requirements. The agency is proposing to set performance criteria for the various safety systems and hardware necessary for use on these vehicles.

Timetable:

Action	Date	FR Cite
NPRM	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Evans, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2272

RIN: 2127–AH80

2341. HEADLAMP GLARE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The current standard sets minimum and maximum headlamp intensities to ensure the driver of the vehicle sees as much of the roadway as possible, while minimizing glare for other drivers using the road. The agency has been receiving a significant number of public complaints about headlamp glare from other vehicles. Technological changes, fleet mix changes, and an increase in the average driver age, cause the agency to reexamine seeing distance and glare.

Timetable:

Action	Date	FR Cite
Request for Comments (Auxiliary Lamps)	09/28/01	66 FR 49594
Reopen Comment Period	11/30/01	66 FR 59769
Comment Period End	12/22/01	
Comment Period End	01/28/02	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Van Iderstine, Chief, Visibility and Injury Prevention Division NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Stds., 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

RIN: 2127–AH81

2342. STOWABLE OR FOLD—AWAY CHILD RESTRAINT ANCHORAGES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: This action proposes requests by petitions for reconsideration to permit stowing and fold—away anchors on vehicles. The proposal would set performance and other requirements for such anchors. This pertains to the requirements established in the final rule published March 5, 1999 (64 FR 10785, RIN 2127—AG50).

Timetable:

Action	Date	FR Cite
Agency Decision	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Other issues raised by the petitioners are being addressed in RIN 2127—AH65 — Child Restraint Anchorage Systems — Part 1 and RIN 2127—AH86 — Child Restraint Anchorage Systems — Part 2.

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RIN: 2127–AH85

2343. MOTORCYCLE HEADLAMP SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to modify the motorcycle headlamp system height of upper beam and number of headlamp and light source.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Hardie, Safety Standards Engineer Office of Crash Avoidance Standards, Department of Transportation, National Highway Traffic Safety Administration, NVS—121, Visibility and Injury Prevention Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
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RIN: 2127–AH92

2344. IMPROVE MOTORCYCLE HELMET HEAD PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.218

Legal Deadline: None

Abstract: In 1998, 2,284 motorcyclists were killed and 49,000 injured in traffic crashes on U.S. highways. The agency believes that helmet usage by motorcyclists is the most effective method to reduce deaths and injuries in motorcycle crashes. In order to improve the head protection for motorcyclists, the agency is proposing to upgrade the performance standards and test procedures to incorporate the technological advancements available in the current market and to review the standard for harmonization with other major helmet standards.

Timetable:

Action	Date	FR Cite
Agency Decision	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI03

2345. REORGANIZE AND HARMONIZE CONTROLS AND DISPLAYS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.101

Legal Deadline: None

Abstract: The agency is proposing to reorganize the controls and displays requirements to make them more user—friendly and to harmonize the standard with the Canadian Motor Vehicle Safety Standard No. 101 on the same subject. These proposed changes will list the symbols used in the standard to improve driver recognition of the function of controls and the meaning of telltales.

Timetable:

Action	Date	FR Cite
NPRM	09/23/03	68 FR 55217
NPRM Comment Period End	11/24/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gayle Dalrymple, Safety Engineer, Vehicle Controls and Adapted Vehicle Division, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Standards NVS—123, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5559

RIN: 2127–AI09

2346. SEAT BELT EMERGENCY LOCKING RETRACTOR

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.209

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing clarifications concerning the test procedure for the acceleration pulse shape, onset rate, time duration, and acceleration tolerance for seat belt emergency locking retractors.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AI38

2347. ADAPTATION OF INSTRUMENTED LOWER LEGS FOR HYBRID III MALE AND FEMALE ADULT DUMMIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is proposing the use of crash test dummies with instrumented lower legs to assess the crashworthiness and the potential of lower limb injuries to occupants of passenger cars, vans, light trucks, and sport utility vehicles. The new legs would be retrofits for un—instrumented legs in current Hybrid III male and female adult size dummies. The legs will be used to monitor both the inertial impact and floor pan intrusion effects upon injury potential to the knees, tibia, ankle, and feet. The new legs will permit the agency to assess the injury potential to the lower legs in current motor vehicles during crashes and also enable the vehicle manufacturers to design and construct vehicles that will minimize lower limb injuries.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sean Doyle, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI39

2348. PROCEDURES FOR PARTICIPATING IN AND RECEIVING DATA FROM THE NATIONAL DRIVER REGISTRATION PROBLEM DRIVER POINTER SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30301 to 30308; PL 106—159, sec 204

CFR Citation: 23 CFR 1327

Legal Deadline: None

Abstract: The agency is proposing to amend the National Driver Register regulations to implement an amendment made by the Motor Carrier Safety Improvement Act of 1999 (PL 106—159). The amendment requires a State, before issuing or renewing a motor vehicle operator's license to an individual, to query both the National Driver Register and the Commercial Driver's License Information System on the individual's driving record.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Edward Milton, Acting Chief, Driver Register and Traffic Records, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4800

RIN: 2127–AI45

2349. CARGO CARRYING CAPACITY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering mandatory consumer information in the form of a label that will inform the consumer of the Cargo Carrying Capacity (CCC) of motor homes, travel trailers, and fifth wheel travel trailers. Such labeling will help the consumer make informed decisions during the purchasing process, act as a reference during cargo loading and encourage the recreational vehicle industry to allow for greater cargo carrying capacities which in turn will reduce instances of overloading.

Timetable:

Action	Date	FR Cite
NPRM	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Evans, Safety Standards Engineer Office of Crash Avoidance Stds., Department of Transportation, National Highway Traffic Safety Administration, NVS—123, Vehicle Controls and Adapted Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI50

2350. HORIZONTAL DISCHARGE TRAILERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 UCS 30117; 49 USC 30166

CFR Citation: 49 CFR 571.224

Legal Deadline: None

Abstract: In response to two petitions for rulemaking, the agency is considering excluding semitrailers equipped with "horizontal discharge trailers" from the current standard.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI56

2351. ALLOW ROLL—BAR DURING BRAKE TESTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: The agency is proposing to allow vehicles with a gross vehicle weight rating of over 10,000 pounds to use a roll—bar during braking tests.

Timetable:

Action	Date	FR Cite
NPRM	11/04/03	68 FR 62417
NPRM Comment Period End	01/05/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Samuel Daniel, General Engineer Office of Crash Avoidance Stds., Department of Transportation, National Highway Traffic Safety Administration, NVS—122, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4921

RIN: 2127–AI63

2352. CHILD RESTRAINT SYSTEM WEBBING STRENGTH

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: The agency is proposing to require minimum breaking strengths for child restraint systems webbing.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4919
Fax: 202 366—4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI66

2353. MOTORCYCLE BRAKE CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.123

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing to allow a handlebar lever instead of a foot pedal to control the rear brakes on motorcycles which have no clutch control.

Timetable:

Action	Date	FR Cite
NPRM	11/21/03	68 FR 65667
NPRM Comment Period End	01/20/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance NVS—123, Department of Transportation, National Highway Traffic Safety Administration, NVS 123, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4171

RIN: 2127–AI67

2354. GM PETITION ON AMENDING FMVSS NO. 301 AND FMVSS NOS. 208, 212, 219, 303, AND 305

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1497

CFR Citation: 49 CFR 571.208; 49 CFR 571.212; 49 CFR 571.219; 49 CFR 571.301; 49 CFR 571.303; ...

Legal Deadline: None

Abstract: NHTSA published an NPRM on November 13, 2000, proposing to upgrade the rear— and side—impact tests in FMVSS No. 301, Fuel System Integrity. The NPRM requested comments on a number of particular issues. One of the requests, item 3.h, proposed to eliminate the second sentence in the standard's S7.11(b), which describes the test vehicle loading conditions. GM submitted comments on the issue and recommended specific changes. In addition, GM petitioned NHTSA to amend FMVSS Nos. 208, 212, 219, 303 and 305 with identical language that GM recommended for amending FMVSS No. 301.

Timetable:

Action	Date	FR Cite
Agency Decision	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI76

2355. +FEDERAL MOTOR VEHICLE SAFETY STANDARDS; CHILD RESTRAINT SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: Other, Statutory, November 1, 2001, Other.
Other, Statutory, November 1, 2002, Other.
TREAD ACT MANDATE (November 2002).

Abstract: Section 14(a) of the TREAD Act requires NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints.

including minimizing head injuries from side impact collisions. The action specifically addresses the prospective adoption of a dynamic side impact test in FMVSS No. 213; currently, only frontal tests are conducted. If side impact test requirements are not proposed, the TREAD Act requires NHTSA to submit a Report to Congress explaining the rationale for these actions.

Timetable:

Action	Date	FR Cite
ANPRM	05/01/02	67 FR 21836
Report to Congress	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 366—4329
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RIN: 2127–AI83

2356. INCORPORATION OF EUROSID II DUMMY INTO 49 CFR PART 572

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: Incorporation of the EuroSID II, Side Impact Crash Test Dummy, into part 572 is being considered to support the forthcoming upgrade of FMVSS 214, Side Impact Regulation and to attain harmonization of crash test tools on a worldwide basis. The EuroSID is one of the alternative crash test tools being evaluated to upgrade FMVSS 214.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4912
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Email: sbackaitis@nhtsa.dot.gov

RIN: 2127–AI89

2357. VEHICLES BUILT IN TWO OR MORE STAGES — STANDARD 201 (PETITIONS FOR RECONSIDERATION)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.201

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering an amendment to FMVSS No. 201 Occupant Protection in Interior Impact as the requirements apply to vehicles manufactured in two or more stages. An interim final rule was published on June 18, 2002 (67 FR 41348) that amended the schedule for compliance by manufacturers of vehicles built in two or more stages with the upper interior head protection requirements of FMVSS No. 201.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Dr. William R.S. Fan, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Room 5320F, NVS—112, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4922
Fax: 202 366—4329

RIN: 2127–AI93

2358. PART 571.3 DEFINITIONS, DESIGNATED SEATING POSITION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.3

Legal Deadline: None

Abstract: The agency is considering an amendment to part 571.3 Definitions, to redefine the term "designated seating position" (DSP) in order to establish an objective criteria that is more enforceable.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AI94

2359. CRS REGISTRATION RULEMAKING, FMVSS NO. 213 AND PART 588

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1409

CFR Citation: 49 CFR 571.213; 49 CFR 588

Legal Deadline: None

Abstract: This rule would modify the registration card by adding a space for the consumer's email address. Amending the registration card would require modification to FMVSS No. 213, "Child Restraint Systems," and part 588, "Child Restraint Systems Recordkeeping Requirements."

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4919

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RIN: 2127–AI95

2360. BUY AMERICA REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 97—424

CFR Citation: 23 CFR 1253

Legal Deadline: None

Abstract: The agency is proposing to exempt certain purchases by grantees from the requirements of the Department of Transportation's Buy America provisions to streamline and improve the grant process.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Donaldson, Acting Assistant Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9511

RIN: 2127–AJ06

2361. • VEHICLE MODIFICATIONS TO ACCOMMODATE PEOPLE WITH DISABILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority of 49 CFR 1.50

CFR Citation: 49 CFR 595

Legal Deadline: None

Abstract: NPRM proposing to extend part 595 subpart C, vehicle modifications to accommodate people with disabilities, to include portions of FMVSS Nos. 201, 208, and 225.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rebecca MacPherson, Attorney Advisor, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2992

RIN: 2127–AJ07

2362. • +SIDE IMPACT PROTECTION UPGRADE — STANDARD 214

Regulatory Plan: This entry is Seq. No. 98 in part II of this issue of the **Federal Register**.

RIN: 2127–AJ10

2363. • FEDERAL MOTOR VEHICLE SAFETY STANDARDS DEFINITION OF LOW SPEED VEHICLES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; ...

CFR Citation: 49 CFR 571.3

Legal Deadline: None

Abstract: This proposal addresses two petitions for rulemaking regarding the exclusion of trucks from the definition of "low—speed vehicle" (LSV). The proposed definition, would expand LSV class to include trucks, but would limit the class to small electric vehicles. In addition proposed definition is more objective than the current definition.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gayle Dalrymple, Safety Engineer, Vehicle Controls and Adapted Vehicle Division, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Standards NVS—123, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5559

RIN: 2127–AJ12

2364. • AMEND REGULATORY DEFINITION OF MOTORCYCLE TO EXCLUDE LOW—SPEED MOTORCYCLES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; ...

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: Rulemaking to amend 49 CFR 571.3, Definitions, so that the definition of "motorcycle" will exclude low—speed motorcycles, i.e., those capable of a maximum speed of 20 mph or less.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance NVS—123, Department of Transportation, National Highway Traffic Safety Administration, NVS 123, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4171

RIN: 2127–AJ13

2365. • INCORPORATION OF SID—IIS SIDE IMPACT CRASH TEST DUMMY INTO PART 572

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; ...

CFR Citation: 49 CFR 1.50

Legal Deadline: None

Abstract: Incorporation of the SID—IIs small female side impact crash test dummy into Part 572 is being considered to support forthcoming upgrade of FMVSS 214, side impact regulation and to attain harmonization of crash test tools on a worldwide basis. SID IIs is one of the alter—natve crash test tools being evaluated to upgrade FMVSS 214 to assure safety provisions in motor vehicles for small female occupants, cost of the SID IIs to the vehicle manufacturers are negligible per female manufactured vehicle basis.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AJ16

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Final Rule Stage

2366. RADIATOR SAFETY CAP

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.402

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing a new Federal motor vehicle safety standard regulating new radiator caps and coolant reservoir caps, and new passenger cars, multipurpose passenger vehicles and light trucks with such caps. The agency believes that this new standard, if implemented, would result in fewer scald injuries that occur when people attempt to remove caps from motor vehicle radiators or coolant reservoirs that are under high pressure and contain hot fluids. However, this rulemaking would not require that radiator caps or coolant reservoir caps be provided on any motor vehicle.

Timetable:

Action	Date	FR Cite
Request for Comments	06/10/93	58 FR 32503
Comment Period End	08/09/93	
NPRM	06/01/01	66 FR 29747
NPRM Comment Period End	07/31/01	
NPRM Comment Period Extended	08/02/01	66 FR 40176
NPRM Comment Period End	09/28/01	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Hardie, Safety Standards Engineer Office of Crash Avoidance Standards, Department of Transportation, National Highway Traffic Safety Administration, NVS—121, Visibility and Injury Prevention Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

RIN: 2127–AE59

2367. UPGRADE FUEL INTEGRITY PERFORMANCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.301

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking in 1995 announced the agency's plan to consider upgrading the standard by making the current crash requirements more stringent and by broadening the standard's focus to include mitigation concepts related to fuel system components and environmental and aging tests related to components. The notice also requested comments on the agency's plan to explore a three—phase approach to upgrading the standard, data, methods, and strategies that may assist in the agency's regulatory decisions in defining specific requirements and test procedures for upgrading the standard. Based on the responses to the notice and available data, the agency proposed replacing the current rear—impact test procedures with a more stringent test procedure. The agency also proposed replacing the standard's current side—impact test requirements with the side impact test requirements of Federal Motor Vehicle Safety Standard No. 214, Side—Impact Protection.

Timetable:

Action	Date	FR Cite
Request for Comments	12/14/92	57 FR 59041
Comment Period End	02/12/93	
ANPRM	04/12/95	60 FR 18566
ANPRM Comment Period End	06/12/95	
NPRM	11/13/00	65 FR 67693
NPRM Comment Period End	02/12/01	66 FR 78461
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This action will respond to RIN 2127—AE83. On December 15, 2000, an extension of comment period was published in response to petitions.

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Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AF36

2368. ALTERNATIVE GEOMETRIC VISIBILITY REQUIREMENTS FOR LAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to harmonize the lighting standard's geometric visibility requirements for signal lamps with those of the ECE. Harmonization of the standard worldwide, without reducing safety, would allow manufacturers to reduce costs by producing to a single world vehicle standard rather than several, thus reducing costs and improving the flow of trade. The agency issued additional/alternative proposals.

Timetable:

Action	Date	FR Cite
NPRM	10/26/95	60 FR 54833
NPRM Comment Period End	12/26/95	
SNPRM	12/10/98	63 FR 68233
SNPRM Comment Period End	03/10/99	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On February 27, 1997 (62 FR 8883), the agency terminated rulemaking in which the agency had asked for comments on whether the performance and installation of front and rear fog lamps should be regulated. In response to these comments, the SAE has established a Fog Lamp Task Force to develop an internationally acceptable fog lamp standard on which a Federal standard could be based.

ANALYSIS: Regulatory Evaluation, 10/26/95, 60 FR 54833

Agency Contact: Richard Van Iderstine, Chief, Visibility and Injury Prevention Division NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Stds., 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

RIN: 2127–AF75

2369. POWER—OPERATED WINDOWS: ROOF PANELS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.118

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to amend the test procedure used to demonstrate compliance by adding an alternative testing specification for a noncontact automatic reversal system, in order to provide a more meaningful and realistic method for evaluating the compliance of such systems which do not rely on contact to sense an obstruction. Petition was granted.

Timetable:

Action	Date	FR Cite
NPRM	06/04/96	61 FR 28124
Correction	06/14/96	61 FR 30209
NPRM Comment Period End	08/05/96	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance NVS—123, Department of Transportation, National Highway Traffic Safety Administration, NVS 123, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4171

RIN: 2127–AF83

2370. DOOR LATCH EXEMPTION FOR VEHICLES EQUIPPED WITH WHEELCHAIR LIFTS AND RAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.206

Legal Deadline: None

Abstract: In response to granting a petition for rulemaking from Independent Mobility Systems, the agency is considering removing the exemption in FMVSS No. 206 for wheelchair lift door retention components. Prior to 1998, wheelchair adaptive equipment manufacturers disabled door retention components when installing wheelchair ramp and lift systems. However, recent changes in technology have eliminated the necessity for modifying door retention for wheelchair lift/ramp installations and therefore, it is no longer necessary to provide the lift exemption in FMVSS No. 206

Timetable:

Action	Date	FR Cite
Termination Notice	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On 05/31/96 (61 FR 27325), the agency published a grant notice. The agency believes that the suggested changes made by the petitioner merit additional study and research. The agency is currently conducting research to determine if door latch exemptions are still necessary. Simultaneously, the agency is developing a door latch procedure for sliding doors.

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AG16

2371. DEALER NOTIFICATION OF DEFECT OR NONCOMPLIANCE DETERMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30102; 49 USC 30103; 49 USC 30111; 49 USC 30112; 49 USC 30115; 49 USC 30116; 49 USC 30118; 49 USC 30119; 49 USC 30120; 49 USC 30163; 49 USC 30165

CFR Citation: 49 CFR 573; 49 CFR 577

Legal Deadline: None

Abstract: The rule will implement an amendment to 49 USC chapter 301 which prohibits dealers from selling motor vehicles or motor vehicle equipment that has been determined to contain a safety—related defect or noncompliance with a Federal motor vehicle safety standard until the defect or noncompliance is remedied. It will set forth criteria to govern the timing and content of notifications of defects and noncompliances that manufacturers must send to their dealers.

Timetable:

Action	Date	FR Cite
NPRM	09/27/93	58 FR 50314

Action	Date	FR Cite
NPRM Comment Period End	10/27/93	
SNPRM	05/19/99	64 FR 27227
SNPRM Comment Period End	06/18/99	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jonathan D. White, Chief, Recall Analysis Division, Office of Defects Investigation, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5226
Fax: 202 366—7882

RIN: 2127--AG27

2372. POWER WINDOW SAFETY SWITCHES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.118

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to require each power—operated window, interior partition, and roof panel in a motor vehicle to be equipped with a switch designed so that contact by a form representing a small child's knee would not close a window, partition, or panel. The agency is currently gathering non—crash fatality data from state records to determine the scope of the problem.

Timetable:

Action	Date	FR Cite
NPRM	11/15/96	61 FR 58504
NPRM Comment Period End	01/14/97	
Final Rule	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance NVS—123, Department of Transportation, National Highway Traffic Safety Administration, NVS 123, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4171

RIN: 2127–AG36

2373. SEAT BELT POSITIONING DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed a labeling requirement for seat belt positioning devices. This label would consist of a warning regarding the suitability of these devices for a particular height/weight/age of child.

Timetable:

Action	Date	FR Cite
NPRM	08/13/99	64 FR 44164
NPRM Comment Period End	10/12/99	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4919
Fax: 202 366—4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AG49

2374. GLARE REDUCTION FROM DAYTIME RUNNING LAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency proposed to amend the lighting standard to reduce glare from daytime running lamps (DRLs). A final rule is imminent. This action is intended to provide the public with all the conspicuity benefits of DRLs while reducing glare and is based on research that has become available since the final rule establishing DRLs was published in 1993.

Timetable:

Action	Date	FR Cite
NPRM	08/07/98	63 FR 42348
NPRM Comment Period End	09/21/98	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Van Iderstine, Chief, Visibility and Injury Prevention Division NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Stds., 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

RIN: 2127–AG86

2375. ADMINISTRATIVE REWRITE FOR HEADLAMP REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency has proposed to rewrite the sections relating to headlighting. The rewrite is important because of the standard's age and numerous amendments which have made it difficult to read and interpret. The revised standard should reduce burden, especially to small manufacturers, because of improved clarity. The reorganization of the sections relating to other lamps will be addressed in a separate rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	11/12/98	63 FR 63258
NPRM Comment Period Extended to 4/11/99	02/08/99	64 FR 6021
NPRM Comment Period End	02/10/99	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard L. Van Iderstine, Division Chief, Visibility and Control Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5280

RIN: 2127–AG87

2376. SIGNAL LAMPS USED WITH LIGHT—EMITTING DIODES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to revise the requirements for signal lamps equipped with 3 or more light—emitting diodes (LEDs). The current requirements have become design restrictive and a service burden for vehicle and signal lamp manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	06/24/98	63 FR 34350
NPRM Comment Period Extended	08/03/98	63 FR 41222
NPRM Comment Period End	10/09/98	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Flanigan, General Engineer, NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Visibility & Injury Prevention Division, Office of Crash Avoidance Stds, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720

RIN: 2127–AG88

2377. +ALLOCATION OF FUEL ECONOMY CREDITS

Priority: Other Significant

Legal Authority: 49 USC 32903

CFR Citation: 49 CFR 534

Legal Deadline: None

Abstract: The agency is proposing rulemaking to clarify when and how predecessor and successor automobile manufacturers may use the fuel economy credits of the predecessor or successor. The use of carry forward or carry back credits will be specified for manufacturers that merge. This action is considered significant because it will affect the treatment of the Corporate Average Fuel Economy (CAFE) penalties.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6523
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Edward Glancy, Senior Attorney Advisor, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2992

RIN: 2127–AG97

2378. +UPGRADE OF HEAD RESTRAINTS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322

CFR Citation: 49 CFR 571.202

Legal Deadline: None

Abstract: The agency has proposed to upgrade the current head restraint requirements to increase safety. The proposal also, until the upgraded requirements become effective, allows manufacturers to certify their vehicles either to the existing U.S. requirements or to the Economic Commission for Europe (ECE) Regulation No. 25. The upgrade proposed performance requirements intended to assure that the head restraint, if adjusted, will remain locked in specific height positions and calls for the installation of head restraints in rear seats. This action is considered significant due to the expected high cost to the private sector for the modifications to the standard.

Timetable:

Action	Date	FR Cite
NPRM	01/04/01	66 FR 967
NPRM Comment Period End	03/05/01	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AH09

2379. UPPER INTERIOR IMPACT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.201

Legal Deadline: None

Abstract: At the request of the manufacturers' organizations, the agency proposed to amend the upper interior impact requirements (1) to modify the minimum distance between certain targets on vertical surfaces inside a vehicle and (2) to add new definitions and test procedures for new—style door frames and vertical seat belt mounting structures.

Timetable:

Action	Date	FR Cite
NPRM	04/05/00	65 FR 17843
NPRM Comment Period End	06/05/00	
NPRM Comment Period Extended	06/07/00	65 FR 36106
NPRM Comment Period End	07/05/00	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of

Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AH61

2380. REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30141; 49 USC 30147

CFR Citation: 49 CFR 592

Legal Deadline: None

Abstract: The agency proposed to reduce regulatory burdens associated with importation of Canadian vehicles for resale in the United States when those vehicles already comply in essential respects with the Federal motor vehicle safety standards. This proposal would enhance safety by revising application procedures to ensure a higher caliber of registered importers and clarifying existing obligations.

Timetable:

Action	Date	FR Cite
NPRM	11/20/00	65 FR 69810
NPRM Comment Period	02/01/01	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Goode Michael, Attorney Advisor, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5263
Fax: 202 366—3820
Email: michael.goode@nhtsa.dot.gov

RIN: 2127–AH67

2381. ACCELERATOR CONTROL SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.124

Legal Deadline: None

Abstract: The agency reviewed this standard and published a Request for Comments to obtain information on electronic accelerator controls. After reviewing the comments received on this notice, the agency plans to propose a revision of the standard that will make explicit the application of the standard to electronic accelerator controls and the electric vehicles. The proposal will recognize that electronic engine controls vastly increase the ways manufacturers can achieve fail—safe performance in the event of a disconnection or severance of the accelerator control system and will propose a number of alternative compliance tests for fail—safe performance to avoid design restrictions.

Timetable:

Action	Date	FR Cite
Request for Comments	12/04/95	60 FR 62061
Comment Period End	02/02/96	
NPRM	07/23/02	67 FR 48117
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mike Pyne, Safety Standards Engineer, Office of Crash Avoidance NVS—123, Department of Transportation, National Highway Traffic Safety Administration, NVS 123, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4171

RIN: 2127–AH71

2382. VEHICLES WITH RAISED ROOFS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.216

Legal Deadline: None

Abstract: In response to petitions for reconsideration of a final rule published on April 27, 1999 (64 FR 22567, RIN 2127—AF40) that made testing more suitable for vehicles with raised— or sloped—roof structures, the petitioners requested that the agency modify the portion of the rule that pertains to raised—roof vehicles, particularly those vehicles used for transporting disabled persons. The petitioners claim that the test plate position requirement for these vehicles causes the plate's rear edge to contact the raised—roof structure in a manner which causes abnormal penetration and failure.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/00	65 FR 4579
Interim Final Rule Effective	01/31/00	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4919
Fax: 202 366—4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AH74

2383. BRAKE HOSES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.106

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to adopt portions of the brake component Federal safety provisions that are now in the Federal Motor Carrier Safety Administration regulations into the agency's brake regulation.

Timetable:

Action	Date	FR Cite
NPRM	05/15/03	68 FR 26384
NPRM Comment Period End	07/14/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey Woods, Safety Standards Engineer Office of Crash Avoidance Standards, Department of Transportation, National Highway Traffic Safety Administration, NVS—122, Vehicle Dynamics Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

RIN: 2127–AH79

2384. CLARIFY TEST PROCEDURES FOR BRAKE FLUIDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.116

Legal Deadline: None

Abstract: The agency has proposed to revise the corrosion and evaporation test procedures for brake fluids. These revisions are intended to improve the levels of compliance test repeatability and/or reproducibility.

Timetable:

Action	Date	FR Cite
NPRM	01/16/01	66 FR 3527
NPRM Comment Period End	03/19/01	
Final Action	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Samuel Daniel, General Engineer Office of Crash Avoidance Stds., Department of Transportation, National Highway Traffic Safety Administration, NVS—122, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4921

RIN: 2127–AH96

2385. LABEL PLACEMENT ON REAR IMPACT GUARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.223

Legal Deadline: None

Abstract: In response to petitions for rulemaking, the agency is proposing to allow trailer manufacturers additional flexibility in the placement of the permanent label on the guard to minimize the probability that the label will be exposed to conditions — environmental, operational, or otherwise — that may damage or destroy the guard while maintaining a location that is easily accessible and visible for inspection and enforcement purposes. Other portions of the petitions are denied.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15154
NPRM Comment Period End	05/28/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4919
Fax: 202 366—4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI04

2386. DISPOSITION OF REPLACED TIRES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30102 to 30103; 49 USC 30112; 49 USC 30117 to 30121; 49 USC 30166 to 30167; Delegation of authority 49 CFR 1.50

CFR Citation: 49 CFR 573

Legal Deadline: None

Abstract: Rule to implement section 7 of the TREAD Act, PL 106—414 49 USC 30120(d) by requiring a manufacturer who conducts a campaign to remedy a safety—related defect or noncompliance that involves the replacement of tires to develop a plan regarding the disposition of the tires that are replaced. The plan would address how to prevent, by means reasonably within the manufacturer's control, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial nonvehicular uses.

Timetable:

Action	Date	FR Cite
NPRM	12/18/01	66 FR 65165
NPRM Comment Period End	02/19/02	
SNPRM	07/26/02	67 FR 48852
SNPRM Comment Period End	08/26/02	
SNPRM Comment Period End	08/26/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Enid Rubenstein, Senior Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC—10, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—5252
Fax: 202 366—2820

RIN: 2127–AI29

2387. +AUTOMOTIVE FUEL ECONOMY MANUFACTURING INCENTIVE FOR ALTERNATIVE FUEL VEHICLES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 49 USC 32905(f); 49 USC 32906(a)(l)(B)

CFR Citation: 49 CFR 538

Legal Deadline: Final, Statutory, December 31, 2001, Final.

Abstract: The agency is statutorily required to publish a notice that either extends the incentive program whereby automotive manufacturers earn Corporate Average Fuel Economy credits for the production of dual—fuel vehicles for up to four years beyond model year 2004, with a maximum allowable increase in average fuel economy per manufacturer of 0.9 miles per gallon, or explains the rationale for not extending the incentive program.

Timetable:

Action	Date	FR Cite
Notice of Intent	01/07/02	67 FR 713
NPRM	03/11/02	67 FR 10873
NPRM Comment Period End	04/10/02	
NPRM Comment Period End	04/10/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Richard Katz, Lead Engineer, Consumer Program Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4936
Fax: 202 366—4329
Email: kkatz@nhtsa.dot.gov

RIN: 2127–AI41

2388. EXPANDING THE AUTO PARTS MARKING REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33103

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: In accordance with the Anti Car Theft Act of 1992, the Attorney General was required to report on the effectiveness of expanding the parts marking requirements of the theft prevention standard to the remaining motor vehicle lines. On the basis of the available evidence presented, the Attorney General found that the evidence did not support a finding that requiring parts marking would not substantially inhibit chop shop operations and auto theft and therefore, recommended expanding the parts marking requirements to the remaining motor vehicle lines. Based on the results of the report, the agency is required to conduct a rulemaking to extend the theft prevention standard to the remaining motor vehicle lines.

Timetable:

Action	Date	FR Cite
NPRM	06/26/02	67 FR 43075
NPRM Comment Period End	08/26/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 493—2290
Email: rosalind.proctor@nhtsa.dot.gov

RIN: 2127–AI46

2389. PARKING BRAKES FOR NON—SCHOOL BUS VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: The agency is proposing to update the standard to require non—school bus vehicles with a gross vehicle weight rating (GVWR) over 10,000 pounds to be equipped with a hydraulic parking brake system.

Timetable:

Action	Date	FR Cite
NPRM	10/30/02	67 FR 66098
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Samuel Daniel, General Engineer Office of Crash Avoidance Stds., Department of Transportation, National Highway Traffic Safety Administration, NVS—122, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4921

RIN: 2127–AI47

2390. HEAVIER HYBRID III TYPE 6—YEAR—OLD—SIZE TEST DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; ...

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is proposing to incorporate a heavier 6—year—old child dummy as part of the Hybrid III test dummy family. This dummy will have weight added to the existing dummy, making it heavier than 60 pounds. The weighted 6—year—old dummy would have application for testing child restraint systems which are rated for weights above the current 6—year—old dummy weight and would serve as an interim device until such time as the Hybrid III 10—year—old dummy has been fully developed.

Timetable:

Action	Date	FR Cite
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sean Doyle, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—1740
Fax: 202 366—4329
Email: sean.doyle@nhtsa.dot.gov

RIN: 2127–AI58

2391. RETROACTIVE CERTIFICATION (POLICY STATEMENT)

Priority: Info./Admin./Other

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30166; 49 USC 32502; ...

CFR Citation: 49 CFR 567

Legal Deadline: None

Abstract: Policy statement will detail circumstances under which the agency will allow retroactive certification of heavy trucks and buses manufactured for use in Canada and Mexico.

Timetable:

Action	Date	FR Cite
Request for Comments	03/19/02	67 FR 12790
Comment Period End	05/20/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rebecca MacPherson, Attorney Advisor, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2992

RIN: 2127–AI59

2392. RECORD RETENTION OF RETROACTIVELY CERTIFIED VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30112; 49 USC 30115; 49 USC 30117 30121; 49 USC 30166 to 30167

CFR Citation: 49 CFR 576

Legal Deadline: None

Abstract: Record retention requirements for manufacturers who retroactively certify that heavy trucks and buses manufactured for use in Canada and Mexico met all applicable Federal motor vehicle safety standards on date of original manufacture.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12800
NPRM Comment Period End	05/20/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rebecca MacPherson, Attorney Advisor, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2992

RIN: 2127–AI60

2393. IMPORTATION OF COMMERCIAL MOTOR VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30112

CFR Citation: 49 CFR 591

Legal Deadline: None

Abstract: This rulemaking would propose a definition of the term "import."

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12806
NPRM Comment Period End	05/20/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Edward Glancy, Senior Attorney Advisor, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2992

RIN: 2127–AI64

2394. FMVSS NO. 208 ADVANCED AIR BAG PETITIONS FOR RECONSIDERATION (PART 2)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This notice is the second in a series addressing the Petitions for Reconsideration received for the December 18, 2001, FMVSS No. 208 Final Rule. It addresses detailed dummy and seat positioning issues and other test procedure clarification requested in the Petitions for Reconsideration.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Louis Molino, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Office of Crashworthiness Standards, NVS—112, 400 Seventh Street, SW, Room 5320, Washington, DC 20590
Phone: 202 366—1833
Fax: 202 366—4329

RIN: 2127–AI82

2395. WARNING LABEL AND ADDITIONAL CONSPICUITY FEATURES FOR LOW SPEED VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 500

Legal Deadline: None

Abstract: Low speed vehicles (whose top speed capability is, by definition, 25 mph) are required by NHTSA to meet certain minimum safety requirements. These requirements are less stringent and comprehensive than those for all other passenger motor vehicles. While low speed vehicles originally intended for use on roadways in neighborhoods, gated communities, and similar environments with limited traffic, some States now permit them to be used on roads with posted speed limits up to 35 mph, and even higher in a few cases. Additionally, because various States treat these vehicles as zero emission vehicles, it is likely that larger volumes of these vehicles will enter service beginning in 2003. Given the small size of these vehicles and their limited safety features, they offer less protection in a crash than a regular car, van, or truck does. This means a higher risk of injury or death in crashes, even at low speeds. Consequently, the agency is considering a label warning of this higher risk and measures for increasing the conspicuity of low speed vehicles.

Timetable:

Action	Date	FR Cite
NPRM	07/12/02	67 FR 46149
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Van Iderstine, Chief, Visibility and Injury Prevention Division NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Stds., 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

Chris Flanigan, General Engineer, NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Visibility & Injury Prevention Division, Office of Crash Avoidance Stds, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720

RIN: 2127–AI84

2396. USE OF SEAT—MOUNTED CHILD RESTRAINTS ON SCHOOL BUS SEATS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1392

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: This action responds to petitions to amend FMVSS No. 213, Child Restraint Systems, to allow the use of seat—mounted child restraint systems on school buses. Currently, FMVSS No. 213 does not allow child restraint systems to be attached to a vehicle seat cushion or vehicle seat back except by vehicle seat belts.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4919
Fax: 202 366—4329
Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI88

2397. +REAR CENTER LAP/SHOULDER BELT REQUIREMENT — STANDARD 208

Priority: Economically Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30177; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is considering an amendment to its occupant protection standard, FMVSS No. 208, to require the installation of Type 2 (lap/shoulder belt) assemblies for all rear non—outboard designated seating positions (DSPs) in passenger cars, trucks and multipurpose passenger vehicles with a Gross Vehicle Weight Rating (GVWR) of 4,536 kg (10,000 lbs.) or less.

Timetable:

Action	Date	FR Cite
NPRM	08/06/03	68 FR 46546
Final Rule	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AI91

2398. +REPORTING OF INFORMATION AND DOCUMENTS ABOUT POTENTIAL DEFECTS

Priority: Other Significant

Legal Authority: 49 USC 30166(m)

CFR Citation: 49 CFR 579

Legal Deadline: None

Abstract: Final rule responding to remaining petitions for reconsideration of final rule on reporting of information and documents about potential defects published on July 10, 2002 (67 FR 45882).

Timetable:

Action	Date	FR Cite
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Andrew DiMarsico, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5263
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Email: andrew.dimarsico@dot.gov

RIN: 2127–AI92

2399. 5TH PERCENTILE DUMMY BELTED BARRIER CRASH TEST REQUIREMENTS — STANDARD 208

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is considering an amendment to its occupant protection standard, FMVSS No. 208, to improve high speed crash protection to belted occupants of small stature that may sit in the full forward seat position. Current crash test requirements for the 5th percentile adult female dummy include a 0—48 km/h belted rigid barrier crash test. The agency is considering increasing the maximum crash test speed from 48 km/h to 56 km/h to be consistent with the 50th percentile adult male requirements that will take effect according to the second phase of the FMVSS No. 208 Advanced Air Bag Final Rule (65 FR 30680).

Timetable:

Action	Date	FR Cite
NPRM	08/06/03	68 FR46539
Final Rule	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AI98

2400. REIMBURSEMENT PRIOR TO RECALL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30120(d)

CFR Citation: 49 CFR 573; 49 CFR 577

Legal Deadline: None

Abstract: This action responds to a petition for reconsideration of the reimbursement prior to recall rule (67 FR 64049).

Timetable:

Action	Date	FR Cite
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Andrew DiMarsico, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC—10, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5263
Fax: 202 366—3820

RIN: 2127–AJ05

2401. • CHILD RESTRAINT SYSTEMS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30117; . . .

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: Response to a petition for reconsideration of an October 1, 2002 Final Rule amending the requirements for child restraint labels and the written instructions that accompany child restraints.

Timetable:

Action	Date	FR Cite
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Versailles, Office of Planning and Consumer Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2057

RIN: 2127–AJ15

2402. • PLATFORM LIFT SYSTEMS; PETITIONS FOR RECONSIDERATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30116; . . .

CFR Citation: 49 CFR 571.403; 49 CFR 571.404

Legal Deadline: None

Abstract: The history of this ruelaming includes a NPRM (2/1993), a SNPRM (7/2000) and a Final Rule (12/2002). In this action, the Agency is responding to Petitions for Reconsideration to the Final Rule is taking place. The Final Rule adopts two new safety standards: Standard No. 403, an equipment standard specifying requirements for platform lifts; and Standard No. 404, a vehicle standard for all vehicles equipped with such lifts. The equipment standard will require platform lift manufacturers to ensure that their lifts meet minimum platform dimensions and maximum size limits on platform protrusions and gaps. Requirements also include handrails, a threshold—warning signal, provisions for backup operation, and retaining barriers. Performance tests address such areas as wheelchair retention, lift strength/durability, maximum platform velocity/acceleration, and platform slip resistance. Interlocks are prescribed to prevent situations relative to vehicle and lift movement that could cause injury. The vehicle standard will require vehicle manufacturers who install lifts to use lifts meeting the equipment standard, to install them in accordance with lift manufacturer's instructions, and to ensure that specific information is made available to lift users. These standards will prevent lift occupants from rolling or falling off of lift platforms, slipping or tripping while on lift platforms, being caught or pinched by moving lift components, and will provide safer transit for the disabled public.

Timetable:

Action	Date	FR Cite
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Evans, Safety Standards Engineer Office of Crash Avoidance Stds., Department of Transportation, National Highway Traffic Safety Administration, NVS—123, Vehicle Controls and Adapted Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AJ18

2403. • CONFIDENTIAL BUSINESS INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 30166 (m)

CFR Citation: 49 CFR 512

Legal Deadline: None

Abstract: This action is related to completed rulemaking action (RIN 2127—AI13), which was published on July 28, 2003, at 68 FR 44209. It responds to petitions for reconsideration received by NHTSA in response to the final rule.

Timetable:

Action	Date	FR Cite
Response to Petitions	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Kido, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—5263

RIN: 2127–AJ24

2404. +REVIEW: SIDE—IMPACT PROTECTION

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.214

Legal Deadline: None

Abstract: This standard requires passenger cars manufactured after September 1, 1996, to provide occupant protection when impacted in the side by a moving deformable barrier. The agency has compared the actual risk of occupant injury in side—impact crashes of cars meeting the standard to the risk in pre—standard cars. The cost of the standard has been estimated. The technical report has been published. This regulation was selected for review because of its costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/94	
Technical Report: Phase I	12/08/99	64 FR 68717
Comment Period End	04/06/00	
Summary and Discussion of Public Comments Sent to Docket: Phase 1	08/11/00	
End Review	06/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The Phase I evaluation report indicates that the test injury criterion TTI(d) has a statistically significant association with fatality risk in actual side—impact crashes on the highway. In model years 1981—93 cars, models with low TTI(d) on the Federal motor vehicle safety standard no. 214 test tend to have low fatality risk.

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2560
Fax: 202 366—2559
Email: ckahane@nhtsa.dot.gov

RIN: 2127–AF54

2405. REVIEW: REDESIGNED AIR BAGS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This standard was temporarily amended to make the unbelted test for vehicles with air bags less stringent and, in effect, make it easier for manufacturers to quickly depower their air bags. Redesigned air bags are likely to benefit out—of—position occupants and reduce drivers' arm injuries, but they might be less effective than earlier air bags for some occupants. This regulation was selected for review because of public interest, potential benefits, and possibility of higher risk for some vehicle occupants.

Timetable:

Action	Date	FR Cite
Begin Review	05/01/98	
End Review	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH13

2406. REVIEW: ANTILOCK BRAKE SYSTEMS FOR HEAVY TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105; 49 CFR 571.121

Legal Deadline: None

Abstract: These standards require antilock brake systems (ABS) on truck—tractors manufactured after March 1, 1997, semi—trailers and single—unit trucks equipped with air brakes after March 1, 1998, and single—unit trucks over 10,000 pounds GVWR equipped with hydraulic brakes after March 1, 1999. The agency will study the influence of ABS on crash involvement rates and estimate the cost of ABS. These regulations were selected for review because of their costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	04/01/00	
Evaluation Plan Published	08/14/00	65 FR 49633
Collection of Information	10/05/01	66 FR 51093
Comment Period End	12/04/01	
End Review	12/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AI14

2407. REVIEW: REAR—IMPACT GUARDS FOR TRUCK TRAILERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.223; 49 CFR 571.224

Legal Deadline: None

Abstract: These standards set requirements for the geometry, configuration, strength, and energy absorption capability of rear—impact guards on full trailers and semi—trailers over 10,000 pounds GVWR manufactured after January 26, 1998. The agency will study the influence of these guards on injuries in passenger vehicles that rear—impact trailers. The cost of the standards will also be estimated. These regulations were selected for review because of their costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	04/15/00	

Action	Date	FR Cite
Evaluation Plan Published	08/14/00	65 FR 49633
Collection of Information	10/05/01	66 FR 51093
Comment Period End	12/04/01	
End Review	12/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charles J. Kahane, Chief, Evaluation Division, Office of Plans and Policy, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI15

2408. IDLE STOP TECHNOLOGY USED IN SOME HYBRID ELECTRIC VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.102

Legal Deadline: None

Abstract: The agency is proposing to amend the standard to clarify the intent of the standard and allow it to accommodate "idle stop technology" used in some hybrid electric vehicles. This will respond to existing interpretations which promised such a modification.

Timetable:

Action	Date	FR Cite
NPRM	05/15/03	68 FR 26269
NPRM Comment Period End	07/14/03	
Final Action	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Evans, Safety Standards Engineer Office of Crash Avoidance Stds., Department of Transportation, National Highway Traffic Safety Administration, NVS—123, Vehicle Controls and Adapted Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI43

2409. CONVEX MIRRORS FOR COMMERCIAL TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking from Barbara Sandord, the agency is considering amending the standard to require that all commercial trucks traveling on the interstate highway system have convex mirrors affixed to their front right and left fenders (such as those required on school buses).

Timetable:

Action	Date	FR Cite
Request for Comments	01/22/03	68 FR 2993
Comment Period Ends	03/24/03	
NPRM	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Flanigan, General Engineer, NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Visibility & Injury Prevention Division, Office of Crash Avoidance Stds, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720

RIN: 2127–AI52

2410. ENHANCED PASSENGER—SIDE MIRROR SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking from AM General, the agency is considering amending the standard by extending the requirements to MPVs and trucks (independent of their weight) to allow enhanced passenger—side mirror systems.

Timetable:

Action	Date	FR Cite
Request for Comments	01/22/03	68 FR 2993
Comment Period Ends	03/24/03	
NPRM	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Chris Flanigan, General Engineer, NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Visibility & Injury Prevention Division, Office of Crash Avoidance Stds, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720

RIN: 2127–AI53

2411. DAYTIME RUNNING LAMPS INTENSITY REDUCTION PHASE II

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency is proposing to further lower glare while minimizing the change in conspicuity.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Van Iderstine, Chief, Visibility and Injury Prevention Division NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Stds., 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

RIN: 2127–AI62

2412. +EVENT DATA RECORDERS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In the past several years, there has been considerable interest from the safety community in establishing requirements for event data recorders (EDRs). We believe it is timely to consider what role NHTSA should take in implementing EDRs in motor vehicles. Recently, NHTSA received a petition requesting that NHTSA initiate rulemaking to require the installation of EDRs in new vehicles. The agency decided to issue a Federal Register notice asking for comments. NHTSA will decide what to do after review of comments and other related information.

Timetable:

Action	Date	FR Cite
Request for Comments	10/11/02	67 FR 63493
Comment Period End	01/09/03	
Comment Period Extended	01/10/03	68 FR 1508
Comment Period End	02/28/03	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Dr. William R.S. Fan, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Room 5320F, NVS—112, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4922
Fax: 202 366—4329

RIN: 2127–AI72

2413. FMVSS NO. 201 UPPER INTERIOR IMPACT MULTI—STAGE VEHICLE COMPLIANCE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 21411; 49 USC 21415; 49 USC 21417; 49 USC 21466

CFR Citation: 49 CFR 571.201

Legal Deadline: None

Abstract: The agency received petitions for rulemaking from Recreational Vehicle Industry Association (RVIA) and National Truck Equipment Association (NTEA). The agency issued an interim final rule extending the compliance date from 9/1/02 to 9/1/03. However, this one year extension does not provide sufficient time for the agency to consider the issues raised in these petitions before the compliance date for multi—stage vehicles manufacturers. This action would extend the compliance date for multi—stage vehicles by one another three years, i.e., from 9/1/03 to 9/1/06.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/18/02	67 FR 41348
Interim Final Rule	08/28/03	68 FR 51706

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. William R.S. Fan, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Room 5320F, NVS—112, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI86

2414. ADAPTIVE FRONTAL LIGHTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 1.50; 49 CFR 501.8; 49 CFR 571.108

Legal Deadline: None

Abstract: The National Highway Traffic Safety Administration is examining issues related to motor vehicle headlighting glare. This will look at Advanced Frontal lighting systems to determine the adverse consequences to highway safety from glare as this new concept of adaptive lighting is introduced into the U.S. vehicle fleet. An initial notice of request for comment is being issued to gather information.

Timetable:

Action	Date	FR Cite
Request for Comments	02/12/03	68 FR 7101

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Van Iderstine, Chief, Visibility and Injury Prevention Division NVS—121, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Stds., 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI97

2415. ● +TIRE PRESSURE MONITORING SYSTEM

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; ...

CFR Citation: 49 CFR 571.138; 49 CFR 571.101

Legal Deadline: None

Abstract: The Transportation Recall Enhancement Accountability and Documentation (TREAD) Act required the Secretary of Transportation to initiate rulemaking to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under—inflated. The agency issued a final rule for tire pressure monitoring sysstems (TPMS)(establishing FMVSS No. 138) on June 5, 2002; however, that version of the standard was vacated by a decision issued by the U.S. Court of Appeals for the Second Circuit in August 2003.

The agency will take action in accordance with the Administrative Procedures Act to re—establish FMVSS No. 138, in a manner consistent with the court's decision, and provide a new phase—in period.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Samuel Daniel, General Engineer Office of Crash Avoidance Stds., Department of Transportation, National Highway Traffic Safety Administration, NVS—122, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4921

RIN: 2127–AJ23

Department of Transportation (DOT) Completed Actions
National Highway Traffic Safety Administration (NHTSA)

2416. +CRASHWORTHINESS RATINGS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 5

Legal Deadline: None

Abstract: This action would require manufacturers to disseminate crashworthiness performance information concerning their cars to the public, to provide consumers with comparative information on the crashworthiness performance of new car models. This rulemaking is considered significant because of the impact on manufacturers, the interest shown by consumers, and the potential significant effects on the automotive marketplace. The agency requested public comments on the National Academy of Sciences (NAS) study titled "Shopping for Safety — Providing Consumer Automotive Safety Information," (TRB Special Report 248) and how that study should be reflected in the agency's decision on whether, and if so, how, to proceed with a crashworthiness rating for automobiles.

Timetable:

Action	Date	FR Cite
NPRM	01/22/81	46 FR 7025
NPRM Comment Period End	04/22/81	
Request for Comments	05/20/97	62 FR 27648
Comment Period End	08/18/97	
Termination	07/24/03	68 FR 43899

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Versailles, Office of Planning and Consumer Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2057

RIN: 2127–AA03

2417. +FLAMMABILITY OF INTERIOR MATERIALS—SCHOOL BUSES

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.302

Legal Deadline: None

Abstract: Advance notice of proposed rulemaking requested comments regarding possible upgrade of Standard 302 to reduce the risk of fire to school bus occupants. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	11/04/88	53 FR 44627
ANPRM Comment Period End	01/03/89	
Request for Comments	02/26/91	56 FR 7826
Comment Period End	04/29/91	
Withdrawn	07/24/03	68 FR 43895

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AA44

2418. INCORPORATION OF 1996 REVISION OF THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) INTO GLAZING STANDARD

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.205

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to incorporate the 1996 revision of the American National Standards Institute (ANSI) standard for safety glazing used in motor vehicles and other minor revisions into the agency's current standard for safety glazing used in motor vehicles.

Timetable:

Action	Date	FR Cite
NPRM	08/04/99	64 FR 42330
NPRM Comment Period End	10/04/99	
Final Action	07/25/03	68 FR 43964
Final Action Effective	09/23/03	
Technical Amendment	09/26/03	68 FR 55544
Technical Amendment Effective	01/22/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH08

2419. HEAVY VEHICLE ANTILOCK BRAKE SYSTEM (ABS) PERFORMANCE REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105; 49 CFR 571.121

Legal Deadline: None

Abstract: The agency has proposed performance tests for ABS—equipped single—unit trucks and buses. ABS equipment requirements became effective for air—braked single—unit trucks, buses, and trailers on March 1, 1998, and for hydraulic—braked trucks and buses becomes effective on March 1, 1999. The agency indicated in prior rulemaking notices that it would consider supplementing these ABS equipment requirements with performance requirements after conducting tests to determine if such testings are practicable and repeatable for trucks and buses.

Timetable:

Action	Date	FR Cite
NPRM	12/21/99	64 FR 71377
NPRM Comment Period End	02/22/00	
Final Rule	08/11/03	68 FR 47485

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey Woods, Safety Standards Engineer Office of Crash Avoidance Standards, Department of Transportation, National Highway Traffic Safety Administration, NVS—122, Vehicle Dynamics Division, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH16

2420. DEFINITION OF MULTIFUNCTIONAL SCHOOL ACTIVITY BUS

Priority: Substantive, Nonsignificant

Legal Authority: 9 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing to amend various sections of part 571 to create a new vehicle type, tentatively called community transportation vehicles, that will have to meet the crashworthiness standards applicable to school buses, but will not have to meet some of the crash avoidance standards (i.e., stop arms, flashing lights, etc.). This would allow manufacturers to certify vehicles that will be less expensive and as safe as a school bus for transportation of Head Start students because we have tentatively decided that the school bus crash avoidance features are unnecessary when there is no curb—side pickup.

Timetable:

Action	Date	FR Cite
Final Rule	07/31/03	68 FR 44892

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH23

2421. CHILD RESTRAINT ANCHORAGE SYSTEMS — PART 2

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: This action responds to several petitions for reconsideration concerning long—term testing procedures regarding the strength and other issues of universal child—restraint anchors. These requirements were established by the final rule on universal child—restraint anchorages published on March 5, 1999 (64 FR 10785, RIN 2127—AG50). An earlier action (RIN 2127—AH65) responded to other issues raised by the petitions.

Timetable:

Action	Date	FR Cite
Final Action	06/27/03	68 FR 38208

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH99

2422. MOVING BARRIER TIRE SPECIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.214; 49 CFR 571.301

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed changing the currently specified G78—15 tires used in the moving barrier test and replacing them with P215—75R15 radial tires. The current tires are not readily available.

Timetable:

Action	Date	FR Cite
NPRM	10/10/01	66 FR 51629
NPRM Comment Period End	12/10/01	
Final Action	07/29/03	68 FR 44468

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
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RIN: 2127–AI05

2423. +CONFIDENTIAL BUSINESS INFORMATION

Priority: Other Significant

Legal Authority: 49 USC 30166(M)

CFR Citation: 49 CFR 512

Legal Deadline: None

Abstract: The agency is revising the confidential business information regulations to simplify them and improve their clarity, and to update specific sections to reflect current case law and legislative action. This action will help ensure the efficient processing of requests for confidential treatment and the proper protection of sensitive business information.

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21198
NPRM Comment Period End	07/01/02	
Final Action	07/28/03	68 FR 44209

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Donaldson, Acting Assistant Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9511

RIN: 2127–AI13

2424. +IMPROVE TIRE SAFETY INFORMATION

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: Other, Statutory, December 1, 2000, Other.
Final, Statutory, June 1, 2002, Final.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. Pursuant to that Act, the Agency published an ANPRM stating that the agency is considering amendments to its regulations to improve the tire information and its availability and understandability to consumers. To aid in this effect, the agency sought responses from the public to questions relating to such matters as Tire Identification Number content, readability and location, loading, plies and cords, tread wear indicator, Uniform Tire Quality Grading System, speed rating, run—flat and extended mobility tires, tire inflation pressure, and dissemination of tire safety information. This action is considered to be significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
ANPRM	12/01/00	65 FR 75222
ANPRM Comment Period End	01/30/01	
NPRM	12/19/01	66 FR 65535
Comment Period End	02/19/02	
Final Rule	11/18/02	67 FR 69600
Final Action — Delay of Effective Date	06/05/03	68 FR 33655

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Versailles, Office of Planning and Consumer Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2057

RIN: 2127–AI32

2425. IMPROVING THE SAFETY OF CHILD RESTRAINTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: Final, Statutory, November 30, 2002, Final.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking that will improve the safety of child restraints, including minimizing head injuries from side—impact collisions. The agency will consider whether to (1) require more comprehensive tests of child restraints using an array of crash conditions and an updated test seat assembly; (2) use test dummies that represent a greater range of sizes of children and that incorporate current technologies; (3) require improved protection from head injuries in side—and rear—impact crashes; (4) provide consumer information on the physical compatibility of child restraints and vehicle seats on a model—by—model basis; (5) prescribe clearer and simpler labels and instructions on child restraints; (6) consider restraints for children weighing up to 80 pounds; (7) apply scaled injury criteria performance levels, including neck injury; and (8) include a child restraint in each vehicle crash tested under the New Car Assessment Program.

Timetable:

Action	Date	FR Cite
NPRM	05/01/02	67 FR 21805
Final Rule	06/24/03	68 FR 37620

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI34

2426. +OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 106—346, sec 351

CFR Citation: 23 CFR 1225

Legal Deadline: None

Abstract: The Transportation Equity Act for the 21st Century (TEA—21) established a grant program under which States could qualify for incentive funds if they enacted and enforced a law that provides that any person with a blood alcohol concentration of .08 percent or greater while operating a motor vehicle in the State is deemed to have committed a per se offense of driving while intoxicated or an equivalent per se offense. The agency published a final rule implementing that incentive grant program. Section 351 of the Department of Transportation (DOT) Appropriations Act for Fiscal Year (FY) 2001 (PL 106—346) contains a new provision requiring the withholding of certain Federal—aid highway funds from a State, beginning in fiscal year 2004, if the State has not enacted and is not enforcing such a law. This action will amend the regulation implementing the incentive grant program established in TEA—21 to reflect the new sanctions provisions established in the DOT Appropriations Act for FY 2001.

Timetable:

Action	Date	FR Cite
NPRM	02/06/03	68 FR 6091
NPRM Comment Period End	04/07/03	
Final Action	08/22/03	68 FR 50703
Final Action Effective	10/21/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: John Donaldson, Acting Assistant Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—9511

Marlene Markison, Associate Administrator, Injury Control Operations & Resources, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2121

RIN: 2127–AI44

2427. COMPLIANCE FOR MULTISTAGE MANUFACTURERS AND ALTERERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: The agency is responding to a petition for extraordinary relief of the compliance date by which final—stage manufacturers and alterers must install tether anchorages in affected vehicles to comply with our final rule published March 5, 1999 (64 FR 10786, RIN 2127—AG50).

Timetable:

Action	Date	FR Cite
Final Rule	05/08/03	68 FR 24664

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Email: gmouchahoir@nhtsa.dot.gov

RIN: 2127–AI49

2428. +IMPROVED TIRE SAFETY

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.139

Legal Deadline: Final, Statutory, June 1, 2002, Final.

Abstract: The Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to improve the safety requirements of tires. The agency is proposing a new tire standard applicable to radial and non—radial tires that are mounted on passenger cars, light truck vehicles, and multipurpose vehicles, but not tires for motorcycles and heavy trucks. The proposed requirements include tests for high speed performance, endurance, low pressure validation, low pressure high speed performance, road hazard impact, resistance to bead unseating and aging.

Timetable:

Action	Date	FR Cite
NPRM	03/05/02	67 FR 10050
NPRM Comment Period End	05/06/02	
Final Action	06/26/03	68 FR 37981

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Scott, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Stds. NVS—122, Vehicle Dynamics Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

RIN: 2127–AI54

2429. +ADVANCED AIR BAG REQUIREMENTS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: In response to several petitions for rulemaking, the agency considered adjustments in the phase—in—requirements for advanced air bags. In January 2003, the agency issued a final rule that reduced the percentage of a manufacturer's vehicles that must comply with the advanced air bag requirements during the first year of the first stage, i.e., from September 1, 2003, through August 31, 2004, from 35 percent to 20 percent. The agency is continuing to consider possible adjustments in the alternative phase—in requirement available to limited—line manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	09/24/02	67 FR 59800
NPRM Comment Period End	10/24/02	
Final Rule	01/31/03	68 FR 4961
Final Action	05/05/03	68 FR 23614

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590

Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AI71

2430. THEFT DATA FOR CALENDAR YEAR 2000

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33104 (b) (4)

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: This action published the preliminary theft data on passenger motor vehicles that occurred in calendar year 2000 for model year 2000 vehicles. The theft data indicate the overall vehicles' theft rate in 2000. Publication of this data fulfills the agency's obligation to periodically obtain accurate and timely data and publish the information for review and comment.

Timetable:

Action	Date	FR Cite
NPRM	03/12/02	67 FR 11161
Final Action	08/19/02	67 FR 53756

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah Mazyck, Program Analyst, Department of Transportation, National Highway Traffic Safety Administration, NVS—132, Office of Planning and Consumer Standards, 400 Seventh Street SW, Room 5320, Washington, DC 20590
Phone: 202 366—0846
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Email: deborah.mazyck@nhtsa.dot.gov

RIN: 2127–AI75

2431. +CONSUMER INFORMATION REGULATIONS; FEDERAL MOTOR VEHICLE SAFETY STANDARDS; ROLLOVER RESISTANCE

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: Final, Statutory, November 22, 2002, Final.
TREAD Act Mandate.

Abstract: This action establishes a consumer information program on rollover resistance using both dynamic and static vehicle measurements in response to section 12 of the TREAD Act. It replaces the current rollover resistance consumer information that is based only on static measurements. This action has no regulatory effect on vehicle manufacturers or the public. The cost of collecting the information and making it available to the public is entirely the responsibility of NHTSA as part of its New Car Assessment Program (NCAP).

Timetable:

Action	Date	FR Cite
NPRM	10/07/02	67 FR 62528
NPRM Comment Period End	11/21/02	
Final Action	10/14/03	68 FR 59250

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Patrick Boyd, Division Chief, Vehicle Controls & Adapted Vehicles Division, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance NVS—123, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329
Email: pboyd@nhtsa.dot.gov

RIN: 2127–AI81

2432. LIST OF NONCONFORMING VEHICLES ELIGIBLE FOR IMPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30141

CFR Citation: 49 CFR 593

Legal Deadline: None

Abstract: This final action amends the list of vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation. The list is published as an appendix to NHTSA's regulations at 49 CFR part 593 that establish the procedures through which the agency makes import eligibility decisions. The amendment will add to the list all vehicles that NHTSA has decided to be eligible for importation since the list was last published on September 19, 2002.

This action was the same as RIN 2127—AJ19; so the agency terminated this as a separate action.

Timetable:

Action	Date	FR Cite
Terminated	11/24/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Because this rule only furnishes information and imposes no regulatory requirement, the agency has good cause to dispense with a notice of proposed rulemaking to solicit comments on this amendment.

Agency Contact: Michael Goode, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC—10, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5263
Fax: 202 366—3820

RIN: 2127–AI87

2433. +TIRE PRESSURE MONITORING SYSTEM; PETITIONS FOR RECONSIDERATION

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.138; 49 CFR 571.101

Legal Deadline: None

Abstract: The agency received petitions for reconsideration of the new standard requiring a tire pressure monitoring system (TPMS) on new light vehicles. This rule was required by the Transportation REcall Enhancement, Accountability, and Documentation (TREAD) Act.

The TPMS standard was challenged in a case before U.S. Count of Appeals for the Second Circuit. On August 6, 2003, the Court issued a decision whish vacated the standard and remanded to the agency for further rulemaking consistent with the Court's opinion. With the standard vacated, the agency has terminated its response to petitions for reconsideration. However, the agency will treat these petitions as comments in the next phase of the TPMS rulemaking.

Timetable:

Action	Date	FR Cite
Terminated	11/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Scott, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, Office of Crash Avoidance Stds. NVS—122, Vehicle Dynamics Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2720
Fax: 202 366—4329

RIN: 2127–AI90

2434. HIGH—THEFT LINES FOR MODEL YEAR 2004

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33104

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: This action listed the likely high—theft vehicle lines that are subject to the parts—marking requirements of the theft prevention standard and high theft lines that are exempted from the parts—marking requirements for model year 2004.

Timetable:

Action	Date	FR Cite
Final Action	07/02/03	68 FR 39471

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 493—2290
Email: rosalind.proctor@nhtsa.dot.gov

RIN: 2127–AI99

2435. THEFT DATA FOR CALENDAR YEAR 2001

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33104(b)(4)

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: This action will publish the preliminary data on passenger motor vehicles that occurred in calendar year 2001 for MY 2001 vehicles. The theft data indicate the overall vehicles' theft rate in 2001. Publication of this data fulfills the agency's obligation to periodically obtain accurate and timely data and publish the information for review and comment.

Timetable:

Action	Date	FR Cite
Preliminary Theft Data; Request for Comments	04/15/03	68 FR 18181
Final Action	09/19/03	68 FR 54857

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah Mazyck, Program Analyst, Department of Transportation, National Highway Traffic Safety Administration, NVS—132, Office of Planning and Consumer Standards, 400 Seventh Street SW, Room 5320, Washington, DC 20590
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Fax: 202 493—2290
Email: deborah.mazyck@nhtsa.dot.gov

RIN: 2127–AJ00

2436. INSURER REPORTING REQUIREMENTS FOR OCTOBER 2003

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33112

CFR Citation: 49 CFR 544

Legal Deadline: None

Abstract: NHTSA proposes to update its lists in appendices A, B, and C of part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experience. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1999 calendar year not later than October 25, 2003. Further, as long as the insurer remains listed, it must submit reports by each subsequent October 25.

Timetable:

Action	Date	FR Cite
NPRM	03/21/03	68 FR 13887
Final Action	10/14/03	68 FR 59132
Final Action Effective	10/14/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—0846
Fax: 202 493—2290
Email: rosalind.proctor@nhtsa.dot.gov

RIN: 2127–AJ01

2437. SELECTION OF APPENDIX A—CHILD RESTRAINT SYSTEMS—STANDARD 208

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is considering an amendment to its occupant protection standard, FMVSS No. 208, to establish an annual process for updating the child restraint systems currently listed in appendix A of FMVSS No. 208 for use in testing advanced air bag systems. In the past, appendix A has only been updated in response to petitions for reconsideration of the May 12, 2002, FMVSS No. 208 Advanced Air Bag final rule (65 FR 30680). This amendment will outline the method the agency will use to obtain the necessary data related to child restraint systems, the selection criteria based on these data, the timing of the update and the legal form the update will take.

The agency decided to consider this issue in the context of another rulemaking on Standard 208, RIN 2127—AI82, and therefore terminated this action.

Timetable:

Action	Date	FR Cite
Terminated	11/28/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Louis Molino, Safety Standards Engineer, Department of Transportation, National Highway

Traffic Safety Administration, Office of Crashworthiness Standards, NVS—112, 400 Seventh Street, SW, Room 5320, Washington, DC 20590
Phone: 202 366—1833
Fax: 202 366—4329

RIN: 2127–AJ03

2438. • PART 587; OFFSET DEFORMABLE BARRIER, PETITION FOR RECONSIDERATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; ...

CFR Citation: 49 CFR 587

Legal Deadline: None

Abstract: The agency is responding to a petition for reconsideration on the final rule (65 FR 17196) amending 49 CFR Part 587, "Deformable Barriers." The petition recommends that the agency harmonize the offset deformable barrier specification with that specified in EC regulation 96/79/EC.

Timetable:

Action	Date	FR Cite
Final Action	11/04/03	68 FR 62421

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lori Summers, Division Chief, Department of Transportation, National Highway Traffic Safety Administration, NVS—112, Light Duty Vehicle Division, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4917
Fax: 202 366—4329

RIN: 2127–AJ11

2439. • LIST OF NONCONFORMING VEHICLES ELIGIBLE FOR IMPORTATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30141

CFR Citation: 49 CFR 593

Legal Deadline: None

Abstract: This final action amends the list of vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards that NHTSA has decided to be eligible for importation. This list is published as an appendix to NHTSA's regulations at 49 CFR Part 593 that establish the procedures through which the agency makes import eligibility decisions. The amendment will add to the list all vehicles that NHTSA has decided to be eligible for importation since the list was last published on October 1, 2002.

Timetable:

Action	Date	FR Cite
Final Action	09/26/03	68 FR 55545
Final Action Effective	09/26/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Coleman R. Sachs, Chief, Import and Certification Division, Office of Vehicle Safety Compliance, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Room 6111, NVS—223, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—3151
Fax: 202—366—1024
Email: csachs@nhtsa.dot.gov

RIN: 2127–AJ19

2440. • REPORTING OF INFORMATION AND DOCUMENTS ABOUT POTENTIAL DEFECTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 30102—103; 49 USC 30112, 30117—121; 49 USC 30166—167; 49 CFR 1.50

CFR Citation: 49 CFR 579

Legal Deadline: None

Abstract: Final Rule responding to a petition for reconsideration of the Final Rule on reporting of information and documents about potential defects published on July 10, 2002, (67 FR 45882), to extend the date for submitting the one—Time Historical reports until 1/15/04 — Part 579.

Timetable:

Action	Date	FR Cite
Final Action	11/14/03	68 FR 64568
Final Action Effective	11/14/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Andrew DiMarsico, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC—10, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5263
Fax: 202 366—3820

RIN: 2127–AJ21

2441. • TIRE PRESSURE MONITORING SYSTEM; VACATION OF STANDARD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.138; 49 CFR 571.101

Legal Deadline: None

Abstract: The TPMS standard (FMVSS No. 138) was challenged in a case before the Court of Appeals for the Second Circuit. On August 6, 2003, the Court issued a decision which vacated the standard and remanded to the agency for further rulemaking consistent with the Court's opinion. This rule is an administrative action to amend the code of Federal Regulations to reflect the Court's decision vacating the standard. The agency will reestablish FMVSS No. 138 in a separate action.

Timetable:

Action	Date	FR Cite
Final Action	11/20/03	68 FR 65404
Final Action Effective	11/20/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Samuel Daniel, General Engineer Office of Crash Avoidance Stds., Department of Transportation, National Highway Traffic Safety Administration, NVS—122, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4921

RIN: 2127–AJ22

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Prerule Stage

2442. DETERMINATION OF MINIMUM TESTING RATE FOR RANDOM DRUG AND ALCOHOL TESTING

Priority: Info./Admin./Other

Legal Authority: 49 USC 20103

CFR Citation: None

Legal Deadline: None

Abstract: Each year FRA announces the minimum random drug and alcohol testing rates for the following year for the railroad industry. This determination is based on a review of rail industry drug and alcohol management information system data, as well as data from compliance reviews of rail industry drug and alcohol testing programs. Procedures were established in a final rule published on December 2, 1994, 59 FR 62218. For the calendar year 2003, the minimum random drug and alcohol testing rates of covered railroad employees continue to be 25 percent and 10 percent, respectively. This agenda entry will be updated each year to show the latest annual determination. Cites for determinations already issued are provided below.

Timetable:

Action	Date	FR Cite
Annual Determination	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: In the notice of determination of January 2, 2003 (68 FR 57), the minimum random drug and alcohol testing rates of covered railroad employees remained at 25 percent and 10 percent, respectively, for calendar year 2002. In the notices of determination of 2/18/98 (63 FR 8143), 12/30/98 (63 FR 71789), 12/27/99 (64 FR 72289), 12/19/00 (65 FR 79318), and 1/2/02 (67 FR 21), the minimum rates remained at 25 percent and 10 percent for calendar years 1998, 1999, 2000, 2001, and 2002.

Agency Contact: Patricia V. Sun, Trial Attorney, Department of Transportation, Federal Railroad Administration, 1120 Vermont Avenue NW., MS—10, Washington, DC 20590
Phone: 202 493—6060
Fax: 202 493—6068

RIN: 2130–AB31

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Proposed Rule Stage

2443. LOCOMOTIVE CRASHWORTHINESS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: Final, Statutory, March 3, 1995, Final.
Report to Congress issued 9/18/96.

Abstract: The agency has proposed to address the crashworthiness of locomotives pursuant to the Rail Safety Enforcement and Review Act (1992). FRA investigated locomotive crashworthiness, as well as a variety of locomotive working conditions (See RIN 2130—AA89) and reported its finding to Congress. On October 31, 1996, the Railroad Safety Advisory Committee (RSAC) accepted a preliminary planning task to schedule handling of these issues. The Locomotive Crew Safety Working Group met on January 23, 1997, to develop task statements that were forwarded to the full RSAC and accepted on June 24, 1997. The RSAC Locomotive Crashworthiness Working Group last met in January, 2002, to consider specific recommendations for regulatory action. Originally this project was considered significant; however, it appears likely that important incremental changes in current design standards can be made without significant disruption or controversy.

Timetable:

Action	Date	FR Cite
Open Meeting Notice	07/22/94	59 FR 37528
Report to Congress	09/18/96	
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: This rulemaking was originally included in RIN 2130—AA89, Locomotive Cab Working Conditions.

Agency Contact: Darrell Tardiff, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493—6037

RIN: 2130–AB23

2444. LOCOMOTIVE EVENT RECORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: FRA will propose improvements in the crashworthiness of event recorders and will propose additional requirements for data capture and recording for event recorders installed in new and rebuilt locomotives.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: This rulemaking was previously titled "Crashworthy Event Recorders."

Agency Contact: Thomas Herrmann, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6036

RIN: 2130–AB34

2445. REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20148

CFR Citation: 49 CFR Part 224

Legal Deadline: None

Abstract: FRA is considering requiring that retroreflective tape be applied to all rail freight rolling stock. After extensive analysis, FRA has concluded that reflectionization of railroad freight rolling stock appears to be a viable and cost effective method of reducing the number of collisions at highway—rail grade crossings and the casualties and property damages which result from those collisions. FRA's cost—benefit analysis and comments from interested parties may be found in the public docket for this proceeding.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lucinda Henriksen, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493—1345

RIN: 2130–AB41

2446. OCCUPATIONAL NOISE EXPOSURE FOR RAILROAD OPERATING EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229; 49 CFR 227

Legal Deadline: None

Abstract: FRA has proposed to address crew working conditions on locomotives, pursuant to the Rail Safety Enforcement and Review Act (1992). FRA investigated a variety of locomotive working conditions, including noise, and reported its findings to Congress in 1996. FRA presented the subject of locomotive working conditions to the Railroad Safety Advisory Committee (RSAC). The RSAC process, which involves participation of all parties with significant interests, provides a forum for consensual rulemaking and program development.

Through the RSAC process, FRA is amending its occupational noise standards for railroad employees whose predominant noise exposure occurs in the locomotive cab. FRA's existing standard concerning cab noise, 49 CFR 229.121, limits cab employee noise exposure to certain levels based on the duration of their experience. FRA would like to update its regulation to incorporate new measures. This proposal would require railroads to implement a hearing conservation program, which would include hearing tests (audiograms), training, and monitoring. It would also set design standards for new locomotives and maintenance standards for all locomotives.

Timetable:

Action	Date	FR Cite
Report to Congress	09/18/96	
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Christina McDonald, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6032

RIN: 2130–AB56

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Final Rule Stage

2447. +WHISTLE BANS AT HIGHWAY—RAIL GRADE CROSSINGS

Priority: Other Significant

Legal Authority: 49 USC 20153

CFR Citation: 49 CFR 222

Legal Deadline: Final, Statutory, November 2, 1996, Final.

Abstract: This action would govern when train whistles at grade crossings must be sounded. FRA has found that failing to use the locomotive horn can significantly increase the number of collisions with motorists using the crossing. This action is considered significant because of substantial public interest. This action is being taken pursuant to statutory mandate. FRA studied the consequences of the proposed action and prepared a draft environmental impact statement (EIS) for the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	01/13/00	65 FR 2230
NPRM Comment Period End	05/26/00	
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State

Additional Information: An Omnibus Bill at the end of the 106th Congress prohibited publication of a final rule before July 2001.

Agency Contact: Mark H. Tessler, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6061

RIN: 2130–AA71

2448. +STANDARDS FOR DEVELOPMENT AND USE OF PROCESSOR—BASED SIGNAL AND TRAIN CONTROL SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 234; 49 CFR 236; 49 CFR 209

Legal Deadline: None

Abstract: FRA has continued its commitment to supporting Positive Train Control (PTC) technology development, testing and compatibility; and promoting deployment of PTC technology in the near future. In September 1997, FRA initiated joint fact—finding efforts through the Railroad Safety Advisory Committee (RSAC) Working Group on PTC. The advice and recommendations of RSAC formed the basis of an NPRM that would facilitate introduction of advanced technology, including systems that support PTC functions. The NPRM addresses technical standards for all processor—based signal and train control products, amending 49 CFR part 236. The comment period ended 11/08/01, and FRA is now preparing a final rule.

Timetable:

Action	Date	FR Cite
NPRM	08/10/01	66 FR 42351
NPRM Comment Period End	11/08/01	
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cynthia Walters, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6064

RIN: 2130–AA94

2449. +APPLICATION OF RANDOM TESTING AND OTHER ALCOHOL AND DRUG REGULATIONS TO EMPLOYEES OF FOREIGN RAILROADS

Priority: Other Significant

Legal Authority: 49 USC 20103; 49 USC 20140

CFR Citation: 49 CFR 219

Legal Deadline: None

Abstract: This action would apply FRA's random testing and other alcohol and drug requirements to employees of a foreign railroad whose primary reporting point is outside the United States, and who perform train service or dispatching service in the United States. Such employees are currently exempt from random testing, pre—employment testing, and requirements for employee self—referral and co—worker report policies. This action is considered significant because of substantial inter—departmental concerns.

Timetable:

Action	Date	FR Cite
NPRM	12/11/01	66 FR 64000
Notice of Hearing	01/23/02	67 FR 3138
NPRM Comment Period End	02/11/02	
Comment Period Extended	03/14/02	
Docket Reopened for Additional Comments	12/10/02	67 FR 75966
Second NPRM Comment Period End	08/27/03	
Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Patricia V. Sun, Trial Attorney, Department of Transportation, Federal Railroad Administration, 1120 Vermont Avenue NW., MS—10, Washington, DC 20590
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RIN: 2130–AB39

2450. RETENTION OF CURRENT MONETARY THRESHOLD FOR REPORTING RAIL EQUIPMENT ACCIDENTS/INCIDENTS DURING CALENDAR YEAR 2003 AND UNTIL FURTHER AMENDED

Priority: Info./Admin./Other

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 225

Legal Deadline: None

Abstract: This is an Interim Final Rule which establishes the monetary threshold for reporting rail equipment accidents/incidents for the calendar year 2003 and beyond. This rule replaces the annual determination of the threshold, which is being withdrawn. The 2003 threshold will remain the same as the threshold for calendar year 2002 due to the unavailability of Bureau of Labor Statistics data that was previously used to calculate the threshold. The 2002 threshold is $6700; this is the number that will carry over for 2003 and beyond. FRA is not calculating a new threshold; rather, the old one is being retained as it is not possible to calculate a new threshold with the current formula due to the lack of BLS data. The 2002 threshold will be carried over for calendar year 2003 and beyond, until a new formula is established. FRA will be seeking notice and comment at a future date to establish a new formula for calculating the monetary threshold for accident/incident reporting for calendar year 2004 and beyond.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/30/02	67 FR 79533
Interim Final Rule Effective	01/01/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roberta Stewart, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493—6027

RIN: 2130–AB57

2451. RAILROAD LOCOMOTIVE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20102 to 20103, 20133, 20137 to 20138, 20107, 20143, 20701 to 20703; 49 USC 21301 to 21302; 49 USC 21304; 49 CFR 1.49(c) and 1.49(m)

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: This rulemaking action makes a technical clarification to the headlight and auxiliary light provisions contained in 49 CFR 229.125(a) and (d). The purpose of this modification is to codify FRA's existing acceptance of lamps used in locomotive headlights and auxiliary lights for nearly a decade. The clarifying amendment is consistent with existing FRA enforcement policies and FRA's intent when issuing the original rules related to locomotive headlights and auxiliary lights.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/19/03	68 FR 49713
Interim Final Rule Comment Period End	09/18/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas Herrmann, Trial Attorney, Department of

Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6036

RIN: 2130–AB58

Department of Transportation (DOT) Completed Actions
Federal Railroad Administration (FRA)

2452. BLUE SIGNAL AND RELATED PROTECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 218

Legal Deadline: None

Abstract: FRA was reconsidering amendments to its "Blue Signal" regulations, which prescribe minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment.

Timetable:

Action	Date	FR Cite
Final Rule Amendments	03/01/95	60 FR 11047
Comment Period End	05/01/95	
Comment Period Reopened	06/09/95	60 FR 30469
Withdrawn	07/18/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: The final rule on utility employees was published August 16, 1993 (58 FR 43287), RIN 2130—AA77. FRA has changed the title of the current entry to the Unified Agenda, which was originally titled "Protection of Utility Employees," to more accurately reflect what this action was expected to address.

Agency Contact: John A. Winkle, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493—6067

RIN: 2130–AA90

2453. SMALL RAILROADS; POLICY STATEMENT ON ENFORCEMENT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 601 et seq; PL 104—121; 49 USC 20101 et seq

CFR Citation: 49 CFR 209

Legal Deadline: Other, Statutory, March 29, 1997, Other.

Abstract: The Small Business Regulatory Enforcement Act (SBREFA) of 1996 requires, among other things, that Federal agencies establish communication and enforcement programs to address the unique concerns and operations of small entities.

Pursuant to SBREFA, FRA published communication and enforcement policies with respect to small entities in an Interim Statement of Agency Policy and undertook an interim definition of "small entity" in this process. Also, FRA invited comment from the public for the purpose of adopting a new definition of "small entity" in the future, and conducted a public meeting with all interested parties to discuss this issue. FRA issued a final statement of policy on May 9, 2003.

Timetable:

Action	Date	FR Cite
Interim Policy Statement	08/11/97	62 FR 43024
Interim Policy Statement Effective	10/10/97	
Comment Period End	11/30/97	
Final Policy Statement	05/09/03	68 FR 24891

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Local

Additional Information: A public meeting was held on September 28, 1999. (See 64 FR 46468, 8/25/99.)

Agency Contact: Melissa Porter, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6034

RIN: 2130–AB15

2454. CRANE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In response to a petition for rulemaking, FRA was considering whether to adopt regulations governing functional and design safety of on—track railroad cranes used for track maintenance.

Timetable:

Action	Date	FR Cite
Termination	07/24/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Mark H. Tessler, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6061

RIN: 2130–AB27

2455. ROADWAY MAINTENANCE MACHINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 214

Legal Deadline: None

Abstract: FRA issued regulations governing operational and design safety of on—track equipment used by railroads for track maintenance. This rulemaking was requested by the Brotherhood of Maintenance of Way Employees (BMWE) as part of the organization's petition requesting revision of the track safety standards. FRA decided to respond to this portion of the BMWE petition in a rulemaking separate from the track safety standards revision.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1930
NPRM Comment Period End	03/12/01	
Final Rule	07/28/03	68 FR 44388

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: This rulemaking is an offshoot of the rulemaking to revise the track safety standards.

Agency Contact: Daniel Alpert, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6026

RIN: 2130–AB28

2456. REVISION TO RAILROAD SAFETY ENFORCEMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 209

Legal Deadline: None

Abstract: This action would have revised and updated FRA's enforcement procedures. This action would have addressed the recodification of the railroad safety laws and revised certain administrative hearing procedures.

Timetable:

Action	Date	FR Cite
Termination	07/24/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kathryn E. Shelton, Department of Transportation, Federal Railroad Administration
Phone: 202 493—6063
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Email: kathryn.shelton@fra.dot.gov

RIN: 2130–AB35

2457. RULES OF PRACTICE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 211

Legal Deadline: None

Abstract: This action would have revised and updated FRA's rulemaking procedures, and the procedures for participation in the rulemaking process, such as petitions for rulemaking, petitions for reconsideration, and petitions for waiver. These procedures would have been modified to reflect the recodification of the railroad safety laws, and changes in the application of FRA's regulatory procedures that have developed over time.

Timetable:

Action	Date	FR Cite
Termination	07/24/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Colleen A. Brennan, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6028

RIN: 2130–AB36

2458. +MINIMUM STANDARDS FOR TEMPERATURE IN THE LOCOMOTIVE CAB

Priority: Other Significant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: This rulemaking would have amended current minimum temperature requirements and established maximum cab temperature requirements. FRA is terminating this rulemaking because the agency was unable to determine that regulatory action could be supported by safety benefits that would clearly outweigh the costs. Rather than proposing regulatory action, FRA is making available to the industry the results of safety research for consideration in the context of broader corporate decisionmaking (including issues related to employee retention, productivity, and preservation of other assets.) FRA believes that this action will encourage continued investment toward improving locomotive cab working conditions.

Timetable:

Action	Date	FR Cite
Termination	07/24/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cynthia Walters, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493—6064

RIN: 2130–AB46

Department of Transportation (DOT)
Federal Transit Administration (FTA)

Proposed Rule Stage

2459. • +RAIL FIXED GUIDEWAY SYSTEMS; STATE SAFETY OVERSIGHT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 5330

CFR Citation: 49 CFR 659

Legal Deadline: None

Abstract: The FTA is proposing changes to clarify and further refine state requirements for the provision of safety and security oversight of rail fixed guideway systems. The NPRM incorporates findings and lessons learned from FTA's monitoring and evaluation of the program, which has been in effect for several years. This NPRM also highlights recommendations identified by FTA to facilitate improved implementation of the original requirements and to address new concerns for security and emergency preparedness.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: This rulemaking action is being taken in lieu of further action on a previously reported RIN (2132—AA69).

Agency Contact: Jerry Fisher, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—2896

Meghan Ludtke, Attorney Advisor, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4011
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RIN: 2132–AA76

Department of Transportation (DOT) Federal Transit Administration (FTA) — Final Rule Stage

2460. • DRUG AND ALCOHOL MANGEMENT INFORMATION SYSTEM REPORTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 U.S.C. 5331; 49 CFR 1.51

CFR Citation: 49 CFR 655

Legal Deadline: None

Abstract: FTA's drug and alcohol testing rules include requirements for employers to submit drug and alcohol testing data using specific Management Information System (MIS) forms. The Department of Transportation recently published a final rule revising all DOT agency MIS forms and transforming them into a single one—page form for use throughout DOT. The requirement for use of the form is now in 49 CFR part 40. By final rule, FTA has to conform its Drug and Alcohol rule by deleting portions of the MIS reporting requirements.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Agency Contact: Meghan Ludtke, Attorney Advisor, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4011
Fax: 202 366—3809

RIN: 2132–AA77

Department of Transportation (DOT) Federal Transit Administration (FTA) — Long-Term Actions

2461. SCHOOL BUS OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5323(f)

CFR Citation: 49 CFR 605

Legal Deadline: None

Abstract: This rulemaking would amend the definition of "tripper" service, which is mass transportation service modified to meet the needs of school students and personnel. The amended definition will prohibit the use of certain signage without the express written permission of the FTA Administrator, and provides that tripper buses must stop only at stops that are marked as available to the public. In the previous agenda, FTA had stated that it intended to withdraw the proposed amendment. However, upon further consideration, the agency has decided to hold this matter in abeyance pending reauthorization of the Transportation Equity Act for the 21st Century (TEA—21).

Timetable:

Action	Date	FR Cite
NPRM	05/03/99	64 FR 23590
NPRM Comment Period End	07/02/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Agency Contact: Elizabeth S. Martineau, Attorney Advisor, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
Phone; 202 366—1936
Fax: 202 366—3809

RIN: 2132–AA67

Department of Transportation (DOT) Federal Transit Administration (FTA) — Completed Actions

2462. STATE SAFETY OVERSIGHT; RAIL FIXED GUIDEWAY SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5330

CFR Citation: 49 CFR 659

Legal Deadline: None

Abstract: Due to the receipt of an adverse comment, FTA withdrew the direct final rule issued on June 11, 2002, which would have amended the definition of "accident." The agency concluded that coordination with other stakeholders was warranted but had been required to expend its resources on other security initiatives during the past year. For these reasons, this rulemaking was being held in abeyance while the next course of action was determined. FTA has recently determined that it will amend the rulemaking and accordingly, will close out this rulemaking action (2132—AA69) and initiate a new rule under 2132—AA76.

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/03/02	67 FR 15725
Withdrawal of Direct Final Rule	07/01/02	67 FR 44091
Withdrawn	07/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: This rulemaking is being superceded by 2132—AA76.

Agency Contact: Jerry Fisher, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2132–AA69

Department of Transportation (DOT) Saint Lawrence Seaway Development Corporation (SLSDC) — Completed Actions

2463. • SEAWAY REGULATIONS AND RULES: STERN ANCHORS AND NAVIGATION UNDERWAY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 33 USC 983(a); 33 USC 984(a)(4); 49 CFR 1.52

CFR Citation: 33 CFR 401.15; 33 CFR 401.35

Legal Deadline: None

Abstract: Under international agreement, the SLSDC and the Canadian St. Lawrence Seaway Management Corporation jointly publish and administer the Seaway Regulations and Rules (Practices and Procedures in Canada). This action would amend the regulations to require large tug and tow combinations to have stern anchor and to require all vessels to meet certain manning requirements in the wheelhouse and on deck when underway.

Timetable:

Action	Date	FR Cite
Final Action	06/19/03	68 FR 36748
Final Action Effective	07/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marc C. Owen, Chief Counsel, Department of Transportation, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—6823
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Email: marc.owen@sls.dot.gov

RIN: 2135–AA18

Department of Transportation (DOT) Research and Special Programs Administration (RSPA) — Proposed Rule Stage

2464. PIPELINE SAFETY: GAS GATHERING LINE DEFINITION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192

Legal Deadline: Final, Statutory, October 24, 1994, Final.

Abstract: The existing definition of "gas gathering line" and "regulated gathering line" would be clearly defined to eliminate confusion in distinguishing these pipelines from transmission lines in rural areas. The costs should be minimal since the definition will conform to prevailing practices in government and industry.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48505
Request for Comments	03/11/99	64 FR 12147
Electronic Public Meeting	04/13/99	64 FR 12147
Extension of Comment Period	04/30/99	64 FR 23256
Comment Period Ends	07/07/99	64 FR 23256
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. RSPA—98—4868 (Formerly PS—122).

ANALYSIS: Regulatory Evaluation, 09/25/91, 56 FR 48505

Agency Contact: Fred Joyner, Senior Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—3530

RIN: 2137–AB15

2465. PIPELINE SAFETY: PERIODIC UNDERWATER INSPECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: Final, Statutory, October 24, 1995, Final.

Abstract: This action would require operators of natural gas and hazardous liquid pipelines to conduct periodic underwater inspections of offshore pipelines and those in navigable waterways. This action would also define what constitutes an exposed underwater pipeline and what constitutes a hazard to navigation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Docket No. RSPA—97—3001. This action could include requirements for the reburial of exposed pipelines. Under an OPS contract, Texas A&M University completed a study of the issues related to burial depth and inspection requirements for underwater pipelines.

An NPRM is being drafted that will incorporate the Texas A&M recommendation for a risk—based approach.

Agency Contact: Fred Joyner, Senior Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—3530

RIN: 2137–AC54

2466. HAZARDOUS MATERIALS: REVISION OF REQUIREMENTS FOR CARRIAGE BY AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 48 USC 5101 to 5127

CFR Citation: 49 CFR 175

Legal Deadline: None

Abstract: Part 175 is being revised and rewritten in order to simplify and clarify the requirements, further align them with the international requirements (ICAO) and eliminate obsolete requirements,

Timetable:

Action	Date	FR Cite
ANPRM	02/26/02	67 FR 8769
ANPRM; Extension of Comment Period'	05/13/02	67 FR 32002
ANPRM Comment Period End	05/31/02	
ANPRM; Extension Comment Period End	09/30/02	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Docket No. HM—228; RSPA—02—11654.

Agency Contact: Deborah Boothe, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD18

2467. +HAZARDOUS MATERIALS SAFETY: TRANSPORTATION OF OXYGEN CYLINDERS AND OXYGEN GENERATORS ABOARD AIRCRAFT

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 175

Legal Deadline: None

Abstract: RSPA proposes to amend the Hazardous Materials Regulations to require oxygen cylinders and oxygen generators, when transported aboard aircraft, to be packed in an outer packaging that meets prescribed thermal and heat resistance requirements. These requirements will increase the level of safety associated with transportation of oxidizing gases by air. This rule has no impact on the use of passenger—owned oxygen cylinders. This rule is significant due to public interest.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: HM Docket: HM—224B. A separate rulemaking addressing the use of passenger—owned cylinders of oxygen during a flight is under RIN 2105—AC29. Previously titled Hazardous Materials Safety: Transportation of Oxygen Cylinders on Aircraft.

Agency Contact: John A. Gale, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD33

2468. +HAZARDOUS MATERIALS: SAFETY REQUIREMENTS FOR EXTERNAL PRODUCT PIPING ON CARGO TANKS TRANSPORTING FLAMMABLE LIQUIDS

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 173; 49 CFR 180

Legal Deadline: None

Abstract: This rulemaking addresses requirements to reduce the risks associated with the retention of flammable liquid in unprotected product piping on a cargo tank motor vehicle during transportation (wetlines). It responds to an NTSB recommendation. It is significant because of industry concerns about its cost implications.

Timetable:

Action	Date	FR Cite
ANPRM	02/10/03	68 FR 6689
ANPRM Comment Period End	06/10/03	
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM—213B; RSPA—99—6223.

Agency Contact: Michael Stevens, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD36

2469. PIPELINE SAFETY: ANNUAL UPDATE OF STANDARDS INCORPORATED BY REFERENCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, and 60118

CFR Citation: 49 CFR 191; 49 CFR 193; 49 CFR 195

Legal Deadline: None

Abstract: More than 70 voluntary consensus technical standards are incorporated by reference in the Federal gas pipeline, hazardous liquid pipeline, and liquefied natural gas (LNG) safety regulations. The Office of Pipeline Safety will propose to incorporate updated standards early in each calendar year.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Docket No. RSPA—02—11457.

Agency Contact: Richard D. Huriaux, Manager, Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4565

RIN: 2137–AD68

2470. HAZARDOUS MATERIALS: SECURITY REQUIREMENTS FOR MOTOR CARRIERS TRANSPORTING HAZARDOUS MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 et seq; 49 USC 322; ...

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: The Research and Special Programs Administration and the Federal Motor Carrier Safety Administration are examining the need for enhanced security requirements for motor carrier transportation of hazardous materials. We asked for comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements.

Timetable:

Action	Date	FR Cite
ANPRM	07/16/02	67 FR 46622
ANPRM Comment Period End	10/15/02	
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: Docket No. HM—232A. The Federal Motor Carrier Safety Administration is closing this rulemaking action under RINA 2136—AA71. Any further rulemaking will be addressed under RSPA RIN 2137—AD70.

Agency Contact: Susan Gorsky, Senior Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD70

2471. HAZARDOUS MATERIALS REGULATIONS: ALUMINUM CYLINDERS — REVISED REQUALIFICATION AND USE CRITERIA FOR THE DOT 3 AL CYLINDER MADE OF ALUMINUM ALLOY 6351—TG

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: The purpose of this rulemaking initiative is to minimize personal injury during the filling process and adopt a standard for early detection of sustained load cracking in order to control the risk of the cylinder rupturing.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. HM—220F

Agency Contact: Charles E. Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD78

2472. • HAZARDOUS MATERIALS: EXEMPTIONS INTO REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171; 49 CFR 173 and174; 49 CFR 176 and 177

Legal Deadline: None

Abstract: This rule proposes to incorporate into the HMR certain widely used and safety—proven exemptions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM—233

URL For More Information: rules@rspa.dot.gov

Agency Contact: Gigi L. Corbin, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366—8553
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RIN: 2137–AD84

2473. • HAZARDOUS MATERIALS: MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: Miscellaneous amendments to HMR based on petitions for rulemaking and RSPA initiative, including updated incorporation by reference, revised definitions, revisions to the Hazardous Materials Table, and clarifications of certain existing requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket HM—218C.

Agency Contact: Gigi L. Corbin, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366—8553
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Email: rules@rspa.dot.gov

RIN: 2137–AD87

2474. • Sequence Number Intentionally Skipped

2475. • Sequence Number Intentionally Skipped

Department of Transportation (DOT)

Research and Special Programs Administration (RSPA)

Final Rule Stage

2476. PIPELINE SAFETY: PASSAGE OF INTERNAL INSPECTION DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: In 1994, RSPA amended its gas and hazardous liquid pipeline safety regulations to require that operators design and construct certain pipelines to accommodate the passage of instrumented internal inspection devices, or smart pigs. In response to petitions for reconsideration, RSPA proposed to modify requirements that apply to offshore transmission lines and that require removal of smart pig impediments from transmission line sections. In addition, RSPA suspended enforcement of the rule on offshore transmission lines and on onshore transmission line sections except replacement parts. Final rulemaking action will resolve issues raised by the petitions and public comments on the proposed modifications, and end the suspension of enforcement.

Timetable:

Action	Date	FR Cite
NPRM	11/20/92	57 FR 54745
NPRM Comment Period End	01/19/93	
Final Rule	04/12/94	59 FR 17275
NPRM	09/30/94	59 FR 49896
NPRM Correction	10/19/94	59 FR 52863
Limited Suspension of Enforcement	02/07/95	60 FR 7133
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. PS—126. The integrity testing proposal in Proposals for Pipeline Safety, RIN 2137—AB27, was consolidated, in part, into this rulemaking.

ANALYSIS: Regulatory Evaluation, 04/12/94, 59 FR 17275

Agency Contact: B. Furrow, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590—0001
Phone: 202 366—4559

RIN: 2137–AB71

2477. +PIPELINE SAFETY: RESPONSE PLANS FOR ONSHORE OIL PIPELINES

Priority: Other Significant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 194

Legal Deadline: Final, Statutory, August 18, 1992, Final.

Abstract: The interim final rule established regulations requiring response plans for certain onshore oil pipelines. Those regulations are mandated by the Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (Pub. L. 101—380). Pipeline operators filed response plans under this interim final rule, and numerous tabletop exercises and area exercises have been conducted to validate the planning process. The purpose of these requirements is to improve response capabilities and minimize the impact of onshore oil spills from pipelines. This rule is significant because of substantial public and congressional interest. A final rule incorporating the comments will be published in December 2003.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/93	58 FR 244
Interim Final Rule Comment Period End	02/19/93	
Notice of Public Meeting	06/15/94	59 FR 30755
Notice of Public Hearing	11/29/96	61 FR 60679
Correction	01/21/97	62 FR 2989
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. PS—130.

ANALYSIS: Regulatory Evaluation, 01/05/93, 58 FR 244

Agency Contact: Melanie Barber, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—4560

RIN: 2137–AC30

2478. +APPLICABILITY OF THE HAZARDOUS MATERIALS REGULATIONS TO LOADING, UNLOADING, AND STORAGE

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 106 to 107; 49 CFR 171 to 180

Legal Deadline: None

Abstract: This rulemaking makes revisions to better define the applicability of the Federal Hazardous Materials Regulations (HMR) in order to clarify the relationship among Federal, State, local, and tribal agencies in the regulation of hazardous materials. Under circumstances specified in Federal statutes, the regulations of other Federal agencies

(EPA and OSHA) and non—Federal governments (States, localities, and Indian tribes) must be consistent with or defer to RSPA's regulation of the transportation of hazardous materials in commerce. However, other Federal and non—Federal requirements are generally not limited where hazardous materials are not in transportation. Activities relating to loading, unloading, and storage of hazardous materials have become areas of particular uncertainty and concern to both industry and non—Federal governments. This action is significant because of the substantial public interest in reducing uncertainty and avoiding conflicting regulations.

Timetable:

Action	Date	FR Cite
ANPRM	07/29/96	61 FR 39522
ANPRM Comment Period End	11/30/96	
SANPRM	04/27/99	64 FR 22718
SANPRM Comment Period End Extended to 08/25/1999	07/26/99	
NPRM	06/14/01	66 FR 32420
NPRM Comment Period Extended to 08/02/2001 & Public Meetings	08/02/01	66 FR 40174
NPRM Comment Period End	11/30/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Docket No. HM—223; RSPA—98—4952. As a result of comments received to the ANPRM, we have upgraded this rulemaking to significant.

Agency Contact: Susan Gorsky, Senior Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AC68

2479. HAZARDOUS MATERIALS: REVISIONS TO INCIDENT REPORTING REQUIREMENTS AND DETAILED HAZARDOUS MATERIALS INCIDENT REPORT DOT FORM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5105 to 5127

CFR Citation: 49 CFR 171

Legal Deadline: None

Abstract: This rulemaking would revise the hazardous materials incident reporting regulations in 49 CFR part 171, including the hazardous materials incident report (form 5800.1). The goal of this rulemaking is to simplify, update and review the requirements while enhancing the ability of the Research and Special Programs Administration and the DOT modal administrations to gather information vital to increasing safety of transporting hazardous materials.

Timetable:

Action	Date	FR Cite
ANPRM	03/23/99	64 FR 13943
ANPRM Comment Period End	06/21/99	
NPRM	07/03/01	66 FR 35155
NPRM Comment Period End	10/01/01	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Additional Information: Docket No. HM—229; RSPA—99—5013.

Agency Contact: T. Glenn Foster, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD21

2480. HAZARDOUS MATERIALS: HAZARD COMMUNICATION REQUIREMENTS—PETITIONS FOR RULEMAKING AND MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171; 49 CFR 172

Legal Deadline: None

Abstract: This rulemaking action proposes to amend the Hazardous Materials Regulations (HMR) to continue improving the hazard communication requirements to better identify hazardous materials in transportation, in response to several petitions for rulemaking and RSPA initiatives. The primary areas addressed are shipping papers, marking, labeling, and placarding requirements. The proposed action is intended to improve safety for transportation workers, emergency responders, and the public. The effect of the proposed regulatory action is to simplify, clarify, correct, or provide relief from certain regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/11/03	68 FR 34880
NPRM Comment Period End	08/11/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. HM—206B; RSPA—03—15327.

Agency Contact: Helen L. Engrum, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD28

2481. PIPELINE SAFETY: PERIODIC UPDATES TO PIPELINE SAFETY REQUIREMENTS (1999)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 et seq

CFR Citation: 49 CFR 190; 49 CFR 191; 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: This periodic update revises and updates the pipeline safety regulations to provide clarity and remove unnecessary burdens to the regulated pipeline community. Revisions include updated references to voluntary specifications and standards incorporated by reference in the pipeline safety regulations, and various clarifications and grammatical corrections. These updates reflect the most recent editions of each specification and standard incorporated by reference. These updates enable pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth.

Timetable:

Action	Date	FR Cite
NPRM	03/22/00	65 FR 15290
NPRM Comment Period End	05/22/00	
Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA—99—6106

Agency Contact: Richard D. Huriaux, Manager, Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4565

RIN: 2137–AD35

2482. HAZARDOUS MATERIALS: ADOPTION OF LATEST IAEA AND OTHER MISCELLANEOUS REVISIONS AND CLARIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: This rulemaking harmonizes the requirements for the packaging and transportation of Class 7 (radioactive) materials with the International Atomic Energy Agency (IAEA) regulations for the safe transportation of radioactive material and the United Nations recommendations.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/99	64 FR 72633
ANPRM Comment Period Extended	03/01/00	65 FR 11028
ANPRM Comment Period End	03/29/00	
ANPRM Comment Period End	06/29/00	
NPRM	04/30/02	67 FR 21328
NPRM Comment Period End	07/29/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM—230; RSPA—99—6283.

Agency Contact: Charles E. Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD40

2483. +HAZARDOUS MATERIALS: TRANSPORTATION OF LITHIUM BATTERIES

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172 to 175

Legal Deadline: None

Abstract: RSPA is revising requirements applicable to lithium batteries for consistency with international requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/02/02	67 FR 15510
NPRM Comment Period End	06/14/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM—224C; RSPA—02—11989

Agency Contact: John A. Gale, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD48

2484. HAZARDOUS MATERIALS: REVISION OF THE REQUIREMENTS FOR HAZARDOUS WASTE MANIFESTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172

Legal Deadline: None

Abstract: The NPRM proposed to update the Hazardous Waste Manifest requirements to accommodate changes the Environmental Protection Agency has proposed, including the use of electronic versions of the Hazardous Waste Manifest and electronic signatures.

Timetable:

Action	Date	FR Cite
NPRM	08/08/01	66 FR 41490
NPRM Comment Period End	10/04/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: HM Docket: HM—206E; RSPA—01—10292.

Agency Contact: Darrell Relerford, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD50

2485. +PIPELINE SAFETY: PIPELINE INTEGRITY MANAGEMENT IN HIGH—CONSEQUENCE AREAS (GAS TRANSMISSION PIPELINE OPERATORS)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 5121; 49 USC 60102 to 60104; 49 USC 60108, 60109, 60117, 60118, 60124; 49 CFR 1.53

CFR Citation: 49 CFR 192

Legal Deadline: Final, Statutory, December 17, 2003, Final.
A law passed in 2002 requires OPS to issue regulations by December 17, 2003.

Abstract: An October 21, 1999, notice announced a public meeting to consider the need for additional safety and environmental regulations for gas transmission lines, hazardous liquid pipelines, and distribution pipelines in high—density population areas, commercially navigable waterways, and areas unusually sensitive to environmental damage. The public meeting was held on November 18—19, 1999, in Herndon, Virginia. The meeting was to determine the extent to which operators now have integrity management programs, to explore effective ways to promote their development and implementation by all operators, and to discuss mechanisms to confirm the adequacy of such operator—developed programs. Participants in the meeting discussed a practical definition of high—consequence areas, as well as the need, if any, for increased inspection, enhanced damage prevention, improved emergency response, and other measures to prevent and mitigate pipeline leaks and ruptures in these areas. Comments from the public were due by January 17, 2000.

A final rule was published to require validation/testing of the integrity of certain hazardous liquid pipelines in high—consequence areas (RIN 2137—AD45).

Work on a similar gas rule is almost complete. A final rule defining high consequence areas for gas transmission pipelines was issued on August 6, 2002 (67 FR 50824). A notice of proposed rulemaking proposing integrity management requirements for transmission pipelines in the high consequence areas was issued on January 28, 2003 (68 FR 4278).

Timetable:

Action	Date	FR Cite
NPRM — Integrity Management Program	01/28/03	68 FR 4278
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Docket No. RSPA—00—7666.

Agency Contact: Mike Israni, General Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4571
Email: mike.israni@rpsa.dot.gov

RIN: 2137–AD54

2486. PIPELINE SAFETY: HAZARDOUS LIQUID PIPELINE OPERATOR ANNUAL REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103; 49 USC 60102; 49 USC 60104; 49 USC 60108; 49 USC 60109; 49 USC 60118; 49 CFR 1.53

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: This rulemaking would amend the pipeline safety regulations to require hazardous liquid pipeline operators to submit a Hazardous Liquid Operator Annual Report. The information on the hazardous liquid operator annual report form is needed to normalize hazardous liquid accident information for identifying safety trends in the accident data. The inventory information that the annual report would provide addresses a major deficiency in the current information collection. Through a separate rulemaking, RSPA is also improving the hazardous liquid accident form by expanding "failure cause" categories and collecting more detailed information about the impact of failed pipelines. Together with the improved hazardous liquid accident report, the proposed Hazardous Liquid Operator Annual Report will address the concerns of RSPA/OPS, the National Transportation Safety Board (NTSB), Congress, and others, increase the overall usefulness of the data, and make analysis more efficient and meaningful.

Timetable:

Action	Date	FR Cite
NPRM	07/26/02	67 FR 48844
Final Rule	08/05/03	68 FR 46109
Correction	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA—01—9832.

Agency Contact: Roger Little, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—4569

RIN: 2137–AD59

2487. HAZARDOUS MATERIALS: REVISION TO PENALTY GUIDELINES

Priority: Info./Admin./Other

Legal Authority: 49 USC 5101 et seq

CFR Citation: 49 CFR app A to subpart D

Legal Deadline: None

Abstract: This final rule will make revisions to RSPA's guidelines in appendix A to 49 CFR part 107, subpart D, which set forth policy and procedures for assessing civil penalties for violations of the Federal Hazardous Materials Transportation Law and the Hazardous Materials Regulations. This rule will add baseline penalty amounts for additional violations, adjust baseline penalty amounts for other violations, and state that RSPA now considers prior violations for 6 years rather than 5. In addition, this rule will correct a typographical error in the address to where the civil penalty payments must be sent and make editorial changes to procedural regulations for issuing administrative preemption determinations.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frazer C. Hilder, Attorney, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4400

RIN: 2137–AD71

2488. PIPELINE SAFETY: TECHNICAL REVISIONS TO AGENCY PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 190 60101 et seq

CFR Citation: 49 CFR 190

Legal Deadline: None

Abstract: This rulemaking action makes minor technical changes to internet and mailing addresses, docket procedures, titles, section numbers, and penalty amounts, among other things.

Timetable:

Action	Date	FR Cite
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA—02—14136.

Agency Contact: Lawrence White,
Attorney Advisor, Department of
Transportation, Research and Special
Programs Administration, 400 Seventh
Street, SW, Washington, DC 20590
Phone: 202 366—4400
Fax: 292 366—7041

RIN: 2137–AD77

2489. HAZARDOUS MATERIALS: ENHANCING SECURITY OF EXPLOSIVES TRANSPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 et seq

CFR Citation: 49 CFR 174; 49 CFR 175; 49 CFR 176; 49 CFR 177

Legal Deadline: None

Abstract: This rulemaking would incorporate requirements promulgated by the Transportation Security Administration concerning implementation of the Safe Explosives Act (title XI, subtitle C of the Homeland Security Act) into the Hazardous Materials Regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/05/03	68 FR 23881
Interim Final Rule Effective	05/05/03	
Interim Final Rule Comment Period End	06/04/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. HM—232C

URL For More Information: rules@rspa.dot.gov

Agency Contact: Susan Gorsky, Senior
Regulations Specialist, Department of
Transportation, Research and Special
Programs Administration, 400 Seventh
Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD79

2490. PIPELINE SAFETY: LIQUEFIED NATURAL GAS FACILITIES; AND UPDATING SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 et seq; 49 USC 5103

CFR Citation: 49 CFR 193

Legal Deadline: None

Abstract: This action will clarify the application of RSPA's safety standards for liquefied natural gas (LNG) facilities to operation, maintenance, and fire protection of certain existing facilities. In addition, it will revise standards what contain incorrect cross—references, make minor editorial changes to fire protection and training standards, require annual reviews of plans and procedures, and update references to National Fire Protection Association (NFPA) 59A, the LNG standard issued by the NFPA. These actions are needed to remove ambiguities, ensure that plans and procedures are up—to—date, and modernize references to NFPA 59A.

Timetable:

Action	Date	FR Cite
NPRM	05/01/03	68 FR 23272
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA—03—14556

Agency Contact: L. M. Furrow,
Regulations Manager, Department of
Transportation, Research and Special
Programs Administration, 400 Seventh
Street SW., Washington, DC 20590
Phone: 202 366—4559

RIN: 2137–AD80

2491. • HAZARDOUS MATERIALS REGULATIONS: MATTER INCORPORATED BY REFERENCE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 173; 49 CFR 175 to 176; 49 CFR 178 to 179

Legal Deadline: None

Abstract: The final rule creates a standard format for expressing matters incorporated by reference in the HMR. It also makes minor editorial corrections to improve the clarity of the HMR.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket Number RSPA—03—15574 (HM—189U)

URL For More Information: rules@rspa.dot.gov

URL For Public Comments: dms.dot.gov/

Agency Contact: Eileen Edmonson,
Transportation Regulations Specialist,
Department of Transportation, Research
and Special Programs Administration,
400 Seventh Street SW., Washington,
DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD83

2492. • HAZARDOUS MATERIALS: EDITORIAL CORRECTIONS AND MISCELLANEOUS CLARIFICATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 173; 49 CFR 175 to 176; 49 CFR 178 to 179

Legal Deadline: None

Abstract: This final rule corrects editorial errors and enhances the clarity of certain provisions in the hazardous materials regulations

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM—189V

Agency Contact: Darrell Relerford, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD85

2493. • HAZARDOUS MATERIALS: SUSPENSION OF APPROVAL PROGRAM FOR CERTAIN PERSONS PERFORMING VISUAL REQUALIFICATION OF DOT SPECIFICATION CYLINDERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 5107 to 5127

CFR Citation: 49 CFR 107; 49 CFR 180

Legal Deadline: None

Abstract: In this final rule, RSPA is suspending until further notice regulations to require certain persons who perform visual cylinder requalifications under 49 CFR 180.209(g) of the Hazardous Materials Regulations to obtain approval from RSPA. The requirements were adopted in a final rule published August 8, 2002 (67 FR 51625; RIN 2137—AD58). This action is necessary to address complexities concerning implementation of the approval requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM—220D; RSPA—01—10373.

Agency Contact: Sandra Webb, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—8553
Fax: 202 366—3012
Email: rules@rspa.dot.gov

RIN: 2137–AD86

Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)
Long-Term Actions

2494. +SAFEGUARDING FOOD FROM CONTAMINATION DURING TRANSPORTATION

Priority: Other Significant

Legal Authority: 49 USC 5701 to 5714

CFR Citation: 49 CFR 1

Legal Deadline: Final, Statutory, August 1, 1991, Final.

Abstract: The Sanitary Food Transportation Act of 1990 (49 USC 5701 et seq.) requires the Secretary of Transportation, in consultation with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency, to issue regulations concerning the transportation of food, food additives, drugs, devices, and cosmetics in motor and rail vehicles also used to transport nonfood products that could pose an unreasonable danger to human or animal health when so transported. This rulemaking will implement the statutory requirements. This rulemaking is significant because of substantial public and congressional interest.

Timetable:

Action	Date	FR Cite
ANPRM	02/20/91	56 FR 6934
ANPRM Comment Period Extended to 04/29/1991	03/21/91	56 FR 11982
NPRM	05/21/93	58 FR 29698
Notice of Public Hearing	05/21/93	58 FR 29698
NPRM Comment Period End	10/18/93	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: ANALYSIS: Regulatory Evaluation, 05/21/93, 58 FR 29698

Agency Contact: Helen L. Engrum, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AC00

2495. HAZARDOUS MATERIALS: CARGO TANK ROLLOVER REQUIREMENTS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 178

Legal Deadline: None

Abstract: The purpose of this advance notice of proposed rulemaking is to request comments concerning the need, if any, for amending the Hazardous Materials Regulations with regard to standards for cargo tank rollover protection devices on specification DOT 406, 407, and 412 cargo tank motor vehicles.

Timetable:

Action	Date	FR Cite
ANPRM	11/16/99	64 FR 62161
ANPRM Comment Period End	05/15/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: HM Docket: HM—213A; RSPA—99—5921. Based on comments received to the ANPRM,

DOT—RSPA **Long-Term Actions**

Federal Motor Carrier Safety Administration awarded a contract to review the UMTRI Study. The review is anticipated to be completed in 2004.

Agency Contact: Michael Stevens, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD34

2496. HAZARDOUS MATERIALS: HARMONIZATION WITH THE UNITED NATIONS RECOMMENDATIONS, INTERNATIONAL MARITIME DANGEROUS GOODS CODE, AND INTERNATIONAL CIVIL AVIATION ORGANIZATION TECHNICAL INSTRUCTIONS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: To amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171—180) to maintain alignment with international standards by incorporating numerous changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/03/02	67 FR 72034
Effective Date — Incorporation by Reference	01/08/03	
Final Rule — Incorporated by Reference	01/08/03	68 FR 1013
Final Rule	07/31/03	68 FR 44992
Final Action Effective	10/01/03	
Delayed Compliance	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket HM—215E.

Agency Contact: Joan McIntyre, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD66

Department of Transportation (DOT) **Completed Actions**
Research and Special Programs Administration (RSPA)

2497. PIPELINE SAFETY: FURTHER REGULATORY REVIEW; GAS PIPELINE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: This action would change miscellaneous gas pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The proposed changes result from RSPA's further review of the standards and changes recommended by the National Association of Pipeline Safety Representatives (NAPSR) in its November 1992 report on the standards and by the State Industry Regulatory Review Committee in its April 26, 1999 report. The proposed changes would reduce costs in the pipeline industry without compromising safety.

Timetable:

Action	Date	FR Cite
NPRM	11/13/02	67 FR 68815
Final Rule	09/15/03	68 FR 53895
Final Action Effective	10/15/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. RSPA—02—13208. Formerly Docket No. PS—124. The NAPSR report was published November 9, 1993, at 58 FR 59431, as part of the earlier review of the standards.

Early in 1992, RSPA began an extensive review of the Federal gas pipeline safety regulations (49 CFR 192) and invited the public to participate (57 FR 4745; February 7, 1992). RSPA published a notice of proposed rulemaking (NPRM), proposing changes to 38 regulations in part 192 (Notice 1: 57 FR 39572; August 31, 1992). In addition, the National Association of Pipeline Safety Representatives (NAPSR) reported on a separate but related review of part 192. Because the NAPSR report concerned a few of the regulations covered by the NPRM and had similar objectives, we published the report and requested public comment on its various recommended rule changes (Notice 2: 58 FR 59431; November 9, 1992) and later extended the comment period (Notice 3: 58 FR 68382; December 27, 1993). A final rule was published on June 6, 1996. However, not all the changes suggested by the commenters were incorporated in the final rule. A further review of the regulations in part 192, based on the record in this docket, was initiated in late 1996. This review identified proposals from the Gas Piping Technology Committee (GPTC), the ASME B31.8 (gas pipeline safety standards) committee, and NAPSR that have not yet been addressed.

In October 1997, NAPSR and the gas pipeline industry formed the State Industry Regulatory Review Committee (SIRRC) to discuss the regulatory proposals of NAPSR and other issues. On May 3, 1999, the SIRRC provided OPS a report on outcome of the discussion on 39 proposed changes in the gas pipeline safety regulations.

Most of the SIRRC recommendations will be addressed in a subsequent notice of proposed rulemaking. However, the welding recommendations are being adopted in the periodic update (Docket No. RSPA—99—6106 RIN 2137—AD35). And the corrosion control recommendations are being considered in a review of the gas pipeline corrosion regulations in RIN 2137—AD63.

Agency Contact: L.M. Furrow,
Manager, Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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Email: buck.furrow@rspa.dot.gov

RIN: 2137–AD01

2498. PIPELINE SAFETY: RECOMMENDATIONS TO CHANGE HAZARDOUS LIQUID PIPELINE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 60101 to 60128

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: In 1995, the National Association of Pipeline Safety Representatives (NAPSR) completed its review of the hazardous liquid pipeline safety regulations. NAPSR provided RSPA with 28 recommendations for changes to 49 CFR part 195, the hazardous liquid pipeline regulations. NAPSR's recommendations are aimed at making the regulations more explicit, understandable, and enforceable. This action would address the need to change part 195 as NAPSR recommended.

Timetable:

Action	Date	FR Cite
NPRM	09/06/02	67 FR 56970
Final Action	09/11/03	68 FR 53526
Final Action Effective	10/14/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. RSPA—97—2717.

Agency Contact: L. M. Furrow,
Regulations Manager, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—4559

RIN: 2137–AD10

2499. HAZARDOUS MATERIALS: AIR CARRIER EMERGENCY TELEPHONE NUMBER REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 175

Legal Deadline: None

Abstract: The rulemaking addresses safety recommendations from the National Transportation Safety Board to require that air carriers transporting hazardous materials have the means, 24 hours per day, to quickly retrieve and provide to emergency responders consolidated specific information about the identity and location of all hazardous materials on an aircraft in a timely manner.

Timetable:

Action	Date	FR Cite
ANPRM	08/15/00	65 FR 49777
ANPRM Comment Period End	11/13/00	
NPRM	02/13/02	67 FR 6669
NPRM Comment Period End	04/26/02	
Final Action	03/25/03	68 FR 14341
Final Action Effective	10/01/03	
Delayed Compliance Date	10/01/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. HM—206C; RSPA—00—7762.

Agency Contact: Gigi L. Corbin,
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Phone: 202 366—8553
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Email: rules@rspa.dot.gov

RIN: 2137–AD29

2500. PIPELINE SAFETY: PRODUCER—OPERATED OUTER CONTINENTAL SHELF GAS AND HAZARDOUS LIQUID PIPELINES THAT CROSS DIRECTLY INTO STATE WATERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 et seq

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: This proposed rule would implement a provision of the December 10, 1996, Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding Outer Continental Shelf (OCS) Pipelines. This rule would address producer—operated pipelines that cross into State waters without first connecting with a transporting operator's facility on the OCS. It is complementary to the Direct Final Rule that addressed OCS oil or gas pipelines located upstream of the points at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator (62 FR 61692, November 19, 1997; and 63 FR 126598, March 16, 1998). The proposed rule also would address the procedures by which producer and transportation pipeline operators would petition for permission to operate under either DOT or DOI regulations governing pipeline design, construction, operation, and maintenance according to the operational circumstances of their respective pipelines.

Timetable:

Action	Date	FR Cite
NPRM	04/05/02	67 FR 15355
Final Rule	08/05/03	68 FR 46109

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA—99—6132.

Agency Contact: L.E. Herrick,
Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366—5523

RIN: 2137–AD42

2501. HAZARDOUS MATERIALS: MISCELLANEOUS AMENDMENTS FOR UNLOADING IM PORTABLE TANKS ON A TRANSPORT VEHICLE — PETITION FOR RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 177

Legal Deadline: None

Abstract: RSPA is responding to petitions for rulemaking regarding the requirements applicable to the unloading of intermodal (IM) portable tanks while on a transport vehicle.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8220
NPRM Comment Period End	04/08/02	
Final Action	05/30/03	68 FR 32409

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM—218A; RSPA—01—10533.

Agency Contact: Joan McIntyre,
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DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD44

2502. +HAZARDOUS MATERIALS: SECURITY REQUIREMENTS FOR OFFERORS AND TRANSPORTERS OF HAZARDOUS MATERIALS

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107; 49 CFR 172; 49 CFR 173; 49 CFR 177; 49 CFR 397

Legal Deadline: None

Abstract: This final rule will establish certain requirements designed to enhance the security of hazardous materials in transportation.

Timetable:

Action	Date	FR Cite
NPRM	05/02/02	67 FR 22028
Comment Period Extended	05/23/02	67 FR 36138
NPRM Comment Period End	07/03/02	
Final Action	03/25/03	68 FR 14510
Final Action Effective	03/25/03	
Final Rule Information Collection Approval	05/28/03	68 FR 31627
Final Action Effective	06/20/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket HM—232; RSPA—02—12064.

Agency Contact: Susan Gorsky, Senior Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—8553
Email: rules@rspa.dot.gov

RIN: 2137–AD67

2503. HAZARDOUS MATERIALS: MISCELLANEOUS REVISIONS TO THE HAZARDOUS MATERIALS REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 173; 49 CFR 177 to 178

Legal Deadline: None

Abstract: This rule proposes to make miscellaneous amendments to the hazardous materials regulations based on petitions for rulemaking and RSPA's initiatives.

Timetable:

Action	Date	FR Cite
NPRM	01/21/03	68 FR 2734
NPRM Comment Period End	03/17/03	
Final Rule	08/14/03	68 FR 48562
Final Action Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM—218B; RSPA—02—13773

Agency Contact: Gigi L. Corbin, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366—8553
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RIN: 2137–AD73

2504. PIPELINE SAFETY: NATIONAL PIPELINE MAPPING SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60109, 60113, 60118; 49 CFR 1.53

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: RSPA aims to implement a requirement that all gas transmission and hazardous liquid operators submit pipeline geospatial data to the National Pipeline Mapping System (NPMS). This rule covers interstate and intrastate pipelines and offshore pipelines under the jurisdiction of the Research and Special Programs Administration. The proposed rule will address the procedures by which pipeline operators create, submit and maintain the data submitted to the NPMS.

This action is withdrawn because necessary action is covered in the Pipeline Safety Act of 2003 signed into law December 17, 2002.

Timetable:

Action	Date	FR Cite
Withdrawn	12/17/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA—97—2426.

Agency Contact: Steve Fischer, GIS Manager, Department of Transportation, Research and Special Programs Administration, Room 7128, 400 7Seventh Street SW., Washington, DC 20590
Phone: 202 366—4566
Email: steve.fischer@rspa.dot.gov

RIN: 2137–AD76

2505. +CARGO PREFERENCE REGULATIONS—CARRIAGE OF OCEANGOING CARGO GENERATED BY GOVERNMENT PROGRAMS

Priority: Other Significant

Legal Authority: 46 app USC 1101, 1114(b), 1122(d), 1241

CFR Citation: 46 CFR 381; 49 CFR 1.66

Legal Deadline: None

Abstract: This action would clarify the Maritime Administration's cargo preference regulations governing the carriage of oceangoing cargo generated by Government programs. The rulemaking will concern, among other issues: (1) incorporating into part 381 MARAD's existing rules on priority of service of various U.S.—flag services; (2) clarifying how shipper agencies should comply with the existing provisions of the regulations regarding geographic areas and booking cargo on U.S.—flag vessels before foreign—flag vessels; (3) redefining certain terms for clarity to bring them in line with commercial practices; and (4) other related issues. This rule is significant because of public interest.

Timetable:

Action	Date	FR Cite
ANPRM	01/28/99	64 FR 4382
ANPRM Comment Period End	03/29/99	
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas W. Harrelson, Director, Office of Cargo Preference, Room 8118, Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5515

RIN: 2133–AB37

2506. APPLICATION FEE FOR ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS

Priority: Substantive, Nonsignificant

Legal Authority: 46 app USC 1114(b); 49 USC 322; PL 105—383; 46 USC 12106 note; 49 CFR 1.66(c)

CFR Citation: 46 CFR 388

Legal Deadline: None

Abstract: Part 388 of 46 CFR prescribes regulations to waive the U.S.—build requirements of the Passenger Vessel Services Act and Section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with the appropriate endorsement for employment in the coastwise trade as passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. The Maritime Administration proposes to increase the application fee for administrative waiver of the coastwise trade laws from $300 to $500. The increased application fee would closer align the application fee with the actual cost of processing each waiver application.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Hokana, Department of Transportation, Maritime Administration, MAR—830 Room 7201, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—0760
Email: michael.hokana@marad.dot.gov

RIN: 2133–AB50

2507. ● +VESSEL DOCUMENTATION: LEASE FINANCING FOR VESSELS ENGAGED IN THE COASTWISE TRADE; SECOND RULEMAKING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 46 app USC 808

CFR Citation: 46 CFR 221

Legal Deadline: None

Abstract: This is a joint notice of proposed rulemaking by the Coast Guard and the Maritime Administration. The Coast Guard proposes to amend its regulations on documentation, under the lease—financing provisions, of vessels engaged in the coastwise trade. One proposal addresses the issue of whether we should prohibit or restrict the chartering back (whether by time charter, voyage charter, space charter, contract of affreightment, or other contract for the use of a vessel) of a lease—financed vessel to the parent of the vessel owner or to a subsidiary or affiliate of the parent. A second proposal would establish a limit on the length of time that a coastwise endorsement issued before the date of publication of this notice of proposed rulemaking would run. The final subject concerns the question of whether applications for an endorsement under the lease—financing provisions should be reviewed and approved by an independent third party with expertise in vessel chartering. Though these subjects were discussed in many of the comments received to the previous Coast Guard rulemaking on lease financing, we feel that we need additional public input specifically focused on these subjects and on our proposed changes. These proposals would amend the final rule (USCG—2001—8825) on vessel documentation under lease financing found elsewhere in this issue of the Federal Register.

The Maritime Administration (MARAD) proposes to amend its regulations to require MARAD's approval of all transfers of the use of a lease—financed vessel engaged in the coastwise trade back to the vessel's foreign owner, the parent of the owner, a subsidiary or affiliate of the parent, or an officer, director, or shareholder of one of them. In 1992, MARAD amended its regulations to grant general approval for time charters of U.S.—flag vessels to charterers that were not U.S. citizens (noncitizens) and to eliminate MARAD's review of these time charters. The lease—financing provisions potentially allowcitizen to exert additional control over a vessel operated in the coastwise trade by becoming the owner of the vessel and time chartering the vessel back to itself or to a related entity through an intermediate U.S. citizen bareboat charterer. MARAD's review of charter arrangements in the limited circumstances where the time charterer is related to the noncitizen vessel owner will ensure that U.S. citizens maintain control over vessels operating in the coastwise trade.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: John T. Marquez, Jr., Attorney Advisor, Division of Maritime

Assistance Programs, Room 7228, Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2133–AB51

Department of Transportation (DOT)
Maritime Administration (MARAD)

Final Rule Stage

2508. ADMINISTRATIVE WAIVERS OF THE COASTWISE TRADE LAWS FOR ELIGIBLE VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: 46 app USC 1114(b); PL 105—383; 46 USC 12106 note; 49 CFR 1.66

CFR Citation: 46 CFR 388

Legal Deadline: None

Abstract: This interim final rule will implement regulations to waive the U.S.—build requirements of the Passenger Vessel Services Act and Section 27 of the Merchant Marine Act, 1920, for eligible vessels to be documented with appropriate endorsement for employment in the coastwise trade as passenger vessels or uninspected passenger vessels authorized to carry no more than 12 passengers for hire. The Maritime Administration intends to publish the interim final rule to implement the changes of the Maritime Transportation Security Act of 2002. The legislative changes lift the sunset provision and require the Secretary of Transportation to revoke an endorsement that was obtained by fraud. The Secretary of Transportation has delegated to MARAD the authority to process applications for waivers of the coastwise laws if the waivers do not adversely affect U.S. vessel builders or U.S.—built vessel coastwise trade businesses.

This interim final rule also brings the application procedure into compliance with the Government Paperwork Elimination Act (GPEA). GPEA requires that by October 21, 2003, the government must provide "the option of electronic maintenance, submission, or disclosure of information when practicable as a substitute for paper." Therefore, we will provide the option of electronic filing of the application.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/30/03	68 FR 23084
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Hokana, Department of Transportation, Maritime Administration, MAR—830 Room 7201, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—0760
Email: michael.hokana@marad.dot.gov

RIN: 2133–AB49

2509. • TRADING RESTRICTIONS ON VESSELS TRANSFERRED TO A FOREIGN REGISTRY: AMENDMENT OF LIST OF PROHIBITED COUNTRIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 46 app USC 808, 839

CFR Citation: 46 CFR 221.15(c)(3); 46 CFR 221.13(a)(4)

Legal Deadline: None

Abstract: 46 CFR 221.15 requires the prior written approval of the Maritime Administrator to transfer a U.S.—flag vessel over 1,000 tons to a foreign registry. Without further approval, 46 CFR 221.15(c)(3)prohibits the operation of any such vessel from trading with the following countries set forth in 46 CFR 221.13(a)(4): an entity within the geographic area formerly known as the Union of Soviet Socialist Republics, Latvia, Lithuania, Estonia, Libya, Iraq, Bulgaria, Albania, Northern Korea, Laos, Cambodia, Mongolian Peoples Republic, Vietnam, and Cuba. Under the authority provided by 46 CFR 221.15(b)(1)(iii), the Maritime Administration (MARAD) incorporates the countries listed in 15 CFR part 740, Supplement 1, Country Group E. Country Group E has been changed to the following countries: Cuba, Iran, Iraq, North Korea, Libya, Sudan and Syria. The rule would implement 46 CFR 221.13(a)(4) to substitute the countries currently listed in Country Group E.

Timetable:

Action	Date	FR Cite
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mr. Len Sutter, Attorney—Advisor, Department of Transportation, Maritime Administration, 400 Seventh St., SW, Room 7228, Washington, DC 20590
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Fax: 202 366—7485
Email: len.sutter@marad.dot.gov

RIN: 2133–AB55

2510. • Sequence Number Intentionally Skipped

2511. REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS: INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTY

Priority: Substantive, Nonsignificant

Legal Authority: 46 app USC 802, 803, 808, 835, 839, 841a, 114(b), 1195; 46 USC 301, 313; 49 CFR 1.66

CFR Citation: 46 CFR 221

Legal Deadline: None

Abstract: The Maritime Administration (MARAD, we, us, or our) will propose regulations amending regulations at 46 CFR Part 221 to adjust our maximum civil monetary penalties or range of minimum and maximum civil penalties. We will do so pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

Timetable:

Action	Date	FR Cite
Final Action	06/04/03	68 FR 33405

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joe Macey, Attorney—Advisor, Department of Transportation, Maritime Administration, Room 7228, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366—5182
Email: joe.macey@marad.dot.gov

RIN: 2133–AB48

2512. • ELECTRONIC OPTIONS FOR TRANSMITTING CERTAIN INFORMATION COLLECTION RESPONSES TO MARAD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 44 USC 3504; 49 CFR 1.66

CFR Citation: 46 CFR 232; 46 CFR 281; 46 CFR 287; 46 CFR 295; 46 CFR 298; 46 CFR 310; 46 CFR 340; 46 CFR 349; 46 CFR 355; 46 CFR 380; 46 CFR 382; 46 CFR 387; 46 CFR 390; ...

Legal Deadline: None

Abstract: The Maritime Administration (MARAD, we, us, or our) is publishing this final rule to offer electronic submission options. MARAD will now accept electronic submissions of certain required information that we previously accepted only in paper form. This action is part of MARAD's implementation of the Government Paperwork Elimination Act (GPEA).

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/05/03	68 FR 62535
Interim Final Rule Effective	11/05/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Weaver, Director, Office of Management and Information Services, Department of Transportation, Maritime Administration, 400 Seventh Street SW, Room 7301, Washington, DC 20590
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RIN: 2133–AB56

[FR Doc. 03–29839 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XVI

Department of the Treasury

Semiannual Regulatory Agenda

DEPARTMENT OF THE TREASURY (TREAS)

DEPARTMENT OF THE TREASURY

31 CFR Subtitle A, Chs. I and II

Semiannual Agenda and Fiscal Year 2004 Regulatory Plan

AGENCY: Department of the Treasury.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice is given pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980) and Executive Order (E.O.) 12866 ("Regulatory Planning and Review," September 30, 1993), which require the publication by the Department of a semiannual agenda of regulations. E.O. 12866 also requires the publication by the Department of a regulatory plan for fiscal year 2004.

FOR FURTHER INFORMATION CONTACT: The Agency Contact identified in the item relating to that regulation.

SUPPLEMENTARY INFORMATION: On November 25, 2002, the President signed the Homeland Security Act of 2002 (the Act), establishing the Department of Homeland Security (DHS). The Act transferred the U.S. Customs Service from the Department of the Treasury to the DHS, where it is now known as the Bureau of Customs and Border Protection. Notwithstanding the transfer of the Customs Service to DHS, the Act provides that the Secretary of the Treasury retains sole legal authority over the customs revenue functions, and authorizes the Secretary to delegate any of this retained authority to the Secretary of Homeland Security. By Treasury Department Order No. 100-16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any such regulations concerning import quotas or trade bans; user fees; marking and labeling; copyright and trademark enforcement; and the completion of entry or substance of entry summary, including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements. Accordingly, these regulations are now listed in the semiannual regulatory agenda of the Departmental Offices of the Department of the Treasury.

The semiannual agenda and The Regulatory Plan of the Department of the Treasury conform to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

For this edition of Treasury's regulatory agenda, one regulation of the Alcohol and Tobacco Tax and Trade Bureau is included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. This entry in The Regulatory Plan is listed in the table of contents below and is denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Dated: October 28, 2003.

Richard S. Carro,

Senior Advisor to the General Counsel for Regulatory Affairs.

Departmental Offices—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2513	12 CFR 1805 Community Development Financial Institutions (CDFI) Program; Reporting Requirements	1505—AA93
2514	17 CFR 403.4 Amendments to the Government Securities Act Regulations: Customer Protection—Reserves and Custody of Securities	1505—AA94
2515	Amendments to the Government Securities Act Regulations: Exemption for Holdings Subject to Fiduciary Standards	1505—AB06
2516	Terrorism Risk Insurance Program; Initial Claims Procedure Requirements	1505—AB07
2517	Terrorism Risk Insurance Program; Litigation Management	1505—AB08
2518	Terrorism Risk Insurance Program; Additional Claims Issues	1505—AB09
2519	Textiles and Textile Products Subject to Textile Trade Agreements	1505—AB13
2520	Liquidation; Extension; Suspension	1505—AB14
2521	19 CFR 12 Detention, Seizure, and Forfeiture of "Bootleg" Sound Recording and Music Videos of Live Musical Performances	1505—AB15
2522	19 CFR 111 Remote Location Filing	1505—AB20
2523	Merchandise Processing Fees Eligible to be Claimed as Certain Types of Drawback Based on Substitution of Finished Petroleum Derivatives	1505—AB44

Departmental Offices—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2524	31 CFR 19 Common Rule Suspension and Debarment	1505—AA86
2525	31 CFR 501 Reporting and Procedures Regulations; Cuban Assets Control Regulations: Publication of Economic Sanctions Enforcement Guidelines	1505—AA95
2526	31 CFR 1.8 to 1.12 Disclosure of Records in Litigation	1505—AA97
2527	19 CFR 4 Harbor Maintenance Fee	1505—AB11

Departmental Offices—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2528	Donated Cargo Exemption From Harbor Maintenance Fee	1505—AB12
2529	19 CFR 181 North American Free Trade Agreement (NAFTA)—Implementation of Duty—Deferral Program Provisions	1505—AB17
2530	Country—of—Origin Marking	1505—AB21
2531	19 CFR 4 User and Navigation Fees; Other Reimbursable Charges	1505—AB24
2532	19 CFR 10 African Growth and Opportunity Act and Generalized System of Preferences	1505—AB26
2533	Expanded Weekly Entry Procedure for Foreign Trade Zones	1505—AB27
2534	19 CFR 10 United States—Caribbean Basin Trade Partnership Act and Caribbean Basin Initiative	1505—AB28
2535	19 CFR 24 Reimbursable Customs Inspectional Services—Increase in Hourly Rate Charge	1505—AB29
2536	19 CFR 12 Dog and Cat Protection Act	1505—AB31
2537	19 CFR 10 Prototypes Used Solely For Product Development, Testing, Evaluation, or Quality Control Purposes	1505—AB32
2538	19 CFR 10 Preferential Treatment of Brassieres Under the United States—Caribbean Basin Trade Partnership Act	1505—AB33
2539	19 CFR 141 Single Entry for Unassembled or Disassembled Entities Imported on Multiple Conveyances	1505—AB34
2540	19 CFR 10 Implementation of the Andean Trade Promotion and Drug Eradication Act	1505—AB37
2541	Trade Benefits Under the African Growth and Opportunity Act	1505—AB38
2542	19 CFR 24 Fees for Customs Processing at Express Courier Facilities	1505—AB39
2543	Trade Benefits Under the Caribbean Basin Economic Recovery Act	1505—AB40
2544	Tariff Treatment Related to Disassembly Operations Under the North American Free Trade Agreement (NAFTA)	1505—AB41
2545	Refund of Duties Paid on Imports of Certain Wool Products	1505—AB43

Departmental Offices—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2546	31 CFR ch II Possible Regulation of Access to Accounts at Financial Institutions Through Payment Service Providers	1505—AA74
2547	Financial Activities of Financial Subsidiaries	1505—AA80
2548	Financial Subsidiaries	1505—AA81
2549	12 CFR 1501.2 Secretary's Determination of Real Estate Brokerage	1505—AA84
2550	12 CFR 1501.2 Secretary's Determination of Other Activities Financial in Nature	1505—AA85
2551	31 CFR 5 Treasury Debt Collection	1505—AA90
2552	12 CFR 1806 Bank Enterprise Award (BEA) Program	1505—AA91
2553	12 CFR 1805 Community Development Financial Institutions (CDFI) Program	1505—AA92
2554	Terrorism Risk Insurance Program; Recoupments of Federal Share of Compensation for Insured Losses	1505—AB10
2555	19 CFR 142 Reconciliation	1505—AB16
2556	19 CFR 12 Entry of Softwood Lumber Shipments From Canada	1505—AB18
2557	Expanded Methods of Payment of Duties, Taxes, Interest, and Fees	1505—AB22
2558	Entry of Softwood Lumber Shipments From Canada	1505—AB23
2559	19 CFR 142 Requirements for Future Customs Transactions When Payment To Customs on Prior Transactions is Delinquent and/or Dishonored	1505—AB25

Departmental Offices—Completed Actions

Sequence Number	Title	Regulation Identification Number
2560	48 CFR ch 10 Department of the Treasury Acquisition Regulation	1505—AA89
2561	31 CFR 50 Terrorism Risk Insurance Program; Program Scope and Definitions	1505—AA96
2562	31 CFR 50 Terrorism Risk Insurance Program; Disclosures and Mandatory Availability Requirements	1505—AA98
2563	31 CFR 50 Terrorism Risk Insurance Program; State Residual Market Insurance Entities	1505—AA99
2564	Customs Entry Documentation Pursuant to Anticounterfeiting Consumer Protection Act	1505—AB19
2565	19 CFR 24 User Fees	1505—AB30
2566	Civil Fines For Importation of Merchandise Bearing a Counterfeit Mark	1505—AB35
2567	Manufacturing Substitution Drawback—Duty Apportionment	1505—AB36
2568	Preferential Treatment of Brassieres Under the Caribbean Basin Economic Recovery Act	1505—AB42
2569	Import Restrictions Imposed on Archaeological Material from Cambodia	1505—AB45

Departmental Offices—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2570	Extension of Emergency Import Restrictions Imposed on Ethnological Material from Cyprus	1505—AB46

Financial Crimes Enforcement Network—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2571	Customer Identification Programs for Pawn Brokers	1506—AA39

Financial Crimes Enforcement Network—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2572	31 CFR 103 Amendment to the Bank Secrecy Act Regulations—Delegation of Authority To Assess Civil Money Penalties on Depository Institutions	1506—AA08
2573	31 CFR 103.65 Amendments to the Bank Secrecy Act Regulations—Requirement That Financial Institutions Establish Anti—Money Laundering Programs	1506—AA28
2574	Customer Identification Programs for Travel Agents	1506—AA38
2575	Customer Identification Programs for Loan and Finance Companies	1506—AA40
2576	Customer Identification Programs for Sellers of Vehicles	1506—AA41

Financial Crimes Enforcement Network—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2577	31 CFR 103 Amendment to the Bank Secrecy Act Regulations Regarding Reporting of Cross—Border Transportation of Certain Monetary Instruments	1506—AA15
2578	31 CFR 103 Amendment to the Bank Secrecy Act Regulations—Exemptions From the Requirement To Report Transactions in Currency	1506—AA23
2579	31 CFR 103.30 Amendment to the Bank Secrecy Act Regulations—Requirement that Nonfinancial Trades or Businesses Report Certain Currency Transactions	1506—AA25
2580	31 CFR 103.175-103.178 Due Diligence Requirements for Correspondent Accounts and Private Banking Accounts	1506—AA29
2581	31 CFR 103.121 Customer Identification Programs for Banks, Savings Associations, and Credit Unions	1506—AA31
2582	31 CFR 103.16 Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations Requirement That Insurance Companies Report Suspicious Transactions	1506—AA36
2583	31 CFR 103.15 Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Transactions	1506—AA37
2584	31 CFR 103.184 Imposition of Special Measures Against the Country of Nauru	1506—AA43
2585	31 CFR 103.56 Financial Crimes Enforcement Network; Delegation of Enforcement Authority Regarding the Foreign Bank Account Report Requirements	1506—AA45
2586	Financial Crimes Enforcement; Amendments to the Bank Secrecy Act Regulations—Nomenclature Changes	1506—AA61

Financial Crimes Enforcement Network—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2587	31 CFR 103 Amendments to the Bank Secrecy Act Regulations—Special Reporting and Recordkeeping Requirements—Money Services Businesses (MSBs)	1506—AA19

Financial Crimes Enforcement Network—Completed Actions

Sequence Number	Title	Regulation Identification Number
2588	31 CFR 103.122 Customer Identification Program for Broker—Dealers	1506—AA32
2589	31 CFR 103.131 Customer Identification Program for Mutual Funds	1506—AA33
2590	31 CFR 103.11 Requirement That Futures Commission Merchants and Introducing Brokers in Commodities Report Suspicious Transactions	1506—AA44
2591	Financial Crimes Enforcement Network; Freedom of Information Act, Privacy Act of 1974—Implementation	1506—AA62

Financial Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2592	31 CFR 245 Claims on Account of Treasury Checks	1510—AA51
2593	31 CFR 206 Management of Federal Agency Receipts and Disbursements; Operation of the Cash Management Improvement Fund	1510—AA86
2594	31 CFR 215 Withholding of District of Columbia, State, City, and County Income, or Employment Taxes by Federal Agencies	1510—AA90

Financial Management Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2595	31 CFR 240 Indorsement and Payment of Checks Drawn on the U.S. Treasury	1510—AA45
2596	31 CFR 281 Foreign Exchange Operations	1510—AA48
2597	31 CFR 256 Payments Under Judgment and Private Relief Acts	1510—AA52
2598	31 CFR 285.5 Offset of Federal Payments (Other Than Tax Refund and Federal Benefit Payments) To Collect Past—Due, Legally Enforceable Nontax Debt	1510—AA65
2599	31 CFR 285.7 Salary Offset	1510—AA70
2600	31 CFR 285.8 Offset of Tax Refund Payment To Collect State Income Tax Obligations	1510—AA78
2601	31 CFR 203 Payment of Federal Taxes and the Treasury Tax and Loan Program	1510—AA79
2602	31 CFR 901.9 Federal Claims Collection Standard—Collection by Installments	1510—AA91
2603	Federal Government Participation in the Automated Clearing House (ACH)	1510—AA98

Financial Management Service—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2604	31 CFR 285.6 Offset of Federal Payments (Other Than Tax Refund and Federal Benefit Payments) To Collect Past—Due Debts Owed to States (Other Than Child Support)	1510—AA66
2605	31 CFR 285.14 Public Dissemination of Identity of Delinquent Debtors	1510—AA72
2606	31 CFR 223 Surety Bond Reimbursement Fund	1510—AA85
2607	Payment of Federal Taxes and the Treasury Tax and Loan Program	1510—AA96
2608	Federal Government Participation in the Automated Clearing House (ACH)	1510—AA97

Financial Management Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
2609	31 CFR 210 2003 Automated Clearing House (ACH) Rules	1510—AA89

Alcohol and Tobacco Tax and Trade Bureau—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2610	27 CFR 7 Revision of Brewery Regulations and Issuance of Regulations for Taverns on Brewery Premises (Brewpubs) **(Reg Plan Seq No. 99)**	1513—AA02
2611	27 CFR 4 Prohibition of Alcohol Beverage Containers and Standard of Fill for Distilled Spirits and Wine	1513—AA07
2612	27 CFR 270 Determination of Tax and Recordkeeping on Large Cigars	1513—AA16
2613	27 CFR 9 Petition To Establish the "Santa Barbara Highlands" Viticultural Area	1513—AA24
2614	27 CFR 44 Regulatory Changes From Customs Service Final Rule	1513—AA26
2615	27 CFR 40 Shipments of Tobacco Products or Cigarette Papers or Tubes Without Payment of Tax	1513—AA27
2616	27 CFR 9 Petition To Establish the "Trinity Lake" Viticultural Area	1513—AA29
2617	27 CFR 9 Petition To Establish "Eola Hills" as a New American Viticultural Area	1513—AA41
2618	27 CFR 4 Proposed Addition of New Grape Variety Names for American Wines	1513—AA42
2619	27 CFR 40 Marks, Labels, Notices and Bonds for, and Removal of, Tobacco Products, and Cigarette Papers and Tubes	1513—AA49
2620	27 CFR 9 Petition To Establish "Santa Maria Bench" as a New American Viticultural Area	1513—AA51
2621	27 CFR 40 In—Transit Stops of Tobacco Products, and Cigarette Papers and Tubes Without Payment of Tax	1513—AA52
2622	27 CFR 9 Petition To Establish "Snake River Valley" as a New Viticultural Area	1513—AA53
2623	27 CFR 9 Petition To Expand the Livermore Valley Viticultural Area	1513—AA54
2624	27 CFR 9 San Francisco Bay and Central Coast Viticultural Areas—Boundary Realignment/Expansion	1513—AA55
2625	27 CFR 9 Petition To Establish "Chehalem Mountains" as a New American Viticultural Area	1513—AA57
2626	27 CFR 9 Petition To Establish "Ribbon Ridge" as a New American Viticultural Area	1513—AA58
2627	27 CFR 9 Petition To Establish "Yamhill—Carlton District" as a New American Viticultural Area	1513—AA59
2628	Petition To Establish the "Fort Ross Seaview" Viticultural Area	1513—AA64
2629	Petition To Establish the "Alexander Mountain" Viticultural Area	1513—AA65
2630	27 CFR 9 Petition To Establish "Grand Lake O' the Cherokees" as a New American Viticultural Area	1513—AA66
2631	Petition No. 2 To Expand the Russian River Valley Viticultural Area	1513—AA67
2632	Petition To Establish the "Salado Creek" Viticultural Area	1513—AA69
2633	Petition To Establish the "Shawnee Hills" Viticultural Area	1513—AA70
2634	Proposed Amended Boundaries for the Santa Lucia Highlands and the Arroyo Seco Viticultural Area	1513—AA72
2635	Petition To Establish "Southern Oregon" as a Viticultural Area	1513—AA75
2636	Petition To Establish "Texoma" as a Viticultural Area	1513—AA77
2637	Evidence of Exportation for Distilled Spirits; Use of Alternative Documentation	1513—AA78
2638	Petition To Establish the "High Valley" Viticultural Area	1513—AA79

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Alcohol and Tobacco Tax and Trade Bureau—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2639	Exportation of Liquors: Recodification of Regulations: Administrative Changes Due to the Homeland Security Act of 2002	1513—AA76
2640	27 CFR 275 Implementation of Public Law 105—33, Section 9302, Requiring the Qualification of Tobacco Product Importers and Miscellaneous Technical Amendments	1513—AA10
2641	27 CFR 7 Flavored Malt Beverages and Related Proposals	1513—AA12
2642	27 CFR 275 Tobacco Products and Cigarette Papers and Tubes Shipped from Puerto Rico to the United States	1513—AA17
2643	27 CFR 270 Elimination of Statistical Classes for Large Cigars	1513—AA18
2644	27 CFR 41 Importation of Tobacco Products and Cigarette Papers and Tubes; Recodification of Regulations	1513—AA20
2645	27 CFR 24 Production of Dried Fruit and Honey Wines	1513—AA21
2646	27 CFR 9 Proposed "San Bernabe" Viticultural Area	1513—AA28
2647	27 CFR 4 Proposal To Recognize Synonyms for Petite Sirah and Zinfandel Grape Varieties	1513—AA32
2648	27 CFR 9 Petition To Establish "Red Hills Lake County" American Viticultural Area	1513—AA33
2649	27 CFR 9 Petition To Establish "Bennett Valley" as an American Viticultural Area	1513—AA36
2650	27 CFR 9 Petition for the Establishment of "Red Hill" as an American Viticultural Area	1513—AA39
2651	27 CFR 9 Petition To Change the Temecula Viticultural Area's Name to Temecula Valley	1513—AA40
2652	27 CFR 9 Petition To Establish "Alexandria Lakes" as a New American Viticultural Area	1513—AA45
2653	27 CFR 4 Organic Claims in Labeling and Advertising of Alcohol Beverages	1513—AA46
2654	27 CFR 9 Petition To Establish "Oak Knoll District" as a New American Viticultural Area	1513—AA48
2655	27 CFR 9 Petition To Establish "Dundee Hills" as a New American Viticultural Area	1513—AA50
2656	27 CFR 7 Labeling and Advertising of Malt Beverages	1513—AA60

Alcohol and Tobacco Tax and Trade Bureau—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2657	Electronic Signatures; Electronic Submission of Forms to TTB	1513—AA61
2658	Petition To Establish "McMinnville" as an American Viticultural Area in Oregon	1513—AA63
2659	Petition No. 1 To Expand the Russian River Valley Viticultural Area	1513—AA68
2660	Administrative Changes to Alcohol, Tobacco, and Firearms Regulations Due to the Homeland Security Act of 2002	1513—AA80

Alcohol and Tobacco Tax and Trade Bureau—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2661	27 CFR 252 Exportation of Liquors	1513—AA00
2662	27 CFR 7 Alcoholic Content Labeling for Malt Beverages	1513—AA01
2663	27 CFR 24.278 Implementation of Wine Credit Provisions of Public Law 104—188	1513—AA05
2664	27 CFR 24.66 Implementation of Public Law 105—34, Section 1416, Relating to Refund of Tax for Domestic Wine Returned to Bond Regardless of Merchantability (Taxpayer Relief Act of 1997)	1513—AA06
2665	27 CFR 4 Amended Standard of Identity for Sherry	1513—AA08
2666	Sake Regulations	1513—AA11
2667	27 CFR 275 Prohibited Marks on Packages of Tobacco Products and Cigarette Papers and Tubes Imported or Brought into the United States	1513—AA14
2668	27 CFR 4.32(d) Removal of Requirement To Disclose Saccharin in the Labeling of Wine, Distilled Spirits, and Malt Beverages	1513—AA15
2669	27 CFR 31 Liquor Dealers; Recodification of Regulations	1513—AA19
2670	27 CFR 19, subpart W Proposed Revisions to the Distilled Spirits Plant Regulations	1513—AA23
2671	27 CFR 9 Petition To Establish "Seneca Lake" as an American Viticultural Area	1513—AA34
2672	27 CFR 17 Tax—Paid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use	1513—AA37
2673	27 CFR 9 Petition To Establish "Columbia Gorge" as a New American Viticultural Area	1513—AA43
2674	31 CFR 8 Eliminate Requirement To Enroll To Practice Before the Bureau	1513—AA62

Alcohol and Tobacco Tax and Trade Bureau—Completed Actions

Sequence Number	Title	Regulation Identification Number
2675	27 CFR 4 Amelioration of Fruit and Agricultural Wines; Technical Amendments	1513—AA30
2676	27 CFR 45 Removal of Tobacco Products and Cigarette Papers and Tubes Without Payment of Tax for Use in the United States	1513—AA38
2677	27 CFR 9 Petition To Establish "Upper Arroyo Grande" as a New American Viticultural Area	1513—AA56

Comptroller of the Currency—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2678	Interagency Proposal To Consider Alternative Forms of Privacy Notices Under the Gramm—Leach—Bliley Act	1557—AC80

Comptroller of the Currency—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2679	12 CFR 19 Maintenance of Records	1557—AB99
2680	12 CFR 30 Interagency Guidelines Establishing Standards for Safety and Soundness	1557—AC08
2681	12 CFR 5 Rules, Policies, and Procedures for Corporate Activities	1557—AC11
2682	Risk—Based Capital; Capital Adequacy Guidelines; Capital Maintenance: Asset—Backed Commercial Paper Programs and Early Amortization Provisions	1557—AC77

Comptroller of the Currency—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2683	Rules, Policies, and Procedures for Corporate Activities; Licensing Procedures	1557—AC79

Comptroller of the Currency—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2684	12 CFR 3 Capital Rules	1557—AB14
2685	12 CFR 5 Rules, Policies, and Procedures for Corporate Activities and Bank Activities and Operations	1557—AB97
2686	12 CFR 28 International Banking Activities	1557—AC04
2687	12 CFR 11 Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules	1557—AC12
2688	12 CFR 5 Rules, Policies, and Procedures for Corporate Activities (Electronic Filings)	1557—AC13
2689	12 CFR 7 Bank Activities and Operations; Real Estate Lending and Appraisals	1557—AC73
2690	Electronic Filing and Disclosure of Beneficial Ownership Reports	1557—AC75
2691	Risk—Based Capital; Capital Adequacy Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset—Backed Commercial Paper Program Assets	1557—AC76
2692	Bank Activities and Operations	1557—AC78

Comptroller of the Currency—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2693	Rules and Procedures for Claims Against OCC—Appointed Receiverships for Uninsured Financial Institutions	1557—AB59
2694	Fair Credit Reporting Regulations	1557—AB78
2695	Recordkeeping Requirements for Bank Exceptions From Securities Broker or Dealer Registration	1557—AB93
2696	12 CFR 25 Community Reinvestment Act Regulation	1557—AB98

Comptroller of the Currency—Completed Actions

Sequence Number	Title	Regulation Identification Number
2697	31 CFR 103 Customer Identification Programs for Banks, Savings Associations, and Certain Nonfederally Regulated Banks	1557—AC06
2698	12 CFR 24 Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments (12 CFR Part 24)	1557—AC09
2699	12 CFR 19 Removal, Suspension, and Debarment of Independent Accountants From Performing Audit Services	1557—AC10

Internal Revenue Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2700	Hand Carrying Returns (Temporary)	1545—BB45
2701	Corporate Reorganizations; Continuity—Transfers of Assets or Stock Following a Reorganization (Temporary)	1545—BB81
2702	Guidance Regarding Mark—to—Market Valuation for Certain Securities	1545—BB90
2703	New Markets Tax Credit Amendments (Temporary)	1545—BC02
2704	Guidance Regarding Application of Section 265(a)(2) and 246A in Transactions Involving Related Parties, Pass—Through Entities, or Other Intermediaries	1545—BC24
2705	Substitute for Return (SFR) and Automated Substitute for Return (ASFR) (Temporary)	1545—BC46
2706	Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group (Temporary)	1545—BC77

Internal Revenue Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2707	Foreign Insurance Companies	1545—AL82
2708	Outbound Transfers of Property to Foreign Corporations	1545—AM97
2709	Foreign Insurance Company—Domestic Election	1545—AO25
2710	Fringe Benefit Sourcing Under Section 861	1545—AO72
2711	Taxation of Global Trading	1545—AP01
2712	Information Reporting and Record Maintenance	1545—AP10
2713	Integrated Financial Transaction	1545—AR20
2714	Source Rules for Payments Made Pursuant to Certain Swap Arrangements	1545—AU89
2715	Foreign Tax Credit Anti—Abuse Regulation	1545—AV97
2716	Transportation of Persons and Property by Air	1545—AW19
2717	Capital Gain Guidance Relating to CRTs	1545—AW35
2718	Constructive Sales of Appreciated Financial Positions	1545—AW97
2719	Rules for Sourcing Certain Transportation Income, Space, or Ocean Activity Income, and Related Foreign Base Company Shipping Income	1545—AX02
2720	Definition of Accounting Method	1545—AX21
2721	Awarding of Costs and Certain Fees	1545—AX46
2722	Highly Compensated Employee	1545—AX48
2723	Modification to Section 367(a) Stock Transfer Regulations	1545—AX77
2724	Clarification of Foreign—Based Company Sales Income Rules	1545—AX91
2725	Like—Kind Exchanges	1545—AX95
2726	Guidance on Changes to the Laws for Corporate Estimated Taxes	1545—AY22
2727	Withholding Tax on Foreign Partners' Share of Effectively Connected Income	1545—AY28
2728	Taxable Years of Controlled Foreign Corporations (CFCs) and Foreign Personal Holding Companies (FPHCs)	1545—AY30
2729	Allocation of Income and Deductions from Intangibles	1545—AY38
2730	Dollar—Value LIFO	1545—AY39
2731	Previously Taxed Earnings and Profits Under Subpart F	1545—AY54
2732	Disclosure of Returns and Return Information in Judicial and Administrative Tax Proceedings	1545—AY89
2733	Payments For Interest in Partnership	1545—AY90
2734	Allocation and Apportionment of Interest Expense; Tax Book Value Disparities	1545—BA02
2735	Transactions Involving Obligations of Consolidated Group Members	1545—BA11
2736	Deductibility of Employer Contributions for Deferred Compensation	1545—BA13
2737	Continuation of a Consolidated Group	1545—BA14
2738	Property Exempt from Levy	1545—BA22
2739	Gasoline Tax Claims	1545—BA27
2740	Suspension of Statutes of Limitation in John Doe and Third—Party Summons Disputes, and Expansion of Taxpayers' Rights To Receive Notice and Seek Judicial Review of Third Party Summonses	1545—BA31
2741	Income From Sources Within Specified Possession	1545—BA37
2742	Treatment of Certain Obligation—Shifting Transactions	1545—BA41
2743	Multifamily Housing Bonds	1545—BA45
2744	Modification of Check the Box Regulations (Temporary)	1545—BA58
2745	Modification of Check the Box Regulations	1545—BA59
2746	Abatement of Interest on Large Erroneous Refunds	1545—BA61
2747	Allocation and Apportionment Rules: Guidance on Selected Issues	1545—BA64
2748	Provisions Regarding Cross—Border Transactions	1545—BA65
2749	Circular 230—Tax Shelter Amendments	1545—BA70
2750	Circular 230—Phase 2 Nonshelter Revisions	1545—BA72
2751	Allocation of New Markets Tax Credit	1545—BA84
2752	Transfer of Notes or Stock To Provide for Satisfaction of Contested Liabilities	1545—BA90
2753	Guidance To Facilitate Electronic Tax Administration	1545—BA96
2754	Timely Mailing Treatment	1545—BA99
2755	Hand Carry Returns	1545—BB00
2756	Allocation of Foreign Tax Credits Among Partners	1545—BB11
2757	Distributions of Property	1545—BB12
2758	Cost Sharing	1545—BB26
2759	Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporation	1545—BB28
2760	Amending the Low—Income Housing Tax Credit Program	1545—BB37
2761	Administrative Simplification of 481(a) Adjustment Periods in Various Regulations	1545—BB47
2762	Election Out Generation—Skipping Transfer Tax (GST) Deemed Allocations	1545—BB54
2763	Substitute Dividend Payments in Securities Lending and Similar Transactions	1545—BB56

Internal Revenue Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2764	Deemed IRAs in Qualified Retirement Plans	1545—BB58
2765	Deemed IRAs in Qualified Retirement Plans (Temporary)	1545—BB59
2766	Information Reporting Relating to Taxable Stock Transactions	1545—BB60
2767	Loss Limitation Rules—G U Repeal	1545—BB61
2768	Contributions To Purchase Certain Retirement Annuities or Custodial Accounts Under Section 403(b)	1545—BB64
2769	Installment Obligations	1545—BB65
2770	Liquidation of an Interest	1545—BB71
2771	Qualified Interests	1545—BB72
2772	Collected Excise Taxes; Duties of Collector	1545—BB75
2773	Collected Excise Taxes; Duties of Collector (Temporary)	1545—BB76
2774	Application of Nondiscrimination Cross—Testing Rules to Cash Balance Plans	1545—BB79
2775	Corporate Reorganizations; Continuity—Transfers of Assets or Stock Following a Reorganization	1545—BB80
2776	Notional Principal Contracts; Contingent Nonperiodic Payments	1545—BB82
2777	REMIC Residuals—Timing of Income for Foreign Holders	1545—BB84
2778	Transferor or Transferee as a Predecessor or Successor	1545—BB85
2779	Dependent Care Credit	1545—BB86
2780	Partnership Equity for Services	1545—BB92
2781	Determination of Single—Sum Distributions From Cash Balance Plans	1545—BB93
2782	Accrual for Certain REMIC Regular Interests	1545—BB94
2783	New Markets Tax Credit Amendments	1545—BC03
2784	Tax Exempt Bond Partnership Reporting Regulation	1545—BC04
2785	Determination of Basis of a Single Class of Stock or Securities Received in Exchange for a Single Class of Stock or Securities in a Tax—Free Exchanges	1545—BC05
2786	General Allocation and Accounting Regulations	1545—BC07
2787	Entry of Taxable Fuel	1545—BC08
2788	Timing and Modification of the Section 59(e) Election	1545—BC13
2789	Guidance Necessary To Facilitate Business Electronic Filing	1545—BC15
2790	Changes in Computing Depreciation	1545—BC18
2791	Value of Life Insurance When Distributed From a Qualified Retirement Plan	1545—BC20
2792	Utility Allowance Regulation Update	1545—BC22
2793	Special Consolidated Return Rules for Interest Expense Disallowed Under Section 265(a)(2)	1545—BC23
2794	EGTRRA Changes to Protected Retirement Benefits	1545—BC26
2795	Single Determination of Tax for Multiple Pools of Assets of an S Corporation	1545—BC29
2796	Deemed Corporate Election for Electing S Corporations	1545—BC32
2797	Substitute for Return (SFR) and Automated Substitute for Return (ASFR)	1545—BC45
2798	Additional Guidance Regarding Mark—to—Market Accounting for Traders in Securities and/or Commodities, Including Foreign Currency Instruments	1545—BC48
2799	Qualified Severance Regulations	1545—BC50
2800	Stewardship Expenses	1545—BC52
2801	Removal of Section 6152 Regulations	1545—BC53
2802	Guarantee Fees Under Section 143(g)	1545—BC59
2803	Predeceased Parent Rule	1545—BC60
2804	Qualified Zone Academy Bonds	1545—BC61
2805	Guidance Necessary To Facilitate Business Electronic Filing (Temporary)	1545—BC62
2806	Guidance Under Section 707 Regarding Disguised Sales	1545—BC63
2807	Partnership Transactions Involving Partner's Stock	1545—BC64
2808	Partnerships and Deemed Dispositions of Unrealized Receivables and Inventory Items	1545—BC65
2809	LIFO Recapture Under Section 1362(d)	1545—BC66
2810	Qualified Zone Academy Bonds (Temporary)	1545—BC68
2811	Section 179 Elections	1545—BC69
2812	Real Estate Mortgage Investment Conduit (REMIC) Tetra Rules	1545—BC71
2813	Collection after Assessment	1545—BC72
2814	Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group	1545—BC74
2815	Confidential Transactions	1545—BC75
2816	Confidential Transactions (Temporary)	1545—BC76

Internal Revenue Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2817	Foreign Corporations	1545—AK74
2818	Nonrecognition of Corporate Distributions and Reorganizations Under the Foreign Investment in Real Property Tax Act	1545—AK79
2819	Computation of a Branch's Taxable Income; Taxation of Exchange Gain or Loss on Branch Remittances	1545—AM12
2820	Earnings Stripping Payments	1545—AO24
2821	Registration Required Obligations	1545—AP33
2822	Interest—Free Adjustments	1545—AQ61
2823	Definition of "Highly Compensated Employee"	1545—AQ74
2824	Escrow Funds and Other Similar Funds	1545—AR82
2825	Mark—to—Market Upon Disposition	1545—AS85
2826	Straddles——Miscellaneous Issues	1545—AT46
2827	Recomputation of Life Insurance Reserves	1545—AU49
2828	Definition of Private Activity Bond—Refunding Regulations	1545—AU98
2829	Return of Levied Property in Certain Cases	1545—AV01
2830	Electronic Transmission of Withholding Certificates	1545—AV27
2831	Interest on Education Loans	1545—AW01
2832	Mark—to—Market Accounting for Dealers in Commodities and Traders in Securities and Commodities	1545—AW06
2833	Intercompany Obligations	1545—AW30
2834	Reporting of Payments to Attorney	1545—AW72
2835	Qualified Offers	1545—AW99
2836	Delay Rental Payments	1545—AX06
2837	Guidance on Cost Recovery in the Entertainment Industry	1545—AX12
2838	Cash or Deferred Arrangements	1545—AX26
2839	Cash or Deferred Arrangements (Temporary)	1545—AX43
2840	Stock Transfer Rules—Carryover of Earnings and Taxes	1545—AX65
2841	Allocation and Apportionment of Interest Expense and Certain Other Expenses	1545—AX72
2842	HIPAA Portability	1545—AX84
2843	Application of Separate Foreign Tax Credit Limitations	1545—AX88
2844	Capitalization of Interest and Carrying Charges Properly Allocable to Straddles	1545—AX92
2845	Assumption of Partnership Liabilities	1545—AX93
2846	Definition of Income	1545—AX96
2847	Electing Mark—to—Market for Marketable Stock of a PFIC	1545—AY17
2848	Authorized Placement Agency	1545—AY18
2849	Information Reporting on Cancellation of Indebtedness	1545—AY35
2850	Election—Asset Acquisitions of Insurance Companies	1545—AY49
2851	Electronic Furnishing of Payee Statements	1545—AY50
2852	Tax Treatment of Cafeteria Plans	1545—AY67
2853	Low—Income Taxpayer Clinics	1545—AY84
2854	New Market Tax Credit	1545—AY87
2855	Definition of Agent and Safeguard Certifications	1545—AY94
2856	Tax Shelter Penalties	1545—AY97
2857	Expenditures in Connection with the Creation of Intangible Assets	1545—BA00
2858	Mergers Involving Disregarded Entities	1545—BA06
2859	Reductions of Accruals and Allocations Because of Increased Age	1545—BA10
2860	Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options	1545—BA26
2861	Amendment to the Definition of Refunding	1545—BA46
2862	Loss Limitation Rules	1545—BA52
2863	Noncompensatory Partnership Options	1545—BA53
2864	Required Distributions from Retirement Plans	1545—BA60
2865	Carryback of Consolidated Net Operating Losses to Separate Return Years	1545—BA73
2866	Statutory Options	1545—BA75
2867	Disclosure of Relative Value of Distribution Forms	1545—BA78
2868	Partnership Transactions Involving Long—Term Contracts	1545—BA81
2869	Reporting Requirements for Widely Held Fixed Investment Trusts	1545—BA83
2870	Guidance on Reporting of Deposit Interest Paid to Nonresident Aliens	1545—BA86
2871	Aggregate Computation and Allocation of Research Credit	1545—BA88
2872	Reduced Exclusion of Gain From Sale or Exchange of Principal Residence	1545—BB01
2873	Change in Use; Accelerated Cost Recovery System	1545—BB05

Internal Revenue Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2874	Capital Account Bookup	1545—BB10
2875	Structured Settlement Factoring Transactions	1545—BB14
2876	Testimony Authorizations and Requests for IRS Information	1545—BB15
2877	Toll Telephone Service—Definition	1545—BB18
2878	Authorization for IRS To Charge Fees For Copying Exempt Organization Returns	1545—BB21
2879	Extension of Time for Filing Returns	1545—BB29
2880	Investment Adjustment Rules and Waiver of Loss Carryovers From SRLY Years—Amended	1545—BB38
2881	Amendment to Section 6724 Relating to Failure To File Correct Information Returns	1545—BB41
2882	Limitation on Use of Nonaccrual Experience Method of Accounting	1545—BB43
2883	Advance Rentals	1545—BB44
2884	Special Depreciation Allowance	1545—BB57
2885	Use of Government Depositaries in Connection With Tax Under the Federal Unemployment Tax Act	1545—BB66
2886	Availability of Section 338(h)(10) Election in Multistep Transactions	1545—BB68
2887	Real Estate Mortgage Investment Conduits (REMICs); Application of Section 446 With Respect to Inducement Fees	1545—BB73
2888	Guidance on Life Insurance and Annuity Contracts	1545—BB77
2889	Assumption of Partnership Liabilities (Temporary)	1545—BB83
2890	Distributions of Loss Corporation Stock by Qualified Plans	1545—BC00
2891	Transfers of Nonstatutory Stock Options to Related Persons	1545—BC06
2892	Notarization Requirement for Statements of Purchase	1545—BC11
2893	Contingent at Closing Escrows	1545—BC16
2894	Changes in Computing Depreciation (Temporary)	1545—BC17
2895	Like—Kind Exchanges Under Section 168 (Temporary)	1545—BC27
2896	Preservation of Stock Basis	1545—BC28
2897	Elimination of Forms of Distribution in Defined Contribution Plans	1545—BC35
2898	Depreciation of Vans and Light Trucks	1545—BC36
2899	Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group	1545—BC38
2900	Remedial Actions for Tax Exempt Bonds	1545—BC40

Internal Revenue Service—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
2901	Income Tax—Taxpayer's Obligation To File a Notice of Redetermination of Foreign Tax and Civil Penalties for Failure To File	1545—AC09
2902	Income Tax—Definition of Qualified Possession Source Investment Income for Purposes of Puerto Rico and Possession Tax Credit	1545—AC10
2903	FSC Transfer Pricing Rules, Distributions, Dividends Received, Deduction, and Other Special Rules for FSC	1545—AI16
2904	Information From Passport and Immigration Applicants	1545—AJ93
2905	Income of Foreign Governments and International Organizations	1545—AL93
2906	Clarification of Treatment of Separate Limitation Losses	1545—AM11
2907	Earnings and Profits of Controlled Foreign Corporations	1545—AM90
2908	Caribbean Basin Investments	1545—AM91
2909	Consolidated Alternative Minimum Tax	1545—AN73
2910	Conforming Taxable Years of CFCs and FPHCs	1545—AO22
2911	Charitable Contributions	1545—AP30
2912	Guidance in Notice 89—37, Which Treats the Receipt of a Corporate Partner's Stock by the Corporate Partner as a Circumvention of General Utilities Repeal	1545—AP52
2913	Use of GAAP Earnings as E&P of Foreign Corporations	1545—AQ55
2914	The Treatment of Accelerated Death Benefits	1545—AQ70
2915	Foreign Trusts Regulations	1545—AR25
2916	Treatment of Dual Consolidated Losses	1545—AR26
2917	Allocation of Accrued Benefits Between Employer and Employee Contributions	1545—AT82
2918	Foreign Corporations Regulations	1545—AT96
2919	Application of Grantor Trust Rules to Nonexempt Employees' Trust	1545—AU29
2920	Application of Attribution Rules to Foreign Trusts	1545—AU91
2921	Financial Asset Securitization Investment Trust (FASIT) Start—up; Operational and Transitional Rules	1545—AU94

Internal Revenue Service—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2922	Agreements for Payment of Tax Liabilities in Installments	1545—AU97
2923	Substantiating Travel Expense Deductions for Members of Congress	1545—AV55
2924	Stocks and Securities Safe Harbor Exception	1545—AW13
2925	Contingent Debt Instrument	1545—AW33
2926	Source of Income From Certain Space and Ocean Activities and for Communications Income	1545—AW50
2927	Highway Vehicle—Definition	1545—AX10
2928	Guaranteed Investment Contracts	1545—AX22
2929	Inspection of Written Determinations	1545—AX40
2930	Definition of Passive Foreign Investment Company Under Section 1297	1545—AX78
2931	Active Conduct of an Insurance Business Under PFIC Rules	1545—AY20
2932	HIPAA General Nondiscrimination	1545—AY32
2933	HIPAA Nondiscrimination Exception for Church Plans	1545—AY33
2934	HIPAA Nondiscrimination Exception for Bona Fide Wellness Programs	1545—AY34
2935	Special Rules Relating to Transfers of Intangibles to Foreign Corporations	1545—AY41
2936	Recognition of Gain on Certain Distributions of Stock or Securities in Connection with an Acquisition	1545—AY42
2937	Special Rules for S Corporations	1545—AY44
2938	Normal Retirement Age for Pension Plans	1545—AY61
2939	Liabilities Assumed in Certain Corporate Transactions	1545—AY74
2940	Normalization	1545—AY75
2941	Research Credit III	1545—AY82
2942	Transitional Relief for Qualified Intermediaries	1545—AY92
2943	Consolidated Returns; Nonapplicability of Section 357(c)	1545—BA09
2944	Procurement/Purchasing Card Reporting	1545—BA17
2945	Interest Other Than That of a Creditor	1545—BA69
2946	Redemptions Treated as Dividends	1545—BA80
2947	Carryover and Stacking Rule Amendment	1545—BA85
2948	Designated IRS Officer or Employee	1545—BA89
2949	Tax Book Value Disparities	1545—BA92
2950	Earnings and Profits Attribution Principles	1545—BA93
2951	Communications Excise Tax; Taxable Communication Services	1545—BB04
2952	Investigative Disclosures	1545—BB16
2953	Mixed Use Output Facilities	1545—BB23
2954	Duplicative Tax Benefits	1545—BB25
2955	Accrual Rules for Creditable Foreign Taxes and Guidance on Change in Taxable Year	1545—BB27
2956	Treatment of Services Under Section 482	1545—BB31
2957	Preparer Penalties—Signature Requirement and Copies of Returns	1545—BB34
2958	Safe Harbor Leasing Second Interest Capitalization	1545—BB62
2959	Safe Harbor Leasing Second Interest Capitalization (Temporary)	1545—BB63
2960	Use of Government Depositaries in Connection With Tax Under the Federal Unemployment Tax Act (Temporary)	1545—BB67
2961	Statutory Options (Temporary)	1545—BB69
2962	Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Upon Filing of Notice of Lien	1545—BB96
2963	Miscellaneous Changes to Collection Due Process Procedures Relating to Hearings Before Levy	1545—BB97
2964	Computation of Tax Attributes	1545—BB98
2965	Prohibited Allocation of Securities in an S Corporation	1545—BC34
2966	Guidance on PFIC Purging Elections	1545—BC37
2967	Guidance on PFIC Purging Elections (Temporary)	1545—BC49
2968	Coordination of United States and Certain Possessions Income Taxes	1545—BC54
2969	Suspension of Running of Period of Limitation During a Proceeding To Enforce or Quash a Designated or Related Summons	1545—BC55
2970	Guidance Under Section 2053 Regarding Post—Death Events	1545—BC56
2971	Section 1045 Application to Partnerships	1545—BC67

Internal Revenue Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
2972	Golden Parachute Payments	1545—AH49
2973	Railroad Unemployment Repayment Tax	1545—AN40
2974	Treatment of Obligation—Shifting Transactions	1545—AU19
2975	Guidance Under Subpart F Relating to Certain Hybrid Transactions	1545—AW63
2976	Allocation of Research Credit	1545—AX05
2977	Straddles—One Side Larger Than the Other	1545—AX16
2978	Allocating Basis Adjustments	1545—AX18
2979	Special Rules for Retroactive Payments Under Section 417(a)(7)(A) for Qualified Retirement Plans	1545—AX34
2980	Changes in Entity Classification: Special Rule for Certain Foreign Eligible Entities	1545—AX39
2981	Compensation Deferred Under Eligible Section 457(b) Plans	1545—AX52
2982	Definition of "Private Activity Bonds" Allocation and Accounting Regulations	1545—AX55
2983	Disclosure of Return and Return Information to Designee of Taxpayer	1545—AX85
2984	Investment Type Property (Prepayment)	1545—AY12
2985	Use of Taxpayer Identifying Numbers	1545—AY24
2986	Dual Consolidated Loss Recapture Events	1545—AY27
2987	Modified Guaranteed Contracts	1545—AY48
2988	Qualified S Election for Testamentary Trusts	1545—AY76
2989	Treatment of Community Income for Certain Individuals Not Filing Joint Returns	1545—AY83
2990	Charitable Lead Interest	1545—AY86
2991	Net Gift Treatment	1545—AY91
2992	Receipt of Multiple Notices with Respect to Incorrect Taxpayer Identification Numbers	1545—BA18
2993	Catch—Up Contributions for Individuals Aged 50 or Over	1545—BA24
2994	Amendments to Rules for Allocation of Basis	1545—BA32
2995	Earned Income Credit	1545—BA34
2996	Split—Dollar Life Insurance	1545—BA44
2997	Treatment of Funded Welfare Benefit Plans	1545—BA47
2998	User Fees for Offers To Compromise	1545—BA54
2999	Compensatory Stock Options Under Section 482	1545—BA57
3000	Controlled Foreign Partnership Reporting	1545—BA77
3001	Foreign Corporations—Treatment of Distributions or Liquidations	1545—BA79
3002	Earnings Calculation for Returned or Recharacterized Contributions	1545—BA82
3003	Transfer of Notes or Stock To Provide for Satisfaction of Contested Liabilities (Temporary)	1545—BA91
3004	Generation—Skipping Transfer Tax Relief Provisions	1545—BA94
3005	Employment Taxes—Failure—to—Deposit Penalty	1545—BA97
3006	Depreciation of Vans and Light Trucks (Temporary)	1545—BB06
3007	Disclosure of Reportable Transactions	1545—BB07
3008	Registration of Reportable Transactions	1545—BB08
3009	List Maintenance Requirement for Reportable Transactions	1545—BB09
3010	Investigative Disclosures (Temporary)	1545—BB17
3011	Substantiation of Incidental Expenses	1545—BB20
3012	Authorization for IRS To Charge Fees For Copying Exempt Organization Returns (Temporary)	1545—BB22
3013	Exclusions from Gross Income of Foreign Corporations	1545—BB30
3014	Fractional Parts of a Dollar	1545—BB35
3015	Investment Adjustment Rules and Waiver of Loss Carryovers From SRLY Years—Amended (Temporary)	1545—BB39
3016	Fractional Parts of a Dollar (Temporary)	1545—BB42
3017	Update to Section 6081 Regulations (Temporary)	1545—BB55
3018	Real Estate Mortgage Investment Conduits; Application of Section 446 With Respect to Inducement Fees (Temporary)	1545—BB74
3019	Availability of Section 338(h)(10) Election in Multistep Transactions (Temporary)	1545—BB78
3020	Guidance Under Section 368 Regarding Restricted Stock	1545—BB87
3021	Disclosure of Return Information to the Department of Agriculture (Temporary)	1545—BB91
3022	Distributions of Loss Corporation Stock by Qualified Plans (Temporary)	1545—BB99
3023	Tax Exempt Bond Partnership Reporting Regulation (Temporary)	1545—BC01
3024	Other Assessable Penalties with Respect to the Preparation of Income Tax Returns for Other Persons	1545—BC12
3025	Special Depreciation Allowance (Temporary)	1545—BC19
3026	Transfers of Compensatory Options to Related Persons	1545—BC21
3027	Limitation on Use of the Nonaccrual Experience Method of Accounting	1545—BC31
3028	Prohibited Allocation of Securities in an S Corporation (Temporary)	1545—BC33
3029	Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group (Temporary)	1545—BC39

Internal Revenue Service—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3030	Reduction of Tax Attributes Due to Discharge of Indebtedness (Temporary)	1545—BC47

Office of Thrift Supervision—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3031	Risk—Based Capital Guidelines; Implementation of New Basel Capital Accord	1550—AB56

Office of Thrift Supervision—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3032	Risk—Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Asset—Backed Commercial Paper Programs and Early Amortization Provisions	1550—AB81

Office of Thrift Supervision—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3033	Risk—Based Capital Guidelines; Capital Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset—Backed Commercial Paper Program Assets	1550—AB79

Office of Thrift Supervision—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3034	12 CFR 571 Fair Credit Reporting	1550—AB33
3035	12 CFR 563e Community Reinvestment Act	1550—AB48

Office of Thrift Supervision—Completed Actions

Sequence Number	Title	Regulation Identification Number
3036	12 CFR 567 Capital Rules	1550—AB11
3037	12 CFR 545 Directors and Officers	1550—AB19
3038	12 CFR 513 Removal, Suspension, and Debarment of Accountants from Performing Audit Services	1550—AB53
3039	12 CFR 545 Federal Savings Associations—Operations, Agency Offices; Fiduciary Powers of Savings Associations	1550—AB80
3040	Customer Identification Programs for Banks, Savings Associations, and Certain Nonfederally Regulated Banks	1550—AB82
3041	12 CFR 506 Savings Associations—Operations; Transactions with Affiliates	1550—AB84
3042	Regulatory Reporting Standards: Qualifications for Independent Public Accounts Performing Audit Services for Voluntary Audit Filers	1550—AB85

2513. COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS (CDFI) PROGRAM; REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4703; 12 USC 4703 note; 12 USC 4717; 31 USC 321

CFR Citation: 12 CFR 1805

Legal Deadline: None

Abstract: We are proposing changes to require entities certified by us as Community Development Financial Institutions (CDFIs) to submit reports that we may from time to time require to enable us to better: 1) evaluate the impact of the CDFI Program; and 2) monitor such entities' continued eligibility as certified CDFIs. We are also proposing to give the Fund the discretion to decertify a certified CDFI that does not timely submit such required reports.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
NPRM Comment Period End	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey C. Berg, Legal Counsel, Department of the Treasury, Suite 200 South, Community Development Financial Institutions Fund, 601 13th Street NW., Washington, DC 20005
Phone: 202 622—8530
Fax: 202 622—8244
Email: bergj@cdfi.treas.gov

RIN: 1505–AA93

2514. AMENDMENTS TO THE GOVERNMENT SECURITIES ACT REGULATIONS: CUSTOMER PROTECTION—RESERVES AND CUSTODY OF SECURITIES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78o—5(b)(1)(A); 15 USC 78o—5(b)(4)

CFR Citation: 17 CFR 403.4

Legal Deadline: None

Abstract: The proposal would allow for the expansion of the categories of collateral registered government securities brokers and dealers may pledge when borrowing fully paid or excess margin securities from customers. This proposal is a conforming technical amendment to the Government Securities Act regulations. It is based on the Securities and Exchange Commission's revisions to its customer protection requirements for brokers and dealers subject to the requirements of 17 CFR 240.15c3—3(b)(3).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lori Santamorena, Executive Director, Department of the Treasury, Room 315, Room 315, Government Securities Regulations Staff, 999 E Street NW., Washington, DC 20239
Phone: 202 691—3632
Fax: 202 219—3639
Email: govsecreg@bpd.treas.gov

Kevin Hawkins, Government Securities Specialist, Department of the Treasury, Room 315, Room 315, Government Securities Regulations Staff, 999 E Street NW., Washington, DC 20239
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RIN: 1505–AA94

2515. • AMENDMENTS TO THE GOVERNMENT SECURITIES ACT REGULATIONS: EXEMPTION FOR HOLDINGS SUBJECT TO FIDUCIARY STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78o—5(b)(1)(A); 15 USC 78o—5(b)(4); 15 USC 78o—5(b)(5); 31 USC 3121; 31 USC 9110; . . .

CFR Citation: 17 CFR 450.3

Legal Deadline: None

Abstract: The proposed rule would amend the Government Securities Act regulations applicable to custodial holdings of Government securities by depository institutions. Specifically, this proposal would expand the eligibility for the exemption for holdings subject to fiduciary standards at 17 CFR part 450.3 to include savings associations examined by the Office of Thrift Supervision. The exemption is currently available to depository institutions that meet its conditions regulated by the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deidere R. Brewer, Government Securities Specialist, Department of the Treasury, Room 315, Government Securities Regulations Staff, 999 E Street NW., Washington, DC 20239
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RIN: 1505–AB06

2516. • TERRORISM RISK INSURANCE PROGRAM; INITIAL CLAIMS PROCEDURE REQUIREMENTS

Priority: Other Significant

Legal Authority: Terrorism Risk Insurance Act, title 1, PL 107—297, 116 Stat 2322; 15 USC 6701 note; 5 USC 301

CFR Citation: 31 CFR 50

Legal Deadline: None

Abstract: As the statutorily authorized administrator of the Terrorism Risk

Insurance Program, Treasury is issuing proposed and final regulations to implement the Program. Under the Terrorism Risk Insurance Act, title I, Public Law 107—297, and the Program, the Federal Government shares the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This rule incorporates and clarifies statutory conditions for filing claims for payment of the Federal share of compensation for insured losses under the Program. The rule addresses requirements for loss certification, specifies information needed in conjunction with insurer submissions for Federal compensation, offers guidance on the statutory definition of what is payable as the federal share of insured losses, and sets forth requirements for investigating and auditing claims under the Program. The rule generally builds upon previous interim guidances and final rules issued by Treasury, particularly in areas involving definitions and disclosure requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Howard Leikin, Senior Insurance Advisor, Department of the Treasury, Office of Financial Institutions, Terrorism Risk Insurance Program, 1500 Pennsylvania Avenue NW., Washington, DC 20220
Phone: 202 622—6770

RIN: 1505–AB07

2517. • TERRORISM RISK INSURANCE PROGRAM; LITIGATION MANAGEMENT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Terrorism Risk Insurance Act, title 1, PL 107—297, 116 Stat 2322; 15 USC 6701 note; 5 USC 301

CFR Citation: 31 CFR 50

Legal Deadline: None

Abstract: As the statutorily authorized administrator of the Terrorism Risk Insurance Program, Treasury is issuing proposed and final regulations to implement the Program. Under the Terrorism Risk Insurance Act, title I, Public Law 107—297, and the Program, the Federal Government shares the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This rule implements the litigation management provisions of section 107 of the Act as well as other litigation relating to the Program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Howard Leikin, Senior Insurance Advisor, Department of the Treasury, Office of Financial Institutions, Terrorism Risk Insurance Program, 1500 Pennsylvania Avenue NW., Washington, DC 20220
Phone: 202 622—6770

RIN: 1505–AB08

2518. • TERRORISM RISK INSURANCE PROGRAM; ADDITIONAL CLAIMS ISSUES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Terrorism Risk Insurance Act, title 1, PL 107—297, 116 Stat 2322; 15 USC 6701 note; 5 USC 301

CFR Citation: 31 CFR 50

Legal Deadline: None

Abstract: As the statutorily authorized administrator of the Terrorism Risk Insurance Program, Treasury is issuing proposed and final regulations to implement the Program. Under the Terrorism Risk Insurance Act, title I, Public Law 107—297, and the Program, the Federal Government shares the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This rule provides requirements for claims procedures related to the later stages of claims administration and final netting of losses as well as secondary issues such as procedures in case of insurer insolvency.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	02/00/04	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Howard Leikin, Senior Insurance Advisor, Department of the Treasury, Office of Financial Institutions, Terrorism Risk Insurance Program, 1500 Pennsylvania Avenue NW., Washington, DC 20220
Phone: 202 622—6770

RIN: 1505–AB09

2519. TEXTILES AND TEXTILE PRODUCTS SUBJECT TO TEXTILE TRADE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 7 USC 1854

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to the country of origin standards and documentary requirements applicable to textiles and textile products subject to section 204 of the Agricultural Act of 1956. Amendment involves simplification of regulatory text, has no substantive effect on the U.S. textile import program as administered by the Bureau of Customs and Border Protection, and is intended to ensure that the wording of the Customs Regulations is consistent with the product coverage of section 204.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AB54

Agency Contact: Dick Crichton, Operations Officer, Department of the Treasury, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229

Phone: 202 927—0162

RIN: 1505–AB13

2520. LIQUIDATION; EXTENSION; SUSPENSION

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1500; 19 USC 1504; 19 USC 1624

CFR Citation: 19 CFR 159

Legal Deadline: None

Abstract: Document would amend the Customs Regulations to implement amendments to section 504 of the Tariff Act of 1930, as amended, which pertains to limitations on the liquidation of entries that were contained in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. Amendments would allow the reconciliation of entries to be treated as if they were entry summaries, subject to normal liquidation requirements; authorize the electronic transmittal of notices of extension and suspension of liquidation; extend the time period in which the Bureau of Customs and Border Protection must liquidate a suspended entry after the suspension is removed; remove the application of the four—year limitation to suspended entries; and provide that the agency must also inform sureties when an entry is suspended or extended.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AB66

Agency Contact: William G. Rosoff, Chief, Duty Refund and Determination Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW.,
Washington, DC 20229
Phone: 202 572—8807

RIN: 1505–AB14

2521. DETENTION, SEIZURE, AND FORFEITURE OF "BOOTLEG" SOUND RECORDING AND MUSIC VIDEOS OF LIVE MUSICAL PERFORMANCES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 17 USC 602; 17 USC 603; 31 USC 9701; 19 USC 66; 19 USC 1202; 19 USC 58a; 19 USC 58b; 19 USC 58c; 19 USC 66; 17 USC 101; 17 USC 601

CFR Citation: 19 CFR 12; 19 CFR 24; 19 CFR 133

Legal Deadline: None

Abstract: Amendment to provide for the detention, seizure, and forfeiture of unauthorized (bootleg) copies of sound recordings and music videos of live musical performances recorded outside of and imported into the United States, as provided by section 513(a) of the Uruguay Round Agreements Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AB74

Agency Contact: George F. McCray, Chief, Intellectual Property Rights Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW.,
Washington, DC 20229
Phone: 202 572—8709

RIN: 1505–AB15

2522. REMOTE LOCATION FILING

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1484; 19 USC 1624; 19 USC 1641

CFR Citation: 19 CFR 111; 19 CFR 113; 19 CFR 141; 19 CFR 143

Legal Deadline: None

Abstract: Amendment to allow entry filers to electronically file entries of merchandise with the Bureau of Customs and Border Protection from locations within the United States other than at the port of arrival of the merchandise or the location of examination of the merchandise.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC23

Agency Contact: Lisa Santana, Import Specialist, Department of the Treasury, Office of Field Operations, 1300 Pennsylvania Avenue NW.,
Washington, DC 20229
Phone: 202 927—4342

RIN: 1505–AB20

2523. • MERCHANDISE PROCESSING FEES ELIGIBLE TO BE CLAIMED AS CERTAIN TYPES OF DRAWBACK BASED ON SUBSTITUTION OF FINISHED PETROLEUM DERIVATIVES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1313; 19 USC 1624

CFR Citation: 19 CFR 191

Legal Deadline: None

Abstract: Amendment to provide that merchandise processing fees are eligible to be claimed, in limited circumstances, as drawback based on substitution of finished petroleum derivatives. Amendment is consistent with a court decision in which merchandise processing fees were found to be eligible to be claimed as unused merchandise drawback. As drawback based on substitution of finished petroleum derivatives is, in limited circumstances, treated in the same manner as unused merchandise drawback, the amendment reflects that merchandise processing fees are also eligible to be claimed as drawback in these circumstances.

Timetable:

Action	Date	FR Cite
NPRM	10/02/03	68 FR 56804
NPRM Comment Period End	12/01/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD32

Agency Contact: William G. Rosoff, Chief, Duty Refund and Determination

Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572—8807

RIN: 1505–AB44

Department of the Treasury (TREAS)
Departmental Offices (DO)
Final Rule Stage

2524. COMMON RULE SUSPENSION AND DEBARMENT

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 701

CFR Citation: 31 CFR 19; 31 CFR 20

Legal Deadline: None

Abstract: The common rule provides uniform requirements for debarment and suspension by executive branch agencies to protect assistance, loans, benefits and other nonprocurement activities from waste, fraud, abuse and poor performance, similar to the system used for Federal procurement activities under subpart 9.4 of the Federal Acquisition Regulation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/26/03	68 FR 66605
Interim Final Rule Comment Period End	01/26/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Lee,
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Washington, DC 20220
Phone: 202 622—0808
Fax: 202 622—2318

RIN: 1505–AA86

2525. REPORTING AND PROCEDURES REGULATIONS; CUBAN ASSETS CONTROL REGULATIONS: PUBLICATION OF ECONOMIC SANCTIONS ENFORCEMENT GUIDELINES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 1901 to 1908; 22 USC 287c; 31 USC 321(b); 50 USC 1701 to 1706; 50 USC app 1—44

CFR Citation: 31 CFR 501; 31 CFR 515

Legal Deadline: None

Abstract: The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury is publishing for public comment an updated version of its internal Economic Sanctions Enforcement Guidelines. These Guidelines are being published as separate appendices to two parts of the Code of Federal Regulations: 1) general provisions are being published as an appendix to the Reporting and Procedures Regulations, 31 CFR part 501; and 2) specific provisions focusing on Cuba are being published as an appendix to the Cuban Assets Control Regulations, 31 CFR part 515.

Timetable:

Action	Date	FR Cite
NPRM	01/29/03	68 FR 4422
NPRM Comment Period End	03/31/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chief of Records,
Department of the Treasury, Annex—
2nd Floor, Office of Foreign Assets
Control, 1500 Pensylvania Avenue
NW., Washington, DC 20220
Phone: 202 622—2530
Fax: 202 622—1657

RIN: 1505–AA95

2526. DISCLOSURE OF RECORDS IN LITIGATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 31 USC 321

CFR Citation: 31 CFR 1.8 to 1.12

Legal Deadline: None

Abstract: This interim final rule amends Treasury's regulations that govern access to information and records in connection with legal proceedings, including litigation in which neither the United States nor the Department of the Treasury is a party. The amendments elaborate on the procedures used when determining whether employees in the Departmental Offices will be permitted to testify or provide records relating to their official duties when they are directly subpoenaed or otherwise requested to testify. The amendments also specify and clarify the criteria that Treasury officials use when deciding whether to allow an employee to testify or provide records.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/03	68 FR 12584
Interim Final Rule Effective	03/17/03	
Interim Final Rule Comment Period End	04/16/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 1505–AA97

2527. HARBOR MAINTENANCE FEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; PL 99—662; 19 USC 66; 19 USC 81a to 81u; 19 USC 623; 19 USC 1202; 19 USC 1624; 31 USC 9701; PL 99—272; PL 99—509

CFR Citation: 19 CFR 4; 19 CFR 24; 19 CFR 146; 19 CFR 178

Legal Deadline: Final, Statutory, April 1, 1987, Final.

Abstract: Amendments to the Customs Regulations to implement provisions of the Water Resources Development Act of 1986, which authorizes the Bureau of Customs and Border Protection to assess a harbor maintenance fee of 0.125 percent (.00125) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port unless specifically exempted from the fee. Proceeds of the fee are deposited in a trust fund for the U.S. Army Corps of Engineers to use for the improvement and maintenance of U.S. ports and harbors.

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	
Interim Final Rule Effective	03/01/87	
Interim Final Rule	03/30/87	52 FR 10198
Interim Final Rule Comment Period End	05/29/87	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AA57

Agency Contact: Deborah Thompson, Accountant, Department of the Treasury, Accounts Receivable Branch, Office of Finance, Indianapolis, IN 46278
Phone: 317 298—1200

RIN: 1505–AB11

2528. DONATED CARGO EXEMPTION FROM HARBOR MAINTENANCE FEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a; 19 USC 66; 19 USC 1202; 19 USC 1624; 31 USC 9701; 19 USC 58b; 19 USC 58c

CFR Citation: 19 CFR 24

Legal Deadline: None

Abstract: Amends interim Customs Regulations relating to harbor maintenance fees. The interim regulations established a shipping fee for transporting cargo on specified U.S. waterways. The Act was amended to include an exemption for nonprofit organizations or cooperatives, which own or finance cargo determined by the Bureau of Customs and Border Protection to be intended for use in humanitarian or development assistance overseas. This amendment sets forth the applicability and terms of this exemption.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/08/92	57 FR 607
Interim Final Rule Effective	01/08/92	
Interim Final Rule Comment Period End	03/09/92	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AA87

Agency Contact: Deborah Thompson, Accountant, Department of the Treasury, Accounts Receivable Branch, Office of Finance, Indianapolis, IN 46278
Phone: 317 298—1200

RIN: 1505–AB12

2529. NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)—IMPLEMENTATION OF DUTY—DEFERRAL PROGRAM PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1481; 19 USC 1484; 19 USC 1202; 19 USC 1315; 19 USC 1624; 19 USC 3314

CFR Citation: 19 CFR 181; 19 CFR 113; 19 CFR 141; 19 CFR 144; 19 CFR 10

Legal Deadline: Final, Statutory, January 1, 1996, Final.

Abstract: Document amends regulations to establish procedural and other requirements that apply to the collection, waiver, and reduction of duties under the duty—deferral program provisions of the North American Free Trade Agreement (NAFTA). The document prescribes the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty—deferral program, either for exportation to another NAFTA country or for entry into a duty—deferral program of another NAFTA country, the procedures that must be followed in filing a claim for a waiver or reduction of duties collected on such merchandise, and the procedures for finalization of duty collections and duty waiver or reduction claims.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	01/01/96	
Interim Final Rule	01/30/96	61 FR 2908
Interim Final Rule Comment Period End	04/01/96	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AB87

Agency Contact: Shawn Filion, Commercial Program Specialist, Department of the Treasury, Office of Field Operations, North Star Commercial, P.O. Box 400, Buffalo, NY 14225
Phone: 716 551—3053

RIN: 1505–AB17

2530. COUNTRY—OF—ORIGIN MARKING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1304; 19 USC 1624

CFR Citation: 19 CFR 134

Legal Deadline: None

Abstract: Amendments clarify the country—of—origin marking rules set forth in part 134 of the Customs Regulations. Amendments promote the concept of informed compliance by the trade and proper field administration of the statutory requirement.

Timetable:

Action	Date	FR Cite
NPRM	01/26/00	65 FR 4193
NPRM Comment Period End	04/26/00	65 FR 17473
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC32

Agency Contact: Monika Rice Brenner, Chief, Special Classification and Marking Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1505–AB21

2531. USER AND NAVIGATION FEES; OTHER REIMBURSABLE CHARGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a to 58c; 19 USC 66; 19 USC 1202;

19 USC 1431; 19 USC 1433; 19 USC 1434; 19 USC 1505; 19 USC 1624; 31 USC 9701; 46 USC 2110 to 2112

CFR Citation: 19 CFR 4; 19 CFR 24; 19 CFR 101

Legal Deadline: None

Abstract: Amendment regarding the proper assessment of user and navigation fees, as well as other reimbursement charges for customs services performed in connection with, among other things, the processing of vehicles, vessels, aircraft, and merchandise arriving in the United States. The purpose of the amendment is to conform the regulations with the intent of the customs user fee statute and to reflect existing operational policy and administrative practice in this area.

Timetable:

Action	Date	FR Cite
NPRM	05/01/01	66 FR 21705
NPRM Comment Period End	07/02/01	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC63

Agency Contact: Kimberly Nott, Operations Officer, Department of the Treasury, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927—0042

RIN: 1505–AB24

2532. AFRICAN GROWTH AND OPPORTUNITY ACT AND GENERALIZED SYSTEM OF PREFERENCES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2461; 19 USC 3314; 19 USC 3721

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2000, Final.

Abstract: Amendments to implement the trade benefit provisions for sub—Saharan Africa contained in title I of the Trade and Development Act of 2000. The trade benefits under title I, also referred to as the African Growth and Opportunity Act, apply to sub—Saharan African countries designated by the President and involve the extension of duty—free treatment under the Generalized System of Preferences (GSP) to nonimport—sensitive, nontextile articles normally excluded from GSP duty—free treatment, and the entry of specific textile and apparel articles free of duty and free of any quantitative limits.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	
Interim Final Rule	10/05/00	65 FR 59668
Interim Final Rule Comment Period End	12/04/00	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC72

Agency Contact: Leon Hayward, Operations Officer, Department of the Treasury, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1505–AB26

2533. EXPANDED WEEKLY ENTRY PROCEDURE FOR FOREIGN TRADE ZONES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 81a to 81u; 19 USC 1202; 19 USC 1484i; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 146

Legal Deadline: None

Abstract: Amendment in conformance with the Trade and Development Act of 2000 to expand the weekly entry procedure for foreign trade zones to include merchandise involved in activities other than exclusively assembly—line production operations. Under the expanded weekly procedure, weekly entries covering estimated removals of merchandise from a foreign trade zone for any seven—day period and the associated entry summaries will have to be filed exclusively through the Automated Broker Interface, with duties, fees, and taxes being scheduled for payment through the Automated Clearinghouse.

Timetable:

Action	Date	FR Cite
NPRM	07/25/02	67 FR 48594
NPRM Comment Period End	09/23/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC74

Agency Contact: Debbie Scott, Chief, Entry and Drawback Management, Department of the Treasury, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927—1962

RIN: 1505–AB27

2534. UNITED STATES—CARIBBEAN BASIN TRADE PARTNERSHIP ACT AND CARIBBEAN BASIN INITIATIVE

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2701; 19 USC 3314

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2000, Final.

Abstract: Amendments to implement the trade benefit provisions for Caribbean Basin countries contained in title II of the Trade and Development Act of 2000. The trade benefits under title II, also referred to as the United States—Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to nontextile articles that are excluded from duty—free treatment under the Caribbean Basin Initiative program.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	65 FR 59650
Interim Final Rule	10/05/00	65 FR 59650
Interim Final Rule Comment Period End	12/04/00	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC76

Agency Contact: Craig Walker, Senior Attorney—Advisor, Department of the Treasury, Special Classification and Marking Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1505–AB28

2535. REIMBURSABLE CUSTOMS INSPECTIONAL SERVICES—INCREASE IN HOURLY RATE CHARGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 6103; 19 USC 58a to 58c; 19 USC 66; 19 USC 261; 19 USC 267; 19 USC 1202; 19 USC 1450 to 1452; 19 USC 1456; 19 USC 1505; 19 USC 1557; 19 USC 1562; 19 USC 1624; 26 USC 4461; 26 USC 4462; 31 USC 9701; 46 USC 2110 to 2112

CFR Citation: 19 CFR 24; 19 CFR 101

Legal Deadline: None

Abstract: Amendment to increase the rate of charge for reimbursable customs inspectional services.

Timetable:

Action	Date	FR Cite
NPRM	02/01/01	66 FR 8554
NPRM Comment Period End	04/02/01	
Second NPRM	10/09/02	67 FR 62920
Second NPRM Comment Period End	12/09/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC77

Agency Contact: Dennis Lomax, Accountant, Department of the Treasury, Accounting Services Division, Office of Finance, Indianapolis, IN 46278
Phone: 317 298—1200

RIN: 1505–AB29

2536. DOG AND CAT PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1308; 19 USC 1592; 19 USC 1593a; 19 USC 1624

CFR Citation: 19 CFR 12; 19 CFR 113; 19 CFR 151; 19 CFR 162

Legal Deadline: Final, Statutory, August 9, 2001, Final.

Abstract: Amendment to implement certain provisions of the Dog and Cat Protection Act of 2000. The Dog and Cat Protection Act of 2000 prohibits the importation of any products containing dog or cat fur, and provides for civil and criminal penalties for violations of the Act. Amendment sets forth the prohibitions on dog and cat fur importations and the penalties for violations. Amendment also implements the provision of the Act pertaining to customs certification process of commercial laboratories, both domestic and foreign, that can determine if articles intended to be imported into the United States contain dog or cat fur.

Timetable:

Action	Date	FR Cite
NPRM	08/10/01	66 FR 42163
NPRM Comment Period End	10/09/01	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC87

Agency Contact: Jeremy Baskin, Attorney—Advisor, Penalties Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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Phone: 202 927—1249

Renee Stevens, Science Officer, Department of the Treasury, Office of Laboratories and Scientific Services, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1505–AB31

2537. PROTOTYPES USED SOLELY FOR PRODUCT DEVELOPMENT, TESTING, EVALUATION, OR QUALITY CONTROL PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; PL 106—476

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, September 9, 2001, Final.

Abstract: Amendment to establish rules and procedures under the Product Development and Testing Act of 2000 (PDTA). The purpose of the PDTA is to promote product development and testing in the United States by allowing the duty—free entry of articles, commonly referred to as prototypes, that are to be used exclusively in product development, testing, evaluation, and quality control. Amendments set forth the procedures for both the identification of those prototypes properly entitled to duty—free entry, as well as the permissible sale of such prototypes, following use in the United States, as scrap, waste, or for recycling.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10636
NPRM Comment Period End	04/08/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC88

Agency Contact: Lisa Santana, Import Specialist, Department of the Treasury, Office of Field Operations, 1300 Pennsylvania Avenue NW.,
Washington, DC 20229
Phone: 202 927—4342

RIN: 1505–AB32

2538. PREFERENTIAL TREATMENT OF BRASSIERES UNDER THE UNITED STATES—CARIBBEAN BASIN TRADE PARTNERSHIP ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2701; 19 USC 3314

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2001, Final.

Abstract: Amendment to implement those provisions within the United States—Caribbean Basin Trade Partnership Act (the CBTPA) that establish standards for preferential treatment for brassieres imported from CBTPA beneficiary countries. The amendments involve specifically the methods, procedures, and related standards that will apply for purposes of determining compliance with the 75 percent aggregate U.S. fabric components content requirement under the CBTPA brassieres provision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/04/01	66 FR 50534
Interim Final Rule Effective	10/04/01	
Correction	10/11/01	66 FR 51864
Interim Final Rule Comment Period End	12/03/01	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC89

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Phone: 202 927—0162

Cynthia Reese, Senior Attorney, Department of the Treasury, Room 503, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW.,
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Phone: 202 572—8790

RIN: 1505–AB33

2539. SINGLE ENTRY FOR UNASSEMBLED OR DISASSEMBLED ENTITIES IMPORTED ON MULTIPLE CONVEYANCES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 141; 19 CFR 142

Legal Deadline: Final, Statutory, May 9, 2001, Final.

Abstract: Amendment to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single entity which, due to its size or nature, arrives in the United States on separate conveyances. Amendment implements statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	04/08/02	67 FR 16664
NPRM Comment Period End	06/07/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AC94

Agency Contact: Gina Grier, Attorney, Entry Procedures and Carriers Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW.,
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Robert E. Watt, Program Officer, Department of the Treasury, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927—0279

RIN: 1505–AB34

2540. IMPLEMENTATION OF THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 3203; 19 USC 3314

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: None

Abstract: Amendment to implement the trade benefit provisions for Andean countries contained in title XXXI of the Trade Act of 2002. The trade benefits under title XXXI, also referred to as the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), apply to Andean countries specifically designated by the President for ATPDEA purposes. The ATPDEA trade benefits involve the entry of specific apparel and other textile articles free of duty and free of any quantitative restrictions, limitations, or consultation levels, the extension of duty—free treatment to specified nontextile articles normally excluded from duty—free treatment under the Andean Trade Preference Act (ATPA) program if the President finds those articles to be not import—sensitive in the context of the ATPDEA, and the entry of certain imports of tuna free of duty and free of any quantitative restrictions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/25/03	68 FR 14478
Interim Final Rule Effective	03/25/03	
Interim Final Rule Comment Period End	05/27/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD19

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Robert Abels, Operations Officer,
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Phone: 202 927—1959

RIN: 1505–AB37

2541. TRADE BENEFITS UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 3721; 19 USC 3314

CFR Citation: 19 CFR 10

Legal Deadline: None

Abstract: Amendment to those provisions of the Customs Regulations that implement the trade benefit provisions for sub—Saharan African countries contained in the African Growth and Opportunity Act (the AGOA). Amendments involve the textile and apparel provisions of the AGOA and in part reflect changes to those statutory provisions by section 3108 of the Trade Act of 2002. The specific statutory changes involve the amendment of several provisions to clarify the status of apparel articles assembled from knit—to—shape components, the inclusion of a specific reference to apparel articles formed on seamless knitting machines, a change of the wool fiber diameter specified in one provision, and the addition of a new provision to cover additional production scenarios involving the United States and AGOA beneficiary countries.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/21/03	68 FR 13820
Interim Final Rule Effective	03/21/03	
Interim Final Rule Comment Period End	05/20/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD20

Agency Contact: Robert Abels,
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Phone: 202 927—1959

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Phone: 202 572—8790

RIN: 1505–AB38

2542. FEES FOR CUSTOMS PROCESSING AT EXPRESS COURIER FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a to 58c; 19 USC 66; 19 USC 1202; 19 USC 1505; 19 USC 261; 19 USC 267; 19 USC 1450 to 1452; 19 USC 1456; 19 USC 1524; 19 USC 1557; 19 USC 1562; 19 USC 1624; 26 USC 4461; 26 USC 4462; 19 USC 3332; 46 USC 2110 to 2112

CFR Citation: 19 CFR 24; 19 CFR 113; 19 CFR 128

Legal Deadline: None

Abstract: Amendment to implement amendments to the customs user fee statute made by section 337 of the Trade Act of 2002. Statutory amendments concern the fees payable for customs services provided in connection with the informal entry or release of shipments at express consignment carrier facilities and centralized hub facilities. The effect of the statutory amendments is to replace the annual lump sum payment procedure with a quarterly payment procedure based on a specific fee for each individual airway bill or bill of lading.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD21

Agency Contact: Joseph Lanzante,
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1300 Pennsylvania Avenue NW.,
Washington, DC 20229
Phone: 202 927—5246

RIN: 1505–AB39

2543. TRADE BENEFITS UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2701; 19 USC 3314

CFR Citation: 19 CFR 10

Legal Deadline: None

Abstract: Amendment to implement the trade benefits for Caribbean Basin countries contained in section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA). Amendments involve the textile and apparel provisions of section 213(b) and in part reflect changes made to those statutory provisions by section 3107 of the Trade Act of 2002. The specific statutory changes involve the amendment of several provisions to clarify the status of apparel articles assembled from knit—to—shape components, the addition of language requiring any dyeing, printing, and finishing of certain fabrics to be done in the United States, the inclusion of exception language in the brassieres provision regarding articles entered under other CBERA apparel provisions, the addition of a provision permitting the dyeing, printing, and finishing of thread in the Caribbean region, and the addition of a new provision to cover additional production scenarios involving the United States and the Caribbean region.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/21/03	68 FR 13827
Interim Final Rule Effective	03/21/03	
Interim Final Rule Comment Period End	05/20/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD22

Agency Contact: Robert Abels, Operations Officer, Department of the Treasury, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927—1959

Cynthia Reese, Senior Attorney, Department of the Treasury, Room 503, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572—8790

RIN: 1505–AB40

2544. TARIFF TREATMENT RELATED TO DISASSEMBLY OPERATIONS UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 3314

CFR Citation: 19 CFR 181

Legal Deadline: None

Abstract: Amendment to amend the Customs Regulations concerning the North American Free Trade Agreement (NAFTA) to allow components that are recovered from the disassembly of used goods in a NAFTA country to be entitled to NAFTA originating status when imported into the United States, provided that: the recovered components satisfy the applicable NAFTA rules of origin requirements; and where the applicable rule of origin does not include a regional value content requirement, the components are subject to further processing in the NAFTA country beyond certain minor operations.

Timetable:

Action	Date	FR Cite
NPRM	03/13/03	68 FR 12011
NPRM Comment Period End	05/12/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD23

Agency Contact: Edward M. Leigh, Attorney, Special Classification and Marking Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572—8827

RIN: 1505–AB41

2545. REFUND OF DUTIES PAID ON IMPORTS OF CERTAIN WOOL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 10

Legal Deadline: None

Abstract: Amendment to remove the regulation originally promulgated to provide procedures for the issuance of refunds of duties paid on certain wool imports pursuant to section 505 of title V of the Trade and Development Act of 2000. As section 5101 of the Trade Act of 2002 significantly amended section 505 and provides self—effectuating procedures for the issuance of the refunds, the regulation implementing section 505 is no longer necessary and is obsolete.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD27

Agency Contact: Suzanne Kingsbury, Attorney, Regulations Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572—8763

RIN: 1505–AB43

Department of the Treasury (TREAS) Long-Term Actions
Departmental Offices (DO)

2546. POSSIBLE REGULATION OF ACCESS TO ACCOUNTS AT FINANCIAL INSTITUTIONS THROUGH PAYMENT SERVICE PROVIDERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 31 CFR ch II

Timetable:

Action	Date	FR Cite
ANPRM	01/08/99	64 FR 1149
ANPRM Comment Period End	04/08/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Roger Bezdek
Phone: 202 622—1807

RIN: 1505–AA74

2547. FINANCIAL ACTIVITIES OF FINANCIAL SUBSIDIARIES

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/00	65 FR 14819
Interim Final Rule Effective	03/14/00	
Interim Final Rule Comment Period End	05/15/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622—1976
Fax: 202 622—1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA80

2548. FINANCIAL SUBSIDIARIES

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton

Phone: 202 622—1976
Fax: 202 622—1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA81

2549. SECRETARY'S DETERMINATION OF REAL ESTATE BROKERAGE

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1501.2

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 307
NPRM Comment Period End	03/02/01	
NPRM Comment Period Extended	05/01/01	66 FR 12440
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622—1976
Fax: 202 622—1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA84

2550. SECRETARY'S DETERMINATION OF OTHER ACTIVITIES FINANCIAL IN NATURE

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1501.2

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/02/01	66 FR 257
Interim Final Rule Effective	01/02/01	
Interim Final Rule Comment Period End	02/02/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622—1976
Fax: 202 622—1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA85

2551. TREASURY DEBT COLLECTION

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 5

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/28/02	67 FR 65843
Interim Final Rule Comment Period End	11/27/02	
Next Action Undetermined	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Brian Lee
Phone: 202 622—0808
Fax: 202 622—2318

RIN: 1505–AA90

2552. BANK ENTERPRISE AWARD (BEA) PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1806

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/04/03	68 FR 5717
Interim Final Rule Comment Period End	04/07/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey C. Berg
Phone: 202 622—8530
Fax: 202 622—8244
Email: bergj@cdfi.treas.gov

RIN: 1505–AA91

2553. COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS (CDFI) PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1805

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/04/03	68 FR 5704
Interim Final Rule Comment Period End	04/07/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey C. Berg
Phone: 202 622—8530
Fax: 202 622—8244
Email: bergj@cdfi.treas.gov

RIN: 1505–AA92

2554. • TERRORISM RISK INSURANCE PROGRAM; RECOUPMENTS OF FEDERAL SHARE OF COMPENSATION FOR INSURED LOSSES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Terrorism Risk Insurance Act, title 1, PL 107—297, 116 Stat 2322; 15 USC 6701 note; 5 USC 301

CFR Citation: 31 CFR 50

Legal Deadline: None

Abstract: As the statutorily authorized administrator of the Terrorism Risk Insurance Program, Treasury is issuing proposed and final regulations to implement the Program. Under the Terrorism Risk Insurance Act, title I, Public Law 107—297, and the Program, the Federal Government shares the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This rule incorporates and clarifies statutory requirements for the recoupment of the Federal share of compensation for insured losses. The rule establishes requirements for determining amounts to be recouped and for procedures insurers are to use for collecting terrorism loss risk—spreading premiums and remitting them to the Treasury.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Howard Leikin, Senior Insurance Advisor, Department of the Treasury, Office of Financial Institutions, Terrorism Risk Insurance Program, 1500 Pennsylvania Avenue NW., Washington, DC 20220
Phone: 202 622—6770

RIN: 1505–AB10

2555. RECONCILIATION

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 142; 19 CFR 159

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Leonard
Phone: 202 927—0915

RIN: 1505–AB16

2556. ENTRY OF SOFTWOOD LUMBER SHIPMENTS FROM CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 12; 19 CFR 113

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/97	62 FR 8620
Interim Final Rule Effective	02/26/97	
Interim Final Rule Comment Period End	04/28/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward
Phone: 202 927—3271

RIN: 1505–AB18

2557. EXPANDED METHODS OF PAYMENT OF DUTIES, TAXES, INTEREST, AND FEES

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 24

Timetable:

Action	Date	FR Cite
NPRM	03/17/99	64 FR 13141
NPRM Comment Period End	05/17/99	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Lloyd
Phone: 202 927—0119

RIN: 1505–AB22

2558. ENTRY OF SOFTWOOD LUMBER SHIPMENTS FROM CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 12

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/23/00	65 FR 33251
Interim Final Rule Effective	05/23/00	
Interim Final Rule Comment Period End	07/24/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward
Phone: 202 927—3271

RIN: 1505–AB23

2559. REQUIREMENTS FOR FUTURE CUSTOMS TRANSACTIONS WHEN PAYMENT TO CUSTOMS ON PRIOR TRANSACTIONS IS DELINQUENT AND/OR DISHONORED

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 142; 19 CFR 24

Timetable:

Action	Date	FR Cite
Next Action Undetermined	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Reiley
Phone: 202 927—1504

RIN: 1505–AB25

Department of the Treasury (TREAS) Completed Actions
Departmental Offices (DO)

2560. DEPARTMENT OF THE TREASURY ACQUISITION REGULATION

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR ch 10

Completed:

Reason	Date	FR Cite
Final Rule	07/03/03	68 FR 39854
Final Rule Effective	08/04/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Angelie Jackson
Phone: 202 622—0245
Fax: 202 622—2273
Email: angelie.jackson@do.treas.gov

RIN: 1505–AA89

2561. TERRORISM RISK INSURANCE PROGRAM; PROGRAM SCOPE AND DEFINITIONS

Priority: Other Significant

CFR Citation: 31 CFR 50

Completed:

Reason	Date	FR Cite
Final Rule	07/11/03	68 FR 41250
Final Rule Effective	07/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mario Ugoletti
Phone: 202 622—2730

RIN: 1505–AA96

2562. TERRORISM RISK INSURANCE PROGRAM; DISCLOSURES AND MANDATORY AVAILABILITY REQUIREMENTS

Priority: Other Significant

CFR Citation: 31 CFR 50

Completed:

Reason	Date	FR Cite
NPRM	04/18/03	68 FR 19309
Interim Final Rule	04/18/03	68 FR 19302
Interim Final Rule Effective	04/18/03	
Interim Final Rule Comment Period End	05/19/03	
Final Rule	10/17/03	68 FR 59720
Final Rule Effective	10/17/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mario Ugoletti

Phone: 202 622—2730

RIN: 1505–AA98

2563. TERRORISM RISK INSURANCE PROGRAM; STATE RESIDUAL MARKET INSURANCE ENTITIES

Priority: Other Significant

CFR Citation: 31 CFR 50

Completed:

Reason	Date	FR Cite
NPRM	04/18/03	68 FR 19309
Final Rule	10/17/03	68 FR 59715
Final Rule Effective	10/17/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Mario Ugoletti
Phone: 202 622—2730

RIN: 1505–AA99

2564. CUSTOMS ENTRY DOCUMENTATION PURSUANT TO ANTICOUNTERFEITING CONSUMER PROTECTION ACT

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 141

Completed:

Reason	Date	FR Cite
NPRM	09/13/99	64 FR 49423
Withdrawn	08/22/03	68 FR 50733

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: George F. McCray
Phone: 202 572—8709

RIN: 1505–AB19

2565. USER FEES

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 24; 19 CFR 111

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43624
Final Action Effective	08/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Reiley
Phone: 202 927—1504

RIN: 1505–AB30

2566. CIVIL FINES FOR IMPORTATION OF MERCHANDISE BEARING A COUNTERFEIT MARK

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 133

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43635
Final Action Effective	08/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynne O. Robinson
Phone: 202 572—8743

RIN: 1505–AB35

2567. MANUFACTURING SUBSTITUTION DRAWBACK—DUTY APPORTIONMENT

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 191

Completed:

Reason	Date	FR Cite
Final Action	08/22/03	68 FR 50700
Final Action Effective	08/22/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Rosoff
Phone: 202 572—8807

RIN: 1505–AB36

2568. PREFERENTIAL TREATMENT OF BRASSIERES UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 10

Completed:

Reason	Date	FR Cite
Interim Final Rule	09/30/03	68 FR 56166
Interim Final Rule Effective	09/30/03	
Interim Final Rule Comment Period End	12/01/03	
Final Action	07/24/03	68 FR 43624
Final Action Effective	07/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Abels
Phone: 202 927—1959

Cynthia Reese
Phone: 202 572—8790

RIN: 1505–AB42

2569. • IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL MATERIAL FROM CAMBODIA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 2612

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment reflects the imposition of import restrictions on certain archaeological materials originating in Cambodia. The restrictions are imposed pursuant to an agreement between the United States and the Government of the Kingdom of Cambodia that was entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Timetable:

Action	Date	FR Cite
Final Action	09/22/03	68 FR 55000
Final Action Effective	09/22/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD34

Agency Contact: Joseph Howard, Attorney, Intellectual Property Rights Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572—8701

RIN: 1505–AB45

2570. • EXTENSION OF EMERGENCY IMPORT RESTRICTIONS IMPOSED ON ETHNOLOGICAL MATERIAL FROM CYPRUS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 2612

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to reflect that the emergency import restrictions currently in place on certain ethnological material from Cyprus continue, without interruption, for an additional three years.

Timetable:

Action	Date	FR Cite
Final Action	08/29/03	68 FR 51903
Final Action Effective	09/04/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1515—AD38

Agency Contact: Joseph Howard, Attorney, Intellectual Property Rights Branch, Department of the Treasury, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 572—8701

RIN: 1505–AB46

BILLING CODE 4820—02—S

Department of the Treasury (TREAS) Prerule Stage
Financial Crimes Enforcement Network (FINCEN)

2571. CUSTOMER IDENTIFICATION PROGRAMS FOR PAWN BROKERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—56, sec 326

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This regulation will require pawn brokers to adopt and implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to them by any Government agency.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA39

Department of the Treasury (TREAS) Proposed Rule Stage
Financial Crimes Enforcement Network (FINCEN)

2572. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—DELEGATION OF AUTHORITY TO ASSESS CIVIL MONEY PENALTIES ON DEPOSITORY INSTITUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5321(e), Bank Secrecy Act

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes to delegate to the appropriate Federal banking regulatory agencies, the authority to assess civil money penalties on depository institutions for violations of the Bank Secrecy Act. The regulation would prescribe the parameters of the delegated authority.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA08

2573. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—REQUIREMENT THAT FINANCIAL INSTITUTIONS ESTABLISH ANTI—MONEY LAUNDERING PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5316(h)

CFR Citation: 31 CFR 103.65; 31 CFR 103.66; 31 CFR 103.67

Legal Deadline: Final, Statutory, April 24, 2002, Final.

Abstract: FinCEN will issue a series of regulations regarding anti—money laundering program requirements for various financial institutions, as defined in the Bank Secrecy Act.

Timetable:

Anti—Money Laundering Programs for Businesses Engaged in Vehicle Sales, Including Automobile, Airplane & Boat Sales (1506—AA60)
  ANPRM 02/24/03 (68 FR 8568)
  ANPRM Comment Period End 04/10/03
  NPRM 06/00/04

Anti—Money Laundering Programs for Commodity Trading Advisors (1506—AA55)
  NPRM 05/05/03 (68 FR 23640)
  NPRM Comment Period End 07/07/03
  Final Rule 06/00/04

Anti—Money Laundering Programs for Dealers in Precious Metals, Stones or Jewels (1506—AA58)
  NPRM 02/21/03 (68 FR 8480)
  NPRM Comment Period End 04/22/03
  Final Action 06/00/04

Anti—Money Laundering Programs for Financial Institutions (1506—AA52)
  Interim Final Rule 04/29/02 (67 FR 21110)
  Interim Final Rule Comment Period End 05/29/02
  Final Action 06/00/04
Anti—Money Laundering Programs for Insurance Companies (1506—AA50)
  NPRM 09/26/02 (67 FR 60625)
  NPRM Comment Period End 11/25/02
  Final Rule 06/00/04
Anti—Money Laundering Programs for Investment Advisors (1506—AA51)
  NPRM 05/05/03 (68 FR 23646)
  NPRM Comment Period End 07/07/03
  Final Rule 06/00/04
Anti—Money Laundering Programs for Loan & Finance Companies (1506—AA53)
  NPRM 06/00/04
Anti—Money Laundering Programs for Money Services Businesses (1506—AA54)
  Interim Final Rule 04/29/02 (67 FR 21114)
  Interim Final Rule Comment Period End 05/29/02
  Final Action 06/00/04
Anti—Money Laundering Programs for Mutual Funds (1506—AA48)
  Interim Final Rule 04/29/02 (67 FR 21117)
  Interim Final Rule Comment Period End 05/29/02
  Final Action 06/00/04
Anti—Money Laundering Programs for Operators of a Credit Card System (1506—AA56)
  Interim Final Rule 04/29/02 (67 FR 21121)
  Interim Final Rule Comment Period End 05/29/02
  Final Action 06/00/04
Anti—Money Laundering Programs for Persons Involved In Real Estate Closings and Settlements (1506—AA59)
  ANPRM 04/10/03 (68 FR 17569)
  ANPRM Comment Period End 06/09/03
  NPRM 06/00/04
Anti—Money Laundering Programs for Travel Agencies (1506—AA49)
  ANPRM 02/24/03 (68 FR 8571)
  ANPRM Comment Period End 04/10/03
  NPRM 06/00/04
Anti—Money Laundering Programs for Unregistered Investment Companies (1506—AA57)
  NPRM 09/26/02 (67 FR 60617)
  NPRM Comment Period End 11/25/02
  Final Rule 06/00/04

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network,
P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA28

2574. CUSTOMER IDENTIFICATION PROGRAMS FOR TRAVEL AGENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—56, sec 326

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This regulation will require travel agents to adopt and implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to them by any Government agency.

Timetable:

Action	Date	FR Cite
ANPRM	02/24/03	68 FR 8571
ANPRM Comment Period End	04/10/03	
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network,
P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA38

2575. CUSTOMER IDENTIFICATION PROGRAMS FOR LOAN AND FINANCE COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—56, sec 326

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This regulation will require loan and finance companies to adopt and implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to them by any Government agency.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network,
P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA40

2576. CUSTOMER IDENTIFICATION PROGRAMS FOR SELLERS OF VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—56, sec 326

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This regulation will require sellers of vehicles to adopt and implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to them by any Government agency.

Timetable:

Action	Date	FR Cite
ANPRM	02/24/03	68 FR 8568
ANPRM Comment Period End	04/10/03	
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network,
P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA41

2577. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS REGARDING REPORTING OF CROSS—BORDER TRANSPORTATION OF CERTAIN MONETARY INSTRUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5312(a)(3), Bank Secrecy Act

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This rule will require reporting of cross—border transportation of certain negotiable instruments.

Timetable:

Action	Date	FR Cite
NPRM	01/22/97	62 FR 3249
NPRM Comment Period End	04/22/97	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA15

2578. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—EXEMPTIONS FROM THE REQUIREMENT TO REPORT TRANSACTIONS IN CURRENCY

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5330

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This document contains an interim final rule that further reforms and simplifies the process by which depository institutions may exempt transactions of retail and other businesses from the requirement to report transactions in currency in excess of $10,000. The interim final rule is part of a continuing program to reduce unnecessary burdens upon financial institutions complying with the Bank Secrecy Act and increase the cost—effectiveness of the counter—money laundering policies of the Department of the Treasury.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/28/00	65 FR 46356
Interim Final Rule Effective	07/31/00	
Interim Final Rule Comment Period End	09/26/00	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA23

2579. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—REQUIREMENT THAT NONFINANCIAL TRADES OR BUSINESSES REPORT CERTAIN CURRENCY TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 et seq; PL 107—56

CFR Citation: 31 CFR 103.30

Legal Deadline: Final, Statutory, April 26, 2002, Final.

Abstract: This document contains an interim final rule amending the Bank Secrecy Act regulations to require certain persons to report currency received in the course of their trade or business.

Timetable:

Action	Date	FR Cite
NPRM	12/31/01	66 FR 67685
Interim Final Rule	12/31/01	66 FR 67680
NPRM Comment Period End	03/01/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA25

2580. DUE DILIGENCE REQUIREMENTS FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(i)

CFR Citation: 31 CFR 103.175 to 103.178

Legal Deadline: Final, Statutory, July 23, 2002, Final.

Abstract: Section 5318(i) of 31 U.S.C., added by section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non—U.S. persons. Section 312 takes effect on July 23, 2002, whether or not Treasury has issued a final rule implementing that provision.

Timetable:

Action	Date	FR Cite
NPRM	05/30/02	67 FR 37736
NPRM Comment Period End	07/01/02	
Interim Final Rule	07/23/02	67 FR 48347
Interim Final Rule Effective	07/23/02	
Interim Final Rule Comment Period End	08/22/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA29

2581. CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(l)

CFR Citation: 31 CFR 103.121

Legal Deadline: Final, Statutory, October 25, 2002, Final.

Abstract: This notice of proposed rulemaking proposes to require banks, savings associations, and credit unions to establish written customer identification programs.

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48290
NPRM Comment Period End	09/06/02	
NPRM	05/09/03	68 FR 25163
Final Action	05/09/03	68 FR 25090
NPRM Comment Period End	06/23/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA31

2582. FINANCIAL CRIMES ENFORCEMENT NETWORK; AMENDMENT TO THE BANK SECRECY ACT REGULATIONS REQUIREMENT THAT INSURANCE COMPANIES REPORT SUSPICIOUS TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5332

CFR Citation: 31 CFR 103.16

Legal Deadline: None

Abstract: This document will require insurance companies to report suspicious transactions to the Department of the Treasury. The amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States as a part of the counter—money laundering program of the Department of the Treasury.

Timetable:

Action	Date	FR Cite
NPRM	10/17/02	67 FR 64067
NPRM Comment Period End	12/16/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA36

2583. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—REQUIREMENT THAT MUTUAL FUNDS REPORT SUSPICIOUS TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5331; PL 107—56

CFR Citation: 31 CFR 103.15

Legal Deadline: None

Abstract: This document contains an amendment to the regulations implementing the statute generally known as the Bank Secrecy Act. The amendment would require mutual funds to report suspicious transactions to the Department of the Treasury. The amendment constitutes a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as part of the counter—money laundering program of the Department of the Treasury.

Timetable:

Action	Date	FR Cite
NPRM	01/21/03	68 FR 2716
NPRM Comment Period End	03/24/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA37

2584. IMPOSITION OF SPECIAL MEASURES AGAINST THE COUNTRY OF NAURU

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—56, sec 311; 31 USC 5318A

CFR Citation: 31 CFR 103.184

Legal Deadline: None

Abstract: This rule will impose "special measures" against Nauru. Nauru was previously designated as a country of primary money laundering concern pursuant to section 311 of the USA Patriot Act on December 20, 2002, a prerequisite for the imposition of special measures.

Timetable:

Action	Date	FR Cite
NPRM	04/17/03	68 FR 18914
NPRM Comment Period End	05/19/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA43

2585. FINANCIAL CRIMES ENFORCEMENT NETWORK; DELEGATION OF ENFORCEMENT AUTHORITY REGARDING THE FOREIGN BANK ACCOUNT REPORT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5332; PL 107—56, sec 312; PL 107—56, sec 314; PL 107—56, sec 352

CFR Citation: 31 CFR 103.56

Legal Deadline: None

Abstract: FinCEN is amending the regulations implementing the Bank Secrecy Act to reflect that enforcement authority with respect to the foreign bank account report requirements of 31 CFR part 103 has been delegated from FinCEN to the Commissioner of the Internal Revenue Service.

Timetable:

Action	Date	FR Cite
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA45

2586. • FINANCIAL CRIMES ENFORCEMENT; AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—NOMENCLATURE CHANGES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 31 USC 5318 et seq

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This document amends 31 CFR part 103 to reflect changes to the structure of the Department of the Treasury.

Timetable:

Action	Date	FR Cite
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA61

Department of the Treasury (TREAS) Long-Term Actions
Financial Crimes Enforcement Network (FINCEN)

2587. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—SPECIAL REPORTING AND RECORDKEEPING REQUIREMENTS—MONEY SERVICES BUSINESSES (MSBS)

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103

Timetable:

Action	Date	FR Cite
NPRM	05/21/97	62 FR 27909
NPRM Comment Period End	09/30/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA19

Department of the Treasury (TREAS) Completed Actions
Financial Crimes Enforcement Network (FINCEN)

2588. CUSTOMER IDENTIFICATION PROGRAM FOR BROKER—DEALERS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103.122

Completed:

Reason	Date	FR Cite
Final Action	05/09/03	68 FR 25113

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA32

2589. CUSTOMER IDENTIFICATION PROGRAM FOR MUTUAL FUNDS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103.131

Completed:

Reason	Date	FR Cite
Final Action	05/09/03	68 FR 25131

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA33

2590. REQUIREMENT THAT FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES REPORT SUSPICIOUS TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103.11; 31 CFR 103.17; 31 CFR 103.33; 31 CFR 103.56

Completed:

Reason	Date	FR Cite
NPRM	05/05/03	68 FR 23653
Final Rule	11/20/03	68 FR 65392

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA44

2591. • FINANCIAL CRIMES ENFORCEMENT NETWORK; FREEDOM OF INFORMATION ACT, PRIVACY ACT OF 1974—IMPLEMENTATION

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 5 USC 552, subpart A, as amended; 5 USC 552a, subpart C; 31 USC 321

TREAS—FINCEN

Completed Actions

CFR Citation: 31 CFR 0

Legal Deadline: None

Abstract: Given FinCEN's new status as a bureau, FinCEN is issuing Freedom of Information Act and Privacy Act regulations of its own.

Timetable:

Action	Date	FR Cite
Final Action	09/25/03	68 FR 55309

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Office of the Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905—3590
Fax: 703 905—3735

RIN: 1506–AA62

BILLING CODE 4810—35—S

Department of the Treasury (TREAS)
Financial Management Service (FMS)

Proposed Rule Stage

2592. CLAIMS ON ACCOUNT OF TREASURY CHECKS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 321; 31 USC 3328; 31 USC 3331; 31 USC 3343; 31 USC 3702; 31 USC 3712

CFR Citation: 31 CFR 245

Legal Deadline: None

Abstract: Title 31 CFR part 245 governs the issuance of replacement checks for checks drawn on the United States Treasury when: 1) the original check has been lost, stolen, destroyed or mutilated or defaced to such an extent that it is rendered non—negotiable; 2) the original check has been negotiated and paid on a forged or unauthorized indorsement; and 3) the original check has been cancelled pursuant to 31 CFR part 240. This regulation is being revised to update the regulation's definitions to make them consistent with the language of the proposed revisions to the definitions in 31 CFR part 240. Other revisions will govern the use of the Check Forgery Insurance Fund (Fund). The Fund is a revolving fund established to settle payee claims of nonreceipt where the original check has been fraudulently negotiated. The Fund ensures that innocent payees, whose Treasury checks have been fraudulently cashed, receive replacement checks in a timely manner.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Ella White, Program Analyst, Department of the Treasury, Financial Management Service, Room 8D25, 3700 East—West Highway, Hyattsville, MD 20782
Phone: 202 874—8445
Email: ella.white@fms.treas.gov

RIN: 1510–AA51

2593. MANAGEMENT OF FEDERAL AGENCY RECEIPTS AND DISBURSEMENTS; OPERATION OF THE CASH MANAGEMENT IMPROVEMENT FUND

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 31 USC 321; 31 USC 3301; 31 USC 3302; 31 USC 3321; 31 USC 3327; 31 USC 3332; 31 USC 3335; 31 USC 3720; 31 USC 6503

CFR Citation: 31 CFR 206

Legal Deadline: None

Abstract: This regulation governs collection and deposit regulations requiring timely methods, principally Electronic Funds Transfer (EFT), for the collection and deposit of funds as authorized by section 2652 of the Deficit Reduction Act of 1984. This regulation also incorporates revisions authorized by the Cash Management Act of 1990 and the Cash Management Improvement Act Amendments of 1992. These revisions require executive agencies to use effective, efficient disbursement mechanisms, principally EFT, in the delivery of payments. An agency's failure to comply with this regulation may result in a charge equal to the cost of such noncompliance to the Treasury's General Fund.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 408D, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—6799
Email: stephen.kenneally@fms.treas.gov

RIN: 1510–AA86

2594. WITHHOLDING OF DISTRICT OF COLUMBIA, STATE, CITY, AND COUNTY INCOME, OR EMPLOYMENT TAXES BY FEDERAL AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5516; 5 USC 5517; 5 USC 5520; EO 1197, sec 4

CFR Citation: 31 CFR 215

Legal Deadline: None

Abstract: This regulation governs the agreements entered into by the Department of the Treasury and State and local governments for the withholding of State and local income taxes from the compensation of Federal employees.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 408D, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—6799
Email: stephen.kenneally@fms.treas.gov

RIN: 1510–AA90

Department of the Treasury (TREAS) **Final Rule Stage**

Financial Management Service (FMS)

2595. INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE U.S. TREASURY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 12 USC 391; 31 USC 321; 31 USC 3327; 31 USC 3328; 31 USC 3331; 31 USC 3334; 31 USC 3343; 31 USC 3702; 31 USC 3702 note; 31 USC 3711; 31 USC 3712; 31 USC 3716; 31 USC 3717; 318 US 363 (1943); 332 US 234 (1947)

CFR Citation: 31 CFR 240

Legal Deadline: None

Abstract: Notice of proposed rulemaking II (NPRM II) was a reissuance of NPRM I published on September 21, 1995, which proposed to fix the time by which Treasury can decline payment on Treasury checks, provide financial institutions with a date certain for final payments, and provide greater clarity by defining previously undefined terms. NPRM I also proposed that the Department of the Treasury may instruct Federal Reserve Banks to intercept benefit payment checks to deceased payees and to return, unpaid, those checks. In addition to the revisions proposed in NPRM I, NPRM II announced the Department of the Treasury's intent that this regulation supersede Federal common law regarding the risk of loss on checks containing forged disbursing officer signatures, such as counterfeits. The Interim Final Rule will amend this regulation to implement provisions of the Debt Collection Improvement Act of 1996 authorizing the collection of debts owed by presenting banks through Treasury Check Offset. NPRM III is a reissuance of NPRM II and will address, at a minimum, the issues in NPRMs I and II.

Timetable:

Action	Date	FR Cite
NPRM I	09/21/95	60 FR 48940
NPRM Comment Period End	11/06/95	
NPRM II	05/30/97	62 FR 29314
NPRM	04/23/03	68 FR 20046
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Ronald E. Brooks, Senior Program and Policy Analyst, Financial Operations, Department of the Treasury, Financial Management Service, Room 725—D, 3700 East—West Highway, Hyattsville, MD 20782
Phone: 202 874—7573
Email: ronald.brooks@fms.treas.gov

RIN: 1510–AA45

2596. FOREIGN EXCHANGE OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2363; 31 USC 3513; EO 10488; EO 10900

CFR Citation: 31 CFR 281

Legal Deadline: None

Abstract: This regulation governs the administration of the purchase, custody, deposit, transfer, sale, and reporting of foreign exchange (including credits and currencies) by executive departments and agencies. Currently, this regulation allows the purchase of foreign currency to an amount which, together with the balance on hand in the bank, may not exceed estimated requirements for a 30—day period. The revised rule allows the purchase of foreign currency to a balance "commensurate with immediate disbursing requirements."

Timetable:

Action	Date	FR Cite
NPRM	01/29/96	61 FR 2750
NPRM Comment Period End	02/28/96	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 408D, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—6799
Email: stephen.kenneally@fms.treas.gov

Walt Henderson, Senior Financial Program Specialist, Cash Management Policy and Planning Directorate, Department of the Treasury, Financial Management Service, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—6705
Email: walt.henderson@fms.treas.gov

RIN: 1510–AA48

2597. PAYMENTS UNDER JUDGMENT AND PRIVATE RELIEF ACTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 104—53; PL 104—316; 28 USC 2414; 28 USC 2517; 31 USC 1304

CFR Citation: 31 CFR 256

Legal Deadline: None

Abstract: This regulation governs the procedures for securing payment for money judgments against the United States. The proposed revision will update these procedures. This revision will benefit claimants and others in understanding the judgment payment process. This regulation currently describes a process that involves the General Accounting Office (GAO) and the Treasury Department. The revision will remove the GAO from this description to reflect legislative amendments that effect this change. Also, the regulation currently identifies monetary thresholds that no longer exist. The change will reflect the removal of these monetary limitations. These revisions will make the regulation consistent with current procedures for securing payment of money judgments against the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/08/96	61 FR 552
NPRM Comment Period End	02/07/96	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Wanda Rogers, Director, Financial Accounting and Services Division, Department of the Treasury, Financial Management Service, Room 620D, 3700 East—West Highway, Hyattsville, MD 20782
Phone: 202 874—8380
Email: wanda.rogers@fms.treas.gov

RIN: 1510–AA52

2598. OFFSET OF FEDERAL PAYMENTS (OTHER THAN TAX REFUND AND FEDERAL BENEFIT PAYMENTS) TO COLLECT PAST—DUE, LEGALLY ENFORCEABLE NONTAX DEBT

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 321; 31 USC 3716

CFR Citation: 31 CFR 285.5

Legal Deadline: None

Abstract: This rule governs the administrative offset of Federal payments by disbursing officials of the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/26/02	67 FR 78936
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg, Financial Program Specialist, Debt Management Service, Department of the Treasury, Financial Management Service, Room 44AB, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—7131
Fax: 202 874—7494
Email: gerald.isenberg@fms.treas.gov

RIN: 1510–AA65

2599. SALARY OFFSET

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5514

CFR Citation: 31 CFR 285.7

Legal Deadline: None

Abstract: This rule governs the centralized computer matching of Federal employee records for purposes of salary offset to collect nontax delinquent debt owed the Federal Government.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/28/98	63 FR 23353
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg, Financial Program Specialist, Debt Management Service, Department of the Treasury, Financial Management Service, Room 44AB, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—7131
Fax: 202 874—7494
Email: gerald.isenberg@fms.treas.gov

RIN: 1510–AA70

2600. OFFSET OF TAX REFUND PAYMENT TO COLLECT STATE INCOME TAX OBLIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6402(e)

CFR Citation: 31 CFR 285.8

Legal Deadline: None

Abstract: This rule governs the offset of Federal tax refund payments to collect delinquent State income taxes.

Timetable:

Action	Date	FR Cite
NPRM	12/20/99	64 FR 71233
Interim Final Rule	12/20/99	64 FR 71227
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Federalism: Undetermined

Agency Contact: Dean Balamaci, Director, Business and Agency Liaison Division, Department of the Treasury, Financial Management Service, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—6804
Email: dean.balamaci@fms.treas.gov

RIN: 1510–AA78

2601. PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 12 USC 90; 12 USC 265; 12 USC 266; 12 USC 321; 12 USC 323; 12 USC 332; 12 USC 391; 12 USC 1452(d); 12 USC 1464(k); 12 USC 1767; 12 USC 1789(a); 12 USC 2013; 12 USC 2122; 12 USC 3102; 12 USC 6302; 31 USC 3301 to 3304

CFR Citation: 31 CFR 203

Legal Deadline: None

Abstract: This first rule includes general revisions that will provide needed updates to support operational changes to the system used for the collection of corporate withholding taxes and the investment of the Government's excess operating funds, and incorporate other needed updates. The second rule amended the regulation to provide the Secretary greater flexibility to adjust the rate of interest charged on funds loaned through the Treasury Tax and Loan (TT&L) program. It also allows for a new TT&L investment option for financial institutions.

Timetable:

General Revisions (1510—AA92)
NPRM 11/00/03

Treasury Tax and Loan Rate of Interest (1510—AA93)
NPRM 07/30/99 (64 FR 41747)
NPRM Comment Period End 09/28/99
Final Action 03/15/02 (67 FR 11573)

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Catherine McHugh, Senior Financial Program Specialist, Department of the Treasury, Financial Management Service, Room 415B, Federal Finance, Asset Management Directorate, Risk Management Division, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—7497
Email: catherine.mchugh@fms.treas.gov

RIN: 1510–AA79

2602. FEDERAL CLAIMS COLLECTION STANDARD—COLLECTION BY INSTALLMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3711; 31 USC 3717

CFR Citation: 31 CFR 901.9

Legal Deadline: None

Abstract: Section 901.9, paragraph(f) is being modified to state that when an administrative charge is being paid out of amounts collected from the debtor, a partial or installment payment on a debt should be applied to that charge first, then to penalties, other administrative charges, interest, and principal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Gerry Isenberg, Financial Program Specialist, Debt Management Service, Department of the Treasury, Financial Management Service, Room 44AB, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—7131
Fax: 202 874—7494
Email: gerald.isenberg@fms.treas.gov

RIN: 1510–AA91

2603. • FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE (ACH)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5525; 12 USC 391; 31 USC 321; 31 USC 3301; 31 USC 3302; 31 USC 3321; 31 USC 3332; 31 USC 3335; 31 USC 3720

CFR Citation: 31 CFR 210

Legal Deadline: None

Abstract: The Department of the Treasury, Financial Management Service (FMS), is amending its rule governing the use of the Automated Clearing House (ACH) system by Federal agencies. This proposed rule would amend 31 CFR part 210 to provide that, as of an effective date to be specified, any check received by a Federal agency may be converted to an ACH debit entry. The proposed rule would request comment on a plan whereby FMS would provide notice of check conversion to the general public through agency and financial institution web sites, the Federal Register, on agency forms, and in radio, television, and media announcements.

Timetable:

Action	Date	FR Cite
NPRM	08/21/03	68 FR 50671
NPRM Comment Period End	10/20/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
www.fms.treas.gov/ach

URL For Public Comments:
(do not use http://)
210comments@fms.treas.gov

Agency Contact: Donald Skiles, Senior Financial Program Specialist, Department of the Treasury, Financial Management Service, Federal Finance, Asset Management Directorate, Risk Management Division, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—6994
Email: donald.skiles@fms.treas.gov

RIN: 1510–AA98

Department of the Treasury (TREAS)
Financial Management Service (FMS)
Long-Term Actions

2604. OFFSET OF FEDERAL PAYMENTS (OTHER THAN TAX REFUND AND FEDERAL BENEFIT PAYMENTS) TO COLLECT PAST—DUE DEBTS OWED TO STATES (OTHER THAN CHILD SUPPORT)

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 285.6

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Gerry Isenberg
Phone: 202 874—7131
Fax: 202 874—7494
Email: gerald.isenberg@fms.treas.gov

RIN: 1510–AA66

2605. PUBLIC DISSEMINATION OF IDENTITY OF DELINQUENT DEBTORS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 285.14

Timetable:

Action	Date	FR Cite
Next Action Undetermined	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg
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Fax: 202 874—7494
Email: gerald.isenberg@fms.treas.gov

RIN: 1510–AA72

2606. SURETY BOND REIMBURSEMENT FUND

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 31 CFR 223

Timetable:

Action	Date	FR Cite
Next Action Undetermined	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Wanda Rogers
Phone: 202 874—8380
Email: wanda.rogers@fms.treas.gov

RIN: 1510–AA85

2607. • PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 90, ; 12 USC 265—266; 12 USC 332; 12 USC 391; 12 USC 1452(d); 12 USC 1464(k); 12 USC 1767; 12 USC 1789a; 12 USC 2013; 12 USC 2122; 12 USC 3102; 26 USC 6302; 31 USC 321; 31 USC 323; 31 USC 3301 to 3304

CFR Citation: 31 CFR 203

Legal Deadline: None

Abstract: The Department of the Treasury, Financial Management Service, is proposing to revise its regulation governing the Treasury Tax and Loan (TT&L) program at 31 CFR Part 203. The proposed changes would update the rule to reflect the reorganization and enhancement of the TT&L program, including changes in terminology, and simplify the rule by deleting procedures and provisions that appear in other regulations or in the Treasury Financial Manual.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: www.fms.treas.gov/eftps/eftpsregs.html

URL For Public Comments: (do not use http://)203.comments@fms.treas.gov

Agency Contact: Catherine McHugh, Senior Financial Program Specialist, Department of the Treasury, Financial Management Service, Room 415B, Federal Finance, Asset Management Directorate, Risk Management Division, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—7497
Email: catherine.mchugh@fms.treas.gov

RIN: 1510–AA96

2608. • FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE (ACH)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5525; 12 USC 391; 31 USC 321; 31 USC 3301; 31 USC 3302; 31 USC 3321; 31 USC 3332; 31 USC 3335; 31 USC 3720

CFR Citation: 31 CFR 210

Legal Deadline: None

Abstract: The Department of the Treasury, Financial Management Service, is amending its rule governing the use of the Automated Clearing House (ACH) system by Federal agencies. This proposed rule would amend 31 CFR part 210 to expand the circumstances in which checks presented or delivered to agencies may be converted to ACH debit entries. The proposed rule also addresses issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments.

Timetable:

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: www.fms.treas.gov/ach

URL For Public Comments: (do not use http://)210comments@fms.treas.gov

Agency Contact: Catherine McHugh, Senior Financial Program Specialist, Department of the Treasury, Financial Management Service, Room 415B, Federal Finance, Asset Management Directorate, Risk Management Division, 401 14th Street SW., Washington, DC 20227
Phone: 202 874—7497
Email: catherine.mchugh@fms.treas.gov

RIN: 1510–AA97

Department of the Treasury (TREAS)
Financial Management Service (FMS)

Completed Actions

2609. 2003 AUTOMATED CLEARING HOUSE (ACH) RULES

Priority: Other Significant

CFR Citation: 31 CFR 210

Completed:

Reason	Date	FR Cite
Interim Final Rule	06/05/03	68 FR 33825

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Donald Skiles
Phone: 202 874—6994
Email: donald.skiles@fms.treas.gov

RIN: 1510–AA89

BILLING CODE 4810—25—S

Department of the Treasury (TREAS)
Alcohol and Tobacco Tax and Trade Bureau (TTB)

Proposed Rule Stage

2610. REVISION OF BREWERY REGULATIONS AND ISSUANCE OF REGULATIONS FOR TAVERNS ON BREWERY PREMISES (BREWPUBS)

Regulatory Plan: This entry is Seq. No. 99 in part II of this issue of the **Federal Register**.

RIN: 1513–AA02

2611. PROHIBITION OF ALCOHOL BEVERAGE CONTAINERS AND STANDARD OF FILL FOR DISTILLED SPIRITS AND WINE

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: TTB proposes to amend regulations to clarify the standards of fill for distilled spirits and wine. TTB also proposes to amend regulations to prohibit certain alcohol beverage containers that are likely to mislead consumers as to the identity or character of the distilled spirits, wine, or malt beverage products or to be confused with other (nonalcohol) food products.

Timetable:

Action	Date	FR Cite
NPRM	02/09/99	64 FR 6486
NPRM Comment Period End	04/12/99	
Revised NPRM—Aggregate Packaging	04/00/04	
Revised NPRM—Deceptive Packaging	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AB89

Agency Contact: Lisa M. Gesser, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 128,
Morganza, MD 20660
Phone: 301 290—1460
Fax: 301 290—1463
Email: lisa.gesser@ttb.treas.gov

RIN: 1513–AA07

2612. DETERMINATION OF TAX AND RECORDKEEPING ON LARGE CIGARS

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 5701; 27 USC 5702

CFR Citation: 27 CFR 40; 27 CFR 275

Legal Deadline: None

Abstract: This notice incorporates most of the parts of Industry Circular 91—3, dated March 19, 1991, entitled "Large Cigar Taxes On and After January, 1991" that have not been placed in the regulations. Industry Circular 91—3 addressed questions about determining the amount of tax for large cigars based on their sale price. In addition, this notice proposes: 1) to give guidance on tax adjustments for large cigars provided at no cost in connection with a sale, and 2) recordkeeping requirements for persons in Puerto Rico, who bring large cigars upon prepayment or deferred payment of tax into the United States from Puerto Rico.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC22

Agency Contact: Linda Wade—Chapman, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226
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Fax: 202 927—8525
Email: wade—chapman.linda@ttb.gov

RIN: 1513–AA16

2613. PETITION TO ESTABLISH THE "SANTA BARBARA HIGHLANDS" VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition proposing the establishment of the "Santa Barbara Highlands" as an American viticultural area. The proposed Santa Barbara Highlands area is located in Santa Barbara and Ventura Counties in California. The petition was submitted by Nebil Zarif, President, Barnwood Vineyards.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC53

Agency Contact: Timothy P. DeVanney, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927—8196
Fax: 202 927—8525
Email: timothy.devanney@ttb.gov

RIN: 1513–AA24

2614. REGULATORY CHANGES FROM CUSTOMS SERVICE FINAL RULE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 44

Legal Deadline: None

Abstract: The temporary rule prescribes TTB regulations relating to a final rule (T.D. 92—181, 57 FR 37692), published by the former U.S. Customs Service (USCS). The USCS published this final rule to create a separate class of customs bonded warehouse duty—free store (class 9). A class 9 customs bonded warehouse may receive tobacco products or cigarette papers or tubes without payment of Federal excise tax. The temporary rule prescribes the regulations that allow a manufacturer of tobacco products or cigarette papers and tubes and an export warehouse proprietor to send such articles to a class 9 customs bonded warehouse. In addition, the temporary rule prescribes regulations that allow a proprietor of a customs bonded manufacturing warehouse to send such cigars to a class 9 customs bonded warehouse. This notice of proposed rulemaking invites comments on the temporary rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC56

Agency Contact: Linda Wade—Chapman, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927—8181
Fax: 202 927—8525
Email: wade—chapman.linda@ttb.gov

RIN: 1513–AA26

2615. SHIPMENTS OF TOBACCO PRODUCTS OR CIGARETTE PAPERS OR TUBES WITHOUT PAYMENT OF TAX

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 40; 27 CFR 275

Legal Deadline: None

Abstract: The proposed rule clarifies regulations and establishes procedures governing tobacco products or cigarette papers or tubes brought in bond from Puerto Rico to the United States. In addition, the proposed rule would allow a manufacturer of tobacco products to receive in bond, cigarette papers and tubes for placement in packages of roll—your—own tobacco, and would eliminate filing bond extensions for tobacco products and cigarette papers or tubes from the U.S. Virgin Islands.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC57

Agency Contact: Linda Wade—Chapman, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927—8181
Fax: 202 927—8525
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RIN: 1513–AA27

2616. PETITION TO ESTABLISH THE "TRINITY LAKE" VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition from Keith Groves of Alpen Cellars proposing the establishment of a viticultural area located in Trinity County, California. The proposed Trinity Lake viticultural area consists of approximately 96,000 acres.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC62

Agency Contact: Timothy P. DeVanney, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927—8196
Fax: 202 927—8525
Email: timothy.devanney@ttb.gov

RIN: 1513–AA29

2617. PETITION TO ESTABLISH "EOLA HILLS" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition proposing the establishment of "Eola Hills" as a new American viticultural area in Oregon.

Timetable:

Action	Date	FR Cite
NPRM	09/08/03	68 FR 52875
NPRM Comment Period End	11/07/03	
Comment Period Extended	11/07/03	68 FR 63042
Extended Comment Period End	01/06/04	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC78

Agency Contact: Jennifer Berry, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 18152, Roanoke, VA 24014
Phone: 540 344—9333
Fax: 540 344—5855
Email: jennifer.berry@ttb.gov

RIN: 1513–AA41

2618. PROPOSED ADDITION OF NEW GRAPE VARIETY NAMES FOR AMERICAN WINES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: TTB has received petitions proposing to add several names to the list of grape variety names used to designate American wines.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC79

Agency Contact: Jennifer Berry, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 18152, Roanoke, VA 24014
Phone: 540 344—9333
Fax: 540 344—5855
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RIN: 1513–AA42

2619. MARKS, LABELS, NOTICES AND BONDS FOR, AND REMOVAL OF, TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5704; 26 USC 7805

CFR Citation: 27 CFR 40; 27 CFR 275

Legal Deadline: None

Abstract: This notice of proposed rulemaking requires labels, notices and marks for removals, in bond, of tobacco products or cigarette papers and tubes that are not in packages. This notice proposes new sections that prohibit the removal of tobacco products or cigarette papers or tubes that are not in packages for domestic uses. Packages are the immediate containers in which a manufacturer or importer places the tobacco products or cigarette papers or tubes for sale or delivery to the consumer. Also, this notice broadens the language for extending bonds so that manufacturers may receive tobacco products, cigarette papers and tubes, without payment of tax, from Puerto Rico. This notice may affect the operations conducted by manufacturers of tobacco products or cigarette papers and tubes and importers of tobacco products.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC90

Agency Contact: Linda Wade—Chapman, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927—8181
Fax: 202 927—8525
Email: wade—chapman.linda@ttb.gov

RIN: 1513–AA49

2620. PETITION TO ESTABLISH "SANTA MARIA BENCH" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB received a petition from Cambria Winery and Vineyard proposing to establish the "Santa Maria Bench" viticultural area in Santa Barbara County, California. The petitioned viticultural area has 3,200 acres, with 1,500 acres planted to wine grapes, and is within the established Santa Maria and the Central Coast viticultural areas.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC93

Agency Contact: Linda Wade—Chapman, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927—8181
Fax: 202 927—8525
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RIN: 1513–AA51

2621. IN—TRANSIT STOPS OF TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES WITHOUT PAYMENT OF TAX

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5704

CFR Citation: 27 CFR 40; 27 CFR 44

Legal Deadline: None

Abstract: This notice is the result of a petition from the Cigar Association of America and the Pipe Tobacco Council. The petition requests that TTB change its position regarding in—transit stops of tobacco products and cigarette papers and tubes after removal without payment of tax from a factory. TTB has taken the position that the law provides that manufacturers may remove the tobacco products and cigarette papers and tubes by paying the excise tax and subsequently filing a claim for drawback. This notice proposes to clarify the regulations to recognize such in—transit stops and specifies records that manufacturers and export warehouse proprietors maintain relating to the removals without payment of tax.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC95

Agency Contact: Linda Wade—Chapman, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927—8181
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RIN: 1513–AA52

2622. PETITION TO ESTABLISH "SNAKE RIVER VALLEY" AS A NEW VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB received a petition proposing "Snake River Valley" as a new American viticultural area located in the States of Idaho and Washington.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC98

Agency Contact: Timothy P. DeVanney, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927—8196
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RIN: 1513–AA53

2623. PETITION TO EXPAND THE LIVERMORE VALLEY VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB received a petition proposing to expand the boundaries of approved American viticultural area Livermore Valley located in the State of California. The proposed expanded boundaries encompass approximately 259,000 acres, of which 4,355 acres are devoted to vineyards. The expansion would add approximately 163,000 acres, 120 acres of vineyards and four wineries to the area.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC99

Agency Contact: Timothy P. DeVanney, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA54

2624. SAN FRANCISCO BAY AND CENTRAL COAST VITICULTURAL AREAS—BOUNDARY REALIGNMENT/EXPANSION

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB received a petition proposing an expansion/realignment of the boundaries of approved American viticultural areas San Francisco Bay and Central Coast located in the State of California. In total, the proposed expanded boundaries encompass approximately 20,000 acres.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AD00

Agency Contact: Timothy P. DeVanney, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA55

2625. PETITION TO ESTABLISH "CHEHALEM MOUNTAINS" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition proposing the establishment of the "Chehalem Mountains" viticultural area located in Yamhill, Washington, and Clackamas Counties, Oregon.

Timetable:

Action	Date	FR Cite
NPRM	10/07/03	68 FR 57840
NPRM Comment Period End	12/08/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AD02

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 415 271—1254
Fax: 707 773—1415
Email: nancy.sutton@ttb.gov

RIN: 1513–AA57

2626. PETITION TO ESTABLISH "RIBBON RIDGE" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition proposing the establishment of the "Ribbon Ridge" viticultural area located in the northern part of Yamhill County, Oregon between Newberg and Gaston.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AD03

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 415 271—1254
Fax: 707 773—1415
Email: nancy.sutton@ttb.gov

RIN: 1513–AA58

2627. PETITION TO ESTABLISH "YAMHILL—CARLTON DISTRICT" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition proposing the establishment of the "Yamhill—Carlton District" viticultural area. The proposed area falls within the approved boundaries of the Willamette Valley viticultural area in northwest Oregon.

Timetable:

Action	Date	FR Cite
NPRM	10/07/03	68 FR 57845
NPRM Comment Period End	12/08/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AD04

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 415 271—1254
Fax: 707 773—1415
Email: nancy.sutton@ttb.gov

RIN: 1513–AA59

2628. PETITION TO ESTABLISH THE "FORT ROSS SEAVIEW" VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed 27,500—acre Fort Ross—Seaview viticultural area is in the North Coast and Sonoma Coast viticultural areas. It is approximately 65 miles north—northwest from San Francisco, close to the Pacific coastline. A significant distinguishing factor of the viticultural area, based on its 920 feet and 1,800 feet elevations, is the sunny and warm growing season that contrasts to the surrounding foggy and cooler lower elevations. The draft notice of proposed rulemaking is in review.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 415 271—1254
Fax: 707 773—1415
Email: nancy.sutton@ttb.gov

RIN: 1513–AA64

2629. PETITION TO ESTABLISH THE "ALEXANDER MOUNTAIN" VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed Alexander Mountain 5,990—acre viticultural area, with 720 acres of winegrape cultivation, is approximately 65 miles north of San Francisco, California. It is totally within the Alexander Valley, North Sonoma and North Coast viticultural areas. It has elevations above the Alexander Valley floor, a mountain climate, and varying terrain orientations for multiple solar exposures. The draft notice of proposed rulemaking is being prepared for review.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 415 271—1254
Fax: 707 773—1415
Email: nancy.sutton@ttb.gov

RIN: 1513–AA65

2630. PETITION TO ESTABLISH "GRAND LAKE O' THE CHEROKEES" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB received a petition proposing "Grand Lake O' the Cherokees" as a new American viticultural area in Oklahoma. The proposed area is located in the northeastern region of the State. The proposed viticultural area encompasses Craig and portions of Ottawa, Delaware, and Hayes Counties.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC97

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RIN: 1513–AA66

2631. PETITION NO. 2 TO EXPAND THE RUSSIAN RIVER VALLEY VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed Russian River Valley viticultural area expansion increases the original boundaries by 30,200 acres to the east and south sides. The notice of proposed rulemaking is in review.

Earlier TTB received a separate Russian River Valley viticultural area expansion petition (RIN 1513—AA68) for a 767—acre expansion. This area is incorporated in the larger 30,200—acre expansion noted above. The final rule for the smaller expansion is being reviewed.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA67

2632. PETITION TO ESTABLISH THE "SALADO CREEK" VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB received a petition to establish the Salado Creek viticultural area in Stanislaus County, California. The proposed 2,940—acre viticultural area is about 75 miles east—southeast of San Francisco and 18 miles southwest of Modesto. The notice of proposed rulemaking is in review.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA69

2633. PETITION TO ESTABLISH THE "SHAWNEE HILLS" VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205(e)

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB requests comments concerning the proposed establishment of the "Shawnee Hills" viticultural area in southern Illinois. The proposed Shawnee Hills viticultural area is approximately 80 miles long from the Ohio River on the east to the Mississippi River on the west, and approximately 20 miles wide from north to south. Approximately 160 acres are planted with wine varietals.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kristy Colon, TTB Specialist, Department of the Treasury,

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RIN: 1513–AA70

2634. PROPOSED AMENDED BOUNDARIES FOR THE SANTA LUCIA HIGHLANDS AND THE ARROYO SECO VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205(e)

CFR Citation: 27 CFR 9.139; 27 CFR 9.59

Legal Deadline: None

Abstract: TTB requests comments concerning the proposed changes to the boundaries of the Santa Lucia Highlands and Arroyo Seco viticultural areas located in Monterey County, California. The proposed boundary change extends portions of the Santa Luca Highlands viticultural area and curtails the Arroyo Seco viticultural area.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kristy Colon, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, 650 Massachusetts Avenue NW.,
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RIN: 1513–AA72

2635. • PETITION TO ESTABLISH "SOUTHERN OREGON" AS A VITICULTURAL AREA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB proposes to establish the Southern Oregon viticultural area in portions of Douglas, Jackson, and Josephine Counties in southwestern Oregon.

Timetable:

Action	Date	FR Cite
NPRM	09/18/03	68 FR 54696
NPRM Comment Period End	11/17/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW.,
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RIN: 1513–AA75

2636. • PETITION TO ESTABLISH "TEXOMA" AS A VITICULTURAL AREA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: We have received a petition for the establishment of a viticultural area in north central Texas to be called "Texoma."

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 18152,
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RIN: 1513–AA77

2637. • EVIDENCE OF EXPORTATION FOR DISTILLED SPIRITS; USE OF ALTERNATIVE DOCUMENTATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 252

Legal Deadline: None

Abstract: TTB intends to amend the regulations in part 252 to clarify the documents that provide adequate export evidence for shipments of distilled spirits and to provide a timeframe for submission of these documents. These amended regulations would also inform the public that TTB would consider approval of alternative types of documentation as adequate export evidence.

Timetable:

Action	Date	FR Cite
NPRM	09/24/03	68 FR 55281
NPRM Comment Period End	11/24/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Brady, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 45797,
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RIN: 1513–AA78

2638. • PETITION TO ESTABLISH THE "HIGH VALLEY" VITICULTURAL AREA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition to establish the "High Valley" viticultural area, which is located about 85 miles north of San Francisco, California, on the eastern shore of Clear Lake.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA79

Department of the Treasury (TREAS) Final Rule Stage
Alcohol and Tobacco Tax and Trade Bureau (TTB)

ALCOHOL

2639. • EXPORTATION OF LIQUORS: RECODIFICATION OF REGULATIONS: ADMINISTRATIVE CHANGES DUE TO THE HOMELAND SECURITY ACT OF 2002

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552(a); 19 USC 81c; 27 USC 203; 44 USC 3504(h); 26 USC 5001; ...

CFR Citation: 27 CFR 28; 27 CFR 252

Legal Deadline: None

Abstract: The Alcohol and Tobacco Tax and Trade Bureau is recodifying its regulations pertaining to exportation of liquors. Due to the Homeland Security Act, we are also making administrative changes to these regulations to reflect the Bureau's new name and organizational structure. This document does not include any substantive regulatory changes.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	
Final Action Effective	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa M. Gesser, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660
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RIN: 1513–AA76

2640. IMPLEMENTATION OF PUBLIC LAW 105—33, SECTION 9302, REQUIRING THE QUALIFICATION OF TOBACCO PRODUCT IMPORTERS AND MISCELLANEOUS TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5712; 26 USC 5713

CFR Citation: 27 CFR 275

Legal Deadline: Other, Statutory, January 1, 2000, Other.

Abstract: These regulations will implement section 9302 provisions of Public Law 105—33, requiring permits for businesses engaged in importing tobacco products. Also, minor technical amendments have been included in this rule.

Timetable:

Action	Date	FR Cite
NPRM	12/22/99	64 FR 71955
Interim Final Rule	12/22/99	64 FR 71947
Interim Final Rule Effective	01/01/00	
Interim Final Rule Comment Period End	05/03/00	65 FR 17477
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC07

Agency Contact: Linda Wade—Chapman, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA10

2641. FLAVORED MALT BEVERAGES AND RELATED PROPOSALS

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 211, 205; 26 USC 5052

CFR Citation: 27 CFR 7; 27 CFR 25

Legal Deadline: None

Abstract: TTB issued ATF Rulings 96—1 and 2002—2 to address production and labeling of flavored malt beverages that derive their alcohol content from flavoring materials. TTB has studied the issue of flavored malt beverages and is proposing rules to limit the contribution of distilled spirits derived from flavoring materials in flavored malt beverages. These proposals address production, identity, labeling, formulation, and tax issues related to flavored malt beverages.

Timetable:

Action	Date	FR Cite
NPRM	03/24/03	68 FR 14292
NPRM Comment Period End	06/23/03	
NPRM Comment Period End Extended	06/02/03	68 FR 32698
Extended Comment Period End	10/21/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC11

URL For Public Comments:
http://www.ttb.gov/foia/nprm__comments/ttbnotice04__comments.htm

Agency Contact: Charles N. Bacon, Program Manager, Department of the Treasury, Tax and Trade Bureau, Room 701, 10 Causeway Street, Boston, MA 02222
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RIN: 1513–AA12

2642. TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES SHIPPED FROM PUERTO RICO TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 5701; 27 USC 7652

CFR Citation: 27 CFR 275

Legal Deadline: None

Abstract: This temporary rule eliminates TTB onsite supervision of tobacco products and cigarette papers and tubes of Puerto Rican manufacture that are shipped from Puerto Rico to the United States. It also eliminates related forms. This rule requires that persons who ship such articles maintain records so that the amount of tax is calculated and recorded for TTB audit and examination. Also, this temporary rule simplifies and clarifies certain sections.

Timetable:

Action	Date	FR Cite
NPRM	03/08/01	66 FR 13864
Interim Final Rule	03/08/01	66 FR 13849
NPRM Comment Period End	05/07/01	66 FR 13864
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC24

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RIN: 1513–AA17

2643. ELIMINATION OF STATISTICAL CLASSES FOR LARGE CIGARS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 5722

CFR Citation: 27 CFR 40; 27 CFR 275

Legal Deadline: None

Abstract: This notice proposes to eliminate reporting categories in regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/05/02	67 FR 67340
NPRM Comment Period End	12/05/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC33

Agency Contact: Linda Wade—Chapman, TTB Specialist, Department of the Treasury, Tax and Trade Bureau,
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RIN: 1513–AA18

2644. IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES; RECODIFICATION OF REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 41; 27 CFR 275

Legal Deadline: None

Abstract: TTB is recodifying the regulations in part 275, Importation of Tobacco Products and Cigarette Papers and Tubes. The purpose of this recodification is to reissue the regulations in part 275 of title 27 of the Code of Federal Regulations (CFR) as 27 CFR part 41. In addition, we are making the necessary nomenclature changes to this part due to the reorganization of ATF into two separate bureaus.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC46

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division,
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RIN: 1513–AA20

2645. PRODUCTION OF DRIED FRUIT AND HONEY WINES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5381; 26 USC 5382; 26 USC 5385; 26 USC 5386; 26 USC 5387

CFR Citation: 27 CFR 24

Legal Deadline: None

Abstract: TTB has received two petitions relating to the production of agricultural wines. One petition proposes that the wine regulations be amended to allow for the production of dried fruit wines with an alcohol by volume content of more than 14 percent. The second petition proposes that the regulations be amended to allow for the production of honey wines with a starting Brix of less than 22 degrees.

Timetable:

Action	Date	FR Cite
NPRM	07/02/03	68 FR 39500
NPRM Comment Period End	09/02/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC48

Agency Contact: Jennifer Berry, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 18152,
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RIN: 1513–AA21

2646. PROPOSED "SAN BERNABE" VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received petitions proposing the establishment of the "San Bernabe" viticultural area and the realignment of the San Lucas American Viticultural Area (AVA). Both areas are situated within the Central Coast AVA and the Monterey AVA and are located in central Monterey County, California. The San Lucas realignment will transfer 1,100 northwest acres to the San Bernabe southern area in an effort to conform with the geography of the new area. No comments were received in response to the notice of proposed rulemaking and the draft final rule is being prepared for review.

Timetable:

Action	Date	FR Cite
NPRM	05/14/03	68 FR 25851
NPRM Comment Period End	07/14/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC60

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division,
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RIN: 1513–AA28

2647. PROPOSAL TO RECOGNIZE SYNONYMS FOR PETITE SIRAH AND ZINFANDEL GRAPE VARIETIES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: TTB is proposing to amend the list of prime grape names for American wines to recognize the name "Durif" as a synonym for the Petite Sirah grape and to recognize the name "Primitivo" as a synonym for the Zinfandel grape. This is in response to the result of recent DNA research into the identity of these grape varieties.

Timetable:

Action	Date	FR Cite
NPRM	04/10/02	67 FR 17312
NPRM Comment Period Extended	06/06/02	67 FR 38915
NPRM Comment Period End	10/08/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC65

Agency Contact: Jennifer Berry, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 18152,
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RIN: 1513–AA32

2648. PETITION TO ESTABLISH "RED HILLS LAKE COUNTY" AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The comment period for the Red Hills (California) 31,250—acre proposed viticultural area closed in March 2003. Based on the 14 public comments and requests by the petitioning group, the name will be finalized as Red Hills Lake County, to better identify the location of the viticultural area. The originally petitioned boundaries will be expanded to the northwest to include Benson Ridge. A draft final rule is in review.

Timetable:

Action	Date	FR Cite
NPRM	10/30/02	67 FR 66083
NPRM Comment Period End	12/30/02	
NPRM Comment Period Reopened	01/16/03	68 FR 2262
Second NPRM Comment Period End	03/17/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC66

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division,
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RIN: 1513–AA33

2649. PETITION TO ESTABLISH "BENNETT VALLEY" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed 8,100—acre viticultural area is located entirely within the North Coast viticultural area of northern California, Sonoma County, and predominantly within the Sonoma Valley viticultural area. There are small overlaps into the Sonoma Coast and Sonoma Mountain viticultural areas. The petitioned area is approximately 40 miles northeast of San Francisco and is bordered by mountains, foothills, and the City of Santa Rosa. Currently, there are 650 acres of vineyards. The notice of proposed rulemaking comment period closed January 21, 2003, with no comments received. The final rule is being reviewed.

Timetable:

Action	Date	FR Cite
NPRM	11/22/02	67 FR 70352
NPRM Comment Period End	01/21/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC72

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division,
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RIN: 1513–AA36

2650. PETITION FOR THE ESTABLISHMENT OF "RED HILL" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 205(e)

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB received a petition proposing the establishment of "Red Hill" as an American viticultural area located within the State of Oregon. The proposed viticultural area consists of approximately 1,668 acres or 8.6 square miles.

Timetable:

Action	Date	FR Cite
NPRM	10/30/02	67 FR 66079
NPRM Comment Period End	12/30/02	
NPRM Comment Period Reopened	01/16/03	68 FR 2262
Second NPRM Comment Period End	03/17/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC76

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RIN: 1513–AA39

2651. PETITION TO CHANGE THE TEMECULA VITICULTURAL AREA'S NAME TO TEMECULA VALLEY

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed name change from Temecula to Temecula Valley is intended to provide a more accurate portrayal of the viticultural area, geographically and politically, and to provide clarity to wine consumers. The boundaries will not change. The notice of proposed rulemaking comment period closed December 20, 2002, with favorable comments received. The final rule is being reviewed.

Timetable:

Action	Date	FR Cite
NPRM	10/21/02	67 FR 64573
NPRM Comment Period End	12/20/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC77

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA40

2652. PETITION TO ESTABLISH "ALEXANDRIA LAKES" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB proposes to establish "Alexandria Lakes" as a new American viticultural area. The proposed area is located in Douglas County, Minnesota. This proposal is a result of a petition filed by Robert G. Johnson on behalf of Carlos Creek Winery.

Timetable:

Action	Date	FR Cite
NPRM	01/23/03	68 FR 3199
NPRM Comment Period End	03/24/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC85

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RIN: 1513–AA45

2653. ORGANIC CLAIMS IN LABELING AND ADVERTISING OF ALCOHOL BEVERAGES

Priority: Info./Admin./Other

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7; 27 CFR 13

Legal Deadline: None

Abstract: TTB amended its alcohol beverage labeling rules to cross—reference the United States Department of Agriculture's National Organic Program (NOP) rules. The mandatory compliance date for the NOP rules was October 21, 2002. TTB requested comments on the temporary rule in an associated notice of proposed rulemaking. Comments were due March 27, 2003.

Timetable:

Action	Date	FR Cite
NPRM	10/08/02	67 FR 62860
Temporary Rule	10/08/02	67 FR 62856
NPRM Comment Period Reopened	12/27/02	67 FR 79011
NPRM Comment Period Reopened	05/09/03	68 FR 24903
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC87

Agency Contact: Marjorie D. Ruhf, Program Manager, Department of the Treasury, Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA46

2654. PETITION TO ESTABLISH "OAK KNOLL DISTRICT" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB is proposing the establishment of the "Oak Knoll District—Napa Valley" viticultural area in Napa County, California. This action is in response to a petition by the Oak Knoll District Committee.

Timetable:

Action	Date	FR Cite
NPRM	07/09/02	67 FR 45437
NPRM Comment Period End	09/09/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC89

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RIN: 1513–AA48

2655. PETITION TO ESTABLISH "DUNDEE HILLS" AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition from the North Willamette Valley AVA Group proposing to establish the "Dundee Hills" American viticultural area in Yamhill County, Oregon. This petitioned viticultural area has 6,490 acres, with 1,264 acres planted to wine grapes, and is on the north side of the Willamette Valley viticultural area in northwest Oregon. In November 2002, the petitioning group amended their viticultural area petition from the Red Hills of Dundee to the Dundee Hills to avoid confusion with any other Red Hills viticultural area. Substantiating name evidence for the "Dundee Hills" name has been provided. The notice of proposed rulemaking published August 15, 2003.

Timetable:

Action	Date	FR Cite
NPRM	08/15/03	68 FR 48839
NPRM Comment Period End	10/14/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC91

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA50

2656. LABELING AND ADVERTISING OF MALT BEVERAGES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 7

Legal Deadline: None

Abstract: This project revises malt beverage advertising and labeling regulations in plain language. This revision will make no substantive changes to the current 27 CFR part 7.

Timetable:

Action	Date	FR Cite
NPRM	06/27/02	67 FR 43496
NPRM Comment Period End	08/26/02	
NPRM Comment Period Extended	08/27/02	67 FR 54388
NPRM Comment Period End	09/25/02	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC10

URL For Public Comments: www.ttb.gov/foia/nprm__comments/notice946__comments.htm

Agency Contact: Charles N. Bacon, Program Manager, Department of the Treasury, Tax and Trade Bureau, Room 701, 10 Causeway Street, Boston, MA 02222
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RIN: 1513–AA60

2657. ELECTRONIC SIGNATURES; ELECTRONIC SUBMISSION OF FORMS TO TTB

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: TTB proposes to amend the regulations to permit industry members to use electronic technology to reduce the need for and storage of paper documents. In order to accomplish our goals, we are proposing to allow industry members to use electronic signatures to sign certain forms instead of using traditional handwritten signatures, and submit certain forms to TTB electronically through an electronic document receiving system that we approve.

Timetable:

Action	Date	FR Cite
NPRM	04/11/03	68 FR 17760
NPRM Comment Period End	05/12/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1512—AC84

Agency Contact: Lisa M. Gesser, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660
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RIN: 1513–AA61

2658. PETITION TO ESTABLISH "MCMINNVILLE" AS AN AMERICAN VITICULTURAL AREA IN OREGON

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB has received a petition proposing "McMinnville" as a new American viticultural area in Oregon.

Timetable:

Action	Date	FR Cite
NPRM	06/27/03	68 FR 38248
NPRM Comment Period End	08/26/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 18152, Roanoke, VA 24014
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RIN: 1513–AA63

2659. PETITION NO. 1 TO EXPAND THE RUSSIAN RIVER VALLEY VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: TTB received a petition in August 2002, from Mr. Donald Carano to expand the Russian River Valley viticultural area's east boundary area by 767 acres in Sonoma County, California. The public comments indicated a general acceptance, without significant opposition, to the expansion area. The final rule is in review.

More recently TTB received a separate petition (RIN 1513—AA67) from the Russian River Valley Winegrowers group proposing a larger expansion to the east and south of the original Russian River Valley viticultural boundaries, which includes this smaller expansion. The second expansion petition will be addressed in a separate notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	01/08/03	68 FR 1020
NPRM Comment Period End	03/10/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, Room 5000, Regulations and Procedures Division, 650 Massachusetts Avenue NW., Washington, DC 20226
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RIN: 1513–AA68

2660. • ADMINISTRATIVE CHANGES TO ALCOHOL, TOBACCO, AND FIREARMS REGULATIONS DUE TO THE HOMELAND SECURITY ACT OF 2002

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107—296; ...

CFR Citation: 27 CFR 1; 27 CFR 4; 27 CFR 5; 27 CFR 6; 27 CFR 8; ...

Legal Deadline: None

Abstract: The Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice, and the Alcohol and Tobacco Tax and Trade Bureau in the Department of the Treasury. Due to these changes, this final rule amends the Alcohol and Tobacco Tax and Trade Bureau's regulations to reflect the Bureau's new name and organizational structure.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	
Final Action Effective	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa M. Gesser, TTB Specialist, Department of the Treasury, Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660
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Email: lisa.gesser@ttb.treas.gov

RIN: 1513–AA80

Department of the Treasury (TREAS)
Alcohol and Tobacco Tax and Trade Bureau (TTB)

Long-Term Actions

2661. EXPORTATION OF LIQUORS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 252

Timetable:

Action	Date	FR Cite
ANPRM	09/08/92	57 FR 40887
ANPRM Comment Period End	10/08/92	
ANPRM Comment Period Extended	10/15/92	57 FR 47320
ANPRM Comment Period Extended End	12/07/92	
ANPRM	08/09/96	61 FR 41500
ANPRM Comment Period End	12/10/96	
NPRM	06/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joanne Brady
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RIN: 1513–AA00

2662. ALCOHOLIC CONTENT LABELING FOR MALT BEVERAGES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 7

Timetable:

Action	Date	FR Cite
NPRM	04/19/93	58 FR 21233
Interim Final Rule	04/19/93	58 FR 21228
NPRM Comment Period Extended	07/19/93	58 FR 38543
NPRM Comment Period End	07/19/93	

Action	Date	FR Cite
NPRM Comment Period Extended End	09/17/93	
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bernard J. Kipp
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RIN: 1513–AA01

2663. IMPLEMENTATION OF WINE CREDIT PROVISIONS OF PUBLIC LAW 104—188

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 24.278; 27 CFR 24.279

Timetable:

Action	Date	FR Cite
NPRM	06/02/97	62 FR 29681
Interim Final Rule	06/02/97	62 FR 29663
NPRM Comment Period End	08/01/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1513–AA05

2664. IMPLEMENTATION OF PUBLIC LAW 105—34, SECTION 1416, RELATING TO REFUND OF TAX FOR DOMESTIC WINE RETURNED TO BOND REGARDLESS OF MERCHANTABILITY (TAXPAYER RELIEF ACT OF 1997)

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 24.66; 27 CFR 24.295; 27 CFR 24.312

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf
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RIN: 1513–AA06

2665. AMENDED STANDARD OF IDENTITY FOR SHERRY

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 4

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf
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RIN: 1513–AA08

2666. SAKE REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
End Review	08/21/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Bernard J. Kipp
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RIN: 1513–AA11

2667. PROHIBITED MARKS ON PACKAGES OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES IMPORTED OR BROUGHT INTO THE UNITED STATES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Wade—Chapman
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RIN: 1513–AA14

2668. REMOVAL OF REQUIREMENT TO DISCLOSE SACCHARIN IN THE LABELING OF WINE, DISTILLED SPIRITS, AND MALT BEVERAGES

Priority: Info./Admin./Other

CFR Citation: 27 CFR 4.32(d); 27 CFR 5.32(b)(6); 27 CFR 7.22(b)(5)

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf
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RIN: 1513–AA15

2669. LIQUOR DEALERS; RECODIFICATION OF REGULATIONS

Priority: Info./Admin./Other

CFR Citation: 27 CFR 31; 27 CFR 194; ...

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karl Joedicke
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RIN: 1513–AA19

2670. PROPOSED REVISIONS TO THE DISTILLED SPIRITS PLANT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 19

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Daniel J. Hiland
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RIN: 1513–AA23

2671. PETITION TO ESTABLISH “SENECA LAKE” AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 9

Timetable:

Action	Date	FR Cite
NPRM	10/21/02	67 FR 64575
NPRM Comment Period End	12/20/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kristy Colon
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RIN: 1513–AA34

2672. TAX—PAID DISTILLED SPIRITS USED IN MANUFACTURING PRODUCTS UNFIT FOR BEVERAGE USE

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 17

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Wade—Chapman
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RIN: 1513–AA37

2673. PETITION TO ESTABLISH “COLUMBIA GORGE” AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 9

Timetable:

Action	Date	FR Cite
NPRM	06/27/03	68 FR 38251
NPRM Comment Period End	08/26/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Sutton
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RIN: 1513–AA43

2674. ELIMINATE REQUIREMENT TO ENROLL TO PRACTICE BEFORE THE BUREAU

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 8

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney
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RIN: 1513–AA62

Department of the Treasury (TREAS)
Alcohol and Tobacco Tax and Trade Bureau (TTB)

Completed Actions

2675. AMELIORATION OF FRUIT AND AGRICULTURAL WINES; TECHNICAL AMENDMENTS

Priority: Info./Admin./Other

CFR Citation: 27 CFR 4

Completed:

Reason	Date	FR Cite
Final Action	07/02/03	68 FR 39454

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Berry
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RIN: 1513–AA30

2676. REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHOUT PAYMENT OF TAX FOR USE IN THE UNITED STATES

Priority: Info./Admin./Other

CFR Citation: 27 CFR 45

Completed:

Reason	Date	FR Cite
Withdrawn	08/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Wade—Chapman
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RIN: 1513–AA38

2677. PETITION TO ESTABLISH “UPPER ARROYO GRANDE” AS A NEW AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 9

Completed:

Reason	Date	FR Cite
Withdrawn	07/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy P. DeVanney
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RIN: 1513–AA56

BILLING CODE 4810—33—S

Department of the Treasury (TREAS) Comptroller of the Currency (OCC)

Prerule Stage

2678. • INTERAGENCY PROPOSAL TO CONSIDER ALTERNATIVE FORMS OF PRIVACY NOTICES UNDER THE GRAMM—LEACH—BLILEY ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 6801 et seq

CFR Citation: 12 CFR 40

Legal Deadline: None

Abstract: The OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Federal Trade Commission, Commodities Futures Trading Commission, and Securities and Exchange Commission (collectively, the Agencies) are requesting comment on whether the Agencies should consider amending the regulations that implement sections 502 and 503 of the Gramm—Leach—Bliley Act to allow or require financial institutions to provide alternative types of privacy notices, such as a short privacy notice, that would be easier for consumers to understand.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 1557–AC80

Department of the Treasury (TREAS) Comptroller of the Currency (OCC)

Proposed Rule Stage

2679. MAINTENANCE OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 92; 12 USC 92a; 12 USC 93; 12 USC 93a; 12 USC 481; 12 USC 484; 12 USC 1818

CFR Citation: 12 CFR 7

Legal Deadline: None

Abstract: The notice of proposed rulemaking would invite comment on a revision to part 7 that would require entities subject to the jurisdiction of the OCC to establish and maintain accurate and complete documentation and records, and allow the OCC timely access to such records. The proposed revision in part 7 would also provide that when a bank discloses documents and records to the OCC during the supervisory process, such a disclosure is not voluntary and is not made to an adversary. The OCC anticipates that this proposed rule would not have a significant impact on national banks.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Tierney, Attorney, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW., Washington, DC 20219
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RIN: 1557–AB99

2680. INTERAGENCY GUIDELINES ESTABLISHING STANDARDS FOR SAFETY AND SOUNDNESS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 12 USC 93a; 12 USC 1818; 12 USC 1831—p; 12 USC 3102(b); 15 USC 6801; 15 USC 6805(b)(6)

CFR Citation: 12 CFR 30

Legal Deadline: None

Abstract: The OCC and the other Federal banking agencies plan to issue a notice of proposed rulemaking to amend their Interagency Guidelines Establishing Standards for Safety and Soundness. The amendment would add a new subsection, pursuant to which a depository institution should establish and maintain new policies and standards designed to ensure an effective system of corporate governance. This amendment is intended to address potential weaknesses in management and corporate governance practices.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AC08

2681. RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24a; 12 USC 24 (Seventh); 12 USC 93a; 12 USC 3101 et seq

CFR Citation: 12 CFR 5

Legal Deadline: None

Abstract: The OCC plans to issue a notice of proposed rulemaking that will require national banks to receive OCC approval before selling or otherwise disposing of all or substantially all of its assets. This proposed rule also provides that the OCC will apply the same standards as it applies to the establishment of a de novo bank to notices to acquire control of such a bank.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heidi M. Thomas, Special Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW.,
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RIN: 1557–AC11

2682. • RISK—BASED CAPITAL; CAPITAL ADEQUACY GUIDELINES; CAPITAL MAINTENANCE: ASSET—BACKED COMMERCIAL PAPER PROGRAMS AND EARLY AMORTIZATION PROVISIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 93a

CFR Citation: 12 CFR 3

Legal Deadline: None

Abstract: The OCC, Federal Reserve Board, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision are proposing to amend their risk—based capital standards by removing the April 1, 2004, sunset provision in order to permanently adopt the interim rule, issued concurrently, that permits sponsoring banks, bank holding companies, and thrifts to exclude from risk—weighted assets those assets in asset—backed commercial paper (ABCP) programs consolidated onto sponsoring banking organizations' balance sheets as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). In addition, the proposed rule would increase the risk—based capital requirement for liquidity facilities with an original maturity of one year or less that banking organizations provide to ABCP Programs. Finally, the proposed rule would require a risk—based capital charge for early amortization risk associated with certain types of revolving securitizations by generally requiring banks to hold a marginal increase in capital for revolving securitizations as their level of excess spread decreases.

Timetable:

Action	Date	FR Cite
NPRM	10/01/03	68 FR 56568
NPRM Comment Period End	11/17/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ron Shimabukuro, Special Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW.,
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RIN: 1557–AC77

2683. • RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES; LICENSING PROCEDURES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1 et seq; 12 USC 24a; 12 USC 24(seventh); 12 USC 93a; 12 USC 3101 et seq.

CFR Citation: 12 CFR 5

Legal Deadline: None

Abstract: The OCC plans to issue a notice of proposed rulemaking to revise certain rules regarding corporate activities. The amendments would update and streamline part 5 licensing procedures, which would increase efficiencies and reduce process costs for national banks and the OCC.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1557–AC79

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

Final Rule Stage

2684. CAPITAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 161; 12 USC 1828 note; 12 USC 1828(n); 12 USC 1831n note; 12 USC 1835; 12 USC 3907; 12 USC 3909

CFR Citation: 12 CFR 3

Legal Deadline: None

Abstract: As part of the OCC's ongoing efforts to develop and refine capital standards to ensure the safety and soundness of the national banking system and to implement statutory requirements, the OCC is amending various provisions of the capital rules for national banks. Specifically, these changes include: 1) new Basel capital accord (Basel II) (formerly referred to as domestic capital framework); and 2) securities borrowing transactions. The OCC is conducting both of these rulemakings jointly with the other Federal banking agencies.

Timetable:

Implementation of a Revised Basel Capital Accord (formerly Domestic Capital Framework) (1557—AC48)
- ANPRM 11/03/00 (65 FR 66193)
- ANPRM Comment Period End 02/01/01
- ANPRM 08/04/03 (68 FR 45900)
- ANPRM Comment Period End 11/03/03

Securities Borrowing Transactions (1557—AC39)
- Interim Final Rule 12/05/00 (65 FR 75856)
- Interim Final Rule Comment Period End 01/19/01
- Final Rule 12/00/03

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AB14

2685. RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES AND BANK ACTIVITIES AND OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24 (Seventh); 12 USC 92a; 12 USC 93a; 12 USC 161; 12 USC 602; 12 USC 1818; 12 USC 1828(n); 12 USC 1828 note; 12 USC 1831n note; 12 USC 1831o; 12 USC 1835; 12 USC 3101 et seq; 12 USC 3901 et seq; 12 USC 3907; 12 USC 3909; 12 USC 24a, sec 5136A of the Revised Statutes; 15 USC 78q; 15 USC 78q—1; 15 USC 78w; 12 USC 29; 12 USC 371; 12 USC 215a—2; 12 USC 215a—3; 12 USC 92; 12 USC 93; 12 USC 481; 12 USC 484; 12 USC 1701j—3; 12 USC 3331 et seq; 12 USC 1828(o)

CFR Citation: 12 CFR 3; 12 CFR 5 to 7; 12 CFR 9; 12 CFR 28; 12 CFR 34

Legal Deadline: None

Abstract: The OCC issued a notice of proposed rulemaking to amend part 5 to implement the authority for national banks to merge with one or more of their nonbank affiliates contained in section 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). The OCC also plans to amend part 5 to implement the authority in section 1204 of AHEOA by adding a new section setting forth the application and prior approval requirements for national banks contemplating reorganization as a subsidiary of a bank holding company. In addition, the OCC also plans to implement section 1205 of AHEOA by amending part 7 to permit national banks to adopt bylaws providing for staggered boards of directors and to permit national banks to apply to expand the size of their boards of directors over 25 members. The OCC also plans to make other amendments to parts 5, 7, 9, and 34, as well as certain technical amendments to parts 3, 6, and 28.

Timetable:

Action	Date	FR Cite
NPRM	02/07/03	68 FR 6363
NPRM Comment Period End	04/08/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AB97

2686. INTERNATIONAL BANKING ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24 (Seventh); 12 USC 93a; 12 USC 161; 12 USC 602; 12 USC 1818; 12 USC 3101 et seq; 12 USC 3901 et seq

CFR Citation: 12 CFR 28; 12 CFR 5

Legal Deadline: None

Abstract: The OCC plans to issue a final rule that will clarify or revise a number of application or notice procedures, including the standards for approval that would apply. It permits Federal branches and agencies to operate with one license in the United States, with a license issued only for the initial Federal branch or agency, rather than requiring each office of a foreign bank to have a separate license. It also permits a Federal branch to operate a loan production office as part of its branch license. In addition, the OCC proposes to implement through its regulation a number of OCC interpretations regarding the capital equivalency deposit required of Federal branches and agencies. Finally, the OCC proposes to revise several definitions.

Timetable:

Action	Date	FR Cite
NPRM	04/23/03	68 FR 19949
NPRM Comment Period End	06/23/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AC04

2687. REPORTING AND DISCLOSURE REQUIREMENTS FOR NATIONAL BANKS WITH SECURITIES REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934; SECURITIES OFFERING DISCLOSURE RULES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 93a; 15 USC 78l; 15 USC 78m; 15 USC 78n; 15 USC 78p; 15 USC 78w

CFR Citation: 12 CFR 11; 12 CFR 16

Legal Deadline: None

Abstract: The Sarbanes—Oxley Act of 2002 made amendments to section 12(i) of the Securities Exchange Act of 1934. These amendments vested the OCC with authority to administer and enforce several of the enhanced reporting, disclosure, and corporate governance obligations imposed by the Sarbanes—Oxley Act with respect to national banks that have a class of securities registered under the Securities Exchange Act of 1934. The final rule would amend the Securities Exchange Act disclosure rules applicable to national banks to reflect the amendmenmts to section 12(i) of the Securities Exchange Act of 1934.

Timetable:

Action	Date	FR Cite
NPRM	05/21/03	68 FR 27753
NPRM Comment Period End	06/20/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AC12

2688. RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES (ELECTRONIC FILINGS)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC et seq; 12 USC 24a; 12 USC 24 (Seventh); 12 USC 93a; 12 USC 3101 et seq

CFR Citation: 12 CFR 5

Legal Deadline: None

Abstract: The interim final rule made revisions to part 5 filing requirements to facilitate electronic filings for certain applications. The purpose of these changes is to permit national banks to file certain classes of applications electronically and to inform national banks where they may find detailed procedural information on electronic filings. The rule also amended part 5 to clarify the circumstances under which the OCC may adopt filing procedures different from those otherwise required by part 5.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/14/03	68 FR 17890
Interim Final Rule Effective	04/14/03	
Interim Final Rule Comment Period End	06/13/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AC13

2689. • BANK ACTIVITIES AND OPERATIONS; REAL ESTATE LENDING AND APPRAISALS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1 et seq; 12 USC 71; 12 USC 71a; 12 USC 93a; 12 USC 29; 12 USC 371; 12 USC 1701j—3; 12 USC 1828(o); 12 USC 3331 et seq

CFR Citation: 12 CFR 7; 12 CFR 34

Legal Deadline: None

Abstract: The OCC issued a notice of proposed rulemaking to amend parts 7 and 34 of its regulations to add provisions clarifying the applicability of State law to national banks. These provisions would identify types of State laws that are preempted, as well as types of State laws that generally are not preempted, in the context of national bank lending, deposit—taking, and other activities.

Timetable:

Action	Date	FR Cite
NPRM	08/05/03	68 FR 46119
NPRM Comment Period End	10/06/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1557–AC73

2690. • ELECTRONIC FILING AND DISCLOSURE OF BENEFICIAL OWNERSHIP REPORTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 93a; 15 USC 78l; 15 USC 78p

CFR Citation: 12 CFR 11

Legal Deadline: None

Abstract: The Sarbanes—Oxley Act of 2002 made amendments to section 16(a) of the Securities Exchange Act of 1934, which requires the filing of beneficial ownership reports by officers, directors, and principal shareholders of issuers of securities. The OCC is issuing an interim rule with request for comment to require that beneficial ownership reports be filed electronically by officers, directors, and principal shareholders of national banks, pursuant to the amendments of the Sarbanes—Oxley Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/22/03	68 FR 54981
Interim Final Rule Comment Period End	11/21/03	
Interim Final Rule Effective	01/01/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1557–AC75

2691. • RISK—BASED CAPITAL; CAPITAL ADEQUACY GUIDELINES; CAPITAL MAINTENANCE: INTERIM CAPITAL TREATMENT OF CONSOLIDATED ASSET—BACKED COMMERCIAL PAPER PROGRAM ASSETS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 93a

CFR Citation: 12 CFR 3

Legal Deadline: None

Abstract: The OCC, together with the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, plan to amend their risk—based capital standards by providing an interim treatment for assets in asset—backed commercial paper (ABCP) programs that are consolidated onto the balance sheets of sponsoring banks, bank holding companies, and thrifts as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46). Specifically, the interim capital treatment allows sponsoring banking organizations to remove consolidated ABCP program assets from their risk—weighted asset base for the purpose of calculating their risk—based capital ratios.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/03	68 FR 56530
Interim Final Rule Effective	10/01/03	
Interim Final Rule Comment Period End	11/17/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AC76

2692. ● BANK ACTIVITIES AND OPERATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1 et seq; 12 USC 71; 12 USC 71a; 12 USC 92; 12 USC 92a; 12 USC 93; 12 USC 93a; 12 USC 481; 12 USC 484; 12 USC 1818

CFR Citation: 12 CFR 7

Legal Deadline: None

Abstract: The OCC plans to issue a final rule amending 12 CFR part 7 by amending the rules regarding visitorial powers. The amendments clarify the extent of the OCC's visitorial authority and the application of exceptions to that authority.

Timetable:

Action	Date	FR Cite
NPRM	02/07/03	68 FR 6363
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1557–AC78

Department of the Treasury (TREAS) Comptroller of the Currency (OCC) Long-Term Actions

2693. RULES AND PROCEDURES FOR CLAIMS AGAINST OCC—APPOINTED RECEIVERSHIPS FOR UNINSURED FINANCIAL INSTITUTIONS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AB59

2694. FAIR CREDIT REPORTING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
NPRM Update	03/27/01	66 FR 16624
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AB78

2695. RECORDKEEPING REQUIREMENTS FOR BANK EXCEPTIONS FROM SECURITIES BROKER OR DEALER REGISTRATION

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AB93

2696. COMMUNITY REINVESTMENT ACT REGULATION

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 25

Timetable:

Action	Date	FR Cite
ANPRM	07/19/01	66 FR 37602
ANPRM Comment Period End	10/17/01	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AB98

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

Completed Actions

2697. CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CERTAIN NONFEDERALLY REGULATED BANKS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 21; 31 CFR 103

Completed:

Reason	Date	FR Cite
Final Rule	05/09/03	68 FR 25090
Final Action Effective	06/09/03	
Compliance Date	10/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AC06

2698. COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS (12 CFR PART 24)

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 24

Completed:

Reason	Date	FR Cite
Final Rule	08/15/03	68 FR 48771
Final Rule Effective	09/15/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AC09

2699. REMOVAL, SUSPENSION, AND DEBARMENT OF INDEPENDENT ACCOUNTANTS FROM PERFORMING AUDIT SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 19

Completed:

Reason	Date	FR Cite
Final Rule	08/13/03	68 FR 48256
Final Rule Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1557–AC10

BILLING CODE 4830—01—S

Department of the Treasury (TREAS)
Internal Revenue Service (IRS)

Prerule Stage

2700. HAND CARRYING RETURNS (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6091

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This temporary regulation provides guidance to taxpayers under section 6091 of the Code regarding the place of filing for hand—carried returns. The regulations reflect the changes in organizational structure of the IRS that may affect where taxpayers may file hand—carried returns.

Timetable:

Action	Date	FR Cite
Temporary Regulation	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—138173—02

Drafting attorney: Emly B. Berndt (202) 622—4940

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Treasury attorney: Julian Kim (202) 622—1981

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RIN: 1545–BB45

2701. CORPORATE REORGANIZATIONS; CONTINUITY—TRANSFERS OF ASSETS OR STOCK FOLLOWING A REORGANIZATION (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides amendments to regulation section 1.368—2(k) of the income tax regulations, which sets forth rules providing that for certain reorganizations, transfers by the acquiring corporation of target assets or stock to certain controlled corporations will not disqualify the transaction from nonrecognition treatment. The temporary regulations will clarify the reorganizations subject to these rules.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—165579—02

Drafting attorney: Rebecca O. Burch (202) 622—7550

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RIN: 1545–BB81

2702. GUIDANCE REGARDING MARK—TO—MARKET VALUATION FOR CERTAIN SECURITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 475; 26 USC 446

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Section 475(a) requires that dealers in securities must mark their securities to market. If the security is inventory, the dealer must include that security at fair market value. Taxpayers must treat any securities that are not inventory as if they were sold for its fair market value on the last business day of the year. While the legal definition of the term "fair market value" has long been settled, the statute is silent as to what valuation methodology should be used to determine fair market value of any particular security. Many of the securities subject to section 475 raise difficult valuation issues. An advanced notice of proposed rulemaking asked for comments on rules and standards that the IRS is considering using a financial statement—tax conformity approach for valuing certain securities under section 475 for which the determination of actual fair market value is administratively difficult. The rules will include: (1) the securities to which this approach applies; (2) the taxpayers who may elect this approach; (3) the election into the approach; (4) the applicable financial statements to be used; (5) the record—keeping, retention, and availability requirements for verification of financial statement—tax conformity; and (6) what approach will apply if the election for financial statement—tax conformity is not made. A notice of proposed rulemaking will be published after the IRS and the Treasury consider comments received on the advance notice of rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—100420—03

Drafting attorney: Marsha A. Sabin (202) 622—3950

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Treasury attorneys: Michael Novey (202) 622—1339 and Viva Hammer (202) 622—0869

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RIN: 1545–BB90

2703. NEW MARKETS TAX CREDIT AMENDMENTS (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 45D; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The temporary regulations will amend regulations section 1.45D—1T involving the new markets tax credit under section 45D. The amendments will address certain issues involving qualified low—income community investments under section 45D(d)(1).

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—115471—03

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RIN: 1545–BC02

2704. • GUIDANCE REGARDING APPLICATION OF SECTION 265(A)(2) AND 246A IN TRANSACTIONS INVOLVING RELATED PARTIES, PASS—THROUGH ENTITIES, OR OTHER INTERMEDIARIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7701(f); 26 USC 265(a); 26 USC 246A

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Section 7701(f) of the Code provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the provisions of the Code that deal with (1) the linking of borrowing to investment, or (2) diminishing the risk through the use of related persons, pass—through entities, or other intermediaries. Section 7701(f) was enacted to authorize the issuance of regulations to prevent the avoidance of the purposes of sections 265(a)(2) (which disallows interest on indebtedness incurred or continued to purchase or carry tax—exempt obligations) and 246A (which reduces the dividends received deduction under sections 243, 244, or 245(a)) in proportion to the extent that the portfolio stock with respect to which the dividends are received is debt—financed) through transactions involving related parties, pass—through entities, or other intermediaries.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—128572—03

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RIN: 1545–BC24

2705. • SUBSTITUTE FOR RETURN (SFR) AND AUTOMATED SUBSTITUTE FOR RETURN (ASFR) (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805; 26 USC 6020

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The temporary regulation serves to be the Service's expression of intent that certain documents generated in the substitute for return (SFR) and Automated Substitute for Return (ASFR) process constitute section 6020(b) returns for purposes of assessing the section 6651(a)(2) addition to tax.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: REG—131739—03

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RIN: 1545–BC46

2706. • GUIDANCE UNDER SECTION 1502; APPLICATION OF SECTION 108 TO MEMBERS OF A CONSOLIDATED GROUP (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations amend REG—132760—03 published in the Federal Register on September 4, 2003 (68 FR 52542), and TD 9089 also published in the Federal Register on September 4, 2003 (68 FR 52487). Those regulations provided guidance concerning the application of section 108 to members of a consolidated group.

Timetable:

Action	Date	FR Cite
Temporary Regulations	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—153319—03

Drafting attorney: Amber R. Cook (202) 622—7530

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RIN: 1545–BC77

Department of the Treasury (TREAS)
Internal Revenue Service (IRS)

Proposed Rule Stage

2707. FOREIGN INSURANCE COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 842; 26 USC 864

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will prescribe rules for determining investment income effectively connected with the conduct of an insurance business in the United States by a foreign company.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209066—88 (INTL—024—88)

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RIN: 1545–AL82

2708. OUTBOUND TRANSFERS OF PROPERTY TO FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 367

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The income tax regulations under section 367(a) will be amended to reflect the changes made to that section by the Technical and Miscellaneous Corrections Act of 1988. Section 367(a)(5) now provides that a transfer of assets to a foreign corporation in an exchange described in section 361 is subject to section 367(a)(1), unless certain ownership requirements and other conditions are met. The regulations will provide guidance regarding the application of this section. The change in the statute was necessitated by the repeal of "General Utilities."

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209006—89 (INTL—089—89)

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RIN: 1545–AM97

2709. FOREIGN INSURANCE COMPANY—DOMESTIC ELECTION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 953

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide substantive and procedural rules regarding the election under section 953(d) to treat certain controlled foreign corporations engaged in the insurance business as domestic corporations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—208980—89 (INTL—765—89)

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RIN: 1545–AO25

2710. FRINGE BENEFIT SOURCING UNDER SECTION 861

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 861

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address the circumstances in which an allocation of income of an individual for the performance of services, both within and outside the United States, is appropriately made only on the time basis.

Timetable:

Action	Date	FR Cite
NPRM	01/21/00	65 FR 3402
Public Hearing	07/18/00	
Second NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—208254—90 (INTL—107—90)

Drafting attorney: David F. Bergkuist (202) 622—3850

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CC:INTL

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Phone: 202 622—3850

RIN: 1545–AO72

2711. TAXATION OF GLOBAL TRADING

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864; 26 USC 482; 26 USC 863

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will improve the taxation of global trading.

Timetable:

Action	Date	FR Cite
ANPRM	08/28/90	55 FR 35152
NPRM	03/06/98	63 FR 11177
NPRM Comment Period End	06/04/98	
Hearing	07/14/98	
Second NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—208299—90 (INTL—70—90)

Drafting attorney: Kenneth P. Christman (202) 622—3870

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Treasury attorney: Patricia Brown (202) 622—1781

CC:INTL

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RIN: 1545–AP01

2712. INFORMATION REPORTING AND RECORD MAINTENANCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7801; 26 USC 6038C

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will implement the directives of section 6038C. This will be accomplished by requiring foreign corporations engaged in a U.S. business to provide specific information regarding related party transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—208265—90 (INTL—102—90)

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Treasury attorney: Patricia Brown (202) 622—1781

CC:INTL

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Phone: 202 622—3870

RIN: 1545–AP10

2713. INTEGRATED FINANCIAL TRANSACTION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation addresses whether matched book sale and repurchase transactions conducted by securities dealers qualify as integrated financial transactions under section 1.861—10(c).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209604—93 (INTL—001—93)

Drafting attorney: Kenneth P. Christman (202) 622—3870

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Treasury attorney: Patricia Brown (202) 622—1781

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RIN: 1545–AR20

2714. SOURCE RULES FOR PAYMENTS MADE PURSUANT TO CERTAIN SWAP ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 863; 26 USC 7701

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules for determining the source and character of payments made in certain swap transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—253560—96

Drafting attorney: Paul S. Epstein (202) 622—3870

Reviewing attorney: Paul S. Epstein (202) 622—3870

CC:INTL

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Phone: 202 622—3870

RIN: 1545–AU89

2715. FOREIGN TAX CREDIT ANTI—ABUSE REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 901; 26 USC 901; 26 USC 904; 26 USC 864; 26 USC 7701

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will disallow foreign tax credits with respect to foreign taxes generated in certain arrangements from which the reasonably expected economic profits are insubstantial compared to expected foreign tax credits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—103445—98

Drafting attorney: Bethany Ingwalson (202) 622—3850

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CC:INTL

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RIN: 1545–AV97

2716. TRANSPORTATION OF PERSONS AND PROPERTY BY AIR

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 4261; 26 USC 4271; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations provide guidance concerning the excise taxes imposed on the amounts paid for the transportation of persons and property by air.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—106167—98

Drafting attorney: Deane M. Burke (202) 622—3130

Reviewing attorneys: Frank K. Boland (202) 622—3130 and Phillip Howard (202) 622—3000

Treasury attorney: John Parcell (202) 622—2578

CC:PSI

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Phone: 202 622—3130

RIN: 1545–AW19

2717. CAPITAL GAIN GUIDANCE RELATING TO CRTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1; 26 USC 664

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides guidance relating to charitable remainder trusts in light of the changes made to section 1(h) of the Internal Revenue Code by the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—110896—98

Drafting attorney: Theresa M. Melchiorre (202) 622—7830

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Treasury attorney: Catherine Hughes (202) 622—9407

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Phone: 202 622—7830

RIN: 1545–AW35

2718. CONSTRUCTIVE SALES OF APPRECIATED FINANCIAL POSITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1259

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to principles for determining if a taxpayer has constructively sold an appreciated financial position.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG—102191—98

Drafting attorney: Kathleen Sleeth (202) 622—3920

Reviewing attorney: Elizabeth Handler (202) 622—3920

Treasury attorney: Michael Novey (202) 622—1339

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RIN: 1545–AW97

2719. RULES FOR SOURCING CERTAIN TRANSPORTATION INCOME, SPACE, OR OCEAN ACTIVITY INCOME, AND RELATED FOREIGN BASE COMPANY SHIPPING INCOME

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides guidance to shipping and aircraft companies for application of the source rules for certain income under sections 863(c) and 863(d), and for related space or ocean activity income that is also foreign—based company shipping income under section 954(f).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—115557—98

Drafting attorney: Patricia A. Bray (202) 622—3880

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Treasury attorney: Carl Dubert (202) 622—0222

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RIN: 1545–AX02

2720. DEFINITION OF ACCOUNTING METHOD

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 446

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will clarify the definition of a change in the method of accounting.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—105228—99

Drafting attorney: Jeffery G. Mitchell (202) 622—4970

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Treasury attorney: Sharon Kay (202) 622—0865

CC:ITA

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Phone: 202 622—4970

RIN: 1545–AX21

2721. AWARDING OF COSTS AND CERTAIN FEES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7430

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed amendments to the Treasury Regulations incorporate the 1997 and 1998 amendments to 26 U.S.C. 7430, relating to the awarding of attorney's fees in administrative and court proceedings. The amendments to 26 U.S.C. 7430 were enacted under the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—111833—99

Drafting attorney: Tami C. Belouin (202) 622—3847

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CC:PA:APJP

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Phone: 202 622—3847

RIN: 1545–AX46

2722. HIGHLY COMPENSATED EMPLOYEE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 414

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulations will provide the definition of highly compensated employee.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—111277—99

Drafting attorney: R. Lisa Mojiri—Azad (202) 622—6080

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CC:TEGE

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RIN: 1545–AX48

2723. MODIFICATION TO SECTION 367(A) STOCK TRANSFER REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 367

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: This regulation will modify section 367(a), stock transfer regulations, to address abuses under check—the—box and through the use of convertible stock.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—116053—99

Drafting attorney: Robert W. Lorence (202) 622—3860

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Treasury attorney: Michael Caballero (202) 622—0851

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RIN: 1545–AX77

2724. CLARIFICATION OF FOREIGN—BASED COMPANY SALES INCOME RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 954

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation clarifies when a controlled foreign corporation cannot exclude sales income from foreign—based company sales income under the manufacturing exception by reason of activities of a contract manufacturer. Likewise, the branch rule under IRC section 954(d)(2) does not apply to a contract manufacturer.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG—106356—00

Drafting attorney: Valerie A. Mark—Lippe (202) 622—3840

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Phone: 202 622—3840

RIN: 1545–AX91

2725. LIKE—KIND EXCHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 168; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations relate to like—kind exchanges under section 168 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—106590—00

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RIN: 1545–AX95

2726. GUIDANCE ON CHANGES TO THE LAWS FOR CORPORATE ESTIMATED TAXES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6655

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The proposed regulations provide guidance on changes to the law for corporate estimated taxes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—107722—00

Drafting attorney: Robert A. Desilets, Jr. (202) 622—4910

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RIN: 1545–AY22

2727. WITHHOLDING TAX ON FOREIGN PARTNERS' SHARE OF EFFECTIVELY CONNECTED INCOME

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 1446

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance for partnership withholding on partners' allocable share of partnership's effectively connected income.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—108524—00

Drafting attorney: David J. Sotos (202) 622—3860

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Treasury attorney: Michael Caballero (202) 622—0851

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RIN: 1545–AY28

2728. TAXABLE YEARS OF CONTROLLED FOREIGN CORPORATIONS (CFCS) AND FOREIGN PERSONAL HOLDING COMPANIES (FPHCS)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 898

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide definitions and rules for determining the required year for CFCs and FPHCs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—108523—00

Drafting attorney: Jeffrey L. Vinnik (202) 622—3840

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CC:INTL

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RIN: 1545–AY30

2729. ALLOCATION OF INCOME AND DEDUCTIONS FROM INTANGIBLES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 482

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will address the allocation of income and deductions from intangible property.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG—115037—00

Drafting attorney: J. Peter Luedtke (202) 435—5265

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Treasury attorney: Rocco Femia (202) 622—1755

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RIN: 1545–AY38

2730. DOLLAR—VALUE LIFO

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 472; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance under the dollar—value last—in, first—out (LIFO) inventory method for taxpayers that define LIFO items based on components of cost.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—107580—00

Drafting attorney: Scott H. Rabinowitz (202) 622—4970

Reviewing attorney: Jeffery G. Mitchell (202) 622—4970

Treasury attorney: Sharon Kay (202) 622—0865

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RIN: 1545–AY39

2731. PREVIOUSLY TAXED EARNINGS AND PROFITS UNDER SUBPART F

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 959

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address previously taxed earnings and profits under subpart F.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—121509—00

Drafting attorney: Jonathan A. Sambur (202) 622—3840

Reviewing attorney: Kelly Kogan (202) 622—3840

Treasury attorney: Rocco Femia (202) 622—1755

CC:INTL

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RIN: 1545–AY54

2732. DISCLOSURE OF RETURNS AND RETURN INFORMATION IN JUDICIAL AND ADMINISTRATIVE TAX PROCEEDINGS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed rule relates to the disclosure of returns and return information in judicial and administrative tax proceedings pursuant to 26 U.S.C. 6103(h)(4).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—120297—01

Drafting attorney: Christine S. Irwin (202) 622—4570

Reviewing attorney: David L. Fish (202) 622—4590

Treasury attorney: Eric San Juan (202) 622—0224

CC:PA:DPL

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RIN: 1545–AY89

2733. PAYMENTS FOR INTEREST IN PARTNERSHIP

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 736

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations relate to section 736(b)(3)(B), regarding payments for interest in a partnership if the retiring or deceased partner was a general partner in the partnership.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—123382—01

Drafting attorney: James M. Gergurich (202) 622—3070

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CC:PSI

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RIN: 1545–AY90

2734. ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE; TAX BOOK VALUE DISPARITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations would propose amendments to the current tax book value method of valuing assets for purposes of interest expense apportionment in order to reduce disparities between the treatment of foreign and domestic use assets.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—129447—01

Drafting attorney: Margaret A. Hogan (202) 622—3850

Reviewing attorney: Anne Devereaux (202) 622—3850

Treasury attorneys: Michael Caballero (202) 622—0851 and John Harrington (202) 622—0589

CC:INTL

Agency Contact: Margaret A. Hogan, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
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RIN: 1545–BA02

2735. TRANSACTIONS INVOLVING OBLIGATIONS OF CONSOLIDATED GROUP MEMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations are in regard to intercompany obligations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—107592—00

Drafting attorney: Frances Kelly (202) 622—7072

Reviewing attorney: Michael J. Wilder (202) 622—3393

Treasury attorney: Audrey Nacamuli (202) 622—5721

CC:CORP

Agency Contact: Frances L. Kelly, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
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Phone: 202 622—7072

RIN: 1545–BA11

2736. DEDUCTIBILITY OF EMPLOYER CONTRIBUTIONS FOR DEFERRED COMPENSATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will update and clarify the general rules for deductibility of employer contributions to qualified retirement plans and other deferred compensation arrangements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—139449—01

Drafting attorney: Linda S.F. Marshall (202) 622—6090

Reviewing attorney: Mark Schwimmer (202) 622—6090

Treasury attorney: Thomas Reeder (202) 622—1341

CC:TEGE

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RIN: 1545–BA13

2737. CONTINUATION OF A CONSOLIDATED GROUP

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation addresses issues related to the continuation of consolidated groups in regulation's section 1.1502—75.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—126022—01

Drafting attorney: Christopher M. Bass (202) 622—7770

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CC:CORP

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RIN: 1545–BA14

2738. PROPERTY EXEMPT FROM LEVY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6334

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation will describe the judicial procedures for approval of a principal residence seizure, pursuant to I.R.C. sections 6334(a)(13(B)(i) and 6334(e)(1).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—140378—01

Drafting attorney: Robin M. Ferguson (202) 622—3610

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CC:PA:CBS

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Phone: 202 622—3610

RIN: 1545–BA22

2739. GASOLINE TAX CLAIMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6416

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The proposed regulation will provide guidance regarding claims for credit or refund of the gasoline tax under section 6416(b)(2) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
ANPRM	10/23/01	66 FR 53564
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local, State, Tribal

Additional Information: REG—143219—01

Drafting attorney: Susan Athy (202) 622—3130

Reviewing attorneys: Frank Boland (202) 622—3130 and Phillip Howard (202) 622—3000

Treasury attorney: John Parcell (202) 622—2578

CC:PSI

Agency Contact: Susan Athy,
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RIN: 1545–BA27

2740. SUSPENSION OF STATUTES OF LIMITATION IN JOHN DOE AND THIRD—PARTY SUMMONS DISPUTES, AND EXPANSION OF TAXPAYERS' RIGHTS TO RECEIVE NOTICE AND SEEK JUDICIAL REVIEW OF THIRD PARTY SUMMONSES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7603; 26 USC 7609

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The proposed regulation provides guidance regarding modified rules for serving summonses on third—party recordkeepers, the broadened range of summonses subject to the notice requirements, and the suspension of limitations periods when court actions are brought or when a summoned third party fails to fully respond to a summons. This proposed regulation incorporates the changes enacted in the Internal Revenue Service Restructuring and Reform Act of 1998, Omnibus Budget Reconciliation Act of 1990, Technical and Miscellaneous Revenue Act of 1988 and Tax Reform Act of 1986. This regulation is a continuation of the regulation project previously numbered at REG—208225—88.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—153037—01

Drafting attorney: Elizabeth D. Rawlins (202) 622—3600

Reviewing attorney: Robert A. Miller (202) 622—3600

CC:PA:CBS

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RIN: 1545–BA31

2741. INCOME FROM SOURCES WITHIN SPECIFIED POSSESSION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 931; 26 USC 911

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will remove the reference to section 911 in the section 931 regulations and update the definition of a possession under those regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—159068—01

Drafting attorney: Jonathan A. Sambur (202) 622—3840

Reviewing attorney: Phyllis E. Marcus (202) 622—3840

Treasury attorney: Carl Dubert (202) 622—0222

CC:INTL

Agency Contact: Jonathan A. Sambur, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington
Phone: 202 622—3840

RIN: 1545–BA37

2742. TREATMENT OF CERTAIN OBLIGATION—SHIFTING TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864(c)(6); 26 USC 7701(e)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation proposes a rule that applies to a single taxpayer engaging in certain tax—motivated obligation—shifting transfers to prevent tax avoidance. Similar multi—party tax avoidance techniques are addressed by Property Treasury Regulation section 1.7701(i)—2 (1996). This regulation also would modify a rule in the proposed regulation dealing with certain related—party transfers that might, in its present form, present opportunities for tax avoidance.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—160799—01

Drafting attorney: Jeffrey L. Vinnik (202) 622—3840

Reviewing attorney: David N. Bowen (202) 622—3800

Treasury attorney: Rocco Femia (202) 622—1755

CC:INTL

Agency Contact: Jeffrey L. Vinnik, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3840

RIN: 1545–BA41

2743. MULTIFAMILY HOUSING BONDS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to various issues with respect to multifamily housing bonds.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: REG—163765—01

Drafting attorney: Rose M. Weber (202) 622—3980

Reviewing attorney: Bruce M. Serchuk (202) 622—3980

Treasury attorney: Stephen J. Watson (202) 622—1322

CC:TEGE

Agency Contact: Rose M. Weber, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3980

RIN: 1545–BA45

2744. MODIFICATION OF CHECK THE BOX REGULATIONS (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: The Modification of Check the Box regulations will add a new section to the 301.7701—2 regulations to provide that in certain circumstances, namely in State law mergers and conversions, a surviving disregarded entity will be regarded for purposes of assessment and collection of prior year tax liabilities of predecessor entities. Thus, following a transaction in which a regarded entity is merged or converted into a disregarded entity, the Commissioner will be able to exercise collection and assessment authority against the disregarded entity for any liabilities stemming from tax periods of the regarded entity prior to the date of the transaction.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—106681—02

Drafting attorney: James M. Gergurich (202) 622—3070

Reviewing attorney: Jeanne Sullivan (202) 622—3070

Treasury attorney: Stephanie Robinson (202) 622—9858

CC:PSI

Agency Contact: James M. Gergurich, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3070

RIN: 1545–BA58

2745. MODIFICATION OF CHECK THE BOX REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: The Modification of Check the Box regulation will add a new section to the 301.7701—2 regulations to provide that in certain circumstances, namely in State law mergers and conversions, a surviving disregarded entity will be regarded for purposes of assessment and collection of prior year tax liabilities of predecessor entities. Thus, following a transaction in which a regarded entity is merged or converted into a disregarded entity, the Commissioner will be able to exercise collection and assessment authority against the disregarded entity for any liabilities stemming from tax periods of the regarded entity prior to the date of the transaction.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—106681—02

Drafting attorney: James M. Gergurich (202) 622—3070

Reviewing attorney: Jeanne Sullivan (202) 622—3070

Treasury attorney: Stephanie Robinson (202) 622—9858

CC:PSI

Agency Contact: James M. Gergurich, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3070

RIN: 1545–BA59

2746. ABATEMENT OF INTEREST ON LARGE ERRONEOUS REFUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6404(e)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation will provide rules that address whether the Internal Revenue Service may abate interest on an erroneous refund exceeding $50,000 pursuant to I.R.C. section 6404(e) (26 U.S.C. 6404(e)).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—167500—01

Drafting attorney: David A. Abernathy (202) 622—7940

Reviewing attorney: Richard Goldman (202) 622—7940

CC:PA:APJP

Agency Contact: David A. Abernathy, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—7940

RIN: 1545–BA61

2747. ALLOCATION AND APPORTIONMENT RULES: GUIDANCE ON SELECTED ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 863

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to the allocation and apportionment under section 861 of selected deductions, e.g., charitable contributions and research and experimentation expenses.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—128240—01

Drafting attorney: Teresa B. Hughes (202) 622—3850

Reviewing attorney: Anne Devereaux (202) 622—3850

Treasury attorney: John Harrington (202) 622—0589

CC:INTL

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Phone: 202 622—3850

RIN: 1545–BA64

2748. PROVISIONS REGARDING CROSS—BORDER TRANSACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 368(a)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation will make conforming changes to account for cross—border section 368(a)(1)(A) mergers.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG—125628—01

Drafting attorney: Robert W. Lorence (202) 622—3860

Reviewing attorney: Charles Besecky (202) 622—3860

CC:INTL

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RIN: 1545–BA65

2749. CIRCULAR 230—TAX SHELTER AMENDMENTS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 31 USC 330

CFR Citation: 31 CFR 10

Legal Deadline: None

Abstract: These regulations propose amendments to the standards for tax opinions related to tax shelters.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—122379—02

Drafting attorney: Brinton T. Warren (202) 622—7800

Reviewing attorney: Richard S. Goldstein (202) 622—3400

Treasury attorney: Julian Kim (202) 622—1981

CC:PA:APJP

Agency Contact: Brinton T. Warren, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
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RIN: 1545–BA70

2750. CIRCULAR 230—PHASE 2 NONSHELTER REVISIONS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 31 USC 330

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations propose amendments to the rules governing practice before the Internal Revenue Service.

Timetable:

Action	Date	FR Cite
ANPRM	12/19/02	67 FR 77724
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—122380—02

Drafting attorney: Heather L. Dostaler (202) 622—8445

Reviewing attorney: Richard S. Goldstein (202) 622—7820

Treasury attorney: Julian Kim (202) 622—1981

CC:PA:APJP

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Phone: 202 622—8445

RIN: 1545–BA72

2751. ALLOCATION OF NEW MARKETS TAX CREDIT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 45D; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will address how the section 45D new markets tax credit should be allocated to the partners of a partnership under section 704(b) of the Internal Revenue Code and will address related partnership issues.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—131999—02

Drafting attorney: Michael Goldman (202) 622—3080

Reviewing attorney: James Quinn (202) 622—3070

CC:PSI

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RIN: 1545–BA84

2752. TRANSFER OF NOTES OR STOCK TO PROVIDE FOR SATISFACTION OF CONTESTED LIABILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations would amend regulations section 1.461—2 that allows a taxpayer to deduct in the taxable year of transfer the amount of money on other property transferred to satisfy an asserted liability that the taxpayer contests. The amendment to regulations section 1.461—2(c)(1) relates to transfers to provide for the satisfaction of an asserted liability. The regulations would also amend regulations section 1.461—2 to provide rules relating to economic performance.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—136890—02

Drafting attorney: Norma C. Rotunno (202) 622—7900

Reviewing attorney: Thomas D. Moffitt (202) 622—7900

Treasury attorney: Sharon A. Kay (202) 622—0865

CC:ITA

Agency Contact: Norma C. Rotunno, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
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RIN: 1545–BA90

2753. GUIDANCE TO FACILITATE ELECTRONIC TAX ADMINISTRATION

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation will facilitate electronic tax administration.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—137243—02

Drafting attorney: Bridget E. Tombul (202) 622—4940

Reviewing attorney: Ashton P. Trice (202) 622—4940

Treasury attorney: John Parcell (202) 622—2578

CC:PA:APJP

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RIN: 1545–BA96

2754. TIMELY MAILING TREATMENT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7502

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation will expressly provide that a registered or certified mail receipt is the sole means to prove delivery of a document to the Internal Revenue Service.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—138176—02

Drafting attorney: Charles A. Hall (202) 622—4940

Reviewing attorney: Ashton Trice (202) 622—4940

Treasury attorney: Eric San Juan (202) 622—0224

CC:PA:APJP

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RIN: 1545–BA99

2755. HAND CARRY RETURNS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6091

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation revises obsolete references in the regulations under section 6091 of the Internal Revenue Code and provides guidance to taxpayers on the proper place to file a return by hand carrying the return to the Internal Revenue Service. Currently, the regulations provide that handcarried returns should be filed with the District Director.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—138173—02

Drafting attorney: Emly B. Berndt (202) 622—4940

Reviewing attorney: Ashton Trice (202) 622—4940

Treasury attorney: Julian Kim (202) 622—2578

CC:PA:APJP

Agency Contact: Emly B. Berndt, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
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RIN: 1545–BB00

2756. ALLOCATION OF FOREIGN TAX CREDITS AMONG PARTNERS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 704(b); 26 USC 703(b)(3); 26 USC 702(a)(b)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance on how foreign tax credits must be allocated to partners under section 704(b).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—139792—02

Drafting attorney: Beverly M. Katz (202) 622—3050

Reviewing attorney: Daniel Carmody (202) 622—3050

Treasury attorney: Deborah Harrington (202) 622—1788

CC:PSI

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Phone: 202 622—3050

RIN: 1545–BB11

2757. DISTRIBUTIONS OF PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1023; 26 USC 1024; 26 USC 2032

CFR Citation: 26 CFR 301; 26 CFR 20

Legal Deadline: None

Abstract: This regulation will clarify the language in regulations section 301.9100—6T to remove confusion as to whether relief for making an election under regulations section 2032 is available under sections 301.9100—1 and 301—9100—3.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—139845—02

Drafting attorney: Theresa M. Melchiorre (202) 622—7830

Reviewing attorney: Katherine A. Mellody (202) 622—7830

Treasury attorney: Catherine Hughes (202) 622—9407

CC:PSI

Agency Contact: Theresa M. Melchiorre, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—7830

RIN: 1545–BB12

2758. COST SHARING

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 482

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations will provide additional guidance on cost sharing arrangements under section 482.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG—144615—02

Drafting attorneys: David Bowen (202) 622—3800 and Jeffrey Parry (202) 435—5265

Reviewing attorney: Elizabeth G. Beck (202) 435—5265

Treasury attorney: Rocco Femia (202) 622—1755

CC:INTL

Agency Contact: Jeffrey Parry, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 435—5265

RIN: 1545–BB26

2759. APPLICATION OF SEPARATE LIMITATIONS TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 904(d)(6)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Taxpayer Relief Act of 1997 amended the foreign tax credit limitation rules under section 904(d) and extended lookthrough treatment to dividends paid by a 10/50 lookthrough corporation, effective for earnings and profits accumulated in tax years beginning after December 31, 2002. These regulations would provide guidance needed to comply with these changes, including transition rules for dividends paid by a 10/50 lookthrough corporation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—144784—02

Drafting attorney: Ginny Y. Chung (202) 622—3850

Reviewing attorney: Barbara Felker (202) 622—3850

CC:INTL

Agency Contact: Ginny Y. Chung, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3850

RIN: 1545–BB28

2760. AMENDING THE LOW—INCOME HOUSING TAX CREDIT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 42; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations are amendments to the general public use requirements in the low—income housing tax credit program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—151145—02

Drafting attorney: Jack Malgeri (202) 622—3040

Reviewing attorney: Harold Burghart (202) 622—3040

CC:PSI

Agency Contact: Jack Malgeri, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
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Washington, DC 20224
Phone: 202 622—3040

RIN: 1545–BB37

2761. ADMINISTRATIVE SIMPLIFICATION OF 481(A) ADJUSTMENT PERIODS IN VARIOUS REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The purpose of this project is to harmonize various regulatory provisions with current administrative guidance regarding recovery periods for section 481(a) adjustments. When the IRS changed the spread periods from four years (positive and negative) to four years (positive) and one year (negative), it discovered that there were some scattered regulatory provisions that contain different spread periods. Those regulatory provisions that are imposed as a matter of administrative discretion are under consideration to impose a standard spread period.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—142605—02

Drafting attorney: Christian T. Wood (202) 622—4930

Reviewing attorneys: Grant Anderson (202) 622—4930 and David Fahey (202) 622—4930

CC:ITA

Agency Contact: Christian T. Wood, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
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RIN: 1545–BB47

2762. ELECTION OUT GENERATION—SKIPPING TRANSFER TAX (GST) DEEMED ALLOCATIONS

Priority: Info./Admin./Other

Legal Authority: 26 USC 2601; 26 USC 2632; 26 USC 2642

CFR Citation: 26 CFR 601

Legal Deadline: None

Abstract: Procedure for making the election to not have the deemed generation—skipping transfer tax allocation rules apply with respect to a GST Trust and for making the election to treat a trust as a GST Trust.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—153841—02

Drafting attorney: Scott S. Landes (202) 622—3090

Reviewing attorney: George Maenik (202) 622—3090

Treasury attorney: Catherine Hughes (202) 622—9407

CC:PSI

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RIN: 1545–BB54

2763. SUBSTITUTE DIVIDEND PAYMENTS IN SECURITIES LENDING AND SIMILAR TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7701; 26 USC 863

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to taxation of cross—border and foreign—to—foreign substitute dividend payments in securities lending and similar transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG—130751—01

Drafting attorney: Jeffrey L. Vinnik (202) 622—3840

Reviewing attorney: David Bowen (202) 622—3800

CC:INTL

Agency Contact: Jeffrey L. Vinnik, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
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RIN: 1545–BB56

2764. DEEMED IRAS IN QUALIFIED RETIREMENT PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 408

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) added new section 408(q) to the Internal Revenue Code. The new section allows eligible employer plans to permit employees to make voluntary contributions to a separate account or annuity established under the plan. The regulation will provide rules under which the accounts or annuities will be treated as Roth or traditional IRA's as applicable.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—157302—02

Drafting attorney: Linda C. Phillips (202) 622—6090

Reviewing attorney: Janet Laufer (202) 622—6090

Treasury attorney: Tom Reeder (202) 622—1341

CC:TEGE

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RIN: 1545–BB58

2765. DEEMED IRAS IN QUALIFIED RETIREMENT PLANS (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 408(q)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) added new section 408(q) to the Internal Revenue Code. The new section allows eligible employer plans to permit employees to make voluntary contributions to a separate account or annuity established under the plan. The regulation will provide rules under which the accounts or annuities will be treated as Roth or traditional IRA's as applicable.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—158210—02

Drafting attorney: Linda C. Phillips (202) 622—6090

Reviewing attorney: Janet Laufer (202) 622—6090

Treasury attorney: Tom Reeder (202) 622—1341

CC:TEGE

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RIN: 1545–BB59

2766. INFORMATION REPORTING RELATING TO TAXABLE STOCK TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6043; 26 USC 6045

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations under sections 6043(c) and 6045 require information reporting for corporate acquisitions of control and changes in capital structure.

Timetable:

Action	Date	FR Cite
NPRM	11/18/02	67 FR 69496
Second NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—143321—02

Drafting attorney: Nancy L. Rose (202) 622—4910

Reviewing attorney: Pamela W. Fuller (202) 622—4910

CC:PA:APJP

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RIN: 1545–BB60

2767. LOSS LIMITATION RULES—G U REPEAL

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 337; 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulations will provide guidance to corporations that are members of an affiliated group filing a consolidated income tax return and that own stock of a subsidiary member of the group. The regulations will prevent rules relating to certain adjustments to the basis of subsidiary member stock from having the effect of offsetting certain income and gain upon a disposition of the stock by the consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—157711—02

Drafting attorney: Lola L. Johnson (202) 622—7530

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CC:CORP

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RIN: 1545–BB61

2768. CONTRIBUTIONS TO PURCHASE CERTAIN RETIREMENT ANNUITIES OR CUSTODIAL ACCOUNTS UNDER SECTION 403(B)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 403(b); 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation would revise and update the current section 403(b) regulations to reflect the numerous statutory revisions to this section of the Internal Revenue Code since these regulations were first promulgated in 1964. Section 403(b) concerns the income tax exclusion for contributions to purchase certain retirement annuities or custodial accounts made for their employees by certain tax—exempt employers or State—sponsored educational institutions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: REG—155608—02

Drafting attorney: John A. Tolleris (202) 622—6060

Reviewing attorney: Cheryl Press (202) 622—6060

Treasury attorney: William Bortz (202) 622—1352

CC:TEGE

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RIN: 1545–BB64

2769. INSTALLMENT OBLIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 704(c)(1)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance on the treatment of installment obligations received in exchange for section 704(c) property.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—160330—02

Drafting attorney: Christopher L. Trump (202) 622—3080

Reviewing attorney: Jeanne Sullivan (202) 622—4117

Treasury attorney: Deborah Harrington (202) 622—1788

CC:PSI

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Phone: 202 622—3080

RIN: 1545–BB65

2770. LIQUIDATION OF AN INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 2704(b)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to additional rules for determining when applicable restrictions are disregarded in valuing the liquidation of an interest under section 2704 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—163113—02

Drafting attorney: John MacEachen (202) 622—7701

Reviewing attorney: George Masnik (202) 622—3090

Treasury attorney: Catherine Hughes (202) 622—9407

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RIN: 1545–BB71

2771. QUALIFIED INTERESTS

Priority: Info./Admin./Other

Legal Authority: 26 USC 2702

CFR Citation: 26 CFR 25

Legal Deadline: None

Abstract: This regulation amends examples 5 and 6 of regulation section 25.2702—3(e) to comply with the Tax Court's holding in Walton v. Commissioner, 115 TC. 589 (2000).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—163679—02

Drafting attorney: Scott S. Landes (202) 622—3090

Reviewing attorney: George Masnik (202) 622—3090

Treasury attorney: Catherine Hughes (202) 622—9407

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RIN: 1545–BB72

2772. COLLECTED EXCISE TAXES; DUTIES OF COLLECTOR

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 4291; 26 USC 6302; 26 USC 7805

CFR Citation: 26 CFR 40; 26 CFR 49

Legal Deadline: None

Abstract: These proposed regulations relate to the obligations of persons that receive payments for air transportation or communications service subject to excise tax when persons liable for taxes refuse to pay the tax.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—163909—02

Drafting attorney: Deane M. Burke (202) 622—3130

Reviewing attorneys: Frank K. Boland (202) 622—3130 and Phillip Howard (202) 622—3000

Treasury attorney: John Parcell (202) 622—2578

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Phone: 202 622—3130

RIN: 1545–BB75

2773. COLLECTED EXCISE TAXES; DUTIES OF COLLECTOR (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 4291; 26 USC 6302; 26 USC 7805

CFR Citation: 26 CFR 40; 26 CFR 49

Legal Deadline: None

Abstract: These temporary regulations relate to the obligations of persons that receive payments for air transportation or communications service subject to excise tax when persons liable for taxes refuse to pay the tax.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—163909—02

Drafting attorney: Deane M. Burke (202) 622—3130

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RIN: 1545–BB76

2774. APPLICATION OF NONDISCRIMINATION CROSS—TESTING RULES TO CASH BALANCE PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 411

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules for the application of certain nondiscrimination requirements, prohibiting discrimination in favor of highly compensated employees, to cash balance pension plans.

Timetable:

Action	Date	FR Cite
NPRM	12/11/02	67 FR 76123
Hearing	04/09/03	
Other/Second NPRM	12/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG—164464—02

Drafting attorney: Linda S.F. Marshall (202) 622—6090

Reviewing attorney: Marjorie Hoffman (202) 622—6090

Treasury attorney: William Bortz (202) 622—1352

CC:TEGE

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RIN: 1545–BB79

2775. CORPORATE REORGANIZATIONS; CONTINUITY—TRANSFERS OF ASSETS OR STOCK FOLLOWING A REORGANIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides amendments to regulations section 1.368—2(k) of the income tax regulations, which sets forth rules providing that for certain reorganizations, transfers by the acquiring corporation of target assets or stock to certain controlled corporations will not disqualify the transaction from nonrecognition treatment. The proposed amendments will clarify the reorganizations subject to these rules.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—165579—02

Drafting attorney: Rebecca O. Burch (202) 622—7550

Reviewing attorney: Wayne Murray (202) 622—7700

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RIN: 1545–BB80

2776. NOTIONAL PRINCIPAL CONTRACTS; CONTINGENT NONPERIODIC PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 446

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: These proposed regulations relate to the character and the inclusion into income and deduction of contingent nonperiodic payments made pursuant to a notional principal contract.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG—166012—02

Drafting attorney: Kathleen Sleeth (202) 622—3920

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Treasury attorney: Viva Hammer (202) 622—0869

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RIN: 1545–BB82

2777. REMIC RESIDUALS—TIMING OF INCOME FOR FOREIGN HOLDERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 860G(b); 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations under 26 U.S.C. 860G(b) provide that if the holder of the REMIC residual interest is a foreign person, amounts inducible in the gross income of the holder shall be taken into account for each day during the taxable year on which the foreign person held the interest.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—159929—02

Drafting attorney: Arturo Estrada (202) 622—3900

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RIN: 1545–BB84

2778. TRANSFEROR OR TRANSFEREE AS A PREDECESSOR OR SUCCESSOR

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 355; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations under section 355(e) sets forth whether a transferor or transferee will be treated as a predecessor or successor for purposes of section 355(e).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—145535—02

Drafting attorney: Krishna P. Vallabhaneni (202) 622—7550

Reviewing attorney: Charles Whedbee (202) 622—7550

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RIN: 1545–BB85

2779. DEPENDENT CARE CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 21; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The notice of proposed rulemaking will amend existing but partially obsolete regulations under 26 U.S.C. 21 relating to dependent care credits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—139059—02

Drafting attorney: Warren M. Joseph (202) 622—4920

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CC:ITA

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RIN: 1545–BB86

2780. PARTNERSHIP EQUITY FOR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 721; 26 USC 83

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations will describe the tax treatment of partnership equity issued in connection with the performance of services.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—105346—03

Drafting attorneys: Audrey W. Ellis and Demetri Yatrakis (202) 622—3060

Reviewing attorney: Matthew Lay (202) 622—3060

Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–BB92

2781. DETERMINATION OF SINGLE—SUM DISTRIBUTIONS FROM CASH BALANCE PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will modify the rules for the determination of minimum single—sum distributions from cash balance pension plans.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Additional Information: REG—168897—02

Drafting attorney: Linda S.F. Marshall (202) 622—6090

Reviewing attorney: Marjorie Hoffman (202) 622—6030

Treasury attorney: Elizabeth Drigotas (202) 622—1332

CC:TEGE

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RIN: 1545–BB93

2782. ACCRUAL FOR CERTAIN REMIC REGULAR INTERESTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations provide guidance on the accrual of original issue discount on certain REMIC regular interests.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—108637—03

Drafting attorney: Rebecca E. Asta (202) 622—3930

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CC:FIP

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RIN: 1545–BB94

2783. NEW MARKETS TAX CREDIT AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 45D; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will amend regulations section 1.45D—1T involving the new markets tax credit under section 45D. The amendments will address certain issues involving qualified low—income community investments under section 45D(d)(1).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—115471—03

Drafting attorney: Paul F. Handleman (202) 622—3040

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Treasury attorney: Steve Watson (202) 622—1322

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RIN: 1545–BC03

2784. TAX EXEMPT BOND PARTNERSHIP REPORTING REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6031; 26 USC 7805; 26 USC 706

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will state the Internal Revenue Service's authority to issue other guidance concerning the reporting requirements for tax exempt bond partnerships. The other guidance will be issued separately by Revenue Procedure.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—115472—03

Drafting attorney: David A. Shulman (202) 622—3080

Reviewing attorney: Jeanne Sullivan (202) 622—3080

Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–BC04

2785. DETERMINATION OF BASIS OF A SINGLE CLASS OF STOCK OR SECURITIES RECEIVED IN EXCHANGE FOR A SINGLE CLASS OF STOCK OR SECURITIES IN A TAX—FREE EXCHANGES

Priority: Routine and Frequent

Legal Authority: 26 USC 338; 26 USC 358; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Amendment to section 1.358—2 of the income tax regulation. The proposed regulation will provide the basis allocation methods when a distributee exchanges a single class of stock acquired held in different lots (different dates and bases) for a single class of stock in a transaction under section 354, 355, or 356.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—116564—03

Drafting attorney: Theresa M. Kolish (202) 622—7930

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RIN: 1545–BC05

2786. GENERAL ALLOCATION AND ACCOUNTING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides rules for the allocation of and accounting for bond proceeds for purposes of determining whether bonds are private activity bonds under section 141 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State

Federalism: Undetermined

Additional Information: REG—140379—02

Drafting attorney: Johanna L. Som de Cerff (202) 622—3980

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RIN: 1545–BC07

2787. • ENTRY OF TAXABLE FUEL

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6011; 26 USC 6071; 26 USC 6151

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules for payment of tax when taxable fuel is entered by an unregistered person.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—120616—03

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Treasury attorney: John Parcell (202) 622—2578

CC:PSI

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RIN: 1545–BC08

2788. • TIMING AND MODIFICATION OF THE SECTION 59(E) ELECTION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 59

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance on making a section 59(e) election.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—124405—03

Drafting attorney: Eric B. Lee (202) 622—3120

Reviewing attorney: Brenda Stewart (202) 622—3120

Treasury attorney: George Manousos (202) 622—1788

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RIN: 1545–BC13

2789. • GUIDANCE NECESSARY TO FACILITATE BUSINESS ELECTRONIC FILING

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulatory amendments are designed to facilitate electronic filing of certain income tax returns and other forms.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG—116664—01

Drafting attorney: Nathan B. Rosen (202) 622—4910

Reviewing attorney: Pamela Fuller (202) 622—4910

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RIN: 1545–BC15

2790. • CHANGES IN COMPUTING DEPRECIATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance under section 446(e) regarding changes in computing depreciation or amortization.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—126459—03

Drafting attorney: Sara Logan (202) 622—3110

Reviewing attorney: Kathleen Reed (202) 622—3110

Treasury attorney: George Manousos (202) 622—1335

CC:PSI

Agency Contact: Sara L. Logan,
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RIN: 1545–BC18

2791. • VALUE OF LIFE INSURANCE WHEN DISTRIBUTED FROM A QUALIFIED RETIREMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations under section 402(a) of the Internal Revenue Code concern the amount includible in a distributee's income when certain life insurance and annuity contracts are distributed by a qualified retirement plan.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—126967—03

Drafting attorney: Robert M. Walsh (202) 622—6090

Reviewing attorney: Linda Marshall (202) 622—6090

Treasury attorney: Harlan Weller (202) 622—1001

CC:TEGE

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RIN: 1545–BC20

2792. • UTILITY ALLOWANCE REGULATION UPDATE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 42

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will modify and update utility allowance regulations under section 1.142—10, which provides for an alternative method for computing utility allowances under section 1.142—10(b)(4)(ii). Also, the regulation will provide for annual updates of utility allowances.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—128274—03

Drafting attorney: Gregory N. Doran (202) 622—3040

Reviewing attorney: Harold Burghart (202) 622—3040

Treasury attorney: Bruce Serchuk (202) 622—1766

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RIN: 1545–BC22

2793. • SPECIAL CONSOLIDATED RETURN RULES FOR INTEREST EXPENSE DISALLOWED UNDER SECTION 265(A)(2)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1502; 26 USC 265; 26 USC 7701

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will address the treatment of interest income with respect to an intercompany loan when the source of funds is borrowing from a nonmember and there is a disallowance of interest expense under section 265(a)(2).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—128590—03

Drafting attorney: Frances L. Kelly (202) 622—7072

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RIN: 1545–BC23

2794. • EGTRRA CHANGES TO PROTECTED RETIREMENT BENEFITS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 645(b)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance relating to section 411(d)(6) of the Code regarding the elimination of certain early retirement benefits, retirement—type subsidies, and optional forms of benefit (section 411(d)(6)(B) protected benefits), and will address both: 1) when these benefits result in significant burdens and complexities for plans and its participants; and 2) when such benefits are of de minimis value to participants.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—128309—03

Drafting attorney: Pamela R. Kinard (202) 622—6060

CC:TEGE

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RIN: 1545–BC26

2795. • SINGLE DETERMINATION OF TAX FOR MULTIPLE POOLS OF ASSETS OF AN S CORPORATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 1374(e)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation will address the determination of tax with respect to various pools of assets of an S corporation that is subject to tax under section 1374.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—131486—03

Drafting attorney: Jocelyn Leyretana (202) 622—7750

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Treasury attorney: Audrey Nacamuli (202) 622—1721

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RIN: 1545–BC29

2796. • DEEMED CORPORATE ELECTION FOR ELECTING S CORPORATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7701; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will deem an electing S corporation to have also elected to be an association taxed as a corporation under section 301.7701—3(1)(i) to ease the administrative burden on taxpayers and IRS Service Centers. It will continue implementation of section 7701 under the secretary's general section 7805 regulatory authority.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—131786—03

Drafting attorney: Rebekah A. Myers (202) 622—3050

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Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–BC32

2797. • SUBSTITUTE FOR RETURN (SFR) AND AUTOMATED SUBSTITUTE FOR RETURN (ASFR)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805; 26 USC 6020

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulation serves to be the Service's expression of intent that certain documents generated in the substitute for return (SFR) and Automated Substitute for Return (ASFR) processes constitute section 6020(b) returns for purposes of assessing the section 6651(a)(2) addition to tax.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: REG—131739—03

Drafting attorney: Tracey B. Leibowitz (202) 622—4940

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RIN: 1545–BC45

2798. • ADDITIONAL GUIDANCE REGARDING MARK—TO—MARKET ACCOUNTING FOR TRADERS IN SECURITIES AND/OR COMMODITIES, INCLUDING FOREIGN CURRENCY INSTRUMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805; 26 USC 988(a)(1) (B)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides additional rules relating to the trader mark—to—market election: (1) the coordination of income character rules of the mark—to market regime with the capital election under section 988(a)(1)(B); (2) the definition of commodities for purposes of section 475; and (3) the application of the mark—to—market rules for traders that trade both securities and commodities in a single business.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—135660—03

Drafting attorney: Camille B. Evans (202) 622—3870

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RIN: 1545–BC48

2799. • QUALIFIED SEVERANCE REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 2642(a)(3)(C)

CFR Citation: 26 CFR 2654

Legal Deadline: None

Abstract: This regulation relates to generation—skipping transfer tax consequences of a qualified severance of a trust.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—145987—03

Drafting attorney: Mayer R. Samuels (202) 622—7265

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Treasury attorney: Catherine Hughes (202) 622—9407

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RIN: 1545–BC50

2800. • STEWARDSHIP EXPENSES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The current regulations under section 1.861—8(e)(A), titled “Stewardship Expenses Attributable to Dividends Received,” are confusing and subject to misuse by taxpayers. In conjunction with the proposed services regulations under section 482, it is proposed to revise these regulations to clarify the parameters of stewardship expenses, thereby demarcating them from shareholder activities under section 482 and supportive expenses under section 1.861—8T(b)(3).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—138603—03

Drafting attorney: Teresa B. Hughes (202) 622—3850

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RIN: 1545–BC52

2801. • REMOVAL OF SECTION 6152 REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 6152

CFR Citation: 26 CFR 301; 26 CFR 1

Legal Deadline: None

Abstract: The regulations will remove sections 1.6152—1 and 301.6152—1 pertaining to section 6152 of the Internal Revenue Code, which was repealed for tax years beginning after December 31, 1986.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—139421—03

Drafting attorney: Janice R. Feldman (202) 622—8488

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RIN: 1545–BC53

2802. • GUARANTEE FEES UNDER SECTION 143(G)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 143

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will allow issues of qualified mortgage revenue bonds under section 143 to exclude certain fees paid to guarantee pools of mortgages (including mortgage backed securities) from the calculation of the effective interest rate on the mortgages for purposes of section 143(g).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: REG—146692—03

Drafting attorney: Michael P. Brewer (202) 622—3980

Reviewing attorney: Timothy L. Jones (202) 622—3980

CC:TEGE

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RIN: 1545–BC59

2803. • PREDECEASED PARENT RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 2651

CFR Citation: 26 CFR 2651; 26 CFR 7805

Legal Deadline: None

Abstract: The proposed regulation will provide guidance on the predeceased parent rule in section 2651(e) and amend the regulations under section 26.2612—1(a)(2).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—145988—03

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RIN: 1545–BC60

2804. • QUALIFIED ZONE ACADEMY BONDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 1397E

CFR Citation: 26 CFR 1.1397E

Legal Deadline: None

Abstract: The proposed regulation will provide that the credit allowed for eligible holders of qualified zone academy bonds may be claimed by S corporation shareholders; will clarify that no procedure is necessary to carry over unused QZAB limit; will coordinate and make consistent provisions regarding determination of credit rate and maturity date; will provide for remedial action in case of change in use of bond proceeds; prevent the use of bond proceeds to repay the bonds.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: Local, State

Additional Information: REG—121475—03

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RIN: 1545–BC61

2805. • GUIDANCE NECESSARY TO FACILITATE BUSINESS ELECTRONIC FILING (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 301; 26 CFR 602

Legal Deadline: None

Abstract: The temporary regulation is designed to facilitate the electronic filing of certain business income tax returns and other forms.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—116664—01

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RIN: 1545–BC62

2806. • GUIDANCE UNDER SECTION 707 REGARDING DISGUISED SALES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 707; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance regarding disguised sales of partnership interests.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—149519—03

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RIN: 1545–BC63

2807. • PARTNERSHIP TRANSACTIONS INVOLVING PARTNER'S STOCK

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805; 26 USC 337

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation under section 1.337(d)—3 will finalize regulations relating to partnership transactions involving partner's stock.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined.

Federalism: Undetermined

Additional Information: REG—149518—03

Drafting attorney: Tara P. Volungis (202) 622—3080

Reviewing attorney: Christine Ellison (202) 622—3070

Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–BC64

2808. • PARTNERSHIPS AND DEEMED DISPOSITIONS OF UNREALIZED RECEIVABLES AND INVENTORY ITEMS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 751; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These modifications to regulations under section 751 require a redeeming partner to take hot assets with built—in gain equal to the partner's proportionate share of the total hot asset appreciation in the partnership, regardless of fair market value.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—149610—03

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Reviewing attorney: Dan Carmody (202) 622—3050

Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–BC65

2809. • LIFO RECAPTURE UNDER SECTION 1362(D)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 1363

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Section 1363(d) provides for the recapture of LIFO benefits when a, corporation elects S corporation status. This project addresses the treatment LIFO inventor held though partnerships.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—149524—03

Drafting attorney: Pietro E. Canestrelli (202) 622—3060

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Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–BC66

2810. • QUALIFIED ZONE ACADEMY BONDS (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 1397E

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation will provide that the credit allowed for eligible holders of qualified zone academy bonds may be claimed by S corporation shareholders; will clarify that no procedure is necessary to carry over unused QZAB limit; will coordinate and make consistent provisions regarding determination of credit rate and maturity date; will provide for remedial action in case of change in use of bond proceeds; prevent the use of bond proceeds to repay the bonds.

Timetable:Section 610 R

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: REG—121475—03

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RIN: 1545–BC68

2811. • SECTION 179 ELECTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 202

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulations will provide guidance for election under section 179, effective for 2003.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Additional Information: REG—152549—03

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RIN: 1545–BC69

2812. • REAL ESTATE MORTGAGE INVESTMENT CONDUIT (REMIC) TETRA RULES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 860F

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation relates to the application of partnership audit procedures to disputes regarding the ownership of residual interests in a REMIC.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—154077—03

Drafting attorney: Arturo Estrada (202) 622—3900

Reviewing attorney: Dale Collinson (202) 622—3900

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RIN: 1545–BC71

2813. • COLLECTION AFTER ASSESSMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805; 26 USC 6502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The Internal Revenue Service Restructuring and Reform Act of 1988 (RRA '98) section 3461 amended section 6502 of the Code to limit the ability of the Service to enter into agreements extending the collection statute. RRA '98 also included an off—Code "sunset" provision governing the continued effect of collection statute extension agreements executed prior to January 1, 2000, the effective date of this section. The current regulations under section 6502 have not been updated to reflect these changes to the section. The current regulations provide that extension agreements may be executed anytime prior to the expiration of the original statutory collection period.

The revised regulations will incorporate the changes imposed by RRA '98 and will provide in part that the only two circumstances under which an agreement extending the collecting period may be executed are: (1) when the extension agreement is executed in connection with an Installment Agreement; and (2) when the extension agreement is executed prior to a levy being released pursuant to section 6343, when the release occurs after the expiration of the original 10—year statutory collection period. Also, the revised regulations will discuss the continued validity of extension agreements executed prior to January 1, 2000.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—148701—03

Drafting attorney: Aaron D. Gregory (202) 622—3620

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RIN: 1545–BC72

2814. • GUIDANCE UNDER SECTION 1502; APPLICATION OF SECTION 108 TO MEMBERS OF A CONSOLIDATED GROUP

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations amend REG—132760—03 published in the Federal Register on September 4, 2003 (68 FR 52542) and TD 9089 also published in the Federal Register on September 4, 2003 (68 FR 52487). Those regulations provided guidance concerning the application of section 108 to members of a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—153319—03

Drafting attorney: Amber R. Cook (202) 622—7530

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RIN: 1545–BC74

2815. • CONFIDENTIAL TRANSACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 6011; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will modify the rule for confidential transactions under section 1.6011—4(b)(3).

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—155303—03

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RIN: 1545–BC75

2816. • CONFIDENTIAL TRANSACTIONS (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 6011; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will modify the rule for confidential transactions under section 1.6011—4(b)(3).

Timetable:

Action	Date	FR Cite
Temporary Regulations	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—155303—03

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RIN: 1545–BC76

Department of the Treasury (TREAS)
Internal Revenue Service (IRS)

Final Rule Stage

2817. FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 367

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The income tax regulations under section 367 will be amended to reflect the changes made to that section by the Tax Reform Act of 1984. Section 367 now provides generally that a foreign corporation will not be considered to be a corporation, for purposes of certain nonrecognition provisions of the Code, upon the transfer of property to such corporation by a U.S. person. The statute provides certain exceptions to that rule, exemptions to those exceptions, and special rules applicable to certain specified transfers. The regulations will provide guidance concerning the applicability of the general rule and its exceptions and special rules, including guidance concerning transfers of assets for use in the active conduct of a trade or business, stock transfers, transfers of intangible assets, and transfers of branch operations that have operated at a loss.

Timetable:

Action	Date	FR Cite
NPRM	05/16/86	51 FR 17990
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209042—86 (INTL—610—86)

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RIN: 1545–AK74

2818. NONRECOGNITION OF CORPORATE DISTRIBUTIONS AND REORGANIZATIONS UNDER THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 897

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules concerning the effect of certain distributions including dividends, redemptions, distributions pursuant to reorganizations, and liquidations on corporations and their shareholders under the Foreign Investment in Real Property Tax Act. Regulations will also provide rules for determining the extent to which nonrecognition would apply to certain transfers of real property interests and the extent to which certain reorganizations will be treated as sales of property at fair market value.

Timetable:

Action	Date	FR Cite
NPRM	05/05/88	53 FR 16233
Hearing	03/01/89	54 FR 1189
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209039—87 (INTL—491—87)

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RIN: 1545–AK79

2819. COMPUTATION OF A BRANCH'S TAXABLE INCOME; TAXATION OF EXCHANGE GAIN OR LOSS ON BRANCH REMITTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to branch rules and how to translate branch income, the taxation of exchange gain or loss on branch remittances.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48457
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—208270—86 (INTL—965—86)

Drafting attorney: Kenneth P. Christman (202) 622—3870

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Treasury attorney: Carl Dubert (202) 622—0222

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RIN: 1545–AM12

2820. EARNINGS STRIPPING PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation addresses the deductibility of interest under section 163 being limited when paid by a corporation to related persons not subject to U.S. tax.

Timetable:

Action	Date	FR Cite
NPRM	06/18/91	56 FR 27907
Hearing	09/25/91	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209059—89 (INTL—870—89)

Drafting attorney: Theodore Setzer (202) 622—3870

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RIN: 1545–AO24

2821. REGISTRATION REQUIRED OBLIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 165

CFR Citation: 26 CFR 1.

Legal Deadline: None

Abstract: This regulation will finalize all outstanding proposed regulations under section 1.163—1(b)(2).

Timetable:

Action	Date	FR Cite
NPRM	01/21/93	58 FR 5316
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—208245—90 (INTL—115—90)

Drafting attorney: Carl M. Cooper (202) 622—3840

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RIN: 1545–AP33

2822. INTEREST—FREE ADJUSTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6205

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: Under section 6205(a)(1) of the Code, if less than the correct amount of tax imposed under the FICA, the RRTA, or the income tax withholding provisions is paid with respect to any payment of wages or compensation, proper adjustments with respect to both the tax and amount to be deducted must be made without interest in such manner and in such times as the Secretary may by regulations prescribe. The amendments add language to clarify that an interest—free adjustment can be made in certain situations in which the error is ascertained before the appropriate return is filed. The amendments are intended to apply only to situations in which no return was filed because the employer improperly failed to treat its workers as employees.

Timetable:

Action	Date	FR Cite
NPRM	12/10/92	57 FR 58423
NPRM Comment Period End	02/08/93	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209538—92 (EE—12—92)

Drafting attorney: Karin Loverud (202) 622—6060

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RIN: 1545–AQ61

2823. DEFINITION OF "HIGHLY COMPENSATED EMPLOYEE"

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 414

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations define the term "highly compensated employee" under section 414(q) of the Code. Temporary and proposed regulations, under sections 414(q) and 414(s), were published February 19, 1988 (53 FR 4965). Final regulations, under section 414(s), were published September 19, 1991 (56 FR 47659) under project EE—129—86. The regulations under 414(q) were split off from project EE—129—86. It is anticipated that proposed regulations under section 414(q) will be published in the future under project REG—209558—92 (EE—32—92).

Timetable:

Action	Date	FR Cite
NPRM	02/19/88	53 FR 4999
NPRM Comment Period End	04/19/88	
Partially Closed by TD 8548	06/27/94	59 FR 32911
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: REG—209558—92

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RIN: 1545–AQ74

2824. ESCROW FUNDS AND OTHER SIMILAR FUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 0468B

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides further guidance relating to certain escrow funds and other similar funds.

Timetable:

Action	Date	FR Cite
NPRM	02/01/99	64 FR 4801
NPRM Comment Period End	05/03/99	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209619—93 (IA—17—93)

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RIN: 1545–AR82

2825. MARK—TO—MARKET UPON DISPOSITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 475

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations address the relationship between mark—to—market accounting and accrual of stated interest, discount and premium, and between mark—to—market accounting and the tax treatment of bad debts. The regulations also provide that securities are to be marked to market upon disposition by a dealer and the exemption from marking to market in certain securitization transactions.

Timetable:

Action	Date	FR Cite
NPRM	01/04/95	60 FR 397
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209724—94 (FI—42—94)

Drafting attorney: Stephen J. Coleman (202) 622—6289

Reviewing attorney: Elizabeth Handler (202) 622—3157

CC:FIP

Sections 1.475(a)—3 finalized in TD 8700. Sections 1.475(b)—4 finalized in TD 8700. Sections 1.475(c)—2 finalized in TD 8700.

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RIN: 1545–AS85

2826. STRADDLES——MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1092

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation clarifies the circumstances in which common stock may be personal property for purposes of section 1092.

Timetable:

Action	Date	FR Cite
NPRM	05/02/95	60 FR 21482
Other/Comment Period End	05/01/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—209768—95 (FI—21—95)

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RIN: 1545–AT46

2827. RECOMPUTATION OF LIFE INSURANCE RESERVES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 816

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will permit recomputation of life insurance reserves that were not originally computed according to the requirements of section 816(b)(1)(A).

Timetable:

Action	Date	FR Cite
NPRM	01/02/97	62 FR 71
Final Action	12/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—246018—96

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RIN: 1545–AU49

2828. DEFINITION OF PRIVATE ACTIVITY BOND—REFUNDING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide guidance on the application of the private loan test and the private business use and private payments/security tests to refunding bonds.

Timetable:

Action	Date	FR Cite
NPRM	12/30/94	59 FR 67658
NPRM Comment Period End	05/01/95	
Second NPRM	05/14/03	68 FR 25845
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—113007—99

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RIN: 1545–AU98

2829. RETURN OF LEVIED PROPERTY IN CERTAIN CASES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: Section 501(b) of the Taxpayer Bill of Rights 2 amended section 6343 of the Internal Revenue Code to authorize the Secretary to return levied property in four enumerated circumstances. Section 1102(d)(1)(B) of RRA 98 changed "Taxpayer Advocate" to "National Taxpayer Advocate" as a person who determines what is in the best interest of the taxpayer. The regulations set forth the circumstances in which the Secretary may return property and procedures to implement these sections.

Timetable:

Action	Date	FR Cite
NPRM	02/14/01	66 FR 10249
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—101520—97

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RIN: 1545–AV01

2830. ELECTRONIC TRANSMISSION OF WITHHOLDING CERTIFICATES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6061; 26 USC 1441

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance for the electronic transmission of withholding certificates.

Timetable:

Action	Date	FR Cite
NPRM	10/14/97	62 FR 53504
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—107872—97

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RIN: 1545–AV27

2831. INTEREST ON EDUCATION LOANS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 221; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance on the deduction of interest on education loans under section 221.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3257
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—116826—97

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RIN: 1545–AW01

2832. MARK—TO—MARKET ACCOUNTING FOR DEALERS IN COMMODITIES AND TRADERS IN SECURITIES AND COMMODITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 475; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance concerning mark—to—market accounting for securities traders and commodities dealers and traders.

Timetable:

Action	Date	FR Cite
NPRM	01/28/99	64 FR 4374
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—104924—98

Drafting attorney: Stephen J. Coleman (202) 622—6289

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RIN: 1545–AW06

2833. INTERCOMPANY OBLIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1502; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides clarification of the tax treatment of certain transfers of intercompany obligations by or to a member of a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	12/18/98	63 FR 70354
NPRM Comment Period End	03/22/99	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—105964—98

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RIN: 1545–AW30

2834. REPORTING OF PAYMENTS TO ATTORNEY

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6045

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides information reporting requirements for payments of gross proceeds made in the course of a trade or business to attorneys in connection with legal services.

Timetable:

Action	Date	FR Cite
NPRM	05/21/99	64 FR 27730
Second NPRM	05/17/02	67 FR 35064
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—126024—01

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RIN: 1545–AW72

2835. QUALIFIED OFFERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to the qualified offer rule allowing the recovery of reasonable administrative or litigation costs.

Timetable:

Action	Date	FR Cite
NPRM	01/04/01	66 FR 749
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—121928—98

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RIN: 1545–AW99

2836. DELAY RENTAL PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 263

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations clarify that section 1.612—3(c) applies to delay rental payments to the extent that section 263A does not require the payments to be capitalized.

Timetable:

Action	Date	FR Cite
NPRM	02/08/00	65 FR 6090
Public Hearing	05/26/00	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—103882—99

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RIN: 1545–AX06

2837. GUIDANCE ON COST RECOVERY IN THE ENTERTAINMENT INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to the application of the income forecast method under section 167(g) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	05/31/02	67 FR 38025
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—103823—99

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RIN: 1545–AX12

2838. CASH OR DEFERRED ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation updates and revises regulations on qualified cash or deferred arrangements, matching contributions, and employee contributions.

Timetable:

Action	Date	FR Cite
NPRM	07/17/03	68 FR 42476
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—108639—99

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RIN: 1545–AX26

2839. CASH OR DEFERRED ARRANGEMENTS (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations update and revise regulations for cash or deferred arrangements.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—108639—99

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RIN: 1545–AX43

2840. STOCK TRANSFER RULES—CARRYOVER OF EARNINGS AND TAXES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 367

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to how earnings and profits and foreign income tax accounts carry over under section 381 and are allocated under section 312 in certain transactions described in section 367(b) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	11/15/00	65 FR 69138
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—116050—99

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RIN: 1545–AX65

2841. ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE AND CERTAIN OTHER EXPENSES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide rules for the allocation and apportionment of interest expenses and certain other expenses for purposes of the foreign tax credit and certain other international tax provisions.

Timetable:

Action	Date	FR Cite
NPRM	02/05/90	55 FR 3750
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—117608—99

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RIN: 1545–AX72

2842. HIPAA PORTABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 9833

CFR Citation: 26 CFR 54

Legal Deadline: None

Abstract: These regulations provide guidance to group health plans regarding the limitations on imposing pre—existing condition exclusions and the special enrollment rules. These regulations also provide guidance regarding plans and benefits that are not subject to these rules.

Timetable:

Action	Date	FR Cite
NPRM	04/08/97	62 FR 16977
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—119828—99

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RIN: 1545–AX84

2843. APPLICATION OF SEPARATE FOREIGN TAX CREDIT LIMITATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 904; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation clarifies the application of separate foreign tax credit limitations under sections 904(b) and 904(d) of the Code and revises the rules for computing post—1986 undistributed earnings and taxes of foreign corporations under section 902 of the Code.

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 319
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—104683—00

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RIN: 1545–AX88

2844. CAPITALIZATION OF INTEREST AND CARRYING CHARGES PROPERLY ALLOCABLE TO STRADDLES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 263; 26 USC 1092

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will clarify the types of payments that may be "interest" or "carrying charges" subject to 26 U.S.C. 263(g), clarify the operation of the capitalization rules of 26 U.S.C. 263(g), and also clarify what constitutes "positions" and "losses" subject to 26 U.S.C. 1092.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4746
Comment Period End	05/01/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—105801—00

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Treasury attorney: Mike Novey (202) 622—1339

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RIN: 1545–AX92

2845. ASSUMPTION OF PARTNERSHIP LIABILITIES

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 752

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation prevents the acceleration or duplication of losses through the assumption of liabilities in transactions involving partnerships.

Timetable:

Action	Date	FR Cite
NPRM	06/24/03	68 FR 37434
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—106736—00

Drafting attorney: Horace Howells (202) 622—3050

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Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–AX93

2846. DEFINITION OF INCOME

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 643; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide guidance under section 643 of the Internal Revenue Code, on whether State law definition of trust income is trust income for Federal tax purposes.

Timetable:

Action	Date	FR Cite
NPRM	02/15/01	66 FR 1039
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—106513—00

Drafting attorney: Bradford R. Poston (202) 622—3060

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Treasury attorney: Catherine Hughes (202) 622—9407

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RIN: 1545–AX96

2847. ELECTING MARK—TO—MARKET FOR MARKETABLE STOCK OF A PFIC

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1296

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation describes the methods and procedures for electing mark—to—market treatment for marketable stock of a PFIC.

Timetable:

Action	Date	FR Cite
NPRM	07/31/02	67 FR 49634
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG—112306—00

Drafting attorney: Alexandra K. Helou (202) 622—3840

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Treasury attorney: Michael Caballero (202) 622—0851

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RIN: 1545–AY17

2848. AUTHORIZED PLACEMENT AGENCY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 152

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation amends the definition of "authorized placement agency" (for purposes of determining whether a child placed for legal adoption in a taxpayer's home is a dependent of the taxpayer) to include biological parents and other persons authorized by State law to place children for legal adoption.

Timetable:

Action	Date	FR Cite
NPRM	11/30/00	65 FR 71277
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—107279—00

Drafting attorney: Elizabeth K. Kaye (202) 622—4910

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RIN: 1545–AY18

2849. INFORMATION REPORTING ON CANCELLATION OF INDEBTEDNESS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 6050

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to information reporting on the cancellation of indebtedness.

Timetable:

Action	Date	FR Cite
NPRM	06/13/02	67 FR 40629
Public Hearing	10/08/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—107524—00

Drafting attorney: Joseph P. Dewald (202) 622—4910

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Treasury attorney: Michael Novey (202) 622—1339

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RIN: 1545–AY35

2850. ELECTION—ASSET ACQUISITIONS OF INSURANCE COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 197; 26 USC 338; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations prescribe the manner in which the various provisions of subchapter L, chapter 1, subtitle A of the Internal Revenue Code apply to asset acquisitions deemed to occur by reason of a section 338 election as well as to actual acquisitions of insurance company assets subject to section 1060.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10640
Public Hearing	09/18/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—118861—00

Drafting attorney: Mark Weiss (202) 622—7790

Reviewing attorney: Filiz Serbes (202) 622—7790

Treasury attorney: Audrey Nacamuli (202) 622—0869

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RIN: 1545–AY49

2851. ELECTRONIC FURNISHING OF PAYEE STATEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6050; 26 USC 6051; 26 USC 6041; 26 USC 6724

CFR Citation: 26 CFR 1; 26 CFR 31

Legal Deadline: None

Abstract: This regulation amends the regulations to allow for the electronic furnishing of Forms W—2, 1098—E, 1098—T, and other payee statements.

Timetable:

Action	Date	FR Cite
NPRM	02/14/01	66 FR 10247
NPRM Comment Period End	07/06/01	66 FR 32279
Public Hearing	07/25/01	66 FR 32279
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: REG—107186—00

Drafting attorney: Michael E. Hara (202) 622—4910

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RIN: 1545–AY50

2852. TAX TREATMENT OF CAFETERIA PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 125

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides information about the tax treatment of cafeteria plans.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1923
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG—209461—79

Drafting attorney: Shoshanna Tanner (202) 622—6080

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RIN: 1545–AY67

2853. LOW—INCOME TAXPAYER CLINICS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will amend the regulations pertaining to the definition of income tax return preparer to exclude low—income taxpayer clinics and their volunteers when operating as authorized by 26 U.S.C. 7526.

Timetable:

Action	Date	FR Cite
NPRM	06/11/02	67 FR 39915
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—115285—01

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RIN: 1545–AY84

2854. NEW MARKET TAX CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 45D; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to the new markets tax credit under section 45D, which was enacted by section 121(a) of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106—554).

Timetable:

Action	Date	FR Cite
ANPRM	05/01/01	66 FR 21844
NPRM	12/26/01	66 FR 66376
Public Hearing	03/14/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—119436—01

Drafting attorney: Paul F. Handleman (202) 622—3040

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RIN: 1545–AY87

2855. DEFINITION OF AGENT AND SAFEGUARD CERTIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation relates to the definition of agent for purposes of I.R.C. sections 6103(1) and (m).

Timetable:

Action	Date	FR Cite
NPRM	02/01/02	67 FR 4938
NPRM Comment Period End	05/02/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal, Local

Additional Information: REG—120135—01

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RIN: 1545–AY94

2856. TAX SHELTER PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6662; 26 USC 6664

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation relates to sections 6662 and 6664 regarding tax shelter penalties. The project has arisen in connection with the revision to Circular 230.

Timetable:

Action	Date	FR Cite
NPRM	12/31/02	67 FR 79894
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—126016—01

Drafting attorneys: Jamie G. Bernstein (202) 622—7845

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RIN: 1545–AY97

2857. EXPENDITURES IN CONNECTION WITH THE CREATION OF INTANGIBLE ASSETS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 263

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide guidance on the treatment of costs incurred in connection with the creation of an intangible asset.

Timetable:

Action	Date	FR Cite
NPRM	12/19/02	67 FR 77701
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—125638—01

Drafting attorney: Andrew J. Keyso, Jr. (202) 622—5020

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RIN: 1545–BA00

2858. MERGERS INVOLVING DISREGARDED ENTITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 368; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance concerning the requirements to be met in order for a merger or consolidation to qualify as a reorganization under section 368(a)(1)(A). They will also address whether certain mergers involving disregarded entities can qualify as reorganizations under section 368(a)(1)(A).

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57400
Second NPRM	01/24/03	68 FR 3477
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—126485—01

Drafting attorneys: Richard M. Heinecke (202) 622—7930

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Treasury attorney: Audrey Nacamuli (202) 622—5721

CC:CORP

RIN 1545—BA06 and its corresponding number REG—126485—01 was first opened with respect to a proposed regulation that was first published in the Federal Register on November 15, 2001. The November 15, 2001, proposed regulations were withdrawn by proposed regulations in the Federal Register on January 24, 2003. The January 24, 2003, proposed regulations with the same REG—126485—01, not only withdrew the November 15, 2001, proposed regulations but also served as a cross—referencing proposed regulation to a temporary regulation published in the Federal Register on January 24, 2003, and a notice of proposed rulemaking.

The temporary regulations also use the REG—126485—01 number. The document published with respect to the temporary regulations also serve as final regulations. The final regulations use RIN 1545—BB46 and REG—162729—02. Once the temporary regulations were published, the final regulations (REG—162729—02; RIN 1545—BB46) were closed.

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RIN: 1545–BA06

2859. REDUCTIONS OF ACCRUALS AND ALLOCATIONS BECAUSE OF INCREASED AGE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 411; 26 USC 411

CFR Citation: 26 CFR 1

Legal Deadline: Final, Statutory, February 1, 1988, Final.

Abstract: These regulations will prescribe rules regarding the requirement that accruals and allocations under qualified retirement plans cannot be reduced because of the attainment of any age.

Timetable:

Action	Date	FR Cite
NPRM	12/11/02	67 FR 76123
Hearing	04/09/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG—209500—86

Drafting attorney: Linda S.F. Marshall (202) 622—6090

Reviewing attorney: Marjorie Hoffman (202) 622—6090

Treasury attorney: Harlan Weller (202) 622—1001

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RIN: 1545–BA10

2860. APPLICATION OF THE FEDERAL INSURANCE CONTRIBUTIONS ACT, FEDERAL UNEMPLOYMENT TAX ACT, AND COLLECTION OF INCOME TAX AT SOURCE TO STATUTORY STOCK OPTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 3101; 26 USC 3111; 26 USC 3121; 26 USC 3301; 26 USC 3306; 26 USC 3401; 26 USC 3402; 26 USC 7805

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: The regulations under sections 424, 3121, 3306, and 3401 clarify the application of the Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and the Collection of Income

Tax at Source to statutory stock options; i.e., incentive stock options under section 422 (ISOs) and options granted under employee stock purchase plans under section 423 (ESPP options). The regulations provide that at the time of the exercise of a statutory stock option, the individual who was granted the statutory stock option receives wages for FICA and FUTA purposes. The regulations also provide that the amount of wages received equals the excess of the fair market value of the stock acquired pursuant to the exercise of the statutory stock option over the amount paid for the stock and that income tax withholding is not required when an individual exercises a statutory stock option because no income is recognized at the time of exercise by reason of section 421(a)(1).

Timetable:

Action	Date	FR Cite
NPRM	11/13/01	66 FR 57023
Public Hearing	05/14/02	67 FR 5076
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—142686—01

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Treasury attorney: Bill Bortz (202) 622—1352

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RIN: 1545–BA26

2861. AMENDMENT TO THE DEFINITION OF REFUNDING

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will amend the definition of a refunding issue applicable to tax—exempt bonds issued by State and local governments.

Timetable:

Action	Date	FR Cite
NPRM	04/10/02	67 FR 17310
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: REG—165706—01

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RIN: 1545–BA46

2862. LOSS LIMITATION RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 337(d)

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulation provides guidance on the treatment of certain losses recognized on sales of subsidiary stock by members of a consolidated group under section 337(d) and section 1502 of the Internal Revenue Code. For related matters, see the proposed regulations published on March 12, 2002, at 67 FR 11070 regarding REG—102740—02.

Timetable:

Action	Date	FR Cite
NPRM	05/31/02	67 FR 38040
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—123305—02

Drafting attorney: Lola L. Johnson (202) 622—7530

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RIN: 1545–BA52

2863. NONCOMPENSATORY PARTNERSHIP OPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 704; 26 USC 721; 26 USC 761

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will describe the tax treatment of noncompensatory partnership options.

Timetable:

Action	Date	FR Cite
NPRM	01/22/03	68 FR 2930
Public Hearing	05/20/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—103580—02

Drafting attorneys: Audrey W. Ellis and Demetri G. Yatrakis (202) 622—3060

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Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–BA53

2864. REQUIRED DISTRIBUTIONS FROM RETIREMENT PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 401(a)(9)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to required minimum distributions from defined benefit plans and annuity contracts.

Timetable:

Action	Date	FR Cite
NPRM	04/17/02	67 FR 18834
Hearing	09/04/02	67 FR 56509
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—108697—02

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RIN: 1545–BA60

2865. CARRYBACK OF CONSOLIDATED NET OPERATING LOSSES TO SEPARATE RETURN YEARS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will harmonize the waiver election in regulations section 1.1502—21(b)(3) with the amendments to IRC 172(b) with the Job Creation and Worker Assistance Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/31/02	67 FR 38039
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—122564—02

Drafting and reviewing attorney: Marie C. Milnes—Vasquez (202) 622—7530

Treasury attorney: Audrey Nacamuli (202) 622—5721

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RIN: 1545–BA73

2866. STATUTORY OPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 421

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides rules for the creation, and or maintenance, of a statutory stock option plan. It includes rules on adopting a plan, plan requirements, permissible provisions of a plan, and disqualification of a statutory option.

Timetable:

Action	Date	FR Cite
NPRM	06/09/03	68 FR 34344
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—122917—02

Drafting attorney: Erinn M. Madden (202) 622—6030

Reviewing attorney: Robert Misner (202) 622—6030

Treasury attorney: Elizabeth Drigotas (202) 622—1332

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RIN: 1545–BA75

2867. DISCLOSURE OF RELATIVE VALUE OF DISTRIBUTION FORMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805(b); 26 USC 417(a)(3)(A)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will specify the disclosures that must be made to participants in qualified pension plans to describe the relative value of the available optional forms of benefit.

Timetable:

Action	Date	FR Cite
NPRM	10/07/02	67 FR 62417
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG—124667—02

Drafting attorney: Linda S.F. Marshall (202) 622—6090

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Treasury attorney: Harlan Weller (202) 622—1001

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RIN: 1545–BA78

2868. PARTNERSHIP TRANSACTIONS INVOLVING LONG—TERM CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 460

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Currently, regulations under section 460 divide the rules regarding a mid—contract change in taxpayers engaged in completing long—term contracts into two categories: constructive completion transactions and step—in—the—shoes transactions. The regulations provide that a transfer described in section 721(a) of a long—term contract to a partnership and a transfer of a partnership interest are step—in—the—shoes transactions. These regulations will explain the tax consequences of contributions of long—term contracts to, transfers of interests in, and distributions from, partnerships holding long—term contracts.

Timetable:

Action	Date	FR Cite
NPRM	08/06/03	68 FR 46516
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—128203—02

Drafting attorney: Richard T. Probst (202) 622—3060

Reviewing attorney: Thomas Hines (202) 622—3060

Treasury attorney: Deborah Harrington (202) 622—1788

CC:PSI

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RIN: 1545–BA81

2869. REPORTING REQUIREMENTS FOR WIDELY HELD FIXED INVESTMENT TRUSTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation relates to reporting requirements for widely held fixed investment trusts.

Timetable:

Action	Date	FR Cite
NPRM	06/20/02	67 FR 41892
NPRM Comment Period End	09/18/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—106871—00

Drafting attorney: Faith Colson (202) 622—3060

Reviewing attorney: J. Thomas Hines (202) 622—3060

Treasury attorney: Viva Hammer (202) 622—0869

CC:PSI

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RIN: 1545–BA83

2870. GUIDANCE ON REPORTING OF DEPOSIT INTEREST PAID TO NONRESIDENT ALIENS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 31

Legal Deadline: None

Abstract: This regulation will provide guidance on the reporting requirements for interest on deposits maintained at U.S. offices of certain financial institutions and paid to nonresident aliens that are residents of certain specified countries.

Timetable:

Action	Date	FR Cite
NPRM	08/02/02	67 FR 50386
Hearing	12/05/02	67 FR 50386
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—133254—02

Drafting attorney: Alexandra K. Helou (202) 622—3840

Reviewing attorney: Valerie Mark Lippe (202) 622—3840

Treasury attorney: Hilary Hoover (202) 622—1781

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RIN: 1545–BA86

2871. AGGREGATE COMPUTATION AND ALLOCATION OF RESEARCH CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 41

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance on the proper method of computing the research credit for a controlled group. In addition, this regulation will provide guidance on the allocation of the research credit among members of a controlled group.

Timetable:

Action	Date	FR Cite
NPRM	07/29/03	68 FR 44499
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—133791—01

Drafting attorney: Jolene J. Shiraishi (202) 622—3120

Reviewing attorney: Brenda M. Stewart (202) 622—3120

Treasury attorney: Sharon Kay (202) 622—0865

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RIN: 1545–BA88

2872. REDUCED EXCLUSION OF GAIN FROM SALE OR EXCHANGE OF PRINCIPAL RESIDENCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 121; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance on when a taxpayer who has not owned and used the property for two years or who has claimed the exclusion within the last two years is eligible to claim a reduced exclusion under section 121(c).

Timetable:

Action	Date	FR Cite
NPRM	12/24/02	67 FR 78398
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—138882—02

Drafting attorney: Sara P. Shepherd (202) 622—4960

Reviewing attorney: J. Charles Strickland (202) 622—4960

Treasury attorney: Eric San Juan (202) 622—0224

CC:ITA

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RIN: 1545–BB01

2873. CHANGE IN USE; ACCELERATED COST RECOVERY SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 168

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance under section 168 regarding depreciation of property for which the use changes.

Timetable:

Action	Date	FR Cite
NPRM	07/21/03	68 FR 43047
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—138499—02

Drafting attorney: Sara L. Logan (202) 622—3110

Reviewing attorney: Kathleen Reed (202) 622—3110

Treasury attorney: George Manousos (202) 622—1335

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RIN: 1545–BB05

2874. CAPITAL ACCOUNT BOOKUP

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 704; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will expand the circumstances under which a revaluation of partnership capital accounts is permitted.

Timetable:

Action	Date	FR Cite
NPRM	07/02/03	68 FR 39498
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—139796—02

Drafting attorney: Jason T. Smyczek (202) 622—3050

Reviewing attorney: David Haglund (202) 622—3050

Treasury attorney: Deborah Harrington (202) 622—1788

CC:PSI

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RIN: 1545–BB10

2875. STRUCTURED SETTLEMENT FACTORING TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 115

CFR Citation: 26 CFR 1; 26 CFR 602; 26 CFR 157

Legal Deadline: None

Abstract: These regulations relate to section 5891 of the Internal Revenue Code. Section 5891 imposes a 40 percent excise tax upon any person who acquires certain payment rights in a structured settlement factoring transaction. The regulations provide guidance necessary to comply with the reporting requirements of the excise tax.

Timetable:

Action	Date	FR Cite
NPRM	02/19/03	68 FR 7956
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—139768—02

Drafting attorney: Shareen S. Pflanz (202) 622—4920

Reviewing attorney: Charles Strickland (202) 622—4960

Treasury attorney: John Parcell (202) 622—2578

CC:ITA

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RIN: 1545–BB14

2876. TESTIMONY AUTHORIZATIONS AND REQUESTS FOR IRS INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 301

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation will amend existing regulations on testimony authorizations and requests for IRS information.

Timetable:

Action	Date	FR Cite
NPRM	07/09/03	68 FR 40850
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—140930—02

Drafting attorney: J. Suzanne Sones (202) 622—4590

Reviewing attorney: David L. Fish (202) 622—4590

CC:PA:DPL

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RIN: 1545–BB15

2877. TOLL TELEPHONE SERVICE—DEFINITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 49

Legal Deadline: None

Abstract: This regulation provides amendments to regulations relating to the definition of toll telephone service.

Timetable:

Action	Date	FR Cite
NPRM	04/01/03	68 FR 15690
Hearing	09/10/03	68 FR 35828
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—141097—02

Drafting attorney: Cynthia A. McGreevy (202) 622—3130

Reviewing attorneys: Frank Boland (202) 622—3130 and Phillip Howard (202) 622—3000

Treasury attorney: John Parcell (202) 622—2578

CC:PSI

Agency Contact: Cynthia A. McGreevy,
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RIN: 1545–BB18

2878. AUTHORIZATION FOR IRS TO CHARGE FEES FOR COPYING EXEMPT ORGANIZATION RETURNS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6104

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulation provides authorization for Internal Revenue Service to charge fees for copying exempt organization returns.

Timetable:

Action	Date	FR Cite
NPRM	07/09/03	68 FR 40849
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—142538—02

Drafting attorney: Sarah Tate (202) 622—4590

Reviewing attorney: Philip Lindenmuth (202) 622—4560

Treasury attorney: Eric San Juan (202) 622—0224

CC:PA:DPL

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RIN: 1545–BB21

2879. EXTENSION OF TIME FOR FILING RETURNS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6081

CFR Citation: 26 CFR 1; 26 CFR 25; 26 CFR 31; 26 CFR 53; 26 CFR 55; 26 CFR 156; ...

Legal Deadline: None

Abstract: This regulation will amend the section 6081 regulations to remove the signature requirement for Form 8809, Request for Extension of Time to File Information Returns. This will enable filers of information returns to request an extension of time to file using an online version of the Form 8809.

Timetable:

Action	Date	FR Cite
NPRM	06/11/03	68 FR 34875
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—107618—02

Drafting attorney: Charles A. Hall (202) 622—4940

Reviewing attorney: Judith Wall (202) 622—4940

Treasury attorney: John Parcell (202) 622—2578

CC:PA:APJP

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RIN: 1545–BB29

2880. INVESTMENT ADJUSTMENT RULES AND WAIVER OF LOSS CARRYOVERS FROM SRLY YEARS—AMENDED

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will allow a group to revoke an election under regulations section 1.1502—32(b)(4), where such election has become unnecessary as a result of regulations section 1.1502—20T(i)(2).

Timetable:

Action	Date	FR Cite
NPRM	05/07/03	68 FR 24404
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—152524—02

Drafting attorney: Jeffrey B. Fienberg (202) 622—7930

Reviewing attorney: Alison G. Burns (202) 622—7700

Treasury attorney: Audrey Nacamuli (202) 622—5721

CC:CORP

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1111 Constitution Avenue NW,
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RIN: 1545–BB38

2881. AMENDMENT TO SECTION 6724 RELATING TO FAILURE TO FILE CORRECT INFORMATION RETURNS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6724

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Amended regulations to provide an electronic alternative procedure as to when the filing of a correction is considered prompt for purposes of section 6724.

Timetable:

Action	Date	FR Cite
NPRM	07/09/03	68 FR 40857
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—141669—02

Drafting attorney: Robert A. Desilets (202) 622—4910

Reviewing attorney: John J. McGreevy (202) 622—4910

Treasury attorney: Eric San Juan (202) 622—0224

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RIN: 1545–BB41

2882. LIMITATION ON USE OF NONACCRUAL EXPERIENCE METHOD OF ACCOUNTING

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 403

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Under section 448(d)(5), as amended by the Job Creation and Worker Assistance Act of 2002, the nonaccrual experience method of accounting is available only for amounts to be received for the performance of qualified services (i.e., services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting) or for services provided by certain small businesses (i.e., those with gross receipts of $5 million or less). The law provides that such taxpayers are not required to accrue, based on their experience, any portion of year—end receivables that will not be collected. Under the proposed regulations, taxpayers will be permitted to determine such amounts using alternative computations or formulas which, based on experience, accurately reflect the amount of income that will not be collected by such taxpayer. The proposed regulations will provide safe harbor methods (computations or formulas) of estimating such amounts that the taxpayers can rely on.

Timetable:

Action	Date	FR Cite
NPRM	09/04/03	68 FR 52543
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—141402—02

Drafting attorney: Terrance McWhorter (202) 622—4970

Reviewing attorney: Tom A. Luxner (202) 622—4970

CC:ITA

We issued interim guidance in the form of a Notice 2003—12, 2003—6 published in the IRB 422 on January 22, 2003, with a request for comments.

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RIN: 1545–BB43

2883. ADVANCE RENTALS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 61(a)(5)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will allow the IRS Commissioner to change the rules for accounting for advance rental income. This change is needed to accomplish an item on Treasury's Guidance Priority List involving advance payments. Because the modification only provides for the Commissioner's authority and does not directly change a substantive rule, the regulation should have no loss or risk.

Timetable:

Action	Date	FR Cite
NPRM	12/18/02	67 FR 77450
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—151043—02

Drafting attorney: Edwin B. Cleverdon (202) 622—7900

Reviewing attorney: Kim Koch (202) 622—5020

CC:ITA

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RIN: 1545–BB44

2884. SPECIAL DEPRECIATION ALLOWANCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance under sections 168 and 1400L(b) regarding special deprecations allowance.

Timetable:

Action	Date	FR Cite
NPRM	09/08/03	68 FR 53008
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—157164—02

Drafting attorney: Douglas Kim (202) 622—3110

Reviewing attorney: Kathleen Reed (202) 622—3110

Treasury attorney: George Manuso (202) 622—1335

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RIN: 1545–BB57

2885. USE OF GOVERNMENT DEPOSITARIES IN CONNECTION WITH TAX UNDER THE FEDERAL UNEMPLOYMENT TAX ACT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 6302

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: The proposed regulations will raise the amount of accumulated Federal Unemployment Tax Act for taxes that a taxpayer may accumulate before being required to deposit.

Timetable:

Action	Date	FR Cite
NPRM	07/17/03	68 FR 42329
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—144908—02

Drafting attorney: Heather L. Dostaler (202) 622—8445

Reviewing attorney: Brinton T. Warren (202) 622—7134

Treasury attorney: John Parcell (202) 622—2578

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RIN: 1545–BB66

2886. AVAILABILITY OF SECTION 338(H)(10) ELECTION IN MULTISTEP TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 338; 26 USC 368

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation concerns whether a section 338(h)(10) election should suspend application of the step transaction doctrine.

Timetable:

Action	Date	FR Cite
NPRM	07/09/03	68 FR 40848
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—143679—02

Drafting attorneys: Daniel F. Heins and Mary E. Goode (202) 622—7930

Reviewing attorney: Reginald Mombrun (202) 622—7930

CC:CORP

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RIN: 1545–BB68

2887. REAL ESTATE MORTGAGE INVESTMENT CONDUITS (REMICS); APPLICATION OF SECTION 446 WITH RESPECT TO INDUCEMENT FEES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 446; 26 USC 860

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide guidance on the proper timing of income from the receipt of fees to induce the purchase of noneconomic residual interests in Real Estate Mortgage Investment Conduits (REMICs). The regulations require that these REMIC inducement fees may no longer be taken into account currently upon receipt. Instead, the proposed regulations require that these inducement fees be taken into account over a period that is related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the holder of the noneconomic residual interest. The regulations also provide two safe harbor methods of accounting for these inducement fees. The regulations will be issued at 26 CFR section 1.446—6, as applicable. (The notice of proposed rulemaking also includes a sourcing rule at 1.863—1(e).)

Timetable:

Action	Date	FR Cite
NPRM	07/21/03	68 FR 43055
Public Hearing	11/18/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG—162625—02

Drafting attorney: John W. Rogers, III (202) 622—3950

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RIN: 1545–BB73

2888. GUIDANCE ON LIFE INSURANCE AND ANNUITY CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 817

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation modifies the existing section under 26 U.S.C. 817(h) relating to guidance on life insurance and annuity contracts.

Timetable:

Action	Date	FR Cite
NPRM	07/30/03	68 FR 44689
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—163974—02

Drafting attorney: James Polfer (202) 622—3970

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RIN: 1545–BB77

2889. ASSUMPTION OF PARTNERSHIP LIABILITIES (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations enact section 358(b) for partnerships for the period between October 18, 1999, and the publication of the companion proposed regulations.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—106736—00

Drafting attorney: Horace W. Howells (202) 622—3050

Reviewing attorney: Dianna Miosi (202) 622—3050

Treasury attorney: Deborah Harrington (202) 622—1788

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RIN: 1545–BB83

2890. DISTRIBUTIONS OF LOSS CORPORATION STOCK BY QUALIFIED PLANS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 382(m)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Under current regulations, distributions of loss corporation stock from a qualified trust to its beneficiaries can cause an ownership change, triggering the limitation on losses of section 382 of the Internal Revenue Code. This regulation would reduce the negative impact of many such distributions by providing a "talking rule" that would treat distributed stock as having been acquired by the beneficiary in the time and manner acquired by the trust.

Timetable:

Action	Date	FR Cite
NPRM	06/27/03	68 FR 38247
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—108676—03

Drafting attorney: Martin T. Huck (202) 622—7750

Reviewing attorney: Mark Jennings (202) 622—7750

Treasury attorney: Audrey Nacamuli (202) 622—5721

CC:CORP

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RIN: 1545–BC00

2891. TRANSFERS OF NONSTATUTORY STOCK OPTIONS TO RELATED PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 83

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules for determining when the transfer of a nonstatutory stock option will be considered an arm's length transaction for purposes of section 1.83—7(a).

Timetable:

Action	Date	FR Cite
NPRM	07/02/03	68 FR 39498
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—116914—03

Drafting attorney: Stephen B. Tackney (202) 622—6040

Reviewing attorney: Robert Misner (202) 622—6030

Treasury attorney: William Bortz (202) 622—1352

CC:TEGE

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RIN: 1545–BC06

2892. • NOTARIZATION REQUIREMENT FOR STATEMENTS OF PURCHASE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1042(a)(1); 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations would modify the requirement that statements of purchase of qualified replacement property be notarized within 30 days of purchase.

Timetable:

Action	Date	FR Cite
NPRM	07/10/03	68 FR 41087
Comment Period End	10/08/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—121122—03

Drafting attorney: John T. Ricotta (202) 622—6060

Reviewing attorney: Robert Patchell (202) 622—6060

CC:TEGE

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RIN: 1545–BC11

2893. • CONTINGENT AT CLOSING ESCROWS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulations will provide rules for taxing the income of a contingent at closing escrow. A contingent at closing escrow is, generally, established in connection with the sale or exchange of real or personal property to hold assets that will be distributable to the purchaser or seller based on the post—closing resolution of bona fide contingencies. The rules will require the purchaser or seller to take into account all items of income and deduction for Federal income tax purposes.

Timetable:

Action	Date	FR Cite
NPRM	02/01/99	64 FR 4801
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—103422—03

Reviewing attorney: A. Katharine Kiss (202) 622—7812

Drafting attorney: Jeff Mitchell (202) 622—7934

Treasury attorney: Deborah Harrington (202) 622—1788

CC:ITA

Agency Contact: A. Katharine Kiss, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—7812

RIN: 1545–BC16

2894. • CHANGES IN COMPUTING DEPRECIATION (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The temporary regulation provides guidance under section 446(b) regarding changes in computing depreciation or amortization.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—126459—03

Drafting attorney: Sara L. Logan (202) 622—3110

Reviewing attorney: Kathleen Reed (202) 622—3110

Treasury attorney: George Manousos (202) 622—1335

CC:PSI

Agency Contact: Sara L. Logan, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3110

RIN: 1545–BC17

2895. • LIKE—KIND EXCHANGES UNDER SECTION 168 (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 168

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This temporary regulation relates to the depreciation of properly subject to section 168 of the Internal Revenue Code (MACRS property). Specifically, these temporary regulations provide guidance on how to depreciate MACRS properly acquired in a like—kind exchange under section 1031 or as a result of an involuntary conversion under section 1033, where both the acquired and relinquished properly are subject to MACRS.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: REG—106590—00

Drafting attorney: Charles Magee (202) 622—3110

Reviewing attorney: Charles Ramsey (202) 622—3110

Treasury attorney: George Manousos (202) 622—1335

CC:PSI

Agency Contact: Charles Magee, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3110

RIN: 1545–BC27

2896. • PRESERVATION OF STOCK BASIS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address the determination of stock basis in the case of a group structure change that occurs by reason of certain transactions.

Timetable:

Action	Date	FR Cite
NPRM	07/08/03	68 FR 40579
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—130262—03

Drafting attorney: Ross E. Poulsen (202) 622—7770

Reviewing attorney: Marlene Oppenheim (202) 622—7770

Treasury attorney: Audrey Nacamuli (202) 622—5721

CC:CORP

Agency Contact: Ross E. Poulsen, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—7770

RIN: 1545–BC28

2897. • ELIMINATION OF FORMS OF DISTRIBUTION IN DEFINED CONTRIBUTION PLANS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 411(d)(b)(E)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will amend the section 411(d)(b) regulations to conform to the amendments made by EGTRRA, in accordance with section 411(d)(b)(E), relating to the elimination of forms of distribution in defined contribution plans.

Timetable:

Action	Date	FR Cite
NPRM	07/08/03	68 FR 40581
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—112039—03

Drafting attorney: Vernon S. Carter (202) 622—6060

Treasury attorney: William Bortz (202) 622—1352

CC:TEGE

Agency Contact: Vernon Carter, Tax Law Specialist, Department of the Treasury, Internal Revenue Service,
1111 Constitution Avenue NW,
Washington, DC 20224
Phone: 202 622—6060

RIN: 1545–BC35

2898. • DEPRECIATION OF VANS AND LIGHT TRUCKS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance defining a specific class of vans and light trucks as exempt from the depreciation limitations imposed on passenger automobiles under section 280F.

Timetable:

Action	Date	FR Cite
NPRM	07/07/03	68 FR 40224
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—138495—02

Drafting attorney: Bernard Harvey, III (202) 622—3110

Reviewing attorney: Charles Ramsey (202) 622—3110

Treasury attorney: John Parcell (202) 622—2578

CC:PSI

Agency Contact: Bernard P. Harvey III, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
1111 Constitution Avenue NW,
Washington, DC 20224
Phone: 202 622—3110

RIN: 1545–BC36

2899. • GUIDANCE UNDER SECTION 1502; APPLICATION OF SECTION 108 TO MEMBERS OF A CONSOLIDATED GROUP

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations under section 1502 of the Internal Revenue Code provide guidance concerning the application of certain provisions of section 108 to members of a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	09/04/03	68 FR 52542
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—132760—03

Drafting attorney: Amber R. Cook (202) 622—7530

Reviewing attorney: Marie Milnes—Vasquez (202) 622—7530

Treasury attorney: Audrey Nacamuli (202) 622—5721

CC:CORP

Agency Contact: Amber R. Cook, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
1111 Constitution Avenue NW,
Washington, DC 20224
Phone: 202 622—7530

RIN: 1545–BC38

2900. • REMEDIAL ACTIONS FOR TAX EXEMPT BONDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 141; 26 USC 142

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations amend final regulations under section 1.141—12 and 1.141—2 that provide certain permitting remedial actions for tax exempt bonds issued by State and local governments and make related amendments to section 1.141—15 and 1.141—16. This regulation revises the definition of the amount of nonqualified bonds under section 141—12 and amends the provision of section 1.141—12 and 1.141—2 relating to allocations of nonqualified bonds.

Timetable:

Action	Date	FR Cite
NPRM	07/21/03	68 FR 43059
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—132483—03

Drafting attorney: Gary W. Bornholdt (202) 622—7870

Reviewing attorney: Bruce Serchuk (202) 622—1766

CC:TEGE

Agency Contact: Gary W. Bornholdt, Attorney—Advisor, Department of the Treasury, Internal Revenue Service,
1111 Constitution Avenue NW,
Washington, DC 20224
Phone: 202 622—7870

RIN: 1545–BC40

2901. INCOME TAX—TAXPAYER'S OBLIGATION TO FILE A NOTICE OF REDETERMINATION OF FOREIGN TAX AND CIVIL PENALTIES FOR FAILURE TO FILE

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301; 26 CFR 602

Timetable:

Action	Date	FR Cite
NPRM	06/23/88	53 FR 23659
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622—3850

RIN: 1545–AC09

2902. INCOME TAX—DEFINITION OF QUALIFIED POSSESSION SOURCE INVESTMENT INCOME FOR PURPOSES OF PUERTO RICO AND POSSESSION TAX CREDIT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/21/86	51 FR 2726
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: W. Edward Williams
Phone: 202 622—3880

RIN: 1545–AC10

2903. FSC TRANSFER PRICING RULES, DISTRIBUTIONS, DIVIDENDS RECEIVED, DEDUCTION, AND OTHER SPECIAL RULES FOR FSC

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/03/87	52 FR 6467
NPRM Comment Period End	05/02/87	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas L. Giblen
Phone: 202 435—5265

RIN: 1545–AI16

2904. INFORMATION FROM PASSPORT AND IMMIGRATION APPLICANTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	12/24/92	57 FR 61373
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amanda A. Ehrlich
Phone: 202 622—3880

RIN: 1545–AJ93

2905. INCOME OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	06/27/88	53 FR 24100
NPRM Comment Period End	08/26/88	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David A. Juster
Phone: 202 622—3850

RIN: 1545–AL93

2906. CLARIFICATION OF TREATMENT OF SEPARATE LIMITATION LOSSES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	06/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard L. Chewning
Phone: 202 622—3850

RIN: 1545–AM11

2907. EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/25/90	55 FR 2535
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622—3850

RIN: 1545–AM90

2908. CARIBBEAN BASIN INVESTMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	05/13/91	56 FR 21963
Hearing	07/12/91	56 FR 21963
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: W. Edward Williams
Phone: 202 622—3880

RIN: 1545–AM91

2909. CONSOLIDATED ALTERNATIVE MINIMUM TAX

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/30/92	57 FR 62251
NPRM Comment Period End	03/01/93	
Hearing	04/06/93	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Martin Scully
Phone: 202 622—8066

RIN: 1545–AN73

2910. CONFORMING TAXABLE YEARS OF CFCS AND FPHCS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/05/93	58 FR 290
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carl M. Cooper
Phone: 202 622—3840

RIN: 1545–AO22

2911. CHARITABLE CONTRIBUTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/12/91	56 FR 10395
Hearing	08/01/91	56 FR 23823
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Teresa B. Hughes
Phone: 202 622—3850

RIN: 1545–AP30

2912. GUIDANCE IN NOTICE 89—37, WHICH TREATS THE RECEIPT OF A CORPORATE PARTNER'S STOCK BY THE CORPORATE PARTNER AS A CIRCUMVENTION OF GENERAL UTILITIES REPEAL

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/15/92	57 FR 59324
NPRM Comment Period End	01/20/93	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tara P. Volungis
Phone: 202 622—3080

RIN: 1545–AP52

2913. USE OF GAAP EARNINGS AS E&P OF FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	07/01/92	57 FR 29246
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622—3850

RIN: 1545–AQ55

2914. THE TREATMENT OF ACCELERATED DEATH BENEFITS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/15/92	57 FR 59319
NPRM Comment Period End	02/26/93	
Hearing	03/19/93	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ann H. Logan
Phone: 202 622—3970

RIN: 1545–AQ70

2915. FOREIGN TRUSTS REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Rennie Quarrie
Phone: 202 622—3880

RIN: 1545–AR25

2916. TREATMENT OF DUAL CONSOLIDATED LOSSES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kenneth D. Allison
Phone: 202 622—3860

RIN: 1545–AR26

2917. ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/22/95	60 FR 66532
NPRM Comment Period End	03/21/96	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cathy A. Vohs
Phone: 202 622—6090

RIN: 1545–AT82

2918. FOREIGN CORPORATIONS REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/08/96	61 FR 9377
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kenneth P. Christman
Phone: 202 622—3870

RIN: 1545–AT96

2919. APPLICATION OF GRANTOR TRUST RULES TO NONEXEMPT EMPLOYEES' TRUST

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	09/27/96	61 FR 50778

Action	Date	FR Cite
NPRM Comment Period End	12/26/96	
Hearing	01/15/97	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: M. Grace Fleeman
Phone: 202 622—3880

Linda S.F. Marshall
Phone: 202 622—6090

James A. Quinn
Phone: 202 622—3070

RIN: 1545–AU29

2920. APPLICATION OF ATTRIBUTION RULES TO FOREIGN TRUSTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: W. Edward Williams
Phone: 202 622—3880

RIN: 1545–AU91

2921. FINANCIAL ASSET SECURITIZATION INVESTMENT TRUST (FASIT) START—UP; OPERATIONAL AND TRANSITIONAL RULES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301; 26 CFR 1

Timetable:

Action	Date	FR Cite
ANPRM	11/04/96	61 FR 56648
ANPRM Comment Period End	12/31/96	
NPRM	02/07/00	65 FR 5807
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alexa Temple Dubert
Phone: 202 622—3071

RIN: 1545–AU94

2922. AGREEMENTS FOR PAYMENT OF TAX LIABILITIES IN INSTALLMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	12/31/97	62 FR 68241
Second NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Frederick W. Schindler
Phone: 202 622—3620

RIN: 1545–AU97

2923. SUBSTANTIATING TRAVEL EXPENSE DEDUCTIONS FOR MEMBERS OF CONGRESS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 5

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Edwin B. Cleverdon
Phone: 202 622—7900

RIN: 1545–AV55

2924. STOCKS AND SECURITIES SAFE HARBOR EXCEPTION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	06/12/98	63 FR 32164
Hearing	09/09/98	
NPRM Comment Period End	09/10/98	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kenneth P. Christman
Phone: 202 622—3870

RIN: 1545–AW13

2925. CONTINGENT DEBT INSTRUMENT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	08/29/03	68 FR 51944
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Milton M. Cahn
Phone: 202 622—3870

RIN: 1545–AW33

2926. SOURCE OF INCOME FROM CERTAIN SPACE AND OCEAN ACTIVITIES AND FOR COMMUNICATIONS INCOME

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3903
Hearing	05/23/01	66 FR 12916
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Edward R. Barret
Phone: 202 435—5265

RIN: 1545–AW50

2927. HIGHWAY VEHICLE—DEFINITION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 48

Timetable:

Action	Date	FR Cite
NPRM	06/06/02	67 FR 38913
Public Hearing	02/27/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Theodore N. Margopulos
Phone: 202 622—3130

RIN: 1545–AX10

2928. GUARANTEED INVESTMENT CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	08/27/99	64 FR 46876
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Rose M. Weber
Phone: 202 622—3980

RIN: 1545–AX22

2929. INSPECTION OF WRITTEN DETERMINATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Lambert—Dean
Phone: 202 622—4570
Fax: 202 622—9888

RIN: 1545–AX40

2930. DEFINITION OF PASSIVE FOREIGN INVESTMENT COMPANY UNDER SECTION 1297

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alexandra K. Helou
Phone: 202 622—3840

RIN: 1545–AX78

2931. ACTIVE CONDUCT OF AN INSURANCE BUSINESS UNDER PFIC RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Sheila Ramaswamy
Phone: 202 622—3870

RIN: 1545–AY20

2932. HIPAA GENERAL NONDISCRIMINATION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 54

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1435
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Russell Weinheimer
Phone: 202 622—6080

RIN: 1545–AY32

2933. HIPAA NONDISCRIMINATION EXCEPTION FOR CHURCH PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1437
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Russell Weinheimer
Phone: 202 622—6080

RIN: 1545–AY33

2934. HIPAA NONDISCRIMINATION EXCEPTION FOR BONA FIDE WELLNESS PROGRAMS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1421
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Russell Weinheimer
Phone: 202 622—6080

RIN: 1545–AY34

2935. SPECIAL RULES RELATING TO TRANSFERS OF INTANGIBLES TO FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas D. Beem
Phone: 202 622—3860

RIN: 1545–AY41

2936. RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONNECTION WITH AN ACQUISITION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	04/26/02	67 FR 20711
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amber R. Cook
Phone: 202 622—7530

RIN: 1545–AY42

2937. SPECIAL RULES FOR S CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301; 26 CFR 601

Timetable:

Action	Date	FR Cite
NPRM	04/27/92	57 FR 15272

Action	Date	FR Cite
NPRM Comment Period End	06/26/92	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David A. Juster
Phone: 202 622—3850

RIN: 1545–AY44

2938. NORMAL RETIREMENT AGE FOR PENSION PLANS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Janet A. Laufer
Phone: 202 622—6090

RIN: 1545–AY61

2939. LIABILITIES ASSUMED IN CERTAIN CORPORATE TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
ANPRM	05/06/03	68 FR 23931
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas C. Bates
Phone: 202 622—7550

RIN: 1545–AY74

2940. NORMALIZATION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/04/03	68 FR 10190
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: David Selig
Phone: 202 622—3040

RIN: 1545–AY75

2941. RESEARCH CREDIT III

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/26/01	66 FR 66362
Hearing	03/27/02	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Nicole R. Cimino
Phone: 202 622—3120

RIN: 1545–AY82

2942. TRANSITIONAL RELIEF FOR QUALIFIED INTERMEDIARIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Ethan A. Atticks
Phone: 202 622—3840

RIN: 1545–AY92

2943. CONSOLIDATED RETURNS; NONAPPLICABILITY OF SECTION 357(C)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	11/14/01	66 FR 57021
Public Hearing	03/21/02	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas I. Russell
Phone: 202 622—7550

RIN: 1545–BA09

2944. PROCUREMENT/PURCHASING CARD REPORTING

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/31/03	68 FR 4970
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Donna J. Welch
Phone: 202 622—4910

RIN: 1545–BA17

2945. INTEREST OTHER THAN THAT OF A CREDITOR

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	07/08/03	68 FR 40583
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Tara P. Volungis
Phone: 202 622—3080

RIN: 1545–BA69

2946. REDEMPTIONS TREATED AS DIVIDENDS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	10/18/02	67 FR 64331
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa K. Leong
Phone: 202 622—7530

RIN: 1545–BA80

2947. CARRYOVER AND STACKING RULE AMENDMENT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	07/07/03	68 FR 40218
Hearing	09/23/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Christopher J. Wilson
Phone: 202 622—3040

Lauren R. Taylor
Phone: 202 622—3040

RIN: 1545–BA85

2948. DESIGNATED IRS OFFICER OR EMPLOYEE

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	09/10/02	67 FR 57354
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth D. Rawlins
Phone: 202 622—3600

RIN: 1545–BA89

2949. TAX BOOK VALUE DISPARITIES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622—3850

RIN: 1545–BA92

2950. EARNINGS AND PROFITS ATTRIBUTION PRINCIPLES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Mark R. Pollard
Phone: 202 622—3850

RIN: 1545–BA93

2951. COMMUNICATIONS EXCISE TAX; TAXABLE COMMUNICATION SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 49

Timetable:

Action	Date	FR Cite
ANPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Cynthia A. McGreevy
Phone: 202 622—3130

RIN: 1545–BB04

2952. INVESTIGATIVE DISCLOSURES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	07/10/03	68 FR 41089
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Helene R. Newsome
Phone: 202 622—4570

RIN: 1545–BB16

2953. MIXED USE OUTPUT FACILITIES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
ANPRM	09/23/02	67 FR 59767
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Local, State

Federalism: Undetermined

Agency Contact: Rose M. Weber
Phone: 202 622—3980

RIN: 1545–BB23

2954. DUPLICATIVE TAX BENEFITS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/14/03	68 FR 12324
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Aimee K. Meacham
Phone: 202 622—7530

RIN: 1545–BB25

2955. ACCRUAL RULES FOR CREDITABLE FOREIGN TAXES AND GUIDANCE ON CHANGE IN TAXABLE YEAR

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622—3850

RIN: 1545–BB27

2956. TREATMENT OF SERVICES UNDER SECTION 482

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas L. Giblen
Phone: 202 435—5265

RIN: 1545–BB31

2957. PREPARER PENALTIES—SIGNATURE REQUIREMENT AND COPIES OF RETURNS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	04/24/03	68 FR 20089
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard C. Grosenick
Phone: 202 622—5510

RIN: 1545–BB34

2958. SAFE HARBOR LEASING SECOND INTEREST CAPITALIZATION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Grant D. Anderson
Phone: 202 622—4970

RIN: 1545–BB62

2959. SAFE HARBOR LEASING SECOND INTEREST CAPITALIZATION (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Grant D. Anderson
Phone: 202 622—4970

RIN: 1545–BB63

2960. USE OF GOVERNMENT DEPOSITARIES IN CONNECTION WITH TAX UNDER THE FEDERAL UNEMPLOYMENT TAX ACT (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 31

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Heather L. Dostaler
Phone: 202 622—8445

RIN: 1545–BB67

2961. STATUTORY OPTIONS (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Erinn M. Madden
Phone: 202 622—6030

RIN: 1545–BB69

2962. MISCELLANEOUS CHANGES TO COLLECTION DUE PROCESS PROCEDURES RELATING TO NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN

Priority: Routine and Frequent

CFR Citation: 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerome D. Sekula
Phone: 202 622—3610

RIN: 1545–BB96

2963. MISCELLANEOUS CHANGES TO COLLECTION DUE PROCESS PROCEDURES RELATING TO HEARINGS BEFORE LEVY

Priority: Routine and Frequent

CFR Citation: 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerome D. Sekula
Phone: 202 622—3610

RIN: 1545–BB97

2964. COMPUTATION OF TAX ATTRIBUTES

Priority: Routine and Frequent

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	07/18/03	68 FR 42652
Final Action	12/00/06	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Theresa M. Kolish
Phone: 202 622—7930

RIN: 1545–BB98

2965. • PROHIBITED ALLOCATION OF SECURITIES IN AN S CORPORATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805; 26 USC 409(p)(7)(A)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance for employee stock ownership plans holding stock of a subchapter S corporation concerning the prohibition against allocations to disqualified persons under section 409(p).

Timetable:

Action	Date	FR Cite
NPRM	07/21/03	68 FR 43058
Comment Period End	10/20/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—129709—03

Drafting attorney: John T. Ricotta (202) 622—6060

Reviewing attorney: Marjorie Hoffman (202) 622—6060

CC:TEGE

Agency Contact: John T. Ricotta, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224

Phone: 202 622—6060

RIN: 1545–BC34

2966. • GUIDANCE ON PFIC PURGING ELECTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations will provide guidance to taxpayers, who in limited circumstances, continue to be subject to the PFIC excess distribution regime of section 1291 although the foreign corporation in which they own stock is no longer treated as a PFIC under section 1298 or section 1297(e).

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—133446—03

Drafting attorney: Alexandra K. Helou (202) 622—3840

Reviewing attorney: Valerie A. Mark Lippe (202) 622—3840

Treasury attorney: Michael Caballero (202) 622—0851

CC:INTL

Agency Contact: Alexandra K. Helou, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3840

RIN: 1545–BC37

2967. • GUIDANCE ON PFIC PURGING ELECTIONS (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations will provide guidance to taxpayers on making timely deemed sale and deemed dividend elections under sections 1291 and 1298.

Timetable:

Action	Date	FR Cite
Temporary Regulations	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—133446—03

Drafting attorney: Alexandra K. Helou (202) 622—3840

Reviewing attorney: Valerie A. Mark Lippe (202) 622—3840

Treasury attorney: Michael Caballero (202) 622—0857

CC:INTL

Agency Contact: Alexandra K. Helou, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3840

RIN: 1545–BC49

2968. • COORDINATION OF UNITED STATES AND CERTAIN POSSESSIONS INCOME TAXES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: The regulations for section 7654 (1954 Code) will revise existing regulations for clarification and the regulations for section 7654 (1986 Code) will be new. Internal Revenue Code (IRC) section 7654 contains the provisions for cover—over to the U.S. Possessions. Old section 7654 (1954 Code) continues to be applicable to Guam and the Commonwealth of the Northern Mariana Islands (CNMI) because these two possessions do not have an effective implementing agreement with the United States as required by the Tax Reform Act of 1986. Regulations are necessary for consistent and correct application of section 7654. For example, cover—over for (Armed Forces) residents of the possessions stationed outside the possessions are not specifically addressed in the 1954 Code, and neither is cover—over for Federal employees residing in U.S. Possessions. Regulations are needed to carryout the provisions of section 7654 and sections 931, 932, and 935.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—139900—03

Drafting attorney: Mae J. Lew (202) 435—5262

Reviewing attorney: Ricardo A. Cadenas (202) 435—5262

CC:INTL

Agency Contact: Mae J. Lew, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 435—5262

RIN: 1545–BC54

2969. • SUSPENSION OF RUNNING OF PERIOD OF LIMITATION DURING A PROCEEDING TO ENFORCE OR QUASH A DESIGNATED OR RELATED SUMMONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 6503

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: These regulations relate to the use of designated and related summonses and the effect on the period of limitations on assessment when a case is brought with respect to a designated or related summons.

Timetable:

Action	Date	FR Cite
NPRM	07/31/03	68 FR 44905
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—208199—91

Drafting attorney: Elizabeth D. Rawling (202) 622—3600

Reviewing attorney: Robert A. Miller (202) 622—3600

CC:PA:CBS

Agency Contact: Elizabeth D. Rawlins, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3600

RIN: 1545–BC55

2970. • GUIDANCE UNDER SECTION 2053 REGARDING POST—DEATH EVENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 20

Legal Deadline: None

Abstract: These regulations relate to the amount deductible under section 2053(a)(3) of the Internal Revenue Code. The regulations will affect estates of decedents where claims exist against the decedent's estate.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG—143316—03

Drafting attorney: DeAnn K. Malone (202) 622—3112

Reviewing attorney: Melissa Liquerman (202) 622—7830

Treasury attorney: Cathy Hughes (202) 622—9407

CC:PSI

Agency Contact: DeAnn K. Malone, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3112

RIN: 1545–BC56

2971. • SECTION 1045 APPLICATION TO PARTNERSHIPS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance on how the capital gains rollover provision of section 1045 applies to partnerships.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—150562—03

Drafting attorney: Charlotte Chyr (202) 622—3070

Reviewing attorneys: Jian Grant (202) 622—3050 and James Quinn (202) 622—3070

Treasury attorney: Deborah Harrington (202) 622—1788

CC:PSI

Agency Contact: Charlotte Chyr, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3070

RIN: 1545–BC67

Department of the Treasury (TREAS)
Internal Revenue Service (IRS)

Completed Actions

2972. GOLDEN PARACHUTE PAYMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9083	08/04/03	68 FR 45745

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Erinn M. Madden

Phone: 202 622—6030

RIN: 1545–AH49

2973. RAILROAD UNEMPLOYMENT REPAYMENT TAX

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 31

Completed:

Reason	Date	FR Cite
Withdrawn	11/07/02	67 FR 67802

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kyle A. Finizio
Phone: 202 622—6040

RIN: 1545–AN40

2974. TREATMENT OF OBLIGATION—SHIFTING TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	11/10/03	68 FR 63744

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christina A. Morrison
Phone: 202 622—3950

RIN: 1545–AU19

2975. GUIDANCE UNDER SUBPART F RELATING TO CERTAIN HYBRID TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	07/13/99	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Valerie A. Mark—Lippe
Phone: 202 622—3840

RIN: 1545–AW63

2976. ALLOCATION OF RESEARCH CREDIT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	07/29/03	68 FR 44499

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jolene J. Shiraishi
Phone: 202 622—3120

RIN: 1545–AX05

2977. STRADDLES—ONE SIDE LARGER THAN THE OTHER

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	09/04/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles W. Culmer
Phone: 202 622—3960

RIN: 1545–AX16

2978. ALLOCATING BASIS ADJUSTMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9059	06/09/03	68 FR 34293

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jason T. Smyczek
Phone: 202 622—3050

RIN: 1545–AX18

2979. SPECIAL RULES FOR RETROACTIVE PAYMENTS UNDER SECTION 417(A)(7)(A) FOR QUALIFIED RETIREMENT PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9076	07/16/03	68 FR 41906

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Robert M. Walsh
Phone: 202 622—6090

RIN: 1545–AX34

2980. CHANGES IN ENTITY CLASSIFICATION: SPECIAL RULE FOR CERTAIN FOREIGN ELIGIBLE ENTITIES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9093	10/22/03	68 FR 60296

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ronald M. Gootzeit
Phone: 202 622—3860

RIN: 1545–AX39

2981. COMPENSATION DEFERRED UNDER ELIGIBLE SECTION 457(B) PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9075	07/11/03	68 FR 41230

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Agency Contact: Cheryl E. Press
Phone: 202 622—6060
Fax: 202 622—4631

RIN: 1545–AX52

2982. DEFINITION OF "PRIVATE ACTIVITY BONDS" ALLOCATION AND ACCOUNTING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	09/04/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Bornholdt
Phone: 202 622—7870

RIN: 1545–AX55

2983. DISCLOSURE OF RETURN AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9054	04/29/03	68 FR 22598

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph E. Conley
Phone: 202 622—4580

RIN: 1545–AX85

2984. INVESTMENT TYPE PROPERTY (PREPAYMENT)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9085	08/04/03	68 FR 45772

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Johanna L. Som de Cerff
Phone: 202 622—3980

RIN: 1545–AY12

2985. USE OF TAXPAYER IDENTIFYING NUMBERS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9082	08/05/03	68 FR 46081

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert W. Lorence
Phone: 202 622—3860

RIN: 1545–AY24

2986. DUAL CONSOLIDATED LOSS RECAPTURE EVENTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9084	07/30/03	68 FR 44616

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathryn T. Holman
Phone: 202 622—3860

Kenneth D. Allison
Phone: 202 622—3860

RIN: 1545–AY27

2987. MODIFIED GUARANTEED CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9058	05/07/03	68 FR 24349

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ann H. Logan
Phone: 202 622—3970

RIN: 1545–AY48

2988. QUALIFIED S ELECTION FOR TESTAMENTARY TRUSTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9078	07/17/03	68 FR 42251

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deane M. Burke
Phone: 202 622—3130

RIN: 1545–AY76

2989. TREATMENT OF COMMUNITY INCOME FOR CERTAIN INDIVIDUALS NOT FILING JOINT RETURNS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9074	07/10/03	68 FR 41067

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robin M. Tuczak
Phone: 202 622—4940

RIN: 1545–AY83

2990. CHARITABLE LEAD INTEREST

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9068	07/07/03	68 FR 40130

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Susan B. Hurwitz
Phone: 202 622—3090

RIN: 1545–AY86

2991. NET GIFT TREATMENT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 25

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9077	07/18/03	68 FR 42593

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: DeAnn K. Malone
Phone: 202 622—3112

RIN: 1545–AY91

2992. RECEIPT OF MULTIPLE NOTICES WITH RESPECT TO INCORRECT TAXPAYER IDENTIFICATION NUMBERS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 31

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9055	04/29/03	68 FR 22594

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy L. Rose
Phone: 202 622—4910

RIN: 1545–BA18

2993. CATCH—UP CONTRIBUTIONS FOR INDIVIDUALS AGED 50 OR OVER

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9072	07/08/03	68 FR 40510

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John T. Ricotta
Phone: 202 622—6060

RIN: 1545–BA24

2994. AMENDMENTS TO RULES FOR ALLOCATION OF BASIS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jason T. Smyczek
Phone: 202 622—3050

RIN: 1545–BA32

2995. EARNED INCOME CREDIT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9045	03/06/03	68 FR 10655

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Shoshanna Tanner
Phone: 202 622—6080

RIN: 1545–BA34

2996. SPLIT—DOLLAR LIFE INSURANCE

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Second NPRM	05/09/03	68 FR 24898
Final Action Completed by TD 9092	09/17/03	68 FR 54336

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Rebecca E. Asta
Phone: 202 622—3930

RIN: 1545–BA44

2997. TREATMENT OF FUNDED WELFARE BENEFIT PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9079	07/17/03	68 FR 42254

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Betty J. Clary
Phone: 202 622—6080

RIN: 1545–BA47

2998. USER FEES FOR OFFERS TO COMPROMISE

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9086	08/15/03	68 FR 48785

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gene W. Beard
Phone: 202 622—3620

RIN: 1545–BA54

2999. COMPENSATORY STOCK OPTIONS UNDER SECTION 482

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9088	08/26/03	68 FR 51171

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas L. Giblen
Phone: 202 435—5265

RIN: 1545–BA57

3000. CONTROLLED FOREIGN PARTNERSHIP REPORTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9065	07/01/03	68 FR 39012

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tasheaya Warren Ellison
Phone: 202 622—3860

RIN: 1545–BA77

3001. FOREIGN CORPORATIONS—TREATMENT OF DISTRIBUTIONS OR LIQUIDATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9066	07/02/03	68 FR 39452

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Milton M. Cahn
Phone: 202 622—3870

RIN: 1545–BA79

3002. EARNINGS CALCULATION FOR RETURNED OR RECHARACTERIZED CONTRIBUTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9056	05/05/03	68 FR 23586

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cathy A. Vohs
Phone: 202 622—6090

RIN: 1545–BA82

3003. TRANSFER OF NOTES OR STOCK TO PROVIDE FOR SATISFACTION OF CONTESTED LIABILITIES (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9095	11/21/03	68 FR 65634

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Norma C. Rotunno
Phone: 202 622—7900

RIN: 1545–BA91

3004. GENERATION—SKIPPING TRANSFER TAX RELIEF PROVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	04/30/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lian A. Mito
Phone: 202 622—7830

RIN: 1545–BA94

3005. EMPLOYMENT TAXES—FAILURE—TO—DEPOSIT PENALTY

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 31

Completed:

Reason	Date	FR Cite
Withdrawn	03/17/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles A. Hall
Phone: 202 622—4940

RIN: 1545–BA97

3006. DEPRECIATION OF VANS AND LIGHT TRUCKS (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9069	07/07/03	68 FR 40129

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bernard P. Harvey
Phone: 202 622—3110

RIN: 1545–BB06

3007. DISCLOSURE OF REPORTABLE TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	08/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tara P. Volungis
Phone: 202 622—3080

RIN: 1545–BB07

3008. REGISTRATION OF REPORTABLE TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Withdrawn	08/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tara P. Volungis
Phone: 202 622—3080

RIN: 1545–BB08

3009. LIST MAINTENANCE REQUIREMENT FOR REPORTABLE TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Withdrawn	08/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tara P. Volungis
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RIN: 1545–BB09

3010. INVESTIGATIVE DISCLOSURES (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9073	07/10/03	68 FR 41073

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Helene R. Newsome
Phone: 202 622—4570

RIN: 1545–BB17

3011. SUBSTANTIATION OF INCIDENTAL EXPENSES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9064	07/01/03	68 FR 39011

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sameera Y. Hasan
Phone: 202 622—4930

RIN: 1545–BB20

3012. AUTHORIZATION FOR IRS TO CHARGE FEES FOR COPYING EXEMPT ORGANIZATION RETURNS (TEMPORARY)

Priority: Info./Admin./Other

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9070	07/09/03	68 FR 40768

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sarah Tate
Phone: 202 622—4590

RIN: 1545–BB22

3013. EXCLUSIONS FROM GROSS INCOME OF FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9087	08/26/03	68 FR 51394

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Bray
Phone: 202 622—3880

David L. Lundy
Phone: 202 622—3880

RIN: 1545–BB30

3014. FRACTIONAL PARTS OF A DOLLAR

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 301

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marcy W. Mendelsohn
Phone: 202 622—4940

RIN: 1545–BB35

3015. INVESTMENT ADJUSTMENT RULES AND WAIVER OF LOSS CARRYOVERS FROM SRLY YEARS—AMENDED (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9057	05/07/03	68 FR 24351

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey B. Fienberg
Phone: 202 622—7930

RIN: 1545–BB39

3016. FRACTIONAL PARTS OF A DOLLAR (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 7504; 26 CFR 301

Completed:

Reason	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marcy W. Mendelsohn
Phone: 202 622—4940

RIN: 1545–BB42

3017. UPDATE TO SECTION 6081 REGULATIONS (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 31; 26 CFR 602

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9061	06/11/03	68 FR 34797

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles A. Hall
Phone: 202 622—4940

RIN: 1545–BB55

3018. REAL ESTATE MORTGAGE INVESTMENT CONDUITS; APPLICATION OF SECTION 446 WITH RESPECT TO INDUCEMENT FEES (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	08/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John W. Rogers, III
Phone: 202 622—3950

RIN: 1545–BB74

3019. AVAILABILITY OF SECTION 338(H)(10) ELECTION IN MULTISTEP TRANSACTIONS (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9071	07/09/03	68 FR 40766

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Daniel F. Heins
Phone: 202 622—7930

Mary E. Goode
Phone: 202 622—7930

RIN: 1545–BB78

3020. GUIDANCE UNDER SECTION 368 REGARDING RESTRICTED STOCK

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Withdrawn	08/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen R. Cleary
Phone: 202 622—7530

RIN: 1545–BB87

3021. DISCLOSURE OF RETURN INFORMATION TO THE DEPARTMENT OF AGRICULTURE (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9060	06/06/03	68 FR 33857

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Christine S. Irwin
Phone: 202 622—4570

RIN: 1545–BB91

3022. DISTRIBUTIONS OF LOSS CORPORATION STOCK BY QUALIFIED PLANS (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9063	06/27/03	68 FR 38177

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Martin T. Huck
Phone: 202 622—7750

RIN: 1545–BB99

3023. TAX EXEMPT BOND PARTNERSHIP REPORTING REGULATION (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 9094	11/10/03	68 FR 63733

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David A. Shulman
Phone: 202 622—3080

RIN: 1545–BC01

3024. • OTHER ASSESSABLE PENALTIES WITH RESPECT TO THE PREPARATION OF INCOME TAX RETURNS FOR OTHER PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6107; 26 USC 6061; 26 USC 6695; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: Persons who prepare income tax returns for compensation may satisfy the requirement of providing a signed copy of the return to the taxpayer by copies which are signed electronically or as otherwise prescribed by the Secretary.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 9053	04/24/03	68 FR 20069

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—141659—02

Drafting attorney: Richard C. Grosenick (202) 622—5510

Reviewing attorney: Stuart Spielman (202) 622—5510

CC:PA:APJP

Agency Contact: Richard C. Grosenick, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—5510

RIN: 1545–BC12

3025. • SPECIAL DEPRECIATION ALLOWANCE (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance under sections 168(k) and 1400L(b) regarding the special depreciation allowance.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 9091	09/08/03	68 FR 52986

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG—157164—02

Drafting attorney: Douglas Kim (202) 622—3110

Reviewing attorney: Kathleen Reed (202) 622—3110

Treasury attorney: George Manousos (202) 622—1335

CC:PSI

Agency Contact: Douglas Kim, Attorney—Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622—3110

RIN: 1545–BC19

3026. • TRANSFERS OF COMPENSATORY OPTIONS TO RELATED PERSONS

Priority: Routine and Frequent

Legal Authority: 26 USC 83

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations which provide that sales or dispositions of stock options to related persons will not be considered arm's length transactions for purposes of section 1.83—7.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 9067	07/02/03	68 FR 39453

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—116914—03

Drafting attorney: Stephen B. Tackney (202) 622—6040

Reviewing attorney: Robert Misner (202) 622—6030

Treasury attorney: William Bortz (202) 622—1352

CC:TEGE

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RIN: 1545–BC21

3027. • LIMITATION ON USE OF THE NONACCRUAL EXPERIENCE METHOD OF ACCOUNTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 448(d)(5)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide two safe harbor nonaccrual experience methods that will be presumed to clearly reflect a taxpayer's nonaccrual experience, and for taxpayers who wish to compute their nonaccrual experience using a computation or formula other than the two safe harbors provided, the requirements that must be met in order to use an alternative computation or formula to compute their nonaccrual experience.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 9090	09/04/03	68 FR 52496

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG—141402—02

Drafting attorney: Terrance McWhorter (202) 622—4970

Reviewing attorney: Tom Luxner and David Schneider (202) 622—4970

Treasury attorney: George Manousos (202) 622—1335

CC:ITA

Agency Contact: Terrance McWhorter,
General Tax Attorney, Department of
the Treasury, Internal Revenue Service,
1111 Constitution Avenue NW,
Washington, DC 20224
Phone: 202 622—4970

RIN: 1545–BC31

3028. • PROHIBITED ALLOCATION OF SECURITIES IN AN S CORPORATION (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805; 26 USC 409(p)(7)(A)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The temporary regulations provides guidance for employee ownership plans holding stock of a subchapter S Corporation concerning the prohibition against allocations to disqualified persons under section 409(p).

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 9081	07/21/03	68 FR 42970

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—129709—03

Drafting attorney: John T. Ricotta (202) 622—6060

Reviewing attorney: Marjorie Hoffman (202) 622—6060

CC:TEGE

Agency Contact: John T. Ricotta,
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RIN: 1545–BC33

3029. • GUIDANCE UNDER SECTION 1502; APPLICATION OF SECTION 108 TO MEMBERS OF A CONSOLIDATED GROUP (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The temporary regulations under section 1502 of the Internal Revenue Code provide guidance concerning the application of certain provisions of section 108 to members of a consolidated group.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 9089	09/04/03	68 FR 52487

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—132760—03

Drafting attorney: Amber R. Cook (202) 622—7530

Reviewing attorney: Marie Milnes—Vasquez (202) 622—7530

Treasury attorney: Audrey Nacamuli (202) 622—5721

CC:CORP

Agency Contact: Amber R. Cook,
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1111 Constitution Avenue NW,
Washington, DC 20224
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RIN: 1545–BC39

3030. • REDUCTION OF TAX ATTRIBUTES DUE TO DISCHARGE OF INDEBTEDNESS (TEMPORARY)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 26 USC 7805; 26 USC 108

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations clarify that, in the case of a transaction described in section 381(a)that ends a year in which the transferor corporation excludes COD income from gross income under section 108(a), any tax attributes to which the acquiring corporation succeeds under section 381, including the basis of property which carry's over under section 362, shall reflect the reductions required by sections 108 and 1017.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 9080	07/18/03	68 FR 42590

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG—113112—03

Drafting attorney: Theresa M. Kolish (202) 622—7930

Reviewing attorney: Steve Hankin (202) 622—7930

Treasury attorney: Audrey Nacamuli (202) 622—5721

CC:CORP

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RIN: 1545–BC47

BILLING CODE 6720—01—S

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)

Prerule Stage

3031. • RISK—BASED CAPITAL GUIDELINES; IMPLEMENTATION OF NEW BASEL CAPITAL ACCORD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1828 (note)

CFR Citation: 12 CFR 567

Legal Deadline: None

Abstract: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision are setting forth for industry comment their current views on a proposed framework for implementing the New Basel Capital Accord in the United States. In particular, this advance notice of proposed rulemaking (ANPRM) describes significant elements of the Advanced Internal Ratings—Based approach for credit risk and the Advanced Measurement Approaches for operational risk (together, the advanced approaches). The ANPRM specifies criteria that would be used to determine banking organizations that would be required to use the advanced approaches, subject to meeting certain qualifying criteria, supervisory standards, and disclosure requirements. Other banking organizations that meet the criteria, standards, and requirements also would be eligible to use the advanced approaches. Under the advanced approaches, banking organizations would use internal estimates of certain risk components as key inputs in the determination of their regulatory capital requirements.

Timetable:

Action	Date	FR Cite
ANPRM	08/04/03	68 FR 45900
ANPRM Comment Period End	11/03/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

Agency Contact: Teresa Scott, Counsel (Banking and Finance), Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW.,
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RIN: 1550–AB56

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)
Proposed Rule Stage

3032. • RISK—BASED CAPITAL GUIDELINES; CAPITAL ADEQUACY GUIDELINES; CAPITAL MAINTENANCE: ASSET—BACKED COMMERCIAL PAPER PROGRAMS AND EARLY AMORTIZATION PROVISIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1828 (note)

CFR Citation: 12 CFR 567

Legal Deadline: None

Abstract: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (collectively, the Agencies) are proposing to amend their risk—based capital standards by removing a sunset provision in order to permit sponsoring banks, bank holding companies, and thrifts (collectively, sponsoring banking organizations) to continue to exclude from their risk—weighted asset base those assets in asset—backed commercial paper (ABCP) programs that are consolidated onto sponsoring banking organizations' balance sheets as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities. The Agencies also are proposing to require banking organizations to hold risk—based capital against liquidity facilities with an original maturity of one year or less that organizations provide to ABCP programs, regardless of whether the organization sponsors the program or must consolidate the program under generally accepted accounting principles. Finally, the Agencies are again proposing a risk—based capital charge for certain types of securitizations of revolving retail credit that incorporate early amortization provisions.

Timetable:

Action	Date	FR Cite
NPRM	10/01/03	68 FR 56568
NPRM Comment Period End	11/17/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 1550–AB81

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)
Final Rule Stage

3033. • RISK—BASED CAPITAL GUIDELINES; CAPITAL GUIDELINES; CAPITAL MAINTENANCE: INTERIM CAPITAL TREATMENT OF CONSOLIDATED ASSET—BACKED COMMERCIAL PAPER PROGRAM ASSETS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1828 (note)

CFR Citation: 12 CFR 567

Legal Deadline: None

Abstract: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision are amending their risk—based capital standards by providing an interim capital treatment for assets in asset—backed commercial paper (ABCP) programs that are consolidated onto the balance sheets of sponsoring banking organizations as a result of a recently issued accounting interpretation, FIN 46. The interim capital treatment allows sponsoring banking organizations to remove the consolidated ABCP program assets from their risk—weighted asset bases for the purpose of calculating their risk—based capital ratios. In addition, any minority interests in ABCP programs that are consolidated as a result of FIN 46 are to be excluded from sponsoring banking organizations' minority interest component of tier 1 capital and, thereby, from total risk—based capital.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/03	68 FR 56530
Interim Final Rule Effective	10/01/03	
Interim Final Rule Comment Period End	11/17/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 1550–AB79

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)

Long-Term Actions

3034. FAIR CREDIT REPORTING

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 571

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
NPRM Update	03/27/01	66 FR 16624
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Paul Robin
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RIN: 1550–AB33

3035. COMMUNITY REINVESTMENT ACT

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 563e

Timetable:

Action	Date	FR Cite
Joint ANPRM	07/19/01	66 FR 37602
Joint ANPRM Comment Period End	10/17/01	
Joint NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Richard Bennett
Phone: 202 906—7409

Theresa A. Stark
Phone: 202 906—7054

Celeste Anderson
Phone: 202 906—7990

RIN: 1550–AB48

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)

Completed Actions

3036. CAPITAL RULES

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 567

Completed:

Reason	Date	FR Cite
Merged With 1550—AB56	08/04/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Teresa Scott
Phone: 202 906—6478

Michael D. Solomon
Phone: 202 906—5654

David Riley
Phone: 202 906—6669

RIN: 1550–AB11

3037. DIRECTORS AND OFFICERS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 545; 12 CFR 563

Completed:

Reason	Date	FR Cite
Withdrawn	08/15/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robyn Dennis
Phone: 202 906—5751

David A. Permut
Phone: 202 906—7505

Karen Osterloh
Phone: 202 906—6639

RIN: 1550–AB19

3038. REMOVAL, SUSPENSION, AND DEBARMENT OF ACCOUNTANTS FROM PERFORMING AUDIT SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 513

Completed:

Reason	Date	FR Cite
Final Rule	08/13/03	68 FR 48256
Final Rule Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christine Smith
Phone: 202 906—5740

Teresa Scott
Phone: 202 906—6478

RIN: 1550–AB53

3039. • FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS, AGENCY OFFICES; FIDUCIARY POWERS OF SAVINGS ASSOCIATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1828

CFR Citation: 12 CFR 545; 12 CFR 550

Legal Deadline: None

Abstract: OTS is issuing a final rule amending its regulation governing agency offices of Federal savings associations to conform that regulation to recent changes to OTS's fiduciary activities regulations. OTS is also removing an incorrect parenthetical in 12 CFR 550.136, OTS's regulation governing the extent to which State law applies to the fiduciary activities of a Federal savings association.

Timetable:

Action	Date	FR Cite
Final Rule	09/09/03	68 FR 53024
Final Rule Effective	09/09/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Leary, Counsel (Banking and Finance), Regulations and Legislation Division, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
Phone: 202 906—7170

Kevin A. Corcoran, Assistant Chief Counsel, Business Transactions, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
Phone: 202 906—6962

Judi McCormick, Trust Specialist, Supervision Policy, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552

Phone: 202 906—5636

RIN: 1550–AB80

3040. • CUSTOMER IDENTIFICATION PROGRAMS FOR BANKS, SAVINGS ASSOCIATIONS, AND CERTAIN NONFEDERALLY REGULATED BANKS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 375b; 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1468; 12 USC 1817; 12 USC 1820; 12 USC 1828; 12 USC 1831o; 12 USC 3806; 31 USC 5318; 42 USC 4106

CFR Citation: 12 CFR 563

Legal Deadline: Final, Statutory, October 26, 2002, Final.

Abstract: The Secretary of the Treasury, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration issued a joint final rule implementing section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Section 326 requires a regulation that contains minimum standards that financial institutions must implement to: 1) verify the identity of any person seeking to open an account; 2) maintain records of the information used to verify the person's identity; and 3) determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by a Government agency. The substantive requirements were codified as part of Treasury's BSA regulations located in 31 CFR part 103. In addition, OTS added a cross—reference to 12 CFR part 563 clarifying the applicability of the final rule to savings associations.

Timetable:

Action	Date	FR Cite
NPRM	07/23/02	67 FR 48290
NPRM Comment Period End	09/06/02	
Final Rule	05/09/03	68 FR 25090
Final Rule Effective	06/09/03	
Compliance Date	10/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Riese,
Director, Compliance Policy,
Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW.,
Washington, DC 20552
Phone: 202 906—6134

Karen Osterloh, Special Counsel,
Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW.,
Washington, DC 20552
Phone: 202 906—6639

RIN: 1550–AB82

3041. • SAVINGS ASSOCIATIONS—OPERATIONS; TRANSACTIONS WITH AFFILIATES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1468; 12 USC 1817; 12 USC 1820; 12 USC 1828; 12 USC 1831o; 12 USC 375b; 12 USC 3806; 42 USC 4106; 44 USC 3501 et seq.

CFR Citation: 12 CFR 506; 12 CFR 559; 12 CFR 562; 12 CFR 563

Legal Deadline: None

Abstract: The Office of Thrift Supervision (OTS) revised its regulations on transactions with affiliates. This interim final rule conformed OTS' regulations to the Board of Governors of the Federal Reserve System's (FRB) final rule implementing sections 23A and 23B of the Federal Reserve Act (FRA). The FRB rule (Regulation W) combines statutory restrictions on transactions with affiliates with new and existing interpretations and exemptions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/20/02	67 FR 77909
Interim Final Rule Comment Period End	02/18/03	
Final Rule	10/07/03	68 FR 57790
Final Rule Effective	11/06/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The interim final rule and the final rule published in the Federal Register under RIN 1550—AB55.

Agency Contact: Donna Deale,
Manager, Supervision Policy,
Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW.,
Washington, DC 20552
Phone: 202 906—7488

Karen Osterloh, Special Counsel,
Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW.,
Washington, DC 20552
Phone: 202 906—6639

RIN: 1550–AB84

3042. REGULATORY REPORTING STANDARDS: QUALIFICATIONS FOR INDEPENDENT PUBLIC ACCOUNTS PERFORMING AUDIT SERVICES FOR VOLUNTARY AUDIT FILERS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 562

Completed:

Reason	Date	FR Cite
Final Rule	09/08/03	68 FR 52831
Final Rule Effective	09/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Teresa Scott
Phone: 202 906—6478

Christine Smith
Phone: 202 906—5740

RIN: 1550–AB85

[FR Doc. 03–27747 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XVII

Department of Veterans Affairs

Semiannual Regulatory Agenda

DEPARTMENT OF VETERANS AFFAIRS (VA)

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Veterans Affairs.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations that the Department of Veterans Affairs (VA) will have under development or review during the 12-month period beginning in the fall 2003. The purpose in publishing the Department's regulatory agenda is to allow all interested persons the opportunity to participate in VA's regulatory planning.

ADDRESSES: Interested persons are invited to comment on the entries listed in the agenda by contacting the individual agency contact listed for each entry or by writing to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Gloria Armstrong at (202) 273-9515.

SUPPLEMENTARY INFORMATION: This document is issued pursuant to Executive Order 12866 "Regulatory Planning and Review" (and implementing guidance) and the Regulatory Flexibility Act, which require that executive agencies semiannually publish in the **Federal Register** an agenda of regulations that VA will have under development or review. For this edition of the Department of Veterans Affairs regulatory agenda, VA's most important significant regulatory action is included in The Regulatory Plan.

William A. Moorman,

Assistant to the Secretary, Office of Regulation Policy and Management.

Department of Veterans Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3043	Waivers	2900—AK29
3044	Reasonable Charges for Medical Care or Services; 2003 Methodology Changes	2900—AL06
3045	Copayments for Extended Care Services	2900—AL49
3046	Clarification of Patients Rights Regarding Who May Prescribe Medication	2900—AL66
3047	Schedule for Rating Disabilities—Neurological Conditions and Convulsive Disorders	2900—AF23
3048	Schedule for Rating Disabilities—Digestive System	2900—AF24
3049	Education Provisions of the Veterans Programs Enhancement Act of 1998	2900—AJ68
3050	Veterans and Dependents Education: Topping—Up Tuition Assistance; Licensing and Certification Tests; Duty To Assist Education Claimants	2900—AK80
3051	Schedule for Rating Disabilities; Malignant Neoplasms	2900—AL27
3052	Survivors' and Dependents' Educational Assistance Program Eligibility Period for Eligible Children and Other Miscellaneous Issues	2900—AL44
3053	Loan Guaranty: Hybrid Adjustable Rate Mortgages	2900—AL54
3054	Annual Risk Allowance for Servicemembers' Group Life Insurance and Veterans' Group Life Insurance	2900—AL56
3055	Loan Guaranty: Assistance to Certain Disabled Veterans in Acquiring Specially Adapted Housing	2900—AL58
3056	Compensation for Certain Cases of Bilateral Deafness	2900—AL59
3057	Loan Guaranty; Loan Servicing and Claims Procedures Modification	2900—AL65
3058	Adjudication: Service Requirements for Veterans	2900—AL67
3059	Presumptions of Service Connection	2900—AL70
3060	Adjudication: Accrued Benefits and Death Compensation Benefits	2900—AL71
3061	Burial Benefits	2900—AL72
3062	New and Material Evidence	2900—AL73
3063	Rules on Apportionments to Dependents, Payments to Fiduciaries and Incarcerated Beneficiaries	2900—AL74
3064	Regulations Related to Payments and Adjustments to Payments	2900—AL75
3065	Claims Based on Service in the Philippine Armed Forces	2900—AL76
3066	Department of Veterans Affairs Acquisition Regulations Plain Language Rewrite	2900—AK78
3067	Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects	2900—AL77
3068	Standards for Collection, Compromise, Suspension, or Termination of Collection Effort, and Referral of Civil Claims for Money or Property; Regional Office Committees on Waivers and Compromises; Salary	2900—AK10
3069	Audits of States, Local Governments, and Nonprofit Organizations; Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	2900—AJ62

Department of Veterans Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3070	Advanced Health Care Planning	2900—AJ28
3071	Grants to States for Construction and Acquisition of State Home Facilities	2900—AJ43

Department of Veterans Affairs—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3072	Payment for Non—VA Physician Services Associated With Either Outpatient or Inpatient Care Provided at Non—VA Facilities	2900—AK94
3073	Priorities for Outpatient Medical Services and Inpatient Hospital Care	2900—AL39
3074	Charges Used for Recovery From Tortiously Liable Third Parties for Medical Care or Services Provided by the Department of Veterans Affairs	2900—AL48
3075	Enrollment—Provision of Hospital and Outpatient Care to Veterans—Subpriorities of Priority Categories 7 and 8 and Enrollment Level Decision **(Reg Plan Seq No. 100)**	2900—AL51
3076	Reasonable Charges for Medical Care or Services; 2003 Update	2900—AL57
3077	Sensori—Neural Aids	2900—AL60
3078	VA Homeless Providers Grant and Per Diem Program; Religious Organizations	2900—AL63
3079	Medication Prescribed by Non—VA Physicians	2900—AL68
3080	Schedule for Rating Disabilities—The Musculoskeletal System	2900—AE91
3081	Total Disability Evaluations Based on Inability of the Individual To Engage in Substantially Gainful Employment	2900—AH21
3082	Schedule for Rating Disabilities—The Eye	2900—AH43
3083	Claims Based on Aggravation of Nonservice—Connected Disability	2900—AI42
3084	Governmentwide Debarment and Suspension (Nonprocurement) and Requirement for Drug—Free Workplace (Assistance)	2900—AK16
3085	Definition of Psychosis for Certain VA Purposes	2900—AK21
3086	Filipino Veterans Benefit Improvements	2900—AK65
3087	Loan Guaranty: Prepurchase Counseling Requirements	2900—AK76
3088	Additional Disability or Death Due to Hospital Care, Medical or Surgical Treatment, Examination, Training and Rehabilitation Services, or Compensated Work Therapy Program	2900—AK77
3089	Time Limit for Request for De Novo Review	2900—AK97
3090	Exceptions to Definition of Date of Receipt Based on Special or Unforeseen Circumstances	2900—AL12
3091	Loan Guaranty: Implementation of Public Law 107—103	2900—AL23
3092	Schedule for Rating Disabilities; Guidelines for Application of Evaluation Criteria for Certain Respiratory and Cardiovascular Conditions; Evaluation of Hypertension With Heart Disease	2900—AL26
3093	Veterans Education: Veterans Education and Benefits Expansion Act of 2001	2900—AL28
3094	Schedule for Rating Disabilities; Evaluation of Multiple Scars	2900—AL32
3095	Testimony Certified or Under Oath	2900—AL38
3096	Administration of VA Education Benefits—Centralized Certification	2900—AL43
3097	Increase Rates Payable Under the Survivor's and Dependent's Education Assistant Program	2900—AL64
3098	Reservists' Education: Revision of Eligibility Requirements for the Montgomery GI Bill—Selected Reserve	2900—AL69
3099	Implementing the Health Insurance Portability and Accountability Act (HIPAA)	2900—AL53
3100	Appeals Regulations; Rules of Practice	2900—AE78
3101	The Board of Veterans' Appeals; Rules of Practice—Motion for Review of Decisions on Grounds of Clear and Unmistakable Error	2900—AJ85
3102	Rules of Practice: Medical Opinions From the Veterans Health Administration	2900—AK52
3103	Board of Veterans' Appeals Rules of Practice: Notice Procedures Relating to Withdrawal of Services by a Representative	2900—AL45
3104	State Cemetery Grants: Aid to States for Establishment, Expansion, and Improvement of Veterans Cemeteries	2900—AH46
3105	Eligibility for a Headstone or Marker for Graves Already Marked at Private Expense; Applications for Headstone and Marker	2900—AL40

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Department of Veterans Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
3106	VA Homeless Providers Grant and Per Diem Program Regulations	2900—AL30
3107	Copayments for Inpatient Hospital Care Under Geographic Means Test	2900—AL35
3108	Exclusions From Income and Net Worth Computations	2900—AJ52
3109	Schedule for Rating Disability—The Spine	2900—AJ60
3110	Veterans Education: Additional Opportunity To Participate in the Montgomery GI Bill and Other Miscellaneous Issues	2900—AK81
3111	Schedule for Rating Disabilities; Evaluation of Tinnitus	2900—AK86

Department of Veterans Affairs—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3112	Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance Program	2900—AL17
3113	Accelerated Payments Under the Montgomery GI Bill—Active Duty Program	2900—AL22
3114	Compensation and Pension Provisions of the Veterans Education and Benefits Expansion Act of 2001	2900—AL29
3115	Independent Study Approved for Certificate Programs and Other Miscellaneous Issues	2900—AL34
3116	Presumption of Service Connection for Cirrhosis of the Liver in Former Prisoners of War	2900—AL36
3117	Effective Dates of Benefits for Disability or Death Caused by Herbicide Exposure; Disposition of Unpaid Benefits After Death of Beneficiary	2900—AL37
3118	Increase in Rates Payable Under the Montgomery GI Bill—Selective Reserve	2900—AL41
3119	Headstone and Marker Inscription	2900—AL50
3120	Veterans Education: Increased Allowances for the Educational Assistance Test Program	2900—AL52
3121	Disease Associated With Exposure to Certain Herbicide Agents: Chronic Lymphocytic Leukemia	2900—AL55
3122	Compensation and Pension Provisions of the Veterans Benefits Act of 2002	2900—AL62
3123	Sealed Bidding and Competitive Proposals	2900—AI99
3124	Board of Veterans' Appeals: Speeding Appellate Review for Aging Veterans	2900—AL08
3125	Board of Veterans' Appeals Rules of Practice: Use of Supplemental Statement of the Case	2900—AL42
3126	Nondiscrimination on the Basis of Race, Color, or National Origin; Handicap; and Age in Programs and Activities Receiving Federal Assistance	2900—AK13
3127	Release of Information From Department of Veterans Affairs Records	2900—AH98
3128	Delegations of Authority; Office of Regulatory Policy and Management (ORPM)	2900—AL61
3129	Privacy Act of 1974—Exemption of Police and Security Records	2900—AL33

Department of Veterans Affairs (VA) Proposed Rule Stage

VETERANS HEALTH ADMINISTRATION

3043. WAIVERS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1722A; PL 106—117

CFR Citation: 38 CFR 17.105

Legal Deadline: None

Abstract: The purpose of this document is to provide regulations to formally establish the waiver process for veterans' copayments.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Howard, Senior Program Analyst (161), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 254—0320
Fax: 202 254—0396
Email: nancy.howard@hq.med.va.gov

RIN: 2900–AK29

3044. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES; 2003 METHODOLOGY CHANGES

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to veterans for nonservice—connected disabilities. This document amends the regulations to revise the charge structure and update other provisions for the purpose of providing more precise charges.

Timetable:

Action	Date	FR Cite
NPRM	10/02/03	68 FR 56876
NPRM Comment Period End	11/03/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, Chief Business Office (161), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 254—0361

RIN: 2900–AL06

3045. COPAYMENTS FOR EXTENDED CARE SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1710B

CFR Citation: 38 CFR 17.111

Legal Deadline: None

Abstract: This document proposes to amend VA's medical regulations concerning copayments for extended care services provided or furnished by VA to veterans for nonservice—

connected disabilities. This document amends the regulations to enhance the spousal protection provisions covering assets. This change would bring VA closer to State medical assistance policies in protecting spouses from potential impoverishment.

Timetable:

Action	Date	FR Cite
NPRM	10/16/03	68 FR 54557
NPRM Comment Period End	12/15/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donna Canada, Chief Business Office (161), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 254—0321
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Daniel Schoeps, Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—8540

RIN: 2900–AL49

3046. • CLARIFICATION OF PATIENTS RIGHTS REGARDING WHO MAY PRESCRIBE MEDICATION

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.33

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs' medical regulations that set forth patients' rights to clarify that it is legally permissible for VA patients to receive medication prescribed by any health care professional legally authorized to prescribe medication.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Audrey Crenshew Drake, Program Director Nursing (108), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565—6740
Email: audrey.drake@mail.va

RIN: 2900–AL66

VETERANS BENEFITS ADMINISTRATION

3047. SCHEDULE FOR RATING DISABILITIES—NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.120; 38 CFR 4.121; 38 CFR 4.122; 38 CFR 4.123; 38 CFR 4.124; 38 CFR 4.124a

Legal Deadline: None

Abstract: These amendments will contain additions, deletions, and revisions of terminology resulting from a systematic review of the medical criteria used to evaluate disabilities of the neurological system.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/91	56 FR 20169
ANPRM Comment Period End	07/01/91	
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson, Medical Officer (211A), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—7211

RIN: 2900–AF23

3048. SCHEDULE FOR RATING DISABILITIES—DIGESTIVE SYSTEM

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.114

Legal Deadline: None

Abstract: These amendments will contain additions, deletions, and revisions of terminology resulting from a systematic review of the medical criteria used to evaluate disabilities of the digestive system.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/91	56 FR 20168
ANPRM Comment Period End	07/01/91	
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson, Medical Officer (211A), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—7211

RIN: 2900–AF24

3049. EDUCATION PROVISIONS OF THE VETERANS PROGRAMS ENHANCEMENT ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 16136; 38 USC 3034; 38 USC 3241; 38 USC 3485; 38 USC 3537; 38 USC 3677; 38 USC 3684; 38 USC 5101

CFR Citation: 38 CFR 21.4145; 38 CFR 21.4200; 38 CFR 21.4206; 38 CFR 21.4262

Legal Deadline: None

Abstract: This proposed rule amendment will bring VA's educational assistance regulations into agreement with the Veterans Program Enhancement Act of 1998 and Veterans Education and Expansion Act of 2001. This amendment will include making advance payments to work—study students optional rather than mandatory and revising the approval criteria for on—job training programs offered by the Federal Government or by State or local governments. This rule is being amended to reflect additional work study opportunities provided under the Veterans Education and Benefits Expansion Act of 2001.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynn M. Nelson, Education Advisor (225C), Department

of Veterans Affairs, Veterans Benefits
Administration, 810 Vermont Avenue
NW, Washington, DC 20420
Phone: 202 273—7294
Fax: 202 275—2636
Email: edulcose@vba.va.gov

RIN: 2900–AJ68

3050. VETERANS AND DEPENDENTS EDUCATION: TOPPING—UP TUITION ASSISTANCE; LICENSING AND CERTIFICATION TESTS; DUTY TO ASSIST EDUCATION CLAIMANTS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3014; 38 USC 3015; 38 USC 3034; 38 USC 3241; 38 USC 3471; 38 USC 3513; 38 USC 3501

CFR Citation: 38 CFR 21.1029 to 21.1033; 38 CFR 21.4005; 38 CFR 21.4008; 38 CFR 21.4009; 38 CFR 21.4146

Legal Deadline: None

Abstract: Regulations implementing provisions of the Veterans Benefits and Health Care Improvement Act of 2000, Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and the Veterans Claims Assistance Act of 2000 that affect VA education benefits programs. These provisions include payment under Survivors' and Dependents' Educational Assistance Program, Post—Vietnam Era Veterans Educational Assistance Program, and the Montgomery GI Bill—Active Duty Program for the costs of taking tests needed to obtain a license or certification. They also include payment of benefits under the Montgomery GI Bill—Active Duty Program of the difference between the portion of tuition and fees covered by the tuition assistance program administered by the various military departments and the actual charges made by an educational institution. The proposed rule also establishes clear guidelines consistent with the intent of Congress regarding the timing and scope of assistance VA will provide to a claimant who files a substantially complete application for benefits under any of the education programs VA administers or who tries to reopen a previously denied claim.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William G. Susling Jr., Assistant Director for Policy and Program Development (225), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—7187
Fax: 202 275—2636
Email: edubsusl@vba.va.gov

RIN: 2900–AK80

3051. SCHEDULE FOR RATING DISABILITIES; MALIGNANT NEOPLASMS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4

Legal Deadline: None

Abstract: This amendment would raise the criteria for evaluating malignant neoplasms throughout the rating schedule in order to assure that they reflect the effect of current treatment methods to ensure that veterans with malignant neoplasms receive fair and consistent evaluations.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson, Medical Officer (211A), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—7211

RIN: 2900–AL27

3052. SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM ELIGIBILITY PERIOD FOR ELIGIBLE CHILDREN AND OTHER MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 101; 38 USC 3002; 38 USC 3501; 38 USC 3512; 38 USC 5113

CFR Citation: 38 CFR 21.3041; 38 CFR 21.4151; 38 CFR 21.5021

Legal Deadline: None

Abstract: The Department of Veterans Affairs is proposing to amend its education regulations to reflect changes in the eligibility period for children due to statutory provisions in Veterans Benefits and Health Care Improvement Act of 2000 and the Veterans Benefits and Expansion Acts of 2001 and 2002.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lynn M. Nelson, Education Advisor (225C), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL44

3053. LOAN GUARANTY: HYBRID ADJUSTABLE RATE MORTGAGES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 3703(c)(1)

CFR Citation: 38 CFR 36.4212; 38 CFR 36.4254; 38 CFR 36.4311; 38 CFR 36.4312

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to implement sections 303 and 308 of Public Law No. 107—330, the Veterans Benefits Act of 2002. VA is incorporating into the regulations the following changes: The addition of hybrid adjustable rate mortgages that will allow VA to guarantee loans with interest rates that remain fixed for a period of not less than the first 3 years of the loan after which the rate can be adjusted annually and an increase in the fee paid for assuming a VA guaranteed loan from .50 percent to 1.00 percent of the loan amount.

Timetable:

Action	Date	FR Cite
NPRM	10/09/03	68 FR 58293
NPRM Comment Period End	11/10/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert D. Finneran,
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Valuation (262), Department of
Veterans Affairs, Veterans Benefits
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RIN: 2900–AL54

3054. ANNUAL RISK ALLOWANCE FOR SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1965 to 1980

CFR Citation: 38 CFR 9.15 (new)

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs regulations relating to Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) to establish a method to determine the amount of the annual risk allowance that is to be paid to the insurance company or companies for administering the SGLI/VGLI programs. It also will serve to inform the public that a profit component is being introduced for the first time as a part of the basic cost of program administration.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne King,
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RIN: 2900–AL56

3055. LOAN GUARANTY: ASSISTANCE TO CERTAIN DISABLED VETERANS IN ACQUIRING SPECIALLY ADAPTED HOUSING

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 2101

CFR Citation: 38 CFR 36.4400

Legal Deadline: None

Abstract: The Department of Veterans Affairs is proposing to amend is loan guaranty regulations concerning assistance to certain disabled veterans in acquiring specially adapted housing. The primary intent is to revise these regulations to improve clarity to the reader. Additional changes are made to incorporate the provisions of a legal decision of the VA Office of General Counsel.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert D. Finneran,
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RIN: 2900–AL58

3056. COMPENSATION FOR CERTAIN CASES OF BILATERAL DEAFNESS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1160(a)(3)

CFR Citation: 38 CFR 3.383(a)(3)

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning the level of hearing loss at which VA may pay disability compensation as if the combination of disabilities in both ears were service—connected, even though disability in one ear is service connected and disability in the other ear is not. This amendment liberalizes the "paired organ" rule for bilateral deafness and provides a definition for the term "deafness." This amendment is necessary to implement a recent legislative change. Rather than requiring total deafness in both ears to trigger the paired organ rule, the proposed amendment would allow VA to consider partial nonservice—connected hearing loss in one ear when evaluating disability caused by compensable service—connected hearing loss in the other ear.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy,
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Veterans Benefit Administration, 111
W. Huron Street, Room 22, Buffalo, NY
14202
Phone: 716 551—4842

RIN: 2900–AL59

3057. ● LOAN GUARANTY; LOAN SERVICING AND CLAIMS PROCEDURES MODIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 3720; 38 USC 3732; 38 USC 3736

CFR Citation: 38 CFR 36.4301; 38 CFR 36.4306a; 38 CFR 36.4311; 38 CFR 36.4313 to 4321; 38 CFR 36.4324 to 4325; 38 CFR 36.4330; 38 CFR 36.4344a; 38 CFR 36.4346

Legal Deadline: None

Abstract: The Department of Veterans Affairs is amending its loan guaranty regulations pertaining to the servicing and liquidation of guaranteed housing loans in default and submitting of guaranty claims by loan holders. These proposed changes regarding loan servicing and claims procedures reflect changes in the servicing of VA loans and are necessary to implement new servicing and claims procedures.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Robert D. Finneran, Assistant Director for Policy and Valuation (262), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL65

3058. • ADJUDICATION: SERVICE REQUIREMENTS FOR VETERANS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3; 38 CFR 5

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its Compensation and Pension regulations relating to service requirements for veterans, currently found in part 3 of title 38 Code of Federal Regulations and to relocate them in new part 5. We propose to reorganize these regulations in a more logical order, add new section and paragraph headings, rewrite some sections, and divide some sections into one or more separate new sections. VA's principle goal in rewriting and reorganizing the current regulations is to provide reader with clearer language and more easily understood regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL67

3059. • PRESUMPTIONS OF SERVICE CONNECTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 501(a); 38 USC 1101(3) and (4); 38 USC 1112; 38 USC 1113; 38 USC 1116; 38 USC 1133; 38 USC 1137

CFR Citation: 38 CFR 3; 38 CFR 5

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations that concern the presumptions of service connection for certain diseases or conditions. VA also proposes to remove certain redundant rules. These revisions are proposed as part of VA's rewrite and reorganization of all of its adjudication regulations in a logical, claimant—focused, and user—friendly format. The intended effect of the proposed revisions is to make the rules regarding presumptions easier to understand and apply.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Russo, Chief, Regulation Rewrite Project (OOREG2), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—9216
Fax: 202 275—9026
Email: capbruss@vba.va.gov

RIN: 2900–AL70

3060. • ADJUDICATION: ACCRUED BENEFITS AND DEATH COMPENSATION BENEFITS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 501(a); 38 USC 1121 and 1122; 31 USC 3329 and 3330; 38 USC 5101; 38 USC 5121; . . .

CFR Citation: 38 CFR 3; 38 CFR 5

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its Compensation and Pension regulations relating to accrued and death compensation benefits, currently found in part 3 of title 38 Code of Federal Regulations (CFR) and to relocate them in new part 5. We propose to reorganize these regulations in a more logical order, add new section and paragraph headings, rewrite some sections, and divide some sections into one or more separate new sections. VA's principle goal in rewriting and reorganizing the current regulations is to provide readers with clearer language and more easily understood regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Russo, Chief, Regulation Rewrite Project (OOREG2), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—9216
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RIN: 2900–AL71

3061. • BURIAL BENEFITS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 101(2); 38 USC 501; 38 USC 2301 to 2305; 38 USC 2307 and 2308; 38 USC 5101; 38 USC 5303(c); 38 USC 6103 to 6105

CFR Citation: 38 CFR 3; 38 CFR 5

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its Compensation and Pension regulations relating to monetary burial benefits, which are currently found in part 3 of title 38 Code of Federal Regulations (CFR) and to relocate them in new part 5. We propose to reorganize these regulations in a more logical order, add new section and paragraph headings, rewrite some sections, and divide some sections into one or more separate new sections. VA's principal goal in rewriting and reorganizing the current regulations is to provide readers with clear language and more easily understood regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Russo, Chief, Regulation Rewrite Project (OOREG2), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL72

3062. • NEW AND MATERIAL EVIDENCE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 501(a); 38 USC 5110(a)

CFR Citation: 38 CFR 3.156

Legal Deadline: None

Abstract: The Department of Veterans Affairs proposes to revise its rule regarding the effective date of awards based on certain types of evidence, when the evidence is submitted after a regional office has decided to claim. The proposed revisions would implement a recent court decision and would improve the effectiveness of our regulations by consolidating existing concepts that are currently not contained in the same rule and would restate those concepts in plain language. We believe that this proposal will make the rules easier to locate and apply.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Bill Russo, Chief, Regulation Rewrite Project (OOREG2), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL73

3063. • RULES ON APPORTIONMENTS TO DEPENDENTS, PAYMENTS TO FIDUCIARIES AND INCARCERATED BENEFICIARIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 501; 38 USC 5101; 38 USC 5110; 38 USC 5112; 38 USC 5307; 38 USC 5313B

CFR Citation: 38 CFR 3; 38 CFR 5

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs (VA) adjudication rules that concern the award and administration of VA benefits to incarcerated veterans, their dependents, and fugitive felons; the award and administration of compensation to certain incompetent veterans; and the apportionment of benefits to dependents. The proposed amendments are necessary to meet VA's overarching objective to reorganize the regulations in a logical, claimant—focused, and user—friendly format. The intended effect of the proposed amendments is to make the existing rules easier to locate, understand, and apply.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Russo, Chief, Regulation Rewrite Project (OOREG2), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL74

3064. • REGULATIONS RELATED TO PAYMENTS AND ADJUSTMENTS TO PAYMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 501; 38 USC 1151; 38 USC 1161; 38 USC 1312; 38 USC 1317; 38 USC 1521; 38 USC 5103; 38 USC 5103; 38 USC 5110; 38 USC 5112; 38 USC 5301; 38 USC 5304 and, 5305; 42 USC 2210 (note)

CFR Citation: 38 CFR 3; 38 CFR 5

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its Compensation and Pension regulations that relate to setting the rates of payments, adjustments and resumptions of payments, and elections between benefits, which are currently found in part 3 of title 38 Code of Federal Regulations (CFR) and to relocate them in new part 5. We propose to reorganize these regulations in a more logical order, add new section and paragraph headings, rewrite some sections, and divide some sections into one or more separate new sections. VA's principal goal in rewriting and reorganizing the current regulation is to provide readers with clearer language and more easily understood regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Russo, Chief, Regulation Rewrite Project (OOREG2), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL75

3065. • CLAIMS BASED ON SERVICE IN THE PHILIPPINE ARMED FORCES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 501; 38 USC 107; 38 USC 3565; 38 USC 5112

CFR Citation: 38 CFR 3.40; 38 CFR 3.42 and 3.43; 38 CFR 3.505; 38 CFR 3.251; 38 CFR 3.1605; ...

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language its adjudication rules that apply to Filipino veterans and their survivors. These revisions are proposed as part of VA's rewrite and reorganization of all of its adjudication rules in a logical, claimant—focused, and user—friendly format. The intended effect of the proposed revisions is to assist Filipino claimants by providing a special body of rules that are dedicated to their needs and to assist VA personnel in locating the rules that are relevant to claims based on Philippine service.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Russo, Chief, Regulation Rewrite Project (OOREG2), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL76

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT

3066. DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATIONS PLAIN LANGUAGE REWRITE

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 48 USC 486(c)

CFR Citation: 38 CFR 8

Legal Deadline: None

Abstract: This rulemaking action would amend the Department of Veterans Affairs acquisition regulation to update position titles, to remove obsolete or duplicative material, to delegate authority, and to make plain language revisions to the text. In addition, the rule would update material to correspond to the requirements of the Federal Acquisition Regulation (FAR) and would provide agency procedures for compliance with FAR requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK78

BOARD OF VETERANS APPEALS

3067. • BOARD OF VETERANS' APPEALS: OBTAINING EVIDENCE AND CURING PROCEDURAL DEFECTS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 7102; 38 USC 7103(c); 38 USC 7104(a); 38 USC 7105; 38 USC 7105A; 38 USC 7109(c)

CFR Citation: 38 CFR 19.9; 38 CFR 19.38; 38 CFR 20.3; 38 CFR 20.903; 38 CFR 20.1304; ...

Legal Deadline: None

Abstract: The Board of Veterans' Appeals proposes to amend VA's Appeals Regulations and the Board's Rules of Practice to make changes with respect to the Board's authority to develop evidence for initial consideration. By way of this rulemaking, we propose removing the invalidated portions of the Board's development regulations and changing those regulations to provide that, with certain exceptions, the Board will remand a case to the agency of original jurisdiction when there is a need to clarify the evidence, correct a procedural defect, or take any other action deemed essential for a proper appellate decision.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565—5978

RIN: 2900–AL77

OFFICE OF FINANCIAL MANAGEMENT

3068. STANDARDS FOR COLLECTION, COMPROMISE, SUSPENSION, OR TERMINATION OF COLLECTION EFFORT, AND REFERRAL OF CIVIL CLAIMS FOR MONEY OR PROPERTY; REGIONAL OFFICE COMMITTEES ON WAIVERS AND COMPROMISES; SALARY

Priority: Other Significant

Legal Authority: 31 USC 3700 et seq; 38 USC 501; 38 USC 5302; 38 USC 5314; 38 USC 5315

CFR Citation: 31 CFR 900 to 904; 38 CFR 1.900 to 1.970

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to revise its current regulations on debt collection by eliminating some and cross—referencing the remainder to the revised DOJ/Treasury Governmentwide Federal Claims Collection Standards (31 CFR parts 900 to 904). These regulations will also be updated to comply with the Debt Collection Improvement Act of 1996. In addition, VA also proposes to amend regulations pertaining to the administration of our Regional Office Committees on Waivers and Compromises.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

VA **Proposed Rule Stage**

Agency Contact: Peter T. Mulhern, Office of Finance (047GC1), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
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TDD Phone: 202 273 6574

RIN: 2900–AK10

OFFICE OF POLICY AND PLANNING

3069. AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS; GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 75; 38 USC 501; PL 98—502

CFR Citation: 38 CFR 41; 38 CFR 49

Legal Deadline: None

Abstract: This document proposes to amend part 41 of VA's regulations to add new subparts to codify revised OMB Circular A—133. The Circular provides standards for consistency and uniformity among Federal agencies for the audits of States, local governments, and nonprofit organizations expending Federal awards. Further, this amendment proposes to add a new part 49 to VA's regulations to bring VA in step with other Federal agencies who have already adopted OMB Circular A—110 as a common rule. The Circular provides for uniform administrative requirements for Federal agencies with grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: John A. Corso, Senior Procurement Analyst (95A), Acquisition Policy Team, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AJ62

Department of Veterans Affairs (VA) Final Rule Stage

VETERANS HEALTH ADMINISTRATION

3070. ADVANCED HEALTH CARE PLANNING

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.32

Legal Deadline: None

Abstract: This document amends the VA medical regulations to codify VA policy regarding advanced health care planning. The rule sets forth a mechanism for the use of written advance directives; i.e., a VA living will, a VA durable power of attorney for health care, and a State—authorized advance directive. The rule also sets forth a mechanism for honoring verbal or nonverbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent and the patient is not physically able to sign an advance directive form or the appropriate form is not readily available. This is intended to help ensure that VA acts in compliance with patients' wishes concerning future health care.

Timetable:

Action	Date	FR Cite
NPRM	11/02/98	63 FR 58677
NPRM Comment Period End	01/04/99	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen Fox M.D., Director, National Center for Ethics (10AE), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—6926

RIN: 2900–AJ28

3071. GRANTS TO STATES FOR CONSTRUCTION AND ACQUISITION OF STATE HOME FACILITIES

Priority: Other Significant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.216; 38 CFR 17.222

Legal Deadline: None

Abstract: This rule amends the Department of Veterans Affairs regulations concerning State homes. VA provides funds to States for projects for the construction, acquisition, or renovation of State veterans nursing homes and State veterans domiciliaries. This rulemaking requests comments regarding what regulations should be established with respect to the priorities for awarding State home grants for construction, acquisition, or renovation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/26/01	66 FR 33845
Interim Final Rule Comment Period End	08/27/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Frank Salvas, Geriatrics and Extended Care (114), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—8536

RIN: 2900–AJ43

3072. PAYMENT FOR NON—VA PHYSICIAN SERVICES ASSOCIATED WITH EITHER OUTPATIENT OR INPATIENT CARE PROVIDED AT NON—VA FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501

CFR Citation: 38 CFR 17.56

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations concerning payment for non—VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non—VA facilities. Currently, 38 CFR 17.56 requires all VA facilities to reimburse for non—VA physician services based upon the Centers for Medicare and Medicaid Services (CMS) physician fee schedule in effect at the time the services are provided. However, it has been determined that special circumstances exist in the State of Alaska. Since a large portion of VA health care provided in Alaska is obtained from non—VA sources, this could negatively impact the quality of care provided veterans living in that State. Therefore, to ensure that the amounts paid to physicians better represent the local cost to furnish a service and to achieve program cost reduction, VA is proposing through this document that an Alaska—specific payment methodology be established for inpatient and outpatient non—VA physician services with that State.

Timetable:

Action	Date	FR Cite
NPRM	07/29/03	68 FR 44507
NPRM Comment Period End	09/29/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rex Gilmore, Health Administration Service (10C3), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—8300

RIN: 2900–AK94

3073. PRIORITIES FOR OUTPATIENT MEDICAL SERVICES AND INPATIENT HOSPITAL CARE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 101; 38 USC 501; 38 USC 1705; 38 USC 1710; PL 104—262

CFR Citation: 38 CFR 17.49

Legal Deadline: None

Abstract: The Department of Veterans Affairs is amending its medical regulations to establish that, in scheduling appointments for non—emergency outpatient medical services and admissions for inpatient hospital care, VA will give priority to veterans with service—connected disabilities rated 50 percent or greater and veterans needing care for a service—connected disability. The Veterans' Eligibility Reform Act of 1996 authorizes VA to ensure that these two categories of veterans receive priority access to this type of care. The intended effect of this rule is to carry out that authority.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/17/02	67 FR 58528
Interim Final Rule Effective	09/17/02	
Interim Final Rule Comment Period End	11/18/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Amy Hertz, Office of Policy and Planning (105D), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—8934

RIN: 2900–AL39

3074. CHARGES USED FOR RECOVERY FROM TORTIOUSLY LIABLE THIRD PARTIES FOR MEDICAL CARE OR SERVICES PROVIDED BY THE DEPARTMENT OF VETERANS AFFAIRS

Priority: Other Significant

Legal Authority: 38 USC 101; 38 USC 501; 38 USC 1701; 38 USC 1705; 38 USC 1710; 38 USC 1721; 38 USC 1722; 38 USC 1729; ...

CFR Citation: 38 CFR 17.101; 38 CFR 17.102

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations with respect to charges used for recovering from tortiously liable third parties the reasonable value of medical care and services provided by VA. The amendment reflects the decision of the Director of the Office of Management and Budget (OMB) to use the "reasonable charges" determined in accordance with the provisions of 38 CFR 17.101 for this purpose, rather than the rates generated by the methodology at 38 CFR 17.102(h).

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, Chief Business Office (161), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 254—0361

RIN: 2900–AL48

3075. ENROLLMENT—PROVISION OF HOSPITAL AND OUTPATIENT CARE TO VETERANS—SUBPRIORITIES OF PRIORITY CATEGORIES 7 AND 8 AND ENROLLMENT LEVEL DECISION

Regulatory Plan: This entry is Seq. No. 100 in part II of this issue of the **Federal Register**.

RIN: 2900–AL51

3076. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES; 2003 UPDATE

Priority: Other Significant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulation concerning "reasonable charges" for medical care and services provided or furnished by VA to veterans for nonservice—

connected disabilities. This document amends the regulation to update databases and other provisions for the purpose of providing more current and more precise charges.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/29/03	68 FR 22966
Interim Final Rule Comment Period End	06/30/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Related RINs: 2900—AJ30; 2900—AK39; 2900—AK73; 2900—AL06

Agency Contact: David Cleaver, Chief Business Office (161), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 254—0361

RIN: 2900–AL57

3077. SENSORI—NEURAL AIDS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1707

CFR Citation: 38 CFR 17.149

Legal Deadline: None

Abstract: This document amends Department of Veterans Affairs (VA) medical regulations concerning sensori—neural aids. 38 CFR section 17.149 authorizes VA to provide sensori—neural aids (i.e., eyeglasses, contact lenses, hearing aids) to seven groups of veterans as identified in the regulation in section 17.149, paragraphs (b)(1)—(b)(7). The veterans presently identified in section 17.149, paragraph (b)(2), are veterans who are former prisoners of war. Section 17.149, paragraph (b)(2), will be revised to include veterans who were awarded the Purple Heart. It will also note that the authority for this regulation, previously identified as 38 U.S.C. 1701(6)(A)(i), has been recodified as 38 U.S.C. 1707 pursuant to Public Law No. 107—135.

Timetable:

Action	Date	FR Cite
NPRM	07/31/03	68 FR 44913
NPRM Comment Period End	09/29/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: John G. Clements, Prosthetic Program Manager (113), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL60

3078. • VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM; RELIGIOUS ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 2002; 38 USC 2011; 38 USC 2061; 38 USC 7721

CFR Citation: 38 CFR 61.64

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is amending its regulations concerning the VA Homeless Providers Grant and Per Diem Program. This document revises provisions that apply to religious organizations that receive VA funds under 38 CFR part 61 to ensure that VA activities under this program are open to all qualified organizations, regardless of their religious character, and to clearly establish the proper uses to which funds may be put and the conditions for the receipt of such funding.

Timetable:

Action	Date	FR Cite
NPRM	09/30/03	68 FR 56426
NPRM Comment Period End	10/30/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, State, Tribal

Agency Contact: Guy A. Liedke, Program Specialist, Department of Veterans Affairs, Veterans Health Administration, Grant and Per Diem Field Office, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL63

3079. • MEDICATION PRESCRIBED BY NON—VA PHYSICIANS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 1706; 38 USC 1710; 38 USC 1712(d); 38 USC 1721

CFR Citation: 38 CFR 17.96

Legal Deadline: None

Abstract: This rule amends VA's medical regulations that govern the provision of medication to veterans when the medication is prescribed by non—VA physicians. The rule provides that, in limited circumstances, VA may provide medication prescribed by a non—VA physician to veterans enrolled in VA's health—care system prior to July 25, 2003, if the veterans have requested an initial appointment for primary care in a VA health care facility before July 25, 2003, and were unable to obtain an initial appointment for primary care within 30 days. The rule establishes specific requirements that veterans must meet to receive such medication, and it establishes limits on the types and quantities of medication VA may provide. VA's intent is to assist enrolled veterans who have requested primary care appointments but who have not been able to obtain one within 30 days.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/25/03	68 FR 43927
Interim Final Rule Effective	07/25/03	
Interim Final Rule Comment Period End	08/25/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL68

VETERANS BENEFITS ADMINISTRATION

3080. SCHEDULE FOR RATING DISABILITIES—THE MUSCULOSKELETAL SYSTEM

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.71(a)

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs Schedule for Rating Disabilities that addresses musculoskeletal conditions. The intended effect is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria and that it reflects medical advances that have occurred since the last review. We also make nonsubstantive editorial changes throughout this portion of the schedule.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/90	55 FR 53315
ANPRM Comment Period End	02/26/91	
NPRM	02/11/03	68 FR 6998
NPRM Comment Period End	04/14/03	
Correction	06/27/03	68 FR 38425
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson, Medical Officer (211A), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—7211

RIN: 2900–AE91

3081. TOTAL DISABILITY EVALUATIONS BASED ON INABILITY OF THE INDIVIDUAL TO ENGAGE IN SUBSTANTIALLY GAINFUL EMPLOYMENT

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 512(a); 38 USC 1110; 38 USC 1131; 38 USC 1155; 38 USC 1502; 38 USC 1521(a)

CFR Citation: 38 CFR 3.321; 38 CFR 3.340; 38 CFR 3.341; 38 CFR 3.342; 38 CFR 4.16; 38 CFR 4.17; 38 CFR 4.18

Legal Deadline: None

Abstract: This action amends the regulations in part 3 of title 38, United States Code, and in the Schedule for Rating Disabilities in part 4 to provide clear and objective standards for determining whether a veteran is entitled to a total evaluation based on his or her inability to perform substantially gainful employment due to disability.

Timetable:

Action	Date	FR Cite
NPRM	10/01/01	66 FR 49886
NPRM Comment Period End	11/30/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, Veterans Benefit Administration, 111 W. Huron Street, Room 22, Buffalo, NY 14202
Phone: 716 551—4842

RIN: 2900–AH21

3082. SCHEDULE FOR RATING DISABILITIES—THE EYE

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.75

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is amending that portion of its Schedule for Rating Disabilities that addresses disabilities of the eye. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria and that it reflects medical advances that have occurred since the last review.

Timetable:

Action	Date	FR Cite
NPRM	05/11/99	64 FR 25246
NPRM Comment Period End	07/12/99	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson, Medical Officer (211A), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—7211

RIN: 2900–AH43

3083. CLAIMS BASED ON AGGRAVATION OF NONSERVICE—CONNECTED DISABILITY

Priority: Other Significant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.310

Legal Deadline: None

Abstract: This document amends VA regulations concerning secondary service connection for certain disabilities. This amendment is necessary because of a recent decision by the U.S. Court of Veterans Appeals and will establish a new means by which veterans may be compensated for disabilities related to other service—connected conditions.

Timetable:

Action	Date	FR Cite
NPRM	06/04/97	62 FR 30547
NPRM Comment Period End	08/04/97	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AI42

3084. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND REQUIREMENT FOR DRUG—FREE WORKPLACE (ASSISTANCE)

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 44; 38 CFR 48 (New)

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is planning to revise its portion of the Governmentwide nonprocurement common rule (NCR) for debarment and suspension found at 38 CFR part 44. These changes include: Drafting the rule in a plain language style and format; reconciling technical differences between the NCR and the Federal Acquisition Regulation; enhancing and clarifying the existing rule; and establishing a separate part at 38 CFR part 48 for the drug—free workplace requirements that are in subpart F of the existing rule.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2900–AK16

3085. DEFINITION OF PSYCHOSIS FOR CERTAIN VA PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.384

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs adjudication regulations to define the term "psychosis." The term is used but not defined in certain statutes that provide presumptive service connection for compensation or health care purposes.

Timetable:

Action	Date	FR Cite
NPRM	10/11/02	67 FR 63352
NPRM Comment Period End	12/10/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson, Medical Officer (211A), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—7211

RIN: 2900–AK21

3086. FILIPINO VETERANS BENEFIT IMPROVEMENTS

Priority: Other Significant

Legal Authority: 38 USC 107

CFR Citation: 38 CFR 3.8; 38 CFR 3.10; 38 CFR 3.1600

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect changes made by the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2001, which changed the rate of compensation payments to certain Filipino veterans residing in the U.S., and the Veterans Benefits and Health Care Improvement Act of 2000, which changed the amount of the burial benefit paid to the survivors of certain Filipino veterans who were residing in the U.S. at the time of their deaths.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/27/01	66 FR 66763
Interim Final Rule Effective	12/27/01	
Interim Final Rule Comment Period End	02/25/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2900–AK65

3087. LOAN GUARANTY: PREPURCHASE COUNSELING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 3203; 38 USC 3210; 38 USC 3220

CFR Citation: 38 CFR 36.4332

Legal Deadline: None

Abstract: The Department of Veterans Affairs is amending its loan guaranty regulations to require that all first—time homebuyers seeking to obtain VA guaranteed home loans complete 3 hours of homeowners' counseling.

Timetable:

Action	Date	FR Cite
NPRM	10/11/01	66 FR 51893
NPRM Comment Period End	12/10/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK76

3088. ADDITIONAL DISABILITY OR DEATH DUE TO HOSPITAL CARE, MEDICAL OR SURGICAL TREATMENT, EXAMINATION, TRAINING AND REHABILITATION SERVICES, OR COMPENSATED WORK THERAPY PROGRAM

Priority: Other Significant

Legal Authority: 38 USC 1151

CFR Citation: 38 CFR 3.154; 38 CFR 3.358; 38 CFR 3.361; 38 CFR 3.362; 38 CFR 3.363; 38 CFR 3.400; 38 CFR 3.708; 38 CFR 3.800

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is amending its

adjudication regulations concerning awards of compensation or dependency and indemnity compensation for additional disability or death caused by VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy (CWT) program.
Under this amendment, benefits will be payable for additional disability or death caused by hospital care, medical or surgical treatment, or examination only if VA is at fault or "an event not reasonably foreseeable" proximately caused the disability or death. Benefits will also be payable for additional disability or death proximately caused by VA's provision of training and rehabilitation services or CWT program.

Timetable:

Action	Date	FR Cite
NPRM	12/12/02	67 FR 76322
NPRM Comment Period End	02/10/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, Veterans Benefit Administration, 111 W. Huron Street, Room 22, Buffalo, NY 14202
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RIN: 2900–AK77

3089. TIME LIMIT FOR REQUEST FOR DE NOVO REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5109(a); 38 USC 7105(a)

CFR Citation: 38 CFR 3.2600

Legal Deadline: None

Abstract: This document amends VA regulations concerning the time a claimant has in which to request a de novo review of their claim at the Veterans Service Center level. (This would reduce the time from the current 60 days to 15 days.) We believe this amendment will reduce unnecessary delays in the appeals process and will not adversely affect claimants.

Timetable:

Action	Date	FR Cite
NPRM	03/11/02	67 FR 10866
NPRM Comment Period End	05/10/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK97

3090. EXCEPTIONS TO DEFINITION OF DATE OF RECEIPT BASED ON SPECIAL OR UNFORESEEN CIRCUMSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5110

CFR Citation: 38 CFR 3.1(r)

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the definition of "date of receipt" by authorizing the Under Secretary for Benefits to establish exceptions to the general rule when special or unforeseen circumstances hinder the normal course by which VA would receive a claim, information, or evidence. The intended effect is to ensure that a significant number of claimants are not deprived of potential entitlement to benefits because of unexpected delays or impediments not caused by the claimants.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, Veterans Benefit Administration, 111 W. Huron Street, Room 22, Buffalo, NY 14202
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RIN: 2900–AL12

3091. LOAN GUARANTY: IMPLEMENTATION OF PUBLIC LAW 107—103

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 2102; 38 USC 3703(a)(1) and (c)(1); 38 USC 3714(d); 38 USC 3761

CFR Citation: 38 CFR 36.4302; 38 CFR 36.4308; 38 CFR 36.4404; 38 CFR 36.4527

Legal Deadline: None

Abstract: VA is amending its loan guaranty regulations to implement certain provisions of Public Law 107—103, the Veterans Education and Benefits Expansion Act of 2001. VA is incorporating into the regulations the following statutory changes: (1) An increase in the maximum amount of entitlement from $50,750 to $60,000; (2) a revision of the requirements for direct housing loans to Native American veterans; (3) a revision of the loan assumption notice requirement; and (4) an increase in the amount of assistance for specially adapted housing from $43,000 to $48,000 for severely disabled veterans and from $8,250 to $9,250 for less severely disabled veterans.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/10/03	68 FR 6625
Interim Final Rule Effective	02/10/03	
Interim Final Rule Comment Period End	04/11/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL23

3092. SCHEDULE FOR RATING DISABILITIES; GUIDELINES FOR APPLICATION OF EVALUATION CRITERIA FOR CERTAIN RESPIRATORY AND CARDIOVASCULAR CONDITIONS; EVALUATION OF HYPERTENSION WITH HEART DISEASE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.104

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities, 38 CFR part 4, in order to clarify the evaluation of certain respiratory and cardiovascular conditions and to explain that hypertension and hypertensive or other heart diseases will be separately evaluated. The intended effect of this amendment is to clarify the use of the current criteria for evaluating respiratory and cardiovascular conditions, particularly in cases where alternative criteria are provided, in order to ensure that veterans receive consistent evaluations and are not required to undergo unnecessary tests.

Timetable:

Action	Date	FR Cite
NPRM	08/22/02	67 FR 54394
NPRM Comment Period End	10/21/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson, Medical Officer (211A), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL26

3093. VETERANS EDUCATION: VETERANS EDUCATION AND BENEFITS EXPANSION ACT OF 2001

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3511; 38 USC 3512; 38 USC 3540; 38 USC 3543; 38 USC 3672; 38 USC 3675; 38 USC 3680A; 38 USC 3011(c)

CFR Citation: 38 CFR 21.3045; 38 CFR 21.3046; 38 CFR 21.3104; 38 CFR 21.3300; 38 CFR 21.3301; 38 CFR 21.3302; 38 CFR 21.3303; 38 CFR 21.3305; 38 CFR 21.3306

Legal Deadline: None

Abstract: Final regulations implementing some of the provisions in the Veterans Education and Benefits Expansion Act of 2001. The provisions are: Restoring benefits for individuals ordered to active duty on or after September 11, 2001; an additional opportunity for Vietnam Era Veterans to qualify for benefits under the Montgomery GI Bill program; establishing an ending date to the eligibility period for spouses under the Survivors' and Dependents' Educational Assistance program; expanding special restorative training benefits to include certain disabled spouses and surviving disabled spouses; allowing payment of education benefits for distance learning courses that are part of a certificate program offered by institutions of higher learning; and increasing the amount of scholarship funds someone in a Senior Reserve Officer Training Corps program can receive and remain eligible under the Montgomery GI Bill.

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL28

3094. SCHEDULE FOR RATING DISABILITIES; EVALUATION OF MULTIPLE SCARS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 115

CFR Citation: 38 CFR 4.118

Legal Deadline: None

Abstract: This amendment would clarify the method of evaluating multiple scars in a uniform and consistent manner.

Timetable:

Action	Date	FR Cite
NPRM	10/29/02	67 FR 65915
NPRM Comment Period End	12/30/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson, Medical Officer (211A), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—7211

RIN: 2900–AL32

3095. TESTIMONY CERTIFIED OR UNDER OATH

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5711(a)(3)

CFR Citation: 38 CFR 3.200

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is amending its adjudication regulation that requires written and oral testimony to be certified or given under oath or affirmation in most cases. VA believes that the global requirements in this regulation are no longer necessary to establish the credibility of most testimony offered in support of a claim for benefits. Removal of this regulation will help to streamline the claims process without affecting program integrity.

Timetable:

Action	Date	FR Cite
NPRM	07/31/02	67 FR 49646
NPRM Comment Period End	09/30/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: See related RIN 2900—AK24. On March 5, 2002, VA inadvertently withdrew RIN 2900—AK24 in the April 2002 Unified Agenda but subsequently published the proposed rule on July 31, 2002, at 67 FR 49646.

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RIN: 2900–AL38

3096. ADMINISTRATION OF VA EDUCATION BENEFITS—CENTRALIZED CERTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3672; 38 USC 3675; 38 USC 3676

CFR Citation: 38 CFR 21.4266

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs(VA) rules governing certification of enrollment in approved courses for the training of veterans and other eligible persons under education benefit programs VA administers. As part of the approval requirements, educational institutions designate an official of the institution (a VA certifying official) to certify the enrollment of veterans and other eligible persons to VA. As a general rule, VA rules currently require that each branch or extension of an educational institution must perform the certifications and maintain records for veterans and other eligible persons at the branch or extension. The proposed rule would expand current regulations to allow an educational institution to combine the certification functions at one or more of its locations, to include branches and extensions not located with the same State.

Timetable:

Action	Date	FR Cite
NPRM	06/30/03	68 FR 38657
NPRM Comment Period End	09/29/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL43

3097. • INCREASE RATES PAYABLE UNDER THE SURVIVOR'S AND DEPENDENT'S EDUCATION ASSISTANT PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 3534(b); 5 USC 3564; 5 USC 3686(a); 5 USC 3541(b) and 3542

CFR Citation: 38 CFR 21.3045; 38 CFR 21.3131; 38 CFR 21.3333

Legal Deadline: None

Abstract: This document amends the regulations governing rates of education assistance payable under the Survivors' and Dependents' Educational Assistance (DEA) program to reflect increases required by statutory provisions. The rates of education assistance payable under the DEA program are changed to show a 1.5 percent increase for fiscal year 2003 (October 1, 2002, through September 30, 2003) and 2.2 percent increase for fiscal year 2004 (October 1, 2003, through September 30, 2004).

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lynn M. Nelson, Education Advisor (225C), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL64

3098. • RESERVISTS' EDUCATION: REVISION OF ELIGIBILITY REQUIREMENTS FOR THE MONTGOMERY GI BILL—SELECTED RESERVE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 38 USC 501(a); PL 106—419; PL 107—314

CFR Citation: 38 CFR 21.1032; 38 CFR 21.7540; 38 CFR 21.7550 and 7551

Legal Deadline: None

Abstract: This document amends the regulations governing the administration of the Montgomery GI Bill—Selected Reserve (MGIB—SR) program. The amendments implement provisions in the Veterans Benefits and Health Care Improvement Act of 2000 and the Bob Stump National Defense Authorization Act for Fiscal Year 2003. The Veterans Benefits and Health Care Improvement Act of 2000 contained a provision that changed an eligibility criterion concerning the time for obtaining a high school diploma. The Bob Stump National Defense Authorization Act for Fiscal Year 2003 expanded the MGIB—SR eligibility period from 10 years to 14 years for reservists who first become eligible after September 30, 1992.

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL69

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT

3099. IMPLEMENTING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Priority: Other Significant

Legal Authority: PL 104—191

CFR Citation: 48 CFR 824; 48 CFR 852

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR) to incorporate contract language required to implement the Administrative Simplification provisions of the Health Insurance Portability and

Accountability Act of 1996 (HIPAA), Public Law No. 104—191, title II, subtitle F, sections 261 to 264, 119 Stat. 1936, 2021—34 (11196). As mandated by HIPAA, the Department of Health and Human Services published rules that establish "Standards for Privacy of Individually Identifiable Health Information" (Privacy Rule) found at 45 CFR parts 106 and 164, subparts A and C, to protect the privacy of protected health information and the security of electronically protected health information in the hands of covered entities, including the Veterans Health Administration, and its business associates. This document adds a contract clause to the VAAR that will require VA contractors to protect the privacy and security of this information as defined and required by the Privacy and Security Rules.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cathy Dailey, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition and Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—8774
Fax: 202 273—9302
Email: cathy.dailey@mail.va.gov

RIN: 2900–AL53

BOARD OF VETERANS APPEALS

3100. APPEALS REGULATIONS; RULES OF PRACTICE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 511; 38 USC 512; 38 USC 512(a); 38 USC 5903 to 5905; 38 USC 7102 to 7105; 38 USC 7109(c)

CFR Citation: 38 CFR 19.3 (Revision); 38 CFR 20.609 (Revision); 38 CFR 20.903 (Revision); 38 CFR 20.1000; 38 CFR 20.1001; 38 CFR 20.1002; 38 CFR 20.1100 (Revision); 38 CFR 19.10; 38 CFR 19.15 (Revision); 38 CFR 19.39; 38 CFR 20.3; 38 CFR 20.101 (Revision); 38 CFR 20.102 (Revision); 38 CFR 20.201 (Revision); 38 CFR 20.605 (Revision); ...

Legal Deadline: None

Abstract: The Board of Veterans Appeals will be further revising a recent restructuring of its Appeals Regulations and Rules of Practice (54 FR 34334) in order to address questions that have arisen since that restructuring was proposed. No other alternatives are available. These additional revisions will not entail any costs to the public or to the Government other than the costs normally associated with drafting, Agency review, and publication.

Timetable:

Action	Date	FR Cite
NPRM	02/03/92	57 FR 4131
NPRM Comment Period End	03/04/92	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: These proposed regulations were previously a part of RIN 2900—AE02.

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565—5978

RIN: 2900–AE78

3101. THE BOARD OF VETERANS' APPEALS; RULES OF PRACTICE—MOTION FOR REVIEW OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 7104(d); 38 USC 7111

CFR Citation: 38 CFR 20.1403; 38 CFR 20.1405(a); 38 CFR 20.1405(b)

Legal Deadline: None

Abstract: This document amends the Rules of Practice of the Board of Veterans' Appeals (Board) relating to challenges to Board decisions on the grounds of "clear and unmistakable error" (CUE). The amendment provides for advancing CUE motions on the docket.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/12/03	68 FR 53681
Interim Final Rule Effective	09/12/03	
Interim Final Rule Comment Period End	10/14/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565—5978

RIN: 2900–AJ85

3102. RULES OF PRACTICE: MEDICAL OPINIONS FROM THE VETERANS HEALTH ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 5107(a)

CFR Citation: 38 CFR 20.901(a)

Legal Deadline: None

Abstract: The Board of Veterans' Appeals (Board) is amending its appeals regulations to clarify that it may obtain medical opinions from VA's Veterans Health Administration (VHA). The current rule, 38 CFR 20.901(a), makes an obsolete reference to the "Chief Medical Director," a title eliminated in 1992 and replaced by "Under Secretary for Health." The revised rule would clarify that the Board may obtain opinions from VHA, not from the individual who happens to be the Under Secretary for Health.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/23/01	66 FR 38158
Interim Final Rule Effective	07/23/01	
Interim Final Rule Comment Period End	09/21/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565—5978

RIN: 2900–AK52

3103. BOARD OF VETERANS' APPEALS RULES OF PRACTICE: NOTICE PROCEDURES RELATING TO WITHDRAWAL OF SERVICES BY A REPRESENTATIVE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 5901 to 5904; 38 USC 7105(a)

CFR Citation: 38 CFR 20.608(b)(2)

Legal Deadline: None

Abstract: The Board of Veterans' Appeal proposes to amend its Rules of Practice to simplify notice procedures relating to withdrawal of services by a representative after certification of an appeal. Rule 608(b)(2) (38 CFR 20.608(b)(2)), relating to withdrawal of services by a representative after certification of an appeal, requires service of papers on the parties by certified mail, return receipt requested, and requires filing a signed certification of receipt with the Board. The proposed amendment will eliminate the requirement of mailing by certified mail and replace it with a certification by the mailer.

Timetable:

Action	Date	FR Cite
NPRM	06/03/03	68 FR 33040
NPRM Comment Period End	08/04/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller,
Senior Deputy Vice Chairman,
Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565—5978

RIN: 2900–AL45

NATIONAL CEMETERY SYSTEM

3104. STATE CEMETERY GRANTS: AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS CEMETERIES

Priority: Other Significant

Legal Authority: 38 USC 2408

CFR Citation: 38 CFR 39.1; 38 CFR 39.2; 38 CFR 39.3; 38 CFR 39.7; 38 CFR 39.8; 38 CFR 39.9 (New)

Legal Deadline: None

Abstract: The proposed rule revises 38 CFR part 39 to amend Department of Veterans Affairs (VA) regulations for the State Cemetery Grants Program to implement and update information on program requirements and the application process for participants. The amendment formalizes new standards and provides guidance on how States may obtain funding for grants to expand, establish, or improve State veterans cemeteries. The rule was published as proposed in the Federal Register to provide information to the public on how to apply for Federal funding for State veterans cemeteries. A 60—day public comment period was provided. It is subject to the requirements of the Administrative Procedures Act and E.O. 12866 because the rule is an interpretation of statute. The rule does not have a significant economic impact on a substantial number of small entities; only those States that apply for funding may be direct beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	05/01/03	68 FR 23249
NPRM Comment Period End	06/30/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Karen Barber,
Program Analyst (402B3), Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273—5183
Fax: 202 273—6697
Email: karen.barber@mail.va.gov

RIN: 2900–AH46

3105. ELIGIBILITY FOR A HEADSTONE OR MARKER FOR GRAVES ALREADY MARKED AT PRIVATE EXPENSE; APPLICATIONS FOR HEADSTONE AND MARKER

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—103, sec 502

CFR Citation: 38 CFR 1.632

Legal Deadline: None

Abstract: This interim final rule will amend the Department of Veterans Affairs (VA) regulations to reflect changes made by the Veterans Education and Benefits Expansion Act of 2001 and the Veterans Improvement Act of 2002. We propose to amend through regulation the changes to burial benefits that will allow VA to furnish an appropriate Government headstone or marker for the graves of eligible veterans buried in private cemeteries, regardless of whether the grave has been previously marked with a privately purchased marker. The provision applies to eligible veterans who have died on or after September 11, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/25/03	68 FR 55317
Interim Final Rule Effective	09/25/03	
Interim Final Rule Comment Period End	11/24/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Karen Barber,
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Phone: 202 273—5183
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Email: karen.barber@mail.va.gov

RIN: 2900–AL40

3106. VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 17; 38 CFR 61

Completed:

Reason	Date	FR Cite
Interim Final Rule Comment Period End	05/19/03	68 FR 13590
Correction	06/09/03	68 FR 34332
Final Action	09/26/03	68 FR 55467

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roger J. Casey
Phone: 202 273—8442

RIN: 2900–AL30

3107. COPAYMENTS FOR INPATIENT HOSPITAL CARE UNDER GEOGRAPHIC MEANS TEST

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 17.108

Completed:

Reason	Date	FR Cite
Final Action	10/24/03	68 FR 60853
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Howard
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Email: nancy.howard@hq.med.va.gov

RIN: 2900–AL35

3108. EXCLUSIONS FROM INCOME AND NET WORTH COMPUTATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 3.261; 38 CFR 3.262; 38 CFR 3.272

Completed:

Reason	Date	FR Cite
Final Action	10/24/03	68 FR 60851
Final Action Effective	10/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth McCoy
Phone: 716 551—4842

RIN: 2900–AJ52

3109. SCHEDULE FOR RATING DISABILITY—THE SPINE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 4.71a

Completed:

Reason	Date	FR Cite
Final Action	08/27/03	68 FR 51454
Final Action Effective	09/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson
Phone: 202 273—7211

RIN: 2900–AJ60

3110. VETERANS EDUCATION: ADDITIONAL OPPORTUNITY TO PARTICIPATE IN THE MONTGOMERY GI BILL AND OTHER MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.4138; 38 CFR 21.7020; 38 CFR 21.7042; 38 CFR 21.7136; 38 CFR 21.7540

Completed:

Reason	Date	FR Cite
Final Action	06/09/03	68 FR 34326
Final Action Effective	06/09/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling
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RIN: 2900–AK81

3111. SCHEDULE FOR RATING DISABILITIES; EVALUATION OF TINNITUS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 4.87 (Diagnostic Code 6260)

Completed:

Reason	Date	FR Cite
Final Action	05/14/03	68 FR 25822
Final Action Effective	06/13/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Audrey Tomlinson
Phone: 202 273—7211

RIN: 2900–AK86

3112. INCREASE IN RATES PAYABLE UNDER THE MONTGOMERY GI BILL—ACTIVE DUTY AND SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.3045; 38 CFR 21.3131; 38 CFR 21.3300; 38 CFR 21.3333; 38 CFR 21.7136 to 21.7137

Completed:

Reason	Date	FR Cite
Final Action	06/09/03	68 FR 34319
Final Action Effective	06/09/03	
Correction	06/23/03	68 FR 37206

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynn M. Nelson
Phone: 202 273—7294
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RIN: 2900–AL17

3113. ACCELERATED PAYMENTS UNDER THE MONTGOMERY GI BILL—ACTIVE DUTY PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.4000; 38 CFR 21.7020; 38 CFR 21.7076; 38 CFR 21.7140; 38 CFR 21.7142

Completed:

Reason	Date	FR Cite
Final Action	06/12/03	68 FR 35177
Final Action Effective	06/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynn M. Nelson
Phone: 202 273—7294
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Email: edulcose@vba.va.gov

RIN: 2900–AL22

3114. COMPENSATION AND PENSION PROVISIONS OF THE VETERANS EDUCATION AND BENEFITS EXPANSION ACT OF 2001

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 3.3; 38 CFR 3.307; 38 CFR 3.317; 38 CFR 3.353; 38 CFR 3.665; 38 CFR 3.666; ...

Completed:

Reason	Date	FR Cite
Final Action	06/10/03	68 FR 34539
Final Action Effective	06/10/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt
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RIN: 2900–AL29

3115. INDEPENDENT STUDY APPROVED FOR CERTIFICATE PROGRAMS AND OTHER MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.7540; 38 CFR 21.7550; 38 CFR 21.7576; 38 CFR 21.7620

Completed:

Reason	Date	FR Cite
Final Action	10/17/03	68 FR 59729
Final Action Effective	10/17/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynn M. Nelson
Phone: 202 273—7294
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RIN: 2900–AL34

3116. PRESUMPTION OF SERVICE CONNECTION FOR CIRRHOSIS OF THE LIVER IN FORMER PRISONERS OF WAR

Priority: Other Significant

CFR Citation: 38 CFR 3.309(c)

Completed:

Reason	Date	FR Cite
Final Action	07/18/03	68 FR 42602
Final Action Effective	07/18/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth McCoy
Phone: 716 551—4842

RIN: 2900–AL36

3117. EFFECTIVE DATES OF BENEFITS FOR DISABILITY OR DEATH CAUSED BY HERBICIDE EXPOSURE; DISPOSITION OF UNPAID BENEFITS AFTER DEATH OF BENEFICIARY

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 3.816

Completed:

Reason	Date	FR Cite
Final Action	08/25/03	68 FR 50966
Final Action Effective	09/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Joseph Barrans
Phone: 202 273—6332

RIN: 2900–AL37

3118. INCREASE IN RATES PAYABLE UNDER THE MONTGOMERY GI BILL—SELECTIVE RESERVE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.7636

Completed:

Reason	Date	FR Cite
Final Action	07/21/03	68 FR 42977
Final Action Effective	07/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynn M. Nelson
Phone: 202 273—7294
Fax: 202 275—2636
Email: edulcose@vba.va.gov

RIN: 2900–AL41

3119. HEADSTONE AND MARKER INSCRIPTION

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 1.630

Completed:

Reason	Date	FR Cite
Withdrawn	05/19/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Barber
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Email: karen.barber@mail.va.gov

RIN: 2900–AL50

3120. VETERANS EDUCATION: INCREASED ALLOWANCES FOR THE EDUCATIONAL ASSISTANCE TEST PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.5820; 38 CFR 21.5822

Completed:

Reason	Date	FR Cite
Final Action	11/20/03	68 FR 65399
Final Action Effective	11/20/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynn M. Nelson
Phone: 202 273—7294
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RIN: 2900–AL52

3121. DISEASE ASSOCIATED WITH EXPOSURE TO CERTAIN HERBICIDE AGENTS: CHRONIC LYMPHOCYTIC LEUKEMIA

Priority: Other Significant

CFR Citation: 38 CFR 3.309(e)

Completed:

Reason	Date	FR Cite
Final Action	10/16/03	68 FR 59540
Final Action Effective	10/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Joseph Barrans
Phone: 202 273—6332

RIN: 2900–AL55

3122. COMPENSATION AND PENSION PROVISIONS OF THE VETERANS BENEFITS ACT OF 2002

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 3.27; 38 CFR 3.350(a); 38 CFR 3.802

Completed:

Reason	Date	FR Cite
Final Action	09/26/03	68 FR 55466

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cheryl Konieczny
Phone: 202 273—6779

RIN: 2900–AL62

3123. SEALED BIDDING AND COMPETITIVE PROPOSALS

Priority: Info./Admin./Other

CFR Citation: 48 CFR 806

Completed:

Reason	Date	FR Cite
Withdrawn	09/12/03	68 FR 53705

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher
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RIN: 2900–AI99

3124. BOARD OF VETERANS' APPEALS: SPEEDING APPELLATE REVIEW FOR AGING VETERANS

Priority: Other Significant

CFR Citation: 38 CFR 20.900(c)

Completed:

Reason	Date	FR Cite
Final Action	09/12/03	68 FR 53682

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565—5978

RIN: 2900–AL08

3125. BOARD OF VETERANS' APPEALS RULES OF PRACTICE: USE OF SUPPLEMENTAL STATEMENT OF THE CASE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 20.302(c); 38 CFR 20.501(c)

Completed:

Reason	Date	FR Cite
Final Action	11/17/03	68 FR 64805
Final Action Effective	11/17/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565—5978

RIN: 2900–AL42

3126. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN; HANDICAP; AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 18

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51334
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tyrone Eddins
Phone: 202 501—2801
Fax: 202 501—2885

RIN: 2900–AK13

3127. RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS RECORDS

Priority: Other Significant

CFR Citation: 38 CFR 1.500 to 1.584

Completed:

Reason	Date	FR Cite
Withdrawn	09/18/03	68 FR 54704

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lorraine M. Johnson
Phone: 202 273—6381

RIN: 2900–AH98

3128. DELEGATIONS OF AUTHORITY; OFFICE OF REGULATORY POLICY AND MANAGEMENT (ORPM)

Priority: Info./Admin./Other

CFR Citation: 38 CFR 2.6; 38 CFR 2.7

Completed:

Reason	Date	FR Cite
Final Action	05/13/03	68 FR 25503
Final Action Effective	05/13/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert C. McFetridge
Phone: 202 273—9215

RIN: 2900–AL61

3129. PRIVACY ACT OF 1974—EXEMPTION OF POLICE AND SECURITY RECORDS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 1.582

Completed:

Reason	Date	FR Cite
Final Action	06/13/03	68 FR 35297
Final Action Effective	08/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tanya Al—Khateeb
Phone: 202 273—5511

RIN: 2900–AL33

[FR Doc. 03–27065 Filed 12–19–03; 8:45 am]

BILLING CODE 8320–01–S

Federal Register

Monday,
December 22, 2003

Part XVIII

Advisory Council on Historic Preservation

Semiannual Regulatory Agenda

ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Ch. VIII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Advisory Council on Historic Preservation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following Advisory Council on Historic Preservation regulations are scheduled for development. They are submitted herein for publication in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

FOR FURTHER INFORMATION CONTACT: The Advisory Council contact person for Unified Agenda matters is Javier E. Marques, Associate General Counsel, (202) 606-8503, 1100 Pennsylvania Avenue NW., Suite 809, Washington, DC 20004.

Dated: October 1, 2003.

Advisory Council on Historic Preservation.

Don Klima,

Acting Executive Director.

Advisory Council on Historic Preservation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3130	Protection of Historic Properties	3010—AA06

Advisory Council on Historic Preservation (ACHP) Final Rule Stage

3130. PROTECTION OF HISTORIC PROPERTIES

Priority: Other Significant

Legal Authority: 16 USC 470s

CFR Citation: 36 CFR 800

Legal Deadline: None

Abstract: The Advisory Council on Historic Preservation envisions undergoing rulemaking to amend its regulations that implement section 106 of the National Historic Preservation Act. These few amendments would make the regulations comport with the court decision of National Mining Association v. Nau, and would allow the Advisory Council to pursue section 106 exemptions on its own initiative.

Timetable:

Action	Date	FR Cite
NPRM	09/25/03	68 FR 55354
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

URL For More Information: www.achp.gov/news-regsamends.html

Agency Contact: Javier E. Marques, Associate General Counsel, Advisory Council on Historic Preservation, Room 809, 1100 Pennsylvania Avenue NW., Washington, DC 20004
Phone: 202 606—8503
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Email: jmarques@achp.gov

RIN: 3010–AA06

[FR Doc. 03–27066 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–10–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XIX

Agency for International Development

Semiannual Regulatory Agenda

AGENCY FOR INTERNATIONAL DEVELOPMENT (AID)

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Ch. II

Federal Regulations; USAID Regulatory Agenda Semiannual Summary

AGENCY: U.S. Agency for International Development.

ACTION: Semiannual regulatory agenda.

SUMMARY: The U.S. Agency for International Development (USAID) is publishing this agenda as required by Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), and the Regulatory Flexibility Act. This agenda reports the status of those regulations currently under review and gives USAID's plan for the issuance of proposed regulations during the next 12 months. It is expected that the information provided in this agenda will enable the public to be more aware of and to participate more effectively in USAID's regulatory process.

FOR FURTHER INFORMATION CONTACT:

General: For further information on the agenda or the review list in general, contact: Joanne M. Paskar, Chief, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Washington, DC 20523; Telephone (202) 712-1217, email: jpaskar@usaid.gov.

Specific: For further information about any particular item on the agenda, contact the individual listed as the contact for that item.

SUPPLEMENTARY INFORMATION: Executive Order 12866 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. The Regulatory Flexibility Act applies only to regulations for which a notice of proposed rulemaking was issued on or after September 19, 1980. USAID is required to publish an agenda listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities." The Executive order became effective on September 30, 1993, and it is required that USAID publish a listing of all the regulations it expects to have under active consideration for proposal or review during the coming one-year period.

Dated: September 24, 2003.

Roberto J. Miranda,

Director of Administrative Services.

Agency for International Development—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3131	USAID Acquisition Regulation (AIDAR) Deletion of Appendix D and Appendix J	0412—AA43
3132	USAID Acquisition Regulation (AIDAR) Creation of Appendix A	0412—AA49
3133	Rules and Procedures Applicable to Commodity Transactions Financed by USAID; Miscellaneous Administrative Revisions	0412—AA51

Agency for International Development—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3134	Administration of Grants and Cooperative Agreements	0412—AA21
3135	Miscellaneous Amendments to the AIDAR (AIDAR Notice 98—2)	0412—AA30

Agency for International Development—Completed Actions

Sequence Number	Title	Regulation Identification Number
3136	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	0412—AA45
3137	Governmentwide Debarment and Suspension; Requirements for Drug—Free Workplace (Financial Assistance)	0412—AA47
3138	Adding Vietnam, Cambodia, Afghanistan, and China to the List of Countries Eligible for USAID Financing	0412—AA48

Agency for International Development (AID) Proposed Rule Stage

3131. USAID ACQUISITION REGULATION (AIDAR) DELETION OF APPENDIX D AND APPENDIX J

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 48 CFR ch 7, app D; 48 CFR ch 7, app J

Legal Deadline: None

Abstract: Deletion of appendices D and J of the AIDAR, regarding personal service contracts with U.S. citizens and cooperating country and third country nationals. Policy statements in the appendices will be consolidated into internal policy manuals, and information of a regulatory nature will be incorporated into a new appendix A.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	
Final Action	03/00/04	
Final Action Effective	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom M. Henson, Senior Procurement Analyst, Office of Procurement, Agency for International Development, Room 7.08—106, Policy Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712—5448
Fax: 202 216—3136
Email: thenson@usaid.gov

RIN: 0412–AA43

3132. USAID ACQUISITION REGULATION (AIDAR) CREATION OF APPENDIX A

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 48 CFR ch 7, app A

Legal Deadline: None

Abstract: Appendix A will replace, in substance, the existing appendix D and J scheduled to be deleted commensurate to this action.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	
Final Action	03/00/04	
Final Action Effective	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom M. Henson, Senior Procurement Analyst, Office of Procurement, Agency for International Development, Room 7.08—106, Policy Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712—5448
Fax: 202 216—3136
Email: thenson@usaid.gov

RIN: 0412–AA49

3133. RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY USAID; MISCELLANEOUS ADMINISTRATIVE REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 201

Legal Deadline: None

Abstract: Various administrative changes and corrections; adding conditions when costs to the free port/bonded warehouses are eligible for financing, and making changes to the two forms found in appendices A and B.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Frances M. Maki, Senior Procurement Analyst, Agency for International Development, Room 7.08—094, M/OP/P, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712—4978
Email: fmaki@usaid.gov

RIN: 0412–AA51

Agency for International Development (AID) Final Rule Stage

3134. ADMINISTRATION OF GRANTS AND COOPERATIVE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 226

Legal Deadline: None

Abstract: This regulation will implement the Governmentwide uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations issued by the Office of Management and Budget.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/19/95	60 FR 3743
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Allen Eisenberg, Senior Procurement Analyst, Agency for International Development, Room 7.08—096, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712—1467
Email: aeisenberg@usaid.gov

RIN: 0412–AA21

3135. MISCELLANEOUS AMENDMENTS TO THE AIDAR (AIDAR NOTICE 98—2)

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 48 CFR 712; 48 CFR 727; 48 CFR 742; 48 CFR 752; 48 CFR ch 7, app I

Legal Deadline: None

Abstract: The USAID Acquisition Regulation will be amended to clarify USAID policy on the use of Government facilities and personnel in commercial products, establish an agency policy regarding contract clauses to clarify withholding requirements under IQC contracts, revise reporting requirements, and coordinate the agency's academic publication policy with the FAR's Rights in Data coverage by removing it from appendix I into a new part 727. This new AIDAR part will also provide for contractual coverage of Rights in Data in USAID's contracts performed overseas and awarded to U.S. organizations, provide guidance on Rights in Data coverage for overseas contracts with non—U.S. entities, and provide an alternate paragraph to add to the applicable FAR clause to reserve USAID's right to restrict release of data when release may negatively impact the Government's development or diplomatic relationship with the cooperating countries.

Timetable:

Action	Date	FR Cite
NPRM	11/04/98	63 FR 59501
NPRM Comment Period End	01/04/99	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane M. Howard, Senior Procurement Analyst, Agency for International Development, Room 7.08—082U, M/OP/P, 1300 Pennsylvania Avenue NW.,
Washington, DC 20523—7801
Phone: 202 712—0206
Fax: 202 216—3395
Email: dhoward@usaid.gov

RIN: 0412–AA30

Agency for International Development (AID) — Completed Actions

3136. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d—7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 22 CFR 209.1 to 209.13; 22 CFR 217.1 to 217.47; 22 CFR 218.01 to 218.39

Legal Deadline: None

Abstract: The Agency for International Development proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint Notice of Proposed Rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	08/26/03	68 FR 51335
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Jessalyn L. Pendarvis, Director, Office of Equal Opportunity Programs, Agency for International Development, Room 2.09—77, 1300 Pennsylvania Avenue NW.,
Washington, DC 20523—2901
Phone: 202 712—1110
Fax: 202 216—3370
Email: jpendarvis@usaid.gov

RIN: 0412–AA45

3137. GOVERNMENTWIDE DEBARMENT AND SUSPENSION; REQUIREMENTS FOR DRUG—FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 208; 22 CFR 210

Legal Deadline: None

Abstract: These regulations cover suspension and debarment under nonprocurement programs and drug—free workplace rules. Regulations are being rewritten in plain language and to eliminate certification requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Allen Eisenberg, Senior Procurement Analyst, Agency for International Development, Room 7.08—096, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712—1467
Email: aeisenberg@usaid.gov

RIN: 0412–AA47

3138. ADDING VIETNAM, CAMBODIA, AFGHANISTAN, AND CHINA TO THE LIST OF COUNTRIES ELIGIBLE FOR USAID FINANCING

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 228

Legal Deadline: None

Abstract: Vietnam, Cambodia, Afghanistan, and China will be removed from the restricted countries list for source/origin/nationality purposes.

Timetable:

Action	Date	FR Cite
Final Action	05/06/03	68 FR 23891
Final Action Effective	05/06/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frances M. Maki, Senior Procurement Analyst, Agency for International Development, Room 7.08—094, M/OP/P, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712—4978
Email: fmaki@usaid.gov

RIN: 0412–AA48

[FR Doc. 03–25125 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Monday,
December 22, 2003

Part XX

Architectural and Transportation Barriers Compliance Board

Semiannual Regulatory Agenda

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Ch. XI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Architectural and Transportation Barriers Compliance Board submits the following agenda of proposed regulatory activities, which may be conducted by the agency during the next 12 months. This regulatory agenda may be revised by the agency during the coming months as a result of action taken by the Board.

ADDRESSES: Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004-1111.

FOR FURTHER INFORMATION CONTACT: For information concerning Board regulations and proposed actions, contact James J. Raggio, General Counsel, (202) 272-0040 (voice) or (202) 272-0034 (TDD).

James J. Raggio,

General Counsel, Architectural and Transportation Barriers Compliance Board.

Architectural and Transportation Barriers Compliance Board—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3139	Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities	3014—AA20

Architectural and Transportation Barriers Compliance Board—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3140	Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles: Passenger Vessels	3014—AA11
3141	Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Outdoor Developed Areas	3014—AA22
3142	Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Public Rights—of—Way	3014—AA26

Architectural and Transportation Barriers Compliance Board (ATBCB)

Final Rule Stage

3139. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 12204, Americans With Disabilities Act of 1990; 29 USC 792, Rehabilitation Act

CFR Citation: 36 CFR 1191; 36 CFR 1190

Legal Deadline: None

Abstract: This regulation will revise and update the accessibility guidelines for the Americans With Disabilities Act (ADA) and the Architectural Barriers Act.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Advisory Committee	04/06/94	59 FR 16175
Establishment of Advisory Committee	09/14/94	59 FR 47165
NPRM	11/16/99	64 FR 62248
Notice Extending Comment Period	03/09/00	65 FR 12493
NPRM Comment Period End	03/15/00	
Extension Period End	05/15/00	
Availability of Draft Final Guidelines	04/02/02	67 FR 15509
Second NPRM	09/03/02	67 FR 56441
Second NPRM Comment Period End	10/03/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004—1111
Phone: 202 272—0040
TDD Phone: 202 272—0034
Fax: 202 272—0081
Email: raggio@access—board.gov

RIN: 3014–AA20

Architectural and Transportation Barriers Compliance Board (ATBCB)

Long-Term Actions

3140. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR TRANSPORTATION VEHICLES: PASSENGER VESSELS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans With Disabilities Act of 1990

CFR Citation: 36 CFR 1192

Legal Deadline: None

Abstract: This regulation will amend the Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles to include additional requirements for ferries, excursion boats, and other passenger vessels.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Advisory Committee	03/30/98	63 FR 15175
Establishment of Advisory Committee	08/12/98	63 FR 43136
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004—1111
Phone: 202 272—0040
TDD Phone: 202 272—0034
Fax: 202 272—0081
Email: raggio@access—board.gov

RIN: 3014–AA11

3141. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES: OUTDOOR DEVELOPED AREAS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans With Disabilities Act of 1990

CFR Citation: 36 CFR 1191

Legal Deadline: None

Abstract: This regulation will amend the Americans With Disabilities Act (ADA) Accessibility Guidelines to include requirements for outdoor developed areas.

Timetable:

Action	Date	FR Cite
Notice of Intent to Conduct Regulatory Negotiation	04/18/97	62 FR 19084
Establishment of Regulatory Negotiation Committee	06/04/97	62 FR 30546
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004—1111
Phone: 202 272—0040
TDD Phone: 202 272—0034
Fax: 202 272—0081
Email: raggio@access—board.gov

RIN: 3014–AA22

3142. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES: PUBLIC RIGHTS—OF—WAY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans With Disabilities Act; 29 USC 792, Rehabilitation Act

CFR Citation: 36 CFR 1190; 36 CFR 1191

Legal Deadline: None

Abstract: This regulation will amend the accessibility guidelines for the Americans With Disabilities Act (ADA) and the Architectural Barriers Act to include requirements for public rights—of—way.

Timetable:

Action	Date	FR Cite
Notice of Intent to Form Advisory Committee	08/12/99	64 FR 43980
Notice of Appointment of Advisory Committee Members	10/20/99	64 FR 56482
Availability of Draft Guidelines	06/17/02	67 FR 41206
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004—1111
Phone: 202 272—0040
TDD Phone: 202 272—0034
Fax: 202 272—0081
Email: raggio@access—board.gov

RIN: 3014–AA26

[FR Doc. 03–24033 Filed 12–19–03; 8:45 am]

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Monday,
December 22, 2003

Part XXI

Commission on Civil Rights

Semiannual Regulatory Agenda

COMMISSION ON CIVIL RIGHTS (CCR)

COMMISSION ON CIVIL RIGHTS

45 CFR Ch. VII

Semiannual Agenda of Regulations

AGENCY: Commission on Civil Rights.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations the U.S. Commission on Civil Rights will have under development during the six-month period following publication of the agenda. The purpose for publishing this agenda is to give notice of any regulatory activity by the Commission in order to allow the public an opportunity to participate in the rulemaking process. Therefore, this agenda announces the revisions that will update Commission regulations, specifically 45 CFR 701, 702, 703, and 706.

FOR FURTHER INFORMATION CONTACT: For further information on any items in the agenda, contact Debra A. Carr, Deputy General Counsel, U.S. Commission on Civil Rights, Room 620, 624 Ninth Street NW., Washington, DC 20425, (202) 376-8351.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866, "Regulatory Planning and Review," and the Regulatory Flexibility Act (5 U.S.C. 605), executive agencies are required to publish a semiannual regulatory agenda in the **Federal Register**.

The regulations being considered by the Commission are not "significant" rules within the meaning of Executive Order 12866, and no regulatory impact analysis is required. The Commission has determined that the regulations under consideration will not impose compliance costs or reporting burdens on the public, nor will the regulations have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory analysis is required.

Debra A. Carr,

Deputy General Counsel.

Commission on Civil Rights—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3143	Commission on Civil Rights—Update and Revision	3035—AA02

Commission on Civil Rights (CCR) — Long-Term Actions

3143. COMMISSION ON CIVIL RIGHTS—UPDATE AND REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1975 to 1975f; 5 USC 552(a); 5 USC 552(b)

CFR Citation: 45 CFR 701; 45 CFR 702; 45 CFR 703

Legal Deadline: None

Abstract: The regulation updates and revises most of the Commission's current regulations, specifically 45 CFR 701, 702, 703, and 706. 45 CFR 701 identifies the organization and functions of the Commission. 45 CFR 702 specifies the rules on hearings, reports, and meetings of the Commission. 45 CFR 703 identifies the operation and functions of State Advisory Committees. 45 CFR 706 identifies the ethical, and other conduct and responsibilities of employees.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Debra A. Carr, Deputy General Counsel, Commission on Civil Rights, Room 620, Suite 620, 624 9th Street NW., Washington, DC 20425—0001
Phone: 202 376—7627
Fax: 202 376—1163
Email: dcarr@usccr.gov

RIN: 3035–AA02

[FR Doc. 03–27746 Filed 12–19–03; 8:45 am]

BILLING CODE 6335–01–S

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Monday,
December 22, 2003

Part XXII

Corporation for National and Community Service

Semiannual Regulatory Agenda

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (CNCS)

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chs. XII, XXV

Executive Order 12866 "Regulatory Planning and Review"

AGENCY: Corporation for National and Community Service.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations that the Corporation will have under development, revision, or review during the next year. The purpose for publishing this agenda is to give notice of any regulatory activity by the Agency in order to provide the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: The public is encouraged to contact the agency official listed for the particular agenda item. For other information concerning Corporation regulations or this semiannual agenda, contact Frank R. Trinity, General Counsel, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525, (202) 606-5000, ext. 290.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 "Regulatory Planning and Review" and the Regulatory Flexibility Act (5 U.S.C. 601), executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas in April and October of each year.

The Corporation for National and Community Service will, in consultation with the Office of Management and Budget, determine whether regulations under consideration will impose compliance costs or reporting burdens on the public or whether the regulations will have a significant economic impact on a substantial number of small entities.

Dated: September 12, 2003.

Frank R. Trinity,

General Counsel.

Corporation for National and Community Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3144	Implementation of the Privacy Act of 1974; Amendment	3045—AA25

Corporation for National and Community Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3145	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)	3045—AA28

Corporation for National and Community Service—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3146	AmeriCorps and Learn & Serve Grant Regulations	3045—AA23
3147	Discrimination Complaint Procedures for Participants and Other Beneficiaries	3045—AA24
3148	Corporation for National and Community Service Regulations	3045—AA34
3149	Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by ACTION	3045—AA35
3150	AmeriCorps*VISTA Program Regulations	3045—AA36
3151	National Senior Service Corps Regulations	3045—AA39

Corporation for National and Community Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
3152	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3045—AA27

Corporation for National and Community Service (CNCS) Proposed Rule Stage

3144. IMPLEMENTATION OF THE PRIVACY ACT OF 1974; AMENDMENT

Priority: Info./Admin./Other

Legal Authority: 5 USC 552a; 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 2508

Legal Deadline: None

Abstract: This action makes several minor changes to the Privacy Act regulation of the Corporation for National and Community Service at 45 CFR 2508. These amendments are in accordance with the Privacy Act found at 5 U.S.C. 552a.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William L. Hudson, Law Office Manager, Corporation for National and Community Service, Room 8200, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606—5000
TDD Phone: 202 565—2799
Fax: 202 565—2796
Email: whudson@cns.gov

RIN: 3045–AA25

Corporation for National and Community Service (CNCS) Final Rule Stage

3145. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 12651(c); sec 2455, PL 103—355, 108 Stat 3327 (31 USC 6101 note); EO 12549 (3 CFR, 1986 Comp, p 189); EO 12684 (3 CFR, 1989 Comp, p 2351), sec 2455; 41 USC 701 et seq; 42 USC 12644

CFR Citation: 45 CFR 2542; 45 CFR 2545

Legal Deadline: None

Abstract: These amendments, when finalized, will amend the Corporation's current regulations on nonprocurement debarment and suspension and will add a new part for the amended regulations on drug—free workplace.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzanne K. Dupre, Associate General Counsel, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606—5000
Fax: 202 565—2796
Email: sdupre@cns.gov

RIN: 3045–AA28

Corporation for National and Community Service (CNCS) Long-Term Actions

3146. AMERICORPS AND LEARN & SERVE GRANT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2510; 45 CFR 2513; 45 CFR 2515 to 2540; 45 CFR 2550

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

Agency Contact: Frank R. Trinity
Phone: 202 606—5000
Fax: 202 565—2796
Email: ftrinity@cns.gov

RIN: 3045–AA23

3147. DISCRIMINATION COMPLAINT PROCEDURES FOR PARTICIPANTS AND OTHER BENEFICIARIES

Priority: Other Significant

CFR Citation: 45 CFR 2504

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Nancy B. Voss
Phone: 202 606—5000
Fax: 202 565—2796
Email: nvoss@cns.gov

RIN: 3045–AA24

3148. CORPORATION FOR NATIONAL AND COMMUNITY SERVICE REGULATIONS

Priority: Info./Admin./Other

CFR Citation: 45 CFR 1201

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Britanya E. Rapp
Phone: 202 606—5000
TDD Phone: 202 565—2799
Fax: 202 565—2796
Email: brapp@cns.gov

RIN: 3045–AA34

3149. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ACTION

Priority: Info./Admin./Other

CFR Citation: 45 CFR 1214

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William L. Hudson
Phone: 202 606—5000
TDD Phone: 202 565—2799
Fax: 202 565—2796
Email: whudson@cns.gov

RIN: 3045–AA35

3150. AMERICORPS*VISTA PROGRAM REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1206; 45 CFR 1210 to 1211; 45 CFR 1216 to 1232; 45 CFR 1234 to 1235

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Rosezina Dunn
Phone: 202 606—5000
TDD Phone: 202 565—2799
Fax: 202 565—2789
Email: rdunn@cns.gov

RIN: 3045–AA36

3151. NATIONAL SENIOR SERVICE CORPS REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2551; 45 CFR 2552; 45 CFR 2553; 45 CFR 1235

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

Agency Contact: Peter Boynton
Phone: 202 606—5000
TDD Phone: 202 565—2799
Fax: 202 565—2743
Email: pboynton@cns.gov

RIN: 3045–AA39

Corporation for National and Community Service (CNCS) Completed Actions

3152. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1203; 45 CFR 1232

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51334
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nancy B. Voss
Phone: 202 606—5000
Fax: 202 565—2796
Email: nvoss@cns.gov

RIN: 3045–AA27

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Federal Register

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Federal Register

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December 22, 2003

Part XXIII

Court Services and Offender Supervision Agency for the District of Columbia

Semiannual Regulatory Agenda

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA (CSOSA)

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Ch. VIII

Semiannual Regulatory Agenda

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) is publishing its semiannual regulatory agenda pursuant to Executive Order 12866 (58 FR 51735) and the Regulatory Flexibility Act (5 U.S.C. chapter 6). The regulatory agenda lists all agency regulations that are scheduled for development during the next 12 months or that have been issued since the publication of the previous regulatory agenda.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager, Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004 (telephone: (202) 220-5359; e-mail: roy.nanovic@csosa.gov).

SUPPLEMENTARY INFORMATION: No new regulations have been identified for inclusion in this submission to the regulatory agenda.

George E. Pruden II,
General Counsel.

Court Services and Offender Supervision Agency for the District of Columbia—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3153	Agency Seal	3225—AA05
3154	Acceptance of Gifts	3225—AA06

Court Services and Offender Supervision Agency for the District of Columbia—Completed Actions

Sequence Number	Title	Regulation Identification Number
3155	Disclosure of Records	3225—AA01

Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) Final Rule Stage

3153. AGENCY SEAL

Priority: Substantive, Nonsignificant

Legal Authority: PL 105—33; 18 USC 506; 18 USC 1017

CFR Citation: 28 CFR 803 (New)

Legal Deadline: None

Abstract: CSOSA proposes to adopt regulations on the use of its official seal and the official seal for the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA. Use by any person or organization outside of the Agency may be made only with CSOSA's or PSA's prior written approval. Wrongful use of an official seal is subject to administrative action and/or criminal penalty.

Timetable:

Action	Date	FR Cite
NPRM	04/22/03	68 FR 19770
NPRM Comment Period End	06/23/03	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220—5359
Email: roy.nanovic@csosa.gov

RIN: 3225–AA05

3154. ACCEPTANCE OF GIFTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—96

CFR Citation: 28 CFR 804 (New)

Legal Deadline: None

Abstract: CSOSA proposes to adopt regulations on the acceptance and use of gifts by itself and by the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA. CSOSA and PSA have been granted specific authority by Congress to accept and use gifts in the form of in—kind contributions of space and hospitality for the purpose of supporting offender and defendant programs and equipment and vocational training services to educate and train offenders and defendants. These regulations establish procedures for the public to follow when offering a gift, criteria for accepting and using gifts, and procedures for audit and public inspection of records pertaining to the acceptance and use of gifts.

Timetable:

Action	Date	FR Cite
NPRM	04/22/03	68 FR 19771
NPRM Comment Period End	06/23/03	
Final Action	12/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220—5359
Email: roy.nanovic@csosa.gov

RIN: 3225–AA06

Court Services and Offender Supervision Agency for the District of Columbia (CSOSA)

Completed Actions

3155. DISCLOSURE OF RECORDS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a

CFR Citation: 28 CFR 802 (New)

Legal Deadline: None

Abstract: CSOSA issued regulations on the disclosure of CSOSA or the District of Columbia Pretrial Services Agency (PSA) records. These regulations include procedures for processing requests for disclosure under the Freedom of Information Act, under the Privacy Act, and for production of records in response to a demand from a court or other noncongressional authority in connection with a proceeding to which CSOSA or PSA is not a party. The regulations also identify Privacy Act system of records exemptions for both CSOSA and PSA. These regulations are necessary in order to ensure that the public has appropriate access to information maintained by the CSOSA and PSA and that adequate safeguards are in place to protect the privacy rights of individuals.

Timetable:

Action	Date	FR Cite
NPRM	03/15/02	67 FR 11804
NPRM Comment Period End	05/14/02	
Final Action	06/03/03	68 FR 32985
Final Action Effective	07/03/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220—5359
Email: roy.nanovic@csosa.gov

RIN: 3225–AA01

[FR Doc. 03–25121 Filed 12–19–03; 8:45 am]

BILLING CODE 3129–01–S

Federal Register

Monday,
December 22, 2003

Part XXIV

Environmental Protection Agency

Semiannual Regulatory Agenda

ENVIRONMENTAL PROTECTION AGENCY (EPA)

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Ch. I

FRL-7571-3

Fall 2003 Regulatory Agenda

AGENCY: Environmental Protection Agency.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The Environmental Protection Agency (EPA) publishes the Semiannual Regulatory Agenda to update the public about:

- Regulations and major policies currently under development,
- Reviews of existing regulations and major policies, and
- Regulations and major policies completed or canceled since the last Agenda.

TO BE PLACED ON THE AGENDA MAILING LIST: If you would like to subscribe, please send an e-mail with your name and address to: ncepimal@one.net, or call 800-490-9198. There is no charge for single copies of the Agenda.

FOR FURTHER INFORMATION: If you have questions or comments about a particular action, please get in touch with the agency contact listed in each Agenda entry. If you have general questions about the Agenda or questions about EPA's decision making process, please contact: Phil Schwartz (1806A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; phone: (202-564-6564; e-mail: schwartz.philip@epa.gov. We welcome your suggestions on how we can make the Agenda more useful to you and easier to use.

SUPPLEMENTARY INFORMATION

Table of Contents

A. What Are Our Goals in Developing Regulations and Policies and What Key Principles, Statutes, and Executive Orders Drive the Rulemaking and Policymaking Process?

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I. Acknowledgment of Those Involved in the Rulemaking Process

A. What Are Our Goals in Developing Regulations and Policies and What Key Principles, Statutes, and Executive Orders Drive the Rulemaking and Policymaking Process?

Our primary objective is to protect human health and the environment. To achieve this objective and ensure that our decisions are cost-effective and fully protective, we conduct high quality scientific, economic, and policy analyses. We plan and initiate these analyses at early stages in the regulatory development process, so that Agency decision makers are well informed of the qualitative and quantitative benefits and costs as they select among alternative approaches. We also believe that it is important that we continue to apply new and improved methods to protect the environment, such as: building flexibility into regulations from the very beginning, creating strong partnerships with the regulated community, vigorously engaging in public outreach and involvement, and using effective nonregulatory approaches. Research, testing and adoption of new environmental protection methods is also a central tenet in environmental problem solving. The integration of all these elements via a well managed regulatory development process and a strong commitment to innovative solutions will ensure that we all benefit from significant environmental improvements that are fair, efficient, and protective. Overall our success is measured by our effectiveness in protecting human health and the environment.

For a more extensive discussion of our regulatory objectives and priorities please see our Statement of Priorities in part 2 of today's issue of the **Federal Register**.

Besides the fundamental environmental laws authorizing EPA actions such as the Clean Air Act and Clean Water Act, there are legal requirements that apply to our proposing and then issuing final regulations that are generally contained in the Administrative Procedure Act, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, and the Congressional Review Act.

We also must meet a number of requirements contained in Executive Orders. Of particular significance for EPA rulemakings are Executive Orders 12866 (Regulatory Planning and Review; 58 FR 51735; October 4, 1993), 12898 (Environmental Justice; 59 FR 7629; February 16, 1994), 13045 (Children's Health Protection; 62 FR 19885; April 23, 1997), 13132 (Federalism; 64 FR 43255, August 10, 1999), 13175 (Consultation and Coordination with Indian Tribal Governments; 65 FR 67249, November 9, 2000), and 13211 (Energy; 66 FR 28355, May 22, 2001).

You can find information on these laws and Executive orders through links from www.epa.gov/regAgenda.

B. How Can You Be Involved in EPA's Rulemaking and Policymaking Process?

You can make your voice heard by getting in touch with the contact person provided in each Agenda entry. We urge you to participate as early in the process as possible. You may also participate by commenting on proposed rules that we publish in the **Federal Register**. To be most effective, comments should contain information and data that support your position, and you also should explain why we should incorporate your suggestion in the rule or nonregulatory action. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternatives.

We believe our actions will be more cost-effective and protective if our development process includes stakeholders working with us to identify the most practical and effective solutions to problems, and we stress this point most strongly in all of our training programs for rule and policy developers. Democracy gives real power to individual citizens, but with that power comes responsibility. Democracy is not a spectator sport. We urge you to become involved in EPA's rulemaking and policymaking process.

C. What Actions Are Included in the Agenda?

EPA includes all of our regulations and certain major policy documents in the Agenda with the following exceptions. We generally do not include minor amendments or the following categories of actions:

- Administrative actions such as delegations of authority, changes of address or phone numbers.
- Under the Clean Air Act: Revisions to State Implementation Plans; Equivalent Methods for Ambient Air Quality Monitoring; Deletions from the New Source Performance Standards source categories list; Delegations of Authority to States; Area Designations for Air Quality Planning Purposes.
- Under the Federal Insecticide, Fungicide, and Rodenticide Act: Decision documents defining and establishing registration standards; decision documents and termination decisions for the Special Review Registration process; and data call-in requests made under section 3(c)(2)(B).
- Under the Federal Food, Drug, and Cosmetic Act: Actions regarding pesticide tolerances and food additive regulations, including the tolerance reassessment process.
- Under the Resource Conservation and Recovery Act: Authorization of State solid waste management plans; hazardous waste delisting petitions.
- Under the Clean Water Act: State Water Quality Standards; deletions from the section 307(a) list of toxic pollutants; suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES); delegations of NPDES authority to States.
- Under the Safe Drinking Water Act: Actions on State underground injection control programs.

There is no legal significance to the omission of an item from the Agenda.

D. How Is the Agenda Organized?

We have organized the Agenda:

1. First, into fourteen divisions based on the law that would authorize a particular action. These divisions are:

General, which includes cross-cutting actions, such as rules authorized by multiple statutes and general acquisition rules

- The Clean Air Act (CAA)
- The Atomic Energy Act (AEA)
- The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- The Federal Food, Drug, and Cosmetic Act (FFDCA)
- The Toxic Substances Control Act (TSCA)
- The Emergency Planning and Community Right-to-Know Act (EPCRA)
- Chemical Safety Information, Site Security and Fuels Regulatory Relief Act
- The Resource Conservation and Recovery Act (RCRA)
- The Oil Pollution Act (OPA)
- The Comprehensive Environmental Response, Compensation, and Liability Act Superfund (CERCLA)
- The Clean Water Act (CWA)
- The Safe Drinking Water Act (SDWA)
- The Shore Protection Act (SPA)

2. Second, by the current stage of development. The stages are:

Prerulemaking - Prerulemaking actions are generally intended to determine whether EPA should initiate rulemaking. Prerulemakings may include anything that influences or leads to rulemaking, such as advance notices of proposed rulemaking (ANPRMs), significant studies or analyses of the possible need for regulatory action, announcement of reviews of existing regulations required under section 610 of the Regulatory Flexibility Act, requests for public comment on the need for regulatory action, or important preregulatory policy proposals.

Proposed Rule - This section includes EPA rulemaking actions that are within a year of proposal (publication of Notices of Proposed Rulemakings(NPRMs)).

Final Rule - This section includes rules that will be issued as a finalrule within a year.

Long-Term Action - This section includes rulemakings for which the next scheduled regulatory action is after October 2004.

Completed Action - This section contains actions that have been promulgated and published in the **Federal Register** since publication of the Spring 2003 Agenda. It also includes actions that we are no longer considering. If an action appears in the completed section, it will not appear in future Agendas unless we decide to initiate action again, in which case it will appear as a new entry. EPA also announces the results of our Regulatory Flexibility Act section 610 reviews in this section of the Agenda.

3. Third, by the Regulation Identifier Number assigned when an action is added to the Agenda. (In future Agendas we will organize entries by the section number of the statute that authorizes the rule rather than by the RIN.)

E. What Information Is in Agenda Entries?

Agenda entries include the following information, where applicable:

Sequence Number: This indicates where the entry appears in the Agenda.

Title: Titles for new entries (those that have not appeared in previous Agendas) are preceded by a bullet (•). The notation "Section 610 Review" follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610).

Priority: Entries are placed into one of five categories described below. OMB reviews all significant rules including both of the first two categories, "economically significant" and "other significant."

Economically Significant: Under Executive Order 12866, a rulemaking action that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Other Significant: A rulemaking that is not economically significant but is considered significant for other reasons. This category includes rules that may:

- Create a serious inconsistency or otherwise interfere with an action takenor planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

Substantive, Nonsignificant: A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations (e.g., certain State Implementation Plans, National Priority List updates, Significant New Use Rules, State Hazardous Waste Management Program actions, and Tolerance exemptions). If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget under E.O. 12866, then we would classify the action as either "Economically Significant" or "Other Significant."

Informational/Administrative/Other: An action that is not a rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the Agency's regulatory mandate but that the Agency places in the Agenda to inform the public of the activity.

Also, if we believe that a rule may be "major" as defined in the Congressional Review Act (5 U.S.C. 801, *et seq.*) because it is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in this law, we indicate this under the "Priority" heading with the statement "Major under 5 U.S.C. 801."

Legal Authority: The sections of the United States Code (U.S.C.), Public Law (P.L.), Executive Order (E.O.), or common name of the law that authorizes the regulatory action.

CFR Citation: The sections of the Code of Federal Regulations that would be affected by the action.

Legal Deadline: An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a Notice of Proposed Rulemaking, a Final Action, or some other action.

Abstract: A brief description of the problem the action will address.

Timetable: The dates (and citations) that documents for this action were published in the **Federal Register** and, where possible, a projected date for the next step. Projected publication dates frequently change during the course of developing an action. The projections in the Agenda are our best estimates as of the date we submit the Agenda for publication. For some entries, the timetable indicates that the date of the next action is "to be determined."

Regulatory Flexibility Analysis Required: Indicates whether EPA has prepared or anticipates that it will be preparing a regulatory flexibility analysis under section 603 or 604 of the Regulatory Flexibility Act (RFA). Generally, such an analysis is required for proposed or final rules subject to the RFA that EPA believes may have a significant economic impact on a substantial number of small entities.

Small Entities Affected: Indicates whether we expect the rule to have any effect on small businesses, small governments, or small nonprofit organizations.

Government Levels Affected: Indicates whether we expect the rule to have any effect on levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Federalism Implications: Indicates whether the action is expected to have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates: Section 202 of the Unfunded Mandates Reform Act generally requires an assessment of anticipated costs and benefits if a rule includes a mandate that may result in expenditures of more than $100 million in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If we expect to exceed this $100 million threshold, we note it in this section.

Energy Impacts: Indicates whether the action is a significant energy action under Executive Order 13211.

Agency Contact: The name, address, phone number, and e-mail address, if available, of a person who is knowledgeable about the regulation.

SAN Number: A code number that EPA uses to identify and track rulemakings.

URL's: For some of our actions we include the Internet addresses for: reading copies of rulemaking documents; submitting comments on proposals; and getting more information about the rulemaking and the program of which it is a part.

RIN: The Regulation Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN stand for the EPA office with lead responsibility for developing the action.

F. How Can You Find Out More About EPA's Rulemakings

1. *Public Dockets:* When EPA announces the initiation of a rulemaking, typically through the publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking in the Federal Register, the Agency may establish an official docket to accumulate materials throughout the development process for that rulemaking. The official docket serves as the repository for the collection of documents or information related to a particular agency action or activity. EPA most commonly uses dockets for rulemaking actions, but dockets may also be used for Regulatory Flexibility Act § 610 reviews of rules with significant impacts on a substantial number of small entities and various non-rulemaking activities, such as Federal Register documents seeking public comments on draft guidance, policy statements, information collection requests under the Paperwork Reduction Act, and other non-rule activities. In 2002, EPA released its online electronic docket and comment system, EDOCKET at http://www.epa.gov/edocket.

2. *EPA Websites:* Some of the actions listed in the Agenda include a URL that provides additional information.

3. *Regulatory Agenda Databases and Search Engines*: If you have access to the Internet you can use databases and their accompanying search engines developed by the EPA and the Regulatory Information Service Center (RISC) at the General Services Administration to help you locate actions that are of interest to you. The EPA Regulatory Agenda search engine is located at www.epa.gov/regAgenda. We thoroughly update this database each spring and fall, and we partially update it several other times during the year. RISC's searchable databases are at http://ciir.cs.umass.edu/ua/.

4. *Appendices to the Agenda:* There are six appendices that provide:

- An index based on subject matter
- A list of actions that may have a significant impact on a substantial number of small businesses, small governments, or small non-profit organizations
- A list of actions that may have some impact on some small businesses, small governments, or small non-profit organizations but which may either have less than a significant

impact or affect fewer than a substantial number of them

- A list of the existing rules that we are reviewing under section 610 of the Regulatory Flexibility Act
- A list of actions that may affect State, local, or Tribal governments
- A list of actions that may have federalism implications as defined in Executive Order 13132

5. *The Regulatory Agenda Collection in the EPA History Office* has a complete collection of Regulatory Agendas and related materials. A list of the contents including exact citations for all Agendas is at: http://www.epa.gov/history/collection/aid41.htm

6. *Listservers:* If you want to get automatic e-mails about areasof particular interest, we maintain 12 collections including:

1. Air
2. Water
3. Wastes and emergency response
4. Pesticides
5. Toxicsubstances
6. Right-to-know and toxic release inventory
7. Environmental impacts
8. Endangered species
9. Meetings
10. The Science Advisory Board
11. Daily full-text notices with page numbers, and
12. General information.

For more information and to subscribe via our FR Web site, visit: http://www.epa.gov/fedrgstr/subscribe. If you have e-mail without full Internet access, please send an e-mail to envsubset@epa.gov to request instructions for subscribing to the EPA Federal Register listservers

7. *Access to Interpretive Documents:* To provide a central point of access to non-binding general policy, guidance, and interpretive documents that describe how the Agency intends to exercise its discretionary authority and explains what a statute or regulation means, EPA developed a web site at http://www.epa.gov/guidance/. The site provides access to a collection of non-binding guidance materials issued by EPA Headquarters offices since January 1, 1999, and was developed to assist State and Tribal officials, representatives of companies and organizations that must comply with environmental regulations, and individuals that are concerned with how environmental regulations and statutes are being implemented or enforced. The goal is that, through a central interface to a collection of guidance materials, it will be easier for an individual or institution to understand what guidance is available when complying with environmental regulations.

G. What Special Attention Do We Give to the Impacts of Rules on Small Businesses, Small Governments, and Small Nonprofit Organizations?

For each of our rulemakings we consider whether there will be any adverse impact on any small entity. We attempt to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation. Under RFA/SBREFA, the Agency must prepare a formal analysis of the potential negative impacts on small entities, convene a Small Business Advocacy Review Panel (proposed rule stage), and prepare a Small Entity Compliance Guide (final rule stage) unless the Agency certifies a rule will not have a significant economic impact on a substantial number of small entities. For more detailed information about the Agency's policy and practice with respect to implementing RFA/SBREFA, please visit the RFA/SBREFA website at http://www.epa.gov/sbrefa/. See Appendix B at the end of the Agenda, "Index to Environmental Protection Agency Entries for which a Regulatory Flexibility Analysis is Required" for a list of these rules. See Appendix C for a list of the rules that may affect small entities, but which we do not expect will have a significant economic impact on a substantial number of them.

The Regulatory Flexibility Act (RFA) section 610 requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities (SEISNOSE). For EPA rules issued in 1992-1997, EPA went beyond the requirements of the RFA by preparing regulatory flexibility analyses for rules that would have any adverse impact on any number of small entities, regardless of the size of impact or number of small entities. In effect, many rules that EPA would otherwise have certified as not having a SEISNOSE were not formally certified during this time period. After the RFA was amended in 1996 by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA returned to its earlier practice of formally certifying rules with no SEISNOSE under the RFA while continuing to offer outreach and accommodation to regulated small entities for those rules. EPA has identified eight rules issued before SBREFA was passed that were not formally certified yet do not and will not have a SEISNOSE. EPA has determined that these eight rules are not subject to section 610 review, and, even if a section 610 review were conducted, revision of the rules would not be warranted. A list of these eight rules is available at epa.gov/sbrefa. In this Agenda we report on three ongoing reviews and three completed reviews. See appendix 1 for a list of these actions.

H. How Can You Use Our Electronic Dockets to Participate in Rulemaking and Policymaking?

The official public docket is the collection of materials that is available for public viewing at the docket facility. An electronic version of the public docket is available through EPA's electronic public docket and comment system. EPA Dockets. EPA Dockets (EDOCKET) is an online public docket and comment system designed to expand access to documents in EPA's major dockets. Dockets contain **Federal Register** notices, support documents, and public comments for regulations the Agency publishes and various non-regulatory activities. You may use EPA Dockets at http://www.epa.gov/edocket to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

I. Acknowledgment of Those Involved in the Rulemaking Process

Finally, I would like to thank the members of the public who have taken the time to get involved in the rulemaking process. Experience has taught us that we must listen to and involve our stakeholders if we hope to fully understand the issues and write the most effective rules. Over the years you, the public, have submitted an enormous number of comments on our rulemakings. We have heard all of them and adopted many. Protecting human health and the environment is one of our Nation's most important quests. We thank you for joining us in this endeavor.

Dated: October 7, 2003.

Jessica L. Furey,

Associate Administrator, Office of Policy, Economics, and Innovation.

GENERAL—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3156	SAN No. 4463 Persistent, Bioaccumulative, and Toxic (PBT) Pollutants Strategy	2070—AD45

GENERAL—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3157	SAN No. 4056 Utilization of Small, Minority and Women's Business Enterprises in Procurement Under Assistance Agreements	2020—AA39
3158	SAN No. 3580 Incorporation of Class Deviations Into EPAAR	2030—AA37
3159	SAN No. 4292 Proposed Revision to EPA's Implementing NEPA Regulations	2020—AA42
3160	Report to Congress on Enforcement Data Concerning Small Entities	2020—AA45
3161	SAN No. 4693 Privacy Act Regulations (Revised)	2025—AA13
3162	SAN No. 4191 Revision to EPAAR 1552.211—73, Level of Effort	2030—AA64
3163	SAN No. 4319 Revisions to Acquisition Regulation Concerning Conflict of Interest	2030—AA67
3164	SAN No. 4742 Continuation of Implementing the Empowerment Initiative	2030—AA81
3165	Miscellaneous Revisions to EPAAR Clauses	2030—AA84
3166	On—Site and Off—Site Background Checks Performed by EPA and Contractors	2030—AA85
3167	Contract Bundling Requirements	2030—AA86
3168	SAN No. 4761 Waste Isolation Pilot Plant (WIPP) FY 2002 Report to Congress	2060—AK79
3169	Project XL Site—Specific Rulemaking for the NASA White Sands Test Facility in Las Cruces, New Mexico (Phases III to VI)	2090—AA35

GENERAL—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3170	SAN No. 4747 Implementation of Authority To Appoint Research Scientists Under 42 USC	2030—AA83
3171	SAN No. 4270 Cross—Media Electronic Reporting (ER) and Recordkeeping Rule (CROMERRR)	2025—AA07
3172	SAN No. 4733 Background Investigations for Contractors Performing Services Onsite	2030—AA80
3173	SAN No. 4473 Regulatory Incentives for the National Environmental Performance Track Program	2090—AA13
3174	SAN No. 4536 Project XL Site—Specific Rulemaking for NASA White Sands Test Facility Electronic Reporting in Las Cruces, New Mexico (Phases I and II)	2090—AA27

GENERAL—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3175	SAN No. 4618 Revision of Procedural Rules for Hearings on Cancellations, Suspensions, Changes in Classifications, and Denials of Pesticide Registrations	2020—AA44
3176	SAN No. 3240 Public Information and Confidentiality Regulations	2025—AA02
3177	SAN No. 3671 Guidelines for Carcinogen Risk Assessment	2080—AA06

GENERAL—Completed Actions

Sequence Number	Title	Regulation Identification Number
3178	SAN No. 3817 Implementation of Changes to Governmentwide Debarment and Suspension Common Rule	2030—AA48
3179	SAN No. 4021 Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	2020—AA36
3180	SAN No. 4572 Fellowship Grant Regulation Revision	2030—AA77

GENERAL—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3181	SAN No. 4530 EPA Agencywide Public Involvement Policy	2090—AA23

CLEAN AIR ACT (CAA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3182	SAN No. 4313 Petitions to Delist Hazardous Air Pollutants: MEK	2060—AI72
3183	SAN No. 4785 NESHAP: Perchlorethylene Dry Cleaning Facilities **(Section 610 Review)**	2060—AK64
3184	SAN No. 3556 Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608	2060—AF36
3185	SAN No. 4759 Revision to Policy on Control of Volatile Organic Compounds (VOC)	2060—AK75

CLEAN AIR ACT (CAA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3186	SAN No. 4415 Petitions to Delist Source Categories from the Source Category List, Developed Pursuant to Section 112(c) of the Clean Air Act	2060—AJ23
3187	SAN No. 4531 Evaluation of Updated Test Procedures for the Certification of Gasoline Deposit Control Additives	2060—AJ61
3188	SAN No. 3649 Amendments to Method 24 (Water—Based Coatings)	2060—AF72
3189	SAN No. 4070 General Conformity Regulations; Revisions	2060—AH93
3190	SAN No. 3939 NESHAP: Group I Polymers and Resins and Group IV Polymers and Resins—Amendments	2060—AH47
3191	SAN No. 3975 Review of New Sources and Modifications in Indian Country	2060—AH37
3192	SAN No. 4752 Implementation Rule for PM—2.5 NAAQS **(Reg Plan Seq No. 103)**	2060—AK74
3193	SAN No. 4119 Performance Specification 16 — Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources	2060—AH84
3194	SAN No. 4478 Standards of Performance for New Stationary Sources: Municipal Solid Waste Landfills: Amendment	2060—AJ41
3195	SAN No. 4161 Update of Continuous Instrumental Test Methods	2060—AK61
3196	SAN No. 4310 NESHAP: Printing and Publishing Industry; Amendments	2060—AI66
3197	SAN No. 4571 Electric Utility Steam Generating Unit MACT Regulation **(Reg Plan Seq No. 102)**	2060—AJ65
3198	SAN No. 4585 Portland Cement Manufacturing Industry NESHAP: Amendment To Implement Court Remand	2060—AJ78
3199	SAN No. 4620 National Emission Standards for Coke Oven Batteries — Residual Risk Standards	2060—AJ96
3200	SAN No. 4654 NESHAP: Ethylene Oxide for Sterilization Facilities — Residual Risk Standards	2060—AK09
3201	SAN No. 4655 NESHAP: Gasoline Distribution (Stage I) Residual Risk Standards	2060—AK10
3202	SAN No. 4672 NESHAP: Solvent Extraction for Vegetable Oil: Amendments	2060—AK32
3203	SAN No. 4751 Petition to Delist a Hazardous Air Pollutant (HAP) Source Category from Section 112 of the Clean Air Act — Gas Turbines	2060—AK73
3204	SAN No. 4309 National VOC Emission Standards for Consumer Products; Proposed Amendments	2060—AI62
3205	SAN No. 4748 Control of Hazardous Air Pollutants From Mobile Sources	2060—AK70
3206	SAN No. 4757 Emissions Durability Procedures for New Light—Duty Vehicles and Light—Duty Trucks	2060—AK76
3207	SAN No. 4393 Control of Methyl Tertiary Butyl Ether (MTBE)	2060—AJ00
3208	SAN No. 3412 Operating Permits: Revisions (Part 70)	2060—AF70
3209	SAN No. 4535 Protection of Stratospheric Ozone: Process for Exempting Critical and Emergency Uses of Methyl Bromide	2060—AJ63
3210	SAN No. 4697 Protection of Stratospheric Ozone: Adjusting Allowances for Class I Substances for Export to Article 5 Countries	2060—AK45
3211	SAN No. 3673 Protection of Stratospheric Ozone: Reconsideration of Section 608 Sales Restriction	2060—AG20
3212	SAN No. 4542 Federal Implementation Plan (FIP) for the Billings/Laurel, Montana, Sulfur Dioxide (SO2) Area	2008—AA00
3213	SAN No. 3262 Inspection/Maintenance Recall Requirements	2060—AE22
3214	SAN No. 4348 Inspection Maintenance Program Requirements for Federal Facilities; Amendment to the Final Rule	2060—AI97
3215	SAN No. 4421 Ambient Air Quality Monitoring Regulations: Revisions	2060—AJ25
3216	SAN No. 4450 Revisions to Regional Haze Rule To Address Concerns Raised by DC Circuit Regarding Best Available Retrofit Technology (BART)	2060—AJ31

CLEAN AIR ACT (CAA)—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3217	SAN No. 4570 Control of Air Pollution From Motor Vehicles and Engines: Alternative Low—Sulfur Highway Diesel Fuel Transition Program for Alaska	2060—AJ72
3218	SAN No. 4547 Modification of Authority to Grant Alternative Method Approvals	2060—AJ83
3219	SAN No. 4631 Adoption of the Amended International NOx Standard for Aircraft Engines	2060—AK01
3220	SAN No. 4632 Modification of Anti—Dumping Baselines for Gasoline Produced or Imported for Use in Hawaii, Alaska and the U.S. Territories	2060—AK02
3221	SAN No. 4633 Performance—Based Measurement System For Fuels: Criteria For Self—Qualifying Alternative Test Methods; Description of Optional Statistical Quality Control Measures	2060—AK03
3222	Transportation Conformity Rule Amendments for New 8—Hour Ozone and PM2.5 National Ambient Air Quality Standards	2060—AL73
3223	Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Allowables Plantwide Applicability Limit (PAL), Aggregation, and Debottlenecking **(Reg Plan Seq No. 104)**	2060—AL75
3224	Rule To Reduce Interstate Transport of Fine Particulate Matter and Other Pollutants (Interstate Transport Rule)	2060—AL76
3225	Section 126 rule: Lifting the 8—hour Stay	2060—AL79
3226	Amendment to Marine Diesel Rule	2060—AL81
3227	Section 126 Rule: Withdrawal of Findings for Sources in Michigan	2060—AL83
3228	Lifting the Stay of the 8—Hour Portion of the Findings of Significant Contribution and Rulemaking for Purposes of Reducing Interstate Ozone Transport (NOx SIP Call)	2060—AL84
3229	Deferral of Effective Date of Nonattainment Designations for 8—hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas	2060—AL85
3230	Amendments to the Phase 2 Requirements for Spark—Ignition Nonroad Engines Less Than 19 Kilowatts	2060—AL88
3231	Amendments to Leather Finishing NESHAP	2060—AL89
3232	Protection of Stratospheric Ozone; Allowance System for Controlling HCFC Production, Import and Export; Correction	2060—AL90
3233	Amendments to the NESHAP for Cellulose Products Manufacturing	2060—AL91
3234	Protection of Stratospheric Ozone: Process for Exempting Emergency Uses of Methyl Bromide	2060—AL94
3235	Protection of Stratospheric Ozone: Quantity Allocation of Methyl Bromide After the Phaseout for Critical Use Exemptions	2060—AL95
3236	Five—Year Review of MACT Standards for Large MWC	2060—AL97
3237	Alternative Work Practice for Leak Detection and Repair	2060—AL98

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

CLEAN AIR ACT (CAA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3238	SAN No. 4315 Source—Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation	2009—AA00
3239	SAN No. 3569 Source—Specific Federal Implementation Plan for Navajo Generating Station; Four Corners Power Plant	2009—AA01
3240	SAN No. 4755 Accidental Release Prevention Requirements: Risk Management Programs Requirements Under Clean Air Act Section 112(r)(7); Amendments to the Submission Schedule and Data Requirements	2050—AF09
3241	SAN No. 4768 Amendment to Subparts H and I for Emissions of Radionuclides Other Than Radon from DOE Facilities	2060—AK81
3242	SAN No. 4532 Motor Vehicle and Engine Compliance Program Fees for: Light—Duty Vehicles and Trucks; Heavy—Duty Vehicles and Engines; Nonroad Engines; and Motorcycles	2060—AJ62
3243	SAN No. 3470 Revision to the Guideline on Air Quality Models (Appendix W to 40 CFR Part 51): Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions	2060—AK60
3244	SAN No. 3657 NESHAP: Combustion Turbine	2060—AG67
3245	SAN No. 3343 NESHAP: Iron and Steel Foundries	2060—AE43
3246	SAN No. 3452 National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing	2060—AE82
3247	SAN No. 3656 NESHAP: Reciprocating Internal Combustion Engine **(Reg Plan Seq No. 116)**	2060—AG63
3248	SAN No. 3837 NESHAP: Industrial, Commercial, and Institutional Boilers and Process Heaters **(Reg Plan Seq No. 117)**	2060—AG69
3249	SAN No. 3452 National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing	2060—AK59
3250	SAN No. 4683 Air Quality: Revision to Definition of Volatile Organic Compounds — Exclusion of 4 Compounds	2060—AK37

CLEAN AIR ACT (CAA)—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3251	SAN No. 2915 Methods for Measurement of Visible Emissions—Addition of Methods 203A, 203B, and 203C to Appendix M of Part 51	2060—AF83
3252	SAN No. 3900 Addition of Method 207 to Appendix M of 40 CFR Part 51 Method for Measuring Isocyanates in Stationary Source Emissions	2060—AG88
3253	SAN No. 4433 Interstate Ozone Transport: Response to Court Decisions on the NOx SIP Call, NOx SIP Call Technical Amendments, and Section 126 Rules	2060—AJ16
3254	SAN No. 4625 Implementation Rule for 8—hour Ozone NAAQS **(Reg Plan Seq No. 119)**	2060—AJ99
3255	SAN No. 3380 NSPS: SOCMI — Wastewater and Amendment to Appendix C of Part 63 and Appendix J of Part 60	2060—AE94
3256	SAN No. 3958 Amendments to Standard of Performance for New Stationary Sources; Monitoring Requirements (40 CFR Part 60, Appendix F, Procedure 3)	2060—AH23
3257	SAN No. 4508 Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels; Amendments	2060—AJ53
3258	SAN No. 4555 Electric Arc Furnace NSPS Amendment	2060—AJ68
3259	SAN No. 4605 Proposed Amendments to Performance Standards and Monitoring Requirements for Particulate Matter at Stationary Sources	2060—AJ88
3260	SAN No. 4681 Revision of Combustion Turbines NSPS —Part 60, Subpart GG	2060—AK35
3261	SAN No. 3449 NESHAP: Mercury Cell Chlor—Alkali Plants	2060—AE85
3262	SAN No. 3820 NESHAP: Plywood and Composite Wood Products **(Reg Plan Seq No. 115)**	2060—AG52
3263	SAN No. 3825 NESHAP: Miscellaneous Metal Parts and Products (Surface Coating)	2060—AG56
3264	SAN No. 3826 Plastic Parts and Products (Surface Coating) NESHAP	2060—AG57
3265	SAN No. 3651 NESHAP: Lime Manufacturing	2060—AG72
3266	SAN No. 3906 NESHAP: Surface Coating of Metal Cans	2060—AG96
3267	SAN No. 3907 NESHAP: Surface Coating of Automobiles and Light—Duty Trucks **(Reg Plan Seq No. 118)**	2060—AG99
3268	SAN No. 3924 NESHAP: Primary Magnesium Refining	2060—AH03
3269	SAN No. 3968 NESHAP: Site Remediation	2060—AH12
3270	SAN No. 3971 NESHAP: Organic Liquids Distribution (Non—Gasoline)	2060—AH41
3271	SAN No. 4115 NESHAP: Chromium Electroplating Amendment	2060—AH69
3272	SAN No. 4107 NESHAP: Asphalt/Coal Tar Application on Metal Pipes	2060—AH78
3273	SAN No. 4380 NESHAP: Taconite Iron Ore Processing Industry	2060—AJ02
3274	SAN No. 4426 Clarification to Existing Part 63 NESHAP Delegations' Provisions	2060—AJ26
3275	SAN No. 4479 NESHAP: Gasoline Distribution Facilities — Amendment	2060—AJ42
3276	SAN No. 4591 Benzene Waste Operations NESHAP; Amendments	2060—AJ87
3277	SAN No. 4685 NESHAP: Chlorine Production	2060—AK38
3278	SAN No. 4712 NESHAP: Hazardous Organic NESHAP (HON) Amendments	2060—AK49
3279	SAN No. 4713 NESHAP for Primary Aluminum Reduction Plants; Amendments	2060—AK50
3280	SAN No. 4714 NESHAP for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units; Amendments	2060—AK51
3281	SAN No. 4719 NESHAP for Source Categories: General Provisions; Amendments for Pollution Prevention Alternative Compliance Requirements	2060—AK54
3282	SAN No. 4763 NESHAP: Ethylene Processes; Amendments	2060—AK80
3283	SAN No. 4464 Rulemaking on Section 126 Petitions from New York and Connecticut Regarding Sources in Michigan; Revision of Definition of Applicable Requirement for Title V Operating Permit Programs	2060—AJ36
3284	SAN No. 4689 Section 126 Rule Withdrawal Provision	2060—AK41
3285	SAN No. 4441 Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units Constructed On or Before November 30, 1999	2060—AJ28
3286	SAN No. 4340 Transportation Conformity Amendments: Response to March 2, 1999, Court Decision	2060—AI56
3287	SAN No. 4030 Expanded Definitions for Alternative—Fueled Vehicles and Engines Meeting Low—Emission Vehicle Exhaust Emission Standards	2060—AH52
3288	SAN No. 4604 Modification of the Anti—Dumping Baseline Date Cut—Off Limit for Data Used in Development of an Individual Baseline	2060—AJ82
3289	SAN No. 4626 Control of Emissions from Highway Motorcycles	2060—AJ90
3290	SAN No. 4675 Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel **(Reg Plan Seq No. 120)**	2060—AK27
3291	SAN No. 2665 Importation of Nonconforming Vehicles; Amendments to Regulations	2060—AI03
3292	SAN No. 4599 Protection of Stratospheric Ozone: Listing of Substitutes for Ozone—Depleting Substances: N—Propyl Bromide	2060—AK26
3293	SAN No. 4756 Protection of Stratospheric Ozone: Ban on Trade of Methyl Bromide to Nonparties to the Montreal Protocol	2060—AK67

CLEAN AIR ACT (CAA)—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3294	SAN No. 3560 Protection of Stratospheric Ozone: Refrigerant Recycling; Substitute Refrigerants	2060—AF37
3295	SAN No. 4487 Federal Implementation Plans for Indian Reservations in Idaho, Oregon, and Washington	2012—AA01
3296	SAN No. 4254 Revision to the Definition of Volatile Organic Compound (VOC) to Exclude Tertiary Butyl Acetate ...	2060—AI45
3297	SAN No. 4391 Rescinding Finding that Preexisting PM10 Standards No Longer Applicable in Northern Ada County/Boise, Idaho	2060—AJ05
3298	SAN No. 4548 Compilation of Source—Specific Alternative Methods Being Approved for Source—Category Wide Application	2060—AJ84
3299	SAN No. 4621 Control of Hazardous Air Pollutants From Mobile Sources: Default Baseline Revision and Minor Corrections	2060—AJ97
3300	SAN No. 4634 Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline to California Phase 3 Gasoline	2060—AK04
3301	SAN No. 4699 Revisions to Clarify the Scope of the Sufficiency Monitoring Requirements for Federal and State Operating Permits Programs	2060—AK29
3302	SAN No. 4686 Waste Isolation Pilot Plant (WIPP) FY 2001 Report to Congress	2060—AK39
3303	SAN No. 4722 California Gasoline Technical Correction	2060—AK56
3304	SAN No. 4557 Amendments to the Requirements on Variability in the Composition of Additives Certified Under the Gasoline Deposit Control Program	2060—AK62
3305	SAN No. 4569 Control of Air Pollution from New Motor Vehicles; Addendum to Second Amendment to the Tier 2/Gasoline Sulfur Regulations	2060—AK63
3306	SAN No. 4706 Anti—Dumping Baseline Recalculation for Downstream Oxygenate Addition	2060—AK69
3307	SAN No. 4758 Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline Including Butane Blenders and Attest Engagements	2060—AK77
3308	Protection of Stratospheric Ozone; Refrigerant Recycling; Certification of Recovery and Recovery/Recycling Equipment Intended For Use With Substitute Refrigerants	2060—AL77
3309	Revisions to Federal Operating Permits Program Fee Payment Deadlines for California Agricultural Sources	2060—AL82
3310	Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2004	2060—AM01
3311	Air Quality Designations and Classifications for the 8—Hour Ozone NAAQS	2060—AM03
3312	Protection of Stratospheric Ozone; Refrigerant Recycling; Amended Leak Repair Requirements for Refrigeration and Rir—Conditioning Equipment	2060—AM05
3313	SAN No. 4278 Project XL Site—Specific Rulemaking for Andersen Corporation's Facility in Bayport, Minnesota	2090—AA21
3314	National Emission Standards for Hazardous Air Pollutants: Site—Specific Regulation for Packaging Corporation of America in Tomahawk, Wisconsin	2090—AA33

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

CLEAN AIR ACT (CAA)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3315	SAN No. 4695 NESHAP: Off—Site Waste and Recovery Operations Residual Risk Standard	2060—AK68
3316	SAN No. 4607 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Availability of Information to the Public; Technical Amendment	2050—AE95
3317	SAN No. 4619 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(3); Revisions to the List of Substances	2050—AE96
3318	SAN No. 4266 Review National Ambient Air Quality Standards for Carbon Monoxide	2060—AI43
3319	SAN No. 4255 Review of the National Ambient Air Quality Standards for Particulate Matter	2060—AI44
3320	SAN No. 1002 NAAQS: Sulfur Dioxide (Response to Remand)	2060—AA61
3321	SAN No. 2841 NESHAP: Chromium Electroplating Amendment	2060—AH08
3322	SAN No. 3751 NSPS and Emission Guidelines for Other Solid Waste Incinerators	2060—AG31
3323	SAN No. 3919 Prevention of Significant Deterioration of Air Quality: Permit Application Review Procedures for Non—Federal Class I Areas	2060—AH01
3324	SAN No. 3525 Protection of Stratospheric Ozone: Update of the Substitutes List Under SNAP Program	2060—AG12
3325	SAN No. 4096 Phase I (FIP) To Reduce the Regional Transport of Ozone in the Eastern United States	2060—AH87
3326	SAN No. 4653 NESHAP: Aerospace Manufacturing and Rework Facilities Residual Risk Standards	2060—AK08
3327	SAN No. 4657 NESHAP: Group II Polymers and Resins —Residual Risk Standards	2060—AK13
3328	SAN No. 4660 NESHAP: Industrial Process Cooling Towers Residual Risk Standards	2060—AK16
3329	SAN No. 4661 NESHAP: National Emission Standards for Marine Tank Vessel Loading Operations — Residual Risk Standard	2060—AK17

CLEAN AIR ACT (CAA)—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3330	SAN No. 4662 NESHAP: Perchloroethylene Dry Cleaning Facilities Residual Risk Standards	2060—AK18
3331	SAN No. 4665 NESHAP: Secondary Lead Smelting Residual Risk Standards	2060—AK19
3332	SAN No. 4666 NESHAP: Shipbuilding and Ship Repair Surface Coating — Residual Risk Standards	2060—AK20
3333	SAN No. 4667 NESHAP: Wood Furniture Manufacturing Operations — Residual Risk Standards	2060—AK21
3334	SAN No. 4668 NESHAP: Halogenated Solvent Cleaning —Residual Risk Standards	2060—AK22
3335	SAN No. 4669 NESHAP: Magnetic Tape Manufacturing Operations Residual Risk Standard	2060—AK23
3336	SAN No. 4664 NESHAP: Printing and Publishing Industry — Residual Risk Standards	2060—AK24
3337	SAN No. 4663 NESHAP: Petroleum Refineries — Residual Risk Standards	2060—AK25
3338	SAN No. 4750 National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks — Residual Risk Standards	2060—AK72
3339	SAN No. 4782 Petition to Delist Hazardous Air Pollutant : 4,4'—Methylene Diphenyl Diisocyanate	2060—AK84
3340	SAN No. 4656 NESHAP: Group I Polymers and Resins — Residual Risk Standards	2060—AK12
3341	SAN No. 4659 NESHAP: Hazardous Organic NESHAP (HON) Residual Risk Standards	2060—AK14
3342	SAN No. 4658 NESHAP: Group IV Polymers and Resins — Residual Risk Standards	2060—AK15
3343	SAN No. 4383 Interstate Ozone Transport: Rulemaking on Section 126 Petitions from the District of Columbia, Delaware, Maryland, and New Jersey	2060—AI99
3344	SAN No. 3910 Streamlined Evaporative Test Procedures	2060—AH34
3345	SAN No. 4682 Revisions to the Appeal Procedures and the Federal NOx Budget Trading Program, Parts 78 and 97	2060—AK36
3346	SAN No. 3922 Revised Permit Revision Procedures for the Federal Operating Permits Program—Part 71	2060—AG92
3347	SAN No. 4700 Selection of Sequence of Mandatory Sanctions To Be Applied Pursuant to Section 502 of the Clean Air Act	2060—AK46
3348	SAN No. 3263 Performance Warranty and Inspection/Maintenance Test Procedures	2060—AE20
3349	SAN No. 3917 Transportation Conformity Rule Amendment: Clarification of Trading Provisions	2060—AH31
3350	SAN No. 4584 Performance Specifications for Continuous Parameter Monitoring Systems	2060—AJ86
3351	SAN No. 4691 Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Clean Units	2060—AK42
3352	SAN No. 4783 Voluntary Superior Monitoring	2060—AK85
3353	Consideration of Industry Petition to Remove the Two—Piece Can Subcategory From the Clean Air Act Hazardous Air Pollutant Source Category List	2060—AL86
3354	Consideration of Industry Petition to Remove Ethylene Glycol Monobutyl Ether from the Clean Air Act List of Hazardous Air Pollutants	2060—AL87
3355	Control of Emissions of Air Pollution From New Motor Vehicles: On—Board Diagnostic Requirments for Heavy—Duty Engines and Vehicles Above 14,000 Pounds and In—Use, Not—To—Exceed Emission Standard Testi	2060—AL92
3356	NESHAP: Ferroalloys Production: Ferromanganese and Silicomanganese Residual Risk Standards	2060—AL93
3357	Mineral Wool Production Residual Risk Standard	2060—AL96
3358	NESHAP for Flexible Polyurethane Foam Production: Residual Risk Standards	2060—AL99
3359	NESHAP: Pharmaceuticals Production: Residual Risk Standards	2060—AM00
3360	Repeal of Vacated PM10 National Ambient Air Quality Standards and Related Requirements	2060—AM02
3361	Air Quality Designations for the PM—2.5 NAAQS	2060—AM04

CLEAN AIR ACT (CAA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3362	SAN No. 4466 Overview of Rulemakings for the Purpose of Reducing Interstate Ozone Transport	2060—AJ20
3363	SAN No. 3259 Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration	2060—AL74
3364	SAN No. 4104 NESHAP: Hydrochloric Acid Production Industry	2060—AH75
3365	SAN No. 3470 Revision to the Guideline on Air Quality Models (Appendix W to 40 CFR Part 51): Adoption of a Preferred Long Range Transport Model and Other Revisions	2060—AF01
3366	SAN No. 3346 NESHAP: Integrated Iron and Steel	2060—AE48
3367	SAN No. 3326 NESHAP: Reinforced Plastic Composites Production	2060—AE79
3368	SAN No. 3746 NESHAP: Paint Stripping Operations	2060—AG26
3369	SAN No. 3902 NESHAP: Semiconductor Production	2060—AG93
3370	SAN No. 3479 Amendments to Parts 51, 52, 63, 70, and 71 Regarding the Provisions for Determining Potential To Emit	2060—AI01

CLEAN AIR ACT (CAA)—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3371	SAN No. 3824 NESHAP: Metal Furniture (Surface Coating)	2060—AG55
3372	SAN No. 3655 NESHAP: Asphalt Processing and Asphalt Roofing Manufacturing	2060—AG66
3373	SAN No. 3652 NESHAP: Refractory Products Manufacturing	2060—AG68
3374	SAN No. 3909 NESHAP: Printing, Coating and Dyeing of Fabrics and other Textiles	2060—AG98
3375	SAN No. 3904 NESHAP: Wood Building Products (Surface Coating)	2060—AH02
3376	SAN No. 4022 NESHAP: Coke Ovens: Pushing, Quenching, and Battery Stacks	2060—AH55
3377	SAN No. 4111 NESHAP: Fumed Silica Production	2060—AH72
3378	SAN No. 4162 NESHAP: Oil and Natural Gas Production	2060—AI13
3379	SAN No. 4343 NESHAP: Clay Ceramics Manufacturing	2060—AI68
3380	SAN No. 4144 NESHAP: Engine Test Cells/Stands	2060—AI74
3381	SAN No. 4449 NESHAP: Flexible Polyurethane Foam Fabrication Operations	2060—AJ19
3382	SAN No. 4325 NESHAP: Brick and Structural Clay Products Manufacturing	2060—AJ91
3383	SAN No. 4715 NESHAP: Sources Categories: General Provisions; and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections 112(g) and 112(j); Amendments	2060—AK52
3384	SAN No. 4723 NESHAP: Secondary Aluminum Industry Amendments	2060—AK57
3385	SAN No. 4773 NESHAP: Rubber Tire Manufacturing: Technical Correction	2060—AK82
3386	SAN No. 4749 Amendment to Project XL Site—Specific Rulemaking for Georgia—Pacific Corporation/s Facility in Big Island, Virginia	2060—AK71
3387	SAN No. 4676 Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Routine Maintenance, Repair, and Replacement	2060—AK28
3388	SAN No. 4495 Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States	2060—AJ50
3389	SAN No. 4671 Amendments to Compliance Certification Requirements for State and Federal Operating Permits Programs	2060—AK11
3390	SAN No. 4428 Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane (Halon 1011) Production and Consumption	2060—AJ27
3391	SAN No. 3741 Service Information Regulation for Light—Duty Vehicles and Trucks	2060—AG13
3392	SAN No. 4247 Revisions to Air Pollution Emergency Episode Requirements (Subpart H, 40 CFR Part 51)	2060—AI47
3393	SAN No. 4583 Modification of Federal On—Board Diagnostic Regulations for 2004 Model Year Vehicles Below 14,000 Pounds	2060—AJ77
3394	SAN No. 4600 State and Federal Operating Permits Program: Removal of Amendments to Part 70 and Part 71 Compliance Certification Requirements	2060—AJ89
3395	SAN No. 4694 Extension of Alternative Compliance Periods under the Anti—Dumping Program	2060—AK43
3396	SAN No. 4721 Control of Air Pollution from New Motor Vehicles: Amendment to the Tier 2 Motor Vehicle Emission Standards	2060—AK55
3397	SAN No. 4786 Standards for Reformulated and Conventional Gasoline (Section 610 Review) **(Completion of a Section 610 Review)**	2060—AK65
3398	SAN No. 4787 Inspection/Maintenance Program Requirements **(Completion of a Section 610 Review)**	2060—AK66
3399	SAN No. 4760 Stay of Authority Under 40 CFR 50.9(b) Related to Applicability of 1—Hour Ozone Standard	2060—AK78
3400	SAN No. 4774 Reclassification as Nonroad Engines for Diesel Engines Used in the State of California Agricultural Pump Application	2060—AK83
3401	Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in the Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area.	2060—AL80
3402	SAN No. 4471 Project XL Site—Specific Rulemaking for Georgia—Pacific Corporation Facility in Big Island, Virginia	2090—AA26
3403	SAN No. 4533 New Jersey Gold Track Project XL Rule	2090—AA28

ATOMIC ENERGY ACT (AEA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3404	SAN No. 4054 Environmental Radiation Protection Standards for the Disposal of Low—Activity Mixed Radioactive Waste	2060—AH63
3405	Approaches to an Integrated Framework for Management and Disposal of Low—Activity Radioactive Waste: Request for Comment	2060—AL78

ATOMIC ENERGY ACT (AEA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3406	SAN No. 4003 Technical Change to Dose Methodology for 40 CFR Part 190, Subpart B and 40 CFR 191, Subpart A	2060—AH90

ATOMIC ENERGY ACT (AEA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3407	SAN No. 4403 Revision of the 40 CFR Part 194 Waste Isolation Pilot Plant Compliance Criteria	2060—AJ07

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3408	SAN No. 4727 Endocrine Disruptor Screening Program; Priority Setting Criteria **(Reg Plan Seq No. 101)**	2070—AD59
3409	SAN No. 4789 Pesticide Worker Protection Rule (Section 610 Review) **(Section 610 Review)**	2070—AD66

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3410	SAN No. 2687 Pesticides; Data Requirements for Conventional Chemicals	2070—AC12
3411	SAN No. 4173 Pesticides; Data Requirements for Antimicrobials	2070—AD30
3412	SAN No. 4596 Pesticides; Data Requirements for Biochemical and Microbial Products	2070—AD51
3413	SAN No. 4728 Endocrine Disrupter Screening Program; Implementing the Screening and Testing Phase **(Reg Plan Seq No. 108)**	2070—AD61
3414	SAN No. 4610 Acceptability of Research Using Human Subjects **(Reg Plan Seq No. 107)**	2070—AD57
3415	SAN No. 4170 Pesticides; Procedures for the Registration Review Program	2070—AD29
3416	SAN No. 4216 Pesticides; Emergency Exemption Process Revisions **(Reg Plan Seq No. 106)**	2070—AD36

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FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3417	SAN No. 4027 Pesticides; Tolerance Processing Fees	2070—AD23
3418	SAN No. 2659 Pesticide Management and Disposal; Standards for Pesticide Containers and Containment	2070—AB95
3419	SAN No. 3731 WPS; Pesticide Worker Protection Standard (WPS); Glove Amendment	2070—AC93
3420	SAN No. 3892 Pesticides; Registration Requirements for Antimicrobial Pesticide Products	2070—AD14

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3421	SAN No. 4175 Pesticide Tolerance Reassessment Program	2070—AD24
3422	SAN No. 4602 Plant Incorporated Protectants (PIPs); Exemption for those Based on Viral Coat Proteins	2070—AD49
3423	SAN No. 4611 Plant—Incorporated Protectants (PIPs); Exemption for Those Derived through Genetic Engineering from Sexually Compatible Plants	2070—AD55
3424	SAN No. 4612 Plant Incorporated Protectants (PIPs); Exemption for PIPs that Act by Primarily Affecting the Plant	2070—AD56

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3425	SAN No. 3222 Groundwater and Pesticide Management Plan Rule	2070—AC46
3426	SAN No. 4609 Pesticides; Exemption of Medical Devices Treated with Antimicrobial Pesticides	2070—AD54

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3427	SAN No. 4767 Endangered Species and Pesticide Regulation	2070—AD62
3428	SAN No. 3432 Pesticide Management and Disposal	2020—AA33

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3429	SAN No. 4788 Lead; Requirements for Lead—Based Paint Activities in Target Housing and Child—Occupied Facilities (Section 610 Review) **(Section 610 Review)**	2070—AD65

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3430	SAN No. 3557 Lead—Based Paint Activities; Training and Certification for Renovation and Remodeling **(Reg Plan Seq No. 105)**	2070—AC83
3431	SAN No. 4597 Polychlorinated Biphenyls (PCBs); Disposal of PCBs; Implementation Issues	2070—AD52
3432	SAN No. 4635 Amendment to the Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers (40 CFR Part 723)	2070—AD58
3433	SAN No. 2563 Test Rule; Certain Chemicals on the ATSDR Priority List of Hazardous Substances	2070—AB79
3434	SAN No. 4395 Test Rule; Developmental and Reproductive Toxicity	2070—AD44
3435	SAN No. 3301 TSCA Inventory Update Rule Revisions	2070—AD63
3436	SAN No. 1923 Follow—Up Rules on Existing Chemicals	2070—AA58
3437	SAN No. 4512 Significant New Use Rule; Selected Flame Retardant Chemical Substances for Use in Residential Upholstered Furniture	2070—AD48

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TOXIC SUBSTANCES CONTROL ACT (TSCA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3438	SAN No. 4172 Lead; Notification Requirements for Lead—Based Paint Abatement Activities and Training	2070—AD31
3439	SAN No. 1976 Significant New Use Rules; Follow—Up Rules on Non—5(e) New Chemical Substances	2070—AA59
3440	SAN No. 3495 Significant New Use Rule (SNUR); Chemical—Specific SNURs To Extend Provisions of Section 5(e) Orders	2070—AB27
3441	SAN No. 3487 Test Rule; Hazardous Air Pollutants (HAPs)	2070—AC76
3442	SAN No. 3990 Test Rule; Certain High Production Volume (HPV) Chemicals	2070—AD16
3443	SAN No. 4425 Test Rule; In Vitro Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration	2070—AD42
3444	SAN No. 2178 TSCA Section 8(a) Preliminary Assessment Information Rules	2070—AB08
3445	SAN No. 1139 TSCA Section 8(d) Health and Safety Data Reporting Rules	2070—AB11
3446	SAN No. 3118 TSCA Section 8(e) Policy; Notice of Clarification	2070—AC80

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3447	SAN No. 3148 Asbestos Model Accreditation Plan Revisions	2070—AC51
3448	SAN No. 3252 Lead Fishing Sinkers; Response to Citizens Petition and Proposed Ban	2070—AC21
3449	SAN No. 4376 Lead—Based Paint Activities; Training, Accreditation, and Certification Rule and Model State Plan Rule — Bridges and Structures	2070—AC64
3450	SAN No. 3508 Lead; Management and Disposal of Lead—Based Paint Debris	2070—AC72
3451	SAN No. 2150 Polychlorinated Biphenyls (PCBs); Exemptions From the Prohibitions Against Manufacturing, Processing, and Distribution in Commerce	2070—AB20
3452	SAN No. 3493 Test Rules and Enforceable Consent Agreements Under the Toxic Substances Control Act (Generic Entry)	2070—AB94
3453	SAN No. 2865 Voluntary Children's Chemical Evaluation Program (VCCEP)	2070—AC27
3454	SAN No. 3882 Test Rule; Certain Metals	2070—AD10
3455	SAN No. 4174 Testing Agreement for Certain Oxygenated Fuel Additives	2070—AD28
3456	SAN No. 3528 Significant New Use Rule; Refractory Ceramic Fibers (RCFs)	2070—AC37
3457	SAN No. 4176 Chemical Right—To—Know Initiative; High Production Volume (HPV) Chemicals	2070—AD25
3458	SAN No. 4598 TSCA Policy Statement on Oversight of Transgenic Organisms (Including Plants)	2070—AD53
3459	SAN No. 4777 Lead; Amendments to Requirements for Disclosure of Known Lead—Based Paint or Lead—Based Paint Hazards in Target Housing	2070—AD64

EMERGENCY PLANNING AND COMMUNITY RIGHT—TO—KNOW ACT (EPCRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3460	SAN No. 4616 Clarify TRI Reporting Obligations Under EPCRA Section 313 for the Metal Mining Activities of Extraction and Beneficiation	2025—AA11
3461	SAN No. 4692 Addition of Toxicity Equivalency (TEQ) Reporting and Quantity Data for Individual Members of the Dioxin and Dioxin—Like Compounds Category Under EPCRA, Section 313	2025—AA12

EMERGENCY PLANNING AND COMMUNITY RIGHT—TO—KNOW ACT (EPCRA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3462	SAN No. 4781 Trade Secrecy Claims for Emergency Planning and Community Right—to—Know Information; and Trade Secret Disclosures to Health Professionals; Amendment	2050—AF10
3463	SAN No. 2425 TRI; Responses to Petitions Received To Add or Delete or Modify Chemical Listings on the Toxic Release Inventory	2025—AA00
3464	SAN No. 4595 Toxic Chemical Release Reporting Using North American Industrial Classification System (NAICS)	2025—AA10

EMERGENCY PLANNING AND COMMUNITY RIGHT—TO—KNOW ACT (EPCRA)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3465	SAN No. 3215 Emergency Planning and Community Right—to—Know Act: Amendments and Streamlining Rule	2050—AE17
3466	SAN No. 3994 Response to a Petition Requesting Deletion of Phosmet From the Extremely Hazardous Substances (EHS) List	2050—AE42
3467	SAN No. 4753 Emergency Planning and Community Right—to—Know Act: Modification to the Threshold Planning Quantity Methodology for the Extremely Hazardous Substances that are Solids in Solution.	2050—AF08
3468	SAN No. 4015 TRI; Review of Chemicals on the Original TRI List	2025—AA03
3469	SAN No. 4265 TRI; Revisions to the Otherwise Use Activity Exemptions and the Coal Extraction Activities Exemption	2025—AA06
3470	SAN No. 2847 TRI; Pollution Prevention Act Information Requirements	2025—AA09

EMERGENCY PLANNING AND COMMUNITY RIGHT—TO—KNOW ACT (EPCRA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3471	SAN No. 3993 Emergency Planning and Community Right—to—Know Act; Extremely Hazardous Substances List; Modification of Threshold Planning Quantity for Isophorone Diisocyanate	2050—AE43
3472	SAN No. 3007 TRI; Chemical Expansion; Finalization of Deferred Chemicals	2025—AA01

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3473	SAN No. 3545 Revisions to the Comprehensive Guideline for Procurement of Products Containing Recovered Materials	2050—AE23
3474	SAN No. 4470 Standards for the Management of Coal Combustion Wastes Generated by Commercial Electric Power Producers **(Reg Plan Seq No. 110)**	2050—AE81
3475	SAN No. 4230 Revisions to Solid Waste Landfill Criteria—Leachate Recirculation on Alternative Liners	2050—AE67
3476	SAN No. 4651 Increase Metals Reclamation From F006 Waste Streams **(Reg Plan Seq No. 111)**	2050—AE97
3477	SAN No. 4778 Revisions of the Lead—Acid Battery Export Notification and Consent Requirements	2050—AF06
3478	SAN No. 4743 Land Disposal Restrictions: Determination of Equivalent Treatment for Macroencapsulation of Radioactive Lead Solids; Definition of Macroencapsulation	2050—AF12
3479	SAN No. 3333 NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors **(Reg Plan Seq No. 109)**	2050—AE01
3480	Regulatory Amendments to the F019 Hazardous Waste Listing To Exclude the Wastewater Treatment Sludges From the Chemical Conversion Coating Process (Zinc Phosphating) of Automobile Bodies of Aluminum **(Reg Plan Seq No. 113)**	2050—AG15
3481	RCRA Incentives for Performance Track Members	2090—AA34

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RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3482	SAN No. 4028 Standardized Permit for RCRA Hazardous Waste Management Facilities **(Reg Plan Seq No. 123)**	2050—AE44
3483	SAN No. 3856 Management of Cement Kiln Dust (CKD) **(Reg Plan Seq No. 122)**	2050—AE34
3484	SAN No. 3989 Methods Innovation Rule	2050—AE41
3485	SAN No. 4588 Research, Development, and Demonstration Permits for Municipal Solid Waste Landfill	2050—AE92
3486	SAN No. 3147 Hazardous Waste Manifest Regulation **(Reg Plan Seq No. 121)**	2050—AE21
3487	SAN No. 4084 Office of Solid Waste Burden Reduction Initiative **(Reg Plan Seq No. 124)**	2050—AE50
3488	SAN No. 4091 Modifications to RCRA Rules Associated With Solvent—Contaminated Industrial Wipes	2050—AE51
3489	SAN No. 4092 Recycling of Cathode Ray Tubes (CRTs) and Mercury—Containing Equipment: Changes to Hazardous Waste Regulations **(Reg Plan Seq No. 125)**	2050—AE52
3490	SAN No. 4670 Revisions to the Definition of Solid Waste	2050—AE98
3491	SAN No. 4439 Project XL — Ortho—McNeil Pilot Project Allowing On—Site Treatment of Low—Level Mixed Wastes Without RCRA Permit	2090—AA14
3492	SAN No. 4534 Project XL Site—Specific Rulemaking for Anne Arundel County Millersville Landfill, Severn, Maryland	2090—AA25
3493	SAN No. 4565 Project XL Site—Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Hopewell Junction, New York	2090—AA29

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RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3494	SAN No. 4469 Standards for the Management of Coal Combustion Wastes — Nonpower Producers and Minefilling	2050—AE83

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3495	SAN No. 4411 Regulation of Hazardous Oil—Bearing Secondary Materials from Petroleum Refining Industry and Other Hazardous Secondary Materials Processed in a Gasification System To Produce Synthesis Gas—Final Rule	2050—AE78
3496	SAN No. 4735 RCRA Burden Reduction Initiative, Phase 2	2050—AF01
3497	SAN No. 4701 E—Cycling Pilot Project for Region 3 States (ECOS); Streamlining RCRA Regulations To Encourage Reuse, Recycling, and Recovery of Electronic Equipment	2003—AA00
3498	SAN No. 3189 Final Determination of the Applicability of the Toxicity Characteristic Rule to Petroleum Contaminated Media and Debris From Underground Storage Tanks	2050—AD69
3499	SAN No. 3066 Listing Determination and LDR for Wastes Generated During the Manufacture of Azo, Anthraquinone, and Triarylmethane Dyes and Pigments	2050—AD80
3500	SAN No. 4501 Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures.	2050—AE84
3501	SAN No. 4606 Revisions for Transboundary Shipments of Hazardous Waste for Recovery Within the Organization for Economic Cooperation and Development	2050—AE93
3502	SAN No. 2647 RCRA Subtitle C Financial Test Criteria (Revision)	2050—AC71

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3503	SAN No. 4525 Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead—Based Paint Waste	2050—AE86
3504	SAN No. 4575 Municipal Solid Waste Landfill Location Restrictions for Airport Safety	2050—AE91
3505	SAN No. 4088 Recycled Used Oil Containing PCBs: Amendments	2050—AF07
3506	SAN No. 4233 Land Disposal Restrictions; Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088) and Regulatory Classification of K088 Vitrification Units	2050—AE65
3507	SAN No. 4238 Amendment to Project XL Rulemaking and Final Project Agreement (FPA) for New England Universities Laboratories	2090—AA32

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3508	SAN No. 3439 National Priorities List for Uncontrolled Hazardous Waste Sites: Proposed and Final Rules	2050—AD75
3509	SAN No. 4737 Correction of Errors and Adjustment of CERCLA Reportable Quantities	2050—AF03
3510	SAN No. 4379 Standards and Practices for Conducting "All Appropriate Inquiry" **(Reg Plan Seq No. 112)**	2050—AF04
3511	SAN No. 4177 Revise 40 CFR Part 35 Subpart O: Cooperative Agreements and Superfund State Contracts for Superfund Response Actions	2050—AE62

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COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3512	SAN No. 3423 Reportable Quantity Adjustments for Carbamates and Carbamate—Related Hazardous Waste Streams; Reportable Quantity Adjustment for Inorganic Chemical Manufacturing Process Waste (K178)	2050—AE12
3513	SAN No. 4201 Criteria for the Designation of Hazardous Substances under CERCLA Section 102(a)	2050—AE63
3514	SAN No. 4736 Administrative Reporting Exemption for Certain Air Releases of NOx	2050—AF02

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Completed Actions

Sequence Number	Title	Regulation Identification Number
3515	SAN No. 4740 Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action	2050—AF05

CLEAN WATER ACT (CWA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3516	SAN No. 4344 Water Quality Standards for Indian Country Waters	2040—AD46
3517	SAN No. 4690 National Pollutant Discharge Elimination System Permit Requirements for Municipal Wastewater Treatment During Wet Weather Conditions — Proposed Policy	2040—AD87
3518	SAN No. 4792 Sewage Sludge Round I **(Section 610 Review)**	2040—AD96

CLEAN WATER ACT (CWA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3519	SAN No. 4526 Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Product Schedule Listing Requirements	2050—AE87
3520	SAN No. 4766 Effluent Guidelines Program Plan for 2004/2005	2040—AD92
3521	SAN No. 4540 Test Procedures: New and Updated Test Procedures for the Analysis of Pollutants Under the Clean Water Act and Safe Drinking Water Act	2040—AD71
3522	SAN No. 4623 Watershed Rule: Total Maximum Daily Load (TMDL) Program Revisions **(Reg Plan Seq No. 114)**	2040—AD82

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CLEAN WATER ACT (CWA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3523	SAN No. 4280 Effluent Guidelines and Standards for the Construction and Development Industry **(Reg Plan Seq No. 129)**	2040—AD42
3524	SAN No. 4370 Effluent Guidelines and Standards for the Pulp, Paper, and Paperboard Point Source Category, Dissolving Kraft and Dissolving Sulfite Subcategories (Phase III)	2040—AD49
3525	SAN No. 4406 Effluent Guidelines and Standards for the Concentrated Aquatic Animal Production Industry	2040—AD55
3526	SAN No. 4407 Effluent Guidelines and Standards for the Meat and Poultry Products Point Source Category (Revisions)	2040—AD56
3527	SAN No. 4776 Effluent Guidelines and Standards for the Centralized Waste Treatment Point Source Category (Revision)	2040—AD95
3528	SAN No. 4264 Water Quality Standards for Alabama—Phase II	2040—AD35
3529	SAN No. 4474 Minimizing Adverse Environmental Impact From Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 2 **(Reg Plan Seq No. 130)**	2040—AD62
3530	SAN No. 3288 Comparison of Dredged Material to Reference Sediment	2040—AC14
3531	SAN No. 3488 Round 2 Standards for the Use or Disposal of Sewage Sludge	2040—AC25
3532	SAN No. 4624 Modification to Competitive Process Used by EPA for Wetland Program Development Grants	2040—AD83
3533	Sludge: Agency Response to the National Research Council Report on Biosolids Applied to Land and the Results of EPA's Review of Existing Sewage Sludge Regulations.	2040—AE59
3534	Effluent Guidelines and Standards: Recodification of Various Effluent Guidelines	2040—AE61

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CLEAN WATER ACT (CWA)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3535	SAN No. 3702 Test Procedures for the Analysis of Trace Metals Under the Clean Water Act	2040—AC75
3536	SAN No. 3714 Test Procedures: Increased Method Flexibility for Test Procedures Approved for Clean Water Act Compliance Monitoring	2040—AC92
3537	SAN No. 3713 Test Procedures: Performance—Based Measurement System (PBMS) Procedures and Guidance for Clean Water Act Test Procedures	2040—AC93
3538	SAN No. 4049 Test Procedures for the Analysis of Co—Planar and Mono—Ortho—Substituted Polychlorinated Biphenyls (PCBs) Under the Clean Water Act	2040—AD09
3539	SAN No. 4378 Test Procedures: Revisions to Method Detection and Quantification for the Clean Water Act	2040—AD53
3540	SAN No. 4357 Uniform National Discharge Standards for Vessels of the Armed Forces — Phase II	2040—AD39
3541	SAN No. 4543 Minimizing Adverse Environmental Impact from Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 3	2040—AD70
3542	SAN No. 3663 Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution	2040—AC58
3543	SAN No. 3786 NPDES Streamlining Rule — Round III	2040—AC84
3544	SAN No. 3999 NPDES Permit Requirements for Municipal Sanitary and Combined Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Excess Flow Treatment Facilities	2040—AD02
3545	SAN No. 4493 Clean Water State Revolving Fund Regulation Revisions Re: Use as Matching Funds	2040—AD68
3546	SAN No. 4746 Regulations for Gray and Black Water Discharges from Cruise Ships Operating in Certain Alaskan Waters	2040—AD89

CLEAN WATER ACT (CWA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3547	SAN No. 2806 Effluent Guidelines and Standards for the Metal Products and Machinery Category, Phases 1 and 2	2040—AB79
3548	SAN No. 4741 Effluent Guidelines and Standards for Pharmaceutical Manufacturing: Amendment	2040—AD97
3549	SAN No. 3155 Test Procedures for the Analysis of Miscellaneous Metals, Anions, and Volatile Organics Under the Clean Water Act, Phase One	2040—AC95
3550	SAN No. 4047 Test Procedures for the Analysis of Biological Contaminants Under the Clean Water Act	2040—AD08
3551	SAN No. 4089 Test Procedures for the Analysis of Miscellaneous Metals, Anions, and Volatile Organics Under the Clean Water Act, Phase Two	2040—AD12
3552	SAN No. 4377 Test Procedures for the Analysis of Mercury Under the Clean Water Act (Method 245.7)	2040—AD52
3553	SAN No. 4726 Minimizing Adverse Environmental Impacts from Cooling Water Intake Structures Under Section 316(b) of the Clean Water Act — Phase I Revisions	2040—AD85
3554	SAN No. 2804 Clean Water Act Definition of Waters of the United States	2040—AB74

SAFE DRINKING WATER ACT (SDWA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3555	SAN No. 3238 National Primary Drinking Water Regulations: Aldicarb	2040—AC13
3556	SAN No. 4770 Unregulated Contaminant Monitoring Regulation for Public Water Systems Revisions	2040—AD93
3557	National Primary Drinking Water Regulations: Minor Corrections and Clarification to Drinking Water Regulations	2040—AE58
3558	SAN No. 4703 Drinking Water Contaminant Candidate List 2	2060—AD86

SAFE DRINKING WATER ACT (SDWA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3559	SAN No. 2340 National Primary Drinking Water Regulations: Groundwater Rule **(Reg Plan Seq No. 126)**	2040—AA97
3560	SAN No. 4341 National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule **(Reg Plan Seq No. 127)**	2040—AD37
3561	SAN No. 4342 National Primary Drinking Water Regulations: Stage 2 Disinfection Byproducts Rule **(Reg Plan Seq No. 128)**	2040—AD38

SAFE DRINKING WATER ACT (SDWA)—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3562	SAN No. 4769 National Primary and Secondary Drinking Water Regulations: Approval of Additional Method for the Detection of Coliforms and E. Coli. in Drinking Water	2040—AD90
3563	National Primary Drinking Water Regulations: Analytical Method for Uranium	2040—AE62

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SAFE DRINKING WATER ACT (SDWA)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3564	SAN No. 2281 National Primary Drinking Water Regulations: Radon	2040—AA94
3565	SAN No. 4404 National Secondary Drinking Water Regulations (NSDWR): Methyl Tertiary Butyl Ether (MTBE) and Technical Corrections to the NSDWR	2040—AD54
3566	SAN No. 4775 National Primary Drinking Water Regulations: Revisions to the Total Coliform Monitoring and Analytical Requirements and Additional Distribution System Requirements	2040—AD94
3567	SAN No. 4745 Drinking Water Contaminant Candidate List 3	2040—AD99
3568	SAN No. 4236 Underground Injection Control: Update of State Programs	2040—AD40
3569	Drinking Water: Regulatory Determinations Regarding Contaminants on the Second Drinking Water Contaminant Candidate List	2040—AE60

SAFE DRINKING WATER ACT (SDWA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3570	SAN No. 4447 Drinking Water: Regulatory Determinations Regarding Contaminants on the Drinking Water Contaminant Candidate List	2040—AD61
3571	SAN No. 4424 6—Year Review of Existing National Primary Drinking Water Regulations	2040—AD67

SHORE PROTECTION ACT (SPA)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3572	SAN No. 2820 Shore Protection Act, Section 4103(b) Regulations	2040—AB85

Environmental Protection Agency (EPA) **Prerule Stage**
General

3156. PERSISTENT, BIOACCUMULATIVE, AND TOXIC (PBT) POLLUTANTS STRATEGY

Priority: Other Significant

Legal Authority: "Not Yet Determined"

CFR Citation: 00 CFR NYD

Legal Deadline: None

Abstract: As described in the Agency's 1998 PBT Strategy, EPA is developing and implementing National Action Plans for certain priority PBT pollutants. These pollutants pose risks because they are toxic, persist in ecosystems, and accumulate in fish and up the food chain. The PBT challenges remaining stem from the pollutants' ability to travel long distances, to transfer rather easily among air, water, and land, and to linger for generations. EPA is forging a new approach to reduce risks from and exposures to priority PBT pollutants through increased coordination among EPA national and regional programs. This approach also requires the significant involvement of stakeholders, including international, state, local, and tribal organizations, the regulated community, environmental groups, and private citizens. EPA is initially focusing action on 12 substances either individually or as categories and two major cross—cutting issues (monitoring and outreach/risk communication). The action plans will use the full range of tools to prevent and reduce releases of these substances. These tools include international, voluntary, outreach, programmatic, remedial, compliance monitoring and assistance, enforcement, research, and regulatory tools. EPA will integrate and sequence actions within and across action plans, and will seek to leverage these actions on international and industry—sector bases. Beyond these first 12 substances EPA will identify additional PBTs for development of National Action Plans. Although these plans are not regulatory actions, EPA has included them in the Regulatory Agenda to inform the public and regulated community because the action plans may discuss regulatory alternatives for consideration.

Timetable:

Action	Date	FR Cite
Notice	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4463.

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RIN: 2070–AD45

Environmental Protection Agency (EPA) General — Proposed Rule Stage

3157. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES IN PROCUREMENT UNDER ASSISTANCE AGREEMENTS

Priority: Other Significant

Legal Authority: PL 101—507; PL 102—389; PL 101—549 "sec 1001"; 42 USC 9605(f); PL 100—590; EO 12432; EO 12138; EO 11625

CFR Citation: 40 CFR 33

Legal Deadline: None

Abstract: The regulation will codify revisions to the Agency's program for the utilization of Small, Minority and Women's Business Enterprises in procurements under assistance agreements (i.e., grants and cooperative agreements awarded by EPA as well as grants and cooperative agreements awarded by other agencies under interagency agreements with EPA). The revisions are necessary to ensure consistency with the Supreme Court's decision in Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097 (1995), and were identified as part of the Clinton Administration's review of affirmative action programs. They include: (1) placing greater emphasis on requiring assistance agreement recipients to submit documentation supporting proposed fair share procurement objectives for Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) based on the availability of qualified MBEs and WBEs in the relevant geographic market; (2) authorizing or requiring recipients and their prime contractors to take reasonable race/gender—conscious measures (e.g., bidding credits) in the event that race/gender—neutral efforts prove inadequate to meet fair share objectives; and (3) administering statutory MBE/WBE objectives as a national goal, allowing smaller or larger fair share objectives for particular grants or cooperative agreements based on the availability standard.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4056.

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RIN: 2020–AA39

3158. INCORPORATION OF CLASS DEVIATIONS INTO EPAAR

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 1537; 48 CFR 1552

Legal Deadline: None

Abstract: The Agency has approved a number of class deviations (e.g., changes to reporting requirements and monthly progress reports) to the EPAAR since its promulgation in April 1994. This proposed rule would incorporate most of the class deviations to the EPAAR.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3580.

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RIN: 2030–AA37

3159. PROPOSED REVISION TO EPA'S IMPLEMENTING NEPA REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321

CFR Citation: 40 CFR 6

Legal Deadline: None

Abstract: The proposed revision is necessary to clarify and update EPA's

National Environmental Policy Act (NEPA) regulation. The revision would clarify Agency responsibilities for congressionally funded special appropriation projects and EPA—funded grant programs. The revision would clarify public involvement procedures and organization responsibilities. The proposal would revise the list of actions which are categorically excluded from analyses. The revision is also needed to incorporate a number of Executive orders and other cross—cutting requirements into the NEPA process.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4292.

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RIN: 2020–AA42

3160. • REPORT TO CONGRESS ON ENFORCEMENT DATA CONCERNING SMALL ENTITIES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 00 CFR NYD

Legal Deadline: Final, Statutory, December 31, 2003, Final.
Other, Statutory, December 31, 2004, Other.

Abstract: The Small Business Paperwork Relief Act of 2002 requires agencies to submit reports concerning enforcement activities conducted with respect to small entities. An initial report, covering activities in FY 2003, is due by December 31, 2003, with a final report, covering FY 2004 activities, due one year later.

Timetable:

Action	Date	FR Cite
Report to Congress	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN 4842.

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RIN: 2020–AA45

3161. PRIVACY ACT REGULATIONS (REVISED)

Priority: Info./Admin./Other

Legal Authority: 5 USC 552a

CFR Citation: 40 CFR 16 (revised)

Legal Deadline: None

Abstract: This action proposed to revise the Privacy Act regulation to exempt new systems and systems currently claiming to be exempt from the Act. Other revisions are generally minor and include revising the access provision so that a copy of a record can be obtained without a personal inspection; changing the time limit for appeals of denials from 10 days to 30 days; changing the process for accessing Privacy Act records and contesting Privacy Act records from the system manager to the Freedom of Information Office; and referring appeals from denials of system of records maintained by the Office of Inspector General to that office for decision. The proposed rule does not have implications on small businesses nor state/local/tribal government.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4693.

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RIN: 2025–AA13

3162. REVISION TO EPAAR 1552.211—73, LEVEL OF EFFORT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301 "Sec 205(c)"; "63 Stat 390 as amended"

CFR Citation: 48 CFR 1552

Legal Deadline: None

Abstract: This rule will revise EPAAR 1552.211—73, Level of Effort, to define more concisely the services being acquired, and to more accurately reflect the relationship between services provided and fee payments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4191.

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RIN: 2030–AA64

3163. REVISIONS TO ACQUISITION REGULATION CONCERNING CONFLICT OF INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: "Not Yet Determined"

CFR Citation: 00 CFR NYD

Legal Deadline: None

Abstract: The purpose of this rule is to revise the Agency's conflict of interest (COI) acquisition regulations. The specific revisions involve more stringent requirements for submission of relevant information from Agency contractors and potential contractors regarding their relationships with parent companies, affiliates, subsidiaries, and sister companies. Current Agency regulations do not require the submission of this level of information. Receipt and evaluation of this information is critical in order for the Agency to decide whether or not COI situations exist and how they are to be handled. This revised rule will also codify several COI clauses that have been developed since the issuance of the previous rule in 1994.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4319.

Sectors Affected: 5413 Architectural, Engineering and Related Services; 54162 Environmental Consulting Services; 5416 Management, Scientific and Technical Consulting Services; 5417 Scientific Research and Development Services; 562 Waste Management and Remediation Services

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RIN: 2030–AA67

3164. CONTINUATION OF IMPLEMENTING THE EMPOWERMENT INITIATIVE

Priority: Substantive, Nonsignificant

Legal Authority: "Not Yet Determined"

CFR Citation: 00 CFR NYD

Legal Deadline: None

Abstract: EPA's Office of Acquisition Management conducted an internal assessment of its organization and determined that in some situations there were too many levels of review required prior to making contract awards and other contract—related decisions. Consequently, steps were taken to revise internal policies to eliminate certain higher level reviews and give authority and responsibility for making decisions relating to contract actions to the qualified individuals most familiar with the contracting action. This rule is being issued as a direct final rule because the changes being made are not considered controversial and adverse comments are not expected.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4742.

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RIN: 2030–AA81

3165. • MISCELLANEOUS REVISIONS TO EPAAR CLAUSES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; Sec (c), 63 Stat. 390, as amended; 40 USC 486 (c); 41 USC 418(b)

CFR Citation: 48 CFR 1515; 48 CFR 1535; 48 CFR 1552

Legal Deadline: None

Abstract: This rule includes administrative changes to various EPAAR clauses, such as address changes and points of contact. Nothing substantive will be affected.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4813.

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RIN: 2030–AA84

3166. • ON—SITE AND OFF—SITE BACKGROUND CHECKS PERFORMED BY EPA AND CONTRACTORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; Sec 205(c), 63 Stat 390, as amended; 40 USC 486 (c); 41 USC 418 (b)

CFR Citation: 48 CFR 1511; 48 CFR 1552

Legal Deadline: None

Abstract: This rule will require contractors to perform background checks and make suitability determinations before contractor employees can perform services on—site.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4814.

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RIN: 2030–AA85

3167. • CONTRACT BUNDLING REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 41 USC 418 (b); Sec 205(c), 63 Stat 390 as amended

CFR Citation: 48 CFR 1519; 48 CFR 1552

Legal Deadline: None

Abstract: In March of 2003, the President called on the Office of Management and Budget to prepare a strategy for unbundling Federal contracts. Federal contracting opportunities for Small Businesses have been dramatically reduced because of contract bundling. Contract bundling occurs when two or more procurement requirements for goods or services previously provided or performed under separate, smaller contracts is consolidated into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern. OMB's plan will require all agencies to uniformly review requirements prior to contract bundling. In addition, the plan will require contract bundling reviews for task and delivery orders under multiple award contract vehicles. Senior agency management will be held accountable for eliminating unnecessary contract bundling and mitigating the effects of necessary and justified contract bundling. In acquisitions where contract bundling is determined to be necessary and justified, actions will be taken to mitigate the effects by increasing subcontracting opportunities for small business. EPA's Office of Small and Disadvantaged Business Utilization and OAM will be working closely to eliminate unnecessary contract bundling and mitigate the effects of necessary contract bundling. Additional agency guidance and training will be forthcoming.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2030–AA86

3168. WASTE ISOLATION PILOT PLANT (WIPP) FY 2002 REPORT TO CONGRESS

Priority: Info./Admin./Other

Legal Authority: PL 102—579 sec 23(a)(2)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This Report to Congress is required by section 23(a)(2) of the WIPP Land Withdrawal Act, which requires EPA to submit an annual report to Congress "on the status of and resources required for the fulfillment of the Administrator's responsibilities under the Act" regarding the Waste Isolation Pilot Plant (WIPP). This report summarizes the activities and progress EPA has made in fulfilling its responsibilities under the Act and outlines the resources required for the Agency to meet its commitments. The WIPP is an underground repository for the permanent disposal of radioactive waste generated as byproducts from nuclear weapons production. It was constructed by the Department of Energy (DOE) and is located near Carlsbad, New Mexico. In 1998, EPA certified that the WIPP complies with EPA's radioactive waste disposal standards at subpart B and C of 40 CFR 191 and EPA's WIPP compliance criteria at 40 CFR 194, and thus is safe to contain radioactive waste. Since that time, the DOE has begun emplacing waste in the WIPP. The waste is stored approximately 2,100 feet underground in excavated, natural salt formations. EPA also has responsibility for assuring continual compliance with EPA's radioactive waste disposal standards. EPA continues to have an oversight role at the WIPP to ensure that it continues to protect human health and the environment. This Report summarizes EPA's activities past and present.

Timetable:

Action	Date	FR Cite
Report to Congress	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN 4761.

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RIN: 2060–AK79

3169. • PROJECT XL SITE—SPECIFIC RULEMAKING FOR THE NASA WHITE SANDS TEST FACILITY IN LAS CRUCES, NEW MEXICO (PHASES III TO VI)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 33 USC 2701—2761; 42 USC 300(f) to 300(j)—26; 42 USC 6901 to 6992(k); . . .

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The United States Environmental Protection Agency has entered into a final project agreement with the National Aeronautics and Space Administration (NASA) White Sands Test Facility in Las Cruces, New Mexico, that would modify the reporting requirements under the Resource Conservation and Recovery Act (RCRA) and the Safe Drinking Water Act (SDWA). The rule will allow the facility to submit regulatory reports and permit information electronically rather than on paper to the New Mexico Environment Department (NMED) Solid Waste Bureau,

EPA—General **Proposed Rule Stage**

Hazardous Waste Bureau, Groundwater Bureau, and Air Quality Bureau. Doing so will significantly reduce its regulatory reporting costs and enhance the State's ability to analyze and manage the facility's regulatory and permit information. The electronic reporting involves six phases that will transition NASA from submitting data on a CD—ROM to utilizing the internet to transmit data to NMED. This rule covers Phases III to VI of the project, the previous NASA White Sands Test Facility final rule covered Phases I and II.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4836.

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RIN: 2090–AA35

Environmental Protection Agency (EPA) — Final Rule Stage

General

3170. IMPLEMENTATION OF AUTHORITY TO APPOINT RESEARCH SCIENTISTS UNDER 42 USC

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 00 CFR NYD

Legal Deadline: None

Abstract: The proposed regulation will implement the Agency's authority under 42 USC 6A.I.61 section 209(f) and 209(g) to appoint research scientists and to take related personnel actions. Under 42 USC, the Agency has authority to make appointments of research scientists and to take related personnel actions including determining qualifications, method of recruitment, selection, duration of appointment and pay. The Agency's authority under 42 USC is separate from and not limited by 5 USC. The authority granted to the Agency under 42 USC derives from one of the foundation documents of the Agency: Reorganization Plan No. 3 of 1970.

Timetable:

Action	Date	FR Cite
Direct Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4747.

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RIN: 2030–AA83

3171. CROSS—MEDIA ELECTRONIC REPORTING (ER) AND RECORDKEEPING RULE (CROMERRR)

Priority: Other Significant

Legal Authority: PL 104—13; PL 105—277

CFR Citation: 40 CFR 3 (New); 40 CFR 9 (Revision)

Legal Deadline: None

Abstract: As proposed, the Cross—Media Electronic Reporting (ER) and Recordkeeping Rule (CROMERRR) was intended to provide a uniform legal framework for paperless electronic reporting and recordkeeping, including electronic signature/certification, across EPA's environmental compliance programs. Based on public comment, however, EPA now plans to focus on finalizing the electronic reporting components of the proposed CROMERRR, and to defer further action on the electronic recordkeeping components until a later time. Under current plans, the final electronic reporting (ER) rule will address electronic reporting by companies regulated under all of EPA's programs: air, water, pesticides, toxic substances, wastes, and emergency response. The final rule will remove existing regulatory obstacles to electronic reporting, and it would set requirements for companies choosing to report electronically. In addition, the rule would set the conditions for allowing electronic reporting under State, tribal or local environmental programs that operate under EPA authorization. The final ER rule is intended to make electronic reporting as simple, efficient, and cost—effective as possible for regulated companies, while ensuring that a transition from paper to electronic reporting does not compromise EPA's compliance and enforcement programs. Consequently, the Agency's strategy is to impose as few specific requirements as possible, and to keep those requirements neutral with respect to technology, so the rule will pose no obstacles to adopting new technologies as they emerge. To ensure that authorized programs at the State, tribal, and local levels meet EPA's electronic reporting goals, the final ER rule would specify a set of criteria that these program's must satisfy as they initiate electronic reporting. In response to public comments, EPA is also planning to include provisions for a streamlined process for EPA to review and approve authorized program revisions or modifications to allow electronic reporting. EPA is required by the Government Paperwork Elimination Act (GPEA) of 1998 to make the option of electronic reporting and recordkeeping available, where practicable, to its regulated community by October 2003.

Timetable:

Action	Date	FR Cite
NPRM	08/31/01	66 FR 46161
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4270

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RIN: 2025–AA07

3172. BACKGROUND INVESTIGATIONS FOR CONTRACTORS PERFORMING SERVICES ONSITE

Priority: Substantive, Nonsignificant

Legal Authority: "Not Yet Determined"

CFR Citation: 00 CFR NYD

Legal Deadline: NPRM, Statutory, September 6, 2002, NPRM.
Final, Statutory, December 5, 2002, Final.

Abstract: Executive Orders 10450 and 12968 require that all persons entering Federal service, including contract employees, be investigated for suitability. The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to add a clause requiring contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on or within Federally—owned or leased space and facilities, commercial space primarily occupied by Federal employees, and Superfund, Oil Pollution Act, and Stafford Act sites. The clause will require contractors (and subcontractors) to perform background checks and make suitability determinations on their employees before the employees can perform on—site contract services for the EPA. Contracting Officers will be allowed to waive the requirements of the clause on a case—by—case basis. The process contemplated by the clause will allow EPA to mitigate any actual or potential threat to the public health, welfare and the environment.

Timetable:

Action	Date	FR Cite
NPRM	01/22/03	68 FR 2988
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4733.

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RIN: 2030–AA80

3173. REGULATORY INCENTIVES FOR THE NATIONAL ENVIRONMENTAL PERFORMANCE TRACK PROGRAM

Priority: Other Significant

Legal Authority: "Not Yet Determined"

CFR Citation: 40 CFR 63; 40 CFR 262

Legal Deadline: None

Abstract: The National Environmental Performance Track is designed to recognize facilities that consistently meet their legal requirements and have implemented high—quality environmental management systems, and to encourage them to achieve more by continuously improving their environmental performance and informing and involving the public. Facilities gain entrance to Performance Track by submitting an application that documents that four specific criteria are met: an operating environmental management system; commitment to continuous environmental improvement through documented past improvements and future commitments; engaging the public; and a strong record of compliance. To promote participation in the program, and the environmental and other benefits that will come with it, EPA intends to offer several incentives. Among those incentives are the adjustments in current regulatory requirements that are the subjects of this rulemaking. These include reducing the frequency of reports required under the Maximum Achievable Control Technology (MACT) provisions of the Clean Air Act; and extending on—site storage of RCRA waste to 180 days.

Timetable:

Action	Date	FR Cite
NPRM	08/13/02	67 FR 52674
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4473.

URL For More Information:
www.epa.gov/performancetrack

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RIN: 2090–AA13

3174. PROJECT XL SITE—SPECIFIC RULEMAKING FOR NASA WHITE SANDS TEST FACILITY ELECTRONIC REPORTING IN LAS CRUCES, NEW MEXICO (PHASES I AND II)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The U.S. Environmental Protection Agency (EPA) has entered into an XL (eXcellence and Leadership) Final Project Agreement (FPA) with the National Aeronautics and Space Administration (NASA) White Sands Test Facility (WSTF) in Las Cruces, NM to implement a project that would modify reporting requirements under the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), Clean Water Act (CWA) and the Clean Air Act (CAA). The purpose of this NASA WSTF Electronic Reporting site—specific rule is to enable the NASA WSTF to electronically submit compliance reports and permit information to the New Mexico Environment Department (NMED) in lieu of submitting paper reports. The rule will set forth guidelines to ensure that the information submitted by NASA WSTF to NMED is accurate by outlining procedures for data authentication, use of electronic signature and encryption processes. This rule will address Phases I and II of the project covering reporting requirements under RCRA and the SDWA. A second and subsequent rule will address phases III—VI of the project covering additional reporting requirements under the CWA and CAA.

Timetable:

Action	Date	FR Cite
NPRM	10/31/01	66 FR 55050
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4536.

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RIN: 2090–AA27

Environmental Protection Agency (EPA) — Long-Term Actions

General

3175. REVISION OF PROCEDURAL RULES FOR HEARINGS ON CANCELLATIONS, SUSPENSIONS, CHANGES IN CLASSIFICATIONS, AND DENIALS OF PESTICIDE REGISTRATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136a(c) to 136a(d); 7 USC 136b(d) to 136b(f); 7 USC 136d(b) to 7 USC 136d(e); 7 USC 136w(a)

CFR Citation: 40 CFR 164 (Revision)

Legal Deadline: None

Abstract: EPA is preparing a comprehensive revision of the rules of practice governing the conduct of licensing adjudications under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The existing rules of practice were originally promulgated by EPA in 1973. In the subsequent 30 years, Congress has substantially amended FIFRA, creating a number of additional types of licensing adjudications which are not expressly provided for in the existing rules of practice. In order to include provisions tailored to these new types of proceedings, and to incorporate the standard practices which have evolved and the precedents which have been established since these rules were first promulgated, EPA intends to comprehensively revise the FIFRA rules of practice.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4618.

Sectors Affected: 112 Animal Production; 111 Crop Production; 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2020–AA44

3176. PUBLIC INFORMATION AND CONFIDENTIALITY REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2005; 15 USC 2601 et seq; 21 USC 346; 33 USC 1251 et seq; 33 USC 1414; 42 USC 11001 et seq; 42 USC 300(f) et seq; 42 USC 4912; 42 USC 6901 et seq; 42 USC 7401 et seq; 42 USC 9601 et seq; 5 USC 552; 7 USC 136 et seq

CFR Citation: 40 CFR 2; 40 CFR 57; 40 CFR 122; 40 CFR 123; 40 CFR 145; 40 CFR 233; 40 CFR 260; 40 CFR 270; 40 CFR 271; 40 CFR 281; 40 CFR 350; 40 CFR 403; 40 CFR 85; 40 CFR 86

Legal Deadline: NPRM, Statutory, August 31, 2000, NPRM.

Abstract: EPA regulations at 40 CFR part 2, subpart B, provide procedures for handling and disclosing information claimed as confidential business information (CBI). Although the current regulations have succeeded in protecting CBI, changes in Agency workload, practice, and statutory authority have made it difficult to handle CBI activities as expeditiously as desired. EPA is examining its CBI regulations to determine whether changes are needed to make them more efficient and effective. Provision 40 CFR 2.205(c), which automatically protects CBI substantiations claimed as confidential, is being examined individually and as part of the CBI regulations as a whole.

Timetable:

Action	Date	FR Cite
NPRM 1	11/23/94	59 FR 60446
NPRM 2	10/25/99	64 FR 57421
NPRM 3	12/21/99	64 FR 71366
NPRM 4	08/30/00	65 FR 52684
ANPRM	12/21/00	65 FR 80394
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 3240.

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RIN: 2025–AA02

3177. GUIDELINES FOR CARCINOGEN RISK ASSESSMENT

Priority: Info./Admin./Other

Legal Authority: "Not applicable"

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Agency will use these guidelines to evaluate suspect carcinogens in line with the policies and procedures established in the statutes administered by the EPA. These guidelines revise and replace EPA Guidelines for Carcinogen Risk Assessment published at 51 FR 33992, September 24, 1986. These guidelines provide EPA staff and decisionmakers with the directions and perspectives necessary to develop and use risk assessments. The guidelines also provide the general public with basic information about the Agency's approaches to risk assessment.

To develop guidelines the Agency must find a balance between consistency and innovation. Consistent risk assessments provide consistent bases to support regulatory decision—making. On the other hand, innovation is necessary so the Agency will base its decisions on current scientific thinking. In balancing these and other science policies, the Agency relies on input from the general scientific community through established scientific peer review processes. The guidelines incorporate basic principles and science policies based on evaluation of the currently available information. The revisions place increased emphasis on the role of carcinogenic mechanisms in risk assessment and clearer explication of underlying assumptions in risk assessment.

These guidelines will have minimal to no impact on small businesses or State, local, and tribal governments.

Timetable:

Action	Date	FR Cite
Reproposed Guidelines	04/23/96	61 FR 17960
Implementation Policy	06/25/96	61 FR 32799
Final Guidelines	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3671.

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RIN: 2080–AA06

Environmental Protection Agency (EPA) General Completed Actions

3178. IMPLEMENTATION OF CHANGES TO GOVERNMENTWIDE DEBARMENT AND SUSPENSION COMMON RULE

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 32

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2030–AA48

3179. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 42.101 to 42.112; 28 CFR 42.501 to 42.540; 28 CFR 42.700 to 42.736

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 2020–AA36

3180. FELLOWSHIP GRANT REGULATION REVISION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 46

Completed:

Reason	Date	FR Cite
Interim Final Rule	04/04/03	68 FR 16708
Interim Final Rule Effective	05/05/03	
Interim Final Rule Comment Period End	06/03/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2030–AA77

3181. EPA AGENCYWIDE PUBLIC INVOLVEMENT POLICY

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	06/06/03	68 FR 33946

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 2090–AA23

Environmental Protection Agency (EPA)
Clean Air Act (CAA)
Prerule Stage

3182. PETITIONS TO DELIST HAZARDOUS AIR POLLUTANTS: MEK

Priority: Substantive, Nonsignificant

Legal Authority: "Clean Air Act Section 112(b)(3)"

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, February 28, 2000, NPRM.

Abstract: The Agency has received 4 petitions to remove certain pollutants (i.e., methanol, methyl ethyl ketone, ethylene glycol butyl ether, and methyl isobutyl ketone) from the list of hazardous air pollutants (HAPs) under Section 112(b) of the Clean Air Act. The Agency must review the petitions and either grant or deny the petition within 18 months of the date the complete petition was received. If the Agency grants a petition, a notice of proposed rulemaking will be published in the Federal Register, allowing the opportunity for public comment. If the Agency denies a petition, a notice of denial will be published in the Federal Register providing an explanation for such denial. If the Agency grants a petition and ultimately removes the pollutant from the HAP list then sources emitting such pollutants would not be required to meet MACT emissions standards for the pollutant. If on the other hand, the Agency denies the petition, then MACT standards would be issued as currently planned under Section 112(c) and 112(d) of the Clean Air Act for sources emitting such pollutants. Depending on the 4 individual determinations, the Agency will issue separate notices for each.

Timetable:

Action	Date	FR Cite
Notice	05/02/01	66 FR 21929
NPRM 1	05/30/03	68 FR 32606
NPRM 2	11/00/03	
NPRM 3	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4313.

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RIN: 2060–AI72

3183. NESHAP: PERCHLORETHYLENE DRY CLEANING FACILITIES

Priority: Info./Admin./Other

Legal Authority: 42 USC 7412; 5 USC 610

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: On September 22, 1993 (58 FR 49354), EPA promulgated standards to control perchlorethylene emissions from drycleaning facilities under section 112 of the Clean Air Act (see 40 CFR part 63, subpart M). Pursuant to section 610 of the Regulatory Flexibility Act, EPA has reviewed this rule to determine if it should be continued without change, or should be amended or rescinded, to minimize adverse economic impacts on small entities. The full results of EPA's review have been summarized in a report and placed in docket number OAR—2003—0029 in EPA's electronic docket system (www.epa.gov/edocket). These results are briefly summarized here.

EPA has concluded that there is continued need for this rule to protect public health by reducing harmful perchloroethylene (PCE) emissions as mandated by section 112 of the Clean Air Act. EPA's review also addressed the following issues: complaints received, complexity, duplication and overlap. Regarding complaints, several commenters urged EPA to make the rule more stringent to further reduce or eliminate PCE use. The Agency is currently addressing these kinds of considerations as part of its review of the NESHAP under Clean Air Act sections 112(d)(6) and 112(f), and therefore will not address these issues further here.

A number of commenters cited recordkeeping burdens, but some also acknowledged that the requirements promote efficiency and are consistent with good business practices. Other commenters note that while recordkeeping does impose some paperwork burden, they do not believe it translates into significant economic cost. Another commenter proposed ways to lessen monitoring and recordkeeping burden. The Agency finds that revising the requirements as proposed by the commenters may lead to increased PCE emissions and may fail to demonstrate continued compliance.

The Agency also found that the rule's complexity is necessary to minimize economic impacts on small businesses while ensuring emissions reductions. The Agency received no comments requesting simplification of the rule requirements. EPA therefore finds that revisions to the NESHAP based on rule complexity are not necessary.

The extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules was also assessed as part of this review. The Agency is not aware of any instance where the NESHAP conflicts with State, local, or other requirements, and received no comments to that effect.

Finally, the Agency must consider the degree to which technology, economic conditions, or other factors have changed in the area of the rule. As noted above, although the Agency finds that no revisions to the NESHAP are necessary for the purpose of this RFA review, the Agency will continue to assess advances in technology as part of the ongoing review of the NESHAP that is required by section 112(d)(6) of the Clean Air Act.

In light of the considerations outlined above, EPA has decided to continue this rule in effect without change. A fuller explanation of the results of this review is given in the aforementioned report which has been placed in the docket established for this review.

Timetable:

Action	Date	FR Cite
Begin Review	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4785.

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RIN: 2060–AK64

3184. PROTECTION OF STRATOSPHERIC OZONE: SUPPLEMENTAL RULE REGARDING A RECYCLING STANDARD UNDER SECTION 608

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq "CAA 608"

CFR Citation: 40 CFR 82(F)

Legal Deadline: None

Abstract: This rule will amend the recordkeeping aspects of the technician certification program, clarify aspects of a sales restriction, and adopt an updated version of ARI standard 740. The rule will also clarify the distinction between major and non—major repairs and amend several definitions including small appliances. The rule also addresses the transfers of unreclaimed refrigerant between majority—owned and majority—controlled subsidiaries.

Timetable:

Action	Date	FR Cite
NPRM 1	02/29/96	61 FR 7858
NPRM	11/01/96	61 FR 56493
Notice	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3556. Additional SANs 3895, 3896. This rule will address a potential adoption of a more flexible method for cleaning refrigerants for refrigerant transferred between appliances with different ownership with a potential adoption of a 3rd party certification program for labs.

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RIN: 2060–AF36

3185. REVISION TO POLICY ON CONTROL OF VOLATILE ORGANIC COMPOUNDS (VOC)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 51.100(s)

Legal Deadline: None

Abstract: EPA is considering the proposal of revisions to its policy on control of volatile organic compounds (VOC), including the use of photochemical reactivity in controlling VOCs. As a first step, an ANPRM will be issued soliciting public comment on various policy options. Subsequent steps could range from taking no further action to publishing a policy statement in the Federal Register. The ANPRM is to announce that EPA is considering revision of its VOC policy which appeared in the July 8, 1977 Federal Register (42 FR 35314) under the title "Recommended Policy on Control of Volatile Organic Compounds." That policy statement gave a broad description about how EPA would approach VOC control. This policy also said that we would be exempting certain organic compounds from control in volatile organic compound regulations (to meet ozone ambient air quality limits) due to these compounds having very low ozone forming potential. A list of exempt compounds was later codified in the definition of VOC at 40 CFR 51.100(s) which was adopted on February 3, 1992 (57 FR 3941) for use in State Implementation Plans. The ANPRM will ask for public comments on various approaches EPA may use in the future to take photochemical reactivity into account in controlling VOCs. For example, some have argued that we should determine a specific reactivity number for each individual compound, and to control each compound based on its reactivity number (as opposed to treating all VOC the same way as we do now). The ANPRM could lead to a policy statement, such as the 1977 policy statement, which would give a broad outline of the new approach EPA would take in the future. This would not be a rulemaking, but the revised policy could lead to new rules being adopted still further in the future. (Any such rules would be separately noticed in the Regulatory Agenda.) For example, the ANPRM could eventually lead to a revision of the definition of VOC at 40 CFR 51.100(s).

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4759.

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RIN: 2060–AK75

Environmental Protection Agency (EPA)
Clean Air Act (CAA)

Proposed Rule Stage

3186. PETITIONS TO DELIST SOURCE CATEGORIES FROM THE SOURCE CATEGORY LIST, DEVELOPED PURSUANT TO SECTION 112(C) OF THE CLEAN AIR ACT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, April 21, 2000, NPRM.

Abstract: The EPA has received one petition to remove a SC (2—Piece Can Manufacturing) from the SC List developed pursuant to section 112(c) of the Clean Air Act (CAA). The most current SC list was published on February 12, 2002 (67 FR 6521). Section 112(c)(9), which provides the legislative authority and guidelines for such actions, states that the Administrator may delete a SC from the list under section 112(c), on petition of any person or on the Administrator's own motion, whenever the Administrator determines that no source in the category emits hazardous air pollutants (HAPs) in quantities which may cause a lifetime risk of cancer greater than 1 in 1 million to the individual in the population who is most exposed and that emissions from no source in the category exceed a level which is adequate to protect public health with an ample margin of safety and that no adverse environmental effect will result. As of August 14, 2002, one petition to delist a SC has been received. It contains information on HAP emissions, exposures, health effects, human risks, and potential ecological concerns as well as the petitioner's explanation why the 2—Piece Can Manufacturing should be removed from the SC List. The EPA is reviewing the petition. Once the review is completed, the EPA will decide whether to grant or deny the petition. Section 112(c)(9) requires that within 12 months of receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4415.

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RIN: 2060–AJ23

3187. EVALUATION OF UPDATED TEST PROCEDURES FOR THE CERTIFICATION OF GASOLINE DEPOSIT CONTROL ADDITIVES

Priority: Substantive, Nonsignificant

Legal Authority: "CAA 211"

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: All gasoline must contain additives to control the formation of deposits in the fuel supply system and engine of motor vehicles. If uncontrolled, such deposits can result in a significant increase in motor vehicle emissions. This action will propose that updated test procedures be adopted for the certification of gasoline deposit control additives regarding their ability to control fuel injector and intake valve deposits. The adoption of the updated procedures will ensure that the gasoline deposit control program continues to ensure an adequate level of deposit control, thereby preventing an increase in motor vehicle emissions. The updated test procedures require less time to perform and are less costly. Therefore, the adoption of the proposed procedures will reduce the burden on industry of complying with the gasoline deposit control program. The proposed action will not impact small businesses, or state, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4531.

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RIN: 2060–AJ61

3188. AMENDMENTS TO METHOD 24 (WATER—BASED COATINGS)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 60

Legal Deadline: Final, Statutory, June 15, 2001, Final.

Abstract: The determination of volatile organic compounds (VOCs) content of a surface coating by reference Method 24 involves determination of its water content and calculation of its VOC content as the difference of the two measurements (volatile content minus water content). Method 24 is inherently less precise for water—based coatings than it is for solvent—based coatings and the imprecision increases as water content increases. This action will amend Method 24 by adding a direct measurement procedure for measuring VOC content of water—based coatings, thereby improving the method's precision.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3649.

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RIN: 2060–AF72

3189. GENERAL CONFORMITY REGULATIONS; REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401—7671

CFR Citation: 40 CFR 51.850 to 51.860; 40 CFR 93.150 to 93.160

Legal Deadline: None

Abstract: Section 176(c) of the Clean Air Act prohibits Federal entities from taking actions which do not conform to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). In November 1993, EPA promulgated two sets of regulations to implement section 176(c). First, on November 24, EPA promulgated the Transportation Conformity Regulations to establish the criteria and procedures for determining that transportation plans, programs, and projects which are funded under title 23 U.S.C. or the Federal Transit Act conform with the SIP. Then, on November 30, EPA promulgated regulations, known as the General Conformity Regulations, to ensure that other Federal actions also conformed to the SIPs. The EPA has not reviewed or revised the General Conformity Regulations since their 1993 promulgation. Several Federal agencies have identified concerns over the implementation of the General Conformity Regulations, including the requirements for areas designated nonattainment for the newly promulgated NAAQS. In conjunction with an ad hoc work group of representatives from several Federal agencies, EPA will review the implementation of the General Conformity Regulations. The EPA will then propose and promulgate any appropriate revision to those regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN 4070.

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RIN: 2060–AH93

3190. NESHAP: GROUP I POLYMERS AND RESINS AND GROUP IV POLYMERS AND RESINS—AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63.480 to 63.506 (Revision); 40 CFR 63.1310 to 63.1335 (Revision)

Legal Deadline: None

Abstract: During the development of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for elastomers (Group I polymers and resins) and thermoplastics (Group IV polymers and resins) (RINs 2060—AD56 and 2060—AE37), many of the provisions contained in the Hazardous Organic NESHAP (HON) were referenced directly by these polymers and resins regulations due to similarities in processes, emission characteristics, and control technologies. On January 17, 1997, the EPA promulgated changes to the HON to remove ambiguity, to clearly convey EPA intent, and to make the rule easier to understand and implement in response to industry petitions. It is necessary to make parallel changes to the polymers and resins NESHAP; otherwise inconsistencies will exist for NESHAPs regulating similar source categories. An ANPRM was published in the Federal Register on 11/25/96 (61 FR 59849), to explain the nature of changes planned. Subsequently, six litigants have petitioned for review of the elastomers and thermoplastics regulations. Four companies have petitioned EPA to reconsider specific provisions in the thermoplastics regulation. Revisions will be proposed to parallel HON changes and to resolve petitioners' issues.

Timetable:

Action	Date	FR Cite
ANPRM	11/25/96	61 FR 59849
NPRM 1	03/09/99	64 FR 11559
Direct Final 2	06/08/99	64 FR 30406
NPRM 2	06/08/99	64 FR 30453
NPRM 3	06/08/99	64 FR 60456
Direct Final 1	06/19/00	65 FR 38030
Direct Final 3	08/29/00	65 FR 52319
Direct Final 4	10/26/00	65 FR 64161
NPRM 4	02/23/01	66 FR 11233
Final 1	07/16/01	66 FR 36924
Final 2	08/06/01	66 FR 40903
NPRM 5	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3939.

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AH47

3191. REVIEW OF NEW SOURCES AND MODIFICATIONS IN INDIAN COUNTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: As required by the Clean Air Act's New Source Review (NSR) provisions, the EPA is proposing Federal regulations governing preconstruction permitting of major and minor stationary sources of air pollution in Indian country. Pursuant to the Tribal Air Rule, eligible Indian tribes may receive EPA authorization to develop and implement such programs. The Federal NSR permitting programs would be effective throughout Indian country and would be implemented by EPA if eligible Indian Tribes do not elect, or do not receive authorization, to manage such programs. The proposed Federal NSR rule would require sources in Indian country, with certain exceptions, to obtain a permit prior to construction if they are: (1) New minor sources; (2) existing minor sources undergoing modification; or (3) existing major sources undergoing minor modification. The proposed rule also would allow new or existing stationary sources to accept enforceable limits on their production capacity or hours of operation in order to be considered minor sources and avoid being subject to other Clean Air Act requirements such as the title V operating permit program. The proposed Federal major NSR rule would require sources in nonattainment areas in Indian country to obtain a permit prior to construction if they are: (1) New major sources; or (2) existing major sources undergoing major modification. These rules would not impose any mandates on tribal governments to implement NSR permitting programs. Tribal governments may be affected, however, insofar as they own or operate sources that must obtain a permit from the EPA under the final Federal permitting program regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Tribal

Additional Information: SAN 3975.

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RIN: 2060–AH37

3192. IMPLEMENTATION RULE FOR PM—2.5 NAAQS

Regulatory Plan: This entry is Seq. No. 103 in part II of this issue of the **Federal Register**.

RIN: 2060–AK74

3193. PERFORMANCE SPECIFICATION 16 — SPECIFICATIONS AND TEST PROCEDURES FOR PREDICTIVE EMISSION MONITORING SYSTEMS IN STATIONARY SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: Performance Specification 16 is being proposed to provide performance criteria for predictive emission monitoring systems. Predictive systems represent a new technology that uses process information or parameters to predict pollutant emissions instead of directly measuring them. The Agency is allowing their use in recently—promulgated rules and they are being considered by a number of regulated facilities. The specification lists the requirements for acceptable systems that are met by passing tests that compare the monitoring system with standardized methods and audit gases to determine system accuracy and stability. Performance Specification 16 will primarily apply to facilities whose emissions can be predicted from process parameters such as combustion processes (including gas turbines and internal combustion engines).

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN 4119.

Sectors Affected: 336399 All Other Motor Vehicle Parts Manufacturing; 333618 Other Engine Equipment Manufacturing; 33241 Power Boiler and Heat Exchanger Manufacturing; 333611 Turbine and Turbine Generator Set Unit Manufacturing

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RIN: 2060–AH84

3194. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: MUNICIPAL SOLID WASTE LANDFILLS: AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401; 42 USC 7411; 42 USC 7414; 42 USC 7416; 42 USC 7429; 42 USC 7601

CFR Citation: 40 CFR 60.750; 40 CFR 60.751; 40 CFR 60.752(b)(2)(iii)(B); 40 CFR 60.752(b)(2)(iii)(C); 40 CFR 60.752(b)(2)(iii)(D); 40 CFR 60758

Legal Deadline: None

Abstract: This action will amend the existing regulation entitled Standards of Performance for New Stationary Sources: Municipal Solid Waste Landfills, subpart WWW of 40 CFR Part 60, promulgated on March 12, 1996. The amendment is being undertaken in response to requests to clarify our intent regarding what constitutes an adequate landfill gas treatment system. This action also clarifies our intent to exempt from control landfill gas that is treated/upgraded. Furthermore, it clarifies who is responsible for control of untreated landfill gas that is sold. This action is necessary to clarify our intent regarding the issues discussed above. It will improve implementation and compliance with this regulation.

Timetable:

Action	Date	FR Cite
Proposed Amdt	05/23/02	67 FR 36476
Supplemental NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4478.

Sectors Affected: 562212 Solid Waste Landfill

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RIN: 2060–AJ41

3195. UPDATE OF CONTINUOUS INSTRUMENTAL TEST METHODS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: Methods 3A, 6C, 7E, 10, and 20 of 40 CFR Part 60, Appendix A are instrumental methods that are being revised to make their performance criteria consistent. Analyzer calibration error tests and sampling system bias tests now required in Methods 3A, 6C, and 7E are being added to Methods 10 and 20. Inconsistent acceptance criteria for other performance tests and calibration gas quality are also being made uniform. Performance criteria currently determined based on the instrument span is being revised to an emission limit basis. This change will fix the acceptance limits for all source tests on the applicable emission limit and not on a span value that sources have some discretion in choosing. These revisions were proposed on August 27, 1997, in an announcement entitled Amendments for Testing and Monitoring Provisions. They were considered not significant at that time. The public did not feel that the preamble to the rule provided adequate notice of the changes being made to the methods. The commenters requested a reproposal of these revision to the instrumental methods to allow for adequate public review. Methods 7F and 7G are new methods that measure nitrogen oxides electrochemically. These methods are being proposed in response to requests made by vendors/sources. These methods will add flexibility to the testing provisions currently in place and will not add requirements or affect the stringency of the underlying emission standards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4161.

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RIN: 2060–AK61

3196. NESHAP: PRINTING AND PUBLISHING INDUSTRY; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 1994, Final.

Abstract: The amendments will clarify the rule and ensure it reflects the EPA's intent.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN 4310.

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RIN: 2060–AI66

3197. ELECTRIC UTILITY STEAM GENERATING UNIT MACT REGULATION

Regulatory Plan: This entry is Seq. No. 102 in part II of this issue of the **Federal Register**.

RIN: 2060–AJ65

3198. PORTLAND CEMENT MANUFACTURING INDUSTRY NESHAP: AMENDMENT TO IMPLEMENT COURT REMAND

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63.1340 to 63.1359

Legal Deadline: None

Abstract: The Portland Cement Manufacturing Industry NESHAP was promulgated June 14, 1999, and has been codified in 40 Code of Federal Regulations 63, Subpart LLL. The Sierra Club and the National Lime Association petitioned the court to review Subpart LLL, while the American Portland Cement Alliance (APCA) opted to negotiate a settlement agreement. (Note that there is currently a separate rule under development to amend Subpart LLL to implement the settlement agreement with the APCA — SAN 4524, RIN 2060—AJ57.) On December 15, 2000, a panel of the D.C. Circuit issued its opinion in National Lime Assn v. EPA. The Court remanded the three standards for which we established floors of no control (hydrogen chloride [HCl], total hydrocarbon [THC], and mercury [Hg]). The Court found that we committed error in not considering other means of control, in particular, control of

HAPs in raw materials and in fossil fuels. The Court also remanded that we consider setting beyond—the—floor standards for HAP metals, for which particulate matter (PM) is a surrogate. This action will consist of amendments to respond to the court remand.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4585.

Sectors Affected: 32731 Cement Manufacturing

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RIN: 2060–AJ78

3199. NATIONAL EMISSION STANDARDS FOR COKE OVEN BATTERIES — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, October 27, 2001, NPRM.

Abstract: The Clean Air Act (CAA) Section 112(f), standard to protect health and the environment is the statutory authority for this rulemaking. In accordance with Section 112(f)(2), EPA must promulgate residual risk standards 8 years after promulgation of emission standards. We promulgated emission standards for charging, topside leaks, and door leaks at coke ovens on October 27, 1993. This rule will further reduce coke oven emissions from charging, topside leaks, and door leaks at the affected coke plants.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4620.

Sectors Affected: 331111 Iron and Steel Mills

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RIN: 2060–AJ96

3200. NESHAP: ETHYLENE OXIDE FOR STERILIZATION FACILITIES — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 6, 2002, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA codified in 40 CFR part 63, subpart O. This source category covers ethylene oxide commercial sterilizers. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4654.

Sectors Affected: 3254 Pharmaceutical and Medicine Manufacturing; 311942 Spice and Extract Manufacturing

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RIN: 2060–AK09

3201. NESHAP: GASOLINE DISTRIBUTION (STAGE I) RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 14, 2002, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety. The sources covered are Stage I gasoline distribution sources — i.e., sources of air emissions from processes involved with the wholesale distribution of gasoline to gas stations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN 4655.

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RIN: 2060–AK10

3202. NESHAP: SOLVENT EXTRACTION FOR VEGETABLE OIL: AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: On April 12, 2001, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for solvent extraction of vegetable oil. This amendment will consider adjustments to that NESHAP in light of information gained since its promulgation.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4672. Split from RIN 2060—AH22.

Sectors Affected: 311225 Fats and Oils Refining and Blending; 311223 Other Oilseed Processing; 311222 Soybean Processing

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RIN: 2060–AK32

3203. PETITION TO DELIST A HAZARDOUS AIR POLLUTANT (HAP) SOURCE CATEGORY FROM SECTION 112 OF THE CLEAN AIR ACT — GAS TURBINES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Other, Statutory, Other.

Abstract: The Agency has received a petition to remove the gas turbines source category from the list of hazardous air pollutant sources under section 112(c) of the Clean Air Act. The Agency must review the petition and either grant or deny the petition within 12 months of the date the complete petition is received. If the Agency grants the petition, a notice of proposed rulemaking will be published in the Federal Register, allowing the opportunity for public comment. If the Agency denies the petition, a notice of denial will be published in the Federal Register providing an explaination of the denial.

Timetable:

Action	Date	FR Cite
NPRM or Notice	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4751.

Sectors Affected: 3336 Engine, Turbine, and Power Transmission Equipment Manufacturing; 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AK73

3204. NATIONAL VOC EMISSION STANDARDS FOR CONSUMER PRODUCTS; PROPOSED AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7511b

CFR Citation: 40 CFR 59

Legal Deadline: None

Abstract: Amendments to the consumer products rule are being proposed to clarify and correct the rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4309.

Sectors Affected: 32599 All Other Chemical Product Manufacturing

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RIN: 2060–AI62

3205. CONTROL OF HAZARDOUS AIR POLLUTANTS FROM MOBILE SOURCES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 7521

CFR Citation: 40 CFR 80; 40 CFR 86

Legal Deadline: None

Abstract: This rule establishes appropriate requirements, based on the need for and feasibility of additional requirements, to control hazardous air pollutants (air toxics) from motor vehicles, nonroad engines and vehicles, and their fuels. The Clean Air Act requires EPA to periodically revise such requirements. EPA committed to this rulemaking in its March 29, 2001 rule, Control of Emissions of Hazardous Air Pollutants From Mobile Sources. Motor vehicles are significant contributors to national emissions of several hazardous air pollutants. These pollutants are known or suspected to have serious health or environmental impacts. Reducing emissions of these pollutants will reduce the risk to public health and welfare.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	
Final Action	07/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Additional Information: SAN 4748.

Sectors Affected: 3361 Motor Vehicle Manufacturing; 3363 Motor Vehicle Parts Manufacturing; 32411 Petroleum Refineries; 4227 Petroleum and Petroleum Products Wholesalers

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RIN: 2060–AK70

3206. EMISSIONS DURABILITY PROCEDURES FOR NEW LIGHT—DUTY VEHICLES AND LIGHT—DUTY TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7521

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: On October 22, 2002 the U. S. Court of Appeals for the D.C. Circuit vacated durability provisions that automotive manufacturers used to demonstrate that the emissions of their vehicles would comply with emission standards for the useful lives of those vehicles. The Court also required EPA to issue new regulations. This action fulfills the mandate. The new durability regulations will include options that a manufacturer may choose from to age preproduction vehicles to determine the rate of emission deterioration over the vehicle's useful life. The options will include a prescribed fixed driving cycle and a presribed bench aging cycle that are used to age prototype vehicles or emission control components to the equivalent of the useful life period of the vehicle in a manner that replicates the aging that the vehicle or components would see in actual use. This rule does not change the Federal emission standards or the test procedures used to quantify emissions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4757.

Sectors Affected: 3361 Motor Vehicle Manufacturing

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RIN: 2060–AK76

3207. CONTROL OF METHYL TERTIARY BUTYL ETHER (MTBE)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: EPA is considering taking action to control the use of methyl tertiary butyl ether (MTBE), which is an organic compound that is primarily used as a fuel additive in gasoline. MTBE has been used to meet the oxygen requirement established by the Federal Reformulated Gasoline Program (RFG) established by the 1990 amendments to the Clean Air Act (CAA). Over 85 percent of reformulated gasoline contains MTBE. EPA is concerned that the widespread use of MTBE may have resulted in the contamination of groundwater and drinking water supplies, threatening their future use. While current detections levels are generally believed to be below levels that may cause public health concerns, low level MTBE contamination may render water unpotable due to offensive taste and odor. In November 1998, EPA established a Blue Ribbon Panel to investigate air quality benefits and water quality concerns associated with oxygenates, including MTBE, in gasoline, and to provide independent advice and recommendations on ways to maintain air quality while protecting water quality. In September 1999, the panel recommended that the use of MTBE be substantially reduced. EPA is now evaluating the Blue Ribbon Panel's recommendations, and has conducted a preliminary review of authorities available to address risks associated with MTBE. EPA issued an Advance Notice of Proposed Rulemaking to inform the public of this preliminary inquiry, and to solicit public comment on possible regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	03/24/00	65 FR 16094
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: SAN 4393.

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RIN: 2060–AJ00

3208. OPERATING PERMITS: REVISIONS (PART 70)

Priority: Other Significant

Legal Authority: 42 USC 7661 et seq

CFR Citation: 40 CFR 51; 40 CFR 52; 40 CFR 70

Legal Deadline: None

Abstract: In response to litigation on the operating permits rule regulations, 40 CFR part 70, to provide more effective implementation of part 70, and to address comments provided in response to notices of proposed rulemaking, parts 70, 51 and 52 are being revised. The changes will streamline the procedures for revising stationary—source operating permits issued by State and local permitting authorities under title V of the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM Original	08/29/94	59 FR 44460
Supp NPRM 1	04/27/95	60 FR 20804
Supplemental NPRM	08/31/95	60 FR 45530
NPRM	03/00/04	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Additional Information: SAN 3412.

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RIN: 2060–AF70

3209. PROTECTION OF STRATOSPHERIC OZONE: PROCESS FOR EXEMPTING CRITICAL AND EMERGENCY USES OF METHYL BROMIDE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7671c

CFR Citation: 40 CFR Part 82

Legal Deadline: None

Abstract: With this action, EPA will revise the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer. The amendments will incorporate exemptions permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer and recent changes to the Clean Air Act. Specifically, the amendments will create a process to exempt production and consumption of quantities of methyl bromide for critical and emergency uses from the 2005 phaseout of methyl bromide. Because this is an exemption, the rule will confer a benefit on affected entities.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4535.

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RIN: 2060–AJ63

3210. PROTECTION OF STRATOSPHERIC OZONE: ADJUSTING ALLOWANCES FOR CLASS I SUBSTANCES FOR EXPORT TO ARTICLE 5 COUNTRIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671 to 7671q

CFR Citation: 40 CFR 82

Legal Deadline: None

Abstract: This action reinforces the economic incentives related to the transition of Article 5 countries to ozone—depleting substance alternatives. Currently, Article 5 allowances are determined as a percentage of total production allowances assigned to US companies for Class I ozone—depleting substances. In accordance with the Beijing Amendments of the Montreal Protocol, this action establishes Article 5 allowances independently of total production allowances.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4697.

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RIN: 2060–AK45

3211. PROTECTION OF STRATOSPHERIC OZONE: RECONSIDERATION OF SECTION 608 SALES RESTRICTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7671(g) "CAA 608"

CFR Citation: 40 CFR 82(F)

Legal Deadline: None

Abstract: EPA is amending the rule on refrigerant recycling, promulgated under section 608 of the Clean Air Act to clarify how the statutory venting prohibition of the Act applies to refrigerants that are used as substitutes for CFC and HCFC ozone—depleting refrigerants. It also exempts refrigerants that are used as substitutes for CFC and HCFC ozone—depleting refrigerants. It also exempts certain substitute refrigerants from the prohibition on the basis of current evidence that their release does not pose a threat to the environment. In addition, EPA is extending the refrigerant sales restriction to substitute refrigerants that consist of an ozone—depleting substance.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3673.

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RIN: 2060–AG20

3212. FEDERAL IMPLEMENTATION PLAN (FIP) FOR THE BILLINGS/LAUREL, MONTANA, SULFUR DIOXIDE (SO2) AREA

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq

CFR Citation: 40 CFR 52

Legal Deadline: None

Abstract: The State of Montana submitted a sulfur dioxide (SO2) State Implementation Plan (SIP) for the Billings/Laurel, Montana, area. On 5/2/02 and 5/22/03 we partially approved and partially disapproved Montana's SO2 SIP for Billings/Laurel. EPA intends to propose a Federal Implementation Plan (FIP) to cover those parts of the State's plan we disapproved. EPA's FIP will assure that the Billings/Laurel area will attain and maintain the SO2 NAAQS.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN 4542.

Sectors Affected: 32411 Petroleum Refineries

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RIN: 2008–AA00

3213. INSPECTION/MAINTENANCE RECALL REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7511(a)(2)(b); 42 USC 7511(a)(2)(b)(2)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This action specifies requirements for enhanced I/M programs to establish a program to ensure compliance with recall notices. This is pursuant to the Clean Air Act Amendments of 1990.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3262.

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RIN: 2060–AE22

3214. INSPECTION MAINTENANCE PROGRAM REQUIREMENTS FOR FEDERAL FACILITIES; AMENDMENT TO THE FINAL RULE

Priority: Other Significant

Legal Authority: 23 USC 101; 42 USC 7401 et seq

CFR Citation: 40 CFR 51 (Revision); 40 CFR 93 (New)

Legal Deadline: None

Abstract: The Environmental Protection Agency (EPA) has had oversight and policy development authority for Inspection and Maintenance (I/M) programs since the passage of the Clean Air Act (CAA) in 1970. The 1977 amendments to the CAA mandated I/M for certain areas with long—term air quality problems and the 1990 amendments set forth standards for implementation of I/M programs. EPA used the statutory requirements of the Act, including I/M requirements for Federal facilities, to promulgate regulations which states would use in the development of their I/M State Implementation Plans (SIPs). Those rule requirements effectively gave States certain authorities over the Federal government. The Department of Justice has now ruled that Federal sovereign immunity was not fully waived under the CAA for those requirements and EPA should amend its rule to remove the requirement that States include those elements in their SIPs. EPA is proposing to: (1) Amend the Federal facilities I/M requirements by removing that section; (2) correct existing I/M SIP approval actions which include these elements; (3) establish new Federal facilities I/M program requirements which Federal facilities in I/M program areas must meet in order to comply with the Act; and (4) designate for each State which section of the Act Federal agencies must comply with based on how that State promulgated its I/M regulations. These changes will have minimal to no impact on the States as no new requirements are being created. The States are under no obligation, legal or otherwise, to modify existing SIPs meeting the previously applicable requirements as a result of this action, nor will emissions reduction credit be affected. However, the changes will clarify for affected Federal facilities what they must do to meet the CAA requirements by establishing new regulations per those requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4348.

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RIN: 2060–AI97

3215. AMBIENT AIR QUALITY MONITORING REGULATIONS: REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 50 (Revision); 40 CFR 53 (Revision); 40 CFR 58 (Revision)

Legal Deadline: None

Abstract: Air pollution control authorities use air quality data to determine compliance with the National Ambient Air Quality Standards and in subsequent work to develop air pollution mitigation strategies. The data come primarily from ambient air monitoring stations run by state and local agencies, although federal, tribal, and industrial organizations also run stations. The design of the monitoring networks is regulated under 40 CFR 58. This rule was originally written in 1979 and several revisions have been made in the intervening years. Air pollution control authorities have improved their parts of the network in response to changes in air quality, advances in the understanding of the movements and health effects of air pollutants, and developments in air pollution measurement technology. EPA has also cooperated with air pollution control authorities to improve the networks, but we have not revised the applicable regulations comprehensively. The proposed revisions would remove real or perceived constraints on redeploying air monitoring stations; more accurately reflect the roles of EPA and other control authorities in designing, reviewing, and modifying networks; bring provisions related to quality assurance up to date; and recognize technological changes. The current regulations require states to develop plans to deploy air monitoring networks, but they do not emphasize administering the networks. States generally develop new plans only when new monitoring is needed, such as for a new NAAQS. The regulations need to be revised to reflect the roles of EPA and the state and local agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4421.

Sectors Affected: 92411 Air and Water Resource and Solid Waste Management; 334519 Other Measuring and Controlling Device Manufacturing

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RIN: 2060–AJ25

3216. REVISIONS TO REGIONAL HAZE RULE TO ADDRESS CONCERNS RAISED BY DC CIRCUIT REGARDING BEST AVAILABLE RETROFIT TECHNOLOGY (BART)

Priority: Other Significant

Legal Authority: 42 USC 7410; 42 USC 7414; 42 USC 7421; 42 USC 7470 to 7479; 42 USC 7491; 42 USC 7492; 42 USC 7601; 42 USC 7602

CFR Citation: 40 CFR 51.308(e)(1); 40 CFR 51 app Y (New)

Legal Deadline: NPRM, Judicial, April 15, 2004, NPRM.
Final, Judicial, April 15, 2005, Final.

Abstract: To meet the Clean Air Act's requirements, EPA published the regional haze rule on July 1, 1999 (64 FR 35714). On May 24, 2002, the DC Circuit vacated certain provisions of the regional haze rule related to best available retrofit technology (BART). Because of this court decision, we need to propose and publish revised BART provisions in the regional haze rule. The purpose of this effort is to provide the appropriate changes to the BART requirements and guidelines, and to address additional issues related to reasonable progress goals for the visibility program. On July 20, 2001, we proposed guidelines intended to add further clarifications to the BART requirements in the regional haze rule. Since then, due to additional information that has come to light since that proposal, we have decided that a supplemental proposal is needed.

Timetable:

Action	Date	FR Cite
NPRM Resubmittal	07/20/01	66 FR 38108
Supplemental NPRM	04/00/04	
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4450.

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RIN: 2060–AJ31

3217. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND ENGINES: ALTERNATIVE LOW—SULFUR HIGHWAY DIESEL FUEL TRANSITION PROGRAM FOR ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a); 42 USC 7625—1

CFR Citation: 40 CFR 69 and 80 (Revision)

Legal Deadline: None

Abstract: This action will carry out a flexibility provision for Alaska that was included in EPA's heavy—duty diesel rule, which was promulgated on

January 18, 2001. That rule established more stringent national emission standards for heavy—duty highway vehicles and engines for the 2007 model year, and a technology—enabling sulfur limit of 15 ppm for highway diesel fuel beginning in 2006. In that rule, EPA recognized Alaska's unique geographical, meteorological, air quality, and economic factors and provided Alaska an opportunity to develop its own plan to transition to low—sulfur highway diesel fuel, as an alternative to the national transition program. Our goal in offering this flexibility is to transition Alaska into the low—sulfur fuel program in a manner that minimizes costs, while ensuring that the new vehicles and engines receive the low—sulfur fuel they need. As stated in the Federal Register notice for the diesel rule, if Alaska submits an alternative plan by April 1, 2002, and if EPA determines that it provides a reasonable alternative, EPA intends to initiate rulemaking and, within one year from the date of Alaska's submittal, promulgate a final rule to incorporate the alternative plan. A stakeholder process to develop options is already underway in Alaska, and the State informed EPA that it intends to submit an alternative transition plan in late 2001 or early 2002. This action will be in response to that anticipated submittal.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4570.

Sectors Affected: 336112 Light Truck and Utility Vehicle Manufacturing

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RIN: 2060–AJ72

3218. MODIFICATION OF AUTHORITY TO GRANT ALTERNATIVE METHOD APPROVALS

Priority: Substantive, Nonsignificant

Legal Authority: "Not Yet Determined"

CFR Citation: 00 CFR NYD

Legal Deadline: None

Abstract: Currently, stationary source regulations cite specific test methods to demonstrate compliance. If a source locates a test method which will measure the regulated pollutant(s) with similar precision and accuracy to the method cited in the regulation, and would like to use the alternative method, the source must petition the EPA (along with data documenting the applicability of the alternative) to allow the alternative method. Each of these alternative method approvals by letter may currently only be granted to a specific source. Source category—wide approvals must be published for comment in the Federal Register. Due to budgetary and time constraints, the process constrains industry trade associations from developing and submitting alternative test methods. Therefore, the purpose of this rulemaking is to modify the regulations to allow source category—wide alternative method approvals to be issued by letter.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4547.

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RIN: 2060–AJ83

3219. ADOPTION OF THE AMENDED INTERNATIONAL NOX STANDARD FOR AIRCRAFT ENGINES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq; "CAA 231 to 232"; 42 USC 7571 to 7572; 5 USC 552(a)

CFR Citation: 40 CFR 87.1; 40 CFR 87.21; 40 CFR 87.64; 40 CFR 87.71; 40 CFR 87.10; 40 CFR 87.31(b); 40 CFR 87.82; 40 CFR 87.89

Legal Deadline: None

Abstract: The purpose of this proposed rulemaking is to amend the existing United States regulations governing the exhaust emissions from new commercial aircraft gas turbine engines. The amendment will codify into United States law the recently amended voluntary NOx emission standard of the United Nation's International Civil Aviation Organization (ICAO), thus bringing the United States emission standards into alignment with the internationally adopted standards. This NOx standard was adopted at the ICAO/Committee on Aviation Environmental Protection (CAEP) 4 meeting in 1998. The implementation of the standard is to begin in January 2004. Further, this amendment will establish consistency between U.S. and international requirements and test procedures. This action is necessary to ensure that domestic commercial aircraft meet international standards and the public can be assured that they are receiving the air quality benefits of the international standards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4631.

Sectors Affected: 33641 Aerospace Product and Parts Manufacturing; 336412 Aircraft Engine and Engine Parts Manufacturing; 3336 Engine, Turbine, and Power Transmission Equipment Manufacturing; 336413 Other Aircraft Part and Auxiliary Equipment Manufacturing

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RIN: 2060–AK01

3220. MODIFICATION OF ANTI—DUMPING BASELINES FOR GASOLINE PRODUCED OR IMPORTED FOR USE IN HAWAII, ALASKA AND THE U.S. TERRITORIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80 (Revision)

Legal Deadline: None

Abstract: "Dumping" refers to the practice whereby refiners making clean fuels for certain markets (such as reformulated gasoline for clean—air purposes) take the pollutants removed from the clean fuels and "dump" them into other fuels they are producing for other markets. This, if allowed, would make those other fuels even dirtier than before, and so the Clean Air Act prohibits this practice. EPA has existing "anti—dumping" rules on the books that codify this Clean Air Act prohibition. This action proposes to allow refiners and importers of conventional gasoline produced or imported for use in Hawaii, Alaska, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands to petition EPA to modify their baselines to use the most appropriate seasonal baseline and Complex Model for purposes of compliance with the RFG program's anti—dumping requirements.

Specifically, this action would allow refiners and importers to petition EPA to use the summer Complex Model for all anti—dumping baseline and compliance determinations for conventional gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands. This action would allow refiners and importers to petition EPA to use the winter Complex Model for all anti—dumping baseline and compliance purposes in Alaska. We are proposing this action to address certain inconsistencies in the RFG program's anti—dumping provisions which may have significant unintended negative impacts on refiners and importers. In addition, this action proposes to modify the anti—dumping provisions to address compliance in certain situations where a refinery becomes nonoperational during the annual averaging period. This action is intended to address compliance issues where a refinery does not produce sufficient "summer" gasoline to offset the higher emissions of "winter" gasoline due to the refinery becoming non—operational during the annual averaging period. Today's proposed actions would not compromise the environmental goals of the RFG program, or result in any environmental degradation. Today's proposed actions would not have any negative impact on small businesses or state/local/tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN 4632.

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RIN: 2060–AK02

3221. PERFORMANCE—BASED MEASUREMENT SYSTEM FOR FUELS: CRITERIA FOR SELF—QUALIFYING ALTERNATIVE TEST METHODS; DESCRIPTION OF OPTIONAL STATISTICAL QUALITY CONTROL MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7545

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: Transportation fuels (like gasoline and diesel fuel) are regulated by EPA under the Clean Air Act to control the emissions that result when they are burned in engines, and also to protect engines' emission control equipment. Fuels regulations require measurement of various of the fuels' properties, and prescribe "designated" analytical methods for that purpose. This regulation is intended to provide a way for regulated parties to self—qualify alternatives to the designated measurement methods that may be cheaper, quicker, simpler, more amenable to automation, or otherwise preferable. The regulation will also prescribe a minimum level of statistical quality control for all fuels test methods, designated or alternative. The regulations should quicken the adoption of new measurement technologies by removing the need for multiple method—specific rule—makings, but to do so in a way that will not degrade the performance of the overall measurement system. The qualification criteria are designed to admit only methods that are as precise as the designated methods and can be made to accurately predict designated method measurements. Introduction of statistical quality control for all methods should improve measurement precision and accuracy in actual practice across all methods.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4633.

Sectors Affected: 324199 All Other Petroleum and Coal Products Manufacturing; 54199 All Other Professional, Scientific and Technical Services; 42271 Petroleum Bulk Stations and Terminals; 48691 Pipeline Transportation of Refined; 334516 Analytical Laboratory Instrument Manufacturing

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RIN: 2060–AK03

3222. ● TRANSPORTATION CONFORMITY RULE AMENDMENTS FOR NEW 8—HOUR OZONE AND PM2.5 NATIONAL AMBIENT AIR QUALITY STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401—7671q

CFR Citation: 40 CFR 51 and 93

Legal Deadline: None

Abstract: The transportation conformity rule ensures that transportation planning is consistent with a state's plans for achieving the air quality standards. These amendments to the existing transportation conformity rule are necessary as a result of the new 8—hour ozone and PM2.5 air quality standards. The main issues that will be addressed in these amendments are the regional emissions tests that apply before new SIPs are submitted and which particulate matter provisions of the rule apply to PM2.5.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, Local, State

Additional Information: SAN 4811.

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RIN: 2060–AL73

3223. ● PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): ALLOWABLES PLANTWIDE APPLICABILITY LIMIT (PAL), AGGREGATION, AND DEBOTTLENECKING

Regulatory Plan: This entry is Seq. No. 104 in part II of this issue of the **Federal Register**.

RIN: 2060–AL75

3224. ● RULE TO REDUCE INTERSTATE TRANSPORT OF FINE PARTICULATE MATTER AND OTHER POLLUTANTS (INTERSTATE TRANSPORT RULE)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 7410(a)

CFR Citation: 40 CFR 51; 40 CFR 72; 40 CFR 75; 40 CFR 96

Legal Deadline: None

Abstract: Many pollutant types and sources contribute to ambient levels of fine particulate matter (PM2.5) and ozone that exceed national air quality standards, and to regional haze that adversely affects visibility in Federal class I areas. Some of these pollutants may originate tens or hundreds of miles from the areas where violations of the national ambient air quality standards are detected, from sources that are outside the jurisdiction of the State that is harmed. The Clean Air Act requires that a State take steps to prevent emissions from sources located within its boundaries from interfering with a downwind State's ability to meet air quality standards, or interfering with measures to protect visibility. EPA believes it is important to address interstate transport for PM2.5 prior to the time when State plans addressing nonattainment of the standards are completed, so that States can rely on upwind reductions when developing plans for attaining the standards. The Bush Administration has proposed Clear Skies legislation that will help reduce interstate transport of pollution from the largest emitters in the power generation sector. This mandatory program would dramatically reduce sulfur dioxide (SO2), nitrogen oxides (NOx), and mercury by setting a national cap on emissions of each pollutant from power generators. Trading would provide sources with flexibility to reduce their emissions in most efficient and least costly way. EPA prefers to address the issue of transported pollution from power generators through Clear Skies legislation rather than rulemaking. Because enactment of legislation is inherently uncertain, in addition to promoting legislation EPA is initiating this rulemaking as a potential substitute to achieve part of what would be achieved by Clear Skies. Also, if analysis warrants, this rulemaking could supplement legislation by addressing categories of emissions sources not covered by the legislation. Further, EPA will conduct updated transport analyses t determine whether emission reductions beyond the already—promulgated NOx SIP Call (63 FR 57355) are warranted for purposes of the 8—hour ozone standard. Under the interstate transport rule, EPA would establish State—level emissions budgets for transported pollutants, and offer compliance flexibility in the form of an emissions trading program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4794.

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RIN: 2060–AL76

3225. • SECTION 126 RULE: LIFTING THE 8—HOUR STAY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52; 40 CFR 75; 40 CFR 97

Legal Deadline: Final, Statutory, November 29, 2004, Final.

Abstract: Section 126 of the CAA allows States to petition EPA for a finding that emissions from stationary sources in other States significantly contribute to nonattainment problems in the petitioning State. If EPA approves a petition, EPA would establish Federal requirements for the sources. In April 1999, EPA finalized action on 8 petitions submitted by Northeastern States for purposes of mitigating interstate transport of NOx, one of the main precursors of ground—level ozone. Subsequent court rulings caused EPA to stay the portion of the rule based on the 8—hour ozone standard. Now, the aforementioned court challenges have been resolved, enabling EPA to lift the stay on the 8—hour portion of the rule. This action would accomplish the removal of that stay.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4095.1. Split from RIN 2060—AH88.

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RIN: 2060–AL79

3226. • AMENDMENT TO MARINE DIESEL RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7621 et seq; 42 USC 7542 et seq

CFR Citation: 40 CFR 94

Legal Deadline: None

Abstract: In February 2003, we adopted emission standards for Category 3 marine diesel engines. The changes to 40 CFR part 94 inadvertently displaced some of the provisions we had recently established for recreational marine diesel engines in November 2002. This direct final rule corrects these errors; these corrections are intended merely to replace regulatory text we originally adopted under each program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Direct Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4622.1. Split from RIN 2060—AJ98.

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RIN: 2060–AL81

3227. • SECTION 126 RULE: WITHDRAWAL OF FINDINGS FOR SOURCES IN MICHIGAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 52.34

Legal Deadline: None

Abstract: In response to petitions submitted by four Northeastern States, in January 2000, EPA issued the Section 126 Rule which required sources in Michigan and certain other States to reduce nitrogen oxides (NOx) emissions for the purpose of reducing interstate ozone transport. EPA coordinated the Section 126 Rule with another rule known as the NOx State implementation plan (SIP) Call, which also addresses ozone transport in the eastern half of the United States. EPA established a mechanism in the Section 126 Rule whereby the rule would be withdrawn for sources in a State if the State submitted, and EPA approved, a SIP that complied with the NOx SIP Call. This was a practical way to address the overlap between the two rules and avoid having sources be subject to two sets of potentially different NOx transport control requirements. As the result of court actions, the compliance dates for the Section 126 Rule and the NOx SIP Call have been delayed and the NOx SIP Call has been divided into two phases. Therefore, in a separate action, EPA recently proposed to revise the Section 126 Rule withdrawal provision so that it will continue to operate under these new circumstances. Under that proposal, where a State submits a NOx SIP that meets only Phase 1 of the NOx SIP Call, EPA would need to make a determination that the SIP controls the total group of Section 126 sources to the same stringency as the Section 126 Rule would before the Section 126 Rule could be withdrawn. The EPA has reviewed and is in the process of approving the Michigan NOx SIP. In this current action, EPA is proposing that the SIP meets the newly proposed Section 126 Rule withdrawal criteria, and therefore, EPA is proposing to withdraw the redundant Section 126 Rule for sources in Michigan.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local

Additional Information: SAN 4796.

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RIN: 2060–AL83

3228. • LIFTING THE STAY OF THE 8—HOUR PORTION OF THE FINDINGS OF SIGNIFICANT CONTRIBUTION AND RULEMAKING FOR PURPOSES OF REDUCING INTERSTATE OZONE TRANSPORT (NOX SIP CALL)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 51.121

Legal Deadline: None

Abstract: This action would amend a final rule EPA issued under section 110 of the Clean Air Act (CAA) related to interstate transport of pollutants. EPA is proposing to lift the stay of our findings in the nitrogen oxides State Implementation Plan Call (NOx SIP Call) contained in 40 CFR 51.121(a)(2), related to the 8—hour ozone national ambient air quality standards (NAAQS). The findings were stayed in a final rule published in the Federal Register on September 18, 2000 (65 FR 56245). This action does not create any new requirements; it merely reinstitutes a requirement of the NOx SIP Call that had previously been stayed. The background on the NOx SIP Call and the aforementioned stay are as follows: In the final NOx SIP Call, EPA found that emissions of NOx from 22 States and the District of Columbia (hereinafter referred to as 23 States) significantly contribute to downwind areas' nonattainment of the 1—hour ozone NAAQS. EPA also separately found that NOx emissions from the same 23 States significantly contribute to downwind nonattainment of the 8—hour ozone NAAQS. Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded the 8—hour ozone NAAQS. [American Trucking Associations, Inc. v. EPA, 175 F.3d 1027 on rehearing 195 F.3d 4 (D.C. Cir. 1999).] EPA stayed the 8—hour basis of the NOx SIP Call rule based on the uncertainty created by the D.C. Circuit's decision. EPA have now completed the actions necessary to address the aforementioned remand, and therefore is now conducting rulemaking to lift the stay.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: SAN 4797.

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RIN: 2060–AL84

3229. • DEFERRAL OF EFFECTIVE DATE OF NONATTAINMENT DESIGNATIONS FOR 8—HOUR OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR EARLY ACTION COMPACT AREAS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7407; 42 USC 7601

CFR Citation: 40 CFR 81

Legal Deadline: None

Abstract: EPA is proposing to defer the effective date of nonattainment air quality designations for "Early Action Compact Areas" that are violating the 8—hour ozone national ambient air quality standard, but have agreed to reduce ground—level ozone pollution earlier than the Clean Air Act requires. This proposal establishes the first of three dates by which EPA would defer the effective date of nonattainment designations for any of these areas that continues to meet all compact milestones. In a separate action, EPA will designate these areas "nonattainment" by April 15, 2004; however, as long as Early Action Compact areas meet agreed—upon milestones, the impact of nonattainment designation for the 8—hour ozone standard will be deferred until September 30, 2005.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: SAN 4798.

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RIN: 2060–AL85

3230. • AMENDMENTS TO THE PHASE 2 REQUIREMENTS FOR SPARK—IGNITION NONROAD ENGINES LESS THAN 19 KILOWATTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7547

CFR Citation: 40 CFR 90 (Revision)

Legal Deadline: None

Abstract: EPA adopted phase 2 requirements for small (less than 19 kilowatts) spark—ignition (gasoline) nonroad engines in March 1999 and April 2000. The Phase 2 requirements are being phased—in between 2001 and 2007. (The majority of the engines covered by these regulations are used in lawn and garden applications.) In February 2003, the Outdoor Power Equipment Institute, a trade group representing engine manufacturers, petitioned EPA and requested several changes to the phase 2 regulations. This rulemaking includes several amendments to the phase 2 requirements intended to ensure a smooth transition to the phase 2 standards for engine manufacturers. The amendments contain a number of changes to the averaging, banking, and trading program and to the certification process.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Direct Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4801.

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RIN: 2060–AL88

3231. • AMENDMENTS TO LEATHER FINISHING NESHAP

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: None

Abstract: On February 27, 2002, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Leather Finishing Operations industry. EPA was subsequently petitioned by two affected facilities concerning the definition of specialty leather. EPA has engaged in negotiations with these facilities concerning the definition and is issuing these technical corrections to address the concerns. The amendments to the rule will clarify the definition of specialty leather and provide a means of determining what kinds of leather meet the definition of specialty leather.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4802.

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RIN: 2060–AL89

3232. • PROTECTION OF STRATOSPHERIC OZONE; ALLOWANCE SYSTEM FOR CONTROLLING HCFC PRODUCTION, IMPORT AND EXPORT; CORRECTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671

CFR Citation: 40 CFR 82 (Revision)

Legal Deadline: None

Abstract: Although an allowance allocation system for controlling hydrochlorofluorocarbon (HCFC) production, import, and export was established with publication of the final rule on January 21, 2003 (SAN 4120, RIN 2060—AH67), several issues associated with that system have arisen that need to be amended for clarity and consistency.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4804.

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RIN: 2060–AL90

3233. • AMENDMENTS TO THE NESHAP FOR CELLULOSE PRODUCTS MANUFACTURING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: None

Abstract: On July 11, 2002, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Cellulose Products Manufacturing industry. The EPA was subsequently petitioned by two affected facilities concerning several issues. The EPA has engaged in negotiations with these facilities concerning the issues and is issuing these amendments to address the concerns. The amendments clarify several definitions and provide clearer and consistent directions on complying with the standards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4808.

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RIN: 2060–AL91

3234. • PROTECTION OF STRATOSPHERIC OZONE: PROCESS FOR EXEMPTING EMERGENCY USES OF METHYL BROMIDE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 105—277, sec 764

CFR Citation: 40 CFR Part 82

Legal Deadline: None

Abstract: Under the Clean Air Act and the Montreal Protocol on substances that deplete the ozone layer, this rule will seek to create an exemption for emergency uses of methyl bromide, an ozone depleting substance, after the phase—out date of 2005. This exemption will be limited to no more than 20 metric tons per emergency event. This is a deregulatory action that will decrease burden on producers, importers, distributors and applicators of methyl bromide as well as end—users of methyl bromide who are growers and owners of stored food products while still achieving the environmental objectives of the program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4819.

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RIN: 2060–AL94

3235. • PROTECTION OF STRATOSPHERIC OZONE: QUANTITY ALLOCATION OF METHYL BROMIDE AFTER THE PHASEOUT FOR CRITICAL USE EXEMPTIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 105—277, sec 764

CFR Citation: 40 CFR 82

Legal Deadline: None

Abstract: Under the Clean Air Act and the Montreal Protocol on substances that deplete the ozone layer, this rule will seek to allocate quantities of methyl bromide for critical use exemptions to entities within the United States based on amounts of methyl bromide authorized by the parties to the Montreal Protocol for use after the 2005 phase—out date. This action is a deregulatory action that will reduce burden on producers, importers, distributors and applicators of methyl bromide as well as end—users of methyl bromide who are growers and owners of stored food products.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4820.

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RIN: 2060–AL95

3236. • FIVE—YEAR REVIEW OF MACT STANDARDS FOR LARGE MWC

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq.

CFR Citation: 40 CFR 60

Legal Deadline: NPRM, Judicial, April 30, 2004, NPRM.
Final, Judicial, June 30, 2006, Final.

Abstract: Under section 129 of the Clean Air Act (CAA), EPA is required to adopt and implement maximum achievable control technology (MACT) standards for both new and existing large municipal waste combustion units (MWC). Those MACT standards have been adopted and fully implemented with all retrofits completed. Section 129(a)(5)of the CAA requires EPA to review and, if necessary, revise those standards every 5 years. This rulemaking addresses those requirements and is the first 5—year review of the MACT standards. Implementation of these MACT standards has been highly effective and has reduced dioxin/furan emissions by more than 99 percent since 1990 and mercury emissions by more than 95 percent since 1990. Similar reductions have occurred for other CAA section 129 pollutants.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
Final Action	06/00/06	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4829.

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RIN: 2060–AL97

EPA—Clean Air Act (CAA) — Proposed Rule Stage

3237. • ALTERNATIVE WORK PRACTICE FOR LEAK DETECTION AND REPAIR

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60, subpart GGG

Legal Deadline: None

Abstract: This rule would amend existing regulations controlling emissions of volatile organic compounds (VOC) from oil refineries under Clean Air Act section 111. These regulations are codified at 40 CFR part 60, subpart GGG. These regulations require periodic leak detection and repair (LDAR) of pumps and valves. The current work practice requires each pump and valve to be individually monitored for leaks. Refineries have had LDAR programs in place for nearly 20 years and view them as burdensome because they are labor intensive. Newer laser based monitoring technology is being developed which will detect leaks at a reduced costs because of the ability to monitor multiple components at one time. This rule would amend the existing regulations which affect refineries to enable the plant operators to use the new technology.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4830.

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RIN: 2060–AL98

Environmental Protection Agency (EPA) — Final Rule Stage
Clean Air Act (CAA)

3238. SOURCE—SPECIFIC FEDERAL IMPLEMENTATION PLAN FOR NAVAJO GENERATING STATION; NAVAJO NATION

Priority: Substantive, Nonsignificant

Legal Authority: "Not Yet Determined"

CFR Citation: 49 CFR 123

Legal Deadline: None

Abstract: EPA proposes to federalize standards from the Arizona and New Mexico State Implementation Plans (SIPS) applicable to the Navajo generating station. Where necessary, EPA's proposed emission standards modify the standards extracted from the States' regulatory programs to ensure comprehensive emission control and Federal consistency.

Timetable:

Action	Date	FR Cite
NPRM	09/08/99	64 FR 48725
Notice	01/26/00	65 FR 4244
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4315. Formerly listed as RIN 2060—AI79

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RIN: 2009–AA00

3239. SOURCE—SPECIFIC FEDERAL IMPLEMENTATION PLAN FOR NAVAJO GENERATING STATION; FOUR CORNERS POWER PLANT

Priority: Other Significant

Legal Authority: 42 USC 1740

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: EPA proposes to federalize standards from the Arizona and New Mexico State Implementation Plans (SIPS) applicable to the Four Corners Plant, respectively. Where necessary, EPA's proposed emission standards modify the standards extracted from the States' regulatory programs to ensure comprehensive emission control and Federal consistency.

Timetable:

Action	Date	FR Cite
NPRM	09/08/99	64 FR 48731
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: SAN 3569. NPRM—http://www.epa.gov/fedrgstr/EPA—;AIR/1999/September/Day—08/a23277.htm.; Formerly listed as RIN 2060—AF42

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RIN: 2009–AA01

3240. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS REQUIREMENTS UNDER CLEAN AIR ACT SECTION 112(R)(7); AMENDMENTS TO THE SUBMISSION SCHEDULE AND DATA REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412(r)

CFR Citation: 40 CFR 68

Legal Deadline: Other, Statutory, June 21, 2004, Other.

Abstract: On June 20, 1996, EPA published risk management planning regulations mandated under the accidental release prevention provisions of the Clean Air Act (CAA). Sources with more than a threshold quantity of a regulated substance in a process are required to develop and implement a risk management program that includes, for covered processes, a five—year accident history, an off—site consequence analysis, a prevention program, and an emergency response program. The owners and operators of these sources must submit a risk management plan (RMP) that summarizes the source's implementation of the risk management program. The RMPs are to be made available to Federal, state, and local emergency planning and response agencies and to the public through a central location. The first submissions were received in June 1999; to date, approximately 15,000 sources have submitted RMPs.

EPA is proposing to modify the submission schedule under the risk management program by adding two triggers to the requirements to correct or update the RMP: (a) sources who have an accident that meets the criteria for the five year accident history be required to update their RMP within six months of the date of the accident; and (b) sources will be required to correct their emergency contact information within one month of a change in the information. EPA is also proposing to add four data elements to the RMP: (a) a mandatory data element for sources to provide the e—mail address for the emergency contact; (b) new data elements for sources to provide the reason for an RMP update (e.g. new regulated substance onsite, etc.) or correction; (c) a new five—year accident history data element requirement for the owner or operator to provide an indication of whether the accident involved an uncontrolled/runaway reaction; and (d) additional data elements for sources that use a contractor to fill out the RMP to provide their name, address and telephone number. Finally, EPA proposes to remove the requirement for sources to discuss the off—site consequence analysis (i.e, worst—case accidental release scenario(s) and the alternative accidental release scenario(s)) within the executive summary of the RMP. This effort will ultimately provide the implementing agency important contact and accident information to allow for assistance and improved communications of information to prevent accidents.

These changes should not significantly change the associated burden. The major change would be the accidental release update requirement; however, the source will not need to submit again, provided there are no other accidents or major changes, for another 5 years. EPA intends to finalize all of these changes in time for the majority of facilities to complete their five year updates due June 21, 2004.

Timetable:

Action	Date	FR Cite
NPRM	07/31/03	68 FR 45124
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4755.

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RIN: 2050–AF09

3241. AMENDMENT TO SUBPARTS H AND I FOR EMISSIONS OF RADIONUCLIDES OTHER THAN RADON FROM DOE FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: PL 95—95; "CAAA 112(g) or (q)"

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: Subparts H and I of 40 CFR Part 61 establish standards under the Clean Air Act for emissions of radionuclides other than radon from Department of Energy (DOE) and other non—DOE federal facilities. Under subparts H and I, regulated entities currently determine compliance with the emission standards by utilizing the approved computer models CAP88 and AIRDOS—PC or any other procedures for which EPA has granted prior approval. Since promulgation of Subparts H and I, EPA has developed an additional model, GENII—NESHAPS, which is suitable for regulated entities to use to determine compliance, in addition to the currently—approved models mentioned above. The model was developed to incorporate the internal dosimetry models recommended by the International Commission on Radiological Protection (ICRP) and the radiological risk estimating procedures of Federal Guidance Report 13 into updated versions of existing environmental pathway analysis models. The model was developed under the direction of OAR's Office of Radiation and Indoor Air, in consultation with OAR's Office of Air Quality Planning and Standards (OAQPS). Also, GENII—NESHAPs has undergone Science Advisory Board (SAB) review. In this direct final rule, EPA is updating Subparts H and I to include GENII—NESHAPS as an approved compliance model.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Additional Information: SAN 4768.

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RIN: 2060–AK81

3242. MOTOR VEHICLE AND ENGINE COMPLIANCE PROGRAM FEES FOR: LIGHT—DUTY VEHICLES AND TRUCKS; HEAVY—DUTY VEHICLES AND ENGINES; NONROAD ENGINES; AND MOTORCYCLES

Priority: Other Significant

Legal Authority: 42 USC 7552; 31 USC 9701; 42 USC 4370(c)

CFR Citation: 40 CFR 86 (Revision)

Legal Deadline: None

Abstract: Under the Motor Vehicle and Engine Compliance (MVECP) Fee Program user fees are collected for certification and compliance activities. Currently, user fees are required by manufacturers of light—duty vehicles, light—duty trucks, heavy—duty vehicles, heavy—duty engines and motorcycles. Through this Notice, EPA is finalizing the notice to update the current fee provisions for the existing industries and incorporate fees for nonroad manufacturers. In addition, the fee schedule will be updated to reflect costs in administering compliance activities for new regulations such as the "Tier 2" automobile standards and nonroad engine standards.

Timetable:

Action	Date	FR Cite
NPRM	08/07/02	67 FR 51402
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4532.

Sectors Affected: 3331 Agriculture, Construction, and Mining Machinery Manufacturing; 336412 Aircraft Engine and Engine Parts Manufacturing; 33399 All Other General Purpose Machinery Manufacturing; 33611 Automobile and Light Duty Motor Vehicle Manufacturing; 336311 Carburetor, Piston, Piston Ring and Valve Manufacturing; 33312 Construction Machinery Manufacturing; 3336 Engine, Turbine, and Power Transmission Equipment Manufacturing; 333111 Farm Machinery and Equipment Manufacturing; 33612 Heavy Duty Truck Manufacturing; 333924 Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing; 333112 Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 333 Machinery Manufacturing; 33392 Material Handling Equipment Manufacturing; 333131 Mining Machinery and Equipment Manufacturing; 3361 Motor Vehicle Manufacturing; 336991 Motorcycle, Bicycle and Parts Manufacturing; 333991 Power-Driven Hand Tool Manufacturing; 33651 Railroad Rolling Stock Manufacturing; 33661 Ship and Boat Building

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RIN: 2060–AJ62

3243. REVISION TO THE GUIDELINE ON AIR QUALITY MODELS (APPENDIX W TO 40 CFR PART 51): ADOPTION OF A PREFERRED GENERAL PURPOSE (FLAT AND COMPLEX TERRAIN) DISPERSION MODEL AND OTHER REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410 "CAAA 110(a)(2)"; "CAAA 165(e)"; "CAAA 172(a)"; "CAAA 172(c)"; 42 USC 7601 "CAAA 301(a)(1)"; "CAAA 320"

CFR Citation: 40 CFR 51.112; 40 CFR 51.160; 40 CFR 51.166; 40 CFR 52.21

Legal Deadline: None

Abstract: This action would revise the Guideline on Air Quality Models, published as appendix W to 40 CFR part 51. The guideline provides EPA—recommended models for use in predicting ambient concentrations of pollutants for programs ranging from Prevention of Significant Deterioration (PSD) to State Implementation Plans (SIPs) for controlling air pollution sources. The guideline fulfills a Clean Air Act mandate for EPA to specify models for air management purposes. This revision would enhance the Guideline by incorporating a new, general purpose dispersion model called AERMOD, which would replace the existing Industrial Source Complex (ISC3) model in many air—quality assessments, including those involving complex terrain. An earlier version of the AERMOD revision was previously proposed (65 FR 21505, 4/21/2000; see SAN 3470), but not promulgated. We are reproposing it to reflect changes made in response to public comment we received on the April 2000 proposal.

Timetable:

Action	Date	FR Cite
NPRM	04/21/00	65 FR 21505
Notice of Data Availability	09/08/03	68 FR 52934
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 3470.1. Split from RIN 2060—AF01.

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RIN: 2060–AK60

3244. NESHAP: COMBUSTION TURBINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 "CAA 112"

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, Final.
Final, Judicial, August 29, 2003, Final.

Abstract: The combustion turbine source category is listed as a major source of hazardous air pollutants (HAPs) under section 112 of the Clean Air Act (CAA). A major source is one which emits more than 10 tons/yr of one HAP or more than 25 tons/yr of a combination of 189 HAPs. Combustion turbines also emit NOx, SO2, CO, and PM. Combustion turbines are already regulated for NOx and SO2 emissions under section 111 of the

CAA. The combustion turbine MACT was published in the Federal Register on January 14, 2003. A public hearing was held on January 29, 2003 and the public comment period closed on February 28, 2003. Comments and data received during the comment period resulted in a reanalysis of the MACT floor and MACT for different subcategories. Subcategories based on fuel were developed (oil and natural gas) in response to public comments. A delisting petition for some combustion turbine subcategories was sent to EPA on August 28, 2002. The subcategory list and the regulation will be revised if these combustion turbine subcategories are delisted. The final combustion turbine MACT will be signed by the Administrator in August 2003.

Timetable:

Action	Date	FR Cite
NPRM	01/14/03	68 FR 1888
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3657.

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RIN: 2060–AG67

3245. NESHAP: IRON AND STEEL FOUNDRIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, Final.
Final, Judicial, August 29, 2003, Final.

Abstract: Iron foundries and steel foundries have been identified by the EPA as potentially significant sources of air emissions of manganese compounds, lead compounds, and other substances that are among the pollutants listed as hazardous air pollutants in section 112 of the Clean Air Act, as amended in November of 1990. As such, these industries may be source categories for which national emission standards may be warranted.

Timetable:

Action	Date	FR Cite
NPRM	12/23/02	67 FR 78274
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3343. EPA is required to promulgate standards for all of the source categories listed in accordance with section 112(e) by November 15, 2000.

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RIN: 2060–AE43

3246. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING

Priority: Other Significant

Legal Authority: 42 USC 7412 "CAAA 112"

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000, NPRM.
Final, Judicial, August 29, 2003, Final.

Abstract: This regulation will cover organic chemical manufacturing processes not covered by previously promulgated MACT standards including the Hazardous Organic NESHAP (HON). The regulation will control process vents (continuous and batch, including mixing operations), equipment leaks, storage tanks, wastewater, solvent recovery, and heat exchange systems.

Timetable:

Action	Date	FR Cite
NPRM	04/04/02	67 FR 16154
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3452.

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AE82

3247. NESHAP: RECIPROCATING INTERNAL COMBUSTION ENGINE

Regulatory Plan: This entry is Seq. No. 116 in part II of this issue of the **Federal Register**.

RIN: 2060–AG63

3248. NESHAP: INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

Regulatory Plan: This entry is Seq. No. 117 in part II of this issue of the **Federal Register**.

RIN: 2060–AG69

3249. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: MISCELLANEOUS COATING MANUFACTURING

Priority: Other Significant

Legal Authority: 42 USC 7412 "CAAA 112"

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000, NPRM.

Abstract: The Miscellaneous Coating Manufacturing NESHAP rulemaking will control air—toxic emissions from processes used in the manufacturing of coatings, such as paint, ink and adhesives, which contain over 5 percent hazardous air pollutants (HAP) by weight. Controls will be based on Maximum Available Control Technology (MACT) provisions of the Clean Air Act, and will cover process vessels, storage tanks, equipment leaks, wastewater, and transfer/loading operations.

Timetable:

Action	Date	FR Cite
NPRM	04/04/02	67 FR 16154
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3452.1. Split from RIN 2060—AE82.

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AK59

3250. AIR QUALITY: REVISION TO DEFINITION OF VOLATILE ORGANIC COMPOUNDS — EXCLUSION OF 4 COMPOUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7407(d)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This is a deregulatory action to exclude four compounds from the list of volatile organic compounds (VOCs) on the basis that these compounds make a negligible contribution to tropospheric ozone formation. These four compounds are: 1,1,1,2,2,3,3—heptafluoro—3—methoxy—propane (n—C3F7OCH3; 3—ethoxy—,1,1,2,3,4,4,5,5,6,6,6—dodecafluoro—2— (trifluoromethyl) hexane (known as HFE—7500, HFE—s702, T—7145, and L—15381); 1,1,1,2,3,3,3—heptafluoropropane (known as HFC 227ea); and methyl formate (HCOOCH3). These compounds have potential for use as refrigerants, fire suppressants, aerosol propellants, sterilants, blowing agents (used in the manufacture of foamed plastic), and solvents. This action will remove the necessity to control these four compounds as VOCs in State Implementation Plans for attaining the ozone standard.

Timetable:

Action	Date	FR Cite
NPRM	09/03/03	68 FR 52373
NPRM Comment Period End	10/03/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4683.

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AK37

3251. METHODS FOR MEASUREMENT OF VISIBLE EMISSIONS—ADDITION OF METHODS 203A, 203B, AND 203C TO APPENDIX M OF PART 51

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401(b)(1); 42 USC 7410; 42 USC 7470 to 7479; 42 USC 7501 to 7508; 42 USC 7601(a)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This rulemaking adds Test Methods 203A, 203B, and 203C to 40 CFR part 51, appendix M (entitled Example Test Methods for State Implementation Plans). These methods describe procedures for estimating the opacity of visible emissions. States have requested that EPA promulgate these methods so that they can use them in State Implementation Plans in enforcing visible emissions regulations from Stationary Sources.

Timetable:

Action	Date	FR Cite
NPRM	11/22/93	58 FR 61639
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 2915.

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RIN: 2060–AF83

3252. ADDITION OF METHOD 207 TO APPENDIX M OF 40 CFR PART 51 METHOD FOR MEASURING ISOCYANATES IN STATIONARY SOURCE EMISSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: The Clean Air Act Amendments of 1990 listed certain isocyanate compounds as hazardous air pollutants (HAPs). The Agency does not have any published test methods that would measure air emissions of these isocyanate compounds from stationary sources. This action would add a validated test method to measure isocyanate emissions to appendix M of part 51. Test methods in part 51 can be adopted by any State for use in any regulation that requires the measurement of any of the isocyanate compounds on the HAP list. This action would not impose any new regulatory requirements that do not already exist. It should benefit State governments by providing them with a validated test procedure for measuring the emissions of isocyanate compounds.

Timetable:

Action	Date	FR Cite
NPRM	12/08/97	62 FR 64532
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3900.

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RIN: 2060–AG88

3253. INTERSTATE OZONE TRANSPORT: RESPONSE TO COURT DECISIONS ON THE NOX SIP CALL, NOX SIP CALL TECHNICAL AMENDMENTS, AND SECTION 126 RULES

Priority: Other Significant

Legal Authority: 42 USC 7410(a)(2)(D); 42 USC 7410(k)(5)

CFR Citation: 40 CFR 51 (Revision)

Legal Deadline: None

Abstract: On October 27, 1998 (63 FR 57355), EPA issued a rule to reduce smog in the eastern half of the country. The rule required 22 States and the District of Columbia to reduce emissions of nitrogen oxides (NOx), which reacts with other chemicals in the atmosphere to form smog. EPA required these reductions because pollution from each of these States was transported by the wind and significantly contributed to unhealthy air quality in downwind states. In response to litigation from several parties on the NOx SIP call, the U.S. Court of Appeals for the District of Columbia issued a decision on March 3, 2000 making it clear that EPA and States can and should move forward to implement this regional strategy. The ruling remanded certain relatively minor portions of the original rule back to the EPA. This rulemaking covers the portion of the rule associated with the remanded issues: certain cogeneration units, internal combustion engines, the partial State requirements for Georgia and Missouri and the exclusion of Wisconsin. In this rulemaking, EPA will consider the partial State issue for Alabama Michigan and propose SIP submittal dates and compliance dates, as well. The D.C. Circuit Court also remanded, or remanded and vacated, the cogeneration unit issue in decisions on the NOx SIP Call Technical Amendments, and Section 126 Rule on June 8, 2001 and May 15, 2001, respectively. These remands will also be addressed in this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8395
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: SAN 4433.

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RIN: 2060–AJ16

3254. IMPLEMENTATION RULE FOR 8—HOUR OZONE NAAQS

Regulatory Plan: This entry is Seq. No. 119 in part II of this issue of the **Federal Register**.

RIN: 2060–AJ99

3255. NSPS: SOCMI — WASTEWATER AND AMENDMENT TO APPENDIX C OF PART 63 AND APPENDIX J OF PART 60

Priority: Other Significant

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60, SOCMI Wastewater and app J; 40 CFR 63, app C

Legal Deadline: None

Abstract: This rulemaking will develop a new source performance standard to control air emissions of volatile organic compounds from wastewater treatment operations of the synthetic chemical manufacturing industry.

Timetable:

Action	Date	FR Cite
NPRM	09/12/94	59 FR 46780
Supp NPRM 1	10/11/95	60 FR 52889
Supp NPRM 2	12/09/98	63 FR 67988
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3380.

Sectors Affected: 3251 Basic Chemical Manufacturing

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RIN: 2060–AE94

3256. AMENDMENTS TO STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES; MONITORING REQUIREMENTS (40 CFR PART 60, APPENDIX F, PROCEDURE 3)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60

Legal Deadline: Final, Statutory, June 15, 2001, Final.

Abstract: This rulemaking proposes to add a method, Method 203, for the measurement of opacity from stationary sources, to appendix M (Example Test Methods for State Implementation Plans) in 40 CFR part 51. This action provides States with an instrumental test method which can be used in determining, on a continuous basis, compliance with stationary source opacity emission limitations.

Timetable:

Action	Date	FR Cite
NPRM	10/07/92	57 FR 46114
Supplemental NPRM	05/08/03	68 FR 24692
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3958.

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RIN: 2060–AH23

3257. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: VOLATILE ORGANIC LIQUID STORAGE VESSELS; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401; 42 USC 7411; 42 USC 7414; 42 USC 7416; 42 USC 7601

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This direct final action revises existing standards for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) by amending the storage vessel volume applicability criteria and adding a vapor pressure applicability criterion. This is a narrow technical amendment responding to new information that came in after the original rule was promulgated.

Timetable:

Action	Date	FR Cite
Proposed Amdt	02/24/03	68 FR 8574
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4508.

Sectors Affected: 325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing; 42271 Petroleum Bulk Stations and Terminals

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RIN: 2060–AJ53

3258. ELECTRIC ARC FURNACE NSPS AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60.270 to 60.276a

Legal Deadline: None

Abstract: Sources affected by the NSPS for electric arc furnaces (aubparts AA and AAa) have expressed concerns with the requirements in the NSPS to use a continuous opacity monitor (COM) to monitor opacity and report periods when the COM indicated greater than 3 percent opacity as periods of excess emissions, and have petitioned the EPA to reconsider the COM requirements. These concerns arise from recent information that indicate that COM readings may have an error of up to 4 percent, which in itself is greater than the 3 percent excess emissions threshold. The EPA is reconsidering the COM requirements, and may amend the NSPS to add alternative monitoring requirements.

Timetable:

Action	Date	FR Cite
Proposed Amdmt	10/16/02	67 FR 64014
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4555.

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RIN: 2060–AJ68

3259. PROPOSED AMENDMENTS TO PERFORMANCE STANDARDS AND MONITORING REQUIREMENTS FOR PARTICULATE MATTER AT STATIONARY SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60 app B; 40 CFR 60 app F

Legal Deadline: None

Abstract: This action would repropose some monitoring specifications that were originally included in an OSWER proposal to regulate air emissions from hazardous waste combustors (as explained further below). It revises several standards and requirements related to continuous emission monitoring systems for particulate matter (PM). These include: Specifications and test procedures known as Performance Specification 11 (PS—11), and quality assurance requirements known as Procedure 2. The proposed revisions clarify and update performance standards and monitoring requirements for facilities required to install and use continuous monitoring equipment to measure particulate matter emissions from stacks and ducts. The action does not change any emission standards or add any additional recordkeeping requirements. This action is a supplement to actions by EPA's OSWER that included proposed regulations for hazardous waste combustors. The first action was published in the Federal Register on

December 30, 1997 (62 FR 67788). Recent OAR field studies have revealed needed revisions to PS—11 and Procedure 2. In view of the significant amount of time that has passed since the last proposal was published (December 30, 1997) and the significant amount of knowledge we have recently gained from our field studies, we believe that a supplemental proposal and another opportunity for the public to comment on PS—11 and Procedure 2 are appropriate.

Timetable:

Action	Date	FR Cite
NPRM	12/12/01	66 FR 64176
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4605.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ88

3260. REVISION OF COMBUSTION TURBINES NSPS —PART 60, SUBPART GG

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 60 (Revision)

Legal Deadline: None

Abstract: The NSPS for Combustion Turbines has not been revised since 1980. Revisions are needed to reduce the burden on EPA and State/local agencies, of approving, on a case by case basis, alternate testing and monitoring protocols due to advances in emission control technologies. The revisions are also intended to bring consistency between the monitoring and testing requirements in the Combustion Turbines NSPS (Part 60) and the Acid Rain Program (part 75) so that the same data can be used to comply with both regulations.

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/14/03	68 FR 18003
Direct Final Rule Withdrawn	05/28/03	68 FR 31611
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: SAN 4681.

Sectors Affected: 211111 Crude Petroleum and Natural Gas Extraction; 2211 Electric Power Generation, Transmission and Distribution; 211112 Natural Gas Liquid Extraction; 221 Utilities

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RIN: 2060–AK35

3261. NESHAP: MERCURY CELL CHLOR—ALKALI PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Judicial, August 29, 2003, Final.

Abstract: Section 112(c)(6) of the Clean Air Act requires us to list categories of sources for seven specific pollutants (including mercury) assuring that sources accounting for not less than 90 percent of the aggregate emissions of each pollutant are subject to standards pursuant to section 112(d)(2). Chlor—alkali plants are among the source categories listed to achieve the 90 percent goal for mercury. Currently, the source category includes 11 plants located in 10 states engaged in the production of chlorine and caustic using mercury cells. Together, these plants account for 45 percent of the nationwide mercury inventory for non—combustion sources.

Timetable:

Action	Date	FR Cite
NPRM	07/03/02	67 FR 44672
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3449.

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RIN: 2060–AE85

3262. NESHAP: PLYWOOD AND COMPOSITE WOOD PRODUCTS

Regulatory Plan: This entry is Seq. No. 115 in part II of this issue of the **Federal Register**.

RIN: 2060–AG52

3263. NESHAP: MISCELLANEOUS METAL PARTS AND PRODUCTS (SURFACE COATING)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000, NPRM.
Final, Judicial, August 29, 2003, Final.

Abstract: This regulation will control emissions of hazardous air pollutants (HAPs) from operations that apply surface coatings to metal parts and products. Although this rule would cover a wide variety of coating operations, it would not apply to specific coating operations for which regulations have been developed (e.g., plastic parts coating, can coating, large appliance coating, etc.). This regulation is required under section 112 of the Clean Air Act of 1990.

Timetable:

Action	Date	FR Cite
NPRM	08/13/02	67 FR 52780
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State

Additional Information: SAN 3825.

Sectors Affected: 331316 Aluminum Extruded Product Manufacturing; 331221 Cold-Rolled Steel Shape Manufacturing; 33312 Construction Machinery Manufacturing; 332312 Fabricated Structural Metal Manufacturing; 33612 Heavy Duty Truck Manufacturing; 331511 Iron Foundries; 331111 Iron and Steel Mills; 33121 Iron and Steel Pipes and Tubes Manufacturing from Purchased Steel; 335312 Motor and Generator Manufacturing; 331319 Other Aluminum Rolling and Drawing; 332311 Prefabricated Metal Building and Component Manufacturing; 326291 Rubber Product Manufacturing for Mechanical Use; 336212 Truck Trailer Manufacturing

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RIN: 2060–AG56

3264. PLASTIC PARTS AND PRODUCTS (SURFACE COATING) NESHAP

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, Final.
Final, Judicial, August 29, 2003, Final.

Abstract: This action would address the hazardous air pollutants (HAP) emissions from the coating of plastic parts. Pollution prevention approaches will be considered.

Timetable:

Action	Date	FR Cite
NPRM	12/04/02	67 FR 72276
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 3826.

Sectors Affected: 339999 All Other Miscellaneous Manufacturing; 336399 All Other Motor Vehicle Parts Manufacturing; 326199 All Other Plastics Product Manufacturing; 336999 All Other Transportation Equipment Manufacturing; 339111 Laboratory Apparatus and Furniture Manufacturing; 337214 Nonwood Office Furniture Manufacturing; 333313 Office Machinery Manufacturing; 32614 Polystyrene Foam Product Manufacturing; 33422 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing; 33995 Sign Manufacturing; 33992 Sporting and Athletic Goods Manufacturing; 339112 Surgical and Medical Instrument Manufacturing; 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing

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RIN: 2060–AG57

3265. NESHAP: LIME MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq; 44 USC 350 et seq; 5 USC 605

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, Final.
Final, Judicial, August 29, 2003, Final.

Abstract: Section 112 of the Clean Air Act Amendments of 1990 requires the EPA to develop emission standards for each major source category of hazardous air pollutants (HAPs). The standards are to be technology—based and are to require the maximum degree of emission reduction determined to be achievable by the Administrator of the EPA. The EPA has determined that some lime manufacturing plants may be major sources for one or more HAPs. As a consequence, a regulation (emission standards) is being developed for the lime manufacturing industry.

Timetable:

Action	Date	FR Cite
NPRM	12/20/02	67 FR 78046
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3651.

Sectors Affected: 32741 Lime Manufacturing

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RIN: 2060–AG72

3266. NESHAP: SURFACE COATING OF METAL CANS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, Final.
Final, Judicial, August 29, 2003, Final.

Abstract: This action will result in the reduction of hazardous air pollutants emitted by the metal can industry.

Timetable:

Action	Date	FR Cite
NPRM	01/15/03	68 FR 2110
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3906.

Sectors Affected: 332115 Crown and Closure Manufacturing; 332431 Metal Can Manufacturing; 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers

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RIN: 2060–AG96

3267. NESHAP: SURFACE COATING OF AUTOMOBILES AND LIGHT—DUTY TRUCKS

Regulatory Plan: This entry is Seq. No. 118 in part II of this issue of the **Federal Register**.

RIN: 2060–AG99

3268. NESHAP: PRIMARY MAGNESIUM REFINING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, Final.
Final, Judicial, August 29, 2003, Final.

Abstract: Section 112 of the Clean Air Act (Act), as amended November 1990, requires the EPA to regulate categories of major and area sources of hazardous air pollutants (HAPs) listed in section 112(b). The EPA has determined that sources that manufacture primary magnesium may reasonably be anticipated to emit several of the 189 HAPs listed (including chlorine and hydrochloric acid) in quantities sufficient to designate them as a major source. As a consequence, primary magnesium refining is among the HAP emitting source categories selected for regulation and is in the group of categories for which final rules are scheduled to be promulgated by November 15, 2000 (58 FR 63941, December 3, 1993).

Timetable:

Action	Date	FR Cite
NPRM	01/22/03	68 FR 2970
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN 3924.

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RIN: 2060–AH03

3269. NESHAP: SITE REMEDIATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, Final.
Final, Judicial, August 29, 2003, Final.

Abstract: This rule regulates HAP emissions from clean up of contaminated media and waste material at industrial sites. Superfund, RCRA corrective action, gasoline stations, farms and residential sites are exempt from rule requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/30/02	67 FR 49398
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: SAN 3968.

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RIN: 2060–AH12

3270. NESHAP: ORGANIC LIQUIDS DISTRIBUTION (NON—GASOLINE)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000, NPRM.
Final, Judicial, August 29, 2003, Final.

Abstract: This project is to develop national emission standards for hazardous air pollutants by establishing maximum achievable control technology (MACT) for facilities distributing organic liquids. MACT standards are under development to reduce the release of hazardous air pollutants (HAPs) from all industries to protect the public health and environment. This project should include but is not limited to those activities associated with the storage and distribution of organic liquids other than gasoline at sites that serve as distribution points from which organic liquids may be obtained for further use and processing.

Timetable:

Action	Date	FR Cite
NPRM	04/02/02	67 FR 15674
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3971.

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RIN: 2060–AH41

3271. NESHAP: CHROMIUM ELECTROPLATING AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This final amendment will also allow hard chromium electroplating facilities using fume suppressants for emission control to meet a surface tension limit similar to the requirements for decorative chromium electroplating and chromium anodizing facilities instead of the present requirement to meet an emission limit. Facilities choosing to use fume suppressants for emission control would be required to monitor the surface tension at the same frequency currently required for decorative chromium and chromium anodizing tanks and demonstrate compliance with the surface tension operating limit. Like decorative chromium electroplating and chromium anodizing facilities, hard chromium electroplating facilities would now be allowed to monitor surface tension to demonstrate compliance in lieu of performance testing.

Timetable:

Action	Date	FR Cite
NPRM	06/05/02	67 FR 38810
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4115.

Sectors Affected: 332813 Electroplating, Plating, Polishing, Anodizing and Coloring

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RIN: 2060–AH69

3272. NESHAP: ASPHALT/COAL TAR APPLICATION ON METAL PIPES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000, NPRM.

Abstract: The Clean Air Act (CAA), as amended in 1990, requires the EPA to: (1) Publish an initial list of all categories of major and area sources of the hazardous air pollutants (HAPs) listed in section 112(b) of the CAA; (2) promulgate a schedule establishing a date for the promulgation of emission standards for each of the listed categories of HAPs emission sources; and (3) develop emission standards for each source of HAPs. These standards are to be technology—based and are to require the maximum degree of emission reduction determined to be achievable by the Administrator. The Agency has determined that the application of asphalt or coal tar to metal pipes may reasonably be anticipated to emit several of the 189 HAPs listed in section 112(b) of the CAA. As a consequence, a regulatory development program is being pursued for the asphalt/coal tar application on metal pipes industry to promulgate emission standards.

Timetable:

Action	Date	FR Cite
NPRM	08/13/02	67 FR 52780
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4107. This action will be covered under Miscellaneous Metal Parts and Products, SAN 3825, RIN 2060—AG56.

Sectors Affected: 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers

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RIN: 2060–AH78

3273. NESHAP: TACONITE IRON ORE PROCESSING INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001, NPRM.
Final, Judicial, August 29, 2003, Final.

Abstract: The taconite iron ore processing source category is comprised of eight facilities operating in the United States. Six facilities are located in Minnesota and two are located in Michigan. The expected sources of HAP emissions for this source category include: fossil fuel combustion sources, and possibly the handling and transfer of mined ore containing naturally occurring inorganic compounds. Anticipated HAP emissions released from these sources primarily include: formaldehyde, manganese, nickel, arsenic, and chromium. The quantities of HAP released are expected to exceed major source levels.

Timetable:

Action	Date	FR Cite
NPRM	12/18/02	67 FR 77562
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN 4380. There are eight taconite processing facilities in the U.S.; six are located in Minnesota and two are located in Michigan. The MACT standard for this industry group will be shared between EPA and the State of Minnesota. State regulations currently in place include both air emissions limitations and prohibition of effluent discharge to Great Lakes waters, and both air and water monitoring requirements. Other existing Federal regulations may be affected under RCRA and TSCA.

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RIN: 2060–AJ02

3274. CLARIFICATION TO EXISTING PART 63 NESHAP DELEGATIONS' PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR Part 63

Legal Deadline: None

Abstract: 40 CFR part 63 contains OAR's air—toxics emissions regulations, often referred to as MACT rules or NESHAPS. We are revising some part 63 standards to reflect changes in delegation provisions. We are also revising some sections in the part 63 regulations to clarify what are standards and what are compliance assurance measures. The benefits of the changes will include clarifying what authorities in each standard can be delegated to State and local air pollution control agencies and meshing the standards with revisions previously made to other part 63 regulations.

Timetable:

Action	Date	FR Cite
Proposed Amdt	01/16/02	67 FR 2286
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4426.

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RIN: 2060–AJ26

3275. NESHAP: GASOLINE DISTRIBUTION FACILITIES — AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63 subpart R

Legal Deadline: None

Abstract: On December 14, 1994, EPA promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for Gasoline Distribution Facilities (59 FR 64318). These standards are codified at 40 CFR part 63, subpart R. This action will amend that rule by adding a DOT test method as an alternative for measuring emissions from railcars. This method came to EPA's attention subsequent to promulgation of the original rule.

Timetable:

Action	Date	FR Cite
NPRM	09/20/02	67 FR 59434
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4479.

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RIN: 2060–AJ42

3276. BENZENE WASTE OPERATIONS NESHAP; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: This amendment will add a compliance option for tanks, making the Benzene Waste Operations NESHAP consistent with the RCRA CC rules. Hazardous waste treatment facilities have requested these amendments because they must comply with both rules. There is no emission reduction as a result of this action. However, facilities may save money. We expect no negative impacts on small businesses and State/local/tribal governments. Industry and government support this change.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/12/02	67 FR 68526
Direct Final Rule Withdrawn	02/06/03	68 FR 6082
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4591.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing; 3311 Iron and Steel Mills and Ferroalloy Manufacturing; 562211 Hazardous Waste Treatment and Disposal

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RIN: 2060–AJ87

3277. NESHAP: CHLORINE PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, Final.
Final, Judicial, August 29, 2003, Final.

Abstract: This action announces our decision not to issue regulations for the Chlorine Production source category. The source category is composed of nearly 50 facilities that produce chlorine using several different methods. We have determined that 21 of these facilities are major sources, including 20 chlor—alkali plants that produce chlorine and caustic as co—products through the electrolysis of brine, and one primary magnesium refining facility that produces chlorine as a by—product of magnesium metal production. Primary magnesium refining is a separately listed source category and, as such, the one refiner will be addressed in a separate rulemaking. None of the 20 chlor—alkali plants are in and of themselves major sources. All are well—controlled and emit negligible amounts of chlorine and, in some cases, additional negligible amounts of hydrochloric acid. These sources are major only due to collocation. That is, they are part of larger establishments that are major sources. These larger establishments include organic chemical manufacturers, polymer and resin producers, and pulp and paper mills, all of which are already subject to one or more NESHAP. Section 112(d)(4) gives us the discretion to consider risk in issuing MACT standards for pollutants for which a health threshold has been established, provided that the public health is protected with an ample margin of safety. Chlorine and HC1 are both threshold pollutants for which we have defined threshold values in the form of Inhalation Reference Concentrations (RfCs). We have modeled chlorine and HC1 emissions from each of the 20 chlor—alkali plants and have determined that none of the plants emit chlorine or HC1 in quantities that result in human exposures in the ambient air at levels approaching the threshold values. Therefore, we conclude that no further control or regulation is necessary. NOTE: Three of the 20 chlor—alkali plants operate mercury cells. We are addressing mercury emissions from mercury cell chlor—alkali plants in a separate proposal, which is currently under development. To facilitate comment, we plan to publish both the mercury cell proposal and this action on chlorine production in the same issue of the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	07/03/02	67 FR 44713
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4685.

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RIN: 2060–AK38

3278. NESHAP: HAZARDOUS ORGANIC NESHAP (HON) AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 "CAA 112"

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This action proposes to amend the Hazardous Organic NESHAP to allow vapor balancing as a control option for storage vessels.

Timetable:

Action	Date	FR Cite
Direct Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4712.

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RIN: 2060–AK49

3279. NESHAP FOR PRIMARY ALUMINUM REDUCTION PLANTS; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR Part 63

Legal Deadline: None

Abstract: The NESHAP for Primary Aluminum Reduction Plants was promulgated in 1997 (40 CFR Part 63, Subpart LL). The amendments described here would revise the emission limit for polycyclic organic matter applicable to one subcategory of source based on newly available data more representative of performance from the top five performing sources. The proposed amendments would also clarify language on compliance dates and add specific provisions for startup of new or reconstructed affected sources and affected sources that restart after being idled for long periods of time. More time would be allowed due to the nature of the process operation, depending on the type of source. No additional costs or information collection requirements would be incurred as a result of the amendments. There also are no significant policy issues. State agency and industry representatives concur with the changes, which will improve implementation of the 1997 rule.

Timetable:

Action	Date	FR Cite
NPRM	03/17/03	68 FR 12645
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4713.

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RIN: 2060–AK50

3280. NESHAP FOR PETROLEUM REFINERIES: CATALYTIC CRACKING UNITS, CATALYTIC REFORMING UNITS, AND SULFUR RECOVERY UNITS; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The NESHAP for Petroleum Refineriesis an existing rulemaking (40 CFR Part 63, Subpart CC) to control hazardous air pollutant emissions from equipment in the petroleum refining industry. This rulemaking will amend the Petroleum Refinery NESHAP to incorporate additional complicance options for catalytic reforming units at refineries. Clarifying language and missing tables will also be added. This action will not increase costs or change the emission reductions expected for this rule.

Timetable:

Action	Date	FR Cite
Direct Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4714.

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RIN: 2060–AK51

3281. NESHAP FOR SOURCE CATEGORIES: GENERAL PROVISIONS; AMENDMENTS FOR POLLUTION PREVENTION ALTERNATIVE COMPLIANCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63.2; 40 CFR 63.17

Legal Deadline: None

Abstract: We are proposing amendments to the Part 63 General Provisions that would allow facilities that are subject to a maximum achievable control technology (MACT) Subpart to discontinue unnecessary requirements if, through pollution prevention measures, they achieve and can demonstrate continued hazardous air pollutant (HAP) emission reductions equivalent to or better than the MACT level of control. We are proposing these amendments to encourage and promote pollution prevention, which is our strategy of first choice in reducing HAP emissions. We expect these amendments to result in no additional burden for sources and air pollution control agencies. This effort is the product of discussions with State and local air pollution control officials. There also are no significant policy issues.

Timetable:

Action	Date	FR Cite
Proposed Amdt	05/15/03	68 FR 26249
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4719.

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RIN: 2060–AK54

3282. NESHAP: ETHYLENE PROCESSES; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 subparts XX and YY

Legal Deadline: None

Abstract: The Ethylene Production NESHAP was promulgated on Friday, July 12, 2002 (67 FR 46258) without petition for judicial review. However, we did receive a letter from the affected industry association requesting that we consider certain technical corrections. Following review of this request, we believe some changes to the final rule are necessary for clarity and consistency. This correction requires an action in the form of a direct final rule which will contain rule changes, technical amendments and clarifications.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4763.

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RIN: 2060–AK80

3283. RULEMAKING ON SECTION 126 PETITIONS FROM NEW YORK AND CONNECTICUT REGARDING SOURCES IN MICHIGAN; REVISION OF DEFINITION OF APPLICABLE REQUIREMENT FOR TITLE V OPERATING PERMIT PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52; 40 CFR 75; 40 CFR 97

Legal Deadline: None

Abstract: The EPA is proposing to revise the section 126 Rule in light of the March 3, 2000 court decision on the NOx SIP Call. The court vacated, and remanded to EPA for further consideration, the inclusion of Georgia and Missouri in the NOx SIP Call in light of the Ozone Transport Assessment Group conclusions that emissions from coarse grid portions of States did not merit controls. The reasoning of the Court regarding the significance of NOx emissions from sources in Georgia and Missouri calls into question the inclusion of the coarse grid portion of Michigan in the NOx SIP Call. In a separate proposal, EPA is proposing to withdraw the NOx SIP Call requirements for the Michigan coarse grid area. The section 126 Rule is based on many of the same analyses and information used for the NOx SIP call and covers part of Michigan. Thus, EPA is proposing to withdraw its section 126 findings and control requirements with respect to sources located in the small part of the coarse grid portion of Michigan that is currently covered by the section 126 Rule. The EPA has not identified any existing section 126 sources that would be affected by the proposal, however this proposal would eliminate findings and control requirements for new sources locating in the coarse grid. This proposal does not create any new requirements, thus there are no associated costs. The EPA is also proposing to revise the definition "applicable requirement" for title V operating permit programs by providing expressly that any standard or other requirement under section 126 is an applicable requirement and must be included in operating permits issued under title V of the CAA.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8386
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4464. Split from RIN 2060—AH88.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ36

3284. SECTION 126 RULE WITHDRAWAL PROVISION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52

Legal Deadline: None

Abstract: EPA is proposing to revise one narrow aspect of the section 126 rule, which was promulgated January 18, 2000. The rule requires certain sources located in the eastern United States to reduce their NOx emissions for purposes of reducing ozone transport. EPA coordinated the section 126 rule with a related ozone transport rule, known as the NOx State implementation plan call (NOx SIP Call), which also addresses ozone transport in the eastern United States. The EPA established the same compliance date for both rules, May 1, 2003. The EPA included a provision in the section 126 rule which provided that where a State adopted, and EPA approved, a SIP controlling transport under the NOx SIP Call, and with a May 1, 2003 compliance date, EPA would withdraw the section 126 requirements for sources in that State. This was a practical way to address the overlap between the two rules and avoid having sources be subject to two sets of potentially different NOx transport control requirements. As the result of court actions, the compliance dates for the section 126 Rule and the NOx SIP Call have both been delayed until May 31, 2004. In addition, the NOx SIP Call has been divided into two phases. Therefore, it is necessary to revise the section 126 rule withdrawal provision so that it will continue to operate under these new circumstances.

Timetable:

Action	Date	FR Cite
NPRM	04/04/03	68 FR 16644
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4689.

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RIN: 2060–AK41

3285. FEDERAL PLAN REQUIREMENTS FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS CONSTRUCTED ON OR BEFORE NOVEMBER 30, 1999

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7429

CFR Citation: 40 CFR 62

Legal Deadline: None

Abstract: The Clean Air Act Amendments of 1990 directed the Environmental Protection Agency (EPA) to set emission guidelines for existing incinerators combusting commercial or industrial waste under sections 111 and 129. Final emission guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) were published on December 1, 2000 (see 65 FR 75338). In accordance with section 129, any State with affected sources must submit a State plan by December 1, 2001 describing how the State will implement the emission guidelines for existing CISWI. Section 129 requires the Administrator to develop and implement a Federal plan for existing CISWI units located in any State which has not submitted an approvable plan within 2 years of promulgation of the emissions guidelines. In this CISWI Federal plan rulemaking, EPA becomes the implementing authority in those instances where the State has failed to submit a plan or a plan has not yet been approved. Therefore, consistent with section 129(b)(3) of the Act, EPA is proposing a plan that applies to CISWI in any State that has not submitted an approvable plan within the time allotted. This action makes no changes to the requirements in the rule, and is intended to fulfill EPA's duty under section 129(b)(3) to promulgate a Federal plan as a gap—filling measure until the State fulfills its statutory obligations. When the State submits an approvable State plan, the Federal plan will no longer apply to units in that State.

Timetable:

Action	Date	FR Cite
NPRM	11/25/02	67 FR 70640
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 4441.

Sectors Affected: 325 Chemical Manufacturing; 321 Wood Product Manufacturing

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RIN: 2060–AJ28

3286. TRANSPORTATION CONFORMITY AMENDMENTS: RESPONSE TO MARCH 2, 1999, COURT DECISION

Priority: Other Significant

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 93

Legal Deadline: None

Abstract: The Clean Air Act requires EPA to promulgate rules that establish the criteria and procedures for determining whether highway and transit plans, programs, and projects conform to state air quality plans. Conformity means that the transportation actions will not cause or worsen violations of air quality standards or delay timely attainment of the standards. The original conformity rule was finalized on November 24, 1993, and most recently amended on August 15, 1997. On March 2, 1999, the U.S. Court of Appeals overturned certain provisions of the 1997 conformity amendments. This rulemaking will amend the conformity rule in compliance with the court decision. The rulemaking will formalize the May 14, 1999 EPA guidance and the June 18, 1999 DOT guidance that was issued to guide action on this issue until a rulemaking could be issued. Specifically, the rulemaking will clarify the types of projects that can be implemented in the absence of a conforming transportation plan. It will also explain EPA's process for reviewing newly submitted air quality plans and when those submissions can be used for conformity purposes.

Timetable:

Action	Date	FR Cite
Proposed Amdt	06/30/03	68 FR 3904
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: SAN 4340.

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RIN: 2060–AI56

3287. EXPANDED DEFINITIONS FOR ALTERNATIVE—FUELED VEHICLES AND ENGINES MEETING LOW—EMISSION VEHICLE EXHAUST EMISSION STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2001; 15 USC 2002; 15 USC 2003; 15 USC 2005; 15 USC 2006; 15 USC 213; 42 USC 7521; 42 USC 7522; 42 USC 7524; 42 USC 7525; 42 USC 7541; 42 USC 7542; 42 USC 7549; 42 USC 7550; 42 USC 7552

CFR Citation: 40 CFR 86; 40 CFR 88

Legal Deadline: None

Abstract: This action will ease the burden of certification for both original equipment manufacturers (OEMs) and after—market conversion entities. This action will, for vehicles and engines meeting LEV emission standards, broaden the definition of the term dedicated fuel system, broaden the criteria for engine families, and provide an exemption from certification fees. This action is not a deregulatory action. This action will provide another means for small business to remain active entities in supplying alternatively fueled vehicles to the market place. The above three changes are intended to reduce the cost of complying with the requirements of certification, and small business will benefit from these changes. This action will enhance the ability for the regulated industry to provide alternatively fueled vehicles to the consumer in support of the Executive Order 13031.

Timetable:

Action	Date	FR Cite
NPRM	07/20/98	63 FR 38767
Notice	05/14/99	64 FR 26410
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4030.

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RIN: 2060–AH52

3288. MODIFICATION OF THE ANTI—DUMPING BASELINE DATE CUT—OFF LIMIT FOR DATA USED IN DEVELOPMENT OF AN INDIVIDUAL BASELINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(1); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.91(b)(1)(i); 40 CFR 80.93(a)

Legal Deadline: None

Abstract: "Dumping" refers to the practice whereby refiners making clean fuels for certain markets (such as reformulated gasoline for clean—air purposes) take the pollutants removed from the clean fuels and "dump" them into other fuels they are producing for other markets. This, if allowed, would make those other fuels even dirtier than before, and so the Clean Air Act prohibits this practice. EPA has existing "anti—dumping" rules on the books that codify this Clean Air Act prohibition. This regulation is a minor technical amendment to those existing regulations. It would amend a portion of those regulations to allow the use of data collected after January 1, 1995 in the development of baselines, and it would establish a cut—off date of January 1, 2002 for the submission of all individual baselines under the anti—dumping program. This date is the same as that allowed for foreign refineries seeking a unique individual baseline under the anti—dumping program.)

Timetable:

Action	Date	FR Cite
Direct Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4604.

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RIN: 2060–AJ82

3289. CONTROL OF EMISSIONS FROM HIGHWAY MOTORCYCLES

Priority: Other Significant

Legal Authority: 42 USC 7401 to 7671(q)

CFR Citation: 40 CFR 94

Legal Deadline: None

Abstract: EPA is finalizing actions to reduce emissions from highway motorcycles, which currently are subject to existing emission standards that were put in place over 20 years ago. Emissions control technologies have advanced significantly since that time, and EPA believes it is appropriate to put in place more stringent standards for hydrocarbon and nitrogen oxide emissions that reflect this progress. The final standards are consistent with standards California has recently promulgated, thereby creating the opportunity to industry to produce and market products nationwide. EPA proposed new emission standards for highway motorcycles on August 14, 2002 (67 FR 53050), in a proposal that also included a proposal for evaporative emission standards for marine vessels that use spark—ignition engines. The final rule now involves only new emission standards for highway motorcycles.

Timetable:

Action	Date	FR Cite
NPRM	08/14/02	67 FR 53050
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: SAN 4626. Split from RIN 2060—AI11.

Sectors Affected: 42183 Industrial Machinery and Equipment Wholesalers; 333924 Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing; 335312 Motor and Generator Manufacturing

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RIN: 2060–AJ90

3290. CONTROL OF EMISSIONS OF AIR POLLUTION FROM NONROAD DIESEL ENGINES AND FUEL

Regulatory Plan: This entry is Seq. No. 120 in part II of this issue of the **Federal Register**.

RIN: 2060–AK27

3291. IMPORTATION OF NONCONFORMING VEHICLES; AMENDMENTS TO REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7522 "CAA 203"; 42 USC 7525 "CAA 206"; 42 USC 7541 "CAA 207"; 42 USC 7542 "CAA 208"; 42 USC 7601 "CAA 301"; 42 USC 7522 "CAA 203"; 42 USC 7550 "CAA 216"; 42 USC 7601 "CAA 301"

CFR Citation: 40 CFR 85

Legal Deadline: None

Abstract: This action will amend the regulations in 40 CFR part 85, subpart P to allow entry into the United States of vehicles which are originally sold in Canada and which are identical to their U.S. counterparts, without obtaining a certificate of conformity from EPA. This action is in response to a petition for review of import rules. The final rule also will address certain other issues in part 85, subpart P and subpart R, including: (1) Formalizing a long—standing EPA policy regarding the importation of owned vehicles that are proven to be identical to a vehicle certified for sale in the United States; (2) establishing new emission standards applicable to imported nonconforming vehicles; (3) clarifying the regulatory language that concerns exclusions and exemptions from meeting Federal emission requirements; and (4) providing several minor clarifications to the existing regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/24/94	59 FR 13912
Supplemental NPRM	02/12/96	61 FR 5840
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 2665.

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RIN: 2060–AI03

3292. PROTECTION OF STRATOSPHERIC OZONE: LISTING OF SUBSTITUTES FOR OZONE—DEPLETING SUBSTANCES: N—PROPYL BROMIDE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671 to 7671q

CFR Citation: 40 CFR 82

Legal Deadline: None

Abstract: This rule proposes to add n—propylbromide (nPB) to the list of acceptable substitutes for class I and class II ozone depleting substances used as solvents for general metals, precision, and electronics cleaning, as well as in aerosol solvent and adhesives end uses. This would provide another alternative to solvents with higher ozone depletion potential that industry is interested in using. The rule also would propose specific conditions on the use of nPB as a solvent. These might include limiting the specific applications in which it may be used to those with low emissions and requiring exposure limits consistent with industry practices. This will ensure that nPB is used in a manner that is safe and environmentally protective. OSHA does not currently regulate nPB. EPA would revise our ruling to adopt whatever OSHA requires if OSHA later regulates the use of nPB. If finalized as proposed, this rule would be consistent with most existing industry practices and would impose little or no burden on industry.

Timetable:

Action	Date	FR Cite
NPRM	06/03/03	68 FR 33283
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4599. Split from RIN 2060—AJ58. The previous ANPRM was under SAN No. 3525.

Sectors Affected: 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 336 Transportation Equipment Manufacturing; 337 Furniture and Related Product Manufacturing; 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing

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RIN: 2060–AK26

3293. PROTECTION OF STRATOSPHERIC OZONE: BAN ON TRADE OF METHYL BROMIDE TO NONPARTIES TO THE MONTREAL PROTOCOL

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7671 to 7671q

CFR Citation: 40 CFR 82

Legal Deadline: None

Abstract: This action will prohibit the import and export of methyl bromide (class I, Group VI controlled substance) from or to a foreign state that is not a party to the 1992 Copenhagen Amendments to the Montreal Protocol. The rule is being published in accordance with the Montreal Protocol and the Clean Air Act.

Timetable:

Action	Date	FR Cite
Direct Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4756.

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RIN: 2060–AK67

3294. PROTECTION OF STRATOSPHERIC OZONE: REFRIGERANT RECYCLING; SUBSTITUTE REFRIGERANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq; 42 USC 7671(g) "CAA 608"

CFR Citation: 40 CFR 82(F)

Legal Deadline: None

Abstract: EPA is amending the rule on refrigerant recycling, promulgated under section 608 of the Clean Air Act to clarify how the statutory venting prohibition of the act applies to refrigerants that are used as substitutes for CFC and HCFC ozone—depleting refrigerants. It also exempts certain substitute refrigerants from the prohibition on the basis of current evidence that their release does not pose a threat to the environment. In addition, EPA is extending the refrigerant sales restriction to substitute refrigerants that consist of an ozone—depleting substance.

Timetable:

Action	Date	FR Cite
NPRM	06/11/98	63 FR 32044
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3560.

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RIN: 2060–AF37

3295. FEDERAL IMPLEMENTATION PLANS FOR INDIAN RESERVATIONS IN IDAHO, OREGON, AND WASHINGTON

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 49.121 to 49.139; 40 CFR 49.9861 to 49.17810

Legal Deadline: None

Abstract: This Federal Implementation Plan (FIP) proposes basic air rules to apply on Indian Reservations in Idaho, Oregon, and Washington. The rules provide some basic air quality protection similar to what the State implementation plans (SIPs) require for Idaho, Oregon, and Washington. These rules are needed to establish a level playing field and create basic federally enforceable rules under the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	03/15/02	67 FR 11748
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Tribal

Federalism: Undetermined

Additional Information: SAN 4487. EPA Region 10 would be responsible for implementing and enforcing these proposed rules. Tribes can choose to assist EPA or take over responsibility for their reservations, and EPA would provide funding to tribes through grants to support their efforts.

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RIN: 2012–AA01

3296. REVISION TO THE DEFINITION OF VOLATILE ORGANIC COMPOUND (VOC) TO EXCLUDE TERTIARY BUTYL ACETATE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 51.100(s)

Legal Deadline: None

Abstract: The definition of VOC is proposed to be revised to add tertiary butyl acetate to the list of negligibly reactive compounds. This is a deregulatory action that will remove tertiary butyl acetate from the necessity to be controlled as a VOC in SIPs for attaining the ozone standard.

Timetable:

Action	Date	FR Cite
NPRM	09/30/99	64 FR 52731
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4254.

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RIN: 2060–AI45

3297. RESCINDING FINDING THAT PREEXISTING PM10 STANDARDS NO LONGER APPLICABLE IN NORTHERN ADA COUNTY/BOISE, IDAHO

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 50.6(d); 40 CFR 52.676; 40 CFR 81.313

Legal Deadline: None

Abstract: The EPA had previously taken action to revoke the PM—10 national ambient air quality standards (NAAQS) for the Boise/Ada County area in anticipation that a revised PM—10 NAAQS would soon be in place. However, the DC Circuit court subsequently vacated the revised PM—10 NAAQS, the effectiveness of which served as the underlying basis for EPA's decision to revoke the preexisting PM—10 NAAQS. Therefore, in order to protect public health in the Boise/Ada County area, EPA is proposing to reinstate the pre—existing PM—10 NAAQS. Without this action there would be no Federal PM—10 NAAQS applicable to this area. This action is tentatively subject to the terms of a settlement agreement that was signed by all parties in January 2001. A Federal Register notice of the proposed settlement requesting public comment was published January 30, 2001 in accordance with section 113(g) of the Act. No negative comments were received. EPA/DOJ signed the settlement agreement and the State is in the process of carrying out its obligations under the settlement agreement. The State submitted its maintenance plan for Boise on 9/27/2002. Under the settlement, EPA agreed to take final action on the State's submittal by 9/30/2003. On July 30, 2003 a Feferal Register notice was published proposing to rescind the finding that the 1987 PM10 NAAQS are not applicable in the Ada County/Boise, Idaho area, and simultaneously, to approve a PM10 SIP maintenance plan for the Ada County/Boise Idaho area and to redesignate the area from nonattainment to attainment. There will be a 30—day comment period. Written comments must be received on or before August 29, 2003. Under the settlement agreement, we must sign and forward to the Federal Register office our final action by September 30, 2003.

Timetable:

Action	Date	FR Cite
NPRM 1	06/26/00	65 FR 39321
Notice	07/26/00	65 FR 45953
NPRM	07/30/03	68 FR 44715
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local, State

Additional Information: SAN 4391.

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RIN: 2060–AJ05

3298. COMPILATION OF SOURCE—SPECIFIC ALTERNATIVE METHODS BEING APPROVED FOR SOURCE—CATEGORY WIDE APPLICATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 00 CFR NYD

Legal Deadline: None

Abstract: Sources have applied for approval of alternative test methods for use at their facility. The Agency has approved these methods and issued letters of approval to each requestor. The Agency has determined that these methods could be used at similar sources, thus giving those sources an alternative test method to the one cited in the regulation. This action seeks to publish these facility—specific approvals in order to provide other facilities within the source category the option of using the alternative method.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4548.

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RIN: 2060–AJ84

3299. CONTROL OF HAZARDOUS AIR POLLUTANTS FROM MOBILE SOURCES: DEFAULT BASELINE REVISION AND MINOR CORRECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(1); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80

Legal Deadline: Final, Statutory, October 31, 2001, Final.

Abstract: The final rule, Control of Emissions of Hazardous Air Pollutants From Mobile Sources (66 FR 17230, 3/29/01), directed EPA to revise the default toxics baselines in the rule to include year 2000 data when it becomes available. When revised, the default toxics baseline values will be the average toxics values for gasoline over the period 1998—2000. This data is now available, and this rule will promulgate those revised baseline values, and also incorporate several minor technical corrections to the existing rule.

Timetable:

Action	Date	FR Cite
Direct Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4621.

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RIN: 2060–AJ97

3300. REGULATION OF FUEL AND FUEL ADDITIVES: EXTENSION OF CALIFORNIA ENFORCEMENT EXEMPTIONS FOR REFORMULATED GASOLINE TO CALIFORNIA PHASE 3 GASOLINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.81

Legal Deadline: None

Abstract: EPA is proposing to exempt refiners, importers, and blenders of gasoline subject to the State of California's reformulated gasoline regulations from certain enforcement provisions in the federal reformulated (RFG) regulations. Certain exemptions under the federal RFG program already apply to California Phase 2 gasoline, but additional exemptions are necessary to cover Phase 3 gasoline.

Timetable:

Action	Date	FR Cite
Direct Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4634.

Sectors Affected: 32411 Petroleum Refineries; 32511 Petrochemical Manufacturing

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RIN: 2060–AK04

3301. REVISIONS TO CLARIFY THE SCOPE OF THE SUFFICIENCY MONITORING REQUIREMENTS FOR FEDERAL AND STATE OPERATING PERMITS PROGRAMS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 70.6(c)(1); 40 CFR 71.6(c)(1)

Legal Deadline: None

Abstract: The purpose of these rulemakings is to clarify that under 40 CFR 70.6(c)(1) and 71.6(c)(1), all title V permits must contain monitoring sufficient to assure compliance with the permits' terms and conditions, as required under sections 504(a), 504 (b), 504(c) and 114(a)(3) of the Clean Air Act, where section 70.6(a)(3)(i)(B) or section 71.6(a)(3) is not applicable. Specifically, these rulemakings are limited to the suspension and removal of the prefatory phrase "(c)onsistent with paragraph (a)(3) of this section" from the sufficiency monitoring requirement in section 70.6(c)(1) and section 71.6(c)(1). The suspension and removal will codify the Administrator's interpretation of the title V monitoring requirements as set forth in two adjudicatory orders issued in 2000 in response to petitions to object to title V permits (the Pacificorp and Fort James orders) and will be consistent with two prior decisions of the U.S. Court of Appeals for the District of Columbia Circuit concerning the title V monitoring requirements. We are undertaking these rulemakings consistent with the defense of pending litigation, Utility Air Regulatory Group v. EPA, No. 01—1204 (D.C. Cir.). In this litigation, the Utility Air Regulatory Group (UARG) has asserted, in part, that EPA's interpretation of section 70.6(c)(1) and section 71.6(c)(1) as stated in the Pacificorp and Fort James orders is overbroad because the prefatory language in these sufficiency monitoring regulations (i.e., consistent with paragraph (a)(3)) limits their scope to that of the periodic monitoring provisions at section 70.6(a)(3) and section 71.6(a)(3). While EPA disagrees with UARG's assertions, EPA believes that further clarification through rulemaking would be useful. The EPA believes that suspension and removal of the prefatory language will de—link the sufficiency monitoring requirement from the separate periodic monitoring requirement, and thus, make more clear the distinction between the two requirements. Specifically, this rulemaking will clarify that where an applicable requirement does not require any periodic testing or monitoring, permit conditions are required to establish "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" under section 70.6(a)(3)(i)(B) or section 71.6(a)(3). Where the applicable requirement already requires "periodic" testing or monitoring but that monitoring is not sufficient to assure compliance, the separate regulatory standard at section 70.6(c)(1) or section 71.6(c)(1) applies instead to require monitoring "sufficient to assure compliance." These rulemakings do not address any other issues related to Title V monitoring, such as the type of monitoring required under the periodic or sufficiency monitoring provisions. The EPA expects to consider comments on these other monitoring issues during a separate, future notice—and—comment rulemaking. The rulemakings simply clarify existing requirements, rather than impose new requirements. Any future rulemaking actions on the scope of sufficiency monitoring will be subject to OMB review because the related proposal was found to be a "significant regulatory action" under Executive Order 12866 due to "novel legal or policy issues." In addition, all such rulemaking actions have been found not to be economically significant, and they will not result in additional costs to State, local, or tribal governments, or to the private sector.

Timetable:

Action	Date	FR Cite
NPRM	09/17/02	67 FR 58561
Interim Final Action	09/17/02	67 FR 58529
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4699.

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RIN: 2060–AK29

3302. WASTE ISOLATION PILOT PLANT (WIPP) FY 2001 REPORT TO CONGRESS

Priority: Info./Admin./Other

Legal Authority: PL 102—579, sec 23(a)(2)

CFR Citation: 40 CFR 194

Legal Deadline: None

Abstract: This Report to Congress is required by section 23(a)(2) of the WIPP Land Withdrwal Act, which requires EPA to submit an annual report to Congress "on the status of and resources required for the fulfillment of the Administrator's responsibilities under the Act" regarding the Waste Isolation Pilot Plant (WIPP). This report summarizes the activities and progress EPA has made in fulfilling its responsibilities under the Act and outlines the resources required for the Agency to meet its commitments. The WIPP is an underground repository for the permanent disposal of radioactive waste generated as byproducts from nuclear weapons production. It was constructed by the Department of Energy (DOE) and is located near Carlsbad, New Mexico. In 1998, EPA certified that the WIPP complies with EPA's radioactive waste disposal standards at subpart B and C of 40 CFR 191 and EPA's WIPP compliance criteria at 40 CFR 194, and thus is safe to contain radioactive waste. Since that time, the DOE has begun emplacing waste in the WIPP. The waste is stored approximately 2,100 feet underground in excavated, natural salt formations. EPA also has responsibility for assuring continual compliance with EPA's radioactive waste disposal standards. EPA continues to have an oversight role at the WIPP to ensure that it continues to protect human health and the environment. This Report summarizes EPA's actvities past and present.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN 4686.

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RIN: 2060–AK39

3303. CALIFORNIA GASOLINE TECHNICAL CORRECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(1); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.81(a)

Legal Deadline: None

Abstract: This rule corrects final regulations which were published in the Federal Register on March 29, 2001 (66 FR 17230). The corrected regulatory provision restores the definition of California gasoline as used in the enforcement exemptions for California gasoline under the regulation of fuels and fuel additives.

Timetable:

Action	Date	FR Cite
Direct Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4722.

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RIN: 2060–AK56

3304. AMENDMENTS TO THE REQUIREMENTS ON VARIABILITY IN THE COMPOSITION OF ADDITIVES CERTIFIED UNDER THE GASOLINE DEPOSIT CONTROL PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80

Legal Deadline: Other, Statutory, May 30, 2001, Other.

Abstract: A direct final rule and parallel notice of proposed rulemaking were published on November 5, 2001, in response to a settlement agreement reached with the American Chemical Council (ACC) regarding their litigation on the Gasoline Deposit Control Additive Rule. This litigation pertained to the information that manufacturers must provide on additive composition at the time of certification. Adverse comments were received on two of the four amendments. A partial withdrawal notice was published on January 24, 2002, which withdrew the amendments on which we received adverse comments. In this action, we plan to finalize the provisions that were withdrawn. The provisions we plan to finalize are based on an ACC consensus position, which reduces the burden on manufacturers in demonstrating compliance with limits on the compositional variability of the deposit control additives, while maintaining the emissions control benefits of the gasoline deposit control program.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/05/01	66 FR 55885
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4557.1. Split from RIN 2060—AJ69. Action is consistent with Settlement Agreement signed with American Chemistry Council in January 2000, which became final in August, 2000 (no comments were received in the public notice and comment). ACC v. EPA, D.C. Cir. No. 94—1778 (consol).

Sectors Affected: 325998 All Other Miscellaneous Chemical Product Manufacturing

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RIN: 2060–AK62

3305. CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES; ADDENDUM TO SECOND AMENDMENT TO THE TIER 2/GASOLINE SULFUR REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a); 42 USC 7401 to 7521(l); 42 USC 7521(m) to 7671q

CFR Citation: 40 CFR 80; 40 CFR 86

Legal Deadline: None

Abstract: On June 12, 2002, EPA promulgated a direct final rule (SAN 4569, 67 FR 40169) that corrected, amended, and revised certain provisions of the Tier 2/Gasoline Sulfur regulations to assist regulated entities with program implementation and compliance. At that time, EPA also published a concurrent proposed rule to be used in case the direct final rule received adverse comment. Such adverse comment was received, and a portion of that June 12 rule had to be withdrawn. This action will respond to that adverse comment and address the aforementioned withdrawn material.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/12/02	67 FR 40169
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4569.1. Split from RIN 2060—AJ71.

Sectors Affected: 336111 Automobile Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing

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RIN: 2060–AK63

3306. ANTI—DUMPING BASELINE RECALCULATION FOR DOWNSTREAM OXYGENATE ADDITION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.91

Legal Deadline: None

Abstract: This rule would allow a refiner who added oxygenate after sampling and just before shipment to exclude that oxygenate from its anti—dumping baseline determination. This exclusion of oxygenate is already allowed for a refinery's gasoline to which oxygenate was added outside of the refinery gate. This rule will have limited application, and could provide relief to small refiners.

Timetable:

Action	Date	FR Cite
Direct Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4706.

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RIN: 2060–AK69

3307. REGULATION OF FUELS AND FUEL ADDITIVES: MODIFICATIONS TO STANDARDS AND REQUIREMENTS FOR REFORMULATED AND CONVENTIONAL GASOLINE INCLUDING BUTANE BLENDERS AND ATTEST ENGAGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7454(c); 42 USC 7454(k); 42 USC 7601

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: Through the Clean Air Act Amendments of 1990, Congress mandated that EPA promulgate regulations for reformulated and conventional gasoline. The purpose of this mandate was to reduce vehicle emissions of toxic and ozone—forming compounds. EPA published the regulations on February 16, 1994. On July 11, 1997, EPA published a proposed rule that included various minor adjustments to the 1994 rule. The emissions benefits achieved from the reformulated gasoline and conventional gasoline programs would not be reduced by the proposed changes. On December 31, 1997, EPA finalized many of the proposed changes. This rule would finalize the remaining changes that were not included in the December 31, 1997 final rule.

Timetable:

Action	Date	FR Cite
NPRM	07/11/97	62 FR 37338
Final Partial	12/31/97	62 FR 68196
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4758.

Sectors Affected: 32411 Petroleum Refineries; 42271 Petroleum Bulk Stations and Terminals

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RIN: 2060–AK77

3308. • PROTECTION OF STRATOSPHERIC OZONE; REFRIGERANT RECYCLING; CERTIFICATION OF RECOVERY AND RECOVERY/RECYCLING EQUIPMENT INTENDED FOR USE WITH SUBSTITUTE REFRIGERANTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq; 42 USC 7671(g) "CAA 608"

CFR Citation: 40 CFR 82(F)

Legal Deadline: None

Abstract: EPA is amending the rule on refrigerant recycling equipment intended for use with Substitute Refrigerants: EPA is amending the rule on refrigerant recycling, promulgated under section 608 of the Clean Air Act, to clarify how the requirements of section 608 extend to refrigerant recovery and/or recycling equipment intended for use with substitutes for CFC and HCFC refrigerants.

Timetable:

Action	Date	FR Cite
NPRM	06/11/98	63 FR 32044
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3560.1. Split from RIN 2060—AF37.

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RIN: 2060–AL77

3309. • REVISIONS TO FEDERAL OPERATING PERMITS PROGRAM FEE PAYMENT DEADLINES FOR CALIFORNIA AGRICULTURAL SOURCES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 42 CFR 71.9(f)

Legal Deadline: None

Abstract: The EPA is taking final action to amend the Federal Operating Permits Program to extend the date by which state—exempt major agricultural sources in California must pay fees and to allow their permit applications to be considered complete even though fees will not be paid at the time the applications are due. This action allows EPA to process the applications and issue permits while the Agency computes a fee amount based on the cost of administering the permits program for these sources. The amendments extend the due date for submitting operating permit fees to EPA until May 14, 2004 for agricultural sources that are major sources subject to title V but are not being permitted by 34 Clean Air Act title V operating permits programs in the State of California.

Timetable:

Action	Date	FR Cite
NPRM	05/13/03	68 FR 25548
Direct Final Action	05/13/03	68 FR 25507
Withdrawal of Direct Final	06/27/03	68 FR 38197
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN 4791.

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RIN: 2060–AL82

3310. • PROTECTION OF STRATOSPHERIC OZONE: ALLOCATION OF ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2004

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671; 42 USC 7671q

CFR Citation: 40 CFR 82.4

Legal Deadline: None

Abstract: With this action, EPA will be allocating essential—use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2004. Essential—use allowances permit a person to obtain controlled class I ODSs as an exemption to the January 1, 1996 regulatory phase—out of class I ODS solely for the designated essential purpose. This regulation will allocate essential use allowances for CFCs for use in metered dose inhalers for the treatment of asthma and chronic obstructive lung disease, and methyl chloroform for use in the space shuttle.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4833. The final rule must be published by January 1, 2004, in order for the pharmaceutical companies that produce metered dose inhalers to have access to CFCs in a timely manner. We plan to publish the proposal in early October.

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RIN: 2060–AM01

3311. • AIR QUALITY DESIGNATIONS AND CLASSIFICATIONS FOR THE 8—HOUR OZONE NAAQS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7407, 7501—7515,7601

CFR Citation: 40 CFR part 81

Legal Deadline: Final, Judicial, April 15, 2004, Final.

Abstract: In 1997, EPA promulgated the revised National Ambient Air Quality Standards (NAAQS) for ozone. This action is intended to promulgate designations and classifications for areas across the country as attainment/unclassifiable or nonattainment. The CAA defines a nonattainment area to include the area that is violating the NAAQS and any nearby areas that are contributing to the violation of the NAAQS. The process for designations following promulgation of a NAAQS is contained in Section 107(d)(1) of the CAA. EPA requested States and Tribes to make recommendations regarding attainment of their areas by July 15, 2004. EPA will review the recommended designations and may make modifications as deemed necessary to such recommendations. If EPA determines that a modification is needed, the EPA will notify the State and Tribes no later than 120 days prior to promulgating final designations, which provides an opportunity for States and Tribes to defend their recommended positions. In cases where the States or Tribes do not submit recommendations, EPA will promulgate the designations for areas it deems appropriate. Final ozone designations will be promulgated on April 15, 2004

Timetable:

Action	Date	FR Cite
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4839.

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RIN: 2060–AM03

3312. • PROTECTION OF STRATOSPHERIC OZONE; REFRIGERANT RECYCLING; AMENDED LEAK REPAIR REQUIREMENTS FOR REFRIGERATION AND AIR—CONDITIONING EQUIPMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq; 42 USC 7671(g) "CAA 608"

CFR Citation: 40 CFR 82(F)

Legal Deadline: None

Abstract: EPA is amending the leak repair requirements for commercial, comfort cooling, and industrial process refrigeration appliances, promulgated under section 608 of the Clean Air Act. This rule will address methods to calculate leak rates, amend definitions concerning leak repair, and clarify how the leak repair requirements of section 608 extend to appliances using refrigerants that are substitutes for CFC and HCFC refrigerants.

Timetable:

Action	Date	FR Cite
NPRM	06/11/98	63 FR 32044
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3560.2. Split from RIN 2060. Split from RIN 2060—AF37.

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RIN: 2060–AM05

3313. PROJECT XL SITE—SPECIFIC RULEMAKING FOR ANDERSEN CORPORATION'S FACILITY IN BAYPORT, MINNESOTA

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 52

Legal Deadline: None

Abstract: This site—specific rule, applicable only to the Andersen Bayport facility, provides regulatory changes under the Clean Air Act (CAA) to implement Andersen Corporation's XL project. In this project, the facility will be allowed to increase production levels without undergoing case—by—case reveiws prompted by its Volatile Organic Compounds (VOC) emission changes, as long as its VOC emissions per unit of production remain below the performance ratio and its overall emissions remain below a facilitywide VOC cap.

Timetable:

Action	Date	FR Cite
NPRM	04/19/99	64 FR 19097
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4278.

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RIN: 2090–AA21

3314. • NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: SITE—SPECIFIC REGULATION FOR PACKAGING CORPORATION OF AMERICA IN TOMAHAWK, WISCONSIN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63.443; 40 CFR 63.457; 40 CFR 63.453

Legal Deadline: None

Abstract: This site specific regulation will allow Packaging Corporation of America (PCA) to operate its semi—chemical pulp and paper mill with an alternative control technology for its hazardous air pollutants (HAPs). This alternative treatment has been approved by the EPA and its use will be conducted as a pilot project under the May 5, 1998, Joint State/EPA Agreement to Pursue Regulatory Innovation. An applicable federal air rule requires semi—chemical pulp and paper mills to collect and incinerate their vent gases. As an alternative treatment, PCA will collect and hard—pipe vent gas condensates to their on—site wastewater treatment plant. The vent gas condensates contain a large proportion of the vent gas HAPs, and the HAPs are effectively treated in the wastewater treatment plant. PCA has agreed to accept as an enforceable limit a methanol destruction rate of approximately two times the amount of methanol that would be destroyed with the technology prescribed in the federal air rule. Methanol is an appropriate surrogate for the total HAPs in the vent gases. Data from a full scale treatability study conducted by PCA in June 2001 indicate that the alternative treatment technology may be capable of achieving approximately five times greater methanol treatment than prescribed in the air rule, although PCA will not have to commit to achieving this greater destruction rate.

Timetable:

Action	Date	FR Cite
Direct Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4816.

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RIN: 2090–AA33

Environmental Protection Agency (EPA) Clean Air Act (CAA) — Long-Term Actions

3315. NESHAP: OFF—SITE WASTE AND RECOVERY OPERATIONS RESIDUAL RISK STANDARD

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, July 1, 2004, Final.

Abstract: EPA developed technology—based emissions standards (MACT standards) for this source category under section 112(d) of the Clean Air Act, codified in 40 CFR part 63, subpart DD. The current action, required by section 112(f) of the Clean Air Act, is to assess residual risks after compliance with subpart DD, and develop additional enission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4695.

Sectors Affected: 56221 Waste Treatment and Disposal

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RIN: 2060–AK68

3316. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, SECTION 112(R)(7); AVAILABILITY OF INFORMATION TO THE PUBLIC; TECHNICAL AMENDMENT

Priority: Info./Admin./Other

Legal Authority: "CAA 112(r)"

CFR Citation: 40 CFR 68.210

Legal Deadline: None

Abstract: Section 112(r)(7) of the Clean Air Act (CAA) and its implementing regulations at 40 CFR Part 68 require certain stationary sources to report an off—site consequence analysis (OCA), including a worst—case release scenario, in a risk management plan (RMP) that is to be made available to the public. In response to concerns that posting OCA information on the Internet might increase the risk of terrorist and other criminal activities, on August 5, 1999 the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA) was enacted. The Act requires the President to promulgate regulations governing the distribution of the OCA sections of RMPs that, in the opinion of the President, would minimize the likelihood of accidental releases and the risk of terrorist and other criminal activities associated with posting this information. The President delegated his rulemaking authority to the Attorney General and the Administrator of EPA, who jointly promulgated the required regulations at 40 CFR part 1400. The part 1400 regulations restrict the public's access to the OCA sections of RMPs in certain ways. As currently drafted, however, section 68.210(a) of part 68 states that RMPs are available to the public under CAA section 114, which makes information collected under the CAA, including RMPs in their entirety, available to the public, except for confidential business information. EPA is therefore revising 40 CFR section 68.210(a) to reflect the August 2000 rulemaking. The revision will state that OCA data is made available to the public under the provisions of 40 CFR part 1400. This revision is not meant to regulate any new entities.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4607.

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RIN: 2050–AE95

3317. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, SECTION 112(R)(3); REVISIONS TO THE LIST OF SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: "CAA 112(r)"

CFR Citation: 40 CFR 68.130

Legal Deadline: None

Abstract: The list of substances subject to the Chemical Accident Prevention requirements at 40 CFR part 68 was promulgated on January 31, 1994. The Clean Air Act states that the list may be revised from time to time by EPA's own motion or by petition and shall be reviewed at least every 5 years. Since the January 1994 final list rule, EPA has modified the listing for hydrochloric acid; deleted a category of explosive chemicals; exempted flammable substances in gasoline used as fuel and in naturally occurring hydrocarbon mixtures prior to initial processing; and excluded flammable substances used as a fuel or held for sale as a fuel at a retail facility. In fulfillment of the statute's 5—year review requirement, EPA has conducted a thorough review of the list. Based on that review, EPA is proposing additions, deletions and modifications to the list of substances. Deletions are based on EPA's review of the chemical toxicity, physical property, production/use quantity and accident history of currently listed substances and new information or erroneous data that impacts the basis of the chemical's listing. Other toxic and flammable chemicals are proposed to be added because they meet the criteria for listing a toxic or flammable substance. In addition, EPA proposes to revise the reporting threshold and toxic endpoints of several toxic substances based on updated toxicity information. Facilities (such as chemical manufacturers, processors, and users), with more than the threshold quantity of a listed substance in a process, are required to develop a risk management program and submit a risk management plan to EPA. The proposed changes to the list will ensure that facilities are properly managing risks of the most acutely toxic and flammable chemicals that could have an adverse impact on the facility and surrounding community in event of an accidental release.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4619.

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2050–AE96

3318. REVIEW NATIONAL AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE

Priority: Other Significant

Legal Authority: 42 USC 7409

CFR Citation: 40 CFR 50

Legal Deadline: Final, Statutory, May 31, 2001, Final.

Abstract: Review of the national ambient air quality standards (NAAQS) for carbon monoxide (CO) every 5 years is mandated by the Clean Air Act. This review assesses the available scientific data about the health and environmental effects of CO and translates the science into terms that can be used in making recommendations about whether or how the standards should be changed. The last review of the CO NAAQS was completed in 1994 with a final decision that revisions were not appropriate at that time.

Timetable:

Action	Date	FR Cite
NPRM	05/00/05	
Final Action	05/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4266.

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RIN: 2060–AI43

3319. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 7408; 42 USC 7409

CFR Citation: 40 CFR 50

Legal Deadline: NPRM, Judicial, March 31, 2005, NPRM.
Final, Judicial, December 20, 2005, Final.

Abstract: On July 18, 1997, the EPA published a final rule revising the national ambient air quality standards (NAAQS) for particulate matter (PM) (62 FR 38652). While retaining the PM10 standard levels, new standards were added for fine particles (PM2.5) to provide increased protection against both health and environmental effects of PM. On the same day, a Presidential Memorandum (62 FR 38421) was published that, among other things, anticipated that EPA would complete the next review of the PM NAAQS by July 2002. The EPA's plans and schedule for the next periodic review of the PM NAAQS were published on October 23, 1997 (62 FR 55201). Due to the unprecedented volume of new research, the completion of the Criteria Document has been extended. As result the overall schedule for the review of the PM NAAQS has extended beyond the original target of July 2002. As with other NAAQS reviews, a rigorous assessment of relevant scientific information will be presented in a Criteria Document (CD) prepared by EPA's National Center for Environmental Assessment. The EPA's Office of Air Quality Planning and Standards will then prepare a Staff Paper (SP) for the Administrator which will evaluate the policy implications of the key studies and scientific information contained in the CD and additional technical analyses and identify critical elements that EPA staff believe should be considered in reviewing the standards. The CD and SP will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) and the public, and both final documents will reflect the input received through these reviews. As the PM NAAQS review is completed, the Administrator's proposal to revise or reaffirm the PM NAAQS will be published with a request for public comment. Input received during the public comment period will be considered in the Administrator's final decision.

Timetable:

Action	Date	FR Cite
NPRM	01/00/05	
Final Action	12/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4255.

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RIN: 2060–AI44

3320. NAAQS: SULFUR DIOXIDE (RESPONSE TO REMAND)

Priority: Other Significant

Legal Authority: 42 USC 7409 "CAA 109"

CFR Citation: 40 CFR 50.4; 40 CFR 50.5

Legal Deadline: None

Abstract: On November 15, 1994, the Environmental Protection Agency (EPA) proposed not to revise the existing 24—hour and annual primary standards. The EPA sought public comment on the need to adopt additional regulatory measures to address the health risk to asthmatic individuals posed by short—term peak sulfur dioxide exposure. On March 7, 1995, EPA proposed implementation strategies for reducing short—term high concentrations of sulfur dioxide emissions in the ambient air. On May 22, 1996, EPA published its final decision not to revise the primary sulfur dioxide NAAQS. The notice stated that EPA would shortly propose a new implementation strategy to assist States in addressing short—term peaks of sulfur dioxide. The new implementation strategy — the Intervention Level Program — was proposed on January 2, 1997. In July 1996, the American Lung Association and the Environmental Defense Fund petitioned the U.S. Court of Appeals for the D.C. Circuit for a judicial review of EPA's decision not to establish a new 5—minute NAAQS. On January 30, 1998, the court found that EPA did not adequately explain its decision and remanded the case so EPA could explain its rationale more fully. EPA published a schedule for responding to the remand in the May 5, 1998 Federal Register. Since that notice, EPA has continued to work on the proposed response to the remand by reviewing additional SO2 air quality information. EPA published an informational notice in the Federal Register on January 9, 2001 (66 FR 1665). EPA conducted monitoring to evaluate sources of SO2 peaks and is currently analyzing these data.. The results of this project will inform the response to the remand.

Timetable:

Action	Date	FR Cite
NPRM NAAQS Review	11/15/94	59 FR 58958
NPRM NAAQS impl—51	03/07/95	60 FR 12492
Final Original	05/22/96	61 FR 25566
NPRM rev. NAAQS impl	01/02/97	62 FR 210
Notice	05/05/98	63 FR 24782
Informational Notice	01/09/01	66 FR 1665
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 1002.

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RIN: 2060–AA61

3321. NESHAP: CHROMIUM ELECTROPLATING AMENDMENT

Priority: Other Significant

Legal Authority: 42 USC 7412 "CAA 112"

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Final standards under section 112(d) for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks (40 CFR 63, Subpart N) were promulgated on January 25, 1995. Since promulgation, the Agency has determined that a class of chromium electroplating operations were inadvertently excluded from regulation. Specifically, the final standards do not apply to sources engaged in continuous chromium electroplating of steel sheet used to make cans and other containers. It is the Agency's intent to regulate all facilities engaged in chromium electroplating. Therefore, the Agency plans to amend the chromium electroplating rule to extend its applicability to continuous chromium electroplating operations.

Timetable:

Action	Date	FR Cite
Proposed Amdt	03/00/05	
Final Action	09/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 2841.

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RIN: 2060–AH08

3322. NSPS AND EMISSION GUIDELINES FOR OTHER SOLID WASTE INCINERATORS

Priority: Other Significant

Legal Authority: 42 USC 7509 "CAA 129"

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: Section 129 of the Clean Air Act of 1990 requires the Agency to promulgate New Source Performance Standards (NSPS) and Emission Guidelines (EG) for solid waste incinerators. Section 129 specifically required the Administrator to publish a schedule for regulating Other Solid Waste Incinerators (OSWI). A notice published on November 9, 2000 announced that the Administrator would promulgate OSWI standards by November 15, 2005. The notice also listed what classes of incinerators might be covered by the OSWI standards. Standards will be set for the following pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead cadmium, mercury, and dioxins and dibenzofurans.

Timetable:

Action	Date	FR Cite
Notice	11/09/00	65 FR 66850
NPRM	11/00/04	
Final Action	11/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Additional Information: SAN 3751.

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RIN: 2060–AG31

3323. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY: PERMIT APPLICATION REVIEW PROCEDURES FOR NON—FEDERAL CLASS I AREAS

Priority: Other Significant

Legal Authority: 42 USC 7670—7479 "CAA 160—169"

CFR Citation: 40 CFR 51.166; 40 CFR 52.21

Legal Deadline: None

Abstract: Under the Clean Air Act's prevention of significant deterioration (PSD) program, a State or tribe may redesignate their lands as class I areas to provide enhanced protection for their air quality resources. This rule will clarify the PSD permit review procedures for new and modified major stationary sources near these non—Federal class I areas. EPA seeks to develop clarifying PSD permit application procedures that are effective, efficient, and equitable.

Timetable:

Action	Date	FR Cite
ANPRM	05/16/97	62 FR 27158
NPRM	10/00/05	
Final Action	10/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Additional Information: SAN 3919.

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RIN: 2060–AH01

3324. PROTECTION OF STRATOSPHERIC OZONE: UPDATE OF THE SUBSTITUTES LIST UNDER SNAP PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671(k) "CAA 612"

CFR Citation: 40 CFR 82; 40 CFR 9

Legal Deadline: None

Abstract: Section 612 of the Clean Air Act requires EPA to identify alternatives to class I and II ozone—depleting substances and to publish lists of acceptable and unacceptable substitutes. Producers of substitutes must notify EPA at least 90 days before alternatives are introduced into interstate commerce. Unlike acceptable alternatives (see Notices), substitutes which are deemed by EPA to be unacceptable or acceptable subject to use restrictions must go through notice and comment rulemaking. Substitute lists are updated intermittently depending on the volume of notifications.

Timetable:

Action	Date	FR Cite
ANPRM	01/16/92	57 FR 1984
NPRM	05/12/93	58 FR 28094
Final	03/18/94	59 FR 13044
Notice 1	08/26/94	59 FR 44240
NPRM 1	09/26/94	59 FR 49108
Notice 2	01/13/95	60 FR 3318
Final 1	06/13/95	60 FR 31092
Notice 3	07/28/95	60 FR 38729
NPRM 2	10/02/95	60 FR 51383
Notice 4	02/08/96	61 FR 4736
Final 2	05/22/96	61 FR 25585
NPRM 3	05/22/96	61 FR 25604
Notice 5	09/05/96	61 FR 47012
Final 3	10/16/96	61 FR 54030
Notice 6	03/10/97	62 FR 10700
NPRM 4	05/21/97	62 FR 27874
Notice 7	06/03/97	62 FR 30275
NPRM 5	02/03/98	63 FR 5491
Notice 8	02/24/98	63 FR 9151
Notice 9	05/22/98	63 FR 28251
Interim Final 7	01/26/99	64 FR 3861
Interim Final 8	01/26/99	64 FR 3865
ANPRM 9	02/18/99	64 FR 8043
NPRM 6	02/18/99	64 FR 8038
Final 5	04/28/99	64 FR 22981
Notice 10	06/08/99	64 FR 30410
Notice 11	12/06/99	64 FR 68039
Notice 12	04/11/00	65 FR 19327
Final 6	04/26/00	65 FR 24387
Notice 13	06/19/00	65 FR 37900
NPRM 10	07/11/00	65 FR 42653
Notice 14	12/18/00	65 FR 78977
Correction Notice 14	03/07/01	66 FR 13655
Notice 15	05/23/01	66 FR 28408
DF Rescind Rule	01/29/02	67 FR 4185
DF Rescind Foams Corr.	07/22/02	67 FR 47703
Notice 16	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3525.

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RIN: 2060–AG12

3325. PHASE I (FIP) TO REDUCE THE REGIONAL TRANSPORT OF OZONE IN THE EASTERN UNITED STATES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 52; 40 CFR 97

Legal Deadline: NPRM, Statutory, January 25, 2003, NPRM.

Abstract: This action would promulgate Federal Implementation Plans (FIPs) which require nitrogen oxides (NOx) emissions decreases. The intended effect is to reduce the transport of ozone (smog) pollution and one of its main precursors (NOx) across State boundaries in the eastern half of the United States. On October 27, 1998, EPA published a final rule (the NOx SIP Call) which allowed States 12 months to develop, adopt, and submit revisions to their State Implementation Plans (SIPs) to address the transport problem. The Administrator is required to promulgate a FIP within 2 years of: (1) Finding that a State has failed to make a required submittal; or (2) finding that a submittal is not complete; or (3) disapproving a SIP submittal. On June 22, 2000, the D.C. Court of Appeals assigned a new SIP submittal date of October 30, 2000. Eleven States (Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, and Ohio) and the District of Columbia had not submitted adequate SIPs, as announced in a findings rule published on December 26, 2000. All of these States have since submitted approvable plans. (Note: The FIPs discussed here would apply to all elements of the NOx SIP call that were not remanded to EPA by the court on March 3, 2000. The portions of the SIP call that were remanded to EPA will be covered under phase 2 SIPs, and if necessary, separate FIP actions would be prepared for those.)

Timetable:

Action	Date	FR Cite
NPRM	10/21/98	63 FR 56393
Findings Action	12/26/00	65 FR 81366
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State

Additional Information: SAN 4096.

Sectors Affected: 333415 Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 325998 All Other Miscellaneous Chemical Product Manufacturing; 324199 All Other Petroleum and Coal Products Manufacturing; 33611 Automobile and Light Duty Motor Vehicle Manufacturing; 32731 Cement Manufacturing; 331221 Cold-Rolled Steel Shape Manufacturing; 221121 Electric Bulk Power Transmission and Control; 221122 Electric Power Distribution; 327211 Flat Glass Manufacturing; 221112 Fossil Fuel Electric Power Generation; 327213 Glass Container Manufacturing; 32512 Industrial Gas Manufacturing; 325131 Inorganic Dye and Pigment Manufacturing; 331111 Iron and Steel Mills; 322122 Newsprint Mills; 333618 Other Engine Equipment Manufacturing; 327212 Other Pressed and Blown Glass and Glassware Manufacturing; 322121 Paper (except Newsprint) Mills; 32213 Paperboard Mills; 32511 Petrochemical Manufacturing; 48621 Pipeline Transportation of Natural Gas; 325211 Plastics Material and Resin Manufacturing; 32211 Pulp Mills; 22133 Steam and Air-Conditioning Supply

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RIN: 2060–AH87

3326. NESHAP: AEROSPACE MANUFACTURING AND REWORK FACILITIES RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 30, 2003, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart GG. The current action, required by section 112(f) of the CAA, is to assess residual risks from the same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4653.

Sectors Affected: 33641 Aerospace Product and Parts Manufacturing

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RIN: 2060–AK08

3327. NESHAP: GROUP II POLYMERS AND RESINS —RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, March 8, 2003, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA. This source category covers certain chemical process units used to manufacture products. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4657.

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AK13

3328. NESHAP: INDUSTRIAL PROCESS COOLING TOWERS RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 30, 2002, Final.

Abstract: A national emission standard for hazardous air pollutants (NESHAP) for industrial process cooling towers (IPCT) was previously promulgated under Section 112(d) of the Clean Air Act. That standard effectively bans the use of chromium—based water treatment chemicals in IPCT used to remove heat from chemical or industrial processes. The Clean Air Act Section 112(f) requires us to assess within 8 years of promulgation of a NESHAP the remaining risk to the public and to develop additional more stringent standards if such standards are needed to protect the public health with an ample margin of safety. This action is to examine the remaining risk from IPCT and, if warranted, to develop new risk based standards.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: SAN 4660.

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RIN: 2060–AK16

3329. NESHAP: NATIONAL EMISSION STANDARDS FOR MARINE TANK VESSEL LOADING OPERATIONS — RESIDUAL RISK STANDARD

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 19, 2003, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart Y. This source category covers tanks or ships that contain gasoline, crude oil, or HAPs in bulk. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4661.

Sectors Affected: 483 Water Transportation

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RIN: 2060–AK17

3330. NESHAP: PERCHLOROETHYLENE DRY CLEANING FACILITIES RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: EPA developed technology—based emission standards for this source category under section 112(d) of the Clean Air Act. The current action, required by Section 112(f) of the Clean Air Act, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN 4662.

Sectors Affected: 81232 Drycleaning and Laundry Services (except Coin-Operated)

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RIN: 2060–AK18

3331. NESHAP: SECONDARY LEAD SMELTING RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, June 23, 2003, Final.

Abstract: National emission standards for hazardous air pollutants (NESHAP) for secondary lead smelting were promulgated on June 23, 1995 under Clean Air Act Section 112(d). The standards establish emission limitations and work practice standards for all new and existing secondary lead smelters that produce refined lead from lead scrap, mainly lead acid batteries. Clean Air Act Section 112(f) requires us to assess within 8 years of promulgation of a NESHAP the remaining risk to the public and to develop additional more stringent standards if such standards are needed to protect the public health with an ample margin of safety. This action is to examine the remaining risk from secondary lead smelters and to develop new risk based standards, if warranted.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4665.

Sectors Affected: 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)

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RIN: 2060–AK19

3332. NESHAP: SHIPBUILDING AND SHIP REPAIR SURFACE COATING — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 31, 2003, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart II. This source category covers air—toxic emissions from the painting, welding, and sandblasting of ships under construction or repair at major sources. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 4666.

Sectors Affected: 336611 Ship Building and Repairing

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RIN: 2060–AK20

3333. NESHAP: WOOD FURNITURE MANUFACTURING OPERATIONS — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 7, 2003, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart JJ. This source category covers air—toxic emissions from wood—furniture manufacturing, including wood finishing, gluing, and painting. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4667.

Sectors Affected: 337 Furniture and Related Product Manufacturing; 337211 Wood Office Furniture Manufacturing

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RIN: 2060–AK21

3334. NESHAP: HALOGENATED SOLVENT CLEANING —RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 2, 2002, Final.

Abstract: This action is required by the CAA to assess residual risk and develop standards as necessary to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4668.

Sectors Affected: 335999 All Other Miscellaneous Electrical Equipment and Component Manufacturing; 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing; 336999 All Other Transportation Equipment Manufacturing; 337124 Metal Household Furniture Manufacturing; 332116 Metal Stamping; 339 Miscellaneous Manufacturing; 336 Transportation Equipment Manufacturing

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RIN: 2060–AK22

3335. NESHAP: MAGNETIC TAPE MANUFACTURING OPERATIONS RESIDUAL RISK STANDARD

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 15, 2002, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4669.

Sectors Affected: 334613 Magnetic and Optical Recording Media Manufacturing; 33461 Manufacturing and Reproducing Magnetic and Optical Media

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RIN: 2060–AK23

3336. NESHAP: PRINTING AND PUBLISHING INDUSTRY — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, May 30, 2004, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart KK. This source category covers air—toxic emissions from many activities located at printing and publishing facilities — primarily the printing process itself, plus affiliated equipment such as cleaning, ink and solvent mixing, chemical storage, and solvent recovery. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN 4664.

Sectors Affected: 322221 Coated and Laminated Packaging Paper and Plastics Film Manufacturing; 322222 Coated and Laminated Paper Manufacturing; 323112 Commercial Flexographic Printing; 323111 Commercial Gravure Printing; 322212 Folding Paperboard Box Manufacturing; 322225 Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses; 323119 Other Commercial Printing; 322223 Plastics, Foil, and Coated Paper Bag Manufacturing

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RIN: 2060–AK24

3337. NESHAP: PETROLEUM REFINERIES — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, August 31, 2003, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart CC. This source category covers air—toxic emissions from equipment at petroleum refineries, such as process vents, storage vessels, and valve leaks. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4663.

Sectors Affected: 32411 Petroleum Refineries

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RIN: 2060–AK25

3338. NATIONAL EMISSION STANDARDS FOR CHROMIUM EMISSIONS FROM HARD AND DECORATIVE CHROMIUM ELECTROPLATING AND CHROMIUM ANODIZING TANKS — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, January 25, 2003, Final.

Abstract: A national emission standard for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks was previously promulgated under Section 112(d) of the Clean Air Act. That standard set emission limits for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks. The Clean Air Act Section 112(f) requires us to assess within 8 years of promulgation of a NESHAP the remaining risk to the public and to develop additional more stringent standards if such standards are needed to protect the public health with an ample margin of safety. This action is to examine the remaining risk from hard and decorative chromium electroplating and chromium anodizing tanks and, if warranted, to develop new risk based standards.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 4750.

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RIN: 2060–AK72

3339. PETITION TO DELIST HAZARDOUS AIR POLLUTANT : 4,4'—METHYLENE DIPHENYL DIISOCYANATE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The Clean Air Act requires EPA to regulate 188 compounds that are listed as air toxics, also known as hazardous air pollutants. Air toxics are those pollutants known, or suspected, to cause cancer and other human health problems. The law allows EPA to consider petitions to modify the list, by adding or removing substances. Individuals seeking to remove a substance must demonstrate that there are adequate data to determine that emissions, outdoor concentrations, bioaccumulation, or atmospheric deposition of the substance may not reasonably be anticipated to damage human health or the environment. The Agency received a petition to remove 4,4'—Methylene Diphenyl Diisocyanate (MDI) from the American Chemistry Council on December 26, 2002. Once EPA receives a petition, it conducts two reviews: a completeness review, to determine whether there is sufficient information on which to base a decision; and a technical review, to evaluate the merits of the petition. The EPA also requests and considers information from the public. After a comprehensive technical review of both the petition and the information received from the public to determine whether the petition satisfies the requirements of the CAA, the review team is required to make a recommendation to the Administrator on whether to grant the petition. If the Administrator decides to grant a petition, a proposed rule is published in the Federal Register which proposes a modification of the HAP list and presents the reasoning for doing so. The proposed rule is open to public comment and public hearing and all additional substantive information received during the public's involvement is evaluated prior to the decision on the issuance of a final rule. However, if the Administrator decides to deny a petition, a notice setting forth an explanation of the reasons for denial is published instead. A notice of denial constitutes final Agency action of nationwide scope and applicability, and is subject to judicial review as proided in the CAA.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: SAN 4782.

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RIN: 2060–AK84

3340. NESHAP: GROUP I POLYMERS AND RESINS — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, September 6, 2004, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart U. This source category covers chemical process units used to manufacture elastomer products from raw materials. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4656.

Sectors Affected: 325212 Synthetic Rubber Manufacturing

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RIN: 2060–AK12

3341. NESHAP: HAZARDOUS ORGANIC NESHAP (HON) RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, April 22, 2003, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety. This rule will cover the major sources of air emissions within the synthetic organic chemical industry.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4659.

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AK14

3342. NESHAP: GROUP IV POLYMERS AND RESINS — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, September 12, 2004, Final.

Abstract: EPA developed technology—based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart JJJ. This source category covers chemical process units used to manufacture thermoplastic products from raw materials. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4658.

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AK15

3343. INTERSTATE OZONE TRANSPORT: RULEMAKING ON SECTION 126 PETITIONS FROM THE DISTRICT OF COLUMBIA, DELAWARE, MARYLAND, AND NEW JERSEY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52; 40 CFR 97

Legal Deadline: Final, Statutory, December 14, 1999, Final.

Abstract: In April through July 1999, 3 Northeastern States (New Jersey, Maryland, and Delaware) and the District of Columbia submitted individual petitions to EPA in accordance with section 126 of the Clean Air Act (CAA). Each petition specifically requests that EPA make a finding that nitrogen oxides (NOx) emissions from certain stationary sources in other States significantly contribute to ozone nonattainment and maintenance problems with respect to the 1—hour and 8—hour ozone standards in the petitioning State. If EPA makes such a finding of significant contribution, EPA is authorized to establish Federal emissions limits for the sources. The petitions rely on the analyses from EPA's NOx SIP call. The sources targeted by the petitions are large electricity generating units and large non—electricity generating units, as defined in EPA's NOx SIP call. The EPA took rulemaking action on similar petitions from 8 other Northeastern States that were submitted in 1997.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN 4383. There is a different statutory deadline associated with each petition based on the date of receipt by EPA: New Jersey — 12/14/99, Maryland — 01/01/00, Delaware — 02/10/00, District of Columbia — 03/07/00

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RIN: 2060–AI99

3344. STREAMLINED EVAPORATIVE TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7521(m)

CFR Citation: 40 CFR 86 (Revision)

Legal Deadline: None

Abstract: This action will streamline the test procedure used to establish compliance with evaporative emission requirements for light duty vehicles and trucks. The current test procedure requires both two— and three—day diurnal emission tests, as well as running—loss testing. The revisions will delete the three day requirement and add flexibilities for running—loss compliance. This will enable manufacturers to save significant resources without any decrease in environmental benefits.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3910.

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RIN: 2060–AH34

3345. REVISIONS TO THE APPEAL PROCEDURES AND THE FEDERAL NOX BUDGET TRADING PROGRAM, PARTS 78 AND 97

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7601; 42 USC 7651 et seq; 42 USC 7401; 42 USC 7403; 42 USC 7426

CFR Citation: 40 CFR 75 (Revision); 40 CFR 97 (Revision)

Legal Deadline: None

Abstract: This rule is a set of revisions which will simplify and streamline the interface between the existing Acid Rain Program and the NOx Budget Trading Program.

Timetable:

Action	Date	FR Cite
NPRM	06/13/01	66 FR 31978
NPRM ECP	07/27/01	66 FR 39123
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4682. Split from RIN 2060—AJ43.

Sectors Affected: 221111 Hydroelectric Power Generation

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RIN: 2060–AK36

3346. REVISED PERMIT REVISION PROCEDURES FOR THE FEDERAL OPERATING PERMITS PROGRAM—PART 71

Priority: Other Significant

Legal Authority: 42 USC 7661(a)(d)(3)

CFR Citation: 40 CFR 71.7

Legal Deadline: None

Abstract: The proposed regulatory change would streamline permit revisions procedures for stationary air sources that are subject to the Federal operating permits program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/06	
Final Action	06/00/07	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 3922.

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RIN: 2060–AG92

3347. SELECTION OF SEQUENCE OF MANDATORY SANCTIONS TO BE APPLIED PURSUANT TO SECTION 502 OF THE CLEAN AIR ACT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7661a(d); 42 USC 7661a(g); 42 USC 7661a(i)

CFR Citation: 40 CFR 70

Legal Deadline: None

Abstract: This rule would establish the order of sanctions for operating permits program deficiencies under the mandatory sanctions provisions of title V of the Clean Air Act. This rule would stipulate that an emission offset sanction applies first and a highway funding sanction six months later. Sanction application under section 502 of the Clean Air Act is automatic under the timeframes prescribed once EPA selects the sanction order; EPA's only discretion concerns the ordering of sanctions as discussed above. Thus, the only relevant potential impact is the effect of applying, as a general matter, the emission offset sanction six months before the highway sanction. The EPA does not believe this will have a significant impact given the short period of time the offset sanction will apply before the highway sanction would apply when States fail to correct title V deficiencies. Moreover, EPA also believes that, in the event applying the highway sanction is not necessary six months following the offset sanction, because the State has corrected the deficiency prompting the finding, applying the offset sanction first eliminates the need for EPA and other agencies to bear the greater administrative and implementation burden of having to effectuate the highway sanction.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4700.

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RIN: 2060–AK46

3348. PERFORMANCE WARRANTY AND INSPECTION/MAINTENANCE TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7541; 42 USC 7601

CFR Citation: 40 CFR 51; 40 CFR 85

Legal Deadline: None

Abstract: This action establishes a new short test procedure for use in I/M programs required by the Clean Air Act Amendments of 1990. Vehicles that are tested and failed using this procedure and that meet eligibility requirements established by the act would be eligible for free warranty repair from the manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	
Final Action	12/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN 3263.

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RIN: 2060–AE20

3349. TRANSPORTATION CONFORMITY RULE AMENDMENT: CLARIFICATION OF TRADING PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7671 "CAA 176(c)"

CFR Citation: 40 CFR 51; 40 CFR 93

Legal Deadline: None

Abstract: The transportation conformity rule, promulgated in November 1993, ensures that transportation and air quality planning are consistent with Clean Air Act air quality standards. The Open Market Trading Guidance provides guidance to states for establishing a method to quantify emissions reductions (called discrete emissions reductions or DERs) that can be traded among parties and how such trading should occur. This action will amend the transportation conformity rule to clarify how emissions trading could be reconciled in the conformity process.

Timetable:

Action	Date	FR Cite
NPRM	11/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 3917.

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RIN: 2060–AH31

3350. PERFORMANCE SPECIFICATIONS FOR CONTINUOUS PARAMETER MONITORING SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 60 Appendix B; 40 CFR 60 Appendix F

Legal Deadline: None

Abstract: This action proposes Performance Specification 17 (PS—17), Quality Assurance (QA) Procedure 4, and amendments to Appendix F, QA Procedure 1. Performance Specification 17 and QA Procedure 4 apply to continuous parameter monitoring systems (CPMS). Many of the rules promulgated under 40 CFR part 63 require owners and operators of affected emission units to install and operate CPMS to monitor various parameters, such as temperature, pressure, flow rate, and pH, associated with the operation and performance of emission control devices. However, few, if any, of those rules specify complete procedures for ensuring the quality of the data measured by CPMS. The proposed PS—17 establishes procedures and other requirements that will ensure that those CPMS are properly selected, installed, and placed into operation. The proposed QA Procedure 4 specifies procedures that will ensure that those CPMS provide quality data on an ongoing basis. Both PS—17 and QA Procedure 4 will help to ensure compliance with emission limitations established under 40 CFR part 63. Procedure 1 of Appendix F currently addresses QA procedures for continuous emission monitoring systems (CEMS) that measure a single pollutant. The proposed amendments to QA Procedure 1 broadens the procedure to address the unique requirements of CEMS that are used for monitoring multiple pollutants. Because several of the regulations promulgated under 40 CFR part 63 require multiple pollutant CEMS, these amendments are needed to ensure those CEMS are operated in a manner that ensures the quality of the emission data collected. This action is not expected to have any impacts on small entities or State, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4584.

Sectors Affected: 21 Mining; 22 Utilities; 31-33 Manufacturing; 486 Pipeline Transportation; 562212 Solid Waste Landfill; 562213 Solid Waste Combustors and Incinerators

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RIN: 2060–AJ86

3351. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): CLEAN UNITS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This proposed rule would revise the provisions for the clean unit test contained in the major New Source Review (NSR) requirements. This action proposes to revise the length of the clean unit designation period contained in the final NSR rules. The current rules allow for clean unit designation to be used for 10 years provided the source meets the requirements to maintain clean unit status. This proposed rule would recognize that the average life expectancy of control equipment is 15 years rather than the 10 years contained in the final rules. Permitting agencies and industry will benefit from this action by potentially reducing the number of future permit actions. As a result, this action reduces the compliance burden, including annual compliance costs, for all sources subject to the major NSR program requirements.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4691.

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RIN: 2060–AK42

3352. VOLUNTARY SUPERIOR MONITORING

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 60 to 61; 40 CFR 63; 40 CFR 70; 40 CFR 71

Legal Deadline: None

Abstract: The Emissions Measurement Center of EPA's Office of Air Quality Planning and Standards in Research Triangle Park, NC is exploring a regulatory option called "Voluntary Superior Monitoring (VSM)." Under this option, owners/operators of industrial air pollution sources could volunteer to conduct "superior" monitoring which could range from more frequent monitoring of emissions to replacement of existing monitoring. In return for conducting superior monitoring, EPA will offer incentives to these sources, such as less record keeping and reporting, some flexibility in control device or process operation, or flexibility in averaging times for determining compliance with the standard. We are also planning to provide guidance on how to implement Voluntary Superior Monitoring and what criteria industrial sources would need to meet to be eligible for this program. This rulemaking will be beneficial for both industry and the environment. Industry will be encouraged to conduct better monitoring which will potentially allow them to monitor their processes better, ensure their control equipment is running efficiently, and focus their maintenance practices. As a result of this improved monitoring by industry, we expect that air emissions will be reduced significantly. Industry will also be better able to demonstrate compliance with data collected from the superior monitoring. These data will also demonstrate to citizens that an industry is in compliance and, thus, a "good neighbor." We expect this rule to be implemented through the operating permits program which will involve state and local air pollution control agencies and the EPA regional offices. Instead of revising each individual New Source Performance Standard (NSPS) and National Emission Standards for Hazardous Air Pollutant (NESHAP) to incorporate superior monitoring provisions, we envision proposing this regulatory option by revising the general provisions to parts 60, 61, and 63. The general provisions contain moniroring, testing, recordkeeping, reporting, and other requirements common to all NSPS and/or NESHAP. In addition, we believe that the operating permit program in parts 70 and 71 will need to be modified to allow this approach.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4783.

Sectors Affected: 325 Chemical Manufacturing; 332 Fabricated Metal Product Manufacturing; 337 Furniture and Related Product Manufacturing; 333 Machinery Manufacturing; 327 Nonmetallic Mineral Product Manufacturing; 322 Paper Manufacturing; 324 Petroleum and Coal Products Manufacturing; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 323 Printing and Related Support Activities; 336 Transportation Equipment Manufacturing; 221 Utilities; 321 Wood Product Manufacturing

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RIN: 2060–AK85

3353. • CONSIDERATION OF INDUSTRY PETITION TO REMOVE THE TWO—PIECE CAN SUBCATEGORY FROM THE CLEAN AIR ACT HAZARDOUS AIR POLLUTANT SOURCE CATEGORY LIST

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 CFR 63

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The Agency has received a petition to remove the two—piece can subcategory from the Metal Can Surface Coating source category, which is on the list of hazardous air pollutant source categories under section 112(c) of the Clean Air Act. The Agency must review the petition and either grant or deny the petition within 12 months of the date the complete petition is received. If the Agency grants the petition, a notice of proposed rulemaking will be published in the Federal Register, allowing the opportunity for public comment. If the

Agency denies the petition, a notice of denial will be published in the Federal Register providing an explanation of the denial. The Can Manufactures Association submitted the petition on November 4, 1996, and provided additional materials through April 4, 1999. At that time we determined the petition was complete. A final decision on the merits of the petition has been delayed due to outstanding toxicological issues regarding two pollutants (formaldehyde and ethylene glycol monobutyl ether (EGBE)), and due to a technically weak ecological assessment prepared by the petitioner. Issues with formaldehyde and EGBE should be resolved soon and we are still awaiting an updated ecological assessment from the petitioner.

Timetable:

Action	Date	FR Cite
Notice	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4799.

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RIN: 2060–AL86

3354. • CONSIDERATION OF INDUSTRY PETITION TO REMOVE ETHYLENE GLYCOL MONOBUTYL ETHER FROM THE CLEAN AIR ACT LIST OF HAZARDOUS AIR POLLUTANTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The Agency received a petition to remove Ethylene Glycol Monobutyl ether (EGBE, 2—Butoxyethanol) from the American Chemistry Council on August 29, 1997, with additional submittals through December 21, 1998. This action will address that petition. A final decision on the petition will involve the resolution of toxicological issues with EGBE, including whether or not it is a human carcinogen. The institutional structure under which the petition will be considered is as follows: The Clean Air Act requires EPA to regulate 188 compounds that are listed as air toxics, also known as hazardous air pollutants. Air toxics are those pollutants known, or suspected, to cause cancer and other human health problems. The law allows EPA to consider petitions to modify the list, by adding or removing substances. Individuals seeking to remove a substance must demonstrate that there are adequate data to determine that emissions, outdoor concentrations, bioaccumulation, or atmospheric deposition of the substance may not reasonably be anticipated to damage human health or the environment. Once EPA receives a petition, it conducts two reviews: a completeness review, to determine whether there is sufficient information on which to base a decision; and a technical review, to evaluate the merits of the petition. The EPA also requests and considers information from the public. After a comprehensive technical review of both the petition and the information received from the public to determine whether the petition satisfies the requirements of the CAA, the review team recommends to the Administrator whether to grant the petition. If the Administrator decides to grant a petition, we propose a rule in the Federal Register which proposes a modification of the HAP list and presents the reasoning for doing so. The proposed rule is open to public comment and public hearing If the Administrator decides to deny a petition, a notice setting forth an explanation of the reasons for denial is published instead. A notice of denial constitutes final Agency action of nationwide scope and applicability, and is subject to judicial review as provided in the CAA.

Timetable:

Action	Date	FR Cite
Notice	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 4800.

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RIN: 2060–AL87

3355. • CONTROL OF EMISSIONS OF AIR POLLUTION FROM NEW MOTOR VEHICLES: ON—BOARD DIAGNOSTIC REQUIRMENTS FOR HEAVY—DUTY ENGINES AND VEHICLES ABOVE 14,000 POUNDS AND IN—USE, NOT—TO—EXCEED EMISSION STANDARD TESTI

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: EPA is proposing to establish on—board diagnostic (OBD) requirements for heavy—duty on—highway and non—road vehicles and engines greater than 14,000 pounds gross vehicle weight. This action will also propose to require manufacturers of these vehicles and engines to make available emissions—related service information to after market service providers. OBD systems are intended to monitor the performance of emission controls on these vehicles and engines to ensure proper functionality and compliance with emissions standards. This notice also proposes a manufacturer run in use testing program for heavy—duty engines and vehicles to assess compliance with the applicable not to exceed standards beginning in 2007. This portion of the notice has a court—ordered date for May 2004 and final May 2005 as a result of a settlement between EPA , ARB, and Engine Manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4809.

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RIN: 2060–AL92

3356. • NESHAP: FERROALLOYS PRODUCTION: FERROMANGANESE AND SILICOMANGANESE RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, May 20, 2007, Final.

Abstract: EPA developed technology—based emission standards for this source category under section 112(d) of the Clean Air Act. The current action, required by Section 112(f) of the Clean Air Act, is to assess residual risks and develop additional emission standard, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4810.

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RIN: 2060–AL93

3357. • MINERAL WOOL PRODUCTION RESIDUAL RISK STANDARD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 91—190, sec 203; 42 USC 7401

CFR Citation: 40 CFR 63.1175 to 63.1199

Legal Deadline: None

Abstract: Section 112(f)(2) of the Clean Air Act (CAA) directs us to assess the risk remaining (residual risk) after the application of control technology standards under section 112(d) (MACT). The EPA is to promulgate more stringent standards for a category or subcategory of sources subject to MACT standards under section 112(d) if promulgation of such standards is necessary to protect public health with an ample margin of safety or to prevent (taking into consideration various factors) adverse environmental effects. In particular, the CAA specifies the cancer risk of concern for setting more stringent standards. The CAA states that if the MACT standards do not reduce lifetime excess cancer risk to the individual most exposed to emissions ... to less than one in one million, the Administrator shall promulgate standards under this subsection for such source categories. The standards to be promulgated under this subsection must provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the Clean Air Act Amendments of 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental impact. Section 112(f)(2)(B) expressly preserves EPA's interpretation of an ample margin of safety developed in the 1989 benzene NESHAP final rule. EPA will review the mineral wool production MACT standard and conduct analyses to determine whether the residual risk warrants further regulation. The CAA requires that the residual risk rules be promulgated (if necessary) within eight years (nine for the two—year bin standards) after the promulgation of the associated MACT standard. The MACT rule for the mineral wool production source category was promulgated on June 1, 1999. Therefore, the statutory deadline for promulgating a residual risk rule (if necessary) for this source category is June 1, 2007.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4825.
Legal: Legislative deadline for the residual risk rule is 8 years after promulgation of that source category's MACT rule.

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RIN: 2060–AL96

3358. • NESHAP FOR FLEXIBLE POLYURETHANE FOAM PRODUCTION: RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: EPA promulgated technology—based emission standards for this source category in 1998 under section 112(d) of the Clean Air Act. These standards are codified at 40 CFR part 63, subpart III. The current action, required by section 112(f) of the Clean Air Act, is to assess residual risks that remain once that standard becomes effective, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN 4831.

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RIN: 2060–AL99

3359. ● NESHAP: PHARMACEUTICALS PRODUCTION: RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, October 21, 2010, Final.

Abstract: EPA promulgated technology—based emission standards for this source category in 1998 under section 112(d) of the Clean Air Act. These standards are codified at 40 CFR part 63, subpart FFF. The current action, required by section 112(f) of the Clean Air Act, is to assess residual risk that remains once that rule becomes effective, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 4832.

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RIN: 2060–AM00

3360. ● REPEAL OF VACATED PM10 NATIONAL AMBIENT AIR QUALITY STANDARDS AND RELATED REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq; 5 USC 553

CFR Citation: 40 CFR 50, 53, 58

Legal Deadline: None

Abstract: In American Trucking Associations, Inc., et al., v. EPA, the U.S. Court of Appeals for the D.C. Circuit vacated revisions to the PM10 national ambient air quality standards issued by EPA in 1997, and left intact the pre—existing PM10 standards. To conform the Code of Federal Regulations to the court's decision, it is necessary to remove the revised standards and all associated regulations and interpretative materials. Because this is purely a ministerial action, final rulemaking without opportunity for public review and comment is justified under "good cause" provisions of the Administrative Procedure Act.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4837.

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RIN: 2060–AM02

3361. ● AIR QUALITY DESIGNATIONS FOR THE PM—2.5 NAAQS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7404(d)

CFR Citation: 40 CFR 81

Legal Deadline: None

Abstract: This rule sets out final air quality designations and classifications for all areas of the United States as required by section 107 of the Clean Air Act (CAA). The air quality status of an area is represented by the designation of the area. Designations are objectively based upon air quality monitoring data and other relevant information pertaining to the air quality of the area. Area designations of attainment/unclassifiable means that the area has sufficient data to determine that the area is meeting the PM—2.5 NAAQS, or that due to no data being available for the area, or insufficient data being available, EPA cannot make a determination for the area. States and tribes were requested to make their recommendations to EPA on the attainment status of their respective areas by February 2004. EPA will review the recommended designations and may make modifications as deemed necessary. If EPA determines that a modification to the recommendations is required, EPA will notify the State or tribe of their decision no later than 120 days prior to promulgating a final designation, which provides an opportunity for them make a case for why EPA's modification may be inappropriate. In cases where a State or tribe does not make a recommendation, the EPA will promulgate the designation that it deems appropriate. The final date for promulgating designations for PM—2.5 will be December 31, 2004.

Timetable:

Action	Date	FR Cite
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4840.

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RIN: 2060–AM04

Environmental Protection Agency (EPA) Clean Air Act (CAA) — Completed Actions

3362. OVERVIEW OF RULEMAKINGS FOR THE PURPOSE OF REDUCING INTERSTATE OZONE TRANSPORT

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 40 CFR 51

Completed:

Reason	Date	FR Cite
Final Action	05/01/02	67 FR 21868
NPRM	04/04/03	68 FR 16644

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

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RIN: 2060–AJ20

3363. • PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): RECONSIDERATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 51.160 to 51.166; 40 CFR 52.21

Legal Deadline: None

Abstract: The EPA revised regulations governing the New Source Review (NSR) programs mandated by parts C and D of title I of the CAA. These revisions include changes in NSR applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. The changes reflect EPA's consideration of discussions and recommendations of the CAA Advisory Committee (CAAAC) Subcommittee on NSR, Permits, and Toxics, comments filed by the public, and meetings and discussions with interested stakeholders. The changes are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the program and, in certain respects, resulting in greater environmental protection.

Timetable:

Action	Date	FR Cite
NPRM	07/23/96	61 FR 38249
Final Action	12/31/02	67 FR 80186

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Additional Information: SAN No. 3259.1.

Split from RIN 2060—AE11. See also SAN No. 4390.

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RIN: 2060–AL74

3364. NESHAP: HYDROCHLORIC ACID PRODUCTION INDUSTRY

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/17/03	68 FR 19076

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH75

3365. REVISION TO THE GUIDELINE ON AIR QUALITY MODELS (APPENDIX W TO 40 CFR PART 51): ADOPTION OF A PREFERRED LONG RANGE TRANSPORT MODEL AND OTHER REVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 51.112; 40 CFR 51.160; 40 CFR 51.166; 40 CFR 52.21

Completed:

Reason	Date	FR Cite
Final Action	04/15/03	68 FR 18439

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AF01

3366. NESHAP: INTEGRATED IRON AND STEEL

Priority: Other Significant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	05/20/03	68 FR 27645

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AE48

3367. NESHAP: REINFORCED PLASTIC COMPOSITES PRODUCTION

Priority: Other Significant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/21/03	68 FR 19375

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

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RIN: 2060–AE79

3368. NESHAP: PAINT STRIPPING OPERATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Withdrawn	10/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG26

3369. NESHAP: SEMICONDUCTOR PRODUCTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	05/22/03	68 FR 27913

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG93

3370. AMENDMENTS TO PARTS 51, 52, 63, 70, AND 71 REGARDING THE PROVISIONS FOR DETERMINING POTENTIAL TO EMIT

Priority: Other Significant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
The Agency plans no further action.	11/01/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 2060–AI01

3371. NESHAP: METAL FURNITURE (SURFACE COATING)

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	05/23/03	68 FR 28605

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2060–AG55

3372. NESHAP: ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/29/03	68 FR 22976
Correction Notice	05/07/03	68 FR 24562

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG66

3373. NESHAP: REFRACTORY PRODUCTS MANUFACTURING

Priority: Other Significant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/16/03	68 FR 18729

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG68

3374. NESHAP: PRINTING, COATING AND DYEING OF FABRICS AND OTHER TEXTILES

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	05/29/03	68 FR 32172

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG98

3375. NESHAP: WOOD BUILDING PRODUCTS (SURFACE COATING)

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	05/28/03	68 FR 31746

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH02

3376. NESHAP: COKE OVENS: PUSHING, QUENCHING, AND BATTERY STACKS

Priority: Other Significant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/14/03	68 FR 18007

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH55

3377. NESHAP: FUMED SILICA PRODUCTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/17/03	68 FR 19076

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH72

3378. NESHAP: OIL AND NATURAL GAS PRODUCTION

Priority: Other Significant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	06/17/99	64 FR 32609

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AI13

3379. NESHAP: CLAY CERAMICS MANUFACTURING

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	05/16/03	68 FR 26690
Final Action Correction	05/28/03	68 FR 31744

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AI68

3380. NESHAP: ENGINE TEST CELLS/STANDS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	05/27/03	68 FR 28774

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AI74

3381. NESHAP: FLEXIBLE POLYURETHANE FOAM FABRICATION OPERATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	04/14/03	68 FR 18662

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ19

3382. NESHAP: BRICK AND STRUCTURAL CLAY PRODUCTS MANUFACTURING

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	05/16/03	68 FR 26690
Final Action Correction	05/28/03	68 FR 31744

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ91

3383. NESHAP: SOURCES CATEGORIES: GENERAL PROVISIONS; AND REQUIREMENTS FOR CONTROL TECHNOLOGY DETERMINATIONS FOR MAJOR SOURCES IN ACCORDANCE WITH CLEAN AIR ACT SECTIONS 112(G) AND 112(J); AMENDMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63 (Revision)

Completed:

Reason	Date	FR Cite
Final Rule — Amendments	05/30/03	68 FR 32586

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 2060–AK52

3384. NESHAP: SECONDARY ALUMINUM INDUSTRY AMENDMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	09/24/02	67 FR 59787
Final Amendment	12/30/02	67 FR 79808

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK57

3385. NESHAP: RUBBER TIRE MANUFACTURING: TECHNICAL CORRECTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Withdrawn	09/04/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK82

3386. AMENDMENT TO PROJECT XL SITE—SPECIFIC RULEMAKING FOR GEORGIA—PACIFIC CORPORATION/S FACILITY IN BIG ISLAND, VIRGINIA

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63.863(c)(1) revision; 40 CFR 63.867(a)(2) revision

Completed:

Reason	Date	FR Cite
Direct Final Rule Amendment	08/05/03	68 FR 46102

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK71

3387. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR): ROUTINE MAINTENANCE, REPAIR, AND REPLACEMENT

Priority: Economically Significant

CFR Citation: 40 CFR 51.165; 40 CFR 51.166; 40 CFR 52.21

Completed:

Reason	Date	FR Cite
Final Action	10/27/03	68 FR 61247

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

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RIN: 2060–AK28

3388. REVISIONS TO REGIONAL HAZE RULE TO INCORPORATE SULFUR DIOXIDE MILESTONES AND BACKSTOP EMISSIONS TRADING PROGRAM FOR NINE WESTERN STATES

Priority: Other Significant

CFR Citation: 40 CFR 51.309

Completed:

Reason	Date	FR Cite
Final Action	06/05/03	68 FR 33764

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ50

3389. AMENDMENTS TO COMPLIANCE CERTIFICATION REQUIREMENTS FOR STATE AND FEDERAL OPERATING PERMITS PROGRAMS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 70; 40 CFR 71 (Revisions)

Completed:

Reason	Date	FR Cite
Final Action	06/27/03	68 FR 38518

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK11

3390. PROTECTION OF STRATOSPHERIC OZONE: PHASEOUT OF CHLOROBROMOMETHANE (HALON 1011) PRODUCTION AND CONSUMPTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 82

Completed:

Reason	Date	FR Cite
Final Action	07/18/03	68 FR 42883

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ27

3391. SERVICE INFORMATION REGULATION FOR LIGHT—DUTY VEHICLES AND TRUCKS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 86

Completed:

Reason	Date	FR Cite
Final Action	06/27/03	68 FR 38428

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AG13

3392. REVISIONS TO AIR POLLUTION EMERGENCY EPISODE REQUIREMENTS (SUBPART H, 40 CFR PART 51)

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 51 Appendix L; 40 CFR 51.150 to 51.153

Completed:

Reason	Date	FR Cite
Withdrawn	09/12/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2060–AI47

3393. MODIFICATION OF FEDERAL ON—BOARD DIAGNOSTIC REGULATIONS FOR 2004 MODEL YEAR VEHICLES BELOW 14,000 POUNDS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Completed:

Reason	Date	FR Cite
NPRM	06/17/03	68 FR 35830
Direct Final Rule	06/17/03	68 FR 35792

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ77

3394. STATE AND FEDERAL OPERATING PERMITS PROGRAM: REMOVAL OF AMENDMENTS TO PART 70 AND PART 71 COMPLIANCE CERTIFICATION REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 70 (Revision); 40 CFR 71 (Revision)

Completed:

Reason	Date	FR Cite
Withdrawn	09/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ89

3395. EXTENSION OF ALTERNATIVE COMPLIANCE PERIODS UNDER THE ANTI—DUMPING PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 00 CFR None

Completed:

Reason	Date	FR Cite
Direct Final Rule	05/06/03	68 FR 24299

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK43

3396. CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES: AMENDMENT TO THE TIER 2 MOTOR VEHICLE EMISSION STANDARDS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 86 (Revision)

Completed:

Reason	Date	FR Cite
Direct Final Rule	12/06/02	67 FR 72820

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK55

3397. STANDARDS FOR REFORMULATED AND CONVENTIONAL GASOLINE (SECTION 610 REVIEW)

Priority: Info./Admin./Other

Legal Authority: 42 USC 7545; 5 USC 610

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: On February 16, 1994, (59 FR 7716), EPA promulgated a rule setting standards for reformulated and conventional gasoline (RFG) under authority of section 211 of the Clean Air Act. These standards are codifed in the Code of Federal Regulations at 40 CFR part 80. Pursuant to section 610 of the Regulatory Flexibility Act, EPA has reviewed this rule to determine if it should be continued without change, or should be amended or rescinded, to minimize adverse economic impacts on small entities. EPA considered, and solicited comments on, the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. The full results of EPA's review have been summarized in a report and placed in the rulemaking docket number OAR—2003—0030. (This electronic docket can be found at www.epa.gov/edocket.) These results are briefly summarized here.

As a result of the review, EPA has concluded that there is continued need for this rule because the rule contributes significantly to reducing harmful smog—causing emissions. Unhealthy smog levels are a significant concern in this country, with over 53 million people living in counties with air quality that does not meet the 1—hour ozone standard. Since it began eight years ago, the RFG program has provided annual emission reductions in VOC and NOx of 105,000 tons during the ozone season, and at least 24,000 tons of toxic air pollutants, such as benzene, year—round. The benzene level at air monitors in 1995, in RFG areas, showed dramatic declines, with a median reduction of 38 percent from the previous year. The emission reductions that can be attributed to the RFG program are equivalent to taking 16 million cars off the road.

EPA's review also addressed the other aforementioned issues cited above: complaints received, complexity, duplication and overlap, and other factors. After considering these factors, EPA's view is that the rule as currently configured minimizes complexity, duplication and overlap to the extent possible given the parameters of the Clean Air Act mandate for the rule. Two public comments were received, one supportive of the rule and one advocating that EPA limit the variety of state fuel programs in order to reduce the distribution problems associated with a variety of different state fuel requirements. The commenter also suggested that EPA address the sources of emissions transport so that areas are not forced into the federal RFG program because of transport of emissions.

Under the preemption provisions of the CAA, EPA does not have authority to go beyond the preemption provisions and control what fuel programs states adopt. EPA's role under the preemption provisions is limited to determining whether the state fuel program is otherwise preempted, and if so whether the reductions it would achieve are necessary to achieve a NAAQS. Amendments or rescision of the RFG or CG rules would not change this or reduce the number of potential state fuel programs. Therefore the comment does not present a basis for EPA to consider amending or rescinding the RFG or CG rules. In addition, EPA recognizes that the control of emissions transport is important; however, this is addressed through controls adopted by EPA or the States under other provisions of title I and II of the Act, and changes to the RFG or CG rules are not an appropriate mechanism to address emissions transport.

In light of the considerations outlined above, EPA has decided to continue this rule in effect without change. A fuller explanation of the results of this review is given in the aforementioned report which has been placed in the docket established for this review.

Timetable:.

Action	Date	FR Cite
End Review	10/08/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4786.

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RIN: 2060–AK65

3398. INSPECTION/MAINTENANCE PROGRAM REQUIREMENTS

Priority: Info./Admin./Other

Legal Authority: 42 USC 7511; 5 USC 610

CFR Citation: 40 CFR 51 subpart S

Legal Deadline: None

Abstract: On November 5, 1992 (57 FR 52950), EPA promulgated a rulemaking laying out the requirements for the automobile inspection and maintenance (I/M) program under Section 182(a)(2)(B)(ii) of the Clean Air Act. These requirements are codifed at 40 CFR part 51, subpart S. Pursuant to section 610 of the Regulatory Flexibility Act, EPA has reviewed this rule to determine if it should be continued without change, or should be amended or rescinded, to minimize adverse economic impacts on small entities. EPA considered, and solicited comments on, the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. The results of EPA's review have been summarized in a report and placed in the rulemaking docket (docket number OAR—2003—0031 at www.epa.gov/edocket). These results are briefly summarized here.

As a result of the review, EPA has concluded that there is continued need for this rule to assure that the pollution—control features of cars and trucks continue to function properly while in use. This need was the basis for the I/M provisions in the Clean Air Act that require EPA to maintain the program. EPA's review also addressed the other issues cited above: complaints received, complexity, duplication, and overlap. Regarding complaints, no comments were received during the course of this review. Regarding complexity, the Agency has revised and streamlined I/M requirements several times since 1992, most recently in 2001, and continues to look for ways to provide states and other stakeholders greater flexibility with regard to how the I/M program is implemented. The present RFA section 610 review did not identify any further actions appropriate at this time aimed at further reducing complexity beyond the many measures already taken as recently as 2001. The review did not identify any duplication or overlap with other rules or programs. After considering these factors, EPA's view is that the rule as currently configured minimizes complexity, duplication and overlap to the extent possible given the parameters of the Clean Air Act mandate for the rule. In light of these considerations, EPA has decided not to revise the rule in response to the current section 610 review. As a separate matter, however, EPA does plan to propose adjustments to some of the I/M rule's requirements early next year to meet the needs of states with areas newly designated nonattainment under EPA's 8—hour ozone standard. A fuller explanation of the results of this review is given in the aforementioned report which has been placed in the docket established for this review.

Timetable:

Action	Date	FR Cite
End Review	10/08/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4787.

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RIN: 2060–AK66

3399. STAY OF AUTHORITY UNDER 40 CFR 50.9(B) RELATED TO APPLICABILITY OF 1—HOUR OZONE STANDARD

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 50.9(b)

Completed:

Reason	Date	FR Cite
Final Action	06/26/03	68 FR 38160

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AK78

3400. RECLASSIFICATION AS NONROAD ENGINES FOR DIESEL ENGINES USED IN THE STATE OF CALIFORNIA AGRICULTURAL PUMP APPLICATION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 89

Completed:

Reason	Date	FR Cite
Direct Final Rule	04/11/03	68 FR 17741

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 2060–AK83

EPA—Clean Air Act (CAA) Completed Actions

3401. • REVISIONS TO THE REGIONAL HAZE RULE TO CORRECT MOBILE SOURCE PROVISIONS IN THE OPTIONAL PROGRAM FOR NINE WESTERN STATES AND ELIGIBLE INDIAN TRIBES WITHIN THAT GEOGRAPHIC AREA.

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7410; 42 USC 7414; 42 USC 7421; 42 USC 7470 to 7479; 42 USC 7491; 42 USC 7492; 42 USC 7601; 42 USC 7602

CFR Citation: 40 CFR 51.309

Legal Deadline: None

Abstract: This is a noncontroversial correction to section 309 of the Regional Haze Regulations to reflect the current situation relative to mobile source emissions in the West. It will result in a reduction in regulatory burden. The correction has been requested by the Western Regional Air Partnership (WRAP), which is a comprised of particular western governors making up the Grand Canyon Visibility Transport Commission (GCVTC). The approach to mobile sources currently included in section 309 is based on certain recommendations of the GCVTC that are now outdated because of federal standards adopted since the Commission made its recommendations. The WRAP's suggested correction updates section 309 requirements to conform with current expected inventory trends. It also eliminates certain comprehensive mobile source requirements which are now unnecessary, retaining only a requirement only to consider reductions for SO2 from nonroad mobile sources in the absence of federal regulation.

Timetable:

Action	Date	FR Cite
NPRM	07/03/03	68 FR 39888
Direct Final Amendment	07/03/03	68 FR 39842

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4495.1. Split from RIN 2060—AJ50

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RIN: 2060–AL80

3402. PROJECT XL SITE—SPECIFIC RULEMAKING FOR GEORGIA—PACIFIC CORPORATION FACILITY IN BIG ISLAND, VIRGINIA

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63 (Revision)

Completed:

Reason	Date	FR Cite
Final Action	03/26/01	66 FR 16400

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2090–AA26

3403. NEW JERSEY GOLD TRACK PROJECT XL RULE

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 50; 40 CFR 51; 40 CFR 261; 40 CFR 262; 40 CFR 264; 40 CFR 265; 40 CFR 270

Completed:

Reason	Date	FR Cite
Withdrawn	10/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 2090–AA28

Environmental Protection Agency (EPA)
Atomic Energy Act (AEA) Prerule Stage

3404. ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR THE DISPOSAL OF LOW—ACTIVITY MIXED RADIOACTIVE WASTE

Priority: Other Significant

Legal Authority: 42 USC 2021 "Atomic Energy Act of 1954"; "Reorganization Plan No. 3 of 1970"; "Nuclear Waste Policy Act of 1982"

CFR Citation: 40 CFR 193

Legal Deadline: None

Abstract: This rulemaking would address the problem of disposal of low—activity mixed radioactive wastes, consisting of a chemically hazardous component and low levels of radioactivity. These wastes are anticipated to arise in the commercial sector from various sources. The rulemaking is intended to increase disposal options for these wastes and offer a streamlined regulatory process which melds hazardous chemical protection and radioactivity protection requirements while protecting public health and safety. The rule would not mandate a disposal method, but rather would permit an alternative to existing disposal methods. The U.S. Nuclear Regulatory Commission is anticipated to be the implementing Agency for the application of this rule. An Advanced Notice of Proposed Rulemaking is being issued to solicit early public input on this issue — see SAN 4054.1 elsewhere in this issue of the Regulatory Agenda.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	
NPRM	05/00/04	
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4054.

EPA—Atomic Energy Act (AEA) Prerule Stage

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RIN: 2060–AH63

3405. ● APPROACHES TO AN INTEGRATED FRAMEWORK FOR MANAGEMENT AND DISPOSAL OF LOW—ACTIVITY RADIOACTIVE WASTE: REQUEST FOR COMMENT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2021 "Atomic Energy Act of 1954"; "Reorganization Plan No. 3 of 1970"; "Nuclear Waste Policy Act of 1982"

CFR Citation: 40 CFR 193

Legal Deadline: None

Abstract: This advance notice of proposed rulemaking (ANPRM) will solicit public comment on voluntary approaches that would allow additional options for the disposal of low—activity mixed wastes. The wastes intended to be disposed of in these cells are federally regulated mixed wastes, consisting of a chemically hazardous component and low levels of radioactivity. These wastes are anticipated to arise in the commercial sector from various sources, but may also be generated by Federal Government activities. The intention of this effort is to increase disposal options for these wastes and offer a streamlined regulatory process which melds hazardous chemical protection and radioactivity protection requirements while protecting public health and safety. It is envisioned that any rule that would be promulgated in this area would not mandate a disposal method, but rather permit an alternative to existing disposal methods. (See SAN 4054 elsewhere in today's Regulatory Agenda.) In this ANPRM, public comment will be solicited on application of such a rule to other low—activity radioactive wastes not currently regulated at the Federal level, and on possible non—regulatory approaches to improved management. The U.S. Nuclear Regulatory Commission is anticipated to be the implementing Agency for the application of any rule that would follow this ANPRM.

Timetable:

Action	Date	FR Cite
ANPRM	11/18/03	68 FR 65119
ANPRM Comment Period End	03/27/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4054.1. Split from RIN 2060—AH63.

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RIN: 2060–AL78

Environmental Protection Agency (EPA) Proposed Rule Stage
Atomic Energy Act (AEA)

3406. TECHNICAL CHANGE TO DOSE METHODOLOGY FOR 40 CFR PART 190, SUBPART B AND 40 CFR 191, SUBPART A

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2021 "Atomic Energy Act of 1954"; "Reorganization Plan No. 3 of 1970"; "Nuclear Waste Policy Act of 1982"

CFR Citation: 40 CFR 190(B); 40 CFR 191(A)

Legal Deadline: None

Abstract: The purpose of this action is to make a technical change to the dose methodology used in subpart A of 40 CFR 191, entitled Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High—Level Waste and Transuranic Waste The current methodology is outdated. The dose methodology used in the rule published on September 19, 1985, was based on the target organ approach recommended by the International Commission on Radiological Protection (ICRP) in report no. 2. Since that time science has progressed and a new methodology based on an effective dose equivalent approach is currently being recommended by the ICRP in report no.26. This action would update the 40 CFR 191, subpart A dose limits published in 1985 from the target organ to the state—of—the—art effective dose equivalent system. There would be no change in the level of protection, just the scientific methodology for determining compliance with the levels of protection established in 1985.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4003.

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RIN: 2060–AH90

Environmental Protection Agency (EPA) Final Rule Stage

Atomic Energy Act (AEA)

3407. REVISION OF THE 40 CFR PART 194 WASTE ISOLATION PILOT PLANT COMPLIANCE CRITERIA

Priority: Substantive, Nonsignificant

Legal Authority: "106 Stat. 4777 as amended by the 1996 LWA Amendments"; PL 102—579; PL 104—201; "Waste Isolation Pilot Plant Land Withdrawal Act of 1992"

CFR Citation: 40 CFR 194.8(b)

Legal Deadline: None

Abstract: EPA is proposing several revisions to the compliance criteria in 40 CFR Part 194: (1) addition of a process for making minor changes to the provisions of the Compliance Criteria (194.6); (2) changes to the approval process for waste characterization programs at the Department of Energy transuranic (TRU) waste sites (194.8(b)); (3) changes to allow for submission of compliance applications and reference materials in alternative format (e.g., compact disk) (194.12 & 194.13); and replacement of the term "process knowledge" with "acceptable knowledge". The second item is the most significant change. Section 194.8(b) requires EPA to inspect TRU waste sites on a waste stream basis, and to initiate a notice—and—comment process for each inspection. If a site receives our approval to ship a single waste stream or group of waste streams, that site cannot ship a different waste stream until we perform an additional 194.8(b) inspection. Based on actual site inspection experience, we have learned that for regulatory purposes emphasis is better placed on the processes used to characterize the wastes streams rather than on the particular waste streams themselves. Also, we had witnessed DOE's capacity to properly characterize numerous waste streams at different waste generator sites. On this basis, we are proposing to alter the waste characterization approval process so that only one approval would be issued per site. EPA will assign reporting requirements for waste characterization activities and specify any limitations that would necessitate additional inspections. The purpose of the proposed revisions to 194.8(b) is to achieve process and resources efficiencies while maintaining our confidence in DOE's technical capability to characterize wastes destined for the Waste Isolation Pilot Plant.

Timetable:

Action	Date	FR Cite
NPRM	08/09/02	67 FR 51930
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4403.

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RIN: 2060–AJ07

Environmental Protection Agency (EPA) Prerule Stage

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

3408. ENDOCRINE DISRUPTOR SCREENING PROGRAM; PRIORITY SETTING CRITERIA

Regulatory Plan: This entry is Seq. No. 101 in part II of this issue of the **Federal Register**.

RIN: 2070–AD59

3409. PESTICIDE WORKER PROTECTION RULE (SECTION 610 REVIEW)

Priority: Info./Admin./Other

Legal Authority: 7 USC 135

CFR Citation: 40 CFR Part 156; 40 CFR Part 170

Legal Deadline: None

Abstract: On August 21, 1992, the Environmental Protection Agency (EPA) issued final revisions to the Worker Protection Standards governing the protection of workers from agricultural pesticides. These revised regulations expand the scope of the standards to include not only workers performing hand labor operations in fields treated with pesticides, but employees in forests, nurseries, and greenhouses and employees who handle (mix, load, apply, etc.) pesticides for use in these locations. The revised regulations became effective January 1, 1995, and are applicable to agricultural farm workers and pesticide handlers working on farms, forests, nurseries, and greenhouses. In 1995 and 1996, the standard was amended to address specific concerns of the regulation community. EPA is reviewing this regulation pursuant to section 610 of the Regulatory Flexibility Act (5 USC 610). The purpose of this review is to determine whether the rule should be continued without change, or should be amended or rescinded, to minimize economic impacts on small entities while still complying with the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). EPA has already solicited comment on the continued need for the rule; the complexity of the rule; the extent to which it overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and the degree to which technology, economic conditions or other relevant factors have changed since the rule was promulgated. We expect to announce the completion of this review and report its outcome in 2004. See EPA Docket ID number OPPT—2003—0115 at www.epa.gov/edocket.

Timetable:

Action	Date	FR Cite
Final Action 1	08/21/92	57 FR 38102
Begin Review	05/01/03	
Comment Period End	07/31/03	
End Review	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4789.

Sectors Affected: 111 Crop Production; 1114 Greenhouse, Nursery and Floriculture Production; 1131 Timber Tract Operations; 115 Support Activities for Agriculture and Forestry

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RIN: 2070–AD66

Environmental Protection Agency (EPA) Proposed Rule Stage
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

3410. PESTICIDES; DATA REQUIREMENTS FOR CONVENTIONAL CHEMICALS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(a) to 136(y)

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will propose revisions to its data requirements for the registration of conventional pesticide products. In this action, the Agency is proposing revisions to the data requirements that pertain to product chemistry, toxicology, residue chemistry, applicator exposure, post—application exposure, nontarget terrestrial and aquatic organisms, nontarget plant protection, and environmental fate. The proposed data requirements reflect current scientific knowledge and understanding. These revisions will improve the Agency's ability to make regulatory decisions about the human health and environmental effects of pesticide products to better protect wildlife, the environment, and people, including sensitive subpopulations. Couple with revision data requirements, EPA proposes to reformat the requirements and revise its general procedures and policies associated with data submission. By codifying existing data requirements which are currently applied on a case—by—case basis, the pesticide industry, along with other partners in the regulated community, would attain a better understanding and could better prepare for the pesticide registration process. EPA intends to propose a series of revisions t o the data requirements, covering different data disciplines and product types.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 2687.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AC12

3411. PESTICIDES; DATA REQUIREMENTS FOR ANTIMICROBIALS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(a) to 136(y)

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update and revise its pesticide data requirements for antimicrobial products. The data requirements specify the data that are required for EPA to evaluate the registrability of a pesticide product. The revisions will also clarify the data requirements for all antimicrobials to reflect current practice.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4173.

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD30

3412. PESTICIDES; DATA REQUIREMENTS FOR BIOCHEMICAL AND MICROBIAL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update the data requirements necessary to register a biochemical or microbial pesticide product. The revisions will codify data requirements to reflect current regulatory and scientific standards. The data requirements will cover all scientific disciplines for biochemical and microbial pesticides, including product chemistry and residue chemistry, toxicology and environmental fate and effects. The revision will not include plant incorporated protectants.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Additional Information: SAN 4596.

EPA—Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Proposed Rule Stage

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD51

3413. ENDOCRINE DISRUPTER SCREENING PROGRAM; IMPLEMENTING THE SCREENING AND TESTING PHASE

Regulatory Plan: This entry is Seq. No. 108 in part II of this issue of the **Federal Register**.

RIN: 2070–AD61

3414. ACCEPTABILITY OF RESEARCH USING HUMAN SUBJECTS

Regulatory Plan: This entry is Seq. No. 107 in part II of this issue of the **Federal Register**.

RIN: 2070–AD57

3415. PESTICIDES; PROCEDURES FOR THE REGISTRATION REVIEW PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136a (g); 7 USC 136w

CFR Citation: 00 CFR NYD

Legal Deadline: None

Abstract: The Agency will establish procedures to implement section 3(g) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which provides for periodic review of pesticide registrations. The goal of these regulations is to review a pesticide's registration every 15 years.

Timetable:

Action	Date	FR Cite
ANPRM	04/26/00	65 FR 24586
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4170.

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD29

3416. PESTICIDES; EMERGENCY EXEMPTION PROCESS REVISIONS

Regulatory Plan: This entry is Seq. No. 106 in part II of this issue of the **Federal Register**.

RIN: 2070–AD36

Environmental Protection Agency (EPA) Final Rule Stage
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

3417. PESTICIDES; TOLERANCE PROCESSING FEES

Priority: Other Significant

Legal Authority: 21 USC 346(a)

CFR Citation: 40 CFR 180

Legal Deadline: None

Abstract: In 1996, the Food Quality Protection Act amended the Federal Food, Drug, and Cosmetic Act to require EPA to charge tolerance fees that, in the aggregate, will cover all costs associated with processing tolerance actions, including filing a tolerance petition, and establishing, modifying, leaving in effect, or revoking a tolerance or tolerance exemption. Since 1983 (the last time a cost analysis was conducted), factors such as expanded data requirements, changes in risk assessment methods, improvements in data base management and tracking systems, and the increasing complexity of scientific review of petitions have resulted in costs substantially exceeding the fees currently charged. This rule will adjust the fee structure and fee amounts for tolerance actions.

Timetable:

Action	Date	FR Cite
NPRM Pesticides—Tolerance Processing Fees	06/09/99	64 FR 31039
Supplemental NPRM Processing Fees for Inert Ingredients	07/24/00	65 FR 45569
Supplemental NPRM Reopening of Comment Period	08/31/00	65 FR 52979
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4027.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD23

3418. PESTICIDE MANAGEMENT AND DISPOSAL; STANDARDS FOR PESTICIDE CONTAINERS AND CONTAINMENT

Priority: Other Significant

Legal Authority: 7 USC 136(q) "FIFRA sec 19"; 7 USC 136(a) "FIFRA sec 3"; 7 USC 136(w) "FIFRA sec 25"

CFR Citation: 40 CFR 156; 40 CFR 165

Legal Deadline: Final, Statutory, December 24, 1991, Final.

Abstract: FIFRA sec. 19 gives EPA authority to regulate the management of pesticides and their containers, including storage, transportation and disposal. As proposed, this rule would establish standards for removal of pesticides from containers and for rinsing containers; facilitate the safe use, refill, reuse, and disposal of pesticide containers by establishing standards for container design, labeling and refilling; and establish requirements for containment of stationary bulk containers and for containment of pesticide dispensing areas.

Timetable:

Action	Date	FR Cite
NPRM	02/11/94	59 FR 6712
Supp NPRM 1	10/21/99	64 FR 56918
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 2659.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 11511 Support Activities for Crop Production; 42291 Farm Supplies Wholesalers

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RIN: 2070–AB95

3419. WPS; PESTICIDE WORKER PROTECTION STANDARD (WPS); GLOVE AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(w)

CFR Citation: 40 CFR 170

Legal Deadline: None

Abstract: This final rule would create greater flexibility in requirements of the 1992 Worker Protection Standard related to the use of gloves by workers and applicators.

Timetable:

Action	Date	FR Cite
NPRM	09/09/97	62 FR 47544
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 3731.

Sectors Affected: 111 Crop Production; 1114 Greenhouse, Nursery and Floriculture Production; 1131 Timber Tract Operations; 115 Support Activities for Agriculture and Forestry

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RIN: 2070–AC93

3420. PESTICIDES; REGISTRATION REQUIREMENTS FOR ANTIMICROBIAL PESTICIDE PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(a)(h); 7 USC 136(w)

CFR Citation: 40 CFR 152

Legal Deadline: Final, Statutory, September 15, 2000, Final.

Abstract: This regulation will specify antimicrobial registration reforms that will reduce to the extent possible the review time for antimicrobial pesticides. The regulation will clarify criteria for completeness of applications, and will specify or refer to a definition of the various classes of antimicrobial pesticide use patterns and the associated data and labeling requirements that would be consistent with the degree and type of risk presented by each class. In addition, the regulation will also include labeling standards for public health antimicrobial products.

Timetable:

Action	Date	FR Cite
NPRM	09/17/99	64 FR 50671
Notice	11/16/99	64 FR 62145
Final 1	12/14/01	66 FR 64759
Final 2	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 3892.

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD14

3421. PESTICIDE TOLERANCE REASSESSMENT PROGRAM

Priority: Routine and Frequent

Legal Authority: 21 USC 346(a)to(q)

CFR Citation: 40 CFR 180

Legal Deadline: Other, Statutory, August 3, 2006, Other.

Abstract: EPA will reassess pesticide tolerances and exemptions for raw and processed foods established prior to August 3, 1996, to determine whether they meet the reasonable certainty of no harm standard of the Federal Food, Drug and Cosmetic Act (FFDCA). FFDCA sec. 408(q), as amended by the Food Quality Protection Act (FQPA). FQPA requires that EPA conduct this reassessment on a phased 10—year schedule. Based on its reassessment, EPA will take a series of regulatory actions to modify or revoke tolerances. Since such actions are issued on a chemical—by—chemical basis, this regulatory plan entry does not list the individual actions that are likely to occur under this program. For status information about the individual chemicals, go to http://www.epa.gov/pesticides.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4175. LEGAL DEADLINE CONT: EPA is required to complete reassessments on a phased schedule of: 33 percent by August 3; 1999; 66 percent by August 3; 2002; and 100 percent by August 3; 2006. The Agency will continue to assess pesticide tolerances throughout each year.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD24

3422. PLANT INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR THOSE BASED ON VIRAL COAT PROTEINS

Priority: Other Significant

Legal Authority: 21 USC 346(a) et seq; 7 USC 136 et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant—incorporated protectants based on viral coat proteins to its plant—incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to "prevent, repel or mitigate any pest". These substances are also "pesticide chemical residues" under the Federal Food, Drug, and Cosmetic Act (FFDCA). Therefore, EPA is concurrently considering the exemption of plant—incorporated protectants based on viral coat proteins from the requirement of a tolerance under section 408 of the FFDCA. Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a 2001 Supplemental Proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM	11/23/94	59 FR 60496
Supp NPRM 1	07/22/96	61 FR 37891
Supp NPRM 2	05/16/97	62 FR 27132
Supp NPRM—RCAN	04/23/99	64 FR 19958
Final Resubmittal	07/19/01	66 FR 37855
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4602.

This action is a continuation of the action described in RIN 2070—AC02. Since several pieces of that action are now finalized, the Agency is spliting this piece into a separate Agenda entry so that it can continue to be tracked separately.

Sectors Affected: 111 Crop Production; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD49

3423. PLANT—INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR THOSE DERIVED THROUGH GENETIC ENGINEERING FROM SEXUALLY COMPATIBLE PLANTS

Priority: Other Significant

Legal Authority: 7 USC 136 et seq; 21 USC 346a et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant—incorporated protectants derived through genetic engineering from sexually compatible plants to its plant—incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to "prevent, repel or mitigate any pest". These substances are also "pesticide chemical residues" under the Federal Food, Drug, and Cosmetic Act (FFDCA). Therefore, EPA is concurrently considering the exemption of plant—incorporated protectants derived through genetic engineering from sexually compatible plants from the requirement of a tolerance under section 408 of the FFDCA. Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a recent Supplemental Proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM	11/23/94	59 FR 60496
Supplemental NPRM	08/20/01	66 FR 43552
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4611. This action is a continuation of the action described in RIN 2070—AC02. Since several pieces of that action are now finalized, the Agency is spliting this piece into a separate Agenda entry so that it can continue to be tracked separately.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD55

3424. PLANT INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR PIPS THAT ACT BY PRIMARILY AFFECTING THE PLANT

Priority: Other Significant

Legal Authority: 7 USC 136 et seq; 21 USC 346a et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant—incorporated protectants that act by primarily affecting the plant to its plant—incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to "prevent, repel or mitigate any pest." Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a recent supplemental proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM Original	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supp NPRM 1	05/16/97	62 FR 27132
Supp NPRM 2	04/23/99	64 FR 19958
Supp NPRM 3	07/19/01	66 FR 37855
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4612. This action is a continuation of the action described in RIN 2070—AC02. Since several pieces of that action are now finalized, the Agency is spliting this piece into a separate Agenda entry so that it can continue to be tracked separately.

Sectors Affected: 111 Crop Production; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD56

3425. GROUNDWATER AND PESTICIDE MANAGEMENT PLAN RULE

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 7 USC 136(a) "FIFRA sec 3"; 7 USC 136(w)

CFR Citation: 40 CFR 152.170

Legal Deadline: None

Abstract: This regulation as proposed would establish Pesticide Management Plans (PMPs) as a new regulatory requirement for certain pesticides. Unless a State or tribal authority had an EPA—approved Plan specifying risk—reduction measures, use of the chemical would be prohibited. The rule would also specify procedures and deadlines for development, approval and modification of plans by States and tribal authorities. Several parameters of the program described in the proposed rule are being reconsidered to determine whether the program can address water quality issues rather than ground—water only, and to determine the best partnership approach to implementation.

Timetable:

Action	Date	FR Cite
NPRM	06/26/96	61 FR 33259
Notice	02/23/00	65 FR 8925
Supplemental NPRM	03/24/00	65 FR 15885
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Federalism: Undetermined

Additional Information: SAN 3222.

Sectors Affected: 9241 Administration of Environmental Quality Programs

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RIN: 2070–AC46

EPA—Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Long-Term Actions

3426. PESTICIDES; EXEMPTION OF MEDICAL DEVICES TREATED WITH ANTIMICROBIAL PESTICIDES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136; 7 USC 136a; 7 USC 136w

CFR Citation: 40 CFR 152.20

Legal Deadline: None

Abstract: This action will exempt from the requirements of FIFRA medical devices treated with antimicrobial pesticides. EPA has determined that these treated medical devices are adequately regulated by the Food and Drug Administration. This action would eliminate dual regulation of these products by EPA and FDA. EPA would continue to regulate the antimicrobial pesticide used to treat the medical device.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4609.

Sectors Affected: 32619 Other Plastics Product Manufacturing; 31499 All Other Textile Product Mills

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RIN: 2070–AD54

Environmental Protection Agency (EPA) Completed Actions
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

3427. ENDANGERED SPECIES AND PESTICIDE REGULATION

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 402

Completed:

Reason	Date	FR Cite
Withdrawn	09/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

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RIN: 2070–AD62

3428. PESTICIDE MANAGEMENT AND DISPOSAL

Priority: Other Significant

CFR Citation: 40 CFR 165

Completed:

Reason	Date	FR Cite
Withdrawn	10/20/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2020–AA33

Environmental Protection Agency (EPA) Prerule Stage
Toxic Substances Control Act (TSCA)

3429. LEAD; REQUIREMENTS FOR LEAD—BASED PAINT ACTIVITIES IN TARGET HOUSING AND CHILD—OCCUPIED FACILITIES (SECTION 610 REVIEW)

Priority: Info./Admin./Other

Legal Authority: TSCA 402/404; 15 U.S.C. 2682; 15 U.S.C. 2684

CFR Citation: 40 CFR 745 subpart L; 40 CFR 745 subpart Q

Legal Deadline: None

Abstract: In August, 1996, the Environmental Protection Agency (EPA) promulgated regulations under section 402 of the Toxic Substances Control Act (TSCA) to ensure that individuals conducting lead—based paint activities in target housing and child—occupied facilities are properly trained and certified, that training programs providing instruction in such activities are accredited and that these activities are conducted according to reliable, effective and safe work practice standards. EPA also finalized a Federal regulation under section 404 of TSCA that allows States and Indian Tribes to seek authorization to administer and enforce the regulations developed under section 402 for the training and certification of individuals conducting LBP activities and the accreditation of training programs for LBP activities in 1996 (August 29, 1996, 61 FR 45778). EPA performed an analysis of the potential impacts on small entities and determined that this action is likely to have a modest adverse economic impact on a substantial number of small entities. The TSCA section 404 regulations became effective August 29, 1998. The final rule then provided for an additional phase—in period for the requirements for training program accreditation, individual and firm certification, and work practice standards. Regulations for accreditation of training programs became effective on March 1, 1999. Regulations for certification of individuals and firms became fully effective on March 1, 2000. EPA is reviewing the 1996 regulation pursuant to section 610 of the Regulatory Flexibility Act (5 USC 610). The purpose of this review is to determine whether the rule should be continued without change, or should be amended or rescinded, to minimize economic impacts on small entities while still complying with the provisions of the Toxic Substances Control Act (TSCA). EPA has already solicited comment on the continued need for the rule; the complexity of the rule; the extent to which it overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and the degree to which technology, economic conditions or other relevant factors have changed since the rule was promulgated. We expect to announce the completion of that review and report its outcome in 2004. See EPA Docket ID number OPPT—2003—0015 at www.epa.gov/edocket.

Timetable:

Action	Date	FR Cite
Final Action 1	08/29/96	61 FR 45778
Begin Review	05/01/03	
Other/Comment Period End	07/31/03	
End Review	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4788.

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RIN: 2070–AD65

Environmental Protection Agency (EPA) Proposed Rule Stage
Toxic Substances Control Act (TSCA)

3430. LEAD—BASED PAINT ACTIVITIES; TRAINING AND CERTIFICATION FOR RENOVATION AND REMODELING

Regulatory Plan: This entry is Seq. No. 105 in part II of this issue of the **Federal Register**.

RIN: 2070–AC83

3431. POLYCHLORINATED BIPHENYLS (PCBS); DISPOSAL OF PCBS; IMPLEMENTATION ISSUES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 2607 "TSCA 6"

CFR Citation: 40 CFR 761 (Revision)

Legal Deadline: None

Abstract: This proposed regulation will clarify and expand on implementation issues that have arisen as a result of the publication of the 1998 PCB Disposal Amendments (63 FR 35384). Topics will include but not be limited to: Use authorizations; public participation process; appeals process; natural gas pipelines; testing and analysis; manifesting of PCB waste; publication process for validated alternate decontamination solvents; PCB analytical methods; and storage of dedicated PCB equipment. The action to authorize certain nonliquid PCB applications is also included in this action.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

Additional Information: SAN 4597.

Sectors Affected: 31-33 Manufacturing; 81 Other Services (except Public Administration); 54 Professional, Scientific and Technical Services; 92 Public Administration; 53 Real Estate and Rental and Leasing; 48-49 Transportation; 22 Utilities; 562 Waste Management and Remediation Services

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RIN: 2070–AD52

3432. AMENDMENT TO THE PREMANUFACTURE NOTIFICATION EXEMPTIONS; REVISIONS OF EXEMPTIONS FOR POLYMERS (40 CFR PART 723)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604

CFR Citation: 40 CFR 723

Legal Deadline: None

Abstract: This regulatory action will eliminate exemptions under the Polymer Exemption Rule for certain polymers containing perfluoroalkyl sulfonate (PFAS), perfluoroalkyl carboxylates (PFAC), perfluoroalky—containing telomers, and other polymers containing perfluoroalkkyl groups. Based on data on perfluorooctyl sulfonate (PFOS) and perfluorooctonic acid (PFOA), and other chemical substances containing perfluoroalkyl groups, EPA believes that these substances may persist in the environment, bioaccumulate, and be toxic. Certain polymers which contain PFAS, PFAC, perfluoroalkyl—containing telomers, or other substances with perfluoroalkyl groups, would no longer qualify for exemption from TSCA section 5 reporting.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4635.

Sectors Affected: 325 Chemical Manufacturing; 327 Nonmetallic Mineral Product Manufacturing; 326 Plastics and Rubber Products Manufacturing

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RIN: 2070–AD58

3433. TEST RULE; CERTAIN CHEMICALS ON THE ATSDR PRIORITY LIST OF HAZARDOUS SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 "TSCA 4"; 15 USC 2611 "TSCA 12"

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is proposing a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of eight chemicals to fulfill data needs identified by the Agency for Toxic Substances and Disease Registry (ATSDR), the National Toxicology Program (NTP), and EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 104(i). Under CERCLA, ATSDR is to establish a list of priority hazardous substances found at superfund sites, develop toxicological profiles for the hazardous substances, identify priority data needs, and establish a research program obtaining the necessary data. This action is a component of ATSDR's research program. Data from this action would provide specific information about the substances for the public and scientific community. The information would be used in conducting comprehensive public health assessments of populations living near hazardous waste sites. Scientific data improves the quality of risk assessments used by EPA, other Federal agencies, and State and local governments. The risk assessments affect standards, guidelines, listing/delisting, and other decisions affecting public health and the environment. In addition, this action would require manufacturers and processors to develop data for these chemicals that will be used by EPA under the Clean Air Act (CAA) to evaluate residual risks from hazardous air pollutants (HAPs) on the list of HAPs in the CAA under section 112(f), 42 USC 7412(f) and sections 112(d and e). Data from this action would also be used to support implementation of several provisions of section 112 of the CAA including, determining risks remaining after the application of technology based standards under section 112(d) of the CAA, estimating the risks associated with accidental releases, and determining whether or not substances should be removed (delisted) from section (b)(1) of the CAA list of HAPS.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 2563.

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AB79

3434. TEST RULE; DEVELOPMENTAL AND REPRODUCTIVE TOXICITY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2607(a); 15 USC 2611; 15 USC 2625

CFR Citation: 40 CFR 790 to 799; 40 CFR 704

Legal Deadline: None

Abstract: EPA is reproposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) that would require manufacturers, defined by statute to include importers, and processors of seven substances to conduct testing for developmental and/or reproductive toxicity. EPA is also proposing reporting rules for two of the seven substances. These rules would require the reporting of production volumes so it will be possible to determine when the testing program can be triggered for the two substances without causing a significant impact on revenues. This is a reproposal of a test rule announced March 4, 1991 (56 FR 9092).

Timetable:

Action	Date	FR Cite
NPRM (Original)	03/04/91	56 FR 9092
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4395.

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AD44

3435. TSCA INVENTORY UPDATE RULE REVISIONS

Priority: Other Significant

Legal Authority: 15 USC 2607(a) "TSCA 8(a)"

CFR Citation: 40 CFR 710

Legal Deadline: None

Abstract: In this follow—on action to the Inventory Update Rule Amendments (IURA) (RIN 2070—AC61) that was finalized in January 2003, EPA is making additional changes to the IUR to adjust the submission period, the reporting frequency, and the recordkeeping period, and to clarify language associated with petitioning to be partially exempt from reporting requirements and with reporting information on imported materials. Additionally, certain technical corrections, such as removing obsolete regulatory text associated with IUR reporting that occurred in 2002 and correcting certain paragraph references will be included. EPA anticipates adverse comments on moving the submission period and therefore is first proposing these changes.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: SAN 3301.1. Split from RIN 2070—AC61.

Sectors Affected: 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing

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RIN: 2070–AD63

3436. FOLLOW—UP RULES ON EXISTING CHEMICALS

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 "TSCA 5"; 15 USC 2607 "TSCA 8"

CFR Citation: 40 CFR 704; 40 CFR 707; 40 CFR 710; 40 CFR 721

Legal Deadline: None

Abstract: EPA has established a program to monitor the commercial development of existing chemicals of concern and/or to gather information to support planned or ongoing risk assessments on such chemicals. As these chemicals are identified, EPA will initiate rulemakings under the Toxic Substances Control Act (TSCA) sections 5 and/or 8 to require reporting of appropriate needed information by the manufacturers, importers and/or processors of these chemicals. Individual proposed or final rules will be published on at least the chemicals listed below.

Timetable:

Action	Date	FR Cite
NPRM—2—4 Original	09/27/89	54 FR 39548
NPRM—Chloranil	05/12/93	58 FR 27980
NPRM—Benzidine	08/30/95	60 FR 45119
Final—Benzidine	10/07/96	61 FR 52287
NPRM—Heavy	01/15/02	67 FR 1937
NPRM—2—4	12/00/04	
Final—Heavy	06/00/04	
NPRM—p—Aminophenol	06/00/04	
NPRM—2—Etho	12/00/04	
NPRM—Benzidine—amend	12/00/04	
NPRM—Methylcyclo	12/00/04	
NPRM—Certain Chemical Substances No Longer in Production	03/00/05	
NPRM—o—Tolodine	03/00/05	
Final—Benzidine—amend	12/00/05	
Final—Chloranil	06/00/05	
Final—Benzidene	12/00/05	
Final—2—4	12/00/05	
Final—Methylcyclo	12/00/05	
Final—Etho	12/00/05	
Final—Certain Substances	12/00/05	
Final—o—Tolodine	12/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 1923.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AA58

3437. SIGNIFICANT NEW USE RULE; SELECTED FLAME RETARDANT CHEMICAL SUBSTANCES FOR USE IN RESIDENTIAL UPHOLSTERED FURNITURE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604 "TSCA 5"

CFR Citation: 40 CFR 704; 40 CFR 721; 40 CFR 707; 40 CFR 710

Legal Deadline: None

Abstract: EPA is proposing a significant new use rule (SNUR) under section 5 of the Toxic Substances Control Act (TSCA) covering certain flame retardant chemicals for use in residential upholstered furniture. The SNUR would require companies wanting to import or manufacture these chemicals for the significant new uses described in the proposed rule to submit a significant new use notice (SNUN) to the Agency at least 90 days prior to beginning those activities.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: SAN 4512.

Sectors Affected: 325 Chemical Manufacturing; 313 Textile Mills; 337121 Upholstered Household Furniture Manufacturing

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RIN: 2070–AD48

3438. LEAD; NOTIFICATION REQUIREMENTS FOR LEAD—BASED PAINT ABATEMENT ACTIVITIES AND TRAINING

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2682 "TSCA 402"; 15 USC 2687 "TSCA 407"

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: EPA is issuing this rule under the authority of section 407 of the Toxic Substances Control Act (TSCA) to establish notification procedures for lead abatement professionals (certified under 40 CFR 745.226) conducting lead—based paint activities, and training programs (accredited under 40 CFR 745.225) providing lead—based paint activities courses. Specifically, this rule seeks to establish procedures to notify the Agency prior to commencement of lead—based paint abatement activities as required by 40 CFR 745.227(e)(4). In addition, this rule seeks to establish provisions which would require training programs accredited under 40 CFR 745.225 to notify the Agency under the following conditions (1) prior to providing lead—based paint activities, training and (2) following completion of lead—based paint activities courses. These notification requirements are necessary to provide EPA compliance monitoring and enforcement personnel with information necessary to track compliance activity and to prioritize inspections. This rule supports 40 CFR part 745, subpart L to ensure that lead abatement professionals who inspect, assess and remove lead—based paint, dust or soil are well qualified, trained, and certified to conduct these activities.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 7207
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4172.

Sectors Affected: 611519 Other Technical and Trade Schools

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RIN: 2070–AD31

3439. SIGNIFICANT NEW USE RULES; FOLLOW—UP RULES ON NON—5(E) NEW CHEMICAL SUBSTANCES

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 "TSCA 5"

CFR Citation: 40 CFR 721

Legal Deadline: None

Abstract: EPA regulates the commercial development of new chemicals that have completed premanufacture notice (PMN) review. In a PMN review, the Agency assesses whether or not a chemical's manufacture, import, process, distribution, use, or disposal outside the activities described in the PMN may present an unreasonable risk. EPA will issue significant new use rules (SNURs) requiring 90—day notification to EPA from any manufacturer, importer, or processor who would engage in activities that are designated as significant new uses. Under the expedited follow—up rule (EFUR) which became effective on October 12, 1989, EPA will identify such new chemicals and publish them in a batch SNUR 3 to 4 times per year. Chemicals that were subject to a proposed SNUR before the effective date of the EFUR or do not qualify under the EFUR, may be regulated individually by notice and comment rulemaking and are listed below.

Timetable:

Action	Date	FR Cite
NPRM (84—1056)	06/11/86	51 FR 21199
NPRM (86—566)	12/08/87	52 FR 46496
NPRM	06/11/93	58 FR 32628
Final (84—1056)	01/00/04	
Final (86—566)	02/00/04	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 1976.

Sectors Affected: 325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing

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RIN: 2070–AA59

3440. SIGNIFICANT NEW USE RULE (SNUR); CHEMICAL—SPECIFIC SNURS TO EXTEND PROVISIONS OF SECTION 5(E) ORDERS

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 "TSCA 5"

CFR Citation: 40 CFR 721

Legal Deadline: None

Abstract: When the Agency determines that uncontrolled manufacture, import, processing, distribution, use or disposal of a premanufacture notification (PMN) substance may present an unreasonable risk, it may issue a section 5(e) consent order to limit these activities. However, such orders apply only to the PMN submitter. Once the new substance is entered on the Toxic Substances Control Act (TSCA) chemical inventory, others can manufacture, import or process the substance without controls. Therefore, EPA extends the controls to apply to others by designating manufacture, import or processing of the substances for uses without the specified controls as significant new uses. Under the Expedited Follow—Up Rule, which became effective on October 10, 1989 (54 FR 31314), EPA routinely publishes batch SNURs containing routine section 5(e) and non—5(e) SNURs. However, certain activities, such as modifications, withdrawals, revocations, and SNURs upon which comments are received in the direct final publication process, are subject to notice and comment rulemaking and are listed below.

Timetable:

Action	Date	FR Cite
NPRM 1	05/27/93	58 FR 30744
NPRM 2	06/06/94	59 FR 29255
NPRM 3	12/19/94	59 FR 65289
NPRM 4	06/26/97	62 FR 34421
NPRM	09/09/98	63 FR 48157
Final 1	05/11/02	67 FR 17643
Final 2	05/00/04	
Final 3	05/00/04	
Final 4	08/00/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3495.

Sectors Affected: 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing

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RIN: 2070–AB27

3441. TEST RULE; HAZARDOUS AIR POLLUTANTS (HAPS)

Priority: Other Significant

Legal Authority: 15 USC 2603 "TSCA 4"; 15 USC 2611 "TSCA 12"

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is proposing health effects testing under TSCA section 4 in support of programs and activities required under section 112 of the Clean Air Act (CAA), governing Hazardous Air Pollutants (HAPs). Section 112 of the CAA directs EPA to determine the risk to health and the environment remaining after application of technology—based emissions standards to major and area sources. Section 112 also sets forth a mechanism for revising and modifying the statutory list of 189 HAPs under section 112(b), and requirements for an accidental release control program. These data will also be important for the right—to—know program given the large release of these chemicals to the atmosphere. In order to implement these and other programs and requirements under section 112, EPA must identify the health and environment effects of potential concern from exposure to HAPs, ascertain the minimum data needed to adequately characterize those health and environmental effects, and assess the risks posed by HAPs. In addition, under section 103(d), EPA is required to conduct a research program on the short— and long—term effects of air pollutants on human health, ascertain the minimum data needed to adequately characterize those health and environmental effects, and assess the risks posed by HAPs.

Timetable:

Action	Date	FR Cite
NPRM	06/26/96	61 FR 33178
Supplemental NPRM	12/24/97	62 FR 67466
Supplemental NPRM	04/21/98	63 FR 19694
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 3487.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC76

3442. TEST RULE; CERTAIN HIGH PRODUCTION VOLUME (HPV) CHEMICALS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2611—12; 15 USC 2625—26

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: This rule will require testing and recordkeeping requirements for certain high production volume (HPV) chemicals (i.e., chemicals which are manufactured (including imported) in the aggregate at more than 1 million pounds on an annual basis). Although varied based on specific data needs for the particular chemical, the data generally collected under this rule may include: acute toxicity, repeat dose toxicity, developmental and reproductive toxicity; mutagenicity ecotoxicity, and environmental fate. The first rule proposed testing for 37 HPV chemicals with substantial worker exposure. The action is part of the Chemical Right—to—Know Initiative, which is described under RIN 2070—AD25.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81658
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 3990. See also the Regulatory Plan entry entitled Chemical Right—to—Know Initiative (RIN 2070—AD25; SAN 4176).

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD16

3443. TEST RULE; IN VITRO DERMAL ABSORPTION RATE TESTING OF CERTAIN CHEMICALS OF INTEREST TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 "TSCA 4"; 15 USC 2611 "TSCA 12"

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is requiring manufacturers (which is defined by statute to include importers) and processors of 38 chemical substances of interest to the Occupational Safety and Health Administration (OSHA) to conduct testing for in vitro dermal absorption rate. These chemicals, and others, were designated for in vitro dermal absorption rate testing in the 31st, 32nd, and 35th Reports of the TSCA section 4(e) Interagency Testing Committee (ITC) to the EPA. Each of the chemical substances included in this final rule is produced in an amount equal to or greater than one million pounds per year. In addition, each of the chemicals in this final rule was identified in the National Occupational Exposure Survey (NOES) as having a total potential worker exposure of greater than 1,000 workers. EPA has also determined that there are insufficient data or experience upon which the effects of the manufacture, processing and use of these chemicals on health can reasonably be determined or predicted and that testing of such substances with respect to such effects is necessary. OSHA has indicated that it needs quantitative measures of dermal absorption rate in order to evaluate the potential hazard of these chemicals to workers.

Timetable:

Action	Date	FR Cite
NPRM	06/09/99	64 FR 31074
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4425. Please note that this entry was previously identified under RIN 2070—AB07. TSCA requires EPA to initiate a rulemaking proceeding within one year of ITC designation or if such a proceeding is not initiated within one year, publish in the Federal Register EPA's reason for not initiating such proceeding.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD42

3444. TSCA SECTION 8(A) PRELIMINARY ASSESSMENT INFORMATION RULES

Priority: Routine and Frequent

Legal Authority: 15 USC 2607(a) "TSCA 8(a)"

CFR Citation: 40 CFR 712

Legal Deadline: None

Abstract: These rules add chemicals to the list of chemicals and designated mixtures subject to the requirements of the Toxic Substances Control Act section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). These chemicals have been identified by the Office of Pollution Prevention and Toxics, other EPA offices, and other Federal agencies, as well as recommended for testing consideration by the Interagency Testing Committee. Manufacturers and importers are required to submit exposure—related data (EPA Form No. 7710—35) on the chemicals. These data will be used to monitor the levels of production, import and/or processing of these substances and the avenues of human and environmental exposure to these substances. These data will also support risk assessment and test rule decisions.

Timetable:

Action	Date	FR Cite
Final 37th ITC List	02/28/96	61 FR 7421
Final 38th ITC List	10/29/96	61 FR 55871
Final 38th ITC List—Stay	12/11/96	61 FR 65186
Final 38th—tech stay	01/07/98	63 FR 684
Final 38th ITC—rev	01/11/00	65 FR 1548
Final 39th ITC List	01/11/00	65 FR 1548
Final 41st ITC List	07/05/00	65 FR 41371
Final 42nd ITC List	07/24/00	65 FR 45535
Final 47th ITC List	07/26/01	66 FR 38955
Final 48th ITC List	06/11/03	68 FR 34832
Final 50th ITC List	06/11/03	68 FR 34832
Final 53rd ITC List	06/00/04	
Final 54th ITC List	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 2178.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB08

3445. TSCA SECTION 8(D) HEALTH AND SAFETY DATA REPORTING RULES

Priority: Routine and Frequent

Legal Authority: 15 USC 2607(d) "TSCA 8(d)"

CFR Citation: 40 CFR 716

Legal Deadline: None

Abstract: These rules require manufacturers, importers and processors to submit unpublished health and safety data on chemicals added to the requirements of the Toxic Substances Control Act section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716). These chemicals have been identified by the Office of Pollution Prevention and Toxics, other

EPA offices, and other Federal agencies, as well as recommended for testing consideration by the Interagency Testing Committee.

Timetable:

Action	Date	FR Cite
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 1139.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB11

3446. TSCA SECTION 8(E) POLICY; NOTICE OF CLARIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2607(e) TSCA 8(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The TSCA section 8(e) Notice of Clarification and Solicitation of Public Comment would change certain aspects of the 1978 TSCA section 8(e) Policy Statement. The 1978 Policy Statement describes the types of information that EPA considers reportable under section 8(e), the substantial risk reporting provision of TSCA, and describes the procedures for reporting such information to EPA. This clarification effort derives from a review of the existing section 8(e) guidance done in the context of questions raised by companies considering participating in the section 8(e) Compliance Audit Program (CAP). As a result of this review, EPA determined that parts of the 1978 Policy Statement concerning the reportability of information on widespread and previously unsuspected distribution in environmental media and emergency incidents of environmental contamination needed some refinement. The subject Federal Register action solicited comment on refined reporting guidance concerning widespread and previously unsuspected distribution in environmental media and provides additional circumstances where information is not reportable because it is considered known to the Administrator. Finally, the notice solicited comments on changes to the section 8(e) reporting deadline and the standards for claims of confidentiality for information contained in a notice of substantial risk under section 8(e).

Timetable:

Action	Date	FR Cite
NPRM	07/13/93	58 FR 37735
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3118

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AC80

Environmental Protection Agency (EPA)
Toxic Substances Control Act (TSCA) Long-Term Actions

3447. ASBESTOS MODEL ACCREDITATION PLAN REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2646 "TSCA 206"

CFR Citation: 40 CFR 763

Legal Deadline: Final, Statutory, November 28, 1992, Final.

Abstract: The Asbestos School Hazard Abatement Reauthorization Act (ASHARA) amended TSCA to require that EPA revise its asbestos model accreditation plan (MAP) to extend training and accreditation requirements to include persons performing certain asbestos—related work in public or commercial buildings, to increase the minimum number of training hours required for accreditation purposes and to effect other changes necessary to implement the amendments.

Timetable:

Action	Date	FR Cite
Model Plan	05/13/92	57 FR 20438
Interim Final Rule	02/03/94	59 FR 5236
Final Action	05/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

Additional Information: SAN 3148.

Sectors Affected: 611519 Other Technical and Trade Schools

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RIN: 2070–AC51

3448. LEAD FISHING SINKERS; RESPONSE TO CITIZENS PETITION AND PROPOSED BAN

Priority: Other Significant

Legal Authority: 15 USC 2605 "TSCA 6"

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: On October 20, 1992, the Environmental Defense Fund (EDF), Federation of Fly Fishers, Trumpeter Swan Society, and North American Loon Fund petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA), and the Administrative Procedure Act (APA), to initiate rulemaking proceedings under section 6 of TSCA to require that the sale of lead fishing sinkers be accompanied by an appropriate label or notice warning that such products are toxic to wildlife. EPA granted the petition, however, the Agency believes that a labeling provision would not adequately address the risk of injury to waterfowl and other birds (waterbirds), from ingestion of lead fishing sinkers. In addition, EPA also believes that zinc fishing sinkers adversely affect waterbirds, and can cause mortality. Therefore, EPA has proposed a rule under section 6(a) of TSCA to prohibit the manufacturing, processing, and distribution in commerce in the United States, of certain smaller size fishing sinkers containing lead and zinc, and mixed with other substances, including those made of brass.

Timetable:

Action	Date	FR Cite
ANPRM	05/13/91	56 FR 22096
NPRM	03/09/94	59 FR 11122
Final Action	12/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 3252.

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RIN: 2070–AC21

3449. LEAD—BASED PAINT ACTIVITIES; TRAINING, ACCREDITATION, AND CERTIFICATION RULE AND MODEL STATE PLAN RULE — BRIDGES AND STRUCTURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 15 USC 2603 "TSCA 4"; PL 102—550 "sec 402"; PL 102—550 "sec 404"

CFR Citation: 40 CFR 745

Legal Deadline: Final, Statutory, April 28, 1994, Final.

Abstract: The Residential Lead—Based Paint Hazard Reduction Act of 1992 mandates EPA promulgate regulations governing lead—based paint (LBP) activities to ensure that individuals engaged in such activities are properly trained, that LBP training programs are accredited, and that contractors engaged in such activities are certified. In addition, EPA must promulgate a Model State program which may be adopted by any State which seeks to administer and enforce a State program. EPA promulgated regulations for training and certification of training programs for LBP activities and child occupied facilities in 1996 (see 40 CFR 745). Regulations for LBP activities in public and commercial buildings and bridges and other structures are still under development.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	
Final Action	12/00/06	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

Additional Information: SAN 4376.

Sectors Affected: 23411 Highway and Street Construction; 611519 Other Technical and Trade Schools

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RIN: 2070–AC64

3450. LEAD; MANAGEMENT AND DISPOSAL OF LEAD—BASED PAINT DEBRIS

Priority: Other Significant

Legal Authority: 15 USC 2682; 15 USC 2684; 42 USC 6901 to 6992

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: Currently, waste derived from lead—based paint (LBP) abatements is managed under the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. Other Federal agencies (Department of Housing and Urban Development, Department of Health and Human Services) and several States and advocacy groups have expressed concern that the costs associated with the disposal of large volume architectural components (e.g., doors and windows) may interfere with abatement activities. EPA's Office of Prevention, Pesticides and Toxic Substances and the Office of Solid Waste have initiated a joint rulemaking to address the disposal of these architectural components. This rulemaking would develop disposal standards for these components under the Toxic Substances Control Act (TSCA) title IV, (the definition of abatement under TSCA title IV, section 401(1)(B), includes disposal). The TSCA regulations would establish appropriate disposal standards for LBP architectural components and identify recycling and incineration activities that would be controlled or prohibited. To minimize duplication of waste management requirements, EPA is developing a companion RCRA rule to suspend temporarily hazardous waste management regulations applicable to lead—based paint debris which will be subject to the new TSCA standards.

Timetable:

Action	Date	FR Cite
NPRM	12/18/98	63 FR 70189
Comment Extension	02/12/99	64 FR 7159
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 3508. See also RCRA companion rule: Temporary Suspension of Toxicity Characteristic Rule for Specified Lead—Based Paint Debris (SAN 14263; RIN 2050—AE68).

NPRM—
http://www.epa.gov/fedrgstr/EPA—TRI/1998/December/Day—18/tri33326.htm

Sectors Affected: 233 Building, Developing and General Contracting; 23332 Commercial and Institutional Building Construction; 23542 Drywall, Plastering, Acoustical and Insulation Contractors; 23592 Glass and Glazing Contractors; 23521 Painting and Wall Covering Contractors; 23511 Plumbing, Heating and Air-Conditioning Contractors; 23321 Single Family Housing Construction; 562111 Solid Waste Collection; 54138 Testing Laboratories; 23594 Wrecking and Demolition Contractors

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RIN: 2070–AC72

3451. POLYCHLORINATED BIPHENYLS (PCBS); EXEMPTIONS FROM THE PROHIBITIONS AGAINST MANUFACTURING, PROCESSING, AND DISTRIBUTION IN COMMERCE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2605 "TSCA 6(e)(3)(B)"

CFR Citation: 40 CFR 761

Legal Deadline: None

Abstract: Section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA) provides that the Administrator may grant, by rule, exemptions from the prohibitions against manufacturing, processing and distribution in commerce of PCBs upon finding that (1) no unreasonable risk to health or the environment will occur, and (2) good faith efforts have been made by the petitioner to develop a substitute for PCB which does not pose an unreasonable risk of injury to health or the environment. In addition, the interim procedural rules were amended to require certain petitioners to reapply for EPA approval to continue PCB activities previously approved by EPA.

Timetable:

Action	Date	FR Cite
NPRM	12/06/94	59 FR 62875
NPRM 1	09/17/02	67 FR 58567
Final 1	01/31/03	68 FR 4934
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 2150.

Sectors Affected: 2211 Electric Power Generation, Transmission and Distribution; 31-33 Manufacturing; 5133 Telecommunications

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RIN: 2070–AB20

3452. TEST RULES AND ENFORCEABLE CONSENT AGREEMENTS UNDER THE TOXIC SUBSTANCES CONTROL ACT (GENERIC ENTRY)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 "TSCA 4"; 15 USC 2611 "TSCA 12"

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is requiring testing via rules, or will obtain testing through enforceable consent agreements (ECAs) or publish a notice which provides the reasons for not doing so for chemicals listed herein. These chemicals have been designated for priority testing consideration by the TSCA Interagency Testing Committee (ITC) or recommended for testing consideration (for which the 12—month statutory requirement does not apply). The list also includes chemicals or categories of chemicals which have been identified for testing consideration by other Federal or other EPA offices through EPA review processes.

Timetable:

Action	Date	FR Cite
ANPRM (Aryl Phos)	12/29/83	48 FR 57452
NPRM (BFRs)	06/25/91	56 FR 29140
NPRM (Aryl Phos)	01/17/92	57 FR 2138
Final Action—ECA (DBE)	08/05/99	64 FR 42692
Final Action—ECA (TCE)	06/15/00	65 FR 37550
Final Action—ECA (EDC)	06/03/03	68 FR 33125
Final Action—ECA (H.F.)	03/00/04	
Final Action—ECA (M.A.)	06/00/04	
Final Action—ECA (P.A.)	06/00/04	
Final Action—ECA (DEA)	09/00/04	
Final Action—ECA (ArylP)	06/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 3493.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB94

3453. VOLUNTARY CHILDREN'S CHEMICAL EVALUATION PROGRAM (VCCEP)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This is a voluntary program to evaluate commercial chemicals to which children may have a high likelihood of exposure. Designed with extensive stakeholder participation, the purpose of this voluntary program is to obtain toxicity and exposure data needed to assess the risk of childhood exposure to commercial chemicals. EPA launched a pilot of this program on December 26, 2000. Manufacturers of 20 of the 23 pilot chemicals have volunteered to sponsor their chemicals in tier 1 in the pilot. A workshop was held in December 2001 to provide sponsors with additional guidance on the scope and content of the exposure assessments they will prepare. A peer consultation process is being used to evaluate the scientific merits of the hazard, exposure, and risk assessments submitted by sponsors. Assessments for four chemicals have been evaluated in the peer consultation process. Although not currently involving a rulemaking, EPA has included this pilot program in the Regulatory Agenda to inform the public about activities like this related to its chemical testing program.

Timetable:

Action	Date	FR Cite
Notice	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 2865.

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

URL For More Information:
www.epa.gov/chemrtk/vccep

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RIN: 2070–AC27

3454. TEST RULE; CERTAIN METALS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 "TSCA 4"; 15 USC 2611 "TSCA 12"; 15 USC 2625 "TSCA 26"

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is coordinating an evaluation of the data needs for assessing potential adverse affects that exposures to metals pose for health and the environment with the Agencies efforts to develop a framework for assessing potential risks from exposures to metals. This activity is intended to lead to EPA proposing a test rule under section 4(a) of the Toxic Substances Control Act (TSCA). A test rule would require manufacturers and processors of certain metals (beryllium, chromium, manganese, mercury, nickel, and selenium) to fulfill data needs identified by the Agency for Toxic Substances and Disease Registry (ATSDR), the National Toxicology Program (NTP) and EPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 104(I), the Clean Air Act (CAA) section 112 and other statutes requiring risk assessments, health assessments, permits, standards, guidelines, listing/delisting, and other decisions affecting public health and the environment. Under CERCLA the Agency for Toxic Substances and Disease Registry (ATSDR) is to establish a list of priority hazardous substances found at superfund sites, develop toxicological profiles for the hazardous substances, identify priority data needs, and establish a research program obtaining the necessary data. This action is a component of ATSDR's research program. Data from this action would provide specific information about the substances for the public and scientific communities. Data from this action would also be used to implement several provisions of section 112 of the CAA, including determining risks remaining after the application of technology based on standards under section 112(d) of the CAA, estimating the risks associated with accidental releases, and determining whether or not substances should be removed from the CAA section (b)(1) list of HAPs (delisting).

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 3882.

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AD10

3455. TESTING AGREEMENT FOR CERTAIN OXYGENATED FUEL ADDITIVES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2611; 15 USC 2625

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA's Office of Air and Radiation (OAR), in the administration of section 211 of the Clean Air Act (CAA), has requested that OPPT use its TSCA section 4 testing authority to obtain health effects data on a number of Oxygenated Fuel Additives (OFAs). These data are needed by EPA and others to increase understanding of the toxicity of these substances individually and in comparison to each other as well as to other OFAs such as methyl t—butyl ether (MTBE). EPA will be soliciting interested parties to work on an Enforceable Consent Agreement (ECA) under TSCA section 4, through which responsible parties can agree to provide data to EPA. Although not currently a rulemaking, EPA is including this in the Regulatory Agenda to inform the public of this activity which will have a regulatory impact once an ECA is finalized.

Timetable:

Action	Date	FR Cite
Notice To Solicit	06/00/05	
Notice ECA	12/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 4174.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD28

3456. SIGNIFICANT NEW USE RULE; REFRACTORY CERAMIC FIBERS (RCFS)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604 "TSCA 5"; 15 USC 2605 "TSCA 6"

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA has instituted a program to monitor the commercial development of existing chemicals of concern and/or to gather information to support risk assessments on such chemicals. As these chemicals are identified, EPA will initiate rulemakings under the Toxic Substances Control Act (TSCA) sections 5 and/or 6 to require reporting by the manufacturers, importers and/or processors of these chemicals.

Timetable:

Action	Date	FR Cite
NPRM	03/21/94	59 FR 13294
Final Action	09/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN 3528.

Sectors Affected: 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing

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RIN: 2070–AC37

3457. CHEMICAL RIGHT—TO—KNOW INITIATIVE; HIGH PRODUCTION VOLUME (HPV) CHEMICALS

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: The voluntary Chemical RTK Initiative was established in 1998 in response to the finding that most commercial chemicals have very little, if any, publicly available toxicity information on which to make sound judgments about potential risks. There are three key components to this initiative, each of which is being implemented by EPA. These are: collecting and making public screening level toxicity data for 2,800 widely used commercial chemicals; additional health effects assessment for chemicals to which children are substantially exposed; and the listing and lowering of thresholds for persistent, bioaccumulative, toxic chemicals reported to the Toxic Release Inventory (TRI). Although this Initiative is not a rulemaking, EPA has included it in the Regulatory Agenda to inform the public. The Initiative will involve several separate activities, with any regulatory related actions included as separate entries in the Regulatory Agenda.

Timetable:

Action	Date	FR Cite
Notice	12/26/00	65 FR 81686
Initiative Completed	06/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4176. See also items identified under the following RINs 2070—AD09; 2070—AD38; RIN 2070—AD16; RIN 2070—AC27.

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AD25

3458. TSCA POLICY STATEMENT ON OVERSIGHT OF TRANSGENIC ORGANISMS (INCLUDING PLANTS)

Priority: Other Significant

Legal Authority: 15 USC 2604

CFR Citation: 40 CFR 720

Legal Deadline: None

Abstract: As a follow—up to the final Biotechnology Rule under the Toxic Substances Control Act (TSCA) EPA intends to address TSCA oversight of transgenic plants and other organisms. Recent information indicates that transgenic plants and other organisms are being developed for uses which appear to be subject to TSCA jurisdiction. For example, plants are being genetically modified to produce industrial grade, rather than food grade, oils. Many of these plants are subject to oversight by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture while being tested in the environment. Following APHIS approval of a petition for non—regulated status filed pursuant to APHIS' regulations implementing the Federal Plant Pest Act at 7 CFR part 340, however, these plants cease to be subject to regulation by USDA. Additionally, transgenic animals that are not under the jurisdiction of FDA appear to be subject to TSCA. Such animals may be genetically improved livestock for commercial purposes. The policy statement would address whether EPA should exercise jurisdiction under TSCA over such transgenic organisms prior to their commercial use.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4598.

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RIN: 2070–AD53

3459. LEAD; AMENDMENTS TO REQUIREMENTS FOR DISCLOSURE OF KNOWN LEAD—BASED PAINT OR LEAD—BASED PAINT HAZARDS IN TARGET HOUSING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 4852d

CFR Citation: 40 CFR 745.100; 40 CFR 745.101; 40 CFR 745.102; 40 CFR 745.103; 40 CFR 745.107; 40 CFR 745.110; 40 CFR 745.113; 40 CFR 745.115; 40 CFR 745.118; 40 CFR 745.119

Legal Deadline: None

Abstract: Amendments will clarify to which target housing transactions the rule applies; add or clarify definitions of important terms; clarify the disclosure responsibilities of agents; clarify what information must be disclosed; clarify recordkeeping requirements to support enforcement; and will amend existing regulatory text to resolve some inconsistent interpretations and to incorporate interpretations that have been issued through guidance. The amendments will be developed jointly with the Department of Housing and Urban Development (HUD), which jointly administers and enforces the current requirements with EPA. Small businesses and state/local/tribal governments that sell or lease target housing will be affected in that they will need to become familiar with new/revised requirements that apply to these transactions. Overall burden is not expected to increase significantly.

Timetable:

Action	Date	FR Cite
NPRM	08/00/05	
Final Action	07/00/07	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Tribal

Federalism: Undetermined

Additional Information: SAN 4777.

Sectors Affected: 53111 Lessors of Residential Buildings and Dwellings; 53121 Offices of Real Estate Agents and Brokers; 531311 Residential Property Managers; 92511 Administration of Housing Programs; 522292 Real Estate Credit

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RIN: 2070–AD64

Environmental Protection Agency (EPA) **Proposed Rule Stage**

Emergency Planning and Community Right—to—Know Act (EPCRA)

3460. CLARIFY TRI REPORTING OBLIGATIONS UNDER EPCRA SECTION 313 FOR THE METAL MINING ACTIVITIES OF EXTRACTION AND BENEFICIATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Toxics Release Inventory (TRI) currently requires reporting from metal mining facilities if they manufacture or process 25,000 pounds or more of a listed chemical or otherwise use 10,000 pounds or more of a listed chemical. These mining facilities engage in the removal of naturally occurring materials from the earth. EPA had considered naturally occurring materials to be manufactured by natural processes. A recent court order set aside EPA's interpretation of manufacture stating that naturally occurring ores can not be manufactured within the meaning of EPCRA section 313. EPA is considering clarifying how the definitions of manufacturing and processing under EPCRA section 313 apply to the mining sector processes of extraction and beneficiation. This action will not affect the coal extraction activities exemption.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	
Final Action	08/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN 4616.

URL For More Information: www.epa.gov/tri

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RIN: 2025–AA11

3461. ADDITION OF TOXICITY EQUIVALENCY (TEQ) REPORTING AND QUANTITY DATA FOR INDIVIDUAL MEMBERS OF THE DIOXIN AND DIOXIN—LIKE COMPOUNDS CATEGORY UNDER EPCRA, SECTION 313

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: Under section 313 of the Emergency Planning and Community Right—to—Know Act (EPCRA) (i.e., the Toxics Release Inventory (TRI)), dioxin and dioxin—like compounds are reported in units of grams for the category. This project will add toxic equivalency (TEQ) reporting for the category and quantity data for individual members of the category to the grams only reporting currently required for the category under EPCRA section 313. TEQs are a weighted quantity measure based on the toxicity of each dioxin congener relative to the most toxic dioxin congeners, 2,3,7,8—tetrachlorodibenzo—p—dioxin and 1,2,3,7,8—pentachlorodibenzo—p—dioxin. The addition of TEQ reporting will allow better understanding of the releases and waste management quantities currently reported to the TRI for dioxin and dioxin—like compounds. TEQ reporting will also make it easier to compare TRI data on dioxin and dioxin—like compounds with other EPA activities which present data on dioxin and dioxin—like compounds in terms of TEQs. Several industry groups have written OMB supporting the addition of TEQ reporting to TRI.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 4692. TRI has not converted to NAICS so the Standard Industrial Classification (SIC) Codes are listed: SIC Code 10 Metal Mining (except SIC codes 1011, 1081, and 1094), SIC Code 12 Coal Mining (except SIC code 1241), SIC Code 20—39 Manufacturing, SIC Codes 4911, 4931, and 4939 Electric Utilities (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), SIC Code 4953 Commercial Hazardous Waste Treatment (limited to facilities regulated under the RCRA, subtitle C, 42 U.S.C. section 6921 et seq.), SIC Code 5169 Chemicals and Allied Products—Wholesale, SIC Code 5171 Petroleum Bulk Terminals and Plants, SIC Code 7389 Solvent Recovery Services (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis).

URL For More Information: www.epa.gov/tri

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RIN: 2025–AA12

3462. TRADE SECRECY CLAIMS FOR EMERGENCY PLANNING AND COMMUNITY RIGHT—TO—KNOW INFORMATION; AND TRADE SECRET DISCLOSURES TO HEALTH PROFESSIONALS; AMENDMENT

Priority: Info./Admin./Other

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048

CFR Citation: 40 CFR 350.16; 40 CFR 350.17; 40 CFR 350.27

Legal Deadline: None

Abstract: On July 29, 1988, EPA published the procedures for claims of trade secrecy made by facilities reporting under sections 303(d)(2) and (d)(3), 311, 312, and 313 of the Emergency Planning and Community Right—to—Know Act (EPCRA), codified in 40 CFR part 350, including where to mail these claims. EPA also published the trade secrecy substantiation forms in the final rule. This rule amends the regulations published in 1988 to change the location to submit claims and appeals. This rule also amends the regulations to remove the substantiation forms for trade secrecy claims.

The regulations promulgated in July 1988 allows EPA to disclose to authorized representatives including contractors and subcontractors to EPA who perform work for EPA in connection with EPCRA regulations. For handling trade secret claims, EPA has contracted to a private firm, and this contract is recompleted every three years. Section 350.16 lists the address of the contractor location which is now outdated, this action will reflect this change. Another revision will be to change EPA's address in section 350.17 since EPA is at a new location. The last revision is to remove the substantiation form in section 350.27 and make it available on the program office's website. This is needed since the Office of Management and Budget (OMB) approves the form every three years during the renewal of Information Collection Requirement submitted under the Paperwork Reduction Act. The date that appears on the form for OMB approval is also outdated. Since the address to mail the trade secrecy claims and the OMB approval date may change periodically, the Agency has decided to refer to the program offices website for this informaion.

This action will not raise any regulatory burden on any entities subject to the requirements under 40 CFR part 350, it is only informing the public of the changes.

Timetable:

Action	Date	FR Cite
NPRM	11/14/03	68 FR 64726
Direct Final Action	11/14/03	68 FR 64719

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4781.

Sectors Affected: 325 Chemical Manufacturing; 32511 Petrochemical Manufacturing; 324 Petroleum and Coal Products Manufacturing; 326 Plastics and Rubber Products Manufacturing

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RIN: 2050–AF10

3463. TRI; RESPONSES TO PETITIONS RECEIVED TO ADD OR DELETE OR MODIFY CHEMICAL LISTINGS ON THE TOXIC RELEASE INVENTORY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 11013 "EPCRA 313"

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: This is an ongoing action to cover all chemical petitions received by the TRI Program. These actions grant or deny petitions received to add or delete or modify chemicals on the list of toxic chemicals under section 313 of the Emergency Planning and Community Right to Know Act (EPCRA) that are subject to reporting under the Toxic Chemical Release Reporting Rule. The actions cover individual chemicals or groups of chemicals for which petitions have been received.

Timetable:

Action	Date	FR Cite
Notice—DBNPA	10/27/95	60 FR 54949
NPRM—Diisononyl phthalate	09/05/00	65 FR 53681
Report—Alloys	08/22/01	66 FR 44107
Final—DBNPA	08/00/04	
Response—Acetonitrile	09/00/04	
Response—Chromium Antimony Titanate	09/00/04	
Final—Diisononyl Phthalate	02/00/05	
Response—Nitrogen Tetroxide	03/00/05	
Response—19 Volatile Corrosion Inhibitor Chemicals	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 2425. Formerly listed as RIN 2070—AC00. Statutory deadline: Within 180 days of receipt the Agency must either initiate rulemaking or explain why not in the Federal Register. Manufacturing industries in SIC codes 20—39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products—Wholesale (SIC code 5169); Petroleum Bulk Terminals and Plants (SIC code 5171); and, Solvent Recovery Services (SIC code 7389).

URL For More Information:
www.epa.gov/tri

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RIN: 2025–AA00

EPA—Emergency Planning and Community Right—to—Know Act (EPCRA) Final Rule Stage

3464. TOXIC CHEMICAL RELEASE REPORTING USING NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS)

Priority: Info./Admin./Other

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Office of Management and Budget (OMB) published a Federal Register Notice of final decision (62 FR 68) to adopt the North American Industry Classification System (NAICS) for the United States. This rulemaking initiates the conversion from TRI Reporting using Standard Industrial Classification (SIC) codes to TRI Reporting using NAICS codes. The TRI Program will convert to NAICS without producing any changes in the facilities that are now subject to TRI reporting. Therefore, there should be no increased burden resulting from this action.

Timetable:

Action	Date	FR Cite
NPRM	03/21/03	68 FR 13872
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4595.

Sectors Affected: 212 Mining (except Oil and Gas); 221 Utilities; 562 Waste Management and Remediation Services; 422 Wholesale Trade, Nondurable Goods

URL For More Information: www.epa.gov/tri

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RIN: 2025–AA10

Environmental Protection Agency (EPA) Long-Term Actions
Emergency Planning and Community Right—to—Know Act (EPCRA)

3465. EMERGENCY PLANNING AND COMMUNITY RIGHT—TO—KNOW ACT: AMENDMENTS AND STREAMLINING RULE

Priority: Other Significant

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048; 42 USC 11021; 42 USC 11022

CFR Citation: 40 CFR 355; 40 CFR 370

Legal Deadline: None

Abstract: This rule will address the remaining issues from the proposed rule of June 8, 1998. (Reporting thresholds for gasoline and diesel fuel at retail gas stations were included in a separate final rule; 64 FR 7031, February 11, 1999.) This supplemental proposal will address reporting thresholds for chemicals that pose minimal risk. The final rule to the June 8, 1998 proposal and this supplemental proposal will address: reporting thresholds for rock salt, sand, gravel and other chemicals that pose minimal risk; plain language rewrite; and may consider reporting thresholds for facilities with some similarities to gas stations (motor pools, marinas, etc.) and guidance on approaches to State flexibility.

This supplemental rule, when finalized, will minimize burden for those facilities that are currently reporting chemicals that pose minimal risk under sections 311 and 312 of the Emergency Planning and Community Right—to—Know Act. This rule, when finalized, may also reduce the number of facilities subject to these reporting requirements. The reporting requirements under sections 311 and 312 are intended to enhance communities' and emergency response officials' awareness of chemical hazards; to facilitate the development of State and local emergency response plans; and to aid communities and emergency response officials in preparing for and responding to emergencies safely and effectively. By proposing to provide relief from routine reporting of substances with minimal hazards and minimal risk, state and local officials can focus on chemicals that may pose more significant hazard or may present greater risks to the community.

Timetable:

Action	Date	FR Cite
NPRM	06/08/98	63 FR 31268
Supplemental NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: SAN 3215.

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RIN: 2050–AE17

3466. RESPONSE TO A PETITION REQUESTING DELETION OF PHOSMET FROM THE EXTREMELY HAZARDOUS SUBSTANCES (EHS) LIST

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048

CFR Citation: 40 CFR 355

Legal Deadline: None

Abstract: EPA has received a petition requesting that phosmet be removed from the list of Extremely Hazardous Substances (EHS) list under the Emergency Planning and Community Right—to—Know Act (EPCRA). The petitioner claims that phosmet does not meet the acute toxicity criteria for listing. EPA has proposed a rule to delete the chemical from the EHS list and is seeking public comment on the acute toxicity data reviewed and EPA's proposal.

EPA considered conducting additional toxicity testing to solve a dispute involving some questionable toxicity data. However, the petitioner conducted new tests; the results of which EPA considered in its decision to propose a deletion of the chemical.

Since the action involves delisting phosmet (a pesticide) from a regulated list of chemicals, EPA anticipates no additional costs on regulated entities, which include the petitioner, distributors of pesticides and farm uses of the pesticides. This action, if finalized, would reduce the regulatory burden for facilities that handle phosmet onsite, as well as Local Emergency Planning Committees, of complying with the emergency planning and notification requirements for the chemical phosmet under EPCRA sections 302, 303, and 304.

Timetable:

Action	Date	FR Cite
NPRM	11/12/03	68 FR 64041
NPRM Comment Period End	01/12/04	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3994.

Sectors Affected: 42291 Farm Supplies Wholesalers; 11133 Noncitrus Fruit and Tree Nut Farming; 111421 Nursery and Tree Production

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RIN: 2050–AE42

3467. EMERGENCY PLANNING AND COMMUNITY RIGHT—TO—KNOW ACT: MODIFICATION TO THE THRESHOLD PLANNING QUANTITY METHODOLOGY FOR THE EXTREMELY HAZARDOUS SUBSTANCES THAT ARE SOLIDS IN SOLUTION.

Priority: Other Significant

Legal Authority: 42 USC 11001

CFR Citation: 40 CFR 355

Legal Deadline: None

Abstract: EPA is considering an alternative approach for the threshold planning quantity (TPQ) for chemicals on the Extremely Hazardous Substances (EHS) List that are handled as solids in solution. The current TPQ for solids in solution is based on a very conservative assumption that the entire quantity of the solid chemical at a facility could potentially be released to air in event of an accident. EPA will propose a rule to revise the TPQ for solids in solution and seek comment on an alternative approach based on industry's request to revisit the TPQ rationale for the chemical paraquat dichloride (handled as a solid in aqueous solution). Use of this experimental data would likely raise the TPQ for solids in solution and result in relieving some facilities (number and type unknown at this time) from the regulatory emergency planning and notification requirements under Section 302—304 of the Emergency Planning and Community Right—to—Know Act (EPCRA). EPA will evaluate various experimental data for accidental air releases of solutions containing solid chemicals when developing revised TPQs. EPA would also seek public comment on the appropriateness of considering aerosol size as a factor for potential off—site exposure to communities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN 4753.

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RIN: 2050–AF08

3468. TRI; REVIEW OF CHEMICALS ON THE ORIGINAL TRI LIST

Priority: Other Significant

Legal Authority: 42 USC 1101 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: When TRI was established by Congress in 1986, the statutory language placed 309 chemicals and 20 categories of chemicals on the TRI list; that is referred to as the original TRI list. The chemicals on the original list were taken from two existing lists of toxic substances: the Maryland Chemical Inventory Report List of Toxic or Hazardous Substances, and the New Jersey Environmental Hazardous Substances list. This action constitutes the first systematic review of toxicology and environmental data for all the chemicals on the original TRI list to determine whether data for those chemicals conform with the statutory criteria for listing of chemicals on TRI. Chemicals for which data do not meet the statutory criteria will be delisted.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4015. Formerly listed as RIN 2070—AD18.

AFFECTED SECTORS: Manufacturing industries in SIC codes 20—39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products—Wholesale (SIC code 5169) Petroleum Bulk Terminals and Plants (SIC code

5171); and Solvent Recovery Services (SIC code 7389).

URL For More Information: www.epa.gov/tri

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RIN: 2025–AA03

3469. TRI; REVISIONS TO THE OTHERWISE USE ACTIVITY EXEMPTIONS AND THE COAL EXTRACTION ACTIVITIES EXEMPTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Toxics Release Inventory (TRI) requires reporting from facilities that manufacture or process at least 25,000 pounds of a listed non—PBT chemical, or otherwise use 10,000 pounds of a listed non—PBT chemical. The activity thresholds are lower for listed PBT chemicals. In determining amounts of listed chemicals that are manufactured, processed or otherwise used, facilities may consider specific exemptions from reporting. EPA is presently reviewing a group of these exemptions. The categories of exemptions presently being reconsidered by EPA are the personal use exemption, and the motor vehicle maintenance exemption. Also known as otherwise use exemptions because they are limited to otherwise use activities, these exemptions are expressly provided for at 40 CFR 372.38(c). EPA is also considering changes to the coal mining extraction activities exemption provided for at 40 CFR 372.38(g).

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 4265. Formerly listed as RIN 2070—AD39. By Statute and Regulation, this rule will affect SIC codes 20—39, 10 (except SIC codes 1011, 1081, 1094), 12 (except SIC code 1241), 4911, 4931, 4939, 4953, 5169, 5171, and 7389.

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RIN: 2025–AA06

3470. TRI; POLLUTION PREVENTION ACT INFORMATION REQUIREMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 11013 "Pollution Prevention Act"

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: Section 6607(b) of the Pollution Prevention Act of 1990 (PPA) (Pub. L. 101—508) requires the addition of several data elements to the Toxic Chemical Release Inventory (TRI) reporting requirements as promulgated under section 313 of the Emergency Planning and Community Right—to—Know Act of 1986 (EPCRA) (Pub. L. 99—499). Section 313 of EPCRA requires owners or operators of certain facilities that manufacture, process, or otherwise use listed toxic chemicals to annually report their releases of these chemicals to each environmental medium. The PPA mandates that section 313 covered facilities also report on source reduction and recycling activities relating to the toxic chemicals beginning with the 1991 reporting year. Since 1991 covered facilities have been providing this information to EPA in section 8, Source Reduction and Recycling Activities, of EPA Form R. On September 25, 1991 (56 FR 48475), EPA proposed regulations which would provide definitions and instructions for reporting the PPA data elements on the EPA Form R. In this action, EPA will amend certain aspects of the September 25, 1991, proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48475
Notice of receipt	03/31/99	64 FR 15324
Response	To Be	Determined
Supplemental NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 2847. Formerly listed as RIN 2070—AC24. Affected Sectors Include: Manufacturing industries in SIC codes 20—39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products—Wholesale (SIC code 5169); Petroleum Bulk Terminals and Plants (SIC code 5171); and, Solvent Recovery Services (SIC code 7389).

URL For More Information: www.epa.gov/tri

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RIN: 2025–AA09

Environmental Protection Agency (EPA) — Completed Actions

Emergency Planning and Community Right—to—Know Act (EPCRA)

3471. EMERGENCY PLANNING AND COMMUNITY RIGHT—TO—KNOW ACT; EXTREMELY HAZARDOUS SUBSTANCES LIST; MODIFICATION OF THRESHOLD PLANNING QUANTITY FOR ISOPHORONE DIISOCYANATE

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 355

Completed:

Reason	Date	FR Cite
Final Action	09/02/03	68 FR 52978

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2050–AE43

3472. TRI; CHEMICAL EXPANSION; FINALIZATION OF DEFERRED CHEMICALS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 40 CFR 372

Completed:

Reason	Date	FR Cite
Withdrawn	09/09/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2025–AA01

Environmental Protection Agency (EPA) — Proposed Rule Stage

Resource Conservation and Recovery Act (RCRA)

3473. REVISIONS TO THE COMPREHENSIVE GUIDELINE FOR PROCUREMENT OF PRODUCTS CONTAINING RECOVERED MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6912(a) "RCRA 6002(e)"

CFR Citation: 40 CFR 247

Legal Deadline: None

Abstract: RCRA section 6002 and E.O. 13101 require EPA to prepare guidelines in the Federal Register which designate items that are or can be made with recovered materials and to issue recommendations for government procurement of these items. Once designated, procuring agencies are required to purchase these items with the highest percentage of recovered materials practicable. Government procurement of EPA-designated items containing recovered materials fosters markets for recovered materials and, thereby, closes the recycling loop. To date, EPA has designated 54 items under three Comprehensive Procurement Guidelines (CPG1, CPG2 and CPG3). EPA has also issued a Recovered Materials Advisory Notice (RMAN) with each CPG which provides recommendations on buying the designated items. The E.O. requires EPA to update the CPG every two years. EPA will propose item designations in CPG5. Shortly afterwards, EPA will issue final item designations in CPG4. EPA recently published a Notice of Data Availability for a prospective designation of nylon carpet.

Timetable:

Action	Date	FR Cite
Notice—PPRMA	06/08/98	63 FR 31214
Notice—RMAN1	06/08/98	63 FR 31217
NPRM	08/26/98	63 FR 45558
Final—CPG3—RMAN3	01/19/00	65 FR 3069
Notice—NAFD	01/19/00	65 FR 3082
NPRM—CPG4—RMAN4	08/28/01	66 FR 45256
Notice	07/16/03	68 FR 42040
NPRM—CPG5	12/00/03	
Final—CPG4—RMAN4	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN 3545.

Sectors Affected: 92111 Executive Offices; 92119 All Other General Government

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RIN: 2050–AE23

3474. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS

Regulatory Plan: This entry is Seq. No. 110 in part II of this issue of the **Federal Register**.

RIN: 2050–AE81

3475. REVISIONS TO SOLID WASTE LANDFILL CRITERIA—LEACHATE RECIRCULATION ON ALTERNATIVE LINERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6944; 42 USC 6949a

CFR Citation: 40 CFR 258

Legal Deadline: None

Abstract: EPA plans to propose a rule to allow leachate recirculation over alternative liner systems which meet the performance standard specified by the municipal solid waste landfill (MSWLF) criteria. The performance determination would be made by the state director of an approved MSWLF program. EPA also plans to propose a new section to the MSWLF criteria which will allow the alternative of clean closure of landfills rather than require the installation of a landfill cap, which would allow the solid waste in the MSWLF to be totally removed from the site and be properly disposed of at another site. Finally, EPA plans to propose an additional factor to 258.54 for determining the frequency of ground water monitoring for the detection monitoring program specified in this subpart. The additional factor for consideration concerns liner performance where there is some direct system for determining liner performance. However, the minimum monitoring frequency would still be no less than once a year as stated in the existing regulation.

The Federal role is to establish minimum protective criteria (part 258). This proposal will allow additional flexibility for facility managers of municipal landfills to achieve compliance with the criteria. By providing additional flexibility this proposal will reduce potential costs while providing alternative means of environmental protection.

Timetable:

Action	Date	FR Cite
NODA	04/06/00	65 FR 18014
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State, Tribal

Additional Information: SAN 4230.

Sectors Affected: 562 Waste Management and Remediation Services

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RIN: 2050–AE67

3476. INCREASE METALS RECLAMATION FROM F006 WASTE STREAMS

Regulatory Plan: This entry is Seq. No. 111 in part II of this issue of the **Federal Register**.

RIN: 2050–AE97

3477. REVISIONS OF THE LEAD—ACID BATTERY EXPORT NOTIFICATION AND CONSENT REQUIREMENTS

Priority: Other Significant

Legal Authority: 42 USC 6901 et seq

CFR Citation: 40 CFR subpart G 266.80 (a)

Legal Deadline: None

Abstract: Currently, generators, transporters and facilities that reclaim but do not store spent lead—acid batteries are exempt from hazardous waste management requirements, as specified in 40 CFR part 266 subpart G. Spent lead—acid batteries destined for export/reclamation are not, therefore, subject to RCRA manifesting or export notification and consent requirements specified in 40 CFR part 262. Allowing the export of spent lead—acid batteries without prior notice and consent of the receiving country is not consistent with widely—accepted international practices. Similarly, the exemption contrasts with more recent Universal Waste requirements in 40 CFR part 262, which require export notice and consent for comparable waste streams. The purpose of this regulation is to modify the spent lead—acid battery exemption to require appropriate notice and consent for those batteries intended for export.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	
Final Action	08/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN 4778.

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RIN: 2050–AF06

3478. LAND DISPOSAL RESTRICTIONS: DETERMINATION OF EQUIVALENT TREATMENT FOR MACROENCAPSULATION OF RADIOACTIVE LEAD SOLIDS; DEFINITION OF MACROENCAPSULATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6924

CFR Citation: 40 CFR 268.42

Legal Deadline: None

Abstract: EPA anticipates taking action to grant a national determination of equivalent treatment petition at the request of the Department of Energy. Currently the use of containers is prohibited for the disposal of radioactive lead solids by regulations at 40 CFR 268.42. This necessitates the segradation and separation of radioactive lead solids from other debris. Containers of high density polyethylene (HDPE) can be constructed that provide a resistant barrier to degradation by the wastes and materials into which it may come into contact after disposal. Revision of current regulation will be required to allow the use of such HDPE containers for waste primarily consisting of radioactive lead solids. We believe these changes in disposal practices will promote more efficient cleanup of contaminated sites by removing a regulatory distinction between radioactive lead solids and other forms of hazardous debris, reduce worker exposures, and promote further advancement in new technologies for disposal. The use of containers are expected to be less costly than extrusion coatings and, therefore, this action would be cost neutral to cost beneficial to the Department of Energy and other generators of radioactive lead solids.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	
Direct Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4743. Action is of equivalent regulatory stringency. States and Tribes will not be required to adopt rule.

EPA—Resource Conservation and Recovery Act (RCRA) Proposed Rule Stage

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RIN: 2050–AF12

3479. NESHAPS: STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR HAZARDOUS WASTE COMBUSTORS

Regulatory Plan: This entry is Seq. No. 109 in part II of this issue of the **Federal Register**.

RIN: 2050–AE01

3480. • REGULATORY AMENDMENTS TO THE F019 HAZARDOUS WASTE LISTING TO EXCLUDE THE WASTEWATER TREATMENT SLUDGES FROM THE CHEMICAL CONVERSION COATING PROCESS (ZINC PHOSPHATING) OF AUTOMOBILE BODIES OF ALUMINUM

Regulatory Plan: This entry is Seq. No. 113 in part II of this issue of the **Federal Register**.

RIN: 2050–AG15

3481. • RCRA INCENTIVES FOR PERFORMANCE TRACK MEMBERS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 262; 40 CFR 264; 40 CFR 265; 40 CFR 268; 40 CFR 279

Legal Deadline: None

Abstract: The Performance Track program provides recognition and incentives for facilities that demonstrate to the Agency that they are top environmental performers. Performance Track is a voluntary, facility based program that reviews applicants twice a year for conformance to four core criteria. These criteria are: a commitment to continuous improvement, a well—functioning Environmental Management system in place for at least one year, a solid record of compliance, and a commitment to community outreach and annual public reporting. Currently there are about 320 members in Performance Track. In this action, EPA plans to propose permit modifications, performance based standards for tanks and generator standards, and reduced duplication between RCRA and CAA standards. These incentives will be available only to facilities that are members of the Performance Track program. Should a facility choose to leave the program, any regulatory benefits they receive will no longer be available. Performance Track facilities commit to environmental improvements that reach beyond regulatory compliance, and as such benefits are quantifiable via each member facilities' annual report, and in aggregate through EPA's progress reports on the program. In EPA's first Performance Track progress report, member facilities collectively reduced: energy use by 1.1 million mmBtus, water use by 475 million gallons, hazardous materials use by 908 tons, emissions of volatile organic compounds (VOCs) by 329 tons, emissions of air toxics by 57 tons, emission of nitrogen oxides (NOx) by 152 tons, discharges to water of biochemical oxygen demand (BOD), chemical oxygen demand (COD), and total suspended solids (TSS) by 1,227 tons, toxic discharges to water 5,543 tons, solid waste by 150,000 tons, and hazardous waste by 692 tons.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4828.

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RIN: 2090–AA34

Environmental Protection Agency (EPA) Final Rule Stage
Resource Conservation and Recovery Act (RCRA)

3482. STANDARDIZED PERMIT FOR RCRA HAZARDOUS WASTE MANAGEMENT FACILITIES

Regulatory Plan: This entry is Seq. No. 123 in part II of this issue of the **Federal Register**.

RIN: 2050–AE44

3483. MANAGEMENT OF CEMENT KILN DUST (CKD)

Regulatory Plan: This entry is Seq. No. 122 in part II of this issue of the **Federal Register**.

RIN: 2050–AE34

3484. METHODS INNOVATION RULE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925; 42 USC 6926; 42 USC 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6936; 42 USC 6937; 42 USC 6938; 42 USC 6939; 42 USC 6974; 42 USC 9601; 42 USC 9614(c)

CFR Citation: 40 CFR 258; 40 CFR 260; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270; 40 CFR 279

Legal Deadline: None

Abstract: EPA's process for releasing analytical methods through the SW—

846 methods compendium which support the RCRA program, has been through publishing FR notices and taking public comment. SW—846 methods are widely used, but the majority of the methods are not required by any particular regulation. Therefore, EPA has proposed a streamlined process for releasing analytical methodologies to the public, while also promoting the Performance Base Measurement Approach in the Methods Innovation Proposed Rule (MIR) (FAR: 67FR 66252 (October 30, 2002). The comment period was extended until February 28, 2003. In addition EPA has been working to break down the barriers that the environmental monitoring community faces when trying to use new monitoring techniques. As a first step, EPA has accelerated its review process for new methods by eliminating several unnecessary internal review steps. However, there are currently 32 citations in title 40 of the Code of Federal Regulations (CFR) where the use of SW—846 methods is required. As a second step for speeding up the approval process, EPA proposed to remove the requirements to use SW—846 methods for other than method defined parameters (i.e., where the method defines the regulations, such as the Toxicity Characteristic Leaching Procedure) from 40 CFR. This action will likely lead to an even more streamlined approval process since SW—846 will then be able to be handled strictly as guidance and not need the regulatory process for approval. This additional streamlining will permit new, more cost—effective methods to attain public and regulatory authority acceptance in much less time, allowing required monitoring to be done more cheaply, faster and, in some cases, more accurately. The MIR and previous method packages have been exempt from OMB review and SBREFA analysis due the nature of the guidance and it's voluntary use.

Since many advances have occurred in waste sampling strategies since initial guidance was published in 1984, along with the proposal EPA has announced the availability of a new guidance document for public comment entitled, "RCRA Waste Sampling Draft Technical Guidance." One main advantage to releasing the guidance is that the document provides new approaches to waste sampling, with real life examples which we expect will lead to improved ability to characterize waste streams. We believe that the release of this MIR and Waste Sampling Guidance will be widely accepted by the regulated, scientific, and academic community because they provide state of the art approaches for determining hazardous waste and sampling characteristic techniques.

Timetable:

Action	Date	FR Cite
NPRM	10/30/02	67 FR 66252
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 3989.

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RIN: 2050–AE41

3485. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6944; 42 USC 6949a; 42 USC 6981(a)

CFR Citation: 40 CFR 258.4

Legal Deadline: None

Abstract: EPA is considering adding a new section to the Criteria for Municipal Solid Waste Landfills (MSWLF) to allow directors of approved states to issue research, development, and demonstration (RD&D) permits for landfill operations at variance with some parts of the criteria, as long as it is demonstrated that these operations will not result in an increased risk to human health and the environment. Variances for location restrictions, design standard groundwater monitoring, corrective action requirements, the financial assurance criteria, and most operational controls would not be allowed by this action. EPA is considering this alternative to stimulate new technologies and alternatives in the landfilling of municipal solid waste. This additional flexibility may reduce potential costs while providing opportunities for innovative technologies that protect human health and the environment.

Timetable:

Action	Date	FR Cite
NODA	04/06/00	65 FR 18014
NPRM	06/10/02	67 FR 39662
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN 4588. Split from RIN 2050—AE67.

Sectors Affected: 562 Waste Management and Remediation Services

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RIN: 2050–AE92

3486. HAZARDOUS WASTE MANIFEST REGULATION

Regulatory Plan: This entry is Seq. No. 121 in part II of this issue of the **Federal Register**.

RIN: 2050–AE21

3487. OFFICE OF SOLID WASTE BURDEN REDUCTION INITIATIVE

Regulatory Plan: This entry is Seq. No. 124 in part II of this issue of the **Federal Register**.

RIN: 2050–AE50

3488. MODIFICATIONS TO RCRA RULES ASSOCIATED WITH SOLVENT—CONTAMINATED INDUSTRIAL WIPES

Priority: Other Significant

Legal Authority: 42 USC 6921

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: EPA proposed to modify the RCRA regulations for management of solvent—contaminated industrial wipes in response to stakeholder concerns that industrial wipes are over—regulated because they pose little threat to human health and the environment. Industrial wipes are used with solvents across industry in various ways; EPA estimates that there are approximately 471,000 users of industrial wipes in 13 economic subsectors, but many users use small numbers of wipes with small amounts of solvents on them.

This proposed regulation, upon finalization, would provide regulatory relief for two types of solvent—contaminated industrial wipes: (1) Disposable wipes, which are disposed of in a landfill or by combustion after use, and (2) reusable wipes, which are laundered after use to remove the solvent and then are used again. EPA proposed to conditionally exclude disposable industrial wipes from the definition of hazardous waste and to conditionally exclude reusable industrial wipes from the definition of solid waste.

The regulation is estimated to result in $34 million of savings throughout the economy and has been developed with conditions to ensure that management of these solvents remains protective of human health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	11/20/03	68 FR 65586

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 4091.

Sectors Affected: 325 Chemical Manufacturing; 334 Computer and Electronic Product Manufacturing; 332 Fabricated Metal Product Manufacturing; 337 Furniture and Related Product Manufacturing; 333 Machinery Manufacturing; 441 Motor Vehicle and Parts Dealers; 812 Personal and Laundry Services; 323 Printing and Related Support Activities; 811 Repair and Maintenance; 336 Transportation Equipment Manufacturing

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RIN: 2050–AE51

3489. RECYCLING OF CATHODE RAY TUBES (CRTS) AND MERCURY—CONTAINING EQUIPMENT: CHANGES TO HAZARDOUS WASTE REGULATIONS

Regulatory Plan: This entry is Seq. No. 125 in part II of this issue of the **Federal Register**.

RIN: 2050–AE52

3490. REVISIONS TO THE DEFINITION OF SOLID WASTE

Priority: Other Significant

Legal Authority: 42 USC 6903"RCRA sec 1004"

CFR Citation: 40 CFR 261.2

Legal Deadline: None

Abstract: Under RCRA, to be a hazardous waste, a material must also be a solid waste. EPA's framework for determining whether a material is a solid waste is based on what the material is, and how it's managed (e.g., how it is used, reused, etc.). For materials being recycled, RCRA jurisdiction is complex, and the history of legal decisions related to the definition of solid waste is extensive (AMC I, API I, AMC II, ABR, API II, etc.). In response to American Mining Congress v. EPA, 824 F. 2d 1177(D.C. Cir. 1987) (AMC I) and one of the most recent decisions, the Association of Battery Recyclers, v. EPA 208 F.3d 1047 (2000) (ABR), EPA proposed to revise the definition of solid waste. The proposed rule specifically addressed materials undergoing reclamation. In the context of reclamation, we discussed options for how to distinguish materials that are discarded from materials that remain in use in a continuous industrial process and we proposed a definition of "continuous industrial process." Generally, we believe that removing the specter of RCRA control where it is not necessary can spur increased reuse and recycling of hazardous waste, and will lead to better resource conservation and improved materials management overall.

Timetable:

Action	Date	FR Cite
NPRM	10/28/03	68 FR 61558
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN 4670. Nominated for reform in OMB's Report to Congress on the Costs and Benefits of Regulations, Appendix A to revise the definition of solid waste rule to grant an exemption from RCRA for materials destined for recycling or reuse. OMB has given it a medium priority level.

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RIN: 2050–AE98

3491. PROJECT XL — ORTHO—MCNEIL PILOT PROJECT ALLOWING ON—SITE TREATMENT OF LOW—LEVEL MIXED WASTES WITHOUT RCRA PERMIT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924(y); 42 USC 6938

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This site—specific rulemaking would allow Ortho—McNeil Pharmaceutical (OMP) to treat small volumes of low—level mixed wastes on—site using a bench—scale catalytic oxidizing treatment unit as an alternative to long—term storage and off—site transportation and land disposal at a Nuclear Regulatory Commission (NRC)—licensed, Resource Conservation and Recovery Act permitted Treatment, Storage and Disposal Facility. This treatment effectively destroys the organic component of the wastestream, yielding a residual that is only a low—level radioactive waste and can be disposed at an NRC—licensed low—level radioactive waste disposal facility. OMP is also working with various companies to develop and test recovery technologies that could be used in lieu of disposal.

Timetable:

Action	Date	FR Cite
NPRM	07/24/01	66 FR 38395
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4439.

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RIN: 2090–AA14

3492. PROJECT XL SITE—SPECIFIC RULEMAKING FOR ANNE ARUNDEL COUNTY MILLERSVILLE LANDFILL, SEVERN, MARYLAND

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6945; 42 USC 6949

CFR Citation: 40 CFR 258

Legal Deadline: None

Abstract: Anne Arundel County proposes to demonstrate that a bioreactor with an alternative liner system is as effective or superior to a bioreactor with the standard composite liner currently allowed by regulations. The main goal of this project is to deliver superior environmental performance by capturing the additional airspace gained by accelerated decomposition of the waste. This benefits the County and its citizens by prolonging the life of the landfill and thereby postponing the siting of new solid waste management facilities with their attendant social, environmental, and economic impacts.

Timetable:

Action	Date	FR Cite
NPRM	05/13/03	68 FR 25550
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, State

Additional Information: SAN 4534.

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RIN: 2090–AA25

3493. PROJECT XL SITE—SPECIFIC RULEMAKING FOR THE IBM SEMICONDUCTOR MANUFACTURING FACILITY IN HOPEWELL JUNCTION, NEW YORK

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924(y); 42 USC 6938

CFR Citation: 40 CFR 261.4(a)

Legal Deadline: None

Abstract: This rulemaking provides a site—specific exclusion from the regulatory definition of solid waste for certain wastewater treatment sludges (otherwise designated as Hazardous Waste No. F006) when they are used as ingredients in the production of cement. Without this exclusion, the sludges being legitimately recycled as substitutes for raw materials would remain subject to hazardous waste regulatory requirements, including the need for a storage permit by the cement manufacturer, which is a major disincentive to recycling the sludges in this manner. This XL project tests the presumption that these sludges can be safely recycled without regulatory oversight.

Timetable:

Action	Date	FR Cite
NPRM	06/06/01	66 FR 30349
Supplemental NPRM	04/14/03	68 FR 18042
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4565.

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RIN: 2090–AA29

3494. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES — NONPOWER PRODUCERS AND MINEFILLING

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 6907(a)(3); 42 USC 6944

CFR Citation: 40 CFR 257

Legal Deadline: None

Abstract: This action is for the development of nonhazardous waste regulations under subtitle D of the RCRA statute. The regulations will apply to landfill and surface impoundment facilities that manage coal combustion wastes generated by nonutility combustors. Nonutility combustors are commercial, industrial, and institutional facilities that burn coal in boilers to generate steam. The regulations will also apply to mine facilities where any coal combustion wastes are managed, (i.e., backfilled into mined areas). This action results from EPA's regulatory determination for fossil fuel combustion wastes (see 65 FR 32214, May 22, 2000), in which the Agency concluded that coal combustion wastes could pose significant risks to human health and the environment if they are not properly managed. As described in the regulatory determination, there is sufficient evidence that adequate controls may not be in place. The intended benefits of this action will be to prevent contamination or damage to ground waters and surface waters, thereby avoiding risk to human health and the environment, including ecological risks. The Agency has completed information collection efforts and is currently analyzing this information. The Agency will also analyze the human health and ecological risks, costs, and economic impact of this action as it develops the proposed regulations. The Agency has considered alternatives to this action, including regulating these wastes as hazardous wastes under subtitle C of RCRA, but has rejected this approach as discussed in the regulatory determination (see 65 FR 32214, May 22, 2000). EPA has also considered issuing guidance to industry and state and local governments to focus on the waste management issues but concluded that there will probably continue to be some gaps in practices and controls and is concerned at the possibility that these will go undressed. The Agency is considering alternatives to regulation of mine placement under RCRA per this action, including consulting with the U.S. Department of the Interior on appropriate measures under the Surface Mining Control and Reclamation Act (SMCRA) or some combination of both SMCRA and RCRA.

Timetable:

Action	Date	FR Cite
NPRM	07/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

Additional Information: SAN 4469. This rule may also impact Federal, State, local or tribal governments that own/operate coal—burning facilities (excluding facilities that primarily generate electric power for sale) or coal mines that accept coal combustion wastes.

Sectors Affected: 325 Chemical Manufacturing; 2121 Coal Mining; 22112 Electric Power Transmission, Control and Distribution; 311 Food Manufacturing; 337 Furniture and Related Product Manufacturing; 62 Health Care and Social Assistance; 322 Paper Manufacturing; 331 Primary Metal Manufacturing; 313 Textile Mills; 336 Transportation Equipment Manufacturing

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RIN: 2050–AE83

3495. REGULATION OF HAZARDOUS OIL—BEARING SECONDARY MATERIALS FROM PETROLEUM REFINING INDUSTRY AND OTHER HAZARDOUS SECONDARY MATERIALS PROCESSED IN A GASIFICATION SYSTEM TO PRODUCE SYNTHESIS GAS—FINAL RULE

Priority: Other Significant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925; 42 USC 6926; 42 USC 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937; 42 USC 6938; 42 USC 6939; 42 USC 6974

CFR Citation: 40 CFR 260; 40 CFR 261

Legal Deadline: None

Abstract: The U.S. Environmental Protection Agency (EPA) is considering finalizing revisions to the RCRA hazardous regulations to exclude oil—bearing secondary materials, generated by the petroleum refining industry and others, from the definition of solid waste if the materials are destined to be processed in a gasification device manufacturing synthesis gas fuel. We are considering this exclusion in order to clarify and simplify RCRA jurisdiction, and to be consistent with other comparable existing exclusions.

Timetable:

Action	Date	FR Cite
NPRM	03/25/02	67 FR 13684
Final Action	01/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4411. This is an extension of a previous notice that contained the following RIN 2050—AD88.

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RIN: 2050–AE78

3496. RCRA BURDEN REDUCTION INITIATIVE, PHASE 2

Priority: Other Significant

Legal Authority: 42 USC 6907; 42 USC 6912(a); 42 USC 6921 to 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937 to 6939; 42 USC 6944; 42 USC 6949(a); 42 USC 6974; PL 104—13

CFR Citation: 40 CFR 260.31; 40 CFR 261.4; 40 CFR 261.38; 40 CFR 264.16; 40 CFR 264.52; 40 CFR 264.56; 40 CFR 264.73; 40 CFR 264.98 et seq; 40 CFR 265.16; 40 CFR 265.52; 40 CFR 265.56; 40 CFR 265.73; 40 CFR 265.98 et seq; 40 CFR 266.103; 40 CFR 268.7, 268.9; 40 CFR 270.16, 270.17

Legal Deadline: None

Abstract: As part of its response to the Paperwork Reduction Act, EPA formed the RCRA Burden Reduction Initiative. The Agency is reviewing additional burden reduction opportunities, some of which were proposed but not included in the Burden Reduction Initiative final rule. Additionally, EPA will look for opportunities for burden reduction within the biennial report. Moving from a paper system to an electronic system focused on information gathered and generated by treatment, storage, and disposal facilities may provide for significant burden reduction savings.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4735.

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RIN: 2050–AF01

3497. E—CYCLING PILOT PROJECT FOR REGION 3 STATES (ECOS); STREAMLINING RCRA REGULATIONS TO ENCOURAGE REUSE, RECYCLING, AND RECOVERY OF ELECTRONIC EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924(y); 42 USC 6938

CFR Citation: 40 CFR 261.4(a)(24); 40 CFR 261.40

Legal Deadline: None

Abstract: This project is the result of an Environmental Council of States (ECOS) partnership agreement that EPA Region 3 entered into with the six State environmental agencies. As part of the partnership agreement, the region agreed to prepare a regional rule and to expedite its promulgation by using the direct final rulemaking process. By using this innovative approach to have a regional e—Cycling Pilot Project, EPA Region 3 and the Mid—Atlantic States (DE, DC, MD, PA, VA, WV) will be able to provide additional information about EPA's national proposed cathode ray tube (CRT) exclusion from the definition of solid waste. (CRTs are the video display components of televisions and computer monitors.) The regional e—Cycling Pilot Project could serve as a model for electronic recycling nationwide and the States believe that the recycling program will function effectively as a result of this regulatory flexibility.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/26/02	67 FR 78718
Withdrawal of Direct Final Rule	02/24/03	68 FR 8553
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Additional Information: SAN 4701.

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RIN: 2003–AA00

3498. FINAL DETERMINATION OF THE APPLICABILITY OF THE TOXICITY CHARACTERISTIC RULE TO PETROLEUM CONTAMINATED MEDIA AND DEBRIS FROM UNDERGROUND STORAGE TANKS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6921 "RCRA 3001"

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: In the final hazardous waste toxicity characteristic (TC) rule published in June 1990, EPA decided to temporarily defer application of the TC rule to petroleum—contaminated media and debris, such as soils and groundwater, that result from underground storage tank (UST) corrective actions. This rule is part of the Agency's commitment to make a final determination regarding the UST temporary deferral. The temporary deferral was, in part, based on the Agency's concern that without such a deferral, UST cleanup procedures would be adversely affected, resulting in delays in remedial action and increases in remediation costs. Since this action is deregulatory, there are no adverse effects on small businesses, or on State, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	02/12/93	58 FR 8504
Final Action	12/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN 3189.

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RIN: 2050–AD69

3499. LISTING DETERMINATION AND LDR FOR WASTES GENERATED DURING THE MANUFACTURE OF AZO, ANTHRAQUINONE, AND TRIARYLMETHANE DYES AND PIGMENTS

Priority: Other Significant

Legal Authority: 42 USC 6921 "RCRA 3001"; 42 USC 9602 "CERCLA 102"

CFR Citation: 40 CFR 148; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 268; 40 CFR 271; 40 CFR 302

Legal Deadline: NPRM, Judicial, November 10, 2003, NPRM.
Final, Judicial, February 15, 2005, Final.

Abstract: This action is mandated by the 1984 Hazardous and Solid Waste Amendments and a consent decree (EDF v. Browner, Civil Action No. 89—0598, D.D.C.). This action addresses the potential human health and environmental risks posed by wastes from the manufacture of dyes and pigments, and determines whether these wastes should be listed as hazardous wastes under the Resource Conservation and Recovery Act (RCRA) to control any potentially unacceptable risks. If listed under RCRA, these wastes would also be added to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Upon evaluation of risk assessment modeling results, we will propose whether or not to list the wastes of concern. If relevant, we may include contingencies to focus the listing on particular waste management practices. If we determine that these wastes warrant listing, we will provide the benefit of protecting human health and the environment. At the same time, we plan to provide specific risk—reduction goals for industry, which, if met, will significantly reduce the regulatory burden associated with the listing determination. As of August 2003, we have not yet quantified potential costs associated with this rule. Depending on how the proposal is structured, there may be some small business impacts.

The current action is a reproposal of prior actions. We proposed listing decisions for most of the targeted wastes in 1994, and several other wastes in 1999. The 1994 and 1999 proposals were incomplete because they did not contain information claimed to be confidential by industry (the data are subject to an injunction prohibiting their release). The current action does not rely on the contested data and will replace the 1994 and 1999 proposals. The reproposal will also identify land disposal restrictions for the wastes of concern.

The current action is targeted on wastes from the manufacture of dyes and pigments, with specific emphasis on certain product classes (azos, anthraquinones, triarylmethanes). Manufacturers of these products will need to assess their wastes to determine whether they meet the final listing definitions.

Timetable:

Action	Date	FR Cite
NPRM—Dyes1	12/22/94	59 FR 66072
NPRM—Dyes2	07/23/99	64 FR 40192
NPRM	11/00/04	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN 3066.

Sectors Affected: 325132 Organic Dye and Pigment Manufacturing

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RIN: 2050–AD80

3500. REVISION OF WASTEWATER TREATMENT EXEMPTIONS FOR HAZARDOUS WASTE MIXTURES.

Priority: Other Significant

Legal Authority: 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924; 42 USC 6926

CFR Citation: 40 CFR 261.3(a)(2)(iv)(A) to (G)(Revision)

Legal Deadline: None

Abstract: This revision to the wastewater treatment exemptions for hazardous waste mixtures has been proposed to address inconsistencies in the regulations, as well as provide regulatory relief. Current EPA mixture rule exemptions have not kept up with more recent additions to solvent listings, Clean Air Act regulations, wastewater treatment technology, and policies affecting other hazardous wastes. Therefore, the need exists for a Federal deregulatory solution to resolve these inconsistencies. It is estimated that this rule, if finalized, will save $11 to 49 million in compliance costs. EPA proposed to add two solvents (benzene and 2—ethoxyethanol) to the hazardous waste exemptions for mixtures of spent solvents in wastewater treatment plants (headworks rule) at 40 CFR 261.3(a)(2)(iv)(A) — (B). EPA proposed not to take action on two other solvents, 2—nitropropane and 1,1,2—trichloroethane. In addition, EPA has proposed (1) changing the implementation of the rule from using mass balance only, to choice of using direct monitoring; (2) revising the types of facilities and the types of wastes eligible for the de minimis exemption under section 261.3(a)(2)(iv)(D); and clarifying the applicability of the exemption to scrubber waters from the incineration of spent solvents. Facilities affected by this action include industrial facilities with on—site wastewater treatment plants, commercial wastewater treatment facilities, and certain Federal facilities.

Timetable:

Action	Date	FR Cite
NPRM	04/08/03	68 FR 17233
Final Action	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4501. This rule has been nominated for reform in OMB's Report to Congress on the Costs and Benefits of Regulation, Appendix A. OMB has given it a high priority level.

Sectors Affected: 31-33 Manufacturing; 562 Waste Management and Remediation Services

URL For Public Comments:
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RIN: 2050–AE84

3501. REVISIONS FOR TRANSBOUNDARY SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6901 et seq

CFR Citation: 40 CFR 262 subpart H (Revision)

Legal Deadline: None

Abstract: The Agency is considering changing the existing regulation 40 CFR 262 Subpart H, which regulates transboundary movement of hazardous waste within all countries that are members of the Organization for Economic Cooperation and Development (OECD). This is in response to the fact that there is now approximately $30 to 40 billion in annual trade among developed countries in waste recyclables, with the United States having a positive trade balance. Because each of the developed countries (the 30 OECD countries) had a different system for controlling the exports and imports of waste, including recyclables, the international recycling market was not as efficient as it could be. A more streamlined, uniform system for exports and imports will also increase recycling and lessen disposal. The United States was actively involved in the negotiation of a legally—binding OECD multilateral agreement to create a more streamlined system. OECD Member countries are then obligated to transfer the terms of the multilateral agreement to their domestic regulations in order for the multilateral agreement to have legal authority. This regulation would be amended to comply with changes passed by the OECD Council. Existing waste lists may be restructured to comply with the new OECD waste lists. As such, previously existing waste lists may be renamed according to adopted OECD terminology. Shipments of small waste amounts destined for laboratory analysis may be exempted from filing certain paperwork requirements that are otherwise required. A certificate of recovery may be required upon final recovery of wastes and timeframes for recovery operations may be changed to reflect the decisions made by the OECD Council. This needs to have a Federal solution because international exports and imports are overseen at the Federal level due to the foreign powers authority clause.

Many alternatives were considered by government and industry during the intensive negotiations on the legally binding multilateral agreement, with the U.S. having a great deal of influence over which alternatives were in the final agreement. The Agency plans to codify the streamlining provisions of the OECD multilateral agreement, regulating exporters and importers of waste recyclables.

Exporters and importers of waste recyclables will need to implement the international uniform procedures of the OECD multilateral agreement, however these costs will be less than would be needed to deal with 30 different national export and import systems. In addition, some common existing export and import procedures were streamlined so that the new procedures are even more efficient than was common in the past. The benefits are greater administrative efficiency for U.S. exporters and importers in the international recycling market, and a lower level of waste disposal in the United States since there is more efficient access to other recycling markets.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	
Direct Final Rule	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 4606.

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RIN: 2050–AE93

3502. RCRA SUBTITLE C FINANCIAL TEST CRITERIA (REVISION)

Priority: Other Significant

Legal Authority: 42 USC 6912(a) "RCRA 2002(a)"; 42 USC 6924 "RCRA 3004"; 42 USC 6925 "RCRA 3005"; 42 USC 6926 "RCRA 3006"

CFR Citation: 40 CFR 264; 40 CFR 265; 40 CFR 280; 40 CFR 761

Legal Deadline: None

Abstract: EPA's regulations require companies to provide financial assurance for environmental obligations, and allow companies that meet certain requirements to self insure their environmental obligations for closure, post—closure care and third party liability. EPA proposed a revised financial test because the revised test would be better at predicting which firms will enter bankruptcy and not be able to cover their financial assurance obligations at hazardous waste treatment, storage and disposal facilities. If such a firm were to enter bankruptcy, the government could incur the clean up liability.

EPA's regulations set the minimum national standards for State hazardous waste programs, and so a change in Federal requirements would be necessary to ensure consistent improvements in the test. Without rulemaking, States would have the option of not adopting these changes, and so the improvement in the test would not be implemented in States that cannot have regulations that are more stringent than Federal standards.

The proposal considered several alternative financial tests, and the analysis supporting the original proposal found that the savings from the proposed alternative would be $19 million in public and private costs. If EPA promulgates a revised financial test, it may affect companies that treat, store, or dispose of hazardous waste.

Timetable:

Action	Date	FR Cite
NPRM Original	07/01/91	56 FR 30201
NPRM	10/12/94	59 FR 51523
Notice	12/00/04	
Final Action	03/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 2647.

Sectors Affected: 325188 All Other Basic Inorganic Chemical Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 33299 All Other Fabricated Metal Product Manufacturing; 333999 All Other General Purpose Machinery Manufacturing; 325998 All Other Miscellaneous Chemical Product Manufacturing; 336399 All Other Motor Vehicle Parts Manufacturing; 331311 Alumina Refining; 4411 Automobile Dealers; 323110 Commercial Lithographic Printing; 334 Computer and Electronic Product Manufacturing; 22111 Electric Power Generation; 332813 Electroplating, Plating, Polishing, Anodizing and Coloring; 325193 Ethyl Alcohol Manufacturing; 221112 Fossil Fuel Electric Power Generation; 45431 Fuel Dealers; 4471 Gasoline Stations; 811111 General Automotive Repair; 32512 Industrial Gas Manufacturing; 325131 Inorganic Dye and Pigment Manufacturing; 33271 Machine Shops; 56292 Materials Recovery Facilities; 333319 Other Commercial and Service Industry Machinery Manufacturing; 32551 Paint and Coating Manufacturing; 32511 Petrochemical Manufacturing; 42271 Petroleum Bulk Stations and Terminals; 32411 Petroleum Refineries; 325211 Plastics Material and Resin Manufacturing; 323114 Quick Printing; 22132 Sewage Treatment Facilities; 48422 Specialized Freight (except Used Goods) Trucking, Local; 311942 Spice and Extract Manufacturing; 336 Transportation Equipment Manufacturing; 56211 Waste Collection; 56221 Waste Treatment and Disposal

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RIN: 2050–AC71

Environmental Protection Agency (EPA) Completed Actions
Resource Conservation and Recovery Act (RCRA)

3503. CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES AND CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS: DISPOSAL OF RESIDENTIAL LEAD—BASED PAINT WASTE

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 257; 40 CFR 258

Completed:

Reason	Date	FR Cite
Final Action	06/18/03	68 FR 36487

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2050–AE86

3504. MUNICIPAL SOLID WASTE LANDFILL LOCATION RESTRICTIONS FOR AIRPORT SAFETY

Priority: Info./Admin./Other

CFR Citation: 40 CFR 258.10

Completed:

Reason	Date	FR Cite
Withdrawn	10/08/02	67 FR 62647

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2050–AE91

3505. RECYCLED USED OIL CONTAINING PCBS: AMENDMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 261; 40 CFR 279

Completed:

Reason	Date	FR Cite
Final Action	07/30/03	68 FR 44659

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 2050–AF07

3506. LAND DISPOSAL RESTRICTIONS; TREATMENT STANDARDS FOR SPENT POTLINERS FROM PRIMARY ALUMINUM REDUCTION (K088) AND REGULATORY CLASSIFICATION OF K088 VITRIFICATION UNITS

Priority: Other Significant

CFR Citation: 40 CFR 268; 40 CFR 271

Completed:

Reason	Date	FR Cite
Withdrawn	09/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

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RIN: 2050–AE65

3507. AMENDMENT TO PROJECT XL RULEMAKING AND FINAL PROJECT AGREEMENT (FPA) FOR NEW ENGLAND UNIVERSITIES LABORATORIES

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 262

Completed:

Reason	Date	FR Cite
Withdrawn	09/09/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 2090–AA32

Environmental Protection Agency (EPA) Proposed Rule Stage
Comprehensive Environmental Response, Compensation and Liability Act

3508. NATIONAL PRIORITIES LIST FOR UNCONTROLLED HAZARDOUS WASTE SITES: PROPOSED AND FINAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9605 "CERCLA 105"

CFR Citation: 40 CFR 300.425

Legal Deadline: None

Abstract: This action will revise the sites included on the National Priorities List (NPL) of uncontrolled waste sites in the National Contingency Plan (NCP). CERCLA requires that the Agency revise the NPL at least annually. Periodic revisions will allow EPA to include sites on the NPL with known or threatened hazardous substance releases and to delete sites that have been cleaned up.

Timetable:

Action	Date	FR Cite
Final 20	03/06/98	63 FR 11332
NPRM 24	03/06/98	63 FR 11340
Final 21	07/28/98	63 FR 40182
NPRM 25	07/28/98	63 FR 40247
Final Tex—Tin	09/18/98	63 FR 49855
Final 22	09/29/98	63 FR 51848
NPRM 26	09/29/98	63 FR 51882
Final 23	01/19/99	64 FR 2942
NPRM 27	01/19/99	64 FR 2950
NPRM Midnight Mine	02/16/99	64 FR 7564
NPRM 28	04/23/99	64 FR 19968
Final 24	05/10/99	64 FR 24949
NPRM Almeda	05/10/99	64 FR 24990
Final 25	07/22/99	64 FR 39878
NPRM 29	07/22/99	64 FR 39886
NPRM 30	10/22/99	64 FR 56992
Final Action	10/22/99	64 FR 56966
Final 26	02/04/00	65 FR 5435
NPRM 31	02/04/00	65 FR 5468
Final 28	05/11/00	65 FR 30482
NPRM 32	05/11/00	65 FR 30489
Final 29	07/27/00	65 FR 46096
NPRM 33	07/27/00	65 FR 46131
NPRM Alabama/Malone	08/24/00	65 FR 51567
Final 30	12/01/00	65 FR 75179
NPRM 34	12/01/00	65 FR 75215
NPRM 35	01/11/01	66 FR 2380
Final 31	06/14/01	66 FR 32235
NPRM 36	06/14/01	66 FR 32287
Final 32	09/13/01	66 FR 47583
NPRM 37	09/13/01	66 FR 47612
NPRM Libby/Omaha	02/26/02	67 FR 8836
Final Rule Adding 19 Sites	09/05/02	67 FR 56757
NPRM 38	09/05/02	67 FR 56794
Final Action	04/30/03	68 FR 23077
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN 3439.

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RIN: 2050–AD75

3509. CORRECTION OF ERRORS AND ADJUSTMENT OF CERCLA REPORTABLE QUANTITIES

Priority: Other Significant

Legal Authority: 42 USC 9602 to 9603

CFR Citation: 40 CFR 302 (Revision)

Legal Deadline: None

Abstract: The Agency is considering proposing corrections and other changes to 40 CFR 302.4, the Designation of Hazardous Substances. The proposal may include the correction of entries for individual substances, entries for F— and K— waste streams and entries in appendix A of 40 CFR 302.4. Other aspects of the proposal may include additional substances as entries in table 302.4, appendix A to section 302.4, and the table in section 302.6(b)(iii); removal of other entries from these lists; and amendments to certain footnotes that explain entries in table 302.4.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: SAN 4737. The Agency is considering additional corrections not covered in a prior Error Correction Rulemaking (67 FR 45314, 7/9/02) and expected to generate comment from the public.

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RIN: 2050–AF03

3510. STANDARDS AND PRACTICES FOR CONDUCTING "ALL APPROPRIATE INQUIRY"

Regulatory Plan: This entry is Seq. No. 112 in part II of this issue of the **Federal Register**.

RIN: 2050–AF04

3511. REVISE 40 CFR PART 35 SUBPART O: COOPERATIVE AGREEMENTS AND SUPERFUND STATE CONTRACTS FOR SUPERFUND RESPONSE ACTIONS

Priority: Other Significant

Legal Authority: 42 USC 9601 to 9675

CFR Citation: 40 CFR 35 subpart O

Legal Deadline: None

Abstract: 40 CFR part 35 subpart O is the Superfund Administrative Regulation that governs awarding of Superfund cooperative agreements (CAs) to States, Indian tribes, and territories of the United States. Subpart O covers State—lead, site—specific cooperative agreements for non—time—critical removal, preremedial, remedial, and enforcement actions, and site—specific management assistance for federal—lead projects. Also covered by subpart O are non—site—specific Core Program and Voluntary Cleanup Program State infrastructure development, as well as Brownfields pilots, and Brownfields assessments. The requirements for Superfund State contracts, financial administration, property, procurement, reporting, recordkeeping, and closeout are provided in subpart O.

Subpart O was promulgated 6/5/1990, and became effective on 7/5/1990. Many changes in the Superfund program have occurred over the past almost ten years and these need to be reflected in subpart O. The six categories of CAs presently used in subpart O need greater flexibility to accommodate the new types of CAs that have developed. For example, the number of Block Funding Reform pilots, begun in 1997, to consolidate several of the cooperative agreements offered in subpart O, has grown to about 16 for fiscal year 2000, and have generated at least 60 approved deviation requests from subpart O and 40 CFR part 31. These pilot projects offer considerable administrative relief to States, tribes, and EPA by reducing reporting requirements, broadening scope changes without amendment, increasing the ability to move monies within and among CAs, and relaxing application requirements regarding site—specific identification of cooperative agreement funds to certain activities, while maintaining site—specific drawdown requirements needed for cost recovery and Superfund accounting. Subpart O also needs to be conformed with part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements).

EPA expects to institutionalize the combining of CA types, create more flexible reporting requirements, permit greater scope changes without amendment, provide more flexible money movement within and among CAs, and promote other policy advances in State/tribal/EPA interaction.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4177.

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RIN: 2050–AE62

Environmental Protection Agency (EPA) Long-Term Actions

Comprehensive Environmental Response, Compensation and Liability Act

3512. REPORTABLE QUANTITY ADJUSTMENTS FOR CARBAMATES AND CARBAMATE—RELATED HAZARDOUS WASTE STREAMS; REPORTABLE QUANTITY ADJUSTMENT FOR INORGANIC CHEMICAL MANUFACTURING PROCESS WASTE (K178)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9602(a); 42 USC 11004

CFR Citation: 40 CFR 302; 40 CFR 355

Legal Deadline: None

Abstract: EPA has listed carbamate waste streams as hazardous wastes under the Resource Conservation and Recovery Act (RCRA). RCRA listed wastes, by statute, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and are assigned a one pound statutory reportable quantity (RQ) until EPA adjusts them. These substances also become subject to reporting requirements under the Emergency Planning and Community Right—to—Know Act (EPCRA) with a one pound threshold. EPA proposed RQ adjustments for the carbamates. Most RQ adjustments are greater than one pound. Raising the RQs for these substances would decrease the burden on: (1) The regulated community for complying with the reporting requirements under CERCLA and EPCRA; (2) Federal, State, and local authorities for program implementation; and (3) Federal, State, or local authorities, if they release hazardous substances at the RQ level or greater.

In addition, we proposed an RQ adjustment for the inorganic chemical manufacturing process waste (K178)(66 FR 58258, 11/20/01).

Timetable:

Action	Date	FR Cite
NPRM	12/04/03	68 FR 67916
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 3423.

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RIN: 2050–AE12

EPA—Comprehensive Environmental Response, Compensation and Liability Act Long-Term Actions

3513. CRITERIA FOR THE DESIGNATION OF HAZARDOUS SUBSTANCES UNDER CERCLA SECTION 102(A)

Priority: Other Significant

Legal Authority: 42 USC 9602

CFR Citation: 40 CFR 302.4

Legal Deadline: None

Abstract: This action will address the development of evaluation criteria for the designation of substances as hazardous under CERCLA. It is necessary to develop evaluation criteria because the Agency has the authority under CERCLA 102(a) to designate substances as hazardous; however, the Agency does not have criteria to do so. To date the only substances designated as CERCLA hazardous substances are as a result of their appearance on other Acts' lists defined under CERCLA 101(14). Using CERCLA designation criteria the Agency may establish CERCLA hazardous substances independently from other Acts, in the interest of public health and the environment.

The purpose of this action is to have well thought—out criteria for designating hazardous substances that may be applied to individual substances for evaluation and decision as to whether or not the substance should be appropriately designated a CERCLA 102(a) hazardous substance. The Agency already has the authority to designate substances as hazardous; in this action, criteria will be developed to implement that authority.

Timetable:

Action	Date	FR Cite
ANPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4201.

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RIN: 2050–AE63

3514. ADMINISTRATIVE REPORTING EXEMPTION FOR CERTAIN AIR RELEASES OF NOX

Priority: Other Significant

Legal Authority: 42 USC 9603

CFR Citation: 40 CFR 302.6(c)

Legal Deadline: None

Abstract: The Agency is considering proposing to administratively exempt from reporting requirements the releases of certain NOx emissions to air. This would eliminate reports from facilities emitting NOx where the Agency has determined that the releases pose little or no risk or to which a Federal response is infeasible or inappropriate. Requiring reports of such releases would serve little or no useful purpose and could, instead, impose a significant burden on the Federal response system and on the persons responsible for notifying the Federal Government of the release.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN 4736.

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RIN: 2050–AF02

Environmental Protection Agency (EPA) Completed Actions
Comprehensive Environmental Response, Compensation and Liability Act

3515. CLARIFICATION TO INTERIM STANDARDS AND PRACTICES FOR ALL APPROPRIATE INQUIRY UNDER CERCLA AND NOTICE OF FUTURE RULEMAKING ACTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 312

Completed:

Reason	Date	FR Cite
Final Action	05/09/03	68 FR 24888

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

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RIN: 2050–AF05

Environmental Protection Agency (EPA) Prerule Stage
Clean Water Act (CWA)

3516. WATER QUALITY STANDARDS FOR INDIAN COUNTRY WATERS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1251 et seq

CFR Citation: 40 CFR 131; 40 CFR 121.17 (New); 40 CFR 122.4 (Amended); 40 CFR 123.1 (Amended); 40 CFR 131.4 (Amended); 40 CFR 131.40 (New); 40 CFR 230.10 (Amended); 40 CFR 233.1 (Amended); 40 CFR 233.51 (Amended)

Legal Deadline: None

Abstract: EPA is preparing an advanced notice of proposed rulemaking (ANPRM) for Federal water quality standards for waters in Indian country for signature in November 2003. EPA will publish the ANPRM in the Federal Register and mail a copy of it to each State and tribe. The

ANPRM will be a notice published in the Federal Register that describes the situation and requests comment on specific issues and possible regulatory text that EPA could use to promulgate Federal water quality standards for Indian country waters that do not currently have water quality standards in place under the Clean Water Act. Without applicable standards, the Clean Water Act's mechanisms for protecting water quality in Indian country are limited. The notice will openly and objectively present options and issues and will not predetermine any outcome. The notice will be detailed enough that all parties can see what provisions EPA is contemplating and lead to thorough discussion of issues involved. The notice will pose specific questions about the issues such as: (1) Should EPA promulgate "core" standards? Individually tailored standards?; (2) For tribes who wish to develop their own plan for establishing standards, which is preferred: an "opt out" or an "opt in" approach for Federal standards?; (3) Are there waters where absence of water quality standards is preventing a solution to water quality problems?; and (4) What are the potential impacts of having and not having water quality standards in place in Indian country? A Federal promulgation would not prevent tribes from developing and adopting their own federally approved water quality standards where possible.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Federalism: Undetermined

Additional Information: SAN 4344.

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RIN: 2040–AD46

3517. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT REQUIREMENTS FOR MUNICIPAL WASTEWATER TREATMENT DURING WET WEATHER CONDITIONS — PROPOSED POLICY

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 et seq

CFR Citation: 40 CFR 122.41(m)

Legal Deadline: None

Abstract: During periods of wet weather, wastewater flows received by municipal sewage treatment plants can significantly increase, which can create operational challenges for sewage treatment facilities. Where peak flows approach or exceed the design capacity of a treatment plant they can seriously reduce treatment efficiency or damage treatment units. In addition to hydraulic concerns, wastewater associated with peak flows may have low organic strength, which can also decrease treatment efficiencies. EPA plans to invite comment on a proposed policy. the proposed policy will provide a proposed interpretation of National Pollutant Discharge Elimination System (NPDES) permit requirements for peak wet weather discharges from a publicly owned treatment works (POTWs) that are comprised of effluent routed around biological treatment units and blended with the effluent from the biological units (or other advanced treatment units) prior to discharge, where the final discharge would meet permit effluent limitations based upon the secondary treatment regulations and any more stringent limitations necessary to meet water quality standards. Regulatory agencies, municipal operators of POTWs, and representatives of environmental advocacy groups have expressed uncertainty about the appropriate regulatory interpretation for such situations. EPA's intention would be that implementation of the proposed policy would ensure that NPDES requirements be applied in a nationally—consistent manner that improves the capacity, management, operation and maintenance of POTW treatment plants and collection systems.

Timetable:

Action	Date	FR Cite
Draft Policy	12/00/03	
Final Policy	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN 4690.

Sectors Affected: 22132 Sewage Treatment Facilities

URL For More Information:
www.epa.gov/npdes

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RIN: 2040–AD87

3518. SEWAGE SLUDGE ROUND I

Priority: Info./Admin./Other

Legal Authority: Section 405(d) and (e) of the Clean Water Act; 33USC 1345(d) and (e) as amended; 5 USC 610

CFR Citation: 40 CFR 503

Legal Deadline: None

Abstract: On February 19, 1993 (58 FR 9248), EPA promulgated standards for the use or disposal of sewage sludge for the three major sewage sludge management practices of land application, surface disposal, and incineration. The part 503 standards impose sewage sludge quality requirements on sewage sludge preparers and management practices on land appliers of sewage sludge. The standards also have monitoring, recordkeeping, and reporting requirements. Small entities are subject to these standards. Small entities are defined as wastewater treatment plants that treat domestic sewage with wastewater flow capacities of less than one million gallons per day (MGD), septage pumpers and haulers, and sewage sludge preparers and treaters that process and subsequently use/dispose of less than 290 dry metric tons of sewage sludge per year. On August 4, 1999 (64 FR 42551) the Part 503 standards were amended. One of the amendments allowed the permitting authority, at their discretion, to reduce the frequency of monitoring requirements for all wastewater treatment plants including small entities. EPA performed a Regulatory Flexibility Analysis when the standards were promulgated in 1993 which indicated that the rule could have a significant impact on a substantial number of small entities. EPA then used this analysis to develop the rule in a way that mitigated small entity impact to the extent possible while still fulfilling the Clean Water Act's section 405(d) mandate to protect public health and the environment with an adequate margin of safety. EPA is now initiating a review of the rule under section 610 of the Regulatory Flexibility Act to determine if the rule should be continued without change, or should be amended or rescinded, to minimize adverse economic impacts on small entities. EPA will consider, and solicits comments, on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. Comments should be submitted to the Agency Contact listed below. Comments must be received 90 days after this Federal Register notice. This action is not a rulemaking; it is a review of an existing rulemaking. Any new rulemaking activity resulting from this review will be published as a notice in future regulatory agendas. In submitting comments, please reference Docket ID number OW—2003—0016, and follow the instructions provided in Unit H of the preamble to the Spring Regulatory Agenda.

Timetable:

Action	Date	FR Cite
Final Action 1	02/19/93	58 FR 9248
Begin Review	05/00/03	
End Review	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4792.

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RIN: 2040–AD96

Environmental Protection Agency (EPA)
Clean Water Act (CWA)
Proposed Rule Stage

3519. REVISIONS TO THE NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN; SUBPART J PRODUCT SCHEDULE LISTING REQUIREMENTS

Priority: Other Significant

Legal Authority: 33 USC 1321(d)(2); "CWA 311(d)(2)"

CFR Citation: 40 CFR 300

Legal Deadline: None

Abstract: This action will propose revisions to subpart J of the National Contingency Plan (NCP) (40 CFR part 300.900). Section 311(d)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP. Under subpart J, respondents wishing to add a product to the Product Schedule must submit technical product data specified in 40 CFR 300.915 to EPA. This rulemaking will propose revisions to subpart J to clarify and change protocols for effectiveness and toxicity testing. It will clarify EPA authority to remove products from the Product Schedule. These changes will help ensure protection of the environment when these products are used to clean up and mitigate oil spills into or upon navigable waters, adjoining shorelines, the waters of the contiguous zone, or which may affect natural resources belonging to or under the exclusive management authority of the United States.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN 4526.

Sectors Affected: 54 Professional, Scientific and Technical Services; 3259 Other Chemical Product Manufacturing; 325 Chemical Manufacturing; 3251 Basic Chemical Manufacturing

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RIN: 2050–AE87

3520. EFFLUENT GUIDELINES PROGRAM PLAN FOR 2004/2005

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(m) "CWA"

CFR Citation: 00 CFR None

Legal Deadline: Final, Statutory, February 4, 2004, Final.

Abstract: EPA publishes an Effluent Guidelines Program Plan every other year as required by Section 304(m) of the Clean Water Act (CWA). The Plan sets forth EPA's rationale for the selection of particular industries as candidates for new or revised effluent guidelines. EPA's Effluent Guidelines Program Plan for 2004/2005 will describe the effluent guidelines program and the effluent guidelines underway, as well as identifying existing guidelines that may be revised or new guidelines that may be developed. OW will use the 2004/2005 Plan as a strategic opportunity to help design the future of the technology—based pollution control program for industrial sources of water pollution.

Timetable:

Action	Date	FR Cite
Draft Plan	11/00/03	
Final Plan	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4766.

URL For More Information: http://www.epa.gov/guide/strategy

URL For Public Comments: http://www.epa.gov/edocket/ow-2002-0020

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RIN: 2040–AD92

3521. TEST PROCEDURES: NEW AND UPDATED TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS UNDER THE CLEAN WATER ACT AND SAFE DRINKING WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a); 42 USC 300f; 42 USC 300g—1; 42 USC 300j—4; 42 USC 300j—9(a)

CFR Citation: 40 CFR 136; 40 CFR 141

Legal Deadline: None

Abstract: This regulatory action would amend the "Guidelines Establishing Test Procedures for the Analysis of Pollutants" under 40 CFR Part 136 and the National Primary Drinking Water Regulations under 40 CFR part 141 to approve new and updated EPA methods for wastewater, ambient water quality, and drinking water, including new and updated versions of methods from voluntary consensus standards bodies and other organizations. These methods are used to comply with monitoring requirements in the wastewater, ambient water quality and/or drinking water programs, as authorized under the Clean Water Act (CWA) and Safe Drinking Water Act. This regulation would propose new methods for metals such as Method 200.8 (which utilizes ICP/MS), new methods for chemical pollutants (e.g., Method 245.7), updated methods for chemical pollutants (e.g., Methods 300.1 and 200.7), including methods from voluntary consensus standards bodies (VCSBs), and from other external organizations submitted under EPA's alternate test procedure program. The new and updated methods include methods from organizations such as the American Society for Testing and Materials (ASTM), Standard Methods, and the Association of Official Analytical Methods—International.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4540. This action incorporates the following analytical methods that had previously been tracked independently: 1. RIN 2040—AC95, SAN 3155 — Test Procedures for the Analysis of Miscellaneous Metals, Anions, and Volatile Organics Under the Clean Water Act, Phase One 2. RIN 2040—AD12, SAN 4089 — Test Procedures for the Analysis of Miscellaneous Metals, Anions, and Volatile Organics Under the Clean Water Act, Phase Two, and 3. RIN 2040—AD52, SAN 4377 — Test Procedures for the Analysis of Mercury Under the Clean Water Act (Method 245.7).

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RIN: 2040–AD71

3522. WATERSHED RULE: TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM REVISIONS

Regulatory Plan: This entry is Seq. No. 114 in part II of this issue of the **Federal Register**.

RIN: 2040–AD82

Environmental Protection Agency (EPA) Clean Water Act (CWA) Final Rule Stage

3523. EFFLUENT GUIDELINES AND STANDARDS FOR THE CONSTRUCTION AND DEVELOPMENT INDUSTRY

Regulatory Plan: This entry is Seq. No. 129 in part II of this issue of the **Federal Register**.

RIN: 2040–AD42

3524. EFFLUENT GUIDELINES AND STANDARDS FOR THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY, DISSOLVING KRAFT AND DISSOLVING SULFITE SUBCATEGORIES (PHASE III)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311; 33 USC 1314; 33 USC 1316; 33 USC 1317; 33 USC 1318; 33 USC 1342; 33 USC 1361

CFR Citation: 40 CFR 430.10 to 430.18; 40 CFR 430.40 to 430.48

Legal Deadline: None

Abstract: On December 17, 1993, EPA proposed revised effluent limitations, guidelines, and standards and best management practices regulations for the Dissolving Kraft and Dissolving Sulfite Subcategories of the Pulp, Paper, and Paperboard Point Source Category (40 CFR part 430). EPA is considering the public comments on the proposed rule and the new data acquired since proposal. Although this rulemaking, which EPA refers to Pulp and Paper Phase III, has been scheduled for final action in September 2004, EPA will consider as part of its

2004 effluent guidelines planning process under CWA section 304(m) whether to proceed with the rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/17/93	58 FR 66078
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4370.

Sectors Affected: 3221 Pulp, Paper, and Paperboard Mills

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RIN: 2040–AD49

3525. EFFLUENT GUIDELINES AND STANDARDS FOR THE CONCENTRATED AQUATIC ANIMAL PRODUCTION INDUSTRY

Priority: Other Significant

Legal Authority: "CWA Section 301"; "CWA Section 304"; "CWA Section 306"; "CWA Section 307"; "CWA Section 308"; "CWA Section 318"; "CWA Section 402"; "CWA Section 501"

CFR Citation: 40 CFR 451

Legal Deadline: NPRM, Judicial, August 14, 2002, NPRM.
Final, Judicial, June 30, 2004, Final.

Abstract: EPA is focusing new efforts to help reduce nutrient loadings from commercial agricultural and industrial operations nationwide. Currently, there are no Federal technology—based standards for aquatic animal production facilities, which are part of the aquaculture industry. This action is a new effort to develop pollutant controls in the form of nationally applicable discharge standards for commercial and public aquaculture operations. In assessments of surface water quality, States most frequently cite siltation, nutrients, and pathogens as the major cause of water quality impairment. With the growth of the aquaculture industry, and inconsistent state of regulatory oversight, EPA will examine available technologies for the control of solids which in turn control other pollutants, primarily nutrients. This action was formerly titled Aquaculture.

Timetable:

Action	Date	FR Cite
NPRM	09/12/02	67 FR 57871
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN 4406.

Sectors Affected: 112511 Finfish Farming and Fish Hatcheries; 112519 Other Animal Aquaculture; 112512 Shellfish Farming; 71213 Zoos and Botanical Gardens

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RIN: 2040–AD55

3526. EFFLUENT GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY (REVISIONS)

Priority: Other Significant

Legal Authority: 33 USC 1311; 33 USC 1314; 33 USC 1316; 33 USC 1317; 33 USC 1318; 33 USC 1342; 33 USC 1361

CFR Citation: 40 CFR 432 (Revision)

Legal Deadline: NPRM, Judicial, January 30, 2002, NPRM.
Final, Judicial, December 31, 2003, Final.

Abstract: The Agency proposed revisions to the effluent limitations guidelines and standards for the Meat and Poultry Products Point Source Category in February 2002. The current regulations, at 40 CFR 432, are more than 20 years old and establish limitations and standards for only conventional pollutants. The current regulations do not establish national regulations for ammonia nitrogen discharges associated with slaughterhouses/packinghouses (Subparts A—D). Nutrients like ammonia may pose a water quality problem for impaired streams. Revisions to the current regulations may also include effluent limitations for poultry processing, which is not currently covered by any effluent guideline.

Timetable:

Action	Date	FR Cite
NPRM	02/25/02	67 FR 8582
NODA	08/13/03	68 FR 48471
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4407.

Sectors Affected: 311611 Animal (except Poultry) Slaughtering; 311612 Meat Processed from Carcasses; 311613 Rendering and Meat By-product Processing; 311615 Poultry Processing

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RIN: 2040–AD56

3527. EFFLUENT GUIDELINES AND STANDARDS FOR THE CENTRALIZED WASTE TREATMENT POINT SOURCE CATEGORY (REVISION)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1316"CWA"; 33 USC 1317"CWA"

CFR Citation: 40 CFR 437

Legal Deadline: None

Abstract: EPA is considering amendments for certain provisions of the effluent guidelines for the Centralized Waste Treatment industry, which were published on December 22, 2000. The rule would modify the limitations and standards for some of the regulated pollutants and would correct errors in the printed text.

Timetable:

Action	Date	FR Cite
NPRM	09/10/03	68 FR 53432
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN 4776.

Sectors Affected: 562219 Other Nonhazardous Waste Treatment and Disposal; 562211 Hazardous Waste Treatment and Disposal

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RIN: 2040–AD95

3528. WATER QUALITY STANDARDS FOR ALABAMA—PHASE II

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1313 "CWA 303"

CFR Citation: 40 CFR 131

Legal Deadline: NPRM, Judicial, October 15, 2002, NPRM.

Abstract: Under the CWA, States have primary authority in developing water quality standards for waters within their jurisdiction. EPA maintains oversight authority in that States must submit their water quality standards to EPA for review and approval or disapproval. If a State's water quality standards are not consistent with the requirements of the CWA and its supporting regulations, and are subsequently disapproved by EPA, the State must revise the disapproved water quality standards. If the State does not revise the disapproved water quality standards, the CWA requires the EPA Administrator to promulgate Federal water quality standards to supersede those disapproved provisions in the states' water quality standards. EPA is developing a proposed rule to determine the appropriate use designations for seven waterbodies in Alabama that EPA disapproved in 1986 and 1991.

Timetable:

Action	Date	FR Cite
NPRM	10/23/02	67 FR 65256
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4264. Judicial NPRM: Consent decree specifies that EPA will sign proposed Federal replacement standards by 10/31/2002 unless EPA approves State use designations.

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RIN: 2040–AD35

3529. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 2

Regulatory Plan: This entry is Seq. No. 130 in part II of this issue of the **Federal Register**.

RIN: 2040–AD62

3530. COMPARISON OF DREDGED MATERIAL TO REFERENCE SEDIMENT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1344 "CWA 404"

CFR Citation: 40 CFR 230

Legal Deadline: None

Abstract: This action would revise the testing provisions of the Clean Water Act section 404(b)(1) Guidelines to provide for comparisons between dredged material proposed for discharge and reference sediment. Reference sediment would be defined as sediment that reflects conditions at the disposal site had no dredged material disposal ever occurred there. Because the disposal site itself is currently used as the point of comparison, this action would make a technical improvement in assessing cumulative impacts and help make dredged material testing under section 404 more consistent with that conducted for ocean disposal, which currently employs a reference sediment approach. This action is not expected to have a significant impact on state, local, or tribal governments or small business, as the action will be limited to Corps projects and permit applications for which dredged material testing is necessary, and because the effect of the action will be limited to changing the location of an otherwise collected sample.

Timetable:

Action	Date	FR Cite
NPRM	01/04/95	60 FR 419
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN 3288.

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RIN: 2040–AC14

3531. ROUND 2 STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

Priority: Other Significant

Legal Authority: 33 USC 1345 "CWA 405"; 33 USC 1361(a) "CWA 501(a)"

CFR Citation: 40 CFR 503 (Revisions)

Legal Deadline: NPRM, Judicial, December 15, 1999, NPRM.
Final, Judicial, October 17, 2003, Final.

Abstract: This rulemaking concerns dioxin and dioxin—like compounds in sewage sludge that is applied to the land. Section 405 of the Clean Water Act (CWA) requires EPA to promulgate regulations providing guidelines for the use and disposal of sewage sludge, including numeric standards for toxic pollutants which may adversely affect human health and the environment and management practices. EPA promulgated the first round of regulations, which set standards for toxic pollutants in sewage sludge for which information was available and management practices for land application, surface disposal and incineration of sewage sludge. (58 FR 9248, Feb. 19, 1993). EPA proposed the second round of regulations, for other toxic pollutants not regulated in the first round, of regulations, for other toxic pollutants not regulated in the first round, in December 1999 (64 FR 72045, Dec. 23, 1999). The proposed rule would establish a limit of 300 nanograms of TEQ dioxins per kilogram of dry sewage sludge for land application along with monitoring requirements. The proposal also proposed to take no regulatory action with respect to dioxins in sewage sludge that is disposed of at a surface disposal site or incinerated in a sewage sludge incinerator. EPA signed a final notice of its determination not to further regulate for dioxins in sewage sludge that is disposed of at a surface disposal site or incinerated in a sewage sludge incinerator, and stated that final action on the proposal to amend the land application rule will be published separately at a later date. (66 FR 66228, Dec. 21, 2001). On June 12, 2002 at 67 FR 40554, EPA published a notice of data availability in which EPA presented the results of a revised risk assessment and an analytical survey of dioxins in sewage sludge. The final action on the land application rule is subject to a consent decree deadline of October 17, 2003.

Timetable:

Action	Date	FR Cite
NPRM	12/23/99	64 FR 72045
Final Determination	12/21/01	66 FR 66228
NODA	06/12/02	67 FR 40554
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 3488.

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RIN: 2040–AC25

3532. MODIFICATION TO COMPETITIVE PROCESS USED BY EPA FOR WETLAND PROGRAM DEVELOPMENT GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 "CWA 104"

CFR Citation: 40 CFR 35.613; 40 CFR 35.382

Legal Deadline: None

Abstract: EPA is proposing to modify the requirements for use of competitive procedures in the award of Wetland Program Development Grants (WPDG). The proposed changes for WPDG would provide the Regions with an option for allocating WPDG funds to States that meet criteria established in national program guidance. The proposed changes would provide States, tribal, intertribal, interstate and local agencies greater flexibility in developing comprehensive programs.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Additional Information: SAN 4624.

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RIN: 2040–AD83

3533. • SLUDGE: AGENCY RESPONSE TO THE NATIONAL RESEARCH COUNCIL REPORT ON BIOSOLIDS APPLIED TO LAND AND THE RESULTS OF EPA'S REVIEW OF EXISTING SEWAGE SLUDGE REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 33 USC. 1345(d)(e)

CFR Citation: 40 CFR 503

Legal Deadline: None

Abstract: The Federal Register notice will announce the final results of the review of regulations under the Clean Water Act (CWA) governing the use and disposal of sewage sludge pursuant to section 405(d)(2)(C) of the CWA. The purpose of the review is to identify additional toxic pollutants that may warrant future regulatory action. As part of this review, EPA commissioned the National Research Council (NRC) of the National Academy of Sciences to independently review the technical basis of the chemical and pathogen regulations applicable to sewage sludge that is applied to land. The NRC study took place between January 2001 and June 2002. In July 2002, the NRC published a report entitled "Biosolids Applied to Land: Advancing Standards and Practices" in response to the EPA's request. The NRC identified a need to update the scientific basis of part 503 and provided approximately 60 recommendations. The notice will also announce a final strategy explaining how EPA plans to respond to the recommendations in the NRC report and explains the rationale for the strategy.

The purpose of the notice is to meet the requirements of a settlement agreement. Over the past decade, citizens and environmental organizations have raised questions over the adequacy of the chemical and pathogen standards for protecting human health. In a side agreement to a consent decree modification in Gearhart v. Whitman, EPA agreed to sign a notice for publication in the Federal Register by January 8, 2004, to announce the final results of the review under the CWA and the final planned strategy for responding to the NRC's recommendations.

The publication of this Federal Register notice will be an important step in setting new priorities for the biosolids program for research and future program development activities.

Timetable:

Action	Date	FR Cite
Notice of Preliminary Strategy	04/08/03	68 FR 17379
Final Strategy	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4803.

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RIN: 2040–AE59

3534. • EFFLUENT GUIDELINES AND STANDARDS: RECODIFICATION OF VARIOUS EFFLUENT GUIDELINES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: CWA 301; CWA 304; CWA 306; CWA 307; CWA 402; CWA 501

CFR Citation: 40 CFR 401 to 419

Legal Deadline: None

Abstract: Several years ago, the Office of Water conducted a comprehensive review of effluent guidelines and removed from the Code of Federal Regulations (CFR) provisions contained in a number of regulations that were obsolete or redundant (FR 60 33926, June 29, 1995). In addition to removing these provisions, EPA's Office of Water identified additional opportunities for further streamlining some of the effluent guidelines.

This action would recodify the effluent limitations and standards for 12 point source categories without making any legally substantive changes in the requirements. The revised and shorter format will enable Federal, State and local regulators and the regulated community to more easily read, understand and implement the regulations. By reducing the number of pages in Title 40, the new format will also afford significant long—term savings in the annual cost of printing these regulations.

The point source categories which would be recodified by this action include: Dairy Products Processing (part 405), Grain Mills Manufacturing (part 406), Fruits and Vegetable Processing (part 407), Canned and Preserved Seafood (part 408), Sugar Processing (part 409), Textile Mills (part 410), Cement Manufacturing (part 411), Electroplating (part 413), Inorganic Chemicals (part 415), Soaps and Detergent Manufacturing (part 417), Fertilizer Manufacturing (part 418), and Petroleum Refining (part 419). The revisions would also expand the list of general definitions in section 401.11.

Timetable:

Action	Date	FR Cite
Direct Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Federalism: Undetermined

Additional Information: SAN 4822.

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RIN: 2040–AE61

Environmental Protection Agency (EPA)
Clean Water Act (CWA)
Long-Term Actions

3535. TEST PROCEDURES FOR THE ANALYSIS OF TRACE METALS UNDER THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1314(h) "CWA 304(h)"; 33 USC 1361(a) "CWA 501 (a)"

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 to approve new EPA methods for the determination of trace metals at EPA's water quality criteria levels. These methods are necessary for the implementation of water quality—based permits under the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act. Water quality—based permits are necessary when technology—based controls do not ensure that a particular water body would meet the State's designated water quality standard. Because the methods currently approved under 40 CFR part 136 were designed to support primarily technology—based permitting needs, and because these technology—based levels are as much as 280 times higher than water quality—based criteria for metals. EPA is pursuing approval of new test procedures.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

Additional Information: SAN 3702.

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RIN: 2040–AC75

3536. TEST PROCEDURES: INCREASED METHOD FLEXIBILITY FOR TEST PROCEDURES APPROVED FOR CLEAN WATER ACT COMPLIANCE MONITORING

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) "CWA 304 (h)"; 33 USC 1361(a) "CWA 501 (a)"

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would highlight the flexibility already contained in the 600 and 1600 series of EPA Methods that are currently approved for Clean Water Act compliance monitoring under 40 CFR part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. These methods typically contain a statement that, in recognition of advances that are occurring in analytical technology, and to allow the analyst to overcome sample matrix interferences, the analyst is permitted certain options to improve separations or lower the costs of measurements. These options include alternate extraction, concentration, cleanup procedures, and changes in columns and detectors. The methods further require the analyst to demonstrate that the method modifications will not adversely affect the quality of data by generating quality control results that meet the specifications contained in the method. Despite this stated flexibility, the Agency has found that many NPDES and pretreatment permitting authorities are not aware of this flexibility when issuing or enforcing NPDES and pretreatment permits. Therefore, this regulatory action will highlight the existing method flexibility and clarify EPA's position regarding its application. This action will also extend this flexibility to other methods currently approved under 40 CFR part 136. The purpose of extending this flexibility to other methods is to (1) increase consistency between methods, (2) provide for increased recognition of advances in analytical technology, and (3) reduce costs associated with analytical measurements.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 3714.

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RIN: 2040–AC92

3537. TEST PROCEDURES: PERFORMANCE—BASED MEASUREMENT SYSTEM (PBMS) PROCEDURES AND GUIDANCE FOR CLEAN WATER ACT TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) "CWA 304(h)"; 33 USC 1361(a) "CWA 501(a)"

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would establish the use of performance—based measurement procedures and guidance for use in Clean Water Act compliance monitoring under 40 CFR part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. The new procedures would include guidance concerning the format, content, quality assurance/quality control, and data validation requirements for use of test methods. This regulatory action would also describe increased program guidance in the form of a clearinghouse, technical bulletins, and/or guidance documents geared towards clarifying technical and policy issues associated with the use of test methods approved for use in the program.

Timetable:

Action	Date	FR Cite
NPRM	03/28/97	62 FR 14975
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 3713.

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RIN: 2040–AC93

3538. TEST PROCEDURES FOR THE ANALYSIS OF CO—PLANAR AND MONO—ORTHO—SUBSTITUTED POLYCHLORINATED BIPHENYLS (PCBS) UNDER THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a)

CFR Citation: 40 CFR 136; 40 CFR 503

Legal Deadline: None

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR parts 136 and 503 to approve EPA Method 1668 for the congener—specific determination of co—planar and mono—ortho—substituted polychlorinated biphenyls (PCBs) in effluent, ambient water, and sludge. This method is necessary for the implementation of water quality—based permits under the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act. Water quality—based permits are necessary when technology—based controls do not ensure that a particular water body would meet the State's designated water quality standard. At present there is no EPA analytical method for determination of these PCBs at the levels of concern. Therefore, approval of a new EPA test procedure is necessary.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4049.

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RIN: 2040–AD09

3539. TEST PROCEDURES: REVISIONS TO METHOD DETECTION AND QUANTIFICATION FOR THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); 33 USC 1361(a)

CFR Citation: 40 CFR 136

Legal Deadline: NPRM, Judicial, February 28, 2003, NPRM.
Final, Judicial, November 1, 2004, Final.

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 related to the detection and quantification procedures currently used by EPA for analytes regulated in the wastewater program as authorized under the Clean Water Act (CWA). The current method detection limit (MDL) procedure is set forth at 40 CFR part 136, appendix B. EPA has not promulgated a generic procedure for quantification but it uses the minimum level of quantitation (ML) in its wastewater program. The ML is defined in analytical methods and is generally set at 3.18 times the MDL. The Office of Water has been working to revise and refine these concepts in response to the need to regulate pollutants at low levels (often levels that are lower than measurement capabilities will allow) and to address other potential approaches to detection and quantification, including concepts being introduced by outside organizations such as voluntary consensus standards bodies (VCSBs). The rulemaking would also reevaluate the current MDL and quantification approaches and assess alternative approaches.

Timetable:

Action	Date	FR Cite
NPRM	03/12/03	68 FR 11791
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4378.

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RIN: 2040–AD53

3540. UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES — PHASE II

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1322; 33 USC 1361

CFR Citation: 40 CFR 1700

Legal Deadline: Final, Statutory, May 10, 2001, Final.

Abstract: This action is Phase II of implementing regulations on Uniform National Discharge Standards for Vessels of the Armed Forces. In 1996 the Clean Water Act was amended to create section 312(n), Uniform National Discharge Standards for Vessels of the Armed Forces. Section 312(n) directs EPA and DOD to work together to provide Armed Forces vessels with a nationally uniform set of discharge standards, which preempt State discharge standards for these vessels. The purpose of the statute is to allow DOD to plan, design and build environmentally sound vessels, to encourage innovative pollution control technology, and to improve operational flexibility. EPA and DOD jointly promulgated Phase I of these regulations, 40 CFR part 1700, on May 10, 1999 (64 FR 25126). The Phase I rulemaking concluded that 25 discharges from Armed Forces vessels would require control devices. Some of these discharges have the potential to introduce oil or other organics into receiving waters (such as bilge water); some have the potential to introduce copper or other metals (such as fire main); and some have the potential to introduce nonindigenous invasive aquatic species (such as ballast water). Phase II will establish performance standards for control devices for these 25 discharges. Once DOD implements rules for achieving the standards set in Phase II, covered discharges from Armed Forces vessels will be required to meet these standards, and will not be subject to discharge standards established by States.

Timetable:

Action	Date	FR Cite
NPRM	01/00/05	
Final Action	09/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Additional Information: SAN 4357.

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RIN: 2040–AD39

3541. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 3

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1311 "CWA 301"; 33 USC 1316 "CWA 306"; 33 USC 1326 "CWA 316"; 33 USC 1361 "CWA 501"

CFR Citation: 40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Legal Deadline: NPRM, Judicial, November 1, 2004, NPRM.
Final, Judicial, June 1, 2006, Final.

Abstract: This rulemaking affects, at a minimum, existing facilities that use cooling water intake structures, and whose intake flow levels exceed a minimum threshold EPA will determine during this rulemaking. The affected facilities include at a minimum: (1) Electricity generating facilities not covered by Phase 2 regulations; (2) pulp and paper manufacturing facilities; (3) chemicals and allied products manufacturing facilities; (4) petroleum and coal products manufacturing facilities; (5) primary metals manufacturing facilities; and (6) oil and gas extraction facilities. Section 316(b) of the Clean Water Act provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. A primary purpose of this action is to minimize the impingement and entrainment of fish and other aquatic organisms by cooling water intake structures. Impingement refers to trapping fish and other aquatic life against cooling water intake structures. Entrainment occurs when aquatic organisms, eggs and larvae are drawn into a cooling system and then pumped back out with significant injury or mortality to the entrained organisms.

Timetable:

Action	Date	FR Cite
NPRM	11/00/04	
Final Action	06/00/06	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4543. Split from RIN 2040—AC34.

Sectors Affected: 312 Beverage and Tobacco Product Manufacturing; 325 Chemical Manufacturing; 61131 Colleges, Universities and Professional Schools; 334 Computer and Electronic Product Manufacturing; 211111 Crude Petroleum and Natural Gas Extraction; 22111 Electric Power Generation; 335 Electrical Equipment, Appliance and Component Manufacturing; 332 Fabricated Metal Product Manufacturing; 311 Food Manufacturing; 333 Machinery Manufacturing; 21 Mining; 211112 Natural Gas Liquid Extraction; 327 Nonmetallic Mineral Product Manufacturing; 322 Paper Manufacturing; 324 Petroleum and Coal Products Manufacturing; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 22133 Steam and Air-Conditioning Supply; 313 Textile Mills; 336 Transportation Equipment Manufacturing; 321 Wood Product Manufacturing

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RIN: 2040–AD70

3542. STREAMLINING THE GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Priority: Other Significant

Legal Authority: 33 USC 1314 "CWA 304"; 33 USC 1317 "CWA 307"; 33 USC 1342 "CWA 402"; 33 USC 1361 "CWA 501"

CFR Citation: 40 CFR 403

Legal Deadline: None

Abstract: The final rule will be promulgated as a program streamlining activity. The rule will revise certain provisions in the General Pretreatment Regulations (40 CFR Part 403) that address restrictions on and oversight of industrial discharges into Publicly Owned Treatment Works (POTWs). The final rule would include exclusions or variable requirements for smaller facilities that contribute insignificant amounts of pollutants, clarify requirements for implementing Pretreatment Standards, and provide more flexible reporting, inspection and sampling requirements. The revisions should provide greater flexibility, reduce burden, and achieve improved environmental results at less cost for regulatory authorities and the regulated community.

Timetable:

Action	Date	FR Cite
NPRM	07/22/99	64 FR 39564
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 3663.

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RIN: 2040–AC58

3543. NPDES STREAMLINING RULE — ROUND III

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311 "CWA 301"; 33 USC 1312 "CWA 302"; 33 USC 1314 "CWA 304"; 33 USC 1316 "CWA 306"; 33 USC 1318 "CWA 308"; 33 USC 1342 "CWA 402"; 33 USC 1361 "CWA 501"

CFR Citation: 40 CFR 122; 40 CFR 123; 40 CFR 124

Legal Deadline: None

Abstract: EPA plans to issue a rulemaking package to revise NPDES requirements in parts 122, 123, and 124 to eliminate redundant regulations, provide clarification, and remove or streamline unnecessary procedures. Revisions under consideration in this rule include adding additional permit modifications that can be considered minor modifications at 122.63, and changes to requirements concerning EPA's review of State permits. Other revisions may be considered as work on this rule progresses. This rulemaking is expected to affect entities which implement the NPDES program or are regulated by it. This includes small businesses and State, tribal and local governments. Most of these effects are expected to be deregulatory or streamlining in nature.

Timetable:

Action	Date	FR Cite
NPRM	11/00/06	
Final Action	08/00/07	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 3786.

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RIN: 2040–AC84

3544. NPDES PERMIT REQUIREMENTS FOR MUNICIPAL SANITARY AND COMBINED SEWER COLLECTION SYSTEMS, MUNICIPAL SATELLITE COLLECTION SYSTEMS, SANITARY SEWER OVERFLOWS, AND PEAK EXCESS FLOW TREATMENT FACILITIES

Priority: Other Significant

Legal Authority: 33 USC 1311"CWA 301"; 33 USC 1314"CWA 304"; 33 USC 1318"CWA 308"; 33 USC 1342"CWA 402"; 33 USC 1361"CWA 501(a)"

CFR Citation: 40 CFR 122.38; 40 CFR 122.41; 40 CFR 122.42

Legal Deadline: None

Abstract: EPA is considering developing a notice of proposed rulemaking that would propose a broad—based regulatory framework for sanitary sewer collection systems under the NPDES program. The Agency is considering proposing standard permit conditions for inclusion in permits for publicly owned treatment works (POTWs) and municipal sanitary sewer collection systems. The standard requirements would address reporting, public notification, and recordkeeping requirements for sanitary sewer overflows (SSOs), capacity assurance, management, operation and maintenance requirements for municipal sanitary sewer collection systems; and a prohibition on SSOs. The Agency is also considering proposing a regulatory framework for applying NPDES permit conditions, including applicable standard permit conditions, to municipal satellite collection systems. Municipal satellite collection systems are sanitary sewers owned or operated by a municipality that conveys wastewater to a POTW operated by a different municipality. EPA is also considering clarifying NPDES requirements, including secondary treatment requirements, for discharges from peak excess flow treatment facilities.

Timetable:

Action	Date	FR Cite
NPRM	10/00/04	
Final Action	10/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN 3999. Note: This rule was formerly known as "Revisions to NPDES Requirements for Compliance Reporting and Collection System Discharges."

Sectors Affected: 22132 Sewage Treatment Facilities

URL For More Information:
www.epa.gov/npdes

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RIN: 2040–AD02

3545. CLEAN WATER STATE REVOLVING FUND REGULATION REVISIONS RE: USE AS MATCHING FUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1383(h)

CFR Citation: 40 CFR 35.3125(b)(1)

Legal Deadline: None

Abstract: This regulation will revise the Clean Water State Revolving Fund (CWSRF) Regulations to allow the use of loans from the non—Federal and non—State match share of CWSRF funds as a match for infrastructure grants. In 1990, EPA issued regulations implementing the CWSRF program, established as Title VI of the Clean Water Act (CWA) in 1987. Section 603(h) of the CWA prohibits use of the CWSRF loan as matching funds with respect to the non—Federal share of the cost of a treatment works project for which a municipality or agency is receiving assistance from the Administrator under any other authority. In issuing its regulations at 40 CFR 35.3125(b)(1), EPA interpreted this prohibition broadly, applying the restriction to all treatment works construction. At that time, EPA believed the replacement of the construction grants program authorized by Title II of the CWA by the CWSRF would result in a significant decrease in the use of other Federal grant funds for treatment works construction. However, from FY 1995 onward, Congress has authorized and appropriated funds for infrastructure construction grants in various Appropriations Acts. There are currently over 1500 projects totaling over $4.1 billion dollars. In several cases, EPA has been asked to allow CWSRF funds to be used as a match for these grants; but 40 CFR 35.3125(b)(1) prohibits such action. Upon reconsideration, EPA has decided its initial reading in 1990 was too broad, and the intent of Congress was only to prohibit use of CWSRF loans as a match for Title II construction grants. This action will revise the regulations to allow a State, in its operation of the CWSRF, to permit a CWSRF loan for non—Title II infrastructure construction grant projects to be used as a non—federal match in certain circumstances. The prohibition on the use of CWSRF as a match for a Title II construction grant will continue.

Timetable:

Action	Date	FR Cite
Direct Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4493.

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RIN: 2040–AD68

3546. REGULATIONS FOR GRAY AND BLACK WATER DISCHARGES FROM CRUISE SHIPS OPERATING IN CERTAIN ALASKAN WATERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106—554, sec 1404—1407

CFR Citation: 00 CFR NYD

Legal Deadline: None

Abstract: Title XIV: Certain Alaska Cruise Ship Operations (HR 4577) authorizes EPA to establish effluent standards for black and gray water from cruise ships into the waters of Alaska, the Alexander Archipelago, and the Kachemak Bay National Marine Estuarine Research Reserve. EPA will develop those standards based on the best available scientific information on the environmental effects of the regulated discharges and the availability of new technologies for wastewater treatment. The implementation of these regulations will reduce the environmental impacts of cruise ships operating in the waters of Alaska, the Alexander Archipelago, and the Kachemak Bay National Marine Estuarine Research Reserve.

Timetable:

Action	Date	FR Cite
NPRM	11/00/05	
Final Action	11/00/07	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: SAN 4746. This rule was formerly known as "Regulations for Cruise Ships Operating in Alaskan Waters"

Sectors Affected: 483114 Coastal and Great Lakes Passenger Transportation; 483112 Deep Sea Passenger Transportation

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RIN: 2040–AD89

Environmental Protection Agency (EPA) Completed Actions
Clean Water Act (CWA)

3547. EFFLUENT GUIDELINES AND STANDARDS FOR THE METAL PRODUCTS AND MACHINERY CATEGORY, PHASES 1 AND 2

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 438

Completed:

Reason	Date	FR Cite
Final Action	05/13/03	68 FR 25686

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

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RIN: 2040–AB79

3548. EFFLUENT GUIDELINES AND STANDARDS FOR PHARMACEUTICAL MANUFACTURING: AMENDMENT

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 439

Completed:

Reason	Date	FR Cite
Withdrawn	06/11/03	68 FR 34831

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

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RIN: 2040–AD97

3549. TEST PROCEDURES FOR THE ANALYSIS OF MISCELLANEOUS METALS, ANIONS, AND VOLATILE ORGANICS UNDER THE CLEAN WATER ACT, PHASE ONE

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 136

Completed:

Reason	Date	FR Cite
Withdrawn	09/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AC95

3550. TEST PROCEDURES FOR THE ANALYSIS OF BIOLOGICAL CONTAMINANTS UNDER THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 136

Completed:

Reason	Date	FR Cite
Final Action	07/21/03	68 FR 43272

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AD08

3551. TEST PROCEDURES FOR THE ANALYSIS OF MISCELLANEOUS METALS, ANIONS, AND VOLATILE ORGANICS UNDER THE CLEAN WATER ACT, PHASE TWO

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 136

Completed:

Reason	Date	FR Cite
Withdrawn	09/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AD12

3552. TEST PROCEDURES FOR THE ANALYSIS OF MERCURY UNDER THE CLEAN WATER ACT (METHOD 245.7)

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 136.3

Completed:

Reason	Date	FR Cite
Withdrawn	09/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AD52

3553. MINIMIZING ADVERSE ENVIRONMENTAL IMPACTS FROM COOLING WATER INTAKE STRUCTURES UNDER SECTION 316(B) OF THE CLEAN WATER ACT — PHASE I REVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 125 subpart I

Completed:

Reason	Date	FR Cite
Final Action	06/19/03	68 FR 36749

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2040–AD85

3554. CLEAN WATER ACT DEFINITION OF WATERS OF THE UNITED STATES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 33 CFR 328.3(a); 40 CFR 110.1; 40 CFR 112.2; 40 CFR 116.3; 40 CFR 117.1; 40 CFR 122.2; 40 CFR 230.3(s); 40 CFR 232.2; 40 CFR 257.3—1(d); 40 CFR 300 app E; 40 CFR 401.11(I)

Completed:

Reason	Date	FR Cite
Withdrawn	11/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

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RIN: 2040–AB74

3555. NATIONAL PRIMARY DRINKING WATER REGULATIONS: ALDICARB

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 300f et seq

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: None

Abstract: EPA promulgated MCLs for aldicarb, aldicarb sulfoxide, and aldicarb sulfone in the Phase II rulemaking in 1991 at levels of 0.003, 0.004, and 0.002 ug/l, respectively. In response to an administrative petition from the manufacturer Rhone—Poulenc, the Agency issued an administrative stay of the effective date. EPA will reexamine risk assessment and occurrence data on aldicarb and make a determination of what further action is appropriate.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	
Final Action	08/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

Additional Information: SAN 3238.

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AC13

3556. UNREGULATED CONTAMINANT MONITORING REGULATION FOR PUBLIC WATER SYSTEMS REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300f et seq

CFR Citation: 40 CFR 141.40

Legal Deadline: Other, Statutory, August 6, 2004, Other.

Abstract: The 1996 amendments to the Safe Drinking Water Act require the Agency to publish, every 5 years, a revised listing of the contaminants to be monitored under the UCMR. The purpose of this proposed action is to meet that requirement by revising the National Primary Drinking Water Regulations for the UCMR to: provide minor modifications to the current UCMR program to improve its implementation; to revise the lists of analytes to permit a second round of monitoring; and to approve the analytical methods needed to perform this monitoring.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	
Final Action	09/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN 4770.

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RIN: 2040–AD93

3557. • NATIONAL PRIMARY DRINKING WATER REGULATIONS: MINOR CORRECTIONS AND CLARIFICATION TO DRINKING WATER REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 140 and 141

Legal Deadline: None

Abstract: This rule is intended to make minor changes to clarify and correct Drinking Water regulations. Typographical errors and inadvertent omissions will be corrected in the final Long Term 1 Enhanced Surface Water Treatment Final Rule. Additional technical corrections for other drinking water regulations may be added during the rule development process.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Action	01/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN 4795.

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RIN: 2040–AE58

3558. DRINKING WATER CONTAMINANT CANDIDATE LIST 2

Priority: Routine and Frequent

Legal Authority: 42 USC 300f et seq; SDWA1412(b)(1)(B)

CFR Citation: None

Legal Deadline: Final, Statutory, February 6, 2003, Final.

Abstract: This action is to develop the Second Drinking Water Contaminant Candidate List (CCL2). To meet the Safe Drinking Water Act (SDWA) requirements under section 1412(b)(1)(B)(i), as amended in 1996, EPA will publish a list of contaminants that are known or anticipated to occur in public water systems which may require regulation under the SDWA. In developing this list of contaminants, that are not currently subject to any proposed or promulgated NPDWRs, EPA must consult with the SAB, provide an opportunity for public comments, consider the National Contaminant Occurrence Database (developed under SDWA section 1445(g)), consider contaminants referred to in section 101(4) of CERCLA, and substances registered as pesticides under FIFRA. Similar to CCL1, the CCL2 will be based on readily available occurrence and health effects information and evaluated by EPA. SDWA required the first CCL to be published 18 months after the date of enactment (2/98), and a new CCL every 5 years thereafter. The methods used to develop the CCL are described in the Federal Register (62 FR 52193). To respond to comments received on the draft drinking water CCL, the Agency requested assistance from the National Research Council (NRC) for guidance on methods and processes to identify and narrow a very broad universe of potential contaminants into a smaller, more focused list for the future CCLs. The details of the NRC recommendation are available in the report entitled "Classifying Drinking Water Contaminants for Regulatory Considerations." The NRC recommendations are being evaluated by a National Drinking Water Advisory Council Work Group and the results of this parallel effort will be used for future CCLs.

Timetable:

Action	Date	FR Cite
Preliminary Notice Announcement	11/00/03	
Final Notice Announcement of CCL	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4703

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RIN: 2060–AD86

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA)

Final Rule Stage

3559. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUNDWATER RULE

Regulatory Plan: This entry is Seq. No. 126 in part II of this issue of the **Federal Register**.

RIN: 2040–AA97

3560. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG TERM 2 ENHANCED SURFACE WATER TREATMENT RULE

Regulatory Plan: This entry is Seq. No. 127 in part II of this issue of the **Federal Register**.

RIN: 2040–AD37

3561. NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE 2 DISINFECTION BYPRODUCTS RULE

Regulatory Plan: This entry is Seq. No. 128 in part II of this issue of the **Federal Register**.

RIN: 2040–AD38

3562. NATIONAL PRIMARY AND SECONDARY DRINKING WATER REGULATIONS: APPROVAL OF ADDITIONAL METHOD FOR THE DETECTION OF COLIFORMS AND E. COLI. IN DRINKING WATER

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300f; 42 USC 300g1—6; 42 USC 300j—9

CFR Citation: 40 CFR 141.21

Legal Deadline: None

Abstract: The Office of Water will revise the National Primary and Secondary Drinking Water Regulations to approve the Colitag Method for the detection of coliforms and E. Coli. in finished drinking water. This promulgation adds an additional analytical method to Part 141 to monitor for total coliforms and E. Coli in finished drinking water, for which other methods have been approved previously. It does not withdraw any currently approved methods, nor does it add nor alter any current monitoring requirement. This rule provides the ability to use an additional standardized method, offering water systems and their laboratories further operational flexibility. On March 7, 2002, EPA published "Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for Aeromonas; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants; Proposed Rule." In this proposed rule, EPA sought comments on the proposed promulgation of multiple industry—developed methods, one of which was the Colitag method, a "Test for Detection and Identification of Coliforms and E. coli Bacteria in Drinking Water and Source Water as Required in National Primary Drinking Water Regulations." This method was proposed for the analysis of total coliforms and E. coli in finished drinking water samples. EPA has since received additional information from CPI International, developers of Colitag, relevant to the performance of the method. Such information included additional data as well as a re—evaluation of previously reported data included in the public record that supported the proposed approval of Colitag. On December 2, 2002 EPA invited public comments on this additional information in "Notice of Data Availability; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants; Additional Information on the Colitag Method." Based on the evaluation of this additional information and review of public comments, the Agency now plans to promulgate the Colitag Method.

Timetable:

Action	Date	FR Cite
NPRM	03/07/02	67 FR 10532
NODA	12/02/02	67 FR 71520
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Additional Information: SAN 4769.

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EPA—Safe Drinking Water Act (SDWA) **Final Rule Stage**

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RIN: 2040–AD90

3563. • NATIONAL PRIMARY DRINKING WATER REGULATIONS: ANALYTICAL METHOD FOR URANIUM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Safe Drinking Water Act, sec. 1412; 42 USC 300f; 42 USC 300g—1; 42 USC 300j—4; 42 USC 300j—9

CFR Citation: 40 CFR 141.25

Legal Deadline: None

Abstract: EPA plans to promulgate a method for compliance monitoring of uranium that uses an inductively coupled plasma mass spectrometry (ICP—MS) technology. This technology has gained wide acceptance over the past decade, and should reduce costs for analyzing for uranium and provide a greater level of accuracy. States, laboratories and water systems have asked the Agency to approve this analytical method.

Timetable:

Action	Date	FR Cite
Direct Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Local, State, Tribal

Additional Information: SAN 4826.

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RIN: 2040–AE62

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA) **Long-Term Actions**

3564. NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 42 USC 300f et seq"SDWA1412"

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: Other, Statutory, February 6, 1999, Other.
NPRM, Statutory, August 6, 1999, NPRM.
Final, Statutory, November 2, 2000, Final.

Abstract: EPA proposed regulations for radon in drinking water which provide flexibility in how to manage the health risks from radon, in both drinking water and in indoor air. States and systems would be able to focus their efforts on the highest radon risks to the public — in indoor air — while reducing the highest risks from radon in drinking water. The proposal was based on the unique framework in the 1996 Safe Drinking Water Act (SDWA). The proposed regulation would provide two options to states and water systems for reducing public health risks from radon. Under the first option, states may choose to develop enhanced state programs to address the health risks from indoor radon while water systems reduce radon levels in drinking water to at or below the higher, alternative maximum contaminant level MCL proposed at 4,000 pCi/L (picoCuries per liter, a standard unit of radiation). EPA is encouraging the states to adopt this approach as the most cost—effective way to achieve the greatest radon risk reduction. If a State does not elect this option, the second option would require water systems in that State to either reduce radon in drinking water levels to the MCL of 300 pCi/L, or to develop a local indoor radon program and reduce levels in drinking water to 4000 pCi/L.

Timetable:

Action	Date	FR Cite
ANPRM	09/30/86	51 FR 34836
NPRM Original	07/18/91	56 FR 33050
Notice 99	02/26/99	64 FR 9560
NPRM	11/02/99	64 FR 59245
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN 2281.

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AA94

3565. NATIONAL SECONDARY DRINKING WATER REGULATIONS (NSDWR): METHYL TERTIARY BUTYL ETHER (MTBE) AND TECHNICAL CORRECTIONS TO THE NSDWR

Priority: Other Significant

Legal Authority: 42 USC 300f et seq

CFR Citation: 40 CFR 143 (Revision)

Legal Deadline: None

Abstract: Methyl Tertiary Butyl Ether (MTBE) is a fuel additive used primarily to increase the oxygen content in gasoline. It has been used in increasing quantity in the 1990s to meet the requirements of the Federal Reformulated Gasoline (FRG) and Oxyfuels programs required by the Clean Air Act Amendments of 1990. Although the use of MTBE in gasoline has helped to reduce harmful air emissions, it is being detected in ground water and surface water throughout the country. In some instances the affected waters are drinking water sources. At relatively low levels, MTBE's taste and odor can make drinking water supplies unacceptable to consumers. In this action, EPA is proposing a secondary standard for MTBE, which would provide guidance for taste and odor acceptability and to protect the public welfare.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4404.

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD54

3566. NATIONAL PRIMARY DRINKING WATER REGULATIONS: REVISIONS TO THE TOTAL COLIFORM MONITORING AND ANALYTICAL REQUIREMENTS AND ADDITIONAL DISTRIBUTION SYSTEM REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 300f et seq

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: None

Abstract: EPA has determined the need to revise the Total Coliform Rule (TCR), as published in the July 18, 2003 Federal Register (68FR42907). EPA intends revisions to the TCR to maintain or provide for greater human health protection than under the existing TCR. A Federal Advisory Committee recommended that EPA, as part of the TCR 6—year review process, "initiate a process for addressing cross—connection control and backflow prevention requirements and consider additional distribution system requirements related to significant health risks."The TCR, promulgated in 1989, protects human health by requiring microbial monitoring in drinking water distribution systems. The TCR does not include distribution system corrective or protective requirements to reduce contamination from coliforms and other contaminants. EPA has gained a better understanding of distribution system impacts on human health and, therefore, intends to strenghten the TCR by adding distribution system requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/00/06	
Final Action	06/00/08	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN 4775.

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RIN: 2040–AD94

3567. DRINKING WATER CONTAMINANT CANDIDATE LIST 3

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300g—1(b)

CFR Citation: 00 CFR None

Legal Deadline: Other, Statutory, February 6, 2008, Other.

Abstract: The Safe Drinking Water Act (SDWA) as amended in 1996 requires EPA to publish a list of contaminants that are known or anticipated to occur in public water systems, and which may require regulation under the SDWA every five years. The purpose of this action is to prepare and publish the third Contaminant Candidate List (CCL). In preparing the third list, EPA will evaluate the classification approach recommended by the National Academy of Sciences' National Research Council (NRC) and, if possible, use the NRC approach to identify and narrow a very broad universe of potential contaminants into a smaller, more focused list for future CCLs.

Timetable:

Action	Date	FR Cite
Preliminary Notice	02/00/07	
Final Notice	02/00/08	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4745.

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RIN: 2040–AD99

3568. UNDERGROUND INJECTION CONTROL: UPDATE OF STATE PROGRAMS

Priority: Info./Admin./Other

Legal Authority: 42 USC 300h—1"SDWA 1422"; 42 USC 300h—4"SDWA 1425"

CFR Citation: 40 CFR 147 (Revision)

Legal Deadline: None

Abstract: EPA provides a place in part 147 of its UIC regulations where all the State UIC programs are summarized. Included in this summarization are all the authorities and regulations used by the States to implement the UIC program, as well as all other documents that are relevant to the program. The primary reason for this is to provide one place where all the UIC programs nationwide are presented. A second reason, more importantly, is to allow EPA to incorporate by reference into the Code of Federal Regulations the State program authorities. Current citations to State regulations in 40 CFR part 147 are out of date for many States. This update is necessary to ensure that the CFR accurately reflects current approved State UIC programs and that elements of those programs are federally enforceable if necessary. EPA Regional Offices will be submitting State revision packages as they are completed. Part 147 will then be updated in several stages. This is the first stage. This effort should have no impact on the regulated community because we will merely be incorporating by reference elements of already effective State programs.

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN 4236.

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RIN: 2040–AD40

3569. • DRINKING WATER: REGULATORY DETERMINATIONS REGARDING CONTAMINANTS ON THE SECOND DRINKING WATER CONTAMINANT CANDIDATE LIST

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 U.S.C. 300g—1(b)

CFR Citation: 00 CFR None

Legal Deadline: Other, Statutory, August 6, 2006, Other.

Abstract: The 1996 amendments to the Safe Drinking Water Act (SDWA) require EPA to publish a list of non—regulated contaminants every five years, which may warrant regulation due to their health effects and their potential for occurrence in public water systems (PWSs). The first Contaminant Candidate List (CCL), was published in the Federal Register on March 2, 1998 (63 FR 10247). The second CCL should be published in 2003. In addition to publishing the drinking water CCL, the SDWA also requires the Agency to select five or more contaminants from the second CCL and determine, by August 2006, whether to regulate these contaminants with a National Primary Drinking Water Regulation (NPDWR). In order to make a determination of whether or not to develop an NPDWR for a contaminant, the SDWA requires three statutory tests be met: 1) the contaminant may have an adverse effect on the health of persons; 2) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and 3) in the sole judgment of the Administrator, regulation of the contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems. Using these three statutory tests to make regulatory decisions, there are three possible outcomes: 1) regulate the contaminant with an NPDWR; 2) develop guidance (e.g., Health or Consumer Advisory); or 3) determine no action is necessary.

Timetable:

Action	Date	FR Cite
Preliminary Notice	08/00/05	
Final Notice	08/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN 4821.

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RIN: 2040–AE60

Environmental Protection Agency (EPA) Safe Drinking Water Act (SDWA) Completed Actions

3570. DRINKING WATER: REGULATORY DETERMINATIONS REGARDING CONTAMINANTS ON THE DRINKING WATER CONTAMINANT CANDIDATE LIST

Priority: Other Significant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Notice	07/18/03	68 FR 42897

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2040–AD61

3571. 6—YEAR REVIEW OF EXISTING NATIONAL PRIMARY DRINKING WATER REGULATIONS

Priority: Other Significant

CFR Citation: 00 CFR None

Completed:

Reason	Date	FR Cite
Final Notice	07/18/03	68 FR 42908

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2040–AD67

Environmental Protection Agency (EPA) Shore Protection Act (SPA)

Long-Term Actions

3572. SHORE PROTECTION ACT, SECTION 4103(B) REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2601 "Shore Protection Act of 1988"; PL 100—688 "4103(b)"

CFR Citation: 40 CFR 237

Legal Deadline: None

Abstract: This rule will implement the Shore Protection Act (SPA) and is designed to prevent the deposit of municipal and commercial waste into U.S. Coastal Waters. This rule establishes minimum waste handling practices for vessels and waste handling facilities involved in the transport of municipal or commercial wastes in the coastal waters of the United States. The rule may require certain vessels and waste handling facilities to develop an operation and maintenance manual that identifies procedures to prevent, report, and clean up deposits of waste into coastal waters. Local governments and businesses involved with the vessel transportation and shore side handling of these wastes would be affected by this rule. Currently no tribes are known to be involved in waste handling of this type; therefore none would be affected by this rule. In regards to small businesses, EPA has provided guidance on development of operation and maintenance manuals and encourages the use and documentation of existing industry practices that meet or exceed the EPA proposed minimum waste handling standards. All indications are that this regulation as proposed would have a minimal economic impact. This regulation will result in reduction of municipal and commercial wastes deposited in coastal waters.

Timetable:

Action	Date	FR Cite
NPRM	08/30/94	59 FR 44798
Final Action	08/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Local

Additional Information: SAN 2820.

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RIN: 2040–AB85

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Federal Register

Monday,
December 22, 2003

Part XXV

Equal Employment Opportunity Commission

Semiannual Regulatory Agenda

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Ch. XIV

Semiannual Regulatory Agenda

AGENCY: Equal Employment Opportunity Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is publishing its semiannual regulatory agenda pursuant to Executive Order 12866, 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. chapter 6. The agenda lists all regulations that are scheduled for review or development during the next 12 months or that have been finalized since the publication of the last agenda.

FOR FURTHER INFORMATION CONTACT: Thomas Schlageter, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20507; telephone (202) 663-4669.

SUPPLEMENTARY INFORMATION: The Commission has identified four items in this regulatory agenda.

For this edition of EEOC's regulatory agenda, the most important significant regulatory action is included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entry is listed in the table of contents below and is denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Signed in Washington, DC, this 8th day of September 2003.

For the Commission.

Cari M. Dominguez,

Chair.

Equal Employment Opportunity Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3573	Posting Requirements Under the Notification and Federal Employee Antidiscrimination and Retaliation Act	3046—AA74

Equal Employment Opportunity Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3574	Procedures—The Age Discrimination in Employment Act	3046—AA54
3575	Coordination of Retiree Health Benefits With Medicare and State Health Benefits **(Reg Plan Seq No. 131)**	3046—AA72

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Equal Employment Opportunity Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3576	Federal Sector Equal Employment Opportunity Complaint Processing	3046—AA73

Equal Employment Opportunity Commission (EEOC) Proposed Rule Stage

3573. POSTING REQUIREMENTS UNDER THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT

Priority: Other Significant

Legal Authority: PL 107—174, sec 303

CFR Citation: 29 CFR 1614.701 et seq

Legal Deadline: Final, Statutory, October 1, 2003, Final.

Abstract: Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 requires each Federal agency to post on its website certain statistical information about equal employment opportunity complaints that it receives and processes under 29 CFR part 1614. The Act authorizes EEOC to issue regulations defining certain terms and prescribing the time, form, and manner of the posting.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 3046–AA74

Equal Employment Opportunity Commission (EEOC) Final Rule Stage

3574. PROCEDURES—THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 628, sec 115, Civil Rights Act of 1991

CFR Citation: 29 CFR 1626

Legal Deadline: None

Abstract: Section 115 of the Civil Rights Act of 1991 deleted references to the Portal—to—Portal Act from the private suit provisions of the Age Discrimination in Employment Act (ADEA) and replaced them with a requirement that suit be filed no later than 90 days after termination of proceedings or dismissal of a charge by EEOC. Accordingly, section 1626.7(a) is being deleted and section 1626.15(b) is being revised because they were both based upon the Portal—to—Portal Act. New sections are being added concerning termination of EEOC proceedings and the issuance of notices of the new 90—day limitation period.

Timetable:

Action	Date	FR Cite
NPRM	08/12/02	67 FR 52431
NPRM Comment Period End	10/11/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 3046–AA54

3575. COORDINATION OF RETIREE HEALTH BENEFITS WITH MEDICARE AND STATE HEALTH BENEFITS

Regulatory Plan: This entry is Seq. No. 131 in part II of this issue of the **Federal Register**.

RIN: 3046–AA72

Equal Employment Opportunity Commission (EEOC) Long-Term Actions

3576. FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESSING

Priority: Other Significant

CFR Citation: 29 CFR 1614

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3046–AA73

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Federal Register

Monday,
December 22, 2003

Part XXVI

Federal Mediation and Conciliation Service

Semiannual Regulatory Agenda

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Ch. XII

Semiannual Regulatory Agenda

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Federal Mediation and Conciliation Service's (FMCS) regulatory agenda issued under Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists regulations that are currently under development or review or that FMCS expects to have under development or review during the next 12 months. The effect of this agenda is to advise the public of FMCS' current and future regulatory activities.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Arthur Pearlstein, General Counsel, Office of the General Counsel, Federal Mediation and Conciliation Service, at (202) 606-3635. For information about a specific regulation project listed on the agenda, contact the person designated in the agenda for that regulation.

SUPPLEMENTARY INFORMATION: Under the President's order on Regulatory Planning and Review, Executive Order 12866 (58 FR 51735, October 4, 1993), each agency is required to prepare an agenda of all regulations under development or review. The Regulatory Flexibility Act, Public Law 98-354, has a similar agenda requirement (5 U.S.C. 602). Under the law, the agenda must list any regulation that is likely to have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has issued guidelines prescribing the form and content of the regulatory agenda. Under those guidelines, the agenda must list all regulatory activities being conducted or reviewed in the next 12 months and provide certain specified information on each regulation. All of the items on this agenda are current or projected rulemakings.

Dated: September 11, 2003.

Amy E. Krupsky,

Attorney-Advisor, FMCS.

Federal Mediation and Conciliation Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3577	Public Information	3076—AA06
3578	Access to Neutrals	3076—AA10

Federal Mediation and Conciliation Service—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3579	Governmentwide Debarment and Suspension Nonprocurement: Governmentwide Requirement for Drug—Free Work Place	3076—AA08

Federal Mediation and Conciliation Service (FMCS) Final Rule Stage

3577. PUBLIC INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552 et seq

CFR Citation: 29 CFR 1401 (Revision)

Legal Deadline: None

Abstract: The proposed revision to FMCS' Public Information regulations is intended to incorporate the recent amendments to the Freedom of Information Act into FMCS' portion of the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/03/99	64 FR 59697
NPRM Comment Period End	01/03/00	
Final Action	01/00/04	
Final Action Effective	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Arthur Pearlstein, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW, Room 713, Washington, DC 20427
Phone: 202 606—3635
Fax: 202 606—5345
Email: apearlstein@fmcs.gov

RIN: 3076—AA06

3578. ACCESS TO NEUTRALS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 172 and 173 et seq

CFR Citation: 29 CFR 1480

Legal Deadline: None

Abstract: FMCS proposes to establish a list of neutrals for use by private individuals and/or organizations for employment—related alternative dispute resolution services.

Timetable:

Action	Date	FR Cite
NPRM	05/05/03	68 FR 23634
NPRM Comment Period End	07/07/03	

Action	Date	FR Cite
Final Action	01/00/04	
Final Action Effective	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peggy A. McNeive, Director of the Neutrals Initiative, Federal Mediation and Conciliation Service, Suite 501, 801 Walnut Street, Kansas City, MO 64106—1823
Phone: 816 374—6215
Fax: 816 374—6026

RIN: 3076–AA10

Federal Mediation and Conciliation Service (FMCS) Long-Term Actions

3579. GOVERNMENTWIDE DEBARMENT AND SUSPENSION NONPROCUREMENT: GOVERNMENTWIDE REQUIREMENT FOR DRUG—FREE WORK PLACE

Priority: Substantive, Nonsignificant

CFR Citation: 29 CFR 1471 and 1472

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3322
NPRM Comment Period End	03/25/02	
Final Action	To Be Determined	
Final Action Effective	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 3076–AA08

[FR Doc. 03–25122 Filed 12–19–03; 8:45 am]

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December 22, 2003

Part XXVII

General Services Administration

Semiannual Regulatory Agenda

GENERAL SERVICES ADMINISTRATION (GSA)

GENERAL SERVICES ADMINISTRATION

41 CFR Chs. 101, 102, 105, 300, 301, 302, 303, and 304

48 CFR Ch. 5

Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: General Services Administration (GSA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the spring 2003 edition. This agenda was developed under the guidelines in an Office of Management and Budget memorandum. GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated.

FOR FURTHER INFORMATION CONTACT: Rodney P. Lantier, Regulatory and Federal Assistance Publication Division, (202) 208-7312.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the Federal Register.

Dated: September 22, 2003.

Becky Rhodes,

Acting Associate Administrator, Office of Governmentwide Policy.

General Services Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3580	Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs	3090—AE32
3581	Title IX of the Education Amendments Act	3090—AH49
3582	Telecommunications Management	3090—AG03
3583	Disposition of Seized and Forfeited, Voluntarily Abandoned, and Unclaimed Personal Property	3090—AH11
3584	FPMR Case 2003—101—1, Disposition of Personal Property With Special Handling Requirements	3090—AH21
3585	Federal Management Regulation; Personal Property Management	3090—AH31
3586	FPMR Case 2003—101—2, Federal Management Regulation; Supply and Procurement	3090—AH80
3587	General Services Administration Acquisition Regulation (GSAR) Case 2003—G502; Defense Priorities and Allocations System	3090—AH88

General Services Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3588	GSBCA Rules of Procedure (Standard Proceedings and Expedited Proceedings)	3090—AH69
3589	GSBCA Rules of Procedure for Transportation Rate Cases	3090—AH70
3590	GSBCA Rules of Procedure for Travel and Relocation Expenses Cases; GSBCA Rules of Procedure for Decisions Authorized by 31 U.S.C. 3529	3090—AH71
3591	GSPMR Case 2003—105—1, General Services Administration Property Management Regulations; Collection of Claims Owed the United States	3090—AH84
3592	GSPMR Case 2003—105—2, General Services Administration Property Management Regulations, Administrative Wage Garnishment	3090—AH85
3593	GSPMR Case 2003—105—3, General Services Administration Property Management Regulations; Salary Offset for Indebtedness of Federal Employees to the United States	3090—AH86
3594	General Services Administration Acquisition Regulation (GSAR) Case 2002—G504; Acquisition of Leasehold Interests in Real Property; Historic Preference	3090—AH01
3595	General Services Administration Acquisition Regulation (GSAR) Case 2002—G503, Tax Adjustment	3090—AH03
3596	FMR Amendment 2003—2; FMR Case 2003—102—1; Federal Management Regulation; Mail Management	3090—AH13
3597	General Services Administration Acquisition Regulation (GSAR) Case 2002—G501, FedBizOpps Notice on Charging for E—mail Notification Service	3090—AH67
3598	Federal Management Regulation; Motor Vehicle Management	3090—AH68
3599	General Services Administration Acquisition Regulation Case 2002—G505; GSAR Amendment 2003—01, Federal Supply Schedule Contracts—Acquisition of Information Technology by State and Local Government	3090—AH76
3600	FTR Case 2003—303, Federal Travel Regulation; eTravel Service (eTS)	3090—AH83
3601	FPMR Case 2003—101—3, Federal Property Management Regulations; Pricing Policy for Occupancy in GSA Space	3090—AG33

General Services Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3602	Federal Property Management Regulations; Discrimination Prohibited on the Basis of Age	3090—AH46
3603	Federal Property Management Regulations; Nondiscrimination in Programs Receiving Federal Financial Assistance	3090—AH47
3604	General Services Administration; Office of Civil Rights; Nondiscrimination Based on Sex in All Programs and Activities Receiving Federal Surplus Property	3090—AH48
3605	General Services Administration; Office of Civil Rights; Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by General Services Administration	3090—AH59
3606	General Services Administration; Administrative Personnel; Prohibited Purchases of Property Sold by GSA	3090—AH50
3607	FTR Interim Rule 7—Income Tax Reimbursement Allowance (ITRA)	3090—AG99
3608	General Services Administration Acquisition Regulation; Clarification of HUBZone	3090—AH17
3609	General Services Administration Acquisition Regulation (GSAR), Guidance on Electronic Funds Transfer	3090—AH30

General Services Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3610	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance	3090—AH33
3611	FPMR Amendment H—211 and FMR Amendment B—3, Federal Management Regulation; Sale of Personal Property	3090—AH10
3612	General Services Administration Acquisition Regulation (GSAR) Case 2002—G506; GSAR Change 6, Identification of Products That Have Environmental Attributes	3090—AH25
3613	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug—Free Workplace (Grants)	3090—AH35
3614	GSAR Case 2002—G507; GSAR Amendment 2003—02, Consolidation of Industrial Funding Fee and Sales Reporting Clauses; Reduction in Amount of Industrial Funding Fee	3090—AH79
3615	FTR Case 2003—304; FTR Amendment 2003—04, Federal Travel Regulation; Using Promotional Materials; Conference Planning	3090—AH81
3616	FTR Case 2003—306; FTR Amendment 2003—05, Federal Travel Regulation; Per Diem (Incidental Expense Increase)	3090—AH87

General Services Administration (GSA) Proposed Rule Stage

OFFICE OF CIVIL RIGHTS

3580. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 41 CFR 101—8.3; 41 CFR 102—7

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101—8.3 in plain language and moves it into the Federal Management Regulation at 102—7. The revised regulation updates coverage for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross—reference to the Uniform Federal Accessibility Standards.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Agency Contact: Regina Budd, Deputy Associate Administrator, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501—4571
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RIN: 3090–AE32

3581. TITLE IX OF THE EDUCATION AMENDMENTS ACT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 41 CFR 101—4.100 et seq

Legal Deadline: None

Abstract: This rulemaking revises FPMR 41 CFR 101—4 into plain language and moves it into the Federal Management Regulation. The revised regulation enforces title IX of the Education Amendments of 1972, as amended, in federally assisted education and training programs.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Regina Budd, Deputy Associate Administrator, Office of Civil Rights, General Services Administration, Washington, DC 20405
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RIN: 3090–AH49

OFFICE OF GOVERNMENTWIDE POLICY

3582. TELECOMMUNICATIONS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c); 40 USC 1424(b)

CFR Citation: 41 CFR 101—35; 41 CFR 102—172

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101—35 to update GSA's telecommunications management policy and moves it into the Federal Management Regulation at 102—172. The regulation is being rewritten in a plain language, question and answer format to make it easier to use and understand.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/07/96	61 FR 41003
Interim Final Rule Effective	08/08/96	
Interim Final Rule Comment Period End	10/07/96	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Keith Thurston, Assistant to Deputy Associate Administrator, Office of Information Technology Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AG03

3583. DISPOSITION OF SEIZED AND FORFEITED, VOLUNTARILY ABANDONED, AND UNCLAIMED PERSONAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 484(m)

CFR Citation: 41 CFR 101—48; 41 CFR 102—41

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101—48 and moves it into the Federal Management Regulation at 102—41. The regulation is being rewritten in a plain language, question and answer format to make the regulation easier to use and understand.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robert Holcombe, Director, Personal Property Management Policy Division, General Services Administration, Washington, DC 20405
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Email: robert.holcombe@gsa.gov

RIN: 3090–AH11

3584. FPMR CASE 2003—101—1, DISPOSITION OF PERSONAL PROPERTY WITH SPECIAL HANDLING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c)

CFR Citation: 41 CFR 101—42; 41 CFR 102—40

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101—42 and moves it into the Federal Management Regulation at 102—40. The regulation revises use, handling, and disposal requirements for special categories of personal property. The rule is being rewritten in plain language in a question and answer format.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Robert Holcombe, Director, Personal Property Management Policy Division, General Services Administration, Washington, DC 20405
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RIN: 3090–AH21

3585. FEDERAL MANAGEMENT REGULATION; PERSONAL PROPERTY MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 481; 40 USC 483 to 487

CFR Citation: 41 CFR 102—35

Legal Deadline: None

Abstract: This rulemaking provides a general outline of the policies governing the management of Federal personal property and summarizes the processes provided for in FMR parts 102—36 through 102—42.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robert Holcombe, Director, Personal Property Management Policy Division, General Services Administration, Washington, DC 20405
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RIN: 3090–AH31

3586. FPMR CASE 2003—101—2, FEDERAL MANAGEMENT REGULATION; SUPPLY AND PROCUREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c)

CFR Citation: 41 CFR 101—25 to 101—30; 41 CFR 102—21 to 102—28

Legal Deadline: None

Abstract: The General Services Administration (GSA) is proposing to amend the Federal Property Management Regulation (FPMR) by revising coverage at 41 CFR parts 101—

25 to 101—30 regarding Government property management policies and moving it into the Federal Management Regulation (FMR) at 41 CFR parts 102—21 to 102—28. A cross—reference in the FPMR will direct readers to the coverage in the FMR.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robert Holcombe, Director, Personal Property Management Policy Division, General Services Administration, Washington, DC 20405
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RIN: 3090–AH80

3587. • GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2003—G502; DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c)

CFR Citation: 48 CFR 511; 48 CFR 552

Legal Deadline: None

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement the Defense Priorities and Allocation System (DPAS) within the GSA Federal Supply Service (FSS).

Timetable:

Action	Date	FR Cite
NPRM	10/15/03	68 FR 59510
NPRM Comment Period End	11/14/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4035, 1800 F Street NW, Washington, DC 20405
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RIN: 3090–AH88

General Services Administration (GSA) Final Rule Stage

BOARD OF CONTRACT APPEALS

3588. GSBCA RULES OF PROCEDURE (STANDARD PROCEEDINGS AND EXPEDITED PROCEEDINGS)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 601 to 613

CFR Citation: 48 CFR 6101; 48 CFR 6102

Legal Deadline: None

Abstract: This interim rule contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board). The rules governing the standard proceedings of the Board in contract disputes are contained in 48 CFR part 6101. Rules governing expedited proceedings in contract disputes, including alternative disputes resolution, are contained in 48 CFR part 6102. The revisions to the rules provide procedures for the filing by e—mail of documents in cases before the Board in both standard and expedited proceedings.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Margaret S. Pfunder, Chief Counsel, GSA Board of Contract Appeals, General Services Administration, Washington, DC 20405
Phone: 202 501—0272
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RIN: 3090–AH69

3589. GSBCA RULES OF PROCEDURE FOR TRANSPORTATION RATE CASES

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3726(i)(1); 41 USC 601 to 613; PL 104—316, sec 201(o)

CFR Citation: 48 CFR 6103

Legal Deadline: None

Abstract: This interim rule contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board) applicable to the Board's review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(i)(1). The revisions to the rules provide procedures for the filing by e—mail of documents in rate determination cases.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Margaret S. Pfunder, Chief Counsel, GSA Board of Contract Appeals, General Services Administration, Washington, DC 20405
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RIN: 3090–AH70

3590. GSBCA RULES OF PROCEDURE FOR TRAVEL AND RELOCATION EXPENSES CASES; GSBCA RULES OF PROCEDURE FOR DECISIONS AUTHORIZED BY 31 U.S.C. 3529

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3702; 31 USC 3529; 41 USC 601 to 613; PL 104—316, sec 202(n), 202(o), 204

CFR Citation: 48 CFR 6104; 48 CFR 6105

Legal Deadline: None

Abstract: This interim rule contains revisions to the rules of procedure of the GSA Board of Contract Appeals (Board) applicable to the Board's review of claims made by Federal civilian agencies against the United States for reimbursement of expenses incurred while on temporary duty travel or in connection with relocation to a new duty station. The rules governing proceedings when a claim is filed with the Board by an employee or an employee's agency are contained in 48 CFR part 6104. Rules governing proceedings when a request for an advance decision involving certification or payment of a claim is made by a disbursing or certifying official of an agency, or the head of agency, are governed by 48 CFR part 6105. The revisions to the rules provide procedures for the filing by e—mail of documents in both types of travel and relocation expenses cases.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Margaret S. Pfunder, Chief Counsel, GSA Board of Contract Appeals, General Services Administration, Washington, DC 20405
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RIN: 3090–AH71

OFFICE OF THE COMPTROLLER

3591. • GSPMR CASE 2003—105—1, GENERAL SERVICES ADMINISTRATION PROPERTY MANAGEMENT REGULATIONS; COLLECTION OF CLAIMS OWED THE UNITED STATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552 to 553; 31 USC 321, 3701, 3711, 3716, 3717, 3718, 3719, 3720B, 3720D ; 31 CFR 900 to 904

CFR Citation: 41 CFR 105—55

Legal Deadline: None

Abstract: The General Services Administration (GSA) proposed an amendment and reissuance to its regulations concerning the procedures used to collect debts owed to GSA by incorporating applicable provisions as required by the Debt Collection Improvement Act of 1996 (DCIA) and the Federal Claims Collection Standards.

Timetable:

Action	Date	FR Cite
NPRM	07/11/03	68 FR 41274
NPRM Comment Period End	09/09/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. Kosar, Staff Accountant, Office of the Chief Financial Officer, General Services Administration, Washington, DC 20405
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RIN: 3090–AH84

3592. • GSPMR CASE 2003—105—2, GENERAL SERVICES ADMINISTRATION PROPERTY MANAGEMENT REGULATIONS, ADMINISTRATIVE WAGE GARNISHMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552 to 553; 31 USC 3720D; 31 CFR 285.11

CFR Citation: 41 CFR 105—57

Legal Deadline: None

Abstract: The General Services Administration (GSA) proposed an amendment to its regulations to implement the administrative wage garnishment provisions contained in the Debt Collection Improvement Act of 1996 (DCIA). Wage garnishment is a process whereby an employer withholds amounts from an employee's wages and pays those amounts to the employee's creditor in satisfaction of a withholding order. The DCIA authorizes Federal agencies to administratively garnish the disposable pay of an individual to collect delinquent non—tax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury.

This part was previously titled Collection of Debts by Tax Refund Offset. Effective January 1, 1999, the Department of Treasury started to conduct the tax refund offset program as part of the centralized offset program, known as the Treasury Offset Program (TOP), operated by the Financial Management Service (FMS), a bureau of the Department of Treasury. Since GSA has a cross—servicing agreement with FMS, which includes the TOP, the collection of debts by tax refund offset is no longer valid and is rescinded and replaced with the new part regarding administrative wage garnishment.

Timetable:

Action	Date	FR Cite
NPRM	07/11/03	68 FR 41290
NPRM Comment Period End	09/09/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. Kosar, Staff Accountant, Office of the Chief Financial Officer, General Services Administration, Washington, DC 20405
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RIN: 3090–AH85

3593. • GSPMR CASE 2003—105—3, GENERAL SERVICES ADMINISTRATION PROPERTY MANAGEMENT REGULATIONS; SALARY OFFSET FOR INDEBTEDNESS OF FEDERAL EMPLOYEES TO THE UNITED STATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5514; 5 CFR 550, subpart K; 31 CFR 5, subpart B; 31 CFR 900 to 904; 31 CFR 285.7

CFR Citation: 41 CFR 105—56

Legal Deadline: None

Abstract: The General Services Administration (GSA) proposed to change its regulations concerning the salary offset procedures used to collect debts that are owed to the United States by Federal employees. The proposed change would conform GSA regulations to the legislative changes enacted in the Debt Collection Improvement Act of 1996 (DCIA) and the amended procedures presented in the Federal

Claims Collection Standards (FCCS) jointly issued by the Department of the Treasury (Treasury) and the Department of Justice (DoJ). The proposed change will allow GSA to improve its collection of debts due the United States from Federal employees.

Timetable:

Action	Date	FR Cite
NPRM	07/10/03	68 FR 41093
NPRM Comment Period End	09/08/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3090–AH86

OFFICE OF GOVERNMENTWIDE POLICY

3594. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2002—G504; ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY; HISTORIC PREFERENCE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c)

CFR Citation: 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking updates GSAR clause 552.270—4, Historic Preference, that is used in the acquisition of leasehold interests. E.O. 13006 requires that Federal agencies give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. As a result of the requirements of the E.O., 552.270—4 will be revised to establish the order of precedence.

Timetable:

Action	Date	FR Cite
NPRM	06/30/99	64 FR 35122
NPRM Comment Period End	08/30/99	
Second NPRM	10/19/01	66 FR 53193
Second NPRM Comment Period End	12/18/01	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4035, 1800 F Street NW, Washington, DC 20405
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Email: rodney.lantier@gsa.gov

RIN: 3090–AH01

3595. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2002—G503, TAX ADJUSTMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c)

CFR Citation: 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking establishes a provision at GSAR 552.270—74, Tax Adjustment. The provision outlines the methodology for calculating real estate taxes for use in solicitations for offers for acquisition of leasehold interests in real property.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33799
NPRM Comment Period End	07/24/00	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4035, 1800 F Street NW, Washington, DC 20405
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RIN: 3090–AH03

3596. FMR AMENDMENT 2003—2; FMR CASE 2003—102—1; FEDERAL MANAGEMENT REGULATION; MAIL MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: sec 2, PL 94—575, as amended ; 44 USC 2904; 40 USC 121(c)

CFR Citation: 41 CFR 102—192

Legal Deadline: None

Abstract: The interim rule published in the Federal Register at 67 FR 38896, June 6, 2002, revised FPMR 101—9 and moved it into the Federal Management Regulation at 102—192. The new rule, rewritten in plain language, established four requirements at the agency level. Specifically, all agencies must (1) have written security plans at the agency and facility level; (2) ensure that mail costs are identified at the program level; (3) ensure that all payments to the United States Postal Service are made using commercial payment processes (i.e., not using the Postal Service's Official Mail Accounting System)—the effective date of this requirement will be October 1, 2003; and (4) have performance measures for mail operations. In addition, the new rule requires all agencies that spend over $1 million per year on postage to send GSA an annual report that states the total amounts spent on postage, verifies that facility security plans have been reviewed at the agency level, identifies performance measures in use, and describes the agency's plans to improve the efficiency and effectiveness of their mail operations.

This second interim rule amended the Federal Management Regulation (FMR) to extend the deadline for agencies to convert to commercial payment to the United States Postal Service instead of the Official Mail Accounting System (OMAS). This rule amended the interim rule published in the Federal Register at 67 FR 38896, June 6, 2002, to reflect the extension of the deadline from October 1, 2003, to December 31, 2003. The FMR and corresponding documents are available via the Internet at http://www.gsa.gov.

Timetable:

Action	Date	FR Cite
NPRM	05/29/01	66 FR 29067
NPRM Comment Period End	07/30/01	

Action	Date	FR Cite
NPRM Comment Period Extended	07/31/01	66 FR 39473
NPRM Comment Period End	09/28/01	
Interim Final Rule	06/06/02	67 FR 38896
Interim Final Rule Effective	06/06/02	
Interim Final Rule	09/29/03	68 FR 56112
Interim Final Rule Comment Period End	11/28/03	
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Henry Maury, Senior Policy Analyst, Office of Transportation and Personal Property (MT), General Services Administration, Washington, DC 20405
Phone: 202 208—7928
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Email: henry.maury@gsa.gov

RIN: 3090–AH13

3597. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2002—G501, FEDBIZOPPS NOTICE ON CHARGING FOR E—MAIL NOTIFICATION SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 505

Legal Deadline: None

Abstract: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to charge subscribers to the value—added e—mail notification service of Federal Business Opportunities (FedBizOpps.gov) a modest annual fee beginning October 1, 2003. The charge will be only for the members of the public who elect to register for options 2 or 3 of the FedBizOpps Vendor Notification Service, specifically to (1) receive all notices from selected organizations and product service classifications or (2) register to receive all procurement notices on the site.

Timetable:

Action	Date	FR Cite
NPRM	01/09/03	68 FR 2003
NPRM Comment Period End	02/10/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4035, 1800 F Street NW, Washington, DC 20405
Phone: 202 208—7312
Fax: 202 501—2727
Email: rodney.lantier@gsa.gov

RIN: 3090–AH67

3598. FEDERAL MANAGEMENT REGULATION; MOTOR VEHICLE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c)

CFR Citation: 41 CFR 102—34

Legal Deadline: None

Abstract: An amendment to FMR 102—34 has been drafted to incorporate recent changes in the program. The significant changes proposed are:

1. The Fleet Average Fuel Economy Standards for FY 2000 and beyond is 20.7 miles per gallon for light trucks.
2. Motor vehicle identification requirements have been changed. All required identifiers are now to be included on the license plate: "For Official Use Only," "U.S. Government," and Federal agency or bureau identification. Previously, the identifiers were on decals that were placed on the vehicles. A waiver is currently allowing agencies to deviate from the decal requirement.
3. UNICOR is the mandatory supplier of official U. S. Government license plates. Lorton Prison in Virginia was the supplier for a number of years but has closed. The GSA Federal Vehicle Policy Division (MTV) initiated a Memorandum of Understanding (MOU) with UNICOR to provide license plates to all Federal agencies.
4. Agencies are identified by a letter code on the license plate. For example, the letter G designates GSA Fleet.
5. The exemption from displaying U.S. Government license plates and other motor vehicle identification currently did not allow agencies to request this on administrative vehicles that were not directly connected to investigative, law enforcement, or intelligence duties. Our office issued a wavier to this after the events of September 11, 2001, at the request of the agencies. This note has been removed to allow agencies to request an exemption on all their vehicles.
6. Addition of a clause that agencies are required to purchase EPA—designated content products such as re—refined engine oils, retread tires, and reclaimed engine coolant.
7. The Federal Motor Vehicle Fleet Report reporting is now accomplished through the Federal Automotive Statistical Tool (FAST). FAST is an Internet—based reporting system used by GSA and the Department of Energy to capture motor vehicle inventory, cost, fuel, and use data from all Federal agencies.
8. A new subpart has been added on Environmental Concerns, which addresses hazardous wastes, Clean Air Act Amendments of 1990, Energy Policy Act of 1992, Executive Order 13149, the Federal Fleet Program, EPA—designated recycled content products, and the Federal Alternative Fuel Vehicle USER Program.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William T. Rivers, Director, Federal Vehicle Policy Division, General Services Administration, Office of Governmentwide Policy, Washington, DC 20405
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Fax: 202 208—0349
Email: bill.rivers@gsa.gov

RIN: 3090–AH68

3599. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION CASE 2002—G505; GSAR AMENDMENT 2003—01, FEDERAL SUPPLY SCHEDULE CONTRACTS—ACQUISITION OF INFORMATION TECHNOLOGY BY STATE AND LOCAL GOVERNMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c)

CFR Citation: 48 CFR 511; 48 CFR 516; 48 CFR 532; 48 CFR 538; 48 CFR 546; 48 CFR 552

Legal Deadline: Final, Statutory, April 17, 2003, Final.

Abstract: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement section 211 of the E—Government Act of 2002. Section 211 authorizes the Administrator of GSA to provide for the use by States or local governments of its Federal Supply Schedules for automated data processing equipment (including firmware), software, supplies, support equipment, and services.

Timetable:

Action	Date	FR Cite
NPRM	01/23/03	68 FR 3220
NPRM Comment Period End	03/24/03	
Interim Final Rule	05/07/03	68 FR 24372
Interim Final Rule Comment Period End	07/07/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4035, 1800 F Street NW, Washington, DC 20405
Phone: 202 208—7312
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RIN: 3090–AH76

3600. • FTR CASE 2003—303, FEDERAL TRAVEL REGULATION; ETRAVEL SERVICE (ETS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5707; 5 USC 5738; 5 USC 5741 to 5742; 20 USC 905(a); 31 USC 1353; 40 USC 121(c); 49 USC 40118; EO 11609, 3 CFR, 1971 to 1975 Comp, p 586

CFR Citation: 41 CFR 300—3; 41 CFR 301—50; 41 CFR 301—52; 41 CFR 301—70; 41 CFR 301—73

Legal Deadline: None

Abstract: The General Services Administration (GSA) proposed to amend the Federal Travel Regulation (FTR) by revising the term Travel Management System (TMS) to Travel Management Service and by revising its definition. New terms and definitions for the eTravel Program Management Office (PMO) will also be added. This rule proposed amending the FTR requirements dealing with employees' use of their agencies' Travel Management Service (TMS) and the eTravel Service (eTS). The eTravel PMO will provide migration planning tools, coordinate migration planning meetings, and provide migration planning support beginning July 2003. This rule proposed a requirement that agencies begin implementing the eTS no later than December 31, 2004, and complete migration to eTS for full agency—wide use by September 30, 2006. This rule also proposed a requirement that agencies submit migration plans and schedules to the eTravel PMO no later than March 31, 2004. This proposed rule specified that award of a task order to a vendor under the impending eTS Master Contract for implementation services, authorization and travel claim services, and (if applicable) reservation and fulfillment services will constitute the beginning of eTS implementation for an agency. Agency—wide use of the eTS (accommodating FedTrip through September 30, 2004, and agency—contracted Travel Management Center support, if applicable) for all travel management processes and travel claim submissions will constitute complete migration. Under this rule, agencies will be required to allocate the budget and personnel resources necessary to support eTS implementation, training, and use data exchange. This will include programming agency funds to establish interfaces between the eTS standard data output and their applicable business systems. This proposed regulation is in accordance with the President's Management Agenda for fiscal year 2002.

Timetable:

Action	Date	FR Cite
NPRM	06/30/03	68 FR 38661
NPRM Comment Period End	07/30/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero, Acting Director, Travel Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
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Email: peggy.deprospero@gsa.gov

RIN: 3090–AH83

PUBLIC BUILDINGS SERVICE

3601. FPMR CASE 2003—101—3, FEDERAL PROPERTY MANAGEMENT REGULATIONS; PRICING POLICY FOR OCCUPANCY IN GSA SPACE

Priority: Other Significant

Legal Authority: 40 USC 121(c); 116 Stat. 1068 (formerly 40 USC 486(c))

CFR Citation: 41 CFR 101—20; 41 CFR 101—21; 41 CFR 102—85

Legal Deadline: None

Abstract: The General Services Administration (GSA) is amending the Federal Property Management Regulations (FPMR) by moving coverage of GSA's Rent Program into the Federal Management Regulation (FMR). A cross—reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This final rule establishes the pricing policy between GSA and customer agencies for space and services furnished by GSA. It also governs intra—governmental pricing of space and services provided by agencies other than GSA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/08/01	66 FR 23169
Interim Final Rule Effective	05/08/01	
Interim Final Rule Comment Period End	07/09/01	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Cathleen Kronopolus, Director, Policy and Analysis, Portfolio Management (PT), General Services Administration, Washington, DC 20405
Phone: 202 501—4940
Fax: 202 219—1966

RIN: 3090–AG33

OFFICE OF CIVIL RIGHTS

3602. FEDERAL PROPERTY MANAGEMENT REGULATIONS; DISCRIMINATION PROHIBITED ON THE BASIS OF AGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6101 et seq

CFR Citation: 41 CFR 101—8.7

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101—8.7 in plain language and moves it into the Federal Management Regulation. The rule enforces the Age Discrimination Act of 1975, which prohibits discrimination based on age in programs or activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Regina Budd, Deputy Associate Administrator, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501—4571
Email: regina.budd@gsa.gov

RIN: 3090–AH46

3603. FEDERAL PROPERTY MANAGEMENT REGULATIONS; NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 476; 42 USC 2000d—1; 20 USC 1681

CFR Citation: 41 CFR 101—6; 41 CFR 102—4

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101—6.2 in plain language and moves it into the Federal Management Regulation at 102—4. The rule enforces title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Regina Budd, Deputy Associate Administrator, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501—4571
Email: regina.budd@gsa.gov

RIN: 3090–AH47

3604. GENERAL SERVICES ADMINISTRATION; OFFICE OF CIVIL RIGHTS; NONDISCRIMINATION BASED ON SEX IN ALL PROGRAMS AND ACTIVITIES RECEIVING FEDERAL SURPLUS PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 476

CFR Citation: 41 CFR 101—6.2

Legal Deadline: None

Abstract: The Office of Civil Rights has no implementing regulation for this provision at this time. However, the statute states that this provision shall be enforced through agency provisions and rules similar to those under title VI.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Regina Budd, Deputy Associate Administrator, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501—4571
Email: regina.budd@gsa.gov

RIN: 3090–AH48

3605. GENERAL SERVICES ADMINISTRATION; OFFICE OF CIVIL RIGHTS; ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 41 CFR 105—8

Legal Deadline: None

Abstract: This regulation enforces nondiscrimination on the basis of handicap in programs and activities conducted by GSA. This rulemaking will be revised and rewritten in plain language.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Regina Budd, Deputy Associate Administrator, Office of Civil Rights, General Services Administration, Washington, DC 20405
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Email: regina.budd@gsa.gov

RIN: 3090–AH59

OFFICE OF GENERAL COUNSEL

3606. GENERAL SERVICES ADMINISTRATION; ADMINISTRATIVE PERSONNEL; PROHIBITED PURCHASES OF PROPERTY SOLD BY GSA

Priority: Info./Admin./Other

Legal Authority: 5 USC 7301; 5 CFR 2635.105; 5 CFR 2635.702; 5 CFR 2635.703

CFR Citation: 5 CFR 6701.103

Legal Deadline: None

Abstract: Under the current regulation at 5 CFR 6701.103, GSA employees (and their spouses and minor children) are prohibited from purchasing for themselves or others any personal or real property being sold by GSA. This regulation supplemented the prohibition on the use of public office for private gain at 5 CFR 2635.702 and the prohibition on the use of nonpublic information at 5 CFR 2635.703. GSA believes that the current prohibition at section 6701.103 for all GSA employees, their spouses, and minor children is unnecessarily broad and that the prohibition should be extended only to those employees where the possibility of using public office or nonpublic information for private gain exists or where the possibility of the appearance of a conflict of interest occurs. For that reason, GSA is retaining but liberalizing this provision, so as to allow the purchase by GSA employees of property sold by GSA, except for those GSA employees who personally and substantially participate in, or have official responsibility for, the sale of real and personal property.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eugenia Ellison, Associate General Counsel, General Law Division Office of General Counsel, General Services Administration, Washington, DC 20405
Phone: 202 501—0765
Fax: 202 501—6347

RIN: 3090–AH50

OFFICE OF GOVERNMENTWIDE POLICY

3607. FTR INTERIM RULE 7—INCOME TAX REIMBURSEMENT ALLOWANCE (ITRA)

Priority: Other Significant

Legal Authority: 5 USC 5707

CFR Citation: 41 CFR 301—11

Legal Deadline: None

Abstract: This rulemaking amends the FTR to add authority to implement sections of the Travel and Transportation Reform Act of 1998, which authorize Federal agencies to reimburse Federal, State, and local income taxes incurred as a result of long—term official travel. It also allows for the reimbursement of penalty and interest payments due to incorrect withholdings by the employee's agency for tax years 1993 and 1994.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	01/01/93	
Interim Final Rule	06/18/99	64 FR 32812
Interim Final Rule Comment Period End	08/17/99	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero, Acting Director, Travel Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
Phone: 202 501—2826
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Email: peggy.deprospero@gsa.gov

RIN: 3090–AG99

3608. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION; CLARIFICATION OF HUBZONE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c)

CFR Citation: 48 CFR 519; 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking will clarify how the HUBZone program applies to acquiring leasehold interests in real property.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4035, 1800 F Street NW, Washington, DC 20405
Phone: 202 208—7312
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Email: rodney.lantier@gsa.gov

RIN: 3090–AH17

3609. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR), GUIDANCE ON ELECTRONIC FUNDS TRANSFER

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 121(c)

CFR Citation: 48 CFR 532; 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking establishes procedures for implementing the Debt Collection Improvement Act of 1996 in accordance with Department of Treasury rules at 31 CFR part 208 and OMB Prompt Payment Act rules at 5 CFR part 1315. To comply with these rules, GSA must collect specific vendor information. 5 CFR 1315.9(b) requires a proper invoice to include the Taxpayer Identification Number (TIN) and banking information for electronic funds transfer, unless agency procedures provide otherwise. GSA will require the TIN on each invoice but will enter banking information on the GSA Form 300 in lieu of requiring it on the invoice.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory and Fed. Assistance Pub. Div. (MVA), Office of Governmentwide Policy, General Services Administration, Room 4035, 1800 F Street NW, Washington, DC 20405
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RIN: 3090–AH30

3610. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, OR AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 41 CFR 101—6; 41 CFR 101—8

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51373
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Regina Budd
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Email: regina.budd@gsa.gov

RIN: 3090–AH33

3611. FPMR AMENDMENT H—211 AND FMR AMENDMENT B—3, FEDERAL MANAGEMENT REGULATION; SALE OF PERSONAL PROPERTY

Priority: Substantive, Nonsignificant

CFR Citation: 41 CFR 101—45; 41 CFR 102—38

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51420
Final Action Effective	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robert Holcombe
Phone: 202 501—3828
Fax: 202 501—6742
Email: robert.holcombe@gsa.gov

RIN: 3090–AH10

3612. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2002—G506; GSAR CHANGE 6, IDENTIFICATION OF PRODUCTS THAT HAVE ENVIRONMENTAL ATTRIBUTES

Priority: Other Significant

CFR Citation: 48 CFR 538; 48 CFR 552

Completed:

Reason	Date	FR Cite
Final Action	09/02/03	68 FR 52127
Final Action Effective	09/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier
Phone: 202 208—7312
Fax: 202 501—2727
Email: rodney.lantier@gsa.gov

RIN: 3090–AH25

3613. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS)

Priority: Other Significant

CFR Citation: 41 CFR 105—68; 41 CFR 105—74

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66534
Final Action Effective	11/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Donald J. Suda
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RIN: 3090–AH35

3614. GSAR CASE 2002—G507; GSAR AMENDMENT 2003—02, CONSOLIDATION OF INDUSTRIAL FUNDING FEE AND SALES REPORTING CLAUSES; REDUCTION IN AMOUNT OF INDUSTRIAL FUNDING FEE

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 501; 48 CFR 538; 48 CFR 552

Completed:

Reason	Date	FR Cite
Final Action	07/11/03	68 FR 41286
Final Action Effective	07/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier
Phone: 202 208—7312
Fax: 202 501—2727
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RIN: 3090–AH79

3615. • FTR CASE 2003—304; FTR AMENDMENT 2003—04, FEDERAL TRAVEL REGULATION; USING PROMOTIONAL MATERIALS; CONFERENCE PLANNING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5707, 31 USC 1353

CFR Citation: 41 CFR 301—53; 41 CFR 301—74

Legal Deadline: None

Abstract: The Federal Travel Regulation (FTR) was amended to clarify provisions regarding promotional benefits or materials that a conference planner receives from a travel service provider.

Timetable:

Action	Date	FR Cite
Final Action	05/22/03	68 FR 27936
Final Action Effective	05/22/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jim Harte, Program Analyst (Leader—Facilitator), Travel Management Policy, General Services Administration, Office of Governmentwide Policy, Washington, DC 20405
Phone: 202 501—0483
Email: jim.harte@gsa.gov

RIN: 3090–AH81

3616. • FTR CASE 2003—306; FTR AMENDMENT 2003—05, FEDERAL TRAVEL REGULATION; PER DIEM (INCIDENTAL EXPENSE INCREASE)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5707

CFR Citation: 41 CFR 301

Legal Deadline: None

Abstract: This final rule amends the Federal Travel Regulation (FTR) by increasing the incidental expense allowance under the per diem expenses from $2.00 to $3.00 for all per diem localities.

Timetable:

Action	Date	FR Cite
Final Action	08/29/03	68 FR 51911
Final Action Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peggy DeProspero, Acting Director, Travel Management Policy, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AH87

[FR Doc. 03–25128 Filed 12–19–03; 8:45 am]

BILLING CODE 6820–34–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XXVIII

Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution

Semiannual Regulatory Agenda

MORRIS K. UDALL FOUNDATION-U.S. INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION (MKU-USIECR)

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The U. S. Institute for Environmental Conflict Resolution

36 CFR Ch. XVI

Semiannual Regulatory Agenda

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (including the U. S. Institute for Environmental Conflict Resolution).

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for development during the next 12 months. It is issued pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: Ellen K. Wheeler, General Counsel, Morris K. Udall Foundation, 130 S. Scott Avenue, Tucson, AZ 85701; Telephone (520) 670-5299; Fax (520) 670-5530.

SUPPLEMENTARY INFORMATION: With this publication, the Foundation satisfies the requirement of Executive Order 12866 that it publish an agenda of rules that it expects to issue. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also requires publication of an agenda identifying rules that will have significant economic effect on a substantial number of small entities. The Foundation certifies that this proposed rule will not have a significant impact on small entities.

Dated: September 10, 2003.

Ellen K. Wheeler,

Deputy Executive Director and General Counsel.

Morris K. Udall Foundation—U.S. Institute for Environmental Conflict Resolution—Completed Actions

Sequence Number	Title	Regulation Identification Number
3617	Confidentiality in Dispute Resolution Proceedings	3320—AA01

Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution (MKU-USIECR)

Completed Actions

3617. CONFIDENTIALITY IN DISPUTE RESOLUTION PROCEEDINGS

Priority: Info./Admin./Other

Legal Authority: 5 USC 571 et seq; 20 USC 5601 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule implements section 574 of title 5, U.S. Code, and provides that communications prepared for a dispute resolution proceeding in which the U.S. Institute for Environmental Conflict Resolution is involved as a third—party neutral will be confidential, except in certain specified circumstances.

Timetable:

Action	Date	FR Cite
Withdrawn	09/10/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen K. Wheeler, General Counsel, Deputy Executive Director, Morris K. Udall Foundation—U.S. Institute for Environmental Conflict Resolution, 130 S. Scott Avenue, Tucson, AZ 85701
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RIN: 3320–AA01

[FR Doc. 03–24031 Filed 12–19–03; 8:45 am]

BILLING CODE 6820–FN–S

Federal Register

Monday,
December 22, 2003

Part XXIX

National Aeronautics and Space Administration

Semiannual Regulatory Agenda

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Ch. V

Regulatory Agenda

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: NASA's regulatory agenda describes those regulations being considered for development or amendment by NASA, the need and legal basis for the actions being considered, the name and telephone number of the knowledgeable official, whether a regulatory analysis is required, and the status of regulations previously reported. This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. NASA's Statement of Regulatory Priorities is included in part II.

ADDRESSES: Director, Management Assessment Division (Code JM), Office of Management Systems, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Cheryl E. Parker (202) 358-0252.

SUPPLEMENTARY INFORMATION: OMB guidelines dated July 31, 2003, "Fall 2003 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions" require a regulatory agenda of those regulations under development and review to be published in the **Federal Register** each April and October.

Dated: August 29, 2003.

John D. Werner,

Director, Management Assessment Division.

National Aeronautics and Space Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3618	Investigation Research Misconduct	2700—AC50
3619	NASA Grant and Cooperative Agreement Handbook	2700—AC55
3620	Access to Sensitive Information	2700—AC60
3621	NASA Federal Acquisition Regulation (FAR) Supplement—Research and Development Abstracts	2700—AC64
3622	Reissuance of the NASA Federal Acquisition Regulation Supplement Parts 1801 to 1809, 1811, and 1812 Consistent With the Federal Acquisition Regulations System Guidance and Policy in FAR Part 1	2700—AC65
3623	Government Property—Quarterly Reporting	2700—AC80
3624	Research and Development Abstracts—NASA Grant and Cooperative Agreement Handbook	2700—AC82
3625	Reissuance of the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) Part 1813 to 1817 Consistent With The Federal Acquisition Regulations Systems Guidance and Policy in FAR Part 1	2700—AC83
3626	Reissuance of the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) Parts 1819 and 1822 to 1825 Consistent With the Federal Acquisition Regulations System Guidance and Policy in FAR Part 1	2700—AC84
3627	Reissuance of the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) Parts 1827 to 1833 Consistent With the Federal Acquisition Regulations System Guidance and Policy in FAR Part 1	2700—AC85
3628	Reissuance of the NASA Federal Acquisition Regulation Supplement (NFS) Parts 1834 to 1837, 1839, and 1841 Consistent With the Federal Acquisition Regulations System Guidance and Policy in FAR Part 1	2700—AC86
3629	Reissuance of the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) Parts 1842 to 1851 Consistent With the Federal Acquisition Regulations System Guidance and Policy in FAR Part 1	2700—AC87
3630	Reissuance of the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) Parts 1852, 1853, 1871, and 1872 Consistent With Federal Acquisition Regulations System Guidance and Policy in FAR Part 1	2700—AC88
3631	NASA FAR Supplement—Procedures for NASA Headquarters Public Announcement of Contract Awards	2700—AC89
3632	NASA FAR Supplement—Acquisition Planning and Option Exercise Procedures	2700—AC91

National Aeronautics and Space Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3633	Cross—Waiver of Liability	2700—AB51
3634	Code of Conduct for International Space Station Crew	2700—AC40
3635	Government—Owned Contractor—Operated Vehicle Fleet Management and Reporting	2700—AC59
3636	Government Property—Instruction for Preparing NASA Form 1018	2700—AC73
3637	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug—Free Workplace (Grants)	2700—AC76
3638	Grants and Cooperative Agreements—Government Property Report	2700—AC79
3639	Development Work for Industry in NASA Wind Tunnels	2700—AC81

National Aeronautics and Space Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3640	NASA Grant and Cooperative Agreement Handbook—Investigative Requirements	2700—AC74
3641	NASA Grant and Cooperative Agreement Handbook—Public Acknowledgements	2700—AC75

National Aeronautics and Space Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3642	Miscellaneous Administrative Changes to the NASA Federal Acquisition Regulation Supplement (NFS)	2700—AC33
3643	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	2700—AC41
3644	NASA Grant and Cooperative Agreement Handbook—Miscellaneous Changes	2700—AC53
3645	NASA Astronaut Candidate Recruitment and Selection Program	2700—AC56
3646	Temporary Duty Travel—Issuance of Motor Vehicle for Home—to—Work Transportation	2700—AC57
3647	NASA Federal Acquisition Regulation Supplement—Format and Numbering of Award Document	2700—AC61
3648	Conformance With FAX 01—14 and Miscellaneous Administrative and Editorial Changes	2700—AC72
3649	NASA Grant and Cooperative Agreement Handbook—Financial Reporting	2700—AC77
3650	NASA Federal Acquisition Supplement—Interagency Acquisition Approvals	2700—AC78
3651	NASA Grant and Cooperative Agreement Handbook—Format and Numbering of Award Document	2700—AC90

National Aeronautics and Space Administration (NASA) Proposed Rule Stage

3618. INVESTIGATION RESEARCH MISCONDUCT

Priority: Info./Admin./Other

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1275

Legal Deadline: None

Abstract: The National Aeronautics and Space Administration (NASA) is proposing this rule to implement the "Federal Policy on Research Misconduct," issued by the Office of Science and Technology Policy in the Federal Register (FR) on December 6, 2000 (65 FR 76260). This proposed rule sets out the definition of research misconduct, the procedures for investigating allegations of research misconduct and recommending findings, and the procedure for adjudicating and appealing such findings. Findings of research misconduct must be accompanied by recommendations for administrative action by NASA in order to discourage such behavior and ensure the integrity of research funded by NASA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mayra N. Montrose, National Aeronautics and Space Administration, Office of the NASA Chief Scientist, Code AS, 300 E Street SW, Washington, DC 20744
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Email: mayra.montrose@nasa.gov

RIN: 2700–AC50

3619. NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1260

Legal Deadline: None

Abstract: NASA is amending 14 CFR 1260 to provide guidance on the format and content of its Cooperative Agreement Notices (CANs).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Sauret, Office of Procurement, Code HK, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546
Phone: 202 358—1068
Email: thomas.e.sauret@nasa.gov

RIN: 2700–AC55

3620. ● ACCESS TO SENSITIVE INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1809; 48 CFR 1852

Legal Deadline: None

Abstract: The rule amends the NASA FAR Supplement to include policy, guidance, and contract clauses addressing contractor access to sensitive information. This change is in response to the increased use of data management systems and reliance on contractors to support the administrative and technical functions of the Agency. This combination of factors has resulted in the increased need to release sensitive information generated by the Government or obtained from other contractors to non—Government employees.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mr. David Forbes, National Aeronautics and Space Administration, 300 E Street SW, Code GK, Washington, DC 20546
Phone: 202 358—2051
Fax: 202—358—3083

RIN: 2700–AC60

3621. • NASA FEDERAL ACQUISITION REGULATION (FAR) SUPPLEMENT—RESEARCH AND DEVELOPMENT ABSTRACTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1835; 48 CFR 1852

Legal Deadline: None

Abstract: This rule amends the NASA FAR Supplement to include a requirement for the electronic submission of an abstract of the planned research to be conducted under Contract containing research and development effort valued at over $25,000. This requirement is being established to support NASA's implementation of section 207(g) of the E—Government Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	10/31/03	68 FR 62048
NPRM Comment Period End	12/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Sauret, Office of Procurement, Code HK, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546
Phone: 202 358—1068
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RIN: 2700–AC64

3622. • REISSUANCE OF THE NASA FEDERAL ACQUISITION REGULATION SUPPLEMENT PARTS 1801 TO 1809, 1811, AND 1812 CONSISTENT WITH THE FEDERAL ACQUISITION REGULATIONS SYSTEM GUIDANCE AND POLICY IN FAR PART 1

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1801 to 1809; 48 CFR 1811; 48 CFR 1812

Legal Deadline: None

Abstract: This rules amends the NASA FAR Supplement by removing from the CFR those portions of the NFS containing information that consists of internal Agency guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulation System and requires public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet.

Timetable:

Action	Date	FR Cite
NPRM	11/17/03	68 FR 64847
NPRM Comment Period End	01/16/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2700–AC65

3623. • GOVERNMENT PROPERTY—QUARTERLY REPORTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1845; 48 CFR 1852

Legal Deadline: None

Abstract: Government property reporting requirements will be amended to require the submission of quarterly reports in addition to the annual report.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Lou Becker, Procurement Analyst, National Aeronautics and Space Administration, 300 E Street SW, Code HK, Washington, DC 20546
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RIN: 2700–AC80

3624. • RESEARCH AND DEVELOPMENT ABSTRACTS—NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 14 CFR 1260

Legal Deadline: None

Abstract: The rule amends the NASA Grant and Cooperative Handbook to include a requirement for the electronic submission of an abstract of the planned research to be conducted on contracts containing research and development effort valued at over $25,000. This requirement is being established to support NASA's implementation of section 207(g) of the E—Government Act of 2002.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Sauret, Office of Procurement, Code HK, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546
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Email: thomas.e.sauret@nasa.gov

RIN: 2700–AC82

3625. • REISSUANCE OF THE NASA FEDERAL ACQUISITION REGULATION (FAR) SUPPLEMENT (NFS) PART 1813 TO 1817 CONSISTENT WITH THE FEDERAL ACQUISITION REGULATIONS SYSTEMS GUIDANCE AND POLICY IN FAR PART 1

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1813 to 1817

Legal Deadline: None

Abstract: This rule amends the NASA Far Supplement (NFS) by removing from the CFR those portions of the NFS containing information that consists of internal Agency guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification of CFR and internal Agency guidance in a single document that is available on the Internet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HK), 300 E Street SW, Washington, DC 20546
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Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC83

3626. • REISSUANCE OF THE NASA FEDERAL ACQUISITION REGULATION (FAR) SUPPLEMENT (NFS) PARTS 1819 AND 1822 TO 1825 CONSISTENT WITH THE FEDERAL ACQUISITION REGULATIONS SYSTEM GUIDANCE AND POLICY IN FAR PART 1

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1819; 48 CFR 1822 to 1825

Legal Deadline: None

Abstract: This rule amends the NASA Far Supplement (NFS) by removing from the CFR those portions of the NFS containing information that consists of internal Agency guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification of CFR and internal Agency guidance in a single document that is available on the Internet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HK), 300 E Street SW, Washington, DC 20546
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Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC84

3627. • REISSUANCE OF THE NASA FEDERAL ACQUISITION REGULATION (FAR) SUPPLEMENT (NFS) PARTS 1827 TO 1833 CONSISTENT WITH THE FEDERAL ACQUISITION REGULATIONS SYSTEM GUIDANCE AND POLICY IN FAR PART 1

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1827 to 1833

Legal Deadline: None

Abstract: This rule amends the NASA Far Supplement (NFS) by removing from the CFR those portions of the NFS containing information that consists of internal Agency guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification of CFR and internal Agency guidance in a single document that is available on the Internet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HK), 300 E Street SW, Washington, DC 20546
Phone: 202 358—1645
Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC85

3628. • REISSUANCE OF THE NASA FEDERAL ACQUISITION REGULATION SUPPLEMENT (NFS) PARTS 1834 TO 1837, 1839, AND 1841 CONSISTENT WITH THE FEDERAL ACQUISITION REGULATIONS SYSTEM GUIDANCE AND POLICY IN FAR PART 1

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1834 to 1837; 48 CFR 1839; 48 CFR 1841

Legal Deadline: None

Abstract: This rule amends the NASA Far Supplement (NFS) by removing from the CFR those portions of the NFS containing information that consists of internal Agency guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification of CFR and internal Agency guidance in a single document that is available on the Internet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HK), 300 E Street SW, Washington, DC 20546
Phone: 202 358—1645
Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC86

3629. • REISSUANCE OF THE NASA FEDERAL ACQUISITION REGULATION (FAR) SUPPLEMENT (NFS) PARTS 1842 TO 1851 CONSISTENT WITH THE FEDERAL ACQUISITION REGULATIONS SYSTEM GUIDANCE AND POLICY IN FAR PART 1

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1842 to 1851

Legal Deadline: None

Abstract: This rule amends the NASA Far Supplement (NFS) by removing from the CFR those portions of the NFS containing information that consists of internal Agency guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification of CFR and internal Agency guidance in a single document that is available on the Internet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HK), 300 E Street SW, Washington, DC 20546
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Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC87

3630. • REISSUANCE OF THE NASA FEDERAL ACQUISITION REGULATION (FAR) SUPPLEMENT (NFS) PARTS 1852, 1853, 1871, AND 1872 CONSISTENT WITH FEDERAL ACQUISITION REGULATIONS SYSTEM GUIDANCE AND POLICY IN FAR PART 1

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1852; 48 CFR 1853; 48 CFR 1871; 48 CFR 1872

Legal Deadline: None

Abstract: This rule amends the NASA Far Supplement (NFS) by removing from the CFR those portions of the NFS containing information that consists of internal Agency guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification of CFR and internal Agency guidance in a single document that is available on the Internet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HK), 300 E Street SW, Washington, DC 20546
Phone: 202 358—1645
Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC88

3631. • NASA FAR SUPPLEMENT—PROCEDURES FOR NASA HEADQUARTERS PUBLIC ANNOUNCEMENT OF CONTRACT AWARDS

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1805

Legal Deadline: None

Abstract: This change to the NFS will revise the process used to advise and provide information necessary for NASA Headquarters notification and announcements of significant contract awards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Yolande Harden, Procurement Analyst, National Aeronautics and Space Administration, 300 E Street SW, Code HK, Washington, DC 20546
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RIN: 2700–AC89

3632. • NASA FAR SUPPLEMENT—ACQUISITION PLANNING AND OPTION EXERCISE PROCEDURES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1805; 48 CFR 1807; 48 CFR 1817

Legal Deadline: None

Abstract: This change to the NFS focuses on improvement in the acquisition planning, public notice, and contract option exercise processes supportive of NASA's efforts under the President's Management Agenda Competitive Sourcing element.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Yolande Harden, Procurement Analyst, National Aeronautics and Space Administration,
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RIN: 2700–AC91

National Aeronautics and Space Administration (NASA) Final Rule Stage

3633. CROSS—WAIVER OF LIABILITY

Priority: Info./Admin./Other

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1266

Legal Deadline: None

Abstract: This provides technical amendments to implement the cross—waiver of liability provision of the intergovernmental agreement of the International Space Station and to refine and clarify contractual cross—waivers in NASA agreements involving launch services.

Timetable:

Action	Date	FR Cite
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven Mirmina, Attorney Advisor, National Aeronautics and Space Administration, NASA Headquarters (Code GS), 300 E Street SW, Washington, DC 20546
Phone: 202 358—0729
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RIN: 2700–AB51

3634. CODE OF CONDUCT FOR INTERNATIONAL SPACE STATION CREW

Priority: Other Significant

Legal Authority: 42 USC 2455, 2473, and 2475; 18 USC 799

CFR Citation: 14 CFR 1214, subpart 1214.4

Legal Deadline: None

Abstract: NASA is amending 14 CFR part 1214 by adding subpart 1214.4 to implement certain provisions of the International Space Station Intergovernmental Agreement regarding crew members' observance of a Code of Conduct.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	
Interim Final Rule	12/21/00	65 FR 80302
Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: E. Jason Steptoe, Associate General Counsel, National Aeronautics and Space Administration, Office of General Counsel (Code GS), 300 E Street SW, Washington, DC 20546
Phone: 202 358—2432
Email: jsteptoe@nasa.gov

RIN: 2700–AC40

3635. • GOVERNMENT—OWNED CONTRACTOR—OPERATED VEHICLE FLEET MANAGEMENT AND REPORTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1801; 48 CFR 1811; 48 CFR 1823; 48 CFR 1851; 48 CFR 1852

Legal Deadline: None

Abstract: This rule amends NASA's Federal Acquisition Regulation (FAR) Supplement (NFS) to require contractors to collect data and report on usage of Government—owed Contractor—operated vehicles, including Interagency Fleet Management System (IFMS) vehicles.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/22/03	68 FR 43333
Interim Final Rule Effective	07/22/03	
Interim Final Rule Comment Period End	09/22/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Patrick Flynn, Procurement Analyst, National Aeronautics and Space Administration,
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RIN: 2700–AC59

3636. • GOVERNMENT PROPERTY—INSTRUCTION FOR PREPARING NASA FORM 1018

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1845; 48 CFR 1852

Legal Deadline: None

Abstract: NASA uses the data contained in contractor reports for annual financial statements and property management. In order to ensure consistent reporting of NASA property by contractors, an amendment to the NASA Federal Acquisition Regulation Supplement (NFS) is necessary to provide a definition of obsolete property, addresses contractor validation of 1018 data and proper reporting of software to which NASA has title, clarify other property classifications, and revise the date for submission of annual property reports from October 31st to October 15th.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/31/03	68 FR 62023
Interim Final Rule Comment Period End	12/30/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Lou Becker,
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RIN: 2700–AC73

3637. • GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 701; 42 USC 2473(c); 31 USC 6101

CFR Citation: 14 CFR 1265

Legal Deadline: None

Abstract: NASA is participating in a proposed common rule that proposes substantive changes and amendments to the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug—Free Workplace Act of 1988. The purpose of these proposed changes are as follows:

1. Resolve unnecessary technical differences between the procurement and nonprocurement debarment rules;

2. Make improvements to the existing common rule consistent with the purpose of the suspension and debarment system;

3. Revise the current approach to the style and format to use plain language; and

4. Move the drug—free workplace requirements currently in subpart F of the Debarment and Suspension Nonprocurement Common Rule to a new section.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul D Brundage,
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Administration, 300 E Street SW, Code
HK, Washington, DC 20546
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RIN: 2700–AC76

3638. • GRANTS AND COOPERATIVE AGREEMENTS—GOVERNMENT PROPERTY REPORT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 14 CFR 1260

Legal Deadline: None

Abstract: Government property reporting requirements will be amended to revise the date for submission of annual property reports from October 31st to October 15th.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mr. Lou Becker,
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300 E Street SW, Code HK,
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RIN: 2700–AC79

3639. • DEVELOPMENT WORK FOR INDUSTRY IN NASA WIND TUNNELS

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 50 USC 511 to 515; 42 USC 2473(c)(5) and (6)

CFR Citation: 14 CFR 1210

Legal Deadline: None

Abstract: The regulations set forth in 14 CFR 1210 detail the policies and procedures by which NASA makes certain of its wind tunnel facilities available for use in development work by industry. NASA is in the process of updating these regulations to more accurately reflect current accounting policies and operating procedures.

Timetable:

Action	Date	FR Cite
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jay M. Henn,
Director, Research Support Division,
National Aeronautics and Space
Administration, 300 E Street SW, Code
R, Washington, DC 20546
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Email: jay.m.henn@nasa.gov

RIN: 2700–AC81

3640. • NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—INVESTIGATIVE REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 14 CFR 1260

Legal Deadline: None

Abstract: NASA sometimes, albeit infrequently, requires information for investigations of individuals working on grants and cooperative agreements in order to determine whether to permit, deny, or restrict access to a NASA Center, facility, or computer system, or to NASA technical information. The provision at section 1260.35, Investigative Requirements, is inserted in all grants and cooperative agreements to ensure recipients provide the information requested by NASA for any required investigation. This proposed change is needed because recipients of grants and cooperative agreements, especially educational institutions, often do not maintain or have access to the types of information required by the provision at section 1260.35 about their staff, faculty, and students because of policy and legal restrictions. Instead of requiring the recipients to obtain and submit personal information, this proposed rule makes it clear that the individuals needing access may provide the requisite information directly to NASA.

Timetable:

Action	Date	FR Cite
NPRM	08/15/03	68 FR 48838
NPRM Comment Period End	10/14/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzan Moody, National Aeronautics and Space Administration, 300 E Street SW, Code SJ, Washington, DC 20546
Phone: 202 358—0503
Email: smoody@nasa.gov

RIN: 2700–AC74

3641. • NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—PUBLIC ACKNOWLEDGEMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 14 CFR 1260

Legal Deadline: None

Abstract: This proposed rule would amend the NASA Grant and Cooperative Agreement Handbook to include public acknowledgement of NASA photographs and illustrations in reports or publications generated as a result of NASA's award of grants or cooperative agreements.

Timetable:

Action	Date	FR Cite
NPRM	08/15/03	68 FR 48837
NPRM Comment Period End	10/14/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Paul D Brundage, National Aeronautics and Space Administration, 300 E Street SW, Code HK, Washington, DC 20546
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Email: paul.d.brundage@nasa.gov

RIN: 2700–AC75

National Aeronautics and Space Administration (NASA) Completed Actions

3642. MISCELLANEOUS ADMINISTRATIVE CHANGES TO THE NASA FEDERAL ACQUISITION REGULATION SUPPLEMENT (NFS)

Priority: Info./Admin./Other

CFR Citation: 48 CFR 1801 to 1872

Completed:

Reason	Date	FR Cite
Withdrawn	08/29/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton
Phone: 202 358—1645
Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC33

3643. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1250; 14 CFR 1251; 14 CFR 1252

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51334

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Dr. Dorothy Hayden—Watkins
Phone: 202 358—2167
Fax: 202 358—3336
Email: dorothy.hayden—watkins—1@nasa.gov

RIN: 2700–AC41

3644. NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—MISCELLANEOUS CHANGES

Priority: Info./Admin./Other

CFR Citation: 14 CFR 1260; 14 CFR 1274

Completed:

Reason	Date	FR Cite
Withdrawn	08/29/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Rita Svarcas
Phone: 202 358—0464
Fax: 202 358—3220

Email: rita.svarcas@nasa.gov

RIN: 2700–AC53

3645. NASA ASTRONAUT CANDIDATE RECRUITMENT AND SELECTION PROGRAM

Priority: Info./Admin./Other

CFR Citation: 14 CFR 1214

Completed:

Reason	Date	FR Cite
Direct Final Rule	04/23/03	68 FR 19947
Comment Period End	05/23/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Candace S. Irwin
Phone: 202 358—1206
Fax: 202 358—3040
Email: cirwin@nasa.gov

RIN: 2700–AC56

3646. TEMPORARY DUTY TRAVEL—ISSUANCE OF MOTOR VEHICLE FOR HOME—TO—WORK TRANSPORTATION

Priority: Other Significant

CFR Citation: 14 CFR 1204.1600

Completed:

Reason	Date	FR Cite
NPRM	06/23/03	68 FR 37108
Final Action	10/24/03	68 FR 60847

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William E. Gookin
Phone: 202 358—2306
Fax: 202 358—3235
Email: william.e.gookin@nasa.gov

RIN: 2700–AC57

3647. • NASA FEDERAL ACQUISITION REGULATION SUPPLEMENT—FORMAT AND NUMBERING OF AWARD DOCUMENT

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1804

Legal Deadline: None

Abstract: This rule amends the NASA FAR Supplement to include a revised numbering scheme for contracts required by the changes to the Federal Procurement Data System—Next Generation (FPDS—NG).

Timetable:

Action	Date	FR Cite
Final Action	09/11/03	68 FR 53525

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HK), 300 E Street SW, Washington, DC 20546
Phone: 202 358—1645
Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC61

3648. • CONFORMANCE WITH FAX 01—14 AND MISCELLANEOUS ADMINISTRATIVE AND EDITORIAL CHANGES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1806; 48 CFR 1815; 48 CFR 1825; 48 CFR 1872

Legal Deadline: None

Abstract: This final rule revised the NASA FAR Supplement (NFS) to confirm to changes made to the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular 2001—14 and to make administrative and editorial changes needed to update the designated agency competition advocate, update references, and clarify the term "NASA workforce" as used in the instruction for drafting an announcement of opportunity.

Timetable:

Action	Date	FR Cite
Final Action	08/01/03	68 FR 45168

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HK), 300 E Street SW, Washington, DC 20546
Phone: 202 358—1645
Email: celeste.m.dalton@nasa.gov

RIN: 2700–AC72

3649. • NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—FINANCIAL REPORTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 14 CFR 1260

Legal Deadline: None

Abstract: This change amends the NASA Grant and Cooperative Agreement Handbook to reflect NASA's implementation of the Department of Health and Human Services' Payment Management System (DHHS/PMS), including electronic submission of grantees' quarterly Federal Cash Transactions Reports (SF272s). The changes also clarify NASA's policies and internal practices with regard to suspension or termination of advance payments.

Timetable:

Action	Date	FR Cite
Final Action	08/21/03	68 FR 50468

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rita Svarcas, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20744
Phone: 202 358—0464
Fax: 202 358—3220
Email: rita.svarcas@nasa.gov

RIN: 2700–AC77

3650. • NASA FEDERAL ACQUISITION SUPPLEMENT—INTERAGENCY ACQUISITION APPROVALS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1817

Legal Deadline: None

Abstract: This rule will amend the NASA FAR Supplement by establishing a 5—year limitation on interagency acquisitions.

Timetable:

Action	Date	FR Cite
Final Action	10/06/03	68 FR 57629

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph LeCren, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters, Code HK, Washington, DC 20546
Phone: 202 358—0444

RIN: 2700–AC78

3651. • NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—FORMAT AND NUMBERING OF AWARD DOCUMENT

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2473(c)(1)

CFR Citation: 48 CFR 1260

Legal Deadline: None

Abstract: This rule amends NASA's Grant and Cooperative Handbook to include a reviewed numbering scheme for grants and cooperative agreements required by the changes the Federal Procurement Data System—Next Generation (FPDS—NG).

Timetable:

Action	Date	FR Cite
Final Action	09/18/03	68 FR 54654

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzan Moody, National Aeronautics and Space Administration, 300 E Street SW, Code SJ, Washington, DC 20546
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RIN: 2700–AC90

[FR Doc. 03–24019 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XXX

National Archives and Records Administration

Semiannual Regulatory Agenda

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Ch. XII

Fall 2003 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: National Archives and Records Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the proposed regulatory actions that the National Archives and Records Administration (NARA) plans for the next 12 months and those actions that have been completed since the spring of 2003. This agenda was developed under the guidelines in OMB's Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, dated July 30, 2003. NARA's purpose in publishing this agenda is to allow interested persons an opportunity to have more comprehensive documentation of NARA's regulatory plans and to participate in the rulemaking process. Some of the regulations listed in the agenda are considered significant under Executive Order 12866, "Regulatory Planning and Review."

For this edition of NARA's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

FOR FURTHER INFORMATION CONTACT: Nancy Allard, Regulatory Contact, Policy and Communications Staff, (301) 837-1477.

Dated: September 4, 2003.

John W. Carlin,

Archivist of the United States.

National Archives and Records Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3652	Federal Records Management **(Reg Plan Seq No. 132)**	3095—AB16

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Archives and Records Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3653	Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964	3095—AB09
3654	Revision of NARA Research Room Procedures	3095—AB10
3655	Restrictions on the Use of Records	3095—AB11
3656	Official Seals and Logos	3095—AB19
3657	Nondiscrimination on the Basis of Handicap When Receiving Federal Financial Assistance	3095—AB21
3658	Testimony by NARA Employees and Production of Records in Legal Proceedings	3095—AB32
3659	Use of Meeting Rooms and Public Space	3095—AB33

National Archives and Records Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3660	Presidential Library Facilities	3095—AA82
3661	Implementation of OMB Circular A—110, Section 36	3095—AA96
3662	NARA Facilities; Phone Numbers	3095—AB30
3663	Information Security Oversight Office; National Industrial Security Program	3095—AB34

National Archives and Records Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3664	Records Management; Electronic Text Documents	3095—AB05
3665	Review of Records Center Facility Standards	3095—AB31

NARA

National Archives and Records Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3666	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	3095—AB04
3667	Public Use of NARA Facilities	3095—AB17
3668	Information Security Oversight Office; Classified National Security Information	3095—AB18
3669	NARA Facilities—Phone Numbers	3095—AB20
3670	NARA Facilities; Hours of Operation for Exhibition Halls	3095—AB22

National Archives and Records Administration (NARA) Prerule Stage

3652. FEDERAL RECORDS MANAGEMENT

Regulatory Plan: This entry is Seq. No. 132 in part II of this issue of the **Federal Register**.

RIN: 3095–AB16

National Archives and Records Administration (NARA) Proposed Rule Stage

3653. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Other Significant

Legal Authority: 44 USC 2104(a); 42 USC 2000d to 2000d—7; E0 12250

CFR Citation: 36 CFR 1213

Legal Deadline: None

Abstract: NARA is adopting Governmentwide regulations on nondiscrimination on the grounds of race, color, or national origin in any program or activity receiving Federal financial assistance from NARA. These regulations will affect the National Historical Publications and Records Commission grant program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: Undetermined

URL For Public Comments: www.regulations.gov

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602—6001
Phone: 301 837—1850
Fax: 301 837—0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB09

3654. REVISION OF NARA RESEARCH ROOM PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1254

Legal Deadline: None

Abstract: NARA is updating and revising in plain language its regulations concerning use of records and donated historical materials in NARA research rooms.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	
Final Action	03/00/04	
Final Action Effective	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Jennifer Davis Heaps, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20740
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Email: jennifer.heaps@nara.gov

RIN: 3095–AB10

3655. RESTRICTIONS ON THE USE OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2101 to 2118; 22 USC 1461(b); 5 USC 552, as amended; EO 12958 (3 CFR, 1995 Comp., p 333) as amended; ...

CFR Citation: 36 CFR 1254, 1256

Legal Deadline: None

Abstract: NARA is updating and rewriting in plain language its regulations on statutory and other restrictions on access to archival records and donated historical materials transferred to the National Archives of the United States. NARA proposes to remove an existing policy that allows access to restricted information for purposes of biomedical statistical research.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	
Final Action	04/00/04	
Final Action Effective	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For Public Comments:
www.regulations.gov

Agency Contact: Jennifer Davis Heaps, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20740
Phone: 301 837—1850
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Email: jennifer.heaps@nara.gov

RIN: 3095–AB11

3656. OFFICIAL SEALS AND LOGOS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(e); 44 USC 2116(b); 44 USC 2302

CFR Citation: 36 CFR 1200

Legal Deadline: None

Abstract: NARA is amending its regulations to include rules on the use of NARA logos by the public and other Federal agencies. The existing regulations only cover official NARA seals.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For Public Comments:
www.regulations.gov

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602—6001
Phone: 301 837—1850
Fax: 301 837—0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB19

3657. NONDISCRIMINATION ON THE BASIS OF HANDICAP WHEN RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 36 CFR 1208

Legal Deadline: None

Abstract: NARA is proposing to modifiy its regulations on nondiscrimination on the basis of handicap by adding rules that recipients of NARA grants must follow when they hire individuals for programs and projects.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For Public Comments:
www.regulations.gov

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602—6001
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Fax: 301 837—0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB21

3658. • TESTIMONY BY NARA EMPLOYEES AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 44 USC 2104; 44 USC 2108; 44 USC 2109; 44 USC 2112; 44 USC, Ch.22

CFR Citation: 36 CFR 1201; 36 CFR 1250; 36 CFR 1251 (new); 36 CFR 1254

Legal Deadline: None

Abstract: This regulation will establish NARA's policies and procedures with respect to testimony by NARA staff and/or production of information and records in legal proceedings.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Local, State

Federalism: Undetermined

URL For Public Comments:
www.regulations.gov

Agency Contact: Jason R Baron, Director of Litigation, National Archives and Records Administration, Room 3110, NGC, 8601 Adelphi Road, College Park, MD 20740
Phone: 301 837—1750
Fax: 301—837—0293
Email: jason.baron@nara.gov

RIN: 3095–AB32

3659. • USE OF MEETING ROOMS AND PUBLIC SPACE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 44 USC 2104

CFR Citation: 36 CFR 1280

Legal Deadline: None

Abstract: The renovation of the National Archives Building in Washington, DC, has changed and expanded the space available for public programs and meetings. NARA is updating its regulations on use of NARA facilities to address this.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

URL For Public Comments:
www.regulations.gov

Agency Contact: Jennifer Davis Heaps, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20740
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RIN: 3095–AB33

3660. PRESIDENTIAL LIBRARY FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a); 44 USC 2112

CFR Citation: 36 CFR 1281

Legal Deadline: None

Abstract: NARA is issuing regulations relating to the acceptance of a Presidential library facility by the Archivist of the United States from a non—Federal group or institution. The regulations will address requirements in the Presidential Libraries Act of 1986 for architectural and design standards, certifications, and reporting to Congress.

Timetable:

Action	Date	FR Cite
NPRM	08/25/98	63 FR 45203
NPRM Comment Period End	10/26/98	
Final Action	02/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740—6001
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RIN: 3095–AA82

3661. IMPLEMENTATION OF OMB CIRCULAR A—110, SECTION 36

Priority: Other Significant

Legal Authority: 5 USC 301

CFR Citation: 36 CFR 1210

Legal Deadline: None

Abstract: This rule will incorporate the provisions of OMB Circular A—110, section 36, regarding the availability of data produced under an award through the Freedom of Information Act (FOIA) into our NHPRC grants administration regulation at 36 CFR part 1210.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14406
Interim Final Rule Comment Period End	05/15/00	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State

Federalism: Undetermined

URL For Public Comments: www.regulations.gov

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740—6001
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RIN: 3095–AA96

3662. • NARA FACILITIES; PHONE NUMBERS

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1253

Legal Deadline: None

Abstract: NARA is amending its regulation that lists the phone numbers of NARA facilities that are open to the public. This rule updates phone numbers for the facilities.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602—6001
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Email: kimberly.richardson@nara.gov

RIN: 3095–AB30

3663. • INFORMATION SECURITY OVERSIGHT OFFICE; NATIONAL INDUSTRIAL SECURITY PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: EO 12829, as amended by EO 12885

CFR Citation: 32 CFR 2001

Legal Deadline: None

Abstract: The Information Security Oversight Office is publishing through NARA an implementing directive for Executive Order 12829 that is binding on executive branch agencies that enter into classified contracts, licenses, or grants. The purpose of the National Industrial Security Program is to safeguard classified information that may be released or has been released to current, prospective, or former contractors, licensees, or grantees of United States agencies.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

URL For Public Comments: www.regulations.gov

Agency Contact: J. William Leonard, Director, Information Security Oversight Office, National Archives and Records Administration, Room 500, 700 Pennsylvania Avenue NW., Washington, DC 20408
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Fax: 202—219—5385
Email: william.leonard@nara.gov

RIN: 3095–AB34

National Archives and Records Administration (NARA) — Long-Term Actions

3664. RECORDS MANAGEMENT; ELECTRONIC TEXT DOCUMENTS

Priority: Other Significant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1234

Legal Deadline: None

Abstract: In response to a petition, NARA sought Federal agency and public comment concerning the management, scheduling and preservation of text documents created in electronic form. NARA is evaluating a revision of the regulation.

Timetable:

Action	Date	FR Cite
ANPRM	10/10/01	66 FR 51740
ANPRM Comment Period End	01/08/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

URL For Public Comments:
www.regulations.gov

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740—6001
Phone: 301 837—1850
Fax: 301 837—0319
Email: nancy.allard@nara.gov

RIN: 3095–AB05

3665. • REVIEW OF RECORDS CENTER FACILITY STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1228..228(b); 36 CFR 1228.230(b); 36 CFR 1228.230(e); 36 CFR 1228.230(i); 36 CFR 1228.230(l); 36 CFR 1228.230(s)

Legal Deadline: None

Abstract: NARA's regulation specifying facility standards for records storage facilities that house Federal records has been identified as being of particular concern to small businesses. Because of the stated concerns that the regulation places a burden on small businesses, we are reviewing the regulation to identify possible modifications to the regulation that will still ensure protection of Federal records while reducing the burden on records centers that are small businesses. This review may result in further rulemaking activity

Timetable:

Action	Date	FR Cite
Begin Review	05/01/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Federalism: Undetermined

URL For Public Comments:
www.regulations.gov

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740—6001
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RIN: 3095–AB31

National Archives and Records Administration (NARA) — Completed Actions

3666. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS)

Priority: Other Significant

CFR Citation: 36 CFR 1209; 36 CFR 1211

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Nancy Allard
Phone: 301 837—1850
Fax: 301 837—0319
Email: nancy.allard@nara.gov

RIN: 3095–AB04

3667. PUBLIC USE OF NARA FACILITIES

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1280

Completed:

Reason	Date	FR Cite
NPRM	04/18/03	68 FR 19168
Final Action	09/15/03	68 FR 53882
Final Action Effective	10/15/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kimberly Richardson
Phone: 301 837—1850
Fax: 301 837—0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB17

3668. INFORMATION SECURITY OVERSIGHT OFFICE; CLASSIFIED NATIONAL SECURITY INFORMATION

Priority: Substantive, Nonsignificant

CFR Citation: 32 CFR 2001

Completed:

Reason	Date	FR Cite
Direct Final Rule	09/22/03	68 FR 55167

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: J. William Leonard
Phone: 202 219—5250
Fax: 202 219—5385
Email: william.leonard@nara.gov

RIN: 3095–AB18

3669. NARA FACILITIES—PHONE NUMBERS

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1253

Completed:

Reason	Date	FR Cite
Direct Final Rule	06/04/03	68 FR 33404

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kimberly Richardson
Phone: 301 837—1850
Fax: 301 837—0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB20

3670. ● NARA FACILITIES; HOURS OF OPERATION FOR EXHIBITION HALLS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1280

Legal Deadline: None

Abstract: NARA is modifying the hours of operation for its Exhibition Halls during the months of April and May.

Timetable:

Action	Date	FR Cite
NPRM	06/17/03	68 FR 35829
NPRM Comment Period End	08/18/03	
Final Action	09/12/03	68 FR 53680
Final Action Effective	10/14/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

URL For Public Comments: www.regulations.gov

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602—6001
Phone: 301 837—1850
Fax: 301 837—0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB22

[FR Doc. 03–24022 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XXXI

National Foundation on the Arts and the Humanities

Institute of Museum and Library Services
Semiannual Regulatory Agenda

INSTITUTE OF MUSEUM AND LIBRARY SERVICES (IMLS)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Ch. XI

Semiannual Regulatory Agenda

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to Executive Order 12866 and the Regulatory Planning and Review Act, the Institute of Museum and Library Services publishes this regulatory agenda describing agency regulations under development or review.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506; E-mail: nweiss@imls.gov, or call (202) 606-5414.

Nancy E. Weiss,

General Counsel.

Institute of Museum and Library Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3671	Implementation of the Electronic Freedom of Information Act Amendments of 1996	3137—AA12
3672	Grants Regulations	3137—AA16

Institute of Museum and Library Services—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3673	Implementation of Title IX of the Education Act Amendments of 1972	3137—AA10

Institute of Museum and Library Services—Completed Actions

Sequence Number	Title	Regulation Identification Number
3674	Nondiscrimination on the Basis of Race, Color, and National Origin in Programs and Activities Receiving Federal Financial Assistance	3137—AA13
3675	Governmentwide Debarment and Suspension (Nonprocurement)	3137—AA14
3676	Supplemental Standards of Ethical Conduct for Employees of the Institute of Museum and Library Services (IMLS)	3137—AA15

Institute of Museum and Library Services (IMLS) — Proposed Rule Stage

3671. IMPLEMENTATION OF THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 45 CFR 1100.5

Legal Deadline: None

Abstract: Regulations will implement the Electronic Freedom of Information Act Amendments of 1996, which facilitate public requests for information.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
Phone: 202 606—5414
TDD Phone: 202 606—8636
Fax: 202 606—1077
Email: nweiss@imls.gov

RIN: 3137–AA12

3672. • GRANTS REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 104—208, sec 262, Museum and Library Services Act

CFR Citation: 45 CFR 1180

Legal Deadline: None

Abstract: The regulations at 45 CFR 1180 will be revised to provide updated guidance on the Institute of Museum and Library Services' grant programs.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
Phone: 202 606—5414
TDD Phone: 202 606—8636
Fax: 202 606—1077
Email: nweiss@imls.gov

RIN: 3137–AA16

Institute of Museum and Library Services (IMLS) — Final Rule Stage

3673. IMPLEMENTATION OF TITLE IX OF THE EDUCATION ACT AMENDMENTS OF 1972

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1681 to 1683; 20 USC 1685; 20 USC 1686

CFR Citation: 45 CFR 1182

Legal Deadline: None

Abstract: Regulations will implement title IX of the Education Act Amendments of 1972, which ensure equality on the basis of sex in education programs and activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	10/29/99	64 FR 58567
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local, Tribal

Additional Information: Previously reported as completed in the October 2000 edition.

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
Phone: 202 606—5414
TDD Phone: 202 606—8636
Fax: 202 606—1077
Email: nweiss@imls.gov

RIN: 3137–AA10

Institute of Museum and Library Services (IMLS) — Completed Actions

3674. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, AND NATIONAL ORIGIN IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1110.1 to 1110.13

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nancy E. Weiss
Phone: 202 606—5414
TDD Phone: 202 606—8636
Fax: 202 606—1077
Email: nweiss@imls.gov

RIN: 3137–AA13

3675. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1185; 45 CFR 1186

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Nancy E. Weiss
Phone: 202 606—5414
TDD Phone: 202 606—8636
Fax: 202 606—1077
Email: nweiss@imls.gov

RIN: 3137–AA14

3676. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE INSTITUTE OF MUSEUM AND LIBRARY SERVICES (IMLS)

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 7701

Completed:

Reason	Date	FR Cite
Interim Final Rule	04/14/03	68 FR 17877
Interim Final Rule Effective	04/14/03	
Interim Final Rule Comment Period End	05/14/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy E. Weiss
Phone: 202 606—5414
TDD Phone: 202 606—8636
Fax: 202 606—1077
Email: nweiss@imls.gov

RIN: 3137–AA15

[FR Doc. 03–24029 Filed 12–19–03; 8:45 am]

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Part XXXII

National Foundation on the Arts and the Humanities

National Endowment for the Arts
Semiannual Regulatory Agenda

NATIONAL ENDOWMENT FOR THE ARTS (NEA)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Ch. XI

Semiannual Regulatory Agenda

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605) and Executive Order 12866, the National Endowment for the Arts publishes this regulatory agenda describing agency regulations under development or review.

FOR FURTHER INFORMATION CONTACT: Claudia Nadig, General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call (202) 682-5418.

Hope O'Keeffe,

Deputy General Counsel.

National Endowment for the Arts—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3677	Nondiscrimination in Federally Assisted Programs and Activities; Effectuation of Title VI of the Civil Rights Act of 1964	3135—AA10
3678	Nondiscrimination on the Basis of Sex in Federally Assisted Programs and Activities—Implementation of Title IX of the Education Amendments of 1972	3135—AA15

National Endowment for the Arts—Completed Actions

Sequence Number	Title	Regulation Identification Number
3679	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3135—AA17
3680	Governmentwide Debarment and Suspension (Nonprocurement)	3135—AA18
3681	Governmentwide Requirements for Drug—Free Workplace (Grants)	3135—AA19
3682	Standards of Conduct of Employees	3135—AA20

National Endowment for the Arts (NEA) Long-Term Actions

3677. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES; EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1140

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Karen Elias
Phone: 202 682—5418
Fax: 202 682—5572
Email: eliask@arts.endow.gov

RIN: 3135–AA10

3678. NONDISCRIMINATION ON THE BASIS OF SEX IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES—IMPLEMENTATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Priority: Other Significant

CFR Citation: 45 CFR 1155

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local, Tribal

Agency Contact: Karen L. Elias
Phone: 202 682—5418
TDD Phone: 202 682—5496
Fax: 202 682—5572
Email: eliask@arts.gov

RIN: 3135–AA15

3679. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR ch XI

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Karen Elias
Phone: 202 682—5418
Fax: 202 682—5572
Email: eliask@arts.endow.gov

RIN: 3135–AA17

3680. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1154

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Elias
Phone: 202 682—5418
Fax: 202 682—5572
Email: eliask@arts.endow.gov

RIN: 3135–AA18

3681. GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1155

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Elias
Phone: 202 682—5418
Fax: 202 682—5572
Email: eliask@arts.endow.gov

RIN: 3135–AA19

3682. • STANDARDS OF CONDUCT OF EMPLOYEES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 CFR 2635

CFR Citation: 45 CFR 1105

Legal Deadline: None

Abstract: Repeal of Agency regulation superseded by Governmentwide OGE standards of ethical conduct and new supplemental regulations requiring prior written approval to engage in certain outside employment or related activities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/05/03	
Interim Final Rule Effective	09/05/03	
Interim Final Rule Comment Period End	10/06/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Karen L. Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue NW., Washington, DC 20506
Phone: 202 682—5418
TDD Phone: 202 682—5496
Fax: 202 682—5572
Email: eliask@arts.gov

RIN: 3135–AA20

[FR Doc. 03–25126 Filed 12–19–03; 8:45 am]

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Part XXXIII

National Foundation on the Arts and the Humanities

National Endowment for the Humanities

Semiannual Regulatory Agenda

NATIONAL ENDOWMENT FOR THE HUMANITIES (NEH)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Ch. XI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, and Executive Order 12866, "Regulatory Planning and Review," dated September 30, 1993, the National Endowment for the Humanities is required to publish, semiannually, an agenda of proposed regulations that the Endowment has issued or expects to issue and current rules that are under agency review.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Deputy General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202) 606-8322.

Lynne A. Munson,

Deputy Chairman, National Endowment for the Humanities.

National Endowment for the Humanities—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3683	Implementation of Title IX of the Education Act Amendments of 1972	3136—AA14
3684	Privacy Act Regulations	3136—AA18
3685	Freedom of Information Act Regulations	3136—AA27

National Endowment for the Humanities—Completed Actions

Sequence Number	Title	Regulation Identification Number
3686	Supplemental Standards of Ethical Conduct for Employees of the National Endowment for the Humanities	3136—AA21
3687	Standards of Conduct of Employees	3136—AA22
3688	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3136—AA24
3689	Governmentwide Debarment and Suspension (Nonprocurement)	3136—AA25
3690	Governmentwide Requirements for Drug—Free Workplace (Grants)	3136—AA26

National Endowment for the Humanities (NEH) Long-Term Actions

3683. IMPLEMENTATION OF TITLE IX OF THE EDUCATION ACT AMENDMENTS OF 1972

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1171

Timetable:

Action	Date	FR Cite
NPRM	10/29/99	64 FR 58568
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606—8322
TDD Phone: 202 606—8282
Fax: 202 606—8600
Email: hgottry@neh.gov

RIN: 3136–AA14

3684. PRIVACY ACT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1115

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606—8322
TDD Phone: 202 606—8282
Fax: 202 606—8600
Email: hgottry@neh.gov

RIN: 3136–AA18

3685. FREEDOM OF INFORMATION ACT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1100.5

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606—8322
TDD Phone: 202 606—8282
Fax: 202 606—8600
Email: hgottry@neh.gov

RIN: 3136–AA27

3686. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 8501

Completed:

Reason	Date	FR Cite
Interim Final Rule	09/05/03	68 FR 52682
Interim Final Rule Effective	09/05/03	
Interim Final Rule Comment Period End	10/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606—8322
TDD Phone: 202 606—8282
Fax: 202 606—8600
Email: hgottry@neh.gov

RIN: 3136–AA21

3687. STANDARDS OF CONDUCT OF EMPLOYEES

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1105

Completed:

Reason	Date	FR Cite
Interim Final Rule	09/05/03	68 FR 52701
Interim Final Rule Effective	09/05/03	
Interim Final Rule Comment Period End	10/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606—8322
TDD Phone: 202 606—8282
Fax: 202 606—8600
Email: hgottry@neh.gov

RIN: 3136–AA22

3688. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1110; 45 CFR 1170

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Heather C. Gottry
Phone: 202 606—8322
TDD Phone: 202 606—8282
Fax: 202 606—8600
Email: hgottry@neh.gov

RIN: 3136–AA24

3689. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1169

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606—8322
TDD Phone: 202 606—8282
Fax: 202 606—8600
Email: hgottry@neh.gov

RIN: 3136–AA25

3690. GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1173

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heather C. Gottry
Phone: 202 606—8322
TDD Phone: 202 606—8282
Fax: 202 606—8600
Email: hgottry@neh.gov

RIN: 3136–AA26

[FR Doc. 03–24037 Filed 12–19–03; 8:45 am]
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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Monday,
December 22, 2003

Part XXXIV

National Science Foundation

Semiannual Regulatory Agenda

NATIONAL SCIENCE FOUNDATION (NSF)

NATIONAL SCIENCE FOUNDATION

45 CFR Ch. VI

Regulatory Agenda

AGENCY: National Science Foundation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The National Science Foundation is publishing its fall 2003 regulatory agenda pursuant to Executive Order 12866, "Regulatory Planning and Review" (3 CFR 1993 Comp., p. 638); the Regulatory Flexibility Act (5 U.S.C. 601-612); and the Office of Management and Budget Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions.

FOR FURTHER INFORMATION CONTACT: For further information on a particular item, call or write the individual identified as agency contact. General comments or inquiries about this agenda may be directed to Penelope C. Baker, Administrative Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230, (703) 292-8060.

Dated: November 12, 2003.

Lawrence Rudolph,

General Counsel.

National Science Foundation—Completed Actions

Sequence Number	Title	Regulation Identification Number
3691	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3145—AA38
3692	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug—Free Workplace (Grants)	3145—AA41

National Science Foundation (NSF) — Completed Actions

3691. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 618

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Bijan Gilanshah
Phone: 703 292—8060
Fax: 703 292—9041
Email: bgilansh@nsf.gov

RIN: 3145–AA38

3692. • GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: EO 12549

CFR Citation: 45 CFR 620; 45 CFR 630

Legal Deadline: None

Abstract: NSF is participating in the common rule on Governmentwide Debarment and Suspension and Governmentwide Requirements for a Drug—Free Workplace.

Timetable:

Action	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Federalism: No

Agency Contact: Penelope Baker, National Science Foundation
Phone: 703 292—8687

RIN: 3145–AA41

[FR Doc. 03–29838 Filed 12–19–03; 8:45 am]

BILLING CODE 7555–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Monday,
December 22, 2003

Part XXXV

Office of Federal Housing Enterprise Oversight

Semiannual Regulatory Agenda

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT (OFHEO)

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

12 CFR Ch. XVII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of Federal Housing Enterprise Oversight.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice is given pursuant to the requirements of the "Regulatory Flexibility Act" (Pub. L. 96-354, September 19, 1980) and Executive Order 12866 ("Regulatory Planning and Review," September 30, 1993), which require the publication of a semiannual agenda of regulations.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Washington, DC 20552, (202) 414-3788.

Dated: September 11, 2003.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

Office of Federal Housing Enterprise Oversight—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3693	Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Office of Federal Housing Enterprise Oversight	2550—AA11
3694	Minimum Capital	2550—AA18
3695	Corporate Governance	2550—AA24

Office of Federal Housing Enterprise Oversight—Completed Actions

Sequence Number	Title	Regulation Identification Number
3696	Organization and Functions	2550—AA27

Office of Federal Housing Enterprise Oversight (OFHEO) Long-Term Actions

3693. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

Priority: Info./Admin./Other

Legal Authority: 29 USC 794

CFR Citation: 12 CFR 1706

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight will propose a regulation to effectuate section 119 of the Rehabilitation Comprehensive Services, and Developmental Disabilities Amendment of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by executive agencies or the United States Postal Service.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Isabella W. Sammons, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414—3790

RIN: 2550–AA11

3694. MINIMUM CAPITAL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4612

CFR Citation: 12 CFR 1750

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight will propose to amend its Minimum Capital rule to accommodate changes in Generally Accepted Accounting Principles, clarify reporting requirements, and make supervisory monitoring of capital more transparent.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David A. Felt, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
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RIN: 2550–AA18

3695. CORPORATE GOVERNANCE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4513(a); 12 USC 4513(b)(1)

CFR Citation: 12 CFR 1710

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight is proposing to amend its corporate governance regulation to incorporate changes in Federal law and standards affecting governance of public corporations.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David W. Roderer, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414—3804

RIN: 2550–AA24

Office of Federal Housing Enterprise Oversight (OFHEO) Completed Actions

3696. • ORGANIZATION AND FUNCTIONS

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552; 12 USC 4513; 12 USC 4526

CFR Citation: 12 CFR 1700

Legal Deadline: None

Abstract: OFHEO revised its regulation that describes and displays the Agency's official seal and logo. This logo is the official symbol representing OFHEO and is displayed on correspondence, selected documents, and signage of the Agency.

Timetable:

Action	Date	FR Cite
Final Action	06/02/03	68 FR 32627
Final Action Effective	06/02/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David W. Roderer, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
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RIN: 2550–AA27

[FR Doc. 03–24044 Filed 12–19–03; 8:45 am]

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Monday,
December 22, 2003

Part XXXVI

Office of Government Ethics

Semiannual Regulatory Agenda

OFFICE OF GOVERNMENT ETHICS (OGE)

OFFICE OF GOVERNMENT ETHICS

5 CFR Ch. XVI

Semiannual Regulatory Agenda; Fall 2003

AGENCY: Office of Government Ethics.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following Office of Government Ethics (OCE) substantive and procedural regulations are scheduled for development or review during the six-month period following publication. This agenda fulfills OGE's responsibility to publish a semiannual regulatory agenda under Executive Order 12866, Regulatory Planning and Review, and has been prepared in accordance with guidance received from the Office of Management and Budget. None of the OGE regulations in this agenda will have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6. In addition, none of the listed OGE regulatory actions are procurement-related.

This publication in the **Federal Register** does not impose a binding obligation on the Office of Government Ethics with respect to any particular item on its agenda. The dates shown for the future steps of each action are estimates and not commitments to act by the date shown. Moreover, other OGE regulatory actions, in addition to the entries listed, are not precluded.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917; Telephone: (202) 482-9245; TDD: (202) 482-9293; Fax: (202) 482-9237.

Approved: October 9, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Office of Government Ethics—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3697	Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture	3209—AA00

Office of Government Ethics—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3698	Standards of Ethical Conduct for Employees of the Executive Branch	3209—AA04
3699	Limitations on Outside Earned Income, Employment, and Affiliations for Certain Noncareer Employees	3209—AA13
3700	Executive Agency Ethics Training Programs	3209—AA07
3701	Interpretation, Exemptions, and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)	3209—AA09
3702	Post—Employment Conflict of Interest Restrictions	3209—AA14

Office of Government Ethics—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3703	Executive Agency Supplemental Standards of Ethical Conduct Regulations Issued Jointly With the Concurrence of the Office of Government Ethics	3209—AA15

Office of Government Ethics—Completed Actions

Sequence Number	Title	Regulation Identification Number
3704	Office of Government Ethics Gift Acceptance Authority and Organizational Update	3209—AA21
3705	Privacy Act Rules of the Office of Government Ethics	3209—AA18

3697. EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

Priority: Other Significant

Legal Authority: 5 USC app (Ethics in Government Act of 1978); EO 12674; EO 12731; 26 USC 1043; 28 USC 2461 note; PL 101—410; PL 104—134, sec 31001

CFR Citation: 5 CFR 2634

Legal Deadline: None

Abstract: Regulation revising the executive branch public and confidential financial disclosure report systems for high—level officials and certain mid—level employees, respectively, in light of the changes to the Ethics in Government Act effected by the Ethics Reform Act of 1989 (Pub. L. 101—194), as amended. These disclosure provisions apply to public reports filed since January 1, 1991. Subpart I of the regulation, effective October 5, 1992, superseded prior executive branchwide and agency—specific regulations and established a revised system of confidential reporting, modeled generally on the public reporting system, for executive branch agency mid—level employees with sensitive duties and special Government employees. This regulation also has a subpart dealing with certificates of divestiture.

Timetable:

Action	Date	FR Cite
NPRM	12/02/86	51 FR 43359
Interim Final Rule	04/07/92	57 FR 11800
Correction	05/22/92	57 FR 21854
Correction	12/31/92	57 FR 62605
Revised Interim Final Rule	07/21/93	58 FR 38911
Proposed Amendment to Interim Final Rule	09/01/93	58 FR 46096
Technical Amendments to Interim Final Rule	11/30/93	58 FR 63023
Technical (Paperwork) Amendments to Interim Final Rule	07/07/94	59 FR 34755
Proposed Amendments—Certificates of No New Interests for Confidential Filers	01/15/97	62 FR 2048
Final Amendment—Certificates of No New Interests for Confidential Filers	06/24/97	62 FR 33972
Updating Amendment to Part 2634	09/17/97	62 FR 48746
Clarifying Amendment to Section 2634.906	03/31/98	63 FR 15273
Minor Amdt. to Part 2634 (Transfer of Inactive in Lieu of Honoraria Charitable Paymts. Reporting)	08/12/98	63 FR 43067
Paperwork Revisions to Appendixes A, B, and C	11/02/98	63 FR 58619
Technical Amendments to Part 2634	12/18/98	63 FR 69991
Technical Corrections to Part 2634	01/14/99	64 FR 2421
Proposed Gifts Reporting Waiver Amendments	05/13/99	64 FR 25849
Inflation Adjustments to Civil Monetary Penalties as Reflected in Part 2634	08/30/99	64 FR 47095
Final Gifts Reporting Waiver Amendments	09/14/99	64 FR 49639
Technical Amendments to Categories of Value Reporting and Gifts / Reimbursements Thresholds	11/20/00	65 FR 69655
Final Rule Amendment to Confer Additional Agency Confidential Report Filing Extension Authority	11/05/01	66 FR 55871
Final Rule Amendments to Qualified Trusts Certificates Notices	05/03/02	67 FR 22348
Final Rule Clarifying Amendment on Revocable Inter Vivos Trust Interpretation	05/31/02	67 FR 37965
Final Rule Amendments on Filing Exts. & Fee Waivers Delegations	08/01/02	67 FR 49856
Effective Date Correction to Final Rule Amendments on Filing Exts. & Fee Waivers Delegations	09/06/02	67 FR 57063
Final Rule Amendment on Reporting Period for Public Reports	09/13/02	67 FR 57937
Final Rule Amendment on Increased Reporting Thresholds for Gifts & Reimbursements	10/02/02	67 FR 61761
Proposed Rule Amendments to Certificates of Divestiture Provisions (Subpart J)	12/00/03	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	12/00/03	
Proposed Rule Amendments to Confidential Financial Disclosure Provisions	12/00/03	
Proposed Rule Amendments to Qualified Trust Provisions	03/00/04	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	05/00/04	
Proposed Rule Amendments Re: Excepted Investment Funds	10/00/04	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA00

3698. STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Priority: Other Significant

Legal Authority: 5 USC 7301; 5 USC 7351; 5 USC 7353; 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731

CFR Citation: 5 CFR 2635

Legal Deadline: None

Abstract: Regulation implementing certain provisions of Executive Order 12674 on Principles of Ethical Conduct, as modified by Executive Order 12731, and the Ethics Reform Act of 1989 (Pub. L. 101—194), as amended. Effective February 3, 1993, this ethical conduct standards regulation generally superseded executive branch employee conduct and gifts rules, as well as pertinent portions of agency—specific conduct regulations issued under prior Executive Order 11222. For certain existing agency regulatory standards setting forth financial interest prohibitions and prior approval for outside employment/activities, an extended grace period was in effect until November 1, 1996, or until individual concerned agencies issued supplemental regulations (with Office of Government Ethics concurrence), whichever occurred first.

Timetable:

Action	Date	FR Cite
NPRM	07/23/91	56 FR 33778
NPRM Comment Period End	09/20/91	
Final Overall Regulation on Standards of Ethical Conduct	08/07/92	57 FR 35006
Correction	10/27/92	57 FR 48557
Correction	11/04/92	57 FR 52583
5 CFR 2635.403(a) and 2635.803 Grace Period Extension	02/02/94	59 FR 4779
Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	02/02/95	60 FR 6390
NPRM on Widely Attended Gatherings	06/15/95	60 FR 31415
Minor Correction to One Citation	10/03/95	60 FR 51667
Further 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	12/27/95	60 FR 66857
Further Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	08/07/96	61 FR 40950
Final Rule on Widely Attended Gatherings	08/20/96	61 FR 42965
Correction to Final Rule on Widely Attended Gatherings	09/16/96	61 FR 48733
Interim Rule on Gifts From Political Organizations	09/27/96	61 FR 50689
Final Rule on Gifts From Political Organizations	03/17/97	62 FR 12531
Updating Amendments to Part 2635	09/17/97	62 FR 48746
Proposed Amendments Re: Gifts (Subpart B)	08/04/98	63 FR 41476
Further Minor Proposed Amendments to Part 2635 / Seeking Employment and Outside Activities	08/26/98	63 FR 45415
Amendments to Subpart B Gifts From Outside Sources	12/18/98	63 FR 69992
Technical Corrections to Part 2635	01/14/99	64 FR 2421
Final Amendments to Part 2635 / Seeking Employment and Outside Activities	03/17/99	64 FR 13063
Interim Rule on Travel Expenses for Certain Unofficial Teaching, Speaking, and Writing	09/05/00	65 FR 53650
Correction	09/12/00	65 FR 55076
Final Technical Amendment to Nonsponsor Widely Attended Gathering Gift Dollar Ceiling	11/20/00	65 FR 69655
Final Rule on Travel Expenses for Certain Unofficial Teaching, Speaking, and Writing	11/30/01	66 FR 59673
Final Rule Amend.—Increased Dollar Ceiling Except. for Nonsponsor Widely Attended Gatherings Gifts	10/02/02	67 FR 61761
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	12/00/03	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	05/00/04	
Overall Proposed Amendments to Standards of Ethical Conduct Regulation	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA04

3699. LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT, AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 28 USC 2461 note; PL 101—410; PL 104—134, sec 31001

CFR Citation: 5 CFR 2636

Legal Deadline: None

Abstract: The regulation had, in pertinent part, implemented, effective January 1, 1991, the prohibition on honoraria (now declared unconstitutional by the courts as to most rank and file executive branch employees and hence determined to be eviscerated as to all other Federal employees by the Office of Legal Counsel of the Justice Department). In addition, the regulation continues to implement the limitation on outside employment as provided in the 1989 Ethics Reform Act revisions to the Ethics in Government Act, as amended. The regulation has now been amended in light of the above—noted litigation and other pertinent developments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/17/91	56 FR 1721

Action	Date	FR Cite
Deferral of Effective Date of 5 CFR 2636.205	05/10/91	56 FR 21589
Additional Deferral of Effective Date of 5 CFR 2636.205	10/11/91	56 FR 51319
Revision of Honorarium Definition in 5 CFR 2636.203(a)	01/08/92	57 FR 601
Further Deferral of Effective Date of 5 CFR 2636.205	02/14/92	57 FR 5369
Technical Correction to Interim Final Rule	12/30/93	58 FR 69176
Technical (Paperwork) Amendments to Interim Final Rule	07/07/94	59 FR 34755
Removal of Subpart B of Part 2636	08/12/98	63 FR 43067
Technical Corrections to Part 2636	01/14/99	64 FR 2421
Inflation Adjustment to Civil Monetary Penalty As Reflected in Part 2636	08/30/99	64 FR 47095
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	12/00/03	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	05/00/04	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA13

3700. EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731

CFR Citation: 5 CFR 2638.701 to 2638.704

Legal Deadline: None

Abstract: Regulation specifying the responsibilities of executive branch agencies and their designated agency ethics officials to develop and implement orientation and annual ethics training courses and to distribute appropriate guidance materials to their employees under section 301(b) and (c) of Executive Order 12674, as modified by Executive Order 12731.

Timetable:

Action	Date	FR Cite
NPRM	09/18/90	55 FR 38335
NPRM Comment Period End	11/17/90	
Final Rule on Executive Agency Ethics Training Programs	04/07/92	57 FR 11886
Correction	04/27/92	57 FR 15219
Amendment	12/10/92	57 FR 58399
Correction	12/28/92	57 FR 61612
Interim Amendments to Liberalize Certain Training Requirements	03/16/94	59 FR 12145
Interim Final Rule Comment Period End	05/16/94	
Interim Amendments to Refine Certain Training Requirements	03/12/97	62 FR 11307
Correction to Interim Training Reg. Amendments	03/19/97	62 FR 13213
Correction to Interim Training Reg. Amendments	03/27/97	62 FR 14737
Interim Amendments to Refine Certain Training Requirements Comment Period End	04/11/97	62 FR 11307
Most Interim Amendments to Refine Certain Training Requirements Effective	06/10/97	62 FR 13213
Interim Amendment to Restructure Regulation Provisions	02/14/00	65 FR 7275
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA07

3701. INTERPRETATION, EXEMPTIONS, AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 18 USC 208

CFR Citation: 5 CFR 2640

Legal Deadline: None

Abstract: This regulation interprets section 208(a) of title 18, U.S.C., which prohibits officers and employees of the executive branch from officially participating personally and substantially in a particular matter in which there is a personal financial interest or a financial interest of a related person or organization (absent a waiver or exemption under 18 U.S.C. 208(b)). It also lists and describes interests considered too remote or too inconsequential to affect the integrity of the services of executive branch officers or employees, in accordance with 18 U.S.C. 208(b)(2). Such interests are exempt from the restrictions of 18 U.S.C. 208(a), generally requiring disqualification. The regulation also provides guidance to executive branch agencies as to the kinds of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from an employee and which, therefore, may be waived from the general rule of disqualification under 18 U.S.C. 208(a), pursuant to 18 U.S.C. 208(b)(1). In addition, guidance is provided concerning the issuance of waivers to special Government employee advisory committee members, pursuant to 18 U.S.C. 208(b)(3). A separate interim final rule, published in 1995 exempting certain financial interests arising from Federal Government executive branch employment as well as from Social Security or veterans' benefits from the general prohibition in section 208(a), was incorporated in the overall final rule. Additional exemptions are considered for development from time to time as appropriate.

Timetable:

Action	Date	FR Cite
Govt. Interests and Social Security and Veterans' Benefits Exemptions Interim Final Rule	08/28/95	60 FR 44706
Overall NPRM	09/11/95	60 FR 47208
Overall NPRM Comment Period End	11/13/95	
Overall Final Rule	12/18/96	61 FR 66830
Correction	01/09/97	62 FR 1361
Overall Final Rule Effective	01/17/97	
Correction	04/29/97	62 FR 23127
Interim Census Exemption Amendment	03/29/00	65 FR 16511
Final Census Exemption Amendment	08/04/00	65 FR 47830
Proposed Additional Exemption Amendments	09/06/00	65 FR 53942
Proposed Amendments Comment Period End	12/05/00	
Final Additional Exemption Amendments	03/19/02	67 FR 12443
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	12/00/03	
Proposed Rule Amendment Re: Excepted Investment Funds	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA09

3702. POST—EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 18 USC 207

CFR Citation: 5 CFR 2641; 5 CFR 2637 (Continuation)

Legal Deadline: None

Abstract: This interpretive regulation will give guidance for the executive branch on the various substantive restrictions of the current version of the post—Government employment conflict of interest statute 18 U.S.C. 207, which became effective January 1, 1991, pursuant to title I of the Ethics Reform Act of 1989 (Pub. L. 101—194), as amended. Parts of the regulation, dealing with procedures for waivers by the Office of Government Ethics of certain senior official constraints (based on executive agency hardship), designated senior employees, and separate agency designations, have already been published in the Federal Register; such designations are periodically updated by the Office of Government Ethics. The Office of Government Ethics also has continued to publish in the CFR the interpretive regulation, 5 CFR part 2637 (but now without the no—longer—effective former Senior Employee and old agency component designation listings), under the lifetime bar of the prior version of the post—employment law which still applies to executive branch employees who left the Government before January 1, 1991. Once a complete current post—employment law final regulation is published, the old part 2637 regulation will be removed from the CFR.

Timetable:

Action	Date	FR Cite
Interim Final Rule for One—Year Restriction of Section 207(c)	02/01/91	56 FR 3951
Designation of Senior Employees and Separate Agency Components	01/28/92	57 FR 3115
Designation of Additional Separate Agency Component	04/07/92	57 FR 11673
Amendment to Prior Post—Employment Regulation (Part 2637)	12/31/92	57 FR 62467
Amendment to Interim Final Rule (Part 2641)	06/21/93	58 FR 33755
Technical Amendment to Authority Citation of 5 CFR Part 2637	12/30/93	58 FR 69176
Technical Amendments to Interim Final Rule	07/07/94	59 FR 34755
Exempted Senior Employee and Agency Separate Component Designation Update	05/16/97	62 FR 26915
Correction: Post—Employment Reg. Update	06/11/97	62 FR 31865
Agency Separate Component Designation Update	02/05/99	64 FR 5709
Agency Separate Component Designation Update Final Rule	01/30/03	68 FR 4681
Overall NPRM	02/18/03	68 FR 7843
Correction to Overall NPRM	03/31/03	68 FR 15385
Overall NPRM Comment Period End	05/19/03	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	12/00/03	
Overall Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA14

3703. EXECUTIVE AGENCY SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT REGULATIONS ISSUED JOINTLY WITH THE CONCURRENCE OF THE OFFICE OF GOVERNMENT ETHICS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 7301; 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 5 CFR 2635.105

CFR Citation: 5 CFR 2635; 5 CFR ch XXI et seq

Legal Deadline: None

Abstract: The supplemental executive agency standards of ethical conduct regulations, once issued jointly with the concurrence of the Office of Government Ethics (OGE) at agency expense in new chapters at the end of 5 CFR, after OGE approval, supplement for each individual agency concerned the OGE executive branch standards of ethical conduct, as codified at 5 CFR part 2635. The supplemental regulations, as they are issued in accordance with sections 201(a) and 301(a) of Executive Order 12674, as modified by Executive Order 12731, set forth those agency—specific provisions under applicable law and regulation, such as regulatory restrictions on holding certain financial interests, designation of subunits and prior approval for outside employment, which are needed for certain agencies to round out the executive branchwide ethical standards for their employees.

Timetable:

Action	Date	FR Cite
FTC Employees (5 CFR Ch. XLVII) Interim Final Rule	05/27/93	58 FR 30695
OPIC Employees (5 CFR Ch. XXXIII) Interim Final Rule	06/17/93	58 FR 33319
Treasury Employees (5 CFR Ch. XXI) NPRM	08/03/93	58 FR 41193
ICC Employees (5 CFR Ch. XL) Final Rule	08/06/93	58 FR 41989
PRC Employees (5 CFR Ch. XLVI) Final Rule	08/12/93	58 FR 42839
DOD Employees (5 CFR Ch. XXVI) Interim Final Rule	09/10/93	58 FR 47619
CFTC Employees (5 CFR Ch. XLI) Final Rule	10/12/93	58 FR 52637
IAF Employees (5 CFR Ch. LXIII) Final Rule	01/27/94	59 FR 3771
5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	02/02/94	59 FR 4779
NRC Employees (5 CFR Ch. XLVIII) Final Rule	04/13/94	59 FR 17457
FDIC Employees (5 CFR Ch. XXII) NPRM	07/12/94	59 FR 35480
NASA Employees (5 CFR Ch. LIX)	09/28/94	59 FR 49335
FRTIB Employees (5 CFR Ch. LXXIV)	10/06/94	59 FR 50816
Education Employees (5 CFR Ch. LIII)	01/30/95	60 FR 5816
Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	02/02/95	60 FR 6390
OMB Employees (5 CFR Ch. LXXVII) Final Rule	03/07/95	60 FR 12396
USPS Employees (5 CFR Ch. LX)	03/27/95	60 FR 15700
Eximbank Employees (5 CFR Ch. LII)	04/07/95	60 FR 17625
FDIC Employees (5 CFR Ch. XXII)	04/25/95	60 FR 20171
Treasury Employees (5 CFR Ch. XXI) Final Rule	05/05/95	60 FR 22249
FCA Employees (5 CFR Ch. XXXI)	06/12/95	60 FR 30778
FCSIC Employees (5 CFR Ch. XXX)	06/12/95	60 FR 30773
HUD Employees (5 CFR Ch. LXV)	06/30/95	60 FR 34420
OPIC Employees (5 CFR Ch. XXXIII) Final Rule	07/21/95	60 FR 37555
USPS Employees (5 CFR Ch. LX) Final Rule	09/11/95	60 FR 47240
FCA Employees (5 CFR Ch. XXXI) Final Rule	09/13/95	60 FR 47453
OGE Concurrence in FCA Employees (5 CFR Ch. XXXI) Final Rule	12/06/95	60 FR 62319
BGFRS Employees (5 CFR Ch. LVIII)	12/19/95	60 FR 65249
Further 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	12/27/95	60 FR 66857
FCSIC Employees (5 CFR Ch. XXX) Final Rule	02/06/96	61 FR 4349
EEOC Employees (5 CFR Ch. LXII)	02/26/96	61 FR 7065
TVA Employees (5 CFR Ch. LXIX)	05/06/96	61 FR 20117
DOE Employees (5 CFR Ch. XXIII)	07/05/96	61 FR 35085
FDIC Employees (5 CFR Ch. XXII) Amendment	07/09/96	61 FR 35915
HUD Employees (5 CFR Ch. LXV)	07/09/96	61 FR 36246
OPM Employees (5 CFR Ch. XXXV)	07/16/96	61 FR 36993
HHS Employees (5 CFR Ch. XLV)	07/30/96	61 FR 39756
DOT Employees (5 CFR Ch. L)	07/31/96	61 FR 39901
FMSHRC Employees (5 CFR Ch. LXXIV)	07/31/96	61 FR 39869
EPA Employees (5 CFR Ch. LIV)	08/02/96	61 FR 40500
NARA Employees (5 CFR Ch. LXVI)	08/05/96	61 FR 40505
Further Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	08/07/96	61 FR 40950
FERC Employees (5 CFR Ch. XXIV)	08/23/96	61 FR 43411
BGFRS Employees (5 CFR Ch. LVIII) Final Rule	10/16/96	61 FR 53827
FCC Employees (5 CFR Ch. XXIX)	10/31/96	61 FR 56109
GSA Employees (5 CFR Ch. LVII)	11/01/96	61 FR 56399
DOL Employees (5 CFR Ch. XLII)	11/06/96	61 FR 57281
DOJ Employees (5 CFR Ch. XXVIII)	11/25/96	61 FR 59811
NSF Employees (5 CFR Ch. XLIII)	11/25/96	61 FR 59815
CPSC Employees (5 CFR Ch. LXXI)	12/13/96	61 FR 65457
FDIC Employees (5 CFR Ch. XXII) Amendment	01/27/97	62 FR 3771
NLRB Employees (5 CFR Ch. LXI)	02/12/97	62 FR 6445
DOJ Employees (5 CFR Ch. XXVIII) Final Rule	05/02/97	62 FR 23941
DOJ Employees (5 CFR Ch. XXVIII) Final Rule Correction	06/11/97	62 FR 31865
OPM Employees (5 CFR Ch. XXXV) Interim Rule Correction	06/17/97	62 FR 32859
EEOC Employees (5 CFR Ch. LXII) Final Rule	07/08/97	62 FR 36447
OPM Employees (5 CFR Ch. XXXV) Final Rule	08/11/97	62 FR 42897
DOI Employees (5 CFR Ch. XXV)	10/16/97	62 FR 53713

Action	Date	FR Cite
DOI Employees (5 CFR Ch. XXV) Interim Final Rule Correction	04/15/98	63 FR 18501
DOI Employees (5 CFR Ch. XXV) Interim Final Rule Correction	04/24/98	63 FR 20447
DOI Employees (5 CFR Ch. XXV) Final Rule	06/24/98	63 FR 34258
FTC Employees (5 CFR Ch. XLVII) Final Rule Amendments	08/12/98	63 FR 43069
BGFRS Employees (5 CFR Ch. LVIII) Final Rule Amendments	12/08/99	64 FR 68615
DOL Employees (5 CFR Ch. XLII) Final Rule	12/30/99	64 FR 73852
USDA Employees (5 CFR Ch. LXXIII) Interim Final Rule	03/24/00	65 FR 15825
USDA Employees (5 CFR Ch. LXXIII) Interim Final Rule Correction	04/20/00	65 FR 21239
USDA Employees (5 CFR Ch. LXXIII) Final Rule	10/02/00	65 FR 58635
Treasury Employees (5 CFR Ch. XXI) Final Rule Amendments	02/01/01	66 FR 8505
NASA Employees (5 CFR Ch. LIX) Final Rule Amendments	11/27/01	66 FR 59135
DOT (FAA) Employees (5 CFR Ch. L) Final Rule Amendments	12/03/01	66 FR 60139
Treasury (OCC) Employees (5 CFR Ch.XXI) Final Rule Amendments	07/17/02	67 FR 46840
USDA (FSA) Employees (5 CFR Ch. LXXIII) Final Rule Amendments	09/16/02	67 FR 58319
USDA (FSA) Employees (5 CFR Ch. LXXIII) Final Rule Amendments Correction	11/04/02	67 FR 67089
FDIC Employees (5 CFR Ch. XXII) Final Rule Amendments	11/29/02	67 FR 71069
IMLS Employees (5 CFR Ch. LXVII) Interim Final Rule	04/14/03	68 FR 17877
EEOC Employees (5 CFR Ch. LXII) Final Rule Amendments	09/04/03	68 FR 52485
NEA Employees (5 CFR Ch. LV) Interim Final Rule	09/05/03	68 FR 52681
NEH Employees (5 CFR Ch. LVI) Interim Final Rule	09/05/03	68 FR 52682
DOD Employees (5 CFR Ch. XXVI) Final Rule Amendments	11/18/03	68 FR 64979
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005
Phone: 202 482—9300
TDD Phone: 202 482—9293
Fax: 202 482—9237

RIN: 3209–AA15

Office of Government Ethics (OGE) Completed Actions

3704. OFFICE OF GOVERNMENT ETHICS GIFT ACCEPTANCE AUTHORITY AND ORGANIZATIONAL UPDATE

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978

CFR Citation: 5 CFR 2600

Legal Deadline: None

Abstract: This proposed regulation would implement the agency gift acceptance authority of the Office of Government Ethics (OGE) as set forth in the 1996 OGE Authorization Act. This regulation is being written in "plain language." In addition, various provisions of OGE's part 2600 organization and functions regulation were updated to reflect changes in OGE's organizational structure.

Timetable:

Action	Date	FR Cite
NPRM (OGE Gift Acceptance Authority)	05/05/03	68 FR 23875
Final Rule (OGE Organization & Functions)	07/15/03	68 FR 41681
Final Rule (OGE Gift Acceptance Authority)	10/22/03	68 FR 60593
Final Rule Clarifying Amendment (OGE Organization & Functions)	11/03/03	68 FR 62213

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Allison C. George, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005
Phone: 202 482—9300
TDD Phone: 202 482—9293
Fax: 202 482—9237

RIN: 3209–AA21

3705. PRIVACY ACT RULES OF THE OFFICE OF GOVERNMENT ETHICS

Priority: Other Significant

Legal Authority: 5 USC 552a; 5 USC app, Ethics in Government Act of 1978

CFR Citation: 5 CFR 2606 (New)

Legal Deadline: None

Abstract: The final rule established for the Office of Government Ethics (OGE) regulatory procedures to implement the Privacy Act of 1974, including requests for access and amendment and appeals, and referenced certain OGE systems of records (including two Governmentwide executive branch systems, which were also updated and revised, with the addition of five internal systems, see 68 FR 3097 (01/22/03), as corrected at 68 FR 24744 (05/08/03)).

Timetable:

Action	Date	FR Cite
NPRM	01/22/03	68 FR 2923

OGE **Completed Actions**

Action	Date	FR Cite
NPRM Comment Period End	03/24/03	
Final Rule	05/22/03	68 FR 27891

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Elaine Newton, Attorney Advisor, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005
Phone: 202 482—9300
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RIN: 3209–AA18

[FR Doc. 03–27069 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XXXVII

Office of Management and Budget

Semiannual Regulatory Agenda

OFFICE OF MANAGEMENT AND BUDGET (OMB)

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Ch. III and 48 CFR Ch. 01

Federal Regulations; OMB Circulars, OFPP Policy Letters, and CASB Cost Accounting Standards Included in the Semiannual Agenda of Federal Activities

AGENCY: Office of Management and Budget.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Office of Management and Budget (OMB) is publishing its semiannual agenda of upcoming activities for OMB Circulars, Office of Federal Procurement Policy (OFPP) Policy Letters, and Cost Accounting Standards Board (CASB) Cost Accounting Standards.

OMB Circulars and OFPP Policy Letters are published in accordance with OMB's internal procedures for implementing Executive Order 12866 (October 4, 1993, 58 FR 51735). OMB Policy guidelines are issued under authority derived from several sources including: subtitles I, II, and V of title 31, United States Code; Executive Order 11541; and other specific authority as cited. OMB Circulars and OFPP Policy Letters communicate guidance and instructions of a continuing nature to executive branch agencies. As such, most OMB Circulars and OFPP Policy Letters are not regulations. Nonetheless, because these issuances are typically of public interest, they are generally published in the **Federal Register** in both proposed (for public comment) and final stages. For this reason, they are presented below in the standard format of "prerule," "proposed rule," and "final rule" stages.

CASB Cost Accounting Standards are issued under authority derived from 41 U.S.C. 422. Cost Accounting Standards are rules governing the measurement, assignment, and allocation of costs to contracts with the U.S. Government.

For purposes of this agenda, we have excluded directives that outline procedures to be followed in connection with the President's budget and legislative programs and directives that affect only the internal functions, management, or personnel of Federal agencies.

FOR FURTHER INFORMATION CONTACT: See agency person listed for each entry in the agenda, c/o Office of Management and Budget, Washington, DC 20503. On the overall agenda, contact Stephen A. Weigler, (202) 395-4855, at the above address.

Stephen A. Weigler,

Deputy Assistant Director for Administration.

Office of Management and Budget—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3706	Accounting for the Cost of Employee Stock Ownership Plans	0348—AB57

Office of Management and Budget—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3707	Federal Participation in the Development and Use of Volunteer Consensus Standards and in Conformity Assessment Activities (OMB Circular A—119)	0348—AB53

Office of Management and Budget—Completed Actions

Sequence Number	Title	Regulation Identification Number
3708	Revision of OMB Circular A—127 To Implement the Federal Financial Management Improvement Act and To Reflect Updated Financial Management Policies; Creation of a Single Financial Management Circular	0348—AB46
3709	Policies on Management of Federal Information Resources (OMB Circular A—130)	0348—AB55

Office of Management and Budget (OMB) — Prerule Stage

3706. ACCOUNTING FOR THE COST OF EMPLOYEE STOCK OWNERSHIP PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 422

CFR Citation: 48 CFR 99

Legal Deadline: None

Abstract: The Cost Accounting Standards Board is proposing to amend its standards to provide criteria for measuring and assigning the costs of employee stock ownership plans sponsored by Government contractors.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Action	Date	FR Cite
ANPRM Comment Period End	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Management and Budget, Room 9013, NEOB, 725 17th Street NW., Washington, DC 20503
Phone: 202 395—4550
Fax: 202 395—5105

RIN: 0348–AB57

Office of Management and Budget (OMB) Long-Term Actions

3707. FEDERAL PARTICIPATION IN THE DEVELOPMENT AND USE OF VOLUNTEER CONSENSUS STANDARDS AND IN CONFORMITY ASSESSMENT ACTIVITIES (OMB CIRCULAR A—119)

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 1111; PL 104—113

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: OMB Circular A—119, "Federal Participation in the Development and Use of Voluntary Consensus Standards," contains reporting requirements regarding agency use of Government—unique standards and voluntary consensus standards along with agency participation in voluntary consensus standards bodies. The Circular instructs agencies to use voluntary consensus standards in lieu of Government—unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical. Language in A—119 calls on OMB to review the Circular for effectiveness three years from the date of issuance (February 1998).

Timetable:

Action	Date	FR Cite
Proposed Revision	12/00/04	
Final Revision	04/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jacqueline Zeiher, Policy Analyst, Office of Management and Budget, Room 10236, NEOB, 725 17th Street NW., Washington, DC 20503
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Email: jzeiher@omb.eop.gov

RIN: 0348–AB53

Office of Management and Budget (OMB) Completed Actions

3708. REVISION OF OMB CIRCULAR A—127 TO IMPLEMENT THE FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT ACT AND TO REFLECT UPDATED FINANCIAL MANAGEMENT POLICIES; CREATION OF A SINGLE FINANCIAL MANAGEMENT CIRCULAR

Priority: Info./Admin./Other

Legal Authority: PL 101—576, Chief Financial Officer's Act of 1990

CFR Citation: 31 CFR 503

Legal Deadline: None

Abstract: Last year, OMB planned to rescind OMB Circular A—127 to implement the Federal Financial Management Improvement Act (FFMIA) and to reflect updated financial management polices. After more analysis, OMB decided to rescind A—127 and the following financial management circulars and replace them with one circular: 1) OMB Circular A—50, Audit Follow—up; 2) OMB Circular A—123, Management Accountability and Control; 3) OMB Circular A—127, Financial Management Systems; 4) OMB Circular A—127, Financial Management Systems Revised Transmittal Memorandum No. 2; and 5) OMB Circular A—134, Financial Accounting Principles and Standards.

For more than a decade, there has been a myriad of legislation enacted to hold Federal agencies accountable for their performance and to manage for results. The volume of guidance issued by OMB to help agencies meet these new statutory and administrative requirements is complex and confusing, and has resulted in agency performance and financial management and reporting more focused on compliance than performance and results. The purpose of rescinding existing Circulars and replacing them with one document is to consolidate, establish, and update Governmentwide policies and procedures related to executive branch Federal agencies' financial and performance management and reporting.

Timetable:

Action	Date	FR Cite
Withdrawn	10/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Areletha Venson, Administrative Support Specialist, Office of Management and Budget
Phone: 202 395—3993
Fax: 202 395—3952
Email: avenson@omb.eop.gov

RIN: 0348–AB46

3709. POLICIES ON MANAGEMENT OF FEDERAL INFORMATION RESOURCES (OMB CIRCULAR A—130)

Priority: Substantive, Nonsignificant

Legal Authority: PL 104—106

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: OMB Circular A—130 establishes policy for the management of Federal information resources, and includes procedural and analytic guidelines for implementing aspects of these policies as appendices. OMB is reviewing appendix III of the Circular for consistency with the Federal Information Security Management Act.

Timetable:

Action	Date	FR Cite
Withdrawn	10/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kamela White, Policy Analyst, Office of Management and Budget, Room 10236, NEOB, 725 17th Street NW., Washington, DC 20503
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RIN: 0348–AB55

[FR Doc. 03–27745 Filed 12–19–03; 8:45 am]

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December 22, 2003

Part XXXVIII

Office of Personnel Management

Semiannual Regulatory Agenda

OFFICE OF PERSONNEL MANAGEMENT (OPM)

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

Regulatory Agenda

AGENCY: Office of Personnel Management.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following Office of Personnel Management (OPM) regulations are scheduled for development or review during the six-month period following publication. This agenda carries out OPM's responsibilities to publish a semiannual agenda under Executive Order 12866, "Regulatory Planning and Review," and the Regulatory Flexibility Act (5 U.S.C. chapter 6). This publication in the **Federal Register** does not impose a binding obligation on the Office of Personnel Management with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded.

FOR FURTHER INFORMATION CONTACT: Valerie Kline, (202) 606-1973.

SUPPLEMENTARY INFORMATION: OPM has begun a comprehensive, systematic review of its Governmentwide personnel regulations. OPM has undertaken this initiative to make the regulations more readable wherever possible, to eliminate duplication, and to weed out obsolete references. OPM will incorporate any necessary substantive changes as part of this project. OPM has begun publishing these regulations as proposed regulations and will continue to do so as the project progresses.

This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. OPM's Statement of Regulatory Priorities is included in part II.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Office of Personnel Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3710	Personnel Management in Agencies	3206—AJ95
3711	Amendment to Selective Service Registration Requirements	3206—AI52
3712	Employment in the Excepted Service	3206—AH83
3713	Veterans Recruitment Appointments	3206—AJ90
3714	Employment of Relatives	3206—AK03
3715	Merit Promotion and Internal Placement	3206—AI20
3716	Other Than Full—Time Employment (Part—Time, Seasonal, Intermittent)	3206—AI22
3717	Order of Release from Competitive Level	3206—AI96
3718	Reemployment Rights	3206—AI19
3719	Training	3206—AJ19
3720	Performance Management	3206—AJ80
3721	Certified Performance Appraisal Systems and Aggregate Limitation on Pay	3206—AJ86
3722	Personnel Management Research Programs and Demonstration Projects	3206—AJ67
3723	Classification Under the General Schedule	3206—AH38
3724	Miscellaneous Changes and Standardization of Pay and Leave Regulations	3206—AJ85
3725	Superior Qualifications Appointments	3206—AI00
3726	Locality—Based Comparability Payments; Redefinition of Locality Pay Areas	3206—AJ45
3727	Post Differentials (Nonforeign Areas); Palmyra Atoll	3206—AK00
3728	Prevailing Rate Systems; Redefinition of the San Francisco, California, Nonappropirated Fund Wage Area	3206—AK26
3729	Reemployment of Civilian Retirees To Meet Exceptional Employment Needs	3206—AI32
3730	List of Agents Designated to Accept Legal Process	3206—AJ83
3731	Retirement—State Income Tax Withholding Instrumentalities	3206—AH62
3732	Federal Employees' Health Benefits Program: Continuing FEHB Coverage Into Retirement	3206—AI62
3733	Changes in Health Benefits Enrollment	3206—AK04
3734	Federal Employees' Group Life Insurance Federal Acquisition Regulation	3206—AI65
3735	Implementation of Additional Cost Principles in the Federal Employees' Health Benefits Program	3206—AJ10
3736	Retirement—Court Orders Awarding Survivor Annuities; Correcting or Supplementing the First Order Dividing Marital Property	3206—AG28
3737	Retirement—Credit for Military Service	3206—AG58
3738	Retirement—FERS Elections of Coverage	3206—AG96
3739	Probation on Initial Appointment to a Competitive Position	3206—AI47
3740	Competitive Service and Competitive Status	3206—AJ75
3741	Information Technology Exchange Program	3206—AJ91
3742	Strategic Human Capital Management Assessment	3206—AJ92

Office of Personnel Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3743	Basic Concepts and Definitions (General)	3206—AJ98
3744	Excepted Service—Career and Career—Conditional Employment	3206—AJ28
3745	Excepted Service—Temporary Organizations	3206—AJ70
3746	Detail of Government Employees Between the Executive Branch and the Legislative Branch	3206—AK05
3747	Reasonable Accommodation Language for Vacancy Announcements	3206—AJ11
3748	Recruitment and Selection Through Competitive Examination	3206—AJ52
3749	Temporary Assignment of Employees Between Federal, State, Local, and Indian Tribal Governments	3206—AJ94
3750	Promotion and Internal Placement; Accelerated Qualifications	3206—AG19
3751	Awards	3206—AJ65
3752	Official Duty Station Determinations for Pay Purposes	3206—AH84
3753	Pay Under the General Schedule; Subpart F—Locality—Based Comparability Payments	3206—AJ62
3754	Job Grading Reviews and Appeals of Federal Wage System Employees	3206—AI14
3755	Prevailing Rate Systems; Redefinition of the North Dakota and Duluth, Minnesota, Appropriated Fund Wage Areas	3206—AJ78
3756	Prevailing Rate Systems; Change in Federal Wage System Survey Job and Miscellaneous Change	3206—AJ79
3757	Pay Administration; Availability Pay for Criminal Investigators	3206—AJ49
3758	Premium Pay Limitations	3206—AJ56
3759	Pretax Allotments for Flexible Spending Accounts	3206—AJ88
3760	Retention Allowances	3206—AJ48
3761	Extended Assignment Incentives	3206—AJ87
3762	Voluntary Separation Incentive Payments (VSIPs)	3206—AJ76
3763	Prevailing Rate Systems; Change in the Survey Month for the Bureau of Reclamation Mid—Pacific Region Survey	3206—AK06
3764	Physician's Comparability Allowances	3206—AJ96
3765	Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002	3206—AJ93
3766	Employee Responsibilities and Conduct	3206—AJ74
3767	Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees	3206—AJ77
3768	Retirement; Coverage—Nonappropriated Fund Instrumentalities	3206—AH57
3769	Coverage for Certain Employees of the District of Columbia	3206—AI02
3770	Retirement, Health, and Life Insurance Coverage for Certain Employees of the District of Columbia Under the District of Columbia Courts and Justice Technical Corrections Act of 1998	3206—AI55
3771	Law Enforcement Officer and Firefighter Retirement	3206—AJ39
3772	Continuation of Eligibility for Certain Civil Service Benefits for Former Federal Employees of the Civilian Marksmanship Program	3206—AJ55
3773	Retirement—Federal Employees Retirement System; Basic Annuity	3206—AJ82
3774	Retirement—Debt Collection	3206—AE72
3775	Correction of Retirement Coverage Errors Under the Federal Erroneous Retirement Coverage Correction Act	3206—AJ38
3776	Retirement Coverage and Service Credit Elections Available to Current and Former Nonappropriated Fund Employees	3206—AJ72
3777	Federal Employees' Group Life Insurance Program: Miscellaneous Changes and Clarifications	3206—AG63
3778	Federal Employees' Group Life Insurance: Removal of Premiums and Age Bands from Regulations	3206—AJ46
3779	Federal Long—Term Care Insurance Regulations	3206—AJ71
3780	Federal Employees' Health Benefits Program: Payment of Premiums for Periods of Leave Without Pay or Insufficient Pay	3206—AG66
3781	Federal Employees' Health Benefits Children's Equity	3206—AJ34
3782	Financial Sanctions of Health Care Providers in the Federal Employees' Health Benefits Program	3206—AJ42
3783	Employees Responsible for the Management or Use of Federal Computer Systems	3206—AJ84
3784	General and Miscellaneous	3206—AJ97
3785	Retirement—FERS Basic Annuity	3206—AE73
3786	Time—In—Grade Restrictions	3206—AG06
3787	Federal Employees' Health Benefits Program: Effective Dates	3206—AI37
3788	Grade and Pay Retention	3206—AI88
3789	Federal Employees' Health Benefits Acquisition Regulation: Large Provider Agreements, Subcontracts, and Miscellaneous Changes	3206—AJ20
3790	Implementation of Flexible Spending Accounts for Executive Branch Federal Employees Participating in the Federal Employees Health Benefits Program	3206—AJ66
3791	Federal Executive Boards	3206—AJ68
3792	OPM Employee Responsibilities and Conduct	3206—AJ69
3793	Posting Regulations	3206—AJ73

Office of Personnel Management—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3794	Personnel Security and Related Programs	3206—AC21
3795	Investigations	3206—AB92
3796	Retirement—General Administration	3206—AI83

Office of Personnel Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
3797	Implementation of Premium Conversion for Executive Branch Federal Employees Participating in the Federal Employees' Health Benefits (FEHB) Program	3206—AJ17
3798	Governmentwide Debarment and Suspension (Nonprocurement)	3206—AJ31
3799	Protests, Disputes, and Appeals	3206—AK07

Office of Personnel Management (OPM)

Proposed Rule Stage

3710. • PERSONNEL MANAGEMENT IN AGENCIES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107—296

CFR Citation: 5 CFR 250

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is issuing proposed regulations to implement the requirement in Public Law 107—296, section 1304 for OPM to design a set of systems for assessing human capital management by Federal agencies. These regulations describe the framework for these systems, including the metrics, that agencies will use.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Diane Tyrrell, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606—0960
Fax: 202 606—2329
Email: dmtyrrel@opm.gov

RIN: 3206–AJ95

3711. AMENDMENT TO SELECTIVE SERVICE REGISTRATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3328

CFR Citation: 5 CFR 300

Legal Deadline: None

Abstract: The Office of Personnel Management proposes regulations to delegate to agencies the determination whether a Federal job applicant's failure to register with the Selective Service was knowing and willful. This change is authorized by an amendment to 5 U.S.C. 3328.

Timetable:

Action	Date	FR Cite
NPRM	03/29/99	64 FR 14842
NPRM Comment Period End	04/28/99	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara J. Bell, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606—0830
Email: bjbell@opm.gov

RIN: 3206–AI52

3712. EMPLOYMENT IN THE EXCEPTED SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3301; 5 USC 3302; 5 USC 8151; EO 10577

CFR Citation: 5 CFR 302

Legal Deadline: None

Abstract: The revised regulations will make it easier for agencies to understand how to run the excepted service employment system, so they can create better and more efficient employment procedures.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tina Vay, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606—0830
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Email: cmvay@opm.gov

RIN: 3206–AH83

3713. VETERANS RECRUITMENT APPOINTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—288

CFR Citation: 5 CFR 307

Legal Deadline: None

Abstract: The Office of Personnel Management proposes to revise its regulations regarding Veterans Readjustment Appointments to implement the provisions of Public Law 107—288, the Jobs for Veterans Act, signed into law on November 7, 2002.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Michael J. Mahoney,
Division for Strategic Human Resources
Policy, Office of Personnel
Management, 1900 E Street NW.,
Washington, DC 20415
Phone: 202 606—0830
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Email: mjmahone@opm.gov

RIN: 3206–AJ90

3714. • EMPLOYMENT OF RELATIVES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 3110

CFR Citation: 5 CFR 310

Legal Deadline: None

Abstract: A plain language rewrite of the regulations to make them more readable.

Timetable:

Action	Date	FR Cite
NPRM	09/22/03	68 FR 55012
NPRM Comment Period End	11/21/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Raleigh M. Neville,
Employment Service, Staffing and
Restructuring Policy Division, Office of
Personnel Management, 1900 E Street
NW., Washington, DC 20415
Phone: 202 606—0830
Fax: 202 606—0023

RIN: 3206–AK03

3715. MERIT PROMOTION AND INTERNAL PLACEMENT

Priority: Other Significant

Legal Authority: 5 USC 3301; 5 USC 3302

CFR Citation: 5 CFR 316; 5 CFR 335

Legal Deadline: None

Abstract: In an effort to provide agencies with greater flexibility and to clarify existing flexibility, the Office of Personnel Management is proposing to revise the regulations covering merit promotion and internal placement. These regulations will provide a framework within which agencies may develop merit—based programs for internal selections.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Jacobs,
Division for Strategic Human Resources
Policy, Office of Personnel
Management, 1900 E Street NW.,
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Fax: 202 606—0390
Email: kkjacobs@opm.gov

RIN: 3206–AI20

3716. OTHER THAN FULL—TIME EMPLOYMENT (PART—TIME, SEASONAL, INTERMITTENT)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301

CFR Citation: 5 CFR 340; 5 CFR 110

Legal Deadline: None

Abstract: These proposed regulations will grant agencies and employees more flexibility by clarifying agency authority to schedule part—time employees on a pay period, rather than weekly, basis; defines job sharing; and modifies seasonal employment, includes plain language changes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Email: dmtyrrel@opm.gov

RIN: 3206–AI22

3717. ORDER OF RELEASE FROM COMPETITIVE LEVEL

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3502; 5 USC 3503

CFR Citation: 5 CFR 351

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing retention regulations covering the order in which agencies release competing employees from their competitive levels in a reduction in force.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AI96

3718. REEMPLOYMENT RIGHTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3582; 5 USC 3301; PL 103—296

CFR Citation: 5 CFR 352

Legal Deadline: None

Abstract: The Office of Personnel Management proposes regulations to update provisions to conform to law allowing employees assigned to international organizations under certain conditions to maintain FERS and FICA retirement coverage. The current regulations require updates because they mention only CSRS retirement.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. Mahoney, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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Fax: 202 606—0390
Email: mjmahone@opm.gov

RIN: 3206–AI19

3719. TRAINING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 4118

CFR Citation: 5 CFR 410; 5 CFR 410.309; 5 CFR 410.404; 5 CFR 410.505

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing proposed regulations to address continued service requirements in light of new legislation authorizing the expanded authority for payment of academic degrees. Proposed changes will restore the allowance for agency heads to delegate authority to define requirements for continued service and provide guidance concerning circumstances when the requirement for continued service can be waived. Proposed regulations will also clarify distinctions between training and meetings.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
Final Action	02/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LaVeen Ponds, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606—1394
Email: lmponds@opm.gov

RIN: 3206–AJ19

3720. PERFORMANCE MANAGEMENT

Priority: Other Significant

Legal Authority: 5 USC 4305

CFR Citation: 5 CFR 430, subpart A; 5 CFR 430, subpart B

Legal Deadline: None

Abstract: Part 430, subparts A and B, are being revised to improve the readability of the existing regulatory language and to codify existing policies and procedures that are not currently in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Colchao, Division for Strategic Human Resources Policy, Office of Personnel Management, Room 7412, 1900 E Street NW., Washington, DC 20415
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Email: pay—performance—policy@opm.gov

RIN: 3206–AJ80

3721. CERTIFIED PERFORMANCE APPRAISAL SYSTEMS AND AGGREGATE LIMITATION ON PAY

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—296; 5 USC 5305; 5 USC 5307; EO 12748, 3 CFR, 1991 Comp; PL 101—509; PL 103—89

CFR Citation: 5 CFR 430

Legal Deadline: None

Abstract: The Office of Personnel Management, jointly with the Office of Management and Budget, is issuing proposed regulations to implement a recent statutory amendment increasing the aggregate limitation on pay for employees in Senior Executive Service and scientific or professional positions to the total annual compensation payable to the Vice President. The proposed regulations establish the performance appraisal systems certification requirements that must be met to use the higher aggregate limitation on pay.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Colchao, Division for Strategic Human Resources Policy, Office of Personnel Management, Room 7412, 1900 E Street NW., Washington, DC 20415
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Email: pay—performance—policy@opm.gov

RIN: 3206–AJ86

3722. PERSONNEL MANAGEMENT RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 4703

CFR Citation: 5 CFR 470

Legal Deadline: None

Abstract: The Personnel Management Research Programs and Demonstration Projects regulations require revision to increase understanding, clarify interpretation, and ease implementation. Such revisions will enhance the freedom to manage within the Federal Government by providing clarity and eliminating ambiguities in the language of the regulations and making clear the intent and requirements of the law. The revisions will also serve to streamline the current provisions for research programs and demonstration projects, and provide more flexibility to agencies for testing and establishing alternatives to recruit, retain, and manage a high quality workforce.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy H. Kichak, Division for Strategic Human Resources Policy, Office of Personnel

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Washington, DC 20415
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RIN: 3206–AJ67

3723. CLASSIFICATION UNDER THE GENERAL SCHEDULE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5112

CFR Citation: 5 CFR 511, subpart F; 5 CFR 511, subpart G

Legal Deadline: None

Abstract: The general schedule classification regulations require updating to reflect current organizational nomenclature following a reorganization within OPM.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leslie J. Pollack,
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RIN: 3206–AH38

3724. MISCELLANEOUS CHANGES AND STANDARDIZATION OF PAY AND LEAVE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5304; 5 USC 5305; 5 USC 5548; 5 USC 5550a; 5 USC 6124; 5 USC 6133(a); 5 USC 6304(d)(3); PL 102—484; PL 103—337; PL 103—329; EO 11228; 5 USC 6305; 5 USC 6306; 5 USC 6311; PL 103—356; 5 USC 6326; 5 USC 6332; 5 USC 6362; PL 100—566; PL 103—103; PL 105—18; 5 USC 6387; PL 103—3; 5 USC 6391; PL 102—25

CFR Citation: 5 CFR 530; 5 CFR 531; 5 CFR 550, subpart J; 5 CFR 610; 5 CFR 630

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing proposed regulations to clarify and standardize the rules governing the pay and leave of Federal employees. The proposed regulations are being issued to aid and support the standardization of payroll processes under the e—Payroll initiative and enhance understanding of the administration of pay and leave policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon Herzberg,
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RIN: 3206–AJ85

3725. SUPERIOR QUALIFICATIONS APPOINTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5333

CFR Citation: 5 CFR 531

Legal Deadline: None

Abstract: The Office of Personnel Management proposes to revise regulations concerning the appointment of superior candidates above the minimum rate of pay for General Schedule positions. The proposed changes clarify and modify what agencies should consider when making these superior qualifications appointments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson,
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RIN: 3206–AI00

3726. LOCALITY—BASED COMPARABILITY PAYMENTS; REDEFINITION OF LOCALITY PAY AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5304

CFR Citation: 5 CFR 531, subpart F

Legal Deadline: None

Abstract: The Office of Personnel Management plans to issue a proposed rule that would redefine one or more existing locality pay areas for General Schedule exmployees based on recommendations of hte Federal Salary Council.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ45

3727. • POST DIFFERENTIALS (NONFOREIGN AREAS); PALMYRA ATOLL

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5941

CFR Citation: 5 CFR 591

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is issuing interim regulations to establish Palmyra Atoll as a place at which the Governement pays a post differential. The Government pays post differentials to certain civilian Federal employees in specified nonforeign areas as a recruitment incentive based on conditions of environment in the local area compared with conditions in the continental United States. The Department of Interior has asked OPM to establish Palmyra Atoll as a post differential area.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald L. Paquin, Human Resources and Systems Service, Office of Compensation Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606—2838

RIN: 3206–AK00

3728. • PREVAILING RATE SYSTEMS; REDEFINITION OF THE SAN FRANCISCO, CALIFORNIA, NONAPPROPIRATED FUND WAGE AREA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: The Office of Personnel Management plans to issue a rule that would abolish the San Francisco, CA, nonappropriated fund Federal Wage System wage area. San Francisco County, the sole county of the wage area, would be placed in the Santa Clara, CA, nonappropriated fund wage area as an area of application.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AK26

3729. REEMPLOYMENT OF CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8344; 5 USC 8468

CFR Citation: 5 CFR 553

Legal Deadline: None

Abstract: The Office of Personnel Management proposes regulations to establish new criteria for granting exceptions for key positions in temporary organizations established by law or Executive order. This rule will also expand and clarify the criteria used in exercising this authority.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Phone: 202 606—0830
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RIN: 3206–AI32

3730. LIST OF AGENTS DESIGNATED TO ACCEPT LEGAL PROCESS

Priority: Info./Admin./Other

Legal Authority: 42 USC 659; 15 USC 1673; EO 12105; 3 CFR 262

CFR Citation: 5 CFR 581, app

Legal Deadline: None

Abstract: Appendix A to 5 CFR part 581 is being amended to update the addresses and telephone numbers for agents designated to receive legal process. This appendix is also being amended to add a new agency and designated agents.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Darlene M. Carr, Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415—1300
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RIN: 3206–AJ83

3731. RETIREMENT—STATE INCOME TAX WITHHOLDING INSTRUMENTALITIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8345; 5 USC 8347; 5 USC 8461; 5 USC 8469

CFR Citation: 5 CFR 831, subpart S; 5 CFR 841, subpart J

Legal Deadline: None

Abstract: These regulations modify existing regulations to reflect changes designed to expand and streamline the process of withholding State income tax from CSRS and FERS annuities.

Timetable:

Action	Date	FR Cite
NPRM	06/23/99	64 FR 33429
Second NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia A. Rochester, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AH62

3732. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: CONTINUING FEHB COVERAGE INTO RETIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: This proposed regulation would increase OPM's ability to waive requirements for continuing health benefits coverage into retirement when it is to the advantage of the Government to do so.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AI62

3733. • CHANGES IN HEALTH BENEFITS ENROLLMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 8913; 50 USC 403p; 22 USC 4069c

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: OPM is issuing proposed regulation on changes in health benefits enrollment for annuitants or survivor annuitants when a carrier terminates participation in the Federal Employees Health Benefits (FEHB) Program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nataya Battle,
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Washington, DC 20515
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RIN: 3206–AK04

3734. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716; 40 USC 486(C)

CFR Citation: 48 CFR 1.301

Legal Deadline: None

Abstract: This proposed regulation would revise the existing Federal Employees' Group Life Insurance Federal Acquisition Regulation (LIFAR) by updating and revising policy regulations with respect to the acquisition and administration of life insurance contracts for Federal employees.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	
Final Action	04/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AI65

3735. IMPLEMENTATION OF ADDITIONAL COST PRINCIPLES IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913; 40 USC 486(c); 48 CFR 1.301

CFR Citation: 48 CFR 1630; 48 CFR 1631; 48 CFR 1652

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing a regulation that would inform experience—rated carriers in the Federal Employees' Health Benefits Program how it intends to implement additional cost principles.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ10

3736. RETIREMENT—COURT ORDERS AWARDING SURVIVOR ANNUITIES; CORRECTING OR SUPPLEMENTING THE FIRST ORDER DIVIDING MARITAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 838

Legal Deadline: None

Abstract: These regulations would establish standards for determining which supplemental or correcting court orders are not "modifications" and the procedures applicable to such orders. They also provide for the continuation of the former spouse's survivor coverage and the reduction in the retiree's annuity until the State court decides the extent of the former spouse's rights to retirement benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3206–AG28

3737. RETIREMENT—CREDIT FOR MILITARY SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8461(g); 38 USC 4331

CFR Citation: 5 CFR 8347(a); 5 CFR 8461(g); 5 CFR 842.306; 5 CFR 842.307

Legal Deadline: None

Abstract: These regulations implement changes in the treatment of certain military service under CSRS and FERS required under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christopher H. Ziebarth, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AG58

3738. RETIREMENT—FERS ELECTIONS OF COVERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8461(g); PL 99—335, sec 301(d)(3)

CFR Citation: 5 CFR 846

Legal Deadline: None

Abstract: These regulations implement title III of the Federal Employees Retirement System (FERS) Act of 1986, as amended, dealing with the election of FERS coverage by employees under the Civil Service Retirement System and certain other employees. The regulations contain regulatory and interpretative rules concerning employees' eligibility to elect FERS coverage, procedures for electing FERS coverage, and basic benefits based on the service for employees who elect FERS coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/21/87	52 FR 19235
Interim Final Rule	09/13/93	58 FR 47821
Interim Final Rule	06/18/98	63 FR 33231
NPRM	12/00/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Email: payleave@opm.gov

RIN: 3206–AG96

3739. PROBATION ON INITIAL APPOINTMENT TO A COMPETITIVE POSITION

Priority: Other Significant

Legal Authority: 5 USC 3321

CFR Citation: 5 CFR 315, subpart H

Legal Deadline: None

Abstract: This regulation will permit agencies to use a competitive service probationary period of up to three years, when the work of the position cannot be properly evaluated in only one year. It will also establish one year as the minimum probationary period.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AI47

3740. COMPETITIVE SERVICE AND COMPETITIVE STATUS

Priority: Other Significant

Legal Authority: 5 USC 3301, 5 USC 3302

CFR Citation: 5 CFR 212

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is rewriting its regulations in plain language to make them more readable. This includes part 212 that contains the definitions of competitive service and competitive status. This is one aspect of a broader review of OPM's regulations. This regulatory rewrite supports the Administration's effort to use "plain language" when disseminating information throughout the Federal community and to the general public.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ75

3741. INFORMATION TECHNOLOGY EXCHANGE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—347

CFR Citation: 5 CFR 370

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing proposed regulations to implement Governmentwide provisions contained in the E—Government Act (Pub. L. 107—347). This law authorizes the temporary assignment of employees in the field of information technology (IT) management between the Federal Government and private sector organizations. It also authorizes Federal agencies to accept, on a volunteer basis, the services of non—Federal IT employees.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ91

3742. STRATEGIC HUMAN CAPITAL MANAGEMENT ASSESSMENT

Priority: Other Significant

Legal Authority: PL 107—296

CFR Citation: 5 CFR 250

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is issuing proposed regulations to implement the requirement in Public Law 107—296, section 1304 for OPM to design a set of systems for assessing human capital management by Federal agencies. These regulations describe the framework for these systems, including the metrics, that agencies will use.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3206–AJ92

Office of Personnel Management (OPM) Final Rule Stage

3743. • BASIC CONCEPTS AND DEFINITIONS (GENERAL)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 3301; 5 USC 3302

CFR Citation: 5 CFR 210

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is proposing a plain language rewrite of its regulations on basic concepts and definitions of part 210 as part of a broader review of OPM's regulations. The purpose of the revisions is to make the regulations more readable.

Timetable:

Action	Date	FR Cite
NPRM	06/30/03	68 FR 38644
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ98

3744. EXCEPTED SERVICE—CAREER AND CAREER—CONDITIONAL EMPLOYMENT

Priority: Other Significant

Legal Authority: EO 13162

CFR Citation: 5 CFR 213; 5 CFR 315

Legal Deadline: None

Abstract: These regulations implement Executive Order 13162, which establishes the Federal Career Intern Program. This program will be used to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, or competencies and prepare them for careers in analyzing and implementing public programs.

This regulation supports the Administration's effort to recruit the highest caliber people to the Federal Government, develop their professional abilities, and retain them in Federal departments and agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/14/00	65 FR 78077
Interim Final Rule Effective	12/14/00	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ28

3745. EXCEPTED SERVICE—TEMPORARY ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3161

CFR Citation: 5 CFR 213

Legal Deadline: None

Abstract: Since the new law on temporary organizations provides new limitations on temporary organizations, we are amending excepted service appointing authority for hiring persons in temporary organizations to reflect these changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/08/03	68 FR 24605
Interim Final Rule Effective	05/08/03	
Interim Final Rule Comment Period End	07/07/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ70

3746. • DETAIL OF GOVERNMENT EMPLOYEES BETWEEN THE EXECUTIVE BRANCH AND THE LEGISLATIVE BRANCH

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 1103

CFR Citation: 5 CFR 300

Legal Deadline: None

Abstract: OPM is proposing new regulations regarding the detail of executive branch employees to the legislative branch. The purpose of the revision is to set forth guidelines for executive branch detailees to the legislative branch.

Timetable:

Action	Date	FR Cite
NPRM	09/09/03	68 FR 53054
NPRM Comment Period End	10/24/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AK05

3747. REASONABLE ACCOMMODATION LANGUAGE FOR VACANCY ANNOUNCEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3301; 5 USC 3302; 5 USC 3304(f); 5 USC 3327; ...

CFR Citation: 5 CFR 302; 5 CFR 317; 5 CFR 330; 5 CFR 333; 5 CFR 335

Legal Deadline: None

Abstract: The Office of Personnel Management is publishing interim regulations requiring a reasonable accommodation statement in agency vacancy announcements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/11/01	66 FR 63905
Interim Final Rule Effective	01/10/02	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ11

3748. RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302

CFR Citation: 5 CFR 332

Legal Deadline: None

Abstract: OPM is issuing an interim regulation to allow agencies to decide how candidates are referred for competitive appointment when agencies fill multiple vacancies simultaneously. We are codifying a long—standing practice (5 U.S.C. 3301 and 5 U.S.C. 3302) of providing agencies with the option of either certifying a candidate for only one vacancy at a time, or certifying a candidate simultaneously for all vacancies for which that candidate expresses an interest, is eligible, and is within reach.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/02	67 FR 7055
Interim Final Rule Effective	02/15/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ52

3749. • TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN FEDERAL, STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 3376

CFR Citation: 5 CFR 334

Legal Deadline: None

Abstract: These regulations address the temporary assignment of employees to and from State and local governments, colleges, and universities, Indian tribal governments and selected nonprofit organizations.

Timetable:

Action	Date	FR Cite
NPRM	08/22/03	68 FR 50726
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ94

3750. PROMOTION AND INTERNAL PLACEMENT; ACCELERATED QUALIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 3304

CFR Citation: 5 CFR 316; 5 CFR 335; 5 CFR 338

Legal Deadline: None

Abstract: OPM will issue final regulations on accelerated qualifications only to authorize agencies to establish intensive training programs for acquiring qualifications at an accelerated rate.

Timetable:

Action	Date	FR Cite
NPRM	02/20/96	61 FR 6324
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3206–AG19

3751. AWARDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 4506

CFR Citation: 5 CFR 450, subpart C

Legal Deadline: None

Abstract: Regulations at 5 C.F.R. 450, subpart C (new), implement provisions of Public Law 107—67 (5 U.S.C. 4507a) that extend eligibility for Presidential Rank Awards to certain senior level employees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/13/02	67 FR 52595
Interim Final Rule Effective	09/12/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ65

3752. OFFICIAL DUTY STATION DETERMINATIONS FOR PAY PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5305; 5 USC 5304; 5 USC 5941; EO 10000; PL 101—509, sec 404

CFR Citation: 5 CFR 530; 5 CFR 531; 5 CFR 591

Legal Deadline: None

Abstract: These interim regulations clarify the location—based pay entitlements of Federal employees who are detailed or temporarily assigned to work at a new location, including telework situations. Location—based pay entitlements include locality payments, special salary rates, and nonforeign area cost—of—living allowances.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/09/97	62 FR 25423
Interim Final Rule Comment Period End	07/08/97	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AH84

3753. PAY UNDER THE GENERAL SCHEDULE; SUBPART F—LOCALITY—BASED COMPARABILITY PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5304

CFR Citation: 5 CFR 531

Legal Deadline: None

Abstract: Under current regulations, locality pay area boundaries change automatically whenever the Office of Management and Budget (OMB) modifies the geographic coverage of a metropolitan statistical area (MSA) or a consolidated metropolitan statistical area. OMB plans wholesale modifications in metropolitan area definitions in 2003 based on new criteria and 2000 census data. We plan to tie our locality pay area definitions to the geographic coverage of MSAs as defined in OMB Bulletin 99—4 so that locality pay area boundaries will not automatically change when OMB revises its metropolitan area definitions. This will allow the President's Pay Agent and the Federal Salary Council the opportunity to review the new metropolitan area definitions to see if they are appropriate for use in the locality pay program.

Timetable:

Action	Date	FR Cite
NPRM	09/11/02	67 FR 57536
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ62

3754. JOB GRADING REVIEWS AND APPEALS OF FEDERAL WAGE SYSTEM EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5346

CFR Citation: 5 CFR 532, subpart G

Legal Deadline: None

Abstract: The job grading reviews and appeals regulations require updating to reflect current organizational nomenclature following a reorganization within OPM.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary D. Wahlert, Human Resources System Service, Family Programs and Employee Relations Div., Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AI14

3755. PREVAILING RATE SYSTEMS; REDEFINITION OF THE NORTH DAKOTA AND DULUTH, MINNESOTA, APPROPRIATED FUND WAGE AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing a proposed rule to redefine the White Earth Indian Reservation portion of Becker County, Clearwater County, and Mahnonen County, Minnesota, from the North Dakota to the Duluth, Minnesota, Federal Wage System Wage Area.

Timetable:

Action	Date	FR Cite
NPRM	08/22/03	68 FR 50727
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ78

3756. PREVAILING RATE SYSTEMS; CHANGE IN FEDERAL WAGE SYSTEM SURVEY JOB AND MISCELLANEOUS CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing a proposed rule to change the grade level of the Industrial Electronic Controls Repairer Federal Wage System survey job description.

Timetable:

Action	Date	FR Cite
NPRM	08/12/03	68 FR 47877
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ79

3757. PAY ADMINISTRATION; AVAILABILITY PAY FOR CRIMINAL INVESTIGATORS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5545(h); 5 USC 5548

CFR Citation: 5 CFR 550

Legal Deadline: None

Abstract: These final regulations will clarify a number of issues relating to the administration of availability pay, a form of premium pay for criminal investigators who are required to work, or be available to work, substantial amounts of unscheduled overtime duty based on the needs of the employing agency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/23/94	59 FR 66149
Second Interim Final Rule	01/29/99	64 FR 4517
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ49

3758. PREMIUM PAY LIMITATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5547; 5 USC 5548

CFR Citation: 5 CFR 550

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim regulations to implement recent statutory amendments dealing with the premium pay limitations for Federal employees. Those amendments raise the premium pay caps for most employees, provide authority to use an annual cap instead of a biweekly cap in additional circumstances, and make certain other changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/19/02	67 FR 19319
Interim Final Rule Effective	04/29/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ56

3759. PRETAX ALLOTMENTS FOR FLEXIBLE SPENDING ACCOUNTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5527; EO 10982; 3 CFR, 1959—1963 Comp, p. 263

CFR Citation: 5 CFR 550

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim regulations to enable employees to contribute to pre—tax flexible spending accounts (FSAs) through two new allotments from the employee's pay to the employing agency. One of the new allotments will be available for a health care FSA and the other for a dependent care FSA. Flexible spending accounts become effective on July 1, 2003.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ88

3760. RETENTION ALLOWANCES

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 5 USC 5754

CFR Citation: 5 CFR 575, subpart C

Legal Deadline: None

Abstract: These final regulations would provide agencies with greater flexibility in the use of retention allowances by allowing them to pay such allowances to employees who are likely to leave their positions for other Federal employment under certain limited circumstances.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 5491
NPRM Comment Period End	03/20/01	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ48

3761. EXTENDED ASSIGNMENT INCENTIVES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5757; PL 107—273

CFR Citation: 5 GFR 575

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim regulations to implement a recent statutory amendment that authorizes the payment of extended assignment incentives to certain categories of Federal employees in positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands. The interim regulations will establish the criteria and procedures for the payment of extended assignment incentives.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/12/03	68 FR 53667
Interim Final Rule Effective	09/12/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ87

3762. VOLUNTARY SEPARATION INCENTIVE PAYMENTS (VSIPS)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—296

CFR Citation: 5 CFR 576

Legal Deadline: None

Abstract: Public Law 106—297, the Homeland Security Act of 2002, requires that most Federal agencies request the authority to offer VSIPs to their employees from the Office of Personnel Management. This change in VSIP procedures has been incorporated into 5 CFR 576 through interim regulations published February 4, 2003. The law also contains the VSIP repayment waiver provisions that were previously found in the interim regulations published under RIN 3206—AG20.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/04/03	68 FR 5529
Interim Final Rule Effective	02/04/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ76

3763. • PREVAILING RATE SYSTEMS; CHANGE IN THE SURVEY MONTH FOR THE BUREAU OF RECLAMATION MID—PACIFIC REGION SURVEY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: The Office of Personnel Management plans to issue a proposed rule that would change the timing of annual wage surveys conducted by the Bureau of Reclamation to determine prevailing rates of pay for supervisors of negotiated rate wage employees in its Mid—Pacific Region.

Timetable:

Action	Date	FR Cite
NPRM	10/31/03	68 FR 62027
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AK06

3764. • PHYSICIAN'S COMPARABILITY ALLOWANCES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 5948; 5 USC 5548

CFR Citation: 5 CFR 595

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is issuing proposed regulations as part of OPM's plain language rewrite initiative. The proposed regulations have been converted to a question—and—answer format and rewritten to ease reader understanding and improve the administration of this program.

Timetable:

Action	Date	FR Cite
NPRM	07/29/03	68 FR 44489
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ96

3765. IMPLEMENTATION OF TITLE II OF THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—174, sec. 204; Presidential Memorandum dated July 8, 2003

CFR Citation: 5 CFR 724

Legal Deadline: Final, Statutory, October 1, 2003, Final.
The President assigned the responsibility to the Office of Personnel Management to issue regulations implementing title II of the Act by October 1, 2003 .

Abstract: The Office of Personnel Management is proposing interim regulations that would implement Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002. The Act requires that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. The regulations would clarify Federal agency reporting and training requirements under the Act and prescribe the procedures for reimbursement of the Judgment Fund.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ93

3766. EMPLOYEE RESPONSIBILITIES AND CONDUCT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 7301; EO 12674, 3 CFR, 1989 Comp, p. 215, as modified by EO 12731; EO 12731, 3 CFR, 1989 Comp, p. 306

CFR Citation: 5 CFR 735

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is proposing a plain language rewrite of its regulations regarding the standards that govern employee responsibilities and conduct as part of a broader review of OPM's regulations. The purpose of the revisions is to make the regulations more readable.

Timetable:

Action	Date	FR Cite
NPRM	01/15/03	68 FR 1987
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Wade Plunkett, Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ74

3767. AGENCY USE OF APPROPRIATED FUNDS FOR CHILD CARE COSTS FOR LOWER INCOME EMPLOYEES

Priority: Other Significant

Legal Authority: PL 106—58, sec 643; PL 107—76

CFR Citation: 5 CFR 792, subpart B

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is issuing interim regulations to revise the final regulations issued March 14, 2000, implementing the child care subsidy program legislation. We are issuing interim regulations because Congress made permanent the law authorizing agencies in the executive branch of the Federal Government to assist lower income employees with their child care costs, thus making child care more affordable for those employees. OPM is also issuing these revisions as part of a broader review of OPM's regulations to make the regulations more readable.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/24/03	68 FR 14127
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ77

3768. RETIREMENT; COVERAGE—NONAPPROPRIATED FUND INSTRUMENTALITIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 841 to 844; 5 CFR 847

Legal Deadline: Final, Statutory, August 9, 1996, Final.

Abstract: These regulations implement the provisions of Public Law 104—106 and Public Law 107—107, which allow employees who have been employed by nonappropriated fund instrumentalities under the jurisdiction of the armed forces to obtain retirement credit under limited circumstances.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/09/96	61 FR 41714
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3206–AH57

3769. COVERAGE FOR CERTAIN EMPLOYEES OF THE DISTRICT OF COLUMBIA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8361(g); PL 105—33, sec 11202(f), 11232(e), 11246(b); PL 106—522, sec 145

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 842; 5 CFR 846; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These regulations implement provisions of the National Capital Revitalization and Self—Government Improvement Act of 1997, which requires that nonjudicial employees of the District of Columbia Courts, and under certain conditions, the District of Columbia Corrections Trustee, and the District of Columbia Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee and their respective employees be considered Federal employees for purposes of Federal retirement, health, and life insurance coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/97	62 FR 50995
Interim Final Rule Comment Period End	12/01/97	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3206–AI02

3770. RETIREMENT, HEALTH, AND LIFE INSURANCE COVERAGE FOR CERTAIN EMPLOYEES OF THE DISTRICT OF COLUMBIA UNDER THE DISTRICT OF COLUMBIA COURTS AND JUSTICE TECHNICAL CORRECTIONS ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: PL 105—274

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 842; 5 CFR 846; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These interim regulations implement the District of Columbia Courts and Justice Technical Corrections Act of 1998. The effect of these regulations is to extend Federal retirement, health insurance, and life insurance coverage to employees of the Public Defender Service of the District of Columbia under section 7 of the Act, and to exclude certain former employees of the District of Columbia, who are hired by the Department of Justice or by the Court Services and Offender Supervision Agency, from Federal retirement coverage if they elect, under section 3 of the Act, to continue their coverage under a retirement system for employees of the District of Columbia.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/31/99	64 FR 15286
Interim Final Rule Comment Period End	06/29/99	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AI55

3771. LAW ENFORCEMENT OFFICER AND FIREFIGHTER RETIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 831; 5 CFR 842

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing an interim rule that permits certain police officers with the Metropolitan Washington Airports Authority to elect coverage under the special retirement provisions for law enforcement officers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/25/01	66 FR 38523
Interim Final Rule Effective	07/25/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ39

3772. CONTINUATION OF ELIGIBILITY FOR CERTAIN CIVIL SERVICE BENEFITS FOR FORMER FEDERAL EMPLOYEES OF THE CIVILIAN MARKSMANSHIP PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1622(b), PL 104—106, 110 Stat 515

CFR Citation: 5 CFR 831; 5 CFR 842; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These regulations describe conditions and procedures applicable to continuation of eligibility for certain Civil Service benefits for former Federal employees of the Civilian Marksmanship Program.

Timetable:

Action	Date	FR Cite
NPRM	06/03/02	67 FR 38210
NPRM Comment Period End	08/02/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ55

3773. RETIREMENT—FEDERAL EMPLOYEES RETIREMENT SYSTEM; BASIC ANNUITY

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—296

CFR Citation: 5 CFR 831, 5 CFR 842

Legal Deadline: None

Abstract: Public Law 107—296 authorized agencies to request voluntary early retirement authority (VERA) based on a need for workforce reshaping. Previously, agencies could only request VERA based on demonstrated need to downsize. Public Law 107—296 also provided workforce reshaping flexibility to agencies requesting the authority to offer voluntary separation incentive payments (VSIP). Interim regulations amending 5 CFR part 576 have already been issued to cover the VSIP flexibility. Interim regulations revising parts 831 and 842 of 5 CFR are urgently needed so that agencies can request both VERA and VSIP based on the need for workforce reshaping. At the moment, they can only request VSIP on this basis—which hampers their ability to accomplish the goals set out in the President's management agenda.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/13/03	68 FR 35270
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ82

3774. RETIREMENT—DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 835, subpart E

Legal Deadline: None

Abstract: These regulations will amend the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) regulations by consolidating and updating existing regulations in three different subparts of the CSRS regulations, and 5 CFR 845 in the FERS regulations to eliminate duplication of the provisions governing debt collection. This item is for subpart E of the new part 835, which will address collections of Government claims from payments made by OPM.

Timetable:

Action	Date	FR Cite
NPRM	10/05/92	57 FR 45753
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Rochester, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AE72

3775. CORRECTION OF RETIREMENT COVERAGE ERRORS UNDER THE FEDERAL ERRONEOUS RETIREMENT COVERAGE CORRECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 106—265

CFR Citation: 5 CFR 839

Legal Deadline: None

Abstract: The Office of Personnel Management is amending its regulations to include new rules for correcting certain retirement coverage errors. We are amending the regulations to implement the provisions of the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), title II of Public Law 106—265. The regulations will allow agencies to correct affected coverage errors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/19/01	66 FR 15605
Interim Final Rule Effective	03/19/01	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cynthia Reinhold, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ38

3776. RETIREMENT COVERAGE AND SERVICE CREDIT ELECTIONS AVAILABLE TO CURRENT AND FORMER NONAPPROPRIATED FUND EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461; PL 107—107, sec 1131; PL 107—107, sec 1132

CFR Citation: 5 CFR 847, subpart H; 5 CFR 847, subpart I

Legal Deadline: None

Abstract: These regulations amend the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) regulations to establish procedures for employees who want to elect to use service they performed for a Nonappropriated Fund Instrumentality (NAFI) of the Department of Defense or Coast Guard to qualify for immediate retirement under CSRS or FERS annuity when employees elect to use NAFI service to qualify for immediate CSRS or FERS retirement.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	12/28/01	
Interim Final Rule	01/16/03	68 FR 2175
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ72

3777. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM: MISCELLANEOUS CHANGES AND CLARIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716

CFR Citation: 5 CFR 870

Legal Deadline: None

Abstract: These regulations include changes to FEGLI regulations that clarify procedures for signing and witnessing designations of beneficiary, accepting designations of beneficiary by facsimile, accepting DNA evidence to establish paternity, etc. They also change the time frame for electing optional insurance when first eligible from 31 days to 60 days and add information on Basic insurance for certain Department of Defense employees under Public Law 106—398.

Timetable:

Action	Date	FR Cite
NPRM	10/27/00	65 FR 64530
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AG63

3778. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE: REMOVAL OF PREMIUMS AND AGE BANDS FROM REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716; PL 106—398

CFR Citation: 5 CFR 870

Legal Deadline: None

Abstract: Public Law 105—311 allowed retiring employees to elect to continue their option B and/or option C coverage on an unreduced basis. Since this means that more people over age 65 will have these coverages and will continue to pay premiums, the previous age band structure (with the top age band being 60 and over) needed to be expanded. OPM previously added additional age bands to option C; we now need to expand these further and to add age bands to option B. In addition, the actuaries have determined that changes in mortality rates warrant further changes to the FEGLI premiums. Since the current regulatory process does not allow OPM the flexibility to change premiums quickly and in an efficient and timely manner, we are removing the premiums from regulations. We will announce future premium changes in a public notice in the Federal Register.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/09/03	68 FR 17315
Final Action	10/04/03	68 FR 59081
Final Action Effective	11/13/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ46

3779. FEDERAL LONG—TERM CARE INSURANCE REGULATIONS

Priority: Other Significant

Legal Authority: 5 USC 9008

CFR Citation: 5 CFR 875

Legal Deadline: None

Abstract: On September 19, 2000, the Long—Term Care Security Act became law. As directed by the Act, OPM published interim regulations on February 4, 2003, which establish the basic rules under which the Federal Long Term Care Insurance Program operates. The public comment period ended on April 7, 2003.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/04/03	68 FR 5531
Interim Final Rule Effective	02/04/03	
Interim Final Rule Comment Period End	04/07/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Cutler, Division
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RIN: 3206–AJ71

3780. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: PAYMENT OF PREMIUMS FOR PERIODS OF LEAVE WITHOUT PAY OR INSUFFICIENT PAY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: These regulations establish a requirement that Federal agencies counsel employees entering nonpay status, or whose pay is insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage, and if continuing, of paying premiums directly on a current basis or incurring a debt to be withheld from future salary. These regulations are intended to ensure employees are fully aware of these alternatives. We have received comments on the interim final rule, which are under review.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/22/96	61 FR 37807
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3206–AG66

3781. FEDERAL EMPLOYEES' HEALTH BENEFITS CHILDREN'S EQUITY

Priority: Substantive, Nonsignificant

Legal Authority: PL 106—394

CFR Citation: 5 CFR 890; 5 CFR 892

Legal Deadline: None

Abstract: Public Law 106—394 requires mandatory self and family coverage for Federal Employees' Health Benefits (FEHB) eligible employees who do not comply with a court or administrative order to provide health benefits for their children. This regulation requires that employees subject to such an order be enrolled in self and family coverage in a plan that provides full benefits to his/her child(ren) in the area where they live or provide documentation to his/her employing office that he/she has other health coverage for the children. If the employee does not enroll in an appropriate health plan or provide documentation of other coverage for the children, the employing office will enroll the employee for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage. This type of mandatory coverage has been in effect for several years in the private sector. This regulation defines how this requirement will be implemented in the FEHB Program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/03	68 FR 56523
Interim Final Rule Effective	10/31/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nataya Battle, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20515
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RIN: 3206–AJ34

3782. FINANCIAL SANCTIONS OF HEALTH CARE PROVIDERS IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8902a

CFR Citation: 5 CFR 890, subpart J

Legal Deadline: None

Abstract: These regulations will implement the financial sanctions provisions of the Federal Employees' Health Care Protection Act of 1998 (Pub. L. 105—266). In cases where a health care provider knowingly: (1) submitted false, fraudulent, or misleading claims; (2) failed to provide claims—related information requested by OPM or a FEHBP carrier; or (3) submitted claims while debarred, the statute authorizes OPM to effectuate civil monetary penalties. These financial sanctions may be imposed in addition to suspension or debarment, which are the other forms of sanctions authorized by the statute. The regulatory provisions for suspension and debarment are being implemented in an earlier amendment to 5 CFR 890, subpart J.

Timetable:

Action	Date	FR Cite
NPRM	02/10/03	68 FR 6649
NPRM Comment Period End	04/11/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ42

3783. EMPLOYEES RESPONSIBLE FOR THE MANAGEMENT OR USE OF FEDERAL COMPUTER SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: PL 100—235

CFR Citation: 5 CFR 930, subpart C

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing proposed regulations to revise the rules that govern the training of employees responsible for the management or use of Federal computer systems. The proposal refers the user to the National Institute of Standards and Technology (NIST) website, which will have the most current information on computer security awareness and training guidelines and removes text that is included on the NIST website, thus, streamlining the regulation where appropriate.

Timetable:

Action	Date	FR Cite
NPRM	09/04/03	68 FR 52528
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LaVeen Ponds, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ84

3784. • GENERAL AND MISCELLANEOUS

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 CFR 1

CFR Citation: 5 CFR 990

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is proposing to remove its regulation concerning the submission of claims by preference eligibles to OPM and the recognition of representatives by OPM. The existing regulation is now obsolete.

Timetable:

Action	Date	FR Cite
NPRM	05/27/03	68 FR 28806
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Raleigh M. Neville, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ97

3785. RETIREMENT—FERS BASIC ANNUITY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8461

CFR Citation: 5 CFR 842, subparts B to G

Legal Deadline: None

Abstract: These final regulations will amend FERS Basic Annuity regulations governing Eligibility (subpart B), Credit for Service (subpart C), Computations (subpart F), and Alternative Forms of Annuity (subpart G). These regulations have been published at various times in interim final form, and have been affected by statutory changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/87	52 FR 2061
Interim Final Rule	01/16/87	52 FR 2067
Interim Final Rule	02/11/87	52 FR 4473
Interim Final Rule	02/11/87	52 FR 4479
Interim Final Rule	05/14/87	52 FR 18193
Interim Final Rule	04/08/88	53 FR 11635
Interim Final Rule	02/09/90	55 FR 4598
Final Rule	12/27/90	55 FR 53136
Interim Final Rule	02/19/91	56 FR 6549
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3206–AE73

3786. TIME—IN—GRADE RESTRICTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302; EO 10577

CFR Citation: 5 CFR 300

Legal Deadline: None

Abstract: The Office of Personnel Management will eliminate the requirement that employees serve one year in—grade to be eligible for promotion above the GS—5 level. The requirement to be eliminated is separate from the qualifications requirement for one year's experience at the next lowest grade or equivalent for promotion.

Timetable:

Action	Date	FR Cite
NPRM	06/15/94	59 FR 30717
NPRM Comment Period End	01/10/95	60 FR 2546
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3206–AG06

3787. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: EFFECTIVE DATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: This final regulation would adopt January 1 as the effective date for all open season enrollment changes and new enrollment in the Federal Employees' Health Benefits Program.

Timetable:

Action	Date	FR Cite
NPRM	08/31/98	63 FR 46180
NPRM Comment Period End	09/30/98	
Final Action	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AI37

3788. GRADE AND PAY RETENTION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5361; 5 USC 5366

CFR Citation: 5 CFR 536

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing final regulations giving agencies discretionary authority to grant pay retention to certain employees moving to positions under pay systems other than the General Schedule or the Federal Wage System. This new flexibility would allow agencies to prevent eligible employees from suffering a reduction in pay that would otherwise result from a management action.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33785
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AI88

3789. FEDERAL EMPLOYEES' HEALTH BENEFITS ACQUISITION REGULATION: LARGE PROVIDER AGREEMENTS, SUBCONTRACTS, AND MISCELLANEOUS CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913; 40 USC 486(c); 48 CFR 1.301

CFR Citation: 48 CFR 1602; 48 CFR 1604; 48 CFR 1615; 48 CFR 1632; 48 CFR 1644; 48 CFR 1652; 48 CFR 1602; . . .

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing a new policy that establishes notification and information requirements, including audits, for Federal Employees' Health Benefits experience—rated carrier large provider agreements. The proposed regulation also revises the threshold for advance approval of carrier subcontracts.

Timetable:

Action	Date	FR Cite
NPRM	08/15/03	68 FR 10000
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ20

3790. IMPLEMENTATION OF FLEXIBLE SPENDING ACCOUNTS FOR EXECUTIVE BRANCH FEDERAL EMPLOYEES PARTICIPATING IN THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 125; 26 USC 129; 26 USC 152

CFR Citation: 5 CFR 892

Legal Deadline: None

Abstract: The Office of Personnel Management plans to issue regulations to enable employees of all executive branch agencies to elect a Health Care Flexible Spending Account (HCFSA) and/or a Dependent Care Flexible

Spending Account (DCFSA) in accordance with sections 125, 129, and 152 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael W. Kaszynski, Retirement and Insurance Services, Office of Personnel Management, Insurance Policy and Information Division, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ66

3791. FEDERAL EXECUTIVE BOARDS

Priority: Info./Admin./Other

Legal Authority: 5 CFR 960, Memorandum of the President for Heads of Departments and Agencies

CFR Citation: 5 CFR 960

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) proposes regulations designed to make plain language updates, and general or routine modifications with no cost implications. These regulations also will clarify language based on modifications to OPM programs.

Timetable:

Action	Date	FR Cite
NPRM	11/25/02	67 FR 70559
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AJ68

3792. OPM EMPLOYEE RESPONSIBILITIES AND CONDUCT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a; 5 USC 7301

CFR Citation: 5 CFR 1001

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is proposing a plain language rewrite of its regulations regarding the standards that govern OPM employee's responsibilities and conduct as part of a broader review of OPM's regulations. The purpose of the revisions is to make the regulations more readable.

Timetable:

Action	Date	FR Cite
NPRM	11/20/02	67 FR 70029
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Wade Plunkett, Office of the General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606—1700

RIN: 3206–AJ69

3793. POSTING REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 5 USC 1103

CFR Citation: 5 CFR 110

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing proposed regulations to revise the rules relating to notice of new regulations and information collection requirements. The revisions include eliminating one subpart and renaming the remaining subpart, and making plain language modifications.

Timetable:

Action	Date	FR Cite
NPRM	03/06/03	68 FR 10667
NPRM Comment Period End	05/05/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert T. Coco, Division for Management and Chief Financial Officer, Office of Personnel Management, Contracting, Facilities, and Administrative Services Group, Publications Management Branch, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AJ73

Office of Personnel Management (OPM) Long-Term Actions

3794. PERSONNEL SECURITY AND RELATED PROGRAMS

Priority: Other Significant

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 7312; 50 USC 403; EO 10450; EO 10577

CFR Citation: 5 CFR 732

Legal Deadline: None

Abstract: With the abolishment of the Federal Personnel Manual (FPM), certain policies and procedures enunciated in the FPM are being considered for publication in another format.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/23/91	56 FR 18650
Interim Final Rule	09/16/94	59 FR 47527
Interim Final Rule Effective Date	10/17/94	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathy Dillaman, Associate Director, Investigations Service, Office of Personnel Management, Division for Strategic Human Resources Policy, 1900 E Street NW., Washington, DC 20415—4000

Phone: 202 606—1042

RIN: 3206–AC21

3795. INVESTIGATIONS

Priority: Other Significant

Legal Authority: PL 93—579; 5 USC 552a

CFR Citation: 5 CFR 736

Legal Deadline: None

Abstract: With the abolishment of the Federal Personnel Manual (FPM), certain policies and procedures enunciated in the FPM are being considered for publication in another format.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/23/91	56 FR 18650
Begin Review	10/01/93	
Interim Final Rule	09/16/94	59 FR 47527
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathy Dillaman, Associate Director, Investigations Service, Office of Personnel Management, Division for Strategic Human Resources Policy, 1900 E Street NW., Washington, DC 20415—4000
Phone: 202 606—1042

RIN: 3206–AB92

3796. RETIREMENT—GENERAL ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 841

Legal Deadline: None

Abstract: These regulations would allow an agency to retain the individual retirement record when an employee transfers within the same agency even though the employee would be serviced by another intra—agency payroll.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/20/00	65 FR 21119
Interim Final Rule Effective	04/20/00	
Final Action	11/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3206–AI83

Office of Personnel Management (OPM) Completed Actions

3797. IMPLEMENTATION OF PREMIUM CONVERSION FOR EXECUTIVE BRANCH FEDERAL EMPLOYEES PARTICIPATING IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS (FEHB) PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 5 CFR 890

Completed:

Reason	Date	FR Cite
Final Action	10/01/03	68 FR 56525
Final Action Effective	10/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nataya Battle
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RIN: 3206–AJ17

3798. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 970

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3206–AJ31

3799. • PROTESTS, DISPUTES, AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 1733

Legal Deadline: None

Abstract: OPM is issuing a final rule to reflect the change of address for the Interior Board of Contract Appeals.

Timetable:

Action	Date	FR Cite
Final Rule	10/31/03	68 FR 62022
Final Rule Effective	10/31/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alfred F. Chatterton III, Chief, Procurement Division, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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RIN: 3206–AK07

[FR Doc. 03–27744 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XXXIX

Peace Corps

Semiannual Regulatory Agenda

PEACE CORPS (PEACE)

PEACE CORPS

22 CFR Ch. III

Regulatory Agenda

AGENCY: Peace Corps.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations the Peace Corps will have under development during the 6-month period from October 1, 2003, through March 31, 2004. The purpose of publishing this agenda is to give notice of any regulatory activity by the Agency in order to allow the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: The public is encouraged to contact the agency official listed for the particular agenda item. For other information concerning Peace Corps' regulations or this semiannual agenda, contact Suzanne B. Glasow, Associate General Counsel, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692-2150.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act, 5 U.S.C. 601-612, executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas in April and October of each year. The regulations being considered by the Peace Corps are not "significant" rules within the meaning of Executive Order 12866, and no regulatory impact analysis is required. In addition, the Peace Corps has determined, under the Regulatory Flexibility Act, that the regulations under consideration will not have a significant economic impact on a substantial number of small entities. Accordingly, no Regulatory Flexibility Analysis is required. The Agency has also determined that the regulations will not impose compliance costs or reporting burdens on the public.

Dated: September 20, 2003.

Keith A. Vance,

Director, Office of Administrative Services, Peace Corps.

Peace Corps—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3800	Handicapped Discrimination Prohibition and Procedures	0420—AA03
3801	Eligibility and Standards for Peace Corps Volunteer Service Regarding Procedures—Appeals	0420—AA10
3802	Volunteer Discrimination Complaint Procedure	0420—AA11
3803	Implementation of the Privacy Act of 1974	0420—AA15
3804	Organization	0420—AA16

Peace Corps—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3805	Supplemental Standards of Conduct for Peace Corps Employees	0420—AA09
3806	Responsibilities and Ethical Standards for Peace Corps Employees	0420—AA12
3807	Inspection and Copying of Records: Rules for Compliance With Freedom of Information Act	0420—AA14
3808	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0420—AA17

Peace Corps (PEACE) Proposed Rule Stage

3800. HANDICAPPED DISCRIMINATION PROHIBITION AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 22 CFR 313

Legal Deadline: None

Abstract: The regulation implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs or activities conducted by executive agencies or the Postal Service.

Timetable:

Action	Date	FR Cite
NPRM	10/08/91	56 FR 50684
NPRM Comment Period End	12/09/91	
Second NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA03

PEACE **Proposed Rule Stage**

3801. ELIGIBILITY AND STANDARDS FOR PEACE CORPS VOLUNTEER SERVICE REGARDING PROCEDURES—APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 75 Stat 612, secs 4(b), 5(a), and 22; 22 USC 2504; EO 12137, May 16, 1979; International Security and Development Cooperation Act of 1981, sec 601; 95 Stat 1519 and 1540

CFR Citation: 22 CFR 305

Legal Deadline: None

Abstract: The Peace Corps is reviewing its Eligibility and Standards for Peace Corps Service, specifically with regard to establishing and publishing an appeals procedure for administrative and medical deselection. 42 U.S.C. 5057(c)(1), as amended, no longer provides authority for the listed agenda item. Therefore, 42 U.S.C. 5057, as above, shall be deleted from future printings of the Unified Agenda.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey,
General Counsel, Peace Corps, Suite
8200, 1111 20th Street NW,
Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA10

3802. VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2503; 5 USC 553 and 554

CFR Citation: 22 CFR 306; 45 CFR 1225

Legal Deadline: None

Abstract: The Peace Corps is promulgating its own regulations regarding the Volunteer Discrimination Complaint Procedure to replace the current cross—reference to the former ACTION's regulations applicable to Peace Corps volunteers, which appear in 45 CFR part 1225.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey,
General Counsel, Peace Corps, Suite
8200, 1111 20th Street NW,
Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA11

3803. IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 308

Legal Deadline: None

Abstract: The Peace Corps is revising its Privacy Act regulation to be consistent with revisions to its systems of records and to delete unnecessary and outdated provisions.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey,
General Counsel, Peace Corps, Suite
8200, 1111 20th Street NW,
Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA15

3804. ORGANIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 302

Legal Deadline: None

Abstract: The Peace Corps is removing this rule from the Code of Federal Regulations because it is outdated and unnecessary. Information on Peace Corps' organization is routinely updated and published in the Federal Register's "United States Government Manual."

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey,
General Counsel, Peace Corps, Suite
8200, 1111 20th Street NW,
Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA16

Peace Corps (PEACE) Final Rule Stage

3805. SUPPLEMENTAL STANDARDS OF CONDUCT FOR PEACE CORPS EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: EO 12674; 5 CFR 2635.105

CFR Citation: 22 CFR 307; 5 CFR 67 (New)

Legal Deadline: None

Abstract: The Peace Corps is removing part 307 from the Code of Federal Regulations. Part 307 provides the standards of conduct applicable to Peace Corps employees. Peace Corps employees are already subject to the Governmentwide regulations on employee standards of conduct, and the Peace Corps is considering the appropriate action to take in regard to its supplemental standards of conduct.

Timetable:

Action	Date	FR Cite
NPRM	02/05/03	68 FR 5857

Action	Date	FR Cite
NPRM Comment Period End	03/07/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey,
General Counsel, Peace Corps, Suite
8200, 1111 20th Street NW,
Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA09

3806. RESPONSIBILITIES AND ETHICAL STANDARDS FOR PEACE CORPS EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 7301; 5 USC app Ethics in Government Act of 1978; EO 12674; 5 CFR 2635.105; 5 CFR 2635.403; 5 CFR 2635.803

CFR Citation: 22 CFR 307

Legal Deadline: None

Abstract: The Peace Corps is removing part 307 from the Code of Federal Regulations. Part 307 provides the standards of conduct applicable to Peace Corps employees. Peace Corps employees are already subject to the Governmentwide regulations on employee standards of conduct, and the Peace Corps is considering the appropriate action to take in regard to its own supplemental standards of conduct.

Timetable:

Action	Date	FR Cite
NPRM	02/05/03	68 FR 5857
NPRM Comment Period End	03/07/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey,
General Counsel, Peace Corps, Suite
8200, 1111 20th Street NW,
Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA12

3807. INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH FREEDOM OF INFORMATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 303

Legal Deadline: None

Abstract: The Peace Corps is revising its Freedom of Information Act (FOIA) regulation to implement the 1996 revisions to FOIA and to include Office of Inspector General provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/02/03	68 FR 39490
NPRM Comment Period End	08/01/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey,
General Counsel, Peace Corps, Suite
8200, 1111 20th Street NW,
Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA14

3808. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: sec 2455, PL 103—355, 108 Stat 3327; EO 12549, 3 CFR 1986 Comp, p 189; EO 12698, 3 CFR 1989 Comp, p 235

CFR Citation: 22 CFR 310

Legal Deadline: None

Abstract: The Peace Corps intends to publish proposed revisions to its Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug—Free Workplace (Financial Assistance) rule in 22 CFR part 310 in conjunction with other participating agencies. Under the proposed rule, Peace Corps' debarment and suspension provisions would remain in part 310 and would set out procedures to be used by the Peace Corps when it has evidence that a recipient of Peace Corps funds pursuant to a nonprocurement agreement, such as grant or cooperative agreement, has committed fraud, embezzlement, forgery, or a variety of other serious offenses.

The rule's drug—free workplace provisions would be moved to a new rule, part 312, and would include requirements, prohibitions, and procedures regarding the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance by a grantee of the Peace Corps in conducting any activity under a Peace Corps grant.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Tyler S. Posey,
General Counsel, Peace Corps, Suite
8200, 1111 20th Street NW,
Washington, DC 20526—0001
Phone: 202 692—2150
Fax: 202 692—2151
Email: tposey@peacecorps.gov

RIN: 0420–AA17

[FR Doc. 03–24034 Filed 12–19–03; 8:45 am]

BILLING CODE 6051–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XL

Pension Benefit Guaranty Corporation

Semiannual Regulatory Agenda

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Ch. XL

Agenda of Regulations Under Development

AGENCY: Pension Benefit Guaranty Corporation (PBGC).

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Pension Benefit Guaranty Corporation's regulatory agenda issued under Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists regulations that are currently under development or review or that PBGC expects to have under development or review during the next 12 months. The effect of this agenda is to advise the public of PBGC's current and future regulatory activities.

ADDRESSES: Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, (202) 326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to (202) 326-4024.) For information about a specific regulation project listed on the agenda, contact the person designated in the agenda for that regulation.

SUPPLEMENTARY INFORMATION: Under the President's order on Regulatory Planning and Review, Executive Order 12866 (58 FR 51735, October 4, 1993), each agency is required to prepare an agenda of all regulations under development or review. The Regulatory Flexibility Act, Public Law 98-354, 5 U.S.C. 601, has a similar agenda requirement. Under that law, the agenda must list any regulation that is likely to have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has issued guidelines prescribing the form and content of the regulatory agenda. Under those guidelines, the agenda must list all regulatory activities being conducted or reviewed in the next 12 months and provide certain specified information on each regulation. For this edition of the Pension Benefit Guaranty Corporation's regulatory agenda, the most significant regulatory action is included in The Regulatory Plan, which appears in part II of this issue of the Federal Register. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Dated: September 12, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

Pension Benefit Guaranty Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3809	Allocation of Assets in Single—Employer Plans; Valuation of Benefits and Assets **(Reg Plan Seq No. 133)**	1212—AA55
3810	Payment of Benefits in PBGC—Trusteed Plans	1212—AA98

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Pension Benefit Guaranty Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3811	Assessment Of and Relief From Penalties	1212—AA95

Pension Benefit Guaranty Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
3812	Filing Rules	1212—AA89

Pension Benefit Guaranty Corporation (PBGC)

Proposed Rule Stage

3809. ALLOCATION OF ASSETS IN SINGLE—EMPLOYER PLANS; VALUATION OF BENEFITS AND ASSETS

Regulatory Plan: This entry is Seq. No. 133 in part II of this issue of the **Federal Register**.

RIN: 1212–AA55

3810. PAYMENT OF BENEFITS IN PBGC—TRUSTEED PLANS

Priority: Other Significant

Legal Authority: 29 USC 1302(b)(3); 29 USC 1322; 29 USC 1344

CFR Citation: 29 CFR 4022; 29 CFR 4044

Legal Deadline: None

Abstract: When the PBGC assumes trusteeship of a terminated pension plan, it pays benefits to participants pursuant to plan provisions and title IV of ERISA. The PBGC is exploring how to improve its benefit payments rules. This regulation will fill in gaps in the rules, clarify matters that have been handled on a case—by—case basis in the past, and otherwise address issues relating to the determination of guarantee limits and the time, form, and manner of payment.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005—4024
Phone: 202 326—4024
TDD Phone: 800 877—8339
Fax: 202 326—4112

RIN: 1212–AA98

Pension Benefit Guaranty Corporation (PBGC)

Final Rule Stage

3811. ASSESSMENT OF AND RELIEF FROM PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2461 note; 29 USC 1302(b)(3); 29 USC 1303(a); 29 USC 1306; 29 USC 1307; 29 USC 1371

CFR Citation: 29 CFR 4003; 29 CFR 4007; 29 CFR 4071

Legal Deadline: None

Abstract: The PBGC has issued a number of policy statements about penalties over the last few years. For the convenience of the public, the PBGC proposes to replace those policy statements with an updated and expanded set of penalty policies codified in its regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/12/01	66 FR 2856
NPRM Comment Period End	03/13/01	
Final Action	01/00/04	
Final Action Effective	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah C. Murphy, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005—4026
Phone: 202 326—4024
TDD Phone: 800 877—8339
Fax: 202 326—4112

RIN: 1212–AA95

Pension Benefit Guaranty Corporation (PBGC)

Completed Actions

3812. FILING RULES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1301 et seq

CFR Citation: 29 CFR 4000

Legal Deadline: None

Abstract: The PBGC's rules governing the date of filing vary, depending on the regulation involved and the method of filing used (e.g., mail postmarked by the United States Postal Service, metered mail, commercial delivery service, facsimile). The PBGC is clarifying and simplifying its filing rules and providing greater flexibility in methods of filing (including by electronic means).

Timetable:

Action	Date	FR Cite
NPRM	02/14/03	68 FR 7454
NPRM Comment Period End	04/15/03	
Final Action	10/28/03	68 FR 61344
Final Action Effective	11/28/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas H. Gabriel, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005—4026
Phone: 202 326—4024
TDD Phone: 800 877—8339
Fax: 202 326—4112

RIN: 1212–AA89

[FR Doc. 03–25119 Filed 12–19–03; 8:45 am]

BILLING CODE 7708–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Monday,
December 22, 2003

Part XLI

Presidio Trust

Semiannual Regulatory Agenda

PRESIDIO TRUST (PRESIDIO)

PRESIDIO TRUST

36 CFR Ch. X

Semiannual Agenda of Regulations Pursuant to Executive Order 12866

AGENCY: The Presidio Trust.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Presidio Trust (Trust) is a wholly owned Government corporation created by Congress pursuant to title I of the Omnibus Parks and Public Lands Act of 1996, Public Law 104-333, 110 Stat. 4097. The Trust is charged with managing a portion of the former U.S. Army base known as the Presidio, in San Francisco, California.

This regulatory agenda describes the regulations that the Trust will be proposing, developing, and reviewing between October 1, 2003, and March 31, 2004. This information is published in order to notify the public of the Trust's regulatory activities so that interested persons may participate in the Trust's rulemaking process.

FOR FURTHER INFORMATION CONTACT: For further information about the Trust's regulatory agenda or rulemaking process, contact Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052; telephone: 415-561-5300.

Dated: March 19, 2003.

Steven Carp,

Legal Analyst.

Presidio Trust—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3813	Interim Management of the Presidio	3212—AA00

Presidio Trust (PRESIDIO) Final Rule Stage

3813. INTERIM MANAGEMENT OF THE PRESIDIO

Priority: Other Significant

Legal Authority: PL 104—333, sec 101 to 106

CFR Citation: 36 CFR 1001; 36 CFR 1002; 36 CFR 1004; 36 CFR 1005

Legal Deadline: None

Abstract: This interim final rule has governed the use and management of the area administered by the Presidio Trust. The Trust has decided to adopt the interim final regulations as final regulations for management of the area under its administrative jurisdiction. Since their adoption in June 1998, the interim final regulations have served the public well and have provided clear, concise guidance to those charged with enforcing the Trust's regulations. These regulations cover public use and recreational activities; the protection of natural, cultural, and archeological resources; vehicle and traffic safety; and commercial and private operations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/30/98	63 FR 35694
Interim Final Rule Comment Period End	08/31/98	
Final Action	11/00/03	
Final Action Effective	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven Carp, Legal Analyst, Presidio Trust, P.O. Box 29052, 34 Graham Street, San Francisco, CA 94129—0052
Phone: 415 561—5339
Fax: 415 561—5308
Email: scarp@presidiotrust.gov

RIN: 3212–AA00

[FR Doc. 03–25120 Filed 12–19–03; 8:45 am]

BILLING CODE 4310–4R–S

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Monday,
December 22, 2003

Part XLII

Railroad Retirement Board

Semiannual Regulatory Agenda

RAILROAD RETIREMENT BOARD (RRB)

RAILROAD RETIREMENT BOARD

20 CFR Ch. II

Semiannual Agenda of Regulations Under Development or Review

AGENCY: Railroad Retirement Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda contains lists of regulations that the Board is developing or proposes to develop in the next 12 months and regulations that are scheduled to be reviewed in that period.

ADDRESSES: 844 North Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Office of General Counsel, Railroad Retirement Board, (312) 751-4945, Fax (312) 751-7102, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: For this edition of the Railroad Retirement Board's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the Table of Contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Regulations that are routine in nature or which pertain solely to internal agency management have not been included in the agenda.

Dated: September 11, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

Railroad Retirement Board—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3814	Employers' Contributions and Contribution Reports	3220—AB53
3815	Electronic Filing of Applications and Claims for Benefits Under the Railroad Unemployment Insurance Act **(Reg Plan Seq No. 134)**	3220—AB57

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Railroad Retirement Board—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3816	Reduction and Nonpayment of Annuities by Reason of Work	3220—AA61
3817	Freedom of Information Act Requests	3220—AB47
3818	Determining Disability	3220—AB50
3819	Appendix 1 to Part 220—Listing of Impairments	3220—AB51
3820	Application for Annuity or Lump Sum **(Reg Plan Seq No. 135)**	3220—AB55

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Railroad Retirement Board—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3821	Creditable Railroad Compensation	3220—AB23

Railroad Retirement Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
3822	Determining Disability	3220—AA99
3823	Retirement Age	3220—AB54
3824	Account Benefits Ratio	3220—AB56

Railroad Retirement Board (RRB) — Proposed Rule Stage

3814. EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 345 362(l)

CFR Citation: 20 CFR 345.202 to 204

Legal Deadline: None

Abstract: The Railroad Retirement Board amends sections 345.202 to 204 of 20 CFR part 345 to explain the effective date of consolidated employer records that result in the issuance of a joint contribution rate under the "experience rating" provisions of section 8 of the Railroad Unemployment Insurance Act. The amendment also incorporates a nomenclature change due to a recent agency reorganization.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AB53

3815. ELECTRONIC FILING OF APPLICATIONS AND CLAIMS FOR BENEFITS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Regulatory Plan: This entry is Seq. No. 134 in part II of this issue of the **Federal Register**.

RIN: 3220–AB57

Railroad Retirement Board (RRB) — Final Rule Stage

3816. REDUCTION AND NONPAYMENT OF ANNUITIES BY REASON OF WORK

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 230

Legal Deadline: None

Abstract: The Railroad Retirement Board revises 20 CFR part 230 to explain how employment or self—employment after an annuity beginning date may cause a reduction in, or nonpayment of, the annuity. It also reflects the changes in law made by the enactment of Public Law 106—182, the Senior Citizens' Freedom to Work Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	08/16/95	60 FR 42482
NPRM Comment Period End	09/25/95	60 FR 43999
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AA61

3817. FREEDOM OF INFORMATION ACT REQUESTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5); 45 USC 362; 5 USC 552

CFR Citation: 20 CFR 200.4

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR 200.4 to direct all Freedom of Information Act requests to the Board's General Counsel, and to extend the time within which responses may be made from 10 to 20 working days as provided by the Freedom of Information Act.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/29/03	68 FR 61620
Direct Final Rule Effective	01/27/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AB47

3818. DETERMINING DISABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231a; 45 USC 231f

CFR Citation: 20 CFR 220.143; 20 CFR 220.170

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR sections 220.143 and 220.170 to index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index, and to increase (from $200 to $530) the minimum amount of monthly earnings to count during a trial work period, and then to index that amount to the Social Security national average wage index.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/09/03	68 FR 34341
NPRM Comment Period End	08/08/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AB50

3819. APPENDIX 1 TO PART 220—LISTING OF IMPAIRMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231a; 45 USC 231f

CFR Citation: 20 CFR 220.110; 20 CFR 220, app 1

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR 220.110 and appendix 1—Listing of Impairments, to conform the medical criteria that apply to disability determinations to the medical criteria in the Social Security Administration's regulations (20 CFR 404, subpart P, appendix 1).

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AB51

3820. APPLICATION FOR ANNUITY OR LUMP SUM

Regulatory Plan: This entry is Seq. No. 135 in part II of this issue of the **Federal Register**.

RIN: 3220–AB55

Railroad Retirement Board (RRB) Long-Term Actions

3821. CREDITABLE RAILROAD COMPENSATION

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f

CFR Citation: 20 CFR 211.3

Legal Deadline: None

Abstract: The RRB amends its regulations regarding the creditability of pay for time lost to prohibit the crediting of pay for time lost beyond the date of a judgment or settlement, or in the absence of a judgment or settlement, beyond the date of payment. The Labor Member of the RRB dissents from this proposal and recommends allowing the crediting of pay for time lost in these circumstances when the accompanying railroad retirement taxes are paid on the compensation.

Timetable:

Action	Date	FR Cite
NPRM	12/04/97	62 FR 61488
NPRM Comment Period End	02/02/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AB23

Railroad Retirement Board (RRB) Completed Actions

3822. DETERMINING DISABILITY

Priority: Other Significant

CFR Citation: 20 CFR 220.114

Completed:

Reason	Date	FR Cite
Final Rule	10/22/03	68 FR 60290
Final Rule Effective	10/22/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AA99

3823. RETIREMENT AGE

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 218; 20 CFR 220; 20 CFR 225

Completed:

Reason	Date	FR Cite
Final Rule	07/01/03	68 FR 39009
Final Action	07/01/03	68 FR 39009
Final Action Effective	07/01/03	
Correction	08/01/03	68 FR 45315

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AB54

3824. ACCOUNT BENEFITS RATIO

Priority: Other Significant

CFR Citation: 20 CFR 206

Completed:

Reason	Date	FR Cite
Final Rule	08/26/03	68 FR 51152
Final Rule Effective	08/26/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo
Phone: 312 751—4945
TDD Phone: 312 751—4701
Fax: 312 751—7102

RIN: 3220–AB56

[FR Doc. 03–24038 Filed 12–19–03; 8:45 am]

BILLING CODE 7905–01–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XLIII

Selective Service System

Semiannual Regulatory Agenda

SELECTIVE SERVICE SYSTEM (SSS)

SELECTIVE SERVICE SYSTEM

32 CFR Ch. XVI

Regulatory Agenda

AGENCY: Selective Service System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The purpose of this agenda is to report the proposed rulemaking activities of the Selective Service System that might affect the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*). This information will allow the public to participate in the System's decisionmaking at an early stage.

FOR FURTHER INFORMATION CONTACT: Rudy G. Sanchez, Jr., Office of the General Counsel, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209-2425; Telephone (703) 605-4012.

SUPPLEMENTARY INFORMATION: The agenda is published in accordance with the requirements of Executive Order 12866. Selective Service regulations appear in 32 CFR chapter XVI.

Dated: August 27, 2003.

Lewis C. Brodsky,

Acting Director of Selective Service System.

Selective Service System—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3825	Selective Service Regulations	3240—AA01

Selective Service System (SSS) Long-Term Actions

3825. SELECTIVE SERVICE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 451 et seq, Military Selective Service Act

CFR Citation: 32 CFR ch XVI

Legal Deadline: None

Abstract: Various sections of 32 CFR chapter XVI will be revised to increase clarity of expression or change procedures for registrant processing.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rudy G. Sanchez Jr., Legal Affairs Officer, Selective Service System, 5th Floor, Office of General Counsel, 1515 Wilson Boulevard,
Arlington, VA 22209—2425
Phone: 703 605—4012
Fax: 703 605—4006
Email: rsanchez@sss.gov

RIN: 3240–AA01

[FR Doc. 03–24021 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XLIV

Small Business Administration

Semiannual Regulatory Agenda

SMALL BUSINESS ADMINISTRATION (SBA)

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Improving Government Regulations; Semiannual Regulatory Agenda

AGENCY: Small Business Administration (SBA).

ACTION: Semiannual regulatory agenda.

SUMMARY: The entries below represent SBA's 49th semiannual regulatory agenda (agenda). SBA drafted the agenda to meet both the criteria and the spirit of the regulatory review process. SBA publishes this agenda pursuant to Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

FOR FURTHER INFORMATION CONTACT: For further information on agenda items, SBA encourages the public to contact the individual agency official referenced in each entry. For information concerning SBA's overall Regulatory Review and Development Program or general semiannual agenda questions, contact Martin S. Conrey, Assistant General Counsel for Legislation and Appropriations, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 619-0638.

SUPPLEMENTARY INFORMATION: SBA's semiannual regulatory agenda is designed to increase public knowledge of SBA's anticipated regulatory activities. Publication may encourage increased public participation in the regulatory review and development process.

SBA's agenda is divided into three parts: Part I, Proposed Rules (includes those rules that are likely to be proposed during the next 12 months); part II, Final Rules (includes proposed rules that will probably be finalized during the agenda period); part III, Completed Actions (includes regulations completed or withdrawn and any reviews completed since the preceding agenda).

Publication of the agenda does not impose any binding obligation on SBA with regard to any specific item. Moreover, regulatory actions not listed in the agenda are not precluded. SBA regulations are developed in a manner that promotes economic growth without imposing unnecessary regulatory burdens on the public.

For this edition of SBA's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Hector V. Barreto,
Administrator.

Small Business Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3826	Surety Bond Guarantee	3245—AE13
3827	HUBZone Empowerment Contracting Program	3245—AE66

Small Business Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3828	Supplemental Standards of Ethical Conduct for Employees of the Small Business Administration	3245—AC96
3829	Disclosure of Information Regulations; Subpart B	3245—AE03
3830	Small Business Development Centers (SBDC) Program Revisions	3245—AE05
3831	Small Business Lending Companies Regulations **(Reg Plan Seq No. 136)**	3245—AE14
3832	8(a) Business Development/Program Improvement	3245—AE38
3833	SDB Certification and Eligibility—Program Improvement	3245—AE47
3834	Small Business Investment Companies—Civil Penalties for Late Submission of Required Reports	3245—AE69
3835	Small Business Investment Companies—Amendment Under the Small Business Reauthorization Act of 2000	3245—AE70
3836	Small Business Investment Companies—Maximum Leverage Eligibility	3245—AE79
3837	Small Business Size Standards; Surety Bond Guarantee Program	3245—AE81
3838	Business Loans and Development Company Loans; Applications by Certified Development Companies (CDCs) for Liquidation and Litigation Authority/Uniform Liquidation and Litigation Procedures	3245—AE83
3839	Small Business Size Standards; New Car Dealers	3245—AF01
3840	Surety Bond Guarantee Program—Procedural Changes for Payment of Fees	3245—AF10
3841	Small Business Size Standards; Restructuring of Size Standards **(Reg Plan Seq No. 137)**	3245—AF11
3842	Small Business Government Contracting Programs	3245—AF12

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Small Business Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3843	Administrative Wage Garnishment and Administrative Offset	3245—AE50
3844	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	3245—AE61
3845	Small Business Size Regulations; Small Business Innovation Research Program	3245—AE76
3846	Small Business Size Standards; Testing Laboratories	3245—AE78
3847	Small Business Size Standards; Information Technology Value Added Resellers	3245—AE80
3848	Small Business Size Regulations: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals	3245—AE92
3849	Small Business Technology Transfer Program Policy Directive	3245—AE96
3850	Size for Purposes of the Multiple Award Schedule and Other Multiple Award Contracts; Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations	3245—AF06

Small Business Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3851	Development Company Loan (504) Program Changes	3245—AE41
3852	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs or Activities Receiving Federal Financial Assistance	3245—AE59
3853	Business Loans and Development Company Loans 2000 Act Changes	3245—AE68
3854	Small Business Size Standards; Forest Fire Suppression and Fuels Management Services	3245—AE89
3855	Record Disclosure and Privacy; The Electronic Freedom of Information Act Amendments of 1996	3245—AE94
3856	Small Business Size Standards; Facilities Support Services (Including Base Maintenance)	3245—AF03
3857	Prime Contracting Assistance; Contract Bundling	3245—AF07
3858	Small Business Investment Company Amendments Act of 2001	3245—AF09

Small Business Administration (SBA) Prerule Stage

3826. SURETY BOND GUARANTEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC app 3; 15 USC 687b; 15 USC 694b; PL 105—135; 15 USC 687c; 15 USC 694a

CFR Citation: 13 CFR 115

Legal Deadline: None

Abstract: SBA is considering revising the Preferred Surety Bond and the Prior Approval program regulations to simplify the language, make the rule easier to understand, and clarify policy.

Timetable:

Action	Date	FR Cite
ANPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Ms. Johnnie L. Albertson, AA, Office of Surety Guarantees, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6540

RIN: 3245–AE13

3827. HUBZONE EMPOWERMENT CONTRACTING PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 644(c); 15 USC 662(5); PL 105—135, sec 601 et seq, 111 Stat 2592; sec 304, PL 103—403, 108 Stat 4175, 4188

CFR Citation: 13 CFR 121; 13 CFR 125; 13 CFR 126

Legal Deadline: None

Abstract: The SBA proposed to amend its regulations for the HUBZone Empowerment Contracting Program to incorporate changes enacted by Public Law 106—554. SBA has withdrawn the proposed rule on the HUBZone Program. SBA received over 1100 comments on the proposed rule and in reviewing those comments, felt several of them were significant enough to warrant further consideration. Internally, SBA also found some other issues that we believe required further study. The Agency does intend to publish an Advanced Notice of Proposed Rulemaking to address each of these issues. However, this action is currently pending because of the major potential changes the Small Business Reauthorization Act of 2003 could make to the HUBZone Program.

Timetable:

Action	Date	FR Cite
NPRM	01/28/02	67 FR 3826
NPRM Comment Period Extended	02/26/02	67 FR 8739
NPRM Comment Period End	02/27/02	
NPRM Comment Period End	03/29/02	
ANPRM	05/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Michael P. McHale, Associate Administrator for HUBZone Empowerment Contracting Program, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6731

RIN: 3245–AE66

Small Business Administration (SBA) — Proposed Rule Stage

3828. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE SMALL BUSINESS ADMINISTRATION

Priority: Other Significant

Legal Authority: 15 USC 684; 15 USC 637(a)(18); 15 USC 637(a)(19); EO 12674

CFR Citation: 5 CFR 5400

Legal Deadline: None

Abstract: The SBA and the Office of Government Ethics (OGE) are jointly issuing this rule, which is designed to establish uniform standards of ethical conduct for the officers and employees of the SBA. The rule will be published at 5 CFR chapter XLIV and will supplement the Standards of Ethical Conduct for Employees of the executive branch issued by the OGE (57 FR 35006; August 7, 1992). The rule is necessary to supplement the standards issued by OGE because it addresses ethical issues that are unique to SBA.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robinson S. Nunn, Chief Counsel for Ethics, Small Business Administration, 409 Third Street SW, 7th Floor, Washington, DC 20416
Phone: 202 205—6642

RIN: 3245–AC96

3829. DISCLOSURE OF INFORMATION REGULATIONS; SUBPART B

Priority: Substantive, Nonsignificant

Legal Authority: PL 104—231; 5 USC 552

CFR Citation: 13 CFR 102

Legal Deadline: None

Abstract: This proposed regulation will amend 13 CFR 102, amendments to subpart B "The Privacy Act" (PA). This action proposes to add new routine disclosures, correct the definition of "system of records," require identification of requestors, clarify when lack of social security number can cause benefit denial, and provide for one free copy of an official personnel file.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Lisa Babcock, Chief, Freedom of Information Act Office, Small Business Administration, Room 2441, 409 Third Street SW, Washington, DC 20416
Phone: 202 401—8200
Fax: 202 205—7059
Email: lisa.babcock@sba.gov

RIN: 3245–AE03

3830. SMALL BUSINESS DEVELOPMENT CENTERS (SBDC) PROGRAM REVISIONS

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 648

CFR Citation: 13 CFR 130

Legal Deadline: None

Abstract: SBA is revising its SBDC regulations to reflect statutory and other changes. The proposed regulation incorporates provisions from Public Law 103—403, enacted on October 22, 1994; Public Law 104—208, enacted on September 30, 1996; and Public Law 105—135, enacted on December 2, 1997. This regulation will bring SBA into compliance with the statutory requirements for due process procedures in termination of Small Business Development lead centers. In addition, the funding formulas will be updated and the use of appropriated funds for administration of the program will be aligned with the statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bridget E. Bean, Acting AA/SBDC, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6766

RIN: 3245–AE05

3831. SMALL BUSINESS LENDING COMPANIES REGULATIONS

Regulatory Plan: This entry is Seq. No. 136 in part II of this issue of the **Federal Register**.

RIN: 3245–AE14

3832. 8(A) BUSINESS DEVELOPMENT/PROGRAM IMPROVEMENT

Priority: Other Significant

Legal Authority: 15 USC 631

CFR Citation: 13 CFR 124

Legal Deadline: None

Abstract: This rule will make program improvements to the 8(a) regulations. Among other things, the rule will clarify: The mentor/protege program, who will be considered socially disadvantaged, who will be considered economically disadvantaged, and the provision requiring firms to make substantial and sustained efforts to attain the targeted levels of non—8(a) revenue established in their business plans as it applies only to firms in the developmental stage of program participation. The rule will also give SBA the discretion to permit a disadvantaged individual to meet the full—time devotion requirement and prohibit tribes from being majority owner of more than one 8(a) concern in the same or similar line of business. The rule will set forth the procedures for terminations and early graduations and amend the rules governing Federal surplus property. The rule will clarify what criteria an 8(a) participant must meet in order to be considered eligible for a sole source 8(a) contract. Part 124 will also be amended to include certain new policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Eugene Cornelius Jr.,
Associate Administrator for Business Development, Small Business Administration, 409 Third Street SW,
Washington, DC 20416
Phone: 202 205—6452
Email: eugene.cornelius@sba.gov

RIN: 3245–AE38

3833. SDB CERTIFICATION AND ELIGIBILITY—PROGRAM IMPROVEMENT

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(j); 15 USC 637(a); 15 USC 637(d); PL 99—661; PL 100—656, sec 1207; PL 101—37; PL 101—574; 42 USC 9815

CFR Citation: 13 CFR 124; 13 CFR 134

Legal Deadline: None

Abstract: Program improvements to clarify regulations governing the SDB program. The proposed changes clarify requirements, enhance customer service, and correct omissions. For example: A procedure for recertifying eligible firms is established; provisions are made to prevent loss of SDB certification by a subcontractor following award of a contract; and stipulations are made requiring contracting officers to forward protests to SBA for determination of merit.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Eugene Cornelius Jr.,
Associate Administrator for Business Development, Small Business Administration, 409 Third Street SW,
Washington, DC 20416
Phone: 202 205—6452
Email: eugene.cornelius@sba.gov

RIN: 3245–AE47

3834. SMALL BUSINESS INVESTMENT COMPANIES—CIVIL PENALTIES FOR LATE SUBMISSION OF REQUIRED REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m; 15 USC 662

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: This rule will provide for the imposition of civil penalties on small business investment companies that fail to file required reports by the applicable due date. The proposed amount of civil penalties are, for each day past the due date, it must pay to SBA $100.00 per day per report. The civil penalties will continue to accrue until and including the date upon which it submits the complete and accurate report.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey D. Pierson,
Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300,
Washington, DC 20416
Phone: 202 205—6510
Fax: 202 205—6959

RIN: 3245–AE69

3835. SMALL BUSINESS INVESTMENT COMPANIES—AMENDMENT UNDER THE SMALL BUSINESS REAUTHORIZATION ACT OF 2000

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m; PL 106—554

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: The Small Business Reauthorization Act of 2000 made a number of changes to the Small Business Investment Act of 1958, as amended. For the Small Business Investment Companies (SBIC) Program, the changes include provisions effecting the definition of "long—term financing." This rule will incorporate this change.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Jeffrey D. Pierson,
Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300,
Washington, DC 20416
Phone: 202 205—6510
Fax: 202 205—6959

RIN: 3245–AE70

3836. SMALL BUSINESS INVESTMENT COMPANIES—MAXIMUM LEVERAGE ELIGIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 662; 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: This rule will implement a provision of the New Markets Venture Capital Program Act of 2000 that allows small business investment companies to be eligible for additional Government leverage based on their investments in low—income areas.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Jeffrey D. Pierson,
Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300,
Washington, DC 20416

Phone: 202 205—6510
Fax: 202 205—6959

RIN: 3245–AE79

3837. SMALL BUSINESS SIZE STANDARDS; SURETY BOND GUARANTEE PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will revise the size standard applicable to construction and service companies seeking assistance under SBA's Surety Bond Guarantee Program. Changes in the program and economic trends support an increase above the current $6 million size standard.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6618
Fax: 202 205—6390
Email: gary.jackson@sba.gov

RIN: 3245–AE81

3838. BUSINESS LOANS AND DEVELOPMENT COMPANY LOANS; APPLICATIONS BY CERTIFIED DEVELOPMENT COMPANIES (CDCS) FOR LIQUIDATION AND LITIGATION AUTHORITY/UNIFORM LIQUIDATION AND LITIGATION PROCEDURES

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(h); 15 USC 697(a)(2)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: This proposed rule would implement statutory provisions that give some Certified Development Companies (CDCs) authority to handle liquidation and litigation of loans that are funded with the proceeds of debentures guaranteed by the SBA under the 504 loan program. It also proposes uniform liquidation and litigation procedures for authorized CDCs and for lenders participating in the 7(a) business loan program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Walter C. Intlekofer, Director, Portfolio Managment Division, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—7543
Email: walter.intlekofer@sba.gov

RIN: 3245–AE83

3839. SMALL BUSINESS SIZE STANDARDS; NEW CAR DEALERS

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule proposes to increase the current size standard for the New Car Dealer industry. Changes in the industry over the last 10 years indicate that a size standard review of the current $24.5 million is warranted.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6618
Fax: 202 205—6390
Email: gary.jackson@sba.gov

RIN: 3245–AF01

3840. • SURETY BOND GUARANTEE PROGRAM—PROCEDURAL CHANGES FOR PAYMENT OF FEES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC app 3; 15 USC 687(b); 15 USC 694(b); 15 USC 687(c); 15 USC 694 (a); PL 105—135

CFR Citation: 13 CFR 115

Legal Deadline: None

Abstract: SBA is revising its Surety Bond Guarantee Program regulations to change the procedures for the payment of the Principal's and the Surety's fees. Currently, the Principal pays its fee to SBA directly, but the proposed regulations would require the Surety to pay the Principal's fee to SBA. An additional change would require the Surety to pay SBA its fee within a specified timeframe.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Ms. Johnnie L. Albertson, AA, Office of Surety Guarantees, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6540

RIN: 3245–AF10

3841. • SMALL BUSINESS SIZE STANDARDS; RESTRUCTURING OF SIZE STANDARDS

Regulatory Plan: This entry is Seq. No. 137 in part II of this issue of the **Federal Register**.

RIN: 3245–AF11

3842. • SMALL BUSINESS GOVERNMENT CONTRACTING PROGRAMS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 634(b)(6); 15 USC 637; 15 USC 644; 31 USC 9701; 31 USC 9702

CFR Citation: 13 CFR 125

Legal Deadline: None

Abstract: The U.S. Small Business Administration (SBA) proposes to amend its regulation governing small business subcontracting assistance. As proposed, the rule would implement additional subcontracting goals required by statute, clarify prime contractor responsibilities in providing subcontracting opportunities for small businesses, and provide additional guidance on evaluating the good faith efforts of large businesses to comply with subcontracting plans.

Timetable:

Action	Date	FR Cite
NPRM	10/20/03	68 FR 60015
NPRM Comment Period End	12/19/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Dean Robert Koppel, Assistant Administrator, Policy and Research, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—7322
Email: dean.koppel@sba.gov

RIN: 3245–AF12

Small Business Administration (SBA) Final Rule Stage

3843. ADMINISTRATIVE WAGE GARNISHMENT AND ADMINISTRATIVE OFFSET

Priority: Other Significant

Legal Authority: 5 USC 504; 15 USC 632; 15 USC 634(b)(6); 15 USC 637(a); 31 USC 3711; 31 USC 3720; 31 USC 3716

CFR Citation: 13 CFR 134; 13 CFR 140

Legal Deadline: None

Abstract: SBA is issuing a rule adopting administrative wage garnishment and administrative offset regulations to implement the Debt Collection Improvement Act of 1996. The rule will allow SBA to garnish the wages of a person indebted to the United States for any non—tax debt without first obtaining a judgment. The debtor generally will be entitled to a hearing before an appropriate official. This rule will also include administrative offset and other remedies to comply with Treasury directives.

Timetable:

Action	Date	FR Cite
NPRM	06/27/00	65 FR 39567
NPRM Comment Period End	08/28/00	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: James W. Hammersley, Director, Office of Loan Policy, Small Business Administration, 8th Floor, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6490

RIN: 3245–AE50

3844. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549 (3 CFR, 1986 Comp, p 189); EO 11738 (3 CFR, 1973 Comp, p 799); EO 12689 (3 CFR, 1989 Comp, p 235); Drug Free Workplace Act of 1988, sec 5151 to 5160; PL 100—690, title V, subtitle D; 41 USC 701 et seq; 15 USC 634(b)(6); 5 USC 301 et seq; 15 USC 631 et seq; PL 103—355, sec 2455, 108 Stat 3327 (31 USC 6160 note)

CFR Citation: 13 CFR 145

Legal Deadline: None

Abstract: This rule will make substantive changes and amendments to the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule for implementing the Drug—Free Workplace Act of 1988. For example, this rule will: (1) provide for optional lower tier suspension and debarment coverage by including paragraph 145.220(d) for all contracts that equal or exceed the $25,000 award threshold under SBA nonprocurement transactions; (2) limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction; (3) set the dollar threshold on prohibited lower tier procurement transactions with excluded persons at $25,000; and (4) separate this proposed rule from the drug—free workplace requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Darryl Hairiston, Assistant Administrator, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6412
Email: darryl.hairiston@sba.gov

RIN: 3245–AE61

3845. SMALL BUSINESS SIZE REGULATIONS; SMALL BUSINESS INNOVATION RESEARCH PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will allow wholly owned subsidiaries to be eligible for Small Business Innovation Research funding agreements. Current regulations limit the eligibility of the program to businesses owned by individuals.

Timetable:

Action	Date	FR Cite
NPRM	06/04/03	68 FR 33142
NPRM Comment Period End	07/07/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6618
Fax: 202 205—6390
Email: gary.jackson@sba.gov

RIN: 3245–AE76

3846. SMALL BUSINESS SIZE STANDARDS; TESTING LABORATORIES

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule revises the size standard for the Testing Laboratories industry. Changes in the composition of the industry indicate a higher size standard than $6 million is warranted to define which businesses are small businesses.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17020
NPRM Comment Period End	05/10/02	
NPRM Comment Period Extended	09/03/02	67 FR 56966
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gary M. Jackson,
AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6618
Fax: 202 205—6390
Email: gary.jackson@sba.gov

RIN: 3245–AE78

3847. SMALL BUSINESS SIZE STANDARDS; INFORMATION TECHNOLOGY VALUE ADDED RESELLERS

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will establish a size standard for Information Technology (IT) Value Added Resellers. Current regulations apply the same eligibility requirements to these types of businesses as for dealers and nonmanufacturers. To establish more appropriate eligibility requirements for IT Value Added Resellers, a new industry category and size standard will be established.

Timetable:

Action	Date	FR Cite
NPRM	07/24/02	67 FR 48419
NPRM Comment Period End	08/23/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gary M. Jackson,
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Fax: 202 205—6390
Email: gary.jackson@sba.gov

RIN: 3245–AE80

3848. SMALL BUSINESS SIZE REGULATIONS: RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105—135, sec 601 et seq, 111 Stat 2592; 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 644(c); 15 USC 662(5); PL 102—486, 106 Stat 2776, 3133

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will amend SBA's Small Business Size Regulations and the regulations applying to appeals of size determinations. The rule will further amend the definitions of affiliation, annual receipts, and employees. It will also make procedural and technical changes to cover additional programs such as SBA's HUBZone program and the Governmentwide Small Disadvantaged Business Program. This rule will codify several long—standing precedents of SBA's Office of Hearing and Appeals and will clarify the jurisdiction of that office. Further, the rule will amend all references in part 134 from the Standard Industrial Classification code to the North American Industry Classification System (NAICS) code because on October 1, 2000, SBA converted to NAICS.

Timetable:

Action	Date	FR Cite
NPRM	11/22/02	67 FR 70339
NPRM Comment Period End	01/21/03	
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Tribal

Agency Contact: Linda Williams, AA, Office of Policy, Planning, and Liaison, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 401—8150
Fax: 202 205—6390

RIN: 3245–AE92

3849. SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM POLICY DIRECTIVE

Priority: Other Significant

Legal Authority: 15 USC 638

CFR Citation: None

Legal Deadline: None

Abstract: This policy directive will incorporate recently enacted statutory requirements. The purpose of the directive is to provide guidance to participating Federal agencies for the general conduct of the Small Business Technology Transfer Program.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy Directive	06/16/03	68 FR 35748
Comment Period End	07/16/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Maurice Swinton, Assistant Administrator for Technology, Small Business Administration, Office of Government Contracting/Business Development, 409 Third Street SW, Washington, DC 20416
Phone: 202 205—6450

RIN: 3245–AE96

3850. SIZE FOR PURPOSES OF THE MULTIPLE AWARD SCHEDULE AND OTHER MULTIPLE AWARD CONTRACTS; SMALL BUSINESS SIZE REGULATIONS; 8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will amend SBA's small business size regulations as it relates to the General Services Administration's Multiple Award Schedule Program, including the Federal Supply Schedule, multiple award contracts, including Governmentwide Acquisition Contracts.

Timetable:

Action	Date	FR Cite
NPRM	04/25/03	68 FR 20350
NPRM Comment Period End	06/24/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Linda Williams, AA, Office of Policy, Planning, and Liaison, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 401—8150
Fax: 202 205—6390

RIN: 3245–AF06

Small Business Administration (SBA) Completed Actions

3851. DEVELOPMENT COMPANY LOAN (504) PROGRAM CHANGES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 13 CFR 120

Completed:

Reason	Date	FR Cite
NPRM	07/08/03	68 FR 40553
Final Action	10/07/03	68 FR 57960
Final Action Effective	11/06/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Gail Hepler
Phone: 202 653—7530

RIN: 3245–AE41

3852. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 13 CFR 112; 13 CFR 113; 13 CFR 117

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51334
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: L. Rose Trujillo
Phone: 202 205—6750

RIN: 3245–AE59

3853. BUSINESS LOANS AND DEVELOPMENT COMPANY LOANS 2000 ACT CHANGES

Priority: Substantive, Nonsignificant

CFR Citation: 13 CFR 120

Completed:

Reason	Date	FR Cite
Direct Final Rule	08/28/03	68 FR 51677
Direct Final Rule Comment Period End	09/29/03	
Direct Final Rule Effective	10/14/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James W. Hammersley
Phone: 202 205—6490

RIN: 3245–AE68

3854. SMALL BUSINESS SIZE STANDARDS; FOREST FIRE SUPPRESSION AND FUELS MANAGEMENT SERVICES

Priority: Other Significant

CFR Citation: 13 CFR 121

Completed:

Reason	Date	FR Cite
Final Action	06/04/03	68 FR 33348

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gary M. Jackson
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Fax: 202 205—6390
Email: gary.jackson@sba.gov

RIN: 3245–AE89

3855. RECORD DISCLOSURE AND PRIVACY; THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996

Priority: Substantive, Nonsignificant

CFR Citation: 13 CFR 102, subpart A

Completed:

Reason	Date	FR Cite
Final Action	10/14/03	68 FR 59091
Final Action Effective	11/14/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa Babcock
Phone: 202 401—8200
Fax: 202 205—7059
Email: lisa.babcock@sba.gov

RIN: 3245–AE94

3856. SMALL BUSINESS SIZE STANDARDS; FACILITIES SUPPORT SERVICES (INCLUDING BASE MAINTENANCE)

Priority: Other Significant

CFR Citation: 13 CFR 121

Completed:

Reason	Date	FR Cite
Final Action	10/15/03	68 FR 59309
Final Action Effective	11/14/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gary M. Jackson
Phone: 202 205—6618
Fax: 202 205—6390
Email: gary.jackson@sba.gov

RIN: 3245–AF03

3857. PRIME CONTRACTING ASSISTANCE; CONTRACT BUNDLING

Priority: Other Significant

CFR Citation: 13 CFR 125

Completed:

Reason	Date	FR Cite
Final Action	10/20/03	68 FR 60006
Final Action Effective	11/19/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Linda Williams
Phone: 202 401—8150
Fax: 202 205—6390

RIN: 3245–AF07

3858. • SMALL BUSINESS INVESTMENT COMPANY AMENDMENTS ACT OF 2001

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a) and (h); 15 USC 696(3); 15 USC 697 (a)(2); PL 107—100

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: This direct final rule incorporates changes to the regulations as required by the Small Business Investment Company Amendments Act of 2001. The 2001 Act contained two provisions that temporarily reduced 7(a) program fees for a 2—year period (from 10/1/02 through 9/30/04). Thus, it temporarily reduces the guarantee fee and the ongoing annual service fee payable to SBA by participation lenders in SBA's 7(a) business loan program. This direct final rule will incorporate these statutory, temporary reduced fee provisions into SBA regulations. No other amendments are made by this action. These fee provisions have already been publicized to borrowers and lenders through an SBA Information Notice.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/01/03	68 FR 56553
Direct Final Rule Comment Period End	10/31/03	
Direct Final Rule Effective	11/17/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew B. McConnell Jr., Chief, Office of Financial Assistance, Small Business Administration, 409 Third Street, SW, Washington, DC 20416
Phone: 202 205—7238

RIN: 3245–AF09

[FR Doc. 03–24025 Filed 12–19–03; 8:45 am]

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1985

Federal Register

Monday,
December 22, 2003

Part XLV

Social Security Administration

Semiannual Regulatory Agenda

SOCIAL SECURITY ADMINISTRATION (SSA)

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner

20 CFR Ch. III

Semiannual Unified Regulatory Agenda

AGENCY: Social Security Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: Executive Order (E.O.) 12866 (as amended by E.O. 13258) entitled Regulatory Planning and Review, issued September 30, 1993, and the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) require each Federal agency to publish semiannually a brief description of all regulatory actions under development or review, expected to be under development or review for the next 12 months, or completed since the previous publication of the agenda. Our last agenda of regulations was published May 27, 2003.

FOR FURTHER INFORMATION CONTACT: For further information about a specific regulatory action, contact the person identified as the agency contact for that action. Comments or inquiries of a general nature should be directed to Martin J. Sussman, Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401; Telephone (410) 965-1767 or TTY (410) 966-5609.

SUPPLEMENTARY INFORMATION The Social Security Administration (SSA) administers the retirement, survivors, and disability insurance programs under title II of the Social Security Act (the Act), the Supplemental Security Income (SSI) program under title XVI of the Act, and Special Benefits to Certain World War II Veterans under title VIII of the Act. Our regulations generally do not impose burdens on the private sector or on State, local, or tribal governments. Our regulations document the rules under which we make eligibility determinations and set forth both the responsibilities of the Agency towards the public and beneficiaries' rights and responsibilities under the programs we administer.

Our regulatory efforts can be placed into one of the following three categories; (1) legislative implementation; (2) program changes to improve SSA service to the public; and (3) improvements or clarifications to enhance effective stewardship of SSA programs.

We continue to seek legislative improvements for the programs we administer. However, because of the complexity of our programs, statutory language is rarely detailed enough to govern the actions of agency adjudicative decision-makers. Supporting regulations are often required. In some instances, Congress directs SSA to issue implementing regulations. For other legislative provisions, SSA regulations provide program information to applicants for benefits, current beneficiaries, and their legal counsels.

Included in our agenda are items that will amend our regulations to include more provisions of "The Ticket to Work and Work Incentives Improvement Act of 1999," (Pub. L. 106-170), which was signed on December 17, 1999. Among the provisions still requiring regulations are provisions that will suspend continuing disability reviews based on work activity and expedited reinstatement of disability benefits terminated due to work activity. In addition, we expect to propose revisions to the existing rules that implement the Ticket to Work program.

We continue to work diligently to improve our program benefit regulations and to develop partnerships with large segments of the community of interest groups concerned about Social Security programs. The remainder of our Unified Agenda reflects such improvements and clarifications.

For this edition of SSA's regulatory agenda, the most important significant regulatory actions are included in The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

The fall 2003 regulatory agenda for the Social Security Administration follows.

Dated: September 12, 2003.

Martin J. Sussman,

SSA Regulations Officer.

Social Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3859	Revised Medical Criteria for Endocrine Disorders (436P)	0960—AD78
3860	Supplemental Standards for Ethical Conduct for Employees of the Social Security Administration (601P)	0960—AE48
3861	Title VI (Civil Rights Act (1964)), Title IX (Education Amend. (1972)), Rehabilitation Act (1973), and Age Discrimination Act (1975) in Programs/Activities Receiving Financial Assistance by SSA (617P)	0960—AE63
3862	Enforcement of Nondiscrimination in Social Security Programs or Activities (661P)	0960—AE78
3863	Privacy and Disclosure of Official Records and Information (711P) **(Reg Plan Seq No. 138)**	0960—AE88
3864	Federal Salary Offset (Withholding a Portion of a Federal Employee's Salary To Collect a Delinquent Debt Owed to the Social Security Administration) (721P) **(Reg Plan Seq No. 139)**	0960—AE89
3865	Exemption of Work Activity as a Basis for a Continuing Disability Review (Ticket to Work and Work Incentives Improvement Act of 1999) (725P)	0960—AE93
3866	Medical Equivalence for Adults and Children (787P)	0960—AF19
3867	Expedited Reinstatement of Disability Benefits (Ticket to Work and Work Incentives Improvement Act) (790P)	0960—AF21
3868	SSI Trusts and Transfers of Resources (791P)	0960—AF22
3869	Revised Medical Criteria for Evaluating Genitourinary Disorders (802P)	0960—AF30
3870	Revised Medical Criteria for Evaluating Special Senses and Speech Disorders (805P)	0960—AF34

Social Security Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3871	Revised Medical Criteria for Evaluating Neurological Disorders (806P)	0960—AF35
3872	Disability Insurance Program Demonstration Project Authority (Ticket to Work and Work Incentives Improvement Act of 1999) (789P)	0960—AF41
3873	Revised Medical Criteria for Evaluating Cardiovascular Disorders (826P)	0960—AF48
3874	Determining Disability for an Individual With Drug Addiction or Alcoholism (851P)	0960—AF57
3875	Revised Medical Criteria for Evaluating Respiratory System Disorders (859P)	0960—AF58
3876	Revised Medical Criteria for Evaluating Growth Disorders (444P)	0960—AF67
3877	Special Benefits for Certain World War II Veterans; Reporting Requirements, Suspension and Termination Events, Overpayments, and Administrative Review Process (922P)	0960—AF72
3878	Representative Payment Under Titles II, VIII, and XVI of the Social Security Act (949F) **(Reg Plan Seq No. 140)**	0960—AF83
3879	Elimination of Clothing From the Definitions of Income and In—Kind Support and Maintenance, Exclusions of One Automobile, and Household Goods and Personal Effects Under SSI From Resources (950P) **(Reg Plan Seq No. 141)**	0960—AF84
3880	Mandatory Exclusion of Health Care Providers, Representatives, and Representative Payees From Participation in SSA Programs (954P)	0960—AF85
3881	Evidence Requirement for Assignment of Social Security Numbers (SSNs); Assignment of SSNs to Foreign Students (960P) **(Reg Plan Seq No. 142)**	0960—AF87
3882	Amendments to the Ticket to Work and Self—Sufficiency Program (967P) **(Reg Plan Seq No. 143)**	0960—AF89
3883	Elimination of Deemed Military Wages (968P)	0960—AF90
3884	Elimination of Parent—to—Child Deeming for Individuals Who No Longer Meet the Definition of Spouse of the Natural or Adoptive Parent (793P) **(Reg Plan Seq No. 144)**	0960—AF96

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Social Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3885	Revised Medical Criteria for Evaluating Malignant Neoplastic Diseases (399F)	0960—AD67
3886	Dedicated Accounts and Installment Payments for Certain Past Due SSI Benefits (622F)	0960—AE59
3887	Technical Changes to Supplemental Security Income (SSI) Regulations (664F)	0960—AE79
3888	Administrative Wage Garnishment (To Repay a Debt Owed to the Social Security Administration) (724F) **(Reg Plan Seq No. 145)**	0960—AE92
3889	OASDI and SSI; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration (737F) **(Reg Plan Seq No. 146)**	0960—AE97
3890	Revised Medical Criteria for Evaluating Impairments of the Digestive System (800F) **(Reg Plan Seq No. 147)**	0960—AF28
3891	Revised Medical Criteria for Evaluating Skin Disorders (801F)	0960—AF29
3892	Revised Medical Criteria of Evaluating Impairments Affecting Multiple Body Systems (803F)	0960—AF32
3893	Filing Claims Under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act (785F)	0960—AF39
3894	Revisions to the Medical—Vocational Guidelines (823P)	0960—AF47
3895	Filing of Applications and Related Forms (797F)	0960—AF52
3896	Payment of Benefits to Aliens Residing Outside the United States (909F)	0960—AF70
3897	Referral of Persons Eligible for Disability or Blindness Benefits to Other Agencies for Vocational Rehabilitation Services (929F)	0960—AF80
3898	Continuation of Benefit Payment to Certain Individuals Who Are Participating in a Program of Vocational Rehabilitation Services, Employment Services, or Other Support Services (925F) **(Reg Plan Seq No. 148)**	0960—AF86
3899	Administrative Review Process; Incorporation by Reference of Oral Findings of Fact and Rationale in Wholly Favorable Written Decisions (964I) **(Reg Plan Seq No. 149)**	0960—AF92
3900	Supplemental Security Income; Exclusion of Military Pay for Combat Service from Deemed Income and Resources (978I)	0960—AF97

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

Social Security Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3901	Deeming of Income From an Ineligible Spouse to an Eligible Individual and an Eligible Child (606P)	0960—AE50
3902	Revised Medical Criteria for Evaluating Immune System Disorders (804P)	0960—AF33
3903	Wage Reports and Pension Information (809P)	0960—AF38
3904	New Disability Claims Process—Roles of State Agency (816F)	0960—AF44
3905	Amendments to Annual Earnings Test Regulations (866F)	0960—AF62
3906	Revised Medical Criteria for Evaluating Mental Disorders (886P)	0960—AF69
3907	Stepchild Entitlement and Termination Requirements (934P)	0960—AF78
3908	Interrelationship of Old—Age, Survivors, and Disability Insurance Program with the Railroad Retirement Program (943I)	0960—AF82
3909	Revised Medical Criteria for Evaluating Hematological Disorders (974P)	0960—AE88

Social Security Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3910	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations (547F)	0960—AE25
3911	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug—Free Workplace (Grants) (554F)	0960—AE27
3912	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments (555F)	0960—AE28
3913	Restrictions on Lobbying in Connection with the Award of Grants, Contracts, and Cooperative Agreements (556F)	0960—AE29
3914	Evidence Requirements for Assignment of Social Security Administration Numbers (SSNs); Assignment of SSNs for Nonwork Purposes (751F)	0960—AF05
3915	Clarification of Rules Involving RFC Assessments; Clarification of Use of Vocational Experts and Other Sources of the Sequential Evaluation Process; Incorporation of "Special Profile" Into Regs (808F)	0960—AF37
3916	Access to Information Held by Financial Institutions (815F)	0960—AF43
3917	Clarification of the Disability Exclusion (915P)	0960—AF71
3918	Claimant Identification Pilot Projects (937F)	0960—AF79
3919	Elimination of Sanctions for Refusal of Vocational Rehabilitation Services Without Good Cause (938F)	0960—AF81
3920	Availability of Information and Records to the Public (969F)	0960—AF91
3921	Extension of Expiration Date for Several Body Systems Listings (976F)	0960—AF93
3922	Revised Medical Criteria for Evaluating Amyotrophic Lateral Sclerosis (989F)	0960—AF95

Social Security Administration (SSA) — Proposed Rule Stage

3859. REVISED MEDICAL CRITERIA FOR ENDOCRINE DISORDERS (436P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Sections 9.00 and 109.00 of appendix 1 to subpart P of part 404 of our regulations (404.1501 through 404.1599) describe those endocrine impairments that are considered severe enough to prevent a person from doing any gainful activity, or in the case of a child claiming SSA payments under title XVI, that cause marked and severe functional limitations. We are proposing to revise the criteria in these sections to reflect advances in medical knowledge, treatment, and methods of evaluating endocrine impairments. The Supplemental Security Income Program incorporates and uses the same medical criteria as the Old—Age, Survivors, and Disability Insurance Program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bonnie Davis, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 965—4172

RIN: 0960–AD78

3860. SUPPLEMENTAL STANDARDS FOR ETHICAL CONDUCT FOR EMPLOYEES OF THE SOCIAL SECURITY ADMINISTRATION (601P)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; 5 USC 7301; 5 USC 7353

CFR Citation: 5 CFR ch LXXXI (New)

Legal Deadline: None

Abstract: The Social Security Administration (SSA), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for officers and employees of SSA that supplement the OGE Standards of Ethical Conduct for Employees of the Executive Branch, which became effective February 3, 1993. The proposed rule specifies procedural and substantive requirements that are necessary to address ethical issues unique to SSA.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stuart M. Besser, Attorney, Social Security Administration, Office of the General Counsel, 6401 Security Boulevard, Baltimore, MD 21235—6401
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Richard M. Bresnick, Paralegal Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1758

RIN: 0960–AE48

3861. TITLE VI (CIVIL RIGHTS ACT (1964)), TITLE IX (EDUCATION AMEND. (1972)), REHABILITATION ACT (1973), AND AGE DISCRIMINATION ACT (1975) IN PROGRAMS/ACTIVITIES RECEIVING FINANCIAL ASSISTANCE BY SSA (617P)

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1681; 29 USC 794; 42 USC 902(a)(5); 42 USC 2000d; 42 USC 6101

CFR Citation: 20 CFR 431

Legal Deadline: None

Abstract: Prior to March 31, 1995, SSA was an operating component of HHS and the general regulatory authority for SSA programs and administration was vested in the Secretary of Health and Human Services (the Secretary) based on section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). The Social Security Independence and Program Improvements Act (SSIPIA) established SSA as an independent agency in the executive branch of the Federal Government effective March 31, 1995, and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under section 106(b) of SSIPIA, HHS regulations in effect immediately prior to March 31, 1995, which relate to functions now vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until such time as they are modified, suspended, terminated, or repealed by the Commissioner. SSA is promulgating regulations at 20 CFR part 431, which are based in large measure upon the HHS regulations at 45 CFR parts 80, 81, 84, 86, and 91. These SSA regulations reflect changes necessary to adapt the HHS regulations to SSA procedures. Upon SSA's rules becoming final regulations, the HHS regulations will cease to have application to SSA in accordance with section 106(b) of SSIPIA.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eileen Inglesby—Houghton, Attorney, Social Security Administration, Office of the General Counsel, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 965—4816

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Phone: 410 965—1769

RIN: 0960–AE63

3862. ENFORCEMENT OF NONDISCRIMINATION IN SOCIAL SECURITY PROGRAMS OR ACTIVITIES (661P)

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 902

CFR Citation: 20 CFR 432

Legal Deadline: None

Abstract: These proposed regulations are intended to ensure that individuals are not subjected to discrimination on the basis of disability, race, color, national origin, sex, age, or religion in any program or activity conducted by SSA.

Timetable:

Action	Date	FR Cite
NPRM	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1769

RIN: 0960–AE78

3863. PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION (711P)

Regulatory Plan: This entry is Seq. No. 138 in part II of this issue of the **Federal Register**.

RIN: 0960–AE88

3864. FEDERAL SALARY OFFSET (WITHHOLDING A PORTION OF A FEDERAL EMPLOYEE'S SALARY TO COLLECT A DELINQUENT DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (721P)

Regulatory Plan: This entry is Seq. No. 139 in part II of this issue of the **Federal Register**.

RIN: 0960–AE89

3865. EXEMPTION OF WORK ACTIVITY AS A BASIS FOR A CONTINUING DISABILITY REVIEW (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999) (725P)

Priority: Other Significant

Legal Authority: 42 USC 421(m)

CFR Citation: 20 CFR 404.903; 20 CFR 404.1574; 20 CFR 404.1575; 20 CFR 404.1590; 20 CFR 404.1594; 20 CFR 416.990; 20 CFR 416.994; 20 CFR 416.1403

Legal Deadline: None

Abstract: We are proposing to amend our regulations to explain how we will implement section 221(m) of the Social Security Act (the Act). Section 221(m) affects our rules for when we will conduct a continuing disability review if a beneficiary works and receives benefits under title II of the Act based on disability. (We interpret this section to include beneficiaries who receive both title II disability benefits and Supplemental Security Income (SSI) payments based on disability.) It also affects the way we evaluate work activity when deciding if a beneficiary has engaged in substantial gainful activity, and affects the standards we use when we determine whether disabiltiy continues or ends.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kristine Erwin—Tribbitt, Social Insurance Specialist, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, Baltimore, MD 21235
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Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1769

RIN: 0960–AE93

3866. MEDICAL EQUIVALENCE FOR ADULTS AND CHILDREN (787P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1525; 20 CFR 404.1526; 20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 416.925; 20 CFR 416.926; 20 CFR 416.926a; 20 CFR 416.927; 20 CFR 416.929

Legal Deadline: None

Abstract: This notice of proposed rulemaking will clarify that we will consider the medical severity of the individual's impairment, based on all relevant evidence in the case record when we make a finding regarding medical equivalence. These rules will clarify our medical equivalence policy in light of the decision in Hickman v. Apfel, 187 F.3d 683 (7th Cir. 1999).

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jane Deweib, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 965—0020

RIN: 0960–AF19

3867. EXPEDITED REINSTATEMENT OF DISABILITY BENEFITS (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT) (790P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 423(i); 42 USC 1383(p)

CFR Citation: 20 CFR 404.1592b to 404.1592f; 20 CFR 416.999 to 416.999d

Legal Deadline: None

Abstract: Individuals with disabilities face multiple barriers in attempting to return to work. Section 112 of Public Law 106—170 provides a new statutory work incentive by providing for expedited reinstatement of SSDI and SSI benefits terminated due to work activity, when the former beneficiary requests reinstatement within 60 months of termination because his or her disability prevents work activity. Section 112 also provides for payment of provisional benefits for up to six months until SSA makes a determination on the requester's entitlement to reinstated benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Nelson, Social Insurance Specialist, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, Baltimore, MD 21235
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Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235
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RIN: 0960–AF21

3868. SSI TRUSTS AND TRANSFERS OF RESOURCES (791P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1382a(a); 42 USC 1382b(c); 42 USC 1382b(e); PL 106—169, sec 205; PL 106—169, sec 206

CFR Citation: 20 CFR 416

Legal Deadline: None

Abstract: We propose to amend our regulations to reflect sections 205 and 206 of Public Law 106—169, the Foster Care Independence Act of 1999. Section 205 generally provides for counting certain trusts as resources in the SSI program. Section 206 generally provides for a period of ineligibility for SSI benefits as a result of transferring resources for less than fair market value.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Albert Fatur, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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Robert J. Augustine, Social Insurance Specialist, Social Security

Administration, Office of Regulations,
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Phone: 410 965—0020

RIN: 0960–AF22

3869. REVISED MEDICAL CRITERIA FOR EVALUATING GENITOURINARY DISORDERS (802P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments (the Listings) that we use to evaluate genitourinary impairments. We apply these criteria at step three of our sequential evaluation processes for adults and children who claim Social Security or Supplemental Security Income benefits based on disability under title II and title XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment, and methods of evaluating genitourinary impairments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul J. Scott, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Bouleveard, Baltimore, MD 21235—6401
Phone: 410 966—1192

RIN: 0960–AF30

3870. REVISED MEDICAL CRITERIA FOR EVALUATING SPECIAL SENSES AND SPEECH DISORDERS (805P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving special senses and speech disorders. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act. The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating special senses and speech disorders.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michelle Hungerman, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 965—0020

RIN: 0960–AF34

3871. REVISED MEDICAL CRITERIA FOR EVALUATING NEUROLOGICAL DISORDERS (806P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving neurological disorders at the third step of our sequential evaluation processes for adults and children under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating neurological disorders.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carolyn Kiefer, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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Phone: 410 966—9822

RIN: 0960–AF35

3872. DISABILITY INSURANCE PROGRAM DEMONSTRATION PROJECT AUTHORITY (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999) (789P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 434

CFR Citation: 20 CFR 404.1599

Legal Deadline: None

Abstract: One of SSA's most important initiatives is to ensure that Social Security Disability Insurance (SSDI) beneficiaries with disabilities who want to work have the opportunity to do so. Section 301 of Public Law 106—170 provides the Commissioner of Social Security the authority to develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of treating the work activity of individuals entitled to disability insurance benefits.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1769

RIN: 0960–AF41

3873. REVISED MEDICAL CRITERIA FOR EVALUATING CARDIOVASCULAR DISORDERS (826P)

Priority: Other Significant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Listings 4.00 and 104.00 of appendix 1 to subpart P of our regulation (20 CFR 404.1501 through 404.1599) describe those cardiovascular impairments that are considered severe enough to prevent a person from doing any gainful activity, or for a child claiming SSI payments under title XVI, that cause marked and severe functional limitations. We propose to revise the criteria that we use to evaluate cardiovascular impairments under the listings to reflect our program experience and advances in medical knowledge, treatment, and methods of evaluating these disorders. The SSI program incorporates by reference and uses the same medical criteria as the old—age, survivors, and disability insurance program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bonnie Davis, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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RIN: 0960–AF48

3874. DETERMINING DISABILITY FOR AN INDIVIDUAL WITH DRUG ADDICTION OR ALCOHOLISM (851P)

Priority: Other Significant

Legal Authority: PL 104—121, sec 105; PL 105—33, sec 5525; PL 106—170, sec 401

CFR Citation: 20 CFR 404.315; 20 CFR 404.316; 20 CFR 404.321; 20 CFR 404.332; 20 CFR 404.335; 20 CFR 404.337; 20 CFR 404.350; 20 CFR 404.352; 20 CFR 404.402; 20 CFR 404.470; 20 CFR 404.480; 20 CFR 404.902; 20 CFR 404.1505; 20 CFR 404.1535 TO 404.1541; 20 CFR 404.1500, app 1; 20 CFR 416.101; 20 CFR 416.202; 20 CFR 416.214; 20 CFR 416.262; 20 CFR 416.265; 20 CFR 416.535; 20 CFR 416.542; 20 CFR 416.544; 20 CFR 416.558; 20 CFR 416.601; 20 CFR 416.610; 20 CFR 416.925; 20 CFR 416.935 to 416.941; 20 CFR 416.1123; 20 CFR 416.1326; 20 CFR 416.1331; 20 CFR 416.1402; 20 CFR 416.1701; 20 CFR 416.1720; 20 CFR 416.1725

Legal Deadline: None

Abstract: We propose to revise our regulations that address drug addiction and alcoholism (DAA) under title II and XVI of the Social Security Act. The proposed rules reflect provisions of section 105 of the Contract with America Advancement Act of 1996, Public Law 104—121; section 5525 of the Balanced Budget Act of 1997, Public Law 105—33; and section 401 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106—170.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry P. Spain, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1769

RIN: 0960–AF57

3875. REVISED MEDICAL CRITERIA FOR EVALUATING RESPIRATORY SYSTEM DISORDERS (859P)

Priority: Other Significant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving respiratory system disorders. The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating respiratory disorders.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carolyn Kiefer, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 965—9104

Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 965—0020

RIN: 0960–AF58

3876. REVISED MEDICAL CRITERIA FOR EVALUATING GROWTH DISORDERS (444P)

Priority: Other Significant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1; 20 CFR 416 subpart I

Legal Deadline: None

Abstract: Section 100.00 of part B of appendix 1 to subpart P of part 404 of the Disability Regulations describes growth impairments considered severe enough to cause marked and severe functional limitations in a child under age 18. We are proposing revisions to the growth impairment listings. The revisions contained in these regulations reflect advances in medical knowledge, treatment, and methods of evaluating growth impairments. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old—Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Regina Connell, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235
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RIN: 0960–AF67

3877. SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS; REPORTING REQUIREMENTS, SUSPENSION AND TERMINATION EVENTS, OVERPAYMENTS, AND ADMINISTRATIVE REVIEW PROCESS (922P)

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720A; 42 USC 402; 42 USC 403; 42 USC 404(a); 42 USC 404(e); 42 USC 405(a); 42 USC 405(c); 42 USC 422(b); 42 USC 423(e); 42 USC 424a; 42 USC 425; 42 USC 902(a)(5); 42 USC 1001 to 1013; 42 USC 1104; 42 USC 1106; 42 USC 1320a—8a

CFR Citation: 20 CFR 404.401; 20 CFR 408.101; 20 CFR 408.701; 20 CFR 408.704; 20 CFR 408.708; 20 CFR 408.710; 20 CFR 408.712; 20 CFR 408.714; 20 CFR 408.801 to 408.809; 20 CFR 408.810; 20 CFR 408.812; 20 CFR 408.814; 20 CFR 408.816; 20 CFR 408.818; 20 CFR 408.820; 20 CFR 408.900 to 408.905; 20 CFR 408.910 to 408.915; 20 CFR 408.918; 20 CFR 408.920; 20 CFR 408.922; 20 CFR 408.923; 20 CFR 408.930 to 408.933; 20 CFR 408.940 to 408.946; 20 CFR 408.950; 20 CFR 408.1000 to 408.1007; 20 CFR 408.1009; 20 CFR 408.1011; 20 CFR 408.1013 to 408.1016; 20 CFR 408.1020 to 408.1022; 20 CFR 408.1040; 20 CFR 408.1045; 20 CFR 408.1050; 20 CFR 408.1060; 20 CFR 408.1070; 20 CFR 408.1101; 20 CFR 408.1201; 20 CFR 408.1205; 20 CFR 408.1210; 20 CFR 408.1215; 20 CFR 408.1220; 20 CFR 408.1225; 20 CFR 408.1226; 20 CFR 408.1230; 20 CFR 408.1235; 20 CFR 416.570

Legal Deadline: None

Abstract: We propose to add six additional subchapters to part 408 (proposed) of our regulations. The title VIII program provides monthly benefits to certain World War II veterans who were previously eligible for supplemental security income payments under title XVI of the Act and reside outside the United States. These additional subparts would codify the title VIII requirements on reporting responsibilities, suspension and termination events, overpayment and underpayment policies, and the administrative review process.

Timetable:

Action	Date	FR Cite
NPRM	11/05/03	68 FR 62670
NPRM Comment Period End	01/05/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 965—0020

RIN: 0960–AF72

3878. REPRESENTATIVE PAYMENT UNDER TITLES II, VIII, AND XVI OF THE SOCIAL SECURITY ACT (949F)

Regulatory Plan: This entry is Seq. No. 140 in part II of this issue of the **Federal Register**.

RIN: 0960–AF83

3879. ELIMINATION OF CLOTHING FROM THE DEFINITIONS OF INCOME AND IN—KIND SUPPORT AND MAINTENANCE, EXCLUSIONS OF ONE AUTOMOBILE, AND HOUSEHOLD GOODS AND PERSONAL EFFECTS UNDER SSI FROM RESOURCES (950P)

Regulatory Plan: This entry is Seq. No. 141 in part II of this issue of the **Federal Register**.

RIN: 0960–AF84

3880. MANDATORY EXCLUSION OF HEALTH CARE PROVIDERS, REPRESENTATIVES, AND REPRESENTATIVE PAYEES FROM PARTICIPATION IN SSA PROGRAMS (954P)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106—169, sec 208; 42 USC 1320b—6

CFR Citation: 20 CFR 404.1503b; 20 CFR 416.903b

Legal Deadline: None

Abstract: This proposed rule would exclude representatives and health care providers who are convicted of violating certain criminal statutes involving fraud and other matters in the title II or title XVI programs administered by SSA, or who are assessed a civil monetary penalty for making false or misleading statements related to such programs, from participation in those programs. The minimum exclusion period is five years, but exclusions can be permanent.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1769

RIN: 0960–AF85

3881. EVIDENCE REQUIREMENT FOR ASSIGNMENT OF SOCIAL SECURITY NUMBERS (SSNS); ASSIGNMENT OF SSNS TO FOREIGN STUDENTS (960P)

Regulatory Plan: This entry is Seq. No. 142 in part II of this issue of the **Federal Register**.

RIN: 0960–AF87

3882. AMENDMENTS TO THE TICKET TO WORK AND SELF—SUFFICIENCY PROGRAM (967P)

Regulatory Plan: This entry is Seq. No. 143 in part II of this issue of the **Federal Register**.

RIN: 0960–AF89

SSA

Proposed Rule Stage

3883. ELIMINATION OF DEEMED MILITARY WAGES (968P)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107—117

CFR Citation: 20 CFR 404.1301

Legal Deadline: None

Abstract: We propose to revise our regulations to reflect a provision in Public Law 107—117 that eliminates deemed military service wage credits for members of the uniformed services for all years after calendar year 2001.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gareth N. Dence, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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Phone: 410 965—0020

RIN: 0960–AF90

3884. • ELIMINATION OF PARENT—TO—CHILD DEEMING FOR INDIVIDUALS WHO NO LONGER MEET THE DEFINITION OF SPOUSE OF THE NATURAL OR ADOPTIVE PARENT (793P)

Regulatory Plan: This entry is Seq. No. 144 in part II of this issue of the **Federal Register**.

RIN: 0960–AF96

Social Security Administration (SSA)

Final Rule Stage

3885. REVISED MEDICAL CRITERIA FOR EVALUATING MALIGNANT NEOPLASTIC DISEASES (399F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Sections 13.00 and 113.00 (malignant neoplastic diseases) of appendix 1 to subpart P of part 404 of our regulations (404.1501 through 404.1599) describe those impairments that are considered severe enough to prevent a person from doing any gainful activity, or for a child claiming SSI payments under title XVI, that causes marked and severe functional limitations. We are revising these sections to ensure that the medical evaluation criteria are up—to—date and consistent with the latest advances in medical knowledge and treatment. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old—Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59305
NPRM Comment Period End	01/28/02	
NPRM Comment Period End Extended	04/18/02	67 FR 19138
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michelle Hungerman, Social Insurance Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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RIN: 0960–AD67

3886. DEDICATED ACCOUNTS AND INSTALLMENT PAYMENTS FOR CERTAIN PAST DUE SSI BENEFITS (622F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 902(a)(5); 42 USC 1381; 42 USC 1381a; 42 USC 1382(c); 42 USC 1382(e); 42 USC 1383(a) to 1383(d); 42 USC 1383(g)

CFR Citation: 20 CFR 416.545; 20 CFR 416.546; 20 CFR 416.640; 20 CFR 416.1210; 20 CFR 416.1247

Legal Deadline: Final, Statutory, November 22, 1996, Final.
Interim Final Rules were published on December 20, 1996.

Abstract: These regulations reflect amendments to the Social Security Act made by sections 213 and 221 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Section 213 requires the establishment of accounts in financial institutions for the payment of past due SSI benefits after reimbursement to a State for Interim Assistance Reimbursement exceeding 6 months' benefits to representative payees on behalf of children under age 18. These accounts will be dedicated for certain purposes by restrictions on the use of such past due benefits.

Section 221 requires past due SSI benefits after reimbursement to a State for Interim Assistance Reimbursement that equals or exceeds 12 months' benefits to be paid in installments, with certain exceptions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/20/96	61 FR 67203
Interim Final Rule Comment Period End	02/18/97	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1769

RIN: 0960–AE59

3887. TECHNICAL CHANGES TO SUPPLEMENTAL SECURITY INCOME (SSI) REGULATIONS (664F)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 20 CFR 416.1236; 20 CFR 416, subpart K, app

Legal Deadline: None

Abstract: We are amending the SSI regulations by making technical changes to our rules on income and resources. These technical changes update lists of exclusions from income and resources under the SSI program that are based on statutes other than the Social Security Act and make additional technical changes.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eric Ice, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 6401 Security Boulevard, Baltimore, MD 21235—6401
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Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 965—0020

RIN: 0960–AE79

3888. ADMINISTRATIVE WAGE GARNISHMENT (TO REPAY A DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (724F)

Regulatory Plan: This entry is Seq. No. 145 in part II of this issue of the **Federal Register**.

RIN: 0960–AE92

3889. OASDI AND SSI; ADMINISTRATIVE REVIEW PROCESS; VIDEO TELECONFERENCING APPEARANCES BEFORE ADMINISTRATIVE LAW JUDGES OF THE SOCIAL SECURITY ADMINISTRATION (737F)

Regulatory Plan: This entry is Seq. No. 146 in part II of this issue of the **Federal Register**.

RIN: 0960–AE97

3890. REVISED MEDICAL CRITERIA FOR EVALUATING IMPAIRMENTS OF THE DIGESTIVE SYSTEM (800F)

Regulatory Plan: This entry is Seq. No. 147 in part II of this issue of the **Federal Register**.

RIN: 0960–AF28

3891. REVISED MEDICAL CRITERIA FOR EVALUATING SKIN DISORDERS (801F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: This final rule will revise the criteria in the Listing of Impairments (the Listings) we use for evaluating skin disorders in adults and to introduce corresponding medical criteria for evaluating skin disorders in children. We will revise the skin listings to ensure that the medical evaluation criteria are up—to—date and consistent and that the latest advances in medical knowledge and treatment are included.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63634
NPRM Comment Period End	02/08/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF29

3892. REVISED MEDICAL CRITERIA OF EVALUATING IMPAIRMENTS AFFECTING MULTIPLE BODY SYSTEMS (803F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: These final rules revise the criteria in the Listing of Impairments that we use to evaluate claims involving impairments affecting multiple body systems. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act. The proposed revisions reflect current medical knowledge, treatment, and methods of evaluating impairments affecting multiple body systems.

Timetable:

Action	Date	FR Cite
NPRM	12/23/02	67 FR 78196
NPRM Comment Period End	02/21/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF32

3893. FILING CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES CLAIMS ACT (785F)

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2672; 31 USC 3721; 42 USC 905(a)(5)

CFR Citation: 20 CFR 429.101 to 429.110; 20 CFR 429.201 to 429.211; 28 CFR 14

Legal Deadline: None

Abstract: These final rules will establish a new subpart B in part 429 that will prescribe the procedures SSA follows when claims are filed by employees against SSA for personal property damage or loss incident to their service with SSA. We will also make corrections and clarifications to our current procedures and practices on claims against the Government for damage to or loss of property or personal injury or death that is caused by the negligent or wrongful act or omission of an SSA employee.

Timetable:

Action	Date	FR Cite
NPRM	12/20/02	67 FR 77942
NPRM Comment Period End	02/18/03	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 0960–AF39

3894. REVISIONS TO THE MEDICAL—VOCATIONAL GUIDELINES (823P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405(a); 42 USC 423; 42 USC 1382c; 42 USC 902(a)(5)

CFR Citation: 20 CFR 404, subpart P, app 2; 20 CFR 404.1564; 20 CFR 416.964

Legal Deadline: None

Abstract: This rule will make several clarifications to our medical—vocational guidelines. First, for individuals whose previous semiskilled or skilled work does not allow him or her to transfer skills to other semiskilled or skilled work within his or her residual functional capacity (RFC), we will treat the past work experience as if it were unskilled. It will also clarify which medical—vocational rules apply to individuals who are illiterate or unable to communicate in English.

Timetable:

Action	Date	FR Cite
NPRM	07/07/03	68 FR 40213
NPRM Comment Period End	09/05/03	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF47

3895. FILING OF APPLICATIONS AND RELATED FORMS (797F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402(i); 42 USC 402(j); 42 USC 402(o); 42 USC 402(p); 42 USC 402(r); 42 USC 405; 42 USC 416(i)(2); 42 USC 423(b); 42 USC 428(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.610; 20 CFR 404.611; 20 CFR 422.505

Legal Deadline: None

Abstract: This final rule includes language that explains the Internet applications completed on SSA's website and submitted to SSA are prescribed applications for filing for social security benefits. It incorporates an explanation that once SSA has an approved electronic signature method in place, the signature method will be included as part of the Internet application process and will be required for the applications.

Timetable:

Action	Date	FR Cite
NPRM	08/17/01	66 FR 43136
NPRM Comment Period End	10/16/01	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF52

3896. PAYMENT OF BENEFITS TO ALIENS RESIDING OUTSIDE THE UNITED STATES (909F)

Priority: Other Significant

Legal Authority: 42 USC 402(t); 42 USC 405(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.460

Legal Deadline: None

Abstract: We are revising our rules to remove Democratic Kampuchea (now Cambodia) and Vietnam from the list of countries to which social security benefits individuals residing in those countries who are not U.S. citizens or nationals, may not be sent to under Department of the Treasury (Treasury) restrictions. The removal of the Treasury restrictions on benefit payments to individuals in these countries permits payments to accrue for affected individuals who are entitled to title II benefits for months in which they reside in either Cambodia or Vietnam provided they are not subject to other nonpayment provisions for those months. The revisions are necessary to reflect that the Treasury has published regulations that have removed restrictions, under 31 USC 123, on sending Federal payments to payees living in Cambodia or Vietnam.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF70

3897. REFERRAL OF PERSONS ELIGIBLE FOR DISABILITY OR BLINDNESS BENEFITS TO OTHER AGENCIES FOR VOCATIONAL REHABILITATION SERVICES (929F)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106—170

CFR Citation: 20 CFR 404.1630; 20 CFR 404.2101 to 404.2109; 20 CFR 404.2111; 20 CFR 404.2112; 20 CFR 404.2114 to 404.2127; 20 CFR 416.101; 20 CFR 416.1030; 20 CFR 416.1701; 20 CFR 416.1710; 20 CFR 416.2201; 20 CFR 416.2202; 20 CFR 416.2204; 20 CFR 416.2209; 20 CFR 416.2211 to 416.2227

Legal Deadline: None

Abstract: We are revising our regulations pertaining to the requirement to refer for vocational rehabilitation (VR) services those individuals who filed for disability benefits, thereby conforming them to provisions in the Ticket to Work and Work Incentives Improvement Act of 1999. The Ticket to Work and Work Incentives Improvement Act of 1999 repealed the VR referral requirement effective with January 1, 2001, in States in which the Ticket to Work and Self—Sufficiency program has been implemented. In States in which we have implemented the Ticket to Work program, we are no longer referring beneficiaries eligible for disability benefits to State vocational rehabilitation agencies.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

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RIN: 0960–AF80

3898. CONTINUATION OF BENEFIT PAYMENT TO CERTAIN INDIVIDUALS WHO ARE PARTICIPATING IN A PROGRAM OF VOCATIONAL REHABILITATION SERVICES, EMPLOYMENT SERVICES, OR OTHER SUPPORT SERVICES (925F)

Regulatory Plan: This entry is Seq. No. 148 in part II of this issue of the **Federal Register**.

RIN: 0960–AF86

3899. ADMINISTRATIVE REVIEW PROCESS; INCORPORATION BY REFERENCE OF ORAL FINDINGS OF FACT AND RATIONALE IN WHOLLY FAVORABLE WRITTEN DECISIONS (964I)

Regulatory Plan: This entry is Seq. No. 149 in part II of this issue of the **Federal Register**.

RIN: 0960–AF92

3900. • SUPPLEMENTAL SECURITY INCOME; EXCLUSION OF MILITARY PAY FOR COMBAT SERVICE FROM DEEMED INCOME AND RESOURCES (978I)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Sec 1612(b) of the Social Security Act; Sec 1614(f) of the Social Security Act

CFR Citation: 20 CFR 416.1161; 20 CFR 416.1202

Legal Deadline: None

Abstract: These interim final rules provide for excluding additional military pay for combat service from countable income and resources when we determine the eligibility of children and spouses of military personnel for Supplemental Security Income (SSI). The exclusions ensure that the SSI benefits of children and spouses of military personnel are not adversely affected by the deployment of their family members to a combat zone.

Under these rules, in determining an individual's eligibility for SSI, we would not count the following types of income of an ineligible parent or spouse:

Any additional increment in pay, other than any increase in basic pay, received while serving as a member of the uniformed services, if—

1. The spouse or parent received the pay as a result of deployment to or while serving in a combat zone; and
2. The spouse or parent was not receiving the additional pay immediately prior to deployment to or service in a combat zone.

Under these rules, we also would exclude from deemed resources for nine months following the month of receipt, the unspent portion of any retroactive payment of:

1. Special pay (hostile fire and imminent danger pay) received by the ineligible spouse or ineligible parent from one of the uniformed services pursuant to 37 USC 310; and
2. Family separation allowance received by the ineligible spouse or ineligible parent from one of the uniformed services pursuant to 37 USC 427 as a result of deployment to or while serving in a combat zone.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF97

3901. DEEMING OF INCOME FROM AN INELIGIBLE SPOUSE TO AN ELIGIBLE INDIVIDUAL AND AN ELIGIBLE CHILD (606P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 902(a)(5); 42 USC 1381a; 42 USC 1382; 42 USC 1382a; 42 USC 1382b; 42 USC 1382c(f); 42 USC 1382j; 42 USC 1383

CFR Citation: 20 CFR 416.1160; 20 CFR 416.1165; 20 CFR 416.1166

Legal Deadline: None

Abstract: This rule would revise the method used under the SSI program to determine income for a child who lives with both parents where one parent is ineligible for SSI because of income deemed from an ineligible spouse. Instead of deeming any excess income from the ineligible spouse to the child, referred to as "pass—through deeming," we would deem income to the child using the method we use where neither parent files for SSI. Under current rules, "pass—through" deeming has had the unintended effect of deeming more income than would have been deemed if the regular rules for deeming from ineligible parents who do not file for SSI are used.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 0960–AE50

3902. REVISED MEDICAL CRITERIA FOR EVALUATING IMMUNE SYSTEM DISORDERS (804P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We are planning to update and revise the rules that we use to evaluate immune system disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are sections 14.00 and 114.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). These listings include such disorders as HIV infection, other Immunoglobulin deficiency syndromes or deficiencies of cell—mediated immunity, System Lupus Erythematosus, Scleroderma, Polymyositis, Inflammatory Arthritis, and other connective tissue disorders.

Timetable:

Action	Date	FR Cite
ANPRM	05/09/03	68 FR 24896
ANPRM Comment Period End	07/08/03	
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF33

3903. WAGE REPORTS AND PENSION INFORMATION (809P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 432; 42 USC 902(a)(5)

CFR Citation: 20 CFR 422.114

Legal Deadline: None

Abstract: The Social Security Administration (SSA) proposes to amend its rules on processing reports of wages (paper Forms W—2, "Wage and Tax Statement," and W—3 "Transmittal of Income and Tax Statements," or equivalent W—2 and W—3 magnetic media or electronic reports) submitted annually by employers. We are proposing to eliminate the acceptance level for wage reports with unidentified or incorrectly identified wage items. We are proposing to include electronic filing as a means of wage reporting. Also, we propose replacing references to obsolete technical instruction bulletins with Magnetic Media Reporting and Electronic Filing instructions. We have updated form names and updated the address for obtaining a publication. These rules are intended to ensure that wages are reported to SSA with accurate information so that earnings can be properly credited to employees' Social Security records.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 0960–AF38

3904. NEW DISABILITY CLAIMS PROCESS—ROLES OF STATE AGENCY (816F)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 405(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.1512; 20 CFR 404.1513; 20 CFR 404.1526; 20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 404.1546; 20 CFR 404.1615; 20 CFR 404.1616; 20 CFR 416.912; 20 CFR 416.913; 20 CFR 416.926; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.946; 20 CFR 416.1015; 20 CFR 416.1016

Legal Deadline: None

Abstract: We plan to revise our regulations that pertain to the processing of initial claims for disability benefits under title II and title XVI of the Social Security Act at the initial and reconsideration steps of the administrative review process. Under these final rules, certain State agency disability examiners, familiarly called "single decisionmakers," will be responsible for the disability determinations in many initial claims for disability benefits. However, they will be able to ask for advice from State agency medical or psychological consultants when they decide they need it. We also plan to review other rules to reflect these changes, including our rules about how we decide whether a person's impairment(s) medically equals a listing.

Timetable:

Action	Date	FR Cite
NPRM	01/19/01	66 FR 5494
NPRM Comment Period End	03/20/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

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RIN: 0960–AF44

3905. AMENDMENTS TO ANNUAL EARNINGS TEST REGULATIONS (866F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 403; 42 USC 403(a); 42 USC 405(a); 42 USC 416; 42 USC 423; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5); PL 106—182

CFR Citation: 20 CFR 404.415; 20 CFR 404.416

Legal Deadline: None

Abstract: The Senior Citizen's Freedom to Work Act of 2000, enacted on April 7, 2000, eliminates the annual earnings test for beneficiaries, starting from the month in which they reach full retirement age.

Timetable:

Action	Date	FR Cite
NPRM	08/25/03	68 FR 50985
NPRM Comment Period End	10/24/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF62

3906. REVISED MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS (886P)

Priority: Other Significant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1; 20 CFR 404.1520; 20 CFR 404.1520a; 20 CFR 404.1528; 20 CFR 416.920a; 20 CFR 416.928

Legal Deadline: None

Abstract: We are planning to update and revise the rules that we use to evaluate mental disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are in sections 404.1520a and 416.920a of our regulations, and sections 12.00 and 112.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings).

Timetable:

Action	Date	FR Cite
ANPRM	03/17/03	68 FR 12639
ANPRM Comment Period End	06/16/03	
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0960–AF69

3907. STEPCHILD ENTITLEMENT AND TERMINATION REQUIREMENTS (934P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 403(a); 42 USC 403(b); 42 USC 405(a); 42 USC 416; 42 USC 423; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.339; 20 CFR 404.352; 20 CFR 404.363; 42 CFR 404.364

Legal Deadline: None

Abstract: SSA proposes to amend its regulations to incorporate the changes to the entitlement and termination requirements for stepchild's benefits introduced by the Contract with America Advancement Act of 1996. The statutory changes allow a stepchild to be considered dependent upon an insured stepparent for purposes of entitlement to benefits as a stepchild, only if he or she is receiving at least one—half support from the insured person (stepparent). The changes also require benefit termination when the stepchild's natural parent and the insured stepparent divorce. We propose to extend the termination requirement to include: (1) a divorce that ends the marriage between a stepchild's adoptive parent and the insured stepparent; and (2) a prospective annulment that ends the marriage between a stepchild's natural or adoptive parent and the stepparent. We also propose to include in the regulations our longstanding policy that a stepchild's benefits are terminated when the marriage between the stepchild's parent and the stepparent is annulled from the beginning (ab initio). These proposed rules also correct a cross—reference affecting entitlement to mother's or father's benefits, and reintroduce an inadvertently deleted definition concerning dependency determinations for grandchildren and stepgrandchildren born during the one—year support period relevant to a child's entitlement on the basis of those relationships to insured persons. These rules will reflect enacted legislation and provide accurate and complete guidelines for determining entitlement to benefits.

Timetable:

Action	Date	FR Cite
NPRM	08/12/03	68 FR 47877
NPRM Comment Period End	10/14/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF78

3908. INTERRELATIONSHIP OF OLD—AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM WITH THE RAILROAD RETIREMENT PROGRAM (943I)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 107—90, sec 103; 42 USC 405(i); 45 USC 231(a) to 231(e); 45 USC 231(l); 45 USC 231(q); 45 USC 231(r)

CFR Citation: 20 CFR 404.1401; 20 CFR 404.1402; 20 CFR 404.1404; 20 CFR 404.1405; 20 CFR 404.1413

Legal Deadline: None

Abstract: These interim final rules implement section 103 of the Railroad Retirement and Survivors' Improvement Act of 2001, which established an alternative railroad annuity vesting requirement for certain categories of individuals. Under the alternative provision, affected railroad workers with 5 or more years of service (but less than 10) become vested under the Railroad Retirement Act provided all of those years of service accrued after December 31, 1995. The provision was effective on January 1, 2002.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0960–AF82

3909. REVISED MEDICAL CRITERIA FOR EVALUATING HEMATOLOGICAL DISORDERS (974P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Sections 7.00 and 107.00 (hemic and lymphatic system) of appendix 1 to subpart P of part 404 of our regulations (404.1501 through 404.1599) describe hematological disorders that are considered severe enough to prevent a person from doing any gainful activity, or for a child claiming SSI payments under title XVI, which causes marked and severe functional limitation. We are proposing to revise these sections to ensure that the medical evaluation criteria are up—to—date and consistent with the latest advances in medical knowledge and treatment. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old—Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0960–AF88

Social Security Administration (SSA) Completed Actions

3910. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS (547F)

Priority: Info./Admin./Other

CFR Citation: 20 CFR 435.000

Completed:

Reason	Date	FR Cite
Final Action	05/27/03	68 FR 28710
Final Action Effective	05/27/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine
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RIN: 0960–AE25

3911. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG—FREE WORKPLACE (GRANTS) (554F)

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 436.000; 20 CFR 439.000

Completed:

Reason	Date	FR Cite
Final Action	11/26/03	68 FR 66533

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine
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RIN: 0960–AE27

3912. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS (555F)

Priority: Info./Admin./Other

CFR Citation: 20 CFR 437.000

Completed:

Reason	Date	FR Cite
Final Action	05/27/03	68 FR 28727
Final Action Effective	05/27/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Robert J. Augustine
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RIN: 0960–AE28

3913. RESTRICTIONS ON LOBBYING IN CONNECTION WITH THE AWARD OF GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS (556F)

Priority: Info./Admin./Other

CFR Citation: 20 CFR 438.000

Completed:

Reason	Date	FR Cite
Final Action	05/27/03	68 FR 28744
Final Action Effective	05/27/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine
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RIN: 0960–AE29

3914. EVIDENCE REQUIREMENTS FOR ASSIGNMENT OF SOCIAL SECURITY ADMINISTRATION NUMBERS (SSNS); ASSIGNMENT OF SSNS FOR NONWORK PURPOSES (751F)

Priority: Other Significant

CFR Citation: 20 CFR 422.104; 20 CFR 422.107

Completed:

Reason	Date	FR Cite
Final Rule	09/25/03	68 FR 55304
Final Rule Effective	10/27/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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Phone: 410 966—9822

RIN: 0960–AF05

3915. CLARIFICATION OF RULES INVOLVING RFC ASSESSMENTS; CLARIFICATION OF USE OF VOCATIONAL EXPERTS AND OTHER SOURCES OF THE SEQUENTIAL EVALUATION PROCESS; INCORPORATION OF "SPECIAL PROFILE" INTO REGS (808F)

Priority: Other Significant

CFR Citation: 20 CFR 404.1501; 20 CFR 404.1505; 20 CFR 404.1512; 20 CFR 404.1520; 20 CFR 404.1545; 20 CFR 404.1546; 20 CFR 404.1560; 20 CFR 404.1561; 20 CFR 404.1563; 20 CFR 404.1569a; 20 CFR 404.1594; 20 CFR 416.901; 20 CFR 416.905; 20 CFR 416.912; 20 CFR 416.920; 20 CFR 416.945; 20 CFR 416.946; 20 CFR 416.960 to 416.963; 20 CFR 416.969a; 20 CFR 416.994

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51153
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino
Phone: 410 965—1769

RIN: 0960–AF37

3916. ACCESS TO INFORMATION HELD BY FINANCIAL INSTITUTIONS (815F)

Priority: Other Significant

CFR Citation: 20 CFR 416.200; 20 CFR 416.207; 20 CFR 416.421; 20 CFR 416.640; 20 CFR 416.1231; 20 CFR 416.1242; 20 CFR 416.1245; 20 CFR 416.1247; 20 CFR 416.1320; 20 CFR 416.1321; 20 CFR 416.1335; 20 CFR 416.1337; 20 CFR 416.1618

Completed:

Reason	Date	FR Cite
Final Action	09/11/03	68 FR 53506
Final Action Effective	10/14/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eric Ice
Phone: 410 966—3233

Suzanne DiMarino
Phone: 410 965—1769

RIN: 0960–AF43

3917. CLARIFICATION OF THE DISABILITY EXCLUSION (915P)

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 404.130(f); 20 CFR 404.211(b)(2); 20 CFR 404.211(e)(1); 20 CFR 404.320(a)

Completed:

Reason	Date	FR Cite
Withdrawn	09/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ines Riley
Phone: 410 965—4138

Fran O. Thomas
Phone: 410 966—9822

RIN: 0960–AF71

3918. CLAIMANT IDENTIFICATION PILOT PROJECTS (937F)

Priority: Other Significant

CFR Citation: 20 CFR 404.617 (New); 20 CFR 416.217 (New)

Completed:

Reason	Date	FR Cite
Final Action	05/01/03	68 FR 23192
Final Action Effective	05/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Suzanne DiMarino
Phone: 410 965—1769

RIN: 0960–AF79

3919. ELIMINATION OF SANCTIONS FOR REFUSAL OF VOCATIONAL REHABILITATION SERVICES WITHOUT GOOD CAUSE (938F)

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 404.401; 20 CFR 404.402; 20 CFR 404.412; 20 CFR 404.421 to 404.423; 20 CFR 404.425; 20 CFR 404.435 to 404.437; 20 CFR 404.458; 20 CFR 404.902; 20 CFR 404.1596; 20 CFR 404.2101 to 2103; 20

CFR 404.2109; 20 CFR 404.2113; 20 CFR 404.2116; 20 CFR 404.2117; 20 CFR 416.213; 20 CFR 416.708; 20 CFR 416.1701; 20 CFR 416.1715; 20 CFR 416.2040; 20 CFR 416.2201 to 416.2203; 20 CFR 416.2209; 20 CFR 416.2213; 20 CFR 416.2216; 20 CFR 416.2217

Completed:

Reason	Date	FR Cite
Final Action	07/07/03	68 FR 40119
Final Action Effective	07/07/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Melvin Winer
Phone: 410 965—9175

Suzanne DiMarino
Phone: 410 965—1769

RIN: 0960–AF81

3920. AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC (969F)

Priority: Other Significant

CFR Citation: 20 CFR 402.125; 20 CFR 402.135; 20 CFR 402.180; 20 CFR 402.190; 20 CFR 402.195

Completed:

Reason	Date	FR Cite
Final Action	10/22/03	68 FR 60294
Final Action Effective	10/22/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ethel Burrows
Phone: 410 965—3948

Fran O. Thomas
Phone: 410 966—9822

RIN: 0960–AF91

3921. • EXTENSION OF EXPIRATION DATE FOR SEVERAL BODY SYSTEMS LISTINGS (976F)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We adjudicate claims at the third step of our sequential evaluation process for evaluating disability using the Listing of Impairments (the Listings) under the Social Security and Supplemental Security Income (SSI) programs. This final rule extends until July 1, 2005, the date on which several body system listings will no longer be effective.

Timetable:

Action	Date	FR Cite
Final Action	06/20/03	68 FR 36911
Final Action Effective	06/20/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Torkas, Policy Specialist, Social Security Administration, Office of Disability Programs, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1744

Fran O. Thomas, Social Insurance Specialist, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235—6401
Phone: 410 966—9822

RIN: 0960–AF93

3922. • REVISED MEDICAL CRITERIA FOR EVALUATING AMYOTROPHIC LATERAL SCLEROSIS (989F)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.1500, app 1; 20 CFR 416.934

Legal Deadline: None

Abstract: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate amyotrophic lateral sclereosis (ALS). We apply these criteria when you claim benefits based on disability under title II or title XVI of the Social Security Act (the Act). The revision provides that we will find you disabled if you have medical evidence showing that you have ALS.

Timetable:

Action	Date	FR Cite
Final Action	08/28/03	68 FR 51689
Final Action Effective	08/28/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Martin J. Sussman, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965—1767

RIN: 0960–AF95

[FR Doc. 03–24043 Filed 12–19–03; 8:45 am]

BILLING CODE 4191–02–S

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XLVI

Tennessee Valley Authority

Semiannual Regulatory Agenda

TENNESSEE VALLEY AUTHORITY (TVA)

TENNESSEE VALLEY AUTHORITY

18 CFR Ch. XIII

Regulatory Agenda

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Semiannual regulatory agenda.

SUMMARY: As a nonregulatory agency, TVA originates few regulations. TVA submitted a final regulation which revised the requirements applicable to the construction and maintenance of obstructions in the Tennessee River system and codified policies related to management of shoreline land under the jurisdiction of TVA which was published August 7, 2003. TVA has previously submitted, together with other Federal agencies, proposed regulations implementing title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1972, and the Age Discrimination Act of 1975 related to the definitions of "program or activity" and "program." These regulations were published in final rule August 26, 2003. TVA is therefore publishing a regulatory agenda in voluntary compliance with Executive Order No. 12866.

FOR FURTHER INFORMATION CONTACT: For further information, please contact the persons listed.

Maureen H. Dunn,

General Counsel.

Tennessee Valley Authority—Completed Actions

Sequence Number	Title	Regulation Identification Number
3923	Approval of Construction and Regulation of Structures in the Tennessee River System and Shoreline Management	3316—AA19
3924	Nondiscrimination in Federally Assisted Programs of TVA — Effectuation of Title VI of the Civil Rights Act of 1964	3316—AA20

Tennessee Valley Authority (TVA) — Completed Actions

3923. APPROVAL OF CONSTRUCTION AND REGULATION OF STRUCTURES IN THE TENNESSEE RIVER SYSTEM AND SHORELINE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 831 to 831dd

CFR Citation: 18 CFR 1304 (Revision)

Legal Deadline: None

Abstract: This action revises the requirements applicable to construction and maintenance of obstructions in the Tennessee River System to better describe the types of facilities that would be considered for approval. It also would codify policies related to management of certain shoreline lands under the jurisdiction, custody, and control of TVA.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56821
NPRM Comment Period End	11/20/00	
Final Rule	08/07/03	68 FR 46930

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Robert L. Curtis, Specialist—Land Policy, Resource Stewardship, Tennessee Valley Authority, P.O. Box 1589, 17 Ridgeway Road, Norris, TN 37828
Phone: 865 632—1552

RIN: 3316–AA19

3924. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA — EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d—7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 18 CFR 1302; 18 CFR 1307; 18 CFR 1309

Legal Deadline: None

Abstract: The Department of Justice proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act. Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint Notice of Proposed Rulemaking involving up to 24 Federal agencies, including TVA.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Franklin E. Alford, Manager, Supplier and Diverse Business Relations, Tennessee Valley Authority, 1101 Market Street, WR3J, Chattanooga, TN 37402
Phone: 423 751—7203

RIN: 3316–AA20

[FR Doc. 03–24042 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part XLVII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Federal Acquisition Regulation;
Semiannual Regulatory Agenda

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Regulatory Agenda

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 "Regulatory Planning and Review." This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Regulatory and Federal Assistance Publication Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte, Regulatory and Federal Assistance Publication Division, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on the FAR website at http://www.arnet.gov/FAR.

Dated: September 29, 2003

Ralph J. DeStefano

Acting Director, Acquisition Policy Division.

DOD/GSA/NASA (FAR)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3925	FAR Case 2003—007, Buy American Act—Nonavailable Articles	9000—AJ72
3926	FAR Case 2002—017, Elimination of Standard Form 1417, Pre—Solicitation Notice (Construction Contract)	9000—AJ73
3927	FAR Case 2002—021, Subcontracts for Commercial Items and Commercial Components	9000—AJ75

DOD/GSA/NASA (FAR)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3928	FAR Case 2000—608, New Consolidated Form for Selection of Architect—Engineer Contractors (SF—330)	9000—AJ15
3929	FAR Case 2002—010, Debarment and Suspension—Order Placement and Option Exercise	9000—AJ48
3930	FAR Case 2001—026, Depreciation Cost Principle	9000—AJ56
3931	FAR Case 2001—037, Insurance and Pension Costs	9000—AJ57
3932	FAR Case 2002—014, Debriefing—Competitive Acquisition	9000—AJ59
3933	FAR Case 2003—001, Increased Federal Prison Industries, Inc., Waiver Thresholds	9000—AJ62
3934	FAR Case 2003—019, Federal Procurement Data System	9000—AJ76

DOD/GSA/NASA (FAR)—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3935	FAR Case 1989—093, Implementation of the Anti—Lobbying Statute	9000—AD76
3936	FAR Case 1995—013, Government Property	9000—AH60
3937	FAR Case 1999—025, Cost Accounting Standards Administration	9000—AI70
3938	FAR Case 1998—020, Hazardous Material Safety Data	9000—AJ21
3939	FAR Case 2001—021, Training and Education Cost Principle	9000—AJ38
3940	FAR Case 2002—011, Procurement of Printing and Duplicating Through the Government Printing Office	9000—AJ51
3941	FAR Case 2000—305, Commercially Available Off—the—Shelf Items	9000—AJ55
3942	FAR Case 2001—034, General Provisions of the Cost Principles	9000—AJ60
3943	FAR Case 1999—603, Federal Supply Schedule Services and Blanket Purchase Agreements	9000—AJ63

DOD/GSA/NASA (FAR)—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3944	FAR Case 1999—402, FAR Part 27 Rewrite in Plain Language	9000—AJ64
3945	FAR Case 2002—006, Application of the Cost Principles and Procedures and Accounting for Unallowable Costs	9000—AJ65
3946	FAR Case 2002—027, Unsolicited Proposals	9000—AJ66
3947	FAR Case 2001—031, Deferred Compensation and Post—Retirement Benefits Other Than Pensions	9000—AJ67
3948	FAR Case 2002—008, Gain and Losses, Maintenance and Repair Costs and Material Costs	9000—AJ69
3949	FAR Case 2002—025, Unique Contract and Order Identifier Numbers	9000—AJ70
3950	FAR Case 2003—008, Share—in—Savings Contracting	9000—AJ74

DOD/GSA/NASA (FAR)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3951	FAR Case 1994—753, Travel Costs	9000—AG27
3952	FAR Case 1997—304, Electronic Commerce in Federal Procurement	9000—AI10
3953	FAR Case 2000—304, Electronic Signatures	9000—AI94
3954	FAR Case 1999—400, Geographic Use of the Term "United States"	9000—AI99
3955	FAR Case 2000—308, Prompt Payment Under Cost—Reimbursement Contracts for Services	9000—AJ17
3956	FAR Case 2001—005, Notification of Overpayment, Contract Financing Payments	9000—AJ20
3957	FAR Case 2001—030, Electronic Listing of Acquisition Vehicles for Use by More Than One Agency	9000—AJ30
3958	FAR Case 2001—029, Miscellaneous Cost Principles	9000—AJ33
3959	FAR Case 2000—009, Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items	9000—AJ34
3960	FAR Case 2001—015, Prohibited Sources	9000—AJ35
3961	FAR Case 2001—008, Compensation Cost Principle	9000—AJ36
3962	FAR Case 2002—003, Temporary Emergency Procurement Authority	9000—AJ40
3963	FAR Case 2001—024, Selling Cost Principle	9000—AJ42
3964	FAR Case 2000—005, Leadership in Environmental Management (Executive Order 13148)	9000—AJ44
3965	FAR Case 2001—035, Past Performance Evaluation of Federal Prison Industries Contracts	9000—AJ45
3966	FAR Case 2002—001, Economic Planning, Employee Morale, and Travel Costs Principles	9000—AJ46
3967	FAR Case 2001—028, Energy—Efficient Standby Power Devices	9000—AJ47
3968	FAR Case 2001—032, Elimination of the Standard Form 129, Solicitation Mailing List Application	9000—AJ50
3969	FAR Case 2002—012, Section 508 Micro—Purchase Exception Sunset Provision	9000—AJ53
3970	FAR Case 2002—026, Procurements for Defense Against or Recovery From Terrorism or Nuclear, Biological, Chemical, or Radiological Attack	9000—AJ54
3971	FAR Case 2002—029, Contract Bundling	9000—AJ58
3972	FAR Case 2002—018, Central Contractor Registration	9000—AJ61
3973	FAR Case 2003—006, Caribbean Basin Country—Dominican Republic	9000—AJ71

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Proposed Rule Stage

3925. • FAR CASE 2003—007, BUY AMERICAN ACT—NONAVAILABLE ARTICLES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 25

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to add certain food and textile items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	09/16/03	68 FR 54296
NPRM Comment Period End	11/17/03	

Action	Date	FR Cite
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW,
Washington, DC 20405
Phone: 202 501—4225
Fax: 202 501—4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ72

3926. • FAR CASE 2002—017, ELIMINATION OF STANDARD FORM 1417, PRE—SOLICITATION NOTICE (CONSTRUCTION CONTRACT)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 1; 48 CFR 36; 48 CFR 53

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to eliminate the use of the Standard Form (SF) 1417. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	09/16/03	68 FR 54294
NPRM Comment Period End	11/17/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW,
Washington, DC 20405
Phone: 202 501—4225
Fax: 202 501—4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ73

3927. • FAR CASE 2002—021, SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 44; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require that the clause at 52.244—6 Subcontracts for Commercial Components be inserted in solicitations and contracts other than those for commercial items. This regulatory action was not subject to Office of Budget and Management review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	10/27/03	68 FR 61302
NPRM Comment Period End	12/26/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW,
Washington, DC 20405
Phone: 202 501—4225
Fax: 202 501—4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ75

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Final Rule Stage

3928. FAR CASE 2000—608, NEW CONSOLIDATED FORM FOR SELECTION OF ARCHITECT—ENGINEER CONTRACTORS (SF—330)

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 1; 48 CFR 36; 48 CFR 53

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to replace Standard Forms 254 and 255 with proposed Standard Form 330, Architect—Engineer Qualification. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	10/19/01	66 FR 53314
NPRM Comment Period End	12/18/01	
NPRM Comment Period End (Extended)	01/08/02	66 FR 65792
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW,
Washington, DC 20405
Phone: 202 501—4225
Fax: 202 501—4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ15

3929. FAR CASE 2002—010, DEBARMENT AND SUSPENSION—ORDER PLACEMENT AND OPTION EXERCISE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC Ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 9

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to address the placement of orders against existing contracts with contractors that have been debarred, suspended, or proposed for debarment. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	11/04/02	67 FR 67282
NPRM Comment Period End	01/03/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501—4225
Fax: 202 501—4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ48

3930. FAR CASE 2001—026, DEPRECIATION COST PRINCIPLE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 31

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to revise the depreciation cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	01/30/03	68 FR 4876
NPRM Comment Period End	03/31/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501—4225
Fax: 202 501—4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ56

3931. FAR CASE 2001—037, INSURANCE AND PENSION COSTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to amend the insurance and indemnification cost principle and the portion of the compensation cost principle relating to pension costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	01/30/03	68 FR 4880
NPRM Comment Period End	03/31/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
Phone: 202 501—4225
Fax: 202 501—4067
Email: laurie.duarte@gsa.gov

RIN: 9000–AJ57

3932. FAR CASE 2002—014, DEBRIEFING—COMPETITIVE ACQUISITION

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement sections 1014 and 1064 of the Federal Acquisition Streamlining Act of 1994 on requirements for debriefing unsuccessful offerors under competitive proposals. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	02/04/03	68 FR 5778
NPRM Comment Period End	04/07/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ59

3933. • FAR CASE 2003—001, INCREASED FEDERAL PRISON INDUSTRIES, INC., WAIVER THRESHOLDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 8

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to increase the Federal Prison Industries, Inc.'s clearance exception threshold at part 8.606(e) from $25 to $2,500 and to eliminate the criterion that delivery is required within 10 days. By increasing this threshold to $2,500, Federal agencies will not be required to make purchases from FPI of products from FPI's Schedule that are at or below $2,500. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/22/03	68 FR 28094
Interim Final Rule Effective	05/22/03	
Interim Final Rule Comment Period End	06/23/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

URL For Public Comments:
www.acqnet.gov/far

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ62

3934. • FAR CASE 2003—019, FEDERAL PROCUREMENT DATA SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 4; 48 CFR 53

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to reflect changes in contract action reporting to the Federal Procurement Data System—Next Generation (FPDS—NG). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ76

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Long-Term Actions

3935. FAR CASE 1989—093, IMPLEMENTATION OF THE ANTI—LOBBYING STATUTE

Priority: Substantive, Nonsignificant

Legal Authority: PL 101—121, sec 319

CFR Citation: 48 CFR 3; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement section 319 of Public Law 101—121, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on Use of Appropriated Funds To Influence Certain Federal Contracting and Financial Transactions." Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/90	55 FR 3190
Interim Final Rule Comment Period End	04/02/90	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AD76

3936. FAR CASE 1995—013, GOVERNMENT PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 8; 48 CFR 45; 48 CFR 52

Legal Deadline: None

Abstract: The rule amends the Federal Acquisition Regulation (FAR) to simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	06/02/97	62 FR 30186
NPRM Comment Period End	08/15/97	
NPRM	01/10/00	65 FR 1438
NPRM Comment Period End	03/10/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AH60

3937. FAR CASE 1999—025, COST ACCOUNTING STANDARDS ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 30; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to delineate the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	04/18/00	65 FR 20854
NPRM Comment Period End	06/19/00	
NPRM	07/03/03	68 FR 40104
NPRM Comment Period End	09/02/03	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AI70

3938. FAR CASE 1998—020, HAZARDOUS MATERIAL SAFETY DATA

Priority: Other Significant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 23; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to revise the language that provides policies and procedures for contractor submission of Material Safety Data Sheets (MSDSs). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	01/04/02	67 FR 632
NPRM Comment Period End	03/05/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ21

3939. FAR CASE 2001—021, TRAINING AND EDUCATION COST PRINCIPLE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) "Training and Education Costs" cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	05/15/02	67 FR 34810
Correction	06/11/02	67 FR 40136
NPRM Comment Period End	07/15/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ38

3940. FAR CASE 2002—011, PROCUREMENT OF PRINTING AND DUPLICATING THROUGH THE GOVERNMENT PRINTING OFFICE

Priority: Economically Significant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 6; 48 CFR 8; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement the policy set forth in Office of Management and Budget (OMB Memorandum No. M—02—07, Procurement of Printing and Duplicating Through the Government Printing Office (GPO) (May 3, 2002)). In order to induce competition, save taxpayer money, and promote small business opportunities, the memorandum eliminates restrictions that mandated use of GPO as the single source and frees agencies to select printing from a wide array of sources that can demonstrate their ability to meet the Government's needs most effectively. This regulatory action is a significant regulatory action and was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	11/13/02	67 FR 68914
NPRM Comment Period End	12/13/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

URL For Public Comments: www.acqnet.gov/far

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RIN: 9000–AJ51

3941. FAR CASE 2000—305, COMMERCIALLY AVAILABLE OFF—THE—SHELF ITEMS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 12; 48 CFR 52

Legal Deadline: None

Abstract: This rule solicits comments regarding the implementation of section 4203 of the Federal Acquisition Reform Act (Pub. L. 104—106) (the Act) with respect to Commercially Available Off—the—Shelf Item Acquisitions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
ANPRM	01/30/03	68 FR 4874
ANPRM Comment Period End	03/31/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ55

3942. FAR CASE 2001—034, GENERAL PROVISIONS OF THE COST PRINCIPLES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 31

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to amend the general provisions of the cost principles contained in the FAR. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	02/04/03	68 FR 5774
NPRM Comment Period End	04/07/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ60

3943. • FAR CASE 1999—603, FEDERAL SUPPLY SCHEDULE SERVICES AND BLANKET PURCHASE AGREEMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(C)

CFR Citation: 48 CFR 8; 48 CFR 38

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to incorporate policies for services and to strengthen the procedures for establishing Blanket Purchase Agreements under the Federal Supply Schedules. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	04/18/03	68 FR 19294
Correction	04/29/03	68 FR 22772
NPRM Comment Period End	06/17/03	68 FR 19294
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

URL For Public Comments: www.acqnet.gov/far

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW,
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RIN: 9000–AJ63

3944. • FAR CASE 1999—402, FAR PART 27 REWRITE IN PLAIN LANGUAGE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to clarify, streamline, and update guidance and clauses on patents, data, and copyrights to provide a more logical presentation of this complex material. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	05/28/03	68 FR 31790
NPRM Comment Period End	07/28/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ64

3945. • FAR CASE 2002—006, APPLICATION OF THE COST PRINCIPLES AND PROCEDURES AND ACCOUNTING FOR UNALLOWABLE COSTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) sections relating to accounting for unallowable costs and application of cost principles and procedures. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	05/28/03	68 FR 28108
NPRM Comment Period End	07/21/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ65

3946. • FAR CASE 2002—027, UNSOLICITED PROPOSALS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15

Legal Deadline: None

Abstract: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107—296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. This is not a significant regulatory action and was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	06/03/03	68 FR 33330
NPRM Comment Period End	08/04/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ66

3947. • FAR CASE 2001—031, DEFERRED COMPENSATION AND POST—RETIREMENT BENEFITS OTHER THAN PENSIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 31; 48 CFR 52

Legal Deadline: None

Abstract: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by revising the paragraphs of the "compensation for personal services" cost principle relating to deferred compensation and post—retirement benefits other than pensions. This is not a significant regulatory action and, therefore, was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	06/03/03	68 FR 33326
NPRM Comment Period End	08/04/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ67

3948. • FAR CASE 2002—008, GAIN AND LOSSES, MAINTENANCE AND REPAIR COSTS AND MATERIAL COSTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15; 48 CFR 31

Legal Deadline: None

Abstract: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by deleting the cost principle regarding maintenance and repair costs, revising the cost principles regarding gains and losses on disposition or impairment of depreciable property or other capital assets, and by revising the language concerning material costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	07/07/03	68 FR 40466
NPRM Comment Period End	09/05/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ69

3949. • FAR CASE 2002—025, UNIQUE CONTRACT AND ORDER IDENTIFIER NUMBERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 4

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require that Federal agencies assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System (FPDS). Agencies must be in compliance with this requirement no later than October 1, 2003, when the next generation of FPDS, "FPDS—NG," becomes operational. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/03	68 FR 56679
Interim Final Rule Effective	10/01/03	
Interim Final Rule Comment Period End	10/31/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ70

3950. • FAR CASE 2003—008, SHARE—IN—SAVINGS CONTRACTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 16; 48 CFR 39

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to solicit comments to assist in the implementation of section 210 of the E—Government Act of 2002, Public Law 107—347. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
ANPRM	10/01/03	68 FR 56613
Correction	10/15/03	68 FR 59447
ANPRM Comment Period End	10/31/03	68 FR 56613
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ74

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Completed Actions

3951. FAR CASE 1994—753, TRAVEL COSTS

Priority: Other Significant

CFR Citation: 48 CFR 31.205—46

Completed:

Reason	Date	FR Cite
Withdrawn	06/02/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AG27

3952. FAR CASE 1997—304, ELECTRONIC COMMERCE IN FEDERAL PROCUREMENT

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 4; 48 CFR 5; 48 CFR 12; 48 CFR 13; 48 CFR 14; 48 CFR 19; 48 CFR 22; 48 CFR 34; 48 CFR 35; 48 CFR 36

Completed:

Reason	Date	FR Cite
Final Action	10/01/03	68 FR 56676
Final Action Effective	10/01/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

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RIN: 9000–AI10

3953. FAR CASE 2000—304, ELECTRONIC SIGNATURES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 4

Completed:

Reason	Date	FR Cite
Final Action	05/22/03	68 FR 28093
Final Action Effective	06/23/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI94

3954. FAR CASE 1999—400, GEOGRAPHIC USE OF THE TERM "UNITED STATES"

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 3; 48 CFR 4; 48 CFR 5; 48 CFR 6; 48 CFR 8; 48 CFR 9; 48 CFR 14; 48 CFR 19; 48 CFR 22; 48 CFR 23; 48 CFR 25; 48 CFR 26; 48 CFR 28; 48 CFR 29; 48 CFR 31; 48 CFR 35; 48 CFR 36; 48 CFR 42; 48 CFR 47; 48 CFR 52; 48 CFR 53

Completed:

Reason	Date	FR Cite
Final Action	05/22/03	68 FR 28079

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI99

3955. FAR CASE 2000—308, PROMPT PAYMENT UNDER COST—REIMBURSEMENT CONTRACTS FOR SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 32; 48 CFR 52

Completed:

Reason	Date	FR Cite
Other/Correction	05/22/03	68 FR 33231
Final Action	05/22/03	68 FR 28092
Final Action Effective	05/22/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AJ17

3956. FAR CASE 2001—005, NOTIFICATION OF OVERPAYMENT, CONTRACT FINANCING PAYMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 12; 48 CFR 32; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	10/01/03	68 FR 56682
Final Action Effective	10/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ20

3957. FAR CASE 2001—030, ELECTRONIC LISTING OF ACQUISITION VEHICLES FOR USE BY MORE THAN ONE AGENCY

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 5

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43859
Final Action Effective	07/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ30

3958. FAR CASE 2001—029, MISCELLANEOUS COST PRINCIPLES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 31; 48 CFR 47; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	05/22/03	68 FR 28091
Final Action Effective	06/23/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ33

3959. FAR CASE 2000—009, CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTE OR EXECUTIVE ORDERS—COMMERCIAL ITEMS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	05/22/03	68 FR 28096
Final Action Effective	06/23/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ34

3960. FAR CASE 2001—015, PROHIBITED SOURCES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 25; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	10/01/03	68 FR 56685
Final Action Effective	10/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ35

3961. FAR CASE 2001—008, COMPENSATION COST PRINCIPLE

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 16; 48 CFR 22; 48 CFR 31; 48 CFR 37; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43863
Final Action Effective	08/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ36

3962. FAR CASE 2002—003, TEMPORARY EMERGENCY PROCUREMENT AUTHORITY

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 12; 48 CFR 13; 48 CFR 19; 48 CFR 25

Completed:

Reason	Date	FR Cite
Final Action	10/01/03	68 FR 56681
Final Action Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ40

3963. FAR CASE 2001—024, SELLING COST PRINCIPLE

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 31

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43871
Final Action Effective	08/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ42

3964. FAR CASE 2000—005, LEADERSHIP IN ENVIRONMENTAL MANAGEMENT (EXECUTIVE ORDER 13148)

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 23; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43868
Final Action Effective	08/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AJ44

3965. FAR CASE 2001—035, PAST PERFORMANCE EVALUATION OF FEDERAL PRISON INDUSTRIES CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 8; 48 CFR 42

Completed:

Reason	Date	FR Cite
Final Action	05/22/03	68 FR 28095
Final Action Effective	06/23/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ45

3966. FAR CASE 2002—001, ECONOMIC PLANNING, EMPLOYEE MORALE, AND TRAVEL COSTS PRINCIPLES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 31

Completed:

Reason	Date	FR Cite
Final Action	10/01/03	68 FR 56686
Final Action Effective	10/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ46

3967. FAR CASE 2001—028, ENERGY—EFFICIENT STANDBY POWER DEVICES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 11; 48 CFR 23

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43857
Final Action Effective	08/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ47

3968. FAR CASE 2001—032, ELIMINATION OF THE STANDARD FORM 129, SOLICITATION MAILING LIST APPLICATION

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 1; 48 CFR 5; 48 CFR 14; 48 CFR 19; 48 CFR 22; 48 CFR 36; 48 CFR 52; 48 CFR 53

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43855
Final Action Effective	08/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ50

3969. FAR CASE 2002—012, SECTION 508 MICRO—PURCHASE EXCEPTION SUNSET PROVISION

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 39

Completed:

Reason	Date	FR Cite
Final Action	07/24/03	68 FR 43872
Final Action Effective	07/24/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ53

3970. FAR CASE 2002—026, PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 10; 48 CFR 12; 48 CFR 13; 48 CFR 19; 48 CFR 25

Completed:

Reason	Date	FR Cite
Final Action	10/01/03	68 FR 56681
Final Action Effective	10/01/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

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RIN: 9000–AJ54

3971. FAR CASE 2002—029, CONTRACT BUNDLING

Priority: Economically Significant

CFR Citation: 48 CFR 2; 48 CFR 7; 48 CFR 8; 48 CFR 16; 48 CFR 19; 48 CFR 42

Completed:

Reason	Date	FR Cite
Final Action	10/20/03	68 FR 60000
Final Action Effective	10/20/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

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RIN: 9000–AJ58

3972. • FAR CASE 2002—018, CENTRAL CONTRACTOR REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 4; 48 CFR 13; 48 CFR 32; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require contractor registration in the Central Contractor Register (CCR) database prior to award of any contract, basic agreement, basic ordering agreement, or blanket purchase agreement. In addition, the rule requires contracting officers to modify existing contracts whose period of performance extends beyond September 30, 2003, to require contractors to register in the CCR database by December 31, 2003. The rule also revises the source list of supplies at FAR 13.102 to reflect statutory changes in 15 U.S.C. 644(g). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. The rule is not a major rule under 5 U.S.C. 804.

The Paperwork Reduction Act (Pub. L. 104—13) applies because the rule contains information collection requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/03/03	68 FR 16366
NPRM Comment Period End	06/02/03	
Final Action	10/01/03	68 FR 56669
Final Action Effective	10/01/03	
Correction	10/30/03	68 FR 61866

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat (MVA), DOD/GSA/NASA (FAR), Room 4033, 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ61

3973. • FAR CASE 2003—006, CARIBBEAN BASIN COUNTRY—DOMINICAN REPUBLIC

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to reinstate the treatment of the products of the Dominican Republic as eligible products under acquisitions subject to the Trade Agreements Act, as directed by the U.S. Trade Representative (USTR). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	10/01/03	68 FR 56684
Final Action Effective	10/31/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ71

[FR Doc. 03–27062 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part XLVIII

Commodity Futures Trading Commission

Semiannual Regulatory Agenda

COMMODITY FUTURES TRADING COMMISSION (CFTC)

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Commodity Futures Trading Commission, in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of significant rules that the Commission expects to propose or promulgate over the next year. The Commission welcomes comments from small entities and others on the agenda.

FOR FURTHER INFORMATION CONTACT: Eileen A. Donovan, Assistant Secretary for FOIA Matters, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418-5096, edonovan@cftc.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that:

Semiannually, each agency shall publish in the **Federal Register** a regulatory flexibility agenda that shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1). 5 U.S.C. 602(a).

The Commission has prepared an agenda of significant rules that it presently expects may be considered during the course of the next year. These rules may have some impact on small entities.[1] In this regard, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Commission's fall 2003 regulatory flexibility agenda is set forth below.

Issued in Washington, DC on September 2, 2003, by the Commission.

Jean A. Webb,

Secretary of the Commission.

Commodity Futures Trading Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3974	Interagency Proposal To Consider Alternative Forms of Privacy Notices Under the Gramm—Leach—Bliley Act	3038—AC04

Commodity Futures Trading Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3975	Registration Exemptions Pertaining to the Offer and Sale of Foreign Futures and Foreign Options Contracts to Customers Located in the United States	3038—AB45
3976	Use of Broker—Dealers, Depository Institutions, and Farm Crediting System Institutions as Intermediaries on Derivatives Transaction Execution Facilities	3038—AB70
3977	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons; Requirements for Foreign Stock Index Contracts To Qualify as Non—Narrow—Based Indices	3038—AB75
3978	Information Access and Price Transparency For Exempt Commercial Markets	3038—AC02
3979	Collection of Claims Owed the United States Arising from Activities Under the Commission's Jurisdiction	3038—AC03
3980	Haircuts on Foreign Currency	3038—AC05

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[1] The Commission published its definition of small entity to be used in connection with rulemaking proceedings on April 30, 1982 (47 FR 18618). Pursuant to that definition, the Commission is not required to list many of the agenda items contained in this regulatory flexibility agenda. See 5 U.S.C. 602(a)(1). Moreover, the Commission has previously certified, pursuant to section 605 of the RFA, 5 U.S.C. 605, that certain items contained in this agenda will not have a significant economic impact on a substantial number of small entities. Accordingly, the listing of a rule in this regulatory flexibility agenda should not, in any event, be taken as a determination that a rule, when proposed or promulgated, will in fact require a regulatory flexibility analysis. However, the Commission hopes that the publication of an agenda that includes significant rules, regardless of their potential impact on small entities, may serve the public generally by providing an early and meaningful opportunity to participate in and comment on the formulation of new or revised regulations. In addition to publishing the regulatory flexibility agenda, the Commission also makes available to the public, on a monthly basis, a calendar and, on a weekly basis, posts an advisory on its website (http://www.cftc.gov) that lists rules that the Commission is considering or will consider in the near future.

Commodity Futures Trading Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3981	Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers	3038—AB64
3982	Investment of Customer Funds	3038—AC01

Commodity Futures Trading Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3983	Regulation of Hybrid Instruments	3038—AB69

Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3984	Performance Disclosures for Commodity Trading Advisors and Commodity Pool Operators	3038—AB39
3985	Customer Identification Program for Futures Commission Merchants and Introducing Brokers	3038—AB90
3986	Allocation of Bunched Orders	3038—AB93
3987	Treatment of Foreign Futures or Foreign Options Secured Amount	3038—AB96
3988	Exclusion for Certain Otherwise Regulated Persons From Definition of Commodity Pool Operator (CPO); Exemption From Certain Part 4 Requirements for Commodity Pool Operators & Commodity Trading Advisors	3038—AB97

Commodity Futures Trading Commission (CFTC) Prerule Stage

3974. • INTERAGENCY PROPOSAL TO CONSIDER ALTERNATIVE FORMS OF PRIVACY NOTICES UNDER THE GRAMM—LEACH—BLILEY ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 7b—2 and 12a(5); 15 USC 6801 et seq

CFR Citation: 17 CFR 160

Legal Deadline: None

Abstract: Subtitle A of the Gramm—Leach—Bliley Act (GLB Act), captioned Disclosure of Nonpublic Personal Information (15 U.S.C. 6801 et seq.), requires each financial institution to provide a notice of its privacy policies and practices to its consumer customers. In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties, and provide a consumer a reasonable opportunity to direct the institution not to share nonpublic personal information about the consumer with nonaffiliated third parties. The GLB Act agencies, including the CFTC, have published substantially identical regulations to implement GLB title V, known collectively as the "privacy rule." Many notices issued under the privacy rule were long and complex, and difficult to compare with each other. Consequently, GLB Act agencies are considering whether to amend the privacy rule to provide for simpler, more useful notices. The GLB Act agencies intend to issue an advance notice of proposed rulemaking to determine whether to propose changes to the privacy rule, and if so, will seek further public comment on specific programs. The agencies expect that consumer testing would be a key component in the development of any specific proposals.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3038–AC04

3975. REGISTRATION EXEMPTIONS PERTAINING TO THE OFFER AND SALE OF FOREIGN FUTURES AND FOREIGN OPTIONS CONTRACTS TO CUSTOMERS LOCATED IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2(a)(1)(A); 7 USC 6(b); 7 USC 6c

CFR Citation: 17 CFR 30.1; 17 CFR 30.4; 17 CFR 30.10

Legal Deadline: None

Abstract: The Commission proposes to codify some of the interpretations and positions that its staff has taken regarding registration requirements under part 30 of the Commission's rules, which governs, generally, the solicitation and sale of foreign futures and foreign options contracts to customers located in the United States. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they carry only: (1) customer omnibus accounts for U.S. FCMs; (2) U.S. affiliate accounts that are proprietary to the foreign futures and options broker; or (3) U.S. accounts that are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

Timetable:

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46613
NPRM Comment Period End	10/25/99	
Second NPRM	01/00/04	
Second NPRM Comment Period End	03/00/04	
Final Action	07/00/04	
Final Action Effective	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan A. Elliott, Attorney Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB45

3976. USE OF BROKER—DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDITING SYSTEM INSTITUTIONS AS INTERMEDIARIES ON DERIVATIVES TRANSACTION EXECUTION FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106—554, 114 Stat 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is required to coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulators (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to implement the provisions of the Commodity Futures Modernization Act of 2000 relating to the use of broker—dealers, depository institutions, and farm credit system institutions as intermediaries on derivatives transaction execution facilities.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lawrence B. Patent, Deputy Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB70

3977. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS; REQUIREMENTS FOR FOREIGN STOCK INDEX CONTRACTS TO QUALIFY AS NON—NARROW—BASED INDICES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106—554, 114 Stat 2763

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, December 21, 2001, Other.

Abstract: The Commission and the Securities and Exchange Commission are required to jointly issue (1) rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of security futures products traded on or subject to the rules of a foreign board of trade to United States persons, and (2) rules and regulations that set forth the requirements for foreign stock index contracts to qualify as non—narrow—based indices.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew V. Chapin, Attorney Advisor, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB75

3978. • INFORMATION ACCESS AND PRICE TRANSPARENCY FOR EXEMPT COMMERCIAL MARKETS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 2(h)(3)—(5)

CFR Citation: 17 CFR 36.3

Legal Deadline: None

Abstract: The proposal would revise the rules on Commission access to information on transactions on electronic trading facilities operating as exempt commercial markets under the Commodity Exchange Act to provide for access to more relevant and useful information. The proposed rules also would require such markets to publicly disseminate certain trading data if, as defined, they perform a significant price discovery function in the underlying cash market.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038–AC02

3979. • COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 31 USC 3720D; 31 CFR 285.11

CFR Citation: 17 CFR 143

Legal Deadline: None

Abstract: Pursuant to the Debt Collection Improvement Act (DCIA) of 1996, the Department of the Treasury has promulgated regulations authorizing and governing the administrative garnishment of wages of persons, not employed by the Federal government, who owe claims to the United States. Under the DCIA and Treasury regulations, Federal agencies can promulgate rules allowing for the garnishment of such claims arising from actions within their jurisdiction. As a general matter, the individual agencies' rules must adopt, or otherwise conform to, the Treasury rules. To expedite the collection of claims arising from activity within its jurisdiction, the Commission is amending its part 143 rules, governing debt collections, to provide for administrative wage garnishment.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
NPRM Comment Period End	01/00/04	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038–AC03

3980. • HAIRCUTS ON FOREIGN CURRENCY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 6f(b)

CFR Citation: 17 CFR 1.17

Legal Deadline: None

Abstract: The Commission is proposing to amend regulations that specify required capital charges, or exclusions from net capital, to be deducted by futures commission merchants (FCMs) and introducing brokers (IBs) when computing their adjusted net capital. For forward contracts that are not covered by an open futures contract or commodity option, and are in specified foreign currencies (British pounds, Canadian dollars, Japanese yen, Swiss francs or the Euro), the proposed amendment would apply a capital charge of 6 percent of the market value of the FCM's or IB's uncovered forward contracts in these currencies. Uncovered forwards in any other non—U.S. currency would remain subject to the 20 percent capital charge currently set forth in the Commission's regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038–AC05

Commodity Futures Trading Commission (CFTC) — Final Rule Stage

3981. MINIMUM FINANCIAL REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6f

CFR Citation: 17 CFR 1.17

Legal Deadline: None

Abstract: The Commission intends to propose amendments to Rule 1.17 that would adopt a risk—based capital requirement for futures commission merchants.

Timetable:

Action	Date	FR Cite
NPRM	07/09/03	68 FR 40835
NPRM Comment Period End	09/08/03	
Final Action	02/00/04	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas J. Smith, Chief Accountant and Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1121 21st Street NW., Washington, DC 20581
Phone: 202 418—5495
Email: tsmith@cftc.gov

RIN: 3038–AB64

3982. • INVESTMENT OF CUSTOMER FUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 7 USC 6d

CFR Citation: 17 CFR 1.25

Legal Deadline: None

Abstract: The Commission has proposed to amend Regulation 1.25 to allow futures commission merchants to engage in repurchase agreements with customer—deposited securities subject to certain conditions and to modify the portfolio time—to—maturity requirements for securities deposited in connection with certain collateral management programs of derivatives clearing organizations.

Timetable:

Action	Date	FR Cite
NPRM	06/30/03	68 FR 38654
NPRM Comment Period Reopened	08/06/03	68 FR 46516
NPRM Comment Period End	09/05/03	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phyllis P. Dietz, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
Phone: 202 418—5449
Fax: 202 418—5536
Email: pdietz@cftc.gov

RIN: 3038–AC01

Commodity Futures Trading Commission (CFTC) — Long-Term Actions

3983. REGULATION OF HYBRID INSTRUMENTS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy E. Yanofsky
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Fax: 202 418—5567
Email: nyanofsky@cftc.gov

RIN: 3038–AB69

Commodity Futures Trading Commission (CFTC) — Completed Actions

3984. PERFORMANCE DISCLOSURES FOR COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 4.25; 17 CFR 4.35

Completed:

Reason	Date	FR Cite
Final Action	07/21/03	68 FR 42964
Final Action Effective	08/20/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert B. Wasserman
Phone: 202 418—5092
Fax: 202 418—5528
Email: rwasserman@cftc.gov

RIN: 3038–AB39

3985. CUSTOMER IDENTIFICATION PROGRAM FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103; 17 CFR 42

Completed:

Reason	Date	FR Cite
Final Action	05/09/03	68 FR 25149
Final Action Effective	06/09/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Office of General Counsel
Phone: 202 418—5120
Fax: 202 418—5524
Email: amlstaff@cftc.gov

RIN: 3038–AB90

3986. ALLOCATION OF BUNCHED ORDERS

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 1.35

Completed:

Reason	Date	FR Cite
Final Action	06/11/03	68 FR 34790
Final Action Effective	07/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: R. Trabue Bland
Phone: 202 418—5466
Email: tbland@cftc.gov

RIN: 3038–AB93

3987. TREATMENT OF FOREIGN FUTURES OR FOREIGN OPTIONS SECURED AMOUNT

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 30.7

Completed:

Reason	Date	FR Cite
Withdrawn	07/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas J. Smith
Phone: 202 418—5495
Email: tsmith@cftc.gov

RIN: 3038–AB96

3988. EXCLUSION FOR CERTAIN OTHERWISE REGULATED PERSONS FROM DEFINITION OF COMMODITY POOL OPERATOR (CPO); EXEMPTION FROM CERTAIN PART 4 REQUIREMENTS FOR COMMODITY POOL OPERATORS & COMMODITY TRADING ADVISORS

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 4.5; 17 CFR 4.7; 17 CFR 4.12 to 4.14; 17 CFR 4.21; 17 CFR 4.22; 17 CFR 4.31

Completed:

Reason	Date	FR Cite
Final Action	08/08/03	68 FR 47221
Final Action Effective	08/08/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Barbara S. Gold
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Christopher W. Cummings
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Email: ccummings@cftc.gov

RIN: 3038–AB97

[FR Doc. 03–24024 Filed 12–19–03; 8:45 am]

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Monday,
December 22, 2003

Part XLIX

Consumer Product Safety Commission

Semiannual Regulatory Agenda

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Regulatory Flexibility Act; Semiannual Regulatory Flexibility and Unified Agendas

AGENCY: Consumer Product Safety Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: In this document, the Commission publishes its semiannual regulatory flexibility agenda. In addition, this document includes an agenda of regulatory actions the Commission expects to be under development or review by the agency during the next year. This document meets the requirements of the Regulatory Flexibility Act and Executive Order 12866.

DATES: The Commission welcomes comments on each subject area of the agenda, particularly from small entities. Written comments concerning the agenda should be received in the Office of the Secretary by January 31, 2003.

ADDRESSES: Comments on the regulatory flexibility agenda should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001; Telephone (301) 504-0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814-4423. Comments should be captioned "Regulatory Flexibility Agenda." Comments may also be filed by telefacsimile to (301) 504-0127, or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Jacqueline Elder, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, Washington, DC 20207-0001, telephone (301) 504-7645, e-mail jelder@cpsc.gov. For further information regarding a particular item on the agenda, consult the individual listed in the column headed "Contact" for that particular item.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small businesses, small governmental organizations, and other small entities. Section 602 of the RFA (5 U.S.C. 602) requires each agency to publish twice each year a regulatory flexibility agenda containing a brief description of the subject area of any rule expected to be proposed or promulgated that is likely to have a "significant economic impact" on a "substantial number" of small entities. The agency must also provide a summary of the nature of the rule, and a schedule for acting on each rule for which the agency has issued a notice of proposed rulemaking.

The regulatory flexibility agenda is also required to contain the name and address of the agency official knowledgeable about the items listed. Further, agencies are required to provide notice of their agendas to small entities and to solicit their comments by direct notification, or by inclusion in publications likely to be obtained by such entities.

Additionally, Executive Order 12866 requires each agency to publish twice each year a regulatory agenda of regulations under development or review during the next year, and states that such an agenda may be combined with the agenda published in accordance with the RFA. The regulatory flexibility agenda published below lists the regulatory activities expected to be under development or review during the next 12 months. This agenda also includes regulatory activities that have been completed by the Commission prior to publication. It includes all such activities, whether or not they may have a significant economic impact on a substantial number of small entities.

The agenda contains a brief description and summary of each regulatory activity, including the objectives and legal basis for each; an approximate schedule of target dates, subject to revision, for the development or completion of each activity, and the name and telephone number of a knowledgeable agency official concerning particular items on the agenda. All agency contacts have the same address: Consumer Product Safety Commission, Washington, DC 20207-0001.

Dated: September 11, 2003.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

Consumer Product Safety Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3989	Flammability Standard for Upholstered Furniture	3041—AB35
3990	Petition HP 00—2 Requesting a Rule Declaring Natural Rubber Latex a Strong Sensitizer	3041—AB88
3991	Petition CP 02—01 Requesting a Rule Adopting ASTM F400, Safety Standard for Lighters as a Consumer Product Safety Standard	3041—AC01
3992	Petition CP 02—3 Requesting a Standard for Hunting Tree Stands and a Ban of Waist Belt Restraints Used With Hunting Tree Stands	3041—AC07
3993	Petition CP 03—1/HP 03—1 Requesting a Standard for Bunk Bed Corner Posts	3041—AC10

Consumer Product Safety Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3994	Proposed Rule on Baby Bath Seats	3041—AC03

Consumer Product Safety Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
3995	Amendment of Safety Regulations for Cribs	3041—AB67
3996	Amendment of the Standard for the Flammability of Clothing Textiles	3041—AB68
3997	Portable Bed Rails	3041—AB91
3998	Proposed Standard To Address Open—Flame Ignition of Mattresses/Bedding	3041—AC02
3999	Test Method for Determining Applicability of Cautionary Labeling and Child—Resistant Packaging to Hydrocarbon—Containing Products in Spray Packaging	3041—AC05
4000	Petition CP 02—4/HP 02—1 Requesting a Ban of All—Terrain Vehicles That Are Sold for the Use of Children Under 16 Years Old	3041—AC11
4001	Possible Special Packaging Standard for Household Products Containing Hydroxides	3041—AC12
4002	Petition PP 03—1 Requesting an Amendment To Child—Resistance Testing Pass/Fail Criterion for Unit Dose Packaging	3041—AC17
4003	Petition CP 03—3 Requesting the Labeling of Weightlifting Bench Press Benches To Reduce or Prevent Deaths Due to Asphyxia/Anoxia	3041—AC18
4004	Petition CP 03—2 Requesting Performance Standards for a System To Reduce or Prevent Injuries from Contacting the Blade of a Table Saw	3041—AC19

Consumer Product Safety Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4005	Petition HP 01—1 Requesting the Development of a Performance Standard for Bicycle Handlebars	3041—AB94
4006	Petition HP 01—03 Requesting a Ban on Use of Chromated—Copper—Arsenate (CCA) Treated Wood in Playground Equipment	3041—AB97
4007	Petition CP 02—2 Requesting a Rule To Require a Performance Standard for Auxiliary Hazard Lighting Systems on Snowmobiles	3041—AC09
4008	Requirements for Bicycles—Tests and Test Procedures; Correction	3041—AC20

Consumer Product Safety Commission (CPSC) Prerule Stage

3989. FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 15 USC 1191, Flammable Fabrics Act

CFR Citation: 16 CFR 1640

Legal Deadline: None

Abstract: On June 15, 1994, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding for development of a flammability standard to address risks of death, injury, and property damage from fires associated with ignition of upholstered furniture by small open—flame sources such as matches, lighters, or candles. The CPSC staff conducted research and developed a draft flammability performance standard. The draft standard was first presented to stakeholders at a 1996 ASTM voluntary standards meeting. The staff also worked with industry and voluntary standards groups to develop possible alternatives to a federal rule. In 1997, the staff forwarded a briefing package containing the draft standard and supporting data to the Commission.

In 1998, the Commission held a public hearing to gather additional information beyond that available to the agency on the potential toxicity, health risks, and environmental effects associated with flame—retardant chemicals that might be used to meet a standard. In CPSC's 1999 appropriations legislation, Congress directed the Commission to contract with the National Academy of Sciences (NAS) for an independent study of potential health hazards associated with the use of flame retardant chemicals that might be used in upholstered furniture fabrics to meet a CPSC standard. The final NAS report was published in July 2000. The report concluded that of 16 flame—retardant chemicals reviewed, 8 could be used in upholstered furniture fabrics without presenting health hazards to consumers.

A CPSC staff risk assessment concluded that a number of flame—retardant chemicals are available that would not present health risks to consumers, although additional data are needed for some other chemicals. The CPSC staff has also worked with the National Institute of Occupational Safety and Health and the Environmental Protection Agency to evaluate possible impacts of flame—retardant chemical use on worker safety and the environment.

In 2001, the CPSC staff forwarded a briefing package containing an updated draft standard and supporting data to the Commission. In 2002, the Commission staff held a public meeting to receive any new technical information and recommendations from interested parties on the upholstered furniture project. In 2003, the staff forwarded a package to the Commission analyzing the information received at the meeting, and a package recommending that the Commission expand its proceeding to cover both small open flame and cigarette ignition risks. On October 17, 2003, the Commission voted to issue a new ANPRM to start a proceeding to cover both small open flame and cigarette ignition risks.

Timetable:

Action	Date	FR Cite
ANPRM	06/15/94	59 FR 30735
ANPRM Comment Period End	08/15/94	
Staff Briefing of Commission on NPRM	12/18/97	
Commission Voted To Defer Action Pending Results of Toxicity Hearing	03/02/98	
Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame Retardant Chemicals	03/17/98	63 FR 13017
NAS Study Completed (Required by Congress)	07/10/00	
Staff Sent Briefing Package to Commission	11/01/01	
Meeting Notice	03/20/02	67 FR 12916
Staff Held Public Meeting	06/18/02	
Second Day of Public Meeting	06/19/02	
Staff Sent Analysis of Information From Public Meeting to the Commission	02/06/03	
Staff Sent Regulatory Options to Commission	07/12/03	
Notice of September 24 Public Meeting	08/27/03	68 FR 51564
Commission Decision	10/17/03	
ANPRM	10/23/03	68 FR 60629
ANPRM Comment Period End	12/22/03	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Dale R. Ray, Project Manager, Consumer Product Safety Commission, Directorate for Economic Analysis, Washington, DC 20207
Phone: 301 504—7704
Email: dray@cpsc.gov

RIN: 3041–AB35

3990. PETITION HP 00—2 REQUESTING A RULE DECLARING NATURAL RUBBER LATEX A STRONG SENSITIZER

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from Debi Adkins, Editor, Latex Allergy News, requests that the Commission issue a rule declaring that natural rubber latex (NRL) and products containing NRL are strong sensitizers under the Federal Hazardous Substances Act (FHSA) and require labeling. NRL is in such consumer products as gloves, adhesives, shoes, balloons, pacifiers, and carpet backing, as well as many medical products. The petitioner states that a portion of the population has developed an allergy to latex that can be debilitating, even causing death. On March 21, 2000, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. On May 24, 2000, at the request of several persons, the Commission published a notice extending the original due date for comments of May 22, 2000, for 30 days to June 21, 2000. Eighty—four comments were received. Before completing the briefing package, the staff asked Federal experts to review the staff's assessment of the health effects related to latex. The staff incorporated comments from this review and has completed a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	03/02/00	
Notice	03/21/00	65 FR 15133
Comment Period End	05/22/00	
Comment Period Extended	05/24/00	65 FR 33525
Comment Period End	06/21/00	
Federal Expert Review Completed	10/28/02	
Staff Sent Briefing Package to Commission	10/16/03	
Notice of Staff Briefing and Public Meeting Held on December 10, 2003	11/14/03	68 FR 64610
Commission Decision	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Suzanne Barone Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
Phone: 301 504—7256
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RIN: 3041–AB88

3991. PETITION CP 02—01 REQUESTING A RULE ADOPTING ASTM F400, SAFETY STANDARD FOR LIGHTERS AS A CONSUMER PRODUCT SAFETY STANDARD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2058, Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Lighter Association, Inc. requests that the Commission issue a rule adopting an ASTM voluntary standard for lighters as a consumer product safety standard. The voluntary standard contains numerous safety requirements for cigarette lighters. On January 17, 2002, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The comment period closed on March 18, 2002. The Lighter Association submitted supplemental information in support of the petition on November 19, 2002. The staff is reviewing all information received and is preparing a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	12/26/01	
Notice	01/17/02	67 FR 2420
Comment Period End	03/18/02	
Staff Sends Briefing Package to Commission	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Rikki Z. Khanna, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504—7546
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RIN: 3041–AC01

3992. PETITION CP 02—3 REQUESTING A STANDARD FOR HUNTING TREE STANDS AND A BAN OF WAIST BELT RESTRAINTS USED WITH HUNTING TREE STANDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2058(i), Consumer Product Safety Act

CFR Citation: None

Legal Deadline: None

Abstract: A petition from Carol Pollack—Nelson, Ph.D. requests that the Commission issue regulations that would establish a mandatory standard for hunting tree stands to address the risk of falling, and ban waist belt restraints used with the tree stands. On May 1, 2002, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The staff is preparing a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	04/15/02	
Notice	05/01/02	67 FR 21640
Comment Period End	07/01/02	
Staff Sends Briefing Package to Commission	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: DeWane J. Ray, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504—7547
Email: jray@cpsc.gov

RIN: 3041–AC07

3993. PETITION CP 03—1/HP 03—1 REQUESTING A STANDARD FOR BUNK BED CORNER POSTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1262(j), Federal Hazardous Substances Act; 15 USC 2058(i), Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Danny Foundation requests that the Commission establish a standard to address an alleged hazard of strangulation posed by bunk bed corner posts. The petitioner asserts that due to the height of bunk beds, corner posts on bunk beds pose a substantial risk to children when the children's clothing, bedding, or other items become caught on the corner posts. On November 8, 2002, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The comment period closed on January 7, 2003. The staff is preparing a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	10/23/02	
Notice	11/08/02	67 FR 68107
Comment Period End	01/07/03	
Staff Sends Briefing Package to Commission	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Debra L. Sweet, Project Manager, Consumer Product Safety Commission, Directorate for Epidemiology, Washington, DC 20207
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RIN: 3041–AC10

Consumer Product Safety Commission (CPSC) **Proposed Rule Stage**

3994. PROPOSED RULE ON BABY BATH SEATS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking (ANPRM), published in the Federal Register on August 1, 2001, requested comments on a rulemaking proceeding that could result in a mandatory rule addressing baby bath seats. These are consumer products used to hold an infant in a bathtub while the child is being bathed. The Commission voted to publish the ANPRM and proceed with rulemaking after considering the staff's analysis of available data and information provided by the petitioners, the Consumer Federation of America and other consumer groups who requested that the Commission ban baby bath seats and bath rings. The staff briefed the Commission on July 28, 2003, and the Commission received oral comments from the public on the same date. The staff evaluated the comments received at the hearing and sent a briefing package to the Commission. On October 16, 2003, the Commission decided to issue a notice of proposed rulemaking and directed the staff to prepare it for the Commission's consideration.

Timetable:

Action	Date	FR Cite
ANPRM	08/01/01	66 FR 39692
ANPRM Comment Period End	10/01/01	
Staff Sends Briefing Package to Commission	05/08/03	
Staff Briefed Commission	07/28/03	
Hearing	07/28/03	
Commission Decision	10/16/03	
Staff Sends Draft NPRM to Commission	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504—7577
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RIN: 3041–AC03

Consumer Product Safety Commission (CPSC) **Long-Term Actions**

3995. AMENDMENT OF SAFETY REGULATIONS FOR CRIBS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553, Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: 16 CFR 1508; 16 CFR 1509

Legal Deadline: None

Abstract: On December 16, 1996, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding that could result in amendment of the safety regulations for full—size and non—full—size cribs, 16 CFR parts 1508 and 1509. Among the regulatory alternatives under consideration is amendment of the regulations to add tests to assure that slats will not disengage from the side panels of cribs. The Commission began this proceeding after considering information about incidents in which crib slats disengaged from the side panels of cribs, creating a risk that children may become entrapped between the remaining slats or fall out of the crib. At the urging of CPSC staff, in April 1999, the voluntary standard for cribs designated, "Specification for Full Size Baby Cribs (ASTM F1169—99)," and published by ASTM International was revised to include performance requirements for crib slats. The Commission will consider written comments received in response to the ANPRM, and assess the adequacy of and conformance with the voluntary standard before deciding whether to continue the proceeding by publication of a notice of proposed rulemaking, or terminate further proceedings.

Timetable:

Action	Date	FR Cite
Staff Recommended Revisions to Voluntary Standard	09/30/96	
ANPRM	12/16/96	61 FR 65996
ANPRM Comment Period End	02/14/97	
Revisions to Voluntary Standard Approved	04/10/99	
Voluntary Certification Program Begins	03/01/00	
Staff Began Monitoring Adequacy of and Conformance with Revised Voluntary Standard	03/27/01	
Staff Completes Monitoring Adequacy and Conformance	To Be Determined	
Staff Sends Briefing Package to Commission	To Be Determined	
Commission Decision	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504—7577
Email: phackett@cpsc.gov

RIN: 3041–AB67

3996. AMENDMENT OF THE STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1191, Flammable Fabrics Act

CFR Citation: 16 CFR 1610

Legal Deadline: None

Abstract: The Standard for the Flammability of Clothing Textiles prohibits the manufacture, importation, or sale of clothing, and fabrics and related materials intended for use in clothing, which are dangerously flammable because of rapid and intense burning. The standard prescribes the apparatus, procedure, and criteria to be used for testing to determine compliance with that standard. The standard was made mandatory by the Flammable Fabrics Act of 1953 (Pub. L. 83—88, 67 Stat. 111; June 30, 1953). Some of the equipment and procedures specified by the standard, particularly those for laundering and cleaning of test specimens, have become obsolete, unavailable, or unrepresentative of current practices. The staff prepared a briefing package describing modifications of the standard that may be needed to assure that the test in the standard is conducted with equipment and procedures representative of conditions to which garments currently are exposed. After consideration of the briefing package, the Commission decided to begin a proceeding for amendment of the standard. An advance notice of proposed rulemaking was published in the Federal Register on September 12, 2002. The staff is reviewing public comments and will develop proposed amendments for Commission consideration.

Timetable:

Action	Date	FR Cite
Staff Sent Briefing Package to Commission	06/11/02	
Commission Decision	08/28/02	
ANPRM	09/12/02	67 FR 57770
ANPRM Comment Period End	11/12/02	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Margaret L. Neily, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504—7530
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RIN: 3041–AB68

3997. PORTABLE BED RAILS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is considering whether certain portable bed rails present an unreasonable risk of injury that should be regulated. A portable bed rail is a device intended to be installed on an adult bed to prevent a child from falling out of the bed. Such bed rails may be constructed in a manner that allows children to become entrapped between the portable bed rail and the bed. This entrapment can result in serious injury or death. The ASTM standard for bed rails has been revised and staff will evaluate the adequacy of, and conformance to, the revised standard. Following this evaluation, the Commission staff will prepare a briefing package for Commission consideration as to whether to continue the rulemaking.

Timetable:

Action	Date	FR Cite
Staff Sent Briefing Package to Commission	06/28/00	
Commission Decision	09/21/00	
ANPRM	10/03/00	65 FR 58968
ANPRM Comment Period End	12/04/00	
Staff Sent Briefing Package to Commission	10/01/01	
Commission Decision	10/30/01	
Staff Evaluates Conformance to Voluntary Standard	To Be Determined	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504—7577
Email: phackett@cpsc.gov

RIN: 3041–AB91

3998. PROPOSED STANDARD TO ADDRESS OPEN—FLAME IGNITION OF MATTRESSES/BEDDING

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1193, Flammable Fabrics Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In 1995, the Commission staff began a project on mattress fires. Subsequent to that, the Commission docketed two petitions from the Children's Coalition for Fire—Safe Mattresses, FP 00—1 and FP 00—2, requesting certain standards to address the open flame ignition hazard with mattresses/bedding. On October 2, 2001, the Commission voted to grant these two petitions and issue an ANPRM addressing this mattress flammability hazard. The Commission published an advance notice of proposed rulemaking (ANPRM) in the Federal Register of October 11, 2001, that requested comments on a rulemaking proceeding that could result in a mandatory flammability standard addressing open flame ignition of mattresses/bedding. The staff will address public comments on the ANPRM and prepare a briefing package for Commission consideration with a draft proposed rule for mattresses. The staff is also preparing a briefing package for Commission consideration as to whether to issue an ANPRM to address the flammability of bedding.

Timetable:

Action	Date	FR Cite
ANPRM	10/11/01	66 FR 51886
ANPRM Comment Period End	12/10/01	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AC02

3999. TEST METHOD FOR DETERMINING APPLICABILITY OF CAUTIONARY LABELING AND CHILD—RESISTANT PACKAGING TO HYDROCARBON—CONTAINING PRODUCTS IN SPRAY PACKAGING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1471, Poison Prevention Packaging Act; 15 USC 1261(p), Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On January 3, 2000, CPSC issued a notice of proposed rulemaking under the Poison Prevention Packaging Act (PPPA) to require child—resistant packaging of prepackaged products that contain liquid hydrocarbons of low viscosity, including aerosol/trigger/pump packaged products (spray products) that expel product in a stream. The final rule issued on October 25, 2001, covered liquid hydrocarbon—containing products other than these spray products.

Under current CPSC guidance, special cautionary labeling under the Federal Hazardous Substances Act (FHSA) would also be required for most hydrocarbon—containing spray products that expel product as a stream. The staff has now developed a quantitative test method to identify those hydrocarbon—containing spray products that pose an aspiration hazard. The staff is preparing a briefing package for the Commission's consideration that may recommend using this test method to determine applicability of the FHSA special cautionary labeling and PPPA child—resistant packaging requirements to spray products that expel product in a stream.

Timetable:

Action	Date	FR Cite
NPRM	01/03/00	65 FR 93
NPRM Comment Period End	03/20/00	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3041–AC05

4000. PETITION CP 02—4/HP 02—1 REQUESTING A BAN OF ALL—TERRAIN VEHICLES THAT ARE SOLD FOR THE USE OF CHILDREN UNDER 16 YEARS OLD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 553(e) Administrative Procedure Act; 15 USC 2056 Consumer Product Safety Act; 15 USC 1261 Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Consumer Federation of America and several other groups requests that the Commission ban adult—sized four—wheel, all—terrain vehicles (ATVs) that are sold for the use of children under age 16. The petitioners assert that these ATVs pose an unreasonable risk of injury and death to children. In January 2003, the Commission released a risk analysis of ATV use. The Commission held a public hearing on June 5, 2003, in Morgantown, West Virginia. The staff is reviewing available information and preparing a briefing package for Commission consideration.

Timetable:

Action	Date	FR Cite
Petition Docketed	09/26/02	
Notice	10/18/02	67 FR 64353
Comment Period End	12/17/02	
Comment Period Extended	12/26/02	67 FR 78776
Comment Period End	03/16/03	
Notice of Public Hearing	04/23/03	68 FR 19975
Public Hearing	06/05/03	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AC11

4001. POSSIBLE SPECIAL PACKAGING STANDARD FOR HOUSEHOLD PRODUCTS CONTAINING HYDROXIDES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 1471, Poison Prevention Packaging Act; 15 USC 1261(p), Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Sodium and potassium hydroxide are caustic substances found in many household products. In addition to sodium and potassium hydroxide, other hydroxides, such as calcium, lithium, and ammonium hydroxide are also found in consumer products. There are numerous reports of injuries, ranging from minor irritation to second degree burns of the oral cavity, esophagus, eyes, and skin resulting from exposure to these products. Because of the potential for injury to children, household substances in dry forms containing 10 percent or more by weight of free or chemically unneutralized sodium and/or potassium hydroxide, and all other household substances containing 2 percent or more by weight of free or chemically unneutralized sodium and/or potassium hydroxide currently require child resistant packaging under the Poison Prevention Packaging Act.

Based upon new injury and toxicity information, the staff is considering whether to recommend: (1) requiring special packaging for all hydroxides, and (2) decreasing the percentage of sodium and potassium hydroxide for special packaging to be required. The staff is preparing a briefing package for Commission consideration.

Timetable:

Action	Date	FR Cite
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: John W. Boja, Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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RIN: 3041–AC12

4002. • PETITION PP 03—1 REQUESTING AN AMENDMENT TO CHILD—RESISTANCE TESTING PASS/FAIL CRITERION FOR UNIT DOSE PACKAGING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1471, Poison Prevention Packaging Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Healthcare Compliance Packaging Council (HCPC) requests that the Commission amend the regulatory definition of a child—resistance test failure for unit dose, i.e., non—reclosable, packaging under the Poison Prevention Packaging Act, 15 U.S.C. 1471—1476. Specifically, the HCPC requests that the Commission eliminate the current criterion related to the toxicity of the substance to be packaged and define a unit dose packaging failure to be a child gaining access to more than eight individual unit doses. The staff is reviewing available information and will prepare a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	05/12/03	
Other/Notice	06/16/03	68 FR 35614
Other/Comment Period End	08/15/03	
Staff Sends Briefing Package to Commission	To Be Determined	
Commission Decision	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AC17

4003. • PETITION CP 03—3 REQUESTING THE LABELING OF WEIGHTLIFTING BENCH PRESS BENCHES TO REDUCE OR PREVENT DEATHS DUE TO ASPHYXIA/ANOXIA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2051, Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: V. Patteson Lombardi, Ph.D., requests that the Commission issue a rule requiring a warning label on both uprights of weightlifting bench press benches. He asserts that the labeling is necessary to reduce or eliminate deaths due to asphyxia/anoxia caused by being trapped under a bench press barbell. The staff is reviewing available information and will prepare a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	06/24/03	
Notice	07/18/03	68 FR 42692
Comment Period End	09/16/03	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Timothy P. Smith, Project Manager, Consumer Product Safety Commission, Division of Human Factors, Directorate for Engineering Sciences, Washington, DC 20207
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RIN: 3041–AC18

4004. • PETITION CP 03—2 REQUESTING PERFORMANCE STANDARDS FOR A SYSTEM TO REDUCE OR PREVENT INJURIES FROM CONTACTING THE BLADE OF A TABLE SAW

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2051, Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Messrs. Fanning, Fulmer, and Gass, et al., request that the Commission issue a rule prescribing performance standards for a system to reduce or prevent injuries from contacting the blade of a table saw. The staff is reviewing available information and will prepare a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	06/10/03	
Notice	07/09/03	68 FR 40912
Comment Period Extended	09/05/03	68 FR 52753
Comment Period End	11/07/03	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3041–AC19

4005. PETITION HP 01—1 REQUESTING THE DEVELOPMENT OF A PERFORMANCE STANDARD FOR BICYCLE HANDLEBARS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: None

Legal Deadline: None

Abstract: A petition from Flaura Koplin Winston, M.D., Ph.D., Director, Trauma Link: The Interdisciplinary Pediatric Injury Control Research Center, Children's Hospital of Philadelphia, requests that the Commission develop a performance standard for bicycle handlebars regarding energy dissipation and distribution during impact. The request was docketed as a petition on January 23, 2001. A notice requesting comment on the petition was published in the Federal Register on February 14, 2001. The initial comment period closed on April 16, 2001. The comment period was extended to May 16, 2001. The Commission denied the petition on July 11, 2003. The staff is working with the ASTM International Task Group on Handlebars to develop voluntary performance requirements to address this risk of injury.

Timetable:

Action	Date	FR Cite
Petition Docketed	01/23/01	
Notice	02/14/01	66 FR 10273
Comment Period End	04/16/01	
Notice	04/16/01	66 FR 19429
Comment Period End	05/16/01	
Staff Sent Briefing Package to Commission	06/12/03	
Petition Denied	07/11/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3041–AB94

4006. PETITION HP 01—03 REQUESTING A BAN ON USE OF CHROMATED—COPPER—ARSENATE (CCA) TREATED WOOD IN PLAYGROUND EQUIPMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 1262, Federal Hazardous Substance Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Environmental Working Group and Healthy Building Network, docketed June 20, 2001, requests that the Commission enact an immediate ban on the use of chromated copper arsenate (CCA) treated wood in playground equipment. This treatment is used as a pesticide in the wood. The petitioners assert that a ban is necessary because recent research has shown that arsenic is more carcinogenic than was previously recognized, and is present at significant concentrations on CCA treated wood and in underlying soil. They further assert that the health risks posed by this wood are greater than was previously recognized, and that past risk assessments were incomplete. The petitioners also requested that the Commission review the safety of CCA treated wood for general use. Such a review would not require rulemaking to implement. Therefore, this request was not docketed. On July 13, 2001, the Commission published a notice in the Federal Register to solicit comments on the petition. The 60—day comment period ended on September 11, 2001. Commission staff reviewed comments received on the petition and conducted studies to obtain exposure data to assess possible health risks to children from the use of CCA—treated wood in playground equipment. The Conference report accompanying the Commission's FY 2002 appropriation directed the CPSC to submit a report to Congress on its work on CCA treated wood and steps taken to inform State and local governments of that work. The report was submitted to the appropriations committees of both houses of Congress on February 15, 2002. Also, in February 2002, the USEPA announced that the manufacturers of CCA had requested that registrations of CCA be cancelled, effective December 31, 2003. The staff's exposure and risk assessment was reviewed by outside experts. Commission staff prepared an options briefing package, including its risk assessment, that was sent to the Commission on February 7, 2003, for its consideration. The Commission held a public meeting on March 17—18, 2003, that included a briefing by CPSC staff members on their studies and evaluations, as well as testimony from interested public parties. The Commission's staff analyzed comments received at the hearing and after the hearing and prepared another package for the Commission that responds to these comments. On November 4, 2003, the Commission voted to deny the petition.

Timetable:

Action	Date	FR Cite
Petition Docketed	06/20/01	
Notice on Petition	07/13/01	66 FR 36756
Comment Period End	09/11/01	
Notice on Protocols	09/20/01	66 FR 48428
Comment Period End	10/22/01	
Expert Assessment Completed	12/01/02	
Staff Sent Briefing Package to Commission	02/07/03	
Public Meeting	03/17/03	
Staff Sent Package to the Commission Responding to Public Comments	10/09/03	
Petition Denied	11/04/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AB97

4007. PETITION CP 02—2 REQUESTING A RULE TO REQUIRE A PERFORMANCE STANDARD FOR AUXILIARY HAZARD LIGHTING SYSTEMS ON SNOWMOBILES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2058, Consumer Product Safety Act

CFR Citation: None

Legal Deadline: None

Abstract: In correspondence dated February 8, 2002, Allen J. Lakosky and Michelle Robillard of Snow Glow, Inc., requested that the Commission issue a rule prescribing performance standards for auxilliary lighting systems on snowmobiles. A notice was published in the Federal Register on April 30, 2002, in which the Commission solicited public comments concerning the petition. The staff prepared a briefing package for consideration by the Commission. The Commission denied the petition on August 4, 2003.

Timetable:

Action	Date	FR Cite
Petition Docketed	03/15/02	
Notice	04/30/02	67 FR 21222
Comment Period End	07/01/02	
Staff Sends Briefing Package to Commission	07/17/03	
Petition Denied	08/04/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3041–AC09

4008. • REQUIREMENTS FOR BICYCLES—TESTS AND TEST PROCEDURES; CORRECTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Deadline: None

Abstract: An immediately effective final rule to correct minor obvious typographical errors in equation defining criteria for the reflective tire and rim test in the Commission's bicycle regulations at 16 CFR part 1512.

Timetable:

Action	Date	FR Cite
Staff Sends Briefing Package to Commission	08/18/03	
Commission Approved Final Rule for Publication	08/26/03	
Final Rule	09/05/03	68 FR 52690
Final Action Effective	09/05/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3041–AC20

[FR Doc. 03–24028 Filed 12–19–03; 8:45 am]

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December 22, 2003

Part L

Farm Credit Administration

Semiannual Regulatory Agenda

FARM CREDIT ADMINISTRATION (FCA)

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Farm Credit Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Farm Credit Administration (FCA), as an independent regulatory agency, in compliance with Executive Order 12866, sets forth the following agenda of regulations, which it will have under development and review during the 12 months following publication.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Technical Editor, Office of the Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102, (703) 883-4125, TTY (703) 883-4056.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small entities. FCA regulations, which apply to Farm Credit banks and associations, generally do not and will not have a substantial impact on "small entities" as that term is defined in the Regulatory Flexibility Act.

The FCA, as an independent regulatory agency, is exempt from certain provisions of Executive Order 12866. It participates in this joint publication to further the public interest by including the FCA in a single source of information concerning current and projected rulemaking and reviews of existing regulations, pursuant to section 4 of Executive Order 12866.

Dated: September 12,2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

Farm Credit Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4009	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations—Investments in Rural America	3052—AB92
4010	Title IV Conservators, Receivers, and Voluntary Liquidations; Joint and Several Liability—Priority of Claims	3052—AC16

Farm Credit Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4011	Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations—OFI Lending	3052—AB96
4012	Loan Policies and Operations—Young, Beginning, and Small Farmers and Ranchers	3052—AC07
4013	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—Leverage Ratio	3052—AC08
4014	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—Risk—Weighting Revisions	3052—AC09
4015	Federal Agricultural Mortgage Corporation—Farmer Mac Risk—Based Capital Standards	3052—AC17
4016	Federal Agricultural Mortgage Corporation—Farmer Mac Nonprogram Investments and Liquidity	3052—AC18
4017	Organization; Standards of Conduct; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Gen. Provisions; Definitions; Disclosure to Shareholders; Disclosure to Investors	3052—AC19
4018	Eligibility and Scope of Financing—Scope of Lending	3052—AC20
4019	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations—Capital Adequacy—Preferred Stock	3052—AC21
4020	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations—Investments, Liquidity, and Divestiture	3052—AC22

Farm Credit Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4021	Loan Policies and Operations—Distressed Loan Restructuring	3052—AB69
4022	Loan Policies and Operations—Effective Interest Rate Disclosure	3052—AC04
4023	Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions—Credit and Related Services	3052—AC06

Farm Credit Administration—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4024	Organization and Functions—FCA Organization	3052—AB82
4025	Disclosure to Shareholders; Accounting and Reporting Requirements—Disclosure and Reporting Requirements	3052—AC11
4026	Loan Policies and Operations—Loan Syndication Transactions	3052—AC13
4027	Regulatory Burden	3052—AC15

Farm Credit Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
4028	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—Technical Amendments	3052—AC05
4029	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy—ABS and MBS Investments	3052—AC14

Farm Credit Administration (FCA) Prerule Stage

4009. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS—INVESTMENTS IN RURAL AMERICA

Priority: Other Significant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132; 12 USC 2146; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2202b; 12 USC 2211; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b—6; 12 USC 2279aa; 12 USC 2279aa—3; 12 USC 2279aa—4; 12 USC 2279aa—6 to 2279aa—8; 12 USC 2279aa—10; 12 USC 2279aa—12

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This regulation would develop safety and soundness standards and other criteria for investments in rural America.

Timetable:

Action	Date	FR Cite
Begin Review	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AB92

4010. TITLE IV CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS; JOINT AND SEVERAL LIABILITY—PRIORITY OF CLAIMS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2183; 12 USC 2243; 12 USC 2244; 12 USC 2252; 12 USC 2277a; ...

CFR Citation: 12 CFR 627

Legal Deadline: None

Abstract: This rulemaking would respond to a regulatory petition to change priority of claims from FCS banks under their joint and several obligation for debt issuances.

Timetable:

Action	Date	FR Cite
Begin Review	04/25/03	
End Review	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC16

4011. LOAN POLICIES AND OPERATIONS; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS—OFI LENDING

Priority: Other Significant

Legal Authority: 12 USC 2011; 12 USC 2013 to 2015; 12 USC 2017 to 2020; 12 USC 2071; 12 USC 2073 to 2076; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2097; 12 USC 2121; 12 USC 2122; 12 USC 2124; 12 USC 2128; 12 USC 2129; 12 USC 2131; 12 USC 2132; 12 USC 2141; 12 USC 2146; 12 USC 2149; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2183; 12 USC 2184; 12 USC 2199; ...

CFR Citation: 12 CFR 614; 12 CFR 615

Legal Deadline: None

Abstract: The regulation would address impediments for System funding of other financing institutions (OFIs), including the risk weightings of OFI loans made by System banks and borrower rights applicable to loans made by OFIs.

Timetable:

Action	Date	FR Cite
ANPRM	04/20/00	65 FR 21151
ANPRM Comment Period End	06/19/00	
Comment Period Extended	06/26/00	65 FR 39319
Public Meeting	07/05/01	66 FR 35428
Public Meeting	07/19/01	66 FR 37681
NPRM	08/11/03	68 FR 47502
NPRM Comment Period End	10/10/03	
NPRM; Reopening of Comment Period	10/23/03	68 FR 60627
Reopening Comment Period End	12/22/03	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AB96

4012. LOAN POLICIES AND OPERATIONS—YOUNG, BEGINNING, AND SMALL FARMERS AND RANCHERS

Priority: Other Significant

Legal Authority: 12 USC 2207

CFR Citation: 12 CFR 614

Legal Deadline: None

Abstract: This rulemaking would enhance the System's service to borrowers who are young, beginning, and small farmers and ranchers and the System's reporting on young, beginning, and small farmers.

Timetable:

Action	Date	FR Cite
ANPRM	09/23/02	67 FR 59479
Notice of Public Meeting	10/18/02	67 FR 64320
ANPRM Comment Period End	12/23/02	
NPRM	09/15/03	68 FR 53915
NPRM Comment Period End	11/14/03	
NPRM Reopening of Comment Period	11/20/03	68 FR 65417
Reopening Comment Period End	01/20/04	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC07

4013. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; CAPITAL ADEQUACY—LEVERAGE RATIO

Priority: Other Significant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132; 12 USC 2146; 12 USC 2154; 12 USC 2154A; 12 USC 2160; 12 USC 2202b; 12 USC 2211; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b—6; 12 USC 2279aa; 12 USC 2279aa—3; 12 USC 2279aa—4; 12 USC 2279aa—6; 12 USC 2279aa—8; ...

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This rulemaking would review the net collateral ratio requirements for Farm Credit banks and consider a capital leverage ratio for Farm Credit System institutions.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC08

4014. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; CAPITAL ADEQUACY—RISK—WEIGHTING REVISIONS

Priority: Other Significant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132; 12 USC 2146; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2202b; 12 USC 2211; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b—6; 12 USC 2279aa; 12 USC 2279aa—10; 12 USC 2279aa—12; ...

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This regulation would revise capital risk weightings of assets consistent with the other Federal bank regulatory agencies and other risk—weighting issues affecting System institutions.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	
Final Rule	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC09

4015. FEDERAL AGRICULTURAL MORTGAGE CORPORATION—FARMER MAC RISK—BASED CAPITAL STANDARDS

Priority: Other Significant

Legal Authority: 12 USC 2183; 12 USC 2243; 12 USC 2252; 12 USC 2279aa—11; 12 USC 2279bb; ...

CFR Citation: 12 CFR 650

Legal Deadline: None

Abstract: This rulemaking would revise and clarify existing risk—based capital regulatory standards for Farmer Mac.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC17

4016. FEDERAL AGRICULTURAL MORTGAGE CORPORATION—FARMER MAC NONPROGRAM INVESTMENTS AND LIQUIDITY

Priority: Other Significant

Legal Authority: 12 USC 2183; 12 USC 2243; 12 USC 2252; 12 USC 2279aa—11; 12 USC 2279bb; ...

CFR Citation: 12 CFR 650

Legal Deadline: None

Abstract: This rulemaking would propose liquidity standards and regulatory limits for nonmission investments permitted for Farmer Mac.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC18

4017. ORGANIZATION; STANDARDS OF CONDUCT; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; GEN. PROVISIONS; DEFINITIONS; DISCLOSURE TO SHAREHOLDERS; DISCLOSURE TO INVESTORS

Priority: Other Significant

Legal Authority: 12 USC 2243; 12 USC 2252; 12 USC 2254; 12 USC 2013; 12 USC 2019

CFR Citation: 12 CFR 611; 12 CFR 612; 12 CFR 615; 12 CFR 618; 12 CFR 619; 12 CFR 620; 12 CFR 630

Legal Deadline: None

Abstract: This rulemaking would review governance of FCS institutions for enhanced independent and objective oversight of management and operations; would enhance disclosure requirements for FCS institution employees and directors who receive compensation from other entities; and would review the audit committee requirements for FCS institutions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC19

4018. ELIGIBILITY AND SCOPE OF FINANCING—SCOPE OF LENDING

Priority: Other Significant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2017; 12 USC 2018; 12 USC 2019; ...

CFR Citation: 12 CFR 613

Legal Deadline: None

Abstract: This rulemaking would respond to a petition from the FCS and help determine if regulatory changes are needed to section 613.3005, Lending Objective of Existing Eligibility and Scope of Financing regulations.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/03	68 FR 23425
Public Hearing	05/02/03	68 FR 23425
Comment Period Extended	07/29/03	68 FR 44490
ANPRM Comment Period End	07/31/03	
Comment Period End	10/29/03	
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC20

4019. • FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS—CAPITAL ADEQUACY—PREFERRED STOCK

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; ...

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This regulation would establish safety and soundness parameters on the issuance of preferred stock and establish regulatory controls to ensure fair and equitable treatment of all shareholders.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC21

4020. • FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS—INVESTMENTS, LIQUIDITY, AND DIVESTITURE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; ...

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This regulation would modify current investment eligibility criteria, portfolio limits, and liquidity requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC22

4021. LOAN POLICIES AND OPERATIONS—DISTRESSED LOAN RESTRUCTURING

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2011; 12 USC 2075; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2096; 12 USC 2121; 12 USC 2013 to 2015; 12 USC 2017; 12 USC 2018; 12 USC 2071; 12 USC 2073; 12 USC 2074

CFR Citation: 12 CFR 614

Legal Deadline: None

Abstract: This rulemaking would clarify certain provisions of the borrower rights regulations and address regulatory burden comments.

Timetable:

Action	Date	FR Cite
NPRM	02/04/03	68 FR 5595
NPRM Comment Period End	04/07/03	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AB69

4022. LOAN POLICIES AND OPERATIONS—EFFECTIVE INTEREST RATE DISCLOSURE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2011; 12 USC 2075; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2096; 12 USC 2121; 12 USC 2013 to 2015; 12 USC 2017; 12 USC 2018; 12 USC 2071; 12 USC 2073; 12 USC 2074; ...

CFR Citation: 12 CFR 614

Legal Deadline: None

Abstract: This rulemaking would clarify and provide guidance for implementing the effective interest rate disclosure requirements of the Farm Credit Act of 1971, as amended.

Timetable:

Action	Date	FR Cite
NPRM	02/04/03	68 FR 5587
NPRM Comment Period End	03/06/03	
Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC04

4023. ELIGIBILITY AND SCOPE OF FINANCING; LOAN POLICIES AND OPERATIONS; GENERAL PROVISIONS—CREDIT AND RELATED SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2017 to 2019; 12 USC 2073; 12 USC 2075; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2129; 12 USC 2143; 12 USC 2206a; 12 USC 2211 to 2213; 12 USC 2243; 12 USC 2252

CFR Citation: 12 CFR 613; 12 CFR 614; 12 CFR 618

Legal Deadline: None

Abstract: This rulemaking would amend regulations to provide guidance, address regulatory burden comments, and incorporate statutory changes provided by the 2002 Farm Bill.

Timetable:

Action	Date	FR Cite
NPRM	05/21/03	68 FR 27757
NPRM Comment Period End	06/20/03	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Office of the Secretary to the Board, (703) 883—4125, nicholsonc@fca.gov

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RIN: 3052–AC06

Farm Credit Administration (FCA) — Long-Term Actions

4024. ORGANIZATION AND FUNCTIONS—FCA ORGANIZATION

Priority: Info./Admin./Other

CFR Citation: 12 CFR 600

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Edward Donnelly
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RIN: 3052–AB82

4025. DISCLOSURE TO SHAREHOLDERS; ACCOUNTING AND REPORTING REQUIREMENTS—DISCLOSURE AND REPORTING REQUIREMENTS

Priority: Other Significant

CFR Citation: 12 CFR 620; 12 CFR 621

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3052–AC11

4026. LOAN POLICIES AND OPERATIONS—LOAN SYNDICATION TRANSACTIONS

Priority: Other Significant

CFR Citation: 12 CFR 614

Timetable:

Action	Date	FR Cite
Notice	01/17/03	68 FR 2540
Comment Period End	02/18/03	
Comment Period Extended	02/25/03	68 FR 8764
Comment Period End	04/21/03	
Comment Period Extended	04/21/03	68 FR 19538
Comment Period End	06/20/03	
Comment Period Extended	06/25/03	68 FR 37824
Comment Period End	08/19/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dennis K. Carpenter
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RIN: 3052–AC13

4027. REGULATORY BURDEN

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 600 to 650

Timetable:

Action	Date	FR Cite
Notice	05/16/03	68 FR 26551
Comment Period End	07/15/03	
Begin Review	10/15/03	
End Review	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lori Markowitz
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RIN: 3052–AC15

Farm Credit Administration (FCA) — Completed Actions

4028. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; CAPITAL ADEQUACY—TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 615

Completed:

Reason	Date	FR Cite
Final Rule	04/16/03	68 FR 18532
Final Rule Effective	06/05/03	68 FR 33617

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laurie A. Rea
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RIN: 3052–AC05

4029. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; CAPITAL ADEQUACY—ABS AND MBS INVESTMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 615

Completed:

Reason	Date	FR Cite
Interim Final Rule	03/28/03	68 FR 15045
Interim Final Rule Comment Period End	04/28/03	
Interim Final Rule Effective	06/04/03	68 FR 33347

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3052–AC14

[FR Doc. 03–24040 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
December 22, 2003

Part LI

Farm Credit System Insurance Corporation

Semiannual Regulatory Agenda

FARM CREDIT SYSTEM INSURANCE CORPORATION (FCSIC)

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Ch. XIV

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Semiannual regulatory agenda.

SUMMARY: In response to Executive Order 12866, the Farm Credit System Insurance Corporation (Corporation) will have a regulation concerning golden parachutes and indemnity agreements under development and review during the 12 months following publication.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Technical Editor, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, VA 22102, (703) 883-4125, TTY (703) 883-4056.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small entities. Corporation regulations, which apply to Farm Credit banks and associations, generally do not and will not have a substantial impact on "small entities" as that term is defined in the Regulatory Flexibility Act.

The Corporation, as an independent regulatory agency, is not subject to all of the provisions of Executive Order 12866. It participates in this joint publication to further the public interest by including the Corporation in a single source of information concerning current and projected rulemaking and reviews of existing regulations, pursuant to section 4 of the Executive Order 12866.

Dated: September 12, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit System Insurance Corporation Board.

Farm Credit System Insurance Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4030	Golden Parachute and Indemnification Payments	3055—AA08

Farm Credit System Insurance Corporation (FCSIC) **Proposed Rule Stage**

4030. GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Priority: Other Significant

Legal Authority: PL 104—105

CFR Citation: 12 CFR 1400 to 1410

Legal Deadline: None

Abstract: This rulemaking would address the new authorities provided in the Farm Credit System Reform Act of 1996 to regulate golden parachutes and indemnity agreements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, (703) 883—4125

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RIN: 3055–AA08

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part LII

Federal Communications Commission

Semiannual Regulatory Agenda

FEDERAL COMMUNICATIONS COMMISSION (FCC)

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions#173;Spring 2003

AGENCY: Federal Communications Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. *See* 5 U.S.C. 602. The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maura McGowan, Telecommunications Specialist, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, (202) 418-0990.

SUPPLEMENTARY INFORMATION:

Unified Agenda of Major and Other Significant Proceedings

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

Docket Number — assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (*e.g.*, Docket No. 96-1 or Docket No. 99-1). The abbreviation for the responsible bureau usually precedes the docket number, as in "MM Docket No. 96-222," which indicates that the responsible bureau is the Mass Media Bureau (now the Media Bureau). A docket number consisting of only five digits (*e.g.*, Docket No. 29622) indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI) — issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rulemaking (NPRM) — issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

Further Notice of Proposed Rulemaking (FNPRM) —issued by the Commission when additional comment in the proceeding is sought.

Memorandum Opinion and Order (MO&O) — issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

Rulemaking (RM) Number — assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

Report and Order (R&O) — issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4031	Policies and Rules Governing Interstate Pay—Per—Call and Other Information Services Pursuant to the Telecommunications Act of 1996 (CC Docket Nos. 96—146, 93—22)	3060—AG42
4032	Implementation of the Subscriber Selection Changes Provision of the Telecommunications Act of 1996; CC Docket No. 94—129	3060—AG46
4033	Implementation of Section 255 and Section 251(a)(2) of the Telecommunications Act of 1996; Access to Telecommunications Services Equipment and Customer Premise Equipment for Persons With Disabilities;	3060—AG58
4034	In the Matter of the Telecommunications Relay Services, the Americans With Disabilities Act of 1990, and the Telecommunications Act of 1996; CC Docket No. 90—571	3060—AG75
4035	In the Matter of Telecommunications Relay Services and Speech—to—Speech Services for Individuals With Hearing and Speech Disabilities, Americans With Disabilities Act of 1990; CC Docket No. 98—67	3060—AG76
4036	Establishment of Rules Governing Procedures To Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission; CG Docket No. 02—32	3060—AI02
4037	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; CG Docket No. 02—278 **(Section 610 Review)**	3060—AI14
4038	Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service); CG Docket No. 03—123 **(Section 610 Review)**	3060—AI15

OFFICE OF ENGINEERING AND TECHNOLOGY—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4039	Exposure to Radiofrequency Electromagnetic Fields	3060—AI17

OFFICE OF ENGINEERING AND TECHNOLOGY—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4040	MSS Spectrum Allocation	3060—AF75
4041	Unlicensed National Information Infrastructure at 5 GHz	3060—AG19
4042	Dedicated Short Range Communications of Intelligent Transportation Services	3060—AG94
4043	Industry Coordination Committee System for Broadcast Digital Television Service	3060—AH13
4044	3650—3700 Government Transfer Band	3060—AH14
4045	Fixed Satellite Service and Terrestrial System in the Ku—Band	3060—AH17
4046	Spread Spectrum Devices	3060—AH25
4047	Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations	3060—AH37
4048	Conducted Emission Limits	3060—AH46
4049	Revision of the Rules Regarding Ultra—Wideband Transmission	3060—AH47
4050	Software Defined Radio Authorization	3060—AH64
4051	New Advanced Wireless Services	3060—AH65
4052	Reallocation of 27 MHz Spectrum	3060—AH66
4053	Revisions to Broadcast Auxiliary Service Rules	3060—AH78
4054	Part 15 Biennial Review	3060—AH92
4055	Amateur Radio Service Rules	3060—AI04
4056	Unlicensed Devices in the 5 GHz Band	3060—AI16
4057	Above 76 GHz	3060—AI18

OFFICE OF ENGINEERING AND TECHNOLOGY—Completed Actions

Sequence Number	Title	Regulation Identification Number
4058	Regulations for RF Lighting Devices	3060—AG95
4059	Wireless Medical Telemetry Service	3060—AH27

OFFICE OF GENERAL COUNSEL—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4060	Amendment of the Ex Parte Rules in Joint Board Proceedings	3060—AH02
4061	Amendment of Section 1.1204 of the Commission's Ex Parte Rules	3060—AH58
4062	Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission	3060—AH86

INTERNATIONAL BUREAU—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4063	Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures (IB Docket No. 95—117)	3060—AD70
4064	Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the L—Band (IB Docket No. 96—132)	3060—AF89
4065	Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310—2360 MHz Frequency Band (IB Docket No. 95—91; GEN Docket No. 90—357)	3060—AF93

INTERNATIONAL BUREAU—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4066	Redesignation of the 27.5—29.5 GHz Frequency Band (CC Docket No. 92—297)	3060—AF94
4067	Allocate & Designate: Spec for Fixed—Sat Srv (37.5—38.5, 40.5—41.5 & 48.2—50.2 GHz Bands). Allocate: Fixed & Mobile 40.5—42.5 GHz; Wireless 46.9—47 GHz; Gov Oper 37—38 & 40—40.5 GHz; IB Doc No. 97—95	3060—AH23
4068	Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band; IB Docket No. 99—81	3060—AH28
4069	1998 Biennial Regulatory Review — Review of Accounts Settlement in Maritime Mobile &Maritime Mobile—Satellite Radio Services and Withdrawal of the Commission as Accounting Authority; IB Doc No. 98—96	3060—AH30
4070	Global Mobile Personal Communications by Satellite; IB Docket No. 99—67	3060—AH49
4071	Streamlining Earth Station Licensing Rules; IB Docket No. 00—248	3060—AH60
4072	Policies and Rules for Non—Geostationary Satellite Orbit, Fixed Satellite Service in the KA—Band; IB Docket No. 02—19	3060—AH93
4073	Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Callback Service; IB Docket No. 02—18	3060—AH94
4074	Space Station Licensing Reform; IB Dockets 00—248 and 02—34	3060—AH98
4075	Alaska Bush Earth Station Policy; IB Docket No. 02—30	3060—AH99
4076	Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L—Band, and the 1.6/2.4 GHz Band	3060—AI05
4077	Mitigation of Orbital Debris; IB Docket No. 02—54	3060—AI06

INTERNATIONAL BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
4078	Amendment of Policy To Allow Non—U.S. Licensed Space Stations To Provide Service in the United States; IB Docket No. 96—111; CC Docket No. 93—23	3060—AG31
4079	Policies for the Direct Broadcast Satellite Service; IB Docket No. 98—21	3060—AH29

MEDIA BUREAU—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4080	Transfer of Control of Non—Stock Entities (MM Docket No. 89—77)	3060—AE31
4081	Cable Television Rate Regulation	3060—AF41
4082	Cable Television Rate Regulation: Cost of Service	3060—AF48
4083	Customer Service Standards	3060—AF69
4084	Filing of Television Network Affiliation Contracts (MM Docket No. 95—40)	3060—AF80
4085	Rules Governing Broadcast Television Advertising (MM Docket No. 95—90)	3060—AF81
4086	Cable Home Wiring	3060—AG02
4087	Closed Captioning	3060—AG26
4088	Cable Act Reform	3060—AG27
4089	Competitive Availability of Navigation Devices	3060—AG28
4090	Minor Modifications of Broadcast Licenses Without Prior Construction Permit (MM Docket No. 96—58)	3060—AG30
4091	Pole Attachment Provisions	3060—AG71
4092	Review of Technical Rules in Parts 73 and 74 (MM Docket No. 98—93)	3060—AG81
4093	Digital Must Carry	3060—AG91
4094	Horizontal Ownership Limits	3060—AH09
4095	Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmission — SHVIA	3060—AH35
4096	Retransmission Consent Issues — SHVIA	3060—AH36
4097	Digital Audio Broadcasting Systems (MM Docket No. 99—325)	3060—AH40
4098	Satellite Broadcasting Signal Carriage Requirements	3060—AH45
4099	Ancillary or Supplemental Use of DTV Capacity by Non—Commercial Licensees (MM Docket No. 98—203)	3060—AH53
4100	Periodic Review of Rules and Policies Affecting the Conversion to DTV	3060—AH54
4101	Direct Broadcast Public Interest Obligations; MM Docket No. 93—25	3060—AH59
4102	Children's TV, Obligations of Digital TV Broadcasters (MM Docket No. 00—167)	3060—AH68

MEDIA BUREAU—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4103	Extension of Filing Requirements for Children's TV Programming Report (MM Docket No. 00—44)	3060—AH69
4104	Radio Market Definitions (MM Docket No. 00—244)	3060—AH70
4105	Enhanced and Standardized Disclosure (MM Docket No. 00—168)	3060—AH71
4106	Revision of EEO Rules and Policies; MM Docket No. 98—204	3060—AH95
4107	Reexamination of Comparative Standards for Noncommercial Educational Applicants; MM Docket No. 95—31	3060—AH96
4108	Cross Ownership of Broadcast Stations and Newspapers	3060—AH97
4109	Biennial Regulatory Review of the Commission's Broadcast Ownership Rules	3060—AI07

MEDIA BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
4110	Exclusive Contract Prohibition of the Program Access Rules	3060—AH91

OFFICE OF MANAGING DIRECTOR—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4111	Assessment and Collection of Regulatory Fees for FY 2002	3060—AH85

OFFICE OF MANAGING DIRECTOR—Completed Actions

Sequence Number	Title	Regulation Identification Number
4112	Assessment and Collection of Regulatory Fees for FY 2003	3060—AI19

WIRELESS TELECOMMUNICATIONS BUREAU—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4113	Amendment of the Commission's Rules Concerning Maritime Communications	3060—AF14
4114	Resale and Roaming Obligations Pertaining to Commercial Mobile Radio Services	3060—AF58
4115	Implementation of Section 309(j) of the Communications Act, Competitive Bidding; 218—219 MHz Competitive Bidding Rules	3060—AG00
4116	39 GHz Channel Plan	3060—AG16
4117	Implementation of 309(j) of the Communications Act, Amendment of Parts 20 and 24 of the Commission's Rules — Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	3060—AG21
4118	Revision of the Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems	3060—AG34
4119	In the Matter of the Communications Assistance for Law Enforcement Act	3060—AG74
4120	Development of Operational, Technical, and Spectrum Requirements for Public Safety Communications Requirements	3060—AG85
4121	Multiple Access Systems	3060—AG86
4122	Amendment of Part I of the Commission's Rules — Competitive Bidding Procedures	3060—AG87
4123	Amendment of Part 90 of the Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems	3060—AH12
4124	Service Rules for the 746—764 and 776—794 MHz Bands, and Revisions to Part 27 of the Commission's Rules	3060—AH32
4125	Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended	3060—AH33
4126	Amendment to Parts 1, 2, 87, and 101 of the Rules to License Fixed Services at 24 GHz	3060—AH41
4127	Part 101 — Terrestrial Microwave Fixed Radio Services	3060—AH42
4128	Amendment of Parts 13 and 80 Governing Maritime Communications	3060—AH55
4129	Amendment of the Rules Regarding Installment Payment Financing for Personal Communications Services Licensees	3060—AH57

WIRELESS TELECOMMUNICATIONS BUREAU—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4130	Transfer of the 3650 Through 3700 MHz Band From Federal Government Use	3060—AH75
4131	2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services	3060—AH81
4132	In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets	3060—AH82
4133	In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services	3060—AH83
4134	Amendment of Part 90 for Licensing Low Power Operations in 450—470 MHz Band	3060—AH84
4135	Reallocation of the 216—220 MHz, 1390—1395 MHz, 1427—1429 MHz, 1429—1432 MHz, 1432—1435 MHz, 1670—1675 MHz, and 2385—2390 MHz Government Transfer Bands	3060—AH87
4136	Review of Quiet Zones Application Procedures	3060—AH88
4137	Reallocation and Service Rules for the 698—746 MHz Spectrum Band (Television Channels 52—59)	3060—AH89
4138	Implementation of 911 Act	3060—AH90

WIRELESS TELECOMMUNICATIONS BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
4139	Implementation of Section 309(j) of the Communications Act, Competitive Bidding; Narrowband PCS Competitive Bidding Rules	3060—AF99
4140	1998 Biennial Regulatory Review — Spectrum Aggregation Limits for Wireless Telecommunications Carriers	3060—AH34

WIRELINE COMPETITION BUREAU—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4141	Administration of the North American Numbering Plan	3060—AF50
4142	Use of N11 Codes and Other Abbreviated Dialing Arrangements	3060—AF51
4143	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	3060—AF85
4144	Toll—Free Service Access Codes	3060—AG11
4145	Implementation of Section 273 of the Telecommunications Act of 1996	3060—AG36
4146	Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	3060—AG43
4147	Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996; LEC Tariff Streamlining Provisions	3060—AG47
4148	Access Charge Reform	3060—AG49
4149	Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	3060—AG50
4150	Enhanced 911 Services for Wireline	3060—AG60
4151	Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	3060—AG72
4152	Detariffing of Competitive Local Exchange Carriers' Interstate Exchange Access Services	3060—AG73
4153	Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, Operator Services, and Directory Assistance	3060—AH00
4154	Deployment of Wireline Services Offering Advanced Telecommunications Capability	3060—AH03
4155	Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	3060—AH18
4156	Local Telephone Networks That LECs Must Make Available to Competitors	3060—AH44
4157	2000 Biennial Regulatory Review — Telecommunications Service Quality Reporting Requirements	3060—AH72
4158	Access Charge Reform and Universal Service Reform	3060—AH74
4159	2000 Biennial Regulatory Review — Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers; Phase 2 and Phase 3	3060—AH76
4160	Streamlining Procedures for Common Carrier Transfers of Control and Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations	3060—AH79
4161	Numbering Resource Optimization	3060—AH80
4162	Performance Measurements and Standards for Unbundled Network Elements and Interconnection	3060—AI00
4163	Performance Measurements and Standards for Interstate Special Access Services	3060—AI01
4164	Customer Premises Equipment/Enhanced Services Bundling Restrictions in Computer II	3060—AI03

4031. POLICIES AND RULES GOVERNING INTERSTATE PAY—PER—CALL AND OTHER INFORMATION SERVICES PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 (CC DOCKET NOS. 96—146, 93—22)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 228

CFR Citation: 47 CFR 64.1501; 47 CFR 64.1504; 47 CFR 64.1510

Legal Deadline: None

Abstract: The Commission received comments on proposed rules designed to implement the 1996 Telecommunications Act with respect to information services to prevent abusive and deceptive practices by entities that might try to circumvent the statutory requirements. The proposed rules address generally the use of dialing sequences other than the 900 service access code to provide information services. The Bureau (CGB) requested and received comments to refresh the record on March 17, 2003.

Timetable:

Action	Date	FR Cite
NPRM	07/26/96	61 FR 39107
Order	07/26/96	61 FR 39084
NPRM Comment Period End	09/16/96	
Notice to Refresh Record	03/17/03	68 FR 14939
Comment Period End	05/27/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

URL For More Information:
www.fcc.gov/cgb/policy/paypercall.html

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RIN: 3060–AG42

4032. IMPLEMENTATION OF THE SUBSCRIBER SELECTION CHANGES PROVISION OF THE TELECOMMUNICATIONS ACT OF 1996; CC DOCKET NO. 94—129

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 201; 47 USC 258

CFR Citation: 47 CFR 64.1100; 47 CFR 64.1150; 47 CFR 64.1160; 47 CFR 64.1170; 47 CFR 64.1180; 47 CFR 64.1190

Legal Deadline: None

Abstract: In December 1998, the Commission established new rules and policies implementing section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, which makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." The rules provide, among other things, that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after such violation. In the FNPRM, we sought comment on several proposals to further strengthen our slamming rules. In April 2000, the Commission modified the slamming liability rules by giving victims of slamming adequate redress, ensuring that carriers that slam do not profit from their fraud, and allowing states to act as the primary administrator of slamming complaints.

In July 2000, the Commission took further action to improve the existing carrier change process for both consumers and carriers. protect the right of consumers to exercise choice among carriers, and ensure that consumers' choices are honored. In December 2000, the Commission adopted a Biennial Review FNPRM seeking comment on proposals to amend the slamming rules to lighten administrative burdens associated with selling or transferring customer bases by eliminating the need to obtain a waiver, while continuing to protect consumers. In February 2001, the Commission adopted an order modifying and clarifying certain aspects of the reporting and registration requirements it had adopted in July 2000. In May 2001, the Commission adopted streamlined procedures for the carrier—to—carrier sale or transfer of customer bases, as proposed in the Biennial Review FNPRM.

In February, 2003, the Commission adopted a Reconsideration Order and Second FNPRM. The Reconsideration Order addresses, amongst other things, the requirement that a carrier's sales agent drop—off a carrier change request phone call once the customer has been connected to an independent third party verifier, and the applicability of our slamming rules to local exchange carriers. In the Second FNPRM, the Commission sought comment on rule modifications with respect to third party verifications.

Timetable:

Action	Date	FR Cite
MO&O on Recon and FNPRM	08/14/97	62 FR 43493
FNPRM Comment Period End	09/30/97	
Second Report & Order and Second FNPRM	02/16/99	64 FR 7745
First Order on Recon	04/13/00	65 FR 47678
Third Report & Order and Second Order on Recon	11/08/00	65 FR 66934
Third FNPRM	01/29/01	66 FR 8093
Order	03/01/01	66 FR 12877
First Report & Order and Fourth Report & Order	06/06/01	66 FR 30334
2nd FNPRM	03/17/03	68 FR 19176
3rd Order on Recon	03/17/03	68 FR 19152
2nd FNPRM Comment Period End	06/17/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG46

4033. IMPLEMENTATION OF SECTION 255 AND SECTION 251(A)(2) OF THE TELECOMMUNICATIONS ACT OF 1996; ACCESS TO TELECOMMUNICATIONS SERVICES EQUIPMENT AND CUSTOMER PREMISE EQUIPMENT FOR PERSONS WITH DISABILITIES;

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 255; 47 USC 251 (a)(2)

CFR Citation: 47 CFR 6; 47 CFR 7

Legal Deadline: None

Abstract: This proceeding is initiated to implement the provisions of sections 255 and 251(a)(2) of the Communications Act and related sections of the Telecommunications Act of 1996 regarding the accessibility of telecommunications equipment and services to persons with disabilities.

Timetable:

Action	Date	FR Cite
NOI	09/26/96	61 FR 50465
NPRM	05/22/98	63 FR 28456
NPRM Comment Period End	08/14/98	
Report & Order	11/19/99	64 FR 63235
Further NOI	11/19/99	64 FR 63277
Further NOI Comment Period End	12/14/99	
Public Notice	07/13/00	65 FR 43372
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State

Federalism: Undetermined

Additional Information: Additional Bureau: Wireline Competition Bureau; Wireless Telecommunications Bureau

URL For More Information:
www.fcc.gov/cgb/dro/section255.html

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RIN: 3060–AG58

4034. IN THE MATTER OF THE TELECOMMUNICATIONS RELAY SERVICES, THE AMERICANS WITH DISABILITIES ACT OF 1990, AND THE TELECOMMUNICATIONS ACT OF 1996; CC DOCKET NO. 90—571

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225

CFR Citation: 47 CFR 64.604

Legal Deadline: None

Abstract: This item addresses the requirement that telecommunications relay services be capable of handling any type of call normally provided by common carriers, including coin sent—paid calls. On April 5, 2001, the Commission published a Second FNPRM seeking comment on the coin sent—paid issue. This Second FNPRM suspended the enforcement of section 64.604(a)(3) of our rules until final rules in this proceeding are adopted and published in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	12/04/90	55 FR 50037
R&O and Request for Comments	08/01/91	56 FR 36729
Order on Recon, Second R&O and FNPRM	03/03/93	58 FR 12175
MO&O	11/28/95	60 FR 58626
Order	09/08/97	62 FR 47152
Order	08/23/00	
NPRM	04/05/01	66 FR 18059
5th R&O	02/07/03	68 FR 6352
R & O (Correction)	02/24/03	68 FR 8553
Recon of 5th R&O and Order Comment Deadline	04/04/03	
Public Notice	04/15/03	68 FR 18205
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Additional Bureau: Wireline Competition Bureau

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RIN: 3060–AG75

4035. IN THE MATTER OF TELECOMMUNICATIONS RELAY SERVICES AND SPEECH—TO—SPEECH SERVICES FOR INDIVIDUALS WITH HEARING AND SPEECH DISABILITIES, AMERICANS WITH DISABILITIES ACT OF 1990; CC DOCKET NO. 98—67

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225; 47 USC 255; 47 USC 610

CFR Citation: 47 CFR 64.601; 47 CFR 64.603; 47 CFR 64.604; 47 CFR 64.605

Legal Deadline: None

Abstract: This Proceeding is the last in a series designed to update and improve telecommunications relay services (TRS) for persons with disabilities, in implementation of the Americans with disabilities ACT (ADA), Title IV. Title IV of the ADA requires the Commission to ensure that TRS is available to the extent possible in the most efficient manner to persons with hearing or speech disabilities in the United States. TRS enables an individual with a hearing or speech disability to communicate by telephone or other assistive communication device. The Commission issued its first order pursuant to Title IV of the ADA implementing TRS on July 26, 1991. Since 1991, the Commission has revisited the regulations governing TRS on numerous occasions, in part, to make available to consumers new forms of TRS, and to amend the mandatory minimum standards to improve the quality of TRS, consistent with the goal of functional equivalency set forth in section 225. Through these actions the Commission has broadly defined TRS to include any service that enables persons with hearing or speech disabilities to use the telecommunications network to communicate by wire or radio, and not to be limited to either telecommunications service or services that require a TTY. This item includes a report and order, an order on reconsideration, and a further notice of proposed rulemaking. This item amends existing and establishes new regulations governing TRS.

Timetable:

Action	Date	FR Cite
NPRM	05/20/98	63 FR 32798

Action	Date	FR Cite
NPRM Comment Period End	09/14/98	
FNPRM	06/21/00	65 FR 38490
Order on Recon	06/21/00	65 FR 38432
Report and Order	06/21/00	65 FR 38432
2nd FNPRM	04/05/01	66 FR 18059
Public Notice	07/19/01	66 FR 37631
Public Notice Correction	08/03/01	66 FR 40666
Public Notice	08/15/01	66 FR 42858
Public Notice Correction	10/26/01	66 FR 54165
MO&O	01/29/02	67 FR 4203
FNPRM	01/29/02	67 FR 4227
Declaratory Ruling	06/11/02	67 FR 39863
FNPRM	06/11/02	67 FR 39929
Public Notice	07/24/02	67 FR 48415
Public Notice	07/29/02	67 FR 49024
Public Notice	08/26/02	67 FR 57641
Public Notice	10/31/02	67 FR 66399
Public Notice	10/31/02	67 FR 66400
Public Notice	10/31/02	67 FR 66397
Public Notice	12/17/02	67 FR 77272
Public Notice	01/27/03	68 FR 3880
5th R&O	02/07/03	68 FR 6352
5th R&O Correction	02/24/03	68 FR 8553
Public Notice	03/04/03	68 FR 10245
Order on Recon	04/06/03	68 FR 18826
Public Notice	05/30/03	68 FR 32511
NPRM	06/23/03	68 FR 37158
Public Notice	08/18/03	68 FR 49478
Public Notice	08/20/03	68 FR 50146
NPRM	08/25/03	68 FR 50993
2nd R&O and Order on Recon	08/25/03	68 FR 50973
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: Undetermined

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RIN: 3060–AG76

4036. ESTABLISHMENT OF RULES GOVERNING PROCEDURES TO BE FOLLOWED WHEN INFORMAL COMPLAINTS ARE FILED BY CONSUMERS AGAINST ENTITIES REGULATED BY THE COMMISSION; CG DOCKET NO. 02—32

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154(i) and 154(j); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 1.716 to 1.718

Legal Deadline: None

Abstract: This proceeding seeks comment on proposals to establish a unified, streamlined process for the intake and resolution of informal complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, (the Act) and our implementing rules and orders.

The Commission has previously emphasized that our consumer complaint mechanisms are a principal vehicle for achieving such compliance and promoting the pro—competitive goals underlying the Act and our rules. We are concerned, however, that our existing complaint mechanisms require consumers to navigate an array of rule provisions and disparate procedures administered by various offices within the Commission in order to file complaints about practices they believe violate the Act or our rules and orders. Our goal in this proceeding is to consolidate and streamline the consumer complaint mechanisms consumers use when submitting informal complaints to the Commission.

We propose to establish a consumer complaint mechanism patterned after our existing rules for informal complaints filed against common carriers pursuant to section 208 of the Act contained in sections 1.717—1.718 of the Commission's rules. We also invite comment on whether we should make changes to our existing informal common carrier complaint rules.

Timetable:

Action	Date	FR Cite
NPRM	04/16/02	67 FR 18560
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Federalism: Undetermined

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RIN: 3060–AI02

4037. • RULES AND REGULATIONS IMPLEMENTING THE TELEPHONE CONSUMER PROTECTION ACT (TCPA) OF 1991; CG DOCKET NO. 02—278

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 227

CFR Citation: 47 CFR 64.1200; 47 CFR 68.318(c); 47 CFR 68.318(d); 47 CFR 64.1601(e)

Legal Deadline: None

Abstract: The Commission released an NPRM on September 18,2002, seeking comment on the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). The NPRM sought comment on whether the Commission should revise its existing rules, or adopt additional rules, on the use of autodialers, prerecorded messages, and unsolicited facsimile advertisements. The NPRM also sought comment on the effectiveness of the company—specific do—not—call lists and whether to revisit the option of establishing a national do—not—call list.

The Commission released an FNPRM on March 25, 2003, seeking comment on the requirements under the Do—Not—Call Implementation Act to issue a final rule in the TCPA proceeding within 180 days and, in doing so, to maximize consistency with the Federal Trade Commission's (FTC's) rules. On July 3, 2003, the Commission released a Report and Order establishing, along with the FTC, a national do—not—call registry. The Commission's Report and Order also adopted rules on the use of predictive dialers, the transmission of caller ID information by telemarketers, and the sending of unsolicited fax

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advertisements. On August 18, 2003, the Commission adopted an Order on Reconsideration, which delayed the effective date of the written consent requirement for unsolicited fax advertisements until January 1, 2005.

Timetable:

Action	Date	FR Cite
NPRM	10/08/02	67 FR 62667
NPRM Comment Period Extended	11/29/02	67 FR 71126
Reply Comment Period Extended	12/26/02	67 FR 78763
Comment Period End	01/31/03	
FNPRM	04/03/03	68 FR 16250
Order	07/25/03	68 FR 44144
Order Effective	08/25/03	
Order on Recon	08/25/03	68 FR 50978
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AI14

4038. • RULES AND REGULATIONS IMPLEMENTING SECTION 225 OF THE COMMUNICATIONS ACT (TELECOMMUNICATIONS RELAY SERVICE); CG DOCKET NO. 03—123

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225; 47 USC 255; 47 USC 610

CFR Citation: 47 CFR 64.601; 47 CFR 64.603; 47 CFR 64.604; 47 CFR 64.605

Legal Deadline: None

Abstract: This proceeding establishes a new docket flowing from the previous telecommunications relay service (TRS) history, CC Docket No. 98—67. This proceeding contains an NPRM continuing the Commission's inquiry into improving the quality of TRS and furthering the goal of functional equivalency consistent with the Congress' mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. The Commission seeks comment on ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

Timetable:

Action	Date	FR Cite
NPRM	08/25/03	68 FR 50993
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AI15

Federal Communications Commission (FCC) Office of Engineering and Technology — Proposed Rule Stage

4039. • EXPOSURE TO RADIOFREQUENCY ELECTROMAGNETIC FIELDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 303; 47 USC 302; 47 USC 309(j); 47 USC 336

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 95

Legal Deadline: None

Abstract: The Notice of Proposed Rulemaking proposed amendments to the FCC rules relating to compliance of transmitters and facilities with guidelines for human exposure to radio frequency (RF) energy.

Timetable:

Action	Date	FR Cite
NPRM	09/08/03	68 FR 52879
NPRM Comment Period End	12/08/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Federalism: Undetermined

Agency Contact: Robert Cleveland, Federal Communications Commission
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RIN: 3060–AI17

Federal Communications Commission (FCC) Office of Engineering and Technology — Long-Term Actions

4040. MSS SPECTRUM ALLOCATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 304

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The Second Report and Order finalized the reallocation of the 1990—2025 MHz band from Broadcast Auxiliary Service, including the Cable Television Relay Service and the Local Television Transmission Service, licensees to the new Mobile—Satellite Service (MSS), and established rules for the relocation of incumbent licensees from the 1990—2110 MHz band as well as incumbent Fixed Service (FS) microwave licensees from the 2165—2200 MHz bands, in cases where sharing between MSS and FS is not possible. The Second Memorandum Opinion and Order confirmed the Commission's decision to require new MSS licensees to bear the cost of relocating incumbent licensees in these bands.

Timetable:

Action	Date	FR Cite
NPRM	01/31/95	60 FR 11644
Order	03/08/95	60 FR 13687
First R&O	04/22/97	62 FR 19509
R&O and FNPRM	04/22/97	62 FR 19538
MO&O	12/17/98	63 FR 69606
Second R&O and Second MO&O	08/07/00	65 FR 48174
Order	08/19/02	67 FR 53754
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: ET Docket No. 95—18

Agency Contact: Tom Derenge, Chief, Spectrum Policy Branch, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AF75

4041. UNLICENSED NATIONAL INFORMATION INFRASTRUCTURE AT 5 GHZ

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 15

Legal Deadline: None

Abstract: The MO&O amends the rules to permit fixed, point—to—point unlicensed National Information Infrastructure (U—NII) devices in the 5.725—5.285 GHz band to operate with one—watt maximum transmitter output power and directional antennas of up to 23 db:gain. It clarifies the rules regarding unwanted emissions and specifies these limits in terms of absolute radiated power levels. These actions will add to the flexibility and capability of U—NII operations without causing an increase in harmful interference to incumbent operations sharing the same spectrum.

Timetable:

Action	Date	FR Cite
NPRM	05/06/96	61 FR 24749
R&O	01/31/97	62 FR 4649
Public Notice	03/17/97	62 FR 12641
MO&O	07/31/98	63 FR 40831
Petition for Reconsideration	09/18/98	63 FR 49913
Petition for Recon Withdrawn by Letter	05/02/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: RM—8468 and RM—8653; ET Docket No. 96—102

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RIN: 3060–AG19

4042. DEDICATED SHORT RANGE COMMUNICATIONS OF INTELLIGENT TRANSPORTATION SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 90

Legal Deadline: None

Abstract: The FCC proposes to allocate 75 megahertz of spectrum for use by Dedicated Short Range Communications (DSRC) of Intelligent Transportation Systems (ITS). DSRC systems are being designed that require a short range, wireless link to transfer information between vehicles and roadside systems. ITS services are expected to improve traveler safety, decrease traffic congestion, and facilitate reduction of air pollution and conservation of fossil fuels. This action furthers the goal of the U.S. Congress, the Department of Transportation, and the ITS industry to improve the efficiency of the Nation's transportation infrastructure and facilitate the growth of the ITS industry.

Timetable:

Action	Date	FR Cite
NPRM	06/30/98	63 FR 35558
NPRM Comment Period End	09/14/98	
Reply Comment Period End	10/31/98	
R&O	11/26/99	64 FR 66405
Petition for Reconsideration	02/16/00	65 FR 7873
Dismissed as Moot	01/15/03	68 FR 2001
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: ET Docket No. 98—95

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RIN: 3060–AG94

4043. INDUSTRY COORDINATION COMMITTEE SYSTEM FOR BROADCAST DIGITAL TELEVISION SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 307; 47 USC 336

CFR Citation: 47 CFR 73; 47 CFR 74

Legal Deadline: None

Abstract: We seek comment on the establishment of an industry coordination committee to assist the Commission in the implementation of digital television (DTV) service. This committee system would evaluate proposed changes to the DTV Table of Allotments and perform other related functions.

Timetable:

Action	Date	FR Cite
NPRM	02/09/99	64 FR 6296
NPRM Comment Period End	03/29/99	
Reply Comment Period End	04/28/99	
Final Action	01/25/02	67 FR 3616
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: ET Docket No. 99—34

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RIN: 3060–AH13

4044. 3650—3700 GOVERNMENT TRANSFER BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The First Report and Order allocated 50 MHz of spectrum on the 3650—3700 MHz band to the fixed and mobile (base stations) terrestrial services on a primary basis. It also ensures the continuity of fixed satellite service (FSS) operations and permits new FSS operations to help alleviate congestion in the adjacent 3700—4200 MHz FSS band.

The Second Notice of Proposed Rule Making proposes to establish licensing and service rules for the assignment of fixed and mobile services licenses in the 3650—3700 MHz band. It also seeks comments on whether technical requirements or other reasons justify licensing the 3650—3700 MHz and the 4940—4990 MHz band at the same time.

Timetable:

Action	Date	FR Cite
NPRM	01/14/99	64 FR 2462
NPRM Comment Period End	03/01/99	
First R&O	11/17/00	65 FR 69454
Second NPRM	11/17/00	65 FR 69612
Petition for Reconsideration	03/28/01	66 FR 16940
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: ET Docket No. 98—237

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RIN: 3060–AH14

4045. FIXED SATELLITE SERVICE AND TERRESTRIAL SYSTEM IN THE KU—BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 157; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 25

Legal Deadline: None

Abstract: The Memorandum Opinion and Order and 2nd Report and Order addressed petitions for reconsideration and established technical, service, and licensing rules for Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. MVDDS will facilitate the delivery of new communications services, such as video and broadband services, to a wide range of populations, including those that are unserved or underserved. These rules will allow MVDDS licensees to share the 12 GHz band with new operators on a com—primary basis, and non—harmful interference basis with incumbent Direct Broadcast Satellite service providers.

Timetable:

Action	Date	FR Cite
NPRM	01/12/99	64 FR 1786
Order	02/16/99	64 FR 7577
Public Notice	12/15/99	64 FR 70028
FNPRM	01/24/01	66 FR 7607
R&O	02/16/01	66 FR 10601
Petitions for Reconsideration	04/09/01	66 FR 18474
2nd R&O	06/26/02	67 FR 43031
3rd R&O	06/18/03	68 FR 42610
Order To Deny	06/25/03	68 FR 43942
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: ET Docket No. 98—206

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RIN: 3060–AH17

4046. SPREAD SPECTRUM DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The Second Report and Order amends the Commission's rules to improve spectrum sharing by unlicensed devices operating in the 2.4 GHz band (2400—2483.5 MHz) to provide for introduction of new digital transmission technologies, and eliminate unnecessary regulations for spread spectrum systems.

Timetable:

Action	Date	FR Cite
NPRM	07/20/99	64 FR 38877
NPRM Comment Period End	11/02/99	
R&O	09/25/00	65 FR 57557
Petition for Reconsideration	11/08/00	65 FR 67009
FNPRM	06/12/01	66 FR 31585
Order	06/12/01	66 FR 31556
2nd R&O	06/25/02	67 FR 42730
MO&O	06/23/03	68 FR 37093
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: ET Docket No. 99—231

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RIN: 3060–AH25

4047. ESTABLISHMENT OF AN IMPROVED MODEL FOR PREDICTING THE BROADCAST TELEVISION FIELD STRENGTH RECEIVED AT INDIVIDUAL LOCATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 334; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: Final, Statutory, May 29, 2000, Final.

Abstract: The Commission adopted a prediction model for determining presumptively the ability of individual locations to receive over—the—air television stations. This model will be a useful means for establishing the eligibility of individual households to receive the signals of television broadcast network stations through satellite carriers. The Commission is complying with the new statutory requirements set forth in the Satellite Home Viewer Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	02/02/00	65 FR 4923
NPRM Comment Period End	03/07/00	
R&O	06/09/00	65 FR 36639
Petition for Reconsideration	07/31/00	65 FR 46713

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: ET Docket No. 00—11

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RIN: 3060–AH37

4048. CONDUCTED EMISSION LIMITS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307; 47 USC 544A

CFR Citation: 47 CFR 15; 47 CFR 18

Legal Deadline: None

Abstract: The Report and Order amends the Commission's rules for Radio Frequency (RF) devices to modify the limits on the amount of RF energy that is permitted to be conducted onto alternating current (AC) power lines. These limits protect against interference to licensed radio services operating below 30 MHz. The rule changes also harmonize our domestic requirements with the international standards developed by the International Electrotechnical Commission, International Special Committee on Radio Interference. The Commission believes that such harmonization will benefit consumers and manufacturers by providing better interference protection to licensed radio services as well as promoting a global marketplace for RF devices.

Timetable:

Action	Date	FR Cite
NPRM	11/16/99	64 FR 62159
NPRM Comment Period End	02/29/00	
R&O	07/10/02	67 FR 45666
Final Action	07/10/02	67 FR 45666

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: ET Docket No. 98—80

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RIN: 3060–AH46

4049. REVISION OF THE RULES REGARDING ULTRA—WIDEBAND TRANSMISSION

Priority: Economically Significant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307; 47 USC 544A

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The First Report and Order amends the Commission's rules to permit the marketing and operation of certain types of new products incorporating ultra—wideband (UWB) technology. UWB devices operate by employing very narrow or short duration pulses that result in very large or wideband transmission bandwidths. UWB technology holds great promise for a vast array of new applications that we believe will provide significant benefits for public safety, businesses and consumers. With appropriate technical standards, UWB devices can operate using spectrum occupied by existing radio services without causing interference, thereby permitting scarce spectrum resources to be used more efficiently.

Timetable:

Action	Date	FR Cite
NPRM	06/14/00	65 FR 37332
NPRM Comment Period End	10/12/00	
1st R&O	05/16/02	67 FR 34852

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: ET Docket No. 98—153

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RIN: 3060–AH47

4050. SOFTWARE DEFINED RADIO AUTHORIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 155; 47 USC 225; 47 USC 303(r); 47 USC 309

CFR Citation: 47 CFR 1; 47 CFR 2

Legal Deadline: None

Abstract: The NPRM proposes to streamline the equipment authorization procedures for software defined radios. We propose to define software defined radios as a new class of equipment with equipment authorization rules that reflect the additional flexibility incorporated into such radios. The frequency and technology agility of software defined radios could increase the use of presently underutilized frequency bands.

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 341
Report & Order	10/05/01	66 FR 50834
Petitions for Reconsideration	12/07/01	66 FR 63545

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: ET Docket No. 00—47

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RIN: 3060–AH64

4051. NEW ADVANCED WIRELESS SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: This proceeding explores the possible uses of frequency bands below 3 GHz to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

Timetable:

Action	Date	FR Cite
NPRM	01/23/01	66 FR 7438
NPRM Comment Period End	03/09/01	
Final Report	04/11/01	66 FR 18740
MO&O	09/13/01	66 FR 47591
FNPRM	09/13/01	66 FR 47618
First R&O	10/25/01	66 FR 53973
Petition for Reconsideration	11/02/01	66 FR 55666
2nd R&O	01/24/03	68 FR 3455
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: ET Docket No. 00—258

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RIN: 3060–AH65

4052. REALLOCATION OF 27 MHZ SPECTRUM

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303(a); 47 USC 336

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The NPRM proposes to reallocate a total of 27 MHz of spectrum, transferred from Federal Government use, for non—Government services pursuant to the Omnibus Budget Act of 1977. The transfer of these bands to non—Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligation as mandated by Congress to assign this spectrum for non—Government use.

Timetable:

Action	Date	FR Cite
NPRM	01/23/01	66 FR 7443
NPRM Comment Period End	03/26/01	
R&O and MO&O	02/11/02	67 FR 6172
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Federalism: Undetermined

Additional Information: ET Docket No. 00—221

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RIN: 3060–AH66

4053. REVISIONS TO BROADCAST AUXILIARY SERVICE RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 302; 47 USC 303(f); 47 USC 303(r); 47 USC 332; 47 USC 337

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 73; 47 CFR 74; 47 CFR 78

Legal Deadline: None

Abstract: The Notice of Proposed Rule Making conducts an extensive review of the Broadcast Auxiliary Services (BAS) rules and proposes changes to create a more efficient BAS that can readily adapt to regulatory and technological changes. The Commission examines the relationship between BAS, the Cable Television Relay Service (CARS), and the Fixed Microwave Television Service. The Commission also examines the use of wireless assist video devices (WAVDs) on unused television channels.

Timetable:

Action	Date	FR Cite
NPRM	05/24/01	66 FR 28686
NPRM Comment Period End	07/23/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Federalism: Undetermined

Additional Information: ET Docket No. 01—75

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RIN: 3060–AH78

4054. PART 15 BIENNIAL REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(e)(f) and (r); 47 USC 304 and 307

CFR Citation: 47 CFR 2; 47 CFR 15; 47 CFR 18; 47 CFR 90

Legal Deadline: None

Abstract: The First Report and Order in this proceeding requires radar detectors to comply with limits on radiated emissions in the 11.7—12.2 GHz band to prevent interference to satellite services. Radar detectors are required to be approved by the Federal Communications Commission or another designated organization before they can be marketed within the United States.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59209
1st R&O	07/29/02	67 FR 48989
Petition for Recon	09/12/02	67 FR 57819

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: ET Docket No. 01—278

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RIN: 3060–AH92

4055. AMATEUR RADIO SERVICE RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 302(a); 47 USC 303; 47 USC 336

CFR Citation: 47 CFR 2; 47 CFR 97

Legal Deadline: None

Abstract: The NPRM proposes to amend the Commission's rules to add a new secondary allocation to the 135.7—137.8 kHz band for the amateur service for experimentation in the low frequency region of the spectrum; and add a new secondary allocation to the 5250—5400 kHz band for the amateur service to facilitate high frequency amateur service operations; and to upgrade the amateur service allocation from secondary to primary status and add a primary allocation for the amateur—satellite service in the 2400—2402 MHz band.

Timetable:

Action	Date	FR Cite
NPRM	06/14/02	67 FR 40898
NPRM Comment Period End	08/13/02	
R&O	06/03/03	68 FR 33020
Petition for Recon	08/05/03	68 FR 46187

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Additional Information: ET Docket No. 02—98

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RIN: 3060–AI04

4056. • UNLICENSED DEVICES IN THE 5 GHZ BAND

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 301; 47 USC 302(a); 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 316; 47 USC 332

CFR Citation: 47 CFR 2; 47 CFR 15

Legal Deadline: None

Abstract: The notice of proposed rulemaking proposes to amend the rules governing the operation of Unlicensed National Information Infrastructure (U—NII) devices, including Radio Local Area Networks (RLANS) to make available an additional 255 megahertz of spectrum in the 5.47—5.725 GHz band.

Timetable:

Action	Date	FR Cite
NPRM	07/25/03	68 FR 44011

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AI16

4057. • ABOVE 76 GHZ

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 302(a); 47 USC 303; 47 USC 336

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The Notice of Proposed Rulemaking seeks comments on reallocating spectrum in the 76—81 GHz frequency band and the bands above 95 GHz to make the domestic and international frequency allocation change consistent with each other.

Timetable:

Action	Date	FR Cite
NPRM	06/03/03	68 FR 33043

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

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RIN: 3060–AI18

Federal Communications Commission (FCC)
Office of Engineering and Technology
Completed Actions

4058. REGULATIONS FOR RF LIGHTING DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307

CFR Citation: 47 CFR 18

Legal Deadline: None

Abstract: The FCC proposed to update the regulations for RF lighting devices. This action was taken in response to new developments in RF lighting technology. With the passage of time, the record in this proceeding has become outdated. There does not appear to be a need for further Commission action at this time; we are terminating this proceeding without prejudice to its substantive merits.

Timetable:

Action	Date	FR Cite
ANPRM	04/24/98	63 FR 20362
First Report & Order	07/12/99	64 FR 37417
Order Terminating Proceeding	06/23/03	68 FR 37112
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: ET Docket No. 98—42

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RIN: 3060–AG95

4059. WIRELESS MEDICAL TELEMETRY SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304

CFR Citation: 47 CFR 2; 47 CFR 15; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: The Commission amended parts 2 and 95 of the rules to allocate spectrum and to establish rules for a Wireless Medical Telemetry Service. This action will allow potentially life critical medical telemetry equipment, which currently operates on a secondary basis, unprotected from interference, to operate on a blanket licensed, interference protected basis.

Timetable:

Action	Date	FR Cite
NPRM	08/02/99	64 FR 41891
NPRM Comment Period End	10/18/99	
R&O	07/17/00	65 FR 43995
MO&O	02/11/02	67 FR 6172
Final Action	02/11/02	67 FR 6172
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: ET Docket No. 99—255

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RIN: 3060–AH27

Federal Communications Commission (FCC)
Office of General Counsel
Long-Term Actions

4060. AMENDMENT OF THE EX PARTE RULES IN JOINT BOARD PROCEEDINGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 1.1206

Legal Deadline: None

Abstract: The FCC proposes to amend its ex parte rules to facilitate communications by the States in Joint Board proceedings and proceedings before the FCC involving a recommendation from a Joint Board.

Timetable:

Action	Date	FR Cite
NPRM	07/15/98	63 FR 38142
NPRM Comment Period End	08/31/98	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH02

4061. AMENDMENT OF SECTION 1.1204 OF THE COMMISSION'S EX PARTE RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 309

CFR Citation: 47 CFR 1.1204

Legal Deadline: None

Abstract: The Commission proposes to amend its regulations specifying presentations that are treated as exempt under the ex parte rules. Under the current rule, presentations to or from the Department of Justice and the Federal Trade Commission regarding telecommunications competition matters are treated as exempt. The item would expand the scope of the exemption to include the Competition Directorate of the European Commission and other international and foreign bodies with analogous functions. The item would clarify that the term "telecommunications competition matters" in the existing rules was intended to be construed broadly and was not limited to common carriers.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81474
NPRM Comment Period End	02/09/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH58

4062. AMENDMENT OF SECTION 1.17 OF THE COMMISSION'S RULES CONCERNING TRUTHFUL STATEMENTS TO THE COMMISSION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 201(b); 47 USC 303(r)

CFR Citation: 47 CFR 1.17

Legal Deadline: None

Abstract: The Commission amended its regulations relating to the submission of truthful information to the Commission to: (1) provide that the rule prohibits incorrect statements or omissions resulting from negligence and not just intentional misrepresentation or lack of candor; (2) make clearer that the rule covers statements made to the Commission in all contexts; (3) include oral statements and not just written statements; and (4) include all persons making statements to the Commission (e.g. including non—regulatees). Petition for reconsideration is pending.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10658
Interim Final Rule	03/28/03	68 FR 15096
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH86

4063. STREAMLINING THE COMMISSION'S RULES AND REGULATIONS FOR SATELLITE APPLICATION AND LICENSING PROCEDURES (IB DOCKET NO. 95—117)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 4; 47 USC 154; 47 USC 303; 47 USC 554; 47 USC 701 to 744

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: On February 10, 1997, the FCC adopted rules and policies that streamlined the application and licensing requirements of part 25 of its rules, which deals with communication satellites and earth stations. The streamlined rules waived the construction permit requirement for satellite space stations; changed the license term for temporary fixed earth stations; and adjusted or changed the rules concerning minor modifications and basic requirements for satellite service applications. The streamlined rules also resulted in the creation of a new application form, FCC Form 312. Form 312 eliminated from the International Bureau's use the FCC Form 493, FCC Form 430, FCC Form 702, and FCC Form 704. Petitions for Reconsideration were filed in this matter. In March 1997 the Commission released a Public Notice concerning these petitions, which are presently pending before the International Bureau.

Timetable:

Action	Date	FR Cite
NPRM	09/09/95	60 FR 46252
R&O, Recon Pending	02/10/97	62 FR 5924
Public Notice/Petitions for Recon	03/26/97	62 FR 14430
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, Local, State

Federalism: Undetermined

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RIN: 3060–AD70

4064. ESTABLISHING RULES AND POLICIES FOR THE USE OF SPECTRUM FOR MOBILE SATELLITE SERVICE IN THE L—BAND (IB DOCKET NO. 96—132)

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 316; 47 USC 403

CFR Citation: 47 CFR 25.136(d)(1) to 25.136(d)(8); 47 CFR 25.136(e)(1) to 25.136(e)(10)

Legal Deadline: None

Abstract: The Commission has established licensing policies to govern mobile—satellite services (MSS) in the L—band. Specifically, the Commission has modified the license of Motient Services, Inc. (Motient), the only U.S. MSS system currently authorized to operate in the L—band, to use up to 20 megahertz of spectrum across the entire L—band. Previously, Motient was authorized only to operate in the upper portion of the L—band. In addition, the Commission has adopted and incorporated into part 25 of the rules specific operational parameters and technical requirements to ensure the integrity of maritime distress and safety communications service will not be compromised by MSS operation in the lower portion of the L—band.

Timetable:

Action	Date	FR Cite
NPRM	06/18/96	61 FR 40772
NPRM Comment Period End	09/23/96	
R&O (Release Date)	02/07/02	67 FR 51105
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Federalism: Undetermined

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RIN: 3060–AF89

4065. ESTABLISHMENT OF RULES AND POLICIES FOR THE DIGITAL AUDIO RADIO SATELLITE SERVICE IN THE 2310—2360 MHZ FREQUENCY BAND (IB DOCKET NO. 95—91; GEN DOCKET NO. 90—357)

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 151(i); 47 USC 154(j); 47 USC 157; 47 USC 309(j)

CFR Citation: 47 CFR 25.144

Legal Deadline: None

Abstract: The Commission is proposing rules to govern satellite digital audio radio services (SDARS). The Commission adopted service rules for SDARS in 1997 and sought further comment on proposed rules governing the use of complementary terrestrial repeaters. See 62 FR 19095.

Timetable:

Action	Date	FR Cite
NPRM	06/15/95	60 FR 35166
R&O	03/11/97	62 FR 11083
FNPRM	04/18/97	62 FR 19095
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AF93

4066. REDESIGNATION OF THE 27.5—29.5 GHZ FREQUENCY BAND (CC DOCKET NO. 92—297)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 301; 47 USC 302

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 21; 47 CFR 25

Legal Deadline: None

Abstract: The Commission issued a Memorandum Opinion and Order that addressed a petition for clarification and/or reconsideration filed by Teledesic Corporation of the Commission's Third Report and Order, which established technical requirements and service rules for geostationary fixed satellite services (NGOS FSS) in the Ka—band. Hughes Communications Galaxy, Inc. filed a Petition for Reconsideration of the Memorandum, Opinion and Order. The Hughes petition is still pending.

Timetable:

Action	Date	FR Cite
NPRM	07/13/95	60 FR 43740
NPRM Comment Period End	09/07/95	
R&O	08/28/96	61 FR 44177
Third R&O	11/18/97	62 FR 61488
Order on Recon	05/25/02	67 FR 39308
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: CC Docket No. 92—297

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RIN: 3060–AF94

4067. ALLOCATE & DESIGNATE: SPEC FOR FIXED—SAT SRV (37.5—38.5, 40.5—41.5 & 48.2—50.2 GHZ BANDS). ALLOCATE: FIXED & MOBILE 40.5—42.5 GHZ; WIRELESS 46.9—47 GHZ; GOV OPER 37—38 & 40—40.5 GHZ; IB DOC NO. 97—95

Priority: Economically Significant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(e); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r); 47 USC 304; 47 USC 307

CFR Citation: 47 CFR 2.106; 47 CFR 25.202; 47 CFR 25.208

Legal Deadline: None

Abstract: This item adopts a plan for non—government operations in the 36.0 — 51.4 GHz portion of the V—band, establishing priorities for different services in different parts of this band.

Timetable:

Action	Date	FR Cite
NPRM	04/04/97	62 FR 16129
Report & Order	01/15/99	64 FR 2585
Correction	02/08/99	64 FR 6138
Correction	02/10/99	64 FR 6565
Notice of Petition for Reconsideration	03/22/99	64 FR 13796
Order on Reconsideration	12/01/99	
Further NPRM	07/05/01	66 FR 35399
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local, Tribal

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RIN: 3060–AH23

4068. ESTABLISHMENT OF POLICIES AND SERVICE RULES FOR THE MOBILE SATELLITE SERVICE IN THE 2 GHZ BAND; IB DOCKET NO. 99—81

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 310; 47 USC 319

CFR Citation: 47 CFR 25.114; 47 CFR 25.115; 47 CFR 25.121; 47 CFR 25.133; 47 CFR 25.136; 47 CFR 25.137; 47 CFR 25.143; 47 CFR 25.201; 47 CFR 25.202; 47 CFR 25.203; 47 CFR 25.279

Legal Deadline: None

Abstract: The Commission amended the regulations covering the 1.6/2.4 GHz Mobile Satellite Service (MSS) to incorporate the rules for the 2 GHz MSS. The actions establish the band arrangement and service rules and policies for the 2 GHz MSS. The effect of amending the 1.6/2.4 GHz MSS rules to include 2 GHz MSS is to simplify and harmonize the rules for the types of satellite services.

Timetable:

Action	Date	FR Cite
NPRM	04/07/99	64 FR 16880
Report and Order	10/04/00	65 FR 59140
MO&O	09/13/01	66 FR 47591
Erratum	07/16/02	67 FR 46603
2nd MO&O	03/13/03	68 FR 11986
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Federalism: Undetermined

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RIN: 3060–AH28

4069. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF ACCOUNTS SETTLEMENT IN MARITIME MOBILE &MARITIME MOBILE—SATELLITE RADIO SERVICES AND WITHDRAWAL OF THE COMMISSION AS ACCOUNTING AUTHORITY; IB DOC NO. 98—96

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 303(r)

CFR Citation: 47 CFR 3.10(e)

Legal Deadline: None

Abstract: The FCC has decided to withdraw from acting as an accounting authority for the settlement of accounts in the maritime mobile and maritime mobile—satellite (ship—to—shore) radio services, and to rely solely upon the various privately owned accounting authorities the FCC has authorized. In that connection the FCC amended section 3.10(e) of its rules to specify that private accounting authorities must serve the public non—discriminatorily (action 7—13—99). The Commission is gathering comment to develop a plan to ensure a smooth transition to private accounting authorities.

Timetable:

Action	Date	FR Cite
NPRM	07/24/98	63 FR 39800
Report & Order	07/28/99	64 FR 40774
Further NPRM	07/28/99	64 FR 40808
Comment Period Extended	09/03/99	64 FR 48337
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Federalism: Undetermined

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RIN: 3060–AH30

4070. GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE; IB DOCKET NO. 99—67

Priority: Economically Significant

Legal Authority: 47 USC 4(i); 47 USC 7(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 310

CFR Citation: 47 CFR 25.200; 47 CFR 25.213; 47 CFR 25.215; 47 CFR 25.216; 47 CFR 2.1204

Legal Deadline: None

Abstract: The FCC has proposed to adopt rules to facilitate transnational use of mobile terminals used for 2—way voice communication via satellite systems with global or international coverage. In the same proceeding, the FCC has adopted limits on out—of—band emissions from some mobile satellite terminals in order to protect reception of aeronautical satellite radionavigation signals in the 1559—1610 MHz band. The FCC also asked for comment on the advisability of adopting rules requiring providers of mobile telecommunication service via satellite to provide 911 emergency—calling features.

Timetable:

Action	Date	FR Cite
NPRM	04/06/99	64 FR 16687
NPRM Comment Period End	05/18/99	
Public Notice	01/17/01	66 FR 3960
R&O and FNPRM (release date)	05/14/02	67 FR 61999
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

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RIN: 3060–AH49

4071. STREAMLINING EARTH STATION LICENSING RULES; IB DOCKET NO. 00—248

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 701 to 744

CFR Citation: 47 CFR 23; 47 CFR 25

Legal Deadline: None

Abstract: The Commission has found several cases in which modifying or eliminating rules could facilitate licensing of earth stations, thereby expediting the provision of useful satellite services to the public, without unreasonably increasing the risk of harmful interference to existing earth station or space station operators, or terrestrial wireless operators in shared frequency bands.

Specifically, this NPRM considers the following rule revisions: (1) codifying streamlined procedures for case—by—case examination of earth stations using "non—routine" antennas, non—routine power levels, or both; (2) relaxing some current requirements, such as increasing power and power density limits, and allowing some temporary fixed earth stations to begin operation sooner than is now permitted; (3) streamlining the very small aperture terminal (VSAT) rules, and revising the Commission's power level rules to provide for various types of VSAT multiple access methods; (4) adopting a simplified license application form for "routine" earth stations; and (5) other miscellaneous rule revisions. The Commission also invites comment on extending these proposed rules to the Ka—band.

On September 26, 2002, the Commission adopted a Further Notice of Proposed Rulemaking in this proceeding. This Further NPRM invited comment on refinements to the proposals in the NPRM to relax some earth station technical requirements, and on an alternative to the VSAT proposals in the NPRM. The Further NPRM also seeks comment on proposals made by commenters in response to the First NPRM.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1283
NPRM Comment Period End	05/07/01	
First R&O	03/19/02	67 FR 12485
FNPRM	12/24/02	67 FR 78399
FNPRM comment period ends	04/08/03	
2nd R&O (release date)	06/20/03	
2nd FNPRM (release date)	07/08/03	
3rd R&O (release date)	07/08/03	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH60

4072. POLICIES AND RULES FOR NON—GEOSTATIONARY SATELLITE ORBIT, FIXED SATELLITE SERVICE IN THE KA—BAND; IB DOCKET NO. 02—19

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: The NPRM seeks to determine a method to license multiple satellite network systems in spectrum designated on a primary basis for non—geostationary satellite orbit, fixed—satellite service. It also proposes service rules to apply to these licensees.

Timetable:

Action	Date	FR Cite
NPRM	03/04/02	67 FR 9641
NPRM Comment Period End	04/18/02	
R&O	06/18/03	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH93

4073. ENFORCEMENT OF OTHER NATIONS' PROHIBITIONS AGAINST THE UNCOMPLETED CALL SIGNALING CONFIGURATION OF INTERNATIONAL CALLBACK SERVICE; IB DOCKET NO. 02—18

Priority: Info./Admin./Other

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154 (j); 47 (USC 201(b); 47 USC 303(r); ...

CFR Citation: None

Legal Deadline: None

Abstract: The Notice of Proposed Rulemaking seeks comments on whether the Commission should eliminate the existing comity—based prohibitions and thus discontinue the policy that allows a foreign government or entity to make use of the enforcement mechanisms of the Commission to prohibit the U.S. carriers from offering one form of call—back abroad. International call—back arrangements allow foreign callers to take advantage of low U.S. international services rates, many of which are significantly lower than the rates available in their home countries.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10656
NPRM Comment Period End	05/15/02	
Order	04/14/03	68 FR 25840

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AH94

4074. SPACE STATION LICENSING REFORM; IB DOCKETS 00—248 AND 02—34

Priority: Other Significant

Legal Authority: 47 USC 154(i); 47 USC 157; 47 USC 303(c); 47 USC (f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has adopted a Notice of Proposed Rulemaking to streamline its procedures for reviewing satellite license applications. Currently, the Commission uses processing rounds to review those applications. In a processing round, when an application is filed, the International Bureau (Bureau) issues a public notice establishing a cut—off date for other mutually exclusive satellite applications, and then considers all those applications together. In cases where sufficient spectrum to accommodate all the applicants is not available, the Bureau directs the applicants to negotiate a mutually agreeable solution. Those negotiations usually take a long time, and delay provision of satellite services to the public.

The NPRM invites comment on two alternatives for expediting the satellite application process. One alternative is to replace the processing round procedure with a "first—come, first—served" procedure that would allow the Bureau to issue a satellite license to the first party filing a complete, acceptable application. The other alternative is to streamline the processing round procedure by adopting one or more of the following proposals: (1) placing a time limit on negotiations; (2) establishing criteria to select among competing applicants; (3) dividing the available spectrum evenly among the applicants.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12498
NPRM Comment Period End	07/02/02	
2nd R&O (release date)	06/20/03	
2nd FNPRM (release date)	07/08/03	
3rd R&O (release date)	07/08/03	
FNPRM	08/27/03	68 FR 51546
First R&O	08/27/03	68 FR 51499
FNPRM Comment Period End	10/27/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH98

4075. ALASKA BUSH EARTH STATION POLICY; IB DOCKET NO. 02—30

Priority: Other Significant

Legal Authority: 47 USC 301

CFR Citation: None

Legal Deadline: None

Abstract: The FCC is proposing to repeal a policy against licensing "duplicative" MTS earth stations in rural Alaska.

Timetable:

Action	Date	FR Cite
NPRM	05/30/02	67 FR 37750
Final Rule	08/12/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH99

4076. FLEXIBILITY FOR DELIVERY OF COMMUNICATIONS BY MOBILE SATELLITE SERVICE PROVIDERS IN THE 2 GHZ BAND, THE L—BAND, AND THE 1.6/2.4 GHZ BAND

Priority: Economically Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 157(a); 47 USC 301; 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r); 47 USC 303(y); 47 USC 308

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proceeding was initiated to obtain comments on proposals to bring flexibility to the delivery of communications by mobile satellite service (MSS) providers.

Timetable:

Action	Date	FR Cite
NPRM	09/13/01	66 FR 47621
NPRM Comment Period End	10/25/01	
Public Notice	04/05/02	67 FR 16347
NPRM	01/29/03	
Report & Order	01/29/03	
First R&O	04/23/03	68 FR 51499
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AI05

4077. MITIGATION OF ORBITAL DEBRIS; IB DOCKET NO. 02—54

Priority: Routine and Frequent

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 5; 47 CFR 25; 47 CFR 97

Legal Deadline: None

Abstract: The Commission is proposing rules for satellite services concerning orbital debris mitigation. Orbital debris consists of artificial objects orbiting the Earth that are not functional spacecraft. The Commission is proposing a range of options for addressing orbital debris issues as part of spacecraft design and operation in order to preserve access to space for the long term.

Timetable:

Action	Date	FR Cite
NPRM	05/03/02	67 FR 22376
NPRM Comment Period End	08/16/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AI06

Federal Communications Commission (FCC)
International Bureau
Completed Actions

4078. AMENDMENT OF POLICY TO ALLOW NON—U.S. LICENSED SPACE STATIONS TO PROVIDE SERVICE IN THE UNITED STATES; IB DOCKET NO. 96—111; CC DOCKET NO. 93—23

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 303; 47 USC 308

CFR Citation: 47 CFR 25.113; 47 CFR 25.115; 47 CFR 25.130; 47 CFR 25.131; 47 CFR 25.137

Legal Deadline: None

Abstract: In the Second Order on Reconsideration in this proceeding, the Commission denied four petitions for reconsideration of the DISCO II Order.

Timetable:

Action	Date	FR Cite
NPRM	05/14/96	61 FR 32398
NPRM Comment Period End	08/16/96	
FNPRM	07/29/97	62 FR 40494
R&O	12/04/97	62 FR 64167
Public Notice	01/05/98	63 FR 227
Public Notice on Petitions for Recon	01/30/98	63 FR 4640
First Order on Recon	11/15/99	64 FR 61791
Second Order on Recon (Release Date)	11/05/01	
Declaratory Order (release date)	06/20/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Federalism: Undetermined

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RIN: 3060–AG31

4079. POLICIES FOR THE DIRECT BROADCAST SATELLITE SERVICE; IB DOCKET NO. 98—21

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: This proceeding streamlines and simplifies the Commission's rules governing direct broadcast satellite (DBS) service. It also harmonizes the rules for DBS with those of other satellite services.

Timetable:

Action	Date	FR Cite
NPRM	03/06/98	63 FR 11202
NPRM	02/02/01	66 FR 8774
R&O	08/08/02	67 FR 51110

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AH29

Federal Communications Commission (FCC)
Media Bureau
Long-Term Actions

4080. TRANSFER OF CONTROL OF NON—STOCK ENTITIES (MM DOCKET NO. 89—77)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The Commission will consider proposals concerning the treatment of corporations and other organizational structures that are not traditional commercial corporations.

Timetable:

Action	Date	FR Cite
NOI	03/16/89	54 FR 15957
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AE31

4081. CABLE TELEVISION RATE REGULATION

Priority: Other Significant

Legal Authority: 47 USC 154; 47 USC 543

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has adopted rate regulations to implement section 623 of the 1992 Cable Act to ensure that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment. Reconsideration was requested. The 14th Order on Reconsideration addresses petitions on issues governing regulated services by cable systems. In a subsequent notice, comment was sought on recalibrating the competitive differential between rates of systems subject to effective competition and noncompetitive systems. In addition, comment was sought as to whether there may be a different approach to establish reasonable rates on the basic service tier.

Timetable:

Action	Date	FR Cite
NPRM	01/04/93	58 FR 48
R&O and FNPRM	05/21/93	58 FR 29736
MO&O and FNPRM	08/18/93	58 FR 43816
3rd R&O	11/30/93	58 FR 63087
Order on Recon, 4th R&O, and 5th NPRM	04/15/94	59 FR 17943
3rd Order on Recon	04/15/94	59 FR 17961
5th Order on Recon and FNPRM	10/13/94	59 FR 51869
4th Order on Recon	10/21/94	59 FR 53113

Action	Date	FR Cite
6th Order on Recon, 5th R&O, and 7th NPRM	12/06/94	59 FR 62614
7th Order on Recon	01/25/95	60 FR 4863
9th Order on Recon	02/27/95	60 FR 10512
8th Order on Recon	03/17/95	60 FR 14373
6th R&O and 11th Order on Recon	07/12/95	60 FR 35854
13th Order on Recon	10/05/95	60 FR 52106
12th Order on Recon	10/26/95	60 FR 54815
10th Order on Recon	04/08/96	61 FR 15388
Order on Recon of the 1st R&O and Further NPRM	04/15/96	61 FR 16447
MO&O	02/12/97	62 FR 6491
Report on Cable Industry Prices	02/24/97	62 FR 8245
R&O	03/31/97	62 FR 15118
14th Order on Recon	10/15/97	62 FR 53572
NPRM and Order	09/05/02	67 FR 56882
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Local, State

Federalism: Undetermined

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RIN: 3060–AF41

4082. CABLE TELEVISION RATE REGULATION: COST OF SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 543

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has established rules pursuant to which cable operators may set rates for regulated cable service in accordance with traditional cost—of—service principles, as modified to take account of unique characteristics of the cable industry. In the latest NPRM, comment was sought on rule changes that may be necessary or desirable in order to account for changes in the regulatory process resulting from the end of the Commission's statutory authority to regulate certain tiers of cable programming service.

Timetable:

Action	Date	FR Cite
NPRM	07/30/93	58 FR 40762
R&O	04/15/94	59 FR 17975
2nd NPRM	04/15/94	59 FR 18066
MO&O	10/14/94	59 FR 52087
2nd R&O/1st Order on Recon/FNPRM	03/08/96	61 FR 9361
Correction	03/22/96	61 FR 11749
NPRM and Order	09/05/02	67 FR 56882
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

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RIN: 3060–AF48

4083. CUSTOMER SERVICE STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i) to 154(j); 47 USC 303; 47 USC 552

CFR Citation: 47 CFR 76

Legal Deadline: NPRM, Statutory, April 3, 1993, NPRM.

Abstract: The Commission has adopted customer service standards for cable operators nationwide to implement the provisions of the Cable Act of 1992. Such standards shall include, at a minimum, cable systems office hours, telephone availability, installations, outages, service calls, and communication between the cable operator and subscriber, including billing and refunds.

Timetable:

Action	Date	FR Cite
NPRM	12/23/92	57 FR 61038
R&O	04/19/93	58 FR 21107
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

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RIN: 3060–AF69

4084. FILING OF TELEVISION NETWORK AFFILIATION CONTRACTS (MM DOCKET NO. 95—40)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 303(r)

CFR Citation: 47 CFR 73.3613(a)

Legal Deadline: None

Abstract: This proceeding considers changes to the requirement that stations file their network affiliation agreements with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/19/95	60 FR 19564
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Federalism: Undetermined

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RIN: 3060–AF80

4085. RULES GOVERNING BROADCAST TELEVISION ADVERTISING (MM DOCKET NO. 95—90)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 301; 47 USC 303(r); 47 USC 313; 47 USC 314

CFR Citation: 47 CFR 73.658(h); 47 CFR 73.658(i)

Legal Deadline: None

Abstract: This proceeding considers changes to two rules regulating broadcast television advertising. The first advertising rule prohibits a broadcast television network from influencing or controlling the rates its affiliates set for the sale of their non—network advertising time. The second advertising rule prohibits a broadcast television network from representing any of its affiliates in the sale of non—network advertising time.

Timetable:

Action	Date	FR Cite
NPRM	07/05/95	60 FR 34959
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Judith Herman, Assistant Chief, Industry Analysis Division, Federal Communications Commission, Media Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AF81

4086. CABLE HOME WIRING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 544(i)

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: On October 6, 1997, the FCC adopted a Report and Order and Second Notice of Proposed Rulemaking (FCC 97—7360) that amends its cable inside wiring rules to enhance competition in the video distribution marketplace. The Second FNPRM seeks comment on, among other things, whether there are circumstances where the FCC should adopt restrictions on exclusive contracts in order to further promote competition in the multiple dwelling unit marketplace. The 2nd Report and Order addresses multiple dwelling units when the occupant charges video service providers.

Timetable:

Action	Date	FR Cite
NPRM	11/17/92	57 FR 54209
R&O	03/02/93	58 FR 11970
NPRM	02/01/96	61 FR 3657
First Order on Recon & FNPRM	02/16/96	61 FR 6210
FNRPM	09/03/97	62 FR 46453
R&O and Second FNPRM	11/14/97	62 FR 60165
First Order on Recon and 2nd R&O	03/21/03	68 FR 13850
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG02

4087. CLOSED CAPTIONING

Priority: Other Significant

Legal Authority: 47 USC 613

CFR Citation: 47 CFR 79.1; 47 CFR 79.2

Legal Deadline: None

Abstract: The FCC adopted regulations to ensure that video programming is accessible to persons with hearing disabilities through closed captioning. The rules were adopted in August 1997 and modified in response to petitions for reconsideration in September 1998. In April 2000, the FCC adopted rules to ensure the accessibility of televised emergency information to persons with hearing disabilities through closed captioning or another method of visual presentation.

Timetable:

Action	Date	FR Cite
NOI	12/15/95	60 FR 65052
Order	01/29/96	61 FR 2781
Order	03/12/96	61 FR 9963
Report	08/14/96	61 FR 42249
NPRM	02/03/97	62 FR 4959
Order	03/24/97	62 FR 13853
R&O	09/16/97	62 FR 48487
FNRPM	01/21/98	63 FR 3070
Order	10/20/98	63 FR 55959
Order	06/23/99	64 FR 33424
Second R&O	05/09/00	65 FR 26757
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Additional Bureau: Consumer Information

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RIN: 3060–AG26

4088. CABLE ACT REFORM

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 522; 47 USC 543; 47 USC 544; 47 USC 548; 47 USC 552

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: This proceeding implements the cable reform section of the Telecommunications Act of 1996. It addresses several issues, including the cable rate complaint process, effective competition and subscriber notifications.

Timetable:

Action	Date	FR Cite
Order & NPRM	04/30/96	61 FR 19013
Report & Order	07/02/99	64 FR 35948
Correction	08/06/99	64 FR 42855
Order on Recon	06/14/02	67 FR 40870
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

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RIN: 3060–AG27

4089. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 549

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has adopted rules to address the mandate expressed in section 629 of the Communications Act to ensure the commercial availability of "navigation devices," the equipment used to access video programming and other services from multichannel video programming systems. Petitions for reconsideration were resolved in a recent order. The Commission also issued a Further Notice of Proposed Rulemaking and Declaratory Ruling. The Further Notice sought comment as to the effectiveness of the Commission's rules for achieving the commercial availability of navigation devices. Accompanying the Further Notice was a Declaratory Ruling which found that technology licenses requiring copy protection measures to be located within a navigation host device are consistent with the Commission's navigation devices rules. A subsequent Further Notice sought comment on a Memorandum of Understanding (MOU) filed by affected industries. The MOU seeks Commission action regarding compatibility regarding digital televisions and digital cable systems.

Timetable:

Action	Date	FR Cite
NPRM	03/05/97	62 FR 10011
R&O	07/15/98	63 FR 38089
Order on Reconsideration	06/02/99	64 FR 29599
FNPRM & Declaratory Ruling	09/28/00	65 FR 58255
FNPRM	01/16/03	68 FR 2278
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG28

4090. MINOR MODIFICATIONS OF BROADCAST LICENSES WITHOUT PRIOR CONSTRUCTION PERMIT (MM DOCKET NO. 96—58)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 155(c)(1); 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: This proceeding will implement the Commission's new authority to eliminate the present requirement for a construction permit for a broadcast station in certain instances where the changed facilities would not have an adverse impact on other broadcast facilities. In these instances, licensees or permittees will be able to initiate the change without prior authority and file a license application to cover the change afterwards.

Timetable:

Action	Date	FR Cite
NPRM	04/08/96	61 FR 15439
R&O	09/30/97	62 FR 51052
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG30

4091. POLE ATTACHMENT PROVISIONS

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 224; 47 USC 303; 47 USC 403

CFR Citation: 47 CFR 1.1401 to 1.1418

Legal Deadline: Final, Statutory, February 8, 1998, Final.

Abstract: The Commission established rules relating to pole attachments. The Telecommunications Act of 1996 required that within two years the Commission prescribe regulations governing the charges for pole attachments for telecommunications attachers. These regulations are to be used by cable operators and telecommunications carriers to provide telecommunications services when the utility and attaching entity parties fail to resolve a dispute over such charges. The Report and Order released in 1998 prescribed regulations to govern these charges.

In April 2000, the Commission released a Report and Order addressing issues related to the formula used to calculate just and reasonable rates that utilities charge for pole attachments. Petitions for reconsideration of both the 1998 and 2000 orders were resolved by Order released in May 2001.

Timetable:

Action	Date	FR Cite
NPRM	08/18/97	62 FR 43963
R&O	03/12/98	63 FR 12013
R&O	05/17/00	65 FR 31270
Erratum	05/31/00	65 FR 34820
Reconsideration Order	06/29/01	66 FR 34569
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Federalism: Undetermined

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RIN: 3060–AG71

4092. REVIEW OF TECHNICAL RULES IN PARTS 73 AND 74 (MM DOCKET NO. 98—93)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 307; 47 USC 319

CFR Citation: 47 CFR 73; 47 CFR 74

Legal Deadline: None

Abstract: The Second Report and Order in this radio technical streamlining proceeding continues the Commission's efforts to make the broadcast application process simpler, faster, and more efficient. In the Second Report and Order, the Commission amended the separation requirements for short—spaced FM stations, section 73.215(e), to afford second— and third—adjacent channel stations minimum relief of six kilometers from the full spacing requirements of section 73.207. The order also expands the types of facility changes covered by expedited one—step licensing procedures and provides additional technical flexibility to FM stations licensed to Puerto Rico and the U.S. Virgin Islands. The order also relaxes noncommercial educational FM second adjacent channel standard and establishes a noncommercial educational FM community coverage standard. Finally, the item creates a new commercial FM class, class C—zero, and a mechanism to reclassify class C stations that do not meet the new class minimum antenna height where there is a competing demand for spectrum.

Timetable:

Action	Date	FR Cite
NPRM	06/22/98	63 FR 33892
Report & Order	04/21/99	64 FR 19498
Second Report & Order	12/20/00	65 FR 79773
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG81

4093. DIGITAL MUST CARRY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 534

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: Section 614(b)(4)(B) of the Communications Act requires that, at the time the Commission prescribes standards for advanced television, it should "initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of those broadcast signals of local commercial television stations which have been changed to conform with such modified standards." In August of 1998, the FCC issued a Notice of Proposed Rulemaking seeking comments on the requirements of that section. In June 2000, based on responses to the Notice of Proposed Rulemaking, the Commission clarified that DTV—only television stations, in the context of auctioning analog channels 59—69, will ultimately have must carry rights. In January of 2001, the Commission issued a First Report and Order and Further Notice of Proposed Rulemaking resolving a number of technical and legal issues, including clarification that digital—only TV stations are entitled to mandatory carriage.

Timetable:

Action	Date	FR Cite
NPRM	08/07/98	63 FR 42330
MO&O and FNPRM	07/12/00	65 FR 42879
FNPRM	03/26/01	66 FR 16523
First R&O	03/26/01	66 FR 16533
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AG91

4094. HORIZONTAL OWNERSHIP LIMITS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 533

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: Section 613 of the Communications Act requires the Commission to "prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest." On October 8, 1999, the Commission issued a Third Report and Order, FCC 99—289, in this matter. The Commission revised the horizontal ownership rules as follows: (1) all multichannel video subscribers will be counted when calculating the 30 percent ownership limit; (2) actual subscriber numbers, rather than potential subscriber numbers, will be used for calculating an owner's share; and (3) the minority exception which allowed a 35 percent ownership limit for minority—owned entities under certain circumstances was eliminated. On March 2, 2001, the District of Columbia Circuit Court reversed and remanded the cable horizontal and vertical limits. (Time Warner Entertainment Co. v. FCC, 240 F.3d 1126 (DC cir.2001)). Pursuant to the court's remand, the Commission is soliciting comment.

Timetable:

Action	Date	FR Cite
Second MO&O on Recon and FNPRM	07/14/98	63 FR 37790
Third R&O	12/01/99	64 FR 67198
Order on Recon	03/08/00	65 FR 12135
MO&O	06/08/00	65 FR 36382
FNPRM	10/11/01	66 FR 51905
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH09

4095. APPLICATION OF NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT RULES TO SATELLITE RETRANSMISSION — SHVIA

Priority: Other Significant

Legal Authority: 47 USC 339

CFR Citation: 47 CFR 73; 47 CFR 76

Legal Deadline: None

Abstract: The FCC proposed rules on its implementation of certain aspects of the Satellite Home Viewer Improvement Act of 1999. In October of 2000, the FCC issued an order adopting rules that apply the current cable rules for network non—

duplication, syndicated program exclusivity and sports blackout to satellite carriers.

Timetable:

Action	Date	FR Cite
NPRM	02/02/00	65 FR 4927
Report and Order	11/14/00	65 FR 68082
R&O and Order on Recon	11/14/02	67 FR 68944
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH35

4096. RETRANSMISSION CONSENT ISSUES — SHVIA

Priority: Other Significant

Legal Authority: 47 USC 325

CFR Citation: 47 CFR 76.64(m); 47 CFR 76.65

Legal Deadline: None

Abstract: The Satellite Home Viewer Improvement Act of 1999 (SHVIA) requires broadcasters, until the year 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors (MVPDs) with respect to their transmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements.

The First Report and Order (Order) determined that the statute does not intend to subject retransmission consent negotiation to detailed substantive oversight by the Commission. Instead, the Order concludes that Congress intended that the Commission follow established precedent, particularly in the field of labor law, in implementing the good faith retransmission consent negotiation requirement. Consistent with this conclusion, the Order adopts a two—part test for good faith. The first part of the test consists of a brief, objective list of negotiation standards. The second part of the good faith test is based on a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the specific standards enumerated above, given the totality of the circumstances constitute a failure to negotiate in good faith. The Commission's rules regarding the good faith negotiation requirement sunset on January 1, 2006. An MVPD believing itself to be aggrieved may file a complaint with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	12/29/99	64 FR 72985
First R&O	03/23/00	65 FR 23805
Order on Recon	09/19/01	66 FR 48219
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH36

4097. DIGITAL AUDIO BROADCASTING SYSTEMS (MM DOCKET NO. 99—325)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The rulemaking proceeding was initiated to foster the development and implementation of terrestrial digital audio broadcasting (DAB). The transition to DAB promises the benefits that have generally accompanied digitalization — better audio fidelity, more robust transmission systems, and the possibility of new auxiliary services. In the First Report and Order, the Commission selected in—band, on—channel as the technology that will permit AM and FM radio broadcasters to introduce digital operations. Consideration of formal standard—setting procedures and related broadcasting licensing and service rule changes will be addressed in a future Order.

Timetable:

Action	Date	FR Cite
NPRM	11/09/99	64 FR 61054
First R&O	12/23/02	67 FR 78193
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH40

4098. SATELLITE BROADCASTING SIGNAL CARRIAGE REQUIREMENTS

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 338; 47 USC 534; 47 USC 535

CFR Citation: 47 CFR 76

Legal Deadline: Final, Statutory, November 29, 2000, Final.

Abstract: The Satellite Home Viewer Improvement Act of 1999 (SHVIA) requires satellite carriers, by January 1, 2002, to carry upon request all local broadcast stations' signals. These signals must be carried in all local markets in which the satellite carriers carry at least one broadcast station signal, assuming this signal is licensed pursuant to section 122 of the Copyright Act. The SHVIA requires the Commission to issue rules implementing the Act's mandatory carriage requirements within one year of the SHVIA's enactment. On November 29, 2000, the Commission adopted a Report and Order that places satellite carriers on equal footing with cable operators with respect to the availability of programming. The applicable statutory provisions are found in section 1008 of the SHVIA and codified at section 338 of the Communications Act. The Commission implementing satellite broadcast signal carriage rule is 47 CFR 76.66.

Timetable:

Action	Date	FR Cite
NPRM	06/30/00	65 FR 40564
NPRM Comment Period End	08/04/00	
Report and Order	01/23/01	66 FR 7410
Announcement of Effective Date	06/29/01	66 FR 34582
Order on Reconsideration	09/26/01	66 FR 49124

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH45

4099. ANCILLARY OR SUPPLEMENTAL USE OF DTV CAPACITY BY NON—COMMERCIAL LICENSEES (MM DOCKET NO. 98—203)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 4(i); 47 USC 4(j); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The Report and Order amends the Commission's rules to require that noncommercial educational (NCE) television licensees primarily provide a nonprofit, noncommercial educational service over their entire digital bitstream, including ancillary or supplementary service; and apply to them the same program to assess and collect fees as that established for commercial DTV licensees' use of DTV capacity for the provision of ancillary or supplementary services. This Report and Order also determines that the Communications Act of 1934 prohibition against the provision of advertising by NCE licensees does not apply to nonbroadcast services, such as subscription services provided on their DTV channels. The intended effect of these actions is to clarify the manner in which NCE licensees may use their excess DTV capacity for remunerative purposes.

Timetable:

Action	Date	FR Cite
NPRM	12/14/98	63 FR 68722
R&O	11/26/01	66 FR 58973

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

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RIN: 3060–AH53

4100. PERIODIC REVIEW OF RULES AND POLICIES AFFECTING THE CONVERSION TO DTV

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 4(i); 47 USC 4(j); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: On January 18, 2001, the Commission adopted a Report and Order (R&O) and Further Notice of Proposed Rulemaking, addressing a number of issues related to the conversion of the nation's broadcast television system from analog to digital television. The Memorandum Opinion and Order on Reconsideration revised a number of the determinations the Commission made in the R&O, affirms other decisions, and provides clarification of certain rules and policies. The Commission also modifies the minimum hours of operation of certain DTV stations and establishes guidelines for television stations that may seek an extension of the May 1, 2002, and May 1, 2003, deadlines for construction of DTV facilities. The 2nd Report & Order resolved several major technical issues including the issue of receiver performance standards, DTV tuners, and revisions to certain components of the DTV transmission standard. The latest NPRM commenced the Commission's second periodic review of the progress of the digital television conversion.

Timetable:

Action	Date	FR Cite
NPRM	03/23/00	65 FR 15600
Report & Order	02/13/01	66 FR 9973
MO&O	12/18/01	66 FR 65122
3rd MO&O and Order on Recon	10/02/02	67 FR 61816
2nd R&O and 2nd MO&O	10/11/02	67 FR 63290
NPRM	02/18/03	68 FR 7737

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AH54

4101. DIRECT BROADCAST PUBLIC INTEREST OBLIGATIONS; MM DOCKET NO. 93—25

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 335

CFR Citation: 47 CFR 25; 47 CFR 100

Legal Deadline: None

Abstract: The Commission adopted rules in 1998 that implement section 25 of the Cable Television Consumer Protection and Competition Act of 1992, as codified at section 335 of the Communications Act of 1934. Section 335 directs the Commission to impose certain public interest obligations on direct broadcast satellite providers. Several petitions for reconsideration are pending.

Timetable:

Action	Date	FR Cite
NPRM	03/08/93	58 FR 12917
Report and Order	02/08/99	64 FR 52399

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AH59

4102. CHILDREN'S TV, OBLIGATIONS OF DIGITAL TV BROADCASTERS (MM DOCKET NO. 00—167)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 336(d)

CFR Citation: 47 CFR 73.670; 47 CFR 73.671; 47 CFR 73.673

Legal Deadline: None

Abstract: This item seeks comment on a range of issues related to application of our existing children's programming rules to digital broadcasting. The NPRM focuses primarily on two areas: the obligation of commercial television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees limit the amount of advertising in children's programs.

In addition, this document seeks comment on how to address the issue of the airing, in programs viewed by children, promotions that may be inappropriate for children to watch. Although this document seeks comment largely on challenges unique to the digital area, it also discusses several issues that apply equally to analog and digital broadcasting.

Timetable:

Action	Date	FR Cite
NPRM	11/08/00	65 FR 66951
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH68

4103. EXTENSION OF FILING REQUIREMENTS FOR CHILDREN'S TV PROGRAMMING REPORT (MM DOCKET NO. 00—44)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 308

CFR Citation: 47 CFR 73.3526

Legal Deadline: None

Abstract: This document seeks comment on the tentative conclusion that broadcasters who maintain Internet websites should be required to post their completed quarterly Children's Television Programming Reports (FCC Form 398) on these sites. The FCC Form 398 is required to be filed by commercial television broadcast stations each quarter. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990. Although the Children's Television Programming Reports are available in a central location on the FCC's website, members of the public may look first to their local broadcast station for information about programming at the station, making station website posting useful.

Timetable:

Action	Date	FR Cite
NPRM	05/04/00	65 FR 25895
R&O	11/09/00	65 FR 67283
Further NPRM	11/09/00	65 FR 67331
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH69

4104. RADIO MARKET DEFINITIONS (MM DOCKET NO. 00—244)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 202(h); 47 USC 303; 47 USC 307

CFR Citation: 47 CFR 73.3555

Legal Deadline: None

Abstract: This FNPRM proposes changes to local ownership rules and policies concerning multiple ownership of radio broadcasting stations. The Commission examines the effect our current rules have had on the public and seeks comments to better serve our communities. This action is also intended to consider possible changes to our current local market radio ownership rules and policies in accordance with the Telecommunications Act of 1996. Because of the similarity of the issues presented in the Multiple Ownership of Radio Broadcast Stations in Local Markets to those in the Matter of Definition of Radio Market, the two actions were, in effect, consolidated.

These issues were evaluated as part of the Commission's biennial review of Media Ownership rules. An NPRM was initiated regarding the development of radio markets in smaller communities.

Timetable:

Action	Date	FR Cite
NPRM	12/28/00	65 FR 82305
FNPRM	12/11/01	66 FR 63997
NPRM	08/05/03	68 FR 46359
R&O	08/14/03	68 FR 82305
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH70

4105. ENHANCED AND STANDARDIZED DISCLOSURE (MM DOCKET NO. 00—168)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73.3526

Legal Deadline: None

Abstract: This item concerns rules and policies on how commercial television broadcast station licensees provide public interest information to the public. This document proposes amendments to the public inspection file rules that would standardize the format used for providing public interest information to the public and make information contained in public inspection files available on the Internet. The intended effect of this action is to propose rules that would make information regarding how television broadcast stations meet their fundamental public interest obligation to serve the needs and interests of their communities of license easier to understand or more accessible to the public.

Timetable:

Action	Date	FR Cite
NPRM	10/19/00	65 FR 62683
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH71

4106. REVISION OF EEO RULES AND POLICIES; MM DOCKET NO. 98—204

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 257; 47 USC 301; 47 USC 303; 47 USC 307; 47 USC 308; 47 USC 309; 47 USC 334; 47 USC 403; 47 USC 554

CFR Citation: 47 CFR 73.2080; 47 CFR 76.73; 47 CFR 76.75; 47 GFR 76.79; 47 CFR 76.1702

Legal Deadline: None

Abstract: FCC authority to govern Equal Employment Opportunity ("EEO") responsibilities of cable television operators was codified in the Cable Communications Policy Act of 1984. This authority was extended to television broadcast licensees and other multi—channel video programming distributors in the Cable and Television Consumer Protection Act of 1992. In the Second Report and Order, the FCC adopted new EEO rules and policies. This action was in response to a decision of the U.S. Court of Appeals for the District of Columbia Circuit that found prior EEO rules unconstitutional. The Third Notice of Proposed Rulemaking requests comment as to the applicability of the EEO rules to part—time employees.

Timetable:

Action	Date	FR Cite
NPRM	01/14/02	67 FR 1704
2nd R&O and 3rd NPRM	01/17/03	68 FR 670
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AH95

4107. REEXAMINATION OF COMPARATIVE STANDARDS FOR NONCOMMERCIAL EDUCATIONAL APPLICANTS; MM DOCKET NO. 95—31

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This FNPRM solicits additional comments on how the Commission should allocate and license "non—reserved" spectrum (i.e., spectrum that has not been set aside for exclusive use by noncommercial educational broadcast stations) in which both commercial and noncommercial entities have an interest. This FNPRM was issued in response to a court decision in National Public Radio vs. FCC.

Timetable:

Action	Date	FR Cite
FNPRM	03/05/02	67 FR 9945
2nd R&O	05/15/03	68 FR 26220
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AH96

4108. CROSS OWNERSHIP OF BROADCAST STATIONS AND NEWSPAPERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303, 307, 309,310

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This NPRM initiates a proceeding to seek comment on whether and to what extent it should revise the newspaper/broadcast cross—ownership rule, which prohibits common ownership of a broadcast station and a newspaper in the same geographic area. The local multimedia marketplace in which broadcast stations and newspapers operate has changed significantly since the Commission adopted the rule in 1975. This proceeding seeks comment on the relevance of these changes to the newspaper/broadcast cross—ownership rule.

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50991
R&O	08/14/03	68 FR 48765
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH97

4109. BIENNIAL REGULATORY REVIEW OF THE COMMISSION'S BROADCAST OWNERSHIP RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 307; 47 USC 308; 47 USC 309(a); 47 USC 310(d); PL 104.104, 202(h)

CFR Citation: 47 CFR 73.355(e); 47 CFR 73.355(b); 47 CFR 73.355(a); 47 CFR 73.355(c); 47 CFR 73,3555(d); ...

Legal Deadline: None

Abstract: The Telecommunications Act of 1996 directs the Commission to re—examine its broadcast ownership rules every two years and repeal or modify any regulation it determines to be no longer in the public interest. The NPRM initiated this review.

Timetable:

Action	Date	FR Cite
NPRM	10/28/02	67 FR 65751
R&O	08/14/03	68 FR 48765

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AI07

Federal Communications Commission (FCC) Media Bureau — Completed Actions

4110. EXCLUSIVE CONTRACT PROHIBITION OF THE PROGRAM ACCESS RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 548

CFR Citation: 47 CFR 76.1002

Legal Deadline: NPRM, Statutory, October 5, 2002, NPRM.

Abstract: Section 628(c)(2)(D) of the Communications Act generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming between vertically integrated programming vendors and cable operators. Pursuant to section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the FCC conducts a proceeding and finds that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. In October 2001, the FCC issued an NPRM to initiate a proceeding in order to make that determination. In June 2002, the Commission issued an order extending the prohibition on exclusive contracts to October 5, 2007.

Timetable:

Action	Date	FR Cite
NPRM	10/31/01	66 FR 54972
R&O	07/30/02	67 FR 49247

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH91

Federal Communications Commission (FCC) Office of Managing Director — Long-Term Actions

4111. ASSESSMENT AND COLLECTION OF REGULATORY FEES FOR FY 2002

Priority: Economically Significant

Legal Authority: 47 USC 159

CFR Citation: 47 CFR 1.1151 et seq

Legal Deadline: None

Abstract: Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, requires the FCC to recover the costs of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

Timetable:

Action	Date	FR Cite
NPRM (Adopted Date)	04/10/02	67 FR 17325
R&O	07/12/02	67 FR 46297
Erratum	09/27/02	67 FR 61000

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH85

Federal Communications Commission (FCC)
Office of Managing Director

Completed Actions

4112. • ASSESSMENT AND COLLECTION OF REGULATORY FEES FOR FY 2003

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 159

CFR Citation: 47 CFR 1.1151 et seq

Legal Deadline: None

Abstract: Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, requires the FCC to recover the costs of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

Timetable:

Action	Date	FR Cite
NPRM	04/10/03	68 FR 17577
R&O	08/13/03	68 FR 48445

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AI19

Federal Communications Commission (FCC)
Wireless Telecommunications Bureau

Long-Term Actions

4113. AMENDMENT OF THE COMMISSION'S RULES CONCERNING MARITIME COMMUNICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 80

Legal Deadline: None

Abstract: Amendment of the Maritime Radio Service Rules to encourage growth and improve the regulatory structure in VHF maritime communications.

Timetable:

Action	Date	FR Cite
NOI/NPRM	11/05/92	57 FR 57717
FNPRM	04/26/95	60 FR 35507
First R&O	04/26/95	60 FR 34198
Second FNPRM	06/17/97	62 FR 37533
Second R&O	06/17/97	62 FR 40281
Third R&O and MO&O	07/06/98	63 FR 40059
MO&O	04/26/99	64 FR 26885
Third NPRM	12/08/00	65 FR 76966
Fourth R&O	12/13/00	65 FR 77821
Fourth NPRM	02/04/02	67 FR 5080
2nd MO&O and 5th R&O	07/25/02	67 FR 48560
R&O	08/13/03	68 FR 48446

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: PR Docket No. 92—257.

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RIN: 3060–AF14

4114. RESALE AND ROAMING OBLIGATIONS PERTAINING TO COMMERCIAL MOBILE RADIO SERVICES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: PL 103—66, sec 6002, Omnibus Budget Reconciliation Act of 1993

CFR Citation: 47 CFR 20; 47 CFR 22

Legal Deadline: None

Abstract: On an interim basis, the First Report and Order extends to broadband PCS and covered SMR providers the cellular rule that prohibits restricting resale of communications services. The new rules sunset five years after the last group of initial licensees for currently allocated broadband PCS spectrum is awarded. The rules also eliminate all exceptions to the rule that allowed cellular licensees to restrict resale by competing with fully operational cellular licensees in the same geographic market. The Commission successfully adopted a Second Report and Order and Third Notice of Proposed Rulemaking in this proceeding. The Second Report and Order extends the Commission's cellular rules on manual roaming by any individual whose handset is capable of accessing the network of a cellular, broadband PCS, or covered SMR provider. The Third NPRM, among other things, sought comment on whether the Commission should adopt rules requiring cellular, broadband PCS, and covered SMR providers to provide automatic roaming in their coverage areas, and whether both automatic and manual roaming requirements should sunset five years after the initial grant of PCS licenses. The Third MO&O generally affirmed the Commission's earlier decision to extend the cellular resale rule to include certain PCS and SMR providers and to sunset the rule until November 24, 2002. However, it modified the prior decision by removing customer premise equipment (CPE) and CPE in bundled packages from the scope of the resale rule, by revising the scope of the resale rule to exclude all C, D, E, and F block PCS licensees that do not own and control and are not controlled by cellular or A or B block licensees, and by exempting from the rule all SMR and other CMRS providers that do not utilize in—network switching facilities.

Timetable:

Action	Date	FR Cite
NPRM	07/13/94	59 FR 35664
NOI	07/13/94	59 FR 35664
NPRM Comment Period End	09/29/94	
NPRM	04/04/95	60 FR 20949
NPRM Comment Period End	07/14/95	
First R&O	07/12/96	61 FR 38399
Second R&O and Third NPRM	08/15/96	61 FR 44026
MO&O and O on Recon	11/09/99	64 FR 61022

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Federal

Federalism: Undetermined

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RIN: 3060–AF58

4115. IMPLEMENTATION OF SECTION 309(J) OF THE COMMUNICATIONS ACT, COMPETITIVE BIDDING; 218—219 MHZ COMPETITIVE BIDDING RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 95

Legal Deadline: None

Abstract: Tenth Report and Order modifies the competitive bidding rules for the upcoming auction of 218—219 MHz: (1) eliminates bidding credits available to women— and minority—owned 218—219 MHz applicants; (2) extends two levels of bidding credits to small businesses based on a two—tiered small business definition; (3) clarifies the attribution rules for affiliates of 218—219 MHz applicants; and (4) increases the amount of the upfront payments required to participate in the 218—219 MHz auction.

Timetable:

Action	Date	FR Cite
R&O	04/25/94	59 FR 24947
FNPRM	08/06/96	61 FR 49103
R&O	11/15/96	61 FR 60198
FNPRM	09/30/98	63 FR 52215
MO&O	10/08/98	63 FR 54073
R&O and MO&O	11/03/99	64 FR 59656
Order on Reconsideration	12/29/99	64 FR 72956
Second Order on Reconsideration	02/07/01	66 FR 9212
3rd O on Recon of R&O and MO&O	06/24/02	67 FR 42507

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: WT Docket No. 98—169

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RIN: 3060–AG00

4116. 39 GHZ CHANNEL PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 524

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 101

Legal Deadline: None

Abstract: This proceeding amends the FCC's rules to facilitate more effective use of the 39 GHz band.

Timetable:

Action	Date	FR Cite
NPRM	01/26/96	61 FR 2465
NPRM Comment Period End	02/12/96	
Order	02/22/96	61 FR 6809
Reply Comments	02/27/96	
Order	05/01/96	61 FR 19236
Second NPRM	01/21/98	63 FR 3075
R&O	02/06/98	63 FR 6079
MO&O	08/23/99	64 FR 45891
NPRM	12/20/99	64 FR 71088
R&O	01/02/01	66 FR 33
NPRM	12/21/01	66 FR 65866
R&O	03/04/02	67 FR 9610
R&O	12/03/02	67 FR 71861
R&O	08/13/03	68 FR 48446

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: ET Docket No. 95—183, RM—8553; PP Docket No. 93—253

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RIN: 3060–AG16

4117. IMPLEMENTATION OF 309(J) OF THE COMMUNICATIONS ACT, AMENDMENT OF PARTS 20 AND 24 OF THE COMMISSION'S RULES — BROADBAND PCS COMPETITIVE BIDDING AND THE COMMERCIAL MOBILE RADIO SERVICE SPECTRUM CAP

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(r); 47 USC 309(j); 47 USC 332

CFR Citation: 47 CFR 24

Legal Deadline: None

Abstract: NPRM to modify the competitive bidding rules for the Broadband PCS F Block. Report and Order, adopted 6/21/96, modified the PCS/cellular rule and the cellular spectrum cap.

Timetable:

Action	Date	FR Cite
O on Recon of Fifth MO&O and D, E, & F R&O	11/15/00	65 FR 68927

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: PP Docket No. 93—253

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RIN: 3060–AG21

4118. REVISION OF THE RULES TO ENSURE COMPATIBILITY WITH ENHANCED 911 EMERGENCY CALLING SYSTEMS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 47 USC 134(i); 47 USC 151; 47 USC 201; 47 USC 208; 47 USC 215; 47 USC 303; 47 USC 309

CFR Citation: 47 CFR 20

Legal Deadline: None

Abstract: In a series of orders in several related proceedings issued since 1996, the Federal Communications Commission has taken action to improve the quality and reliability of

911 emergency services for wireless phone users. Rules have been adopted governing the availability of basic 911 services and the implementation of enhanced 911 (E911) for wireless services.

Timetable:

Action	Date	FR Cite
FNPRM	07/26/96	61 FR 40374
R&O	07/26/96	61 FR 40348
MO&O	01/16/98	63 FR 2631
Second Report & Order	06/28/99	64 FR 34564
Third R&O	11/04/99	64 FR 60126
Second MO&O	12/29/99	64 FR 72951
Fourth Report & Order, Third NPRM, and NPRM	09/19/00	65 FR 56752
Fourth MO&O	10/02/00	65 FR 58657
FNPRM	06/13/01	66 FR 31878
Order	11/02/01	66 FR 55618
R&O	05/23/02	67 FR 36112
Public Notice	07/17/02	67 FR 46909
Order to Stay	07/26/02	
Order on Recon	01/22/03	68 FR 2914
FNPRM	01/23/03	68 FR 3214

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: CC Docket No. 94—102; CC Docket No. 96—115; CC Docket No. 92—105; WT Docket No. 00—110

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RIN: 3060–AG34

4119. IN THE MATTER OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 47 USC 229; 47 USC 1001 to 1008

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: All of the decisions in this proceeding thus far are aimed at implementation of provisions of the Communications Assistance for Law Enforcement Act.

Timetable:

Action	Date	FR Cite
NPRM	10/10/97	62 FR 63302
Order	01/13/98	63 FR 1943
FNPRM	11/16/98	63 FR 63639
Report & Order	01/29/99	64 FR 51462
Order	03/29/99	64 FR 14834
Second Report & Order	09/23/99	64 FR 51462
Third Report & Order	09/24/99	64 FR 51710
Order on Recon	09/28/99	64 FR 52244
Policy Statement	10/12/99	64 FR 55164
Second Order on Recon	05/04/01	66 FR 22446
Order	10/05/01	66 FR 50841
Order on Remand	05/02/02	67 FR 21999

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: CC Docket No. 97—213

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RIN: 3060–AG74

4120. DEVELOPMENT OF OPERATIONAL, TECHNICAL, AND SPECTRUM REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 303; 47 USC 337(a); 47 USC 403

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: This item takes steps toward developing a flexible regulatory framework to meet vital current and future public safety communications needs.

Timetable:

Action	Date	FR Cite
NPRM	10/09/97	62 FR 60199
Second NPRM	11/07/97	62 FR 60199
First R&O	08/06/98	63 FR 58645
Third NPRM	08/06/98	63 FR 58685
MO&O	04/26/99	64 FR 60123
Second R&O	08/08/00	65 FR 48393
Fourth NPRM	08/25/00	65 FR 51788
Second MO&O	09/05/00	65 FR 53641
Third MO&O	11/07/00	65 FR 66644
Third R&O	11/07/00	65 FR 66644
Fifth NPRM	02/16/01	66 FR 10660
Fourth R&O	02/16/01	66 FR 10632
MO&O	09/27/02	67 FR 61002
NPRM	11/08/02	67 FR 68079
R&O	12/13/02	67 FR 76697

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: WT Docket No. 96—86

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RIN: 3060–AG85

4121. MULTIPLE ACCESS SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 101

Legal Deadline: None

Abstract: This proceeding amended the FCC's rules regarding multiple address systems (MAS) in the microwave service. It streamlined regulations and established a framework for MAS spectrum that provides opportunities for continued development of competitive service offerings by allowing a variety of services.

Timetable:

Action	Date	FR Cite
NPRM	01/19/97	62 FR 11407

Action	Date	FR Cite
Order	09/17/98	63 FR 53350
FNPRM	05/18/99	64 FR 38617
R&O	04/03/00	65 FR 17445
MO&O	07/03/01	66 FR 35107

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: WT Docket No. 97—81

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RIN: 3060–AG86

4122. AMENDMENT OF PART I OF THE COMMISSION'S RULES — COMPETITIVE BIDDING PROCEDURES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 202; 47 USC 303; 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 21; 47 CFR 24; 47 CFR 27; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: This proceeding proposes to amend and modify the competitive bidding rules for all auctionable services.

Timetable:

Action	Date	FR Cite
NPRM	03/21/97	62 FR 13570
NPRM Comment Period End	04/16/97	
Second FNPRM	01/07/98	63 FR 770
Third R&O	01/15/98	63 FR 2315
Fifth R&O, Order on Recon	08/29/00	65 FR 52323
Fourth FNPRM	08/29/00	65 FR 52401
Seventh R&O	10/29/01	66 FR 54447
8th R&O	04/08/02	67 FR 16647
2nd Order on Recon of 3rd R&O and Order on Recon of 5th R&O	07/21/03	68 FR 42984

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: WT Docket No. 97—82

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RIN: 3060–AG87

4123. AMENDMENT OF PART 90 OF THE RULES TO ADOPT REGULATIONS FOR AUTOMATIC VEHICLE MONITORING SYSTEMS

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 251; 47 USC 252; 47 USC 303; 47 USC 309; 47 USC 332

CFR Citation: 47 CFR 1; 47 CFR 90

Legal Deadline: None

Abstract: This Second Report and Order adopts rules and procedures governing competitive bidding for multilateration Location and Monitoring Service (LMS) frequencies.

Timetable:

Action	Date	FR Cite
NPRM	10/06/97	62 FR 52078
NPRM Comment Period End	11/20/97	
Second R&O	07/30/98	63 FR 40659
NPRM	05/03/99	64 FR 23571

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: The NPRM sought comment on the LMS auction following the general competitive bidding procedures of part 1, subpart Q; the establishment of a small business definition for LMS; whether small business provisions are sufficient to promote participation by businesses owned by minorities, women or rural telephone companies; partitioning and disaggregation.

PR Docket No. 93—61

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RIN: 3060–AH12

4124. SERVICE RULES FOR THE 746—764 AND 776—794 MHZ BANDS, AND REVISIONS TO PART 27 OF THE COMMISSION'S RULES

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 1; 47 USC 4(i); 47 USC 7; 47 USC 10; 47 USC 201; 47 USC 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 307; 47 USC 308; 47 USC 309(j); 47 USC 309(k); 47 USC 310; 47 USC 311; 47 USC 315; 47 USC 317; 47 USC 324; 47 USC 331; 47 USC 332; 47 USC 336

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Report and Order in this proceeding adopts service rules for licensing and auction of commercial services in spectrum in the 700 MHz band to be vacated by UHF television licensees.

Timetable:

Action	Date	FR Cite
NPRM	07/07/99	64 FR 36686
R&O	01/20/00	65 FR 3139
Second R&O	04/04/00	65 FR 17594
MO&O and FNPRM	07/12/00	65 FR 42879
Second MO&O	02/06/01	66 FR 9035
Third R&O	02/14/01	66 FR 10204
Second MO&O	02/15/01	66 FR 10374
Order on Recon of Third R&O	10/10/01	66 FR 51594
3rd MO&O and Order	07/30/02	67 FR 49244

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: WT Docket No. 99—168; CS Docket No. 98—120; MM Docket No. 00—39

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RIN: 3060–AH32

4125. IMPLEMENTATION OF SECTIONS 309(J) AND 337 OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 22; 47 CFR 24; 47 CFR 26; 47 CFR 27; 47 CFR 73; 47 CFR 74; 47 CFR 80; 47 CFR 87

Legal Deadline: None

Abstract: This NPRM commences a proceeding to implement 309(j) and 337 of the Communications Act, as amended by the Balanced Budget Act of 1997, which was signed into law on 8/5/97. This notice seeks comment on changes to the Commission's rules and policies to implement the revised auction authority.

Timetable:

Action	Date	FR Cite
NPRM	05/03/99	64 FR 23571
R&O	01/02/01	66 FR 33
MO&O	05/16/02	67 FR 34848
NPRM	07/17/03	68 FR 42337
R&O	07/17/03	68 FR 42296
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: WT Docket No. 99—87

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RIN: 3060–AH33

4126. AMENDMENT TO PARTS 1, 2, 87, AND 101 OF THE RULES TO LICENSE FIXED SERVICES AT 24 GHZ

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 101

Legal Deadline: None

Abstract: This rulemaking proposes licensing and service rules to govern the 24 GHz band generally.

Timetable:

Action	Date	FR Cite
NPRM	12/20/99	64 FR 71088
R&O	08/05/00	65 FR 59350
Order	06/01/01	66 FR 29722
NPRM	12/21/01	66 FR 65866
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: WT Docket No. 99—327

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RIN: 3060–AH41

4127. PART 101 — TERRESTRIAL MICROWAVE FIXED RADIO SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 101

Legal Deadline: None

Abstract: Proceeding to streamline the Commission's rules, expedite processing of authorizations for terrestrial microwave fixed radio services and clarify rules concerning the terrestrial microwave fixed radio services.

Timetable:

Action	Date	FR Cite
NPRM	01/11/95	60 FR 2722
R&O	05/28/96	61 FR 26670
Order	03/05/98	63 FR 10778
Final Action Correction	03/24/98	63 FR 14039
NPRM	06/20/00	65 FR 38333
MO&O	06/20/00	65 FR 38324
R&O	01/31/03	68 FR 4953
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: WT Docket No. 94—148 (closed); WT Docket No. 00—19

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RIN: 3060–AH42

4128. AMENDMENT OF PARTS 13 AND 80 GOVERNING MARITIME COMMUNICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 13; 47 CFR 80

Legal Deadline: None

Abstract: This matter concerns the amendment of the rules governing maritime communications in order to consolidate, revise and streamline the regulations as well as address new international requirements and improve the operational ability of all users of marine radios.

Timetable:

Action	Date	FR Cite
NPRM	03/24/00	65 FR 21694
NPRM	08/17/00	65 FR 50173
NPRM	05/17/02	67 FR 35086
Report & Order	08/07/03	68 FR 46957
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: WT Docket No. 00—48

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RIN: 3060–AH55

4129. AMENDMENT OF THE RULES REGARDING INSTALLMENT PAYMENT FINANCING FOR PERSONAL COMMUNICATIONS SERVICES LICENSEES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 301 to 303; 47 USC 309; 47 USC 332

CFR Citation: 47 CFR 1; 47 CFR 24

Legal Deadline: None

Abstract: This proceeding proposes resumption of installment payments for broadband Personal Communications Services (PCS), e.g., for C and F Block, with payment deadline to be reinstated as of March 31, 1998. The proposal contemplates, inter alia, changes to the FCC's C Block rules to govern re—auction of surrendered spectrum in the C Block. The proposal was released on October 16, 1997, and published in the Federal Register.

Timetable:

Action	Date	FR Cite
2nd R&O	10/24/97	62 FR 55348
FNPRM	10/24/97	62 FR 55375
Order on Recon of Second R&O	04/08/98	63 FR 17111
Fourth R&O	09/23/98	63 FR 50791
Second Order on Recon of Second R&O	05/18/99	64 FR 26887
Recon of Fourth R&O	03/16/00	65 FR 14213
FNPRM	06/13/00	65 FR 37092
6th R&O and Order on Recon	09/05/00	65 FR 53620
Order on Recon	02/12/01	66 FR 9773
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: The Order on Reconsideration published in the Federal Register in April 1998 addresses 37 petitions, 17 oppositions, 16 replies to opposition, and 38 ex parte filings.

WT Docket No. 97—82

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RIN: 3060–AH57

4130. TRANSFER OF THE 3650 THROUGH 3700 MHZ BAND FROM FEDERAL GOVERNMENT USE

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 157; 47 USC 303; 47 USC 307; 47 USC 332

CFR Citation: 47 CFR 2.106; 47 CFR 25.202; 47 CFR 27.1; 47 CFR 27.4; 47 CFR 27.5; 47 CFR 27.14; 47 CFR 27.50; 47 CFR 27.53; 47 CFR 27.55; 47 CFR 27.57; 47 CFR 27.58; 47 CFR 27.61; ...

Legal Deadline: None

Abstract: This proceeding is intended to establish licensing and service rules for frequencies in the 3650 to 3700 MHz band, transferred from government use.

Timetable:

Action	Date	FR Cite
NPRM	03/16/00	65 FR 14230
First R&O and Second NPRM	11/17/00	65 FR 69612
Petition for Reconsideration	03/28/01	66 FR 16940
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Federalism: Undetermined

Additional Information: WT Docket No. 00—32; ET Docket No. 98—237

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RIN: 3060–AH75

4131. 2000 BIENNIAL REGULATORY REVIEW SPECTRUM AGGREGATION LIMITS FOR COMMERCIAL MOBILE RADIO SERVICES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 161; 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 20.6; 47 CFR 22.942

Legal Deadline: None

Abstract: The Commission has adopted a final rule in a proceeding reexamining the need for Commercial Mobile Radio Services spectrum aggregation limits.

Timetable:

Action	Date	FR Cite
NPRM	02/12/01	66 FR 9798
NPRM Comment Period End	05/14/01	
Final Rule	01/14/02	67 FR 1626
Correction to Final Rule	01/31/02	67 FR 4675
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: WT Docket No. 01—14

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RIN: 3060–AH81

4132. IN THE MATTER OF PROMOTING EFFICIENT USE OF SPECTRUM THROUGH ELIMINATION OF BARRIERS TO THE DEVELOPMENT OF SECONDARY MARKETS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 308; 47 USC 309; 47 USC 310

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has opened a proceeding to examine actions it may take to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81475
NPRM Comment Period End	01/29/01	66 FR 8149
New NPRM Comment Period End	02/09/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: WT Docket No. 00—230

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RIN: 3060–AH82

4133. IN THE MATTER OF AUTOMATIC AND MANUAL ROAMING OBLIGATIONS PERTAINING TO COMMERCIAL MOBILE RADIO SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 152(n); 47 USC 154(i); 47 USC 154(j); 47 USC 201(b); 47 USC 251(a); 47 USC 253; 47 USC 303(r); 47 USC 332(c)(1)(B); 47 USC 309

CFR Citation: 47 CFR 20.12; 47 CFR 22.901

Legal Deadline: None

Abstract: This rulemaking considers whether the Commission should adopt an automatic roaming rule for Commercial Mobile Radio Services and sunset the current manual roaming requirement.

Timetable:

Action	Date	FR Cite
NPRM	11/01/00	65 FR 69891

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: WT Docket No. 00—193

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RIN: 3060–AH83

4134. AMENDMENT OF PART 90 FOR LICENSING LOW POWER OPERATIONS IN 450—470 MHZ BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 1; 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 332

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: The proposed amendments facilitate the viability of low power operations in the private land mobile radio 450—470 MHz Band.

Timetable:

Action	Date	FR Cite
NPRM	09/12/01	66 FR 47435
R&O	04/21/03	68 FR 19444

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: WT Docket No. 01—146

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RIN: 3060–AH84

4135. REALLOCATION OF THE 216—220 MHZ, 1390—1395 MHZ, 1427—1429 MHZ, 1429—1432 MHZ, 1432—1435 MHZ, 1670—1675 MHZ, AND 2385—2390 MHZ GOVERNMENT TRANSFER BANDS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151, 154(i), 154(j), 155, 225, 303(r), 309, 325(e); 47 USC 154, 302(a), 303,336; 47 USC 154(i), 161, 303(g), 303(r), 332(c)(7); 47 USC 154, 303

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 27; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: The reallocation proposes to establish new service rules for licensing 27 MHz of spectrum transferred from government to non—government use.

Timetable:

Action	Date	FR Cite
NPRM	02/15/02	67 FR 7113
R&O	06/20/02	67 FR 41847
Correction	11/29/02	67 FR 71110

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: WT Docket No. 02—08

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RIN: 3060–AH87

4136. REVIEW OF QUIET ZONES APPLICATION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 1; 47 USC 154(i); 47 USC 161; 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 1

Legal Deadline: None

Abstract: Review of Quiet Zones rules for possible streamlining while ensuring adequate protection from interference.

Timetable:

Action	Date	FR Cite
NPRM	12/21/01	66 FR 65866
NPRM Comment Period End	02/06/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

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RIN: 3060–AH88

FCC—Wireless Telecommunications Bureau — Long-Term Actions

4137. REALLOCATION AND SERVICE RULES FOR THE 698—746 MHZ SPECTRUM BAND (TELEVISION CHANNELS 52—59)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151, 152, 154(i),155(c), 157, 201, 202, 208, 214, 301, 302(g), 303, 307; 47 USC 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535

CFR Citation: 47 CFR 2; 47 CFR 27; 47 CFR 73

Legal Deadline: None

Abstract: The Commission has adopted allocation and service rules for the 48 MHz of spectrum in the 698—746 MHz band currently occupied by television channels 52—59.

Timetable:

Action	Date	FR Cite
NPRM	04/13/01	66 FR 19106
Report & Order	02/06/02	67 FR 5491
MO&O	07/09/02	67 FR 45380
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: GN Docket No. 01—74

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RIN: 3060–AH89

4138. IMPLEMENTATION OF 911 ACT

Priority: Economically Significant

Legal Authority: 47 USC 151, 154(i),154(j), 157, 160, 210, 202, 208, 214, 251(e), 301, 303, 308; 47 USC 309(j), 310

CFR Citation: 47 CFR 20.3; 47 CFR 20.18; 47 CFR 64.3000 to 64.3004

Legal Deadline: None

Abstract: This proceeding is separate from the Commission's proceeding on Enhanced 911 Emergency Systems (E911) in that it is intended to implement provisions of the Wireless Communications and Public Safety Act of 1999 through the promotion of public safety by the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. More specifically, a chief goal of the proceeding is to ensure that all emergency calls are routed to the appropriate local emergency authority to provide assistance. The E911 proceeding goes a step further and is aimed at improving the effectiveness and reliability of wireless 911 dispatchers with additional information on wireless 911 calls.

Timetable:

Action	Date	FR Cite
Final Rule	01/25/02	67 FR 3621
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local

Federalism: Undetermined

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RIN: 3060–AH90

Federal Communications Commission (FCC)
Wireless Telecommunications Bureau — Completed Actions

4139. IMPLEMENTATION OF SECTION 309(J) OF THE COMMUNICATIONS ACT, COMPETITIVE BIDDING; NARROWBAND PCS COMPETITIVE BIDDING RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 24

Legal Deadline: None

Abstract: Report and Order and FNPRM to modify the competitive bidding rules for participation by designated entities in narrowband PCS.

Timetable:

Action	Date	FR Cite
Third MO&O	08/16/94	59 FR 44058
FNPRM	04/23/97	62 FR 27569
R&O	04/23/97	62 FR 27507
Second FNPRM	06/06/00	65 FR 35875
Second R&O	06/06/00	65 FR 35843
Third R&O and Order on Reconsideration	06/04/01	66 FR 29911

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: GEN Docket No. 90—314; ET Docket No. 92—100; PP Docket No. 93—253

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RIN: 3060–AF99

4140. 1998 BIENNIAL REGULATORY REVIEW — SPECTRUM AGGREGATION LIMITS FOR WIRELESS TELECOMMUNICATIONS CARRIERS

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 161; 47 USC 332

CFR Citation: 20 CFR 20; 22 CFR 942

Legal Deadline: None

Abstract: The Commission has adopted a final rule in a proceeding examining the need for Commercial Mobile Radio Services spectrum aggregation limits.

Timetable:

Action	Date	FR Cite
NPRM	12/10/98	63 FR 70727
R&O	10/07/99	64 FR 54564
MO&O on Recon	11/08/00	

FCC—Wireless Telecommunications Bureau — Completed Actions

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Additional Information: WT Docket No. 98—205

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Federal Communications Commission (FCC) Wireline Competition Bureau — Long-Term Actions

4141. ADMINISTRATION OF THE NORTH AMERICAN NUMBERING PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 3 to 4; 47 USC 151; 47 USC 152 to 155; 47 USC 154(i); 47 USC 201 to 205; 47 USC 207 to 209; 47 USC 218; 47 USC 225 to 227; 47 USC 251 to 252; 47 USC 271; 47 USC 332; 47 USC 403

CFR Citation: 47 CFR 52.1 to 52.99; 47 CFR 151; 47 CFR 154; 47 CFR 201 to 205; 47 CFR 403

Legal Deadline: None

Abstract: The Report and Order lays the foundation for the fair and effective administration of numbering in the United States. The Report and Order establishes a model for administration of numbering resources in a competitive environment. In this model, the FCC will set broad policy objectives, be the final arbiter of domestic numbering disputes and work closely with other member countries of the North American Numbering Plan (NANP), the States, industry and consumers to ensure fair and effective number administration. The Report and Order creates the North American Number Council (NANC) under the Federal Advisory Committee Act. In the Third Report and Order, released on October 9, 1997, the Commission affirmed the NANC's selection of Lockheed Martin IMS as the new NANP administrator. The NANP administrator is a nongovernmental entity that is not aligned with any particular telecommunications industry segment, and upon selection and following a transition period, assumed Bellcore's current NANP administrator functions and the central office code administration functions currently handled by the dominant local exchange carrier in each area code. The rules were expanded to accommodate the requirements of the Telecommunications Act of 1996. See FCC 96—337, released August 8, 1996.

Timetable:

Action	Date	FR Cite
NOI	11/10/92	57 FR 53462
NPRM	05/10/94	59 FR 24103
R&O	07/28/95	60 FR 58737
Second R&O	09/06/96	61 FR 47284
Third R&O	10/23/97	62 FR 55179
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AF50

4142. USE OF N11 CODES AND OTHER ABBREVIATED DIALING ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201 to 205; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In 1992, the FCC released a Notice of Proposed Rulemaking in CC Docket 92—105 proposing that local exchange carriers (LECs) be required to make N11 codes available for access to information service providers. In this proposal, LECs could establish any reasonable assignment criteria for such allocation, including "first come, first served." The FCC's General Counsel released a letter indicating it found no regulatory or legal obstacles to assignment of N11 codes for information services. On February 19, 1997, the FCC released a First Report and Order and Further Notice of Proposed Rulemaking in that Docket (FCC 97—51), which allows incumbent LECs, in addition to the States and Bell Communications Research (Bellcore), to continue to perform the N11 code administration functions that they performed at the time of enactment of the 1996 Act amendments to the 1934 Act, until further FCC action. The FCC concluded that: (1) 311 should be assigned as a national number for access to non—emergency police calls; (2) 711 should be assigned as a national number for access to telecommunications relay services (TRS); (3) all providers of telephone exchange service must be able to have their customers call 611 and 811 to reach their repair and business service offices; and (4) a LEC may not itself offer enhanced services using a 411 code or any other N11 code, unless that LEC offers access to the code on a reasonable nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services. In the FNPRM, the FCC asked for comment on: (1) the technical feasibility of implementing 711 for TRS access; (2) the possibility of developing an N11 gateway offering access to multiple TRS providers; (3) whether with such access, TRS calls would still be answered within mandatory minimum answer times; (4) whether such a gateway would be consistent with section 255; (5) whether other important disability services could be accessed thereby; (6) the possibility of providing both voice and text TRS services through the same abbreviated TRS code; (7) the proprietary nature of N11 codes; and (8) an FCC proposal to transfer administration of N11 codes at the local level from incumbent LECs to the North American Numbering Plan (NANP) administrator. Petitions for reconsideration or clarification on the order have been filed. Comments and replies were filed on March 31 and April 30, 1997, respectively. On June 16, 1999, the Commission released a Public Notice announcing that it would hold a public forum on September 8, 1999, on 711 access to TRS. The goal of the forum was to identify steps that must be taken to implement 711 access to TRS as well as obstacles to implementation and how those obstacles could be resolved.

On August 9, 2000, the Commission released a Second Report and Order (FCC 00—257) that addresses issues related to the deployment of 711 for access to TRS. The Commission required a nationwide rollout of 711 access to TRS and established an implementation framework. On July 31, 2000, the Commission released a Third Report and Order (FCC 00—256) that granted the petition of the United Way of America, and others, for nationwide assignment of the 211 abbreviated dialing code for access to community information and referral services. The Commission also granted the petition of the U.S. Department of Transportation for nationwide assignment of the 511 abbreviated dialing code for access to travel and traffic information. The Commission further addressed issues raised in petitions for reconsideration of the N11 First Report and Order and resolved outstanding issues from the N11 Further Notice of Proposed Rulemaking.

On August 29, 2000, the Commission released a Fourth Report and Order and Third Notice of Proposed Rulemaking in CC Docket 92—105 and a Notice of Proposed Rulemaking in WT Docket 00—110 (FCC 00—327) to implement the Wireless Communications and Public Safety Act of 1999. The Commission designated 911 as the universal emergency number and sought comment on appropriate transition periods and how the Commission should facilitate States' efforts to deploy comprehensive emergency communications systems.

Timetable:

Action	Date	FR Cite
NPRM	05/29/92	57 FR 22681
First R&O	02/26/97	62 FR 8633
FNPRM	02/26/97	62 FR 8671
Second R&O	09/11/00	65 FR 54799
Fourth R&O and Third NPRM	09/19/00	65 FR 56751
Third R&O	02/09/01	66 FR 9674
Second NPRM	04/05/01	66 FR 18059
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Additional Bureau: Consumer Information

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RIN: 3060–AF51

4143. IMPLEMENTATION OF THE UNIVERSAL SERVICE PORTIONS OF THE 1996 TELECOMMUNICATIONS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 et seq

CFR Citation: 47 CFR 54

Legal Deadline: NPRM, Statutory, March 8, 1996, NPRM.
Other, Statutory, November 8, 1996, Other.
Final, Statutory, May 8, 1997, Final.

Abstract: As required by the Telecommunications Act of 1996, the Commission sought comment on proposals for reforming universal service. On November 8, 1996, the Federal—State Joint Board on Universal Service issued a recommended decision on changes to the universal service support mechanisms. In addition, on January 10, 1997, the Commission issued an NPRM and NOI on changes to the Board of Directors of the National Exchange Carrier Association (NECA), regarding the administration of universal service. On May 8, 1997, the Commission, at the direction of Congress, released its order implementing the universal service portions of the 1996 Act. On December 30, 1997, the Commission issued the 4th Order on Reconsideration which made changes and clarifications to the May 8 Order. On June 22, 1998, the Commission issued the 5th Order on Reconsideration which revised the collection levels for the schools and libraries support mechanism through June 30, 1999, and revised the collection levels for the rural health care support mechanism through December 31, 1998. The 5th Order on Reconsideration also revised the priority with which schools and libraries and rural health care providers will receive support. On October 28, 1998, the Commission issued the 5th Report and Order, in which it adopted the model platform for its forward—looking economic cost methodology, which will be used to determine support for non—rural carriers beginning July 1, 1999. On November 21, 1998, the Commission issued the 8th Order on Reconsideration in which it consolidated the administration of universal service into a single entity known as the Universal Service Administrative Company or USAC. On November 25, 1998, the Federal—State Joint Board on Universal Service issued its Second Recommended Decision in which the Joint Board made certain recommendations to the Commission regarding the high—cost support mechanism.

On May 28, 1999, the Commission issued the 13th Order on Reconsideration in which it adopted the principles of a Federal high—cost support mechanism that conformed to the Second Recommended Decision and in which it sought further comment on specific elements of the support methodology. In the 13th Order on Reconsideration, the Commission also decided to implement the new high—cost support mechanism on January 1, 2000 instead of July 1, 1999, as previously planned. On May 28, 1999, the Commission also issued a Further Notice of Proposed Rulemaking in which it sought comment on proposed input values to be used in the forward—looking model to determine non—rural LECs' cost of providing supported services in high cost areas. On August 5, 1999, the Commission adopted a Further Notice of Proposed Rulemaking in which it sought comment to ascertain the availability of, and to understand the possible impediments to, deployment and subscribership in unserved and underserved areas of the Nation, including tribal lands and other insular areas.

On November 1, 1999, the Commission issued the Fourteenth Order on Reconsideration, in which it eliminated the requirement that only carriers that have been certified as eligible telecommunications carriers may receive credit against their universal service contributions for providing telecommunications services to rural health care providers at the lower urban rates. On November 1, 1999, the Commission also issued the Fifteenth Order on Reconsideration, in which it authorized support for any commercially available telecommunications service regardless of the bandwidth, and simplified the method for determining how much support a rural health care provider can receive. On November 2, 1999, the Commission issued the Ninth Report and Order and Eighteenth Order on Reconsideration in which it adopted a new forward—looking high—cost support mechanism that will enable States to ensure the reasonable comparability of non—rural carriers' intrastate rates. On November 2, 1999, the Commission also issued the Tenth Report and Order inwhich it completed the selection of a cost model to estimate forward—looking cost by adopting input values for the previously adopted cost model.

On June 30, 2000, the Commission issued the Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, in response to the Further Notice of Proposed Rulemaking it adopted on August 5, 1999. In the Twelfth Report and Order, the Commission adopted measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities.

On October 12, 2000, the Commission released a Further Notice of Proposed Rulemaking and Order to seek comment on proposals to modify the Commission's rules relating to contributions to the Federal universal service support mechanisms. On January 12, 2001, the Commission released a Further Notice of Proposed Rulemaking seeking comment on the Recommended Decision of the Federal—State Joint Board on Universal Service (Joint Board) regarding a plan for reforming the universal service support mechanism for rural carriers. The Joint Board sent to the Commission the Rural Task Force Recommendation as a good foundation for implementing rural high—cost reform. The Rural Task Force recommends the use of a modified version of the current high—cost loop support mechanism based on carriers' embedded costs.

On May 23, 2001, the Commission released the Fourteenth Report and Order, Twenty—Second Order on Reconsideration and Further Notice of Proposed Rulemaking. In the Fourteenth Report and Order, the Commission adopted a five—year plan that makes modifications to the high—cost loop support mechanism for rural carriers. These modifications were based on the recommendation of the Joint Board and will provide predictable levels of support so that rural carriers can continue to provide affordable service in rural America, while ensuring that consumers in all areas of the nation, including rural areas, have access to affordable and quality telecommunications services.

On March 14, 2001, the Commission issued an order modifying the methodology used to assess contributions to universal service. The methodology was modified to reduce the interval between the accrual of revenues and the assessment of contributions based on those revenues. The order reduced the interval from an average of one year to an average of six months.

On May 8, 2001, the Commission issued a Notice of Proposed Rulemaking which sought comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.

On May 22, 2001, the Commission adopted a five—year interim freeze of the part 36 jurisdictional separations rules, pending comprehensive reform of the separations process. The five—year interim freeze was based upon the July 21, 2000, Recommended Decision of the Federal—State Joint Board on Separations. Under the interim freeze, the Part 36 categories and jurisdictional allocation factors of price cap incumbent LECs are frozen, while rate—of—return carriers had the option to freeze only their jurisdictional allocation factors. The interim freeze is in effect from July 1, 2001, to June 30, 2006, or until comprehensive reform is completed, whichever comes first.

On November 8, 2001, the Commission released the Fifteenth Report and Order and Further Notice of Proposed Rulemaking (Further Notice) reforming the interstate access charge and universal service support system for rate—of—return incumbent carriers. The Order established a new interstate support mechanism to replace implicit support in the interstate access rate structure of rate—of—return carriers with explicit, portable support. Among other things, the Further Notice sought comment on consolidating the existing Long Term Support mechanism with the new support mechanism created in the Order.

On January 25, 2002, the Commission released a Further Notice of Proposed Rulemaking and Order (Further Notice), in which it sought comment on modifications to the rules governing the schools and libraries support mechanism. The modifications address changes that would make the program more efficient, ensure that the benefits of the program are distributed in an equitable manner, and prevent waste, fraud, and abuse. In addition, the order denied certain petitions for reconsideration relating to unused funds.

On February 15, 2002, the Commission released a Notice of Proposed Rulemaking and Order, in which it sought comment on the issues from the Ninth Report and Order remanded by the United States Court of Appeals for the Tenth Circuit. The Ninth Report and Order established a Federal high—cost universal service support mechanism for non—rural carriers based on forward—looking economic costs. In addition, the order referred these issues to the Federal—State Joint Board on Universal Service for a recommended decision.

On February 15, 2002, the Commission issued a Notice of Proposed Rulemaking examining the appropriate legal and policy framework under the Communications Act of 1934, as amended, for broadband access to the Internet provided over domestic wireline facilities.

On February 26, 2002, the Commission issued a Further Notice of Proposed Rulemaking and Report and Order, in which it sought comment on specific proposals to change the manner in which universal service contributions are assessed and recovered, including one proposal to assess contributions based on the number and capacity of connections provided to a public network. This proceeding also made certain modifications to the existing contribution system.

On April 19, 2002, the Commission issued a Notice of Proposed Rulemaking in which it sought comment on specific proposals to: clarify how it should treat eligible entities that also perform functions that are outside the statutory definition of "health care provider;" provide support for internet access; and change the calculation of discounted services, including the calculation of urban and rural rates.

On December 13, 2002, the Commission issued an Order and Second FNPRM in which it sought further comment on three specific connection—based universal service contribution methodologies. This Order also made interim changes to the contribution methodology to ensure the viability of the fund in the near term.

On February 25, 2003, the Commission issued an NPRM in which it sought comment on the Recommended Decision issued by the Federal—State Joint Board on Universal Service regarding the definition of services supported by universal service.

On February 26, 2003, the Commission issued a Public Notice in which it sought comment on a staff study of several alternative universal service contribution methodologies.

On April 30, 2003, the Commission issued a Second Report & Order and Further Notice of Proposed Rulemaking, in which it simplified and streamlined the operation of the schools and libraries support mechanism. In addition, it sought comment on further proposals to refine the support mechanism, including the carry—forward of unused funds.

On May 21,2003, the Commission issued a Twenty—fifth Order on Reconsideration, Report and Order, and Further Notice of Proposed Rulemaking, in which it resolved several petitons for reconsideration of the Twelfth Report and Order. In addition, it sought further comment on ways to provide enhanced Lifeline support to near reservation areas.

On June 9, 2003, the Commission released a Notice of Proposed Rulemaking, in which it sought comment on changes to the low—income support mechanisms recommended by the Joint Board.

On July 3, 2003, the Commission released an Order eliminating the requirement that the National Exchange Carrier Association hold annual elections for its board of directors and that its directorsserve one—year terms.

On July 14, 2003, the Commission released an Order and Order on Reconsideration adopting the Joint Board's recommendations regarding the services supported by universal service.

Timetable:

Action	Date	FR Cite
Recommended Decision Federal—State Joint Board, Universal Service	11/08/96	61 FR 63778
1st R&O	05/08/97	62 FR 32862
2nd R&O	05/08/97	62 FR 32862
Order on Recon	07/10/97	62 FR 40742
R&O and 2nd Order on Recon	07/18/97	62 FR 41294
2nd R&O, and FNPRM	08/15/97	62 FR 47404
3rd R&O	10/14/97	62 FR 56118
2nd Order on Recon	11/26/97	62 FR 65036
4th Order on Recon	12/30/97	62 FR 2093
5th Order on Recon	06/22/98	63 FR 43088
5th R&O	10/28/98	63 FR 63993
8th Order on Recon	11/21/98	
2nd Recommended Decision	11/25/98	63 FR 67837
13th Order on Recon	06/09/99	64 FR 30917
FNPRM	06/14/99	64 FR 31780
FNPRM	09/30/99	64 FR 52738
14th Order on Recon	11/16/99	64 FR 62120
15th Order on Recon	11/30/99	64 FR 66778
10th R&O	12/01/99	64 FR 67372
9th R&O and 18th Order on Recon	12/01/99	64 FR 67416
19th Order on Recon	12/30/99	64 FR 73427
20th Order on Recon	05/08/00	65 FR 26513
Public Notice	07/18/00	65 FR 44507
12th R&O, MO&O and FNPRM	08/04/00	65 FR 47883
FNPRM and Order	11/09/00	65 FR 67322
FNPRM	01/26/01	66 FR 7867
R&O and Order on Recon	03/14/01	66 FR 16144
NPRM	05/08/01	66 FR 28718
Order	05/22/01	66 FR 35107
14th R&O and FNPRM	05/23/01	66 FR 30080
FNPRM and Order	01/25/02	67 FR 7327
NPRM	02/15/02	67 FR 9232
NPRM and Order	02/15/02	67 FR 10846
FNPRM and R&O	02/26/02	67 FR 11254
NPRM	04/19/02	67 FR 34653
Order and 2nd FNPRM	12/13/02	67 FR 79543
NPRM	02/25/03	68 FR 12020
Public Notice	02/26/03	68 FR 10724
2nd R&O and FNPRM	06/20/03	68 FR 36961
25th Order on Recon, R&O, Order, and FNPRM	07/16/03	68 FR 41996
NPRM	07/17/03	68 FR 42333
Order	08/06/03	68 FR 46500
Order and Order on Recon	08/19/03	68 FR 49707
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AF85

4144. TOLL—FREE SERVICE ACCESS CODES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201 et seq; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proceeding assures that toll—free numbers are allocated on an efficient, fair, and orderly basis.

Timetable:

Action	Date	FR Cite
NPRM	10/05/95	60 FR 57157
Second R&O	04/25/97	62 FR 20126
Third R&O	10/09/97	62 FR 55179
Fourth R&O and MO&O	03/30/98	63 FR 16440
Fifth R&O	07/05/00	65 FR 53189
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG11

4145. IMPLEMENTATION OF SECTION 273 OF THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 153; 47 USC 154; 47 USC 157; 47 USC

201 to 209; 47 USC 218; 47 USC 251; 47 USC 273; 47 USC 403

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rulemaking implements provisions of the Telecommunications Act of 1996 relating to the manufacturing of telecommunications equipment and customer premises equipment by the Bell Operating Companies and their affiliates.

Timetable:

Action	Date	FR Cite
NPRM	01/24/97	62 FR 3638
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG36

4146. TELECOMMUNICATIONS CARRIERS' USE OF CUSTOMER PROPRIETARY NETWORK INFORMATION AND OTHER CUSTOMER INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 222; 47 USC 272; 47 USC 303(r)

CFR Citation: 47 CFR 64.2001; 47 CFR 64.2003; 47 CFR 64.2005; 47 CFR 64.2007; 47 CFR 64.2009

Legal Deadline: None

Abstract: The Commission adopted rules implementing the new statutory framework governing carrier use and disclosure of customer proprietary network information (CPNI) created by section 222 of the Communications Act of 1934, as amended. CPNI includes, among other things, to whom, where, and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent to which the service is used.

Timetable:

Action	Date	FR Cite
NPRM	05/28/96	61 FR 26483
Public Notice	02/25/97	62 FR 8414
Second R&O and FNPRM	04/24/98	63 FR 20364
Order on Reconsideration	10/01/99	64 FR 53242
Final Rule, Announcement of Effective Date	01/26/01	66 FR 7865
Clarification Order & Second NPRM	09/07/01	66 FR 50140
3rd R&O and 3rd FNPRM	09/20/02	67 FR 59205
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG43

4147. IMPLEMENTATION OF SECTION 402(B)(1)(A) OF THE TELECOMMUNICATIONS ACT OF 1996; LEC TARIFF STREAMLINING PROVISIONS

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 154

CFR Citation: 47 CFR 1.773(a); 47 CFR 61.58

Legal Deadline: Final, Statutory, February 8, 1997, Final.

Abstract: In this Report and Order, the FCC adopted rules to implement the specific streamlining requirements of the Telecommunications Act of 1996. Petitions for reconsideration were filed.

Timetable:

Action	Date	FR Cite
NPRM	09/24/96	61 FR 49987
NPRM Comment Period End	10/24/96	
R&O	02/07/97	62 FR 5757
Order on Recon	10/16/02	67 FR 63850
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG47

4148. ACCESS CHARGE REFORM

Priority: Economically Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 201 to 205; 47 USC 403; 47 USC 553

CFR Citation: 47 CFR 61.41 to 61.49; 47 CFR 69

Legal Deadline: None

Abstract: On December 24, 1996, the Commission initiated a rulemaking to revise its access charge rules to make them compatible with a competitive market envisioned by the Telecommunications Act of 1996. On May 7, 1997, in the Access Charge Reform Order, the Commission adopted revised access charge rate structure rules and adjusted the price cap productivity factor. The Commission also adopted a market—based approach to reducing overall access charge levels and moving such levels toward forward—looking economic costs. The Commission adopted a Further Notice of Proposed Rulemaking seeking comment on proposals to allow presubscribed interexchange carrier charges on special access lines and to adjust the allocation of General Support Facilities costs recovered through interstate access charges.

On July 10, 1997, on its own motion, and on October 9, 1997, in response to reconsideration petitions, the Commission revised or clarified certain parts of the rules adopted in the May 1997 Access Charge Reform Order. Reconsideration petitions filed in response to the Access Charge Reform Order, if not yet addressed, will be addressed in future reconsideration orders. On November 26, 1997, in the General Support Facilities Order, the Commission adopted rules requiring price cap carriers to adjust the allocation of General Support Facilities costs and to reduce their price cap indices to ensure that regulated access rates do not recover those costs which are related to nonregulated services. Reconsideration petitions filed in response to the November 1997 General Support Facilities Order will be addressed in a future reconsideration order. On May 27, 1999, the Commission initiated a further rulemaking, seeking comment on how to adjust interstate access charges in conjunction with the removal from access charges of implicit universal service support for non—rural local exchange carriers. On August 5, 1999, the Commission adopted rules implementing the market—based approach to access charge reform, pursuant to which incumbent price cap local exchange carriers receive progressively greater pricing flexibility as competition develops. The Commission also initiated a Further Notice of Proposed Rulemaking, seeking comment on additional pricing flexibility, proposed changes to the rate structure for local switching and tandem—switched transport, and the need to constrain access charges imposed by competitive local exchange carrier. On May 31, 2000, in the CALLS Order, the Commission adopted an industry proposal (the CALLS Proposal) establishing a 5—year plan for price cap local exchange carriers and resolving many outstanding issues concerning interstate access charges and interstate universal service. On April 27, 2001, the Commission revised its tariff rules to establish benchmark access rates for competitive local exchange carriers, whereby access rates at or below the benchmark will be presumed just and reasonable and may be imposed by tariff, and access rates above the benchmark will be mandatorily detariffed. The Commission adopted a rural exemption to this benchmark scheme, recognizing that a higher level of access charges is justified for certain carriers serving rural areas. On May 21, 2001, the Commission determined that price cap local exchange carriers should not be permitted to assess prescribed interexchange carrier charges on special access lines. On June 4, 2002, the Commission concluded a cost review proceeding in which it determined that price cap carriers' forward—looking costs justified scheduled increases to the subscriber line charge cap.

On June 24, 2003, in response to a petition for reconsideration, the Commission adopted a rule exempting payphone lines from the presubscribed interexchange carrier charge (PICC). On July 10, 2003, in response to a remand by the U.S. Court of Appeals for the Fifth Circuit, the Commission released an order reaffirming two aspects of the CALLS Order: the sizing of the interstate access universal service support mechanism at $650 million, and the adoption of a 6.5 percent X—factor.

Timetable:

Action	Date	FR Cite
NPRM	01/31/97	62 FR 4670
FNPRM	06/06/97	62 FR 31040
R&O	06/11/97	62 FR 31868
Second Report & Order	06/11/97	62 FR 31939
Order on Reconsideration	07/29/97	62 FR 40460
Second Order on Reconsideration	10/29/97	62 FR 56121
Third Report & Order	12/15/97	62 FR 65619
Public Notice	10/09/98	63 FR 54430
Third Order on Reconsideration	10/15/98	63 FR 55334
Fourth Report & Order and FNPRM	06/09/99	64 FR 30949
Fifth Report & Order and FNPRM	09/22/99	64 FR 51258
NPRM	10/04/99	64 FR 53648
Sixth Report & Order	06/21/00	65 FR 38684
Public Notice	06/26/00	65 FR 39335
Seventh Report & Order and FNPRM	05/21/01	66 FR 27892
Order	07/20/01	66 FR 37943
Order	06/25/02	67 FR 42735
Order on Recon	07/22/03	68 FR 43327
Order on Remand	08/20/03	68 FR 50077
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AG49

4149. IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 to 155; 47 USC 157; 47 USC 201 to 205; 47 USC 207 to 209; 47 USC 218

CFR Citation: 47 CFR 51; 47 CFR 52

Legal Deadline: Final, Statutory, August 8, 1996, Final.

Abstract: The Second Report and Order and Memorandum Opinion and Order implemented the dialing parity, nondiscriminatory access, network disclosure, and number administration provisions of the Telecommunications Act of 1996. The Order also denied the Petition for Expedited Declaratory Ruling on the area code relief plan for Dallas and Houston filed with the FCC by the Texas Public Utilities Commission on May 9, 1996. Finally, this Order addressed petitions for clarification or reconsideration in the matters of proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech and the Administration of the North American Numbering Plan. On July 19, 1999, the Commission released an order denying the petition for reconsideration of the Local Competition Second Report and Order and Memorandum Opinion and Order filed by Beehive Telephone Company, Inc., Local Competition Second Report and Order, First Order on Reconsideration, CC Docket No. 96—98, FCC 99—170, 1999 WL 507245 (1999). On August 17, 1999, Beehive filed a Notice of Appeal of this order with the U.S. Court of Appeals for the D.C. Circuit. On May 18, 2000, the Court affirmed the Commission's decision without a published opinion. On June 30, 2000, Beehive filed a Petition for Rehearing with the Court. That petition was denied on July 18, 2000.

On September 9, 1999, the Commission released the Second Order on Reconsideration of the Local Competition Second Report and Order, FCC 99—227, resolving petitions for reconsideration of rules adopted in the Local Competition Second Report and Order to implement the requirement of section 251(b)(3), 47 U.S.C. section 251(b)(3), that LECs provide non—discriminatory access to directory assistance, directory listing and operator services. At the same time the Commission released a Notice of Proposed Rulemaking (NPRM), FCC 99—227, seeking comment on issues related to developments in, and the convergence of, directory publishing and directory assistance. On October 21, 1999, the Commission released the Third Order on Reconsideration of the Local Competition Second Report and Order, FCC 99—243, resolving the petitions for reconsideration regarding numbering administration under section 251(e)(1) of the Act, 47 U.S.C. section 251(e)(1). On January 9, 2002, the Commission released an Order on Reconsideration dismissing petitions for reconsideration or clarification of the Local Competition Second Report and order and Memorandum Opinion and Order regarding dialing parity under section 251(b)(3) of the Act, 47 U.S.C. section 251(b)(3), and network disclosure under Section 251(c)(1) of the Act, 47 U.S.C. section 251(c)(1). On January 23, 2001, the Commission released a First Report and Order, FCC 01—27, resolving issues raised in the September 9 NPRM, and concluding, among other things, that competing Directory Assistance (DA) providers that are certified as CLECs, are agents of CLECs, or that offer call completion services provide telephone exchange or telephone toll service, and thus are entitled to nondiscriminatory access to LEC local DA databases.

Petitions for Reconsideration in response to this Order are currently pending before the Commission.

On January 9, 2002, the FCC released the Directory Assistance Notice of Proposed Rulemaking, FCC 01—384, in which the Commission solicited comment on whether there is sufficient competition in the retail DA market, and if not, what, if any, action the Commission should take to promote such competition. The Commission sought specific comment on whether alternative dialing methods would promote competition. Proposed methods include: (1) presubscription to 411, (2) utilizing national 555 numbers, (3) utilizing carrier access codes (1010 numbers), (4) utilizing 411XX numbers. The Commission also sought comment on whether the 411 dialing code should be eliminated. This proceeding currently is pending before the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/25/96	61 FR 18311
NPRM Comment Period End	06/03/96	
Order	09/06/96	61 FR 47284
NPRM	09/27/99	64 FR 51949
Second Order on Recon	09/27/99	64 FR 51910
Third Order on Recon	11/18/99	64 FR 62983
First Report & Order	02/21/01	66 FR 10965
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Federalism: Undetermined

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RIN: 3060–AG50

4150. ENHANCED 911 SERVICES FOR WIRELINE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201; 47 USC 222; 47 USC 251

CFR Citation: 47 CFR 64.706; 47 CFR 64.708; 47 CFR 68.2; 47 CFR 68.3; 47 CFR 68.3(a); 47 CFR 68.228; 47 CFR 68.308; 47 CFR 68.310

Legal Deadline: None

Abstract: The rules generally will assist State governments in drafting legislation that will ensure that multi—line telephone systems are compatible with the enhanced 911 network.

Timetable:

Action	Date	FR Cite
NPRM	10/11/94	59 FR 54878
FNPRM	01/23/03	68 FR 3214
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local, Tribal, Federal

Federalism: Undetermined

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RIN: 3060–AG60

4151. COMPUTER III FURTHER REMAND PROCEEDINGS: BELL OPERATING COMPANY PROVISION OF ENHANCED SERVICES

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 160; 47 USC 161; 47 USC 202 to 205; 47 USC 251; 47 USC 271; 47 USC 272; 47 USC 274 to 276

CFR Citation: 47 CFR 51; 47 CFR 53; 47 CFR 64

Legal Deadline: None

Abstract: On January 30, 1998, the FCC released a Further Notice of Proposed Rulemaking (FNPRM) proposing to streamline the safeguards under which the Bell Operating Companies (BOCs) provide information (or enhanced) services, such as voice mail and electronic messaging. The FCC sought comment on tentative conclusions relating to nonstructural safeguards, Comparably Efficient Interconnection (CEI) plans, and network information disclosure rules, among other things. Finally, the FNPRM sought to build a record on which to respond to a partial remand of certain orders by the Court of Appeals for the Ninth Circuit. On February 25, 1999, the Commission adopted a Report and Order which streamlined the Commission's CEI and network information disclosure rules. Although the BOCs must continue to comply with their CEI obligations, they are no longer required to obtain pre—approval of their CEI plans and amendments from the Commission before initiating or altering an intra—LATA information service. Instead, the Commission requires the BOCs to post their CEI plans on their publicly accessible Internet sites, and to notify the Common Carrier Bureau upon such posting. The Commission removed the network information disclosure rules set forth in the Computer II and Computer III proceedings, with the narrow exception of the Computer II rules that require carriers to disclose changes that could affect how customer premises equipment (CPE) is attached to the network. On March 7, 2001, the FCC released a Public Notice requesting further comment on the outstanding issues discussed in its January 30, 1998 FNPRM.

Because the issues in this FNPRM overlap with certain issues that the Commission is now considering in a separate docket regarding broadband services, the Commission has incorporated the FNPRM into the broadband proceeding insofar as the FNPRM relates to the BOCs' obligations to promote access to their networks with respect to broadband services. The broadband proceeding is entitled, "Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers," CC Docket No. 02—33, NPRM, FCC 02—42 (rel. Feb. 15, 2002).

Timetable:

Action	Date	FR Cite
FNPRM	02/26/98	63 FR 9749

Action	Date	FR Cite
R&O	03/24/99	64 FR 14141
Public Notice	03/15/01	66 FR 15064
NPRM	02/15/02	67 FR 9232
NPRM Comment Period End	05/03/02	
Reply Comment Period End	07/01/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AG72

4152. DETARIFFING OF COMPETITIVE LOCAL EXCHANGE CARRIERS' INTERSTATE EXCHANGE ACCESS SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 to 154; 47 USC 160; 47 USC 201 to 205

CFR Citation: 47 CFR 61.26

Legal Deadline: None

Abstract: In an Order released on April 27, 2001, the Commission addressed a number of interrelated issues concerning charges for interstate switched access services provided by competitive local exchange carriers (CLECs) and the obligations of interexchange carriers to exchange access traffic with CLECs. The Order seeks to ensure that CLEC access charges are just and reasonable, to reduce regulatory arbitrage opportunities, and to avoid disrupting the development of competition in the local telecommunications market.

In an attached Further Notice of Proposed Rulemaking, the Commission sought comment on whether tariffed CLEC—provided access service for toll free, or "8YY," numbers should be afforded different treatment than CLEC tariffed switched access traffic generally.

Timetable:

Action	Date	FR Cite
NPRM	07/17/97	62 FR 38244
FNPRM	09/22/99	64 FR 51280
Public Notice	06/26/00	65 FR 39335
Order	05/21/01	66 FR 27892
FNPRM	05/21/01	66 FR 27927
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AG73

4153. PERFORMANCE MEASUREMENTS AND REPORTING REQUIREMENTS FOR OPERATIONS SUPPORT SYSTEMS, INTERCONNECTION, OPERATOR SERVICES, AND DIRECTORY ASSISTANCE

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 201; 47 USC 202; 47 USC 251; 47 USC 303

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On April 17, 1998, the FCC released an NPRM seeking comment on a set of model performance measurements and reporting requirements for operations support systems, interconnection, and access to operator services and to directory assistance.

Timetable:

Action	Date	FR Cite
NPRM	04/17/98	63 FR 27021
NPRM (To Terminate Proceeding)	11/19/01	66 FR 59759
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH00

4154. DEPLOYMENT OF WIRELINE SERVICES OFFERING ADVANCED TELECOMMUNICATIONS CAPABILITY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 153; 47 USC 154; 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 251; 47 USC 252; 47 USC 253; 47 USC 254; 47 USC 256; 47 USC 271; 47 USC 303(r)

CFR Citation: 47 CFR 51.5; 47 CFR 51.230; 47 CFR 51.231; 47 CFR 51.232; 47 CFR 51.233; 47 CFR 51.319; 47 CFR 51.321; 47 CFR 51.323; 47 CFR 51.605; 47 CFR 51.607

Legal Deadline: None

Abstract: On March 31, 1999, the Commission released a First Report and Order and Further Notice of Proposed Rulemaking (NPRM) (Advanced Services Order), in CC Docket No. 98—147, adopting several measures to enable competitive providers of advanced services such as those used to provide high—speed Internet access, to deploy new technologies on a faster, more cost—effective basis to consumers. This order is intended to create marketplace conditions conducive to the nationwide deployment of advanced telecommunications services consistent with the goals of section 706 of the Telecommunications Act of 1996. Because the Commission concluded that the record did not sufficiently address long—term spectrum compatibility issues, the Commission adopted a companion Further NPRM that sought comment on issues related to developing long—term standards and practices for spectrum compatibility and management. In the Further NPRM, the Commission also tentatively concluded that it is technically feasible for two different telecommunications carriers sharing a single line to provide traditional voice service and advanced services. The Further Notice sought comment on the operational, pricing, legal and policy ramifications of mandating such line sharing at the Federal level.

On November 9, 1999, the Commission released a Second Report and Order (Advanced Services Resale Order) in CC Docket No. 98—147, which addressed whether the discounted resale obligation of section 251(c)(4) applies to incumbent Local Exchange Carrier (LEC) provision of advanced services. The Commission determined that analysis of section 251(c)(4) requires a fact—specific evaluation of the features and characteristics of a particular transaction, and concluded that advanced services sold at retail by incumbent LECs to residential and business end—users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. The Commission, however, reached a different result as to advanced services sold to Internet Service Providers for inclusion in a high—speed Internet service offering, concluding that these advanced services are inherently different from advanced services made available directly to business and residential end—users, and as such, are not subject to the discounted resale obligations of section 251(c)(4).

On December 9, 1999, the Commission released a Third Report and Order in CC Docket No. 98—147 and Fourth Report and Order in CC Docket No. 96—98 (Line Sharing Order). In the Line Sharing Order, the Commission adopted measures to promote the availability of competitive broadband Digital Subscriber Line (DSL) services, especially to residential and small business customers. The Third R&O amended the Commission's network unbundling rules to require incumbent LECs to provide unbundled access to a new network element, the high frequency portion of the local loop. This enables competitive LECs to compete with incumbent LECs to provide DSL services through telephone lines that the competitive LECs can share with incumbent LECs. In addition, the Line Sharing Order adopted spectrum management policies and rules to facilitate the competitive deployment of advanced services. These rules will significantly benefit the rapid and efficient deployment of DSL technologies.

On January 19, 2001, the Commission issued an Order on Reconsideration and a Further Notice of Proposed Rulemaking in which the Commission reinforced its line sharing rules to promote availability of unbundled access to the high frequency portion of the loop. It also addressed issues in a variety of petitions for clarification and/or reconsideration filed in response to the Line Sharing Order.

On December 20, 2001, the Commission released a Notice of Proposed Rulemaking in CC Docket Nos. 01—338, 96—98, and 98—147 seeking comment on whether, in light of changed circumstances, it should retain the unbundlingrequirement.

On May 24, 2002, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Commission's line sharing rules, finding that the Commission had failed to give adequate consideration to existing facilities—based competition in the provision of broadband services, especially by cable systems. The court stayed the effectiveness of its opinion through February 20, 2003. On August 21, 2003, the Commission released a Report and Order on Remand and Further Notice of Proposed Rulemaking (Triennial Review Order) in CC Docket Nos. 01—338, 96—98, and 98—147, declining to reinstate its line sharing rules except on a grandfathered and transitional basis. Specifically, the Commission determined that competitive carriers are not impaired without access to the high frequency portion of an incumbent LEC's copper loops. Among other things, the Commission determined that competitors will continue to have access to an incumbent LEC's stand—alone copper loops and reaffirmed the incumbent LEC's obligation to permit line splitting, which is similar to line sharing, but with a competitive LEC, not the incumbent LEC, as the voice provider.

In recognition of competitive LEC reliance on the vacated line—sharing rules, the Commission's Triennial Review Order established an interim grandfather rule, which permits competitive LECs to continue providing DSL service to all existing customers until the next biennial review. In addition, the Commission established a tree—year transition period, which is designed to minimize customer disruption and provide a glide path to competitive LECs currently availing themselves of the line sharing UNE. During the first year of the transition, competitive carriers may continue to sign up new customers through line sharing at 25 percent of State—approved recurring rates or the agreed—upon recurring rates in existing interconnection agreements for stand—alone copper loops. In the second year, no new customers may be added and this rate increases to 50 percent of the cost of a stand—alone loop. In the last year of the transition, the same rate increases to 75 percent. After the transition period, a non—grandfathered customer must be served through a line splitting arrangement, a stand—alone copper loop, or an arrangement that the competitive LEC has negotiated with the incumbent LEC to replace line sharing.

Timetable:

Action	Date	FR Cite
NPRM	08/24/98	63 FR 45140
Order	08/24/98	63 FR 45133
R&O and Further NPRM	04/30/99	64 FR 23229
Third R&O	01/10/00	65 FR 1331
Second R&O	02/11/00	65 FR 6912
Reconsideration Order and Further NPRM	02/06/01	66 FR 9035
NPRM	01/15/02	67 FR 1947
Order	08/21/03	68 FR 52307
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH03

4155. PRESCRIBING THE AUTHORIZED RATE OF RETURN FOR INTERSTATE SERVICES OF LOCAL EXCHANGE CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201(b); 47 USC 202 to 205; 47 USC 218 to 220; 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 65.301

Legal Deadline: None

Abstract: This Notice initiates a proceeding to represcribe the authorized rate of return for interstate access services provided by ILECs. It marks the first prescription proceeding since we revised the rules governing procedures and methodologies for prescribing and enforcing the rate of return for ILECs not subject to price cap regulation, and the first prescription proceeding since the Commission adopted its price cap rules for local exchange carriers. In this Notice, we seek comment on the methods by which we could calculate the ILECs' cost of capital. In the Notice, we propose corrections to errors in the codified formulas for the cost of debt and cost of preferred stock and seek comment on whether this proceeding warrants a change in the low—end formula adjustment for local exchange carriers subject to price caps.

Timetable:

Action	Date	FR Cite
NPRM	10/05/98	63 FR 55988
NPRM Comment Period End	04/08/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH18

4156. LOCAL TELEPHONE NETWORKS THAT LECS MUST MAKE AVAILABLE TO COMPETITORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 251

CFR Citation: 47 CFR 51 (Revision)

Legal Deadline: None

Abstract: This revises the rules applicable to incumbent local exchange carriers (LECs) to permit competitive carriers to access portions of the incumbent LECs' networks on an unbundled basis. Unbundling allows competitors to lease portions of the incumbent LECs' network to provide telecommunications services. These rule changes are intended to remove uncertainty regarding the incumbent LECs' unbundling obligations under the Telecommunications Act of 1996 and are expected to accelerate the development of local exchange competition.

On April 10, 2001, the Commission issued a Public Notice seeking comment on a Joint Petition filed by BellSouth, SBC, and Verizon asking the Commission to find that high—capacity loops and dedicated transport should not be subject to mandatory unbundling. The Commission issued Public Notices on April 23, 2001, and May 14, 2001, seeking additional comment.

On December 20, 2001, the Commission issued a Notice of Proposed Rulemaking to comprehensively consider the appropriate changes, if any, to its unbundling policies in light of market developments and technological advances. 67 FR 1947. As part of this triennial review, the Commission incorporated the records of several pending proceedings on unbundling into this docket, including: (1) the availability of loops, transport, and combinations thereof; (2) high—capacity loops and dedicated transport; (3) local switching; and (4) next—generation networks.

On May 29, 2002, the Commission extended the reply comment date of the Notice of Proposed Rulemaking to July 17, 2002, to allow all interested parties to incorporate their review and analysis of USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002). On August 1, 2002, the Commission issued a Public Notice seeking comment on a Verizon telephone company's petition asking the Commission to forbear from applying certain section 271 checklist items if the Commission determines that the corresponding network elements no longer need to be unbundled. On August 13, 2002, the Commission issued a Public Notice seeking comment on a petition filed by WorldCom, Inc., asking the Commission to declare that requesting carriers are entitled to access certain data from incumbent LECs at cost—based rates when they use such data to provide interexchange and exchange access service.

On August 21, 2003, the Commission issued a Report and Order on Remand and Further Notice of Proposed Rulemaking, in which the Commission adopted new unbundling requirements. 68 FR 52307. The Commission re—defined the impairment standard for unbundling to mean when a requesting carrier's lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entries into a market uneconomic. The Commission's unbundling analysis specifically also considers market—specific variations, including considerations of customer class, geography, and service.

In applying this granular analysis, the Commission issued numerous detailed findings and conclusions. As part of these determinations, the Commission concluded that for mass market loops: (1) copper loops are unbundled; (2) hybrid (copper plus fiber) are not unbundled for packet—switching but are unbundled for TDM—based capability; and (3) fiber—to—the—home loops are generally not unbundled, with a limited obligation for overbuild situations. The Commission also held that line sharing would not be unbundled, but that line splitting must be supported by the incumbent LEC. For high—capacity loops serving the enterprise market and for dedicated interoffice transmission facilities, the Commission concluded (1) that OCn loops and transport are not unbundled, (2) that dark fiber DS1 and DS3 loops are unbundled, subject to wholesale and self—provisioning triggers and potential deployment analysis, as well as caps on the number of loops at each capacity available on each route. The Commission further concluded thatcarriers are impaired for DSO mass market local circuit switching, and directed the states to apply triggers and a potential deployment analysis to make impairment determinations within 9 months. The Commission also resolved a myriad of other issues affecting the scope of the incumbent LEC unbundling obligations, including the availability of commingling, combinations, conversions, and other parts of the network such as packet switching and databases.

In addition, the Commission initiated an inquiry regarding whether the Commission should modify the so—called pick—and—choose rule that permits requesting carriers to opt into individual portions of interconnection agreements without accepting all the terms and conditions of such agreements.

Timetable:

Action	Date	FR Cite
Second Further NPRM	04/26/99	64 FR 20238
Fourth Further NPRM	01/14/00	65 FR 2367
Second Errata Third R&O and Fourth Further NPRM	01/18/00	65 FR 2542
Supplemental Order	01/18/00	65 FR 2542
Errata Third R&O and Fourth Further NPRM	01/18/00	65 FR 2542
Third R&O	01/18/00	65 FR 2542
Correction	04/11/00	65 FR 19334
Supplemental Order Clarification	06/20/00	65 FR 38214
Public Notice	02/01/01	66 FR 8555
Public Notice	03/05/01	66 FR 18279
Public Notice	04/10/01	
Public Notice	04/23/01	
Public Notice	05/14/01	
NPRM	01/15/02	67 FR 1947
Public Notice	05/29/02	
Public Notice	08/01/02	
Public Notice	08/13/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Local, State

Federalism: Undetermined

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RIN: 3060–AH44

4157. 2000 BIENNIAL REGULATORY REVIEW — TELECOMMUNICATIONS SERVICE QUALITY REPORTING REQUIREMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 201(b); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 32; 47 CFR 32.11; 47 CFR 32.1220(h); 47 CFR 32.2311(f); 47 CFR 32.2003(b); 47 CFR 32.5280(c); 47 CFR 32.27(c); 47 CFR 64.903(a)

Legal Deadline: None

Abstract: This NPRM proposes to eliminate our current service quality reports (ARMIS Report 43—05 and 43—06) and replace them with a more consumer—oriented report. The NPRM proposes to reduce the reporting categories from more than 30 to 6, and addresses the needs of carriers, consumers, state public utility commissions, and other interested parties.

Timetable:

Action	Date	FR Cite
NPRM	12/04/00	65 FR 75657
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3060–AH72

4158. ACCESS CHARGE REFORM AND UNIVERSAL SERVICE REFORM

Priority: Economically Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 201 to 205; 47 USC 254; 47 USC 403

CFR Citation: 47 CFR 36; 47 CFR 54; 47 CFR 61; 47 CFR 69

Legal Deadline: None

Abstract: On October 11, 2001, the Commission adopted an Order reforming the interstate access charge and universal service support system for rate—of—return incumbent carriers. The Order adopts three principal reforms. First, the Order modifies the interstate access rate structure for small carriers to align it more closely with the manner in which costs are incurred. Second, the Order removes implicit support for universal service from the rate structure and replaces it with explicit, portable support. Third, the Order permits small carriers to continue to set rates based on the authorized rate of return of 11.25 percent. The Order became effective on January 1, 2002, and the support mechanism established by the Order was implemented beginning July 1, 2002.

The Commission also adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking additional comment on proposals for incentive regulation, increased pricing flexibility for rate—of—return carriers, and proposed changes to the Commission's "all—or—nothing" rule. Comments on the FNPRM were due on February 14, 2002, and reply comments on March 18, 2002.

Timetable:

Action	Date	FR Cite
NPRM	01/25/01	66 FR 7725
Report and Order	11/30/01	66 FR 59719
Further NPRM	11/30/01	66 FR 59761
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH74

4159. 2000 BIENNIAL REGULATORY REVIEW — COMPREHENSIVE REVIEW OF THE ACCOUNTING REQUIREMENTS AND ARMIS REPORTING REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE CARRIERS; PHASE 2 AND PHASE 3

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 161; 47 USC 201(b); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 32.1 et seq

Legal Deadline: None

Abstract: This NPRM seeks comment on various measures to streamline existing accounting and ARMIS reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/13/00	65 FR 67675
NPRM Comment Period End	03/14/01	
Public Notice	06/26/01	66 FR 33938
Public Notice Comment Period End	07/26/01	
R&O	02/06/02	67 FR 5669
Order	09/05/02	67 FR 66069
Order	11/12/02	67 FR 77432

Action	Date	FR Cite
Comment Period End	02/18/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH76

4160. STREAMLINING PROCEDURES FOR COMMON CARRIER TRANSFERS OF CONTROL AND IMPLEMENTATION OF FURTHER STREAMLINING MEASURES FOR DOMESTIC SECTION 214 AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 152; 47 USC 154(i); 47 USC 154(j); 47 USC 201; 47 USC 214; 47 USC 303(r)

CFR Citation: 47 CFR 63.01; 47 CFR 63.51; 47 CFR 63.52

Legal Deadline: None

Abstract: On July 20, 2001, the Commission adopted a Notice of Proposed Rulemaking in CC Docket No. 01—150 (FCC 01—205) (Merger Streamlining NPRM). The Commission proposes to streamline application procedures under 47 USC 214 for common carrier authorizations to acquire domestic transmission lines through acquisitions of corporate control. The Commission requests comments on the criteria it should adopt for deciding which applications would require little scrutiny to determine that they would serve the public interests.

On March 14, 2002, the Commission adopted rules to streamline the review of applications for section 214 authorization to transfer control of domestic transmission lines. The streamlining procedures allow domestic telecommunications carriers to qualify for expedited review of their merger applications, thus eliminating unnecessary regulatory burdens on carriers while increasing the efficiency and transparency of the FCC review process.

Timetable:

Action	Date	FR Cite
NPRM	08/09/01	66 FR 41823
R&O	04/17/02	67 FR 18827
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3060–AH79

4161. NUMBERING RESOURCE OPTIMIZATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201 et seq; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In 1999, the Commission released the Numbering Resource Optimization Notice of Proposed Rulemaking (Notice) in CC Docket 99—200. The Notice examined and sought comment on several administrative and technical measures aimed at improving the efficiency with which telecommunications numbering resources are used and allocated. It incorporated input from the North American Numbering Council (NANC), a Federal advisory committee, which advises the Commission on issues related to number administration.

In the Numbering Resource Optimization First Report and Order and Further Notice of Proposed Rulemaking (NRO First Report and Order), released on March 31, 2000, the Commission adopted a mandatory utilization data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, and a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently. In addition, the Commission adopted a single system for allocating numbers in blocks of one thousand, rather than ten thousand, wherever possible, and established a plan for national rollout of thousands—block number pooling. The Commission also adopted numbering resource reclamation requirements to ensure that unused numbers are returned to the North American Numbering Plan (NANP) inventory for assignment to other carriers. Also, to encourage better management of numbering resources, carriers are required, to the extent possible, to first assign numbering resources within thousands blocks (a form of sequential numbering).

In the NRO Second Report and Order, the Commission adopted a measure that requires all carriers to use at least 60 percent of their numbering resources before they may get additional numbers in a particular area. That 60 percent utilization threshold increases to 75 percent over the next three years. The Commission also established a five—year term for the national Pooling Administrator and an auditing program to verify carrier compliance with the Commission's rules. Furthermore, the Commission addressed several issues raised in the Notice, concerning area code relief. Specifically, the Commission declined to amend the existing Federal rules for area code relief or specify any new federal guidelines for the implementation of area code relief. The Commission also declined to state a preference for either all—services overlays or geographic splits as a method of area code relief. Regarding mandatory nationwide ten—digit dialing, the Commission declined to adopt this measure at the present time. Furthermore, the Commission declined to mandate nationwide expansion of the "D digit" (the "N" of an NXX or central office code) to include 0 or 1, or to grant state commissions the authority to implement the expansion of the D digit as a numbering resource optimization measure at the present time.

In the NRO Third Report and Order, the Commission addressed national thousands—block number pooling administration issues, including declining to alter the implementation date for covered CMRS carriers to participate in pooling. The Commission also addressed Federal cost recovery for national thousands—block number pooling, and continued to require States to establish cost recovery mechanisms for costs incurred by carriers participating in pooling trials.

The Commission reaffirmed the Months—to—Exhaust (MTE) requirement for carriers. The Commission declined to lower the utilization threshold established in the Second Report and Order, and declined to exempt pooling carriers from the utilization threshold. The Commission also established a safety valve mechanism to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources.

In the NRO Third Report and Order, the Commission lifted the ban on technology—specific overlays (TSOs), and delegated authority to the Common Carrier Bureau, in consultation with the Wireless Telecommunications Bureau, to resolve any such petitions. Furthermore, the Commission found that carriers who violate our numbering requirements, or fail to cooperate with an auditor conducting either a "for cause" or random audit, should be denied numbering resources in certain instances. The Commission also reaffirmed the 180—day reservation period, declined to impose fees to extend the reservation period, and found that State commissions should be allowed password—protected access to the NANPA database for data pertaining to NPAs located within their State.

The measures adopted in the NRO orders will allow the Commission to monitor more closely the way numbering resources are used within the NANP, and will promote more efficient allocation and use of NANP resources by tying a carrier's ability to obtain numbering resources more closely to its actual need for numbers to serve its customers. These measures are designed to create national standards to optimize the use of numbering resources by: (1) minimizing the negative impact on consumers of premature area code exhausts; (2) ensuring sufficient access to numbering resources for all service providers to enter into or to compete in telecommunications markets; (3) avoiding premature exhaust of the NANP; (4) extending the life of the NANP; (5) imposing the least societal cost possible, and ensuring competitive neutrality, while obtaining the highest benefit; (6) ensuring that no class of carrier or consumer is unduly favored or disfavored by the Commission's optimization efforts; and (7) minimizing the incentives for carriers to build and carry excessively large inventories of numbers.

In NRO Third Order on Recon in CC Docket No, 99—200, Third Further Notice of Proposed Rulemaking in CC Docket No, 99—200 and Second Further Notice of Proposed Rulemaking in CC Docket No, 95—116, the Commission reconsidered its findings in the NRO Third Report and Order regarding the local Number portability (LNP) and thousands—block number pooling requirements for carriers in the top 100 Metropolitan Statistical areas (MSAs). Specifically, the Commission reversed its clarification that those requirements extend to all carriers in the largest 100 MSAs, regardless of whether they have received a request from another carrier to provide LNP. The Commission also sought comment on whether the Commission should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. The Commission also sought comment on whether all carriers in the top 100 MSAs should be required to participate in thousands—block number pooling, regardless of whether they are required to be LNP capable. In addition, the Commission sought comment on whether all MSAs included in Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs.

In the NRO Fourth Report and Order and Further Notice of Proposed Rulemaking, the Commission reaffirmed that carriers must deploy LNP in switches within the 100 largest Metropolitan Statistical Areas (MSAs) for which another carrier has made a specific request for the provision of LNP. The Commission delegated the authority to state commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case—by—case basis. The Commission concluded that all carriers, except those specifically exempted, are required to participate in thousands—block number pooling in accordance with the national rollout schedule, regardless of whether they are required to provide LNP, including commercial mobile radio service (CMRS) providers that are not required to deploy LNP until November 24, 2003. The Commission specifically exempted from the pooling requirement rural telephone companies and Tier III CMRS providers that have not received a request to provide LNP. The Commission also exempted from the pooling requirement carriers that are the only service provider receiving numbering resources in a given rate center. Additionally, the Commission sought further comment on whether these exemptions should be expanded to include carriers where there are only two service providers receiving numbering resources in the rate center. Finally, the Commission reaffirmed that the 100 largest MSAs identified in the 1990 U.S. Census reports as well as those areas included on any subsequent U.S. Census report of the 100 largest MSAs.

Timetable:

Action	Date	FR Cite
NPRM	06/17/99	64 FR 32471
R&O and Further NPRM	06/16/00	65 FR 37703
Second R&O and Second Further NPRM	02/08/01	66 FR 9528
Third R&O and Second Order on Recon	02/12/02	67 FR 643
3rd O on Recon & 3rd FNPRM	04/05/02	67 FR 16347
4th R&O and 4th NPRM (release date)	06/18/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Sanford Williams, Attorney, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554
Phone: 202 418—1508

RIN: 3060–AH80

4162. PERFORMANCE MEASUREMENTS AND STANDARDS FOR UNBUNDLED NETWORK ELEMENTS AND INTERCONNECTION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 151, 152; 47 USC 154(i), 201; 47 USC 202, 206—209; 47 USC 251, 253; 47 USC 503,504,706

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On November 8, 2001, the Commission opened a rulemaking to consider whether it should adopt a modest group of national performance measurements and standards for evaluating the provision of unbundled network elements by Incumbent Local Exchange Carriers.

Timetable:

Action	Date	FR Cite
NPRM	11/30/01	66 FR 59759
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Henry L. Thaggert III, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418—7941
Fax: 202 418—1413
Email: hthagger@fcc.gov

RIN: 3060–AI00

4163. PERFORMANCE MEASUREMENTS AND STANDARDS FOR INTERSTATE SPECIAL ACCESS SERVICES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 101, 152; 47 USC 154(i); 47 USC 201, 202; 47 USC 206 to 209, 251; 47 USC 272, 503

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On November 16, 2001, the Commission opened a rulemaking to consider whether it should adopt national performance measurements, standards, and penalties for the provision of interstate special access services.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63651
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Henry L. Thaggert III, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418—7941
Fax: 202 418—1413
Email: hthagger@fcc.gov

RIN: 3060–AI01

4164. CUSTOMER PREMISES EQUIPMENT/ENHANCED SERVICES BUNDLING RESTRICTIONS IN COMPUTER II

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151, 152; 47 USC 154, 160; 47 USC 161, 201 to 205; 47 USC 215, 218; 47 USC 220, 303(r)

CFR Citation: 47 CFR 64.702(e)

Legal Deadline: None

Abstract: This further notice of proposed rulemaking examines the need for certain restrictions on a common carrier's ability to bundle customer premises equipment (CPE), enhanced services, and regulated telecommunications services.

Timetable:

Action	Date	FR Cite
FNPRM	10/09/98	63 FR 56892
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Cathy Carpino, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street, SW, Washington, DC 20554
Phone: 202 418—1593
Fax: 202 418—1413
Email: cathy.carpino@fcc.gov

RIN: 3060–AI03

[FR Doc. 03–27999 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part LIII

Federal Deposit Insurance Corporation

Semiannual Regulatory Agenda

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is hereby publishing items for the spring 2003 Unified Agenda of Federal Regulatory and Deregulatory Actions. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

FOR FURTHER INFORMATION CONTACT: Persons identified under regulations listed in the agenda. Unless otherwise noted, the address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

On June 16, 2003, the FDIC and the other banking regulatory agencies announced the start of a review of their regulations for the purpose of reducing regulatory burden on insured institutions pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (68 FR 35589). The review, focused on categories of regulations, will continue through 2006, and involves requesting public comment in various forums. The first three categories of regulations under review were announced on June 16, and the agencies plan to request public comment on the remaining categories in the **Federal Register** on an approximately semiannual basis. The agencies' reviews may result in rulemaking initiatives to reduce regulatory burden that will be announced in the semiannual agenda. More information about the reviews can be obtained at www.EGRPRA.gov, or www.FDIC.gov.

Interested persons may petition the FDIC for the issuance, amendment, or repeal of any regulation by submitting a written petition to the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429. Petitioners should include complete and concise statements of their interest in the subject matter and reasons why the petitions should be granted.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Federal Deposit Insurance Corporation—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4165	12 CFR 327 Assessments—Assessment Base	3064—AB46
4166	Risk—Based Guidelines; Implementation of New Basel Capital Accord	3064—AC73

Federal Deposit Insurance Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4167	12 CFR 334 Fair Credit Reporting Act Regulations	3064—AC35
4168	Risk—Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance	3064—AC75

Federal Deposit Insurance Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4169	Risk—Based Guidelines: Capital Adequacy Guidelines; Capital Maintenance	3064—AC74

Federal Deposit Insurance Corporation—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4170	12 CFR 342 Qualification Requirements for the Recommendation or Sale of Certain Securities	3064—AB85
4171	12 CFR 330 Deposit Insurance Coverage	3064—AC43
4172	12 CFR 325 Risk—Based Capital Guidelines—Market Risk Measure; Securities Borrowing Transactions	3064—AC46

Federal Deposit Insurance Corporation—Long—Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4173	12 CFR 345 Community Reinvestment Act Regulations **(Section 610 Review)**	3064—AC50
4174	12 CFR 330 Deposit Insurance Regulations; Living Trust Accounts	3064—AC54
4175	Access of Persons with Disabilities to FDIC Programs, Activities, Facilities, and Electronic and Information Technology	3064—AC58
4176	Regulatory Publication and Review	3064—AC59

Federal Deposit Insurance Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
4177	12 CFR 342 Brokers and Dealers	3064—AC42
4178	12 CFR 325 Simplified Capital Framework for Noncomplex Financial Institutions	3064—AC44
4179	12 CFR 303 Filing Procedures; Corporate Powers; International Banking; Management Official Interlocks	3064—AC55
4180	12 CFR 308 Removal, Suspension, and Debarment of Accountants From Performing Audit Services	3064—AC57
4181	Minimum Security Devices and Procedures and Bank Secrecy Act Compliance	3064—AC76

Federal Deposit Insurance Corporation (FDIC) Prerule Stage

4165. ASSESSMENTS—ASSESSMENT BASE

Priority: Other Significant

Legal Authority: 12 USC 1441; 12 USC 1817 to 1819

CFR Citation: 12 CFR 327

Legal Deadline: None

Abstract: In 1994, the FDIC sought comment on a proposal to revise the assessment base used by insured institutions to determine the premium paid for deposit insurance. That initiative did not lead to a proposed rule. Instead, the FDIC plans to revisit the issue with a new advance notice of proposed rulemaking on alternative options for the deposit component of the assessment base and on options regarding the float deduction and use of average daily deposit balances.

Timetable:

Action	Date	FR Cite
ANPRM	10/05/94	59 FR 50710
ANPRM Comment Period End	02/02/95	
ANPRM	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Munsell St. Clair, Senior Policy Analyst, Division of Insurance and Research, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898—8967

RIN: 3064–AB46

4166. • RISK—BASED GUIDELINES; IMPLEMENTATION OF NEW BASEL CAPITAL ACCORD

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This joint advance notice of proposed rulemaking sponsored by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corpoaration, and the Office of Thrift Supervision, describes significant elements of the advanced internal ratings—based approach for credit risk and the advanced measurement approaches for operational risk.

Timetable:

Action	Date	FR Cite
ANPRM	08/04/03	68 FR 45900
ANPRM Comment Period End	11/03/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Public Compliance Cost: ; Base Year for Dollar Estimates: 2003

URL For More Information:
http://www.fdic.gov/regulations/laws/publiccomments/basel/index.html

URL For Public Comments:
http://www.fdic.gov/regulations/laws/publiccomments/basel/index.html

Agency Contact: Keith Ligon, Chief, Examination Support Unit, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898—3618

RIN: 3064–AC73

Federal Deposit Insurance Corporation (FDIC) Proposed Rule Stage

4167. FAIR CREDIT REPORTING ACT REGULATIONS

Priority: Other Significant

Legal Authority: 15 USC 1681s; 12 USC 1819(a)(Tenth)

CFR Citation: 12 CFR 334

Legal Deadline: None

Abstract: Section 506 of the Gramm—Leach—Bliley Act (Act) authorizes the Federal banking agencies to publish Fair Credit Reporting Act regulations to carry out the purposes of the Act. Due to comments received from a joint notice of proposed rulemaking, dated October 20, 2000, it is anticipated that the agencies will issue a new proposed rulemaking for public comment.

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
Second NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert A. Patrick, Counsel, Legal Division, Federal Deposit Insurance Corporation,
Washington, DC 20429
Phone: 202 898—3757

RIN: 3064–AC35

4168. • RISK—BASED CAPITAL GUIDELINES; CAPITAL ADEQUACY GUIDELINES; CAPITAL MAINTENANCE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: The Comptroller of the Currency, Board of Governors of the Federal Reserves System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, collectively, are proposing to amend their risk—based capital standards by removing a sunset provision in order to permit sponsoring banks, bank holding companies, and thrifts to exclude from their risk—weighted asset base those assets in asset—backed commercial paper programs that are consolidated onto sponsoring banking organizations' balance sheets as a result of a recently issued accounting interpretation, Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46).

Timetable:

Action	Date	FR Cite
NPRM	10/01/03	68 FR 56568
NPRM Comment Period End	11/17/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation,
Washington, DC 20429
Phone: 202 898—3581

RIN: 3064–AC75

Federal Deposit Insurance Corporation (FDIC) Final Rule Stage

4169. • RISK—BASED GUIDELINES: CAPITAL ADEQUACY GUIDELINES; CAPITAL MAINTENANCE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1815(a); 12 USC 1815(b); 12 USC 1816; 12 USC 1818(a); 12 USC 1818(b); 12 USC 1818(c); 12USC 1818(t); 12 USC 1819 (Tenth); 12 USC 1828(c); 12 USC 1828(d); 12 USC 1828(i); 12 USC 1828 (n); 12 USC 1828(o); 12 USC 1831o; 12 USC 1835; 12 USC 3907; 12 USC 3909; 12 USC 4808

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, collectively, are amending their risk—based capital standards by providing and interim capital treatment for assets in asset—backed commercial paper (ABCP) programs that are consolidated onto the balance sheets of sponsoring banks, bank holding companies, and thrifts. The interm capital treatment allows sponsoring banking organizations to remove the consolidated ABCP program assets from their risk—weighted asset bases for the purpose of calculating their risk—based capital ratios.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/03	68 FR 56530
Interim Final Rule Effective	10/01/03	
Interim Final Rule Comment Period End	11/17/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation,
Washington, DC 20429
Phone: 202 898—3581

RIN: 3064–AC74

4170. QUALIFICATION REQUIREMENTS FOR THE RECOMMENDATION OR SALE OF CERTAIN SECURITIES

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 342

Timetable:

Action	Date	FR Cite
NPRM	12/30/96	61 FR 68824
NPRM Comment Period End	02/28/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Phillips
Phone: 202 898—3581

RIN: 3064–AB85

4171. DEPOSIT INSURANCE COVERAGE

Priority: Other Significant

CFR Citation: 12 CFR 330

Timetable:

Action	Date	FR Cite
ANPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Catherine Ribnick
Phone: 202 736—0117

RIN: 3064–AC43

4172. RISK—BASED CAPITAL GUIDELINES—MARKET RISK MEASURE; SECURITIES BORROWING TRANSACTIONS

Priority: Other Significant

CFR Citation: 12 CFR 325

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/05/00	65 FR 75856
Interim Final Rule Effective	01/04/01	
Interim Final Rule Comment Period End	01/19/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert F. Storch
Phone: 202 898—8906

RIN: 3064–AC46

4173. COMMUNITY REINVESTMENT ACT REGULATIONS

Priority: Other Significant

CFR Citation: 12 CFR 345

Timetable:

Action	Date	FR Cite
ANPRM	07/19/01	66 FR 37602
ANPRM Comment Period End	10/17/01	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Tim Burniston
Phone: 202 898—6670

RIN: 3064–AC50

4174. DEPOSIT INSURANCE REGULATIONS; LIVING TRUST ACCOUNTS

Priority: Other Significant

CFR Citation: 12 CFR 330

Timetable:

Action	Date	FR Cite
NPRM	06/30/03	68 FR 38646
NPRM Comment Period End	08/29/03	68 FR 38645
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph A. DiNuzzo
Phone: 202 898—7349

RIN: 3064–AC54

4175. • ACCESS OF PERSONS WITH DISABILITIES TO FDIC PROGRAMS, ACTIVITIES, FACILITIES, AND ELECTRONIC AND INFORMATION TECHNOLOGY

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1819

CFR Citation: 12 CFR 352

Legal Deadline: None

Abstract: The Federal Deposit Insurance Corporation (FDIC) proposes to amend its regulations to implement section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires each Federal agency or department to ensure that the electronic and information technology is comparable to the access of those who are not disabled, unless the agency would incur and undue burden.

Timetable:

Action	Date	FR Cite
ANPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Earl McJett, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 416—4320

RIN: 3064–AC58

4176. • REGULATORY PUBLICATION AND REVIEW

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: The OCC, Board, FDIC and OTS are beginning a review of our regulations to reduce burden imposed on insured depository institutions as required by section 2222 of the Economic Growth and Regulatory Act of 1996.

Timetable:

Action	Date	FR Cite
Notice	06/16/03	68 FR 35589
Next Action Undetermined		

Regulatory Flexibility Analysis Required:

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas Nixon, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898—8766

RIN: 3064–AC59

4177. BROKERS AND DEALERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78a

CFR Citation: 12 CFR 342

Legal Deadline: Final, Statutory, May 12, 2001, Final.

Abstract: This rulemaking implements section 204 of the Gramm—Leach—Bliley Act (GLBA), which requires the Federal banking agencies to establish recordkeeping requirements for banks relying on any of the broker—dealer exemptions listed in sections 201 and 202 of GLBA, which are being withdrawn at this time.

Timetable:

Action	Date	FR Cite
Withdrawn	09/09/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898—3581

RIN: 3064–AC42

4178. SIMPLIFIED CAPITAL FRAMEWORK FOR NONCOMPLEX FINANCIAL INSTITUTIONS

Priority: Other Significant

Legal Authority: 12 USC 1815(a)

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: 12 CFR part 325, Simplified Capital Framework for Noncomplex Financial Institutions, is being withdrawn to be replaced by the New Basel II advance notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	11/03/00	65 FR 66193
ANPRM Comment Period End	02/01/01.	
Withdrawn	08/04/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
http://www.fdic.gov/regulations/laws/publiccomments/basel/index.html

Agency Contact: Michael Phillips, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898—3581

RIN: 3064–AC44

4179. FILING PROCEDURES; CORPORATE POWERS; INTERNATIONAL BANKING; MANAGEMENT OFFICIAL INTERLOCKS

Priority: Other Significant

Legal Authority: 12 USC 378; 12 USC 1813; 12 USC 1815; 12 USC 1816; 12 USC 1817; 12 USC 1818; 12 USC 1820; 12 USC 1823; 12 USC 1828; 12 USC 1828a; 12 USC 1831a; 12 USC 1831e; 12 USC 1828m; 12 USC 1831p—1(c); 12 USC 1823(k); 12 USC 1828(k); 12 USC 3207

CFR Citation: 12 CFR 303; 12 CFR 333; 12 CFR 347; 12 CFR 348; 12 CFR 359

Legal Deadline: None

Abstract: This rulemaking amends regulations governing filing procedures, international banking, and management official interlocks by making technical corrections and modifications to clarify existing policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/27/02	67 FR 79271
NPRM Comment Period End	02/25/03	
Final Action	08/21/03	68 FR 50459
Final Action Effective	09/22/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mindy West Schwartzstein, Examination Specialist, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898—7221

RIN: 3064–AC55

4180. REMOVAL, SUSPENSION, AND DEBARMENT OF ACCOUNTANTS FROM PERFORMING AUDIT SERVICES

Priority: Other Significant

Legal Authority: 5 USC 504; 5 USC 554 to 557; 12 USC 93(b); 12 USC 164; 12 USC 505; 12 USC 1815(e); 12 USC 1817; 12 USC 1818; 12 USC 1820; 12 USC 1828; 12 USC 1829; 12 USC 1829b; 12 USC 1831i; 12 USC 1831m(g)(4); 12 USC 1831o; 12 USC 1831p—1; 12 USC 1832(c); 12 USC 1884(b); 15 USC 78(h); 15 USC 78(i); 31 USC 330; 31 USC 5321; 42 USC 4012a; PL 104—134

CFR Citation: 12 CFR 308

Legal Deadline: None

Abstract: This rulemaking, sponsored jointly by the OCC, the FRS, OTS, and the FDIC, revises the agencies' rules to establish rules of practice and procedure for the removal, suspension, and debarment of accountants and their firms from performing section 36 of the Federal Deposit Insurance Act audit services for insured depository institutions.

Timetable:

Action	Date	FR Cite
NPRM	01/08/03	68 FR 1115
NPRM Comment Period End	03/10/03	
Final Action	08/13/03	68 FR 48270
Final Action Effective	10/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Bogue, Counsel, Enforcement Unit, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898—3726

RIN: 3064–AC57

4181. • MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT COMPLIANCE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1813; 12 USC 1815; 12 USC 1817; 12 USC 1818; 12 USC 1819(tenth); 12 USC 1881 to1883; 31 USC 5311 to 5314; 31 USC 5316 to 5332.2

CFR Citation: 12 CFR 326

Legal Deadline: None

Abstract: The Department of the Treasury, through the Financial Crimes Enforcement Network, together with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the

National Credit Union Administration, collectively, have jointly adopted a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

Timetable:

Action	Date	FR Cite
NPRM	09/06/02	67 FR 48290
Final Action	05/09/03	68 FR 25112
Final Action Effective	06/09/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karl Gold, Attorney, Federal Deposit Insurance Corporation, Washington, DC 20429
Phone: 202 898—8702

RIN: 3064–AC76

[FR Doc. 03–24032 Filed 12–19–03; 8:45 am]

BILLING CODE 6714–01–S

Federal Register

Monday,
December 22, 2003

Part LIV

Federal Energy Regulatory Commission

Semiannual Regulatory Agenda

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Semiannual regulatory agenda.

SUMMARY: In accordance with guidance issued by the Office of Management and Budget (OMB), the Federal Energy Regulatory Commission voluntarily submits information about rulemakings under development. Of the 21 rulemakings listed, 16 are current or projected rulemakings, and 5 are completed actions.

DATES: The dates provided represent goals, not commitments, and may be revised due to shifts in workload, changes in priorities, or extensive public comments. See the various dates listed for each specific rulemaking.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Person listed for each specific rulemaking.

Magalie R. Salas,

Secretary.

Federal Energy Regulatory Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4182	Standards of Conduct for Transmission Providers	1902—AC07
4183	Electronic Filing of Documents	1902—AC09
4184	Standardizing Generator Interconnection Agreements and Procedures	1902—AC15
4185	Electricity Market Design and Structure (Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design)	1902—AC18
4186	Electronic Tariff Filings	1902—AC19
4187	Regulations of Cash Management Practices	1902—AC23
4188	Standardization of Small Generator Interconnection Agreements and Procedures	1902—AC26
4189	Natural Gas Pipelines Negotiated Rate Policies and Practices	1902—AC28
4190	Standard of Review for Proposed Changes to Market—Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities	1902—AC29
4191	Hydroelectric Licensing Regulations Under the Federal Power Act	1902—AC30
4192	Electronic Registration	1902—AC31
4193	Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act	1902—AC36
4194	Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid	1902—AC39
4195	Quarterly Financial Reporting and Revisions to the Annual Reports	1902—AC43
4196	Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)	1902—AC44
4197	Amendments to Blanket Sales Certificates	1902—AC45

Federal Energy Regulatory Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4198	Critical Energy Infrastructure Information	1902—AC11
4199	Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations	1902—AC34
4200	Standards for Business Practices of Interstate Natural Gas Pipelines	1902—AC37
4201	Delegation of Authority	1902—AC41
4202	Policy Statement on Consultation With Indian Tribes in Commission Proceedings	1902—AC42

Federal Energy Regulatory Commission (FERC) Long-Term Actions

4182. STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

Priority: Other Significant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3423; 16 USC 791 to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 37; 18 CFR 161; 18 CFR 250; 18 CFR 358

Legal Deadline: None

Abstract: The Commission is considering whether to promulgate new standards of conduct regulations that would apply uniformly to natural gas pipelines and public utilities that are currently subject to the gas standards of conduct of 18 CFR part 161 and the electric standards of conduct at 18 CFR part 161 and the electric standards of conduct at 18 CFR part 37. (Docket No. RM01—10—000.)

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50919
NPRM Comment Period End	12/20/01	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Demetra E. Anas,
Attorney, Federal Energy Regulatory
Commission, 888 First Street NE,
Washington, DC 20426
Phone: 202 502—8178
Fax: 202 208—0057

RIN: 1902–AC07

4183. ELECTRONIC FILING OF DOCUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551 to 557; 15 USC 717 to 717z; 15 USC 3301 to 3432; 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352; 49 USC 60502; 49 USC app 1 to 85 (1988)

CFR Citation: 18 CFR 385

Legal Deadline: Other, Statutory, October 21, 2003. Government Paperwork Elimination Act

Abstract: The Commission updated its electronic filing system to release 4.0 and began accepting additional types of documents for filing via the Internet in lieu of paper copies. (Docket No. RM00—12—000.)

Timetable:

Action	Date	FR Cite
Final Rule	09/21/00	65 FR 57088
Final Rule Effective	11/01/00	
New Release and Additional Qualified Docs.	12/12/02	67 FR 76397
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, Local, State, Tribal

Agency Contact: Wilbur Miller,
General Attorney, Office of the General
Counsel, Federal Energy Regulatory
Commission, 888 First Street NE,
Washington, DC 20426
Phone: 202 502—8953
Email: wilbur.miller@ferc.gov

RIN: 1902–AC09

4184. STANDARDIZING GENERATOR INTERCONNECTION AGREEMENTS AND PROCEDURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The Commission amended its regulations to require public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to have on file standard procedures and a standard agreement for interconnection of generators larger than 20 megawatts. (Docket No. RM02—1—000.)

Timetable:

Action	Date	FR Cite
ANPRM	11/01/01	66 FR 55140
ANPRM Comment Period End	02/01/02	67 FR 3632
NPRM	05/02/02	67 FR 22249
NPRM Comment Period End	06/17/02	
Final Rule	08/18/03	68 FR 49846
Final Rule Effective	10/20/03	
Order on Rehearing	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick G. Rooney,
Federal Energy Regulatory Commission,
Office of Markets, Tariffs and Rates,
888 First Street NE, Washington, DC
20426
Phone: 202 502—6205

RIN: 1902–AC15

4185. ELECTRICITY MARKET DESIGN AND STRUCTURE (REMEDYING UNDUE DISCRIMINATION THROUGH OPEN ACCESS TRANSMISSION SERVICE AND STANDARD ELECTRICITY MARKET DESIGN)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The Commission is proposing to amend its regulations under the Federal Power Act, to modify the pro forma open access transmission tariff established under the Commission's order No. 888, to provide for non—discriminatory standardized transmission service and wholesale electric markets, and so to remedy remaining undue discrimination in the provision of interstate transmission services and in other industry practices, and to assure just and reasonable rates within and among regional power markets. The Commission has not scheduled a date for finalizing this rule. It has issued a White Paper in response to comments on the rule and is holding regional conferences to further discuss issues raised by states and industry participants. (Docket No. RM01—12—000.)

Timetable:

Action	Date	FR Cite
NPRM	08/29/02	67 FR 55452
NPRM Comment Period End	11/15/02	
White Paper	04/28/03	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alice Fernandez,
Federal Energy Regulatory Commission,
Office of Markets Tariffs and Rates, 888
First Street NE, Washington, DC 20426
Phone: 202 502—6389

RIN: 1902–AC18

4186. ELECTRONIC TARIFF FILINGS

Priority: Other Significant

Legal Authority: OMB Circular A—130

CFR Citation: 18 CFR 131; 18 CFR 154; 18 CFR 157; 18 CFR 35; 18 CFR 250; 18 CFR 330; 18 CFR 341; 18 CFR 342; 18 CFR 344; 18 CFR 346; 18 CFR 348; 18 CFR 385

Legal Deadline: Other, Statutory, October 21, 2003. Government Paperwork Elimination Act

Abstract: The Commission is considering making the electronic filing format of gas, electric, and oil tariffs mandatory. (Docket No. RM01—5—000.)

Timetable:

Action	Date	FR Cite
Notice of Inquiry	03/20/01	66 FR 15673
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bolton Pierce, Federal Energy Regulatory Commission, Office of Markets, Tariffs and Rates, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8803

RIN: 1902–AC19

4187. REGULATIONS OF CASH MANAGEMENT PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717o; 16 USC 825(h); 49 app USC 20 (1988); 49 app USC 12 (1988)

CFR Citation: 18 CFR 101; 18 CFR 201; 18 CFR 352

Legal Deadline: None

Abstract: The Commission amended its regulations by implementing documentation requirements for FERC—regulated entities that participate in cash management programs. The Commission is also seeking comments on new reporting requirements that require FERC—regulated entities to file their cash management agreements with the Commission, and to notify the Commission when their proprietary capital ratios fall below 30 percent, and when their proprietary capital ratios subsequently return to or exceed 30 percent. (Docket No. RM02—14—000.)

Timetable:

Action	Date	FR Cite
NPRM	08/07/02	67 FR 51150
NPRM Comment Period End	08/28/02	
Interim Final Rule	07/08/03	68 FR 40500
Interim Final Rule Comment Period End	08/07/03	
Interim Final Rule Effective	08/07/03	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter Roidakis, Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8206

RIN: 1902–AC23

4188. STANDARDIZATION OF SMALL GENERATOR INTERCONNECTION AGREEMENTS AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7532

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The Commission proposes the addition of standard small generator interconnection procedures and a standard small generator interconnection agreement to the open access transmission tariffs of public utilities that own, operate, or control facilities for transmitting electric energy in interstate commerce. (Docket No. RM02—12—000)

Timetable:

Action	Date	FR Cite
ANPRM	08/26/02	67 FR 54749
ANPRM Comment Period End	12/20/02	67 FR 70194
NPRM	08/19/03	68 FR 49974
NPRM Comment Period End	10/03/03	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael G. Henry, Attorney, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8532

RIN: 1902–AC26

4189. NATURAL GAS PIPELINES NEGOTIATED RATE POLICIES AND PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717d; 15 USC 717e

CFR Citation: 18 CFR 284

Legal Deadline: None

Abstract: The Commission has determined to modify its Negotiated Rate Policy. The Commission has revised its filing requirements to increase the transparency of negotiated rates in order to minimize the potential for discrimination and will no longer permit the pricing of negotiated rates based upon natural gas commodity price indices. (Docket No. PL02—6—000)

Timetable:

Action	Date	FR Cite
Notice of Inquiry	07/25/02	67 FR 48592
NOI Comment Period End	09/25/02	67 FR 53350
Modification of Negotiated Rate Policy	08/05/03	68 FR 46179
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael G. Henry, Attorney, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8532

RIN: 1902–AC28

4190. STANDARD OF REVIEW FOR PROPOSED CHANGES TO MARKET—BASED RATE CONTRACTS FOR WHOLESALE SALES OF ELECTRIC ENERGY BY PUBLIC UTILITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 601; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 792 to 825y; 16 USC 2601 to 2645; 42 USC 4321 to 4361; 42 USC 7101 to 7352

CFR Citation: 18 CFR 2

Legal Deadline: None

Abstract: The Commission proposes to adopt a policy statement on the standard of review to be met to justify proposed changes in market—based rate contracts for wholesale sales of electric energy by public utilities in light of Mobile—Sierra doctrine. (Docket No. PL02—7—000)

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy Statement	08/08/02	67 FR 51516
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Shaheda Sultan, Staff Attorney, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426
Phone: 202 502—8845

RIN: 1902–AC29

4191. HYDROELECTRIC LICENSING REGULATIONS UNDER THE FEDERAL POWER ACT

Priority: Other Significant

Legal Authority: 5 USC 551 to 557; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 791a to 825r; 16 USC 2601 to 2645; 42 USC 7101 to 7352

CFR Citation: 18 CFR 4; 18 CFR 5; 18 CFR 9; 18 CFR 16; 18 CFR 375; 18 CFR 385

Legal Deadline: None

Abstract: The Commission revised its regulations pertaining to hydroelectric licensing under the Federal Power Act. The revisions create a new licensing process in which a potential license applicant's pre—filing consultation and the Commission's scoping pursuant to the National Environmental Policy Act would be conducted concurrently, rather than sequentially. The Rules also provide for increased public participation in pre—filing consultation. (Docket No. RM02—16—000)

Timetable:

Action	Date	FR Cite
NPRM	03/21/03	68 FR 13898
NPRM Comment Period End	04/21/03	
Final Rule	08/25/03	68 FR 51070
Final Rule Effective	10/23/03	
Order on Rehearing	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Tribal

Agency Contact: John Clements, Federal Energy Regulatory Commission, Office of General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8070

RIN: 1902–AC30

4192. ELECTRONIC REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551 to 557; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 791 to 825r; 16 USC 2601 to 2645; 42 USC 7101 to 7352

CFR Citation: 18 CFR 375; 18 CFR 390

Legal Deadline: None

Abstract: The Commission suspended the effective date of its requirement that users of its online applications register electronically. 18 CFR 390.1 is suspended until the new effective date is announced by the Commission, in a document published in the Federal Register. (Docket No. RM02—10—000.)

Timetable:

Action	Date	FR Cite
Final Rule	08/12/02	67 FR 52406
Final Rule Effective	01/15/03	68 FR 1964
Final Rule Suspension	02/14/03	68 FR 7416
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Wilbur Miller, General Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8953
Email: wilbur.miller@ferc.gov

RIN: 1902–AC31

4193. EMERGENCY RECONSTRUCTION OF INTERSTATE NATURAL GAS FACILITIES UNDER THE NATURAL GAS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 42 USC 7101 to 7352

CFR Citation: 18 CFR 157; 18 CFR 157; 18 CFR 375

Legal Deadline: None

Abstract: The Commission amended its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right—of—way, and to commence construction without prior notice and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity for protection of life or health or for maintenance of physical property. (Docket No. RM03—4—000 and AD02—14.)

Timetable:

Action	Date	FR Cite
NPRM	01/28/03	68 FR 4120
NPRM Comment Period End	02/27/03	
Final Rule	05/28/03	68 FR 31596
Final Rule Effective	07/14/03	
Order on Rehearing	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Christin, Managing Advisor, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502—6022

RIN: 1902–AC36

4194. PROPOSED PRICING POLICY FOR EFFICIENT OPERATION AND EXPANSION OF TRANSMISSION GRID

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The Commission proposes a new pricing policy for the rates of transmission owners that transfer operational control of their transmission facilities to a Regional Transmission Organization (RTO), from independent transmission companies (ITCs) with RTOs, or pursue additional measures that promote efficient operation and expansion of the transmission grid. The proposed policy creates rate incentives that reward RTO and ITC formation. (Docket No. PL03—1—000.)

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy Statement	01/27/03	68 FR 3842
Comments Due	03/13/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen Pointer, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426
Phone: 202 502—8761

RIN: 1902–AC39

4195. • QUARTERLY FINANCIAL REPORTING AND REVISIONS TO THE ANNUAL REPORTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 551 to 557; 15 USC 79; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 791a to 828c; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352; 42 USC 60502; 49 USC app. 1—85 (1988)

CFR Citation: 18 CFR 141; 18 CFR 260; 18 CFR 357; 18 CFR 375

Legal Deadline: None

Abstract: The Commission proposes to revise its regulations by establishing quarterly financial reporting requirements for jurisdictional public utilities, licensees, natural gas and oil pipeline companies. The Commission proposes to make certain changes to the existing Annual Reports to improve the quality of financial information filed with the Commission and to provide consistency in the reporting of financial information for all periods. (Docket No. RM03—8—000.)

Timetable:

Action	Date	FR Cite
NPRM	07/07/03	68 FR 40340
NPRM Comment Period End	08/22/03	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Julia A. Lake, Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8370
Email: julia.lake@ferc.gov

RIN: 1902–AC43

4196. • AMENDMENTS TO CONFORM REGULATIONS WITH ORDER NO. 630 (CRITICAL ENERGY INFRASTRUCTURE INFORMATION FINAL RULE)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 791a to 827c; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 4; 18 CFR 16; 18 CFR 141; 18 CFR 157

Legal Deadline: None

Abstract: The Commission revised its regulations requiring companies to make information directly available to the public under certain circumstances. The revisions are necessary to conform these regulations to Order No. 630, which established guidelines for the handling of Critical Energy Infrastructure Information. (Docket No. RM03—6—000.)

Timetable:

Action	Date	FR Cite
NPRM	04/16/03	68 FR 18538
NPRM Comment Period End	05/16/03	
Final Rule	09/02/03	68 FR 52089
Final Rule Effective	10/23/03	
Order on Rehearing	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Wilbur Miller, General Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8953
Email: wilbur.miller@ferc.gov

RIN: 1902–AC44

4197. • AMENDMENTS TO BLANKET SALES CERTIFICATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 42 USC 7101 to 7532; 42 USC 1331 to 1356

CFR Citation: 18 CFR 284

Legal Deadline: None

Abstract: The Commission proposes to amend the blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce to require that pipelines and all sellers for resale adhere to a code of conduct with respect to gas sales. (Docket No. RM03—10—000.)

Timetable:

Action	Date	FR Cite
NPRM	07/07/03	68 FR 40207
NPRM Comment Period End	08/18/03	68 FR 46133
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Faerberg, Attorney Advisor, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8275
Email: david.faerberg@ferc.gov

RIN: 1902–AC45

Federal Energy Regulatory Commission (FERC) Completed Actions

4198. CRITICAL ENERGY INFRASTRUCTURE INFORMATION

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 375; 18 CFR 388

Completed:

Reason	Date	FR Cite
Final Rule Effective	04/02/03	
Order on Rehearing	08/06/03	68 FR 46456

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carol C. Johnson
Phone: 202 502—8521
Email: carol.johnson@ferc.gov

RIN: 1902–AC11

4199. ACCOUNTING, FINANCIAL REPORTING, AND RATE FILING REQUIREMENTS FOR ASSET RETIREMENT OBLIGATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 35; 18 CFR 101; 18 CFR 154; 18 CFR 201; 18 CFR 346; 18 CFR 352

Completed:

Reason	Date	FR Cite
Final Rule	04/21/03	68 FR 19610
Final Rule Effective	05/21/03	
Order on Rehearing	07/31/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark Klose
Phone: 202 502—8283
Email: mark.klose@ferc.gov

Julia A. Lake
Phone: 202 502—8370
Email: julia.lake@ferc.gov

RIN: 1902–AC34

4200. STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 284

Completed:

Reason	Date	FR Cite
Final Rule	03/21/03	68 FR 13813
Final Rule Effective	04/21/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Goldenberg
Phone: 202 502—8685

RIN: 1902–AC37

4201. • DELEGATION OF AUTHORITY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 551 to 557; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 791 to 825r; 16 USC 2601 to 2645; 42 USC 7101 to 7352

CFR Citation: 18 CFR 375; 18 CFR 376

Legal Deadline: None

Abstract: The Commission amended its regulations on delegations of authority to reflect changes in the Commission's internal structure. Specifically, the Commission duplicated existing authorities delegated to the Office of Markets, Tariffs and Rates and General Counsel for the newly formed Office of Market Oversight and Investigation. (Docket No. RM03—7—000.)

Timetable:

Action	Date	FR Cite
Final Rule Effective	05/07/03	
Final Rule	05/14/03	68 FR 25814

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Arlene T. McCarthy, Staff Attorney, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 502—8567

RIN: 1902–AC41

4202. • POLICY STATEMENT ON CONSULTATION WITH INDIAN TRIBES IN COMMISSION PROCEEDINGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 792 to 825y; 16 USC 2601 to 2645; 42 USC 4321 to 4361; 42 USC 7101 to 7352; 5 USC 601

CFR Citation: 18 CFR 2

Legal Deadline: None

Abstract: The Commission issued this policy statement to articulate its commitment to promote a government—to—government relationship between itself and federally—recognized Indian tribes. The policy statement establishes a tribal liaison position as well as establishing certain actions specific to the hydroelectric program. (Docket No. PL03—4—000.)

Timetable:

Action	Date	FR Cite
Final Rule — Policy Statement	08/06/03	68 FR 46452
Final Rule Effective	09/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Elizabeth Molloy, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, NE, Washington, DC 20426
Phone: 202 502—8771

RIN: 1902–AC42

[FR Doc. 03–24036 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part LV

Federal Housing Finance Board

Semiannual Regulatory Agenda

FEDERAL HOUSING FINANCE BOARD (FHFB)

FEDERAL HOUSING FINANCE BOARD

12 CFR Ch. IX

Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Federal Housing Finance Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Housing Finance Board (Finance Board) hereby publishes items for the Unified Agenda of Federal Regulatory and Deregulatory Actions, as required by section 4 of Executive Order 12866. The Finance Board is an independent agency in the executive branch of the Government that is charged by statute with supervising and regulating the Nation's Federal Home Loan Bank (Bank) System and the Financing Corporation (FICO). The Bank System comprises 12 regional Federal Home Loan Banks that are each owned by their member financial institutions and that provide wholesale credit to members and certain nonmembers to be used for mortgage lending and related community lending activities. The Bank System also includes the Office of Finance, which issues Bank System consolidated obligations. FICO is a corporate entity separate from the Bank System that oversees outstanding debt issued to assist in resolving the savings and loan crisis of the 1980s. The Finance Board has an ongoing need to adopt various regulations dealing with the agency's internal administration and with Bank System and FICO issues.

This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Finance Board's Statement of Regulatory Priorities is included in part II.

ADDRESSES: Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Office of General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, (202) 408-2826; E-mail: gottliebm@fhfb.gov.

Dated: September 30, 2003.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

Federal Housing Finance Board—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4203	Public Disclosure	3069—AB22
4204	Federal Home Loan Bank Anti—Money Laundering Programs	3069—AB27

Federal Housing Finance Board—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4205	Modernized Federal Home Loan Bank Membership	3069—AB09
4206	Acquired Member Assets	3069—AB18
4207	Board Governance	3069—AB19
4208	New Business Activities	3069—AB20
4209	Community Support Requirements	3069—AB21
4210	Federal Home Loan Bank Appointed Directors	3069—AB24
4211	Affordable Housing Program	3069—AB26

Federal Housing Finance Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
4212	Amendments to Privacy Act Regulation	3069—AB07
4213	Description of Organization and Functions Regulation	3069—AB25

Federal Housing Finance Board (FHFB) Proposed Rule Stage

4203. PUBLIC DISCLOSURE

Priority: Other Significant

Legal Authority: 12 USC 1422b(a); 12 USC 1422a(a)

CFR Citation: 12 CFR 900; 12 CFR 998

Legal Deadline: None

Abstract: The Finance Board adopted a proposed rule to improve public disclosure by the Federal Home Loan Banks including addressing the requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934, as these Acts are interpreted and applied by the SEC.

Timetable:

Action	Date	FR Cite
NPRM	09/17/03	68 FR 54396
NPRM Comment Period End	01/15/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John P. Foley, Senior Attorney, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20552
Phone: 202 408—2932
Email: foleyj@fhfb.gov

Joseph A. McKenzie, Deputy Chief Economist, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408—2845
Email: mckenziej@fhfb.gov

RIN: 3069–AB22

4204. • FEDERAL HOME LOAN BANK ANTI—MONEY LAUNDERING PROGRAMS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1422a; 12 USC 1422b; 31 USC 5318

CFR Citation: 12 CFR 979

Legal Deadline: None

Abstract: The Federal Housing Finance Board is considering adopting a proposed regulation that would require the Federal Home Loan Banks to adopt anti—money laundering programs pursuant to the USA Patriot Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael P. Vallely, Senior Attorney—Advisor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006
Phone: 202 408—2589
Email: vallelym@fhfb.gov

RIN: 3069–AB27

Federal Housing Finance Board (FHFB) Long-Term Actions

4205. MODERNIZED FEDERAL HOME LOAN BANK MEMBERSHIP

Priority: Other Significant

CFR Citation: 12 CFR 925

Timetable:

Action	Date	FR Cite
Multiple Bank Membership Solicitation of Comments	10/03/01	66 FR 50366
Extension of Comment Period	12/04/01	66 FR 63007
Solicitation of Comments Period End	03/04/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Neil R. Crowley
Phone: 202 408—2990
Email: crowleyn@fhfb.gov

Daniel Coates
Phone: 202 408—2959
Email: coatesd@fhfb.gov

RIN: 3069–AB09

4206. ACQUIRED MEMBER ASSETS

Priority: Other Significant

CFR Citation: 12 CFR 900; 12 CFR 932; 12 CFR 955

Timetable:

Action	Date	FR Cite
NPRM	07/01/03	68 FR 39027
NPRM Comment Period End	09/02/03	
NPRM Withdrawal	09/17/03	68 FR 54396
Second NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon B. Like
Phone: 202 408—2930
Fax: 202 408—2580
Email: likes@fhfb.gov

Scott Smith
Phone: 202 408—2991
Email: smiths@fhfb.gov

RIN: 3069–AB18

4207. BOARD GOVERNANCE

Priority: Other Significant

CFR Citation: 12 CFR 915; 12 CFR 917; 12 CFR 918

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Arnold Intrater
Phone: 202 408—2536
Email: intratera@fhfb.gov

RIN: 3069–AB19

4208. NEW BUSINESS ACTIVITIES

Priority: Other Significant

CFR Citation: 12 CFR 980

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Neil R. Crowley
Phone: 202 408—2990
Email: crowleyn@fhfb.gov

RIN: 3069–AB20

4209. COMMUNITY SUPPORT REQUIREMENTS

Priority: Other Significant

CFR Citation: 12 CFR 944

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Janice A. Kaye
Phone: 202 408—2505
Email: kayej@fhfb.gov

RIN: 3069–AB21

4210. FEDERAL HOME LOAN BANK APPOINTED DIRECTORS

Priority: Other Significant

CFR Citation: 12 CFR 915

Timetable:

Action	Date	FR Cite
NPRM	03/19/03	68 FR 13238
NPRM Comment Period End	06/17/03	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia L. Sweeney
Phone: 202 408—2872
Email: sweeneyp@fhfb.gov

RIN: 3069–AB24

4211. • AFFORDABLE HOUSING PROGRAM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1430(j)

CFR Citation: 12 CFR 951

Legal Deadline: None

Abstract: The Finance Board is planning to adopt comprehensive amendments to its Affordable Housing Program regulations.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon B. Like, Senior Attorney—Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408—2930
Fax: 202 408—2580
Email: likes@fhfb.gov

RIN: 3069–AB26

Federal Housing Finance Board (FHFB) Completed Actions

4212. AMENDMENTS TO PRIVACY ACT REGULATION

Priority: Info./Admin./Other

Legal Authority: 5 USC 552; 5 USC 552a

CFR Citation: 12 CFR 910; 12 CFR 913

Legal Deadline: None

Abstract: The Finance Board issued a final rule to revise its Privacy Act regulation to reflect an agency reorganization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/03	68 FR 39810
Interim Final Rule Comment Period End	09/02/03	
Final Action	10/15/03	68 FR 59308
Final Action Effective	11/14/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janice A. Kaye, Attorney Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408—2505
Email: kayej@fhfb.gov

RIN: 3069–AB07

4213. • DESCRIPTION OF ORGANIZATION AND FUNCTIONS REGULATION

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552; 12 USC 1422b(a); 12 USC 1423

CFR Citation: 12 CFR 900; 12 CFR 905

Legal Deadline: None

Abstract: The Finance Board revised its Description of Organization and Functions regulation to reflect agency reorganizations that have already taken effect.

Timetable:

Action	Date	FR Cite
Final Action	06/27/03	68 FR 38169
Final Action Effective	06/27/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janice A. Kaye, Attorney Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408—2505
Email: kayej@fhfb.gov

RIN: 3069–AB25

[FR Doc. 03–27063 Filed 12–19–03; 8:45 am]

BILLING CODE 6725–01–S

Federal Register

Monday,
December 22, 2003

Part LVI

Federal Maritime Commission

Semiannual Regulatory Agenda

FEDERAL MARITIME COMMISSION (FMC)

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

Regulatory Plan and Unified Agenda

AGENCY: Federal Maritime Commission.

ACTION: Regulatory plan and semiannual regulatory agenda.

SUMMARY: Pursuant to section 4(b) of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission anticipates having under consideration, during the period from October 1, 2003, to September 30, 2004, actions in the areas listed below.

FOR FURTHER INFORMATION CONTACT: For further information concerning Commission rulemaking proceedings or the status of any matter listed below, contact: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5725; e-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION Section 602 of the Regulatory Flexibility Act (5 U.S.C. 602) requires the publication of an agenda of items for which regulatory agencies may propose or promulgate a rule, which is likely to have a significant economic impact on a substantial number of small entities. Section 4(b) of Executive Order 12866 also requires agencies to publish a regulatory agenda. The agendas include information on regulatory activities being conducted or reviewed during the succeeding 12 months by the Commission.

The following is the Commission's unified regulatory agenda. The agenda does not necessarily include all petitions for rulemakings that are under staff review.

In addition, the Commission maintains a compilation of the status of pending rulemaking proceedings and a listing of rules that have become final since the publication of the most recent regulatory agenda. This will be made available to the public, including the press and interested persons.

The Commission currently has no actions under consideration that constitute "significant regulatory actions" under the definition in Executive Order 12866. This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the **Federal Register**. The Federal Maritime Commission's Statement of Regulatory Priorities is included in part II.

Bryant L. VanBrakle,

Secretary.

Federal Maritime Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4214	Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 (Docket No. 99—13)	3072—AC11
4215	Impact of Government Paperwork Elimination Act and Electronic Signatures in Global and National Commerce Act (Docket No. 01—08)	3072—AC17
4216	Common Carrier Status Under the Shipping Act of 1984	3072—AC21
4217	Revisions to Commission's Regulations Regarding the Filing of Agreement Minutes	3072—AC23
4218	Revisions to the Information Form and Monitoring Report Regulations for Carrier Agreements	3072—AC24
4219	Transshipment Agreements	3072—AC26
4220	Update of Existing Filing and Service Fees	3072—AC27

Federal Maritime Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4221	Passenger Vessel Financial Responsibility (Docket No. 02—15)	3072—AC22

Federal Maritime Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4222	Coloading Practices and Possible Section 16 Exemption for Coloading (Docket Nos. 93—22 and 94—26)	3072—AB75
4223	Port Restrictions and Requirements in the United States/Japan Trade (Docket No. 96—20)	3072—AB97

Federal Maritime Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4224	Amendment to Service Contract Regulations (Docket No. 03—03)	3072—AC25

Federal Maritime Commission (FMC) Proposed Rule Stage

4214. CONTENT OF OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984 (DOCKET NO. 99—13)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC app 1701 et seq; PL 105—258

CFR Citation: 46 CFR 535

Legal Deadline: None

Abstract: The FMC issued an inquiry to solicit comments concerning the appropriate content of agreements filed with the Commission pursuant to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998. The comments received will assist the Commission in preparing a rule to update or refine the existing content standards.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	08/03/99	64 FR 42057
Inquiry Comment Period End	10/04/99	
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Carol J. Neustadt, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5740
Fax: 202 523—5738
Email: caroln@fmc.gov

RIN: 3072–AC11

4215. IMPACT OF GOVERNMENT PAPERWORK ELIMINATION ACT AND ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (DOCKET NO. 01—08)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105—277, Government Paperwork Elimination Act; PL 106—229, Electronic Signatures in Global and National Commerce Act; 5 USC 553; 46 USC app 1716

CFR Citation: 46 CFR 500 et seq

Legal Deadline: Final, Statutory, October 21, 2003, Final.

Abstract: The Federal Maritime Commission issued an inquiry to solicit information and comments concerning the impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act on all sectors of the U.S. ocean shipping industry. These comments are assisting the Commission as it analyzes the use and acceptance of documents in electronic form, as well as other means of engaging in electronic transactions. The Commission, via a rulemaking, plans to provide individuals or entities with the option to submit information or transact business with the Commission electronically, where practicable, and to maintain records electronically when practicable.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	07/18/01	66 FR 37468
Comment Period Extended to 09/17/2001	08/17/01	66 FR 43261
Comments Due	08/17/01	
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Derek O. Scarbrough, Chief Information Officer, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5800
Fax: 202 523—5827
Email: cio@fmc.gov

RIN: 3072–AC17

4216. COMMON CARRIER STATUS UNDER THE SHIPPING ACT OF 1984

Priority: Other Significant

Legal Authority: 5 USC 553; 46 USC app 1701 et seq; PL 105—258

CFR Citation: 46 CFR 515; 46 CFR 520; 46 CFR 530; 46 CFR 535

Legal Deadline: None

Abstract: The Federal Maritime Commission is proposing to amend its rules to address the criteria that it will use to establish ocean common carrier status under the Shipping Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5796
Fax: 202 523—4372
Email: florence@fmc.gov

Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5783

Fax: 202 523—5785
Email: vernh@fmc.gov

RIN: 3072–AC21

4217. REVISIONS TO COMMISSION'S REGULATIONS REGARDING THE FILING OF AGREEMENT MINUTES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553; 46 USC app 1701 to 1707; 46 USC app 1709 to 1710; 46 USC app 1712; 46 USC app 1714 to 1718; ...

CFR Citation: 46 CFR 535

Legal Deadline: None

Abstract: The FMC is considering amending its regulations governing the filing of minutes and related documents by carrier agreements. The minutes reporting regulations require that certain types of agreements on file with the FMC submit a report of each meeting held, describing all matters discussed or considered within the scope of the agreement. The FMC is considering changing the rules to clarify the level of detail adequate to describe matters discussed or considered at agreement meetings, and update, refine, and simplify the regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5796
Fax: 202 523—4372
Email: florence@fmc.gov

RIN: 3072–AC23

4218. REVISIONS TO THE INFORMATION FORM AND MONITORING REPORT REGULATIONS FOR CARRIER AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553; 46 USC app 1701 to 1707; 46 USC app 1709 to 1710; 46 USC app 1712; 46 USC app 1714 to 1718; ...

CFR Citation: 46 CFR 535

Legal Deadline: None

Abstract: The FMC is considering amending its regulations governing the requirements for Information Forms and Monitoring Reports submitted by parties to carrier agreements filed with the Commission. The revisions being considered would seek to ensure that the Commission receives the most relevant and reliable data from agreement carriers so that the competitive impact of these agreements can be assessed as accurately as possible. The modifications would update, refine, and simplify the regulations to require data essential to the Agency's agreement review process and monitoring program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5796
Fax: 202 523—4372
Email: florence@fmc.gov

RIN: 3072–AC24

4219. • TRANSSHIPMENT AGREEMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553; 46 USC app 1701 to 1707; 46 USC app 1709 to 1710; 46 USC app 1712; 46 USC app 1714 to 1718

CFR Citation: 46 CFR 535

Legal Deadline: None

Abstract: The FMC is considering amending its regulations on transshipment agreements to clarify circumstances under which agreements would not qualify as transshipment agreements, but rather would be vessel—sharing agreements subject to filing with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
NPRM Comment Period End	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5796
Fax: 202 523—4372
Email: florence@fmc.gov

Carol J. Neustadt, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5740
Fax: 202 523—5738
Email: caroln@fmc.gov

RIN: 3072–AC26

4220. • UPDATE OF EXISTING FILING AND SERVICE FEES

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553; 31 USC 9701; 46 USC app 1716

CFR Citation: 46 CFR 502; 46 CFR 503; 46 CFR 510; 46 CFR 514; 46 CFR 540; 46 CFR 572; 46 CFR 585; 46 CFR 587; 46 CFR 588

Legal Deadline: None

Abstract: The FMC proposes to revise its existing fees for: Filing petitions, complaints, special docket applications, freight forwarder applications, vessel performance and casualty certification applications, agreements, and various public information services. The proposal will update existing fees to reflect current costs to the Commission.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	
NPRM Comment Period End	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: JoAnn Baca, Special Assistant to the Executive Director, Federal Maritime Commission, 800

North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5800
Fax: 202 523—5827
Email: joannb@fmc.gov

RIN: 3072–AC27

Federal Maritime Commission (FMC) Final Rule Stage

4221. PASSENGER VESSEL FINANCIAL RESPONSIBILITY (DOCKET NO. 02—15)

Priority: Other Significant

Legal Authority: 5 USC 552 to 553; 46 USC app 817d to 817e; 46 USC 1716; 31 USC 9701; PL 89—777

CFR Citation: 46 CFR 540

Legal Deadline: None

Abstract: The FMC proposes to amend its rules regarding the establishment of passenger vessel financial responsibility under sections 2 (Casualty) and 3 (Performance) of Public Law 89—777. The amendments would: Eliminate the current ceiling on required Performance coverage; adjust the amount of coverage required by providing for consideration of the obligations of credit card issuers; provide for the use of Alternative Dispute Resolution (ADR), including the Commission's ADR program, in resolving passenger Performance claims; revise the application form; and make a number of technical adjustments to the Performance and Casualty rules.

Timetable:

Action	Date	FR Cite
NPRM	10/31/02	67 FR 66352
NPRM Comment Period End	01/08/03	
NPRM Comment Period Extended	12/27/02	67 FR 79029
NPRM Comment Period End	04/08/03	
NPRM Comment Period Extended	04/08/03	68 FR 17003
Notice of Public Hearing To Be Held 06/11/2003	05/06/03	68 FR 23947
Requests To Participate in Public Hearing Due	05/28/03	
NPRM Comment Period End	05/30/03	
Final Action	02/00/04	
Final Action Effective	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sandra L. Kusumoto, Director, Bureau of Consumer Complaints & Licensing, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5787
Fax: 202 523—5830
Email: sandrak@fmc.gov

Ronald D. Murphy, Commission Dispute Resolution Specialist, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5787
Fax: 202 275—0536
Email: adr@fmc.gov

Carol J. Neustadt, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523—5740
Fax: 202 523—5738
Email: caroln@fmc.gov

RIN: 3072–AC22

Federal Maritime Commission (FMC) Long-Term Actions

4222. COLOADING PRACTICES AND POSSIBLE SECTION 16 EXEMPTION FOR COLOADING (DOCKET NOS. 93—22 AND 94—26)

Priority: Substantive, Nonsignificant

CFR Citation: 46 CFR 520.11

Timetable:

Action	Date	FR Cite
NPRM	11/24/93	58 FR 62077
NPRM Comment Period End	03/11/94	59 FR 5974
Notice of Inquiry (Docket No. 94—26)	11/09/94	59 FR 55826
Comment Period End for NOI (Docket No. 94—26)	12/27/94	
NOI Comment Period Extended to 01/23/95	12/28/94	59 FR 66880
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carol J. Neustadt
Phone: 202 523—5740
Fax: 202 523—5738
Email: caroln@fmc.gov

RIN: 3072–AB75

4223. PORT RESTRICTIONS AND REQUIREMENTS IN THE UNITED STATES/JAPAN TRADE (DOCKET NO. 96—20)

Priority: Other Significant

CFR Citation: 46 CFR 551

Timetable:

Action	Date	FR Cite
NPRM	11/13/96	61 FR 58160
Comment Period Extended to 01/20/97	12/27/96	61 FR 68200
NPRM Comment Period End	01/13/97	
Final Rule — Report Due 08/26/1999 and Every 180 Days Thereafter	03/04/97	62 FR 9696
Final Rule Effective	04/14/97	
Amendment to Final Rule	04/16/97	62 FR 18532
Final Rule Effectiveness Extended to 09/04/97	04/16/97	62 FR 18533
Status Reports and Comments Due 07/01/97	04/16/97	62 FR 18533
Status Reports and Comments Due 08/05/97	04/16/97	62 FR 18433

Action	Date	FR Cite
Amendment to Final Rule — Denial of Petition	10/20/97	62 FR 54396
Final Rule Effectiveness Suspended 11/13/97	11/19/97	62 FR 61648
Final Rule Removed	06/07/99	64 FR 30245
Final Rule Removed Effective	06/07/99	
Report Due 11/07/2001 and Every 180 Days Thereafter	08/15/01	
Requirement for Reporting Revised	08/15/01	66 FR 42859
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carol J. Neustadt
Phone: 202 523—5740
Fax: 202 523—5738
Email: caroln@fmc.gov

RIN: 3072–AB97

Federal Maritime Commission (FMC) Completed Actions

4224. AMENDMENT TO SERVICE CONTRACT REGULATIONS (DOCKET NO. 03—03)

Priority: Substantive, Nonsignificant

CFR Citation: 46 CFR 530

Completed:

Reason	Date	FR Cite
NPRM	04/02/03	68 FR 15978
Final Action	07/22/03	68 FR 43326
Final Action Effective	09/08/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Florence A. Carr
Phone: 202 523—5796
Fax: 202 523—4372
Email: florence@fmc.gov

RIN: 3072–AC25

[FR Doc. 03–24026 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Monday,
December 22, 2003

Part LVII

Federal Reserve System

Semiannual Regulatory Agenda

FEDERAL RESERVE SYSTEM (FRS)

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period November 1, 2003, through April 30, 2004. The next agenda will be published in the spring of 2004.

DATES: Comments about the form or content of the agenda may be submitted any time during the next 6 months.

ADDRESSES: Comments should be addressed to Jennifer J. Johnson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board is publishing its fall 2003 agenda as part of the Fall 2003 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into three sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. A third section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. Matters begun and completed between issues of the agenda have not been included.

A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda and which the Board has not completed.

Margaret McCloskey Shanks,

Assistant Secretary of the Board.

Federal Reserve System—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4225	Regulation: DD — Truth in Savings Act **(Section 610 Review)**	7100—AC86

Federal Reserve System—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4226	Regulation: B — Equal Credit Opportunity; and Regulation: Z — Truth in Lending (Docket Numbers: R—1040 and R—1043)	7100—AC46
4227	Regulation: E — Electronic Fund Transfers (Docket Numbers: R—0919 and R—1041)	7100—AC06
4228	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System (Docket Number: R—1064)	7100—AC69
4229	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System	7100—AC73
4230	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R—1087)	7100—AC75
4231	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control, Capital Appendices **(Section 610 Review)**	7100—AC88
4232	Regulation: M — Consumer Leasing (Docket Number: R—1042)	7100—AC53
4233	Regulation: V — Fair Credit Reporting (Docket Number: R—1082)	7100—AC68
4234	Regulation: Y — Bank Holding Companies and Change in Bank Control	7100—AC66
4235	Regulation: Y — Bank Holding Companies and Change in Bank Control	7100—AC78
4236	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R—1091)	7100—AC79
4237	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R—1094)	7100—AC81
4238	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R—1092)	7100—AC82
4239	Regulation: BB — Community Reinvestment (Docket Number: R—1112) **(Section 610 Review)**	7100—AC87
4240	Regulation: DD — Truth in Savings (Docket Number: R—1044)	7100—AC34

Federal Reserve System—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4241	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R—0930)	7100—AC13

Federal Reserve System—Completed Actions

Sequence Number	Title	Regulation Identification Number
4242	Regulation: T — Credit by Brokers and Dealers; Regulation: U — Credit by Banks; and Regulation: X — Borrowers of Securities Credit (Docket Number: R—0995)	7100—AC45

Federal Reserve System (FRS) — Proposed Rule Stage

4225. REGULATION: DD — TRUTH IN SAVINGS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4301

CFR Citation: 12 CFR 230

Legal Deadline: None

Abstract: Regulation DD, which implements the Truth in Savings Act, requires that depository institutions uniformly disclose to customers information about the terms and conditions on which interest is paid and fees are assessed on deposit accounts.

The Board has targeted Regulation DD for review to update it and to comply with provisions of section 610(c) of the Regulatory Flexibility Act of 1994. The review is expected to commence with publication of an advance notice of proposed rulemaking in second quarter 2004 and be completed in the same year.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jane Ahrens, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452—3667

RIN: 7100–AC86

Federal Reserve System (FRS) — Final Rule Stage

4226. REGULATION: B — EQUAL CREDIT OPPORTUNITY; AND REGULATION: Z — TRUTH IN LENDING (DOCKET NUMBERS: R—1040 AND R—1043)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1601 et seq; 12 USC 4301 et seq

CFR Citation: 12 CFR 202; 12 CFR 213; 12 CFR 226; 12 CFR 230

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules to permit the electronic delivery of Regulation B and Regulation Z disclosures, if the consumer agrees (63 FR 14548, March 25, 1998, and 64 FR 46988, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E—Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E—Sign Act incorporated some elements of the Board's regulatory proposals governing electronic disclosures. Some provisions in the Board's proposals, however, were modified or preempted by the Act, while other provisions were not addressed by the E—Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued interim final rules on the electronic delivery of disclosures (66 FR 17329, March 30, 2001, and 66 FR 17779, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rules, consistent with the requirements of the E—Sign Act, creditors generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for certain disclosures. The interim final rules also establish uniform requirements for the timing and delivery of electronic disclosures. The March 2001 rulemakings were published as interim final rules to allow interested persons to present new information or views not considered in previous rulemakings. The rules are not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rules	03/25/98	63 FR 14548
Board issued revised proposed rules	09/14/99	64 FR 46988
Board issued interim final rule (Regulation Z)	03/30/01	66 FR 17329
Board issued interim final rule (Regulation B)	04/04/01	66 FR 17779
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jane Jensen Gell, Manager, Fair Lending, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452—2412

RIN: 7100–AC46

4227. REGULATION: E — ELECTRONIC FUND TRANSFERS (DOCKET NUMBERS: R—0919 AND R—1041)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1693 et seq

CFR Citation: 12 CFR 205

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment an interim final rule and proposed rules under Regulation E to permit the electronic delivery of disclosures, if the consumer agrees (Docket Number: R—1002; 63 FR 14528, March 25, 1998 (interim rule), and Docket Number: R—1041; 64 FR 49699, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E—Sign Act), which became effective October 1, 2000, generally provides that records and signatures may not be denied legal effect solely because they are in electronic form. The E—Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Certain provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E—Sign Act but were consistent with the Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17786, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E—Sign Act, financial institutions generally must obtain consumers' affirmative consent to provide disclosures electronically. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures. The March 1998 interim rule was withdrawn under the interim final rule.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board is expected to take further action.

A May 1996 Regulation E proposal to permit financial institutions to provide disclosures electronically also included proposed amendments imposing modified requirements on stored—value products in systems that track individual transactions, cards, or consumers and providing an exemption for cards on which a maximum value of $100 can be stored (Docket Number: R—0919; 61 FR 19696, May 2, 1996); the latter proposal remains pending.

Timetable:

Action	Date	FR Cite
Board issued proposed rule on coverage of stored—value products & electronic delivery of disclosures	05/02/96	61 FR 19696
Board issued interim rule permitting electronic delivery of disclosures	03/25/98	63 FR 14528
Board issued proposed rule imposing additional requirements re: electronic delivery of disclosures	09/14/99	64 FR 49699
Board issued interim final rules	04/04/01	66 FR 17786
Board lifted mandatory compliance date of interim final rule	08/08/01	66 FR 41439
Further Board action on interim final rules	12/00/03	
Further Board action on stored—value proposal by	02/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jane Jensen Gell, Manager, Fair Lending, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452—2412

RIN: 7100–AC06

4228. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (DOCKET NUMBER: R—1064)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 335; 12 USC 1835a

CFR Citation: 12 CFR 208

Legal Deadline: None

Abstract: In March 2000, the Board approved an interim rule with request for public comment amending Regulation H to implement section 121 of the Gramm—Leach—Bliley Act for state member banks (65 FR 14810, March 20, 2000). Section 121 in part authorizes state member banks to control, or hold an interest in, financial subsidiaries so as to conduct certain activities that are financial in nature or incidental to a financial activity. In August 2001, following review of the public comments, the Board adopted the final rule substantially as proposed (66 FR 42929, August 16, 2001).

The Board will also consider issuing for public comment a proposed rule in place of an existing Miscellaneous Interpretation (12 CFR 250.141) relating to member bank purchases of stock in operations subsidiaries to update its provisions and conform to section 121. It is not anticipated that the proposal will have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board requested comment on interim rule	03/20/00	65 FR 14810
Board adopted interim rule	08/16/01	66 FR 42929
Board will consider requesting comment on replacement rule for Miscellaneous Interpretation by	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Michael J. O'Rourke, Counsel, Federal Reserve System, Legal Division
Phone: 202 452—3288

RIN: 7100–AC69

4229. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1828(t)

CFR Citation: 12 CFR 208

Legal Deadline: None

Abstract: Section 204 of the Gramm—Leach—Bliley Act added a new subsection (t) to section 18 of the Federal Deposit Insurance Act requiring the Board, in consultation with the Securities and Exchange Commission, to establish recordkeeping requirements for state member banks and branches and agencies of foreign banks that rely on the exceptions from the definition of broker or dealer provided in section 3(a)(4) or (5) of the Securities Exchange Act of 1934.

The Board anticipates issuing for public comment a rule that would implement these recordkeeping requirements. The Board notes that the Securities and Exchange Commission has, by rule, delayed the effective date of the new exemptions for banks contained in section 3(a)(4) and (5) of the Securities Exchange Act of 1934, and has indicated that it expects to issue for public comment, a revised rule to implement the "broker" exception in section 3(a)(4) of the Securities and Exchange Act. The Board requested comment on rules that would provide guidance concerning the scope of their exemptions (66 FR 27760, May 18, 2001; 67 FR 67496, November 5, 2002; SEC Release No. 34—45897, May 8, 2002; SEC Release No. 34—46751, October 30, 2002). In light of these developments, the Board has delayed adopting a recordkeeping rule pending action by the Securities and Exchange Commission. It is not anticipated that the Board's proposal, when issued, would have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452—5270

RIN: 7100–AC73

4230. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R—1087)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 36; 12 USC 92a; 12 USC 93a; ...

CFR Citation: 12 CFR 208; 12 CFR 225

Legal Deadline: None

Abstract: In December 2000, the Board issued an interim rule, with request for public comment, amending Regulations H and Y to effectively reduce the capital requirement for certain securities borrowing transactions (65 FR 75856, December 5, 2000). The proposed amendments would recognize the historically low risk of these transactions and bring the capital requirements for U.S. banking organizations into better alignment with the capital requirements of other U.S. and non—U.S. regulators of financial institutions. The proposed amendments would have little or no effect on small banking organizations subject to the Board's regulation, as securities borrowing activities are concentrated in a relatively small number of very large banking organizations. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	12/05/00	65 FR 75856
Further Board action by	04/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: David Adkins, Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452—5259

RIN: 7100–AC75

4231. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL, CAPITAL APPENDICES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 24a; 12 USC 36; 12 USC 92a; ...

CFR Citation: 12 CFR 208 app A; 12 CFR 208 app D; 12 CFR 208 app E; 12 CFR 225 app A; 12 CFR 225 app D; 12 CFR 225 app E

Legal Deadline: None

Abstract: The capital appendices to Regulations H and Y set forth guidelines for institutions in calculating their regulatory capital requirements, both risk—based and leveraged.

While the guidelines are continuously monitored and updated as required to reflect market innovations, accounting changes, or modifications to supervisory policy, the Board is undertaking a more comprehensive review of the guidelines to minimize regulatory burden, clarify issues arising from the Gramm—Leach—Bliley Act, enhance the overall risk sensitivity, and to comply with provisions of section 610(c) of the Regulatory Flexibility Act of 1994. This review is proceeding in conjunction with ongoing revisions to the Basel Accord. The Board will consider requesting comment after Basel CP3 is released.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Barbara Bouchard, Assistant Director, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452—3072

RIN: 7100–AC88

4232. REGULATION: M — CONSUMER LEASING (DOCKET NUMBER: R—1042)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1667

CFR Citation: 12 CFR 213

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules under Regulation M, which implements the Consumer Leasing Act, to permit the electronic delivery of disclosures, if the consumer agrees (63 FR 14538, March 25, 1998 and 64 FR 49713, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services regulations administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E—Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E—Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Some provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E—Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17322, March 30, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E—Sign Act, lessors generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for disclosures not deemed to relate to "transactions," such as disclosures in advertising. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rule	03/25/98	63 FR 14538
Board issued revised proposed rule	09/14/99	64 FR 49713
Board issued interim final rule	03/30/01	66 FR 17322
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jane Ahrens, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452—2412

RIN: 7100–AC53

4233. REGULATION: V — FAIR CREDIT REPORTING (DOCKET NUMBER: R—1082)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1681 et seq

CFR Citation: 12 CFR 222

Legal Deadline: None

Abstract: In 1996, the Congress amended the Fair Credit Reporting Act (FCRA) as part of the Consumer Credit Reporting Reform Act. The amendments, among other things, prohibited the federal regulatory agencies from issuing implementing regulations. In November 1999, the Congress once again amended the FCRA as part of the Gramm—Leach—Bliley Act. The amendments lifted the prohibition and directed the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision to issue implementing regulations jointly.

In October 2000, the agencies issued proposed regulations for public comment (65 FR 63120, October 20, 2000). The proposal is not expected to have a significant economic impact on a substantial number of small entities. Following review of the public comments, agency staff is considering a revised proposal.

Timetable:

Action	Date	FR Cite
Board requested comment	10/20/00	65 FR 63120
Further Board action by	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: David Stein, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452—3667

RIN: 7100–AC68

4234. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1844(b)

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: Title I of the Gramm—Leach—Bliley Act (GLB Act) makes a number of miscellaneous amendments to sections 3, 4, and 5 of the Bank Holding Company Act of 1956 (BHC Act) and adds a new section 10A to the BHC Act. These amendments, among other things, prohibit the Board from determining that new activities are closely related to banking under section 4(c)(8) of the BHC Act; streamline the Board's reporting, examination, and other supervisory authority over bank holding companies and their subsidiaries; reduce the restrictions applicable to companies that control "nonbank banks" that are exempt from the nonbanking restrictions of the BHC Act under section 4(f) of that Act; and repeal the savings bank life insurance provisions currently set forth in section 3(g) of the BHC Act.

The Board will consider issuing for public comment amendments to Regulation Y to implement the provisions of the GLB Act affecting the BHC Act that are not addressed in proposed rules described elsewhere in the Board's agenda. It is not anticipated that the proposals will have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452—5270

RIN: 7100–AC66

4235. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 24a; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1816; ...

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: The Board will consider issuing for public comment proposed amendments to Regulation Y that will include a series of technical changes to Regulation Y necessitated by the Gramm—Leach—Bliley Act, as well as a general reorganization of Regulation Y. The proposal should not have a significant economic impact on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Andrew S. Baer, Counsel, Federal Reserve System, Legal Division
Phone: 202 452—2246

RIN: 7100–AC78

4236. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R—1091)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843

CFR Citation: 12 CFR 225.86

Legal Deadline: None

Abstract: In January 2001, the Board issued for public comment a proposed rule amending Regulation Y that would define real estate brokerage and real estate management activities as financial in nature or incidental to a financial activity and therefore permissible for financial holding companies under the Board's Regulation Y (66 FR 307, January 3, 2001). The proposal would facilitate the creation of diversified financial companies that can offer "one—stop shopping" to consumers contemplating the purchase or management of real estate. The proposal is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	01/03/01	66 FR 307
Further Board action by	03/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mark E. Van Der Weide, Counsel, Federal Reserve System, Legal Division
Phone: 202 452—2263

RIN: 7100–AC79

4237. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R—1094)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843

CFR Citation: 12 CFR 225.86(e)

Legal Deadline: None

Abstract: In December 2000, the Board, jointly with the Department of the Treasury, issued interim rules with request for public comment that implement section 4(k)(5) of the Bank Holding Company Act and section 5136A(b)(3) of the Revised Statutes, which were added by the Gramm—Leach—Bliley Act (66 FR 257, January 3, 2001). The interim rules specify three general types of activities to be financial in nature or incidental to a financial activity, and create a mechanism by which financial holding companies, financial subsidiaries of national banks, or others may request that the Board or the Secretary of the Treasury, respectively, define particular activities within one of the three categories. Such activities would therefore be permissible for financial holding companies and financial subsidiaries of national banks. The rules are not expected to have a significant economic impact on a substantial number of small entities.

Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	01/03/01	66 FR 257
Further Board action by	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Andrew S. Baer, Counsel, Federal Reserve System, Legal Division
Phone: 202 452—2246

RIN: 7100–AC81

4238. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R—1092)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843(k)

CFR Citation: 12 CFR 225.28; 12 CFR 225.89

Legal Deadline: None

Abstract: In December 2000, the Board issued for public comment a proposed rule that would allow all bank holding companies to conduct a greater amount of nonfinancial data processing than previously authorized (65 FR 80384, December 21, 2000). The proposed rule also would allow financial holding companies, as a complementary activity, to own companies engaged in certain data processing—related activities, such as data storage and Internet and portal hosting. The Board anticipates that the proposal would allow bank holding companies to provide a wider range of financial products and services to customers and would not have a significant economic impact on a substantial number of small entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	12/21/00	65 FR 80384
Further Board action by	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452—5270

RIN: 7100–AC82

4239. REGULATION: BB — COMMUNITY REINVESTMENT (DOCKET NUMBER: R—1112)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2901

CFR Citation: 12 CFR 228

Legal Deadline: None

Abstract: In 1995, the Board issued Regulation BB which implements the Community Reinvestment Act (CRA). Substantially similar regulations were issued by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS). The goal of these regulations was to achieve more objective performance—based CRA examinations and to minimize burden. At the time these regulations were issued, the agencies committed to conducting a 2002 comprehensive review of the regulations' effectiveness in achieving this goal.

In July 2001, the Board, the OCC, FDIC, and OTS issued an advance notice of proposed rulemaking (ANPR) (66 FR 37602, July 19, 2001). The notice identifies key issues in addition to requesting comment generally on potential revisions to the regulation. The Board is also reviewing the regulation in accordance with requirements of section 610(c) of the Regulatory Flexibility Act of 1994.

The first issue presented in the ANPR is whether any change to the regulation is necessary and warranted, in light of the burden that change would entail. Other issues include: the effectiveness of the evaluation methods set forth in the regulations; the effectiveness of the requirement that large financial institutions collect and report data on small business, small farm, and community development lending; and whether the regulations have provided a reasonable and sufficient standard for designating the communities within which a financial institution's activities will be evaluated during a CRA examination.

It is not anticipated that any rule proposed for public comment would have a significant economic impact on a substantial number of small entities subject to the Board's regulation. Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	07/19/01	66 FR 37602
Further Board action by	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Dan Sokolov, Attorney, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452—2412

RIN: 7100–AC87

4240. REGULATION: DD — TRUTH IN SAVINGS (DOCKET NUMBER: R—1044)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4301 et seq

CFR Citation: 12 CFR 230

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules and an interim rule under Regulation DD, which implements the Truth in Savings Act (TISA), to permit the electronic delivery of disclosures, if the consumer agrees (63 FR 14533, March 25, 1998, and 64 FR 49740, September 14, 1999). The interim rule permits the electronic delivery of TISA disclosures provided on periodic statements. The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E—Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E—Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Certain provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E—Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17795, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E—Sign Act, depository institutions generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for disclosures not deemed to relate to "transactions," such as disclosures in advertising. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures. The 1999 interim rule permitting electronic delivery of Regulation DD disclosures on periodic statements was withdrawn under the interim final rule.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rule	03/25/98	63 FR 14533
Board issued revised proposed rule and interim rule	09/14/99	64 FR 49740
Board issued interim final rule	04/04/01	66 FR 17795
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jane Ahrens, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452—2412

RIN: 7100–AC34

Federal Reserve System (FRS) — Long-Term Actions

4241. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y,— BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R—0930)

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 208 app A

Timetable:

Action	Date	FR Cite
Board requested comment	08/16/96	61 FR 42565
Further Board action by	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: John Connolly
Phone: 202 452—3621

RIN: 7100–AC13

Federal Reserve System (FRS) — Completed Actions

4242. REGULATION: T — CREDIT BY BROKERS AND DEALERS; REGULATION: U — CREDIT BY BANKS; AND REGULATION: X — BORROWERS OF SECURITIES CREDIT (DOCKET NUMBER: R—0995)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78G, Securities Exchange Act of 1934, as amended

CFR Citation: 12 CFR 220; 12 CFR 221; 12 CFR 224

Legal Deadline: None

Abstract: As part of the regular review of its regulations and in accordance with requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, and section 610(c) of the Regulatory Flexibility Act of 1994, the Board is conducting a review of its margin regulations. In order to complete this review, the Board approved issuing for public comment an advance notice of proposed rulemaking in December 1997 (63 FR 2840, January 16, 1998). The advance notice highlights issues raised by interested persons in response to previous requests for comment that had not been addressed by the Board in the course of its periodic review. It also provides an opportunity to further harmonize the treatment of bank and nonbank lenders under the revised Regulation U adopted by the Board at the same time as the advance notice. The advance notice also invites comment on all areas of the regulations.

Further action by the Board is not expected during the next six months.

Timetable:

Action	Date	FR Cite
Board requested comment	01/16/98	63 FR 2840

Action	Date	FR Cite
Further Board action not expected within the next six months	08/21/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Scott J. Holz, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452—2966

RIN: 7100–AC45

[FR Doc. 03–24041 Filed 12–19–03; 8:45 am]

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Monday,
December 22, 2003

Part LVIII

Federal Trade Commission

Semiannual Regulatory Agenda

FEDERAL TRADE COMMISSION (FTC)

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Trade Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following agenda of Commission proceedings is published in accordance with section 22(d)(1) of the Federal Trade Commission Act, 15 U.S.C. 57b-3(d)(1), and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, title II of Pub. L. 104-121, 110 Stat. 847. The Commission's agenda follows guidelines and procedures issued July 31, 2003, by the Office of Management and Budget in accordance with the provisions of Executive Order No. 12866, "Regulatory Planning and Review" of September 30, 1993. 58 FR 51735 (Oct. 4, 1993). This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in part II of this issue of the Federal Register. The Federal Trade Commission's Statement of Regulatory Priorities is included in part II.

The Commission has identified a rulemaking that is related to the events of September 11, 2001, because the USA PATRIOT Act, Pub.L. 107-56, 115 Stat. 272, amended the Telemarketing and Consumer Fraud and Abuse Prevention Act, 16 USC 6101-6108, and thus affects the Telemarketing Sales Rule, 16 CFR part 310.

The Commission has responded to the optional information requirement to identify rulemakings that are likely to have some impact on small entities but are not subject to the requirements of the RFA. The current rulemakings that are likely to have some impact on small entities include: (1) the Hobby Protection Rules, 16 CFR part 304; (2) the Smokeless Tobacco Rules, 16 CFR part 307; (3) the Pay-Per-Call Rule, 16 CFR part 308; (4) the Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles, 16 CFR part 309; (5) the Telemarketing Sales Rule, 16 CFR part 310; (6) the Franchise and Business Opportunities Rule, 16 CFR part 436; (7) the Funeral Rule, 16 CFR part 453; (8) the Trade Regulation Rule on Ophthalmic Practice Rules, 16 CFR part 456; and (9) the Rule on Labeling and Advertising of Home Insulation, 16 CFR part 460.

In addition, the agency has responded to the optional information requirement that corresponds to the requirements of Executive Order 13132, "Federalism" of August 4, 1999. 64 FR 43255 (Aug. 10, 1999). The Commission believes that none of the rules in this Agenda has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government" within the meaning of E.O. 13132. The Commission continues to work closely with the States and other governmental units in its rulemaking process, which explicitly considers the effect of the agency's rules on these governmental entities.

Further, the agency has responded to the optional information requirement that corresponds to the requirements of Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use." 66 FR 28355 (May 22, 2001). The Commission believes that none of the rules in this agenda meets this Executive Order's criteria requiring preparation of a Statement of Energy Effects.

Most of the reviews listed in the following agenda are being conducted as part of the Commission's plan to review and seek information about all of its regulations and guides, including their costs and benefits, and regulatory and economic impact every ten years. These reviews incorporate and expand upon the review required by the RFA and regulatory reform initiatives directing agencies to conduct a review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform.

Except for notice of completed actions, the information in this agenda represents the judgment of Commission staff, based upon information now available. Each projected date of action reflects an assessment by the FTC staff of the likelihood that the specified event will occur during the coming year. No final determination by the staff or the Commission respecting the need for, or the substance of, a trade regulation rule or any other procedural option should be inferred from the notation of projected events in this agenda. In most instances, the dates of future events are listed by month, not by a specific day. The acquisition of new information, changes of circumstances, or changes in the law may alter this information.

FOR FURTHER INFORMATION CONTACT: For information about specific regulatory actions listed in the agenda, contact the agency contact listed for each particular proceeding. Comments or inquiries of a general nature about the Agenda should be directed to Sandra M. Vidas, Attorney, telephone: (202) 326-2456; e-mail: svidas@ftc.gov; or G. Richard Gold, Attorney, telephone: (202) 326-3355; e-mail: rgold@ftc.gov, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

By direction of the Commission.

Shira Pavis Minton,

Acting Secretary.

Federal Trade Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4243	Regulatory Review	3084—AA47
4244	Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986	3084—AA48
4245	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992	3084—AA78
4246	Trade Regulation Rule on Ophthalmic Practice Rules	3084—AA80
4247	Labeling Requirements for Alternative Fuels and Alternative—Fueled Vehicles	3084—AA89
4248	Rules and Regulations Under the Hobby Protection Act	3084—AA90

Federal Trade Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4249	Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation	3084—AA60
4250	Trade Regulation Rule on Franchising and Business Opportunity Ventures	3084—AA63

Federal Trade Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4251	Premerger Notification Rules and Report Form	3084—AA91

Federal Trade Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4252	Trade Regulation Rule on Funeral Industry Practices	3084—AA82

Federal Trade Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4253	Telemarketing Sales Rule	3084—AA86
4254	Appliance Labeling Rule	3084—AA93

Federal Trade Commission (FTC) **Prerule Stage**

4243. REGULATORY REVIEW

Priority: Other Significant

Legal Authority: 15 USC 41 et seq

CFR Citation: 16 CFR 1 et seq

Legal Deadline: None

Abstract: The Commission is continuing its review of current rules and guides to identify any that should be modified or rescinded. The Commission will continue to consider ways to streamline and improve the review program. On March 4, 2002, the Commission published a tentative timetable for its regulatory review program under which all of the Commission's rules and guides are reviewed over a ten year period. 67 FR 9630 (Mar. 4, 2002). On January 17, 2003, the Commission announced that it will review one rule, two guides, and the statements of general policy or interpretations under the Fair Credit Reporting Act during 2003. 68 FR 2465 (Jan. 17, 2003). No determination about whether to modify or rescind a rule, guide or interpretation or any other procedural option should be inferred from the Commission's decision to publish a request for comments. In certain instances, the reviews may also address other specific matters or issues, such as proposed amendments. Finally, the Commission may modify the rule review timetable as circumstances warrant.

Timetable:

Action	Date	FR Cite
Notice of Rules and Guides to Review in 2000	01/19/00	65 FR 2912
Notice of Rules and Guides to Review in 2002	03/04/02	67 FR 9630
Notice of Rules and Guides to Review in 2003	01/17/03	68 FR 2465
Notice of Rules and Guides to Review in 2004	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Neil Blickman, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580
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RIN: 3084–AA47

4244. REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 4401

CFR Citation: 16 CFR 307

Legal Deadline: None

Abstract: The Comprehensive Smokeless Tobacco Health Education Act of 1986 requires health warnings on all packages and advertisements for smokeless tobacco. The Act directs the Commission to issue implementing Rules governing the format and display of the warnings. On November 4, 1986, the Commission issued its Rules setting out the provisions for the size, color, typeface, and rotation of the statutory warnings. In FY 2000, the Commission undertook a periodic review of the Rules. The purpose of the review was to determine whether the Rules continue to effectively meet the goals of the Act and to seek information concerning the Rules, particularly their economic impact, in order to decide whether they should be amended. Staff plans to forward its recommendations to the Commission this year.

Timetable:

Action	Date	FR Cite
Recommendation to the Commission Regarding ANPRM (Regulatory Review)	01/27/00	
ANPRM (Regulatory Review)	03/07/00	65 FR 11944
Comment Period End (Regulatory Review)	04/24/00	
Comment Period Extended (Regulatory Review)	05/08/00	65 FR 26534
Extended Comment Period End (Regulatory Review)	07/21/00	
Reopening and Extension of Comment Period	10/13/00	65 FR 60899
Extended Comment Period End	10/16/00	
Recommendation to Commission (Regulatory Review)	02/00/04	
Commission Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA48

4245. TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 5701 et seq; 15 USC 5714(1)

CFR Citation: 16 CFR 308

Legal Deadline: None

Abstract: Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) to curtail certain unfair and deceptive practices perpetrated by some pay—per—call businesses, and to encourage the growth of the legitimate pay—per—call industry. TDDRA mandated that the FTC promulgate a rule to curb these practices; the Pay—Per—Call or 900—Number Rule (Rule) became effective on November 1, 1993. TDDRA granted the Commission limited jurisdiction over common carriers for purposes of the Rule. The Rule requires that advertisements for 900—numbers contain certain disclosures; requires that anyone who calls a 900—number service be given the opportunity to hang up at the conclusion of the preamble without incurring any charge for the call; and establishes procedures for resolving billing disputes for 900—number calls and other telephone—billed purchases. The Rule itself required the Commission to initiate a review of the Rule prior to November 1997. As part of this review, the Commission published a notice in the Federal Register on March 12, 1997, requesting comments on, among other things, the economic impact of and the continuing need for the Rule, and the effect on the Rule of any technological or industry changes. The Commission also sought comments, pursuant to authority granted under the Telecommunications Act of 1996, on whether to expand the Rule to govern other similar audio information and entertainment services. Staff held a public workshop on June 19—20, 1997, during which members of the industry discussed issues raised in the comments, including billing and collection issues and possible ways to expand the definition of "pay—per—call services." Many commenters reported that the Rule has been successful in reducing the abuses that led to the passage of TDDRA. Despite the success of the Rule in correcting the abuses in the 900—number industry, complaints about other types of audiotext services (accessed via dialing patterns other than 900 numbers) are being reported. The majority of complaints now involve 800 numbers, international numbers, or other dialing patterns that do not use the 900—number prefix. Many consumer and law enforcement agencies also have been receiving complaints from consumers who have discovered unexplained charges (in some cases, recurring charges) on their telephone bills for services that were never authorized, ordered, received, or used, a practice known as "cramming." On October 30, 1998, the Commission published an NPRM that would expand the definition of "pay—per—call" services beyond 900 numbers and that would implement measures to combat telephone bill cramming. The proposed revisions would: (1) require the express authorization of the person to be billed for the purchase of any "telephone—billed purchases" that cannot be blocked by 900—number blocking; (2) prohibit vendors from billing consumers for monthly or other recurring charges for pay—per—call services unless the vendor had entered into a "presubscription agreement" with the person to be billed and had sent the consumer a written copy of the agreement; and (3) give consumers legal recourse to dispute unauthorized charges crammed on phone bills and have those charges removed. The comment period was extended to March 10, 1999, and a workshop—conference was held on May 20—21, 1999. At the workshop, participants discussed issues raised by the comments, such as the meaning of "express authorization" and the requirements for a presubscription agreement. Staff plans to forward a recommendation to the Commission by early 2004.

Timetable:

Action	Date	FR Cite
Request for Comments	03/12/97	62 FR 11749
Comment Period End	05/12/97	
Public Workshop	06/19/97	
Public Workshop	06/20/97	

Action	Date	FR Cite
Recommendation to Commission	09/08/98	
NPRM	10/30/98	63 FR 58523
Comment Period Extended	01/04/99	64 FR 61
Comment Period End	01/08/99	
Public Workshop—Conference	02/25/99	
Extended Comment Period End	03/10/99	
Public Workshop	05/20/99	
Public Workshop	05/21/99	
Recommendation to Commission	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA78

4246. TRADE REGULATION RULE ON OPHTHALMIC PRACTICE RULES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 41 et seq

CFR Citation: 16 CFR 456

Legal Deadline: None

Abstract: Issued in 1978, the Trade Regulation Rule on Ophthalmic Practice Rules, also known as the Prescription Release Rule, provides that an optometrist or ophthalmologist must give the patient, at no extra cost, a copy of the eyeglass prescription immediately after the examination is completed. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined by the Rule, on a requirement that the patient agrees to purchase ophthalmic goods from the optometrist or ophthalmologist, and from placing on the prescription, or delivering to the patient, certain disclaimers or waivers of liability. The Rule does not require an optometrist or ophthalmologist to release a contact lens prescription to a patient after an eye exam. As part of its systematic review of all Commission rules and guides, the Commission has requested comments on the economic impact of, and the continuing need for, this Rule, possible conflict between the Rule and State, local, or other Federal laws, and the effect on the Rule of any technological, economic, or other industry changes. Staff is evaluating the comments received and formulating a recommendation as to whether the Commission should retain the Rule or initiate a rulemaking to revise or repeal it.

Timetable:

Action	Date	FR Cite
Request for Comments	04/03/97	62 FR 15865
Notice of Comment Period Extension	05/29/97	62 FR 29088
Comment Period End	09/02/97	
Recommendation to Commission	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA80

4247. LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE—FUELED VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13232(a)

CFR Citation: 16 CFR 309

Legal Deadline: None

Abstract: The Rule, which became effective on November 20, 1995, requires disclosure of appropriate cost and benefit information to enable consumers to make reasonable purchasing choices and comparisons between nonliquid alternative fuels as well as alternative—fueled vehicles. As part of its ongoing systemic review of all Federal Trade Commission rules and guides, the Commission requested comments on, among other things, the economic impact and benefits of this Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Commission also requested comments on specific options for modifying the Rule's alternative—fueled vehicle label in light of new Environmental Protection Agency tailpipe emissions standards. No Commission determination on the need for or the substance of the Rule should be inferred from the intent to publish requests for comments. The staff expects to forward its recommendation on a final rule to the Commission during 2003 and expects Commission action early in 2004.

Timetable:

Action	Date	FR Cite
Request for Comments	05/08/03	68 FR 24669
Comment Period End	06/23/03	
Recommendation to Commission	12/00/03	
Commission Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA89

4248. RULES AND REGULATIONS UNDER THE HOBBY PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2101 et seq

CFR Citation: 16 CFR 304

Legal Deadline: None

Abstract: The Rule, which became effective on February 6, 1975; prescribes the required markings on imitation political and numismatic items, specifying the sizes and dimensions of the type, the location of the marking, and how to mark incusable (those that can be impressed with a stamp) and nonincusable items. Specifically, imitation political items — such as buttons, posters, coffee mugs and the like — must be marked with the calendar year they were manufactured, and imitation numismatic items — including coins, tokens and paper money — must be marked with the word "copy." As part of its ongoing systematic review of all Federal Trade Commission rules and guides, the Commission has requested public comments on, among other things, the economic impact and benefits of the Rule; possible conflict between the Rule and State, local, or other Federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. 68 FR 9856 (Mar. 3, 2003). For example, the Federal Register notice asks for comments on whether changes in the relevant technology, such as e—mail and the Internet, affects the Rule since it was issued. No Commission determination on the need for or the substance of the Rule should be inferred from the intent to publish requests for comments. The staff expects to forward a recommendation to the Commission during 2003 and expects Commission action early in 2004.

Timetable:

Action	Date	FR Cite
Notice of Intent to Request Comments	01/17/03	68 FR 2465
Request for Comments	03/03/03	68 FR 9856
Comment Period End	05/02/03	
Recommendation to Commission	12/00/03	
Commission Action	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA90

Federal Trade Commission (FTC) — Proposed Rule Stage

4249. TRADE REGULATION RULE CONCERNING THE LABELING AND ADVERTISING OF HOME INSULATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 41 et seq

CFR Citation: 16 CFR 460

Legal Deadline: None

Abstract: The Federal Trade Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (Rule) became effective on September 29, 1980. The Rule is designed to assist consumers in evaluating and comparing the thermal performance characteristics of competing home insulation products by specifically requiring manufacturers of home insulation products to provide information about the product's degree of resistance to the flow of heat (R—Value). The Rule also establishes uniform standards for testing, information disclosure, and substantiation of product performance claims. As part of the systematic review of its rules and guides, the Commission requested comments on, among other things, the economic impact of and the continuing need for this Rule, possible conflicts between the Rule and State, local and other Federal laws, and the effect on the Rule of any technological, economic, or other industry changes. In response to the comments received, the Commission issued an advance notice of proposed rulemaking (ANPRM) seeking comment on whether it should initiate a rulemaking proceeding to amend the Rule to recognize technological advances in R—Value testing and specimen preparation procedures, and to clarify and streamline the Rule's requirements. The Commission reviewed the comments received on the ANPRM and issued a notice of proposed rulemaking (NPRM), which proposed a number of amendments to the Rule. The staff expects to forward its recommendation to the Commission by March 2004.

Timetable:

Action	Date	FR Cite
Request for Comments	04/06/95	60 FR 17492
Commission Action/Part I	03/28/96	61 FR 13659
Commission Action/ANPRM	09/01/99	64 FR 48023
ANPRM Comment Period End	11/15/99	
Request for Comments (NPRM)	07/15/03	68 FR 41872
NPRM Comment Period End	09/22/03	
Recommendation to Commission	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA60

4250. TRADE REGULATION RULE ON FRANCHISING AND BUSINESS OPPORTUNITY VENTURES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 41 to 58

CFR Citation: 16 CFR 436

Legal Deadline: None

Abstract: The Federal Trade Commission's Trade Regulation Rule on Franchising and Business Opportunity Ventures (Franchise Rule) became effective on October 21, 1979. The Rule is designed to reduce deceptive and unfair practices in the sale of franchises and business opportunities by requiring the pre—sale disclosure of material information about the franchise. For example, the Rule requires franchisors to disclose their business background and litigation history, as well as the number of failed and terminated franchise units. The Rule also requires the disclosure of material terms of the franchise relationship, such as recurring fees and termination and renewal rights. The Rule further requires the franchisor to provide an audited financial statement for the most recent three fiscal years. Finally, the Rule requires any franchisor who makes earnings representations to provide the prospective franchisee with an earnings claims document that substantiates those claims. On February

28, 1997, the Commission published an advance notice of proposed rulemaking (ANPRM) contemplating amendments that would address new technologies and market practices and at the same time, reduce unnecessary regulatory burdens. The Commission specifically requested comments on whether to revise the Rule to more closely align Federal and State disclosure requirements governing franchise sales, and to address changes in the marketing of franchises, such as the sale of franchises internationally and through the Internet. Six public workshops were held in five cities during 1997 to promote discussions about the issues; allow the public to make statements on the record; and assist Commission staff in drafting a proposed amended Rule. On October 22, 1999, the Commission published a notice of proposed rulemaking (NPRM) with a text of the revised Rule. Comments were accepted until December 21, 1999, and rebuttal comments were accepted until January 31, 2000. Commission staff is now preparing a staff report.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/97	62 FR 9115
ANPRM Comment Period End	12/31/97	62 FR 28822
Recommendation to Commission	03/26/99	
NPRM	10/22/99	64 FR 57293
NPRM Comment Period End	12/21/99	
NPRM Rebuttal Comment Period End	01/31/00	
Staff Report	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 3084–AA63

Federal Trade Commission (FTC) Final Rule Stage

4251. PREMERGER NOTIFICATION RULES AND REPORT FORM

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 18a Clayton Act

CFR Citation: 16 CFR 801 to 803

Legal Deadline: None

Abstract: The Premerger Notification Rules (Rules) and the Antitrust Improvements Act Notification and Report Form (HSR Form) were adopted pursuant to section 7A of the Clayton Act. Section 7A requires firms of a certain size contemplating mergers or acquisitions of a specified size to file notification with the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) and to wait a designated period of time before consummating the transaction. It also requires the FTC, with the concurrence of the U.S. Assistant Attorney General for Antitrust, to promulgate rules requiring that notification be in a form and contain information necessary to enable the FTC and DOJ to determine whether the proposed acquisition may, if consummated, violate the antitrust laws. These rules are continually reviewed in order to improve the program's effectiveness and to reduce the paperwork burden on the business community. The Commission proposed modifications to the HSR Form on June 14, 1994. 59 FR 30545. Changes requiring the use of the North American Industrial Classification System (NAICS) to replace the Standard Industrial Classification (SIC) codes in completing items 5—8 on the HSR Form became effective on July 1, 2001.

On February 1, 2001, the Commission published interim and proposed rules amending the Hart—Scott—Rodino Rules (HSR Rules) contained in 16 CFR parts 801, 802 and 803. The interim rules took effect upon publication and implemented statutory amendments to section 7A of the Clayton Act that had been enacted on December 21, 2000. The proposed rules set forth other changes improving and updating the HSR Rules.

Both the interim and proposed rules invited public comment. The Commission received seventeen public comments addressing the interim rules (66 FR 8679) and the proposed rules (66 FR 8723). The proposed rules were revised and changes to parts 801 and 802 were made final effective April 17, 2002 (67 FR 11898). Interim rule 802.21 was revised and made final in a separate rulemaking and made effective on February 2, 2002 (67 FR 11904). On January 17, 2003, the Commission responded to issues raised by the comments received on the interim rules and issued final amendments to parts 801 and 803 (68 FR 2425). The Commission also received a number of comments that were not relevant to the changes promulgated by either set of rules. These additional comments remain under consideration and may be addressed by future rulemaking.

By the end of 2003, the Commission anticipates amending the HSR rules to allow parties to file the premerger notification and report form electronically via the Internet. The Commission also expects to issue a notice of proposed rulemaking during the spring or summer of 2004 to revise its treatment of noncorporate entities.

Timetable:

Action	Date	FR Cite
NPRM (Rule Change)	02/01/01	66 FR 8723
Interim Rule I (Statutory Changes)	02/01/01	66 FR 8679
Interim Rule II (Rules of Practice)	02/01/01	66 FR 8720
Comment Period End (Interim and Proposed Rules)	03/19/01	
NPRM (Change form SIC to NAICS)	05/09/01	66 FR 23561
Effective Date (Change from SIC to NAICS)	07/01/01	
Final Rule Part 802.21	03/18/02	67 FR 11904
Final Rules Parts 801 and 802	03/18/02	67 FR 11898
Final Rules Parts 801 and 803	01/17/03	68 FR 2425
Final Rule	12/00/03	
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3084–AA91

Federal Trade Commission (FTC) Long-Term Actions

4252. TRADE REGULATION RULE ON FUNERAL INDUSTRY PRACTICES

Priority: Substantive, Nonsignificant

CFR Citation: 16 CFR 453

Timetable:

Action	Date	FR Cite
Recommendation to Commission Regarding Initial Notice for Comment	04/17/99	
Initial Notice for Public Comment	05/05/99	64 FR 24249
Close of Comment Period (Extended)	08/11/99	64 FR 35965
Public Workshop	11/18/99	64 FR 56717
Recommendation to Commission	03/00/05	
Commission Action	07/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3084–AA82

Federal Trade Commission (FTC) Completed Actions

4253. TELEMARKETING SALES RULE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 6101 to 6108

CFR Citation: 16 CFR 310

Legal Deadline: Other, Statutory, December 31, 2000. Begin Rule Review and Report to Congress

Abstract: In 1995, the Commission issued the Telemarketing Sales Rule (TSR or Rule), 16 CFR part 310, under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 USC 6101—6108. TSR requires telemarketers to disclose information; prohibits misrepresentations; limits the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services.

The Commission was required to begin review of the TSR to evaluate the Rule's operation and report to Congress. The Commission issued a request for public comment on the Rule, its overall costs, benefits and its regulatory and economic impact since its adoption in 1995. As part of the review, the Commission held a public forum on January 11, 2000, addressing the operation of the Rule's "do—not—call" provision. Another public forum to discuss other provisions of TSR was held on July 27—28, 2000. The review is summarized in the Statement of Basis and Purpose for the "do—not—call" Rule. 68 FR 4580 (Jan. 29, 2003).

On October 25, 2001, President Bush signed the USA PATRIOT Act, P.L. 107—56, into law, with provisions that have significant impact on TSR. Section 1101 of the 2001 Act amends the Telemarketing Act to extend the coverage of TSR to charitable fund raising conducted by for—profit telemarketers for, or on behalf of, charitable organizations.

On January 22, 2002, the Commission announced its proposal to amend the Rule and to publish a notice of proposed rulemaking (NPRM). Among other things, the proposed Rule would establish a centralized national "do not call" registry, would prohibit telemarketers from receiving or sharing a consumer's billing information with anyone else, and would prohibit telemarketers from blocking "Caller ID" information. In addition, as mandated by Sec. 1011 of the USA PATRIOT Act, also referred to as the Crimes Against Charitable Americans Act of 2001, 15 USC 6101 note, the Commission's proposal would add certain disclosures and other requirements applicable to for—profit telemarketers who solicit charitable donations. Staff held a three—day public workshop from June 5—7, 2002, to discuss these and other proposed changes to the Rule. On May 24, 2002, the Commission also issued a related NPRM proposing that user fees be imposed on telemarketers and their seller or telemarketer clients for access to the national "do not call" registry in order to establish and maintain the registry. See 67 FR 37362 (May 29, 2002). The Commission announced the final amended Rule on December 18, 2002. On October 1, 2003, affected parties must be in full compliance with (1) Sec. 310.4(b)(1)(iv)(the prohibition of abandoned calls); (2) Sec. 310.4(b)(4)(the safe harbor for call abandonment as well as any record keeping requirements associated with the safe harbor); and (3) Sec. 310.4(b)(1)(iii)(B) (the national "do not call" registry provisions of the amended Rule). 68 FR 16414 (Apr. 4, 2003). Full compliance is required for Sec. 310.4(a)(7) (the caller identification provisions) on January 29, 2004; and March 31, 2003, was the date required for full compliance with all other provisions of the amended TSR.

As noted above, among other things, the final amended Rule establishes a national "do not call" registry, requires telemarketers to transmit Caller ID information, prohibits abandoned calls, prohibits unauthorized billing, requires express authorization when certain payment mechanisms are used, requires express informed consent in certain types of transactions, requires disclosures when the offer involves a negative option feature, and requires disclosures and prohibits misrepresentations in solicitations for charitable contributions. The amended Rule provides an exemption from the do—not—call registry for businesses with which consumers have an established business relationship. The Rule also exempts from the do—not call registry for—profit telemarketers making charitable solicitations.

The National Do Not Call Registry opened on June 27, 2003. Consumers can register for free in two ways: online at DONOTCALL.GOV or by telephone at 1 (888) 382—1222. As of October 1, 2003, it became illegal for most telemarketers to call a number listed on the national registry.

On February 20, 2003, the Congress authorized the agency to collect fees sufficient to implement and enforce the "do not call" provisions of the TSR (P.L. 108—7). On April 3, 2003, the Commission issued a Revised Notice of Proposed Rulemaking (Revised Fee NPRM) to amend the TSR by adding a new section that would impose fees on entities accessing the national "do not call" registry. 68 FR 16238 (Apr. 3, 2003). The Commission issued the Final Fee Rule on July 31, 2003. 68 FR 45134. The Final Rule will among other things: require only sellers to pay the annual fee for access to the national registry; impose an annual fee of $25 per area code, with a maximum annual fee of $7,375; allow access to up to five area codes for free; and, set October 1, 2003, as the effective date for the "do—not—call" provisions of the amended TSR.

Additional revisions to the amended TSR will allow more entities to access the "do not call" registry for the purpose of scrubbing their lists, even if they are entities that are exempt from the FTC's jurisdiction. However, the FTC emphasizes strongly that the information in the national registry may be used for no purpose other than to stop unwanted telemarketing calls.

To comply with the amended TSR's "do not call" provisions by the effective date of October 1, 2003, all covered sellers are required to access the registry for the first time between September 1 and September 30, 2003.

Timetable:

Action	Date	FR Cite
Announcement of Public Forum re: "Do—Not—Call" Provision	11/24/99	64 FR 66124
Public Forum re "Do—Not—Call" Provision	01/11/00	
Request for Comments	02/28/00	65 FR 10428
Comment Period End	04/27/00	
Extension of Comment Period	05/05/00	65 FR 26161
Extended Comment Period End	05/30/00	
Public Forum	07/27/00	
Public Forum	07/28/00	
USA Patriot Act Enacted	10/25/01	
NPRM	01/30/02	67 FR 4492
NPRM Comment Period End	03/29/02	
Extension of Comment Period	04/03/02	67 FR 15767
Extended Comment Period End	04/15/02	
Related NPRM—User Fees	05/29/02	67 FR 37362
Public Forum	06/05/02	
Public Forum	06/06/02	
Public Forum	06/07/02	
NPRM—User Fees Comment Period End	06/28/02	
Recommendation to Commission	11/08/02	
Final Commission Action Announced	12/18/02	
Final Amended Rule Published	01/29/03	68 FR 4580
Revised Fee NPRM	04/03/03	68 FR 16238
Stay of Compliance	04/04/03	68 FR 16414
Rev'd. User Fee NPRM Comment Period End	05/01/03	
Final Rule on User Fees	07/31/03	68 FR 45134

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA86

4254. • APPLIANCE LABELING RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 6291 et seq

CFR Citation: 16 CFR 305

Legal Deadline: None

Abstract: The Commission issued the Rule concerning disclosures regarding energy consumption and water use of certain home appliances (Appliance Labeling Rule) in 1979, 44 FR 66466 (Nov. 19, 1979) in response to a directive in the Energy Policy and Conservation Act of 1975 (EPCA), 42 U.S.C. 6294. The rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an EnergyGuide label and in catalogs.

New energy conservation standards and a new DOE test procedure for clothes washers will become effective on January 1, 2004. Application of the new test procedure (the J1 test) will likely produce energy consumption figures different from those yielded by the old test procedure (the J test). Because these test results are used to determine energy use information that appears on the FTC EnergyGuide label, consumers may not be able effectively to compare the energy performance of clothes washers if the labels are based on two different test procedures.

To ease the transition to the new energy efficiency standard and new (J1) test procedure, the Association of Home Appliance Manufacturers (AHAM) wrote to FTC staff on February 7, 2003, requesting permission to begin using that test for labeling clothes washers during 2003, before the test becomes effective. In addition, AHAM's letter requested that the Commission allow its members to provide special wording on the EnergyGuide labels for these models to help consumers in distinguishing washers tested under the new (J1) procedure from those tested under the old (J) procedure. AHAM proposed a modified label that would display a banner across the top stating: "This Model has been Tested to the 2004 Test Procedure. Compare only with Models with this Notice." AHAM requested that the Commission allow its members to begin using the new (J1) test and modified labels on May 1, 2003, and that the labeling changes be made permanent.

To grant AHAM's request, the Commission would have to grant an exemption from certain EnergyGuide testing and labeling requirements for the remainder of the calendar year of 2003 and issue rule amendments to make the requested labeling changes a permanent requirement for all manufacturers after January 1, 2004. On April 4, 2003, the Commission sought comments on AHAM's proposals. 68 FR 16231. The Commission received four comments; three of which supported the conditional exemption and rule change. In a Federal Register notice issued on June 18, 2003, the Commission granted a conditional exemption from certain EnergyGuide testing and labeling requirements for the remainder of the calendar year of 2003 to allow manufacturers to use the new (J1) test procedure immediately instead of waiting until the beginning of 2004. The Commission also amended the Rule to require explanatory language on EnergyGuide labels for all models beginning January 1, 2004. 68 FR 36458.

Timetable:

Action	Date	FR Cite
NPRM	04/03/03	68 FR 16231
Final Rule and Conditional Exemption	06/18/03	68 FR 36458

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
www.ftc.gov/bcp/online/edcams/eande/index.html

URL For Public Comments:
www.ftc.gov/os/comments/appliancecomments/index.html

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RIN: 3084–AA93

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Monday,
December 22, 2003

Part LIX

National Credit Union Administration

Semiannual Regulatory Agenda

NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Semiannual Regulatory Agenda

AGENCY: National Credit Union Administration (NCUA).

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to its ongoing policy of reviewing regulations, NCUA is publishing a list of current and projected rulemakings, reviews of existing regulations, and completed actions as of September 9, 2003, to be included in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

DATES: This information is current as of September 9, 2003.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: For each regulation listed, the person(s) named in the listing, at the above address, unless otherwise noted, or listed telephone number.

SUPPLEMENTARY INFORMATION: The purpose of this agenda is to enable credit unions and the public to follow regulatory development and review at NCUA and to participate in that process more effectively. Entries for the agenda appear in one of five possible categories: Prerule stage; proposed rule stage; final rule stage; long-term actions; or completed actions.

The agenda is published pursuant to NCUA Interpretive Ruling and Policy Statement Number 87-2 "Developing and Reviewing Government Regulations," 54 FR 35231, September 18, 1987, which sets out NCUA's policy and procedures for developing and reviewing its regulations. NCUA's policy is to ensure that its regulations impose only minimum required burdens on credit unions, consumers, and the public; are appropriate for the size of the financial institution it regulates; are issued only after full public participation; and are clear and understandable. Further, NCUA undertakes to review all regulations every 3 years to clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.

Executive Order 12866, signed by President Clinton on September 30, 1993, requires independent executive agencies such as NCUA to publish a regulatory agenda.

Approved by the NCUA Board on September 9, 2003.

NAME: Becky Baker,

Secretary of the Board.

National Credit Union Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4255	Consumer Protections for Federally Insured Credit Unions' Sale of Nondeposit Investments	3133—AC56
4256	Regulatory Publication and Review	3133—AC78
4257	Privacy of Consumer Financial Information	3133—AC84

National Credit Union Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4258	Credit Practices	3133—AC34
4259	Nondiscrimination in Federally Assisted Programs	3133—AC59
4260	Maximum Borrowing Authority; Suretyship and Guaranty	3133—AC73
4261	Mergers of Federally—Insured Credit Unions; Voluntary Termination or Conversion of Insured Status	3133—AC82
4262	Guidance on Response Program for Unauthorized Access to Member Information and Member Notice	3133—AC83
4263	Conversion of Insured Credit Unions to Mutual Savings Banks	3133—AC86
4264	Exchangeable Collateralized Mortgage Obligations	3133—AC87

National Credit Union Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4265	OMB Control Numbers	3133—AC52
4266	Truth in Savings	3133—AC57
4267	Share Insurance and Appendix	3133—AC65
4268	Description of NCUA; Request for Agency Action	3133—AC77
4269	Requests for Information Under the Freedom of Information Act and Privacy Act and by Subpoena, Subpart E	3133—AC79
4270	Loan Participation	3133—AC85

National Credit Union Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
4271	Requirements for Insurance	3133—AC33
4272	Investment and Deposit Activities	3133—AC49
4273	Bank Secrecy Act Compliance Programs and Procedures	3133—AC62
4274	Organization and Operations of Federal Credit Unions—Benefits for Employees of Federal Credit Unions	3133—AC64
4275	Advertising	3133—AC67
4276	Member Business Loans	3133—AC68
4277	Revision of Interpretive Ruling and Policy Statement 87—2, Developing and Reviewing Government Regulations	3133—AC71
4278	Treatment of Swap Agreements in Liquidation or Conservatorship	3133—AC72
4279	Prompt Corrective Action	3133—AC74
4280	Rules of NCUA Board Procedures; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings	3133—AC75
4281	Requests for Information Under the Freedom of Information Act and Privacy Act and by Subpoena; Security Procedures for Classified Information	3133—AC76

National Credit Union Administration (NCUA) Prerule Stage

4255. CONSUMER PROTECTIONS FOR FEDERALLY INSURED CREDIT UNIONS' SALE OF NONDEPOSIT INVESTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: NCUA is considering proposing regulations to ensure that the sale to members of all nondeposit investments through various types of arrangements is done in a safe and sound manner.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314—3428
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RIN: 3133–AC56

4256. REGULATORY PUBLICATION AND REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 3311

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, September 6, 2003, Final.

Abstract: The financial institution regulators are required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 to categorize all of the agencies' regulations by type and then issue a notice and request for comment for each of the categories. The notice must request comment on areas of the regulations that are outdated, unnecessary, or unduly burdensome. This must be done on a 10—year cycle. The first cycle ends in September 2006. The notice for the first category was issued on July 3, 2003.

Timetable:

Action	Date	FR Cite
Notice	07/03/03	68 FR 39803
Notice	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3133–AC78

4257. • PRIVACY OF CONSUMER FINANCIAL INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 6801 et seq

CFR Citation: 12 CFR 716

Legal Deadline: None

Abstract: NCUA plans to issue an interagency ANPRM and then a proposed rule, and a final rule on privacy notices and ways financial institutions can make them clear and conspicuous.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3133–AC84

4258. CREDIT PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 57a; 15 USC 1681b

CFR Citation: 12 CFR 706

Legal Deadline: None

Abstract: NCUA issued a proposed regulation under the Fair Credit Reporting Act that addresses the sharing of opt—out information between Federal credit unions and their affiliates. NCUA intends to issue a second proposal for comment.

Timetable:

Action	Date	FR Cite
NPRM	10/26/00	65 FR 64168
NPRM Comment Period End	12/26/00	
Second NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3133–AC34

4259. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 2000d et seq; 29 USC 793; 42 USC 6101 et seq

CFR Citation: 12 CFR 730

Legal Deadline: None

Abstract: The purpose of this rule is to implement Federal statutes that prohibit credit unions that receive Federal financial assistance from discrimination on certain bases.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Paul Marshall Peterson, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
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RIN: 3133–AC59

4260. MAXIMUM BORROWING AUTHORITY; SURETYSHIP AND GUARANTY

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757; 12 USC 1766; 12 USC 1781 to 1790; 12 USC 1790d

CFR Citation: 12 CFR 741.2; 12 CFR 701.20

Legal Deadline: None

Abstract: This provision limits borrowing for federally insured credit unions to 50 percent of paid—in and unimpaired capital and surplus. The limitation is statutory for Federal credit unions (FCUs). NCUA proposes amending the regulation to permit federally insured, State—chartered credit unions (FISCUs) to apply for a waiver from the borrowing limitations. NCUA also proposes adding a new provision to its regulations that allows FCUs to act as surety or guarantor on behalf of their members. The proposal establishes certain requirements to ensure that FCUs and FISCUs, if permitted under State law to act as a surety or guarantor, are not exposed to undue risk.

Timetable:

Action	Date	FR Cite
NPRM	10/01/03	68 FR 56586
NPRM Comment Period End	12/01/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3133–AC73

4261. • MERGERS OF FEDERALLY—INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1766; 12 USC 1785; 12 USC 1786; 12 USC 1789

CFR Citation: 12 CFR 708b

Legal Deadline: None

Abstract: Update various regulatory requirements for mergers and conversions to nonfederal share insurance.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul Marshall Peterson, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
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RIN: 3133–AC82

4262. • GUIDANCE ON RESPONSE PROGRAM FOR UNAUTHORIZED ACCESS TO MEMBER INFORMATION AND MEMBER NOTICE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 6801 ; 15 USC 6805(b); 12 USC 1751 et seq

CFR Citation: 12 CFR 748.01(b); 12 CFR 748 app B

Legal Deadline: None

Abstract: NCUA plans to issue a proposed rule regarding section 501(b) of the Gramm—Leach—Bliley Act, consistent and comparable with the banking agencies' proposed rule on Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.

Timetable:

Action	Date	FR Cite
NPRM	10/30/03	68 FR 61760
NPRM Comment Period End	12/29/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3133–AC83

4263. • CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1766; 12 USC 1785(b)

CFR Citation: 12 CFR 708a

Legal Deadline: None

Abstract: The proposal requires a credit union converting to a mutual savings bank to disclose additional information in its notice to members of its intent to convert.

Timetable:

Action	Date	FR Cite
NPRM	10/01/03	68 FR 56589
NPRM Comment Period End	12/01/03	
Second NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3133–AC86

4264. • EXCHANGEABLE COLLATERALIZED MORTGAGE OBLIGATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1757(15)

CFR Citation: 12 CFR 703

Legal Deadline: None

Abstract: A proposed amendment to part 703 to enumerate the conditions under which a Federal credit union may invest in an Exchangeable Collateralized Mortgage Obligation.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3133–AC87

National Credit Union Administration (NCUA) Final Rule Stage

4265. OMB CONTROL NUMBERS

Priority: Info./Admin./Other

Legal Authority: 12 USC 1766(a); 5 USC 3507(f)

CFR Citation: 12 CFR 795

Legal Deadline: None

Abstract: NCUA plans to update the display table that lists the current OMB control numbers and the 12 CFR part or section where each number is described or identified.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3133–AC52

4266. TRUTH IN SAVINGS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4311

CFR Citation: 12 CFR 707

Legal Deadline: Other, Statutory, November 6, 2001, Other. Mandated by Truth in Savings Act.

Abstract: NCUA amended its Truth in Savings rule in compliance with the Truth in Savings Act, which requires NCUA to amend its rule in conformity with changes made by the Federal Reserve Board to its Regulation DD.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/19/01	66 FR 48206
Interim Final Rule Effective	10/01/01	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3133–AC57

4267. SHARE INSURANCE AND APPENDIX

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1757; 12 USC 1765 to 1766; 12 USC 1781 to 1782; 12 USC 1787; ...

CFR Citation: 12 CFR 745

Legal Deadline: None

Abstract: Update NCUA's share insurance rules to bring them into closer parity with the Federal Deposit Insurance Corporation's deposit insurance rules.

Timetable:

Action	Date	FR Cite
NPRM	07/03/03	68 FR 39868
NPRM Comment Period End	09/02/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3133–AC65

4268. DESCRIPTION OF NCUA; REQUEST FOR AGENCY ACTION

Priority: Info./Admin./Other

Legal Authority: 12 USC 1766, 1789, 1795F

CFR Citation: 12 CFR 790

Legal Deadline: None

Abstract: Revise and update description of NCUA and request for Agency action (including appeals provision); technical corrections.

Timetable:

Action	Date	FR Cite
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
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Fax: 703 518—6569
Email: rmetz@ncua.gov

RIN: 3133–AC77

4269. REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT AND BY SUBPOENA, SUBPART E

Priority: Info./Admin./Other

Legal Authority: 5 USC 552a

CFR Citation: None

Legal Deadline: None

Abstract: Addition of new Privacy Act systems of records to ensure building security and to monitor employees' daily attendance and amendment of existing system of records to reflect maintenance of records of individual employee's entries and exists from a parking garage.

Timetable:

Action	Date	FR Cite
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dianne M. Salva, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314—3428
Phone: 703 518—6540
Fax: 703 518—6569
Email: dsalva@ncua.gov

RIN: 3133–AC79

4270. • LOAN PARTICIPATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 15 USC 1601 et seq; 42 USC 1981; 42 USC 3601 to 3610; 42 USC 4311 to 4312

CFR Citation: 12 CFR 701.22

Legal Deadline: None

Abstract: NCUA proposes to update and clarify the definition of certain terms used in NCUA's loan participation rule to conform to other NCUA rules and to provide greater flexibility to Federal credit unions in choosing appropriate loan participation partners.

Timetable:

Action	Date	FR Cite
NPRM	06/26/03	68 FR 39866
NPRM Comment Period End	09/02/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314—3428
Phone: 703 518—6558
Fax: 703 518—6569
Email: fkressman@ncua.gov

RIN: 3133–AC85

National Credit Union Administration (NCUA) Completed Actions

4271. REQUIREMENTS FOR INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1756 to 1757; 12 USC 1757A; 12 USC 1766; 12 USC 1785; 12 USC 1781

CFR Citation: 12 CFR 741

Legal Deadline: None

Abstract: NCUA issued a final rule that requires a credit union to develop a business plan and receive foreign government approval before establishing a branch outside the United States.

Timetable:

Action	Date	FR Cite
ANPRM	09/14/00	65 FR 55464

Action	Date	FR Cite
ANPRM Comment Period End	11/13/00	
NPRM	09/26/02	67 FR 60607
NPRM Comment Period End	11/25/02	
Final Action	04/30/03	68 FR 23027

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518—6540
Fax: 703 518—6569
Email: rmetz@ncua.gov

RIN: 3133–AC33

4272. INVESTMENT AND DEPOSIT ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757(7); 12 USC 1757(8); 12 USC 1757(15)

CFR Citation: 12 CFR 703

Legal Deadline: None

Abstract: This final rule updates and clarifies NCUA's investment and deposit activities rules, having taken into account comments solicited by a previously issued advance notice of proposed rulemaking and proposed rule.

Timetable:

Action	Date	FR Cite
ANPRM	10/26/01	66 FR 54168
ANPRM Comment Period End	01/24/02	
NPRM	12/27/02	67 FR 78996
NPRM Comment Period End	02/25/03	
Final Action	05/24/03	68 FR 32958

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314—3428
Phone: 703 518—6558
Fax: 703 518—6569
Email: fkressman@ncua.gov

RIN: 3133–AC49

4273. BANK SECRECY ACT COMPLIANCE PROGRAMS AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1766(a); 12 USC 1786(q); 31 USC 5311; 31 USC 5318

CFR Citation: 12 CFR 748.2

Legal Deadline: None

Abstract: The rule has been amended to clarify and cross—reference changes to credit unions' responsibilities for Bank Secrecy Act compliance resulting from passage of the U.S.A. PATRIOTS Act, Public Law 107—56, October 26, 2001.

Timetable:

Action	Date	FR Cite
Final Action	05/09/03	68 FR 25112

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John K. Ianno, Senior Trial Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314—3428
Phone: 703 518—6540
Fax: 703 518—6569
Email: johni@ncua.gov

RIN: 3133–AC62

4274. ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS—BENEFITS FOR EMPLOYEES OF FEDERAL CREDIT UNIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a—b; 12 USC 1766 to 1767; . . .

CFR Citation: 12 CFR 701.19

Legal Deadline: None

Abstract: Clarify the scope of the rule permitting Federal credit unions to provide their employees with reasonable retirement and employee benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/20/01	66 FR 65662
NPRM Comment Period End	02/19/02	
Second NPRM	09/25/02	67 FR 60184
Second NPRM Comment Period End	12/26/02	
Final Action	04/24/03	68 FR 23025

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314—3428
Phone: 703 518—6558
Fax: 703 518—6569
Email: fkressman@ncua.gov

RIN: 3133–AC64

4275. ADVERTISING

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1766; 12 USC 1781; 12 USC 1789; 12 USC 4311

CFR Citation: 12 CFR 740

Legal Deadline: None

Abstract: Revised to address electronic advertising and transactions and to improve clarity.

Timetable:

Action	Date	FR Cite
NPRM	09/25/02	67 FR 60604
NPRM Comment Period End	11/25/02	
Final Action	05/02/03	68 FR 23381

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dianne M. Salva, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314—3428
Phone: 703 518—6540
Fax: 703 518—6569
Email: dsalva@ncua.gov

RIN: 3133–AC67

4276. MEMBER BUSINESS LOANS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757a

CFR Citation: 12 CFR 723

Legal Deadline: None

Abstract: NCUA intends to issue a final rule adopting amendments to its member business loan rule that will revise or clarify provisions regarding collateral requirements, aggregate loan limits, and other areas related to member business lending. NCUA also will amend the prompt corrective action, credit union service organization, regulatory flexibility, and corporate credit union rules as part of this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	04/03/03	68 FR 16450
NPRM Comment Period End	06/03/03	
Final Action	10/01/03	68 FR 56537

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Chrisanthy J. Loizos, Staff Attorney, National Credit Union Administration, 1775 Duke Street,
Alexandria, VA 22314
Phone: 703 518—6567
Fax: 703 518—6569
Email: cloizos@ncua.gov

RIN: 3133–AC68

4277. REVISION OF INTERPRETIVE RULING AND POLICY STATEMENT 87—2, DEVELOPING AND REVIEWING GOVERNMENT REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 5 USC 601 et seq; 12 USC 1752a

CFR Citation: 12 CFR 791.8

Legal Deadline: None

Abstract: Revision amends the Interpretive Ruling and Policy Statement to update the definition of small credit union and provide for notice to the public of regulations up for NCUA review in the coming year.

Timetable:

Action	Date	FR Cite
NPRM	12/04/02	67 FR 72113
NPRM Comment Period End	02/03/03	
Final Action	05/22/03	68 FR 31949

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul Marshall Peterson, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518—6540
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Email: ppeterson@ncua.gov

RIN: 3133–AC71

4278. TREATMENT OF SWAP AGREEMENTS IN LIQUIDATION OR CONSERVATORSHIP

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1787(c)(8)(D)(i)

CFR Citation: 12 CFR 709.13

Legal Deadline: None

Abstract: The NCUA amended its involuntary liquidation regulation to designate swap agreements as qualified final contracts (QFCs). Treatment of Swaps as QFCs will limit counterparty exposure when a federally insured credit union is placed into involuntary liquidation or a conservatorship and thereby encourage entities to engage in swaps with federally insured credit unions.

Timetable:

Action	Date	FR Cite
NPRM	02/26/03	68 FR 8860
NPRM Comment Period End	03/28/03	
Final Action	05/22/03	68 FR 32355

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul Marshall Peterson, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518—6540
Fax: 703 518—6569
Email: ppeterson@ncua.gov

RIN: 3133–AC72

4279. PROMPT CORRECTIVE ACTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1790d

CFR Citation: 12 CFR 702

Legal Deadline: None

Abstract: Withdrawal of role establishing "simplified net worth restoration plan" for system of capital standards for federally insured credit unions.

Timetable:

Action	Date	FR Cite
NPRM	11/29/02	67 FR 71113
NPRM Comment Period End	01/28/03	
Withdrawn	04/29/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Steven W. Widerman, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street,
Alexandria, VA 22314
Phone: 703 518—6557
Email: widerman@ncua.gov

RIN: 3133–AC74

4280. RULES OF NCUA BOARD PROCEDURES; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5526

CFR Citation: 12 CFR 791

Legal Deadline: None

Abstract: Withdrawn.

Timetable:

Action	Date	FR Cite
Withdrawn	07/31/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dianne M. Salva, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street,
Alexandria, VA 22314—3428
Phone: 703 518—6540
Fax: 703 518—6569
Email: dsalva@ncua.gov

RIN: 3133–AC75

4281. REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 12 CFR 792

Legal Deadline: None

Abstract: Amendment to inform requester of Freedom of Information search cut—off date.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/30/03	68 FR 61736

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dianne M. Salva, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314—3428
Phone: 703 518—6540
Fax: 703 518—6569
Email: dsalva@ncua.gov

RIN: 3133–AC76

[FR Doc. 03–25127 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part LX

National Indian Gaming Commission

Semiannual Regulatory Agenda

NATIONAL INDIAN GAMING COMMISSION (NIGC)

NATIONAL INDIAN GAMING COMMISSION

25 CFR Ch. III

Semiannual Regulatory Agenda

AGENCY: National Indian Gaming Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The National Indian Gaming Commission (NIGC) today is publishing an agenda of its open and anticipated rulemaking actions. The agenda is a general announcement to the public intended to provide notice of rulemaking actions in which the public may wish to participate. In the future, the Commission intends to issue notices of proposed rulemaking or advance notices of proposed rulemaking, or final rules for the following: rules establishing technical standards for game classifications; rules establishing technical standards for gaming machines and associated equipment; rules revising Freedom of Information Act Procedures; rules revising Privacy Act procedures; rules establishing a process for the assessment, notification, and collection of debts owed the NIGC; rules revising tribal background investigation submission requirements and timing; rules concerning hearings and appeals procedures; rules concerning enforcement; rules revising the scope and review of management contracts; rules concerning net gaming revenue; rules concerning gaming facility licensing standards; rules concerning practice before the Commission; rules implementing the National Environmental Policy Act (NEPA); and rules concerning technical amendments to the Minimum Internal Control Standards. The Commission invites questions and public comment on individual agenda items.

FOR FURTHER INFORMATION CONTACT: John R. Hay, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005, (202) 632-7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 "Regulatory Planning and Review" and the Regulatory Flexibility Act, 5 U.S.C. 605, executive agencies are required to publish semiannual regulatory agendas in the **Federal Register** each year.

The regulations being considered by the Commission are not "significant" rules within the meaning of E.O. 12866, and no Regulatory Impact Analysis is required. The Commission also has determined, under the Regulatory Flexibility Act, that most of the regulations under consideration will not have a significant economic impact on a substantial number of small entities. For these regulations, no Regulatory Flexibility Analysis is required. The Commission has not yet determined whether the rules implementing the National Environmental Policy Act, the Privacy Act, or gaming facility licensing require a Regulatory Flexibility Analysis. The proposed rules are not covered under section 202 of the Unfunded Mandates Reform Act (Pub. L. 104-4), as they are not Federal mandates that may result in an expenditure of $100 million or more in any one year by State, local, or tribal governments, in the aggregate, or the private sector. Further, these proposed rules are not considered major under 5 U.S.C. 801 enacted by Public Law 104-121, and, therefore, are not subject to section 801's 60-day deferral requirement. The Commission has not yet determined whether the technical amendments to the Minimum Internal Control Standards, technical standards for game classifications, technical standards for gaming machines and associated gaming equipment, or the Privacy Act procedures are a major rule.

For this edition of the National Indian Gaming Commission's regulatory agenda, the most significant regulatory actions are included in The Regulatory Plan, which appears in part II of the **Federal Register**. The Regulatory Plan entries are listed in the table of contents below and are denoted by a bracketed bold reference, which directs the reader to the appropriate sequence number in part II.

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

National Indian Gaming Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4282	Freedom of Information Act Procedures (Amendments)	3141—AA21
4283	Privacy Act Procedures (Amendments)	3141—AA28
4284	Technical Standards for Game Classifications, Gaming Machines, and Gaming Systems **(Reg Plan Seq No. 150)**	3141—AA29

References in boldface appear in the Regulatory Plan in part II of this issue of the **Federal Register**.

National Indian Gaming Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4285	Debt Collection	3141—AA25

National Indian Gaming Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4286	Practice Before the Commission	3141—AA07
4287	Hearings and Appeals Procedure	3141—AA08
4288	Enforcement	3141—AA09
4289	Management Contracts	3141—AA13
4290	Net Gaming Revenue	3141—AA14
4291	Tribal Background Investigation Submission Requirements and Timing	3141—AA15
4292	Administrative Fees	3141—AA16
4293	Gaming Facility Licensing Standards	3141—AA23
4294	National Environmental Policy Act (NEPA) Implementing Regulations	3141—AA26
4295	Technical Amendments to the Minimum Internal Control Standards	3141—AA27

National Indian Gaming Commission (NIGC) Proposed Rule Stage

4282. FREEDOM OF INFORMATION ACT PROCEDURES (AMENDMENTS)

Priority: Other Significant

Legal Authority: 5 USC 552

CFR Citation: 25 CFR 517.3; 25 CFR 517.6; 25 CFR 517.8

Legal Deadline: None

Abstract: These rules will revise the current regulations to make them consistent with the amended Freedom of Information Act (FOIA). The rules will also update information such as addresses and copying fees.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gregory Smith, FOIA/PA Officer, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632—7003
Fax: 202 632—7066
Email: gregory__smith@nigc.doi.gov

RIN: 3141–AA21

4283. PRIVACY ACT PROCEDURES (AMENDMENTS)

Priority: Other Significant

Legal Authority: 5 USC 552a

CFR Citation: 25 CFR 515

Legal Deadline: None

Abstract: These rules will revise current regulations to update addresses and list systems of records.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA28

4284. • TECHNICAL STANDARDS FOR GAME CLASSIFICATIONS, GAMING MACHINES, AND GAMING SYSTEMS

Regulatory Plan: This entry is Seq. No. 150 in part II of this issue of the **Federal Register**.

RIN: 3141–AA29

National Indian Gaming Commission (NIGC) Final Rule Stage

4285. DEBT COLLECTION

Priority: Other Significant

Legal Authority: 31 USC 3716; 25 USC 2713(a)(1)

CFR Citation: 25 CFR 580

Legal Deadline: None

Abstract: This regulation will establish a process for the assessment, notification, and collection of debts owed the National Indian Gaming Commission.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/20/01	66 FR 58056
Interim Final Rule Comment Period End	01/04/02	
Interim Final Rule Comment Period Reopened	01/09/02	67 FR 1273
Interim Final Rule Comment Period End	01/14/02	
Final Rule	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Tribal

NIGC **Final Rule Stage**

Agency Contact: Cynthia K. Shaw, Attorney, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632—7003
Fax: 202 632—7066
Email: cynthia_shaw@nigc.doi.gov

RIN: 3141–AA25

National Indian Gaming Commission (NIGC) — Long-Term Actions

4286. PRACTICE BEFORE THE COMMISSION

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: William F. Grant
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA07

4287. HEARINGS AND APPEALS PROCEDURE

Priority: Other Significant

CFR Citation: 25 CFR 522 to 524; 25 CFR 533; 25 CFR 535; 25 CFR 539; 25 CFR 573; 25 CFR 575; 25 CFR 577

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA08

4288. ENFORCEMENT

Priority: Other Significant

CFR Citation: 25 CFR 573

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA09

4289. MANAGEMENT CONTRACTS

Priority: Other Significant

CFR Citation: 25 CFR 531; 25 CFR 533; 25 CFR 536

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA13

4290. NET GAMING REVENUE

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 571; 25 CFR 573

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA14

4291. TRIBAL BACKGROUND INVESTIGATION SUBMISSION REQUIREMENTS AND TIMING

Priority: Other Significant

CFR Citation: 25 CFR 556; 25 CFR 558

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA15

4292. ADMINISTRATIVE FEES

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 514

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA16

4293. GAMING FACILITY LICENSING STANDARDS

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 522.4(b)(6); 25 CFR 522.6(b)

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA23

4294. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) IMPLEMENTING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Tribal

Agency Contact: Kathy Zebell
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA26

4295. TECHNICAL AMENDMENTS TO THE MINIMUM INTERNAL CONTROL STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 25 CFR 542

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632—7003
Fax: 202 632—7066

RIN: 3141–AA27

[FR Doc. 03–24030 Filed 12–19–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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Federal Register

Monday,
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Part LXI

Nuclear Regulatory Commission

Semiannual Regulatory Agenda

NUCLEAR REGULATORY COMMISSION (NRC)

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing its semiannual regulatory agenda in accordance with Public Law 96-354, "The Regulatory Flexibility Act," and Executive Order 12866, "Regulatory Planning and Review." The agenda is a compilation of all rules on which the NRC has recently completed action or has proposed or is considering action. This issuance updates any action occurring on rules since publication of the last semiannual agenda on May 27, 2003 (68 FR 31418).

ADDRESSES: You may submit comments on any rule in the agenda by any one of the following methods. Please include the RIN (Regulation Identifier Number) number in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov.If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking web site at http://ruleforum.llnl.gov. Address questions about our rulemaking website to Carol Gallagher (301) 415-5905; email cag@nrc.gov.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to the rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1'F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking web site at http://ruleforum.llnl.gov.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: For further information concerning NRC rulemaking procedures or the status of any rule listed in this agenda, contact Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-7163 (e-mail: mtl@nrc.gov). Persons outside the Washington, DC, metropolitan area may call, toll-free: 1-800-368-5642. For further information on the substantive content of any rule listed in the agenda, contact the individual listed under the heading "Agency Contact" for that rule.

SUPPLEMENTARY INFORMATION: The information contained in this semiannual publication is updated to reflect any action that has occurred on rules since publication of the last NRC semiannual agenda on May 27, 2003 (68 FR 31418). Within each group, the rules are ordered according to the Regulation Identifier Number (RIN).

The information in this agenda has been updated through September 12, 2003. The date for the next scheduled action under the heading "Timetable" is the date the rule is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The agenda is intended to provide the public early notice and opportunity to participate in the NRC rulemaking process. However, the NRC may consider or act on any rulemaking even though it is not included in the agenda.

The NRC agenda lists all open rulemaking actions. Six rules affect small entities, one of which may potentially have a "significant economic impact on a substantial number of small entities" as defined in the Regulatory Flexibility Act.

Dated at Rockville, Maryland, this 12th day of September 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and directive Branch, Division of Administrative Services, Office of Administration.

Nuclear Regulatory Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4296	Fitness for Duty Programs	3150—AF12
4297	Nuclear Power Plant Worker Fatigue	3150—AG99
4298	Public Records	3150—AH12
4299	Control of Solid Material	3150—AH18
4300	Options for Addressing Training and Experience Issues Associated With Recognition of Specialty Boards by NRC	3150—AH19
4301	Acceptable Criteria for Emergency Core Cooling Systems for Light—Water Nuclear Power Reactors	3150—AH22

Nuclear Regulatory Commission—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
4302	Industry Codes and Standards; Amended Requirements	3150—AH24
4303	Risk—Informed Alternative to Maximum Pipe Break Size (LB—LOCA Redefintion)	3150—AH29
4304	Licensing Proceedings for the Receipt of High—Level Radioactive Waste at a Geologic Repository: Licensing Support Network, Submissions to the Electronic Docket	3150—AH31

Nuclear Regulatory Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4305	Lessons Learned From Design Certification	3150—AG24
4306	Risk—Informing Special Treatment Requirements	3150—AG42
4307	Performance—Based, Risk—Informed Fire Protection	3150—AG48
4308	Transfers of Certain Source Materials by Specific Licensees	3150—AG64
4309	Compatibility With IAEA Transportation Safety Standards	3150—AG71
4310	Financial Information Requirements for Applications To Renew or Extend the Term of an Operating License for a Power Reactor	3150—AG84
4311	Changes to Emergency Action Levels — Appendix E	3150—AH00
4312	Security Requirements for Portable Gauges Containing Byproduct Material	3150—AH06
4313	Electronic Submission of Fingerprint Records	3150—AH16
4314	List of Approved Spent Fuel Storage Casks: Standarized NUHOMS System Revision (Amendment 5)	3150—AH26
4315	List of Approved Spent Fuel Storage Casks: Standarized NUHOMS —24P, —52B, —61BT, —32PT, and —24PHB Revision (Amendment 6)	3150—AH27
4316	List of Approved Spent Fuel Storage Casks: Standarized NUHOMS System Revision (Amendment 7)	3150—AH28
4317	Minor Changes to Decommissioning Trust Fund Provisions	3150—AH32

Nuclear Regulatory Commission—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4318	Update Fuel Performance Considerations and Other Fuel Cycle Issues	3150—AA31
4319	Disposal by Release Into Sanitary Sewerage	3150—AE90
4320	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste	3150—AG41
4321	Integrated Rulemaking for Decommissioning Nuclear Power Reactors	3150—AG47
4322	Changes to Adjudicatory Process	3150—AG49
4323	Reevaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage	3150—AG63
4324	Entombment Options for Power Reactors	3150—AG89
4325	Modifications to Pressure—Temperature Limits	3150—AG98
4326	Distribution of Source Material to Exempt Persons and General Licensees and Revision of 10 CFR 40.22 General License	3150—AH15
4327	List of Approved Spent Fuel Storage Casks: NAC—UMS Revision (Amendment 3)	3150—AH25

Nuclear Regulatory Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
4328	Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Programs or Activities	3150—AG65
4329	Standards for Combustible Gas Control System in Light—Water—Cooled Power Reactors	3150—AG76
4330	Financial Assurance Amendments for Materials Licenses	3150—AG85
4331	Incorporation by Reference of ASME BPV and OM Code Cases	3150—AG86
4332	Event Notification Requirements	3150—AG90
4333	Geological and Seismological Characteristics of Spent Fuel Storage Systems	3150—AG93

Nuclear Regulatory Commission—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4334	Revision of Fee Schedules; Fee Recovery, FY 2003	3150—AH14
4335	Facility Security Clearance and Safeguarding of National Security Information and Restricted Data—Minor Changes	3150—AH17
4336	List of Approved Spent Fuel Storage Casks: NAC—MPC Revision (Amendment 3)	3150—AH20
4337	General License for Import of Major Nuclear Reactor Components	3150—AH21
4338	Adjustment of the Maximum Retrospective Deferred Premium	3150—AH23
4339	Assessment of Access Authorization Fees	3150—AH30
4340	Submission of Documents Electronically; Minor Corrections	3150—AH33

Nuclear Regulatory Commission (NRC) Proposed Rule Stage

4296. FITNESS FOR DUTY PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 26

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to ensure compatibility with the Department of Health and Human Services guidelines, reduce unnecessary regulatory burden in some areas, clarify the Commission's original intent of the rule, and improve overall program effectiveness and efficiency. This rulemaking would address the petition for rulemaking submitted by the Virginia Electric and Power Company (VEPCO) (PRM—26—1). In addition, this rulemaking subsumes a previously separate rulemaking, "Reduction in the Scope of Random Fitness—for—Duty Testing Requirements for Nuclear Power Reactor Licensees" (part 26)(RIN 3150—AG62). Because of the issues raised in response to the earlier affirmed rule, a new proposed rule will be published.

Timetable:

Action	Date	FR Cite
NPRM	05/09/96	61 FR 21105
NPRM Comment Period End	08/07/96	
Second NPRM	06/00/04	
Final Rule	11/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3150–AF12

4297. NUCLEAR POWER PLANT WORKER FATIGUE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 26

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to establish thresholds for the control of working hours to ensure that working hours in excess of the thresholds are controlled through a risk—informed deviation process. This rule would provide significantly greater assurance that worker fatigue does not adversely affect the operational safety of nuclear power plants. This rulemaking also would address a petition for rulemaking submitted by Barry Quigley (PRM—26—02).

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: David Desaulniers, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555—0001
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RIN: 3150–AG99

4298. PUBLIC RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 9

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to reflect changes in officials who initially deny access to records or deny access to records whose initial denial has been appealed, and to reflect a change in an appellate official due to a reorganization. The amendment would allow the Executive Assistant to the Secretary of the Commission, rather than the Assistant Secretary, to make the initial determination to deny NRC records in whole or in part under the Commission's regulations. Also, an appeal of a denial of a request for a waiver or reduction of fees, or denial of a request for expedited processing would be appealed to the Executive Director for Operations rather than the Secretary of the Commission.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carole Ann Reed,
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Washington, DC 20555
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RIN: 3150–AH12

4299. CONTROL OF SOLID MATERIAL

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to evaluate alternatives for the control of solid materials with very low, or no, levels of radioactivity. There are currently non—codified guidance and practices for the control of solid materials. Current practice is to apply, on a case—by—case basis, either Regulatory Guide 1.86 surface contamination values or no detectable activity using environmental measurements methods. In addition, there are no current release levels established generally for volumetrically contaminated materials. An examination of approaches to the control of solid materials would help the NRC staff evaluate the cost effectiveness of means to handle requests for clearance of materials during both operations and decommissioning.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal, State

Federalism: Undetermined

Agency Contact: Frank Cardile,
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RIN: 3150–AH18

4300. OPTIONS FOR ADDRESSING TRAINING AND EXPERIENCE ISSUES ASSOCIATED WITH RECOGNITION OF SPECIALTY BOARDS BY NRC

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 35

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations modifying the training and experience requirements based on recommendations submitted by the Advisory Committee on the Medical Uses of Isotopes (ACMUI), contained in SECY—02—0194 (October 30, 2002, "Staff Requirements — SECY—02—0194 — Options for Addressing Part 35 Training and Experience Issues Associated with Recognition of Specialty Boards by NRC" (February 12, 2003). The Commission approved an option that includes posting on the NRC's web site the names of boards whose certifications are recognized as meeting revised criteria for training and experience rather than including the names in regulations. The Commission directed that the staff develop the proposed rule based on the ACMUI's recommendations, with certain qualifications in SRM—02—0194, including clarifications about the meaning of terms in preceptor statements — the retention of which was required by the Commission.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Federalism: Undetermined

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RIN: 3150–AH19

4301. • ACCEPTABLE CRITERIA FOR EMERGENCY CORE COOLING SYSTEMS FOR LIGHT—WATER NUCLEAR POWER REACTORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 41 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend NRC regulations to add M5, a zirconium—niobium alloy to the alloys currently approved by the NRC for use as fuel cladding. The proposed amendment would eliminate the agency's practice of approving the use of this alloy by exemptions. This action is intended to increase NRC's effectiveness and efficiency and to reduce unnecessary regulatory burden for licensees without adversely affecting public health and safety.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Merilee Banic,
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RIN: 3150–AH22

4302. • INDUSTRY CODES AND STANDARDS; AMENDED REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to incorporate by reference the 2001 Edition and 2002 Addenda of Division 1 rules in section III, "Rules for

Construction of Nuclear Power Plant Components," of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME BPV Code); the 2001 Edition and 2002 Addenda of Division 1 rules in section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," of the ASME BPV Code; and the 2001 edition and 2002 addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Stephen A. Tingen, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555—0001
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RIN: 3150–AH24

4303. • RISK—INFORMED ALTERNATIVE TO MAXIMUM PIPE BREAK SIZE (LB—LOCA REDEFINTION)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to allow for a risk—informed alternative to the present maximum loss—of—coolant accident (LOCA) break size. This rulemaking would grant in part a petition for rulemaking submitted by the Nuclear Energy Institute, PRM—50—75. In accordance with the same SRM, this rulemaking would also amend General Design Criterion (GDC) 35—and possibly GDC 38 and GDC 41 as well—to eliminate, based upon appropriate risk considerations, the assumption of a coincident loss of offsite power for postulated large break (low frequency) loss—of—coolant accidents. As such, the rulemaking would grant in part another petition for rulemaking, PRM—50—77, submitted by Bob Christie (Performance Technology).

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Alan K. Rocklein, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555—0001
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RIN: 3150–AH29

4304. • LICENSING PROCEEDINGS FOR THE RECEIPT OF HIGH—LEVEL RADIOACTIVE WASTE AT A GEOLOGIC REPOSITORY: LICENSING SUPPORT NETWORK, SUBMISSIONS TO THE ELECTRONIC DOCKET

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2133, 42 USC 2134, 42 USC 2201, 42 USC 2232, 42 USC 2233, 42 USC 2239, 42 USC 5841, 42 USC 5842, 42 USC 5846

CFR Citation: 10 CFR 2

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations that govern Rules of Practice applicable to the use of the Licensing Support Network (LSN) for the licensing proceeding on the disposal of high—level radioactive waste at a geologic repository (HLW licensing proceeding). The proposed amendments would establish the basic requirements and standards for the submission of adjudicatory materials to the electronic docket by parties to the HLW licensing proceeding. The proposed amendments would also address the issue of reducing the unnecessary loading of duplicate documents on individual LSN participant websites.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Francis X. Cameron, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555—0001
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RIN: 3150–AH31

Nuclear Regulatory Commission (NRC) Final Rule Stage

4305. LESSONS LEARNED FROM DESIGN CERTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 52

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's requirements for early site permits, standard design certifications, and combined licensees for nuclear power plants, and for other licensing processes. The amendments are based on the NRC staff's experience with the previous design certification reviews and on discussions with stakeholders about the early site permit (ESP), design certification, and combined license (COL) processes. This action is expected to improve the effectiveness of the licensing processes for future applicants. The rulemaking also would make conforming clarifications and corrections to the NRC's regulations.

The NRC is proposing to reorganize 10 CFR part 52 to establish a separate section for each of the seven licensing processes currently described in 10 CFR part 52 (early site permits, early site reviews, standard design certification, standard design approvals, combined licenses, manufacturing licenses, and duplicate design licenses). The purpose of this reorganization is to clarify that each licensing process has equal standing. In addition, several subparts would be reserved for future licensing processes. No substantive changes are intended by the incorporation of current appendices M, N, O, and Q into the new subparts in 10 CFR part 52.

The NRC is also proposing to retitle 10 CFR part 52 as Additional Licensing Processes for Nuclear Power Plants to clarify that the licensing processes in 10 CFR part 52 are in addition to and supplement the two—step licensing process in 10 CFR part 50 and the license renewal process in 10 CFR part 54, and are not limited to the early site permit, standard design certification, and combined license processes as the current title implies.

The proposed rule would amend section 52.1 to clarify that all seven licensing processes are within the scope of 10 CFR part 52. Sections within current appendices M, N, O, and Q would also become new sections of the revised part. In addition, the proposed rule would reserve sections for future licensing processes. In doing so, the NRC hopes to convey that 10 CFR part 52 is the preferred location in 10 CFR for nuclear power plant licensing processes. The proposed rule subsumed the rulemaking, Standardized Plant Designs, Early Review of Sites Suitability Issues; Clarifying Amendments (RIN 3150—AE25), that would remove redundant appendices M, N, O, and Q from part 50. The part 52 rulemaking plan (SECY—98—282) was approved by the Commission on January 14, 1999.

Timetable:

Action	Date	FR Cite
NPRM	07/03/03	68 FR 40026
NPRM Comment Period End	09/16/03	
Final Rule	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3150–AG24

4306. RISK—INFORMING SPECIAL TREATMENT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 21; 10 CFR 50; 10 CFR 54; 10 CFR 100

Legal Deadline: None

Abstract: The proposed rule would provide an alternative, risk—informed approach for special treatment requirements in the current regulations. Special treatment requirements are requirements imposed on structures, systems, and components (SSCs) that provide additional confidence that these SSCs are capable of meeting design basis functional requirements. The contemplated risk—informed approach would categorize SSCs and vary the associated regulatory treatment based on the SSC's safety significance. This action is a result of the Commission's continuing efforts to risk—inform its regulations. The staff provided the Commission the proposed rule package on September 30, 2002. In a Staff Requirements Memorandum for SECY—02—0176, dated March 28, 2003, the Commission directed the staff to publish the proposed rule in the Federal Register for public comment.

Timetable:

Action	Date	FR Cite
ANPRM	03/03/00	65 FR 11488
ANPRM Comment Period End	05/17/00	
NPRM	05/16/03	68 FR 26511
Comment Period Extended	07/30/03	68 FR 44672
Final Rule	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3150–AG42

4307. PERFORMANCE—BASED, RISK—INFORMED FIRE PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would address the Commission's direction provided in the staff requirements memorandum dated April 1, 1999, to establish a performance—based, risk—informed alternative to the NRC's existing reactor fire protection requirements through the adoption of an industry consensus standard: NFPA 805, "Performance—Based Standard for Fire Protection for Light—Water Reactor Electric Generating Plants." Draft rule language was posted for public comment on the NRC Rulemaking Forum website on December 20, 2001. Draft proposed rule language was posted on the NRC Rulemaking Forum website on April 2, 2002, and again on May 30, 2002, for public information. The proposed rule package was provided to the Commission on July 15, 2002 (SECY—02—132). Comments are being categorized and evaluated.

Timetable:

Action	Date	FR Cite
NPRM	11/01/02	67 FR 66578
ANPRM Comment Period End	01/15/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Joseph L. Birmingham, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555—0001
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RIN: 3150–AG48

4308. TRANSFERS OF CERTAIN SOURCE MATERIALS BY SPECIFIC LICENSEES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 40

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to require NRC approval for transfers from licensees of unimportant quantities of source material (less than 0.05 percent by weight) to persons exempt from licensing requirements. The objective of this proposed action is to ensure that the regulations regarding transfers of materials containing low concentrations of source material are adequate to protect public health and safety. Publication of the final rule is being delayed until certain recent related issues are resolved to minimize the possibility of future inconsistencies in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	08/28/02	67 FR 55175
NPRM Comment Period End	11/12/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Gary Comfort, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555—0001
Phone: 301 415—8106
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RIN: 3150–AG64

4309. COMPATIBILITY WITH IAEA TRANSPORTATION SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 71

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations on packaging and transporting radioactive material to make them compatible with the International Atomic Energy Agency (IAEA) standards and to codify other applicable requirements. These changes are compatible with TS—R—1, the latest revision of the IAEA transportation standards. This rulemaking also would address the unintended economic impact of NRC's emergency final rule entitled Fissile Material Shipments and Exemptions (February 10, 1997; 62 FR 5907) and a petition for rulemaking submitted by International Energy Consultants, Inc. (PRM—71—12)(February 19, 1998; 63 FR 8362). This rulemaking is closely related to a corresponding Department of Transportation (DOT) proposed rule to amend transportation regulations (April 30, 2002; 67 FR 21328). NRC's final rule is scheduled to be published concurrently with the DOT's final rule. Therefore, the publication date is dependent on DOT's schedule.

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21390
NPRM Comment Period End	07/29/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3150–AG71

4310. FINANCIAL INFORMATION REQUIREMENTS FOR APPLICATIONS TO RENEW OR EXTEND THE TERM OF AN OPERATING LICENSE FOR A POWER REACTOR

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to remove the requirement that non—electric utility power reactor licensees submit financial qualifications information as part of the license renewal process. The proposed rule would recognize the need for a reduced level of regulatory burden for licensees falling in this category because the NRC has alternate means to ensure that these licensees are financially viable to operate their facilities and maintain public health and safety. Non—power reactor licensees would continue to submit the financial qualifications information as part of the license renewal process and would not be affected by this proposed rule change. Comments are being categorized and evaluated.

Timetable:

Action	Date	FR Cite
NPRM	06/04/02	67 FR 38427
NPRM Comment Period End	08/19/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3150–AG84

4311. CHANGES TO EMERGENCY ACTION LEVELS — APPENDIX E

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would resolve an ambiguity in the regulations regarding NRC approval of nuclear power plant licensee—initiated changes to emergency action levels (EALs). The proposed rule would allow licensees to make minor changes to EALs without prior NRC approval.

Timetable:

Action	Date	FR Cite
NPRM	07/24/03	68 FR 43673

Action	Date	FR Cite
NPRM Comment Period End	10/07/03	
Final Rule	08/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3150–AH00

4312. SECURITY REQUIREMENTS FOR PORTABLE GAUGES CONTAINING BYPRODUCT MATERIAL

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 30

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations governing the use of byproduct material in specifically licensed portable gauges. The proposed rule would require a licensee to provide a minimum of two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal whenever the portable gauges are not under the control and constant surveillance of the licensee.

Timetable:

Action	Date	FR Cite
NPRM	08/01/03	68 FR 45172
NPRM Comment Period End	10/15/03	
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AH06

4313. ELECTRONIC SUBMISSION OF FINGERPRINT RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 73

Legal Deadline: None

Abstract: The final rule will amend the Commission's regulations concerning the submittal of fingerprint cards and fingerprint records and the payment of the user fee for processing fingerprints. The amendments will provide licensees additional flexibility in submitting fingerprint records and in paying the user fee applicable to processing fingerprint records.

Timetable:

Action	Date	FR Cite
Final Rule	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3150–AH16

4314. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: STANDARIZED NUHOMS SYSTEM REVISION (AMENDMENT 5)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The direct final rule will amend the Commission's regulations by revising the Standardized NUHOMS System listing within the list of approved spent fuel storage casks to include Amendment No. 5 to Certificate of Compliance Number 1004. Amendment No. 5 adds another Dry Shielded Canister (DSC), designated the NUHOMS—32PT DSC, to the authorized contents of the Standardized NUHOMS System. This canister is designed to accommodate 32 Pressurized Water Reactor assemblies with or without Burnable Poison Rod assemblies. It is designed for use with existing NUHOMS Horizontal Storage Module and NUHOMS Transfer Cask.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/19/03	68 FR 49683
Direct Final Rule Effective	11/03/03	
Withdrawal of Direct Final Rule	10/30/03	68 FR 61734
Final Rule	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jayne M. McCausland, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555—0001
Phone: 301 415—6219
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RIN: 3150–AH26

4315. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: STANDARIZED NUHOMS —24P, —52B, —61BT, —32PT, AND —24PHB REVISION (AMENDMENT 6)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The direct final rule amends the Commission's regulations that apply to storage of spent fuel by revising the Transnuclear, Inc., Standardized NUHOMS cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 6 to Certificate of Compliance Number 1004. This amendment will add another dry shielded canister (DSC), designated NUHOMS —24PHB, to the authorized contents of the Standardized NUHOMS —24P, —52B, and —61BT cask system. The NUHOMS —24PHB cask will permit a Part 72 licensee to store high burnup Babcock & Wilcox 15x15 spent fuel assemblies with an average burnup of up to 55,000 megawatts—day/metric ton of uranium, enrichment equal to 4.5

weight percent uranium—235, a maximum decay heat load of 1.3 kilowatt (kW) per assembly, and a maximum heat load of 24 kW per cask under a general license.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/07/03	68 FR 57785
Direct Final Rule Effective	12/22/03	
Confirmation of Effective Date	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Margaret Stambaugh, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555
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RIN: 3150–AH27

4316. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: STANDARIZED NUHOMS SYSTEM REVISION (AMENDMENT 7)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The direct final rule will amend the Commission's regulations by revising the Transnuclear, Inc., (TN) Standardized NUHOMS System listing within the list of approved spent fuel storage casks to include Amendment No. 7 to Certificate of Compliance Number 1004. Amendment 7 incorporates changes in support of the Amergen Corporation plans to load damaged fuel and additional fuel types at its Oyster Creek Nuclear Station. The amendment specifically adds damaged Boiling Water Reactor spent fuel assemblies and additional fuel types to the authorized contents of the NUHOMS —61BT Dry Storage Canister.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jayne M. McCausland, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555—0001
Phone: 301 415—6219
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RIN: 3150–AH28

4317. • MINOR CHANGES TO DECOMMISSIONING TRUST FUND PROVISIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: This direct final rule amends the Commission's regulations related to decommissioning trust fund provisions to make minor changes to a final rule promulgated by the NRC in December 2002. This action establishes an earlier effective date for a portion of the final rule and adds clarifying language to amendments regarding notification requirements, investment prohibitions, and the option for licensees to retain their existing license conditions.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/20/03	68 FR 65386
Direct Final Rule Effective	12/24/03	
Confirmation of Effective Date	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Brian J. Richter, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555—0001
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RIN: 3150–AH32

Nuclear Regulatory Commission (NRC) Long-Term Actions

4318. UPDATE FUEL PERFORMANCE CONSIDERATIONS AND OTHER FUEL CYCLE ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011; 42 USC 2201; 42 USC 4321; 42 USC 5841; 42 USC 5842

CFR Citation: 10 CFR 51

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by addressing uranium fuel cycle environmental data (Table S—3) and the environmental effects of transportation of fuel and waste data (Table S—4). In section 51.51, the environmental data would be re—estimated and reflect changes in the structure and activities of the fuel cycle and the availability of better data. Estimates of releases of Radon—222 and Technetium—99 would be added to Table S—3. The addition of a specific value for Radon—222 would address the outstanding portion of petition for rulemaking PRM—51—1, submitted by the New England Coalition on Nuclear Pollution. To provide immediate relief to the petitioners' request, the Commission published a final rule on March 14, 1977 (42 FR 13803), that removed the original value for Radon—222 from Table S—3 so that it became subject to case—specific litigation. It was anticipated that the Commission would add a specific value for Radon—222, but the Commission deferred action until a general updating of Table S—3 is undertaken. For section 51.52, the environmental impact estimates would be re—estimated to reflect the use of more highly enriched fuel and discharge of more highly irradiated fuels from a reactor; as well as many changes needed to update fuel cycle process and technologies.

This rulemaking would result in current and more accurate estimates of the environmental impact of licensing a new plant, and would eliminate the requirement to review the contribution to environmental impacts from Radon—222 and Technetium—99 in individual plant reviews. This rule is being reissued as a proposed rule, and would update the initial rulemaking effort to address newly emerging issues and research.

Timetable:

Action	Date	FR Cite
NPRM	03/04/81	46 FR 15154
NPRM Comment Period End	05/04/81	
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Stewart Schneider, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555
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RIN: 3150–AA31

4319. DISPOSAL BY RELEASE INTO SANITARY SEWERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking (ANPRM) was published to request public comment, information, and recommendations on contemplated amendments to the Commission's regulations governing the release of radionuclides from licensed nuclear facilities into sanitary sewer systems. The Commission believes that by incorporating current sewer treatment technologies, the contemplated rulemaking would improve the control of radioactive materials released to sanitary sewer systems by licensed nuclear facilities. The Interagency Steering Committee on Radiation Standards (ISCORS), the NRC and the Environmental Protection Agency conducted a joint survey of sewage treatment plants. The need for and the extent of a rulemaking will be evaluated pending the result of the survey and the associated dose assessment. This rulemaking would also address a petition for rulemaking submitted by the Northeast Ohio Sewer District (PRM—20—22).

Timetable:

Action	Date	FR Cite
ANPRM	02/25/94	59 FR 9146
ANPRM Comment Period End	05/26/94	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Lydia Chang, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555—0001
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RIN: 3150–AE90

4320. ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES OF TRANSPORTATION OF CERTAIN TYPES OF NUCLEAR WASTE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 71; 10 CFR 73

Legal Deadline: None

Abstract: The NRC has issued an advance notice of proposed rulemaking (ANPRM) to invite early input from affected parties and the public on the issues associated with the advance notification of Indian tribes of spent fuel shipments. The Department of Energy (DOE) has indicated that it intends to comply with NRC's physical protection requirements for shipments under the Nuclear Waste Policy Act; however, its current practices conflict with NRC regulations. For example, DOE already has asked for and will continue to ask for exemptions from the shipment itinerary information requirements of foreign research reactor fuel. DOE, as a courtesy, provides Indian tribes with notification of spent fuel shipments. NRC's current regulations do not address notification of Indian tribes. Further, DOE has developed a satellite tracking system to monitor the status of spent fuel shipments at all times. Distribution of this status information to parties other than governors' designees is not compatible with NRC regulations. A rulemaking plan was approved by the Commission on February 2, 2001. This rulemaking was put on hold by the Commission pending review of NRC rules in response to events of September 11, 2001.

Timetable:

Action	Date	FR Cite
ANPRM	12/21/99	64 FR 71331
ANPRM Comment Period End	07/05/00	65 FR 18010
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Roger W. Broseus, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555—0001
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RIN: 3150–AG41

4321. INTEGRATED RULEMAKING FOR DECOMMISSIONING NUCLEAR POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: A staff requirements memorandum dated June 23, 1999, directed the NRC staff to consider an integrated, risk—informed decommissioning rule rather than individual rulemakings to address emergency preparedness, insurance, safeguards, operator staffing, and backfit for nuclear power plants that are being decommissioned. SECY—99—168, dated June 30, 1999, recommended that the integrated approach be approved and outlined staff plans for pursuing such a rulemaking. Accordingly, the staff has subsumed previous rulemaking activities in the areas of emergency planning, insurance, safeguards, operator staffing, and backfit into one integrated rulemaking effort. This rulemaking would apply to licensees who certified, pursuant to 10 CFR 50.82(a), that they have permanently ceased facility operation(s) and have permanently removed fuel from the reactor vessel. The Commission approved this approach in an SRM dated December 21, 1999. This rulemaking also would address a petition for rulemaking submitted by the North Carolina Public Utility Commission (PRM—50—57).

In SECY—00—0145, dated June 28, 2000, the NRC staff recommended a decommissioning rulemaking plan in the areas of emergency planning, insurance, safeguards, operator staffing, and backfit (the integrated decommissioning rulemaking plan). The rulemaking plan relied on a draft decommissioning risk study as the basis for its recommendations. The Commission returned the rulemaking plan to the staff for rework in September 2000, based on changes to the decommissioning risk study findings. The decommissioning risk study, NUREG—1738, was issued in January 2001. After assessing the findings in the risk study, the staff presented a policy options paper to the Commission, SECY—01—0100, dated June 4, 2001, that provided options and made recommendations on issues to be addressed in the integrated rulemaking. Following the terrorist events of September 11, 2001, the NRC staff recommended and the Commission approved the withdrawal of SECY—01—0101 because of the likely changes in the staff's position on decommissioning plant safeguards. The decommissioning policy position will be revisited when a broad—scope NRC safeguards policy is developed in response to potential terrorist acts at nuclear facilities. The schedule for the integrated rulemaking cannot be determined at this time.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: George J. Mencinsky, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555—0001
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RIN: 3150–AG47

4322. CHANGES TO ADJUDICATORY PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 1; 10 CFR 2; 10 CFR 50; 10 CFR 51; 10 CFR 52; 10 CFR 54; 10 CFR 60; 10 CFR 70; 10 CFR 73; 10 CFR 75; 10 CFR 76; 10 CFR 110

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations concerning its rules of practice to make the NRC's hearing process more efficient and effective. The proposed amendments would fashion hearing procedures that are tailored to the different types of licensing and regulatory activities the NRC conducts and would better focus and use the limited resources available to involved parties. The final rule was submitted to the Commission on April 26, 2002.

Timetable:

Action	Date	FR Cite
NPRM	04/16/01	66 FR 19610
NPRM Comment Period End	09/14/01	66 FR 27045
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Geary S. Mizuno, Nuclear Regulatory Commission, Office of the General Counsel, Washington, DC 20555—0001
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RIN: 3150–AG49

4323. REEVALUATION OF POWER REACTOR PHYSICAL PROTECTION REGULATIONS AND POSITION ON A DEFINITION OF RADIOLOGICAL SABOTAGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 73

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to require power reactor licensees to conduct drills and exercises to evaluate their protective strategy against a simulated design basis threat (DBT) of radiological sabotage. The proposed rulemaking would also include risk insights, supporting guidance documents and be more performance—based. Following the events of September 11, 2001, the staff recommended and the Commission approved the withdrawal of SECY—01—0101, Proposed Rule Changes to 10 CFR 73.55, which contained the staff's recommendations in the subject rulemaking. This withdrawal was requested to allow the staff to incorporate its post—September 11, 2001, considerations in a revised recommended rule revision, then later resubmit 10 CFR 73.55 to the Commission for its consideration.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Scott A. Norris, Nuclear Regulatory Commission, Office of Nuclear Security and Incident Response, Washington, DC 20555
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RIN: 3150–AG63

4324. ENTOMBMENT OPTIONS FOR POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20; 10 CFR 50

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking (ANPRM) was published seeking stakeholder input on three proposed regulatory options and whether entombment was a viable decommissioning alternative. In SECY 02—0191 (October 25, 2002), NRC staff proposed deferring the rulemaking until the Office of Nuclear Regulatory

Research has conducted research to develop a sound technical basis for an entombment option, estimated in 2005. The Commission, in a Staff Requirements Memorandum dated November 26, 2002, did not object to staff's proposal, and requested information regarding the scope and type of research needed to support any entombment option. This information was provided to the Commission on May 14, 2003.

Timetable:

Action	Date	FR Cite
ANPRM	10/16/01	66 FR 52551
ANPRM Comment Period End	12/31/01	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Patricia Eng, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555—0001
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RIN: 3150–AG89

4325. MODIFICATIONS TO PRESSURE—TEMPERATURE LIMITS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to eliminate those requirements for pressure—temperature limits that are related to the metal temperature of the reactor pressure vessel closure head flange and vessel flange areas. The proposed rule would amend footnotes 2 and 6 to table 1 of appendix G, and simplify restructuring of the table. Also, this rulemaking would address the petition for rulemaking submitted by Westinghouse Electric Company (PRM—50—69).

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Matthew Mitchell, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555—0001
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RIN: 3150–AG98

4326. DISTRIBUTION OF SOURCE MATERIAL TO EXEMPT PERSONS AND GENERAL LICENSEES AND REVISION OF 10 CFR 40.22 GENERAL LICENSE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 40

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to improve the control over the distribution of source material to exempt persons and to general licensees in order to make part 40 more risk—informed. The proposed rule also would govern the licensing of source material by adding specific requirements for licensing of and reporting by distributors of products and materials used by exempt persons and general licensees. Source material is used under general license and under various exemptions from licensing requirements in part 40 for which there is no regulatory mechanism for the Commission to obtain information to fully assess the resultant risks to public health and safety. Although estimates of resultant doses have been made, there is a need for ongoing information on the quantities and types of radioactive material distributed for exempt use and use under general license. Obtaining information on the distribution of source material is particularly difficult because many of the distributors of source material to exempt persons and generally licensed persons are not currently required to hold a license from the Commission. Distributors are often unknown to the Commission. No controls are in place to ensure that products and materials distributed are maintained within the applicable constraints of the exemptions. In addition, the amounts of source material allowed under the general license in 10 CFR 40.22 could result in exposures above 1 mSv/year (100 mrem/year) to workers at facilities that are not required to meet the requirements of parts 19 and 20. Without knowledge of the identity and location of the general licensees, it would be difficult to enforce restrictions on the general licensees. This rule also would address PRM—40—27 and PRM—40—28 submitted by the State of Colorado and organization of Agreement States and Donald A. Barbour, Philotechnics, respectively.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Gary Comfort, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555—0001
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RIN: 3150–AH15

4327. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: NAC—UMS REVISION (AMENDMENT 3)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The direct final rule will amend the Commission's regulations by revising the NAC—UMS cask system listing within the list of approved spent fuel storage casks to include Amendment No. 3 to Certificate of Compliance Number 1015. Amendment No. 3 modifies the present cask system design to add the 100—ton transfer cask design, adds an alternate poison material, revises fuel assembly dimensions, revises thermal analyses, increases Boiling Water Reactor fuel assembly weight, and incorporates Interim Staff Guidance—11 revision provisions. The amendment will also reorganize Section 6.5 of the Safety Evaluation Report, revise Technical

Specification A.5.5, and request several editorial and administrative changes.

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jayne M. McCausland, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555—0001
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RIN: 3150–AH25

Nuclear Regulatory Commission (NRC) Completed Actions

4328. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE; NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 4

Completed:

Reason	Date	FR Cite
Final Action	08/26/03	68 FR 51333
Final Action Effective	09/25/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Marva C. Gary
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RIN: 3150–AG65

4329. STANDARDS FOR COMBUSTIBLE GAS CONTROL SYSTEM IN LIGHT—WATER—COOLED POWER REACTORS

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 50

Completed:

Reason	Date	FR Cite
Final Action	09/16/03	68 FR 54123
Final Action Effective	10/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Anthony W. Markley
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RIN: 3150–AG76

4330. FINANCIAL ASSURANCE AMENDMENTS FOR MATERIALS LICENSES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 30; 10 CFR 40; 10 CFR 70

Completed:

Reason	Date	FR Cite
Final Rule	10/03/03	68 FR 57327
Final Rule Effective	12/02/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Clark Prichard
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RIN: 3150–AG85

4331. INCORPORATION BY REFERENCE OF ASME BPV AND OM CODE CASES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 50

Completed:

Reason	Date	FR Cite
Final Rule	07/08/03	68 FR 40469
Final Rule Effective	08/07/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Harry S. Tovmassian
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RIN: 3150–AG86

4332. EVENT NOTIFICATION REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 72; 10 CFR 73

Completed:

Reason	Date	FR Cite
Final Rule	06/05/03	68 FR 33611
Final Rule Effective	10/03/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mark Haisfield
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RIN: 3150–AG90

4333. GEOLOGICAL AND SEISMOLOGICAL CHARACTERISTICS OF SPENT FUEL STORAGE SYSTEMS

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 72

Completed:

Reason	Date	FR Cite
Final Rule	09/16/03	68 FR 54143
Final Rule Effective	10/16/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Keith McDaniel
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RIN: 3150–AG93

4334. REVISION OF FEE SCHEDULES; FEE RECOVERY, FY 2003

Priority: Economically Significant

CFR Citation: 10 CFR 170; 10 CFR 171

Completed:

Reason	Date	FR Cite
NPRM	04/03/03	68 FR 16373
Final Rule	06/18/03	68 FR 36713
Final Rule Effective	08/18/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Local, State

Federalism: Undetermined

Agency Contact: Ann Norris
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RIN: 3150–AH14

4335. FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA—MINOR CHANGES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 95

Completed:

Reason	Date	FR Cite
Final Rule	07/11/03	68 FR 41221
Final Rule Effective	07/11/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: J. Keith Everly
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RIN: 3150–AH17

4336. LIST OF APPROVED SPENT FUEL STORAGE CASKS: NAC—MPC REVISION (AMENDMENT 3)

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 72

Completed:

Reason	Date	FR Cite
Direct Final Rule	07/18/03	68 FR 42570
Direct Final Rule Effective	10/01/03	
Confirmation of Effective Date	09/25/03	68 FR 55304

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jayne M. McCausland
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Email: jmm2@nrc.gov

RIN: 3150–AH20

4337. • GENERAL LICENSE FOR IMPORT OF MAJOR NUCLEAR REACTOR COMPONENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2133

CFR Citation: 10 CFR 110

Legal Deadline: None

Abstract: The direct final rule amends the Commission's regulations to abolish the specific license and issue a general license for the import of major reactor components of utilization facilities for end—use by 10 CFR part 50 or 52 licensees at NRC—licensed nuclear power reactors. The rule is necessary to facilitate the import of major components of domestic nuclear reactors, not currently manufactured in the United States, in furtherance of the protection of public health and safety. The direct final rule also reduces the unnecessary regulatory burden imposed by specific licensing related to the maintenance of NRC—licensed reactors.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/28/03	68 FR 31588
Confirmation of Effective Date	07/31/03	68 FR 44870

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Suzanne Schuyler—Hayes, Nuclear Regulatory Commission, Office of International Programs, Washington, DC 20555—0001
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RIN: 3150–AH21

4338. • ADJUSTMENT OF THE MAXIMUM RETROSPECTIVE DEFERRED PREMIUM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 140

Legal Deadline: None

Abstract: This final rule increases the maximum secondary retrospective deferred premium for liability insurance coverage in the event of nuclear incidents at licensed, operating, commercial nuclear power plants with a rated capacity of 100,000 kW or more. Presently established at $83.9 million per reactor per incident (but not to exceed $10 million in any 1 year), the maximum secondary retrospective deferred premium is being increased to $94.5 million per reactor per incident (but not to exceed $10 million in any 1 year). The change is based on the aggregate percentage change of 12.59 percent in the Consumer Price Index (CPI) from September 1998 through March 2003. The Price—Anderson Amendments Act of 1988 requires that this inflation adjustment be made at least once each 5 years. The increase in the primary nuclear liability insurance layer, which was increased on January 1, 2003, to $300 million, is also reflected in this rule.

Timetable:

Action	Date	FR Cite
Final Rule	08/07/03	68 FR 46929
Final Rule Effective	08/20/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Ira Dinitz, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555—0001
Phone: 301 415—1289
Email: ipd1@nrc.gov

RIN: 3150–AH23

4339. • ASSESSMENT OF ACCESS AUTHORIZATION FEES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 11; 10 CFR 25

Legal Deadline: None

Abstract: The final rule will amend the Commission's regulations to change the schedule of fees for processing licensee applications for access authorization. The NRC is replacing its set fee schedules for special nuclear material access authorization and national security information or restricted data access authorization with a formula for calculating fees based on current Office of Personnel Management billing rates for personnel background investigations. The new formula is designed to recover the full cost of application processing from the licensee. The use of a fee assessment formula tied to current OPM billing rates will eliminate the need for the NRC to update its access authorization fee schedules through regular rulemakings.

Timetable:

Action	Date	FR Cite
Final Rule	11/05/03	68 FR 62509
Final Rule Effective	11/05/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Patricia A. Smith, Nuclear Regulatory Commission, Office of Administration, Washington, DC 20555
Phone: 301 415—7739
Email: pas5@nrc.gov

RIN: 3150–AH30

4340. • SUBMISSION OF DOCUMENTS ELECTRONICALLY; MINOR CORRECTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 2; 10 CFR 4; 10 CFR 9; 10 CFR 15; 10 C

Legal Deadline: None

Abstract: The final rule amends the Commission's regulations to permit voluntary electronic submission of documents and provide procedures for submitting documents electronically. Amending the regulations to permit electronic submission will facilitate the electronic capture of externally generated documents into NRC's Agencywide Document Access and Management System (ADAMS). The rulemaking addresses and improves the document control and records management issues that are of concern to the NRC, its applicants, licensees, and members of the public by improving the process of communication, dissemination, and storage of records. The rule incorporates minor corrections to the current regulations regarding the submission of documents to the NRC (e.g., organizational, name, and phone number changes). This rulemaking is consistent with existing legislative and regulatory initiatives, such as the Paperwork Reduction Act of 1995, Office of Management and Budget Circular A—130 (Revised February 8, 1996), and the Government Paperwork Elimination Act of 1998, to reduce the information collection burden on the public and to make information more readily accessible to the public. This rule was published as a direct final rule on September 6, 2002. Significant adverse comments were received on the companion proposed rule. The direct final rule was withdrawn on December 4, 2002. A subsequent final rule addressing the comments received will be published in the Federal Register.

Timetable:

Action	Date	FR Cite
Final Rule	10/10/03	68 FR 58791
Final Rule Effective	01/01/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Brenda J. Shelton, Nuclear Regulatory Commission, Office of the Chief Information Officer, Washington, DC 20555—0001
Phone: 301 415—7233
Email: bjs1@nrc.gov

RIN: 3150–AH33

[FR Doc. 03–25123 Filed 12–19–03; 8:45 am]

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Federal Register

Monday,
December 22, 2003

Part LXII

Securities and Exchange Commission

Semiannual Regulatory Agenda

SECURITIES AND EXCHANGE COMMISSION (SEC)

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33-8316, 34-48717, 35-27746, 39-2411, IA-2187, IC-26233, File No. S7-24-03]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Securities and Exchange Commission is publishing an agenda of its rulemaking actions, pursuant to the Regulatory Flexibility Act. Information in the agenda was accurate on October 2, 2003, the date on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries. The Commission provides notice under section 610 of the Regulatory Flexibility Act.

DATES: Public comments are due by December 30, 2003.

ADDRESSES: Persons wishing to submit written comments should file three copies of their comments with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549-0609. All submissions should refer to File No. S7-24-03 and will be available for public inspection and copying at the Commission's Public Reference Room, Room 1026, at the same address. Interested persons may also submit comments electronically at the following e-mail address: rule-comments@sec.gov. The Commission does not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Interested persons submitting comments should only submit information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: David R. Fredrickson or Constancio B. Cater, Office of the General Counsel, 202-942-0890.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (Pub. L. No. 96-354, 94 Stat. 1164) (September 19, 1980) requires each Federal agency, during April and October of each year, to publish in the **Federal Register** an agenda identifying rules that the agency expects to propose or adopt that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from previous publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

"Securities Act"—Securities Act of 1933

"Exchange Act"—Securities Exchange Act of 1934

"PUHCA"—Public Utility Holding Company Act of 1935

"Investment Company Act"—Investment Company Act of 1940

"Investment Advisers Act"—Investment Advisers Act of 1940

The Commission's regulatory flexibility agenda is set forth below. The Commission invites public comment on the agenda and on the individual agenda entries.

Dated: October 30, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

DIVISION OF CORPORATION FINANCE—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4341	Industry Guide 3—Statistical Disclosure by Bank Holding Companies	3235—AI10
4342	Asset—Backed Securities Disclosure	3235—AF74
4343	Streamlining Rule 144	3235—AH13
4344	Electronic Signatures Act and Information Delivery Under the Securities Act of 1933	3235—AI82
4345	Additional Form F—6 Eligibility Requirement Related to the Listed Status of Deposited Securities Underlying American Depository Receipts	3235—AI89
4346	First Time Mandated Application of International Financial Reporting Standards	3235—AI92
4347	Revision of Multijurisdictional Disclosure System	3235—AH99
4348	Lock—Up Agreements	3235—AI09
4349	Security Holder Director Nominations	3235—AI93
4350	Securities Act Communications Reform	3235—AI11
4351	Proxy Disclosure Regarding Executive Compensation and Related Party Transactions	3235—AI80
4352	Treatment of Foreign Banks Under Section 402 of the Sarbanes—Oxley Act	3235—AI81

DIVISION OF CORPORATION FINANCE—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4353	Form 8—K Disclosure of Certain Management Transactions	3235—AI43
4354	Disclosure in Management's Discussion and Analysis Regarding the Application of Critical Accounting Policies	3235—AI44
4355	Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors	3235—AI90
4356	Defining "Qualified Purchasers"	3235—AI25
4357	Additional Form 8—K Disclosure Requirements and Acceleration of Filing Date	3235—AI47

DIVISION OF CORPORATION FINANCE—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4358	Financial Reporting and Blank Check Companies	3235—AH88

DIVISION OF CORPORATION FINANCE—Completed Actions

Sequence Number	Title	Regulation Identification Number
4359	Mandated Electronic Filing and Website Posting for Forms 3, 4, and 5	3235—AI26
4360	Disclosure Required by Sections 404, 406, and 407 of the Sarbanes—Oxley Act of 2002	3235—AI66
4361	Certification of Disclosure in Certain Exchange Act Reports	3235—AI79

DIVISION OF INVESTMENT MANAGEMENT—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4362	Investment Company Portfolio Transaction Cost Concept Release	3235—AI94

DIVISION OF INVESTMENT MANAGEMENT—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4363	Books and Records To Be Maintained by Investment Advisers	3235—AH24
4364	Principal Transactions With Investment Advisory Clients	3235—AH34
4365	Certain Thrift Institutions Deemed Not To Be Investment Advisers	3235—AI16
4366	Exemption From Registration for Certain Commodity Pool Operators	3235—AI29
4367	Exemption To Permit Investment Companies To Invest in Other Investment Companies	3235—AI30
4368	Substitution of Funds Underlying Variable Insurance Products	3235—AI58
4369	Amendments to Registration Form and Rules for Registration of Certain Investment Company Securities	3235—AI84
4370	Disclosure of Breakpoint Discounts by Mutual Funds	3235—AI95
4371	Exemption From Shareholder Approval for Certain Subadvisory Contracts	3235—AH80
4372	Amendments to Form N—SAR, Semiannual Report of Registered Investment Companies	3235—AF93
4373	Amendments to the Cash Solicitation Rule	3235—AH33
4374	Rulemaking for EDGAR System	3235—AI18
4375	Investment in Money Market Funds	3235—AI45
4376	Regional Transmission Organizations and Independent Transmission Companies	3235—AI27
4377	Exemptions From Section 17(c) of the Public Utility Holding Company Act Regarding Officers and Directors of Registered Holding Companies	3235—AI59

DIVISION OF INVESTMENT MANAGEMENT—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4378	Amendments to Form ADV	3235—AI17
4379	Compliance Programs of Investment Companies and Investment Advisers	3235—AI77
4380	Shareholder Report and Financial Statement Revisions	3235—AG64

DIVISION OF INVESTMENT MANAGEMENT—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4381	Political Contributions by Certain Investment Advisers	3235—AH72
4382	Certain Broker—Dealers Deemed Not To Be Investment Advisers	3235—AH78
4383	PUHCA: Exemption for Certain Acquisitions of Foreign Utility Companies; Subsidiaries Authorized To Perform Services or Construction or To Sell Goods	3235—AF78

DIVISION OF INVESTMENT MANAGEMENT—Completed Actions

Sequence Number	Title	Regulation Identification Number
4384	Custody or Possession of Funds or Securities of Clients	3235—AH26
4385	Proposed Amendments to Investment Company Advertising Rules	3235—AH19
4386	Certain Research and Development Companies	3235—AI57
4387	Insurance Products: Equity Index Insurance Products Concept Release	3235—AH23

DIVISION OF MARKET REGULATION—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4388	Risk Assessment Recordkeeping and Reporting Requirement	3235—AH06
4389	Registration Requirements for Banks Acting as Brokers or Dealers in Security Futures Products	3235—AI83
4390	Alternative Net Capital Computation for Broker—Dealers That Elect To Be Supervised on a Consolidated Basis	3235—AI96
4391	Supervised Investment Bank Holding Companies	3235—AI97
4392	Request for Comment on NYSE Petition for Amending the CTA and CQ Plans so as To Delete the Participants' Fee Exemptions	3235—AI78
4393	Tender and Reorganization Agents	3235—AH53
4394	Net Capital Requirements for Brokers or Dealers—Definition of the Term Nationally Recognized Statistical Rating Organization	3235—AH28
4395	Short Sales	3235—AH84
4396	Amendments to the Penny Stock Rules in Light of the Electronic Signatures in Global and National Commerce Act	3235—AI02
4397	Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities and Exchange Act of 1934	3235—AI19

DIVISION OF MARKET REGULATION—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4398	Rule 15c3—3 Reserve Requirements for Margin Related to Security Futures Products	3235—AI61
4399	Purchases of Certain Equity Securities by the Issuer and Others	3235—AH37
4400	Publication or Submission of Quotations Without Specified Information	3235—AH40
4401	Processing Requirements for Cancelled Securities Certificates	3235—AH54

SEC

DIVISION OF MARKET REGULATION—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4402	Request for Comment on NASDAQ Petition Relating to NASDAQ Listed Securities	3235—AI86
4403	Recordkeeping Requirements for Transfer Agents	3235—AI88
4404	Enhanced Confirmation Disclosure of Mutual Fund Transaction	3235—AI91

DIVISION OF MARKET REGULATION—Completed Actions

Sequence Number	Title	Regulation Identification Number
4405	Broker—Dealer Exemption From Sending Certain Financial Information to Customers	3235—AI68

OFFICES AND OTHER PROGRAMS—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4406	Proposal to Amendment Disclosure Requirements Related to Derivative Financial Instruments and Derivative Commodity Instruments	3235—AH98
4407	Amendments to the Rules of Practice and Related Provisions	3235—AI98

OFFICES AND OTHER PROGRAMS—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4408	Supplemental Financial Information	3235—AH86

OFFICES AND OTHER PROGRAMS—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4409	International Accounting Standards	3235—AH65
4410	Implementation of Standards of Professional Conduct for Attorneys	3235—AI72

OFFICES AND OTHER PROGRAMS—Completed Actions

Sequence Number	Title	Regulation Identification Number
4411	Rules Regarding Improper Influence on the Conduct of Audits	3235—AI67

4341. INDUSTRY GUIDE 3—STATISTICAL DISCLOSURE BY BANK HOLDING COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 77a et seq; 5 USC 78a et seq

CFR Citation: 17 CFR 229; 17 CFR 231; 17 CFR 241

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments to Securities Act Industry Guide 3 and Exchange Act Industry Guide 3, Statistical Disclosure by Banking Holding Companies, to update them and apply them more broadly to registrants engaging in lending, investing, or deposit—taking activities, in addition to banks and bank holding companies. The revisions also would likely take into account changes in financial reporting rules and the increasingly diverse lending and investing activities that expose registrants to credit risk.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Carol Stacey, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942—2960

RIN: 3235–AI10

4342. ASSET—BACKED SECURITIES DISCLOSURE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e; 15 USC 78o; 15 USC 78w; 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s; 15 USC 78l; 15 USC 78m; 15 USC 78n

CFR Citation: 17 CFR 229; 17 CFR 230; 17 CFR 239; 17 CFR 240; 17 CFR 249

Legal Deadline: None

Abstract: The Division of Corporation Finance is considering whether to recommend to the Commission amendments to revise rules and forms, which would specify disclosure requirements for asset—backed securities transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeffrey Minton, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—2910

RIN: 3235–AF74

4343. STREAMLINING RULE 144

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq

CFR Citation: 17 CFR 230.144

Legal Deadline: None

Abstract: The Commission proposed revisions to Rule 144, Rule 145, and Form 144 to make the rules and form easier to understand and apply. The Division is considering recommending that the Commission repropose amendments that would, among other things, add a bright line test to the Rule 144 definition of affiliate, increase the Form 144 filing thresholds, and codify certain interpretive positions.

Timetable:

Action	Date	FR Cite
NPRM	02/20/97	62 FR 9246
NPRM Comment Period End	04/29/97	
Second NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Raymond A. Be, Office of Rulemaking, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942—2910

RIN: 3235–AH13

4344. ELECTRONIC SIGNATURES ACT AND INFORMATION DELIVERY UNDER THE SECURITIES ACT OF 1933

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77z—3; 15 USC 78c(b)

CFR Citation: 17 CFR 230.405

Legal Deadline: None

Abstract: The Division of Corporation Finance is considering whether to recommend to the Commission an amendment to the definition of the term "graphic communication" in Securities Rule 405 to codify the Commission's long—standing position that the information delivery requirements of the Securities Act of 1933 may be satisfied through the use of electronic media.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Andrew Thorpe, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—2910

RIN: 3235–AI82

4345. • ADDITIONAL FORM F—6 ELIGIBILITY REQUIREMENT RELATED TO THE LISTED STATUS OF DEPOSITED SECURITIES UNDERLYING AMERICAN DEPOSITORY RECEIPTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77f; 15 USC 77q; 15 USC 77j; 15 usc 77s

CFR Citation: 17 CFR 239.36

Legal Deadline: None

Abstract: The Division is considering whether to recommend to the Commission a proposed amendment to Form F—6 to make the form unavailable to register under the Securities Act of 1933 depositary shares evidenced by American depository receipts if the foreign issuer has separately listed the deposited securities on a registered national securities exchange or automated inter—dealer quotation system of a national securities association.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Michael Coco,
Securities and Exchange Commission,
450 Fifth Street NW, Washington, DC
20549
Phone: 202 942—3010

RIN: 3235–AI89

4346. • FIRST TIME MANDATED APPLICATION OF INTERNATIONAL FINANCIAL REPORTING STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division is considering whether to recommend to the Commission a proposed amendment to Form 20—F to provide a one—time accommodation regarding prior period financial statements prepared under International Financial Reporting Standards ("IFRS"). This accommodation would be applicable to foreign private issuers that are incorporated in a country that has adopted IFRS as the official national accounting standard for reporting periods beginning after January 2005.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Michael Coco,
Securities and Exchange Commission,
450 Fifth Street NW, Washington, DC
20549
Phone: 202 942—3010

RIN: 3235–AI92

4347. REVISION OF MULTIJURISIDICTIONAL DISCLOSURE SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 78aaa et seq

CFR Citation: 17 CFR 230; 17 CFR 239; 17 CFR 240

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose revisions to the Multijurisidictional Disclosure System for Canadian registrants that would integrate them into the Commission's foreign issuer disclosure system in a manner more consistent with all other foreign registrants. The proposals would limit the scope of the MJDS, including the number of companies eligible to use the system and the circumstances under which they may use it, while preserving MJDS filers' ability to make offerings in the United States using Canadian offering documents and without review by Commission staff.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Mary Cascio, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—2990
Fax: 202 942—9624

RIN: 3235–AH99

4348. LOCK—UP AGREEMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 230; 17 CFR 240

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose a new rule under the Securities Act to clarify how to register securities that acquiring companies issue to certain target security holders who enter into lock—up agreements in connection with acquisition transactions. The Division also would consider recommending corresponding exemptions from certain Exchange Act rules to allow for the execution of lock—up agreements without violation of the applicable rules.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Pamela Carmody,
Securities and Exchange Commission,
Division of Corporation Finance
Phone: 202 942—2920

RIN: 3235–AI09

4349. • SECURITY HOLDER DIRECTOR NOMINATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c(b); 15 USC 78m; 15 USC 78n; 15 USC 78o; 15 USC 78p; 15 USC 78w(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Corporation Finance is considering whether to recommend to the Commission amendments to the proxy rules and related rules and regulations to facilitate shareholder access to company materials for the purpose of nominating and electing directors.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Lillian K Cummins,
Securities and Exchange Commission,
450 Fifth Street NW, Washington, DC
20549
Phone: 202 942—2920

RIN: 3235–AI93

4350. SECURITIES ACT COMMUNICATIONS REFORM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 77a et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose modifications to the Securities Act restrictions on communications by issuers and underwriters around the time of an offering. The Division is focusing on the section 5 restrictions on pre—filing offers and free writing and the Securities Act rules that permit limited types of communication during those periods. The Division is also considering whether changes would be appropriate to the limitations on communications in certain exempt offerings. Finally, the Division is examining the requirements for delivery of final prospectuses.

Timetable:

Action	Date	FR Cite
NPRM	03/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Andrew Thorpe, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—2910

RIN: 3235–AI11

4351. PROXY DISCLOSURE REGARDING EXECUTIVE COMPENSATION AND RELATED PARTY TRANSACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Corporation Finance is considering whether to recommend that the Commission propose amendments that would enhance disclosure regarding executive compensation, the independence of a registrant's board of directors, related party transactions between executive officers and directors, and related party transactions concerning related party transaction with an issuer.

Timetable:

Action	Date	FR Cite
NPRM	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kim McManus, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—2910

RIN: 3235–AI80

4352. TREATMENT OF FOREIGN BANKS UNDER SECTION 402 OF THE SARBANES—OXLEY ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Corporation Finance is considering whether to recommend that the Commission propose an Exchange Act rule that would exempt qualified foreign banks from the insider lending prohibitions of Exchange Act section 13(k). Section 402 of the Sarbanes—Oxley Act imposed these prohibitions on both domestic and foreign issuers. However, it also created an exemption for federally insured banks that are subject to the insider lending restrictions under the Federal Reserve Act and its corresponding regulations. Since most foreign banks do not qualify for this exemption as currently written, the proposed Exchange Act rule would extend this exemption to foreign banks that meet specified criteria similar to those that exempt domestic banks under section 402.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Elliot Staffin, Special Counsel, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942—2990

RIN: 3235–AI81

Securities and Exchange Commission (SEC) Division of Corporation Finance

Final Rule Stage

4353. FORM 8—K DISCLOSURE OF CERTAIN MANAGEMENT TRANSACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 230.144; 17 CFR 239.12; 17 CFR 239.13; 17 CFR 239.16b; 17 CFR 249.308

Legal Deadline: None

Abstract: The Commission proposed amendments that would require some public companies to file current reports on Form 8—K describing: directors' and executive officers' transactions in company equity securities, directors' and executive officers' arrangements for the purchase and sale of company equity securities, and loans of money to a director or executive officer made or guaranteed by the company or an affiliate of the company. In Release 34—46313, the Commission stated that, in light of the Sarbanes—Oxley Act of 2002 amendment of section 16(a) of the Securities Exchange Act of 1934, the Commission does not intend to consider further proposed Form 8—K reporting of directors' and executive officers' transactions in company equity securities. The Division continues to consider the proposed Form 8—K reporting of directors' and executive officers' arrangements for the purchase and sale of company equity securities and company loans and loan guarantees to directors and executive officers that are not prohibited by the Sarbanes—Oxley Act.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19914
NPRM Comment Period End	06/24/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Anne M. Krauskopf, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—2910

RIN: 3235–AI43

4354. DISCLOSURE IN MANAGEMENT'S DISCUSSION AND ANALYSIS REGARDING THE APPLICATION OF CRITICAL ACCOUNTING POLICIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 228.303; 17 CFR 229.303

Legal Deadline: None

Abstract: The Commission proposed rule provisions to require a company to discuss the application of its critical accounting policies. The proposals would encompass both critical accounting estimates that a company makes and the initial adoption by a company of an accounting policy with a material impact on its financial presentation. The new disclosure would be included in the MD&A section of a company's annual reports, registration statements, and proxy and information statements and would be updated quarterly.

Timetable:

Action	Date	FR Cite
NPRM	05/20/02	67 FR 35620
NPRM Comment Period End	07/19/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Andrew Thorpe, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—2910

RIN: 3235–AI44

4355. • DISCLOSURE REGARDING NOMINATING COMMITTEE FUNCTIONS AND COMMUNICATIONS BETWEEN SECURITY HOLDERS AND BOARDS OF DIRECTORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c(b); 15 USC 78c; 15 USC 78n; 15 USC 78w(a); 15 USC 78mmm

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission proposed amendments to the proxy rules to require new disclosure regarding nominating committees and communications between security holders and boards of directors.

Timetable:

Action	Date	FR Cite
NPRM	08/14/03	68 FR 48724
NPRM Comment Period End	09/15/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Lillian K Cummins, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549
Phone: 202 942—2920

RIN: 3235–AI90

4356. DEFINING "QUALIFIED PURCHASERS"

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78r

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission proposed amendments to Rule 146 to provide a definition of "qualified purchaser" to fully implement the "covered securities" portion of section 18 of the Securities Act of 1933.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66839
NPRM Comment Period End	02/25/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Marva Simpson, Special Counsel, Securities and Exchange Commission, Washington, DC 20549
Phone: 202 942—2950
Fax: 202 942—9516

RIN: 3235–AI25

4357. ADDITIONAL FORM 8—K DISCLOSURE REQUIREMENTS AND ACCELERATION OF FILING DATE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission proposed amendments to Form 8—K to add several new disclosure items to Form 8—K, amend many of the existing Form 8—K disclosure items, shorten the Form 8—K filing deadline to 2 business days, and reorganize the disclosure items into logical categories.

Timetable:

Action	Date	FR Cite
NPRM	06/25/02	67 FR 42914
NPRM Comment Period End	08/26/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Raymond A. Be, Office of Rulemaking, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942—2910

RIN: 3235–AI47

Securities and Exchange Commission (SEC)
Division of Corporation Finance
Long-Term Actions

4358. FINANCIAL REPORTING AND BLANK CHECK COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a et seq

CFR Citation: 17 CFR 249.308

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments to Form 8—K that would remove the grace period for filing financial statements in a blank check company merger.

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Kevin O'Neill, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942—2950
Fax: 202 942—9516

RIN: 3235–AH88

Securities and Exchange Commission (SEC)
Division of Corporation Finance
Completed Actions

4359. MANDATED ELECTRONIC FILING AND WEBSITE POSTING FOR FORMS 3, 4, AND 5

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 77aaa et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a—1 et seq; PL 107—204, sec 3(a)

CFR Citation: 17 CFR 230; 17 CFR 232; 17 CFR 239; 17 CFR 240; 17 CFR 249 to 250; 17 CFR 259 to 260; 17 CFR 269; 17 CFR 274

Legal Deadline: Final, Statutory, July 30, 2003, Final.

Abstract: The Commission adopted rule and form amendments to mandate the electronic filing and website posting by issuers with corporate websites of beneficial ownership reports filed by officers, directors, and principal security holders under section 16(a) of the Securities Exchange Act of 1934. The Commission also implemented changes to the EDGAR system in order to facilitate electronic filing. In addition, the Commission adopted rule changes to eliminate magnetic cartridges as a means of electronic filing. The intended general effect of the proposals is to facilitate compliance with the will of Congress, as reflected in amended section 16(a), and to facilitate the more efficient transmission, dissemination, analysis, storage, and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers, and the Commission.

Timetable:

Action	Date	FR Cite
NPRM	12/27/02	67 FR 79466
NPRM Comment Period End	02/10/03	
Final Action	05/13/03	68 FR 25788
Final Action Effective	06/30/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Mark W. Green, Senior Special Counsel, Securities and Exchange Commission, Washington, DC 20549
Phone: 202 942—1940
Fax: 202 942—9624

RIN: 3235–AI26

4360. DISCLOSURE REQUIRED BY SECTIONS 404, 406, AND 407 OF THE SARBANES—OXLEY ACT OF 2002

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77e, 77f, 77g, 77j, 77q, 77z—3; 15 USC 78l, 78m, 78o, 78w, 78mm; secs 3(a), 406, and 407 of the Sarbanes—Oxley Act of 2002

CFR Citation: 17 CFR 228.401; 17 CFR 228—406; 17 CFR 228.601; 17 CFR 229.401; 17 CFR 229.406; 17 CFR 229.601

Legal Deadline: Final, Statutory, January 26, 2003, Final. Sarbanes—Oxley Act of 2002.

Abstract: In January 2003, the Commission adopted rules relating to sections, 406 and 407 of the Sarbanes—Oxley Act of 2002. The rules require companies to include in their Exchange Act filings: (1) disclosure regarding whether a company had adopted a code of ethics that applies to certain senior officers and (2) disclosure regarding whether a company has an audit committee financial expert serving on its audit committee. In June 2003, the Commission adopted rules relating to section 404 of the Sarbanes—Oxley Act requiring companies to provide internal control reports and attestations by their independent auditors.

Timetable:

Action	Date	FR Cite
NPRM	10/30/02	67 FR 66208
NPRM Comment Period End	11/29/02	
Final Action for 406 and 407 Rules	01/31/03	68 FR 5110
Final Action Effective	03/03/03	
Final Action for 404 Rules	06/18/03	68 FR 36636
Final Action Effective	08/14/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Raymond A. Be, Office of Rulemaking, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942—2910

RIN: 3235–AI66

4361. CERTIFICATION OF DISCLOSURE IN CERTAIN EXCHANGE ACT REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78m; 15 USC 78o(d); 15 USC 78mm; 15 USC 80a—8; 15 USC 80a—29; 15 USC 80a—37

CFR Citation: 17 CFR 228.601; 17FR 229.601; 17 CFR 240.13a—14; 17 CFR 240.13a—15; 17 CFR 240.15D—14; 17 CFR 240.15D—15; 17 CFR 270.30a—2; 17 CFR 270.30a—3; 17 CFR 232.302

Legal Deadline: None

Abstract: The Commission adopted amendments to rules and forms under the Securities Exchange Act of 1934 and Investment Company Act of 1940 to require issuers to provide the certifications required by sections 302 and 906 of the Sarbanes—Oxley Act of

SEC—Division of Corporation Finance — Completed Actions

2002 as exhibits to the periodic reports to which they relate.

Timetable:

Action	Date	FR Cite
NPRM	03/31/03	68 FR 15600
NPRM Comment Period End	05/15/03	
Final Action	06/18/03	68 FR 36636
Final Action Effective	08/14/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Andrew Thorpe, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—2910

RIN: 3235–AI79

Securities and Exchange Commission (SEC) Division of Investment Management — Prerule Stage

4362. • INVESTMENT COMPANY PORTFOLIO TRANSACTION COST CONCEPT RELEASE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission issue a concept release requesting public comment on how disclosure of investment company transaction costs might be improved, including whether it would be appropriate and feasible to require investment companies to provide their investors with quantitative disclosure of portfolio transaction costs.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Paul Goldman, Assistant Director, Division of Investment Management, Securities and Exchange Commission, 901 E Street NW, Washington, DC 20549
Phone: 202 942—0510
Email: goldmanp@sec.gov

RIN: 3235–AI94

Securities and Exchange Commission (SEC) Division of Investment Management — Proposed Rule Stage

4363. BOOKS AND RECORDS TO BE MAINTAINED BY INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b—4; 15 USC 80b—6(4); 15 USC 80b—11(a)

CFR Citation: 17 CFR 275.204—2

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission update the books and records requirements for investment advisers.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Don L. Evans, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AH24

4364. PRINCIPAL TRANSACTIONS WITH INVESTMENT ADVISORY CLIENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b—6a

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission revise the conditions under which investment advisers may enter into principal transactions with their clients.

Timetable:

Action	Date	FR Cite
NPRM	07/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AH34

4365. CERTAIN THRIFT INSTITUTIONS DEEMED NOT TO BE INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b—2(a)(11)(F)

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending a proposal to the Commission to except from the definition of investment adviser thrift institutions providing investment advice to certain clients.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AI16

4366. EXEMPTION FROM REGISTRATION FOR CERTAIN COMMODITY POOL OPERATORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b—6a

CFR Citation: 17 CFR 275.203(b)(6)—1

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission propose a rule exempting certain commodity pool operators from investment adviser registration and addressing issues related to the Commodity Futures Modernization Act amendments to the Investment Adviser Act.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Daniel Seth Kahl, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AI29

4367. EXEMPTION TO PERMIT INVESTMENT COMPANIES TO INVEST IN OTHER INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a—6(c); 15 USC 80a—12(d)(1)(j)

CFR Citation: 17 CFR 12d1—1, 12d1—2, 12d1—3

Legal Deadline: None

Abstract: The Commission proposed new rules that would (i) allow investment companies to purchase securities issued by money market funds in excess of limits on those investments under the Investment Company Act of 1940 and (ii) alleviate certain investment and other restrictions on investment companies that invest in other investment companies ("fund of funds"). The Commission also proposed amendments to the forms that investment companies use to register under the Investment Company Act and offer their shares under the Securities Act of 1933. The proposed amendments would require registered funds to disclose the aggregate costs of investing in other funds.

Timetable:

Action	Date	FR Cite
NPRM	10/08/03	68 FR 58226
NPRM Comment Period End	12/03/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Penelope W. Saltzman, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549—0506
Phone: 202 942—0690

RIN: 3235–AI30

4368. SUBSTITUTION OF FUNDS UNDERLYING VARIABLE INSURANCE PRODUCTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose a rule to permit substitutions of funds underlying variable insurance products without a Commission approval order under section 26(c) of the Investment Company Act and related relief form section 17(a) for in-kind transactions in connection with the substitutions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Keith Carpenter, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0679

RIN: 3235–AI58

4369. AMENDMENTS TO REGISTRATION FORM AND RULES FOR REGISTRATION OF CERTAIN INVESTMENT COMPANY SECURITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a—24; 15 USC 80a—37; 15 USC 77f; 15 USC 77h; 15 USC 77j; 15 USC 77s(a)

CFR Citation: 17 CFR 230; 17 CFR 270; 17 CFR 274

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission amend the rule and the form under the Investment Company Act of 1940 that prescribe the method by which certain investment companies calculate and pay registration fees under the Securities Act of 1933 and Rule 457 under the Securities Act that allows for the offset of registration fees in cases of overpayment. The amendments would make clear that funds must pay interest on late filings at the time of the late filing, allow funds to use excess filing fees resulting from erroneous over payments with Form 24F—2 filings as an offset against future registration fees due with Form

24F—2 filings, and make technical corrections to the form.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Ruth Armfield Sanders, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0633

RIN: 3235–AI84

4370. • DISCLOSURE OF BREAKPOINT DISCOUNTS BY MUTUAL FUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e to 77g; 15 USC 77j; 15 USC 77s(a); 15 USC 80a—8; 15 USC 80a—24; 15 USC 80a—37

CFR Citation: 17 CFR 15A; 17 CFR 274.11A

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose new rules that would require improved disclosure in mutual fund prospectuses regarding "breakpoint" discounts on front—end sales loads.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Christian Broadbent, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549
Phone: 202 942—0721

RIN: 3235–AI95

4371. EXEMPTION FROM SHAREHOLDER APPROVAL FOR CERTAIN SUBADVISORY CONTRACTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a—6(c)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission proposed a new rule to allow certain types of funds or their investment advisers to enter into subadvisory agreements for investment management services without obtaining shareholder approval.

Timetable:

Action	Date	FR Cite
NPRM	10/29/03	68 FR 61720
NPRM Comment Period End	01/08/04	
Next Action Undetermined	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Adam B. Glazer, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0690

RIN: 3235–AH80

4372. AMENDMENTS TO FORM N—SAR, SEMIANNUAL REPORT OF REGISTERED INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78n; 15 USC 78o(d); 15 USC 78w(a); 15 USC 80a—8; 15 USC 80a—29; 15 USC 80a—37

CFR Citation: 17 CFR 249.330; 17 CFR 274.101

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission amend Form N—SAR, the semiannual report for registered investment companies, to update the items of the form.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Tara Royal, Securities and Exchange Commission
Phone: 202 942—0721

RIN: 3235–AF93

4373. AMENDMENTS TO THE CASH SOLICITATION RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b—4; 15 USC 80b—6; 15 USC 80—11(a)

CFR Citation: 17 CFR 275.206(4)—3

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend revisions to the cash solicitation rule.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Catherine E. Marshall, Office of Investment Adviser Regulation, Division Of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AH33

4374. RULEMAKING FOR EDGAR SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 78c; 15 USC 781; 15 USC 78m; 15 USC 78n; 15 USC 78o(d); 15 USC 78w(a); 15 USC 78ll; 15 USC 77sss; 15 USC 79c; 15 USC 79e; 15 USC 79f; 15 USC 79g; 15 USC 79j; 15 USC 79l; 15 USC 79m; 15 USC 79n; 15 USC 79q; 15 USC 79t; 15 USC 80a—8; 15

USC 80a—29; 15 USC 80a—30; 15 USC 80a—37

CFR Citation: 17 CFR 232.101 to 232.601

Legal Deadline: None

Abstract: In connection with the ongoing modernization of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, the Division is considering recommending that the Commission propose amendments to existing rules and forms to make technical and clarifying corrections and to expand the categories of mandatory electronic filings and to identify series and classes for certain investment company filings.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Ruth Armfield Sanders, Senior Special Counsel, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0633

RIN: 3235–AI18

4375. INVESTMENT IN MONEY MARKET FUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a—6(c); 15 USC 80a 37(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose a new rule that would permit a company to treat money market fund shares as cash items for purposes of determining whether the company is an investment company under the Investment Company Act of 1940.

Timetable:

Action	Date	FR Cite
NPRM	02/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Penelope W. Saltzman, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549—0506
Phone: 202 942—0690

RIN: 3235–AI45

4376. REGIONAL TRANSMISSION ORGANIZATIONS AND INDEPENDENT TRANSMISSION COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79c

CFR Citation: 17 CFR 250.18; 17 CFR 250.40; 17 CFR 250.44; 17 CFR 250.6

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending a proposal to the Commission to deem an "independent transmission company" as defined by the rule not to be a "subsidiary," "company," or "affiliate" of a registered holding company. The rule is intended to facilitate the Federal Energy Regulatory Commission's Order No. 2000, Regional Transmission Organizations.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Victoria J. Adraktas, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0545
Email: adraktasv@sec.gov

RIN: 3235–AI27

4377. EXEMPTIONS FROM SECTION 17(C) OF THE PUBLIC UTILITY HOLDING COMPANY ACT REGARDING OFFICERS AND DIRECTORS OF REGISTERED HOLDING COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79q(c)

CFR Citation: 17 CFR 250.70

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose revisions to existing Rule 70 under the Public Utility Holding Company Act to update the exemptions to reflect current industry conditions.

Timetable:

Action	Date	FR Cite
NPRM	04/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David B. Smith, Securities and Exchange Commission, Office of Public Utility Regulation, Division of Investments Management, Washington, DC 20549
Phone: 202 942—0525

RIN: 3235–AI59

Securities and Exchange Commission (SEC) Division of Investment Management — Final Rule Stage

4378. AMENDMENTS TO FORM ADV

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b—4, 80b—6(4), 80bll(a), 80b—3(c)(1); 15 USC 77s(a); 15 USC 78(a), 78bbb(e)(2); 15 USC 77sss(a); 15 USC 78(s)—37(a)

CFR Citation: 17 CFR 275.204—2; 17 CFR 275.204—3; 17 CFR 275.206(4)—4; 17 CFR 279.1

Legal Deadline: None

Abstract: In 2000, the Commission proposed amendments to Form ADV and related rules to create an electronic filing system for investment advisers and to improve the quality of information that advisers must provide to clients and prospective clients. The proposed amendments to Form ADV and the final amendments to part 1 of Form ADV were published under RIN 3235—AD21. The Commission deferred adoption of the final amendments to part 2 of Form ADV. Final action on amendments to part 2 of the Form ADV (and related rules), if approved by the Commission, will be published under the new RIN.

Timetable:

Action	Date	FR Cite
NPRM	04/05/00	65 FR 20524
NPRM Comment Period End	06/13/00	
Final Action	02/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Daniel Seth Kahl, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AI17

4379. COMPLIANCE PROGRAMS OF INVESTMENT COMPANIES AND INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a—30(a); 15 USC 80a—37(a); 15 USC 80b—6; 15 USC 80b—11; 15 USC 80b—4

CFR Citation: 17 CFR 270.38a—1 (New); 17 CFR 275.204—2; 17 CFR 275.206(4)—7

Legal Deadline: None

Abstract: The Commission proposed new Rule 38a—1 under the Investment Company Act, new Rule 206(4)—7 under the Investment Advisers Act, and amendments to Rule 204—2 under the Investment Advisers Act to require each investment company and investment adviser to: (i) adopt and implement policies and procedures reasonably designed to prevent violations of the Federal securities laws, (ii) review those policies and procedures annually, (iii) appoint a chief compliance officer, and (iv) maintain certain compliance records.

Timetable:

Action	Date	FR Cite
NPRM	02/11/03	68 FR 7038
NPRM Comment Period End	04/18/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Hester M. Peirce, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0690

RIN: 3235–AI77

4380. SHAREHOLDER REPORT AND FINANCIAL STATEMENT REVISIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e, 77f, 77g, 77h, 77j, 77s(a), 77z—3, 78j(b), 78l, 78m, 78o(d), 78w(a); 15 USC 80a—6(c), 80a—8, 80a—24(a), 80a—29, 80a—30, 80a—37

CFR Citation: 17 CFR 210.6—10; 17 CFR 210.12—12C; 17 CFR 239.14; 17 CFR 239.15A; 17 CFR 239.17; 17 CFR 249.33; 17 CFR 270.30b1—4; 17 CFR 274.11A; 17 CFR 274.11a—1; 17 CFR 274.11b; 17 CFR 274.128; 17 CFR 274.129

Legal Deadline: None

Abstract: The Commission proposed rule and form amendments to improve the periodic disclosure provided by registered management investment companies about their portfolio investments, costs, and past performance, including amendments that would require quarterly disclosure of portfolio holdings.

Timetable:

Action	Date	FR Cite
NPRM	01/02/03	68 FR 160
NPRM Comment Period End	02/14/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John M. Faust, Office of Disclosure Regulation, Securities and Exchange Commission, Division of Investment Management, 451 5th Street NW, Washington, DC 20549
Phone: 202 942—0721

RIN: 3235–AG64

Securities and Exchange Commission (SEC)
Division of Investment Management
Long-Term Actions

4381. POLITICAL CONTRIBUTIONS BY CERTAIN INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 206(4); 15 USC 211(a); 15 USC 204

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The Commission has proposed new Rule 206(4)—5, which would prohibit an investment adviser from providing advisory services for compensation to a Government client for 2 years after the adviser or any of its partners, executive officers, or solicitors makes a contribution to certain elected officials or candidates.

The Commission also has proposed rule amendments that would require a registered adviser that has Government clients to maintain certain records of the political contributions made by the adviser or any of its partners, executive officers, or solicitors.

Timetable:

Action	Date	FR Cite
NPRM	08/10/99	64 FR 43556
NPRM Comment Period End	11/01/99	
Next Action To Be Determined	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AH72

4382. CERTAIN BROKER—DEALERS DEEMED NOT TO BE INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b—2(a)(11)(F); 15 USC 80b—11(a)

CFR Citation: 17 CFR 275.202(a)(11)—1

Legal Deadline: None

Abstract: The Commission has proposed new Rule 202(a)(11)—1, which would exempt from the definition of investment adviser those broker—dealers offering nondiscretionary, full—service brokerage programs so long as the investment advice provided is solely incidental to the brokerage services and other conditions are satisfied.

Timetable:

Action	Date	FR Cite
NPRM	11/10/99	64 FR 61226
NPRM Comment Period End	01/14/00	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AH78

4383. PUHCA: EXEMPTION FOR CERTAIN ACQUISITIONS OF FOREIGN UTILITY COMPANIES; SUBSIDIARIES AUTHORIZED TO PERFORM SERVICES OR CONSTRUCTION OR TO SELL GOODS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79e; 15 USC 79f(b); 15 USC 79i(c)(3); 15 USC 79t; 15 USC 79z—5a; 15 USC 79z—5b; 15 USC 79; 15 USC 79j; 15 USC 79l; 15 USC 79m; 15 USC 79n; 15 USC 79o

CFR Citation: 17 CFR 250.55 (New); 17 CFR 250.87 (Revision); 17 CFR 259.5s (Revision); 17 CFR 259.207 (Revision)

Legal Deadline: None

Abstract: Proposed rule 55 under the Public Utility Holding Company Act is intended to provide a safe harbor for those acquisitions of one or more foreign utility companies by a registered holding company that meet specified criteria. Proposed rule 56, previously considered in RIN 3235—AF79, clarifies that a subsidiary of a registered holding company that is engaged exclusively in the business of owning an interest in one or more foreign utility companies will be deemed a foreign utility company. The proposed amendment to rule 87 would require registered holding companies to obtain Commission approval of intrasystem agreements involving foreign utility companies and exempt wholesale generators.

Timetable:

Action	Date	FR Cite
NPRM	03/15/93	58 FR 13719
NPRM Comment Period End	04/14/93	
Second NPRM	02/07/01	66 FR 9247
Second NPRM Comment Period End	04/09/01	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Related to RIN 3235—AF79

Agency Contact: Alberto Zapata, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0545

RIN: 3235–AF78

Securities and Exchange Commission (SEC) Division of Investment Management

Completed Actions

4384. CUSTODY OR POSSESSION OF FUNDS OR SECURITIES OF CLIENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b—3(c)(1); 15 USC 80b—4; 15 USC 80b—11(a); 15 USC 80b—6(4)

CFR Citation: 17 CFR 275.206(4)—2

Legal Deadline: None

Abstract: The Commission adopted revisions to the custody rule under the Investment Advisers Act of 1940. The proposed amendments are designed to conform the rule to modern custodial practices and enhance protections for client assets while reducing burdens on advisers that have custody of client assets.

Timetable:

Action	Date	FR Cite
NPRM	07/25/02	67 FR 48579
NPRM Comment Period End	09/25/02	
Final Action	10/01/03	68 FR 56692
Final Action Effective	11/05/03	
Compliance Date	04/01/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Vivian Liu, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0719

RIN: 3235–AH26

4385. PROPOSED AMENDMENTS TO INVESTMENT COMPANY ADVERTISING RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77b; 15 USC 77e; 15 USC 77f; 15 USC 77g; 15 USC 77j; 15 USC 77s(a); 15 USC 77z—3; 15 USC 80a—8; 15 USC 78j(b); 15 USC 78w(a); 15 USC 80a—8; 15 USC 80a—

24; 15 USC 80a—29; 15 USC 80a—33; 15 USC 80a—37

CFR Citation: 17 CFR 230.482; 17 CFR 230.134; 17 CFR 230.156; 17 CFR 239.15A; 17 CFR 239.17a; 17 CFR 239.17b; 17 CFR 270.34b—1; 17 CFR 274.11A; 17 CFR 274.11b; 17 CFR 274.11c; 17CFR 274.11d

Legal Deadline: None

Abstract: The Commission adopted amendments to Rule 482 to permit fund advertisements that are not subject to restrictions limiting the content of the advertisement to information "the substance of which" is in a fund's prospectus. The Commission also adopted amendments requiring enhanced disclosure in fund advertisements.

Timetable:

Action	Date	FR Cite
NPRM	05/24/02	67 FR 36712
NPRM Comment Period End	07/31/02	
Final Action	10/06/03	68 FR 57760
Final Action Effective	11/15/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: David Schwartz, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0721

RIN: 3235–AH19

4386. CERTAIN RESEARCH AND DEVELOPMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a—6(c); 15 USC 80a—37(a)

CFR Citation: 17 CFR 270.3a—8

Legal Deadline: None

Abstract: The Commission adopted new Rule 3a—8 under the Investment Company Act of 1940 that provides a safe harbor from investment company status for certain research and development companies.

Timetable:

Action	Date	FR Cite
NPRM	12/03/02	67 FR 71915
NPRM Comment Period End	01/15/03	
Final Action	06/20/03	68 FR 37046
Final Action Effective	08/19/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Karen Goldstein, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0646

RIN: 3235–AI57

4387. INSURANCE PRODUCTS: EQUITY INDEX INSURANCE PRODUCTS CONCEPT RELEASE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq

CFR Citation: 17 CFR 230.151

Legal Deadline: None

Abstract: The Division is withdrawing this item from the Unified Agenda because the Division does not expect to recommend that the Commission consider the item within the next 12 months. The Division may reconsider this item at a later date.

Timetable:

Action	Date	FR Cite
ANPRM	08/27/97	62 FR 45359
ANPRM Comment Period End	11/20/97	
NPRM	11/21/97	62 FR 62273
NPRM Comment Period End	01/05/98	
Withdrawn	11/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: William Kotapish, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942—0670

RIN: 3235–AH23

Securities and Exchange Commission (SEC)
Division of Market Regulation

Proposed Rule Stage

4388. RISK ASSESSMENT RECORDKEEPING AND REPORTING REQUIREMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a(h)

CFR Citation: 17 CFR 240.17h—1T; 17 CFR 240.17h—2T

Legal Deadline: None

Abstract: The Risk Assessment Recordkeeping and Reporting Requirements, which became effective September 30, 1992, following notice and comment, were adopted as temporary rules pursuant to the Market Reform Act of 1990. These rules contain recordkeeping and reporting requirements with regard to Material Associated Persons of broker—dealers. The Division plans to recommend that the Commission propose final rules replacing the temporary rules.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—4886
Fax: 202 942—9553

RIN: 3235–AH06

4389. REGISTRATION REQUIREMENTS FOR BANKS ACTING AS BROKERS OR DEALERS IN SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78o(i)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division is considering recommending to the Commission proposed Rule 15i—1, which would apply the broker—dealer registration requirements of the Exchange Act to banks that act as brokers or dealers in security futures products.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Sean P. O'Malley, Special Counsel, Securities and Exchange Commission
Phone: 202 942—0734

RIN: 3235–AI83

4390. • ALTERNATIVE NET CAPITAL COMPUTATION FOR BROKER—DEALERS THAT ELECT TO BE SUPERVISED ON A CONSOLIDATED BASIS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a; 15 USC 78c; 15 USC 78q(a); 15 USC 78mm

CFR Citation: 17 CFR 240.15c3—1; 17 CFR 240.15c3—4; 17 CFR 240.30—3; 17 CFR 240.17a—5; 17 CFR 240.17a—11

Legal Deadline: None

Abstract: The Division is considering whether to recommend that the Commission propose rules and rule amendments under the Securities Exchange Act of 1934 that would establish an optional alternative method for computing net capital for certain broker—dealers that are part of a holding company group. An eligible broker—dealer may elect to compute its net capital using this alternative method, which involves the use of mathematical modeling techniques to determine market and credit risk capital charges, if the holding company of the broker—dealer consents to Commission supervision of the holding company and the other affiliates of the broker—dealer. As part of this supervision, the Commission would examine the books and records of the holding company and the affiliates of the broker—dealer, and the holding company would make periodic reports to the Commission, which would include group—wide financial and risk management information and a capital assessment in accordance with the Basel Standards.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Rose Wells, Securities and Exchange Commission
Phone: 202 942—0143

RIN: 3235–AI96

4391. • SUPERVISED INVESTMENT BANK HOLDING COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a; 15 USC 78q(i); 15 USC 78w; 15 USC 78mm

CFR Citation: 17 CFR 240.17i—1; 17 CFR 240.17i—2; 17 CFR 240.17i—3; 17 CFR 240.17i—4; 17 CFR 240.17i—5; 17 CFR 240.17i—6; 17 CFR 240.17i—7; 17 CFR 240.17i—8; 17 CFR 240.17i—9

Legal Deadline: None

Abstract: The Division is recommending that the Commission propose rules to implement section 17(i) of the Securities Exchange Act of 1934. The proposed new rules would establish an application process through which "investment bank holding companies" ("IBHCs") could elect to become "supervised investment bank holding company" ("SIBHC"), as well as a process by which an SIBHC could withdraw from Commission supervision. In addition, the proposed new rules would require that an SIBHC (i) create and implement a group—wide internal risk management control system, (ii) create and maintain certain, specified records and make them available to Commission staff during inspections and examinations, and (iii) provide the Commission with periodic and special reports. Finally, the proposed new rules would establish remedies for non—compliance with these rules.

Pursuant to the Act, an IBHC is defined to be any person, other than a natural person, that owns or controls one or more broker—dealers. Further, an IBHC that is eligible may voluntarily submit to Commission supervision on a group—wide basis to become an SIBHC. An IBHC would not be eligible to become an SIBHC if it is (i) affiliated with an insured bank (with certain exceptions) or a savings association, (ii) a foreign bank, foreign company, foreign bank branch agency, or a State—chartered commercial lending company, or (iii) a foreign bank that controls an Edge Act Corporation. Section 17(i) of the Act created a new framework for supervising these SIBHCs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Bonnie Lynn Gauch, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942—0756

RIN: 3235–AI97

4392. REQUEST FOR COMMENT ON NYSE PETITION FOR AMENDING THE CTA AND CQ PLANS SO AS TO DELETE THE PARTICIPANTS' FEE EXEMPTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 78k—1; 17 CFR 240.11Aa—3—2

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has sought and is now reviewing comments from the public on the NYSE's petition requesting that the Commission amend the CTA and CQ Plans to remove provisions that exempt CTA participants from certain charges that generally apply for the receipt and use of market data.

Timetable:

Action	Date	FR Cite
ANPRM	04/01/03	68 FR 15688
ANPRM Comment Period End	05/01/03	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Sapna C. Patel, Office of Market Supervision, Securities and Exchange Commission
Phone: 202 942—0166
Fax: 202 942—9695

RIN: 3235–AI78

4393. TENDER AND REORGANIZATION AGENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78k—1(a)(1)(B); 15 USC 78n(d)(4); 15 USC 78o(c)(3); 15 USC 78o(c)(6); 15 USC 78q—1(a); 15 USC 78q—1(d)(1); 15 USC 78w(a)

CFR Citation: 17 CFR 240.17Ad—14

Legal Deadline: None

Abstract: The Commission proposed amendments to Rule 17Ad—14 under the Securities Exchange Act of 1934. The amendments would require the establishment of book—entry accounts in connection with reorganization events and would provide securities depositories within 3 business days after the expiration of a tender offer, exchange offer, or reorganization event in which to deliver physical securities certificates to the agents.

Timetable:

Action	Date	FR Cite
NPRM	09/04/98	63 FR 47209
NPRM Comment Period End	11/03/98	
Second NPRM	01/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Jennifer Amy Lucier, Attorney, Securities and Exchange Commission
Phone: 202 942—0173
Fax: 202 942—9553

RIN: 3235–AH53

4394. NET CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS—DEFINITION OF THE TERM NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c; 15 USC 78o; 15 USC 78q; 15 USC 78w

CFR Citation: 17 CFR 240.15c3—1

Legal Deadline: None

Abstract: In June 2003, the Commission issued a concept release as part of its review of the role of credit rating agencies in the operation of the securities markets. The Commission has sought comment on various issues relating to credit ratings agencies including whether credit ratings should continue to be used for regulatory purposes under the federal securities laws; and, if so, the process of determining whose credit ratings should be used, and the level of oversight to apply to such credit rating agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/30/97	62 FR 68018
NPRM Comment Period End	03/02/98	
ANPRM	06/12/03	68 FR 35258
ANPRM Comment Period End	07/28/03	
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Additional Information: This proposal was based in part on comments received in response to a concept release (RIN 3235—AG41; 59 FR 46314), which is now combined in this rulemaking.

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—4886
Fax: 202 942—9553

RIN: 3235–AH28

4395. SHORT SALES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78j(a); 15 USC 78w

CFR Citation: 17 CFR 240.10a—1

Legal Deadline: None

Abstract: The Division is considering whether to recommend that the Commission propose rules to amend Exchange Act Rule 10a—1, the short sale rule. As part of its comprehensive review of Exchange Act Rule 10a—1, the Commission published in 1999 a concept release soliciting public comment on, among other things: lifting the limits on short sales of exchange listed securities under advancing market conditions; providing an exception for actively traded securities; focusing short sale restrictions on certain market events and trading strategies; removing short sale restrictions on hedging transactions; revising short sale regulation in response to certain market developments; revising the definition of "short sale"; extending short sale regulation to non—exchange listed securities; and eliminating short sale regulation altogether.

Timetable:

Action	Date	FR Cite
ANPRM	10/28/99	64 FR 57996
ANPRM Comment Period End	12/28/99	
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—4176
Fax: 202 942—9695

RIN: 3235–AH84

4396. AMENDMENTS TO THE PENNY STOCK RULES IN LIGHT OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c(h); 15 USC 78o(g)

CFR Citation: 17 CFR 240.15g—2(c); 17 CFR 240.15g—9(e)

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose rules 15g—2(c) and 15(g)—9(e) under the Exchange Act. The Division plans to recommend that the Commission propose two alternatives that would adapt Rules 15g—2 and 15g—9 to the requirements of the Electronic Signatures Act in slightly different ways. The Division is also considering whether to recommend that the Commission amend the definition of "penny stock" in rule 3a51—1 in light of the NASDAQ application to become a national securities exchange, and in light of the CFMA.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Norman Reed, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942—7901

RIN: 3235–AI02

4397. DEFINITION OF TERMS IN AND SPECIFIC EXEMPTIONS FOR BANKS, SAVINGS ASSOCIATIONS, AND SAVINGS BANKS UNDER SECTIONS 3(A)(4) AND 3(A)(5) OF THE SECURITIES AND EXCHANGE ACT OF 1934

Priority: Substantive, Nonsignificant

Legal Authority: PL 106—102

CFR Citation: 17 CFR 240.3a4—2; 17 CFR 240.3a4—3; 17 CFR 240.3a—51; 17 CFR 240.3b—17; 17 CFR 240.3b—18; 17 CFR 200.30—3; 17 CFR 240.3a4—4 to 3a4.6; 17 CFR 240.15a—7 to 15a—9

Legal Deadline: Other, Statutory, May 12, 2001, Other.

Abstract: The Commission issued guidance to the meaning of terms added to the Securities Exchange Act of 1934 by the Gramm—Leach—Bliley Act of 1999. The Commission intends to amend the guidance regarding the definition of "broker" and to extend the implementation date for the guidance as necessary. The Commission amended the guidance regarding the definition of "dealer" on February 24, 2003, and extended the implementation date for the guidance regarding the definition of "dealer" until September 30, 2003.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/18/01	66 FR 27760
Interim Final Rule Comment Period End	07/17/01	
Comment Period Extended	07/24/01	66 FR 38370
Interim Final Rule Extended	07/24/01	66 FR 38370
Comment Period End	09/04/01	
Interim Final Rule Extended	05/08/02	
NPRM for Dealer Rules	11/05/02	67 FR 67495
Comment Period for Dealer Rule End	12/05/02	
Final Dealer Rule	02/24/03	68 FR 8686
Compliance Date for Dealer Rule	09/30/03	
NPRM for Broker Rules	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—0073
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RIN: 3235–AI19

Securities and Exchange Commission (SEC) Division of Market Regulation

Final Rule Stage

4398. RULE 15C3—3 RESERVE REQUIREMENTS FOR MARGIN RELATED TO SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78o(c)(3); 15 USC 78w

CFR Citation: 17 CFR 240.15c3—3a

Legal Deadline: None

Abstract: The Commission proposed amendments designed to delineate the manner in which a broker—dealer would calculate its customer reserve requirement under Rule 15c3—3a (the "Reserve Formula") to the Exchange Act in light of enactment of the Commodity Futures Modernization Act of 2000 ("CFMA"). Specifically, the proposed amendments would set forth the Reserve Formula treatment of customer margin that a broker—dealer deposits with a clearing agency registered with the Securities and Exchange Commission or a derivatives clearing organization registered with the Commodity Futures Trading Commission to clear and settle customer transactions in security futures products conducted through securities accounts.

Timetable:

Action	Date	FR Cite
NPRM	09/23/02	67 FR 59748
NPRM Comment Period End	10/23/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Matthew Bruce Comstock, Attorney, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
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Fax: 202 942—9553

RIN: 3235–AI61

4399. PURCHASES OF CERTAIN EQUITY SECURITIES BY THE ISSUER AND OTHERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78c; 15 USC 78i(a)(6); 15 USC 78j(b); 15 USC 78m(e); 15 USC 78o(c); 15 USC 78w(a)

CFR Citation: 17 CFR 240.10b—18

Legal Deadline: None

Abstract: The Commission has proposed simplifying and updating Rule 10b—18's provisions in light of market developments since the Rule's adoption. Rule 10b—18 provides a safe harbor from liability under the anti—manipulation provisions of sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b—5 thereunder, for issuer purchases of its common stock made in compliance with Rule 10b—18's manner, timing, price, and volume conditions.

Timetable:

Action	Date	FR Cite
NPRM	12/18/02	67 FR 77594
NPRM Comment Period End	02/18/03	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Joan Collopy, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—0772
Fax: 202 942—9695

RIN: 3235–AH37

4400. PUBLICATION OR SUBMISSION OF QUOTATIONS WITHOUT SPECIFIED INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78c; 15 USC 78j(b); 15 USC 78o(q); 15 USC 78q(a); 15 USC 78w(a)

CFR Citation: 17 CFR 240.15c2—11

Legal Deadline: None

Abstract: As part of its efforts to respond to fraud and manipulation in the microcap securities market, the Commission proposed amendments to Rule 15c2—11. These amendments would limit the Rule's piggyback provision and increase public availability of issuer information. The amendments would modestly expand the information review requirements for non—reporting issuers and the documentation required for significant relationships between the broker—dealer and the issuer of the security to be quoted. Finally the amendments would exclude from the rule securities of larger, more liquid issuers.

Timetable:

Action	Date	FR Cite
NPRM	02/25/98	63 FR 9661
NPRM Comment Period End	04/27/98	
Second NPRM	03/08/99	64 FR 11124
Second NPRM Comment Period End	04/07/99	
Second NPRM Comment Period Extended to	04/14/99	64 FR 18393
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James A. Brigagliano, Assistant Director, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—0772

RIN: 3235–AH40

4401. PROCESSING REQUIREMENTS FOR CANCELLED SECURITIES CERTIFICATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78q—1

CFR Citation: 17 CFR 240.17Ad—19

Legal Deadline: None

Abstract: The Commission proposed Rule 17Ad—19 to establish regulations for the processing of cancelled securities certificates and to require each transfer agent to establish written procedures for the storage and destruction of cancelled securities certificates.

Timetable:

Action	Date	FR Cite
NPRM	10/06/00	65 FR 59766
NPRM Comment Period End	12/05/00	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas C. Etter Jr., Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—0178
Fax: 202 942—9695

RIN: 3235–AH54

Securities and Exchange Commission (SEC) Division of Market Regulation — Long-Term Actions

4402. • REQUEST FOR COMMENT ON NASDAQ PETITION RELATING TO NASDAQ LISTED SECURITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 78f(b)(1); 15 USC 78o—3(b)(2); 15 USC 78F(b)(5); 15 USC 78f(b)(8); 15 USC 78o—3(b)(6); 15 USC 78o—3(b)(9)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has requested comment on a petition submitted by the Nasdaq Stock Market, Inc. ("NASDAQ") concerning the regulation of Nasdaq—listed securities. Specifically, Nasdaq requested that the Commission amend the rules of all markets that trade Nasdaq—listed securities to establish uniform trading rules, and to ensure equal surveillance and enforcement of those rules; order that the exchanges' costs of regulation, including costs associated with proper data collection, surveillance, and enforcement, be aggregated and deducted from the market data revenue collected pursuant to the Nasdaq Unilisted Trading Privileges Plan ("UTP Plan"); and, prohibit the launch or continuation of Nasdaq trading by any market that fails to protect investors as required under the Securities Exchange Act of 1934 ("Act"). In addition, the Commission requested comment on whether the same actions would be appropriate for the regulation and trading of exchange—listed securities.

Timetable:

Action	Date	FR Cite
ANPRM	05/20/03	68 FR 27722
ANPRM Comment Period End	06/19/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Theodore R. Lazo, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942—0745
Fax: 202 942—9695
Email: lazot@sec.gov

RIN: 3235–AI86

4403. • RECORDKEEPING REQUIREMENTS FOR TRANSFER AGENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78q—1

CFR Citation: 17 CFR 240.17Ad—7(f)

Legal Deadline: None

Abstract: The Commission proposed amending Rule 17AD—7(f) to clarify that registered transfer agents may use electronic, microfilm, and micrographic media as a substitute for hard copy records for complying with the Commission's recordkeeping rules and that a third party on behalf of a transfer agent may place into escrow the required software information.

Timetable:

Action	Date	FR Cite
NPRM	06/20/03	68 FR 36951
NPRM Comment Period End	07/21/03	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Agency Contact: David Karasik, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—0786
Fax: 202 942—9695
Email: karasikd@sec.gov

RIN: 3235–AI88

4404. • ENHANCED CONFIRMATION DISCLOSURE OF MUTUAL FUND TRANSACTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78o(c)(2)

CFR Citation: 17 CFR 240.15c2—2; 17 CFR 240.10b—10

Legal Deadline: None

Abstract: The Division is considering recommending to the Commission a proposal to issue new rule 15c2—2 under the Securities Exchange Act of 1934, and amend current rule 10b—10 to provide for improved confirmation disclosure of costs associated with mutual fund transaction and distribution arrangements that have the potential to cause conflicts of interest.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Joshua Kans, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—0079
Fax: 202 942—9645
Email: kansj@sec.gov

RIN: 3235–AI91

Securities and Exchange Commission (SEC) Division of Market Regulation

Completed Actions

4405. BROKER—DEALER EXEMPTION FROM SENDING CERTAIN FINANCIAL INFORMATION TO CUSTOMERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78q(e)(1)(c)

CFR Citation: 17 CFR 240.17a—5

Legal Deadline: None

Abstract: The Commission adopted an amendment to Rule 17a—5(c) under the Securities Exchange Act of 1934 that provides a conditional exemption from the Rule's requirement that a broker—dealer that carries customer accounts send its full balance sheet to each of its customers twice a year. A broker—dealer taking advantage of the exemption is required to post its full balance sheet to its website and provide a toll—free telephone number to call for a free copy.

Timetable:

Action	Date	FR Cite
NPRM	12/03/02	67 FR 71909
NPRM Comment Period End	01/02/03	
Final Action	08/06/03	68 FR 46446
Final Action Effective	09/05/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942—4886
Fax: 202 942—9553

RIN: 3235–AI68

Securities and Exchange Commission (SEC)
Offices and Other Programs
Proposed Rule Stage

4406. PROPOSAL TO AMENDMENT DISCLOSURE REQUIREMENTS RELATED TO DERIVATIVE FINANCIAL INSTRUMENTS AND DERIVATIVE COMMODITY INSTRUMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a—1 et seq

CFR Citation: 17 CFR 210; 17 CFR 228; 17 CFR 229

Legal Deadline: None

Abstract: The Office of the Chief Accountant is considering recommending that the Commission publish a release proposing amendments that would conform the Commission's disclosure requirements with Financial Accounting Standards No.133.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jenifer Minke—Girard, Securities and Exchange Commission
Phone: 202 942—4400
Fax: 202 942—9656
Email: minke—girardj@sec.gov

RIN: 3235–AH98

4407. ● AMENDMENTS TO THE RULES OF PRACTICE AND RELATED PROVISIONS

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 7207; 15 USC 77s; 15 USC 78s; 15 USC 78w; 15 USC 79t; 15 USC 77sss; 15 USC 80a—37; 15 USC 80a—39; ...

CFR Citation: 17 CFR 200.21(b)(2); 17 CFR 200.43(c)(3); 17 CFR 200.111; 17 CFR 201.100(a); 17 CFR 201.101(a); 17 CFR 201.102(d)(4); 17 CFR 201.111(h); 17 CFR 201.141; 17 CFR 201.150(c)(4)

Legal Deadline: None

Abstract: The Office of General Counsel is recommending that the Commission propose for public comment amendments to its Rules of Practice and related provisions in light of the Sarbanes—Oxley Act of 2002. The Sarbanes—Oxley Act, among other things, authorizes the Commission to review disciplinary actions of the Public Company Accounting Oversight Board and to create "Fair Funds" in Commission administrative proceedings. The Office is also considering whether to propose for comment amendments to other provisions of the Rules of Practice as a result of its experience with those rules and to correct certain citations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane V White, Senior Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942—0950

RIN: 3235–AI98

Securities and Exchange Commission (SEC)
Offices and Other Programs
Final Rule Stage

4408. SUPPLEMENTAL FINANCIAL INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a—1 et seq

CFR Citation: 17 CFR 210; 17 CFR 229

Legal Deadline: None

Abstract: The Commission has proposed amendments to reposition within its regulation the requirement for certain registrants to disclose changes in their valuation and loss accrual accounts and to clarify the type of information to be disclosed. The Commission also has proposed amendments to its rules to require disclosure of information concerning tangible and intangible assets and related accumulated depreciation, depletion, and amortization.

Timetable:

Action	Date	FR Cite
NPRM	01/31/00	65 FR 4585
NPRM Comment Period End	04/17/00	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: John W. Albert, Associate Chief Accountant, Securities and Exchange Commission
Phone: 202 942—4400
Fax: 202 942—9656

RIN: 3235–AH86

Securities and Exchange Commission (SEC) Long-Term Actions
Offices and Other Programs

4409. INTERNATIONAL ACCOUNTING STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 210; 17 CFR 249.220f

Legal Deadline: None

Abstract: The Commission is reviewing comments received in response to a concept release on whether the Commission should recognize accounting standards promulgated by the International Accounting Standards Committee for purposes of cross—border offerings and listings by foreign companies. The staff is considering drafting appropriate rule proposals and recommendations to the Commission.

Timetable:

Action	Date	FR Cite
ANPRM	02/23/00	65 FR 8896
ANPRM Comment Period End	05/23/00	
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Susan Koski—Grafer, Office of the Chief Accountant, Securities and Exchange Commission
Phone: 202 942—4400

RIN: 3235–AH65

4410. IMPLEMENTATION OF STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 7202, 7245, 7262; 15 USC 77s; 15 USC 78c(b), 78d—3, 78m, 78w; 15 USC 80a—37, 80a—38; 15 USC 80b—11

CFR Citation: 17 CFR 205

Legal Deadline: Final, Statutory, January 26, 2003, Final.

Abstract: The Commission adopted a rule establishing standards of professional conduct for attorneys who appear and practice before the Commission on behalf of issuers in accordance with section 307 of the Sarbanes—Oxley Act 2002. The standards include a rule requiring an attorney to report evidence of a material violation of securities or breach of fiduciary duty or similar violation by the issuer up—the—ladder within the company to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors. The Commission is still considering the "noisy withdrawal" provisions of the original proposal under which attorneys would be required under certain circumstances to withdraw from representing an issuer and disclose that fact to the Commission. In the related proposing release, the Commission discusses that part of the original proposal and seeks comment on additional alternatives. Although the Commission has not yet determined the date for the next action in this rulemaking, placement in the Long—Term category does not necessarily mean that the Commission will not act within the next twelve months.

Timetable:

Action	Date	FR Cite
NPRM for Professional Standard Rules	12/02/02	67 FR 71670
NPRM Comment Period End	12/18/02	
NPRM for "Noisy Withdrawal" Rule	02/06/03	68 FR 6324
Final Action for Professional Standard Rules	02/06/03	68 FR 6296
NPRM for "Noisy Withdrawal" Rule Comment Period End	04/07/03	
Final Action for Professional Standard Rules Effective	08/05/03	
Final Action of "Noisy Withdrawal" Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Timothy N McGarey, Securities and Exchange Commission
Phone: 202 942—0835

RIN: 3235–AI72

Securities and Exchange Commission (SEC) Completed Actions
Offices and Other Programs

4411. RULES REGARDING IMPROPER INFLUENCE ON THE CONDUCT OF AUDITS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a et seq; 15 USC 80a—1 et seq

CFR Citation: 17 CFR 240

Legal Deadline: Final, Statutory, April 26, 2003, Final.

Abstract: The Commission adopted rules to prohibit officers and directors of an issuer, and persons acting under their direction, from taking any action to influence, coerce, manipulate, or mislead the auditor of the issuer's financial statements.

Timetable:

Action	Date	FR Cite
NPRM	10/24/02	67 FR 65325
NPRM Comment Period End	11/25/02	
Final Action	05/28/03	68 FR 31820
Final Action Effective	06/27/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Michael J. Kigin, Associate Chief Accountant, Securities and Exchange Commission
Phone: 202 942—4400

RIN: 3235–AI67

[FR Doc. 03–28000 Filed 12–19–03; 8:45 am]

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Monday,
December 22, 2003

Part LXIII

Surface Transportation Board

Semiannual Regulatory Agenda

SURFACE TRANSPORTATION BOARD (STB)

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Ch. X

[STB Ex Parte No. 536 (Sub-No. 15)]

Semiannual Regulatory Agenda

AGENCY: Surface Transportation Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Surface Transportation Board (the Board), in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of: (1) current and projected rulemakings; and (2) existing regulations being reviewed to determine whether to propose modifications through rulemaking. Listed below are the regulatory actions to be developed or reviewed during the next 12 months. Following each rule identified is a brief description of the rule, including its purpose and legal basis.

FOR FURTHER INFORMATION CONTACT: A contact person is identified for each of the rules listed below.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that, semiannually, each agency shall publish in the **Federal Register** a regulatory flexibility agenda, which shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

Accordingly, a list of proceedings appears below containing information about subject areas in which the Board is currently conducting rulemaking proceedings or may institute such proceedings in the near future. It also contains information about existing regulations being reviewed to determine whether to propose modifications through rulemaking.

The agenda represents the Board's best estimate of rules that will be considered over the next 12 months. However, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Board is publishing its fall 2003 regulatory flexibility agenda as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Unified Agenda is coordinated by the Office of Management and Budget (OMB), pursuant to Executive Order 12866. The Board is participating in the program voluntarily to assist OMB.

Decided: September 4, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

Surface Transportation Board—Long—Term Actions

Sequence Number	Title	Regulation Identification Number
4412	Small Rate Guidelines, STB Ex Parte No. 646	2140—AA70
4413	Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads, STB Ex Parte No. 647	2140—AA71
4414	Public Participation in Rail Abandonment Proceedings, STB Ex Parte No. 537 (Sub—No. 1)	2140—AA72

Surface Transportation Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
4415	Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights, STB Ex Parte No. 282 (Sub—No. 20)	2140—AA68
4416	Removal of Divisions of Revenue Regulations, STB Ex Parte No. 637 (Sub—No. 1)	2140—AA69

Surface Transportation Board (STB) Long-Term Actions

4412. • SMALL RATE GUIDELINES, STB EX PARTE NO. 646

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 10701(d)(3)

CFR Citation: 49 CFR 1109; 49 CFR 1114

Legal Deadline: None

Abstract: The Board is seeking comments to revise the Simplified Guidelines (Rate Guidelines—Non—Coal Proceedings, 1 STB 1004 (1996)) to provide small shippers meaningful access to regulatory relief in cases where a full stand—alone cost presentation is too costly.

Timetable:

Action	Date	FR Cite
Hearing	03/31/03	68 FR 15553
Notice	04/07/03	68 FR 16862
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: stb.dot.gov

URL For Public Comments: stb.dot.gov

Agency Contact: Beryl Gordon, Deputy Director, Office of Proceedings, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423—0001
Phone: 202 565—1616
TDD Phone: 800 877—8339
Fax: 202 565—9002
Email: gordonb@stb.dot.gov

RIN: 2140–AA70

4413. • CLASS EXEMPTION FOR EXPEDITED ABANDONMENT PROCEDURE FOR CLASS II AND CLASS III RAILROADS, STB EX PARTE NO. 647

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 10502; 49 USC 10903

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Surface Transportation Board will consider a proposal to create a Class exemption for Class II and Class III railroads from the prior approval abandonment requirements, and any other matters interested persons may raise about the abandonment process.

Timetable:

Action	Date	FR Cite
ANPRM	08/13/03	68 FR 48332
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: stb.dot.gov

URL For Public Comments: stb.dot.gov

Agency Contact: Joseph H. Dettmar, Deputy Director, Office of Proceedings, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423—0001
Phone: 202 565—1609
TDD Phone: 800 877—8339
Fax: 202 565—9002
Email: dettmarj@stb.dot.gov

RIN: 2140–AA71

4414. • PUBLIC PARTICIPATION IN RAIL ABANDONMENT PROCEEDINGS, STB EX PARTE NO. 537 (SUB—NO. 1)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 49 CFR 1152.20(a)(2)(xi)

Legal Deadline: None

Abstract: The Board is proposing to amend its regulations concerning the service of a notice of intent to abandon or discontinue rail service by removing an obsolete reference to a labor organization and making technical changes.

Timetable:

Action	Date	FR Cite
NPRM	09/02/03	68 FR 52168
NPRM Comment Period End	10/02/03	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information: stb.dot.gov

URL For Public Comments: stb.dot.gov

Agency Contact: John J. Sado, Assistant to the Director of the Office of Proceedings, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423
Phone: 202 565—1661
TDD Phone: 800—877—8339
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Email: sadoj@stb.dot.gov

RIN: 2140–AA72

Surface Transportation Board (STB) Completed Actions

4415. RAILROAD CONSOLIDATION PROCEDURES—EXEMPTION FOR TEMPORARY TRACKAGE RIGHTS, STB EX PARTE NO. 282 (SUB—NO. 20)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 11323 to 11325; 49 USC 10502

CFR Citation: 49 CFR 1180.2(d)(8); 49 CFR 1180.4(g)(2)(iii)

Legal Deadline: None

Abstract: The STB adopts a class exemption for trackage rights that, by their terms, are for overhead operations only and expire on a date certain, not to exceed one year from the effective date of the exemption.

Timetable:

Action	Date	FR Cite
NPRM	02/10/03	68 FR 6695
NPRM Comment Period End	03/12/03	
Final Action	05/23/03	68 FR 28139
Final Action Effective	06/22/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
stb.dot.gov

URL For Public Comments:
stb.dot.gov

Agency Contact: Joseph H. Dettmar, Deputy Director, Office of Proceedings, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423—0001
Phone: 202 565—1609
TDD Phone: 800 877—8339
Fax: 202 565—9002
Email: dettmarj@stb.dot.gov

RIN: 2140–AA68

4416. ● REMOVAL OF DIVISIONS OF REVENUE REGULATIONS, STB EX PARTE NO. 637 (SUB—NO. 1)

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 10705

CFR Citation: 49 CFR 1137.1

Legal Deadline: None

Abstract: The Board is removing its regulations concerning divisions of revenue proceedings because of changes in the statute and the infrequency of divisions of revenue complaints.

Timetable:

Action	Date	FR Cite
NPRM	05/06/03	68 FR 23947
NPRM Comment Period End	06/05/03	
Final Action	08/29/03	68 FR 51919
Final Action Effective	09/28/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

URL For More Information:
stb,dot.gov

URL For Public Comments:
stb.dot.gov

Agency Contact: John J. Sado, Assistant to the Director of the Office of Proceedings, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423
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RIN: 2140–AA69

[FR Doc. 03–24023 Filed 12–19–03; 8:45 am]

BILLING CODE 4915–00–S

A. INDEX TO ENTRIES THAT AGENCIES HAVE DESIGNATED FOR SECTION 610 REVIEW

Section 610(a) of the Regulatory Flexibility Act (5 U.S.C. 601) requires each agency to have a plan for the periodic review of its rules that have a significant economic impact on a substantial number of small entities. Each agency must publish annually in the **Federal Register** a list of the rules that it plans to review in the next year. Some agencies use the Unified Agenda to fulfill this requirement. Those agencies indicate such entries by appending "(Section 610 Review)" to the titles. Some agencies have also indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews.

The following index lists the regulatory actions for which agencies included this designation. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction in part II of this issue.

Seq. No.	Title
	USDA
23	Elimination of Chilling Time and Temperature Requirements for Ready-To-Cook Poultry **(Section 610 Review)**
222	Animal Welfare; Inspection, Licensing, and Procurement of Animals **(Section 610 Review)**
226	Bees and Related Articles **(Section 610 Review)**
227	Veterinary Diagnostic User Fees—5-Year Plan for Fees **(Section 610 Review)**
231	Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity **(Section 610 Review)**
237	Plant Pest Regulations; Update of Current Provisions **(Section 610 Review)**
245	Gypsy Moth; Interstate Movement of Regulated Articles **(Section 610 Review)**
247	Nursery Stock Regulations **(Completion of a Section 610 Review)**
337	Nutrition Labeling of Meat and Poultry Products **(Section 610 Review)**
368	Standards and Labeling Requirements for Mechanically Separated Species and Products in Which It Is Used **(Completion of a Section 610 Review)**
450	High Energy Cost Rural Community Grants **(Section 610 Review)**
	ED
34	Reauthorization of the Individuals With Disabilities Education Act **(Section 610 Review)**
	HHS
55	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P) **(Section 610 Review)**
979	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food (Part 110) **(Section 610 Review)**
1034	Investigational Use New Animal Drug Regulations **(Completion of a Section 610 Review)**
	DHS
1291	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements **(Section 610 Review)**
	DOJ
75	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review)**
76	Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review)**
1968	Commerce in Explosives (Including Explosives in the Fireworks Industry) **(Rulemaking Resulting From a Section 610 Review)**
	DOL
2068	Prohibited Transaction Exemption Procedures **(Section 610 Review)**
2102	Occupational Exposure to Ethylene Oxide **(Section 610 Review)**
2105	Excavations **(Section 610 Review)**
2106	Presence Sensing Device Initiation of Mechanical Power Presses **(Section 610 Review)**
	DOT
2213	Airworthiness Standards: Normal, Utility, Acrobatic and Commuter Category Airplanes **(Section 610 Review)**
2306	Transportation of Household Goods; Consumer Protection Regulations **(Rulemaking Resulting From a Section 610 Review)**
	EPA
3183	NESHAP: Perchlorethylene Dry Cleaning Facilities **(Section 610 Review)**
3397	Standards for Reformulated and Conventional Gasoline (Section 610 Review) **(Completion of a Section 610 Review)**
3398	Inspection/Maintenance Program Requirements **(Completion of a Section 610 Review)**
3409	Pesticide Worker Protection Rule (Section 610 Review) **(Section 610 Review)**
3429	Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities (Section 610 Review) **(Section 610 Review)**
3518	Sewage Sludge Round I **(Section 610 Review)**

Seq. No.	Title
	FCC
4037	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; CG Docket No. 02–278 **(Section 610 Review)**
4038	Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service); CG Docket No. 03–123 **(Section 610 Review)**
	FDIC
4173	Community Reinvestment Act Regulations **(Section 610 Review)**
	FRS
4225	Regulation: DD—Truth in Savings Act **(Section 610 Review)**
4231	Regulation: H—Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y—Bank Holding Companies and Change in Bank Control, Capital Appendices **(Section 610 Review)**
4239	Regulation: BB—Community Reinvestment (Docket Number: R–1112) **(Section 610 Review)**

B. INDEX TO ENTRIES FOR WHICH A REGULATORY FLEXIBILITY ANALYSIS IS REQUIRED

The Regulatory Flexibility Act (5 U.S.C. 601) requires that agencies publish regulatory agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for the Unified Agenda.

The following index lists the regulatory actions in this publication for which agencies believe that the Act may require a Regulatory Flexibility Analysis because the rule is likely to have such effects on small businesses, small governmental jurisdictions, or small organizations. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction in part II of this issue.

Businesses

Seq. No.	Title
	USDA
2	National Dairy Promotion and Research Program (DA–02–03)
3	Livestock Mandatory Reporting Program—Lamb Amendment (LS–01–08)
4	Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Fish, Perishable Agricultural Commodities, and Peanuts (LS–03–04)
6	Bovine Spongiform Encephalopathy: Minimal Risk Regions and Importation of Commodities
7	Foot-and-Mouth Disease; Payment of Indemnity
8	Agricultural Bioterrorism Protection Act of 2002; Possession, Use, and Transfer of Biological Agents and Toxins
22	Egg and Egg Products Inspection Regulations
24	Emergency Regulations To Prevent Meat Food and Meat Products That May Contain the BSE Agent From Entering Commerce
26	Performance Standards for Ready-To-Eat Meat and Poultry Products
27	Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products
152	Changes in Fees for Federal Grading and Certification of Livestock for Chicago Mercantile Exchange Futures Deliveries
153	Mango Promotion, Research, and Information Order (FV–01–707)
154	Quality Systems Verification Program (LS–02–10)
155	Exemption of Organic Producers From Research and Promotion/Marketing Order Assessment (PY–02–006 and FV–03–900–1)
157	Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading (PY–02–003)
158	Plant Variety Protection Services (ST–02–02)
159	Voluntary Federal Dairy Grading and Inspection Fees (DA–03–03)
162	Removal of Cottonseed Chemist Licensing Program and Amendments to Regulations Pertaining to Commodity Testing Laboratories (ST–02–03)
164	Good Guidance Practices for the National Organic Program (TM–03–03)
165	Revision of Regulations Governing the Inspection and Grading Service of Manufactured or Processed Dairy Products (DA–00–08)
168	Voluntary Federal Meat Grading and Certification Services (LS–02–06)
169	User Fees for 2003 Crop Cotton Classification Services (CN–02–006)
170	National Organic Program, Amendment to the National List of Allowed and Prohibited Substances
171	PACA: Coating or Battering Fruits and Vegetables Does Not Alter Their Character (FV–02–369)
173	National Organic Program: Amendments to the National List (2nd list)
220	Methyl Bromide; Authorization as Official Quarantine Use
223	Importation of Unmanufactured Wood Articles From Mexico
225	Phytosanitary Certificates for Imported Fruits and Vegetables
226	Bees and Related Articles **(Section 610 Review)**
229	Infectious Salmon Anemia; Payment of Indemnity
233	Importation of Solid Wood Packing Material; Adoption of International Standards
238	Importation of Fuji Variety Apples From the Republic of Korea
246	Importation of Unmanufactured Wood Articles; Solid Wood Packing Material
247	Nursery Stock Regulations **(Completion of a Section 610 Review)**
249	Low Pathogenic Avian Influenza; Payment of Indemnity
251	Agricultural Inspection and AI User Fees Along the U.S./Canada Border
257	National Flood Insurance Regulations
264	Guaranteed Single-Family Housing
296	Swine Packer Marketing Contracts
358	Ante-Mortem and Post-Mortem Inspection of Livestock and Poultry
359	Requirements for Disposition and Disposal of Inspected Raw Meat and Poultry Products
426	Affirmative Fair Housing Marketing Plan
427	Business and Industry Guaranteed Loan Program—Financing Cooperative Stock
	DOC
32	Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP)
493	Commercial Availability of Fabric and Yarn
497	Chemical Weapons Convention Regulations
514	Administration of State Log Exports Ban
562	Weakfish: Increase in Incidental Catch per Amendment 4

Businesses—Cont.

Seq. No.	Title
565	Amendment 4 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands
566	Regulatory Amendment To Require Mandatory Observer Coverage in the At-Sea Processing Sector of the Whiting Fishery
567	Adjustment of Management Program: Bottomfish Fisheries in the Hawaiian Islands
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4299	Control of Solid Material
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590	Revise Community Development Quota Program Administration and Allocation Regulations—BSAI FMP Amendment 71
678	Atlantic Large Whale 2002 Seasonal Area Management (SAM) Program
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60	Hospital Patients' Rights CoP—Standard Safety Compliance Committees (CMS–3120–P)
1103	Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships—Phase II (CMS–1810–FC)
1123	Hospital Conditions of Participation: Requirements For History and Physical Examinations; Authentication of Verbal Orders, Securing Medications and Post-Anesthesia Evaluations (CMS–3122–F)
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1291	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements **(Section 610 Review)**
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85	Rulemaking Relating to Notice Requirements for Continuation of Health Care Coverage
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3678	Nondiscrimination on the Basis of Sex in Federally Assisted Programs and Activities—Implementation of Title IX of the Education Amendments of 1972
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3935	FAR Case 1989–093, Implementation of the Anti-Lobbying Statute
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4033	Implementation of Section 255 and Section 251(a)(2) of the Telecommunications Act of 1996; Access to Telecommunications Services Equipment and Customer Premise Equipment for Persons With Disabilities;
4037	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; CG Docket No. 02–278 **(Section 610 Review)**
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C. INDEX TO ENTRIES THAT MAY AFFECT SMALL ENTITIES WHEN A REGULATORY FLEXIBILITY ANALYSIS IS NOT REQUIRED

The Regulatory Flexibility Act (5 U.S.C. 601) requires that agencies publish regulatory agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Some agencies have chosen to identify additional regulatory actions that may have some impact on small entities even though a Regulatory Flexibility Analysis may not be required.

The following index lists the regulatory actions in this publication for which agencies have chosen to indicate that some impact on small entities is likely even though a Regulatory Flexibility Analysis may not be required. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction in part II of this issue.

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577	Amendment 9 to the Fishery Management Plan.Amendment for the Pelagic Fisheries of the Western Pacific Region
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D. INDEX TO ENTRIES THAT MAY AFFECT GOVERNMENT LEVELS

Executive Order 12866 entitled "Regulatory Planning and Review" (October 4, 1993; 58 FR 51735) and the Unfunded Mandates Reform Act of 1995 (P.L. 104–4) direct agencies to assess the effects of Federal regulations on State, local, and tribal governments. In keeping with these efforts, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions have an effect on various levels of government. See also Index E for entries that may have "federalism implications" as defined in Executive Order 13132 entitled "Federalism" (August 4, 1999; 64 FR 43255).

The following index lists the regulatory actions in this publication that agencies believe may have effects on State, local, tribal, or Federal levels of government. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction in part II of this issue.

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4	Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Fish, Perishable Agricultural Commodities, and Peanuts (LS–03–04)
7	Foot-and-Mouth Disease; Payment of Indemnity
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11	Commodity Supplemental Food Program (CSFP): Plain Language, Program Accountability, and Program Flexibility
12	Food Stamp Program: Simplification and State Flexibility
13	FSP: High Performance Bonuses
14	FSP: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002
15	FSP: Employment and Training Program Provisions of the Farm Security and Rural Investment Act of 2002
16	Senior Farmers' Market Nutrition Program (SFMNP)
17	FSP: Discretionary Quality Control Provisions of Title IV of Public Law 107–171
18	Child and Adult Care Food Program: Improving Management and Program Integrity
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170	National Organic Program, Amendment to the National List of Allowed and Prohibited Substances
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315	National School Lunch Program (NSLP) Allowable Costs
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E. INDEX TO ENTRIES THAT MAY HAVE FEDERALISM IMPLICATIONS

Executive Order 13132 entitled "Federalism" (August 4, 1999; 64 FR 43255) directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." This term refers to actions "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." As part of this effort, agencies, other than independent regulatory agencies, include in their submissions for the Unified Agenda information on whether their regulatory actions have federalism implications.

The following index lists the regulatory actions in this publication that agencies believe may have federalism implications. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction in part II of this issue.

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Rules and Regulations

Federal Register
Vol. 68, No. 246
Tuesday, December 23, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 919 and 970

RIN 3206–AK30

Governmentwide Debarment and Suspension (Nonprocurement)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redesignate part 970 of title 5 of the Code of Federal Regulations as part 919. OPM intends to use part 970 in the near future as the location for new regulations issued jointly by the Department of Homeland Security and OPM, which will establish a new human resources management system within DHS.

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: David Cope, Debarring Official, Office of Inspector General, Office of Personnel Management, by telephone at (202) 606–2851, by fax at (202) 606–2153, or by e-mail at *debar@opm.gov.*

SUPPLEMENTARY INFORMATION: In determining the organization of regulatory parts in title 5 of the Code of Federal Regulations, OPM generally assigns part numbers so that they link to corresponding statutory sections of title 5, United States Code. For example, the leave statutes in 5 U.S.C. chapter 63 are regulated in 5 CFR part 630. As part of the Homeland Security Act of 2002 (Pub. L. 107–296, November 25, 2002), Congress added a new chapter 97 to title 5, United States Code. Section 9701 of chapter 97 provides OPM and the Department of Homeland Security (DHS) with authority to jointly issue regulations establishing a new human resources management system for DHS employees. OPM has determined that, consistent with its general approach in assigning regulatory part numbers, part 970 should be reserved for the joint DHS/OPM regulations issued under 5 U.S.C. 9701. OPM expects those regulations to be issued early in 2004.

Currently, OPM has existing regulations in part 970 that relate to a Governmentwide system for debarment and suspension of certain persons with respect to participation in transactions under Federal nonprocurement programs. With the issuance of this final rule, these debarment and suspension regulations will be relocated to part 919.

Because the redesignation of part 970 does not involve rulemaking, the redesignation changes are final and become effective immediately.

List of Subjects in 5 CFR Part 919

Administrative practice and procedure, Grant programs, Loan programs.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR chapter I as follows:

PART 970—[REDESIGNATED AS PART 919]

■ 1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 2455, Pub.L. 103–355, 108 Stat.3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

■ 2. Part 970 is redesignated as part 919.

[FR Doc. 03–31576 Filed 12–22–03; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–125–AD; Amendment 39–13387; AD 2003–25–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. This amendment continues to require the modification and installation, but adds new modifications of the bonding leads for certain airplanes. This amendment also changes the applicability of the existing AD. The actions specified by this AD are intended to prevent ignition sources and consequent fire/explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004. The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of January 27, 2004.

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 28, 2000 (65 FR 45513, July 24, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–14–15, amendment 39–11825 (65 FR 45513, July 24, 2000), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on September 9, 2003 (68 FR 53061). The action proposed to require modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. The action also adds new modifications of the bonding leads, for certain airplanes, and changes the applicability in the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. Two commenters have no objections or comments to the proposed AD.

Request To Cite Revised Service Information

Two commenters ask that the new requirements section of the proposed AD be changed to cite Revision 01, dated April 26, 2000; Revision 02, dated June 28, 2000; and Revision 03, dated October 3, 2000; of Airbus Service Bulletin A320–28–1077; as additional sources of service information to use for accomplishment of the specified actions. One commenter states that Revision 04, dated December 14, 2001 (cited in the proposed AD for accomplishment of certain new actions) specifies that no additional work is required on airplanes modified by Revision 01, 02, or 03.

The FAA agrees to add Revisions 01, 02, and 03 of the referenced service bulletin as additional sources of service information for accomplishment of the actions required by paragraph (b)(1) of this final rule. Those revisions are acceptable if accomplished before the effective date of this AD, as the changes are mainly editorial changes.

Change to Final Rule

In paragraph (c)(2) of the proposed AD, we specified that alternative methods of compliance (AMOC) approved previously for AD 2000–14–15, were not approved as AMOCs with this AD. We have changed paragraph (c)(2) to specify that AMOCs approved previously are approved as AMOCs with paragraph (a) of this AD. The AMOCs that have been issued are not authorizing changes per the original issue of the service bulletin; therefore, they meet the requirements specified in those paragraphs.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 227 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 2000–14–15 take between 20 and 100 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be between $295,100 and $1,475,500; or between $1,300 and $6,500 per airplane.

Should an operator be required to accomplish the actions specified in Airbus Service Bulletin A320–28–1077, Revision 01, 02, 03, 04, or 05, it takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of these new actions is estimated to be $130 per airplane.

Should an operator be required to accomplish the actions specified in Airbus Service Bulletin A320–28–1079, it takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of these new actions is estimated to be $390 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11825 (65 FR 45513, July 24, 2000), and by adding a new airworthiness directive (AD), amendment 39–13387 to read as follows:

2003–25–04 Airbus: Amendment 39–13387. Docket 2002–NM–125–AD. Supersedes AD 2000–14–15, Amendment 39–11825.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; excluding those on which Airbus Modifications 27150, 27955, and 27472 have been installed.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition sources and consequent fire/explosion in the fuel tank, accomplish the following:

Restatement of Requirements of AD 2000–14–15

Modification and Installation

(a) Within 36 months after August 28, 2000 (the effective date of AD 2000–14–15, amendment 39–11825), modify the fuel pipe couplings and install bonding leads in the specified locations of the fuel tank, per the Accomplishment Instructions of Airbus Service Bulletin A320–28–1077, dated July 9, 1999; Revision 01, dated April 26, 2000; Revision 02, dated June 28, 2000; Revision 03, dated October 3, 2000; Revision 04, dated December 14, 2001; or Revision 05, dated August 27, 2002. As of the effective date of this AD, only Revision 01, 02, 03, 04, or 05 may be used.

New Requirements of this AD

Modification and Installation

(b) Do the applicable actions required by paragraphs (b)(1) and (b)(2) of this AD at the times specified.

(1) For airplanes on which the actions required by paragraph (a) of this AD have been done per Airbus Service Bulletin A320–28–1077, dated July 9, 1999: Within 36 months after the effective date of this AD, install an additional bonding lead (including doing an electrical resistance check) by doing all the actions per paragraphs 3.B.(3) and 3.C. of the Accomplishment Instructions of Airbus Service Bulletin A320–28–1077, Revision 04, dated December 14, 2001; or Revision 05, dated August 27, 2002. Accomplishment of the actions before the effective date of this AD per Airbus Service Bulletin A320–28–1077, Revision 01, dated April 26, 2000; Revision 02, dated June 28, 2000; or Revision 03, dated October 3, 2000; is considered acceptable for compliance with the actions required by this paragraph.

(2) For airplanes on which an additional center fuel tank is installed, as described in Airbus Service Bulletin A320–28–1079, dated November 30, 1998: Within 20 months after the effective date of this AD, modify the fuel system of the additional center fuel tank (including an electrical resistance check) by doing all the actions per paragraphs 2.A. through 2.E. of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–14–15, amendment 39–11825, are considered to be approved as alternative methods of compliance with paragraph (a) of this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A320–28–1077, dated July 9, 1999; Airbus Service Bulletin A320–28–1077, Revision 01, dated April 26, 2000; Airbus Service Bulletin A320–28–1077, Revision 02, dated June 28, 2000; Airbus Service Bulletin A320–28–1077, Revision 03, dated October 3, 2000; Airbus Service Bulletin A320–28–1077, Revision 04, dated December 14, 2001; Airbus Service Bulletin A320–28–1077, Revision 05, dated August 27, 2002; and Airbus Service Bulletin A320–28–1079, dated November 30, 1998; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–28–1077, Revision 01, dated April 26, 2000; Airbus Service Bulletin A320–28–1077, Revision 02, dated June 28, 2000; Airbus Service Bulletin A320–28–1077, Revision 03, dated October 3, 2000; Airbus Service Bulletin A320–28–1077, Revision 04, dated December 14, 2001; Airbus Service Bulletin A320–28–1077, Revision 05, dated August 27, 2002; and Airbus Service Bulletin A320–28–1079, dated November 30, 1998; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A320–28–1077, dated July 9, 1999, was approved previously by the Director of the Federal Register as of August 28, 2000 (65 FR 45513, July 24, 2000).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–202(B), dated April 17, 2002.

Effective Date

(e) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington, on December 5, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31063 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–119–AD; Amendment 39–13392; AD 2003–25–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 Series Airplanes, Model A300 B4–600R Series Airplanes, Model A300 C4–605R Variant F Airplanes, and Model A300 F4–605R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B4–600 series airplanes, Model A300 B4–600R series airplanes, Model A300 C4–605R Variant F airplanes, and Model A300 F4–605R airplanes. This AD requires modification of certain components of the 115 Volts Alternating Current (VAC) supply wiring and of the fuel gauging system. This action is necessary to prevent short circuits between 115 VAC wiring and certain fuel system electrical wire runs with subsequent overheating of the cadensicon sensor thermistor or fuel level sensor, which could be great enough to ignite fuel vapors in the fuel tank and cause an explosion. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–600 series airplanes, Model A300 B4–600R series airplanes, Model A300 C4–605R Variant F airplanes, and Model A300 F4–605R airplanes, was published in the **Federal Register** on September 8, 2003 (68 FR 52862). That action proposed to require modification of certain components of the 115 Volts Alternating Current (VAC) supply wiring and of the fuel gauging system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. The commenter supports the proposed AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 29 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $8,938 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $757,610, or $10,823 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–09 Airbus: Amendment 39–13392. Docket 2002–NM–119–AD.

Applicability: Model A300 B4–600 series airplanes, Model A300 B4–600R series airplanes, Model A300 C4–605R Variant F airplanes, and Model A300 F4–605R airplanes; as listed in Airbus Service Bulletin A300–28–6066, dated November 8, 2000; or Airbus Service Bulletin A300–28–6070, Revision 01, dated March 22, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent short circuits between 115 Volts Alternating Current (VAC) wiring and certain fuel system electrical wire runs with subsequent overheating of the cadensicon sensor thermistor or fuel level sensor, which could be great enough to ignite fuel vapors in the fuel tank and cause an explosion, accomplish the following:

Modification

(a) Within 4,000 flight hours after the effective date of this AD, modify elements of the electrical wiring to separate the cadensicon wiring from the 115 VAC wiring, in accordance with Airbus Service Bulletin A300–28–6066, dated November 8, 2000.

(b) Within 4,000 flight hours after the effective date of this AD, modify elements of the electrical wiring to separate the 115 VAC supply wiring of the fuel gauging system, in accordance with Airbus Service Bulletin A300–28–6070, Revision 01, dated March 22, 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Service Bulletin A300–28–6066, dated November 8, 2000; and Airbus Service Bulletin A300–28–6070, Revision 01, dated March 22, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directives 2002–172(B) and 2002–171(B), both dated April 3, 2002.

Effective Date

(e) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington, on December 11, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31191 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–269–AD; Amendment 39–13395; AD 2003–25–12]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 900 EX and Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Falcon 900 EX and Mystere-Falcon 900 series airplanes. This action requires installing an attachment support assembly for the fire extinguishing piping in the baggage compartment. For certain airplanes this action also requires modifying the liner panel of the baggage compartment. The actions specified by this AD are intended to prevent distortion of the fire extinguishing discharge nozzle as a result of the nozzle not being secure, which could result in poor diffusion of the fire extinguishing agent in the event of a fire in the baggage compartment. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington

98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 900 EX and Mystere-Falcon 900 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 19, 2003 (68 FR 54866). The action proposed to require installing an attachment support assembly for the fire extinguishing piping in the baggage compartment. That action also proposed to require modification of the liner panel of the baggage compartment for certain airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the supplemental NPRM or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed in the supplemental NPRM.

Cost Impact

We estimate that 150 airplanes of U.S. registry are affected by this AD.

It takes about 3 work hours per airplane to install the support assembly, at an average labor rate of $65 per work hour. Required parts are provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $29,250, or $195 per airplane.

If required, the panel modification takes about 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed panel modification is estimated to be $260 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–12 Dassault Aviation: Amendment 39–13395. Docket 2001–NM–269–AD.

Applicability: The following airplanes, certificated in any category:

TABLE—APPLICABILITY

Model—	Excluding airplanes modified in accordance with Dassault Service Bulletin—	Which corresponds to Dassault Modification—
Mystere-Falcon 900 series airplanes	F900–279, dated June 7, 2001	M3368.
	or F900–279, Revision 1, dated May 15, 2002	M3368 and M874.
Falcon 900EX series airplanes	F900EX—142, dated June 7, 2001	F900EX M3368.

Compliance: Required as indicated, unless accomplished previously.

To prevent distortion of the fire extinguishing discharge nozzle as a result of the nozzle not being secure, which could result in poor diffusion of the fire extinguishing agent in the event of a fire in the baggage compartment, accomplish the following:

Installation

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever comes first, install an attachment support assembly for the fire extinguishing piping in the baggage compartment, in accordance with the following service information, as applicable:

(1) For Model Falcon 900 EX series airplanes: Paragraphs 2.A. through 2.C. of the Accomplishment Instructions of Dassault Service Bulletin F900EX–142, dated June 7, 2001.

(2) For Model Mystere-Falcon 900 series airplanes: Paragraphs 2.A. through 2.D., as applicable, of the Accomplishment Instructions of Dassault Service Bulletin F900–279, Revision 1, dated May 15, 2002. Paragraph 2.B. of this service bulletin includes a modification of the liner panel of the baggage compartment for airplanes having serial numbers 1 through 59 inclusive, with the nozzle directed downward.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Dassault Service Bulletin F900EX–142, dated June 7, 2001; and Dassault Service Bulletin F900–279, Revision 1, dated May 15, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directives 2001–192–034(B) R1 and 2002–261(B), both dated May 15, 2002.

Effective Date

(d) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington, on December 11, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31192 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–08–AD; Amendment 39–13396; AD 2003–25–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplanes, that requires a one-time inspection for damage of the power feeder cables and surrounding structure, and repair if necessary. For certain airplanes, this amendment requires fabricating and installing a power feeder support bracket assembly and clamps at station Y=595.000, left side. For certain other airplanes, this amendment requires installing two power feeder support brackets and clamps at station Y=606.000, left side. This action is necessary to prevent chafing of the external ground power feeder cables against the adjacent structure, which could result in arcing and fire. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 airplanes was published in the **Federal Register** on September 8, 2003 (68 FR 52870). That action proposed to require a one-time inspection for damage of the power feeder cables and surrounding structure, and repair if necessary. For certain airplanes, that action proposed to require fabricating and installing a power feeder support bracket assembly and clamps at station Y=595.000, left side. For certain other airplanes, that action proposed to require installing two power feeder support brackets and clamps at station Y=606.000, left side.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received. The commenter supports the proposal.

Conclusion

After careful review of the available data, including the comment noted above, we have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 59 airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 to 3 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Required parts will cost approximately $385 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $22,660 to 25,520, or $515 to $580 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–13 McDonnell Douglas: Amendment 39–13396. Docket 2002–NM–08–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the external ground power feeder cables against the adjacent structure, which could result in arcing and fire, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD: Perform a general visual inspection for damage of the power feeder cables and surrounding structure, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. If any damage is found, repair it before further flight in accordance with the service bulletin. Inspections and repairs done before the effective date of this AD in accordance with Revision 01 of the service bulletin, dated November 6, 2002, are also acceptable for compliance with the requirements of this paragraph.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Bracket Installation

(b) Within 6 months after the effective date of this AD: Perform the actions specified in paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. Accomplishment of the actions before the effective date of this AD in accordance with Revision 01 of the service bulletin, dated November 6, 2002, is also acceptable for compliance with the requirements of this paragraph.

(1) For Group 1 and Group 3 airplanes: Fabricate and install a new power feeder support bracket assembly and clamps at station Y=595.000, left side. Bracket fabrication and installation done before the effective date of this AD in accordance with the original issue of the service bulletin, dated October 18, 2001, is also acceptable for compliance with the requirements of paragraph (b)(1) of this AD.

(2) For Group 2 airplanes: Install 2 power feeder support brackets and clamps at station Y=606.000, left side.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington, on December 11, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31193 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–180–AD; Amendment 39–13394; AD 2003–25–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing airplane models, that requires a one-time inspection to identify all H–11 steel bolts installed in the latch fittings of the cargo doors, repetitive inspections for cracked or broken H–11 steel bolts, and follow-on and corrective actions if necessary. This amendment also requires eventual replacement of all H–11 steel bolts in the latch fittings of the cargo doors with Inconel bolts. This action is necessary to prevent broken bolts in the latch fittings, which could reduce the capability of the door latch to keep the door closed, and result in loss of a cargo door and consequent rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nick Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes was published in the **Federal Register** on August 27, 2003 (68 FR 51521). That action proposed to require a one-time inspection to identify all H–11 steel bolts installed in the latch fittings of the cargo doors, repetitive inspections for cracked or broken H–11 steel bolts, and follow-on and corrective actions if necessary. That action also proposed to require eventual replacement of all H–11 steel bolts in the latch fittings of the cargo doors with Inconel bolts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 566 airplanes of the affected design in the worldwide fleet. The FAA estimates that 179 airplanes of U.S. registry will be affected by this AD, that it will take between 2 and 8 work hours per airplane (depending on the airplane's configuration) to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $130 and $520 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–25–11 Boeing: Amendment 39–13394. Docket 2001–NM–180–AD.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes; line numbers 1 through 721 inclusive, 976, and 982; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent bolts from breaking in the latch fittings of the cargo doors, which could reduce the capability of the door latch to keep the door closed, and result in loss of a cargo door and consequent rapid depressurization of the airplane, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin" as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 747–53A2464, Revision 1, dated August 30, 2001.

(2) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

(3) Although the service bulletin specifies that the actions therein must be accomplished prior to or concurrently with the actions in Boeing Alert Service Bulletin 747–52A2167 and Boeing Service Bulletin 747–52–2197, this AD does not include such a requirement. AD 80–14–11, amendment 39–3831, already requires accomplishment of Boeing Alert Service Bulletin 747–52A2167, Revision 1, dated March 28, 1980.

(4) Inspections and replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–53A2464, dated March 15, 2001, are considered acceptable for compliance with this AD.

Initial Inspection

(b) Within 1 year after the effective date of this AD: Do a one-time detailed inspection to identify all H–11 steel bolts installed in the latch fittings of the main deck side cargo door, nose cargo door, and the forward and aft lower lobe cargo doors, as applicable. Do the inspection by checking the bolt part number stamped on the bolt head, or verifying the bolt is steel by using a magnet, per the service bulletin. If no H–11 steel bolt is found, no further action is required by this paragraph. If any H–11 steel bolt is found, do the requirements of paragraph (c) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Follow-On Inspections/Corrective Actions

(c) For any H–11 steel bolt found during any inspection required by paragraph (b) of this AD: Before further flight, do an ultrasonic inspection for cracked or broken bolts, or replace the H–11 steel bolt with an Inconel bolt, per the service bulletin. Replace any cracked or broken bolt with an Inconel bolt before further flight per the service bulletin. Repeat the ultrasonic inspection of remaining H–11 steel bolts in the latch fittings of the main deck side cargo door, nose cargo door, and the forward and aft lower lobe cargo doors, at intervals not to exceed 18 months until the terminating action required by paragraph (d) of this AD is done.

Terminating Action

(d) Within 6 years after the effective date of this AD: Replace, with Inconel bolts, all H–11 steel bolts in the latch fittings of the main deck side cargo door, nose cargo door, and the forward and aft lower lobe cargo doors, per the service bulletin. The procedures for this replacement include performing a detailed inspection of the bolt hole for corrosion; oversizing the bolt hole to remove any corrosion; installing a new bolt, nut, and washers; and applying sealant. Such replacement terminates the repetitive inspections required by paragraph (c) of this AD. If corrosion is found and oversizing the bolt hole within the limits specified in the service bulletin is not adequate to remove the corrosion, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Parts Installation

(e) As of the effective date of this AD: No person may install, on any airplane, an H-11 steel bolt in the latch fittings of the main deck side cargo door, nose cargo door, or the forward and aft lower lobe cargo doors.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–53A2464, Revision 1, dated August 30, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington, on December 11, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31195 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–163–AD; Amendment 39–13393; AD 2003–25–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires an inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment (CAC) area, and corrective actions if necessary. That AD also currently requires revising the wire connection stack up of certain cable terminals at the electrical power center bays in the CAC, and replacing certain terminal strips with new strips and removing applicable nameplates at electrical power center bays. This amendment requires additional actions for improving the terminal strips and revises the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the CAC. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–24–12, amendment 39–12019 (65 FR 75615, December 4, 2000), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the **Federal Register** on July 24, 2003 (68 FR 43695). For certain airplanes, the action proposed to require revising the wire connection stack up of the cable terminals at the electrical power center bays in the center accessory compartment (CAC), as applicable; doing a one-time general visual inspection of the surrounding structure and electrical cables for chafing or damage; replacing terminal strips; removing the applicable nameplate at the electrical power center bays 1, 2, and 3 in the CAC; and doing a general visual inspection of the surrounding structure and electrical cables for arcing damage. For certain other airplanes, the action also proposed to require relocating the terminal strip, and doing a general visual inspection of the surrounding structure and electrical cables for arcing damage. The action also proposed to revise the applicability of the existing AD to include additional airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 163 airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry will be affected by this AD.

The new actions that are required by this new AD will take approximately between 1 and 7 work hours per airplane (depending on airplane configuration) to accomplish, at an average labor rate of $65 per work hour. Required parts will cost approximately between $721 and $2,035 per airplane (depending on airplane configuration). Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be between $786 and $2,490 per airplane (depending on airplane configuration).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12019 (65 FR 75615, December 4, 2000), and by adding a new airworthiness directive (AD), amendment 39–13393, to read as follows:

2003–25–10 McDonnell Douglas: Amendment 39–13393. Docket 2001–NM–163–AD. Supersedes AD 2000–24–12, Amendment 39–12019.

Applicability: Model MD–11 and MD–11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the center accessory compartment (CAC), accomplish the following:

Revising Wire Connection Stack Up, Inspecting, Replacing Terminal Strips, Removing the Nameplate, and Relocating Terminal Strips; As Applicable

(a) For Groups 1 through 6 airplanes as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002: Within 12 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the service bulletin. Although the service bulletin references a reporting requirement, such reporting is not required by this AD.

(1) Revise the wire connection stack up of the cable terminals at the electrical power center bays 1, 2, and 3 in the CAC, as applicable, and do a one-time general visual inspection of the surrounding structure and electrical cables for chafing or damage.

Note: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Replace the terminal strips and remove the applicable nameplate at the electrical power center bays 1, 2, and 3 in the CAC, and do a general visual inspection of the surrounding structure and electrical cables for arcing damage.

(b) For Group 7 airplanes as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002: Within 12 months after the effective date of this AD, relocate the terminal strip, and do a general visual inspection of the surrounding structure and electrical cables for arcing damage, per the service bulletin. Although the service bulletin references a reporting requirement, such reporting is not required by this AD.

Corrective Action

(c) If any chafing or damage is detected during any general visual inspection required by this AD, before further flight, repair or replace the damaged or chafed component with new or serviceable components, per Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002; except if the type of structural material that has been affected is not covered in the Structural Repair Manual, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. In addition, although the service bulletin references a reporting requirement, such reporting is not required by this AD.

Credit for Earlier Service Bulletins

(d) Applicable actions specified in this AD accomplished before the effective date of this AD per McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000; or Revision 01, dated July 12, 2001, are acceptable for compliance with the applicable requirements of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(f) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington, on December 11, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31196 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–169–AD; Amendment 39–13400; AD 2003–11–15 R1]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–90–30 airplanes, that currently requires replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. The actions specified by that AD are intended to ensure that the lanyards on the pressure relief door have adequate strength. Lanyards of inadequate strength could allow the pressure relief door to detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the detached door striking and damaging the horizontal stabilizer, and consequent reduced controllability of the airplane. This amendment is prompted by the fact that a certain paragraph of the existing AD prohibits installation of certain part numbers of lanyards; the numbers listed in that paragraph correspond to new, improved lanyards that are acceptable for installation. This amendment will correct these part numbers to prohibit installation of suspect lanyards while allowing installation of the new, improved lanyards. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004.

The incorporation by reference of Boeing Service Bulletin MD90–78–048, dated February 15, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 9, 2003 (68 FR 33355, June 4, 2003).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); and Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Kolb, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5244; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2003–11–15, amendment 39–13174 (68 FR 33355, June 4, 2003), which is applicable to all McDonnell Douglas Model MD–90–30 airplanes, was published in the **Federal Register** on August 21, 2003 (68 FR 50491). The action proposed to continue to require replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. The action also proposed to prohibit installation of certain pressure relief door lanyards.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD. The changes in this action add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

It takes approximately 8 work hours per airplane to accomplish the actions currently required by AD 2003–11–15, at an average labor rate of $65 per work hour. Required parts are provided at no cost to the operator. Based on these figures, the cost impact of the actions currently required by AD 2003–11–15 is estimated to be $10,920, or $520 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–13174 (68 FR 33355, June 4, 2003), and by adding a new airworthiness directive (AD), amendment 39–13400, to read as follows:

2003–11–15 R1 McDonnell Douglas: Amendment 39–13400. Docket 2003–NM–169–AD. Revises AD 2003–11–15, Amendment 39–13174.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the lanyards on the pressure relief door for the thrust reverser have adequate strength so that the door will not detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the door striking and damaging the horizontal stabilizer, accomplish the following:

Replacement of Lanyards on the Thrust Reverser Pressure Relief Door

(a) Within 18 months after the effective date of the AD, replace the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and accomplish associated modifications, per the Accomplishment Instructions of Boeing Service Bulletin MD90–78–048, dated February 15, 2001. The associated modifications include removing the pressure relief door, modifying the pressure relief door (including replacing existing brackets with new brackets and re-identifying the door with a new part number), modifying the lower track beam (including removing terminals, replacing the aft quick-release pin with a new pin, and re-identifying the beam with a new part number), modifying the heat shield on the lanyard assembly attach lugs, and re-installing the pressure relief door.

Note 2: Boeing Service Bulletin MD90–78–048, dated February 15, 2001, refers to International Aero Engines Service Bulletin V2500–NAC–78–0184, dated February 16, 2001, for instructions on replacing the lanyards on the pressure relief door for the thrust reverser.

Parts Installation

(b) After the effective date of this AD, no person may install a lanyard having part number (S700M1392A170) or (S700M1392A161) on the pressure relief door for the thrust reverser on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin MD90–78–048, dated February 15, 2001. This incorporation by reference was approved previously by the Director of the Federal Register as of July 9, 2003 (68 FR 33355, June 4, 2003). Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31439 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–92–AD; Amendment 39–13399; AD 2003–26–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes Equipped With Certain Litton Air Data Inertial Reference Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes equipped with certain Litton air data inertial reference units (ADIRU). This AD requires modifying the shelf (floor panel) above ADIRU 3, and, for certain airplanes, modifying the polycarbonate guard that covers the ADIRUs; and the ladder located in the avionics compartment, as applicable. This action is necessary to prevent failure of ADIRU 3 during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA); Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes equipped with certain Litton air data inertial reference units (ADIRU) that was published in the **Federal Register** on October 8, 2003 (68 FR 58050). That action proposed to require modifying the shelf (floor panel) above ADIRU 3, and, for certain airplanes, modifying the polycarbonate guard which covers the ADIRUs, and the ladder located in the avionics compartment, as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $300 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $112,000, or $560 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–26–03 Airbus: Amendment 39–13399. Docket 2002-NM–92–AD.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; equipped with Litton air data inertial reference units (ADIRU) installed per Airbus Modification 24852, 25108, 25336, 26002, or 28218; except those airplanes on which Airbus Modification 30650 or 30872 has been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of ADIRU 3 during flight, which could result in loss of one source of critical attitude and airspeed data and reduce the ability of the flightcrew to control the airplane, accomplish the following:

Modification

(a) Within 2 years after the effective date of this AD: Do the modifications specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable, in accordance with paragraphs A. through D. of the Accomplishment Instructions of Airbus Service Bulletin A320–25–1248, dated February 16, 2001; as applicable.

(1) For all airplanes: Modify the shelf (floor panel) above ADIRU 3 by installing shims between the shelf and the webs of the shelf support structure.

(2) For airplanes with Airbus Modification 25900P3941 or Airbus Service Bulletin A320–25–1200 accomplished as of the effective date of this AD: Modify the polycarbonate guard (umbrella) protecting the ADIRUs by installing shims between the guard and the shelf support structure.

(3) For airplanes with Airbus Modification 23027P2852 or Airbus Service Bulletin A320–52–1038 accomplished as of the effective date of this AD: Modify the ladder located in the avionics compartment by machining the slot at the foot of the ladder to increase the depth by 0.236 inch.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Airbus Service Bulletin A320–25–1248, dated February 16, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–125(B), dated March 6, 2002.

Effective Date

(d) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31270 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–243–AD; Amendment 39–13397; AD 2003–26–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This action requires a

one-time general visual inspection to identify the material of the rudder assembly, and corrective actions, if necessary. For airplanes with a graphite assembly, this action requires repetitive general visual inspections of the flange bolts of the rudder front spar for any loose bolts, and corrective actions, if necessary. This action is necessary to detect and correct loose bolts common to the flange of the rudder front spar and main thrust hinge and actuator assembly, as well as the auxiliary actuator support fitting, which could cause the rudder actuator to separate from the rudder during certain flight conditions, resulting in loss of rudder control and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 2004.

Comments for inclusion in the Rules Docket must be received on or before February 23, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–243–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The manufacturer, Boeing, has advised the FAA that it received two reports of loose bolts common to the flange of the rudder front spar and main thrust hinge and actuator assembly, as well as auxiliary actuator support fitting, on Boeing Model 737 series airplanes. In the first case, no additional damage was reported. In the second case, the holes common to the flange of the rudder front spar had become elongated and were repaired using oversized bolts.

Boeing has notified us that it has received nine additional reports of loose flange bolts. In all of the reported cases (including the original two), the rudders had a graphite spar. The airplanes on which the loose flange bolts were found had between 7,246 and 45,312 total flight hours and between 7,846 and 35,362 total flight cycles. The cause of the loose flange bolts has not yet been determined.

Loose bolts common to the flange of the rudder front spar and main thrust hinge and actuator assembly, as well as the auxiliary actuator support fitting, could cause the rudder actuator to separate from the rudder during certain flight conditions. This condition, if not detected and corrected, could result in loss of rudder control and consequent loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–55A1087, dated October 2, 2003, which describes procedures for performing a one-time general visual inspection of the rudder assembly to determine if an aluminum/fiberglass rudder assembly, or, if a graphite rudder assembly, part number 65C27234–() or 65C25841–(), is installed; performing repetitive general visual inspections of the flange bolts (Stage 1); and corrective actions, if necessary. The corrective actions include retorqueing or replacing the flange bolts as necessary, and contacting Boeing for certain conditions.

The alert service bulletin also describes additional Stage 2 and Stage 3 repetitive flange bolt inspections for certain airplanes.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Interim Action

This is considered to be interim action. We are continuing to investigate the cause of the loose flange bolts. Once the cause and final action have been identified, we may consider further rulemaking. We are, however, currently considering further rulemaking to supersede this AD to require the Stage 2 and Stage 3 repetitive inspections described in the alert service bulletin. Should we determine that those inspections are necessary, the planned compliance time would allow enough time to provide notice and opportunity for prior public comment.

Differences Between This AD and the Alert Service Bulletin

Operators should note that Boeing Alert Service Bulletin 737–55A1087, dated October 2, 2003, specifies inspections in addition to those required by this AD. As stated above, this AD does not require the Stage 2 and Stage 3 repetitive inspections because the planned compliance time for those inspections would allow enough time to provide notice and opportunity for prior public comment.

Additionally, for any aluminum/fiberglass rudder assembly having an identification plate indicating a graphite assembly, or for any graphite rudder assembly having an identification plate indicating an aluminum assembly, the alert service bulletin specifies to contact Boeing for appropriate action. This AD requires operators to contact us, or a Boeing Company Designated Engineering Representative who has been authorized by us to make such findings.

Although the Work Instructions of the alert service bulletin recommend that operators report inspection findings of any loose flange bolt to the manufacturer, this AD does not require operators to submit those inspection findings.

Explanation of Compliance Time for One-time Inspection

Operators should note that the compliance time for accomplishment of the one-time inspection of the rudder assembly to identify the material of the rudder assembly and front spar and the initial Stage 1 repetitive flange bolt inspection required by this AD is 120 days after the effective date of this AD. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition, the significant impact on scheduling and cost for the large fleet of airplanes which must be inspected, and adequate time and availability of facilities for safe and accurate accomplishment of the inspection. In light of all of these factors, we find a 120-day compliance time for doing the flange bolt inspection to be warranted in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–243–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–26–01 Boeing: Amendment 39–13397. Docket 2003–NM–243–AD.

Applicability: All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct loose bolts common to the flange of the rudder front spar and main thrust hinge and actuator assembly, as well as the auxiliary actuator support fitting, which could cause the rudder actuator to separate from the rudder during certain flight conditions, resulting in loss of rudder control and consequent loss of control of the airplane; accomplish the following:

One-Time Inspection

(a) For Groups 1, 2 and 3 airplanes, as listed in Boeing Alert Service Bulletin 737–55A1087, dated October 2, 2003: Within 120 days after the effective date of this AD, perform a one-time general visual inspection of the rudder assembly to determine if an aluminum/fiberglass rudder assembly (Group 1 airplanes), or, if a graphite rudder assembly, part number 65C27234–() or 65C25841–() (Group 2 and Group 3 airplanes) is installed; per the Work Instructions of Boeing Alert Service Bulletin 737–55A1087, dated October 2, 2003.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) If an aluminum/fiberglass assembly is found: No further action is required by paragraph (c) of this AD.

Stage 1—Repetitive Flange Bolt Inspections

(c) If a graphite assembly is found: Within 120 days after the effective date of this AD, perform a general visual inspection of the flange bolts in the main thrust hinge and actuator assembly, as well as the auxiliary actuator support fitting to detect loose bolts, per "Stage 1—Repeat Flange Bolt Inspection" of the Work Instructions of Boeing Alert Service Bulletin 737–55A1087, dated October 2, 2003.

(1) If no loose flange bolt is found: Repeat the inspection required by paragraph (c) of this AD at intervals not to exceed 1,500 flight cycles or 2,000 flight hours, whichever occurs first.

(2) If any loose flange bolt is found: Before further flight, do the applicable corrective actions by accomplishing all actions specified in paragraphs 4. and 5. of "Stage 1—Repeat Flange Bolt Inspection" of the Work Instructions of the alert service bulletin. Thereafter, repeat the inspection required by paragraph (c) of this AD at intervals not to exceed 1,500 flight cycles or 2,000 flight hours, whichever occurs first.

(d) For any aluminum/fiberglass rudder assembly having an identification plate indicating a graphite assembly, or for any graphite rudder assembly having an identification plate indicating an aluminum assembly, and the alert service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, contact the Manager, Seattle Aircraft Certification Office (ACO), FAA; or a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Parts Installation

(e) As of the effective date of this AD, no person may install on any airplane a rudder assembly having part number 65C27234–() or 65C25841–(), unless it has been inspected per paragraph (c) of this AD.

Information Submission

(f) Although the service bulletin referenced in this AD specifies to submit inspection findings to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–55A1087, dated October 2, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on January 7, 2004.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31273 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–61–AD; Amendment 39–13398; AD 2003–26–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–113 and –114 Series Airplanes; and Model A320–111, –211, and –212 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A319–113 and –114 series airplanes; and Model A320–111, –211, and –212 series airplanes; that requires either a review of airplane maintenance or delivery records, or one-time inspection of the hydraulic actuators located in the pivot doors of both thrust reversers to identify the part number, and eventual replacement of certain actuators with modified or new actuators. This action is necessary to prevent jamming of a thrust reverser door during operation, or inadvertent deployment of a thrust reverser door in-flight, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 27, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 27, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A319–113 and –114 series airplanes; and Model A320–111, –211, and –212 series airplanes; was published in the **Federal Register** on October 2, 2003 (68 FR 56792). That action proposed to require either a review of airplane maintenance or delivery records, or one-time inspection of the hydraulic actuators located in the pivot doors of both thrust reversers to identify the part number, and eventual replacement of certain actuators with modified or new actuators.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $56,160, or $520 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–26–02 Airbus: Amendment 39–13398. Docket 2002–NM–61–AD.

Applicability: All Model A319–113 and –114 series airplanes; and Model A320–111, –211, and –212 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of a thrust reverser door during operation or inadvertent deployment of a thrust reverser door in-flight, which could result in reduced controllability of the airplane, accomplish the following:

Inspection and Follow-on Actions

(a) Within 500 airplane flight cycles after the effective date of this AD: Do a detailed inspection of the eight hydraulic actuators located in the pivot doors of the thrust reversers (one actuator per pivot door, four pivot doors per thrust reverser, two thrust reversers per airplane) to identify the part number (P/N) of each actuator, in accordance with Airbus Service Bulletin A320–78–1020, excluding Appendix 01, dated March 28, 2001. Instead of a detailed inspection of the hydraulic actuators, a review of airplane maintenance and delivery records is acceptable if the P/N of each actuator installed on the airplane can be positively determined from that review.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

(1) For any actuator having P/Ns D23090000–1, D23090000–2, D23090000–3, or D23090000–4: Prior to the accumulation of 20,000 total actuator flight cycles, or within 250 airplane flight cycles after accomplishment of the detailed inspection or airplane records review required by paragraph (a) of this AD, whichever occurs later, replace the actuator with a modified or new actuator having part number D23090000–5 or D23090000–6, in accordance with the service bulletin.

(2) For any actuator having P/N D23090000–5: Prior to the accumulation of 30,000 total actuator flight cycles, or within 250 airplane flight cycles after the detailed inspection or airplane records review required by paragraph (a) of this AD, whichever occurs later, replace the actuator with a modified or new actuator having P/N D23090000–6, in accordance with the service bulletin.

(3) For any actuator having P/N D23090000–6: No further action is required by this paragraph.

Note 2: Airbus Service Bulletin A320–78–1020 references Rohr CFM56–5A Service Bulletin RA32078–106, dated November 16, 2000, as an additional source of service information for modification of the actuators.

(b) Once all of the actuators located in the pivot doors of the thrust reversers have P/N D23090000–6, no further action is required by paragraph (a) of this AD.

(c) For operators that do not track actuator flight cycles, or do not have a means of obtaining information regarding actuator flight cycles, engine flight cycles must be used instead of actuator flight cycles.

Parts Installation

(d) As of the effective date of this AD, no person may install an actuator having P/N D23090000–1, D23090000–2, D23090000–3, or D23090000–4 on any airplane.

Submission of Inspection Results to Manufacturer Not Required

(e) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(g) The actions must be done in accordance with Airbus Service Bulletin A320–78–1020, excluding Appendix 01, dated March 28, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–361(B) R1, dated September 3, 2003.

Effective Date

(h) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31271 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 416 and 422

RIN 0960–AE92

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income; Collection of Overdue Program and Administrative Debts Using Administrative Wage Garnishment

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are modifying our regulations dealing with the collection of program overpayment debts that arise under titles II and XVI of the Social Security Act (the Act) and administrative debts owed to us. Specifically, we are making some changes and establishing new regulations on the use of administrative wage garnishment (AWG) to collect such debts when they are past due. AWG is a process whereby we order the debtor's employer to withhold and pay to us up to 15 percent of the debtor's disposable pay every payday until the debt is repaid. The employer is required by law to comply with our AWG order.

EFFECTIVE DATE: These final rules are effective on January 22, 2004.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet Web site for SSA (*i.e.*, Social Security Online): *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance

Specialist, Office of Regulations, Social Security Administration, Room 100, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: Section 31001(o)(1) of Pub. L. 104–134 amended Chapter 37, subchapter II, of title 31, United States Code, by adding section 3720D to permit Federal agencies to use AWG to recover past due debts. We are pursuing AWG to collect past due program overpayment debts incurred under title II and title XVI of the Act and past due administrative debts (see 20 CFR 422.306(a) for examples of administrative debts). The final regulations discussed below will implement 31 U.S.C. 3720D under the guidance provided by the Department of the Treasury at 31 CFR 285.11.

Explanation of Changes to Regulations

We are creating a new subpart E in part 422 of our regulations containing the rules we will use to collect both title II and title XVI program overpayments and administrative debts by AWG. Subpart E will include the following sections that explain the conditions for our use of AWG, the rights of the debtor and the responsibilities of the employer.

In § 422.401, we describe the scope of this subpart—our use of AWG under 31 U.S.C. 3720D to recover past due debts that you owe.

Section 422.402 contains definitions of several terms used in the new subpart, including:

- Paragraph (a), defining "administrative wage garnishment" as the process whereby we order your employer to withhold from your disposable pay and send the amount withheld to us;
- Paragraph (b), defining the term "debt" to mean any amount of money or property that we determine is owed to the United States government and that arises from a program that we administer or an activity that we perform;
- Paragraph (c), defining the term "disposable pay" to mean the amount equal to your total compensation from an employer (including, among other things, wages or salary, bonuses, commissions and vacation pay) after deduction of health insurance premiums and amounts withheld as required by law other than amounts withheld under court order.

Section 422.403 provides that, subject to certain exceptions and conditions, we will use AWG to collect any debt that is past due. We may use AWG concurrently with other practices, such as, tax refund offset and other administrative offset conducted by the Department of the Treasury and referral of information about the debt to consumer reporting agencies. See paragraph (a). We will not use AWG to collect a debt from salary or wages paid by the United States Government. If you have been separated involuntarily from employment, we will not use AWG against you until you have been re-employed continuously for at least 12 months. We will not use AWG to recover your debt while:

- Your title II disability benefits are stopped during the reentitlement period, under 20 CFR 404.1592a(a)(2) of this chapter.
- Your Medicare entitlement is continued because you are deemed to be entitled to title II disability benefits under section 226(b) of the Social Security Act, or
- You are participating in the Ticket to Work and Self-Sufficiency Program and your ticket is in use as described in 20 CFR 411.170 through 411.255. See paragraph (b).

In paragraphs (c) and (d) of § 422.403, we describe the conditions under which we may apply AWG to recover title II and title XVI program overpayment debts, respectively. We may apply AWG if all of the following conditions are met.

- You are not receiving benefits under the program under which the overpayment occurred.
- For an overpayment under title XVI, we are not collecting the debt by reducing your title II benefits.
- We have completed our billing sequence (*i.e.*, we have sent an overpayment notice, reminder notice and past-due notice) or we have terminated or suspended collection activity.
- We have no installment payment arrangement with you, or you failed to make payment under such an arrangement for two consecutive months.
- You have not requested that we waive collection of the overpayment, or you requested waiver but we determined that we would not waive collection.
- You have not requested reconsideration of the initial overpayment determination, or you requested reconsideration but we affirmed the initial determination in whole or in part.
- We cannot recover the overpayment by adjustment of benefits payable to someone other than you.

According to 31 U.S.C. 3720D(b), we must send you written notice at least 30 days prior to taking AWG action. We will send the notice at least 60 days before we will take AWG action. Section 422.405 describes the information we will include in that notice:

- The payment of your debt is past due;
- The nature and amount of your debt;
- Our intention to collect the debt by AWG;
- The amount that could be withheld from your disposable pay (the payment schedule) under AWG;
- You may inspect and copy our records about the debt;
- You may ask us to review the debt (*i.e.*, whether you owe the amount stated in the notice) or the payment schedule stated in the notice;
- You may request an installment payment plan.

The notice will also explain that at the expiration of 60 calendar days from the date of the notice we will order your employer to begin withholding from your disposable pay, unless within that 60-day period you pay us the full amount of the debt, request review of the debt or the payment schedule or request to arrange to pay us by installments. We will keep an electronic record of the notice, showing the date we mailed it and the amount of the debt.

Section 422.410 explains the actions we will take after we send the notice. We will not send an AWG order to your employer before the expiration of 60 calendar days from the date of the notice. If within that 60-day period you request that we review the debt (see § 422.425) or the payment schedule (see § 422.415) stated in the notice or request an installment payment arrangement, we will not take further action until we send you a written notice of our decision. If within that 60-day period you do not pay the full balance of the debt, request review, or request an installment payment arrangement, we may send the AWG order to your employer without further delay. If your request for review is late, we will still perform the review even though we may send the AWG order to your employer. However, if you had good cause for failing to request review of the debt or the payment schedule on time, we will treat your request as if we received it within the 60-day period and delay further action until we send you our decision. Paragraph (b) of § 422.410 describes the circumstances that show good cause for your failure and gives examples. If we arrange an installment payment plan with you after we send you the AWG notice and you fail to make the installment payments for two consecutive months, we may send your employer an AWG order without further delay.

As explained below in the discussion of PUBLIC COMMENTS, we revised paragraph (a)(3) of § 422.410 to ensure that the regulation is consistent with the regulation of the Department of the Treasury on suspending an AWG order pending our decision on a request for review. We also clarified the language of paragraph (b)(3) of that section regarding suspension of an AWG order when you have good cause for failing to request review on time.

Under 31 U.S.C. 3720D(b)(3) and (5) and (c), we must give you the opportunity to inspect and copy our records relating to the debt and the opportunity for a hearing on the existence and amount of the debt and the terms of the repayment schedule. We address these requirements in §§ 422.415, 422.420 and 422.425.

Section 422.415 provides that, upon your request, we will review the amount that your employer will withhold from your disposable pay (the payment schedule) and, when we find that withholding a particular amount would cause financial hardship, we will reduce that amount. We will not reduce the amount to be withheld every payday below $10.00. We will find financial hardship when evidence submitted by you shows that withholding a particular amount from your disposable pay will deprive you of income necessary to meet ordinary and necessary living expenses. Such expenses include, among other things, the cost of food, clothing, housing, medical care, insurance, and support of others for whom you are legally responsible. We will not reduce the amount the employer will withhold for financial hardship if the debt was caused by your intentional false statement or willful concealment of or failure to furnish material information.

Section 422.420 explains that we will arrange to make our records relating to the debt available for your inspection and copying if you notify us of your intention to inspect and copy them.

Section 422.425 describes the hearing process, the process by which we will review the debt at your request. Essentially, this is the same process that we employ to review the debt upon your request before we refer information to the Department of the Treasury for collection by administrative offset or refer information about the debt to consumer reporting agencies. See 20 CFR 422.317. To exercise your right to this review, you must request review and give us evidence that you do not owe all or part of the debt described in the notice or that we do not have the right to collect it. If you do not request review and give us the evidence before the expiration of 60 calendar days from the date of the notice, we may issue the AWG order without further delay. If you request review and give us the evidence within that 60-day period, or if you had good cause for failing to request review and give us the evidence on time, we will not take further AWG action unless and until we consider all of the evidence (including our own records) and send you our written findings that all or part of the debt is past due and we have the right to collect it. Our findings will include supporting rationale and will be our final decision on your request. If we find that you do not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send your employer an AWG order.

Section 422.430 states that, if we determine that you do not owe the debt or we do not have the right to collect it, we will cancel any AWG order that we issued and refund promptly any amount withheld from your pay under that order. Refunds will not bear interest unless Federal law or contract requires interest.

In § 422.435, we describe the AWG order, the factors that determine the amount your employer must withhold and the information that your employer must send us. Paragraph (a) describes the information that will appear in the AWG order (your name, address and social security number; the amount of the debt; information about the amount that the employer must withhold; and where to send the withheld amount). We will maintain an electronic record of the order showing the date that we mailed the order. See paragraph (b). We will require the employer to certify within 20 days of receipt of the AWG order your employment status and the amount of disposable pay available for withholding. See paragraph (c).

Paragraph (d) of § 422.435 explains how the employer will calculate the actual amount to withhold from your disposable pay on each payday and remit to us. This section implements 31 U.S.C. 3720D(b)(1) and 31 CFR 285.11(i). Usually, the amount to be withheld under the AWG order will be the lesser of the amount indicated in the order (up to 15% of disposable pay) or the amount by which disposable pay exceeds thirty times the minimum wage.

Paragraph (e) of § 422.435 discusses our rules that apply if your disposable pay is subject to more than one garnishment order. A withholding order for family support always has priority over our AWG order. Our AWG order has priority over other types of orders served after our AWG order unless Federal law provides otherwise. When your disposable pay is already subject to one or more withholding orders with higher or equal priority with our AWG order, the amount that your employer must withhold and remit to us will not be more than an amount calculated by subtracting the amount(s) withheld under the other withholding order(s) from 25% of your disposable pay. Under paragraph (f), we will have your employer withhold more than the amount calculated under these rules if you request in writing the higher rate of withholding. Moreover, as noted above, we will reduce the amount that your employer will withhold if we find under § 422.415(b) that withholding at that amount will cause you financial hardship.

In paragraphs (a) through (e) of § 422.440, we discuss the responsibilities of your employer under the AWG order. The rules require your employer to begin withholding the appropriate amount on the first payday following receipt of the AWG order, or on the first or second payday after such receipt if the employer received the AWG order within 10 days before the first payday. The rules require your employer to continue to withhold and promptly pay the withheld amount to us every payday until we have recovered the debt and any interest, penalties and administrative costs that we may charge you under applicable law. Your employer need not alter its normal pay and disbursement cycles. However, your employer cannot honor any allotment or assignment of pay by you (other than arrangements made to satisfy a family support judgement or order) to the extent that such assignment or allotment interferes with or prevents withholding under the AWG order.

In paragraph (f) of § 422.440, we explain that Federal law prohibits your employer from using an AWG order as the basis for firing, refusing to employ or disciplining you. You may file a civil action in Federal or State court against an employer who violates the prohibition. See 31 U.S.C. 3720D(e).

In § 422.445, we explain that we may file a civil action in Federal court against the employer for any amounts that it fails to withhold in compliance with our AWG order issued under proposed § 422.435, and the employer may also be liable for our attorney fees and other associated costs and damages. See 31 U.S.C. 3720D(f). We will not bring a civil action against your employer until we terminate collection action against you in accordance with applicable Federal standards, unless earlier filing is necessary to avoid the expiration of any applicable statute of limitations period. We will deem collection to be terminated if we receive no payment on the debt for one year.

Other Changes

We are amending 20 CFR 404.527 and 416.590 to mention that we may recover title II and title XVI overpayments, respectively, under the rules in subpart E of part 422.

We are adding to 20 CFR 404.903 a new paragraph (v) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title II of the Act. We are adding to 20 CFR 416.1403(a) a new paragraph (20) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title XVI of the Act. As a result of these two revisions, the administrative review procedures in 20 CFR part 404, subpart J, and part 416, subpart N, will not apply to the determination to use AWG. Moreover, that determination is not subject to judicial review under 42 U.S.C. 405(g) or 1383(c)(3).

In addition, we corrected an obsolete reference in 20 CFR 404.527(b)(1) to the provisions of the Federal Claims Collection Standards on termination and suspension of collection activity.

Public Comments

On November 15, 2002, we published proposed rules in the **Federal Register** at 67 FR 69164 and provided a 60-day period for interested parties to comment. We received comments from 5 organizations and 3 individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the issues raised by the commenters that are within the scope of the proposed rules.

Comment: Four organizations recommended that we provide an opportunity for an oral hearing when the individual requests review of the debt or the repayment schedule. These organizations claimed that § 422.425 is not consistent with the AWG statute and the implementing regulation of the Department of the Treasury at 31 CFR 285.11. One organization stated that our regulation overlooks the need for interactive discussion between SSA and the debtor when paper review is inadequate. Another mentioned that the oral hearing should be conducted by an administrative law judge.

Response: The statute on AWG requires that, before an agency issues a garnishment order to an individual's employer, the agency must provide the individual with an opportunity for a "hearing" on the existence and amount of the debt and the terms of the repayment schedule stated in the agency's notice of proposed garnishment. See 31 U.S.C. 3720D(b)(5) and (c). The statute does not describe the type of hearing that the agency must provide. This matter is addressed in the regulation of the Department of the Treasury established under the authority of 31 U.S.C. 3720D(h). The Treasury regulation on AWG states at 31 CFR 285.11(f)(2) that, when requested by the debtor, the agency "shall provide a hearing, which at the agency's option may be oral or written * * *" The agency must provide the debtor with "a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity." 31 CFR 285.11(f)(3)(i). When an oral hearing is not required, the agency must afford the debtor a "paper hearing" and "decide the issues in dispute based upon a review of the written record." 31 CFR 285.11(f)(3)(iii). Moreover, the Treasury regulation provides that "[n]othing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations." 31 CFR 285.11(b)(6).

Thus, the Treasury regulation leaves to the agency's judgement the decision whether the circumstances warrant providing the opportunity for an oral hearing before taking garnishment action. Also, that regulation does not require the agency to afford the debtor an oral hearing in connection with the AWG process regarding matters on which the opportunity for an oral hearing has previously been provided under other applicable laws and regulations. We believe that the process for review provided under § 422.425 of our AWG regulation combined with the process established in other SSA regulations for review of SSA's overpayment and waiver determinations fully complies with the requirements of the statute and Treasury regulations at 31 CFR 285.11.

Well before we would send the notice to a debtor of our intention to collect a program overpayment debt by AWG, we would have sent the debtor notice of the overpayment determination that explained the overpayment and offered the debtor the opportunity to appeal that determination, to request waiver of recovery of the overpayment, and to make arrangements to repay the debt. The administrative processes provided in 20 CFR part 404, subparts F and J, and 20 CFR part 416, subparts E and N, including the informal conference with an adjudicator and the oral hearing before an administrative law judge, are available at that time.

By the time that we would send the notice of intent to garnish, the issues on which the debtor has not had the opportunity to challenge the agency can be adequately resolved by documentary evidence. Examples of these issues are whether the overpayment balance stated in the notice is accurate (reflects all payments made by the debtor), whether collection of the overpayment was waived previously by SSA, and whether the debt was discharged by (or SSA must suspend collection efforts) an order of a bankruptcy court. Under § 422.425, we will conduct the review (hearing) by examining SSA records related to the debt and any evidence submitted by the individual. When the debtor requests review on time or has good cause for a late request, we will not order the debtor's employer to withhold from the debtor's disposable pay until we issue our decision.

Some of the commenters indicated that they had concerns about the underlying overpayment determinations and overpayment notices, and had concerns that the procedures provided in § 422.425 would not be adequate to ensure a meaningful opportunity for a hearing on these matters before we would send a garnishment order. We believe that the procedures provided in current regulations at 20 CFR parts 404 and 416 are adequate to resolve these matters. If the debtor indicates in responding to the notice of intent to garnish that he or she wants us to review the overpayment determination, we would invoke those procedures when consistent with those regulations (*e.g.*, when the debtor shows good cause for extending the time to request reconsideration, a hearing before an administrative law judge, or review by the Appeals Council on the overpayment determination). See 20 CFR 404.909, 404.911, 404.933(c), 404.968(b), 416.1409, 416.1411, 416.1433(c) and 416.1468(b). Moreover, if the debtor cannot show good cause for an extension of time to review the overpayment determination, other regulations allow us to reopen and revise that determination under certain conditions. See 20 CFR 404.987–404.996 and 416.1487–416.1494. We have concluded that these long-standing procedures adequately provide for the resolution of issues concerning the overpayment determination.

Finally, our procedures for implementing AWG would not preclude an individual from interactive discussions and exchange of information with SSA representatives about the overpayment, the garnishment process, or the options available to the individual to obtain an explanation or review of the debt, waiver of collection, etc. Like other notices that we issue regarding overpayments, the notice described in § 422.405 will contain standard language inviting the individual to contact SSA in writing, by telephone, or by visiting a local SSA office to ask questions or obtain further explanation of the debt. The notice will include telephone numbers and the address of the SSA field office located closest to the individual's address. Thus, the individual will have an opportunity for interactive discussion with SSA representatives. During that discussion, he or she may provide and receive explanations and information concerning the case. In conducting the review described in § 422.425, we will consider our records on the case and any information, explanations (oral or written) or documents furnished by the individual.

Comment: Three organizations said that our AWG notice to individuals should fully explain the right to request a reduction of the withholding based on financial hardship, and should clearly state that the request can be made at any time.

Response: We are committed to providing a full and clear written explanation of an individual's rights regarding AWG. The explanation recommended by the three organizations will appear in the notice to the debtors. Specifically, our notice informing individuals about garnishment will include an explanation of the right to request a reduction of the amount to be withheld from disposable pay based on financial hardship. Our notice will also explain that the individual can make this request at any time. If the individual shows us that the withholding schedule in question would cause financial hardship, we will lower the amount we would collect from that person's pay. We will find hardship if the withholding schedule would keep the individual from meeting the ordinary and necessary living expenses of the individual and his family.

Comment: Two organizations said that we should remain consistent with Treasury's regulations by providing a time limit for issuing our decision on the person's requests for review.

Response: Treasury's regulation, 31 CFR 285.11(f)(10), provides that an agency shall issue a written decision as soon as practicable, but no later than 60 days after the date on which a request for hearing was received by the agency. Further, the regulation provides that if the agency cannot issue the decision in that 60-day timeframe, then the agency may not issue a garnishment order (and must suspend an order that it issued) until the agency holds the hearing and renders its decision. We have revised § 422.410(a) to ensure that our policy is consistent with the Treasury regulation.

We will strive to issue a written decision on a person's request for review as soon as possible. In a case where a person requests review within the 60-day period from the date of the notice of our intent to garnish, we will not take further action to initiate garnishment until we send that person a written notice of our decision. If the person has good cause for requesting review after that 60-day period, we will not take further action, and we will suspend any AWG action already taken, until we send the decision notice. We revised § 422.410(a)(3) to provide that, if an individual requests review late without "good cause" and we do not make our decision on the request within 60 calendar days from the date that we received the request, we will suspend any AWG order already issued. AWG will not resume before we conduct the review and issue the notice of our decision.

Comment: One organization said we should make the following two changes to § 422.405 of the proposed regulations: (1) Provide that our written notice to individuals proposing garnishment will inform people they can request waiver; and (2) explain the differences between waiver and review. In addition, one organization said we should not initiate garnishment proceedings while the request for waiver is pending.

Response: We are not adopting the recommended changes to § 422.405. Our regulations on administrative wage garnishment implement 31 U.S.C. 3720D under the guidance of Treasury's regulation at 31 CFR 285.11. Neither of these provisions cover waiver of collection. We will, however, follow our usual practice and include detailed language describing the right to request waiver in our notice to the debtor about garnishment. We will also explain the difference between waiver and review of the debt in that same notice. While a waiver request is pending, we will not initiate garnishment. Effective on the date we receive a request, we will suspend any garnishment action that began before we received the request.

Comment: One organization stated that our decision to use AWG should be an initial determination subject to our administrative appeal process and further judicial appeal.

Response: Consistent with our regulations regarding the decision to use other practices (such as, reporting debts to consumer reporting agencies and collection through administrative offset against Federal payments) authorized by 31 U.S.C. chapter 37, we will not include the decision to use AWG among the actions listed as initial determinations in 20 CFR 404.902 and 416.1402. Those sections of our regulations contain lists of SSA determinations that affect the rights of individuals under the Social Security and Supplemental Security Income programs (among other things, entitlement to, eligibility for and amount of benefit payments). Initial determinations are subject to the administrative appeal process described in 20 CFR part 404, subpart J, and part 416, subpart N. When an individual exhausts the administrative remedies provided in those regulations, the individual may obtain further review in Federal court under sections 205(g) and 1631(c) of the Act. Because our decision to use AWG does not affect rights under these programs, it is not the type of determination described in 20 CFR 404.902 and 416.1402. Thus, in these final rules, we include the decision to use AWG among those decisions listed in 20 CFR 404.903 and 416.1403 that are not initial determinations.

We note that waiver of collection of an overpayment is a right granted by sections 204(b) and 1631(b)(1)(B) of the Act to individuals who meet the conditions prescribed in those laws. An individual notified under § 422.405 regarding AWG will have the opportunity to request waiver of collection of the overpayment before we will issue a garnishment order. An individual may request waiver of collection of the overpayment at any time. Our determination on a request for waiver is an initial determination subject to the appeal process described in subpart J of part 404 or subpart N of part 416. See 20 CFR 404.902(k) and 416.1402(c).

Comment: One organization stated that the 60-day period to submit documentary evidence will not be adequate for individuals to obtain necessary records in many cases. The organization recommended that SSA provide in § 422.425 for extension of time to obtain such evidence where the individual shows good cause.

Response: We are not changing the regulation to specifically provide for an extension of the 60-day period to submit documentary evidence. However, we will cover this matter in staff instructions on the procedures for conducting AWG. The regulation established by these final rules allows us, but does not require us, to issue the garnishment order immediately after the 60-day period expires if the individual does not give us the evidence within that period. See § 422.425(a). We will give an individual a reasonable amount of extra time to secure documentary evidence if we find that the 60-day period established in the regulation is inadequate in a particular case. The reasonable amount of extra time will depend on the individual's specific circumstances and the type of documentary evidence the individual is trying to obtain. In addition, if a person has good cause for requesting review of the debt after the 60-day period expires and also needs more time to obtain documentary evidence, we will allow that person a reasonable amount of time according to the circumstances of the case.

Comment: One organization commented that AWG should not be initiated while an individual is engaged in work activities with a Ticket to Work, or is in an extended period of eligibility. The organization expressed concern that the financial condition and long-term work prospects of such an individual are uncertain.

Response: We agree with the organization. We added paragraphs (b)(3), (4) and (5) to § 422.403 of the final regulations to provide that we will not apply AWG in the situations described in the comment. One of our strategic goals is to deliver high-quality, citizen-centered service. In pursuit of this goal, we are committed to encouraging and supporting the work activity of individuals with disabilities. To that end, our programs, including the Ticket to Work and Self-Sufficiency program, provide incentives and services to promote return to work. Also, title II disability beneficiaries can be provided an extended period of eligibility (the reentitlement period) and extended Medicare coverage while they attempt to work. Another of our strategic goals is to ensure superior stewardship of our programs and resources. One of the steps we are taking to achieve this goal is the improvement of debt management practices, and the implementation of AWG serves this objective. In pursuing both of these goals, we must find the proper balance between these activities and objectives.

Imposing AWG on individuals who are not receiving cash benefits during the reentitlement period because they are working, or during the period in which they are entitled to extended Medicare coverage following termination of their cash benefits due to work activity, or during the period in which they are participating in the Ticket to Work and Self-Sufficiency Program and have a ticket in use, could discourage them from continuing to work and, thus, could act counter to the purposes of the work incentive programs. The exclusion from AWG would be temporary if they continue to work at a substantial level. The possible negative effects on our work incentive programs would outweigh the benefits of any additional overpayment recovery that we might gain from imposing AWG on individuals during their early attempts to work.

Comment: One organization commented that we should deliver our notice of planned garnishment action in formats other than written notices for people who need special accommodations.

Response: We have a tradition of helping people who need special accommodations in their dealings with the Agency. This includes people with visual and hearing impairments, people with physical and mental disabilities and people who speak languages other than English. Depending upon the individual's needs, we will try to take special action to help the person. For example, we give all people applying for or receiving Social Security payments by reason of blindness the opportunity to choose how they want to receive SSA notices. Such people can elect to be notified by SSA in a telephone call, by certified mail and by first class mail. They can change their election at any time, and we will honor that change. At this time, however, due to a lack of contractor support for the production of Braille notices, we cannot offer that option.

In addition, our regulations on the use of AWG will provide some accommodation for people who have physical, mental, educational or linguistic limitations which prevent them from requesting review on time or from understanding the need to make a request on time. Section 422.410(b) provides that when a person has good cause for a late request, SSA will treat the request for review as if we received it on time; *i.e.*, we would not pursue garnishment (or we would stop it if it has begun) until we notify the person about our decision. In determining whether there is good cause for a late request we will take into consideration the person's physical, mental, educational or linguistic limitations.

Comment: One organization recommended that we include with our notices lists of the names and addresses of local legal aid organizations and other advocacy groups who could assist individuals who are subject to AWG.

Response: As required by law, we provide on notices of adverse determinations, covered by 20 CFR part 404, subpart J, and part 416, subpart N, information on the options for obtaining legal representation to assist individuals in their dealings with us. See sections 206(c) and 1631(d)(2)(B) of the Act and 20 CFR 404.1706 and 416.1506. We are not required by law to provide this information in our AWG notices.

When we send the initial notice of overpayment to an individual and also when we notify a person about an adverse determination regarding his or her benefits, we include the information about options available to the person to obtain legal representation or assistance. We inform the person that he can have a friend, lawyer or someone else help. We also tell the person that any local Social Security office can provide a list of groups that can help. In the notice of garnishment to the individual, we will include the address of the local Social Security office that services the person's area, as well as a toll-free telephone number the person can call with any questions. We believe that the information that the individual would receive in certain notices prior to receiving the notice about AWG, and the availability of the information about legal aid organizations and other advocacy groups in our local offices, are adequate to help a person obtain independent advice and assistance. Consequently, we do not plan to include names and addresses of local legal aid organizations and other advocacy groups in the notice of garnishment to individuals.

Comment: We received three comments from individuals. Two of the comments were not specific to the regulation and will therefore not be addressed. The third comment questioned why Federal employees are exempt from AWG under § 422.403(b)(1).

Response: Federal employees who owe debts to the Federal Government are subject to Federal salary offset under 5 U.S.C. 5514, rather than AWG under 31 U.S.C. 3720D. The regulation of the Department of the Treasury regarding AWG under 31 U.S.C. 3720D does not cover Federal salary offset. See 31 CFR § 285.11(b)(5). Thus, Federal salary offset is not covered under our regulations on AWG. However, we are developing a Federal salary offset program.

Regulatory Procedures

Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has reviewed these final rules in accordance with E.O. 12866, as amended by E.O. 13258.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Some entities, as employers of some individuals who owe debts to us, will be subjected to these final regulations and to the certification requirement in proposed § 422.435(c). However, any particular small employer is not likely to receive wage garnishment orders from us concerning a significant number of employees. Under § 422.435(c), employers of delinquent debtors must certify certain information about the debtor's status such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer receives withholding orders from us on several employees over the course of a year, the cost imposed on the employer to complete the certifications, withhold from disposable pay, and remit those amounts to us will not have a significant economic impact on that entity. Employers will not be required to vary their normal pay cycles to comply with a withholding order that is issued under these final rules.

Federalism

We have reviewed these final rules under the threshold criteria of E.O. 13132, "Federalism," and determined that they will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Although States and local governments, as employers of some individuals who owe debts to us, are subject to these final regulations and to the certification requirement in § 422.435(c), there will be a relatively small number of debtors who will meet the criteria for selection who are employed by the States and local governments. Any particular State or local government is not likely to receive AWG orders from us concerning a significant number of employees. Under § 422.435(c), States and local governments that employ delinquent debtors must certify certain information about the debtors' status such as the debtors' employment status and earnings. This information is contained in the States' or local governments' payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for a State or local government to complete the certification form. Even if a State or local government receives AWG orders from us on several employees over the course of a year, the cost imposed on the State or local government to complete the certifications, withhold from disposable pay, and remit those amounts to us will not have a significant economic impact on that entity. States or local governments are not required to vary their normal pay cycles to comply with AWG orders that will be issued under these final rules.

Paperwork Reduction Act

The final rules in new subpart E of part 422 contain information collection activities at §§ 422.415, 422.425 and 422.435. However, the activities are exempt as administrative actions under 44 U.S.C. 3518(c)(1)(B)(ii) from the clearance requirements of 44 U.S.C. 3507 as amended by section 2 of Pub. L. 104–13 (May 22, 1995), the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Blind, Disability benefits; Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: November 10, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending parts 404, 416 and 422 of Title 20 of the Code of Federal Regulations as follows:

PART 404—[AMENDED]

■ 1. The authority citation for subpart F of part 404 continues to read as follows:

Authority: Secs. 204, 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404, 405(a) and 902(a)); 31 U.S.C. 3720A.

■ 2. Paragraph (a), introductory text, of § 404.527 is revised and paragraph (b)(1) is amended by removing "4 CFR 104.2 or 104.3." at the end of the paragraph and adding in its place "31 CFR 903.2 or 903.3.".

The revised text reads as follows:

§ 404.527 Additional methods for recovery of title II benefit overpayments.

(a) *General.* In addition to the methods specified in §§ 404.502 and 404.520, an overpayment under title II of the Act is also subject to recovery under the rules in subparts D and E of part 422 of this chapter. Subpart D of part 422 of this chapter applies only under the following conditions:

* * * * *

■ 3. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

■ 4. Section 404.903 is amended by removing the word "and" at the end of paragraph (t), replacing the period at the end of paragraph (u) with "; and", and adding paragraph (v) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(v) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title II of the Social Security Act (*see* part 422, subpart E, of this chapter).

PART 416—[AMENDED]

■ 5. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

■ 6. Paragraph (a), introductory text, of § 416.590 is revised to read as follows:

§ 416.590 Are there additional methods for recovery of title XVI benefit overpayments?

(a) *General.* In addition to the methods specified in §§ 416.560, 416.570, 416.572 and 416.580, we may recover an overpayment under title XVI of the Act from you under the rules in subparts D and E of part 422 of this chapter. Subpart D of part 422 of this chapter applies only under the following conditions:

* * * * *

■ 7. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

■ 8. Section 416.1403 is amended by removing the word "and" at the end of paragraph (a)(18), replacing the period at the end of paragraph (a)(19) with "; and", and adding paragraph (a)(20) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(20) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title XVI of the Social Security Act (see part 422, subpart E, of this chapter).

PART 422—[AMENDED]

■ 9. Subpart E is added to read as follows:

Subpart E—Collection of Debts by Administrative Wage Garnishment

Sec.
422.401 What is the scope of this subpart?
422.402 What special definitions apply to this subpart?
422.403 When may we use administrative wage garnishment?
422.405 What notice will we send you about administrative wage garnishment?
422.410 What actions will we take after we send you the notice?
422.415 Will we reduce the amount that your employer must withhold from your pay when withholding that amount causes financial hardship?
422.420 May you inspect and copy our records related to the debt?
422.425 How will we conduct our review of the debt?
422.430 When will we refund amounts of your pay withheld by administrative wage garnishment?
422.435 What happens when we decide to send an administrative wage garnishment order to your employer?
422.440 What are your employer's responsibilities under an administrative wage garnishment order?
422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?

Subpart E—Collection of Debts by Administrative Wage Garnishment

Authority: Secs. 205(a), 702(a)(5) and 1631(d)(1) of the Social Security Act (42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1)) and 31 U.S.C. 3720D.

§ 422.401 What is the scope of this subpart?

This subpart describes the procedures relating to our use of administrative wage garnishment under 31 U.S.C. 3720D to recover past due debts that you owe.

§ 422.402 What special definitions apply to this subpart?

(a) *Administrative wage garnishment* is a process whereby we order your employer to withhold a certain amount from your disposable pay and send the withheld amount to us. The law requires your employer to comply with our garnishment order.

(b) *Debt* means any amount of money or property that we determine is owed to the United States and that arises from a program that we administer or an activity that we perform. These debts include program overpayments made under title II or title XVI of the Social Security Act and any other debt that meets the definition of "claim" or "debt" at 31 U.S.C. 3701(b).

(c) *Disposable pay* means that part of your total compensation (including, but not limited to, salary or wages, bonuses, commissions, and vacation pay) from your employer after deduction of health insurance premiums and amounts withheld as required by law. Amounts withheld as required by law include such things as Federal, State and local taxes but do not include amounts withheld under court order.

(d) *We, our,* or *us* means the Social Security Administration.

(e) *You* means an individual who owes a debt to the United States within the scope of this subpart.

§ 422.403 When may we use administrative wage garnishment?

(a) *General.* Subject to the exceptions described in paragraph (b) of this section and the conditions described in paragraphs (c) and (d) of this section, we may use administrative wage garnishment to collect any debt that is past due. We may use administrative wage garnishment while we are taking other action regarding the debt, such as, using tax refund offset under §§ 404.520–404.526 and 416.580–416.586 of this chapter and taking action under subpart D of this part.

(b) *Exceptions.* (1) We will not use this subpart to collect a debt from salary or wages paid by the United States Government.

(2) If you have been separated involuntarily from employment, we will not order your employer to withhold amounts from your disposable pay until you have been reemployed continuously for at least 12 months. You have the burden of informing us about an involuntary separation from employment.

(3) We will not use this subpart to collect a debt while your disability benefits are stopped during the reentitlement period, under § 404.1592a(a)(2) of this chapter, because you are engaging in substantial gainful activity.

(4) We will not use this subpart to collect a debt while your Medicare entitlement is continued because you are deemed to be entitled to disability benefits under section 226(b) of the Social Security Act (42 U.S.C. 426(b)).

(5) We will not use this subpart to collect a debt if you have decided to participate in the Ticket to Work and Self-Sufficiency Program and your ticket is in use as described in §§ 411.170 through 411.225 of this chapter.

(c) *Overpayments under title II of the Social Security Act.* This subpart applies to overpayments under title II of the Social Security Act if all of the following conditions are met:

(1) You are not receiving title II benefits.

(2) We have completed our billing system sequence (*i.e.*, we have sent you an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity in accordance with applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 31 CFR 903.3.

(3) We have not made an installment payment arrangement with you or, if we have made such an arrangement, you have failed to make any payment for two consecutive months.

(4) You have not requested waiver pursuant to § 404.506 or § 404.522 of this chapter or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(5) You have not requested reconsideration of the initial overpayment determination pursuant to

§§ 404.907 and 404.909 of this chapter or, after a review conducted pursuant to § 404.913 of this chapter, we have affirmed all or part of the initial overpayment determination.

(6) We cannot recover your overpayment pursuant to § 404.502 of this chapter by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, an overpayment will be deemed to be unrecoverable from any individual who was living in a separate household from yours at the time of the overpayment and who did not receive the overpayment.

(d) *Overpayments under title XVI of the Social Security Act.* This subpart applies to overpayments under title XVI of the Social Security Act if all of the following conditions are met:

(1) You are not receiving benefits under title XVI of the Social Security Act.

(2) We are not collecting your title XVI overpayment by reducing title II benefits payable to you.

(3) We have completed our billing system sequence (*i.e.*, we have sent you an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity under applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 31 CFR 903.3.

(4) We have not made an installment payment arrangement with you or, if we have made such an arrangement, you have failed to make any payment for two consecutive months.

(5) You have not requested waiver pursuant to § 416.550 or § 416.582 of this chapter or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(6) You have not requested reconsideration of the initial overpayment determination pursuant to §§ 416.1407 and 416.1409 of this chapter or, after a review conducted pursuant to § 416.1413 of this chapter, we have affirmed all or part of the initial overpayment determination.

(7) We cannot recover your overpayment pursuant to § 416.570 of this chapter by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, if you are a member of an eligible couple that is legally separated and/or living apart, we will deem unrecoverable from the other person that part of your overpayment which he or she did not receive.

§ 422.405 What notice will we send you about administrative wage garnishment?

(a) *General.* Before we order your employer to collect a debt by deduction from your disposable pay, we will send you written notice of our intention to do so.

(b) *Contents of the notice.* The notice will contain the following information:

(1) We have determined that payment of the debt is past due;

(2) The nature and amount of the debt;

(3) Information about the amount that your employer could withhold from your disposable pay each payday (the payment schedule);

(4) No sooner than 60 calendar days after the date of the notice, we will order your employer to withhold the debt from your disposable pay unless, within that 60-day period, you pay the full amount of the debt or take either of the actions described in paragraphs (b)(6) or (7) of this section;

(5) You may inspect and copy our records about the debt (*see* § 422.420);

(6) You may request a review of the debt (*see* § 422.425) or the payment schedule stated in the notice (*see* § 422.415); and

(7) You may request to pay the debt by monthly installment payments to us.

(c) *Mailing address.* We will send the notice to the most current mailing address that we have for you in our records.

(d) *Electronic record of the notice.* We will keep an electronic record of the notice that shows the date we mailed the notice to you and the amount of your debt.

§ 422.410 What actions will we take after we send you the notice?

(a) *General.* (1) We will not send an administrative wage garnishment order to your employer before 60 calendar days elapse from the date of the notice described in § 422.405.

(2) If paragraph (b) of this section does not apply and you do not pay the debt in full or do not take either of the actions described in § 422.405(b)(6) or (7) within 60 calendar days from the date of the notice described in § 422.405, we may order your employer to withhold and send us part of your disposable pay each payday until your debt is paid.

(3) If you request review of the debt or the payment schedule after the end of the 60 calendar day period described in paragraph (a)(2) of this section and paragraph (b) of this section does not apply, we will conduct the review. However, we may send the administrative wage garnishment order to your employer without further delay. If we sent the administrative wage garnishment order to your employer and we do not make our decision on your request within 60 calendar days from the date that we received your request, we will tell your employer to stop withholding from your disposable pay. Withholding will not resume before we conduct the review and notify you of our decision.

(4) We may send an administrative wage garnishment order to your employer without further delay if:

(i) You request an installment payment plan after receiving the notice described in § 422.405, and

(ii) We arrange such a plan with you, and

(iii) You fail to make payments in accordance with that arrangement for two consecutive months.

(b) *Good cause for failing to request review on time.* If we decide that you had good cause for failing to request review within the 60-day period mentioned in paragraph (a)(2) of this section, we will treat your request for review as if we received it within that 60-day period.

(1) *Determining good cause.* In determining whether you had good cause, we will consider—

(i) Any circumstances that kept you from making the request on time;

(ii) Whether our action misled you;

(iii) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from making a request on time or from understanding the need to make a request on time.

(2) *Examples of good cause.* Examples of facts supporting good cause include, but are not limited to, the following.

(i) Your serious illness prevented you from contacting us yourself or through another person.

(ii) There was a death or serious illness in your family.

(iii) Fire or other accidental cause destroyed important records.

(iv) You did not receive the notice described in § 422.405.

(v) In good faith, you sent the request to another government agency within the 60-day period, and we received the request after the end of that period.

(3) *If we issued the administrative wage garnishment order.* If we determine that you had good cause under paragraph (b) of this section and we already had sent an administrative wage garnishment order to your employer, we will tell your employer to stop withholding from your disposable pay. Withholding will not resume until we conduct the review and notify you of our decision.

§ 422.415 Will we reduce the amount that your employer must withhold from your pay when withholding that amount causes financial hardship?

(a) *General.* Unless paragraph (d) of this section applies, we will reduce the amount that your employer must withhold from your pay when you request the reduction and we find financial hardship. In any event, we will not reduce the amount your employer must withhold each payday below $10. When we decide to reduce the amount that your employer withholds, we will give you and your employer written notice.

(1) You may ask us at any time to reduce the amount due to financial hardship.

(2) If you request review of the payment schedule stated in the notice described in § 422.405 within the 60-day period stated in the notice, we will not issue a garnishment order to your employer until we notify you of our decision.

(b) *Financial hardship.* We will find financial hardship when you show that withholding a particular amount from your pay would deprive you of income necessary to meet your ordinary and necessary living expenses. You must give us evidence of your financial resources and expenses.

(c) *Ordinary and necessary living expenses.* Ordinary and necessary living expenses include:

(1) Fixed expenses such as food, clothing, housing, utilities, maintenance, insurance, tax payments;

(2) Medical, hospitalization and similar expenses;

(3) Expenses for the support of others for whom you are legally responsible; and

(4) Other reasonable and necessary miscellaneous expenses which are part of your standard of living.

(d) *Fraud and willful concealment or failure to furnish information.* (1) We will not reduce the amount that your employer withholds from your disposable pay if your debt was caused by:

(i) Your intentional false statement, or

(ii) Your willful concealment of, or failure to furnish, material information.

(2) "Willful concealment" means an intentional, knowing and purposeful delay in providing, or failure to reveal, material information.

§ 422.420 May you inspect and copy our records related to the debt?

You may inspect and copy our records related to the debt. You must notify us of your intention to review our records. After you notify us, we will arrange with you the place and time the records will be available to you. At our discretion, we may send copies of the records to you.

§ 422.425 How will we conduct our review of the debt?

(a) *You must request review and present evidence.* If you receive a notice described in § 422.405, you have the right to have us review the debt. To exercise this right, you must request review and give us evidence that you do not owe all or part of the debt or that we do not have the right to collect it. If you do not request review and give us this evidence within 60 calendar days from the date of our notice, we may issue the garnishment order to your employer without further delay. If you request review of the debt and present evidence within that 60 calendar-day period, we will not send a garnishment order to your employer unless and until we consider all of the evidence and send you our findings that all or part of the debt is overdue and we have the right to collect it.

(b) *Review of the evidence.* If you request review of the debt, we will review our records related to the debt and any evidence that you present.

(c) *Our findings.* Following our review of all of the evidence, we will send you written findings, including the supporting rationale for the findings. Issuance of these findings will be our final action on your request for review. If we find that you do not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send a garnishment order to your employer.

§ 422.430 When will we refund amounts of your pay withheld by administrative wage garnishment?

If we find that you do not owe the debt or that we have no right to collect it, we will promptly refund to you any amount withheld from your disposable pay under this subpart that we received and cancel any administrative wage garnishment order that we issued. Refunds under this section will not bear interest unless Federal law or contract requires interest.

§ 422.435 What happens when we decide to send an administrative wage garnishment order to your employer?

(a) *The wage garnishment order.* The wage garnishment order that we send to your employer will contain only the information necessary for the employer to comply with the order. This information includes:

(1) Your name, address, and social security number,

(2) The amount of the debt,

(3) Information about the amount to be withheld, and

(4) Information about where to send the withheld amount.

(b) *Electronic record of the garnishment order.* We will keep an electronic record of the garnishment order that shows the date we mailed the order to your employer.

(c) *Employer certification.* Along with the garnishment order, we will send your employer a certification form to complete about your employment status and the amount of your disposable pay available for withholding. Your employer must complete the certification and return it to us within 20 days of receipt.

(d) *Amounts to be withheld from your disposable pay.* After receipt of the garnishment order issued under this section, your employer must begin withholding from your disposable pay each payday the lesser of:

(1) The amount indicated on the order (up to 15% of your disposable pay); or

(2) The amount by which your disposable pay exceeds thirty times the minimum wage as provided in 15 U.S.C. 1673(a)(2).

(e) *Multiple withholding orders.* If your disposable pay is subject to more than one withholding order, we apply the following rules to determine the amount that your employer will withhold from your disposable pay:

(1) Unless otherwise provided by Federal law or paragraph (e)(2) of this section, a garnishment order issued under this section has priority over other withholding orders served later in time.

(2) Withholding orders for family support have priority over garnishment orders issued under this section.

(3) If at the time we issue a garnishment order to your employer amounts are already being withheld from your pay under another withholding order, or if a withholding order for family support is served on your employer at any time, the amounts to be withheld under this section will be the lesser of:

(i) The amount calculated under paragraph (d) of this section; or

(ii) The amount calculated by subtracting the amount(s) withheld under the withholding order(s) with priority from 25% of your disposable pay.

(4) If you owe more than one debt to us, we may issue multiple garnishment orders. If we issue more than one garnishment order, the total amount to be withheld from your disposable pay under such orders will not exceed the amount set forth in paragraph (d) or (e)(3) of this section, as appropriate.

(f) *You may request that your employer withhold more.* If you request in writing that your employer withhold more than the amount determined under paragraphs (d) or (e) of this section, we will order your employer to withhold the amount that you request.

§ 422.440 What are your employer's responsibilities under an administrative wage garnishment order?

(a) *When withholding must begin.* Your employer must withhold the appropriate amount from your disposable pay on each payday beginning on the first payday after receiving the garnishment order issued under this section. If the first payday is within 10 days after your employer receives the order, then your employer must begin withholding on the first or second payday after your employer receives the order. Withholding must continue until we notify your employer to stop withholding.

(b) *Payment of amounts withheld.* Your employer must promptly pay to us all amounts withheld under this section.

(c) *Other assignments or allotments of pay.* Your employer cannot honor an assignment or allotment of your pay to the extent that it would interfere with or prevent withholding under this section, unless the assignment or allotment is made under a family support judgement or order.

(d) *Effect of withholding on employer pay and disbursement cycles.* Your employer will not be required to vary its normal pay and disbursement cycles in order to comply with the garnishment order.

(e) *When withholding ends.* When we have fully recovered the amounts you owe, including interest, penalties, and administrative costs that we charge you as allowed by law, we will tell your employer to stop withholding from your disposable pay. As an added precaution, we will review our debtors' accounts at least annually to ensure that withholding has been terminated for accounts paid in full.

(f) *Certain actions by an employer against you are prohibited.* Federal law prohibits an employer from using a garnishment order issued under this section as the basis for discharging you from employment, refusing to employ you, or taking disciplinary action against you. If your employer violates this prohibition, you may file a civil action against your employer in a Federal or State court of competent jurisdiction.

§ 422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?

(a) We may bring a civil action against your employer for any amount that the employer fails to withhold from your disposable pay in accordance with § 422.435(d), (e) and (f). Your employer may also be liable for attorney fees, costs of the lawsuit and (in the court's discretion) punitive damages.

(b) We will not file a civil action against your employer before we terminate collection action against you, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "terminate collection action" means that we have terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.3) or other applicable standards. In any event, we will consider that collection action has been terminated if we have not received any payments to satisfy the debt for a period of one year.

[FR Doc. 03–31493 Filed 12–22–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 15

[CIV 102F; AG Order No. 2697–2003]

RIN 1105–AA62

Certification and Decertification in Connection With Certain Suits Based Upon Acts or Omissions of Federal Employees and Other Persons

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: In cases where employees of the Federal government are sued for money damages based on alleged torts, if the Attorney General certifies that the employees (and certain non-employees) were acting within the scope of their employment at the time, the suit would be deemed an action against the United States under the Federal Tort Claims Act. This final rule conforms Department regulations to the provisions of the Federal Employees Liability Reform and Tort Compensation Act which expanded the tort protections for Federal employees (and certain non-employees) by finalizing a proposed rule the Department published on this subject on October 22, 2002.

DATES: This final rule is effective January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Phyllis J. Pyles, Director, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044.

SUPPLEMENTARY INFORMATION: The Department published a proposed rule on this subject on October 22, 2002, at 67 FR 64844. No comments were received before the comment period closed on December 23, 2002, and, accordingly, the Department is finalizing the proposed rule without change.

Background

In 1961 Congress passed the Federal Drivers Act, 75 Stat. 539, which immunized Federal employees from liability for money damages based on torts involving the operation of motor vehicles within the scope of their employment. In the event that a Federal employee was sued in such a case, the statute authorized the Attorney General to issue a certification that the employee was acting within the scope of his or her employment at the time of the incident out of which the suit arose, and the suit thereafter would be deemed a tort action against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671–2680.

In ensuing years, a number of similar certification statutes were enacted to protect medical and legal personnel employed by certain Federal agencies from tort liability for professional malpractice arising within the scope of their employment. *E.g.*, 10 U.S.C. 1054 (Department of Defense legal personnel); 10 U.S.C. 1089 (Department of Defense medical personnel); 22 U.S.C. 2509(j) (Peace Corps medical personnel); 22 U.S.C. 2702 (Department of State medical personnel); 38 U.S.C. 7316 (Department of Veterans Affairs medical personnel); 42 U.S.C. 233 (Public Health Service medical personnel); 42 U.S.C. 2458a (National Aeronautics and Space Administration medical personnel).

Most recently, the Federal Employees Liability Reform and Tort Compensation Act, 28 U.S.C. 2679(b)–(e), became law. This certification statute, which replaced the less comprehensive Federal Drivers Act, extended immunity from liability for money damages to Federal employees for all common law torts committed within the scope of their employment.

A number of certification statutes also have been enacted to protect certain non-employees from tort liability arising out of certain Federal programs. As part of the National Swine Flu Immunization Program of 1976, 90 Stat. 1113, Congress authorized the Attorney General to issue certifications in suits brought against certain agencies, organizations, and individuals which participated in the manufacture, distribution, and administration of the swine flu vaccine. Similar authority has been conferred on the Attorney General with respect to certain suits against fiduciaries of the Federal Retirement Thrift Savings Fund (5 U.S.C. 8477(e)(4)); atomic weapon testing contractors (42 U.S.C. 2212); and certain individuals enrolled as volunteers in National Volunteer Programs (42 U.S.C. 5055(f)).

Finally, several statutes, without expressly providing for certification, confer Federal employee status on certain persons who would not otherwise be encompassed within the Federal Tort Claims Act's definition of an "employee of the United States" as that term is defined by 28 U.S.C. 2671. *E.g.*, 5 U.S.C. 3102 (persons employed to assist handicapped federal employees in performing duties); 5 U.S.C. 3111 (unpaid student volunteers); 7 U.S.C. 2272 (volunteers to Department of Agriculture); 10 U.S.C. 1588 (volunteers to Armed Services); 16 U.S.C. 18i (volunteers to National Park Service); 16 U.S.C. 558c (volunteers to Forest Service); 22 U.S.C. 2504 (Peace Corps volunteers); 29 U.S.C. 1706 (Job Corps enrollees); 33 U.S.C. 569c (volunteers to Army Corps of Engineers); 42 U.S.C. 3788 (volunteers to Office of Justice Programs, Bureau of Justice Assistance, National Institute of Justice Assistance, and Bureau of Justice Statistics).

Part 15 has not been revised since the enactment of the Federal Employees Liability Reform and Tort Compensation Act. The regulations were initially promulgated after passage of the Federal Drivers Act, 26 FR 11420 (1961), and revised as additional certification statutes were enacted. *See* 40 FR 4910 (1975); 42 FR 15409 (1977); 44 FR 9379 (1979); 49 FR 44995 (1984). As last revised, Part 15 comprises three sections (15.1, 15.2, and 15.3) and an appendix. Each section in turn is subdivided into three subsections which govern suits subject to (1) the Federal Drivers Act and the malpractice certification statutes; (2) the swine flu statute; and (3) the atomic weapons testing statute.

This rule revises Part 15 to conform it to the provisions of the Federal Employees Liability Reform and Tort Compensation Act, and to delete references to specific certification statutes. Section 15.1 is new and sets forth definitions of the terms "appropriate Federal agency," "Federal employee," and "covered person." Sections 15.2, 15.3, and 15.4 cover the same subjects which were covered by the prior versions of sections 15.1, 15.2, and 15.3, respectively, except that rather than the former tripartite subdivision, each section is subdivided into two paragraphs, one of which governs suits against Federal employees, and the other which governs suits against covered persons. The appendix is removed.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to Federal employees and certain non-employees against whom civil actions are filed under circumstances in which the remedy against the United States under the Federal Tort Claims Act has been made exclusive of the remedy against such Federal employees and non-employees. The regulation requires Federal employees in those circumstances promptly to deliver the process and pleadings in such actions to their employing Federal agency, and the agency to send a report concerning the matter to the appropriate United States Attorney and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice. The regulation further requires covered non-employees in those circumstances promptly to deliver the process and pleadings in such actions to the appropriate Federal agency, and the agency to send a report concerning the matter to the appropriate United States Attorney and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice. The rule's economic impact is minimal.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 15

Authority delegations (Government agencies), Tort claims.

■ For the reasons stated in the preamble, the Department of Justice revises 28 CFR part 15 to read as follows:

PART 15—CERTIFICATION AND DECERTIFICATION IN CONNECTION WITH CERTAIN SUITS BASED UPON ACTS OR OMISSIONS OF FEDERAL EMPLOYEES AND OTHER PERSONS

Sec.
15.1 General provisions.
15.2 Expeditious delivery of process and pleadings.
15.3 Agency report.
15.4 Removal and defense of suits.

Authority: 5 U.S.C. 301, 8477(e)(4); 10 U.S.C. 1054, 1089; 22 U.S.C. 2702; 28 U.S.C. 509, 510, and 2679; 38 U.S.C. 7316; 42 U.S.C. 233, 2212, 2458a, and 5055(f); and the National Swine Flu Immunization Program of 1976, 90 Stat. 1113 (1976).

§ 15.1 General provisions.

(a) This part contains the regulations of the Department of Justice governing the application for and the issuance of statutory certifications and decertifications in connection with certain suits based upon the acts or omissions of Federal employees and certain other persons as to whom the remedy provided by the Federal Tort Claims Act, 28 U.S.C. 1346(b) and 2672, is made exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against such Federal employees and other persons.

(b) As used in this part:

(1) *Appropriate Federal agency* means the Federal agency most closely associated with the program out of which the claim or suit arose. When it cannot be ascertained which Federal agency is the most closely associated with the program out of which the claim or suit arose, the responsible Director of the Torts Branch, Civil Division, Department of Justice, shall be consulted and will thereafter designate the appropriate Federal agency.

(2) *Federal employee* means "employee of the United States" as that term is defined by 28 U.S.C. 2671.

(3) *Covered person* means any person other than a Federal employee or the estate of a Federal employee as to whom Congress has provided by statute that the remedy provided by 28 U.S.C. 1346(b) and 2672 is made exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against such person.

§ 15.2 Expeditious delivery of process and pleadings.

(a) Any Federal employee against whom a civil action or proceeding is brought for money damages for loss or damage to property, or personal injury or death, on account of any act or omission in the scope of the employee's office or employment with the Federal Government, shall promptly deliver all process and pleadings served on the employee, or an attested true copy thereof, to the employee's immediate superior or to whomever is designated by the head of the employee's department or agency to receive such papers. In addition, if prior to the employee's receipt of such process or pleadings, the employee receives information regarding the commencement of such a civil action or proceeding, he shall immediately so advise his superior or the designee. If the action is brought against the employee's estate this procedure shall apply to the employee's personal representative. The superior or designee shall provide the United States Attorney for the district embracing the place where the action or proceeding is brought and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice, information concerning the commencement of such action or proceeding, and copies of all process and pleadings.

(b) Any covered person against whom a civil action or proceeding is brought for money damages for loss or damage to property, or personal injury or death, on account of any act or omission, under circumstances in which Congress has provided by statute that the remedy provided by the Federal Tort Claims Act is made the exclusive remedy, shall promptly deliver to the appropriate Federal agency all process and pleadings served on the covered person, or an attested true copy thereof. In addition, if prior to the covered person's receipt of such process or pleadings, the covered person receives information regarding the commencement of such a civil action or proceeding, he shall immediately so advise the appropriate Federal agency. The appropriate Federal agency shall provide to the United States Attorney for the district embracing the place where the action or proceeding is brought, and the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice, information concerning the commencement of such action or proceeding, and copies of all process and pleadings.

§ 15.3 Agency report.

(a) The Federal employee's employing Federal agency shall submit a report to the United States Attorney for the district embracing the place where the civil action or proceeding is brought fully addressing whether the employee was acting within the scope of his office or employment with the Federal Government at the time of the incident out of which the suit arose, and a copy of the report shall be sent by the employing Federal agency to the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice.

(b) The appropriate Federal agency shall submit a report to the United States Attorney for the district embracing the place where the civil action or proceeding is brought fully addressing whether the person was acting as a covered person at the time of the incident out of which the suit arose, and a copy of the report shall be sent by the appropriate Federal agency to the responsible Branch Director of the Torts Branch, Civil Division, Department of Justice.

(c) A report under this section shall be submitted at the earliest possible date, or within such time as shall be fixed upon request by the United States Attorney or the responsible Branch Director of the Torts Branch.

§ 15.4 Removal and defense of suits.

(a) The United States Attorney for the district where the civil action or proceeding is brought, or any Director of the Torts Branch, Civil Division, Department of Justice, is authorized to make the statutory certification that the Federal employee was acting within the scope of his office or employment with the Federal Government at the time of the incident out of which the suit arose.

(b) The United States Attorney for the district where the civil action or proceeding is brought, or any Director of the Torts Branch, Civil Division, Department of Justice, is authorized to make the statutory certification that the covered person was acting at the time of the incident out of which the suit arose under circumstances in which Congress has provided by statute that the remedy provided by the Federal Tort Claims Act is made the exclusive remedy.

(c) A certification under this section may be withdrawn if a further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action. The making, withholding, or withdrawing of certifications, and the removal and defense of, or refusal to remove or defend, such civil actions or proceedings shall be subject to the instructions and supervision of the Assistant Attorney General in charge of the Civil Division or his or her designee.

Dated: December 16, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–31489 Filed 12–22–03; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR PART 27

[USCG–2003–15486]

RIN 1625–AA73

Civil Monetary Penalties—Adjustments for Inflation

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adjusting fines and other civil monetary penalties to reflect the impact of inflation. These adjustments are made in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: This final rule is effective January 22, 2004.

ADDRESSES: Material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–15486 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Robert Spears of the Office of Standards Evaluation and Development, Coast Guard, telephone 202–267–1099 or 202–267–6826. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Many fines or other civil monetary penalties (CMPs) for violating Federal laws and regulations were set by Congress long ago, and their deterrent value has weakened with time due to inflation. Congress recognizes this problem and has devised a mechanism to address it. It provides mandatory inflation adjustment formulas and requires Federal agencies to adjust their CMPs using those formulas at least once every four years, making further direct involvement by Congress unnecessary. This mechanism derives from the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, 104 Stat. 890, §§ 1–6, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321, § 31001(s)(1); see 28 U.S.C. 2461 note (collectively, "the statute").

The Coast Guard is amending 33 CFR 27.3 to update CMP adjustments first made in 1997. We expect to repeat the adjustment process in 2007 and quadrennially thereafter. We are also making two non-substantive changes, amending 33 CFR 27.1 to make the legislative authority for CMP adjustments clearer, and removing 33 CFR 27.2 which applied specifically to the 1997 adjustments and is no longer necessary.

Regulatory Procedure

This final rule is published without prior notice of proposed rulemaking or public comment. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for dispensing with notice and comment in this rulemaking. This rulemaking implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and with the exception of the non-substantive changes described above, that legislation mandates all our actions and allows us no discretion in implementation, so that prior notice and comment is unnecessary and contrary to the public interest.

Method of Calculation

The statute (see "Background and Purpose") requires inflation adjustments to be based on changes in the Consumer Price Index (CPI) from June of the calendar year in which the penalties were last set or adjusted, through June of the year prior to the adjustment. The statute also includes precise rules for rounding penalty increases. It limits the first adjustments of an agency's penalties to 10 percent of the penalty amounts. Our method of calculation takes into account the General Accounting Office (GAO) report "United States Coast Guard Implementation of the Inflation Adjustment Act," (GAO–03–221R, Nov. 1, 2002) and subsequent discussions with the GAO. Table A below sets forth each CMP provision which is being increased in 2003 and shows the intermediate calculations performed to arrive at the adjusted final maximum penalty contained in the last column.

BILLING CODE 4910–15–P

Table A - CMP Adjustment Calculations

U.S. Code Citation	Civil Monetary Penalty	Year penalty amount was last set	Maximum Penalty amount last set	CPI Inflation Factors	Percent needed to adjust to dollars in the year the penalty was set	Percentage increase in inflation needed to trigger next adjustment	Maximum Penalty Increase after P.L. 101-410 Rounding	Maximum Penalty Amount After Increase and P.L. 101-410 Rounding	Maximum Penalty Amount After Increase, P.L. 101-410 Rounding, and 10% Limit
14 U.S.C. 88(c)	Saving Life and Property	1997	$5,500	179.9/160.3	12.2%	7.7%	$1,000	$6,500	$-
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (first offense)	1992	3,000	179.9/140.2	28.3%	15.2%	1,000	4,000	3,300
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (subsequent offense)	1997	22,000	179.9/160.3	12.2%	[illegible]	5,000	27,000	-
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	1997	110	179.9/160.3	12.2%	45.5%	0	110	-
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's River	1997	220	179.9/160.3	12.2%	22.8%	0	220	-
33 U.S.C. 495	Bridges/Failure to Comply with Regulations	1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
33 U.S.C. 499	Bridges/Drawbridges	1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
33 U.S.C. 502	Bridges/Failure to Alter Bridge Obstruction Navigation	1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
33 U.S.C. 533	Bridges/Maintenance and Operation	1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
33 U.S.C. 1208(a)	Bridge to Bridge Communication	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
33 U.S.C. 1208(b)	Bridge to Bridge Communication	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
33 U.S.C. 1232	PWSA Regulations	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1236(b)	Vessel Navigation: Regattas or Marine Parades	1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
33 U.S.C. 1236(c)	Vessel Navigation: Regattas or Marine Parades	1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
33 U.S.C. 1236(d)	Vessel Navigation: Regattas or Marine Parades	1990	2,500	179.9/129.9	38.5%	18.2%	1,000	3,500	2,750
33 U.S.C. 1319(d)	Pollution Prevention	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1319(g)(2)(A)	Pollution Prevention (per violation)	1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
33 U.S.C. 1319(g)(2)(A)	Pollution Prevention (total under subparagraph)	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1319(g)(2)(B)	Pollution Prevention (per day of violation)	1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
33 U.S.C. 1319(g)(2)(B)	Pollution Prevention (total under subparagraph)	1997	137,500	179.9/160.3	12.2%	3.2%	20,000	157,500	-
33 U.S.C 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (per violation)	1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
33 U.S.C 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (total under paragraph)	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (per day of violation)	1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (total under paragraph)	1997	137,500	179.9/160.3	12.2%	3.2%	20,000	157,500	-
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation)	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit of hazsub discharged)	1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Discharges	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Discharges	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit of hazsub discharged)	1997	3,300	179.9/160.3	12.2%	15.2%	0	3,300	-
33 U.S.C. 1321(j)	Oil/Hazardous Substances: Prevention Regulations	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1322(j)	Marine Sanitation Devices	1997	2,200	179.9/160.3	12.2%	22.8%	0	2,200	-
33 U.S.C. 1322(j)	Marine Sanitation Devices	1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
33 U.S.C. 1517(a)	Deepwater Ports Regulations	1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
33 U.S.C. 1608(a)	International Regulations	1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
33 U.S.C. 1608(b)	International Regulations	1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
33 U.S.C. 1908(b)(1)	Pollution from Ships	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 1908(b)(2)	Pollution from Ships	1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
33 U.S.C. 2072(a)	Inland Navigation Rules	1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
33 U.S.C. 2072(b)	Inland Navigation Rules	1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
33 U.S.C. 2609(a)	Shore Protection	1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
33 U.S.C. 2609(b)	Shore Protection	1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-

Table A - CMP Adjustment Calculations

33 U.S.C. 2716a(a)	Oil Pollution Liability and Compensation		1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
46 U.S.C. App 1505(a)	Safe Containers for International Cargo		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. App 1805(c)(2)	Suspension of Passenger Service		1997	55,000	179.9/160.3	12.2%	4.2%	5,000	60,000	-
46 U.S.C. 2110(e)	Vessel Inspection or Examination Fees		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 2115	Alcohol and Dangerous Drug Testing		1996	5,000	179.9/163	10.4%	9.1%	1,000	6,000	5,500
46 U.S.C. 2302(a)	Negligent Operations: Recreational Vessels		2002	5,000	183.7/179.9	2.1%	10.0%	0	5,000	-
46 U.S.C. 2302(a)	Negligent operations: Other Vessels		2002	25,000	183.7/179.9	2.1%	10.0%	0	25,000	-
46 U.S.C. 2302(c)(1)	Negligent Operations		1996	5,000	179.9/163	10.4%	9.1%	1,000	6,000	5,500
46 U.S.C. 2306(a)(2)(B)(4)	Vessel Reporting Requirements: Owner		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master		1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 3102(c)(1)	Immersion suits		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 3302(i)(5)	Inspection Permit		1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 3318(a)	Vessel Inspection		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 3318 (g)	Vessel Inspection		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 3318(h)	Vessel Inspection		1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 3318(i)	Vessel Inspection		1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 3318(j)(1)	Vessel Inspection		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 3318(j)(1)	Vessel Inspection		1990	2,000	179.9/129.9	38.5%	22.8%	1,000	3,000	2,200
46 U.S.C. 3318(k)	Vessel Inspection		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 3318(l)	Vessel Inspection		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 3502(e)	List/Count of Passengers		1997	110	179.9/160.3	12.2%	45.5%	0	110	-
46 U.S.C. 3504(c)	Notification to Passengers		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 3504(c)	Notification to Passengers		1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 3506	Copies of Laws on Passenger Vessels		1997	220	179.9/160.3	12.2%	22.8%	0	220	-
46 U.S.C. 3718(a)(1)	Dangerous Cargo Carriage		1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
46 U.S.C. 4106	Uninspected Vessels		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 4311(b)	Recreational Vehicles		1997	110,000	179.9/160.3	12.2%	4.2%	10,000	120,000	-
46 U.S.C. 4311(b)	Recreational Vehicles		1997	2,200	179.9/160.3	12.2%	22.8%	0	2,200	-
46 U.S.C. 4311(c)	Recreational Vehicles		1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 4507	Vessel Inspection		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 4703	Abandonment of barges		1997	1,100	179.9/160.4	12.2%	45.5%	0	1,100	-
46 U.S.C. 5116(a)	Load Lines		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 5116(b)	Load Lines		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 5116(c)	Load Lines		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 6103(a)	Reporting Marine Casualties		1996	25,000	179.9/156.7	14.8%	9.1%	5,000	30,000	27,500
46 U.S.C. 6103(b)	Reporting Marine Casualties		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 8101(e)	Manning of Inspected Vessels		1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 8101(f)	Manning of Inspected Vessels		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 8101(g)	Manning of Inspected Vessels		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 8101(h)	Manning of Inspected Vessels		1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 8102(a)	Watchmen on Passenger Vessels		1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 8103(f)	Citizenship Requirements		1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 8104(i)	Watches on Vessels		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 8104(j)	Watches on Vessels		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 8302(e)	Staff Department on Vessels		1997	110	179.9/160.3	12.2%	45.5%	0	110	-
46 U.S.C. 8304(d)	Officer's Competency Certificates		1997	110	179.9/160.3	12.2%	45.5%	0	110	-
46 U.S.C. 8502(e)	Coastwise Pilotage		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 8502(f)	Coastwise Pilotage		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 8503	Federal Pilots		1997	27,500	179.9/160.3	12.2%	7.7%	5,000	32,500	-
46 U.S.C. 8701(d)	Merchant Mariners Documents		1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 8702(e)	Crew Requirements		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 8906	Small Vessel Manning		1996	25,000	179.9/156.7	14.8%	9.1%	5,000	30,000	27,500
46 U.S.C. 9308(a)	Pilotage: Great Lakes		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 9308(b)	Pilotage: Great Lakes		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 9308(c)	Pilotage: Great Lakes		1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 10104(b)	Failure to Report Sexual Offense		1997	5,500	179.9/160.3	12.2%	7.7%	1,000	6,500	-
46 U.S.C. 10307	Posting of Agreements		1997	110	179.9/160.3	12.2%	45.5%	0	110	-
46 U.S.C. 10308(b)	Foreign Engagements by Seamen		1997	110	179.9/160.3	12.2%	45.5%	0	110	-
46 U.S.C. 10309(b)	Replacement of Lost/Deserted Seamen		1997	220	179.9/160.3	12.2%	22.8%	0	220	-
46 U.S.C. 10310	Discharge of Seamen		1997	55	179.9/160.3	12.2%	7.7%	10	65	-
46 U.S.C. 10312(c)	Foreign/Intercoastal Voyages		1997	110	179.9/160.3	12.2%	45.5%	0	110	-
46 U.S.C. 10314(a)(2)	Pay Advances to Seamen		1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 10314(b)	Pay Advances to Seamen		1997	550	179.9/160.3	12.2%	7.7%	100	650	-

Table A - CMP Adjustment Calculations

46 U.S.C. 10315(c)	Allotment to Seamen	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 10321	Seamen Protection: General	1997	220	179.9/160.3	12.2%	22.8%	0	220	-
46 U.S.C. 10505(b)	Advances	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 10508(b)	Seamen Protection: General	1997	22	179.9/160.3	12.2%	22.8%	0	22	-
46 U.S.C. 10711	Effects of Deceased Seamen	1997	220	179.9/160.3	12.2%	22.8%	0	220	-
46 U.S.C. 10902(a)(2)	Complaints of Unfitness	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 10903(d)	Proceedings on Examination of Vessel	1997	110	179.9/160.3	12.2%	45.5%	0	110	-
46 U.S.C. 10907(b)	Permission to Make Complaint	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 11101(f)	Accommodations for Seamen	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 11102(b)	Medicine Chests on Vessels	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 11104(b)	Destitute Seamen	1997	110	179.9/160.3	12.2%	45.5%	0	110	-
46 U.S.C. 11105(c)	Wages on Discharge	1997	550	179.9/160.3	12.2%	7.7%	100	650	-
46 U.S.C. 11303(a)	Log Books	1997	220	179.9/160.3	12.2%	22.8%	0	220	-
46 U.S.C. 11303(b)	Log Books	1997	220	179.9/160.3	12.2%	22.8%	0	220	-
46 U.S.C. 11303(c)	Log Books	1997	165	179.9/160.3	12.2%	30.4%	0	165	-
46 U.S.C. 11506	Carrying of Sheath Knives	1997	55	179.9/160.3	12.2%	7.7%	10	65	-
46 U.S.C. 12122(a)	Identification of Vessels	1996	10,000	179.9/156.7	14.8%	22.8%	1,000	11,000	11,000
46 U.S.C. 12122(c)	Vessel Documentation	1998	100,000	179.9/163.0	10.4%	4.6%	10,000	110,000	110,000
46 U.S.C. 12309(b)	Numbering of Undocumented Vessels	1997	1,100	179.9/160.3	12.2%	45.5%	0	1,100	-
46 U.S.C. 12507(b)	Vessel Identification System	1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
46 U.S.C. 14701	Measurement of Vessels	1997	22,000	179.9/160.3	12.2%	9.3%	5,000	27,000	-
46 U.S.C. 14701	Registry/Recording: Tonnage	1997	22,000	179.9/160.3	12.2%	9.3%	5,000	27,000	-
46 U.S.C. 14702	Measurement/False Statements	1997	22,000	179.9/160.3	12.2%	9.3%	5,000	27,000	-
46 U.S.C. 31309	Instruments and Liens	1997	11,000	179.9/160.3	12.2%	22.8%	0	11,000	-
49 U.S.C. 5123(a)(1)*	Hazardous Materials-Related to Vessels	1997	27,500	179.9/160.3	12.2%	9.1%	5,000	32,500	-

*Note: 49 U.S.C. 5123 (a) (1) was formerly 49 U.S.C. App 1809 (a) (1)

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Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule concerns civil monetary penalties imposed for violating Federal law and regulations. It has no impact on law-abiding persons.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule concerns civil monetary penalties imposed for violating Federal law and regulations. It has no impact on law-abiding persons.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we will assist small entities in understanding this rule. If you are a small entity and the Coast Guard has assessed a civil monetary penalty against you, let your hearing officer know if you need help understanding the provisions of this rule or how it applies to you.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This rule affects only those persons who violate Federal law or regulations, and involves no discretion on the part of the Coast Guard.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, figure 2–1, paragraph (34)(a) of the Instruction categorically excludes this rule from further environmental documentation. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 27

Marine safety, Oil pollution, Penalties, Vessels, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 27 as follows:

PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. Revise the authority citation for part 27 to read as follows:

Authority: Secs. 1–6, Pub. L. 101–410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

■ 2. Revise § 27.1 to read as follows:

§ 27.1 Applicability.

This part implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, by periodically adjusting the maximum civil monetary penalty provided by statute for laws administered by the Coast Guard and assessable in either civil judicial or administrative proceedings.

§ 27.2 [Removed]

■ 3. Remove § 27.2.

■ 4. Revise § 27.3 to read as follows:

§ 27.3 Penalty Adjustment Table.

Table 1 identifies statutes administered by the Coast Guard that authorize a civil monetary penalty. The "adjusted maximum penalty" is the maximum penalty authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, as determined by the Coast Guard.

TABLE 1.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	Adjusted maximum penalty amount ($)*
14 U.S.C. 88(c)	Saving Life and Property	6,500
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (first offense)	3,300
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (subsequent offenses)	27,000
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	110
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's river	220
33 U.S.C. 495	Bridges/Failure to Comply with Regulations	1,100
33 U.S.C. 499	Bridges/Drawbridges	1,100
33 U.S.C. 502	Bridges/Failure to Alter Bridge Obstructing Navigation	1,100
33 U.S.C. 533	Bridges/Maintenance and Operation	1,100
33 U.S.C. 1208(a)	Bridge to Bridge Communication	650
33 U.S.C. 1208(b)	Bridge to Bridge Communication	650
33 U.S.C. 1232	PWSA Regulations	32,500
33 U.S.C. 1236(b)	Vessel Navigation: Regattas or Marine Parades	6,500
33 U.S.C. 1236(c)	Vessel Navigation: Regattas or Marine Parades	6,500
33 U.S.C. 1236(d)	Vessel Navigation: Regattas or Marine Parades	2,750
33 U.S.C. 1319(d)	Pollution Prevention	32,500
33 U.S.C. 1319(g)(2)(A)	Pollution Prevention (per violation)	11,000
33 U.S.C. 1319(g)(2)(A)	Pollution Prevention (total under subparagraph)	32,500
33 U.S.C. 1319(g)(2)(B)	Pollution Prevention (per day of violation)	11,000
33 U.S.C. 1319(g)(2)(B)	Pollution Prevention (total under subparagraph)	157,500
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (per violation)	11,000
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (total under paragraph)	32,500
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (per day of violation)	11,000
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (total under paragraph)	157,500
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation)	32,500

TABLE 1.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	Adjusted maximum penalty amount ($)*
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit of hazsub discharged).	1,100
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Discharges	32,500
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Discharges	32,500
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit of hazsub discharged)..	3,300
33 U.S.C. 1321(j)	Oil/Hazardous Substances: Prevention Regulations	32,500
33 U.S.C. 1322(j)	Marine Sanitation Devices	2,200
33 U.S.C. 1322(j)	Marine Sanitation Devices	6,500
33 U.S.C. 1517(a)	Deepwater Ports Regulations	11,000
33 U.S.C. 1608(a)	International Regulations	6,500
33 U.S.C. 1608(b)	International Regulations	6,500
33 U.S.C. 1908(b)(1)	Pollution from Ships	32,500
33 U.S.C. 1908(b)(2)	Pollution from Ships	6,500
33 U.S.C. 2072(a)	Inland Navigation Rules	6,500
33 U.S.C. 2072(b)	Inland Navigation Rules	6,500
33 U.S.C. 2609(a)	Shore Protection	32,500
33 U.S.C. 2609(b)	Shore Protection	11,000
33 U.S.C. 2716a(a)	Oil Pollution Liability and Compensation	32,500
46 U.S.C. 1505(a)	Safe Containers for International Cargo	6,500
46 U.S.C. App 1805(c)(2)	Suspension of passenger service	60,000
46 U.S.C. 2110(e)	Vessel inspection or examination fees	6,500
46 U.S.C. 2115	Alcohol and dangerous drug testing	5,500
46 U.S.C. 2302(a)	Negligent operations: recreational vessels	5,000
46 U.S.C. 2302(a)	Negligent operations: other vessels	25,000
46 U.S.C. 2302(c)(1)	Negligent operations	5,500
46 U.S.C. 2306(a)(2)(B)(4)	Vessel Reporting Requirements: Owner	6,500
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master	1,100
46 U.S.C. 3102(c)(1)	Immersion suits	6,500
46 U.S.C. 3302(i)(5)	Inspection Permit	1,100
46 U.S.C. 3318(a)	Vessel inspection	6,500
46 U.S.C. 3318(g)	Vessel inspection	6,500
46 U.S.C. 3318(h)	Vessel inspection	1,100
46 U.S.C. 3318(i)	Vessel inspection	1,100
46 U.S.C. 3318(j)(1)	Vessel inspection	11,000
46 U.S.C. 3318(j)(1)	Vessel inspection	2,200
46 U.S.C. 3318(k)	Vessel inspection	11,000
46 U.S.C. 3318(l)	Vessel inspection	6,500
46 U.S.C. 3502(e)	List/count of passengers	110
46 U.S.C. 3504(c)	Notification to passengers	11,000
46 U.S.C. 3504(c)	Notification to passengers	650
46 U.S.C. 3506	Copies of laws on passenger vessels	220
46 U.S.C. 3718(a)(1)	Dangerous cargo carriage	32,500
46 U.S.C. 4106	Uninspected vessels	6,500
46 U.S.C. 4311(b)	Recreational vessels (maximum for related series of violations)	120,000
46 U.S.C. 4311(b)	Recreational vessels	2,200
46 U.S.C. 4311(c)	Recreational vessels	1,100
46 U.S.C. 4507	Vessel inspection	6,500
46 U.S.C. 4703	Abandonment of barges	1,100
46 U.S.C. 5116(a)	Load lines	6,500
46 U.S.C. 5116(b)	Load lines	11,000
46 U.S.C. 5116(c)	Load lines	6,500
46 U.S.C. 6103(a)	Reporting marine casualties	27,500
46 U.S.C. 6103(b)	Reporting marine casualties	6,500
46 U.S.C. 8101(e)	Manning of inspected vessels	1,100
46 U.S.C. 8101(f)	Manning of inspected vessels	11,000
46 U.S.C. 8101(g)	Manning of inspected vessels	11,000
46 U.S.C. 8101(h)	Manning of inspected vessels	1,100
46 U.S.C. 8102(a)	Watchmen on passenger vessels	1,100
46 U.S.C. 8103(f)	Citizenship requirements	650
46 U.S.C. 8104(i)	Watches on vessels	11,000
46 U.S.C. 8104(j)	Watches on vessels	11,000
46 U.S.C. 8302(e)	Staff department on vessels	110
46 U.S.C. 8304(d)	Officer's competency certificates	110
46 U.S.C. 8502(e)	Coastwise Pilotage	11,000
46 U.S.C. 8502(f)	Coastwise Pilotage	11,000
46 U.S.C. 8503	Federal Pilots	32,500
46 U.S.C. 8701(d)	Merchant mariners documents	650
46 U.S.C. 8702(e)	Crew requirements	11,000
46 U.S.C. 8906	Small vessel manning	27,500

TABLE 1.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	Adjusted maximum penalty amount ($)*
46 U.S.C. 9308(a)	Pilotage: Great Lakes	11,000
46 U.S.C. 9308(b)	Pilotage: Great Lakes	11,000
46 U.S.C. 9308(c)	Pilotage: Great Lakes	11,000
46 U.S.C. 10104(b)	Failure to report sexual offense	6,500
46 U.S.C. 10307	Posting of agreements	110
46 U.S.C. 10308(b)	Foreign engagements by seamen	110
46 U.S.C. 10309(b)	Replacement of lost/deserted seamen	220
46 U.S.C. 10310	Discharge of seamen	65
46 U.S.C. 10312(c)	Foreign/intercoastal voyages	110
46 U.S.C. 10314(a)(2)	Pay advances to seamen	650
46 U.S.C. 10314(b)	Pay advances to seamen	650
46 U.S.C. 10315(c)	Allotment to seamen	650
46 U.S.C. 10321	Seamen protection: general	220
46 U.S.C. 10505(b)	Advances	650
46 U.S.C. 10508(b)	Seamen protection: general	22
46 U.S.C. 10711	Effects of deceased seamen	220
46 U.S.C. 10902(a)(2)	Complaints of unfitness	650
46 U.S.C. 10903(d)	Proceedings on examination of vessel	110
46 U.S.C. 10907(b)	Permission to make complaint	650
46 U.S.C. 11101(f)	Accommodations for seamen	650
46 U.S.C. 11102(b)	Medicine chests on vessels	650
46 U.S.C. 11104(b)	Destitute seamen	110
46 U.S.C. 11105(c)	Wages on discharge	650
46 U.S.C. 11303(a)	Log books	220
46 U.S.C. 11303(b)	Log books	220
46 U.S.C. 11303(c)	Log books	165
46 U.S.C. 11506	Carrying of sheath knives	65
46 U.S.C. 12122(a)	Identification of vessels	11,000
46 U.S.C. 12122(c)	Vessel Documentation	110,000
46 U.S.C. 12309(b)	Numbering of undocumented vessels	1,100
46 U.S.C. 12507(b)	Vessel identification system	11,000
46 U.S.C. 14701	Measurement of vessels	27,000
46 U.S.C. 14701	Registry/recording: tonnage	27,000
46 U.S.C. 14702	Measurement/false statements	27,000
46 U.S.C. 31309	Instruments and liens	11,000
49 U.S.C. 5123(a)(1)**	Hazardous materials—related to vessels	32,500

* The penalty amounts listed in this column include penalties that were adjusted in 1997 and 2003; some penalties that were adjusted in 1997 did not qualify for an adjustment this year according to the rounding rules. However, we decided to include the adjusted 1997 penalties that were not adjusted in 2003 to show the comprehensive list of civil penalties.

** 49 U.S.C. 5123(a)(1) was formerly 49 U.S.C. 1809(a)(1).

Dated: December 5, 2003.

L.L. Hereth,

Rear Admiral, Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–31491 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3710, 3730, 3810, 3820, 3830–3840, and 3850

[WO–620–1430–00–24 1A]

RIN 1004–AD31

Locating, Recording, and Maintaining Mining Claims or Sites; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects editorial and typographical errors in a final rule published in the **Federal Register** on October 24, 2003, regarding locating, recording, and maintaining mining claims or sites on public lands managed by the Bureau of Land Management (BLM).

EFFECTIVE DATE: November 24, 2003.

FOR FURTHER INFORMATION CONTACT: Ted Hudson, (202) 452–5042.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections reorganized the regulations on locating, filing, and maintaining mining claims or sites by consolidating provisions that were scattered in various portions of Groups 3700 and 3800 into 10 consecutive parts, placing the provisions in logical order, clarifying conflicting language, eliminating duplication, and removing obsolete provisions.

Need for Correction

As published, the final rule contained editorial and typographical errors in the preamble and regulatory text, some of which may prove to be misleading and need to be clarified and all of which need to be corrected.

■ In rule FR Doc. 03–26673 published on October 24, 2003 (68 FR 61046), make the following corrections.

■ 1. On page 61049, in the first column, correct the table under "Part 3835" by removing 10th row of the table beginning with "3835.17" and revising the 9th row of the table to read as follows:

3835.17	New; 3833.1–6(d); 3833.1–7(a)–(d); 3833.2–1

■ 2. On page 61051, in the first column, correct the first paragraph under the heading *Subpart C-Mining Law Minerals* by removing the number “3830.12(a)(2)” from the third line, from the eighth line, and from the 17th line, and adding in its place in each line the number “3830.12(a)(3)”.

■ 3. On page 61052, in the third column, correct the final paragraph that ends on page 61053 by:

■ a. Adding after “paragraph (b)” in the second line a comma and the phrase “which becomes paragraph (c) in the final rule”;

■ b. Removing from the fourth line from the bottom of the page the phrase “paragraph (b)(1)” and adding in its place the phrase “paragraph (c)(1)”; and

■ c. Removing from the third line from the bottom of the page the phrase “paragraph (b)(5)” and adding in its place the phrase “paragraph (c)(5)”.

■ 4. On page 61053, in the first column, correct the first paragraph that continues from page 61052 by removing from the third line the phrase “paragraph (b)(3)(iv)” and adding in its place the phrase “paragraph (c)(3)(iv)”.

■ 5. On page 61056, in the second column, correct the second and third paragraphs to read as follows:

Sections 3833.20 through 3833.22 describe when and how you may amend the record of a previously located mining claim or site. Sections 3833.30 through 3833.33 cover transfers of mining claims or sites.

Finally, sections 3833.90 through 3833.92 describe how to cure certain defects in your recording of mining claims or sites.

■ 6. On page 61057, in the third column, in the second to last line of the column, correct the number “3835.34” at the end of that line to read “3835.33.”

■ 7. On page 61058, in the first column, correct the heading for section 3835.10 to read *“How Do I request a waiver?”*

■ 8. On page 61058, in the second column, in the sixth line of the paragraph under the heading *Section 3835.14 How do I file for a small miner waiver for newly-recorded mining claims?*, correct the number “3835.34” near the end of that line to read “3835.33.”

■ 9. On page 61059, in the third column, in the first full paragraph of the column, correct the last sentence of the paragraph to read as follows: “We have amended paragraph (h), which is numbered (9) in the final rule, as suggested by the comment.”

■ 10. On page 61060, in the second column, in line 9 of the first full paragraph, correct the number “3836.16” near the middle of that line to read “3836.15.”

■ 11. On page 61061, in the first column, in the heading *Section 3737.11 When May I Acquire a Delinquent Co-Claimant's Interests In a Mining Claim Or Site?*, correct the number “3737.11” to read “3837.11.”

■ 12. On page 61061, at the bottom of the first column, in the heading *Section 3737.21 How do I Notify the Delinquent Co-Claimant That I Want To Acquire His or Her Interests?*, correct the number “3737.21” to read “3837.21.”

■ 13. On page 61061, at the top of the second column, in the heading *Section 3737.23 How do I Notify BLM That I Have Acquired a Delinquent Co-Claimant's Interests in a Mining Claim or Site?*, correct the number “3737.23” to read “3837.23.”

■ 14. On page 61063, in the second column, in the third full paragraph, under the heading *Author*, correct the word “proposed” at the end of the first line to read “final.”

§ 3830.21 [Corrected]

■ 15. On page 61067, in paragraph (f) of the table in section 3830.21, the correct the parenthetical cross-reference “(§ 3836.30)” to read “(§ 3836.20).”

■ 16. On page 61068, in the second column, correct the first sentence of paragraph 3830.93(a) to read as follows:

§ 3930.93 When are defects curable?

(a) If there is a defect in your compliance with a statutory requirement, the defect is incurable if the statute does not give the Secretary authority to permit exceptions (*see* §§ 3830.91 and 3833.91 of this chapter). * * *

* * * * *

§ 3832.42 [Amended]

■ 17. On page 61071, in the second column, in the last line of paragraph 3832.42(b)(4), correct the parenthetical cross-reference “(*see* § 3832.28(c) of this part)” to read “(*see* § 3832.12(a) and (b)).”

§ 3835.14 [Corrected]

■ 18. On page 61075, in the first column, in the last line of paragraph 3835.14(b), correct the number “3835.34” at the end of that line to read “3835.33.”

§ 3835.15 [Corrected]

■ 19. On page 61075, in the first column, in the third line of paragraph 3835.15(a), correct the number “3835.34” near the middle of that line to read “3835.33.”

§ 3835.31 [Corrected]

■ 20. On page 61076, in the third column, (§ 3835.31(c)) in the sixth line of the column, correct the number “3835.34” near the middle of that line to read “3835.33.”

Dated: December 18, 2003.

Ian Senio,

Acting Group Manager, Regulatory Affairs.

[FR Doc. 03–31551 Filed 12–22–03; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3874; MB Docket No. 03–23 RM–10633]

Radio Broadcasting Services; Conway and Vilonia, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking*, 68 FR 7964 (February 19, 2003), this document grants a petition for rulemaking filed by Creative Media, Inc. licensee of Station KASR(FM), proposing to substitute Channel 224C3 for Channel 224A at Conway, Arkansas, reallot Channel 224C3 from Conway to Vilonia, Arkansas as the community's first local aural transmission service, and modify the license for Station KASR(FM) to reflect the changes. Channel 224C3 is reallotted from Conway to Vilonia, Arkansas, at Creative's requested site 12.7 kilometers (7.9 miles) east of the community at coordinates 35–05–02 NL and 92–04–59 WL.

DATES: Effective January 23, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–23, adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 224A at Conway and by adding Vilonia, Channel 224C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31596 Filed 12–22–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284–2323–02; I.D. 121803A]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of commercial fishery

SUMMARY: NMFS announces that the summer flounder commercial quota available to New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 2003, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise New Jersey that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey.

DATES: Effective 1801 hours, December 22, 2003, through 2400 hours, December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326, e-mail *jason.blackburn@noaa.gov*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2003 calendar year was set equal to 13,980,028 lb (6,341,235 kg)(68 FR 60, January 2, 2003). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, resulting in a commercial quota of 2,338,158 lb (1,060,571 kg). The 2003 allocation was reduced to 2,329,010 lb (1,056,432 kg) due to research set-aside.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New Jersey has harvested its quota for 2003.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 1801 hours, December 22, 2003, further landings of summer flounder in New Jersey by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2003 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 1801 hours, December 22, 2003, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 18, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31602 Filed 12–18–03; 2:48 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 246
Tuesday, December 23, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[USCG–2003–16712]

Port Access Routes Study: In the Approaches to Narragansett Bay and Buzzards Bay, Cleveland Ledge to the Race, Narragansett Bay East Passage, and the Areas Offshore of Connecticut, Rhode Island, and Massachusetts

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Route Study (PARS) to evaluate the continued applicability of, and the need for modifications to, current vessel routing measures in the approaches to Narragansett Bay and Buzzards Bay, Cleveland Ledge to the Race, Narragansett Bay East Passage, and the areas offshore of Connecticut, Rhode Island, and Massachusetts. The goal of the study is to help reduce the risk of marine casualties and increase the efficiency of vessel traffic management in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before February 23, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–16712 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) *Fax:* (202) 493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call John Mauro, Project Officer, First Coast Guard District, telephone (617) 223–8355, email *jmauro@d1.uscg.mil*; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone (202) 267–0574, e-mail *Gdetweiler@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this study by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice of study (USCG–2003–16712), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Definitions

The following definitions are from the International Maritime Organization's (IMO's) "Ships' Routeing Guide" (except those marked by an asterisk) and should help you review this notice:

Area to be avoided or ATBA means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all vessels or certain classes of vessels.

Deep-water route means a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Inshore traffic zone means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where vessels must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of vessels in transit, which is often marked by centerline buoys.

Recommended track means a route which has been specifically examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

*Regulated Navigation Area or RNA** means a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout means a routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation zone or separation line means a zone or line separating the traffic lanes in which vessels are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of vessels proceeding in the same direction.

Traffic lane means an area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme or TSS means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of vessels through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Why are port access route studies required? Under the Ports and Waterways Safety Act (PWSA)(33 U.S.C. 1223(c)), the Commandant of the Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of port access routes before establishing or adjusting fairways or TSSs. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is to reconcile, to the extent practicable, the need for safe access routes with other reasonable uses of the waterway.

Were there previous port access route studies? The Approaches to Narragansett Bay, RI, and Buzzards Bay, MA, were last studied in 1979, and the final results were published in the **Federal Register** on January 7, 1982 (47 FR 879). The study concluded that two minor modifications to the existing TSS in the Approaches to Narragansett Bay, RI, and Buzzards Bay, MA, were needed. Both minor modifications were made and are in effect.

Why is a new port access route study necessary? Vessel size, traffic density, and channel depths and widths have changed since the 1979 study. Major changes on channel depth, channel width, and navigational aid alignment are currently underway in the Providence River and the port of Providence, RI. The report by the U.S. Army Corps of Engineers entitled "Waterborne Commerce of the United States" states that, from 1997 to 2001, the number of annual trips through the Cape Cod Canal decreased by 38 percent from 1,635 to 1,007; the number of trips to and from the Port of Providence, RI, decreased by 36 percent from 1,449 to 930; the number of trips to and from the Port of Fall River, MA, decreased by 18 percent from 380 to 313, and the number of trips to and from the Port of New Bedford/Fairhaven, MA, decreased by 16 percent from 2,665 to 2,242. Since 1944, a Corps of Engineers navigation project for the Cape Cod Canal has maintained a depth of 32 feet in the Cape Cod Canal. Maintenance dredging is currently underway in the Providence River, where shoaling has reduced the depths in the channel by as much as 10 to 12 feet in places. Dredging the navigation channel to a depth of 40 feet and a width of 600 feet will restore the channel to its full, congressionally authorized, project dimensions. Once the dredging is complete, vessel traffic to and from the Port of Providence and through the Cape Cod Canal should increase significantly.

What are the timeline, study area, and process of this PARS? The First Coast Guard District will conduct this PARS. The study will begin immediately and should take 6 to 12 months to complete.

The study area will encompass the approaches to Narragansett and Buzzards Bays, Cleveland Ledge to the Race, Narragansett Bay East Passage, and the areas offshore of Connecticut, Rhode Island, and Massachusetts that are used by commercial and public vessels transiting to and from Long Island Sound and the Cape Cod Canal.

As part of this study, we will consider previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and affects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

Possible Scope of the Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will identify any problems and appropriate solutions. The study may recommend that we—

1. Maintain the current vessel routing measures;
2. Establish a deep-water route;
3. Modify the existing TSS in the Approaches to Narragansett Bay and Buzzards Bay;
4. Designate a recommended route encompassing the routes typically used by merchant and naval vessels transiting the study area;
5. Create one or more additional precautionary areas;
6. Create one or more inshore traffic zones near either or both approaches;
7. Establish an area to be avoided (ATBA) in shallow areas where the risk of grounding is present;
8. Establish, disestablish, or modify anchorage grounds; and
9. Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water.

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer and follow the instructions under "Public Participation and Request for Comments" above.

1. What navigational hazards do vessels operating in the study area face? Please describe.
2. Are there strains on the current vessel routing system, such as increasing traffic density? If so, please describe.
3. Are modifications to existing vessel routing measures needed to address hazards and strains and to improve traffic management efficiency in the study area? If so, please describe.
4. What costs and benefits are associated with the potential study recommendations listed above? What measures do you think are most cost-effective?
5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

Dated: December 16, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03-31623 Filed 12-22-03; 8:45 am]

BILLING CODE 4910-15-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3868; MB Docket No. 03-246, RM-10830]

Radio Broadcasting Services; Ambrose and Ocilla, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments of the Commission's rules. The Commission requests comment on a petition filed by RTG Radio, LLC, licensee of Station WKAA(FM), Channel 249A, Ocilla, Georgia. Petitioner proposes to delete Channel 249A at Ocilla, Georgia, to allot Channel 250A at Ambrose, Georgia, and to modify the license of Station WKAA(FM) accordingly. Channel 250A can be allotted to Ambrose in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 km (8.3 miles) southeast of Ambrose. The coordinates for Channel 250A at Ambrose are 31-30-36 North Latitude and 82-54-48 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before January 30, 2004, and reply comments on or before February 17, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: David G. O'Neil, Elise Dang, Manatt, Phelps & Phillips, LLP, 1501 M Street, NW., Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418-7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MB Docket No. 03-246, adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Ambrose, Channel 250A and by removing Channel 249A at Ocilla.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-31608 Filed 12-22-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3891, Docket No. 02-369, RM-10611]

Radio Broadcasting Services; Quitaque, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Quitaque, Texas. The Audio Division had requested comment on a petition filed by Maurice Salsa, proposing the allotment of Channel 272A at Quitaque, Texas. *See* 67 FR 78402, December 24, 2002. Petitioner did not file comments supporting the requested allotment. This document dismisses the petition for failure to demonstrate a continuing interest in the requested allotment. The document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418-7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-369, adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-31607 Filed 12-22-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3872, Docket No. 01–261, RM–10271]

Radio Broadcasting Services; Early, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Early, Texas. The Audio Division had requested comment on a petition filed by Jeraldine Anderson, proposing the allotment of Channel 294A at Early, Texas. *See* 66 FR 52733, October 17, 2001. Petitioner filed comments supporting the requested allotment, but subsequently submitted a request for dismissal of her petition. This document dismisses the petition for failure to demonstrate a continuing interest in the requested allotment, based upon petitioner's request for dismissal. The document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 012–261, adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31606 Filed 12–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3870; MB Docket No. 03–245; RM–10826]

Radio Broadcasting Services; Durant, OK, and Whitewright, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by NM Licensing LLC, licensee of Station KLAK(FM), Channel 248C2, Durant, Oklahoma. The petition proposes to reallot KLAK(FM) from Durant, Oklahoma, to Whitewright, Texas, and to provide Whitewright with its first local aural transmission service. The coordinates for requested Channel 248C2 at Whitewright, Texas are 33–30–55 NL and 96–24–16 with a site restriction of 1.2 kilometers (0.7 mile) west of Whitewright.

Petitioner's reallotment proposal complies with the provisions of section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 248C2 at Whitewright, Texas, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before January 30, 2004, and reply comments on or before February 17, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Joseph A. Belisle, Esq., Leibowitz & Associates, PA; One Southeast Third Avenue, Suite 1450; Miami, Florida 33131; and Mark N. Lipp, Esq. and J. Thomas Nolan, Esq., Vinson & Elkins, LLP; 1455 Pennsylvania Avenue, NW., Washington, DC 20004–1008.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–245, adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 248C2 at Durant.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Whitewright, Channel 248C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 03–31605 Filed 12–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3886, Docket No. 02–368, RM–10610]

Radio Broadcasting Services; Lockney, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking to add an FM allotment in Lockney, Texas. The Audio Division had requested comment on a petition filed by Linda Crawford, proposing the allotment of Channel 271C3 at Lockney, Texas. *See* 67 FR 78,402, December 24, 2002. Petitioner did not file comments supporting the requested allotment. This document dismisses the petition for failure to demonstrate a continuing interest in the requested allotment. The document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–368, adopted December 3, 2003, and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–31604 Filed 12–22–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 246

Tuesday, December 23, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TM–03–11]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice inviting proposals for fiscal year (FY) 2004 grant funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given for proposals for FY 2004 grant funds under the Federal-State Marketing Improvement Program (FSMIP). FSMIP anticipates that approximately $1.3 million will be available for support of this program in FY 2004. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State agencies are eligible to apply for funds, State agencies are encouraged to involve industry groups, academia and community-based organizations in the development of proposals and the conduct of projects.

DATES: Funds will be allocated on the basis of one round of consideration. Proposals will be accepted through February 13, 2004.

ADDRESSES: Proposals may be sent to: FSMIP, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 4009 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, FSMIP Staff Officer, (202) 720–2704.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). FSMIP provides matching grants on a competitive basis to assist State Departments of Agriculture or other appropriate State agencies in conducting studies or developing innovative approaches related to the marketing of U.S. food and agricultural products. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division to discuss their proposal.

Proposals are submitted by the State Agency and must be accompanied by completed Standard Forms (SF) 424 and 424A. Note that the SF 424 has been revised and that all applicants now must have a DUNS number and provide additional contact information when applying for this or any other Federal grant program. The revised SF 424 is available at: *http://www.whitehouse.gov/omb/grants/grants_forms.html.* AMS will not approve the use of FSMIP funds for advertising or, with limited exceptions, for the purchase of equipment. Detailed program guidelines may be obtained from your State Department of Agriculture, the above AMS contact, or the FSMIP Web site: *www.ams.usda.gov/tmd/fsmip.htm.*

FSMIP funds can be requested for a wide range of marketing research and marketing service activities, including projects aimed at:

(1) Developing and testing new or more efficient methods of processing, packaging, handling, storing, transporting, and distributing food and other agricultural products;

(2) Assessing customer response to new or alternative agricultural products or marketing services and evaluating potential opportunities for U.S. producers, processors and other agribusinesses, in both domestic and international markets; and,

(3) Identifying problems and impediments in existing channels of trade between producers and consumers of agricultural products and devising improved marketing practices, facilities, or systems to address such problems.

While all proposals which fall within the FSMIP guidelines will be considered, States are encouraged to submit proposals that have regional or national significance and that foster innovation in the following areas:

(1) Market Analysis—collecting and analyzing unique and relevant economic data and transportation and marketing statistics relating to targeted domestic and international markets.

(2) Transportation and distribution—finding ways to improve efficiency and reduce barriers in local, regional, national and international transportation and distribution systems to promote free movement of U.S. food and agricultural products.

(3) Competitiveness and new markets—identifying new opportunities for traditional and non-traditional products and by-products of agricultural production and processing in domestic and international markets. Assessing consumer preferences and consumer response to marketing and labeling claims.

(4) Quality and variety—enhancing the value of food and agricultural products through improvements in product quality and traceability. Using technology to address marketing challenges and opportunities such as developing new products and innovative packaging, or improving handling and storage methods.

Starting in FY 2004, applicants have the option of submitting FSMIP applications electronically through the central Federal grants Web site, *http://grants.gov* instead of mailing hard copy documents. Applicants considering the electronic application option are strongly urged to familiarize themselves with the Federal grants Web site well before the application deadline and to begin the application process before the deadline. Additional details about the FSMIP application process for all applicants are available at the FSMIP Web site: *http://www.ams.usda.gov/tmd/fsmip.htm.*

FSMIP is listed in the "Catalog of Federal Domestic Assistance" under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: December 17, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31540 Filed 12–22–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–040N]

Codex Alimentarius: Meeting of the Codex Committee on Meat Hygiene

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U. S. Department of Agriculture (USDA), is sponsoring a public meeting on January 15, 2004, to provide information and receive public comments on agenda items that will be discussed at the Tenth Session of the Codex Committee on Meat Hygiene, which will be held in Auckland, New Zealand, on February 16–20, 2004. The Under Secretary recognizes the importance of providing interested parties with information about the Codex Committee on Meat Hygiene of the Codex Alimentarius Commission and to address items on the Agenda for the 10th Session of the Committee.

DATES: The public meeting is scheduled for Thursday, January 15, 2004, from 1 p.m.–4 p.m.

ADDRESSES: The public meeting will be held at the Department of Agriculture's South Building in Room 0161, 1400 Independence Avenue, SW., Washington, DC. To receive copies of the documents referenced in this notice, contact the Food Safety and Inspection Service (FSIS) Docket Clerk, USDA, FSIS, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/ccmh10/mh04_01e.htm*. If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket #03–040N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edith Kennard, Staff Officer, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 720–5261, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, the Food and Drug Administration, and the Environmental Protection Agency manage and carry out U.S. Codex activities.

The Codex Executive Committee (CEC), at its 47th Session in 2000, asked that the Codex Committee on Meat Hygiene reconvene to redraft the existing codes on meat hygiene so that they reflect contemporary developments. The CEC also asked that the scope of the existing codes be broadened so as to include poultry meat hygiene. These recommendations were confirmed by the 24th Session of the Codex Alimentarius Commission in July 2001.

Issues To Be Discussed at the Public Meeting

Provisional agenda items to be discussed during the public meeting:

1. Draft Code of Hygienic Practice for Meat.
2. Proposed Draft Annex on Risk-Based Post-Mortem Examination Procedures for Meat.
3. Proposed Draft Annex on Microbiological Verification of Process Control of Meat Hygiene.
4. Discussion Paper on Hygiene Provisions for Processed Meat.

Public Meeting

At the January 15th public meeting, the agenda items, including U.S. positions, will be described and discussed. Attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to activities of the 10th Session of the Codex Committee on Meat Hygiene (Docket #03–040N).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information about Listserv, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC on December 17, 2003.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 03–31541 Filed 12–22–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–041N]

Public Meeting on New Technology: The State of Food Safety Technologies To Enhance Public Health

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) will hold a public meeting on January 13, 2004, to discuss the development and use of new food safety technologies to enhance public health.

DATES: The public meeting is scheduled for Tuesday, January 13, 2004, from 8:30 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the Doubletree Hotel, 1616 Dodge Street, Omaha, NE 68102;

telephone (402) 346–7600. A tentative agenda will be available in the FSIS Docket Room and on the Internet at *http://www.fsis.usda.gov.* An official transcript of the meeting, when it becomes available, will be kept in the FSIS Docket Room, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Dr. Perfecto Santiago, Executive Associate for Program Development, at (202) 205–0699. Registration for the meeting will be onsite. FSIS encourages attendees to pre-register as soon as possible by contacting Ms. Mary Harris of the FSIS Strategic Initiatives, Partnerships and Outreach Staff at (202) 690–6497 or by e-mail to *mary.harris@fsis.usda.gov* or fax (202) 690–6500. If a sign language interpreter or other special accommodations are necessary, please contact Ms. Harris no later than December 31, 2003.

SUPPLEMENTARY INFORMATION:

Background

The 2003 FSIS Food Safety Vision Statement states that FSIS is implementing several new initiatives in order to continue towards its vision for food safety, including expediting the review and implementation of safe interventions at slaughter and processing plants. FSIS reviews new technologies that establishments plan to employ to ensure that the use of these technologies is consistent with agency regulations, and that the technologies will not adversely affect product safety, inspection procedures, or the safety of FSIS inspection program personnel. In August 2003, the Office of the Under Secretary for Food Safety, United States Department of Agriculture, announced that the Food Safety and Inspection Service (FSIS) had established a New Technology Staff to streamline the implementation of new technologies in an establishment's operations and to reduce the amount of time it takes the agency to review these new technologies. The New Technology Staff will place significant emphasis on fostering the development and use of new technologies that can help reduce pathogens on meat and poultry products.

One purpose of this public meeting is to promote and facilitate an exchange of the latest information on new and emerging technologies of public health significance. In particular, FSIS will use the meeting to explore how small and very small plants can avail themselves of these technologies in their operations. The Agency also intends to use the meeting to explore ways to reduce the time between the development and implementation of new technologies.

Main topics to be discussed at the public meeting are as follows:

(1) The Agency's new procedures and ways to expedite even further the process for making promising food safety technologies available for use, including ways that FSIS and stakeholders can work together to make emerging technology more widely available. The stakeholders include academia, state governments, industry, consumers, and other government agencies. (2) Emerging technologies that have been commercialized or will soon be commercialized. These new technologies include the following categories:

a. Pre-slaughter operation interventions that treat the animal before slaughter operations begin, such as hide treatment and bacteria exclusion in the animal;

b. Decontamination methods during slaughter and processing operations, such as antimicrobials being used on the carcass;

c. Sanitation interventions to decontaminate product contact surfaces or to treat the environment in the slaughter and processing areas to exclude or remove organisms such as Listeria monocytogenes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC on December 17, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–31542 Filed 12–22–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB90

Forest Transportation System Analysis; Revisions to Road Management Policy

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published on December 16, 2003 (68 FR 69986), a notice of issuance of a final directive to Forest Service Manual (FSM) Title 7700—Engineering, Chapter 7710—Transportation Atlas, Records, and Analysis, as Amendment 7700–2003–2. The notice contained an incorrect World Wide Web/Internet address.

FOR FURTHER INFORMATION CONTACT: Deborah Beighley or Nelson Hernandez, Engineering Staff, Forest Service, at (703) 605–4617 and (703) 605–4613, respectively.

CORRECTION: In the **Federal Register** issue of December 16, 2003, in FR Doc. 03–30871, page 69986, in the first column, correct the **ADDRESSES** caption to read:

ADDRESSES: The final directive, which includes a digest of the summary of changes and the revised directive text in its entirety, is available electronically via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives/fsm/7700.* Single paper copies of the directive also are available by contacting the USDA Forest Service, Engineering Staff (Mail Stop 1101), 1400 Independence Avenue SW., Washington, DC 20250–1101.

Dated: December 18, 2003.

Jack L. Craven,

Acting Deputy Chief, National Forest System.

[FR Doc. 03–31654 Filed 12–22–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD NOVEMBER 22, 2003–DECEMBER 17, 2003

Firm name	Address	Date petition accepted	Product
Gilmore Valve Co., Ltd	1231 Lumpkin Road, Houston, TX 77043	12/04/03	Hydraulic valves.
Stout Industries, Inc., dba Stout Marketing, Inc.	6425 W. Florissant Ave., St. Louis, MO 63166.	12/04/03	Point of sale metal signs, displays, building and canopy fascia.
William Dudek Manufacturing Company	4901 W. Armitage Avenue, Chicago, IL 60639.	12/04/03	Mounting brackets of steel for consumer articles.
Delta Machine and Tool, Inc	1501 Lexington Avenue, DeLand, FL 32724.	12/08/03	Diagnostic lancets for diabetic testing kits, custom plastic-injection molded; and injection molded bodies for surgical punches used in cardiac surgery.
Burgess Manufacturing of Oklahoma, Inc	1250 Roundhouse Road, Guthrie, OK 73044.	12/17/03	Wooden pallets.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 16, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–31523 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–866]

Certain Folding Gift Boxes From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 10, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain folding gift boxes from the People's Republic of China. The review covers two manufacturers/exporters and the period of review is August 6, 2001, through December 31, 2002. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. Therefore, these final results of review do not differ from the preliminary results of review.

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats (Red Point), Yang Jin Chun (Yun Choy), or Thomas Schauer, Group 1, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047, (202) 482–5760, and (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On October 10, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain folding gift boxes from the People's Republic of China (PRC). *See Preliminary Results of Antidumping Duty Administrative Review: Certain Folding Gift Boxes from the People's Republic of China*, 68 FR 58653. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Order

The products covered by this antidumping duty order are certain folding gift boxes. Certain folding gift boxes are a type of folding or knock-down carton manufactured from paper or paperboard. Certain folding gift boxes are produced from a variety of recycled and virgin paper or paperboard materials, including, but not limited to, clay-coated paper or paperboard and kraft (bleached or unbleached) paper or paperboard. The scope of the order excludes gift boxes manufactured from paper or paperboard of a thickness of more than 0.8 millimeters, corrugated paperboard, or paper mache. The scope of the order also excludes those gift boxes for which no side of the box, when assembled, is at least nine inches in length.

Certain folding gift boxes are typically decorated with a holiday motif using various processes, including printing, embossing, debossing, and foil stamping, but may also be plain white or printed with a single color. The subject merchandise includes certain folding gift boxes, with or without handles, whether finished or unfinished, and whether in one-piece or multi-piece configuration. One-piece gift boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece gift boxes are those with a folded bottom and a folded top as separate pieces. Certain folding gift boxes are generally packaged in shrink-wrap, cellophane, or other packaging materials, in single or multi-box packs for sale to the retail customer. The scope of the order excludes folding gift boxes that have a retailer's name, logo, trademark or similar company information printed prominently on the box's top exterior (such folding gift boxes are often known as "not-for-resale" gift boxes or "give-away" gift boxes and may be provided by department and specialty stores at no charge to their retail customers). The scope of the order also excludes folding gift boxes where both the outside of the box is a single color and the box is not packaged in shrink-wrap, cellophane, other resin-based packaging films, or paperboard.

Imports of the subject merchandise are classified under *Harmonized Tariff Schedules of the United States* (HTSUS) subheadings 4819.20.00.40 and 4819.50.40.60. These subheadings also cover products that are outside the scope of the order. Furthermore, although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of the Comments Received

No parties submitted comments on the preliminary results of review. Accordingly, there is no concurrent issues and decision memorandum or analysis memorandum issued with these final results of review. Further, we have made no changes in the calculations since the preliminary results of review.

Final Results of Review

We determine the following percentage weighted-average dumping margins exist for folding gift boxes for the period August 6, 2001, through December 31, 2002:

Exporter/manufacturer	Margin (percent)
Red Point Paper Products Co., Ltd	0.00
PRC-wide rate (including Yun Choy, Ltd.)	164.75

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment value for subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of folding gift boxes entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates established above; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters (except for Max Fortune, which was excluded from the antidumping duty order) will be the "PRC-wide" rate; and (4) the cash deposit rate for all other non-PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 17, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00614 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Notice of Extraordinary Challenge Committee's Final Decision and Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extraordinary Challenge Committee's final decision and amended final results of antidumping duty administrative review.

SUMMARY: On October 30, 2003, the Extraordinary Challenge Committee issued its decision to deny the Department of Commerce's April 13, 2000, extraordinary challenge petition with respect to a determination made by the Binational Panel in the final results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico covering the period August 1, 1994, through July 31, 1995. As there is now a final and conclusive decision in this case, we are amending the amended final results of review and we will instruct U.S. Customs and Border Protection to liquidate entries subject to this review.

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Mark Ross, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4794, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1997, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (62 FR 17148) (amended May 5, 1997)[1] (*Fifth Review Final Results*).

CEMEX, S.A. de C.V. (CEMEX), GCC Cemento, S.A. de C.V. (GCCC)[2], and the Southern Tier Cement Committee (the petitioner) contested various aspects of the Department's *Fifth Review Final Results.* On June 18, 1999, the Binational Panel (the Panel) issued an order remanding to the Department the *Fifth Review Final Results.* Specifically, the Panel instructed the Department to implement the following: (1) Exclude the respondents' home-market sales of bagged Type I cement from the foreign like product in the calculation of normal value; (2) re-examine the record evidence to determine whether a constructed-export-price offset should be granted; (3) recalculate the difference-in-merchandise adjustment to reflect the exclusion of home-market sales of bagged cement; (4) correct certain ministerial errors.

On November 15, 1999, the Department issued the final results of redetermination on remand, and on February 10, 2000, the Panel affirmed these results and dismissed the case. *See* Secretariat File No. USA–97–1904–01. On April 30, 2000, the Department filed an extraordinary challenge petition with the Extraordinary Challenge Committee (ECC). On October 30, 2003, the ECC determined that the Department's petition did not meet the criteria required for an extraordinary challenge review and thus denied the Department's petition. Therefore, as there is now a final and conclusive ECC decision in this action, we are amending our amended final results of review and we will instruct U.S. Customs and Border Protection (Customs) to liquidate entries subject to this review.

Amendment to Amended Final Results

Pursuant to section 516A(g) of the Tariff Act of 1930, as amended (the Act), we are now amending the amended final results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico for the period August 1, 1994, through July 31, 1995. Based on the final results of redetermination on remand, the weighted-average antidumping margin for CEMEX and GCCC changes from 73.69 percent to 44.89 percent.

The Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise exported by firms covered by this review.

We are issuing and publishing this determination and notice in accordance with section 516A(g) of the Act.

Dated: December 17, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00615 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–DS–S

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[1] *See Gray Portland Cement and Clinker from Mexico: Amended Final Results of Antidumping Duty Administrative Review,* 62 FR 24414 (May 5, 1997).

[2] Cementos de Chihuahua, S.A. de C.V., was GCCC's formal name during this segment of the proceeding.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot-Rolled Carbon Steel Flat Products from India: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from Indian producers/exporters of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (HRS) from India. The review covers one producer/exporter of subject merchandise during the period of review (POR), May 3, 2001, through November 30, 2002. The Department has preliminarily determined that no dumping margin exists for the manufacturer/exporter during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy P. Finn or Kevin Williams, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0065 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the antidumping duty order on HRS from India. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from India,* 66 FR 60194 (December 3, 2001) (*Amended Final Determination*). On December 2, 2002, the Department published a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on HRS from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 67 FR 71533 (December 2, 2002). On December 30 and 31, 2002, Essar Steel Ltd. (Essar) and Tata Iron and Steel Company Ltd. (Tata), Indian producers/exporters of subject merchandise, requested administrative reviews of their entries during the POR. On January 15, 2003, the Department initiated an administrative review of Essar and Tata. National Steel Corporation, Nucor Corporation, and United States Steel Corporation, petitioners in this proceeding, did not request an administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 68 FR 3009 (January 22, 2003).

On January 3, 2003, the Department issued an antidumping questionnaire to Essar and Tata. The Department received Essar's responses to the questionnaire in January and February 2003. On January 15, 2003, Essar requested that it be allowed to report cost and home market sales information for periods other than the POR. On February 25, 2003, the Department allowed Essar to limit the reporting period for its home market sales to the period May 1, 2002, through January 31, 2003. On March 5, 2003, Tata withdrew its request for an administrative review.

On April 29, 2003, the Department allowed Essar to expand the POR for cost reporting purposes to include the month of April 2001. The Department issued supplemental questionnaires to Essar in March, April, May, June and July 2003, and received timely responses. On June 27, 2003, Essar requested that it be excluded from reporting sales from stockyards. On August 6, 2003, the Department granted Essar's request regarding its stockyard sales.

On August 27, 2003 and November 4, 2003, the Department published in the **Federal Register** notices extending the deadline for issuing the preliminary results in this case until no later than November 3, 2003, and December 15, 2003, respectively. *See Certain Hot-Rolled Carbon Steel Flat Products from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 51557 (August 27, 2003); *also see Certain Hot-Rolled Carbon Steel Flat Products from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 62430 (November 4, 2003).

Scope of the Review

The products covered by the antidumping duty order are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the order.

Specifically included within the scope of the order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of the order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to the order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by the order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Review

The POR is May 3, 2001, through November 30, 2002.

Final Partial Rescission of Review

As provided in 19 CFR 351.213(d)(1), "the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." Tata withdrew its request for an administrative review within 90 days of the date of publication of the notice of initiation of the instant administrative review and no other party requested an administrative review of Tata. Therefore, the Department is rescinding the instant administrative review with respect to Tata.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), the Department conducted a verification of the sales and cost information provided by Essar. The Department conducted this verification using standard verification procedures including: on-site inspection of the manufacturer's facilities, examination of relevant sales, cost, production and financial records and selection of relevant source documentation as exhibits. The Department's verification findings are identified in the sales and cost verification memoranda dated December 15, 2003, the public versions of which are on file in the Central Records Unit (CRU), room B099 of the main Commerce building.

Use of Partial Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline for submission of the information, or in the form and manner requested, (C) significantly impedes an antidumping or countervailing proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of the party. The Act provides that an adverse inference may include reliance on information derived from the petition, a final determination in an antidumping investigation or review, or any other information placed on the record. *See* section 776(b)(1), (2), (3), and (4) of the Act.

During the administrative review, Essar withheld certain information requested by the Department regarding its relationships with certain companies, and reported information regarding such relationships that does not agree with the Department's verification findings. Moreover, the record indicates that Essar significantly impeded the proceeding with respect to the issue of affiliation and did not cooperate by acting to the best of its ability to comply with the Department's requests for information regarding its relationships with the companies at issue. Therefore, as partial adverse facts available, the Department has preliminarily determined that Essar is affiliated with all of the companies in the Essar Group, as well as the companies identified in footnote 41 of Essar's 2001/2002 Annual Report. Additionally, we applied an adverse inference by determining that Essar did not engage in arm's-length transactions with the Essar Group companies and the footnote 41 companies that it failed to identify as affiliated parties. Specifically, we determined that the costs that Essar incurred as a result of its transactions with these companies are less than the costs it would have incurred had the transactions been conducted with unaffiliated parties. Transactions with these companies affect Essar's general and administrative (G&A) expenses, financing expenses, and manufacturing overhead expenses. As adverse facts available, we recalculated the G&A ratio used by Essar using information contained in Ispat Industries Ltd.'s (Ispat) 2000–2001 financial statements. We also adjusted Essar's manufacturing overhead expenses and financial expenses based on available information regarding the amount by which the costs that Essar incurred as a result of its transactions with affiliated parties are less than market prices. For a complete discussion of our use of adverse facts available, see the memorandum from Thomas F. Futtner, Acting Director, Office IV, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated December 15, 2003 (Facts Available Memorandum), which is on file in the CRU.

Section 776(c) of the Act provides that when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The percentage used to increase Essar's manufacturing overhead and financial expenses is not considered secondary information because it is based on information obtained during the course of this review from Essar. Therefore, the Department is not required to corroborate this percentage. With respect to the G&A expenses, we obtained Ispat's 2000–2001 financial statements from the public record of the investigation of certain cold-rolled carbon steel flat products from India. *See Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela; Notice of Initiation of Antidumping Duty Investigations*, 66 FR 54198, 54207 (October 26, 2001). These financial statements cover the period April 1, 2000, through March 31, 2001, which predates the POR by one fiscal year. Publicly available data from independent sources that relate to the relevant time period are generally considered to be both relevant and reliable because they are contemporaneous with the period under consideration and not generated for purposes of the trade action. Because Ispat is an Indian producer of hot-rolled carbon steel flat products and its 2000–2001 financial statements are publicly available and cover a period close in time to the POR, the Department considers these statements to have probative value, and therefore, to be corroborated.

Date of Sale

Essar reported the invoice date for both its home market and U.S. sales to be the date of sale. Although the Department maintains a presumption that the invoice date is the date of sale (19 CFR 351.401(i)), "[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (Preamble). Because the record evidence does not indicate that the material terms of home market sales are finally established on a date other than the date of the invoice, consistent with the methodology employed with respect to Essar in the investigation, the Department is preliminarily using the invoice date as the date of Essar's home market sales. However, with respect to Essar's U.S. sales, the Department found no evidence of changes to the material terms of sale after the contract date (*e.g.*, changes to the price, quantity, production or shipment schedules). Therefore, the Department is preliminarily using the contract date as the date of Essar's U.S. sales.

Fair Value Comparison

In order to determine whether Essar sold HRS to the United States at less than normal value (NV), the Department compared the export price (EP) of individual U.S. sales to the monthly weighted-average NV of sales of the foreign like product made in the ordinary course of trade (see section 777A(d)(2) of the Act; see also section 773(a)(1)(B)(i) of the Act). The methodology used to compare sales and to calculate EP and NV are described in the "Comparison Methodology", "Export Price," and "Normal Value" sections of this notice.

Comparison Methodology

In accordance with section 771(16) of the Act, the Department considered all products within the scope of this review that Essar produced and sold in the comparison market during the POR to be foreign like products for purposes of determining appropriate product comparisons to HRS sold in the United States. The Department determined that the home market is the appropriate comparison market because the aggregate quantity of Essar's home market sales of foreign like product is more than five percent of the aggregate quantity of its U.S. sales of subject merchandise (*see* section 773(a)(1)(C) of the Act and the "Normal Value" section of this notice, below). The Department compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise made in the home market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by Essar in the following order of importance: painted or not painted; quality; carbon content; yield strength; thickness; width; cut-to-length or coil; tempered or not tempered; pickled or not pickled; edge trim; and with or without patterns in relief.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practical, the Department determined NV based on sales in the home market at the same level of trade (LOT) as the EP sales. The NV LOT is that of the starting-price sales in the home market. For EP sales, the U.S. LOT is also the level of the starting-price sale.

To determine whether NV sales are at a different LOT than the EP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the home market sales on which NV is based and the home market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

In determining whether separate LOTs exist, we obtained information from Essar about the marketing stages for the reported U.S. and home market sales, including a description of the selling activities performed by Essar for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. *See* 19 CFR 351.412(c)(1)(i) and (iii). We expect that, if claimed LOTs are the same, the selling functions and activities of the seller at each level should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In its questionnaire responses, Essar reported that during the POR, it sold the foreign like product in the home market through one channel of distribution and in the United States through one channel of distribution. We found that Essar engaged in similar selling activities for all home market sales. There are also no differences in the selling functions performed in the U.S. channel of distribution. Based on the similarity of the selling functions, we have determined that Essar sold HRS at one LOT in the home market and one LOT in the U.S. market. We also found that the selling activities performed by Essar in the home market are similar to those performed in the U.S. market. Specifically, Essar engaged in price negotiations, contacted customers, processed orders, made freight arrangements, collected payments and extended credit, and provided warranty services in both markets at similar levels of intensity. Therefore, we have preliminarily determined that the LOTs in the home and U.S. markets are the same LOT. Thus, a LOT adjustment is not required for comparison of U.S. sales to home market sales.

Export Price

In calculating U.S. price, the Department used EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, by Essar to unaffiliated purchasers in the United States. We calculated EP based on the packed, delivered prices charged to unaffiliated customers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price, where applicable, for foreign movement expenses (including brokerage and handling and inland freight), international freight, U.S. duties and importer handling fees. In accordance with section 772(c)(1)(C) of the Act, we increased EP by the countervailing duty (CVD) rate attributable to the export subsidies found in the CVD investigation of HRS from India (the ongoing first administrative review of the CVD order has not yet been completed).

Essar claimed an adjustment for duty drawback under the Duty Free Remission Scheme (DFRC). The Department applies a two-pronged test to determine whether to grant a respondent a duty drawback adjustment pursuant to section 772(c)(1)(B) of the Act. Specifically, the Department grants a respondent a duty drawback adjustment if it finds that: (1) Import duties and rebates are directly linked to, and are dependent upon, one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

However, Essar failed to demonstrate that it received a duty drawback from the Government of India (GOI) under the DFRC program. In fact, Essar indicated that its application for the DFRC program had not yet been approved. *See* Essar's April 22, 2003 supplemental questionnaire response at 62. At verification, company officials again reported that Essar had yet to receive approval of its application for the DFRC program. Because there is no evidence that Essar received duty drawback under the DFRC program, we have not increased U.S. price by the amount of drawback claimed by Essar.

Normal Value

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales failed the cost test, we calculated NV as noted in subsection 4, "Calculation of NV," below.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), see 19 CFR 351.404(b)(2), we compared Essar's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Because Essar's aggregate volume of home market sales of the foreign like product is greater than five percent of its aggregate volume of U.S. sales of subject merchandise, we determined that the home market is viable and have used the home market as the comparison market.

2. Affiliated-Party Transactions and Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length. See 19 CFR 351.403(c). Sales to affiliated customers for consumption in the home market that were determined not to be at arm's-length were excluded from our analysis. Essar reported sales of the foreign like product to affiliated end-users and resellers. To test whether these sales were made at arm's-length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c), and in accordance with the Department's practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). We included in our NV calculations those sales to affiliated parties that were made at arm's length prices.

3. Cost of Production (COP) Analysis

In the investigation of HRS from India, the most recently completed segment of this proceeding, the Department disregarded Essar's home market sales that failed the cost test. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 22157 (May 3, 2001) (a portion of Essar's home market sales continued to be disregarded in the final determination). Accordingly, pursuant to section 773(b)(2)(A)(ii) of the Act, the Department, initiated a COP investigation of Essar for purposes of this administrative review. We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, for the POR based on the sum of materials and fabrication costs, G&A expenses, and packing costs. We relied on Essar's cost data, as submitted, except as noted below:

1. Essar purchased iron-ore pellets, an input used to manufacture the merchandise under review, from an affiliated party, Hy-Grade Pellets Limited (Hy-Grade), at a price below Hy-Grade's COP. Pursuant to section 773(f)(3) of the Act, we adjusted the reported per-unit cost of iron-ore pellets to reflect Hy-Grade's COP.
2. We disallowed Essar's reported scrap offset because the offset was based, in part, on sales of scrap to affiliated parties.
3. As indicated in the "Use of Partial Adverse Facts Available" above, we based Essar's G&A expenses on adverse facts available and made an adverse adjustment to Essar's manufacturing overhead expenses and financial expenses. See Facts Available Memorandum.

For further information regarding each of the above adjustments, see the calculation memorandum from Timothy P. Finn, Senior Import Compliance Specialist, to the File, dated December 15, 2003, on file in the CRU.

B. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COPs to home market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the adjusted COPs to home market prices, less any applicable movement charges and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, if less than 20 percent of Essar's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." If 20 percent or more of Essar's sales of a given product during the POR were made at prices below the COP, we determined that such sales were made in substantial quantities within an extended period of time (*i.e.*, a period of one year). Further, because we compared prices to POR-average costs, we determined that the below-cost prices would not permit recovery of all costs within a reasonable time period, and thus, we disregarded the below-cost sales in accordance with sections 773(b)(1) and (2) of the Act.

We found that for certain products, Essar made home market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV by adding together Essar's materials, fabrication, selling and G&A expenses and interest expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based selling and G&A expenses and profit on the amounts incurred by Essar in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the home market.

4. Calculation of NV

We calculated NV from ex-factory prices to unaffiliated customers in the home market. These prices include charges for packing. We made deductions from the starting price, when appropriate, for discounts and rebates, and movement expenses and domestic brokerage and handling. See section 773(a)(6)(B)(ii) of the Act. In accordance with section 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs to, and deducted home market packing costs from, the starting price. In addition, in accordance with section 773(a)(6)(C)(iii) of the Act, we made circumstance of sale (COS) adjustments to the starting price by deducting direct selling expenses incurred on home market sales from the starting price and adding U.S. direct selling expenses to the starting price.

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted foreign currencies into U.S. dollars using the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average percentage margin exists for the period May 3, 2001, through November 30, 2002:

Manufacturer/Exporter	Margin (percent)
Essar Steel Ltd.	0.00

The Department will disclose the calculations used in its analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication date of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. *See* 19 CFR 309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the deadline for filing case briefs. *See* 19 CFR 309(d). Parties who submit written arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we request that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on a diskette. The Department will publish the notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from the publication date of this notice.

Assessment Rate

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. If the importer-specific assessment rate is above *de minimis*, we will instruct CBP to assess the importer-specific rate uniformly on all entries made during the POR. The Department will issue appropriate assessment instructions directly to the CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importers' entries during the review period.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review (except that if the rate is *de minimis, i.e.*, less than 0.5 percent, no cash deposit rate will be required); (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate of 38.72 percent, which is the "all others" rate established in the LTFV investigation.[1] *See Amended Final Determination*. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00613 Filed 12–22–03; 8:45 am]

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[1] The "all others" cash deposit rate, applied by CBP, is reduced to account for the export subsidy rate found in the countervailing duty investigation. The adjusted "all others" rate is 23.87 percent.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Notice of Amended Antidumping Duty Order; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended antidumping duty order.

SUMMARY: On November 29, 2001, the Department of Commerce (the Department) published the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands*, 66 FR 59565 (November 29, 2001). As a result of the Court of International Trade's (the Court's) decisions in *Corus Staal BV, et al.* v. *United States*, 283 F. Supp. 2d 1357 (CIT 2003) (*Corus Staal BV III*) and *Corus Staal BV, et al.* v. *United States*, 279 F. Supp. 2d 1363 (CIT 2003) (*Corus Staal BV II*), we are publishing this notice of amended antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Deborah Scott (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

EFFECTIVE DATE: December 23, 2003.

SUPPLEMENTARY INFORMATION:

Scope of the Order

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).

Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.

Ball bearings steels, as defined in the HTS.

Tool steels, as defined in the HTS.

Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

ASTM specifications A710 and A736.

USS Abrasion-resistant steels (USS AR 400, USS AR 500).

All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under this order is dispositive.

Amended Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (Tariff Act), the Department published its final determination that sales of hot-rolled steel from the Netherlands were being made at less than fair value in the United States. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products*, 66 FR 50408 (October 3, 2001) and accompanying Issues and Decision Memorandum, *as amended, Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products*, 66 FR 55637 (November 2, 2001) (collectively, *Final Determination*). On November 13, 2001, the International Trade Commission notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of certain hot-rolled steel from the Netherlands. On November 29, 2001, the Department published in the **Federal Register** the antidumping duty order on hot-rolled steel from the Netherlands. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands*, 66 FR 59565 (November 29, 2001) (*Antidumping Duty Order*).

Subsequent to the publication of the Department's antidumping duty order, the petitioners (National Steel Corporation, Bethlehem Steel Corporation, and United States Steel Corporation) and the respondent (Corus Staal BV and Corus Steel USA Inc. (collectively, Corus)) challenged certain aspects of the Department's *Final Determination* before the Court. In addition, the Department requested a voluntary remand with respect to the inadvertent omission of the proper language from the antidumping duty order to cease collection of provisional measures six months after the publication of the preliminary determination, in accordance with section 733(d) of the Tariff Act. On March 7, 2003, the Court issued a remand order to the Department for the sole purpose of revising its antidumping duty order to preclude collection of provisional measures beyond the six-month period pursuant to section 733(d) of the Tariff Act, and also to explain its practice of interpreting the provisional measures time period, *i.e.*, in calendar months or the equivalent in six 30-day periods. *See Corus Staal BV* v. *United States*, 259 F. Supp. 2d 1253 (CIT 2003). *See Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands: Notice of Final Court Decision and Suspension of Liquidation*, 68 FR 60912 (October 24, 2003) for a summary of the ensuing litigation.

On September 29, 2003, the Court affirmed the Department's remand determination and entered a final judgment order in regards to the *Final Determination* and *Antidumping Duty Order. See Corus Staal BV III; see also Corus Staal BV II*. As a result, the Department is now amending the antidumping duty order on hot-rolled steel from the Netherlands to lift suspension of liquidation 180 days from the date of publication of the preliminary determination in the **Federal Register** until the date of publication of the *Antidumping Duty Order*. Because the preliminary determination was published on May 3, 2001, and the *Antidumping Duty Order* was published on November 29, 2001, the Department will issue instructions to Customs and Border Protection (Customs) to terminate suspension of liquidation of all entries of subject merchandise made between October 30, 2001, and November 28, 2001, inclusive, without regard to antidumping duties (*i.e.*, release all bonds and refund all cash deposits). In addition, in accordance with section 736(a)(1) of the Tariff Act, the Department will also instruct Customs to resume collection, effective November 29, 2001, of a cash deposit equal to the estimated weighted-average antidumping duty margins published in the *Final Determination*. Effective November 29, 2001, Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The "All Others" rate applies to all exporters of subject hot-rolled steel from the Netherlands not specifically listed. The weighted-average dumping margins are as follows:

Producer/manufacturer/ exporter	Cash deposit rate (percent)
Corus Staal BV	2.59
All Others	2.59

This notice constitutes the amended antidumping duty order with respect to certain hot-rolled carbon steel flat products from the Netherlands. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This amended order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: December 16, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E3–00616 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of an antidumping duty administrative review.

SUMMARY: On August 22, 2003, in response to a request made by the petitioners [1], the Department of Commerce (the Department) published a notice of initiation of an antidumping duty administrative review of silicon metal from Brazil, for the period of review (POR) July 1, 2002, through June 30, 2003. Because the petitioners have withdrawn their request for review, and there were no other requests for review for this time period, the Department is rescinding this review in accordance with 19 CFR 351.213 (d)(1).

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, telephone: (202) 482–5831, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil, covering the POR July 1, 2002, through June 30, 2003. *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 39511 (July 2, 2003). On August 22, 2003, pursuant to a request made by the petitioners, the Department initiated an administrative review of Companhia Ferroligas Minas Gerais-Minasligas (Minasligas) and Companhia Brasileira Carbureto de Calcio (CBCC), both of which are subject to the antidumping duty order on silicon metal from Brazil for the POR July 1, 2002, through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* 68 FR 50750, 50751 (August 22, 2003). On November 19, 2003, the petitioners withdrew their request for an administrative review of Minasligas.

Rescission of Review

19 CFR 351.213(d)(1) provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. Since the notice of initiation of this administrative review was published on August 22, 2003, and the petitioners, the party requesting this administrative review, withdrew their request for review within 90 days after the date of publication of the notice of initiation, the Department is rescinding the administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 2002, through June 30, 2003, in accordance with 19 CFR 351.213(d)(1).

Further, we are rescinding the review with respect to CBCC because, since the initiation of this current review, the Department has revoked the order in part, with respect to CBCC, effective for entries made on or after July 1, 2002. *See Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part* 68 FR 57670, 57671 (October 6, 2003).

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 18, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E3–00617 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–25–U

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[1] The petitioners are Elkem Metals Company and Globe Metallurgical Inc.

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–054. *Applicant:* Frostburg State University, Department of Biology, 101 Braddock Road, Compton Science Center, Frostburg, MD 21532. *Instrument:* Electron Microscope, Model JEM–1011. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used for science-related educational purposes in the course BIO 436/536, Electron Microscopy for Biologists. *Application accepted by Commissioner of Customs:* December 10, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–31595 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121203C]

Vessel Monitoring Systems (VMS); Certification of New VMS Unit for Use in Northeast Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of VMS unit certification.

SUMMARY: NMFS announces the approval and certification of the Boatracs FMCT/G (Fisheries Mobile Communications Transceiver/Global Positioning System (GPS) based) VMS unit for use in all fisheries in the northeastern United States in which VMS units are required.

DATES: This new FMCT/G VMS unit can be used effective December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Northeast Office for Law Enforcement, VMS Program, telephone 978–281–9213.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR 648.9 set forth VMS requirements for fisheries in the northeastern United States that require the use of VMS for fishery monitoring and/or reporting. Specifically, § 648.9(b) lists minimum VMS performance criteria that a VMS unit must meet in order to be certified for use.

The Administrator, Northeast Region, NMFS, has reviewed all components of the FMCT/G and other information provided by the vendor and has certified the following unit for use in all Northeast fisheries in which VMS units are required: Boatracs FMCT/G, available from Boatracs, 1935 Cordell Court, El Cajon, CA 92020–0911, Telephone: (619) 438–6000,1–800–336–8722.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 16, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31613 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071703A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Disapproval of an exempted fishing permit(EFP).

SUMMARY: NMFS announces that it has disapproved the request for an exempted fishing permit (EFP) from Florida Offshore Aquaculture, Inc., of Madeira Beach, FL. The EFP would have authorized a 24–month feasibility study for net cage culture of cobia, mahi-mahi, greater amberjack, Florida pompano, red snapper and cubera snapper at a site approximately 33 statute miles (53 km) WSW. of Johns Pass, FL.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; fax: 727–570–5583; e-mail: *peter.eldridge@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP was requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b), concerning scientific research activity, exempted fishing permits, and exempted educational activity.

Florida Offshore Aquaculture, Inc., requested an EFP to determine the feasibility of raising fish in the exclusive economic zone approximately 33 miles (53 km) WSW. of Johns Pass, FL. Initially, the project intended to raise juvenile cobia in four cages during the first year. The applicant intended to expand the project to eight cages with cobia, mahi-mahi, greater amberjack, Florida pompano, red snapper and cubera snapper. The applicant stated that disease-free fingerlings would be obtained from the Aquaculture Center of the Florida Keys (59300 Overseas Highway, Marathon, FL, phone (305) 743–6135) and the Marine Science Institute of the University of Texas (750 Channel View Drive, Port Aransas, TX, phone (361) 749–6795). Further, the applicant stated that the brood stock and their spawn would be genetically tagged using the satellite DNA method.

On July 30, 2003, NMFS published in the **Federal Register** a notice of receipt of an application for an exempted fishing permit with a request for comments on the EFP (68 FR 44745). During the public comment period, 340 individuals opposed the granting of the EFP. In addition, one shrimp firm opposed the EFP because it would disrupt their operations. Six environmental organizations opposed granting the EFP and stated that an Environmental Impact Statement (EIS) rather than an Environmental Assessment (EA) should be prepared for this project. In July 2003, the Florida Department of Environmental Protection (FDEP) expressed concerns about the EA and requested that the EA be revised to reflect their concerns. The Florida Department of Agriculture and Consumer Services supported the permit application.

Consistent with the requirements of 50 CFR 600.745(b)(3)(i), NMFS provided copies of the EFP application and information to the State of Florida, the Gulf of Mexico Fishery Management Council (Council), the U.S. Coast Guard (Coast Guard), and Region 4 of the Environmental Protection Agency (EPA) along with information on the EFP's effects on target species.

The Council considered the EFP request at its September 2003 meeting, and strongly recommended that the EFP for Florida Offshore Aquaculture, Inc. be denied. The Coast Guard and the EPA did not respond to the NMFS request for comments. On October 27, 2003, the Florida Department of Environmental Protection commented that the revised EA lacked adequate information pertaining to the environmental effects of caged aquaculture operations in warm waters, particularly the Gulf of Mexico, and the potential for short- and long-term environmental impacts due to expansion of the facility. Also, they stated that the precedent setting nature of the proposed action warrants a thorough evaluation under the National Environmental Policy Act.

The major issues of concern, as indicated by the Council, environmental organizations, and individuals, included: (1) the applicant made false statements in connection with the application; (2) which vessel would be used for transporting feed and fish to and from the cages; (3) who would conduct the DNA fingerprinting that would allow tracking of the aquaculture fish throughout their sale; (4) possible escapement and its impact on wild stocks; (5) the type of food used for feeding; (6) possible transfer of diseases to wild fish; (7) timing of cage placement offshore; (8) timing of acquiring fingerlings; (9) the expertise and ability of the applicant to undertake the endeavor; (10) associated penalties for violating the EFP; (11) who is responsible for any environmental damage; (12) staff expertise on treating disease; (13) how disease outbreaks would be treated; (14) liability and environmental insurance; (15) paper trail on aquacultured fish throughout the marketing chain; (16) possible conflicts or impacts on or with other fishing activities; (17) possible interactions of wild fish or other organisms with the cages; (18) response to storm events; (19) why a smaller number of cages will not be used if this is a feasibility study; and (20) the range of species for possible stocking.

Given the inexperience of the applicant and the false information in the application, it appears that the applicant lacks the capability to comply with the conditions of the EFP. It is likely that the project could impact significantly the surrounding habitat and marine fishery resources. Virtually all of the agencies and environmental organizations stated that the proposed action required either an EIS or a thorough analysis of the environmental impacts. Given the precedent setting nature of the action, NMFS concurs that the proposed action warrants an EIS.

The Council is developing a generic amendment and an EIS to determine the feasibility of conducting and regulating aquaculture projects in Federal waters in the Gulf of Mexico. This effort is expected to be completed within 2 years. This process will result in extensive public input and appears necessary to ensure that no unanticipated consequences will result from proposed future aquaculture projects. NMFS will work with the Council and support the development of the generic amendment and EIS.

Given the precedent setting nature of the project and the need for full public input into the process, especially the need for an EIS, NMFS believes that it is premature to grant an EFP at this time. Rather, applicants should work closely with the Council to develop appropriate procedures for establishing and maintaining future aquaculture projects in Federal waters. Thus, NMFS denies the application for an EFP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 17, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31611 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice, Establishment of a Frequency Assignment Coordination Web Site

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Telecommunications and Information Administration (NTIA), as part of an agreement with the Federal Communications Commission (FCC) in its Allocations and Service Rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands Report and Order, plans to establish a Web-based coordination system to facilitate frequency assignment coordination between federal and non-federal operations within the 70, 80, and 90 GHz bands.[1] Until the complete web-based coordination system is operational, NTIA and the federal agencies will continue to process private sector assignments for coordination within 14 working days of the FCC providing those assignment requests to NTIA. Although the automated coordination system will not be ready for use for several months, NTIA is publicly announcing that the following Web site <*http://ntiacsd.ntia.doc.gov/webcoord/status.cfm*> can be accessed by non-federal applicants to determine the status of their frequency assignment applications for these bands at any point in time.

FOR FURTHER INFORMATION CONTACT: Karl B. Nebbia, Office of Spectrum Management, Deputy Associate Administrator, at (202) 482–1850, or electronic mail: *knebbia@ntia.doc.gov;* or Thomas Woods, Office of Spectrum Management, Frequency Assignment Branch Chief, at (202) 482–1132, or electronic mail: *twoods@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: New technologies are making widespread beneficial use of the 70, 80, and 90 GHz bands possible for the first time. These bands, which are shared between federal and non-federal users, can now be used to offer a broad range of new products and services, such as high-speed wireless local area networks, and to increase access to broadband services, including access systems for the Internet. In order to accelerate the introduction of these technologies, NTIA and the FCC have agreed to use an innovative Web-based frequency coordination mechanism to coordinate use between the federal and non-federal sectors. The FCC's recent Allocations and Service Rules Order for the 71–76 GHz, 81–86 GHz, and 92–95 GHz bands, set in motion the steps necessary to implement these technologies. The NTIA/FCC agreement calls for the formulation of a plan for the web-based frequency coordination mechanism within four months of the release of the Allocations and Service Rules Order.[2] Within another four months, the interactive system would be operational. This new system will allow non-federal users to use a Web site to determine whether they have any potential conflict with federal users. Non-federal user applicants will be required to input certain information into a database. Once that information has been submitted, it will be processed within minutes and a determination will be made on whether or not the applicant can move forward in planning for their system's operational use within those bands of spectrum.

Until the complete Web-based system is operational, however, federal and non-federal users will continue to coordinate their assignments through NTIA's Interdepartment Radio Advisory Committee (IRAC) Frequency Assignment Subcommittee (FAS). To help each applicant know the status of a particular application with respect to its FAS review, NTIA will provide status information at *http://ntiacsd.ntia.doc.gov/webcoord/status.cfm.* This site will identify when non-federal applications for these bands have been submitted to the FAS, when those applications completed federal agency review, and the final result.

While not a part of the agreement regarding the automated mechanism for the 70, 80, 90 GHz bands, the 21.2–23.6

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[1] Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands, WT Docket No. 02–146, Report and Order, FCC 03–248 at ¶54 (released, Nov. 4, 2003) (Allocations and Service Rules Order).

[2] *See id.* at ¶ 2.

GHz band is also shared between federal and non-federal users and presents similar coordination challenges. Accordingly, NTIA will also provide on this Web site status information regarding the processing of non-federal applications for that band.

Dated: December 17, 2003.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 03-31511 Filed 12-22-03; 8:45 am]

BILLING CODE 3510-60-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

December 17, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also *see* 67 FR 63632, published on October 15, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 17, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on December 23, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	310,668 dozen.
338/339	3,633,517 dozen.
635	434,602 dozen.
638/639	3,095,642 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3-00612 Filed 12-22-03; 8:45 am]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

December 17, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also *see* 68 FR 26575, published on May 16, 2003.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 17, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 12, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the eight-month period which began on May 1, 2003 and extends through December 31, 2003.

Effective on December 23, 2003, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
301	405,533 kilograms.
332	2,667 dozen pairs.
333	5,440 dozen.
338/339	10,463,635 dozen.
435	18,267 dozen.
440	767 dozen.
447	36,827 dozen.
448	13,713 dozen.

Category	Restraint limit[1]
620	1,997,227 square meters.

[1] The limits have not been adjusted to account for any imports exported after April 30, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E3–00610 Filed 12–22–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 04–C0001]

Lifelike Co., d/b/a My Twinn, a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Flammable Fabrics Act in the **Federal Register** in accordance with the terms of 16 CFR Part 1605. Published below is a provisionally-accepted Settlement Agreement with The Lifelike Company, d/b/a My Twinn, a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by January 7, 2004.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 04–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: December 16, 2003.

Todd A. Stevenson,
Secretary.

Consent Order Agreement

The Lifelike Company, d/b/a My Twinn ("Respondent""Lifelike"), a corporation, enters into this Consent Order Agreement ("Agreement") with the staff of the Consumer Product Safety Commission ("the staff") pursuant to the procedures set forth in section 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act, 16 CFR part 1605.

This Agreement and Order are for the purpose of settling allegations of the staff that Respondent sold purple satin pajamas made from 100% polyester and rosebud nightgowns made from 100% polyester that failed to comply with the Standards for the Flammability of Children's Sleepwear ("Sleepwear Standards"), 16 CFR parts 1615 and 1616.

Respondent and the Staff Agree

1. The Consumer Product Safety Commission ("Commission") is an Independent regulatory agency of the United States Government. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*, the Flammable Fabrics Act (FFA), 15 U.S.C. 1191 *et seq.*, and the Federal Trade Commission Act (FTCA), 15 U.S.C. 41 *et seq.*

2. Respondent is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located at 5655 South Yosemite Street, Suite 2121, Greenwood, Village, CO 80111.

3. Respondent is now, and has been engaged in one or more of the following activities: The sale, or the offering for sale, in commerce, or the importation into the United States or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after sale or shipment in commerce, children's sleepwear garments that are subject to the Sleepwear Standards.

4. This Agreement is for the purpose of settling the allegations of the accompanying Complaint. This Agreement does not constitute an admission by Respondent that it violated the law. The Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

5. The parties agree that this Consent Order Agreement resolves the allegations of the Complaint and the Commission shall not initiate any civil or administrative action against Respondent for those alleged violations set forth in the Complaint.

6. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (a) to an administrative or judicial hearing, (b) to judicial review or other challenge or contest of the validity of the Commission's actions, (c) to a determination by the Commission as to whether Respondent failed to comply with the CPSA, FFA, FTCA, and the underlying regulations, (d) to a statement of findings of fact and conclusions of law, and (e) to any claims under the Equal Access to Justice Act.

7. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1605.13d). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 20th day after the date it is published in the **Federal Register**.

8. In settlement of the staff's allegations of the Complaint, Respondent agrees to comply with the attached Order incorporated herein by reference.

9. Upon a violation of the attached Order by Respondent, the Commission reserves the right to take appropriate legal action against Respondent for all violations listed in the Complaint and for all violations occurring after the date of this Agreement and respondent waives the statute of limitations.

10. For any violation occurring after the date of this Agreement, if the Commission finds that Respondent has manufactured for sale, sold, or offered for sale, in commerce, or imported into the United States, or introduced, delivered for introduction, transported or caused to be transported, in commerce, of any product, fabric, or related material which fails to comply with the Sleepwear Standards, Respondent will pay to the Commission upon demand a penalty in the amount of five (5) times the retail value of the product in question. This provision does not preclude the Commission from taking additional action including, but not limited to, civil, administrative, and/or criminal actions under sections 5, 6, and 7 of the FFA, 15 U.S.C. 1194, 1195, and 1196; sections 2 and 21 of the CPSA, 15 U.S.C. 2069 and 2070; and

sections 10 and 17(b) of the FTCA 15 U.S.C. 50 and 57(b).

11. Respondent reserves its right to challenge the Commission's findings under paragraphs 9 and 10 of this Agreement before the Commission and to have the court review whether the Commission's decision was arbitrary and capricious.

12. The Commission may publicize the terms of this Consent Order Agreement.

13. This Agreement, and the Complaint accompanying the Agreement, may be used in interpreting the Order. Agreements, understandings, representations, or interpretations, made outside this Consent Order Agreement may not be used to vary or contradict its terms.

14. Upon acceptance of the Agreement, the Commission shall issue the following Order.

15. The provisions of this Agreement shall apply to Respondent and each of its successors and assigns.

Dated: September 29, 2003.

Respondent, the Lifelike Co.

Dennis W. Scruggs,

Executive Vice President and Chief Financial Officer, The Lifelike Company, d/b/a My Twinn, 5655 South Yosemite Street, Suite 212, Greenwood Village, CO 80111.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: September 29, 2003.

Dennis C. Kacoyanis,

Trial Attorney, Office of Compliance.

Order

It is hereby ordered that Respondent, its successors, and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality, do forthwith cease and desist from manufacturing for sale, selling, or offering for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, any product, fabric, or related material that fails to comply with the flammability requirements of the Standards for the Flammability of Children's Sleepwear, 16 CFR parts 1615 and 1616.

It is further ordered That following service upon Respondent of the Final Order in this matter, Respondent will notify the Commission within 30 days following the consummation of the sale of a majority of its stock or following a change in any of its corporate officers responsible for compliance with the terms of this Consent Agreement and Order.

By direction of the Commission, this Consent Agreement and Order is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Secretary is directed to publish the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**

So ordered by the Commission, this 16th day of December, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

Complaint

Nature of Proceedings

Pursuant to the provisions of the Flammable Fabrics Act (FFA), as amended, 15 U.S.C. 1191 *et seq.*; the Federal Trade Commission Act (FTCA), as amended, 15 U.S.C. 41 *et seq.*; and the Standards for the Flammability of Children's Sleepwear (Sleepwear Standards), 16 CFR parts 1615 and 1616, the Consumer Product Safety Commission having reason to believe that the Lifelike Company, d/b/a My Twinn®, 5655 South Yosemite Street, Suite 212, Greenwood, CO 80111, has violated the provisions of said Acts; and further, it appearing to the Commission that a proceeding by it in respect to those violations would be in the public interest, therefore, it hereby issues its complaint stating its charges as follows:

1. Respondent the Lifelike Company, d/b/a My Twinn® is a corporation organized and existing under the laws of the State of Colorado, with its principal place of business located at 5655 South Yosemite Street, Suite 212, Greenwood Village, CO 80111.

2. Respondent is now and has been engaged in the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, ion commerce, or the sale or delivery after a sale or shipment in commerce, as the term "commerce" is defined in section 2(b) of the FFA, 15 U.S.C. 119(b), "children's sleepwear" as defined in 16 CFR 1615.1 and 1616.1.

3. From October 15, 1999, through December 3, 1999, Respondent imported into the United States, sold, and offered for sale, in commerce, introduced, delivered for introduction, transported or caused to be transported, in commerce, and sold or delivered after a sale or shipment in commerce 4,366 pairs of purple satin pajamas made from 100% polyester that failed to meet the flammability requirements of the Children's Sleepwear Standards, 16 CFR parts 1615 and 1616, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a).

4. In 2001, Respondent sold, and offered for sale, in commerce, introduced, delivered for introduction, transported or caused to be transported, in commerce, and sold or delivered after a sale or shipment in commerce, 2,103 pairs of purple satin pajamas, GPU 072899, made from 100% polyester that failed to meet the flammability requirements of the Children's Sleepwear Standards, 16 CFR parts 1615 and 1616, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a).

5. In 2001, Respondent sold, and offered for sale, in commerce, introduced, delivered for introduction, transported or caused to be transported, in commerce, and sold or delivered after a sale or shipment in commerce 3,564 rosebud nightgowns, GPU 072600, made from 100% polyester that failed to meet the flammability requirements of the Children's Sleepwear Standards, 16 CFR parts 1615 and 1616, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a).

6. The acts by Respondent set forth in paragraphs 3 through 5 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desists order may be issued against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Relief Sought

7. The staff seeks the issuance of a cease and desist order against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the 11th day of December, 2003.

By direction of the Commission.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance.

[FR Doc. 03–31495 Filed 12–22–03; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Draft Selection Criteria for Closing and Realigning Military Installations Inside the United States

AGENCY: Office of the Deputy Under Secretary of Defense (Installations and Environment), DoD.

ACTION: Notice.

SUMMARY: This notice publishes the draft selection criteria that will be used by the Department of Defense to make closure and realignment recommendations that will be reviewed by the 2005 Defense Base Closure and Realignment Commission.

DATES: Comments should be submitted to the Department of Defense at the address shown below by January 28, 2004, to be considered in the formulation of the final criteria.

ADDRESSES: Interested parties should submit written comments to: Office of the Deputy Under Secretary of Defense (Installations & Environment), ATTN: Mr. Peter Potochney, Director, Base Realignment and Closure, Room 3D814, the Pentagon, Washington DC, 20301–3300. Please cite this **Federal Register** announcement in all correspondence. Interested parties may also forward their comments via facsimile at 703–695–1496.

FOR FURTHER INFORMATION CONTACT: Mr. Mike McAndrew, Base Realignment and Closure Office, ODUSD(I&E), (703) 614–5356.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Base Closure and Realignment Act of 1990, as amended (the Act), establishes the authority by which the Secretary of Defense may close or realign military installations inside the United States. Section 2913(a) of the Act requires the Secretary of Defense to publish the selection criteria proposed to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States by December 31, 2003, for a 30-day public comment period. Section 2913(e) requires the Secretary of Defense to publish the final selection criteria no later than February 16, 2004. The final selection criteria are subject to Congressional disapproval by Act of Congress until March 15, 2004.

B. Relationship to Previous Criteria

Since the 1991 Base Realignment and Closure (BRAC) round, the Department of Defense (DoD) has used the same, publicly accepted, selection criteria to make its closure and realignment recommendations. The Department first published these criteria for public comment in a November 30, 1990 (55 FR 49678), **Federal Register** notice. Based on comments received, the proposed criteria were appropriately amended. The February 15, 1991 (56 FR 6374), **Federal Register** notice contained an analysis of public comments received and a description of the changes DoD made to the draft criteria. Having not been disapproved by Congress, the final criteria were used to make recommendations to the 1991 Defense Base Closure and Realignment Commission. Subsequently, the DoD, in a December 15, 1992 (57 FR 59334), and a December 9, 1994 (59 FR 63769), **Federal Register** notice, announced that it would use the same final criteria to make recommendations to the 1993 and 1995 Defense Base Closure and Realignment Commissions, respectively.

The Act specifies that the selection criteria shall ensure that military value is the primary consideration in making closure and realignment recommendations. It also lists specific considerations that military value must include and special considerations that the selection criteria must address. The eight criteria proposed for this round were based on the accepted, tested, and proven criteria used in past BRAC rounds. These criteria now incorporate statutory requirements and stress the Department's capabilities based approach to performing missions.

C. Draft Selection Criteria

It is proposed that the Department of Defense use the following criteria in making recommendations for the closure or realignment of military installations inside the United States:

- In recommending military installations for closure or realignment, the Department of Defense will, giving priority consideration to military value (criteria 1–4), consider:

Military Value

1. The current and future mission capabilities and the impact on operational readiness of the Department of Defense's total force, including the impact on joint warfighting, training, and readiness.

2. The availability and condition of land, facilities and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.

3. The ability to accommodate contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.

4. The cost of operations and the manpower implications.

Other Considerations

5. The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

6. The economic impact on existing communities in the vicinity of military installations.

7. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions, and personnel.

8. The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

D. Previous Federal Register References

1. 55 FR 49678, November 30, 1990: Proposed selection criteria and request for comments.
2. 55 FR 53586, December 31, 1990: Extend comment period on proposed selection criteria.
3. 56 FR 6374, February 15, 1991: Published selection criteria and analysis of comments.
4. 57 FR 59334, December 15, 1992: Published selection criteria.
5. 59 FR 63769, December 9, 1994: Published selection criteria.

Dated: December 18, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31631 Filed 12–19–03; 10:00 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 23, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 17, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: Social and Character Development Research Program National Evaluation.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 32,160.

Burden Hours: 13,868.

Abstract: The Social and Character Development (SACD) National Evaluation will evaluate the success of seven school-based interventions designed to promote positive social and character development among elementary school children. The research will determine, through randomized field trials, whether one or more program interventions produce meaningful effects. The study's three primary research questions are: (1) Do the SACD interventions affect social-emotional competence, school climate, positive and negative behavior, and academic achievement? (2) For whom, and under what conditions, are the interventions effective? and (3) What is the process by which the interventions affect children's behavior? Data collection activities will include the administration of surveys to children, teachers, principals, and primary caregivers; school observations, and school record abstractions over a three year period: from 2004–05 to 2006–07. Results from the evaluation will provide education professionals with information they need to make informed choices about which intervention to adopt.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2428. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivian_reese@ed.gov. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–31513 Filed 12–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 17, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Even Start Classroom Literacy Interventions and Outcomes (CLIO) Study.

Frequency: Semi-Annually.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden

Responses: 19,939.

Burden Hours: 8,766.

Abstract: CLIO will test the effectiveness for children and parents of promising early childhood education and parenting education interventions in a sample of Even Start projects to determine: (1) Whether enhanced interventions that focus on literacy and integrate early childhood and parenting education are more effective than existing Even Start services; (2) the relative effectiveness of different interventions; and (3) the relative contribution of enhanced parenting education to program results.

Requests for copies of the submission for OMB review: Comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2425. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–31514 Filed 12–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 17, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: American Indian Supplement to the NAEP, Field Test 2004.

Frequency: One time.

Affected Public:

State, local, or tribal gov't, SEAs or LEAs; individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,300.

Burden Hours: 325.

Abstract: This study is a field test for a planned supplement to the National Assessment of Educational Progress (NAEP). The study will determine the feasibility of oversampling the American Indian and Alaska Native student population. In addition to a standard assessment, it includes special background questionnaires for student, teacher, and school components. A three-year clearance is requested.

Requests for copies of the submission for OMB review: Comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2363. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–31515 Filed 12–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Teaching American History Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215X.

DATES:

Applications Available: December 23, 2003.

Deadline for Notice of Intent to Apply: February 5, 2004.

Deadline for Transmittal of Applications: March 2, 2004.

Deadline for Intergovernmental Review: May 3, 2004.

Eligible Applicants: Local educational agencies (LEAs)—including charter schools that are considered LEAs under State law and regulations—working in partnership with one or more of the following entities:

- Institutions of higher education (IHE).
- Non-profit history or humanities organizations.
- Libraries and museums.

Estimated Available Funds: Although the Congress has not enacted a final appropriation for FY 2004, the Department is inviting applications for this competition now so that it may be prepared to make awards following final action on the Department's appropriations bill. Based on the congressional action to date, we estimate that $100,000,000 will be available for new awards under this competition. The actual level of funding depends on final congressional action.

Estimated Range of Awards: Total funding for a three-year project period is $350,000–1,000,000 for LEAs with enrollments of less than 300,000 students; and $500,000–2,000,000 for LEAs with enrollments above 300,000 students.

Estimated Average Size of Awards: Total for all three years is $750,000.

Estimated Number of Awards: 100–135.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Teaching American History grants support projects to raise student achievement by improving teachers' knowledge, understanding, and appreciation of traditional American history. Grant awards assist local educational agencies (LEAs), in partnership with entities that have extensive content expertise, to develop, document, evaluate, and disseminate innovative, cohesive models of professional development. By helping teachers to develop a deeper understanding and appreciation of traditional American history as a separate subject matter within the core curriculum, these programs improve instruction and raise student achievement.

Priorities: This competition includes one absolute priority and two invitational priorities that are explained in the following paragraphs. To be considered for funding, each applicant must address the absolute priority regarding Partnerships with Other Agencies or Institutions. These priorities are as follows.

In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 2351(b) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Absolute Priority: For FY 2004, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Partnerships With Other Agencies or Institutions

Each applicant must propose to work in collaboration with one or more of the following:

- IHE.
- Non-profit history or humanities organizations.
- Libraries or museums.

Note: Each applicant is encouraged to include in its application an assurance from appropriate officials of the agency or institution(s) with which it will work in partnership. This assurance may include information about how the partnering agency or institution(s) will help the applicant implement the proposed project.

Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2004 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Experimental and Quasi-Experimental Evaluation Designs

The Secretary is particularly interested in receiving applications that propose evaluation plans that are based on rigorous scientifically based research methods to assess the effectiveness of a particular intervention. The Secretary intends that this priority will allow program participants and the Department to determine whether the project produces meaningful effects on student achievement or teacher performance.

Evaluation methods using an experimental design are best for determining project effectiveness. Thus, the project should use an experimental design under which participants—*e.g.*, students, teachers, classrooms, or schools—are randomly assigned to participate in the project activities being evaluated or to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, the project may use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—*e.g.*, students, teachers, classrooms, or schools—with non-participants having similar pre-program characteristics.

In cases where random assignment is not possible and an extended series of observations of the outcome of interest precedes and follows the introduction of a new program or practice, regression discontinuity designs may be employed.

For projects that are focused on special populations in which sufficient numbers of participants are not available to support random assignment or matched comparison group designs, single-subject designs such as multiple baseline or treatment-reversal or interrupted time series that are capable of demonstrating causal relationships can be employed.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group nor regression discontinuity designs will not be considered responsive to the priority when sufficient numbers of participants are available to support these designs. Evaluation strategies that involve too small a number of participants to support group designs must be capable of demonstrating the causal effects of an intervention or program on those participants.

The proposed evaluation plan must describe how the project evaluator will collect—before the project intervention commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

In determining the quality of the evaluation method, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) The type of design to be used (that is, random assignment or matched comparison). If it will be matched comparison, the applicant should include in the plan a discussion of why random assignment is not feasible.

(2) Outcomes to be measured.

(3) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(4) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation. (An independent evaluator does not have any authority over the project and is not involved in its implementation.)

Invitational Priority 2—Traditional American History

The Secretary is particularly interested in receiving applications that propose projects that address traditional American history, meaning, for example, projects that teach the significant issues, episodes, and turning points in the history of the United States, and how the words and deeds of individual Americans have determined the course of our Nation. This history teaches how the principles of freedom and democracy, articulated in our founding documents, have shaped—and continue to shape—America's struggles and achievements, as well as its social, political, and legal institutions and relations. Applicants are invited to propose projects that enable students to gain an understanding of these principles and of the historical events and people that best illustrate them.

Program Authority: 20 U.S.C. 6721 *et seq.*, Part C, subpart 4, of Title II of the Elementary and Secondary Education Act of 1965, as reauthorized by the No Child Left Behind Act of 2001.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: Although the Congress has not enacted a final appropriation for FY 2004, the Department is inviting applications for this competition now so that it may be prepared to make awards following final action on the Department's appropriations bill. Based on the congressional action to date, we estimate that $100,000,000 will be available for new awards under this competition. The actual level of funding depends on final congressional action.

Estimated Range of Awards: Total funding for a three-year project period is $350,000–1,000,000 for LEAs with enrollments of less than 300,000 students; and $500,000–2,000,000 for LEAs with enrollments above 300,000 students.

Estimated Average Size of Awards: Total for all three years is $750,000.

Estimated Number of Awards: 100–135.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Local educational agencies (LEAs)—including charter schools that are considered LEAs under State law and regulations—working in partnership with one or more of the following entities:

- Institutions of higher education (IHE).
- Non-profit history or humanities organizations.
- Libraries and museums.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.215X.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** elsewhere in this notice. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of LEAs that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department with a short e-mail indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent no later than February 5, 2004, to Christine Miller at: *TeachingAmericanHistory@ed.gov.*

Applicants that fail to provide this e-mail notification may still apply for funding. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 25 single-sided, double-spaced pages printed in 12 point font or larger. If the applicant is addressing the invitational priority for evaluation, the narrative must be limited to 30 single-sided, double-spaced pages printed in 12 point font or larger. The page limit does not apply to the title page, the Application for Federal Assistance (ED 424), the one-page abstract, the budget summary form (ED 524) and the narrative budget justification, any curriculum vitae, the bibliography of literature cited, or the assurances and certifications.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:* *Applications Available:* December 23, 2003.

Deadline for Notice of Intent to Apply: February 5, 2004.

Deadline for Transmittal of Applications: March 2, 2004.

The dates and times for the transmittal of applications by mail or hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 3, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants under Teaching American History—CFDA Number 84.215X be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Christine Miller, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C126, FB–6, Washington, DC 20202–6200. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Teaching American History—CFDA Number 84.215X is one of the programs included in the pilot project. If you are an applicant under Teaching American History, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) one of the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contacts) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Teaching American History at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The following selection criteria for this program are in 34 CFR 75.210 and 20 U.S.C. 6721:

1. *Meeting the statutory requirements.* (Total of 50 points)

(a) *Project quality* (40 points). The Secretary considers the quality of the proposed project by considering how well the applicant describes a plan for development, implementation, and strengthening of programs to teach traditional American history as a separate academic subject (not as a component of social studies) within elementary school and secondary school curricula, including the implementation of activities—

(i) To provide professional development and teacher education activities with respect to American history; and

(ii) To improve the quality of instruction.

Note. The Secretary encourages the applicant to include a discussion of the specific history content to be covered by the grant; the format in which the applicant will deliver the history content; and the quality of the staff and consultants responsible for delivering these content-based professional development activities. The applicant may also attach curriculum vitae for individuals who will provide the content training to the teachers.

The Secretary also encourages applicants to provide a description of plans to demonstrate how teachers are using the knowledge acquired from project activities to improve the quality of instruction. This description may include plans for reviewing how teachers' lessons planning and classroom teaching are affected by their participation in project activities.

(b) *Partnership(s)* (10 points). The Secretary considers how well the applicant describes a plan that meets the statutory requirement to carry out activities under the grant in partnership with one or more of the following:

(i) An institution of higher education.

(ii) A nonprofit history or humanities organization.

(iii) A library or museum.

Note: The Secretary encourages the applicant to provide the rationale for selecting the partners and explain the specific activities that the partner(s) will contribute to the grant during each year of the project. The Secretary also encourages the applicant to include a memorandum of understanding or detailed letters of commitment from the partner(s) in an appendix to the application narrative.

2. *Significance* (20 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers—

(a) The national significance of the proposed project; and

(b) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

Note: The Secretary encourages the applicant to discuss the significance of the proposed project, including national significance. For example, the applicant could include information on: the extent to which teachers in the LEA are not certified in history or social studies; student achievement data in American history; and rates of student participation in courses such as Advanced Placement American History.

3. *Quality of the management plan* (10 points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

4. *Quality of the project evaluation* (20 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Note: The Secretary encourages applicants to align evaluation plans with the project design explained under the *Project Quality* criterion.

Note: The Secretary encourages the applicant to include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. The Secretary also encourages applicants to identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. Applicants are encouraged to indicate (1) what types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used to collect data; (4) what data collection instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor the progress of the funded project and to provide accountability information about both success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* We have established one performance indicator for Teaching American History. The indicator is: Students in experimental and quasi-experimental studies of educational effectiveness of Teaching American History projects will demonstrate higher achievement on course content measures and/or statewide U.S. history assessments than students in control and comparison groups.

We will track this indicator through the use of two measures. We will gather data for these measures through those grantees who are using experimental and quasi-experimental evaluation designs.

Measure One: Percentage of students in studies of educational effectiveness who demonstrate higher achievement than those in control and comparison groups.

Measure Two: Percentage of school districts that demonstrate higher educational achievement for students than those in control or comparison groups.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Christine Miller, Alex Stein, Harry Kessler, or Claire Geddes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C126, Washington, DC 20202–6200. Telephone: (202) 260–8766 (Christine Miller); (202) 205–9085 (Alex Stein); (202) 708–9943 (Harry Kessler); or (202) 260–8757 (Claire Geddes) or by e-mail: *teachingamericanhistory@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 18, 2003.

Nina S. Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–31567 Filed 12–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, January 13, 2004, 6 p.m.–9 p.m.

ADDRESSES: Fernald Closure Project Site, 7400 Willey Road, Trailer 214, Hamilton, OH 45013–9402.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6 p.m.—Call to Order
6–6:30 p.m.—Chair's Remarks, Ex Officio Announcements and Updates
6:30–8 p.m.—Discuss Groundwater Treatment Alternatives
8–8:15 p.m.—Status of Risk-Based End States Policy at Fernald
8:15–8:45 p.m.—Update on Stewardship Issues
 —Comments on Draft Institutional Controls Plan
 —Comments on Legacy Management Strategic Plan
 —Coalition for Post-Closure Involvement in Fernald
8:45–9 p.m.—Public Comment and Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and a reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on December 18, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–31526 Filed 12–22–03; 8:45 am]

BILLING CODE 6450–01–P

U.S. DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 9, 2004; 8:30 a.m. to 6 p.m. and Tuesday, February 10, 2004; 8:30 a.m. to 4 p.m.

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Bruce Strauss; Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–20/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: (301) 903–3705.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Monday, February 9, 2004, and Tuesday, February 10, 2004.

- Discussion of Department of Energy High Energy Physics Programs
- Discussion of National Science Foundation Elementary Particle Physics Program
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Bruce Strauss, 301–903–3705 or *Bruce.Strauss@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on December 18, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–31525 Filed 12–22–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–10–000, et al.]

FPL Energy New Mexico Wind, LLC, et al.; Electric Rate and Corporate Filings

December 9, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Energy New Mexico Wind, LLC and FPL Energy American Wind, LLC

[Docket EC04–10–000]

Take notice that on December 4, 2003, FPL Energy New Mexico Wind, LLC and FPL Energy American Wind, LLC (Applicants) submitted for filing a revision to Attachment A of Applicant's application that was approved by the Commission's November 26, 2003, Order in Docket No. EC04–10–000. Applicants' filing contains a request for expedited clarification of the Commission's November 26, 2003, Order, as well as a request for a shortened comment period.

Comment Date: December 11, 2003.

2. Covanta Energy Corporation

[Docket No. EC04–22–000]

Take notice that on December 4, 2003, Covanta Energy Corporation submitted a Notice of Withdrawal of its November 13, 2003, application in the above-referenced proceeding.

Comment Date: December 26, 2003.

3. Oswego Cogen Company, LLC; Sithe/Independence Equity LLC; and Sithe/Independence Power Partners, L.P.

[Docket No. EC04–33–000]

Take notice that on December 5, 2003, Oswego Cogen Company, LLC (Oswego), Sithe/Independence Equity LLC (Equity), and Sithe/Independence Power Partners, L.P. (Independence) (collectively, the Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition from Oswego to Equity of a 40% limited partnership interest in Independence. Independence states it owns a 1,060 MW generating facility in Oswego, New York. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: December 26, 2003.

4. Onondaga Cogeneration Limited Partnership

[Docket Nos. EC04–34–000 and ER00–895–002]

Take notice that on December 5, 2003, Onondaga Cogeneration Limited Partnership (Onondaga), submitted an application pursuant to section 203 of the Federal Power Act and a notice of status change, seeking authorization for an internal restructuring. This internal restructuring, together with a subsequent transaction, would result in the transfer of indirect control of certain jurisdictional facilities associated with Onondaga's 91–MW dual fuel, combined-cycle merchant energy facility located in Geddes, New York. Onondaga requests expedited consideration of its application and certain waivers.

Onondaga states that the transaction will have no effect on competition, rates or regulation and is in the public interest.

Comment Date: December 26, 2003.

5. Sithe Energy Marketing, L.P., AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., and Sithe/Independence Power Partners, L.P.

[Docket Nos. ER02–2202–003, ER98–2782–005, and ER03–42–004]

Take notice that on December 4, 2003, Sithe Energy Marketing, L.P., AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., and Sithe/Independence Power Partners, L.P. (collectively, the Sithe Entities) tendered for filing a notice of change in status pursuant to section 205 of the Federal Power Act with respect to their authority to engage in wholesale sales of capacity, energy and ancillary services at market-based rates. The change in status involves the transfer of Oswego Cogen Company, LLC's 40% ownership interests in Sithe/Independence Power Partners, L.P. to Sithe/Independence Equity LLC, a transaction that will result in Sithe Energies, Inc. holding, directly and indirectly, 100% of the ownership interests in Sithe/Independence Power Partners, L.P.

Comment Date: December 26, 2003.

6. New York Independent System Operator Inc.

[Docket No. ER03–690–003]

Take notice that on November 26, 2003, New York Independent System Operator Inc. (NYISO) filed a Report on Market Competitiveness at the New York Independent System Operator Proxy Busses. NYISO states that this report was filed in compliance with directives in the Commission's August 22, 2003 Order Conditionally Accepting Proposed Tariff Revisions, 104 FERC ¶ 61,220.

Comment Date: December 26, 2003.

7. Columbus Southern Power Company

[Docket No. ER04–150–001]

Take notice that on November 20, 2003, Columbus Southern Power Company (CPS) submitted for filing a Certificate of Concurrence related to a November 3, 2003, Notice of Cancellation of its Service Agreement No. 3. CPS states that the certificate was not signed at the time of the cancellation and is now ready to be included with the cancellation.

Comment Date: December 19, 2003.

8. NEO California Power LLC

[Docket No. ER04–220–001]

Take notice that on December 5, 2003, NEO California Power LLC (NEO California) tendered for filing revised rate schedule sheets for the Must-Run Service Agreement (RMR Agreement) between NEO California and the California Independent System Operator Corporation (California ISO) an amendment to one of the revised rate schedule sheets that was filed in ER04–220–000 on November 21, 2003.

Comment Date: December 26, 2003.

9. APN Starfirst, LP

[Docket No. ER04–226–001]

Take notice that on December 5, 2003, APN Starfirst, LP (Starfirst) filed an amended Rate Schedule FERC No. 1 to comply with Federal Energy Regulatory Commission requirements in Order 614.

Comment Date: December 26, 2003.

10. Central Hudson Gas & Electric Corporation

[Docket No. ER04–258–000]

Take notice that on December 4, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 63, effective June 18, 1981, in Docket No. ER81–604–000.

Central Hudson states that the contract was terminated in accordance with its terms as a result of the sale, on January 30, 2001, of the Central Hudson electric generation units designated in the contract.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the regulations to permit the Notice of Cancellation to be effective February 1, 2001.

Central Hudson states that a copy of its filing was served on Orange & Rockland Utilities, Inc., and the State of New York Public Service Commission.

Comment Date: December 26, 2003.

11. Central Hudson Gas & Electric Corporation

[Docket No. ER04–259–000]

Take notice that on December 4, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 66, effective April 19, 1983, in Docket No. ER83–533–000. Central Hudson states that the contract was terminated in accordance with its terms as a result of the sale, on January 30, 2001, of the Central Hudson electric generation units designated in the contract. Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the regulations to permit the notice of cancellation to be effective February 1, 2001. Central Hudson states that a copy of its filing was served on New York State Electric and Gas Corporation, and the State of New York Public Service Commission.

Comment Date: December 26, 2003.

12. Tampa Electric Company

[Docket No. ER04–260–000]

Take notice that on December 4, 2003, Tampa Electric Company (Tampa Electric) tendered for filing a Notice of Cancellation of its transaction-specific service agreement with Cargill Fertilizer, Inc. (Cargill) under Tampa Electric's open access transmission tariff. Tampa Electric proposes that the cancellation be made effective on January 1, 2004. Tampa Electric states that copies of the filing have been served on Cargill and the Florida Public Service Commission.

Comment Date: December 26, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER04–261–000]

Take notice that on December 4, 2003, PJM Interconnection, LLC (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, American Project Development Corp/ American Hydro Power Company/ American Hydro Power Partners, L.P. and Pennsylvania Electric Company. PJM requests a waiver of the Commission's 60-day notice requirement to permit a November 4, 2003, effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: December 26, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00611 Filed 12–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–36–000, et al.]

Sunbury Generation, LLC, et al.; Electric Rate and Corporate Filings

December 11, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sunbury Generation, LLC, and Duquesne Power, L.P.

[Docket No. EC04–36–000]

Take notice that on December 8, 2003, Sunbury Generation, LLC (Sunbury) and Duquesne Power, L.P. (Duquesne) (collectively, Applicants) tendered for filing an application requesting all necessary authorizations under section 203 of the Federal Power Act, 16 U.S.C. 824b, for Applicants to engage in the transfer from Sunbury to Duquesne of (1) an approximately 436 MW generating facility located in Snyder County, Pennsylvania, and (2) Sunbury's Rate Schedule FERC No. 2.

Applicants state that copies of this filing have been served on the Pennsylvania Public Utility Commission.

Comment Date: December 29, 2003.

2. New York Independent System Operator, Inc.; Dynegy Power Marketing, Inc.

[Docket No. EL03–26–001]

Take notice that on December 5, 2003, the New York Independent System Operator, Inc. (NYISO) and Dynegy Power Marketing, Inc. (Dynegy) are jointly submitting exhibits presented to the Arbitrator in American Arbitration Association proceeding no. 13 198 00247 02. The exhibits were not previously filed with the Commission.

NYISO and Dynegy state that certain information relating to the level of bids is confidential and therefore are requesting privileged treatment for portions of the Exhibits pursuant to 18 CFR 388.112.

Comment Date: December 19, 2003.

3. KES Kingsburg, L.P.

[Docket Nos. EL04–33–000 and QF86–155–004]

Take notice that on December 8, 2003, KES Kingsburg, L.P. (Kingsburg) filed in the above-referenced dockets a request for a temporary waiver of the efficiency standard for its qualifying cogeneration facility in Kingsburg, California (the Facility), pursuant to section 292.205(c) of the Commission's regulations. Kingsburg requests waiver for calendar year 2003 due to unforeseen mechanical failures within the Facility's steam turbine.

Comment Date: January 7, 2004.

4. City of Vernon, California

[Docket No. EL04–34–000]

Take notice that on December 8, 2003, the City of Vernon, California (Vernon) tendered for filing the annual update to its Transmission Revenue Balancing Account Adjustment (TRBA Adjustment) and to Appendix I of its Transmission Owner Tariff (TO Tariff), to reflect that update.

Vernon also states that pursuant to paragraph 1.4 of the Settlement approved in Docket No. EL02103, 102 FERC 61,141 (Feb. 5, 2003), Vernon is providing to the California Independent System Operator Corporation (ISO) on a confidential basis for ISO review and verification, and submitting to the Commission on a confidential basis under 18 CFR 388.112, a volume of certain confidential data. Vernon states that nonconfidential, redacted versions of this data are also being filed with the Commission and served.

Consistent with the ISO's FERC Electric Tariff, Vernon requests a January 1, 2004, effective date for its filing.

Vernon states that copies of this filing have been served on the California Independent System Operator Corporation and the seven other Participating Transmission Owners, as well as served upon all individuals on the service list in Commission Docket No. EL03–31.

Comment Date: December 29, 2003.

5. Tenaska Alabama II Partners, L.P.

[Docket No. ER01–137–001]

Take notice that on December 8, 2003, Tenaska Alabama II Partners, L.P.

(Tenaska Alabama II) submitted for filing with the Federal Energy Regulatory Commission its triennial updated market analysis in accordance with Appendix B of the Commission's Order issued December 8, 2000, and certain revisions to its FERC Electric Tariff, Original Volume. No. 1 Tenaska Alabama II states that this filing includes incorporation of the Market Behavior Rules set forth in the Commission's November 17, 2003, Order in Docket Nos. EL01–118–000 and EL01–118–001, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003).

Comment Date: December 29, 2003.

6. New York Independent System Operator, Inc.

[Docket No. ER01–3001–008]

Take notice that on December 1, 2003, the New York Independent System Operator, Inc. (NYISO) submitted a report which addresses: (1) The NYISO's existing demand response programs, the status of real-time demand response mechanisms, and the effects of demand response programs on wholesale prices; and (2) the status of new generation resources in the New York Control Area. This submittal represents the NYISO's fifth report in compliance with the Commission's October 25, 2001, Order.

The NYISO states it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: December 22, 2003.

7. Innovative Technical Services, L.L.C.

[Docket No. ER03–763–001]

Take notice that on December 3, 2003, Innovative Technical Services, L.L.C. (InTech-LLC) submitted a compliance filing to incorporate the market behavior rules adopted by the Commission on November 17, 2003, in Docket Nos. EL01–118–000 and EL01–118–001, into InTech-LLC's market based tariff.

Comment Date: December 29, 2003.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1312–001]

Take notice that on December 8, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed information amending its September 8, 2003, filing, to revise the Midwest ISO's Open Access Transmission Tariff (OATT) by incorporating certain procedures relating to station power service. Midwest ISO states that the September 8, 2003 filing was made pursuant to section 205 of the Federal Power Act 16 U.S.C. 824(d), and part 35 of the regulations of the Federal Energy Regulatory Commission 18 CFR 35 *et seq.*

Comment Date: December 29, 2003.

9. White Pine Copper Refinery, Inc.

[Docket No. ER04–262–000]

Take notice that on December 5, 2003, White Pine Copper Refinery, Inc. (White Pine) filed with the Commission a Petition for acceptance of its initial rate schedule, FERC Electric Tariff, Original Volume No. 1, and request for authority to sell electric energy at market-based rates, certain blanket approvals, and waiver of certain Commission regulations. White Pine has requested waiver of the 60-day notice period in order to allow an effective date of December 5, 2003.

Comment Date: December 29, 2003.

10. Nordic Marketing of Massachusetts, L.L.C.

[Docket No. ER04–263–000]

Take notice that on December 5, 2003, Nordic Marketing of Massachusetts, L.L.C. petitioned the Commission to: Accept for filing its Rate Schedule FERC No. 1, which will permit it to sell electric energy and capacity to wholesale customers at market-based rates and permit transmission capacity reassignment; waive 60 days' notice and allow that rate schedule to become effective upon acceptance, but no later than February 3, 2004; and, grant such other waivers and blanket authorizations as have been granted to other power marketers.

Comment Date: December 29, 2003.

11. Nordic Marketing of Michigan L.L.C.

[Docket No. ER04–264–000]

Take notice that on December 5, 2003, Nordic Marketing of Michigan, L.L.C. petitioned the Commission to: accept for filing its Rate Schedule FERC No. 1, which will permit it to sell electric energy and capacity to wholesale customers at market-based rates and permit transmission capacity reassignment; waive 60 days' notice and allow that rate schedule to become effective upon acceptance, but no later than February 3, 2004; and, grant such other waivers and blanket authorizations as have been granted to other power marketers.

Comment Date: December 29, 2003.

12. Nordic Marketing of New York, L.L.C.

[Docket No. ER04–265–000]

Take notice that on December 5, 2003, Nordic Marketing of New York, L.L.C. petitioned the Commission to: Accept for filing its Rate Schedule FERC No. 1, which will permit it to sell electric energy and capacity to wholesale customers at market-based rates and permit transmission capacity reassignment; waive 60 days' notice and allow that rate schedule to become effective upon acceptance, but no later than February 3, 2004; and, grant such other waivers and blanket authorizations as have been granted to other power marketers.

Comment Date: December 29, 2003.

13. Central Vermont Public Service Corporation

[Docket No. ER04–266–000]

Take notice that on December 5, 2003, Central Vermont Public Service Corporation (Central Vermont) filed an executed version of Second Revised Service Agreement No. 15, a Network Integration Transmission Service Agreement and Network Operating Agreement (Revised Service Agreement) with Vermont Electric Cooperative, Inc. (VEC) under Central Vermont's FERC Electric Tariff, Second Revised Volume No. 7 (OATT).

Central Vermont states that copies of the filing were served upon the VEC and the Vermont Public Service Board.

Comment Date: December 29, 2003.

14. Pacific Gas and Electric Company

[Docket No. ER04–267–000]

Take notice that on December 11, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreement (GSFA), and Generator Interconnection Agreement (GIA) and Letter Amendment Extensions between PG&E and Geysers Power Company, LLC (Geysers Power), and Notices of Termination of PG&E Rate Schedules FERC Nos. 204 and 205, as supplemented, and Notice of Termination of PG&E 2nd Revised Service Agreement No. 1 under FERC Electric Tariff, Sixth Revised Volume No. 5.

PG&E states that copies of this filing have been served upon Geysers Power, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: December 29, 2003.

15. Duquesne Power, L.P.; Duquesne Light Co.; Monmouth Energy, Inc.; Metro Energy, L.L.C.; NM Colton Genco, L.L.C.; NM Mid-Valley Genco, L.L.C.; NM Milliken Genco, L.L.C.

[Docket Nos. ER04–268–000, ER98–4159–003, ER99–1293–002, ER01–2317–002, ER03–320–003, ER03–321–003, and ER03–322–003]

Take notice that on December 8, 2003, Duquesne Power, L.P., Duquesne Light Co., Monmouth Energy, Inc., Metro Energy, L.L.C., NM Colton Genco, L.L.C., NM Mid-Valley Genco, L.L.C., and NM Milliken Genco, L.L.C., tendered for filing a Notice of Change in Status and applications for certain waivers and authorizations under section 205 of the Federal Power Act.

Comment Date: December 29, 2003.

16. The Morenci Water and Electric Company

[Docket No. OA04–2–000]

Take notice that on December 5, 2003, The Morenci Water and Electric Company tendered for filing a request for a disclaimer of jurisdiction that it is not a public utility under the Federal Power Act and a waiver of the reciprocity requirement, or in the alternative, a waiver of the requirements of Order Nos. 888 and 889 and certain regulations.

Comment Date: January 5, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00609 Filed 12–22–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7601–7]

Applicability of the Safe Drinking Water Act to Submetered Properties Docket: OW–2003–0065

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) finalized a memorandum that outlined its revised policy regarding regulatory requirements under the Safe Drinking Water Act (SDWA) for submetered properties. The revised policy is shown in the **SUPPLEMENTARY INFORMATION** section of this notice, in its final memorandum form. Under SDWA section 1411, the national primary drinking water regulations apply to public water systems (PWS) that have their own water source, treat, or "sell" water. EPA staff and program managers have previously issued memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system, but bills tenants separately for this water, is "selling" the water and therefore is independently subject to SDWA's drinking water requirements. As a way to promote full cost and conservation pricing to achieve water conservation, the EPA is changing its interpretation of section 1411 as it applies to submetered properties. EPA believes that the addition of a submeter should not in any way change the quality of water provided to customers on these properties.

In general, the scope of this policy is not intended to extend where the property in question has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (*e.g.*, many military installations/facilities or large mobile home parks).

DATES: EPA's revised policy, as described in the section I.A. memorandum, effective December 16, 2003.

ADDRESSES: Related documents, including EPA's response to public comments on the subject policy, can be accessed at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. For more information, *see* section I..B.1 of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For more information please contact Ronald Bergman by phone at 202–564–3823, or by e-mail at *bergman.ronald@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Final Revised Policy

Today, EPA is publishing a memorandum revising current policy regarding regulatory requirements under the Safe Drinking Water Act (SDWA) of submetered properties. The memorandum changes EPA's interpretation of section 1411 as it applies in the specific context of submetering and direct billing of tenants. EPA published a proposed memo in the **Federal Register** on August 28, 2003 (68 FR 51777) and solicited public comments for 60 days. Comments were received from a variety of stakeholders, including State, county, and local governments, apartment building owners and associations, utility companies, and housing associations. Generally, commenters strongly supported the proposed policy and agreed that submetering promotes water conservation.

Memorandum

Subject: Applicability of the Safe Drinking Water Act to Submetered Properties.

From: G. Tracy Mehan III, Assistant Administrator.

To: Regional Administrators, Regions I–X.

The purpose of this memorandum is to announce EPA's revised policy concerning the applicability of the Safe Drinking Water Act (SDWA) to submetered properties. Submetering, as applied in this policy, means a billing process by which a property owner (or association of property owners, in the case of co-ops or condominiums) bills tenants based on metered total water use; the property owner is then responsible for payment of a water bill from a public water system. Under the revised policy, a property owner who installs submeters to track usage of water by tenants on his or her property will not be subject to SDWA regulations solely as a result of taking the administrative act of submetering and billing. Property owners must receive all of their water from a regulated public water system to qualify under the terms of this policy revision for submetered properties.

EPA proposed the revised policy in the **Federal Register** on August 28, 2003 (68 FR 51777) and requested public comment. In response, the Agency received strong support for the revised policy on submetering from a variety of stakeholders. In light of this response, and because a key objective of the Agency is to promote water efficiency and conservation, EPA has decided to change the policy for submetering.

Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation. Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In addition to helping reduce the risk of water shortages, water conservation also provides other important benefits. Water conservation helps ensure in-stream flows, thereby providing protection for ecosystems, which can become out of balance when demands stress water resources. Water conservation also helps reduce stress on water supply and wastewater infrastructure making them less prone to failure. Further, the use of submeters to measure water consumption is a necessary pre-requisite to achieving full-cost and conservation pricing.

Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or "sell" water. EPA staff and program managers had issued several memoranda stating that any building or property owner who met the definition of a PWS and received water from a regulated public water system without adding further treatment, but billed tenants separately for this water, would be considered to be "selling" the water and, therefore, would be independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of section 1411 as it applies in the specific context of submetering.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting section 1411. In that legislative history, the Committee report stated that it "intends to exempt businesses which merely store and distribute water provided by others, unless that business sells water as a separate item or bills separately for water it provides."[1] Under EPA's previous interpretation, an owner of an apartment building or similar property who is exempt under section 1411 but merely installed a submeter and billed the tenants for the water, or simply began billing tenants (even without a submeter), would then be considered to be operating a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress originally intended the statute to be applied in this manner, or that it should continue to be the Agency's interpretation for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings or similar properties for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term "selling" water in section 1411 might mean. The statute itself does not define the term "selling" or suggest an interpretation that any billing of water would automatically trigger full SDWA regulation.
- Some owners of apartment buildings and other multifamily housing expressed concern that, under EPA's previous policy, the installation of submeters subjected them to the full regulatory requirements of the Safe Drinking Water Act (SDWA), comparable to the requirements imposed on water utilities.
- In 1996, a Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (*e.g.*, apartment buildings and/or complexes) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation efforts.[2] In response, EPA agreed to reconsider the matter and issue further guidance.[3]
- EPA's approach in previous memoranda may have created a disincentive to water conservation, which can undermine water quality over the long term.
- Simply applying the concept of "sell" to every billing transaction is not appropriate.

Revised Policy

Consistent with Congressional requests to reconsider this matter, the Agency now believes that certain property owners, who had not previously been (or would not be) subject to SDWA's national primary drinking water regulations, and who install submeters to accurately track usage of water by tenants on his or her property, should not be subject to regulations solely as a result of taking the action to submeter and bill.

The addition of a submeter should not in any way change the quality of water provided to customers on the property. A PWS that provides water to a property maintains responsibility for providing public notification under 40 CFR 141.201(c) (or approved State equivalent) to consumers. In addition, the PWS must make "good faith" efforts to provide the tenants with the annual Consumer Confidence Reports under 40 CFR 141.155(b). A submetered property would still be considered a PWS under SDWA section 1401, hence States and EPA would retain the ability to take corrective action under SDWA's emergency powers authority (section 1431) if public health risks arise.

Scope of Revised Policy

EPA received numerous comments asking that the revised policy be expanded beyond apartment buildings. EPA agrees that submetering to achieve water conservation may be appropriate for other property types, which share similar characteristics to an apartment building, and likewise should not be considered as "selling" under SDWA section 1411, simply because a submeter is installed and the property owner begins direct billing for the water. This description is the basis for the definition of submetering. Determinations of whether billing for water is a "sale" for purposes of section 1411, and whether systems are "submetering" as that term is used in this policy, should be made by the Primacy Agency.

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[1] H. Rept. 93–1185 (93rd Cong., 2nd Session), reprinted in A Legislative History of the Safe Drinking Water Act, Committee Print Serial 97–9 (1982) at 549.

[2] H. Rept. 104–632 at 55 (1996).

[3] H. Rept. 104–632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

In making a determination, the Primacy Agency should consider if the property has certain characteristics, such as a limited distribution system with no known backflow or cross connection issues; the majority of its plumbing is within a structure instead of underground; and property ownership is a single/individual (or association of property owners, in the case of co-ops or condominiums). Of course, for any system to be excluded under section 1411, it must receive all of its water from a regulated public water system.

In general, the scope of this policy is not intended to extend where the property in question has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (*e.g.*, many military installations/ facilities or large mobile home parks).

Although EPA is not requiring that submetered systems be regulated, each State has the flexibility to determine whether, and how, to best track properties that submeter. For example, in Alabama, the State defines a submetered property as a "segmented public water system" and requires that it have access to a certified operator. Texas requires that submetered properties allow access to the property by the public water system that provides it with water, register with the Texas Commission on Environmental Quality, and follow regulations for submetering.

While submetering and billing for water usage may positively induce water conservation actions, States may still want to take other steps to ensure that property owners and others convert to water efficient fixtures and appliances. For example, Texas requires that apartment buildings have water-efficient plumbing fixtures and appliances as a condition of approval of a submetered billing system.

Ratio Utility Billing Systems (RUBS) and Hybrid Billing Systems (HWH)

Several commenters raised the issue of ratio utility billing systems (RUBS) [4] and other allocation billing systems. Some commenters suggested that EPA should include this type of billing in the revised policy because it would have no negative effect on water quality. Other commenters encouraged EPA to exclude RUBS, stating that RUBS may not result in water conservation, and may, in fact, reduce incentives to install submeters and charge on the basis of actual water usage. Water savings, if any, from RUBS and hot water hybrid billing systems (HWH) are uncertain. At this time, EPA believes that RUBS or other allocation billing systems do not meet the definition of submetering, as used in this policy, and do not encourage water conservation. Therefore, a property using these billing systems is not addressed by this policy. Primacy Agencies will need to determine whether such properties are "selling" water within the meaning of SDWA section 1411.

This memorandum clarifies EPA's policy change and reconfirms our strong interest in advocating water conservation. Any previous EPA statements or policy memoranda on this issue are superceded by this memorandum.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2003–0065. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

Dated: December 17, 2003.

G. Tracy Mehan III,

Assistant Administrator, Office of Water.

[FR Doc. 03–31588 Filed 12–22–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

December 11, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before February 23, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

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[4] A ratio utility billing system (RUBS) or an allocation formula, divides a property's water bill among its residents based on a ratio of floor space, number of occupants, or some other quantitative measure. With RUBS, a price signal based on actual use is not sent to the tenant as with submetering, and the amount of water saved by these systems is unclear. A hot water hybrid (HWH) billing system is a combination of submetering and allocation where hot water is submetered and a formula is applied to estimate the resident's total water use based on the volume of hot water metered. HWH systems provide more of a price signal than RUBS but less than that for submetering.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–0439

Title: Regulations Concerning Indecent Communications by Telephone

Form Number: N/A

Type of Review: Extension of a currently approved collection

Respondents: Business or other for-profit entities; Individuals or households

Number of Respondents: 10,200

Estimated Time per Response: 0.13 hrs. (8 mins.) (avg.)

Frequency of Response: On occasion reporting requirements; Third party disclosure

Total Annual Burden: 1,632 hours

Total Annual Cost: None

Needs and Uses: Under Section 223 of the Communications Act of 1932, as amended, telephone companies are required, to the extent technically feasible, to prohibit access to indecent communications from the telephone of a subscriber who has not previously requested access. 47 CFR Section 64.201 implements Section 223 and contains several information collection requirements: (1) A requirement that certain common carriers block access to indecent messages unless the subscriber seeks access from the common carrier (telephone company) in writing; (2) A requirement that adult message service providers notify their carriers of the nature of their programming; and (3) A requirement that a provider of adult message services request that their carrier identify it as such in bills to its subscribers. The information requirements are imposed on carriers, adult message service providers, and those who solicit their services to ensure that minors are denied access to material deemed indecent.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31598 Filed 12–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 12, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility; and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 23, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0787.

Type of Review: Extension of a currently approved collection.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, FCC 03–42.

Form Number: N/A.

Respondents: Business or other for-profit entities; individuals or households; State, local, or tribal government.

Number of Respondents: 35,035.

Estimated Time per Response: 1 to 10 hours.

Frequency of Response: Recordkeeping; on occasion and biennial reporting requirements; third party disclosure.

Total Annual Burden: 145,869 hours.

Total Annual Cost: $51,187,500.

Needs and Uses: On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement Section 258 of the 1996 Act. On May 23, 2003, the Commission also released an Order (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* The rules and requirements implementing section 258 can be found primarily at 47 CFR part 64. The modified and revised rules will strengthen the ability of our rules to deter slamming, while protecting consumers from carriers that may take advantage of consumer confusion over different types of telecommunications services. This *Third Order of Reconsideration* also contains a *Further Notice of Proposed Rulemaking,* in which we seek comment on rule modifications with respect to third party verifications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31599 Filed 12–22–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

December 16, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before February 23, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0346.

Title: Section 78.27, License Conditions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; business and other for-profit entities; and not-for-profit institutions.

Number of Respondents: 50.

Estimated Time per Response: 10 mins. (0.167 hrs.).

Total Annual Burden: 8 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 78.27 requires licensees of Cable Television Relay Service (CARS) stations to notify the FCC in writing when the station commences operation. A CARS licensee, which needs additional time to complete construction of the station, must request an extension of time from the FCC 30 days prior to the expiration of the one-year construction period. The Commission uses these filings to provide accurate CARS channel usage for frequency coordination, to prevent warehousing of spectrum, and to prevent frequency interference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31600 Filed 12–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 17, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 23, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1040.

Title: Broadcast Ownership Rules, MB Docket No. 02–277 and MM Docket Nos. 02–235, 02–327, and 00–244.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 12.

Estimated Time per Response: 2–10 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 12 hours.

Total Annual Cost: None.

Needs and Uses: On June 2, 2003, the Commission adopted a Report and Order and Notice of Proposed Rulemaking (R&O), *In the Matter of 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* MM Docket No. 02–277, *Cross Ownership of Broadcast Stations and Newspapers,* MM Docket No. 01–235, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets,* MM Docket No. 01–317, *Definition of Radio Markets,* MM Docket No. 00–244, and *Definition of Radio Markets for Areas Not Located in an Arbitron Survey Areas Not Located in an Arbitron Survey Area,* MB Docket No. 03–130, FCC 03–127. That R&O contained several one-time reporting requirements which were outside of form collections, affecting licensees with: Temporary waivers, conditional waivers, pending waiver requests, extensions of waiver, or requests for permanent waivers of the broadcast ownership rules. These reporting requirements were adopted to ensure compliance with the new broadcast ownership rules and to ensure the rules' effectiveness.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31601 Filed 12–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1177]

Privacy Act of 1974; Notice of Amendment of System of Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; amendment of systems of records.

SUMMARY: In accordance with the Privacy Act, the Board of Governors of the Federal Reserve System (Board) is amending three systems of records, entitled Payroll and Leave (BGFRS–7), Biographical File of Federal Reserve Bank Officers (BGFRS–12), and Federal Reserve System Bank Supervision Staff Qualifications (BGFRS–13) to include new routine uses, as well as reflect changes in the format and maintenance of some records. We invite public comment on this publication.

DATES: Comment must be received on or before January 22, 2004.

ADDRESSES: Comments should refer to Docket No. OP–1177, and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202/452–3819 or 202/452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boutilier, Managing Senior Counsel, (202/452–2418), Legal Division. For the hearing impaired *only*, contact Telecommunications Device for the Deaf (TDD) (202–263–4869).

SUPPLEMENTARY INFORMATION: Neither of the systems for Payroll and Leave and Biographical Files of Federal Reserve Officers had been updated for several years. The current revisions to these two systems reflect changes in records retained and the increasing use of electronic storage of Board records. In addition, the system managers have been changed to reflect an internal reorganization at the Board.

The system of records on Federal Reserve System Bank Supervision Staff Qualifications has been revised to reflect the inclusion of Board employees as well as Federal Reserve Bank employees in the files, and the use of electronic data bases to record the qualifications and assignments of the employees.

All three systems of records were reviewed for their routine uses and appropriate amendments to those routine uses have been made.

In accordance with 5 U.S.C. 552a(r), a report of these amended systems of records is being filed with the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget. These amendments will become effective on February 16, 2004, without further notice, unless the Board publishes a notice to the contrary in the **Federal Register**.

Accordingly, the systems of records entitled Payroll and Leave (BGFRS–7), Biographical File of Federal Reserve Bank Officer Personnel (BGFRS–12), and Federal Reserve System Bank Supervision Staff Qualifications (BGFRS–13).

BGFRS–7

SYSTEM NAME:

Payroll and Leave.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551. Some information is electronically stored off-site on behalf of the Board by a contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees and members of the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll records, including pay statements; requests for deductions; tax and social security withholdings; Board retirement deductions; voluntary withholdings for the Board's Thrift Plan or FERS, savings bonds, CFC, and insurance; tax forms; W–2 forms; overtime requests; leave data; and worker's compensation data. Leave records, including compensatory time, and codes indicating reasons for taking leave, such as family illness, or military leave.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11 of the Federal Reserve Act (12 U.S.C. 248(i) and 248(l)).

PURPOSE(S):

These records are used by the Board for payroll, attendance, leave, insurance, tax, retirement, budget, and cost accounting programs, and to facilitate compliance with statutory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used for the following purposes.

a. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

b. To disclose to contractors, agents, or volunteers performing or working on a contract, service, cooperative agreement, or job for the Board.

c. To disclose information to Federal, State, local, and professional licensing boards, Board of Medical Examiners; or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications or registration necessary to practice an occupation, profession or specialty, in order to obtain information relevant to a Board decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Board decision to hire or retain an employee, issue a security clearance, conduct a security or suitability investigation of an individual, classify jobs, let a contract, or issue a license, grant, or other benefits.

f. To disclose to a Federal agency or to a Federal Reserve Bank, in response to its request, or at the initiation of the Board, information in connection with the hiring of an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency or Federal Reserve Bank, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's or Federal Reserve Bank's decision.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

h. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board or United States is a party to the judicial or administrative proceeding.

i. To disclose information to the Department of Justice or in a proceeding before a court, adjudicative body, or other administrative body before which the Board is authorized to appear, when:

(1) The Board or any employee of the Board in his or her official capacity; or

(2) Any employee of the Board in his or her individual capacity where the Department of Justice or the Board has agreed to represent the employee; or

(3) The United States (when the Board determines that the litigation is likely to affect the Board) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Board is deemed by the Board to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission.

l. To disclose information to the Merit Systems Protection Board or the Office of Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, *e.g.*, as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

m. To disclose information in connection with the investigation and resolution of allegations of unfair labor practices before the Federal Reserve Board Labor Relations Panel when requested.

n. To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

o. To provide information to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

p. To appropriate Federal and State agencies to provide required reports including data on unemployment insurance.

q. To the Social Security Administration to report FICA deductions.

r. To charitable institutions to report contributions.

s. To the Internal Revenue Service and to State, local, tribal and territorial governments for tax purposes.

t. To the Office of Personnel Management in connection with programs administered by that office.

u. To an employee, agent, contractor, or administrator of any Board, Federal Reserve System, or Federal government employee benefit or savings plan, any information necessary to carry out any function authorized under such plan, or to carry out the coordination or audit of a benefit or savings plan.

v. To officials of labor organizations recognized under applicable law when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

w. To a Federal agency for the purpose of collecting a debt owed the Federal government through administrative or salary offset or the offset of tax refunds

x. To other Federal agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals.

y. To the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, Department of Veterans Affairs, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of 5 U.S.C. 5532.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage. Electronic and paper files.

Retrievability. Filed by name, Social Security number, and employee number.

Safeguards. Access to and use of these records is limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized access. Electronic files are protected by passwords. Paper records are stored in cabinets and a safe.

Retention and disposal: Various; minimum of one year from date of annual audit; maximum of indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Human Resources Function, Management Division, Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Internal personnel forms, federal, state, and local tax forms, employee authorizations and directive forms, insurance forms; leave and overtime reports, federal and state garnishment forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–12

SYSTEM NAME:

Biographical File of Federal Reserve Bank Officers.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution Ave., NW., Washington, DC 20551.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Reserve Bank officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains a variety of biographical information on the Reserve Bank officers, as well as personnel actions that occurred during that officer's employment by the Federal Reserve System. The biographical information includes System employment date; birth date; tenure; medical; education; gender; ethnicity; veteran status; past and present salaries, group levels, department, and position titles. Personnel actions include, but are not limited to: appointment, promotion, reassignment, transfer, demotion, awards, and separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 11 and 21 of the Federal Reserve Act (12 U.S.C. 248 and 12 U.S.C. 485).

PURPOSE(S):

These records are collected and maintained to assist the Board in its role as supervisor of the Federal Reserve Banks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

b. To disclose to contractors, agents, or volunteers performing or working on a contract, service, cooperative agreement, or job for the Board.

c. By Federal Reserve System officials for purposes of review in connection with appointments, transfers, promotion, function reassignments, adverse actions, reassignment to non-officer status, and determination of qualifications of an individual.

d. To publish name, title and department/function data for the directory of officers of the Federal Reserve Banks.

e. To provide reports to Congress, agencies, and the public on characteristics of the work force.

f. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or man-power studies. May also be utilized to respond to general requests for information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

g. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

h. To disclose information to another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Board or United States is a party to the judicial or administrative proceeding.

i. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Records are maintained in file folders, loose-leaf notebooks, and an electronic database.

Retrievability: Electronic records are indexed by combination of name or identification number. Records in file folders and notebooks are maintained by Federal Reserve Districts.

Safeguards: Records are maintained in lockable metal file cabinet or metal file cabinets in secured rooms with access limited to those whose official duties require access. Access to the electronic database is controlled through assignment of security clearances to appropriate personnel.

Retention and disposal: Records are retained by the system manager until the officer separates from the Federal Reserve System, at which time they are sent to the Board's Records for permanent file, where they are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, 20th and Constitution Ave, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES.

Information in this system of records comes from either the individual to whom it applies, or data provided by Federal Reserve System officials and employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

BGFRS–13

SYSTEM NAME:

Federal Reserve System Bank Supervision Staff Qualifications.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551; and the twelve Federal Reserve Banks, located in Boston, MA; New York, NY; Philadelphia, PA; Cleveland, OH; Richmond, VA; Atlanta, GA; Chicago, IL; St. Louis, MO; Minneapolis, MN; Kansas City, MO; Dallas, TX; and San Francisco, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present bank supervision staff employed by the Federal Reserve System, who are located at the Board of Governors and the twelve Federal Reserve Banks. Bank supervision staff includes bank examiners and selected supervision staff in the Federal Reserve System.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information relating to the skills, qualifications, training, and experience of bank supervision staff. It also contains information regarding past and present assignments and current availability of individual bank supervision staff employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11 of the Federal Reserve Act, (12 U.S.C. 248(a) and 248(l)).

PURPOSE(S):

These records are collected and maintained to assist the Board in performing its statutory duty to examine state member banks, bank holding companies, financial holding companies and affiliates of such institutions. The information is used to assist in career development of examiners and other bank supervision staff. The information also aids the Board and the Reserve Banks in selecting qualified bank supervision staff for particular assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the records may be used:

a. To disclose information to Federal Reserve Banks, contractors, or agents in connection with work performed on behalf of the Board.

b. To disclose information to the National Archives and Records Administration in connection with records management inspections and its role as Archivist.

c. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigation, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Board becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose to a Federal Reserve Bank or a federal agency in the executive, legislative, or judicial branch of government, in response to its request, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, or the lawful statutory, administrative, or investigative purpose of the Federal Reserve Bank or agency to the extent that the information is relevant or necessary to the requesting Federal Reserve Bank's or agency's decision or action.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

g. To disclose information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the Board or Federal government is a party to the judicial or administrative proceeding.

h. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator, mediator or other duly authorized official engaged in investigation, administrative resolution or settlement of a grievance, complaint or appeal filed by an employee.

i. To disclose information to officials of state or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before the Board, Equal Employment Opportunity Commission, or a court.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: These records are maintained in file folders and in electronic media.

Retrievability: These records are retrievable by the name of and/or a unique assigned identification number for the individual on whom they are maintained.

Safeguards: Access to, and use of, these records is limited to those persons whose official duties require such access.

Retention and disposal: Records regarding training are removed from the active file when the employee leaves the Federal Reserve System and deleted five years later. Records in other parts of this system are currently under review to determine the appropriate retention period and will be retained until the appropriate retention period has been established.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Banking Supervision and Regulation, and Director, Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th and Constitution, NW., Washington, DC 20551.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. The request should contain the individual's name, date of birth, Social Security number, identification number (if known), approximate date of record, and type of position.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The records come from the individual to whom the record pertains, and personnel and training records regarding the individual that are maintained by the Board and Federal Reserve Banks.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 17, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–31510 Filed 12–22–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Mechanisms of Foodborne Infectious Disease Outbreaks—New—Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC).

This study will systematically determine how local and state health departments find out about disease outbreaks. While it is assumed that speed and accuracy of outbreak detection can be improved, there is little reported analysis of current detection methods at the state and local levels. Great attention is being focused on improving infectious disease outbreak detection in the United States (U.S.), heightened by concerns of U.S. vulnerability to bioterrorist attack, and the inclusion of the development of enhanced syndromic surveillance systems. This information can be used to identify ineffective successful methods, and to motivate investments in alternative methods for outbreak detection.

The investigation will consist of a collection of available documentation about the outbreak and administration of a questionnaire to the local or state health department representative who identified each of 250 different outbreaks, which are sampled from the Electronic Foodborne Outbreak Reporting System (EFORS) database. The questionnaire will consist of both closed- and open-ended items, and will be administered via Web-form or telephone interview. The initial 250 outbreak sample will be stratified by State, partly in order to reasonably distribute survey burden. With an anticipated 80% response rate, the final sample will be approximately 200 outbreaks (and respondents).

Additional efforts to reduce survey burden will include completion of as many of the questionnaire items as possible prior to administration (based on supporting documents), and Web-form or telephone administration options. There will be no cost to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State and Local Health Departments Representatives	200	1	1	200
Total				200

Dated: December 16, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31524 Filed 12–22–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing, as required by the Federal Advisory Committee Act, that the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings during fiscal year 2003.

ADDRESSES: Copies are available from the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857, 301–827–6860.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Committee Management Officer, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees through September 30, 2003:

Center for Biologics Evaluation and Research
  Biological Response Modifiers Advisory Committee
  Vaccines and Related Biological Products Advisory Committee
Center for Drug Evaluation and Research
  Anti-Infective Drugs Advisory Committee
  Arthritis Advisory Committee
  Cardiovascular and Renal Drug Advisory Committee
  Gastrointestinal Drug Advisory Committee
National Center for Toxicological Research
  Science Advisory Board to the National Center for Toxicological Research
  Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee)
Center for Devices and Radiological Health
  Medical Devices Advisory Committee (consisting of reports for the Circulatory System Devices Panel; Gastroenterology and Urology Devices Panel; General and Plastic Surgery Devices Panel; Dental Products Panel; Obstetrics and Gynecology Devices Panel; Neurological Devices Panel; Ophthalmic Devices Panel; Orthopaedic and Rehabilitation Devices Panel; Radiological Devices Panel)

Annual reports are available for public inspections between 9 a.m. and 4 p.m., Monday through Friday at the following locations:

1. The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, 101 Independence Ave. SE., rm. 133, Washington, DC; and
2. The Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Dated: December 15, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–31494 Filed 12–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods and Compositions of Defensin-Antigen Fusion Proteins and Chemokine-Antigen Fusion Proteins as Vaccines for Tumors and Viral Infection

Arya Biragyn (NCI).

PCT Application No. PCT/US01/43830 filed 19 Nov 2001 (DHHS Reference No. E–024–2002/0–PCT–02).

Licensing Contact: Catherine Joyce; (301) 435–5031; *joycec@mail.nih.gov*.

This invention relates to the development of a vaccine for increasing the immunogenicity of a tumor antigen, thus useful for the treatment of cancer, as well as a vaccine for increasing the immunogenicity of a viral antigen, thus allowing treatment of viral infection. In particular, the present invention provides a fusion protein comprising a defensin or chemokine fused to either a tumor antigen or viral antigen which is administered as either a protein or nucleic acid vaccine to elicit an immune response effective in treating cancer or effective in treating or preventing viral infection. In particular, the C–C chemokine macrophage inflammatory protein (MIP–3α) was shown to be particularly effective in increasing the immunogenicity of a tumor antigen. Aspects of this work have been published as a PCT patent application with publication number WO 03/025002.

This technology is available for licensing on an exclusive or a non-exclusive basis.

Dated: December 16, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31652 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Improved Endogenous Opioid Anti-Nociception With Reduced Neurodegeneration, Hyperalgesia, Allodynia and Tolerance

Amina Woods, Toni Shippenberg, and Lawrence Sharp (NIDA).

U.S. Provisional Application No. 60/459,830 filed 01 Apr 2003 (DHHS Reference No. E–276–2001/0–US–01).

Licensing Contact: Norbert Pontzer; (301) 435–5502; *pontzern@mail.nih.gov*.

Endogenous opioid peptides and receptors evolved to modulate nociceptive input in response to injury. One of those peptides, dynorphin, acts on the kappa opioid receptor subtype to produce analgesia without sedation, respiratory depression or constipation. Prior to this invention, dynorphin was not an acceptable analgesic because of certain severe toxic side effects, when given in doses higher than physiological concentrations, mainly NMDA mediated neurotoxicity. Dynorphin produces its deleterious side effects by producing an NMDA mediated motor paralysis. In disease states such as stroke, spinal cord injury or neuropathic pain, activation of NMDA receptors by endogenous dynorphin may lead to neurodegeneration, hyperalgesia and allodynia. Tolerance to opiate drugs may also be mediated by the NMDA actions of dynorphin. This invention provides materials and methods to block NMDA receptor activation by dynorphin thus allowing the use of exogenous dynorphin as a beneficial nociceptive agent without side effects and preventing pathological actions of endogenous dynorphin in response to injury. Experimental data demonstrate: (1) attenuation of motor activity deficits, flaccid paralysis and mechanical allodynia produced by dynorphin administration; (2) reduction of infarct size and locomotor deficits after cerebral ischemia; (3) the reduction of morphine tolerization; and (4) so far no visible side effects.

Pain Control by the Selective Local Ablation of Nociceptive Neurons

Michael Iadarola and Zoltan Olah (NIDCR).

PCT/US01/09425 filed 22 Mar 2001, published as WO 02/076444 (DHHS Reference No. E–109–2000/0–PCT–02).

Licensing Contact: Norbert Pontzer; (301) 435–5502; *np59n@nih.gov*.

The vanilloid receptor (VR) is a cation channel predominantly expressed on the peripheral processes and perikarya of nociceptive primary afferent neurons. Previous studies have shown that activation of the peripheral receptors by agonists such as capsaicin from hot peppers, or the much more potent resiniferatoxin, produces acute pain sensation which may be followed by desensitization. These inventors discovered that administration of VR agonists in the vicinity of neuronal cell bodies expressing the VR receptor can actually destroy those cells. To control pain and inflammatory disorders, the present invention provides methods and kits for the selective ablation of pain sensing neurons. For example, the intraganglionic administration of a VR agonist selectively ablates primary afferent nociceptive neurons without impairing other sensory modalities. This invention will greatly enhance the ability to control pain, inflammation and other conditions mediated by nociceptive neurons while sparing mental function and other sensations.

This research has been described, in part, in Olah et al., J. Biol. Chem., 276, pp. 11021–11030, 2001.

Dated: December 17, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–31653 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, NIH.

Date: January 12, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: Topics proposed for discussion include scientific presentations, budget update, NIH Roadmap, and workgroup updates.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Shelly Pollard, ACD Coordinator, Building 2, National Institutes of Health, Bethesda, MD 20892, 301–496–0959.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31497 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Basic Science.

Date: February 23–24, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Science.

Date: February 26–27, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Martin H. Goldrosen, PhD, Chief, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Ste. 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31505 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: January 30, 2004.

Closed: 8:30 a.m. to 12 noon.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 1 p.m. to adjournment.

Agenda: The agenda includes Opening Remarks and the Annual State of the Center Report by Director, NCCAM, Overview of Activities at the National Center for Research Resources, Role of GCRCs—Launching New Areas of Research, and other business of the Council.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20852.

Contact Person: Jane F. Kinsel, Ph.D., M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–6701.

The public comments session is scheduled from 4:30–5 p.m. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland, 20892, (301) 496–6701, Fax: (301)

480–0087. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on January 20, 2004. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (February 9, 2004) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, (301) 496–6701, Fax (301) 480–0087, or via email at *naccames@mail.nih.gov*.

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 03–31557 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (6 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Disease Advisory Council.

Date: February 4–5, 2004.

Open: February 4, 2004, 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 5, 2004, 9:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: February 5, 2004, 10:15 a.m. to adjournment.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: February 4–5, 2004.

Open: February 4, 2004, 1 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 4, 2004, 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 5, 2004, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: February 5, 2004, 8:30 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

Date: February 4–5, 2004.

Open: February 4, 2004, 1 p.m. to 3 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9, Bethesda, MD 20892.

Closed: February 4, 2004, 3:15 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9, Bethesda, MD 20892.

Open: February 5, 2004, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammond@extra.niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: February 4–5, 2004.

Open: February 2, 2004, 1 p.m. to 5:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: February 5, 2004, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a phone I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 16, 2003

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31500 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: January 20, 2004.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Open: 10:30 a.m. to 4 p.m.

Agenda: Director's Report, Budget Update, Scientific Presentation, Concept Clearances.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Norman S. Braveman, Assistant to the Director, NIH—NIDCR, Building 45, Room 4AN–24, Bldg 45 Rm 4AN24 (301) 594–208, Bethesda, MD 20892, 301 594–2089, *NORMAN.BRAVEMAN@NIH.GOV.*

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/discover/nadrc.index.htm,* where an agenda and any additional information for the meeting will be posted when available.

Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31501 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–25, Review of R21s.

Date: January 13, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 04–21, Review T32s.

Date: January 29, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

Name of Committee: National Institute of Dental Craniofacial Research Special Emphasis Panel 04–31, Review of R01s.

Date: February 23, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372, *george_hausch@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31502 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 29–30, 2004.

Open: January 29, 2004, 8:30 a.m. to Adjournment.

Agenda: (1) A report by the Director, NICHD; (2) a presentation by the Contraception and Reproductive Health Branch; and other Council business.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conf. Room 6, Bethesda, MD 20892.

Closed: January 30, 2004, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conf. Room 6, Bethesda, MD 20892

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, 301–594–7232.

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31503 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, the Immunology of Ricin.

Date: January 8, 2004.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone conference call).

Contact Person: Tracy A. Shahan, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2606, *tshahan@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Pathogenesis of PVN.

Date: January 9, 2004.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone conference call).

Contact Person: Tracy A. Shahan, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2606, *tshahan@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31504 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, The Role of PPARB in Environmental Liver Disease.

Date: February 4–5, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Ranch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31553 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Development of an Indoor Allergen Assay for Asthma Studies.

Date: February 12, 2004.

Time: 10:30 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Janice B. Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P. O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31554 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Reduction of Allergen Levels in Residential Dwellings.

Date: February 26, 2004.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS, Building 4401, 79 T. W. Alexander Drive, Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31555 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Metabonomics of the Liver.

Date: February 18, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: December 17, 2003.

LaVerne Y. Stringfield

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31556 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited Program Project Grant Application.

Date: January 12, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Annie Walker-Abbey, Scientific Review Administrator, Scientific Review Program, NIAID/DEA, 6700B Rockledge Drive, RM 2217, MSC–7616, Bethesda, MD 20892–7616, 301–451–2761.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31558 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Development and Validation of High Throughput in Vitro Estrogen Receptor (ER) and Androgen Receptor (AR) Binding Assays.

Date: February 19, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.142, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31560 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 26, 2004.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: January 26, 2004.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transportation Subcommittee.

Date: January 26, 2004.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 26, 2004.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from NIAID Director on Institute programs and a report on the Immune Tolerance Network.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.niaid.nih.gov/facts/facts.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31561 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: January 22–23, 2004.

Closed: January 22, 2004, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20892.

Open: January 22, 2004, 10:30 a.m. to 5 p.m.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: January 23, 2004, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 and E2, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, Phd, Acting Associate Director, Division of Extramural Activities, 45 Center Drive, Room 2AN24G, MSC6200, Bethesda, MD 20892–6200, (301) 594–3910, *hagana@nigms.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Centers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31562 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: February 4–5, 2004.

Closed: February 4, 2004, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: February 5, 2004, 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate the Board of Scientific Counselor's Report.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Open: February 5, 2004, 9:30 a.m. to 3 p.m.

Agenda: Program documents.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Kenneth R. Warren, PhD, Director, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Willco Building, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–4375, *kwarren@niaaa.nih.gov*.

Information is also available on the Institute's/Center's home page: *silk.nih.gov/silk/niaaa1/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31563 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Special Emphasis Panel 1 for Unsolicited Biodefense P01 Applications.

Date: January 14, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, Md 20817. (Telephone Conference Call).

Contact Person: Stefani T. Rudnick, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *srudnick@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31564 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 26, 2004.

Time: 1 p.m. to 6 p.m.

Agenda: Framework for DAIDS Clinical Research in a Global Environment.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, (301) 435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31565 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Disease Research Opportunities.

Date: January 16, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call).

Contact Person: Clayton C. Huntley, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2570, *ch405t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31566 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: February 5–6, 2004.

Open: February 5, 2004, 9 a.m. to 11 a.m.

Agenda: Administrative reports and program discussions.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Closed: February 5, 2004, 11 a.m. to 5 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Closed: February 6, 2004, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, Center Drive, Bethesda, MD 20814.

Contact Person: Sheldon Kotzin, MLS, Chief, Bibliographic Services Division, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this Notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interest person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 03–31496 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 22, 2003, 1 p.m. to December 22, 2003, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on December 8, 2003, 68 FR 68404–68405.

The meeting will be held December 15, 2003. The time and location remain the same. The meeting is closed to the public.

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31498 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, December 15, 2003, 1 p.m. to December 15, 2003, 2:30 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 3, 2003, 68 FR 67689–67690.

The meeting will be held December 22, 2003, from 11 a.m. to 12:30 p.m. The location remains the same. The meeting is closed to the public.

Dated: December 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31499 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vaccine.

Date: December 19, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Yeast Molecular Biology.

Date: December 22, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioanalytical Special Review.

Date: January 7, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301)–435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Muculoskeletal Sciences.

Date: January 9, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SB 50R: PAR–03–032: Bioengineering Research Partnerships.

Date: January 16, 2004.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31559 Filed 12–22–03; 8:45 am]

BILLING CODE 4140–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: International Trade Commission.

ACTION: Notice of determination.

EFFECTIVE DATE: December 15, 2003.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act of 1989 ("the Act"), as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBERA-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market determination made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBERA-beneficiary countries.

For the 12-month period ending September 30, 2003, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 2.67 billion gallons. Seven percent of this amount is 186.9 million gallons (these figures have been rounded). Therefore, the base quantity for 2004 should be 186.9 million gallons.

FOR FURTHER INFORMATION CONTACT: Devry Boughner (202) 205–3313, *dboughner@usitc.gov*, in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart, *wgearhart@usitc.gov*, of the Commission's Office of the General Counsel at (202) 205–3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Background: For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations.

Section 225 of the Customs and Trade Act of 1990 (Pub. L. 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

Issued: December 18, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31655 Filed 12–22–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–432 and 731–TA–1024–1028 (Final)]

Prestressed Concrete Steel Wire Strand from Brazil, India, Korea, Mexico, and Thailand

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: December 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective July 16, 2003, the Commission established a schedule for the conduct of the final phase of the subject investigations (68 FR 52614, September 4, 2003). By Executive Order announced on December 9, 2003, the Executive Departments and Agencies of the Federal Government are scheduled to close on Friday, December 26, 2003. The Commission, therefore, is revising its schedule as follows: the Commission will make its final release of information on December 29, 2003 and final party comments are due on January 2, 2004.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: December 19, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–31690 Filed 12–22–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1394]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Juvenile Justice Advisory Committee

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing a meeting of the Juvenile Justice Advisory Committee in Point Clear, Alabama, from January 12–14, 2004, at the meeting times and location noted below.

DATES: The schedule of events is as follows:

Monday, January 12, 2004

9 a.m.–5 p.m. Juvenile Justice Advisory Committee Training (Closed Session)

Tuesday, January 13, 2004

9 a.m.–12 p.m. Juvenile Justice Advisory Committee Training (Closed Session)

12 p.m.–1:30 p.m. Informal Personnel Discussion (Closed Session)

1:30 p.m.–3 p.m. Organizational Discussion (Open Session)

3 p.m.–5 p.m. Working Group—Subcommittee Organization (Closed Session)

Wednesday, January 14, 2004

9 a.m.–10:15 a.m. Subcommittee Reporting (Open Session)

10:30 a.m.–12 p.m. Closing Remarks (Open Session)

ADDRESSES: The meeting will take place at the Grand Hotel Marriott, One Grand Boulevard, Point Clear, Alabama, 36564.

FOR FURTHER INFORMATION CONTACT: Timothy Wight, Designated Federal Official, OJJDP, at 202–514–2190 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Juvenile Justice Advisory Committee, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. This is an administrative and organizational meeting of the Committee wherein the members will be addressed by the Administrator of OJJDP, receive training concerning the provisions of the Federal Advisory Committee Act, elect a Committee chair and vice-chair, and organize into sub-committees.

Members of the public who wish to attend the open sessions of the meeting should notify the Juvenile Justice Resource Center at 301–519–5790 (Karen Goldstein) or 301–519–5245 (Carol Sadler)by 5 p.m., ET, on January 5, 2004. Notification may also be sent to the following e-mail address: *JJAC@jjrc.org*. Please indicate your name, address, phone number, and which open sessions you are expecting to attend.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 03–31552 Filed 12–22–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 15, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or by E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Gamma Radiation Exposure Records.

OMB Number: 1219–0039.

Affected Public: Business or other for-profit.

Type of Response: Recordkeeping.

Frequency: Annually.

Number of Respondents: 2.

Number of Annual Responses: 2.

Estimated Time Per Response: 1 hour.

Total Burden Hours: 2.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Title 30, CFR § 57.5047 requires that gamma radiation surveys be conducted annually in all underground mines where radioactive ores are mined. The Standard also requires, where average gamma radiation measurements are in excess of 2.0 milliroentgens per hour in the working place, that gamma radiation dosimeters be provided for all persons affected, and that records of cumulative individual gamma radiation exposure be kept. These recordkeeping requirements are necessary to protect miners from adverse health affects resulting from occupational exposure to gamma radiation.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

OMB Number: 1219–0078.

Affected Public: Business or other for-profit.

Type of Response: Recordkeeping, Reporting, and Third party disclosure.

Frequency: On occasion; Bi-monthly; Monthly; and Annually.

Average Response Time: Varies from 15 minutes to 4 hours.

Cite/Reference	Annual responses	Hour burden
30 CFR 49.2:		
Coal	117	117
Metal/Non-metal	31	31
30 CFR 49.3 and 49.4:		
Coal	2	4
Metal/Non-metal	11	22
30 CFR 49.6:		
Coal	14,868	4,510
Metal/Non-metal	14,904	4,521
30 CFR 49.7:		
Coal	1,652	3,511
Metal/Non-metal	1,656	3,519
30 CFR 49.8:		
Coal	7,623	4,226
Metal/Non-metal	7,673	4,631
30 CFR 49.9:		
Coal	117	233
Metal/Non-metal	31	62
30 CFR 75.1713–1:		
Coal	117	233
30 CFR 75.1702:		
Coal	166	332

Cite/Reference	Annual responses	Hour burden
Coal total	24,662	13,166
Metal/Non-metal total	24,306	12,786
Grand total	48,968	25,952

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $561,306.

Description: Under 30 CFR part 49, Mine Rescue Teams, the regulations set standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates. Parts 75 and 77 requires that coal mine operators make arrangements with a licensed physician, medical service, medical clinic, or hospital and with an ambulance service to provide 24-hour emergency medical assistance and transportation. That information is to be posted at the mine.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–31537 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 11, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Notice of issuance of insurance policy.

OMB Number: 1215–0059.

Affected Public: Business or other for-profit and State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Annually.

Number of Respondents: 60.

Annual Responses: 4,000.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 667.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,800.

Description: The CM–921 provides insurance carriers with the means to supply the Department of Labor with information showing that a responsible coal mine operator is insured against its Federal Black Lung compensation liability pursuant to the requirements established in the Federal Black Lung Benefits Act. The CM–921 is authorized by 20 CFR part V, subpart C, 726.208–213.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Representative Fee Request.

OMB Number: 1215–0078.

Affected Public: Business or other for-profit and individuals or households.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 12,700.

Number of Annual Responses: 12,700.

Estimated Time Per Response: 30 minutes for Longshore filings and 1 hour for FECA filings.

Total Burden Hours: 7,850.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $17,215.

Description: Individuals filing for compensation benefits with the Office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under the Federal Employees' Compensation Act (FECA), 20 CFR 10.700–703, and under the Longshore and Harbor Workers' Compensation Act (LHWCA), 20 CFR 702.132. The fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection request sets forth the criteria for the information, which must be presented by the respondent in order to have the fee approved by the OWCP. The information collection does not have a particular form or format; the respondent must present the information in any format which is convenient and which meets all the required information criteria. The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to approve representative fees under the two Acts.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Request for Employment Information.

OMB Number: 1215–0105.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 500.

Number of Annual Responses: 500.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 125.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $200.

Description: The Form CA–1027 is used to collect information about a claimant's employment. The information is necessary to determine continued eligibility for compensation payments under the Federal Employee's Compensation Act (5 U.S.C. 8106).

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Provider Enrollment Form.

OMB Number: 1215–0137.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: On occasion.

Number of Respondents: 12,600.

Number of Annual Responses: 12,600.

Estimated Time Per Response: 8 minutes.

Total Burden Hours: 1,676.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $5,040.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.*, and the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.* These statutes require OWCP to pay for medical and vocational rehabilitation services provided to beneficiaries. In order for OWCP's billing contractor to pay providers of these services with its automated bill processing system, providers must "enroll" with one or more of the OWCP programs that administer the statues by submitting certain profile information, including identifying information, tax I.D. information, and whether they possess specialty or sub-specialty training. Form OWCP–1168 is used to obtain this information from each provider. If this information is not obtained before the provider submits his or her first bill, the bill payment process is prolonged and increases the burden on providers. The Department of Labor seeks approval for the extension of this information collection in order to carry out a wide range of automated medical bill "edits", such as, the identification of duplicate billings, the application of pertinent fee schedules that apply to the programs, utilization review, and fraud and abuse detection. This information is also used to furnish timely and detailed reports to providers on the status of previously submitted bills.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–31538 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–CK–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

December 15, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Assistant Secretary for Policy.

Type of Review: Revision of a currently approved collection.

Title: National Agriculture Workers Survey (NAWS).

OMB Number: 1225–0044.

Affected Public: Individuals or households and farms.

Type of Response: Reporting.

Frequency: Annually.

Number of Respondents: 5,200.

Number of Annual Responses: 5,344.

Estimated Time Per Response: 20 minutes to conduct employer interviews; 15 minutes for the Occupational Injury Supplement; and 50 minutes for the Primary Questionnaire.

Total Burden Hours: 3,570.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: NAWS provides an understanding of the manpower resources available to U.S. agriculture. It is the national source of information on the demographic, occupational health and employment characteristics of hired crop workers.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 03–31539 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,915]

Advanced Design and Knits, Inc., Copiague, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 23, 2003 in response to a petition filed by a company official, and ex-worker on behalf of workers at Advanced Design and Knits, Inc. Copiague, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 16th day of October, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31527 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,402]

Alamac American Knits LLC, Lumberton, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 2003 in response to a petition filed by a company official on behalf of workers at Alamac American Knits LLC, Lumberton, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of November 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31534 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,405]

Authentic Fitness Corp., Los Angeles, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 1, 2003 in response to a worker petition filed on behalf of workers at Authentic Fitness Corporation, Commerce, California.

The petitioning group of workers is covered by an earlier petition filed on October 1, 2003 (TA–W–53,132) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 13th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31535 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,179]

Kulicke & Soffa Industries, Inc., Willow Grove, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 8, 2003 in response to a petition filed by a company official on behalf of workers at Kulicke & Soffa Industries, Inc., Willow Grove, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 3rd day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31528 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,370]

Fishing Vessel (F/V) Laurie B, Ketchikan, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 29, 2003 in response to a petition filed by a company official on behalf of workers of F/V Laurie B, Ketchikan, Alaska.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31532 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,398]

Lumenis, Santa Clara, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 31, 2003, in response to a petition filed on behalf of workers at Lumenis, Santa Clara, California. The workers produced medical laser systems and fiber optic hand-pieces.

The petition regarding the investigation has been deemed invalid. In order to establish a valid petition, all petitioners must have been employed at the subject firm during the one year period prior to the petition. Not all three petitioners meet this requirement of a valid petition. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of November 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31533 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,223]

Nighswonger Contract Cutting, Coquille, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 2003 in response to a petition filed by the South Coast Business Employment Corporation on behalf of workers at Nighswonger Contract Cutting, Coquille, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 14th day of November 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31530 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,191]

Snap-Tite, Inc., dba Autoclave Engineers Division, Erie, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 8, 2003 in response to a worker petition filed by a company official on behalf of workers at Snap-tite, Inc., dba Autoclave Engineers Division, Erie, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 14th day of November, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31529 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,459]

SPX, Lindberg Division, Watertown, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 6, 2003 in response to a worker petition filed on behalf of workers at SPX, Lindberg Division, Watertown, Wisconsin.

The petitioning group of workers is covered by an earlier petition instituted on October 31, 2003 (TA–W–53,399) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 14th day of November 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31536 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,368]

Fishing Vessel (F/V) Susan Tendering, Kodiak, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 29, 2003 in response to a petition filed by a company official on behalf of workers of F/V Susan Tendering, Kodiak, Alaska.

All workers were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31531 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0197 (2004)]

Construction Fall Protection Plans and Training Requirements (29 CFR 1926.502 and 1926.503); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirement contained in the construction standard for fall protection. The Standard allows employers to develop alternative procedures to the use of conventional fall protection systems when the systems are infeasible or create a greater hazard. The alternative procedures (plan) must be written. Also, employers who use safety net systems may certify that the installation meets the standard's criteria in lieu of performing a drop-test on the net. In addition, employers are required to prepare training-certification records for their employees. The plan and certification records ensure that employers comply with the requirements to protect workers from falls, which account for the largest number of fatalities among construction workers.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted by (postmarked or received) by February 23, 2004.

Facsimile and electronic transmission: Your comments must be received by February 23, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR–1218–0197 (2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m. EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. ICR–1218–0197 (2004), in your comments.

Electronic. You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov.*

II. Obtaining Copies of Supporting Statement for the Information Collection

The Supporting Statement for the Information Collection is available for downloading from OSHA's Web site at *http://www.osha.gov.* The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Todd Owen at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Noah Connell, Directorate of Construction, OSHA, U.S. Department of Labor, Room N–3467, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2020.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The standards on Construction Fall Protection Systems Criteria and Practice (29 CFR 1926.502) and Training Requirements (29 CFR 1926.503) ensure that employers provide the required fall protection for their employees. Accordingly, these standards have the following paperwork requirements: Paragraphs (c)(4)(ii) and (k) of 29 CFR 1926.502, which specify certification of safety nets and development of fall-protection plans, respectively, and paragraph (b) of 29 CFR 1926.502, which requires employers to certify training records. The training-certification requirement specified in paragraph (b) of 29 CFR 1926.503 documents the training provided to employees potentially exposed to fall hazards. A competent person must train these employees to recognize fall hazards and in the use of procedures and equipment that minimize these hazards. An employer must verify compliance with this training requirement by preparing and maintaining a written certification record that contains the: Name or other identifier of the employee receiving the training; the date(s) of the training; and the signature of the competent person who conducted the training or of the employer.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirements in the Construction Fall Protection Plans and Records (29 CFR 1926.502 and 1926.503). The Agency is proposing to increase the burden by 149,895 hours, from 771,166 hours to 921,061 hours, mainly as a result of increasing the estimated number of fall protection plans. The fall protection plan and certification records of net drop test and training are needed to help employees identify fall hazards and to know which protective measures are to be used.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Construction Fall Protection Plans and Records Standard.

Type of Review: Extension of a currently-approved information collection requirement.

Title: Construction Fall Protection Plans and Training Requirements in Construction (29 CFR 1926.502 and 1926.503).

OMB Number: 1218–0197.

Affected Public: Business or other for-profit.

Number of Respondents: 100,080.

Frequency: On occasion.

Average Time Per Response: Varies (*i.e.*, 5 minutes (.08 hour) to certify a safety net to 65 minutes to develop and write a fall-protection plan).

Estimated Total Burden Hours: 921,061.

Estimated Cost (Operation and Maintenance): 0.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC on December 17, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–31550 Filed 12–22–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Study of IMLS Funded Digital Collections and Content—Focus Groups, Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of requests for new information collection approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this proposed information collection request, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Research and Technology, Rebecca Danvers at (202) 606–2478. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by January 22, 2004. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: For a copy of the information collection request contact: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 223, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. In the National Leadership Grant Program, IMLS funds the digitization of library and museum collections.

This study is to determine the feasibility of using the Open Archives Initiative (OAI) Metadata Harvesting Protocol to aggregate and provide integrated item-level search access to the digitization projects funded by the Institute of Museum and Library Services through the National Leadership Grant Program.

II. Current Action

To develop an effective Open Archives Initiative metada harvesting protocol information will be collected from focus groups of resource developers.

Agency: Institute of Museum and Library Services

Title: Study of IMLS Funded Digital Collections and Content

OMB Number: none.

Agency Number: 3137.

Frequency: Once.

Affected Public: Museums and libraries that created digital collections with IMLS funding.

Number of Respondents: 20, in two focus groups.

Estimated Time Per Respondent: 1.5 hours.

Total Burden Hours: 30.

Total Annualized capital/startup costs: n/a.

Total Costs: $1,125.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Dated: December 17, 2003.

Rebecca Danvers,

Director, Research and Technology.

[FR Doc. 03–31518 Filed 12–22–03; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Nuclear Management Company, LLC, Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–43, issued to Nuclear Management Company, LLC (the licensee), for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Kewaunee Nuclear Power Plant operating license and technical specifications (TSs) to increase the licensed rated power by 6.0 percent from 1673 megawatts thermal (MWt) to 1772 MWt.

The proposed action is in accordance with the licensee's application dated May 22, 2003.

The Need for the Proposed Action

The proposed action permits an increase in the licensed core thermal power from 1673 MWt to 1772 MWt for the Kewaunee Nuclear Power Plant, providing the flexibility to obtain a higher electrical output from the Kewaunee Nuclear Power Plant with minimal modifications.

Environmental Impacts of the Proposed Action

The licensee has submitted an environmental evaluation supporting the proposed stretch power uprate and provided a summary of its conclusions concerning the radiological and non-radiological environmental impacts of the proposed action.

Radiological Environmental Assessment

The stretch power uprate will increase the activity level of radioactive isotopes in the primary and secondary coolant. Due to leakage or process operations, fractions of these fluids are transported to the liquid and gaseous radwaste systems where they are processed prior to discharge. As the activity levels in the primary and secondary coolant are increased, the activity level of radwaste inputs is proportionately increased. Regulatory guidance relative to methodology to be utilized to establish whether the radwaste effluent releases from a pressurized-water reactor meet the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I, is provided in NUREG–0017, Revision 1. The NUREG–0017 methodology is independent of the length of the fuel cycle.

The maximum expected increase in the reactor coolant source (associated with the chemical group with the largest percentage increase) is approximately 17.6 percent for noble gas activity. This increase is primarily a combination of the impact of core power uprate and reduction in reactor coolant system (RCS) mass. Considering the accuracy and error bounds of the operational data utilized in NUREG–0017, this percentage change is well within the uncertainty of the existing NUREG–0017-based expected reactor coolant isotopic inventory used for radwaste effluent analyses and corrected for a facility with this power rating.

As discussed above, there is approximately a 17.6 percent increase assumed for the liquid releases as input activities are based on the largest long-term RCS activity increase for any chemical grouping and on waste volumes which are essentially independent of power level within the applicability range of NUREG–0017. Tritium releases in liquid effluents are assumed to increase approximately 11.4 percent (corresponding to the effective increase in core power) since the facility is changing its power rating, without changing its operational procedures. However, for all liquid releases, the power uprate analysis conservatively used the worst case scaling factor for all isotopes between the pre-uprate case and the uprate case.

For all noble gases (limiting chemical group), there will be a maximum 17.6 percent increase in effluent releases due to the core power uprate. Gaseous releases of Kr-85 in actuality will increase by approximately 11.4 percent. Isotopes with shorter half lives will have increases slightly greater than the percentage increase in power level. The decrease in RCS mass (approximately 5 percent) contributes to the increased concentration of this chemical group in the RCS (the primary removal term for the non-Kr-85 noble gases is decay in the RCS) such that the impact of power uprate is conservatively approximated at 17.6 percent. The impact of the power uprate in iodine releases is approximated by the power level increase. The other components of the gaseous release (that is, particulates via the building ventilation systems and water activation gases) are not impacted by the power uprate using the methodology outlined in NUREG–0017. Tritium releases in the gaseous effluents increase in proportion to the increased tritium production, which is directly related to core power and is pathway allocated in the analysis in the same ratio as pre-power uprate releases. For particulates, the methodology of NUREG–0017 specifies the release rate per year per unit per building ventilation system. This is not dependent on power level. Thus, there is no change calculated for the power uprate. However, a 17.6 percent increase will be conservatively addressed.

The maximum increase in doses for gaseous and liquid effluents is estimated to be 17.6 percent. The estimated doses are a very small fraction of that allowable under appendix I.

Only minor, if any, changes in waste generation volume are expected. However, it is expected that the activity levels for most of the solid waste would increase proportionately to the increase in long half life coolant activity. Thus, while the total longlived activity contained in the waste is expected to be bounded by the percentage of the power uprate, the increase in the overall volume of waste generation resulting from the power uprate is expected to be minor.

The licensee stated that the power uprate has no significant impact on the expected annual radwaste effluent releases or doses (that is, all doses remain a small percentage of allowable Appendix I doses). The licensee concluded that following the power uprate, the liquid and gaseous radwaste effluent treatment system will remain capable of maintaining normal operation offsite doses within the requirements of 10 CFR Part 50, Appendix I.

Dose Consideration

The stretch power uprate will impact the radiation source terms in the core and the expected radiation source terms in the coolant. The actual increase in radiation levels due to the power uprate will not significantly affect radiation zoning or shielding requirements in the various areas of the plant because it is expected that the increase due to the power uprate will be offset by (1) the conservative analytical techniques typically used to establish shielding requirements, (2) the conservatism in the pre-power uprate design-basis RCS source terms used to establish the radiation zones, and (3) the plant TSs that limit the RCS concentrations to levels well below the design-basis source terms. Individual worker exposures will be maintained within acceptable limits by the site as-low-as-is-reasonably-achievable program that controls access to radiation areas. The licensee stated that the stretch power uprate has no significant effect on normal plant operation radiation zones and shielding requirements.

Following the power uprate, the licensee stated that the post-LOCA vital area operator dose estimates will remain within the regulatory limits of NUREG–0578, Item 2.1.6.b and NUREG–0737 II.B.2 and II.B.3.

Non-Radiological Environmental Assessment

The licensee assessment included determining whether the power uprate will cause the plant to exceed the National Pollutant Discharge Elimination System (NPDES) permits' effluent discharge limitations and other conditions associated with operation of the plant. This review is based upon information contained in the State of Wisconsin, Department of Natural Resources (WDNR), WPDES Permit No. WI–0001571–06–0 and the Final Environmental Statement for the Kewaunee Nuclear Power Plant. The WPDES permit was effective beginning on August 1, 2002, and expires June 30, 2005. The licensee stated that there are no requirements in the NPDES Permit impacted by the power uprate. Circulating water outlet temperature rise increases by approximately 1.5 °F due to the power uprate. The total temperature rise across the condenser would be 16.7 °F. No change in the circulating water flow is required due to the power uprate. The 1.5 °F increase in the circulating water outlet temperature rise is acceptable because it is within the licensee's WPDES Permit No. WI–0001571–06–0.

Summary

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It has a small affect on nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Kewaunee Nuclear Power Plant, dated December 1972.

Agencies and Persons Consulted

On November 4, 2003, the staff consulted with the Wisconsin State official, Jeff Kitzembul of the Public Service Commission—Electric Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated May 22, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–

397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 16th day of December 2003.

For the Nuclear Regulatory Commission.

L. Raghavan,

Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31577 Filed 12–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of December 22, 29, 2003, January 5, 12, 19, 26, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of December 22, 2003

There are no meetings scheduled for the Week of December 22, 2003.

Week of December 29, 2003—Tentative

There are no meetings scheduled for the Week of December 29, 2003.

Week of January 5, 2004—Tentative

There are no meetings scheduled for the Week of January 5, 2004.

Week of January 12, 2004—Tentative

Wednesday, January 14, 2004

9:30 a.m. Briefing on Status of Office of Chief Information Officer Programs, Performance, and Plans (Public Meeting) (Contact: Jacqueline Silber, 301–415–7330)

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of January 19, 2004—Tentative

Wednesday, January 21, 2004

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of January 26, 2004—Tentative

There are no meetings scheduled for the Week of January 26, 2004.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Timothy J. Frye, (301) 415–1651.

Additional Information: By a vote of 3–0 on December 17, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (1) SECY–03–0195 (Final Rule: 10 CFR Part 50, Financial Information Requirements for Applications to Renew of Extend the Term of an Operating License for a Power Reactor); and (2) SECY–03–0211 (Dominion Nuclear Connecticut, Inc., Millstone Nuclear Power Station, Unit 2)" be held on December 18, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555, (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: December 18, 2003.

Timothy J. Frye,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–31669 Filed 12–19–03; 11:02 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 27 through December 11, 2003. The last biweekly notice was published on December 9, 2003 (68 FR 68654).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays.

Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 22, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 11, 2003, as supplemented by letter dated August 20, 2003, and October 13, 2003.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 5.5.16, "Containment Leakage Rate Testing Program" to allow a one-time extension of the containment Type A leak rate test interval from once in 10 years to once in 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to TS 5.5.16 provides a one-time extension of the containment Type A test interval to 15 years for HBRSEP (H. B. Robinson Steam Electric Plant), Unit No. 2. The proposed TS change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment vessel is designed to provide a leak-tight barrier against the uncontrolled release of radioactivity to the environment in the unlikely event of postulated accidents. As such, the containment vessel is not considered as the initiator of an accident. Therefore, the proposed TS change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only a one-time change to the interval between containment Type A tests. Types B and C leakage testing will continue to be performed at the intervals specified in 10 CFR part 50, Appendix J, Option A, as required by the HBRSEP, Unit No. 2, TS. As documented in NUREG–1493, "Performance-Based Containment Leakage-Test Program," industry experience has shown that Types B and C containment leak rate tests have identified a very large percentage of containment leak paths, and that the percentage of containment leak paths that are detected only by Type A testing is very small. In fact, an analysis of 144 integrated leak rate tests, including 23 failures, found that none of the failures involved a containment liner breach. NUREG–1493 also concluded, in part, that reducing the frequency of containment Type A testing to once per 20 years results in an imperceptible increase in risk. The HBRSEP, Unit No. 2, test history and risk-based evaluation of the proposed extension to the Type A test interval supports this conclusion. The design and construction requirements of the containment vessel, combined with the containment inspections performed in accordance with the American Society of Mechanical Engineers (ASME) Code, Section XI, and the Maintenance Rule (10 CFR 50.65) provide a high degree of assurance that the containment vessel will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed TS change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change to TS 5.5.16 provides a one-time extension of the containment Type A test interval to 15 years for HBRSEP, Unit No. 2. The proposed change to the Type A test interval does not result in any physical changes to HBRSEP, Unit No. 2. In addition, the proposed test interval extension does not change the operation of HBRSEP, Unit No. 2, such that a failure mode involving the possibility of a new or different kind of accident from any accident previously evaluated is created.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change to TS 5.5.16 provides a one-time extension of the containment Type A test interval to 15 years for HBRSEP, Unit No. 2. The NUREG–1493 study of the effects of extending containment leak rate testing found that a 20 year extension for Type A testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leak rate contributes a very small amount to the individual risk, and that the decrease in Type A testing frequency would have a minimal affect on this risk, since most potential leak paths are detected by Type B and C testing.

The proposed change only involves a one-time extension of the interval for containment Type A testing; the overall containment leak rate specified by the HBRSEP, Unit No. 2, TS is being maintained. Type B and C testing will continue to be performed at the frequency required by the HBRSEP, Unit No. 2, TS. The regular containment inspections being performed in accordance with the ASME Code, Section XI, and the Maintenance Rule (10 CFR 50.65) provide a high degree of assurance that the containment will not degrade in a manner that is only detectable by Type A testing. In addition, a plant-specific risk evaluation demonstrates that the extension of the Type A test interval from 10 years to 15 years results in a "very small" increase in risk for those accident sequences influenced by Type A testing and a "small" increase in risk when compared to the test frequency of 3 tests per 10 years.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above discussion, Progress Energy Carolinas, Inc., has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 20, 2003.

Description of amendment request: The amendments would revise the Technical Specifications to update the heatup, cooldown, criticality, and inservice test pressure and temperature limits for the reactor coolant system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed changes to the reactor coolant system (RCS) pressure-temperature (P/T) limits are developed utilizing the methodology of ASME (American Society of Mechanical Engineers) XI, 10 CFR (part) 50 Appendix G, in conjunction with the methodology of Code Case N–640. Usage of these methodologies provides compliance with the underlying intent of 10 CFR (part) 50 Appendix G and provides operational limits that ensure failure of the reactor vessel will not occur. The proposed changes to allow operation with two pumps capable of injecting into the RCS and utilization of the residual heat removal (RHR) suction relief valves has been evaluated and determined to provide adequate protection of the RCS from the worst case pressure transient.

The probability of any design basis accident (DBA) is not affected by these changes, nor are the consequences of any DBA affected by these changes. The P/T limits, and low temperature overpressure protection (LTOP) setpoints, and T_{enable} value are not considered to be initiators or contributors to any accident analysis addressed in the Catawba UFSAR (updated final safety analysis report).

The proposed changes do not adversely affect the integrity of the RCS such that its function in the control of radiological consequences is affected. The changes do not alter any assumption previously made in the radiological consequence evaluations nor affect the mitigation of the radiological consequences of an accident previously evaluated. The proposed changes to the TS are consistent with the intent of the flexibility currently provided in NUREG–1431, Standard Technical Specifications for Westinghouse Plants, Revision 2.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the updated final safety analysis report (UFSAR) because the accident analysis assumptions and initial conditions will continue to be maintained.

Second Standard

Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed change does not involve any physical alteration of plant systems, structures, or components. The requirements for the P/T limit curves and LTOP setpoints remain in place. The fundamental approach follows approved ASME and Westinghouse report methodology. The proposed curves and change to the enable temperature for LTOP system reflect changes in material properties acknowledged and managed by regulation and an upgrade in technology, which has been approved by ASME.

The proposed changes to allow operation with two pumps capable of injecting into the RCS and utilization of the RHR suction relief valves has been evaluated. The evaluation has shown that both the PORVs (power-operated relief valves) and RHR suction relief valves provide adequate relief protection of the RCS from the worst case pressure transient and provide equivalent protection to that already allowed by the current TS (technical specification).

The proposed changes do not introduce new failure mechanisms for system structures, or components not already considered in the UFSAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created because no new failure mechanisms or initiating events have been introduced.

Third Standard

Does operation of the facility in accordance with the proposed amendment involve a significant reduction in the margin of safety.

Response: No.

The proposed changes are developed utilizing the methodology of ASME XI, 10 CFR (part) 50 Appendix G, in conjunction with Code Case N–640 and Code Case N–641 methodology. Usage of these methodologies provides compliance with the underlying intent of 10 CFR (part) 50 Appendix G and provides operational limits that ensure failure of the reactor vessel will not occur. Although the Code Cases constitute relaxation from the current requirements of 10 CFR (part) 50 Appendix G, the alternative methodology allowed by the Code is based on industry experience gained since the inception of the 10 CFR (part) 50 Appendix G requirements for which some of the requirements have now been determined to be excessively conservative. The more appropriate assumptions and provisions allowed by the Code Cases maintain a margin of safety that is consistent with the intent of 10 CFR (part) 50 Appendix G, *i.e.*, with regard to the margin originally contemplated by 10 CFR (part) 50 Appendix G for determination of RCS P/T limits.

The analyses completed for this proposed TS amendment demonstrate that established acceptance criteria continue to be met. Specifically, the P/T limit curves, LTOP setpoints, allowances for operating two pumps, utilization of RHR suction relief valves and LTOP T_{enable} values provide acceptable margin to vessel fracture under both normal operation and LTOPs design basis (mass addition and heat addition) accident conditions. The proposed changes to the TS are consistent with the intent of the flexibility currently provided in NUREG–1431, Standard Technical Specifications for Westinghouse Plants, Revision 2. Therefore, there will be no significant reduction in a margin of safety as a result of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: March 28, 2003, as supplemented by letter dated October 23, 2003.

Description of amendment request: The proposed amendments would revise the technical specifications to reduce the main steam line low pressure primary containment isolation allowable value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Current licensing bases events remain bounding for ATWS, transient, and accident analyses. For the bounding events, a reduction in the allowable value for the MSL LPIS produces no significant change in the limiting results with respect to the acceptance criteria. The proposed change does not alter the response of plant equipment to transient conditions, nor does it introduce any new equipment, modes of system operation or failure mechanisms. The proposed change does not adversely impact structures, systems, or components.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

ECCS–LOCA Performance

In the analyses used to evaluate the ECCS-LOCA performance, the MSIVs are assumed to close at the start of the accident for all break locations. Therefore, the low pressure isolation trip is not used in the LOCA analyses and the LOCA analysis results are not affected by the reduction in the LPIS.

For large breaks in the MSL (both inside and outside containment), the MSIV closure is initiated by a high steam line flow signal at the beginning of the event, well before the LPIS is reached. For these cases, the ECCS performance is not affected by the reduction in the LPIS.

If the steam line break is too small to result in a high flow isolation signal, MSIV closure may be initiated by another signal (*e.g.*, high steam line tunnel temperature or low reactor water level) or it may occur due to the LPIS trip. In either case, steam line breaks of any size are not the limiting events with respect to ECCS performance, and a 40 psi reduction in the LPIS will not affect compliance with the acceptance criteria of 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors."

Based on the above discussions, the reduction of the MSIV LPIS has no adverse impact on the plant response to a LOCA or on compliance with the acceptance criteria of 10 CFR 50.46.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of a previously evaluated ECCS-LOCA accident.

Containment System Response

In evaluating containment response to pipe breaks inside containment, the MSIVs are assumed to close at the start of the accident for all break locations in the containment system response analyses. Therefore, the low pressure isolation trip is not assumed and the analysis results are not affected by the reduction in the LPIS.

In the event that MSIV closure does not occur at the beginning of the accident, MSL isolation is effectively achieved as the pressure regulator closes the turbine control and bypass valves in an attempt to maintain turbine throttle pressure at the regulator setpoint of approximately 925 psig. Thus, for events other than breaks in the main steam line, isolation occurs before the LPIS is reached.

For large breaks in the MSL (both inside and outside containment), the MSIV closure is initiated by a high steam line flow signal at the beginning of the event, well before the LPIS is reached. For these cases, the containment system response is not affected by the reduction in the LPIS. For a steam line break too small to result in a high flow isolation signal, MSIV closure may be initiated by another signal (*e.g.*, low reactor water level) or it may occur due to the LPIS trip. Small breaks do not determine the peak drywell shell temperature and equipment qualification (EQ) envelope. Large breaks, as characterized in Section 3.3.2 of Attachment 4, are large enough to depressurize the reactor irrespective of the MSIV closure. Hence, a 40-psi reduction in the LPIS will not affect the peak drywell shell temperature or the drywell temperature EQ envelope.

Based on the above discussions, the reduction of the MSIV LPIS has no adverse impact on the containment system response.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated for containment system response.

Subcompartment Pressurization

The MSL break mass and energy release used in the evaluation are based on steady-state reactor operating conditions. Therefore, the low pressure isolation trip is not used in the subcompartment pressurization analysis. In addition, the peak annulus pressurization loads occur at the beginning of the event, well before MSIV closure can occur.

The subcompartment pressurization results are not affected by the reduction in the MSL LPIS.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated for subcompartment pressurization.

Appendix R Fire Protection

The reactor system response for the Appendix R fire protection analysis was performed during the Extended Power Uprate (EPU) project. The sequence of events for the analysis shows that closure of the MSIVs is initiated on low-low reactor water level. However, before the LPIS setpoint is reached, the turbine control valves closing on low inlet pressure effectively isolate steam flow following a scram. The revised LPIS has no adverse impact on the reactor system response to an Appendix R fire protection event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated for Appendix R fire protection.

Station Blackout

The initiating event for a station blackout, a loss of off-site power, results in MSIV closure at the beginning of the event. The reduction of the MSL LPIS has no adverse impact on the reactor system response during a station blackout.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of a previously evaluated station blackout event.

High Energy Line Break

The steam line break analysis assumes closure of the MSIVs due to high steam line flow at the beginning of the event. Thus, the low pressure isolation trip is not used in the analyses and the results are not adversely affected by the reduced LPIS.

The steam line break case determines the short-term peak steam tunnel temperature. However, the range of break sizes for which the low pressure isolation trip initiates MSIV closure is limited. Such a break must be large enough to depressurize the vessel below the pressure regulator setpoint, approximately 925 psig, but small enough such that high steam line flow trip does not result. Although such cases could result in an increase in the mass and energy released, similar to a larger line break, isolation will still occur before the LPIS is reached. The isolation will occur as a result of Main Steam Line Tunnel Temperature—High for any leak greater than 1% rated steam flow. Thus, a 40 psig reduction in the LPIS will not adversely affect the peak temperature in the steam tunnel. In addition, the dynamic effects (*e.g.*, pipe whip and jet impingement) on other structures, systems and components are unaffected by the reduced LPIS.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of a high energy line break accident previously evaluated.

Radiological Consequences

The MSIVs are assumed to close due to high steam line flow at the start of an accident in the analysis. The low pressure isolation trip is not used in the mass release analysis and the radiological consequences are not affected by the reduction of the LPIS.

If the steam line break is too small to cause a high flow isolation signal, MSIV closure may be initiated by another signal (*e.g.*, high steam tunnel temperature or low reactor water level) or it may result from the low pressure isolation trip. Thus, a 40 psig reduction in the LPIS will have no adverse impact on the radiological consequences. The radiological consequences of a reduction in the MSL LPIS are addressed further in Section 6 of this attachment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated for radiological consequences.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

General Electric Company (GE) evaluated the impact of reducing the LPIS analytical limit from 825 to 785 psig, including analysis of transient and safety related licensing bases for DNPS, Units 2 and 3, and QCNPS, Units 1 and 2. Current licensing bases events remain bounding for ATWS, transient, and accident analyses. The proposed change revises the allowable value of TS Table 3.3.6.1–1, Function 1.b, but does not alter the instrumentation or control logic of the Primary Containment Isolation System.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The revised LPIS does not change the current licensing bases events, which remain bounding for ATWS, transient and accident analyses. The conclusion that a reduction in the MSIV LPIS will not have an adverse impact on plant accident analyses is valid. The LPIS was analyzed by GE during the EPU project for impact on safety limits and safety margins and was determined to be a non-impacted item. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: August 19, 2003.

Description of amendment request: The proposed amendments would modify Technical Specification (TS) 5.5.13, "Primary Containment Leakage Rate Testing Program," by identifying a specific exception to the testing guidance contained in Regulatory Guide (RG) 1.163, "Performance-Based Containment Leak-Test Program."

LaSalle County Station (LSCS) Units 1 and 2 conduct their leakage rate testing of the primary containments to the requirements of 10 CFR 50.54(o) and 10 CFR part 50, Appendix J, Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," Option B as modified by approved exemptions. Additionally, the program is in accordance with the guidelines contained in RG 1.163. The proposed TS change would take exception to RG 1.163 guidance by allowing the testing of potential valve atmospheric leakage paths (*e.g.*, valve stem packing), that are not exposed to reverse direction Type B or C leakage test pressure during the regularly scheduled Type A test. A list of the potential valve atmospheric leakage paths, the leakage rate measurement method and the acceptance criteria will be contained in the program. This exception will be applicable only to valves that are not isolable from the primary containment free air space.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated.

The proposed change will revise LaSalle County Station, Units I and 2, Technical Specification (TS) 5.5.13, "Primary Containment Leakage Rate Testing Program" by identifying a specific exception to the testing guidance contained in Regulatory Guide (RG) 1.163, "Performance-Based Containment Leak-Test Program."

The function of the primary containment is to isolate and contain fission products released from the reactor Primary Coolant System (PCS) following a design basis Loss of Coolant Accident (LOCA) and to confine the postulated release of radioactive material to within limits. The probability of an accident previously evaluated is not dependent on the test-frequency of the primary containment Type A, B or C testing. The test interval associated with primary containment testing is not a precursor of any accident previously evaluated. The proposed specific exception to the testing guidance contained in RG 1.163 will continue to test all potential valve atmospheric leakage paths and will not be a precursor to a Design Basis Accident (DBA). Containment testing does provide assurance that the LaSalle County Station primary containments will not exceed allowable leakage rate values specified in the Technical Specifications and will continue to perform their design function following an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The integrity of the primary containment is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the primary containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." These tests are performed to verify the essentially leak tight characteristics of the primary containment at the design basis accident pressure. The proposed change for a specific exception to the testing guidance contained in Regulatory Guide (RG) 1.163 will continue to test all potential valve atmospheric leakage paths and does not effect the test acceptance criteria for Type A, B or C testing. Therefore, LSCS has determined that the proposed change provides an equivalent level of protection as that currently provided.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief : Anthony J. Mendiola.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: November 20, 2003.

Description of amendment request: The licensee proposes to revise the safety limit minimum critical power ratio (SLMCPR) values in section 2.1.1.2 of the Technical Specifications (TSs). The SLMCPR values are based on cycle-specific calculations done for the next fuel cycle, Cycle 10, using methodology previously approved by the Nuclear Regulatory Commission (NRC).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed SLMCPR values, calculated using an NRC-approved methodology, will be made in a manner such that conservatism is maintained through compliance with applicable NRC regulations and guidance. No hardware design change is involved with the proposed amendment, thus there will be no adverse effect on the functional performance of any plant structure, system, or component (SSC). All SSCs will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of postulated accidents. SLMCPR values were not previously factored into the probability of accidents, nor were they factored into scenarios of previously analyzed accidents. Accordingly, the revised SLMCPR values will lead to no increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is not the result of a hardware design change, nor does it lead to the need for a hardware design change. There is no change in the methods the unit is operated. As a result, all SSCs will continue to perform as previously analyzed by the licensee, and previously evaluated and accepted by the NRC staff. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since the licensee did not propose to exceed or alter a design basis or safety limit, the proposed amendment will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: November 21, 2003.

Description of amendment request: The proposed amendment would allow the position of a rod to be monitored by a means other than the movable incore detectors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change provides an alternative method for the monitoring of the position of a rod once the position of the rod is verified using the moveable incore detector system. The proposed monitoring of stationary gripper coil parameters provides a reasonably similar approach to rod position monitoring as that provided by the movable incore detector system. In particular, the ability to immediately detect a rod drop or misalignment is not directly provided by the movable incore detector system or by the monitoring of stationary gripper coil parameters. Additionally, neither the movable incore detector system, nor the monitoring of stationary gripper coil parameters, provides the capability to verify rod position following a reactor trip or shutdown. Therefore, the monitoring of stationary gripper coil parameters, in lieu of the use of the movable incore detector system, provides an equivalent and acceptable method of monitoring rod position while a position indicator is inoperable.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. As described above, the proposed change provides only an alternative method of monitoring the position of a rod. No new accident initiators are introduced by the proposed alternative manner of performing rod position monitoring. The proposed change does not affect the reactor protection system or the reactor control system. Hence, no new failure modes are created that would cause a new or different kind of accident from any accident previously evaluated.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The bases for TS (Technical Specification) 3.1.8 state that the operability of the rod position indicators is required to determine control rod positions and thereby ensure compliance with the control rod alignment and insertion limits. The proposed change does not alter the requirement to determine rod position but provides an alternative method for monitoring the position of the affected rod after the position of the rod is verified using the moveable incore detector system. As a result, the initial conditions of the accident analysis are preserved and the consequences of previously analyzed accidents are unaffected.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of consideration of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 13, 2002, as supplemented September 25, 2003.

Brief description of amendments: These amendments changed the Technical Specifications (TSs) by removing the requirement to have the charging pumps operable when thermal power is greater than 80% of rated thermal power. The change also removes Surveillance Requirement 3.5.2.4 for verifying the required charging pump flow rate. The change to TS 3.5.2 does not modify any other charging pump requirements in the Technical Requirements Manual (*e.g.*, requirements of charging pump availability for boration and cooldown remain in effect).

Date of issuance: December 3, 2003.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 260 and 237.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**: February 18, 2003 (68 FR 7812).*

The September 25, 2003, supplemental letter provided clarifying information that did not enlarge the scope of the amendment as noticed in the original **Federal Register** notice or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 3, 2003.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: May 28, 2003, as supplemented November 25, 2003.

Brief description of amendments: These amendments changed the reactor pressure vessel pressure-temperature limit cooldown curves in the Calvert Cliffs 1 and 2 Technical Specifications by incorporating a different range of temperatures for which a maximum cooldown rate of 100°F/hr is acceptable.

Date of issuance: December 9, 2003.

Effective date: As of the date of issuance to be implemented within 120 days.

Amendment Nos.: 261 and 238.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 8, 2003 (68 FR 40701).

The November 25, 2003, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 9, 2003.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: March 14, 2003, as supplemented by letter dated June 24, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.8.1, "AC Sources—Operating," Surveillance Requirements (SRs) pertaining to the testing of the Division 1 and 2 standby diesel generators (DGs). Specifically, the proposed changes eliminate mode restrictions that previously prevented performance of SRs during Modes 1 and 2 for the Division 1 and 2 DGs. The changes allow the performance of SR 3.8.1.9 and SR 3.8.1.10 for the Division 1 and 2 DGs during any plant operating mode.

Date of issuance: November 7, 2003.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 137.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** (68 FR 18275). The June 24, 2003, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: May 28, 2003, as supplemented on June 24, 2003.

Brief description of amendment: The amendment revised Technical Specification (TS) Section 3.4.3, "RCS Pressure and Temperature (P/T) Limits," and section 3.4.12, "Low Temperature Overpressure Protection (LTOP)," to incorporate revised reactor pressure vessel P/T limits and overpressure protection system limits to allow operation up to 20 effective full-power years. Specifically, the amendment changed TS Figures 3.4.3–1 to 3.4.3–3 and TS Figures 3.4.12–1 to 3.4.12–4.

Date of issuance: December 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 220.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 22, 2003 (68 FR 43389).

The June 24 letter provided clarifying information that did not enlarge the scope of the amendment request or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 1, 2003, as supplemented by letter dated September 30, 2003.

Brief description of amendment: The amendment modifies the surveillance testing requirements for the containment spray system by deleting the requirement to verify the position of valves that are locked, sealed, or otherwise secured in their correct position (and by deleting wording regarding the verified valves being positioned to take suction from the refueling water tank), and replacing the quantitative allowable pump degradation value with a requirement to verify the pumps perform in accordance with the Inservice Testing Program.

Date of issuance: December 4, 2003.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 252.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 27, 2003 (68 FR 28851).

The September 30, 2003, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 4, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois

Date of application for amendments: February 27, 2003, as supplemented on July 17, July 31, September 11, and November 25, 2003.

Brief description of amendments: The amendments revise Technical Specification Section 3.4.9, "Reactor Coolant System Pressure and Temperature (P/T) Limits," incorporating revisions to the P/T limit curves. The amendment also deletes the license conditions specified in DNPS Unit 2 Facility Operating License Section 2.C(8) and DNPS Unit 3 Facility Operating License Section 3.P, "Pressure-Temperature Limit Curves."

Date of issuance: November 26, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days of the date of issuance.

Amendment Nos.: 205/197.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Facility Technical Specifications and license conditions specified in the Facility Operating Licenses.

Date of initial notice in ***Federal Register***: August 5, 2003 (68 FR 46242).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 26, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: November 26, 2002.

Brief description of amendments: These amendments revised TS 3.1.3.1, "Control Rod Operability," by adding new Limiting Condition for Operation criteria and applicable ACTION requirements for scram discharge volume (SDV) vent and drain valves. The changes also modified TS 3.6.3, "Primary Containment Isolation Valves," to clarify the relationship between TS 3.1.3.1 and TS 3.6.3 regarding SDV vent and drain valves.

Date of issuance: November 26, 2003.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 168 and 131.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: January 7, 2003 (68 FR 803).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 26, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of application for amendments: March 26, 2003.

Brief description of amendments: These amendments modify Technical Specifications (TSs) 4.0.1 and 4.0.3 to be consistent with the Improved Standard Technical Specifications. The amendments also modify the TS requirements for missed surveillances in TS 4.0.3 to be consistent with the Nuclear Regulatory Commission-approved Technical Specification Task Force (TSTF), Standard Technical Specification Change TSTF–358, Revision 6.

Date of issuance: November 25, 2003.

Effective date: As of the date of its issuance and shall be implemented within 60 days.

Amendment Nos.: 258 and 140.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: June 24, 2003 (68 FR 37577).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 2003.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 9, 2002, as supplemented by letter dated August 28, 2003.

Brief description of amendments: The changes would revise Technical Specification (TS) 3.75, "Auxiliary Feedwater System," Surveillance Requirement (SR) 3.7.5.2 Frequency. Specifically, the wording of the Frequency of SR 3.7.5.2 would change from "31 days on a Staggered Test Basis" to "In accordance with the Inservice Testing Program." This change is requested to implement recommendations of the Standard Technical Specifications for Combustion Engineering Plants, NUREG–1432, Revision 2.

Date of issuance: November 25, 2003.

Effective date: November 25, 2003, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2—191; Unit 3—182.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: January 7, 2003 (68 FR 812).

The August 28, 2003, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 14, 2002, as supplemented by letters dated October 30, and November 6, 2003.

Brief description of amendments: The amendments revise the Updated Final Safety Analysis Report (UFSAR) to eliminate the turbine missile design basis.

Date of issuance: December 2, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance. The UFSAR changes shall be implemented in the next periodic update to the UFSAR in accordance with 10 CFR 50.71(e).

Amendment Nos.: Unit 1—158; Unit 2—146.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the UFSAR.

Date of initial notice in ***Federal Register***: February 18, 2003 (68 FR 7821).

The October 30, and November 6, 2003, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the ***Federal Register*** on February 18, 2003 (68 FR 7821).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 22, 2003, as supplemented by letters dated September 10 and September 30, 2003.

Brief description of amendments: The amendments change the pressurizer safety valve lift tolerance, as specified in Technical Specification (TS) 3.4.2.2, "Reactor Coolant System," from plus/minus (±) 2 percent (%) to +2% and −3%.

Date of issuance: December 2, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—159; Unit 2—147.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the TSs.

Date of initial notice in ***Federal Register***: June 24, 2003 (68 FR 37583).

The September 10 and September 30, 2003, supplemental letters provided clarifying information that was within the scope of the original ***Federal Register*** notice (68 FR 37583) and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: August 7, 2003.

Description of amendment request: The amendments modified Technical Specification (TS) requirements for mode change limitations to adopt Industry/TS Task Force (TSTF) change TSTF–359, "Increase Flexibility in Mode Restraints."

Date of issuance: December 1, 2003.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment Nos.: 249, 286 & 244.

Facility Operating License Nos. DPR–33, DPR–52, and DPR–68. Amendments revised the TSs.

Date of initial notice in **Federal Register**: October 14, 2003 (68 FR 59221).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: March 13, 2003, as supplemented July 30, 2003.

Description of amendment: The amendment revises the boron concentration requirements in Technical Specifications (TSs) 3.5.2, "Cold Leg Accumulators," and 3.5.5, "Refueling Water Storage Tank." The revised boron concentration requirement is a function of the number of tritium producing burnable absorber rods (TPBARs) in the core.

Date of issuance: December 1, 2003.

Effective date: As of the date of issuance to be implemented no later than startup from an outage in which TPBARs are loaded into the reactor.

Amendment Nos.: 289 & 279.

Facility Operating License Nos. DPR–77 and DPR–79: Amendment revised the TSs.

Date of initial notice in **Federal Register**: April 15, 2003 (68 FR 18286). The supplemental letter provided clarifying information only and did not change the scope of the original amendment request or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 2003.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By January 22, 2004, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Southern Nuclear Operating Company, Inc., et al., Docket No. 50–425, Vogtle Electric Generating Plant, Unit 2, Burke County, Georgia

Date of amendment request: November 5, 2003.

Description of amendment request: The proposed amendment would extend the surveillance interval for the Memories Test portion of the Actuation Logic Test for: (1) Power Range Block (Switch position 1), (2) Intermediate Range Block (Switch position 2), (3) Source Range Block (Switch positions 3 and 4), (3) Safety Injection (SI) Block, Pressurizer (Switch positions 5 and 6), (4) SI Block, High Steam Pressure Rate (Switch positions 7 and 8), (5) Auto SI Block (Switch position 9), and (6) Feedwater Isolation on P14 or SI (Switch positions 10 and 11). In addition to the functions listed above, the licensee is requesting an extension of the surveillance interval for the portions of the Actuation Logic Test for Feedwater Isolation on P14 or SI that pass through the memories circuits and the Power Range block of the Source Range Trip test for the Unit 2 Train B Solid State Protection System to the next refueling outage at the end of Cycle 10 or the next Unit 2 shutdown to MODE 5, whichever comes first.

Date of issuance: December 3, 2003.

Effective date: December 3, 2003.

Amendment No.: 108.

Facility Operating License No. NPF–81: Amendment revises the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. November 18, 2003 (68 FR 65092). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by December 18, 2003, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated December 3, 2003.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: John A. Nakoski.

Dated in Rockville, Maryland, this 15th day of December, 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31314 Filed 12–22–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Deborah Grade, Director, Washington Services Branch, Center for Talent Services, Division for Human Resources Products and Services, (202) 606–5027.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between October 1, 2003, and October 31, 2003. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments for October 2003.

Schedule B

No Schedule B appointments for October 2003.

Schedule C

The following Schedule C appointments were approved for October 2003:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60004 Special Assistant to the Administrator, Office of Information and Regulatory Affairs. Effective October 08, 2003.

BOGS60034 Staff Assistant to the Director, Office of Management and Budget. Effective October 15, 2003.

BOGS60012 Confidential Assistant to the Controller, Office of Federal Financial Management. Effective October 17, 2003.

BOGS60027 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs. Effective October 27, 2003.

BOGS00039 Confidential Assistant to the Associate Director for Legislative Affairs. Effective October 31, 2003.

Office of National Drug Control Policy

QQGS00023 Confidential Assistant to the Chief of Staff. Effective October 21, 2003.

Section 213.3304 Department of State

DSGS60487 Congressional Affairs Manager to the Assistant Secretary for International Organizational Affairs. Effective October 01, 2003.

DSGS60531 Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 01, 2003.

DSGS60575 Writer-Editor to the Assistant Secretary for Oceans, International Environment and Science Affairs. Effective October 02, 2003.

DSGS60544 Strategic Planning Officer to the Coordinator for International Information Programs. Effective October 10, 2003.

DSGS60703 Special Assistant to the Assistant Secretary for Economic and Business Affairs. Effective October 22, 2003.

DSGS60701 Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 24, 2003.

DSGS60702 Special Assistant to the Deputy Chief of Protocol. Effective October 24, 2003.

DSGS60712 Special Advisor to the Assistant Legal Adviser for African Affairs. Effective October 28, 2003.

Section 213.3305 Department of the Treasury

DYGS60250 Director, Public Affairs to the Deputy Assistant Secretary (Public Affairs). Effective October 09, 2003.

Section 213.3306 Office of the Secretary of Defense

DDGS00755 Personal & Confidential Assistant to Assistant Secretary of Defense (Special Operations/Low Intensity Conflict). Effective October 02, 2003.

DDGS00756 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia). Effective October 03, 2003.

DDGS16758 Deputy White House Liaison to the Special Assistant to the Secretary of Defense for White House Liaison. Effective October 10, 2003.

Section 213.3307 Department of the Army

DWGS00086 Special Assistant to the Army General Counsel. Effective October 08, 2003.

DWGS60075 Special Assistant to the Assistant Secretary of the Army (Installations, Logistics and Environment). Effective October 08, 2003.

Section 213.3308 Department of the Navy

DNGS60056 Confidential Assistant to the Assistant Secretary Financial Management. Effective October 16, 2003.

Section 213.3310 Department of Justice

DJGS00034 Special Assistant to the Assistant Attorney General, Criminal Division. Effective October 02, 2003.

DJGS00217 Counsel to the Director, Violence Against Women Office. Effective October 02, 2003.

DJGS00123 Senior Counsel to the Director, Office of Public Affairs. Effective October 10, 2003.

DJGS00254 Counselor to the Assistant Attorney General. Effective October 16, 2003.

DJGS00432 Senior Counsel to the Director of the Executive Office for United States Attorneys. Effective October 16, 2003.

DJGS00255 Counsel to the Assistant Attorney General. Effective October 17, 2003.

DJGS00268 Counsel to the Assistant Attorney General. Effective October 22, 2003.

DJGS00258 Counsel to the Assistant Attorney General. Effective October 30, 2003.

DJGS00380 Principal Deputy Director to the Director, Office of Public Affairs. Effective October 30, 2003.

DJGS00377 Staff Assistant to the Director, Office of Public Affairs. Effective October 31, 2003.

Section 213.3311 Department of Homeland Security

DMGS00137 Special Assistant to the Under Secretary for Information Analysis and Infrastructure Protection. Effective October 03, 2003.
DMGS00127 Director of Legislative Affairs for Secretarial Offices to the Assistant Secretary for Legislative Affairs. Effective October 06, 2003.
DMGS00141 Press Secretary to the Assistant Secretary for Public Affairs. Effective October 16, 2003.
DMGS00128 Director of Legislative Affairs for Information Analysis and Infrastructure Protection to the Assistant Secretary for Legislative Affairs. Effective October 17, 2003.
DMGS00135 Confidential Assistant to the Director, State and Local Affairs. Effective October 20, 2003.
DMGS00136 Confidential Assistant to the Director, State and Local Affairs. Effective October 20, 2003.
DMOT00138 Policy Analyst to the Administrator, Transportation Security Administration. Effective October 20, 2003.
DMGS00133 Assistant Director for Legislative Affairs to the Assistant Secretary for Legislative Affairs. Effective October 21, 2003.
DMGS00140 Senior Advisor to the Privacy Officer. Effective October 24, 2003.
DMGS00144 External Affairs Coordinator to the Chief of Staff. Effective October 24, 2003.
DMOT00139 Director of Special Projects for Transportation Security Policy to the Assistant Administrator for Transportation Security Policy. Effective October 27, 2003.
DMGS00146 Policy Advisor to the Chief of Staff. Effective October 29, 2003.
DMGS00148 Public Affairs Specialist to the Director of Communications for Information Analysis and Infrastructure Protection. Effective October 29, 2003.
DMGS00138 Deputy Assistant Secretary for Legislative Affairs (Senate) to the Assistant Secretary for Legislative Affairs. Effective October 30, 2003.
DMGS00143 Senior Advance Representative to the Chief of Staff. Effective October 30, 2003.
DMGS00150 Public Affairs Specialist to the Director of Communications for Information Analysis and Infrastructure Protection. Effective October 31, 2003

Section 213.3312 Department of the Interior

DIGS00545 Special Assistant (Communications Program Manager) to the Director, National Park Service. Effective October 03, 2003.
DIGS06077 Special Assistant—External and Intergovernmental Affairs to the Director, External and Intergovernmental Affairs. Effective October 10, 2003.
DIGS50001 Counselor to the Assistant Secretary—Indian Affairs. Effective October 10, 2003.
DIGS06078 Confidential Assistant (Press Secretary) to the Director, External and Intergovernmental Affairs. Effective October 23, 2003.

Section 213.3313 Department of Agriculture

DAGS00198 Special Assistant to the Special Assistant. Effective October 28, 2003.

Section 213.3314 Department of Commerce

DCGS60583 Special Assistant to the Assistant Secretary for Administration and Chief Financial Officer. Effective October 01, 2003.
DCGS00429 Confidential Assistant to the Director, Office of White House Liaison. Effective October 09, 2003.
DCGS00492 Confidential Assistant to the Executive Assistant. Effective October 09, 2003.
DCGS00461 Confidential Assistant to the Chief Economist and Special Advisor to the Secretary. Effective October 10, 2003.
DCGS00298 Special Assistant to the Deputy Assistant Secretary for Communications and Information. Effective October 31, 2003.
DCGS00639 Press Secretary to the Director of Public Affairs. Effective October 31, 2003.

Section 213.3315 Department of Labor

DLGS60219 Special Assistant to the Chief of Staff. Effective October 03, 2003.
DLGS60272 Special Assistant to the Director of Public Liaison. Effective October 06, 2003.
DLGS60195 Special Assistant to the Assistant Secretary for Employment Standards. Effective October 14, 2003.
DLGS60025 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective October 31, 2003.
DLGS60178 Special Assistant to the Director, 21st Century Workforce. Effective October 31, 2003.

Section 213.3316 Department of Health and Human Services

DHGS60523 Executive Director, President's Council on Physical Fitness and Sports to the Assistant Secretary, Health. Effective October 06, 2003.
DHGS60026 Special Assistant to the Director, Public Affairs Office. Effective October 15, 2003.
DHGS60167 Confidential Assistant to the Assistant Secretary for Public Affairs. Effective October 27, 2003.

Section 213.3317 Department of Education

DBGS00298 Confidential Assistant to the Deputy Director of Communications, Office of Public Affairs. Effective October 16, 2003.

Section 213.3318 Environmental Protection Agency

EPGS03606 Press Secretary to the Associate Assistant Administrator for Public Affairs. Effective October 10, 2003.

Section 213.3331 Department of Energy

DEGS00380 Assistant to the Chief of Staff and Congressional Specialist to the Assistant Secretary for International Affairs. Effective October 29, 2003.

213.3332 Small Business Administration

SBGS60195 Special Assistant to the Associate Administrator for Field Operations. Effective October 17, 2003.
SBGS60011 Deputy Associate Administrator to the Associate Administrator for Communications/Public Liaison. Effective October 20, 2003.
SBGS60091 Special Assistant to the Associate Administrator for Communications/Public Liaison. Effective October 20, 2003.
SBGS60200 Special Assistant to the Deputy Associate Administrator for Congressional and Legislative Affairs. Effective October 20, 2003.

Section 213.3334 Federal Trade Commission

FTGS60006 Congressional Liaison Specialist to the Chairman. Effective October 16, 2003.

Section 213.3337 General Services Administration

GSGS00063 Director of Marketing to the Deputy Associate Administrator for Communications. Effective October 22, 2003.
GSGS60073 Special Assistant to the Chief of Staff. Effective October 31, 2003.

Section 213.3342 Export-Import Bank

EBSL00032 Senior Vice President of Congressional Affairs to the President and Chairman. Effective October 31, 2003.

Section 213.3367 Federal Maritime Commission

MCGS60006 Counsel to the Commissioner to a Member. Effective October 31, 2003.

Section 213.3382 National Endowment for the Humanities

NHGS60076 Director, We the People Office to the Deputy Chairman. Effective October 31, 2003.

Section 213.3384 Department of Housing and Urban Development

DUGS60534 Deputy Director to the Director, Center for Faith-Based and Community Initiatives. Effective October 22, 2003.

DUGS60337 Director of Media Development to the Assistant Secretary for Public Affairs. Effective October 24, 2003.

DUGS60317 Special Assistant to the Regional Director. Effective October 30, 2003.

Section 213.3391 Office of Personnel Management

PMGS00044 Executive Director to the Director. Effective October 10, 2003.

PMGS00045 Special Assistant to the Chief of Staff. Effective October 29, 2003.

Section 213.3394 Department of Transportation

DTGS60159 Special Assistant to the Associate Administrator for Policy. Effective October 10, 2003.

DTGS60292 Associate Director for Intergovernmental Affairs to the Deputy Assistant Secretary for Governmental Affairs. Effective October 10, 2003.

Section 213.3397 Federal Housing Finance Board

FBOT00005 Staff Assistant to the Chairman. Effective October 15, 2003.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–31575 Filed 12–22–03; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Vasogen Inc., Common Stock, No Par Value) File No. 0–29350

December 17, 2003.

Vasogen Inc., a Canada corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on December 9, 2003 to withdraw the Issuer's Security from listing on the Amex and to list such Security on the Nasdaq National Market System ("Nasdaq NMS"). The Board states that it considered the following reason in its decision to withdraw the Security from listing and registration on the Amex: listing on the Nasdaq NMS represents a logical next step to support of the Issuer's growth while offering shareholders increased liquidity.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in Canada, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 9, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–31546 Filed 12–22–03; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78l(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Bio-Imaging Technologies, Inc. To Withdraw Its Common Stock, $.00025 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–11182

December 17, 2003.

Bio-Imaging Technologies, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.00025 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on November 5, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the Security on the Nasdaq National Market System ("Nasdaq NMS"). The Board states that it is taking such action because the Board believes that listing on the Nasdaq NMS will provide additional liquidity to the Issuer's stockholders and provide additional benefits to the Issuer and its stockholders such as, among other things, greater coverage by analysts and greater interest by institutional investors.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

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[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

Any interested person may, on or before January 9, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–31547 Filed 12–22–03; 8:45 am]

BILLING CODE 8010–01–P

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[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of DepoMed, Inc., To Withdraw its Common Stock, No Par Value From Listing and Registration on the American Stock Exchange LLC File No. 1–13111

December 17, 2003.

DepoMed, Inc., a California corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on December 5, 2003 to withdraw the Issuer's Security from listing on the Amex and list to list the Security on the Nasdaq National Market System ("Nasdaq NMS"). The Board states that it considered the following reasons in its decision to withdraw the Security from listing and registration on the Amex: (i) the Board believes that it would be in the best interest of the Issuer and its shareholders that the Security be listed for trading on the Nasdaq NMS in order to improve the trading volume and liquidity of the Security that may be obtained through increased investor awareness afforded by the Nasdaq NMS; and (ii) the Board believes that there is no advantage to listing the Security on both Amex and the Nasdaq NMS and that it is, therefore, in the best interests of the Issuer and its shareholders to delist the Security from the Amex.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in California, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 9, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–31548 Filed 12–22–03; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of GB Holdings, Inc. and its Wholly-Owned Subsidiaries Greate Bay Hotel and Casino, Inc. and GB Property Funding Corp., To Withdraw its 11% Notes (Due 2005) From Listing and Registration on the American Stock Exchange LLC File No. 1–15064

December 17, 2003.

GB Holdings, Inc., ("Holdings"), and its wholly-owned subsidiaries Greate Bay Hotel and Casino, Inc. ("Operating") and GB Property Funding Corp. ("Funding"), incorporated in the States of Delaware and New Jersey (together the "Issuer"), have filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the 11% Notes (due 2005) issued by Funding and guaranteed by Operating and Holdings ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors ("Board") of the Issuer, by unanimous written consent, dated November 11, 2003, determined to withdraw the Issuer's Security from listing on the Amex. The Board states that it reached its decision to withdraw the Security from listing and registration on the Amex after concluding that the existing listing has not resulted in an active trading market, which, the Board believes, results from several factors, including the fact that: (i) There are only 44 noteholders of record; (ii) an affiliate of the Issuer owns approximately 58% of the aggregate principal amount of the Security and six record holders own approximately 95.3% of the aggregate principal amount of the Security; and (iii) in the past 60 days only $3,717,000 of the Security has been traded on the Amex. Accordingly, the continued listing of the Security does not serve either the Issuer's interest or the interests of the holders of the Security because an active trading market on the Amex has not developed.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the States of Delaware and New Jersey, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 9, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–31549 Filed 12–22–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0420]

Aspen Ventures III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Aspen Ventures III, L.P., of 1000 Fremont Avenue, Suite 200, Los Altos, California 94024, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.703, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2001)). Aspen Ventures III, L.P. proposes to provide equity financing to RedSiren, Inc. of 650 Smithfield Street Suite 900, Pittsburgh, Pennsylvania 15222. The financing is contemplated for general corporate purposes including research and development, sales and marketing expansion and working capital.

This financing is brought within the purview of §107.730(a)(1) of the regulations because Aspen Ventures III L.P.'s limited partner Redleaf Group, Inc. (an investor in Aspen Ventures III) and an Associate of Aspen Ventures III, L.P., currently owns greater than 10 percent of RedSiren, Inc. and therefore is considered an Associate Aspen Ventures III, L.P., as defined in §107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: December 11, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–31519 Filed 12–22–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0432]

TeleSoft Partners II, SBIC, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TeleSoft Partners II SBIC, L.P., of 1450 Fashion Island Blvd, Suite 610, San Mateo, California 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2001)). TeleSoft Partners II, SBIC, L.P proposes to provide equity financing to Aarohi Communications, Inc. of 405 River Oaks Parkway, San Jose, California 95134, and to CreekPath Systems, Inc., of 7420 E. Dry Creek Parkway, Suite 100, Longmont, Colorado 80503. The financings are contemplated for general corporate purposes including working capital, product development and marketing.

The financings are brought within the purview of §107.730(a)(1) of the Regulations because TeleSoft Partners II, L.P. and TeleSoft Partners II QP, L.P., Associates of TeleSoft Partners II, SBIC, LP, currently own greater than 10 percent of Aarohi Communications, Inc. and CreekPath Systems, Inc. and therefore each company is considered an Associate TeleSoft Partners II, SBIC, L.P., as defined in §107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: November 24, 2003.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 03–31520 Filed 12–22–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB)

Office of Management and Budget (OMB), *Attn:* Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW, Washington, DC 20503, Fax: 202–395–6974.

Social Security Administration (SSA), DCFAM, *Attn:* Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the

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[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78l(g).

[5] 17 CFR 200.30–3(a)(1).

SSA Reports Clearance Officer at (410)–965–0454 or by writing to the address listed above.

1. *Pain Report-Child—20 CFR 416.912 and 416.1512—0960–0540.* The information collected by form SSA–3371-BK will be used to obtain the types of information specified in the regulations, and to provide disability interviewers (and applicants/claimants in self-help situations) with a convenient means of recording the information obtained. This information is used by the State disability determination services (DDS) adjudicators and administrative law judges to assess the effects of symptoms on functionality for determining disability under the Social Security Act. The respondents are applicants for Supplemental Security Income (SSI) benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 62,500 hours.

2. *Medical Permit Parking Application—41 CFR 101–20.104–2—0960–0624.* SSA issues medical parking assignments at SSA-owned and -leased facilities to individuals who have a medical condition which meets the criteria for medical parking. In order to issue a medical parking permit, SSA must obtain medical evidence from the applicant's physician. Form SSA–3192-F4 is used to collect this information. SSA then uses the information to determine whether the individual qualifies for a medical parking permit and whether or not to issue the permit. The respondents are physicians of applicants for medical parking permits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 144.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 144 hours.

3. *Certification of Prison Records by Prison Officials—20 CFR 422.107—0960-NEW.* When a valid agreement is in place, prison officials provide to SSA specific information to attest to the identity of certain incarcerated U.S. citizens who need replacement Social Security cards. The information the prison officials provide will be taken from the official prison files and will be used by SSA to establish the applicant's identity in the Social Security card process. The respondents are prison officials who certify identity of prisoners applying for replacement Social Security cards.

Type of Request: New information collection.

Number of Respondents: 1,000.

Frequency of Response: 200.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 10,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at (410) 965–0454, or by writing to the address listed above.

1. *Blood Donor Locator Service—20 CFR 401.200—0960–0501.* Section 1141(a) of the Social Security Act and 42 U.S.C. 1320b-11 require that participating State agencies provide the SSA Blood Donor Locator Service (BDLS) with specific information on blood donors who have tested positive for Human Immunodeficiency Virus (HIV). SSA uses the information to identify the donor and to locate the donor's address in SSA records for the purpose of notifying the states and assuring that states meet regulatory requirements to qualify for using the BDLS. SSA will retain no record of the request or the information after processing has been completed. The respondents are participating State agencies acting on behalf of authorized blood donor facilities.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10.

Frequency of Response: 5.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 13 hours.

2. *Discrimination Complaint Form—0960–0585.* The information collected on form SSA–437 is used by SSA to investigate and formally resolve complaints of discrimination based on race, color, national origin, sex, age, religion, and retaliation in any program or activity conducted by SSA. A person who believes that he or she has been discriminated against on any of the above bases may file a written complaint of discrimination. The information will be used to identify the complainant; identify the alleged discriminatory act; ascertain the date of such alleged act; obtain the identity of the individual(s)/facility/component that allegedly discriminated; and ascertain other relevant information that would assist in the investigation and resolution of the complaints. The respondents are individuals who allege discrimination on the grounds described above.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 98.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 98 hours.

3. *Pre-1957 Military Service Federal Benefit Questionnaire—20 CFR 404.1301–1371—0960–0120.* Form SSA–2512 collects data used in the claims adjudication process to grant gratuitous military wage credits, when applicable, and solicits sufficient information to make a determination of eligibility. The respondents are individuals who are applying for Social Security benefits on the record of a wage earner with pre-1957 military service.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 2,000 hours.

4. *Application for Supplemental Security Income—20 CFR 416.305–335—0960–0229.* The information collected using Form SSA–8000–BK (or during a personal interview) is needed and is used to determine eligibility for SSI and the amount of benefits payable to the applicant. The respondents are applicants for SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,128,374.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 752,249 hours.

5. *Statement of Household Expenses and Contributions—20 CFR 416.1130–1148—0960–0456.* Eligibility for Supplemental Security Income (SSI) is based on need. A factor for determining need is whether an individual receives in-kind support and maintenance in the form of food and shelter provided by other persons. SSA collects information on form SSA–8011–F3 to determine the existence and amount of in-kind support and maintenance received by a claimant/beneficiary of SSI. SSA uses the information to determine eligibility and payment amount under this program. The respondents are members of SSI claimants'/beneficiaries' households.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 100,000 hours.

Dated: December 16, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–31521 Filed 12–22–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 03–1(7)]

Blakes v. Barnhart; Court Cases Involving Sections 12.05 and 112.05 of the Listing of Impairments That Are Remanded for Further Proceedings—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 03–1(7).

EFFECTIVE DATE: December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Cassia Parson, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–0446, or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling. This Social Security Acquiescence Ruling will apply to all decisions where the Agency issued a final decision prior to the effective date of the 2000 mental impairment rules (September 20, 2000), and the Commissioner's new final decision after court remand was issued or will be issued on or after December 23, 2003. If we made a decision on your application for benefits prior to September 20, 2000, under Sections 12.05 and or 112.05 of the Listings of Impairments and the court remanded the case to us for further administrative proceedings, you may request application of this Social Security Acquiescence Ruling. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: October 31, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Acquiescence Ruling 03–1(7)

Blakes v. *Barnhart*, 331 F.3d 565 (7th Cir. 2003)—Cases Involving Sections 12.05 and 112.05 of the Listing of Impairments That Are Remanded By a Court for Further Proceedings Under Titles II and XVI of the Social Security Act.

Issue: For cases originally decided by Administrative Law Judges (ALJs) or the Appeals Council before September 20, 2000, which version of listing 12.05 or 112.05 to use on remand from a Federal court in the Seventh Circuit, and how that listing should be applied.

Statute/Regulation/Ruling Citation: Sections 205(b)and (g), 223, 1614(a)(3)and(4)of the Social Security Act (42 U.S.C. 405(b) and (g), 423, 1382c(a)(3) and (4)); 20 CFR 404.1505, 404.1520, 404.1520a, 404.1525, 416.905, 416.906, 416.920, 416.920a, 416.924, 416.925, and 20 CFR Part 404, Subpart P, Appendix 1, sections 12.05 and 112.05.

Circuit: Seventh (Illinois, Indiana, Wisconsin).

Blakes v. *Barnhart*, 331 F.3d 565 (7th Cir. 2003).

Applicability of Ruling: This Ruling applies only to court remands at the Administrative Law Judge (ALJ) hearing and Appeals Council levels of the administrative review process.

Description of Case: Sandra Blakes applied for Supplemental Security Income payments based on disability on behalf of her son, Lamanuel Wolfe, Jr., in 1998, when Lamanuel was 5 years old. At the ALJ hearing, Blakes presented evidence that Lamanuel was being treated for a seizure disorder and had received services for speech and language delays. There was also evidence of Stanford-Binet IQ testing in February 1999 that resulted in a composite score of 81 and subarea scores as low as 70.

The ALJ accepted the intelligence testing scores as valid. The ALJ also acknowledged that Lamanuel was receiving services for speech and language delays and being treated for a possible seizure disorder. The ALJ noted a speech and language assessment which demonstrated severe delays in speech intelligibility and receptive and expressive language. However, the ALJ rejected Lamanuel's claim that the requirements of the listing for mental retardation were met because the evidence did not establish that Lamanuel had mental retardation. The ALJ stated that the examiner who performed the intelligence testing specifically stated that Lamanuel had a good prognosis, and that his language problems caused only minimal effects on his activities of daily living. In light of that examiner's findings, the ALJ concluded that the evidence did not describe a person who has mental retardation. The ALJ also found that Lamanuel's impairments did not medically equal any listing or functionally equal the listings. Therefore, she found that Lamanuel was not disabled.

The Appeals Council denied the request for review and the claimant appealed to the United States District Court for the Eastern District of Wisconsin. The United States Magistrate Judge recommended that the ALJ's decision be affirmed, because the conclusion that Lamanuel did not have mental retardation was supported by substantial evidence. The district court adopted the Magistrate Judge's report and recommendation, and found that the ALJ had adequately supported her conclusion that Lamanuel did not have mental retardation. The district court therefore affirmed the Social Security Administration's (SSA's) final decision.

On appeal to the United States Court of Appeals for the Seventh Circuit, Blakes offered several arguments. Blakes argued that the ALJ failed to build a "logical bridge" between the evidence and her conclusions, and that the ALJ relied on her own judgment about the cause of Lamanuel's impairments without any medical support in the record for that judgment. In addition, she argued that the ALJ should have called upon a medical expert to testify at the hearing, and that Lamanuel's impairments met the requirements of Listing 112.05D. [1]

In remanding the case for further proceedings, including testimony from an expert witness, the Court of Appeals held that the ALJ must apply the pre-September 20, 2000, version of listing 112.05 in this case as the Court interpreted it. The Court noted that after the ALJ had decided the case, SSA issued final rules that, among other things, revised Listings 12.05 and 112.05.[2] The court stated that the new version of listing 112.05 "introduced a new, dual requirement" that an individual satisfy the diagnostic description of the introductory paragraph and one of the six sets of criteria following the introductory paragraph. The Court of Appeals held that the pre-September 20, 2000, version of the Listings that had been applied by the ALJ in her decision did not require an individual to meet the diagnostic description for mental retardation, only the other criteria of the Listing. The Court of Appeals also held that, on remand, the ALJ should apply the Court of Appeals' interpretation of the pre-September 20, 2000, version of the listings.

Statement As To How Blakes Differs From SSA's Interpretation

Our interpretation of the pre-September 20, 2000, version of Listings 12.05 and 112.05 is the same as our interpretation of the current listings. The diagnostic description of mental retardation contained in the introductory paragraph of these Listings, or "capsule definition," is an integral part of their criteria, as in all of the mental disorders listings. For example, in Acquiescence Ruling 98-2(8), acquiescing in the decision in *Sird* v. *Chater*, 105 F.3d 401 (8th Cir. 1997), we explained that "SSA's interpretation of the [pre-September 2000 version of] Listing [12.05] is that, if an individual has:

(1) mental retardation, i.e., significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period, or autism, i.e., a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period;

(2) a valid verbal, performance or full scale IQ in the range specified by Listing 12.05C; and

(3) a physical or other mental impairment that is severe within the meaning of 20 CFR 404.1520(c) or 416.920(c), the individual's impairments meet Listing 12.05C."[3] Therefore, the revisions that became effective on September 20, 2000, were intended only to clarify sections 12.00A and 112.00A of the introductory text of the mental disorders listings and were not a change in policy. *See* 65 FR at 50776, 50779.

The holding is also inconsistent with our interpretation of the effective date provision of the final rules that became effective on September 20, 2000. We interpret the effective date provision of the final mental disorders rules to mean that, when a court decides a case after the effective date of the final rules, reverses the Commissioner's final decision, and remands the case for further administrative proceedings, we will apply the provisions of the final rules on remand to the entire period at issue in the claim. We do not apply the version of our rules that the adjudicator applied at the time the case originally was adjudicated, since that decision has been vacated. Rather, as is the case with respect to other determinations and decisions, we apply our current rules to the entire period at issue.

The Court of Appeals, on the other hand, concluded that, on remand, the ALJ should apply the pre-September 20, 2000, version of the Listings (as the Court interpreted it, different from our intent), even though the ALJ will issue the hearing decision after the September 20, 2000, effective date of the final rules.

Explanation of How SSA Will Apply the Blakes Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides or resided in Illinois, Indiana, Wisconsin at the time of the court remand and applies only to ALJ hearing or Appeals Council decisions made pursuant to a court's remand order.

This Ruling applies to any case involving:

(1) A final ALJ's or Appeals Council's decision, made prior to September 20, 2000, that was appealed to and remanded by the court, and; and

(2) Evidence of a medically determinable mental impairment to be evaluated under Listings 12.05 or 112.05.

In deciding cases that meet the criteria in the preceding two paragraphs, the ALJ or Appeals Council will apply the Seventh Circuit's interpretation of the pre-September 20, 2000, version of Listings 12.05 or 112.05. The ALJ or the Appeals Council will not require that the claimant meet the capsule definition of mental retardation in order to meet Listing 12.05 or 112.05. To meet a listing, the claimant need only satisfy the requirements of subsections A through D of listing 12.05 or subsections A through F of listing 112.05, as appropriate to the individual's age.

[FR Doc. 03–31522 Filed 12–22–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4564]

Culturally Significant Objects Imported for Exhibition Determinations: "The Annunciation and The Bridge at Courbevoie"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March

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[1] Although *Blakes* was a title XVI childhood disability case involving the application of Listing 112.05D, similar principles also apply to disability claims involving Listing 12.05 under title II and title XVI of the Act. Therefore, this Ruling extends to both title II and title XVI disability claims involving Listings 12.05 and 112.05.

[2] *See* 65 FR 50746 (2000). The final rules were published on August 21, 2000, and they became effective on September 20, 2000. *Id*. at 50746.

[3] We rescinded Acquiescence Ruling 98-2(8) when re revised the mental disorders listings in 2000. 65 FR 50784 (2000).

27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 *note, et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "The Annunciation and The Bridge at Courbevoie," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Trust, Los Angeles, CA from on or about January 13, 2004 to on or about April 25, 2004 and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 16, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31581 Filed 12–22–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4566]

Culturally Significant Objects Imported for Exhibition Determinations: "A Beautiful and Gracious Manner: The Art of Parmigianino"

DEPARTMENT: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236–3 of August 28, 2000 [65 FR 53795], and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibit, "A Beautiful and Gracious Manner: The Art of Parmigianino," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the objects at The Frick Collection, New York, New York, from on or about January 27, 2004, to on or about April 18, 2004, and possible additional venues yet to be determined is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 11, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31583 Filed 12–22–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4563]

Culturally Significant Objects Imported for Exhibition Determinations: "Love Letters: Dutch Genre Paintings in the Age of Vermeer"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Love Letters: Dutch Genre Paintings in the Age of Vermeer," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Bruce Museum of Arts and Science, Greenwich, CT from on or about January 31, 2004 to on or about May 2, 2004 and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 16, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31580 Filed 12–22–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4567]

Culturally Significant Objects Imported for Exhibition Determinations: "Return of the Buddha: The Qingzhou Discoveries"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Return of the Buddha: The Qingzhou Discoveries," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, from on or about March 20, 2004 until on or about August 8, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these

Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Damir Arnaut, the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 11, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31584 Filed 12–22–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4565]

Culturally Significant Objects Imported for Exhibition Determinations: "Turner and Venice"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 *note, et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257, I hereby determine that the objects to be included in the exhibition "Turner and Venice," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners and/or custodian. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on or about February 15, 2004 to on or about May 30, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Walter R. Sulzynsky, the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–5078). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 11, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31582 Filed 12–22–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4560]

Determinations Pursuant to Executive Order 13224 Relating to Jaish e-Mohammed and Lashkar e-Tayyiba

The Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, has amended the designation of Jaish e-Mohammed pursuant to Executive Order 13224 to add the following names as aliases:

Khuddam-ul-Islam
Khudamul Islam
Kuddam e Islami.

The Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, has amended the designation of Lashkar e-Tayyiba pursuant to Executive Order 13224 to add the following names as aliases:

al Mansoorian
al Mansooreen
Army of the Pure
Army of the Pure and Righteous.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously", no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

Dated: December 16, 2003.

William P. Pope,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 03–31569 Filed 12–22–03; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4561]

Redesignation of Foreign Terrorist Organizations

Pursuant to section 219 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1189, the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, hereby redesignates, effective December 23, 2003, the following two organizations as foreign terrorist organizations:

Lashkar e-Tayyiba

Also known as Lashkar e-Toiba
Also known as Lashkar-i-Taiba
Also known as al Mansoorian
Also known as al Mansooreen
Also known as Army of the Pure
Also known as the Army of the Righteous
Also known as the Army of the Pure and Righteous

Jaish e-Mohammed

Also known as the Army of Mohammed
Also known as Mohammed's Army
Also known as Tehrik ul-Furqaan
Also known as Khuddam-ul-Islam
Also known as Khudamul Islam
Also known as Kuddam e Islami

Dated: December 16, 2003.

William P. Pope,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 03–31570 Filed 12–22–03; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4562]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: 2004 Summer Institute for English Language Educators from South Africa

SUMMARY: The African Programs Branch, Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the 2004 Summer Institute for English Language Educators from South Africa. Accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to provide a six-week academic training program for approximately 28 English language educators form South Africa. Subject to availability of funds, one grant will be awarded to conduct the 2004 Institute.

Important Note: This Request for Grant Proposals contains language in the "Shipment and Deadline for Proposals" section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Program Information

Overview

American institutions of higher education having an acknowledged reputation in the field of English-as-a-Second Language (ESL) and in curriculum design may apply to develop and deliver a six-week summer program for approximately twenty-eight English language educators from South Africa. The Summer Institute should be programmed to encompass about 45 days and should begin on or about June 14, 2004. A variation in start date, up to one week beyond June 14, 2004, will be considered if it is necessitated by the host institution's academic calendar. The first five weeks of the program will consist of academic coursework specializing in project-based ESL materials development/delivery focusing on three content-based areas: HIV-AIDS, civic education and civil society, and economics/entrepreneurship). The Institute will include instruction in classroom management and curriculum design to support these ESL content-based projects at the secondary and tertiary levels. Participants, with the help of the host institution, will develop a web site for all projects. The sixth week will consist of an escorted cultural and educational tour of Washington DC.

The 2004 Summer Institute for English Language Educators from South Africa will provide participants with intensive training in the fundamentals of content-based ESL materials development/delivery, continuous assessment, classroom management and curriculum design. These four areas are critical in South Africa where educators are attempting to create a new English curriculum in a context of educational transformation and Outcomes Based Education (OBE). Given the need to teach content-based English across the South African curriculum, English language educators are key personnel for quality learning. Presently, there exists a severe shortage of skilled classroom educators. South African teachers will need to produce and deliver culturally appropriate and pedagogically sound content-based materials in a multi-cultural setting.

The Summer Institute will also provide structured exposure to U.S. culture and the diversity of America. The challenges of teaching in a multi-cultural society should be a component of the program. The program should maintain a relative balance among discussion sessions, lectures and collaborative workshops. A web site is recommended for participants' projects. Lengthy lectures should be kept to a minimum. Participants should be given ample opportunity to work together and learn from each other as well as from their American instructors. Given the project-based orientation exploring the themes of HIV-AIDS, civic education and civil society, and economics/entrepreneurship, participants will be able to share not only content but relevant ESL materials with their colleagues and home institutions. Participants will receive an educational materials allowance.

Few participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. society and education should be an integral part of the Institute and should be held on the first two to three days of the program.

Guidelines

Applicants should design a two-part program:

(1) A five-week academic program supporting South Africa's goal of education transformation through the delivery of intensive training in content-based materials development, classroom management, continuous assessment and curriculum design for Outcomes Based Education (OBE) and ESL learning (English across the curriculum) at the secondary and tertiary levels. Division of the group into 3–4 manageable project teams, each with a selected thematic/content focus and each targeting the particular needs of the secondary and tertiary levels is essential. Training should be sensitive to any special needs of the South African participants.

(2) A one-week escorted visit to Washington, DC, planned, arranged, and conducted by the Institute Program Director and principal Institute staff. The Washington program should be seen as an integral part of the Summer Institute, complementing and reinforcing both the academic and thematic content. This escorted visit should take place at the end of the Institute. Programming in Washington will include a half-day briefing session at the Bureau of Educational and Cultural Affairs, United States Department of State. Additionally, visits to such organizations as TESOL, a regional university, local school systems and teacher resource centers, are encouraged. A visit to the Embassy of South Africa should also be planned. Proposals may include cultural and educational visits en route to Washington, if such stops contribute to program quality and are cost-effective. The participants will return to South Africa at the conclusion of the Washington program.

Specific areas to address in the Institute are:

1. Materials development/delivery with an emphasis on content-based ESL instruction. Techniques for continuous assessment should also be addressed. Thematic issues should include HIV-AIDS, civic education and civil society and entrepreneurship/economics.

2. Classroom management (for secondary levels).

3. Education Technology:

(a) Introduction and/or enrichment of computer-based word processing and appropriate software for participants who lack these skills. Introduction to computer networks for ESL professionals.

(b) Introduction and/or enrichment of knowledge of e-mail and the Internet as pedagogic and research tools.

4. Visits to:

(a) Local institutions and organizations related to thematic areas.

(b) On-going ESL classes at the host institution, other universities, and in local educational or community centers, providing participants with opportunities to observe ESL methodology, materials, and multi-cultural classrooms featuring content-based language learning across the curriculum.

5. Involvement of participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

6. Formative evaluation and adjustment of program components accordingly, as well as summative evaluation of the entire Institute upon its completion.

In accordance with the objectives of the Summer Institute, participants will concentrate on their thematic program projects. However, the academic program should provide time for interaction with American students, faculty, and school administrators, and the local community to promote mutual understanding between the people of the United States and South Africa. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest; home stays with families in the area (with other educators if possible), and events that will bring the participants into contact with Americans from a variety of backgrounds.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Participants

Participants, to be selected by Public Affairs Section of the U.S. Embassy in Pretoria, will be South African educators involved with English language instruction. Professionally, they can be teacher-trainers, subject advisors, curriculum developers, and learning facilitators/coordinators. The selected participants will be drawn from public and private sectors including the national and provincial departments of education, teacher resource centers, non-governmental organizations, university departments of education and teacher training colleges.

Minimum qualification for all participants will be a three-year teacher-training diploma with preference given to candidates with university degrees. Recruitment will concentrate on English language educators who are actively involved at secondary and tertiary levels, some of whom may be relatively inexperienced but are identified as having leadership potential. Depending upon availability of funds, approximately 28 participants from South Africa will participate in the Institute.

Program Elements

The proposal should be designed to support the following specific activities:

1. Pre-program communication among participants and the U.S. institution to facilitate an exchange of ideas developed for the Institute. Communication should be e-mail based.
2. Creation of a Web site identifying the program goals/syllabus and on-going participant thematic projects. The site should be a dynamic resource, with weekly updates during the duration of the program, and regular updates in South Africa following program completion. The web site should display each of the three completed theme-based projects. The participants should develop site content, while site construction and Internet hosting should be provided by the grantee institution. All Institute participants should receive a CD-ROM of their Web site creation.
3. A five-week academic program comprising coursework on
   - —Project-based English for content-based instruction,
   - —Theory and practice of continuous assessment,
   - —Use of the Internet and web resources for educators,
   - —Leadership training to enable participants to conduct workshops upon return to their countries. Training should meet the special needs of participants from South Africa.
4. Cultural activities facilitating interaction among the South African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of South Africa, planned within the five-week academic program.
5. A one-week, escorted, cultural and educational visit to Washington, DC, complementing and reinforcing the academic material. The visit will be planned, arranged and conducted by the Institute Program Director and staff.
6. Follow-on communication among participants and the U.S. institution to continue exchanges of ideas developed during the Institute.
7. Assistance to participants in selecting, purchasing and shipping materials to use in follow-on activities and training projects in South Africa.

Orientation: The host institution should plan to conduct either a pre-program needs assessment if time allows, or a needs assessment upon the arrival of the participants. The Institute Director should be prepared to adjust program emphasis as necessary to respond to participants' professional concerns.

The Public Affairs Section of the U.S. Embassy, Pretoria, will hold a pre-departure orientation for all participants in South Africa. The grantee institution will be expected to provide general orientation materials for this meeting. This material might include a tentative program outline with suggested goals and objectives, relevant background information about the U.S. institutions and individuals involved in the project, and information about the local housing, climate, and available services.

Program Administration

All Summer Institute programming and administrative logistics, management of the academic program and the educational tour, and on-site arrangements will be the responsibility of the grantee institution.

The grantee institution is responsible for arrangements for lodging, food, maintenance and local travel for participants while at the host institution and in Washington. The host institution should strive to balance cost-effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants. Single rooms or housing in residential suites, which offer privacy, are preferable.

The Bureau will provide the grantee institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute. The Bureau will arrange participants' international travel. The participants will arrive directly at the Institute site from their home countries. It is expected that the Institute program staff will make arrangements to have participants met upon arrival at the airport nearest the host campus. Departures will be from Washington, DC. Participants will be given international tickets, which will include the leg from the host institution to Washington, DC, if necessary. The Institute staff will plan for ground transportation to and from Washington area airports.

Proposals should describe the available health care system and the plan to provide health care access to Institute participants. The Department of State will provide limited health insurance coverage to all participants. The host institution will be responsible for enrolling the participants in the insurance program with materials supplied by the Department.

Budget Guidelines: Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to provide clarification.

The Bureau anticipates awarding one grant in an amount not-to-exceed $175,000 to support program and administrative costs required to implement this program. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs are limited to $60,000. Therefore, such organizations are ineligible for this competition. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Allowable costs for the program include the following:

1. Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);
2. Lodging, meals, and incidentals for participants;
3. Expenses associated with cultural activities planned for the group of participants;
4. Administrative costs as necessary.
5. U.S. ground transportation costs to U.S. appointments, meetings and to/from airports.

Proposals should maximize cost sharing through private sector support as well as institutional direct funding contributions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/AF–04–01.

FOR FURTHER INFORMATION CONTACT: The African Programs Branch, ECA/A/E/AF, Room 232, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, Tel: (202) 619–5376 and fax (202) 619–6137, e-mail: *eberelso@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Ellen Berelson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement: An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

Important Note: The deadline for this competition is Friday, February 6, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to:

U.S. Department of State, SA–44,
Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/AF–04–01,
Program Management, ECA/EX/PM,
Room 534, 301 4th Street, SW.,
Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Section at the U.S. Embassy for its review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries."

Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants.
2. *Program planning:* Relevant work plan and a detailed calendar should demonstrate substantive undertakings and logistical capacity. Plan and calendar should adhere to the program overview and guidelines described above. The proposal should clearly demonstrate how the institution will meet the program's objectives.
3. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with South African participants. Proposal should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken.
4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).
6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.
7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.
8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended.
9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.
10. *Cost-sharing:* Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 17, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31579 Filed 12–22–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4534]

Cultural Property Advisory Committee Notice of Meeting

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on Tuesday, January 13, 2004, from approximately 9:30 a.m. to 5 p.m., and on Wednesday, January 14, 2004, from approximately 9:30 a.m. to 12 noon, at the United States Department of State, Annex 44, 301 4th St., SW., Washington, DC. Pursuant to 19 U.S.C. 2605(g), the Committee will conduct a review of the "Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Pre-Hispanic Cultures of the Republic of El Salvador;" and the "Agreement between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Hispanic Cultures of the Republic of Nicaragua." The Committee's review will focus attention on Article II of each agreement.

Portions of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B). There will also be an open session to receive comments from interested parties regarding these two agreements. The open portion of the meeting will be held from approximately 1:30 to 2:30 p.m. on January 13. Seating is limited. Persons wishing to attend this open portion of the meeting must notify the Cultural Property office at (202) 619–6612 by 5 p.m. (EDT) Wednesday, January 7, 2004, to arrange for admission. Persons wishing to present oral comments at the open portion of the meeting, or to submit written comments for the Committee's consideration, must provide them in writing by 5 p.m., (EDT) January 7, 2004. All comments may be faxed to (202) 260–4893. Oral presentations will be limited to ensure time for the Committee to pose questions. Information about the Convention on

Cultural Property Implementation Act and these two agreements may be found at *http://exchanges.state.gov/culprop*.

Dated: December 11, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31578 Filed 12–22–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4568]

Bureau of Administration; Notice of Availability of Alternative Fueled Vehicle (AFV) Report for Fiscal Year 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The U.S. Department of State, Bureau of Administration, is issuing this notice in order to comply with the Energy Policy Act of 1992 and 42 U.S.C. 13218(b). The purpose of this notice is to announce the public availability of the Department of State's interim Fiscal Year 2003 report at the following Web site: *http://www.state.gov/m/a/26931.htm*. A final report will be made available upon completion of data collection.

FOR FURTHER INFORMATION CONTACT: Questions regarding reports on the AFV report Web site should be addressed to the Domestic Fleet Management and Operations Division (A/OPR/GSM/FMO) [Attn: Barry Shpil], 2201 C Street NW (Room B258), Washington, DC 20520, phone 202–647–3628.

Dated: December 9, 2003.

Vincent J. Chaverini,

Deputy Assistant Secretary Office of Operations, Department of State.

[FR Doc. 03–31585 Filed 12–22–03; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15642 and FMCSA–2001–11060]

Safety Auditor Certification; Notice of Statutory Compliance Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of statutory compliance date.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) gives notice that after December 31, 2003, all safety inspections, audits, and compliance reviews will be conducted by FMCSA or State employees certified under the Certification of Safety Auditors, Safety Investigators, and Safety Inspectors interim final rule (67 FR 12776, Mar. 19, 2002; 67 FR 41196, Jun. 17, 2002) (commonly referred to as the "Certification rule") or qualified under the grandfather provisions of 49 U.S.C. 31148(b). The Certification rule was one of three interim final rules set aside by the U.S. Court of Appeals for the Ninth Circuit on January 16, 2003, on the grounds that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. On July 28, 2003, FMCSA notified the public (68 FR 44378) that, as authorized by Sec. 211 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), the Secretary of Transportation (Secretary) had extended by 12 months the agency's December 31, 2002, statutory deadline for compliance with the safety certification requirements. The extension of the statutory compliance deadline provided FMCSA the necessary time to comply with the court's mandate by preparing an Environmental Assessment (EA) for the Certification rule. The EA concluded that implementation of the Certification rule would have no adverse environmental consequences and, in fact, would likely have a positive, if minimal, impact on the affected environment. On October 2, 2003, the agency issued a notice announcing the EA's availability in the docket and requesting public comment (68 FR 56863). The agency received no comments on the EA. Following the close of the public comment period, FMCSA prepared a Finding of No Significant Impact document for the Certification rule. The Finding of No Significant Impact is attached to the EA in the docket. Compliance with the statutory certification requirement by FMCSA and its State partners will assure the agency's continued fulfillment of its statutory responsibilities to reduce crashes, injuries, and fatalities involving large trucks and buses.

DATES: Compliance with 49 U.S.C. 31148(b) begins January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Pat Woodman, Chief of the Enforcement and Compliance Division (MC–ECE), (202) 366–9699, FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Sec. 210 of the Motor Carrier Safety Improvement Act (MCSIA) of 1999 (Pub. L. 106–159, 113 Stat. 1748) directs that all motor carriers (both foreign and domestic) granted new operating authority must undergo a safety audit within 18 months of commencing operations in interstate commerce in the United States [49 U.S.C. 31144(c)(1)]. Sec. 211 of the MCSIA requires that any safety audit conducted after December 31, 2002, be performed by: (1) A motor carrier safety auditor certified under rules established for that purpose, or (2) a Federal or State employee qualified to perform such an audit or review at the time MCSIA was enacted [49 U.S.C. 31148(b)]. The legislation gives the Secretary oversight responsibility for these motor carrier safety auditors and investigators, including the authority to decertify them [49 U.S.C. 31148(e)]. In addition, section 31148(c) authorizes the Secretary to extend (by no more than 12 months) the December 31, 2002, deadline for compliance with the safety certification requirements of MCSIA if it is determined that the rulemaking required by the statute cannot be timely implemented.

As required by Sec. 211, FMCSA published an interim final rule entitled "Certification of Safety Auditors, Safety Investigators, and Safety Inspectors," establishing procedures to certify and maintain certification for safety auditors, inspectors, and investigators (67 FR 12776, Mar. 19, 2002; 67 FR 41196, Jun. 17, 2002). The rule amends 49 CFR parts 350 and 385 to provide for three types of certification, as follows: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside vehicle and driver inspections. The Certification rule took effect on July 17, 2002 (67 FR 41196).

The rule requires certification not only for Federal employees performing safety audits, inspections, and compliance reviews but also for State and local employees conducting these activities under the Motor Carrier Safety Assistance Program (MCSAP). States must certify that safety employees meet minimal Federal standards as a condition of their continued participation in the MCSAP. Federal and MCSAP employees qualified to perform compliance reviews on December 9, 1999, are grandfathered by 49 U.S.C. 31148(b)(2) and are not required to be certified under the rule. The Certification rule extended this grandfather period to include personnel who were fully trained and performing compliance reviews or roadside inspections before June 17, 2002. Both grandfathered employees and those certified under the rule will be required to maintain their certification by completing a minimum number of safety review activities each year.

The 2002 Department of Transportation (DOT) Appropriations Act (Pub. L. 107–87, 115 Stat. 833, December 18, 2001) had stipulated that FMCSA could not expend funds on processing applications of Mexico-domiciled motor carriers for authority to operate in the United States beyond the border commercial zones, as recommended by an international arbitration panel convened pursuant to the North American Free Trade Agreement, until FMCSA published, among other things, a number of regulations including the Certification rule. (This condition was again imposed in the 2003 DOT Appropriations Act [Pub. L. 108–7, 117 Stat. 11, February 20, 2003]). Another precondition for processing such applications was publication of a rule implementing Sec. 210 of the MCSIA. An interim final rule entitled "New Entrant Safety Assurance Process" (New Entrant rule), establishing procedures to heighten the agency's safety scrutiny of new entrant motor carriers, including standards and procedures regarding the safety audits mandated by Sec. 210, was published on May 13, 2002 (67 FR 31978) and became effective on January 1, 2003.

On January 16, 2003, the U.S. Court of Appeals for the Ninth Circuit set aside the Certification rule and two other FMCSA rules establishing application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate beyond the border commercial zones. The court concluded that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. See *Public Citizen* v. *DOT,* 316 F.3d 1002 (9th Cir. 2003). Specifically with respect to the Certification rule, the court determined that because the rule did not fall within any of the existing DOT categorical exclusions, FMCSA acted arbitrarily and capriciously by failing to conduct an EA for the rule. DOT's petition for rehearing was denied on April 10, 2003. Consequently, the court's mandate setting aside the three rules took effect on April 18, 2003.

On July 17, 2003, the Secretary notified the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that, in accordance with his authority under 49 U.S.C. 31148(c), he had extended the deadline for compliance with the statutory certification requirements to December 31, 2003, while FMCSA acted to comply with the court's mandate. FMCSA notified the public of this extension (68 FR 44378, Jul. 28, 2003).

On August 26, 2003, FMCSA issued a notice to advise the public that a Programmatic Environmental Impact Statement (PEIS) would be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), as amended, and a General Conformity Evaluation would be made pursuant to the Clean Air Act [42 U.S.C. 7506(c)(1)], before promulgation of the rules on application and safety monitoring procedures for Mexico-domiciled carriers seeking U.S. operating authority (68 FR 51322, Aug. 26, 2003). The notice also announced that FMCSA was preparing an EA for the Certification rule and that a supplemental Notice of Intent would be issued if, based on the EA, the agency determined that preparation of an Environmental Impact Statement (EIS) is required.

On September 8, 2003, the United States sought Supreme Court review of the Ninth Circuit decision that invalidated the rules concerning Mexico-domiciled carriers, but did not seek review on the exclusion issues that pertained solely to the Certification rule. The following month, FMCSA issued a notice announcing the availability of an EA for the Certification rule and requesting public comment (68 FR 56863, Oct. 2, 2003). On December 15, 2003, the Supreme Court granted the Government's petition for review.

Environmental Assessment and Finding of No Significant Impact

The EA noted that the Certification rule is intended to promote more accurate safety audits, inspections, and compliance reviews by ensuring that these activities are conducted by highly trained personnel certified by FMCSA or by State or local governments. The procedures established under the rule preserve and formalize training requirements and practices that have been in effect within the DOT system for more than 20 years. Implementation of these procedures will not require FMCSA to engage in any new activities or to construct new inspection facilities, classroom facilities, or roadways; nor will the certification program, in and of itself, increase the number of safety inspections performed. Although the New Entrant rule created a new kind of review—the "safety audit" of new entrant carriers—the training required for safety auditor certification is merely a simplified, less comprehensive version of that required to conduct compliance reviews and roadside vehicle and driver inspections.

Therefore, the Certification rule will neither increase commercial vehicular traffic congestion, noise levels, and land use nor adversely impact air quality. Likewise, the certification process will have no measurable impact in conventional analysis areas such as visual, cultural, and aesthetic resources, geology and soils, water resources and hydrology, biological and ecological resources, energy consumption, socioeconomics, and environmental justice.

As required by DOT Order 5610.1C, Procedures for Considering Environmental Impacts, September 18, 1979, as amended on July 13, 1982, and July 30, 1985, and the Council on Environmental Quality's regulations implementing NEPA, the EA also analyzed the potential environmental impact of failure to implement the proposed certification procedures (the No Action Alternative). Under this scenario, the agency would withdraw the Certification rule and make no changes to the safety fitness regulations at 49 CFR part 385. In addition, FMCSA considered two alternative actions. As detailed in the EA, we judged all three alternatives to be inadequate.

The EA concluded that insofar as the certification program increases the government's ability to identify potentially unsafe carriers and vehicles and remove them from the Nation's roads, it will have positive, if minimal, effects on air quality, noise levels, and public safety. Accordingly, FMCSA anticipates that the Certification rule will produce a net positive impact on the affected environment, and has determined that an EIS for the rule is not required. The agency received no public comments on the EA.

As noted in the Background section of this document, the FY 2002 and 2003 DOT Appropriations Acts made issuance of the Certification rule a precondition to FMCSA's expenditure of funds on the processing of Mexico-domiciled motor carrier applications for authority to operate in the United States beyond the border commercial zones. Nevertheless, the EA does not attempt to analyze the prospective environmental impacts of Mexico-domiciled carriers operating in the United States. This is because the PEIS and General Conformity Evaluation required by the Ninth Circuit Court decision are already being undertaken with respect to the two other rules discussed in the Background section that are preconditions to the processing of applications of Mexican carriers for operating authority beyond the border commercial zones. Unless the Ninth Circuit Court decision is reversed or the relevant terms of the DOT Appropriations Acts are not extended, FMCSA cannot process applications of Mexico-domiciled motor carriers seeking authority to operate beyond the border commercial zones until a PEIS and General Conformity Evaluation have been completed and considered by FMCSA. Implementing the Certification rule will not affect that prohibition.

Further, the Certification rule standing alone will have no impact on prospective Mexican truck and bus operations beyond the border commercial zones. For example, it will not affect either the number of Mexico-domiciled vehicles entering the United States or the number and duration of safety inspections of these vehicles. Indeed, unlike the application and safety monitoring rules, which apply solely to Mexico-domiciled motor carriers, the only connection between the Certification rule and the operation of Mexican carriers beyond the border commercial zones is the contingency Congress created when it made issuance of the rule one of the preconditions to the processing of these carriers' applications for operating authority.

As noted above, FMCSA received no public comments in response to the EA. Following the close of the public comment period, the agency prepared a Finding of No Significant Impact document for the Certification rule. FMCSA's full Environmental Assessment and Finding of No Significant Impact are available in the docket.

In accordance with the agency's statutory obligation under 49 U.S.C. 31148(b), FMCSA and its State partners will comply with the statutory certification requirement effective January 1, 2004.

Issued on: December 18, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–31597 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Potential Service Disruptions in Supervisory Control and Data Acquisition Systems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA's Office of Pipeline Safety (RSPA/OPS) is issuing this advisory notice to owners and operators of gas and hazardous liquid pipelines who use Supervisory Control and Data Acquisition (SCADA) systems. Pipeline owners and operators should establish thorough testing regimes when they design and implement modifications and enhancements of their SCADA systems. Owners and operators should consider using off-line or developmental workstations to test changes, then deploy the changes on-line under close monitoring at times when few operational changes are expected on the pipeline. Applying these techniques will help ensure that changes in the SCADA system environment do not have an unexpected effect on pipeline operations.

FOR FURTHER INFORMATION CONTACT: Richard Huriaux, (202) 366–4565; or by e-mail, *richard.huriaux@rspa.dot.gov*. This document can be viewed at the RSPA/OPS home page at *http://ops.dot.gov*. General information about the RSPA/OPS programs can be obtained by accessing RSPA's home page at *http://rspa.dot.gov*.

I. Advisory Bulletin (ADB–03–09)

To: Owners and Operators of Gas and Hazardous Liquid Pipeline Systems Who Use SCADA Systems.

Subject: Potential Service Disruptions in SCADA Systems.

Purpose: To inform pipeline owners and operators of the potential for service disruptions in SCADA systems caused by maintenance or enhancements of SCADA system configuration and other critical databases, and the possibility of those disruptions leading to or aggravating pipeline releases.

Advisory: Each pipeline owner or operator should review their procedures for the upgrading, configuring, maintaining, and enhancing its SCADA system. If not well thought out and thoroughly tested, such changes could cause inadvertent service disruptions in the SCADA system. Resulting conditions could may impede controllers responsible for operating the pipeline from promptly recognizing and reacting to abnormal conditions, and could potentially impact the controllers' abilities to restore normal operations. Owners and operators should ensure that SCADA system modifications do not degrade overall SCADA performance to an unacceptable level. To further reduce the potential effect of service disruptions, responsible personnel should coordinate significant and non-routine SCADA modifications to occur at times when no significant changes to pipeline operations are anticipated.

It is good practice for owners and operators of pipeline systems to periodically review their SCADA system configurations, operating procedures, and performance measurements to ensure that the SCADA computer servers are functioning as intended. Owners and operators should consider using off-line or development workstations/servers to help ensure that impending changes are tested as thoroughly as possible before moving the changes into production. Although off-line or development workstations can be valuable, they may not fully represent timing, load and other factors that will be present in the production environment. System modifications should be implemented via structured and managed processes to reduce the likelihood of unforeseen problems. Such controlled processes are especially important if an owner or operator makes changes directly in the on-line environment.

In addition, owners or operators should periodically confirm that associated design and maintenance personnel, whether employees, contractors, or third-party providers, are adequately skilled to perform SCADA system modifications without causing undesirable consequences. These same personnel should be cognizant of the critical system attributes that should be monitored during the testing phase of implementation.

SUPPLEMENTARY INFORMATION:

II. Background

This advisory bulletin responds to National Transportation Safety Board (NTSB) Recommendation P–02–05, which suggested that RSPA/OPS: "[i]ssue an advisory bulletin to all pipeline owners and operators who use supervisory control and data acquisition (SCADA) systems advising them to implement an off-line workstation that can be used to modify their SCADA system database or to perform developmental and testing work independent of their on-line systems. Advise owners and operators to use the off-line system before any modifications are implemented to ensure that those modifications are error-free and that they create no ancillary problems for controllers responsible for operating the pipeline."

During an earlier investigation of a pipeline incident, RSPA/OPS inspectors identified inadequate SCADA performance as an operational safety concern, and published advisory bulletin ADB–99–03 on July 16, 1999 (64 FR 38501). That advisory identified eroding SCADA performance as a contributing factor to the accident.

Through subsequent analysis, it has become apparent that SCADA performance in general can be adversely impacted by system configuration changes, upgrades, or modifications to critical databases. There are several ways that pipeline owners and operators can reduce the risk of such conditions:

(1) Ensure that personnel assigned to these duties are adequately skilled in the maintenance and upgrading of the SCADA system configuration and critical databases.

(2) Know what critical metrics can be monitored that provide thorough and representative measures of system performance during testing and after the changes are implemented.

(3) Consider making the changes first on an isolated, off-line, or development workstation or processor, to test the effect of the changes prior to moving the work into the production environment.

(4) Recognize that the use of off-line or development workstations/servers to test impending changes can be valuable, but probably does not fully represent timing, load, and other factors present in the production environment.

(5) Know the limits and bounds of the testing regime, so that adequate and targeted vigilance may be applied during final testing and after initial implementation into the production environment.

(6) Coordinate significant and non-routine SCADA system modifications with pipeline controller operating personnel, so that revisions are implemented and tested at times when no significant changes to pipeline operations are anticipated.

Although NTSB Recommendation P–02–05 called only for an advisory bulletin, RSPA/OPS has taken additional actions to improve SCADA and controller operations and our inspection process. RSPA/OPS has initiated a study on the safety evaluation of pipeline SCADA technology. In early 2004, RSPA/OPS will revise its SCADA inspection protocols. Later in 2004, RSPA/OPS will begin development of a new, multi-tiered approach to inspection of SCADA systems.

RSPA/OPS has also initiated a study of Controller Certification in compliance with Section 13(b) of the Pipeline Safety Improvement Act of 2002. Section 13(b) of the Pipeline Safety Improvement Act of 2002 (PSIA), directs the Secretary of Transportation to develop tests and other requirements for certifying the qualifications of individuals who operate computer-based systems for controlling the operations of pipelines. The RSPA/OPS project team is evaluating current operator personnel qualification practices for pipeline controllers in collaboration with a study team sponsored by the gas and hazardous liquid industry. RSPA/OPS will develop an approach to certification programs and will undertake pilot testing. Through research and pilot program evaluations, RSPA/OPS will determine the best combination of prescriptive and performance-based requirements that should be considered as certification criteria for pipeline controllers.

Issued in Washington, DC on December 17, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–31574 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453–S, S Corporation Declaration and Signature for Electronic Filing.

DATES: Written comments should be received on or before February 23, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Robert M. Coar, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: S Corporation Declaration and Signature for Electronic Filing.

OMB Number: 1545–1867.

Form Number: 8453–S.

Abstract: Form 8453–S is necessary to enable the electronic filing of Form 1120S U.S. Income Tax Return for an S Corporation. The form is created to meet the stated Congressional policy that paperless filing is the preferred and most convenient means of filing Federal tax and information returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 2,500,000.

Estimated Time Per Respondent: 7 hours, 1 minute.

Estimated Total Annual Burden Hours: 17,550,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 2003.

Robert M. Coar,

IRS Reports Clearance Officer.

[FR Doc. 03–31616 Filed 12–22–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this notice is to notify interested parties of the average cost of government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments that occur during calendar year 2004.

FOR FURTHER INFORMATION CONTACT: Lisa Ciolek, Capital and Performance Budgeting (402A12), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5161 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 501(a) and Pub. L. 104–275, section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2004 is the average cost of government-furnished graveliners in fiscal year 2003, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the government-furnished graveliner.

The average cost of government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $164.66 for fiscal year 2003.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the government-furnished graveliner. These costs have been determined to be $9.75 for calendar year 2004.

The net allowance payable for qualifying interments occurring during calendar year 2004, therefore, is $154.91.

Approved: December 12, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–31507 Filed 12–22–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to continue a recurring computer matching program matching Office of Personnel Management (OPM) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The goal of this match is to compare income status as reported to VA with records maintained by OPM.

VA plans to match records of veterans and surviving spouses and children who receive pension, and parents who receive DIC from VA with OPM benefit records maintained by OPM. The match with OPM will provide VA with data from OPM civil service benefit records.

VA will use this information to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Otherwise, information about a VA beneficiary's receipt of OPM benefits is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

Records to be Matched: The VA records involved in the match are the VA system of records, VA Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22) first published at 41 FR 924 (March 3, 1976), and last amended at 66 FR 47727 (September 13, 2001), with other amendments as cited therein. The OPM records involved in the match are from the OPM Civil Service Retirement Pay File identified as OPM Central-1, Civil Service Retirement and Insurance Records, published as 64 FR 54930, October 8, 1999, as amended May 3, 2000 (65 FR 25775). In accordance with title 5 U.S.C. 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties are submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIBs) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420. All written comments received will be available for public inspection in the Office of Regulations Management, Room 1063B, 810 Vermont Avenue, NW., Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Fridays except holidays. Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (212B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: This information is required by title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: December 15, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–31506 Filed 12–22–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to continue a recurring computer matching program matching Social Security Administration (SSA) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The purpose of the match is to compare income status as reported to VA with records maintained by SSA. VA plans to match records of beneficiaries who receive pension and DIC with the Master Beneficiary Record (MBR) and the Earnings Recording and Self-Employment Income System (MEF) maintained by SSA.

VA will use this information to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. The matching program will enable VA to ensure accurate reporting of income.

Records to be Matched: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22). The SSA records consist of the SSA Master beneficiary Record (MBR), SSA/OSR, 60–0090. In the absence of MBR data, SSA will attempt to verify the SSN in VA records using the SSA Earnings Recording and Self-Employment Income System (MEF), SSA/OSR, 60–0059.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

DATES: The match will start no sooner than 30 days after publication in the **Federal Register** and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1158, 810 Vermont Avenue, NW., Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (212B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: This information is required by title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: December 12, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–31508 Filed 12–22–03; 8:45 am]

BILLING CODE 8320–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Tuesday,
December 23, 2003

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds—Plain Language Uniform Offering Circular; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds—Plain Language Uniform Offering Circular

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Proposed Rule.

SUMMARY: The Department of the Treasury ("Treasury," "We," or "Us") proposes to amend 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds) by converting it to plain language. We are proposing this amendment to make our marketable securities auction rules easier to understand. This amendment would also make certain minor revisions to better make the auction rules conform to current practices.

DATES: Send your comments to reach us on or before February 23, 2004.

ADDRESSES: You may send comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street NW., Room 315, Washington, DC 20239–0001. You may also send us comments by e-mail at *govsecreg@bpd.treas.gov.* When sending comments by e-mail, please provide your full name and mailing address. You may download this proposed amendment, and review the comments we receive, from the Bureau of the Public Debt's Web site at *http://www.publicdebt.treas.gov.* The proposed amendment and comments will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director) or Chuck Andreatta (Associate Director), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632 or e-mail us at *govsecreg@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. In addition to requiring us to write new regulations in plain language, a Presidential memorandum dated June 2, 1998, directs us to consider rewriting existing regulations in plain language. The Uniform Offering Circular (UOC), in conjunction with the announcement for each auction, provides the terms and conditions for the sale and issuance in an auction to the public of marketable Treasury bills, notes and bonds.[1] We have rewritten the UOC in plain language because the wide variety of bidders in our securities auctions—broker-dealers, depository institutions, non-financial firms, individuals, etc.—have widely different levels of experience in dealing with federal regulations in general and with securities-related concepts and regulations in particular. We also believe that better understanding of the auction rules may increase direct participation in our auctions and improve the auction process overall, resulting in lower borrowing costs.

In addition to rewriting the existing regulations in plain language, we are proposing to make certain minor revisions to better make the auction rules conform to current auction practices. For example, we have eliminated references to multiple-price auctions since we now use single-price auctions for all marketable Treasury securities. We also have renamed "inflation-indexed" securities as "inflation-protected" securities so that the resulting acronym, TIPS, conforms with the way these securities are commonly referred to by market participants and the press.

We also have made several organizational changes to streamline the regulations and to aid their readability. For example, in section 356.11, which addresses how bidders may submit bids, the current UOC is organized according to whether the bid is submitted on a paper tender form or by computer. In the plain-language version, the section is organized by whether we will be issuing awarded securities in the commercial book-entry system or in the TreasuryDirect book-entry system. This reorganization was done to make it easier for different types of bidders—firms and institutions versus individuals, for example—to find out their respective bidding requirements.

Appendix A, which describes different bidder categories, has also been reorganized in the way it describes the process for requesting separate-bidder status. The UOC currently describes this process separately for corporations and for partnerships. The plain-language version describes how to obtain separate-bidder recognition in a single location within Appendix A, thereby eliminating repetitive parallel language. Please note that Appendix A of the proposed rule adds a definition of "Foreign and International Monetary Authorities," a category of bidder that was not previously described in the UOC.

Finally, we are proposing to eliminate the two exhibits at the end of the UOC. Exhibit A provides sample auction announcements. Exhibit B is a sample autocharge agreement. Both auction announcements and autocharge agreements are subject to more frequent revision than the UOC itself, and examples of both are readily available at the Bureau of the Public Debt's Web site at *http://www.publicdebt.treas.gov.*

We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A section appears in bold type and is preceded by the section symbol and a numbered heading, for example, **§ 356.20 How does the Treasury determine auction awards?**)

Procedural Requirements

It has been determined that this is not a significant regulatory action for purposes of Executive Order 12866. Although we are issuing this proposed rule in proposed form to benefit from public comment, the notice and public procedures requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

Since no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The Office of Management and Budget previously approved the collections of information in this proposed amendment in accordance with the Paperwork Reduction Act under control number 1535–0112. We are only rewriting the UOC in plain language and are not proposing substantive changes to these requirements that would impose additional burdens on auction bidders.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government Securities, Securities.

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[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR Part 356.

For the reasons stated in the preamble, we propose to revise 31 CFR Part 356 to read as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

Subpart A—General Information

Sec.
356.0 What authority does the Treasury have to sell and issue securities?
356.1 To which securities does this circular apply?
356.2 What definitions do I need to know to understand this part?
356.3 What is the role of the Federal Reserve Banks in this process?
356.4 What are the book-entry systems in which auctioned Treasury securities may be issued?
356.5 What types of securities does the Treasury auction?

Subpart B—Bidding, Certifications, and Payment

356.10 What is the purpose of an auction announcement?
356.11 How are bids submitted in an auction?
356.12 What are the different types of bids and do they have specific requirements or restrictions?
356.13 When must I report my net long position and how do I calculate it?
356.14 What are the requirements for submitting bids for customers?
356.15 What rules apply to bids submitted by investment advisers?
356.16 Do I have to make any certifications?
356.17 How and when do I pay for securities awarded in an auction?

Subpart C—Determination of Auction Awards; Settlement

356.20 How does the Treasury determine auction awards?
356.21 How are awards at the high yield or discount rate calculated?
356.22 Does the Treasury have any limitations on auction awards?
356.23 How are the auction results announced?
356.24 Will I be notified directly of my awards and, if I am submitting bids for others, do I have to provide confirmations?
356.25 How does the settlement process work?

Subpart D—Miscellaneous Provisions

356.30 When does the Treasury pay principal and interest on securities?
356.31 How does the STRIPS program work?
356.32 What tax rules apply?
356.33 Does the Treasury have any discretion in the auction process?
356.34 What could happen if someone does not fully comply with the auction rules or fails to pay for securities?
356.35 Who approved the information collections?

Appendix A to Part 356—Bidder Categories

Appendix B to Part 356—Formulas and Tables

Appendix C to Part 356—Investment Considerations

Appendix D to Part 356—Description of the Consumer Price Index

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

Subpart A—General Information

§ 356.0 What authority does the Treasury have to sell and issue securities?

Chapter 31 of Title 31 of the United States Code authorizes the Secretary of the Treasury to issue United States obligations, and to offer them for sale with the terms and conditions that the Secretary prescribes.

§ 356.1 To which securities does this circular apply?

The provisions in this part, including the appendices, and each individual auction announcement govern the sale and issuance of marketable Treasury securities issued on or after March 1, 1993. This part also governs all securities eligible for the Separate Trading of Registered Interest and Principal of Securities (STRIPS) Program (*See* §356.31). In addition, these provisions and the auction announcements govern any other types of securities we may issue under this part.

§ 356.2 What definitions do I need to know to understand this part?

Accrued interest means an amount that bidders must pay to us for interest income as part of the settlement amount. Accrued interest compensates us up front for interest that bidders will be paid but did not earn because it is attributable to a period of time prior to the issue date. (*See* Appendix B, section I, paragraph C for additional explanation and examples.)

Adjusted value means, for an interest component stripped from an inflation-protected security, an amount derived by:

(1) Multiplying the semiannual interest rate by the par amount, and then

(2) Multiplying this value by: 100 divided by the Reference CPI of the original issue date (or dated date, when the dated date is different from the original issue date). (*See* Appendix B, section IV for an example of how to calculate the adjusted value.)

Auction means a bidding process by which we sell marketable Treasury securities to the public.

Autocharge agreement means an agreement in a format acceptable to Treasury between a submitter or clearing corporation and a depository institution that authorizes us to:

(1) Deliver awarded securities to either:

(i) The book-entry securities account of a designated depository institution in the commercial book-entry system, or

(ii) A TreasuryDirect account, and

(2) Charge a funds account of a designated depository institution for the settlement amount of the securities.

Bid means an offer to purchase a stated par amount of securities, either competitively or noncompetitively, in an auction.

Bid-to-cover ratio means the total par amount of securities bid for in an auction divided by the total par amount of securities awarded. It excludes bids by, and awards to, the Federal Reserve for its own account.

Bidder, as further defined in Appendix A, means a person or an entity that offers to purchase Treasury securities in an auction either directly or through a depository institution or dealer. We may consider two or more persons or entities to be one bidder based on their relationship or their actions in participating in an auction.

Bidder Identification Number means a number we assign to each institutional submitter and to certain other competitive bidders. We assign such numbers either to identify certain bidders or to grant separate bidder status to different parts of the same corporate or partnership structure.

Book-entry security means a security that is issued and maintained as an accounting entry or electronic record in either the commercial book-entry system or in TreasuryDirect. (*See* § 356.3)

Business day means any day on which the Federal Reserve Banks are open for business.

Call means the redemption of a security prior to maturity under the terms specified in its auction announcement.

Clearing corporation means a clearing agency as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)). A clearing corporation must be registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 and its rules.

Competitive bid means a bid to purchase a stated par amount of securities at a specified yield or discount rate.

Consumer Price Index (CPI) means the monthly non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers, published by the Bureau of Labor

Statistics of the Department of Labor. We use the CPI as the basis for adjusting the principal amounts of inflation-protected securities. (*See* Appendix D)

Corpus means the principal component of a security that has been stripped of its interest components.

CUSIP number means the unique identifying number assigned to each separate security issue and each separate STRIPS component. CUSIP numbers are provided by the CUSIP Service Bureau of Standard & Poor's Corporation. CUSIP is an acronym for Committee on Uniform Securities Identification Procedures.

Customer means a bidder that directs a depository institution or dealer to submit or forward a bid for a specific amount of securities in a specific auction on the bidder's behalf. Only depository institutions and dealers may submit bids for customers directly to us, or forward them to another depository institution or dealer.

Dated date means the date from which interest accrues for notes and bonds. The dated date and issue date are usually the same. In those cases where interest begins accruing prior to the issue date, however, the dated date will be prior to the issue date. An example is when the dated date is a Saturday and the issue date is the following Monday.

Dealer means an entity that is registered or has given notice of its status as a government securities broker or government securities dealer under Section 15C(a)(1) of the Securities Exchange Act of 1934.

Depository institution means:

(1) An entity described in Section 19(b)(1)(A), excluding subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

(2) Any agency or branch of a foreign bank as defined by the International Banking Act of 1978, as amended (12 U.S.C. 3101).

Discount means the difference between par and the price of the security, when the price is less than par. (*See* Appendix B for formulas and examples.)

Discount amount means the discount divided by 100 and multiplied by the par amount. (*See* Appendix B for formulas and examples.)

Discount rate means a rate of return, on an annual basis, on bills held until they mature. The discount rate is expressed in percentage terms and based on a 360-day year. It is also referred to as the "bank discount rate." (*See* Appendix B for formulas and examples.)

Funds account means a cash account maintained by a depository institution at a Federal Reserve Bank.

Index means the Consumer Price Index.

Index ratio means, for an inflation-protected security, the Reference CPI of a particular date divided by the Reference CPI of the original issue date. (When the dated date is different from the original issue date, the denominator of the index ratio is the Reference CPI of the dated date rather than that of the original issue date.)

Inflation-adjusted principal means, for an inflation-protected security, the value of the security derived by multiplying the par amount by the applicable index ratio as described in Appendix B, section I, paragraph B.

Interest rate means the annual percentage rate of interest paid on the par amount (or the inflation-adjusted principal) of a specific issue of notes or bonds. (*See* Appendix B for methods and examples of interest calculations on notes and bonds.)

Intermediary means a depository institution or dealer that forwards bids for customers to another depository institution or dealer. An intermediary does not submit bids directly to us.

Issue date means the date specified in the auction announcement on which we issue a security as an obligation of the United States. Interest normally begins to accrue on a security's issue date.

Marketable security means a security that may be bought, sold and transferred in the secondary market.

Maturity date means the date on which a security becomes due and payable, and ceases to earn interest. The maturity date is specified in the auction announcement.

Minimum to bid means the smallest amount of a security that may be bid for in an auction as stated in the auction announcement.

Multiple to bid means the smallest additional amount of a security that may be bid for in an auction as stated in the auction announcement.

Noncompetitive bid means a bid to purchase a stated par amount of securities at the yield or discount rate awarded to competitive bidders.

Offering amount means the par amount of securities we are offering to the public for purchase in an auction, as specified in the auction announcement.

Par means a price of 100. (*See* Appendix B)

Par amount means the stated value of a security at original issuance.

Person means a natural person.

Premium means the difference between par and the price of the security, when the price is greater than par.

Premium amount means the premium divided by 100 and multiplied by the par amount.

Price means the price of a security as calculated using the formulas in Appendix B.

Real yield means, for an inflation-protected security, the yield based on the payment stream in constant dollars. In other words, the real yield is the yield in the absence of inflation.

Reference CPI (Ref CPI) means, for an inflation-protected security, the index number applicable to a given date. (*See* Appendix B, section I, paragraph B)

Reopening means the auction of an additional amount of an outstanding security.

Security means a Treasury bill, note, or bond, each as described in this part. Security also means any other obligation we issue that is subject to this part according to its auction announcement. Security includes an interest or principal component under the STRIPS program.

Settlement means final and complete payment for securities awarded in an auction and delivery of those securities.

Settlement amount means the total of the par amount of securities awarded, less any discount amount or plus any premium amount, and plus any accrued interest. For inflation-protected securities, the settlement amount also includes any inflation adjustment when such securities are reopened or when the dated date is different from the issue date.

STRIPS (Separate Trading of Registered Interest and Principal of Securities) means our program under which eligible securities are authorized to be separated into principal and interest components, and transferred separately. These components are maintained and transferred in the commercial book-entry system.

Submitter means a person or entity submitting bids directly to us for its own account, for customer accounts, or both. Only depository institutions and dealers are permitted to submit bids for customer accounts. We permit investment advisers to submit bids on behalf of controlled accounts.

TINT means an interest component from a stripped security.

TreasuryDirect® means the TreasuryDirect Book-Entry Securities System. (*See* 31 CFR 357, subpart C)

We (or "us") means the Secretary of the Treasury and his or her delegates, including the Department of the Treasury, Bureau of the Public Debt, and their representatives. The term also includes Federal Reserve Banks acting as fiscal agents of the United States.

Yield means the annualized rate of return to maturity on a fixed-principal security. Yield is expressed as a percentage. For an inflation-protected security, yield means the real yield. Yield is also referred to as "yield to maturity." (*See* Appendix B)

You means a prospective bidder in an auction.

§ 356.3 What is the role of the Federal Reserve Banks in this process?

The Treasury Department authorizes Federal Reserve Banks, as fiscal agents of the United States, to perform all activities necessary to carry out the provisions of this part, any auction announcements, and applicable regulations.

§ 356.4 What are the book-entry systems in which auctioned Treasury securities may be issued?

We issue Treasury marketable securities into either of two book-entry securities systems—the commercial book-entry system or TreasuryDirect. We maintain and transfer securities in these two book-entry systems at their par amount. For example, par amounts of inflation-protected securities do not include adjustments for inflation. Securities may be transferred from one system to the other. *See* Department of the Treasury Circular, Public Debt Series No. 2–86, as amended (31 CFR Part 357).

(a) *The commercial book-entry system.* When depository institutions or dealers submit bids for Treasury securities in an auction, securities awarded as a result of those bids are generally held in the commercial book-entry system. Specifically, we maintain book-entry accounts in the National Book-Entry System® ("NBES") for Federal Reserve Banks, depository institutions, and other authorized entities, such as government and international agencies and foreign central banks. In their accounts, depository institutions maintain securities held for their own account and for the accounts of others. The accounts held for others include those of other depository institutions and dealers, which may, in turn, maintain accounts for others.

(b) *TreasuryDirect.* In this system, we maintain the book-entry securities of account holders directly on the records of the Bureau of the Public Debt, Department of the Treasury. Bids for securities to be held in TreasuryDirect are generally submitted directly to us, although such bids may also be forwarded to us by a depository institution or dealer.

§ 356.5 What types of securities does the Treasury auction?

We offer securities under this part exclusively in book-entry form and as direct obligations of the United States issued under Chapter 31 of Title 31 of the United States Code. The securities are subject to the terms and conditions in this part, the regulations governing book-entry Treasury bills, notes, and bonds (31 CFR Part 357), and the auction announcements. When we issue additional securities with the same CUSIP number as outstanding securities, we consider them to be the same securities as the outstanding securities.

(a) *Treasury bills.*—(1) Are issued at a discount;

(2) Are redeemed at their par amount at maturity; and

(3) Have maturities of not more than one year.

(b) *Treasury notes.*—(1) Treasury fixed-principal [1] notes.

(i) Are issued with a stated rate of interest to be applied to the par amount;

(ii) Have interest payable semiannually;

(iii) Are redeemed at their par amount at maturity;

(iv) Are sold at discount, par, or premium, depending upon the auction results; and

(v) Have maturities of at least one year, but of not more than ten years.

(2) *Treasury inflation-protected notes.*—(i) Are issued with a stated rate of interest to be applied to the inflation-adjusted principal on each interest payment date;

(ii) Have interest payable semiannually;

(iii) Are redeemed at maturity at their inflation-adjusted principal, or at their par amount, whichever is greater;

(iv) Are sold at discount, par, or premium, depending on the auction results (*See* Appendix B for price and interest payment calculations and Appendix C for Investment Considerations.); and

(v) Have maturities of at least one year, but not more than ten years.

(c) *Treasury bonds*—(1) Treasury fixed-principal bonds.

(i) Are issued with a stated rate of interest to be applied to the par amount;

(ii) Have interest payable semiannually;

(iii) Are redeemed at their par amount at maturity;

(iv) Are sold at discount, par, or premium, depending on the auction results; and

(v) Have maturities of more than ten years.

(2) *Treasury inflation-protected bonds.*—(i) Are issued with a stated rate of interest to be applied to the inflation-adjusted principal on each interest payment date;

(ii) Have interest payable semiannually;

(iii) Are redeemed at maturity at their inflation-adjusted principal, or at their par amount, whichever is greater;

(iv) Are sold at discount, par, or premium, depending on the auction results; and

(v) Have maturities of more than ten years. (*See* Appendix B for price and interest payment calculations and Appendix C for Investment Considerations.)

Subpart B—Bidding, Certifications, and Payment

§ 356.10 What is the purpose of an auction announcement?

By issuing an auction announcement, we provide public notice of the sale of bills, notes, and bonds. The auction announcement lists the specifics of each auction, *e.g.*, offering amount, term and type of security, CUSIP number, and issue and maturity dates. The auction announcement and this part, including the Appendices, specify the terms and conditions of sale. If anything in the auction announcement differs from this part, the auction announcement will control. If you intend to bid, you should read the applicable auction announcement along with this part.

§ 356.11 How are bids submitted in an auction?

(a) *General.* (1) Bids must be submitted using an approved method, which depends on whether you are requesting us to issue the awarded securities in the commercial book-entry system or in TreasuryDirect (See § 356.3). The approved submission methods for these respective systems are explained in this section. A bidder must provide its assigned bidder identification numbers if it has been assigned one. We have the option of accepting or rejecting incomplete bids.

(2) We must receive competitive and noncompetitive bids prior to their respective closing times, which are stated in the auction announcement. We will not include late bids in the auction. For bids other than those submitted on paper forms, our computer time stamp will establish the receipt time. You are bound by your bids after the closing time.

(3) We are not responsible for any delays, errors, or omissions. We are not responsible for any failures or disruptions of equipment or

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[1] We use the term "fixed-principal" in this part to distinguish such securities from "inflation-protected" securities. We refer to fixed-principal notes and fixed-principal bonds as "notes" and "bonds" in official Treasury publications, such as auction announcements and auction results press releases, as well as in auction systems.

communications facilities used for participating in Treasury auctions.

(b) *Commercial book-entry system.* (1) If you are a submitter and the awarded securities are to be issued in the commercial book-entry system, you must submit bids using one of our approved electronic methods except for contingency situations.

(2) You must have an agreement on file with us under which you agree to our terms and conditions for access to our system for participating in our auctions.

(3) In contingency situations, such as a power outage, we may accept bids by telephone if you submit them prior to the relevant bidding deadline.

(c) *TreasuryDirect.* (1) If you are a submitter and the awarded securities are to be issued in TreasuryDirect, you may submit bids by using one of our approved methods, *e.g.*, computer, automated telephone service, or paper forms. You may also reinvest the proceeds of maturing securities into new securities by completing the appropriate transaction request on time.

(2) If you are submitting bids by paper form, you must use forms authorized by the Bureau of the Public Debt and provide the requested information. We have the option of accepting or rejecting bids on any other form. You are responsible for ensuring that we receive bids in paper form on time. A competitive bid is on time if we receive it prior to the deadline for the receipt of competitive bids. A noncompetitive bid is on time if:

(i) We receive it on or before the issue date, and

(ii) The envelope it arrived in bears evidence, such as a U.S. Postal Service cancellation, that it was mailed prior to the auction date.

(3) If you are submitting a bid by computer or telephone you must be an established TreasuryDirect account holder with a Taxpayer Identification Number. You may not submit a competitive bid by computer or telephone.

§ 356.12 What are the different types of bids and do they have specific requirements or restrictions?

(a) *General.* All bids must state the par amount of securities bid for and must equal or exceed the minimum to bid amount stated in the auction announcement. Bids in larger amounts must be in the multiple stated in the auction announcement.

(b) *Noncompetitive bids.*—(1) *Maximum bid.* You may not bid noncompetitively for more than $1 million in a bill auction or more than $5 million in a note or bond auction. The maximum bid limitation does not apply if you are bidding solely through a TreasuryDirect reinvestment request. A request for reinvestment of securities maturing in TreasuryDirect is a noncompetitive bid.

(2) *Additional restrictions.* You may not bid noncompetitively in an auction in which you are bidding competitively. You may not bid noncompetitively if, in the security being auctioned, you hold a position in when-issued trading or in futures or forward contracts at any time between the date of the auction announcement and the time we announce the auction results. During this same timeframe, a noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the securities it is acquiring in the auction. For this paragraph, futures contracts include those:

(i) That require delivery of the specific security being auctioned;

(ii) For which the security being auctioned is one of several securities that may be delivered; or

(iii) That are cash-settled.

(c) *Competitive bids.*

(1) *Bid format*—(i) *Treasury bills.* A competitive bid must show the discount rate bid, expressed with three decimals in .005 percent increments. The third decimal must be either a zero or a five, for example, 5.320 or 5.325.

(ii) *Treasury fixed-principal securities.* A competitive bid must show the yield bid, expressed with three decimals, for example, 4.170.

(iii) *Treasury inflation-protected securities.* A competitive bid must show the real yield bid, expressed with three decimals, for example, 3.070.

(2) *Maximum recognized bid.* There is no limit on the maximum dollar amount that you may bid for competitively, either at a single yield or discount rate, or at different yields or discount rates. However, a competitive bid at a single yield or discount rate that exceeds 35 percent of the offering amount will be reduced to that amount. For example, if the offering amount is $10 billion, the maximum bid amount we will recognize at any one yield or discount rate from any bidder is $3.5 billion. (*See* § 356.22 for award limitations.)

(3) *Additional restriction.* You may not bid competitively in an auction in which you are bidding noncompetitively.

§ 356.13 When must I report my net long position and how do I calculate it?

(a) Net long position reporting threshold.

(1) If you are bidding competitively in an auction, you must report your net long position when the total of your bids plus your net long position in the security being auctioned equals or exceeds the net long position reporting threshold (*See* table). We will specify this threshold in the auction announcement for each security (*See* § 356.10). The threshold is typically 35 percent of the offering amount, but we may state a different threshold in the auction announcement. To see whether you must report your net long position, follow this table:

If . . .	And if. . .	Then. . .
(i) the total of your bids and your net long position in the security being auctioned equals or exceeds the reporting threshold.		you must report your net long position (which does not include your bids).
(ii) the total of your bids in the auction equals or exceeds the reporting threshold.	you have no position or a net short position in the security being auctioned.	you must report a zero.
(iii) the total of your bids and your net long position in the security being auctioned is less than the reporting threshold.		you may either report nothing (leave the field blank) or report your net long position.

(2) Also, if you have more than one bid in an auction and you must report either your net long position or a zero, you must report that figure only once. Finally, if you are a customer and must report either your net long position or a zero, you must report that figure through only one depository institution or dealer. (*See* § 356.14(d))

(b) "As of" time for calculating net long position. You must calculate your net long position as of one half-hour prior to the closing time for receipt of competitive bids.

(c) Components of the net long position. Except as modified in (d) of this section, your net long position is the sum total of the par amounts of:

(1) Your holdings of outstanding securities with the same CUSIP number as the security being auctioned;

(2) Your holdings of STRIPS principal components of the security being auctioned, and;

(3) Your positions, in the security being auctioned, in:

(i) When-issued trading, including when-issued trading positions of the STRIPS principal components;

(ii) Futures contracts that require delivery of the specific security being auctioned (but not futures contracts for which the security being auctioned is one of several securities that may be delivered, and not futures contracts that are cash-settled); and

(iii) Forward contracts that require delivery of the specific security being auctioned or of the STRIPS principal component of that security.

(d) Calculating the net long position in a reopening. In a reopening (additional issue) of an outstanding security, you may subtract the exclusion amount stated in the auction announcement from:

(1) Your holdings of the outstanding securities (paragraph (c)(1) of this section) combined with

(2) Your holdings of STRIPS principal components of the security being auctioned (paragraph (c)(2) of this section). We will specify the amount of holdings that you may exclude from the net long position calculation in the auction announcement. You may not take the exclusion if your combined holdings are zero or less. The exclusion is optional, but if you take the exclusion, you must include any holdings that exceed the exclusion amount in calculating your net long position. If the exclusion amount is greater than your combined holdings (paragraphs (c)(1) and (2) of this section), you may calculate the combined holdings as zero, but they cannot be included in the calculation as a negative number.

§ 356.14 What are the requirements for submitting bids for customers?

(a) *Institutions that may submit bids for customers.* Only depository institutions or dealers may submit bids for customers, or for customers of intermediaries, under the requirements set out in this section. If a bid from a depository institution or a dealer fulfills a guarantee to a customer to sell a specified amount of securities at an agreed-upon price, or a price fixed in terms of an agreed-upon standard, then the bid is a bid of that depository institution or dealer. It is not a customer bid.

(b) *Payment.* Submitters must remit payment for bids they submit on behalf of customers, including customers of intermediaries, that result in awards of securities in the auction.

(c) *Identifying customers.* Submitters must provide the names of customers whenever they submit bids for them. Submitters must provide the names of their direct customers as well as customers of any intermediaries who are forwarding customer bids. For individuals, submitters must provide the customer's full name (first and last). For institutional customers, submitters must provide the name of the institution, and the bidder identification number if the customer provides it. For trusts or other fiduciary estates (*See* Appendix A), submitters must provide on the customer list:

(1) The full name or title of the trustee or fiduciary;

(2) A reference to the document creating the trust or fiduciary estate with date of execution; and

(3) The employer identification number (not social security number) of the trust or fiduciary estate. We do not consider trusts to be a separate bidder that have not been assigned, or that do not provide, an employer identification number.

(d) *Competitive customer bids.* For each customer competitive bid, the submitter must provide the customer's name, the amount bid, and the yield or discount rate. The submitter or intermediary must also report the net long position amount if the customer provides it. The submitter must inform a customer of the net long position reporting requirement (*See* § 356.13) if the customer is bidding for $100 million or more of securities. If the submitter's or intermediary's personnel know that the customer's position information is not correct, the submitter or intermediary may not submit the customer's bid.

(e) *Noncompetitive customer bids.* For each noncompetitive bid, the submitter must provide the customer's name and the amount bid. Submitters may either provide the customer's name with the bid or, if the list of customers is lengthy, the submitter may provide a summary bid amount covering all noncompetitive customers. If it provides a summary bid amount, the submitter must transmit the list of individual customers and their bid amounts by close of business on the auction day. However, the submitter must be able to provide the customer list details by the noncompetitive bidding deadline if requested.

§ 356.15 What rules apply to bids submitted by investment advisers?

(a) *General.* The auction rules that apply to investment advisers are determined by the relationship between "investment advisers" and "controlled accounts." An investment adviser means any person or entity that has investment discretion for the bids or positions of a different person or entity (a controlled account). A person or entity has investment discretion if it determines what, when, and what quantity of securities will be purchased or sold on behalf of another person or entity. We consider a person that is employed or supervised by an investment adviser to be part of that investment adviser. We also consider the bids or positions of controlled accounts to be separate from the bids or positions of the person or entity with which they would otherwise be associated under the bidder categories in Appendix A of this part.

(b) *Bidding options.*—(1) An investment adviser has two options for whose name to use when bidding on behalf of controlled accounts.

An investment adviser may bid for a controlled account . . .	In such cases, we consider the bidder to be . . .
(i) in the investment adviser's own name	the investment adviser.
(ii) in the name of the controlled account	the controlled account.

(2) Using the first option (paragraph (b)(1)(i)), an investment advisor could bid noncompetitively up to the noncompetitive bidding limit only for itself, as a single bidder. Using the second option (paragraph (b)(1)(ii)), an investment adviser could bid noncompetitively for each separately named controlled account up to the noncompetitive bidding limit. The investment adviser could also bid noncompetitively in its own name in the same auction up to the noncompetitive bidding limit. An investment adviser may not bid for a controlled account both noncompetitively and competitively in the same auction. If an investment

adviser is bidding competitively in the name of a controlled account, the controlled account is subject to the award limitations of § 356.22(b).

(c) *Reporting net long positions.* If it is bidding competitively, an investment adviser must calculate the amount of its bids and positions for purposes of the net long position reporting requirement found in § 356.13(a). In addition to its own competitive bids and positions, the investment adviser must also include in the calculation all other competitive bids and positions that it controls. If the net long position is reportable, the investment adviser must report it as a total in connection with only one bid as stated in § 356.13(a). This requirement applies regardless of whether the investment adviser bids in its own name or in the name of its controlled accounts. The following table shows which positions an investment adviser must include to determine whether it meets the net long position reporting threshold in § 356.13(a). If an investment adviser does meet the reporting threshold, the table also shows which positions must be included in, and which may be excluded from, the net long position calculation.

If an investment adviser is bidding competitively, and . . .	Then . . .
(1) the investment adviser has a net long position for its own account ..	that position must be included in the investment adviser's net long position calculation.
(2) the investment adviser's competitive bid is for a controlled account	any net long position of that account must be included in the investment adviser's net long position calculation.
(3) the investment adviser is not bidding competitively for a controlled account and . . .	
(i) the controlled account has a net long position of $100 million or more.	that position must be included in the investment adviser's net long position calculation.
(ii) the controlled account has a net long position that is less than $100 million.	that position may be excluded from the investment adviser's net long position calculation.
(iii) any net long position is excluded under paragraph (b)(3)(ii) of this table.	all net short positions of controlled accounts under $100 million must also be excluded.

(d) *Certifications.* When an investment adviser bids for a controlled account, we deem the investment adviser to have certified that it is complying with this part and the auction announcement for the security. Further, we deem the investment adviser to have certified that the information it provided about bids for controlled accounts is accurate and complete.

(e) *Proration of awards.* Investment advisers that submit competitive bids in the names of controlled accounts are responsible for prorating any awards at the highest accepted yield or discount rate using the same percentage that we announce. *See* § 356.21 for examples of how to prorate.

§ 356.16 Do I have to make any certifications?

(a) *Submitters.* If you submit bids or other information in an auction, we deem you to have certified that:

(1) You are in compliance with this part and the auction announcement;

(2) The information provided with regard to any bids for your own account is accurate and complete; and

(3) The information provided with regard to any bids for customers accurately and completely reflects information provided by your customers or intermediaries.

(4) If you submit bids by computer, you must have on file a written certification that, each time you submit such bids, you are in compliance with this part and the applicable auction announcement. An authorized person must sign and date the certification on behalf of the submitter, and it must be filed with us and renewed at least annually.

(b) *Intermediaries.* If you forward bids in an auction, we deem you to have certified that:

(1) You are in compliance with this part and the applicable auction announcement; and

(2) That the information you provided to a submitter or other intermediary with regard to bids for customers accurately and completely reflects information provided by those customers or intermediaries.

(c) *Customers.* By bidding for a security as a customer we deem you to have certified that:

(1) You are in compliance with this part and the auction announcement and;

(2) The information you provided to the submitter or intermediary in connection with the bid is accurate and complete.

§ 356.17 How and when do I pay for securities awarded in an auction?

(a) *General.* By bidding in an auction, you agree to pay the settlement amount for any securities awarded to you. (*See* § 356.25) For notes and bonds, the settlement amount may include a premium amount, accrued interest, and, for inflation-protected securities, an inflation adjustment.

(b) *TreasuryDirect.* Unless you make other provisions, you must submit payment with your bids or pay by debit entry to a deposit account. To pay by debit entry, you must first authorize us to make debit entries to your deposit account under 31 CFR part 370. Payment by debit entry occurs on the settlement date for the actual settlement amount due. (*See* § 356.25) You may also pay for reinvestments with maturing securities, however, you must pay separately for any premium, accrued interest, or inflation adjustment as soon as you receive your Payment Due Notice.

(1) *Bidding by computer or by telephone.* If you are bidding by computer or by telephone, you must pay for any securities awarded to you by debit entry to a deposit account.

(2) *Bidding by paper form.* If you are mailing bids to us on a paper form, you may either enclose your payment with the form or pay for any securities awarded to you by debit entry to a deposit account.

(i) *Payment with paper form.* For bills, you may pay by depository institution (cashier's or teller's) check, certified check, or currently dated Treasury or fiscal agency check made payable to you. For notes or bonds, in addition to the payment options for bills, you may also pay by personal check. If you submit a personal check, make it payable to TreasuryDirect and mail it to the Federal Reserve Bank handling your account. In your payment amount you must include the par amount and any announced accrued interest and/or inflation adjustment.

(ii) *Payment by debit entry to a deposit account.* If a depository institution or dealer is submitting your bids for securities to be held in

TreasuryDirect, payment may be either by debit entry to a deposit account or by allowing us to charge the Federal Reserve Bank funds account of a depository institution.

(3) *Payment by maturing securities.* You may use maturing securities held in TreasuryDirect as payment for reinvestments into new securities that we are offering, as long as we receive the appropriate transaction request on time.

(c) *Commercial book-entry system.* For securities to be held in the commercial book-entry system, payment of the settlement amount must be by charge to the funds account of a depository institution at a Federal Reserve Bank.

(1) A submitter that does not have a funds account at a Federal Reserve Bank or that chooses not to pay by charge to its own funds account must have an approved autocharge agreement on file with us before submitting any bids. Any depository institution whose funds account will be charged under an autocharge agreement will receive advance notice from us of the total par amount of, and price to be charged for, securities awarded as a result of the submitter's bids.

(2) A submitter that is a member of a clearing corporation may instruct that delivery and payment be made through the clearing corporation for securities awarded to the submitter for its own account. To do this, the following requirements must be met prior to submitting any bids:

(i) We must have acknowledged and have on file an autocharge agreement between the clearing corporation and a depository institution. By entering into such an agreement, the clearing corporation authorizes us to provide aggregate par and price information to the depository institution whose funds account will be charged under the agreement. The clearing corporation is responsible for remitting payment for auction awards of the clearing corporation member.

(ii) We must have acknowledged and have on file a delivery and payment agreement between the submitter and the clearing corporation. By entering into such an agreement, the submitter authorizes us to provide award and payment information to the clearing corporation.

Subpart C—Determination of Auction Awards; Settlement

§ 356.20 How does the Treasury determine auction awards?

(a) *Determining the range and amount of accepted competitive bids.*

(1) *Accepting bids.* First we accept in full all noncompetitive bids that were submitted by the noncompetitive bidding deadline. After the closing time for receipt of competitive bids we start accepting those at the lowest yields or discount rates through successively higher yields or discount rates, up to the amount required to meet the offering amount. When necessary, we prorate bids at the highest accepted yield or discount rate as described below. If the amount of noncompetitive bids would absorb most or all of the offering amount, we will accept competitive bids in an amount sufficient to provide a fair determination of the yield or discount rate for the securities we are auctioning.

(2) *Accepting bids at the high yield or discount rate.* Generally, the total amount of bids at the highest accepted yield or discount rate exceeds the offering amount remaining after we accept the noncompetitive bids and the competitive bids at the lower yields or discount rates. In order to keep the total amount of awards as close as possible to the announced offering amount, we award a percentage of the bids at the highest accepted yield or discount rate. We derive the percentage by dividing the remaining par amount needed to fill the offering amount by the par amount of the bids at the high yield or discount rate and rounding up to the next hundredth of a whole percentage point, for example, 17.13%.

(b) *Determining the interest rate for new note and bond issues.* We set the interest rate at the 1/8 of one percent increment that produces the price closest to, but not above, par when evaluated at the yield of awards to successful competitive bidders.

(c) *Determining purchase prices for awarded securities.* For both noncompetitive bidders and competitive bidders, we convert the highest accepted discount rate or yield to a price expressed as a price per hundred. This price is rounded to three decimals, for example, 99.954. (*See* Appendix B) For inflation-protected securities, the price for awarded securities is the price equivalent to the highest accepted real yield.

§ 356.21 How are awards at the high yield or discount rate calculated?

(a) *Awards to submitters.* We generally prorate bids at the highest accepted yield or discount rate under § 356.20(a)(2) of this part. For example, if 80.15% is the announced percentage at the highest yield or discount rate, we award 80.15% of the amount of each bid at that yield or rate. A bid for $100 million at the highest accepted yield or discount rate would be awarded $80,150,000 in this example. We always make awards for at least the minimum to bid, and above that amount we make awards in the appropriate multiple to bid. For example, Treasury bills may be issued with a minimum to bid of $1,000 and multiples to bid of $1,000. Say we accept an $18,000 bid at the high discount rate, and the percent awarded at the high discount rate is 88.27%. We would award $16,000 to that bidder, which is an upward adjustment from $15,888.60 ($18,000 × .8827) to the nearest multiple of $1,000. If we were to award 4.65% of bids at the highest accepted rate, for example, the award for a $10,000 bid at that rate would be $1,000, rather than $465, in order to meet the minimum to bid for a bill issue.

(b) *Awards to customers.* The same prorating rules apply to customers as apply to submitters. Depository institutions and dealers, whether submitters or intermediaries, are responsible for prorating awards for their customers at the same percentage that we announce. For example, if 80.15% is the announced percentage at the highest yield or discount rate, then each customer bid at that yield or rate must be awarded 80.15%.

§ 356.22 Does the Treasury have any limitations on auction awards?

(a) *Awards to noncompetitive bidders.* The maximum award to any bidder is $1 million for bills and $5 million for notes and bonds. This limit does not apply to bidders bidding solely through TreasuryDirect reinvestment requests.

(b) *Awards to competitive bidders.* The maximum award is 35 percent of the offering amount less the bidder's net long position as reportable under § 356.13. For example, in a note auction with a $10 billion offering amount, and therefore a maximum award of $3.5 billion, a bidder with a reported net long position of $1 billion could receive a maximum auction award of $2.5 billion. When the bids and net long positions of more than one person or entity must be combined, as is the case with investment advisers and controlled accounts (*See* § 356.15(c)), we will use this combined amount for the purpose of this 35 percent award limit.

§ 356.23 How are the auction results announced?

(a) After the conclusion of the auction, we will announce the auction results through a press release that is available on our Web site at *http://www.publicdebt.treas.gov.*

(b) The press release will include such information as:

(1) The amounts of bids we accepted and the amount of securities we awarded;

(2) The range of accepted yields or discount rates;

(3) The proration percentage;

(4) The interest rate for a note or bond;

(5) A breakdown of the amounts of noncompetitive and competitive bids we accepted from, and awarded to, the public;

(6) The amounts of bids tendered and accepted from the Federal Reserve Banks for their own accounts;

(7) The bid-to-cover ratio; and

(8) Other information that we may decide to include.

§ 356.24 Will I be notified directly of my awards and, if I am submitting bids for others, do I have to provide confirmations?

(a) *Notice of awards*—(1) *Notice to submitters.* We will provide notice to all submitters letting them know whether their bids were successful or not.

(2) *Notice to clearing corporations.* If we are to deliver awarded securities under a delivery and payment agreement, we will provide notice of the awards to the clearing corporation that is a party to the agreement.

(b) *Notification of awards to customers.* If you are a submitter for customers, you are responsible for notifying them of their awards. You are also responsible for notifying any intermediaries that forwarded successful bids to you. Similarly, an intermediary is responsible for providing notification of any awards to its customers and any intermediaries from whom it received bids.

(c) *Notification of awards and settlement amounts to a depository institution having an autocharge agreement with a submitter or a clearing corporation.* We will notify each depository institution that has entered into an autocharge agreement with a submitter or a clearing corporation of the amount to be charged, on the issue date, to the institution's funds account at the Federal Reserve Bank servicing the institution. We will provide this notification no later than the day after the auction.

(d) *Customer confirmation.* Any customer awarded a par amount of $500 million or more in an auction must send us a confirmation containing the information in paragraphs (d)(1) and (2) of this section. The confirmation must be sent no later than 10:00 a.m. on the day following the auction. The confirmation must be signed by the customer or authorized representative. If signed by an authorized representative, the confirmation must include the capacity in which the representative is acting. A submitter or intermediary submitting or forwarding bids for a customer must notify the customer of this requirement if we award the customer $500 million or more as a result of those bids. The information the customer must provide in writing is:

(1) A confirmation of the awarded bid(s), including the name of the depository institution or dealer that submitted the bid(s) on the customer's behalf, and

(2) A statement indicating whether the customer had a reportable net long position as defined in § 356.13. If a position had to be reported, the statement must provide the amount of the position and the name of the depository institution or dealer that the customer requested to report the position.

§ 356.25 How does the settlement process work?

Securities bought in the auction must be paid for by the issue date. The payment amount for awarded securities will be the settlement amount as defined in § 356.2. (*See* formulas in Appendix B.) There are several ways to pay for securities:

(a) *Payment by debit entry to a deposit account.* If you are paying by debit entry to a deposit account as provided for in § 356.17 (b)(1) or (b)(2), we will charge the settlement amount to the specified account on the issue date.

(b) *Payment by authorized charge to a funds account.* Where the submitter's method of payment is an authorized charge to the funds account of a depository institution as provided for in § 356.17 (c)(1) and (c)(2), we will charge the settlement amount to the specified funds account on the issue date.

(c) *Payment with bids.* If you paid the par amount with your bids as provided for in § 356.17 (b)(2), you may have to pay an additional amount, or we may have to pay an amount to you, as follows:

(1) *When we owe an amount to you.* If the amount you paid is more than the settlement amount, we will refund the balance to you after the auction. This situation will generally be the case if you submit payment with your bids. A typical example would be an auction where the price is a discount from par and there is no accrued interest.

(2) *When you must remit an additional amount.* If the settlement amount is more than the amount you paid, we will notify you of the additional amount due, which you will be responsible for remitting immediately. You may owe us such an additional amount if the auction calculations result in a premium or if accrued interest or an inflation adjustment is due.

Subpart D—Miscellaneous Provisions

§ 356.30 When does the Treasury pay principal and interest on securities?

(a) *General.* We will pay principal on bills, notes, and bonds on the maturity date as specified in the auction announcement. Interest on bills consists of the difference between the discounted amount paid by the investor at original issue and the par value we pay to the investor at maturity. Interest on notes and bonds accrues from the dated date. Interest is payable on a semiannual basis on the interest payment dates specified in the auction announcement through the maturity date. If any principal or interest payment date is a Saturday, Sunday, or other day on which the Federal Reserve System is not open for business, we will make the payment (without additional interest) on the next business day. If a bond is callable, we will pay the principal prior to maturity if we call it under its terms, which include providing appropriate public notice.

(b) *Treasury inflation-protected securities.* (1) This table explains the amount that we will pay to holders of inflation-protected securities at maturity.

At *maturity*, if . . .	Then . . .
(i) the inflation-adjusted principal is equal to or more than the par amount of the security.	we will pay the inflation-adjusted principal.
(ii) the inflation-adjusted principal is less than the par amount of the security, and the security has not been stripped.	we will pay an additional amount so that the additional amount plus the inflation-adjusted principal equals the par amount.
(iii) the inflation-adjusted principal is less than the par amount of the security, and the security has been stripped.	to holders of principal components only we will pay an additional amount so that the additional amount plus the inflation-adjusted principal equals the par amount.

(2) Regardless of whether or not we pay an additional amount, we will base the final interest payment on the inflation-adjusted principal at maturity.

(c) *Discharge of payment obligations.*

(1) *The commercial book-entry system.* We discharge our payment obligations when we credit payment to the account maintained at a Federal Reserve Bank for a depository institution or other authorized entity, or when we make payment according to the instructions of the person or entity maintaining the account. Further, we do not have any obligations to any person or entity that does not have an account with a Federal Reserve Bank. We also will not recognize the claims of any person or entity:

(i) That does not have an account at a Federal Reserve Bank, or

(ii) With respect to any accounts not maintained at a Federal Reserve Bank.

(2) *TreasuryDirect.* We discharge our payment obligations when we make payment to a depository institution for credit to the account specified by the owner of the security, or when we make payment according to the instructions of the security's owner or the owner's legal representative.

§ 356.31 How does the STRIPS program work?

(a) *General.* Notes or bonds may be "stripped"—divided into separate principal and interest components. These components must be maintained in the commercial book-entry system. Stripping is done at the option of the holder, and may occur at any time from issuance until maturity. We provide the CUSIP numbers and payment dates for the principal and interest components in auction announcements and on our Web site at *http://www.publicdebt.treas.gov.*

(b) *Treasury fixed-principal securities (notes and bonds other than Treasury inflation-protected securities*—(1) *Minimum par amounts required for STRIPS.* The minimum par amount of a fixed-principal security that may be stripped is $1,000. Any par amount to be stripped above $1,000 must be in a multiple of $1,000.

(2) *Principal components.* Principal components stripped from fixed-principal securities are maintained in accounts, and transferred, at their par amount. They have a CUSIP number that is different from the CUSIP number of the fully constituted (unstripped) security.

(3) *Interest components.* Interest components stripped from fixed-principal securities have the following features:

(i) They are maintained in accounts, and transferred, at their original payment value, which is derived by multiplying the semiannual interest rate and the par amount;

(ii) Their interest payment date becomes the maturity date for the component;

(iii) All interest components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped, and therefore are fungible (interchangable).

(iv) The CUSIP numbers of interest components are different from the CUSIP numbers of principal components and fully constituted securities, even if they have the same maturity date, and therefore are not fungible.

(c) *Treasury inflation-protected securities*—(1) *Minimum par amounts required for STRIPS.* The minimum par amount of an inflation-protected security that may be stripped is $1,000. Any par amount to be stripped above $1,000 must be in a multiple of $1,000.

(2) *Principal components.* Principal components stripped from inflation-protected securities are maintained in accounts, and transferred, at their par amount. At maturity, the holder will receive the inflation-adjusted principal or the par amount, whichever is greater. (*See* § 356.30) A principal component has a CUSIP number that is different from the CUSIP number of the fully constituted (unstripped) security.

(3) *Interest components.*—(i) *Adjusted value.* Interest components stripped from inflation-protected securities are maintained in accounts, and transferred, at their adjusted value. This value is derived by multiplying the semiannual interest rate by the par amount and then multiplying this value by: 100 divided by the Reference CPI of the original issue date. (The dated date is used instead of the original issue date when the dates are different.) *See* Appendix B, Section IV of this part for an example of how to do this calculation.

(ii) *CUSIP numbers.* When an interest payment is stripped from an inflation-protected security, the interest payment date becomes the maturity date for the component. All interest components with the same maturity date have the same CUSIP number, regardless of the underlying security from which the interest payments were stripped. Such interest components are fungible (interchangeable). The CUSIP numbers of interest components are different from the CUSIP numbers of principal components and fully constituted securities, even if they have the same maturity date.

(iii) *Payment at maturity.* At maturity, the payment to the holder will be derived by multiplying the adjusted value of the interest component by the Reference CPI of the maturity date, divided by 100. *See* Appendix B, Section IV to this part for an example of how to do this calculation.

(iv) *Rebasing of the CPI.* If the CPI is rebased to a different time base reference period (*See* Appendix D), the adjusted values of all outstanding inflation-protected interest components will be converted to adjusted values based on the new base reference period. At that time, we will publish information that describes how this conversion will occur. After rebasing, any interest components created from a security that was issued during a prior base reference period will be issued with adjusted values calculated using reference CPIs under the most-recent base reference period.

(d) *Reconstituting a security.* Stripped interest and principal components may be reconstituted, that is, put back together into their fully constituted form. A principal component and all related unmatured interest components, in the appropriate minimum or multiple amounts or adjusted values, must be submitted together for reconstitution. Because inflation-protected interest components are different from fixed-principal interest components, they are not interchangeable for reconstitution purposes.

(e) *Applicable regulations.* Subparts A, B, and D of part 357 of this chapter govern notes and bonds stripped into their STRIPS components, unless we state differently in this part.

§ 356.32 What tax rules apply?

(a) *General.* Securities issued under this part are subject to all applicable taxes imposed under the Internal Revenue Code of 1986, or its successor. Under section 3124 of title 31, United States Code, the securities are exempt from taxation by a State or political subdivision of a State, except for State estate or inheritance taxes and other exceptions as provided in that section.

(b) *Treasury inflation-protected securities.* Special federal income tax rules for inflation-protected securities, including stripped inflation-protected principal and interest components, are set forth in Internal Revenue Service regulations.

§ 356.33 Does the Treasury have any discretion in the auction process?

(a) We have the discretion to:

(1) Accept, reject, or refuse to recognize any bids submitted in an auction;

(2) Award more or less than the amount of securities specified in the auction announcement;

(3) Waive any provision of this part for any bidder or submitter; and

(4) Change the terms and conditions of an auction.

(b) Our decisions under this part are final. We will provide a public notice if we change any auction provision, term, or condition.

(c) We reserve the right to modify the terms and conditions of new securities and to depart from the customary pattern of securities offerings at any time.

§ 356.34 What could happen if someone does not fully comply with the auction rules or fails to pay for securities?

(a) *General.* If a person or entity fails to comply with any of the auction rules in this part, we will consider the circumstances and take what we deem to be appropriate action. This could include barring the person or entity from participating in future auctions under this part. We also may refer the matter to an appropriate regulatory agency.

(b) *Liquidated damages.* If you fail to pay for awarded securities in a timely manner, we may require you to pay liquidated damages of up to one percent of the par amount of securities we awarded to you. Our use of this liquidated damages remedy does not preclude us from using any other appropriate remedy.

§ 356.35 Who approved the information collections?

The Office of Management and Budget approved the collections of information contained in §§ 356.11, 356.12, 356.13, 356.14, and 356.15 and in Appendix A of this part under control number 1535–0112.

Appendix A to Part 356—Bidder Categories

I. Categories of Eligible Bidders

We describe below various categories of bidders eligible to bid in Treasury auctions. You may use them to determine whether we consider you and other entities to be one bidder or more than one bidder for auction bidding and compliance purposes. For example, we use these definitions to apply the competitive and noncompetitive award limitations and for other requirements. Notwithstanding these definitions, we consider any persons or entities that intentionally act together with respect to bidding in a Treasury auction to collectively be one bidder. Even if an auction participant does not fall under any of the categories listed below, it is our intent that no auction participant receives a larger auction award by acquiring securities through others than it could have received had it been considered one of these types of bidders.

(a) *Corporation*—We consider a corporation to be one bidder. A corporation includes all of its affiliates, which may be persons, partnerships, or other entities. We use the term "corporate structure" to refer to the collection of affiliates that we consider collectively to be one bidder. An affiliate is any:

- entity that is more than 50% owned, directly or indirectly, by the corporation;
- entity that is more than 50% owned, directly or indirectly, by any other affiliate of the corporation;
- person or entity that owns, directly or indirectly, more than 50% of the corporation;
- person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the corporation; or
- entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the corporation, or of any affiliate of the corporation.

We consider a business trust, such as a Massachusetts or Delaware business trust, to be a corporation.

(b) *Partnership*—We consider a partnership to be one bidder if it is a partnership for which the Internal Revenue Service has assigned a tax-identification number. A partnership includes all of its affiliates, which may be persons, corporations, general partners acting on behalf of the partnership, or other entities. We use the term "partnership structure" to refer to the collection of affiliates that we consider collectively to be one bidder. We may consider a partnership structure that contains one or more corporations as a "partnership" or a "corporation," but not both.

An affiliate is any:

- entity that is more than 50% owned, directly or indirectly, by the partnership;
- entity that is more than 50% owned, directly or indirectly, by any other affiliate of the partnership;
- person or entity that owns, directly or indirectly, more than 50% of the partnership;
- person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the partnership; or
- entity, a majority of whose general partners or a majority of whose board of directors are general partners or directors of the partnership or of any affiliate of the partnership.

(c) *Government-related entity*—We consider each of the following entities to be one bidder:

(1) a state government or the government of the District of Columbia.

(2) a unit of local government, including any county, city, municipality, or township, or other unit of general government as defined by the Bureau of the Census for statistical purposes.

(3) a commonwealth, territory, or possession of the United States.

(4) a governmental entity, body, or corporation established under Federal, State, or local law.

(5) a foreign central bank, the government of a foreign state, or an international organization in which the United States holds membership. This type of entity applies only when such entity is not using an account at the Federal Reserve Bank of New York (*See* paragraph (f)).

We generally consider an investment, reserve, or other fund of one of the above government-related entities as part of that entity and not a separate bidder. We will consider a government-related entity's fund to be a separate bidder if it meets the definition of the "trust or other fiduciary estate" category, or if applicable law requires that the investments of such fund be made separately.

(d) *Trust or other fiduciary estate*—We consider a legal entity created under a valid trust instrument, court order, or other legal authority that designates a trustee or fiduciary to act for the benefit of a named beneficiary to be one bidder. The following conditions must also be met for us to consider a trust entity to be one bidder:

- The legal entity must be able to be identified by:

1. the name or title of the trustee or fiduciary;
2. specific reference to the trust instrument, court order, or legal authority under which the trustee or fiduciary is acting; and
3. the unique IRS-assigned employer identification number (not social security number) for the entity.

- The trustee or fiduciary must make the decisions on participating in auctions on behalf of the trust or fiduciary estate.

(e) *Individual*—We consider a person to be one bidder, regardless of whether he or she is acting as an individual, a sole proprietor, or for any entity not otherwise defined as a bidder. If a person meets the definition of an affiliate within a corporate or partnership structure, we will consider him or her to be a bidder in this "individual" category if the corporation or partnership is not bidding in the same auction. We do not consider a person acting in an official capacity as an employee or other representative of a bidder defined in any other category to be an "individual" bidder. We consider a person, his or her spouse, and any children under the age of 21 having a common household to be one "individual" bidder.

(f) *Foreign and International Monetary Authority ("FIMA")*—We consider one or more parties making up a foreign or international monetary organization that is not private in nature to be a bidder called a FIMA entity if at least one of the parties is a foreign or international entity that is (i) financial in nature, or (ii) not financial in nature but is authorized to open an account at the Federal Reserve Bank of New York. We consider each of the following entities to be a single FIMA entity:

(1) A foreign central bank or regional central bank.

(2) A foreign governmental monetary or finance entity.

(3) A non-governmental international financial organization that is not private in nature (for example, the International Monetary Fund, the World Bank, the Inter-American Development Bank, and the Asian Development Bank).

(4) A non-financial international organization that the United States participates in (for example, the United Nations).

(5) A multi-party arrangement of a governmental ministry and/or a foreign central bank or monetary authority with a United States Government Department and/ or the Federal Reserve Bank of New York.

(6) A foreign or international monetary entity or an entity authorized by statute or by us to open accounts at the Federal Reserve Bank of New York.

(g) *Other Bidder*—We do not consider a bidder defined by any of the above categories to be a bidder in this category. For purposes of this definition, "other bidder" means an institution or organization with a unique IRS-assigned employer identification number. This definition includes such entities as an association, church, university, union, or club. This category does not include any person or entity acting in a fiduciary or investment management capacity, a sole proprietorship, an investment account, an investment fund, a form of registration, or investment ownership designation.

II. How To Obtain Separate Bidder Recognition

Under certain circumstances, we may recognize a major organizational component (*e.g.*, the parent or a subsidiary) in a corporate or partnership structure as a bidder separate from the larger corporate or partnership structure. We also may recognize two or more major organizational components collectively as one bidder. All of the following criteria must be met for such component(s) to qualify for recognition as a separate bidder:

(a) Such component(s) must be prohibited by law or regulation from exchanging, or must have established written internal procedures designed to prevent the exchange of, information related to bidding in Treasury auctions with any other component in the corporate or partnership structure;

(b) Such component(s) must not be created for the purpose of circumventing our bidding and award limitations;

(c) Decisions related to purchasing Treasury securities at auction and participation in specific auctions must be made by employees of such component(s). Employees of such component(s) that make decisions to purchase or dispose of Treasury securities must not perform the same function for other components within the corporate or partnership structure; and

(d) The records of such component(s) related to the bidding for, acquisition of, and disposition of Treasury securities must be maintained by such component(s). Those records must be identifiable—separate and apart from similar records for other components within the corporate or partnership structure. To obtain recognition as a separate bidder, each component or group of components must request such recognition from us, provide a description of the component or group and its position within the corporate or partnership structure, and provide the following certification:

> [Name of the bidder] hereby certifies that to the best of its knowledge and belief it meets the criteria for a separate bidder as described in Appendix A to 31 CFR Part 356. The above-named bidder also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the component or group of components from:
>
> (1) Exchanging any of the following information with any other part of the corporate [partnership] structure: (a) Yields or rates at which it plans to bid; (b) amounts of securities for which it plans to bid; (c) positions that it holds or plans to acquire in a security being auctioned; and (d) investment strategies that it plans to follow regarding the security being auctioned, or
>
> (2) In any way intentionally acting together with any other part of the corporate [partnership] structure with respect to formulating or entering bids in a Treasury auction.
>
> The above-named bidder agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate bidder status changes or when this certification is no longer valid.

Appendix B to Part 356—Formulas and Tables

I. Computation of Interest on Treasury Bonds and Notes.

II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices.

III. Formulas for Conversion of Inflation-Protected Security Yields to Equivalent Prices.

IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Protected Interest Components.

V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills.

The examples in this appendix are given for illustrative purposes only and are in no way a prediction of interest rates on any bills, notes, or bonds issued under this part.

In some of the following examples, we use intermediate rounding for ease in following the calculations. In actual practice, we generally do not round prior to determining the final result.

I. Computation of Interest on Treasury Bonds and Notes

A. Treasury Fixed-Principal Securities

1. *Regular Half-Year Payment Period.* We pay interest on marketable Treasury fixed-principal securities on a semiannual basis. The regular interest payment period is a full half-year of six calendar months. Examples of half-year periods are: (1) February 15 to August 15, (2) May 31 to November 30, and (3) February 29 to August 31 (in a leap year). Calculation of an interest payment for a fixed-principal note with a par amount of $1,000 and an interest rate of 8% is made in this manner: ($1,000 x .08) / 2 = $40. Specifically, a semiannual interest payment represents one half of one year's interest, and is computed on this basis regardless of the actual number of days in the half-year.

2. *Daily Interest Decimal.* We compute a daily interest decimal in cases where an interest payment period for a fixed-principal security is shorter or longer than six months or where accrued interest is payable by an investor. We base the daily interest decimal on the actual number of calendar days in the half-year or half-years involved. The number of days in any half-year period is shown in Table 1.

TABLE 1

Interest period	Beginning and ending days are 1st or 15th of the months listed under interest period (number of days)		Beginning and ending days are the last days of the months listed under interest period (number of days)	
	Regular year	Leap year	Regular year	Leap year
January to July	181	182	181	182
February to August	181	182	184	184
March to September	184	184	183	183
April to October	183	183	184	184
May to November	184	184	183	183
June to December	183	183	184	184
July to January	184	184	184	184
August to February	184	184	181	182
September to March	181	182	182	183
October to April	182	183	181	182
November to May	181	182	182	183
December to June	182	183	181	182

Table 2 below shows the daily interest decimals covering interest from ⅛% to 20% on $1,000 for one day in increments of ⅛ of one percent. These decimals represent 1/181, 1/182, 1/183, or 1/184 of a full semiannual interest payment, depending on which half-year is applicable.

TABLE 2.—DECIMAL FOR ONE DAY'S INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE SEMINANNUALLY OR ON A SEMIANNUAL BASIS, IN REGULAR YEARS OF 365 DAYS AND IN YEARS OF 366 DAYS (TO DETERMINE APPLICABLE NUMBER OF DAYS, SEE TABLE 1)

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
⅛	0.003396739	0.003415301	0.003434066	0.003453039
¼	0.006793478	0.006830601	0.006868132	0.006906077
⅜	0.010190217	0.010245902	0.010302198	0.010359116
½	0.013586957	0.013661202	0.013736264	0.013812155
⅝	0.016983696	0.017076503	0.017170330	0.017265193
¾	0.020380435	0.020491803	0.020604396	0.020718232
⅞	0.023777174	0.023907104	0.024038462	0.024171271
1	0.027173913	0.027322404	0.027472527	0.027624309
1⅛	0.030570652	0.030737705	0.030906593	0.031077348
1¼	0.033967391	0.034153005	0.034340659	0.034530387
1⅜	0.037364130	0.037568306	0.037774725	0.037983425
1½	0.040760870	0.040983607	0.041208791	0.041436464
1⅝	0.044157609	0.044398907	0.044642857	0.044889503
1¾	0.047554348	0.047814208	0.048076923	0.048342541
1⅞	0.050951087	0.051229508	0.051510989	0.051795580
2	0.054347826	0.054644809	0.054945055	0.055248619
2⅛	0.057744565	0.058060109	0.058379121	0.058701657
2¼	0.061141304	0.061475410	0.061813187	0.062154696
2⅜	0.064538043	0.064890710	0.065247253	0.065607735
2½	0.067934783	0.068306011	0.068681319	0.069060773
2⅝	0.071331522	0.071721311	0.072115385	0.072513812
2¾	0.074728261	0.075136612	0.075549451	0.075966851
2⅞	0.078125000	0.078551913	0.078983516	0.079419890
3	0.081521739	0.081967213	0.082417582	0.082872928
3⅛	0.084918478	0.085382514	0.085851648	0.086325967
3¼	0.088315217	0.088797814	0.089285714	0.089779006
3⅜	0.091711957	0.092213115	0.092719780	0.093232044
3½	0.095108696	0.095628415	0.096153846	0.096685083
3⅝	0.098505435	0.099043716	0.099587912	0.100138122
3¾	0.101902174	0.102459016	0.103021978	0.103591160
3⅞	0.105298913	0.105874317	0.106456044	0.107044199
4	0.108695652	0.109289617	0.109890110	0.110497238
4⅛	0.112092391	0.112704918	0.113324176	0.113950276
4¼	0.115489130	0.116120219	0.116758242	0.117403315
4⅜	0.118885870	0.119535519	0.120192308	0.120856354
4½	0.122282609	0.122950820	0.123626374	0.124309392
4⅝	0.125679348	0.126366120	0.127060440	0.127762431
4¾	0.129076087	0.129781421	0.130494505	0.131215470
4⅞	0.132472826	0.133196721	0.133928571	0.134668508
5	0.135869565	0.136612022	0.137362637	0.138121547
5⅛	0.139266304	0.140027322	0.140796703	0.141574586
5¼	0.142663043	0.143442623	0.144230769	0.145027624
5⅜	0.146059783	0.146857923	0.147664835	0.148480663
5½	0.149456522	0.150273224	0.151098901	0.151933702
5⅝	0.152853261	0.153688525	0.154532967	0.155386740
5¾	0.156250000	0.157103825	0.157967033	0.158839779
5⅞	0.159646739	0.160519126	0.161401099	0.162292818
6	0.163043478	0.163934426	0.164835165	0.165745856
6⅛	0.166440217	0.167349727	0.168269231	0.169198895
6¼	0.169836957	0.170765027	0.171703297	0.172651934
6⅜	0.173233696	0.174180328	0.175137363	0.176104972
6½	0.176630435	0.177595628	0.178571429	0.179558011
6⅝	0.180027174	0.181010929	0.182005495	0.183011050
6¾	0.183423913	0.184426230	0.185439560	0.186464088
6⅞	0.186820652	0.187841530	0.188873626	0.189917127
7	0.190217391	0.191256831	0.192307692	0.193370166
7⅛	0.193614130	0.194672131	0.195741758	0.196823204
7¼	0.197010870	0.198087432	0.199175824	0.200276243
7⅜	0.200407609	0.201502732	0.202609890	0.203729282
7½	0.203804348	0.204918033	0.206043956	0.207182320
7⅝	0.207201087	0.208333333	0.209478022	0.210635359
7¾	0.210597826	0.211748634	0.212912088	0.214088398
7⅞	0.213994565	0.215163934	0.216346154	0.217541436
8	0.217391304	0.218579235	0.219780220	0.220994475
8⅛	0.220788043	0.221994536	0.223214286	0.224447514

TABLE 2.—DECIMAL FOR ONE DAY'S INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE SEMINANNUALLY OR ON A SEMIANNUAL BASIS, IN REGULAR YEARS OF 365 DAYS AND IN YEARS OF 366 DAYS (TO DETERMINE APPLICABLE NUMBER OF DAYS, SEE TABLE 1)—Continued

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
8¼	0.224184783	0.225409836	0.226648352	0.227900552
8⅜	0.227581522	0.228825137	0.230082418	0.231353591
8½	0.230978261	0.232240437	0.233516484	0.234806630
8⅝	0.234375000	0.235655738	0.236950549	0.238259669
8¾	0.237771739	0.239071038	0.240384615	0.241712707
8⅞	0.241168478	0.242486339	0.243818681	0.245165746
9	0.244565217	0.245901639	0.247252747	0.248618785
9⅛	0.247961957	0.249316940	0.250686813	0.252071823
9¼	0.251358696	0.252732240	0.254120879	0.255524862
9⅜	0.254755435	0.256147541	0.257554945	0.258977901
9½	0.258152174	0.259562842	0.260989011	0.262430939
9⅝	0.261548913	0.262978142	0.264423077	0.265883978
9¾	0.264945652	0.266393443	0.267857143	0.269337017
9⅞	0.268342391	0.269808743	0.271291209	0.272790055
10	0.271739130	0.273224044	0.274725275	0.276243094
10⅛	0.275135870	0.276639344	0.278159341	0.279696133
10¼	0.278532609	0.280054645	0.281593407	0.283149171
10⅜	0.281929348	0.283469945	0.285027473	0.286602210
10½	0.285326087	0.286885246	0.288461538	0.290055249
10⅝	0.288722826	0.290300546	0.291895604	0.293508287
10¾	0.292119565	0.293715847	0.295329670	0.296961326
10⅞	0.295516304	0.297131148	0.298763736	0.300414365
11	0.298913043	0.300546448	0.302197802	0.303867403
11⅛	0.302309783	0.303961749	0.305631868	0.307320442
11¼	0.305706522	0.307377049	0.309065934	0.310773481
11⅜	0.309103261	0.310792350	0.312500000	0.314226519
11½	0.312500000	0.314207650	0.315934066	0.317679558
11⅝	0.315896739	0.317622951	0.319368132	0.321132597
11¾	0.319293478	0.321038251	0.322802198	0.324585635
11⅞	0.322690217	0.324453552	0.326236264	0.328038674
12	0.326086957	0.327868852	0.329670330	0.331491713
12⅛	0.329483696	0.331284153	0.333104396	0.334944751
12¼	0.332880435	0.334699454	0.336538462	0.338397790
12⅜	0.336277174	0.338114754	0.339972527	0.341850829
12½	0.339673913	0.341530055	0.343406593	0.345303867
12⅝	0.343070652	0.344945355	0.346840659	0.348756906
12¾	0.346467391	0.348360656	0.350274725	0.352209945
12⅞	0.349864130	0.351775956	0.353708791	0.355662983
13	0.353260870	0.355191257	0.357142857	0.359116022
13⅛	0.356657609	0.358606557	0.360576923	0.362569061
13¼	0.360054348	0.362021858	0.364010989	0.366022099
13⅜	0.363451087	0.365437158	0.367445055	0.369475138
13½	0.366847826	0.368852459	0.370879121	0.372928177
13⅝	0.370244565	0.372267760	0.374313187	0.376381215
13¾	0.373641304	0.375683060	0.377747253	0.379834254
13⅞	0.377038043	0.379098361	0.381181319	0.383287293
14	0.380434783	0.382513661	0.384615385	0.386740331
14⅛	0.383831522	0.385928962	0.388049451	0.390193370
14¼	0.387228261	0.389344262	0.391483516	0.393646409
14⅜	0.390625000	0.392759563	0.394917582	0.397099448
14½	0.394021739	0.396174863	0.398351648	0.400552486
14⅝	0.397418478	0.399590164	0.401785714	0.404005525
14¾	0.400815217	0.403005464	0.405219780	0.407458564
14⅞	0.404211957	0.406420765	0.408653846	0.410911602
15	0.407608696	0.409836066	0.412087912	0.414364641
15⅛	0.411005435	0.413251366	0.415521978	0.417817680
15¼	0.414402174	0.416666667	0.418956044	0.421270718
15⅜	0.417798913	0.420081967	0.422390110	0.424723757
15½	0.421195652	0.423497268	0.425824176	0.428176796
15⅝	0.424592391	0.426912568	0.429258242	0.431629834
15¾	0.427989130	0.430327869	0.432692308	0.435082873
15⅞	0.431385870	0.433743169	0.436126374	0.438535912
16	0.434782609	0.437158470	0.439560440	0.441988950
16⅛	0.438179348	0.440573770	0.442994505	0.445441989
16¼	0.441576087	0.443989071	0.446428571	0.448895028
16⅜	0.444972826	0.447404372	0.449862637	0.452348066
16½	0.448369565	0.450819672	0.453296703	0.455801105
16⅝	0.451766304	0.454234973	0.456730769	0.459254144
16¾	0.455163043	0.457650273	0.460164835	0.462707182

TABLE 2.—DECIMAL FOR ONE DAY'S INTEREST ON $1,000 AT VARIOUS RATES OF INTEREST, PAYABLE SEMIANNUALLY OR ON A SEMIANNUAL BASIS, IN REGULAR YEARS OF 365 DAYS AND IN YEARS OF 366 DAYS (TO DETERMINE APPLICABLE NUMBER OF DAYS, SEE TABLE 1)—Continued

Rate per annum (percent)	Half-year of 184 days	Half-year of 183 days	Half-year of 182 days	Half-year of 181 days
16⅞	0.458559783	0.461065574	0.463598901	0.466160221
17	0.461956522	0.464480874	0.467032967	0.469613260
17⅛	0.465353261	0.467896175	0.470467033	0.473066298
17¼	0.468750000	0.471311475	0.473901099	0.476519337
17⅜	0.472146739	0.474726776	0.477335165	0.479972376
17½	0.475543478	0.478142077	0.480769231	0.483425414
17⅝	0.478940217	0.481557377	0.484203297	0.486878453
17¾	0.482336957	0.484972678	0.487637363	0.490331492
17⅞	0.485733696	0.488387978	0.491071429	0.493784530
18	0.489130435	0.491803279	0.494505495	0.497237569
18⅛	0.492527174	0.495218579	0.497939560	0.500690608
18¼	0.495923913	0.498633880	0.501373626	0.504143646
18⅜	0.499320652	0.502049180	0.504807692	0.507596685
18½	0.502717391	0.505464481	0.508241758	0.511049724
18⅝	0.506114130	0.508879781	0.511675824	0.514502762
18¾	0.509510870	0.512295082	0.515109890	0.517955801
18⅞	0.512907609	0.515710383	0.518543956	0.521408840
19	0.516304348	0.519125683	0.521978022	0.524861878
19⅛	0.519701087	0.522540984	0.525412088	0.528314917
19¼	0.523097826	0.525956284	0.528846154	0.531767956
19⅜	0.526494565	0.529371585	0.532280220	0.535220994
19½	0.529891304	0.532786885	0.535714286	0.538674033
19⅝	0.533288043	0.536202186	0.539148352	0.542127072
19¾	0.536684783	0.539617486	0.542582418	0.545580110
19⅞	0.540081522	0.543032787	0.546016484	0.549033149
20	0.543478261	0.546448087	0.549450549	0.552486188

3. *Short First Payment Period.* In cases where the first interest payment period for a Treasury fixed-principal security covers less than a full half-year period (a "short coupon"), we multiply the daily interest decimal by the number of days from, but not including, the issue date to, and including, the first interest payment date. This calculation results in the amount of the interest payable per $1,000 par amount. In cases where the par amount of securities is a multiple of $1,000, we multiply the appropriate multiple by the unrounded interest payment amount per $1,000 par amount.

Example

A 2-year note paying 8⅜% interest was issued on July 2, 1990, with the first interest payment on December 31, 1990. The number of days in the full half-year period of June 30 to December 31, 1990, was 184 (*See* Table 1). The number of days for which interest actually accrued was 182 (not including July 2, but including December 31). The daily interest decimal, $0.227581522 (*See* Table 2, line for 8⅜%, under the column for half-year of 184 days), was multiplied by 182, resulting in a payment of $41.419837004 per $1,000. For $20,000 of these notes, $41.419837004 would be multiplied by 20, resulting in a payment of $828.39674008 ($828.40).

4. *Long First Payment Period.* In cases where the first interest payment period for a bond or note covers more than a full half-year period (a "long coupon"), we multiply the daily interest decimal by the number of days from, but not including, the issue date to, and including, the last day of the fractional period that ends one full half-year before the interest payment date. We add that amount to the regular interest amount for the full half-year ending on the first interest payment date, resulting in the amount of interest payable for $1,000 par amount. In cases where the par amount of securities is a multiple of $1,000, the appropriate multiple should be applied to the unrounded interest payment amount per $1,000 par amount.

Example

A 5-year 2-month note paying 7⅞% interest was issued on December 3, 1990, with the first interest payment due on August 15, 1991. Interest for the regular half-year portion of the payment was computed to be $39.375 per $1,000 par amount. The fractional portion of the payment, from December 3 to February 15, fell in a 184-day half-year (August 15, 1990, to February 15, 1991). Accordingly, the daily interest decimal for 7⅞% was $0.213994565. This decimal, multiplied by 74 (the number of days from but not including December 3, 1990, to and including February 15), resulted in interest for the fractional portion of $15.835597810. When added to $39.375 (the normal interest payment portion ending on August 15, 1991), this produced a first interest payment of $55.210597810, or $55.21 per $1,000 par amount. For $7,000 par amount of these notes, $55.210597810 would be multiplied by 7, resulting in an interest payment of $386.474184670 ($386.47).

B. Treasury Inflation-Protected Securities

1. *Indexing Process.* We pay interest on marketable Treasury inflation-protected securities on a semiannual basis. We issue inflation-protected securities with a stated rate of interest that remains constant until maturity. Interest payments are based on the security's inflation-adjusted principal at the time we pay interest. We make this adjustment by multiplying the par amount of the security by the applicable Index Ratio.

2. *Index Ratio.* The numerator of the Index Ratio, the Ref CPI_{Date}, is the index number applicable for a specific day. The denominator of the Index Ratio is the Ref CPI applicable for the original issue date. However, when the dated date is different from the original issue date, the denominator is the Ref CPI applicable for the dated date. The formula for calculating the Index Ratio is:

$$\text{Index Ratio}_{\text{Date}} = \frac{\text{Ref CPI}_{\text{Date}}}{\text{Ref CPI}_{\text{Issue Date}}}$$

Where Date = valuation date

3. *Reference CPI.* The Ref CPI for the first day of any calendar month is the CPI for the third preceding calendar month. For example, the Ref CPI applicable to April 1 in any year is the CPI for January, which is reported in February. We determine the Ref CPI for any other day of a month by a linear interpolation between the Ref CPI applicable to the first day of the month in which the day falls (in the example, January) and the Ref CPI applicable to the first day of the next month (in the example, February). For interpolation purposes, we truncate calculations with regard to the Ref CPI and the Index Ratio for a specific date to six decimal places, and round to five decimal places. Therefore the Ref CPI and the Index Ratio for a particular date will be expressed to five decimal places.

(i) The formula for the Ref CPI for a specific date is:

$$\text{Ref CPI}_{\text{Date}} = \text{Ref CPI}_{M} + \frac{t-1}{D}\left[\text{Ref CPI}_{M+1} - \text{Ref CPI}_{M}\right]$$

Where Date = valuation date

D = the number of days in the month in which Date falls

t = the calendar day corresponding to Date

CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics

Ref CPI_M = Ref CPI for the first day of the calendar month in which Date falls, *e.g.*, Ref $\text{CPI}_{\text{April 1}}$ is the $\text{CPI}_{\text{January}}$

Ref CPI_{M+1} = Ref CPI for the first day of the calendar month immediately following Date

(ii) For example, the Ref CPI for April 15, 1996 is calculated as follows:

$$\text{Ref CPI}_{\text{April 15, 1996}} = \text{Ref CPI}_{\text{April 1, 1996}} + \frac{14}{30}\left[\text{Ref CPI}_{\text{May 1, 1996}} - \text{Ref CPI}_{\text{April 1, 1996}}\right]$$

Where D = 30, t = 15

Ref $\text{CPI}_{\text{April 1, 1996}}$ = 154.40, the non-seasonally adjusted CPI–U for January 1996.

Ref $\text{CPI}_{\text{May 1, 1996}}$ = 154.90, the non-seasonally adjusted CPI–U for February 1996.

(iii) Putting these values in the equation in paragraph (ii) above:

$$\text{Ref CPI}_{\text{April 15, 1996}} = 154.40 + \frac{14}{30}\left[154.90 - 154.40\right]$$

$$\text{Ref CPI}_{\text{April 15, 1996}} = 154.633333333$$

This value truncated to six decimals is 154.633333; rounded to five decimals it is 154.63333.

(iv) To calculate the Index Ratio for April 16, 1996, for an inflation-protected security issued on April 15, 1996, the Ref $\text{CPI}_{\text{April 16, 1996}}$ must first be calculated. Using the same values in the equation above except that t=16, the Ref $\text{CPI}_{\text{April 16, 1996}}$ is 154.65000.

The Index Ratio for April 16, 1996 is:

$$\text{Index Ratio}_{\text{April 16, 1996}} = 154.65000/154.63333 = 1.000107803.$$

This value truncated to six decimals is 1.000107; rounded to five decimals it is 1.00011.

4. *Index Contingencies.*

(i) If a previously reported CPI is revised, we will continue to use the previously reported (unrevised) CPI in calculating the principal value and interest payments.

If the CPI is rebased to a different year, we will continue to use the CPI based on the base reference period in effect when the security was first issued, as long as that CPI continues to be published.

(ii) We will replace the CPI with an appropriate alternative index if, while an inflation-protected security is outstanding, the applicable CPI is:

- Discontinued,
- In the judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security, or
- In the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security.

(iii) If we decide to substitute an alternative index we will consult with the Bureau of Labor Statistics or any successor agency. We will then notify the public of the substitute index and how we will apply it. Determinations of the Secretary in this regard will be final.

(iv) If the CPI for a particular month is not reported by the last day of the following month, we will announce an index number based on the last available twelve-month change in the CPI. We will base our calculations of our payment obligations that rely on that month's CPI on the index number we announce.

(a) For example, if the CPI for month M is not reported timely, the formula for calculating the index number to be used is:

$$CPI_M = CPI_{M-1} \times \left[\frac{CPI_{M-1}}{CPI_{M-13}}\right]^{1/12}$$

(b) Generalizing for the last reported CPI issued N months prior to month M:

$$CPI_M = CPI_{M-N} \times \left[\frac{CPI_{M-N}}{CPI_{M-N-12}}\right]^{N/12}$$

(c) If it is necessary to use these formulas to calculate an index number, we will use that number for all subsequent calculations that rely on the month's index number. We will not replace it with the actual CPI when it is reported, except for use in the above formulas. If it becomes necessary to use the above formulas to derive an index number, we will use the last CPI that has been reported to calculate CPI numbers for months for which the CPI has not been reported timely.

5. *Computation of Interest for a Regular Half-Year Payment Period.* Interest on marketable Treasury inflation-protected securities is payable on a semiannual basis. The regular interest payment period is a full half-year or six calendar months. Examples of half-year periods are January 15 to July 15, and April 15 to October 15. An interest payment will be a fixed percentage of the value of the inflation-adjusted principal, in current dollars, for the date on which it is paid. We will calculate interest payments by multiplying one-half of the specified annual interest rate for the inflation-protected securities by the inflation-adjusted principal for the interest payment date. Specifically, we compute a semiannual interest payment on the basis of one-half of one year's interest regardless of the actual number of days in the half-year.

Example

A 10-year inflation-protected note paying 3⅞% interest was issued on January 15, 1999, with the first interest payment on July 15, 1999. The Ref CPI on January 15, 1999 (Ref CPI$_{IssueDate}$) was 164, and the Ref CPI on July 15, 1999 (Ref CPI$_{Date}$) was 166.2. For a par amount of $100,000, the inflation-adjusted principal on July 15, 1999, was (166.2/164) × $100,000, or $101,341. This amount was multiplied by .03875/2, or .019375, resulting in a payment of $1,963.48.

C. Accrued Interest

1. You will have to pay accrued interest on a Treasury bond or note when interest accrues prior to the issue date of the security. Because you receive a full interest payment despite having held the security for only a portion of the interest payment period, you must compensate us through the payment of accrued interest at settlement.

2. For a Treasury fixed-principal security, if accrued interest covers a fractional portion of a full half-year period, the number of days in the full half-year period and the stated interest rate will determine the daily interest decimal to use in computing the accrued interest. We multiply the decimal by the number of days for which interest has accrued.

3. If a reopened bond or note has a long first interest payment period (a "long coupon"), and the dated date for the reopened issue is less than six full months before the first interest payment, the accrued interest will fall into two separate half-year periods. A separate daily interest decimal must be multiplied by the respective number of days in each half-year period during which interest has accrued.

4. We round all accrued interest computations to five decimal places for a $1,000 par amount, using normal rounding procedures. We calculate accrued interest for a par amount of securities greater than $1,000 by applying the appropriate multiple to accrued interest payable for $1,000 par amount, rounded to five decimal places.

5. For an inflation-protected security, we calculate accrued interest as shown in section III, paragraphs A and B of this appendix.

Examples. (1) *Treasury Fixed-Principal Securities—(i) Involving One Half-Year:* A note paying interest at a rate of 6¾%, originally issued on May 15, 2000, as a 5-year note with a first interest payment date of November 15, 2000, was reopened as a 4-year 9-month note on August 15, 2000. Interest had accrued for 92 days, from May 15 to August 15. The regular interest period from May 15 to November 15, 2000, covered 184 days. Accordingly, the daily interest decimal, $0.183423913, multiplied by 92, resulted in accrued interest payable of $16.874999996, or $16.87500, for each $1,000 note purchased. If the notes have a par amount of $150,000, then 150 is multiplied by $16.87500, resulting in an amount payable of $2,531.25.

(2) *Involving Two Half-Years:*

A 10¾% bond, originally issued on July 2, 1985, as a 20-year 1-month bond, with a first interest payment date of February 15, 1986, was reopened as a 19-year 10-month bond on November 4, 1985. Interest had accrued for 44 days, from July 2 to August 15, 1985, during a 181-day half-year (February 15 to August 15); and for 81 days, from August 15 to November 4, during a 184-day half-year (August 15, 1985, to February 15, 1986). Accordingly, $0.296961326 was multiplied by 44, and $0.292119565 was multiplied by 81, resulting in products of $13.066298344 and $23.661684765 which, added together, resulted in accrued interest payable of $36.727983109, or $36.72798, for each $1,000 bond purchased. If the bonds have a par amount of $11,000, then 11 is multiplied by $36.72798, resulting in an amount payable of $404.00778 ($404.01).

II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices

Definitions

P = price per 100 (dollars), rounded to three places, using normal rounding procedures

C = the regular annual interest per $100, payable semiannually, *e.g.*, 6.125 (the decimal equivalent of a 6⅛% interest rate)

i = nominal annual rate of return or yield to maturity, based on semiannual interest payments and expressed in decimals, *e.g.*, .0719

n = number of full semiannual periods from the issue date to maturity, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining to maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on November 15, 2015, would have coupon frequency dates of May 15 and November 15.

r = (1) number of days from the issue date to the first interest payment (regular or short first payment period), or (2) number of days in fractional portion (or "initial short period") of long first payment period

s = (1) number of days in the full semiannual period ending on the first interest payment date (regular or short first payment period), or (2) number of days in the full semiannual period in which the fractional portion of a long first payment period falls, ending at the onset of the regular portion of the first interest payment

$v^n = 1/[1 + (i/2)]^n$ = present value of 1 due at the end of n periods

$a_{n\rceil} = (1 - v^n)/(i/2) = v + v^2 + v^3 + \ldots + v^n$ = present value of 1 per period for n periods

A = accrued interest

A. *For fixed-principal securities with a regular first interest payment period:*

Formula:

$$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)\, a_{n\rceil} + 100\, v^n$$

Example:

For an 8¾% 30-year bond issued May 15, 1990, due May 15, 2020, with interest payments on November 15 and May 15, solve for the price per 100 (P) at a yield of 8.84%.

Definitions:

C = 8.75
i = .0884
r = 184 (May 15 to November 15, 1990)
s = 184 (May 15 to November 15, 1990)
n = 59 (There are 60 full semiannual periods, but n is reduced by 1 because the issue date is a coupon frequency date.)
$v^n = 1/[(1 + .0884/2)]^{59}$, or .077940
$a_{n\rceil} = (1 - .077940)/.0442$, or 20.861086

Resolution:

$$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)\, a_{n\rceil} + 100\, v^n \text{ or}$$
$$P[1 + (184/184)(.0884/2)] = (8.75/2)(184/184) + (8.75/2)(20.861086) + 100(.077940)$$
$$(1)\ P[1 + .0442] = 4.375 + 91.267251 + 7.7940$$
$$(2)\ P[1.0442] = 103.436251$$
$$(3)\ P = 103.436251 / 1.0442$$
$$(4)\ P = 99.057892$$
$$(5)\ P = 99.058$$

B. *For fixed-principal securities with a short first interest payment period:*

Formula:

$$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)\, a_{n\rceil} + 100\, v^n$$

Example:

For an 8½% 2-year note issued April 2, 1990, due March 31, 1992, with interest payments on September 30 and March 31, solve for the price per 100 (P) at a yield of 8.59%.

Definitions:

C = 8.50
i = .0859
n = 3
r = 181 (April 2 to September 30, 1990)
s = 183 (March 31 to September 30, 1990)
$v^n = 1/[(1 + .0859/2)]^3$, or .881474
$a_{n\rceil} = (1 - .881474)/.04295$, or 2.759627

Resolution:

$$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)\, a_{\overline{n}|} + 100\, v^n \quad \text{or}$$
$$P[1 + (181/183)(.0859/2)] = (8.50/2)(181/183) + (8.50/2)(2.759627) + 100(.881474)$$

$$(1)\ P[1 + .042481] = 4.203552 + 11.728415 + 88.1474$$
$$(2)\ P[1.042481] = 104.079367$$
$$(3)\ P = 104.079367 / 1.042481$$
$$(4)\ P = 99.838143$$
$$(5)\ P = 99.838$$

C. *For fixed-principal securities with a long first interest payment period:*

Formula:

$$P[1 + (r/s)(i/2)] = [(C/2)(r/s)]v + (C/2)\, a_{\overline{n}|} + 100\, v^n$$

Example:

For an 8½% 5-year 2-month note issued March 1, 1990, due May 15, 1995, with interest payments on November 15 and May 15 (first payment on November 15, 1990), solve for the price per 100 (P) at a yield of 8.53%.

Definitions:

$C = 8.50$
$i = .0853$
$n = 10$
$r = 75$ (March 1 to May 15, 1990, which is the fractional portion of the first interest payment)
$s = 181$ (November 15, 1989, to May 15, 1990)
$v = 1/(1+.0853/2)$, or .959095
$v^n = 1/(1+.0853/2)^{10}$, or .658589
$a_{\overline{n}|} = (1 - .658589)/.04265$, or 8.004947

Resolution:

$$P[1 + (r/s)(i/2)] = [(C/2)(r/s)]v + (C/2)\, a_{\overline{n}|} + 100\, v^n \quad \text{or}$$
$$P[1 + (75/181)(.0853/2)] = [(8.50/2)(75/181)].959095 + (8.50/2)(8.004947) + 100(.658589)$$

$$(1)\ P[1 + .017673] = 1.689014 + 34.021025 + 65.8589$$
$$(2)\ P[1.017673] = 101.568939$$
$$(3)\ P = 101.568939 / 1.017673$$
$$(4)\ P = 99.805084$$
$$(5)\ P = 99.805$$

D. *(1) For fixed-principal securities reopened during a regular interest period where the purchase price includes predetermined accrued interest.*

(2) *For new fixed-principal securities accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.*

Formula:

$$(P + A)[1 + (r/s)(i/2)] = C/2 + (C/2)\, a_{\overline{n}|} + 100\, v^n$$

Where: $A = [(s - r)/s](C/2)$

Example:

For a 9½% 10-year note with interest accruing from November 15, 1985, issued November 29, 1985, due November 15, 1995, and interest payments on May 15 and November 15, solve for the price per 100 (P) at a yield of 9.54%. Accrued interest is from November 15 to November 29 (14 days).

Definitions:

$C = 9.50$
$i = .0954$
$n = 19$
$r = 167$ (November 29, 1985, to May 15, 1986)
$s = 181$ (November 15, 1985, to May 15, 1986)
$v^n = 1/[(1 + .0954/2)]^{19}$, or .412570400
$a_{\overline{n}|} = (1 - .412570)/.0477$, or 12.315094
$A = [(181 - 167)/181](9.50/2)$, or .367403

Resolution:

$$(P+A)[1 + (r/s)(i/2)] = [(C/2) + (C/2)\, a_{n}\rceil + 100\, v^{n} \text{ or}$$

$$(P + .367403)[1 + (167/181)(.0954/2)] = (9.50/2)+(9.50/2)\ (12.315094)+100(.412570)$$

$$(1)\ (P + .367403)[1 + .044011] = 4.75 + 58.496697 + 41.2570$$

$$(2)\ (P + .367403)[1.044011] = 104.503697$$

$$(3)\ (P + .367403) = 104.503697 / 1.044011$$

$$(4)\ (P + .367403) = 100.098272$$

$$(5)\ P = 100.098272 - .367403$$

$$(6)\ P = 99.730869$$

$$(7)\ P = 99.731$$

E. *For fixed-principal securities reopened during the regular portion of a long first payment period:*

Formula:

$$(P + A)[1 + (r/s)(i/2)] = (r'/s'')(C/2) + C/2 + (C/2)\, a_{n}\rceil + 100\, v^{n}$$

Where:

$A = AI' + AI$

$AI' = (r'/s'')(C/2)$

$AI = [(s - r)/s](C/2)$ and

r = number of days from the reopening date to the first interest payment date

s = number of days in the semiannual period for the regular portion of the first interest payment period

r′ = number of days in the fractional portion (or "initial short period") of the first interest payment period

s″ = number of days in the semiannual period ending with the commencement date of the regular portion of the first interest payment period

Example:

A 10¾% 19-year 9-month bond due August 15, 2005, is issued on July 2, 1985, and reopened on November 4, 1985, with interest payments on February 15 and August 15 (first payment on February 15, 1986), solve for the price per 100 (P) at a yield of 10.47%. Accrued interest is calculated from July 2 to November 4.

Definitions:

$C = 10.75$

$i = .1047$

$n = 39$

r = 103 (November 4, 1985, to February 15, 1986)

s = 184 (August 15, 1985, to February 15, 1986)

r′ = 44 (July 2 to August 15, 1985)

s″ = 181 (February 15 to August 15, 1985)

$v^{n} = 1/[(1 + .1047/2)]^{39}$, or .136695

$a^{n}\rceil = (1 - .136695)/.05235$, or 16.491022

$AI' = (44/181)(10.75 / 2)$, or 1.306630

$AI = [(184 - 103)/184](10.75/2)$, or 2.366168

$A = AI' + AI$, or 3.672798

Resolution:

$$(P + A)[1 + (r/s)(i/2)] = (r'/s'')(C/2) + C/2 + (C/2)\, a_{n}\rceil + 100\, v^{n} \quad \text{or}$$

$$(P + 3.672798)[1 + (103/184)(.1047/2)] = (44/181)(10.75/2) + 10.75/2 + (10.75/2)(16.491022) + 100(.136695)$$

$$(1)\ (P + 3.672798)[1 + .029305] = 1.306630 + 5.375 + 88.639243 + 13.6695$$

$$(2)\ (P + 3.672798)[1.029305] = 108.990373$$

$$(3)\ (P + 3.672798) = 108.990373 / 1.029305$$

$$(4)\ (P + 3.672798) = 105.887344$$

$$(5)\ P = 105.887344 - 3.672798$$

$$(6)\ P = 102.214546$$

$$(7)\ P = 102.215$$

F. *For fixed-principal securities reopened during a short first payment period:*

Formula:

$$(P + A)[1 + (r/s)(i/2)] = (r'/s)(C/2) + (C/2)\, a_{n\rceil} + 100\, v^n$$

Where:

$A = [(r' - r)/s](C/2)$ and

r' = number of days from the original issue date to the first interest payment date

Example:

For a 10½% 8-year note due May 15, 1991, originally issued on May 16, 1983, and reopened on August 15, 1983, with interest payments on November 15 and May 15 (first payment on November 15, 1983), solve for the price per 100 (P) at a yield of 10.53%. Accrued interest is calculated from May 16 to August 15.

Definitions:

$C = 10.50$

$i = .1053$

$n = 15$

$r = 92$ (August 15, 1983, to November 15, 1983)

$s = 184$ (May 15, 1983, to November 15, 1983)

$r' = 183$ (May 16, 1983, to November 15, 1983)

$v^n = 1/[(1 + .1053/2)]^{15}$, or .463170

$a_{n\rceil} = (1 - .463170)/.05265$, or 10.196201

$A = [(183 - 92) / 184](10.50 / 2)$, or 2.596467

Resolution:

$$(P + A)[1 + (r/s)(i/2)] = (r'/s)(C/2) + (C/2)\, a_{n\rceil} + 100\, v^n \text{ or}$$

$$(P + 2.596467)[1+(92/184)(.1053/2)] = (183/184)(10.50/2) + (10.50/2)(10.196201) + 100(.463170)$$

$$(1)\ (P + 2.596467)[1 + .026325] = 5.221467 + 53.530055 + 46.3170$$

$$(2)\ (P + 2.596467)[1.026325] = 105.068522$$

$$(3)\ (P + 2.596467) = 105.068522 / 1.026325$$

$$(4)\ (P + 2.596467) = 102.373539$$

$$(5)\ P = 102.373539 - 2.596467$$

$$(6)\ P = 99.777072$$

$$(7)\ P = 99.777$$

G. *For fixed-principal securities reopened during the fractional portion (initial short period) of a long first payment period:*

Formula:

$$(P + A)[1 + (r/s)(i/2)] = [(r'/s)(C/2)]v + (C/2)\, a_{n\rceil} + 100\, v^n$$

Where:

$A = [(r' - r)/s](C/2)$ and

r = number of days from the reopening date to the end of the short period

r' = number of days in the short period

s = number of days in the semiannual period ending with the end of the short period

Example:

For a 9¾% 6-year 2-month note due December 15, 1994, originally issued on October 15, 1988, and reopened on November 15, 1988, with interest payments on June 15 and December 15 (first payment on June 15, 1989), solve for the price per 100 (P) at a yield of 9.79%. Accrued interest is calculated from October 15 to November 15.

Definitions:

$C = 9.75$

$i = .0979$

$n = 12$

$r = 30$ (November 15, 1988, to December 15, 1988)

$s = 183$ (June 15, 1988, to December 15, 1988)

$r' = 61$ (October 15, 1988, to December 15, 1988)

$v = 1 / (1 + .0979/2)$, or .953334

$v^n = [1 / (1 + .0979/2)]^{12}$, or .563563

$a_{n\rceil} = (1 - .563563)/.04895$, or 8.915975

$A = [(61 - 30)/183](9.75/2)$, or .825820

Resolution:

$$(P + A)[1 + (r/s)(i/2)] = [(r'/s)(C/2)]v + (C/2)\,a_{n\rceil} + 100\,v^n \quad \text{or}$$

$$(P + .825820)[1 + (30/183)(.0979/2)] = [(61/183)(9.75/2)](.953334) + (9.75/2)(8.915975) + 100(.563563)$$

$$(1)\ (P + .825820)[1 + .008025] = 1.549168 + 43.465378 + 56.3563$$

$$(2)\ (P + .825820)[1.008025] = 101.370846$$

$$(3)\ (P + .825820) = 101.370846 / 1.008025$$

$$(4)\ (P + .825820) = 100.563821$$

$$(5)\ P = 100.563821 - .825820$$

$$(6)\ P = 99.738001$$

$$(7)\ P = 99.738$$

III. Formulas for Conversion of Inflation-Protected Security Yields to Equivalent Prices

Definitions:

P = unadjusted or real price per 100 (dollars)

P_{adj} = inflation adjusted price; $P \times \text{Index Ratio}_{Date}$

A = unadjusted accrued interest per $100 original principal

A_{adj} = inflation adjusted accrued interest; $A \times \text{Index Ratio}_{Date}$

SA = settlement amount including accrued interest in current dollars per $100 original principal; $P_{adj} + A_{adj}$

r = days from settlement date to next coupon date

s = days in current semiannual period

i = real yield, expressed in decimals (*e.g.,* 0.0325)

C = real annual coupon, payable semiannually, in terms of real dollars paid on $100 initial, or real, principal of the security

n = number of full semiannual periods from issue date to maturity date, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining until maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on July 15, 2026 would have coupon frequency dates of January 15 and July 15.

$v^n = 1/(1 + i/2)n$ = present value of 1 due at the end of n periods

$a_{n\rceil} = (1 - v^n)/(i/2) = v + v^2 + v^3 + * * * + v^n$ = present value of 1 per period for n periods

Date = valuation date

D = the number of days in the month in which Date falls

t = calendar day corresponding to Date

CPI = Consumer Price Index number

CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics

$\text{Ref } CPI_M$ = reference CPI for the first day of the calendar month in which Date falls, *e.g.,* $\text{Ref } CPI_{April1}$ is the $CPI_{January}$

$\text{Ref } CPI_{M+1}$ = reference CPI for the first day of the calendar month immediately following Date

$\text{Ref } CPI_{Date} = \text{Ref } CPI_M + [(t-1)/D][\text{Ref } CPI_{M+1} - \text{Ref } CPI_M]$

$\text{Index Ratio}_{Date} = \text{Ref } CPI_{Date}/\text{Ref } CPI_{IssueDate}$

A. *For inflation-protected securities with a regular first interest payment period:*

Formulas:

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s-r)/s](C/2)$$

$P_{adj} = P \times \text{Index Ratio}_{Date}$

$A = [(s-r)/s] \times (C/2)$

$A_{adj} = A \times \text{Index Ratio}_{Date}$

$SA = P_{adj} + A_{adj}$

$\text{Index Ratio}_{Date} = \text{Ref } CPI_{Date}/\text{Ref } CPI_{IssueDate}$

Example:

We issued a 10-year inflation-protected note on January 15, 1999. The note was issued at a discount to yield of 3.898% (real). The note bears a 3⅞% real coupon, payable on July 15 and January 15 of each year. The base CPI index applicable to this note is 164. (We normally derive this number using the interpolative process described in Appendix B, section I, paragraph B.)

Definitions:

$C = 3.875$

$i = 0.03898$

$n = 19$ (There are 20 full semiannual periods but n is reduced by 1 because the issue date is a coupon frequency date.)

$r = 181$ (January 15, 1999 to July 15, 1999)

$s = 181$ (January 15, 1999 to July 15, 1999)

$\text{Ref } CPI_{Date} = 164$

$\text{Ref } CPI_{IssueDate} = 164$

Resolution:

$$\text{Index Ratio}_{Date} = \text{Ref CPI}_{Date}/\text{Ref CPI}_{IssueDate} = 164/164 = 1$$

$$A = [(181 - 181)/181] \times 3.875/2 = 0$$

$$A_{adj} = 0 \times 1 = 0$$

$$v^n = 1/(1 + i/2)^n = 1/(1 + .03898/2)^{19} = 0.69298457$$

$$a_{n\rceil} = (1-v^n)/(i/2) = (1-0.69298457)/(.03898/2) = 15.75245921$$

Formula:

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s-r)/s](C/2)$$

$$P = \frac{(3.875/2) + (3.875/2)(15.75245921) + 100(0.69298457)}{1 + (181/181)(0.03898/2)} - [(181-181)/181](3.875/2)$$

$$P = \frac{1.9375 + 30.52038972 + 69.298457}{1.01949000} - 0$$

$$P = \frac{101.75634672}{1.01949000}$$

$P = 99.811030$
$P = 99.811$
$P_{adj} = P \times \text{Index Ratio}_{Date}$
$P_{adj} = 99.811 \times 1 = 99.811$
$SA = P_{adj} + A_{adj}$
$SA = 99.811 + 0 = 99.811$

Note: For the real price (P), we have rounded to three places. These amounts are based on 100 par value.

B. (1) *For inflation-protected securities reopened during a regular interest period where the purchase price includes predetermined accrued interest.*

(2) *For new inflation-protected securities accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.*

Bidding: The dollar amount of each bid is in terms of the par amount. For example, if the Ref CPI applicable to the issue date of the note is 120, and the reference CPI applicable to the reopening issue date is 132, a bid of $10,000 will in effect be a bid of $10,000 × (132/120), or $11,000.

Formulas:

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s-r)/s](C/2)$$

$P_{adj} = P \times \text{Index Ratio}_{Date}$
$A = [(s-r)/s] \times (C/2)$
$A_{adj} = A \times \text{Index Ratio}_{Date}$
$SA = P_{adj} + A_{adj}$
$\text{Index Ratio}_{Date} = \text{Ref CPI}_{Date}/\text{Ref CPI}_{IssueDate}$

Example:

We issued a 3⅝% 10-year inflation-protected note on January 15, 1998, with interest payments on July 15 and January 15. For a reopening on October 15, 1998, with inflation compensation accruing from January 15, 1998 to October 15, 1998, and accrued interest accruing from July 15, 1998 to October 15, 1998 (92 days), solve for the price per 100 (P) at a real yield, as determined in the reopening auction, of 3.65%. The base index applicable to the issue date of this note is 161.55484 and the reference CPI applicable to October 15, 1998, is 163.29032.

Definitions:

$C = 3.625$
$i = 0.0365$
$n = 18$
$r = 92$ (October 15, 1998 to January 15, 1999)
$s = 184$ (July 15, 1998 to January 15, 1999)
$\text{Ref CPI}_{Date} = 163.29032$

$\text{Ref CPI}_{\text{IssueDate}} = 161.55484$

Resolution:

$$\text{Index Ratio}_{\text{Date}} = \text{Ref CPI}_{\text{Date}}/\text{Ref CPI}_{\text{IssueDate}} = 163.29032/161.55484 = 1.01074$$

$$v^n = 1/(1 + i/2)^n = 1/(1 + .0365/2)^{18} = 0.72213844$$

$$a_{n\rceil} = (1-v^n)/(i/2) = (1-0.72213844)/(.0365/2) = 15.22529106$$

Formula:

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s-r)/s](C/2)$$

$$P = \frac{(3.625/2) + (3.625/2)(15.22529106) + 100(0.72213844)}{1 + (92/184)(0.0365/2)} - [(184-92)/184](3.625/2)$$

$$P = \frac{1.8125 + 27.59584005 + 72.213844}{1.009125} - (92/184)(1.8125)$$

$$P = \frac{101.62218405}{1.009125} - 0.906250$$

$P = 100.703267 - 0.906250$
$P = 99.797017$
$P = 99.797$
$P_{adj} = P \times \text{Index Ratio}_{\text{Date}}$
$P_{adj} = 99.797 \times 1.01074 = 100.8688$
$P_{adj} = 100.869$
$A = [(184 - 92)/184] \times 3.625/2 = 0.906250$
$A_{adj} = A \times \text{Index Ratio}_{\text{Date}}$
$A_{adj} = 0.906250 \times 1.01074 = 0.915983$
$SA = P_{adj} + A_{adj} = 100.869 + 0.915983$
$SA = 101.784983$

Note: For the real price (P), and the inflation-adjusted price (P_{adj}), we have rounded to three places. For accrued interest (A) and the adjusted accrued interest (A_{adj}), we have rounded to six places. These amounts are based on 100 par value.

IV. Computation of Adjusted Values and Payment Amounts for Stripped Inflation-Protected Interest Components

Note: Valuing an interest component stripped from an inflation-protected security at its adjusted value enables this interest component to be interchangeable (fungible) with other interest components that have the same maturity date, regardless of the underlying inflation-protected security from which the interest components were stripped. The adjusted value provides for fungibility of these various interest components when buying, selling, or transferring them or when reconstituting an inflation-protected security.

Definitions:

c = C/100 = the regular annual interest rate, payable semiannually, *e.g.*, .03625 (the decimal equivalent of a 3⅜% interest rate)
Par = par amount of the security to be stripped
$\text{Ref CPI}_{\text{IssueDate}}$ = reference CPI for the original issue date (or dated date, when the dated date is different from the original issue date) of the underlying (unstripped) security
$\text{Ref CPI}_{\text{Date}}$ = reference CPI for the maturity date of the interest component
AV = adjusted value of the interest component
PA = payment amount at maturity by Treasury

Formulas:

$$AV = \text{Par}(C/2)(100/\text{Ref CPI}_{\text{IssueDate}}) \text{ (rounded to 2 decimals with no intermediate rounding)}$$

$$PA = AV(\text{Ref CPI}_{\text{Date}}/100) \text{ (rounded to 2 decimals with no intermediate rounding)}$$

Example:

A 10-year inflation-protected note paying 3⅞% interest was issued on January 15, 1999, with the second interest payment on January 15, 2000. The Ref CPI of January 15, 1999 ($\text{Ref CPI}_{\text{IssueDate}}$) was 164.00000, and the Ref CPI on January 15, 2000 ($\text{Ref CPI}_{\text{Date}}$) was 168.24516. Calculate the adjusted value and the payment amount at maturity of the interest component.

Definitions:

c = .03875
Par = $1,000,000
$\text{Ref CPI}_{\text{IssueDate}}$ = 164.00000
$\text{Ref CPI}_{\text{Date}}$ = 168.24516

Resolution:

For a par amount of $1 million, the adjusted value of each stripped interest component was $1,000,000(.03875/2)(100/164.00000), or $11,814.02 (no intermediate rounding).

For an interest component that matured on January 15, 2000, the payment amount was $11,814.02 (168.24516/100), or $19,876.52 (no intermediate rounding).

V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills

A. Conversion of the discount rate to a purchase price for Treasury bills of all maturities:

Formula:

$$P = 100\,(1 - dr / 360)$$

Where:

d = discount rate, in decimals
r = number of days remaining to maturity
P = price per 100 (dollars)

Example:

For a bill issued November 24, 1989, due February 22, 1990, at a discount rate of 7.61%, solve for price per 100 (P).

Definitions:

d = .0761
r = 90 (November 24, 1989 to February 22, 1990)

Resolution:

$$P = 100\,(1 - dr / 360)$$

$$(1)\ P = 100\,[1 - (.0761)(90) / 360]$$

$$(2)\ P = 100\,(1 - .019025)$$

$$(3)\ P = 100\,(.980975)$$

$$(4)\ P = 98.0975$$

$$(5)\ P = 98.098$$

Note: Purchase prices per $100 are rounded to three decimal places, using normal rounding procedures.

B. *Computation of purchase prices and discount amounts based on price per $100, for Treasury bills of all maturities:*

1. To determine the purchase price of any bill, divide the par amount by 100 and multiply the resulting quotient by the price per $100.

Example:

To compute the purchase price of a $10,000 13-week bill sold at a price of $98.098 per $100, divide the par amount ($10,000) by 100 to obtain the multiple (100). That multiple times 98.098 results in a purchase price of $9,809.80.

2. To determine the discount amount for any bill, subtract the purchase price from the par amount of the bill.

Example:

For a $10,000 bill with a purchase price of $9,809.80, the discount amount would be $190.20, or $10,000—$9,809.80.

C. *Conversion of prices to discount rates for Treasury bills of all maturities:*

Formula:

$$d = \left[\frac{100-P}{100} \times \frac{360}{r}\right]$$

Where:

P = price per 100 (dollars)
d = discount rate
r = number of days remaining to maturity

Example:

For a 26-week bill issued December 30, 1982, due June 30, 1983, with a price of $95.930, solve for the discount rate (d).

Definitions:

P = 95.930
r = 182 (December 30, 1982, to June 30, 1983)

Resolution:

$$d = \left[\frac{100-P}{100} \times \frac{360}{r}\right]$$

$$(1)\ d = \left[\frac{100-95.930}{100} \times \frac{360}{182}\right]$$

$$(2)\ d = [.0407 \times 1.978022]$$

$$(3)\ d = .080506$$

$$(4)\ d = 8.051\%$$

Note: Prior to April 18, 1983, we sold all bills in price-basis auctions, in which discount rates calculated from prices were rounded to three places, using normal rounding procedures. Since that time, we have sold bills only on a discount rate basis. For regular Treasury bills—13-, 26-, and 52-week bills—discount rates bid were submitted with two decimals in increments of .01 percent, *e.g.*, 5.32, until 1997, when we instituted a change to three-decimal bidding in increments of .005 percent, *e.g.*, 5.320 or 5.325.

D. *Calculation of investment rate (coupon-equivalent yield) for Treasury bills:*

1. *For bills of not more than one half-year to maturity:*

Formula:

$$i = \left[\frac{100-P}{P} \times \frac{y}{r}\right]$$

Where:

i = investment rate, in decimals
P = price per 100 (dollars)
r = number of days remaining to maturity
y = number of days in year following the issue date; normally 365 but, if the year following the issue date includes February 29, then y is 366.

Example:

For a cash management bill issued June 1, 1990, due June 21, 1990, with a price of $99.559 (computed from a discount rate of 7.93%), solve for the investment rate (i).

Definitions:

P = 99.559
r = 20 (June 1, 1990, to June 21, 1990)
y = 365

Resolution:

$$i = \left[\frac{100-P}{P} \times \frac{y}{r}\right]$$

$$(1)\ i = \left[\frac{100-99.559}{99.559} \times \frac{365}{20}\right]$$

$$(2)\ i = [.004430 \times 18.25]$$

$$(3)\ i = .080848$$

$$(4)\ i = 8.08\%$$

2. For bills of more than one half-year to maturity:

Formula:

$$P\,[1 + (r - y/2)(i/y)]\,(1 + i/2) = 100$$

This formula must be solved by using the quadratic equation, which is:

$$ax^2 + bx + c = 0$$

Therefore, rewriting the bill formula in the quadratic equation form gives:

$$\left[\frac{r}{2y} - .25\right] i^2 + \left(\frac{r}{y}\right) i + \left(\frac{P-100}{P}\right) = 0.$$

and solving for "i" produces:

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

Where:
i = investment rate in decimals
b = r/y
a = (r/2y) − .25
c = (P − 100)/P
P = price per 100 (dollars)
r = number of days remaining to maturity
y = number of days in year following the issue date; normally 365, but if the year following the issue date includes February 29, then y is 366.

Example:

For a 52-week bill issued June 7, 1990, due June 6, 1991, with a price of $92.265 (computed from a discount rate of 7.65%), solve for the investment rate (i).

Definitions:
r = 364 (June 7, 1990, to June 6, 1991)
y = 365
P = 92.265
b = 364 / 365, or .997260
a = (364 / 730) − .25, or .24863
c = (92.265 − 100) / 92.265, or −.083835

Resolution:

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

$$(1)\ i = \frac{-.997260 + \sqrt{(.997260)^2 - 4[(.24863)(-.083835)]}}{2(.248630)}$$

$$(2)\ i = \frac{-.997260 + \sqrt{.994528 + .083376}}{.497260}$$

$$(3)\ i = (-.997260 + 1.038222)/.497260$$

$$(4)\ i = .040962/.497260$$

$$(5)\ i = .082375 \text{ or}$$

$$(6)\ i = 8.24\%$$

Appendix C to Part 356—Investment Considerations

I. Inflation-Protected Securities

A. Principal and Interest Variability

An investment in securities with principal or interest determined by reference to an inflation index involves factors not associated with an investment in a fixed-principal security. Such factors include the possibility that:

- the inflation index may be subject to significant changes,
- changes in the index may or may not correlate to changes in interest rates generally or with changes in other indices,
- the resulting interest may be greater or less than that payable on other securities of similar maturities, and
- in the event of sustained deflation, the amount of the semiannual interest payments, the inflation-adjusted principal of the security, and the value of stripped components will decrease. However, if at maturity the inflation-adjusted principal is less than a security's par amount, we will pay an additional amount so that the additional amount plus the inflation-adjusted principal equals the par amount. Regardless of whether or not we pay such an additional amount, we

will always base interest payments on the inflation-adjusted principal as of the interest payment date. If a security has been stripped, we will pay any such additional amount at maturity to holders of principal components only. (*See* § 356.30)

B. Trading in the Secondary Market

The Treasury securities market is the largest and most liquid securities market in the world. The market for Treasury inflation-protected securities, however, may not be as active or liquid as the market for Treasury fixed-principal securities. In addition, Treasury inflation-protected securities may not be as widely traded or as well understood as Treasury fixed-principal securities. Lesser liquidity and fewer market participants may result in larger spreads between bid and asked prices for inflation-protected securities than the bid-asked spreads for fixed-principal securities with the same time to maturity. Larger bid-asked spreads normally result in higher transaction costs and/or lower overall returns. The liquidity of an inflation-protected security may be enhanced over time as we issue additional amounts or more entities participate in the market.

C. Tax Considerations

Treasury inflation-protected securities and the stripped interest and principal components of these securities are subject to specific tax rules provided by Treasury regulations issued under sections 1275(d) and 1286 of the Internal Revenue Code of 1986, as amended.

D. Indexing Issues

While the Consumer Price Index ("CPI") measures changes in prices for goods and services, movements in the CPI that have occurred in the past do not necessarily indicate changes that may occur in the future.

The calculation of the index ratio incorporates an approximate three-month lag, which may have an impact on the trading price of the securities, particularly during periods of significant, rapid changes in the index.

The CPI is reported by the Bureau of Labor Statistics, a bureau within the Department of Labor. The Bureau of Labor Statistics operates independently of Treasury and, therefore, we have no control over the determination, calculation, or publication of the index. For a discussion of how we will apply the CPI in various situations, *see* Appendix B, Section I, Paragraph B. In addition, for a discussion of actions that we would take in the event the CPI is: discontinued; in the judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security; or, in the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security, *see* Appendix B, Section I, Paragraph B.4.

Appendix D to Part 356—Description of the Consumer Price Index

The Consumer Price Index ("CPI") for purposes of inflation-protected securities is the non-seasonally adjusted *U.S. City Average All Items Consumer Price Index for All Urban Consumers.* It is published monthly by the Bureau of Labor Statistics (BLS), a bureau within the Department of Labor. The CPI is a measure of the average change in consumer prices over time in a fixed market basket of goods and services. This market basket includes food, clothing, shelter, fuels, transportation, charges for doctors' and dentists' services, and drugs.

In calculating the index, price changes for the various items are averaged together with weights that represent their importance in the spending of urban households in the United States. The BLS periodically updates the contents of the market basket of goods and services, and the weights assigned to the various items, to take into account changes in consumer expenditure patterns.

The CPI is expressed in relative terms in relation to a time base reference period for which the level is set at 100. For example, if the CPI for the 1982–84 reference period is 100.0, an increase of 16.5 percent from that period would be shown as 116.5. The CPI for a particular month is released and published during the following month. From time to time, the CPI is rebased to a more recent base reference period. We provide the base reference period for a particular inflation-protected security on the auction announcement for that security.

Further details about the CPI may be obtained by contacting the BLS.

Dated: December 9, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–31173 Filed 12–22–03; 8:45 am]

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December 23, 2003

Part III

Federal Communications Commission

47 CFR Parts 2, 25, and 87

World Radiocommunication Conferences Concerning Frequency Bands Above 28 MHz; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, and 87

[ET Docket No. 02–305; FCC 03–269]

World Radiocommunication Conferences Concerning Frequency Bands Above 28 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends our rules to implement domestically various allocation decisions from several World Radiocommunication Conferences ("WRCs") concerning the frequency bands between 28 MHz and 36 GHz, and to otherwise update our rules in this frequency range. The following actions are the most significant to non-Federal government operations: Implementation of generic mobile-satellite service ("MSS") allocations in the bands 1525–1559 MHz and 1626.5–1660.5 MHz ("L-band"); allocation of the band 1164–1215 MHz to the radionavigation-satellite service ("RNSS"); deletion of unused and limited fixed-satellite service ("FSS") and broadcasting-satellite service ("BSS") allocations from the band 2500–2690 MHz; and upgrade of the Earth exploration-satellite service ("EESS") allocation in the band 25.5–27 GHz from secondary to primary. In addition, at the request of the National Telecommunications and Information Administration ("NTIA"), we implement various allocation changes for the space science services and the inter-satellite service ("ISS"), most of which involve spectrum primarily used by the Federal government. These actions conform our rules to previous WRC decisions and are expected to provide significant benefits to the American public.

DATES: Effective January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452, TTY (202) 418–2989, e-mail *Rodney.Small@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket No. 02–305, FCC 03–269, adopted October 31, 2003, and released November 4, 2003. The full text of this document is available on the Commission's Internet site at *www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com*.

Summary of the Report and Order

1. In the *R&O*, we provided for generic MSS allocations across all of the frequencies in the bands 1525–1559 MHz and 1626.5–1660.5 MHz. Specifically, we expanded the primary allocation in the bands 1545–1549.5 MHz, 1558.5–1559 MHz, 1646.5–1651 MHz, and 1660–1660.5 MHz from the aeronautical mobile-satellite (route) service ("AMS(R)S") to all services within the MSS while preserving the status of AMS(R)S. The effect of this action is that the bands 1545–1559 MHz and 1646.5–1660.5 MHz will be made available to all types of MSS communications on a primary basis, rather than segmented for specialized use. This action permits more efficient use of this radio spectrum and facilitates the expansion of MSS use globally. In addition, we deleted the existing primary maritime mobile-satellite service ("MMSS") and MSS allocations in the bands 1530–1544 MHz and 1626.5–1645.5 MHz, as they would now be superfluous. We also deleted the secondary allocation for aeronautical telemetry from the band 1525–1535 MHz to remove potentially conflicting allocations.

2. We allocate the band 1164–1215 MHz to the RNSS for space-to-Earth ("downlink") and space-to-space transmissions in order to accommodate a new civil global positioning system ("GPS") signal. This action permits the addition of GPS signal "L5," which supports the safety-of-life requirements demanded by civil aviation. We also allocated the bands 1215–1240 MHz and 1559–1610 MHz, which are currently limited to RNSS downlinks, for RNSS space-to-space transmissions as well. This action allows use of spaceborne RNSS receivers for scientific and commercial applications.

3. We deleted the flight test and radiolocation allocations in the band 2320–2345 MHz because of the potential for conflict between these services and the Satellite Digital Audio Radio Service ("Satellite DARS"), which has been brought into operation in this band. We also deleted the unused FSS and BSS allocations from the band 2500–2690 MHz in order to remove allocations that are not compatible with two-way fixed and mobile operations that are operating and anticipated in the band.

4. We further implement domestically various allocation decisions from several WRCs concerning the space science services and the ISS. In this regard, we take the following actions:

- Revise secondary allocations for the Federal government EESS and the Federal government space research service ("SRS") from secondary to primary status in 950 megahertz of spectrum in eight frequency bands and specify that these allocations are to be used for active sensor operations ("EESS (active)" and "SRS (active)"): 5250–5255 MHz, 5255–5350 MHz, 8550–8650 MHz, 9500–9800 MHz, 13.4–13.75 GHz, and 17.2–17.3 GHz.
- Modify the non-Federal government/Federal government shared allocations at 13.25–13.4 GHz and 35.6–36 GHz to provide flexibility for the Federal government to use 550 megahertz of additional spectrum for EESS (active) and SRS (active) on a primary basis, and change the primary footnote allocation for active spaceborne sensors in the band 35.5–35.6 GHz to a direct Table listing.
- Modify the non-Federal government/Federal government shared allocation at 5350–5460 MHz to provide flexibility for the Federal government to use 110 megahertz of additional spectrum for the EESS (active) on a primary basis.
- Modify the non-Federal government/Federal government shared allocation at 401–403 MHz to provide flexibility for the Federal government to use EESS uplinks and meteorological-satellite service ("METSAT") uplinks on a primary basis.
- Modify the non-Federal government/Federal government shared allocation at 410–420 MHz to provide flexibility for the Federal government to use the SRS on a primary basis for space-to-space transmissions.
- Modify the non-Federal government/Federal government shared allocation at 7750–7850 MHz to provide flexibility for the Federal government to use METSAT downlinks on a primary basis, limited to non-geostationary satellite systems.
- Modify the non-Federal government/Federal government shared allocation at 8400–8450 MHz to provide flexibility for the non-Federal government to use SRS downlinks from deep space on a secondary basis.
- Modify the non-Federal government/Federal government shared allocation at 25.25–27.5 GHz to provide flexibility for the Federal government to use the ISS on a primary basis.
- Revise the EESS allocation from secondary to primary status in the band 25.5–27 GHz and change the directional

indicator from space-to-space to space-to-Earth.

5. In addition, we: (1) Delete the primary ISS shared allocation from the band 32–32.3 GHz; (2) delete the secondary AMS(R)S allocation from the band 136–137 MHz; (3) more than double the size of the geographic area in New Mexico and Texas where amateur stations in the band 420–450 MHz will be limited in power and where spread spectrum radiolocation systems in the sub-band 420–435 MHz should not expect to be accommodated; (4) modify our rules to reflect NTIA's recent action, which specified that Federal government wind profiler radars ("WPRs") will operate in the sub-band 448–450 MHz; (5) permit U.S. flagged ships to use more spectrum-efficient equipment for on-board mobile radiotelephony communications in areas outside the territorial waters of the United States; (6) delete unused allocations for the International Fixed Public Radiocommunication Services ("IFPRS") from the bands 2.1–2.2 GHz and 10.7–11.7 GHz; and (7) allocate the band 14–14.5 GHz to the MSS (Earth-to-space), which includes aeronautical mobile-satellite service ("AMSS"), on a secondary basis. We also make numerous ministerial amendments to part 2 of our rules.

Discussion

6. In response to various petitions for rulemaking, the Commission has addressed in a number of proceedings many allocation changes that resulted from the 1992 World Administrative Radio Conference ("WARC–92") and the 1995 and 1997 World Radiocommunication Conferences ("WRC–95" and "WRC–97"). In the *Notice of Proposed Rule Making* ("NPRM"), 67 FR 75968, December 10, 2002, in this proceeding, the Commission turned to additional allocation changes from these conferences that have not previously been considered, including several changes sought mainly at the request of NTIA. The *NPRM* also addressed the RNSS allocation changes from the 2000 World Radiocommunication Conference ("WRC–2000"), a Petition for Rule Making filed by the Lockheed Martin Corporation ("Lockheed Martin") requesting that the WRC–2000 RNSS allocations in the bands 1164–1215 MHz and 1559–1610 MHz be implemented domestically and that these frequency bands be added to part 25 of the Commission's Rules, and some non-WRC allocation issues that concern the frequency bands between 28 MHz and 36 GHz. These issues included downgrading the primary flight test and radiolocation allocations in the band 2320–2345 MHz to secondary status, deleting the limited BSS and FSS allocations from the band 2500–2690 MHz, deleting unused IFPRS allocations from the bands 2.1–2.2 GHz and 10.7–11.7 GHz, and making various ministerial amendments to clean up and update the rules.

A. Generic MSS at L-Band

7. *Proposals.* Domestically, the Commission has previously implemented generic MSS proposals in portions of the L-band. However, routine, non-safety related MSS public correspondence is currently precluded in the uppermost one megahertz of upper L-band spectrum (1558.5–1559 MHz and 1660–1660.5 MHz) and may be provided in nine megahertz of additional upper L-band spectrum only on a secondary basis (1545–1549.5 MHz and 1646.5–1651 MHz). Accordingly, the Commission proposed in the *NPRM* to expand the permitted primary services from AMS(R)S to all MSS in the bands 1545–1549.5 MHz, 1558.5–1559 MHz, 1646.5–1651 MHz, and 1660–1660.5 MHz.

8. In addition, the Commission proposed to take the following non-substantive, "clean-up" actions: (1) Delete the superfluous MMSS allocations from bands 1530–1544 MHz and 1626.5–1645.5 MHz, (2) delete the superfluous secondary MSS allocations from the bands 1545–1549.5 MHz and 1646.5–1651 MHz, and (3) delete the superfluous AMS(R)S allocations from the bands 1549.5–1558.5 MHz and 1651–1660 MHz. The effect of these proposals is that the band 1525–1559 MHz would be allocated for MSS downlinks on a primary basis and the band 1626.5–1660.5 MHz would be allocated for MSS uplinks on a primary basis.

9. The Commission proposed to maintain footnotes US308 and US315 concerning the priority to be afforded distress and safety communications, stating that it believed that these generic MSS allocations would provide MSV and others with maximum flexibility, without hindering the use of this spectrum for distress and safety communications. The Commission requested comment on whether footnote US308 should be modified or replaced by international footnotes 5.357A and 5.362A. The Commission also proposed to update part 25 of the rules by stating that the bands 1525–1559 MHz and 1626.5–1660.5 MHz are available for use by L-band MSS systems and that use of the bands 1544–1545 MHz and 1645.5–1646.5 MHz is limited to distress and safety communications.

10. The Commission also requested comment on whether the secondary mobile allocation, which is limited to aeronautical telemetry in the band 1525–1535 MHz, should be deleted in the United States Table of Frequency Allocations ("U.S. Table") and on whether co-frequency transmissions from aircraft can cause harmful interference to the MSS. Consistent with this proposal, the Commission also proposed to revise footnote US78 to remove the frequency 1525.5 MHz, which can be used for both aircraft and spacecraft telemetry. The Commission further requested comment on whether the aeronautical telemetry operations in the band 1525–1535 MHz can be relocated to either the band 1435–1525 MHz or to the band 2310–2385 MHz.

11. *Decision.* We adopted the generic MSS allocation proposal for the bands 1525–1559 MHz/1626.5–1660.5 MHz set forth in the *NPRM*, deleting the secondary aeronautical telemetry allocation from the band 1525–1535 MHz and revising footnote US78 to remove the frequency 1525.5 MHz, and retaining footnotes US308 and US315. Commenters expressed strong support for a generic MSS allocation and deletion of the secondary aeronautical telemetry allocation, and we find that these changes will enhance flexibility and efficiency in the bands 1525–1559 MHz and 1626.5–1660.5 MHz. While there is a difference of opinion regarding the desirability of retaining footnotes US308 and US315, we concur with MSV that the advantages of retaining them outweigh the disadvantages. As noted by MSV, footnotes US308 and US315 are long-standing and replacement of them by international footnotes 5.357A and 5.362A, which have different language, would introduce confusion as to whether policy changes were being made. Further, § 25.136(d) and (e) of the Commission's rules set forth specific requirements for MSS mobile and land earth stations that satisfy the priority and preemption requirements of footnote US315. Regarding footnote US309, we concur with MSV that this footnote allows terrestrial stations in the AMS(R)S to operate in more of the band than international footnotes 5.357A and 5.362A, in order to supplement satellite-to-aircraft links in that service. The broader spectrum range allowed by US309 is more consistent with the Commission's decision to expand AMS(R)S use within a generic MSS allocation. Thus, we decline to modify US309, which we did not propose to change in the *NPRM*. Accordingly, we

are retaining footnotes US308, US315, and US309.

B. RNSS Allocations

12. *Proposals.* As requested by NTIA, the Commission proposed in the *NPRM* to adopt new footnote US385, which would allocate the band 1164–1189 MHz for RNSS downlink and space-to-space transmissions on a primary basis. It also proposed to add definitions of Differential Radionavigation Satellite Service ("Differential RNSS") Station and Differential Global Positioning System ("DGPS") Station to part 2 of the Commission's Rules, as follows:

Differential Radionavigation Satellite Service (Differential RNSS) Station. A station used for the transmission of differential correction data and related information (such as ionospheric data and RNSS satellite integrity information) as an augmentation to an RNSS system for the purpose of improved navigation accuracy.

Differential Global Positioning System (DGPS) Station. A differential RNSS station for specific augmentation of GPS.

13. Additionally, the Commission requested comment on whether the band 1164–1189 MHz should be added to a new footnote US343 that was proposed in WT Docket No. 01–289. This footnote would provide that DGPS stations may be authorized on a primary basis in the bands 108–117.975 MHz and 1559–1610 MHz for the specific purpose of transmitting DGPS information intended for aircraft navigation. The Commission further sought comment on whether it should allocate domestically the international RNSS allocation at 1189–1215 MHz, and in particular on whether this allocation is needed to support U.S. requirements. In the *NPRM*, the Commission observed that studies continue in the international process to determine the aggregate impact of multiple RNSS systems on incumbent aeronautical radionavigation service ("ARNS") systems and that, given the safety-of-life aspects of these ARNS systems, the Commission did not anticipate adopting this additional allocation unless a need is demonstrated and studies are done that support such a move.

14. The *NPRM* also proposed to add a space-to-space directional indicator to the primary RNSS allocation in the bands 1215–1240 MHz and 1559–1610 MHz, which are currently limited to downlink transmissions, to recognize current and future use of spaceborne RNSS receivers for scientific and commercial applications. Finally, the *NPRM* declined to propose adding the RNSS L1 and L5 frequencies to § 25.202(a) of the Commission's Rules, as requested by the Lockheed Martin petition for rule making.

15. *Decision.* Since adoption of the NPRM in this docket, WRC–03 has taken certain decisions regarding RNSS that are relevant to issues raised in this proceeding. In particular, as noted by NTIA, WRC–03 has modified footnote 5.328A of the international Table of Allocations to clarify that all stations in the RNSS operating in the band 1164–1215 MHz shall operate in accordance with specified aggregate interference protection criteria for ARNS (−121.5 dB(W/m^2) in any 1 MHz band) and not claim protection from stations in the ARNS operating in the 960–1215 MHz band. Administrations operating RNSS stations in these bands are to cooperate to ensure that the protection criteria are satisfied. In the *NPRM* in this proceeding, we proposed to add a primary RNSS allocation in the band 1164–1189 MHz, and sought comment on whether we should extend the allocation to the band 1189–1215 MHz, noting in regard to the latter band that studies were underway in the international process to determine the aggregate impacts of multiple RNSS systems on incumbent ARNS systems. We stated that we would not anticipate adopting this additional allocation unless a need was demonstrated and studies completed. Although we did not propose pfd limits on RNSS systems, we did propose to adopt a new United States footnote that would require RNSS stations to not cause interference to, nor claim protection from, stations in the ARNS. Given the WRC–03 results and support on the record in this proceeding, we conclude that the RNSS allocation should extend from 1164–1215 MHz. This increased allocation will provide flexibility for potential future GPS implementation plans and facilitate cooperative efforts among administrations operating RNSS systems in these bands to protect ARNS systems. However, we concur with NTIA that a footnote—rather than a table—allocation for the new 1164–1215 MHz RNSS band is appropriate, and that this footnote should include language specifying that RNSS shall not cause harmful interference to ARNS. While Inmarsat Ventures plc ("Inmarsat") contends that this language could be construed as an additional requirement or superfluous to the WRC–03 aggregate interference protection criteria, we find it appropriate as an interim measure. We intend to address how best to reference the WRC–03 protection criteria for ARNS, whether by adopting international footnote 5.328A or modifying our part 25 satellite service rules, when we initiate a proceeding to address WRC–03 implementation.

16. With regard to Lockheed Martin's recommendations that we expand the current GPS L2 spectrum at 1215–1240 MHz to 1215–1300 MHz and permit non-Federal government RNSS use of the band 1215–1300 MHz, we observe that the *NPRM* did not propose either of those changes and thus we have declined to consider these changes at this time. With regard to Lockheed Martin's recommendation that we add the international RNSS allocations at 1164–1215 MHz and 1559–1610 MHz to the part 25 list of frequency bands available for satellite services, we see no advantage to be gained by taking that action now. As the Commission stated in the *NPRM*, such action would be more appropriate in connection with development of service and licensing rules for the RNSS frequency bands, and following development of international technical criteria for operations in these bands. We will explore all of these issues when we consider the WRC–03 protection criteria for ARNS in the WRC–03 implementation proceeding.

17. With regard to Inmarsat's recommendation that we not adopt the proposed definitions of Differential RNSS and DGPS stations, we disagree with Inmarsat that these definitions create ambiguity or confusion between them and any current definition in either our rules or in the ITU rules. The definitions are simply informational. As we observed in the *NPRM*, differential RNSS correction data and related information is transmitted in a data link and sometimes is not within the RNSS. These definitions clarify that this information augments the RNSS system and improves navigation accuracy. Accordingly, we are adding the proposed definitions of Differential RNSS and DGPS stations to part 2 of the rules.

18. Finally, with regard to Inmarsat's comments on whether the band 1164–1189 MHz should be added to proposed footnote US343, we note that this footnote was proposed in the *Notice of Proposed Rule Making* in WT Docket No. 01–289, which is still pending. We do not wish to prejudge whether proposed US343 will be adopted in that proceeding; hence, we will defer consideration of the possible addition of the band 1164–1189 MHz to proposed US343 to *the Report and Order* in WT Docket No. 01–289.

C. Satellite DARS and Adjacent Bands

19. *Proposals.* In the *NPRM*, the Commission proposed to revise footnote US328 to permit flight testing

operations to continue on a secondary basis in the band 2320–2345 MHz. The Commission also proposed to delete the radiolocation service from footnote US328 because there are no non-Federal government radiolocation operations in the Satellite DARS band and because the Federal government already has a secondary direct Table allocation for this service. It further proposed to delete the requirement that Satellite DARS licensees take cognizance of the launch vehicle frequency 2332.5 MHz because satellite DARS systems have been implemented. In addition, the Commission requested comment on whether all secondary operations should be deleted from this band in order to protect Satellite DARS operations. It proposed to amend § 87.303(d)(1) to state that frequencies in the band 2310–2360 MHz may be assigned on a secondary basis for telemetry and telecommand operations associated with the flight testing of manned or unmanned aircraft and missiles, or their major component, and proposed to delete the launch vehicle frequency 2332.5 MHz from § 87.303(d)(1). The Commission also proposed to add cross-references in the U.S. Table to part 25, Satellite Communications, in the band 2320–2345 MHz, and to part 87, Aviation Services, in the band 2310–2390 MHz. Finally, the *NPRM* proposed to delete footnote 5.396 from the band 2310–2360 MHz from the Federal Government Table because that footnote pertains to the broadcasting-satellite service, which is not regulated by NTIA; and to delete footnote US338 from the band 2310–2320 MHz because that footnote does not pertain to that band. These combined actions were designed to clarify use of the band 2310–2390 MHz and to permit the new satellite DARS service to operate in an interference-free environment in the band 2320–2345 MHz.

20. *Decision.* We are adopting the proposals pertaining to the band 2310–2390 MHz set forth in the *NPRM,* except that we are deleting the mobile service allocation from band 2320–2345 MHz in the U.S. Table and are deleting footnotes US276 and US328, which limit uses under the mobile allocation, from that band. The comments of the Aerospace and Flight Test Radio Coordinating Council and the Boeing Company ("Boeing") convince us that there is no need to maintain a secondary aeronautical telemetry allocation in the band 2320–2345 MHz because such an allocation would be unusable due to potential interference from new Satellite DARS operations. Because footnote US276 currently limits the use of the mobile service in the band 2320–2385 MHz to aeronautical telemetry, this United States footnote is retained but henceforth will apply only to the band 2360–2385 MHz. In contrast, footnote US328, which applies only to the band 2320–2345 MHz, is deleted in its entirety. In all other respects, we adopt the proposals for the band 2310–2390 MHz set forth in the *NPRM.* This action will eliminate possible interference to Satellite DARS operations, as well as remove confusion regarding use of the band 2310–2390 MHz.

D. ITFS/MDS Band

21. *Proposals.* In the *NPRM,* the Commission stated its belief that FSS and BSS operations in the band 2500–2690 MHz could affect the reliability of point-to-multipoint channels and low-power consumer response channels in that band and noted that service rules for advanced mobile operations may also be implemented in that band in the future. Therefore, the Commission proposed to delete the unused and limited FSS and BSS allocations from the band 2500–2690 MHz in order to remove regulatory uncertainty. Consistent with its proposal to delete these allocations, the Commission also proposed to delete footnotes NG101 and NG102, which limit the use of the allocations. In addition, it proposed to delete footnote NG47 so as to make the band 2655–2690 MHz available for ITFS/MDS use in Alaska.

22. *Decision.* We are adopting the proposals pertaining to the band 2500–2690 MHz set forth in the *NPRM.* No party objects to the proposal to delete the FSS allocation in that band, and only AirTV Limited ("AirTV") objects to the proposal to delete the BSS allocation in that band. We make no finding on the potential benefits of AirTV's proposed based Direct-to-Aircraft entertainment and e-mail system in the band 2535–2670 MHz. However, we find that such a system would increase costs for terrestrial services due to the need to mitigate interference caused by AirTV's system. We concur with Boeing that the World Trade Organization agreement does not apply to AirTV's system and thus the U.S. may limit new satellite authorizations when faced with potential interference issues with incumbent operations. We concur with the Wireless Communications Association International, Inc. that AirTV has not met the burden of demonstrating that its system will not cause interference to terrestrial services that use the band 2520–2670 MHz. Accordingly, as proposed in the *NPRM,* we are deleting the FSS and BSS allocations from the band 2500–2690 MHz and are deleting footnotes NG47, NG101, and NG102.

E. Space Science Services

23. *Proposals.* With respect to active spaceborne sensors, in the *NPRM* the Commission proposed, in response to a request from NTIA, to allocate the bands 1215–1300 MHz, 3100–3300 MHz, 5255–5350 MHz, 8550–8650 MHz, 9500–9800 MHz, 13.25–13.4 GHz, 17.2–17.3 GHz, and 35.5–36 GHz to the EESS (active) and SRS (active); the bands 5250–5255 MHz and 13.4–13.75 GHz to the EESS (active) and SRS; and the band 5350–5460 MHz to the EESS (active). These allocation changes would implement WRC–97 allocation changes for the space science services. For the Federal Government Table, the Commission proposed that all of these active spaceborne sensor allocations have primary status, except in the band 3100–3300 MHz, where the sensors would continue to have secondary status. For the non-Federal Government Table, the Commission proposed that all of these allocations have secondary status. At the request of NTIA, the Commission also proposed to add five international footnotes to the U.S. Table to ensure that active spaceborne sensors not cause harmful interference to, nor constrain the use and development of, incumbent primary services in the bands 1215–1300 MHz, 5350–5460 MHz, and 13.25–13.75 GHz. Finally, and also at the request of NTIA, the Commission proposed to add two international footnotes to the U.S. Table to ensure that primary SRS allocations in the bands 5250–5255 MHz and 13.4–13.75 GHz are limited to active spaceborne sensors and that other space research users are on a secondary basis. Consistent with these proposals, the Commission proposed to delete from the U.S. Table international footnotes 5.333 and 5.551, which provide the current secondary active spaceborne sensor allocations, and also proposed to delete the secondary allocation for the SRS (Earth-to-space) in the band 13.25–13.4 GHz.

24. With respect to other space science services, in the band 401–403 MHz the Commission proposed in the *NPRM,* in response to a request from NTIA, to upgrade the secondary EESS and METSAT allocations to primary status for Federal government use and to limit non-Federal government use of these allocations to earth stations transmitting to Federal government space stations. The Commission requested comment on whether non-Federal government use of these allocations should be limited to earth

stations transmitting to Federal government space stations. The Commission proposed to allocate the band 410–420 MHz to the SRS (space-to-space) on a primary basis for Federal government use and to limit its use, through the application of footnote 5.268, to permit communications among astronauts and their base spacecraft while those astronauts are performing activities outside the base spacecraft. In the band 7750–7850 MHz, the Commission proposed an allocation for Federal government METSAT downlink use, limited to NGSO satellites, as requested by NTIA. In the band 8400–8450 MHz, the Commission proposed an allocation for Deep Space downlinks on a secondary basis, to permit non-Federal government entities, such as educational institutions, to perform scientific research in cooperation with the National Aeronautics and Space Administration (“NASA”). In the 32 GHz band range, the Commission proposed to delete the unused ISS allocation from the band 32–32.3 GHz in order to protect deep space reception at Goldstone, California, and proposed to move the text of an international footnote into a U.S. footnote to reflect the anticipated prohibition on use of the band 32–32.3 GHz by the ISS. Finally, in the 34 GHz frequency range, the Commission proposed to move the SRS (deep space) (Earth-to-space) allocation at 34.2–34.7 GHz from a U.S. footnote into the U.S. Table as a direct Table allocation, with Federal government use on a primary basis and with non-Federal government use on a secondary basis; and proposed to move the Goldstone site restriction in that same band from footnote US252 to US262.

25. *Decision.* We are adopting the proposals to provide a primary Federal government allocation and a secondary non-Federal government allocation for EESS (active) and SRS (active) in the band 1215–1260 MHz. With regard to Lockheed Martin's concerns that a primary allocation for EESS (active) and SRS (active) would pose a threat of harmful interference to domestic and global RNSS, we disagree. First, we are adding international footnote 5.332, which states that, for the band 1215–1260 MHz, active spaceborne sensors in the EESS and SRS shall not cause harmful interference to, claim protection from, or otherwise impose constraints on operation or development of the radiolocation service, the RNSS and other services allocated on a primary basis. Second, we observe that the international frequency table already contains primary allocations for RNSS, EESS (active) and SRS (active) in the band 1215–1300 MHz. Thus, if the U.S., in the future, decides to add a primary RNSS allocation to the 1260–1300 MHz band, such a decision would be consistent with the existing international allocation. Any appropriate sharing criteria can be worked out at that time. With regard to Medtronic Inc.’’s recommendation that non-Federal government use of the EESS and METSAT allocations in the band 401–403 MHz be limited to earth stations transmitting to Federal government space stations, no party supports permitting earth stations to transmit to non-Federal government space stations in this band and we did not propose such use. Accordingly, we decline to permit that use.

F. The Band 25.25–27.5 GHz

26. *Proposals.* In the *NPRM,* the Commission noted that there are currently no FCC licensees using the secondary EESS allocation in the band 25.25–27.5 GHz and proposed to: (1) generally reflect changes previously made to the Federal government Table in the *NTIA Manual,* including adopting a primary ISS allocation in that band and changing the directional indicator for the secondary EESS allocation in the sub-band 25.5–27 GHz from space-to-space to space-to-Earth; (2) correspondingly change the directional indicator for the secondary non-Federal government EESS allocation in that sub-band; (3) upgrade the Federal government EESS allocation in that sub-band to primary status; and (4) delete the remainder of the secondary EESS allocation (25.25–25.5 GHz and 27–27.5 GHz).

27. *Decision.* We are adopting the proposals pertaining to the band 25.25–27.5 GHz set forth in the *NPRM,* except that we are maintaining, rather than deleting, the secondary non-Federal government allocation for the EESS (space-to-space) in that band. We take the latter action to allow flexibility for both space-to-space and space-to-Earth operations by Federal and non-Federal government users in that band. With respect to DigitalGlobe Inc.’’s and Space Imaging, LLC's concerns about non-Federal government EESS systems, we find that these two companies have presented evidence that the non-Federal government, as well as the Federal government, EESS allocation in the sub-band 25.5–27 GHz band should be upgraded to primary status, but we conclude that we have insufficient basis to upgrade that allocation at this time. The *NPRM* did not propose to upgrade the non-Federal government allocation, and “based on the limited record in this proceeding “we are unable to conclusively determine whether Federal government fixed, mobile, ISS, and EESS users of the sub-band 25.5–27 GHz would be adversely affected by this upgrade. Accordingly, we decline to take that action at this time. However, we plan to explore in the WRC–03 implementation proceeding referenced in paragraph 24, of the R&O, whether that change could be made without adversely impacting Federal government users of that sub-band. In the interim, because non-Federal government EESS providers will use that sub-band on a secondary basis to Federal government users, it is incumbent that EESS applicants coordinate their proposed operations with NTIA in order to protect those users. Accordingly, we are adopting the changes for the band 25.25–27.5 GHz proposed in the *NPRM,* except for maintaining the secondary non-Federal government allocation for the EESS (space-to-space) in that band.

G. Other Allocation Issues

(1) Secondary AMS(R)S Allocation in the Band 136–137 MHz

28. *Proposals.* The *NPRM* proposed a footnote change in the U.S. Table in order to delete the unused AMS(R)S allocation from the band 136–137 MHz. In addition, the *NPRM* proposed a footnote change to remove the expired transition plan for METSAT use of the band 136–137 MHz.

29. *Decision.* No party commented on the proposals pertaining to the band 136–137 MHz set forth in the *NPRM.* We are adopting these proposals. This action will bring the U.S. Table in the band 136–137 MHz into conformance with the band's use by the AM(R)S, remove the potentially conflicting AMS(R)S secondary allocation, and remove the expired transition plan for METSAT use of the band.

(2) The Band 420–450 MHz

30. *Proposals.* In the *NPRM,* the Commission, in response to a request from NTIA on behalf of the U.S. Army, proposed to modify footnotes to the U.S. Table to more than double the combined size of the geographical area in Texas and New Mexico where the maximum transmitter power that amateur radio stations may use in the band 420–450 MHz would generally be limited to 50 watts PEP, rather than the usual limit of 1.5 kW PEP. In its request to the Commission, NTIA states that this geographical area must be extended to prevent interference from amateur radio operations to a New Mexico missile test range. NTIA cites Army concerns that amateur operations in this area present an interference threat to missiles

launched at Fort Wingate, NM, aimed at the airspace over White Sands Missile Range, NM, because there is now a Department of Defense test and evaluation center that uses areas west and south of Albuquerque, NM. Also in response to a request from NTIA, the Commission stated that it intended to place an informational footnote in its Rules pertaining to Federal government wind profiler radar ("WPR") radiolocation use of the sub-band 448–450 MHz. Finally, the *NPRM* requested comment on whether non-Federal government WPRs should also be allowed in that sub-band on either a primary or secondary basis and on the impact of WPRs on non-Federal government operations permitted in that sub-band.

31. *Decision.* We are adopting the proposals pertaining to the band 420–450 MHz set forth in the *NPRM.* With regard to the recommendation of ARRL, the National Association for Amateur Radio ("ARRL"), that the Commission establish an expedited method of processing amateur radio license requests in cases where amateurs are able to reach agreements with military area frequency coordinators, we note that our license processing procedures are not subject to rulemaking; however, we always seek to process applications as expeditiously as possible. With regard to the concern of Douglas Hanz—an amateur radio licensee—that amateur radio stations be permitted to use 110 watts PEP in that band with a restriction of 6dBi antenna gain, inclusive of transmission line loss, we observe that there already is a procedure by which amateur licensees can use powers greater than 50 watts; *i.e.*, by reaching agreement with a military area frequency coordinator. As indicated in NTIA's correspondence to us of August 2002, the Army finds that the area in Texas and New Mexico where amateur transmitter power in the band must be limited should be expanded to protect missile testing and evaluation at a test range in New Mexico. Accordingly, we are adopting our proposal to modify footnotes to the U.S. Table to expand the area in Texas and New Mexico where the maximum transmitter power that amateur radio stations may use in the band 420–450 MHz would generally be limited to 50 watts PEP. With regard to permitting non-Federal government WPR use of the sub-band 448–450 MHz, only ARRL commented, and it is strongly opposed. Because no one expresses an interest in such non-Federal use, we will not permit non-Federal government WPR use in the 448–450 MHz sub-band.

(3) On-Board Mobile Radiotelephony Communications

32. *Proposals.* In the *NPRM,* the Commission proposed to replace international footnote 669 with footnote 5.287 in the U.S. Table for the band 456–470 MHz. The effect of this proposal would be to permit U.S. licensees to use maritime mobile equipment that is more spectrum-efficient and that has access to ten instead of six channels for on-board communications in areas outside U.S. territorial waters.

33. *Decision.* No party commented on our proposal to replace international footnote 669 with footnote 5.287 in the U.S. Table for the band 456–470 MHz, thereby revising the frequency use provision for on-board mobile radiotelephony maritime communications. Accordingly we are adopting this proposal. This action will permit more efficient maritime mobile equipment to be employed outside U.S. territorial waters.

(4) IFPRS Use in the Bands 2.1–2.2 GHz and 10.7–11.7 GHz

34. *Proposals.* In the *NPRM,* the Commission, in order to remove regulations that are no longer needed, proposed to delete footnote NG23, which pertains to the band 2100–2200 MHz, and to revise footnote NG41 to remove the band 10.7–11.7 GHz because there are no longer any IFPRS licensees operating in either of these bands. The Commission also proposed to delete all cross-references to part 23, except for C-band, from column 6 of the Table of Frequency Allocations.

35. *Decision.* We are adopting the proposals pertaining to the IRPRS set forth in the *NPRM,* but are rejecting the recommendation of the PanAmSat Corporation ("PanAmSat") to prohibit new C-band IFPRS facilities. There is no opposition to the proposals relating to the IFPRS; however, PanAmSat recommends that we take additional action. While we concur with PanAmSat that new IFPRS facilities are unlikely to be required in C-band, we do not want to foreclose the opportunity for additional use of this service in remote island areas if it is required. Further, we have not given interested parties sufficient notice in this proceeding to prohibit such facilities. Additionally, there would be no significant administrative advantage of such a prohibition, as C-band IFPRS rules must be retained for existing facilities. Accordingly, we deny PanAmSat's request.

(5) Secondary MSS Use of the Band 14–14.5 GHz

36. *Proposals.* In the *NPRM,* the Commission observed that LMSS operates on the band 14–14.5 GHz in the United States on a secondary basis without causing harmful interference to ubiquitously deployed VSATs and that other nations have implemented MMSS uplinks in the band 14–14.5 GHz on a secondary basis. The Commission also observed that it agreed with the *U.S. WRC–97 Proposals* that using the same or similar terminals to offer MMSS services in the band 14–14.5 GHz should be compatible with other services in this band, especially since the LMSS allocation has been successfully used in the United States for some time. Accordingly, the Commission proposed in the *NPRM* to allocate the band 14–14.5 GHz to the MSS (Earth-to-space) except AMSS on a secondary basis for non-Federal government use.

37. *Decision.* We are allocating the band 14–14.5 GHz to the MSS, including AMSS (Earth-to-space), for non-Federal government use on a secondary basis. There is no opposition to this allocation. Consistent with the comments of Boeing regarding AMSS, we believe that such use of the band appears to be technically feasible and would be helpful in meeting the growing demand for two-way broadband data and communications capabilities for commercial aircraft passengers and crew. Further, WRC–03 added a worldwide secondary AMSS allocation in this band. We find that conforming the U.S. Table to this recent international allocation is desirable because it will facilitate an important new use of the 14–14.5 GHz band on a non-interference basis to other uses of the band. We further find that no party need be adversely impacted by this action. However, we note that the SRS has a secondary allocation in a portion of this band and NASA uses that allocation as a downlink for its Tracking and Data Relay Satellite System ("TDRSS"). Further, the National Science Foundation ("NSF") operates radio astronomy services ("RAS") in the band 14.47–14.50 GHz in accordance with footnote US203 and Radio Astronomy is allocated on a secondary basis internationally. Therefore, users of AMSS will need to deal with protection of radio astronomy. We also note that a number of administrations have specified specific protection requirements for radio astronomy. In December 2001, we issued Boeing a license to operate mobile earth stations aboard aircraft in the 14–14.5 GHz band

and imposed several conditions on that license, including the conditions that Boeing not constrain deployment of additional government stations operated by NASA in the SRS and that Boeing design and operate its system in accordance with its Technical Operational Coordination Agreement with NSF to facilitate the protection of RAS. Boeing must continue to operate in accordance with the conditions that we imposed on its license and thus must continue to protect the TDRSS and RAS operations in the 14–14.5 GHz band. Further, in accordance with a Memorandum of Understanding ("MOU") that we reached with NTIA in July 2002, we will protect those operations from interference by any future AMSS operations that we authorize in that band. Until we adopt final rules relating to allocation changes in the 14–14.5 GHz band or licensing of AMSS terminals in that band, we will place the following conditions on any additional system authorizations that we may issue in that band for a service similar to Boeing's:

(1) The system shall be designed and operated so as not to cause harmful interference to TDRSS or RAS operations in the United States; and

(2) The system shall not constrain future deployment of additional Federal Earth Stations in the SRS and RAS authorized pursuant to existing allocations.

Because RAS operations in the band 14.47–14.5 GHz operate on an unprotected basis domestically, we will maintain the protection of RAS as articulated in the conditions specified above. However, we note that the Commission may explore in a future rulemaking the protection levels or mechanism necessary to protect these services. The NTIA/FCC MOU states that "[t]he FCC will endeavor to reflect in its decisions conditions and constraints that explicitly protect NASA, NSF and other government operations (*i.e.*, ITU–R Recommendation RA. 769 for Radio Astronomy and ITU–R Recommendations S.A. 5.10, S.A. 1017, S.A. 1155, S.A. 1414, M. AMSS for TDRSS earth stations, and Boeing's Technical Operational Coordination Agreement with NSF, dated 13 December 2001, and the letter of guidance provided to Boeing by NASA, dated December 18, 2001."

38. Lastly, as noted in paragraph 55, of the R&O, government fixed and mobile services are allocated on a secondary basis in the band 14.4–14.5 GHz. Protection criteria for these government terrestrial operations may need to be developed in conjunction with AMSS service rules in the 14–14.5 GHz band.

39. Accordingly, we are allocating the 14–14.5 GHz band to all MSS uses on a secondary basis to the primary FSS in that band, as well as on a secondary basis to the primary radionavigation service in the 14–14.2 GHz sub-band. Finally, with regard to PanAmSat's concern about MMSS, we observe that such use of the band 14–14.5 GHz—like other MSS use of this band—will be on a secondary basis to FSS, and we find no need to further restrict how MMSS should operate in the band.

H. Ministerial Amendments

40. *Proposals*. In the *NPRM*, the Commission proposed to make a number of ministerial amendments to part 2 of the Commission's rules. First, to eliminate both confusion and outdated provisions, the Commission proposed to:

(1) Replace international footnotes 599A, 608A, 608B, and 647B in the "Little LEO" bands of the U.S. Table with footnotes 5.208, 5.219, 5.220, and 5.264, respectively, which are non-substantive changes;

(2) Merge footnote US322 into US320, that is, add the bands 149.9–150.05 MHz and 399.9–400.05 MHz to footnote US320, and delete superfluous footnotes US322 and 599B from the U.S. Table;

(3) Delete expired footnote US318 from the band 137–138 MHz and the part 25 cross reference from the band 136–137 MHz; and

(4) Delete expired text from section 25.202(a)(3), which concerns the allocation status of certain of the Little LEO bands.

41. Second, the Commission observed that, in WT Docket No. 01–289, it proposed to delete the Civil Air Patrol ("CAP") from part 87 of the rules because the Commission has no formal relationship with the CAP, which is authorized by the U.S. Air Force and NTIA. To be consistent with that proposal, in the *NPRM* the Commission proposed to delete footnote US10, which states that several frequencies in the band 138–144 MHz are available for use by the CAP.

42. Third, the Commission proposed to delete international footnote 510 from the band 144–146 MHz in the non-Federal Government Table. This footnote, through its reference of Resolution 640, invited administrations to provide for the needs of international disaster communications and for the needs of emergency communications using certain amateur bands.

43. Fourth, the Commission proposed to revise footnote US48 to remove provisions regarding the band 5350–5460 MHz that are already provided elsewhere in the Table. That is, there is already a primary direct Table allocation for Federal government radiolocation and a secondary direct Table allocation for non-Federal government radiolocation in the band 5350–5460 MHz for this purpose.

44. Fifth, the Commission proposed to revise footnote US110 to remove provisions regarding certain bands that are already shown in the Table. That is, there are primary direct Table allocations for Federal government radiolocation and secondary direct Table allocations for non-Federal government radiolocation in all of the bands listed in footnote US110, except for the band 9200–9300 MHz, which is allocated to both the Federal and non-Federal government radiolocation service on a secondary basis.

45. Sixth, the Commission proposed to revise footnote US310 to specify the pfd limits for all angles of arrival. Currently US310 specifies only the maximum and minimum pfd limits and references CCIR Recommendation 510–1, which has been renumbered as Recommendation ITU–R SA.510–2, for the specific requirements.

46. Seventh, the Commission proposed to add a reference to footnote NG167 in the band 17.3–17.7 GHz to explicitly tie the allocation for the broadcasting-satellite service in the band 17.3–17.7 GHz to its feeder link allocation in the band 24.75–25.25 GHz.

47. Eighth, the Commission proposed to make the following changes to the rule part cross-references in column 6 of the Table of Frequency Allocations:

(1) Delete part 87, the Aviation Services, from the band 29.8–30 MHz and add part 87 to the bands 72–73 MHz, 74.6–74.8 MHz, and 156.2475–157.0375 MHz;

(2) Add part 90, the Private Land Mobile Radio Services, to the band 410–420 MHz;

(3) Add part 80, the Maritime Services, to the band 1525–1535 MHz; and

(4) Add part 25, Satellite Communications, to the band 1660–1660.5 MHz.

48. Ninth, the Commission proposed to make the following changes to eliminate outdated requirements or correct typographical errors:

(1) Clarify in footnote US217 that spread spectrum radiolocation systems may be authorized for Federal and non-Federal government use in the sub-band 420–435 MHz within Alaska and the contiguous 48 states and correct several typographical errors;

(2) Correct a typographical error in footnote US316 by changing the

NEXRAD expansion band from 2900–3100 MHz to 2900–3000 MHz;

(3) Delete the references to footnote NG30 in the band 806–894 MHz and to footnote NG43 in the band 806–849 MHz from the non-Federal Government Table because these footnotes have previously been deleted, but were not fully removed from the non-Federal Government Table;

(4) Delete footnote NG63 because the Commission's licensing files show that there are no television broadcast translator stations still authorized to operate in the band 806–890 MHz (old TV channels 70–83); and

(5) Delete footnote US54 because Federal government radiolocation systems that could cause harmful interference to ARNS have had at least since 1961 to move to other frequency bands.

49. Tenth, the Commission proposed to replace the reference to international footnote 5.149 with footnote US342 in the U.S. Table for several frequency bands and proposed to add two additional bands to the text of that footnote. In addition, it proposed to delete footnote 5.149 from the band 1660.5–1668.4 MHz, and proposed to revise US342 by deleting the indication showing which frequency bands are used for spectral line observations. The Commission also requested comment on whether US342 could be revised to state that licensees are "urged," (similar to footnote 5.149) instead of "required" to take all practicable steps to protect the radio astronomy service ("RAS") from harmful interference.

50. Finally, the Commission observed that the band 73–74.6 MHz is allocated exclusively to the RAS, which is a passive service, and that passive bands are listed in footnote US246. Accordingly, it proposed to add the band 73–74.6 MHz to US246.

51. *Decision*. No party commented on any of the proposals pertaining to ministerial amendments to part 2 of the Commission's rules set forth in the *NPRM*. We are adopting these proposals, to enhance the accuracy of the U.S. Table. In addition, on our own motion, we are making nine additional ministerial changes. We are merging the bands 698–746 MHz and 746–764 MHz as the band 698–764 MHz because the allocations in these bands are exactly the same and thus, this action simplifies our Table. We are deleting the band 34.2–34.7 GHz from footnote US252 because the SRS allocation for this band has been made a direct Table allocation. We are deleting the obsolete list of coordinated observatories from footnote US277 and are instead cross referencing the list of observatories in footnote US355. We are correcting footnote US355 in order to use the proper symbols for degree, minute, and second. We remove the "S" reference in footnote US303 to make the cross-reference to ITU Radio Regulation No. 21.16 consistent with current practice. We are updating footnote NG114 to refer to the Public Mobile Service, not the Domestic Public Service, which no longer exists. At the request of NTIA, we are adding footnote 5.391, which prohibits high-density mobile systems, to the band 2200–2290 MHz, which is Federal government exclusive band. We are adding cross reference to the Aviation Services (part 87) in the bands 2310–2320 MHz and 2345–2385 MHz. We also remove those footnotes to the Table of Frequency Allocations that are no longer in effect because they have been suppressed in the *ITU Radio Regulations*. These additional ministerial actions will update and otherwise remove errors from the U.S. Table.

Final Regulatory Flexibility Certification

52. The Regulatory Flexibility Act of 1980, as amended ("RFA") requires that a final regulatory analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that the "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

53. The Report and Order amends parts 2, 25, and 87 of our rules in order to implement domestically various allocation decisions from several World Radiocommunication Conferences concerning the frequency bands between 28 MHz and 36 GHz and to otherwise update our rules in this frequency range. These allocations mainly affect Federal agencies. Those allocations that are most significant to non-Federal government operations are: (1) Implementing generic L-band MSS allocations; (2) allocating the band 1164–1189 MHz to the RNSS; and (3) deleting unused and limited FSS and BSS allocations from the band 2500–2690 MHz. Concerning L-band MSS, currently there is only one U.S. licensee. Concerning the RNSS allocation, only one or at most a few large companies are expected to be able to launch and maintain RNSS systems, which are expensive. The last action merely deletes unused allocations, with no direct effect on licensees or regulatees.

54. We have determined that the rules adopted in this R&O will not have a significant economic impact on a substantial number of small entities. Accordingly, we hereby certify that this R&O will not have a significant economic impact on a substantial number of small entities. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this R&O, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

55. Pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336, the Report and Order and final rules are adopted.

56. The late-filed comments of DigitalGlobe, Inc. to the *Notice of Proposed Rule Making* in this proceeding are accepted.

57. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

58. This proceeding is terminated.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 25

Commmunications equipment, Satellites.

47 CFR Part 87

Air transportation.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, and 87 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.1 is amended by adding the following definitions in alphabetic order:

§ 2.1 Terms and definitions.

* * * * *

Differential Global Positioning System (DGPS) Station. A differential RNSS station for specific augmentation of GPS.

Differential Radionavigation Satellite Service (Differential RNSS) Station. A station used for the transmission of differential correction data and related information (such as ionospheric data and RNSS satellite integrity information) as an augmentation to an RNSS system for the purpose of improved navigation accuracy.

* * * * *

■ 3. Section 2.106 is amended as follows:

■ a. Revise pages 22 through 75 of the Table.

■ b. In the list of International Footnotes under heading I, remove footnotes 5.120, 5.148, 5.333, and 5.551; add footnotes 5.457A, 5.457B, 5.504A, 5.504B, 5.504C, 5.506A, 5.506B, 5.508A, and 5.509A; and revise footnotes 5.505 and 5.508.

■ c. In the list of International Footnotes under heading II, remove footnotes 591, 599A, 599B, 608A, 608B, 647B, 669, and 792A.

■ d. In the list of United States (US) Footnotes, revise US7, US48, US78, US110, US217, US244, US246, US252, US258, US262, US276, US277, US278, US303, US310, US316, US320, US342, and US355; remove US10, US54, US228, US269, US318, US322, and US328; and add footnotes US384, US385, and US386.

■ e. In the list of Non-Federal Government (NG) Footnotes, remove NG23, NG47, NG63, NG101, and NG102; and revise NG41 and NG114.

■ f. In the list of Federal Government (G) Footnotes, revise footnote G2 and add footnote G129.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

28-33 MHz (HF/VHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
28-29.7 AMATEUR AMATEUR-SATELLITE			28-29.89 US340	28-29.7 AMATEUR AMATEUR-SATELLITE US340	Amateur (97)
29.7-30.005 FIXED MOBILE				29.7-29.8 LAND MOBILE US340	Private Land Mobile (90)
				29.8-29.89 FIXED US340	
			29.89-29.91 FIXED MOBILE US340	29.89-29.91 US340	
			29.91-30 US340	29.91-30 FIXED US340	
30.005-30.01 SPACE OPERATION (satellite identification) FIXED MOBILE SPACE RESEARCH			30-30.56 FIXED MOBILE	30-30.56	
30.01-37.5 FIXED MOBILE			30.56-32	30.56-32 FIXED LAND MOBILE NG124	Private Land Mobile (90)
			32-33 FIXED MOBILE	32-33	
			See next page for 33-37.5 MHz		See next page for 33-37.5 MHz

33-50 MHz (VHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 30.01-37.5 MHz			33-34	33-34 FIXED LAND MOBILE NG124	Private Land Mobile (90)
			34-35 FIXED MOBILE	34-35	
			35-36	35-36 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
			36-37 FIXED MOBILE US220	36-37 US220	
			37-37.5	37-37.5 LAND MOBILE NG124	Private Land Mobile (90)
37.5-38.25 FIXED MOBILE Radio astronomy 5.149			37.5-38 Radio astronomy US342	37.5-38 LAND MOBILE Radio astronomy US342 NG59 NG124	
			38-38.25 FIXED MOBILE RADIO ASTRONOMY US81 US342	38-38.25 RADIO ASTRONOMY US81 US342	
38.25-39.986 FIXED MOBILE			38.25-39 FIXED MOBILE	38.25-39	
			39-40	39-40 LAND MOBILE NG124	Private Land Mobile (90)
39.986-40.02 FIXED MOBILE Space research			40-42 FIXED MOBILE	40-40.98	ISM Equipment (18) Private Land Mobile (90)

40.02-40.98 FIXED MOBILE 5.150			5.150 US210 US220	5.150 US210	
40.98-41.015 FIXED MOBILE Space research 5.160 5.161				40.98-42 US220	
41.015-44 FIXED MOBILE 5.160 5.161			42-46.6	42-43.69 FIXED LAND MOBILE NG124 NG141	Public Mobile (22) Private Land Mobile (90)
				43.69-46.6 LAND MOBILE NG124 NG141	Private Land Mobile (90)
44-47 FIXED MOBILE 5.162 5.162A			46.6-47 FIXED MOBILE	46.6-47	
47-68 BROADCASTING 5.162A 5.163 5.164 5.165 5.169 5.171	47-50 FIXED MOBILE	47-50 FIXED MOBILE BROADCASTING 5.162A	47-49.6	47-49.6 LAND MOBILE NG124	Private Land Mobile (90)
			49.6-50 FIXED MOBILE	49.6-50	
	See next page for 50-68 MHz		See next page for 50-73 MHz	See next page for 50-72 MHz	See next page for 50-72 MHz

50-123.5875 MHz (VHF) Page 25

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 47-68 MHz	50-54 AMATEUR 5.162A 5.166 5.167 5.168 5.170		50-73	50-54 AMATEUR	Amateur (97)
	54-68 BROADCASTING Fixed Mobile 5.172	54-68 FIXED MOBILE BROADCASTING 5.162A		54-72 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
68-74.8 FIXED MOBILE except aeronautical mobile 5.149 5.174 5.175 5.177 5.179	68-72 BROADCASTING Fixed Mobile 5.173	68-74.8 FIXED MOBILE 5.149 5.176 5.179			
	72-73 FIXED MOBILE			72-73 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Aviation (87) Private Land Mobile (90) Personal Radio (95)
	73-74.6 RADIO ASTRONOMY 5.178		73-74.6 RADIO ASTRONOMY US74 US246		
	74.6-74.8 FIXED MOBILE		74.6-74.8 FIXED MOBILE US273		Aviation (87) Private Land Mobile (90)
74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180 5.181			74.8-75.2 AERONAUTICAL RADIONAVIGATION 5.180		Aviation (87)
75.2-87.5 FIXED MOBILE except aeronautical mobile	75.2-75.4 FIXED MOBILE 5.179		75.2-75.4 FIXED MOBILE US273		Private Land Mobile (90)

5.175 5.179 5.184 5.187	75.4-76 FIXED MOBILE	75.4-87 FIXED MOBILE 5.182 5.183 5.188	75.4-88	75.4-76 FIXED MOBILE NG3 NG49 NG56	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
87.5-100 BROADCASTING 5.190	76-88 BROADCASTING Fixed Mobile 5.185	87-100 FIXED MOBILE BROADCASTING		76-88 BROADCASTING NG128 NG129 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	88-100 BROADCASTING		88-108 US93	88-108 BROADCASTING US93 NG2 NG128 NG129	Broadcast Radio (FM) (73) Auxiliary Broadcasting (74)
100-108 BROADCASTING 5.192 5.194					
108-117.975 AERONAUTICAL RADIONAVIGATION 5.197 5.197A			108-117.975 AERONAUTICAL RADIONAVIGATION US93 US343		Aviation (87)
117.975-137 AERONAUTICAL MOBILE (R) 5.111 5.198 5.199 5.200 5.201 5.202 5.203 5.203A 5.203B			117.975-121.9375 AERONAUTICAL MOBILE (R) 5.111 5.198 5.199 5.200 US26 US28		
			121.9375-123.0875 5.198 US30 US31 US33 US80 US102 US213	121.9375-123.0875 AERONAUTICAL MOBILE 5.198 US30 US31 US33 US80 US102 US213	
			123.0875-123.5875 AERONAUTICAL MOBILE 5.198 5.200 US32 US33 US112		
			See next page for 123.5875-137 MHz		See next page for 123.5875-137 MHz

123.5875-148 MHz (VHF)

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International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 117.975-137 MHz			123.5875-128.8125 AERONAUTICAL MOBILE (R) 5.198 US26		Aviation (87)
			128.8125-132.0125 5.198	128.8125-132.0125 AERONAUTICAL MOBILE (R) 5.198	
			132.0125-136 AERONAUTICAL MOBILE (R) 5.198 US26		
			136-137 US244	136-137 AERONAUTICAL MOBILE (R) US244	
137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) Fixed Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			137-137.025 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 SPACE RESEARCH (space-to-Earth) 5.208		Satellite Communications (25)
137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			137.025-137.175 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US319 US320 5.208		
137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) Fixed			137.175-137.825 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 SPACE RESEARCH (space-to-Earth)		

Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			5.208		
137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Fixed Mobile-satellite (space-to-Earth) 5.208A 5.209 Mobile except aeronautical mobile (R) 5.204 5.205 5.206 5.207 5.208			137.825-138 SPACE OPERATION (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) SPACE RESEARCH (space-to-Earth) Mobile-satellite (space-to-Earth) US319 US320 5.208		
138-143.6 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214	138-143.6 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	138-143.6 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213	138-144 FIXED MOBILE G30	138-144	
143.6-143.65 AERONAUTICAL MOBILE (OR) SPACE RESEARCH (space-to-Earth) 5.211 5.212 5.214	143.6-143.65 FIXED MOBILE RADIOLOCATION SPACE RESEARCH (space-to-Earth)	143.6-143.65 FIXED MOBILE SPACE RESEARCH (space-to-Earth) 5.207 5.213			
143.65-144 AERONAUTICAL MOBILE (OR) 5.210 5.211 5.212 5.214	143.65-144 FIXED MOBILE RADIOLOCATION Space research (space-to-Earth)	143.65-144 FIXED MOBILE Space research (space-to-Earth) 5.207 5.213			
144-146 AMATEUR AMATEUR-SATELLITE 5.216			144-148	144-146 AMATEUR AMATEUR-SATELLITE	Amateur (97)
146-148 FIXED MOBILE except aeronautical mobile (R)	146-148 AMATEUR 5.217	146-148 AMATEUR FIXED MOBILE 5.217		146-148 AMATEUR	

148-162.0125 MHz (VHF) Page 29

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
148-149.9 FIXED MOBILE except aeronautical mobile (R) MOBILE-SATELLITE (Earth-to-space) 5.209 5.218 5.219 5.221	148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.209 5.218 5.219 5.221		148-149.9 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) US319 US320 US323 US325 5.218 5.219 G30	148-149.9 MOBILE-SATELLITE (Earth-to-space) US319 US320 US323 US325 5.218 5.219	Satellite Communications (25)
149.9-150.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.224B 5.220 5.222 5.223			149.9-150.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE 5.223		
150.05-153 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149	150.05-156.7625 FIXED MOBILE 5.225 5.226 5.227		150.05-150.8 FIXED MOBILE US216 G30	150.05-150.8 US216	
			150.8-152.855 US216	150.8-152.855 FIXED LAND MOBILE NG112 US216 NG4 NG51 NG124	Public Mobile (22) Private Land Mobile (90) Personal Radio (95)
153-154 FIXED MOBILE except aeronautical mobile (R) Meteorological aids			152.855-154	152.855-154 LAND MOBILE NG4 NG124	Auxiliary Broadcasting (74) Private Land Mobile (90)
154-156.7625 FIXED MOBILE except aeronautical mobile (R) 5.226 5.227			154-156.2475 5.226	154-156.2475 FIXED LAND MOBILE NG112 5.226 NG117 NG124 NG148	Maritime (80) Private Land Mobile (90) Personal Radio (95)
			156.2475-157.0375	156.2475-157.0375 MARITIME MOBILE	Aviation (87)

156.7625-156.8375 MARITIME MOBILE (distress and calling) 5.111 5.226		5.226 5.227 US77 US106 US107 US266	5.226 5.227 US77 US106 US107 US266 NG117	
156.8375-174 FIXED MOBILE except aeronautical mobile 5.226 5.229	156.8375-174 FIXED MOBILE 5.226 5.230 5.231 5.232	157.0375-157.1875 MARITIME MOBILE 5.226 US214 US266 G109	157.0375-157.1875 5.226 US214 US266	Private Land Mobile (90)
		157.1875-157.45 5.226 US223 US266	157.1875-157.45 LAND MOBILE MARITIME MOBILE 5.226 US223 US266 NG111	Maritime (80) Private Land Mobile (90)
		157.45-161.575 5.226 US266	157.45-161.575 FIXED LAND MOBILE 5.226 US266 NG6 NG28 NG70 NG111 NG112 NG124 NG148 NG155	Public Mobile (22) Maritime (80) Private Land Mobile (90)
		161.575-161.625 5.226 US77	161.575-161.625 MARITIME MOBILE 5.226 US77 NG6 NG17	Public Mobile (22) Maritime (80)
		161.625-161.775 5.226	161.625-161.775 LAND MOBILE 5.226 NG6	Public Mobile (22) Auxiliary Broadcasting (74)
		161.775-162.0125 5.226 US266	161.775-162.0125 LAND MOBILE MARITIME MOBILE 5.226 US266 NG6	Public Mobile (22) Maritime (80) Private Land Mobile (90)
		See next page for 162.0125-174 MHz		See next page for 162.0125-174 MHz

162.0125-322 MHz (VHF/UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 156.8375-174 MHz			162.0125-173.2 FIXED US13 MOBILE 5.226 US8 US11 US216 US223 US300 US312 G5	162.0125-173.2 5.226 US8 US11 US13 US216 US223 US300 US312	Auxiliary Broadcasting (74) Private Land Mobile (90)
			173.2-173.4	173.2-173.4 FIXED Land mobile	Private Land Mobile (90)
			173.4-174 FIXED MOBILE G5	173.4-174	
174-223 BROADCASTING 5.235 5.237 5.243	174-216 BROADCASTING Fixed Mobile 5.234	174-223 FIXED MOBILE BROADCASTING 5.233 5.238 5.240 5.245	174-216	174-216 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	216-220 FIXED MARITIME MOBILE Radiolocation 5.241 5.242		216-220 Fixed Mobile Radiolocation 5.241 G2 US210 US229	216-220 FIXED MOBILE except aeronautical mobile US210 US229 NG152 NG173	Maritime (80) Private Land Mobile (90) Personal Radio (95) Amateur (97)
	220-225 AMATEUR FIXED MOBILE Radiolocation 5.241		220-222 FIXED LAND MOBILE Radiolocation 5.241 G2 US335	220-222 FIXED LAND MOBILE US335	Private Land Mobile (90)
			222-225 Radiolocation 5.241 G2	222-225 AMATEUR	Amateur (97)

223-230 BROADCASTING Fixed Mobile 5.243 5.246 5.247	225-235 FIXED MOBILE	223-230 FIXED MOBILE BROADCASTING AERONAUTICAL RADIONAVIGATION Radiolocation 5.250	225-235 FIXED MOBILE G27	225-235	
230-235 FIXED MOBILE 5.247 5.251 5.252		230-235 FIXED MOBILE AERONAUTICAL RADIONAVIGATION 5.250			
235-267 FIXED MOBILE 5.111 5.199 5.252 5.254 5.256			235-267 FIXED MOBILE 5.111 5.199 5.256 G27 G100	235-267 5.111 5.199 5.256	
267-272 FIXED MOBILE Space operation (space-to-Earth) 5.254 5.257			267-322 FIXED MOBILE G27 G100	267-322	
272-273 SPACE OPERATION (space-to-Earth) FIXED MOBILE 5.254					
273-312 FIXED MOBILE 5.254					
312-315 FIXED MOBILE Mobile-satellite (Earth-to-space) 5.254 5.255					
315-322 FIXED MOBILE 5.254					

322-410 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
322-328.6 FIXED MOBILE RADIO ASTRONOMY 5.149			322-328.6 FIXED MOBILE US342 G27	322-328.6 US342	
328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258 5.259			328.6-335.4 AERONAUTICAL RADIONAVIGATION 5.258		
335.4-387 FIXED MOBILE 5.254			335.4-399.9 FIXED MOBILE G27 G100	335.4-399.9	
387-390 FIXED MOBILE Mobile-satellite (space-to-Earth) 5.208A 5.254 5.255					
390-399.9 FIXED MOBILE 5.254					
399.9-400.05 MOBILE-SATELLITE (Earth-to-space) 5.209 5.224A RADIONAVIGATION-SATELLITE 5.222 5.224B 5.260 5.220			399.9-400.05 MOBILE-SATELLITE (Earth-to-space) US319 US320 RADIONAVIGATION-SATELLITE 5.260		
400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261 5.262			400.05-400.15 STANDARD FREQUENCY AND TIME SIGNAL-SATELLITE (400.1 MHz) 5.261		
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.208A 5.209 SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth)			400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) US319 US320 US324	400.15-401 METEOROLOGICAL AIDS (radiosonde) US70 MOBILE-SATELLITE (space-to-Earth) US319 US320 US324 SPACE RESEARCH (space-to-Earth) 5.263	Satellite Communications (25)

5.262 5.264	SPACE RESEARCH (space-to-Earth) 5.263 Space operation (space-to-Earth) 5.264	Space operation (space-to-Earth) 5.264	
401-402 METEOROLOGICAL AIDS SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US384	401-402 METEOROLOGICAL AIDS (radiosonde) US70 SPACE OPERATION (space-to-Earth) Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US384	
402-403 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Fixed Mobile except aeronautical mobile	402-403 METEOROLOGICAL AIDS (radiosonde) US70 EARTH EXPLORATION-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) US345 US384	402-403 METEOROLOGICAL AIDS (radiosonde) US70 Earth exploration-satellite (Earth-to-space) Meteorological-satellite (Earth-to-space) US345 US384	Personal Radio (95)
403-406 METEOROLOGICAL AIDS Fixed Mobile except aeronautical mobile	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345 G6	403-406 METEOROLOGICAL AIDS (radiosonde) US70 US345	
406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267	406-406.1 MOBILE-SATELLITE (Earth-to-space) 5.266 5.267		
406.1-410 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149	406.1-410 FIXED US13 MOBILE RADIO ASTRONOMY US74 US117 G5 G6	406.1-410 RADIO ASTRONOMY US74 US13 US117	

410-470 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
410-420 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-space) 5.268			410-420 FIXED US13 MOBILE SPACE RESEARCH (space-to-space) 5.268 G5	410-420 US13	Private Land Mobile (90)
420-430 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271			420-450 RADIOLOCATION US217 G2 G129 5.286 US7 US87 US230 G8	420-450 Amateur US7 NG135 5.282 5.286 US87 US217 US230	Private Land Mobile (90) Amateur (97)
430-440 AMATEUR RADIOLOCATION 5.138 5.271 5.272 5.273 5.274 5.275 5.276 5.277 5.280 5.281 5.282 5.283	430-440 RADIOLOCATION Amateur 5.271 5.276 5.277 5.278 5.279 5.281 5.282				
440-450 FIXED MOBILE except aeronautical mobile Radiolocation 5.269 5.270 5.271 5.284 5.285 5.286					
450-455 FIXED MOBILE 5.209 5.271 5.286 5.286A 5.286B 5.286C 5.286D 5.286E			450-454 5.286 US87	450-454 LAND MOBILE 5.286 US87 NG112 NG124	Auxiliary Broadcasting (74) Private Land Mobile (90)
			454-456	454-455 FIXED LAND MOBILE NG12 NG112 NG148	Public Mobile (22) Maritime (80)
455-456 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	455-456 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	455-456 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E		455-456 LAND MOBILE	Auxiliary Broadcasting (74)

456-459 FIXED MOBILE 5.271 5.287 5.288			456-460 5.287 5.288	456-460 FIXED LAND MOBILE 5.287 5.288 NG112 NG124 NG148	Public Mobile (22) Maritime (80) Private Land Mobile (90)
459-460 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E	459-460 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.286A 5.286B 5.286C 5.209	459-460 FIXED MOBILE 5.209 5.271 5.286A 5.286B 5.286C 5.286E			
460-470 FIXED MOBILE Meteorological-satellite (space-to-Earth) 5.287 5.288 5.289 5.290			460-470 Meteorological-satellite (space-to-Earth) 5.287 5.288 5.289 US201 US209 US216	460-462.5375 FIXED LAND MOBILE 5.289 US201 US209 NG124	Private Land Mobile (90)
				462.5375-462.7375 LAND MOBILE 5.289 US201	Personal Radio (95)
				462.7375-467.5375 FIXED LAND MOBILE 5.287 5.289 US201 US209 US216 NG124	Private Land Mobile (90)
				467.5375-467.7375 LAND MOBILE 5.287 5.289 US201	Personal Radio (95)
				467.7375-470 FIXED LAND MOBILE 5.288 5.289 US201 US216 NG124	Private Land Mobile (90)

470-849 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile 5.292 5.293	470-585 FIXED MOBILE BROADCASTING 5.291 5.298	470-608	470-512 FIXED NG127 LAND MOBILE NG66 BROADCASTING NG149 NG114 NG115 NG128	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING 5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION 5.149 5.305 5.306 5.307		512-608 BROADCASTING NG149 NG115 NG128	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)	610-890 FIXED MOBILE 5.317A BROADCASTING	608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile		614-890	614-698 BROADCASTING NG149 NG115 NG128	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
				698-764 FIXED MOBILE BROADCASTING NG159 NG115 NG128	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
				764-776 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)

5.149 5.291A 5.294 5.298 5.300 5.302 5.304 5.306 5.311 5.312				776-794 FIXED MOBILE BROADCASTING NG115 NG128 NG159	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcast. (74) Private Land Mobile (90)
790-862 FIXED BROADCASTING	5.293 5.309 5.311			794-806 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)
	806-890 FIXED MOBILE BROADCASTING			806-821 FIXED LAND MOBILE NG31	Public Mobile (22) Private Land Mobile (90)
				821-824 LAND MOBILE	Private Land Mobile (90)
5.312 5.314 5.315 5.316 5.319 5.321				824-849 FIXED LAND MOBILE NG151	Public Mobile (22)
See next page for 862-890 MHz	5.317 5.318	5.149 5.305 5.306 5.307 5.311 5.320		See next page for 849-894 MHz	See next page for 866-896 MHz

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849-941 MHz (UHF) Page 39

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous pages for 470-862 MHz	See previous pages for 614-890 MHz	See previous pages for 585-890 MHz	See previous pages for 614-890 MHz	See previous pages for 614-849 MHz	See previous pages for 614-849 MHz
				849-851 AERONAUTICAL MOBILE	Public Mobile (22)
				851-866 FIXED LAND MOBILE NG31	Public Mobile (22) Private Land Mobile (90)
862-890 FIXED MOBILE except aeronautical mobile BROADCASTING 5.322 5.319 5.323				866-869 LAND MOBILE	Private Land Mobile (90)
890-942 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 Radiolocation	890-902 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation 5.318 5.325	890-942 FIXED MOBILE 5.317A BROADCASTING Radiolocation	890-902 US116 US268 G2	869-894 FIXED LAND MOBILE US116 US268 NG151	Public Mobile (22)
				894-896 AERONAUTICAL MOBILE US116 US268	
				896-901 FIXED LAND MOBILE US116 US268	Private Land Mobile (90)
				901-902 FIXED MOBILE US116 US268	Personal Communications (24)

	902-928 FIXED Amateur Mobile except aeronautical mobile 5.325A Radiolocation 5.150 5.325 5.326		902-928 RADIOLOCATION G59 5.150 US215 US218 US267 US275 G11	902-928 5.150 US215 US218 US267 US275	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
	928-942 FIXED MOBILE except aeronautical mobile 5.317A Radiolocation		928-932 US116 US215 US268 G2	928-929 FIXED US116 US215 US268 NG120	Public Mobile (22) Private Land Mobile (90) Fixed Microwave (101)
				929-930 FIXED LAND MOBILE US116 US215 US268	Private Land Mobile (90)
				930-931 FIXED MOBILE US116 US215 US268	Personal Communications (24)
				931-932 FIXED LAND MOBILE US116 US215 US268	Public Mobile (22)
			932-935 FIXED US215 US268 G2	932-935 FIXED US215 US268 NG120	Public Mobile (22) Fixed Microwave (101)
			935-940 US116 US215 US268 G2	935-940 FIXED LAND MOBILE US116 US215 US268	Private Land Mobile (90)
			940-941 US116 US268 G2	940-941 FIXED MOBILE US116 US268	Personal Communications (24)
5.323	5.325	5.327	See next page for 941-944 MHz		See next page for 941-944 MHz

941-1427 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 890-942 MHz	See previous page for 928-942 MHz	See previous page for 890-942 MHz	941-944 FIXED US268 US301 US302 G2	941-944 FIXED US268 US301 US302 NG120	Public Mobile (22) Fixed Microwave (101)
942-960 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 5.323	942-960 FIXED MOBILE 5.317A	942-960 FIXED MOBILE 5.317A BROADCASTING 5.320	944-960	944-960 FIXED NG120	Public Mobile (22) Auxiliary Broadcast (74) Fixed Microwave (101)
960-1215 AERONAUTICAL RADIONAVIGATION 5.328 5.328A			960-1215 AERONAUTICAL RADIONAVIGATION 5.328 US224 US385		Aviation (87)
1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329 5.329A SPACE RESEARCH (active) 5.330 5.331 5.332			1215-1240 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) SPACE RESEARCH (active) 5.332	1215-1240 Earth exploration-satellite (active) Space research (active)	
1240-1260 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329 5.329A SPACE RESEARCH (active) Amateur 5.330 5.331 5.332 5.334 5.335			1240-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH (active) 5.332 5.334 5.335	1240-1300 Earth exploration-satellite (active) Space research (active) Amateur 5.282 5.334	Amateur (97)
1260-1300 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.329 5.329A SPACE RESEARCH (active) Amateur 5.282 5.330 5.331 5.334 5.335 5.335A					

1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 RADIOLOCATION RADIONAVIGATION-SATELLITE (Earth-to-space) 5.149 5.337A		1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation G2 US342	1300-1350 AERONAUTICAL RADIONAVIGATION 5.337 US342	Aviation (87)
1350-1400 FIXED MOBILE RADIOLOCATION 5.149 5.338 5.339	1350-1400 RADIOLOCATION 5.149 5.334 5.339	1350-1390 FIXED MOBILE RADIOLOCATION G2 5.334 5.339 US311 US342 G27 G114	1350-1390 5.334 5.339 US311 US342	
		1390-1395 5.339 US311 US342 US351	1390-1392 FIXED MOBILE except aeronautical mobile FIXED-SATELLITE (Earth-to-space) US368 5.339 US311 US342 US351	Wireless Communications (27)
			1392-1395 FIXED MOBILE except aeronautical Mobile 5.339 US311 US342 US351	
		1395-1400 LAND MOBILE US350 5.339 US311 US342 US351		Personal (95)
1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.341		1400-1427 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246		

1427-1610 MHz (UHF)					Page 43
International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1427-1429 SPACE OPERATION (Earth-to-space) FIXED MOBILE except aeronautical mobile 5.341			1427-1429.5 LAND MOBILE US350 5.341 US352	1427-1429.5 LAND MOBILE Fixed (telemetry) 5.341 US350 US352	Private Land Mobile (90) Personal (95)
1429-1452 FIXED MOBILE except aeronautical Mobile 5.341 5.342	1429-1452 FIXED MOBILE 5.343 5.341		1429.5-1432 5.341 US350 US352	1429.5-1430 FIXED (telemetry) LAND MOBILE (telemetry) 5.341 US350 US352	
				1430-1432 FIXED (telemetry) LAND MOBILE (telemetry) FIXED-SATELLITE (space-to-Earth) US368 5.341 US350 US352	
			1432-1435 5.341 US361	1432-1435 FIXED MOBILE except aeronautical mobile 5.341 US361	Wireless Communications (27)
1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.341 5.342	1452-1492 FIXED MOBILE 5.343 BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.341 5.344		1435-1525 MOBILE (aeronautical telemetry) 5.341 US78		Aviation (87)
1492-1525 FIXED MOBILE except aeronautical mobile 5.341 5.342	1492-1525 FIXED MOBILE 5.343 MOBILE-SATELLITE (space-to-Earth) 5.348A 5.341 5.344 5.348	1492-1525 FIXED MOBILE 5.341 5.348A			

1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile except aeronautical mobile 5.349 5.341 5.342 5.350 5.351 5.352A 5.354	1525-1530 SPACE OPERATION (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354	1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.351A Earth exploration-satellite Mobile 5.349 5.341 5.351 5.352A 5.354	1525-1535 MOBILE-SATELLITE (space-to-Earth) US315 US380 5.341 5.351	Satellite Communications (25) Maritime (80)
1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile 5.341 5.342 5.351 5.354	1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.351A 5.353A Earth exploration-satellite Fixed Mobile 5.343 5.341 5.351 5.354			
1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.351A 5.341 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A			1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380 5.341 5.351 5.356	Satellite Communications (25) Maritime (80) Aviation (87)
1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329A 5.341 5.362B 5.362C 5.363			1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.341 US208 US260 US343	Aviation (87)

1610-1670 MHz (UHF) Page 45

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Radiodetermination-Satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610-1610.6 MOBILE-SATELLITE (Earth-to-space) US319 US380 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE(Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US208		Satellite Communications (25) Aviation (87)
1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION 5.149 5.341 5.355 5.359 5.363 5.364 5.366 5.367 5.368 5.369 5.371 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) 5.149 5.341 5.364 5.366 5.367 5.368 5.370 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION Radiodetermination-satellite (Earth-to-space) 5.149 5.341 5.355 5.359 5.364 5.366 5.367 5.368 5.369 5.372	1610.6-1613.8 MOBILE-SATELLITE (Earth-to-space) US319 US380 RADIO ASTRONOMY AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) 5.341 5.364 5.366 5.367 5.368 5.372 US208 US342		
1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) 5.341 5.355 5.359 5.363 5.364 5.365 5.366 5.367 5.368 5.369 5.371 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.370 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) 5.351A AERONAUTICAL RADIONAVIGATION Mobile-satellite (space-to-Earth) Radiodetermination-satellite (Earth-to-space) 5.341 5.355 5.359 5.364 5.365 5.366 5.367 5.368 5.369 5.372	1613.8-1626.5 MOBILE-SATELLITE (Earth-to-space) US319 US380 AERONAUTICAL RADIONAVIGATION US260 RADIODETERMINATION-SATELLITE (Earth-to-space) Mobile-satellite (space-to-Earth) 5.341 5.364 5.365 5.366 5.367 5.368 5.372 US208		

1626.5-1660 MOBILE-SATELLITE (Earth-to-space) 5.351A 5.341 5.351 5.353A 5.354 5.355 5.357A 5.359 5.362A 5.374 5.375 5.376	1626.5-1660 MOBILE-SATELLITE (Earth-to-space) US308 US309 US315 US380 5.341 5.351 5.375	Satellite Communications (25) Maritime (80) Aviation (87)
1660-1660.5 MOBILE-SATELLITE (Earth-to-space) 5.351A RADIO ASTRONOMY 5.149 5.341 5.351 5.354 5.362A 5.376A	1660-1660.5 MOBILE-SATELLITE (Earth-to-space) US308 US309 US380 RADIO ASTRONOMY 5.341 5.351 US342	Satellite Communications (25) Aviation (87)
1660.5-1668.4 RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149 5.341 5.379 5.379A	1660.5-1668.4 RADIO ASTRONOMY US74 SPACE RESEARCH (passive) 5.341 US246	
1668.4-1670 METEOROLOGICAL AIDS FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY 5.149 5.341	1668.4-1670 METEOROLOGICAL AIDS (radiosonde) RADIO ASTRONOMY US74 5.341 US99 US342	

1670-2110 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
1670-1675 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE 5.380 5.341			1670-1675 5.341 US211 US362	1670-1675 FIXED MOBILE except aeronautical mobile 5.341 US211 US362	Wireless Communications (27)
1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.341	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) 5.341 5.377	1675-1690 METEOROLOGICAL AIDS FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.341	1675-1700 METEOROLOGICAL AIDS (radiosonde) METEOROLOGICAL-SATELLITE (space-to-Earth) 5.289 5.341 US211		
1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) Fixed Mobile except aeronautical mobile 5.289 5.341 5.382	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE-SATELLITE (Earth-to-space) 5.289 5.341 5.377 5.381	1690-1700 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth) 5.289 5.341 5.381			
1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341	1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile MOBILE-SATELLITE (Earth-to-space) 5.289 5.341 5.377	1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341 5.384	1700-1710 FIXED G118 METEOROLOGICAL-SATELLITE (space-to-Earth) 5.289 5.341	1700-1710 METEOROLOGICAL-SATELLITE (space-to-Earth) Fixed 5.289 5.341	
1710-1930 FIXED MOBILE 5.380 5.384A 5.388A			1710-1755 5.341 US311 US378	1710-1755 FIXED MOBILE 5.341 US311 US378 NG176	

5.149 5.341 5.385 5.386 5.387 5.388			1755-1850 FIXED MOBILE G42	1755-1850	
1930-1970 FIXED MOBILE 5.388A 5.388	1930-1970 FIXED MOBILE 5.388A Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388	1850-2025	1850-2000 FIXED MOBILE NG177	RF Devices (15) Personal Communications (24) Fixed Microwave (101)
1970-1980 FIXED MOBILE 5.388A 5.388					
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F				2000-2020 MOBILE-SATELLITE (Earth-to-space) US380 NG156	Satellite Communications (25)
2010-2025 FIXED MOBILE 5.388A 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389D 5.389E 5.390	2010-2025 FIXED MOBILE 5.388A 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347	2025-2110 FIXED NG118 MOBILE 5.391 5.392 US90 US222 US346 US347	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)

2110-2345 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2110-2120 FIXED MOBILE 5.388A SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2155 FIXED MOBILE US252	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2120-2160 FIXED MOBILE 5.388A 5.388	2120-2160 FIXED MOBILE 5.388A Mobile-satellite (space-to-Earth) 5.388	2120-2170 FIXED MOBILE 5.388A 5.388	2120-2200	2155-2160 FIXED	Domestic Public Fixed (21) Fixed Microwave (101)
2160-2170 FIXED MOBILE 5.388A 5.388 5.392A	2160-2170 FIXED MOBILE 5.388A MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389D 5.389E 5.390			2160-2180 FIXED NG153 MOBILE NG178	Domestic Public Fixed (21) Public Mobile (22) Fixed Microwave (101)
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F 5.392A				2180-2200 MOBILE-SATELLITE (space-to-Earth) US380 NG168	Satellite Communications (25)
2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space)			2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only)	2200-2290	

5.392		MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303	US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)		2290-2300 FIXED, MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE Amateur Radiolocation	2300-2450 FIXED MOBILE RADIOLOCATION Amateur	2300-2305 G123	2300-2305 Amateur	Amateur (97)
		2305-2310 US338 G123	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338	Wireless Communications (27) Amateur (97)
		2310-2320 Fixed Mobile US339 Radiolocation G2 G120 US327	2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327	Wireless Communications (27) Aviation (87)
		2320-2345 Fixed Radiolocation G2 G120 US327	2320-2345 BROADCASTING-SATELLITE 5.396 US327	Satellite Communications (25)
5.150 5.282 5.395	5.150 5.282 5.393 5.394 5.396	See next page for 2345-2360 MHz	See next page for 2345-2360 MHz	See next page for 2345-2360 MHz

2345-2655 MHz (UHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2300-2450 MHz			2345-2360 Fixed Mobile US339 Radiolocation G2 G120 US327	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE 5.396 US327	Wireless Communications (27) Aviation (87)
			2360-2385 MOBILE US276 RADIOLOCATION G2 G120 Fixed	2360-2385 MOBILE US276	Aviation (87)
			2385-2390 US363	2385-2390 FIXED MOBILE NG174 US363	Wireless Communications (27)
			2390-2400 G122	2390-2400 AMATEUR	Amateur (97)
			2400-2402 5.150 G123	2400-2417 AMATEUR 5.150 5.282	ISM Equipment (18) Amateur (97)
			2402-2417 5.150 G122		
			2417-2450 Radiolocation G2 5.150 G124	2417-2450 Amateur 5.150 5.282	
2450-2483.5 FIXED MOBILE Radiolocation 5.150 5.397	2450-2483.5 FIXED MOBILE RADIOLOCATION 5.150 5.394		2450-2483.5 5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	ISM Equipment (18) Private Land Mobile (90) Fixed Microwave (101)

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation 5.150 5.371 5.397 5.398 5.399 5.400 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 5.150 5.400 5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.403 5.351A 5.405 5.407 5.412 5.414	2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.403 5.351A 5.404 5.407 5.414 5.415A		2500-2655 5.339 US205	2500-2655 FIXED US205 MOBILE except aeronautical mobile 5.339	Domestic Public Fixed (21) Instructional TV Fixed (74)
2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.405 5.412 5.418 5.418B 5.418C	2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.418B 5.418C	2520-2535 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.403 5.415A			
		2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.418 5.418A 5.418B 5.418C			

2655-3700 MHz (UHF/SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2655-2670 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.412 5.420	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.420	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.420	2655-2690 Earth exploration-satellite (passive) Radio astronomy Space research (passive) US205	2655-2690 FIXED US205 MOBILE except aeronautical mobile Earth exploration-satellite (passive) Radio astronomy Space research (passive)	Domestic Public Fixed (21) Instructional TV Fixed (74)
2670-2690 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420	2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420	2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420 5.420A			
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.421 5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation 5.423 5.424			2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 METEOROLOGICAL AIDS Radiolocation G2 5.423 US18 G15	2700-2900 5.423 US18	

2900-3100 RADIONAVIGATION 5.426 Radiolocation 5.425 5.427			2900-3100 MARITIME RADIONAVIGATION Radiolocation G56 5.427 US44 US316	2900-3100 MARITIME RADIONAVIGATION Radiolocation US44 5.427 US316	Maritime (80) Private Land Mobile (90)
3100-3300 RADIOLOCATION Earth exploration-satellite (active) Space research (active) 5.149 5.428			3100-3300 RADIOLOCATION G59 Earth exploration-satellite (active) Space research (active) US342	3100-3300 Radiolocation Earth exploration-satellite (active) Space research (active) US342	Private Land Mobile (90)
3300-3400 RADIOLOCATION 5.149 5.429 5.430	3300-3400 RADIOLOCATION Amateur Fixed Mobile 5.149 5.430	3300-3400 RADIOLOCATION Amateur 5.149 5.429	3300-3500 RADIOLOCATION US108 G31 US342	3300-3500 Amateur Radiolocation US108 US342 5.282	Private Land Mobile (90) Amateur (97)
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation 5.431	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation 5.433 5.282 5.432				
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433 5.435		3500-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245	3500-3600 Radiolocation	Private Land Mobile (90)
				3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation	
			3650-3700 US245 US348 US349	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 MOBILE except aeronautical mobile NG170 US245 US348 US349	
	See next page for 3700-4200 MHz		See next page for 3700-4200 MHz	See next page for 3700-4200 MHz	See next page for 3700-4200 MHz

3700-5650 MHz (SHF) Page 55

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 3600-4200 MHz	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		3700-4200	3700-4200 FIXED NG41 FIXED-SATELLITE (space-to-Earth)	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438 5.439 5.440			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
4400-4500 FIXED MOBILE			4400-4500 FIXED MOBILE	4400-4500	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4800-4990 FIXED MOBILE 5.442 Radio astronomy 5.149 5.339 5.443			4800-4940 FIXED MOBILE US203 US342	4800-4940 US203 US342	
			4940-4990 5.339 US311 US342 G122	4940-4990 FIXED MOBILE except aeronautical mobile 5.339 US311 US342	Private Land Mobile (90) Fixed Microwave (101)
4990-5000 FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY Space research (passive) 5.149			4990-5000 RADIO ASTRONOMY US74 Space research (passive) US246		
5000-5150 AERONAUTICAL RADIONAVIGATION 5.367 5.443A 5.443B 5.444 5.444A			5000-5250 AERONAUTICAL RADIONAVIGATION US260	5000-5150 AERONAUTICAL RADIONAVIGATION US260 5.367 5.444A US211 US344 US370	Satellite Communications (25) Aviation (87)

5150-5250 AERONAUTICAL RADIONAVIGATION FIXED-SATELLITE (Earth-to-space) 5.447A 5.446 5.447 5.447B 5.447C	5.367 US211 US307 US344 US370	5150-5250 AERONAUTICAL RADIONAVIGATION US260 FIXED-SATELLITE (Earth-to-space) 5.447A US344 5.447C US211 US307	Satellite Communications (25) Aviation (87)
5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.447D 5.448 5.448A	5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.447D	5250-5255 Earth exploration-satellite (active) Radiolocation Space research	Private Land Mobile (90)
5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.448 5.448A	5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	5255-5350 Earth exploration-satellite (active) Radiolocation Space research (active)	
5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B AERONAUTICAL RADIONAVIGATION 5.449 Radiolocation	5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B AERONAUTICAL RADIONAVIGATION 5.449 RADIOLOCATION G56	5350-5460 AERONAUTICAL RADIONAVIGATION 5.449 Earth exploration-satellite (active) Radiolocation	Aviation (87) Private Land Mobile (90)
5460-5470 RADIONAVIGATION 5.449 Radiolocation	5460-5470 RADIONAVIGATION 5.449 Radiolocation G56 US49 US65	5460-5470 RADIONAVIGATION 5.449 Radiolocation US49 US65	Private Land Mobile (90)
5470-5650 MARITIME RADIONAVIGATION Radiolocation 5.450 5.451 5.452	5470-5600 MARITIME RADIONAVIGATION Radiolocation G56 US50 US65	5470-5600 MARITIME RADIONAVIGATION Radiolocation US50 US65	Maritime (80) Private land Mobile (90)
	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS Radiolocation US51 G56 5.452 US65	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS Radiolocation US51 5.452 US65	

5650-7250 MHz (SHF) Page 57

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
5650-5725 RADIOLOCATION Amateur Space research (deep space) 5.282 5.451 5.453 5.454 5.455			5650-5925 RADIOLOCATION G2	5650-5830 Amateur 5.150 5.282	ISM Equipment (18) Amateur (97)
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur 5.150 5.451 5.453 5.455 5.456	5725-5830 RADIOLOCATION Amateur 5.150 5.453 5.455				
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.451 5.453 5.455 5.456	5830-5850 RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.453 5.455			5830-5850 Amateur Amateur-satellite (space-to-Earth) 5.150	
5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Amateur Radiolocation 5.150	5850-5925 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE Radiolocation 5.150	5.150 US245	5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur 5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE			5925-6425	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space)	International Fixed (23) Satellite Communications (25) Fixed Microwave (101)
			6425-6525 5.440 5.458	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)

5.149 5.440 5.458	6525-6700 5.458 US342	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.458 US342	Satellite Communications (25) Fixed Microwave (101)
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE	6700-7125 5.458	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 5.458 5.458A 5.458B	
		6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171 5.458 5.458A 5.458B	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78)
5.458 5.458A 5.458B 5.458C		7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171 5.458 5.458A 5.458B	
7075-7250 FIXED MOBILE 5.458 5.459 5.460		7075-7125 FIXED NG118 MOBILE NG171 5.458	Auxiliary Broadcasting (74) Cable TV Relay (78)
	7125-7190 FIXED 5.458 US252 G116	7125-7190 5.458 US252	
	7190-7235 FIXED SPACE RESEARCH (Earth-to-space) 5.458	7190-7250 5.458	
	7235-7250 FIXED 5.458		

7250-8215 MHz (SHF) Page 59

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
7250-7300 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE 5.461			7250-7300 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Fixed G117	7250-8025	
7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.461			7300-7450 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.461A			7450-7550 FIXED FIXED-SATELLITE (space-to-Earth) METEOROLOGICAL-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G104 G117		
7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile			7550-7750 FIXED FIXED-SATELLITE (space-to-Earth) Mobile-satellite (space-to-Earth) G117		
7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B MOBILE except aeronautical mobile			7750-7850 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) 5.461B		
7850-7900 FIXED MOBILE except aeronautical mobile			7850-7900 FIXED		

7900-8025 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.461	7900-8025 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Fixed G117		
8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A	8025-8175 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G117	8025-8215 US258	
8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A	8175-8215 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) METEOROLOGICAL-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G104 G117		

8215-10000 MHz (SHF) Page 61

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) MOBILE 5.463 5.462A			8215-8400 EARTH EXPLORATION-SATELLITE (space-to-Earth) FIXED FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) (no airborne transmissions) US258 G117	8215-8400 US258	
8400-8500 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (space-to-Earth) 5.465 5.466 5.467			8400-8450 FIXED SPACE RESEARCH (space-to-Earth) (deep space only)	8400-8450 Space research (space-to-Earth) (deep space only)	
			8450-8500 FIXED SPACE RESEARCH (space-to-Earth)	8450-8500 SPACE RESEARCH (space-to-Earth)	
8500-8550 RADIOLOCATION 5.468 5.469			8500-8550 RADIOLOCATION G59	8500-8550 Radiolocation	
8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.468 5.469 5.469A			8550-8650 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	8550-8650 Earth exploration-satellite (active) Radiolocation Space research (active)	
8650-8750 RADIOLOCATION 5.468 5.469			8650-9000 RADIOLOCATION G59	8650-9000 Radiolocation	
8750-8850 RADIOLOCATION AERONAUTICAL RADIONAVIGATION 5.470 5.471					

8850-9000 RADIOLOCATION MARITIME RADIONAVIGATION 5.472 5.473	US53	US53	
9000-9200 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation 5.471	9000-9200 AERONAUTICAL RADIO-NAVIGATION 5.337 Radiolocation G2 US48 G19	9000-9200 AERONAUTICAL RADIO-NAVIGATION 5.337 Radiolocation US48	Aviation (87)
9200-9300 RADIOLOCATION MARITIME RADIONAVIGATION 5.472 5.473 5.474	9200-9300 MARITIME RADIO-NAVIGATION 5.472 Radiolocation US110 G59 5.474	9200-9300 MARITIME RADIO-NAVIGATION 5.472 Radiolocation US110 5.474	
9300-9500 RADIONAVIGATION 5.476 Radiolocation 5.427 5.474 5.475	9300-9500 RADIONAVIGATION 5.476 US66 Radiolocation US51 G56 Meteorological aids 5.427 5.474 US67 US71	9300-9500 RADIONAVIGATION 5.476 US66 Radiolocation US51 Meteorological aids 5.427 5.474 US67 US71	
9500-9800 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION RADIONAVIGATION SPACE RESEARCH (active) 5.476A	9500-9800 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active)	9500-9800 Earth exploration-satellite (active) Radiolocation Space research (active)	
9800-10000 RADIOLOCATION Fixed 5.477 5.478 5.479	9800-10000 RADIOLOCATION 5.479	9800-10000 Radiolocation 5.479	

10-12.7 GHz (SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION Amateur 5.479 5.480	10-10.45 FIXED MOBILE RADIOLOCATION Amateur 5.479	10-10.45 RADIOLOCATION 5.479 US58 US108 G32	10-10.45 Radiolocation Amateur 5.479 US58 US108 NG42	Private Land Mobile (90) Amateur (97)
10.45-10.5 RADIOLOCATION Amateur Amateur-satellite 5.481			10.45-10.5 RADIOLOCATION US58 US108 G32	10.45-10.5 Radiolocation Amateur Amateur-satellite US58 US108 NG42 NG134	
10.5-10.55 FIXED MOBILE Radiolocation	10.5-10.55 FIXED MOBILE RADIOLOCATION		10.5-10.55 RADIOLOCATION US59		Private Land Mobile (90)
10.55-10.6 FIXED MOBILE except aeronautical mobile Radiolocation			10.55-10.6	10.55-10.6 FIXED	Fixed Microwave (101)
10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) Radiolocation 5.149 5.482			10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) SPACE RESEARCH (passive) US265 US277	10.6-10.68 EARTH EXPLORATION-SATELLITE (passive) FIXED US265 SPACE RESEARCH (passive) US277	
10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.483			10.68-10.7 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246 US355		

10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A (Earth-to-space) 5.484 MOBILE except aeronautical mobile	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 5.484A MOBILE except aeronautical mobile		10.7-11.7 US211	10.7-11.7 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 US211 NG104 US355	Satellite Communications (25) Fixed Microwave (101)
11.7-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.487 5.487A 5.492	11.7-12.1 FIXED 5.486 FIXED-SATELLITE (space-to-Earth) 5.484A Mobile except aeronautical mobile 5.485 5.488	11.7-12.2 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.487 5.487A 5.492	11.7-12.1 5.486	11.7-12.2 FIXED-SATELLITE (space-to-Earth) NG143 NG145 Mobile except aeronautical mobile 5.486 5.488	
	12.1-12.2 FIXED-SATELLITE (space-to-Earth) 5.484A 5.485 5.488 5.489		12.1-12.2		
	12.2-12.7 FIXED MOBILE except aeronautical mobile BROADCASTING BROADCASTING-SATELLITE 5.487A 5.488 5.490 5.492	12.2-12.5 FIXED MOBILE except aeronautical mobile BROADCASTING 5.484A 5.487 5.491	12.2-12.7 5.490	12.2-12.7 FIXED BROADCASTING-SATELLITE 5.487A 5.488 5.490	
12.5-12.75 FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.494 5.495 5.496		12.5-12.75 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE except aeronautical mobile BROADCASTING-SATELLITE 5.493			
	See next page for 12.7-12.75 GHz		See next page for 12.7-12.75 GHz		See next page for 12.7-12.75 GHz

12.7-14.5 GHz (SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 12.5-12.75 GHz	12.7-12.75 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE except aeronautical mobile	See previous page for 12.5-12.75 GHz	12.7-12.75	12.7-12.75 FIXED NG118 FIXED-SATELLITE (Earth-to-space) MOBILE NG53	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
12.75-13.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.441 MOBILE Space research (deep space) (space-to-Earth)			12.75-13.25 US251	12.75-13.25 FIXED NG118 FIXED-SATELLITE (Earth-to-space) 5.441 NG104 MOBILE US251 NG53	
13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIONAVIGATION 5.497 SPACE RESEARCH (active) 5.498A 5.499			13.25-13.4 EARTH EXPLORATION-SATELLITE (active) AERONAUTICAL RADIO-NAVIGATION 5.497 SPACE RESEARCH (active) 5.498A	13.25-13.4 AERONAUTICAL RADIO-NAVIGATION 5.497 Earth exploration-satellite (active) Space research (active)	Aviation (87)
13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.499 5.500 5.501 5.501B			13.4-13.75 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active) 5.501A Standard frequency and time signal-satellite (Earth-to-space) 5.501B	13.4-13.75 Earth exploration-satellite (active) Radiolocation Space research Standard frequency and time signal-satellite (Earth-to-space)	Private Land Mobile (90)
13.75-14 FIXED-SATELLITE (Earth-to-space) 5.484A RADIOLOCATION Standard frequency and time signal-satellite (Earth-to-space) Space research 5.499 5.500 5.501 5.502 5.503 5.503A			13.75-14 RADIOLOCATION G59 Standard frequency and time signal-satellite (Earth-to-space) Space research US337 5.503A US356 US357	13.75-14 FIXED-SATELLITE (Earth-to-space) US337 Radiolocation Standard frequency and time signal-satellite (Earth-to-space) Space research 5.503A US356 US357	Satellite Communications (25) Private Land Mobile (90)

14-14.25 FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 5.457A 5.506B 5.457B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.504C 5.506A Space research 5.504A 5.505			14-14.2 RADIONAVIGATION US292 Space research	14-14.2 FIXED-SATELLITE (Earth-to-space) RADIONAVIGATION US292 Mobile-satellite (Earth-to-space) Space research	Satellite Communications (25) Maritime (80) Aviation (87)
14.25-14.3 FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 5.457A 5.457B 5.506B RADIONAVIGATION 5.504 Mobile-satellite (Earth-to-space) 5.506A 5.508A Space research 5.504A 5.505 5.508 5.509			14.2-14.4	14.2-14.4 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) Mobile except aeronautical mobile	Satellite Communications (25) Fixed Microwave (101)
14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 5.506B 5.457A 5.457B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.506A 5.509A Radionavigation-satellite 5.504A	14.3-14.4 FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 5.457A 5.506B Mobile-satellite (Earth-to-space) 5.506A Radionavigation-satellite 5.504A	14.3-14.4 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.506 5.457A 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.506A 5.509A Radionavigation-satellite 5.504A			
14.4-14.47 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.506A 5.509A Space research (space-to-Earth) 5.504A			14.4-14.47 Fixed Mobile	14.4-14.47 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space)	Satellite Communications (25)
14.47-14.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B 5.484A 5.506 5.506B MOBILE except aeronautical mobile Mobile-satellite (Earth-to-space) 5.504B 5.506A 5.509A Radio astronomy 5.149 5.504A			14.47-14.5 Fixed Mobile US203 US342	14.47-14.5 FIXED-SATELLITE (Earth-to-space) Mobile-satellite (Earth-to-space) US203 US342	

14.5-18.3 GHz (SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
14.5-14.8 FIXED FIXED-SATELLITE (Earth-to-space) 5.510 MOBILE Space research			14.5-14.7145 FIXED Mobile Space research	14.5-14.7145	
14.8-15.35 FIXED MOBILE Space research 5.339			14.7145-15.1365 MOBILE Fixed Space research US310	14.7145-15.1365 US310	
			15.1365-15.35 FIXED Mobile Space research 5.339 US211	15.1365-15.35 5.339 US211	
15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.511			15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
15.4-15.43 AERONAUTICAL RADIONAVIGATION 5.511D			15.4-15.43 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.43-15.63 FIXED SATELLITE (Earth-to-space) 5.511A AERONAUTICAL RADIONAVIGATION 5.511C			15.43-15.63 AERONAUTICAL RADIO-NAVIGATION US260 5.511C US211 US359	15.43-15.63 FIXED SATELLITE (Earth-to-space) AERONAUTICAL RADIO-NAVIGATION US260 5.511C US211 US359	Satellite Communications (25) Aviation (87)
15.63-15.7 AERONAUTICAL RADIONAVIGATION 5.511D			15.63-15.7 AERONAUTICAL RADIONAVIGATION US260 US211		Aviation (87)
15.7-16.6 RADIOLOCATION 5.512 5.513			15.7-16.6 RADIOLOCATION G59	15.7-17.2 Radiolocation	Private Land Mobile (90)

16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) 5.512 5.513			16.6-17.1 RADIOLOCATION G59 Space research (deep space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION 5.512 5.513			17.1-17.2 RADIOLOCATION G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.512 5.513 5.513A			17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G59 SPACE RESEARCH (active)	17.2-17.3 Radiolocation Earth exploration-satellite (active) Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 BROADCASTING-SATELLITE Radiolocation 5.514 5.515 5.517	17.3-17.7 FIXED-SATELLITE (Earth-to-space) 5.516 Radiolocation 5.514	17.3-17.7 Radiolocation US259 G59	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271 BROADCASTING-SATELLITE NG163 NG167 US259	Satellite Communications (25)
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) 5.516 BROADCASTING-SATELLITE Mobile 5.518 5.515 5.517	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE	17.7-17.8	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) US271 NG144	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.516 MOBILE		17.8-18.3 FIXED-SATELLITE (space-to-Earth) G117 5.519 US334	17.8-18.3 FIXED 5.519 US334 NG144	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A (Earth-to-space) 5.520 MOBILE 5.519 5.521			See next page for 18.3-18.6 GHz	See next page for 18.3-18.58 GHz	See next page for 18.3-18.58 GHz

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18.3-22.5 GHz (SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 18.1-18.4 GHz			18.3-18.6 FIXED-SATELLITE (space-to-Earth) G117 US334	18.3-18.6 FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE					
18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile SPACE RESEARCH (passive) 5.522A	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) 5.522B MOBILE except aeronautical mobile Space research (passive) 5.522A 5.522C	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 G117 SPACE RESEARCH (passive) US254 US334	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144	
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) 5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-space) 5.523B 5.523C 5.523D 5.523E MOBILE				19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG144	Satellite Communications (25) Auxiliary Broadcast. (74) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A Mobile-satellite (space-to-Earth) 5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528 5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) 5.484A Mobile-satellite (space-to-Earth) 5.524		19.7-20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 5.529 US334	Satellite Communications (25)

20.1-20.2 FIXED-SATELLITE (space-to-Earth) 5.484A MOBILE-SATELLITE (space-to-Earth) 5.524 5.525 5.526 5.527 5.528			US334	20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.525 5.526 5.527 5.528 US334	
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) 5.524			20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)			21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263		Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.530	21.4-22 FIXED MOBILE	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE 5.530 5.531	21.4-22 FIXED MOBILE		
22-22.21 FIXED MOBILE except aeronautical mobile 5.149			22-22.21 FIXED MOBILE except aeronautical mobile US342		
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) 5.149 5.532			22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) US342 US263		

22.5-27.5 GHz (SHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
22.5-22.55 FIXED MOBILE			22.5-22.55 FIXED MOBILE US211		Fixed Microwave (101)
22.55-23.55 FIXED INTER-SATELLITE MOBILE 5.149			22.55-23.55 FIXED INTER-SATELLITE US278 MOBILE US342		Satellite Communications (25) Fixed Microwave (101)
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE		Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
24-24.05 AMATEUR AMATEUR-SATELLITE 5.150			24-24.05 5.150 US211	24-24.05 AMATEUR AMATEUR-SATELLITE 5.150 US211	ISM Equipment (18) Amateur (97)
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active) 5.150			24.05-24.25 RADIOLOCATION G59 Earth exploration-satellite (active) 5.150	24.05-24.25 Amateur Earth exploration-satellite (active) Radiolocation 5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
24.25-24.45 FIXED	24.25-24.45 RADIONAVIGATION	24.25-24.45 RADIONAVIGATION FIXED MOBILE	24.25-24.45	24.25-24.45 FIXED	Fixed Microwave (101)

24.45-24.75 FIXED INTER-SATELLITE	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533	24.45-24.65 FIXED INTER-SATELLITE MOBILE RADIONAVIGATION 5.533	24.45-24.65 INTER-SATELLITE RADIONAVIGATION 5.533		Satellite Communications (25)
	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)	24.65-24.75 FIXED INTER-SATELLITE MOBILE 5.533 5.534	24.65-24.75 INTER-SATELLITE RADIOLOCATION-SATELLITE (Earth-to-space)		
24.75-25.25 FIXED	24.75-25.25 FIXED-SATELLITE (Earth-to-space) 5.535	24.75-25.25 FIXED FIXED-SATELLITE (Earth-to-space) 5.535 MOBILE 5.534	24.75-25.05 RADIONAVIGATION	24.75-25.05 FIXED-SATELLITE (Earth-to-space) NG167 RADIONAVIGATION	Satellite Communications (25) Aviation (87)
			25.05-25.25	25.05-25.25 FIXED-SATELLITE (Earth-to-space) NG167 FIXED	Satellite Communications (25) Fixed Microwave (101)
25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.25-25.5 FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.25-25.5 Earth exploration-satellite (space-to-space) Standard frequency and time signal-satellite (Earth-to-space)	
25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536A 5.536B FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)			25.5-27 EARTH EXPLORATION-SATELLITE (space-to-Earth) 5.536A FIXED INTER-SATELLITE 5.536 MOBILE Standard frequency and time signal-satellite (Earth-to-space)	25.5-27 Earth exploration-satellite (space-to-Earth) 5.536A (space-to-space) Standard frequency and time signal-satellite (Earth-to-space)	
27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 FIXED FIXED-SATELLITE (Earth-to-space) INTER-SATELLITE 5.536 5.537 MOBILE		27-27.5 FIXED INTER-SATELLITE 5.536 MOBILE	27-27.5 Earth exploration-satellite (space-to-space)	

27.5-32 GHz (SHF/EHF) Page 73

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
27.5-28.5 FIXED 5.537A FIXED-SATELLITE (Earth-to-space) 5.484A 5.539 MOBILE 5.538 5.540			27.5-30	27.5-29.5 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE	Satellite Communications (25) Fixed Microwave (101)
28.5-29.1 FIXED FIXED-SATELLITE (Earth-to-space) 5.484A 5.523A 5.539 MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540					
29.1-29.5 FIXED FIXED-SATELLITE (Earth-to-space) 5.523C 5.523E 5.535A 5.539 5.541A MOBILE Earth exploration-satellite (Earth-to-space) 5.541 5.540					
29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.525 5.526 5.527 5.529 5.540 5.542	29.5-29.9 FIXED-SATELLITE (Earth-to-space) 5.484A 5.539 Earth exploration-satellite (Earth-to-space) 5.541 Mobile-satellite (Earth-to-space) 5.540 5.542		29.5-29.9 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) 5.525 5.526 5.527 5.529	Satellite Communications (25)
29.9-30 FIXED-SATELLITE (Earth-to-space) 5.484A 5.539 MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (Earth-to-space) 5.541 5.543 5.525 5.526 5.527 5.538 5.540 5.542				29.9-30 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) 5.525 5.526 5.527 5.543	

30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) 5.542			30-31 FIXED-SATELLITE (Earth-to-space) MOBILE-SATELLITE (Earth-to-space) Standard frequency and time signal-satellite (space-to-Earth) G117	30-31 Standard frequency and time signal-satellite (space-to-Earth)	
31-31.3 FIXED 5.543A MOBILE Standard frequency and time signal-satellite (space-to-Earth) Space research 5.544 5.545 5.149			31-31.3 Standard frequency and time signal-satellite (space-to-Earth) US211 US342	31-31.3 FIXED MOBILE Standard frequency and time signal-satellite (space-to-Earth) US211 US342	Fixed Microwave (101)
31.3-31.5 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340			31.3-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149 5.546	31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340	31.5-31.8 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) Fixed Mobile except aeronautical mobile 5.149			
31.8-32 FIXED 5.547A RADIONAVIGATION SPACE RESEARCH (deep space) (space-to-Earth) 5.547 5.547B 5.548			31.8-32 RADIONAVIGATION US69 SPACE RESEARCH (deep space) (space-to-Earth) US262 5.548 US211	31.8-32 SPACE RESEARCH (deep space) (space-to-Earth) US262 5.548 US211	

32-40 GHz (EHF)

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
32-32.3 FIXED 5.547A RADIONAVIGATION SPACE RESEARCH (deep space) (space-to-Earth) 5.547 5.547C 5.548			32-32.3 RADIONAVIGATION US69 SPACE RESEARCH (deep space) (space-to-Earth) US262 5.548	32-32.3 SPACE RESEARCH (deep space) (space-to-Earth) US262 5.548	
32.3-33 FIXED 5.547A INTER-SATELLITE RADIONAVIGATION 5.547 5.547D 5.548			32.3-33 INTER-SATELLITE US278 RADIONAVIGATION US69 5.548		Aviation (87)
33-33.4 FIXED 5.547A RADIONAVIGATION 5.547 5.547E			33-33.4 RADIONAVIGATION US69 US360 G117		
33.4-34.2 RADIOLOCATION 5.549			33.4-34.2 RADIOLOCATION US360 G117	33.4-34.2 Radiolocation US360	Private Land Mobile (90)
34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) 5.549			34.2-34.7 RADIOLOCATION SPACE RESEARCH (deep space) (Earth-to-space) US262 US360 G34 G117	34.2-34.7 Radiolocation Space research (deep space) (Earth-to-space) US262 US360	
34.7-35.2 RADIOLOCATION Space research 5.550 5.549			34.7-35.5 RADIOLOCATION US360 G117	34.7-35.5 Radiolocation US360	
35.2-35.5 METEOROLOGICAL AIDS RADIOLOCATION 5.549					
35.5-36 METEOROLOGICAL AIDS EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.549 5.551A			35.5-36 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) US360 G117	35.5-36 Earth exploration-satellite (active) Radiolocation Space research (active) US360	

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International Footnotes

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5.457A In the bands 5925–6425 MHz and 14–14.5 GHz, earth stations on board vessels may communicate with space stations of the fixed-satellite service. Such use shall be in accordance with Resolution 902 (WRC–03).

5.457B In the bands 5925–6425 MHz and 14–14.5 GHz, earth stations located on board vessels may operate with the characteristics and under the conditions contained in Resolution 902 (WRC–03) in Algeria, Saudi Arabia, Bahrain, Comoros, Djibouti, Egypt, United Arab Emirates, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Mauritania, Oman, Qatar, Syrian Arab Republic, Sudan, Tunisia and Yemen, in the maritime mobile-satellite service on a secondary basis. Such use shall be in accordance with Resolution 902 (WRC–03).

* * * * *

5.504A In the band 14–14.5 GHz, aircraft earth stations in the secondary aeronautical mobile-satellite service may also communicate with space stations in the fixed-satellite service. The provisions of Nos. 5.29, 5.30 and 5.31 apply.

5.504B Aircraft earth stations operating in the aeronautical mobile-satellite service in the band 14–14.5 GHz shall comply with the provisions of Annex 1, Part C of Recommendation ITU–R M.1643, with respect to any radio astronomy station performing observations in the 14.47–14.5 GHz band located on the territory of Spain, France, India, Italy, the United Kingdom and South Africa.

5.504C In the band 14–14.25 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, Côte d'Ivoire, Egypt, Guinea, India, Iran, Kuwait, Lesotho, Nigeria, Oman, Syrian Arab Republic and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

5.505 *Additional allocation:* in Algeria, Angola, Saudi Arabia, Bahrain, Bangladesh, Botswana, Brunei Darussalam, Cameroon, China, Congo, Korea (Rep. of), Egypt, the United Arab Emirates, Gabon, Guatemala, Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Japan, Jordan, Kuwait, Lesotho, Lebanon, Malaysia, Mali, Morocco, Mauritania, Oman, Pakistan, the Philippines, Qatar, Syrian Arab Republic, the Dem. People's Rep. of Korea, Singapore, Somalia, Sudan, Swaziland, Tanzania, Chad and Yemen, the band 14–14.3 GHz is also allocated to the fixed service on a primary basis.

* * * * *

5.506A In the band 14–14.5 GHz, ship earth stations with an e.i.r.p. greater than 21 dBW shall operate under the same conditions as earth stations located on board vessels, as provided in Resolution 902 (WRC–03). This footnote shall not apply to ship earth stations for which the complete Appendix 4 information has been received by the Radiocommunication Bureau prior to 5 July 2003.

5.506B Earth stations on board vessels communicating with space stations in the fixed-satellite service may operate in the frequency band 14–14.5 GHz without the need for prior agreement from Cyprus, Greece, and Malta within the minimum distance given in Resolution 902 (WRC–03) from these countries.

5.508 *Additional allocation:* in Germany, Bosnia and Herzegovina, France, Italy, The Former Yugoslav Republic of Macedonia, Libyan Arab Jamahiriya, the United Kingdom, Slovenia and Serbia and Montenegro, the band 14.25–14.3 GHz is also allocated to the fixed service on a primary basis.

5.508A In the band 14.25–14.3 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, China, Côte d'Ivoire, Egypt, France, Guinea, India, Iran, Italy, Kuwait, Lesotho, Nigeria, Oman, Syrian Arab Republic, the United Kingdom and Tunisia by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

* * * * *

5.509A In the band 14.3–14.5 GHz, the power flux-density produced on the territory of the countries of Saudi Arabia, Botswana, Cameroon, China, Côte d'Ivoire, Egypt, France, Gabon, Guinea, India, Iran, Italy, Kuwait, Lesotho, Morocco, Nigeria, Oman, Syrian Arab Republic, the United Kingdom, Sri Lanka, Tunisia and Viet Nam by any aircraft earth station in the aeronautical mobile-satellite service shall not exceed the limits given in Annex 1, Part B of Recommendation ITU–R M.1643, unless otherwise specifically agreed by the affected administration(s). The provisions of this footnote in no way derogate the obligations of the aeronautical mobile-satellite service to operate as a secondary service in accordance with No. 5.29.

* * * * *

United States (US) Footnotes

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US7 In the band 420–450 MHz and within the following areas, the peak envelope power output of a transmitter employed in the amateur service shall not exceed 50 watts, unless expressly authorized by the Commission after mutual agreement, on a case-by-case basis, between the Federal Communications Commission Engineer in Charge at the applicable district office and the military area frequency coordinator at the applicable military base. For areas (e) through (j), the appropriate military coordinator is located at Peterson AFB, CO.

(a) The entire State of New Mexico and Texas west of longitude 104° 00′ West;

(b) The entire State of Florida including the Key West area and the areas enclosed within a 322-kilometer (200-mile) radius of Patrick Air Force Base, Florida (latitude 28° 21′ North, longitude 80° 43′ West), and within a 322-kilometer (200-mile) radius of Eglin Air Force Base, Florida (latitude 30° 30′ North, longitude 86° 30′ West);

(c) The entire State of Arizona;

(d) Those portions of California and Nevada south of latitude 37° 10′ North, and the areas enclosed within a 322-kilometer (200-mile) radius of the Pacific Missile Test Center, Point Mugu, California (latitude 34° 09′ North, longitude 119° 11′ West).

(e) In the State of Massachusetts within a 160-kilometer (100-mile) radius around locations at Otis Air Force Base, Massachusetts (latitude 41° 45′ North, longitude 70° 32′ West).

(f) In the State of California within a 240-kilometer (150-mile) radius around locations at Beale Air Force Base, California (latitude 39° 08′ North, longitude 121° 26′ West).

(g) In the State of Alaska within a 160-kilometer (100-mile) radius of Clear, Alaska (latitude 64° 17′ North, longitude 149° 10′ West).

(h) In the State of North Dakota within a 160-kilometer (100-mile) radius of Concrete, North Dakota (latitude 48° 43′ North, longitude 97° 54′ West).

(i) In the States of Alabama, Georgia and South Carolina within a 200-kilometer (124-mile) radius of Warner Robins Air Force Base, Georgia (latitude 32° 38′ North, longitude 83° 35′ West).

(j) In the State of Texas within a 200-kilometer (124-mile) radius of Goodfellow Air Force Base, Texas (latitude 31° 25′ North, longitude 100° 24′ West).

* * * * *

US48 In the band 9000–9200 MHz, the use of the radiolocation service by non-Federal Government licensees may be authorized on the condition that harmful interference is not caused to the aeronautical radionavigation service or to the Federal Government radiolocation service.

* * * * *

US78 In the mobile service, the frequencies between 1435 and 1525 MHz will be assigned for aeronautical telemetry and associated telecommand operations for flight testing of manned or unmanned aircraft and missiles, or their major components. Permissible usage includes telemetry associated with launching and reentry into the Earth's atmosphere as well as any incidental orbiting prior to reentry of manned objects undergoing flight tests. The following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, and 1524.5 MHz.

* * * * *

US110 In the band 9200–9300 MHz, the use of the radiolocation service by non-Federal Government licensees may be authorized on the condition that harmful interference is not caused to the maritime radionavigation service or to the Federal Government radiolocation service.

* * * * *

US217 In the band 420–450 MHz, pulse-ranging radiolocation systems may be authorized for Federal and non-Federal Government use along the shorelines of the contiguous 48 States and Alaska. In the Sub-band 420–435 MHz, spread spectrum radiolocation systems may be authorized for Federal and non-Federal Government use within the contiguous 48 States and Alaska. All stations operating in accordance with this provision shall be secondary to stations operating in accordance with the Table of Frequency Allocations. Authorizations shall be granted on a case-by-case basis; however, operations proposed to be located within the following geographic areas should not expect to be accommodated:

(a) The entire State of New Mexico and Texas west of longitude 104° 00′ West;

(b) The entire State of Florida including the Key West area and the areas enclosed within a 322-kilometer (200-mile) radius of Patrick Air Force Base, Florida (latitude 28° 21′ North, longitude 80° 43′ West), and within a 322-kilometer (200-mile) radius of Eglin Air Force Base, Florida (latitude 30° 30′ North, longitude 86° 30′ West);

(c) The entire State of Arizona;

(d) Those portions of California and Nevada south of latitude 37° 10′ North, and the areas enclosed within a 322-kilometer (200-mile) radius of the Pacific Missile Test Center, Point Mugu, California (latitude 34° 09′ North, longitude 119° 11′ West).

(e) In the State of Massachusetts within a 160-kilometer (100-mile) radius around locations at Otis Air Force Base, Massachusetts (latitude 41° 45′ North, longitude 70° 32′ West).

(f) In the State of California within a 240-kilometer (150-mile) radius around locations at Beale Air Force Base, California (latitude 39° 08′ North, longitude 121° 26′ West).

(g) In the State of Alaska within a 160-kilometer (100-mile) radius of Clear, Alaska (latitude 64° 17′ North, longitude 149° 10′ West).

(h) In the State of North Dakota within a 160-kilometer (100-mile) radius of Concrete, North Dakota (latitude 48° 43′ North, longitude 97° 54′ West).

(i) In the States of Alabama, Georgia and South Carolina within a 200-kilometer (124-mile) radius of Warner Robins Air Force Base, Georgia (latitude 32° 38′ North, longitude 83° 35′ West).

(j) In the State of Texas within a 200-kilometer (124-mile) radius of Goodfellow Air Force Base, Texas (latitude 31° 25′ North, longitude 100° 24′ West).

* * * * *

US244 The band 136–137 MHz is allocated to the non-Federal Government aeronautical mobile (R) service on a primary basis, and is subject to pertinent international treaties and agreements. The frequencies 136, 136.025, 136.05, 136.075, 136.1, 136.125, 136.15, 136.175, 136.2, 136.225, 136.25, 136.275, 136.3, 136.325, 136.35, 136.375, 136.4, 136.425, 136.45, and 136.475 MHz are available on a shared basis to the Federal Aviation Administration for air traffic control purposes, such as automatic weather observation stations (AWOS), automatic terminal information services (ATIS), flight information services-broadcast (FIS–B), and airport control tower communications.

* * * * *

US246 No station shall be authorized to transmit in the following bands:

73–74.6 MHz,
608–614 MHz, except for medical telemetry equipment,[1]
1400–1427 MHz,
1660.5–1668.4 MHz,
2690–2700 MHz,
4990–5000 MHz,
10.68–10.7 GHz,
15.35–15.4 GHz,
23.6–24 GHz,
31.3–31.8 GHz,
50.2–50.4 GHz,
52.6–54.25 GHz,
86–92 GHz,
100–102 GHz,
105–116 GHz,
164–168 GHz,
182–185 GHz,
217–231 GHz.

* * * * *

US252 The bands 2110–2120 MHz and 7145–7190 MHz are also allocated for Earth-to-space transmissions in the space research service, limited to deep space communications at Goldstone, California.

* * * * *

US258 In the band 8025–8400 MHz, the Earth exploration-satellite service (space-to-Earth) is allocated on a primary basis for non-Federal Government use. Authorizations are subject to a case-by-case electromagnetic compatibility analysis.

* * * * *

US262 The use of the band 31.8–32.3 GHz by the space research service (deep space) (space-to-Earth) and of the band 34.2–34.7 GHz by the space research service (deep space) (Earth-to-space) are limited to Goldstone, California.

* * * * *

US276 Except as otherwise provided for herein, use of the band 2360–2385 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles or major components thereof. The following three frequencies are shared on a co-equal basis by Federal Government and non-Federal Government stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles whether or not such operations involve flight testing: 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. All other mobile telemetering uses shall be secondary to the above uses.

US277 The band 10.6–10.68 GHz is also allocated on a primary basis to the radio astronomy service. However, the radio astronomy service shall not receive protection from stations in the fixed service which are licensed to operate in the one hundred most populous urbanized areas as defined by the 1990 U.S. Census. For the list of observatories operating in this band *see* 47 CFR 2.106, footnote US355.

US278 In the bands 22.55–23.55 GHz and 32.3–33 GHz, non-geostationary inter-satellite links may operate on a secondary basis to geostationary inter-satellite links.

* * * * *

US303 In the band 2285–2290 MHz, non-Federal government space stations in the space research, space operations and Earth exploration-satellite services may be authorized to transmit to the Tracking and Data Relay Satellite System subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal Government stations. The power flux density at the Earth's surface from such non-Federal Government stations shall not exceed -144 to -154 dBW/m^2/4 kHz, depending on angle of arrival, in accordance with ITU Radio Regulation 21.16.

* * * * *

US310 In the band 14.896–15.121 GHz, non-Federal Government space stations in the space research service may be authorized on a secondary basis to transmit to Tracking and Data Relay Satellites subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Federal Government stations. The power flux-density produced by such non-Federal Government stations at the Earth's surface in any 4 kHz band for all conditions and methods of modulation shall not exceed:

-148 $\mathrm{dB(W/m^2)}$ for $0^\circ < \theta \leq 5^\circ$
$-148 + (\theta \leq 5)/2\mathrm{dB(W/m^2)}$ for $5^\circ < \theta \leq 25^\circ$
-138 $\mathrm{dB(W/m^2)}$ for $25^\circ < \theta \leq 90^\circ$

where θ is the angle of arrival of the radio-frequency wave (degrees above the horizontal). These limits relate to the power flux-density and angles of arrival which would be obtained under free-space propagation conditions.

* * * * *

US316 The band 2900–3000 MHz is also allocated on a primary basis to the meteorological aids service. Operations in this service are limited to Federal Government Next Generation Weather Radar (NEXRAD) systems where accommodation in the 2700–2900 MHz band is not technically practical and are subject to coordination with existing authorized stations.

* * * * *

US320 The use of the bands 137–138 MHz, 148–150.05 MHz, and 400.15–401 MHz by the mobile-satellite service is limited to non-voice, non-geostationary satellite systems and may include satellite links between land earth stations at fixed locations.

* * * * *

US342 In making assignments to stations of other services to which the bands:

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[1] Medical telemetry equipment shall not cause harmful interference to radio astronomy operations in the band 608–614 MHz and shall be coordinated under the requirements found in 47 CFR 95.1119.

13360–13410 kHz,
25550–25670 kHz,
37.5–38.25 MHz,
322–328.6 MHz,
1330–1400 MHz,
1610.6–1613.8 MHz,
1660–1660.5 MHz,
1668.4–1670 MHz,
3260–3267 MHz,
3332–3339 MHz,
3345.8–3352.5 MHz,
4825–4835 MHz,
4950–4990 MHz,
6650–6675.2 MHz,
14.47–14.5 GHz,
22.01–22.21 GHz,
22.21–22.5 GHz,
22.81–22.86 GHz,
23.07–23.12 GHz,
31.2–31.3 GHz,
36.43–36.5 GHz,
42.5–43.5 GHz,
48.94–49.04 GHz,
93.07–93.27 GHz,
97.88–98.08 GHz,
140.69–140.98 GHz,
144.68–144.98 GHz,
145.45–145.75 GHz,
146.82–147.12 GHz,
150–151 GHz,
174.42–175.02 GHz,
177–177.4 GHz,
178.2–178.6 GHz,
181–181.46 GHz,
186.2–186.6 GHz,
250–251 GHz,
257.5–258 GHz,
261–265 GHz,
262.24–262.76 GHz,
265–275 GHz

are allocated, all practicable steps shall be taken to protect the radio astronomy service from harmful interference. Emissions from spaceborne or airborne stations can be particularly serious sources of interference to the radio astronomy service (*see* Nos. 4.5 and 4.6 and Article 29 of the ITU Radio Regulations).

* * * * *

US355 In the band 10.7–11.7 GHz, non-geostationary satellite orbit licensees in the fixed-satellite service (space-to-Earth), prior to commencing operations, shall coordinate with the following radio astronomy observatories to achieve a mutually acceptable agreement regarding the protection of the radio telescope facilities operating in the band 10.6–10.7 GHz:

Observatory	West longitude	North latitude	Elevation (in meters)
Arecibo Observatory	66°45′11″	18°20′46″	496
Green Bank Telescope (GBT)	79°50′24″	38°25′59″	825
Very Large Array (VLA)	107°37′04″	34°04′44″	2126
Very Long Baseline Array (VLBA) Stations:			
Brewster, WA	119°40′55″	48°07′53″	255
Fort Davis, TX	103°56′39′	30°38′06″	1615
Hancock, NH	71°59′12″	42°56′01″	309
Kitt Peak, AZ	111°36′42″	31°57′22″	1916
Los Alamos, NM	106°14′42″	35°46′30″	1967
Mauna Kea, HI	155°27′29″	19°48′16″	3720
North Liberty, IA	91°34′26″	41°46′17″	241
Owens Valley, CA	118°16′34″	37°13′54″	1207
Pie Town, NM	108°07′07″	34°18′04″	2371
St. Croix, VI	64°35′03″	17°45′31″	16

* * * * *

US384 In the band 401–403 MHz, the non-Federal Government Earth exploration-satellite (Earth-to-space) and meteorological-satellite (Earth-to-space) services are limited to earth stations transmitting to Federal Government space stations.

US385 The band 1164–1215 MHz is also allocated to the radionavigation-satellite service (space-to-Earth, space-to-space) on a primary basis. In this band, stations in the radionavigation-satellite service shall not cause harmful interference to, nor claim protection from, stations of the aeronautical radionavigation service.

US386 In designing systems for the inter-satellite service in the band 32.3–33 GHz, for the radionavigation service in the band 32–33 GHz, and for the space research service (deep space) (space-to-Earth) in the band 31.8–32.3 GHz, all necessary measures shall be taken to prevent harmful interference between these services, bearing in mind the safety aspects of the radionavigation service.

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Non-Federal Government (NG) Footnotes

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NG41 Frequencies in the bands 3700–4200 MHz and 5925–6425 MHz, may also be assigned to stations in the international fixed public and international control services located in Puerto Rico, the U.S. Virgin Islands, and Navassa Island.

* * * * *

NG114 In the Gulf of Mexico offshore from the Louisiana-Texas coast, the band 476–494 MHz (TV channels 15, 16 and 17) is allocated to the Public Mobile and Private Land Mobile Radio Services in accordance with the regulations set forth in 47 C.F.R. parts 22 and 90, respectively.

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Federal Government (G) Footnotes

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G2 In the bands 216–225, 420–450 (except as provided by US217 and G129), 890–902, 928–942, 1300–1400, 2310–2385, 2417–2450, 2700–2900, 5650–5925 and 9000–9200 MHz, the Federal Government radiolocation service is limited to the military services.

* * * * *

G129 Federal Government wind profilers are authorized to operate on a primary basis in the radiolocation service in the frequency band 448–450 MHz with an authorized bandwidth of no more than 2 MHz centered on 449 MHz, subject to the following conditions: (1) wind profiler locations must be pre-coordinated with the military services to protect fixed military radars; and (2) wind profiler operations shall not cause harmful interference to, nor claim protection from, military mobile radiolocation stations that are engaged in critical national defense operations.

PART 25—SATELLITE COMMUNICATIONS

■ 4. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 5. Section 25.202(a)(3) is revised and paragraph 25.202(a)(4)(iii) is added to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a) * * *

(3) The following frequencies are available for use by the non-voice, non-geostationary mobile-satellite service:

137–138 MHz: Space-to-Earth
148–150.05 MHz: Earth-to-space
399.9–400.05 MHz: Earth-to-space
400.15–401 MHz: Space-to-Earth

(4) * * *

(iii)(A) The following frequencies are available for use by the L-band Mobile-Satellite Service:

1525–1559 MHz: Space-to-Earth
1626.5–1660.5 MHz: Earth-to-space

(B) The use of the frequencies 1544–1545 MHz and 1645.5–1646.5 MHz is limited to distress and safety communications.

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PART 87—AVIATION SERVICES

■ 6. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 7. Section 87.303 is amended by revising paragraph (d)(1) to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435–1525 MHz and 2360–2385 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of manned or unmanned aircraft and missiles, or their major components. The bands 2310–2320 MHz and 2345–2360 MHz are also available for these purposes on a secondary basis. Until January 1, 2007, flight test operations in the band 2385–2390 MHz may continue on a primary basis within 160 km of the nine sites listed in 47 CFR 2.106, footnote US363. Permissible uses of these bands include telemetry and telecommand transmissions associated with the launching and reentry into the Earth's atmosphere, as well as any incidental orbiting prior to reentry, of manned or unmanned objects undergoing flight tests. In the band 1435–1530 MHz, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5, and 1525.5 MHz. In the band 2360–2390 MHz, the following frequencies may be assigned on a co-equal basis for telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles, whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. In the band 2360–2390 MHz, all other mobile telemetry uses are secondary to the above stated launch vehicle uses.

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[FR Doc. 03–31256 Filed 12–22–03; 8:45 am]

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Tuesday,
December 23, 2003

Part IV

Securities and Exchange Commission

17 CFR Part 240
Processing Requirements for Cancelled Security Certificates; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–48931; File No. S7–18–00]

RIN 3235–AH94

Processing Requirements for Cancelled Security Certificates

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rule.

SUMMARY: The Commission is revising its rules governing cancelled securities certificates to improve the processing of securities certificates by transfer agents. The Commission is adopting a new rule under the Securities Exchange Act of 1934 that will require every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. This rule will require transfer agents to: Mark each cancelled securities certificate with the word "cancelled"; maintain a secure storage area for cancelled certificates; maintain a retrievable database of all of its cancelled, destroyed, or otherwise disposed of certificates; and have specific procedures for the destruction of cancelled certificates. Additionally, the Commission is amending its lost and stolen securities rule and its transfer agent safekeeping rule to make it clear that these rules apply to unissued and cancelled certificates.

EFFECTIVE DATE: The amendments will become effective on January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Thomas C. Etter, Jr., Special Counsel, at (202) 942–0178, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Commission is today adopting new Rule 17Ad–19 and adopting amendments to existing Rules 17f–1, 17Ad–7, and 17Ad–12.

I. Introduction

A. The Proposal

On October 2, 2000, the Commission published for comment a release ("Proposing Release") that proposed Rule 17Ad–19 under the Securities Exchange Act of 1934 ("Exchange Act")[1] and proposed amendments to Exchange Act Rules 17f–1 and 17Ad–12.[2] The proposed rule and rule amendments principally were designed to address problems associated with cancelled securities certificates. Rule 17Ad–19 as proposed would have required every transfer agent that handles, processes, or stores securities certificates to establish and implement written procedures for the cancellation, storage, transportation, and destruction of retired securities certificates. The rule would require transfer agents to: Mark each cancelled securities certificate with the word "cancelled;" maintain a secure storage area for cancelled certificates; maintain a retrievable database of all of its cancelled and destroyed certificates; and have specific procedures for the destruction of cancelled certificates. Additionally, proposed amendments to Rule 17f–1 (the lost and stolen securities rule) would have: Required the tracking of securities certificates, cancelled or otherwise, in transit between reporting institutions; established time frames for making required "inquiries" about lost, stolen, missing, or counterfeit securities under Rule17f–1; and defined certain terms for purposes of the rules. Finally, proposed amendments to Rule 17f–1 and Rule 17Ad–12 (the transfer agent safekeeping rule) would have made clear that unissued and cancelled securities certificates must be safeguarded under Rule 17Ad–12 and that they fall within the Commission's Lost and Stolen Securities Program under Rule 17f–1.

We are adopting the proposed new rule and rule amendments, with minor modifications as discussed below, substantially as they were proposed. Further, as discussed below, we have modified Rule 17Ad–19 from the proposal in response to comments to address situations where cancelled securities are "otherwise disposed of."

B. The Commission's Goals

The new rule and rule amendments promote several fundamental Commission goals: Improving the safety and efficiency in processing and transferring securities; reducing or eliminating the physical movement of securities certificates; and reducing the potential for fraudulent use of cancelled securities certificates.[3] The rules primarily relate to problems and costs associated with cancelled securities certificates.

In particular, we address the problem that, until properly destroyed or disposed of, cancelled securities certificates can resurface in the marketplace and can be and have been used to defraud members of the public or financial institutions. Requiring better procedures for processing and destroying cancelled certificates will reduce this potential for harm.

C. Comment Letters

The Commission received 13 comment letters on the proposed rule and proposed rule amendments.[4] Ten commenters generally expressed support for proposed Rule 17Ad–19 and the proposed amendments to Rules 17f–1 and 17Ad–12 and for the Commission's efforts to address cancelled certificate fraud, and offered suggestions for modification or requests for clarification with respect to specific provisions of the proposal. As discussed below, we have adopted some of the suggestions. The remaining three commenters addressed only the issue of certificate destruction, arguing that because securities certificates are culturally important due to their historical, aesthetic, and collectors' values, they should be preserved and not destroyed. We discuss these comments below.

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[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.17f–1 and 240.17Ad–12; Securities Exchange Act Release No. 43401 (October 2, 2000), 65 FR 59766 (October 6, 2000).

[3] *See, generally,* Exchange Act Section 17A(a), 15 U.S.C. 78q–1(a); Section 17(f)(1), 15 U.S.C. 78q(f)(1); *Securities Act Amendments of 1975*, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. 94 to accompany S.249, 58–59 (1975); *Securities Industry Study*, H.R. Report of the Subcom. on Commerce & Finance, House Rep. No. 92–1519, pp. 68–70, 75–76 (1972).

[4] The Commission received comment letters from five transfer agents, one broker-dealer, one bank, one business corporation, one trade group representing transfer agents, one trade group representing investment companies, the president of an organization representing collectors of securities certificates, a finance professor, and a group of business students at Florida State University. Letters from James J. Angel, Ph.D., George Washington University (October 19, 2000); Loren Hanson, Manager, Shareholder Relations, Otter Tail Power Co. (October 24, 2000); Frank Hammelbacher, Norrico, Inc. (October 30, 2000); John E. Nolan, Senior Vice President, Raymond James & Associates, Inc. (November 2, 2000); Charles V. Rossi, Division President, EquiServe (December 4, 2000); Steven Turowski, Senior Regulatory Counsel, PFPC Inc. (December 4, 2000); Kathleen C. Joaquin, Director, Transfer Agency & International Operations, Investment Company Institute ("ICI") (December 5, 2000); Daniel M. Hill, Assistant Vice President, U.S. Bank Trust National Association (December 6, 2000); John F. Kuntz, Vice President and Assistant General Counsel, Chase-Mellon Shareholder Services (December 14, 2000); Keith G. Berkheimer, President, CTA (December 14, 2000); Robert A. Kerstein, President, Scripophily.com (March 5, 2001); and Robert Serrano *et al,* business students at Florida State University (dated November 29, 2000, received at the Commission February 19, 2002). These comment letters are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

II. Background

A. History

When a security certificate is retired, such as when a bond is redeemed or ownership of stock is transferred, the certificate is cancelled by the transfer agent. Cancellation normally involves both an accounting entry on the books of the transfer agent and an alteration of the certificate itself, though either by itself is an act of cancellation. After cancellation of a registered certificate,[5] the Exchange Act's record retention rules for transfer agents require that the certificate or appropriate record of the certificate be retained for not less than six years.[6] In recent years, many corporate bond issues have been called for redemption and cancelled decades before their maturities.[7] These bond redemptions and an active stock market have generated vast amounts of cancelled securities certificates that must be processed, stored, and safeguarded. Certificate processing of retired certificates can involve significant costs and risks. The following examples illustrate some of these risks.

In a 1992 case, cancelled bond certificates with a face amount of approximately $111 billion disappeared after being delivered from a transfer agent's warehouse to a certificate destruction vendor. The certificates, issued by many well-known public companies, later began to resurface worldwide. A number of banks and brokers as well as individuals were defrauded through sales of the cancelled certificates for cash or through use of the cancelled certificates as loan collateral. The bulk of these cancelled certificates still remain unaccounted for and continue to resurface in the marketplace.[8]

In a similar case in 1994, cancelled bonds with a face amount of approximately $6 billion disappeared after being delivered from a transfer agent's record center to two certificate destruction vendors. The cancelled certificates, issued by well-known companies, later began to resurface worldwide. Again, the bulk of these cancelled certificates remain unaccounted for and continue to resurface in the marketplace.[9]

In another instance, a transfer agent's shipping bags filled with cancelled certificates were stolen while in commercial air transit. The transfer agent regularly shipped cancelled certificates from the West Coast to a New York bank for processing. The transfer agent, however, did not record the contents of its shipments and, in effect, relied on its New York bank processing agent to do its bookkeeping. When the shipping bags were stolen, neither the transfer agent nor its bank processing agent realized that the certificates were missing. A number of the certificates later resurfaced in off-market transactions.[10]

Other instances have involved bulk thefts of cancelled certificates from warehouses. In some cases, the records of the certificate numbers of the stored certificates also were stolen because they were stored with the certificates. Even in cases where certificate records for stolen securities were available, they generally were of limited value in identifying the stolen securities because the records were organized chronologically by cancellation dates rather than by certificate numbers. As a result, the necessary information was not easily retrievable from the records.

A common transfer agent practice contributed to this widespread problem. In physically cancelling certificates, many transfer agents marked the certificates only with pinhole-sized perforations. These tiny perforations were intended to indicate cancelled status without defacing the certificates and impairing their usefulness as records. The pinholes, which usually show the cancellation date and the initials of the transfer agent within a space about the size of a quarter, often have been barely noticeable. In some cases, they have been mistaken for notary or authentication markings. Even more problematic has been the practice by some transfer agents of not marking certificates at all to indicate that the certificates have been cancelled.

In many cases, the stolen certificates have reentered the marketplace either through sales or as collateral for loans, resulting in substantial fraud on public investors, public companies, creditors, broker-dealers, and transfer agents. Not only do situations such as these present potential liability for the transfer agents responsible, but they consume the resources of regulatory and criminal law enforcement agencies.

As discussed below, the Commission hopes that these unfortunate practices have been or are being eliminated by the transfer agents themselves through improved trade practices. But without standards and verification, there is no way to be certain. The new rule and rule amendments address these practices and will permit the Commission's examiners to verify compliance as a routine part of their examination schedules.

B. The Commission's Authority

Sections 17(f) and 17A of the Exchange Act provide the Commission with authority and responsibility to protect investors and securities industry participants from the dangers associated with the fraudulent use of cancelled certificates.[11] Section 17(f)(1), in fact, is designed to curtail the profitability of and the unlawful trafficking in lost and stolen securities certificates.[12] Section 17(a)(3) of the Act expressly provides the Commission with rulemaking authority over transfer agent recordkeeping matters.[13] In Section 17A(a), Congress directs the Commission to carry out certain objectives including the safeguarding of securities and funds that are related to securities transfers and the elimination of inefficient securities processing that imposes unnecessary costs on investors.[14] The Commission has broad discretion in carrying out these mandates.[15] We believe that most situations where cancelled securities certificates resurfaced in the marketplace have resulted from a lack of good internal control systems for the processing, storage, transportation, or destruction of the certificates. The rules that we adopt today are intended to provide for more efficient and secure certificate processing, particularly of cancelled certificates.

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[5] The term "registered" as used in 17 CFR 240.17Ad–6(c) with reference to cancelled certificates means certificates registered in the name of an owner, as distinct from bearer certificates that were in wide circulation when this rule was promulgated in 1977.

[6] 17 CFR 240.17Ad–6(c) and 240.17Ad–7(d). *See also* 17 CFR 240.17Ad–7(f). It has been suggested that transfer agents should have the option to destroy cancelled certificates shortly after cancellation. *See* comment letter from Steven Turowski, Chief Regulatory Counsel, PFPC, Inc, (December 4, 2000). While current practices are changing and some transfer agents may want to select alternative means, such as electronic imaging, to satisfy the recordkeeping requirements for cancelled certificates, many transfer agents may prefer to satisfy these recordkeeping requirements by maintaining the physical certificates themselves. Nevertheless, in the Proposing Release, we invited commenters to address this issue, and their comments are summarized below.

We note that we have also proposed amendments to Securities Exchange Act Rule 17Ad–7, 17 CFR240.17Ad–7, which if adopted would make clear that transfer agents may use certain alternative means to store cancelled securities certificates provided that the certificates are electronically stored in conformity with the terms of Rule 17Ad–7. Because these electronic records satisfy the recordkeeping obligations, the paper certificates would not be required to be kept by Rule 17Ad–7. Securities Exchange Act Release No. 48036 (June 16, 2003), 68 FR 36951.

[7] Among the reasons for these bond redemptions has been the decline in long-term interest rates since the early 1980s.

[8] The Commission brought an action against this transfer agent for its failure to report stolen certificates pursuant to Rule 17f–1, 17 CFR 240.17f–1, and for its failure to safeguard securities in its possession pursuant to Rule 17Ad–12, 17 CFR 240.17Ad–12. The transfer agent agreed to pay a civil penalty of $750,000 and to cease and desist from future violations of Sections 17(f)(1) and 17A of the Exchange Act and Rules 17f–1 and 17Ad–12 thereunder. *SEC* v. *Citibank, N.A.*, Civil Action No. 92–2833 (USDC, DC, 1992). *See also* Securities Exchange Act Release No. 31612 (December 17, 1992).

[9] The Commission and the Comptroller of the Currency brought a joint action against this transfer agent for its failure to report as stolen the cancelled certificates pursuant to Rule 17f–1 and its failure to safeguard securities in its possession pursuant to Rule 17Ad–12. The transfer agent agreed to pay a civil penalty of $100,000 and to cease and desist from future violations of Sections 17(f)(1) and 17A of the Exchange Act and Rules 17f–1 and 17Ad–12 thereunder. As remedial measures, the transfer agent also agreed to mark cancelled certificates with the word "cancelled" and to adopt other safeguards. *The Chase Manhattan Bank*, Securities Exchange Act Release No. 34784 (October 4, 1994).

[10] The Commission and the Office of the Comptroller of the Currency brought a joint action against this transfer agent for violation of Section 17(f)(1) of the Exchange Act and Rule 17f–1 thereunder for failure to report the missing securities to the Commission's Lost and Stolen Securities Program. The transfer agent agreed to pay a $75,000 civil penalty and to cease and desist from any further violations of Section 17(f)(1) and Rule 17f–1 thereunder. *Seattle-First National Bank*, Securities Exchange Act Release No. 34293 (July 1, 1994).

III. Final Rules

A. Rule 17Ad–19: Processing of Cancelled Certificates

Currently, the processing of cancelled certificates is largely governed by industry practices. For example, in 1994, the Securities Transfer Association ("STA"), the largest transfer agent trade association,[16] adopted guidelines for its members which, among other things, called for marking cancelled certificates with the word "cancelled" and for greater security measures in certificate storage and destruction.[17] However, these guidelines are not mandatory, and not all transfer agents follow them. Therefore, because cancellation is the critical first step in the processing of retired securities certificates, we believe that rulemaking is necessary to strengthen and standardize this process.

1. Discussion of Text

Rule 17Ad–19 requires each transfer agent to have and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. At a minimum, the written procedures must provide: (1) For controlled access to any cancelled certificate facility; (2) that the transfer agent clearly apply to the face of each cancelled certificate the word "cancelled" unless the transfer agent's procedures will cause the certificate to be destroyed in accordance with other Commission rules within three business days of its cancellation; (3) that the transfer agent keep a readily retrievable record of each cancelled certificate with identifying data consisting of CUSIP number, certificate number including prefix or suffix, denomination, registration, issue date, and cancellation date; (4) that the transportation of cancelled certificates be made in a secure manner with a record of the certificates in transit kept separately; (5) that the transfer agent keep a readily retrievable record of each destroyed certificate or certificate otherwise disposed of;[18] and (6) that authorized personnel of the transfer agent, supervise, witness and document the destruction of certificates.

We are modifying proposed Rule 17Ad–19 to require that transfer agents maintain records not only of the certificates that they or their agents destroy but also of those certificates that they dispose of by any other means and which may, for example, become the property of collectors or dealers in collectibles. In this regard, we note that cancelled certificates, after a period in transfer agent storage, are generally destroyed by the transfer agent or destroyed by some other party acting at the direction of the transfer agent or the issuer. However, a small amount of cancelled certificates may find their way from transfer agents to collectors or perhaps to other places currently unknown to us. Accordingly, to make the rule as complete as possible, we are inserting in paragraph (b) the words "or other disposition" into the phrase "destruction of securities certificates." The term "otherwise disposed of" requires that a record be maintained of how (as by sale or gift) and to whom (with name and address) the certificates were disposed of and the date of disposition. In the text of Rule 17Ad–19, minor changes have been made to paragraphs (a)(2) and (a)(4) for clarification and specificity. Rule 17Ad–19 also includes procedures for the Commission to provide conditional or unconditional exemptions from any of these provisions of the rule in appropriate cases upon written request or upon its own motion. A related amendment to Rule 17Ad–7(i) requires transfer agents to maintain records to demonstrate compliance with the requirements of Rule 17Ad–19 for not less than three years, the first year in an easily accessible place.[19]

2. Comment Letters

Many comments received in reply to the Proposing Release addressed particular aspects of proposed Rule 17Ad–19.

Three commenters,[20] objected to the proposed requirement that certificates must be "cancelled" unless existing procedures would cause their destruction "within 72 hours of their cancellation." They each recommended that "72 hours" be changed to "three business days" to avoid problems with weekends and holidays. We agreed that this change would achieve our goal, while avoiding problems with weekends and holidays and, therefore, we made this modification.

ChaseMellon asked for clarification whether the provision in the rule concerning certificates in transit would apply to shipments between a transfer agent's own offices and affiliates or only to shipments between unaffiliated reporting institutions, vendors, and others. The transportation provision of the rule is intended to apply only to shipments between a reporting institution and unaffiliated parties. We have modified the rule to reflect this point.[21]

ChaseMellon asked whether having written procedures that are consistent with STA's recommended guidelines would constitute compliance with Rule 17Ad–19. Because some requirements of Rule 17Ad–19 may differ from those of the STA's guidelines, transfer agents must be sure they are in compliance with the requirements of Rule 17Ad–19. ChaseMellon also requested clarification whether the records required by Rule

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[11] 15 U.S.C. 78q(f) and 78q–1.

[12] Section 17(f)(1), 15 U.S.C. 78q(f)(1).

[13] 15 U.S.C. 78q(a)(3).

[14] 15 U.S.C. 78q–1(a). *See* Securities Acts Amendments of 1975, Comm. on Banking, Housing and Urban Affairs, Sen. Rep. No. 75 to Accompany S.249, 56–58 (1975).

[15] "The Commission is empowered with broad rulemaking authority over all aspects of a transfer agent's activities as a transfer agent." *Id.* at 57.

[16] STA has over 400 members, the majority of whom are registered transfer agents. For STA's Web site, see *www.stai.org*.

[17] Rules of the STA, Section 1.26 (Recommended Procedures for Cancelled Securities).

[18] Required certificate detail is: CUSIP number, certificate number including prefix or suffix, denomination, registration, issue date, and cancellation date. *See* 17 CFR 240.17Ad–9(a) and 240.17f–1(c)(6). The term "certificate otherwise disposed of" is intended to include the small minority of certificates that are not destroyed by transfer agents or other agents and may, for example, become the property of collectors or of dealers in collectibles.

[19] 17 CFR 240.17Ad–7(i).

[20] EquiServe, ICI, and PFPC, Inc. PFPC, Inc. is a member of the PFPC Financial Services Group, Inc.

[21] This provision is intended to address shipments between unaffiliated financial institutions. We believe that less risk of this type of loss exists in intrafirm shipments where the same firm controls both the sending and receiving offices. We note, however, that a transfer agent's general obligation to safeguard funds and securities applies to intrafirm shipments. *See* Exchange Act Rule 17Ad–12, 15 CFR 240.17Ad–12.

17Ad–19 for cancelled certificates require retrievable information both for certificates that are (1) cancelled but not destroyed and (2) cancelled and destroyed. The rule requires that the applicable information be kept for both types of cancelled certificates.

ChaseMellon asked whether maintaining cancelled certificate data based solely on cancellation dates would be adequate under Rule 17Ad–19. Cancellation date recordkeeping has led to identification problems in the past when cancelled certificates were lost or stolen. Data organized by cancellation date, rather than by CUSIP and certificate number, has proved to be of little value when there is a need for prompt identification of lost, missing, or stolen certificates. It is important that CUSIP numbers and certificate numbers are readily available for the prompt reporting of lost, missing, or stolen certificates to the Lost and Stolen Securities Program and for the prompt alerting of law enforcement authorities and other financial institutions. Accordingly, this requirement is contained in Rule 17Ad–19.

ICI asked whether the new recordkeeping provisions applicable to cancelled certificates would apply retroactively (*i.e.*, apply to certificates previously cancelled), in which case ICI suggested the provisions would be burdensome on transfer agents. The new recordkeeping provisions will apply only prospectively, becoming effective sixty days after the date of adoption of the rule.

B. Rule 17f–1: Lost and Stolen Securities Program

1. Background of Lost and Stolen Securities Program

Section 17(f)(1) of the Exchange Act requires the Commission to operate a Lost and Stolen Securities Program ("LSSP" or "Program").[22] Congress directed the establishment of the Program in 1975 to curtail trafficking in lost, stolen, missing, and counterfeit securities certificates.[23] Rule 17f–1 under the Exchange Act governs LSSP operations. The Program consists mainly of a database for securities that have been reported lost, stolen, missing, or counterfeit. Operationally, the Program has two essential parts: "reports" and "inquiries." Most financial institutions (including exchanges, banks, brokers, clearing agencies, and transfer agents), which Rule 17f–1 designates "reporting institutions,"[24] are required to report any certificates that they discover to be lost, stolen, missing, or counterfeit.[25] These institutions also must inquire of the Program about any securities certificate valued at more than $10,000 that comes into their "possession or keeping."[26] These financial institutions also may voluntarily report or inquire about other certificates.[27]

The Program is operated by the Securities Information Center ("SIC") as the Commission's designee pursuant to a contract. SIC receives all reports and inquiries, responds to inquiries, and maintains the Program's database. As of December 31, 2002, the Program's database reflected securities with a value of approximately $672 billion. There were 26,011 reporting institutions.[28] During the year 2002, reports were made on 926,475 certificates (an average of 3,676 certificates per business day); inquiries were made on 5,231,310 certificates (an average of 20,759 certificates per business day); and matches or "hits" resulting from inquiries occurred on 224,338 certificates, which had a value of approximately $36.5 billion.[29] The hits essentially warned the inquirers that the certificates had been reported as lost, stolen, missing, or counterfeit and were not eligible for transfer.

2. Rule 17f–1 "Requirements for Reporting and Inquiry With Respect to Missing, Lost, Counterfeit or Stolen Securities"

a. "Securities Certificate". We have amended Rule 17f–1 by adding subparagraph (a)(6), which defines "securities certificate" to clarify that the scope of Rule 17f–1 covers the life span of a certificate from the time it is printed until the time it is destroyed. Accordingly, the rule covers: (1) Certificates that have been printed but not issued; (2) certificates that have been issued and remain outstanding; (3) certificates that have been issued and reacquired by the issuer; and (4) certificates that have been cancelled.[30] It likewise includes certificates that are counterfeit or reasonably believed to be counterfeit. As discussed below, we also have incorporated this definition of "securities certificate" into Rules 17Ad–12(b) and 17Ad–19(a)(8).[31]

We received several comments on this proposal. ICI and Otter Tail requested clarification of the term "printed but not issued." Specifically, they asked what identifying information must be included on certificates to qualify such certificates for reporting to LSSP. Under Rule 17f–1, as amended, a securities certificate is "printed but not issued" when it sets forth: The name of the issuer, the CUSIP number, the certificate number, and the authenticating signatures of the issuer. Therefore, a securities certificate to be considered "printed but not issued" does not have to set forth: the name of the registrant, the number of units, or the countersignature of the transfer agent.

U.S. Bank asked whether the proposed definition of "securities certificate" would include both registered and bearer certificates, noting that including bearers and their coupons would be burdensome on transfer agents. U.S. Bank suggested that if coupons are to be included, they should be subject to cancellation practices at the transfer agent's discretion which could include such methods as "hole punching" of coupons as an acceptable means of cancellation. In the rule as amended, the definition of "securities certificate" in subparagraph (a)(6) of Rule 17f–1 includes both registered and bearer certificates. Although processing bearer certificates may in some ways be more onerous to transfer agents than processing registered certificates, we do not believe that bearer certificates can reasonably be excluded from a definition of securities certificates. We note, too, that any burden caused by bearer certificates is diminishing year-by-year due to the Tax Equity and Fiscal Responsibility Act of 1982, which essentially eliminated the issuance of bearer certificates.[32]

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[22] 17 U.S.C. 78q(f)(1).

[23] *See* Lost and Stolen Securities Program, Hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, 93d Cong., 1st Sess. (1973), 2d Sess. (1974). S.249, which became the Securities Acts Amendments of 1975, was amended on the floor of the Senate to add legislation concerning lost, stolen, missing, and counterfeit securities. 121 Cong. Rec. 6186 (April 17, 1975). *See also* Conference Report to Accompany S.249, 94th Cong., 1st Sess. 103–104 (1975).

[24] The term "reporting institution" is defined in 17 CFR 240.17f–1(a)(1).

[25] 17 CFR 240.17f–1(c) and (d).

[26] 17 CFR 240.17f–1(d)(iv). The rule's inquiry requirement applies to any securities certificate received as part of a transaction whose aggregate value (face value in the case of debt or market value in the case of stocks) exceeds $10,000. Required inquiries under existing Rule 17f–1(d) would not be changed by the amendment.

[27] *E.g.*, inquiries on securities certificates valued at less than $10,000. 17 CFR 17f–1(e).

[28] Reporting instructions were comprised of 13,948 banks, 11,116 securities organizations, and 947 non-bank transfer agents. "Securities organizations" are: (1) National securities exchanges, (2) national securities exchange members, (3) national securities exchange member firms, (4) registered securities associations, (5) registered securities association members, (6) securities brokers, (7) securities dealers, and (8) municipal securities dealers.

[29] Securities Information Center, "Annual Statistics for the Period January 1, 2002, through December 31, 2002."

[30] For purposes of market value under the inquiry requirements of Rule 17f–1(d), the cancelled certificates would be given the market value of "live" securities of the same issue.

[31] 17 CFR 240.17Ad–12(b) and 240.17Ad–19(a)(8).

Moreover, the definition of "securities certificate" of Rule 17f–1(a)(6) does not contemplate bond coupons, which are expressly exempted from the reporting and inquiry provisions of Rule 17f–1 by its subparagraph (f)(2). We note, however, that while, due to the exemption, coupons are not securities certificates or reportable within the meaning of Rule 17f–1, they are not exempted from Rule 17Ad–12 and, accordingly, they do come within the "funds and securities" safeguarding provisions of Rule 17Ad–12(a). In any case, Rule 17Ad–19 does not establish specific cancellation practices for coupons. We believe that it is appropriate for coupon cancellation to be governed by accepted, reasonable industry practices at this time.

b. *"Missing" Securities Certificates.* The term "missing" is used in Section 17(f)(1) of the Exchange Act and in Rule 17f–1 thereunder, but until now it was not defined.[33] The term generally has been used to describe certificates that cannot be located, such as certificates that are not found during a count or audit, but that are thought to be misfiled rather than lost or stolen.

There are other circumstances, however, where a transfer agent does not have possession of a certificate though it believes, but cannot be certain, that it knows what happened to the certificate, *i.e.*, that it was destroyed. Some would claim that such a certificate is not "missing" but is more accurately described as "destroyed," and that accordingly a reporting institution is not required to report the certificate under Rule 17f–1 as being missing, lost, or stolen. For example, if cancelled certificates are stored by a transfer agent in a warehouse that is destroyed by a fire, the transfer agent may reasonably believe but cannot be certain (*i.e.*, to the point of providing a guarantee) that all the stored certificates were destroyed.[34] In such a situation, especially where arson is found, there is a risk that some of the certificates may not have been destroyed and may resurface in the marketplace.

We are amending Rule 17f–1(a)(7), as proposed, to define the term "missing" for purposes of Rule 17f–1 as any certificate that: (1) Cannot be located but which is not believed to be lost or stolen or (2) the transfer agent believes was destroyed but was not destroyed according to the certificate destruction procedures required by Rule 17Ad–19. We received no comments on this proposal.

As a result, it will be clear that reporting institutions are required to report the above-described types of missing certificates to LSSP. Then, if such certificates later resurface, there will be a high degree of likelihood that they will be promptly identified and interdicted through LSSP.

3. LSSP Reports of Cancelled Certificates

The Commission has brought enforcement actions for violations of Rule 17f–1 where cancelled securities certificates that were lost or stolen were not reported to LSSP.[35] Nevertheless, there appears to be some uncertainty about whether this rule applies to cancelled certificates.[36] We believe clarification would be useful.

We believe that cancelled certificates are within the meaning and purpose of Rule 17f–1. Like counterfeit certificates, cancelled certificates have no investment value, but they can be used to defraud.[37] The inclusion of the definition of "securities certificate" in Rule 17f–1(a)(6) as discussed above clarifies that cancelled certificates are reportable to LSSP.

4. LSSP Inquiries

In Rule 17f–1, paragraph (c) governs reports and paragraph (d) governs inquiries about lost, stolen, missing, and counterfeit securities. While the rule specifies time frames for making reports, it specifies no time frames for making the inquiries.[38]

When Rule 17f–1 was adopted in 1976, requirements for making inquiries were intended to accommodate business practices and to avoid commercial disruptions.[39] The time frames for making inquiries were left to the business judgment of inquiring companies.[40] Since then, business conditions have changed substantially, in large part due to improvements in automation and communications. Inquiries to LSSP by financial institutions have become quite routine and automated. In addition, the lack of any time limit for making required inquiries has made compliance with the rule difficult to monitor, and it has produced judicial comment.[41] No public comment was received in response to our Proposing Release concerning the time frames for inquiries.

Accordingly, we are adding subparagraph (d)(3), as proposed, to Rule 17f–1 which provides that inquiries must be made by the end of the fifth business day after a certificate comes into the "possession or keeping" of a reporting institution.[42] The amendment also provides that inquiries shall be made before the certificate is sold, used as collateral, or sent to another reporting institution if occurring sooner than the end of the fifth business day.

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[32] Pub.L. 97–248 (September 9, 1982), 26 U.S.C. 309 *et seq.* While not prohibiting bearer securities, TEFRA imposes financial disadvantages on both their issuers and their holders. *See, e.g.*, 26 U.S.C. 6049.

[33] While parallel terms (lost, stolen, and counterfeit) also are not defined by the statute or the rule, we believe that their meanings are clear from the context.

[34] On March 9, 1997, a major warehouse fire, believed to have been caused by arson, apparently destroyed a large number of cancelled securities certificates held in storage by a transfer agent. *See* "A Burning Question: How Safe Are Your Records," *Business Week*, June 23, 1997, at page 130E4.

[35] *Supra* notes 8, 9 and 10.

[36] For example, one court has found that because "cancelled securities" were not expressly included in Rule 17f–1, they were not subject to the reporting requirements of that rule. *A.G. Edwards & Sons, Inc.* v. *Centocor, Inc.*, Civil Action No. 91–6133 (E.D. PA, 1992).

[37] In *United States* v. *Jackson*, 576 F.2d. 749, 757 (8th Cir. 1978), the court recognized that stolen blank stock certificates have no intrinsic value as investments but that they have a "thieves' market value" as demonstrated by an FBI undercover operation, which was part of the case, where the certificates were purchased at 40% of their apparent market value.

[38] *See* Section III.B.1 above for description of inquiries.

[39] When enacting the underlying statute, Congress stated that the Commission should carefully weigh the benefits of mandating inquiries against the costs and effects on efficient business practices. Conference Report on S. 249, Securities Acts Amendments of 1975, 94th Cong., 1st Sess. 104 (1975). In 1976, the Commission observed that the system for inquiries should avoid undue disruptions to commercial transactions and chose not to set time limits for inquiries. Securities Exchange Act Release No. 12030 (January 20, 1976), 41 FR 04834.

[40] In 1979, when the Commission asked for comments from the industry, reporting institutions said they favored a policy of leaving to their own business judgment the time frames for valuing and inquiring of LSSP about securities that came into their possession. The Commission accepted that position. *See* "Inquiry Time Frames," Securities Exchange Act Release No. 15683 (March 29, 1979), 44 FR 20614.

[41] The Seventh Circuit Court of Appeals observed that the addition of a precise time frame for making required inquiries would improve the operation of the rule. *First National Bank of Cicero* v. *Lewco Securities Corp.*, 860 F.2d 1407, 1416, n.14 (7th Cir. 1988). The court also said that whether an institution meets the test of "good faith" required for bona fide purchaser status with respect to securities certificates may depend on whether it has met the inquiry requirements of Rule 17f–1. *Id.* at 1413–1415. *See also* Yadley and Ilkson, "Bona Fide Purchasers of Lost and Stolen Securities: Meeting the 'Good Faith' and 'Notice' Requirements," 5 George Mason U.L. Rev. 101, 127–133 (1982).

[42] The term "reporting institution" is defined in 17 CFR 240.17f–1(a)(1).

5. Securities Shipments

We proposed to add to Rule 17f–1(c)(2)(ii) a requirement that transfer agents track shipments of securities certificates, including cancelled certificates, between reporting institutions. When such a shipment becomes unaccounted for (for example, when the delivering institution fails to receive notice of receipt of the shipment), the delivering institution would be required to investigate to determine the facts. If the certificates cannot be located, under the proposed amendment, the delivering institution would be required to report to LSSP that the certificates are missing, stolen, or lost within a reasonable time not exceeding ten business days after the shipment was sent.

We received five comments on this proposal.[43] The commenters said that the proposed time frame of ten business days was too short a period for transfer agents to verify the non-delivery, to investigate the cause, and to report such matters to LSSP. Alternative suggestions were 15, 20, and 30 business days. In response to these suggestions, and upon consideration of the time we believe is reasonably needed to verify and investigate such non-deliveries, we have increased the time frame to 20 business days.

EquiServe also commented that inasmuch as the overall purpose of the rule package is to address problems with retired or cancelled certificates, the securities shipment proposal in question should not apply to "live" certificates.[44] EquiServe noted that, as proposed, the rule would appear to apply to all shipments of securities certificates, both live certificates and retired certificates, but it noted that live certificates tend to be shipped (1) in small amounts and perhaps only as single certificates and (2) in protected ways, such as by certified mail, that reflect their asset value. It also commented that it would be expensive for transfer agents to monitor the receipt of each such small mailing. EquiServe stated that retired certificates, however, tend to be shipped in bulk, and since they have no investment value there is less economic incentive to record and track such certificates. Thus, EquiServe suggests, the coverage of the rule proposal could be limited to retired certificates.

We agree with EquiServe's reasoning on this matter. The proposed rule appears unnecessary for live certificates, which generally are carefully safeguarded by the securities industry and where the rule would impose higher expenses due to the small shipments usually involved.[45] But we believe the proposal is necessary with respect to retired certificates where there is less financial incentive for the industry to safeguard the certificates and where shipments tend to be fewer and in bulk amounts so that the tracking expenses per certificate would be less. Accordingly, the proposed rule has been modified to apply only to shipments containing retired certificates.

C. Rule 17Ad–12: Safeguarding of Funds and Securities

Rule 17Ad–12 governs the safekeeping of funds and securities by transfer agents.

It requires that securities be handled in a manner that is reasonably free from the risk of destruction, theft, or other loss. We proposed an amendment to Rule 17Ad–12 to make clear that cancelled certificates come within the meaning and purpose of Rule 17Ad–12.[46] As we observed earlier, a cancelled certificate has no intrinsic value but, like a counterfeit certificate, it can be used to defraud. Accordingly, we have amended Rule 17Ad–12 as proposed to provide that the term "securities" used in that rule will have the same meaning as the term "securities certificate" defined in Rule 17f–1. As such, cancelled certificates will be expressly included in the coverage of Rule 17Ad–12, and transfer agents will be responsible for safeguarding cancelled certificates under their control.[47]

D. Other Comments

Discussed below are other comments we received in response to the Proposing Release.

1. Exceptions for Certain Transfer Agents

Paragraph (b) of proposed Rule 17Ad–19 would have applied only to those transfer agents involved in the "keeping, handling, or processing of securities certificates." We requested comment on whether the proposal should apply to all registered transfer agents (approximately 900) or only to the approximately 800 registered transfer agents that maintain securityholder records for one or more securities issues and are directly involved with the keeping, handling, or processing of securities certificates. Excluded from the larger group would be "named transfer agents" (transfer agents that contract their transfer agent functions to transfer agent "service Companies") and transfer agents that conduct a specialty business not involving securities certificates.[48] We received two comments.

CTA recommended that proposed Rule 17Ad–19 apply only to the transfer agents that maintain securityholder records, with an exception for issuers registered as transfer agents that act only for their own issues ("issuer-only transfer agents") with average monthly volumes of 100 transfer items or less. Secondly, Otter Tail, an issuer-only transfer agent, said it averages only 30 certificates per month and that maintaining retrievable records and witnessing the destruction of certificates would require more staff and equipment and would be unduly expensive.

As Rule 17Ad–19 is written, it is applicable only to transfer agents that are involved in the handling, processing, or storage of securities certificates.[49] Therefore, a number of transfer agents, such as named transfer agents, are not subject to the provisions of Rule 17Ad–19, which includes the requirement to prepare written procedures. Nevertheless, a transfer agent that outsources its transfer agent work, which consists of handling, processing, or storage of securities certificates, to another transfer agent (*i.e.*, a service company transfer agent) is legally responsible for ensuring that the provisions of Rule 17Ad–19 are followed with respect to the securities for which it is the named transfer agent. Therefore, both named transfer agents and service company transfer agents have responsibilities for complying with Rule 17Ad–19. Regarding the provisions of Rule 17Ad–19 dealing with the recordkeeping of the destruction of retired securities certificates, we do not believe that these requirements become burdensome simply because the number of certificates being destroyed is small. Even a small transfer agent, for example, can designate a person to destroy certificates under specific procedures. We also believe that these limited burdens are justified by the rule's value as an antifraud measure. We do not think it is prudent, with recordkeeping rules that are linked to antifraud rules, to establish different standards based on the number of certificates processed, the number of transfers made, or the number of issuers serviced. We believe that the requirements of Rule 17Ad–19 are appropriate for all transfer agents that process certificates, regardless of their size or volume.

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[43] The five commenters were: CTA, EquiServe, ICI, PFPC, Inc., and U.S. Bank.

[44] We are using the term "retired certificate" in a slightly broader sense that the term "cancelled certificate." A certificate is "retired" at the time it is taken out of circulation, often by transfer or redemption, regardless of whether it has yet been cancelled.

[45] *See* Rule 17Ad–12, 17 CFR 240.17Ad–12.

[46] We have brought enforcement actions for violations of Rule 17Ad–12 that involved cancelled securities certificates. *See, e.g., SEC* v. *Citibank, N.A., supra* at note 8.

[47] The only comment received concerning Rule 17Ad–12 concerned the new definition of "securities certificate" of Rule 17f1–(a)(6), which is being incorporated by reference into Rule 17Ad–12. *See* Section III.B.2.a above.

[48] For the definitions of "named transfer agent" and "service company" refer to 17 CFR 240.17Ad–9(j) and (k).

[49] The new language of "handling, processing, or storage of securities certificates" more appropriately describes the procedure in question than the previously proposed language of "keeping, handling, and processing of securities certificates."

2. Cancelled-in-Error Notations

We requested comments in the Proposing Release on whether we should prohibit the use of "cancelled-in-error" notations,[50] as some members of the securities industry previously had suggested. PFPC Inc. commented that such notations should be permitted provided they are used with a medallion signature guarantee.[51] PFPC Inc. observed that cancelled-in-error notations can be useful when a certificate is mistakenly cancelled, especially when quick processing is essential or where resubmission is impossible because the endorsing party has died or is otherwise unable to act. U.S. Bank, however, recommended that transfer agents be prohibited from using cancelled-in-error stamps for registered certificates but be permitted to use them for bearer certificates, especially bearer bonds with coupons attached, because such certificates are not usually available in transfer agents' inventories. Inasmuch as these comment letters have specified uses for the practice that were not previously identified, the Commission has decided not to adopt any rule amendments with respect to prohibiting the use of "cancelled-in-error" notations until there is further study of the matter.

3. Data Retention

CTA and PFPC Inc. commented that transfer agents should be given leeway concerning the data that they choose to maintain for the purpose of identifying securities certificates. CTA noted that instead of CUSIP numbers some transfer agents may prefer to use, for example, issuer identification numbers. We believe, however, that the use of CUSIP numbers, which is currently the most widely-used securities issue identification system, provides for uniformity and that it substantially aids the Commission, LSSP, and law enforcement programs. We also note that since 1979, Rule 17f–1(c)(6) has expressly required the inclusion of CUSIP numbers for purposes of securities certificate identification when making a report to LSSP.

4. Consideration of Additional Reporting Obligations

Raymond James & Associates recommended that Rule 17f–1 be amended to include the additional reporting category of escheated securities (in addition to lost, stolen, missing, and counterfeit securities). The commenter also recommended that the reporting time frames under paragraph (c) of Rule 17f–1 be shortened.

We note that Section 17(f)(1) expressly addresses only lost, stolen, missing, and counterfeit securities. From time to time, we have received recommendations to add to the reporting categories of Rule 17f–1, including among others: Securities certificates that have escheated, have been called for redemption, are restricted, are the subject of litigation, or whose issuers are in bankruptcy. The subject of adding reporting categories to Rule 17f–1 has been studied periodically by securities industry groups, but no clear consensus has developed concerning either the scope of or the support for such a rule proposal. Therefore, at this time we are not expanding the number of reporting categories. However, there is nothing to prevent voluntary reporting of more categories if individual reporting companies choose to do so.[52] Regarding the recommendation to shorten the reporting time frames in paragraph (c) of Rule 17f–1, the Commission believes that this issue requires further study.

5. Perforations and the Word "Cancelled"

Regarding Rule 17Ad–19(b)(2), which requires that cancelled certificates be marked "cancelled" by stamp or perforation, PFPC Inc. recommended that the Commission specifically set forth the dimensions for the word "cancelled" and where it should be placed on a certificate. EquiServe questioned the Commission's criticism in the Proposing Release of the use of pin-hole sized perforation markings, which were previously used to indicate cancelled status, and asked "the what type of perforation" would be deemed sufficient.[53] At least for the present, we are leaving to securities industry practices,[54] rather than to Commission action, the details of size of the word "cancelled" and how it should be marked on securities certificates (*e.g.*, by stamp or by perforation). For the present, we believe it is sufficient to state that the term "cancelled" should be "clear and conspicuous." But if it should appear at a later time that further rulemaking or interpretations are necessary or appropriate to clarify these matters, we will provide them.

6. Maintaining Certificates as Collectors' Items

The Proposing Release requested comments on whether the Commission should mandate the destruction of cancelled certificates within thirty days of their cancellation. Three commenters, a finance professor, a non-public corporation, and the president of a securities certificate collectors' organization,[55] argued against destroying old securities certificates because of their importance to financial history, their aesthetic merits, and their value to collectors in a field known as scripophily.

We are sensitive to these interests. We believe that the adoption of sound recordkeeping, safeguarding, and destruction procedures will greatly reduce the risk of improper use of cancelled certificates. Therefore, we do not believe it is necessary at this time to mandate destruction.

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[50] This refers to an industry practice of using hand stamps that state "cancelled in error" or similar language to avoid the time and expense of replacing certificates that are marked "cancelled" by mistake.

[51] The use of a medallion signature guarantee would mean that the "cancelled-in-error" notation is guaranteed by a guarantor financial institution under a signature guarantee program pursuant to Exchange Act Rule 17Ad–15, 17 CFR 240.17Ad–15. Accordingly, the financial risk of the cancelled-in-error procedure would not be imposed on the transfer agent but on the guarantor or the surety for the guarantor.

[52] *See* paragraph (e) of 17 CFR 240.17f–1, which permits "permissive reports and inquiries."

[53] The cancellation pinholes, as used by some major transfer agents, usually spelled out a certificate's cancellation date and the transfer agent's initials in a small circle. Such markings were intended to indicate that the certificates no longer had value as a security while preserving the certificates' form as a record. Except for the small circle of pinholes, the certificates usually appeared entirely presentable. The pinholes, however, often were not noticed by subsequent recipients of the certificates and. if noticed, their meaning was not necessarily clear.

[54] Some transfer agents have advised that they currently are stamping or perforating certificates with an abbreviation of the word "cancelled." This is because they use older equipment that lacks the necessary space for nine letters. Typically, in these cases, one or two apostrophes or similar characters are used in place of up to four letters. To avoid the need for immediate purchase of new equipment, the Commission will interpret the use of such abbreviations as consistent with the requirement in Rule 17Ad–12(c) that written procedures shall "[r]equire that each cancelled certificate be marked with the work 'cancelled' * * *." However, this interpretation shall apply only until a transfer agent using such older equipment acquires new equipment by purchase or other means that replaces the older equipment in question. Thereafter, the transfer agent must use all nine letters of the word "cancelled" in cancelling securities certificates.

[55] James J. Angel, Ph.D., Georgetown Univ.; Frank Hammelbacher, Norrico Inc.; and Robert A. Kerstein, President, Scripology, Inc.

In this regard, we note that cancelled securities certificates, after a period in transfer agent storage, are generally destroyed by the transfer agent or destroyed by some other party at the direction of the transfer agent or the issuer. However, a small amount of cancelled securities certificates find their way from transfer agents into collectors' markets. Accordingly, to make the rule as complete as possible, we are modifying proposed Rule 17Ad–19 to require that transfer agents maintain records not only of the certificates that they or their agents destroy but also of those certificates that they dispose of by any other means, such as by sale to collectors or to dealers for collectors. For certificates disposed of by such other means, transfer agents are required to maintain records of how the certificates were disposed and to whom, with such party's name and address, and the date of disposition.

7. Destruction of Certificates by Transfer Agents

One transfer agent, PFPC Inc., recommended that questions of certificate retention or destruction be discretionary matters for individual transfer agents, and that transfer agents be given the option to destroy certificates within 72 hours of their cancellation, which it said would reduce fraud and storage expenses. Another transfer agent, Otter Tail, took a different position and said that the Commission should mandate certificate destruction at the end of the required six-year retention period. ICI and Mellon recommended that the Commission explore new overall requirements for cancelled securities certificates including (1) the use of electronic media and microfiche for recordkeeping purposes, and (2) the destruction of cancelled certificates, perhaps after they are scanned, imaged, and electronically stored.[56] As noted above in footnote 6, the Commission is proposing amendments to Exchange Act Rule 17Ad–7, 17 CFR 240.17Ad–7, which if adopted would make clear that transfer agents could use certain alternative means to store cancelled securities certificates provided that the cancelled certificates first were electronically preserved in conformity with the terms of that rule.

IV. Paperwork Reduction Act

Certain provisions of the proposed rule and proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[57] The Commission published a notice soliciting comments on the collection of information requirements in the proposing release and submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Record Retention Requirements for Registered Transfer Agents." OMB approved the collection and assigned it OMB Control No. 3235–0136. The collection requirements are necessary to ensure the integrity of transfer agents' records and the safeguarding of securities certificates.

Rule 17Ad–19 contains collection of information requirements that are intended to ensure the integrity and completeness of transfer agents' records regarding physical securities certificates, in particular, cancelled securities certificates. Rule 17Ad–19 requires each registered transfer agent to: (1) Have a written statement setting forth its procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates; (2) mark each cancelled certificate with the word "cancelled" on the face of the certificate; (3) supervise, witness and document the destruction of certificates; and (4) keep an easily retrievable record of each cancelled, destroyed, or otherwise disposed of certificate with identifying certificate data. The amendments to Rules 17f–1 and 17Ad–12 involve no additional paperwork requirements.

Rule 17Ad–19 incorporates the three-year record retention requirement of Rule 17Ad–7(i), but the amendments to Rules 17f–1 and 17Ad–12 do not add any retention periods for recordkeeping requirements. The maintenance of written procedures by transfer agents under Rule 17Ad–19 would be mandatory. The written procedures are confidential and will not be available to the public, although they will be subject to examination by the Commission or other appropriate regulatory agencies. We note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

When the Commission proposed the rule and rule amendment, approximately 1,100 transfer agents were registered with the Commission. The Commission staff estimated that the average amount of time per transfer agent needed to comply with the collection of information requirements of proposed Rule 17Ad–19 would be 40 hours per transfer agent for developing the written procedures. The Commission staff further estimated that the average amount of time per transfer agent per year to comply with the collection of information associated with recording and tracking cancelled securities certificates would be 50 hours per transfer agent per year, a figure that would vary greatly depending on the size of an entity and the volume of its business. Thus, assuming 1,100 registered transfer agents, it was estimated that the start-up collection of information requirements would require about 44,000 hours (40 × 1,100), and the annual collection of information requirements would be about 55,000 hours (50 × 1,100). Thus, in October of 2000, the Commission staff estimated that the combined total during the first year would be about 99,000 hours.

At this time, in contrast with the 1,100 transfer agents at the proposing stage, approximately 900 transfer agents are registered with the Commission, of which about 800 are actively involved in transfer agent activities.[58] After further review and staff conversations with representative transfer agents, as discussed below in Section V, the Commission staff has lowered its estimate of the amount of time per transfer agent needed to comply with the collection of information requirements of Rule 17Ad–19. The lower staff estimates, as compared with the higher estimates in the Proposing Release, result from (1) lower than anticipated cost estimates in a survey of small transfer agents and (2) reports from both small transfer agents and large transfer agents (the latter group as represented by the Securities Transfer Association) that most of the proposed rule changes have already been put into effect over the past few years at most transfer agents. The Commission staff now estimates the time needed will range from about two hours for the smallest transfer agents to about 40 hours for the largest transfer agents. The staff believes that the average time per transfer agent to develop written procedures will be about 20 hours. The Commission staff further estimates that the average amount of time per transfer agent per year to comply with the collection of information associated with recording and tracking cancelled securities certificates will be 20 hours per transfer agent per year, a combined 40 hours for the first year, all of which are figures that would vary greatly depending on the size of an entity and the volume of its business. Thus, assuming 800 registered transfer agents actively involved in transfer agent activities, the start-up collection of information requirements will require about 16,000 hours (20 × 800), and the annual collection of information requirements will be about 16,000 hours (20 × 800). Thus, the estimated combined total during the first year will be about 32,000 hours.

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[56] For a recent Commission rule that authorized the use of optical storage, refer to 15 CFR 240.17Ad–7(f). *See* Securities Exchange Act Release No. 44227 (April 27, 2001), 66 FR 21648 (May 1, 2001).

[57] 44 U.S.C. 3501 *et seq.*

[58] The Commission notes that there is relative ease of entrance into and exit out of the transfer agent business, and the numbers of transfer agents at a given time are affected by the circumstances of the securities industry and the general economy.

Additionally, as discussed above in Sections III.A and III.D.7, the Commission is modifying proposed Rule 17Ad–19 to include securities certificates that are disposed of in some way other than by destruction as, for example, by sale to collectors. The purpose of this modification is to make the rule complete with respect to all dispositions of cancelled securities certificates, but we believe that the number of certificates disposed of by transfer agents by means other than by destruction will be *de minimis* and will not affect the PRA numbers.

V. Costs and Benefits of Proposed Amendments

The Commission has considered the costs and benefits of Rule 17Ad–19 and the amendments to Rules 17f–1 and 17Ad–12. The Commission identified certain costs and benefits relating to the proposals, which are discussed below. We requested public comment in our Proposing Release. In particular, we requested comment on the potential costs for any necessary modifications to information gathering, management, and record-keeping systems or procedures, as well as any potential benefits resulting from the proposals for issuers, transfer agents, banks, brokers, regulators, or others.

In general, the comment letters did not address costs or benefits in financial terms, and none provided cost or benefit data. One transfer agent, Otter Tail, commented that because of its small size it would be burdensome to witness the destruction of its cancelled certificates and to keep automated records of its cancelled certificates. This comment letter was discussed above in Section III.D.2,[59] where we stated that it would be imprudent to exempt certain transfer agents from recordkeeping rules linked to antifraud rules simply because their volume of business is small. Additionally, Otter Tail has provided us with no financial or other information to support its claim that the new requirements would be unduly burdensome on itself or on other small transfer agents.

To supplement our information on small transfer agents for cost and benefit purposes, Commission staff conducted a survey of six small transfer agents. Staff provided them with a written summary of the rule proposals and later contacted them by telephone to discuss in detail the costs and benefits of the proposals. The small transfer agents reported that, in general, they already were in compliance with the proposed rules. That is, they generally were already marking retired securities certificates with the word "cancelled;" they were already maintaining the certificates in a secure environment; and they were destroying the certificates on-premises and witnessing their destruction. All but one transfer agent reported that they already had their data on certificate cancellation and destruction available in electronically retrievable format, and the one remaining transfer agent said it had plans to modify its computer to provide such data. As discussed in the PRA analysis, the one item in the rule proposal that would generally involve an added expense is the requirement to draft "written procedures" for processing cancelled securities. The transfer agents estimated that drafting written procedures would involve a one-time outlay of between 15 minutes and four hours, costs they variously estimated (based on the number of hours times their relevant expenses per hour) at between $15 and $500. Two of the small transfer agents suggested that it is the larger transfer agents that would tend to have problems with these rules because the large transfer agents are more apt to engage outside vendors for the transportation, warehousing, and destruction of cancelled certificates whereas the small transfer agents tend to perform these services within their own premises. One small transfer agent questioned the need for certain of the recordkeeping requirements, but another described the rule proposals as "nice and clean, with no problems."

Commission staff also surveyed the Securities Transfer Association ("STA") as a proxy for large transfer agents. The STA, at the staff's request, reviewed the rule proposals and later reported that its review had revealed "no problems" with the proposals and that it would not be submitting formal comments on the proposals. The STA advised that the large transfer agents are already in compliance with the rule proposals and that, in its opinion, the rule proposals in large part codify existing STA rules. As discussed in the PRA analysis, the STA further reported that the one new item in the rule proposals that would involve new costs is the requirement to have "written procedures" for cancellation procedures, which would take a large transfer agent about 40 work hours to draft the procedures or about $3,000. The STA emphasized its view that most of the proposed rule changes are already in effect at transfer agents.

A. Benefits

The new rule and rule amendments will provide specific benefits to U.S. investors, issuers, transfer agents, and other financial intermediaries. Some of these benefits are not readily quantifiable in terms of dollar value. However, the proposals are designed to reduce the fraudulent use of securities certificates, particularly cancelled certificates, by requiring improved safeguarding and recordkeeping by transfer agents. In recent years, the fraudulent resale and fraudulent collateralization of cancelled certificates (certificates with no investment value) cost private individuals and financial institutions many millions of dollars. We expect the costs of the described forms of certificate fraud on public investors and on market participants to be substantially reduced by the requirements related to adequate safeguarding, recordkeeping, and destruction procedures for these certificates by transfer agents.

B. Costs

The rule changes require transfer agents to have written procedures for the cancellation, storage, transportation, destruction, or other disposition of retired securities certificates; to mark cancelled securities certificates as "cancelled;" to supervise, witness, and document the destruction of certificates; and to keep an easily retrievable record of each cancelled, destroyed, or otherwise disposed of certificate. The preparation of these written procedures required by the new rules will be a cost to transfer agents, and we have discussed the paperwork costs above in Section IV, estimating the combined total paperwork burden during the first year will be about 32,000 hours.

Regarding the required use of the word "cancelled" on cancelled certificates, we reiterate that, with the encouragement of the STA's published guidelines,[60] most transfer agents already are marking their cancelled certificates with the word "cancelled" to designate their cancelled status.[61] We believe the new requirement to use the word "cancelled" to a large extent codifies existing business practices with little additional cost to the industry.

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[59] *See, supra*, in text accompanying notes 48–50.

As noted, the requirements to supervise, witness, and record the destruction of certificates and to keep easily retrievable records of the cancelled certificates will mean additional costs to some transfer agents. However, the additional costs are justified. As the Commission discussed above, its experience has been that securities certificates records that are not easily retrievable are not appropriate for investor protection, securities processing, or law enforcement purposes. In addition, the existing rules of the Exchange Act have since 1983 required registered transfer agents to maintain "appropriate certificate detail"[62] for purposes of their master securityholder files concerning "every security transferred, purchased, redeemed, or issued,"[63] which includes records of cancelled certificates.[64] These new requirements also will apply only on a going forward basis, *i.e.*, no transfer agent will have to provide easily retrievable records for certificates cancelled prior to the Rule's effective date. Moreover, the newly-adopted recordkeeping requirements are consistent with good business practices, such as the STA guidelines.

VI. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking and required to consider whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[65] In adopting rules under the Exchange Act, Section 23(a)(2) requires the Commission to consider the impact any rule would have on competition.[66] Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act. We believe the new rule and amendments should improve market efficiency by reducing a source of fraud and its associated costs (*i.e.*, the fraudulent introduction of cancelled and worthless securities into the marketplace). In addition, the new rule and amendments should have no material anticompetitive effects because they would apply equally to all transfer agents and should have no material effect on capital formation.

VII. Summary of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act ("RFA").[67] This analysis relates to a rule and two rule amendments adopted under the Exchange Act that primarily address the processing of cancelled securities certificates by transfer agents. New Rule 17Ad–19 under the Exchange Act requires every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. The rule requires transfer agents to mark each cancelled securities certificate with the word "cancelled;" maintain a secure storage area for cancelled certificates; maintain an easily retrievable database of all of its cancelled certificates, including cancelled, destroyed, or otherwise disposed of certificates; and have specific procedures for the destruction of cancelled certificates. Additionally, the Commission has amended Rules 17f–1 (the lost and stolen securities rule) and 17Ad–12 (the transfer agent safekeeping rule) to make it clear that these rules apply to unissued and cancelled certificates.

A. Need for Rule and Rule Amendments

The rule and rule amendments address problems involving cancelled securities certificates. In particular, they address the problem that, until properly destroyed, or properly disposed of, cancelled securities certificates can resurface in the marketplace where they can and have been used to defraud public investors and financial institutions. The rule and rule amendments provide better procedures for processing and destroying cancelled certificates that will reduce this potential for harm.

The case history of fraud involving cancelled certificates includes several major cases. In one case, approximately $111 billion of cancelled bond certificates were stolen after being delivered from a transfer agent's warehouse to a certificate destruction vendor. Many of these stolen certificates resurfaced worldwide where they were reintroduced into the marketplace or were used as loan collateral at financial institutions. In many cases, even security professionals were misled because the certificates appeared to be in pristine condition with little or no evidence of having been cancelled. While a number of trade practices have since been formulated by transfer agents to help address these problems, Commission rulemaking will require universal compliance among all transfer agents concerning the proper processing of cancelled certificates.

B. Significant Issues Raised by Public Comment

One commenter, CTA, a trade association, suggested that Rule 17Ad–19 should apply only to transfer agents that maintain securityholder records and suggested an exemption from the rule for transfer agents that act only for their own issuers (*i.e.*, issuer-only transfer agents) and have average monthly volumes of 100 transfer items or less. Another commenter, Otter Tail Power Co., a transfer agent, noted that it processes less than 30 certificates per month and that maintaining retrievable records and witnessing the destruction of certificates would be unduly expensive.

We note that Rule 17Ad–19 does, in fact, exempt certain registered transfer agents (about 100 out of a total transfer agent population of about 900) that do not maintain securityholder records. These are "named transfer agents" that outsource their transfer agent functions to other transfer agents known as "service company" transfer agents.[68] But we do not believe that the requirements of Rule 17Ad–19, which deal with recordkeeping and the cancellation, storage, transportation, destruction, or other disposition of retired certificates, are inappropriately burdensome simply because the number of certificates that a transfer agent is processing or destroying is small. Even a small transfer agent can designate a person to destroy certificates under specific procedures. Moreover, we also believe that these limited burdens are justified by the rule's value as an antifraud measure. We do not believe it would be prudent, especially in an antifraud provision, to establish different standards for transfer agents based on the number of certificates they process or the number of transfers they make within a given period, particularly when, as noted below in Section VII.C, approximately one-half of the transfer agents may be viewed as small entities. Considering that the underlying concern here is the protection of public investors from certificate fraud, we believe that the requirements of Rule 17Ad–19 are appropriate for all transfer agents that are in the business of processing securities certificates.

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[60] *Supra*, note 17.

[61] We believe that most transfer agents are properly marking their retired certificates with the word "cancelled," as STA has recommended. However, because doing so is not a Commission requirement, it currently is not a part of the Commission's examination module for transfer agents. Thus, we have no systematic data on the subject.

[62] 17 CFR 240.17Ad–9(a). The existing requirements for "certificate detail" include the certificate number, number of units, owner's name and address, the issue date, the cancellation date, *etc*.

[63] 17 CFR 240.17Ad–10(a).

[64] *See* 17 CFR 240.17Ad–6(c) and 240.17Ad–9(a).

[65] 15 U.S.C. 78c(f).

[66] 15 U.S.C. 78w.

[67] 15 U.S.C. 601 *et seq.*

[68] 17 CFR 240.17Ad–9 (j)–(k).

C. Small Entities Subject to the Rule

A transfer agent is a small entity if it: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed "small business" or "small organizations" as defined in Exchange Act Rule 0–10; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Exchange Act Rule 0–10.[69] We note that approximately 470 registered transfer agents out of a population of about 900 apparently qualify as "small entities" for purposes of the RFA and will be subject to the requirements of Rule 17Ad–19.

In the Proposing Release, the Commission summarized, and requested comment on, the Initial Regulatory Flexibility Analysis ("IRFA"). We did not receive any comments specifically responding to the IRFA. However, we did receive comments related to small business, which are summarized above in Section VII.B.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Rule 17Ad–19 requires all transfer agents to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. Such written procedures and their implementation are subject to examination by each transfer agent's appropriate regulatory agency.

Additionally, the amendments to Rules 17f–1 and 17Ad–12 clarify that these two rules apply broadly to securities certificates, including cancelled securities certificates.

E. Agency Action To Minimize Effect on Small Entities

As required by Section 603 of the RFA, the Commission has considered the following alternatives to minimize impact of the proposed rules and rule amendments on small entities: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[70] As part of our consideration of the proposed rules, the staff conducted a survey of a few small transfer agents. The consensus among small transfer agents is that Rule 17Ad–19 will essentially codify their existing practices (based to some extent on trade association guidelines in effect since the mid-1990s) and will have minimal effect on them as transfer agents. We also considered alternatives that would exempt small transfer agents from some portions of the rule, but given that the rule is designed in large measure to protect public investors from certificate fraud, we do not believe a size exemption for transfer agents would be appropriate.

The Commission has considered significant alternatives to the proposed rules that would adequately address the problem posed by cancelled securities certificates. The Commission believes that the establishment of different requirements for small entities is neither necessary nor practical because the proposal is designed to provide general standards that will protect the public and members of the financial community from certain types of securities fraud, and the proposal will include an exemption procedure that will be available to small entities on a case by case basis. Moreover, the FRFA concludes that the Commission believes that the proposal, if adopted, will not adversely affect small entities. Finally, the FRFA addresses each of the other requirements set forth under 5 U.S.C. 603. A copy of the FRFA may be obtained by contacting Jerry W. Carpenter or Thomas C. Etter, Jr., at (202) 942–0178, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

VIII. Statutory Basis and Text of Amendments

Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 3(b), 17(a), 17(f)(1), 17A(d), and 23(a) thereof, 15 U.S.C. 78q–1(d) and 78w(a), the Commission is adopting § 240.17Ad–19 and amendments to Rules 17f–1, 17Ad–7, and 17Ad–12 of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of Rules

■ In accordance with the foregoing, the Commission is amending part 240 of chapter II of title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.17f–1 is amended by:

■ a. Adding paragraphs (a)(6), (a)(7) and (a)(8);

■ b. Revising the phrase "lost in transit" to read "lost, missing, or stolen while in transit" in paragraph (c)(2)(i);

■ c. Redesignating paragraphs (c)(2)(ii) and (c)(2)(iii) as paragraphs (c)(2)(iii) and (c)(2)(iv) respectively;

■ d. Adding new paragraph (c)(2)(ii); and

■ e. Adding paragraph (d)(3) to read as follows:

§ 240.17f–1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

(a) * * *

(6) The term *securities certificate* means any physical instrument that represents or purports to represent ownership in a security that was printed by or on behalf of the issuer thereof and shall include any such instrument that is or was:

(i) Printed but not issued;

(ii) Issued and outstanding, including treasury securities;

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[69] 17 CFR 240.0–10.

[70] 5 U.S.C. 603(c).

(iii) Cancelled, which for this purpose means either or both of the procedures set forth in § 240.17Ad–19(a)(1); or

(iv) Counterfeit or reasonably believed to be counterfeit.

(7) The term *issuer* shall include an issuer's:

(i) Transfer agent(s), paying agent(s), tender agent(s), and person(s) providing similar services; and

(ii) Corporate predecessor(s) and successor(s).

(8) The term *missing* shall include any securities certificate that:

(i) Cannot be located or accounted for, but is not believed to be lost or stolen; or

(ii) A transfer agent claims or believes was destroyed in any manner other than by the transfer agent's own certificate destruction procedures as provided in § 240.17Ad–19.

* * * * *

(c) * * *

(2) * * *

(ii) Where a shipment of retired securities certificates is in transit between any transfer agents, banks, brokers, dealers, or other reporting institutions, with no affiliation existing between such entities, and the delivering institution fails to receive notice of receipt or non-receipt of the certificates, the delivering institution shall act to determine the facts. In the event of non-delivery where the certificates are not recovered by the delivering institution, the delivering institution shall report the certificates as lost, stolen, or missing to the Commission or its designee within a reasonable time under the circumstances but in any event within twenty business days from the date of shipment.

* * * * *

(d) * * *

(3) A reporting institution shall make required inquiries by the end of the fifth business day after a securities certificate comes into its possession or keeping, provided that such inquiries shall be made before the certificate is sold, used as collateral, or sent to another reporting institution.

* * * * *

§ 240.17Ad–7 [Amended]

■ 3. Section 240.17Ad–7, paragraph (i), is amended by revising the phrase "§ 240.17Ad–17(c)" to read "§§ 240.17Ad–17(c) and 240.17Ad–19(c)".

■ 4. Amend § 240.17Ad-12, paragraph (a)(1), by revising the phrase "risk of destruction, theft or other loss;" to read "risk of theft, loss or destruction (other than by a transfer agent's certificate destruction procedures pursuant to § 240.17Ad–19);" and adding paragraph (b) to read as follows:

§ 240.17Ad–12 Safeguarding of funds and securities.

* * * * *

(b) For purposes of this section, the term *securities* shall have the same meaning as the term *securities certificate* as defined in § 240.17f–1(a)(6).

■ 5. Section 240.17Ad–19 is added to read as follows:

§ 240.17Ad–19 Requirements for cancellation, processing, storage, transportation, and destruction or other disposition of securities certificates.

(a) *Definitions.* For purposes of this section:

(1) The terms *cancelled* or *cancellation* means the process in which a securities certificate:

(i) Is physically marked to clearly indicate that it no longer represents a claim against the issuer; and

(ii) Is voided on the records of the transfer agent.

(2) The term *cancelled certificate facility* means any location where securities certificates are cancelled and thereafter processed, stored, transported, destroyed or otherwise disposed of.

(3) The term *certificate number* means a unique identification or serial number that is assigned and affixed by an issuer or transfer agent to each securities certificate.

(4) The term *controlled access* means the practice of permitting the entry of only authorized personnel to areas where securities certificates are cancelled and thereafter processed, stored, transported, destroyed or otherwise disposed of.

(5) The term *CUSIP number* means the unique identification number that is assigned to each securities issue.

(6) The term *destruction* means the physical ruination of a securities certificate by a transfer agent as part of the certificate destruction procedures that make the reconstruction of the certificate impossible.

(7) The term *otherwise disposed of* means any disposition other than by destruction.

(8) The term *securities certificate* has the same meaning that it has in § 240.17f-1(a)(6).

(b) *Required procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates.* Every transfer agent involved in the handling, processing, or storage of securities certificates shall establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. This requirement applies to any agent that the transfer agent uses to perform any of these activities.

(c) *Written procedures.* The written procedures required by paragraph (b) of this section at a minimum shall provide that:

(1) There is controlled access to any cancelled certificate facility;

(2) Each cancelled certificate be marked with the word "CANCELLED" by stamp or perforation on the face of the certificate unless the transfer agent has procedures adopted pursuant to this rule for the destruction of cancelled certificates within three business days of their cancellation;

(3) A record that is indexed and retrievable by CUSIP and certificate number that contains the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date of each cancelled certificate;

(4) A record that is indexed and retrievable by CUSIP and certificate number of each destroyed securities certificate or securities certificate otherwise disposed of, the records must contain for each destroyed or otherwise disposed of certificate the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date, and additionally for any certificate otherwise disposed of a record of how it was disposed of, the name and address of the party to whom it was disposed, and the date of disposition;

(5) The physical transportation of cancelled certificates be made in a secure manner and that the transfer agent maintain separately a record of the CUSIP number and certificate number of each certificate in transit;

(6) Authorized personnel of the transfer agent or its designee supervise and witness the intentional destruction of any cancelled certificate and retain copies of all records relating to certificates which were destroyed; and

(7) Reports to the Lost and Stolen Securities Program be effected in a timely and complete manner, as provided in § 240.17f–1 of any cancelled certificate that is lost, stolen, missing, or counterfeit.

(d) *Recordkeeping.* Every transfer agent subject to this section shall maintain records that demonstrate compliance with the requirements set forth in this section and that describe the transfer agent's methodology for complying with this section for three years, the first year in an easily accessible place.

(e) *Exemptive authority.* Upon written application or upon its own motion, the Commission may grant an exemption from any of the provisions of this section, either unconditionally or on specific terms and conditions, to any transfer agent or any class of transfer agents and to any securities certificate or any class of securities certificates.

Dated: December 16, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31450 Filed 12–22–03; 8:45 am]

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Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 22, 52, and 53

Federal Acquisition Regulation; Labor Standards for Contracts Involving Construction; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 52, and 53

[FAR Case 2002–004]

RIN 9000–AJ79

Federal Acquisition Regulation; Labor Standards for Contracts Involving Construction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the revised definitions of "Construction" and "site of the work" in the Department of Labor (DoL) regulations. In addition, the Councils are proposing to clarify several definitions relating to labor standards for contracts involving construction and make requirements for flow down of labor clauses more precise.

DATES: Interested parties should submit comments in writing on or before February 23, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to— *farcase.2002–004@gsa.gov*. Please submit comments only and cite FAR case 2002–004 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 2002–004.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Labor (DoL) published a final rule at 65 FR 80268, December 20, 2000, revising the terms "construction, prosecution, completion, or repair" (29 CFR 5.2(j)) and "site of the work" (29 CFR 5.2(l)). The DoL rule became effective on January 19, 2001. The DOL changes were made to conform the regulations with Federal appellate court decisions and subsequent decisions of DoL's Administrative Review Board regarding the transportation of supplies and materials to or from the construction site. In addition, the DoL rule revised the definition of the "site of the work" to include secondary sites, other than the project's final resting place, which have been established specifically for the performance of the Davis-Bacon covered contract and at which a significant portion of the public building or work called for by the contract is constructed. The Councils propose revisions to the definitions of "construction, alteration, or repair" and "site of the work" in 22.401, to reflect the changes in the DoL regulations. A new provision at 52.222-XX, Davis-Bacon Act—Secondary Site of the Work, is proposed to regulate potential situations where an offeror intends to perform significant portions of the building or work at a secondary site outside the primary site of the work and for which the wage determination provided by the Government for work at the primary site is not applicable.

The proposed revision to the Davis-Bacon Act clause at FAR 52.222–6 mandates that any subsequent incorporation to the contract of a wage determination for a secondary site shall become retroactively effective from the first day work under the contract was performed at that site, without any adjustment in contract price or estimated cost. This is based on the premise that secondary sites are initiatives of the offeror that can be instituted before or after contract award. The proposed rule also specifies that whenever there is transportation of portions of the building or work between the secondary site and the primary site of the work, the applicable wage determination that would prevail shall be for the primary site of the work. This decision was made in accordance with the DoL's administrative determination as outlined in the **Federal Register** at 65 FR 80276.

The Councils also proposed to revise the Davis-Bacon Act clause to establish that any wage determination for a secondary site shall be posted both at the primary site of the work and at the secondary site of the work. The Councils are proposing to include DoL's revised definition of "site of the work" in the Davis-Bacon Act clause.

In addition, the Councils are proposing editorial changes to other definitions in this section. Specifically, the definitions of "apprentice" and "trainee" have been listed separately in the alphabetical list of definitions rather than as a subcategory of "laborer and mechanic." Also the terms "building or work" and "public building or public work" have been combined into a single term of "building or work" and "public building or public work" for definitional purposes. No substantive change is intended with these editorial changes.

The Councils propose revisions to the clause at 52.222–11, Subcontracts (Labor Standards), to clarify that it flows down only to subcontracts for construction within the United States, and that the clause entitled "Contract Work Hours and Safety Standards Act—Overtime Compensation" does not flow down unless included in the contract. This change is necessary because the coverage threshold for the Contract Work Hours and Safety Standards Act is $100,000 and the threshold for the Davis-Bacon Act is $2,000. Thus for construction contracts of $100,000 or less, the Contract Work Hours and Safety Standards Act clause is not included in the contract and therefore would not flow down to any subcontract. If the construction contract is in excess of $100,000, then the clause flows down to subcontracts that may require or involve the employment of laborers and mechanics including watchmen and guards without regard to the value of the subcontract. The clause at 52.222–4 is being revised to reflect this principle.

The Councils have also proposed changes to the Standard Form 1413, Statement and Acknowledgment, to require that the contractor state whether its contract contains the clause entitled "Contract Work Hours and Safety Standards Act—Overtime Compensation," so that the subcontractor certification will only cover this clause if the contractor has indicated that the clause is in its contract. In addition, the Councils have proposed corrections to two of the clause titles and added to the list the clause entitled "Compliance with Davis-Bacon and Related Act Regulations," which is one of the clauses for which certification is required (29 CFR 5.6(a)).

A correction is proposed to FAR 22.406–9(c). That section was incorrectly changed by FAR Case 1999–003, published in the **Federal Register** at 65 FR 46064, July 26, 2000, by redirecting the transfer of withheld funds under the Davis-Bacon to the Secretary of the Treasury instead of the Comptroller General of the General Accounting Office (GAO). Section 3(a) of the Davis-Bacon Act specifically, provides that "the Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the terms of the contract any wages found to be due laborers and mechanics pursuant to this Act." The proposed revision would restore the appropriate FAR language to that which existed prior to the aforementioned FAR case.

The Councils endorsed the proposal to selectively insert in FAR parts 22.404–3 through 22.404–7, "for the primary site of the work," to provide clarity when the requirements do not apply to the wage determination for the secondary site of the work.

Finally, the Councils have proposed plain language changes to the clause prescriptions at FAR 22.407, and the clause at 52.222–11.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule only implements DoL regulation or clarifies the existing requirements. The Councils agree with the Department of Labor's (DoL) December 20, 2000, determination that its regulation would not have a significant economic impact on a substantial number of small entities (see **Federal Register** at 65 FR 80277). DoL stated that the rule primarily implements modifications resulting from court decisions interpreting statutory language, which would reduce the coverage of Davis-Bacon prevailing wage requirements as applied to construction contractors and subcontractors, both large and small, on Davis-Bacon and Related Act covered contracts. In addition, the rule makes a limited amendment to the site of the work definition to address an issue not contemplated under the current regulatory language—those instances where significant portions of buildings or works may be constructed at secondary sites which are not in the vicinity of the project's final resting place. DoL believes that such instances will be rare, and that any increased costs, which may arise on such projects, would be offset by the savings due to the other limitations on coverage provided by the rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 22, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies, but the Councils estimate that the current burden is unaffected by the revisions to the form. The form is being revised for clarification. The form (OMB Control Number 9000–0014) is currently approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22, 52, and 53

Government procurement.

Dated: December 15, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 22, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 22, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Amend section 22.401 by—

a. Adding, in alphabetical order, the definitions "Apprentice" and "Trainee";

b. Removing from the first sentence of the definition "*Building* or *work* generally" and removing from the third sentence "*building* or *work*" and adding "building or work" in both places;

c. Revising the definitions "Construction, alteration, or repair", "Laborers or mechanics" and "Site of the work"; and

d. Amending the definition "Public building or public work" by removing "*building* or *public work*" and adding "building or public work" in its place.

The added and revised text reads as follows:

§ 22.401 Definitions.

* * * * *

Apprentice means a person—

(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an apprentice in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

* * * * *

Construction, alteration, or repair means all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the "site of the work" definition and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (1)(iii) of the "site of work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (1)(ii), and the physical place or places where the building or work will remain (paragraph (1)(i) in the "site of the work" definition).

Laborers or mechanics—(1) Means—

(i) Workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards.

(iii) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so spent; and

(iv) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals.

(2) Does not include workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

* * * * *

Site of the work—(1) Means—

(i) The physical place or places where the construction called for in the contract will remain when work on it is completed (primary site of the work);

(ii) Any secondary site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project; and

(iii) Except as provided in paragraph (2) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., *provided* they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the "site of the work" as defined in paragraphs (1)(i) or (ii) of this definition;

(2) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work", even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Trainee means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

* * * * *

3. Amend section 22.404–3 by revising paragraph (c) to read as follows:

22.404–3 Procedures for requesting wage determinations.

* * * * *

(c) *Time for submission of requests.* (1) The time required by the Department of Labor for processing requests for project wage determinations varies according to the facts and circumstances in each case. An agency should expect the processing to take at least 30 days. Accordingly, agencies should submit requests for project wage determinations for the primary site of the work to the Department of Labor at least 45 days (60 days if possible) before issuing the solicitation or exercising an option to extend the term of a contract.

(2) Agencies should promptly submit to the Department of Labor an offeror's request for a project wage determination for a secondary site of the work. The Contracting Officer shall not extend the due date for receipt of offers as a result of such a request.

* * * * *

22.404–4 [Amended]

4. Amend section 22.404–4 by revising the section heading as set forth below; and amending paragraphs (a), (b), and (c) by adding "for the primary site of the work" after determination" each time it appears.

22.404–4 Solicitations issued without wage determinations for the primary site of the work.

* * * * *

5. Amend section 22.404–5 by—

a. Revising the first sentence of paragraphs (b)(1), (b)(2) introductory text, and (b)(2)(i);

b. Revising paragraph (b)(2)(ii);

c. Revising the first sentence of paragraphs (c)(2) and (c)(3); and

d. Revising paragraph (c)(4).

The revised text reads as follows:

22.404–5 Expiration of project wage determinations.

* * * * *

(b) * * *

(1) If a project wage determination for the primary site of the work expires before bid opening, or if it appears before bid opening that a project wage determination may expire before award, the contracting officer shall request a new determination early enough to ensure its receipt before bid opening. * * *

(2) If a project wage determination for the primary site of the work expires after bid opening but before award, the contracting officer shall request an extension of the project wage determination expiration date from the Administrator, Wage and Hour Division. * * *

(i) If the new determination for the primary site of the work changes any wage rates for classifications to be used in the contract, the contracting officer may cancel the solicitation only in accordance with 14.404–1. * * *

(ii) If the new determination for the primary site of the work does not change any wage rates, the contracting officer shall award the contract and modify it to include the number and date of the new determination. (See 43.103(b)(1).)

(c) * * *

(2) The contracting officer need not delay opening and reviewing proposals or discussing them with the offerors while a new determination for the primary site of the work is being obtained. * * *

(3) If the new determination for the primary site of the work changes any wage rates, the contracting officer shall amend the solicitation to incorporate the new determination, and furnish the wage rate information to all prospective offerors that were sent a solicitation if the closing date for receipt of proposals has not yet occurred, or to all offerors that submitted proposals if the closing date has passed. * * *

(4) If the new determination for the primary site of the work does not change any wage rates, the contracting officer shall amend the solicitation to include the number and date of the new determination and award the contract.

6. Amend section 22.404–6 by revising the second sentence of paragraph (a)(2), the first sentence of paragraph (a)(3), the first sentence of paragraph (b)(3), and paragraph (b)(4) to read as follows:

22.404–6 Modifications of wage determinations.

(a) * * *

(2) * * * The need to include a modification of a project wage determination for the primary site of the work in a solicitation is determined by the time of receipt of the modification by the contracting agency. * * *

(3) The need for inclusion of the modification of a general wage determination for the primary site of the work in a solicitation is determined by the publication date of the notice in the **Federal Register**, or by the time of receipt of the modification (annotated with the date and time immediately upon receipt) by the contracting agency, whichever occurs first. * * *

(b) * * *

(3) If an effective modification of the wage determination for the primary site of the work is received by the contracting officer before bid opening, the contracting officer shall postpone

the bid opening, if necessary, to allow a reasonable time to amend the solicitation to incorporate the modification and permit bidders to amend their bids. * * *

(4) If an effective modification of the wage determination for the primary site of the work is received by the contracting officer after bid opening, but before award, the contracting officer shall follow the procedures in 22.404–5(b)(2)(i) or (ii).

* * * * *

22.404–8 [Amended]

7. Amend section 22.404–8 in paragraphs (b)(1) introductory text, (b)(2), and (c) by adding "of an improper wage determination for the primary site" after "notification".

22.406–9 [Amended]

8. Amend section 22.406–9 by—

a. Removing from the first sentence of paragraph (c)(1) "Secretary of the Treasury" and adding "Comptroller General" in its place and removing from the last sentence of paragraph (c)(1) "Secretary of the Treasury" and adding "Comptroller General (Claims Section)" in its place; and

b. Removing from paragraph (c)(3) "Secretary of the Treasury" and adding "Comptroller General" in its place.

9. Amend section 22.407 by—

a. Revising the heading and removing from the introductory text of paragraph (a) "The contracting officer shall insert" and adding "Insert" in its place;

b. Removing from paragraphs (a)(1) through (a)(10) "The clause at";

c. Removing from paragraph (b) "The contracting officer shall insert" and adding "Insert" in its place;

d. Removing from paragraph (c) "the contracting officer shall";

e. Removing from paragraph (d) "The contracting shall insert" and adding "Insert" in its place; and

f. Adding paragraph (h) to read as follows:

22.407 Solicitation Provision and Contract clauses.

* * * * *

(h) Insert the provision at 52.222–XX, Davis Bacon Act—Secondary Site of the Work, in solicitations in excess of $2,000 for construction within the United States.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Amend section 52.222–4 by revising the date of the clause and paragraph (e) to read as follows:

52.222–4 Contract Work Hours and Safety Standards Act— Overtime Compensation.

* * * * *

Contract Work Hours and Safety Standards Act—Overtime Compensation (Date)

* * * * *

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics including watchmen and guards and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

11. Amend section 52.222–6 by—

a. Revising the date of the clause;

b. Redesignating paragraphs (a) through (d) as paragraphs (b) through (e);

c. Adding a new paragraph (a);

d. Revising the newly designated paragraph (b); and

e. Removing from the newly designated paragraph (c)(4) "(b)(2)" and "(b)(3)" and adding "(c)(2)" and "(c)(3)" in their places, respectively.

The revised and added text reads as follows:

52.222–6 Davis-Bacon Act.

* * * * *

Davis-Bacon Act (Date)

(a) *Definition—Site of the work*—(1) Means—

(i) The physical place or places where the construction called for in the contract will remain when work on it is completed (primary site of the work);

(ii) Any secondary site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project; and

(iii) Except as provided in paragraph (2) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool years, etc., provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the "site of the work" as defined in paragraph (1)(i) or (ii) of this definition;

(2) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal Contractor project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial material supplier which are established by a supplier of materials for the project before opening of bids and not on the site are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be subsequently incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination subsequently incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination applicable to the respective site of the work (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

* * * * *

12. Amend section 52.222–9 by revising the date of the clause and paragraph (a) to read as follows:

52.222–9 Apprentices and Trainees.

* * * * *

Apprentices and Trainees (Date)

(a) *Apprentices*—(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

* * * * *

13. Revise section 52.222–11 to read as follows:

52.222–11 Subcontracts (Labor Standards).

As prescribed in 22.407(a), insert the following clause:

Subcontracts (Labor Standards) (Date)

(a) *Definition. Construction, alteration or repair*, as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the "site of the work" definition and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (1)(iii) of the "site of work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (1)(ii), and the physical place or places where the building or work will remain (paragraph (1)(i) in the "site of the work" definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination—Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Davis-Bacon and Related Act Regulations; and

(11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in this paragraph.

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

(End of clause)

52.222–41 [Amended]

14. Amend section 52.222–41 in paragraph (r) by removing "Bureau of Apprenticeship and Training, Employment and Training Administration" and adding "Office of Apprenticeship Training, Employer, and Labor Services (OATELS)" in its place.

15. Add provision 52.222–XX to read as follows:

52.222–XX Davis-Bacon Act—Secondary Site of the Work.

As prescribed in 22.407(h), insert the following provision:

Davis-Bacon Act—Secondary Site of the Work (Date)

(a) The offeror shall notify the Government if—

(1) The offeror intends to perform work at any secondary site, as defined in paragraph (a)(1)(ii) of the Davis-Bacon Act clause of this solicitation; and

(2) The Davis-Bacon Act is applicable to the work at any secondary site.

(b) If the wage determination provided by the Government for work at the primary place of performance is not applicable to the secondary site(s), the offeror shall—

(1) Obtain a general wage determination for the secondary site via the Internet at *www.xxx*, provide it to the Government for inclusion in any subsequent contract; or

(2) If a general wage determination is not available for the secondary site, request the Contracting Officer to obtain a project wage determination from the Department of Labor. The offeror should request the project wage determination for the secondary site as soon as possible. The due date for receipt of offers will not be extended as a result of an offeror's request for a project wage determination for a secondary site of the work.

(End of provision)

PART 53—FORMS

53.222 [Amended]

16. Amend section 53.222 in paragraph (e) by removing "(Rev 6/89)" and adding "(Date)" in its place, and removing the last sentence.

17. Amend section 53.301–1413 by revising the form to read as follows:

52.301–1413 Statement and Acknowledgement.

BILLING CODE 6820–EP–P

DRAFT

STATEMENT AND ACKNOWLEDGMENT

OMB No.: 9000-0014
Expires: 10/31/2004

Public reporting burden for this collection of information is estimated to average .15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reducation Project (9000-0014), Washingotn, DC 20503.

PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER

4. PRIME CONTRACTOR			5. SUBCONTRACTOR		
a. NAME			a. NAME		
b. STREET ADDRESS			b. STREET ADDRESS		
c. CITY	d. STATE	e. ZIP CODE	c. CITY	d. STATE	e. ZIP CODE

6. The prime contract ☐ does, ☐ does not contain the clause entitled "Contract Work Hours and Safety Standards Act – Overtime Compensation."

7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in item 5 by the following firm:

a. NAME OF AWARDING FIRM

b. DESCRIPTION OF WORK BY SUBCONTRACTOR

DRAFT

8. PROJECT	9. LOCATION

10a. NAME OF PERSON SIGNING	11. BY *(Signature)*	12. DATE SIGNED
10b. TITLE OF PERSON SIGNING		

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

13. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

- Contract Work Hours and Safety Standards Act - Overtime Compensation - (If included in prime contract see Block 6)
- Payrolls and Basic Records
- Withholding of Funds
- Disputes Concerning Labor Standards
- Compliance with Davis-Bacon and Related Act Regulations
- Davis-Bacon Act
- Apprentices and Trainees
- Compliance with Copeland Act Requirements
- Subcontracts (Labor Standards)
- Contract Termination - Debarment
- Certification of Eligiblity

14. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

A		C	
B		D	

15a. NAME OF PERSON SIGNING	16. BY *(Signature)*	17. DATE SIGNED
15b. TITLE OF PERSON SIGNING		

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

STANDARD FORM 1413 (REV.)
Prescribed by GSA/FAR (48 CFR) 53.222(e)

[FR Doc. 03–31232 Filed 12–22–03; 8:45 am]

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1985

Federal Register

Tuesday,
December 23, 2003

Part VI

LOCAL Television Loan Guarantee Board

7 CFR Parts 2200 and 2201
LOCAL Television Loan Guarantee Program; Final Rule and Notice

LOCAL TELEVISION LOAN GUARANTEE BOARD

7 CFR Parts 2200 and 2201

RIN 0572–AB82

LOCAL Television Loan Guarantee Program

AGENCY: LOCAL Television Loan Guarantee Board.

ACTION: Final rule.

SUMMARY: The LOCAL Television Loan Guarantee Board (Board) is issuing regulations to implement the LOCAL Television Loan Guarantee Program (Program or LOCAL TV Program) as authorized by the Launching Our Communities' Access to Local Television Act of 2000 (the Act). Section 1002 of the Act sets forth that the primary purpose of the Act is to facilitate access, on a technologically neutral basis to signals of local television stations for households located in Nonserved Areas and Underserved Areas. The Act establishes a LOCAL Television Loan Guarantee Board (the Board) to approve Guarantees made under the Act. The Board is comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Agriculture, and the Secretary of Commerce, or their designees.

This rule establishes eligibility and Guarantee requirements, the application and approval process, as well as the administration of Guarantees made by the Board. Additionally, this rule establishes the process through which the Board will consider applications under the priority considerations required in the Act.

DATES: *Effective:* This rule becomes effective December 23, 2003.

ADDRESSES: A complete set of comments filed in response to the Proposed Rules are available for public inspection at 1400 Independence Avenue, SW., STOP 1575, Room 2919–S, Washington, DC 20250–1575. These comments can be viewed electronically at *http://www.usda.gov/rus/localtvboard/reply-comments.htm.*

FOR FURTHER INFORMATION CONTACT: Jacqueline G. Rosier, Secretary, LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., STOP 1575, Room 2919–S, Washington, DC 20250–1575. Telephone (202) 720–0530; Facsimile (202) 720–2734; E-mail *localtv@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866, and therefore has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, an Economic Impact Analysis was completed, outlining the costs and benefits of implementing this program. The complete analysis is available from the Board upon request.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Board has determined that this rule meets the applicable standards provided in Section 3 of the Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden.

Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(a)(2), this rule related to loans is exempt from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, including the requirement to provide prior notice and an opportunity for public comment.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the rule have been approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0572–0135.

Catalog of Federal Domestic Assistance

The Program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.853, LOCAL Television Loan Guarantee Program. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Executive Order 12372

No intergovernmental consultation with State and local officials is required because this rule is not subject to the provisions of Executive Order 12372, Intergovernmental Consultation.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 [42 U.S.C. 4321 *et seq.*] (NEPA), an Environmental Impact Statement is not required. If necessary, Loans sought to be guaranteed under this Program will be assessed individually to determine appropriate compliance with NEPA.

Government Paperwork Elimination Act

The Board is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights

The LOCAL TV Board is an equal opportunity lender. Applicants are required to comply with regulations on nondiscrimination and equal employment opportunity.

Executive Order 12630

This rule does not contain policies that have takings implications.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

Background

On December 21, 2000, the President signed into law Public Law 106–553, the Federal Funding Act for Fiscal Year 2001. Title X of Pub. L. 106–553, entitled Launching our Communities Access to Local Television Act of 2000 ("LOCAL TV Act" or "Act") established the LOCAL Television Loan Guarantee Board ("Board"). The Board is authorized to guarantee loans to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved or underserved areas. The Board is comprised of the

Secretary of Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Secretary of Agriculture, and the Secretary of Commerce, or their designees.

On August 15, 2003, the Board published proposed regulations to implement the LOCAL Television Loan Guarantee Program (Program or LOCAL TV Program).[1] The proposed regulations outlined proposed eligibility and guarantee requirements, the application process, as well as the administration of guarantees made by the Board. Additionally, the proposed regulations outlined the proposed process through which the Board would consider application under the priority considerations required in the Act. The Board received eight comments in response to the proposed regulations. In this document, the Board adopts rules to implement the LOCAL TV Program.

Section 2201.1 Definitions

One commenter suggested that the Board amend the proposed rule to provide that the Board will publish contour maps for each Designated Market Area (DMA), including grade A and B contours, to ensure that all applicants are using the same definitions and data sets.

The Act does not require the Board to create contour maps and the Board does not have funds available to undertake such a project. Applicants are required to indicate the number of nonserved and underserved households their projects will reach. *See* Section 2201.11(c)(4) of the regulations. It is expected that applicants will also disclose the manner in which this determination was made. This information, along with the other information requested as part of the application, will be analyzed in a consistent manner across all applicants by the Board.

A number of commenters suggested amending the definition of "local television broadcast signals" to include all local television broadcast stations in a DMA or, at least, all local television broadcast stations eligible for mandatory carriage under Federal Communications Commission (FCC) rules applicable to cable television systems or satellite providers. These suggestions were made because of the concerns of commenters that the proposed definition would have one of four possible negative results: (1) It would overlook some local stations in determining the existing availability of service; (2) it would cause some areas currently receiving local broadcast signals from a cable or satellite provider in accordance with FCC rules to be considered nonserved or underserved erroneously; (3) it would limit the applicability of the loan guarantee to that portion of a loan required to finance facilities necessary to provide only some of the local signals that a cable or satellite provider would be required by FCC rules to provide; or (4) it would direct applicants to provide retransmission of a smaller number of signals than the FCC's rules would dictate, thereby possibly running afoul of both FCC rules and copyright laws. While we do not agree that all of these results were possible, because nothing in the Board's rules would have affected the power of copyright law or the authority of the FCC's rules regarding carriage of local signals by providers applying for loan guarantees under the program, the Board acknowledges that the proposed definition could be improved.

Therefore, the Board has amended the definition of Local Television Broadcast Signals to include all television broadcast signals located in a DMA, subject to limitations pertaining to duplication, similar to the rules the FCC has used in Part 76 of Title 47 of the Code of Federal Regulations. The Board has also added definitions of the terms "low power television station," "television broadcast station," "television broadcast translator station," and "television network" to ensure that these terms are well understood in the revised definition of "local television broadcast signals."

To address the concern that the local signals carried by a cable or satellite provider under the FCC's rules might, in some case, not accord with the definition of "local television broadcast signals" in this rule, the Board has added a new Section 2201.9 which clarifies that the local signals carried by cable or satellite providers in accordance with the FCC's rules will always be considered to meet the definition of "local television broadcast signals" for the purposes of this regulation.

Section 2201.10 Loan Amount and Guarantee Percentage

One comment recommended that the regulations be amended to delete the proposed $1 million minimum size of a guaranteed loan (floor), so that the Board might consider applications for small loans on a case-by-case basis. The commenter indicated that, while the proposed $1 million floor would not pose a problem for it, it might serve to deter certain small companies from applying for a loan guarantee under the program.

The floor was set by the Board after taking into consideration the full costs to the Board of analyzing the eligibility and creditworthiness of applicants and their compliance with appropriate statutes and regulations. Such costs, which might appear to be borne by the Board, would be passed on to applicants through application and origination fees. Lenders would be authorized to charge reasonable fees as well. For loans of less than $1 million, total amount of fees charged by the Board and the lenders would be larger than the benefit of reduced interest expense of the borrower from receiving a Federal loan guarantee. Therefore, the Board will not delete the $1 million floor from the regulations.

Two commenters expressed concern about how the Board would determine the portion of the loan eligible for coverage by the guarantee under Section 2201.10. The Act makes clear that the guarantee should not cover any portion of a loan being used for purposes other than the establishment of the means by which local television broadcast signals will be delivered to a nonserved or underserved Area. However, if the Board were to prorate the costs of facilities based simply on the percentage of local television broadcast signals carried relative to all signals carried or the percentage of signals delivered to nonserved or underserved areas relative to all Areas served and adjust the portion of the loan eligible for guarantee accordingly, the effect would be to undermine the effectiveness of the LOCAL TV Program, by dropping the actual guarantee percentage significantly in many cases. Nonetheless any separable costs used to pay for features, services, or facilities not essential to the means by which local television broadcast signals will be delivered to a nonserved or underserved Area will be excluded from the portion of the loan eligible for coverage by the guarantee. A new subsection 2201.10(b)(3) has been added to clarify this policy.

Section 2201.11 Application Requirements

Credit Opinion. The proposed rules require applicants for loans of $5 million or more to submit to the Board a preliminary credit rating opinion letter. The Board solicited comment on whether the minimum amount should be set within the range of $5 million to $25 million. One comment argued that this requirement could serve as a costly barrier for potential applicants and that this credit opinion letter was not required by the Act. The commenter also stated that this requirement is inconsistent with the "no credit elsewhere test" and that the proposed regulations do not specify what outcome would be required from this opinion letter as a condition to obtaining a Guarantee.

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[1] *See* 68 FR 48814 (August 15, 2003). The proposed regulations can also be viewed at *http://www.usda.gov/rus/localtvboard/legislative_docs.htm.*

The creditworthiness of an applicant is an important consideration for the Board as it implements this program. At the same time, the Board recognizes the commenter's concern that the cost of obtaining a credit opinion letter may be a potential barrier for some applicants. Therefore, the Board will raise the minimum amount of a loan for which a credit rating opinion letter is required from $5 million to $15 million. Section 2201.11(g)(2) of the final rules has been changed accordingly.

Environmental Impact and Documentation for Eligibility Determination. One commenter recommended amending the documentation and other requirements for an applicant to be eligible for a loan guarantee consistently throughout the regulations to provide that the environmental impact assessment and all necessary regulatory approvals, spectrum licenses, and delivery permissions will be required to be finalized prior to the closing of the loan to be guaranteed, but not necessarily at the time of application, as appeared to be required under certain sections of the proposed regulations.

Applications may be submitted, evaluated and conditionally approved prior to finalization of the environmental assessment and completion of the NEPA process however, guaranteed loan funds will not be advanced until the NEPA process is completed. Section 2201.11(i) of the regulations has been amended accordingly. Applications may also be submitted, evaluated and conditionally approved prior to an Applicant obtaining all required regulatory and other approvals, licenses and permissions; however, guaranteed loan funds will not be advanced until they have been obtained. The regulations have been amended to clarify this point as well.

Section 2201.12 Applicant

One commenter asked that the Board amend the regulations to clearly state what the Board actually requires in order for an applicant to be deemed eligible to receive a loan guarantee and indicate the timing for the Board's determination on the applicant's eligibility, as opposed to merely listing in the regulations the information required to be submitted as part of the application.

The Board's regulations state both the factors for determining eligibility of an applicant and the information items necessary to be submitted as part of a complete application. A determination that an applicant is eligible does not mean that the applicant will be made an offer of guarantee. Similarly, a complete application presenting an economically viable project cannot receive an offer of guarantee if the party submitting the application is not eligible. Several commenters suggested that the Board amend either the requirement that an applicant show that their loan would not be available on reasonable terms and conditions without a program guarantee or the documentation requested in the application to show that this requirement has been satisfied. *See* Section 2201.12(b)(2)(v) of the proposed rule.

The "not available on reasonable terms and conditions" requirement in the proposed rule is taken directly from the statute, and therefore cannot be eliminated by regulation. *See* Section 1004(d)(3)(v) of the Act. The documentation requirement is similar to that used in other government loan guarantee programs.

Section 2201.15 Ineligible Loan Purposes

One commenter noted that the regulations do not lay out how the Board, in consultation with the National Telecommunications and Information Administration (NTIA), will make a determination that a project is "not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to Local Television Broadcast Signals in a Nonserved Area or Underserved area * * *. "Another commenter asked that the section be moved to a new location in the regulations in order to underscore the importance of this requirement for Board deliberations on this issue."

The standard that the Board is to apply in making its determination is clearly stated in the Act, *i.e.*, the project is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to the signals of a local television station in a nonserved area or underserved area and is commercially viable. Moreover, the Act requires the Board to consult with the NTIA in its determination. Given the wide variety of types of projects, market conditions, and consumer services that may be offered, it would be inappropriate to specify a formula for making this determination in the regulations. Rather, the Board will make its determination, in accordance with the Act, on a case-by-case basis based on the nature of the project under consideration. A detailed process outlined in the regulations as to how the Board will make this determination is not required by the Act. Because of the importance of this determination, however, the regulations have been amended to move this determination from Section 2201.15(c) to Section 2201.18(f).

Section 2201.17 Submission of Applications

One group of commenters recommended that the Board amend the regulations to state that each application window will be *at least* 120 days long, and not just *approximately* 120 days long, as was stated in the proposed rule.

Elsewhere in today's **Federal Register** the Board is publishing a notice announcing that applications for guarantees are being accepted through April 21, 2004; a 120 day period. While the Board believes 120 days is an appropriate period of time for an applicant to submit an application, it does not believe that a slightly shorter period for additional application windows is inappropriate. As such, should the Board decide to open additional application windows, any such window could be shorter than 120 days.

Two commenters recommended that the regulations require that a public notice be put in place so that affected participants in the DMA are aware an application has been filed. The Board expects to give the public notice of the names of those who applied during an application window after the application window has closed. This notice will be published in the **Federal Register**.

Section 2201.18 Application Selection

Two commenters asked that the Board explain in the regulations how it will meet its statutory requirement to prioritize the service of nonserved areas over the course of the program; *e.g.*, how will the Board prevent the majority of loan guarantees from being issued to serve underserved areas in the initial application window or windows so that the opportunities to serve nonserved areas will not be limited in later application windows. Another commenter raised the related issue of how the Board will select applications from the same area if more than one application meets the eligibility requirements.

All applications received during the time period established in the Board's public notice, published elsewhere in today's **Federal Register**, will be reviewed based on the criteria in the statute and these regulations. Included in these criteria is a statutory priority to provide service to nonserved areas. The Board will extend offers of guarantee to eligible applicants in accordance with such priority standards. However, the Board will apply that priority with regard only to the applications before it. The Board will not withhold funds for potential future applications that may be submitted during a possible additional funding availability period. With respect to applications covering the same geographic area, the Board will again apply the statutory and regulatory approval criteria to its determination as to whether to make an offer of guarantee. The Board may extend an offer of guarantee to more than one applicant seeking to provide service to the same geographic area. However, analysis of the financial feasibility of any particular project proposed by an applicant will necessarily take into account any other applications received by the Board covering the same geographic area. This analysis will include determining whether both Projects can be economically sustainable.

One commenter asked that the Board amend the regulations to facilitate the transition to digital television (DTV) by giving priority to those entities whose business and technical plans include the delivery of all local DTV broadcast stations and the entire 19.4 MBPS digital signal, whether stations are delivering one high-definition signal, several DTV multicast signals, data, or a combination.

The Act specifies the considerations that the Board shall give priority to with respect to the approval of loan guarantees. The transition to DTV is not included within the priorities stated in the Act. If Congress had wanted the Board to give priority to those entities that facilitate the transition to DTV, it could have made that a priority in the Act. The regulations have not been amended to give priority to those entities that facilitate the transition to DTV. However, Section 2201.11(e)(8) of the proposed rule does require the applicant to identify the capacity necessary to digitally broadcast all local television broadcast signals to be provided by the project so that the technical capabilities of the project can be evaluated in light of the ongoing transition to DTV.

One commenter proposed that the Board amend the proposed rule so that an applicant could refer to its entire system, and not merely the assets involved with a proposed project, when describing how high-speed Internet services will be provided in conjunction with the proposed project.

The Act states that the Board should give additional consideration to *projects* that also provide high-speed Internet service. *See* Section 1004(e)(1)(B) of the Act. The Board, therefore, does not have the flexibility to consider any means outside of the project in question by which an applicant might already provide, or would provide in the future, high-speed Internet service.

Another commenter recommended that the regulations be amended to preserve the statutory requirement that "additional"—not "higher" as the regulations now state—priority is given to projects that provide high-speed Internet service. The Board agrees with this comment and has changed the regulations to reflect this change in Section 2201.18(b)(1).

Section 2201.20 Collateral

One commenter suggested amending the proposed rule to specifically allow collateral to include certain intangible assets. The definition of collateral in the proposed rule is broad, and does not preclude the use of intangible assets. All collateral, including any intangible assets, will be subject to review and approval by the Board under Section 2201.20(e) of the regulations.

Another commenter recommended amending the regulations to provide that the Board will adjust the value of collateral downward and require an applicant to pledge additional collateral only if the Board makes a finding that such an adjustment is appropriate as a result of fraud or abuse by the applicant or any affiliate of the applicant. Such an amendment cannot be made. The Act requires that collateral having a value equal to the unpaid balance of the loan, secure the loan. The government must be able to evaluate, at all times, the value of the collateral, regardless of fraud or abuse. The Act clearly contemplates that, in the event the value of pledged collateral is not equal to the unpaid balance of the loan, additional collateral securing the loan will be provided either by the applicant or its affiliates.

Another commenter recommended that the regulations be amended to enable the Board to use its discretion to minimize burdensome fees and penalties and the use of credit premiums by providing that: (1) The Administrator will never hold liens on assets securing the loan that are in excess of the unpaid balance of the loan amount covered by the loan guarantee; and (2) credit risk premiums should be required only in the event of an appropriations shortfall such that the cost of the loan guarantee cannot be covered and that, in such cases, that credit risk premiums will be kept to the lowest practical amount.

With regard to the liens issue, the regulations must preserve discretion for the Board to hold liens in an amount sufficient to protect the taxpayer. With respect to credit risk premiums, Section 2201.23 already permits the Board to use its discretion, with OMB concurrence as to the amount, regarding whether and to what extent credit risk premiums will be charged. Section 2201.23 also states that the Board will reduce the credit risk premium with respect to guarantees proportionately to the extent appropriations of budget authority are sufficient to cover the cost of guarantees, as determined under Section 502(5) of the Federal Credit Reform Act of 1990.

Section 2201.21 Fees

One commenter stated that the origination fee, if one is charged at all, should be capped at 50 percent of the application fee. A loan guarantee origination fee capped at 50 percent of the application fee would impair the Board's ability to recover its costs. The loan guarantee origination fee will be charged only to those applicants that have been made an offer of guarantee. The application fee, on the other hand, will be charged for all applications. The amount of the application fee is meant to cover Board expenses incurred in reviewing an application, while the loan guarantee origination fee is meant to recoup Board expenses incurred in issuing a guarantee and closing the loan.

To ensure that the loan guarantee origination fee more accurately reflects the administrative costs of issuing the guarantee and closing the loan, the Board has decided to revise the amount of the loan guarantee origination fee. This change is reflected in subsection 2201.21(b) of the final rules. This subsection provides a fee sufficient to cover the Board's administrative costs and requires borrowers to enter into an agreement with the Board regarding payment of the fee once an offer of guarantee has been extended. Such costs will likely include legal, financial analysis and other outside consulting fees as well as other administrative costs incurred by the Board. The language conditions closing the loan on full payment of the fee and makes it clear that a borrower is liable for the administrative costs of the Board regardless of whether the loan closes.

Section 2201.25 Performance Agreement

One commenter suggested that the proposed rule be amended to provide that the penalty in subsection 2201.25(b) of the proposed rule for failure to comply with a stipulated performance schedule would not be charged if the applicant in good faith failed to meet the performance schedule.

The Act provides the Board with authority to impose a penalty not to exceed three times the interest due on a guaranteed loan if an applicant fails to meet its stipulated performance schedule.[2] While the Board believes that it is important to retain the flexibility granted to it in the Act to impose the penalty, the Board expects to use its authority very judiciously in order to protect the financial interests of the United States.

Another commenter recommended that in the event a borrower in good faith failed to meet the stipulated performance schedule, the Administrator should provide the borrower with a minimum of 120 days to attempt to cure the failure to perform before the assessment of the penalty.

The issue of a "cure period" is more appropriately addressed in the loan documents. It is anticipated that an appropriate "cure period" provision will be included in the loan documents.

Section 2201.27 Assignment or Transfer of Loans

One commenter recommended that only modifications of significant material provisions of the Loan Documents should require prior written approval of the Board. The commenter also recommended that Board approval not be required for the transfer of certain participation interests in a Loan (*e.g.*, transfer of interests within a group of participating Lenders).

The requirements and limitations in section 2201.27 of the regulations are needed for the Board to assure compliance with the authorizing statute, which requires, for example, that the Board determine whether or not Lenders are eligible to participate in the Program and take note of any transfer of the guaranteed portion of the loan separate and apart from the unguaranteed portion of a loan ("loan stripping"). Such loan stripping is prohibited under subsection 1005(d) of the Act. The Board's need for this information exists not only at the time the loan is originated, but throughout the repayment period.

Section 2201.31 Indemnification

One commenter recommended amending the regulations to clarify that only those affiliates that are providing collateral for the loan guarantee will be subject to the statutorily required indemnification requirements. A case-by-case statutorily required determination will be made concerning which affiliates will be required to indemnify the government. It is possible, however, that indemnification will be received from affiliates which are not providing collateral for a guarantee. It is anticipated that appropriate contracts, between the affiliates and the government, evidencing such indemnification obligation, will be obtained.

Section 2201.33 Defaults

One commenter recommended amending the regulations to state that the failure of a lender to provide all of the required documents to the Board in the event of a default will not void the loan guarantee and that instead only a good faith effort by lender in this regard will be required, which is consistent with current commercial practice.

Subsection 2201.33(c) of the regulations requires the lender to provide certain information, relating to the collection process, to the Board within 90 days of the date of a payment demand. Paragraph (f) of that section provides that the Board may withhold payment under the guarantee if such information has not been provided. This provision is reasonable in light of the Board's reliance on the lender in the loan collection process.

List of Subjects in 7 CFR Parts 2200 and 2201

Loan programs—Communications, Rural areas, Telecommunications, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, chapter XX of title 7 of the Code of Federal Regulations is amended as follows:

PART 2200—ACCESS TO LOCAL TELEVISION SIGNALS GUARANTEED LOAN PROGRAM; GENERAL POLICIES AND PROCEDURES

■ 1. The authority citation for part 2200 continues to read as follows:

Authority: 47 U.S.C. 1101 *et seq.*; Pub. L. 106–553; Pub. L.107–171.

■ 2. The title of part 2200 is revised to read as set out above.

■ 3. Section 2200.1 is amended by adding a new paragraph (d) to read as follows:

§ 2200.1 Definitions.

* * * * *

(d) *Person* means any individual, corporation, cooperative, partnership, joint venture, association, joint-stock company, limited liability company or partnership, trust, unincorporated organization, government entity, agency or instrumentality or any subdivision thereof.

■ 4. Part 2200 is amended by adding §§ 2200.10 through 2200.12 to read as follows:

§ 2200.10 Restrictions on lobbying.

(a) No funds received through a Loan guaranteed under this Program in this chapter may be expended by the recipient of a Federal contract, grant, loan, loan guarantee, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan or loan Guarantee, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, loan Guarantee, or cooperative agreement.

(b) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in the application form, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(c) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a Standard Form-LLL if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or Guarantee.

(d) Each person shall file a certification, contained in the application form, and a disclosure form (Standard Form-LLL), if required, with each submission that initiates agency consideration of such person for:

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[2] See Section 1005(f)(2) of the Act.

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(e) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (c) of this section.

(f) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (d) or (e) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

§ 2200.11 Government-wide debarment and suspension (nonprocurement).

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect. The Board shall review the List of Debarred entities prior to making final loan Guarantee decisions. Suspension or debarment may be a basis for denying a loan Guarantee.

(b) This section applies to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of this section such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of this section, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (b)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction;

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $100,000) under a primary covered transaction;

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons may include loan officers or chief executive officers acting as principal investigators and providers of federally required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not accepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of this section would be prohibited by law.

(3) *Board covered transactions.* This section applies to the Board's Loan Guarantees, subcontracts and transactions at any tier that are charges as direct or indirect costs, regardless of type.

(c) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to paragraph (l) of this section.

(d) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (*see* paragraph (b)(1)(ii) of this section for the period of their exclusion).

(e) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility

(but benefits received in an individual's business capacity are not accepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of this section would be prohibited by law.

(f) Persons who are ineligible are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(g) Persons who accept voluntary exclusions are excluded in accordance with the terms of their settlements. The Board shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(h) The Board may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with the Executive Order.

(i) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(j) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in paragraph (h) of this section.

(k) Except as permitted under paragraphs (h) or (i) of this section, a participant shall not knowingly do business under a covered transaction with a person who is:

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(l) Violation of the restriction under paragraph (k) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(m) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

§ 2200.12 Freedom of Information Act.

(a) *Definitions.* All terms used in this section, which are defined in 5 U.S.C. 551 or 5 U.S.C. 552 shall have the same meaning in this section. In addition the following definitions apply to this section:

(1) *FOIA,* as used in this section, means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under paragraph (c) of this section. Direct costs include, for example, the labor costs of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(4) *Duplication* means the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microfilm, audiovisual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk).

(5) *Educational institution* means a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education that operates a program of scholarly research.

(6) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in this section) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *News* means information about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of newspapers and other periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the general public.

(9) *Review* means the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(10) *Search* means the process of looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. Searches may be done manually or by computer.

(b) *Records available for public inspection and copying.* (1) *Types of records made available.* The information in this section is furnished for the guidance of the public and in compliance with the requirements of the FOIA. This section sets forth the procedures the Board follows to make publicly available the materials specified in 5 U.S.C. 552(a)(2). These materials shall be made available for inspection and copying at the Board's offices pursuant to 5 U.S.C. 552(a)(2). Information routinely provided to the public as part of a regular Board activity (for example, press releases) may be provided to the public without following this section.

(2) *Reading room procedures.* Information available under this section is available for inspection and copying, from 9 a.m. to 5 p.m. weekdays, at 1400 Independence Avenue, SW., Washington, DC.

(3) *Electronic records.* Information available under this section shall also be available on the Board's Web site found at *http://www.usda.gov/rus/localtvboard*.

(c) *Records available to the public on request*—(1) *Types of records made available.* All records of the Board that are not available under paragraph (b) of this section shall be made available upon request, pursuant to the procedures in this section and the exceptions set forth in the FOIA.

(2) *Procedures for requesting records.* A request for records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations. The request shall be submitted in writing to the Secretary of the Board at LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., STOP 1575, Room 2919–S, Washington, DC 20250–1575, or sent by facsimile to the Secretary of the Board at (202) 720–2734. The request shall be clearly marked *FREEDOM OF INFORMATION ACT REQUEST*.

(3) *Contents of request.* The request shall contain the following information:

(i) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(ii) Whether the requested information is intended for commercial use, or whether the requester represents an educational or noncommercial scientific institution, or news media;

(iii) A statement agreeing to pay the applicable fees, or a statement identifying any fee limitation desired, or a request for a waiver or reduction of fees that satisfies paragraph (f) of this section.

(d) *Processing requests*—(1) *Priority of responses.* The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency, is the date the Secretary of the Board actually receives the request. The Secretary of the Board shall normally process requests in the order they are received. However, in the Secretary of the Board's discretion, the Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (d)(2) of this section. When using multitrack processing, the Secretary of the Board may provide requesters in the slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. The Secretary of the Board shall contact the requester by telephone or by letter, whichever is most efficient in each case.

(2) *Expedited processing.* (i) A person may request expedited access to records by submitting a statement, certified to be true and correct to the best of that person's knowledge and belief, that demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v).

(ii) The Secretary of the Board shall notify a requester of the determination whether to grant or deny a request for expedited processing within ten working days of receipt of the request. If the Secretary of the Board grants the request for expedited processing, the Board shall process the request for access to information as soon as practicable. If the Secretary of the Board denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (e) of this section, and the Board shall respond to the appeal within twenty days after the appeal was received by the Board.

(3) *Time limits.* The time for response to requests shall be 20 working days, except:

(i) In the case of expedited treatment under paragraph (d)(2) of this section;

(ii) Where the running of such time is suspended for payment of fees pursuant to paragraph (f)(2)(ii) of this section;

(iii) Where the estimated charge is less than $250, and the requester does not guarantee payment pursuant to paragraph (f)(2)(i) of this section; or

(iv) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B)(iii), the time limit may be extended for a period of time not to exceed 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or such alternative time period as mutually agreed to by the Secretary of the Board and the requester when the Secretary of the Board notifies the requester that the request cannot be processed in the specified time limit.

(4) *Response to request.* In response to a request that satisfies paragraph (c) of this section, an appropriate search shall be conducted of records in the custody and control of the Board on the date of receipt of the request, and a review made of any responsive information located. The Secretary of the Board shall notify the requester of:

(i) The Secretary of the Board's determination of the request and the reasons therefore;

(ii) The information withheld, and the basis for withholding; and

(iii) The right to appeal any denial or partial denial, pursuant to paragraph (e) of this section.

(5) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, classified by, or is in the primary interest of another agency, the Secretary of the Board may refer the request to that agency for a direct response by that agency and inform the requester promptly of the referral. The Secretary of the Board shall consult with another Federal agency before responding to a requester if the Board receives a request for a record in which:

(i) Another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or

(ii) Another Federal agency not subject to the FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(6) *Providing responsive records.* (i) A copy of records or portions of records responsive to the request shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Board's Freedom of Information Office or makes other acceptable arrangements, or the Secretary of the Board deems it appropriate to send the documents by another means. The Secretary of the Board shall provide a copy of the record in any form or format requested if the record is readily reproducible in that form or format, but the Secretary of the Board need not provide more than one copy of any record to a requester.

(ii) The Secretary of the Board shall provide any reasonably segregable portion of a record that is responsive to the request after deleting those portions that are exempt under the FOIA or this section.

(iii) Except where disclosure is expressly prohibited by statute, regulation, or order, the Secretary of the Board may authorize the release of records that are exempt from mandatory disclosure whenever the Board or designated Board members determine that there would be no foreseeable harm in such disclosure.

(iv) The Board is not required in response to the request to create records or otherwise to prepare new records.

(7) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board officers, employees, or agents properly entitled to such information for the performance of official duties), unless required by law.

(e) *Appeals.* (1) Any person denied access to Board records requested under paragraph (c) of this section, denied expedited processing under paragraph (d) of this section, or denied a waiver of fees under paragraph (f) of this section may file a written appeal within 30 calendar days after the date of such denial with the Board. The written appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to Chairman of the Board, LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., STOP 1575, Room 2919–S, Washington, DC 20250–1575, or sent by facsimile to (202) 720–2734. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the requested records should be made available and why the initial denial was in error.

(2) The Chairman of the Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal, and the determination letter shall notify the appealing party of the right to seek judicial review in event of denial.

(f) *Fee schedules and waiver of fees*—(1) *Fee schedule.* The fees applicable to a request for records pursuant to paragraph (c) of this section are set forth in the uniform fee schedule at the end of this paragraph (f).

(i) *Search.* (A) Search fees shall be charged for all requests other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media, subject to the limitations of paragraph (f)(1)(iv) of this section. The Secretary of the Board shall charge for time spent searching even if no responsive record is located or if the Secretary of the Board withholds the record(s) located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(B) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (f)(3) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (f)(3)) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs include the costs, attributable to the search, of operating a central processing unit and operator/programmer salary.

(ii) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (f)(1)(iv) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be 15 cents per page. For copies produced by computer, such as tapes or printouts, the Secretary of the Board shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the Secretary of the Board will charge the direct costs of that duplication.

(iii) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review—the review done when the Secretary of the Board determines whether an exemption applies to a particular record at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(iv) *Limitations on charging fees.* (A) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(B) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(C) Whenever a total fee calculated under this paragraph is $25 or less for any request, no fee will be charged.

(D) For requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.

(2) *Payment procedures.* All persons requesting records pursuant to paragraph (c) of this section shall pay the applicable fees before the Secretary of the Board sends copies of the requested records, unless a fee waiver has been granted pursuant to paragraph (f)(6) of this section. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(i) *Advance notification of fees.* If the estimated charges are likely to exceed $25, the Secretary of the Board shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Secretary of the Board to reformulate the request to lower the costs. The processing of the request shall be suspended until the requester provides the Secretary of the Board with a written guarantee that payment will be made upon completion of the processing.

(ii) *Advance payment.* The Secretary of the Board shall require advance payment of any fee estimated to exceed $250. The Secretary of the Board shall also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the difference shall be refunded to the requester. The time period for responding to requests under paragraph (d)(4) of this section, and the processing of the request shall be suspended until the Secretary of the Board receives the required payment.

(iii) *Late charges.* The Secretary of the Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717.

(3) *Categories of uses.* The fees assessed depend upon the fee category. In determining which category is appropriate, the Secretary of the Board shall look to the identity of the requester and the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary of the Board may seek additional clarification before categorizing the request.

(i) *Commercial use requester.* The fees for search, duplication, and review apply when records are requested for commercial use.

(ii) *Educational, non-commercial scientific institutions, or representatives of the news media requesters.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(iii) *All other requesters.* For all other requests, the fees for search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(4) *Nonproductive search.* Fees for search may be charged even if no responsive documents are found. Fees for search and review may be charged even if the request is denied.

(5) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary of the Board reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees or that several requesters appear to be acting together to submit multiple requests solely in order to avoid payment of fees, the Secretary of the Board may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary of the Board to presume that multiple requests by one requester on the same topic made within a 30-day period have been made to avoid fees.

(6) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in under paragraph (d)(4) of this section, shall not begin until a determination has been made on the request for a waiver or reduction of fees.

(i) *Standards for determining waiver or reduction.* The Secretary of the Board may grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(A) Whether the subject of the records concerns the operations or activities of the government;

(B) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(C) Whether the requester has the intention and ability to disseminate the information to the public;

(D) Whether the information is already in the public domain;

(E) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(F) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(ii) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include a clear statement of how the request satisfies the criteria set forth in paragraph (f)(6)(i) of this section.

(iii) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(iv) *Determination by Secretary of the Board.* The Secretary of the Board shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with paragraph (e) of this section.

(7) Uniform fee schedule.

Service	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search.	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction.	$.15 per page.
(B) Other reproduction (*e.g.*, computer disk or printout, microfilm, microfiche, or microform).	Actual direct cost, including operator time.
(iv) Review of records (includes employee preparation for release, *i.e.* excising).	Actual salary rate of conducting review, plus 16 percent of salary rate.

(g) *Request for confidential treatment of business information*—(1) *Submission of request.* Any submitter of information to the Board who desires confidential treatment of business information pursuant to 5 U.S.C. 552(b)(4) shall file a request for confidential treatment with the Board at the time the information is submitted or a reasonable time after submission.

(2) *Form of request.* Each request for confidential treatment of business information shall state in reasonable detail the facts supporting the commercial or financial nature of the business information and the legal justification under which the business information should be protected. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(3) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated *"PROPRIETARY"* or *"BUSINESS CONFIDENTIAL"* in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential commercial or financial information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(h) *Request for access to confidential commercial or financial information*—(1) *Request for confidential commercial or financial information.* A request by a submitter for confidential treatment of any business information shall be considered in connection with a request for access to that information.

(2) *Notice to the submitter.* (i) The Secretary of the Board shall notify a submitter who requested confidential treatment of information pursuant to 5 U.S.C. 552(b)(4), of the request for access.

(ii) Absent a request for confidential treatment, the Secretary of the Board may notify a submitter of a request for access to submitter's business information if the Secretary of the Board reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(iii) The notice given to the submitter by mail, return receipt requested, shall be given as soon as practicable after receipt of the request for access, and shall describe the request and provide the submitter seven working days from the date of notice, to submit written objections to disclosure of the information. Such statement shall specify all grounds for withholding any of the information and shall demonstrate why the information which is considered to be commercial or financial information, and that the information is a trade secret, is privileged or confidential, or that its disclosure is likely to cause substantial competitive harm to the submitter. If the submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the release of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(3) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(i) The Secretary of the Board determines that the request for access should be denied;

(ii) The requested information lawfully has been made available to the public;

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(iv) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary of the Board, except that in this last instance the Secretary of the Board shall give the submitter written notice of the determination to disclose the information at least seven working days prior to disclosure.

(4) *Notice to requester.* At the same time the Secretary of the Board notifies the submitter, the Secretary of the Board also shall notify the requester that the request is subject to the provisions of this section.

(5) *Determination by Secretary of the Board.* The Secretary of the Board's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary of the Board determines to disclose the business information over the objection of a submitter, the Secretary of the Board shall give the submitter written notice via mail, return receipt requested, or similar means, which shall include:

(i) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A statement that the component intends to disclose the information seven working days from the date the submitter receives the notice.

(6) *Notice of lawsuit.* The Secretary of the Board shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information, and shall promptly notify a requester of any suit filed against the Board to enjoin the disclosure of requested documents.

■ 5. Part 2201 is added to read as follows:

PART 2201—LOCAL TELEVISION LOAN GUARANTEE PROGRAM—PROGRAM REGULATIONS

Subpart A—General

Sec.
2201.1 Definitions.
2201.2–2201.8 [Reserved]
2201.9 Limitation on the applicability of the definition of Local Television Broadcast signals.

Subpart B—Loan Guarantees

2201.10 Loan amount and Guarantee percentage.
2201.11 Application requirements.
2201.12 Applicant.
2201.13 Lender.
2201.14 Eligible Loan purposes.
2201.15 Ineligible Loan purposes.
2201.16 Environmental requirements.
2201.17 Submission of applications.
2201.18 Application selection.
2201.19 Loan terms.
2201.20 Collateral.
2201.21 Fees.
2201.22 Issuance of Guarantees.
2201.23 Funding for the Program.
2201.24 Insurance.
2201.25 Performance Agreement.
2201.26 Lender standard of care.
2201.27 Assignment or transfer of Loans.
2201.28 Participation in guaranteed Loans.
2201.29 Supplemental guarantees.
2201.30 Adjustments.
2201.31 Indemnification.
2201.32 Termination of obligations.
2201.33 Defaults.
2201.34 OMB Control Number.

Authority: 47 U.S.C. 1101 *et seq.*; Pub. L. 106–553; Pub. L. 107–171.

Subpart A—General

§ 2201.1 Definitions.

Act means Title X of Public Law 106–553, entitled the Launching Our Communities' Access to Local Television (LOCAL TV) Act of 2000, as amended.

Administrator means the Administrator of the Rural Utilities Service, U.S. Department of Agriculture, acting pursuant to the Act and on behalf of the Board.

Affiliate means any person or entity that controls, or is controlled by, or is under common control with, another person or entity; and may include any individual who is a director or senior management officer of an Affiliate, a shareholder controlling more than 25 percent of the voting securities of an Affiliate, or more than 25 percent of the ownership interest in an Affiliate not organized in stock form.

Agent means that Lender authorized to take such actions, exercise such powers, and perform such duties on behalf and in representation of all Lenders party to a Guarantee of a single Loan, as is required by, or necessarily incidental to, the terms and conditions of the Guarantee.

Applicant means any party that is seeking financing under the Act in order to provide access to Local Television Broadcast Signals for households in Nonserved Areas and Underserved Areas.

Asset means anything owned by the Applicant that has commercial or exchange value including, but not limited to, cash flows and rights thereto.

Banking Institution means a bank or bank holding company.

Board means the LOCAL Television Loan Guarantee Board authorized by the Act to approve Guarantees to facilitate access, on a technologically neutral basis, to Local Television Broadcast Signals for households located in Nonserved Areas and Underserved Areas.

Borrower means the entity liable for the payment of principal and interest on any Loan guaranteed under the Act, where such entity shall be a corporation, partnership, joint venture trustee or government entity, agency or instrumentality. An individual cannot be a Borrower.

Collateral means all Assets economically pledged by the Applicant, any Affiliate of the Applicant, or both that is required under the provisions of the Act or the Loan Documents to secure the repayment of the indebtedness of the Borrower under the Loan Documents.

Default means a failure by a Borrower, other than a Payment Default, on its obligations under the Loan Documents which has not been cured by the Borrower or duly waived by the Lender within any applicable cure period.

Designated Market Area (DMA) means an area designated as such by Nielsen Media Research and published in the most recent Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates.

Generally Accepted Accounting Principles (GAAP) means a common set of accounting standards and procedures that are either promulgated by an authoritative accounting rulemaking body or accepted as appropriate due to wide-spread application in the United States.

Guarantee means the written agreement, including all terms and conditions and all exhibits thereto, guaranteeing repayment of a specified percentage of the principal of a Loan pursuant to the Act.

Guaranteed Portion means the portion of the principal of a loan that is subject to the Guarantee.

High-Speed Internet means a data connection to the Internet providing an information rate exceeding 200 kilobits per second (kbps) in the consumer's connection to the network in at least one direction, either from the provider to the consumer (downstream) or from the consumer to the provider (upstream).

Lender means an entity that has committed to make a Loan to an Applicant, where such entity shall be:

(1) An entity currently engaged in commercial lending in the normal course of its business; or

(2) A nonprofit corporation, including the National Rural Utilities Cooperative Finance Corporation, engaged primarily in commercial lending, but does not include any governmental entity or any Affiliate thereof, the Federal Agricultural Mortgage Corporation, any institution supervised by the Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board, or any Affiliate of such entities.

Loan means a Loan guaranteed pursuant to the Act and includes the funds made available to the Borrower by the Lender.

Loan Agreement means the contract between the Lender and the Borrower, approved by the Board, setting forth the terms applicable to the Loan.

Loan Documents means the Loan Agreement, Guarantee and all other instruments, and all documentation between or among the Lender, the Borrower, and the Board or Administrator, evidencing the making, disbursing, securing, collecting, or otherwise administering of the Loan.

Local Television Broadcast means the signals of all Television Broadcast Stations located in a DMA. However, when more than one commercial Television Broadcast Station within the same DMA is affiliated with a particular Television Network, the signal of any one of these commercial Television Broadcast Stations will qualify as the Local Television Broadcast Signal of the network at that location, unless such stations are licensed to communities in different States, in which case both stations must be counted. Even if they are not affiliated with the same Television Network, when two or more commercial Television Broadcast Stations simultaneously broadcast the identical programming for more than 50 percent of the broadcast week, the signal of any one of these Television Broadcast Stations will qualify as the Local Television Broadcast Signal. When two or more noncommercial television stations simultaneously broadcast the same programming for more than 50 percent of prime time as defined in 47 CFR 76.5(n), and more than 50 percent outside of prime time over a 3-month period, the signal of any one of these Television Broadcast Stations will qualify as the Local Television Broadcast Signal. In areas not included in a DMA, but under the jurisdiction of the Federal Communications Commission (FCC), an appropriate set of Local Television Broadcast Signals will be determined on a case-by-case basis, subject to the approval of the Board.

Low Power Television Station means a station authorized by the FCC under subpart G of part 74 of title 47, Code of Federal Regulations, that may retransmit the programs and signals of a Television Broadcast Station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service.

Net equity means the value of the total Assets of an entity, less the total liabilities of that entity, as recorded under Generally Accepted Accounting Principles for the fiscal quarter ended immediately prior to the date on which the subject Loan is approved.

Net Worth Ratio means the book value of equity over total Assets.

Nonserved Area means any area that is outside the grade B contour (as determined using standards employed by the Federal Communications Commission (FCC)) of the Local Television Broadcast Signals serving a particular Designated Market Area and does not have access to such signals by any commercial, for profit, multichannel video provider.

Offer of Guarantee means the Board's decision to approve an application for, and extend a Guarantee under, the LOCAL TV Act.

Payment Default means any failure of a Borrower to pay any amount of principal or interest on the Loan when and as due under the Loan Agreement (including, without limitation, following any acceleration thereunder) which has not been cured within any applicable cure period.

Payment Demand means a request, by the Lender or Agent, following a Payment Default, in writing to the Board, for payment under the Guarantee in respect of the defaulted principal.

Performance Agreement means the written agreement between the Administrator and the Borrower (and Lender, if applicable), pursuant to which the Borrower provides stipulated performance schedules with respect to Local Television Broadcast Signals provided through the Project.

Program means the LOCAL Television Loan Guarantee Program (LOCAL TV Program) established under the Act.

Project means a proposal for the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means to deliver Local Television Broadcast Signals to a Nonserved Area or Underserved Area.

Regulatory Capital Ratio means tier 1 and total capital ratios as shown on a Banking Institution's balance sheet.

Security means all Collateral required by the provisions of the Act or the Loan Documents to secure repayment of any indebtedness of the Borrower under the Loan Documents.

Separate Tier of Local Television Broadcast Signals means a category or package of services provided by the applicant, to include the Local Television Broadcast Signals and all over-the-air television broadcast signals carried pursuant to the must-carry requirement of the Communications Act of 1934, as amended, offered as a distinct and separate service choice to the applicant's subscribers at a specified lower rate when compared to other program service choices.

Television Broadcast Station means an over-the-air commercial or noncommercial Television Broadcast Station licensed by the FCC under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a Low Power Television Station or Television Broadcast Translator Station.

Television Broadcast Translator Station means a station in the broadcast service operated for the purpose of retransmitting the programs and signals of a Television Broadcast Station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

Television Network means an entity which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

Term Sheet means an executed agreement between the Applicant and the Lender or Agent that sets forth the key business terms and conditions of the proposed Loan. Execution of this agreement represents evidence of the commitment between the Applicant and Lender or Agent.

Underserved Area means any area that is outside the grade A contour (as determined using standards employed by the Federal Communications Commission) of the Local Television Broadcast Signals serving a particular Designated Market Area and has access to such signals from not more than one commercial, for profit, multichannel video provider.

Unguaranteed Portion means the portion of the principal of a Loan that is not covered by the Guarantee.

§§ 2201.2—2201.8 [Reserved]

§ 2201.9 Limitation on the applicability of the definition of Local Television Broadcast Signals.

Notwithstanding the definition of Local Television Broadcast Signals provided in § 2201.1 of this part, if an area is being served by either a satellite carrier which rebroadcasts signals of Television Broadcast Stations located in the DMA or a cable television system, and that satellite carrier or cable television system is currently in compliance with the rules administered by the Federal Communications Commission (FCC) as described in part 76 of title 47, Code of Federal Regulations, the group of signals of Television Broadcast Stations located in the DMA being retransmitted by such satellite carrier or cable television system will be considered to meet the definition of Local Television Broadcast Signals for the purposes of the regulation.

Subpart B—Loan Guarantees

§ 2201.10 Loan amount and Guarantee percentage.

(a) *Aggregate Value of Loans.* The aggregate value of all Loans for which Guarantees are issued under the Program, including the Unguaranteed Portions of such Loans, may not exceed $1,250,000,000.

(b) *Guarantee Percentage.* (1) A Guarantee approved by the Board may not exceed an amount equal to 80 percent of the principal amount of a Loan made to finance the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area;

(2) If only a portion of a Loan is meant to achieve the purposes described in paragraph (b)(1) of this section, the Board shall determine that portion of the Loan meant to achieve such purpose and may approve a Guarantee in an amount not exceeding 80 percent of that portion of the Loan.

(3) The portion of the Loan meant to achieve the purposes described in paragraph (b)(1) of this section will not be lowered simply because the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area also enable either the provision of signals other than Local Television Broadcast Signals or the provision of signals to areas other than Nonserved or Underserved Areas. However, any amounts of a Loan which the Board determines will be used for separable costs not essential to funding the means by which Local Television Broadcast Signals are delivered to a Nonserved Area or Underserved Area, will be excluded from the portion of the Loan eligible for a Guarantee.

(c) *Minimum Loan Amount.* The Board will not approve a Guarantee for a Loan in an amount less than $1,000,000 (inclusive of both the Guaranteed and Unguaranteed Portions of the Loan).

§ 2201.11 Application requirements.

A completed application consists of the following information:

(a) *An executive summary of the Project.* The Applicant must provide the Board with a general Project overview that addresses each of the following six categories:

(1) A general overview of the system to be developed and description of the Project including the types of equipment, technologies, and facilities to be used;

(2) An explanation of how the Applicant will provide Local Television Broadcast Signals to Nonserved Areas and Underserved Areas;

(3) A short description of the Applicant including a written narrative describing its demonstrated capability and experience in providing access to Local Television Broadcast Signals for households;

(4) An explanation of the total Project cost including a breakdown of the Loan required and the source of funding for the remainder of the Project, if a portion of the Project is to be paid with non-Loan funds;

(5) The name of the Lender or Agent (including a listing of other participating Lenders, if applicable) and a description of the financing structure of the proposed Loan; and

(6) A general description of the geographic area to be served.

(b) *Background information.* General information concerning the Applicant, its Affiliates, and its Lender or Agent, including a description of any financial and contractual arrangements among the parties. Specific information required of all Applicants is as follows:

(1) *Evidence of legal authority and existence of the applicant.* The Applicant must provide evidence of its legal existence and authority to execute the Loan Documents under the proposed Loan and perform the activities proposed under the Project. Such evidence must include Articles of Incorporation and bylaws for incorporated Applicants; other types of Applicants should submit appropriate documentation for their forms of organization. If the Applicant is a special purpose entity (SPE) formed for the purpose of the Project, then the Applicant must provide a copy of the Deed of Partnership or Articles of Organization for the SPE.

(2) *Affiliates descriptions.* A listing of all Affiliates of the Applicant including a description of the nature of the Applicant's relationship to each Affiliate. Any existing or proposed contractual arrangements with each Affiliate should be described.

(3) *Legal name.* The legal name and form of organization of the proposed Lender or Agent.

(4) *Cover Form.* A signed copy of Standard Form 424.

(5) *Management Credentials.* A description of the experience and capabilities of the Applicant's management to carry out the Project.

(c) *A business plan.* A plan, satisfactory to the Board, presenting in detail the fundamentals of the business and providing sufficient financial data to indicate that the business will be economically sustainable. The business plan should include, at a minimum:

(1) *Risk Assessments.* An assessment of the risks related to construction, performance, demand, and financing structure, including a narrative statement detailing planned risks mitigation strategies;

(2) *Plans.* A comprehensive operations and maintenance plan, as well as a marketing strategy;

(3) *Economic and Financial Analysis.* A review of economic and financial factors affecting the business in general and the Project in particular. Applicants should refer to economic and financial conditions in the past three years, and also discuss expectations of such conditions in the future, including:

(i) The adequacy and stability of the business' customer base. Applicants should provide information on the number of subscribers, subscriber churn, subscriber acquisition cost or cost per gross added, subscriber penetration, geographic concentration of customers, nature of the terms of customer contracts, customer technical support, customer satisfaction and retention;

(ii) The demand for services;

(iii) The sensitivity of the business to economic cycles;

(iv) Future capital needs;

(v) The adequacy, competitiveness and affordability of service fees;

(vi) An overview of the prevailing economic and demographic trends in the target service area; and

(vii) Information on programming content and costs.

(4) *Project Market Analysis.* A breakdown of the key elements of the Project, including:

(i) All proposed services to be offered, including High-speed Internet Service, and whether a Separate Tier of Local Television Broadcast Signals will be provided;

(ii) The total number of households, by DMA, and by Nonserved and Underserved Area, which will have access to Local Television Broadcast Signals under the Project;

(iii) The total number of households, by DMA, and by Nonserved and Underserved Area, which will have access under the Project to any other services as described pursuant to paragraph (c)(4)(i) of this section, including an explanation if this number is greater than the total identified in paragraph (c)(4)(ii);

(iv) Estimates of the number of households identified in paragraphs (c)(4)(ii) and (c)(4)(iii) which will subscribe to each of the services identified in paragraph (c)(4)(i) of this section by DMA, including a breakdown of Nonserved and Underserved households;

(v) A breakdown of the Applicant's proposed pricing coupled with an evaluation of any competitor's services offerings and pricings; and

(vi) A service deployment plan and a deployment performance schedule, by DMA, for the services to access the Local Television Broadcast Signals.

(d) *Financial forecast and information.* The Applicant must demonstrate its financial ability to complete and maintain the Project and repay its obligations. The financial data must include the following:

(1) *Audited financial statements.* Income statements, balance sheets, and cash flow statements for at least the last three years or from the date of inception if less than three years. If the Applicant is an SPE, then the Applicant must provide at least the last three years of audited financial statements of the shareholders or partners of the SPE. If an Affiliate has been designated by the Applicant as a source of credit support, then at least three years audited financial statements for the Affiliate must be submitted as well.

(2) *Plan of finance.* An identification and explanation of all sources and uses of funds throughout the proposed loan period, including, but not limited to, any payments to Affiliates or shareholders of the Applicant, estimated Project costs, and proposed terms.

(3) *A Pro-forma financial forecast* covering the life of the proposed loan, including balance sheets, income statements and cash flow statements, with an explanation of assumptions. These Projections must be prepared in accordance with Generally Accepted Accounting Principles and should discuss such issues as the effects of inflation, competition, ongoing repair and replacement needs, technological obsolescence, working capital requirements, and other factors that may affect the Applicant's ability to meet its debt service obligations.

(4) *Project budget.* A detailed cost breakdown of all facilities to be constructed as part of the Project. This breakdown should be on a per unit basis. It should also clearly show what will be financed with guaranteed loan funds and what will be financed with other funds, consistent with the plan of finance in paragraph (d)(2) of this section.

(5) *Commitments.* The Applicant must disclose all reasonably foreseeable financial obligations, contingent liabilities, or other commitments that could affect its financial health over the proposed financing term. At the Board's request, the Applicant must take all reasonable measures to insulate the Project and the Loan from external factors that could affect timely payment of principal and interest. The Board may ask for additional detailed information on commitments where it is deemed necessary.

(6) *Credit enhancement.* In cases where an Affiliate provides credit enhancement, the Applicant must provide documentation demonstrating the Affiliate is sufficiently capitalized and evidencing the strength, extent, limitations, and priority of the credit enhancement relative to the other obligations of the Affiliate.

(e) *A certified system plan, technical analysis, and design.* Prepared by qualified personnel on the Applicant's staff or by a licensed consulting engineer, consisting of the following:

(1) A detailed description of the proposed service area including maps of the service area;

(2) A TV Signals Coverage Diagram and detailed description of all existing and proposed facilities. The diagram must include proposed route miles of cable plant, if applicable, the estimated area served, types of facilities to be deployed (terrestrial microwave or satellite microwave, wireless, translator, fiber optic cable or coaxial cable, electronic equipment, etc.), the capacity of the facilities (number of fibers, size of the cables, and intended number of channels, frequencies used, bandwidth capacity, etc.), and the serving area of the proposed facilities;

(3) The intended capabilities of the Project's facilities, including bandwidth, proposed television signal topology, standards, and television signal transmission protocols. In addition, the Applicant must explain the manner in which the transmission facilities will deliver the proposed Local Television Broadcast Signals, including any equipment necessary to receive the signals which will be located at the subscribers' premises, and/or, near or on the subscribers' television sets;

(4) A listing of all regulatory approvals required to operate facilities, including licenses, permits, and franchises and the status of any required approvals not obtained at the time of the application. For any approvals not yet received, the Applicant should provide details on the nature of the needed approval, the justification for expecting such an approval, the track-record of the Applicant in obtaining such approvals, and the contingency plan in the event the approval is delayed;

(5) A description of the television signal sources (including, but not limited to local, regional and national television signal broadcasters, other television signal providers, content providers, cable television operators and providers, enhanced service providers, providers of satellite services, and the anticipated role of such providers in the proposed Project);

(6) The results of discussions, if any, with local television broadcasters serving the Project area;

(7) An identification of all Local Television Broadcast Signals that will be carried by the Project;

(8) An identification of the digital signal quality and capacity in megabits per second (Mb/s) that will be required to digitally broadcast all Local Television Broadcast Signals to be provided by the Project;

(9) An identification of the net usable bandwidth, in Mb/s, that are surplus to the provision of the Local Television Broadcast Signals to be provided by the Project and that will be used to provide High Speed Internet Service; and

(10) A description of the extent to which the Project will enable the delivery of Local Television Broadcast Signals by a means reasonably compatible with existing systems or devices predominantly in use for the reception of television signals.

(f) *Lender information*—(1) *Lender.* The Application shall include the information described in § 2201.13(b),

(c) and (d) of this part concerning the Lender or Lenders.

(2) *Term Sheet.* The Application shall include a signed Term Sheet.

(3) *Lender's Analysis.* The Applicant shall submit the Lender's detailed analysis of the creditworthiness of the transaction at the time of application and any supporting due diligence documentation, including a complete underwriting analysis of the Project (assessing Applicant creditworthiness and Project feasibility) exercising the Lender's standard of care as set forth at § 2201.26(a).

(4) *Certification.* The Lender must certify that the information provided pursuant to paragraphs (f)(1), (2) and (3) of this section is true and accurate.

(5) *Additional Information.* The Board will request any other information the Board deems material to its assessment of the Lender.

(g) *Other Financial Information*—(1) *Collateral.* The Applicant shall provide a detailed description and valuation of all Collateral to be used to secure the Loan. This valuation shall be supported by an independent, third party appraisal for existing Assets, and/or adequate cost substantiation for Assets to be constructed for purposes of the Project, and in all cases shall be acceptable to the Board. Such a valuation should address, at a minimum, pledged Assets of the Applicant, any designated Affiliate of the Applicant, or both as identified in the Loan Documents, including primary Assets to be used in the delivery of the service for which the Loan sought would be guaranteed. The Applicant also must provide a depreciation schedule (as classified under and in accordance with GAAP) for the major Assets in order for the Board to determine the economically useful life of the primary Assets to be used in delivery of the signals concerned. Appraisals of real property must be prepared by State licensed or certified appraisers, and be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(2) *Credit Opinion.* With respect to applications for a Loan of $15 million or more, the Applicant is required to obtain and submit to the Board a preliminary credit rating opinion letter on the proposed transaction at the time of application, prepared by a nationally recognized statistical rating organization (rating agency) approved by the Board. This preliminary credit rating opinion shall be based on the financing structure proposed by the Applicant for the Project absent the Federal Guarantee, without regard to recovery expectations. The Board will utilize this preliminary credit assessment to assist in evaluating the creditworthiness of the proposed transaction and determining whether it provides a reasonable assurance of repayment. In addition, applicants for loans less than $15 million that have a credit rating shall provide that credit rating to the Board. The Board will utilize this preliminary credit assessment (for loans over $15 million) or an existing credit rating (for loans less than $15 million) to assist in evaluating the creditworthiness of the proposed transaction and determining whether it provides a reasonable assurance of repayment. The Board may approve a Guarantee over $15 million only if it receives a final credit rating opinion letter from the rating agency on the Loan that is in form and substance acceptable to the Board.

(3) *Evidence of Lack of Credit Elsewhere.* The Applicant shall provide the information required pursuant to § 2201.12(b)(2)(v) of this part.

(h) *Compliance with other Federal statutes, regulations and Executive Orders.* The Applicant must certify compliance with other applicable Federal statutes, regulations, and Executive Orders.

(i) *Environmental impact.* The Applicant must provide information describing the Project's impact on the environment as required pursuant to § 2201.16 of this part. The application may be submitted prior to final determination of a Project's environmental impacts; however, a Guarantee shall not be made and no Loan funds will be advanced prior to such determination and demonstrated compliance with all environmental statutes, regulations and executive orders.

(j) *Federal debt certification.* The Applicant must provide a certification that it is not delinquent on any obligation owed to the government (7 CFR parts 3016 and 3019). No Guarantee will be made if either the Applicant or Lender has an outstanding, delinquent Federal debt until:

(1) The delinquent account has been paid in full;

(2) A negotiated repayment schedule is established and at least one payment has been received; or

(3) Other arrangements, satisfactory to the agency responsible for collecting the debt, are made.

(k) *Supplemental information.* The Applicant should provide any additional information it considers relevant to the Project and likely to be helpful in determining the extent to which the Project would further the purposes of the Act.

(l) *Additional information required by the Board.* The Applicant must provide any additional information the Board determines is necessary to adequately evaluate the application.

(m) *Application Fee.* For an application to be considered complete, the Applicant must submit a check payable to the United States Treasury in the amount of the application fee as set forth in § 2201.21(a) of this part.

(n) *Incomplete application.* An incomplete application, including any fee submitted therewith, will be returned to the Applicant without action.

§ 2201.12 Applicant.

(a) *Eligibility.* (1) The Board will make a determination of eligibility of an Applicant to be a Borrower under the Program based upon the Applicant's ability to directly provide, as a result of financing received under the Program, Local Television Broadcast Signals to households in Nonserved Areas and/or Underserved Areas and the information provided pursuant to paragraph (b) of this section.

(2) A determination that an Applicant is eligible does not assure that the Board will approve a Guarantee sought, or otherwise preclude the Board from declining to approve a Guarantee.

(b) *Documentation for Eligibility Determination.* (1) An Applicant must provide a Term Sheet evidencing a commitment of that Lender or Agent, and the Lenders it represents, to make a Loan to the Applicant upon an Offer of Guarantee by the Board, subject to the requirements of the Act and the regulations set forth in this part.

(2) An Applicant must provide documentation demonstrating that:

(i) The Assets, facilities, or equipment covered by the Loan will be utilized economically and efficiently;

(ii) The terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the Loan protect the financial interests of the United States and are reasonable;

(iii) Appropriate and adequate Collateral secures the Loan sought to be guaranteed;

(iv) All necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions for the Loan and the Project under the Loan have been applied for or obtained (a Guarantee shall not be made and no Loan funds will be advanced until all such approvals, licenses and permissions have been obtained);

(v) The Loan would not be available on reasonable terms and conditions without a Guarantee under this

Program. To satisfy this requirement, an Applicant must provide, with its application, documentation from at least one lending institution other than the Lender to which the Applicant has applied for financial assistance dated within six months of submission of the application, indicating that the Applicant was unable to obtain substantially the same Loan it is applying for on reasonable terms and conditions; and

(vi) Repayment of the Loan can reasonably be expected.

§ 2201.13 Lender.

(a) *Eligibility.* (1) The Board will make a determination of eligibility of a Lender to make a Loan to be guaranteed under the Program based upon the criteria set forth in paragraphs (b) and (c) of this section.

(2) A determination that a Lender is eligible does not assure that the Board will approve a Guarantee sought, or otherwise preclude the Board from declining to approve a Guarantee.

(b) *Qualifications.* In addition to evaluating an application pursuant to § 2201.18, in making a determination to approve a Guarantee to a Lender, the Board will assess:

(1) The Lender's Regulatory Capital Ratios, in the case of Banking Institutions, or Net Worth Ratios, in the case of other institutions;

(2) Whether the Lender possesses the ability to administer the Loan, including its experience with loans to telecommunications companies;

(3) The scope, volume and duration of the Lender's activity in administering loans, including federally guaranteed loans;

(4) The performance of the Lender's loan portfolio, including its current delinquency rate;

(5) The Lender's charge-off rate, expressed as a percentage of outstanding loans for its current fiscal year;

(6) If the Lender intends to sell participation interests in the Loan, the plan of syndication; and

(7) Any other matter the Board deems material to its assessment of the Lender.

(c) A Loan will not be guaranteed unless:

(1) If the Lender is not a nonprofit corporation and is subject to loan-to-one-borrower and Affiliate transaction restrictions under applicable law, the Loan is made in accordance with such restrictions;

(2) If the Lender is not a nonprofit corporation and is not subject to the restrictions described in paragraph (c)(1) of this section, the Loan is made to a Borrower that is not an Affiliate of the Lender and the amount of the Loan, and all outstanding loans by the Lender to the Borrower and any of its Affiliates, does not exceed 10 percent of the Net Equity of the Lender; and

(3) If the Lender is a nonprofit corporation, the Board determines that:

(i) Such nonprofit corporation has one or more issues of outstanding long-term debt that is rated within the highest 3 rating categories of a nationally recognized statistical rating organization, as evidenced by written confirmation from the nationally recognized statistical rating organization, subject to updating upon request of the Board; and

(ii) The making of the Loan would not cause a decline in the rating of such Lender's long-term debt below the highest 3 rating categories of a nationally recognized statistical rating organization, as evidenced by written confirmation from the nationally recognized statistical rating organization, subject to updating upon request of the Board.

(d) *Agent.* (1) An application for a Guarantee of a single Loan that includes participation of more than one Lender must identify one of the Lenders participating in such Loan to act as Agent for all Lenders. This Agent is responsible for administering the Loan and shall have those duties and responsibilities required of an Agent, as set forth in the Guarantee.

(2) If more than one Lender is seeking a Guarantee of a single Loan, each one of the Lenders on the application must meet the qualifications set forth in paragraphs (b) and (c) of this section. However, only the Agent must meet the qualifications set forth in paragraph (b)(2) and (3) of this section.

(3) Each Lender, irrespective of any indemnities or other agreements between the Lenders and the Agent, shall be bound by all actions, and/or failures to act, of the Agent. The Board and the Administrator shall be entitled to rely upon such actions and/or failures to act of the Agent as binding all Lenders.

§ 2201.14 Eligible Loan purposes.

To be guaranteed under the Program, a Loan must be made for the purpose of financing the acquisition, improvement, enhancement, construction, deployment, launch, or rehabilitation of the means by which Local Television Broadcast Signals will be delivered to a Nonserved Area or Underserved Area.

§ 2201.15 Ineligible Loan purposes.

(a) The proceeds of the Loan shall not be used for operating, advertising, or promotion expenses, or for the acquisition of licenses for the use of spectrum in any competitive bidding.

(b) The Applicant shall not transfer proceeds of the Loan to any Affiliate(s).

(c) The Board will not fund a Project that is designed primarily to serve one or more of the top 40 Designated Market Areas.

(d) The Board will not fund a Project that would alter or remove National Weather Service warnings from Local Television Broadcast Signals.

(e) No Guarantee may be granted or used to provide funds to a Project that extends, upgrades, or enhances the services provided over any cable system to an area that, as of the enactment of the Act, is covered by a cable franchise agreement that expressly obligates a cable operator to serve such area.

§ 2201.16 Environmental requirements.

(a) *General.* (1) Environmental assessments of the Board's actions will be conducted in accordance with applicable statutes, regulations, and other applicable authorities. Therefore, each application for a Guarantee under the Program must be accompanied by information necessary for the Board to meet the requirements of applicable law.

(2) *Actions requiring compliance with NEPA.* (i) The types of actions classified as "major Federal actions" subject to NEPA procedures are discussed in 40 CFR parts 1500 through 1508.

(ii) With respect to this Program, these actions typically include:

(A) Any Project, permanent or temporary, that will involve construction and/or installations;

(B) Any Project, permanent or temporary, that will involve ground disturbing activities; and

(C) Any Project supporting renovation, other than interior remodeling.

(3) *Environmental information required from the Applicant.* (i) Environmental data or documentation concerning the use of the proceeds of any Loan guaranteed under this Program must be provided by the Applicant to the Board to assist the Board in meeting its legal responsibilities.

(ii) Such information includes:

(A) Documentation for an environmental threshold review from qualified data sources, such as a Federal, State or local agency with expertise and experience in environmental protection, or other sources, qualified to provide reliable environmental information;

(B) Any previously prepared environmental reports or data relevant to the Loan at issue;

(C) Any environmental review prepared by Federal, State, or local agencies relevant to the Loan at issue; and

(D) Any other information that can be used by the Board to ensure compliance with environmental laws.

(iii) All information supplied by the Applicant is subject to verification by the Board.

(b) The regulations of the Council on Environmental Quality implementing NEPA require the Board to provide public notice of the availability of Project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision, etc., to the affected public. *See* 40 CFR 1506.6(b). Environmental information concerning specific Projects can be obtained from the Board by contacting: Secretary, LOCAL Television Loan Guarantee Board, 1400 Independence Ave., SW., Room 2919–S, Stop 1575; Washington, DC 20250–1575.

(c) *National Environmental Policy Act*— (1) *Purpose.* The purpose of this paragraph (c) is to adopt procedures for compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, by the Board. This paragraph supplements regulations at 40 CFR Chapter V.

(2) *Definitions.* For purposes of this section, the following definitions apply:

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment nor an environmental impact statement is required.

Environmental assessment means a document that briefly discusses the environmental consequences of a proposed action and alternatives prepared for the purposes set forth in 40 CFR 1508.9.

EIS means an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA.

FONSI means a finding of no significant impact on the quality of human environment after the completion of an environmental assessment.

NEPA means the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Working capital loan means money used by an ongoing business concern to fund its existing operations.

(3) *Delegations to the Secretary of the Board.* (i) All incoming correspondence from Council on Environmental Quality (CEQ) and other agencies concerning matters related to NEPA, including draft and final EIS, shall be brought to the attention of the Secretary of the Board. The Secretary of the Board will prepare or, at his or her discretion, coordinated replies to such correspondence.

(ii) With respect to actions of the Board, the Board will:

(A) Ensure preparation of all necessary environmental assessments and EISs;

(B) Maintain a list of actions for which environmental assessments are being prepared;

(C) Revise this list at regular intervals, and send the revisions to the Environmental Protection Agency;

(D) Make the list available for public inspection;

(E) Maintain a list of EISs; and

(F) Maintain a file of draft and final EISs.

(4) *Categorical exclusions.* (i) This paragraph describes various classes of Board actions that normally do not have a significant impact on the human environment and are categorically excluded. The word "normally" is stressed; there may be individual cases in which specific factors require contrary action.

(ii) Subject to the limitations in paragraph (c)(4)(iii) of this section, the actions described in this paragraph have been determined not to have a significant impact on the quality of the human environment. They are categorically excluded from the need to prepare an environmental assessment or an EIS under NEPA.

(A) Guarantees of working capital loans; and

(B) Guarantees of loans for the refinancing of outstanding indebtedness of the Applicant, regardless of the purpose for which the original indebtedness was incurred.

(iii) Actions listed in paragraph (c)(4)(ii) of this section that otherwise are categorically excluded from NEPA review are not necessarily excluded from review if they would be located within, or in other cases, potentially affect:

(A) A floodplain;

(B) A wetland;

(C) Important farmlands, or prime forestlands or rangelands;

(D) A listed species or critical habitat for an endangered species;

(E) A property that is listed on or may be eligible for listing on the National Register of Historic Places;

(F) An area within an approved State Coastal Zone Management Program;

(G) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System;

(H) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System;

(I) A sole source aquifer recharge area;

(J) A State water quality standard (including designated and/or existing beneficial uses and anti-degradation requirements); or

(K) The release or disposal of regulated substances above the levels set forth in a permit or license issued by an appropriate regulatory authority.

(5) *Responsibilities and procedures for preparation of an environmental assessment.* (i) The Board will request that the Lender and Applicant prepare an environmental assessment that provides information concerning all potentially significant environmental impacts of the Applicant's proposed Project. The Board, consulting at its discretion with CEQ, will review the information provided by the Lender and Applicant. Though no specific format for an environmental assessment is prescribed, it shall be a separate document, suitable for public review and should include the following in conformance with 40 CFR 1508.9:

(A) *Description of the environment.* The existing environmental conditions relevant to the Board's analysis determining the environmental impacts of the proposed Project should be described. The no action alternative also should be discussed;

(B) *Documentation.* Citations to information used to describe the existing environment and to assess environmental impacts should be clearly referenced and documented. These sources should include, as appropriate, but not be limited to, local, tribal, regional, State, and Federal agencies, as well as, public and private organizations and institutions;

(C) *Evaluating environmental consequences of proposed actions.* A brief discussion should be included of the need for the proposal, of alternatives as required by 42 U.S.C. 4332(2)(E) and their environmental impacts. The discussion of the environmental impacts should include measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the proposed Project.

(ii) An environmental assessment, may:

(A) Tier upon the information contained in a previous EIS, as described in 40 CFR 1502.20;

(B) Incorporate by reference reasonably available material, as described in 40 CFR 1502.21; and/or

(C) Adopt a previously completed EIS reasonably related to the Project for which the proceeds of the Loan sought to be guaranteed under the Program will be used, as described in 40 CFR 1506.3.

(iii) If, on the basis of the environmental assessment, the Board determines that an EIS is not required, a FONSI, as described in 40 CFR 1508.13 will be prepared. The FONSI will include the environmental assessment or a summary of it and be available to the public from the Board. The Board shall maintain a record of these decisions, making them available to interested parties upon request. Requests should be directed to LOCAL Television Loan Guarantee Board, 1400 Independence Ave., SW., Room 2919–S, Stop 1575; Washington, DC 20250–1575. Prior to a final Guarantee decision, a copy of the NEPA documentation shall be sent to the Board for consideration.

(6) *Responsibilities and procedures for preparation of an environmental impact statement.* (i) If after the environmental assessment has been completed, the Board determines that an EIS is necessary, it and other related documentation will be prepared by the Board in accordance with section 102(2)(c) of NEPA, this section, and 40 CFR parts 1500 through 1508. The Board may seek additional information from the Applicant in preparing the EIS. Once the document is prepared, the Board will transmit the document to the Environmental Protection Agency.

(ii) *EIS.* (A) The following procedures, as discussed in 40 CFR parts 1500 through 1508, will be followed in preparing an EIS:

(*1*) The format and contents of the draft and final EIS shall be as discussed in 40 CFR part 1502.

(*2*) The requirements of 40 CFR 1506.9 for filing of documents with the Environmental Protection Agency shall be followed.

(*3*) The Board, consulting at its discretion with CEQ, shall examine carefully the basis on which supportive studies have been conducted to assure that such studies are objective and comprehensive in scope and in depth.

(*4*) NEPA requires that the decision making "utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts." 42 U.S.C. 4332(A). If such disciplines are not present on the Board staff, appropriate use should be made of personnel of Federal, State, and local agencies, universities, non-profit organizations, or private industry.

(B) Until the Board issues a record of decision as provided in 40 CFR 1502.2 no action concerning the proposal shall be taken which would:

(*1*) Have an adverse environmental impact; or

(*2*) Limit the choice of reasonable alternatives.

(*3*) 40 CFR 1506.10 places certain limitations on the timing of Board decisions on taking "major Federal actions." A Guarantee shall not be made before the times set forth in 40 CFR 1506.10.

(iii) A public record of decision stating what the decision was; identifying alternatives that were considered, including the environmentally preferable one(s); discussing any national considerations that entered into the decision; and summarizing a monitoring and enforcement program if applicable for mitigating the environmental effects of a proposal will be prepared. This record of decision will be prepared at the time the decision is made.

§ 2201.17 Submission of applications.

(a) Applications should be submitted as follows:

(1) Applications for Guarantees shall be submitted to the LOCAL Television Loan Guarantee Board, 1400 Independence Avenue, SW., Stop 1575, Room 2919–S, Washington, DC 20250–1575. Applications should be marked Attention: Secretary, LOCAL Television Loan Guarantee Board.

(2) Applications must be submitted postmarked not later than the application filing deadline established by the Board if the applications are to be considered during the period for which the application was submitted.

(3) All Applicants must submit an original and two copies of a completed application.

(b) *Application deadline.* One or more application windows will be announced. The duration of each application window for submission of applications will be approximately 120 days. Notice of an application window will be published in the **Federal Register**.

§ 2201.18 Application selection.

(a) *Application Priority.* When evaluating applications to determine which Project or combinations of Projects will best facilitate access to Local Television Broadcast Signals, the Board shall give priority in the approval of Guarantees to the following categories:

(1) First, to applications for Projects that will serve households in Nonserved Areas.

(2) Second, to applications for Projects that will serve households in Underserved Areas.

(3) Within each category, the Board shall balance applications for Projects that will serve the largest number of households with applications for Projects that will serve remote, isolated communities (including noncontiguous States) in areas that are unlikely to be served through market mechanisms. The Board shall consider the Project's estimated cost per household and shall give priority to those applications for Projects that provide the highest quality service at the lowest cost per household.

(b) *Additional Considerations.* (1) The Board shall give additional consideration to applications for Projects that, in addition to providing Local Television Broadcast Signals, also provide High-speed Internet service.

(2) The Board shall consider other factors, which shall include applications for Projects that:

(i) Offer a separate tier of Local Television Broadcast Signals at a lower cost to consumers, except where prohibited by applicable Federal, State, or local laws or regulations; and

(ii) Enable the delivery of Local Television Broadcast Signals consistent with the purpose of the Act by means reasonably compatible with existing systems or devices predominantly in use.

(c) *Other Considerations.* All other evaluation factors and priority considerations being equal, the Board will give a preference in approving Guarantees to those applications for Projects that provide greater amounts and higher quality Collateral.

(d) *Protection of United States Financial Interests.* The Board may not approve the Guarantee of a Loan unless:

(1) The Board has been given documentation, assurances, and access to information, persons, and entities necessary, as determined by the Board, to address issues relevant to review of the Loan by the Board for purposes of the Act; and

(2) The Board makes a determination in writing that:

(i) To the best of its knowledge upon due inquiry, the Assets, facilities, or equipment covered by the Loan will be utilized economically and efficiently;

(ii) The terms, conditions, security, and schedule and amount of repayments of principal and the payment of interest with respect to the Loan protect the financial interests of the United States and are reasonable;

(iii) The value of Collateral provided by an Applicant is at least equal to the unpaid balance of the Loan amount; and if the value of Collateral provided by an Applicant is less than the Loan amount, additional required Collateral is provided by the Applicant or an Affiliate designated by the Applicant and acceptable to the Board;

(iv) All necessary and required regulatory and other approvals, spectrum licenses, and delivery permissions have been received for the Loan and the Project under the Loan;

(v) The Loan would not be available on reasonable terms and conditions without a Guarantee under the Act; and

(vi) Repayment of the Loan can be reasonably expected.

(e) *Non approvals.* A Guarantee will not be approved if it is determined that:

(1) The Applicant's proposal does not indicate financial feasibility, or the Collateral is determined to not adequately secure the Loan;

(2) The Applicant's proposal indicates technical flaws, which, in the opinion of the Board, would prevent successful implementation, or operation of the Project;

(3) Any other aspect of the Applicant's proposal fails to adequately address any requirements of the Act or the regulations in this part or contains inadequacies which would, in the opinion of the Board, undermine the ability of the Project to meet the general purpose of the Act or comply with requirements in this part; or

(4) Proceeds for the Loan will be used for any of the ineligible purposes set forth in § 2201.15.

(f) *Impact on Competition.* A Loan shall not be guaranteed unless the proposed Project, as determined by the Board in consultation with the National Telecommunications and Information Administration, is not likely to have a substantial adverse impact on competition that outweighs the benefits of improving access to Local Television Broadcast Signals in a Nonserved Area or Underserved Area and is commercially viable.

§ 2201.19 Loan terms.

(a) All Loans guaranteed under the Program shall be due and payable in full no later than the earlier of 25 years from date of the closing of the Loan or the economically useful life of the primary Assets to be used in delivery of the signals concerned, as determined by the Board.

(b) Loans guaranteed under the Program must:

(1) Bear a rate of interest determined by the Board to protect the financial interests of the United States and to be reasonable. This determination will be based on the Board's comparison of the:

(i) Difference, or interest rate spread, between the interest rate on the Loan sought to be guaranteed and the current average yield on outstanding marketable obligations of the United States of comparable maturity; and

(ii) The interest rate spread between the rates on recently issued and similarly rated and structured obligations and the current yields on outstanding marketable obligations of the United States of comparable maturity.

(2) Have terms that, in the judgment of the Board, are consistent in material respects with the terms of similar obligations in the private capital market.

(c) So long as any principal and interest is due and payable on a Loan guaranteed under the Act, a Borrower shall:

(1) Maintain Assets, equipment, facilities, and operations on a continuing basis;

(2) Not make any discretionary dividend payments that impair its ability to repay obligations guaranteed under the Act;

(3) Remain sufficiently capitalized; and

(4) Submit to and cooperate fully with any audit or Collateral review required by the Board.

§ 2201.20 Collateral.

(a) *Existence of adequate Collateral.* An Applicant shall provide the Board such documentation as is necessary, in the judgment of the Board, to provide satisfactory evidence that appropriate and adequate Collateral secures a Loan guaranteed under the Program. Prior to approving a Guarantee, the Board shall require that the value of the Collateral pledged be at least equal to the unpaid balance of the Loan Amount.

(b) *Form of Collateral.* Collateral required by paragraph (a) of this section shall consist solely of Assets of the Applicant, any Affiliate of the Applicant, or both, as identified in the Loan Documents, including primary Assets to be used in the delivery of the service for which the Loan is guaranteed. Such Assets may include, but are not limited to, the following:

(1) Tangible Assets, including current Assets (such as cash, accounts receivable, and inventory), reserve funds, land, buildings, machinery, fixtures, and equipment;

(2) Assignments of all relevant contractual agreements, including contractual rights to certain cash flows, marketing arrangements, third-party guarantees, insurance policies, contractors' bonds, and other agreements or rights that may be of value;

(3) All permits, governmental approvals, franchises and licenses, necessary to carry out and operate the required equipment or service; and

(4) Other Assets, which, in the judgment of the Board, possess Collateral value suitable for securing the Loan, including a pledge of all or part of the Applicant's ownership interest in the Project or company, and any after-acquired property.

(c) *Applicant's compliance findings.* An Applicant's compliance with paragraphs (a) and (b) of this section does not assure a finding of reasonable assurance of repayment, or assure the Board's Guarantee of the Loan.

(d) *Collateral for entire loan.* The same Collateral shall secure the entire Loan, including both the Guaranteed Portion and the Unguaranteed Portion.

(e) *Review of valuation.* The value of Collateral securing a Loan is subject to review and approval by the Board, and may be adjusted downward by the Board if the Board reasonably believes such adjustment is appropriate. The Board's evaluation of the proposed Collateral for the Loan will be based on several factors, including but not limited to:

(1) The expected value of the pledged Collateral in the event of defaults with specific consideration given to the residual value of Project Assets to third-parties and the liquidity of such Assets;

(2) The cash flow characteristics of the Project;

(3) The contractual characteristics of the Project to the extent Project-related agreements underpin the Project's estimated cash flows;

(4) The competitiveness of the Project's economics and the associated certainty of cash flows in the future; and

(5) The creditworthiness of any designated Affiliates(s) that provides services to the Applicant or provides any credit support.

(f) *Ongoing Collateral Assessment.* The Board shall require that the value of the Collateral shall be at all times at least equal to the unpaid balance of the Loan Amount. To ensure that the ongoing value of the Collateral is properly maintained, the Board may require the borrower to have an ongoing third-party inspection and valuation of the Collateral that is acceptable to the Board. If the Collateral value at the measurement date is less than the unpaid balance of the Loan Amount, the Borrower or its designated Affiliates(s) will be required to pledge additional acceptable Collateral to cover any deficit.

(g) *Lien on Collateral.* (1) Upon the Board's approval of a Guarantee, the Administrator shall have liens on Collateral securing the Loan, which shall be superior to all other liens on such Collateral. The value of the Collateral (based on a determination satisfactory to the Board) shall be at least equal to the unpaid balance of the Loan amount, giving significant consideration to the expected value of the Collateral in the event of defaults with specific consideration given to the residual value of the Project Assets to third-parties and the liquidity of such Assets.

(2) Both the Administrator and the Lender or Agent shall have a perfected security interest in the Collateral fully sufficient to protect the financial interests of the United States and the Lenders. However, the security interest perfected by the Administrator shall ensure that the Administrator has first priority in such Collateral.

§ 2201.21 Fees.

(a) *Application Fee.* The Board shall charge each Applicant for a Guarantee under the Program a non-refundable fee, payable to the United States Treasury, to cover the costs of making necessary determinations and findings with respect to an application for a Guarantee under the Program. The amount of the fee is $10,000 for Loans of $1 million up to $50 million, $15,000 for Loans of $50 million up to $100 million, $30,000 for Loans of $100 million up to $500 million, and $40,000 for Loans of $500 million or greater.

(b) *Guarantee Origination Fee.* The Board shall charge and collect from a Borrower a Guarantee Origination Fee. The amount of such fee will be sufficient to cover the administrative costs of the Board associated with the Loan. Upon extending an offer of Guarantee, the Board and the Borrower shall enter into an agreement providing for the payment of the Guarantee Origination Fee; the agreement shall include terms relating to the schedule of payments and deposit of such payments into an escrow account. The Guarantee Origination Fee must be paid in full no later than and as a condition of the closing of any Loan. A Borrower will be responsible for paying the administrative costs of the Board regardless of whether the Loan actually closes.

(c) *Lender Fees.* A Lender or Agent may assess and collect from the Borrower such fees and costs associated with the application and origination of the Loan as are reasonable and customary, taking into consideration the amount and complexity of the credit. The Board may take such fees and costs into consideration when determining whether to offer a Guarantee.

§ 2201.22 Issuance of Guarantees.

(a) The Board's decision to approve an application and extend an Offer of Guarantee under the Program is conditioned upon:

(1) The Lender or Agent and Applicant obtaining any required regulatory or judicial approvals;

(2) The Lender or Agent and Applicant being legally authorized to enter into the Loan under the terms and conditions submitted to the Board in the application;

(3) The Board's receipt of the Loan Documents and any related instruments, in form and substance satisfactory to the Board all properly executed by the Lender or Agent, Applicant, and any other required party other than the Board;

(4) No material adverse change in the Applicant's ability to repay the Loan between the date of the Board's approval and the date the Guarantee is to be issued;

(5) Entering into the Guarantee violates no Loan covenants or existing contractual obligations of the Borrower; and

(6) Such other conditions as determined by the Board.

(b) The Board may withdraw its approval of an application and rescind its Offer of Guarantee if the Board determines that the Lender or Agent or the Applicant cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the Offer of Guarantee.

(c) Only after receipt of all the documentation required by this section will the Administrator sign and deliver the Guarantee.

§ 2201.23 Funding for the Program.

(a) *Costs incurred by the Government.* The Act provides funding for the costs incurred by the Government as a result of granting Guarantees under the Program. While pursuing the goals of the Act, it is the intent of the Board to minimize the cost of the Program to the Government. The Board will estimate the risk posed by the guaranteed Loans to the funds appropriated for the costs of the Guarantees under the Program and operate the Program accordingly.

(b) *Credit Risk Premium*—(1) *Establishment and approval.* The Board may establish and approve the acceptance of credit risk premiums with respect to a Guarantee under this Act in order to offset the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of the Guarantee. To the extent that appropriations of budget authority are insufficient to cover the cost, as so determined, of a Guarantee, and the Board approves such a Guarantee, credit risk premiums shall be accepted from a non-Federal source on behalf of a Borrower.

(2) *Credit risk premium amount*—(i) *General.* The Board shall determine the amount of any credit risk premium to be accepted with respect to a Guarantee on the basis of:

(A) The financial and economic circumstances of the Borrower, including the amount of Collateral offered;

(B) The proposed schedule of Loan disbursements;

(C) The business plans of the Borrower;

(D) Any financial commitment from a broadcast signal provider; and

(E) The concurrence of the Director of the Office of Management and Budget as to the amount of the credit risk premium.

(ii) *Proportionality.* To the extent that appropriations of budget authority are sufficient to cover the cost, as determined under section 502(5) of the Federal Credit Reform Act of 1990, of Guarantees, the credit risk premium with respect to each Guarantee shall be reduced proportionately.

(iii) *Payment of premiums.* Credit risk premiums under this paragraph shall be paid to an escrow account established in the Treasury, which shall accrue interest. Such interest shall be retained by the escrow account, subject to paragraph (b)(2)(iv) of this section.

(iv) *Deductions from escrow account.* If a liquidation of the Collateral occurs pursuant to § 2201.33(h), any shortfall between the proceeds of the liquidation net of costs and expenses relating to the liquidation, and the guarantee amount paid shall be deducted from funds in the escrow account and credited to the Administrator for payment of such shortfall. At such time as all Loans guaranteed under this Program have been repaid or otherwise satisfied in accordance with the Act and the regulations in this part, remaining funds in the escrow account, if any, shall be refunded, on a pro rata basis, to Borrowers whose Loans guaranteed under the Program were not in Payment Default or Default, or where any Payment Default or Default was cured in accordance with the terms of the Loan Documents.

§ 2201.24 Insurance.

The Borrower of a Loan guaranteed under the Program shall obtain, at its expense, insurance sufficient to protect the financial interests of the United States, as determined by the Board.

§ 2201.25 Performance Agreement.

(a) The Borrower of a Loan guaranteed under the Program shall enter into a Performance Agreement with the Administrator with respect to the Local Television Broadcast Signals to be provided through the Project.

(b) The Administrator may assess against and collect from a Borrower a penalty not to exceed 3 times the interest accrued on the Loan during the period of noncompliance if the Borrower fails to meet its stipulated Performance Agreement entered into under paragraph (a) of this section.

§ 2201.26 Lender standard of care.

(a) The Lender or Agent shall exercise due care and diligence in analyzing and administering the Loan as would be exercised by a responsible and prudent Banking Institution when analyzing and administering a secured loan of such Banking Institution's own funds without a Guarantee. Such standards shall also apply to any and all underwriting analysis, approvals, determinations, permissions, acceptances, requirements, or opinion made, given, imposed or reached by Lender.

(b) The Lender or Agent shall have such other obligations and duties to the Board and the Administrator as are set forth in the Act or Loan Documents.

§ 2201.27 Assignment or transfer of Loans.

(a) *Modifications.* The Loan Documents may not be modified, in whole or in part, without the prior written approval of the Board.

(b) *Requirements.* (1) Subject to the provisions of paragraphs (c) and (d) of this section and other provisions of this part, a Lender or Agent may assign or transfer the Loan including the Loan Documents to another Lender that meets the eligibility requirements of § 2201.13 of this part.

(2) Any assignment or transfer of a Loan, or any pledge or other use of a Loan as security, including but not limited to any derivatives transaction, will require the prior written approval of the Board.

(c) The provisions of paragraph (b) of this section shall not apply to transfers which occur by operation of law.

(d) The Agent must hold an interest in a Loan guaranteed under the Program equal to at least the lesser of $25 million or fifteen percent of the aggregate amount of the Loan. Of this amount, the Agent must hold an interest in the Unguaranteed Portion of the Loan equal to at least the minimum amount of the Loan required to be held by the Agent under the preceding sentence multiplied by the percentage of the entire Loan that is not guaranteed. A non-Agent Lender must hold an interest in the Unguaranteed Portion of the Loan representing no less than five percent of such Lender's total interest in the Loan; provided, that a non-Agent Lender may transfer its interest in the Unguaranteed Portion after payment of the Guaranteed Portion has been made under the Guarantee.

(e) The Guarantee shall have no force or effect if any part of the Guaranteed Portion of the Loan is transferred separate and apart from the Unguaranteed Portion of the Loan. At least five percent of any assignment or transfer interest in a Loan must be unguaranteed to ensure that no part of the Guaranteed Portion of the Loan is transferred separate and apart from the Unguaranteed Portion of the Loan.

§ 2201.28 Participation in guaranteed Loans.

(a) Subject to paragraphs (b), (c) and (d) of this section, a Lender may distribute the risk of a portion of a Loan guaranteed under the Program by sale of participations therein if:

(1) Neither the Loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part as a result of the sale of such participations;

(2) The Lender remains solely responsible for the administration of the Loan as an Agent; and

(3) The Board's ability to assert any and all defenses available to it under the law and under the Loan Documents is not adversely affected.

(b) The following categories of entities may purchase participation interests in Loans guaranteed under the Program:

(1) Lenders that meet the eligibility requirements of § 2201.13 of this part;

(2) Qualified institutional buyers as defined in 17 CFR 230.144A (a), known as Rule 144A (a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(3) Any other entity approved by the Board on a case-by-case basis.

(c) An Agent may not grant participations in that portion of its interest in a Loan that may not be assigned or transferred under § 2201.27(d) of this part. A Lender, other than the Agent, may not grant participations in that portion of its interest in a Loan that may not be assigned or transferred under § 2201.27(d) of this part.

(d) At least five percent of any participation interest in a Loan must be unguaranteed.

§ 2201.29 Supplemental guarantees.

The Board will allow the structure of a guaranteed Loan to include one or more supplemental guarantees only from a State or local governmental or tribal entity that cover the Unguaranteed Portion of the Loan, provided that:

(a) There shall be no supplemental guarantee with respect to the Unguaranteed Portion required to be held by the Agent or sole Lender pursuant to § 2201.27(d) of this part;

(b) The Loan Documents relating to any supplemental guarantee shall be acceptable in form and substance to the Board; and

(c) In approving the issuance of a Guarantee, the Board may impose any conditions with respect to supplemental guarantee(s) relating to the Loan that it considers appropriate.

§ 2201.30 Adjustments.

(a) The Board must approve the adjustment of any term or condition of the Loan Documents under this Program, including the rate of interest, time of payment of principal or interest, or Collateral requirements. Adjustments may be approved by the Board only if:

(1) The adjustment is consistent with the financial interests of the United States;

(2) Consent has been obtained from the parties to the Loan Agreement;

(3) The adjustment is consistent with the underwriting criteria developed for the Program;

(4) The adjustment does not adversely affect the interest of the Federal Government in the Assets or Collateral of the Borrower;

(5) The adjustment does not adversely affect the ability of the Borrower to repay the Loan; and

(6) The National Telecommunications and Information Administration of the Department of Commerce has been consulted by the Board regarding the adjustment.

(b) A Lender's decision to forego remedial action in the event of a breach of financial covenants required under the Loan Agreement will not constitute an adjustment under this section.

§ 2201.31 Indemnification.

(a) The United States may be indemnified by any Affiliate of a Borrower designated in the Loan Documents for any losses that the United States incurs as a result of:

(1) A judgment against the Borrower or any of its Affiliates;

(2) Any breach by the Borrower or any of its Affiliates of their obligations under the Loan Documents;

(3) Any violation of the provisions of the Act, or the regulations in this part, by the Borrower or any of its Affiliates;

(4) Any penalties incurred by the Borrower or any of its Affiliates for any reason, including violation of a performance schedule stipulated in a Performance Agreement; and

(5) Any other circumstances that the Board considers appropriate.

(b) The Board may require more than one Affiliate of a Borrower to make the indemnifications referred to in paragraph (a) of this section.

(c) The indemnifications referred to in paragraph (a) of this section shall be included in the Loan Documents.

§ 2201.32 Termination of obligations.

The Board shall have such rights to terminate the Guarantee as are set forth in the Act and Loan Documents.

§ 2201.33 Defaults.

(a) In determining, following any Payment Default or Default, whether to accelerate the maturity of any amounts outstanding under the Loan Documents or otherwise to declare such amounts to be immediately due and payable, or pursue other remedial actions available under the Loan Documents, the Agent or Lender, as the case may be, shall act at all times in accordance with the standard of care and diligence required under § 2201.26(a) of this part.

(b) Following any Payment Default, the Agent or Lender shall promptly notify the Board and be entitled to make a Payment Demand. Any Payment Demand shall:

(1) Identify the amount and due date of the defaulted payment of principal and the outstanding amounts of principal and interest under the Loan;

(2) Describe briefly the circumstances leading to the Payment Default, including, without limitation, the nature of any precipitating Default, whether an acceleration has occurred, and whether a bankruptcy proceeding has been instituted or threatened; and

(3) Be accompanied by a copy of each of the Loan Documents and all notices and other correspondence with the Borrower or other Lender relating to the Payment Default and any precipitating Default.

(c) Following any Payment Demand being made, the Agent or Lender shall furnish to the Board promptly upon request from the Board and, in any event, not later than ninety (90) days from the date of such request, each of the following:

(1) A written, detailed and reasonable plan for the partial or complete foreclosure on and liquidation of the Collateral, including, without limitation, detailed estimates by the Agent or Lender of the time and reasonable costs of collection anticipated to be necessary in order to carry out such plan; and

(2) A written, detailed and reasonable work-out plan, if such a plan is feasible, for the continued operation of the Borrower calculated, in the Agent's or Lender's judgment, to assure the best prospect for repayment of principal and interest under the Loan without partial or complete foreclosure and liquidation of the Collateral, including, without limitation, detailed estimates of the time and expense required for such work-out and an assessment of the risks to the Agent or Lender and the Board associated therewith relative to such risks associated with complete foreclosure and liquidation; and, if any partial foreclosure and liquidation is a part of such proposed work-out plan, a detailed estimate of the time and reasonable costs of collection anticipated by the Agent or Lender to be required to effect such partial liquidation.

(d) By making a Payment Demand, the Agent or Lender shall be conclusively deemed to have certified, with full knowledge of the provisions of 18 U.S.C. 1001 and 31 U.S.C. 3729 including, without limitation, the provisions thereof for penalties and damages, to the Board that it has fully and timely complied with all material provisions and obligations under the Guarantee and the Loan Documents, that the amount demanded is past due and owed by the Borrower under the Loan Agreement, and that the demand is properly made and required to be satisfied by the Board under the terms of the Guarantee.

(e) Following receipt of any Payment Demand, the Board or, on its behalf, any duly authorized representative or designee, may conduct an audit and investigation of compliance with all material provisions and obligations under the Guarantee. The Agent and/or Lender shall cooperate fully and diligently with any such audit and investigation.

(f) Within a reasonable period of time from receipt by the Board of a Payment Demand, the Board shall approve payment of the amount to be paid in respect of the unpaid principal amount under the Loan to which the Payment Demand relates. The Board may withhold such payment if any audit or investigation is pending or if information remains to be furnished by the Agent or Lender. Further, payment shall not be made to the extent it is determined by the Board, whether as the result of an audit, investigation or otherwise, that the Board's payment obligation has terminated. Payment shall be made by wire transfer in immediately available funds to the bank and account designated by the Agent or Lender for such purpose.

(g) The Board may take, or direct to be taken any action in liquidating the Collateral that the Board determines to be necessary or proper, consistent with Federal law and regulations.

(h) Pursuant to the Guarantee, upon Payment Demand by the Agent or Lender, and whether the Board has approved any payment under the Guarantee or any payment has been made under the Guarantee, the Board, through the Administrator, shall have the right to liquidate, or cause to be liquidated, the Collateral. The Board, at its sole discretion, shall have the right to require that the Agent or Lender, solely or with the Administrator, conduct to completion any liquidation of any of the Collateral. Such liquidation shall be conducted by the Agent or Lender in accordance with the standards of care specified in § 2201.26(a) of this part.

§ 2201.34 OMB Control Number.

The information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572–0135.

Dated: December 15, 2003.

Jacqueline G. Rosier,

Secretary, LOCAL Television Loan Guarantee Board.

[FR Doc. 03–31299 Filed 12–22–03; 8:45 am]

BILLING CODE 3410–15–P

LOCAL TELEVISION LOAN GUARANTEE BOARD

LOCAL Television Loan Guarantee Program

AGENCY: LOCAL Television Loan Guarantee Board.

ACTION: Notice of application filing deadline.

SUMMARY: The LOCAL Television Loan Guarantee Board (Board) announces a 120-day application window for the submission of guarantee applications.

DATES: Applications for guarantees must be postmarked no later than April 21, 2004. Applications submitted through guaranteed carrier services will be considered postmarked on the date they are submitted to the carrier. Applications must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; or (3) a dated shipping label, invoice, or receipt from a commercial carrier. If an application is sent through the U.S. Postal Service, neither of the following will be accepted as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

Due to screening procedures at the Department of Agriculture, packages arriving via the United States Postal Service's Priority Mail, First Class, and Parcel Post services are irradiated, which can damage the contents, or delay delivery to the Board. Thus, applicants are encouraged to consider the impact of these procedures in selecting their chosen method for application delivery.

Applications will not be accepted via facsimile machine transmission or electronic mail.

Applications with postmarked dates after April 21, 2004 will not be considered and will be returned to the applicant.

ADDRESSES: An original and two copies of completed applications must be submitted to the Board at: Secretary, Local Television Loan Guarantee Board, STOP 1575, Room 2919–S, 1400 Independence Avenue, SW., Washington, DC 20250–1575.

FOR FURTHER INFORMATION CONTACT: Richard Anderson, Rural Utilities Service/USDA, STOP 1590, Room 5151, 1400 Independence Avenue, SW., Washington, DC 20250–1590. Telephone: (202) 720–9556, fax: (202) 720–0810, e-mail: *randerso@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed Public Law 106–553, the Federal Funding Act for Fiscal Year 2001. Title X of the statute, entitled the "Launching Our Communities" Access to Local Television Act of 2000" (Act), established the LOCAL Television Loan Guarantee Board and authorized the Board to guarantee loans to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved areas or underserved areas. The Board is composed of the Secretaries of Agriculture, Treasury, and Commerce, and the Chairman of the Board of Governors of the Federal Reserve System, or their designees. Individuals have been designated as Board members for each of the agencies represented on the Board. The Act authorizes the Board to approve loan guarantees up to 80 percent of the principal amount of loans; the aggregate value of all loans for which loan guarantees are issued under the Act (including the unguaranteed portion of such loans) may not exceed $1.25 billion. The Board's authority to guarantee loans under the program expires on the earlier of the date the Secretary of Agriculture determines that at least 75 percent of designated market areas (DMAs), other than the top 40 DMAs, have access to local television broadcast signals for virtually all households or December 31, 2006.

The Act requires the issuance of regulations to implement its provisions. Specifically, the Act requires that these regulations set forth: (1) The form of any application to be submitted to the Board; (2) the time periods for the review and consideration by the Board of applications submitted to the Board, as well as any other actions to be taken by the Board with respect to such applications; (3) appropriate safeguards against evasions of the Act; (4) circumstances in which an applicant, together with any affiliate of an applicant, shall be treated as an applicant for a guarantee; (5) requirements that appropriate parties submit to the Board any documents and assurances that are required for the administration of the Act's provisions; (6) requirements governing defaults on loans guaranteed under the Act, including the administration of the payment of guaranteed amounts upon default; and (7) other provisions consistent with the Act's purposes as the Board considers appropriate. The final regulations to implement the program are published elsewhere in today's **Federal Register** and will be codified at Title 7 of the Code of Federal Regulations Parts 2200 and 2201.

Application requirements are set forth in the final regulations published today. Each application will be reviewed in accordance with the program's final regulations. Incomplete or ineligible applications will be returned to applicants.

Dated: December 15, 2003.

Jacqueline G. Rosier,

Secretary, LOCAL Television Loan Guarantee Board.

[FR Doc. 03–31298 Filed 12–22–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Tuesday,
December 23, 2003

Part VII

Securities and Exchange Commission

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17 CFR Part 211
Staff Accounting Bulletin No. 104; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 104]

Staff Accounting Bulletin No. 104

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: This staff accounting bulletin revises or rescinds portions of the interpretative guidance included in Topic 13 of the codification of staff accounting bulletins in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. The principal revisions relate to the rescission of material no longer necessary because of private sector developments in U.S. generally accepted accounting principles.

This staff accounting bulletin also rescinds the Revenue Recognition in Financial Statements Frequently Asked Questions and Answers document issued in conjunction with Topic 13. Selected portions of that document have been incorporated into Topic 13.

EFFECTIVE DATE: December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Chad Kokenge or Shelly Luisi in the Office of the Chief Accountant (202) 942–4400, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1103.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: December 17, 2003.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

■ Accordingly, part 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 104 to the table found in subpart B.

Staff Accounting Bulletin No. 104

Note: The text of SAB 104 will not appear in the Code of Federal Regulations.

The staff hereby revises Topic 13 of the Staff Accounting Bulletin Series as follows:

1. Topic 13.A.1 is modified as follows:
   a. The examples of existing literature referenced in the first paragraph are deleted.
   b. The last paragraph, including footnote 7, is added to make reference to EITF Issue 00–21, "*Revenue Arrangements With Multiple Deliverables,*" which governs how to determine if revenue arrangements contain more than one unit of accounting.
2. Topic 13.A.2 is modified as follows:
   a. Question 3 (formerly Question 1 of the staff's Revenue Recognition in Financial Statements Frequently Asked Questions and Answers document (FAQ)) is added.
3. Topic 13.A.3 is modified as follows:
   a. The subheading *Bill and hold arrangements* is added.
   b. Topic 13.A.3(a) Question is formerly Question 3.
   c. The subheading *Customer acceptance* is added.
   d. Topic 13.A.3(b) Question 1 (formerly Question 5 of the FAQ) is added. The question format is conformed.
   e. Topic 13.A.3(b) Question 2 (formerly Question 6 of the FAQ) is added. The facts, question and interpretive response are modified to reflect the evaluation of the arrangement in the context of separate units of accounting. In addition, the last paragraph of the interpretive response is deleted due to the issuance of EITF Issue 00–21.
   f. Footnote 29 is added to highlight that the changes to Topic 13.A.3(b) Question 2 are to facilitate an analysis of revenue recognition, not interpret EITF Issue 00–21.
   g. Topic 13.A.3(b) Question 3 (formerly Exhibit A Example 1 Scenario A of the FAQ) is added.
   h. Topic 13.A.3(b) Question 4 (formerly Exhibit A Example 1 Scenario B of the FAQ) is added.
   i. Topic 13.A.3(b) Question 5 (formerly Exhibit A Example 1 Scenario C of the FAQ) is added.
   j. The subheading *Inconsequential or perfunctory performance obligations* is added.
   k. Topic 13.A.3(c) Question 1 (formerly Question 2 of the FAQ) is added. The question and interpretive response are modified from the FAQ to reflect the evaluation of the arrangement in the context of a single unit of accounting. The question format is conformed.
   l. Topic 13.A.3(c) Question 2 (formerly Question 3 of the FAQ) is added. The question and interpretive response are modified from the FAQ to reflect the evaluation in the context of a single unit of accounting.
   m. Topic 13.A.3(c) Question 3 (formerly Question 7 of the FAQ) is added. The facts, question and interpretive response are modified to reflect the evaluation of the arrangement in the context of combined deliverables, which result in a single unit of accounting. In addition, the interpretive response is modified to delete the last four sentences as this guidance is no longer necessary due to the issuance of EITF 00–21.
   n. The segue sentence and related footnote discussing delivery or performance of multiple deliverables is deleted to eliminate redundancy.
   o. The subheading *License fee revenue* is added.
   p. Topic 13.A.3(d) Question (formerly Question 9 of the FAQ) is added. The interpretive response is modified to eliminate redundancy.
   q. The subheading *Layaway sales arrangements* is added.
   r. Topic 13.A.3(e) Question is formerly Question 4.
   s. The subheading *Nonrefundable up-front fees* is added.
   t. The examples in Topic 13.A.3(f) Question 1 (formerly Question 5) are modified to include the examples from what was formerly Question 10 of the FAQ. Guidance in the interpretive response is added and conformed from Question 10 of the FAQ which clarifies the incurrence of substantive costs does not necessarily indicate there is a separate earnings event, and that the determination of a separate earnings event should be evaluated on a case-by-case basis.
   u. Footnote 36 is added to clarify the staff's view regarding the vendor activities associated with up-front fees.
   v. Topic 13.A.3(f) Question 2 (formerly Question 6) is modified to reflect the evaluation in the context of a single unit of accounting.
   w. Footnote 14 is deleted. The subject matter of footnote 14 is conformed and included in Topic 13.A.3(f) Question 3; accordingly, Topic 13.A.3(f) Question 3 reflects the guidance formerly located in footnote 14.
   x. Topic 13.A.3(f) Question 4 (formerly Question 15 of the FAQ) is added. The question format is conformed.
   y. Topic 13.A.3(f) Question 5 (formerly Question 16 of the FAQ) is added. The question format is conformed.
   z. The subheading *Deliverables within an arrangement* is added.
   aa. Topic 13.A.3(g) Question (formerly Question 8 of the FAQ) is added and is modified to reflect the evaluation of the question under EITF Issue 00–21.
   bb. Footnote 45 is added to clarify the staff's view of the obligation described in Topic 13.A.3(g) Question under FIN 45.
4. Topic 13.A.4 is modified as follows:
   a. The subheading *Refundable fees for services* is added.
   b. Topic 13.A.4(a) Question 1 is formerly Question 7.
   c. Footnote 56 is added to include guidance from Question 23 of the FAQ.
   d. Topic 13.A.4(a) Question 2 (formerly Question 18 of the FAQ) is added.
   e. Topic 13.A.4(a) Question 3 (formerly Question 19 of the FAQ) is added. The question format is conformed.
   f. Topic 13.A.4(a) Question 4 (formerly Question 20 of the FAQ) is added.
   g. Topic 13.A.4(a) Question 5 (formerly Question 21 of the FAQ) is added. The question format is conformed.
   h. Topic 13.A.4(a) Question 6 (formerly Question 22 of the FAQ) is added.
   i. The subheading *Estimates and changes in estimates* is added.

   j. Topic 13.A.4(b) Question 1 is formerly Question 9.
   k. Topic 13.A.4(b) Question 2 (formerly Question 24 of the FAQ) is added.
   l. Topic 13.A.4(b) Question 3 (formerly Question 25 of the FAQ) is added. The question format is conformed. The last two sentences of the interpretive response are deleted to eliminate redundancy.
   m. Topic 13.A.4(b) Question 4 (formerly Question 26 of the FAQ) is added.
   n. Topic 13.A.4(b) Question 5 (formerly Question 27 of the FAQ) is added.
   o. The subheading *Contingent rental income* is added.
   p. Topic 13.A.4(c) Question is formerly Question 8.
   q. The subheading *Claims processing and billing services* is added.
   r. Topic 13.A.4(d) Question (formerly Question 28 of the FAQ) is added. The facts are modified to reflect to evaluation in the context of a single unit of accounting.

5. Topic 13.A.5 is deleted. This topic provided guidance on income statement presentation and whether transactions should be presented on a gross as a principal or net as an agent basis. EITF Issue 99–19, *"Reporting Revenue Gross as a Principal versus Net as an Agent"*, which was issued subsequent to SAB 101, provides such guidance. Therefore, this guidance is no longer necessary.
6. Topic 13.B is modified as follows:
   a. The interpretive response to Question 1 is modified to reference multiple units of accounting in lieu of multiple elements.
   b. Question 2 is modified to delete the reference to Question 10 of Topic 13.A and Topic 8.A.
   c. Question 3 (formerly Question 29 of the FAQ) is added.
   d. Question 4 (formerly Question 30 of the FAQ) is added.
   e. Question 5 (formerly Question 31 of the FAQ) is added.

Topic 13: Revenue Recognition

A. Selected Revenue Recognition Issues

1. Revenue recognition—general

The accounting literature on revenue recognition includes both broad conceptual discussions as well as certain industry-specific guidance.[1] If a transaction is within the scope of specific authoritative literature that provides revenue recognition guidance, that literature should be applied. However, in the absence of authoritative literature addressing a specific arrangement or a specific industry, the staff will consider the existing authoritative accounting standards as well as the broad revenue recognition criteria specified in the FASB's conceptual framework that contain basic guidelines for revenue recognition.

Based on these guidelines, revenue should not be recognized until it is realized or realizable and earned.[2] Concepts Statement 5, paragraph 83(b) states that "an entity's revenue-earning activities involve delivering or producing goods, rendering services, or other activities that constitute its ongoing major or central operations, and revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues" [footnote reference omitted]. Paragraph 84(a) continues "the two conditions (being realized or realizable and being earned) are usually met by the time product or merchandise is delivered or services are rendered to customers, and revenues from manufacturing and selling activities and gains and losses from sales of other assets are commonly recognized at time of sale (usually meaning delivery)" [footnote reference omitted]. In addition, paragraph 84(d) states that "If services are rendered or rights to use assets extend continuously over time (for example, interest or rent), reliable measures based on contractual prices established in advance are commonly available, and revenues may be recognized as earned as time passes."

The staff believes that revenue generally is realized or realizable and earned when all of the following criteria are met:

- Persuasive evidence of an arrangement exists,[3]
- Delivery has occurred or services have been rendered,[4]
- The seller's price to the buyer is fixed or determinable,[5] and
- Collectibility is reasonably assured.[6]

Some revenue arrangements contain multiple revenue-generating activities. The staff believes that the determination of the units of accounting within an arrangement should be made prior to the application of the guidance in this SAB Topic by reference to the applicable accounting literature.[7]

2. Persuasive evidence of an arrangement

Question 1

Facts: Company A has product available to ship to customers prior to the end of its current fiscal quarter. Customer Beta places an order for the product, and Company A delivers the product prior to the end of its current fiscal quarter. Company A's normal and customary business practice for this class of customer is to enter into a written sales agreement that requires the signatures of the authorized representatives of the Company and its customer to be binding. Company A prepares a written sales agreement, and its authorized representative signs the agreement before the end of the quarter. However, Customer Beta does not sign the agreement because Customer Beta is awaiting the requisite approval by its legal department. Customer Beta's purchasing department has orally agreed to the sale and stated that it is highly likely that the contract will be approved the first week of Company A's next fiscal quarter.

Question: May Company A recognize the revenue in the current fiscal quarter for the sale of the product to Customer Beta when (1) the product is delivered by the end of its current fiscal quarter and (2) the final written sales agreement is executed by Customer Beta's authorized representative within a few days after the end of the current fiscal quarter?

Interpretive Response: No. Generally the staff believes that, in view of Company A's business practice of requiring a written sales agreement for this class of customer, persuasive evidence of an arrangement would require a final agreement that has been executed by the properly authorized personnel of the customer. In the staff's view, Customer Beta's execution of the sales agreement after the end of the quarter causes the transaction to be considered a transaction of the subsequent period.[8] Further, if an arrangement is subject to subsequent approval (*e.g.*, by the management committee or board of directors) or execution of another agreement, revenue recognition would be inappropriate until that subsequent approval or agreement is complete.

Customary business practices and processes for documenting sales transactions vary among companies and industries. Business practices and processes may also vary within individual companies (*e.g.*, based on the class of customer, nature of product or service, or other distinguishable factors). If a company does not have a standard or customary business practice of relying on written contracts to document a sales arrangement, it usually would be expected to have other forms of written or electronic evidence to document the transaction. For example, a company may not use written contracts but instead may rely on binding purchase orders from third parties or on-line authorizations that include the terms of the sale and that are binding on the customer. In that situation, that documentation could represent persuasive evidence of an arrangement.

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[1] The February 1999 AICPA publication "Audit Issues in Revenue Recognition" provides an overview of the authoritative accounting literature and auditing procedures for revenue recognition and identifies indicators of improper revenue recognition.

[2] Concepts Statement 5, paragraphs 83–84; ARB 43, Chapter 1A, paragraph 1; Opinion 10, paragraph 12. The citations provided herein are not intended to present the complete population of citations where a particular criterion is relevant. Rather, the citations are intended to provide the reader with additional reference material.

[3] Concepts Statement 2, paragraph 63 states "Representational faithfulness is correspondence or agreement between a measure or description and the phenomenon it purports to represent." The staff believes that evidence of an exchange arrangement must exist to determine if the accounting treatment represents faithfully the transaction. See also SOP 97–2, paragraph 8. The use of the term "arrangement" in this SAB Topic is meant to identify the final understanding between the parties as to the specific nature and terms of the agreed-upon transaction.

[4] Concepts Statement 5, paragraph 84(a), (b), and (d). Revenue should not be recognized until the seller has substantially accomplished what it must do pursuant to the terms of the arrangement, which usually occurs upon delivery or performance of the services.

[5] Concepts Statement 5, paragraph 83(a); Statement 48, paragraph 6(a); SOP 97–2, paragraph 8. SOP 97–2 defines a "fixed fee" as a "fee required to be paid at a set amount that is not subject to refund or adjustment. A fixed fee includes amounts designated as minimum royalties." Paragraphs 26–33 of SOP 97–2 discuss how to apply the fixed or determinable fee criterion in software transactions. The staff believes that the guidance in paragraphs 26 and 30–33 is appropriate for other sales transactions where authoritative guidance does not otherwise exist. The staff notes that paragraphs 27 through 29 specifically consider software transactions, however, the staff believes that guidance should be considered in other sales transactions in which the risk of technological obsolescence is high.

[6] ARB 43, Chapter 1A, paragraph 1 and Opinion 10, paragraph 12. *See also* Concepts Statement 5, paragraph 84(g) and SOP 97–2, paragraph 8.

[7] See EITF Issue 00–21 paragraph 4 for additional discussion.

[8] AU Section 560.05

The staff is aware that sometimes a customer and seller enter into "side" agreements to a master contract that effectively amend the master contract. Registrants should ensure that appropriate policies, procedures, and internal controls exist and are properly documented so as to provide reasonable assurances that sales transactions, including those affected by side agreements, are properly accounted for in accordance with GAAP and to ensure compliance with Section 13 of the Securities Exchange Act of 1934 (*i.e.*, the Foreign Corrupt Practices Act). Side agreements could include cancellation, termination, or other provisions that affect revenue recognition. The existence of a subsequently executed side agreement may be an indicator that the original agreement was not final and revenue recognition was not appropriate.

Question 2

Facts: Company Z enters into an arrangement with Customer A to deliver Company Z's products to Customer A on a consignment basis. Pursuant to the terms of the arrangement, Customer A is a consignee, and title to the products does not pass from Company Z to Customer A until Customer A consumes the products in its operations. Company Z delivers product to Customer A under the terms of their arrangement.

Question: May Company Z recognize revenue upon delivery of its product to Customer A?

Interpretive Response: No. Products delivered to a consignee pursuant to a consignment arrangement are not sales and do not qualify for revenue recognition until a sale occurs. The staff believes that revenue recognition is not appropriate because the seller retains the risks and rewards of ownership of the product and title usually does not pass to the consignee.

Other situations may exist where title to delivered products passes to a buyer, but the substance of the transaction is that of a consignment or a financing. Such arrangements require a careful analysis of the facts and circumstances of the transaction, as well as an understanding of the rights and obligations of the parties, and the seller's customary business practices in such arrangements. The staff believes that the presence of one or more of the following characteristics in a transaction precludes revenue recognition even if title to the product has passed to the buyer:

1. The buyer has the right to return the product and:

(a) The buyer does not pay the seller at the time of sale, and the buyer is not obligated to pay the seller at a specified date or dates.[9]

(b) The buyer does not pay the seller at the time of sale but rather is obligated to pay at a specified date or dates, and the buyer's obligation to pay is contractually or implicitly excused until the buyer resells the product or subsequently consumes or uses the product,[10]

(c) The buyer's obligation to the seller would be changed (*e.g.*, the seller would forgive the obligation or grant a refund) in the event of theft or physical destruction or damage of the product,[11]

(d) The buyer acquiring the product for resale does not have economic substance apart from that provided by the seller,[12] or

(e) The seller has significant obligations for future performance to directly bring about resale of the product by the buyer.[13]

2. The seller is required to repurchase the product (or a substantially identical product or processed goods of which the product is a component) at specified prices that are not subject to change except for fluctuations due to finance and holding costs,[14] and the amounts to be paid by the seller will be adjusted, as necessary, to cover substantially all fluctuations in costs incurred by the buyer in purchasing and holding the product (including interest).[15] The staff believes that indicators of the latter condition include:

(a) The seller provides interest-free or significantly below market financing to the buyer beyond the seller's customary sales terms and until the products are resold,

(b) The seller pays interest costs on behalf of the buyer under a third-party financing arrangement, or

(c) The seller has a practice of refunding (or intends to refund) a portion of the original sales price representative of interest expense for the period from when the buyer paid the seller until the buyer resells the product.

3. The transaction possesses the characteristics set forth in EITF Issue 95–1 and does not qualify for sales-type lease accounting.

4. The product is delivered for demonstration purposes.[16]

This list is not meant to be a checklist of all characteristics of a consignment or a financing arrangement, and other characteristics may exist. Accordingly, the staff believes that judgment is necessary in assessing whether the substance of a transaction is a consignment, a financing, or other arrangement for which revenue recognition is not appropriate. If title to the goods has passed but the substance of the arrangement is not a sale, the consigned inventory should be reported separately from other inventory in the consignor's financial statements as "inventory consigned to others" or another appropriate caption.

Question 3

Facts: The laws of some countries do not provide for a seller's retention of a security interest in goods in the same manner as established in the U.S. Uniform Commercial Code (UCC). In these countries, it is common for a seller to retain a form of title to goods delivered to customers until the customer makes payment so that the seller can recover the goods in the event of customer default on payment.

Question: Is it acceptable to recognize revenue in these transactions before payment is made and title has transferred?

Interpretive Response: Presuming all other revenue recognition criteria have been met, the staff would not object to revenue recognition at delivery if the only rights that a seller retains with the title are those enabling recovery of the goods in the event of customer default on payment. This limited form of ownership may exist in some foreign jurisdictions where, despite technically holding title, the seller is not entitled to direct the disposition of the goods, cannot rescind the transaction, cannot prohibit its customer from moving, selling, or otherwise using the goods in the ordinary course of business, and has no other rights that rest with a titleholder of property that is subject to a lien under the U.S. UCC. On the other hand, if retaining title results in the seller retaining rights normally held by an owner of goods, the situation is not sufficiently different from a delivery of goods on consignment. In this particular case, revenue should not be recognized until payment is received. Registrants and their auditors may wish to consult legal counsel knowledgeable of the local law and customs outside the U.S. to determine the seller's rights.

3. Delivery and performance

a. Bill and hold arrangements

Facts: Company A receives purchase orders for products it manufactures. At the end of its fiscal quarters, customers may not yet be ready to take delivery of the products for various reasons. These reasons may include, but are not limited to, a lack of available space for inventory, having more than sufficient inventory in their distribution channel, or delays in customers' production schedules.

Question: May Company A recognize revenue for the sale of its products once it has completed manufacturing if it segregates the inventory of the products in its own warehouse from its own products?

May Company A recognize revenue for the sale if it ships the products to a third-party warehouse but (1) Company A retains title to the product and (2) payment by the customer is dependent upon ultimate delivery to a customer-specified site?

Interpretative Response: Generally, no. The staff believes that delivery generally is not considered to have occurred unless the customer has taken title and assumed the risks and rewards of ownership of the products specified in the customer's purchase order or sales agreement. Typically this occurs when a product is delivered to the customer's delivery site (if the terms of the sale are "FOB destination") or when a product is shipped to the customer (if the terms are "FOB shipping point").

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[9] Statement 48, paragraphs 6(b) and 22.

[10] Statement 48, paragraphs 6(b) and 22. The arrangement may not specify that payment is contingent upon subsequent resale or consumption. However, if the seller has an established business practice permitting customers to defer payment beyond the specified due date(s) until the products are resold or consumed, then the staff believes that the seller's right to receive cash representing the sales price is contingent.

[11] Statement 48, paragraph 6(c).

[12] Statement 48, paragraph 6(d).

[13] Statement 48, paragraph 6(e).

[14] Statement 49, paragraph 5(a). Paragraph 5(a) provides examples of circumstances that meet this requirement. As discussed further therein, this condition is present if (a) a resale price guarantee exists, (b) the seller has an option to purchase the product, the economic effect of which compels the seller to purchase the product, or (c) the buyer has an option whereby it can require the seller to purchase the product.

[15] Statement 49, paragraph 5(b).

[16] *See* SOP 97–2, paragraph 25.

The Commission has set forth criteria to be met in order to recognize revenue when delivery has not occurred.[17] These include:

1. The risks of ownership must have passed to the buyer;
2. The customer must have made a fixed commitment to purchase the goods, preferably in written documentation;
3. The buyer, not the seller, must request that the transaction be on a bill and hold basis.[18] The buyer must have a substantial business purpose for ordering the goods on a bill and hold basis;
4. There must be a fixed schedule for delivery of the goods. The date for delivery must be reasonable and must be consistent with the buyer's business purpose (*e.g.*, storage periods are customary in the industry);
5. The seller must not have retained any specific performance obligations such that the earning process is not complete;
6. The ordered goods must have been segregated from the seller's inventory and not be subject to being used to fill other orders; and
7. The equipment [product] must be complete and ready for shipment.

The above listed conditions are the important conceptual criteria that should be used in evaluating any purported bill and hold sale. This listing is not intended as a checklist. In some circumstances, a transaction may meet all factors listed above but not meet the requirements for revenue recognition. The Commission also has noted that in applying the above criteria to a purported bill and hold sale, the individuals responsible for the preparation and filing of financial statements also should consider the following factors: [19]

1. The date by which the seller expects payment, and whether the seller has modified its normal billing and credit terms for this buyer; [20]
2. The seller's past experiences with and pattern of bill and hold transactions;
3. Whether the buyer has the expected risk of loss in the event of a decline in the market value of goods;
4. Whether the seller's custodial risks are insurable and insured;
5. Whether extended procedures are necessary in order to assure that there are no exceptions to the buyer's commitment to accept and pay for the goods sold (*i.e.*, that the business reasons for the bill and hold have not introduced a contingency to the buyer's commitment).

Delivery generally is not considered to have occurred unless the product has been delivered to the customer's place of business or another site specified by the customer. If the customer specifies an intermediate site but a substantial portion of the sales price is not payable until delivery is made to a final site, then revenue should not be recognized until final delivery has occurred.[21]

b. Customer acceptance

After delivery of a product or performance of a service, if uncertainty exists about customer acceptance, revenue should not be recognized until acceptance occurs.[22] Customer acceptance provisions may be included in a contract, among other reasons, to enforce a customer's rights to (1) test the delivered product, (2) require the seller to perform additional services subsequent to delivery of an initial product or performance of an initial service (*e.g.*, a seller is required to install or activate delivered equipment), or (3) identify other work necessary to be done before accepting the product. The staff presumes that such contractual customer acceptance provisions are substantive, bargained-for terms of an arrangement. Accordingly, when such contractual customer acceptance provisions exist, the staff generally believes that the seller should not recognize revenue until customer acceptance occurs or the acceptance provisions lapse.

Question 1

Question: Do circumstances exist in which formal customer sign-off (that a contractual customer acceptance provision is met) is unnecessary to meet the requirements to recognize revenue?

Interpretive Response: Yes. Formal customer sign-off is not always necessary to recognize revenue provided that the seller objectively demonstrates that the criteria specified in the acceptance provisions are satisfied. Customer acceptance provisions generally allow the customer to cancel the arrangement when a seller delivers a product that the customer has not yet agreed to purchase or delivers a product that does not meet the specifications of the customer's order. In those cases, revenue should not be recognized because a sale has not occurred. In applying this concept, the staff observes that customer acceptance provisions normally take one of four general forms. Those forms, and how the staff generally assesses whether customer acceptance provisions should result in revenue deferral, are described below:

(a) *Acceptance provisions in arrangements that purport to be for trial or evaluation purposes.*[23] In these arrangements, the seller delivers a product to a customer, and the customer agrees to receive the product, solely to give the customer the ability to evaluate the delivered product prior to acceptance. The customer does not agree to purchase the delivered product until it accepts the product. In some cases, the acceptance provisions lapse by the passage of time without the customer rejecting the delivered product, and in other cases affirmative acceptance from the customer is necessary to trigger a sales transaction. Frequently, the title to the product does not transfer and payment terms are not established prior to customer acceptance. These arrangements are, in substance, consignment arrangements until the customer accepts the product as set forth in the contract with the seller. Accordingly, in arrangements where products are delivered for trial or evaluation purposes, revenue should not be recognized until the earlier of when acceptance occurs or the acceptance provisions lapse.

In contrast, other arrangements do not purport to be for trial or evaluation purposes. In these instances, the seller delivers a specified product pursuant to a customer's order, establishes payment terms, and transfers title to the delivered product to the customer. However, customer acceptance provisions may be included in the arrangement to give the purchaser the ability to ensure the delivered product meets the criteria set forth in its order. The staff evaluates these provisions as follows:

(b) *Acceptance provisions that grant a right of return or exchange on the basis of subjective matters.* An example of such a provision is one that allows the customer to return a product if the customer is dissatisfied with the product.[24] The staff believes these provisions are not different from general rights of return and should be accounted for in accordance with Statement 48. Statement 48 requires that the amount of future returns must be reasonably estimable in order for revenue to be recognized prior to the expiration of return rights.[25] That estimate may not be made in the absence of a large volume of homogeneous transactions or if customer acceptance is likely to depend on conditions for which sufficient historical experience is absent.[26] Satisfaction of these requirements may vary from product-to-product, location-to-location, customer-to-customer, and vendor-to-vendor.

(c) *Acceptance provisions based on seller-specified objective criteria.* An example of such a provision is one that gives the customer a right of return or replacement if the delivered product is defective or fails to meet the vendor's published specifications for the product.[27] Such rights are generally identical to those granted to all others within the same class of customer and for which satisfaction can be generally assured without consideration of conditions specific to the customer. Provided the seller has previously demonstrated that the product meets the specified criteria, the staff believes that these provisions are not different from general or specific warranties and should be accounted for as warranties in accordance with Statement 5. In this case, the cost of potentially defective goods must be reliably estimable based on a demonstrated history of substantially similar transactions.[28] However, if the seller has not previously demonstrated that the delivered product meets the seller's specifications, the staff believes that revenue should be deferred until the specifications have been objectively achieved.

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[17] See In the Matter of Stewart Parness, AAER 108 (August 5, 1986); *SEC* v. *Bollinger Industries, Inc., et al.*, LR 15093 (September 30, 1996); In the Matter of Laser Photonics, Inc., AAER 971 (September 30, 1997); In the Matter of Cypress Bioscience Inc., AAER 817 (September 19, 1996). *Also see* Concepts Statement 5, paragraph 84(a) and SOP 97–2, paragraph 22.

[18] Such requests typically should be set forth in writing by the buyer.

[19] *See* Note 17, *supra*.

[20] Such individuals should consider whether Opinion 21 pertaining to the need for discounting the related receivable, is applicable. Opinion 21, paragraph 3(a), indicates that the requirements of that Opinion to record receivables at a discounted value are not intended to apply to "receivables and payables arising from transactions with customers or suppliers in the *normal course of business which are due in customary trade terms* not exceeding approximately one year" (emphasis added).

[21] SOP 97–2, paragraph 22.

[22] SOP 97–2, paragraph 20. Also, Concepts Statement 5, paragraph 83(b) states "revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues." If an arrangement expressly requires customer acceptance, the staff generally believes that customer acceptance should occur before the entity has substantially accomplished what it must do to be entitled to the benefits represented by the revenues, especially when the seller is obligated to perform additional steps.

[23] *See*, for example, SOP 97–2, paragraph 25.

[24] Statement 48, paragraph 13.

[25] Statement 48, paragraph 6(f).

[26] Statement 48, paragraphs 8(c) and 8(d).

(d) *Acceptance provisions based on customer-specified objective criteria.* These provisions are referred to in this document as "customer-specific acceptance provisions" against which substantial completion and contract fulfillment must be evaluated. While formal customer sign-off provides the best evidence that these acceptance criteria have been met, revenue recognition also would be appropriate, presuming all other revenue recognition criteria have been met, if the seller reliably demonstrates that the delivered products or services meet all of the specified criteria prior to customer acceptance. For example, if a seller reliably demonstrates that a delivered product meets the customer-specified objective criteria set forth in the arrangement, the delivery criterion would generally be satisfied when title and the risks and rewards of ownership transfers unless product performance may reasonably be different under the customer's testing conditions specified by the acceptance provisions. Further, the seller should consider whether it would be successful in enforcing a claim for payment even in the absence of formal sign-off. Whether the vendor has fulfilled the terms of the contract before customer acceptance is a matter of contract law, and depending on the facts and circumstances, an opinion of counsel may be necessary to reach a conclusion.

Question 2

Facts: Consider an arrangement that calls for the transfer of title to equipment upon delivery to a customer's site. However, customer-specific acceptance provisions permit the customer to return the equipment unless the equipment satisfies certain performance tests. The arrangement calls for the vendor to perform the installation. Assume the equipment and the installation are separate units of accounting under EITF Issue 00–21.[29]

Question: Must revenue allocated to the equipment always be deferred until installation and on-site testing are successfully completed?

Interpretive Response: No. The staff would not object to revenue recognition for the equipment upon delivery (presuming all other revenue recognition criteria have been met for the equipment) if the seller demonstrates that, at the time of delivery, the equipment already meets all of the criteria and specifications in the customer-specific acceptance provisions. This may be demonstrated if conditions under which the customer intends to operate the equipment are replicated in pre-shipment testing, unless the performance of the equipment, once installed and operated at the customer's facility, may reasonably be different from that tested prior to shipment.

Determining whether the delivered equipment meets all of a product's criteria and specifications is a matter of judgment that must be evaluated in light of the facts and circumstances of a particular transaction. Consultation with knowledgeable project managers or engineers may be necessary in such circumstances.

For example, if the customer acceptance provisions were based on meeting certain size and weight characteristics, it should be possible to determine whether those criteria have been met before shipment. Historical experience with the same specifications and functionality of a particular machine that demonstrates that the equipment meets the customer's specifications also may provide sufficient evidence that the currently shipped equipment satisfies the customer-specific acceptance provisions.

If an arrangement includes customer acceptance criteria or specifications that cannot be effectively tested before delivery or installation at the customer's site, the staff believes that revenue recognition should be deferred until it can be demonstrated that the criteria are met. This situation usually will exist when equipment performance can vary based on how the equipment works in combination with the customer's other equipment, software, or environmental conditions. In these situations, testing to determine whether the criteria are met cannot be reasonably performed until the products are installed or integrated at the customer's facility.

Although the following questions provide several examples illustrating how the staff evaluates customer acceptance, the determination of when customer-specific acceptance provisions of an arrangement are met in the absence of the customer's formal notification of acceptance depends on the weight of the evidence in the particular circumstances. Different conclusions could be reached in similar circumstances that vary only with respect to a single variable, such as complexity of the equipment, nature of the interface with the customer's environment, extent of the seller's experience with the same type of transactions, or a particular clause in the agreement. The staff believes management and auditors are uniquely positioned to evaluate the facts and arrive at a reasoned conclusion. The staff will not object to a determination that is well reasoned on the basis of this guidance.

Question 3

Facts: Company E is an equipment manufacturer whose main product is generally sold in a standard model. The contracts for sale of that model provide for customer acceptance to occur after the equipment is received and tested by the customer. The acceptance provisions state that if the equipment does not perform to Company E's published specifications, the customer may return the equipment for a full refund or a replacement unit, or may require Company E to repair the equipment so that it performs up to published specifications. Customer acceptance is indicated by either a formal sign-off by the customer or by the passage of 90 days without a claim under the acceptance provisions. Title to the equipment passes upon delivery to the customer. Company E does not perform any installation or other services on the equipment it sells and tests each piece of equipment against its specifications before shipment. Payment is due under Company E's normal payment terms for that product 30 days after customer acceptance.

Company E receives an order from a new customer for a standard model of its main product. Based on the customer's intended use of the product, location and other factors, there is no reason that the equipment would operate differently in the customer's environment than it does in Company E's facility.

Question: Assuming all other revenue recognition criteria are met (other than the issue raised with respect to the acceptance provision), when should Company E recognize revenue from the sale of this piece of equipment?

Interpretive Response: While the staff presumes that customer acceptance provisions are substantive provisions that generally result in revenue deferral, that presumption can be overcome as discussed above. Although the contract includes a customer acceptance clause, acceptance is based on meeting Company E's published specifications for a standard model. Company E demonstrates that the equipment shipped meets the specifications before shipment, and the equipment is expected to operate the same in the customer's environment as it does in Company E's. In this situation, Company E should evaluate the customer acceptance provision as a warranty under Statement 5. If Company E can reasonably and reliably estimate the amount of warranty obligations, the staff believes that it should recognize revenue upon delivery of the equipment, with an appropriate liability for probable warranty obligations.

Question 4

Facts: Assume the same facts about Company E's equipment, contract terms and customary practices as in Question 3 above. Company E enters into an arrangement with a new customer to deliver a version of its standard product modified as necessary to fit into a space of specific dimensions while still meeting all of the published vendor specifications with regard to performance. In addition to the customer acceptance provisions relating to the standard performance specifications, the customer may reject the equipment if it does not conform to the specified dimensions. Company E creates a testing chamber of the exact same dimensions as specified by the customer and makes simple design changes to the product so that it fits into the testing chamber. The equipment still meets all of the standard performance specifications.

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[27] Statement 5, paragraph 24 and Statement 48, paragraph 4(c).

[28] Statement 5, paragraph 25.

[29] This fact is provided as an assumption to facilitate an analysis of revenue recognition in this fact pattern. No interpretation of Issue 00–21 is intended.

Question: Assuming all other revenue recognition criteria are met (other than the issue raised with respect to the acceptance provision), when should Company E recognize revenue from the sale of this piece of equipment?

Interpretive Response: Although the contract includes a customer acceptance clause that is based, in part, on a customer specific criterion, Company E demonstrates that the equipment shipped meets that objective criterion, as well as the published specifications, before shipment. The staff believes that the customer acceptance provisions related to the standard performance specifications should be evaluated as a warranty under Statement 5. If Company E can reasonably and reliably estimate the amount of warranty obligations, it should recognize revenue upon delivery of the equipment, with an appropriate liability for probable warranty obligations.

Question 5

Facts: Assume the same facts about Company E's equipment, contract terms and customary practices as in Question 3 above. Company E enters into an arrangement with a new customer to deliver a version of its standard product modified as necessary to be integrated into the customer's new assembly line while still meeting all of the standard published vendor specifications with regard to performance. The customer may reject the equipment if it fails to meet the standard published performance specifications or cannot be satisfactorily integrated into the new line. Company E has never modified its equipment to work on an integrated basis in the type of assembly line the customer has proposed. In response to the request, Company E designs a version of its standard equipment that is modified as believed necessary to operate in the new assembly line. The modified equipment still meets all of the standard published performance specifications, and Company E believes the equipment will meet the requested specifications when integrated into the new assembly line. However, Company E is unable to replicate the new assembly line conditions in its testing.

Question: Assuming all other revenue recognition criteria are met (other than the issue raised with respect to the acceptance provision), when should Company E recognize revenue from the sale of this piece of equipment?

Interpretive Response: This contract includes a customer acceptance clause that is based, in part, on a customer specific criterion, and Company E cannot demonstrate that the equipment shipped meets that criterion before shipment. Accordingly, the staff believes that the contractual customer acceptance provision has not been met at shipment. Therefore, the staff believes that Company E should wait until the product is successfully integrated at its customer's location and meets the customer-specific criteria before recognizing revenue. While this is best evidenced by formal customer acceptance, other objective evidence that the equipment has met the customer-specific criteria may also exist (*e.g.*, confirmation from the customer that the specifications were met).

c. Inconsequential or Perfunctory Performance Obligations

Question 1

Question: Does the failure to complete all activities related to a unit of accounting preclude recognition of revenue for that unit of accounting?

Interpretive Response: No. Assuming all other recognition criteria are met, revenue for the unit of accounting may be recognized in its entirety if the seller's remaining obligation is inconsequential or perfunctory.

A seller should substantially complete or fulfill the terms specified in the arrangement related to the unit of accounting at issue in order for delivery or performance to have occurred.[30] When applying the substantially complete notion, the staff believes that only inconsequential or perfunctory actions may remain incomplete such that the failure to complete the actions would not result in the customer receiving a refund or rejecting the delivered products or services performed to date. In addition, the seller should have a demonstrated history of completing the remaining tasks in a timely manner and reliably estimating the remaining costs. If revenue is recognized upon substantial completion of the terms specified in the arrangement related to the unit of accounting at issue, all related costs of performance or delivery should be accrued.

Question 2

Question: What factors should be considered in the evaluation of whether a remaining obligation related to a unit of accounting is inconsequential or perfunctory?

Interpretive Response: A remaining performance obligation is not inconsequential or perfunctory if it is essential to the functionality of the delivered products or services. In addition, remaining activities are not inconsequential or perfunctory if failure to complete the activities would result in the customer receiving a full or partial refund or rejecting (or a right to a refund or to reject) the products delivered or services performed to date. The terms of the sales contract regarding both the right to a full or partial refund and the right of return or rejection should be considered when evaluating whether a portion of the purchase price would be refundable. If the company has a historical pattern of granting such rights, that historical pattern should also be considered even if the current contract expressly precludes such rights. Further, other factors should be considered in assessing whether remaining obligations are inconsequential or perfunctory. For example, the staff also considers the following factors, which are not all-inclusive, to be indicators that a remaining performance obligation is substantive rather than inconsequential or perfunctory:

- The seller does not have a demonstrated history of completing the remaining tasks in a timely manner and reliably estimating their costs.
- The cost or time to perform the remaining obligations for similar contracts historically has varied significantly from one instance to another.
- The skills or equipment required to complete the remaining activity are specialized or are not readily available in the marketplace.
- The cost of completing the obligation, or the fair value of that obligation, is more than insignificant in relation to such items as the contract fee, gross profit, and operating income allocable to the unit of accounting.
- The period before the remaining obligation will be extinguished is lengthy. Registrants should consider whether reasonably possible variations in the period to complete performance affect the certainty that the remaining obligations will be completed successfully and on budget.
- The timing of payment of a portion of the sales price is coincident with completing performance of the remaining activity.

Registrants' determinations of whether remaining obligations are inconsequential or perfunctory should be consistently applied.

Question 3

Facts: Consider a unit of accounting that includes both equipment and installation because the two deliverables do not meet the separation criteria under EITF Issue 00–21. This may be because the equipment does not have value to the customer on a standalone basis, there is no objective and reliable evidence of fair value for the installation or there is a general right of return when the installation is not considered probable and in control of the vendor.

Question: In this situation, must all revenue be deferred until installation is performed?

Interpretive Response: Yes, if installation is essential to the functionality of the equipment.[31] Examples of indicators that installation is essential to the functionality of equipment include:

- The installation involves significant changes to the features or capabilities of the equipment or building complex interfaces or connections;
- The installation services are unavailable from other vendors.[32]

Conversely, examples of indicators that installation is not essential to the functionality of the equipment include:

- The equipment is a standard product;
- Installation does not significantly alter the equipment's capabilities;

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[30] Concepts Statement 5, paragraph 83(b) states "revenues are considered to have been earned when the entity has substantially accomplished what it must do to be entitled the benefits represented by the revenues."

[31] *See* SOP 97–2, paragraph 13.

[32] *See* SOP 97–2, paragraphs 68–71 for analogous guidance.

- Other companies are available to perform the installation.[33]

If it is determined that the undelivered service is not essential to the functionality of the delivered product but a portion of the contract fee is not payable until the undelivered service is delivered, the staff would not consider that obligation to be inconsequential or perfunctory. Generally, the portion of the contract price that is withheld or refundable should be deferred until the outstanding service is delivered because that portion would not be realized or realizable.[34]

d. License Fee Revenue

Facts: Assume that intellectual property is physically delivered and payment is received on December 20, upon the registrant's consummation of an agreement granting its customer a license to use the intellectual property for a term beginning on the following January 1.

Question: Should the license fee be recognized in the period ending December 31?

Interpretive Response: No. In licensing and similar arrangements (*e.g.*, licenses of motion pictures, software, technology, and other intangibles), the staff believes that delivery does not occur for revenue recognition purposes until the license term begins.[35] Accordingly, if a licensed product or technology is physically delivered to the customer, but the license term has not yet begun, revenue should not be recognized prior to inception of the license term. Upon inception of the license term, revenue should be recognized in a manner consistent with the nature of the transaction and the earnings process.

e. Layaway sales arrangements

Facts: Company R is a retailer that offers "layaway" sales to its customers. Company R retains the merchandise, sets it aside in its inventory, and collects a cash deposit from the customer. Although Company R may set a time period within which the customer must finalize the purchase, Company R does not require the customer to enter into an installment note or other fixed payment commitment or agreement when the initial deposit is received. The merchandise generally is not released to the customer until the customer pays the full purchase price. In the event that the customer fails to pay the remaining purchase price, the customer forfeits its cash deposit. In the event the merchandise is lost, damaged, or destroyed, Company R either must refund the cash deposit to the customer or provide replacement merchandise.

Question: In the staff's view, when may Company R recognize revenue for merchandise sold under its layaway program?

Interpretive Response: Provided that the other criteria for revenue recognition are met, the staff believes that Company R should recognize revenue from sales made under its layaway program upon delivery of the merchandise to the customer. Until then, the amount of cash received should be recognized as a liability entitled such as "deposits received from customers for layaway sales" or a similarly descriptive caption. Because Company R retains the risks of ownership of the merchandise, receives only a deposit from the customer, and does not have an enforceable right to the remainder of the purchase price, the staff would object to Company R recognizing any revenue upon receipt of the cash deposit. This is consistent with item two (2) in the Commission's criteria for bill-and-hold transactions which states "the customer must have made a fixed commitment to purchase the goods."

f. Nonrefundable up-front fees

Question 1

Facts: Registrants may negotiate arrangements pursuant to which they may receive nonrefundable fees upon entering into arrangements or on certain specified dates. The fees may ostensibly be received for conveyance of a license or other intangible right or for delivery of particular products or services. Various business factors may influence how the registrant and customer structure the payment terms. For example, in exchange for a greater up-front fee for an intangible right, the registrant may be willing to receive lower unit prices for related products to be delivered in the future. In some circumstances, the right, product, or service conveyed in conjunction with the nonrefundable fee has no utility to the purchaser separate and independent of the registrant's performance of the other elements of the arrangement. Therefore, in the absence of the registrant's continuing involvement under the arrangement, the customer would not have paid the fee. Examples of this type of arrangement include the following:

- A registrant sells a lifetime membership in a health club. After paying a nonrefundable "initiation fee," the customer is permitted to use the health club indefinitely, so long as the customer also pays an additional usage fee each month. The monthly usage fees collected from all customers are adequate to cover the operating costs of the health club.
- A registrant in the biotechnology industry agrees to provide research and development activities for a customer for a specified term. The customer needs to use certain technology owned by the registrant for use in the research and development activities. The technology is not sold or licensed separately without the research and development activities. Under the terms of the arrangement, the customer is required to pay a nonrefundable "technology access fee" in addition to periodic payments for research and development activities over the term of the contract.
- A registrant requires a customer to pay a nonrefundable "activation fee" when entering into an arrangement to provide telecommunications services. The terms of the arrangement require the customer to pay a monthly usage fee that is adequate to recover the registrant's operating costs. The costs incurred to activate the telecommunications service are nominal.
- A registrant charges users a fee for non-exclusive access to its Web site that contains proprietary databases. The fee allows access to the Web site for a one-year period. After the customer is provided with an identification number and trained in the use of the database, there are no incremental costs that will be incurred in serving this customer.
- A registrant charges a fee to users for advertising a product for sale or auction on certain pages of its Web site. The company agrees to maintain the listing for a period of time. The cost of maintaining the advertisement on the Web site for the stated period is minimal.
- A registrant charges a fee for hosting another company's Web site for one year. The arrangement does not involve exclusive use of any of the hosting company's servers or other equipment. Almost all of the projected costs to be incurred will be incurred in the initial loading of information on the host company's Internet server and setting up appropriate links and network connections.

Question: Assuming these arrangements qualify as single units of accounting under EITF Issue 00–21[36], when should the revenue relating to nonrefundable, up-front fees in these types of arrangements be recognized?

Interpretive Response: The staff believes that registrants should consider the specific facts and circumstances to determine the appropriate accounting for nonrefundable, up-front fees. Unless the up-front fee is in exchange for products delivered or services performed that represent the culmination of a separate earnings process,[37] the deferral of revenue is appropriate.

In the situations described above, the staff does not view the activities completed by the registrants (*i.e.*, selling the membership, signing the contract, enrolling the customer, activating telecommunications services or providing initial set-up services) as discrete earnings events.[38] The terms, conditions, and amounts of these fees typically are negotiated in conjunction with the pricing of all the elements of the arrangement, and the customer would ascribe a significantly lower, and perhaps no, value to elements ostensibly associated with the up-front fee in the absence of the registrant's performance of other contract elements. The fact that the registrants do not sell the initial rights, products, or services separately (*i.e.*, without the registrants' continuing involvement) supports the staff's view. The staff believes that the customers are purchasing the ongoing rights, products, or services being provided through the registrants' continuing involvement. Further, the staff believes that the earnings process is completed by performing under the terms of the arrangements, not simply by originating a revenue-generating arrangement.

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[33] *Ibid.*

[34] Concepts Statement 5, paragraph 83(a) and Statement 48, paragraph 6(b).

[35] SOP 00–2, paragraph 7.

[36] The staff believes that the vendor activities associated with the up-front fee, even if considered a deliverable to be evaluated under EITF Issue 00–21, will rarely provide value to the customer on a standalone basis.

[37] *See* Concepts Statement 5, footnote 51, for a description of the "earning process."

[38] In a similar situation, lenders may collect nonrefundable loan origination fees in connection with lending activities. The FASB concluded in Statement 91 that loan origination is not a separate revenue-producing activity of a lender, and therefore, those nonrefundable fees collected at the outset of the loan arrangement are not recognized as revenue upon receipt but are deferred and recognized over the life of the loan (paragraphs 5 and 37).

While the incurrence of nominal up-front costs helps make it clear that there is not a separate earnings event in the telecommunications example above, incurrence of substantive costs, such as in the web hosting example above, does not necessarily indicate that there is a separate earnings event. Whether there is a separate earnings event should be evaluated on a case-by-case basis. Some have questioned whether revenue may be recognized in these transactions to the extent of the incremental direct costs incurred in the activation. Because there is no separable deliverable or earnings event, the staff would generally object to that approach, except where it is provided for in the authoritative literature (*e.g.*, Statement 51).

Supply or service transactions may involve the charge of a nonrefundable initial fee with subsequent periodic payments for future products or services. The initial fees may, in substance, be wholly or partly an advance payment for future products or services. In the examples above, the on-going rights or services being provided or products being delivered are essential to the customers receiving the expected benefit of the up-front payment. Therefore, the up-front fee and the continuing performance obligation related to the services to be provided or products to be delivered are assessed as an integrated package. In such circumstances, the staff believes that up-front fees, even if nonrefundable, are earned as the products and/or services are delivered and/or performed over the term of the arrangement or the expected period of performance[39] and generally should be deferred and recognized systematically over the periods that the fees are earned.[40]

Some propose that revenue should be recognized when the initial set-up is completed in cases where the on-going obligation involves minimal or no cost or effort and should, therefore, be considered perfunctory or inconsequential. However, the staff believes that the substance of each of these transactions indicates that the purchaser is paying for a service that is delivered over time. Therefore, revenue recognition should occur over time, reflecting the provision of service.[41]

Question 2

Facts: Company A provides its customers with activity tracking or similar services (*e.g.*, tracking of property tax payment activity, sending delinquency letters on overdue accounts, etc.) for a ten-year period. Company A requires customers to prepay for all the services for the term specified in the arrangement. The on-going services to be provided are generally automated after the initial customer set-up. At the outset of the arrangement, Company A performs set-up procedures to facilitate delivery of its on-going services to the customers. Such procedures consist primarily of establishing the necessary records and files in Company A's pre-existing computer systems in order to provide the services. Once the initial customer set-up activities are complete, Company A provides its services in accordance with the arrangement. Company A is not required to refund any portion of the fee if the customer terminates the services or does not utilize all of the services to which it is entitled. However, Company A is required to provide a refund if Company A terminates the arrangement early. Assume Company A's activities are not within the scope of Statement 91 and that this arrangement qualifies as a single unit of accounting under EITF Issue 00–21.[42]

Question: When should Company A recognize the service revenue?

Interpretive Response: The staff believes that, provided all other revenue recognition criteria are met, service revenue should be recognized on a straight-line basis, unless evidence suggests that the revenue is earned or obligations are fulfilled in a different pattern, over the contractual term of the arrangement or the expected period during which those specified services will be performed,[43] whichever is longer. In this case, the customer contracted for the on-going activity tracking service, not for the set-up activities. The staff notes that the customer could not, and would not, separately purchase the set-up services without the on-going services. The services specified in the arrangement are performed continuously over the contractual term of the arrangement (and any subsequent renewals). Therefore, the staff believes that Company A should recognize revenue on a straight-line basis, unless evidence suggests that the revenue is earned or obligations are fulfilled in a different pattern, over the contractual term of the arrangement or the expected period during which those specified services will be performed, whichever is longer.

In this situation, the staff would object to Company A recognizing revenue in proportion to the costs incurred because the set-up costs incurred bear no direct relationship to the performance of services specified in the arrangement. The staff also believes that it is inappropriate to recognize the entire amount of the prepayment as revenue at the outset of the arrangement by accruing the remaining costs because the services required by the contract have not been performed.

Question 3

Facts: Assume the same facts as in Question 2 above.

Question: Are the initial customer set-up costs incurred by Company A within the scope of SOP 98–5?

Interpretive Response: Footnote 1 of SOP 98–5 states that "this SOP does not address the financial reporting of costs incurred related to ongoing customer acquisition, such as policy acquisition costs in Statement 60 * * * and loan origination costs in Statement 91 * * * The SOP addresses the more substantive one-time efforts to establish business with an entirely new class of customers (for example, a manufacturer who does all of its business with retailers attempts to sell merchandise directly to the public)." As such, the set-up costs incurred in this example are not within the scope of SOP 98–5.

The staff believes that the incremental direct costs (Statement 91 provides an analogous definition) incurred related to the acquisition or origination of a customer contract in a transaction that results in the deferral of revenue, unless specifically provided for in the authoritative literature, may be either expensed as incurred or accounted for in accordance with paragraph 4 of Technical Bulletin 90–1 or paragraph 5 of Statement 91. The staff believes the accounting policy chosen for these costs should be disclosed and applied consistently.

Question 4

Facts: Assume the same facts as in Question 2 above.

Question: What is the staff's view of the pool of contract acquisition and origination costs that are eligible for capitalization?

Interpretive Response: As noted in Question 3 above, Statement 91 includes a definition of incremental direct costs in its glossary. Paragraph 6 of Statement 91 provides further guidance on the types of costs eligible for capitalization as customer acquisition costs indicating that only costs that result from successful loan origination efforts are capitalized. The FASB staff has published an Implementation Guide on Statement 91 that provides additional guidance on the costs that qualify for capitalization as customer acquisition costs. Further, Technical Bulletin 90–1 also requires capitalization of incremental direct customer acquisition costs and requires that those costs be "identified consistent with the guidance in paragraph 6 of Statement 91." Although the facts of a particular situation should be analyzed closely to capture those costs that are truly direct and incremental, the staff generally would not object to an accounting policy that results in the capitalization of costs in accordance with paragraph 6(a) and (b) of Statement 91 or Technical Bulletin 90–1. Registrants should disclose their policies for determining which costs to capitalize as contract acquisition and origination costs.

Question 5

Facts: Assume the same facts as in Question 2 above. Based on the guidance in Questions 2, 3 and 4 above, Company A has capitalized certain direct and incremental customer set-up costs associated with the deferred revenue.

Question: Over what period should Company A amortize these costs?

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[39] The revenue recognition period should extend beyond the initial contractual period if the relationship with the customer is expected to extend beyond the initial term and the customer continues to benefit from the payment of the up-front fee (*e.g.*, if subsequent renewals are priced at a bargain to the initial up-front fee).

[40] A systematic method would be on a straight-line basis, unless evidence suggests that revenue is earned or obligations are fulfilled in a different pattern, in which case that pattern should be followed.

[41] Concepts Statement 5, paragraph 84(d).

[42] *See* Note 36, *supra.*

[43] *See* Note 39, *supra.*

Interpretive Response: When both costs and revenue (in an amount equal to or greater than the costs) are deferred, the staff believes that the capitalized costs should be charged to expense proportionally and over the same period that deferred revenue is recognized as revenue.[44]

g. Deliverables within an arrangement

Question: If a company (the seller) has a patent to its intellectual property which it licenses to customers, the seller may represent and warrant to its licensees that it has a valid patent, and will defend and maintain that patent. Does that obligation to maintain and defend patent rights, in and of itself, constitute a deliverable to be evaluated under EITF Issue 00–21?

Interpretive Response: No. Provided the seller has legal and valid patents upon entering the license arrangement, existing GAAP on licenses of intellectual property (*e.g.*, SOP 97–2, SOP 00–2, and SFAS No. 50) does not indicate that an obligation to defend valid patents represents an additional deliverable to which a portion of an arrangement fee should be allocated in an arrangement that otherwise qualifies for sales-type accounting. While this clause may obligate the licenser to incur costs in the defense and maintenance of the patent, that obligation does not involve an additional deliverable to the customer. Defending the patent is generally consistent with the seller's representation in the license that such patent is legal and valid. Therefore, the staff would not consider a clause like this to represent an additional deliverable in the arrangement.[45]

4. Fixed or determinable sales price

a. Refundable fees for services

A company's contracts may include customer cancellation or termination clauses. Cancellation or termination provisions may be indicative of a demonstration period or an otherwise incomplete transaction. Examples of transactions that financial management and auditors should be aware of and where such provisions may exist include "side" agreements and significant transactions with unusual terms and conditions. These contractual provisions raise questions as to whether the sales price is fixed or determinable. The sales price in arrangements that are cancelable by the customer is neither fixed nor determinable until the cancellation privileges lapse.[46] If the cancellation privileges expire ratably over a stated contractual term, the sales price is considered to become determinable ratably over the stated term.[47] Short-term rights of return, such as thirty-day money-back guarantees, and other customary rights to return products are not considered to be cancellation privileges, but should be accounted for in accordance with Statement 48.[48]

Question 1

Facts: Company M is a discount retailer. It generates revenue from annual membership fees it charges customers to shop at its stores and from the sale of products at a discount price to those customers. The membership arrangements with retail customers require the customer to pay the entire membership fee (*e.g.*, $35) at the outset of the arrangement. However, the customer has the unilateral right to cancel the arrangement at any time during its term and receive a full refund of the initial fee. Based on historical data collected over time for a large number of homogeneous transactions, Company M estimates that approximately 40% of the customers will request a refund before the end of the membership contract term. Company M's data for the past five years indicates that significant variations between actual and estimated cancellations have not occurred, and Company M does not expect significant variations to occur in the foreseeable future.

Question: May Company M recognize in earnings the revenue for the membership fees and accrue the costs to provide membership services at the outset of the arrangement?

Interpretive Response: No. In the staff's view, it would be inappropriate for Company M to recognize the membership fees as earned revenue upon billing or receipt of the initial fee with a corresponding accrual for estimated costs to provide the membership services. This conclusion is based on Company M's remaining and unfulfilled contractual obligation to perform services (*i.e.*, make available and offer products for sale at a discounted price) throughout the membership period. Therefore, the earnings process, irrespective of whether a cancellation clause exists, is not complete.

In addition, the ability of the member to receive a full refund of the membership fee up to the last day of the membership term raises an uncertainty as to whether the fee is fixed or determinable at any point before the end of the term. Generally, the staff believes that a sales price is not fixed or determinable when a customer has the unilateral right to terminate or cancel the contract and receive a cash refund. A sales price or fee that is variable until the occurrence of future events (other than product returns that are within the scope of Statement 48) generally is not fixed or determinable until the future event occurs. The revenue from such transactions should not be recognized in earnings until the sales price or fee becomes fixed or determinable. Moreover, revenue should not be recognized in earnings by assessing the probability that significant, but unfulfilled, terms of a contract will be fulfilled at some point in the future. Accordingly, the revenue from such transactions should not be recognized in earnings prior to the refund privileges expiring. The amounts received from customers or subscribers (*i.e.*, the $35 fee mentioned above) should be credited to a monetary liability account such as "customers' refundable fees."

The staff believes that if a customer has the unilateral right to receive both (1) the seller's substantial performance under an arrangement (*e.g.*, providing services or delivering product) and (2) a cash refund of prepaid fees, then the prepaid fees should be accounted for as a monetary liability. In consideration of whether the monetary liability can be derecognized, Statement 140 provides that liabilities may be derecognized only if (1) the debtor pays the creditor and is relieved of its obligation for the liability (paying the creditor includes delivery of cash, other financial assets, goods, or services or reacquisition by the debtor of its outstanding debt securities) or (2) the debtor is legally released from being the primary obligor under the liability.[49] If a customer has the unilateral right to receive both (1) the seller's substantial performance under the arrangement and (2) a cash refund of prepaid fees, then the refund obligation is not relieved upon performance of the service or delivery of the products. Rather, the seller's refund obligation is relieved only upon refunding the cash or expiration of the refund privilege.

Some have argued that there may be a limited exception to the general rule that revenue from membership or other service transaction fees should not be recognized in earnings prior to the refund privileges expiring. Despite the fact that Statement 48 expressly does not apply to the accounting for service revenue if part or all of the service fee is refundable under cancellation privileges granted to the buyer,[50] they believe that in certain circumstances a potential refund of a membership fee may be seen as being similar to a right of return of products under Statement 48. They argue that revenue from membership fees, net of estimated refunds, may be recognized ratably over the period the services are performed whenever pertinent conditions of Statement 48 are met, namely, there is a large population of transactions that grant customers the same unilateral termination or cancellation rights and reasonable estimates can be made of how many customers likely will exercise those rights.

The staff believes that, because service arrangements are specifically excluded from the scope of Statement 48, the most direct authoritative literature to be applied to the extinguishment of obligations under such contracts is Statement 140. As noted above, because the refund privilege extends to the end of the contract term irrespective of the amount of the service performed, Statement 140 indicates that the liability would not be extinguished (and therefore no revenue would be recognized in earnings) until the cancellation or termination and related refund privileges expire. Nonetheless, the staff recognizes that over the years the accounting for membership refunds evolved based on analogy to Statement 48 and that practice did not change when Statement 140 became effective. Reasonable people held, and continue to hold, different views about the application of the accounting literature.

Pending further action in this area by the FASB, the staff will not object to the recognition of refundable membership fees, net of estimated refunds, as earned revenue over the membership term in the limited circumstances where all of the following criteria have been met:[51]

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[44] Technical Bulletin 90–1, paragraph 4.

[45] Note, however, the staff believes that this obligation qualifies as a guarantee within the scope of FIN 45, subject to a scope exception from the initial recognition and measurement provisions.

[46] SOP 97–2, paragraph 31.

[47] *Ibid.*

[48] *Ibid.*

[49] Statement 140, paragraph 16.

[50] Statement 48, paragraph 4.

- The estimates of terminations or cancellations and refunded revenues are being made for a large pool of homogeneous items (*e.g.*, membership or other service transactions with the same characteristics such as terms, periods, class of customers, nature of service, etc.).
- Reliable estimates of the expected refunds can be made on a timely basis.[52] Either of the following two items would be considered indicative of an inability to make reliable estimates: (1) Recurring, significant differences between actual experience and estimated cancellation or termination rates (*e.g.*, an actual cancellation rate of 40% versus an estimated rate of 25%) even if the impact of the difference on the amount of estimated refunds is not material to the consolidated financial statements[53] or (2) recurring variances between the actual and estimated amount of refunds that are material to either revenue or net income in quarterly or annual financial statements. In addition, the staff believes that an estimate, for purposes of meeting this criterion, would not be reliable unless it is remote[54] that material adjustments (both individually and in the aggregate) to previously recognized revenue would be required. The staff presumes that reliable estimates cannot be made if the customer's termination or cancellation and refund privileges exceed one year.
- There is a sufficient company-specific historical basis upon which to estimate the refunds,[55] and the company believes that such historical experience is predictive of future events. In assessing these items, the staff believes that estimates of future refunds should take into consideration, among other things, such factors as historical experience by service type and class of customer, changing trends in historical experience and the basis thereof (*e.g.*, economic conditions), the impact or introduction of competing services or products, and changes in the customer's "accessibility" to the refund (*i.e.*, how easy it is for customers to obtain the refund).
- The amount of the membership fee specified in the agreement at the outset of the arrangement is fixed, other than the customer's right to request a refund.

If Company M does not meet all of the foregoing criteria, the staff believes that Company M should not recognize in earnings any revenue for the membership fee until the cancellation privileges and refund rights expire.

If revenue is recognized in earnings over the membership period pursuant to the above criteria, the initial amounts received from customer or subscribers (*i.e.*, the $35 fee mentioned above) should be allocated to two liability accounts. The amount of the fee representing estimated refunds should be credited to a monetary liability account, such as "customers' refundable fees," and the remaining amount of the fee representing unearned revenue should be credited to a nonmonetary liability account, such as "unearned revenues." For each income statement presented, registrants should disclose in the footnotes to the financial statements the amounts of (1) the unearned revenue and (2) refund obligations as of the beginning of each period, the amount of cash received from customers, the amount of revenue recognized in earnings, the amount of refunds paid, other adjustments (with an explanation thereof), and the ending balance of (1) unearned revenue and (2) refund obligations.

If revenue is recognized in earnings over the membership period pursuant to the above criteria, the staff believes that adjustments for changes in estimated refunds should be recorded using a retrospective approach whereby the unearned revenue and refund obligations are remeasured and adjusted at each balance sheet date with the offset being recorded as earned revenue.[56]

Companies offering memberships often distribute membership packets describing and discussing the terms, conditions, and benefits of membership. Packets may include vouchers, for example, that provide new members with discounts or other benefits from third parties. The costs associated with the vouchers should be expensed when distributed. Advertising costs to solicit members should be accounted for in accordance with SOP 93–7. Incremental direct costs incurred in connection with enrolling customers (*e.g.*, commissions paid to agents) should be accounted for as follows: (1) If revenue is deferred until the cancellation or termination privileges expire, incremental direct costs should be either (a) charged to expense when incurred if the costs are not refundable to the company in the event the customer obtains a refund of the membership fee, or (b) if the costs are refundable to the company in the event the customer obtains a refund of the membership fee, recorded as an asset until the earlier of termination or cancellation or refund; or (2) if revenue, net of estimated refunds, is recognized in earnings over the membership period, a like percentage of incremental direct costs should be deferred and recognized in earnings in the same pattern as revenue is recognized, and the remaining portion should be either (a) charged to expense when incurred if the costs are not refundable to the company in the event the customer obtains a refund of the membership fee, or (b) if the costs are refundable to the company in the event the customer obtains a refund of the membership fee, recorded as an asset until the refund occurs.[57] All costs other than incremental direct costs (*e.g.*, indirect costs) should be expensed as incurred.

Question 2

Question: Will the staff accept an analogy to Statement 48 for service transactions subject to customer cancellation privileges other than those specifically addressed in the previous question?

Interpretive Response: The staff has accepted the analogy in limited circumstances due to the existence of a large pool of homogeneous transactions and satisfaction of the criteria in the previous question. Examples of other arrangements involving customer cancellation privileges and refundable service fees that the staff has addressed include the following:

- A leasing broker whose commission from the lessor upon a commercial tenant's signing of a lease agreement is refundable (or in some cases, is not due) under lessor cancellation privileges if the tenant fails to move into the leased premises by a specified date.
- A talent agent whose fee receivable from its principal (*i.e.*, a celebrity) for arranging a celebrity endorsement for a five-year term is cancelable by the celebrity if the celebrity breaches the endorsement contract with its customer.
- An insurance agent whose commission received from the insurer upon selling an insurance policy is refundable in whole for the 30-day period that state law permits the consumer to repudiate the contract and then refundable on a declining pro rata basis until the consumer has made six monthly payments.

In the first two of these cases, the staff advised the registrants that the portion of revenue subject to customer cancellation and refund must be deferred until no longer subject to that contingency because the registrants did not have an ability to make reliable estimates of customer cancellations due to the lack of a large pool of homogeneous transactions. In the case of the insurance agent, however, the particular registrant demonstrated that it had a sufficient history of homogeneous transactions with the same characteristics from which to reliably estimate contract cancellations and satisfy all the criteria specified in the previous question. Accordingly, the staff did not object to that registrant's policy of recognizing its sales commission as revenue when its performance was complete, with an appropriate allowance for estimated cancellations.

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[51] The staff will question further analogies to the guidance in Statement 48 for transactions expressly excluded from its scope.

[52] Reliability is defined in Concepts Statement 2 as "the quality of information that assures that information is reasonably free from error and bias and faithfully represents what it purports to represent." Paragraph 63 of Concepts Statement 5 reiterates the definition of reliability, requiring that "the information is representationally faithful, verifiable, and neutral."

[53] For example, if an estimate of the expected cancellation rate varies from the actual cancellation rate by 100% but the dollar amount of the error is immaterial to the consolidated financial statements, some would argue that the estimate could still be viewed as reliable. The staff disagrees with that argument.

[54] The term "remote" is used here with the same definition as used in Statement 5.

[55] Paragraph 8 of Statement 48 notes various factors that may impair the ability to make a reasonable estimate of returns, including the lack of sufficient historical experience. The staff typically expects that the historical experience be based on the particular registrant's historical experience for a service and/or class of customer. In general, the staff typically expects a start-up company, a company introducing new services, or a company introducing services to a new class of customer to have at least two years of experience to be able to make reasonable and reliable estimates.

[56] The staff believes deferred costs being amortized on a basis consistent with the deferred revenue should be similarly adjusted. Such an approach is generally consistent with the amortization methodology in Statement 91, paragraph 19.

[57] Statement 91, paragraph 5 and Technical Bulletin 90–1, paragraph 4 both provide for the deferral of incremental direct costs associated with acquiring a revenue-producing contract. Even though the revenue discussed in this example is refundable, if a registrant meets the aforementioned criteria for revenue recognition over the membership period, the staff would analogize to this guidance. However, if neither a nonrefundable contract nor a reliable basis for estimating net cash inflows under refundable contracts exists to provide a basis for recovery of incremental direct costs, the staff believes that such costs should be expensed as incurred. *See* SAB Topic 13.A.3.f. Question 3.

Question 3

Question: Must a registrant analogize to Statement 48, or may it choose to defer all revenue until the refund period lapses as suggested by Statement 140 even if the criteria above for analogy to Statement 48 are met?

Interpretive Response: The analogy to Statement 48 is presented as an alternative that would be acceptable to the staff when the listed conditions are met. However, a registrant may choose to defer all revenue until the refund period lapses. The policy chosen should be disclosed and applied consistently.

Question 4

Question: May a registrant that meets the above criteria for reliable estimates of cancellations choose at some point in the future to change from the Statement 48 method to the Statement 140 method of accounting for these refundable fees? May a registrant change from the Statement 140 method to the Statement 48 method?

Interpretive Response: The staff believes that Statement 140 provides a preferable accounting model for service transactions subject to potential refunds. Therefore, the staff would not object to a change from the Statement 48 method to the Statement 140 method. However, if a registrant had previously chosen the Statement 140 method, the staff would object to a change to the Statement 48 method.

Question 5

Question: Is there a minimum level of customers that must be projected not to cancel before use of Statement 48 type accounting is appropriate?

Interpretive Response: Statement 48 does not include any such minimum. Therefore, the staff does not believe that a minimum must apply in service transactions either. However, as the refund rate increases, it may be increasingly difficult to make reasonable and reliable estimates of cancellation rates.

Question 6

Question: When a registrant first determines that reliable estimates of cancellations of service contracts can be made (*e.g.*, two years of historical evidence becomes available), how should the change from the complete deferral method to the method of recognizing revenue, net of estimated cancellations, over time be reflected?

Interpretive Response: Changes in the ability to meet the criteria set forth above should be accounted for in the manner described in paragraph 6 of Statement 48, which addresses the accounting when a company experiences a change in the ability to make reasonable estimates of future product returns.

b. Estimates and changes in estimates

Accounting for revenues and costs of revenues requires estimates in many cases; those estimates sometimes change. Registrants should ensure that they have appropriate internal controls and adequate books and records that will result in timely identification of necessary changes in estimates that should be reflected in the financial statements and notes thereto.

Question 1

Facts: Paragraph 8 of Statement 48 lists a number of factors that may impair the ability to make a reasonable estimate of product returns in sales transactions when a right of return exists.[58] The paragraph concludes by stating "other factors may preclude a reasonable estimate."

Question: What "other factors," in addition to those listed in paragraph 8 of Statement 48, has the staff identified that may preclude a registrant from making a reasonable and reliable estimate of product returns?

Interpretive Response: The staff believes that the following additional factors, among others, may affect or preclude the ability to make reasonable and reliable estimates of product returns: (1) Significant increases in or excess levels of inventory in a distribution channel (sometimes referred to as "channel stuffing"), (2) lack of "visibility" into or the inability to determine or observe the levels of inventory in a distribution channel and the current level of sales to end users, (3) expected introductions of new products that may result in the technological obsolescence of and larger than expected returns of current products, (4) the significance of a particular distributor to the registrant's (or a reporting segment's) business, sales and marketing, (5) the newness of a product, (6) the introduction of competitors' products with superior technology or greater expected market acceptance, and (7) other factors that affect market demand and changing trends in that demand for the registrant's products. Registrants and their auditors should carefully analyze all factors, including trends in historical data, which may affect registrants' ability to make reasonable and reliable estimates of product returns.

The staff reminds registrants that if a transaction fails to meet all of the conditions of paragraphs 6 and 8 in Statement 48, no revenue may be recognized until those conditions are subsequently met or the return privilege has substantially expired, whichever occurs first.[59] Simply deferring recognition of the gross margin on the transaction is not appropriate.

Question 2

Question: Is the requirement cited in the previous question for "reliable" estimates meant to imply a new, higher requirement than the "reasonable" estimates discussed in Statement 48?

Interpretive Response: No. "Reliability" of financial information is one of the qualities of accounting information discussed in Concepts Statement 2. The staff's expectation that estimates be reliable does not change the existing requirement of Statement 48. If management cannot develop an estimate that is sufficiently reliable for use by investors, the staff believes it cannot make a reasonable estimate meeting the requirements of that standard.

Question 3

Question: Does the staff expect registrants to apply the guidance in Question 1 of Topic 13.A.4(a) above to sales of tangible goods and other transactions specifically within the scope of Statement 48?

Interpretive Response: The specific guidance above does not apply to transactions within the scope of Statement 48. The views set forth in Question 1 of Topic 13.A.4(a) are applicable to the service transactions discussed in that Question. Service transactions are explicitly outside the scope of Statement 48.

Question 4

Question: Question 1 of Topic 13.A.4(a) above states that the staff would expect a two-year history of selling a new service in order to be able to make reliable estimates of cancellations. How long a history does the staff believe is necessary to estimate returns in a product sale transaction that is within the scope of Statement 48?

Interpretive Response: The staff does not believe there is any specific length of time necessary in a product transaction. However, Statement 48 states that returns must be subject to reasonable estimation. Preparers and auditors should be skeptical of estimates of product returns when little history with a particular product line exists, when there is inadequate verifiable evidence of historical experience, or when there are inadequate internal controls that ensure the reliability and timeliness of the reporting of the appropriate historical information. Start-up companies and companies selling new or significantly modified products are frequently unable to develop the requisite historical data on which to base estimates of returns.

Question 5

Question: If a company selling products subject to a right of return concludes that it cannot reasonably estimate the actual return rate due to its limited history, but it can conservatively estimate the maximum possible returns, does the staff believe that the company may recognize revenue for the portion of the sales that exceeds the maximum estimated return rate?

Interpretive Response: No. If a reasonable estimate of future returns cannot be made, Statement 48 requires that revenue not be recognized until the return period lapses or a reasonable estimate can be made.[60] Deferring revenue recognition based on the upper end of a wide range of potential return rates is inconsistent with the provisions of Statement 48.

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[58] These factors include "(a) the susceptibility of the product to significant external factors, such as technological obsolescence or changes in demand, (b) relatively long periods in which a particular product may be returned, (c) absence of historical experience with similar types of sales of similar products, or inability to apply such experience because of changing circumstances, for example, changes in the selling enterprise's marketing policies and relationships with its customers, and (d) absence of a large volume of relatively homogeneous transactions."

[59] Statement 48, paragraph 6.

c. Contingent rental income

Facts: Company A owns and leases retail space to retailers. Company A (lessor) renews a lease with a customer (lessee) that is classified as an operating lease. The lease term is one year and provides that the lease payments are $1.2 million, payable in equal monthly installments on the first day of each month, plus one percent of the lessee's net sales in excess of $25 million if the net sales exceed $25 million during the lease term (*i.e.*, contingent rental). The lessee has historically experienced annual net sales in excess of $25 million in the particular space being leased, and it is probable that the lessee will generate in excess of $25 million net sales during the term of the lease.

Question: In the staff's view, should the lessor recognize any rental income attributable to the one percent of the lessee's net sales exceeding $25 million before the lessee actually achieves the $25 million net sales threshold?

Interpretive Response: No. The staff believes that contingent rental income "accrues" (*i.e.*, it should be recognized as revenue) when the changes in the factor(s) on which the contingent lease payments is (are) based actually occur.[61]

Statement 13 paragraph 19(b) states that lessors should account for operating leases as follows: "Rent shall be reported in income over the lease term as it becomes receivable according to the provisions of the lease. However, if the rentals vary from a straight-line basis, the income shall be recognized on a straight-line basis unless another systematic and rational basis is more representative of the time pattern in which use benefit from the leased property is diminished, in which case that basis shall be used."

Statement 29 amended Statement 13 and clarifies that "lease payments that depend on a factor that does not exist or is not measurable at the inception of the lease, such as future sales volume, would be contingent rentals in their entirety and, accordingly, would be excluded from minimum lease payments and included in the determination of income as they accrue." [Summary] Paragraph 17 of Statement 29 provides the following example of determining contingent rentals:

> A lease agreement for retail store space could stipulate a monthly base rental of $200 and a monthly supplemental rental of one-fourth of one percent of monthly sales volume during the lease term. Even if the lease agreement is a renewal for store space that had averaged monthly sales of $25,000 for the past 2 years, minimum lease payments would include only the $200 monthly base rental; the supplemental rental is a contingent rental that is excluded from minimum lease payments. The future sales for the lease term do not exist at the inception of the lease, and future rentals would be limited to $200 per month if the store were subsequently closed and no sales were made thereafter.

Technical Bulletin 85–3 addresses whether it is appropriate for lessors in operating leases to recognize scheduled rent increases on a basis other than as required in Statement 13, paragraph 19(b). Paragraph 2 of Technical Bulletin 85–3 states "using factors such as the time value of money, anticipated inflation, or *expected future revenues* [emphasis added] to allocate scheduled rent increases is inappropriate because these factors do not relate to the *time pattern* of the physical usage of the leased property. However, such factors may affect the periodic reported rental income or expense if the lease agreement involves contingent rentals, which are excluded from minimum lease payments and accounted for separately under Statement 13, as amended by Statement 29." In developing the basis for why scheduled rent increases should be recognized on a straight-line basis, the FASB distinguishes the accounting for scheduled rent increases from contingent rentals. Paragraph 13 states "There is an important substantive difference between lease rentals that are contingent upon some specified future event and scheduled rent increases that are unaffected by future events; the accounting under Statement 13 reflects that difference. If the lessor and lessee eliminate the risk of variable payments by agreeing to scheduled rent increases, the accounting should reflect those different circumstances."

The example provided in Statement 29 implies that contingent rental income in leases classified as sales-type or direct-financing leases becomes "accruable" when the changes in the factors on which the contingent lease payments are based actually occur. Technical Bulletin 85–3 indicates that contingent rental income in operating leases should not be recognized in a manner consistent with scheduled rent increases (*i.e.*, on a straight-line basis over the lease term or another systematic and rational allocation basis if it is more representative of the time pattern in which the leased property is physically employed) because the risk of variable payments inherent in contingent rentals is substantively different than scheduled rent increases. The staff believes that the reasoning in Technical Bulletin 85–3 supports the conclusion that the risks inherent in variable payments associated with contingent rentals should be reflected in financial statements on a basis different than rental payments that adjust on a scheduled basis and, therefore, operating lease income associated with contingent rents would not be recognized as time passes or as the leased property is physically employed. Furthermore, prior to the lessee's achievement of the target upon which contingent rentals are based, the lessor has no legal claims on the contingent amounts. Consequently, the staff believes that it is inappropriate to anticipate changes in the factors on which contingent rental income in operating leases is based and recognize rental income prior to the resolution of the lease contingencies.

Because Company A's contingent rental income is based upon whether the customer achieves net sales of $25 million, the contingent rentals, which may not materialize, should not be recognized until the customer's net sales actually exceed $25 million. Once the $25 million threshold is met, Company A would recognize the contingent rental income as it becomes accruable, in this case, as the customer recognizes net sales. The staff does not believe that it is appropriate to recognize revenue based upon the probability of a factor being achieved. The contingent revenue should be recorded in the period in which the contingency is resolved.

d. Claims processing and billing services

Facts: Company M performs claims processing and medical billing services for healthcare providers. In this role, Company M is responsible for preparing and submitting claims to third-party payers, tracking outstanding billings, and collecting amounts billed. Company M's fee is a fixed percentage (*e.g.*, five percent) of the amount collected. If no collections are made, no fee is due to Company M. Company M has historical evidence indicating that the third-party payers pay 85 percent of the billings submitted with no further effort by Company M. Company M has determined that the services performed under the arrangement are a single unit of accounting.

Question: May Company M recognize as revenue its five percent fee on 85 percent of the gross billings at the time it prepares and submits billings, or should it wait until collections occur to recognize any revenue?

Interpretive Response: The staff believes that Company M must wait until collections occur before recognizing revenue. Before the third-party payer has remitted payment to Company M's customers for the services billed, Company M is not entitled to any revenue. That is, its revenue is not yet realized or realizable.[62] Until Company M's customers collect on the billings, Company M has not performed the requisite activity under its contract to be entitled to a fee.[63] Further, no amount of the fee is fixed or determinable or collectible until Company Ms' customers collect on the billings.

B. Disclosures

Question 1

Question: What disclosures are required with respect to the recognition of revenue?

Interpretive Response: A registrant should disclose its accounting policy for the recognition of revenue pursuant to Opinion 22. Paragraph 12 thereof states that "the disclosure should encompass important judgments as to appropriateness of principles relating to recognition of revenue * * *." Because revenue recognition generally involves some level of judgment, the staff believes that a registrant should always disclose its revenue recognition policy. If a company has different policies for different types of revenue transactions, including barter sales, the policy for each material type of transaction should be disclosed. If sales transactions have multiple units of accounting, such as a product and service, the accounting policy should clearly state the accounting policy for each unit of accounting as well as how units of accounting are determined and valued. In addition, the staff believes that changes in estimated returns recognized in accordance with Statement 48 should be disclosed, if material (*e.g.*, a change in estimate from two percent of sales to one percent of sales).

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[60] Statement 48, paragraph 6(f).

[61] Lessees should follow the guidance established in EITF Issue 98–9.

[62] Concepts Statement 5, paragraph 83(a).

[63] Concepts Statement 5, paragraph 83(b).

Regulation S–X requires that revenue from the sales of products, services, and other products each be separately disclosed on the face of the income statement.[64] The staff believes that costs relating to each type of revenue similarly should be reported separately on the face of the income statement.

MD&A requires a discussion of liquidity, capital resources, results of operations and other information necessary to an understanding of a registrant's financial condition, changes in financial condition and results of operations.[65] This includes unusual or infrequent transactions, known trends or uncertainties that have had, or might reasonably be expected to have, a favorable or unfavorable material effect on revenue, operating income or net income and the relationship between revenue and the costs of the revenue. Changes in revenue should not be evaluated solely in terms of volume and price changes, but should also include an analysis of the reasons and factors contributing to the increase or decrease. The Commission stated in FRR 36 that MD&A should "give investors an opportunity to look at the registrant through the eyes of management by providing a historical and prospective analysis of the registrant's financial condition and results of operations, with a particular emphasis on the registrant's prospects for the future."[66]

Examples of such revenue transactions or events that the staff has asked to be disclosed and discussed in accordance with FRR 36 are:

- Shipments of product at the end of a reporting period that significantly reduce customer backlog and that reasonably might be expected to result in lower shipments and revenue in the next period.
- Granting of extended payment terms that will result in a longer collection period for accounts receivable (regardless of whether revenue has been recognized) and slower cash inflows from operations, and the effect on liquidity and capital resources. (The fair value of trade receivables should be disclosed in the footnotes to the financial statements when the fair value does not approximate the carrying amount.)[67]
- Changing trends in shipments into, and sales from, a sales channel or separate class of customer that could be expected to have a significant effect on future sales or sales returns.
- An increasing trend toward sales to a different class of customer, such as a reseller distribution channel that has a lower gross profit margin than existing sales that are principally made to end users. Also, increasing service revenue that has a higher profit margin than product sales.
- Seasonal trends or variations in sales.
- A gain or loss from the sale of an asset(s).[68]

Question 2

Question: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: All registrants are expected to apply the accounting and disclosures described in this bulletin. The staff, however, will not object if registrants that have not applied this accounting do not restate prior financial statements provided they report a change in accounting principle in accordance with Opinion 20 and Statement 3 no later than the fourth fiscal quarter of the fiscal year beginning after December 15, 1999. In periods subsequent to transition, registrants should disclose the amount of revenue (if material to income before income taxes) recognized in those periods that was included in the cumulative effect adjustment. If a registrant files financial statements with the Commission before applying the guidance in this bulletin, disclosures similar to those described in SAB Topic 11.M should be provided.

However, if registrants have not previously complied with GAAP, for example, by recording revenue for products prior to delivery that did not comply with the applicable bill-and-hold guidance, those registrants should apply the guidance in Opinion 20 for the correction of an error.[69] In addition, registrants should be aware that the Commission may take enforcement action where a registrant in prior financial statements has violated the antifraud or disclosure provisions of the securities laws with respect to revenue recognition.

Question 3

Question: The previous question indicates that the staff will not object to cumulative effect-type transition so long as the prior accounting does not represent an error. Could a company whose prior accounting does not represent an error voluntarily adopt a new method consistent with this SAB Topic by restatement of prior periods, rather than through a cumulative catch-up adjustment?

Interpretive Response: In most instances, no. Opinion 20 does not permit restatement of financial statements for a change in accounting principle that does not represent correction of an error, except in very rare circumstances.[70] An exception is a company that is filing publicly for the first time. As stated in paragraph 29 of Opinion 20, those companies are permitted to reflect the adoption of the new policy via a restatement, and the staff believes that approach is usually necessary to avoid confusing investors in an initial public offering.

Question 4

Question: Should a registrant reporting a change in accounting principle as a result of this SAB Topic file a preferability letter?

Interpretive Response: No preferability letter is required if an accounting change is made in response to a newly issued Staff Accounting Bulletin.

Question 5

Question: If a company had not previously adjusted sales revenues, but deferred recognition of the gross margin of estimated returns for a transaction subject to Statement 48, how should it present a current change in accounting to reduce revenue and cost of sales for estimated returns?

Interpretive Response: Paragraph 7 of Statement 48 states that "sales revenue and cost of sales reported in the income statement shall be reduced to reflect estimated returns." Statement 48 does not provide for recognition of sales and costs of sales while deferring gross margin under any circumstance. This SAB Topic provides no new guidance on this point. If a registrant has failed to comply with GAAP, the registrant should retroactively revise prior financial statements in the manner set forth in Opinion 20 and Statement 16.

[FR Doc. 03–31512 Filed 12–22–03; 8:45 am]

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[64] *See* Regulation S–X, Article 5–03(b)(1) and (2).

[65] *See* Regulation S–K, Article 303 and FRR 36.

[66] FRR 36, also see In the Matter of Caterpillar Inc., AAER 363 (March 31, 1992).

[67] Statement 107.

[68] Gains or losses from the sale of assets should be reported as "other general expenses" pursuant to Regulation S–X, Article 5–03(b)(6). Any material item should be stated separately.

[69] Opinion 20, paragraph 13 and paragraphs 36–37 describe and provide the accounting and disclosure requirements applicable to the correction of an error in previously issued financial statements. Because the term "error" as used in Opinion 20 includes "oversight or misuse of facts that existed at the time that the financial statements were prepared," that term includes both unintentional errors as well as intentional fraudulent financial reporting and misappropriation of assets as described in SAS 99.

[70] *See*, for example, Opinion 20, paragraph 27.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Tuesday,
December 23, 2003

Part VIII

Federal Retirement Thrift Investment Board

5 CFR Parts 1600, 1601, et al.

Employee Elections To Contribute To the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds From the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous; Final Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1650, 1651, 1653, 1655, 1690

Employee Elections To Contribute To the Thrift Savings Plan, Participants' Choices of Investment Funds, Vesting, Uniformed Services Accounts, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Participant Statements, Calculation of Share Prices, Methods of Withdrawing Funds From the Thrift Savings Plan, Death Benefits, Domestic Relations Orders Affecting Thrift Savings Plan Accounts, Loans, Miscellaneous

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is adopting as final the interim rule the Board published in June 2003 to implement the new Thrift Savings Plan (TSP) record keeping system and to permit the making of catch-up contributions by TSP participants who are age 50 and over.

EFFECTIVE DATE: This final rule is effective December 23, 2003.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest or Merritt A. Willing on (202) 942–1684.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services, which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP participant's account are held in trust for the participant.

Congress amended FERSA in 1996 by enacting the Thrift Savings Plan Act of 1996, Public Law 104–208, 110 Stat. 3009, which permitted the Executive Director of the Board to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system.

On June 25, 2002, the Board published a proposed rule with request for comments in the **Federal Register** (67 FR 42856). The proposed rule explained how the Board planned to amend TSP regulations to reflect the processes and terminology of the new record keeping system. On April 4, 2003, the Board published a notice of proposed rulemaking in the **Federal Register** (68 FR 16449). That notice explained that the Board also planned to amend TSP regulations to permit participants who are age 50 or older to make catch-up TSP contributions. The notice also proposed additional changes to the TSP regulations to accommodate further the operation of the new record keeping system.

On June 13, 2003, the Board published an interim rule with request for comments in the **Federal Register** (68 FR 35492). The interim rule adopted the June 25, 2002, proposed rule with the changes discussed in the April 4 notice.

The Board received no comment on the proposed rule, the notice of proposed rulemaking, or the interim rule. Accordingly, the Board is adopting the interim rule as a final rule with several minor changes. These changes are described below.

Part 1640

Interim § 1640.6 requires the TSP to mail quarterly account statements and twice-yearly investment fund information to each participant, unless the participant elects to receive that information via the TSP Web site. The Board has determined that it is more cost effective to furnish account and investment fund information to the 3.2 million TSP participants by posting it on the TSP Web site and to mail costly paper copies of that information only to participants who request them. Therefore, final § 1640.6 establishes the TSP Web site as the primary source for TSP account statements and investment fund information.

Part 1650

A participant can qualify for a hardship withdrawal if his or her monthly income is insufficient to pay monthly expenses or the participant cannot pay certain specified extraordinary expenses. Interim § 1650.32(f) states that a participant cannot receive a hardship withdrawal while he or she is a debtor in a chapter 13 bankruptcy action. The Board adopted this policy because the bankruptcy court establishes a plan for a chapter 13 debtor to repay creditors while preserving sufficient monthly income for the debtor's support. However, a participant who is a chapter 13 debtor is not necessarily protected from hardship based on an extraordinary expense. Therefore, final § 1650.32(f) provides that a participant cannot receive a hardship withdrawal based solely on negative monthly cash flow while he or she is a debtor in a chapter 13 bankruptcy action.

Parts 1651 and 1653

Parts 1651 and 1653 concern the payment of death benefits and court ordered payments to TSP beneficiaries. When the TSP informs a beneficiary that he or she will receive a payment from the TSP, it also provides each beneficiary with information concerning TSP payment options, the tax treatment of a payment from the TSP and the forms the beneficiary needs to elect tax withholding, electronic funds transfer, or a transfer of the payment to an individual retirement account or eligible employer plan. The TSP schedules the payment to occur 60 days after the information and forms are mailed to the beneficiary. If the TSP does not receive any of the election forms from the beneficiary by the scheduled payment date, or if the beneficiary does not request additional time to complete the forms, the TSP pays the beneficiary directly by United States Treasury check.

The TSP expects a beneficiary to review the tax and payment information, and return, in a timely manner, the appropriate forms to the TSP to request additional tax withholding or to elect a payment option. Therefore, if the TSP pays a beneficiary directly, he or she cannot return the funds to the TSP with an untimely request to reissue the payment in a different form. The current TSP regulations do not inform participants of this policy; therefore, the final rule explains that a beneficiary cannot return a properly paid court order or death benefit payment, once issued, to the TSP.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees and former employees of the Federal government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104–4, section 201, 109 Stat. 48, 64, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Board submitted a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. These rules are not major rules as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Parts 1600, 1601, 1603, 1606, 1645, 1650, 1651, 1653, 1690

Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Parts 1604, 1655

Employee benefit plans, Government employees, Military personnel, Pensions, Retirement.

5 CFR Part 1605

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

5 CFR Part 1640

Employee benefit plans, Government employees, Pensions, Reporting and recordkeeping requirements, Retirement.

Gary A. Amelio,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons set out in the preamble, the Executive Director of the Federal Retirement Thrift Investment Board adopts as a final rule the interim rule amending 5 CFR parts 1600, 1601, 1603, 1604, 1605, 1606, 1640, 1645, 1560, 1651, 1653, 1655 and 1690, which was published at 68 FR 35492 on June 13, 2003, with the following changes:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 1. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5) and (c)(1).

■ 2. Amend § 1605.2 by removing "after December 31, 2000" from paragraph (b)(1) and adding in its place "on or after January 1, 2000".

■ 3. Amend § 1605.12 as follows:

■ a. By removing "after December 31, 2000" from paragraphs (a) and (c)(1) and adding in its place "on or after January 1, 2000".

■ b. By removing "on or before December 31, 2000" from paragraph (a) and adding in its place "before January 1, 2000".

■ 4. Amend § 1605.13 as follows:

■ a. By removing "after December 31, 2000" from paragraph (b)(3)(i) and adding in its place "on or after January 1, 2000".

■ b. By removing "on or before December 31, 2000" from paragraph (b)(3)(ii) and adding in its place "before January 1, 2000".

■ 5. Amend § 1605.14 as follows:

■ a. By removing "after December 31, 2000" from paragraph (a)(1) and adding in its place "on or after January 1, 2000".

■ b. By removing "on or before December 31, 2000" from paragraph (a)(1) and adding in its place "before January 1, 2000".

PART 1640—PERIODIC PARTICIPANT STATEMENTS

■ 6. The authority citation for Part 1640 continues to read as follows:

Authority: 5 U.S.C. 8439(c)(1) and (c)(2), 5 U.S.C. 8474(b)(5) and (c)(1).

■ 7. Revise § 1640.6 to read as follows:

§ 1640.6 Methods of providing information.

The TSP will furnish the information described in this part to participants by making it available on the TSP Web site. A participant can request paper copies of that information from the TSP by calling the ThriftLine, submitting a request through the TSP Web site, or by writing to the TSP record keeper.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 8. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

Subpart D—In-Service Withdrawals

■ 9. Amend § 1650.32 by revising paragraph (f) to read as follows:

§ 1650.32 Financial hardship withdrawals.

* * * * *

(f) A participant is not eligible for an in-service hardship withdrawal based solely on monthly negative cash flow (as described in paragraph (b)(1) of this section) during the time he or she has pending a petition in bankruptcy under Chapter 13 of the Bankruptcy Code (11 U.S.C. chapter 13).

PART 1651—DEATH BENEFITS

■ 10. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 11. Amend § 1651.14 by adding a new paragraph (h) to read as follows:

§ 1651.14 How payment is made.

* * * * *

(h) A properly paid death benefit payment cannot be returned to the TSP.

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 12. The authority citation for Part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(b), 8437(e)(3), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—Retirement Benefits Court Orders

■ 13. Amend § 1653.5 by adding a new paragraph (l) after paragraph (k) to read as follows:

§ 1653.5 Payment.

* * * * *

(l) A properly paid court order payment cannot be returned to the TSP.

PART 1655—LOAN PROGRAM

■ 14. The authority citation for Part 1655 continues to read as follows:

Authority: 5 U.S.C. 8433(g) and 8474.

■ 15. Amend § 1655.15 by removing the word "because" from paragraph (a)(7) and adding in its place the word "became".

■ 16. Amend § 1655.18 by removing the citation "1650.64 and 1650.65" from paragraph (c) and adding in its place the citation "part 1650, subpart G".

[FR Doc. 03–31516 Filed 12–22–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Tuesday,
December 23, 2003

Part IX

The President

Presidential Determination No. 2004–10 of December 6, 2003

Presidential Determination No. 2004–11 of December 8, 2003

Presidential Determination No. 2004–12 of December 9, 2003

Presidential Determination No. 2004–14 of December 11, 2003

Proclamation 7745—Wright Brothers Day, 2003

Executive Order 13321—Appointments During National Emergency

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Federal Register
Vol. 68, No. 246
Tuesday, December 23, 2003

Presidential Documents

Title 3—

The President

Presidential Determination No. 2004–10 of December 6, 2003

Presidential Determination on Waiver of Conditions on Obligation and Expenditure of Funds for Planning, Design, and Construction of a Chemical Weapons Destruction Facility in Russia

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 1306 of the Department of Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) (the "Act"), I hereby certify that waiving the conditions described in section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65) is important to the national security interests of the United States, and include herein, for submission to the Congress, the statement, justification, and plan described in section 1306 of the Act.

You are authorized and directed to transmit this certification, including the statement, justification, and plan to the Congress and to arrange for its publication of this determination in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 6, 2003.

[FR Doc. 03–31589
Filed 12–22–03; 8:45 am]
Billing code 4710–10–P

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Presidential Documents

Presidential Determination No. 2004–11 of December 8, 2003

Determination Consistent with Section 620(q) of the Foreign Assistance Act of 1961, as amended, and Section 512 of the FY 2002 and 2003 Foreign Operations, Export Financing, and Related Programs Appropriations Acts

Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[, and] the Administrator, U.S. Agency for International Development

Consistent with the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended, (22 U.S.C. 2370) and section 512 of the FY 2002 and 2003 Foreign Operations, Export Financing, and Related Programs Appropriations Acts, (Public Law 107–115 and Public Law 108–7), I hereby determine that the furnishing of assistance to Liberia is in the national interest of the United States and waive, with respect to that country, the application of section 620(q) of the Foreign Assistance Act and section 512 of the FY 2002 and 2003 Foreign Operations, Export Financing, and Related Programs Appropriations Acts.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 8, 2003.

[FR Doc. 03–31590
Filed 12–22–03; 8:45 am]
Billing code 4710–10–P

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Presidential Documents

Presidential Determination No. 2004–12 of December 9, 2003

Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Consistent with the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the "Act"), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.

THE WHITE HOUSE,
Washington, December 9, 2003.

Presidential Documents

Presidential Determination No. 2004–14 of December 11, 2003

Imposition and Waiver of Sanctions Under Section 604 of the FY 2003 Foreign Relations Authorization Act (Public Law 107–228)

Memorandum for the Secretary of State

Consistent with the authority contained in section 604 of the FY 2003 Foreign Relations Authorization Act (Public Law 107–228) (the "Act"), and with reference to the determinations set out in the report to the Congress transmitted herewith, consistent with section 603 of that Act, regarding noncompliance by the PLO and the Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604(a)(2) "Downgrade in Status of the PLO Office in the United States." This sanction is imposed for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later.

You are authorized and directed to transmit to the appropriate congressional committees the report described in section 603 of the Act.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive that sanction, pursuant to section 604 of the Act. This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 11, 2003.

[FR Doc. 03–31592
Filed 12–22–03; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Proclamation 7745 of December 17, 2003

Wright Brothers Day, 2003

By the President of the United States of America

A Proclamation

A spirit of exploration and discovery has been a part of the American character since our founding days. Orville and Wilbur Wright exemplified this spirit when they made the dream of human flight a reality on December 17, 1903. On Wright Brothers Day, we honor the vision of these bicycle mechanics from Dayton, Ohio, and celebrate the centennial of manned, powered flight.

One hundred years ago, the Wright brothers changed our world with their 12-second, 120-foot flight in North Carolina. Their achievement inspired other aviation pioneers and marked the beginning of a new era of freedom. Since that first flight, aviation and aerospace technology has advanced at a remarkable pace, allowing us to fly across oceans, break the sound barrier, orbit the Earth, land on the moon, and study our universe in a way our ancestors could not have imagined. Each new generation of engineers and other inventors, following in the Wright Brothers' footsteps, continues to move the technology of flight further.

Today, air transportation touches the lives of people throughout the United States, and helps unite the American people. Air transportation brings families and friends together, delivers aid to those in need, and facilitates industry and commerce.

As we look to the future, we remember the extraordinary accomplishments of the Wright Brothers. Their determination and innovation continue to inspire us as we embark on the second century of flight.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 143) as amended, has designated December 17 of each year as "Wright Brothers Day" and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim December 17, 2003, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03–31593
Filed 12–22–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13321 of December 17, 2003

Appointments During National Emergency

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to further respond to the national emergency I declared in Proclamation 7463 of September 14, 2001, I hereby order as follows:

Section 1. *Emergency Appointments Authority.* The emergency appointments authority at section 603 of title 10, United States Code, is invoked and made available to the Secretary of Defense in accordance with the terms of that statute and of Executive Order 12396 of December 9, 1982.

Sec. 2. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any person.

Sec. 3. *Administration.* This order shall be transmitted to the Congress and published in the **Federal Register**.

THE WHITE HOUSE,
December 17, 2003.

[FR Doc. 03-31594
Filed 12-22-03; 8:45 am]
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Veterans Benefits Act of 2003 (Dec. 16, 2003; 117 Stat. 2651)

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Making further continuing appropriations for the fiscal year 2004, and for other purposes. (Dec. 16, 2003; 117 Stat. 2684)

S. 811/P.L. 108–186

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Rules and Regulations

Federal Register
Vol. 68, No. 247
Wednesday, December 24, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Treasury

12 CFR Part 3

[Docket No. 03–24]

RIN 1557–AB97

Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations; Real Estate Lending and Appraisals

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule; technical correction.

SUMMARY: The OCC published in the **Federal Register** of December 17, 2003 (68 FR 70122), a final rule implementing authority provided to national banks by sections 1204, 1205, and 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). This document makes technical corrections to that final rule.

EFFECTIVE DATE: January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Andra Shuster, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–31093, published on December 17, 2003 (68 FR 70131), make the following corrections:

Appendix A to Part 3 [Corrected]

1. On page 70128, in the third column, instruction 2.b. is revised to read as follows:

b. In section 4, amend paragraph (a)(11)(ii) by removing "section 4(a)(8)(i) and (ii)" and adding in its place "section 4(a)(9)(i) and (ii)."

Dated: December 17, 2003.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[FR Doc. 03–31651 Filed 12–23–03; 8:45 am]

BILLING CODE 4810–33–M

FEDERAL RESERVE SYSTEM

12 CFR Part 222

FEDERAL TRADE COMMISSION

16 CFR Part 602

[Regulation V; Docket No. R–1172]

RIN 3084–AA94 Project No. P044804

Effective Dates for the Fair and Accurate Credit Transactions Act of 2003

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (FTC).

ACTION: Joint interim final rules.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) requires the Board and the FTC (the Agencies) jointly to adopt rules establishing the effective dates for provisions of the Act that do not contain specific effective dates. The Agencies are taking two related actions to comply with this requirement. In this action, the Agencies are jointly adopting interim final rules that establish December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act (FCRA) and state laws and provisions that authorize rulemakings or other implementing action by various agencies. In the second action, published elsewhere in today's **Federal Register**, the Agencies jointly propose rules establishing a schedule of effective dates for other provisions of the FACT Act.

DATES: Comments must be submitted on or before January 12, 2004. The Agencies' interim final rules are effective on December 31, 2003.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to either of the Agencies and need not send comments (or copies) to both of the Agencies. Because paper mail in the Washington area and at the Agencies is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title "Interim Final Rules for the FACT Act" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

Board of Governors of the Federal Reserve System: Comments should refer to Docket No. R–1172 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

Federal Trade Commission: Comments should refer to "Interim Final Rules for the FACT Act, Project No. P044804." Comments filed in paper form should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) should be sent to: *FACTAdates@ftc.gov*. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] Regardless of the form in which they are filed, the Commission will consider all timely comments, and will make the comments available (with confidential material redacted) for public inspection and copying at the Commission's principal office and on the Commission Web site at *http://www.ftc.gov*. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site.

FOR FURTHER INFORMATION CONTACT:

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[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Board: Thomas E. Scanlon, Counsel, Legal Division, (202) 452–3594; David A. Stein, Counsel, Minh-Duc T. Le, Ky Tran-Trong, Senior Attorneys, Krista P. DeLargy, Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

FTC: Christopher Keller or Katherine Armstrong, Attorneys, Division of Financial Practices, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Congress enacted the FACT Act, which the President signed into law on December 4, 2003. Pub. L. 108–159, 117 Stat. 1952. In general, the Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information that is contained in a consumer report. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the "Financial Literacy and Education Improvement Act") creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

The Act includes effective dates for many of its sections that vary to take account of the need for rulemaking, implementation efforts by industry, and other policy concerns. Section 3 of the FACT Act requires the Agencies to prescribe joint regulations establishing an effective date for each provision of the Act for which the Act itself does not specifically provide an effective date. The FACT Act requires that the Agencies jointly adopt final rules establishing the effective dates within two months of the date of enactment of the Act. The Act also provides that each of these effective dates must be "as early as possible, while allowing a reasonable time for the implementation" of that provision, but in no case later than ten months after the date of issuance of the Agencies' joint final rules establishing the effective dates for the Act (117 Stat. 1953).

The Agencies are jointly adopting these interim final rules that establish December 31, 2003, as the effective date for section 711 and certain other provisions of the Act that establish the relationship between the FCRA and state laws, as well as for the provisions that authorize rulemaking and other agency action under the FACT Act. In a separate notice published in conjunction with this action, the Agencies are jointly proposing regulations that establish effective dates for the other applicable provisions of the FACT Act. As noted above, the Agencies must complete these effective date rules by February 4, 2004.

The Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) generally requires an agency to publish a notice of a proposed rule and afford interested persons an opportunity to participate in the rulemaking by providing comments prior to promulgation of the rule. The requirement for providing notice of the proposed rule and an opportunity for public comment do not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Correspondingly, a rule may not be made effective less than thirty days after publication, unless as otherwise provided by the agency for good cause found and published with the rule.[2]

The current FCRA contains provisions that preempt state laws in seven areas governed by the FCRA. Under section 624(d)(2) of the FCRA, these provisions expire on January 1, 2004.[3] One of the central aims of the FACT Act is to eliminate this so-called sunset provision and make permanent the current preemption provisions and add others.[4] In these interim final rules, the Agencies are establishing December 31, 2003, as the effective date for section 711 of the FACT Act, which amends section 624(d)(2) of the FCRA, as well as for sections 151(a)(2), 212(e), 214(c), and 311(b) of the FACT Act, each of which similarly determines the relationship of state laws to areas governed by the FCRA.

The Agencies believe that there is good cause for adopting these rules as interim final rules effective without advance public comment or delay. As noted above, the current preemption provisions in the FCRA expire on January 1, 2004. Delaying final action on these provisions of the FACT Act would undermine the purpose of these provisions and is likely to provoke substantial confusion about the applicability of some state laws in areas that Congress has determined should be governed by uniform nationwide standards. Adopting these rules in final form on an interim basis also will have the effect of preserving the current state of the law while comment is received. Implementing these interim final rules is consistent with the statutory directive to act quickly and to "establish effective dates that are as early as possible."

Certain provisions of the Act require one or more agencies to undertake an action or rulemaking within a specified period of time after enactment of the Act. For example, section 213(b) states that the Commission's regulations implementing that section "shall be issued in final form not later than 1 year after the date of enactment of this Act." The Agencies have determined that no joint regulations under section 3 of the FACT Act are required to make these provisions effective. The Agencies believe that, in these cases, Congress has specified the date of enactment as the lawful effective date because that is the predicate for mandating that an agency action be performed within a specified period of time after the date of enactment.

There are, however, several sections of the Act that do not specify the period for rulemaking or other action. To address this, the Agencies' interim final rules establish December 31, 2003, as the effective date for each provision of the FACT Act that authorizes an agency, without establishing an implementation date, to issue a regulation or to take other action to implement the Act or the applicable provision of the FCRA, as amended by the FACT Act. The Agencies believe that there is good cause for adopting these rules in final form on an interim basis without advance public comment or delay. Establishing an early effective date for these regulatory provisions would allow the agencies to begin immediately to perform their responsibilities under the FACT Act. The Agencies note that this section of the interim final rules applies only to the provisions of the FACT Act without effective dates that relate to an agency's authority to issue a regulation or to take other action to implement the Act. These interim final rules do not affect the substantive provisions of the FACT Act implemented by an agency rule. The substantive provisions of the Act become effective as provided in the Act, as provided in the Agencies joint effective date rules, or as provided by the substantive rules promulgated by the agencies, as appropriate.

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[2] 5 U.S.C. 553(b)(3)(B) and (d)(3).

[3] 15 U.S.C. 1681t(d)(2).

[4] See, *e.g.*, S. Rep. No. 108–166 (2003) at 10–11, 25.

Accordingly, the Agencies find good cause for adopting these rules as interim final rules effective on December 31, 2003.

To allow for public participation and assure that these interim rules are appropriate, the Agencies invite comment on the interim final rules and on the Agencies' findings. Based on comments received, the Agencies may adjust the effective date of a section governed by the interim final rules as necessary.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Agencies have reviewed the interim final rules. (The Board has done so under authority delegated to the Board by the Office of Management and Budget.) The rules contain no collections of information pursuant to the Paperwork Reduction Act.

Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(5)

Solicitation of Comments on Use of Plain Language

Section 722(a) of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[5] In light of this requirement, the Board has sought to present the provisions of the joint interim final rule in a simple and straightforward manner. The Board invites your comments on how to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

List of Subjects

12 CFR Part 222

Banks, banking, Holding companies, state member banks.

16 CFR Part 602

Consumer reports, Consumer reporting agencies, Credit, Trade practices.

12 CFR Chapter II—Federal Reserve System

Authority and Issuance

For the reasons set forth in the preamble, the Board adds a new 12 CFR part 222 to read as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

Authority: 15 U.S.C. 1681s; Sec 3, Pub. L. 108–159, 117 Stat. 1953.

Subpart A—General Provisions

§ 222.1 Purpose, scope, and effective dates.

(a)–(b) [Reserved]

(c) *Effective dates.* The applicable provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Pub. L. 108–159, 117 Stat. 1952, shall be effective in accordance with the following schedule:

(1) *Provisions effective December 31, 2003.*

(i) Sections 151(a)(2), 212(e), 214(c), 311(b), and 711, concerning the relation to state laws; and

(ii) Each of the provisions of the FACT Act that authorizes an agency to issue a regulation or to take other action to implement the applicable provision of the FACT Act or the applicable provision of the Fair Credit Reporting Act, as amended by the FACT Act, but only with respect to that agency's authority to propose and adopt the implementing regulation or to take such other action.

(2) [Reserved]

16 CFR Chapter I—Federal Trade Commission

Authority and Issuance

For the reasons set forth in the preamble, the FTC adds a new 16 CFR part 602 to read as follows:

PART 602—FAIR CREDIT REPORTING

Authority: 15 U.S.C. 1681s; Sec. 3, Pub. L. 108–159, 117 Stat. 1953.

Subpart A—General Provisions

§ 602.1 Purpose, scope, and effective dates.

(a)–(b) [Reserved]

(c) *Effective dates.* The applicable provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Pub. L. 108–159, 117 Stat. 1952, shall be effective in accordance with the following schedule:

(1) *Provisions effective December 31, 2003.*

(i) Sections 151(a)(2), 212(e), 214(c), 311(b), and 711, concerning the relation to state laws; and

(ii) Each of the provisions of the FACT Act that authorizes an agency to issue a regulation or to take other action to implement the applicable provision of the FACT Act or the applicable provision of the Fair Credit Reporting Act, as amended by the FACT Act, but only with respect to that agency's authority to propose and adopt the implementing regulation or to take such other action.

(2) [Reserved]

By order of the Board of Governors of the Federal Reserve System, December 16, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated: December 15, 2003.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–31359 Filed 12–23–03; 8:45 am]

BILLING CODE 6210–01–P, 6750–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. NE126; Special Conditions No. 33–005–SC]

Special Conditions: General Electric Aircraft Engines, Model CT7–8A, –8A5, –8B, –8B5, –8E, –8E5, –8F, and –8F5 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: The FAA is issuing special conditions for the General Electric Aircraft Engines (GEAE) models CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, CT7–8F5, engines. On August 2, 2000, the FAA issued Special Conditions (SC) No. 33–003–SC for the GEAE CT7–6e, and CT7–8, turboshaft engines. The CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, CT7–8F5 engines will have a novel or unusual rated 30-minute power, and rated continuous one engine inoperative (OEI) power. The

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[5] Pub. L. 106–102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.

applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. This document contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 31, 2003. The FAA must receive comments on or before January 31, 2004.

ADDRESSES: Mail or deliver comments on these special conditions to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket NE126. You must identify the docket number NE126 at the beginning of your comments, and you should submit two copies of your comments. You may review the public docket containing comments to these special conditions in person at the Office of the Regional Counsel between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chung Hsieh, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (781) 238–7115; fax (781) 238–7199; e-mail *chung.hsieh@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay the issuance of the design approval, and, as a result delay the delivery of aircraft with these engines installed. In addition, the substance of these special conditions has been subject to the public comment process on a prior occasion with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective December 31, 2003; however, the FAA invites interested parties to submit comments on the special conditions. Comments should identify the Rules Docket and special conditions number and be submitted in duplicate to the address specified above. The FAA will consider all comments received by the closing date. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NE126." The postcard will be date-stamped and returned to the commenter.

Background

On March 12, 2003, General Electric Aircraft Engines (GEAE) applied for an amendment to Type Certificate No. E8NE to include the new model CT7–8A turboshaft engine. The application was subsequently amended to include the CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, and CT7–8F5 engines. These engine models, which are derivatives of the CT7–8 currently approved under Type Certificate (TC) No. E8NE, will have the same engine rating structure as the CT7–8 model except that they will include rated continuous one engine inoperative (OEI) power instead of rated 30-minute OEI power. These engine models will be rated at 30-second OEI, 2-minute OEI, continuous OEI, 30-minute, takeoff, and maximum continuous ratings. The requirements in the existing regulations do not contain adequate or appropriate safety standards of this new and unusual engine rating structure.

The rated 30-minute power is the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established under part 33 for periods of use no longer than 30 minutes each. This rating power would provide for rotorcraft hovering operations at a power level greater than maximum continuous power. The certification requirements have been defined around the worst case scenario of unrestricted periods of use, up to 30 minutes each, in one flight. Therefore, the total accumulated time for endurance testing of 30-minute periods, at rated 30-minute power for each period, must be 25 hours for certification. However, when the CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, or CT7–8F5 engine models have a rated continuous OEI power equal to or higher than rated 30-minute power, the test run time of 25 hours under § 33.87(d) may be credited to satisfy the required running time of 25 hours at rated 30-minute power.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, GEAE must show that the CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, CT7–8F5 turboshaft engines meet the applicable provisions of the regulations incorporated by reference in TC No. E8NE or the applicable regulations in effect on the date of application for the change to the CT7–8. The regulations incorporated by reference in the TC are commonly referred to as the "original type certification basis." The regulations incorporated by reference in TC No. E8NE are part 33, effective February 1, 1965, as amended by amendments 33–1 through 33–19 and Special Conditions Numbers 33–002–SC and 33–003–SC.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 33) do not contain adequate or appropriate safety standards for the CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, CT7–8F5 engines because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49, as required by 14 CFR 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The GEAE CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, and CT7–8F5 turboshaft engines will incorporate the following novel or unusual design feature: rated 30-minute power. The power available for rotorcraft hovering to perform search and rescue or similar missions is limited to the maximum continuous rating power under the current part 33 requirements. The rated 30-minute power will provide a higher power level than currently available for use up to 30 minutes at any time between takeoff and landing during any flight. This new rating will enhance rotorcraft safety through the availability of increased power for hovering operations calling for greater than maximum continuous power.

Applicability

As discussed above, these special conditions apply to the CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, and CT7–8F5 turboshaft engines. Should GEAE apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on these models of engines. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the engine.

The substance of these special conditions has been subjected to the notice and comment period in one prior instance and has been derived without substantive change from those previously issued. The FAA has determined that prior public notice and comment are unnecessary and that good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective December 31, 2003. The FAA is, however, requesting comments to allow interested parties to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for GEAE model CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, and CT7–8F5 turboshaft engines. The type certificate basis for the CT7–8A, CT7–8A5, CT7–8B, CT7–8B5, CT7–8E, CT7–8E5, CT7–8F, and CT7–8F5 engines is part 33, effective February 1, 1965, as amended by amendments 33–1 through 33–19 and Special Conditions Numbers 33–002–SC and 33–005–SC.

(a) *Section 33.4, Instructions for Continued Airworthiness (ICA).* In addition to the requirements of § 33.4, the ICA procedures must:

(1) Ensure that the engine deterioration in service will not exceed the level shown in certification using the rated 30-minute power.

(2) Be included in the airworthiness limitations section of the ICA.

(b) *Section 33.7, Engine Ratings and Operating Limitations.* In addition to the ratings provided in § 33.7, a rated 30-minute power is available. The rated 30-minute power is the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established under part 33 and limited in use to periods of not over 30 minutes each.

(c) *Section 33.87, Endurance Test.* Unless already substantiated by the tests run under § 33.87(d), in addition to the requirements of § 33.87, conduct the following test:

Rated 30-minute power: One hour and ten minutes at alternate 5-minute periods at maximum continuous power, and 30-minute periods at rated 30-minute power during the 25 six-hour endurance test cycles.

Issued in Burlington, Massachusetts, on December 17, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–31734 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16359; Airspace Docket No. 03–ASO–18]

Establishment of Class D Airspace; Hilton Head Island, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Hilton Head Island, SC. A federal contract tower with a weather reporting system has been constructed at the Hilton Head Airport. Therefore, the airport meets criteria for Class D Airspace. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the airport.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On November 14, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Hilton Head Island, SC, (68 FR 64574). This action provides adequate Class D airspace for IFR operations at Hilton Head Airport. Designations for Class D are published in FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Hilton Head Island, SC.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO SC D Hilton Head Island, SC [NEW]

Hilton Head Airport, SC
(Lat. 32°13′28″ N, long. 80°41′51″ W)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 3.9-mile radius of the Hilton Head Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on December 12, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–31743 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15465; Airspace Docket No. 03–AGL–11]

Modification of Class E Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Chicago, IL. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for Aurora Municipal Airport, Chicago, IL. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would add an extension to the controlled airspace for Aurora Municipal Airport.

EFFECTIVE DATE: 0901 UTC, April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 29, 3003, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Zanesville, OH (68 FR 55915). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as an extension to a class D surface area are published in paragraph 6004, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Chicago, IL to accommodate aircraft executing instrument flight procedures into and out of Aurora Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6004 Class E Airspace Areas designated as an extension to a Class D surface area

* * * * *

AGL IL E4 Chicago, Aurora Municipal Airport, IL [Revised]

Chicago, Aurora Municipal Airport, IL
(Lat. 41°46′19″ N., long. 88°28′32″ W.)
DuPage VOR/DME
(Lat. 41°53′25″ N., long. 88°21′01″ W.)
I–ARR Localizer
(Lat. 41°46′14″ N., long. 88°27′32″ W.)

That airspace extending upward from the surface within 1.3 miles each side of the DuPage VOR/DME 216° radial extending from the 4.2-mile radius of the Aurora Municipal Airport to 6.6 miles northeast of the airport and within 1.4 miles each side of the I–ARR Localizer west course extending from the 4.2-mile radius of the Aurora Municipal Airport to 6.7 miles west of the airport. This Class E airspace is effective during the specific date and time established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois, on December 10, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–31739 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15834; Airspace Docket No. 03–AGL–13]

Modification of Class E Airspace; Wilmington Clinton Field, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Wilmington Clinton Field, OH. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) has been developed for Wilmington Clinton Field, OH. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action increases the area of the existing controlled airspace at Wilmington Clinton Field.

EFFECTIVE DATE: 0901 UTC, April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 29, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Zanesville, OH (68 FR 55913). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Wilmington Clinton Field, OH, to accommodate aircraft executing instrument flight procedures into and out of Wilmington Clinton Field. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL OH E5 Wilmington Clinton Field, OH [Revised]

Wilmington Clinton Field, OH
(Lat. 39°30′10″ N., long. 83°51′47″ W.)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of Wilmington Clinton Field, excluding that airspace within the Wilmington, OH, and Dayton, Greene County Airport, OH Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois, on December 10, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–31738 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15877; Airspace Docket No. 03–AGL–15]

Establishment of Class E Airspace; Canby, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Canby, MN. An area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) has been developed for Myers Field, Canby, MN. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes an area of controlled airspace for Myers Field.

EFFECTIVE DATE: 0901 UTC, April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 29, 2003, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Canby, MN (68 FR 55914). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain

Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Canby, MN, to accommodate aircraft executing instrument flight procedures into and out of Myers Field. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Areas extending upward from 700 Feet or more above the surface of the earth

* * * * *

AGL MN E5 Canby, MN [New]

Myers Field, MN

(Lat. 44°43′41″ N., long. 96°15′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Myers Field.

* * * * *

Issued in Des Plaines, Illinois, on December 10, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–31737 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16119; Airspace Docket No. 03–AEA–13]

Amendment of Class E Airspace; Erie, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Erie, PA. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Life Star Base Heliport, Harbor Creek, PA, under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 14, 2003, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Erie, PA was published in the **Federal Register** (68 FR 64575–64576). The proposed action would provide additional controlled airspace to accommodate a Standard Instrument Approach Procedure (SIAP), based on area navigation (RNAV), to the Life Star Base Heliport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before December 15, 2003. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of Life Star Base Heliport, Harbor Creek, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Erie, PA (Revised)

Erie International Tom Ridge Field Airport, PA
(Lat. 42°04′55″ N., long. 80°10′34″ W.)
Life Star Base Heliport
Lat. 42°10′19″ N., long. 79°56′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Erie International/Tom Ridge Field Airport and within 4.4 miles each side of the 054° bearing from the airport extending from the 6.7-mile radius to 14 miles northeast of the airport and within a 6-mile radius of Life Star Base Heliport.

* * * * *

Issued in Jamaica, New York, on December 16, 2003.

John G. McCartney.

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31732 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16120; Airspace Docket No. 03–AEA–12]

Amendment of Class E Airspace; Jamestown, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Jamestown, NY. Controlled airspace extending upward form 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into WCA Hospital Heliport, Jamestown, NY under Instrument Flight Rules (IFR).

DATE: 0901 UTC April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 12, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Jamestown, NY was published in the **Federal Register** (68 FR 64008–64009). The proposed action would provide additional controlled airspace to Standard Instrument Approach Procedure (SIAP), based on area navigation (RNAV), to the WCA Hospital Heliport, Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before December 12, 2003. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of WCA Hospital Heliport, Jamestown, NY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA NY E5, Jamestown, NY [Revised]

Chautauqua County/Jamestown Airport, Jamestown, NY
(Lat. 42°09′12″ N., long. 79°15′29″ W.)
WCA Hospital Heliport
(Lat. 42°05′24″ N., long. 79°13′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Chautauqua County/Jamestown Airport and within 2.2 miles each side of the Runway 31 extended centerline extending from the 6.6-mile radius to 7 miles northwest of the runway and within 2.2 miles each side of Runway 13 extended centerline extending from the 6.6-mile radius to 7.9 miles southeast of the runway and within a 6-mile radius of WCA Hospital Heliport.

* * * * *

Dated: Issued in Jamaica, New York, on December 16, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31733 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16220; Airspace Docket No. 03–AEA–15]

Amendment of Class E Airspace; Honesdale, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Honesdale, PA. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Spring Hill Airport, Sterling, PA under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On November 6, 2003, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending Class E airspace extending upward from 700 feet above the surface of Spring Hill Airport, Sterling, PA was published in the **Federal Register** (68 FR 62759–62760). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before December 5, 2003. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations within a 6-mile radius of Spring Hill Airport, Sterling, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, Honesdale, PA [Revised]

Cherry Ridge Airport, Honesdale, PA
(Lat. 41°30′55″ N., long 75°15′05″ W.)
Spring Hill Airport, Sterling, PA
(Lat. 41°20′50″ N., long. 75°24′57″ W.)
Wilkes-Barre VORTAC
(Lat. 41°16′22″ N., long. 75°41′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Cherry Ridge Airport and within 4.4 miles each side of the Wilkes-Barre VORTAC 054° radial extending from the 6.3-mile radius to 8.7 miles northeast of the VORTAC and within a 6-mile radius of Spring Hill Airport.

* * * * *

Issued in Jamaica, New York, on December 9, 2003.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03–31735 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15876; Airspace Docket No. 03–AGL–14]

Modification of Class E Airspace; Zanesville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E Airspace at Zanesville, OH. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) has been developed for Zanesville Municipal Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action increases the area of the existing controlled airspace at Zanesville Municipal Airport.

EFFECTIVE DATE: 0901 UTC, April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, September 29, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Zanesville, OH (69 FR 55911). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Zanesville, OH, to accommodate aircraft executing instrument flight procedures into and out of Zanesville Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL OH E5 Zanesville, OH [Revised]

Zanesville Municipal Airport, OH
(Lat. 39°56′40″ N., long. 81°53′32″ W.)
Zanesville VOR/DME
(Lat. 39°56′27″ N., long. 83°53′33″ W.)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Zanesville Municipal Airport and within 7 miles east and 4.4 miles west of the Zanesville VOR/DME 220° radial extending from the VOR/DME to 10.5 miles southwest of the VOR/DME, excluding that airspace within the Cambridge, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on December 10, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–31736 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–02–035]

RIN 1626–AA09

Drawbridge Operation Regulation Change, St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2, Prescott, Wisconsin; U.S. 16–61 Bridge, Mile 0.3, Prescott, Wisconsin, the Union Pacific Railroad Bridge, Mile 17.3, Hudson, Wisconsin across the St. Croix River, and the S36 Highway Bridge at Stillwater, mile 23.4. This rule modifies the dates and hours requiring advanced notice for openings on each of the bridges. These changes are intended to reduce the number of hours that a drawtender is required to be on site at each of the bridges while maintaining satisfactory service to vessels navigating the area.

DATES: This rule is effective January 23, 2004.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–02–035 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Eighth Coast Guard District, Bridge Branch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 16, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation Change, St. Croix River, MN in the **Federal Register** (67 FR 18521). We received six letters commenting on the proposed rule. On March 25, 2003, we clarified a statement in the NPRM and reopened the comment period to receive additional comments (68 FR 14364). No comments were received during the additional comment period. On September 9, 2003, we published a Supplemental Notice of Proposed Rulemaking (SNPRM) (68 FR 53079) in which we amended the original proposed rule based on comments received in response to the April 16, 2002 NPRM. No additional comments were received in response to the SNPRM. No public hearing was requested, and none was held.

Background and Purpose

In accordance with 33 CFR 117.667, the draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2 at Prescott, Wisconsin, the U.S. 16–61 Bridge, Mile 0.3, at Prescott, Wisconsin and the Union Pacific Railroad Bridge, Mile 17.3, at Hudson, Wisconsin, currently open on signal; except that, from December 15 through March 31, the draws open on signal if at least 24-hours notice is given. Currently, the S36 Stillwater Highway Bridge, Mile 23.4 at Stillwater, Minnesota opens on signal at various times throughout the day from May 15 through October 15, and on signal from October 16 through May 14. The NPRM proposed to amend the regulations governing drawbridges across the St. Croix River by adding a notice requirement for bridge openings during the summer season. Specifically, the NPRM requiring that advance notice be given prior to 11 p.m. for openings between midnight and 7 a.m. from April 1 to October 15 for three of the four bridges.

The Burlington Northern Santa Fe Railroad, Mile 0.2 at Prescott initially requested a change to the regulation for the Burlington Northern Santa Fe Railroad, to open on signal from 7 a.m. to midnight and to open between midnight and 7 a.m., if the bridge was notified prior to 11 p.m. during the summer tourism months. Although the request was submitted by only one bridge owner, the approval would also impact the U.S. 16–61 Bridge and the Union Pacific Railroad Bridge. Therefore, the proposal was expanded to include these two bridges. The S36 Bridge at Stillwater is more remotely located than the other three bridges, and we have proposed a separate opening requirement for the S36 Bridge rather than including it with the other three bridges.

Discussion of Comments and Changes

The Coast Guard received no comment letters in response to the SNPRM. No changes will be made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of the Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Implementing the regulation will allow the owners of drawbridges to reduce the number of hours drawtenders are required to be on site due to a reduction in requests to open the drawbridges between midnight and 8 a.m. from 1 April to 31 October. Previously, these advance notification requirements were temporarily instated to facilitate maintenance on the bridges. During the maintenance periods, the bridge owners received no complaints from commercial or recreational vessel operators. Additionally, this has become the widely accepted method of voluntarily requesting bridge openings from local vessel operators during non-maintenance periods without complaint.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This Coast Guard identified local marinas as small entities that might be affected by this rule due to restricted access to the marinas during periods when drawtenders are not on site. These Entities were consulted prior to initiating this rulemaking process to minimize the economic impact that might result from this rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Promulgation of changes to drawbridge regulations have been found to not have significant effect on the human environment. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. Sec. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.667, paragraph (a) and paragraph (b), introductory text, are revised and a new paragraph (b)(3) is added to read as follows:

§ 117.667 St. Croix River.

(a) The draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2, the Prescott Highway Bridge, Mile 0.3, and the Hudson Railroad Bridge, Mile 17.3, shall operate as follows:

(1) From April 1 to October 31:

(i) 8 a.m. to midnight, the draws shall open on signal;

(ii) Midnight to 8 a.m., the draws shall open on signal if notification is made prior to 11 p.m.,

(2) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the Stillwater Highway Bridge, Mile 23.4, shall open on signal as follows:

* * *

(3) From October 16 through May 14, if at least 24 hours notice is given.

* * * * *

Dated: December 12, 2003.

R.F. Duncan,

Commander, 8th CG District.

[FR Doc. 03–31625 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–241]

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System Within the Ninth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; notice of approval of revised collection of information.

SUMMARY: On October 3, 2003, the Coast Guard published an interim final rule in the **Federal Register** that established a regulated navigation area (RNA) within all portions of the Illinois Waterway System located in the Ninth Coast Guard District and contained reporting requirements for barges loaded with certain dangerous cargoes. This document provides notice that the Office of Management and Budget has approved the revised collection of information contained in that interim rule.

DATES: OMB approved revised collection of information 1625–1505 on November 3, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding this document, or if you have questions on viewing or submitting material to the docket, write or call Commander (CDR) Michael Gardiner or Lieutenant (LT) Matthew Colmer, Project Managers for the Ninth Coast Guard District Commander, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, telephone (216) 902–6059.

SUPPLEMENTARY INFORMATION: On October 6, 2003, the Coast Guard published an interim final rule entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Illinois Waterway System Within the Ninth Coast Guard District" in the **Federal Register** (68 FR 57616). In the preamble of that interim rule, we stated that we would publish a separate notice when and if the Office of Management and Budget (OMB) approved the revised collection of information (1625–1505) contained in the rule (68 FR 57621). On November 3, 2003, OMB announced that they had approved this revised collection of information.

Dated: December 15, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–31624 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. 2003–T–030]

RIN 0651–AB45

Modification to Temporary Postponement of Electronic Filing and Payment Rules for Certain Madrid Protocol-related Rules

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; modification to suspension of applicability dates.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending, until November 2, 2004, a temporary postponement of those provisions of the Trademark Rules of Practice that require electronic transmission to the USPTO of applications for international registration, responses to irregularity notices, and subsequent designations submitted pursuant to the Madrid Protocol. The postponement was announced most recently in a document published in the **Federal Register** on November 7, 2003.

The USPTO is also extending a temporary suspension, announced in the same **Federal Register** document, of those provisions of the Rules of Practice that allow payment of fees charged by the International Bureau of the World Intellectual Property Organization (IB) to be submitted through the USPTO, and those provisions of the Trademark Rules of Practice that require that all fees for international trademark applications and subsequent designations be paid at the time of filing.

The extensions and postponements announced herein are procedural in nature and do not affect any substantive rights.

APPLICABILITY DATES: January 2, 2004, until November 2, 2004. The applicability dates for certain rules in 37 CFR parts 2 and 7, published September 26, 2003, and thereafter suspended until January 4, 2004, are hereby further suspended until November 2, 2004.

DATES: The applicability date for regulations at 37 CFR 2.190(a), 2.198(a)(1), 7.7(a) and (b), 7.11(a) introductory text and (a)(9), 7.14(e), 7.21(b) introductory text and (b)(7) is suspended until November 2, 2004.

FOR FURTHER INFORMATION CONTACT: Ari Leifman, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, extension 155, or by e-mail to ari.leifman@uspto.gov.

SUPPLEMENTARY INFORMATION:

Background

As set forth below, the USPTO is extending the postponement of the applicability date of those regulations that require use of electronic forms in connection with certain Madrid Protocol submissions *until November 2, 2004*. Additionally, the USPTO is likewise extending *to November 2, 2004*, the postponement of the applicability date of those regulations that require that international fees be paid concurrently with Madrid filings, and that these fees be paid through the USPTO.

The Madrid Protocol provides a system for obtaining an international trademark registration. The Madrid Protocol Implementation Act of 2002, Pub. L. 107–273, 116 Stat. 1758, 1913–1921 (MPIA) amends the Trademark Act of 1946 to implement the provisions of the Madrid Protocol in the United States.

On September 26, 2003, the USPTO published new regulations to implement the MPIA. 68 FR 55748, posted on the USPTO Web site at *http://www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf*. These regulations took effect on November 2, 2003. The regulations require that certain submissions that are made to the USPTO in connection with the Madrid Protocol be transmitted using the Trademark Electronic Application System (TEAS). Specifically, 37 CFR 7.11(a) requires that an international application be submitted through TEAS; 37 CFR 7.21(b) requires that a subsequent designation (a request that protection be extended to countries not identified in the original international application) be submitted through TEAS; and 37 CFR 7.14(e) requires that where the International Bureau of the World Intellectual Property Organization (IB) has issued a notice of irregularity to an international applicant, and the international applicant submits a response to that notice through the USPTO, the response must be transmitted through TEAS.

Madrid Submissions Must Be Prepared Using Paper

On October 24, 2003, the USPTO published a document in which it announced that it would permit international applications, responses to irregularity notices, and subsequent designations to be submitted on paper rather than through TEAS, for a temporary period of time. The document accordingly postponed the applicability of 37 CFR 7.11(a), 7.21(b), and 7.14(e), to the extent that those provisions require transmission through TEAS. The document further provided that this postponement would remain in effect until January 2, 2004.

Thereafter, on November 7, 2003, the USPTO published a second document in which it announced that the postponement remained in effect but was modified. The original postponement had provided that applicants could make their submission either on paper or through TEAS. However, the document of November 7, 2003, provided that all Madrid submissions *must* be made on paper. That modification was necessary, because technical difficulties had prevented the deployment of TEAS.

Some of these difficulties have not yet been resolved, and the TEAS forms cannot yet be posted. Therefore, the postponement of the applicability date of 37 CFR 7.11(a), 7.21(b), and 7.14(e) *is hereby extended to November 2, 2004*.

If the TEAS forms are posted while the extended postponement of the applicability dates of 37 CFR 7.11(a), 7.21(b), and 7.14(e) is still in effect, then applicants will be able to file international applications, responses to irregularity notices, and subsequent designations either on paper or through TEAS. Under any circumstances, there will be a transition period during which the USPTO will accept both electronic and paper submissions. This additional period will give applicants the flexibility and the opportunity to become comfortable with the electronic system when it becomes available.

International Fees Must Be Paid Directly to the IB

In addition to requiring that certain submissions that are made to the USPTO in connection with the Madrid Protocol be transmitted using TEAS, the Rules of Practice that took effect on November 2, 2003, also require that international application fees be paid at the time of submission. However, the document of November 7, 2003, temporarily suspended the applicability of those requirements, until January 4, 2004. Thus, the document suspended 37 CFR 7.11(a)(9), to the extent that it requires that international application fees for all classes and the fees for all designated Contracting Parties identified in an international application be paid at the time of submission. Likewise, the document suspended 37 CFR 7.21(b)(7), to the extent that it requires that all international fees for a subsequent designation be paid at the time of submission.

The document of November 7, 2003, further provided that (1) applicants who file Madrid submissions on paper must pay the USPTO certification fee at the time of submission, but must pay the international fees directly to the IB, and that (2) applicants who submit a subsequent designation on paper must pay the USPTO transmittal fee at the time of submission, but must pay the international fees directly to the IB. Additionally, the notice provided that applicants may pay the international fees to the IB either before or after submission of the international application or subsequent designation.

These provisions of the document of November 7, 2003, are hereby extended to November 2, 2004.

If the TEAS forms are posted while the postponement of the applicability dates of 37 CFR 7.11(a)(9) and 7.21(b)(7) remains in effect, then applicants who elect to use those forms will pay the international fees (1) at the time of submission, and (2) through the USPTO.

Applicants Should Utilize Madrid Forms Provided by the IB

Applicants making Madrid submissions should use forms provided by the IB for that purpose. These forms may be downloaded from the IB Web site *http://www.wipo.int/madrid/en/*. Please note that the IB will not process paper submissions that are not prepared using IB forms.

Applicants Should Mail Madrid Submissions to a Designated Address

Pursuant to 37 CFR 2.190(a), all trademark-related documents submitted on paper must be mailed to a designated USPTO address. However, the document of November 7, 2003, waived that rule with respect to international applications, subsequent designations, and responses to notices of irregularities that are filed on paper. The document further provided that all Madrid submissions made on paper should be mailed to the following address: Commissioner for Trademarks, P.O. Box 16471, Arlington, Virginia 22215–1471, Attn: MPU.

The Limited Waiver of 37 CFR 2.190(a) Is Hereby Extended to November 2, 2004

Please note that any trademark-related correspondence other than international applications, subsequent designations, and responses to irregularity notices that is sent to the above-identified address will not be accepted, and will be returned to the sender.

If a submission mailed to the above address pursuant to this document and to the document of November 7, 2003, is delivered by the Express Mail service of the United States Postal Service, the USPTO will deem that the date of receipt of the submission in the USPTO is the date the submission was deposited as Express Mail, provided that the submitter complies with the requirements set forth in 37 CFR 2.198.

Please note that the USPTO is not suspending those rules that require electronic filing of extensions of time to oppose and notices of opposition with the Trademark Trial and Appeal Board, namely 37 CFR 2.101(b)2 and 37 CFR 2.102(a)2.

Dated: December 18, 2003.

Jon W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03–31698 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 259

[Docket No. 2003–4 CARP]

Filing of Claims for DART Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to continuing delays in the receipt of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the DART royalty funds for the year 2003. In order to ensure that claims are timely received, claimants are encouraged to file their DART claims online or by fax, utilizing the special procedures described in this document.

EFFECTIVE DATE: January 1, 2004.

ADDRESSES: Claims may be filed online through the Copyright Office Web site at *http://www.copyright.gov/carp/dart/index.html*. Submissions by facsimile should be sent to (202) 252–3423. Submissions sent by a commercial courier must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Streets, NE., between 8:30 a.m. and 4 p.m. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered by a party, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room 403, First and Independence Avenue, SE., Washington, DC 20540. *See* **SUPPLEMENTARY INFORMATION** for information about online electronic filing through the Copyright Office Web site.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, Susan Grimes, CARP Specialist, or Ralphael Small, Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Chapter 10 of the Copyright Act, 17 U.S.C., places a statutory obligation on manufacturers and importers of digital audio recording devices and media ("DART") who distribute the products in the United States to submit royalty fees to the Copyright Office. 17 U.S.C. 1003. Distribution of these royalty fees may be made to any interested copyright owner who has filed a claim and (1) whose sound recording was distributed in the form of digital musical recordings or analog musical recordings and (2) whose musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions. 17 U.S.C. 1006.

Section 1007 provides that claims to these royalty fees must be filed "[d]uring the first 2 months of each calendar year" with the Librarian of Congress "in such form and manner as the Librarian of Congress shall prescribe by regulation." 17 U.S.C. 1007. Part 259 of title 37 of the Code of Federal Regulations sets forth the procedures for the filing of claims to the DART royalty funds. Section 259.5 states that in order for a claim to be considered timely filed with the Copyright Office, the claims either have to be hand delivered to the Office by the last day in February [1] or if sent by mail, received by the Office by the last day in February or bear a January or February United States Postal Service postmark. 37 CFR 259.5(a). Claims received after the last day in February will be accepted as timely filed only upon proof that the claim was placed within the United States Postal Service during the months of January or February. 37 CFR 259.5(e). A January or February postmark of the United States Postal Service on the envelope containing the claim or, if sent by certified mail return receipt requested, on the certified mail receipt constitutes sufficient proof that the claim was timely filed.[2] 37 CFR 259.5(e). The regulations do not provide for the filing of DART claims by alternative methods such as online submission or facsimile transmission.

In the year 2001, due to severe disruptions in the delivery of mail to the Office caused by threat of possible anthrax contamination, the Copyright Office waived the regulations requiring that claims bear "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and prohibiting the filing by "facsimile transmission," 37 CFR 259.5(d), for the filing of claims to the DART royalty funds for the year 2001. *See* 67 FR 5213 (February 5, 2002). Due to continued security measures affecting the delivery of mail, the Copyright Office waived regulations for the filing of 2002 DART claims last year as well. Certain incoming mail continues to be irradiated and all mail is diverted to an off-site location for screening, resulting in delays in its delivery to the Office. In light of these continuing delays, the Office once again is waiving §§ 259.3(b) and 259.5(d) and allowing the online and facsimile submission of DART claims to the 2003 royalty funds. Online forms are available and may be submitted via the Office's Web site. Note however, that the alternative methods set forth in this Notice apply only to the filing of DART claims for the 2003 royalties which are due by March 1, 2004, and in no way apply to other filings with the Office. Please note that as a result of the last date in February occurring on a Sunday this year, the DART claims are due on Monday, March 1, 2004, in accordance with 37 CFR 259.5(b).

This Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. *See* 37 CFR part 259.

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[1] In any year in which the last day of February falls on Saturday, Sunday, a holiday or other nonbusiness day within the District of Columbia or the Federal Government, claims received by the Copyright Office by the first business day in March, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in March, shall be considered timely filed. 37 CFR 259.5(b).

[2] Claims dated only with a business meter that are received after the last day in February will not be accepted as having been timely filed. 37 CFR 259.5(c).

Acceptable Methods of Filing DART Claims for the Year 2003

Claims to the 2003 DART royalty funds may be submitted as follows:

a. Online Submission

In order to best ensure the timely receipt by the Copyright Office of DART claims, the Office strongly encourages claimants to file their claims online by February 29, 2004, via the Copyright Office Web site. The Office has devised online electronic forms for filing both single and joint DART claims. Claimants will be able to access and complete the forms via the Copyright Office Web site and may submit the forms online as provided in the instructions accompanying the forms. DART forms will be posted on the Office Web site at *http://www.copyright.gov/carp/dart/index.html.* Claimants filing a joint claim may list each of their joint claimants directly on the Office's online joint claim form or may submit the list of joint claimants as a file attachment to the submission page. Lists of joint claimants sent as an attachment must be in a single file in either Adobe Portable Document ("PDF") format, in Microsoft Word Version 2000 or earlier, in WordPerfect 9 or earlier, or in ASCII text. There will be a browse button on the form that will allow claimants to attach the file containing the list of joint claimants and then to submit the completed form to the Office. The attachment must contain only the list of names of joint claimants. Joint claims with attachments containing information other than the joint claimants' names will be rejected.

The DART forms will be available for use during the months of January, February and on March 1, 2004. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted online using forms or formats other than those specified in this Notice will not be accepted by the Office. Claims filed online must be received by the Office no later than 11:59 p.m. E.S.T. on March 1, 2004. Specifically, the completed electronic forms must be received in the Office's server by that time. Any claim received after that time will be considered untimely filed. Claimants will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants utilizing this filing option are required to provide an e-mail address. Claimants submitting their claims online are strongly encouraged to send their claim no later than February 29, 2004, in order to avoid any unforseen delays in receipt of claims by the Office.

When filing claims online, all provisions set forth in 37 CFR part 259 apply except § 259.3(b), which requires the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

b. Facsimile

Claims may be filed with the Office via facsimile transmission and such filings must be sent to (202) 252–3423. Claims filed in this manner must be received in the Office no later than 5 p.m. E.S.T. on March 1, 2004. The fax machine will be disconnected at that time. Claims sent to any other fax number will not be accepted by the Office.

When filing claims via facsimile transmission, claimants must follow all provisions set forth in 37 CFR part 259 with the exception of § 259.5(d), which prohibits the filing of claims by facsimile transmission. The Office is waiving this provision at this time in order to assist claimants in the timely filing of their claims.

c. By Mail

Section 259.5(a)(2) directs claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, should the claim reach the Office after March 1, 2004. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the months of January, February, or on March 1, 2004, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

Because of delays in the receipt of mail, claimants are urged not to use the mail as a means of filing their claims to the 2003 DART royalty funds. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner. Claims sent by mail must be addressed in accordance with § 259.5(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after March 1, 2004, will be rejected as being untimely filed.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 259.

d. Hand Delivery

Beginning December 29, 2003, the Library of Congress will no longer accept in-person, on site deliveries from non-governmental, commercial couriers or messengers. *See* 68 FR 70039 (December 16, 2003). Instead, couriers must deliver materials for staff at the Library of Congress, including claims to DART royalties, directly to the Congressional Courier Acceptance Site ("CCAS"), located on 2nd and D Streets, NE. The CCAS will accept items from couriers with proper identification, *e.g.*, a valid driver's license, Monday through Friday between 8:30 a.m. and 4 p.m. The date of receipt as documented by CCAS will be considered the date of receipt by the Copyright Office for purposes of timely filing. Any claim received from CCAS which does not have a date stamp of March 1, 2004 or earlier, will be considered untimely for this filing period and rejected by the Copyright Office. Alternatively, if a party chooses to hand deliver its claim personally, it can still do so. However, it is possible that under the new system such deliveries may still be redirected to CCAS for processing. For this reason, claimants who choose to have their claims hand delivered to the Copyright Office are strongly encouraged to have their claims delivered by 4 p.m. on Friday, February 27, 2004. The Copyright Office cannot guarantee timely receipt of a hand delivered claim after this date.

Waiver of Regulation

The regulations governing the filing of DART claims require "the original signature of the claimant or of a duly authorized representative of the claimant," 37 CFR 259.3(b), and do not allow claims to be filed by "facsimile transmission," 37 CFR 259.5(d). This Notice, however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2003 DART royalties. The Office is not, and indeed cannot, waive the statutory deadline for the filing of DART claims. *See, United States* v. *Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by March 1, 2004.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company* v. *FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also, Wait Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the continuing delays in the receipt of the mail constitutes a special circumstance which has led the Office to deviate from its usual mail processing procedures. Thus, given the delays in the receipt of mail, the Office believes that the public interest will best be served by waiving, for this filing period, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed online through the Office's Web site. *See* 67 FR at 5214.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after March 1, 2004. *See Locke, supra*. Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in order to assist them in timely filing their claims. By allowing claims to be filed online and by facsimile transmission, the Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Dated: December 19, 2003.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 03–31774 Filed 12–23–03; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD–FRL–7601–5]

RIN 2060–AK28

Approval and Promulgation of Implementation Plans; Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action revises implementation plans concerning the Prevention of Significant Deterioration (PSD) program mandated by part C of title I of the Clean Air Act (CAA or Act). These revisions include changes to incorporate newly promulgated paragraphs in the Federal PSD rule into the Federal Implementation Plan (FIP) portion of the State plan where a State agency does not have an approved PSD State Implementation Plan (SIP) in place. Specifically, the revisions provide a category of equipment replacement activities that are not subject to Major New Source Review (NSR) requirements under the routine maintenance, repair and replacement (RMRR) exclusion. The changes are intended to provide greater regulatory certainty without sacrificing the current level of environmental protection and benefit derived from the NSR program, and to ensure comprehensive and consistent implementation of the Federal PSD program by State, local, and tribal agencies where EPA has determined that they have the responsibility to implement the Federal PSD program.

EFFECTIVE DATE: This final rule is effective on December 26, 2003.

ADDRESSES: *Docket.* Docket No. A–2002–04 is located at the EPA Docket Center, EPA West, U.S. EPA (6102T), 1301 Constitution Avenue, NW, Room B–102, Washington, DC 20460. The E-docket OAR–2002–0068 for this rulemaking is available electronically at *http://www.epa.gov/edocket.*

FOR FURTHER INFORMATION CONTACT: Mrs. Pamela S. Long, Information Transfer and Program Integration Division (C339–03), U.S. EPA Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0641, facsimile number (919) 541–5509, electronic mail email address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this final action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC[a]	NAICS[b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122
Petroleum Refining	291	32411
Industrial Inorganic Chemicals	281	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510
Natural Gas Liquids	132	211112
Natural Gas Transport	492	48621, 22121
Pulp and Paper Mills	261	322110, 322121, 322122, 32213
Paper Mills	262	322121, 322122
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213
Pharmaceuticals	283	325411, 325412, 325413, 325414

[a] Standard Industrial Classification

[b] North American Industry Classification System.

Entities potentially affected by this final action also include State, local, and tribal governments that are delegated authority to implement these regulations.

The EPA has established an official public docket for this action under E-docket OAR–2002–0068 (Legacy Docket No. A–2002–04). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, EPA West, Room B–102, 1301 Constitution Avenue, NW, Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30

p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review

Under section 307(b) of the CAA, judicial review of the final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit February 23, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Outline

The information presented in this preamble is organized as follows:

- I. Today's Final Action
  - A. Background
  - B. Revisions to Part 52
  - C. Effective Date for Today's Final Action
- II. Statutory and Executive Order Reviews
  - A. Executive Order 12866—Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Analysis (RFA)
  - D. Unfunded Mandates Reform Act of 1995
  - E. Executive Order 13132—Federalism
  - F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
  - H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act of 1995
  - J. Congressional Review Act

I. Today's Final Action

A. Background

The 1970 CAA at section 110 required States to submit plans to provide for the implementation and maintenance of the national ambient air quality standards (NAAQS). While the 1970 CAA established requirements for protecting the NAAQS through SIP's, it did not address prevention of significant deterioration of air quality. On May 31, 1972 (37 FR 10842), the Administrator published initial approvals and disapprovals of SIP's submitted pursuant to section 110 of the CAA. On November 9, 1972 (37 FR 23836), all SIP's were disapproved insofar as they failed to provide for significant deterioration of air quality. This action was taken in response to a preliminary injunction issued by the District Court for the District of Columbia, which also required the Administrator to promulgate regulations as to any State plan that either permits the significant deterioration of air quality in any portion of any State, or fails to take the measures necessary to prevent significant deterioration.

On July 16, 1973 (38 FR 18986), "we"[1] proposed several alternative plans for prevention of significant deterioration. On December 5, 1974 (39 FR 42510), we promulgated the Federal PSD program, 40 CFR 52.21. These regulations established a Federal program under section 101(b)(1) of the 1970 CAA to conduct preconstruction review of specified source categories where State agencies fail to provide for prevention of significant deterioration of air quality. This final action also disapproved all State plans as lacking procedures or regulations for preventing significant deterioration of air quality and incorporated the Federal PSD regulations by reference into all State plans. Specifically, it incorporated the provisions of section 52.21 by reference into the SIP's in subparts B through DDD of part 52. (See 39 FR 42514 concerning section 52.21(a), plan disapproval.)

On June 19, 1978 (43 FR 26388), we amended our PSD regulations to implement the new requirements of the Clean Air Act Amendments of 1977 (Pub. L 95–95). These regulations built on the previous ones, but provided a more comprehensive program pursuant to part C (sections 160–165) of title I, which was added in the 1977 CAA Amendments. The 1977 CAA Amendments also added the specific requirement that the PSD program be implemented through SIP's submitted pursuant to CAA section 110. Our final rules in 1978 also amended section 52.21 to incorporate all of the new requirements of CAA sections 160–165 into the Federal PSD program. This final rule contained the same language concerning plan disapprovals that is contained in section 52.21(a)(1) as promulgated on December 31, 2002, as follows:

> Section 52.21(a) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards. Specific disapprovals are listed where applicable in subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in subparts B through DDD of this part. Where this section is so incorporated, the provisions shall also be applicable to all lands owned by the Federal government and Indian reservations located in such State. No disapproval with respect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the obligation of States, emission sources, or other persons with respect to all portions of these plans approved or promulgated under this part (46 FR 26403).

The 1978 final rule also incorporated section 52.21 by reference into the SIP's for 54 programs (50 States, Puerto Rico, Virgin Islands, American Samoa, and Guam) as follows:

> (a) The requirements of sections 160 through 165 of the Clean Air Act are not met, since the plan does not include approvable procedures for preventing the significant deterioration of air quality.
>
> (b) The provisions of section 52.21 (b) through (v) are hereby incorporated and made part of the applicable State plan for the State of______(see 43 FR 26410).

On August 7, 1980 (43 FR 52676), we amended our PSD regulations in response to the decision by the U.S. Court of Appeals for the D.C. Circuit in *Alabama Power Company* v. *Costle,* 636 F.2d. 323 (D.C. Cir. 1979). In addition to revising the PSD rules to respond to the court, this final rule disapproved a number of SIP's for PSD purposes and incorporated section 52.21 by reference into the Federal implementation plan portions of the SIP's for those programs. It also contained the same language concerning plan disapprovals that is contained in the December 31, 2002 provisions at section 52.21(a)(1), as well as the same language concerning incorporation by reference in the relevant subparts of part 52 (*see* 45 FR 52741).

B. Revisions to Part 52

Today, we are making administrative amendments to the Federal implementation plan portions of State plans to update the reference to the PSD FIP that is already incorporated into these plans. When we proposed the

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[1] In this preamble the term "we" refers to EPA and the term "you" refers to major stationary sources of air pollution and their owners and operators. All other entities are referred to by their respective names (for example, reviewing authorities.)

RMRR regulation, we indicated that the rule would impact State and local authorities implementing the Federal PSD program through delegations. In the rule that was published in the **Federal Register** on October 27, 2003 (68 FR 61248), consistent with the proposal, we unambiguously announced our intent to finalize an update to the State plans that had delegated FIPs for PSD. Today's final rule makes administrative amendments to the these delegated programs to incorporate the provisions published in the **Federal Register** on October 27, 2003. This rule is similar in effect to the amendments published in the **Federal Register** on March 10, 2003 (68 FR 11316). In that action, EPA adjusted the citations incorporated into the Federal implementation plan portions of State plans so that all of the substantive amendments as of December 31, 2002 to the PSD regulations would become part of the Federal implementation plan portions of State plans. In today's action, we are further revising references for each FIP to incorporate the equipment replacement provision amendments into the Federal implementation plan portions of State plans.

Today's rule differs in one respect from the previous action to revise the Federal implementation portions of State plans. In the previous rule, we incorporated the relevant subsection 52.21 by referring to the paragraphs as "(a)(2) and (b) to (bb)." The purpose of that reference was to incorporate all the substantive provisions of 52.21. Today's rule adopts a different cross-referencing format—"40 CFR 52.21 except paragraph (a)(1)." Using this format, the Agency intends for the Federal implementation plan portions of State plans to automatically update whenever new sections are added to 52.21.

No tribal government currently has an approved tribal implementation plan (TIP) under the CAA to implement the NSR program. The Federal government is currently the NSR reviewing authority in Indian country. Pursuant to section 52.21(a)(1), the provisions of section 52.21 are applicable to all lands owned by the Federal Government and Indian Reservations located in each State. Therefore, we are incorporating the PSD regulations in section 52.21 by reference into the FIP portion of SIP's where the requirements of CAA sections 160–165 are not met for federally designated Indian lands. By this final action, we are not changing the authority for implementing and enforcing the Federal PSD permitting program for any sources located in Indian country. This incorporation by reference only applies to those sections of subparts B through DDD of part 52 that currently incorporate the PSD FIP program for Indian lands.

C. Effective Date for Today's Final Action

Today's final regulations are effective on December 26, 2003. This is consistent with the December 26, 2003 effective date for the changes to the Federal PSD program in section 52.21 that were published in the **Federal Register** on October 27, 2003. (See 68 FR 61248.)

II. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to EO 12866 review.

B. Paperwork Reduction Act

The information collection requirements for the final rule published October 27, 2003 (68 FR 61248) has been submitted for approval to OMB under the requirements of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 1230.14), and a copy may be obtained from Susan Auby, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements included in ICR No. 1230.14 are not enforceable until OMB approves them.

The information that ICR No. 1230.14 covers is required for the submittal of a complete permit application for the construction or modification of all major new stationary sources of pollutants in attainment and nonattainment areas, as well as for applicable minor stationary sources of pollutants. This information collection is necessary for the proper performance of EPA's functions, has practical utility, and is not unnecessarily duplicative of information we otherwise can reasonably access. We have reduced, to the extent practicable and appropriate, the burden on persons providing the information to or for EPA. In fact, we expect that this rule will result in less burden on industry and reviewing authorities since it streamlines the process of determining whether a replacement activity is RMRR.

However, as we articulated in ICR No. 1230.14, we do anticipate an initial increase in burden for reviewing authorities as a result of the rule changes, to account for revising state implementation plans to incorporate these rule changes. As discussed above, we expect those one-time expenditures to be no more than $580,000 for the estimated 112 affected reviewing authorities. For the number of respondent reviewing authorities, the analysis uses the 112 reviewing authorities count used by other permitting ICR's for the one-time tasks (for example, SIP revisions).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of responding to the information collection; adjust existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

We will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the *Paperwork Reduction Act* (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

C. Regulatory Flexibility Analysis (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) Any small business employing fewer than 500 employees (based on Small Business Administration's size definition); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule.

Today's rule will not have a significant economic impact on a substantial number of small entities because it will decrease the regulatory burden of the existing regulations and have a positive effect on all small entities subject to the rule. This rule improves operational flexibility for owners or operators of major stationary sources and clarifies applicable requirements for determining if a change qualifies as a major modification. We have therefore concluded that today's rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determine that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There is no burden for State, local, and tribal agencies in order for this rule to be included in the SIP, as this final action directly incorporates the changes into the SIP. Moreover, these revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. In addition, we believe the rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners and operators and improving the clarity of requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reasons stated above, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. We do not expect this final rule to result in expenditures by the States. Today's final rules only apply in States that have been delegated the authority to implement the Federal PSD rules. Therefore, reviewing authorities will not incur a burden to revise their SIP's. Moreover, these revisions provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. Thus, Executive Order 13132 does not apply to this rule. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." We believe that this final rule does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

The EPA began considering potential revisions to the NSR rules in the early 1990's and proposed changes in 1996. The purpose of today's final rule is to add greater flexibility to the existing major NSR regulations. These changes will benefit both reviewing authorities and the regulated community by providing increased certainty as to when the requirements apply, and by providing alternative ways to comply with the requirements. Taken as a whole, today's final rule should result in no added burden or compliance costs and should not substantially change the level of environmental performance achieved under the previous rules.

No tribal government currently has an approved tribal implementation plan (TIP) under the CAA to implement the NSR program. The Federal government is currently the NSR reviewing authority in Indian country, thus tribal governments should not experience added burden, nor should their laws be affected with respect to implementation of this rule. Additionally, although major stationary sources affected by today's final rule could be located in or near Indian country and/or be owned or operated by tribal governments, such sources would not incur additional costs or compliance burdens as a result of this rule. Instead, the only effect on such sources should be the benefit of the added certainty and flexibility provided by the rule.

We recognize the importance of including tribal consultation as part of the rulemaking process. Although we did not include specific consultation with tribal officials as part of our outreach process on this final rule, which was developed largely prior to issuance of Executive Order 13175 and which does not have tribal implications under Executive Order 13175, we will continue to consult with tribes on future rulemakings to assess and address tribal implications, and will work with tribes interested in seeking TIP approval to implement the NSR program to ensure consistency of tribal plans with this rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because we believe that this package as a whole will result in equal or better environmental protection than currently provided by the existing regulations, and do so in a more streamlined and effective manner.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. This final rule does not create new requirements but, rather, revises an existing permitting program by providing a series of program options that affected facilities may choose to adopt. These options will reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners and operators, improving the clarity of requirements, and providing alternatives that sources may take advantage of to further improve their operational flexibility. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). Therefore, this rule will be effective on December 26, 2003.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Carbon monoxide, Hydroocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Particular matter, Sulfur oxides.

Dated: December 16, 2003.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—[Amended]

■ 2. Section 52.96 is amended by revising paragraph (b) to read as follows:

§ 52.96 Significant deterioration of air quality.

* * * * *

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing the significant deterioration of air quality on Indian reservations and, therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable reservation in the State of Alaska.

Subpart D—[Amended]

■ 3. Section 52.144 is amended by revising paragraph (b) to read as follows:

§ 52.144 Significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Arizona for that portion applicable to the Pima County Health Department and the Maricopa County Department of Health Services and sources locating on Indian lands.

Subpart E—[Amended]

■ 4. Section 52.181 is amended by revising paragraph (b) to read as follows:

§ 52.181 Significant deterioration of air quality.

* * * * *

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for federally designated Indian lands. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable implementation plan and are applicable to sources located on land under the control of Indian governing bodies.

Subpart F—[Amended]

■ 5. Section 52.270 is amended by revising paragraphs (a)(3), (b)(1) introductory text, (b)(2) introductory text, (b)(3) introductory text, and (b)(4) introductory text to read as follows:

§ 52.270 Significant deterioration of air quality.

(a) * * *

(3) The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of California.

(b) * * *

(1) The PSD rules for Sacramento County Air Pollution Control District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the Sacramento County Air Pollution Control District for:

* * * * *

(2) The PSD rules for North Coast Unified Air Quality Management District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the North Coast Unified Air Quality Management District for:

* * * * *

(3) The PSD rules for Mendocino County Air Pollution Control District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the Mendocino County Air Pollution Control District for:

* * * * *

(4) The PSD rules for Northern Sonoma County Air Pollution Control District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the Northern Sonoma County Air Pollution Control District for:

* * * * *

Subpart G—[Amended]

■ 6. Section 52.343 is amended by revising paragraph (b) to read as follows:

§ 52.343 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Colorado for the sources identified in paragraph (a) of this section as not meeting the requirements of sections 160–165 of the Clean Air Act.

* * * * *

Subpart H—[Amended]

■ 7. Section 52.382 is amended by revising paragraph (b) to read as follows:

§ 52.382 Significant deterioration of air quality.

* * * * *

(b) The increments for nitrogen dioxide promulgated on October 17, 1988 (53 FR 40671), and related requirements in 40 CFR 52.21 except paragraph (a)(1), are hereby incorporated and made part of the applicable implementation plan for the State of Connecticut.

Subpart J—[Amended]

■ 8. Section 52.499 is amended by revising paragraph (b) to read as follows:

§ 52.499 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the District of Columbia.

Subpart K—[Amended]

■ 9. Section 52.530 is amended by revising paragraph (d) introductory text to read as follows:

§ 52.530 Significant deterioration of air quality.

* * * * *

(d) The requirements of sections 160 through 165 of the Clean Air Act are not met since the Florida plan, as submitted, does not apply to certain sources. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated by reference and made a part of the Florida plan for:

* * * * *

Subpart M—[Amended]

■ 10. Section 52.632 is amended by revising paragraph (b) to read as follows:

§ 52.632 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Hawaii.

Subpart N—[Amended]

■ 11. Section 52.683 is amended by revising paragraphs (b) and (c) to read as follows:

§ 52.683 Significant deterioration of air quality.

* * * * *

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing significant deterioration of air quality on Indian reservations. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable plan for Indian reservations in the State of Idaho.

(c) The requirements of section 165 of the Clean Air Act are not met for sources subject to prevention of significant deterioration requirements prior to August 22, 1986, the effective date of EPA's approval of the rules cited in paragraph (a) of this section. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable plan for sources subject to § 52.21 prior to August 22, 1986.

Subpart O—[Amended]

■ 12. Section 52.738 is amended by revising paragraph (b) to read as follows:

§ 52.738 Significant deterioration of air quality.

* * * * *

(b) *Regulations for preventing significant deterioration of air quality.* The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Illinois.

* * * * *

Subpart Q—[Amended]

■ 14. Section 52.833 is amended by revising paragraph (b) to read as follows:

§ 52.833 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Iowa for sources wishing to locate on Indian lands; sources constructed under permits issued by EPA; and certain sources as identified in Iowa's April 22, 1987, letter.

Subpart T—[Amended]

■ 15. Section 52.986 is amended by revising paragraph (b) to read as follows:

§ 52.986 Significant deterioration of air quality.

* * * * *

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for federally designated Indian lands since the plan (specifically LAC: 33:III:509.A.1) excludes all federally recognized Indian lands from the provisions of this regulation. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

Subpart W—[Amended]

■ 16. Section 52.1165 is amended by revising paragraph (b) to read as follows:

§ 52.1165 Significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Massachusetts.

Subpart X—[Amended]

■ 17. Section 52.1180 is amended by revising paragraph (b) to read as follows:

§ 52.1180 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Michigan.

* * * * *

Subpart Y—[Amended]

■ 18. Section 52.1234 is amended by revising paragraph (b) to read as follows:

§ 52.1234 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Minnesota.

* * * * *

Subpart BB—[Amended]

■ 19. Section 52.1382 is amended by revising paragraph (b) to read as follows:

§ 52.1382 Prevention of significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the Montana State implementation plan and are applicable to proposed major stationary sources or major modifications to be located on Indian Reservations.

* * * * *

Subpart CC—[Amended]

■ 20. Section 52.1436 is amended by revising the introductory text to read as follows:

§ 52.1436 Significant deterioration of air quality.

The requirements of sections 160 through 165 of the Clean Air Act are met except as noted in paragraphs (a) and (b) of this section. The EPA is retaining § 52.21 except paragraph (a)(1) as part of the Nebraska SIP for the following types of sources:

* * * * *

Subpart DD—[Amended]

■ 21. Section 52.1485 is amended by revising paragraph (b) to read as follows:

§ 52.1485 Significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are incorporated and made a part of the applicable State plan for the State of Nevada except for that portion applicable to the Clark County Health District.

* * * * *

Subpart FF—[Amended]

■ 22. Section 52.1603 is amended by revising paragraph (b) to read as follows:

§ 52.1603 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of New Jersey.

Subpart GG—[Amended]

■ 23. Section 52.1634 is amended by revising paragraph (b) to read as follows:

§ 52.1634 Significant deterioration of air quality.

* * * * *

(b) The requirements of section 160 through 165 of the Clean Air Act are not met for federally designated Indian lands. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

* * * * *

Subpart HH—[Amended]

■ 24. Section 52.1689 is amended by revising paragraph (b) to read as follows:

§ 52.1689 Significant deterioration of air quality.

* * * * *

(b) *Regulations for preventing significant deterioration of air quality.* The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable state plan for the State of New York.

Subpart JJ—[Amended]

■ 25. Section 52.1829 is amended by revising paragraph (b) to read as follows:

§ 52.1829 Prevention of significant deterioration of air quality.

* * * * *

(b) Regulation for preventing of significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the North Dakota State implementation plan and are applicable to proposed major stationary sources or major modifications to be located on Indian Reservations.

Subpart LL—[Amended]

■ 26. Section 52.1929 is amended by revising paragraph (a) introductory text to read as follows:

§ 52.1929 Significant deterioration of air quality.

(a) Regulation for preventing significant deterioration of air quality. The Oklahoma plan, as submitted, does not apply to certain sources in the State. Therefore the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated, and made part of the Oklahoma State implementation plan, and are applicable to the following major stationary sources or major modifications:

* * * * *

Subpart MM—[Amended]

■ 27. Section 52.1987 is amended by revising paragraph (c) to read as follows:

§ 52.1987 Significant deterioration of air quality.

* * * * *

(c) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing the significant deterioration of air quality on Indian reservations and, therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable plan for Indian reservations in the State of Oregon.

Subpart QQ—[Amended]

■ 28. Section 52.2178 is amended by revising paragraph (b) to read as follows:

§ 52.2178 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of South Dakota.

* * * * *

Subpart RR—[Amended]

■ 29. Section 22.2233 is amended by revising paragraph (b) introductory text to read as follows:

§ 52.2233 Significant deterioration of air quality.

* * * * *

(b) The requirements of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable SIP for the State of Tennessee for the following purposes:

* * * * *

Subpart SS—[Amended]

■ 30. Section 52.2303 is amended by revising paragraphs (c) and (d) to read as follows:

§ 52.2303 Significant deterioration of air quality.

* * * * *

(c) The requirements of section 160 through 165 of the Clean Air Act are not met for federally designated Indian lands. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby adopted and made a part of the applicable implementation plan and are applicable to sources located on land under the control of Indian governing bodies.

(d) The requirements of section 160 through 165 of the Clean Air Act are not met for new major sources or major modifications to existing stationary sources for which applicability determinations would be affected by dockside emissions of vessels. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby adopted and made a part of the applicable implementation plan and are applicable to such sources.

Subpart TT—[Amended]

■ 31. Section 52.2346 is amended by revising paragraph (b) to read as follows:

§ 52.2346 Significant deterioration of air quality.

* * * * *

(b) *Regulation for prevention of significant deterioration of air quality.* The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the Utah State implementation plan and are applicable to proposed major stationary sources or major modifications to be located on Indian Reservations.

* * * * *

Subpart WW—[Amended]

■ 32. Section 52.2497 is amended by revising paragraph (b) to read as follows:

§ 52.2497 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Washington.

* * * * *

Subpart YY—[Amended]

■ 33. Section 52.2581 is amended by revising paragraph (e) to read as follows:

§ 52.2581 Significant deterioration of air quality.

* * * * *

(e) Regulations for the prevention of the significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA.

Subpart ZZ—[Amended]

■ 34. Section 52.2630 is amended by revising paragraph (b) introductory text to read as follows:

§ 52.2630 Prevention of significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The Wyoming plan, as submitted, does not apply to certain sources in the State. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the State implementation plan for the State of Wyoming and are applicable to the following proposed major stationary sources or major modifications:

* * * * *

Subpart AAA—[Amended]

■ 35. Section 52.2676 is amended by revising paragraph (b) to read as follows:

§ 52.2676 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Guam.

Subpart BBB—[Amended]

■ 36. Section 52.2729 is amended by revising paragraph (b) to read as follows:

§ 52.2729 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Puerto Rico.

Subpart CCC—[Amended]

■ 37. Section 52.2779 is amended by revising paragraph (b) to read as follows:

§ 52.2779 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the Virgin Islands.

Subpart DDD—[Amended]

■ 38. Section 52.2827 is amended by revising paragraph (b) to read as follows:

§ 52.2827 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for American Samoa.

[FR Doc. 03–31586 Filed 12–23–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–1809–F4]

RIN 0938–AM21

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; extension of partial delay in effective date.

SUMMARY: This final rule further delays for 6 months, until July 7, 2004, the effective date of the last sentence of 42 CFR 411.354(d)(1). This section was promulgated in the final rule entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the **Federal Register** on January 4, 2001. A 1-year delay of the effective date of the last sentence in this section was published in the **Federal Register** on December 3, 2001. A 6-month delay, until July 7, 2003, was published in the **Federal Register** on November 22, 2002. An additional 6-month delay, until January 7, 2004, was published on April 25, 2003. This further extension of the delay in the effective date of that sentence will give us additional time to reconsider the definition of compensation that is "set in advance" as it relates to percentage compensation methodologies in order to avoid unnecessarily disrupting existing contractual arrangements for physician services. Accordingly, the last sentence of § 411.354(d)(1), which would have become effective January 7, 2004, will not become effective until July 7, 2004. We expect that the definition of "set in advance" will be addressed definitively before July 7, 2004 in a final rule with comment period, entitled "Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships" (Phase II).

DATES: *Effective date:* The effective date of the last sentence in § 411.354(d)(1) of the final rule published in the **Federal Register** on January 4, 2001 (66 FR 856), is delayed to July 7, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Raschke, (410) 786–0016.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

In addition, the information in this final rule will be available soon after publication in the **Federal Register** on our MEDLEARN Web site: *http://cms.hhs.gov/medlearn/refphys.asp.*

I. Background

The final rule, entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the **Federal Register** on January 4, 2001 (66 FR 856), interpreted certain provisions of section 1877 of the Social Security Act (the Act). Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) under the Medicare program, and the entity may not bill for the services, unless an exception applies. Many of the statutory and new regulatory exceptions that apply to compensation relationships require that the amount of compensation be "set in advance." Section 411.354(d)(1) of the final rule defines the term "set in advance."

The last sentence of § 411.354(d)(1) reads: "Percentage compensation arrangements do not constitute compensation that is 'set in advance' in which the percentage compensation is based on fluctuating or indeterminate measures or in which the arrangement results in the seller receiving different payment amounts for the same service from the same purchaser." Many of the comments we received regarding the January 4, 2001 physician self-referral final rule indicated that physicians are commonly paid for their professional services using a formula that takes into account a percentage of a fluctuating or indeterminate measure (for example, revenues billed or collected for physician services). According to the commenters, this compensation methodology is frequently used by hospitals, physician group practices, academic medical centers, and medical foundations. Several commenters pointed out that this aspect of the final rule, which is applicable to academic medical centers and medical foundations (among others), is inconsistent with the compensation methods permitted under the statute for many physician group practices and employed physicians (that is, neither section 1877(h)(4)(B)(i) of the Act nor section 1877(e)(2) of the Act contains the "set in advance" requirement). We understand that hospitals, academic medical centers, medical foundations and other health care entities would have to restructure or renegotiate thousands of physician contracts to comply with the language in § 411.354(d)(1) regarding percentage compensation arrangements.

Accordingly, we published a 1-year delay of the effective date of the last sentence in § 411.354(d)(1) in the **Federal Register** on December 3, 2001 (66 FR 60154), an additional 6-month delay in the effective date on November 22, 2002 (67 FR 70322), and a further 6-month delay on April 25, 2003 (68 FR 20347) in order to reconsider the definition of compensation that is "set in advance" as it relates to percentage compensation methodologies.

II. Provisions of this Final Rule

To avoid any unnecessary disruption to existing contractual arrangements while we consider modifying this provision, we are further postponing, for an additional 6 months, until July 7, 2004, the effective date of the last sentence of § 411.354(d)(1). This delay is intended to avoid disruptions in the health care industry, and potential attendant problems for Medicare beneficiaries, which could be caused by allowing the last sentence of § 411.354(d)(1) to become effective on January 7, 2004. In the meantime, compensation that is required to be "set in advance" for purposes of compliance with section 1877 of the Act may continue to be based on percentage compensation methodologies, including those in which the compensation is based on a percentage of a fluctuating or indeterminate measure. We note that the remaining provisions of § 411.354(d)(1) will still apply and that all other requirements for exceptions must be satisfied (including, for example, the fair market value and "volume and value" requirements.)

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that the notice and comment rulemaking procedure is impracticable, unnecessary, or contrary to the public interest and if the agency incorporates in the rule a statement of such a finding and the reasons supporting that finding.

Our implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b). We find that seeking public comment on this action would be impracticable and unnecessary. We believe public comment is unnecessary because we are implementing this additional delay of effective date as a result of our review of the public comments that we received on the January 4, 2001 physician self-referral final rule. As discussed above, we understand from those comments and the comments we received on the December 3, 2001 interim final rule that, unless we further delay the effective date of the last sentence of § 411.354(d)(1), hospitals, academic medical centers, and other entities will have to renegotiate numerous contracts for physician services, potentially causing significant disruption within the health care industry. We are concerned that the disruption could unnecessarily inconvenience Medicare beneficiaries or interfere with their medical care and treatment. We do not believe that it is necessary to offer yet another opportunity for public comment on the same issue in the limited context of whether to delay this sentence of the regulation. In addition, given the imminence of the January 7, 2004 effective date, we find that seeking public comment on this delay in effective date would be impracticable because it would generate uncertainty regarding an imminent effective date. This uncertainty could cause health care providers to renegotiate thousands of contracts with physicians in an effort to comply with the regulation by January 7, 2004 if the proposed delay is not finalized until after the opportunity for public comment. Thus, providing the opportunity for public comment could result in the very disruption that this delay of effective date is intended to avoid.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: September 29, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: October 27, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–31469 Filed 12–23–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60, FCC 03–288]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: In this document, the Commission modifies its rules to improve the effectiveness of the rural health care support mechanism, which provides discounts to rural health care providers to access modern telecommunications for medical and health maintenance purposes. Because participation in the rural health care support mechanism has not met the Commission's initial projections, the Commission amends its rules to improve the program, increase participation by rural health care providers, and ensure that the benefits of the program continue to be distributed in a fair and equitable manner. In addition, the Commission denies Mobile Satellite Ventures Subsidiary's petition for reconsideration of the *1997 Universal Service Order*.

DATES: Effective February 23, 2004 except for §§ 54.609(a)(2), 54.609(A)(3)(ii), and 54.621(a) which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Shannon Lipp, Attorney, (202) 418–7400 or Regina Brown, Attorney, (202) 418–7400, Wireline Competition Bureau, Telecommunications Access Policy Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order and Order on Reconsideration*, in WC Docket No. 02–60 released On November 17, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. There was also a companion Further Notice of Proposed Rulemaking in WC Docket No. 02–60 released on November 17, 2003.

I. Introduction

1. In this *Report and Order and Order on Reconsideration*, we modify our rules to improve the effectiveness of the rural health care support mechanism, which provides discounts to rural health care providers to access modern telecommunications for medical and health maintenance purposes. Because participation in the rural health care support mechanism has not met the Commission's initial projections, we amend our rules to improve the program, increase participation by rural health care providers, and ensure that the benefits of the program continue to be distributed in a fair and equitable manner. Specifically, we expand the scope of entities eligible to receive discounts, provide support for Internet access, and modify the way in which we calculate discounts to offer rural health care providers more flexibility. In addition, in the *Order on Reconsideration*, we deny Mobile Satellite Ventures Subsidiary's petition for reconsideration of the *1997 Universal Service Order*, 62 FR 32862 (June 17, 1997). The actions we take encourage the development of public/private partnerships and other creative solutions to meet the needs of rural communities and increase participation in the rural health care mechanism.

2. The actions we take will also strengthen telemedicine and telehealth networks across the nation, help improve the quality of health care services available in rural America, and better enable rural communities to rapidly diagnose, treat, and contain possible outbreaks of disease. Moreover, enhancing access to an integrated nation-wide telecommunications network for rural health care providers will further the Commission's core responsibility to make available a rapid nation-wide network for the purpose of the national defense, particularly with the increased awareness of the possibility of biological or chemical terrorist attacks. Finally, these changes will further the Commission's efforts to improve its oversight of the operation of the program to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met without waste, fraud, or abuse.

II. Report and Order

A. Eligible Health Care Provider

3. We now further define the statutory term "public health care provider." We conclude that dedicated emergency departments of rural for-profit hospitals that participate in Medicare should be deemed "public" health care providers eligible to receive prorated rural heath care support. We agree with commenters that this clarification is consistent with congressional intent and is necessary to give meaning to the term "public" health care provider under the rural health care program. Dedicated emergency departments in for-profit hospitals, including the emergency departments of critical access hospitals, are required, pursuant to the Emergency Medical Treatment and Labor Act (EMTALA), to provide medical screening examinations to all patients who present themselves and to stabilize or arrange for appropriate transfer of those patients with emergency conditions. Thus, such providers are "public" in nature by virtue of the persons they are required, pursuant to EMTALA, to examine and/or treat for emergency medical conditions.

4. Moreover, we now determine that dedicated emergency departments in for-profit rural hospitals constitute "rural health clinics." As UVA notes, in most communities, emergency departments are the only ambulatory care entities that serve the public on a 24-hour a day, 7-day a week basis. In many instances, emergency departments of rural for-profit hospitals and critical access hospitals are the only health care providers in rural areas serving the medical needs of the community. Dedicated emergency departments typically provide the types of medical services often provided in traditional health clinics. Therefore, we find that dedicated emergency departments in rural for-profit hospitals should be eligible to receive prorated discounts as "public" "health providers," and more specifically as "public" "rural health clinics." It is necessary to clarify the definition of "rural health clinic" in this way to promote timely access to acute specialty healthcare services, chronic disease management programs and other preventive services essential to public health and safety. These entities are generally the initial point of entry into the healthcare system for any person suffering the consequences of a severe catastrophe or accident and constitute a vital segment of the health care community, particularly in the event of a national public health emergency.

5. Additionally, as suggested by several commenters, given the realities of rural health care providers in offering quality health care services in rural areas, we clarify the entities listed in section 254(h)(7)(B) that qualify as rural "health care providers." We conclude that entities listed in section 254(h)(7)(B) include non-profit entities that function as one of the listed entities on a part-time basis. Pursuant to this modification, non-profit entities that provide ineligible services, even on a primary basis, would be able to receive prorated support commensurate with their provision of eligible rural health care services. For example, if a doctor operated a rural health clinic on a non-profit basis in a rural community one day per week or during evenings in the local community center, that community center would be able to receive prorated support, because it serves as a "rural health clinic" on a part-time basis. Similarly, if a non-profit community mental health center also operated as a for-profit pharmacy, that center would also be able to receive prorated support as a part-time "community mental health center." Our goal in implementing this proposal is two-fold—to encourage the development of public/private partnerships and other creative solutions to meet the needs of rural communities, and to increase participation in the rural health care support mechanism.

6. We decline to expand the definition of health care provider to include nursing homes, hospices, and other long-term care facilities. Congress specifically listed seven categories of entities eligible for support under this program in section 254(h)(7)(B). Given this specific listing, we find that if Congress had intended to include nursing homes, hospices, and other long-term care facilities as health care providers, it would have explicitly done so in the statute. The Commission is not authorized to amend the statute to add categories to the definition, as suggested by commenters. Thus, we affirm the Commission's previous decision that nursing homes, hospices, and other long-term care facilities are ineligible for support, whether operated on a for-profit or non-profit basis. However, because Congress did specifically list seven categories of entities qualifying as health care providers, the Commission may clarify the types of entities that fit within those seven categories. Therefore, consistent with our clarification that entities that serve as a non-profit rural health care clinic on a part-time basis are "health care providers," part-time non-profit rural health care clinics are eligible for

prorated support, even when associated with a nursing home, hospice, or other long-term care facility.

7. In addition, at this time, we decline to expand the definition of rural health care provider to include any rural, non-profit health care entity with a certified Medicare and/or Medicare provider number as proposed by commenters. The record lacks sufficient information to identify the types of entities that would become eligible under this proposal, as Medicare/Medicaid supports a wide range of services, drugs, and products. We are concerned that by including such entities within the definition of “health care provider” we may exceed our statutory authority. Moreover, with the information in the record we are unable to determine the potential impact on the demand for support.

B. Eligible Services

1. Internet Access

8. Given the rapid development of the Internet's capacities, the proliferation of applications available on the Internet, and the increase in the number of Internet users since the *1997 Universal Service Order* was issued, we believe that it is now appropriate to provide funding for Internet access to rural health care providers. In particular, we conclude that support equal to twenty-five percent of the monthly cost for any form of Internet access reasonably related to the health care needs of the facility should be provided to rural health care providers. The definition for Internet access that we adopt here is intended to provide rural health care providers considerable flexibility to utilize the resources available over the Internet that will assist them in fulfilling their health care needs.

9. We agree with commenters that the Internet can serve as an invaluable resource, by providing on-line courses in health education, medical research, follow-up care, regulatory information such as compliance with the Health Insurance Portability and Accountability Act of 1996, video conferencing, web-based electronic benefit claim systems including on-line billing, and other crucial business functions. The incredible potential of the Internet to provide access to such a breadth of medical information may also help reduce isolation in rural communities. In light of the development of medical applications for the Internet since 1997, we conclude that encouraging access to this information service will improve the level of care available in rural areas.

10. Furthermore, health care information shared over the Internet may enable rural health care providers to diagnose, treat, and contain possible outbreaks of disease or respond to health emergencies. We agree with commenters that Internet access provides a vital link to information and instantaneous communications in times of natural disasters and public health emergencies. National connectivity of telehealth and telemedicine networks could also promote the national defense by serving as vehicles for rapid, secure communications in times of emergency, due to outbreaks of disease or biological and chemical attacks.

11. Accordingly, for purposes of the rural health care support mechanism only, we define “eligible Internet access” as “an information service that enables rural health care providers to post their own data, interact with stored data, generate new data, or communicate over the World Wide Web.” Eligible Internet access provides access to the world-wide information resource of the Internet, and includes all features typically provided by Internet service providers to provide adequate functionality and performance. To qualify as Internet access under the definition we adopt today for the rural health care support mechanism, transmissions must traverse the Internet in some fashion. Internet access may provide transport of digital communications using any Internet-based protocols, including encapsulation of data, video, or voice.

12. We specifically decline to adopt the definition of Internet access currently used in the schools and libraries support mechanism. Under those rules, Internet access includes: This definition thus specifically precludes support for features that provide the capability to generate or alter the content of information. We believe adopting such a limitation for the rural health care program would significantly undercut the utility of providing support for Internet access to rural health care providers, because the ability to alter and interact with information over the Internet is precisely the feature that could facilitate improved medical care in rural areas. Under the rural health care support mechanism, we will provide support for Internet access, as long as it is reasonably related to the health care needs of the facility, and it is the most cost-effective method of meeting those needs. We will not provide support, however, for the purchase of internal connections, computer equipment or other telecommunications equipment, even when used to access the Internet, because such items are not information services.

13. We conclude that a flat discount percentage of twenty-five percent off the cost of monthly Internet access will assist health care providers seeking to purchase Internet access, while also providing incentives for rural health care providers to make prudent economic decisions concerning their telemedical needs. We agree with commenters that a flat discount, analogous to the operation of the schools and libraries support mechanism, will lead to greater predictability and fairness among health care providers. A flat discount is consistent with section 254(b)(5), which requires “a specific, sufficient, and predictable mechanism * * * because it limits the amount of support that each health care provider may receive per month to a reasonable level.” A flat discount is also easy to administer. Although it is difficult to estimate the impact of providing support for Internet access service due to the wide range of costs between and among the various types of Internet access services, we agree with commenters' projections that our actions today regarding Internet access are unlikely to result in program demand in excess of the cap. We act conservatively by choosing a twenty-five percent flat discount initially because it will provide an incentive for rural health care providers to choose a level of service appropriate to their needs, will provide more certainty that demand for Internet access support will not exceed the annual funding cap, and will deter wasteful expenditures. Furthermore, we find that a twenty-five percent discount is reasonable because provision of support to health care providers under the rural health care support mechanism is not contingent on economic need, similar to the twenty-five percent discount provided to the least disadvantaged rural schools and libraries. As we gain more experience with this aspect of the support mechanism, we will determine whether an increase in the discount is necessary or advisable. Finally, we disagree with WorldCom that support for Internet access must be based on the difference between urban and rural rates, because section 254(h)(2)(A) of the Act, the statutory provision dealing with information services, makes no reference to an urban-rural comparison, unlike section 254(h)(1)(A). The urban-rural comparison for telecommunications services that WorldCom cites to in section 254(h)(1)(A) does not apply to information services such as Internet

access. Provision of Internet access and other information services is governed by section 254(h)(2)(A).

14. Consistent with the Commission's long-standing principles of competitive neutrality, rural health care providers may receive discounts for the most cost-effective form of Internet access, regardless of the platform. Thus, a provider could opt for dial-up Internet access or broadband Internet access over wireline, cable, wireless, or satellite platforms. Health care providers must certify, however, that the particular Internet access service selected is the most cost-effective way of meeting the facility's health care needs. We believe this policy will provide flexibility to rural health care providers to purchase the most appropriate offerings for their health care needs and may also facilitate the deployment of facilities-based broadband deployment in rural areas.

15. Moreover, we will continue to provide support for toll charges incurred by health care providers that cannot obtain toll-free access to an ISP, limited to the lesser of $180.00 or 30 hours of usage per month. The *1997 Universal Service Order* stated that the proliferation of ISPs and the competitive marketplace "soon should eliminate the need for such support." However, we are persuaded by commenters' showings that the need for such support still exists. Providing support for limited toll charges will place those providers who cannot reach an ISP without incurring toll charges on the same footing as other health care providers with respect to Internet access.

2. Other Services

16. We decline at this time to provide support for services other than telecommunications services, Internet access, and limited toll charges. In the *NPRM*, 67 FR 34653 (May 15, 2002) the Commission sought comment on whether we should establish new policies to enhance access to advanced telecommunications and information services for health care providers consistent with the scope of our authority under section 254(h)(2)(A). Commenters suggested that telecommunications equipment, surcharges imposed by statewide or regional networks, internal connections, and health care providers' travel costs should be eligible for universal service support. We find that providing support for telecommunications equipment, surcharges, and travel costs exceeds the scope of our statutory authority under section 254(h), because these items are neither telecommunications nor information services. In addition, we believe there is insufficient information in the record to provide support for internal connections. Moreover, given our experience with the schools and libraries support mechanism, we are concerned that providing support for internal connections may place an undue burden on the rural health care support mechanism.

C. Calculation of Discounted Services

1. Interpretation of "Similar Services"

17. We alter our current policy to allow rural health care providers to compare the urban and rural rates for functionally similar services as viewed from the perspective of the end user. We agree with commenters that our current policy of comparing technically similar services does not take into account that certain telecommunications services offered in urban areas are not always available in rural areas. In particular, new technologies are often first deployed in urban areas, and such services may be less expensive than services in rural areas based on older technologies. This modification to our rules will better effectuate the mandate of Congress to ensure comparable services for rural areas, as provided in section 254 of the Act, by allowing rural health care providers to benefit from obtaining telecommunications services at rates equivalent to those in urban areas. Eligible health care providers must purchase telecommunications services and compare their service to a functionally equivalent telecommunications service in order to receive this discount.

18. Accordingly, we create "safe harbor" categories of functionally equivalent services based on the advertised speed and nature of the service. For purposes of the rural health care support mechanism only, we establish the following advertised speed categories as functionally equivalent: low—144–256 kbps; medium—257–768 kbps; high—769–1400 kbps (1.4 mbps); T–1—1.41–8 mbps; T–3—8.1–50 mbps. We will also consider whether a service is symmetrical or asymmetrical when determining functional equivalencies. Telecommunications services will be considered functionally similar when operated at advertised speeds within the same category (low, medium, high, T–1, or T–3) and when the nature of the service is the same (symmetrical or asymmetrical). For example, a symmetrical fractional T–1 service operating at an advertised speed of 144 kbps would be considered functionally similar to a symmetrical DSL transmission service with an advertised speed of 256 kbps. By developing "safe harbor" categories of functionally equivalent speeds, we hope to minimize the disparity in rates of services available in rural and urban areas in an administratively easy fashion. We will update these categories, as needed, to reflect technological developments.

2. Urban Area

19. We now revise section 54.605 of our rules to allow rural health care providers to compare rural rates to urban rates in any city with a population of at least 50,000 in the state, as opposed to the nearest city with a population of 50,000. The Commission originally required comparison to the nearest city with 50,000 people, in part, because they believed health care providers would likely connect to a point in that nearest large city. Based on our experience with the program and information in the record, health care providers may not always find the needed expertise in the nearest large city. Allowing comparison to rates in any city in the state acknowledges that rural health care providers may communicate with experts in other cities in the state. Such action also should allow rural health care providers to benefit from the lowest rates for services in the State, thereby providing additional support to develop better telemedicine links. Verizon asserts that, under this policy, rural health care providers may receive better rates than those available in some urban areas of the state. However, we believe that the public interest in providing more flexibility in utilizing telemedicine services and quality health care facilities outweighs any minimal advantage gained by rural health care providers over those health care providers located in certain urban areas. Further, we do not believe the urban rates within states differ so significantly that revising this rule will increase demand to the extent that we may risk exceeding the funding cap of $400 million.

3. Maximum Allowable Distance

20. We revise the Maximum Allowable Distance (MAD) to equal the distance between the rural health care provider and the farthest point on the jurisdictional boundary of the largest city in that State. Accordingly, for distance-based charges actually incurred, we modify our rules to provide support to rural health care providers to any location that exceeds the SUD and is less than this revised MAD. As the Commission indicated in the *NPRM*, our experience to date suggests that limiting rural heath care providers to discounts for distance-based charges to the nearest city of

50,000 or more may not be adequate for purposes of creating a comprehensive telehealth and telemedicine network. Further, commenters contend that the current MAD assumes that the rural health care provider will connect with specialists in the nearest urban area, which may not necessarily have the essential complement of specialists to provide telemedicine services. We believe, in most instances, calculating the MAD as described will provide more support for distance-based charges than our current rules, without creating additional administrative burdens for the Administrator. In addition, this modification should provide rural health care providers access to high levels of care and greater flexibility in developing appropriate telehealth networks.

21. Although commenters generally favor eliminating the MAD, we decline to do so at this time. We are concerned that eliminating the MAD could result in wasteful expenditures for the program, as providers could connect to more distant locations when a closer one would suffice. Expanding the MAD to the largest city in a state should provide support sufficient to enable rural health care providers to connect with health care facilities with a wide range of medical expertise, without introducing the potential for waste associated with eliminating the MAD or making the MAD equal to the furthest point in the state. Moreover, we decline to expand the MAD to equal the distance between the health care provider and the nearest center of tertiary care. Although this proposal may have a more direct relationship to health care services, we agree with commenters that the nearest point of tertiary care may not provide the required specialized expertise. In addition, this proposal would require the identification and continued monitoring of all tertiary care centers throughout the Nation, which would impose significant administrative burdens upon the Administrator of the program.

4. Satellite Services

22. We revise our policy to allow rural health care providers to receive discounts for satellite services even where alternative terrestrial-based services may be available. As suggested by commenters, however, these discounts will be capped at the amount providers would have received if they purchased functionally similar terrestrial-based alternatives. Providers seeking discounts for satellite services will be required to provide to the Administrator documentation of the urban and rural rates for the terrestrial-based alternative services. We believe imposing a cap on support for satellite service is necessary because satellite services are often significantly more expensive than terrestrial-based services. Thus, pursuant to these changes, where rural health care providers opt for more expensive satellite-based services when a cheaper terrestrial-based alternative is available, the provider, and not the support mechanism, will be responsible for the additional cost. For example, if a health care provider pays $100 per month for satellite service, the rural rate for a comparable wireline service plan is $60 per month, and the urban rate is $40 per month, the health care provider would receive $20 per month towards the satellite service. We conclude this approach furthers the principle of competitive neutrality and recognizes the role that satellite services may play in rural areas without unduly increasing the size of the fund. We also seek further comment in the accompanying Further Notice on whether additional rule changes should be adopted to facilitate support for mobile rural health care providers.

5. Insular Areas

23. Although we continue to recognize that using urban rates within a State as the benchmark for reasonable rates may be ill-suited to certain insular areas, we believe that the proposal of some commenters to permit the comparison of insular rural rates to the nearest urban area outside the State is inconsistent with the statutory language set forth in section 254(h)(1)(A). As the Commission indicated in the *Fifteenth Order on Reconsideration*, 64 FR 66778 (November 30, 1999), Congress could have provided discounts for telecommunications services that connect rural health care providers to the nearest major hospital within or outside the State. Congress, however, explicitly provided that rates should be compared to the urban rate in that State. We continue to believe section 254(h)(1)(A) precludes us from designating an urban area outside of the State as the benchmark for comparison for remote, insular areas.

24. We also disagree with American Samoa Telecommunications Authority that section 254(h)(2)(A) authorizes the Commission to provide support for telecommunications links between American Samoa to an urban center outside the territory, such as Honolulu, Hawaii, without regard to the urban-rural rate difference. Section 254(h)(2)(A) authorizes the Commission to take action to increase access to advanced telecommunications and information services. Support for telecommunications services, however, is provided subject to section 254(h)(1)(A) and as discussed herein, requires an urban to rural comparison within the State. Although we do not believe we can grant the request of providers in insular areas, we do provide support for Internet access for all eligible rural health care providers, including those in insular areas, which we believe will functionally provide significant support to health care providers in insular areas.

D. Other Changes to the Rural Health Care Support Mechanism

1. Allocation Guidelines and Record-Keeping Requirements

25. Because entities that engage in both eligible and ineligible activities or that collocate with an entity that provides ineligible services will now be eligible for prorated support, we adopt rules requiring such providers to allocate their discounts to prevent discounts from flowing to ineligible activities or providers of services. Prorated discounts will be provided commensurate only with entities' eligible activities. The method of cost allocation chosen by an applicant should be based on objective criteria, and reasonably reflect the eligible usage of the facilities. Thus, if telecommunications facilities are used jointly for eligible and ineligible purposes, the allocation should be based on the percentage of time the facility is used for eligible purposes or some other method that reasonably reflects eligible usage. Health care providers must keep documentation explaining their allocation methods for five years and present that information to Universal Service Administrative Company upon request. We also direct USAC to evaluate the allocation methods selected by program participants in the course of its audit activities to ensure program integrity. Additionally, we codify the requirement that health care providers must maintain records for their purchases of supported services for at least five years sufficient to document their compliance with all Commission requirements.

26. To illustrate the general principle of discount allocation, we provide several "safe harbor" examples of allocation methods. First, if a dedicated emergency department in a for-profit rural hospital shares access to a T–3 with the rest of the hospital, and the T–3 is used seventy-five hours per week related to EMTALA-emergency care and the education of health care

professionals who work in the dedicated emergency department and fifty hours per week related to other hospital use, the T–3 would be used for eligible purposes sixty percent of the time (seventy-five hours of use by emergency department divided by 125 total hours of use by the entire hospital). Therefore, the eligible dedicated emergency department would receive sixty percent of the difference between the urban and rural rate for the T–3. Second, another dedicated emergency department in a for-profit rural hospital that shares access to a T–3 with the rest of the hospital, might choose to allocate discounts based on employee hours. For example, if the emergency department staff, including on-call physicians, is staffed at 3,360 hours per week (twenty employees covering 168 hours per week), and the rest of the hospital is staffed at 4,000 hours per week (100 employees covering 40 hours per week), the emergency department would receive forty-six percent of the difference between the urban and rural T–3 rate (3,360 emergency staff hours divided by 7,360 total staff hours). Third, if a non-profit rural health clinic operates in a local community center for five hours one evening per week and uses the community center's T–1 line, and the community center's normal operating hours are 10 a.m.–10 p.m., Monday through Saturday, the T–1 would be used for eligible purposes seven percent of the time (five hours divided by eighty-four open hours in a week). Therefore, the eligible non-profit rural health clinic would receive seven percent of the difference between the urban and rural rate for the T–1. Fourth, if a dedicated emergency department in a for-profit rural hospital shares access to a T–1 with the rest of the hospital, and the dedicated emergency department occupies 250 square feet and the hospital occupies 2,500 square feet, the T–1 would be used for eligible purposes ten percent of the time (250 square feet divided by 2,500 square feet). Therefore, the eligible dedicated emergency department would receive ten percent of the difference between the urban and rural rate for the T–1. If a rural health care provider can document that it adopted an allocation method consistent with one of these four examples, we will consider the method compliant with our requirements. Rural health care providers may choose a different allocation method, but will bear the burden of demonstrating, in the event of an audit or otherwise, that the chosen method was based on objective criteria and reasonably reflects the eligible usage of the facilities.

27. Conversely, when services are used solely by an eligible entity for eligible purposes, no allocation would be necessary. For example, if a T–1 is located solely in the dedicated emergency room and is used only for medical or educational purposes, the dedicated emergency room would be able to receive the full discount based on the difference between the urban and rural rate. Similarly, if there is a phone line in a private room at the community center that is dedicated exclusively to a rural health care clinic, no allocation would be necessary because the personnel staffing the part-time rural health care clinic would be the only ones to use the phone.

2 . Streamlining the Application Process

28. Since the *NPRM* was released, USAC has streamlined the application process significantly in response to the numerous comments submitted in this proceeding on this issue. For example, USAC has implemented electronic filing and e-certification for all forms and has arranged for electronic forms to be filled automatically with the previous year's information for repeat on-line filers. USAC has also created a database of urban rates on its Web site. As a result, a health care provider can now bypass the arduous step of having to retrieve this information from its carrier. In addition, USAC has significantly expanded its outreach efforts, such as by sending mailings to carriers and health care providers to alert them to changes in the program, holding monthly conference calls for carriers and health care providers to ask questions and raise concerns, and setting up a toll-free access number where carriers and health care providers can call at their convenience. Finally, USAC has eliminated the form submitted by service providers, FCC Form 468, by combining the relevant information into FCC Form 466, which is submitted by applicants. This modification to the reimbursement process has reduced to a great extent the interval between receipt of service and payments to service providers, thereby mitigating commenters' concerns.

29. We believe USAC's efforts to ease the burdens of applying to the program have been exemplary, as further evidenced by the number of completed applications received by USAC in Funding Year 2003 compared to Funding Year 2002. Nevertheless, in the Further Notice of Proposed Rulemaking, we seek comment on ways in which USAC could further streamline the application process and expand outreach efforts. In addition, we note that the Commission, through the Consumer & Governmental Affairs Bureau, will endeavor through its educational and outreach efforts, to ensure that those most likely affected are informed about the actions taken in this Order. In addition to making fact sheets and other informational materials available for dissemination through the Commission's Web site, the Commission will include the dissemination of such information as part of its on-going, grassroots outreach efforts directed at rural America and undertaken in coordination with other federal and state agencies.

3. Pro-Rata Reductions if Annual Cap Exceeded

30. Based on our estimates and the comments we have received, we continue to believe that our current rules requiring pro-rata distribution of funds if requests exceed the cap, are the most effective and equitable means of distributing limited funds in accordance with the goals and purposes of the statute. Therefore, we agree with the majority of commenters that the current rules should be maintained. We note that the rules adopted in this Order could increase the level of discounts requested in a year, so applicants are encouraged to submit applications during the filing window to secure their universal service funding. We disagree with the commenter that suggested we prioritize universal service support for telecommunication services over information services. We do not think such a measure is necessary at this time because program demand has never approached the cap. Moreover, prioritization would add another level of unnecessary administrative complexity to the support mechanism.

4. Ensuring the Selection of Cost-Effective Services

31. We agree with commenters that the current rules are adequate to ensure that health care providers select the most cost-effective services. Our certification requirements, combined with the requirement that health care providers remain responsible for a significant portion of service costs (*i.e.*, the urban rate of telecommunications services and 75% of Internet access) will ensure that rural health care providers make prudent economic decisions. We also agree with commenters that applicants should not be required to use the lowest-cost technology because factors other than cost, such as reliability and quality, may be relevant to fulfill their telemedical needs.

5. Other Non-Substantive Rule Changes

32. In the *NECA Order*, 62 FR 41294 (August 1, 1997), the Commission directed the National Exchange Carrier Association (NECA) to establish the Rural Health Care Corporation to administer the rural health care support mechanism. Subsequently, the Commission directed the Rural Health Care Corporation to be merged into a division of USAC. In light of the Commission's prior actions, we hereby amend our rules to replace all references to the "Rural Health Care Corporation" with the "Rural Health Care Division." We also revise § 54.609(a)(1)(i) to conform to the *Fifteenth Order on Reconsideration*. We also adopt several other non-substantive rule changes to improve the clarity of the rules.

6. Implementation

33. Funding Year 2003 for the rural health care program ends June 30, 2003, and Funding Year 2004 begins July 1, 2004. Because we do not wish to introduce changes to the program in the middle of a funding year, the modifications to the program adopted in this Order will be implemented beginning with Funding Year 2004. We direct USAC to take the necessary operational steps to implement the improvements to the program adopted herein for Funding Year 2004.

III. Order on Reconsideration

34. Consistent with the policy objectives underlying our decision, we deny, to the extent indicated herein, Mobile Satellite Ventures' (MSV) petition for reconsideration of the *1997 Universal Service Order*. We decline to revise our policy, as MSV suggests, to subsidize satellite service at the same price as terrestrial mobile service. We agree with Verizon that equalizing these rates could undercut competition and competitive neutrality. Although we agree that MSV and similar carriers provide valuable services to rural areas, particularly insular areas unserved by wireline carriers, we are concerned that equalizing the rates for satellite and terrestrial mobile service could significantly increase program demand and disadvantage those carriers already providing functionally similar services at more competitive prices. Accordingly, we deny MSV's petition for reconsideration to the extent indicated herein.

IV. Procedural Matters

A. Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking. The Commission sought written public comments on the proposals in the *NPRM*, including comment on the IRFA. The Commission received seventy-five comments, fourteen reply comments, and six *ex partes* in response to the *NPRM*. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

36. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other things, the Commission adopted a mechanism to provide discounted telecommunications services to public or non-profit health care providers that serve persons in rural areas. Over the last few years, important changes in the rural health community prompt us to review the rural health care universal service support mechanism. In this *Report and Order*, we adopt several modifications to the Commission's rules to improve the effectiveness of the rural health care universal service support mechanism and increase utilization of this mechanism by rural health care providers.

37. Specifically, in the *Report and Order*, we clarify the scope of entities eligible to receive discounts. We conclude that dedicated emergency departments of rural for-profit hospitals that participate in Medicare should be deemed "public" health care providers eligible to receive prorated rural heath care support. We believe this clarification is necessary to give meaning to the term "public" health care provider under the rural health care program. Moreover, we also determine that dedicated emergency departments in for-profit rural hospitals constitute "rural health clinics." These entities are generally the initial point of entry into the healthcare system for any person suffering the consequences of a severe catastrophe or accident and constitute a vital segment of the health care community, particularly in the event of a national public health emergency. Additionally, we conclude that entities listed in section 254(h)(7)(B) include non-profit entities that function as one of the listed entities on a part-time basis. Pursuant to this modification, non-profit entities that provide ineligible services, even on a primary basis, would be able to receive prorated support commensurate with their provision of eligible rural health care services. Our goal in implementing this proposal is two-fold—to encourage the development of public/private partnerships and other creative solutions to meet the needs of rural communities, and to increase participation in the rural health care support mechanism. Further, because entities that engage in both eligible and ineligible activities or that collocate with an entity that provides ineligible services will now be eligible for prorated support, we also adopt rules requiring such providers to allocate their discounts to prevent discounts from flowing to ineligible activities or providers of services.

38. We also provide funding for Internet access for rural health care providers. We conclude that support equal to twenty-five percent of the monthly cost for any form of Internet access reasonably related to the health care needs of the facility should be provided to rural health care providers. We believe that the Internet can serve as an invaluable resource, by providing on-line courses in health education, medical research, follow-up care, regulatory information such as compliance with Health Insurance Portability and Accountability Act of 1996, video conferencing, web-based electronic benefit claim systems including on-line billing, and other crucial business functions. The incredible potential of the Internet to access such a breadth of medical information may also help reduce isolation in rural communities. Furthermore, health care information shared over the Internet may enable rural health care providers to diagnose, treat, and contain possible outbreaks of disease or respond to health emergencies. Thus, in light of the development of medical applications for the Internet since 1997, we conclude that encouraging access to this information service will improve the level of care available in rural areas.

39. We also alter our current policy to allow rural health care providers to compare the urban and rural rates for functionally similar services as viewed from the perspective of the end user. This modification to our rules will better effectuate the mandate of Congress to ensure comparable services for rural areas, as provided in section 254 of the Act, by allowing rural health care providers to benefit from obtaining telecommunications services at rates equivalent to those in urban areas.

40. We also revise § 54.605 of our rules to allow rural health care providers to compare rural rates to urban rates in any city with a population of at least 50,000 in the state, as opposed to the nearest city with a population of 50,000. Allowing comparison to rates in any city in the state acknowledges that rural health care providers may communicate with experts in other cities in the state. Such action also should allow rural health care providers to benefit from the lowest rates for services in the State, thereby providing additional support to develop better telemedicine links.

41. Additionally, we revise the maximum allowable distance (MAD) to equal the distance between the rural health care provider and the farthest point on the jurisdictional boundary of the largest city in that State. Accordingly, for distance-based charges, we modify our rules to provide support to rural health care providers to any location (within or outside of the state) that exceeds the SUD and is less than this revised MAD. We believe, in most instances, calculating the MAD as described will provide more support for distance-based charges than our current rules, without creating additional administrative burdens for the Administrator. In addition, this modification should provide rural health care providers access to high levels of care and greater flexibility in developing appropriate telehealth networks.

42. Lastly, we revise our policy to allow rural health care providers to receive discounts for satellite services even where alternative terrestrial-based services may be available. However, these discounts will be capped at the amount providers would have received if they purchased functionally similar terrestrial-based alternatives. We conclude this approach furthers the principle of competitive neutrality and recognizes the role that satellite services may play in rural areas without unduly increasing the size of the fund.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

43. No petitions for reconsideration or comments were filed directly in response to the IRFA or on issues affecting small businesses.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

44. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

45. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 government jurisdictions in the United States. This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small government jurisdictions must be 75,955 or fewer. Small entities potentially affected by the proposals herein include small rural health care providers, small local health departments and agencies, and small eligible service providers offering discounted services to rural health care providers, including telecommunications carriers and ISPs.

a. Rural Health Care Providers

46. Section 254(h)(5)(B) of the Act defines the term "health care provider" and sets forth seven categories of health care providers eligible to receive universal service support. Although SBA has not developed a specific size category for small, rural health care providers, recent data indicate that there are a total of 8,297 health care providers, consisting of: (1) 625 "post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;" (2) 866 "community health centers or health centers providing health care to migrants;" (3) 1633 "local health departments or agencies;" (4) 950 "community mental health centers;" (5) 1951 "not-for-profit hospitals;" and (6) 2,272 "rural health clinics." We have no additional data specifying the numbers of these health care providers that are small entities. In addition, non-profit entities that act as "health care providers" on a part-time basis will now be eligible to receive prorated support. However, we have no data specifying the number of potential new applicants. Consequently, using the data we do have, we estimate that there are 8,297 or fewer small health care providers potentially affected by the actions proposed in this Notice.

47. As noted, non-profit businesses and small governmental units are considered "small entities" within the RFA. In addition, we note that census categories and associated generic SBA small business size categories provide the following descriptions of small entities. The broad category of Ambulatory Health Care Services consists of further categories and the following SBA small business size standards. The categories of providers with annual receipts of $6 million or less consists of: Offices of Dentists; Offices of Chiropractors; Offices of Optometrists; Offices of Mental Health Practitioners (except Physicians); Offices of Physical, Occupational and Speech Therapists and Audiologists; Offices of Podiatrists; Offices of All Other Miscellaneous Health Practitioners; and Ambulance Services. The category of Ambulatory Health Care Services providers with $8.5 million or less in annual receipts consists of: Offices of Physicians; Family Planning Centers; Outpatient Mental Health and Substance Abuse Centers; Health Maintenance Organization Medical Centers; Freestanding Ambulatory Surgical and Emergency Centers; All Other Outpatient Care Centers, Blood and Organ Banks; and All Other Miscellaneous Ambulatory Health Care Services. The category of Ambulatory Health Care Services providers with $11.5 million or less in annual receipts consists of: Medical Laboratories; Diagnostic Imaging Centers; and Home Health Care Services. The category of Ambulatory Health Care Services providers with $29 million or less in annual receipts consists of Kidney Dialysis Centers. For all of these Ambulatory Health Care Service Providers, census data indicate that there is a combined total of 345,476 firms that operated in 1997. Of these, 339,911 had receipts for that year of less than $5 million. In addition, an additional 3414 firms had annual receipts of $5 million to $9.99 million; and additional 1475 firms had receipts of $10 million to $24.99 million; and an additional 401 had receipts of $25

million to $49.99 million. We therefore estimate that virtually all Ambulatory Health Care Services providers are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

48. The broad category of Hospitals consists of the following categories and the following small business providers with annual receipts of $29 million or less: General Medical and Surgical Hospitals, Psychiatric and Substance Abuse Hospitals; and Specialty Hospitals. For all of these health care providers, census data indicate that there is a combined total of 330 firms that operated in 1997, of which 237 or fewer had revenues of less than $25 million. An additional 45 firms had annual receipts of $25 million to $49.99 million. We therefore estimate that most Hospitals are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

49. The broad category of Nursing and Residential Care Facilities consists of the following categories and the following small business size standards. The category of Nursing and Residential Care Facilities with annual receipts of $6 million or less consists of: Residential Mental Health and Substance Abuse Facilities; Homes for the Elderly; and Other Residential Care Facilities. The category of Nursing and Residential Care Facilities with annual receipts of $8.5 million or less consists of Residential Mental Retardation Facilities. The category of Nursing and Residential Care Facilities with annual receipts of less than $11.5 million consists of Nursing Care Facilities and Continuing Care Retirement Communities. For all of these health care providers, census data indicates that there are a combined total of 18,011 firms that operated in 1997. Of these, 16,165 or fewer firms had annual receipts of below $5 million. In addition, 1205 firms had annual receipts of $5 million to $9.99 million, and 450 firms had receipts of $10 million to $24.99 million. We therefore estimate that a great majority of Nursing and Residential Care Facilities are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

50. The broad category of Social Assistance consists of the category of Emergency and Other Relief Services and small business size standard of annual receipts of $6 million or less. For all of these health care providers, census data indicates that there are a combined total of 37,778 firms that operated in 1997. Of these, 37,649 or fewer firms had annual receipts of below $5 million. An additional 73 firms had annual receipts of $5 million to $9.99 million. We therefore estimate that virtually all Social Assistance providers are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

b. Providers of Telecommunications and Other Services

51. We have included small incumbent local exchange carriers in this present RFA analysis. As noted, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

52. Total Number of Telephone Companies Affected. The United States Bureau of the Census (the "Census Bureau") reports that, at the end of 1997, there were 6,239 firms engaged in providing telephone services, as defined therein. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 6,239 telephone service firms may not qualify as small entities because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that 6,239 or fewer telephone service firms are small entity telephone service firms that may be affected by the decisions and rules adopted in this *Report and Order*.

53. Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers. Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually on the Form 499–A. According to our most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 454 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this *Report and Order*.

54. Internet Service Providers. The SBA has developed a small business size standard for "On-Line Information Services," NAICS code 514191. This category comprises establishments "primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others." Under this small business size standard, a small business is one having annual receipts of $18 million or less. Based on firm size data provided by the Bureau of the Census, 3,123 firms are small under SBA's $18 million size standard for this category code. Although some of these Internet Service Providers (ISPs) might not be independently owned and operated, we are unable at this time to estimate with greater precision the number of ISPs that would qualify as small business concerns under SBA's small business size standard. Consequently, we estimate that there are 3,123 or fewer small entity ISPs that may be affected.

55. Satellite Service Carriers. The SBA has developed a definition for small businesses within the category of Satellite Telecommunications. According to SBA regulations, a small business under the category of Satellite communications is one having annual receipts of $12.5 million or less. According to SBA's most recent data,

there are a total of 371 firms with annual receipts of $9,999,999 or less, and an additional 69 firms with annual receipts of $10,000,000 or more. Thus, the number of Satellite Telecommunications firms that are small under the SBA's $12 million size standard is between 371 and 440. Further, some of these Satellite Service Carriers might not be independently owned and operated. Consequently, we estimate that there are fewer than 440 small entity ISPs that may be affected by the decisions and rules of the present action.

56. Wireless Service Providers. The SBA has developed a definition for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Telephone Trends Report data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the rules.

57. Cable and Other Subscription Programming or Other Program Distribution and Related Entities. The SBA has developed small business size standards which include all such companies generating $12.5 million or less in revenue annually. These standards cover two categories of Cable Services: Cable and Other Subscription Programming; and Cable and Other Program Distribution.

58. Cable and Other Subscription Programming. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. According to Census Bureau data for 1997, there were a total of 234 firms in this category, total, that had operated for the entire year. Of this total, 188 firms had annual receipts of under $10 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

59. Cable and Other Program Distribution. This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

60. The *Report and Order* adopts several modifications to the Commission's rules to improve the effectiveness of the rural health care universal service support mechanism and increase utilization of this mechanism by rural health care providers. As articulated, in the *Report and Order*, we clarify the scope of entities eligible to receive discounts. Specifically, because entities that engage in eligible and ineligible activities or that collocate with an entity that provides ineligible services will now be eligible for prorated support, we adopt rules requiring such providers to allocate their discounts to prevent discounts from flowing to ineligible activities or providers of services. Health care providers are required to maintain documentation explaining their allocation methods for five years and present that information to USAC upon request. The method of cost allocation chosen by an applicant should be based on objective criteria and reasonably reflect the eligible usage of the facilities. Additionally, health care providers must maintain for their purchases of supported services procurement records for at least five years sufficient to document their compliance with all Commission requirements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

61. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach impacting small business, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

62. In this *Report and Order*, we amend our rules to improve the program, increase participation by rural health care providers, and ensure that the benefits of the program continue to be distributed in a fair and equitable manner. Specifically, we expand the scope of entities eligible to receive discounts, provide support for Internet access, and modify the way in which we calculate discounts to offer rural health care providers more flexibility. The actions taken in the *Report and Order* help improve the quality of health care services available in rural America, and better enable rural communities to rapidly diagnose, treat, and contain possible outbreaks of disease. Thus, rural health care providers stand to benefit directly from the modifications to our rules and policies.

6. Report to Congress

63. The Commission will send a copy of the *Report and Order and Order on Reconsideration* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order and Order on Reconsideration* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order and Order on Reconsideration* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

64. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or

modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

C. Further Information

65. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov*. This *Report and Order* can also be downloaded in Microsoft Word and ASCII formats at <*http://www.fcc.gov/ccb/universalservice/highcost*>.

66. For further information, contact Shannon Lipp at (202) 418–7954 or Regina Brown at (202) 418–0792 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

V. Ordering Clauses

67. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 254, and 403, this *Report and Order and Order on Reconsideration* is adopted.

68. Pursuant to the authority contained in section 405, of the Communications Act of 1934, as amended, 47 U.S.C. 405, and 0.291 and 1.429 of the Commission's rules, Mobile Satellite Ventures Subsidiary's Petition for Clarification or Reconsideration is denied to the extent indicated herein.

69. Part 54 of the Commission's rules, is amended, effective January 23, 2004 except for §§ 54.609(a)(2), 54.609(A)(3)(ii), and 54.621(a) which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

70. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order and Order on Reconsideration*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.601 by removing paragraphs (a)(3), (b)(3), and (b)(4), redesignating paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4), revising paragraphs (a)(1), newly designated (a)(3) and (c), and by adding paragraph (d) to read as follows:

§ 54.601 Eligibility.

(a) * * *

(1) Except with regard to those services provided under § 54.621(b), only an entity that is either a public or non-profit rural health care provider, as defined in this section, shall be eligible to receive supported services under this subpart.

* * * * *

(3) For purposes of this subpart, a rural health care provider is a public or non-profit health care provider located in a rural area, as defined in this subpart.

* * * * *

(c) *Services.* (1) Any telecommunications service that is the subject of a properly completed bona fide request by a rural health care provider shall be eligible for universal service support, subject to the limitations described in this paragraph. The length of a supported telecommunications service may not exceed the distance between the health care provider and the point farthest from that provider on the jurisdictional boundary of the largest city in a state as defined in § 54.625(a).

(2) Internet access and limited toll-free access to internet. (i) For purposes of this subpart, eligible Internet access is an information service that enables rural health care providers to post their own data, interact with stored data, generate new data, or communicate over the World Wide Web.

(ii) Internet access shall be eligible for universal service support under § 54.621(a).

(iii) Limited toll-free access to an Internet service provider shall be eligible for universal service support under § 54.621(b).

(d) *Allocation of discounts.* An eligible health care provider that engages in eligible and ineligible activities or that collocates with an entity that provides ineligible services shall allocate eligible and ineligible activities in order to receive a prorated discount for eligible activities. Health care providers shall choose a method of cost allocation that is based on objective criteria and reasonably reflects the eligible usage of the facilities.

§ 54.603 [Amended]

■ 3. Amend § 54.603 by revising the term "Rural Health Care Corporation" in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) to read "Rural Health Care Division."

■ 4. Amend § 54.605 by removing paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and revising paragraphs (a) and (b) to read as follows:

§ 54.605 Determining the urban rate.

(a) If a rural health care provider requests an eligible service to be provided over a distance that is less than or equal to the "standard urban distance," as defined in paragraph (c) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

(b) If a rural health care provider requests an eligible service to be provided over a distance that is greater than the "standard urban distance," as defined in paragraph (c) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service provided over the standard urban distance in any city with a population of 50,000 or more in that state, calculated as if the service were provided between two points within the city.

* * * * *

■ 5. Revise § 54.609 to read as follows:

§ 54.609 Calculating support.

(a) Except with regard to services provided under § 54.621 and subject to the limitations set forth in this subpart, the amount of universal service support for an eligible service provided to a public or non-profit rural health care provider shall be the difference, if any, between the urban rate and the rural rate charged for the service, as defined herein. In addition, all reasonable charges that are incurred by taking such services, such as state and federal taxes shall be eligible for universal service support. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. Rural health care providers may choose one of the following two support options.

(1) *Distance based support.* The Administrator shall consider the base rates for telecommunications services in rural areas to be reasonably comparable to the base rates charged for functionally similar telecommunications service in urban areas in that state, and, therefore, the Administrator shall not include these charges in calculating the support. The Administrator shall include, in the support calculation, all other charges specified, and all actual distance-based charges as follows:

(i) If the requested service distance is less than or equal to the SUD for the state, the distance-based charges for the rural health care provider are reasonably comparable to those in urban areas, so the health care provider will not receive distance-based support.

(ii) If the requested service distance is greater than the SUD for the state, but less than the maximum allowable distance, the distance-based charge actually incurred for that service can be no higher than the distance-based charges for a functionally similar service in any city in that state with a population of 50,000 or more over the SUD.

(iii) "Distance-based charges" are charges based on a unit of distance, such as mileage-based charges.

(iv) Except with regard to services provided under § 54.621, a telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium, and the consortium must establish the actual distance-based charges for the health care provider's portion of the shared telecommunications services.

(2) *Base rate support.* If a telecommunications carrier, health care provider, and/or consortium of health care providers reasonably determines that the base rates for telecommunications services in rural areas are not reasonably comparable to the base rates charged for functionally similar telecommunications service in urban areas in that state, the telecommunications carrier, health care provider, and/or consortium of health care providers may request that the Administrator perform a more comprehensive support calculation. The requester shall provide to the Administrator the information to establish both the urban and rural rates consistent with § 54.605 and § 54.607, and submit to the Administrator with Form 466 all of the documentation necessary to substantiate the request.

(3) *Base rate support-consortium.* Except with regard to services provided under § 54.621, a telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium, and the consortium must establish the applicable rural base rates for telecommunications service for the health care provider's portion of the shared telecommunications services, as well as the applicable urban base rates for the telecommunications service.

(b) Absent documentation justifying the amount of universal service support requested for health care providers participating in a consortium, the Administrator shall not allow telecommunications carriers to offset, or receive reimbursement for, the amount eligible for universal service support.

(c) The universal service support mechanisms shall provide support for intrastate telecommunications services, as set forth in § 54.101(a), provided to rural health care providers as well as interstate telecommunications services.

(d) *Satellite services.* (1) Rural public and non-profit health care providers may receive support for rural satellite services, even when another functionally similar terrestrial-based service is available in that rural area. Discounts for satellite services shall be capped at the amount the rural health care provider would have received if they purchased a functionally similar terrestrial-based alternative.

(2) Rural health care providers seeking discounts for satellite services shall provide to the Administrator with the Form 466 documentation of the urban and rural rates for the terrestrial-based alternatives.

(3) Where a rural health care provider seeks a more expensive satellite-based service when a less expensive terrestrial-based alternative is available, the rural health care provider shall be responsible for the additional cost.

■ 6. Amend § 54.613 by revising paragraph (a) to read as follows:

§ 54.613 Limitations on supported services for rural health care providers.

(a) Upon submitting a bona fide request to a telecommunications carrier, each eligible rural health care provider is entitled to receive the most cost-effective, commercially-available telecommunications service at a rate no higher than the highest urban rate, as defined in § 54.605, at a distance not to exceed the distance between the eligible health care provider's site and the farthest point on the jurisdictional boundary of the city in that state with the largest population.

* * * * *

■ 7. Revise § 54.619 to read as follows:

§ 54.619 Audits and recordkeeping.

(a) *Health care providers. Recordkeeping.* Health care providers shall maintain for their purchases of services supported under this subpart documentation for five years from the end of the funding year sufficient to establish compliance with all rules in this subpart. Documentation must include, among other things, records of allocations for consortia and entities that engage in eligible and ineligible activities, if applicable.

(b) *Production of records.* Health care providers shall produce such records at the request of any auditor appointed by the Administrator or any other state or federal agency with jurisdiction.

(c) *Random audits.* Health care providers shall be subject to random compliance audits to ensure that requesters are complying with the certification requirements set forth in § 54.615(c) and are otherwise eligible to receive universal service support and that rates charged comply with the statute and regulations.

(d) *Annual report.* The Administrator shall use the information obtained under paragraphs (a), (b) and (c) of this section to evaluate the effects of the regulations adopted in this subpart and shall report its findings to the Commission on the first business day in May of each year.

■ 8. Revise § 54.621 to read as follows:

§ 54.621 Access to advanced telecommunications and information services.

(a) Twenty-five percent of the monthly cost of eligible Internet access shall be eligible for universal support. Health care providers shall certify that the Internet access selected is the most cost-effective method for their health care needs as defined in § 54.615(c)(7), and that purchase of the Internet access is reasonably related to the health care needs of the rural health care provider.

(b) Each eligible health care provider that cannot obtain toll-free access to an Internet service provider shall be entitled to receive the lesser of the toll charges incurred for 30 hours of access per month to an Internet service provider or $180 per month in toll charge credits for toll charges imposed for connecting to an Internet service provider.

■ 9. Amend § 54.625 by revising paragraph (a) to read as follows:

§ 54.625 Support for services beyond the maximum supported distance for rural health care providers.

(a) The maximum support distance is the distance from the health care provider to the farthest point on the jurisdictional boundary of the city in that state with the largest population, as calculated by the Administrator.

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[FR Doc. 03–31683 Filed 12–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 00–56]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces the effective date of the amendments to the Commission's rules for governing telecommunications relay services (TRS) and related customer premises equipment for persons with disabilities that contained information collection requirements.

DATES: 47 CFR 64.604(b)(2), (c)(1)–(c)(5)(i) and 64.605(f) published at 65 FR 38432, June 21, 2000, are effective June 29, 2000.

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer & Governmental Affairs Bureau, Disability Rights Office, (202) 418–2517 (voice), (202) 418–0416 (TTY).

SUPPLEMENTARY INFORMATION: On March 6, 2000, the Commission released a *Report and Order*, published at 65 FR 38432, June 21, 2002, in CC Docket No. 98–67; FCC 00–56. The information collections contained in the *Report and Order* were approved by OMB on June 20, 2000. The OMB approval of the information collections contained in the *Report and Order* was announced in the **Federal Register** on June 29, 2000. *See* 65 FR 40093, June 29, 2000.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no persons shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418–0217. The OMB Control Number is 3060–0463.

Synopsis

In the *Report and Order*, the Commission amended its rules governing the delivery of TRS to expand the kinds of relay services available to consumers and to improve the quality of relay service. The Commission also amended its rules to better conform to the statutory mandate that TRS must be "functionally equivalent" to voice telecommunications service to the extent possible. Among other things, these rules are intended to improve the speed at which calls are answered and conversations relayed.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications relay service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31767 Filed 12–23–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No.031028268–3321–02; I.D. 091603F]

RIN 0648–AR12

Atlantic Highly Migratory Species; Bluefin Tuna Season and Size Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) governing the Atlantic bluefin tuna (BFT) fishery, NMFS amends the regulations regarding the opening date of the Purse seine category, closure dates of the Harpoon and General categories, and size tolerances of large medium BFT for the Purse seine and Harpoon categories. The intent of this final rule is to further achieve domestic management objectives under the HMS FMP and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) pursuant to the Atlantic Tunas Convention Act (ATCA).

DATES: This rule is effective on January 23, 2004, except for § 635.27(a)(1)(i)(C) which is effective December 24, 2003.

ADDRESSES: Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) may be obtained from Dianne Stephan, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the Highly Migratory Species Division Web site at *http://www.nmfs.noaa.gov/sfa/hmspg.html.*

FOR FURTHER INFORMATION CONTACT: Dianne Stephan at (978) 281–9397.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Background information regarding these regulatory changes was provided in the preamble to the proposed rule (68 FR 63747, November 10, 2003), and is not repeated here. By this final rule, NMFS announces the new Purse seine start date of July 15; the new Harpoon category closure date of November 15 or when the quota is reached, whichever comes first; the General category closure date of January 31 or when the quota is reached, whichever comes first; and new large medium BFT tolerances for the Purse seine and Harpoon categories. The large medium tolerance limit for each vessel in the Purse seine category is 15 percent by weight of that vessel's annual landings, and the large medium tolerance for the Harpoon category is two BFT per vessel per day.

Changes From the Proposed Rule

Several sections of regulatory text have been modified to be consistent with the change to the Purse seine category start date, specifically, § 635.28 (a)(2) and §§ 635.71(b)(10) and (b)(17). In addition, the final rule also includes a provision to delay the Purse seine category start date to no later than August 15 should it further assist in achieving the objective of the rule to reduce gear conflicts or overlap between fishing categories.

Comments and Responses

Comment 1 - NMFS received numerous comments in favor of a change in the Purse seine category start date from August 15 to July 15. Many commenters supported the July 15 Purse seine category start date for a variety of reasons including providing a greater length of time over which to spread Purse seine category landings, providing more time for purse seine vessels to catch their quota, and providing more opportunity to fish when the weather is better. In supporting the July 15 start date, some commenters stated that as the bulk of General category landings now occur later in the year than they had occurred when the August 15 purse seine start date was originally established, the date should be adjusted to July 15. Commenters stated that this change would be consistent with the original purpose of a purse seine start date that reduces overlap between fishing categories. One commenter also stated that currently the peak General category and Purse seine category landings coincide, which results in negative economic impacts for all in the fishery. This commenter noted that although a change to July 15 may negatively affect the Harpoon category, the proposed increase in allowance of two large mediums per vessel per day for the Harpoon category may mitigate these negative impacts by providing more of an opportunity for the Harpoon category to attain its quota by July 15, prior to the commencement of the Purse seine category fishing season.

Response - The final action establishes a start date for the Purse seine category of July 15. The intent of this action is to maximize positive economic impacts to the BFT fishery as a whole while minimizing negative impacts to the Harpoon category. Increasing the length of the season for the Purse seine category should help alleviate the overlap of large catches in the late summer and fall by allowing for the distribution of purse seine catches throughout more of the season, should improve market prices in the Purse seine and General categories, and would minimize gear conflict on the water. The increase of the Harpoon category large medium retention limit may mitigate impacts by improving the ability of the Harpoon category to land the annual quota, perhaps prior to the commencement of the Purse seine category season. In addition, the final rule includes a provision for delaying the start date to no later than August 15 if a delay would further reduce gear conflicts or overlap between the different categories. Any adjustment to the start date would be filed with the Office of the **Federal Register** but would not be filed less than 14 calendar days prior to July 15. Because there are only five vessels in the Purse seine category, NMFS will be able to provide actual notice to the affected fishermen.

Comment 2 - NMFS also received comments suggesting alternative start dates for the Purse seine category as well as other commercial fishing categories. Some commenters opposed to a July 15 Purse seine category start date supported the status quo August 15 date, and stated that the slower, late fall market could probably better withstand the fiscal impacts of large purse seine catches. One commenter preferred a start date for the Purse seine category later than August 15 and creation of an earlier start date than June 1 for the commercial handgear categories to reduce overlap. One commenter specifically requested an earlier season opening date of the General and Harpoon categories on May 1. A few commenters supported a purse seine start date earlier than July 15, and a number of commenters specifically requested that all categories start on the same date. One commenter requested that the purse seine season be open year-round.

Response - NMFS analyses for this action determined that with the status quo purse seine start date of August 15, the early fall market for the overall fishery suffers from reduced ex-vessel prices that are temporally associated with the height of Purse seine and General category landings. A July 15 start date is intended to shift purse seine landings to earlier in the season and improve ex-vessel prices during the early fall, which is when the General category harvests most of its quota. Alternative dates do not appear to meet the objectives of the rulemaking to assist overall fishery prices and avoid overlap between the Purse seine and General categories. A start date later than August 15 would shorten the season and could thereby negatively affect the ability of the Purse seine category to harvest its quota, which contradicts one objective of this final rule. A start date earlier than July 15 would allow for a longer period of time during which purse seine and harpoon landings would overlap and therefore could increase negative impacts to the Harpoon category, which are somewhat mitigated by the increase in the large medium tolerance for that category. Harmonizing all commercial fishery start dates to the same date would undermine the objective of this action to minimize gear conflicts on the water and to improve ex-vessel prices. Opening the start date for any fishery prior to June 1 would require adjustment of the fishing year, which must be accomplished through an FMP amendment. A year-round fishery for the Purse seine category was not considered as an alternative since it does not address the need to reduce gear conflicts identified in the original purpose for this action. However, as it is likely that market conditions and landing rates will vary among categories and from fishing year to fishing year the final rule includes a provision to provide some flexibility for adjusting the commencement of the Purse seine start date to no later than August 15.

Comment 3 - Several commenters opposed a July 15 start date because it was inconsistent with a current industry agreement regarding operations of spotter aircraft in the purse seine fishery. For this reason, one commenter supported a July 28 start date. The commenter noted that this fishing year was relatively calm regarding spotter plane activity and that the fishery would benefit from a permanent regulation regarding a July 28 start date for purse seine operations and their associated spotter aircraft.

Response - The 2003 fishing year was the first year for implementation of an industry agreement regarding the use of spotter planes throughout the industry. The July 28 start date for purse seine vessels and associated spotter aircraft established in the industry agreement is not an enforceable provision of NMFS regulations and could change based on revised industry arrangements. Consequently, it could be problematic to link season openings to actions not in NMFS control. NMFS recognizes the benefits of industry communication and cooperation on the issue of use of spotter planes in the fishery, and encourages the industry to continue to work together towards a constructive arrangement. The final rule includes a provision to provide some flexibility to the commencement of the Purse seine start date and any influence of spotter planes on landings rates could be considered as part of the deliberations to delay the opening from July 15 to a more appropriate date but no later than August 15.

Comment 4 - Several comments were received regarding quota allocation to the Purse seine category, the impact of purse seine landings on the market, and timing of BFT market forces on ex-vessel prices in general. Several commenters stated that the purse seine fishery interfered with both the General and Harpoon category fisheries, that the Purse seine category should be eliminated altogether, and the quota redistributed among the other commercial categories with higher ex-vessel value landings. These comments noted that there has been ample opportunity for purse seine vessels to catch available quota, i.e., if they had chosen to fish off southern states later in the season, and that purse seine fishing operations this year tended to disrupt the biology and behavior of the fish as well as other traditional fishing patterns and agreements. A commenter stated that shifting the start date to avoid market gluts was not going to help as the volume of fish landed by purse seiners would flood the market regardless of when they were landed. Several commenters noted that adjustment of start and opening dates among the categories would not necessarily assist prices of ex-vessel landings as the markets in Japan were dominated by imports from other countries. In addition, they noted that Japan had business interests in farm raised BFT in pens around the world and could control the flow of tuna from these pens depending on the Japanese domestic market need. A few commenters also mentioned that there was now a strong U.S. domestic market for BFT and that controlling or even banning imports of BFT into the United States could provide stronger prices for U.S. domestic fishermen for BFT destined for internal domestic markets.

Response - One of the purposes of this action is to provide modest changes to the current timing of several commercial categories to assist in increasing economic yield in the fishery overall. To achieve this objective, NMFS analyzed means of decreasing the overlap of the General category and Purse seine category fisheries to improve market conditions and reduce conflicts as these two fishing categories are responsible for the greatest amount of landings in the BFT fishery. This action was intended to provide modest adjustments, pending development of an FMP amendment, to address allocation issues that have arisen. The final rule provides flexibility for fine tuning of the commencement of the Purse seine category between July 15 and August 15 to further assist in achieving the objective of reducing gear conflicts and overlap between fishing categories based on, among others, data from landings and market conditions. NMFS recently published a Notice of Intent to prepare an FMP amendment (68 FR 40907; July 9, 2003) which will address BFT allocation as well as other issues. Elimination of the Purse seine category would require an FMP amendment as well. Information from ICCAT's Bluefin Statistical Document Program indicates that Japan imports BFT from many countries and that the U.S. domestic market for BFT has grown over the past several years. Controlling this international flow of product to improve United States domestic prices is beyond the purview of this rulemaking and would involve international trade negotiations with careful consideration of consequences to existing trade treaties and agreements. While this action will not be able to address BFT imports, it will provide modest adjustments to alleviate overlap in sectors of the U.S. Atlantic BFT fisheries, which could contribute to improved ex-vessel prices and reduce gear conflicts on the water.

Comment 5 - Comments were generally in favor of the November 15 end date for the Harpoon category. Commenters supported implementation of the end date as a means of preserving the Harpoon category quota for the traditional fishery. A few comments were opposed to establishing an end date. One comment stated it was creating two different standards for categories within the fishery especially when NMFS was considering extending the General category season. A few commenters requested that the end date be established on November 1.

Response - The final action includes a November 15 end date for the Harpoon category. This action is intended to maintain the Harpoon category quota for the traditional Gulf of Maine fishery, which upholds the purpose of the 1980 action that established the Harpoon category (45 FR 40118; June 13, 1980). Unlike other categories, the original intent of this fishery and quota allocation was for a particular geographic sector of traditional harpoon fishermen. November 15 is the approximate date by which most or all BFT have migrated out of the Gulf of Maine area. By closing the fishery on November 15, fishermen in other areas will not be able to land BFT against the Harpoon category quota. However, use of a harpoon to harvest BFT will continue to be available to all fishermen under the General category when the General category season is open. NMFS did not consider a November 1 end date because BFT landings in New England have occurred in mid-November, and November 15 attempts to provide the traditional fishery with all available opportunities to harvest the quota while still avoiding investment in a fishery outside the New England area.

Comment 6 - NMFS received several comments in favor of extending the General category end date. Many commenters supported the temporal extension of the General category fishery to include a winter fishery off south Atlantic states, and noted the important economic contribution this fishery makes to the local economy. Several commenters noted that they had invested in this fishery by purchasing equipment and needed more certain annual access to the fishery as opposed to depending upon potential remaining late season quota. One commenter stated that the 2003 quota increase from ICCAT would provide for this action with minimal impact on the summer and fall New England General category fishery. Other commenters noted that this would address some of the concerns raised by the North Carolina Division of Marine Fisheries petition, such as providing more fair and equitable access to BFT when they are available off the south Atlantic coast. A number of commenters requested that the January 31 season end date be applicable for the 2003 fishing year, i.e., for January 2004.

Response - The final action includes a January 31 end date for the General category season. The intent of this action is to more broadly distribute General category fishing opportunities both temporally and geographically. Although there may be a small negative impact on General category fishermen in the northern areas of the fishery, NMFS agrees that the recent increase in the ICCAT quota as well as NMFS' continuing management of the fishery with annual specifications and inseason actions will minimize these impacts. In addition, northern area General category vessels could mitigate impacts by traveling south to participate in the winter fishery. This action addresses, in part, a petition for rulemaking submitted by the North Carolina Division of Marine Fisheries to provide a reasonable opportunity for southern fishermen to harvest BFT when they are available in the southern area. NMFS published a **Federal Register** notice requesting public comment on the petition (67 FR 69502; November 18, 2002), and received 28 comments which ranged from support to opposition.

Other aspects of the petition relate to changes in the BFT quota allocations, which would require an FMP amendment process with further analyses and input from the HMS Advisory Panel (AP) and the public. The AP generally supported a late season commercial General category fishery for southern Atlantic states, depending upon the details and impacts on other fishery participants. In particular, AP members were generally supportive of using some proportion of the additional BFT quota allocated by ICCAT in 2002 towards meeting the objectives of the petition. The AP will revisit BFT allocation issues at its next meeting scheduled for February 9 - 11, 2004.

Comment 7 - Several commenters were opposed to extending the General category season and recommended alternative General category closure dates. A few commenters stated that the fishery off North Carolina was a new fishery rather than a traditional fishery, and thus should not be considered in setting the General category season and no extension should be provided. Several commenters proposed an alternative end date for the General category season of November 30, and requested that the General category retention limits early in the season be increased in order to provide northern area fishermen with a greater opportunity to harvest the quota. Several comments stated concern that if the General category was open during December, there may not be enough quota for the extended fishery in January and thus preferred opening the General category for either December or January but not both. Other comments suggested providing for a distinct set-aside quota and time period for a North Carolina fishery.

Response - The intent of this action is to more broadly distribute General category fishing opportunities both temporally and geographically and provide for an increase in optimum yield for the fishery overall. At the time of development of the HMS FMP, the General category quota tended to be harvested prior to the migration of BFT to waters off the southern states. However, since that time, the fishery has changed and General category quota has been available later into the season. Unlike the Harpoon category quota, the General category quota was not established for use solely by a traditional New England fishery. The potential increase in gross revenues provided by a winter General category fishery could help maximize optimum yield for the BFT fishery overall. Reallocation of quota among time periods or establishing set-aside quotas for particular areas would require an FMP amendment and is beyond the scope of this rulemaking. These issues may be addressed in HMS FMP Amendment Two which is currently under development. A Notice of Intent to prepare this amendment was published in the **Federal Register** on July 9, 2003 (68 FR 40907).

Comment 8 - Comments were generally in favor of the increase in tolerance limit for the Harpoon category. Commenters stated that this fishery is selective, that it is fair and equitable to adjust the tolerance if doing so for the Purse seine category, and an increase in the tolerance limit would not result in an increase in dead discards. A few commenters opposed any tolerance of large medium BFT. One commenter noted that the decrease in availability of giant BFT and any concerns regarding additional mortality of large medium were insignificant when compared to mortality of small fish in the eastern Atlantic and Mediterranean.

Response - The final action increases the tolerance limit for large medium BFT retention in the Harpoon category to two fish per vessel per day. The intent of this action is to balance mortality of pre-spawning fish with the requirement to provide a reasonable opportunity for the Harpoon category to attain its annual quota while avoiding dead discards. Although NMFS stated at the proposed rule stage that logbooks were not expected to be implemented, it is clear that additional information about at-sea operations is needed in order to better evaluate the affect of tolerance limits on dead discards and overall mortality of pre-spawning BFT. NMFS will pursue collection of such information through the implementation of previously approved vessel logbook and/or observer programs. To avoid duplication, existing programs for other fisheries such as the Northeast Region Vessel Trip Report will be evaluated relative to developing HMS specific reporting mechanisms.

Comment 9 - NMFS received comments both in favor of and opposed to the proposed increase in tolerance limit for the Purse seine category. Some commenters were opposed to any increase in tolerance limit, while others opposed the proposed tolerance in favor of a higher one.

Many commenters who were in favor of the change in tolerance limits stated that purse seine vessels would not target smaller fish as a result of a tolerance limit increase. Some commenters also noted that the mortality of undersized fish in the purse seine fishery was negligible when compared with mortality of small fish in the east Atlantic or even mortality of small fish in the U.S. Angling category. Commenters stated that increasing tolerance was particularly relevant when one considered the new data regarding mixing rates between east and west Atlantic stocks, and the uncertainty of BFT size and age at maturity.

Some commenters opposed to an increase in tolerance limit stated that the preferred alternative (15 percent by weight) would result in purse seine vessels targeting smaller fish, and could result in an increase of dead discards. Many commenters requested a thorough study of the effect of any increase in tolerance limits on dead discards. A commenter stated that purse seine vessels already had many advantages over other fishing categories, and that perhaps larger mesh nets would reduce catch of undersized BFT. Another commenter noted that there is a higher mortality associated with release of undersized BFT from purse seine nets compared to those released alive off hook-and-line. This commenter could only support up to a 50–percent increase if observers were deployed on all vessels; otherwise both trip and annual limits should remain the same. At least one commenter specifically requested that a trip limit remain in place for the Purse seine category.

Several commenters suggested a higher tolerance limit than that proposed, and some suggested waiving the tolerance limit all together and proposed a 73–inch (185.4 cm) minimum size for the Purse seine category. A commenter stated that there is a large potential for discards and wasted mortality because of the preponderance of schools of mixed BFT sizes, and suggested that the tolerance be increased to 50 percent by weight as a form of mitigation. This commenter stated that approximately 315 more large medium BFT would be harvested at a 25 percent tolerance limit than a 15 percent tolerance limit, and that 315 more BFT would be biologically insignificant. Several commenters broadened this request to establish 73–inch as a minimum size for all commercial fishing categories. Several commenters emphasized the need for the United States to ensure all possible quota is utilized in order to support domestic needs at ICCAT negotiations. A number of commenters referred to the 25–percent tolerance limit provided in year 2003 exempted fishing permits (EFPs), and encouraged NMFS to continue with what they considered a successful approach.

Response - The final action includes an increase in tolerance for large medium BFT in the Purse seine category of up to 15 percent of landings (by weight). The intent of this action is to balance mortality of large medium BFT while increasing the ability of the Purse seine category to catch the annual quota. NMFS has determined that only a modest increase in large medium tolerance is appropriate at this time, in light of the uncertainty of the effect of a greater tolerance limit on overall mortality of large mediums including dead discards, stock rebuilding, and dead discards of undersized BFT. NMFS estimates that an increase in the tolerance limit of up to 50 percent would result in an additional direct mortality of approximately 1,066 more large medium BFT over the current status quo direct mortality of 251 fish, i.e. over a four-fold increase.

Data from the 2003 season, which relaxed tolerance limits for the purse seine fishery to 25 percent under EFPs, show that purse seine vessels were able to increase landings over 2002 levels with the increased tolerance limit. Further evaluation of this data, in addition to socio-economic data to be provided from the 2003 EFP fishery, will assist NMFS with future management of this fishery sector, including compliance and enforcement of revised tolerance limits. NMFS will be collecting data on dead discards and other variables in this fishery through previously approved programs including vessel logbooks and/or observers. Additional data regarding discard rates and mortality of large medium BFT in the Purse Seine category will help to determine the biological impacts of adjusting the tolerance limits.

Comment 10 - One commenter requested that electronic comments via email be accepted in the future.

Response - NMFS has implemented pilot programs which accepted electronic comments for past rulemakings with some success. The agency intends to pursue the use of electronic media for public comment in the near future.

Comment 11 - One commenter noted that reciprocity should be established for commercial fishermen from other states to fish in North Carolina waters.

Response - The issue of fishing access in state waters by out of state fishermen is a matter of state jurisdiction and not under the purview of NMFS. However, NMFS notes that the State of North Carolina has provided reciprocity for commercial BFT fishermen from other states. In order to fish commercially for BFT in North Carolina, BFT commercial fishermen from other states are now able to obtain a "license to sell" which allows them to sell their catch in North Carolina. Out of state vessels are also allowed to fish within state waters with a permit from North Carolina Division of Marine Fisheries.

Comment 12 - A commenter suggested providing a "mulligan" or tolerance limit of some set number of undersized fish per vessel in all categories that would allow vessels to retain and land accidentally caught undersized fish and reduce discards. The commenter stated that this approach could also help reduce incentives to sell these undersized fish illegally, and that the Japanese market has a preference for these smaller sized fish and offers relatively higher prices per pound.

Response - Adjusting size limits or tolerance limits for reasons other than improving the ability of the Purse seine and Harpoon categories to harvest their respective quotas was beyond the objective for this action. A more comprehensive approach towards eliminating dead discards will be addressed in HMS Amendment Two.

Comment 13 - Comments were received regarding decreasing quotas for all species; eliminating the use of gill nets, seine nets, longlines, and harpoons; and including environmentalists on agency panels. One commenter noted that an ecosystem imbalance caused by a reduction in the number of herring available in New England waters has resulted in a decreased availability of BFT in New England. Many commenters opposed the recent closing of the BFT Angling category.

Response - These issues are outside the scope of the current rulemaking. NMFS has issued a notice of intent for preparation of an amendment to the HMS FMP (68 FR 40907; July 9, 2003) which could address many of these issues, as well as others, during the FMP amendment process. The Herring fishery is managed under the Herring Fishery Management Plan and is currently in the amendment process. The New England Fisheries Management Council is the responsible council for the Herring FMP amendment and has analyzed several alternatives for action that include considerations of the impact of herring on elements of the ecosystem such as predator- prey relationships. The BFT Angling category was closed on November 17 (68 FR 64990, November 18, 2003) because of recent data indicating an over-harvest of this category in 2002. NMFS is reviewing these data to determine if further action is necessary.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. The AA has determined that the regulations contained in this final rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries. NMFS has determined that these regulations are consistent with the Magnuson-Stevens Act, ATCA and ICCAT recommendations.

This action relieves a restriction by extending the BFT General category end date until January 31, thus providing this category with approximately 30 more days in the fishing season. The General category closed on December 10 because the General category had attained its quota. However, there is additional quota available in other categories that NMFS intends to transfer into the General category in January 2004, after updating and reviewing landings data. This action will re-open the General category to fishing through January 31 to allow for the harvest of the additional quota. Therefore, pursuant to 5 U.S.C. 553(d)(1), the 30–day delayed effectiveness period is not applicable to Section 635.27(a)(1)(i)(c), the General category end date provision.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule and submitted it to the Chief Counsel for Advocacy of the Small Business Administration. No comments were received on the IRFA concerning the economic impact of this final rule. A summary of the FRFA is provided below.

The analysis for the FRFA examines the impacts of the alternatives for adjusting the Purse seine category start date, establishing a Harpoon category end date, adjusting the General category end date, and adjusting the retention limit for large medium BFT in the Harpoon and Purse seine category fisheries on small entities. The purpose of this final action is to ensure the BFT fishery is managed consistently with the objectives of the HMS FMP and its implementing regulations, applicable statutes including the Magnuson-Stevens Act and ATCA, and the 1998 ICCAT Rebuilding Plan for western Atlantic BFT.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. This final action would affect vessels in three permit categories, namely the Purse seine, Harpoon, and General categories. The gross revenues for 2002, and number of vessels to date for 2003 for each category are as follows: General category, $13.9 million, 6,797 vessels; Purse seine category, $3.0 million, 5 vessels; and the Harpoon category, $0.5 million, 59 vessels.

Three alternatives were analyzed for the adjustment of the Purse seine category start date, including the no action/status quo alternative of an August 15 start date, the same start date as all other categories - June 1, and the selected alternative of a July 15 start date. These alternatives were evaluated to determine their ability to improve optimum yield and ex-vessel prices for the Purse seine and General categories while minimizing negative impacts to other commercial categories, specifically the Harpoon category. Because of the various factors that affect ex-vessel prices for BFT (i.e., supply, quality, etc.), the exact effect of different Purse seine category season start dates on ex-vessel prices is unknown. NMFS estimated these impacts by assuming that the amount of product on the market was the primary factor affecting ex-vessel prices.

Under the no action alternative, both the General and Purse seine categories appear to be negatively affected by depressed ex-vessel prices which appears to result from a mid-season glut of BFT on the market. However, under this alternative the Harpoon category benefits with higher ex-vessel prices early in the season before the Purse seine category commences.

Another alternative, opening the Purse seine category on June 1, could shift Purse seine category landings to earlier in the year and result in positive impacts for the Purse seine and General categories by relieving the mid-season market glut and distributing landings more uniformly over the fishing year. However, the Harpoon category could suffer the most negative impacts under this alternative because of the overall net increase in early season landings resulting from the overlap with the Purse seine category fishery season that would increase by 76 days. This overlap would occur during the time period when the Harpoon category traditionally experiences the best ex-vessel prices and on average annually lands the bulk (87 percent) of its product.

The selected alternative of a July 15 start date appears to minimize the negative impacts on the Harpoon category by reducing by more than half the amount of overlap with the Purse seine category season relative to the June 1 start date alternative, while still reducing the mid-season market glut, which should positively impact Purse seine and General category ex-vessel prices. Under this alternative, increase in overlap with the Harpoon category would be reduced to 30 days and such overlap would occur during the time period when the Harpoon category averages approximately 26 percent of its gross revenues annually. Due to the large amount of landings, gross revenues and numbers of participants attributed to the Purse seine and General category commercial BFT sectors, this alternative is expected to provide the greatest positive impacts to the BFT fishery as a whole, even though the smaller Harpoon category may experience slightly negative economic impacts. Any negative impact to the Harpoon category could be partially mitigated by the increase in this final rule of the Harpoon category tolerance limit for large medium BFT to two fish per vessel per day, which would improve the ability of the Harpoon category to catch its annual quota. In addition, in response to comment, the final rule for this alternative includes a provision for delaying the start date to no later than August 15 if such a delay would further reduce gear conflicts or overlap between the different categories. Any adjustment to the start date would be filed with the Office of the **Federal Register** but would not be filed less than 14 calender days prior to July 15. Because there are only five vessels in the Purse seine category, NMFS will be able to provide actual notice to the affected fishermen.

Three alternatives were also considered for the Harpoon category end date. The no action/status quo alternative would maintain an open Harpoon category season year round, provided there is Harpoon category quota available. Alternative two (selected) would close the Harpoon category season on November 15, and alternative three would establish a flexible season end date based on the actual dates of the BFT fall migration.

The no action/status quo alternative is expected to result in negative impacts for the traditional northern Harpoon category fishery since BFT could be harvested under the Harpoon category quota in areas outside the New England area, thereby reducing the quota available to the traditional fishery. In addition, the status quo may encourage the development of, and investment in, a southern area Harpoon category fishery, which has not yet occurred.

Alternative two is designed to maintain the Harpoon category quota for the traditional New England fishery and impact only the Harpoon category vessels. This alternative is selected as it is expected to provide positive impacts for the traditional New England Harpoon category fishery since it would close the fishery near the time period when BFT migrate out of the New England area. Negative impacts to southern area fishermen interested in participating in the Harpoon category fishery under this alternative are expected to be negligible since there had been no BFT landings against the Harpoon category quota in such area prior to 2002, few vessels have participated in the Harpoon category fishery in the south Atlantic since that time, and there has been little investment in gear and equipment in a Harpoon category fishery outside of the New England area. Finally, vessel owners/operators that fish outside the traditional New England area that wish to use a harpoon as a primary gear type would still be allowed to do so under the General category permit, albeit under General category retention limits and restrictions.

The third alternative is also designed to affect only Harpoon category vessels and maintain the Harpoon category quota for the traditional New England fishery. Unlike the status quo and alternative two, it could provide additional positive impacts to the traditional New England Harpoon category fishery since it would more closely track the BFT fall migration, and could eliminate the landing of any BFT under the Harpoon category quota outside of the area of the traditional fishery. However it could be difficult to administer due to the difficulty in tracking the BFT migration and may lead to uncertainty for members within the Harpoon category regarding closure of the fishery. Alternative three also would have negligible impacts on southern area fishermen, for the same reasons noted above for alternative two.

The General category season is scheduled to end on December 31 of each fishing year or when the General category quota is harvested, whichever comes first. A winter fishery for large medium and giant BFT has existed in the south Atlantic since the early 1990s, and when quota is available, fish have been harvested under the General category. Two alternatives (in addition to the no action/status quo alternative) were considered that would both extend the General category season to provide southern Atlantic fishermen with more access to the General category BFT quota in the late fall and winter. Under the status quo the General category season would close on December 31 regardless of whether the full allocated quota has been attained or not. Southern area fishermen have been adversely affected this closure date as it occurs when BFT appear off southern states and commercial fishing opportunities have been denied to them after December 31.

Alternative two (selected) would move the General category end date to January 31 of each fishing year. Overall economic impacts of this alternative to the General category BFT fishery as a whole would be neutral since the same overall amount of the General category quota would be landed and the value of the General category quota would not be changed. General category fishermen in the northern region may experience negative economic and social impacts, when compared to the status quo, since any unharvested quota as of December 31 would otherwise be rolled over to the following year. General category fishermen in the southern region would be positively affected by this alternative as it would allow greater utilization of existing investment in gear and equipment if quota was still available for harvest after December 31, and since BFT are usually available in the southern region during the end of the calender year due to the fall migration from the north.

Under alternative three, extending the General category end date to May 31, overall impacts would again be neutral but northern General category fishermen could be more negatively affected and southern region fishermen could be more positively affected, due to the BFT fall migration, and depending on the amount of quota that remains after the season would have usually been closed. Alternative two was the alternative selected since it minimizes negative impacts to northern area fishermen by providing a more limited southern fishery extension and provides positive impacts for southern area fishermen by allowing further utilization of gear and equipment previously invested in a southern area large medium and giant BFT fishery. Negative impacts on northern area fishermen could be slightly mitigated if they are willing to travel south late in the season, provided there is reciprocity among different states' permitting costs and out-of-state fishermen are allowed under a coastal state's regulations to participate in a BFT commercial fishery, regardless of whether it occurs in federal or state waters.

As discussed above, the Purse seine and Harpoon categories have recently experienced difficulties in landing the full annual quota provided for each of these categories with the result of decreased annual gross revenues. Each alternative considered would modify the tolerance limits for landing large medium BFT and was analyzed to determine the increased likelihood of harvesting the respective quotas in the designated time frames while balancing any ecological impacts of increased fishing mortality against the potential to reduce dead discards. As NMFS currently has insufficient information on discards, data will be collected through previously approved information collection programs (i.e., vessel logbooks and/or observers) to determine the effect of adjusting tolerance limits for large medium BFT in the Harpoon and Purse seine categories on mortality of pre-spawning fish and the ability of these categories to harvest allocated quotas.

Alternative one, the no action/status quo alternative, has had negative impacts with a resulting decrease in optimum yield for both the Purse seine and Harpoon categories since they have been unable to land and sell the full allotted quota. Alternatives two, three, and four, all related solely to the Purse seine category, were all designed to increase access to large medium BFT for the Purse seine category and to increase the possibility of full quota attainment while balancing the need to control overall mortality and increased pressure on the large medium size class of BFT. Alternative two removes the 10–percent annual tolerance limit and maintains the 15–percent trip limit which could increase landings and gross revenue for the Purse seine category. Alternative three (selected), which eliminates the trip limit and establishes the annual limit at 15 percent, would provide access to the same total amount of landings as alternative two, but may also increase net revenues by increasing flexibility in meeting the annual tolerance limit. Alternative four could provide the greatest increase in access by decreasing the minimum size to 73 inches (185 cm) for the Purse seine category; however, it was not selected because of the associated potential negative ecological impact of a relatively large increase in overall BFT mortality within the large medium size class of BFT.

Alternatives five and six, related solely to the Harpoon category, were designed to increase access to large medium BFT for the Harpoon category and, similar to considerations with the Purse seine category, balance the attainment of the quota allocation with concerns regarding an increase in mortality and negative ecological impacts. Alternative five would allow an increase in the daily retention limit for the Harpoon category from the status quo of one large medium BFT per day to two large medium BFT per day, and was selected since it is expected to provide an acceptable balance between positive economic effects and a modest increase in mortality of large medium BFT. Large medium BFT mortality is not expected to increase significantly under this alternative because of a harpooner's ability to visually determine the size class of BFT prior to throwing a harpoon. Alternative six would allow full access to the large medium size class by reducing the minimum size limit for the Harpoon category to 73 inches (185 cm), and would provide the most positive economic impacts. However, it was not chosen because of the potential negative ecological impact of a relatively large increase in mortality on large medium fish.

Finally, alternative seven, unlike all other alternatives, would eliminate the tolerance for large medium size class and raise the minimum size of BFT to 81 inches (206 cm) in both the Purse seine and Harpoon categories. This alternative was considered due to the potential positive ecological impacts that would enhance western Atlantic BFT stock rebuilding, but would likely have negative economic and social impacts and further impede full attainment of quota and optimum yield. By narrowing the universe of fish available for harvest to just the giant size class, it would be more difficult for these categories to harvest the allocated quotas, thus the original objective for this action would be contradicted.

This final rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule does not contain any new information collection, reporting, recordkeeping or other compliance requirements. Logbook and observer data collection schemes were proposed and made final in the HMS Fishery Management Plan issued in 1999 and the Office of Management and Budget approved the information collections as part of that rulemaking process. Both the Purse Seine and Harpoon fisheries for BFT were included in the approved information collection requests for these programs. NMFS has faced resource constraints in implementing the approved information collections and has tried to reduce costs and avoid duplication by examining all possible avenues of accessing data on catch, effort and discards in these fisheries. In this final rule, NMFS balanced requirements to reduce dead discards against the requirements to limit mortality on pre-spawning fish and provide a reasonable opportunity for U.S. fishermen to harvest the quotas allocated to each category under the international rebuilding program for BFT and the HMS FMP allocation sector scheme. NMFS addressed this issue by adjusting the tolerance limits for landing large medium BFT for both the Harpoon and Purse Seine categories. In developing this rule, it has become apparent that additional information on the size distribution of fish encountered/caught (as opposed to fish landed) is needed, and NMFS plans on obtaining this information through the previously approved logbook and observer programs.

NMFS prepared an EA for this final rule, and the AA has concluded that there would be no significant impact on the human environment if this final rule were implemented. The EA presents analyses of the anticipated impacts of these regulations and the alternatives considered. A copy of the EA and other analytical documents prepared for this final rule, are available from NMFS (see ADDRESSES).

This rule has been determined to be not significant for purposes of Executive Order 12866.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act (ESA). A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. NMFS is currently implementing the reasonable and prudent alternative required by the BiOp. This final rule would not have any additional impact on sea turtles as these actions do not affect the use of pelagic longline gear, would not likely increase or decrease pelagic longline effort, nor are they expected to shift effort into other fishing areas. No irreversible or irretrievable commitments of resources are expected from this final action that would have the effect of foreclosing the implementation of the requirements of the BiOp.

NMFS has determined that the final regulations would be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and Caribbean coastal states that have approved coastal zone management programs. On November 10, 2003, the proposed regulations were submitted to the responsible state agencies for their review under Section 307 of the Coastal Zone Management Act. As of November 28, 2003, NMFS has received 3 responses, all concurring with NMFS' consistency determination. Because no responses were received from the other states, their concurrence is presumed.

The area in which this final action is planned has been identified as an Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. Based on the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks, which analyzed the impacts of purse seine, harpoon, and rod and reel gear on EFH, this action is not anticipated to have any adverse impacts to EFH.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated:December 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.23, paragraphs (d) and (e)(1) are revised to read as follows:

§ 635.23 Retention limits for BFT.

* * * * *

(d) *Harpoon category.* Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an unlimited number of giant BFT per day. An incidental catch of only two large medium BFT per vessel per day may be retained, possessed, or landed.

(e) * * *

(1) May retain, possess, land, or sell large medium BFT in amounts not exceeding 15 percent, by weight, of the total amount of giant BFT landed during that fishing year.

* * * * *

■ 3. In § 635.27, paragraphs (a)(1)(i)(C), (a)(4)(i), and (a)(5) are revised to read as follows:

§ 635.27 Quotas.

(a) * * *

(1) * * *

(i) * * *

(C) October 1 through January 31 - 10 percent.

* * * * *

(4) * * *

(i) The total amount of large medium and giant BFT that may be caught, retained, possessed, or landed by vessels for which Purse Seine category Atlantic Tunas permits have been issued is 18.6 percent of the overall U.S. BFT landings quota. The directed purse seine fishery for BFT commences on July 15 of each year unless NMFS takes action to delay the season start date. Based on cumulative and projected landings in other commercial fishing categories, and the potential for gear conflicts on the fishing grounds or market impacts due to oversupply, NMFS may delay the BFT purse seine season start date from July 15 to no later than August 15 by filing an adjustment with the Office of the **Federal Register** for publication. In no case shall such adjustment be filed less than 14 calendar days prior to July 15.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels for which Harpoon category Atlantic Tunas permits have been issued is 3.9 percent of the overall U.S. BFT quota. The Harpoon category fishery closes on November 15 each year.

* * * * *

■ 4. In § 635.28 paragraph (a)(2) is revised to read as follows:

§ 635.28 Closures.

(a) * * *

(2) From the commencement date of the directed BFT purse seine fishery, as provided under § 635.27(a)(4)(i), through December 31, the owner or operator of a vessel that has been allocated a portion of the Purse Seine category quota under § 635.27(a)(4) may fish for BFT. Such vessel may be used to fish for yellowfin, bigeye, albacore, or skipjack tuna at any time, however, landings of BFT taken incidental to fisheries targeting other Atlantic tunas or in any fishery in which BFT might be caught will be deducted from the individual vessel's quota for the following BFT fishing season. Upon reaching its individual vessel allocation of BFT, the vessel may not participate in a directed purse seine fishery for Atlantic tunas or in any fishery in which BFT might be caught for the remainder of the fishing year.

* * * * *

■ 5. In § 635.71 paragraphs (b)(10) and (b)(17) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(10) Fish for or catch any Atlantic tunas in a directed fishery with purse seine nets if there is no remaining BFT allocation made under § 635.27 (a)(4).

* * * * *

(17) As a vessel with a Purse Seine category Atlantic tunas permit, catch, possess, retain, or land BFT in excess of its allocation of the Purse Seine category quota, or fish for BFT under that allocation prior to the commencement date of the directed BFT purse seine fishery, as specified in § 635.27(a)(4).

* * * * *

[FR Doc. 03–31758 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284–2323–02; I.D. 121803C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring 357,867 lb (162,326 kg) of commercial summer flounder quota to the Commonwealth of Virginia from its 2003 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: DATES: Effective December 19, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326, FAX (978) 281–9135, *Jason.Blackburn@Noaa.gov*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2003 calendar year was set equal to 13,980,028 lb (6,341,235 kg). The percent allocated to vessels landing summer flounder in Virginia is 21.31676 percent, and in North Carolina is 27.44584 percent. This resulted in an initial commercial quota for Virginia of 2,980,089 lb (1,351,746 kg), and for North Carolina of 3,836,936 (1,740,405 kg) (68 FR 60, January 2, 2003). The 2003 allocation for Virginia was further reduced to 2,968,429 lb (1,346,457 kg), and for North Carolina to 3,821,924 lb (1,733,596 kg), due to research set-aside (January 2, 2003). The 2003 allocation for Virginia was also adjusted downward due to an estimated overage of the 2002 quota of 76,024 lb (34,484 kg), as of October 31, 2002, so that the resulting adjusted 2003 commercial quota for Virginia was 2,904,065 lb (1,317,275 kg) as of January 2, 2003 (68 FR 60). However, NMFS later found that the estimate of a 76,024–lb (34,484–kg) overage as of October 31, 2002, was in error, and restored that amount to Virginia's 2003 quota for a revised total of 2,968,429 lb (1,346,457 kg) on March 3, 2003 (68 FR 9905). The North Carolina quota allocation was not affected by overages from 2002. Therefore, their quota allocation remained at 3,821,924 lb (1,733,596 kg) (68 FR 9905).

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 357,867 lb (162,326 kg) of its 2003 commercial quota to Virginia. This transfer is prompted by a problem with shoaling in the Oregon Inlet, caused by the recent Hurricane Isabel, that is preventing some North Carolina fishing vessels from landing at their normal ports. Landing their catch in Virginia represents the next best alternative, but requires a transfer to account for an increase in Virginia landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2003 are: Virginia, 3,326,296 lb (1,508,783 kg); and North Carolina, 3,464,057 lb (1,571,270 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 18, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31720 Filed 12–19–03; 2:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 247

Wednesday, December 24, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AI37

Federal Employees Health Benefits Program: Effective Dates

AGENCY: Office of Personnel Management.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing its proposal to revise the regulations on adopting January 1 as the effective date for all annual open season enrollment changes and new enrollments in the Federal Employees Health Benefits Program (FEHB) which was published August 31, 1998, FR Doc. 98–23335. The regulation would have changed the existing FEHB regulations concerning the effective date from the 1st day of the first pay period in the new calendar year. This regulation would have concurrently changed the effective date of open season changes in enrollment made by employees, annuitants, former spouses and individuals enrolled under the temporary continuation of coverage (TCC) provisions of FEHB law.

The proposed regulation would have standardized the effective date of most of these new enrollments or changes in enrollment and made it consistent with the beginning of health benefits offered by FEHB plans, which are based on the calendar year. The intent of the regulation was to make it easier for employing offices and health plan carriers to administer the Program and reduce the potential for errors in determining effective dates.

The comment period for the proposed regulation ended September 30, 1998. OPM received comments from agencies that their automated payroll systems were not functionally capable of pro-rating employees' premium shares on other than a pay period basis. January 1 typically falls in the middle of a bi-weekly pay period, the most prevalent pay period used by Federal agencies. Therefore, most agencies would be required to accurately allocate the pro rata premiums to employees' pay on a timely basis. Some agencies reported that they simply would be unable to pro-rate premiums from January 1 to the beginning of the first pay period in the calendar year. Since 1998, OPM has subsequently raised this issue with agencies with similar responses.

OPM is responsible for the Administration's new e-Payroll initiative, part of the President's Management Agenda. This initiative is designed to modernize the Government's payroll system. OPM has selected four payroll service providers to replace the current 22 providers for the Federal government's 1.8 million employees. Under the e-Payroll initiative plan, the four providers will begin government-wide processing in September 2004. Once these new systems are in place, we will reconsider the status of this proposed FEHB rulemaking.

FOR FURTHER INFORMATION CONTACT: Anne Easton on (202) 606–0004.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–31768 Filed 12–23–03; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 55 and 81

[Docket No. 00–108–2]

RIN 0579–AB35

Chronic Wasting Disease Herd Certification Program and Interstate Movement of Captive Deer and Elk

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish a herd certification program to eliminate chronic wasting disease from captive cervids in the United States. Participating deer and elk herds would have to follow program requirements for animal identification, testing, herd management, and movement of animals into and from herds. After 5 years of enrollment with no evidence of chronic wasting disease, a herd would be granted "certified" status. Owners of herds could enroll in a State program that we have determined has requirements equivalent to the Federal program, or could enroll directly in the Federal program if no State program exists. We are also proposing to establish interstate movement requirements to prevent the interstate movement of deer and elk that pose a risk of spreading CWD. These actions are intended to eliminate CWD from the captive deer and elk herds in the United States.

DATES: We will consider all comments that we receive on or before February 23, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–108–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–108–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–108–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Lynn Creekmore, Staff Veterinarian, VS, APHIS, 2150 Centre Avenue, Fort Collins, CO 80526, telephone (970) 494–7354.

SUPPLEMENTARY INFORMATION:

Background

Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy (TSE) of cervids (members of Cervidae, the deer family) that as of November 2002 has been found only in wild and captive animals in North America and in captive animals in the Republic of Korea. First recognized as a clinical "wasting" syndrome in 1967, the disease is typified by chronic weight loss leading to death. There is no known relationship between CWD and any other TSE of animals or people. Species known to be susceptible to CWD include Rocky Mountain elk, mule deer, white-tailed deer, and black-tailed deer. Non-cervid ruminant species, including wild ruminants and domestic cattle, sheep, and goats, have been housed in wildlife facilities in direct or indirect contact with CWD-affected deer and elk, and as of November 2002 there has been no evidence of transmission of CWD to these other species. Additional studies to delineate the host range of CWD are underway.

In the United States, CWD has been confirmed in free-ranging deer and elk in Colorado, Illinois, Nebraska, New Mexico, South Dakota, Utah, Wisconsin, and Wyoming, and in 27 captive (farmed) elk herds in Colorado, Kansas, Minnesota, Montana, Nebraska, Oklahoma, South Dakota, and Wisconsin, and in 2 captive deer herds in Wisconsin. The disease was first detected in U.S. farmed elk in 1997.

Research is being conducted to develop live-animal diagnostic tests for CWD. Currently, definitive diagnosis is based on postmortem examination (necropsy) and testing of postmortem samples. On microscopic examination, lesions of CWD in the central nervous system resemble those of other TSE's. In addition, using a technique called immunohistochemistry, scientists test brain tissues for the presence of the protease-resistant prion protein.

The origin and mode of transmission of CWD is unknown. Animals born in captivity and those born in the wild have been affected with the disease. Based on epidemiology, transmission is thought to be lateral, or from animal to animal. Although maternal transmission may also occur, it appears to be a relatively uncommon form of transmission.

Surveillance for CWD in free-ranging deer and elk in Colorado and Wyoming has been ongoing since 1983 and has defined the endemic areas in those States. CWD was detected in 2000 and 2001 in free-ranging deer in western Nebraska. The source of the disease is believed to be natural spread from the Colorado and Wyoming endemic area. More intensive surveillance to better define the prevalence and distribution of the disease in free ranging deer in these States is underway. However, in 2002, CWD was detected in wild cervids in northwestern Colorado, southern New Mexico, southwestern South Dakota, and south central Wisconsin. Detection of disease in these unexpected areas has led to increased surveillance to better define the limits of the endemic area and to determine the nationwide distribution and prevalence of CWD in wild cervids. This surveillance effort is a two-pronged approach consisting of hunter-harvest cervid surveys conducted in many States, as well as surveillance targeting deer and elk exhibiting clinical signs suggestive of CWD throughout the entire country. Surveillance for CWD in captive elk began in 1997. Captive cervid surveillance has increased each year since 1997 and will be an integral part of the U.S. Department of Agriculture (USDA) program to eliminate CWD from captive cervids. Surveillance in both wild and captive animals has been a cooperative effort involving State agriculture and wildlife agencies, USDA, elk and deer producers, and hunters.

The presence of CWD in cervids causes significant economic and market losses to U.S. producers. Canada recently prohibited the importation of elk from Colorado and Wyoming and now requires that other cervids be accompanied by a certificate stating that CWD has not been diagnosed in the herd of origin. The Republic of Korea recently suspended the importation of deer and elk and their products from the United States and Canada. The domestic prices for elk and deer have also been severely affected by fear of CWD.

The Animal and Plant Health Inspection Service's (APHIS's) regulations in 9 CFR subchapter B govern cooperative programs to control and eradicate communicable diseases of livestock. In accordance with the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture has the authority to issue orders and promulgate regulations to prevent the introduction into the United States and the dissemination within the United States of any pest or disease of livestock, and to pay claims growing out of the destruction of animals. Animal health regulations administered by the Department under this authority include those specifically addressing control programs and indemnity payments for tuberculosis (part 50), brucellosis (part 51), pseudorabies (part 52), and scrapie (part 54), and regulations in part 53 regarding payment of claims for other diseases. We have already promulgated regulations to pay indemnity to the owners of CWD-positive captive herds who voluntarily depopulate their herds. These indemnity regulations, contained in 9 CFR part 55 and referred to below as the indemnity interim rule, were published in the **Federal Register** on February 8, 2002 (Docket No. 00–108–1, 67 FR 5925–5934).

While the indemnity program should contribute greatly to the eventual eradication of CWD in the United States, it will not achieve this goal unless it is supported by programs to actively identify herds infected with CWD, and to manage these herds in a way that will prevent further spread of CWD. To that purpose, we are proposing to create a CWD Herd Certification Program to help eliminate chronic wasting disease from the captive deer and elk herds in the United States. Deer and elk herd owners who choose to participate would have to follow program requirements for animal identification, testing, herd management, and movement of animals into and from herds. We are also proposing to establish interstate movement requirements to prevent the interstate movement of deer and elk that pose a risk of spreading CWD.

APHIS has established herd or flock certification programs in the past to monitor animals for disease and eventually certify a herd or flock as disease-free or low risk. Notably, we established the Scrapie Flock Certification Program, which is described in 9 CFR part 54, subpart B. The CWD Herd Certification Program that we are proposing in this document has many features in common with the scrapie program. Because both diseases are caused by TSE's and often have a long incubation period, both programs require closely monitoring animals over a period of years and restricting movements of animals into and from herds.

Proposed CWD Herd Certification Program

We are proposing to create a cooperative Federal-State-private sector program to contribute to the eradication of CWD from captive deer and elk herds in the United States.

Jurisdiction over captive deer and elk varies from State to State. The vast majority of captive deer and elk are domesticated or farmed; that is, they are raised for profit on private ranches or farms. A smaller number of captive deer and elk are maintained in zoos, other exhibitions, or research facilities.

Farmed captive deer and elk are raised either for sale for meat, for sale as breeding animals, for harvest of antler velvet, or for hunting on private game facilities. In some States, the regulatory authority over captive deer and elk resides with the State agricultural or animal health agency or the State wildlife management agency, and in some States the authority is shared between agricultural and wildlife management agencies.

We have designed a Federal program to monitor the health of deer and elk herds and eventually certify them as low risk for CWD. The CWD Herd Certification Program relies primarily on animal identification, regular surveillance of herds for evidence of CWD, testing for CWD of animals that die in the monitored herds or are sent for slaughter, and limiting new herd acquisitions to animals from herds that are also enrolled in the program. These activities, along with State-Federal cooperation in tracing the movements of CWD-positive animals and identifying animals and herds that are exposed to them, are the foundation of the CWD Herd Certification Program.

Several States already enroll deer and elk herd owners in programs based on these principles. We believe that it is better to build a Federal program that recognizes State activities than to replace them with a strictly Federal program. Therefore, our proposal would establish certain basic definitions and requirements that we believe are consistent among different State programs to effectively address CWD on a national level. We believe the States that have or are developing CWD programs can readily incorporate our proposed minimum criteria with few or no changes to State programs. Our proposal also includes a process for APHIS to approve State programs that meet these criteria as Approved State CWD Herd Certification Programs, and to "grandfather" all herds enrolled in those State programs into the CWD Herd Certification Program. (Note that we do not propose separate Federal and State programs; rather, the CWD Herd Certification Program includes, as a subset, the Approved State CWD Herd Certification Programs—those herds that did not apply directly to enroll in the CWD Herd Certification Program, but that instead were admitted to it based on their prior enrollment in a State program.)

By this means, State CWD programs would become consistent with Federal minimum criteria and with each other. At the herd level, activities and compliance would be based on State guidelines rather than Federal ones. For herd owners who are involved with Approved State CWD Herd Certification Programs, this means that the owners would continue to work with the State contacts and procedures that are familiar to them.

This proposal represents an attempt to apply current scientific and diagnostic information to the disease control and management practices of deer and elk production units. The science of CWD, like that of other TSE's, is rapidly evolving. As new information becomes available, the CWD Herd Certification Program will be updated. The current proposal is designed to have the necessary flexibility to respond to new developments.

The goal of the program is the eradication of CWD from captive deer and elk herds in the United States. Captive herds are those animals that are privately or publicly owned and held for economic or other purposes within a perimeter fence or confined area. This includes cervids that are "farmed," "ranched," "game farmed," or owned by zoos and other public or private entities. The proposed CWD Herd Certification Program would not apply to animals being held for CWD research purposes by State or Federal agencies or universities.

The CWD Herd Certification Program is designed for captive black-tailed and mule deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), red deer (*Cervus elaphus*), and captive elk (*Cervus elaphus*) or elk-red deer hybrids. Except for red deer, all these species are known to be susceptible to CWD; red deer are included because of their extreme genetic similarity to elk. These deer and elk belong to the Family Cervidae, along with other types of deer, reindeer, sitka deer, and moose. Aside from research animals and animals in zoological collections, elk and white-tailed deer are the only captive cervid species in which CWD has been reported. However, CWD has been reported in wild mule deer, white-tailed deer, and elk. Should CWD be reported in other cervid species, this program may be used as a model for those industries to follow.

The CWD Herd Certification Program does not apply to free-ranging cervids under the management of Federal, State or Native American Tribal management authorities. Although it is not directly addressed by this proposal, the spread of CWD in free-ranging animals in its endemic area (Colorado, Wyoming and Nebraska) and its appearance elsewhere, such as in Wisconsin and New Mexico, is a major concern. USDA is working as closely as possible with appropriate State and Federal agencies to encourage management actions to address the presence of CWD in all cervids. USDA will continue to support surveillance for CWD in free-ranging cervids across the country.

Under this proposal, States would design and implement Approved State CWD Herd Certification Programs for their own captive deer and elk owners. If a State does not develop a program, cervid owners in that State could directly enroll in the CWD Herd Certification Program. If a State program meets minimum APHIS requirements to ensure that programs are effective and consistent, the Administrator of APHIS would designate the State program to be an Approved State CWD Herd Certification Program. States could make program standards at the herd level more stringent than the minimum criteria established by APHIS, and could make participation in the CWD Herd Certification Program mandatory if they chose.

Several States have already developed or are developing CWD certification programs. Existing State CWD programs and the deer and elk owners participating in them would be grandfathered into the Federal program if they meet the minimal requirements. The date these herds enrolled in a State program that APHIS subsequently determines qualifies as an Approved State CWD Herd Certification Program would be considered their enrollment date in the CWD Herd Certification Program.

Deer and elk owners in those States that do not have an Approved State CWD Herd Certification Program would be able to join the CWD Herd Certification Program by applying directly to APHIS through their veterinarian in charge[1] and complying with the minimum program requirements for enrolled herd owners in proposed § 55.23(b).

This proposal contains mandatory Federal requirements affecting interstate movement of deer and elk. APHIS would allow interstate movement of captive deer or elk only from herds participating in the program, and participation would have to be documented on the animal health certificate required to move animals interstate. Therefore, owners would have to participate in the CWD Herd Certification Program if they wished to move their animals to another State.

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[1] A veterinarian in charge, as defined by current part 55, is "the veterinary official of Veterinary Services, APHIS, who is assigned by the Administrator to supervise and perform official animal health work for APHIS in the State concerned." A list of veterinarians in charge may be obtained from the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235.

Section by Section Explanation of Proposal

We are proposing to add a new subpart to 9 CFR part 55 that describes the CWD Herd Certification Program. We also propose to add a new 9 CFR part 81, "Chronic Wasting Disease in Captive Deer and Elk," which would contain the mandatory requirements for moving deer and elk interstate. The next sections describe our proposed changes for parts 55 and 81.

Definitions (§ 55.1)

The interim indemnity rule established a "Definitions" section in part 55 and established several definitions that are used in both the indemnity program and in this proposed herd certification program. The following definitions from the interim indemnity rule are also important for the proposed certification rule.

CWD-positive animal. An animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

CWD-positive herd. A herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

CWD-suspect animal. An animal for which an APHIS employee has determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

We propose to retain these definitions as they are; we are setting them out here only for information.

In addition, we are proposing to modify the definitions in part 55 of *CWD-exposed animal, herd,* and *herd plan,* as follows:

CWD-exposed animal. An animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 5 years.

The revision would substitute the standard of being "exposed to a CWD-positive animal" for language in the earlier definition that based the exposed classification on whether the animal was part of a herd within 5 years prior to that herd's designation as CWD-positive, or had been housed with or been in direct contact with a positive animal, or had been on a contaminated premises.

Herd. One or more animals that are (a) under common ownership or supervision and are grouped on one or more parts of any single premises (lot, farm, or ranch) or (b) all animals under common ownership or supervision on two or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

The definition of *herd* would be revised by changing its current statement that it applies to "a group of animals" to read "one or more animals," since in some rare circumstances the owner of a single animal may wish to enroll in the CWD Herd Certification Program.

Herd plan. A written herd management agreement developed by a State representative with input from the herd owner, his or her veterinarian, and other affected parties. The State representative will then submit the herd plan to the Administrator, and the herd plan will not be valid until it has been reviewed and signed by the Administrator. A herd plan sets out the steps to be taken to eradicate CWD from a CWD-positive herd, to control the risk of CWD in a suspect herd, or to prevent introduction of CWD into another herd. A herd plan will require: Specified means of identification for each animal in the herd; regular examination of animals in the herd by a veterinarian for clinical signs of disease; reporting to a State or APHIS representative of any clinical signs of a central nervous system disease or chronic wasting condition in the herd; maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed; and the cause of death, if the animal died while in the herd. A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular circumstances of the herd and its premises, including but not limited to: depopulation of the herd, specifying the time for which a premises must not contain cervids after CWD-positive, -exposed, or -suspect animals are removed from the premises; fencing requirements; selective culling of animals; restrictions on sharing and movement of possibly contaminated livestock equipment; cleaning and disinfection requirements; or other requirements. A herd plan may be reviewed and revised at any time by any party signatory to it, in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread. The revised herd plan must also be submitted to the Administrator for review and signature.

This revision would emphasize that a herd plan is developed primarily not by APHIS, but by a State representative and the herd owner, working in concert with the herd's veterinarian and any other affected parties. Under this definition, APHIS would retain the right to approve or disapprove herd plans. The revision also clarifies that when veterinarians examine animals in accordance with a herd plan they are looking for clinical signs of disease, including signs of chronic wasting conditions, and states that sometimes herd plan requirements may include depopulating the herd.

In addition to the definitions above that are already established, we propose to add the following new definitions to part 55 in support of the CWD Herd Certification program.

Commingled, commingling. Animals are commingled if they have direct contact with each other, have less than 30 feet of physical separation, or share equipment, pasture, or water sources/watershed, except for periods of less than 48 hours at sales or auctions when an APHIS employee or State representative has determined such contact presents minimal risk of CWD transmission. Animals are considered to have commingled if they have had such contact with a positive animal or contaminated premises within the last 5 years.

This definition is needed to address situations where a healthy animal, because it was commingled with a CWD-positive animal, was put at risk of contracting CWD. A buffer zone of 30 feet was chosen because in other APHIS disease control programs this distance has been shown to be effective in preventing aerosol transmission of infective agents from one animal to another. Because there is not yet a detailed model of how TSE's are transmitted, APHIS believes it is prudent to assume that they might spread short distances as aerosols, rather than only through more direct contact.

CWD-exposed herd. A herd in which a CWD-positive animal has resided within 5 years prior to that animal's diagnosis as CWD-positive, as determined by an APHIS employee or State representative.

This definition is needed because herds exposed to CWD should be restricted and monitored until sufficient evidence is available to confirm whether or not the exposure caused new cases of CWD in the herd. Because current evidence strongly suggests that a cervid would die from CWD no more than 5 years after acquiring the disease, we are not concerned about exposures that took place more than 5 years before an animal is diagnosed with CWD.

CWD Herd Certification Program. The Chronic Wasting Disease Herd Certification Program established by this part.

CWD-suspect herd. A herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD for an animal or animals within the herd, as determined by an APHIS employee or State representative, but for which laboratory results have been inconclusive or not yet conducted.

This definition is needed to designate herds that are a high risk because they may be determined CWD-positive in the near future, so that appropriate restrictions may be placed on the herd pending final confirmation of the herd's CWD status.

CWD-source herd. A herd that is identified through testing, tracebacks, and/or epidemiological evaluations to be the source of CWD-positive animals identified in other herds.

Deer. Mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), red deer (*Cervus elaphus*), and hybrids of these species.

Elk. North American wapiti (*Cervus elaphus*) and wapiti x red deer hybrids.

Herd status. The status of a herd assigned under the CWD Herd Certification Program in accordance with proposed § 55.24, indicating a herd's relative risk for CWD. Herd status is based on the number of years of monitoring without evidence of the disease and any specific determinations that the herd has contained or has been exposed to a CWD-positive, -exposed or -suspect animal.

Official identification. Identification mark or device approved by APHIS for use in the CWD Herd Certification Program. Examples are listed in proposed § 55.25.

Trace back herd. A herd in which a CWD-positive animal formerly resided.

Trace forward herd. A herd that has received exposed animals from a CWD-positive herd within 5 years prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.

Administration (§ 55.21)

This proposed section states that the CWD Herd Certification Program is a cooperative effort between APHIS, State animal health agencies, and deer or elk owners. It explains that, under the program, APHIS coordinates with State animal health agencies to encourage deer and elk owners to certify their herds as free of CWD by remaining in continuous compliance with the CWD Herd Certification Program standards.

Participation (§ 55.22)

This proposed section describes the eligibility of captive deer or elk herd owners and State animal health agencies to participate in the CWD Herd Certification Program. Herds of any size, even a single animal, may participate in the program. This section states that any owner of a captive deer or elk herd (except for a CWD-positive herd, a CWD-exposed herd, and a CWD-suspect herd) may apply to enroll, and any State may apply to have its CWD program approved, by contacting the appropriate APHIS or State offices.[2] Before determining that the herd is eligible to join, APHIS or the State may contact the herd owner to obtain more information about the herd and its operations, if needed. APHIS or the State animal health agency will send each approved herd owner a notice of enrollment that includes the herd's enrollment date (in the case of herds already participating in State CWD programs, the enrollment date will be the first day that the herd participated in a State program that APHIS subsequently determines qualifies as an Approved State CWD Herd Certification Program). This proposed section also states that APHIS intends to maintain a list of herds participating in the CWD Herd Certification Program, and the certification status of each herd, available on an Internet Web site and by written request.

With regard to States applying to have a State program approved, this section states that the Administrator will approve or disapprove a State program in accordance with proposed § 55.23(a), discussed below. This section also says that in States with an Approved State CWD Herd Certification Program, program activities would be conducted in accordance with the guidelines of that program, as long as the State program meets certain minimum requirements of the subpart.

Responsibilities of States and Enrolled Herd Owners (§ 55.23)

This proposed section describes the minimum requirements State programs must meet in order to be approved by the Administrator. It also describes the responsibilities of herd owners who enroll in the CWD Herd Certification Program.

The Administrator would review a letter from the State describing its CWD control and deer and elk herd certification activities, and would also review relevant State statutes, regulations, and directives pertaining to animal health activities, and reports and publications of the State animal health agency. The Administrator would determine whether the State had sufficient authority and active programs to conduct traceback, surveillance, and testing activities needed to identify herds exposed to CWD, and to restrict the movement of all CWD-positive, CWD-suspect, and CWD-exposed animals. The Administrator would also look for effective State programs to require individual animal identification in participating deer or elk herds, and to require prompt reporting of suspected cases of CWD and test results for CWD to State or Federal authorities.

We also propose that the State program must have placed all known CWD-positive and CWD-exposed herds under movement restrictions, with movement of animals only for destruction or for research. States must remove herd movement restrictions placed on CWD-positive or CWD-exposed herds only after the herds complete a herd plan. States must also have programs to educate those engaged in the interstate movement of deer and elk regarding requirements of the State program. States would also have to sign a memorandum of understanding with APHIS that delineates the respective roles of each in the CWD Herd Certification Program implementation.

States would also have to designate at least one State animal health official to coordinate CWD Herd Certification Program activities in the State, and would have to agree to update the National CWD Database administered by APHIS with information about the CWD status of herds in the State and information about animals being traced across State lines.

Regarding the responsibilities of deer or elk herd owners who enroll in the CWD Herd Certification Program, proposed § 55.23(b) states that they must agree to maintain their herds in accordance with certain program conditions. These proposed conditions are:

- Each cervid on the premises in the herd must be officially identified using means of identification allowed by proposed § 55.25;
- The herd premises must have perimeter fencing adequate to prevent ingress or egress of cervids. This fencing must comply with any applicable State regulations;
- The owner must immediately report to an APHIS employee or State representative all deaths of deer or elk

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[2] A list of these offices may be obtained from the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235.

aged 16 months or older, and must make the carcasses of such animals available for tissue sampling and testing. This includes animals killed on premises maintained for hunting. The owner also must allow test samples to be collected from any animals sent to slaughter that APHIS desires to test;

- The owner must maintain herd records including a complete inventory of animals that records the age and sex of each animal, the date of acquisition and source of each animal that was not born into the herd, the date of disposal and destination of any animal removed from the herd, and all individual animal identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal. Upon request, the owner must allow an APHIS employee or State representative access to the premises and herd to conduct a physical herd inventory with verification reconciling animals and identifications with the records maintained by the owner;
- If an owner wishes to maintain separate herds, he or she must maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. No commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds; and
- New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program (including herds in Approved State CWD Herd Certification Programs). If animals are received from an enrolled herd with a lower program status, the receiving herd will revert to that lower program status. If animals are obtained from a herd not participating in the program, then the receiving herd will be required to start over in the program.

Herd Status and Movement of Animals Between Enrolled Herds (§ 55.24)

In this proposed section, the progress of a herd through the various stages of the program are described. When a herd is first enrolled in the CWD Herd Certification Program, it would be placed in First Year status. If the herd continues to meet the requirements of the program, each year, on the anniversary of the enrollment date the herd status would be upgraded by 1 year; *i.e.*, Second Year status, Third Year status, Fourth Year status, and Fifth Year status. One year from the date a herd is placed in Fifth Year status, the herd status would be changed to Certified, and the herd would remain in Certified status as long as it remained enrolled in the program (and provided no signs of CWD are detected). Once the herd has received Certified status, the requirements the herd must meet to remain in the program would be slightly reduced. Testing of all animals sent to slaughter and all animals killed on hunting premises would no longer be required, because 5 years of program participation would have documented a minimal herd risk that does not justify such expensive comprehensive testing, but other requirements of the program would remain in force.

This proposed section also describes how a herd could lose its herd status or have it temporarily suspended. If a herd is designated a CWD-positive herd or a CWD-exposed herd, it would immediately lose its program status, and the owner could only re-enroll after completing a herd plan. Owners of CWD-positive herds must make a business decision on whether it is worthwhile to complete a herd plan, which usually would require depopulation of the herd. If an owner completes a herd plan, he or she can at least use the same premises and equipment to raise elk in the future, even if the herd animals are depopulated. If the owner elects not to complete a herd plan, animals from the herd may not move interstate, and the owner may find it difficult to sell animals even within the State, due to buyer reluctance and State restrictions. If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it would immediately be placed in Suspended status pending an epidemiologic investigation by APHIS or a State animal health agency. This epidemiologic investigation could have three possible outcomes: It could determine that the investigated herd was not commingled with a CWD-positive animal; it could determine that the herd was commingled with a CWD-positive animal; or it could be unable to make a definite determination of exposure.

If the epidemiologic investigation determined that the herd was not commingled with a CWD-positive animal, the herd would be reinstated to its former program status, and the time spent in Suspended status would count toward its promotion to the next herd status level.

If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd would lose its program status and would be designated a CWD-exposed herd. The herd would not be eligible to reenroll in the CWD Herd Certification Program until it completed a herd plan.

If the epidemiological investigation was unable to make a determination regarding the exposure of the herd, because the necessary animal or animals were no longer available for testing (*i.e.*, a trace animal from a known positive herd died and was not tested) or for other reasons, the herd status would continue as Suspended unless and until a herd plan was developed for the herd. If a herd plan was developed, the herd would be reinstated into the CWD Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status. Treatment of these indeterminate status herds differs from treatment of Exposed herds in that indeterminate status herds can re-enter the program as soon as a herd plan is developed, while Exposed herds cannot re-enter until they have completed a herd plan and are no longer classified Exposed. The indeterminate herd would have to comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program, and the herd plan would require testing of all animals that die in the herd for any reason, regardless of the age of the animal, and could require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question.

Herds could also lose their program status if the Administrator determined that the herd owner failed to comply with the requirements of the program.

We propose to allow an appeals process for herd owners subject to cancellation of enrollment or loss or suspension of herd status. Herd owners could appeal any of these actions by writing to the Administrator within 10 days after being informed of the reasons for the proposed action. The appeal would have to include all of the facts and reasons upon which the herd owner relies to show that the reasons for the proposed action are incorrect or do not support the action. The Administrator would grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing would be held to resolve the conflict. Rules of practice concerning the hearing would be adopted by the Administrator. However, cancellation of enrollment or loss or suspension of herd status would become effective pending final determination in the proceeding if the Administrator determines that such action is necessary to prevent the possible spread of CWD. This cancellation of enrollment or loss or suspension of herd status would continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

This proposed section also describes restrictions of the source of animals that could be added to an enrolled herd. A herd could add animals from herds with the same or an earlier enrollment date in the CWD Herd Certification Program with no negative impact on the certification status of the receiving herd.[3] If animals were acquired from a herd with a later date of enrollment, the receiving herd would revert to the program status of the sending herd. If a herd participating in the program acquired animals from a nonparticipating herd, the receiving herd would revert to First Year status with a new enrollment date of the date of acquisition of the animal.

Official Identification (§ 55.25)

This section proposes that each animal required to be identified under the CWD Herd Certification Program must have at least two forms of APHIS-approved identification, because a single form of identification can sometimes become detached or obscured (*e.g.*, eartags are sometimes torn loose on brush, or lost due to frostbite damage; tattoo inks sometimes fade, or are obliterated by scarring). Even though not required by most regulations, the use of two forms of animal ID has become common in animal industries, and we believe its program benefits outweigh the additional expense. The official identification would have to be an ear tattoo, tamper-resistant ear tag, electronic implant, or flank tattoo approved for this use by APHIS. The official identification would have to provide a unique identification number that is applied by the owner of the herd or his or her agent and is linked to that herd in the National CWD Database.

This concludes discussion of the changes proposed for part 55. The contents of proposed new part 81 are discussed below.

Definitions (§ 81.1) and Identification of Deer and Elk in Interstate Commerce (§ 81.2)

These proposed sections would be essentially the same as the definitions and identification requirements discussed above with regard to proposed §§ 55.1 and 55.25. The definition of *captive* proposed for part 81 differs slightly from the definition employed in part 55, because under part 81 it is necessary to restrict the interstate movement of animals that were captured from a free-ranging population for interstate movement and release. Such animals are not covered under the indemnity and certification programs of part 55. The definition of *chronic wasting disease* (CWD) proposed for part 81 also describes some clinical signs of CWD that are not needed in the similar definition in part 55, because part 81 requires issuance of certificates stating that animals do not exhibit clinical signs of CWD.

General Restrictions (§ 81.3)

This proposed section would institute the mandatory requirement that no captive deer or elk may move interstate unless it originated in a herd enrolled in the CWD Herd Certification Program and the herd remained in the program long enough to reach a specified status. To encourage early enrollment in the CWD Herd Certification Program and to support its goal of eventually eradicating CWD from captive deer and elk herds in the United States, we are proposing to establish a timetable that gradually increases the time a herd must be in the program in order to move animals interstate. Eventually, only animals from herds that have been enrolled in the program for over 5 years would be allowed to move interstate. If this proposed rule is adopted, immediately after it takes effect, a herd would need to achieve Second Year status before animals from the herd could be moved interstate. (Some herds would have this or greater program status immediately upon enrollment, due to the provisions to "grandfather" herds enrolled in existing State programs that was discussed above.) As of 27 months after the rule takes effect, a herd would need to achieve Third Year status before animals from the herd could be moved interstate. Twelve months later the herd would have to achieve Fourth Year status, then after 12 more months, Fifth Year status, for animals to be moved interstate. Finally, after 12 more months (approximately 5¼ years after the rule takes effect), the herd would have to achieve Certified status. Under this schedule, the longer a herd owner waits before enrolling in the CWD Herd Certification Program, the longer he or she would have to wait before moving animals interstate. This gradually increasing requirement also means that as time goes on, animals allowed to move interstate will have spent more and more time in the CWD Herd Certification Program, with a corresponding decrease in the risk that such animals could spread CWD.

We also propose that captive deer or elk moved interstate must be accompanied by a certificate that identifies its herd of origin, states that the herd is participating in the CWD Herd Certification Program and gives its program status, and states that it is not a CWD-positive, CWD-exposed, or CWD-suspect animal. One exception to this requirement is that deer or elk that are temporarily captured from free-ranging populations may be moved interstate for release (translocated) without enrollment in the CWD Herd Certification Program. Since the CWD Herd Certification Program is not designed for free-ranging populations, we propose that in such cases the free-ranging population must instead be documented to be free from CWD based on a CWD surveillance program that is approved by the State Government of the receiving State and by APHIS.

Issuance of Certificates (§ 81.4)

This proposed section describes the function and contents of the certificate that would be required by proposed § 81.3. Animal health certificates are used in this section in much the same way they are used in many other APHIS regulations: to document the origin, identity, and disease status of animals moving interstate. The certificate would have to show the herd of origin and official identification numbers of each animal to be moved. (Certificates issued for the translocation of free-ranging animals caught in one State and released in another would not need to record this information, since it does not exist for such cases.) The certificate would also have to show the number of animals covered by the certificate, the purpose for which the animals are to be moved, the points of origin and destination, the consignor, and the consignee. The certificate would have to include a statement by the issuing accredited, State, or Federal veterinarian that the animals were not exhibiting clinical signs associated with CWD at the time of examination. The certificate would also have to state that the animals are from a herd participating in the CWD Herd Certification Program, and give the herd's program status, or state that the animals are free-ranging animals that are being translocated from a herd that is documented to be free from CWD based on a CWD surveillance program.

This proposed section also includes some administrative details regarding how to attach secondary forms listing animal identification information to an official certificate. We propose that animal identification documents attached to certificates must be a legible copy of State or APHIS forms that requires individual identification of animals, and must identify each animal to be moved with the certificate; but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink. We also propose that the following information must be typed or written in ink in the identification column on the original and each copy of the certificate and must be circled or boxed, also in ink, so that no additional information can be added: the name of the document; and either the serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who issued the document and the date the document was issued. These proposed requirements would help us ensure the authenticity and reliability of animal identification documents, and help us trace the movement of animals when necessary.

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[3] Note that in addition to this requirement, proposed § 81.3 contains restriction on the interstate movement of captive deer and elk.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The economic analysis is summarized below. Much of the data regarding the cervid industry was provided by the two major industry associations, the North American Elk Breeders Association (NAEBA) and the North American Deer Farmers Association (NADFA). See the full analysis for the complete list of references used in this document. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) the Secretary of Agriculture is authorized to regulate the movement in interstate commerce of any animal if the Secretary determines it necessary to prevent the introduction or dissemination of a livestock pest or disease; to hold, seize, quarantine, treat, destroy, dispose of, or take other remedial action with respect to such animals; to carry out operations and measures to detect, control, or eradicate diseases of livestock; and to cooperate with States or political subdivisions of States in programs to control livestock diseases.

Alternatives Considered

In assessing the need for this proposed rule, we identified three alternatives. One was to maintain the status quo, where State efforts are supported by Federal technical assistance and compensation programs. We rejected this alternative because it does not fully address disease risk, *i.e.*, the possibility of disease spread through interstate movement. The current patchwork of State regulations hinders movement of animals believed free of CWD and hence growth of the industry. Also, this alternative does not give herd owners in States that do not have certification programs the opportunity to participate in such programs if they so desire. The status quo alternative would have no cost effects for APHIS, but over time would impose additional costs on herd owners, who would face costs due to loss of animals from increased spread of CWD, loss of interstate and international markets, and possibly increased compliance costs for stricter State CWD programs as States react to CWD spread.

Another alternative was to simply prohibit the interstate movement of deer and elk altogether, without establishing a voluntary Federal herd certification program. This alternative would not significantly increase costs to APHIS, and would help reduce costs due to loss of animals caused by disease spread through interstate movement. However, this alternative does not afford producers the opportunity to seek the best-paying market for their animals in any State. Accordingly, this alternative was rejected.

The third alternative, the one that we chose, was the establishment of a voluntary Federal herd certification program with interstate movement on animals contingent on participation in that program. This alternative substantially reduces the risk of exporting CWD from one state to another—because only deer and elk that have been subject to certain minimum surveillance criteria can be moved interstate—but at the same time allows producers the opportunity to seek the best-paying market for their animals. The costs and benefits of this alternative are discussed below.

Summary of Economic Analysis

This proposed rule would establish a CWD Herd Certification Program for captive elk and deer, and prohibit the interstate movement of deer and elk that are not enrolled in the program. Herds that participate would have to follow program requirements for animal identification, testing, herd management, and movement of animals to and from herds. Herd owners would be able to enroll in an Approved State CWD Herd Certification Program that met minimum standards established by APHIS, or enroll directly in the Federal CWD Herd Certification Program if there is no State program in their location.

Currently, there are no Federal requirements for the interstate movement of deer and elk. However, 23 States have banned cervid introductions from other States, and at least 20 States have formal CWD certification programs for cervids in place, with requirements similar to the Federal requirements proposed in this rule. The proposed Federal program is designed to build on, rather than replace, existing State programs or State programs that are currently being developed. Herd owners in States that do not have an APHIS-approved program would be able to enroll in the Federal program.

This proposal is intended to help eliminate CWD from captive cervids in the United States. It would support an existing APHIS program that pays indemnities to owners of CWD-positive herds who voluntarily depopulate their herds.

The proposed rule would primarily affect deer and elk farms. In the United States there are an estimated 150,000 elk on 2,300 farms, and 550,000 deer on 11,000 farms. It is estimated that, without improved CWD control efforts, the disease could eventually infect almost all U.S. captive elk herds.

The proposed rule should have a positive economic effect on deer and elk farmers, both large and small, over the long term. In the shorter term, the economic effect on farmers will vary depending on the circumstances of each. Some farmers, especially those who already participate in State programs and who would take advantage of the increased access to out-of-State markets, would benefit immediately. Conversely, some farmers could experience a significant adverse effect, especially any farmers who cannot afford to pay the program's annual costs. However, given the available data, there is no basis to conclude that the proposed rule will have a significant negative economic impact on a substantial number of small entities.

The economic importance of the deer and elk farming industries notwithstanding, the rule's primary benefits would appear to lie in its ability to reduce the potential for the introduction or spread of CWD.

However, it is difficult to translate that reduced potential into a dollar benefit.

The Deer and Elk Industries and the Impact of CWD

The number of deer and elk in the United States that have died as a result of contracting CWD is unknown, largely because there is no way to track deaths among the free-ranging segment of the population. However, sampling has suggested infection rates ranging from less than 1 percent among wild white-tailed deer in Wisconsin to up to 15 percent among wild mule deer in northeastern Colorado. For farmed animals, the number of deaths to-date has been relatively low. It is estimated that fewer than 100 farmed elk and no farmed deer have died as a result of contracting CWD. The number of farmed elk that have died is equivalent to less than one-tenth of 1 percent of the current U.S. farmed elk population, estimated at 150,000. However, for every infected animal, far more have been exposed to the disease.

Deer and elk are farmed for breeding stock, velvet antler, meat, and sales to game parks and exhibits. Velvet antler, considered a medical or dietary aid, is produced primarily for Asian markets. Deer and elk meat is a low-fat, low-cholesterol product, and when it is derived from captive herds (as opposed to meat harvested directly by hunters from wild populations) it is marketed primarily to gourmet restaurants, for consumption by health-conscious dieters. The breeding stock market satisfies the need for replacement animals.

NAEBA estimates that there are about 150,000 elk on 2,300 U.S. farms. The number of elk per farm varies, from a high of "500 plus" (for commercial farms) to a low of about 10 (for hobby farms). The value of each elk held also varies, depending on the type of animal (*e.g.*, bull, heifer, calf), market conditions, and other factors. The average value of each elk is roughly estimated at $2,500, with the typical high end value at about $8,000. (The more valuable trophy animals hunted on game farms tend to be worth more than this average.) Based on the estimated average of $2,500 per animal, the value of all 150,000 elk on U.S. farms is estimated at $375 million (150,000 × $2,500). In 1999, gross receipts for the elk farming and velvet antler industry in North America totaled an estimated $150 million.

NADFA estimates that there are about 550,000 deer on U.S. farms. Based on NADFA's estimate of 50 deer per farm, on average, the number of deer farms in the United States would total 11,000. Assuming each farm has 2.1 employees, the average for deer farms in Indiana, employment on all of the estimated 11,000 deer farms would total 23,100. The number of deer per farm varies, from a high of about 3,000 (for commercial farms) to a low of about 5 (for hobby farms). The value of each deer also varies, depending on such factors as the type of animal (*e.g.*, wapiti, white-tailed, fallow) and market conditions. An earlier NADFA estimate put the average per animal value of all deer on member farms at $1,687, which would make the estimated value of all 550,000 deer on U.S. farms $927.9 million (550,000 × $1,687). As of January, 2002, capital investment (including land, fencing) in white-tailed deer farms totaled an estimated $2.5 billion.

Benefits of Proposed Rule

The proposed rule would benefit the national cervid industry, cervid product consumers, individual herd owners, and individual States. The effects on each are discussed below, and benefits for small businesses are directly addressed in the section "Analysis of the Economic Effects on Small Entities."

The proposed interstate movement restrictions that would allow only "program" deer and elk to be moved interstate would help to prevent the spread of CWD among both the farmed and wild populations. Participation in a certification program substantially reduces the risk of spreading CWD from one State to another, because only deer and elk that have been subject to certain minimum surveillance and other criteria could be moved interstate.

Preventing spread of CWD among deer and elk benefits entities and individuals that rely on those animals for their income, *e.g.*, deer and elk farms, State agencies that sell hunting licenses, employees of motels and restaurants in hunting areas. It benefits individuals that rely on those animals for recreation and food. (A study by a sociologist in Wisconsin found that when the disease seems contained there is little hunter effect. However, if the disease becomes widespread, data in his study suggest that hunters will abandon the sport. Also, hunters from counties in which CWD positive animals were found were more likely to skip the 2002 gun season than were hunters from non-CWD counties.) Preventing disease spread also offers the potential for other, more far reaching benefits. Although there is no known relationship between CWD and other spongiform encephalopathies of animals or humans, bovine spongiform encepalopathy (BSE) has had an immense negative impact upon European livestock systems. Action by USDA on CWD will demonstrate to our trading partners the seriousness with which we view the prevention and control of these types of diseases.

The outbreak of CWD in wildlife and farmed herds has motivated States to restrict the movement of elk and deer into States; and to start programs to control the disease within States. At this time, the various States do not follow a standard interstate movement policy, nor are there standards that would ensure equivalency between State CWD programs. This has resulted in a failure to maintain a nationwide marketing system under which healthy farmed elk and deer can be bought and sold throughout the United States. Producers of elk and deer are, therefore, generally limited to sales in their local marketing areas. The lack of a Federal CWD program has also limited U.S. producers' access to international markets for products such as antler velvet.

Based on the rate of increase in the number of infected herds in recent years, it is estimated that, without improved CWD control efforts, the disease could eventually infect almost all U.S. farmed elk herds. The elk industry is in its early stages, which requires owners to purchase and sell large numbers of animals for breeding stock as they develop superior lines. Such large movements of animals between herds exacerbates risks of disease spread. One herd in Colorado sold approximately 400 animals to many other herds in one year. In Canada, after CWD was discovered in 1996, movements of animals from one herd resulted in the infection of 38 other herds, which caused the Canadian government to buy and destroy 7,400 animals. While it is risky to extrapolate from limited data covering only a few years, the few herds studied in detail do suggest that CWD is easily spread through unrestricted commerce in elk, and could readily become established in most U.S. herds. Adoption of the proposed rule, therefore, could serve to protect substantial elk industry livestock assets, valued at an estimated $375 million.

For farmers with infected deer and elk, the losses can extend far beyond the direct loss of livestock. They can also incur costs for the disposal of the animal carcasses, as well as costs for cleaning and disinfecting their premises. In some areas, positive animals have to be disposed of through costly incineration or digestion, since even landfills require a negative test before accepting a carcass for disposal.

Perhaps most important of all, owners of infected herds may also face State-imposed quarantines and State-imposed restrictions on the subsequent agricultural use of their land, actions which many view as tantamount to closure.

Even farmers with animals that have not been infected or exposed to CWD are affected, as evidenced by recent action taken by the Republic of Korea. That country recently suspended all imports of deer and elk, and their products, from the United States, due to concern that there may be a link between CWD and other spongiform encephalopathies of animals or humans. The precise impact of Korea's suspension is unknown, because data that is compiled on U.S. exports does not provide the level of detail necessary to identify deer and elk and their products. However, New Zealand is a major competitor to U.S. producers in the area of deer antler exports to Korea, and in 2001 the value of New Zealand antler exports to Korea increased from NZ$34 million to NZ$37 million. In 1998 Canada, another major competitor, sold 100,000 kg of elk velvet, worth about CA$13 million, to the Republic of Korea; Canada's sales dropped by 80 percent the next year, after CWD was introduced into Korea from Saskatchewan.[4] To the extent that the proposed Federal certification program would provide the basis for equivalency between State programs, increased international sales are likely.

The rule's primary benefits are to help prevent the spread of and eradicate CWD; assist efficient domestic elk and deer marketing; maintain and enhance export markets of cervid products; and obviate the need for greater public and private expenditures related to CWD in the future. The introduction of an aggressive control program now, when the number of known infected herds is small, reduces the risk of higher future Federal eradication program costs, such as Canada faced in 1996 when they had no certification program and CWD infection in one herd quickly spread to 38 herds, causing 7,400 elk to be destroyed.

The proposed rule also demonstrates to our trading partners that the United States is able and willing to take early and aggressive action to protect the health of its animal and animal industries, making it easier for U.S. exporters to negotiate access to foreign markets.

Costs of Proposed Rule

The proposed rule has cost implications for herd owners, individual States, and APHIS. The impact on each is discussed below, and cost effects for small businesses are directly addressed in the section "Analysis of the Economic Effects on Small Entities."

Cost for Herd Owners

Participation in a State, or Federal, certification program would require that herd owners employ certain minimum disease preventative measures established by APHIS. The cost to comply with these minimum requirements would vary among individual herd owners, depending on the circumstances of each. Many herd owners, especially the larger ones, are likely to already be in at least partial compliance with one or more of the requirements on a voluntary basis, since they constitute sound management practice. Perimeter fencing is a case in point. Most herd owners already have perimeter fencing already in place, if for no other reason than to keep animals from escaping.

The certification program would require that herd owners submit the carcasses of all dead deer and elk 16 months of age or older (including animals killed on hunting premises) to a lab for tissue sampling and testing. The rules would allow herd owners to collect and submit the animal's entire head themselves, or to hire an accredited veterinarian to remove and submit the required tissue samples. Collecting a sample and packing it for submission usually takes under an hour. Veterinarians would charge herd owners about $100 to collect each sample.

Participating herd owners would have to identify each animal uniquely, using two approved forms of identification, such as tattoos, ear tags, or electronic implants. Although many herd owners already identify their animals, only a few are likely to use two forms of identification. The cost of identifying an animal would vary, depending on the type of identification used and other factors, including any costs associated with "rounding up" the animals for installation of the identification. The rules would allow for the multiple use of the same form of identification, so, conceivably, each animal could have two ear tags, potentially the least costly form of identification. Ear tags themselves cost about $2 each. By comparison, veterinarians could be expected to charge herd owners at least about $25 to implant each microchip.

It is estimated that adoption of the program's minimum disease preventative measures would result in increased direct costs totaling about $1,600 annually for the "average" elk herd owner (*i.e.*, one with a herd of 50 elk), exclusive of any costs stemming from a CWD discovery within the herd. The annual cost of $1,600 includes $1,000 for the annual inventory, $100 for the maintenance of program records, $250 for tagging, and $200 for sample collection by a veterinarian, and $50 for ancillary costs. The annual inventory cost of $1,000 assumes veterinary fees to "read" tags ($500) and hired labor ($500). The sample collection cost of $200 assumes that 2 animals over 16 months of age die per year. It is expected that the cost of sample collection would be less of a burden for hunting premises than for production or breeding herds, because of the relatively high per-animal profit margin for hunting premises, and because these businesses are already organized to pass on fees (*e.g.*, for State-required tagging) to their customers. The price these premises charge to hunt an elk varies with the quality of the animal, and ranges from about $3,000 for a lesser-quality bull elk to about $10,000 for bull elk that score over 375 points (*i.e.*, an animal with an exceptional antler rack). Because these businesses generally schedule their hunts well in advance, it should be possible for them to schedule a veterinarian to collect samples at appropriate times without disrupting business or customer schedules. However, APHIS particularly solicits comments on this point, since we do not have detailed knowledge of hunting premises business operations.

Participating herds that are found to have CWD-positive or CWD-exposed animals would immediately lose their program status, and could re-enroll only after completing a herd plan. (A herd plan is a written herd management agreement, developed by APHIS with input from the herd owner, State representatives, and other affected parties, that sets forth the steps to be taken to eradicate CWD from a positive herd.) It is estimated that, in about 90 percent of herd plans, herd owners would agree to depopulate their herds, for which APHIS would pay eligible owners indemnities of up to $3,000 per animal. Two likely consequences for a positive herd are State-imposed quarantines that can last several years, and State-imposed restrictions on the repopulation of cervids on the same premises. Most herd owners would consider these actions as tantamount to closure. Fortunately for herd owners, herd infection is rare. Only 27 farmed elk herds and 2 farmed deer herds have been found positive, representing only 1 percent of all elk farms and much less than 1 percent of all deer farms. We estimate that 20 currently-infected elk herds will be detected over the next two years if this rule is adopted (if this rule is not adopted, there will be less herd monitoring and fewer detections).

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[4] Elk Production: Economic and Production Information for Saskatchewan Producers, Saskatchewan Agriculture and Food, November 2000.

Finally, the proposed certification program would establish herd status, based on the number of years of enrollment in the program with no evidence of disease. Herd status would affect the movement of animals, since additions from a herd with a later enrollment date would cause the acquiring herd to revert to the status of the herd from which the deer and elk were acquired. Herd status, therefore, would tend to make animals from lower status herds less valuable than those from higher status herds, due to the reduced marketability of the former. This would be an issue for new (or short-term) participants in a certification program. Because they would have little or no previous surveillance history, their herds would be accorded lower status, an action that would likely cause a decline in the market value of their animals. This effect will decline over time as herds accumulate years in the program. Also, the "grandfather" provision for Approved State CWD programs means that in many cases the time herds spent in a State program, prior to adoption of this rule, will count toward their program status. Herd owners who choose not to participate in a certification program could also face a loss in animal value, since participating herds would be less likely to acquire animals from nonparticipating herds, due to penalties.

Cost for States

If this rule is adopted, we expect that all States which permit cervid farming would participate by developing approved State CWD programs under the regulations. Many of these States would likely make participation mandatory for all in-State herd owners.

States that do establish a certification program would incur the costs of setting up and administering that program, including costs for: the development of legislative/regulatory authority, surveillance and monitoring, disease research, and education and outreach to farmers. As a point of reference in this regard, it has been conservatively estimated that such costs for establishing and maintaining a CWD program for farmed elk would amount to $47,000 per State per year.

In addition, States may also incur costs stemming from a possible disease discovery, such as costs for: the maintenance of quarantines, diagnostic testing, disposition of positive/exposed herds, and carcass disposal. The costs associated with a discovery of the disease can vary significantly, depending on the number of animals in an affected herd, the herd plan developed to deal with the disease, the type of carcass disposal, and other factors. Based on the experience of 5 of the 7 States with farmed elk that have tested positive for CWD, the cost of responding to a disease finding is estimated at $20,285 per herd, on average.

APHIS assists the States in their CWD eradication efforts by conducting testing, surveillance, and other activities that the States would otherwise have to fund themselves. Through fiscal year 2002, $17.3 million of CCC funding was transferred to APHIS for CWD eradication activities. In addition, $0.8 million of APHIS contingency funds were used for CWD eradication efforts over the last 4 fiscal years.

Cost for APHIS

The direct costs APHIS would incur from this proposed rule are the costs of approving and monitoring CWD programs established by States, and the costs associated with establishing and administering a Federal program for herd owners who wish to participate but who are not located in States with programs. Both costs should be relatively insignificant increases, since APHIS already works closely with States on their CWD programs, and direct enrollment of herds into a Federal program is expected to be needed in no more than a few States with only a few cervid herds in each. APHIS may also incur some costs to the extent that it assists in the design and implementation of State programs that are established (or modified) in response to the proposed rule.

APHIS' liability for indemnities could also be affected, if the newly-established State programs result in more positive finds than would otherwise be the case. To date, APHIS has paid out $12.5 million for CWD indemnities.

Analysis of the Economic Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small entities. This proposed rule would primarily affect deer and elk farms, because they are most likely to be affected by the program's requirements and the interstate movement restrictions.

We do not have details about the size of the 2,300 elk farms and 11,000 deer farms in the United States. However, it is reasonable to assume that most are small in size, under the U.S. Small Business Administration's (SBA) standards. This assumption is based on composite data for providers of the same and similar services. In 1997, there were 10,045 U.S. farms in NAICS 11299, a classification comprised solely of establishments primarily engaged in raising certain animals (including deer and elk but excluding cattle, hogs and pigs, poultry, sheep and goats, animal aquaculture, apiculture, horses and other equines, and fur-bearing animals). For all 10,045 farms, the per farm average gross receipts in 1997 was $105,624, well below the SBA's small entity threshold of $750,000 for farms in that NAICS category.

To the extent that the proposed rule prevents the spread of—and perhaps eliminates altogether—CWD in farmed deer and elk herds in the United States, small herd owners should benefit over the long term. The proposed rule would also provide herd owners with increased access to potentially better-paying out-of-State markets. By establishing equivalency between State programs, and replacing the current patchwork of State regulations, the rule would reduce the cost of complying with multiple sets of requirements and facilitate the safe movement of animals between States. Even herd owners who sell their animals in-State only stand to benefit, since the program reduces their disease risk when importing animals from other States.

The benefits, however, do not come without a price. As indicated above, it is estimated that the direct cost to satisfy the program's prescribed minimum disease preventative measures would total about $1,600 annually for the average elk herd owner (*i.e.*, one with a herd of 50 elk), exclusive of any costs stemming from a CWD discovery within the herd. However, the annual cost does not appear to be particularly burdensome, since it is equivalent to less than 2 percent of the 1997 per farm average gross receipts for all U.S. farms in NAICS 11299 ($1,600/$105,624). Those herd owners who have the option and elect not to participate would avoid the program's annual costs but they would see the value of their animals discounted in the marketplace, since "non-program" animals would likely carry a stigma of inferiority. As discussed below, the discount is likely to exceed the program's annual cost for most herd owners, making participation mandatory from a practical economic standpoint for those who are not required by their respective State to participate.

According to NAEBA, all herd owners sell breeding quality animals, and it is not unusual for the average elk herd owner to sell 10 or more breeding quality animals per year, generally in the range of between $2,500 and $8,000 per animal. NAEBA estimates that, with a Federal certification program in place, non-program breeding quality animals could be sold in-State for breeding purposes, but only at a discount of about 50 percent from their value as program animals. By electing to participate, therefore, the average elk herd owner would more than offset the $1,600 in added program costs with the sale of just 1 high value, or 2 low value, breeding animals per year. From an economic standpoint, therefore, most "elective" herd owners would be better off participating in the program than not participating.

The previous discussion assumes, of course, that the herd owners wished to continue in the cervid business. It is possible that the investment returns experienced by some herd owners are already so low that paying the added costs to join the program would not make economic sense. These herd owners, therefore, would effectively be forced out of the cervid business by the proposed rule. The number of such herd owners is unknown but it is likely to be small, given that the added costs are equivalent to less than 2 percent of 1997 average annual gross receipts for farms in NAICS 11299, a category that includes deer and elk farms.

The presence of CWD in a herd is more likely to be detected if the herd is a participating herd, given the increased surveillance. For herd owners who are found to have positive animals, the negative impact of State-imposed quarantines and State-imposed restrictions on the repopulation of cervids on the same premises would likely more than offset the benefits of any indemnity payments. Indeed, it is very likely that most would elect to cease cervid production altogether. Fortunately for herd owners, the likelihood of a herd becoming infected has been rare, as only 27 farmed elk herds and 2 farmed deer herds have been found positive to-date, representing only 1 percent of all elk farms and much less than 1 percent of all deer farms in the United States at the present time. It is estimated that additional elk herds will be detected over the next 2 years (with the proposed rule in effect), after which a drop off in detection will occur. This drop off will be the result of reduced movement of infected animals between herds due to the program's operations.

All in all, the proposed rule can be expected to have a positive economic effect on deer and elk farmers, both large and small, over the long term. In the shorter term, the economic effect on farmers will vary depending on the circumstances of each. Some farmers, especially those who already participate in State programs and who would take advantage of the increased access to out-of-State markets, could benefit immediately. Conversely, a small number of farmers could experience a significant adverse impact, especially any farmers whose revenue is so small they cannot afford to pay the program's annual costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–108–2. Please send a copy of your comments to: (1) Docket No. 00–108–2, Regulatory Analysis and Development, PPD, APHIS, station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would require several information collection activities, including written requests by State Governments and herd owners to participate in the program, herd owner responses to requests from APHIS or States for information about animals in their herds, the development of written herd plans and the maintenance of herd records, identification of cervids with ear-tags or other devices, issuance and use of certificates to move cervids interstate, and the creation of a memorandum of understanding between APHIS and each participating State.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 2.664 hours per response.

Respondents: Herd owners, personnel employed by herd owners, State animal health authorities, accredited veterinarians.

Estimated annual number of respondents: 5,000.

Estimated annual number of responses per respondent: 30.

Estimated annual number of responses: 150,000.

Estimated total annual burden on respondents: 399,602 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

9 CFR Part 55

Animal diseases, Cervids, Chronic wasting disease, Deer, Elk, Indemnity payments.

9 CFR Part 81

Animal diseases, Cervids, Deer, Elk, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR chapter I as follows:

PART 55—CONTROL OF CHRONIC WASTING DISEASE

1. The authority citation for part 55 would be revised to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 55.1 would be amended as follows:

a. In the definition of *herd*, by removing the words "A group of animals" and adding in their place the words "One or more animals".

b. By revising the definitions of *CWD-exposed animal* and *herd plan* to read as set forth below.

c. By adding definitions for *commingled, commingling, CWD-exposed herd, CWD herd certification program, CWD-suspect herd, CWD-source herd, deer, elk, herd status, official identification, trace back herd,* and *trace forward herd.* in alphabetical order, to read as set forth below.

§ 55.1 Definitions.

* * * * *

CWD Herd Certification Program. The Chronic Wasting Disease Herd Certification Program established by this part. This program includes both herds that directly enroll in the CWD Herd Certification Program and herds that are included based on their participation in Approved State CWD Herd Certification Programs.

* * * * *

Commingled, commingling. Animals are commingled if they have direct contact with each other, have less than 30 feet of physical separation, or share equipment, pasture, or water sources/watershed, except for periods of less than 48 hours at sales or auctions when an APHIS employee or State representative has determined such contact presents minimal risk of CWD transmission. Animals are considered to have commingled if they have had such contact with a positive animal or contaminated premises within the last 5 years.

* * * * *

CWD-exposed animal. An animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 5 years.

CWD-exposed herd. A herd in which a CWD-positive animal has resided within 5 years prior to that animal's diagnosis as CWD-positive, as determined by an APHIS employee or State representative.

* * * * *

CWD-source herd. A herd that is identified through testing, tracebacks, and/or epidemiological evaluations to be the source of CWD-positive animals identified in other herds.

CWD-suspect herd. A herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, as determined by an APHIS employee or State representative, but for which laboratory results have been inconclusive or not yet conducted.

Deer. Mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), red deer (*Cervus elaphus*), and hybrids of these species.

* * * * *

Elk. North American wapiti (*Cervus elaphus*) and wapiti x red deer hybrids.

* * * * *

Herd plan. A written herd management agreement developed by a State representative with input from the herd owner, his or her veterinarian, and other affected parties. The State representative will then submit the herd plan to the Administrator, and the herd plan will not be valid until it has been reviewed and signed by the Administrator. A herd plan sets out the steps to be taken to eradicate CWD from a CWD-positive herd, to control the risk of CWD in a suspect herd, or to prevent introduction of CWD into another herd. A herd plan will require: specified means of identification for each animal in the herd; regular examination of animals in the herd by a veterinarian for clinical signs of disease; reporting to a State or APHIS representative of any clinical signs of a central nervous system disease or chronic wasting condition in the herd; maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed; and the cause of death, if the animal died while in the herd. A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular circumstances of the herd and its premises, including but not limited to: depopulation of the herd, specifying the time for which a premises must not contain cervids after CWD-positive, -exposed, or -suspect animals are removed from the premises; fencing requirements; selective culling of animals; restrictions on sharing and movement of possibly contaminated livestock equipment; cleaning and disinfection requirements; or other requirements. A herd plan may be reviewed and revised at any time by any party signatory to it, in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread. The revised herd plan must also be submitted to the Administrator for review and signature.

Herd status. The status of a herd assigned under the CWD Herd Certification Program in accordance with § 55.24 of this part, indicating a herd's relative risk for CWD. Herd status is based on the number of years of monitoring without evidence of the disease and any specific determinations that the herd has contained or has been exposed to a CWD-positive, -exposed or -suspect animal.

* * * * *

Official identification. Identification mark or device approved by APHIS for use in the CWD Herd Certification Program. Examples are listed in § 55.25.

* * * * *

Trace back herd. A herd in which a CWD-positive animal formerly resided.

Trace forward herd. A herd that has received exposed animals from a CWD-positive herd within 5 years prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.

* * * * *

3. In part 55, a new subpart B would be added to read as follows:

Subpart B—Chronic Wasting Disease Herd Certification Program

Sec.
55.21 Administration.
55.22 Participation and enrollment.
55.23 Responsibilities of States and enrolled herd owners.
55.24 Herd status.
55.25 Official identification.

§ 55.21 Administration.

(a) The CWD Herd Certification Program is a cooperative effort between APHIS, State animal health agencies, and deer and elk owners. APHIS coordinates with State animal health agencies to encourage deer and elk owners to certify their herds as free of CWD by being in continuous compliance with the CWD Herd Certification Program standards.

§ 55.22 Participation and enrollment.

(a) *Participation by owners.* Any owner of a captive deer or elk herd (except for CWD-positive herds, CWD-exposed herds, and CWD-suspect herds) may apply to enroll in the CWD Herd Certification Program by sending a written request to the State animal health agency, or to the veterinarian in charge if no Approved State CWD Herd Certification Program exists in the herd's State. APHIS or the State will determine the herd's eligibility, and if needed will require the owner to submit more details about the herd animals and operations. After determining that the herd is eligible to participate in accordance with this paragraph, APHIS or the State animal health agency will send the herd owner a notice of enrollment that includes the herd's enrollment date. A notice containing a current list of herds participating in the CWD Herd Certification Program and the certification status of each herd may be obtained from the APHIS Internet Web site at *http://www.aphis.usda.gov/vs/nahps/cwd/*, or by writing to the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1235.

(1) *Enrollment date.* The enrollment date for any herd that joins the CWD Herd Certification Program after the effective date of this rule will be the date the herd is approved for participation. For herds already participating in State CWD programs, the enrollment date will be the first day that the herd participated in a State program that APHIS subsequently determines qualifies as an Approved State CWD Herd Certification Program in accordance with § 55.23(a) of this part.

(2) [Reserved]

(b) *Participation by States.* Any State that operates a State program to certify the CWD status of deer or elk may request the Administrator to designate the State program as an Approved State CWD Herd Certification Program. The Administrator will approve or disapprove a State program in accordance with § 55.23(a) of this subpart. In States with an Approved State CWD Herd Certification Program, program activities will be conducted in accordance with the guidelines of that program as long as the State program meets the minium requirements of this part. A notice containing a current list of Approved State CWD Herd Certification Programs may be obtained from the APHIS Internet Web site at *http://www.aphis.usda.gov/vs/nahps/cwd/*, or by writing to the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1235.

§ 55.23 Responsibilities of States and enrolled herd owners.

(a) *Approval of State programs and responsibilities of States.* In reviewing a State program's eligibility to be designated an Approved State CWD Herd Certification Program, the Administrator will evaluate a written statement from the State animal health agency that describes State CWD control and deer and elk herd certification activities and that cites relevant State statutes, regulations, and directives pertaining to animal health activities and reports and publications of the State animal health agency. In determining whether the State program qualifies, the Administrator will determine whether the State:

(1) Has the authority, based on State law or regulation, to restrict the intrastate movement of all CWD-positive, CWD-suspect, and CWD-exposed animals.

(2) Has the authority, based on State law or regulation, to require the prompt reporting of any animal suspected of having CWD and test results for any animals tested for CWD to State or Federal animal health authorities.

(3) Has, in cooperation with APHIS personnel, drafted and signed a memorandum of understanding with APHIS that delineates the respective roles of the State and APHIS in CWD Herd Certification Program implementation.

(4) Has placed all known CWD-positive and CWD-exposed herds under movement restrictions, with movement of animals only for destruction or for research. CWD-positive and CWD-suspect animals may be moved only for transport to an approved research facility or for purposes of destruction.

(5) Has effectively implemented policies to:

(i) Promptly investigate all animals reported as CWD-suspect animals;

(ii) Designate herds as CWD-positive, CWD-exposed, or CWD-suspect and promptly restrict movement of animals from the herd after an APHIS employee or State representative determines that the herd contains or has contained a CWD-positive animal;

(iii) Remove herd movement restrictions only after completion of a herd plan agreed upon by both the State representative and APHIS;

(iv) Conduct an epidemiologic investigation of CWD-positive, CWD-exposed, and CWD-suspect herds that includes the designation of suspect and exposed animals and that identifies animals to be traced;

(v) Conduct tracebacks of CWD-positive animals and traceouts of CWD-exposed animals and report any out-of-State traces to the appropriate State promptly after receipt of notification of a CWD-positive animal; and

(vi) Conduct tracebacks based on slaughter sampling promptly after receipt of notification of a CWD-positive animal at slaughter.

(6) Effectively monitors and enforces State quarantines and State reporting laws and regulations for CWD.

(7) Has designated at least one APHIS or State animal health official to coordinate CWD Herd Certification Program activities in the State.

(8) Has programs to educate those engaged in the interstate movement of deer and elk regarding the identification and recordkeeping requirements of this part.

(9) Requires, based on State law or regulation, and effectively enforces official identification of all animals in herds participating in the CWD Herd Certification Program;

(10) Maintains in the National CWD Database administered by APHIS, or in a State database approved by the Administrator as compatible with the National CWD Database, the State's:

(i) Premises information and assigned premises numbers;

(ii) Individual animal information on all deer and elk in herds participating in the CWD Herd Certification Program in the State;

(iii) Individual animal information on all out-of-State deer and elk to be traced; and

(iv) Accurate herd status data.

(11) Requires that tissues from all CWD-positive or CWD-suspect animals be submitted to a laboratory authorized by the Administrator to conduct official CWD tests and requires complete destruction of the carcasses of CWD-positive and CWD-suspect animals.

(b) *Responsibilities of enrolled herd owners.* Herd owners who enroll in the CWD Herd Certification Program agree to maintain their herds in accordance with the following conditions:

(1) Each animal in the herd must be officially identified using means of identification allowed by § 55.25 of this subpart;

(2) The herd premises must have perimeter fencing adequate to prevent ingress or egress of cervids. This fencing

must comply with any applicable State regulations;

(3) The owner must immediately report to an APHIS employee or State representative all deaths of deer and elk in the herd aged 16 months or older, and must make the carcasses of such animals available for tissue sampling and testing. This includes animals killed on premises maintained for hunting. The owner also must allow test samples to be collected from all animals sent to slaughter;

(4) The owner must maintain herd records including a complete inventory of animals that records the age and sex of each animal, the date of acquisition and source of each animal that was not born into the herd, the date of disposal and destination of any animal removed from the herd, and all individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal. Upon request, the owner must allow an APHIS employee or State representative access to the premises and herd to conduct a physical herd inventory with verification reconciling animals and identifications with the records maintained by the owner;

(5) If an owner wishes to maintain separate herds, he or she must maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. No commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds;

(6) New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program. If animals are received from an enrolled herd with a lower program status, the receiving herd will revert to that lower program status. If animals are obtained from a herd not participating in the program, then the receiving herd will be required to start over in the program.

§ 55.24 Herd status.

(a) When a herd is first enrolled in the CWD Herd Certification Program, it will be placed in First Year status. If the herd continues to meet the requirements of the CWD Herd Certification Program, each year, on the anniversary of the enrollment date the herd status will be upgraded by 1 year; *i.e.*, Second Year status, Third Year status, Fourth Year status, and Fifth Year status. One year from the date a herd is placed in Fifth Year status, the herd status will be changed to Certified, and the herd will remain in Certified status as long as it is enrolled in the program, provided its status is not lost or suspended in accordance with this section. Once the herd has received Certified status, slaughter surveillance and surveillance of animals killed in shooter operations will no longer be required, but other requirements of the program will remain in force.

(b) *Loss or suspension of herd status.* (1) If a herd is designated a CWD-positive herd or a CWD-exposed herd, it will immediately lose its program status and may only reenroll after completing a herd plan. When reenrolled, the herd will enter at a First Year status level, with a new enrollment date reflecting the date the herd completed the herd plan.

(2) If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it will immediately be placed in Suspended status pending an epidemiologic investigation by APHIS or a State animal health agency. If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level.

(i) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd will lose its program status and will be designated a CWD-exposed herd.

(ii) If the epidemiological investigation is unable to make a determination regarding the exposure of the herd, because the necessary animal or animals are no longer available for testing (*i.e.* a trace animal from a known positive herd died and was not tested) or for other reasons, the herd status will continue as Suspended unless and until a herd plan is developed for the herd. If a herd plan is developed, the herd will be reinstated into the CWD Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status. The herd must comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program, and the herd plan will require testing of all animals that die in the herd for any reason, regardless of the age of the animal, and may require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question.

(c) The Administrator may cancel the enrollment of an enrolled herd by giving written notice to the herd owner. In the event of such cancellation, the herd owner may not reapply to enroll in the CWD Herd Certification Program for 5 years from the effective date of the cancellation. The Administrator may cancel enrollment after determining that the herd owner failed to comply with any requirements of this section. Before enrollment is canceled, an APHIS representative will inform the herd owner of the reasons for the proposed cancellation.

(1) Herd owners may appeal cancellation of enrollment or loss or suspension of herd status by writing to the Administrator within 10 days after being informed of the reasons for the proposed action. The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the proposed action are incorrect or do not support the action. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, cancellation of enrollment or loss or suspension of herd status shall become effective pending final determination in the proceeding if the Administrator determines that such action is necessary to prevent the possible spread of CWD. Such action shall become effective upon oral or written notification, whichever is earlier, to the herd owner. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This cancellation of enrollment or loss or suspension of herd status shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

(2) [Reserved]

(d) A herd may add animals from herds with the same or an earlier enrollment date in the CWD Herd Certification Program with no negative impact on the certification status of the receiving herd.[1] If animals are acquired from a herd with a later date of enrollment, the receiving herd reverts to the program status of the sending herd. If a herd participating in the CWD Herd Certification Program acquires animals from a nonparticipating herd, the receiving reverts to First Year status with a new enrollment date of the date of acquisition of the animal.

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[1] Note that in addition to this requirement, § 81.3 of this chapter restricts the interstate movement of captive deer and elk based on their status in the CWD Herd Certification Program.

§ 55.25 Official identification.

(a) Each animal required to be identified by this subpart must have at least two forms of identification. The official identification must be approved for this use by APHIS, and must be an electronic implant, flank tattoo, ear tattoo, or tamper-resistant ear tag. The official identification must provide a unique identification number that is applied by the owner of the herd or his or her agent and must be linked to that herd in the National CWD Database.

4. A new part 81 would be added to read as follows:

PART 81—CHRONIC WASTING DISEASE IN DEER AND ELK

Sec.
81.1 Definitions.
81.2 Identification of deer and elk in interstate commerce.
81.3 General restrictions.
81.4 Issuance of certificates.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 81.1 Definitions.

Animal. Any captive deer or elk.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS employee. Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

Captive. Animals that are privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined area, or that were captured from a free-ranging population for interstate movement and release. Animals that are held for research purposes by State or Federal agencies or universities are not included.

Chronic wasting disease (CWD). A transmissible spongiform encephalopathy of cervids. Clinical signs in affected animals include, but are not limited to, loss of body condition, behavioral changes, excessive salivation, increased drinking and urination, depression, and eventual death.

CWD-exposed animal. An animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 5 years.

CWD Herd Certification Program. The Chronic Wasting Disease Herd Certification Program established in part 55 of this chapter.

CWD-positive animal. An animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

CWD-suspect animal. An animal for which an APHIS employee has determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

Deer. Mule deer (*Odocoileus hemionus*), black-tailed deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), red deer (*Cervus elaphus*), and hybrids of these species.

Elk. North American wapiti (*Cervus elaphus*) and wapiti x red deer hybrids.

§ 81.2 Identification of deer and elk in interstate commerce.

(a) Each animal required to be identified by this part must have at least two forms of identification, except for free-ranging animals captured for interstate movement and release in accordance with § 81.3(a)(2), which must have at least one form of identification. The form of identification must be an electronic implant, flank tattoo, ear tattoo, or tamper-resistant ear tag approved for this use by APHIS. The identification must provide a unique identification number that is applied by the owner of the herd or his or her agent and is linked to that herd in the National CWD Database.

§ 81.3 General restrictions.

(a) No captive deer or captive elk may be moved interstate unless it:

(1) Is moved from a herd that is:

(i) Enrolled in the CWD Herd Certification Program and:

(A) If the movement occurs between [effective date of final rule] and [date 27 months after effective date of final rule], the herd has achieved at least Second Year status in accordance with § 55.24 of this chapter;

(B) If the movement occurs between [date 27 months after effective date of final rule] and [date 39 months after effective date of final rule], the herd has achieved at least Third Year status in accordance with § 55.24 of this chapter;

(C) If the movement occurs between [date 39 months after effective date of final rule] and [date 51 months after effective date of final rule], the herd has achieved at least Fourth Year status in accordance with § 55.24 of this chapter;

(D) If the movement occurs between [date 51 months after effective date of final rule] and [date 63 months after effective date of final rule], the herd has achieved at least Fifth Year status in accordance with § 55.24 of this chapter;

(E) If the movement occurs after [date 63 months after effective date of final rule], the herd has achieved Certified status in accordance with § 55.24 of this chapter; and,

(ii) The herd is accompanied by a certificate issued in accordance with § 81.4 of this part that identifies its herd of origin and its CWD Herd Certification Program status, and states that it is not a CWD-positive, CWD-exposed, or CWD-suspect animal; or

(2) The captive deer or captive elk has at least one form of official identification and was captured for interstate movement and release from a free-ranging population that a certificate accompanying the animals documents to be free from CWD based on a CWD surveillance program that is approved by the State Government of the receiving State and by APHIS.

§ 81.4 Issuance of certificates.

(a) A certificate must show the official identification numbers of each animal to be moved. A certificate must also show the number of animals covered by the certificate; the purpose for which the animals are to be moved; the points of origin and destination; the consignor; and the consignee. The certificate must include a statement by the issuing accredited veterinarian, State veterinarian, or Federal veterinarian that the animals were not exhibiting clinical signs associated with CWD at the time of examination, that the animals are from a herd participating in the CWD Herd Certification Program, and giving the herd's program status.

(b) *Animal identification documents attached to certificates.* As an alternative to typing or writing individual animal identification on a certificate, another document may be used to provide this information, but only under the following conditions:

(1) The document must be a State form or APHIS form that requires individual identification of animals;

(2) A legible copy of the document must be stapled to the original and each copy of the certificate;

(3) Each copy of the document must identify each animal to be moved with the certificate, but any information pertaining to other animals, and any unused space on the document for recording animal identification, must be crossed out in ink; and

(4) The following information must be typed or written in ink in the identification column on the original and each copy of the certificate and must be circled or boxed, also in ink, so that no additional information can be added:

(i) The name of the document; and

(ii) Either the serial number on the document or, if the document is not imprinted with a serial number, both the name of the person who issued the document and the date the document was issued.

Done in Washington, DC, this 17th day of December, 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–31543 Filed 12–23–03; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 222

FEDERAL TRADE COMMISSION

16 CFR Part 602

[Regulation V; Docket No. R–1175]

RIN 3084–AA94 Project No. P044804

Effective Dates for the Fair and Accurate Credit Transactions Act of 2003

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (FTC).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) requires the Board and the FTC (the Agencies) jointly to adopt rules establishing the effective dates for provisions of the Act that do not contain specific effective dates. The Agencies are taking two related actions to comply with this requirement. In this action, the Agencies are proposing rules that would establish a schedule of effective dates for many of the provisions of the FACT Act for which the Act itself does not specifically provide an effective date. In the second action, published elsewhere in today's **Federal Register**, the Agencies are jointly adopting interim final rules that establish December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act (FCRA) and state laws and provisions that authorize rulemakings and other implementing action by various agencies.

DATES: Comments must be submitted on or before January 12, 2004.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to either of the Agencies and need not send comments (or copies) to both of the Agencies. Because paper mail in the Washington area and at the Agencies is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title "Proposed Effective Dates for the FACT Act" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

Board of Governors of the Federal Reserve System: Comments should refer to Docket No. R–1175 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

Federal Trade Commission: Comments should refer to "Proposed Effective Dates for the FACT Act, Project No. P044804." Comments filed in paper form should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) should be sent to: *FACTAdates@ftc.gov*. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] Regardless of the form in which they are filed, the Commission will consider all timely comments, and will make the comments available (with confidential material redacted) for public inspection and copying at the Commission's principal office and on the Commission Web site at *www.ftc.gov*. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site.

FOR FURTHER INFORMATION CONTACT:

Board: Thomas E. Scanlon, Counsel, Legal Division, (202) 452–3594; David A. Stein, Counsel, Minh-Duc T. Le, Ky Tran-Trong, Senior Attorneys, Krista P. DeLargy, Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

FTC: Christopher Keller or Katherine Armstrong, Attorneys, Division of Financial Practices, (202) 326–3224.

SUPPLEMENTARY INFORMATION:

Background and Discussion

Congress enacted the FACT Act, which the President signed into law on December 4, 2003. Pub. L. 108–159, 117 Stat. 1952. In general, the Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information that is contained in a consumer report. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the "Financial Literacy and Education Improvement Act") creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation regarding consumer report information.

The Act includes effective dates for many of its sections that vary to take account of the need for rulemaking, implementation efforts by industry, and other policy concerns. Section 3 of the FACT Act requires the Agencies to prescribe joint regulations establishing an effective date for each provision of the Act for which the Act itself does not specifically provide an effective date. The FACT Act requires that the Agencies jointly adopt final rules establishing the effective dates within two months of the date of enactment of the Act. Thus, by law, the Agencies must complete these rulemaking efforts by February 4, 2004. The Act also provides that each of these effective dates must be "as early as possible, while allowing a reasonable time for the implementation" of that provision, but in no case later than ten months after the date of issuance of the Agencies' joint final rules establishing the effective dates for the Act (117 Stat. 1953).

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[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

In this action, the Agencies are proposing rules that would establish a schedule of effective dates for certain provisions of the FACT Act for which the Act itself does not specifically provide an effective date. In a separate notice published in conjunction with this action, the Agencies are jointly adopting interim final regulations to establish effective dates for provisions of the FACT Act that relate to state laws and to implementing authority for the agencies. The Agencies seek comment on the issues associated with the schedule of effective dates set forth in both the proposed and interim final joint regulations.

Schedule of Effective Dates

The FACT Act contains a number of provisions that clarify or address rights and requirements under the FCRA that are self-effectuating but that do not contain a specific effective date. These provisions are: section 156 (statute of limitations); sections 312(d) (furnisher liability exception), (e) (liability and enforcement), and (f) (rule of construction); section 313(a) (action concerning complaints); section 611 (communications for employee investigations); and section 811 (clerical amendments). Section 111 (amendment to definitions) contains definitions that are self-effectuating but that do not contain specific effective dates. The Agencies propose to establish March 31, 2004, as the effective date for each of the provisions of the Act listed above. With respect to each of these provisions, the Agencies consider that the "reasonable time to implement" standard of section 3 of the Act permits an early effective date because these provisions do not require significant changes to business procedures. Each of these provisions furnishes important benefits to consumers and affected businesses. March 31, 2004, is therefore an appropriate date that balances the statutory mandate to effectuate provisions of the Act "as early as possible" and the Agencies" desire to obtain and consider comment prior to implementation.

The FACT Act contains a number of other provisions without effective dates that would require changes in systems, disclosure forms or practices, or implementing regulations to be administered effectively. The Agencies propose December 1, 2004, as the effective date for these provisions. This will allow industry and the various agencies a reasonable time to establish systems and rules to implement these sections effectively. These sections are listed in the proposed rules.

As explained in the preamble to the Interim Final Rules published concurrently with this Notice (and set forth in section (1)(B) of the applicable interim final rule), the Agencies note that with respect to any provision of the Act that provides for a rulemaking proceeding or other agency action, the proposed rules establishing effective dates do not affect the substantive provisions of the FACT Act implemented by agency rule. The substantive provisions of the Act become effective as provided in the Act, as provided in the Agencies' joint effective date rules, or as provided by the substantive rules promulgated by the various agencies, as appropriate.

Request for Comments

The Agencies invite comment on the proposal. In particular, the Agencies seek comment on whether the proposed schedule of effective dates would allow affected entities a reasonable period of time to comply with or act on the newly-enacted provision(s). The Agencies also invite comment on whether a different effective date is appropriate for any provision. In addition, the Agencies seek comment on whether it is necessary to establish an effective date for any provision not listed (or specifically listed) on the proposed schedule.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Agencies have reviewed the proposed joint rules. (The Board has done so under authority delegated to the Board by the Office of Management and Budget.) The proposed joint rules contain no collections of information pursuant to the Paperwork Reduction Act.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Agencies must publish an initial regulatory flexibility analysis with the joint proposed rules.

The joint proposed rules, if adopted, would establish effective dates for several provisions of the FACT Act. Prior to the enactment of the FACT Act, the FCRA imposed various duties on parties that furnish information to consumer reporting agencies, on parties that use consumer reports, and on consumer reporting agencies themselves. The FACT Act modifies and extends some of these existing duties and imposes new duties on these respective parties. The schedule of effective dates proposed by the Agencies would make the newly-enacted statutory provisions applicable with respect to these parties. The Agencies seek comment on the extent to which the proposed time periods for compliance may affect the scope or nature of the burdens that affected parties are likely to face in complying with the applicable provisions of the FACT Act, if at all. A description of the reasons for the Agencies' decisions and a statement of the objectives of, and legal basis for, the joint interim final and proposed regulations, respectively, are set forth in the supplementary information provided above. The types of entities, if any, to be affected by these rules is also described above, although the agencies do not presently have a basis for estimating the number of small entities to which these rules will apply. Because the rules merely establish effective dates, the rules themselves impose no reporting, recordkeeping or other requirements, which would arise either from obligations imposed by the statute itself or as a result of rulemakings or other implementing actions that may be taken by agencies under the statute. Nonetheless, the Agencies specifically seek comment on the likely burden the joint proposed rule would have on small entities, such as small creditors that furnish information to consumer reporting agencies or use consumer reports, and how the Agencies' proposed rules might minimize this burden, to the extent consistent with the requirements and intent of the FACT Act.

Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(5).

Solicitation of Comments on Use of Plain Language

Section 722(a) of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[2] In light of this requirement, the Board has sought to present the proposed rule in a simple and straightforward manner. The Board invites your comments on how to make the rule easier to understand. For example:

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[2] Pub. L. 106–102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

List of Subjects

12 CFR Part 222

Banks, banking, Holding companies, state member banks.

16 CFR Part 602

Consumer reports, Consumer reporting agencies, Credit, Trade practices.

12 CFR Chapter II—Federal Reserve System

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 222 as follows:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

1.The authority citation for 12 CFR part 222 continues to read as follows:

Authority: 15 U.S.C. 1681a; Sec.3, Pub. L. 108–159, 117 Stat. 1953.

2. In § 222.1, paragraphs (c)(2) and (c)(3) are added to read as follows:

Subpart A—General Provisions

§ 222.1 Purpose, scope, and effective dates.

* * * * *

(c) Effective dates. * * *

(2) *Provisions effective March 31, 2004.*

(i) Section 111, concerning the definitions;

(ii) Section 156, concerning the statute of limitations;

(iii) Sections 312(d), (e), and (f), concerning the furnisher liability exception, liability and enforcement, and rule of construction, respectively;

(iv) Section 313(a), concerning action regarding complaints;

(v) Section 611, concerning communications for employee investigations; and

(vi) Section 811, concerning clerical amendments.

(3) *Provisions effective December 1, 2004.*

(i) Section 112, concerning fraud alerts and active duty alerts;

(ii) Section 114, concerning procedures for the identification of possible instances of identity theft;

(iii) Section 115, concerning truncation of the social security number in a consumer report;

(iv) Section 151(a)(1), concerning the summary of rights of identity theft victims;

(v) Section 152, concerning blocking of information resulting from identity theft;

(vi) Section 153, concerning the coordination of identity theft complaint investigations;

(vii) Section 154, concerning the prevention of repollution of consumer reports;

(viii) Section 155, concerning notice by debt collectors with respect to fraudulent information;

(ix) Section 211(a) and (c), concerning free consumer reports;

(x) Section 212(a)–(d), concerning the disclosure of credit scores;

(xi) Section 213(c), concerning enhanced disclosure of the means available to opt out of prescreened lists;

(xii) Section 214(a), concerning affiliate sharing;

(xiii) Section 216, concerning the disposal of consumer report information and records;

(xiv) Section 217(a), concerning the duty to provide notice to a consumer;

(xv) Section 311(a), concerning the risk-based pricing notice;

(xvi) Section 312(a)–(c), concerning procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies;

(xvii) Section 314, concerning improved disclosure of the results of reinvestigation;

(xviii) Section 315, concerning reconciling addresses;

(xix) Section 316, concerning notice of dispute through reseller; and

(xx) Section 317, concerning the duty to conduct a reasonable reinvestigation.

16 CFR Chapter 1—Federal Trade Commission

Authority and Issuance

For the reasons set forth in the preamble, the FTC proposes to amend 16 CFR part 602 as follows:

PART 602—FAIR CREDIT REPORTING

1. The authority citation for 16 CFR part 602 continues to read as follows:

Authority: 15 U.S.C. 1681a; Sec. 3, Pub. L. 108–159, 117 Stat. 1953.

2. In § 602.1, paragraphs (c)(2) and (c)(3) are added to read as follows:

Subpart A—General Provisions

§ 602.1 Purpose, scope, and effective dates.

* * * * *

(c) *Effective dates.* * * *

(2) *Provisions effective March 31, 2004.*

(i) Section 111, concerning the definitions;

(ii) Section 156, concerning the statute of limitations;

(iii) Sections 312(d), (e), and (f), concerning the furnisher liability exception, liability and enforcement, and rule of construction, respectively;

(iv) Section 313(a), concerning action regarding complaints;

(v) Section 611, concerning communications for employee investigations; and

(vi) Section 811, concerning clerical amendments.

(3) *Provisions effective December 1, 2004.*

(i) Section 112, concerning fraud alerts and active duty alerts;

(ii) Section 114, concerning procedures for the identification of possible instances of identity theft;

(iii) Section 115, concerning truncation of the social security number in a consumer report;

(iv) Section 151(a)(1), concerning the summary of rights of identity theft victims;

(v) Section 152, concerning blocking of information resulting from identity theft;

(vi) Section 153, concerning the coordination of identity theft complaint investigations;

(vii) Section 154, concerning the prevention of repollution of consumer reports;

(viii) Section 155, concerning notice by debt collectors with respect to fraudulent information;

(ix) Section 211(a) and (c), concerning free consumer reports;

(x) Section 212(a)–(d), concerning the disclosure of credit scores;

(xi) Section 213(c), concerning enhanced disclosure of the means available to opt out of prescreened lists;

(xii) Section 214(a), concerning affiliate sharing;

(xiii) Section 216, concerning the disposal of consumer report information and records;

(xiv) Section 217(a), concerning the duty to provide notice to a consumer;

(xv) Section 311(a), concerning the risk-based pricing notice;

(xvi) Section 312(a)–(c), concerning procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies;

(xvii) Section 314, concerning improved disclosure of the results of reinvestigation;

(xviii) Section 315, concerning reconciling addresses;

(xix) Section 316, concerning notice of dispute through reseller; and

(xx) Section 317, concerning the duty to conduct a reasonable reinvestigation.

By order of the Board of Governors of the Federal Reserve System, December 16, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated: December 15, 2003.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–31360 Filed 12–23–03; 8:45 am]

BILLING CODE 6210–01–P, 6750–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146 series airplanes. This proposal would require repetitive general visual inspections of the inside of the condenser regenerative air ducts, air cycle machine turbine outlet, and the jet pump ducts on each air conditioning pack to detect oil and/or oil breakdown products leaking from the engine(s) or auxiliary power unit (APU). This proposal would also require further inspections and replacement of any affected engine, APU, or component with a serviceable part, if necessary. This action is necessary to prevent impairment of the operational skills and abilities of the flight crew caused by oil or oil breakdown products in the cabin air, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 23, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–148–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–148–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–148–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 series airplanes. The CAA advises that flight crews have reported four incidents in which they experienced various levels of impaired performance when flying the affected airplane models. The root cause of the impairment has not been identified; however, circumstantial evidence indicates that a possible cause is an agent or agents released from oil and/or oil breakdown products that leak from the engine(s) or auxiliary power unit (APU) and contaminate the environmental control system (ECS), and are possibly released into the cabin air. Oil or oil breakdown products in the cabin air, if not corrected, could result in possible impairment of the operational skills and abilities of the flight crew, and possible reduced controllability of the airplane.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ISB.21–150, Revision 2, dated October 24, 2002, which describes procedures for repetitive general visual inspections of the inside of the condenser regenerative air ducts, air cycle machine turbine outlet, and the jet pump ducts on each air conditioning pack to detect oil and/or oil breakdown products leaking from the engine(s) or APU and contaminating the ECS and cabin air supply. This service bulletin also describes procedures for detailed inspections and replacement of any affected engine, APU, or component of the engine or APU with serviceable parts if oil contamination is found or if a cabin air quality problem is suspected of being associated with oil contamination of the air supply. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 002–03–2001, dated March 21, 2001, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin

Operators should note that although the service bulletin specifies to complete and return an inspection reporting sheet to the manufacturer, this proposed AD does not include such a requirement.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Cost Impact

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed general visual inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,600, or $130 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited (formerly British Aerospace Regional Aircraft): Docket 2001–NM–148–AD.

Applicability: All Model BAe 146 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent impairment of the operational skills and abilities of the flight crew caused by oil or oil breakdown products in the cabin air, which could result in reduced controllability of the airplane, accomplish the following:

Service Bulletin Reference

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin ISB.21–150, Revision 2, dated October 24, 2002.

(2) Inspections and corrective actions accomplished before the effective date of this AD per BAE Systems (Operations) Limited Service Bulletin ISB.21–150, dated March 20, 2001; or BAE Systems (Operations) Limited Service Bulletin ISB.21–150, Revision 1, dated January 29, 2002; are acceptable for compliance with the corresponding actions required by this AD.

Initial Inspection

(b) Within 500 flight cycles after the effective date of this AD: Perform a general visual inspection of the inside of both the condenser regenerative air ducts, air cycle machine turbine outlet, and the jet pump ducts on each air conditioning pack for the presence of oil contamination, per the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repetitive Inspections

(c) If no oil contamination is found during the inspection required by paragraph (b) of this AD: Repeat the inspection at intervals not to exceed 500 flight cycles in accordance with the service bulletin.

Detailed Inspection and Replacement

(d) If any oil contamination is found during the inspection required by paragraph (b) of this AD: Before further flight, perform a detailed inspection of any affected engine, APU, or component of the engine(s) or APU to determine the cause of the oil contamination per the service bulletin.

(1) If the cause of the oil contamination is found: Except as provided by paragraph (f) of this AD, before further flight, remove any affected engine, APU, or component and replace it with a serviceable part in accordance the service bulletin. Repeat the general visual inspection required by paragraph (b) of this AD at intervals not to exceed 500 flight cycles in accordance with the service bulletin.

(2) If the cause of the oil contamination is not found, repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 50 flight cycles in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Inspection and Repair Following Air Quality Problems

(e) If any cabin air quality problem, whether intermittent or persistent, is reported that is suspected of being associated with oil contamination of the air supply from the environmental control system packs: Before further flight, perform the detailed inspection and any necessary corrective action required by paragraph (d) of this AD in accordance with the service bulletin.

Continued Operation Without Replacement

(f) Airplanes may be operated without accomplishing the replacement(s) required by paragraph (d)(1) of this AD under the conditions described in paragraphs 2.E.(1), 2.E.(2), and 2.E.(3) of the service bulletin, and in accordance with the provisions and limitations specified in the operator's Master Minimum Equipment List (MMEL). Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 500 flight cycles in accordance with the service bulletin.

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane an engine, APU, or component that has been removed per paragraph (d)(1) of this AD, unless it has been cleaned in accordance with paragraph 2.H. of the service bulletin.

No Reporting Requirements

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(i) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in British airworthiness directive 002–03–2001, dated March 21, 2001.

Issued in Renton, Washington, on December 12, 2003.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31441 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 301

[REG–139845–02]

RIN 1545–BB12

Gross Estate; Election to Value on Alternate Valuation Date

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the election under section 2032 to value a decedent's gross estate on the alternate valuation date. The proposed regulations reflect a change to the law made by the Deficit Reduction Act of 1984. The proposed regulations affect estates that are required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Written or electronic comments and requests for a public hearing must be received by March 23, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–139845–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–139845–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa Melchiorre, (202) 622–7830; concerning submissions of comments or to request a hearing, Treena Garrett, (202) 622–3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

As a general rule, section 2031 provides that the value of a decedent's gross estate is to be determined as of the date of the decedent's death. Section 2032 provides that the executor may elect to value the property on an alternate valuation date. Prior to the enactment of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494), section 2032(c) and § 20.2032–1(b) of the Estate Tax Regulations required the election to be made on a timely filed estate tax return, including extensions of time to file actually granted. The Deficit Reduction Act amended section 2032, effective for estates of decedents dying after July 18, 1984, by redesignating section 2032(c) as section 2032(d) and amending section 2032(d) to provide that the election may be made on the estate tax return, whether it is filed timely or late, as long as the return is filed no more than 1 year after the due date, including extensions. Temporary Regulation § 301.9100–6T(b), issued on September 5, 1984, reflects this change to the law and provides a transition rule for estates of decedents dying before July 19, 1984. The temporary regulation, however, also provides that once a return that fails to make the election is filed, the election may not be made on a subsequent return unless the subsequent return is filed by the due date (including extensions) of the original return. This limitation is not found in §§ 301.9100–1 and 301.9100–3 of the Procedure and Administration Regulations that apply to all requests for an extension of time to make an election submitted to the IRS on or after December 31, 1997.

The Deficit Reduction Act of 1984 also added new section 2032(c) that provides that, in the case of estates of decedents dying after July 18, 1984, the election to use the alternate valuation method may be made only if the election results in a reduction in both the value of the gross estate and the actual estate tax liability. The Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085), amended section 2032(c)(2) to provide that the election may be made only if the election results in a decrease both in the value of the gross estate and in the sum of the estate tax and generation-skipping transfer tax liability (reduced by credits allowable against these taxes).

Explanation of Provisions

These proposed regulations will amend § 20.2032–1(b) to reflect the change made to section 2032 by the Deficit Reduction Act of 1984. In addition, the proposed regulations, when finalized, will remove temporary regulation § 301.9100–6T(b) of the Procedure and Administration Regulations so that estates that fail to make the alternate valuation election on the last estate tax return filed before the due date or the first return filed after the due date will be able to request an extension of time to make the election under the provisions of §§ 301.9100–1 and 301.9100–3. However, in view of the statutory 1 year limitation imposed under section 2032(d)(2), no request for an extension of time will be granted if the request is submitted to the IRS more than 1 year after the due date of the return (including extensions of time to file actually granted). The proposed regulations also provide guidance on making a protective election under section 2032.

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Theresa Melchiorre, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 301 are proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2032–1(b) is revised to read as follows:

§ 20.2032–1 Alternate valuation.

* * * * *

(b) *Method and effect of election*—(1) *In general.* The election to use the alternate valuation method is made on the return of tax imposed by section 2001. For purposes of this paragraph (b), the term *return of tax imposed by section 2001* means the last estate tax return filed by the executor on or before the due date of the return (including extensions of time to file actually granted) or, if a timely return is not filed, the first estate tax return filed by the executor after the due date, provided the return is filed no later than 1 year after the due date (including extensions of time to file actually granted). Once the election is made, it is irrevocable, provided that an election may be revoked on a subsequent return filed on or before the due date of the return (including extensions of time to file actually granted). The election may be made only if it will decrease both the value of the gross estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax with respect to the property includible in the decedent's gross estate. If the election is made, the alternate valuation method applies to all property included in the gross estate and cannot be applied to only a portion of the property.

(2) *Protective election.* If, based on the return of tax as filed, use of the alternate valuation method would not result in a decrease in both the value of the gross estate and the sum (reduced by allowable credits) of the estate tax and the generation-skipping transfer tax liability of the estate, a protective election may be made to use the alternate valuation method if it is subsequently determined that such a decrease would occur. A protective election made on the return of tax imposed by section 2001 is irrevocable, provided that it may be revoked on a subsequent return filed on or before the due date of the return (including extensions of time to file actually granted). Absent such revocation, if it is later determined that use of the alternate valuation method would result in a decrease in both the value of the gross estate and in the sum (reduced by allowable credits) of the estate tax and generation-skipping transfer tax liability of the estate, the protective election becomes effective and cannot thereafter be revoked.

(3) *Requests for extension of time to make the election.* A request for an extension of time to make the election pursuant to §§ 301.9100–1 and 301.9100–3 of this chapter will not be granted unless the request is submitted to the Internal Revenue Service no later than 1 year after the due date of the return (including extensions of time to file actually granted).

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.9100–6T [Amended]

Par. 4. Section 301.9100–6T is amended by:

1. Removing the language "paragraph (b)(2)" from paragraph (a)(2) introductory text, and adding the language "paragraph (a)(2)" in its place.
2. Removing paragraph (b).
3. Redesignating paragraphs (c) through (s) as paragraphs (b) through (r), respectively.
4. Removing the language "paragraph (c)(2)" from the last sentence in newly designated paragraph (b)(2) and adding the language "paragraph (b)(2)" in its place.
5. Removing the language "paragraph (l)" from the second, fourth and last sentences in newly designated paragraph (k) and adding the language "paragraph (k)" in its place.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–31615 Filed 12–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD09–03–284]

RIN 2115–AA01

Special Anchorage Area; Madeline Island, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to enlarge the existing special anchorage area in Madeline, Wisconsin. This action is being taken at the request of the La Pointe Yacht Club, which, due to low water levels, has lost usable anchorage space. This proposed rule would make additional space available within the special anchorage area.

DATES: Comments must be received March 23, 2004.

ADDRESSES: You may mail comments to Commander (map), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060, or deliver them to room 2069 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6056.

Commander, Ninth Coast Guard District Marine Safety Office maintains the public docket for this rulemaking. Comments, and documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 2069, Ninth Coast Guard District, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Michael Gardiner, Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District Marine Safety Office, at (216) 902–6056.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–284), indicate the specific section of this document to which each comment applies, and give the reason for each comment.

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District Marine Safety Office at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background Information

On April 1, 2003, the La Pointe Yacht Club, Inc. requested that the Coast Guard initiate a rulemaking to increase the size of the Madeline Island, Wisconsin special anchorage area as described in 33 CFR 110.77b. The Commander of the Ninth Coast Guard District is publishing this notice of proposed rulemaking to request comments on the proposed enlargement of this special anchorage area.

The request to increase the size of this special anchorage area is based on four factors. First, the number of boats using the anchorage has increased resulting in a crowding of boats, causing some to anchor outside the anchorage area boundaries. Second, several years of low water have caused boats to move outside the current anchorage area boundaries to find safe depths. Third, boats with drafts deeper then 3 feet cannot safely use the current defined area. Finally, the existing seaward boundary intersects the inside of the fairway leading into the Madeline Island Marina basin.

Discussion of Proposed Rule

The proposed rule would change the boundaries to the following: all water within a line connecting the points starting at 46°46′44.8″ N, 090°47′14.0″ W; then south south-westerly to 46°46′35.5″ N, 090°47′17.0″ W; then south south-easterly to 46°46′27″ N, 090°47′12.8″ W; then east south-easterly to 46°46′22.6″ N, 090°46′58.8″ W; then following the shoreline back to the starting point. These coordinates are based upon North American Datum 1983 (NAD 83). This would extend the anchorage area boundary approximately 300 feet further at the outer most point.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule only slightly increases the special anchorage area. Normal vessel traffic would not transit this area due to the shallow depths. In addition, vessel traffic can safely pass around this special anchorage area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Ninth Coast Guard District Marine Safety Office, at 1240 East Ninth Street, Cleveland, Ohio, 44199.

Collection of Information

This proposed rule would call for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reason set out in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g). Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.77b to read as follows:

§ 110.77b Madeline Island, Wisconsin

All waters off of La Pointe Harbor, Madeline Island, Wisconsin, encompassed by a line connecting the following points, beginning at 46°46′44.8″ N, 090°47′14.0″ W; then south south-westerly to 46°46′35.5″ N, 090°47′17.0″ W; then south south-easterly to 46°46′27″ N, 090°47′12.8″ W; then east south-easterly to 46°46′22.6″ N, 090°46′58.8″ W; then following the shoreline back to the starting point (NAD 83).

Dated: December 15, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–31728 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, 33, 35 and 40

[Docket ID No. OA–2002–0001; FRL–7602.2]

RIN 2020–AA39

Public Hearings on Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; public hearings.

SUMMARY: This document announces the date and location of a Tribal hearing wherein EPA will take comments on its proposed rule for "Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements," published on July 24, 2003, at 68 FR 43824. This Tribal hearing will be held during the 180 day public comment period for the proposed rule, which ends on January 20, 2004. EPA will publish information concerning additional public hearings and Tribal hearings during the comment period when that information becomes available.

DATES: The Tribal hearing addressed by this **Federal Register** Proposal is scheduled as follows: January 8, 2004, 9 a.m. to 4 p.m., Billings, Montana.

ADDRESSES: The hearing will be held at the following location: The Northern Hotel, 19 North Broadway, Billings, Montana 59101.

FOR FURTHER INFORMATION CONTACT: Kimberly Patrick, Attorney Advisor, at (202) 564–5386, or David Sutton, Deputy Director at (202) 564–4444, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Mail Code 1230A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA published its proposed rule for Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements on July 24, 2003, at 68 FR 43824. EPA has established an official public docket for this action under Docket ID No. OA–2002–0001. The proposed rule and supporting materials are available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information is (202) 566–1752. An electronic version of public docket is available through EPA's electronic public docket and comment systems, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," and then key in docket identification number OA–2002–0001. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

Dated: December 18, 2003.

Thomas J. Gibson,

Chief of Staff.

[FR Doc. 03–31708 Filed 12–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60; FCC 03–288]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on modifications to the definition of "rural area" for the rural health care support mechanism, whether additional modifications to our rules are appropriate to facilitate the provision of support to mobile rural health clinics for satellite services, and additional outreach efforts and measures to streamline further the application process.

DATES: Comments are due on or before February 23, 2004. Reply comments are due on or before April 7, 2004. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before February 23, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov,* and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov* or by fax to 202–395–5167. Parties should also send three paper copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554. *See* Supplemental Information for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Shannon Lipp, Attorney, (202) 418–7400 or Regina Brown, Attorney, (202) 418–7400, Wireline Competition Bureau, Telecommunications Access Policy Division. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in WC Docket No. 02–60 released on November 17, 2003. A companion Report and Order and Order on Reconsideration was also released in WC Docket No. 02–60 on November 17, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

This Further Notice of Proposed Rulemaking (FNPRM) contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The FNPRM contained proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this FNPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments on the proposed information collections discussed in this FNPRM are due on or before February 23, 2004. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0804.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 466–A, and 467.

Type of Review: Proposed revised collection.

Respondents: Business or other for-profit; not for profit institutions.

Title	Number of respondents	Frequency of response	Total annual burden
1. FCC Form 465—Description of Service Requested and Certification	1,600	1.5	96,000
2. FCC Form 466—Funding Request And Certification	1,600	2	192,000
3. FCC Form 466–A—Internet Toll Charge Discount Request	5	1	200
4. FCC Form 467—Connection Certification	1,600	1	81,000

Title	Number of respondents	Frequency of response	Total annual burden
Total Annual Burden: Total Annual Costs: $0	....	....	369,200

Needs and Uses: In the FNPRM, we seek comment on ways to streamline further the application process and expand outreach efforts. In the companion *Report and Order,* we note that USAC has implemented many steps to streamline the application process and has increased its outreach efforts, since the *NPRM,* 67 FR 34653, May 15, 2002, was released in 2002. Among other things, USAC has implemented on-line application filing and has arranged for electronic forms to be filled automatically with the previous year's information for repeat on-line filers. Nevertheless, we seek comment on what additional steps the Universal Service Administrative Commission (USAC) could take to ease further the burdens associated with the application process. For example, what would be the advantages and disadvantages of implementing multi-year applications, so that beneficiaries would not need to apply every funding year? We also seek comment on whether there are additional outreach efforts that USAC could take to inform eligible applicants of the benefits of the program. For instance, should USAC conduct focus groups among rural health care providers to develop ideas on how to identify providers that operate only on a part-time basis? Should USAC contact service providers in rural areas to solicit suggestions for potential eligible users in the area? All rural health care providers applying for discounts on eligible telecommunications and information services must currently file FCC Forms 465, 466, 466–A, and 467. The purpose of these forms is for rural health care providers to certify their eligibility, describe program needs so that service providers are able to bid on the services, indicate that they have selected the most cost-effective methods, apply for discounts, and inform the program's administrator that they have begun to receive or stopped receiving services for which support was allocated.

I. Further Notice of Proposed Rulemaking

A. Definition of "rural area"

1. In this FNPRM, we seek comment on modifications to the definition of "rural area" for the rural health care universal service support mechanism. Currently, an area qualifies as rural if it is located in a non-metropolitan county as defined by the Office of Management and Budget or is specifically identified in the Goldsmith Modification to 1990 Census data published by the Office of Rural Health Care Policy (ORHP). In response to the NPRM, several commenters state that ORHP no longer utilizes the definition adopted by the Commission in 1997 and that there will be no Goldsmith Modification to the most recent 2000 Census data. Several commenters suggest that the Commission adopt the rural designation system currently utilized by ORHP, the Rural Urban Commuting Area (RUCA) system. Others propose to define rural as non-urbanized areas, as specified by the Census Bureau. Finally, some commenters assert that if the Commission adopts a new definition of rural, it should grandfather existing areas that currently qualify as rural, if they would no longer qualify under the new definition.

2. We seek comment on whether we should adopt a new definition of rural area for the rural health care program, and, if so, what that new definition should be. We seek comment on whether there are any definitions for rural areas used by other government agencies or medical organizations that would be appropriate for the rural health care program. In addition to describing any proposed new definitions, we ask commenters to address the specific proposals that have already been raised in the record. Commenters are encouraged to describe the effects of any new definition to the program, *e.g.* how many existing rural areas would become non-rural and vice versa. We also seek comment on whether there are reasons we should or should not use the same definition of "rural" for both the rural health care and schools and libraries support mechanisms.

B. Support for Satellite Services for Mobile Rural Health Clinics

3. We also seek comment on whether additional modifications to our rules are appropriate to facilitate the provision of support to mobile rural health clinics for satellite services. Satellite services may be used by mobile rural health clinics that operate in vans or boats to deliver telemedical services via satellite to residents in rural areas. For example, one non-profit entity is launching the first mobile telemammography van to diagnose breast cancer in women in four rural tribal lands in North and South Dakota early next year. This van will conduct mammograms and deliver results to rural American Indian women while they wait. The van's clinician will send the mammogram via satellite, which is contained in sixty-four megabytes of data, to doctors at the University of Colorado, who will diagnose any abnormalities and email the van with the patient's results. The van will serve approximately 12,000 women among the four tribes, at a rate of ten to twelve women a day. The van will be stationed at each reservation for approximately two weeks at a time and will travel approximately 200–300 days a year, depending on travel time and maintenance and repairs to the van. Satellite service for the van will cost approximately $10,000 a month.

4. In the companion *Report and Order,* we conclude that support for satellite services should be capped at the amount a provider would receive if it received functionally-similar terrestrial-based services. We seek comment on whether it is appropriate to apply this rule to mobile rural health care providers, which by their very nature, are unlikely to be able to utilize terrestrially-based services effectively. In particular, due to the mobile nature of a telemedical unit and the large volume of data it will likely send, would a satellite connection be the most cost-effective method of providing service, even if a terrestrial alternative is available? Should a terrestrial alternative be deemed available and "functionally similar," if by its nature it is tied to a fixed location? We seek comment on how mobile health care providers should make a cost-effective determination for satellite services and whether they should consider the installation and disconnection charges that would be incurred if the mobile rural health clinic were to order a wireline connection at each docking location. Commenters should also discuss whether mobile rural health clinics should be required to service a specific number of locations before satellite services are deemed cost-effective.

5. In the event we conclude that the cap on the provision of support for satellite services where terrestrial service is available should not apply in

these circumstances, how should support be provided (*i.e.*, how should discounts be calculated) for satellite services? Commenters are encouraged to discuss whether rural satellite services for mobile rural health clinics should be compared to urban terrestrial services and under what circumstances. We note that two other commenters in this proceeding proposed to provide support for satellite services for mobile health care providers. Commenters should discuss these commenters' proposals. We also ask commenters to estimate the amount of support a mobile rural health clinic would likely receive and the number of mobile units that would likely be eligible. The non-profit entity associated with the telemammography van states that distance-based charges will not apply to satellite services in the continental United States. We seek comment on whether other similarly situated mobile rural health clinics would be subject to distance-based charges using satellite services and, if so, how the revised Maximum Allowable Distance (MAD) would impact support levels.

6. We seek comment on how we should determine whether a mobile health clinic serves rural areas. In particular, should that determination depend on the principal place of business of the provider (such as its mailing address), or should it depend on where the mobile health clinic actually provides service? We also seek comment on whether support for a mobile rural health clinic should be prorated if it also serves non-rural locations.

C. Administrative Matters

7. In addition, we seek comment on ways to streamline further the application process and expand outreach efforts. In the companion *Report and Order,* we note that USAC has implemented many steps to streamline the application process and has increased its outreach efforts, since the *NPRM* was released in 2002. Among other things, USAC has implemented on-line application filing and has arranged for electronic forms to be filled automatically with the previous year's information for repeat on-line filers. Nevertheless, we seek comment on what additional steps USAC could take to ease further the burdens associated with the application process. For example, what would be the advantages and disadvantages of implementing multi-year applications, so that beneficiaries would not need to apply every funding year? We also seek comment on whether there are additional outreach efforts that USAC could take to inform eligible applicants of the benefits of the program. For instance, should USAC conduct focus groups among rural health care providers to develop ideas on how to identify providers that operate only on a part-time basis? Should USAC contact service providers in rural areas to solicit suggestions for potential eligible users in the area?

II. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the FNPRM. The Commission will send a copy of this FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

9. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other things, the Commission adopted a mechanism to provide discounted telecommunications services to public or non-profit health care providers that serve persons in rural areas. Over the last few years, important changes in the rural health community prompt us to review the rural health care universal service support mechanism.

10. In this FNPRM, we seek comment on whether and how to modify the definition of rural area as utilized in the rural health care support mechanism. We also seek comment on whether additional modifications to our rules are appropriate to facilitate the provision of support to mobile rural health clinics for satellite services. Lastly, we seek comments on ways to streamline further the application process and expand outreach efforts.

2. Legal Basis

11. This FNPRM is adopted pursuant to sections 1, 4(i), (4j), 201–205, 251, 252, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 201–205, 251, 252, and 303.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

12. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

13. We have described in detail, *supra,* in the FRFA, the categories of entities that may be directly affected by any rules or proposals adopted in our efforts to reform the universal service rural health care support mechanism. For this IRFA, we hereby incorporate those entity descriptions by reference.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. The FNPRM seeks comment on potential changes to the definition of "rural area" for the rural health care support mechanism. This potential change will not impact reporting or recordkeeping requirements, however, it could impact the overall pool of eligible applicants. The FNPRM also seeks comment on whether additional support should be provided to mobile rural health clinics that utilize satellite services. If changes are adopted, mobile rural health clinics, including small rural health clinics, could potentially be required to submit additional information regarding their mobile services, if they choose to seek discounts. Lastly, the FNPRM seeks comment on ways to streamline further the application process. If the application process is streamlined further, this would eliminate some of the paperwork associated with the application process.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach impacting small business, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

16. In this *FNPRM,* we seek comment on a new definition of rural area. If a new definition is adopted, this could change the size of the overall pool of eligible applicants for universal service support for rural health care providers. We also seek comment on whether to provide additional support to mobile rural health clinics that utilize satellite services. In seeking to minimize the burdens imposed on small entities where doing so does not compromise the goals of the universal service mechanism, we invite comment on definitions and proposals for additional support for mobile rural health clinics that might be made less burdensome for small entities. In addition, we seek comment on ways to streamline further the application process and expand outreach efforts. If the application process is streamlined further, this could ease the burden on small entities associated with the application process. Additionally, outreach efforts would better inform such businesses about the benefits of the rural health care program and potentially increase small business participation in the program.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

B. Initial Paperwork Reduction Act of 1995 Analysis

18. This *FNPRM* contained proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due February 23, 2004. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. PRA comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Comment Filing Procedures

19. We invite comment on the issues and questions set forth in the *FNPRM* and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 23, 2004, and reply comments on or before April 7, 2004. All filings should refer to WC Docket No. 02–60. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

20. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

21. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

22. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

III. Ordering Clauses

23. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this *Further Notice of Proposed Rulemaking* is adopted.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31684 Filed 12–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3869; MB Docket No. 03-244, RM-10825]

Radio Broadcasting Services; New Market, AR and Tullahoma, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Tennessee Valley Radio, Inc., licensee of Station WUSX(FM), Channel 227C1, Tullahoma, Tennessee. Petitioner proposes to delete Channel 227C1 at Tullahoma, to allot Channel 227C2 at New Market, Alabama, and to modify the license of Station WUSX(FM) accordingly. Channel 227C2 can be allotted to New Market in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 km (3.2 miles) northeast of New Market. The coordinates for Channel 227C2 at New Market are 34-51-48 North Latitude and 86-25-40 West Longitude. *See* Supplementary Information *infra*.

DATES: Comments must be filed on or before January 30, 2004, and reply comments on or before February 17, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the counsel for the petitioner as follows: Mark N. Lipp, J. Thomas Nolan, Vinson & Elkins, L.L.P., 1455 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004-1008.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418-7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-244, adopted December 3, 2003 and released December 8, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding New Market, Channel 227C2.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Tullahoma, Channel 227C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-31635 Filed 12-23-03; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-3873;MB Docket No. 03-6; RM-10595]

Radio Broadcasting Services; Garysburg and Roanoke Rapids, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a Petition for Rulemaking filed by MainQuad Communications, Inc. proposing to reallot Channel 272A from Roanoke Rapids, North Carolina, to Garysburg, North Carolina, as the community's second local aural transmission service, and modify the license for Station WPTM(FM) to reflect the change of community. *See Notice of Proposed Rule Making*, 68 FR 5861 (February 5, 2003). Petition is dismissed because MainQuad Communications, Inc. failed to file comments expressing interest in pursuing the change of community.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03-6, adopted December 3, 2003 and released December 8, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03-31766 Filed 12-23-03; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 121603A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NOAA Fisheries (Assistant Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Assistant

Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue EFPs in response to an application submitted by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), in collaboration with Massachusetts Division of Marine Fisheries (DMF), and Research, Environmental and Management Support (REMSA). These EFPs would allow up to 17 vessels to fish for haddock using longline gear or jig gear in NE multispecies year-round Georges Bank (GB) Closed Area I (CA I) during the months of January, February, and May through September 2004. The purpose of this study is to evaluate the best spatial and temporal location for a directed haddock hook-gear fishery in GB CA I, while having minimal impact to GB cod. This information could then be used by the New England Fishery Management Council and NMFS to determine the feasibility of establishing a Special Access Program for traditional haddock hook-and-line fishery in CA I.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before January 8, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Haddock EFP Proposal." Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fishery Management Specialist, phone: 978–281–9341, fax: 978–281–9135, e-mail: *heather.sagar@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

Three year-round closed areas were established in 1994 under Amendment 5 to the FMP to provide protection to concentrations of regulated NE multispecies, particularly cod, haddock, and yellowtail flounder. These closure areas, CA I, CA II, and the Nantucket Lightship Closure Area, have proven to be effective in improving the stock status of several species, including GB haddock.

In their EFP application, the applicants state that cod are less available than haddock in certain portions of CA I, and propose to support this observation with scientific data, potentially enabling the GB haddock resource to be utilized without impacting the management program that protects GB cod. This request builds upon data collected by the same applicant under an approved EFP that began October 1, 2003, which will continue through December 31, 2003. Preliminary results from the initial study demonstrate the viability of utilizing hook-and-line gear to reduce bycatch of cod in a portion of CA I.

Proposed EFP

The proposed study would occur in a specified area within the northern portion of CA I (north of loran-C line 13660). The experiment would occur during the months of January, February, and May through September 2004, during which 20 1-day trips would occur monthly, for a total of 140 1-day trips for the study. Fishing would be prohibited during the months of March and April to protect spawning haddock in this area. Vessels would not be exempt from days-at-sea. Participating vessels would be prohibited from fishing in areas outside of CA I during an experimental fishing trip. This study would follow normal fishing practices. A total allowable catch (TAC) of 16 mt for GB cod and 285 mt for GB haddock (divided into seasonal TACs specified below) would be established for the experimental fishery. The experimental fishery would be closed down if either the total TAC or the seasonal TAC is exceeded. This study would be divided into three seasonal periods, with individual hard TACs established for each season as follows:

MONTH	DAYS	HADDOCK	COD
Seasonal Period I			
January	20	81 mt (179,468 lb)	4.6 mt (10,076 lb)
February	20		
March	0	0	0
April	0	0	0
Seasonal Period II			
May	20	102 mt (224,355 lb)	5.7 mt (12,595 lb)
June	20		
July	10		
Seasonal Period III			
July	10	102 mt (224,335 lb)	5.7 mt (12,595 lb)
August	20		
September	20		

All fish landed would be subject to the minimum fish size. Although the applicant would be exempt from the haddock trip limits, they would not be exempt from the cod trip limit requirements.

REMSA scientific staff would be present on board each participating vessel, equating to 100-percent scientific data collector coverage for this experimental fishery. The EFPs would contain a provision that the Regional Administrator has the authority to discontinue the proposed experimental fishery on at any time, e.g., the Regional Administrator would terminate the EFP should the individual season TACs, or the overall TACs of 16 mt for GB cod and 285 mt for GB haddock, be exceeded.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the activities proposed to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to 17 vessels exempting them from the CA I, the haddock trip limit, and the 3,600-hook-limit restrictions of the FMP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 17, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31612 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 247
Wednesday, December 24, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–114–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the export of animals and animal products from the United States.

DATES: We will consider all comments that we receive on or before February 23, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–114–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–114–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–114–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the regulations regarding the export of animals and animal products from the United States, contact Dr. Roger Perkins, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–8364. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: U.S. Origin Health Certificate.

OMB Number: 0579–0020.

Type of Request: Extension of approval of an information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS) maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Most countries require a certification that our animals are free from specific diseases and show no clinical evidence of disease. This certification must carry the USDA seal and be endorsed by an APHIS, APHIS accredited, or State veterinarian. VS Form 17–140, U.S. Origin Health Certificate, is used to meet this requirement.

We are asking the Office of Management and Budget (OMB) to approve our use of this form for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5004548 hours per response.

Respondents: APHIS accredited and State veterinarians; animal owners; and exporters. Estimated annual number of respondents : 3,000.

Estimated annual number of responses per respondent: 15.0223.

Estimated annual number of responses: 45,067.

Estimated total annual burden on respondents: 22,554 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of December, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–31657 Filed 12–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program—Food Stamp Application for Meal Services (Form FNS–252–2) and New Addendum for Corporations (Form FNS–252–C)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: USDA's Food and Nutrition Service (FNS) has revised its Food Stamp Program Application for Meal Services, Form FNS–252–2. The form was revised to make it easier to read and to simplify information collected from meal services during the application process. In addition, FNS has developed a new, abbreviated addendum to the revised retailer application for corporations (chain stores). We are soliciting public comments on the content, format and design of the revised Form FNS–252–2 and the new Form FNS–252–C. We will begin using both forms when the new Store Tracking and Redemption Subsystem (STARS II) is in operation, approximately the fourth quarter of 2004.

DATES: Written comments must be submitted on or before February 23, 2004.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information of those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments are invited on the content, format and design of the revised Form FNS–252–2, Food Stamp Program Application for Meal Services, and the addendum for corporations, Form FNS–252–C. Comments should be sent to Karen Walker, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 404, Alexandria, VA 22302; FAX number (703) 305–1863; E-mail: *BRDHQ-WEB@fns.usda.gov.* All submitted comments should refer to the title of this notice and/or the OMB approval number.

FOR FURTHER INFORMATION CONTACT: The public can download copies of the revised Form FNS–252–2 or Form FNS–252–C from the FNS public Web site at *http://www.fns.usda.gov/fsp/retailers.* Readers may also request copies of these forms, or make requests for additional information, by contacting Karen Walker at (703) 305–2418 or via e-mail at *BRDHQ-WEB@fns.usda.gov.* Requests submitted over e-mail should refer to the title of this notice and/or the OMB approval number in the subject line.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program: Food Stamp Program Application for Meal Services, Form FNS–252–2, and the new addendum to the revised retailer application for corporations, Form FNS–252–C.

OMB Number: 0584–0008.

Expiration Date: May 31, 2004.

Type of Request: Revision of a currently approved collection.

Abstract: Section 9 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2018) requires retail food stores to submit applications to FNS for approval prior to participating in the Food Stamp Program. This includes meal services and corporations. FNS field offices review applications to ensure that the firm is eligible and then authorize or deny a firm to accept and redeem Food Stamp Program benefits.

Revised Meal Service Application (Form FNS–252–2)

We know many applicant meal services have submitted incomplete or erroneous applications to field offices. This may be attributed to the ambiguity of the current meal service application and the technical language used. It is our belief that a simpler Form FNS–252–2 will result in fewer mistakes upfront and will reduce the time it takes for a field office to process it. Meal services will also benefit from a simplified application because they will better understand what information is being asked of them initially, and it is more likely a meal service will submit a complete application the first time.

To begin the revision process for the meal service application, a workgroup of FNS regional and field office staff were charged with identifying areas where the current Form FNS–252–2 could be improved to reduce and streamline information collected on the application. While the revised Form FNS–252–2 has more pages than the current meal service application, it is a significant improvement over the current application in many ways. First, the language on the revised meal service application is clearer. We have provided applicants with a detailed explanation of the eligibility requirements for different types of meal services, specified which documentation is required for each type and asked better targeted questions. Secondly, we have increased the font size to aid in the readability of the form. Third, the form supports the President's E–GOV efforts and conforms to the requirements of the Government Paperwork Elimination Act (GPEA) (Pub. L. 105–277, 44 U.S.C. 3504) by making the form compatible with current technology; it can easily be converted into an online application. A few questions have also been added to enable us to better determine the business integrity of the applicant.

Addendum to Revised Retailer Application for Chain Stores (Form FNS–252–C)

Form FNS–252–C is a shortened version of the revised retailer application, Form FNS–252, which was described in the 60-day notice published in the **Federal Register** on January 2, 2003 at 68 FR 79. All chain stores that participate in the Food Stamp Program will benefit from using Form FNS–252–C because it eliminates the need for each store to complete its own application. Instead, the corporation only completes one retailer application (Form FNS–252) for all of its chain stores and an abbreviated Form FNS–252–C for each store. The retailer application, Form FNS–252, will collect information that is universal to all of the chain's stores while the addendum, Form FNS–252–C, will collect information that is unique to each store such as the location and telephone number. This is a tremendous timesaving, especially to large corporations as it takes an average of 27 minutes to complete one Form FNS–252 as compared to 5 minutes to complete one Form FNS–252–C.

STARS I is in the process of being upgraded to STARS II to meet the growing needs of the field offices. The FNS contractor who is developing STARS II has developed a screen in STARS II for the new Form FNS–252–C that corporations can access online and enter information on each store under the corporation. With the online version, the information provided on Form FNS–252–C can be uploaded directly into STARS II. As such, corporations can easily enter information for new stores or make updates on current stores on an as needed basis. In addition, we have developed a hard copy version of Form FNS–252–C for corporations that choose to submit a paper version to FNS. If a corporation submits a hard copy of Form FNS–252–C to the field office, field office staff will enter the data manually into STARS II.

Burden Estimates: As noted above, we will evaluate the revised Form FNS–252–2 and Form FNS–252–C on the appropriateness and clarity of the form's content, format and design. Before making final changes to these forms, we will consider feedback from the public. If the results of the evaluation are positive, we will finalize the revised Form FNS–252–2 and the addendum to the revised retailer application, Form FNS–252–C. We will begin using both forms when the new STARS II system is operational, approximately the fourth quarter of 2004. We will continue to use the current Form FNS–252–2 until we are ready to use the revised meal service application.

Reauthorization figures have not been calculated into the burden estimates for meal services and corporations because it is extremely rare that a meal service or corporation is asked to complete a new application at the time of reauthorization. Like traditional retail food stores, meal services and corporations are reauthorized at least once every five years. During the reauthorization process of these firms, however, information on the application is confirmed over the telephone or through some other means. Updates are then made by field office staff in the STARS database. Both meal services and corporations are routinely exempt from a visit prior to authorization and during reauthorization.

The burden associated with the revised Form FNS–252–2 has been determined from information available in the current STARS database on initial authorizations for meal services. We have used end-of-year Fiscal Year (FY) 2002 data as the base number for current estimates. Because of current economic conditions, we believe this number will increase or remain constant for the present year. We will use 219 as the base number for all newly authorized meal services. We have further increased this number by 3% (7) to account for meal service applications that are processed by field offices but are not authorized. As such, we expect to receive and process 226 initial meal service applications in the upcoming year.

The hourly burden rate per response for the current Form FNS–252–2, as approved by OMB, is 12 minutes. We estimate the burden rate per response for the revised meal service application to be an average of 11 minutes (.18 hour)—a reduction of one minute per response from the current meal service application. Hourly burden time per response varies and includes the time to review instructions, search existing data resources, gather and copy records, complete and review the application and submit the form and documentation to FNS. We estimate the burden rate per response for the addendum to the revised retailer application, Form FNS–252–C, to be an average of 5 minutes (.08 hour). According to end-of-year FY 2002 data, chain stores accounted for 12.8 percent of all authorized stores (146,423), but only 4 percent were new authorizations (750).

The estimated burden computation is provided below:

New Authorizations 226; Reauthorizations NA; Total Responses = 226. We estimate the annual burden hours to be 41 hours for the revised Form FNS–252–2. The computation is provided below:

FNS–252–2:

Affected Public: Meal service providers.

Estimated Number of Respondents: 226.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Responses: 226.

Estimated Time Per Response: .18 hours.

Estimate of Burden: (226 × .18) = 41 hours.

We estimate the annual burden hours to be 60 hours for the addendum to the revised retailer application, Form FNS–252–C. The computation is provided below:

Addendum to Revised Retailer Application, Form FNS–252–C:

Affected Public: Retail food stores under a corporation.

Estimated Number of Respondents: 750.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Responses: 750.

Estimated Time Per Response: .08 hours.

Estimate of Burden: (750 × .08) = 60 hours.

Estimated Total Annual Burden: (60 + 41) = 101 hours.

Dated: December 2, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–31685 Filed 12–23–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest, Big Piney Ranger District, Wyoming. Cottonwood II Vegetation Treatment

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The analysis area of 41,420 acres is located in the North and South Cottonwood Creek watershed on the Big Piney Ranger District of the Bridger-Teton National Forest. It is approximately 25 miles north of Big Piney, Wyoming on the east slope of the Wyoming Range. All lands within the analysis area are National Forest System lands, within Sublette and Lincoln Counties, Wyoming The legal description includes portions of: T32N, R115W; T32N, R116W; T33N, R114W; T33N, R115W; T34N, R115W.

DATES: Comments concerning the scope of the analysis must be received by February 3. 2004. The Draft Environmental Impact Statement (Draft EIS) is expected to be available to the public in September 2004 and the Final Environmental Impact Statement (Final EIS) is expected to be available to the public in January 2005.

ADDRESSES: Send written comments to: District Ranger, Big Piney Ranger District, P.O. Box 218, Big Piney, Wyoming, 83113. For further information, e-mail correspondence to *mailroom_r4_bridger_teton@fs.fed.us* and on the subject line put only "Cottonwood Vegetation Treatment."

FOR FURTHER INFORMATION CONTACT: District Ranger, Big Piney Ranger District, P.O. Box 218, Big Piney, Wyoming 83113 or phone (307) 276–3375.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposal is to improve Forest resource conditions in the North and South Cottonwood Creek drainage, bringing them closer to desired conditions. Attaining the Desiring Future Conditions for each Forest resource will help restore healthy ecosystem functioning and support sustainable resource use.

Alternative 1—Proposed Action

This proposal was developed in response to public issues identified during initial scoping, changes in resource demand since the Cottonwood Plain Implementation Study, and recently identified resource issues. This proposal is also designed to improve

Forest resource conditions as identified in the Cottonwood Plan Implementation Study.

Possible Alternatives

Alternative 2—No Action Alternative

Analysis of this alternative is required under National Environmental Policy Act (NEPA) regulations. The No Action Alternative also serves as a baseline of information for comparison of other alternatives. Though this alternative does not respond to the purpose and need for action, it does address some issues.

Responsible Official

Greg Clark, District Forest Ranger, Big Piney Ranger District, P.O. Box 218, Big Piney, Wyoming 83113.

Nature of Decision To Be Made

This decision will be whether or not the implement specific vegetation management projects and associated road and trail head improvements, as allowed in the Bridger-Teton National Forest Plan and Cottonwood Plan Implementation Study. The decision will include any mitigation measures needed in addition to those prescribed in the Forest Plan.

Scoping Process

The Forest Service is seeking information, comments, and assistance from individuals, organizations, Tribal governments, and Federal, state, and local agencies interested in or affected by this project. Comments that were submitted during the May 14, 1999 scoping effort and during field trips of the project area will be used to prepare the Draft EIS, as will comments submitted through this public scoping request. Public participation will be solicited by notifying in person and/or by mail, known interested and affected publics. News releases will be used to give the public general notice. Public participation activities will include requests for written comments. The first formal opportunity to comment is to respond to this Notice of Intent, which initiates the scoping process (40 CFR 1501.7). Scoping includes: (1) Identifying potential issues, (2) narrowing the potential issues and identifying significant issues from those issues that have been covered by prior environmental review, (3) exploring alternatives in addition to the No Action Alternative, and (4) identifying potential environmental effects of the Proposed Action and alternatives.

Preliminary Issues

The Forest Service has identified the following potential issues. In addition, through the May 1999 scoping effort, issues have been refined. Your input is especially valuable here. It will help us determine which of these issues merit detailed analysis. It will also help identify additional issues related to the Proposed Action that may not be listed here.

Issue 1—Amount and/or types of vegetation treatments under the Proposed Action and the effects on old growth and mature vegetation for lynx, security cover for elk and other habitat, as well as Colorado cutthroat trout habitat.

Issue 2—Forest health, specifically the high proportion of older age-class conifer stands and declining tree growht, drawf mistletoe infection levels in lodgepole pine, and high fuel loadings from dead and down material.

Issue 3—Amount of aspen treatments.

Comment Requested

This Notice of Intent initiates the scoping process, which guides the development of the Draft EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The Draft EIS is scheduled to be filed with the Environmental Protection Agency (EPA) in late August 2004 and to be available for public comment in September 2004. At that time, the EPA will publish a Notice of Availability for the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. The Forest Service believes, at this early stage, it is importance to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the Draft EIS stage, but that are not raised until after completion of the Final EIS, may be waived or dismissed by the courts [*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 19800]. Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period on the Draft EIS. This ensures that substantive comments and objections are made available to the Forest Service at a time when the Forest Service can meaningfully consider them and respond to them in the Final EIS. To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the Draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, section 21).

Dated: December 17, 2003.

Gregory W. Clark,

District Forest Ranger.

[FR Doc. 03–31660 Filed 12–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, January 14, 2004, at the Okanogan and Wenatchee National Forests Headquarters Office, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting we will discuss public comments on the Forest Plan revision, recreation management issues, and new developments in implementation of the Northwest Forest Plan. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National

Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: December 17, 2003.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 03–31661 Filed 12–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, January 8, 2004, in Susanville, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The meeting begins at 9 a.m. at the Forest Supervisor's Office, 2550 Riverside Drive, Susanville, CA 96130. The meeting objectives are for RAC members and the public to hear project presentations from proponents. Agenda topics will include: Presentations of four proposed projects, continuation of selection of projects, develop February meeting agenda and meeting calendar for 2004. Time will be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 03–31636 Filed 12–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo National Forest's Mineral County Resource Advisory Committee will meet on January 6, 2004 at 6 p.m. until 7 p.m. in Superior, Montana for a business meeting. The meeting is open to the public.

DATES: January 6, 2004.

ADDRESSES: The meeting will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper, Designated Forest Official (DFO), District Ranger, Lolo National Forest, at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include nominations and election of a new Committee Chairperson, review of Project Funding Criteria agreed to last year, and discussion or review about new project proposals, as authorized under title II of Public Law 106–393. If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent and the Missoulian.

Dated: December 12, 2003.

Deborah L.R. Austin,

Designated Federal Official.

[FR Doc. 03–31637 Filed 12–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon Province Advisory Committee will meet on January 21, 2004 in Brookings, Oregon in the Best Western Beachfront Inn at 16008 Boat Basin Road. The meeting will begin at 9 a.m. and continue until 4 p.m. Agenda items to be covered include: (1) Development of Work Plan; (2) Public Forum; (3) Update on BLM Resource Management Plan revision process; (4) District and Forest Fire Plans; and (5) Future Agenda Items.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jim Hays, Province Advisory Committee Coordinator, USDA Forest Service, Prospect Ranger District, 47201 Highway 62, Prospect, Oregon 97536, phone (541) 560–3432.

Dated: December 17, 2003.

Scott D. Conroy,

Designated Federal Official.

[FR Doc. 03–31658 Filed 12–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 46–2003]

Pepsi-Cola Manufacturing International, Ltd.—Subzone 61J; Application for Expansion of Scope of Manufacturing Authority; Extension of Comment Period

The comment period for the application submitted by the Puerto Rico Exports Development Corporation (68 FR 54888, 9–19–2003), grantee of FTZ 61, on behalf of Pepsi-Cola Manufacturing International, Ltd. (PCMIL), operator of FTZ 61J, requesting an expansion of the scope of manufacturing authority to include additional finished products and manufacturing capacity under FTZ procedures at the PCMIL soft drink and juice beverage concentrate manufacturing plant in Cidra, Puerto Rico, has been extended to from the closing date of December 19, 2003, to January 23, 2004, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

Material submitted will be available for inspection at address No. 1 noted above.

Dated: December 16, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–31765 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on January 27, 2004, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

1. Introductions and opening remarks by the Chairman.
2. Report on compliance training initiative and Export Management System proposal.
3. Report on close of 2003 Wassenaar Arrangement deliberations.
4. Review of regulation update process.
5. Remarks on Bureau of Industry and Security initiatives.
6. Presentation of papers and comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, BIS/EA, MS: 1099D, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: December 19, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–31717 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2004.

	Period to be reviewed
Antidumping Duty Proceedings	
Mexico: Circular Welded Non-alloy Steel Pipe, A–201–805	11/1/02–10/31/03
Hylsa, S.A. de C.V.	
Niples Del Norte, S.A. de C.V.	
Netherlands: Certain Hot-Rolled Carbon Steel Flat Products, A–421–807	
Corus Staal BV	11/1/02–10/31/03
Republic of Korea: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/02–10/31/03
Hyundai Hysco (formerly Hyundai Steel Pipe Company)	
Husteel Co., Ltd. (formerly Shinho Steel Co., Ltd.)	
SeaH Steel Corporation, Ltd.	
Romania: Certain Hot-Rolled Carbon Steel Flat Products, A–485–806	
Ispat Sidex	11/1/02–10/31/03
Thailand: Certain Hot-Rolled Carbon Steel Flat Products, A–549–817	11/1/02–10/31/03
Nakornthai Strip Mill Public Co., Ltd.	
Sahaviriya Steel Industries Public Co., Ltd.	
Siam Strip Mill Public Co., Ltd.	
The People's Republic of China: Fresh Garlic*, A–570–831	11/1/02–10/31/03

	Period to be reviewed
Clipper Manufacturing Ltd.	
Jinxiang Dong Yun Freezing Storage Co., Ltd.	
Fook Huat Tong Kee Pte., Ltd. (FHTK)	
H&T Trading Company	
Huaiyang Hongda Dehydrated Vegetable Company	
Jinxiang Hongyu Freezing and Storing Co., Ltd.	
Jinan Yipin Corporation, Ltd.	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi Sanshan Import & Export Trading Co., Ltd.	
Shandong Heze International Trade and Developing Co.	
Shanghai Ever Rich Trade Company	
Sunny Import & Export Limited	
Taian Ziyang Food Co., Ltd.	
Tancheng County Dexing Foods Co., Ltd.	
Jining Trans-High Trading Co., Ltd.	
Xiangcheng Yisheng Foodstuffs Co.	
Zhengzhou Harmoni Spice Co., Ltd.	
*If one of the above-named companies does not qualify for a separate rate, all other exporters of fresh garlic from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 18, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–31776 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-046]

Notice of Rescission of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Changed Circumstances Review.

SUMMARY: On July 31, 2003, the Department of Commerce (the Department) published a notice of initiation of changed circumstances review of the antidumping duty finding on polychloroprene rubber (PR) from Japan to determine whether Showa Denko Elastomers, K.K. (SDEL) and Showa Denko K.K. (SDK) are the successor-in-interest companies to Showa DDE Manufacturing K.K. (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan). *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 68 FR 44924 (July 31, 2003) (*Notice of Initiation*). On October 24, 2003, we published a notice of preliminary results, determining that the restructured manufacturing and marketing joint venture, SDEL and SDK, are the successor-in-interest companies to SDEM and DDE Japan, for purposes of determining antidumping liability in this proceeding. *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan*, 68 FR 60913 (October 24, 2003) (*Notice of Preliminary Results*). Interested parties were invited to comment on these preliminary results. On December 5, 2003, SDEL and SDK withdrew their request for a changed circumstances review. The Department is now rescinding this changed circumstances antidumping duty administrative review.

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Mark Manning, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4114 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1973, the Treasury Department published in the **Federal Register** (38 FR 33593) the antidumping duty finding on PR from Japan. On June 17, 2003, SDEL and SDK submitted a letter stating that they are the successor-in-interest to SDEM and DDE Japan, and, as such, entitled to receive the same antidumping treatment as accorded these companies. On July 18, 2003, at the request of the Department, SDEL and SDK submitted additional information and documentation pertaining to their changed circumstances request. On July 31, 2003, the Department published a notice of initiation of changed circumstances review of the antidumping duty finding on PR from Japan to determine whether SDEL and SDK are the successor-in-interest companies to SDEM and DDE Japan. *See Notice of Initiation.* On October 24, 2003, we published a notice of preliminary results, determining that the restructured manufacturing and marketing joint venture, SDEL and SDK, are the successor-in-interest companies to SDEM and DDE Japan, for purposes of determining antidumping liability in this proceeding. *See Notice of Preliminary Results*, 68 FR at 60913. In the same notice, the Department invited interested parties to comment on the preliminary results. Prior to receiving any comments, on December 5, 2003, SDEL and SDK petitioned the Department to withdraw their request for a changed circumstances review.

Scope of Review

Imports covered by this review are shipments of PR, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.41.00, 4002.49.00, 4003.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Rescission of Changed Circumstances Review

On December 5, 2003, SDEL and SDK petitioned the Department to withdraw their request for a changed circumstances review. No interested parties, including the petitioner, objected to this withdrawal request. Consequently, the Department is now rescinding this antidumping duty changed circumstances review. The U.S. Customs and Border Protection will continue to suspend entries of subject merchandise at the appropriate cash deposit rate for all entries of PR from Japan.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 17, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–31777 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–839]

Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision on Polyester Staple Fiber from the Republic of Korea.

SUMMARY: On August 22, 2002, the Court of International Trade ("CIT") affirmed the Department's second remand determination and entered a judgment order in *Geum Poong Corporation and Sam Young Synthetics Co. Ltd. v. United States v. E.I. Dupont De Nemours, Inc., et. al.*, Slip. Op. 02–95, 2002 Ct. Intl. Trade LEXIS 94 (CIT 2002), a lawsuit challenging certain aspects of the Department of Commerce's ("the Department") *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 65 FR 16880 (March 30, 2000) and accompanying Issues and Decision Memorandum (March 22, 2000) ("*Issues and Decision Memorandum*"), and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea, and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000) (collectively, "*Final Determination*"). The Department appealed this decision. On October 9, 2003, the CIT's opinion upholding the Department's final remand was affirmed without opinion by the U.S. Court of Appeals for the Federal Circuit. *See Geum Poong Corp. and Sam Young Synthetics Co. v. United States*, et. al, Court No. 03–1056, 1057, 2003 U.S. App. LEXIS 21438 (Fed. Cir. 2003) (Nonprecedential).

In its remand determination, the Department reviewed the record evidence and derived a facts available profit cap using the financial statements of Saehan Industries, Inc., ("Saehan") and SK Chemical Co. Ltd., ("SK Chemical"), and calculated a profit rate for Geum Poong Corporation ("Geum Poong") using the same information.

As a result of the remand determination, Geum Poong will be excluded from the antidumping duty order on certain polyester staple fiber from Korea because its antidumping rate decreased from 14.10 percent to 0.12 percent (*de minimis*). The All-Others rate decreased from 11.38 percent to 7.91 percent. The antidumping duty rates for respondents Sam Young Synthetics Co. ("Sam Young"), and Samyang Corporation ("Samyang") were unchanged from the *Final Determination.* As there is now a final and conclusive court decision in this action, we are amending our *Final Determination.*

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Judith Rudman, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1174, or(202) 482–0192, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following the publication of the *Final Determination*, the petitioners and the respondents in this case filed lawsuits with the CIT challenging the Department's Final Determination.

In the underlying investigation, the Department was required to calculate a CV profit rate for Geum Poong. Based on the information on the record, the Department determined that a combination of the CV profit rates calculated for the other respondents, Sam Young and Samyang, and a general profit ratio for the entire man-made fibers industry in Korea, extracted from a Bank of Korea ("BOK") publication, was a reasonable method for calculating Geum Poong's profit and was permissible under section 773 (e)(2)(B)(iii) of the Act. (*See Final Determination*).

In its September 6, 2001, opinion, the Court affirmed certain aspects of the Department's method for calculating Geum Poong's CV profit. (*See Geum Poong Corp. v. United States*, 163 F. Supp. 2d. 669 (CIT 2002) ("*Geum Poong I*"). The Court also remanded certain aspects of the Department's determination. Specifically, the Court stated that the Department had not adequately explained why a profit cap was not available and, even assuming a profit cap could not be applied, the Department had not adequately explained why the profit methodology it selected was reasonable. *Id.* at 678–9.

On October 5, 2001, the Department submitted its *Final Results of Redetermination Pursuant to Court Remand* ("*Redetermination I*") in response to the Court's remand order in *Geum Poong I.* In that redetermination, the Department stated its view that as a matter of law none of the profit information on the record of this proceeding could be used as a profit cap because all of the profit rates under consideration included, or likely included, profits on non-Korean sales. The Department further provided an explanation of its decision to reject certain profit data and to combine other profit rates to calculate the CV profit rate for Geum Poong.

In *Geum Poong Corporation and Sam Young Synthetics Co., Ltd. v. United States v. E. I. Dupont De Nemours, Inc., et. al.*, Slip Op 02–26 (March 8, 2002) ("*Geum Poong II*"), the Court remanded again the issue of Geum Poong's CV profit.

We released the *Draft Redetermination Pursuant to Court Remand* ("*Draft Results*") to interested parties on April 16, 2002. Comments on the *Draft Results* were received from the petitioners, Geum Poong and Sam Young on April 23, 2002. On April 30, 2002, the Department responded to the Court's Order of Remand by filing its *Final Results of Redetermination Pursuant to Court Remand* ("*Final Results of Redetermination*").

In the *Final Results of Redetermination*, we calculated a "facts available profit cap" using the financial statements of Saehan and SK Chemical. As per the Court's express instructions, we used this "facts available profit cap" as the CV profit rate for Geum Poong.

The CIT affirmed the Department's *Final Results of Redetermination* on August 22, 2002. *See Geum Poong Corporation and Sam Young Synthetics Co., Ltd. v. United States v. E.I. Dupont De Nemours, Inc.*, Court No. 00–06–00298, Slip. Op. 02–95 (CIT 2002). The Department appealed this decision. On October 9, 2003, the CIT's decision was affirmed by the United States Court of Appeals for the Federal Circuit. *See Geum Poong Corp. and Sam Young Synthetics Co. V. United States*, et. al, Court No. 03–1056, 1057, 2003 U.S. App. LEXIS 21438 (Fed. Cir. 2003) (Nonprecedential). On September 30, 2002, the Department published *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Court Decision and Suspension of Liquidation* ("*Timken Notice*"). See 67 FR at 61316. No party appealed the Federal Circuit opinion. Accordingly, we are now publishing the *Amended Final Determination* as provided in the *Timken Notice.*

Amendment to the Final Determination

Because there is now a final and conclusive decision in the court proceeding, effective as of the publication date of this notice, we are amending the *Final Determination* and establishing the following revised weighted-average dumping margins:

Exporter/manufacturer	Weighted-average margin percentage
Geum Poong Corporation Ltd.	0.12 (de minimis)
All-Others	7.91

The antidumping duty rates for respondents Sam Young and Samyang were unchanged from the *Final Determination.* The Department will issue appraisement instructions directly to U.S. Customs and Border Protection ("CBP"). The Department will instruct CBP to revise cash deposit rates for all parties subject to the All-Others rate, effective as of the publication of this notice. Furthermore, we will instruct CBP to liquidate entries from Geum Poong, which have been suspended pursuant to the antidumping duty order. In accordance with the Court's decision, Geum Poong is now excluded from the antidumping duty order and its entries should be liquidated without regard to antidumping duties.

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: December 17, 2003.

James J. Jochum,

Assistant Secretary for for Import Administration.

[FR Doc. 03–31775 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate and notice of availability of final evaluation findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Texas Coastal Management Program; the North Carolina National Estuarine Research Reserve; the Grand Bay National Estuarine Research Reserve, Mississippi; and the Guana/Tolomato/Matanzas National Estuarine Research Reserve, Florida.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluations will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meetings during the site visits.

The Guana/Tolomato/Matanzas National Estuarine Research Reserve, Florida, evaluation site visit will be held February 9–12, 2004. One public meeting will be held during the week. The public meeting will be on Monday, February 9, 2004, at 6 p.m., at the Reserve's offices at 9741 Ocean Shore Boulevard, Marineland, Florida.

The Texas Coastal Management Program evaluation site visit will be held March 22–26, 2004. One public meeting will be held during the week. The public meeting will be on Thursday, March, 25, 2004, at 1 p.m., at the Carlos F. Truan Natural Resources Center, Conference Room 1003, Texas

A&M University-Corpus Christi, 6300 Ocean Drive, Corpus Christi, Texas.

The Grand Bay National Estuarine Research Reserve, Mississippi, evaluation site visit will be held March 24–26, 2004. One public meeting will be held during the week. The public meeting will be on Wednesday, March 24, 2004, at 6:30 p.m., at the East Jackson County/Orange Grove Community Center, 9313 Old Stage Road, Moss Point, Mississippi.

The North Carolina National Estuarine Research Reserve evaluation site visit will be held March 29-April 2, 2004. Three public meetings will be held during the week. The first public meeting will be on Tuesday, March 30, 2004, at 7 p.m., at the Currituck County Satellite Office, 1123 Ocean Trail, Corolla, North Carolina. The second public meeting will be on Wednesday, March 31, 2004, at 7 p.m., at the Duke University Marine Laboratory Auditorium, 135 Duke Marine Lab Road, Beaufort, North Carolina. The third public meeting will be held on Thursday, April 1, 2004, at 7 p.m., at the King Hall Auditorium, University of North Carolina at Wilmington, 601 South College Road, Wilmington, North Carolina.

Copies of states' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted for each Program until 15 days after the last public meeting held for that Program. Please direct written comments to: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, N/ORM7, 10th Floor, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Notice is hereby given of the availability of the final evaluation findings for the Connecticut and Rhode Island Coastal Management Programs. Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of coastal management programs, and the operation and management of NERRs.

The states of Connecticut and Rhode Island were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)-(K), and adhering to the programmatic terms of their financial assistance awards. Copies of these final evaluation findings may be obtained upon written request from: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, N/ORM7, 10th Floor, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, N/ORM7, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3155, Extension 118.

(Federal Domestic Assistance Catalog 11.419; Coastal Zone Management Program Administration)

Dated: December 17, 2003.

Richard W. Spinrad,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–31662 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121803B]

Marine Mammals; Permits No. 774–1437, 914–1470, 782–1438 and 782–1446

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendments.

SUMMARY: Notice is hereby given that the following Permits have been amended to extend the expiration dates:

774–1437–06 - The National Marine Fisheries Service, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, CA 92038, (Dr. Robert L. Brownell, Jr., Principal Investigator);

914–1470–02 - University of Southern Mississippi, Department of Biological Sciences, USM Box 5018, Hattiesburg, MS 39401 [Principal Investigator: Dr. Bobby L. Middlebrooks];

782–1438–07 and 782–1446–07 - National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070, [Dr. Sue Moore, Principal Investigator (PI)]

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

All Permits - Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

782–1438–07 and 782–1466–07 - Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

774–1437 - Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

914–1470–02 - Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendments have been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 18, 2003.

Tammy Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–31754 Filed 12–23–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

December 22, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Request for public comments concerning a request for a determination that certain shirting fabrics, for use in blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On December 18, 2003, the Chairman of CITA received a petition from School Apparel, Inc. alleging that certain shirting fabrics, classified in subheading 5210.11 of the Harmonized Tariff Schedule of the United States (HTSUS), used in the production of women's and girls' blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that blouses of such fabrics cut and sewn in one or more CBTPA beneficiary country be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 8, 2004, to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA), as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also authorizes quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary country from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the Federal Register that it will follow in considering requests. (66 FR 13502).

On December 18, 2003, the Chairman of CITA received a petition from School Apparel, Inc., alleging that certain shirting fabrics, of HTS subheading 5210.11, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for women's and girls' blouses that are both cut and sewn in one or more CBTPA beneficiary country from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for purposes of the intended use. Comments must be received no later than January 8, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that these shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03-31877 Filed 12-22-03; 4:24 pm]

BILLING CODE 3510-DR-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

December 22, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Request for public comments concerning a request for a determination that certain shirting fabrics, for use in blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On December 18, 2003, the Chairman of CITA received a petition from School Apparel, Inc. alleging that certain shirting fabrics, classified in subheading 5513.11 or 5513.21 of the Harmonized Tariff Schedule of the United States (HTSUS), used in the production of women's and girls' blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that blouses of such fabrics cut and sewn in one or more CBTPA beneficiary country be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 8, 2004, to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA), as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also authorizes quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary country from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the Federal Register that it will follow in considering requests. (66 FR 13502).

On December 18, 2003, the Chairman of CITA received a petition from School Apparel, Inc., alleging that certain shirting fabrics, of HTS subheading 5513.11 and 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for women's and girls' blouses that are both cut and sewn in one or more CBTPA beneficiary country from such fabrics.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for purposes of the intended use. Comments must be received no later than January 8, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these shirting fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabrics stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–31878 Filed 12–22–03; 4:24 pm]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments to the Live Cattle and Feeder Cattle Futures Contracts Increasing the Maximum Daily Price Fluctuation Limit to $0.030 per Pound

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability for public comment of the proposed amendments to the Chicago Mercantile Exchange's live cattle and feeder cattle futures contracts increasing the maximum daily price fluctuation limit to $0.030 per pound.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has requested that the Commission approve the subject proposed amendments for the live cattle and feeder cattle futures contracts. The proposals were submitted pursuant to the provisions of section 5c(c)(2) of the Commodity Exchange Act (Act) and Commission Regulation 40.5. The proposals will increase the maximum daily price fluctuation limits for the affected futures contracts to $0.030 per pound from $.015 per pound above or below the previous trading day's settlement price.

The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the Exchange's proposed amendments for comment is in the public interest, and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before January 8, 2004.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to "CME Live Cattle and Feeder Cattle Price Limit Amendments."

FOR FURTHER INFORMATION CONTACT: Please contact John L. Bird, Jr. of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5276. Facsimile number: (202) 418–5527. Electronic mail: *jbird@cftc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The CME's live cattle and feeder futures contracts currently restrict price fluctuations in any one day to not more that $0.015 per pound above or below the previous trading day's settlement price. The contracts' existing terms also provide for the expansion of the maximum daily price fluctuation limits to $0.03 per pound if prices for two specified contract months move up or down the $0.015 per pound maximum daily price fluctuation limit over two consecutive trading days. The maximum daily price fluctuation limits can be further expanded to $0.05 per pound if prices for two specified contract months move up or down the $0.03 per pound daily price limit for two consecutive trading days. These expanded maximum daily price fluctuation limits revert to the next smaller daily price limit on the next business day if futures prices for the two specified contract months fail to move up or down the maximum daily price fluctuation limit during a given trading day.

The proposed amendments will increase the permitted daily price fluctuation to $0.030 per pound. The amendments also will delete the above-noted provisions or expanding the maximum daily price fluctuation limits.

The Exchange intends to implement the amendments with respect to all existing and newly listed futures contract months immediately following approval by the Commission, and following notification of market participants.

In support of the proposed amendments, the Exchange states the following:

> In the 25 trading sessions (between October 15 and November 24, 2003), at least one of the front two contract months in the even month cycle of Live Cattle Futures have experienced 1.5-cent limit settlements on 15 occasions. * * * Similarly, during those same 25 trading sessions the front two contract months in Feeder Cattle futures have experienced 1.5-cent limit settlements on 10 occasions.
>
> The addition of expanded price limits in Live Cattle, and more recently in Feeder Cattle * * * was designed to address the problem of lock-limit sessions due to a sustained price move in a particular direction. However, in recent weeks both markets have been volatile, but within relatively broad ranges. This has prevented the Live Cattle expanded limits from being triggered in a timely fashion, and prevented those expanded levels from being sustained for more than a single day. The Exchange believes the same problem would have occurred in Feeder Cattle had expanded limits been in effect.

In regard to public comment on the proposed amendments, the CME states that:

> Although the Commission has already posted this proposal on the CFTC Web site, the Exchange has learned that market participants are generally unaware of both the proposal and the ability to comment. To allow a full and open exchange of views on this matter, the Exchange believes it needs to be published in the **Federal Register**, and that those interested parties should be given a 15-day comment period to respond.

The Division is requesting comment on the proposals. The Division is particularly interested in views based on data and analysis that indicate whether or not implementation of the proposed amendments would be consistent with the requirements of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000. In this regard, the Commission historically has applied a policy that maximum daily price fluctuation limits adopted by exchanges should not be overly restrictive in relation to price movements observed in the underlying cash market.

Commenters who previously filed comments with the Commission via the Commission's web site need not re-file such comments as the Commission considers all comments filed with it in the course of reviewing proposed amendments, regardless of the method by which they are filed with the Commission.

Copies of the Exchange's proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the proposed amendments can also be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations there under (17 CFR part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, arguments, or analysis pertaining to the proposed amendments or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on December 19, 2003.

Michael Gorham,

Director, Division of Market Oversight.

[FR Doc. 03–31778 Filed 12–23–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On December 11, 2003, the Department of Education published a 30-day public comment period notice in the **Federal Register** (Page 69074, Column 2) for the information collection, "Part B of the Individuals with Disabilities Education Act Biennial Performance Report". The correct title for this collection should be: "Part B of the Individuals with Disabilities Education Act Annual Performance Report" and the Abstract should read, "State educational agencies are required to establish goals for the performance of children with disabilities in that State that promote the purposes of Part B of the Individuals with Disabilities Education Act (Part B). States must also establish performance indicators that the State will use to assess its progress in achieving these goals. Section 612(a)(16) of Part B requires States to report to the Secretary on the progress that the State has made toward meeting its goals. The Office of Special Education Programs (OSEP) is implementing an integrated, four-part accountability strategy: (1) Verifying the effectiveness and accuracy of States' monitoring, assessment, and data collection systems; (2) attending to States at high risk for compliance, financial, and/or management failure; (3) supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies; and (4) focusing OSEP's intervention on States with low ranking performance on critical performance indicators. Component 3 of OSEP's accountability strategy is implemented through this Annual Performance Report. Reporting requirements for States' Self-Assessment, Improvement Plans, and Biennial Performance Reports are being combined in this Part B Annual Performance Report." The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*.

Dated: December 19, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 03–31710 Filed 12–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 23, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 19, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New Collection.

Title: National Assessment of Educational Progress 2004–2007 System Clearance.

Frequency: One-time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary); Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 906,322.

Burden Hours: 231,800.

Abstract: This clearance request covers all pilot, field, and full scale assessment and survey activities of the National Assessment of Educational Progress. Students are assessed and surveyed in the 4th, 8th and 12th grades as well as some of their teachers and school administrators.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2429. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address, *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–31711 Filed 12–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Charter Schools Program (CSP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282A, 84.282B, and 84.282C.

Dates: Applications Available: December 24, 2003.

Deadline for Transmittal of Applications: February 19, 2004.

Deadline for Intergovernmental Review: April 19, 2004.

Eligible Applicants: (a) State educational agencies (SEAs) in States with a State statute specifically authorizing the establishment of charter schools may apply for funding.

(b) Non-SEA eligible applicants may apply for funding directly from the U.S. Department of Education (Department) if the SEA in the State elects not to participate in the CSP or does not have an application approved under the program.

Estimated Available Funds: Although the Congress has not enacted a final appropriation for FY 2004, the Department is inviting applications for this competition now so that it may be prepared to make awards following final action on the Department's appropriations bill. Based on the congressional action to date, we estimate that $64,000,000 will be available for new awards under this competition. The actual level of funding depends on final congressional action.

Estimated Range of Awards: SEAs: $500,000-$8,000,000 per year. Other eligible applicants: $10,000-$150,000 per year.

Estimated Average Size of Awards: SEAs: $3,000,000 per year. Other eligible applicants: $130,000 per year.

Estimated Number of Awards: SEAs: 18–22. Other eligible applicants: 50–75.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model and to expand the number of high-quality charter schools available to students across the Nation by providing financial assistance for the planning, program design, and initial implementation of charter schools and for evaluating the effects of charter schools, including the effects on students, student academic achievement, staff, and parents.

The Department will hold three (3) separate competitions under this program. All SEA applicants must apply for grant funds under CFDA No. 84.282A. Non-SEA eligible applicants that propose to use grant funds for planning, program design, and implementation must apply under CFDA No. 84.282B. Non-SEA eligible applicants that are requesting funds for dissemination activities must submit their applications under CFDA No. 84.282C.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from section 5202(e) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7221a(e).

Competitive Preference Priorities: For FY 2004 these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 40 points to an applicant, depending on how well the application meets these priorities.

In awarding grants to SEAs under this competition, the Secretary gives priority to States to the extent that the State meets the statutory criterion described in paragraph (a) of this section, and one or more of the statutory criteria described in paragraphs (b) through (d) of this section.

An SEA that meets priority (a) but does not meet one or more of the other priorities will not receive any priority points.

An SEA that does not meet priority (a) but meets one or more of the other priorities will not receive any priority points.

In order to receive preference, an applicant must identify the priorities that it believes it meets and provide documentation supporting its claims.

These priorities are:

(a) *Periodic Review and Evaluation* (10 points). The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every 5 years, unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter, and is meeting or exceeding the academic achievement requirements and goals for charter schools as provided under State law or the school's charter.

(b) *Number of High-Quality Charter Schools* (10 points). The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior to the period for which an SEA or non-SEA eligible applicant applies for a grant under this competition.

(c) *One Authorized Public Chartering Agency Other than a Local Educational Agency (LEA), or an Appeals Process* (10 points). The State—

(1) Provides for one authorized public chartering agency that is not an LEA, such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(2) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(d) *High Degree of Autonomy* (10 points). The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

Invitational Priorities: Under these competitions we are particularly interested in applications that address the following priorities. For FY 2004 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

(a) The applicant proposes to plan, design, and implement one or more high-quality charter schools to address parental interest in public school choice, particularly for parents of children attending schools identified for improvement under Title I, part A of the ESEA.

(b) The applicant proposes to plan, design, and implement one or more high-quality charter schools in geographic areas, including urban and rural areas, in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I, Part A of the ESEA; and

(c) The applicant proposes to plan, design, and implement one or more high-quality charter schools in geographic areas in which a large proportion of students have difficulty meeting State academic content and student achievement standards.

Program Authority: 20 U.S.C. 7221–7221j.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: Although the Congress has not enacted a final appropriation for FY 2004, the Department is inviting applications for this competition now so that it may be prepared to make awards following final action on the Department's appropriations bill. Based on the congressional action to date, we estimate that $64,000,000 will be available for new awards under this competition. The actual level of funding depends on final congressional action.

Estimated Range of Awards: SEAs: $500,000–$8,000,000 per year. Other eligible applicants: $10,000–$150,000 per year.

Estimated Average Size of Awards: SEAs: $3,000,000 per year. Other eligible applicants: $130,000 per year.

Estimated Number of Awards: SEAs: 18–22. Other eligible applicants: 50–75.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Note: Planning and implementation grants or subgrants awarded by the Secretary or an SEA to non-SEA eligible applicants will be awarded for a period of up to 36 months, no more than 18 months of which may be used for planning and program design; and no more than two years of which may be used for the initial implementation of a charter school. Dissemination grants and subgrants are awarded for a period of up to two years.

III. Eligibility Information

1. *Eligible Applicants:* (a) SEAs in States with a State statute specifically authorizing the establishment of charter schools may apply for funding.

Note: The Secretary awards grants to SEAs to enable them to conduct charter school programs in their States. SEAs use their CSP funds to award subgrants to eligible applicants, as defined in this notice, for planning, program design, and initial implementation of a charter school; and to support the dissemination of information about, including successful practices in, charter schools.

(b) Non-SEA eligible applicants may apply for funding directly from the Department if the SEA in the State elects not to participate in the CSP or does not have an application approved under the program.

Note: A non-SEA *eligible applicant* is defined as a developer that has applied to an authorized public chartering authority to operate a charter school and has provided to that authority adequate and timely notice, and a copy, of its CSP application, except that the Secretary or the SEA may waive these requirements in the case of a pre-charter planning grant. Non-SEA eligible applicants, like SEAs, must be in States that have statutes specifically authorizing charter schools. If an SEA's application is approved in this competition, the Department will return applications from non-SEA eligible applicants in that State to the applicants. In such a case, the non-SEA eligible applicant should contact the SEA for information related to the State's subgrant competition.

The following States currently have approved applications under this program: Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Tennessee, Utah, and Wisconsin. In these States, only the SEA is eligible to receive an award under this competition. Non-SEA eligible applicants in States that are not listed must apply directly to the Department on or before the deadline for transmittal of applications in order to be considered for funding in this competition.

(c) *Dissemination Grants.* A charter school may apply to an SEA for funds to carry out dissemination activities, whether or not the charter school has applied for or received funds under the CSP for planning or implementation, if the charter school has been in operation for at least three consecutive years and has demonstrated overall success, including—

(1) Substantial progress in improving student academic achievement;

(2) High levels of parent satisfaction; and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

2. *Cost Sharing or Matching:* These competitions do not involve cost sharing or matching.

3. *Other:* All applicants must meet the definitions of *charter school*, *developer*, *eligible applicant*, and *authorized public chartering agency*, as defined in the authorizing statute. These definitions are in the application package.

IV. Application and Submission Information

1. *Address to Request Application Package:* Rik Lanzendorfer, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C148 FB6, Washington, DC 20202–5961. Telephone: (202) 205–9786 or by e-mail: *Rik.Lanzendorfer@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: December 24, 2003.

Deadline for Transmittal of Applications: February 19, 2004.

Note: We are requiring that applications for grants under these competitions be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. For information about how to access the e-GRANTS system or to request a waiver of the electronic submission requirement, please refer to Section IV, Other Submission Requirements, in this notice.

The application package for this competition specifies the hours of operation of the e-Application Web site. If you are requesting a waiver of the electronic submission requirement, the dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are also in the application package.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: April 19, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions: Use of Funds for Dissemination Activities.* An SEA may reserve not more than 10 percent of the grant funds to support dissemination activities. A charter school may use those funds to assist other schools in adapting the charter school's program (or certain aspects of the charter school's program), or to disseminate information about the charter school through such activities as—

(a) Assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and the assisting charter school's developers, and that agree to be held to at least as high a level of accountability as the assisting charter school;

(b) Developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership;

(c) Developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and

(d) Conducting evaluations and developing materials that document the successful practices of the assisting charter school and that are designed to improve student achievement.

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for these competitions. Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants under Charter Schools Program—CFDA Numbers 84.282A, B, and C be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Rik Lanzendorfer, U.S. Department of Education, 400 Maryland Avenue, SW., room FB6–3C148, Washington, DC 20202–5961. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Charter Schools Program—CFDA Numbers 84.282A, B, and C is one of the programs included in the pilot project. If you are an applicant under the CSP competitions, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Charter Schools Program—CFDA Numbers 84.282A, B, and C at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* All SEA and non-SEA applicants applying for CSP grant funds must address both the application requirements and selection criteria. All SEA and non-SEA applicants applying for CSP grant funds may choose to respond to the application requirements in the context of their response to the selection criteria.

(a) *SEAs (CFDA No. 84.282A).*

(i) *Application Requirements (CFDA No. 84.282A).* (A) Describe the objectives of the SEA's charter school grant program and describe how these objectives will be fulfilled, including steps taken by the SEA to inform teachers, parents, and communities of the SEA's charter school grant program;

(B) Describe how the SEA will inform each charter school in the State about Federal funds that the charter school is eligible to receive and Federal programs in which the charter school may participate;

(C) Describe how the SEA will ensure that each charter school in the State receives the school's commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school;

(D) Describe how the SEA will disseminate best or promising practices of charter schools to each local educational agency in the State;

(E) If an SEA elects to reserve part of its grant funds (no more than 10 percent) for the establishment of a revolving loan fund, describe how the revolving loan fund would operate;

(F) If an SEA desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for any waiver of statutory or regulatory provisions that the SEA believes is necessary for the successful operation of charter schools in the State; and

(G) Describe how charter schools that are considered to be LEAs under State law and LEAs in which charter schools are located will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act.

(ii) *Selection Criteria (CFDA No. 84.282A).* SEAs that propose to use a portion of their grant funds for dissemination activities must address each selection criterion (A) through (H) individually and title each accordingly. SEAs that do not propose to use a portion of their grant funds for dissemination activities must address selection criteria (A) through (G) only, and need not address selection criterion (H).

The maximum possible score is 130 points for SEAs that do not propose to use grant funds to support dissemination activities, and 150 points for SEAs that propose to use grant funds to support dissemination activities.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

To ensure fairness, if an SEA is not proposing to use grant funds to support dissemination activities, the Secretary will not consider points awarded under criterion (H) in determining whether to approve an application for funding.

In evaluating an application from an SEA, the Secretary considers the following criteria:

(A) The contribution the charter schools grant program will make in assisting educationally disadvantaged and other students to achieve State academic content standards and State student academic achievement standards (25 points).

(B) The degree of flexibility afforded by the SEA to charter schools under the State's charter school law (20 points).

(C) The ambitiousness of the objectives for the State charter school grant program (15 points).

(D) The quality of the SEA's strategy for assessing achievement of those objectives (15 points).

(E) The likelihood that the charter school grant program will meet those objectives and improve educational results for students (15 points).

(F) The number of high-quality charter schools to be created in the State (20 points).

(G) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (20 points).

(H) In the case of SEAs that propose to use grant funds to support dissemination activities under section 5204(f)(6) of the ESEA, the quality of the dissemination activities (10 points) and the likelihood that those activities will improve student achievement (10 points).

(b) *Non-SEA Applicants (CFDA No. 84.282B and 84.282C).* The application requirements for all non-SEA applicants are listed in paragraph (i) in this section.

The selection criteria for non-SEA applicants for *Planning, Program Design, and Implementation Grants (CFDA No. 82.282B)* are listed in paragraph (ii) in this section.

The selection criteria for non-SEA applicants for *Dissemination Grants (CFDA No. 84.282C)* are listed in paragraph (iii) in this section.

(i) *Application Requirements (CFDA Nos. 84.282B and 84.282C).* (A) Describe the educational program to be implemented by the proposed charter school, including how the program will enable all students to meet challenging State student academic achievement standards, the grade levels or ages of students to be served, and the curriculum and instructional practices to be used;

(B) Describe how the charter school will be managed;

(C) Describe the objectives of the charter school and the methods by which the charter school will determine its progress toward achieving those objectives;

(D) Describe the administrative relationship between the charter school and the authorized public chartering agency;

(E) Describe how parents and other members of the community will be involved in the planning, program design, and implementation of the charter school;

(F) Describe how the authorized public chartering agency will provide for continued operation of the charter school once the Federal grant has expired, if that agency determines that the charter school has met its objectives;

(G) If the charter school desires the Secretary to consider waivers under the authority of the CSP, include a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter school, and a description of any State or local rules, generally applicable to public schools, that will be waived for, or otherwise not apply to, the school;

(H) Describe how the grant funds will be used, including how these funds will be used in conjunction with other Federal programs administered by the Secretary; and

(I) Describe how students in the community will be informed about the charter school and be given an equal opportunity to attend the charter school.

(ii) *Selection Criteria (CFDA No. 84.282B).* Non-SEA Planning, Program Design, and Initial Implementation Grant applicants must address each selection criterion (A) through (I) individually and title each accordingly.

The maximum possible score for all of the criteria in this section is 145 points.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

In evaluating an application from a non-SEA eligible applicant for Planning, Program Design, and Implementation, the Secretary considers the following criteria:

(A) The quality of the proposed curriculum and instructional practices (25 points).

(B) The degree of flexibility afforded by the SEA and, if applicable, the LEA to the charter school (10 points).

(C) The extent of community support for the application (10 points).

(D) The ambitiousness of the objectives for the charter school (15 points).

(E) The quality of the strategy for assessing achievement of those objectives (10 points).

(F) The likelihood that the charter school will meet those objectives and improve educational results for students during and after the period of Federal financial assistance (20 points).

(G) The extent to which the proposed project encourages parental involvement (20 points).

(H) The qualifications, including relevant training and experience, of the project director; and the extent to which the applicant encourages applications for employment from persons who are members of groups that traditionally have been underrepresented based on race, color, national origin, gender, age, or disability (10 points).

(I) The contribution the charter school will make in assisting educationally disadvantaged and other students to achieve to State academic content standards and State student academic achievement standards (25 points).

(iii) *Selection Criteria (CFDA No. 84.282C).* Non-SEA applicants for Dissemination Grants must address each selection criterion (A) through (E) individually and title each accordingly.

The maximum possible score for all of the criteria in this section is 125 points.

The maximum possible score for each criterion is indicated in parentheses following the criterion.

In evaluating an application from a non-SEA eligible applicant for a dissemination grant, the Secretary considers the following criteria:

(A) The quality of the proposed dissemination activities and the likelihood that those activities will improve student achievement (30 points).

(B) The extent to which the school has demonstrated overall success, including—

(1) Substantial progress in improving student achievement (15 points);

(2) High levels of parent satisfaction (15 points); and

(3) The management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school (15 points).

(C) The extent to which the results of the proposed project will be disseminated in a manner that will enable others to use the information or strategies (20 points).

(D) The qualifications, including relevant training and experience, of the project director; and the extent to which the applicant encourages applications for employment from persons who are members of groups that traditionally have been underrepresented based on race, color, national origin, gender, age, or disability (10 points).

(E) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (20 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), one measure has been developed for evaluating the overall effectiveness of the CSP: To support the creation of a large number of high-quality charter schools. The objective of this goal is to encourage the development of a large number of high-quality charter schools that are free from state or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging state performance standards, and are open to all students. The Secretary has set an overall performance target that calls for an increase in both the number of states with charter school legislation and the number of charter schools in operation around the nation.

All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in meeting this performance measure.

VII. Agency Contact

For Further Information Contact: Rik Lanzendorfer, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C148 FB6, Washington, DC 20202–5961. Telephone: (202) 205–9786 or by e-mail: *Rik.Lanzendorfer@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 19, 2003.

Nina Shokraii Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 03–31699 Filed 12–23–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of Title X claims for reimbursement in fiscal year (FY) 2004.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims in FY 2004 from eligible active uranium and thorium processing sites for reimbursement under Title X of the Energy Policy Act of 1992. In FY 2004, Congress appropriated $51 million for the Title X reimbursement program. Because of the amount of unpaid approved claims within the current reimbursement ceilings (approximately $80 million), DOE plans to accelerate the FY 2004 reimbursements to licensees in advance of the April 30, 2004, regulatory deadline. These payments will be prorated based on the amount of FY 2004 appropriations, unpaid approved claim balances (approximately $80 million), and claims received in May 2003 (approximately $38 million).

DATES: The closing date for the submission of claims in FY 2004 is May 3, 2004. These new claims will be processed for payment by April 30, 2005, together with unpaid approved claim balances from prior years, based on the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, National Nuclear Security Administration Service Center, Environmental Programs Department, PO Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, National Nuclear Security Administration Service Center, Environmental Programs Department, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. Gilbert Maldonado. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Contact Gilbert Maldonado at (505) 845–4035 of the U.S. Department of Energy, National Nuclear Security Administration Service Center, Environmental Programs Department.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR Part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Public Law 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (*e.g.*, statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR Part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington DC on this 16th of December, 2003.

David E. Mathes,

Commercial Disposition Office, Office of Logistics & Waste Disposition Enhancement.

[FR Doc. 03–31700 Filed 12–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995), intends to extend for three years, an information collection package with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before February 23, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Regina Washington or by fax at (202) 586–4617 or by e-mail at *regina.washington@ee.doe.gov* and to Susan L. Frey, Director, Records Management Division IM–11/ Germantown Bldg., Office of Business and Information Management, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290, or by fax at 301–903–9061 or by e-mail at *susan.frey@hqmail.*

FOR FURTHER INFORMATION CONTACT: Susan L. Frey, Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290, (301)–903–3666, or e-mail *susan.frey@hqmail.*

SUPPLEMENTARY INFORMATION: *This package contains:* (1) OMB No. 1910–1400; (2) *Package Title:* Compliance Statement: Energy/Water Conservation Standards for Appliances; (3) *Type of Review:* Renewal; (4) *Purpose:* DOE will collect information from manufacturers to verify that products covered under the Energy Policy and Conservation Act comply with required energy conservation and water conservation standards prior to distributing these products in commerce. DOE will make a determination of compliance by examining manufacturer's compliance statements and certification reports that each basic model meets the applicable energy and water conservation standard as prescribed in section 325 of the Act; (5) *Privacy Impact Assessment:* Not Applicable; (6) *Respondents:* 48; (7) *Estimated Number of Burden Hours:* 1,347.

Statutory Authority: EPCA mandates the use of uniform energy and water conservation standards and testing procedures for covered products. DOE has previously established compliance reporting requirements in § 430.62 of 10 CFR part 430. The authority for certification reporting under part 430 is section 326(d) of Part B of Title III of EPCA which states:

"For purposes of carrying out this part, the Secretary may require, under this part [42 U.S.C. 6291 *et seq.*] or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use of such covered product * * * to ensure compliance with the requirements of this part." 42 U.S.C. 6296(d).

Issued in Washington, DC on December 18, 2003.

Sharon A. Evelin,

Acting Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer.

[FR Doc. 03–31702 Filed 12–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–253–A]

Application To Export Electric Energy; Coral Canada U.S. Inc.

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of application.

SUMMARY: Coral Canada U.S. Inc. (Coral) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 7, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On January 9, 2002, Coral was issued an authorization to export electric energy to Canada; that authorization expires on January 9, 2004. On November 24, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Coral to renew its authorization to transmit electric energy from the United States to Canada as a power marketer. Coral, a Delaware corporation with its principal place of business in Houston, Texas, is indirectly owned by Shell Oil Company and Intergen, N.A. Coral does not own or control any electric power generation or transmission facilities and does not have a franchised service area.

Coral proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Coral, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Because Coral is exporting electricity under the existing authorization, they have requested expedited processing of this application in order to avoid any lapse in export authority. Accordingly, DOE has shortened the comment period and requests comments, protests, and requests to intervene be filed by January 7, 2004.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Coral application to export electric energy to Canada should be clearly marked with Docket EA–253–A. Additional copies are to be filed directly with Robert Reilley, Vice President, Regulatory Affairs, Coral Canada U.S. Inc., 909 Fannin, Plaza One, Houston, TX 77010.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov.* Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on December 18, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–31762 Filed 12–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 14, 2004, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

The meeting presentation will feature an overview of the Federal Facility Agreement Core Team concept. Included will be a discussion of the philosophy behind the Core Team concept, the types of issues they address, and their mission, makeup, and responsibilities.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on December 19, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–31701 Filed 12–23–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–017]

California Independent System Operator Corporation; Notice of Technical Conference

December 16, 2003.

The Federal Energy Regulatory Commission is convening a technical conference regarding the California Independent System Operator Corporation (CAISO) Revised Comprehensive Market Design Proposal 2002 (MD02), pursuant to its Order issued on October 28, 2003,[1] to further facilitate and better understand several aspects of the proposed MD02. The conference will be held on January 28–29, 2004, at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC beginning at 9 a.m. in a room to be announced at a later date.

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[1] California Independent System Operator Corporation, 105 FERC ¶ 61,140 (2003) (October 28 Order).

The conference will focus on the flexible offer obligation proposal, the residual unit commitment process, pricing for constrained-output generators, marginal losses, and ancillary services. Participants are requested to restrict their contributions to this conference to these and other market efficiency issues not related to the mitigation of market power. Market Power Mitigation will be the focus of a second technical conference proposed to be held in early March 2004.

In the October 28 Order, the Commission also sought additional information and explanation from the CAISO in relation to certain elements of the MD02 proposal. Concurrently with this Notice the Commission Staff requests certain supplemental information from the CAISO to further clarify issues relating to certain aspects of the MD02 proposal, and to prepare for the March 2004 second technical conference. The dates by which the CAISO will be required to file information with the Commission are set out in a timetable in the Attachment to this Notice.

Interested participants are also invited to submit information and comments arising from the October 28 Order, the technical conference held in California on November 6, 2003, and from the additional information that will be submitted by the CAISO. Participants are also requested to submit information and comments to the Commission by the due dates listed in the timetable in the Attachment.

A second technical conference will be held in early March 2004 to finalize the outstanding issues relating to implementation of MD02, particularly the design of measures for the mitigation of market power, including local market power mitigation and treatment of imports. A separate notice of technical conference will be issued by the Commission in early February 2004 announcing the date and location of the second technical conference, and a final agenda.

The conference is open for the public to attend, and registration is not required. For more information about the conference, please contact: Olga Kolotushkina at (202) 502–6024 or at *olga.kolotushkina@ferc.gov.*

Magalie R. Salas,

Secretary.

Timetable for Submissions

1. Information on Market Issues to be filed by the CAISO—by January 7, 2004

Pursuant to the October 28 Order, the Commission requests that the CAISO clarify the following issues by January 7, 2004, so that interested participants may both respond and better prepare for discussions at the MD02 Technical Conference to be held on January 28–29, 2004.

- Clarification of the CAISO's approach to allocation of marginal losses—refer to ¶ 78 of the October 28 Order.
- Revised pricing mechanism for setting prices for constrained output generators in the forward market—refer to ¶ 89 of the October 28 Order.
- Further clarification of the statement by the CAISO that it "does not prohibit energy from capacity committed in the day-ahead RUC from being sold by the unit owner via any bilateral transaction in the hour-ahead market, including sales to other Control Areas"—refer to ¶ 123 of the October 28 Order.
- Additional clarification on the CAISO's concern that a purchase of only capacity may undermine incentive to imports to acquire transmission capacity across ties as part of the residual unit commitment process—refer to ¶ 127 of the October 28 Order.

2. Information on Market Issues To Be Filed by Other Participants—by January 14, 2004 *

Participants are invited to file reply comments by Wednesday, January 14, 2004, in response to:

- The CAISO's submission under item 1 above;
- Any other market issues, other than market power mitigation, raised in the October 28 Order; and
- The discussions relating to market issues, other than market power mitigation, that occurred at the November 6, 2003 Technical Conference held in California.

3. Information Requested From CAISO Under Request Issued on December 16, 2003—by January 12, 2004

4. Comments of Other Participants in Response to Information Submitted by the CAISO Under Data Request—Anticipated Date January 26, 2004

Formal notice inviting comments from interested participants relating to CAISO's submission pursuant to the Data Request will be published by the Commission as soon as practicable after the CAISO has submitted the requested information. It is anticipated that the date by which such comments should be filed will be January 26, 2004. This will be specified in the notice.

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* The Commission requests that submissions be limited to market issues other than market power mitigation measures. Market power mitigation and resource adequacy issues will be the focus of the second Technical Conference to be held in early March. The Commission will issue a formal notice announcing the second conference in early February.

[FR Doc. E3–00623 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–31–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

December 16, 2003.

Take notice that on December 9, 2003, CenterPoint Energy Gas Transmission Company (CenterPoint), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP04–31–000 pursuant to Section 7(b) of the Natural Gas Act, an application for permission and approval to abandon certain facilities located in Panola County, Texas. Specifically, CenterPoint proposes to abandon one rural tap and appurtenant facilities located on Line ST–1B, all as more fully described in the request which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link, select "Docket #" and follow the instructions. Call (202) 208–2222 for assistance.

CenterPoint states that it provides natural gas transportation service to CenterPoint Energy-Entex (Entex), an affiliated distribution company that serves two rural domestic customers on CenterPoint's Line ST–1B. CenterPoint avows that Line ST–1B was installed in 1954 for the primary purpose of receiving gas supplies from producers and transporting those supplies to CenterPont's mainline transmission system. Although installed as a gas supply facility, CenterPoint explains that the two rural taps were installed on Line ST–1B to deliver gas to Entex and its two rural customers, Mr. Ray Schultz and Mr. Ronny White. Despite the fact that no production has flowed through the line for a number of years, CenterPoint emphasizes that it nonetheless delivers gas into the line from ST–1 to maintain pressure and continue deliveries to the two rural customers. Given that the line is no longer used for the gas supply purpose for which is was intended, CenterPoint claims that continued operation of Line ST–1B exclusively for the two rural customers is neither efficient nor economical.

CenterPoint states that it has offered Mr. Schultz and Mr. White the options of either converting to liquid propane gas fuel (LPG) at CenterPoint's expense or receiving a cash payment equal to the estimated conversion costs. CenterPoint provided Mr. Schultz's letter of consent in writing, however Mr. White rejected the offer. CenterPoint claims two other arrangements for gas service were tendered to Mr.White, one of which Mr. White rejected, and the other was deemed neither efficient nor economical by CenterPoint. CenterPoint asserts that it has notified Entex of its plan to abandon Mr. White's tap upon either written consent from Mr. White or Commission authorization to abandon its delivery tap. Accordingly, CenterPoint requests permission and approval to abandon the tap to Mr. White, and to compensate him for expenses necessary to convert the existing gas service to LPG fuel.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director—Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken; but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00621 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–105–000]

Dominion Transmission, Inc.; Notice of Tariff Filing

December 16, 2003.

Take notice that on December 8, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 7, 2004:

Third Revised Sheet No. 0
Second Revised Sheet No. 212
First Revised Sheet No. 212A
Third Revised Sheet No. 1171
Second Revised Sheet No: 2506

DTI states that the purpose of this filing is simply to revise the tariff for administrative purposes and to correct certain incorrect cross-references within the tariff. DTI states that the filing includes a series of minor tariff changes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00627 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–018]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

December 16, 2003.

Take notice that on December 10, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8O, reflecting an effective date of November 1, 2003.

Gulfstream states that this filing is being made to implement negotiated rate transactions under Rate Schedules ITS and PALS, respectively, pursuant to Section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff.

Gulfstream states that Original Sheet No. 8O identifies and describes the negotiated rate transactions, including the exact legal name of the relevant shipper, the negotiated rates, the rate schedules, the contract terms, and the contract quantities. Gulfstream also states that Sheet 8O includes footnotes where necessary to provide further details on the transactions listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00626 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–098]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

December 16, 2003.

Take notice that on December 8, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26W.12, to be effective December 3, 2003.

Natural states that the purpose of this filing is to terminate, effective December 3, 2003, an existing firm transportation negotiated rate transaction between Natural and Mirant Americas Energy Marketing, LP.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00618 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–187–001]

North Jersey Energy Associates, a Limited Partnership; Notice of Filing

December 16, 2003.

Take notice that on December 11, 2003, North Jersey Energy Associates, A Limited Partnership (NJEA) filed an amendment to its application in Docket No. ER04–187–000. NJEA states that the amendment revised the applicant's proposed market based rate tariff to prohibit sales within peninsular Florida, to specify the ancillary services available for sale under the tariff, and to withdraw the proposed Service Agreement No. 1 included with the original filing.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00624 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–28–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

December 16, 2003.

Take notice that on December 8, 2003, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP04–28–000 an application, as supplemented on December 11, 2003, pursuant to Northern's blanket authority granted on September 1, 1982, at Docket No. CP82–401–000 and sections 157.205, 157.208, and 157.216 of the Commission's Regulations for authorization to replace, modify, and operate various pipeline facilities in Iowa, all as more fully set forth in the request which is on file with the

Commission and open to public inspection.

Northern proposes to: (1) Operate and replace by abandoning in place approximately 2.6 miles of its Grinnell 10-inch diameter branch line with 16-inch diameter pipeline located in Polk County; (2) up-rate the maximum allowable operating pressure (MAOP) on approximately 30 miles of the Des Moines B-Line in Boone, Dallas and Polk counties, and to operate this segment of pipeline at the higher MAOP; (3) hydrostatically test approximately 7.7 miles of the existing Des Moines 16-inch diameter beginning at Northern's Ogden compressor station in Boone County; and (4) install overpressure protection on its existing Des Moines B-Line at the Des Moines #1D Town Border Station.

Northern estimates that it will spend $4,064,000 of internally generated funds to construct the new pipeline facilities, collectively known as the Pleasant Hill project. Northern states that it needs to construct and operate the proposed Pleasant Hill facilities in order to meet its firm contractual obligations of 96,000 MMBtu equivalent of natural gas per day to MidAmerican Energy Company (MidAmerican).[1]

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.fed.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 855.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: January 6, 2004.

Magalie R. Salas,
Secretary.

[FR Doc. E3–00619 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT95–11–005]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing Amended Refund Report

December 16, 2003.

Take notice that on December 8, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star), formerly Williams Gas Pipelines Central, Inc., tendered for filing an amended refund report regarding collection of Kansas ad valorem taxes in Southern Star's Docket No. GT95–11.

Southern Star states that this filing is being made in compliance with a Commission Letter Order dated September 23, 2003, directing Southern Star to amend its report filed on June 5, 2003, so that Commission staff would have sufficient information to completely process the filing. Southern Star states that the filing amends the previous report by providing an annual accounting of ad valorem taxes received from producers and notes that the associated refunds were made to customers as of November 28, 2003.

Southern Star states that a copy of this filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: December 23, 2003.

Magalie R. Salas,
Secretary.

[FR Doc. E3–00625 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–106–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

December 16, 2003.

Take notice that on December 10, 2003 Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 510, to become effective October 1, 2003.

Southern Star states that the tariff sheet is being submitted to provide the new URL for Electronic Data Interchange that Southern Star has transitioned to since its separation from Williams Gas Pipeline Companies as well as the new contact information. Southern Star states that it completed and tested the new EDI solution in September 2003 and subsequently went live with the new EDI environment on October 1, 2003 and requests an October 1, 2003 effective date for the tariff sheet listed above.

Southern Star states that copies of the tariff sheets are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

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[1] *Northern Natural Gas Company*, 103 FERC ¶ 62,028 (2003).

888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary". Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00628 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

December 16, 2003.

Take notice that on December 8, 2003, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP04–29–000, an application pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to construct and operate a new delivery point for the City of Monroe, a North Carolina Municipal Corporation (City of Monroe), under Transco's blanket certificate issued in Docket No. CP82–426–000, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Transco proposes to construct, own, and operate a delivery point in Iredell County, North Carolina, for a new gas transportation customer, City of Monroe. The proposed facilities are two 6-inch tap valve assemblies, a meter station with one 4-inch ultrasonic flow meter, two hundred feet of 6-inch inlet piping to the meter station, 4-inch bypass piping, 6-inch yard piping, 6-inch outlet piping from the meter station, pulsation dampener vessel, odorization system, electronic flow measurement, communications equipment, and other appurtenant facilities. Transco states that the City of Monroe will initially receive at the proposed delivery point up to 20,400 dekatherms per day of gas from Transco on a firm or interruptible basis at the new delivery point. The estimated total cost of Transco's proposed facilities is approximately $878,500 and the City of Monroe will reimburse Transco for all costs associated with such facilities. Transco also states that the City of Monroe currently is served by Piedmont Natural Gas Company but due to a variety of business reasons, the City of Monroe wants to have gas delivered to its municipal distribution system directly by the Transco system in the future.

Transco further states that the City of Monroe will construct, own and operate any appurtenant facilities to enable it to receive gas from Transco at the proposed delivery point and move the gas to its distribution system. The City of Monroe's facilities will include approximately 38.5 miles of 10-inch pipeline extending from Transco's proposed delivery point to the City of Monroe's existing distribution facilities.

Any questions concerning this application may be directed to Randall R. Conklin, General Counsel, Alfred E. White, Jr. Senior Attorney, or Scott C. Turkington, Director, Rates & Regulatory at (713) 215–2000.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: January 30, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00620 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–391–029 and RP93–162–014]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Filing

December 16, 2003.

Take notice that on November 24, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed its annual cash-out report for the period August 1, 2002 through July 31, 2003. Transco states that the report was filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions (GT&C) of Transco's FERC Gas Tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: December 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00622 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–35–002]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

December 16, 2003.

Take notice that on December 8, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its response to the Commission's Order issued November 28, 2003 in Docket No. RP04–35–000.

Williston Basin states that on November 28, 2003, the Commission issued its Order in the above referenced docket, and accepted Williston Basin's negotiated service agreement with Prairielands Energy Marketing, Inc. to be effective November 1, 2003, subject to Williston Basin making a compliance filing to address the conditions of the Order. Williston Basin states that the instant filing is being made in compliance with the provisions of that Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00629 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–36–000, et al.]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate and Corporate Filings

December 16, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Consolidated Edison Company of New York, Inc., Consolidated Edison Solutions, Inc., KeySpan, Energy Services, Inc., Constellation New-Energy, Strategic Energy, New York Energy Buyers Forum, and Consumer Power Advocates, Complainants, v. New York Independent System Operator, Inc., Respondent

[Docket No. EL04–36–000]

Take notice that on December 15, 2003, Consolidated Edison Company of New York, Inc., Consolidated Edison Solutions, Inc., KeySpan Energy Services Inc., Constellation New-Energy, Strategic Energy, New York Energy Buyers Forum, Consumer Power Advocates (collectively referred to as Complainants) filed a Complaint against the New York Independent System Operator, Inc. (NYISO) requesting that the Commission direct the NYISO to: (a) Revise its calculation of the summer 2003 In-City Installed Capacity (ICAP) rebates such that it complies with the NYISO's Market Administration and Control Area Services Tariff; and (b) refund $20,835,249 to the Complainants.

Comment Date: January 13, 2004.

2. Ameren Energy Development Co., Ameren Energy Generating Co., Ameren Energy Marketing Co., AmerenEnergy Medina Valley Cogen, LLC, Central Illinois Light Co, AmerenEnergy Resources Generating Co., Union Electric Co.

[Docket Nos. ER01–294–002, ER00–3412–003, ER00–816–001, ER04–8–002, ER98–2440–003, ER04–53–002 and ER00–2687–002]

Take notice that on December 10, 2003, Ameren Energy, Inc. and the other affiliates of Ameren Corporation with market rate authority tendered for filing an updated market analysis in connection with their market-based rate authority.

Comment Date: December 31, 2003.

3. Devon Power LLC, Middletown, Middletown Power LL, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing Inc.

[Docket No. ER03–563–025]

Take notice that on December 4, 2003, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc. (collectively, Applicants) and ISO-New England, Inc. (ISO), tendered for filing a report entitled "Review of PUSH Implementation and Results", prepared by the ISO in compliance with the Commission's Order, issued July 24, 2003, 104 FERC ¶ 61,123.

Comment Date: December 29, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–647–004]

Take notice that on December 8, 2003, the New York Independent System Operator, Inc. (NYISO) submitted for filing its Installed Capacity Auction Activity (ICAP) report in compliance with Commission's Order issued May 20, 2003, 103 FERC ¶ 61,201.

Comment Date: December 29, 2003.

5. Citizens Communications Company

[Docket No. ER03–1235–001]

Take notice that on December 11, 2003, Citizens Communications Company (Citizens) tendered a filing in compliance with the Commission Order issued in Docket No. ER03–1235–000 proceedings on October 8, 2003 as corrected by the Commission's Erratum Order issued October 22, 2003.

Comment Date: January 2, 2004.

6. Indiana Michigan Power Company

[Docket No. ER04–125–001]

On October 31, 2003, Indiana Michigan Power Company, d/b/a/ American Electric Power (I&M) filed a third Revised Service Agreement No. 17

with the City of Gas City, Indiana under I&M's FERC Electric Tariff MRS, Original Volume No. 7 (Third revised Service Agreement No. 17).

Take notice that on December 10, 2003, I&M submitted a filing to provide a complete page and correct clerical errors contained in Service Agreement No. 17. I&M notes that it is submitting corrected information to be substituted for the version filed on October 31, 2003.

Comment Date: December 31, 2003.

7. Southwest Power Pool, Inc.

[Docket No. ER04–219–000]

Take notice that on November 24, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing a Letter Agreement between Southwestern Public Service Company d/b/a/ Xcel Energy (SPS) and Caprock Wind, LP (Caprock) (collectively Parties). SPP states that the agreement provides for the performance of certain engineering and design activities by Xcel and the payment for such activities by Caprock relating to the proposed interconnection of a generating facility to be owned and constructed by Caprock. SPP Also states while it is not a party to this Letter Agreement, it is submitting the Letter Agreement on behalf of the Parties as the relevant Transmission Provider. SPP seeks an effective date of October 2003 for this Letter Agreement.

Comment Date: December 24, 2003.

8. PacificCorp

[Docket No. ER04–272–000]

Take notice that on December 8, 2003, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rule and Regulations, a Generation Interconnection Facilities Agreement dated June 17, 2003 between PacifiCorp and Eurus Combine Hills 1 LLC and a Generation Interconnection Operation and Maintenance Agreement dated June 17, 2003, between PacifiCorp and Eurus Combine Hills 1 LLC and all related to Eurus Combine Hills 1 LLC's Combine Hills Turbine Ranch 1 wind generating facility.

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and Eurus Combine Hills 1 LLC.

Comment Date: December 30, 2003.

9. Calpine Oneta Power, L.P.

[Docket No. ER04–279–000]

Take notice that on December 11, 2003, Calpine Oneta Power, L.P. tendered for filing, under Section 205 of the Federal Power Act, a rate schedule for system support services, whereby it would make available to Public Service Company of Oklahoma d/b/a American Electric Power, an emergency redispatch service.

Comment Date: January 2, 2004.

10. NorthWestern Energy

[Docket No. ER04–280–000]

Take notice that on December 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of the Non-Firm Point to Point Transmission Service Agreement between NorthWestern and Southern Energy Trading and Marketing, Inc., which now does business as Mirant Americas, Inc. The non-firm transmission service agreement is a conforming agreement under NorthWestern's Open Access Transmission Tariff. The agreement was executed July 10, 1996, but NorthWestern has never provided any service under agreement.

Comment Date: January 2, 2004.

11. ISO New England Inc.

[Docket No. OA97–237–000]

Take notice that on December 11, 2003, ISO New England Inc. filed its "Quarterly Report for Regulators," as required by Appendix A to Market Rule 1, for the second quarter.

Comment Date: January 2, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00631 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–13–000]

Saltville Gas Storage Company L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Saltville Storage Project and Request for Comments on Environmental Issues

December 16, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Saltville Storage Project involving the construction of a limited number of new facilities and operation of existing facilities by Saltville Gas Storage Company L.L.C. (Saltville) in Smyth and Washington Counties, Virginia.[1] Saltville is currently developing a new 8.2 billion cubic feet (Bcf), underground natural gas storage facility using depleted salt caverns that was previously authorized for construction and operation by the Virginia State Corporation Commission. Saltville has received all necessary state regulatory approvals to construct and operate its storage facility. *See* Appendix 1 for a list of the facilities and their construction status. The EA will focus its analysis on the facilities that still need to be constructed, and on restoration of the areas previously disturbed or currently being disturbed by on-going construction activities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The Saltville Storage Project is located entirely on land that is either already owned by Saltville or over which it already holds all necessary rights-of-way. Saltville does not require additional property rights from landowners in the vicinity of the project. The 6.7-mile-long, 24-inch-diameter natural gas pipeline has already been constructed and is in service. All of the facilities that remain to be constructed by Saltville would be located within its 650-acre property. Saltville commenced limited customer service on August 1, 2003.

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[1] Saltville's application was filed with the Commission under section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations. The Commission determined that the project should be subject to Federal regulation. Therefore, Saltville has filed for approval to complete construction of the project and to operate it pursuant to Federal regulatory requirements.

Summary of the Project

Saltville wants to develop and operate up to four salt storage caverns with a total capacity of 8.2 Bcf. Caverns 1 and 2 have been completed and are in service. Well conversion work remains to be completed on well 23 in Cavern 3 and this conversion work is in progress. Saltville has also substantially completed all of the pipelines and other facilities necessary to operate this storage field with the exception of the following facilities that will be examined in the EA:

- Construction of a second 5,250 horsepower electric-motor driven reciprocating compressor and associated dehydrators and heaters at the existing compressor station;
- Development of Cavern 4 (recomplete Well 24) that would have a capacity of about 0.2 Bcf and associated gas and brine piping (about 500 and 200 feet, respectively) and controls;
- Installation of Cavern 3's *de minimus* associated gas and brine piping connections between the already installed gas and brine mainlines that are currently in-place adjacent to Wells 18, 19, 21, 22, and 23 and controls; and
- A new office building.

All of these facilities are within Saltville's property. No nonjurisdictional facilities are needed. The EA would also address any facility removal activities.

The location of the project facilities is shown in appendix 2.[2]

Land Requirements for the Project

No new land is required. All of the facilities that remain to be constructed would be located in previously disturbed areas that are within Saltville's 650-acre property. These areas are mostly covered with gravel or broken native rock at this time.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice of intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Public safety
- Endangered and threatened species

We will also evaluate possible alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission(s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Saltville and stakeholders. This preliminary list of issues may be changed based on your comments and our analysis.

- Noise from compressor station operations.
- Public safety.
- Saltville fault.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP04–13–000.
- Mail your comments so that they will be received in Washington, DC on or before January 14, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

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[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the "eLibrary" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to "eLibrary" refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission(s rules of practice and procedure (18 CFR 385.214) (*see* Appendix 3).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with "eLibrary", the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *ferconlinesupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00630 Filed 12–23–03; 8:45 am]

BILLING CODE 6717–01–P

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[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0206; FRL–7602–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program—OMB Control Number: 2060–0060

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed/continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program, OMB Control Number 2060–0060, expiration date 02/29/04. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 23, 2004.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mrs. Chestine Payton, Certification and Compliance Division, Outreach and Planning Group, 6405J, telephone (202) 343–9240, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telefax (202) 343–2804, and e-mail *payton.chestine@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0206, which is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue NW., Washington, DC. The Air Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* You may use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *air-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OAR, Mail Code 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in DOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in DOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in DOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Parties potentially affected by this action are automotive manufacturers and builders of automotive after market parts.

Title: Emission Control System Performance Warranty Regulations &

Voluntary Aftermarket Part Certification Program, OMB# 2060–0060, Expiration date 02/29/04.

Abstract: The information required is the minimal necessary to ensure that the part to be certified actually performs as required. Without this information EPA would have no way to control and audit fraudulent or marginal submissions. Information is only collected when the part is tested to be certified, if no information is collected at the time of testing there will be no means of showing later that the part was properly designed. EPA would not be able to control the self-certification of parts and this could, therefore, result in certified parts that cause vehicles to fail emissions standards.

The information collected is part of the requirement of section 207(a) of the Clean Air Act, and as described in section 40 CFR part 85, subpart V. This is a voluntary certification program and there is no requirement that any manufacturer participate.

The total estimated involvement of the aftermarket part industry (replacement and specialty parts) is 1 part per year.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA's burden estimated for this information collection is broken down into three parts: reporting, testing and record keeping burden. EPA estimates that the reporting burden will be 20 hours, testing 150 hours and annual record keeping 1 hour. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclosure or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Respondents/Affected Entities: Parties potentially affected by this action are automotive manufacturers and builders of automotive after market parts.

Estimated Number of Respondents: 1.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 861 hours.

Estimated Total Annualized Cost Burden: $ 37,380.

Dated: December 15, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–31707 Filed 12–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6646–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed December 15, 2003 Through December 18, 2003

Pursuant to 40 CFR 1506.9.

Due to administrative leave being granted on December 26, 2003, EPA's Notice of Availability of Weekly Receipts of Environmental Impact Statements (EISs) are being published on December 24, 2003. All EISs received on December 19, 2003 will be published in January 2, 2004 **Federal Register** (FR) with all Wait Periods and Comment Periods calculated from the December 24, 2003 FR date.

EIS No. 030567, Draft EIS, FHW, NY, NY–17 Parksville/SH–5223, Liberty-County Line, Part 1 Construction and Reconstruction to Interstate Standards, Funding and U.S. Army COE Section 404 Permit Issuance, Town of Liberty, Sullivan County, NY, Comment Period Ends: February 6, 2004, Contact: Robert E. Arnold (518) 472–3636.

EIS No. 030568, Final EIS, IBW, TX, Lower Rio Grande Flood Control Project, Alternative Vegetation Maintenance Practices Impacts, Implementation, Portions of the Rio Grande, Cameron, Hidalgo and Willacy Counties, TX, Wait Period Ends: January 22, 2004, Contact: Douglas Echlin (915) 832–4741.

EIS No. 030569, Final EIS, AFS, WA, Gotchen Risk Reduction and Restoration Project, Implementation, Mount Adams Ranger District, Gifford Pinchot National Forest, Skamania and Yakima Counties, WA, Wait Period Ends: January 22, 2004, Contact: Bruce Holmson (509) 395–3410. This document is available on the Internet at: *http://www.fs.fed.us/gpnf/.*

EIS No. 030570, Draft EIS, FHW, OR, Pioneer Mountain to Eddyville U.S. 20, the Corvallis-Newport Highway, Improvements, Right-of-Way Grant and U.S. Army COE Section 404 Permit, Lincoln County, OR, Comment Period Ends: February 6, 2004, Contact: John Gernhauser (503) 399–5749.

EIS No. 030571, Final EIS, BLM, WY, South Powder River Basin Coal Project, Application for Leasing of Five Federal Coal Tracts: NARO Tracts: NARO North and NARO South (North Antelope/ Rochelle Mine Complex), Little Thunder (Black Thunder Mine) West Roundup (North Rochelle Mine) and West Antelope (Antelope Mine), Campbell and Converse Counties, WY, Wait Period Ends: January 22, 2004, Contact: Nancy Doelger (307) 261–7627. This document is available on the Internet at: *http://www.blm.gov/nepa/prbcoal-feis.*

EIS No. 030572, Final EIS, COE, CA, San Diego Harbor Deepening (Central Navigation Channel) Involving Three Components: Federal Central Navigation Channel Deepening, Disposal of the Dredged Material at the LA–5 Ocean Disposal Site and Relocation and Disposal and Abandonment of a 69 kV Electrical Site, San Diego County, Wait Period Ends: January 22, 2004, Contact: Joy Jaiswal (213) 452–3851.

EIS No. 030573, Draft Supplement, NIH, MT, Rocky Mountain Laboratories' (RML) Integrated Research Facility, Construction and Operation, Housing Biosafety Level (BSL)-2, BSL–3 and BSL–4 Laboratories, Analyzation of Associated Potential Impacts, Ravalli County, MT, Comment Period Ends: February 11, 2004, Contact: Valerie Nottingham (301) 496–3537.

EIS No. 030574, Final EIS, FHW, IN, I–69 Evansville to Indianapolis Corridor Study, I–69 Completion in Southwestern Indiana and Corridor

Selection, IN, Wait Period Ends: January 22, 2004, Contact: Robert Dirks (317) 226–7492. This document is available on the Internet at: *http://www.169indyevn.org.*

EIS No. 030575, Draft EIS, NPS, PA, Lackawanna Heritage Valley, a State and National Heritage Area, Management Action Plan, Implementation, Lackawanna, Luzerne, Wayne and Susquehanna Counties, PA, Comment Period Ends: February 6, 2004, Contact: Peter Samuel (215) 597–1848.

Dated: December 19, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–31709 Filed 12–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7602–4]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of an Executive Committee Meeting of the Board of Scientific Counselors (BOSC).

DATES: The meeting will be held on Thursday, January 22, 2004, from 8:30 a.m. to 5 p.m., and on Friday, January 23, 2004, from 8:30 a.m. to 2 p.m. All times noted are Eastern Time. The meeting may adjourn early on Friday if all business is finished.

ADDRESSES: The meeting will be held at the Lowes L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Lorelei Kowalski, Designated Federal Officer, Environmental Protection Agency, Office of Research and Development, Office of Science Policy Mail Code 8104R), 1200 Pennsylvania Avenue NW., Washington, DC 20460 at (202) 564–3408.

SUPPLEMENTARY INFORMATION: Proposed agenda items include, but are not limited to: discussion of ORD mercury, global change, and endocrine disruptors multi-year plans; update on ORD's computational toxicology plan; briefing on the reorganization of EPA's Science Advisory Board; briefing on public health outcomes; briefing on EPA's Science Inventory; and discussion of BOSC future issues and plans. The meeting is open to the public. Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting should contact Lorelei Kowalski, Designated Federal Officer, by mail at Office of Research and Development (Mail Code 8104R), 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at *kowalski.lorelei@epa.gov*, or by telephone at (202) 564–3408. In general, each individual making an oral presentation will be limited to a total of three minutes.

Information on Services for the Handicapped: Individuals requiring special accommodations at this meeting should contact Lorelei Kowalski, Designated Federal Officer, at (202) 564–3408, at least five business days prior to the meeting so that appropriate arrangements can be made to facilitate their participation.

Dated: December 18, 2003.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 03–31705 Filed 12–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0388; FRL–7338–2]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0388, must be received on or before January 23, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in this unit:

Regulatory Action Leader	Telephone number/e-mail address	Mailing address	File symbol
Todd Peterson	(703) 308–7224; e-mail address: *peterson.todd@epa.gov.*	Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	50932–RN
Alan Reynolds	(703) 605–0515; e-mail address: *reynolds.alan@epa.gov*	Do.	69592–O
Susanne Cerrelli	(703) 308–8077; e-mail address: *cerrelli.susanne.gov*	Do.	74128–R 74128–E

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture pesticides or apply pesticides to growing crops. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0388. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0388. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0388. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0388.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0388. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. *File symbol*: 50932–RN. *Applicant*: Woodstream Corporation, 69 N. Locust Street, Lititz, PA 17543. *Product name*: Animal Repellent Granular. Biochemical pesticide. *Active ingredient*: Oil of black pepper at 0.480% and piperine at 0.185%. *Proposed classification/Use*: None. For use as an animal repellent.

2. *File symbol*: 69592–O. *Applicant*: Agraquest Inc., 1530 Drew Avenue, Davis, CA, 95616. *Product name*: QST 6047 Technical. Insecticide. *Active ingredient*: *Streptomyces galbus* strain QST 6047 at 2.0%. *Proposed classification/Use*: None. Manufacturing use product for formulation into insecticidal products; for control of lepidopteran pests on growing crops.

3. *File symbol*: 74128–R. *Applicant*: Myco-Forestis Corporation 801, Route 344 P.O. Box 3158 L'Assomption, Quebec Canada, J5W 4M9. *Product name*: *Chondrostereum purpureum* strain HQ1 concentrate. Biological herbicide. *Active ingredient*: *Chondrostereum purpureum* strain HQ1 at 24.8%. *Proposed classification/Use*: None. For manufacturing use.

4. *File symbol*: 74128–E. *Applicant*: Myco-Forestis Corporation. *Product name*: Myco-Tech Paste. Biological herbicide. *Active ingredient*: *Chondrostereum purpureum* strain HQ1 at 9.1%. *Proposed classification/Use*: None. For woody vegetation management in right's of way, woodlots, and conifer plantations to inhibit sprouting and regrowth of freshly cut tree species such as: Birch, pin-cherry, poplar/aspen, red and sugar maple, and speckled alder.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 11, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E3–00604 Filed 12–23–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7601–9]

Proposed CERCLA Administrative Cost Recovery Settlement; Broad Brook Mill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and future response costs concerning the Broad Brook Mill Superfund Site (previously identified as the Millbrook Condominiums Site) in East Windsor, Connecticut with Hamilton Sundstrand Corporation ("Settling Party"). The settlement requires the Settling Party to pay $322,301.88 in reimbursement of past response costs and pay all future response costs not inconsistent with the National Contingency Plan on a periodic basis to the EPA Hazardous Substance Superfund. The settlement includes a covenant not to sue the Settling Party pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Records Center, 1 Congress Street, Suite 1100 (HSC), Boston, MA 02114–2023 (Telephone No. 617–918–1440).

DATES: Comments must be submitted on or before January 23, 2004.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Records Center, 1 Congress Street, Suite 1100 (HSC), Boston, MA 02114–2023, Telephone No. (617) 918–1440. A copy of the proposed settlement may be obtained from Man Chak Ng, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023, Telephone No. (617) 918–1785. Comments should reference the Broad Brook Mill Superfund Site in East Windsor, Connecticut and EPA Docket No. CERCLA–01–2003–0014 and should be addressed to Man Chak Ng, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023.

FOR FURTHER INFORMATION CONTACT: Man Chak Ng, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100 (SES), Boston, MA 02114–2023.

Dated: December 5, 2003.

Susan Studlien,

Director, Office of Site Remediation and Restoration, EPA Region 1.

[FR Doc. 03–31706 Filed 12–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, January 7, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–36: Republican Governors Association by Executive Director, Edward T. Tobin III.

Notice of Availability: Petition for Rulemaking on Public Access to Materials Relating to Closed Enforcement Cases.

Routine Administrative Matters.

DATE AND TIME: Tuesday, January 13, 2004 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, §438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Robert Biersack, Deputy Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–31848 Filed 12–22–03; 10:52 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011290–031.

Title: International Vessel Operators Hazardous Material Association Agreement.

Parties: Alianca Navegacao e Logistica Ltda.; APL Co. PTE Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line; Bermuda Container Line; Canada Maritime Agencies Ltd.; China Shipping Container Lines Co., Ltd.; CMA CGM, S.A.; Compania Latino Americana de Navegacion SA; Contship Containerlines; Crowley Maritime Corporation; CSX Lines, LLC; Evergreen Marine Corp. (Taiwan) Ltd.; Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Italia di Navigazione, S.p.A.; Kawasaki Kisen Kaisha Ltd.; Lykes Lines Limited, LLC; Marine Transport Lines, Inc.; Maruba SCA; Mediterranean Shipping Co. S.A.; Mitsui O.S.K. Lines, Ltd.; A.P. Moller-Maersk A/S; National Shipping Co. of Saudi Arabia; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Safmarine Container Lines; Seaboard Marine Ltd.; Senator Lines GmbH; TMM Lines Limited; Tropical Shipping & Construction Co., Ltd.; Yang Ming Marine Transport Corp.; and Zim Israel Navigation Company, Ltd.

Synopsis: The amendment adds Senator Lines as a party to the agreement and deletes Wallenius-Wilhelmsen A/S as a party, removes reference to Hamburg-Süd's former trade name, and updates Maersk's corporate name.

Agreement No.: 011305–012.

Title: United Alliance Agreement.

Parties: Hanjin Shipping Co., Ltd.; Senator Lines GmbH; and United Arab Shipping Company, S.A.G.

Synopsis: The amendment would drop Senator Lines as a party to the agreement and recast the agreement as a vessel sharing arrangement under the name Hanjin/United Arab Vessel Sharing and Slot Allocation Agreement.

Agreement No.: 011626–009.

Title: Aliança/HSDG/P&O Nedlloyd Agreement.

Parties: Aliança Navegacao e Logistica Ltda., Hamburg Südamerikanische Dampfschifffahrts-Gesellschaft KG,; Mercosul Line Navegaçao e Logistica Ltda., P&O Nedlloyd Limited, and P&O Nedlloyd B.V. Inc.

Synopsis: The amendment revises the vessel contributions and space allocations under the agreement, deletes references to Hamburg Süd's trade names and updates its address, updates Mercosul Line's corporate name and address, and renames and restates the agreement. The parties request expedited review.

Agreement No.: 011741–005.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: Australia-New Zealand Direct Line, FESCO Ocean Management Limited, Hamburg-Süd, Lykes Lines Limited LLC, A.P. Moller-Maersk A/S P&O Nedlloyd B.V., and P&O Nedlloyd Limited.

Synopsis: The amendment adds Lykes as a party to the agreement, removes reference to Hamburg-Süd's former trade name, and updates Maersk's corporate name.

Agreement No.: 011792–001.

Title: NYK/WWL/CSAV South America Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A., Nippon Yusen Kaisha, and Wallenius-Wilhelmsen AS.

Synopsis: The amendment removes Wallenius as a party to the agreement; makes conforming changes related to Wallenius' removal; deletes Venezuela from the geographic scope of the agreement; adds service to Baltimore, MD; deletes obsolete language; and restates the agreement.

Agreement No.: 011867.

Title: Norasia/GSL Round the World Service Agreement.

Parties: Norasia Container Lines Limited and Gold Star Line Ltd.

Synopsis: The agreement would authorize the carriers to share vessel space in an around the world service between the United States, on the one hand, and Europe, Asia, Indian Subcontinent, the Middle East, and the Caribbean, on the other hand.

Agreement No.: 201140–001.

Title: NYSA–ILA Assessment Agreement.

Parties: New York Shipping Association, Inc. and the International Longshoremen's Association, AFL–CIO.

Synopsis: The amendment clarifies certain definitions and revises assessments on Bermuda and Puerto Rican trade cargo.

By Order of the Federal Maritime Commission.

Dated: December 19, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–31763 Filed 12–23–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Correction

In the **Federal Register** Notice published December 11, 2003 (68 FR 69083) the reference to Colonial Trade Co., Inc. is corrected to read:

License Number: 4527F.

Name: Colonial Trade Co., Inc.

Address: 8319 Lages Lane, Baltimore, MD 21244.

Date Revoked: November 27, 2003.

Reason: Surrendered license voluntarily.

Dated: December 19, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–31764 Filed 12–23–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 7, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Steven Joseph Bonnett*, Dubuque, Iowa, to acquire voting shares of East Dubuque Bancshares, Inc., Dubuque, Iowa, and thereby indirectly acquire voting shares of East Dubuque Savings Bank, Dubuque, Iowa.

Board of Governors of the Federal Reserve System, December 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E3–00632 Filed 12–23–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule (MTOR or "Rule"). The FTC is soliciting public comments on the proposal to extend through January 31, 2007 the current PRA clearance for information collection requirements contained in the Rule. That clearance expires on January 31, 2004.

DATES: Comments must be filed by January 23, 2004.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *PRA-30-MailOrderRule@FTC.gov*, as prescribed below, and to: Records Management Center, ATTN: Desk Officer for the FTC, OMB, Room 10102 NEOB, fax#: 202/395–6566. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All comments should be captioned "Mail or Telephone Order Merchandise Trade Regulation Rule: Paperwork comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room 2207, 601 New Jersey Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On October 10, 2003, the FTC sought comment on the information collection requirements associated with MTOR, 16 CFR Part 435 (Control Number: 3084–0106). *See* 68 FR 58683. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

Comments from members of the public are invited, and may be filed with the Commission in either paper or electronic form. A public comment filed in paper form should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word), as part of or as an attachment to an e-mail message sent to the following e-mail box: *PRA-30-MailOrderRule@FTC.gov*. Regardless of the form in which they are filed, all timely comments will be considered by the Commission, and will be available (with confidential material redacted) for public inspection and copying at the Commission's principal office and on the Commission Web site at *www.ftc.gov*. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives, before placing those comments on the FTC Web site.

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[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

The Rule was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship merchandise ordered by mail on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. The Rule took effect on February 2, 1976. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. The Commission amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem (*e.g.*, Internet sales), and the Rule was then renamed the "Mail or Telephone Order Merchandise Rule."

Generally, the MTOR requires a merchant to: (1) Have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the Rule requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

Burden statement:

Estimated total annual hours burden: 3,094,000 hours (rounded up to the nearest thousand).

In its 2000 PRA notice and submission to OMB regarding the Rule, FTC staff estimated that 45,919 established companies each spend an average of 50 hours per year on compliance with the Rule, and that approximately 1,985 new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.[2] 65 FR 77031 (December 8, 2000). Thus, the total estimated hours burden was 2,753,000 hours, rounded up to the nearest thousand [(45,919 × 50 hours) + (1,985 × 230 hours)].

No provisions in the Rule have been amended or changed since staff's prior submission to OMB. Thus, the Rule's disclosure and notification requirements remain the same. Since then, however, the number of businesses engaged in the sale of merchandise by mail or by telephone has increased. Based on the U.S. Department of Commerce 2002 Statistical Abstract,[3] approximately 53,600 establishments are now subject to the Rule. The staff attributes much of this growth to brick-and-mortar retailers expanding into electronic shopping, and the continued entry of "dot.com" merchants into the retail industry.

Conversely, based on the 2002 Statistical Abstract data, staff is reducing its estimate of new businesses per year from 1,985 to 1,800. Thus, the current total of affected entities is approximately 55,400 (established and new businesses).

Accordingly, staff estimates total industry hours to comply with the MTOR is 3,094,000 hours [(53,600 × 50 hours) + (1,800 × 230 hours)].

This is a conservative estimate. Arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that compliance with the MTOR is widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute "burden" under the PRA[4] although the above estimates account for it as such.

The mail-order industry has been subject to the basic provisions of the Rule since 1976 and the telephone-order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Since staff's preceding PRA submission to OMB for the Rule, many businesses have upgraded the information management systems they need, in part, to comply with the Rule, and to track orders more effectively. These upgrades, however, were needed to deal with growing consumer demand for merchandise resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet.

Accordingly, most companies now maintain records and provide updated order information of the kind required by the Rule in their ordinary course of business. Nevertheless, staff continues to conservatively assume that the time devoted to compliance with the Rule by existing and new companies remains unchanged from its preceding estimate.

Estimated labor costs: $51,825,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to the 2002 Statistical Abstract, average payroll for "electronic shipping and mail order houses," "direct selling establishments," and "other direct selling establishments" rose from $14.41 per hour in 1999 to $15.19 per hour in 2000, an increase of $0.78 per hour. Assuming average payroll continued to increase $0.78 per hour per year, average payroll in 2002 would have reached $16.75 per hour. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for electronic shipping and mail order houses and direct selling establishments is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses in 2002 for MTOR compliance is approximately $51,825,000 (3,094,000 hours × $16.75/hr.). Relative to direct industry sales, this total is negligible.[5]

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[2] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[3] Statistical Abstract of the United States, 122nd edition, 2002, U.S. Department of Commerce, Economics and Statistics Administration, Table 1000, "Retail Trade—Establishments, Employees and Payroll: 1999 and 2000." This is the most recent edition currently available.

[4] Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[5] Projecting sales for "electronic shopping and mail-order houses," "direct selling establishments," and "other direct selling establishments" (according to the 2002 Statistical Abstract) to all merchants subject to the MTOR, staff estimates that total direct sales to consumers in 2002 to have been $124.88 billion. Thus, the labor cost for compliance by

Continued

Estimated annual non-labor cost burden: $0 or minimal.

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, *i.e.*, inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

William E. Kovacic,

General Counsel.

[FR Doc. 03–31714 Filed 12–23–03; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice regarding charges for certain disclosures.

SUMMARY: The Federal Trade Commission announces that the current $9.00 ceiling on allowable charges under Section 612(f) of the Fair Credit Reporting Act ("FCRA") will remain unchanged for 2003. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(f) on January 1 of each year, based proportionally on changes in the Consumer Price Index ("CPI"), with fractional changes rounded to the nearest fifty cents. The CPI increased 14.89 percent between September 1997, the date the FCRA amendments took effect, and September 2003. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in no change in the current maximum allowable charge of $9.00.

EFFECTIVE DATE: January 1, 2004.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act, which became effective in 1997, provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to section 609 of the Act, in those cases where the FCRA does not require the disclosure to be made without charge.[1] The law states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) goes on to state that the Federal Trade Commission ("the Commission") shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of Section 612(f) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, *i.e.*, September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2003, the Consumer Price Index for all urban consumers and all items increased by 14.89 percent—from an index value of 161.2 in September 1997 to a value of 185.2 in September 2003. An increase of 14.89 percent in the $8.00 base figure would lead to a new figure of $9.19. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the allowable charge should be $9.00.

The Commission therefore determines that the allowable charge for the year 2004 will remain unchanged at $9.00.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–31715 Filed 12–23–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 031 0097]

General Electric Company; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 20, 2004.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Joanne Lewers, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2667.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the

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existing and new businesses in 2002 would have amounted to .042% of sales.

[1] This provision, originally Section 612(a), was added to the FCRA in September 1996 and became effective in September 1997. It was relabeled Section 612(f) by Section 211(a) of the Fair and Accurate Credit Transactions Act of 1003 ("FACT Act"), Public Law 108–159, which was signed into law on December 4, 2003. Because Section 211(a) of the FACT Act provides for free annual disclosures, assessment of this charge will be less frequent, but will still apply to a consumer who has already received a free annual disclosure and doesn't otherwise qualify for an additional free disclosure. The charge will also be permitted until the free annual disclosure requirement becomes effective.

complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 18, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/12/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from General Electric Company ("GE"), which is designed to remedy the anticompetitive effects resulting from GE's acquisition of the nondestructive testing ("NDT") business group of Agfa-Gevaert N.V. ("Agfa"). Under the terms of the Consent Agreement, GE will be required to divest its Panametrics ultrasonic NDT business to R/D Tech, Inc. ("R/D Tech"). The divestiture will take place no later than twenty (20) days from the date GE consummates its acquisition of the Agfa NDT business. The Consent Agreement also includes an Order to Maintain Assets that requires GE to preserve the Panametrics ultrasonic NDT business as a viable, competitive and ongoing operation until the divestiture is achieved.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to a stock and asset purchase agreement dated January 17, 2003, and amended September 19, 2003, GE proposes to acquire Agfa's NDT business group ("Proposed Acquisition"). The total value of the Proposed Acquisition is approximately $437 million. The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the U.S. markets for the research, development, manufacture, and sale of certain types of ultrasonic NDT equipment, specifically: (1) Portable flaw detectors, (2) corrosion thickness gages, and (3) precision thickness gages.

II. The Parties

GE is a diversified technology and services company headquartered in Fairfield, CT. GE is made up of a broad range of primary business units, each with its own number of divisions. GE Aircraft Engines, the business unit that proposes to acquire Agfa's NDT assets, is the world's leading manufacturer of jet engines for military and civil aircraft. Another business unit of GE, GE Power Systems, offers NDT equipment through the NDT Division of Panametrics, Inc. With its headquarters and manufacturing operations in Waltham, MA, Panametrics researches, designs, manufactures, and sells ultrasonic NDT equipment and systems.

Headquartered in Mortsel, Belgium, Agfa is one of the world's leading imaging companies. Agfa researches, develops, produces, and sells a wide variety of NDT equipment through its Krautkramer, Pantak, Seifert, and RADView subsidiaries. Agfa offers a complete range of ultrasonic NDT equipment, including portable and stationary instruments, customized testing machines and accessories, as well as application solutions, training and service.

III. Ultrasonic NDT Equipment

GE, through its Panametrics subsidiary, and Agfa, through its Krautkramer subsidiary, are the two largest suppliers of ultrasonic NDT equipment in the United States. Ultrasonic NDT equipment includes, among other products: (1) Portable flaw detectors; (2) corrosion thickness gages; and (3) precision thickness gages. Ultrasonic NDT equipment is used to inspect the structure and tolerance of materials without damaging the materials or impairing their future usefulness. Manufacturers and end users in a variety of industries use ultrasonic NDT equipment for quality control and safety purposes. Customers of these products purchase the type of ultrasonic NDT equipment that is best-suited for the inspection they need to conduct and, because of the unique performance characteristics of each type of equipment, there is little opportunity to switch to alternative equipment. In fact, even a price increase of five to ten percent for portable flaw detectors, corrosion thickness gages or precision thickness gages would not likely cause a significant number of customers for these products to switch to any alternative product.

The United States is the appropriate geographic market for portable flaw detectors, corrosion thickness gages and precision thickness gages in which to analyze the competitive effects of the Proposed Acquisition. Because ultrasonic NDT equipment frequently needs to be calibrated and repaired to ensure accuracy, customers prefer to purchase from suppliers with local service and support. Furthermore, customers tend to purchase from companies with a proven reputation for accurate and reliable equipment, and are reluctant to switch to a new company that does not have a proven track record for providing accurate and reliable equipment. Foreign suppliers that have not established the necessary service and support networks, brand reputation, and customer acceptance in the U.S. are not effective competitors for U.S. customers and would not be able to constrain a price increase for portable flaw detectors, corrosion thickness gages or precision thickness gages in the U.S.

The U.S. markets for portable flaw detectors, corrosion thickness gages, and precision thickness gages are all highly concentrated. If the Proposed Acquisition is consummated, GE's market share would exceed 70 percent in each of the U.S. markets for: (1) Portable flaw detectors; (2) corrosion thickness gages; and (3) precision thickness gages. In each of these markets, GE and Agfa are the two largest suppliers. For many customers, GE and Agfa are the two top choices when considering a supplier of portable flaw detectors, corrosion thickness gages and precision thickness gages. By eliminating competition between these two leading suppliers, the Proposed Acquisition would allow GE to exercise market power unilaterally, thereby increasing the likelihood that purchasers of portable flaw detectors, corrosion thickness gages and precision thickness gages would be forced to pay higher prices and that innovation in these markets would decrease.

Significant impediments to new entry exist in each of the U.S. markets for portable flaw detectors, corrosion thickness gages and precision thickness gages. First, a new entrant would need to devote significant time and expense to researching and developing a product. Second, a new entrant must undertake the lengthy and costly process of establishing a track record of reliability and accuracy for its product. This track record is critical to customers because ultrasonic NDT equipment is relied upon to ensure the quality and performance of their products. Finally, a new supplier of portable flaw detectors, corrosion thickness gages or precision thickness gages must spend a great deal of time and money to develop a broad service and support network that customers depend upon. For these reasons, new entry into the markets for portable flaw detectors, corrosion thickness gages and precision thickness gages would not be accomplished in a timely manner even if prices increased substantially after the Proposed Acquisition. Additionally, new entry into the markets for portable flaw detectors, corrosion thickness gages, and precision thickness gages is unlikely to occur because the costs of entering the markets are high relative to the limited sales opportunities available to new entrants.

IV. The Consent Agreement

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the U.S. markets for the research, development, manufacture, and sale of portable flaw detectors, corrosion thickness gages, and precision thickness gages by requiring GE to divest its worldwide Panametrics ultrasonic NDT business. Pursuant to the Consent Agreement, the Panametrics ultrasonic NDT business will be divested to R/D Tech. The divestiture will take place no later than twenty (20) days from the date GE consummates its acquisition. If the Commission determines that R/D Tech is not an acceptable buyer or that the manner of the divestiture is not acceptable, GE must unwind the sale and divest the Panametrics ultrasonic NDT business to a Commission-approved buyer within ninety (90) days. Should GE fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest the Panametrics ultrasonic NDT business subject to Commission approval. The trustee will have the exclusive power and authority to accomplish the divestiture within twelve (12) months of being appointed, subject to any necessary extensions by the Commission.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems. The Commission is satisfied that R/D Tech is a well-qualified acquirer of the divested assets. R/D Tech, a private corporation headquartered in Quebec, Canada, researches, designs, manufactures and sells eddy current, acoustic emission, and phased array instruments for manual and automated NDT inspections. With U.S. offices located in Massachusetts, North Carolina, Pennsylvania, and Texas, R/D Tech has the resources, related experience and capabilities to ensure that it will become an effective competitor in the markets for portable flaw detectors, corrosion thickness gages and precision thickness gages. R/D Tech has the necessary industry expertise to replace the competition that existed prior to the Proposed Acquisition. Furthermore, R/D Tech does not pose separate competitive issues as the acquirer of the divested assets because R/D Tech does not produce, or is not a major supplier of, any of the product lines being acquired.

The Consent Agreement contains several provisions designed to ensure that the divestiture of the Panametrics NDT business is successful. For a period of one (1) year from the date the divestiture of the business is accomplished, GE is prohibited from soliciting or inducing any employees or agents of the ultrasonic NDT equipment business involved in the divestiture to terminate their employment with R/D Tech. The Consent Agreement also requires that, post-divestiture, any remaining GE employees with access to confidential business information related to the Panametrics ultrasonic NDT business sign a confidentiality agreement. Pursuant to this agreement, employees will be required to maintain confidential business information as strictly confidential, including the nondisclosure of such confidential information to other GE employees. Finally, the Decision and Order allows the Commission to appoint an Interim Monitor, if necessary, to assure that GE complies with all of its obligations and performs all of its responsibilities as required by the Consent Agreement.

The Consent Agreement also contains an Order to Maintain Assets. This will serve to protect the viability, marketability and competitiveness of the Panametrics ultrasonic NDT business until it is divested to R/D Tech. The Order to Maintain Assets became effective upon the date the Commission accepted the Consent Agreement for placement on the public record and will remain in effect until GE successfully divests the Panametrics ultrasonic NDT business according to the terms of the Decision and Order.

In order to ensure that the Commission remains informed about the status of the Panametrics ultrasonic NDT business pending divestiture, and about the efforts being made to accomplish the divestiture, the Consent Agreement requires GE to file periodic reports with the Commission until the divestiture is accomplished.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission, Chairman Muris not participating and Commissioner Harbour recused.

Donald S. Clark,

Secretary.

[FR Doc. 03–31713 Filed 12–23–03; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus Prevention

Announcement Type: New.

Funding Opportunity Number: 04039.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates:

Letter of Intent (LOI) Deadline: For conferences between the dates of April 1, 2004 to September 30, 2004, submit LOI on or before January 19, 2004.

Application Deadline: March 3, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under the Public Health Service Act, section 301(a), 42 U.S.C. 241(a), as amended and section 317(a), 42 U.S.C. 247b(a), as amended.

Purpose: The purpose of this program is to provide partial support for specific non-federal conferences in the areas of health promotion and disease prevention information/education programs. Conference support by CDC creates the appearance of CDC co-sponsorship; therefore, CDC will actively participate in the development and approval of those portions of the agenda supported by CDC funds. In addition, CDC reserves the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection, and site selection. CDC funds will not be used for portions of meetings that are not approved. This program addresses the "Healthy People 2010" focus area of HIV, and the New Initiative: Advancing HIV Prevention.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP): Strengthen the capacity of our HIV prevention partners nationwide to monitor the HIV epidemic, develop and implement effective HIV prevention interventions, and evaluate prevention programs.

Activities:

Awardee activities for this program are as follows: a. Manage all activities related to conference content (*e.g.*, objectives, topics, session design, workshops, special exhibits, speakers, fees, agenda composition, printing). Many of these items may be developed in concert with CDC personnel assigned to support the conference.

b. Provide draft copies of the agenda, objectives, and proposed related activities to the CDC Project Official for review and comment. Submit a copy of the final agenda, objectives, and proposed related activities to the CDC Grants Management Office for approval.

c. Determine and manage all promotional activities (*e.g.*, title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.

d. Manage all registration processes with participants and registrants (*e.g.*, travel, reservations, correspondence, conference materials and hand-outs, badges, and registration procedures).

e. Plan, negotiate, and manage conference site arrangements, including all audiovisual needs.

f. Develop the content and manage the activities of the conference.

g. If the proposed conference is or includes a satellite broadcast, recipient will:

(1) Provide individual, on-camera rehearsals for all presenters.

(2) Provide at least one full dress rehearsal involving the moderator, all presenters, equipment, visuals, and practice telephone calls at least one day before the actual broadcast and as close to the actual broadcast time as possible.

(3) Provide full scripting and Teleprompter use for the moderator and all presenters.

h. Collaborate with CDC staff in reporting and disseminating conference results, recommendations, and relevant HIV prevention information. This information must be made available to appropriate Federal, State, and local agencies, healthcare providers, HIV/AIDS prevention and service organizations, and the general public.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

b. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on HIV, preventive measures, and program strategies for the prevention of HIV infection.

c. Review draft agendas. The Grants Management Officer will approve or disapprove the final agenda and proposed related activities prior to release of restricted funds.

d. Assist applicant in reporting and disseminating results, recommendations, and relevant HIV prevention information.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $112,000.

Approximate Number of Awards: Five.

Approximate Average Award: $20,000.

Floor of Award Range: $15,000.

Ceiling of Award Range: $25,000.

Anticipated Award Date: April 1, 2004.

Budget Period Length: Six months.

Project Period Length: Six months.

Contingency awards will be made allowing usage of only 10 percent of the total amount to be awarded until a final full agenda, promotional materials (*i.e.*, brochures, Save-the-Date, etc.), and evaluation questions are approved by CDC. Funding will be provided to support costs associated with preparation of the agenda. The remainder of funds will be released only upon CDC approval of the final and full agenda. CDC reserves the right to terminate co-sponsorship at any time.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Technical Schools
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form. Foreign organizations are not eligible to apply.

III.2. Cost Sharing or Matching

Recipient financial participation is required for this program in accordance with this Program Announcement. CDC will not fund more than 75 percent of the total cost of the conference. At least 25 percent of the cost for the conference must be supported with non-federal funds. This factor will be included as an evaluation criterion in the review of your application.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1. Forms are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI):

CDC requires that you send a LOI if you intend to apply for this program. Your LOI will be used as a pre-application mechanism. CDC will review and score your LOI. Only the high scoring LOIs will be invited to apply for funding. CDC will invite applicants to submit their full applications within 30 days after the LOI due date. Availability of funds may limit the number of applicants who receive an invitation to submit an application. Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Single-Spaced
- Written in plain language, avoid jargon

Your LOI must contain the following information:

a. Name of organization.
b. Mailing address.
c. Telephone and fax numbers.
d. E-mail address.
e. Title of the proposed conference.
f. Location of the proposed conference (city and state).
g. Conference dates.
h. Documented need for the conference.
i. Purpose of the conference.
j. Potential contribution to HIV/AIDS Prevention.
k. Intended audience (number and description of conference attendees).
l. Population(s) who that ultimately benefit from the information shared with conference attendees (population consists of persons at risk, *i.e.*, women, men who have sex with men (MSM), injecting drug users and persons living with HIV).
m. The estimated total cost of the conference.
n. The percentage of the total cost (which must be 75 percent or less) being requested from CDC.
o. The relationship of the conference to CDC's Funding Preferences, which are listed in section "V.2 Review and Selection Process".
p. Potential contribution toward the National HIV prevention goals based on the CDC HIV Prevention Strategic Plan:
  1. Decrease new infections.
  2. Increase knowledge of serostatus.
  3. Increase linkage to prevention, care and treatment.
  4. Strengthen monitoring, capacity and evaluation.
q. Potential contribution toward the New Initiative:

Advancing HIV Prevention (See Attachment)

1. Make voluntary testing a routine part of medical care.
2. Implement new models for diagnosing HIV infections.
3. Prevent new infections by working with persons diagnosed with HIV.
4. Further decrease perinatal HIV transmission.

Information on HIV prevention methods (or strategies) can include abstinence; monogamy, *i.e.*, being faithful to a single sexual partner; or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV Prevention (monogamy, consistent and correct condom use).

If applicable, current recipients of CDC HIV funding must provide the award number and title of the funded programs.

Note: No attachments, booklets, or other documents accompanying the LOI will be considered.

Application:

You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 12 pages. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12-point unreduced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Double-spaced.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Written in plain language only. Do not use jargon or abbreviations.
- Number all pages.
- Include a complete index to the application and appendices.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

a. A project summary cover sheet that includes:
  1. Name of organization.
  2. Name of conference.
  3. Location of conference.
  4. Date(s) of conference.
  5. Target population(s) who will benefit from the information shared with conference attendees (*e.g.*, youth, women, men who have sex with men (MSM), injecting drug users and persons living with HIV).
  6. Intended audience (number and description of conference attendees).
  7. Define conference objectives.
  8. Dollar amount requested.
  9. Total conference budget.
b. Biographical sketches and job descriptions of the individuals responsible for planning and coordinating the conference.
c. A budget narrative separately identifying and justifying line items to which the requested Federal funds would be applied.
d. A draft agenda for the proposed conference.
e. Award number and title of funded programs for current recipients of CDC HIV funding. Applicants must have not submitted the same proposal for review for funding to other parts of CDC.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

For conferences during the dates of April 1, 2004 to September 30, 2004.

LOI Deadline Date: January 19, 2004.

CDC requires that you send a LOI if you intend to apply for this program. Failure to submit a LOI precludes you from submitting an application.

Application Deadline Date: March 3, 2004.

Explanation of Deadlines: LOIs and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your LOI or application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the LOI or application as having been received by the deadline.

This program announcement is the definitive guide on LOI and application submission and address. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your LOI and your application. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for the LOIs and applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget are as follows:

1. CDC funds will not be used for non-approved portions of meetings. CDC funds may be used for only those parts of the conference specifically supported by CDC as listed on the Notice of Cooperative Agreement Award. CDC funds may be used for direct costs, such as

a. Salaries.
b. Speaker fees.
c. Rental of conference-related equipment.
d. Registration fees.
e. Scholarships.
f. Transportation costs (not to exceed economy class fares) for non-federal employees.
g. Mileage for local participants.

2. CDC funds may not be used

a. To purchase equipment.
b. To pay honoraria.
c. For organizational dues.
d. To support entertainment.
e. For personal expenses not related to the conference.
f. For travel costs or payment to a Federal employee.
g. For per diem and expenses for local participants.
h. To reimburse indirect costs.
i. To purchase novelty items (*e.g.*, bags, T-shirts, hats, pens) distributed at meetings.
j. To purchase food or drinks.

3. CDC will not fund a conference after it has taken place.

Contingency awards will be made allowing usage of only 10 percent of the total amount to be awarded until a final full agenda, promotional materials (*i.e.*, brochures, Save-the-Date, *etc.*), and evaluation questions are approved by CDC. Funding will be provided to support costs associated with preparation of the agenda. The remainder of funds will be released only upon CDC approval of the final and full agenda. CDC reserves the right to terminate co-sponsorship at any time.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

LOI Submission Address: Submit the original and two hard copies of your LOI by express mail or delivery service to: Technical Information Management—PA04039, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

LOIs may not be submitted electronically.

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA04039, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Letter of Intent Criteria:

The Letter of Intent will be evaluated against the following criteria:

1. The extent to which the LOI content requirements are complete. Does the LOI address all the content requirements listed in Section IV: "Application and Submission Information?" LOI must also address one or more of the elements listed in Section V. "Application Review Information, Review and Selection Process." (20 points)
2. The extent to which the conference overall objectives are reliable, reasonable, measurable and specific. (15 points)
3. The extent to which the applicant demonstrates the need for the conference. (15 points)
4. The extent to which high risk populations will ultimately benefit from the conference. (15 points)
5. The extent to which the applicant discusses the potential contribution to HIV/AIDS prevention. (10 points)
6. The extent to which the conference will have potential contribution toward the New Initiative: Advancing HIV Prevention. (10 points)
7. The extent to which the conference will have potential contribution toward the National HIV Prevention Goals based on the CDC HIV Prevention Strategic Plan. (10 points)
8. The extent to which the overall format and organization of the LOI meets the format listed in the "Content and Form of Submission" Section of the Program Announcement. (5 points)

Application Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Note: Use the following headings on your application narrative.

a. Proposed Program and Technical Approach (30 points):

1. The extent to which the proposed conference description fits one of the Funding Preferences listed in "Section V. Application Review Information, Review and Section Process".

2. The degree to which the conference objectives are specific, measurable, realistic, and time-phased. The extent to which evaluation of the conference assesses increased knowledge and attitudes of the conference participants.

3. The relevance and effectiveness of the proposed agenda in addressing the conference topic(s).

4. The degree to which conference activities relate to the prevention of HIV.

b. Applicant Capability and Experience (25 points):

1. The adequacy of existing resources to administer the program for the proposed conference.

2. The adequacy of existing and proposed facilities for conducting conference activities.

3. The degree to which the applicant has established relationships with related government agencies, community planning groups, and related community groups. Include letters of support (maximum of five letters) from such agencies, addressing related applicant's capability and experience. Letters of support must explain how the agency will work with the applicant to plan the proposed conference. Letters that do not pertain directly to the proposed conference, and specify how the agency will work with the applicant, will not be considered.

c. Qualifications of Program Personnel (25 points):

1. The qualifications and experience of the principal staff person, and his or her ability to devote adequate time to provide effective leadership.

2. Program personnel's ability to accomplish conference objectives.

3. Key personnel's (including associate staff persons, discussion leaders, and speakers) education and expertise relative to the conference objectives.

d. Purpose of the Conference (20 points):

1. Extent to which the applicant shows that participants and presenters will have the opportunity to interact during the conference, share information on successful and unsuccessful program experiences, and develop collaborative working relationships.

2. The extent to which the applicant shows the need for the conference.

3. Does the applicant describe non-federal resources for funding at least 25 percent of the cost for the conference?

e. Budget Justification and Adequacy of the Facility (reviewed, but not scored):

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, consistency with the intended use of cooperative agreement funds, and the extent to which the applicant documents financial support from other sources.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCHSTP. Incomplete applications or applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate your LOI and your application according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect the funding decision:

Preferences for funding may be given for ensuring a balance of funded agencies that:

1. Serve populations in special settings (*e.g.*, correctional institutions, shelters for runaway youth).

2. Target under-served geographic areas with high-risk populations (*e.g.*, migrant and rural populations).

3. The United States regions and territories are represented.

4. Target people of color (especially African Americans and Hispanic women of color).

5. Provide support of comprehensive primary and secondary prevention programs for persons living with HIV.

No preference will be given to organizations that have received CDC funding in past years.

V.3. Anticipated Announcement Award Date

April 1, 2004

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will be notified by mail of the results of the application review.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–5—HIV Program Review Panel Requirements
- AR–8—Public Health System Reporting Requirements
- AR–9—Paperwork Reduction Act Requirements
- AR–10—Smoke-Free Workplace Requirements
- AR–11—Healthy People 2010
- AR–12—Lobbying Restrictions
- AR–15—Proof of Non-Profit Status
- AR–20—Conference Support

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

a. Interim performance report, no less than 90 days before the end of the budget period. The performance report must include:

(1) The cooperative agreement number.

(2) Title of the conference.

(3) Name of the principal investigator, program director or coordinator.

(4) Name of the organization that conducted the conference.

(5) A copy of the agenda.

(6) A list of individuals who participated in the formally planned sessions of the meeting.

(7) A summary of the meeting results, including a discussion of how the meeting reached the stated conference objectives.

(8) The Program Review Panel's report that all written materials have been reviewed as required.

With the prior approval of CDC, copies of proceedings or publications resulting from the conference may be substituted for the performance report, provided they contain the information requested in items one through eight above.

b. Final financial and performance reports, no more than 90 days after the end of the project period.

The reports must be sent to the Grants Management Specialist listed in "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For program technical assistance, contact: Victoria E. Saho, Project Officer, Technical Information and Communications Branch, Division of HIV/AIDS Prevention—Intervention Research and Support, National Center for HIV, STD and TB Prevention, 1600 Clifton Road, NE, M/S E49, Atlanta, GA 30333, Telephone: (404) 639–5211, E-mail: *vsaho@cdc.gov*.

For business management and budget assistance, contact: Carlos Smiley, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2722, E-mail: *csmiley1@cdc.gov*.

For business management and budget assistance in the territories contact: Cynthia Montgomery, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146, Telephone: (770) 488–2632, E-mail: *caf5@cdc.gov*.

Dated: December 18, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31830 Filed 12–22–03; 10:26 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04080]

Health Resources and Services Administration Rapid Expansion of Antiretroviral Therapy Programs for HIV-Infected Persons in Selected Countries in Africa and the Caribbean Under the President's Emergency Plan for AIDS Relief; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a cooperative agreement to rapidly expand ART for low-income HIV-infected persons in selected countries in Africa and the Caribbean under the President's Emergency Plan for AIDS Relief was published in the **Federal Register** on December 1, 2003, Volume 68, Number 230, pages 67186–67192. The notice is amended as follows: On page 67188, Column 1, Section "III.1. Eligible Applicants," please insert the following between the first and second paragraphs:

> The intent of this solicitation to support organizations that can rapidly implement ARV programs in three or more countries in which each applicant already has an operational presence. Although applications that consist of partnerships or consortia (of organizations that individually do not meet the eligibility criteria) that were formed specifically for the purpose of responding to this RFA would technically meet the eligibility requirements, the duration of the experience of partnerships or consortia (of organizations that individually do not meet the eligibility criteria) in working together will be considered in evaluating the strength of the applicants' proposal.

In addition, on page 67188, Column 2, Section "IV.1. Address to Request Application Package," please disregard the first sentence and replace it with the following:

> To apply for this funding opportunity use either application form CDC 5161–1 or CDC 0.1246(E), but we would prefer form CDC 5161–1.

Dated: December 17, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31831 Filed 12–22–03; 10:26 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES).

Times and Dates: 1 p.m.–4:45 p.m., January 21, 2004. 8 a.m.–4:30 p.m., January 22, 2004.

Place: The Hilton Garden Inn, 145 East Riverside Drive, Eagle, Idaho 83616, telephone 208–938–9600, fax 208–938–5200.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and to serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include Status of Stanford Cohen & Associates' Draft Report; INEEL Oversight Program of Food Products Grown Near the Aquifer; Presentation on Additional Food Products Grown Near the Aquifer; Overview of the Cancer Data Registry of Idaho and Minority Data; Progress Report on the National Institute for Occupational Safety and Health INEEL Cohort Data; Presentation of the Comprehensive Environmental Response, Compensation and Liability Act and the Relationship Between Maximum Contaminant Levels and Risk; Presentation on Fish as Bioconcentrators; and a Report on Other Activities at the Radiation Studies Branch. Agenda items are subject to change as priorities dictate.

For Further Information Contact: Ms. Natasha Friday, Executive Secretary, INEELHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE (E–39), Atlanta, Georgia 30333, telephone (404) 498–1800, fax (404) 498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: December 18, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–31663 Filed 12–23–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9019–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July 2003 Through September 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from July 2003 through September 2003, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that potentially may be covered under Medicare. Finally, this notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (*See* Section III of this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Karen Bowman, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–5252.

Questions concerning national coverage determinations in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning Investigational Device Exemptions items in Addendum VI may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C5–13–27, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–4633.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Dawn Willinghan, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6141.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–12–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) Furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, national coverage determinations (NCDs), and Food and Drug Administration (FDA)-approved investigational device exemptions (IDEs) published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare National Coverage Determination Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into six addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM (or CIM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information-in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access*. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html*, by using local WAIS client software, or by telnet to *swais.gpoaccess.gov*, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings.*

D. CMS's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.
- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1999. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.*) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the

FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each CMS publication are shown in Addendum III, along with the CMS publication and transmittal numbers. To help FDLs locate the materials, use the Superintendent of Documents number, plus the transmittal number. For example, to find the Hospice Manual, (CMS Pub. 21) transmittal entitled "Payment of Amounts Owed Medicare," use the Superintendent of Documents No. HE 22.8/18 and the transmittal number 69.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: December 2, 2003.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

November 2, 1999 (64 FR 59185)
December 7, 1999 (64 FR 68357)
January 10, 2000 (65 FR 1400)
May 30, 2000 (65 FR 34481)
June 28, 2002 (67 FR 43762)
September 27, 2002 (67 FR 61130)
December 27, 2002 (67 FR 79109)
March 28, 2003 (68 FR 15196)
June 27, 2003 (68 FR 38359)
September 26, 2003 (69 FR 55618)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[July 2003 through September 2003]

Transmittal No.	Manual/Subject/Publication No.
	Intermediary Manual
	Part 3—Audits, Reimbursement Program Administration **(CMS–Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1892	• Frequency of Billing
	Provider Education
1893	• Release Software
1894	• Review of Form CMS–1450 (previously Form HCFA–1450) for Inpatient and Outpatient Bills
1895	• Diabetes Outpatient Self-Management Training Services
1896	• Mammography Screening
	Diagnostic Mammography
	Diagnostic and Screening Mammography Performed With New Technologies
	Mammography Billing Charts for Billing for Computer Aided Detection Devices
	Common Working File Application of Age and Frequency Edits
	Hospital Outpatient Partial Hospitalization Services
1897	• Limitation on Payment for Services to Individuals Entitled to Benefits on the Basis of End-Stage Renal Disease Who Are Covered by Group Health Plans
	Definitions
	Retroactive Implementation
	Processing Claims
	Determining the 30-Month Coordination Period During Which Medicare May Be Secondary Payer
	Effect of Dual Entitlement
	Subsequent Periods of End-Stage Renal Disease Eligibility or Entitlement
	Amount of Secondary Medicare Payments Where Group Health Payments in Part for Items and Services
	Limitation on Right of Provider or Facility to Charge a Beneficiary
	Responsibility of Provider/Providers of Service and Renal Dialysis Facilities
	Action When Group Health Payments Erroneously Pay Primary Benefits
	Referral to Regional Offices of Cases Involving Taking Into Account Medicare Eligibility or Entitlement and Benefit Differentiation During Coordination Period
	Claimant's Right To Take Legal Action Against a Group Health Plan
	Medical Services Furnished to End-Stage Renal Disease Beneficiaries by Source Outside Group Health Plan Managed Care Plan
	Limitations on Payment for Services to Aged Beneficiaries Who are Covered by a Group Health Plan on the Basis of Current Employment Status
	Definitions
	Individuals Subject to Limitation on Payment, General
	Individuals Not Subject to Limitation on Payment, General
	Identification of Cases by Providers of Services
	Identification of Cases and Action Where There Is Indication of Possible Group Health Plan Coverage
	Action by Provider Where Medicare Is Secondary to Group Health Plan
	Limitation on Right of Provider or Facility to Charge a Beneficiary

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 2003 through September 2003]

Transmittal No.		Manual/Subject/Publication No.
		Employer Plan Denies Claim for Primary Benefit
		Referral of Cases to Regional Offices
		Recovery of Mistaken Primary Medicare Payments
		Advice to Providers, Physicians, and Beneficiaries
		Mistaken Group Health Plan Primary Payments
		Claimant's Right to Take Legal Action Against a Group Health Plan
		Special Rules for Services Furnished by Source Outside Group Health Plan
		Managed Care Health Plan
		Medicare as Secondary Payer for Disabled Individuals
1898	•	Payment for Services Furnished by a Critical Access Hospital
		Carriers Manual
		Part 3—Program Administration (CMS Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1808	•	Mandatory Assignment and Participation Program
		Participation Program
		Limiting Charge
1809	•	Durable Medical Equipment Regional Carriers—Billing Procedures Related to Advance Beneficiary Notice Upgrades
		Providing Upgrades of Durable Medical Equipment Prosthetic, Orthotics, and Supplies Without Any Extra Charge
1810	•	Payment for Physician Services Furnished to Dialysis Inpatients
		Dialysis Services (Codes 90935–90999)
1811	•	Release Software
		Contractor Testing Requirements
1812	•	Definitions of Lines 1 through 115
		Checking Reports
		Exhibits
1813	•	Data Element Requirements
		Payment to Physician for Purchased Diagnostic Tests
		Area Carriers—Physician's Services
		Payment Jurisdiction for Services Paid Under the Physician Fee Schedule and Anesthesia Services
		Claims Processing Instructions for Payment Jurisdiction for Claims Received On or After April 1, 2004
		Payment Jurisdiction for Purchased Services
		Jurisdiction for Shipboard Services
		Exceptions to Jurisdictional Payment
		Exhibit 10
		Items 14–33 Physician or Supplier Information
1814	•	Screening Mammography Examinations
		Identifying a Screening Mammography Claim and a Diagnostic Mammography Claim
		Adjudicating the Claim
		Diagnostic and Screening Mammograms Performed With New Technologies
1815	•	Repairs, Maintenance, Replacement, and Delivery
1816	•	Correct Coding Initiative
1817	•	Medicare Secondary Payment General Provisions
		Third Party Payer Pays Charges in Full
		Physician, Supplier, or Beneficiary Bills Medicare for Primary Benefits
		Multiple Insurers
		Third Party Payer Pays Primary Benefits When Not Required
		Right of Physician or Supplier to Charge Beneficiary
		General
		Definitions
		Current Employment Status
		Employer-Sponsored Managed Care Health Plan
		Nonconforming Group Health Plan
		Recovery of Mistaken Primary Medicare Payments
		Advice to Physicians/Suppliers and Beneficiaries
		Mistaken Group Health Plan Primary Payments
		Claimant's Right to Take Legal Action Against a Group Health Plan
		Special Rules for Services Furnished by Source Outside Group Health Plan
		Managed Care Health Plan
		Medicare Secondary Payer Provisions for Working Aged Individuals
		Individual Not Subject to Medicare Secondary Payer Provision
		Exception for Small Employers in Multi-Employer and Multiple Employer Group Health Plan
		Dually Entitled Individuals
		General
		Individuals Not Subject to Medicare Secondary Payer Provision
		Items and Services Furnished On or After January 1, 1987 and Before August 10, 1993 (Date of Enactment of Omnibus Budget Reconciliation Act of 1993)
1818	•	Filing the Request for Payment
1819	•	Special Requirements for Claims for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 2003 through September 2003]

Transmittal No.	Manual/Subject/Publication No.
1820	• Medicare Physician Fee Schedule Database 2004 File Layout Maintenance Process for the Medicare Physician Fee Schedule Database
	Carriers Manual Part 4—Professional Relations (CMS Pub. 14–4) (Superintendent of Documents No. HE 22.8/7–4)
29	• Provider of Services or Supplier Information
	Program Memorandum Intermediaries (CMS Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–03–057	• Medicare Program-Update to the Hospice Payment Rates, Hospice Cap, Hospice Wage Index and the Hospice for Fiscal Year 2004
A–03–058	• Change in Methodology for Determining Payment for Outliers Under the Acute Care Hospital Inpatient and Long-Term Care Hospital Prospective Payment System
A–03–059	• Addition of Patient Status Code 43, Deletion of Patient Status Codes 71 and 72, and Information on New Patient Status Code 65
A–03–060	• Medicare Program—Update to the Prospective Payment System for Home Health Agencies for Fiscal Year 2004
A–03–061	• Tentative Settlement Requirements for Cost Reports from Home Health Agencies and Skilled Nursing Facilities That Have No Reimbursement Impact
A–03–062	• Department of Veterans Affairs Claims Adjudication Services Project System Changes Needed
A–03–063	• Installation of Version 30 of the Provider Statistical and Reimbursement Reporting System
A–03–064	• X12N 837 Institutional Health Care Claim Companion Document
A–03–065	• New Common Working File Edits to Ensure Accurate Coding and Payments for Discharge and/or Transfer Policies Under the Inpatient Prospective Payment System
A–03–066	• Hospital Outpatient Prospective Payment System Implementation Instructions
A–03–067	• The Supplemental Security Income Medicare Beneficiary Data for Fiscal Year 2002 for Inpatient Prospective Payment System Hospitals
A–03–068	• Informing Beneficiaries About Which Local Medical Review Policy and/or National Coverage Determination Is Associated With Their Claim Denial
A–03–069	• October Outpatient Code Editor Specification Version (V4.3)
A–03–070	• Inclusion of the State of New York in Demonstration for Settlement of Payments for Home Health Services to Dual Eligibles and Instructions for Processing Fiscal Year 2000 Claims Under the Demonstration. Regional Home Health Intermediaries Only.
A–03–071	• Retroactive Correction of Provider Statistical and Reimbursement System Report Data Related to Mammography and Outpatient Therapy Services
A–03–072	• Instructions for Provider Credit Balance Reporting Related Activities
A–03–073	• Fiscal Year 2004 Inpatient Prospective Payment System, Long Term Care Hospital, and Other Billing Changes
A–03–074	• Inpatient Rehabilitation Facility Annual Update: Prospective Payment System Pricer Changes for Fiscal Year 2004
A–03–075	• Medicare Part A Skilled Nursing Facility Prospective Payment System Update
A–03–076	• October 2003 Update of the Hospital Outpatient Prospective Payment System
A–03–077	• October Medicare Outpatient Code Editor Specification Version 19.0 for Bills From Hospitals That Are Not Paid Under the Outpatient Prospective Payment System
A–03–078	• Reimbursement for Automated Multi-Channel Chemistry Tests for End-Stage Renal Disease Beneficiaries
A–03–079	• Installation of Version 31 of the Provider Statistical and Reimbursement Reporting System
A–03–080	• End-Stage Renal Disease Reimbursement for Automated Multi-Channel Chemistry Test
A–03–081	• Conflicting Policies With Provider Reimbursement Manual 15–1, Section 2771
A–03–082	• Clarification for Billing Under the 2300 Provider Number by Hospital-Based Renal Dialysis Facilities
	Program Memorandum Carriers (CMS Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–03–050	• Multiple Primary Payers on Part B Claims-Revision to Change Request 2050
B–03–051	• Therapy Modifier Bypass for Ambulance Claims
B–03–052	• Addition of Temporary "Q" Codes for Drugs Used in Infusion Pumps
B–03–053	• Healthcare Provider Taxonomy Codes Crosswalk
B–03–054	• Establishing and Maintaining Provider and Supplier Enrollment Data in Provider kEnrollment, Chain and Ownership System as Needed for Use By the Railroad Medicare Carrier to Pay Claims
B–03–055	• Common Working File crossover Editing for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Claims During an Inpatient Stay
B–03–056	• Durable Medical Equipment Regional Carriers—Additional Instructions for Health Insurance Portability and Accountability Act Implementatyion on National Drug Codes and the National Council of Prescription Drug Programs
B–03–057	• Additional Guidelines for Implementing the National Council for Prescription Drug Program Format
B–03–058	• Procedures for the Reconciliation of Total Funds Expended for Multi-Carriers Systems Medicare Contractors Used in the Preparation of Form CMS–1522, Monthly Contractor Financial Report

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 2003 through September 2003]

Transmittal No.		Manual/Subject/Publication No.
B–03–059	•	Minimum Number of Pricing Files That Must Be Maintained Online for Medicare Single Drug Pricer
B–03–060	•	Expansion of Beneficiary History and Claims in Process Files in the Voucher Insurance Plan Viable Medicare System. Phase 2—Adjudication Claims in Process File Expansion
B–03–061	•	Durable Medical Equipment Regional Carriers National Council of Prescription of Drug Programs Crosswalk Requirements
B–03–062	•	Procedures for Non-Medicare Secondary Payer Overpayments With Original Balance Less than $10
B–03–063	•	Healthcare Provider Taxonomy Codes Crosswalk
B–03–064	•	Clarification—ICD–9 Coding
B–03–065	•	Changes to Code List for Therapy Services
B–03–066	•	Durable Medical Equipment Regional Carriers—Eliminate Combined Working File Edit for Cancer Diagnosis for National Drug Codes
B–03–067	•	National Council for Prescription Drug Programs Batch Transmittal Standard 1.1 Billing Request Companion Document
B–03–068	•	2004 Annual Update for Skilled Nursing Facility Consolidated Billing for the Common Working File and Medicare Carriers
B–03–069	•	Schedule for Completing the Calendar Year 2004 Fee Schedule Updates and the Participating Physician Enrollment Procedures

Program Memorandum
Intermediaries/Carriers
(CMS Pub. 60A/B)
(Superintendent of Documents No. HE 22.8/6–5)

Transmittal No.		Manual/Subject/Publication No.
AB–03–094	•	October 2003 Quarterly Updates for Skilled Nursing Facility Consolidated Billing
AB–03–095	•	Remittance Advice Remark and Reason Code Update
AB–03–096	•	Quarterly Update of Healthcare Common Procedure Coding System Codes Used for Home Health Consolidated Billing Enforcement
AB–03–097	•	Delay in Implementation of Outpatient Therapy Caps to September 1, 2003
AB–03–098	•	Medicare Summary Notice Implementation for Contractors Using Arkansas Part A Standard System and HCFA Part B Standard System
AB–03–099	•	Instructions for Fiscal Intermediary Standard System and Multi-Carriers System Healthcare Integrated General Ledger Accounting System Changes
AB–03–100	•	October Quarterly Update for 2003 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule
AB–03–101	•	Clarification for CR 2562: Collection of Fee-for-Service Payments Made During Periods of Managed Care Enrollment
AB–03–102	•	Clarifications Regarding Coverage of Hyperbaric Oxygen Therapy for the Treatment of Diabetic Wounds of the Lower Extremities
AB–03–103	•	Medicare Secondary Payer Debt Referral and Write-Off Closed Instructions
AB–03–104	•	Changes to the Laboratory National Coverage Determination Edit Software for October 1, 2003
AB–03–105	•	Harkin Grantees: Complaint Tracking System and Aggregate Reports
AB–03–106	•	Third Clarification of Medicare Policy Regarding the Implementation of the Ambulance Fee Schedule
AB–03–107	•	Federal Bankruptcy/State Insurer Liquidation Actions and Medicare Secondary Payer Debt
AB–03–108	•	Medicare Secondary Payer—(1) Use of Inter-Contractor Notices and the Common Working File for the Development of the Medicare Secondary Payer Conditional Payment Amount for Liability, No-Fault, Worker's Compensation, and Federal Tort Claims Act Cases; (2) Reminder Regarding Termination Updates to the Common Working File; (3) Reminder Regarding Savings Information to Non-Lead Contractors
AB–03–109	•	Discontinue Use of the Healthcare Integrity and Protection Data Bank for Provider Enrollment Only
AB–03–110	•	Adjustment to the Rural Mileage Payment Rate for Ground Ambulance Services
AB–03–111	•	Shared System Maintainer Hours for Resolution of Problems Detected During Health Insurance Portability and Accountability Act Transaction Release Testing
AB–03–112	•	Transmittal AB–03–112 Has Been Rescinded
AB–03–113	•	Update of Codes in the Program Integrity Management Reporting System and the Contractor Administrative Cost and Financial Management System
AB–03–114	•	Claims Processing and Payment of Incomplete Screening Colonoscopies
AB–03–115	•	Payment Denial for Medicare Services Furnished to Alien Beneficiaries Who Are Not Lawfully Present in the United States
AB–03–116	•	Update of Rates and Wage Index for Ambulatory Surgical Center Payment Effective October 1, 2003
AB–03–117	•	Contractor Guidance for Connection to the Medicare Data Communication Network for Real-time Eligibility Inquiries (270/271) Via a Route Other Than Insurance Value-Added Network Services
AB–03–118	•	Cease Further Work on the Eligibility File-Based Standard Trading Partner Agreement for the Purpose of Coordination of Benefits
AB–03–119	•	Final Update to the 2003 Medicare Physician Fee Schedule Database
AB–03–120	•	Medicare Secondary Payer—(1) Copy of Recovery Demand Packages Resulting From a Data Match or Non-Data Match Group Health Plan Recovery Action to Insurers/Third Party Administrators of Employers; (2) Documentation Required When an Insurer/Third Party Administrator Wishes to Resolve a Debt on Behalf of Its Client, an Employer Debtor
AB–03–121	•	Requirement to Cross Claims Over to Multiple Supplemental Insurers
AB–03–122	•	Notice of Interest Rate for Medicare Overpayments and Underpayments
AB–03–123	•	Scheduled Release for October Updates to Software Programs and Pricing/Coding Files
AB–03–124	•	Standard System Automation of the Notice of Change to Medicare Secondary Payer Auxiliary File Process
AB–03–125	•	Consolidation of Claims Cross-Over Process
AB–03–126	•	Change in Type of Service for L04080
AB–03–127	•	Payment for Fecal Leukocyte Examination Under Clinical Laboratory Improvement Amendments of 1988 Certificate for Provider-Performed Microscopy Procedures During Calendar Year 2003

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 2003 through September 2003]

Transmittal No.		Manual/Subject/Publication No.
AB–03–128	•	Clarification to Transmittal AB–03–044 (CR 2611), Addition of New Temporary "K" Codes
AB–03–129	•	Addition of Three New International Classifications of Diseases, Ninth Revision, Clinical Modification Diagnosis Codes To Be Effective as Part of the October 1, 2003, International Classification of Diseases, Clinical Update
AB–03–130	•	Levocarnitine for Use in the Treatment of Carnitine Deficiency in End-Stage Renal Disease Patients
AB–03–131	•	Update to Health Care Claims Status Category Codes and Health Care Claim Status Codes for Use With the Health Care Claim Status Request and Response ASCX12N 276/277
AB–03–132	•	Provider Education Article: Guidelines for Medicare Part B Laboratory Testing
AB–03–133	•	Managing Medicare Appeals Workloads in Fiscal Year 2004
AB–03–134	•	Modifier and Condition Code for Providers to Use When Billing for Implantable Automatic Defibrillators for Beneficiaries in Medicare+Choice Plan
AB–03–135	•	Darbepoetin Alfa (Trade Name Aranesp) and Epoetin Alfa (Trade Name Epogen) for Treatment of Anemia in End-Stage Renal Disease Patients on Dialysis
AB–03–136	•	Correction to Quarterly Update of Health Care Common Procedure Coding System Codes Used for Home Health Consolidated Billing Enforcement
AB–03–137	•	Update of Home Care Common Procedure Coding System Codes and Payment for Ambulatory Surgical Centers and File Names, Descriptions and Instructions for Retrieving the 2004 Ambulatory Surgical Center Home Health Care Common Procedure Coding System Additions, Deletions, and Master Listing
AB–03–138	•	Modification of Medicare Policy for Erythropoietin
AB–03–139	•	Appeals Quality Improvement and Data Analysis Activities
AB–03–140	•	2004 Healthcare Common Procedure Coding System Annual Update Reminder
AB–03–141	•	CMS Companion Document for the Accredited Standards Committee X12N276/277 Health Care Claim Status Request and Response
AB–03–142	•	The Coordination of Benefits Contractor Will Post the Lead Medicare Contractor in the Group Name Field on the Common Working File and Expansion of Lead Contractor Viewing in the Electronic Correspondence Referral System
AB–03–143	•	Implementation of Certain Initial Determination and Appeal Provisions Within Section 521 of the Medicare, Medicaid and State Child Health Insurance Program Benefits Improvement and Protection Act of 2000
AB–03–144	•	Establishing a Uniform Process for the Preparation and Mailing of Case Files From the Contractor to the Office of Hearings and Appeals of the Social Security Administration
AB–03–145	•	Instructions for Contractors Other Than the Religious Nonmedical Health Care Institution Specialty Intermediary Regarding Claims For Beneficiaries With Religious Nonmedical Health Care Institution Elections
AB–03–146	•	Reminder Notice of the Implementation of the Ambulance Transition Schedule
AB–03–147	•	Core Elements and Required Statements for a Valid Privacy Authorization
		State Operations Manual **(CMS Pub. 7)** **(Superintendent of Documents No. HE 22.8/12)**
31	•	Regional Offices Assignment of Provider and Supplier Identification Number
		Hospice Manual **(CMS Pub. 10)** **(Superintendent of Documents No. HE 22.8/2)**
806	•	Hospital Manual, Credit Balance Reporting Requirements—General Provisions Payment of Amounts Owed Medicare Medicare Credit Balance Reporting Certification Page
807	•	Payment for Services Furnished by a Critical Access Hospital
		Home Health Agency Manual **(CMS Pub. 11)** **(Superintendent of Documents No. HE 33.8/5)**
305	•	Diabetes Outpatient Self-Management Training
306	•	Home Health Agency Manual, Credit Balance Reporting Requirements—General Provisions Completing the Centers for Medicare & Medicaid Services—838 Payment of Amounts Owed Medicare Medicare Credit Balance Report Certification Page
		Skilled Nursing Facility Manual **(CMS Pub. 12)** **(Superintendent of Documents No. HE 22.8/3)**
377	•	Credit Balance Reporting Requirements—General Provisions Payment of Amounts Owed Medicare Medicare Credit Balance Report Certification Page

Addendum III.—Medicare and Medicaid Manual Instructions—Continued

[July 2003 through September 2003]

Transmittal No.	Manual/Subject/Publication No.
	Coverage Issues Manual **(CMS Pub. 6)** **(Superintendent of Documents No. HE 22.8/14)**
173	• Implantable Automatic Defibrillators
	Peer Review Organization (CMS Pub. 19) **(Superintendent of Documents No. 22.8/8–15)**
91	• Case Review and Health Care Quality Improvement Program—has been moved to Corresponding Internet-Only Manual chapter in Pub. 100–10, Medicare Quality Improvement Organizations Manual, which can be found at *http://www.cms.hhs.gov/manuals.*
92	• Denials, Reconsiderations and Appeals—has been moved to corresponding Internet-Only Manual chapters in Pub. 100–10, Medicare Quality Improvement Organization Manual, which can be found at *http://www.cms.hhs.gov/manuals.*
93	• Agreements—has been moved to Corresponding Internet-Only Manual chapter in Pub. 100–10, Medicare Quality Improvement Organization Manual, which can be found at *http://www.cms.hhs.gov/manuals.*
94	• Confidentiality and Disclosure—has been moved to the Corresponding Internet-Only Manual, which can be found at *http://www.cms.hhs.gov/manuals.*
95	• Outreach Activities—has been moved to corresponding Internet-Only Manual chapters in Pub. 100–10, Medicare Quality Improvement Organizations Manual, which can be found at *http://www.cms.hhs.gov/manuals.*
96	• Payment Error Prevention Program—has been moved to corresponding Internet-Only Manual chapter in Pub.100–10, Medicare Improvement Organizations Manual, which can be found at *http://www.cms.hhs.gov/manuals.*
97	• Beneficiary Complaint Review—has been moved to corresponding Internet-Only Manual chapter in Pub. 100–10, Medicare Quality Improvement Organizations Manual, which can be found at *http://www.cms.hhs.gov/manuals.*
98	• Data Management—has been moved to corresponding Internet-Only Manual chapter in Pub. 100–10, Medicare Quality Improvement Organizations Manual, which can be found at *http://www.cms.hhs.gov/manuals.*
	Hospice Manual **(CMS Pub. 21)** **(Superintendent of Documents No. HE 22.8/18)**
69	• Hospice Manual, Credit Balance Reporting Requirements—General Provisions Completing the Centers for Medicare & Medicaid Services—838 Payment of Amounts Owed Medicare • Medicare Credit Balance Report Certification Page
	Outpatient Physical Therapy and Comprehensive **Outpatient Rehabilitation Facility Manual** **(CMS Pub. 9)** **(Superintendent of Documents No. HE 22. 8/9)**
18	• Outpatient Physical Therapy/Comprehensive Outpatient Rehabilitation Facility/Community Mental Health/Clinic Manual, Credit Balance Reporting Requirements General Provisions Completing the Centers for Medicare & Medicaid Services—838 Payment of Amounts Owed Medicare Medicare Credit Balance Reporting Certification Page
	Rural Health Clinic Manual & Federally Qualified **Health Centers Manual** **(CMS Pub. 27)** **(Superintendent of Documents No. He 22.8/19:985)**
39	• Rural Health Clinic and Federally Qualified Health Center Manual, Credit Balance Reporting—General Provisions Completing the CMS–838 Payment of Amounts Owed Medicare Medicare Credit Balance Reporting Certification Page
	Rural Dialysis Facility Manual
	(Non-Hospital Operated) **CMS Pub. 29)** **(Superintendent of Documents No. 22.8/13)**
96	• Renal Health Clinic Manual, Credit Balance Reporting Requirement—General Provisions Completing the Centers for Medicare & Medicaid Services–838 Payment of Amounts Owed Medicare Medicare Credit Balance Report Certification Page

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 2003 through September 2003]

Transmittal No.	Manual/Subject/Publication No.
	Provider Reimbursement Manual
	Part 2 Provider Cost Reporting Forms and Instructions **Chapter 11/Form CMS 22.8/4** **(CMS Pub. 15–2–11)**
5	• Reimbursement Information
	ESRD Network Organizations Manual
	(CMS Pub. 81) **(Superintendent of Documents No. HE 22.9/4)**
15	• Background and Responsibilities Administration Confidentiality and Disclosure Information Management Quality Improvement Community Information and Resource Sanctions and End-Stage Renal Disease Grievances Publication Policy Information Collection
	Medicare Claims Processing Manual
	(CMS Pub. 100–04)
3	• New Effective Data for CR2112 (Revisions to the Outpatient Prospective Payment System Pricer Software and Outpatient Code Editor for Blood Deductible and Technician)
	Financial Management
	(CMS Pub. 100–06)
19	• Intermediary Claims Accounts Receivable
	Medicare Program Integrity
	(CMS Pub. 100–08)
44	• When to Develop New/Revised Local Medical Review Policy Coverage Provisions in Local Medical Review Policy Contractor Medical Director Local Medical Review Policy Development Process Final Local Medical Review Policy Web Site Requirements
45	• Focused Medical Review Activity Report
46	• Prepayment Edits
47	• Data Analysis Centers for Medicare & Medicaid Services Mandated Edits
48	• Written Orders Prior to Delivery
49	• Denial Notices
50	• Instructions for Processing Advance Determination of Medicare Coverage Request
51	• Update of Codes in the Program Integrity Management Reporting System and the Contractor Administrative Cost and Financial Management System
	Quality Improvement Organization
	(CMS Pub. 100–10)
2	• Introduction Referrals Quality Review Diagnostic Related Group Limitation on Liability Determinations Third-Level Physician Review Use of the Physician Reviewer Assessment Format Review Setting Requesting Medical Records/Reviewing Documentation Providing Opportunity for Discussion Adhering to Review Timeframes Monitoring Hospitals' Physician Acknowledgement Statements
3	• Introduction Quality Improvement Project Process Developing and Conducting Interventions Documenting and Disseminating Results Centers for Medicare & Medicaid Services Project Support and Guidance Activities

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 2003 through September 2003]

Transmittal No.		Manual/Subject/Publication No.
		Related Activities Through Quality Improvement Organizations, Carrier, Intermediary, and End-Stage Renal Diseases Network Cooperation
4	•	Beneficiary Request for Review of Hospital-Issued Notice of Non-Coverage by a Quality Improvement Organization
5	•	Intermediary/Carrier Memorandum of Agreement Specifications
		Introduction
		Memorandum of Agreement With State Agencies Responsible for Licensing/Certification of Providers/Practitioners
6	•	Statutory and Regulatory Requirements
		General Requirements
		Confidential Information
		Disclosure of Confidential Quality Improvement Organization Information to Officials and Agencies
		Disclosure of Quality Improvement Organization Information for Research Purposes
		Disclosure of Quality Improvement Organization Sanction Information
		Re-disclosure of Quality Improvement Organization Information
7	•	Beneficiary Helpline Language
		Beneficiary Complaints
		Physician/Provider Meeting Activities
		Quality Improvement Organization/Intermediary/Carriers Coordination Activities
		Background
		Confidentiality Requirements
		Report Requirements
		Distribution Requirements
		Publications Policy
		Definition
		Requirements
		Disagreements
		Information Collection Policy
		Centers for Medicare & Medicaid Services Office of Clinical Standards and Quality Requirement
		Statutory and Regulatory Requirements—Office of Management & Budget
		Centers for Medicare & Medicaid Services, Information Collection
		Approval Process
		Additional Consideration
8	•	Introduction
		Review Responsibilities
		Monitoring Hospital Payment Patterns and Developing
		Collaborating With Provider and Practitioner Groups
		Collaborating Efforts With Federal and State Agencies and Other Medicare Contractors
9	•	Scope of Review
		Complaints That Do Not Meet Statutory Requirements
		Referral
		Review Process
		Notice of Disclosure
		Final Response to Complaints
		Disclosure of Quality Review Information to Complaints
		Corrective Actions
		Coordination With Other Entities
		Data Analysis and Reporting Requirements
10	•	Authority
		Purpose of Quality Improvement Organization Review
		Quality Improvement Organization Responsibilities
		Centers for Medicare & Medicaid Services' Role
		Health Care Quality Improvement Program
		Hospital Payment Monitoring Program
		End Stage Renal Disease (CMS Pub. 100–14)
1	•	Forward
		Purpose of the Network Manual
		Statutes and Regulations
		End-Stage Renal Disease Network Organization's Manual Revisions
		Acronyms and Glossary
		Purpose of End-Stage Renal Disease Network Organization
		Requirements for End-Stage Renal Disease Network Organization
		Responsibilities of End-Stage Renal Disease Network Organization
		Health Care Quality Improvement Program
		Goals
		Network Organization's Role in Health Care Quality Improvement Program
2	•	Forward
		Purpose of the Network Manual
		Statutes and Regulations

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 2003 through September 2003]

Transmittal No.	Manual/Subject/Publication No.
	Revision to the End-Stage Renal Disease Organizations Manual Purpose of End-Stage Renal Disease Network Organization Requirements for End-Stage Renal Disease Network Organizations Responsibilities of End-Stage Renal Disease Network Organizations Goals Network Organization's Role in Health Care Quality Improvement Program
3	• Organizational Structure Establishing the Network Computer Board of Directors Other Committees Network Staff Required Administrative Reports/Activities Quarterly Progress and Status Reports Annual Report Semi-Annual Report of Network Operating Costs New End-Stage Renal Disease Patient Orientation Package Activities Internal Quality Control Program Internal Quality Control Program Requirements
	Managed Care Manual (CMS Pub. 100–16)
26	• Alternate Employer Group Enrollment Election Optional Employer Group Medicare+Choice Enrollment Election Request Submitted via Internet Request Signature and Data Effective Dates Notice Requirements Optional Employer Group Medicare+Choice Disenrollment Election Medigap Guaranteed Issue Notification Requirements General Rule Effective Date Researching and Acting on a Change of Address Clarified the Notice Requirements for Out of Area Permanent
27	• Noncontracted Provider Appeals Storage of Appeal Case Files by the Independent Review Entity Representative Filing on Behalf of the Enrollee Storage of Hearing Files
28	• Streamlined Marketing Review Process Introduction Marketing Review Process Guidelines for Advertising Material Guidelines for Advertising (Pre-Enrollment) Material Guidelines for Beneficiary Notification Materials Model Annual Notice of Change General Guidance on Dual Eligibility Guideline for Outreach Program Submission Requirements Centers for Medicare & Medicaid Services' Review/Approval Process Model Direct Mail Letter Summary of Benefits for Medicare+Choice Organizations Referral Programs Allowable Actions for Medicare+Choice Organizations Specific Guidance About the Use of Independent Insurance Agents Answers to Frequently Asked Questions About Promotional Marketing of Multiple Lines of Business
29	• Introduction Quality Assessment and Performance Improvement Program Administration of the Quality Assessment and Performance Improvement Program Medicare+Choice Organizations Using Physician Incentive Plans Health Information System Quality Assessment and Performance Improvement Centers for Medicare & Medicaid Services' Directed Special Projects Reporting Time Frames Communication Process Quality Assessment and Performance Improvement Process for Centers for Medicare & Medicaid Services' Multi-Year Quality Assessment and Performance Improvement Program Project Approvals Evaluation of Quality Assessment and Performance Improvement Program Projects The Medicare+Choice Deeming Program Terminology General Rule

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 2003 through September 2003]

Transmittal No.	Manual/Subject/Publication No.
	Obligations of Deemed Medicare and Medicaid Organizations
	Oversight of Accrediting Organizations
	Application Requirements
	Reporting Requirements
	Informal Hearing Procedures
30	• Reasonable Cost-Based Payments—General
	Reasonable Cost Payments
	Bill Processing
	Principles of Payments
	Budget and Enrollment Forecast
	Interim Per Capita Rate
	Interim Payment for Health Care Prepayment Plans
	Electronic Transfer of Funds
	Payment Report
	Interim and Final Cost and Enrollment Report
	Adjustment of Payments
	Final Cost Report
	Final Settlement Process for Medicare Health Care Prepayment Plans
	Final Settlement Payment for Medicare Health Care Prepayment Plans
	Recovery of Overpayment
	Interest Charges for Medicare Overpayments/Underpayments
	The Basic Rules
	Definition of Final Determination
	Rate of Interest
	Accrual of Interest
	Waiver of Interest
	Rules Applicable to Partial Payments
	Exception to Applicability
	Nonallowable Interest Cost
	Centers for Medicare & Medicaid Services' General Payment Principles
	Medicare Payments to Health Care Prepayment Plans
	Prudent Buyer Principle
	Allowable Costs
	Costs Not Reimbursable Directly to the Health Care Prepayment Plans
	Deductible and Coinsurance
	Hospice Care Costs
	Medicare as Secondary Payer
31	• Overview of Enrollment and Payment Process
	Purpose of the Chapter
	Medicare+Choice Organization Data Processing Responsibilities
	Centers for Medicare & Medicaid Services' Group Health Plan System
	Enrollment/Disenrollment Requirements and Effective Dates
	General
	Enrollments
	Cost-Based Medicare+Choice Organizations Only
	Medicare+Choice Organizations Only
	Disenrollments
	Cost-Based Medicare+Choice Organizations Only
	Medicare+Choice Organizations Only
	Cost-Based Medicare+Choice Organizations Only—Employer Group Health Plan
	Retroactive Enrollment
	Medicare Membership Information
	The Centers for Medicare & Medicaid Services' Medicare+Choice
	Organizations Only Interface Submitting Medicare Membership
	Information to Centers for Medicare & Medicaid Services
	Submission of Enrollment/Disenrollment Transaction Records
	Submission of Correction Transaction Records
	Health Insurance Claim Number
	Transaction Type Code and the Prior Commercial Indicator
	Transaction Type Codes
	Prior Commercial Months Field
	Special Status Beneficiaries—Medicare+Choice Organizations
	Special Status Beneficiaries
	Special Status—Hospice
	Special Status—End-Stage Renal Disease
	Special Status—Institutionalized
	Special Status—Medicaid/Medical Assistance Only
	Special Status—Working Aged
	When to Submit "Special Status" Information (Medicare+Choice Organizations Only)
	Other Medicare Membership Information

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued
[July 2003 through September 2003]

Transmittal No.	Manual/Subject/Publication No.
	Risk Adjustment Payment
	Bonus Payment
	Extra Payment in Recognition of Quality Congestive Heart Failure
	Outpatient Care
	Benefit Stabilization Fund
	Electronic Submission of Membership Records to Centers for Medicare & Medicaid Services
	Timeliness Requirements
	Record Submission Schedule
	Sending the Transaction File to Centers for Medicare & Medicaid Services
	Electronic Data Transfer
	Centers for Medicare & Medicaid Services' Data Center Access
	Data Processing Vendor
	Receiving Medicare Membership Information Form Centers for Medicare & Medicaid Services
	General
	Centers for Medicare & Medicaid Services' Transaction Reply/Monthly Activity Report
	Transaction Reply Field Information
	Plan Payment Report
	Demographic Report—Medicare+Choice Organizations Only
	Medicare Fee-For-Service Bill Itemization and Summary Report
	Monthly Membership Report
	Bonus Payment Report
	Working Aged Transaction Status Report
	Retroactive Payment Adjustment Policy
	Standard Operating Procedures for State and County Code Adjustments
	Standard Operating Procedures for Processing of Institutional Adjustments
	Standard Operating Procedures for Medicaid Retroactive Adjustments
	Standard Operating Procedures for End-Stage Renal Disease Retroactive Adjustments
	Processing of Working Aged Retroactive Adjustments
	Standard Operating Procedures for Retroactive Adjustment Plan Elections
	Centers for Medicare & Medicaid Services, Social Security Administration, and Customer Service Center Disenrollments
	General
	Medicare Customer Service Center Disenrollments
	Centers for Medicare & Medicaid Services' Disenrollments
	Coordination With the Medicare Fee-For-Services Program
	Pro-Rate Deductible
	Duplicate Payment Prevention by Cost-Based Medicare+Choice Organizations

Addendum IV—Regulation Documents Published in the Federal Register [July 2003 Through September 2003]

Publication date	FR Vol. 68 page No.	CFR parts affected	File code	Title of regulation
July 2, 2003	39764		CMS–1473–NC	Medicare Program; Home Health Prospective Payment System Rate Update for FY 2004.
July 15, 2003	41861		OFR Correction	Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Annual Payment Rate Updates and Policy Changes.
July 25, 2003	44091		CMS–3117–N	Medicare Program; Meeting of the Medicare Coverage Advisory Committee September 9, 2003.
July 25, 2003	44089		CMS–1260–N	Medicare Program; Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—August 22, 2003.
July 25, 2003	44088		CMS–3124–WN	Medicare Program; Withdrawal of Medicare Coverage of Multiple-Seizure Electroconvulsive Therapy, Electrodiagnostic Sensory Nerve Conduction Threshold Testing, and Noncontact Normothermic Wound Therapy.
July 25, 2003	44000	42 CFR Part 424	CMS–1185–P	Medicare Program; Elimination of Statement of Intent Procedures for Filing Medicare Claims.
July 25, 2003	43998	42 CFR Part 406	CMS–4018–P	Medicare Program; Continuation of Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity.

Publication date	FR Vol. 68 page No.	CFR parts affected	File code	Title of regulation
July 25, 2003	43995	42 CFR Parts 405 and 411.	CMS–6014–P	Medicare Program; Interest Calculation.
July 25, 2003	43940	42 CFR Parts 411 and 489.	CMS–1475–FC	Medicare Program; Third Party Liability Insurance Regulations.
August 1, 2003	45674	42 CFR Part 412	CMS–1474–F	Medicare Program; Changes to the Inpatient Rehabilitation Facility Prospective Payment System and Fiscal Year 2004 Rates.
August 1, 2003	45346	42 CFR Parts 412 and 413.	CMS–1470–F	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates.
August 4, 2003	46036	42 CFR Parts 409, 411, 413, 440, 483, 488, and 489.	CMS–1469–F	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update.
August 11, 2003	47637	42 CFR Part 412	CMS–1470–F	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates.
August 12, 2003	47966	42 CFR Parts 410 and 419.	CMS–1471–P	Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates.
August 15, 2003	49030	42 CFR Parts 410 and 414.	CMS–1476–P	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004.
August 15, 2003	48805	42 CFR Part 424	CMS–0008–IFC	Medicare Program; Electronic Submission of Medicare Claims.
August 20, 2003	50428	42 CFR Part 405	CMS–1229–P	Medicare Program; Payment Reform for Part B Drugs.
August 22, 2003	50840	42 CFR Parts 409, 417, and 422.	CMS–4041–F	Medicare Program; Modifications to Managed Care Rules.
August 22, 2003	50794		CMS–1236–N	Medicare Program; September 15 and 16, 2003, Meeting of the Practicing Physicians Advisory Council and Request for Nominations.
August 22, 2003	50793		CMS–4053–N	Medicare Program: Meeting of the Advisory Panel on Medicare Education—September 18, 2003.
August 22, 2003	50790		CMS–2136–FN	Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2002.
August 22, 2003	50784		CMS–2166–N	State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2004.
August 22, 2003	50735	42 CFR Part 414	CMS–1167–P	Medicare Program; Payment for Respiratory Assist Devices With Bi-level Capability and a Back-up Rate.
August 22, 2003	50722		CMS–2226–CN	Medicare, Medicaid, and CLIA Programs; Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications; Correction.
August 22, 2003	50717	42 CFR Part 413	CMS–1199–F	Medicare Program; Electronic Submission of Cost Reports.
August 29, 2003	51912	42 CFR Part 447	CMS–2175–FC	Medicaid Program; Time Limitation on Price Recalculations and Recordkeeping Requirements Under the Drug Rebate Program.
September 9, 2003	53266	42 CFR Part 412	CMS–1262–P	Medicare Program; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility.
September 9, 2003	53222	42 CFR Parts 413, 482, and 489.	CMS–1063–F	Medicare Program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals With Emergency Medical Conditions.
September 26, 2003	55634		CMS–3062–N	Medicare Program; Revised Process for Making Medicare National Coverage Determinations.
September 26, 2003	55618		CMS–9018–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April 2003 Through June 2003.
September 26, 2003	55616		CMS–2182–FN	Medicare and Medicaid Programs; Reapproval of the Community Health Accreditation Program (CHAP) for Deeming Authority for Hospices.

Publication date	FR Vol. 68 page No.	CFR parts affected	File code	Title of regulation
September 26, 2003	55566	42 CFR Parts 410 and 414.	CMS–1476–CN	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004; Correction.
September 26, 2003	55528	42 CFR Parts 483 and 488.	CMS–2131–F	Medicare and Medicaid Programs; Requirements for Paid Feeding Assistants in Long Term Care Facilities.
September 26, 2003	55527	42 CFR Part 447	CMS–2175–CN	Medicaid Program; Time Limitation on Price Recalculations and Recordkeeping Requirements Under the Drug Rebate Program; Correction
September 29, 2003	55882	42 CFR Parts 409, 411, 413, 440, 483, 488, and 489.	CMS–1469–CN	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction.
September 30, 2003	56478		CMS–1233–N	Medicare Program; Hospice Wage Index for Fiscal Year 2004.
September 30, 2003	56383		CMS–1473–NC OFR Correction.	Medicare Program; Home Health Prospective Payment System Rate Update for FY 2004; Correction.

Addendum V—National Coverage Determinations [July 2003 Through September 2003]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM (or CIM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://cms.hhs.gov/coverage.*

National Coverage Decisions [July 2003 Through September 2003]

COVERAGE ISSUES MANUAL (CIM) (CMS PUB. 06)

CIM section	Title	Issue date	Effective date
35–85.1	Implantable Automatic Defibrillators	08/22/03 09/22/03 (correction)	10/01/03 10/01/03

PROGRAM MEMORANDUM (PM)

PM No.	Title	Issue date	Effective date
AB–03–104	Changes to the Laboratory NCD Edit Software For 10/03	07/25/03	10/01/03

FEDERAL REGISTER PUBLICATIONS

Title	Publication date	Effective date
CMS–3062–N—Revised Process for Making National Coverage Determinations	09/26/03	N/A

Addendum VI—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist CMS, the Food and Drug Administration (FDA) assigns each device with an FDA-approved investigational device exemption (IDE) to one of two categories. Category A refers to experimental/investigational device exemptions, and Category B refers to nonexperimental/investigational device exemptions. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number and category (A or B) for the second quarter, July through September 2003.

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 3RD QUARTER 2003

IDE	Category
G020202	B
G020312	B
G020316	B
G030027	B
G030031	B
G030040	B
G030059	B
G030066	B
G030100	B
G030121	B
G030131	B
G030133	B
G030134	B
G030135	B
G030136	B

INVESTIGATIONAL DEVICE EXEMPTION NUMBERS, 3RD QUARTER 2003—Continued

IDE	Category
G030137	B
G030138	B
G030141	B
G030143	B
G030144	B
G030145	B
G030146	B
G030147	B
G030151	B
G030159	B
G030162	B
G030165	B
G030167	B
G030169	B
G030170	B
G030172	B
G030173	B
G030174	B
G030177	B

Addendum VII—Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB control Nos.	Approved CFR sections in Title 42, Title 45, and Title 20 (**Note:** sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
0938–0008	414.40, 424.32, 424.44
0938–0022	413.20, 413.24, 413.106
0938–0023	424.103
0938–0025	406.28, 407.27
0938–0027	486.100–486.110
0938–0033	405.807
0938–0034	405.821
0938–0035	407.40
0938–0037	413.20, 413.24
0938–0041	408.6
0938–0042	410.40, 424.124
0938–0045	405.711
0938–0046	405.2133
0938–0050	413.20, 413.24
0938–0062	431.151, 435.1009, 440.220, 440.250, 442.1, 442.10–442.16, 442.30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, 498.3–498.5
0938–0065	485.701–485.729
0938–0074	491.1–491.11
0938–0080	406.7, 406.13
0938–0086	420.200–420.206, 455.100–455.106
0938–0101	430.30
0938–0102	413.20, 413.24
0938–0107	413.20, 413.24
0938–0146	431.800–431.865
0938–0147	431.800–431.865
0938–0151	493.1405, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461, 493.1469, 493.1483, 493.1489
0938–0155	405.2470
0938–0170	493.1269–493.1285
0938–0193	430.10–430.20, 440.167
0938–0202	413.17, 413.20
0938–0214	411.25, 489.2, 489.20
0938–0236	413.20, 413.24
0938–0242	416.44, 418.100, 482.41, 483.270, 483.470
0938–0245	407.10, 407.11
0938–0246	431.800–431.865
0938–0251	406.7
0938–0266	416.41, 416.47, 416.48, 416.83
0938–0267	410.65, 485.56, 485.58, 485.60, 485.64, 485.66
0938–0269	412.116, 412.632, 413.64, 413.350, 484.245
0938–0270	405.376
0938–0272	440.180, 441.300–441.305
0938–0273	485.701–485.729
0938–0279	424.5
0938–0287	447.31
0938–0296	413.170
0938–0300	431.800
0938–0301	413.20, 413.24
0938–0302	418.22, 418.24, 418.26, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938–0313	418.1–418.405
0938–0328	482.12, 482.22, 482.27, 482.30, 482.41, 482.43, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66
0938–0334	491.9
0938–0338	486.104, 486.106, 486.110
0938–0354	441.60
0938–0355	484.10–484.52
0938–0357	409.40–409.50, 410.36, 410.170, 411.4–411.15, 421.100, 424.22, 484.18, 489.21
0938–0358	412.20–412.30

OMB control Nos.	Approved CFR sections in Title 42, Title 45, and Title 20 (**Note:** sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
0938–0359	412.40–412.52
0938–0360	405.2100–405.2184
0938–0365	484.10, 484.11, 484.12, 484.14, 484.16, 484.18, 484.20, 484.36, 484.48, 484.52
0938–0372	414.330
0938–0378	482.60–482.62
0938–0379	442.30, 488.26
0938–0386	405.2100–405.2171
0938–0391	488.18, 488.26, 488.28
0938–0426	476.104, 476.105, 476.116, 476.134
0938–0429	447.53
0938–0443	473.18, 473.34, 473.36, 473.42
0938–0444	1004.40, 1004.50, 1004.60, 1004.70
0938–0445	412.44, 412.46, 431.630, 456.654, 466.71, 466.73, 466.74, 466.78
0938–0447	405.2133
0938–0449	440.180, 441.300–441.310
0938–0454	424.20
0938–0456	412.105
0938–0463	413.20, 413.24
0938–0465	411.404, 411.406, 411.408
0938–0467	431.17, 431.306, 435.910, 435.920, 435.940–435.960
0938–0469	417.107, 417.478
0938–0470	417.143, 417.408
0938–0477	412.92
0938–0484	424.123
0938–0486	498.40–498.95
0938–0501	406.15
0938–0502	433.138
0938–0512	486.301–486.325
0938–0526	462.102, 462.103. 475.100, 475.106, 475.107
0938–0534	410.38, 424.5
0938–0544	493.1–493.2001
0938–0565	411.20–411.206
0938–0566	411.404, 411.406, 411.408
0938–0567	Part 498 Subparts D and E, and 20 CFR 404.933
0938–0573	412.230, 412.256
0938–0581	493.1–493.2001
0938–0599	493.1–493.2001
0938–0600	405.371, 405.378, 413.20
0938–0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 434.28, 483.10, 484.10, 489.102
0938–0612	493.1–493.2001
0938–0618	433.68, 433.74, 447.272
0938–0653	493.1771, 493.1773, 493.1777
0938–0655	493.1840
0938–0657	405.2110, 405.2112
0938–0658	405.2110, 405.2112
0938–0667	482.12, 488.18, 489.20, 489.24
0938–0673	430.10
0938–0679	410.38
0938–0685	410.32, 410.71, 413.17, 424.57, 424.73, 424.80, 440.30, 484.12
0938–0686	493.551–493.557
0938–0688	486.301–486.325
0938–0690	488.4–488.9, 488.201
0938–0691	412.106
0938–0692	466.78, 489.20, 489.27
0938–0700	417.479, 417.500; 422.208, 422.210; 434.44, 434.67, 434.70; 1003.100, 1003.101, 1003.103, 1003.106
0938–0701	422.152
0938–0702	45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180
0938–0703	45 CFR 148.120, 148.124, 148.126, and 148.128
0938–0714	411.370–411.389
0938–0717	424.57
0938–0721	410.33
0938–0722	422.370–422.378
0938–0723	421.300–421.318
0938–0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938–0732	417.126, 417.470
0938–0734	45 CFR 5b
0938–0739	413.337, 413.343, 424.32, 483.20
0938–0742	422.300–422.312
0938–0749	424.57
0938–0753	422.000–422.700
0938–0754	441.152
0938–0758	413.20, 413.24
0938–0760	Part 484 Subpart E, 484.55

OMB control Nos.	Approved CFR sections in Title 42, Title 45, and Title 20 (**Note:** sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
0938–0761	484.11, 484.20
0938–0763	422.1–422.10, 422.50–422.80, 422.100–422.132, 422.300–422.312, 422.400–422.404, 422.560–422.622
0938–0768	417.800–417.840
0938–0770	410.2
0938–0778	422.64, 422.111, 422.560–422.622
0938–0779	417.126, 417.470, 422.64, 422.210
0938–0781	411.404–411.406, 484.10
0938–0786	438.352, 438.360, 438.362, 438.364
0938–0787	406.28, 407.27
0938–0790	460.12, 460.22, 460.26, 460.30, 460.32, 460.52, 460.60, 460.70, 460.71, 460.72, 460.74, 460.80, 460.82, 460.98, 460.100, 460.102, 460.104, 460.106, 460.110, 460.112, 460.116, 460.118, 460.120, 460.122, 460.124, 460.132, 460.152, 460.154, 460.156, 460.160, 460.164, 460.168, 460.172, 460.190, 460.196, 460.200, 460.202, 460.204, 460.208, 460.210
0938–0792	491.3, 491.8, 491.11
0938–0798	413.24, 413.65, 419.42
0938–0802	419.43
0938–0810	482.45
0938–0819	45 CFR 146.121
0938–0823	420.410
0938–0824	440.10, 482.13
0938–0827	45 CFR 146.141
0938–0829	422.568
0938–0832	Part 489
0938–0833	483.350–483.376
0938–0841	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180
0938–0842	412, 413
0938–0846	411.1, 411.350–411.357, 424.22
0938–0857	Part 419
0938–0860	Part 419
0938–0866	45 CFR Part 162
0938–0872	413.337, 483.20
0938–0873	422.152
0938–0874	45 CFR Parts 160 and 162
0938–0878	Part 422 Subparts F and G
0938–0883	45 CFR Parts 160 and 164
0938–0887	45 CFR 148.316, 148.318, 148.320
0938–0897	412.22, 412.533

[FR Doc. 03–30756 Filed 12–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3119–PN]

RIN 0938–AM36

Medicare Program; Procedures for Maintaining Code Lists in the Negotiated National Coverage Determinations for Clinical Diagnostic Laboratory Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of proposed procedures for code maintenance.

SUMMARY: This proposed notice would establish the procedures for maintaining the lists of codes that were included in the national coverage determinations (NCDs) that were announced in the final rule published in the **Federal Register** on November 23, 2001 (66 FR 58788). It also sets forth the circumstances in which a laboratory is permitted to use the date the specimen was retrieved from storage for testing as the date of service instead of the date of collection. The proposed notice clarifies the meaning of the "date of collection." In this proposed notice, we propose a standard time frame that would define when a specimen has been "archived" for undetermined later use.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 23, 2004.

ADDRESSES: In commenting, please refer to file code CMS–3119–PN. Because staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3119–PN, P.O. Box 8011, Baltimore, MD 21244–8011. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan-Moore, (410) 786–4635.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–9994.

I. Background

A. Current Statutory Authority and Medicare Policies

Sections 1833 and 1861 of the Social Security Act (the Act) provide for payment of, among other things, clinical diagnostic laboratory services under Medicare Part B. Diagnostic tests must be ordered either by a physician, as described in 42 CFR 410.32(a), or by a qualified nonphysician practitioner, as described in § 410.32(a)(3). Tests may be furnished by any of the entities listed in § 410.32(d). A laboratory furnishing tests on human specimens must meet all applicable requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578) enacted on October 31, 1988, as implemented by the regulations set forth at 42 CFR part 493. Part 493 applies to all laboratories non-exempt and non-excepted that test human specimens for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of human beings. Section 1862(a)(1)(A) of the Act generally provides that no Medicare payment may be made for expenses incurred for items or services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. Moreover, section 1862(a)(7) of the Act excludes coverage for routine physical checkup expenses, eyeglasses (other than eyewear described in section 1861(s)(8) of the Act), or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses. In addition, the Act excludes coverage for procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefore, or immunizations (except as otherwise allowed under section 1861(s)(10) and subparagraphs (B), (F), (G), or (H) of paragraph (1)). Under the above statutory authority, we have issued national coverage determinations and policies in a variety of documents, such as CMS (formerly HCFA) manual instructions, **Federal Register** notices, and CMS (formerly HCFA) Rulings. Medicare program manuals, program transmittals, and program memoranda are posted on the Internet at *http://cms.hhs.gov/manuals/default.asp.*

Under section 1842(a) of the Act, we contract with organizations to perform bill processing and benefit payment functions for Medicare Part B (Supplementary Medical Insurance). These Medicare contractors, who process Part B claims from noninstitutional entities, are called carriers. Under section 1816(a) of the Act, we contract with fiscal intermediaries to perform claims processing and benefit payment functions for Medicare Part A (Hospital Insurance). Fiscal intermediaries also process claims payable from the Medicare Part B trust fund that are submitted by providers that participate in Medicare Part A, such as hospitals and skilled nursing facilities. We use the term "contractor(s)" to mean carriers and fiscal intermediaries.

Medicare contractors review and adjudicate claims for services to ensure that Medicare payments are made only for services that are covered under Medicare Part A or Part B. In the absence of a specific national coverage determination, coverage decisions are made at the discretion of the local contractors.

B. Recent Legislation

Section 4554(b)(1) of the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, enacted on August 5, 1997, mandates use of a negotiated rulemaking committee to develop national coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B by January 1, 1999. Section 4554(b)(2) of the BBA requires that these national coverage policies be designed to promote program integrity and national uniformity and simplify administrative requirements with respect to clinical diagnostic laboratory services payable under Medicare Part B.

As directed by this statutory provision, we convened a negotiated rulemaking committee that developed recommendations for coverage and administrative policies in accordance with the provisions of the BBA. On March 10, 2000, we published a proposed rule (65 FR 13082) proposing to adopt the committee's recommendations. The final rule was published on November 23, 2001 (66 FR 58788).

C. National Coverage Determinations (NCDs)

The final rule on coverage and administrative policies for clinical diagnostic laboratory services included an addendum containing NCDs for 23 clinical diagnostic laboratory tests. These NCDs state our policy with respect to the circumstances under which the test(s) will be considered reasonable and necessary for Medicare purposes.

NCDs are binding on all Medicare carriers, intermediaries, quality improvement organizations, health maintenance organizations, competitive medical plans, and health care prepayment plans (*see* section 1869(f)(1)(A)(i) of the Act).

In accordance with the recommendations of the negotiated rulemaking committee, we developed these clinical diagnostic laboratory NCDs in a prescribed format. Each NCD has the following sections: the official title of the NCD, other names/abbreviations, description, Healthcare Common Procedure Coding System (HCPCS) codes, indications, limitations, International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM) codes covered by the Medicare program, reasons for denial, ICD–9–CM codes denied, ICD–9–CM codes that do not support medical necessity, sources of information, coding guidelines, documentation requirements, and other comments.

For each of the clinical diagnostic laboratory service NCDs (laboratory NCDs), every ICD–9–CM diagnosis code falls into one of the three code lists. The list of covered codes is intended to reflect the coding translation of the conditions enumerated in the narrative indications section of the NCDs. The translation of the narrative to the appropriate ICD–9–CM diagnosis codes ensures national uniformity in the processing of claims for these clinical diagnostic laboratory tests.

On April 27, 1999, we published a general notice (64 FR 22619) outlining our procedures for developing and revisiting NCDs (the NCD process). We further updated the NCD process in a notice published in the **Federal Register** on September 26, 2003 (68 FR 55634). In the November 23, 2001 final rule (66 FR 58793) for coverage and administrative policies for clinical diagnostic laboratory services, we stated that we would use the NCD process for making changes to the laboratory NCDs. The NCD process is evidence-based and provides an opportunity for public participation in the NCD decision-making process through the posting of announcements of issues under review on the Internet on the CMS coverage home page and requests for comment. At the conclusion of the NCD decision-making process, decision memoranda are published on the CMS website that announce the policy we intend to issue and discuss the evidence we evaluated and our rationale for the final national coverage determination. Coverage issues are announced at *http://cms.hhs.gov/coverage.*

Under the November 23, 2001 final rule (66 FR 58793), code lists can only be modified through the NCD process. However, subsequent experience with the code lists has indicated that processes for routine changes are necessary. For example, experience with the code lists has revealed that clerical errors occasionally occur despite rigorous review. In addition, the committees that maintain the laboratory and related code lists (ICD–9–CM and CPT–4) routinely issue changes that modify laboratory coding procedures. As a result, the code list for a laboratory NCD may not reflect the most current coding practices. For these reasons, HHS is pursuing new processes in this proposed notice to update code lists for clerical or routine changes.

D. Updates of Coding Systems

1. ICD–9–CM Codes

International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM) codes were developed in 1977 as a means of classifying morbidity data for indexing medical records, medical case reviews, and ambulatory and other medical care programs, as well as for basic health statistics. It delineates the clinical picture of each patient, providing information beyond that needed for statistical groupings and analyses of healthcare trends. Early in its history, ICD–9–CM coding was used almost exclusively in institutional settings, such as hospitals. However, since 1989, § 424.32(a)(2) has required the reporting of ICD–9–CM coding on all bills for physicians' services. Thus, ICD–9–CM has come into nearly universal use as a means of reporting diagnoses for patients receiving healthcare services.

In September 1985, the ICD–9–CM Coordination and Maintenance Committee (the Committee) was formed. This is a Federal interdepartmental committee, co-chaired by CMS and the National Center for Health Statistics (NCHS), and charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA), the American Hospital Association (AHA), and various physician specialty groups, as well as physicians, medical records administrators, health information management professionals, and other members of the public, to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations that must be approved by the agencies.

ICD–9–CM coding updates are issued annually. Changes become effective October 1 of each year. Minutes from the ICD–9–CM Committee meetings are available on the Internet at *http://cms.hhs.gov/paymentsystems/icd9.* We announce the annual ICD–9–CM procedure coding changes in the **Federal Register** as part of the annual update of the hospital inpatient prospective payment system. In addition, information on the diagnosis coding changes is available on the Internet at *http://www.cdc.gov/nchs/icd9.htm.*

2. CPT–4 Coding

The Current Procedural Terminology (CPT), Fourth Edition, is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians. The purpose of the terminology is to provide consistent codes for medical, surgical, and diagnostic services.

CPT descriptive terms and identifying codes currently serve a wide variety of important functions in the field of medical nomenclature.

The American Medical Association (AMA) owns CPT. AMA convenes the CPT Editorial Panel (the Panel) quarterly to consider requests and suggestions for changes to CPT. The Panel uses the services of an Advisory Committee with expertise in a wide variety of specialties. Portions of CPT panel meetings are open to the public for the opportunity to make presentations and participate in open discussions. Decision-making sessions, however, are closed. More information regarding the CPT Editorial Panel is available on the following Internet Web site: *http://www.ama-assn.org/ama/pub/category/3884.html.* CPT coding changes are announced annually. Category I changes become effective on January 1 of each year.

E. Implementation of NCDs

One of the goals of section 4554 of the BBA was to promote uniformity in Medicare processing of claims for clinical diagnostic laboratory services. In order to ensure consistent and uniform implementation of the laboratory NCDs throughout the country, we developed an electronic edit table module that will be installed in each of the Medicare claims processing contractors' systems. The edit module will ensure that (1) each contractor matches diagnosis to procedures in the same manner; (2) competing laboratories in an area will have their claims processed identically regardless of whether they are processed by the carrier or fiscal intermediary; and (3) all local contractors have implemented the laboratory NCDs at the same time.

Professional coders on the negotiated rulemaking committee assisted in the development of the laboratory NCDs. Also, we presented the proposed code list to the staff in the Department of Health and Human Services and the general public for review. Nevertheless, we have discovered clerical errors in the code lists. For example, several of the codes did not include the full range of digits. That is, a code that requires 5 digits may have had only 4 digits. We identify this problem by the term "truncated codes." The issue of truncated codes is particularly problematic because our claims processing systems already include edit programs that will return claims to the biller when codes are incomplete. That is, if an entity bills the 4-digit code from the list instead of the 5-digit code, the claim will be returned to the laboratory. However, if the laboratory bills the appropriate 5-digit code, the claim will not be paid, as the 5-digit code is not on the covered code list. Other errors include instances in which the code and the descriptor did not match.

II. Provisions of the Proposed Notice

A. Proposed Process for Code Maintenance

In the preamble of the November 23, 2001, final rule (66 FR 58788), we announced that we intended to conduct maintenance of the 23 laboratory NCDs and create new laboratory NCDs through the NCD process described in the general notice in the **Federal Register** on April 27, 1999 (64 FR 22619). This process has since been updated by general notice published on September 26, 2003 (68 FR 55634). This is an evidence-based method in which determinations are made based on the scientific literature. Formal requests for an NCD must be made in the following manner:

- The request must be in writing.
- The request and supporting documentation must be submitted electronically unless there is good cause for only a hardcopy.
- The requestor must identify the request as a "formal request for a national coverage" determination.
- The requestor must state the Medicare benefit category.
- The requestor must submit adequate supporting documentation including:
  - —A full and complete description of the item or service in question;
  - —A compilation of the medical and scientific information currently available that measures the medical benefits of the item or service;
  - —A specific detailed description of the proposed use of the item or service including the target Medicare population and the medical condition(s) for which it can be used;
  - —An explanation of the design, purpose, and method of using the item or equipment;
  - —A description of any clinical trials or studies currently under way, which might be relevant to a decision; and
  - —The status of current Food and Drug Administration (FDA) administrative proceedings concerning a drug or device or a service using a drug or device subject to regulation by the FDA.

We continue to believe that this NCD process is appropriate for creating new NCDs for clinical diagnostic laboratory services. Likewise, the NCD process is appropriate for requests for substantive changes to the existing laboratory NCDs. However, we believe this process is unduly burdensome and time-consuming for correcting errors in coding and for incorporating new codes and coding changes that may be created by the ICD–9–CM Coordination and Maintenance Committee or the AMA Editorial Panel. Likewise, we believe that a streamlined process is appropriate for making coding changes that flow from the existing narrative. Since the narratives only describe covered conditions this abbreviated approach may be used in moving codes from the "Does Not Support Medical Necessity" list (which can be covered with documentation) to the ICD–9–CM codes covered by the Medicare list. "ICD–9–CM Not Covered by Medicare" list cannot be altered through this abbreviated process. Thus, we are proposing two additional processes for making requests for coding changes in the laboratory NCDs.

We are proposing, therefore, to have three separate processes for requesting changes to the laboratory NCDs. Substantive changes would use the normal evidence-based NCD process. Clerical changes to codes and descriptors would be requested, as set forth below, by a letter that outlines the coding change made subsequent to the publication of the NCD or coding error. Coding changes that flow from the narrative covered indications would be requested by letter detailing the covered indication from the narrative. Scientific evidence would not be required, but is welcomed to support the requestor's position.

1. Clerical Coding Change

Coding changes are made annually to both the ICD–9–CM diagnosis codes and the CPT procedure codes that may be incorporated in the laboratory NCDs. Whenever coding changes to codes or descriptors that are included in the NCD are made, we believe the NCDs should be updated expeditiously to reflect current coding practices. Similarly, clerical errors, such as typographical errors, should be corrected as quickly as possible. Consequently, we are proposing a streamlined process for making clerical changes to codes contained within the laboratory NCDs. We propose the following procedures:

- Whenever we discover truncated codes (that is, ICD–9–CM codes that were not displayed to their highest level of specificity), we would expand the code to the full number of digits. We would use the expanded code that most closely matches the ICD–9–CM descriptor displayed in the NCD.
- Whenever an ICD–9–CM or CPT code had been altered (that is, the descriptor was changed) by the responsible coding authority, we would make corresponding changes to the laboratory NCDs.
- Whenever the responsible coding authority deletes an ICD–9–CM or CPT code, we would remove the code from the NCD. We would not consider this as removal of coverage and would not first publish notice of removal of coverage before taking action.
- Whenever the responsible coding authority changes or replaces an ICD–9–CM or CPT code, we would make corresponding changes to the laboratory NCD based on the crosswalk announced by the coding authority.
- Whenever an ICD–9–CM or CPT code and its descriptor do not match (that is, the descriptor in the NCD is not the descriptor of the code in the coding manuals), we would look to the NCD narrative to determine which item (the code or descriptor) was correct and adjust the other item to match.
- Whenever the responsible coding authority adds a new code to a range of covered codes, we would revise the NCD to include this code.

We are proposing that the general public request clerical or ministerial changes by sending a letter to: Director, Coverage and Analysis Group, Mail Stop C1–09–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. In addition, we may initiate changes that we discover. We would incorporate all of these changes into the edit module software and announce them in the coding manual that we publish on the Internet at *http://www.cms.hhs.gov/ncd/labindexlist.asp#coding*.

We believe that the clerical nature of the changes makes public comments on these changes before implementation unnecessary. A method of recognizing necessary coding changes more rapidly would increase payment efficiency and accuracy. We believe that the urgent need to implement these clerical changes into the laboratory NCDs outweighs the benefit that could be derived from requesting public comment on these ministerial changes. Instead, we would accept comments that are generated from these clerical changes through the comment process described below.

2. Codes That Flow From the Covered Indications Narrative

We have received several requests for a procedure to make changes to the codes in the various laboratory NCD code lists by a process other than the NCD process. Many laboratories believe that there have been omissions of codes from the code lists. However, they believe that the current process of gathering scientific evidence to support coverage of a specific code is unduly burdensome and unnecessary since the narrative already includes coverage of the substance of the code description. Therefore, we propose to establish an abbreviated process for handling requests for certain coding changes to the laboratory NCDs. In order for requests to qualify for this process, the code must flow from the existing narrative indications for the clinical diagnostic laboratory test. In other words, the requested change must be classified as a replacement of or an addition to an existing code. Requests that in effect constitute requests to add new indications must use the NCD evidence-based process outlined in the September 26, 2003, **Federal Register**. Thus, any requests to cover codes that are in the list of ICD–9–CM Codes Not Covered by Medicare must use the NCD evidence-based process.

The abbreviated process is similar to the NCD process in that it includes posting on the Internet and an opportunity for public comment before making a coding change. The principal difference between the processes is the volume of information required. Requesters using the abbreviated process would submit a letter detailing the provision of the NCD narrative that clearly indicates coverage for the requested code. Scientific literature is not required. However, scientific literature supporting the request and/or clinical guidelines from relevant healthcare organizations is welcome. We are proposing the following abbreviated process for coding changes that flow from the existing narrative of the NCD:

- Requests must be made in writing, clearly stating the rationale for the coding change.
- Requests must be sent to: Director, Coverage and Analysis Group, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.
- Our staff will review the request and contact the requestor for additional information, if necessary.
- We will announce on the Internet *(http://cms.hhs.gov/coverage)* any proposed coding changes. The announcement will provide for a 30-day public comment period.
- Within 60 days of the end of the comment period, we would publish a decision memorandum on the coverage website including a summary of comments received, that announces the decision we intend to issue, and a brief explanation for the determination, if not self-evident, in the request. Within 60 days after posting the decision memorandum, we would publish the decision as an instruction in a One Time Notification that includes the effective date of any changes. Codes that are removed from the covered list as a result of this process because they do not flow from the narrative would not be subject to additional prior notice of removal of coverage.
- We would incorporate coding changes into the software and coding manual. Coding changes would be made effective on a quarterly basis.

We would, whenever we become aware of the need to do so, also follow this process to implement the necessary changes. We specifically solicit comments on this streamlined process for making coding changes.

In summary, we are proposing three separate processes for maintaining the laboratory NCDs. Clerical and ministerial changes would be made expeditiously without prior posting on the Internet or public comment. Clerical changes would be announced in a CMS instruction before incorporation into the edit software. Coding changes that flow from the narrative of the existing NCD would be handled through an abbreviated process similar to the NCD process. Requests for coding changes that flow from the existing narrative NCD would not require scientific evidence. We would post a notice of this type of request on the Internet and accept public comments for 30 days before making a determination. Requests for a substantive change to an NCD would be handled through the normal NCD process described in the September 26, 2003, **Federal Register**. The requests require scientific evidence in support of the change in policy. We will post a tracking sheet announcing our acceptance of a request on the Internet and public comments will be solicited for 30 days before making a determination.

3. Code Lists for the Laboratory NCDs

We have generally published NCDs in the Medicare Coverage Issues Manual (CIM). This manual is being replaced by the National Coverage Determination (NCD) Manual. We have published some NCDs initially as a Program Memorandum but subsequently have moved the instruction to the CIM. However, we have not, up to this time, published NCDs that contained the detailed coding information that is contained in the clinical diagnostic laboratory service's NCDs that were negotiated.

The clinical diagnostic laboratory NCDs include long lists of ICD–9–CM codes, coding guidelines, and reasons for denial, resulting in a document of approximately 200 pages. Incorporation of this new style arising exclusively from the laboratory negotiated rulemaking process of NCD into the NCD Manual would dwarf the rest of the manual.

We are proposing to incorporate in the NCD Manual only the narrative portion of the NCDs. That is, we would include in the NCD Manual the description of the service, indications, and limitations. We are proposing that the coding lists and standardized portions of the NCDs would be displayed in a laboratory NCD Coding Manual that would be available electronically on the Internet at *http://www.cms.hhs.gov/ncd/labindexlist.asp#coding*. Printed copies can be made available to readers who do not have access to the Internet for a fee of 10 cents per page.

We believe this mechanism would make handling the NCD Manual easier for all users. Users could readily identify those conditions covered without having to weed through long documents with extensive lists of codes. In addition, we believe separating the coding information from the narrative policy helps to reinforce the differing procedures for substantively changing, as opposed to updating, coding in the NCDs.

In summary, we are proposing a streamlined method of updating the NCDs for coding changes of a clerical nature, that is, correcting errors, and accommodating annual coding updates. We are also proposing to publish only the narrative portion of the laboratory NCDs in the NCD Manual, the document where NCDs are normally compiled. The entire laboratory NCDs, including the code lists and coding guidelines, would be published in an electronic laboratory NCD Coding Manual that would be available on the Internet, and upon request, in printed form for a fee. We request public comment on these proposals.

B. Date of Service

In the final rule of coverage and administrative policies for clinical diagnostic laboratory services that we published on November 23, 2001, we clarified the date of service for clinical diagnostic laboratory services (66 FR 58792). Specifically, we stated that: "For laboratory tests that require a specimen from stored collections, the date of service should be defined as the date the specimen was obtained from the archives."

The final rule did not further define how long a specimen must be stored before it is considered "archived." We clarified in Program Memorandum AB-02-134, that in the absence of specific instructions issued nationally through rulemaking, contractors have discretion in making determinations regarding the length of time a specimen must be stored to be considered "archived." We stated, however, that the rule contemplates a long storage period.

We have received numerous requests from laboratories to issue a national standard to clarify when a stored specimen can be considered "archived." Regional laboratories interact with numerous contractors and find it difficult to automate their electronic billing software to handle variability in date of service by contractor jurisdiction. In other words, it is difficult for laboratories to electronically program their systems to calculate the date of service when in one jurisdiction it would be the collection date while in another the date of service would be the day that the specimen was retrieved from storage.

Consequently, we are proposing to further clarify the date of service provision for clinical diagnostic laboratory services. We propose that a specimen must be stored for more than 30 calendar days to be considered "archived." The date of service for these archived specimens would be the date the specimen was obtained from storage. Specimens stored 30 days or less would have a date of service of the date the specimen was collected.

The final rule also clarified that the date of service for tests when the collection spanned more than 24 hours would be the date the collection began. These extended collection periods are common on fecal occult blood tests and urine collections for hormone analysis in pregnant women. This clarification was added in the November 23, 2001, final rule in response to public comments received on the March 10, 2000, proposed rule. Thus, we did not have the benefit of public input regarding the appropriateness of our solution.

We have received several comments since issuing the final rule that stated the common practice in the laboratory community is to use the date the collection ended as the date of service. Thus, we are soliciting public comment on a proposal to alter our policy to specify that the date of service for collections that span more than 24 hours would be the date the collection ended.

III. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comments on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information collection burden on the affected public, including automated collection techniques.

In summary, we propose to establish a new process for handling requests for certain coding changes to the laboratory NCDs. In order for requests to qualify for this process, requests must be made in writing to us, clearly stating the rationale for the coding change. The request must articulate the code flow from the existing narrative indications for the clinical diagnostic laboratory test. In other words, the requested change must be classified as a correction, updating change, or replacement to an existing code. Requests that in effect constitute requests to add new indications must use the NCD evidence-based process outlined in the April 27, 1999, and subsequent September 26, 2003, **Federal Registers**.

The burden associated with the process referenced above is the time and effort necessary to submit a request in writing, clearly stating the rationale for the coding change. We believe that it will require one hour per request and that eight requests will be submitted on an annual basis.

In order to have this requirement approved under the PRA, we will amend the currently approved NCD/PRA documentation [OMB PRA approval # 0938–0776] to include the new code updating process and resubmit it to OMB for approval. We believe that this abbreviated process is less burdensome than the current process. The current process requires submission of scientific evidence in order to initiate a change in the NCD. This abbreviated process requires only an explanation of how a code flows from the narrative.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Julie Brown—CMS–3119–PN, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice, and, if we proceed with a subsequent document, *we will respond to the comments in the final rule.*

V. Regulatory Impact Statement

In this notice, we propose an abbreviated mechanism for making changes to the lists of ICD–9–CM and CPT codes that are included in the laboratory NCDs. We also propose clarification of when a specimen is considered archived for purposes of the date of service provision contained in the November 21, 2001, final rule. We do not expect this document to impose any significant burden on laboratories. The proposed policy clarifications may lessen the burden on laboratories by establishing uniform procedures for reporting date of service on archived specimens. Should there be any unanticipated increase or decrease of burden, the effects will be minimal.

We have examined the impacts of this proposed notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternative and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have reviewed this proposed notice and have determined it is not a major rule. Therefore, we are not required to perform an assessment of the costs and savings.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals, and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this proposed notice would not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis *if a rule may have* a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this proposed notice would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed notice would have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet *when it promulgates a proposed rule (and subsequent final rule)* that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed notice and have determined that it would not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this document was reviewed by the Office of Management and Budget.

Authority: Sections 1816(a), 1833, 1842(a), 1861, 1862(a)(1)(A), and 1862(a)(7) of the Social Security Act (42 U.S.C. 1395h(a), 1395l, 1395u(a), 1395x, 1395y(a)(1)(A), and 1395y(a)(7))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 23, 2003.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 16, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–31573 Filed 12–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1226–GNC]

RIN 0938–ZA44

Medicare Program; Criteria and Standards for Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carrier Performance During Fiscal Year 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries, carriers, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) regional carriers in the administration of the Medicare program beginning on the first day of the first month following publication of this notice in the **Federal Register**. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary agreement, carrier contract, or DMEPOS regional carrier contract or take other contract actions, for example, assigning or reassigning providers or services to an intermediary or designating regional or national intermediaries. We are requesting public comment on these criteria and standards.

DATES: *Effective Date:* The criteria and standards are effective January 2, 2004.

Comment Period: Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on January 23, 2004.

ADDRESSES: In commenting, please refer to file code CMS–1226–GNC. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. Mail written comments (one original and two copies) to the following address:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1226–GNC, PO Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201 or Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sue Lathroum, (410) 786–7409.

SUPPLEMENTARY INFORMATION: In several instances, we identify a Medicare manual as a source of more detailed requirements. Medicare fee-for-service contractors have copies of the various Medicare manuals referenced in this notice. Members of the public also have access to our manual instructions.

Medicare manuals are available for review at local Federal Depository Libraries (FDLs). Under the FDL Program, government publications are sent to approximately 1,400 designated public libraries throughout the United States. To locate the nearest FDL, individuals should contact any public library.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Information may also be obtained from the following Web site: *http://www.cms.hhs.gov/manuals.*

Finally, all of our regional offices (ROs) maintain all Medicare manuals for public inspection. To find the location of our nearest available RO, you may call the individual listed at the beginning of this notice. That individual can also provide information about purchasing or subscribing to the various Medicare manuals.

Response to Public Comments: Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the Comment Period section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

Inspection of Public Comments: Comments received timely are available for public inspection or they are processed beginning approximately 3 weeks after the close of the comment period, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

I. Background

A. Part A—Hospital Insurance

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with us. These agencies or organizations, known as fiscal intermediaries, determine whether medical services are covered under Medicare, determine correct payment amounts and then make payments to the health care providers (for example, hospitals, skilled nursing facilities (SNFs), and community mental health centers) on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement.

Section 1816(e)(4) of the Act requires us to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816 of the Act, to perform claim processing functions for freestanding Home Health Agency (HHA) claims. We refer to these organizations as Regional Home Health Intermediaries (RHHIs). See § 421.117 and the final rule published in the **Federal Register** on May 19, 1988 (53 FR 17936) for more details about the RHHIs.

The evaluation of intermediary performance is part of our contract management process. These evaluations need not be limited to the current fiscal year (FY), other fixed term basis, or agreement term.

B. Part B Medical Insurance

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B, Supplementary Medical Insurance of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies, and then make payment to the appropriate party.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service contractor performance need not be limited to the current FY, other fixed term basis, or contract term. The evaluation of carrier performance is part of our contract management process.

C. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

In accordance with section 1834(a)(12) of the Act, we have entered into contracts with four DMEPOS regional carriers to perform all of the duties associated with the processing of claims for DMEPOS, under Part B of the Medicare program. These DMEPOS regional carriers process claims based on a Medicare beneficiary's principal residence by State. Section 1842(a) of the Act authorizes contracts with carriers for the payment of Part B claims for Medicare covered services and items. Section 1842(b)(2) of the Act requires us to publish in the **Federal Register** criteria and standards for the efficient and effective performance of carrier contract obligations. Evaluation of Medicare fee-for-service contractor performance need not be limited to the current FY, other fixed term basis, or contract term. The evaluation of DMEPOS regional carrier performance is part of our contract management process.

D. Development and Publication of Criteria and Standards

In addition to the statutory requirements, §§ 421.120 and 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries before implementation. Section 421.201 provides for publication of a **Federal Register** notice to announce criteria and standards for carriers before implementation. The current criteria and standards for intermediaries, carriers, and DMEPOS regional carriers were published in the February 28, 2003 final rule (68 FR 9681).

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal FY, which is October 1. If we do not publish a **Federal Register** notice before the new FY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FY remain in effect.

In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FY, we may publish the criteria and standards notice at any subsequent time during the year. If we publish a notice in this manner, the evaluation period for the criteria and standards that are the subject of the notice will be effective on the first day of the first month following publication. Any revised criteria and standards will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of administrative action or congressional mandate, there may be a need for changes that have a direct impact on the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will publish an amended **Federal Register** notice before implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

II. Analysis of and Response to Public Comments Received on FY 2003 Criteria and Standards

We received no comments in response to the February 28, 2003 **Federal Register** general notice with comment.

III. Criteria and Standards—General

Basic principles of the Medicare program are to pay claims promptly and accurately and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that contractors do what is required of them by statute, law, regulation, contract, and our directives.

We have developed a contractor oversight program for FY 2004 that outlines expectations of the contractor; measures the performance of the contractor; evaluates the performance against the expectations; and provides for appropriate contract action based upon the evaluation of the contractor's performance.

As a means to monitor the accuracy of Medicare FFS payments, we have established the Comprehensive Error Rate Testing (CERT) program—which produces error rates for claims payment decisions made carriers, DMERCs, and FIs. Beginning in November 2003, the CERT program produced claims payment error rates for each individual carrier and DMERC. (FI—specific rates will be available the following year.) These rates measure not only how well contractors are doing at implementing automated review edits and identifying which claims to subject to manual medical review but also measure the impact of the contractor's provider outreach/education and effectiveness of the contractor's provider call centers. As such, we will utilize these contractor-specific error rates as a means to evaluate a contractor's performance.

Several times throughout this notice, we refer to the "readability" of letters, decisions, or correspondence that are going to Medicare beneficiaries from intermediaries or carriers. In those instances, "readability" is defined as being below the 8th grade reading level unless it is obvious that an incoming request from the beneficiary contains language written at a higher level. In these cases, the readability level is tailored to the capacities and circumstances of the intended recipient.

In addition to evaluating performance based upon expectations for FY 2004, we may also conduct follow-up evaluations throughout FY 2004 of areas in which contractor performance was out of compliance with statute, regulations, and our performance expectations during prior review years and thus required the contractor to submit a Performance Improvement Plan (PIP).

We may also utilize Statement of Auditing Standards–70 (SAS–70) reviews as a means to evaluate contractors in some or all business functions.

In FY 2001, we established the Contractor Rebuttal Process as a commitment to continual improvement of contractor performance evaluation (CPE). We will continue the use of this process in FY 2004. The Contractor Rebuttal Process provides the contractors an opportunity to submit a written rebuttal of CPE findings of fact. Whenever we conduct an evaluation of contractor operations, contractors have 7 calendar days from the date of the CPE review exit conference to submit a written rebuttal. The CPE review team or, if appropriate, the individual reviewer will consider the contents of the rebuttal before the issuance of the final CPE report to the contractor.

The FY 2004 CPE for intermediaries and carriers is structured into five criteria designed to meet the stated objectives. The first criterion is "Claims Processing" which measures contractual performance against claims processing accuracy and timeliness requirements as well as activities in handling appeals. Within the Claims Processing Criterion, we have identified those performance standards that are mandated by legislation, regulation, or judicial decision. These standards include claims processing timeliness, the accuracy of Medicare Summary Notices (MSNs), the appropriateness of determinations reversed by an administrative law judge (ALJ), the timeliness of intermediary reconsiderations, reviews and hearings and the timeliness of carrier reviews and hearings, and the readability of carrier reviews. Further evaluation in the Claims Processing Criterion may include, but is not limited to, the accuracy of claims processing, the percent of claims paid with interest, and the accuracy of reconsiderations, reviews, and hearings.

The second criterion is "Customer Service" which assesses the adequacy of the service provided to customers by the contractor in its administration of the Medicare program. The mandated standard in the Customer Service Criterion is the need to provide beneficiaries with written replies that are responsive, that is, provide in detail the reasons for a determination when a beneficiary requests this information, have a customer-friendly tone and clarity, and are at the appropriate reading level. Further evaluation of services under this criterion may include, but is not limited to, the timeliness and accuracy of all correspondence both to beneficiaries and providers; monitoring of the quality of replies provided by the contractor's customer service representatives (quality call monitoring); beneficiary and provider education, training, and outreach activities; and service by the contractor's customer service representatives to beneficiaries who come to the contractor's facility (walk-in inquiry service).

The third criterion is "Payment Safeguards" that evaluates whether the Medicare Trust Fund is safeguarded against inappropriate program expenditures. Intermediary and carrier performance may be evaluated in the areas of Medical Review (MR), Medicare Secondary Payer (MSP), Overpayments (OP), and Provider Enrollment (PE). In addition, intermediary performance may be evaluated in the area of Audit and Reimbursement (A&R).

In FY 1996 the Congress enacted the Health Insurance Portability Act, Medicare Integrity Program giving us the authority to contract with other than, but not excluding, Medicare carriers and intermediaries to perform certain program safeguard functions. In situations where one or more program safeguard functions have been contracted to another entity, we may evaluate the flow of communication and information between a Medicare fee-for-service contractor and the Payment Safeguard Contractor. All Benefit Integrity functions have been transitioned from intermediaries and carriers to the Program Safeguard Contractors, but three DMERCs will continue to handle this work in FY 2004. Because some of the DMERC contractors still conduct Benefit Integrity activities, we may evaluate their performance of that function.

Mandated performance standards for intermediaries in the Payment Safeguards criterion are the accuracy of decisions on SNF demand bills, and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. There are no mandated performance standards for carriers in the Payment Safeguards criterion. Intermediaries and carriers may also be evaluated on any Medicare Integrity Program (MIP) activities if performed under their agreement or contract.

The fourth criterion is "Fiscal Responsibility" which evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both the payment of benefits and costs of administration under the Medicare program. Proper financial and budgetary controls, including internal controls, must be in place to ensure contractor compliance with its agreement with HHS and CMS.

Additional functions reviewed under this criterion may include, but are not limited to, adherence to approved budget, compliance with the Budget and Performance Requirements (BPRs), and compliance with financial reporting requirements.

The fifth and final criterion is "Administrative Activities" which measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations. Proper systems security (general and application controls), Automated Data Processing (ADP) maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the Administrative Activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls that are essential in all aspects of a contractor's operation, and the degree to which the contractor cooperates with us in complying with the Federal Managers' Financial Integrity Act of 1982 (FMFIA). Administrative Activities evaluations may also include reviews related to contractor implementation of our general instructions and data and reporting requirements.

We have developed separate measures for RHHIs in order to evaluate the distinct RHHI functions. These functions include the processing of claims from freestanding HHAs, hospital-affiliated HHAs, and hospices. Through an evaluation using these criteria and standards, we may determine whether the RHHI is effectively and efficiently administering the program benefit or whether the functions should be moved from one intermediary to another in order to gain that assurance.

Below, we list the criteria and standards to be used for evaluating the performance of intermediaries, RHHIs, carriers, and DMEPOS regional carriers.

IV. Criteria and Standards for Intermediaries

A. Claims Processing Criterion

The Claims Processing criterion contains the following six mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted non-Periodic Interim Payment claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean, non-Periodic Interim Payment electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper non-Periodic Interim Payment claims are paid within specified time frames. Specifically, clean, non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. The percentage of reconsideration determinations reversed by ALJs is acceptable. We have defined an acceptable reversal rate by ALJs as one that is at or below 5.0 percent.

Standard 4. 75.0 percent of reconsiderations are processed within 60 days, and 90.0 percent are processed within 90 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 95.0 percent of Part B review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. 90.0 percent of Part B hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Because intermediaries process many claims for benefits under the Part B Medical Insurance portion of the Medicare Program, we also may evaluate how well an intermediary follows the procedures for processing appeals of any Part B claims.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Accuracy of claims processing.
- Establishment and maintenance of a relationship with Common Working File (CWF) Host.
- Accuracy of processing reconsideration cases.
- Accuracy of reviews and hearings, as well as the appropriateness of the reading level of any review determination letters.
- Accuracy and timeliness of processing appeals under section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) and section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act (DIMA). See Note below.

Note: Section 521 of BIPA and section 940 of DIMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. Upon implementation of section 521, the first level in a beneficiary's appeal will be a "redetermination" that will replace the current reconsideration for Part A appeals and the current review for Part B appeals. Intermediaries will be required to process all requests for redeterminations within 60 days of receipt of the request. Upon implementation of section 521 of BIPA, and section 940 of DIMA, we intend to begin evaluating whether intermediaries are meeting the timeliness and accuracy requirements for processing redeterminations. Because the ability for beneficiaries to request this new first level of appeal will not be initiated until section 521 of BIPA is implemented, there will be a period of time in which intermediaries will not only be processing redeterminations, but will continue to process the reconsideration, review, and hearing workloads that existed prior to the implementation of BIPA. Upon the implementation of section 521 of BIPA and section 940 of DIMA, this 60-day requirement and the processing accuracy will be additional functions that may be evaluated.

B. Customer Service Criterion

Functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and provider telephone inquiries.
- Quality Call Monitoring.
- Training of Customer Service Representatives.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Providing timely and accurate written replies to beneficiaries and providers that address the concerns raised and are written with an appropriate customer-friendly tone and clarity and that those written to beneficiaries are at the appropriate reading level.
- Walk-in inquiry service.

- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing providers and physicians timely, accurate, and useful Medicare program information.

C. Payment Safeguards Criterion

The Payment Safeguard criterion contains the following two mandated standards:

Standard 1. Decisions on SNF demand bills are accurate.

Standard 2. TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated time frames. Specifically, applications must be processed to completion within 75 days after receipt by the contractor or returned to the hospitals as incomplete within 60 days of receipt.

Intermediaries may also be evaluated on any MIP activities if performed under their Part A contractual agreement. These functions and activities include, but are not limited to the following:

- Audit and Reimbursement

—Performing the activities specified in our general instructions for conducting audit and settlement of Medicare cost reports.

—Establishing accurate interim payments.

- Benefit Integrity

—Referring allegations of potential fraud that are made by beneficiaries, providers, CMS, Office of Inspector General (OIG), and other sources to the Payment Safeguard Contractor.

—Putting in place effective detection and deterrence programs for potential fraud.

- Medical Review

—Increasing the effectiveness of medical review activities.

—Exercising accurate and defensible decision making on medical reviews.

—Effectively educating and communicating with the provider community.

—Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.

- Medicare Secondary Payer

—Accurately reporting MSP savings.

—Accurately following MSP claim development and edit procedures.

—Auditing hospital files and claims to determine that claims are being filed to Medicare appropriately.

—Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.

—Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with appropriate Medicare Intermediary Manual instructions and our other pertinent general instructions, in the specified order of priority.

- Overpayments

—Collecting and referring Medicare debts timely.

—Accurately reporting and collecting overpayments.

—Adhering to our instructions for management of Medicare Trust Fund debts.

- Provider Enrollment

—Complying with assignment of staff to the provider enrollment function and training the staff in procedures and verification techniques.

—Complying with the operational standards relevant to the process for enrolling providers.

D. Fiscal Responsibility Criterion

We may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure an intermediary's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure an intermediary's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), automated data processing (ADP) maintenance, and disaster recovery plans must be in place. An intermediary must also test system changes to ensure the accurate implementation of our instructions.

Our evaluation of an intermediary under the Administrative Activities criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, and security).
- Disaster recovery plan/systems contingency plan.
- Implementation of our general instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

V. Criteria and Standards for Regional Home Health Intermediaries (RHHIs)

The following three standards are mandated for the RHHI criterion:

Standard 1. Not less than 95.0 percent of clean electronically submitted non-Periodic Interim Payment hospice claims are paid within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean, non-Periodic Interim Payment electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper non-Periodic Interim Payment hospice claims are paid within specified time frames. Specifically, clean, non-Periodic Interim Payment paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 75.0 percent of HHA and hospice reconsiderations are processed within 60 days and 90.0 percent are processed within 90 days. Our expectation is that contractors will meet this percentage on a monthly basis.

We may use this criterion to review an RHHI's performance for handling the HHA and hospice workload. This includes processing HHA and hospice claims timely and accurately; properly paying and settling HHA cost reports; and timely and accurately processing reconsiderations and BIPA section 521 redeterminations from beneficiaries, HHAs, and hospices.

Note: Section 521 of BIPA and section 940 of DIMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. Upon implementation of section 521 of BIPA, the first level in a beneficiary's appeal will be a "redetermination" that will replace the current reconsideration for Part A appeals and the current review for Part B appeals. RHHIs will be required to process all requests for redeterminations within 60 days of receipt of the request. Upon implementation of section 521 of BIPA and section 940 of DIMA, we intend to begin evaluating whether RHHIs are meeting the timeliness and accuracy requirements for processing redeterminations. Because the ability for beneficiaries to request this new first level of appeal will not be initiated until section 521 of BIPA are implemented, RHHIs will not only be processing redeterminations, but will continue to process the reconsideration, review, and hearing workloads that existed prior to the implementation of BIPA. Upon the implementation of section 521 of BIPA and section 940 of DIMA this 60-day requirement and the processing accuracy will be additional functions that may be evaluated.

VI. Criteria and Standards for Carriers

A. Claims Processing Criterion

The Claims Processing criterion contains the following six mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. 98.0 percent of MSNs are properly generated. Our expectation is that MSN messages are accurately reflecting the services provided.

Standard 4. 95.0 percent of review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of carrier hearing decisions are completed within 120 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Review determination letters prepared in response to beneficiary initiated appeal requests are written at an appropriate reading level.

Additional functions that may be evaluated under this criterion includes, but are not limited to, the following:

- Claims Processing accuracy.
- Establishment and maintenance of relationship with the CWF Host.
- Accuracy of processing review determination cases.
- Accuracy of processing hearing cases with decision letters that are clear and have an appropriate customer-friendly tone.
- Accuracy and timeliness of processing appeals under BIPA.

Note: Section 521 of BIPA and section 940 of DIMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. Upon implementation of section 521 of BIPA, the first level in a beneficiary's appeal will be a "redetermination" that will replace the current review for Part B appeals. Carriers will be required to process all requests for redeterminations within 60 days of receipt of the request. Upon implementation of section 521 of BIPA and section 940 of DIMA, we intend to begin evaluating whether carriers are meeting the timeliness and accuracy requirements for processing redeterminations. Because the ability for beneficiaries to request this new first level of appeal will not be initiated until section 521 of BIPA is implemented, there will be a period of time in which carriers will not only be processing redeterminations, but will continue to process the review and hearing workloads that existed prior to the implementation of BIPA. Upon the implementation of section 521 of BIPA and section 940 of DIMA, this 60-day requirement and the processing accuracy will be additional functions that may be evaluated.

B. Customer Service Criterion

Customer Service criterion contains the following mandated standard:

Standard. Replies to beneficiary correspondence address the beneficiary's concerns, are written with an appropriate customer-friendly tone and clarity, and are at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and providers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and provider telephone inquiries.
- Quality call monitoring.
- Training of customer service representatives.
- Providing timely and accurate written replies to beneficiary and provider inquiries.
- Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.
- Walk-in inquiry service.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing providers timely, accurate, and useful Medicare program information.

C. Payment Safeguards Criterion

Carriers may be evaluated on any MIP activities if performed under their contracts. In addition, other carrier functions and activities that may be reviewed under this criterion include, but are not limited to the following:

- Benefit Integrity

—Referring allegations of potential fraud that are made by beneficiaries, providers, CMS, OIG, and other sources to the Payment Safeguard Contractor.

—Putting in place effective detection and deterrence programs for potential fraud.

- Medical Review

—Increasing the effectiveness of medical review activities.

—Exercising accurate and defensible decision making on medical reviews.

—Effectively educating and communicating with the provider community.

—Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.

- Medicare Secondary Payer

—Accurately reporting MSP savings.

—Accurately following MSP claim development/edit procedures.

—Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.

—Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with the appropriate Medicare Carriers Manual instructions, and our other pertinent general instructions.

- Overpayments

—Collecting and referring Medicare debts timely.

—Accurately reporting and collecting overpayments.

—Compliance with our instructions for management of Medicare Trust Fund debts.

- Provider Enrollment

—Complying with assignment of staff to the provider enrollment function and training staff in procedures and verification techniques.

—Complying with the operational standards relevant to the process for enrolling suppliers.

D. Fiscal Responsibility Criterion

We may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

E. Administrative Activities Criterion

We may measure a carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure a carrier's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. Also, a carrier must test system changes to ensure accurate implementation of our instructions.

Our evaluation of a carrier under this criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, and security).
- Disaster recovery plan/systems contingency plan.
- Implementation of our general instructions.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

VII. Criteria and Standards for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Regional Carriers

The five criteria for DMEPOS regional carriers contain a total of seven mandated standards against which all DMEPOS regional carriers must be evaluated.

There also are examples of other activities for which the DMEPOS regional carriers may be evaluated. The mandated standards are in the Claims Processing and Customer Service Criteria. In addition to being described in these criteria, the mandated standards are also described in Attachment J–37 to the DMEPOS regional carrier statement of work (SOW).

A. Claims Processing Criterion

The Claims Processing criterion contains the following six mandated standards:

Standard 1. Not less than 95.0 percent of clean electronically submitted claims are processed within statutorily specified time frames. Clean claims are defined as claims that do not require Medicare DMEPOS regional carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 2. Not less than 95.0 percent of clean paper claims are processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt). Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 3. Properly generated 98.0 percent of MSNs. Our expectation is that MSN messages are accurately reflecting the services provided.

Standard 4. 95.0 percent of DMEPOS regional carrier review determinations are completed within 45 days. Our expectation is that contractors will meet this percentage on a monthly basis.

Standard 5. 90.0 percent of DMEPOS regional carrier hearing decisions are completed within 120 days. CMS's expectation is that contractors will meet this percentage on a monthly basis.

Standard 6. Review determination letters prepared in response to beneficiary initiated appeal requests are written at an appropriate reading level.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Claims processing accuracy.
- Review determinations and hearing decisions are written accurately, clearly, and in a customer friendly tone.
- Telephone reviews are appropriately documented and adjudicated timely.
- Requests for ALJ hearings are forwarded timely.
- Accuracy and timeliness of processing appeals under BIPA.

Note: Section 521 of BIPA and section 940 of DIMA amend section 1869 of the Act by requiring major revisions to the Medicare appeals process. Upon implementation of section 521 of BIPA, the first level in a beneficiary's appeal will be a "redetermination" which will replace the current review for Part B appeals. DMEPOS regional carriers will be required to process all requests for redeterminations within 60 days of receipt of the request. Upon implementation of section 521 of BIPA and section 940 of DIMA, we intend to begin evaluating whether DMEPOS regional carriers are meeting the timeliness and accuracy requirements for processing redeterminations. Because the ability for beneficiaries to request this new first level of appeal will not be initiated until section 521 of BIPA is implemented, there will be a period of time in which DMEPOS regional carriers will not only be processing redeterminations, but will continue to process the review and hearing workloads that existed prior to the implementation of BIPA. Upon the implementation of section 521 of BIPA and section 940 of DIMA, this 60-day requirement and the processing accuracy will be additional functions that may be evaluated.

B. Customer Service Criterion

The Customer Service Criterion contains the following mandated standard:

Standard. Replies to beneficiary correspondence, addresses concerns raised, writes with an appropriate customer-friendly tone and clarity at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and suppliers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, the DMEPOS regional carrier SOW, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Providing timely and accurate replies to beneficiary and supplier telephone inquiries.
- Monitoring calls for quality.
- Training of Customer Service Representatives.

Ensuring the validity of the call center performance data that are being reported in the Customer Service Assessment and Management System.

- Providing timely and accurate replies to beneficiaries, providers, and suppliers.
- Maintaining walk-in inquiry service.
- Conducting beneficiary and supplier education, training, and outreach activities.
- Effectively maintaining an Internet Website dedicated to furnishing suppliers timely, accurate, and useful Medicare program information.
- Ensuring that communications are made to interested supplier organizations for the purpose of developing and maintaining collaborative supplier education and training activities and programs.

C. Payment Safeguards Criterion

DMEPOS regional carriers may be evaluated on any MIP activities if performed under their contracts. The DMEPOS regional carriers must undertake actions to promote an effective program administration for DMEPOS regional carrier claims. These functions and activities include, but are not limited to the following:

- Benefit Integrity

—Identifying potential fraud cases that exist within the DMEPOS regional carrier's service area and taking appropriate actions to resolve these cases.

—Investigating allegations of potential fraud made by beneficiaries, suppliers, CMS, OIG, and other sources.

—Putting in place effective detection and deterrence programs for potential fraud.

- Medical Review

—Reducing the error rate by identifying patterns of inappropriate billing.

—Educating suppliers concerning Medicare coverage and coding requirements.

- Medicare Secondary Payer

—Accurately reporting MSP savings.

—Accurately following MSP claim development/edit procedures.

—Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.

—Identifying, recovering, and referring mistaken/conditional Medicare payments in accordance with the appropriate program instructions in the specified order of priority.

- Overpayments

—Determining that the DMEPOS regional carrier completely, accurately, timely, and aggressively pursued all outstanding overpayments in adherence with the Medicare Carriers Manual and CMS Program Memoranda resulting from the Debt Collection Improvement Act (DCIA).

—Verifying that all overpayments were timely and accurately recorded.

D. Fiscal Responsibility Criterion

We may review the DMEPOS regional carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts. Additional matters that may be reviewed under this criterion include, but are not limited to the following:

- Compliance with financial reporting requirements.
- Adherence to approved program management and MIP budgets.
- Control of administrative cost and benefit payments.

E. Administrative Activities

We may measure a DMEPOS regional carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives. Our evaluation of a DMEPOS regional carrier under this criterion may include, but is not limited to review of the following:

- Systems Security.
- Disaster recovery plan/systems contingency plan.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.

VIII. Action Based on Performance Evaluations

We evaluate a contractor's performance against applicable program requirements for each criterion. Each contractor must certify that all information submitted to us relating to the contract management process, including, without limitation, all files, records, documents and data, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor is required to certify that its files, records, documents, and data have not been manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information required to be submitted for the contract management process under the authority of applicable law(s), regulation(s), contract(s), or our manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal and/or civil prosecution, as well as appropriate administrative action. This administrative action may include debarment or suspension of the contractor, as well as the termination or nonrenewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. When we determine a contractor is not meeting performance requirements, we will use the terms "major nonconformance" or "minor nonconformance" to classify our findings. A major nonconformance is a nonconformance that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. A minor nonconformance is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services. The contractor will be required to develop and implement a PIP for findings determined to be either a major or minor nonconformance. The contractor will be monitored to ensure effective and efficient compliance with the PIP, and to ensure improved performance when requirements are not met.

The results of performance evaluations and assessments under all criteria applying to intermediaries, carriers, RHHIs, and DMEPOS regional carriers will be used for contract management activities and will be published in the contractor's annual Report of Contractor Performance (RCP). We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations when—

- Entering into, renewing, or terminating agreements or contracts with contractors, and
- Deciding other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, these decisions depend on the following:

—Relative overall performance compared to other contractors.

—Number of criteria in which nonconformance occurs.

—Extent of each nonconformance.

—Relative significance of the requirement for which nonconformance occurs within the overall evaluation program.

—Efforts to improve program quality, service, and efficiency.

—Deciding the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary, RHHI, carrier, or DMEPOS regional carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.

IX. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million in any one year). Since this notice only describes criteria and standards for evaluating FIs (including RHHIs), carriers, and DMEPOS regional carriers and has no significant economic impact on the program, its beneficiaries, providers or suppliers, this is not a major notice.

The RFA requires agencies to analyze options for regulatory relief of small businesses, but intermediaries, RHHIs, carriers and DMEPOS regional carriers are not small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This notice does not affect small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. In accordance with section 202, we have determined that the notice does not impose any unfunded mandates on States, local or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a notice that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

We have not prepared a Regulatory Impact Analysis for this notice, in accordance with Executive Order 12866, because it will not have a significant economic impact, nor does it impose any unfunded mandates on State, local, or tribal governments or the private sector. Furthermore, we certify that the notice will not have a significant impact on a substantial number of small entities or small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

X. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Authority: Sections 1816(f), 1834(a)(12), and 1842(b) of the Social Security Act (42 U.S.C. 1395h(f), 1395m(a)(12), and 1395u(b)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital

Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 5, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Editorial Note. This document was received at the Office of the Federal Register on December 17, 2003.

[FR Doc. 03–31468 Filed 12–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1254–N]

Medicare Program; Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—February 18, 19, and 20, 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the first biannual meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2004.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. The Secretary and Administrator consider the Panel's advice as CMS prepares its annual updates of the hospital outpatient prospective payment system (OPPS) through rulemaking.

DATES: The first biannual meeting for 2004 is scheduled for February 18, 19, and 20, 2004, from 8 a.m. to 5 p.m. (EST).

ADDRESSES: The meeting will be held in the Multipurpose Room, 1st Floor, at the CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For copies of the charter, inquiries regarding these meetings, meeting registration, and submission of oral presentations or written agenda items, contact Shirl Ackerman-Ross, the meeting coordinator and Designated Federal Official, FACA; CMS, Center for Medicare Management, Hospital Ambulatory Policy Group, Division of Outpatient Care; 7500 Security Boulevard, Mail Stop C4–05–17; Baltimore, MD 21244–1850 or phone (410) 786–4474. Also, please refer to the CMS Advisory Committees' Information Line at 1–877–449–5659 (toll free) and (410) 786–9379 (local).

For additional information on the APC meeting agenda topics and/or updates to the Panel's activities, search our Internet Web site: *http://www.cms.hhs.gov/faca/apc/default.asp.*

To submit a request for a copy of the charter, search the Internet at *http://www.cms.hhs.gov/faca* or e-mail *SAckermannross@cms.hhs.gov.*

Written materials may also be sent electronically to *outpatientpps@cms.hhs.gov.*

News media representatives should contact our Public Affairs Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to establish and consult with an expert, outside advisory panel on Ambulatory Payment Classification (APC) groups. The Advisory Panel on Ambulatory Payment Classification Groups (the Panel) meets up to three times annually to review the APC groups and to provide technical advice to the Secretary and to the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the groups and their associated weights. We will consider the technical advice provided by the Panel as we prepare the proposed rule that proposes changes to the Outpatient Prospective Payment System (OPPS) for the next calendar year.

The Panel may consist of a chair up to 15 members. These members must be representatives of Medicare Providers who are subject to OPPS and they may not be consultants. Panel members must have technical expertise that will enable them to participate fully in the work of the panel and must be currently employed full-time in their area of expertise. The Administrator selected the Panel membership based upon either self-nominations or nominations submitted by providers or organizations.

The Panel presently consists of the following members and a Chair (Vacant):

- Marilyn Bedell, M.S., R.N., O.C.N.
- Geneva Craig, R.N., M.A.
- Lora DeWald, M.Ed.
- Albert Brooks Einstein, Jr., M.D.
- Robert E. Henkin, M.D.
- Lee H. Hilborne, M.D., M.P.H.
- Stephen T. House, M.D.
- Frank G. Opelka, M.D., F.A.C.S.
- Kathleen Kinslow, C.R.N.A., Ed.D.
- Mike Metro, R.N., B.S.
- Gerald V. Naccarelli, M.D.
- Beverly K. Philip, M.D.
- Lynn R. Tomascik, R.N., M.S.N., C.N.A.A.
- Timothy Gene Tyler, Pharm.D.
- William Van Decker, M.D.

The agenda for the February 2004 meeting will provide for discussion and comment on the following topics:

- Reconfiguration of APCs (for example, splitting of APCs, moving Healthcare Common Procedure Coding System (HCPCS) codes from one APC to another and moving HCPCS codes from New Technology APCs to Clinical APCs).
- Evaluation of APC weights.
- Packaging devices and drug costs into APCs: methodology, effect on APCs, and need for reconfiguring APCs based upon device and drug packaging.
- Removal of procedures from the inpatient list for payment under the OPPS.
- Use of single and multiple procedure claims data.
- Packaging of HCPCS codes.
- Other technical issues concerning APC structure.

We are soliciting comments from the public on specific agenda items falling within these agenda topics for the February 2004 Panel meeting. We will consider specific agenda items for this meeting if they are submitted in writing and fall within the agenda topics listed above. We urge those who wish to comment to send comments as soon as possible but no later than 5 p.m. (EST), Friday, February 6, 2004.

The meeting is open to the public, but attendance is limited to the space available. Individuals or organizations wishing to make 5-minute oral presentations should contact the meeting coordinator by 5 p.m. (EST), Friday, February 6, 2004, in order to be scheduled. The number of oral presentations may be limited by the time available. Oral presentations must not exceed 5 minutes and may be further limited by the Chair due to quantity of presentations.

Persons wishing to make oral presentations must submit a copy of the presentation and the name, address, and telephone number of the presenter. In addition, all presentations must contain, at a minimum, the following supporting information and data:

- The presenter's financial relationship(s), if any, with any company whose products, services, or procedures are under consideration.
- Physicians' Current Procedural Terminology (CPT) codes involved.
- APC(s) affected.
- Description of the issue(s).
- Clinical description of the service under discussion (with comparison to other services within the APC).
- Recommendations and rationale for change.
- Expected outcome of change and potential consequences of not making the change.

Submit a written copy of the oral presentation or written agenda items to the meeting coordinator listed above or electronically to the following address: *outpatientpps@cms.hhs.gov*. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission and cannot acknowledge or respond individually to comments that we receive.

In addition to formal presentations, there will be an opportunity during the meeting for public comment, limited to 1 minute for each individual or a total of 5 minutes per organization.

Persons wishing to attend this meeting, which is located on Federal property, must call the meeting coordinator, Shirl Ackerman-Ross, at (410) 786–4474, to register in advance no later than 5 p.m. (EST), Wednesday, February 4, 2004. Persons attending must present a photographic identification to the Federal Protective Service or Guard Service personnel before they will be allowed to enter the building.

Persons who are not registered in advance will not be permitted into the building and will not be permitted to attend the meeting.

A member of our staff will be stationed at the Central Building, first-floor lobby, to provide assistance to attendees. Please remember that all visitors must be escorted if they have business in areas other than the lower and first floor levels in the Central Building. Parking permits and instructions are issued upon arrival by the guards at the main entrance.

Special Accommodations: Individuals requiring sign-language interpretation or other special accommodations should send a written request for these services to the meeting coordinator, Shirl Ackerman-Ross, at Center for Medicare Management, Hospital Ambulatory Policy Group, Division of Outpatient Care; 7500 Security Boulevard, Mail Stop C4–05–17; Baltimore, MD 21244–1850 by 5 p.m. (EST), Wednesday, February 4, 2003.

Authority: Section 1833(t) of the Act (42 U.S.C. 1395l(t), as amended by section 201(h) of the BBRA of 1999 (Pub. L. 106–113) and section 10(a) of Pub. L. 92–463 (5 U.S.C. Appendix 2). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 9, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–31045 Filed 12–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1247–N]

Medicare Program; Town Hall Meeting in Calendar Year 2004 for Ambulance Condition Codes

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a town hall meeting to provide a forum for all interested individuals to discuss and/or submit written comments on the establishment and implementation of Ambulance Condition Codes. Ambulance Condition Codes would be included in Chapter 15 of the CMS Manual System. Development of new ICD–9–CM codes for those Ambulance Condition Codes that do not currently have a satisfactory corresponding ICD–9–CM code will be a separate process that the ambulance industry must address with the National Center for Health Statistics (NCHS).

DATES: The town hall meeting announced in this notice will be held on Wednesday, February 4, 2004, from 10 a.m. to 4 p.m., e.s.t.

ADDRESSES: The town hall meeting will be held in the auditorium at the Centers for Medicare & Medicaid Services (CMS), 7500 Security Boulevard, Baltimore, Maryland 21244.

FOR FURTHER INFORMATION CONTACT: Anne Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA) (Pub. L. 106–554). Section 1833(h) of the Social Security Act (the Act) and section 531(b) of the BIPA mandated procedures that permit public consultation on clinical laboratory services and durable medical equipment (DME) payment policy issues. We are applying this public consultation procedure to ambulance service policy issues for the purpose of this town hall meeting. This town hall meeting is intended to provide a forum for all interested parties to comment on and discuss the Ambulance Condition Codes. The Ambulance Condition Code information may be reviewed prior to the public meeting by accessing *http://www.cms.hhs.gov/paymentsystems* on the Internet. This information will be available for review beginning January 5, 2003.

II. Presentations

Registered persons from the public may discuss and make recommendations concerning the Ambulance Condition Codes. Individuals who wish to make formal presentations must include that information when registering. Presentations must be brief, and three written copies must be submitted to accompany the oral presentation. Presenters may also make copies available for approximately 50 meeting participants.

III. Registration Instructions

Beginning January 5, 2004, you may complete your registration on-line at *http://www.cms.hhs.gov/paymentsystems*. Please submit the following information when registering: name, company name, address, telephone number, and e-mail address and an indication of whether you wish to make a formal presentation. A confirmation will be sent upon receipt of the registration.

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by close of business on January 23, 2004. In order to gain access to the building and grounds, participants must show to the Federal Protective Service or Guard Service personnel a government-issued photo identification and a copy of their registration confirmation. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting. Seating capacity is limited to the first 250 registrants.

The on-site check-in for visitors will be held from 9 a.m. until 10 a.m., followed by opening remarks. Please allow sufficient time to arrive to go through the security checkpoints. It is suggested that you arrive at 7500 Security Boulevard no later than 8:40 a.m. so that you will be able to arrive promptly at the meeting by 9 a.m. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection.

Individuals requiring sign language interpretation for the hearing impaired or other special accommodations must provide that information upon registering for the meeting.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 9, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–31044 Filed 12–23–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Grants for Coordinated HIV Services and Research for Women, Infants, Children, and Youth

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

SUMMARY: In notice document FR Doc. 03–22427, Vol. 68, No. 171, Thursday, September 4, 2003, make the correction:

On page 52658, in the third column under “Limited Competition:” Correct the areas of limited competition to add: LA—Baton Rouge.

Dated: December 17, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–31771 Filed 12–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following Federal advisory committee meeting. The meeting will be open to the public.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: March 18, 2004; 5 p.m.–7 p.m.; March 19, 2004; 8:30 a.m.–5 p.m.; March 20, 2004; 9 a.m.–5:30 p.m.; March 21, 2004; 8 a.m.–10:30 a.m.

Place: Embassy Suites Hotel Raleigh/Crabtree, 4700 Creedmoor Road, Raleigh, NC 27612, 919–881–0000.

Agenda: The Council will be meeting in Raleigh, North Carolina, to focus on rural implementation issues of the National Health Service Corps (NHSC). Members will meet with local scholars, loan re-payers and program alumni. State Officials will also address council, including communities which have used NHSC services.

FOR FURTHER INFORMATION CONTACT: Tira Robinson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 594–4140.

Dated: December 17, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31769 Filed 12–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry.

Date and Time: February 12, 2004, 8:30 a.m.–4:30 p.m. and February 13, 2004, 8 a.m.–2 p.m.

Place: The Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting the Advisory Committee will work on its fourth report which will be submitted to Congress and the Secretary of the Department of Health and Human Services in November 2004. The fourth report focuses on the role of primary care in health care delivery in the future and the implications for training health professionals. This meeting also will devote time for a discussion of outcomes of Title VII, section 747 programs.

Agenda: The meeting on Thursday, February 12, will begin with opening comments from the Chair of the Advisory Committee. A plenary session will follow in which Advisory Committee members will discuss various sections of the fourth report. The Advisory Committee will divide into workgroups to further develop the fourth report. An opportunity will be provided for public comment.

On Friday, February 13, the Advisory Committee will meet in plenary session to continue its work on the fourth report. There will be a discussion of a subcommittee report on how to measure outcomes of Title VII, section 747 training programs. An opportunity will be provided for public comment.

FOR FURTHER INFORMATION CONTACT: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd.*

Dated: December 17, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31770 Filed 12–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the fiscal year 2003 annual report for the following Health Resources and Services Administration's (HRSA) Federal advisory committee has been filed with the Library of Congress: Health Professions and Nurse Education Special Emphasis Panel.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room in the James Madison Memorial Building, Room LM–133 (entrance on Independence Avenue, between First and Second Streets, SE., Washington, DC).

Copies may be obtained from: Ms. Wilma Johnson, Deputy Director, Division of Independent Review, Office of Management and Program Support, HRSA, Parklawn Building, Room 11A–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3019.

Dated: December 19, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31772 Filed 12–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the fiscal year 2003 annual report for the following Health Resources and Services Administration's (HRSA) Federal advisory committee has been filed with the Library of Congress: Maternal and Child Health Research Grants Review Committee.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room in the James Madison Memorial Building, Room LM–133 (entrance on Independence Avenue, between First and Second Streets, SE., Washington, DC).

Copies may be obtained from: Ms. Stella M. Yu, Division of Research, Training and Education, Maternal and Child Health Bureau, HRSA, Parklawn Building, Room 18A–55, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone 301–443–2340.

Dated: December 19, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–31773 Filed 12–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Directorate of Information Analysis and Infrastructure Protection (IAIP); Open Meeting of National Infrastructure Advisory Council (NIAC)

AGENCY: Directorate of Information Analysis and Infrastructure Protection, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, January 13, 2004, from 3 p.m. until 6 p.m. in Room 207 of the Washington Convention Center, 801 Mount Vernon Place, NW., Washington, DC. The meeting will be open to the public. Limited seating will be available. Reservations are not accepted.

The NIAC advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the NIAC will be briefed on the status of several Working Group activities that the Council undertook at its last meeting.

DATES: The NIAC will meet Tuesday, January 13, 2004, from 3 p.m. until 6 p.m.

ADDRESSES: The NIAC will meet in Room 207 of the Washington Convention Center, 801 Mount Vernon Place, NW., Washington, DC. Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to NIAC members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address: Ms. Nancy J. Wong, Infrastructure Coordination Division, Directorate of Information Analysis and Infrastructure Protection, U.S. Department of Homeland Security, 14th Street & Constitution Avenue, NW., Room 6073, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, NIAC Designated Federal Officer, telephone 202–482–7488.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Subcommittee Meeting on January 13, 2004

I. Opening of Meeting: Nancy J. Wong, U.S. Department of Homeland Security (DHS)/Designated Federal Officer, NIAC.

II. Roll Call of Members: NIAC Staff.

III. Conflict of Interest and the Special Council Government Employee Ethics Training Session: Robert Coyle; and Nancy Baumgartner, DHS/Office of General Counsel.

IV. Opening Remarks: Lt. Gen. Frank Libutti (USMC, ret.), Under Secretary for Information Analysis and Infrastructure Protection, DHS, Homeland Security for Infrastructure Protection; Richard K. Davidson, Chairman, President & CEO, Union Pacific Corporation; Chairman, NIAC; and John T. Chambers, President & CEO, Cisco Systems, Inc.; Vice Chairman, NIAC.

V. Report of the Working Group on Cyber Vulnerability Disclosure Guidelines: Vice Chairman Chambers; and John W. Thompson, Chairman & CEO, Symantec Corporation; NIAC Member.

VI. Status Reports on Pending Initiatives:

a. Evaluation and Enhancement of Information Sharing and Analysis: Thomas E. Noonan, Chairman, President & CEO, Internet Security Systems, Inc.; NIAC Member.

b. Regulatory Guidance/Best Practices for Enhancing Security of Critical Infrastructure Industries: Karen L. Katen, President, Pfizer Global Pharmaceuticals and Exec. V.P., Pfizer Inc.; NIAC Member.

c. Hardening the Internet: George H. Conrades, Chairman & CEO, Akamai Technologies; NIAC Member.

d. Prioritization of Cyber Vulnerabilities: Martin G. McGuinn, Chairman & CEO, Mellon Financial Corporation; NIAC Member.

VII. Discussion of NIAC on the Draft of the Sector Interdependencies/Risk Assessment Guidance Working Report: Martin G. McGuinn, Chairman & CEO, Mellon Financial Corporation; NIAC Member.

VIII. Adoption of NIAC Comments: NIAC Members.

IX. New Business: Chairman Davidson; NIAC Members.

X. Adjournment.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Designated Federal Officer and submit written material. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Designed Federal Officer (*see* **ADDRESSES** and **DATES**).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Designated Federal Officer as soon as possible.

Dated: December 17, 2003.

Nancy J. Wong,

Designated Federal Officer for NIAC.

[FR Doc. 03–31656 Filed 12–23–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16730]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: For each of 5 fiscal years starting in 1999, the Transportation Equity Act for the 21st Century has made $5 million available to the Secretary of Transportation for payments of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. This notice is being published to satisfy a requirement of the Act that a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. In this notice, we have specified the amount of monies the Coast Guard has committed, obligated or expended as of September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Captain Scott Evans, USCG, Chief, Office of Boating Safety, telephone 202–267–1077, fax 202–267–4285, or Mr. Jeffrey N. Hoedt, Chief, Program Management Division, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century became law on June 9, 1998 (Pub. L. 105–178; 112 Stat. 107). The Act required that of the $5 million made available to carry out the national recreational boating safety program each year, $2 million shall be available only to ensure compliance with Chapter 43 of title 46, U.S. Code—Recreational Vessels. The responsibility to administer these funds was delegated to the Commandant of the United States Coast Guard. With the transfer of the Coast Guard to the Department of Homeland Security (DHS), this authority in the Transportation Equity Act for the 21st Century has been transferred to the Secretary of the DHS from the Secretary of the Department of Transportation (Sec. 888 of the Homeland Security Act of 2002), and redelegated to the Coast Guard (Department of Homeland Security Delegation No. 0170.1.).

Subsection (c) of sec. 7405 of the Act directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year 1999 through 2003 shall remain available until expended.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The following activities have been initiated using fiscal year 1999 through 2003 funds transferred to the Coast Guard from the Aquatic Resources (Wallop-Breaux) Trust Fund. The total amount of fiscal year 1999, 2000, 2001, 2002 and 2003 funding committed, obligated and/or expended for each activity is shown.

Factory Visit Program: An initial contract was awarded to establish a national recreational boat factory visit program using contractor personnel, The contract included the development of a plan of action and an 18-month pilot program to validate the elements of the plan and the concept of the program. The pilot program commenced in the summer of 2000. "Compliance associates" (inspectors) were trained and formal factory visits were initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit approximately 2,000 recreational boat manufacturers each year to inspect for compliance with the Federal regulations, communicate with the manufacturers as to why they need to comply with the Federal regulations, and educate them, as necessary, on how to comply with the Federal regulations. ($6,284,665)

Boat Compliance Testing: Funding is provided for expansion of the boat compliance testing program whereby new manually propelled and outboard recreational boats are purchased in the open market and tested for compliance with the Federal flotation standards. The expanded program includes inboard/sterndrive boats and used boats. ($651,381)

Associated Equipment Compliance Testing: A contract was awarded to buy recreational boat "associated equipment" (*e.g.*, starters, alternators, fuel pumps, and bilge pumps) and test this equipment for compliance with Federal safety regulations. This new initiative complements the boat compliance testing program. ($426,220)

Compliance Associated Travel: Travel by employees of the Office of Boating Safety is being performed to carry out additional compliance actions and to gather background and planning information for new compliance initiatives. ($108,395)

New Boat Manufacturer Outreach Package: A contract was awarded to design and develop a comprehensive and user-friendly outreach package for distribution to new recreational boat manufacturers. Included in the package are a brochure and video that outline the many facets of the recreational boat manufacturing business, including Federal regulations, voluntary standards, self-certification, financial aspects, insurance concerns, liability issues, points of contact and the steps necessary to become a new recreational boat manufacturer. The package also includes plain language guidelines that help clarify Federal requirements. The outreach package is aimed at increasing the level of new recreational boat manufacturer compliance with applicable Federal regulations. ($433,995)

National Recreational Boating Survey: The national recreational boating survey was completed on November 30, 2003. The purpose of this project was to obtain up-to-date statistical estimates on recreational boating. Over 25,000 surveys were completed with individuals who boated between September 2001 and September 2002. Survey findings were extrapolated to produce national, regional and State estimates of boat use as well as the characteristics of boat operators, passengers, boats, safety equipment, and the boating environment. The final report is available upon request to the U.S. Coast Guard Infoline at 1–800–368–5647. ($1,809,144).

Boating Accident Report Database (BARD): A contract has been awarded to enhance the capability of all States and the Coast Guard for the successful electronic exchange, management, and reporting of recreational boating accident report data using the BARD software application. This contract provides for software module development, software module testing, applicable rework, implementation, maintenance, and technical support for the user community in the 50 States, five Territories, and the District of Columbia. ($2,953,755)

State Incident Notification: The Coast Guard Search and Rescue Management Information System (SARMIS) software has been modified to electronically notify the relevant State boating law administrators regarding any fatal recreational boating incident cases to which the Coast Guard responds. The intent of this notification is to ensure that these cases are captured in the accident report data submitted by the State boating law administrators to the Boating Accident Report Database (BARD). ($12,678)

Articulated Mannequins/Computer Simulation Model: The objective of this contracted program is to improve the safety of recreational boaters by fostering developmental technology for improved personal flotation devices (PFDs). This program is furthering development of flotation mannequins and a water forces computer simulation program to promote the rapid, objective evaluation of different PFD designs on various body types that are representative of the recreational boating population. The computer simulation program will be validated through the use of a family of anthropomorphic, articulated mannequins. Under the contract to develop the articulated mannequins and computer simulation model, a male model has been built and is almost perfected. Currently, a female and a child mannequin are being developed. The development of a computer simulation program will facilitate evaluation of the effectiveness of new and unique PFD designs. ($814,341)

Risk-Based Personal Flotation Device Approval Process: This ongoing effort will improve the approval process for personal flotation devices (PFDs) by developing a risk-based compliance system that is based on an objective Life Saving Index. This index will provide a formal structure and consistency to the process for accepting new approaches to designing devices for drowning prevention. The risk-based process identifies critical factors for evaluating PFD lifesaving potential and defines the minimum level of performance necessary for approval. ($421,509)

Carbon Monoxide Research: The Office of Boating Safety has entered into a Memorandum of Agreement with the Department of Health and Human Services, U.S. Public Health Service, Federal Occupational Health Program, to continue investigation into identifying and classifying additional recreational boating carbon monoxide related deaths and injuries. ($573,475)

Houseboat Manufacturers Workshop/Conference Support: Funding provided support services for a Coast Guard-sponsored gathering of the houseboat industry to explore potential design solutions to the carbon monoxide poisonings that have occurred on recreational houseboats. ($17,030)

Hull Identification Number (HIN) Economic Analysis: This contracted effort provided the Coast Guard with a cost/benefit analysis on the effects of expanding the current 12-character HIN to a 17-character HIN for all newly constructed recreational boats. ($47,626)

Virtual Reality Personal Watercraft (PWC): A virtual reality PWC was developed under contract to provide a platform to gather objective data on operator reactions to various scenarios. This information would otherwise be unobtainable or would require more costly methods and sources, due to the risk of injury to the operator as well as due to the difficulty of accurately replicating conditions for all operators. The virtual reality PWC is being used in various test scenarios to collect human factors data including the measurement of reactive movements and reaction time that will assist in making decisions or taking action to improve personal watercraft safety. The data from this effort will give greater insight into the human-machine interface related to PWC operation and will assist in the effort to attempt to reduce PWC accidents. ($407,638)

Knowledge Management System: The first phase of a proposed three-phase contracted effort to develop a comprehensive Knowledge Management plan for automating office processes within the Office of Boating Safety was successfully completed. This phase provided the system requirements, potential applications and over-arching possible utility of the knowledge management system. Upon review of phase one analysis it was determined that the project should be terminated. This decision was based upon information obtained while performing this segment. In addition, it was determined that with projected changing software systems within the federal government that it was in our best interest to wait until the new federal system was made available. The second and third phases will not be implemented until further federal direction is obtained. Phases two and three, if implemented, would install document imaging software to capture and fully automate product assurance and consumer files and provide support that will ultimately enhance efficiency in supporting customers, partners and stakeholders. This would provide quicker, more effective and efficient program oversight while providing customers with the ability to do business with the Coast Guard via web-based technology, thus enabling the Coast Guard to reduce the amount of paper transactions involved in servicing external customers. This system will assist in the electronic monitoring, storage and daily use of information and materials within the Office of Boating Safety. ($431,890)

Coast Guard Infoline/Office of Boating Safety Web Site: Funding has been provided for both technological and educational enhancements to the toll-free Coast Guard Infoline and the Office of Boating Safety Web site to create a one-stop customer service center. The Infoline provides information about safety, regulations, communications, Coast Guard policy, and available material related to boating safety issues. Additionally, this effort provides a complete interactive recreational boating safety Web site that offers the public and boating safety agencies and organizations real-time information on every aspect of recreational boating safety. One of the goals of this program is to create a one-stop customer service center for all users. ($859,798)

Federal Requirements Publication: A customer-friendly "Federal Requirements and Safety Tips for Recreational Boats" publication was developed based on easy-to-read, high visibility graphics, and with subject-specific safety tips that promote high retention by the reader. Both hard copy and electronic interactive versions have been created for the public. The enhanced Federal Requirements brochure is being widely distributed, and in addition, can be downloaded from the Office of Boating Safety Web site (*http://www.uscgboating.org*). ($427,000)

Emergency Radio Call Procedures Decal: An emergency radio call procedures decal was produced and disseminated that provides the recreational boater with the proper procedures to use in making an emergency or distress call via VHF–FM Channel 16. This decal will be distributed via the Coast Guard Auxiliary, U.S. Power Squadrons, and State boating offices, as well as U.S. Army Corps of Engineers, Tennessee Valley Authority, and the Bureau of Land Management. This item also supports the Vessel Safety Check (VSC) program provided by the Coast Guard Auxiliary, U.S. Power Squadrons and States. The VSC program is a free service provided by these organizations offering a safety check of recreational boats 65′ or less in length. ($25,810)

Aids to Navigation Booklet: A full-color booklet, "U.S. Aids to Navigation System," was produced to assist recreational boaters in better understanding the use and identification of navigational aids. This booklet is now used as an educational adjunct to the safe boating classes taught by the Coast Guard Auxiliary, U.S. Power Squadrons, and many of the States. It is also distributed in conjunction with the Vessel Safety Check program. ($135,327)

"Operation BoatSmart" Support: Funding support was provided to this initiative which coordinated Coast Guard and other boating safety organizations aims to energize recreational boating safety programs by strengthening and extending partnerships at the national, State and local levels. Through combined and coordinated efforts, the BoatSmart partners targeted those activities and behaviors that presented the greatest risk for the recreational boater. "Operation BoatSmart" brought together these organizations to work in tandem to promote a positive change in boater awareness and behavior, with special emphasis on inland waters where most recreational boating takes place. Special emphasis was focused on encouraging life jacket wear, boater education, and scrupulous enforcement of boating under the influence laws by appropriate authorities. ($273,586)

Recreational Boating Safety Program Marketing Support: A national marketing, awareness and education campaign in support of "Operation BoatSmart," as well as America's Boating Course, Boating Under the Influence Campaign, and the Vessel Safety Check (VSC) Program, has been funded. America's Boating Course is a joint boating safety education course developed by the U.S. Coast Guard Auxiliary and the U.S. Power Squadrons, supported by the Coast Guard. This course, available via CD–Rom or Internet will set the standard for recreational boating safety in our country. The Boating Under the Influence (BUI) campaign, "It's a Different World on the Water," is a multi-year effort to educate the recreational boater about the hazards of boating under the influence of alcohol or drugs. The marketing plan utilizes nationally recognized cartoon characters, Popeye and Olive Oyl, to advertise the VSC program to the boating public at marinas, yacht clubs, boat storage facilities, retail outlets and other recreational outlets. ($98,956)

Recreational Boating Safety (RBS) Outreach Program: This program provides full marketing, media, public information, and program strategy support to the RBS effort. The goal is to coordinate the RBS outreach campaigns some of which include: National Boating Under the Influence Campaign (BUI), Operation BoatSmart, PFD Wear, Vessel Safety Check Program (VSC), America's Boating Course, and other recreational boating safety issues on an as needed basis. ($2,189,254)

Kayak/Canoe Sponson Study: Study completed on the efficacy of the use of sponsons on canoes and kayaks. ($26,171)

Field Support—District Funded Projects

Seventeenth Coast Guard District Boating Safety Detachment: Funding was provided on a one-time, non-recurring basis to the Seventeenth Coast Guard District in support of a Coast Guard Boating Safety Detachment to assist in the transition of the State of Alaska's assumption of Recreational Boating Safety Program responsibilities. ($25,000)

Seventeenth Coast Guard District Boating Education and Safety (BEST)Teams: A 3-year effort, the BEST teams operated in the 17th District in 16 separate locations, with more than 30 team members providing educational benefits to the boaters of that district. ($150,000)

Eighth Coast Guard District Western Rivers Strike Team: Similar to the 17th District program these strike teams operated in the western rivers in the 8th District conducting safety education and providing waterway management assistance to various state RBS related activities within the Eighth Coast Guard District on an as needed basis. ($190,000)

National Boating Registration System: As a service for States/Territories that currently have inadequate (or no) computer software program to maintain their vessel numbering system information, funding was provided to the U.S. Coast Guard Operations Systems Center (OSC) to develop a National Boating Registration System software program that can easily be adapted by any State/Territory for their own use. The software that has been provided to States/Territories at no cost includes a function to automatically generate the annual report on numbered vessels that must be submitted to the Coast Guard each year. ($25,000)

Marine Dealer Literature Display Racks: Display racks for U.S. Coast Guard and U.S. Coast Guard Auxiliary literature were purchased to improve distribution of boating safety literature. These display racks are intended to be used at retail outlets and marine dealers. ($23,725)

Personnel Support: Funding is providing for personnel to support the development of new regulations, to support new contracting activities associated with the additional funding, and to monitor and manage the contracts awarded. ($905,791)

Marine Accident Investigating and Reporting: An initial contract was awarded to investigate and provide reports on marine accidents. The contractor also provides statistical analysis on causes. ($95,000)

A total of $20,844,160 of the $25,000,000 made available to the Coast Guard through annual transfers of $5 million in fiscal years 1999, 2000, 2001, 2002 and 2003 has been committed, obligated or expended as of September 30, 2003.

Dated: December 17, 2003.

Jeffrey J. Hathaway,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 03–31729 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Decision 03–36]

Customs Accreditation of SEA, Ltd. as a Commercial Laboratory

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of SEA, Ltd., of Columbus, Ohio, as a commercial laboratory.

SUMMARY: SEA, Ltd. of Columbus, Ohio has applied to Customs and Border Protection under § 151.12 of the Customs Regulations for accreditation as a commercial laboratory to analyze paraffin wax in candles under chapter 34 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all

of the requirements for accreditation as a commercial laboratory. Specifically, SEA, Ltd. has been granted accreditation to perform the following test methods at their Columbus, Ohio site: (1) Quantitation of Paraffin in Beeswax and Other Waxes by High Temperature Capillary Gas Chromatography, USCL (United States Customs Laboratory) test method 34–07; and (2) Quantitative Analysis of Paraffin in Beeswax by Column Chromatography, USCL (United States Customs Laboratory) test method 34–08. Therefore, in accordance with § 151.12 of the Customs Regulations, SEA, Ltd. of Columbus, Ohio is hereby accredited to analyze the products named above.

Location: SEA, Ltd.'s accredited site is located at: 7349 Worthington—Galena Rd., Columbus, Ohio 43085.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Arlene Faustermann, Science Officer, Laboratories and Scientific Services, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500 North, Washington, DC 20229, (202) 344–1060.

Dated: December 16, 2003.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 03–31759 Filed 12–23–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Decision 03–35]

Customs Accreditation of SGS North America, Inc. as a Commercial Laboratory

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of SGS North America, Inc. of Sulfur, Louisiana, as a commercial laboratory.

SUMMARY: SGS North America, Inc. of Sulfur, Louisiana has applied to Customs and Border Protection under § 151.12 of the Customs Regulations for accreditation as a commercial laboratory to analyze petroleum products under chapter 27 and chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all of the requirements for accreditation as a commercial laboratory. Specifically, SGS North America, Inc. has been granted accreditation to perform the following test methods at their Sulfur, Louisiana site: (1) Water in Petroleum Products and Bituminous Materials by Distillation, ASTM D95; (2) API Gravity of Crude Petroleum and Petroleum Products by Hydrometer, ASTM D287; (3) Sediment in Crude Oils by Extraction, ASTM D473; (4) Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer, ASTM D1298; (5) Water in Crude Oil by Distillation, ASTM D4006; (6) Water and Sediment in Crude Oil by the Centrifuge Method, ASTM D4007; and (7) Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy, ASTM D4294. Therefore, in accordance with § 151.12 of the Customs Regulations, SGS North America, Inc. of Sulfur, Louisiana is hereby accredited to analyze the products named above.

Location: SGS North America, Inc. accredited site is located at: 4701 East Napoleon (Hwy 90), Sulfur, LA 70663.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Arlene Faustermann, Science Officer, Laboratories and Scientific Services, Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500 North, Washington, DC 20229, (202) 344–1060.

Dated: December 16, 2003.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 03–31760 Filed 12–23–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–51]

Notice of Proposed Information Collection: Comment Request; Mortgage Insurance Application for Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2502–0029) and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice informs the public that the Department of Housing and Urban Development (HUD) intends to submit to OMB an information collection package with respect to requiring professional liability insurance for the Section 232 program. The requirements are found in the Notice "Professional Liability Insurance for Section 232 Programs."

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgage Insurance Application for Multifamily Housing Projects.

OMB Control Number, if applicable: 2502–0029.

Description of the need for the information and proposed use: Requirements for Professional Liability Insurance for Section 232 Programs. This information collection is the application for HUD/FHA multifamily mortgage insurance. The information from sponsors and general contractors, and submitted by a HUD-approved mortgagee, is needed to determine project feasibility, and mortgagor/contractor acceptability. In addition, documentation from operators/managers of health care facilities is also required as part of the application for firm commitment for mortgage insurance. HUD analyzes financial data, cost data, drawings, specifications and other documentation to determine whether the proposed project meets program requirements for mortgage insurance. This is a revision to include changes and additional Exhibits to Section K of Form HUD–92013–NHICF.

Agency form numbers, if applicable: HUD–92013, HUD–92013–SUPP, HUD–92013–NHICF and HUD–92013–E.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 188,680; the number of respondents is 6,350 generating approximately 6,350 annual responses, the frequency of response is on occasion, required with each project application and annually for health care facilities. The estimated time to prepare the response varies from 36 minutes to 84 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 16, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–31628 Filed 12–23–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–16]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Historically Black Colleges and Universities

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: February 23, 2004.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluated whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Historically Black Colleges and Universities (HBCU) Program.

OMB Control Number: 2506–0122.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for awards in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: HUD 424, HUD 424B, HUD–424C, HUD–424–CB, SFLLL, HUD 2880, HUD 2991, HUD 2990, HUD 2993, HUD40076, HUD96010–I, and HUD 2994.

Members of the Affected Public: Historically Black Colleges and Universities (HBCU).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on an quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	105	105	200	21,000
Quarterly Reports	75	300	24	7,200
Semi-Annual Reports	60	120	48	5,760
Final Reports	15	15	60	900
Recordkeeping	135	135	24	3,240
Total	390	675	356	38,100

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 11, 2003.

Darlene F. Williams,

General Deputy, Assistant Secretary for Policy Development and Research.

[FR Doc. 03–31629 Filed 12–23–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–17]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: February 23, 2004.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Doctoral Dissertation Research Grant Program.

OMB Control Number: 2528–0213.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for awards in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: HUD 424, HUD 424B, SFLLL, HUD 2880, HUD 2993, HUD 96010–I, and HUD 2994.

Members of the Affected Public: Ph.D. students preparing their dissertations on HUD-related topics.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	80	80	32	2560
Semi-Annual Reports	15	30	4	120
Final Reports	15	15	2	30
Recordkeeping	15	15	4	60
Total	125	140	42	2770

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 11, 2003.

Darlene F. Williams,

General Deputy, Assistant Secretary for Policy, Development and Research.

[FR Doc. 03–31630 Filed 12–23–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–18]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Early Doctoral Student Research Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Lffice of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35 as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Notice of Funding Availability for the Early Doctoral Student Research Grant Program.

OMB Control Number: 2528–0216.

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for awards in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Numbers: HUD 424, HUD 424B, SFLLL, HUD 2880, HUD 2993, HUD 96010–I, and HUD 2994.

Members of the Affected Public: Ph.D. students early in their doctoral studies preparing research papers on HUD-related topics.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly, semi-annual and annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	80	80	32	2560
Semi-Annual Reports	15	30	4	120
Final Reports	15	15	2	30
Recordkeeping	15	15	4	60
Total	125	140	42	2770

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: December 11, 2003.

Darlene F. Williams,

General Deputy, Assistant Secretary for Policy, Development and Research.

[FR Doc. 03–31632 Filed12–23–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–104]

Notice of Submission of Proposed Information Collection to OMB: Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to conduct a study to update its estimates of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.4 million households covered by Public Housing and Section 8 housing subsidies.

DATES: *Comments Due Date:* January 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2528–0203) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Quality Control for Rental Assistance Subsidy Determinations.

OMB Approval Number: 2528–0203.

Description of the Need for the Information and Its Proposed Use: The Department is conducting, under contract, a study to update its estimates of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.4 million households covered by Public Housing and Section 8 housing subsidies. The Quality Control process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. On-site tenant interviews, file reviews, third-party income verifications, and income matching with other Federal data are conducted. The data obtained are used to identify the most serious problems and their associated costs. HUD program offices are then responsible for designing and implementing corrective actions. In addition to providing current estimates of error, results will be compared with those from the 2000 study. These comparisons will indicate whether corrective actions initiated since the 2000 study have been effective and if changes in priorities are needed.

The first QC study found that about one-half of the errors measured using on-site tenant interviews and file reviews could not be detected with the 500\58/50059 form data collected by the Department, which is why HUD and other agencies with means-tested programs have determined that on-site reviews and interviews are an essential complement to remote monitoring measures. The 2000 study showed that the calculation errors detectable with 50058/50059 data had further decreased, probably because this data was increasingly subject to automated computational checks.

This study will provide current information on the quality of tenant interviewing (*e.g.*, whether they are they being asked about all sources of income) and the reliability of eligibility determinations and income verification. Legislation passed in 2002 requires that the Department report on the error measurements annually. A 2003 study is being completed, and this proposed data collection approval is for the next three studies.

Respondents: Recipients of Public Housing and Section 8 Housing Assistance subsidies.

Reporting Burden: The Department will survey approximately 550 PHA/program sponsor staff about (re)certification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Although more than one staff member may need to be contacted to obtain answers to all questions, the questionnaire will be administered once at each participating project and the interviews are expected to take less than 35 minutes. Researchers will survey approximately 3,000 program participants to obtain information on household composition, expenses, and income. the time required for these interviews will vary, but is estimated to require an average of about 50 minutes per interview.

The time estimates provided are based on the 2000 QC survey. This survey will again make use of Computer Assisted Interviewing (CAI) questionnaires and equipment, which are being used in part because they are known to reduce interview times. This software also provides for consistency checks and ensures that all needed data have been collected, thereby reducing the need for follow-up contacts.

Total Estimated Burden Hours: 2,742.

Status: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 17, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–31633 Filed 12–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–105]

Notice of Submission of Proposed Information Collection to OMB: Late Request for Endorsement Procedures

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Late Request for Endorsement Procedures.

OMB Approval Number: 2502–Pending.

Description of the Need for the Information and Its Proposed Use: Section 203.255(b) of the National Housing Act requires Direct Endorsement mortgagees to submit properly documented loans for endorsement within 60 days of loan closing. Further, lenders submitting a loan after this 60-day window must certify that the loan complies with all underwriting requirements. This information is necessary to endorse a loan being submitted for endorsement beyond the 60-day limit following closing.

Respondents: Not-for-profit institutions, State, local or tribal government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per responses	=	Burden hours
Reporting Burden:	12,000	300,000		0.40		120,000

Total Estimated Burden Hours: 120,000.

Status: Existing collection in use without an OMB control number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 17, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–31634 Filed 12–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–106]

Notice of Submission of Proposed Information Collection to OMB: Owner of Record and Re-sale Data To Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

To prevent predatory sales practices, HUD will not insure mortgages on properties re-sold within 90 days, and only the owner-of-record is permitted to sell the property if FHA is to insure the subsequent mortgage. Lenders are required to provide evidence of the date of the last resale and the date it occurred.

DATES: *Comments Due Date:* January 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502–0547) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Owner of Record and Re-sale Data to Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages.

OMB Approval Number: 2502–0547.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: To prevent predatory sales practices, HUD will not insure mortgages on properties re-sold within 90 days, and only the owner-of-record is permitted to sell the property if FHA is to insure the subsequent mortgage. Lenders are required to provide evidence of the date of the last resale and the date it occurred.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	750,000	750,000		0.036		27,500

Total Estimated Burden Hours: 7,500.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 17, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–31756 Filed 12–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Limited English Proficiency Guidance to Recipients of Federal Financial Assistance—Request for Comments

AGENCY: Office of the Secretary, Interior.

ACTION: Limited English Proficiency Guidance—request for comments.

SUMMARY: The Department of the Interior (DOI or Department) publishes for public comment Interim Final Guidance to Federal Financial Assistance Recipients Regarding Title VI *Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (DOI Recipient LEP Guidance). The DOI Recipient LEP Guidance is issued pursuant to Title VI of the Civil Rights Act of 1964 and its implementing regulations and Executive Order 13166.

DATES: Written comments are invited from interested persons and organizations. Comments should be submitted to DOI on or before January 23, 2004. DOI's Recipient LEP Guidance will become final after the comment period. However, DOI will review all timely submitted comments, and determine what modifications, if any, are necessary to the policy guidance, and issue modifications if necessary.

ADDRESSES: Comments should be sent to: E. Melodee Stith, Director, Office for Equal Opportunity, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 5221, Washington, DC 20240, E-mail: *melodee_stith@ios.doi.gov*, Phone: (202) 208–5693, FAX: (202) 208–6112.

FOR FURTHER INFORMATION CONTACT: Melvin C. Fowler, Civil Rights Staff Assistant, Office for Equal Opportunity, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 5221, Washington, DC 20240, E-mail: *Melvin_C_Fowler@ios.doi.gov*, Phone: (202) 208–3455, FAX: (202) 208–6112.

SUPPLEMENTARY INFORMATION: Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), and Title VI regulations, recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal Agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in Department of Justice Policy Guidance entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." *See* 65 FR 50123 (August 16, 2000).

Because this Guidance also must adhere to the Federal-wide compliance standards and framework detailed in the model Department of Justice LEP Guidance issued on June 18, 2002, DOI specifically solicits comments on the nature, scope, and appropriateness of the DOI-specific examples set out in this guidance explaining and/or highlighting how those Federal-wide guidelines are applicable to recipients of DOI financial assistance.

It has been determined that this guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Department of the Interior

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish, and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP."

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of programs and activities that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government assisted programs and activities.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DOI will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to work with the Department of Justice to continue to provide assistance and guidance in this important area and to identify and share model plans, examples of best practices, and cost-saving approaches. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275

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[1] The Department of the Interior recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize and assess the continued vitality of these existing programs and identify additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

(2001), as implicitly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d–1. This guidance document is thus published pursuant to Title VI, Title VI regulations, and Executive Order 13166, and is consistent with the Department of Justice model guidance.

Department of the Interior regulations promulgated pursuant to section 602 forbid recipients from "utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect to individuals of a particular race, color, or national origin." 43 CFR 17.3(b)(2).

The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of the DOI, 43 CFR 17.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued.[3] Under that Order, every Federal Agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, the Department of Justice (DOJ) issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. [*Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons with Limited English Proficiency*, 65 FR 50123 (August 16, 2000) ("DOJ LEP Guidance")].

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, the Assistant Attorney General for the Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval*.[4] The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

Pursuant to Executive Order 13166, DOJ developed its own guidance document for recipients ("LEP Guidance for DOJ Recipients") and initially issued it in final on June 18, 2002 (67 FR 41455, also available at *http://www.lep.gov*). Consistency among departments of the Federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

III. Who Is Covered?

Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and implementing regulations, recipients of Federal financial assistance are required to provide meaningful access to LEP persons.[5] Federal financial assistance includes grants, cooperative agreements, training, use of equipment, donations of surplus property, and other assistance.

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[3] *Improving Access to Services for Persons with Limited English Proficiency*, 65 FR 50121 (August 16, 2000).

[4] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. *See, e.g., Sandoval*, 532 U.S. at 286, 286 n.6 ("[DOJ] assumes for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.") According to DOJ, "the memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal assistance agencies to enforce their own implementing regulations."

[5] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in this guidance also apply to the programs and activities of Federal agencies, including DOI's programs and activities. Examples include, but are not limited to, schools and other programs operated by the Bureau of Indian Affairs, environmental impact research and surveys, land management, national parks, fish and wildlife programs and activities, power plants run by DOI, and others.

Examples of recipients that receive DOI assistance include the following:

- State fish and wildlife agencies;
- State and local park and recreation departments;
- State and local park police departments including fish and wildlife conservation law enforcement agencies;
- State geological survey agencies;
- State and local historic preservation agencies including historical sites and places; and
- Irrigation districts and other public entities providing water and power services.

Sub-recipients are covered when Federal funds are passed through from one recipient to a Sub-recipient. Sub-recipients of DOI assistance include, for example:

- County and city park and recreation agencies;
- State and local government agencies; and
- Public and/or private organizations.

Coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one of the recipient's programs or activities receives the Federal assistance.[6]

Example: DOI provides assistance to a city parks and recreation department to develop or improve one particular park. All aspects of the city parks and recreation department's operations—not just the particular park slated for development or improvement—are covered.

Finally, some recipients operate in jurisdiction in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of federally assisted programs and activities to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient (LEP) and therefore entitled to language assistance with respect to a particular type of service, benefit, or encounter. Examples of populations likely to include LEP persons that DOI recipients serve or encounter and accordingly, should consider when planning language services include, but are not limited to:

- Persons who are actual or potential program beneficiaries of recreation or education programs including those applying for fishing and hunting licenses, or desiring information regarding program availability;
- Persons visiting historical sites and places;
- Persons who encounter natural resources conservation law enforcement officers or other law enforcement recipients of DOI assistance;
- Persons needing information on health, environmental impact, safety, or other warnings or information from recipients of DOI assistance; and
- Parents and family members of the above.

V. How Does a Recipient Determine the Extent of Its Obligations To Provide LEP Services?

Recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs and activities. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, DOI's guidance is intended to strike a balance between ensuring LEP persons have meaningful access to critical services, benefits, and information while not imposing an undue burden on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOI recipients should apply the following four factors to the various kinds of contacts they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons eligible to be served or likely to be directly affected by a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant Agency as the recipient's service area. However, where, for instance, a precinct serves a large LEP population, the appropriate service area is most likely the precinct, and not the entire population served by the department. Where no service area previously has been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations.

Recipients should first examine their prior experience with LEP encounters and determine the breadth and scope of language services that are needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[7] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipient's programs and activities were language services provided.

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[6] If DOI decided, however, to terminate Federal assistance to a recipient based upon noncompliance with its Title VI regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

[7] The focus on the analysis is on the lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language but are not proficient in English. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus upon the language spoken by those who are not proficient in English.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with a LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves a LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intense solution. If a LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if a LEP individual seeks services, benefits, or information under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program Activity, or Service Provided by the Program

The more important the activity, information, service, or program or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to provide language assistance services to residents of a community near a raging wildfire or other environmental emergency, to a person who is suspected of a crime committed in a park, or to an ill or injured park visitor, differ from obligations to individuals seeking to enroll in a voluntary conservation class. A recipient needs to determine whether denial or delay of access to benefits, services, warnings, or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as particular educational programs, essential licenses, or the communication of *Miranda* rights, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal assistance agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, using universally understood pectoral signs, or the formalized use of qualified community volunteers, for example, may help reduce costs.[8] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

VI. How Language Assistance Services Should Be Provided

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in other cases, the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, fire departments or other emergency services located near an Indian reservation may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many fire departments may have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a park—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VII. Selecting Language Assistance Services

When selecting a language service, it is important to consider the quality and accuracy of such service in order to avoid serious consequences to the LEP person and the recipient.

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[8] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than identifying oneself as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret into and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency and the ability to communicate information accurately in both English and the other language and identify and employ the appropriate mode of interpreting;
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology that the LEP person uses;[9]
- Understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires; and
- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in administrative hearings or law enforcement activities).

Some recipients, such as those offering educational or instructional programs, or public utility services, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the context of public safety and law enforcement activities, the use of certified interpreters is strongly encouraged.[10] Where proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue.

While quality and accuracy of language services is critical, the standards for such services vary depending on the service, program or benefit the recipient provides. For example, the quality and accuracy of language services in a hunter education and safety class, an interrogation of a suspect by park police, or environmental hazard warnings must be extraordinarily high, while the quality and accuracy of language services in a lighthouse tour need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. The language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as certain activities in law enforcement, health, environmental, and safety services, or when important legal rights are at issue, a recipient probably would not be providing meaningful access if it only had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. For example, recipients can fill public contact positions such as lifeguards, park ranger, conservation law enforcement officers, or recreation program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with a LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that the interpreters used are competent to interpret any technical or legal terms specific to a particular program. Often an interpreter relies on non-verbal communication and nuances in language to accurately translate the source language into the target language. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters an opportunity to review the document prior to the discussion and address any logistical problems.

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[9] Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, there may be languages which do not have an appropriate interpretation of certain legal or technical terms. The interpreter should make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of written translations in that language that can be used again, when appropriate.

[10] For those languages in which no formal accrediation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter.

Using Community Volunteers. In addition to considering bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure that LEP persons have meaningful access, recipient-coordinated community volunteers working with community-based organizations also may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are regularly available.

Use of Family Members, Friends, Other Program Participants, or Acquaintances as Interpreters. Although recipients should not plan to rely on a LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, or other informal interpreter) in lieu of or to supplement the free language services the recipient offers. LEP persons may feel more comfortable when a trusted family member, friend, or other informal interpreter of their choice acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, or other informal interpreters are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement, family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another individual in a criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LCP person. For DOI recipient programs and activities, this is particularly true in law enforcement settings, administrative hearings, situations in which health, safety, or access to important benefits, services, or information are at stake, or when credibility and accuracy are important to protect an individual's rights or access to important services or information.

An example of such a case is when conservation law enforcement officers respond to a hunting or fishing infraction. In such a cases, use of family members or friends to interpret for the alleged person cited for the hunting or fishing violation may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or other program participants often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors indicates that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a park offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, a LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether to document the recipient's offer to provide language assistance services and the LEP person's response. Where precise, complete and accurate interpretations or translations of information and/or testimony are critical for law enforcement, adjudicatory, health, safety, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own independent interpreter, even if a LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Consent and complaint forms;
- Program materials describing program availability;
- Geological maps and informational publications, under certain circumstances;
- Written notices of rights, denial, loss, or decreases in benefits or services, or of public hearings that impact the community;
- Hunter and aquatics safety education materials;
- Vital portions of websites describing an Agency's mission, organization, programs, activities and services;
- Notices advising LEP persons of free language assistance;
- Prohibit and warning signs, brochures, or other informational material, including information on dangerous wildlife, natural hazards,

environmental hazards, and other health and safety-related information;

- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required; and
- Applications to participate in a recipient's program or activity or to receive recipient benefits, services, licenses, permits, *etc.*

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for bicycle safety courses generally should not be considered vital, whereas applications for drug and alcohol counseling in prison should be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other general information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach materials may be made more effective when done in tandem with other outreach methods, including utilizing the appropriate non-English language speaking media, schools, religious and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information concerning the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and reasonably cannot be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain language assistance services to interpret or translate a document.

Into What Languages Should Documents Be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak numerous different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the recipient should determine its obligation to provide written translations of documents on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b), (see the next section of this document entitled *Safe Harbor Guidelines*), outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in the Department's *Safe Harbor Guidelines* at paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that are interested in specific examples of safe harbor guidelines. However, even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor Guidelines. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The DOI recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five-percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, even where the safe harbor numbers are not met for a particular language, a LEP person speaking that language should be given appropriate oral interpretation of important information.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can be often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[11] Having a second, independent translator check the work of the primary translator can often ensure competence. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[12]

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, a recipient may use less-skilled translators to translate simple documents that have no legal, health, access to benefits and services, or safety consequences. However, to the extent documents contain this type of critical information, recipients should consider using highly skilled translators to translate their contents (including, *e.g.*, information or documents regarding certain law enforcement, health and safety services and certain legal rights, applications, warnings, or prohibitions). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that LEP persons have meaningful access.

VII. Elements of an Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. The LEP Plan should lead most recipients to document their language assistance services, and how staff and LEP persons can access those services.

Despite the benefits associated with a written plan, certain DOI recipients, such as recipients serving very few LEP persons or recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the recipient's obligation to ensure that LEP persons have meaningful access to its program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate its plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process.

The following five steps may be helpful in designing a LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires a recipient to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs. Such cards, for instance, might say, "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. At *http://www.usdoj.gov/crt/cor/13166.htm* or *http://www.lep.gov* the Census Bureau "I speak card" can be found and downloaded. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to identify themselves as requiring language assistance services.

(2) Identifying Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP individuals who have in-person contact with recipient staff; and
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligation to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff knows about LEP policies and procedures; and,

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[11] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[12] For instance, there may be languages which do not have an appropriate direct translation of some natural resources terms or historic references. The translator should be able to provide an appropriate translation and make the recipient aware that an appropriate direct translation does not exist. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate historic references, geological terms or other technical concepts. Creating or using already created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of the recipient's previous translations of similar material may be helpful. In addition to the translator's assessment of the material, community organizations may be able to help consider whether a document is written at a good level for the audience.

- Staff that have contact with the public are trained to work effectively with in-person and telephone interpreters and make materials that have been translated readily available.

Recipients may want to include this training as part of its orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of a LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can implement and reinforce its terms.

(4) Providing Notice to LEP Persons

Once an Agency has decided that it will provide language services based on the four factors, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of such notice include:

- *Posting signs in intake areas and other entry points.* When language assistance is needed to ensure meaningful access to information, benefits, and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services.[13] For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[14] This is particularly true in areas with high volumes of LEP persons seeking access to the DOI recipient's recreational areas, historical sites, and fishing or hunting activities. Appropriate notice to LEP persons also is important to ensure their access to information about environmental concerns.
- *Stating in outreach documents that language services are available from the Agency.* Announcements could be published in brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be put on the front of common documents.
- *Community organizations.* The recipient could work with community-based organizations and other stakeholders to inform LEP individuals of the recipient's services, including the availability of language assistance services.
- *Using a telephone voice mail menu.* The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- *Printed media.* The recipient could publish notices in local newspapers in languages other than English.
- *Broadcasts.* The recipient could provide notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- *Schools.* The recipient could inform LEP persons of the availability of language services through presentations and/or by providing notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and informing employees and LEP persons of any changes in services. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in certain service areas or populations affected or encountered;
- Frequency of encounters with LEP language groups;
- Nature and importance of activities to LEP persons;
- Availability of resources, including technological advances, additional resources and the costs imposed;
- Whether existing assistance is meeting the needs of LEP persons;
- Whether staff knows about and understands the LEP plan how to implement it; and
- Whether identified sources for assistance are still available and viable.

In addition to the five elements typically found in effective implementation plans, such plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DOI through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DOI will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOI will inform the recipient in writing of this determination, including the basis for the determination. DOI uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOI will attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOI must secure compliance through the termination of Federal assistance after the DOI recipient has been given an opportunity for an administrative hearing, by referring the matter to a Department of Justice litigation section to seek injunctive relief or by pursuing other enforcement proceedings. DOI engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOI proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOI's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOI acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, DOI will look favorably on any intermediate steps the recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all activities of recipients and for all potential language minority groups reasonably may require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOI recipients should ensure that they first provide appropriate assistance for significant LEP populations and activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

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[13] For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get language assistance service.

[14] The Social Security Administration has made such signs available at its Web site, (see *http://www.ssa.gov/multilanguage/langlist1.htm*). The signs could be modified for recipient use.

Dated: December 17, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management, and Budget.

[FR Doc. 03–31693 Filed 12–23–03; 8:45 am]

BILLING CODE 4310–RE–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–03–1320–EL]

Notice of Availability of Draft Land Use Analysis/Environmental Assessment, Public Comment Period and Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management's Eastern States, Jackson Field Office, has prepared a Draft Land Use Analysis/Environmental Assessment (LUA/EA) to address coal lease application ALES–51589.

DATES: Written comments must be postmarked on or before January 31, 2004 and provided to the below address.

ADDRESSES: Written comments must be provided to the Bureau of Land Management, Jackson Field Office, 411 Briarwood, Suite 404; Jackson, MS 39206.

Public Hearing: The public hearing will be held on January 8, 2004 at 7 p.m. in the Berry Community Center located at 104 Barnes Avenue, Berry, Alabama. Written comments may be provided by members of the public regardless if they attend the hearing.

FOR FURTHER INFORMATION CONTACT: Lars Johnson, Bureau of Land Management, Jackson, Mississippi, at (601) 977–5400.

SUPPLEMENTARY INFORMATION: The LUA/EA has been prepared in cooperation with the Office of Surface Mining and the Alabama Surface Mining Commission. Public comments are requested on the LUA/EA and fair market value (FMV) and maximum economic recovery (MER) of the tracts included in the lease application proposed to be offered for competitive lease sale. The coal in the tracts would be mined by underground methods. The tracts located in Sections 14, 15, 21, 22, 27, 28, 31, and 33, T 16 S, R 10 W, Huntsville Meridian in Fayette County, Alabama; encompass 2,887.2 acres.

Estimated recoverable federal reserves from the Pratt Seam are 10.789 million tons of federal coal. The proximate analysis of the coal is as follows: moisture—2.8%, ash—10%, volatiles—36.1%, fixed carbon—51.3%, Btu/lb—13,000 and sulfur—2.1%.

The public is invited to comment on the FMV and MER of the tracts proposed to be offered for lease and on factors that may affect FMV and MER. In addition, the LUA/EA is available on request from the below-listed contact person and address. A public hearing will be held on the FMV, MER and LUA/EA.

Comments that address the effect of mining the coal (underground methods) on the environment, as presented in the LUA/EA, are solicited. The public review period for the LUA/EA will be from December 23, 2003 to January 31, 2004. A public hearing will be held, as indicated below.

Procedures for leasing federal coal are provided by 43 CFR 1600 and 3400. The notice to prepare this LUA/EA was published in the **Federal Register** on June 20, 2003 (Volume 68, Number 119; pages 37017–37018). This notice of availability of the LUA/EA, public comment period and public hearing are required by 43 CFR 3422.1 and 43 CFR 3425.3.

As provided by 43 CFR 3422.1(a), proprietary data marked as confidential may be provided in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management office noted above.

Comments on FMV and MER should address, but are not limited to the following factors:

1. The method of mining to be employed in order to obtain MER,
2. The method of determining FMV for the coal to be offered.

If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act (FOIA), you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by FOIA. All submissions from organizations, businesses and individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in entirety.

Dated: October 10, 2003.

Sid Vogelpohl,

Acting Field Manager, Jackson Field Office.

[FR Doc. 03–31837 Filed 12–23–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL) WYW150210, WYW150318, WYW151134, WYW151643, WYW154001]

Notice of Availability of South Powder River Basin Coal Final Environmental Impact Statement, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability (NOA) of a Final Environmental Impact Statement (FEIS) on four maintenance lease applications received for five Federal coal tracts in the decertified Powder River Federal Coal Production Region, Wyoming.

SUMMARY: Under the National Environmental Policy Act (NEPA), implementing regulations and other applicable statutes the Bureau of Land Management (BLM) announces the availability of the South Powder River Basin Coal FEIS.

The FEIS analyzes the impacts of issuing five Federal coal leases in the Wyoming portion of the Powder River Basin. The tracts are being considered for sale as a result of coal lease applications received from existing

companies operating mines in the Wyoming Powder River Basin.

DATES: Written comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their NOA of the FEIS in the **Federal Register**. The BLM will notify all parties on this project's mailing list of the dates when comments will be accepted.

ADDRESSES: Please address questions, comments, or concerns to the Casper Field Office, Bureau of Land Management, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, Wyoming 82604, fax them to (307) 261–7587, or send e-mail comments to the attention of Nancy Doelger at *wymail@blm.gov*. Copies of the FEIS are available for public inspection at the following BLM office locations: Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; Bureau of Land Management, Casper Field Office, 2987 Prospector Lane, Casper, Wyoming 82604.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or telephone: (307) 261–7600.

SUPPLEMENTARY INFORMATION: The five Federal coal tracts being considered for leasing are adjacent to four mines located south and east of Wright, Wyoming. The operators of these mines applied to lease the tracts as maintenance tracts to extend the life of their existing mining operations under the provisions of the Leasing on Application regulations at 43 CFR 3425. The following paragraphs provide descriptions of the tracts as they were applied for.

On March 10, 2000, Powder River Coal Company applied for a maintenance coal lease for approximately 4,500 acres (approximately 564 million tons of recoverable coal) in two tracts adjacent to the North Antelope/Rochelle Mine Complex in Campbell County, Wyoming. The tracts, which are referred to as the NARO North Lease by Application (LBA) Tract and the NARO South LBA Tract, were assigned case numbers WYW150210 and WYW154001, respectively:

NARO North—WYW150210

T. 42 N., R. 70 W., 6th PM, Wyoming,
Sec. 28: Lots 5 thru 16;
Sec. 29: Lots 5 thru 16;
Sec. 30: Lots 9 thru 20;
T. 42 N., R. 71 W., 6th PM, Wyoming,
Sec. 25: Lots 5 thru 15;
Sec. 26: Lots 7 thru 10;
Sec. 35: Lots 1, 2, 7 thru 10, 15, 16.

Containing 2,369.38 acres, more or less.

NARO South—WYW 154001

T. 41 N., R. 70 W., 6th PM, Wyoming,
Sec. 19: Lots 6 thru 11, 12 (S½), 13 thru 20;
Sec. 20: Lots 5 (S½, 6 (S½), 7 (S½), 6 (S½), 8 (S½), 9 thru 16;
Sec. 21: Lots 5 (S½), 12, 13;
Sec. 28: Lots 3 thru 6, 11, NE¼SW¼;
Sec. 29: Lots 1 thru 12;
Sec. 30: Lots 5 thru 12;

Containing 2,133.635 acres, more or less.

On March 23, 2000, Ark Land Company applied for a maintenance coal lease for approximately 2,799.5 acres (approximately 383.6 million in-place tons of coal) adjacent to the Black Thunder Mine in Campbell County, Wyoming. The tract, which is referred to as the Little Thunder LBA Tract, was assigned case number WYW150318. According to the application, the coal is needed to maintain existing mining operations at the Black Thunder Mine and would be used for electric power generation. On June 14, 2001, Ark Land Company filed an application to modify the Little Thunder LBA Tract. As currently filed, the tract includes approximately 3449.3 acres and 440 million tons of recoverable coal reserves.

Little Thunder—WYW150318

T. 43 N., R. 71 W., 6th PM, Wyoming,
Sec. 2: Lots 5, 6, 11 thru 14, 19, 20;
Sec. 11: Lots 1, 2, 7 thru 10, 15, 16;
Sec. 12: Lots 2 (W½ & SE¼), 3 thru 16;
Sec. 13: Lots 1 thru 16;
Sec. 14: Lots 1, 2, 6 thru 9, 14, 15;
Sec. 24: Lots 1 thru 16;
Sec. 25: Lots 1, 2, 7 thru 10, 15, 16.
T. 44 N., R. 71 W., 6th PM, Wyoming,
Sec. 35: Lots 1, 2, 7 thru 10, 15, 16.
Containing 3,449.317 acres, more or less.

On July 28, 2000, Triton Coal Company applied for a maintenance coal lease for approximately 1870.6 acres (approximately 173.2 million in-place tons of coal) adjacent to the North Rochelle Mine in Campbell County, Wyoming. The tract, which is referred to as the West Roundup LBA Tract, was assigned case number WYW151134.

West Roundup—WYW151134

T. 42 N., R. 70 W., 6th PM, Wyoming,
Sec. 6: Lots 8–19, 20 (N½), 21 (N½), 22 (N½), 23 (N½);
Sec. 7: Lots 5 (S½), 6 (S½), 7 (S½), 8 (S½), 9 thru 14;
Sec. 8: Lots 1 (SW¼), 2 (S½], 3 (S½), 4 (S½), 5 thru 12;
Sec. 9: Lots 5 (SW¼), 11, 12, 14;
T. 43 N., R. 70 W., 6th PM, Wyoming,
Sec. 31: Lots 13 thru 20.
T. 42 N., R. 71 W., 6th PM, Wyoming,
Sec. 1: Lots 5, 6, 11 thru 13.
Containing 1,870.638 acres more or less.

On September 12, 2000, Antelope Coal Company applied for a maintenance coal lease for approximately 3,500 acres (approximately 292.5 million in-place tons of coal) adjacent to the Antelope Mine in Campbell and Converse Counties, Wyoming. The tract, which is referred to as the West Antelope LBA Tract, was assigned case number WYW151643. On June 27, 2001, Antelope Coal Company filed an application to modify the West Antelope LBA Tract. As currently filed, the tract includes approximately 3,542 acres and 293.9 million tons of in place coal reserves. According to the application, mining this coal would extend the life of the existing mine and the coal would be mined for sale to electrical power generating plants.

West Antelope—WYW151643

T. 40 N., R. 71 W., 6th PM, Wyoming,
Sec. 3: Lots 15 thru 18;
Sec. 4: Lots 5 thru 20;
Sec. 5: Lots 5 thru 7, 10 thru 15, 19, 20;
Sec. 9: Lot 1;
Sec. 10: Lots 3, 4;
T. 41 N., R. 71 W., 6th PM, Wyoming,
Sec. 28: Lots 1 thru 16;
Sec. 29: Lots 1 thru 16;
Sec. 32: Lots 1 thru 3, 6 thru 11, 14 thru 16;
Sec. 33: Lots 1 thru 16.
Containing 3,542.19 acres more or less.

Each of the mines adjacent to the LBA tracts described above (the North Antelope/Rochelle, Black Thunder, North Rochelle, and Antelope mines, respectively) has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality and an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality. Each of these mines has previously acquired one or more maintenance coal leases using the LBA process.

The Powder River Regional Coal Team (RCT) reviewed these competitive applications at public meetings held on October 25, 2000, in Cheyenne, Wyoming, and May 30, 2002, in Casper, Wyoming. At the most recent meeting, the RCT recommended that BLM continue to process these LBAs.

The Draft Environmental Impact Statement (DEIS) was mailed to the public in February 2003. The EPA and the BLM each published a Notice of Availability in the **Federal Register** on February 7 and February 20, 2003, respectively. A formal public hearing on these applications was held, pursuant to 43 CFR 3425.4 at 7:00 P.M. MDT on March 4, 2003, at the Best Western Tower West Lodge, 109 N. U.S. Highway 14–16, Gillette, Wyoming. The purpose of the hearing was to solicit public comments on the DEIS, the fair market value, the maximum economic recovery, and the proposed competitive sale of the coal included in each of the proposed five tracts. The 60-day comment period on the DEIS ended on April 11, 2003.

The draft and final EIS analyze leasing each of the five tracts as applied for (described above) as a separate Proposed Actions. As part of the coal leasing process, BLM has identified and is evaluating other tract configurations for these tracts which add or subtract Federal coal to avoid bypassing coal or to increase competitive interest in the unleased Federal coal in this area. The tract configurations that BLM has identified for each tract are described and analyzed as alternatives in the EIS. The EIS also analyzes the alternative of rejecting each application to lease Federal coal s the No Action Alternative for each tract.

The agency-preferred alternatives are identified in the FEIS. The agency-preferred alternative varies for each tract, depending on which tract configuration is determined to best advance the public interest in avoiding bypassing Federal coal and increasing competitive interest in obtaining the fair market value of the Federal coal. The Proposed Actions and Alternatives that are considered in the EIS are in conformance with the "Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office" (April 2001), the USDA Forest Service "Final EIS for the Northern Great Plains Revision" (May 2001) and the BLM "Platte River Resource Area Resource Management Plan" (1985).

The USDA Forest Service (Forest Service) is a cooperating agency in the preparation of the EIS. The surface of some of the land included for consideration for leasing in three of the tracts (NARO North, Little Thunder, and West Roundup) is National Forest System land administered by the Forest Service as part of the Thunder Basin National Grasslands.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency in the preparation of this EIS. If the tracts are leased as maintenance tracts, each new lease must be incorporated into the existing mining and reclamation plan for the adjacent mine and the Secretary of the Interior must approve each revision to the MLA (Mineral Leasing Act) mining plan for each mine before the Federal coal in each tract can be mined. OSM is the Federal agency that would be responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plans to the office of the Secretary of the Interior if any or all of these tracts are leased.

Eleven written comments were received during the comment period on the Draft EIS, and four were recorded at the public hearing. The issues that were identified in the comment letters and at the hearing included potential conflicts with existing conventional oil and gas coalbed methane development; potential cumulative impacts of increasing mineral development in the Powder River Basin; validity and currency of resource data; public access; potential impacts to threatened and endangered species and other species of concern; potential cumulative air quality impacts; and potential impacts of nitrogen oxide emissions resulting from blasting of coal and overburden.

A separate Record of Decision (ROD) will be prepared for each of the five LBA tracts being considered for leasing. Comments received on the FEIS will be considered during preparation of the RODs.

Comments, including names and street addresses of respondents, will be available for public review at the Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: October 23, 2003.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 03–31836 Filed 12–23–03; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0043).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart F, "Oil and Gas Well-Workover Operations."

DATES: Submit written comments by February 23, 2004.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov*. Reference "Information Collection 1010–0043" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team at (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1010–0043.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area." These authorities and responsibilities are among those delegated to MMS under which we issue regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection request addresses the regulations at 30 CFR 250, subpart F, Oil and Gas Well-Workover Operations and the associated supplementary notices to lessees and operators intended to provide clarification, description, or explanation of these regulations.

MMS District Supervisors use the information collected to analyze and evaluate planned well-workover operations to ensure that operations result in personnel safety and protection of the environment. They use this evaluation in making decisions to approve, disapprove, or to require modification to the proposed well-workover operations. For example, MMS uses the information to:

- Review log entries of crew meetings to verify that safety procedures have been properly reviewed.
- Review well-workover procedures relating to hydrogen sulfide (H_2S) to ensure the safety of the crew in the event of encountering H_2S.
- Review well-workover diagrams and procedures to ensure the safety of well-workover operations.
- Verify that the crown block safety device is operating and can be expected to function and avoid accidents.
- Verify that the proposed operation of the annular preventer is technically correct and will provide adequate protection for personnel, property, and natural resources.
- Verify the reasons for postponing blowout preventer (BOP) tests, verify the state of readiness of the equipment and to ascertain that the equipment meets safety standards and requirements, ensure that BOP tests have been conducted in the manner and frequency to promote personnel safety and protect natural resources. Specific testing information must be recorded to verify that the proper test procedures were followed.
- Assure that the well-workover operations are conducted on well casing that is structurally competent.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: The frequency varies by section, but is primarily monthly or on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 19,205 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart F	Reporting or recordkeeping requirement	Hour burden
	Reporting Requirements	
602	Request exceptions prior to moving well-workover equipment	1.
602	Notify MMS of any rig movement within Gulf of Mexico (form MMS–144)	Burden included in 1010–0150.
605; 613; 615(a)	Request approval to begin subsea well-workover operations; submit forms MMS–124 and MMS–125.	Burden included in 1010–0045 and 1010–0046.
612	Request establishment/amendment/cancellation of field well-workover rules	1.
614	Post number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and equivalent well-control fluid volume.	.25.
616(a)	Request exception to rated working pressure of the BOP equipment; request exception to annular-type BOP testing.	2.
617(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	6.
617(c)	Notify MMS if sustained casing pressure is observed on a well	.25.
600–618	General departure and alternative compliance requests not specifically covered elsewhere in subpart F regulations.	2.
	Recordkeeping Requirements	
606	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews × 2 weeks per workover = 4).	1.
611	Perform operational check of traveling-block safety device; document results (weekly × 2 weeks per workover = 2).	1.
616(a), (b), (d), (e)	Perform BOP pressure tests, actuations, inspections & certifications; record results; retain records 2 years following completion of workover activities (when installed; at a minimum every 7 days × 2 weeks per workover = 2).	8.
616(b)(2)	Test blind or blind-shear rams; document results (every 30 days during operations). (Note: this is part of BOP test when BOP test is conducted.).	1.
616(b)(2)	Record reason for postponing BOP system tests	.5.
616(c)	Perform crew drills; record results (weekly for 2 crews × 2 weeks per workover = 4)	1.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *".

Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: December 16, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–31626 Filed 12–23–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns four new forms to collect information required under 30 CFR 256, "Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf." The below forms will be used by all MMS Regional Offices:

- MMS–149, Assignment of Interest in Federal Pipeline Right-of-Way.
- MMS–150, Assignment of Record Title Interest in Federal OCS Oil & Gas Lease.
- MMS–151, Assignment of Operating Rights Interest in Federal OCS Oil & Gas Lease.
- MMS–152, Relinquishment of Federal OCS Oil & Gas Lease.

DATES: Submit written comments by February 23, 2004.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov.* Reference "Information Collection 1010–NEW—Assignment Forms" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team at (703) 787–1600 to obtain a copy, at no cost, of the forms or regulations that require the subject collection of information. You may also print a copy of these forms from the MMS Web site: *http://www.gomr.mms.gov/homepg/lsesale/proposed_forms.html* under the heading "Leasing." For more information on the forms themselves, contact Steven K. Waddell, Supervisor, Adjudication Unit, (504) 736–1710.

SUPPLEMENTARY INFORMATION:

Title: Assignment of Pipeline Right-of-Way, Record Title, Operating Rights Forms and Relinquishment of Oil and Gas Lease Form.

OMB Control Number: 1010–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Also, the Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213(c)).

These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS), under which MMS issues regulations governing oil and gas and sulphur operations in the OCS. This request concerns forms used to collect assignment, transfer, extension, and termination of lease information required under 30 CFR 256, "Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf." The Federal Government has been receiving and approving transfers of ownership interest in leases since the inception of the OCS Lands Act, as amended. Currently, owners of Federal offshore leases submit their own forms of Assignment and Relinquishment documents for approval by MMS. Occasionally, the information is incorrect and the intent of the parties is not clear as to the conveyance of ownership interest in the lease or pipeline right-of-way, causing MMS to return the assignment unapproved. These forms have been created to provide a standardized document that will be accepted in all MMS Regional offices; they can be easily prepared by industry and quickly approved by MMS.

To implement the Government Paperwork Elimination Act and to further streamline data collection, MMS is developing systems to provide electronic options for lessees and operators to use in submitting information and requesting approvals. These forms are part of that effort to allow electronic options for lessees and operators to use in submitting information and requesting approvals. In standardizing the input of this information, MMS is providing a means for rapid preparation by industry and reduced analytical time by MMS staff, therefore approving the transfers quicker.

MMS uses this information to track ownership of all offshore leases as to record title, operating rights, and ownership of pipelines, and whether or not the lease has been relinquished and available for the next lease sale. MMS uses the information to update the corporate database, which is in turn used to determine what leases are available for a lease sale. The information in this database is provided to the public via the internet. Without the information, MMS would not be able to track the ownership of leases and therefore not be able to identify responsible parties for the liabilities of the lease, which could total millions of dollars.

Following the publication of this notice, MMS will hold a public forum on the proposed forms at the Gulf of Mexico Regional Office, 1201 Elmwood Park Boulevard, New Orleans, Louisiana. For further information, contact Steven K. Waddell, Supervisor, Adjudication Unit, (504) 736–1710.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 200 Federal OCS oil and gas or sulphur lessees/operators.

Estimated Reporting and Recordkeeping "Hour" Burden: The burden for collecting the information and filing the applications for assignment, transfer, extension, or relinquishment of leases is already approved by OMB under 1010–0006 (expiration date of March 31, 2004) for 30 CFR 256. This submission requests approval for only the additional burden of filling out the new forms. We estimate that each proposed form will require approximately 30 minutes for respondents to complete. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burdens for this new collection. Application filing fees are already approved by OMB under OMB Control Number 1010–0006 for 30 CFR 256.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS will summarize written responses to this notice and address them in the submission for OMB approval. As a result of your comments, MMS will make any necessary adjustments to the burden in the submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: December 16, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–31627 Filed 12–23–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemption (PTE) 2003–38; Exemption Application No. D–11167; Aetna Life Insurance Company (Aetna) and UBS Realty Investors LLC (UBS Realty), Located in Hartford, CT

AGENCY: Employee Benefits Security Administration, Department of Labor (the Department).

ACTION: Notice of technical correction.

On December 17, 2003, the Department published PTE 2003–38 in the **Federal Register** at 68 FR 70315. PTE 2003–38 permits certain transactions that may occur as a result of the sharing of real estate investments among various accounts maintained by Aetna, including Aetna's general account, and the general accounts of Aetna's affiliates which are insurance companies licensed to do business in at least one state, and the ERISA–Covered Accounts with respect to which both Aetna and UBS Realty are fiduciaries.

On page 70315 of the notice granting PTE 2003–38, the prohibited transaction exemption number, appearing in the bracketed text at the beginning of the document, was inadvertently omitted even though the year of publication was specified. Accordingly, the Department hereby corrects the grant notice, in part, to read as follows: "[Prohibited Transaction Exemption 2003–38;* * *]"

FOR FURTHER INFORMATION CONTACT: Mr. Brian J. Buyniski of the Department at (202) 693–8545. (This is not a toll-free number.)

Signed at Washington, DC this 19th day of December, 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–31712 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,564]

Allegheny Ludlum Corporation, Leechburg Works, Leechburg, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 14, 2003 in response to a worker petition filed by a company official on behalf of workers at the Allegheny Ludlum Corporation, Leechburg Works, Leechburg, Virginia.

The petitioning group of workers is covered by an earlier petition filed on November 3, 2003 (TA–W–53,538) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 24th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31678 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,589]

Charmilles Technologies Manufacturing Corporation, a Division of Agie Charmilles Holding Corporation, Owosso, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2003 in response to a petition filed by a company official on behalf of workers at the Charmilles Technologies Manufacturing Corporation, a division of Agie Charmilles Holding Corporation, Owosso, Wisconsin.

The petition is a copy of the petition filed on November 17, 2003 (TA–W–53,543), that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose and the investigation is terminated.

Signed at Washington, DC this 24th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31681 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,497]

Eljer Plumbingware, Inc., Salem, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 10, 2003, in response to a petition which was filed by a company official on behalf of workers at Eljer Plumbingware, Inc., Salem, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 3rd day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31675 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,473]

Farnsworth Fibre Corp., South Boston, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 7, 2003, in response to a petition filed by a company official on behalf of workers at Farnsworth Fibre Corporation, South Boston, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31674 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,581]

NW Services, Inc., Hickory, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2003 in response to a worker petition filed by a company official on behalf of workers at NW Services, Inc., Hickory, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31680 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,315B]

OBG Distribution Company, LLC, Oshkosh B'Gosh, Inc., Celina, Tennessee; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 22, 2003, in response to a petition filed by a company official on behalf of workers at Oshkosh B'Gosh, Inc., OBG Distribution Company, LLC, Celina, Tennessee.

The subject worker group is covered by an active certification issued on March 10, 2003 (TA–W–50,662). Consequently, the investigation has been terminated.

Signed at Washington, DC this 24th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31673 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,580]

Piedmont Bottling & Vending, Inc., Hickory, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 19, 2003 in response to a worker petition filed by a company official on behalf of workers at Piedmont Bottling & Vending, Inc., Hickory, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of December, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31679 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,518]

S. Lichtenberg & Company, Inc., Waynesboro, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 13, 2003 in response to a petition filed by a State agency representative on behalf of workers at S. Lichtenberg & Company, Inc., Waynesboro, Georgia.

The petitioning group of workers is covered by an earlier petition filed on October 30, 2003 (TA–W–53,381) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 24th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31677 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,499]

Supreme Elastic Corporation, Hickory, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 10, 2003 in response to a petition filed by a company official on behalf of workers at Supreme Elastic Corporation, Hickory, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of November, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31676 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,192]

Telect, Sugar Hill, GA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 8, 2003, in response to a worker petition which was filed on behalf of workers at Telect, Sugar Hill, Georgia.

An active certification covering the petitioning group of workers is already in effect (TA–W–41,469D, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 24th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31672 Filed 12–23–03; 8:45 am]

BILLING CODE 4510–30–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of Final Environmental Impact Statement for Alternative Vegetation Maintenance Practices for the Lower Rio Grande Flood Control Project in Cameron, Hidalgo, and Willacy Counties, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) has prepared a Final Environmental Impact Statement (FEIS) on Alternative Vegetation Maintenance Practices for the Lower Rio Grande Flood Control Project in Cameron, Hidalgo, and Willacy counties, Texas. The FEIS analyzes the Continued

Maintenance Alternative (No-Action), comprising the current USIBWC vegetation maintenance program, and the impacts of three vegetation maintenance alternatives that vary from the current USIBWC vegetation maintenance practices along the Lower Rio Grande Valley. No final decision can be made on this proposal during the 30 days following the filing of this FEIS, in accordance with the Council on Environmental regulations, 40 CFR 1506.10(b)(2).

ADDRESSES: Comments should be addressed to: Carolyn Murphy, Chief, Environmental Section, Department of the Army, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553–1229. Copies of the FEIS are available for inspection and review at the following locations: Brownsville Public Library, 2600 Central Boulevard, Brownsville, Texas; Harlingen Public Library, 410 '76 Drive, Harlingen, Texas; and McAllen Public Library, 601 North Main Street, McAllen, Texas. The FEIS is also available on the USIBWC Home Page at: *http://www.ibwc.state.gov*; and at the United States Army Corps of Engineers, Galveston District, Home Page at: *http://www.swg.usace.army.mil/*.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–100, El Paso, Texas 79902 or call (915) 832–4741, e-mail: *dougechlin@ibwc.state.gov*.

SUPPLEMENTARY INFORMATION: The USIBWC vegetation maintenance program is performed along the United States portion of the Lower Rio Grande Flood Control Project (LRGFCP). The vegetation maintenance program was established to fulfill the United States Government's obligations under International Boundary and Water Commission (IBWC) Minutes No. 212 and No. 238 and to protect life and properties in the United States and Mexico from Rio Grande flooding events.

Under Minute No. 212, the United States and Mexico agreed to annual concurrent channel bank mowing to reduce heavy brush growth in the river reach and to ensure a river channel capacity of 20,000 cfs at the Brownsville-Matamoros area. This maintenance mowing is considered necessary to prevent flooding in Brownsville and Matamoros for the design flood and to ensure that brush does not deflect river flood flows toward either country, thus altering the international boundary alignment by erosion. Minute No. 238 calls for equally dividing flood flows into interior floodways in each country, thereby ensuring the 20,000 cfs maximum flow at Brownsville and Matamoros.

On November 1, 1989, the Sierra Club *et al.* filed a civil action suit against the USIBWC alleging vegetation maintenance program violations of the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA) (CA No. 89–3005–RCL (1990 WL 116845 (D.D.C.)), Jul. 31, 1990). The plaintiffs alleged that the USIBWC had not prepared an Environmental Assessment or Environmental Impact Statement (EIS) relative to the operation and maintenance activities for the United States portion of the LRGFCP as required by NEPA. The plaintiffs also alleged that the USIBWC had not entered into formal consultation with the USFWS pursuant to Section 7 of the ESA with respect to the impacts of the United States portion of the LRGFCP on federally-listed threatened or endangered species.

In a 1990 Consent Decree, the USIBWC agreed to enter into formal consultation with the USFWS regarding the impacts of all vegetation clearing activities of the LRGFCP on federally listed species. The consultation process resulted in an issuance by the USFWS of a Biological Opinion (BO) on May 6, 1993. The USFWS has recently issued a new BO. In addition to formal consultation with USFWS, USIBWC agreed to the preparation of this EIS, which specifically addresses alternative vegetation maintenance practices.

This FEIS presents and analyzes the impacts of current and alternative USIBWC vegetation maintenance practices to fulfill commitments under the IBWC Minutes, the Consent Decree, and the new BO. The pertinent elements of the LRGFCP vegetation maintenance program are based on the need to:

- Maintain channel banks to provide adequate flood conveyance.
- Equitably divert flood flows into interior floodways.
- Remove brush and other obstructions within floodways.
- Maintain a wildlife corridor per the USFWS BO and the 1994 LRGFCP Off-River Wildlife Travel Corridor Plan.

Four potential vegetation maintenance alternatives, including the current USIBWC maintenance program, are considered and analyzed in the FEIS. The Preferred Alternative is the Continued Maintenance Alternative (No-Action), representing the continuation of the current USIBWC vegetation maintenance program.

A Record of Decision will be issued on this proposal after a minimum of 30 days following the filing of the FEIS. Any comments on the FEIS must be received no later than 30 days after the date of publication of the notice of availability by the Environmental Protection Agency (EPA) in the **Federal Register**. No action will be taken on the proposed action before 30 days following publication of the notice of availability of the FEIS by EPA.

Dated: December 15, 2003.

Mario Lewis,

General Counsel.

[FR Doc. 03–31670 Filed 12–23–03; 8:45 am]

BILLING CODE 4710–03–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Notice of Availability of Draft Environmental Impact Statement, River Management Alternatives for the Rio Grande Canalization Project, Sierra and Doña Ana Counties, NM and El Paso County, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC), in cooperation with the United States Bureau of Reclamation (USBR), has prepared a Draft Environmental Impact Statement (DEIS) on River Management Alternatives for the Rio Grande Canalization Project (RGCP) located in Sierra and Doña Ana Counties, NM and El Paso County, TX. The DEIS analyzes effects of the No Action Alternative and three action alternatives on the future RGCP operation, maintenance, and implementation of environmental measures. One public hearing will be held to receive oral comments on the DEIS from interested organizations and individuals through transcription by a certified court reporter. Written comments may be submitted at the public hearings or mailed to the USIBWC contact and address below.

DATES: Written comments are requested by February 10, 2004. A public hearing is scheduled for Tuesday, January 27, 2004 in El Paso, Texas. *See* **ADDRESSES** below for location and time.

ADDRESSES: Comments should be addressed to: Mr. Douglas Echlin, Lead

Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902. A public hearing is scheduled from 6:30 to 8:30 p.m. on Tuesday, January 27, 2004 at the USIBWC Headquarters, First Floor Conference Room, 4171 North Mesa Street, El Paso, Texas 79902 to present your verbal or written comments.

Copies of the DEIS are available for inspection and review at the following locations: Branigan Memorial Library, 200 East Picacho Avenue, Las Cruces, New Mexico; El Paso Public Library, 501 North Oregon Street, El Paso, Texas; New Mexico State University Library, Las Cruces, New Mexico; University Library, The University of Texas at El Paso, El Paso, Texas; and United States Section, International Boundary and Water Commission, 4171 North Mesa Street, El Paso, Texas. A copy of the DEIS will also be posted at the USIBWC Web site at *www.ibwc.state.gov* "IBWC News."

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, Lead Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902 or call 915/832–4741. e-mail: *dougechlin@ibwc.state.gov*.

SUPPLEMENTARY INFORMATION: The USIBWC is evaluating long-term river management alternatives for the Rio Grande Canalization Project (RGCP), a narrow river corridor that extends 105.4 river miles along the Rio Grande, from below Percha Dam in Sierra County, New Mexico to American Dam in El Paso, Texas. The RGCP is operated and maintained by the USIBWC and was constructed to facilitate water deliveries to the Rincon and Mesilla Valleys in New Mexico, El Paso Valley in Texas, and Juarez Valley in Mexico. The project also includes a levee system for flood control.

The USIBWC currently implements operation and maintenance procedures to enhance ecosystem functions within the RGCP; however, alterations to the river and floodway from events that predate RGCP construction continue to affect the river and floodway. Therefore, USIBWC recognizes the need to accomplish flood control, water delivery, and operations and maintenance activities in a manner that enhances and restores the riparian ecosystem.

River management alternatives were considered and developed over a three-year-long public consultation process that included input from the general public and stakeholders such as regulatory agencies, irrigation districts, and environmental organizations. The No Action Alternative and three potential action alternatives were selected for further evaluation in the DEIS. Levee rehabilitation, changes associated with grazing leases to improve erosion control, floodway management, and river restoration including aquatic habitat diversification and riparian vegetation development are measures considered in the action alternatives. The USIBWC will select a preferred alternative after public comment on the DEIS.

A copy of the DEIS has been filed with the Environmental Protection Agency (EPA) in accordance with 40 CFR parts 1500–1508 and USIBWC procedures. Written comments concerning the DEIS will be accepted at the address provided above until February 10, 2004.

Dated: December 18, 2003.

Mario Lewis,

General Counsel.

[FR Doc. 03–31664 Filed 12–23–03; 8:45 am]

BILLING CODE 4710–03–U

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: The National Science Foundation published notices in the **Federal Register** of permit applications received from the following applicants on:

William Gilmore (2004–011), August 19, 2003; Howard Evans (2004–005), September 29, 2003; Paul R. Renne (2004–017), October 27, 2003; and Thomas A. Day (2004–018), November 10, 2003.

Permits were issued to these four applicants on December 15, 2003.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–31617 Filed 12–23–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Earthscope Science and Education Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: EarthScope Science and Education Advisory Committee (#16638).

Dates/Time: 8 p.m.–9:30 p.m. Wednesday, January 21, 2004, 8:30 a.m.–5 p.m. Thursday, January 22 and 23, 2004. 8:30 a.m.–12 p.m. Saturday, January 24, 2004.

Place: Sheraton 4-Points Hotel, 1201 K Street NW., Washington, DC.

Type of Meeting: Part-Open (see agenda below).

FOR FURTHER INFORMATION CONTACT: Dr. James H. Whitcomb, Division of Earth Sciences, National Science Foundation, Suite 785, 4201 Wilson Boulevard, Arlington, VA 22230, Phone 703–292–8553.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To carry out EarthScope proposal and management review, including program evaluation, GPRA assessments, and access to privileged materials; and to provide advice, recommendations, and oversight concerning EarthScope construction, operation, science and education support.

Agenda:

January 21, 2004

8 p.m.–9 p.m. Closed—Discussions regarding proposals and personnel decisions.

January 22, 2004

8:30 a.m.–12:00 p.m. Open—Review of EarthScope Execution Plan.

1 p.m.–5 p.m. Closed—Review of funding decisions for personnel and subcontracts for construction phase of EarthScope.

January 23, 2004

8:30 a.m.–5 p.m. Open—Advise on education and outreach Management structure, and revision of volanic area instrumentation.

January 24, 2004

8:30 a.m.–12 p.m. Closed—Review of proposal actions and discussion of proposals still under review.

Reason for Closing: Session having to do with proposal and awards for specific grants, contracts, or other arrangements may properly be closed to the public under 5 U.S.C. 522b(c)(4), (6), and (9)(B) of the Government in the Sunshine Act.

Dated: December 19, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–31716 Filed 12–23–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities'.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

5. *Who will be required or asked to report:* Licensees and applicants for nuclear power plants and research and test facilities.

6. *An estimate of the number of annual responses:* 7,244 (7,069 responses + 175 recordkeepers).

7. *The estimated number of annual respondents:* 175.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 5.2M: 1.8M hours reporting (average of 259 hrs/response) + 3.4M hours recordkeeping (average of 19K hrs/recordkeeper).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 50 of the NRC's regulations "Domestic Licensing of Production and Utilization Facilities," specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may make determinations necessary to protect the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR part 50 are mandatory for the affected licensees and applicants.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 23, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 18th day of December, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–31687 Filed 12–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services, Inc.; Notice of Receipt of Amendment Request and Opportunity To Request a Hearing for Oxide Conversion Building and Effluent Processing Building in the Blended Low-Enriched Uranium Complex

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed on or before January 23, 2004.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Michael A. Lamastra, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8–A–33, Washington, DC 20555–0001. Telephone (301) 415–8139; fax number: (301) 415–5955; e-mail: *mxl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 23, 2003, a request from Nuclear Fuel Services, Inc. (NFS), to amend its NRC Special Nuclear Materials License SNM–124, to authorize processing operations in the Oxide Conversion Building (OCB) and the Effluent Processing Building (EPB) at the Blended Low-Enriched Uranium (BLEU) Complex. The request is the third of three license amendment requests planned to support operations associated with downblending and conversion of high-enriched uranium materials to low-enriched uranium oxides.

NFS is currently manufacturing high-enriched nuclear reactor fuel at its facility in Erwin, Tennessee. NFS is constructing a new complex at the Erwin site to manufacture low-enriched nuclear reactor fuel. NFS is requesting this amendment to authorize operations that will convert liquid uranyl nitrate solutions into solid uranium oxide powder as part of the process for downblending and conversion of high-enriched uranium materials into low-enriched uraniumoxide. After the material is converted to uranium oxide powder, it will be transferred to another facility for fabrication of reactor fuel assemblies.

The October 23, 2003, amendment application contains a proprietary Integrated Safety Analysis (ISA) Summary for the OCB and EPB operations. By letter dated November 14, 2003, NFS provided a non-proprietary version of the ISA Summary. By letters dated October 24, 2003, NFS provided revisions to its Emergency Plan and its Fundamental Nuclear Material Control Plan to incorporate the new operations. By letter dated November 3, 2003, NFS provided a revision to its Physical Security Plan for Special Nuclear Material of Low Strategic Significance. These submittals comprise the content of the license amendment application.

This application will be reviewed by the staff for conformance with 10 CFR parts 20, 51, 70, 73, and 74, using NUREG–1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility" and other applicable agency regulations and guidance. If NRC approves the request, the approval will be documented in an amendment to NRC Special Nuclear Materials License SNM–124. However, before approving the request, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC regulations. These findings will be documented in a Safety Evaluation Report and either an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), or an Environmental Impact Statement (EIS).

By letter dated June 28, 2002, the NRC issued an EA/FONSI to support the first amendment request for this project. This action was noticed in the **Federal Register** on July 9, 2002 (67 FR 45555). The NRC staff may use this assessment for additional information in developing the EA/FONSI or EIS for this action.

II. Notice of Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of 10 CFR part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

A. By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., on Federal workdays; or

B. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

A. The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin, Tennessee 37650–9718. A copy of the request for hearing should also be sent to the attorney for the licensee, Daryl Shapiro, c/o Shaw Pittman, L.L.P., 2300 N Street, NW., Washington, DC 20037; and

B. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., on Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

A. The interest of the requestor in the proceeding;

1. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

2. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

3. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the application for the amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. The documents include:

A. NFS License Amendment Request dated October 23, 2003.

1. Cover Letter (ADAMS accession number ML033350258).

2. Attachment 1, Page Changes to License SNM–124 (ADAMS accession number ML033420721).

B. Non-proprietary ISA Summary dated November 14, 2003, Cover Letter and Attachment (ADAMS accession number ML033380535).

C. Environmental Assessment for First License Amendment dated June 28, 2002 (ADAMS accession number ML021790068).

Attachments II and III of the NFS license amendment request dated October 23, 2003, contain proprietary information and are being withheld from the public pursuant to 10 CFR 2.790. The Physical Safeguards Plan and the Fundamental Nuclear Material Control Plan also are deemed proprietary information and are being withheld from the public pursuant to 10 CFR 2.790(d). In addition, the Emergency Plan Revisions are sensitive, homeland security information, and are not publicly available.

Dated at Rockville, Maryland, this 17th day of December 2003.

For the Nuclear Regulatory Commission.

Gary S. Janosko,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–31686 Filed 12–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 29–30, 2004, in the Montgomery

Room at the Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, January 29 , 2004—8:30 a.m. until the conclusion of business. The Subcommittee will discuss ACRS business processes, effective planning, use of electronic media, potential operational areas for improved effectiveness, and other activities related to the conduct of ACRS business. It will also discuss how well the Committee carries out its charter, the completeness of ACRS reviews, independence issues, and how well it meets the needs of its stakeholders.

Friday, January 30, 2004—8:30 a.m. until the conclusion of business. The Subcommittee will continue to discuss self-assessment of ACRS performance in CY 2003, potential operational areas for improved effectiveness, and other activities related to the conduct of ACRS business. It will also discuss current technical challenges confronting the ACRS, such as risk-informing 10 CFR 50.46, probabilistic risk assessment/significance determination process issues, and proactive Committee initiatives. Additionally, the Subcommittee will discuss needed future technical expertise for the ACRS.

The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. John T. Larkins (telephone: 301–415–7360) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: December 18, 2003.

Medhat El-Zeftawy,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–31689 Filed 12–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling; Notice of Meeting

The Peer Review Committee for Source Term Modeling will hold a closed meeting on January 7, 8, 9, 2004 at Sandia National Laboratories (SNL), Albuquerque, NM.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows:

Wednesday, Jan 7, Thursday, Jan 8, and Friday, Jan 9, 2004—8:30 a.m. until the conclusion of business:

A sub-panel of the Committee will gather information on the behavior of spent nuclear fuel under adverse service conditions. The information gathered will enable the Committee to provide advice and recommendations to aid SNL in development of guidance documents on source terms that will assist the NRC in evaluations of the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material (RAM) transport packages.

For further information regarding the time of the meeting and possible changes to the starting and ending times and the duration of the meeting, contact: Dr. Andrew L. Bates, *telephone:* (301) 415–1963 or Dr. Charles G. Interrante, *telephone:* (301) 415–3967 between 7:30 a.m. and 4:15 p.m. (ET).

Dated: December 18, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–31688 Filed 12–23–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of a new system of records—PBGC–14, My Plan Administration Account Authentication Records—PBGC.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is establishing a new system of records, PBGC–14, My Plan Administration Account (My PAA) Authentication Records—PBGC, subject to the Privacy Act of 1974, as amended. The new system of records is necessary to reflect new records and processes associated with a new online application that will permit individuals to submit information electronically and make payments through the PBGC's Internet Web site (*http://www.pbgc.gov*).

DATES: Comments on the new system of records and proposed routine uses must be received on or before January 23, 2004. The new system of records will become effective February 3, 2004, without further notice, unless comments result in a contrary determination and a notice is published to that effect.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at *http://www.pbgc.gov/privacyact*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov*. Copies of the comments may also be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling (202) 326–4040 during normal business hours. TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4040.

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4000 Ext. 3672. For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4024.

SUPPLEMENTARY INFORMATION: The PBGC is committed to improving customer service and governmental efficiency through the use of information technology to administer the defined benefit pension plan termination insurance program established by title IV of the Employee Retirement Income Security Act of 1974, as amended. A major component of the PBGC's strategy to implement the Government Paperwork Elimination Act (GPEA), Pub. L. 105–277 (1998), is the development of an online self-service center so that PBGC customers can conduct required plan transactions with the PBGC through the Internet.

My PAA is a secure Web-based application that will allow authenticated plan sponsors, administrators, and pension practitioners such as enrolled actuaries and other benefit professionals to work together to file and pay premiums due the PBGC under 29 U.S.C. 1306, check premium account histories, make plan termination filings under 29 U.S.C. 1341, make reportable event filings under 29 U.S.C. 1343, contact the PBGC with questions, and perform other plan maintenance tasks online. The PBGC is establishing a new system of records, PBGC–14, My Plan Administration Account Authentication Records—PBGC, to maintain records about individuals who register to use the My PAA application to verify their identity and authenticate the actions taken by that user with respect to PBGC filings.

To open a My PAA online account, an individual must register with the PBGC as the "filing coordinator." To become a filing coordinator, the individual must submit his or her name, employer, contact information, including e-mail address, and the pension plan name, employer identification number (EIN), and plan number (PN) for each plan for which the individual wants to act as filing coordinator.

To verify that the individual has authority to make filings on behalf of the plan, the individual must submit the number of participants in the plan reported to the PBGC in the plan's most recent premium filing, and the amount of premiums paid to the PBGC for that filing year. The My PAA application will compare the information submitted by the individual with data from previous filings in the PBGC's premium database. If the information submitted by the individual is correct, My PAA will e-mail a temporary user ID and password to the approved filing coordinator that will allow the filing coordinator to obtain access to the My PAA system. When an approved user logs on, the My PAA system will prepopulate data fields in My PAA and allow access to the plan's premium filing history from previous My PAA filings.

If the information submitted does not match the information in the PBGC's premium database, My PAA will notify the individual that he or she has been granted "conditional" status as filing coordinator until the PBGC is able to verify the individual's authority to act on behalf of the plan. A PBGC employee will manually review PBGC premium filing records or contact the plan's sponsor or administrator to verify the individual's authority to act on behalf of the plan. A conditional user receives a temporary user ID and password to make new filings via My PAA, but will not be granted access to the plan's premium filing history from previous My PAA filings. My PAA will not automatically prepopulate data fields as the system does when an approved user accesses the system.

The filing coordinator may use the My PAA application to invite other individuals to participate in PBGC filings with respect to a plan, and select the activities the individuals are authorized to perform. The roles or activities that may be authorized under My PAA include creating and editing filings, signing filings electronically as the plan administrator, signing filings electronically as the enrolled actuary, or authorizing payments to the PBGC. The filing coordinator must submit the individual's name and contact information, including e-mail address, and the activities the individual is authorized to perform in My PAA with respect to the plan. My PAA will e-mail the individual a temporary user ID and password that will permit the invited user to access the My PAA system to register to participate in filings.

My PAA requires a first-time user (either approved or conditional) to change his or her user ID and password when registering during the initial login to the system. The first-time user must also select a secret question/secret answer combination that will be used in addition to the user ID and password to authenticate the actions taken by that user.

The records maintained by the PBGC in PBGC–14, My Plan Administration Account Authentication Records—PBGC, will be used to verify the identity of, and authenticate the actions taken by, individuals using My PAA to make PBGC filings. The information that will be maintained includes the user's name, work telephone number, work e-mail address, other contact information, a temporary, PBGC-issued user ID and password, a user-selected user ID and password, and a secret question/secret answer combination for authentication.

For each pension plan that the user intends to participate in making filings for, the PBGC will also maintain the plan name, employer identification number (EIN), and plan number (PN); the plan administrator's name, address, phone number, and e-mail address; other contact information; and the role that the user will play in the filing process, *i.e.*, creating and editing filings, signing filings electronically as the plan administrator, signing filings electronically as the enrolled actuary, or authorizing payments to the PBGC.

PBGC general routine uses G1, Law Enforcement, G4, Disclosure in Litigation, G5, Disclosure to the Department of Justice in Litigation, G6, Disclosure to OMB, and G7, Congressional Inquiries apply to this system of records. These routine uses were published as the PBGC's Prefatory Statement of General Routine Uses at 60 FR 57462, 57563 (1995).

Issued in Washington, DC this 19th day of December, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

PBGC–14

SYSTEM NAME:

My Plan Administration Account Authentication Records—PBGC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who register to use the My PAA application to make PBGC filings and payments electronically via the PBGC's Internet Web site (*www.pbgc.gov*), including individuals acting for plan sponsors, plan administrators, and pension practitioners such as enrolled actuaries and other benefit professionals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the user's name, work telephone number, work e-mail address, other contact information, a temporary, PBGC-issued user ID and password, a user-selected user ID and password, and a secret question/secret answer combination for authentication. For each pension plan that the user intends to participate in making filings with the PBGC, the name, employer identification number (EIN), and plan number (PN); the plan administrator's name, address, phone number, and e-mail address; other contact information; and the role that the user will play in the filing process, *i.e*, creating and editing filings, signing filings electronically as the plan administrator, signing filings electronically as the enrolled actuary, or authorizing payments to the PBGC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302, 1306, 1307, 1341, and 1343.

PURPOSE(S):

This system of records is maintained for use in verifying the identity of, and authenticating actions taken by, individuals who register to use the My PAA application to make PBGC filings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PBGC General Routine Uses G1, G4, G5, G6, and G7 apply to this system of records (*See* Prefatory Statement of General Routine Uses, 60 FR 57462, 57563 (1995)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated form in computer databases maintained by the PBGC.

RETRIEVABILITY:

Records are indexed by name, user ID and password, and by plan name and EIN/PN.

SAFEGUARDS:

The PBGC has adopted appropriate administrative, technical, and physical controls in accordance with the PBGC's Automated Information Systems Security Program to protect the security, integrity, and availability of the information, and to assure that records are not disclosed to unauthorized individuals.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the PBGC's established records disposition schedule for premium-related records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR part 4902.

RECORD ACCESS PROCEDURES:

An individual may access his or her records via the My PAA application available on the PBGC's Internet Web site (*www.pbgc.gov*), or by following the procedures outlined at 29 CFR part 4902.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individual and other registered users.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–31761 Filed 12–23–03; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIMES: Tuesday, January 6, 2004; 10:30 a.m. and 2:30 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: January 6—10:30 a.m. (Closed); 2:30 p.m. (Open).

MATTERS TO BE CONSIDERED:

Tuesday, January 6—10:30 a.m. (Closed)

1. Financial Update.
2. Capital Investment—Informational Briefing on OCR Enhancements for Letter Mail Automation.
3. Strategic Planning.
4. Personnel Matters and Compensation Issues.

Tuesday, January 6—2:30 p.m. (Open).

1. Minutes of the Previous Meeting, December 8–9, 2003.
2. Remarks of the Postmaster General and CEO.
3. Committee Report.
4. Consideration of Board resolution on Capital Funding.
5. Annual Report on Government in the Sunshine Act Compliance.
6. Fiscal Year 2003 Comprehensive Report on Postal Operations, including the Preliminary Fiscal Year 2005 Annual Performance Plan—GPRA.
7. Election of Chairman and Vice Chairman of the Board of Governors.
8. Tentative Agenda for the February 2–3, 2004, meeting in Ft. Lauderdale, Florida.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–31929 Filed 10–22–03; 3:40 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26315]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 19, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 15, 2004, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609.

For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

Mutual Investment Fund of Connecticut, Inc. (File No. 811–752)

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 29, 2003, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $30,021 incurred in connection with the liquidation were paid by applicant and JP Morgan Chase Bank, applicant's investment adviser.

Filing Date: The application was filed on December 12, 2003.

Applicant's Address: c/o Connecticut Bankers Association, 10 Waterside Dr., Farmington, CT 06103.

The Montgomery Funds (File No. 811–6011); The Montgomery Funds II (File No. 811–8064)

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By June 23, 2003, shareholders of each applicant had transferred their assets to corresponding series of WF Funds and Gartmore Funds, based on net asset value. Expenses of $3,084,969 and $499,936, respectively, incurred in connection with the reorganizations were paid by applicants' investment advisers, Wells Capital Management Inc. and Gartmore Global Asset Management Trust, and/or their affiliates.

Filing Dates: The applications were filed on September 17, 2003, and September 18, 2003, respectively, and amended on November 20, 2003.

Applicants' Address: P.O. Box 2189, Mill Valley, CA 94942.

The Montgomery Funds III (File No. 811–8782)

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 23, 2003, applicant transferred its assets to Gartmore GVIT Developing Markets Fund, based on net asset value. Expenses of $116,149 incurred in connection with the reorganization were paid by applicant's investment adviser, Gartmore Global Asset Management Trust, and/or its affiliates.

Filing Dates: The application was filed on September 18, 2003, and amended on November 20, 2003.

Applicant's Address: P.O. Box 2189, Mill Valley, CA 94942.

The Avalon Fund of Maryland, Inc. (File No. 811–8773)

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 6, 2003, applicant transferred its assets to Eastern Point Advisors Funds Trust, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Date: The application was filed on November 24, 2003.

Applicant's Address: 655 Fairfield Ct., Suite 200, Ann Arbor, MI 48108.

Putnam California Tax Exempt Money Market Fund (File No. 811–5333); Putnam New York Tax Exempt Money Market Fund (File No. 811–5335)

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On August 22, 2003, each applicant made a liquidating distribution to its shareholders, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Date: The applications were filed on November 20, 2003.

Applicant's Address: One Post Office Sq., Boston, MA 02109.

Avalon Capital, Inc. (File No. 811–9004)

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 24, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $17,500 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on November 26, 2003.

Applicant's Address: c/o Gemini Fund Services, Inc., 150 Motor Parkway, Suite 205, Hauppauge, NY 11788.

Pioneer Market Neutral Fund (File No. 811–9867)

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on November 13, 2003.

Applicant's Address: 60 State St., Boston, MA 02109.

Oppenheimer Special Value Fund (File No. 811–10257)

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 16, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on November 5, 2003, and amended on December 2, 2003.

Applicant's Address: 6803 South Tucson Way, Englewood, Co 80112.

The Unified Funds (File No. 811–8968)

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 28, 2001, applicant transferred its assets to Liquid Green Money Market Fund, a series of AmeriPrime Advisors Trust, based on net asset value. Expenses of $9,764 incurred in connection with the reorganization were paid by Unified Investment Advisers, Inc., applicant's investment adviser.

Filing Date: The application was filed on November 7, 2003.

Applicant's Address: Unified Fund Services, Inc., 431 N. Pennsylvania St., Indianapolis, IN 46204.

UBS Managed Investments Trust (File No. 811–4040)

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 24, 2003, applicant transferred the assets of its one series to UBS Global Equity Fund, a series of The UBS Funds, based on net asset value. Expenses of $319,323 were incurred in connection with the reorganization. Fifty percent of these expenses were paid by UBS Global Asset Management, applicant's investment adviser, and the remaining fifty percent were allocated to applicant and the acquiring fund, based on their respective net assets.

Filing Dates: The application was filed on October 21, 2003, and amended on November 21, 2003.

Applicant's Address: 51 West 52nd St., New York, NY 10019–6114.

The Legends Fund, Inc. (File No. 811–7084)

Summary: Applicants seeks an order declaring that it has ceased to be an investment company. Applicant's board of directors and shareholders approved the merger of the Applicant into Touchstone Variable Series Trust on January 27, 2003, and April 18, 2003, respectively. Applicant's assets were distributed on April 23, 2003. Touchstone Advisors, Inc. paid for the expenses of the merger. Applicant has no remaining assets and no outstanding debts or liabilities.

Filing Date: The application was filed on June 30, 2003, and amended on December 17, 2003.

Applicant's Address: 515 West Market Street, Louisville, KY 40202.

New England Zenith Fund (File No. 811–3728)

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Shareholders approved the merger of applicant's series on April 25, 2003, and applicant distributed its assets on May 1, 2003. The funds surviving the merger are portfolios of the Metropolitan Series Fund, Inc. Applicant's investment manager, MetLife Advisers, LLC, and its affiliates, paid expenses of approximately $1,140,000 incurred in connection with the merger.

Filing Date: The application was filed on October 10, 2003.

Applicant's Address: 501 Boylston Street, Boston, MA 02116.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31697 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26314; File No. 812–13013]

Midland National Life Insurance Company, et al.

December 18, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order pursuant to Section 6(c) of the Investment Company Act of 1940, as amended the ("Act") granting exemptions from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

APPLICANTS: Midland National Life Insurance Company ("Midland"), Midland National Life Separate Account C (the "Midland Account"), and Sammons Securities Company, LLC ("Sammons Securities") (all collectively, the "Applicants").

SUMMARY: The Applicants hereby apply for an order of the Commission exempting them with respect to the support of variable annuity contracts described herein (the "Contracts") and other variable annuity contracts that are similar in all material respects to the contracts described herein, that Midland may issue in the future ("Future Contracts"), and any other separate accounts of Midland and its successors in interest ("Future Accounts") that support Future Contracts, and certain National Association of Securities Dealers, Inc. ("NASD") member broker-dealers which, in the future, may act as principal underwriter of such Contracts ("Future Underwriters"), from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, pursuant to section 6(c) of the Act, to the extent necessary to permit the recapture of a bonus credit (previously applied to premium payments) where the bonus credit was applied and (i) the contract owner ("Owner") exercises his or her "free look" right, or (ii) in the event of death, partial withdrawal, or surrender of the contract in the first seven contract years (pursuant to a vesting schedule).

DATES: The Application was filed on September 3, 2003, and amended and restated on December 1, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 11, 2004, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants: c/o Steve Horvat, Esq., Midland National Life Insurance Company, One Midland Plaza, Sioux Falls, SD 57193. Copy to Frederick R. Bellamy, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mark A. Cowan, Senior Counsel, or Zandra Bailes, Branch, Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, 450 5th Street NW., Washington, DC 20549, (202) 942–8090.

Applicants' Representations

1. Midland is a stock life insurance company. Midland was organized in 1906, in South Dakota, as a mutual life insurance company at that time named the Dakota Mutual Life Insurance Company. It was reincorporated as a stock life insurance company in 1909. The name Midland was adopted in 1925. Midland was redomesticated to Iowa in 1999. It is licensed to do business in the District of Columbia, Puerto Rico, and in all States except New York. Midland is a subsidiary of Sammons Enterprises, Inc. which has controlling or substantial stock interests in a large number of other companies engaged in the areas of insurance, corporate services, and industrial distribution.

2. Under the terms of the Contracts, the assets of the Midland Account equal to the reserves and other contract liabilities with respect to the Midland Account are not chargeable with liabilities arising out of any other business which the sponsoring company may conduct (except to the extent that assets in the Midland Account exceed the reserves and liabilities of the Midland Account). The Midland Account is comprised of investment divisions established to receive and invest net premium payments under the Contracts (the "Investment Divisions") and other annuity contracts. The income, gains and losses, realized or unrealized, from the assets allocated to each Investment Division will be credited to or charged against that Investment Division without regard to other income, gains or losses of any other Investment Division. The Midland Account meets the definition of a "separate account" in Rule 0–1(e) under the Act.

3. The Board of Directors of Midland established the Midland Account under the insurance laws of the State of South Dakota in March 1991. The Midland Account is now governed by Iowa law. The Midland Account is registered under the Act as a unit investment trust (File No. 811–07772). The assets of the Midland Account support certain flexible premium variable annuity contracts, and interests in the Midland Account offered through such contracts have been registered under the Securities Act of 1933 ("1933 Act") on three Form N–4 Registration Statements (File Nos. 33–64016, 333–71800 and 333–108437). The Contract, which includes the optional bonus and accompanying recapture that is the subject of this application, is registered in File No. 333–108437.

4. Sammons Securities, an affiliate of Midland, is the principal underwriter of the Contracts. Sammons Securities is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the NASD.

5. Each Investment Division will invest exclusively in a designated series of shares, representing an interest in a particular portfolio of one or more designated management investment companies of the series type ("Funds"). Midland reserves the right to designate the shares of another portfolio of the Funds or of other management investment companies ("Other Funds") as the exclusive investment vehicle for each new Investment Division that may be created in the future. Subject to Commission approval under section 26(c) of the Act, Applicants also reserve the right to substitute the shares of another portfolio previously designated as the exclusive investment vehicle for each Investment Division.

6. The Contracts are flexible premium deferred variable annuity contracts issued by Midland through the Midland Account. Midland currently intends to market the Contract under the name "Advantage II Variable Annuity." The Contracts provide for the accumulation of values on a variable or fixed basis during the accumulation period, and may provide settlement or annuity payment plans on a variable or fixed

basis. The Contracts may be purchased on a non-qualified tax basis. The Contracts may also be purchased and used in connection with plans qualifying for favorable Federal income tax treatment.

7. The Owner determines in the supplemental application or transmittal form for a Contract how the net premium payments will be allocated among the Investment Divisions of the Midland Account, the Fixed Account and any available dollar cost averaging options of the Fixed Account (the "Fixed Account Options"). The Owner generally may allocate premium payments to each Investment Division and to each Fixed Account Option. The Accumulation Value will vary with the investment performance of the Investment Divisions selected, and the Owner bears the entire risk for amounts allocated to the Investment Division.

8. An Owner may return his or her Contract for a refund. This is called the "Free Look Right." The Free Look Right allows an Owner 10 days (or longer if required by state law) to return his or her Contract. Midland generally will return the Accumulation Value minus any premium bonus credit to the Owner, but may return the full premium payment (not including the bonus credit), if greater and required by state law.

9. An Owner may transfer Accumulation Value among the Investment Divisions and between the Fixed Account and any Investment Division prior to the maturity date. The amount that an Owner may transfer into or out of the Fixed Account is limited. The minimum transfer amount is $200, or 100% of an Investment Division if less than $200. The minimum amount does not have to come from or be transferred to just one Investment Division. The only requirement is that the total amount transferred in a day equals at least the transfer minimum. Midland currently allows an unlimited number of transfers of accumulated value in a contract year prior to the maturity date, but Midland reserves the right to charge a transfer fee of $15 for every transfer after the twelfth in a contract year. After the maturity date, Owners may only make two transfers per contract year and then only among the Investment Divisions of the Midland Account.

10. The Owner may withdraw all or part of his or her surrender value prior to the maturity date. If an Owner surrenders a Contract or takes partial surrender, Midland may deduct a surrender charge to compensate it partially for the selling and distribution expenses of the Contracts, including commissions and the costs of preparing sales literature and printing prospectuses. An Owner is permitted to withdraw 10% of net premiums (premium minus partial surrenders) once each contact year without incurring a surrender charge. The following chart shows the surrender charges that apply to the Contracts:

Length of time from premium payment (number of years)	Surrender charge (as a percentage of premium withdrawn)
1	9
2	8
3	7
4	6
5	5
6	4
7	3
8	2
9	1
10+	0

11. Under the Contracts, Midland will pay a death benefit under certain circumstances. Midland's death benefit equals the greatest of: (i) The Accumulation Value (less any non-vested premium bonus and premium taxes); or (ii) 100% of the total net premium payments. Future Contracts may provide different death benefits.

12. If an Owner elects the Premium Bonus Rider under the Contracts, then Midland will add a 6% bonus credit to the Owner's premium payments made during the first contract year. Once elected, the Premium Bonus Rider may not be terminated. The Owner will vest in a portion of this bonus over each of the first seven contract years. As requested in the application, Midland intends that if the Owner exercises the Free Look Right, then the Owner will not receive any portion of the bonus amount. In the event of death, annuitization, withdrawal (including any penalty fee withdrawals), or surrender of the Contract in the first seven contract years, the Owner or the Owner's beneficiary(ies) will only be entitled to that portion of the bonus that has vested, and is not retained by Midland, at the time the event occurs. In contract year 8 and thereafter, the Owner will be entitled to 100% of the bonus amount. The vesting schedule is as follows:

Contract year	Amount of bonus vested
1	4/12
2	5/12
3	6/12
4	7/12
5	8/12
6	9/12
7	10/12
8	12/12

13. Midland will assess daily charge during the first nine contract years against the Owner's Accumulation Value in the Midland Account as a charge for the Premium Bonus Rider. The current charge for the Premium Bonus Rider is at an annual rate of 0.65% of the Midland Account Accumulation Value. Midland reserves the right to change the charge for the Premium Bonus Rider, but the guaranteed maximum level of this charge is 0.70% annually.

14. On the maturity date the Owner may take the surrender value in one lump sum or convert the surrender value into an annuity. The owner may elect or change an annuity payment option up until thirty days before the maturity date. The first annuity payment will be made within one month after the maturity date. The first annual payment will be made within one month after the maturity date. The Owner generally may change the maturity date, subject to limits specified in the prospectus.

15. The amount of each annuity payment under the annuity payment plans will depend on which type of plan is selected, and depending on the plan that is chosen, may depend on factors such as the payee's age, sex (if allowed), and length of the payment period between each annuity payment.

16. Midland may offer Owners dollar cost averaging programs, where Midland, on a monthly or quarterly basis, will automatically transfer a predetermined amount of money from any Investment Option or the Fixed Account into one or more of the Investment Divisions; a portfolio rebalancing program, where Midland will automatically rebalance, on a monthly, quarterly, semi-annual or annual basis, the amounts in an Owner's Investment Divisions according to his or her desired asset allocation; a fixed account earnings sweep program, where Midland will transfer, on a monthly or quarterly basis, Fixed Account interest earnings to one or more of the Investment Divisions; and a systematic withdrawal option, where an Owner, on a monthly quarterly semi-annual or annual basis, which basis the Owner shall select may receive regular payments from his or her Contract subject to certain limitations; or other programs.

17. Midland deducts various fees and charges from the Contracts or the

Midland Account, which currently include daily mortality and expense risk fee; an annual maintenance fee (which may be waived if the Owner's net premium exceeds a certain amount or if the Owner's Contract is a qualified plan under Federal tax law); premium taxes, surrender charges (contingent deferred sales loads) ; transfer fees (if applicable although no such fees is currently charged); and fees for optional benefits or riders.

Applicants' Legal Analysis

1. Applicants respectfully request that the Commission, pursuant to section 6(c) of the Act, grant the exemptions set forth below to permit the Applicants to recapture the bonus credit applied to premium payments under the Premium Bonus Rider of the Contracts (subject to a vesting schedule) (i) upon exercise of the Free Look Right, or (ii) in the event of death, annuitization, or surrender (full or partial) before the eighth contract year.

2. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the contract and provisions of the Act. Applicants request exemptions for the Contracts described herein, and for Future Contracts, from sections 2(a)(32), 22(c) and 27(i)(2)(a) of the Act, and Rule 22c–1 thereunder, pursuant to section 6(c), to the extent necessary to recapture the bonus credit applied to a premium payment under the Premium Bonus Rider, as described above. Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder.

3. For the reasons discussed below, Applicants assert that the recapture of some or all of the bonus credit under the Premium Bonus Rider in the circumstances described herein is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

4. Section 27(i) provides that section 27 does not apply to any registered separate account funding variable insurance contracts, nor to the sponsoring insurance company and principal underwriter of such account, except as provided for in section 27(i)(2)(A). Section 27(i)(2)(A) of the Act, in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security.

5. Section 2(a)(32) of the Act defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

6. To the extent that the recapture of bonus credit under the Premium Bonus Rider might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an Owner of less than the proportionate share of the issuer's net assets, the bonus credit recapture would trigger the need for relief absent some exemption from the Act. Rule 6c–8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall be exempt from sections 2(a)(32), 22(c), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. However, the bonus credit recapture under the Premium Bonus Rider is not a sales load, but a recapture of a bonus credit Midland previously applied to an Owner's premium payments. Under the Premium Bonus Rider, Midland provides the bonus credit from its general account on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, Midland contemplates that an Owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. Midland designed its product so that it would recover its costs (including the bonus credit) over an anticipated duration while a Contract is in force. If an Owner withdraws his or her money from the Contract before this anticipated period, Midland must recapture the bonus credit under the Premium Bonus Rider in order to avoid a loss.

7. Applicants submit that the recapture of a bonus credit does not violate section 2(a)(32) of the Act. The Applicants submit that the bonus recapture under the Premium Bonus Rider of the Contracts does not deprive the Owner of his or her proportionate share of the issuer's current net assets. An Owner's right to the bonus credit under the Premium Bonus Rider will begin to vest in the first contract year, and will become fully vested after the seventh contract year. Until that time, Midland retains the right and interest in the dollar amount of any unvested bonus credit amount. Thus, when Midland recaptures a bonus credit, it is only retrieving its own assets, and because an Owner's interest in the bonus credit is not vested, such Owner would not be deprived of a proportionate share of the Midland Account's assets (the issuer's current net assets) in violation of section 2(a)(32). Therefore, such recapture does not reduce the amount of the Midland Account's current net assets an Owner would otherwise be entitled to receive. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of sections (2)(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture the bonus credit under the Premium Bonus Rider of the Contracts and Future Contracts.

8. Section 22(c) of the Act states that the Commission may make rules and regulations applicable to registered investment companies, and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same ends as contemplated by section 22(a). Rule 22c–1, promulgated under section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security (and a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, any such security) from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security.

9. As a result of the 6% bonus credit under the Premium Bonus Rider, an Owner who made a $10,000 initial premium payment could be viewed as having an Accumulation Value of $10,600 before any earnings accrued. Midland's addition of the bonus credit might arguably be viewed as resulting in an Owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus credit, Midland might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the Midland Account. The Applicants contend that these are not correct interpretations or applications of these statutory and regulatory provisions. The Applicants contend that the bonus credit under the Premium Bonus Rider of the Contracts does not violate section 22(c) and Rule 22c–1.

10. An Owner's interest in his or her Accumulation Value or in the Midland Account would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of a bonus credit pursuant to the Premium Bonus Rider does not reflect a reduction of that price. Instead, Midland will purchase with its own general account assets an interest in the Midland Account equal to the bonus credit. Because the bonus credit will be paid out of Midland's assets, not the Midland Account's assets, no dilution will occur as a result of the credit.

11. The recapture of the bonus credit under the Premium Bonus Rider does not involve either of the evils that the Commission intended to eliminate or reduce with Rule 22c–1. The Commission's stated purposes in adopting Rule 22c–1 were to avoid or minimize (i) dilution of the interests of other security holders and (ii) speculative trading practices that are unfair to such holders. These evils were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, and thereby the values of outstanding mutual fund shares were diluted.

12. The proposed recapture of the bonus credit under the Premium Bonus Rider does not pose such threat of dilution. The bonus credit recapture will not alter an Owner's net asset value. Midland will determine an Owner's surrender value under a Contract in accordance with Rule 22c–1 on a basis next computed after receipt of an Owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c–1). The amount recaptured will equal the amount of the bonus credit that Midland paid out of its general accounts assets. Although an Owner will retain any investment gain attributable to the bonus credit, Midland will determine the amount of such gain on the basis of the current net asset value of the Investment Division. Thus, no dilution will occur upon the recapture of the bonus credit.

13. Further, Applicants submit that the other harm that Rule 22c–1 was designed to address (speculative trading practices calculated to take advantage of backward pricing) will not occur as a result of Midland's recapture of the bonus credit. Variable annuities are designed for long-term investment, and by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was designed to prevent. More to the point, the credit recapture simply does not create the opportunity for speculative trading.

14. Applicants assert that Rule 22c–1 and section 22(c) should have not application to the bonus credit available under the Premium Bonus Rider, as neither of the harms that Rule 22c–1 was designed to address is present in the recapture of the bonus credit. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the bonus credit under the Premium Bonus Rider of the Contracts and Future Contracts.

15. Applicants submit that Midland's recapture of the bonus credit is designed to prevent anti-selection. The risk of anti-selection would be that an Owner could make significant premium payments into the Contract solely in order to receive a quick profit from the credit.

Conclusion

1. For the reasons discussed above, the Applicants submit that the bonus credit involves none of the abuses to which provisions of the Act and the rules thereunder are directed. The Owner will always retain the investment experience attributable to the bonus credit, and will retain the principal amount in all cases except under the single circumstances described herein. Further, Midland should be able to recapture such bonus credit to protect itself from investors wishing to use the Contract as a vehicle for a quick profit at a Midland's expense, and to enable Midland to limit potential losses associated with such bonus credit.

2. Accordingly, Applicants request exemptions from section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the Applicants to recapture the bonus credit applied to a premium payment in the circumstance described above. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent.

3. Applicants seek relief herein not only for themselves with respect to the support of the Contracts, but also with respect to Future Accounts or Future Contracts described herein. Applicants represent that the terms of the relief requested with respect to any Contracts or Future Contracts funded by the Midland Account or Future Accounts are consistent with the standards set forth in section 6(c) of the Act and Commission precedent. The Commission has previously granted class relief (from certain specified provisions of the Act for separate accounts that support variable annuity contracts) that is materially similar to the relief described in the application.

4. In addition, Applicants seek relief herein with respect to Future Underwriters (*i.e.*, a class consisting of NASD member broker-dealers which may also as principal underwriter of the Contracts and Future Contracts). The Commission has regularly granted relief to "future underwriters" that are not named, and are not affiliates of the Applicants. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in section 6(c) of the Act and Commission precedent.

5. Applicants state that, without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants state that if the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional request for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Midland to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants opine, enhance Applicants' ability to effectively take advantage of business opportunities as such opportunities arise. Applicants submit, for all the reasons stated herein, that their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of

the Act, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

6. Applicants represent that the requested exemptions are necessary and appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31696 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48937; File No. SR–Amex–2003–109]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Correct a Numerical Error on a Previously Approved Proposed Rule Change

December 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Amex has designated this proposal as one concerned solely with the administration of the Amex pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to change the rule number originally assigned to Amex Rule 359 (Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms) to Amex Rule 359A. The Amex proposes no substantive changes to the rule. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to replace the rule number originally assigned to Amex Rule 359 (Mandatory Continuing Education for all Floor Members and Mandatory Continuing Education and Initial Test Requirements for Floor Clerks of Members and Member Firms) in SR–Amex–2003–06,[5] and replace it with Amex Rule 359A. The same rule number was chosen inadvertently in a subsequent proposed rule change after SR–Amex–2003–06 was filed on January 31, 2003, and Amendment No. 1 was filed on May 20, 2003. The other proposed rule change bearing a similar rule number was approved ahead of SR–Amex–2003–06.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(1) of the Act[7] in particular in that it is designed to enforce compliance by its members and persons associated with its members, with the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(3) of Rule 19b–4 thereunder,[9] because it is concerned solely with the administration of the Amex.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–109 and should be submitted by January 14, 2004.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] Securities Exchange Act Release No. 48258 (July 30, 2003), 68 FR 46674 (August 6, 2003).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(1).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

[10] The Commission notes that the Amex referenced section 19(b)(3)(A)(ii) of the Act as the rationale for the instant proposed rule change being effective upon filing with the Commission. 15 U.S.C. 78f(b)(3)(A)(ii). *See* SR–Amex–2003–109, page 6 of 7. The Amex's reference to this section of the Act is improper. The Commission assumes, however, that the error is a typographical error, and did not, in this instance, require the Amex to amend the proposed rule change to correct its mistake.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31644 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48935; File No. SR–NASD–2003–171]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify CAES and ITS Pricing

December 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Nasdaq under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4 thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes certain changes to NASD Rule 7010 ("System Services") to amend the transaction charges for users of the Computer Assisted Execution System ("CAES") and of the CAES linkage with the InterMarket Trading System ("ITS"). Nasdaq will implement the proposed rule change on December 1, 2003.

The text of the proposed rule change is below.[5] Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

7010. System Services

(a) through (c) No change.

(d) Computer Assisted Execution Service. The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) Service Charges

$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges *and Credits*

[(A) $0.003 per share executed up to a maximum of $75 per execution shall be paid by any order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part, and $0.0015 per share executed up to a maximum of $50 per execution shall be credited to the CAES market maker that executes such an order.

(B) $0.002 per share executed up to a maximum of $75 per execution shall be paid by any member that sends a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part, and $0.0015 per share executed up to a maximum of $37.50 per execution shall be credited to a member that executes such an order.]

(A) Orders to buy or sell securities listed on the New York Stock Exchange: no charge and no credit.

(B) Orders to buy or sell securities not listed on the New York Stock Exchange:

Average daily share volume executed in CAES or through the ITS/CAES linkage during a month (both NYSE & AMEX listed securities):	*Fee per share executed for orders entered into CAES or commitments sent through the ITS/CAES linkage if such an order or commitment is executed in whole or in part:*
0 to 499,999	*$0.0027, with a maximum of $75 per execution*
500,000 or more	*$0.0025, with a maximum of $75 per execution*
Average daily share volume executed in CAES or through the ITS/CAES linkage (both NYSE & AMEX listed securities):	*Liquidity rebate per share executed for orders/quotes posted into CAES, if such an order/quote is executed in whole or in part:*
1 or more	*$0.002, with a maximum of $37.50 per execution*

(e) through (u) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to modify certain transaction charges for users of CAES and the CAES/ITS linkage. Nasdaq believes that the proposed structure of fees and credits reflects more accurately the existing market price levels for similar services, and, as such, will result in more equitable allocation among members of the charges associated with CAES and CAES/ITS. Nasdaq expects that the proposed rule change will encourage greater use of CAES and CAES/ITS, contributing to greater competition for executions of orders for New York Stock Exchange, Inc.- (“NYSE”) and American Stock Exchange LLC-(“AMEX”) listed securities.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4.

[5] The Commission made technical changes to the rule text to address minor errors in the proposed rule change. Telephone conversation between Alex Kogan, Attorney, Nasdaq, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, dated December 5, 2003.

The proposed rule distinguishes between NYSE and non-NYSE exchange-listed securities, and eliminates transaction charges with respect to executions in NYSE-listed securities. Nasdaq expects that the elimination of such charges will encourage members to make greater use of CAES and the CAES/ITS linkage to trade NYSE securities, thereby increasing competition in this market segment, and benefiting members as well as the investing public.[6] As there will be no transaction charges for NYSE-listed securities, Nasdaq represents that there will also not be a liquidity provider credit with respect to such securities.

With respect to transaction charges for non-NYSE securities, the proposal sets a slightly lower per-share rate for any firm that, in a given calendar month, uses CAES and the CAES/ITS linkage to execute an average of at least 500,000 shares per trading day. To calculate the average, executions in both NYSE and non-NYSE securities will be counted. Such lower rate—25 cents per 100 shares—will apply only to non-NYSE securities in those months when this higher average is attained. In months when the average number of shares executed per trading day is below 500,000, the rate for non-NYSE securities will be 27 cents per 100 shares. The proposed rule retains the existing $75 per execution cap on the transaction charge. Finally, the proposal will set the liquidity provider credit for all firms at 20 cents per 100 shares for non-NYSE securities (regardless of total share volume levels), subject to a $37.50 cap per execution.

Nasdaq believes that all of these changes are designed to make CAES and CAES/ITS more economically feasible for its members and to encourage greater use of these systems.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[7] in general, and section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. Nasdaq believes that by adopting a pricing structure that is responsive to market demands, the proposed rule supports efficient use of existing systems by members and ensures that the charges associated with such use are allocated equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by Nasdaq. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–171. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–171 and should be submitted by January 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31643 Filed 12–23–03; 8:45 am]

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[6] Nasdaq notes that, according to the fee schedule posted on the Archipelago Exchange website, www.arcaex.com, Archipelago Exchange also distinguishes between NYSE and non-NYSE securities and does not charge for transactions in NYSE securities.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48938; File No. SR–NASD–2003–170]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Reduce Fees for the Use of the Automated Confirmation Transaction Service (ACT)

December 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 24, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder[4] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reduce fees for the use of the Automated Confirmation Transaction Service ("ACT").[5] The new fee schedule will be implemented beginning on December 1, 2003. Additionally, the proposed rule change (i) makes minor modifications to the rule language describing the existing discount for transactions in Nasdaq-listed securities through the Nasdaq National Market System ("NNMS"), (ii) deletes a reference to a "terminal fee" for an "ACT only terminal," because Nasdaq no longer provides this service, and (iii) deletes text describing a three-month trial period following the introduction of the ACT Workstation, since the text refers to a period that has fully transpired. The text of the proposed rule change is available at Nasdaq and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing for transactions reported to Nasdaq, including trades in Nasdaq-listed securities, exchange-listed securities, and OTC Bulletin Board securities. ACT handles transactions executed through Nasdaq's automated trading systems, as well as transactions negotiated directly between market participants and transactions that are internalized by market participants.

As part of an ongoing effort to reduce the costs incurred by market participants to use Nasdaq services, Nasdaq is reducing the fees for trade reports in exchange-listed securities by introducing a volume-based discount. The discount applies to all reports in ITS Securities, a term defined in NASD Rule 5210(c) that includes all securities listed on the New York Stock Exchange, the American Stock Exchange, and other exchanges whose listed securities trade through the Intermarket Trading System (defined as "ITS Covered Transactions"). Thus, the discounts offered by the proposed rule change apply to reports that are automatically generated by Nasdaq's automated systems for trading exchange-listed securities,[6] as well as internalized trades in ITS Securities and reports for such securities submitted pursuant to "automated give-up" ("AGU") and Qualified Service Representative ("QSR") arrangements.[7] However, the discounts do not apply to transactions that are subject to trade comparison through ACT, for which Nasdaq will continue to charge $0.0144 per side for each 100 shares (subject to a minimum charge of $0.0576 and a maximum charge of $1.08).

Under the proposal, the per side fee paid by an ACT participant for trade reports during a particular month would depend upon the volume of media transaction reports for ITS Covered Transactions (i) that were submitted to ACT automatically by a Nasdaq trading system and in which the participant was identified as the reporting party,[8] or (ii) that were submitted or introduced to ACT by the participant (regardless of what party is identified as the reporting party).[9] If an ACT participant's average daily volume of such media trade reports was 5,000 or less, its fee for all ACT reports for ITS Covered Transactions during the month would be $0.029 per report. An ACT participant with an average daily volume of more than 5,000 media reports, however, would pay $0.029 per report for a number of reports equal to 5,000 times the number of trading days in the month, but all additional reports during the month would be free.

Nasdaq is also making minor modifications to the rule language describing the existing discount for transactions in Nasdaq-listed securities through the NNMS. These modifications do not alter the substance of this discount, under which the $0.029 fee for reports of trades in Nasdaq-listed securities through the NNMS is waived during any month in which a market participant is a party (either reporting or non-reporting) to an average daily volume of at least 10,000 reports of such trades during the month. As with the proposed discount for ITS Securities, Nasdaq determines eligibility for the NNMS discount by aggregating activity associated with all of the MPIDs associated with a single CRD number (but not activity associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number).

Finally, Nasdaq is deleting a reference to a "terminal fee" for an "ACT only terminal," a service that Nasdaq no longer provides, and is deleting text describing a three-month trial period following the introduction of the ACT Workstation, since the text refers to a period that has fully transpired.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] in general, and with section 15A(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed rule change recognizes the economies of scale and scope associated with higher volumes of trade reports, and will make it more economical for many market participants to use ACT for reporting their trading activity in exchange-listed securities. The proposed rule change is similar in structure to discounts implemented by Nasdaq for Nasdaq-listed stocks within the past year.[12]

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] This proposed rule change applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

[6] At present, those systems are the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") and Primex. However, Nasdaq has recently proposed to allow the trading of exchange-listed securities through the Nasdaq National Market Execution System ("NNMS"). *See* SR–NASD–2003–149 (October 3, 2003). At the time of implementation of SR–NASD–2003–149, the fee schedule adopted herein (rather than the fee schedule for trades in Nasdaq National Market and SmallCap Market securities executed through the NNMS) will apply to reports of executions of ITS Securities through the NNMS (unless Nasdaq amends its ACT fee schedule prior to that time).

[7] AGU and QSR arrangements allow a participant to report trades executed with other brokers with whom they have entered into a contractual relationship.

[8] Volume will be measured with reference to the market participant identifier ("MPID") appearing in the reporting party field of trade reports. If a particular corporate entity has multiple MPIDs associated with the Central Registration Depository ("CRD") number under which it conducts business, Nasdaq will aggregate trade reports associated with all of its MPIDs. However, Nasdaq will not aggregate one corporate entity's trade reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

[9] Volume will be measured with reference to the MPID of the submitting or introducing party as reflected in the data received by Nasdaq in the trade report, with aggregation of multiple MPIDs associated with a single CRD number.

[10] 15 U.S.C. 78o–3.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f)(2) of Rule 19b–4 thereunder,[14] because it establishes or changes a due, fee, or other charge imposed by NASD. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–170. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–170 and should be submitted by January 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[11] 15 U.S.C. 78o–3(b)(5).

[12] See Securities Exchange Act Release Nos. 47661 (April 10, 2003), 68 FR 19045 (April 7, 2003) (SR–NASD–2003–51) and 47919 (May 23, 2003), 68 FR 32788 (June 2, 2003) (SR–NASD–2003–86).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48933; File No. SR–NASD–2002–168]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval of Proposed Rule Change and Amendment No. 1, Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2, Thereto, Relating to Proposed NASD Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System

December 16, 2003.

I. Introduction and Description of the Proposal

On November 19, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would: (1) Require all directives to expunge customer dispute information from the Central Registration Depository ("CRD' or "CRD system") to be confirmed by or ordered by a court of competent jurisdiction; (2) require member firms and associated persons seeking expungement to name NASD as an additional party in any judicial proceeding seeking expungement relief or confirming an arbitration award containing expungement relief; and (3) permit member firms and associated persons to ask NASD to waive the requirement to name NASD as a party on the basis that the expungement order meets at least one of the standards for expungement articulated in the proposed rule.

On January 28, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 10, 2003.[4] The Commission received 28 comments on the proposal from a wide range of sources. The NASD responded to these comments by amending the filing on September 11, 2003.[5] This order approves the proposed rule change, as amended by Amendment No. 1. In addition, the Commission is publishing a notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the proposal. Below is the text of the proposed rule change, as amended by Amendment No. 2. Deletions of the proposed rule text, which was published in the Notice, appear in [brackets]; proposed rule language to be added by Amendment No. 2 appears in *italics*.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter, dated January 28, 2003, from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 47435 (March 4, 2003), 68 FR 11435 ("Notice").

[5] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of the General Counsel, NASD, to Jonathan G. Katz, Secretary, Commission (September 11, 2003) ("Amendment No. 2"). In Amendment No. 2, the NASD made certain changes to its proposed rule text in response to comments received by the Commission in connection with the filing. The Amendment No. 2 rule text changes are published in their entirety and discussed at length below.

2130. Obtaining an Order of Expungement of Customer Dispute Information From the Central Registration Depository (CRD System)

(a) Members or associated persons seeking to expunge information from the CRD system arising from disputes with [public] customers must obtain an order from a court of competent jurisdiction directing such expungement or confirming an arbitration award containing expungement relief.

(b) Members or associated persons petitioning a court for expungement relief or seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents unless this requirement is waived pursuant to subparagraph (1) or (2) below.

(1) Upon request, NASD may waive the obligation to name NASD as a party if NASD determines that the expungement relief is based on *affirmative* judicial or arbitral findings that:

(A) the claim, allegation, or information is [without factual basis] *factually impossible or clearly erroneous;*

(B) the [complaint fails to state a claim upon which relief can be granted or is frivolous] *registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds*; or

(C) the [information contained in the CRD system is defamatory in nature] *claim, allegation, or information is false.*

(2) If the expungement relief is based on judicial or arbitral findings other than those described above, NASD, in its sole discretion and under extraordinary circumstances, also may waive the obligation to name NASD as a party if it determines that:

(A) the expungement relief and accompanying findings on which it is based are meritorious; and

(B) the expungement would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.

(c) *For purposes of this rule, the terms "sales practice violation," "investment-related," and "involved" shall have the meanings set forth in the Uniform Application for Securities Industry Registration of Transfer ("Form U4") in effect at the time of issuance of the subject expungement order.*

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II. Summary of Comments and Response to Comments

A. Comments Received

As stated above, the Commission received 28 comments from a variety of sources.[6] The majority of comments received were in favor of the NASD putting a rule in place on this topic, but had a variety of suggestions as to how to make the proposed rule text more effective. The arguments put forth in the comments are summarized as follows.

Argument #1—The criteria adopted with respect to when the NASD will waive its involvement at the court confirmation level should be the criteria used by arbitrators for granting expungement. In short, rather than simply the criteria for NASD joining the court confirmation proceeding, the standards should be applied directly to arbitrators through the NASD's Code of Arbitration Procedures.[7]

Argument #2—Member firms and associated persons will be in a position to "buy clean records" through an arbitration award containing unwarranted expungement criteria that includes one of the three standards proposed.[8]

Argument #3—The standard for proving a defamation claim varies by jurisdiction and, in conjunction with the proposed standard language invoking defamation principles, the result will be confusion as to which law should be applied.[9]

Argument #4—An absolute or partial privilege exists for defamation claims that arise out of quasi-judicial proceedings (*e.g.*, arbitration) in most jurisdictions, but not all. Thus, confusion could result from the lack of uniformity in this regard.[10]

Argument #5—Extensive collateral litigation will be required to resolve which jurisdiction's defamation standard should apply.[11]

Argument #6—The proposal will cause a "chilling effect." Investors will be disinclined to bring any arbitration claims because of the near certainty that members and associated persons will raise defamation as a defense and counterclaim.[12]

Argument #7—The proposal will result in a "dispositive motions practice." The formal pleading requirements established by the proposal will give rise to an expensive and legally complex motions practice (thus defeating the main goal of arbitration—informal and inexpensive conflict resolution).[13]

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[6] *See* Letter to Margaret H. McFarland, Deputy Secretary, Commission, from Charles W. Austin, Jr., Executive Vice-President, Public Investors Arbitration Bar Association (March 28, 2003) ("PIABA Comment); letter to Secretary, Commission, from Joel A. Goodman and Stephen Krosschell, Goodman & Nekvasil, P.A. (March 29, 2003) ("G&N Comment"); electronic mail ("e-mail") to Secretary, Commission, from Barry D. Estell (March 28, 2003) ("Estell Comment"); letter to Secretary, Commission, from C. Thomas Mason III (March 31, 2003) ("Mason Comment"); letter to Jonathan G. Katz, Secretary, Commission, from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association (March 31, 2003) ("SIA Comment"); e-mail to Commission Rule Comments from Steven M. Sherman (March 31, 2003) ("Sherman Comment"); e-mail to Commission Rule Comments from Alan L. Sachs (March 28, 2003) ("Sachs Comment"); e-mail to Commission Rule Comments from Helen Mangano (March 28, 2003) ("Mangano Comment"); e-mail to Commission Rule Comments from John J. Miller (March 30, 2003) ("Miller Comment"); letter to Jonathan G. Katz, Secretary, Commission, from Gerald S. Siegmyer, Siegmyer, Oshman & Geddie, L.L.P. (April 7, 2003) ("SO&G Comment"); letter to Commission from Donald G. McGrath, McGrath & Polvino, PLLC (March 27, 2003) ("M&P Comment"); letter to Commission from A. Daniel Woska, Woska & Hasbrook (March 31, 2003) ("W&H Comment"); letter to Jonathan G. Katz, Secretary, Commission, from Dan Jamieson (April 25, 2003) ("Jamieson Comment"); letter to Commission from Kenneth R. Hyman, President, Partnervest Securities, Inc. (May 19, 2003) ("Partnervest Comment"); e-mail to Commission from Steven K. McGinnis (May 19, 2003) ("McGinnis Comment"); letter to Commission from Robert L. Hicks, President, Finance 500 (May 19, 2003) ("Finance 500 Comment"); e-mail to Commission Rule Comments from Robert Eastmann (June 3, 2003) ("Eastmann Comment"); letter to Margaret H. McFarland, Deputy Secretary, Commission, from Deborah Bortner, North American Securities Administrators Association CRD Steering Committee Co-Chair and Washington State Director of Securities (June 4, 2003) ("NASAA Comment"); e-mail to Commission Rule Comments from Tammy McQuade (June 7, 2003) ("McQuade Comment"); e-mail to Commission Rule Comments from Fired Broker (June 9, 2003) ("Fired Broker Comment"); e-mail to Commission Rule Comments from Mike Marchetta (June 10, 2003) ("Marchetta Comment"); e-mail to Commission Rule Comments from David Macias (June 10, 2003) ("Macias Comment"); e-mail to Commission Rule Comments from djs (June 10, 2003) ("djs Comment"); 23 substantially identical form letters to Commission from John Schooler, President, WFP Securities (May 21, 2003) ("Form Letter Comment"); e-mail to Commission Rule Comments from Richard Lavoice (July 29, 2003) ("Lavoice Comment"); e-mail to Commission Rule Comments from Steve Kus (July 2, 2003) ("Kus Comment"); e-mail to Commission Rule Comments from David Haburjak (July 8, 2003) ("Haburjak Comment"); and e-mail to Commission Rule Comments from Jim Aldendifer (October 12, 2003) ("Aldendifer Comment").

[7] *See* PIABA Comment and Mason Comment.

[8] *See* PIABA Comment; G&N Comment; Estell Comment; Mason Comment; SO&G Comment; W&H Comment; and Jamieson Comment.

[9] *See* PIABA Comment.

[10] *See* PIABA Comment; G&N Comment; Mason Comment; Mangano Comment; and SO&G Comment.

[11] *See* PIABA Comment.

[12] *See* PIABA Comment; G&N Comment; Estell Comment; Mason Comment; Sachs Comment; Mangano Comment; Miller Comment; SO&G Comment; M&P Comment; and W&H Comment.

[13] *See* PIABA Comment; G&N Comment; Estell Comment; Mason Comment; Sachs Comment; Mangano Comment; Miller Comment; SO&G Comment; M&P Comment; and W&H Comment.

Argument #8—NASD Rule 2110 ("just and equitable principles of trade") should be strengthened to prevent the use of unwarranted criteria for expungement or a new rule should be adopted that states that a member may not seek expungement unless one of the standards is met.[14]

Argument #9—Expungements generally will increase because of the additional criteria and such an increase is clearly detrimental to investors.[15]

Argument #10—A conflict will be created in cases when it is in the investor's interest to settle (through an arbitration award containing expungement criteria), but the investor's counsel will be averse to admitting to have filed a claim warranting expungement (*e.g.*, a defamatory claim).[16]

Argument #11—Pro se investors will be unable to meet the heightened formal pleading requirements established by the proposed standards.[17]

Argument #12—The status quo is not unfair and altering the status quo would place member and associated-records in a privileged class relative to other classes of public records (*i.e.*, civil actions are not expungeable from the public record).[18]

Argument #13—The court confirmation process will be an insufficient safeguard relative to the added expungement criteria, because the NASD does not have the resources to put forth serious opposition to expungements at the court confirmation level.[19]

Argument #14—CRD information is considered to be part of the states' books and records. NASAA and the states currently insist that only "factually impossible" claims are expungeable and, thus, an expansion of the expungement criteria would conflict with the states' books and records laws.[20]

Argument #15—Investors already view the NASD arbitration process with suspicion and adding criteria for expungement will serve to exacerbate this perception.[21]

Argument #16—The integrity of the CRD will be negatively affected by the proposal.[22]

Argument #17—The court confirmation process is still too burdensome on members and associated persons and this burden should be eased, rather than increased.[23]

Argument #18—The proposal evidences a general lack of respect for arbitrators. Moreover, it will undermine the integrity of arbitrators by limiting their decision-making ability.[24]

Argument #19—The proposal should not be acted upon in isolation, instead it should be combined with NASD NtM 02–74 regarding expanding the amount of information that brokers must report, generally.[25]

Argument #20—The proposal would automatically convert the NASD into an adversary of members at the court confirmation level. Furthermore, the proposal will create a systemic prejudice on the part of NASDR against members.[26]

Argument #21—The court confirmation process will require a rehearing of the issues and recalling of witnesses. Such rehearing and recalling will not only be inefficient, but could result in the confirming court making different findings from those made in the underlying arbitration proceeding. This could create confusion as to the status of the underlying arbitration decision.[27]

Argument #22—The current system of disclosing unproven allegations is inequitable and making it more difficult for members and associated persons to remove such allegations from their CRD records is "doubly unfair."[28]

B. Amendment No. 2

In Amendment No. 2, the NASD addressed a number of the comments received by the Commission in response to the publication of the notice in the **Federal Register**. As noted above, some commenters expressed concern that the mere existence of an NASD rule governing expungement could encourage registered persons to seek expungements and make expungement easier to obtain. NASD noted its belief that this is not a legitimate concern. NASD stated that these commenters may not have considered the fact that NASD currently expunges information from the CRD system when ordered to do so by a court of competent jurisdiction, and that court-ordered expungements currently are not subject to any NASD limitations or standards.[29] Under the 1999 moratorium, registered persons seeking expungement relief need only obtain a court order to expunge or court confirmation of an arbitration award granting expungement relief. Under the proposed rule, NASD stressed that it will have the opportunity to review the basis for expungement and to oppose an expungement in court unless there is a specific finding that the expungement meets one of the prescribed standards.

In Amendment No. 2, NASD discussed a concern raised by commenters that arbitrators should have sole authority and complete discretion to order expungement. They suggested that NASD's and the States' proposed role in the court confirmation process would undermine arbitrators' credibility. In response, NASD argued that, to the contrary, the critical element in the proposal is NASD's reliance on fact finders, especially arbitrators, to find that the expungement relief is based on one of the standards in the proposed rule. Also of note, NASD stated in Amendment No. 2 that NASD Dispute Resolution will provide training to arbitrators regarding the standards for expungement that will trigger the NASD waiver of opposition. Under proposed Rule 2130, NASD asserted that it will rely on arbitrators' findings and waive participation in the court confirmation process if arbitrators have appropriately awarded expungement.

Other commenters contended that the proposed procedures will be economically prohibitive. In response, NASD recognized that the additional step of naming NASD as a party may involve additional costs. In an effort to minimize costs to the parties, NASD may waive participation in the court confirmation process before filing with the court if the parties give NASD a copy of the award to review and the arbitrators have ordered expungement based on one of the standards in the rule. NASD noted the belief that the availability of this waiver process should limit any additional costs to the parties.

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[14] *See* PIABA Comment; G&N Comment; and NASAA Comment.

[15] *See* G&N Comment and SO&G Comment.

[16] *See* G&N Comment.

[17] *See* G&N Comment.

[18] *See* Estell Comment; Sherman Comment; Mangano Comment; Miller Comment; and M&P Comment.

[19] *See* G&N Comment; Estell Comment; Mason Comment; Jamieson Comment.

[20] *See* Estell Comment; Mason Comment; and Sherman Comment.

[21] *See* Estell Comment; Sherman Comment; and Mangano Comment.

[22] *See* Mason Comment; Sachs Comment; SO&G Comment; M&P Comment; and W&H Comment.

[23] *See* SIA Comment.

[24] *See* SIA Comment; Jamieson Comment; Partnervest Comment; McGinnis Comment; Finance 500 Comment; and Form Letter Comment.

[25] *See* SIA Comment and Jamieson Comment.

[26] *See* Partnervest Comment; McGinnis Comment; Finance 500 Comment; and Form Letter Comment.

[27] *See* SIA Comment; Partnervest Comment; McGinnis Comment; Finance 500 Comment; and Form Letter Comment.

[28] *See* Eastmann Comment; McQuade Comment; Fired Broker Comment; Marchetta Comment; Macias Comment; djs Comment; LaVoice Comment; Kus Comment; Haburjak Comment; and Aldendifer Comment.

[29] NASD has, since the inception of the CRD system, executed expungements involving customer dispute information based on a court order or (since the imposition of the moratorium in 1999 on expungements based solely on arbitration awards) court confirmation of an arbitration award directing expungement. These court orders included expungement relief granted in cases involving both settlements and hearings on the merits.

The NASD also spoke to whether the proposed rule will discourage settlements, since the parties will no longer have total control over whether information about the arbitration will be expunged. NASD admitted that it is unable to predict the ultimate effect of the proposed rule on settlements. Further, NASD noted that compliance with the proposed rule may have the effect of decreasing the number of settlements that are reached. Currently, it is possible that respondents may agree to pay damages as a quid pro quo for expungement and obtain court confirmation of the expungement. NASD believes that the proposed rule will reduce, if not eliminate, the risk of expunging information that is critical to investor protection and regulatory interests as a condition in settlement negotiations. NASD asserted that the potential dampening effect on settlements must be weighed against the integrity of the information in the CRD system, and the ability of public investors and regulators to examine the entirety of a registered person's record, with the limited exceptions as proposed.

A number of comments received expressed the concern that members and associated persons will be able to "buy clean records" by inserting terms into arbitration settlements that match the standards established under the proposed rule. NASD responded to this concern in Amendment No. 2 by asserting that the "affirmative determination" requirement imposed on arbitrators should foil attempts to "buy a clean record." Under the proposed standard, dismissal of a claim alone would not be a sufficient basis for ordering expungement. NASD states that its arbitrator training materials will make clear that an expungement order must be premised on an *affirmative determination* by the arbitrator that the respondent was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds. Without such an *affirmative finding,* NASD would have no basis under this standard to waive its obligation to be named as a party in the court confirmation process.

Commenters expressed concern that the "complaint fails to state a claim upon which relief can be granted" standard, which parallels a motion to dismiss made in federal court, could be interpreted to authorize arbitrators to grant such motions in arbitration. In response, NASD modified in Amendment No. 2 the language describing the standards under which NASD may waive participation in the court confirmation process. Currently, there is no provision in the Code of Arbitration Procedure that either permits or prohibits motions. NASD did not intend for the proposed rule to have any effect on the authority of arbitrators to grant or deny motions to dismiss a claim before a hearing on the merits. Therefore, through Amendment No. 2, NASD eliminated the "complaint fails to state a claim upon which relief can be granted" standard and replaced it with a more objective standard based on CRD reporting requirements. Specifically, Amendment No. 2 proposed a standard that would require an affirmative arbitral or judicial finding that the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds. Such a finding, NASD argued, would be consistent with the registered representative reporting "No" answers to current Question 14I(1) of the Uniform Application for Securities Industry Registration or Transfer ("Form U–4"). Should arbitrators make the required finding, NASD argued, no logical basis would exist for reporting the underlying complaint and other information on an individual's CRD record. NASD stated its belief that this revised standard eliminates any unintended implications for the arbitration process, while preserving the intended substantive effect of the standard.

Commenters were also concerned that the "defamatory in nature" standard would encourage respondents to counterclaim for defamation and require claimants to defend such claims, thereby creating undue burdens on public investors in the arbitration process. Some commenters correctly noted that claims in arbitration are privileged and therefore immune from suit. In response, NASD stated that it believes the proposed rule should not substantially affect either the substance or procedure of an arbitration proceeding and should not place any undue burden on claimants in the arbitration process. Thus, to avoid the possibility that the proposed standard might result in additional counterclaims for defamation, NASD replaced it in Amendment No. 2 with a requirement that the arbitrator or adjudicator make a finding that the claim, allegation, or information is "false."

Some commenters expressed the concern that the "without factual basis" standard is overly vague. In response, NASD replaced the "without factual basis" standard with a "factual impossibility or clearly erroneous" standard. NASD asserted that this standard has a clear meaning to regulators and public investors and was favored by a number of commenters. This standard, NASD believes, would enable an individual who has been erroneously named in an arbitration, because he or she was not even employed by the member firm during the relevant time, to obtain expungement of a dismissed complaint.

Some commenters suggested that the burden of complying with the three proposed standards should be placed squarely upon the NASD's members. Such a rule would require that NASD members only seek expungement of data from the CRD system, if such data fits within one of the three standards. NASD noted that it does not believe such an approach is necessary to achieve the objectives of the proposed rule. Federal and state courts, that are fully informed about the investor protection and regulatory implications of a proposed expungement order, NASD argued, should be trusted to make the proper decision.

Other commenters put forth the argument that the burden of complying with the three proposed standards should be applied to arbitrators directly through the NASD's Code of Arbitration Procedure. NASD argued that imposing substantive requirements on arbitrators via the Code of Arbitration Procedure would be inappropriate. NASD stated that in no other instance does the Code of Arbitration Procedure impose limitations on arbitrators' ability to decide a legal issue. NASD asserted that arbitrators will know the standards for expungement relief under proposed Rule 2130, because they will have received appropriate training, and members and associated persons will know that arbitrators will only grant expungement relief based on those standards. Therefore, NASD stressed that, although the proposed rule does not place any specific obligations on arbitrators or respondents, all parties and arbitrators will be aware of the standards under which expungement relief should be granted.

As discussed above, under proposed Rule 2130, NASD will participate in the court confirmation proceeding and oppose confirmation of the expungement portion of the arbitration award if the expungement order does not meet one of the specified criteria. Some commenters asserted that NASD will be unable to present sufficient opposition to expungement attempts at the court confirmation level. NASD responded in Amendment No. 2 by stating that these comments were without merit or supporting evidence. NASD noted that it is committed to enforcing the proposed rule, as amended, and that it has an obligation as a self-regulatory organization to fulfill all of its regulatory obligations. Furthermore, NASD stressed that it will be subject to Commission oversight in its administration of the proposed rule. As a further means to ensure that the court is made aware of the investor protection and regulatory implications of an expungement, NASD noted that states will be able to intervene if they have concerns regarding whether investor protection or regulatory issues have been fairly considered by the NASD.[30]

The NASD also discussed on the effective date of the proposed rule in Amendment No. 2. NASD stated that, following Commission approval of proposed Rule 2130, it will announce the approval of the Rule in a NtM, which also will announce the effective date of Rule 2130. According to NASD, the NtM will announce that the requirements of Rule 2130 will apply to all arbitrations or civil lawsuits filed on or after the effective date. NASD noted that all requests to expunge customer dispute information from the CRD system arising from arbitrations or civil lawsuits filed before the effective date of the rule, including any settlements arising therefrom, will continue to be subject to the terms of the moratorium in effect as of January 19, 1999.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, as amended, the comments, and the NASD's response thereto, and finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities association,[31] and, in particular, with the requirements of section 15A [32] of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) [33] of the Act because it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change, as amended, is reasonably designed to accomplish these ends by allowing fact finders and the NASD to consider all competing interests before directing or granting expungement of customer dispute information from the CRD.

Moreover, the Commission, pursuant to section 19(b)(2) [34] of the Act, finds good cause for approving Amendment No. 2 prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. As discussed below, the Commission believes that the NASD has responded to the concerns raised by the commenters and has struck a fair and reasonable balance between the burden that the proposed rule change will impose upon member firms and associated persons and the benefit that the proposed rule change will bestow upon investors, generally. To the extent that the NASD's Amendment No. 2 has not specifically addressed any arguments raised, the Commission is not persuaded by these arguments. The Commission believes that the proposal is a clear improvement over the current system for the expungement of information from the CRD system and believes that it should be put into place as soon as practicable to ensure that investors and regulators have access to more accurate information through the CRD system.

With respect to Argument Nos. 1–9, 11, 13, and 18 discussed above, the Commission believes that the NASD has sufficiently responded in Amendment No. 2. Specifically, with respect to Argument Nos. 1 and 8, the Commission believes that the NASD has sufficiently justified its application of the standards in question to the NASD's waiver or non-waiver of involvement at the court confirmation level. Argument Nos. 1 and 8 assert that the standards should be applied to arbitrators through the Code of Arbitration Procedure and to NASD members seeking expungement, respectively. The Commission agrees with the NASD that standards will be most effectively applied at the waiver juncture. In no other instance in the NASD's Code of Arbitration Procedure are arbitrators bound by substantive restrictions on how they decide an arbitration case. Moreover, as the NASD notes in Amendment No. 2, arbitrators will be aware of the standards that will be utilized with respect to the NASD's waiver of involvement, and, thus, arbitrators will indirectly consider them. NASD notes in Amendment No. 2 that the standards should not be applied to members directly, because federal and state courts are more than able to make the proper decisions with respect to arbitration award confirmation. The Commission agrees with this analysis, and also believes that the potential involvement of the NASD at the court confirmation level will provide greater safeguards than simple application of the rule to members.

With respect to Argument No. 2, concerning the "buying of clean records," the Commission is satisfied that the NASD's requirement that an "affirmative" determination be made by an arbitrator will provide sufficient regulatory protection. In the initial proposed rule filing, the NASD's proposal simply required that a finding be made by an arbitrator that matched one of the proposed standards. In response to this, commenters expressed the concern that members and associated persons would be able to negotiate for the inclusion of a finding in the arbitration settlement that matched one of the requisite standards. By requiring an "affirmative determination" on the part of the arbitrator that one of the standards was met, the NASD asserted that this concern and the ability of members and associated persons to "buy clean records" will be greatly reduced. The Commission agrees with the NASD's analysis in this regard.

Argument Nos. 3–6 and 10 all relate to the potential problems that could be caused by the NASD's use of the word "defamation" in one of the three standards for waiver. In response to these arguments, the NASD proposed replacing the phrase "information contained in the CRD system is defamatory in nature" with "claim, allegation, or information is false." The Commission believes that this change sufficiently addresses Argument Nos. 3–6 and is satisfied that the new proposed language should achieve the NASD's goal in this respect (*i.e.*, ensuring that the CRD system contains accurate information).

Argument Nos. 7 and 11 are concerned with the proposed rule leading to a formal dispositive motions practice at the arbitration level. The Commission believes that the NASD has sufficiently responded to this argument through Amendment No. 2. As discussed at length above, the initial proposed rule text included language that tracked Federal practice pleading requirements. Such language, the commenters argued, could lead to a complex, lengthy, and expensive dispositive motions practice. By removing this potentially problematic language in Amendment No. 2, the Commission believes that the NASD has responded sufficiently to these concerns.

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[30] NASD represented to the Commission that it is in the process of establishing a notice procedure, whereby the state(s) in which a member or associated person is registered would be notified when that member or associated person seeks a waiver of NASD involvement in the court confirmation level. To the extent that the state(s) wishes to intervene, it could so petition the court. Telephone conference between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (October 17, 2003).

[31] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78o–3.

[33] 15 U.S.C. 78o–3(b)(6).

[34] 15 U.S.C. 78s(b)(2).

With respect to Argument No. 9, concerning the NASD's proposed rule text itself leading to an increase in expungements, the NASD disagreed. The Commission agrees with the NASD in that the proposed rule is clearly an improvement over the current expungement system in which there are no parameters placed on expungements being incorporated into arbitration awards.

With respect to Argument No. 13, concerning the NASD's inability to present serious opposition to expungement requests at the court confirmation level, the NASD provided some comfort. In Amendment No. 2, the NASD stressed that it is a federally registered self-regulatory organization that is required by the federal securities laws to enforce its rules.[35] Moreover, to the extent it fails in that regard, it must answer to the Commission. The Commission acknowledges that the extent to which the proposed rule will ultimately require the NASD to contest expungements at the court confirmation level cannot be divined. The Commission believes, however, that the proposal is an improvement over the current system for expungement. To the extent that the NASD's responsibilities at the court confirmation level ever became untenable, the Commission would expect the NASD to approach the Commission with a proposed rule change or in some way seek to alter the process to ensure that the NASD fulfills its self-regulatory obligations.

With respect to Argument No. 18, concerning the proposal's lack of respect for the arbitration process, the NASD responded in Amendment No. 2. The NASD noted that, rather than indicating a lack of respect for arbitration, the proposal demonstrates that the NASD is prepared to rely heavily on the fact-finding ability of arbitrators. Once an arbitrator makes an "affirmative determination" that one of the standards has been met, the NASD will waive its involvement at the court confirmation level. The Commission believes that the proposal strikes the appropriate balance between providing arbitrators with sufficient flexibility in addressing issues, while at the same time placing appropriate parameters on the type of information that is potentially expungeable from the CRD system.

While Amendment No. 2 does not directly address Argument Nos. 12, 14–17, and 19–22, the Commission is not otherwise persuaded by these arguments. The Commission believes that the proposal strikes the appropriate balance between permitting members and associated persons to remove information from the CRD system that holds no regulatory value, while at the same time preserving information on the CRD system that is valuable to investors and regulators.

With respect to Argument No. 12, concerning the proposal's establishment of a privileged class of public records, the Commission is unconvinced. The Commission believes that, notwithstanding the state "public record" status of data in the CRD system, such data is expungeable under certain circumstances. Indeed, a process for the expungement of data from the CRD system has been in place since the establishment of the CRD system. The Commission also is not persuaded by this "states" rights' argument and notes that NASAA itself did not make this argument to the Commission.

With respect to Argument No. 14, concerning the rule's potential conflict with the states' books and records rules, the Commission is not persuaded. NASAA works closely with the NASD in the operation and enhancement of the CRD system. To the extent this is a valid concern of the states, the Commission would have expected NASAA to have raised this point. In fact, NASAA submitted a detailed comment letter on the proposal and did not raise this concern.

With respect to Argument Nos. 15 and 16, concerning a worsening of the already poor perception that investors have of the NASD arbitration process and of the integrity of CRD data, the Commission is not persuaded. These arguments appear to rely on the assumption that adopting explicit criteria for expungement will make expungement easier, compromise the process for expungement, and, ultimately, degrade the CRD system. As discussed at length above, the Commission believes that the proposal will have the opposite effect. Specifically, the Commission believes it will strengthen the expungement process, by ensuring that only information that is not valuable to regulators and investors is expunged from the CRD system.

Argument Nos. 17 and 20–22 ostensibly relate to maintaining the accuracy of data that appears in the CRD system. Specifically, by making it more difficult to expunge information, the arguments aver, members and associated persons will be less likely and less able to expunge inaccurate information from the system—ultimately, degrading the system. The Commission appreciates these arguments and agrees that expungement of inaccurate information from the CRD system is crucial to the system's value. Further to that point, the Commission would clearly be opposed to any proposed rule that would place an unfair burden upon members and associated persons seeking to expunge inaccurate information from the system. The Commission, however, does not believe that the proposal will make expungement of *appropriate* information from the system overly or unfairly difficult. To the extent a member or associated person seeks to expunge *appropriate* information, the NASD should waive involvement at the court confirmation level. In such a circumstance, the process should function not unlike how it currently functions and should not require a significant rehearing of the issues and/or recalling of witnesses. The Commission believes that the proposal has been structured in such a way that the potential for divergent findings at the court confirmation level and the arbitration level has been minimized. In sum, the Commission believes that the proposal addresses the serious Commission concern that valuable information is being expunged from the CRD system through arbitration settlements that include negotiated expungement instructions.

Finally, with respect to Argument No. 19, asserting that the proposal should be acted upon in conjunction with NASD NtM 02–74, the Commission does not agree. The NASD is a registered national securities association and is owed a certain degree of latitude with respect to how it carries out its self-regulatory responsibilities. The Commission believes that the decision to file this proposal separately from the proposal that will follow from NtM 02–74 is the type of self-regulatory decision that the NASD has discretion to make. Moreover, NtM 02–74 has not yet been filed by the NASD and the Commission does not believe it would be in the interests of investors to delay the Commission's action on the instant proposal.

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[35] *See* Section 19(g) of the Act, 15 U.S.C. 78s(g).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2002–168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–168 and should be submitted by January 14, 2004.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NASD–2002–168), as modified by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 be, and hereby is, approved on an accelerated basis. As discussed above, the NASD will announce the effective date of this proposed rule change through a NtM to be circulated as soon as possible after the publication of this approval order in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31646 Filed 12–23–03; 8:45 am]

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[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48930; File No. SR–NASD–2003–177]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Interpretive Material 3130

December 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as "non-controversial" under section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD IM–3130. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

IM–3130. Restrictions on a Member's Activity

(a) This explanation outlines and discusses some of the financial and operational deficiencies which could initiate action under Rule 3130. Paragraphs [(b)]*(c)*(2) and [(c)]*(d)*(2) of Rules 3130 and 3131 recognize that there are various unstated financial and operational reasons for which [the Association] *NASD* may impose restrictions on a member so as to prohibit its expansion or to require a reduction in overall level of business. These provisions are deemed necessary in order to provide for the variety of situations and practices which do arise and which, if allowed to persist, could result in increased exposure to customers and to broker/dealers.

(b) In the opinion of the Board of Governors, it would be impractical and unwise to attempt to identify and list all of the situations and practices [which] that might lead to the imposition of restrictions or the types of remedial actions [the Association] NASD may direct be taken because they are numerous and cannot be totally identified or specified with any degree of precision. The Board believes, however, that it would be helpful to members' understanding to list some of the other bases upon which [the Association] *NASD* may conclude that a member is in or approaching financial difficulty.

(c) For purposes of paragraphs [(b)]*(c)*(2) and [(c)]*(d)*(2) of Rule 3130, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] *NASD* that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) through (8) No change

(d) For purposes of paragraphs [(b)]*(c)*(2) and [(c)]*(d)*(2) of Rule 3131, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by [the Association] *NASD* that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) No change

(2) The member has experienced a substantial change in the manner in which it processes its business which, in [the] *NASD's* view, [of the Association,] increases the potential risk of loss to customers and members.

(3) through (8) No change

(e) If [the Association] *NASD* determines that any of the conditions specified in paragraphs (c) or (d) of this explanation exist, it may require that the member take appropriate action by effecting one or more of the following actions until such time as [the Association] *NASD* determines they are no longer required:

(1) through (12) No change

(13) Be subject to such other restrictions or take such other action as [the Association] *NASD* deems appropriate under the circumstances in the public interest and for the protection of members.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would: (i) change references to "paragraphs (b)(2) and (c)(2)" of NASD Rules 3030 and 3031 to "paragraphs (c)(2) and (d)(2)" in NASD IM–3130(a), (c), (d), and (e); and (ii) change references to "the Association" to "NASD" in NASD IM–3130, thereby conforming the rule language in NASD IM–3130 to the rule language in Rules 3130 and 3131, as recently amended.[5]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[6] in general, and with section 15A(b)(6) of the Act,[7] in particular, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. NASD believes that conforming the references in NASD IM–3130 to renumbered paragraphs in recently amended NASD Rules 3130 and 3131 and changing references to "the Association" to "NASD" would be consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NASD has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change corrects references to recently amended rules, which should preserve the accuracy of NASD's rules. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–177. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–177 and should be submitted by January 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31649 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48932; File No. SR–NASD–2003–186]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Administration of Qualification Examinations on Security Futures

December 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2003, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has filed the proposed rule change pursuant to Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[5] *See* Securities Exchange Act Release No. 48438 (September 4, 2003), 68 FR 53766 (September 12, 2003) (SR–NASD–2003–74).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). The Commission notes that NASD provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

[10] For purposes only of accelerating the operative date of the proposed rule change the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

I. Self-Regulatory Organization's Statement of the Terms of Substance of Proposed Rule Change

In this filing, the NASD discusses the implementation of new and revised qualification examinations to address trading in security futures.

The NASD does not propose to amend any of its existing rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The commodity Futures Modernization Act of 2000 ("CFMA")[4] lifted the ban on the trading of security futures (*i.e.* futures on single stocks and on narrow-based stock indexes). The NASD states that, at the time the CFMA was enacted, expectations for security futures were very high, and two separate markets were developed to trade these new products. To meet the challenge of ensuring that individuals engaging in a security futures business ere properly qualified, the NASD took the unique step of mandating that firms include training in security futures as part of their firm-element continuing education program. Furthermore, to assist firms in meeting this responsibility, the NASD and the National Futures Association ("NFA") contracted with the Institute for Financial Markets to develop an internet-based training program. NASD and NFA have made this program available to firms and registered representative for free. Since its inception in October 2002, over 12,000 individuals have completed the Internet training, which takes approximately two to three hours to complete.

At the time trading in security futures commenced, NASD also indicated that it planned to both modify and create qualification examinations to address trading in security futures. Specifically, NASD intended to modify the Series 4 examination (Registered Options and Security Futures Principal (replacing Registered Options Principal)), Series 9/10 examination (Limited Principal General Securities Sales Supervisor), and Series 42 examination (Limited Representative Options and Security Futures (replacing Limited Representative Options)). In addition, NASD intended to create a new Series 43 examination for general securities representatives (those persons who have successfully completed the Series 7 exam) seeking to engage in a security futures business.[5] The Series 43 is targeted at new entrants into the securities industry. Existing registrants (*i.e.*, those registered before the Series 43 examination is effective) are required to complete a firm-element continuing education program prior to engaging in a security futures business. Once the Series 43 was developed, NASD intended to permit existing registrants the option of completing the firm-element continuing education program in lieu of the Series 43 examination until December 31, 2006.

In the approximately one year since security futures began trading, NASD has devoted substantial resources to creating the Series 43 examination. Industry and SRO representatives[6] have met for 11 days and have devoted collectively over 1800 hours in meeting time developing a content outline and a question bank for the Series 43.[7] In addition, NASD has incurred over $45,000 in expenses to develop these materials. The Series 43 examination development is now complete. Revised study outlines for the Series, 4, 9/10 and 42 also have been developed. Questions for those examinations will be borrowed from the Series 43 question bank and developed by committees charged with maintaining and reviewing the question banks for those examinations.

Despite these efforts, current data on trading volume has shown that there is very limited trading activity in security futures. According to data from the Options Clearing Corporation, the average trading volume for 2003 in security futures is around 10,000 contracts per day across the two exchanges. In addition, NASD's market regulation surveillance confirms that most of this volume is propriety trading among market-maker firms. NFA representatives have informed the NASD that security futures products represented 0.0028% of all futures contracts traded so far in 2003. While similar statistics are not calculated for the securities industry, the figures would be substantially lower given the size of the securities markets.

Moreover, interest among registered representatives to engage in a sescurity futures business has waned. Since July 2003, an average of fewer than 50 registered persons per month in the securities industry have completed the Internet-based continuing education.

In view of the foregoing, the NASD does not believe it is appropriate or necessary to institute the Series 43 exam or amend other existing qualification examinations at the present time. The NASD believes the current system of a firm-element continuing education requirement continues to work well. The NASD states that the feedback it has received on the Internet-training program has been very positive. In addition, the NASD states that it has not received any evidence of customer complaints in these products. Moreover, the NASD is hesitant to amend existing examinations to address security futures because the net result will be to deemphasize other more pertinent subject areas, as the NASD does not intend to expand the number of questions on the Series 4, 9/10, and 42 exams.[8] Finally, the introduction of a separate, stand-alone qualification examination for security futures seems excessive in view of the level of trading in these products. The NASD also anticipates that very few representatives would elect to take the Series 43 exam.

The NASD notes that its colleagues at NFA have made similar conclusions about the need to revise the Series 3 to reflect trading of security futures. Both NASD and NFA believe that the qualification requirements between the securities and futures industry should generally be comparable, and, as regulators, the NASD has sought to avoid favoring one industry group over another, or actions leading to regulatory arbitrage.

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[3] 17 CFR 240.19b–4.

[4] P.L. 106–554, 114 Stat. 2763 (December 21, 2000).

[5] A new Series 43 examination was necessary, in part, because the New York Stock Exchange did not intend to incorporate questions on security futures on the Series 7 examination.

[6] SRO representatives from the NASD, NFA, CBOE, AMEX, OneChicago, and NQLX helped develop the content outline and question bank.

[7] These totals do not include travel time, time spent preparing for meetings (including developing and reqriting questions), and NASD staff time administering the Series 43 program.

[8] The problem is equally acute on the futures industry side, where the proposed revised Series 3 examination will have approximately 17% of its questions addressing security futures.

While the NASD does not plan to implement the new or revised qualification examinations today, it intends to monitor activity in security futures very closely. The NASD also intends to continue coordinating with NFA. The NASD intends to make periodic assessments of the activity in security futures to determine the appropriate time to implement the examinations. The NASD does not believe that there is any single factor that should be determinative of whether security futures examinations should be implemented. Rather, the NASD intends to review the following:

- Volume in security futures contracts
- Analysis of who is trading security futures
- Number of registered representatives completing continuing education
- Number of accounts authorized to trade security futures
- Nature of security futures customers
- Evidence, if any, of customer complaints
- Evidence, if any, of regulatory concerns arising from the NASD's surveillance and examination programs.

Once the NASD determines that new/revised qualifications are appropriate, or the SEC requests that the NASD implement the examinations, the NASD represents that it will be able to have them effective in less than four months. The NASD states that, as its efforts to date indicate, it remains fully committed to providing the necessary resources to ensure that representatives engaging in a security futures business are properly trained and qualified. The NASD intends to closely monitor activity in security futures to determine when, and if, it becomes an appropriate date to implement revised qualification examinations.

NASD believes that for the reasons stated above it is appropriate to defer implementation of revised and new qualification examinations concerning security futures.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed by the NASD as "non-controversial" pursuant to section 19(b)(3)(A) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4 thereunder.[13]

The Commission hereby waives the thirty-day operative waiting period. The Commission believes that it is consistent with the protection of investors and the public interest to waive the thirty-day operative waiting period because the proposed rule change explains the NASD's reasons for delaying the implementation of the new qualification exams for security futures.[14] The Commission notes that the NASD members that trade security futures are required to provide firm-element training for individuals engaged in security futures business.

NASD has requested that the Commission waive the five-day pre-filing requirement in Rule 19b–4(f)(6)(iii).[15] The Commission hereby waives that requirement.

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–186. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–186 and should be submitted by January 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Security.

[FR Doc. 03–31650 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–M

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[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4.

[14] For purposes of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48909; File No. SR–NSCC–2003–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Data Services Only Members

December 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 30, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds a new Rule 31 to NSCC's Rules and amends miscellaneous other provisions of NSCC's Rules as they pertain to data services only members.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change (i) expands the types of entities that may become data services only members under NSCC's rules to include the same type of entities that are eligible to use NSCC's mutual fund services; (ii) permits data services only members to access NSCC's mutual fund profile service; and (iii) consolidates many of NSCC's rules applicable to data services only members in a new Rule 31 of NSCC's rules.

The proposed rule change adds new types of entities that may become data services only members of NSCC. Data services only members are only eligible to access certain limited data and information services of NSCC specifically enumerated under NSCC's rules. They are not permitted to enter transactions for settlement through NSCC facilities.

Currently, a data services only member must meet the requirements of any clause (i) through (vi) of Section 1 of Rule 2 of NSCC's Rules; that is, they must be either a registered broker-dealer, bank or trust company, registered clearing agency, insurance company or entity licensed to sell insurance products, an investment company that has registered under the Investment Company Act of 1940, as amended, or an entity that has demonstrated to NSCC's Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from access to such services in order to be accepted as a data services only member.

These types of entities are identical to the types permitted to be NSCC members under Rule 2, subject in the case of Rule 2 membership to additional criteria relating to standards of financial responsibility and operational capability as set forth in NSCC's procedures. Since data services only members do not input transactions for settlement through NSCC's facilities and since NSCC is therefore not subject to settlement exposure by these members, data services only members are not subject to additional NSCC membership standards regarding financial responsibility.

The proposed rule change adds to the types of entities that may become data services only members the types that are currently eligible to use mutual fund services under rule 52;[4] that is, they may also be either (i) an investment advisor as defined in section 202(a)(ii) of the Investment Advisors Act of 1940, as amended; (ii) a principal underwriter as defined in section 2(a)(29) of the Investment Company Act of 1940, as amended, or a co-distributor, sub-distributor, or otherwise authorized to process mutual fund transactions; or (iii) an organization or entity that acts as a third-party administrator on behalf of defined contribution plans as defined in section 414(i) of the Internal Revenue Code of 1986, as amended.

The proposed rule change also adds NSCC's mutual fund profile service to the types of services available to data services only members. Mutual fund profile service ("MFPS") contains information on mutual funds and investment funds as input by the fund, including data on commission discounts ("breakpoints") available to certain investors buying shares of certain funds under the criteria established by the fund.

Allowing data services only members to access mutual fund profile service and expanding the entities eligible to become data services only members will assist in making mutual fund information, including breakpoint information, more widely available.

The proposed rule change also makes technical changes to NSCC's Rules by adding a new Rule 31 applicable to data services only members, consolidating for ease of reference many NSCC rule provisions applicable to data services only members. Consolidation of many of the provisions applicable to data services only members in Rule 31 will benefit NSCC participants by clarifying the responsibilities and entitlements directly applicable to data services only members and by making it easier for entities not familiar with clearing agency rules to join NSCC.

The technical changes proposed for consolidation of certain rule provisions applicable to data services only members will facilitate access to NSCC services by qualified entities. The proposed changes which add additional entity types to the ones which may currently qualify to become a data services only member and permit data services only members to access NSCC's mutual fund profile service will enable a wider group of mutual fund industry participants to have automated access to MFPS data about mutual funds. These proposed changes to NSCC's rules facilitate the prompt and accurate clearance and settlement of securities transactions and are therefore consistent with the requirements of the Act and the rules and regulations thereunder.

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[1] 15 U.S.C. 78s(b)(1).

[2] The category of data services only member and modifications applicable to such category were approved by the Commission in Securities Exchange Act Release Nos. 44960 (October 19, 2001), 66 FR 56383 [File No. SR–NSCC–2001–14] (added data services only members as a new category to NSCC rules and permitted them to use limited services]; 45560 (March 14, 2002), 67 FR 13200 [File No. SR–NSCC–2001–18] (permitted data services only members to access Fund/SERV for non-settling transactions); 47197 (January 15, 2003), 68 FR 3917 [File No. SR–NSCC–2002–13] (permitted data services only members to access NSCC's insurance processing services for non-settling transactions); and 47664 (April 7, 2003), 68 FR 17850 [File No. SR–NSCC–2003–04] (permitted data services only members and insurance carrier members to populate NSCC's new product repository databases with information relating to insurance products).

[3] The Commission has modified parts of these statements.

[4] Entities eligible to use mutual fund services include fund members admitted under Rule 51 and TPA members admitted under Rule 60 of NSCC's Rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not solicited nor received written comments on the proposed rule change. NSCC has worked closely with the industry to enhance the availability of mutual fund services to a wider range of mutual fund industry participants. NSCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(4)[6] promulgated thereunder because the proposal effects a change in an existing service of NSCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of NSCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal/*. All submissions should refer to the File No. SR–NSCC–2003–16 and should be submitted by January 14, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31648 Filed 12–23–03; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48946; File No. SR–NYSE–2003–34]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Amendment and Restatement of the Constitution of the Exchange To Reform the Governance and Management Architecture of the Exchange

December 17, 2003.

I. Introduction

On November 7, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and restate the Exchange's Constitution to reform the governance and management architecture of the Exchange. The proposed rule change was published for public comment in the **Federal Register** on November 13, 2003.[3] In addition to the proposed amendments to the NYSE Constitution, which are the subject of this Order, the Notice of the proposed rule change included as exhibits the texts of the Proxy Statement sent to NYSE members detailing the proposed changes to the Constitution and a letter, dated November 4, 2003, from the Exchange's Interim Chairman and CEO to NYSE members supplementing the Proxy Statement (the "Supplemental Letter").[4] On November 19, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission received 18 comment letters regarding the proposed rule change.[6] This Order approves the Exchange's rule change as proposed.

II. Description of the Proposed Rule Change

The NYSE proposes to amend and restate its Constitution to significantly change and enhance its governance structure. In short, the Exchange proposes to restructure its governance architecture so that it will have a Board of Directors ("Board") that is independent of members, member organizations, and listed issuers, and whose membership includes only one officer of the Exchange. The Exchange also proposes to create a Board of Executives that is representative of securities firms, listed issuers, and institutional investors. In addition, the NYSE proposes that its regulatory unit report directly to a fully independent committee of the Board, and not to NYSE management. The Exchange represents that the proposed rule change would guarantee the independence of its regulatory function both from members and member organizations and from inappropriate linkage with its marketplace function, yet would retain sufficient proximity to the marketplace to assure the market sensitivity that, in the Exchange's view, is fundamental to effective regulation.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 48764 (November 7, 2003), 68 FR 64380 ("Notice").

[4] In the Supplemental Letter, the NYSE's Interim Chairman and CEO indicated, among other things, his intention to bring before the NYSE Board several further amendments to the Constitution to further clarify and underscore the separation and independence of the regulatory function from the Exchange's marketplace function and from inappropriate influence by members and member organizations. The Commission notes that on November 24, 2003, the reconstituted Board voted to approve these amendments, as well as several others, to the NYSE Constitution. *See* Special Membership Bulletin regarding Additional Amendments to the Constitution, dated November 26, 2003. *See also* Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Annette L. Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated December 4, 2003 ("Additional Amendments Letter"). The NYSE intends to file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act to incorporate these additional Constitutional changes. *See infra* notes 14, 22, 23, 35, 36, 39, 40, and 88.

[5] *See* Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 19, 2003. In Amendment No.1, the Exchange advised that the proposed rule change was approved by unanimous written consent of the Exchange's Board of Directors effective November 13, 2003, and by vote of the members of the Exchange on November 18, 2003. The Exchange noted that, as a result, its internal procedures with respect to the proposed rule change were complete. Amendment No. 1 is simply a technical amendment and thus it is not necessary for the Commission to seek public comment on it.

[6] A list of commenters on the rule proposal, whose comments were received as of December 12, 2003, is attached as Exhibit A to this Order. The public file for the NYSE's proposal, which includes all comment letters received on the proposal, is located at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102.

A description of the most significant changes to the NYSE Constitution follows.

A. Board of Directors

The NYSE proposes to reduce the size of its Board, which previously had 24 members plus as many as three members of NYSE management, to between 6 and 12 members, plus the Chairman of the Board and the Chief Executive Officer (if different than the Chairman). The Board would be required to meet not less than four times per year, and directors would serve one-year terms.[7]

Board members (excluding the Chief Executive Officer) would be required to be independent of the management of the Exchange, the membership of the Exchange, and issuers of securities listed on the Exchange. Among other things, no director (other than the Chief Executive Officer) could be a member of the NYSE; an officer or employee of the NYSE; a person employed by or affiliated, directly or indirectly, with a member organization of the NYSE or with a broker or dealer that engages in a business involving substantial direct contact with securities customers; or an executive officer of a listed issuer. In addition, no director (excluding the Chief Executive Officer) would qualify as independent unless the Board affirmatively determined that the director had no material relationship with the Exchange. The Board would be required to adopt specific standards relating to such determination, comparable to standards required of issuers listed on the Exchange.[8]

The selection process for Board members would be designed to enable the Exchange to comply with the "fair representation" requirements of section 6(b)(3) of the Act.[9] Under the proposed amendments to the Constitution, the Nominating & Governance Committee (which, under the proposal, would be composed solely of independent directors) ultimately would be responsible for recommending to the Board candidates for Board membership. The amendments further would require, however, that the "Industry Members" of the Board of Executives, described below, recommend candidates constituting twenty percent of the number of directors to be elected by members of the Exchange, but in no event fewer than two directors.[10]

If a single individual serves as both the Chairman and Chief Executive Officer ("CEO"), the Board would be required to designate a director as a "lead director" to preside over executive sessions of the Board. The CEO would not be permitted to participate in executive sessions. The Board would be required to publicly disclose the lead director's name and the means by which interested parties could communicate with the lead director.[11]

The Board would be required to compile and distribute an annual nominating report listing the nominees for positions to be elected by the members. The Board would also be required to appoint the members of the Board of Executives.[12]

B. Board of Executives

Pursuant to the proposed Constitutional amendments, the Board would be required to establish a Board of Executives which, subject to the Board's ultimate authority, review, and oversight (and except with respect to the responsibilities delegated to the Standing Committees, discussed below), would advise the CEO in his or her management of the operations of the Exchange.[13] The Board of Executives would consist of the Chairman of Board, who would be the Chairman of the Board of Executives; the CEO (if different than the Chairman); and at least 20 but no more than 25 additional members, who would serve for one-year terms. The Board of Executives would be required to meet not less than six times per year.

The members of the Board of Executives would be required to include at least six individuals who are either the chief executive or a principal executive officer of a member organization that engages in a business with direct contact with securities customers; at least two individuals who are either the chief executive or a principal executive officer of a specialist member organization; and at least two floor representatives other than specialists. The members of the Board of Executives from these categories would be known collectively as the "Industry Members" of the Board of Executives. The Board of Executives also would be required to include at least two lessor members who are not affiliated with a broker or dealer in securities; at least four individuals who are either the chief executive or a principal executive officer of an institution that is a significant investor in equity securities, at least one of whom is a fiduciary of a public pension fund; and at least four individuals who are either the chief executive or principal executive officer of a listed company.[14]

If the Board were to increase the size of the Board of Executives, it must strive to maintain approximately the same balance between Industry Members and other members of the Board of Executives as set forth above. If the Board were to increase the size of the Board of Executives, it would also be free to add members to the Board of

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[7] NYSE Constitution, Article IV, Section 2.

[8] The Board would be required to adopt these standards by effecting a rule change within the meaning of section 19(b)(1) of the Act. The Commission recently approved revisions to the Exchange's corporate governance standards for its listed issuers that, among other things, set forth criteria for determining whether a director is "independent." *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) ("NYSE/Nasdaq Corporate Governance Listing Standards Approval Order").

[9] 15 U.S.C. 78f(b)(3). Section 6(b)(3) of the Act requires the rules of a national securities exchange to provide for the fair representation of its members in the selection of directors and the administration of its affairs, and provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer. *See infra* notes 15–21 and accompanying text for a discussion of fair representation.

[10] *See infra* note 17 and accompanying text.

[11] NYSE Constitution, Article IV, Section 2.

[12] NYSE Constitution, Article IV, Section 1.

[13] NYSE Constitution, Article V, Section 1.

[14] *Id.* The Commission notes that the reconstituted NYSE Board recently voted to further amend the provisions of the NYSE Constitution relating to the composition of the Board of Executives to: (1) Add a representative of individual investors who are retail clients of member organizations; and (2) remove the requirement that specialist representatives be chief executive or principal executive officers of specialist firms, but require that each such representative be registered as a specialist and spend substantial time on the floor of the Exchange. *See* Additional Amendments Letter, *supra* note 4.

Executives who represent other elements of the Exchange community.

C. Fair Representation Requirements

As a registered national securities exchange, the NYSE must adhere to section 6(b)(3) of the Act,[15] which requires the NYSE to assure a fair representation of its members in the selection of its directors and the administration of its affairs, and provide that one or more directors be representative of issuers and investors.[16] In order to satisfy this fair representation obligation, the NYSE proposes to provide in its amended Constitution that the Industry Members of the Board of Executives would recommend to the Board candidates constituting 20% of the directors to be elected by the members of the Exchange, but in no event fewer than two directors.[17] The Constitution would state that the Industry Members are required to propose persons who, in their opinion, are committed to serving the interests of the public and strengthening the Exchange as a public market, and will allow the Exchange to meet the fair representation requirements set forth in the Act.[18]

The Constitution would provide that the directors elected by Exchange members must include directors who will enable the Exchange to comply with the requirements of section 6(b)(3) of the Act.[19] To this end, the proposed amendments also would require the Nominating & Governance Committee, in meeting its responsibilities to recommend candidates for Board membership, to propose candidates who are, in its opinion, committed to serving the interests of the public and strengthening the NYSE as a public securities market, at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning issuers and at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning investors.[20]

The NYSE also proposes an amendment to permit members of the Exchange to propose, by petition, nominees for positions that are to be filled at the elections prescribed in the Exchange's Constitution.[21] Specifically, any such nominee would be required to be endorsed by not less than forty members. No member would be permitted to endorse more than one nominee. However, not less than one hundred members would be permitted to propose, by petition, an entire ticket or any portion of a ticket. If the Board finds that an individual proposed by petition is eligible for election, then the individual would be deemed a nominee for the relevant office or position.

D. Committees

1. Committees Consisting Solely of Directors

The proposed amendments to the NYSE Constitution would provide for the appointment of two types of Standing Committees of the Exchange: (a) Standing Committees composed entirely of directors other than the CEO; and (b) Standing Committees that are joint committees composed of both directors other than the CEO and members of the Board of Executives. The Board would appoint the Standing Committees and their respective chairpersons at its annual organizational meeting, and the Board would be required to adopt a charter for each Standing Committee consistent with the duties of that committee as prescribed in the NYSE Constitution.[22]

The amendments would provide for the appointment of four Standing Committees that would consist solely of directors other than the CEO and would report to the Board: (a) The Nominating & Governance Committee; (b) the Human Resources & Compensation Committee; (c) the Audit Committee; and (d) the Regulatory Oversight & Regulatory Budget Committee. Each of these Standing Committees could be combined with any other Standing Committee in this group, or be subdivided into one or more Standing Committees.[23]

The Nominating & Governance Committee would be responsible for: (a) Recommending to the Board candidates for Board membership; (b) recommending to the Board candidates for membership on the Board of Executives; (c) conducting the Board's annual governance review; (d) reviewing and recommending the Exchange's corporate governance guidelines; (e) establishing an appropriate process for, and overseeing the implementation of, the Board's self-assessments (including Board self-assessment, committee self-assessments and director assessments) and the Board of Executives' self-assessments; (f) recommending director compensation; and (g) succession planning for the Chairman and the CEO.

In addition to the criteria that the Nominating & Governance Committee would be required to follow in recommending candidates for the Board, discussed above,[24] the Committee also would be required to establish procedures to solicit the input of investors in equity securities and members of the Exchange regarding Board candidates.

The Nominating & Governance Committee also would be required to solicit input from the various Exchange communities regarding candidates for appointment by the Board to the Board of Executives. Consensus recommendations for candidates for the Board of Executives representing specialists, floor representatives, and lessor members[25] that are put forward by the respective representatives of these groups would be required to be forwarded to the Board as the recommendations of the Nominating & Governance Committee, unless and to the extent the committee determines that a candidate does not qualify for the position.

The Human Resources & Compensation Committee would be responsible for: (a) Reviewing and approving corporate goals and objectives relevant to the compensation of the CEO, evaluating the CEO's performance in light of these goals and objectives, and, together with the other directors elected by the members, determining and approving such compensation; (b) reviewing and approving recommendations regarding compensation and personnel actions involving senior Exchange personnel, including recommendations received from the Regulatory Oversight & Regulatory Budget Committee regarding senior regulatory personnel; and (c) reporting annually to the members of the Exchange and the public on the compensation of the five most highly compensated officers of the Exchange, as well as director compensation, and on the compensation philosophy and methodology used to award the compensation, including information relating to appropriate comparisons, benchmarks, performance measures and evaluation processes consistent with the mission of the Exchange.

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[15] 15 U.S.C. 78f(b)(3).

[16] *See supra* note 9.

[17] NYSE Constitution, Article IV, Section 2. The Exchange has confirmed that the slate of candidates approved by the Board would constitute a full slate of candidates and 20% of that slate (but in no event fewer than two candidates) would be candidates proposed by the Industry Members. Telephone conversation between James F. Duffy, Senior Vice President and Associate General Counsel, NYSE, and Nancy J. Sanow, Assistant Director, Division, Commission, on December 10, 2003.

[18] NYSE Constitution, Article V, Section 1.

[19] NYSE Constitution, Article IV, Section 2.

[20] NYSE Constitution, Article IV, Section 12. The Nominating & Governance Committee also would be required to establish procedures to solicit the input of investors in equity securities and members of the Exchange regarding Board candidates. *See infra* at note 24 and accompanying text.

[21] NYSE Constitution, Article III, Section 1.

[22] NYSE Constitution, Article IV, Section 12. The Commission notes that the reconstituted NYSE Board recently voted to further amend the Constitution to grant Standing Committees the authority to engage independent legal counsel and other advisors, but the committees may not use counsel or advisors who advise Exchange officers or employees. *See* Additional Amendments Letter, *supra* note . The Exchange confirms that the reconstituted Board also has the authority to engage independent legal counsel and other advisors. Telephone conversation between Darla C. Stuckey, Corporate Secretary, NYSE, and Nancy J. Sanow, Assistant Director, Division, Commission, on December 15, 2003.

[23] The Board could also constitute itself as a committee of the whole in respect of a Standing Committee consisting solely of directors. However, if the Board does so with respect to the activities of the four Standing Committees enumerated above, the CEO would be recused from such Board deliberations. The Commission notes that the reconstituted NYSE Board recently voted to further amend the Constitution to provide that the CEO would be recused from deliberations of the Board with respect to the four Standing Committees whether it is acting as the Board or as a committee of the whole. *See* Additional Amendments Letter, *supra* note 4.

[24] *See supra* note and accompanying text.

[25] *See supra* Section II.B.

The Audit Committee would be responsible for assisting the Board in its oversight of the integrity of the Exchange's financial statements, the Exchange's compliance with legal and regulatory requirements, and the independent auditor's qualifications and independence. The Audit Committee would have direct responsibility for: (a) The hiring, firing and compensation of the independent auditor; (b) overseeing the independent auditor's engagement; (c) meeting regularly in executive session with the auditor; (d) reviewing the auditor's reports with respect to the Exchange's internal controls; (e) pre-approving all audit and non-audit services performed by the auditor; and (f) determining the budget and staffing for the Internal Audit Unit. The amended Constitution would state that the Audit Committee charter must contain additional duties and responsibilities comparable to those required of issuers listed on the Exchange.[26]

The Regulatory Oversight & Regulatory Budget Committee would be responsible for: (a) Assuring the effectiveness, vigor and professionalism of the Exchange's regulatory program; (b) determining the budget for the Exchange's Regulatory Group, Listings and Compliance Unit, Hearing Board, Arbitration Unit, and Regulatory Quality Review Unit; and (c) oversight of the Exchange's Regulation, Enforcement & Listing Standards Committee and Regulatory Quality Review Unit. The Regulatory Oversight & Regulatory Budget Committee also would determine annually the Exchange's regulatory plan, budget, and staffing proposals, and would be responsible for assessing the Exchange's regulatory performance and recommending compensation and personnel actions involving senior regulatory personnel to the Board's Human Resources & Compensation Committee for action.

2. Joint Committees

The amended Constitution would provide for a Regulation, Enforcement & Listing Standards Committee, which would be a Joint Committee composed of both directors (other than the CEO) and members of the Board of Executives, including at least one Industry Member, as selected by the Board. A majority of the members of the committee voting on a matter subject to its vote, however, would be required to be Board directors.[27]

The Regulation, Enforcement & Listing Standards Committee would report to the Regulatory Oversight & Regulatory Budget Committee, and would: (a) review and provide general advice with respect to the Exchange's programs for market surveillance, member and member organization regulation and enforcement, and the listing and de-listing of securities; and (b) hear appeals of disciplinary determinations and determinations to de-list a listed company.[28]

Under the proposed changes to the Constitution, the Board could appoint additional Joint Committees from time to time, provided that each Joint Committee would consist of at least one director other than the CEO.[29]

3. Committees With Directors From the Board and the Board of Executives

The Proxy Statement noted that the Market Structure & Strategy, Quality of Markets/Public Policy and Finance Committees would be comprised of members of both the Board of Directors and Board of Executives, but there must be at least one independent director on such committees and all such committees would report to the Board.[30]

E. Special Committees, Advisory Committees, and Other Bodies

The amended Constitution would provide for the appointment of special committees, subcommittees, advisory committees, boards, or councils from time to time in the Board's discretion, and could be comprised of individuals who are not Board directors or members of the Board of Executives.[31]

F. Officers

The officers of the Exchange would include the Chairman of the Board; the CEO; the President, if there be one; the Chief Regulatory Officer; one or more Vice Presidents; a Secretary; a Treasurer; a Controller; and such other officers as the CEO may propose, subject to the approval of the Board.[32] The proposed amendments would permit any of these offices to be occupied by more than one individual.

The Board would appoint the Chairman, the CEO, and the Chief Regulatory Officer. If the Chairman is neither the CEO nor chosen from among the directors elected by the members, he or she must satisfy the independence criteria set forth in Article IV, Section 2 of the Constitution. The CEO would be authorized to appoint the President and the other officers of the Exchange, subject to the approval of the Board.[33]

No officer of the Exchange would have any authority to recommend candidates for the Board or for appointment by the Board to any committee. However, the Board or the Nominating & Governance Committee would be permitted to solicit the input of any Exchange officer at its own initiative and discretion.

G. The Chairman

The Chairman of the Board would preside at all meetings of the Board and the Board of Executives. If the Chairman is also the CEO, however, he or she would not participate in executive sessions of the Board. The Chairman would also be required to make an Annual Report on the Exchange's activities to a Plenary Session.[34]

H. The CEO

The CEO, subject to the authority of the Board, would be responsible for the management and administration of the affairs of the Exchange.[35]

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[26] NYSE Constitution, Article IV, Section 12.

[27] NYSE Constitution, Article IV, section 12(b)(1).

[28] *Id.*

[29] NYSE Constitution, Article IV, section 12(b)(2).

[30] *See* Proxy Statement.

[31] NYSE Constitution, Article IV, section 13.

[32] NYSE Constitution, Article VI, section 1. The amendments would remove the positions of Executive Vice Chairman and Vice Chairmen and add the positions of CEO and Chief Regulatory Officer to the list of the Exchange's officers.

[33] *Id.*

[34] NYSE Constitution, Article VI, section 2. The Board and Board of Executives must meet jointly in a Plenary Session at least twice a year. The Chairman would chair all Plenary Sessions. NYSE Constitution Article V, section 11.

[35] NYSE Constitution, Article VI, section 3. As noted above, the CEO would not appoint the Chief Regulatory Officer, and could not participate in executive sessions of the Board. In addition, as described in the Additional Amendments Letter, the reconstituted NYSE Board voted to further amend the Constitution, subject to Commission approval, to clarify that the CEO's responsibilities are subject to the specific provisions in the Constitution regarding the segregation of the

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I. The Chief Regulatory Officer

The Chief Regulatory Officer would be responsible for the management and administration of the regulatory functions of the Exchange. The Chief Regulatory Officer would be subject to the authority of the Board and the Regulatory Oversight & Regulatory Budget Committee, and to the administrative standards and policies established by the CEO made applicable to the Chief Regulatory Officer by the Regulatory Oversight & Regulatory Budget Committee.[36]

J. Other Officers

The President and other officers would have such functions and responsibilities as the CEO assigns, subject to the approval of the Board, and, in the case of senior regulatory personnel, subject to the specific oversight and control of the Regulatory Oversight & Regulatory Budget Committee.[37]

K. Delegation Authority

The amended NYSE Constitution would provide that the Board may delegate such of its powers as it may determine to the Board of Executives, to such officers of and employees of the Exchange, and to such committees, composed either of directors or otherwise, as the Board may authorize.[38] Notwithstanding the foregoing, however, the Board would not be permitted to delegate, and no committee would be permitted to re-delegate, to the Board of Executives or to any committee not consisting solely of directors, authority to adopt rules under Section 1 of Article VIII (dealing with rulemaking), or Section 1 of Article IX (dealing with disciplinary rules). Moreover, the Board would not be permitted to delegate, and no committee would be permitted to re-delegate, to the Board of Executives or to any committee not consisting solely of directors, authority to act on any subject matter described in the Constitutional provisions concerning the responsibilities of the Nominating & Governance Committee; the Human Resources & Compensation Committee; the Audit Committee; the Regulatory Oversight & Budget Committee; and the Regulation, Enforcement & Listing Standards Committee.[39] Any exception to these delegation provisions would require a rule change filed with the Commission within the meaning of section 19(b)(1) of the Act.[40]

The proposed amendments also would provide that the Board could continue to exercise any and all powers that it has delegated notwithstanding such delegation, and that the Board could exercise such review and oversight over the exercise of (or omission to exercise) any delegated authority as it might at any time determine.[41]

L. Amendments to the Constitution

Under the proposed amendments, the Board would be permitted to amend or repeal specified provisions of the Constitution, or adopt new provisions, by the affirmative vote of a majority of the entire Board in favor of the amendment or repeal, or by the members of the Exchange who are entitled to vote thereon.[42] The specified provisions include Articles of the Constitution relating to: the Board of Directors (excluding the provision relating to the limitation on the delegation of authority); the Board of Executives (excluding that provision which requires the Board of Executives to be a reasonably balanced representation of Exchange communities); the officers of the Exchange; and the indemnification of Exchange directors, officers or employees. The remaining provisions of the Constitution may be amended or repealed, and new provisions may be adopted, only by the members of the Exchange who are entitled to vote thereon.

However, no Constitutional amendment approved by the majority of the entire Board would be permitted to take effect without the vote of members until the expiration of two weeks from the date the proposed Constitutional amendment was first furnished to members.[43]

M. Transition

The proposed amendments also would add a new Article XVI to the Constitution, to provide for a "Transition Period" that commences on the date that the amended and restated Constitution is approved by members and ending on the date of the next annual meeting of the Exchange and that is intended to allow for continuity of the Exchange's governance during the interim period.[44] Upon expiration of the Transition Period, Article XVI would have no further force and effect. Article XVI further would note that the extraordinary circumstances under which the restated and amended Constitution was proposed and the initial Board of Directors was constituted caused the Exchange to dispense with certain requirements, including: (a) Use of the Nominating Committee to nominate directors; (b) the opportunity for members to petition to nominate additional director candidates; and (c) approval of the proposed amendments by the Board in accordance with the prescribed time frames. The amended Constitution would state that all such requirements are waived and the actions take in contravention of all such requirements are ratified.[45]

N. Other Governance Changes Proposed by the NYSE

The NYSE has directly implemented other governance changes that are in

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regulatory functions of the Exchange. *See* Additional Amendments Letter, *supra* note 4.

[36] NYSE Constitution, Article VI, section 4(a). As described in the Additional Amendments Letter, the reconstituted NYSE Board voted to further amend the Constitution to clarify that the President could not appoint any regulatory officers. *See* Additional Amendments Letter, *supra* note 4.

[37] NYSE Constitution, Article VI, section 4(b).

[38] NYSE Constitution, Article IV, section 14. The amended Constitution would also provide that any committee of directors to which authority is delegated to adopt rules under Article VIII, section 1 (dealing with the operation and administration of the Exchange) and Article IX, section 1 (dealing with the discipline of members, member organizations and others) must include at least one director nominated by the Industry Members of the Board of Executives.

[39] The Commission notes that the reconstituted NYSE Board recently voted to amend this proposed provision to allow the Board to delegate rulemaking authority on the subjects normally confined to the Board or Standing Committees consisting solely of directors to an Exchange officer in between Board meetings, as necessary, subject to informing the Board at its next meeting and, in the case of regulatory matters, subject to the approval of the Chief Regulatory Officer. *See* Additional Amendments Letter, *supra* note 4.

[40] NYSE Constitution, Article IV, section 14. The Commission notes that the reconstituted Board recently voted to further amend the Constitution to add officers and employees of the Exchange to the provision prohibiting the Board to delegate, and a committee to redelegate, authority to adopt rules under Article VIII, section 1 or Article IX, section 1 of the Constitution, or to act on any subject matter described in Article IV, section 12(a) or (b)(1), except by effecting a proposed rule change within the meaning of section 19(b) of the Act. *See* Additional Amendments Letter, *supra* note 4.

[41] NYSE Constitution, Article IV, section 14(b).

[42] NYSE Constitution, Article XIV, section 1. The Commission notes that any further changes to the NYSE Constitution would be required to be filed with the Commission pursuant to section 19(b) of the Act.

[43] The NYSE also proposes that the Board may make such changes to a proposed amendment approved by the affirmative vote of a majority of the entire Board as it may deem necessary or appropriate to carry out the intention of such proposed amendment without the need for a further waiting period. As noted above, changes to the NYSE Constitution would be required to be filed with the Commission pursuant to section 19(b) of the Act.

[44] The amended and restated Constitution was approved by NYSE members on November 18, 2003. *See* Amendment No. 1, *supra* note 5.

[45] The Commission notes that the revisions to the NYSE Constitution set forth in the proposed rule change are effective upon Commission approval of the proposed rule change.

addition to the revisions to the NYSE Constitution approved in this Order. Those other changes include, among other things, commitments to increase the transparency of the Board and Board Committees by requiring the disclosure of Committee charters and bases for certain Board and Committee action; to provide a means by which members and investors may communicate with the NYSE's non-management directors; and to provide annual reports regarding certain activities of the Board and several key committees, including an annual report detailing the charitable activities of or on behalf of the Exchange.

III. Summary of Comments on NYSE Proposal

The Commission received a total of 18 comment letters on the NYSE proposal.[46] A number of commenters broadly supported the NYSE's proposed governance changes, at least to the extent that the changes are considered a positive initial step toward reform.[47] Many of the commenters, however, stated that the proposals did not go far enough. For example, they expressed concerns about the adequacy and effectiveness of the NYSE's revisions to its governance, particularly with respect to the composition of the Board of Directors, the establishment of the Board of Executives, and the structure of the regulatory function.[48] Several commenters also urged the Commission not to approve the proposal until the NYSE had made further changes to it, arguing that the proposal did not go far enough to restore investor confidence.[49] The commenters generally addressed issues falling into one or more of the categories discussed below.

A. The Board of Directors

A number of commenters criticized the proposed composition of the Board of Directors for failing to include investor representatives on the Board.[50] Two commenters referred to investors as being the "ultimate constituency" of the Exchange and consequently there should be several investor representatives on the Board.[51] Another commenter advocated that the Board should have "significant representation" from the public institutional investor community, and yet another commenter stated that approximately one-third of Board seats should be reserved for investor representatives.[52] In contrast, one commenter criticized the proposed Board composition for excluding industry representatives from serving as directors.[53] This commenter argued that industry professionals bring valuable experience and insight to the Board in addressing regulatory and other issues, particularly in hectic times.

Four commenters questioned the independence of the directors.[54] In particular, these commenters suggested that director independence is compromised by the fact that directors are elected by the Exchange members or by their ties to corporate America. One commenter proposed having the Commission and the North American Securities Administrators Association each annually appoint individuals having a background in securities regulation to one seat on the Board in order to ensure some independent and qualified representation.[55]

Several commenters questioned the ability of the reconstituted Board to operate effectively.[56] One of these commenters raised concerns regarding the directors' availability (noting in particular one candidate who serves on eight Boards for listed companies in addition to other long term commitments, and two other candidates who live in the United Kingdom). This commenter expressed doubts that the Board would be able to handle the responsibilities of regular Board meetings, meetings with the Board of Executives, and overseeing and serving on the various key standing committees.[57] Another commenter questioned the ability of a small body of public directors, meeting only four times a year, to function without help from securities professionals.[58] One commenter also expressed concern about the proposed directors' lack of securities industry experience, as well as their ties to corporate America and/or the financial services industry.[59]

B. Board of Executives

Several commenters disputed the efficacy of having the proposed Board of Executives. One commenter argued that the creation of a Board of Executives is an inadequate substitute for direct industry participation in exchange governance.[60] Two commenters characterized the existence of the Board of Executives, in addition to the Board of Directors, as an unnecessarily complex structure, having no advantages over the traditional Board structure with independent key committees, and as setting a poor example for listed companies.[61] One of the commenters also expressed a concern that the dual Board structure would obfuscate rather than enhance accountability.[62]

Another commenter criticized the composition of the Board of Executives for not having adequate "buy-side" representation, arguing that the Board of Executives as proposed would be composed primarily of "sell-side" representation.[63] This commenter advocated increasing the number of members representing individual and institutional investors.

C. Regulatory Function

A majority of commenters called for greater independence of the regulatory function from the business operation of the NYSE.[64] Most of these commenters advocated a complete separation of the regulatory function from the Exchange.[65] Several commenters

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[46] Exhibit A to this Order contains a list of comment letters received by the Commission on the NYSE proposal as of December 12, 2003, including the citations to the comment letters referenced in this Order. The public file for the proposed rule change includes a letter to Chairman Donaldson from NYSE Interim Chairman & CEO John S. Reed regarding the NYSE proposal. The Reed Letter stated that the SRO model can properly fit within the governance structure of the Exchange and pointed to five design elements that support this view. For example, the Reed Letter pointed to a pure "outside" "independent" Board as a core requirement, and a special Oversight Committee of the Board with its specific functions and a charter that will be made public, as design elements. The Reed Letter also pointed out that the fact that the Exchange hosts the trading environment for members but does not directly participate in members' results helps create a distance between business issues and management. Another design element noted in the Reed Letter is that the success of the Exchange requires a tough but fair regulatory regime that is publicly visible. The Reed Letter noted the existence of "tight" SEC oversight as the final design element. The Second Reed Letter, *infra* Section IV, is also contained in the public file for the proposed rule change.

[47] *See* Saul Letter, ICI Letter, First CII Letter, and SIA Letter.

[48] *See* Saul Letter, Peake Letter, CalPERS Letter, CALSTRS Letter, ICI Letter, First CII Letter, PIABA Letter, SIA Letter, State Treasurers' Letter, Knotter Letter, and Ohio Retirement Systems Letter.

[49] *See* CalPERS Letter, CALSTRS Letter, and ICI Letter.

[50] *See* CalPERS Letter, CALSTRS Letter, ICI Letter, PIABA Letter, State Treasurers' Letter, and Ohio Retirement Systems Letter.

[51] *See* ICI Letter and State Treasurers' Letter.

[52] *See* CALSTRS Letter and CalPERS Letter, respectively.

[53] *See* Saul Letter.

[54] *See* Anderson Letter, CALSTRS Letter, PIABA Letter, Knotter Letter and Second CII Letter.

[55] *See* PIABA Letter.

[56] *See* Saul Letter, Peake Letter, and PIABA Letter.

[57] *See* Peake Letter.

[58] *See* Saul Letter.

[59] *See* PIABA Letter.

[60] *See* Saul Letter.

[61] *See* CalPERS Letter and CALSTRS Letter.

[62] *See* CALSTRS Letter.

[63] *See* ICI Letter.

[64] *See* Peake Letter, CalPERS Letter, Merrill Letter, CALSTRS Letter, First CII Letter, SIA Letter, State Treasurers' Letter, Second CII Letter, Ohio Retirement Systems Letter, and Sonoma Letter.

[65] *See* Peake Letter, CalPERS Letter, Merrill Letter, First CII Letter, SIA Letter, Second CII Letter,

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suggested that the Commission consider alternative regulatory models, including merging the Exchange's regulatory function with that of the NASDR, adopting a "hybrid SRO," or having the Commission take a more direct regulatory role.[66]

Several commenters questioned the effectiveness of the regulatory oversight of a Board whose members are directly elected by the persons they are regulating.[67] One commenter proposed that a nomination model similar to that in place for the Public Company Accounting Oversight Board be adopted for nominating the directors charged with overseeing the regulatory arm of the Exchange, with the SEC having sole responsibility of appointing the directors of the oversight bodies.[68]

In contrast, another commenter argued that member participation in regulation was necessary, and that a Board of Directors consisting solely of public directors would find itself "severely handicapped" in dealing with regulatory issues, despite the presence of an advisory Board of Executives.[69] This commenter also expressed concern that the proposal represents a major change in regulation and that it was proposed without a full discussion of the consequences. This commenter argued that one of the possible consequences of excluding member representatives from the Board is that Exchange members might turn away from the Exchange and the auction system, resulting in internalized order flow and a fragmented market. This commenter also stated that member participation makes regulation more "palatable" and generates awareness of regulatory issues.

D. Committee Structure

One commenter expressed concern that, with respect to the Market Structure Committee, a mixed committee of members of the Board of Directors and the Board of Executives, the proposal did not explicitly require a majority of directors to be members of this committee.[70] This commenter criticized this omission, stating that the most crucial part of the regulatory structure is market structure, particularly in light of recent controversies. This commenter also criticized the fact that the Nominating & Governance Committee is composed solely of existing directors, and has no outside members, and argued that this creates a self-perpetuating Board.

E. Chairman and CEO

Two commenters expressed concern that allowing the CEO and Chairman to be the same person would result in a concentration of too much power, particularly in light of the fact that, under this proposal, the Chairman also would act as the sole liaison between the Board of Directors and the Board of Executives.[71] Another commenter also urged separation of the Chairman and CEO functions to enhance the independence of the Board of Directors.[72]

F. Transparency

Several commenters proposed that the Exchange take additional steps to improve its transparency,[73] advocating that the Exchange should set the "gold standard" for disclosure.[74] One commenter stated that the Exchange should be under the same disclosure requirements as listed companies.[75] In addition, this commenter asserted that the Exchange should disclose all ties between Board members, that the Exchange should be banned from making any charitable or political contributions, and that the Exchange should post all documents relating to Board and committee reports and compensation disclosures on its Web site.[76] Another commenter proposed that all key Exchange committees be required to publish annual reports on how they functioned and executed their duties.[77]

In addition, a few commenters urged that final details on the compensation package of the Exchange's former Chairman be made public.[78]

IV. NYSE's Response to the Comment Letters

The Exchange, through its Interim Chairman and CEO, submitted a letter dated December 11, 2003, which responds to issues raised by the commenters.[79] The Exchange noted that the proposed rule change was "intended to solve an immediate board-level governance problem faced by the Exchange" and was "not intended to address all structural issues that the Exchange, and indeed our industry, now face."

The Exchange took issue with the view of several commenters that the Board should include one or more individuals to represent the interest of the public investor. The Exchange stated that "the single most important feature of the proposed rule change is that, with the exception of the CEO, the [Board] is completely independent." In that regard, the Exchange noted that "[a]s the Exchange's fiduciaries, our directors will not have the agenda of a customer, an owner or user, and will not represent any single constituent group." Therefore, the Exchange concluded that "it would be inappropriate to seek to specifically include [Board] members that are representative of the buy-side or of any particular constituent group."

The Exchange acknowledged that individual investors are the Exchange's "ultimate constituency." However, the Exchange stated that "individual investors trading on the Exchange through broker-dealers in small volumes have interests that conflict with other individual investors who participate in the market through public or private funds trading in larger volumes." Thus, the Exchange stated that the "hard-won lesson is that the only way to sort out these issues without bias or conflicts is through an independent board whose primary goal is to 'do the right thing' for the individual investor as such."

Finally, in response to commenters who believed that there should be an individual investor representative on the Board of Executives, the Exchange noted that it intends to amend its Constitution to provide for an individual investor representative on the Board of Executives.

In response to comments regarding regulation and the merits of separating the regulatory and market functions of the Exchange, the NYSE reiterated its position as set forth in the proposed rule change that the filing "does not ask the Commission to approve either the continuation of self-regulation in the United States or at the Exchange." The Exchange noted that "[i]f the Commission decides that broker-dealers should continue to regulate themselves through national securities exchanges, [the] Exchange's new governance architecture provides the best model for resolving and managing conflicts of interest inherent in self-regulation while maintaining the marketplace proximity requisite for optimizing regulatory intervention in delicate market mechanisms." The Exchange added that it expects to implement its model

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Ohio Retirement Systems Letter, and Sonoma Letter.

[66] *See* Peake Letter, Second CII Letter, SIA Letter, and Sonoma Letter.

[67] *See* Anderson Letter, CALSTRS Letter, PIABA Letter, and Knotter Letter.

[68] *See* Second CII Letter.

[69] *See* Saul Letter.

[70] *See* Peake Letter.

[71] *See* CalPERS Letter and CALSTRS Letter.

[72] *See* Ohio Retirement Systems Letter.

[73] *See* CALSTRS, First CII Letter, State Treasurers' Letter, and Second CII Letter.

[74] *See* CALSTRS and Second CII Letter.

[75] *See* First CII Letter.

[76] *See also* Second CII Letter.

[77] *See* CALSTRS Letter.

[78] *See* CALSTRS Letter and State Treasurers' Letter.

[79] *See* Second Reed Letter.

through an independent Board and through a division of regulatory and marketplace functions within the Exchange, including by having a Chief Regulatory Officer reporting directly to the Board of Directors.

In conclusion, the Exchange noted that its proposal seeks to address a "very immediate board-level governance problem" and urged that "the Commission approve the proposed rule change as soon as possible so that the Exchange can continue to function effectively as a marketplace while revitalizing its regulatory function and addressing other important issues from a much improved governance platform."

V. Discussion

The Commission has considered the Exchange's proposed rule change and finds that, in the context in which they were submitted, the proposed amendments to the NYSE Constitution are consistent with the Act and the rules and regulations promulgated thereunder that are applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[80] Specifically, the Commission finds that, in this context, the amended and restated Constitution is consistent with section 6(b)(1) of the Act[81] which requires that the exchange be "so organized and [have] the capacity to carry out the purposes of [the Act]" and to "enforce compliance by its members and persons associated with its members with the provisions of [the Act]." The Commission also finds that, in this context, the amended and restated Constitution is consistent with section 6(b)(3) of the Act,[82] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. In addition, the Commission finds that, in this context, the amended and restated Constitution is consistent with section 6(b)(5) of the Act[83] in that it is designed, among other things, to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers. Further, the Commission finds that, in this context, the amended and restated Constitution is consistent with section 6(b)(7) of the Act,[84] which, among other things, requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members.

Recent events at the Exchange have called into question whether its Board of Directors and key Board committees have been sufficiently independent from NYSE management to assure that these governing bodies exercise their judgment in an objective and autonomous manner. The Exchange quickly confronted its governance issues by appointing an Interim Chairman, without any ties to the Exchange, and by proposing amendments to its Constitution that would significantly alter its governance structure. Moreover, the Exchange has proposed changes to its Constitution that are designed to assure the independence of its regulatory unit from NYSE management and from the entities that it regulates. At the same time, the NYSE has created a mechanism of nomination to the Board of Directors designed to fulfill the "fair representation" requirements applicable to national securities exchanges, as set forth in section 6(b)(3) of the Act.[85]

The Commission discusses below significant aspects of the amendments to the NYSE Constitution.

A. Board of Directors

The amended Constitution provides for a smaller board, composed of independent directors (other than the CEO). Board members (excluding the CEO) must be independent from the management of the Exchange, from the members of the Exchange, and from the issuers listed on the Exchange. In addition, the Exchange must make an affirmative determination of a director's independence. The NYSE also commits to adopting specific standards requiring that the independence determination be comparable to the standards required of listed issuers. Generally, the Board will supervise the regulatory function; monitor the Exchange's performance; approve the Exchange's strategy; hire, fire and determine the compensation of senior management; create a succession plan; and ensure appropriate behavior by Exchange employees, officers and directors.

The Commission believes that the proposal to completely replace the previously large, mixed-composition NYSE Board with a smaller board composed of independent directors (other than the CEO) should increase the likelihood that the directors will be free of any relationship that might impair, or appear to impair, the directors' ability to make judgments in the best interest of the Exchange and investors. The changes to the Constitution explicitly prohibit a director from being a member or lessor member, an officer or employee of the Exchange (except for the CEO), a person employed by or affiliated with a member organization or with a broker-dealer that has substantial direct contact with securities customers, or an executive officer of a listed issuer. Not only must the Board make an affirmative determination that the director (other than the CEO) has no material relationship with the Exchange, it also must assess the director's eligibility according to specific standards relating to independence that are comparable to the standards the NYSE now requires of its listed companies.[86] Indeed, the Commission notes that the NYSE proposal goes one step further than the new requirements for NYSE listed companies because the NYSE will have a board composed of independent directors (except for the CEO), whereas NYSE listed companies must have only a majority of independent directors on their boards.[87] Several commenters raised doubts about the independence of the NYSE directors because of the ties that directors may have to corporate American and/or the financial industry. Also, a few commenters advocated a greater role by the Commission in appointing NYSE directors in order to further assure the directors' independence. The Commission believes that this "independence" standard for the NYSE Board should benefit the Exchange by assuring that key decisions are made by persons free from material relationships with—and thus from potentially improper influence by—the Exchange or the entities it regulates.

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[80] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C.78c (f).

[81] 15 U.S.C. 78f(b)(1).

[82] 15 U.S.C. 78f(b)(3).

[83] 15 U.S.C. 78f(b)(5).

[84] 15 U.S.C. 78f(b)(7).

[85] 15 U.S.C. 78f(b)(3).

[86] See NYSE Constitution Article IV, Section 2, which states that the Exchange "shall adopt specific standards relating to such determination, comparable to the standards required of issuers listed on the Exchange, by effecting a rule change within the meaning of section 19(b)(1) of the Act." 15 U.S.C. 78s(b)(1). *See also* NYSE/Nasdaq Corporate Governance Listing Standards Approval Order. The Commission expects the NYSE to file shortly after issuance of this Order a proposed rule change pursuant to section 19(b) of the Act that contains independence standards for NYSE directors comparable to those recently adopted for its listed issuers.

[87] The Commission notes that the NYSE's CEO would be the only director that would not meet the definition of "independence."

Several commenters expressed concerns about the composition of the Board, including the lack of investor or industry representation, and issues regarding the ability of the directors to operate effectively, given each director's time constraints and the relatively small number of times the Board is required to meet. The Commission believes that, at this point, the NYSE has taken steps designed to assure that the concerns of investors are adequately represented on the NYSE Board. The NYSE has proposed that its new board be independent of specific constituencies, most notably broker-dealer members of the Exchange. In this manner, the NYSE intends the Board to be able to consider the needs of the entire exchange community, including large and small investors, issuers, and securities firms. The Commission notes that the Nominating & Governance Committee will establish procedures to solicit the input of investors regarding Board candidates, and that the committee is explicitly required to nominate a director that represents investors, as discussed in more detail below.

In addition, some commenters expressed concern that permitting the Chairman and CEO to be the same person would result in too great a concentration of power, and some commenters advocated a formal separation of the two positions. The Commission notes that the NYSE has established constraints on the ability of a combined Chairman-CEO to influence decisions that should be made by persons independent of Exchange management. For example, the NYSE's proposal prohibits the CEO from participating in executive sessions of the Board so that, if there is a combined Chairman-CEO, a "lead director" must be designated to preside over executive sessions.[88] In the Commission's view, these structural changes are designed to help assure the independence of the Board from undue management pressures and, in the context of the amendments to the Constitution before the Commission, should be approved.

B. Board of Executives

The NYSE proposes to create a Board of Executives composed of from 20 to 25 individuals who are drawn from clearly defined segments of the NYSE constituencies, including representatives from the retail broker-dealer, specialist, floor broker, lessor member, institutional investor, and listed company communities. The Board of Executives' main role is to advise the CEO in his or her management of the Exchange's operations. The Industry Members of the Board of Executives, representing member organizations, specialist organizations and floor representatives, are to recommend candidates constituting 20% of the members to be elected, but no fewer than two directors.

A number of commenters questioned the efficacy of the Board of Executives and the composition of the Board of Executives, and several stated that a dual board structure is unnecessarily complex and offers few advantages.

The Commission believes that the NYSE's creation of a Board of Executives, composed of individuals from the various Exchange constituencies, is reasonable in the context of an independent Board of Directors. The Board of Executives provides a useful mechanism designed to assure that various Exchange stakeholders continue to have a voice in the decisions of the Exchange; yet the Board of Directors, the body charged with governance of the Exchange and regulation of its members, is independent. The Commission notes that the concept of self-regulation is based on the principle that regulation is most effective when it is done as close as possible to the regulated activity. That principle becomes strained, however, if those in charge of regulation are dependent or aligned with those engaged in the regulated activity. The NYSE has taken steps to address this concern by providing for a self-regulatory function reporting to an independent Board. The Commission believes that the Board of Executives is designed to strike an appropriate balance by allowing representatives of those groups that have a day-to-day stake in the affairs of the Exchange to continue to have a voice, but not the leading role, in the Exchange's governance.

C. Fair Representation

Section 6(b)(3) of the Act[89] imposes specific obligations on the NYSE as a registered national securities exchange to ensure that members are fairly represented in the selection of its directors and the administration of its affairs. The Commission believes that, in this context, the NYSE's proposal is consistent with this mandate.

Under the amended Constitution, NYSE members would continue to elect the Board of Directors, other than the Chairman and the CEO. The ability to cast a vote for Board candidates ensures that members are involved in the selection of the NYSE directors, in compliance with section 6(b)(3).[90] Additionally, the amended Constitution would provide that the Industry Members of the Board of Executives, who represent different segments of the NYSE membership, including member organizations, specialist organizations, and floor representatives, have the right to designate 20% of the nominees elected by members to the Board (and in no event fewer than two directors).[91] Accordingly, NYSE members not only elect all of the members of the Exchange Board, (excluding the Chairman and CEO), but they also have the ability to nominate no less than 20% of them. These nominations must satisfy the independence standards for the Board. In addition, the amended NYSE Constitution maintains a petition process that permits members to put forward nominees for elected positions, so long as the nominee or nominees receive a sufficient number of endorsements.[92]

Furthermore, Industry Members are assured a role in the administration of the Exchange through their participation on the Board of Executives, which is empowered to advise the CEO in the management of the Exchange's operations. As members of the Board of Executives, Industry Members also will have the opportunity to participate on Joint Committees, including the Regulation, Enforcement & Listing Standards Committee, which is required to have at least one Industry Member. The amended NYSE Constitution also requires the Chairman to call a special meeting of the members upon written request of no less than one hundred members.[93]

Finally, section 6(b)(3) of the Act requires the NYSE to have rules that ensure that one or more directors represent issuers and investors, and not be associated with a member of the exchange, broker, or dealer. The Commission believes that the NYSE proposal explicitly fulfills this mandate by specifying that the directors elected by Exchange members shall include directors who will enable the Exchange to comply with the requirements of section 6(b)(3) of the Act[94] and also by requiring that the Nominating Committee recommend to the Board one candidate that represents issuers and one candidate that represents investors.[95]

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[88] The Commission notes that, under an amendment to the Constitution recently approved by the reconstituted NYSE Board, the CEO would be recused from deliberations of the Board, whether it is acting as the Board or as a committee of the whole with respect to the activities of the four Standing Committees. *See* Additional Amendments Letter, *supra* note .

[89] 15 U.S.C. 78f(b)(3).

[90] 15 U.S.C. 78b(b)(3).

[91] The Commission notes that the amended Constitution also would explicitly require the Industry Members to propose persons who, in their opinion, would allow the Exchange to meet the fair representation requirements set forth under section 6(b)(3).

[92] NYSE Constitution, Article III, Section 1(c).

[93] NYSE Constitution, Article III, Section 4.

D. Independence of the Regulatory Function

The Act requires registered exchanges to be so organized that they act as self-regulatory organizations in overseeing their markets and the conduct of their affairs. The Commission believes that any proposed revisions to the Exchange's governance must assure that the NYSE's regulatory function is strong, vigorous, and sufficiently independent and insulated from improper influence from management or any regulated entity. In the Commission's view, the proposed amendments to the NYSE's governance and management architecture are designed to advance this goal.

The NYSE has proposed to create a Chief Regulatory Officer who reports directly to the Board's Regulatory Oversight & Regulatory Budget Committee. As noted above, this Committee determines the Exchange's regulatory plan, programs, budget and staffing proposals and, significantly, is composed of independent directors (other than the CEO), *i.e.*, persons certifiably independent of management or any regulated entity. Inappropriate influence by management that might compromise regulatory integrity also is checked by the fact that the Regulatory Oversight & Regulatory Budget Committee recommends compensation and personnel actions involving senior regulatory personnel to the Board's Compensation Committee—another independent Board committee—rather than to the CEO or any other representative of management. In addition, the Chief Regulatory Officer has no formal reporting relationship with the CEO, except for limited administrative purposes.

Some commenters expressed concern regarding the regulatory function of the NYSE and supported a complete structural separation of the Exchange's regulatory and market functions. As noted above, the exchange self-regulatory structure set forth in the Act is based on the principle that regulation is best informed and most able to reflect ethical standards when that regulation takes place close to the activity to be regulated. Nonetheless, there must be sufficient independence in the regulatory process to prevail against undue interference or influence from the persons or entities being regulated. This independence could be achieved in a variety of ways, including separating entirely the regulatory and market functions of an SRO through, for example, the creation of separate subsidiaries, one of which contains the market function and the other the regulatory function.[96]

The Commission believes that the proposed amendments to the NYSE's governance structure, and in particular the creation of a Chief Regulatory Officer reporting directly to an independent Regulatory Oversight & Regulatory Budget Committee, add a significant degree of independence that should insulate regulatory activity from economic pressures and potential conflicts of interest. The Commission believes that, in this context, the NYSE's proposal is consistent with the statutory requirements. As the Commission continues to review issues relating to self-regulation, it may determine that further separation of the self-regulatory process from market operations would better assure the integrity of the securities markets and the protection of investors.

E. Committees

The proposed amendments to the NYSE Constitution codify the composition and operations of several key committees that have been delegated responsibility over critical Exchange operations. The Commission notes that information about the functions of nearly all NYSE committees was previously not widely available; indeed, only the Nominating Committee had been explicitly mentioned in the NYSE Constitution. The proposed amendments increase the transparency of several key committees and, as a result, their accountability, to the benefit of the Exchange and the investing public.

The Commission believes that the duties, responsibilities, and guidelines assigned to each Standing Committee should help foster strong and independent committees. For example, the Nominating & Governance Committee is subject to an explicit mandate to propose candidates for the Board who are committed to serving the interests of the public and strengthening the Exchange as a public securities market, and that meet the fair representation requirements of the Act. That Committee also has the obligation to conduct the Board's annual governance review, and establish an appropriate process for Board and Board of Executive self-assessments. In the Commission's view, an annual governance review and self-assessments are promising means of assuring that the NYSE remains vigilant and active in its pursuit of improved governance processes.

Similarly, the Commission believes that the new responsibilities of the Human Resources & Compensation Committee are appropriate. This Committee, and not management, must now set forth explicit corporate goals and objectives related to the compensation of the CEO, and evaluate the CEO's performance in light of these goals. These changes comport with the newly-adopted standards for NYSE listed issuers, which require that compensation matters be considered by a committee of the board composed exclusively of independent directors.[97] The new provision is in marked contrast to the way the NYSE Human Resources & Compensation Committee previously appeared to operate. In addition, the Commission believes that the requirement that the Committee report annually to members and the public on the compensation of the five most highly compensated officers of the Exchange, as well as on director compensation, should increase the transparency of this Committee's actions.

The Commission believes that the responsibilities assigned to the NYSE's Audit Committee also are appropriate, particularly with respect to the Audit Committee's direct responsibility for assuring that the NYSE retain a suitable independent auditor. The Commission notes that the NYSE has committed that the Audit Committee's charter would contain additional duties and responsibilities comparable to those required of issuers listed on the Exchange.[98] Thus, the NYSE's own Audit Committee will be held to the same degree of independence and appropriate conduct that the NYSE requires of its listed companies.

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[94] NYSE Constitution, Article IV, Section 2.

[95] NYSE Constitution, Article IV, Section 12(a)(1). In this regard, the Commission notes that, in the Second Reed Letter, the Exchange disagreed with the suggestion of some commenters that the Board should include specific directors who represent "public investors," the "buy-side" or "any other particular constituent group." For the sake of clarity, the Commission would like to point out that, while the Act does not require the Board to include any directors who represent a discrete group within the universe of investors, in order to give effect to section 6(b)(3) of the Act, at least one director should represent the interests of investors generally, including when those interests may differ from the interests of Exchange members and broker-dealers. A proper reading of the proposed Constitution requires this result.

[96] For example, NASD, Inc. has one subsidiary, The Nasdaq Stock Market, Inc., to carry out NASD's market function and another subsidiary, NASD Regulation, to carry out the NASD's regulatory function.

[97] *See* NYSE/Nasdaq Corporate Governance Listing Standards Approval Order, *supra* note 86.

The Commission also believes that the responsibilities assigned to the Regulatory Oversight & Regulatory Budget Committee should support and enhance the independence of the NYSE's regulatory regime. As noted above, this Committee is responsible for overseeing the Exchange's regulatory program. It is the Commission's view that this Committee should play a particularly important role in making certain that the Exchange possesses a strong and independent regulatory program.

Finally, the Commission also believes that the composition and operation of the Regulation, Enforcement & Listing Standards Committee which, among other things, is charged with hearing appeals of disciplinary determinations, complies with the Act's requirement to provide for a fair procedure for the disciplining of member and persons associated with members. This Joint Committee will be composed of both directors (other than the CEO) and members of the Board of Executives, including at least one Industry Member; moreover, a majority of the members voting on a matter subject to a vote of this Committee must be directors. Committee action on appeals of disciplinary determinations will require that a majority of members voting on the action must be independent directors, but the Committee must include at least one Industry Member, which means that there will be representation and input by at least one NYSE member.[99]

One commenter expressed concern about the composition of certain NYSE committees, while another commenter called for greater disclosure of information by key committees. In addition, several commenters advocated that the NYSE increase the transparency of its own operations. The Commission believes that the amendments regarding NYSE Committees should improve the governance of the NYSE and the transparency of its processes. The amended Constitution explicitly outlines the responsibilities and duties of several key committees. This increased disclosure of the decision-making processes and the bases for Committee actions should benefit the Exchange, its constituencies, and investors. The Commission recognizes that for the most part SROs in the past were not required to adhere to high standards of transparency. The Commission plans to continue to work with the NYSE and other SROs to improve their level of transparency.

F. Amendments to the Constitution

The Commission believes that the ability of directors to amend certain specified provisions of the Constitution without member approval should help streamline the Exchange's governance processes. Through this revision, the Board should be able to respond quickly and decisively if a revision to the specified provisions of the Constitution is considered appropriate and the majority of directors votes in favor of such change. The Commission believes that this kind of flexibility for directors is an appropriate tool to address potential governance weaknesses.

VI. Conclusion

In light of the serious governance issues recently confronted by the Exchange and the need for immediate reform measures, the NYSE's proposal is designed to address concerns about the independence of the Board of Directors and to assure the independence of the NYSE's regulatory function from the market function. The Commission believes that the proposed changes to the NYSE Constitution strengthen and improve the Exchange's governance structure. Among other things, under the amended Constitution, the independent Board will be responsible for monitoring the Exchange's governance processes, assessing whether further changes are warranted, and recommending appropriate action.

The Commission believes that the revised NYSE governance structure is one, but not the only, model for SRO governance consistent with the Act that would provide independence between the business side of the Exchange and its regulatory operations. Other self-regulatory structures or allocations of regulatory duties among SROs may offer advantages and disadvantages in terms of expertise, effectiveness, responsiveness, costs and, ultimately, investor protection. In considering the NYSE proposal, some commenters have advocated the complete separation of market and SRO functions. In the Commission's view, the complete structural separation of the NYSE's—or any other SRO's—regulatory function cannot be accomplished by an individual SRO, but would require Commission or Congressional action on a market-wide basis.

The Commission is considering a regulatory initiative to assess possible steps to strengthen the framework for the governance of SROs. In addition, the Commission will continue to consider ways to improve the transparency of the governance procedures of all SROs. In this context, some of the transparency topics the Commission may examine include increasing the disclosure of information relating to compensation of SRO directors, officers and employees; regulatory performance (*e.g.*, number of enforcement actions); types and amounts of fines levied; financial information and financial results; and the operation of key committees.

Finally, the Commission believes that the NYSE Board should continue to monitor and evaluate the Exchange's governance structure and processes on an ongoing basis, and propose further changes as appropriate, including whether the positions of Chairman and CEO should be separated permanently.

For the foregoing reasons, the Commission finds that the proposed rule change, File No. SR–NYSE–2003–34, is consistent with the Act and rules and regulations thereunder, applicable to a national securities exchange, and in particular with sections 6(b)(1), 6(b)(3), 6(b)(5) and 6(b)(7) of the Act.[100]

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change, File No. SR–NYSE–2003–34, be, and hereby is, approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—List of Comments Letters as of December 12, 2003 NYSE Amended and Restated Constitution and Corporate Governance Proposal (NYSE–2003–34)

1. Letter from Ralph S. Saul to Jonathan G. Katz, Secretary, Commission, dated November 12, 2003 ("Saul Letter").
2. Letter from Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, University of North Colorado, to Jonathan G. Katz, Secretary, Commission, dated November 22, 2003 ("Peake Letter").
3. Letter from Sean Harrigan, President, Board of Administration, California Employees' Retirement System ("CalPERS"), to William H. Donaldson, Chairman, Commission, dated November 6, 2003 ("CalPERS Letter").
4. Letter from Gary Andersen to Commission, dated November 6, 2003 ("Andersen Letter").
5. Letter from Robert G. Merrill to William H. Donaldson, Chairman, Commission, dated November 7, 2003 ("Merrill Letter").

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[98] NYSE Constitution, Article IV, Section 12(a)(3).

[99] The Commission further notes that members of the Board of Executives have been added to the list of persons or entities that can call for a review by the Board of a determination by an Exchange hearing panel regarding a disciplinary proceeding. NYSE Constitution, Article IX, Section 6.

[100] 15 U.S.C. 78f(b)(1), (b)(3), (b)(5), and (b)(7).

6. Letter from Jack Ehnes, CEO, California State Teachers'' Retirement System ("CALSTRS"), to Jonathan G. Katz, Secretary, Commission, dated November 20, 2003 ("CALSTRS Letter").
7. Letter from John Reed, Interim Chairman and CEO, NYSE, to William H. Donaldson, Chairman, Commission, dated November 25, 2003 ("Reed Letter").
8. Letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated December 2, 2003 ("ICI Letter").
9. Letter from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, to William H. Donaldson, Chairman, Commission, dated November 3, 2003 ("First CII Letter").
10. Letter from Charles W. Austin, President, Public Investors Arbitration Bar Association, to Jonathan G. Katz, Secretary, Commission, dated December 2, 2003 ("PIABA Letter").
11. Letter from Marc E. Lackritz, President, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated December 5, 2003 ("SIA Letter").
12. Letter from Alan Hevesi, Comptroller, State of New York; Phil Angelides, Treasurer, State of California; Richard H. Moore, Treasurer, State of North Carolina; Sean Harrigan, President, CalPERS; Jack Ehnes, CEO, CALSTRS; Dale McCormick, Treasurer, State of Maine; Randall Edwards, Treasurer, State of Oregon; Michael Fitzgerald, Treasurer, State of Iowa; Jonathan Miller, Treasurer, State of Kentucky; Denise Nappier, Treasurer, State of Connecticut; and Brian K. Krolicki, Treasurer, State of Nevada; to Chairman Donaldson, Commission, dated November 20, 2003 ("State Treasurers" Letter").
13. Letter from James D. Knotter to William H. Donaldson, Chairman, Commission, dated November 10, 2003 ("Knotter Letter").
14. Letter from Hans R. Reinisch to William H. Donaldson, Chairman, Commission, dated November 11, 2003 ("Reinisch Letter").
15. Letter from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, to Jonathan G. Katz, Secretary, Commission, dated November 24, 2003 ("Second CII Letter").
16. Letter from John S. Reed, Interim Chairman & CEO, NYSE, to Jonathan G. Katz, Secretary, Commission, dated December 11, 2003 ("Second Reed Letter").
17. Letter from J.P. Allen, Chair, Highway Patrol Retirement System; Robert M. Beck, Chair, Ohio Police and Fire Pension Fund; Charlie Adkins, Chair, Public Employees Retirement System of Ohio; Eugene E. Norris, Chair, State Teachers Retirement System of Ohio; and Barbara J. Miller, Chair, School Employees Retirement System of Ohio, to William H. Donaldson, Chairman, Commission, dated November 24, 2003 ("Ohio Retirement Systems Letter").
18. Letter from John B. Licata, CEO, Sonoma Securities Corporation, to William H. Donaldson, Chairman, Commission, dated November 22, 2003 ("Sonoma Letter").

[FR Doc. 03–31641 Filed 12–23–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48908; File No. SR–OCC–2003–05]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Assignment of S&P 100 Index Options

December 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 21, 2003, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change changes the assignment methodology for S&P 100 ("OEX") index options from random to pro rata.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At present, OCC uses a random assignment procedure for most classes of options.[3] Pro rata assignment was approved by the Commission for flexibly structured foreign currency options[4] and at present is used only for those options.

The Chicago Board Options Exchange ("CBOE") has asked OCC to change to a *pro rata* assignment methodology for exercises of OEX options. CBOE believes that assigning OEX option exercises on a *pro rata* basis will permit more effective hedging by market participants. When exercises are assigned on a random basis, a holder of a short position in a series in which less than 100% of the open interest is exercised cannot accurately predict whether and to what extent his position will be assigned even after he knows the percentage of open interest exercised. Under the *pro rata* assignment methodology, OCC assigns exercises in a series of options to each clearing member account in approximately the same proportion that the number of short positions of that series carried in the account bears to the total number of short options of that series. As a result, once the percentage of open interest exercised is known, clearing members and market makers can predict whether and to what extent their positions will be assigned and take appropriate market action if desired.[5]

OCC's procedures for assigning exercise notices are not set out in OCC's rules but are treated as a stated policy, practice, or interpretation with respect to OCC Rule 803, which generally addresses assignments to clearing members.[6] This proposed rule change will not effect a substantive change in either of the assignment procedures. It would merely change the assignment procedure for OEX exercises from random to *pro rata*.

OCC believes that the proposed rule change is consistent with section 17A of the Act because it promotes the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination with persons engaged in the clearing and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] This process was discussed in detail in Securities Exchange Act Release No. 46735 (October 28, 2002), 67 FR 67434 (November 5, 2002) (File No. SR–OCC–2002–19).

[4] Securities Exchange Act Release No. 38165 (January 14, 1997), 62 FR 3070 (January 21, 1997) (File No. SR–OCC–96–19).

[5] OCC assigns exercises directly to clearing members and market makers. Positions carried in combined market maker accounts are carried net and identified by acronyms that make it possible for OCC to assign exercises to short positions of individual market makers on a pro rata basis.

[6] Upon request to OCC, investors may obtain a description of OCC's assignment procedures and the options classes to which they apply.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–OCC–2003–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2003–5 and should be submitted by January 14, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31647 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–P

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[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48934; File No. SR–PCX–2003–54]

Self Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change To Amend PCXE Rule 7.37(d) Relating To Routing Orders Away

December 16, 2003.

On September 25, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PCXE Rule 7.37(d) to clarify the process by which orders are routed outside the Archipelago Exchange Facility ("ArcaEx") to away market centers or market participants. The proposed rule change was published for comment in the **Federal Register** on November 19, 2003.[3] The Commission received no comment letters on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, particularly, section 6(b)(5) of the Act.[4] The Commission believes that the PCX's clarification of the process by which orders are routed outside ArcaEx to away market centers or market participants under PCXE Rule 7.37(d) would foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities.

Furthermore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register**. The proposal does not seek to change the process by which ArcaEx routes orders to away market centers or market participants under PCXE Rule 7.37(d), but rather to clarify the existing process. The Commission believes that acceleration of this proposal would assist ArcaEx participants to better understand how ArcaEx may route their orders to away market centers or market participants under PCXE Rule 7.37(d) in a more timely manner. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[5] to approve the proposed rule change on an accelerated basis.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PCX–2003–54) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31642 Filed 12–23–03; 8:45 am]

BILLING CODE 8010–01–P

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48766 (November 10, 2003), 68 FR 65338.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(2).

[6] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Teleconference

AGENCY: Social Security Administration (SSA).

ACTION: Notice of teleconference.

DATES: Thursday, January 22, 2004.

Teleconference: Thursday, January 22, 2004, 1:30 p.m. to 3:30 p.m. Eastern time.

Ticket to Work and Work Incentives Advisory Panel Conference Call: Call-in number: 1–877–546–1565. Pass code: PANEL. Leader/Host: Sarah Wiggins Mitchell.

SUPPLEMENTARY INFORMATION:

Type of meeting: This teleconference meeting is open to the public. The interested public is invited to participate by calling into the teleconference at the number listed above. Public testimony will not be taken.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory

Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the Ticket to Work and Work Incentives Advisory Act (TWWIIA). The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Agenda: The Panel will be discussing its Annual Report to the President and Congress. The agenda for this meeting will be posted on the Internet at *http://www.socialsecurity/work/panel* one week prior to the teleconference or can be received in advance electronically or by fax upon request.

Contact Information: Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff by:

- Mail addressed to Ticket to Work and Work Incentives Advisory Panel Staff, Social Security Administration, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024;
- Telephone contact with Monique Fisher (202) 358–6435;
- Fax at (202) 358–6440; or
- E-mail to *TWWIIAPanel@ssa.gov*.

Dated: December 18, 2003.

Deborah Morrison,

Designated Federal Official.

[FR Doc. 03–31682 Filed 12–23–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4570]

Culturally Significant Objects Imported for Exhibition; Determinations: “Deadly Medicine: Creating the Master Race”

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that an object to be included in the exhibition “Deadly Medicine: Creating the Master Race,” imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at the Holocaust Memorial Museum, Washington, DC, from on or about April 22, 2004, to on or about October 17, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, telephone: (202) 619–6529. The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 17, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31722 Filed 12–23–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4569]

Culturally Significant Objects Imported for Exhibition; Determinations: “Gauguin Tahiti”

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition “Gauguin Tahiti,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, MA, from on or about February 29, 2004, to on or about June 20, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 17, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31721 Filed 12–23–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4571]

Culturally Significant Objects Imported for Exhibition; Determinations: “Playing with Fire: European Terracotta Models, 1740–1840”

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition “Playing with Fire: European Terracotta Models, 1740–1840,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about January 26, 2004, to on or about April 25, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 17, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31723 Filed 12–23–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4572]

Culturally Significant Objects Imported for Exhibition; Determinations: "Roth Time—A Dieter Roth Retrospective"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended by Delegation of Authority No. 236–3 of August 28, 2000 (65 FR 53795), and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibit, "Roth Time—A Dieter Roth Retrospective," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the objects at the Museum of Modern Art, New York, New York, from on or about March 10, 2004, to on or about June 7, 2004, and possible additional venues yet to be determined is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 11, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31724 Filed 12–23–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4574]

Bureau of Nonproliferation; Imposition of Missile Proliferation Sanctions Against Macedonian Entities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that Macedonian entities have engaged in missile technology proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)); Section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 13222 of August 17, 2001 (hereinafter cited as the "Export Administration Act of 1979"); and Executive Order 12851 of June 11, 1993; a determination was made on December 11, 2003, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in Section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A)) and Section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i) on the following entities and their subunits and successors:

1. Blagoja Samakoski (Macedonian national);
2. Mikrosam (Macedonia).

Accordingly, the following sanctions are being imposed on these entities:

(A) New individual licenses for exports to the entities described above of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) New licenses for export to the entities described above of MTCR Annex equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(C) No new United States Government contracts relating to MTCR Annex equipment or technology involving the entities described above will be entered into for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: December 18, 2003.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–31726 Filed 12–23–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4573]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures on Macedonian Entities, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The U.S. Government has determined that Macedonian entities have engaged in missile technology proliferation activities that require the imposition of measures pursuant to Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998.

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202–647–1142). On import ban issues: Rochelle E. Stern, Office of Foreign Assets Control, Department of the Treasury, (202–622–4855). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement

Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Executive Order 12938 of November 14, 1994, as amended, the U.S. Government determined on December 11, 2003 that the following Macedonian persons engaged in proliferation activities that require the imposition of measures pursuant to sections 4(b), 4(c), and 4(d) of Executive Order 12938:

1. Blagoja Samakoski (Macedonian national);
2. Mikrosam (Macedonia).

Accordingly, pursuant to the provisions of Executive Order 12938, as amended, the following measures are imposed on these entities and their subunits and successors for a period of two years:

1. All departments and agencies of the United States Government shall not procure or enter into any contract for the procurement of any goods, technology, or services from these entities and shall terminate any such existing contracts;
2. All departments and agencies of the United States government shall not provide any assistance to these entities, and shall not obligate further funds for such purposes;
3. The Secretary of the Treasury shall prohibit the importation into the United States of any goods, technology, or services produced or provided by these entities, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

These measures shall be implemented by the responsible departments and agencies as provided in Executive Order 12938.

In addition, pursuant to section 126.7(a)(1) of the International Traffic in Arms Regulations, it is deemed that suspending the above-named entities from participating in any activities subject to Section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States.

Therefore, until further notice, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense articles and defense services from the United States; (b) transfers of U.S.-origin defense articles and defense services from foreign destinations; and (c) temporary import of defense articles to or from the above-named entities.

Moreover, it is the policy of the United States to deny licenses and other approvals for exports and temporary imports of defense articles and defense services destined for these entities.

Dated: December 18, 2003.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–31725 Filed 12–23–03; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Dominican Republic Free Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: This publication gives notice that, pursuant to the Trade Act of 2002, and consistent with Executive order 13141 (64 FR 63169) (Nov. 18, 1999) and its implementing guidelines (65 FR 79442), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the proposed United States-Dominican Republic Free Trade Agreement (FTA). The TPSC is requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for our environmental laws and regulations. The TPSC also welcomes public views on appropriate methodologies and sources of data for conducting the review. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

DATES: Public comments should be received no later than January 30, 2004.

ADDRESSES: Submissions by electronic mail: *FR0406@ustr.gov.*

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to David Brooks, Environment and Natural Resources Section, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On August 4, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative, Ambassador Robert B. Zoellick, notified Congress of the President's intent to enter into trade negotiations with the Dominican Republic. Ambassador Zoellick outlined the specific U.S. objectives for the FTA in the notification letters to Congress. The letters to House Speaker Dennis Hastert and Senate President Pro Tempore Ted Stevens can be found on the USTR Web site at *www.ustr.gov/new/fta/Dr/2003-08-04-notification-senate.pdf* and *www.ustr.gov/new/fta/Dr/2003-08-04-notification-house.pdf.*

Since 1984, U.S. unilateral trade preferences through the Caribbean Basin Initiative (CBI) have defined the U.S. trade relationship with the Dominican Republic. An FTA with the Dominican Republic will respond to direction from the Congress in the Caribbean Basin Trade Partnership Act to conclude comprehensive, mutually advantageous trade agreements with CBI countries. The Dominican Republic is the largest economy in the Caribbean Basin region and is the largest beneficiary of CBI preferences, accounting for more than one quarter of U.S. imports under the program. An FTA will build on the success of the CBI and expand U.S. access to the Dominican Republic's market, which already receives $4.3 billion in U.S. exports annually and approximately $1.4 billion in U.S. investment. In 2002, U.S. imports from the Dominican Republic totaled $4.2 billion.

Recognizing the benefits of strengthening the ties among the Dominican Republic, Central America, and the United States, we expect to apply essentially the same disciplines with the Dominican Republic as those we are currently negotiating with the five member countries of the Central American Economic Integration System

(Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, hereinafter "Central America"), and to negotiate specific market access commitments with the Dominican Republic. Therefore, persons wishing to comment on the scope of the environmental review for the proposed FTA with the Dominican Republic are encouraged to make reference to the recently-released interim environmental review of the U.S.-Central America FTA, available at *www.ustr.gov/new/fta/Cafta/2003-08-22-cafta-env_review.pdf* (*see* 68 FR 51822) (August 28, 2003).

2. Environmental Review

USTR, through the TPSC, will perform an environmental review of the proposed agreement pursuant to the Trade Act of 2002 and consistent with Executive Order 13141 (64 FR 63,169) and its implementing guidelines (65 FR 79,442). Environmental reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. Reviews address potential environmental impacts of the proposed agreement and potential implications for environmental laws and regulations. The focus of the review is on impacts in the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

The TPSC currently expects that the environmental review of the proposed FTA with the Dominican Republic is likely to reach preliminary conclusions that are similar to those presented in the Interim Environmental Review of the US–CAFTA. In their comments on the scope for the review of the proposed FTA with the Dominican Republic, the public is requested to focus particular attention on environmental concerns other than those already addressed in the CAFTA Interim Review.

Given the current timetable for negotiations and the relevance of information and analysis contained in the CAFTA Interim Review, the TPSC may not prepare an interim environmental review of the proposed FTA with the Dominican Republic. If no interim review is prepared, all public comments submitted in response to this notice will be taken into account in the course of the negotiations and in the Final Review that will be prepared and published at the conclusion of the negotiations.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: "United States—Dominican Republic Environmental Review" followed by "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.txt) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

USTR will take into account the public comments on environmental issues submitted in response to a previous notice—dated August 28, 2003 (68 FR 51,823)—requesting comments from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations, including environmental issues. These comments will also be made available for public inspection.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 03–31618 Filed 12–23–03; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Propeller Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of advisory circular.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of advisory circular (AC) numbers 35.4–1, Propeller Instructions for Continued Airworthiness.

DATES: The Engine and Propeller Directorate, Aircraft Certification Service, issued AC 35.4–1 on November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7116; fax: (781) 238–7199; e-mail: *jay.turnberg@faa.gov.* The subject AC is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.*

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on January 2, 2003 (68 FR 148) to announce the availability of the proposed AC and invite interested parties to comment.

Background

The propeller type certification process requires the applicant to prepare Instructions for Continued Airworthiness (ICA) under § 35.4. The ICA provide information for proper maintenance that ensures that propellers of that type design are airworthy. This AC addresses preparing ICA for propellers.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on November 3, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–31747 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Front Royal-Warren County Airport, Front Royal, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 0.5924 acres of land at the Front Royal-Warren County Airport, Front Royal, Virginia to the Virginia Department of Transportation for the relocation of Virginia Route 615. There are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. The road is being relocated to provide for a standard runway safety area and the existing Route 615 right-of-way will be exchanged for the relocated road right-of-way.

DATES: Comments must be received on or before January 23, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George W. Hodgkiss, Treasurer—Warren County Airport Commission, at the following address: Mr. David E. Labovitz, Treasurer—Warren County Airport Commission, 229 Stokes Airport Road, Front Royal, VA 22630.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia, on December 8, 2003.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 03–31749 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Notice of Intent To Rule on Request To Release Airport Property at the Gunnison-Crested Butte Regional Airport, Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comments on the release of land at the Gunnison-Crested Butte Regional Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before January 23, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig A. Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado, 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Katherine L. Lucas, Administrative Director, Gunnison-Crested Butte Regional Airport, 711 West Rio Grande, Gunnison, Colorado, 81230.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Gunnison-Crested Butte Regional Airport under the provisions of the AIR 21.

On July 16, 2003, the FAA determined that the request to release property at the Gunnison-Crested Butte Regional Airport submitted by the County of Gunnison, Colorado met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than January 31, 2004.

The following is a brief overview of the request: The Gunnison-Crested Butte Regional Airport requests the release of 0.44 acres of non-aeronautical airport property to the County of Gunnison, Colorado. The purpose of this release is to allow Gunnison County to sell the subject land that has been effectively severed from other airport property and no longer serves any aeronautical purpose at the airport. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may inspect the application, notice and other documents germane to the application in person at the Gunnison-Crested Butte Regional Airport, 711 West Rio Grande, Gunnison, Colorado, 91230.

Issued in Denver, Colorado, on November 26, 2003.

Craig A. Sparks,

Manager, Denver Airports District Office.

[FR Doc. 03–31746 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Bolton Field Airport, Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Columbus Port Authority for Bolton Field Airport under the provisions of 49 U.S.C. 47501 *et. seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is December 5, 2003.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–605, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, (734) 229–2905.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Bolton Field Airport are in compliance with applicable requirements of Part 150, effective December 5, 2003.

Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Columbus Airport Authority. The documentation that constitutes the "noise exposure maps" as defined in section 150.7 of part 150 includes: Exhibit 3 "Exhibit (2001) Noise Exposure Map" and Exhibit 6 "Future (2006) Noise Exposure Map" in the submission. The FAA has determined that these noise exposure maps and accompanying documentation for Bolton Field Airport are in compliance with applicable requirements. This determination is effective on December 5, 2003. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator, which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174; Bolton Field Airport, Airport Terminal Building, 2000 Norton Road, Columbus, Ohio 43228.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Romulus, Michigan, December 5, 2003.

Winsome Lenfert,

Acting Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 03–31751 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–77]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 13, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2003–16618 by any of the following methods:

- Web site: *http://dms.dot.gov.*

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist (425–227–2126), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 19, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–16618.

Petitioner: Israel Aircraft Industries, Ltd.

Sections of 14 CFR Affected: 14 CFR 25.783(h), 25.807(g)(1), 25.810(a)(1), 25.813(b)(3), 25.857(e), and 25.1447(c)(1).

Description of Relief Sought: Petitioner requests exemption from certain provisions of Title 14, Code of Federal Regulations (CFR), to allow carriage of two non-crewmembers on Boeing Model 737–300 airplanes when operated in a freighter configuration.

[FR Doc. 03–31730 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–78]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC, on December 19, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–16212.

Petitioner: Dassault Aviation.

Section of 14 CFR Affected: 14 CFR 25.758(a).

Description of Relief Sought/ Disposition: To amend a previously granted exemption regarding occupant protection requirements for persons occupying multiple-place side-facing seats during takeoff and landing on Falcon Model 2000 airplanes manufactured before January 1, 2004. The amendment would remove the limitation that restricts its applicability to airplanes manufactured before January 1, 2004.

Grant of Exemption, 12/01/2003, Exemption No. 7104A.

Docket No.: FAA–2003–14423.

Petitioner: Dassault Aviation.

Section of 14 CFR Affected: 14 CFR 25.785(b).

Description of Relief Sought/ Disposition: To amend a previously granted exemption regarding occupant protection requirements for persons occupying multiple-place side-facing seats during takeoff and landing on Falcon Model 2000EX airplanes manufactured before January 1, 2004. The amendment would remove the limitation that restricts its applicability to airplanes manufactured before January 1, 2004.

Grant of Exemption, 12/01/2003, Exemption No. 8007A.

[FR Doc. 03–31731 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In November 2003, there were three applications approved. Additionally, one approved amendment to a previously approved application is listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Allegheny County Airport Authority, Pittsburgh, Pennsylvania.

Application Number: 03–02–U–00–PIT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $125,000.

Charge Effective Date: October 1, 2001.

Estimated Charge Expiration Date: October 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Replace security fence.

Decision Date: November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Huntsville-Madison County Airport Authority, Huntsville, Alabama.

Application Number: 03–13–C–00–HSV.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $893,788.

Earliest Charge Effective Date: September 1, 2005.

Estimated Charge Expiration Date: April 1, 2006.

Classes of Air Carriers Not Required To Collect PFC's: (1) Air taxi/ commercial operators; (2) certified air carriers; and (3) certified route air carriers having fewer than 500 annual passenger enplanements.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Huntsville International Airport.

Brief Description of Projects Approved for Collection and Use:

Aircraft rescue and firefighting vehicle.

Security enhancements.

Pavement condition index study.

Fixed base operator taxi widening and taxi lane installation.

Baggage claim/terminal renovation.

Terminal front sink hole repair.

Air traffic control tower site study.

Aircraft rescue and firefighting suit replacements.

Regional jet bridge modifications.

New jet bridge, gate 9.

Terminal front access road paving/ canopy.

Airfield/ramp rehabilitation.

Decision Date: November 5, 2003.

FOR FURTHER INFORMATION CONTACT: Keafur Grimes, Jackson Airports District Office, (601) 664–9884.

Public Agency: San Francisco Airport Commission, San Francisco, California.

Application Number: 03–03–C–00–SFO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $539,107,697.

Earliest Charge Effective Date: November 1, 2008.

Estimated Charge Expiration Date: November 1, 2018.

Class of Air Carriers Not Required To Collect PFCs: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Francisco International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Boarding areas A and G.

International terminal building.

Decision Date: November 7, 2003.

FOR FURTHER INFORMATION CONTACT: Marlys Lingsch, San Francisco Airports District Office, (650) 876–2806.

Amendment to PFC Approvals:

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99–01–C–03–ANC, Anchorage, AK	11/14/03	$15,000,000	$22,000,000	01/01/04	01/01/06

Issued in Washington, DC, on December 19, 2003.

JoAnn Horne,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 03–31748 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Inyokern Airport, Inyokern, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Inyokern Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 23, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Bldv., Room 3024, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Nancy Bass, General Manager, Inyokern Airport at the following address: P.O. Box 634, Inyokern, CA 93527. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Indian Wells Valley Airport District under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David Delshad, Airports Program Engineer, Standards Section, Airports Division, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261. Telephone: (310) 725–3627. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Inyokern Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 19, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Indian Wells Valley Airport District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 25, 2004.

The following is a brief overview of the impose and use application No. 04–04–C–00–IYK:

Level of proposed PFC: $3.00.

Proposed charge effective date: March 1, 2004.

Proposed charge expiration date: September 1, 2004.

Total estimated PFC revenue: $36,183.

Brief Description of the proposed project: Install access gates.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Pacific States Aviation and other small certificated air taxi carriers not providing scheduled service to Inyokern Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Inyokern Airport Administration office.

Issued in Lawndale, California, on November 19, 2003.

Ellsworth Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 03–31745 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cities of Chesapeake and Virginia Beach, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement in cooperation with the Virginia Department of Transportation (VDOT) for the proposed Southeastern Parkway and Greenbelt.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Myers, Planning & Environmental Program Manager, Federal Highway Administration, PO Box 10249, Richmond, Virginia 23240–0249. Telephone: (804) 775–3353.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environmental Impact Statement (EIS) for the Southeastern Parkway and Greenbelt. The study area begins in central Chesapeake and extends to north central Virginia Beach. The study window is roughly defined by the Battlefield Boulevard/Great Bridge Bypass in Chesapeake to the west; the Albemarle and Chesapeake Canal in Chesapeake and North Landing Road in Virginia

Beach to the south; Volvo Parkway in Chesapeake and Lynnhaven Parkway and Laskin Road in Virginia Beach to the north; and Bird Neck Road in Virginia Beach to the east.

The EIS will examine a range of alternatives consisting of a no-build alternative as well as transportation system management strategies, mass transit, improvements to existing facilities, and new alignment facilities. Initial studies for this project began in 1987, with a Draft EIS issued in September 1989 followed by a Supplemental Draft EIS in September 1994. Subsequently, VDOT recommended, and Virginia's Commonwealth Transportation Board endorsed, a preferred alternative. However, work was suspended prior to the completion of a Final EIS. Because of the lapse of time since the circulation of the previous drafts, the study is being reinitiated with a new Draft EIS. Previous studies will be used to the extent practical and will be updated to reflect changes in the project area. The final selection of an alternative will not be made until the alternatives' impacts and comments on the draft EIS and from the public hearing have been fully evaluated.

The scoping process is currently underway. Scoping letters describing the proposed study and soliciting input are being sent to the appropriate Federal, State and local agencies who have expressed or are known to have an interest or legal role in this proposal. A Citizen's Information Meeting will be held to enable organizations, citizens, and interest groups to provide input into the development of the EIS and identify issues that should be addressed. No formal scoping meeting is planned at this time.

A Public Hearing will be held upon completion of the Draft EIS. Notices of the Public Hearing will be given through various forums, providing the time and place of the meeting along with other relevant information. The Draft EIS will be available for public and agency review and comment prior to the Public Hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 17, 2003.

Kenneth R. Myers,

Planning & Environmental Program Manager.

[FR Doc. 03–31639 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson and Park Counties, CO

AGENCY: Federal Highway Administration (FHWA) and Department of Transportation (DOT).

ACTION: Notice to amend notice of intent.

SUMMARY: FHWA is issuing this notice to advise the public that an environmental assessment will be prepared for transportation improvements on US 285 in the Counties of Jefferson and Park, Colorado, rather than an environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Scott Sands, Operations Engineer, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO, 80228, Telephone: (303) 969–6730 extension 362. Kamalesh (Kim) Patel, Project Manager, CDOT Region 1, 18500 East Colfax Avenue, Aurora, CO, 80011, Telephone: (303) 365–7373.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation (CDOT), has begun the National Environmental Policy Act (NEPA) for transportation improvements along US 285 between Conifer and Bailey, Colorado. Scoping has been completed, alternatives have been developed and evaluated and environmental impact analysis has been done.

As a result of these NEPA studies, FHWA and CDOT have determined that this project will not result in a significant impact to the environment, thus an environmental impact statement will not be prepared.

Analysis of the following areas was conducted to reach this determination: Land use and zoning; social; economic; right-of-way; air quality; noise; water resources and quality; wetlands; floodplains; wild and scenic rivers; vegetation and wildlife; threatened, endangered and sensitive species; visual quality; historic preservation; hazardous waste; utilities; parks and recreation resources; farmland; relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; irreversible and irretrievable commitments of resources; and cumulative impacts.

Comments or questions concerning this proposed action and the environmental assessment should be directed to the FHWA or the Colorado Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 18, 2003.

Ronald Speral,

Program Delivery Engineer.

[FR Doc. 03–31668 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16564]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 29 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before January 23, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2003–16564 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building,

400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 29 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Lee A. Burke

Mr. Burke, age 46, has a corneal scar in his right eye due to a childhood injury. His best-corrected visual acuity in the right eye is 20/70 and in the left, 20/15. Following an examination in 2003, his ophthalmologist certified, "In summary, it is my medical opinion that Mr. Burke has very good vision with both eyes open. I have no concern about his abilities to safely operate a commercial vehicle." Mr. Burke reported that he has driven straight trucks for 28 years, accumulating 112,000 miles. He holds a Class D driver's license from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

2. Barton C. Caldara

Mr. Caldara, 37, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/150 and in the left, 20/20. His ophthalmologist examined him in 2003 and stated, "I believe Mr. Caldara has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Caldara reported that he has driven tractor-trailer combinations for 13 years, accumulating 325,000 miles. He holds a Class ABCDM CDL from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

3. Terrance F. Case

Mr. Case, 59, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2003, his optometrist stated, "He has functioned normally all his life with this vision and in my professional opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Case submitted that he has driven straight trucks for 28 years, accumulating 308,000 miles, and tractor-trailer combinations for 5 years, accumulating 350,000 miles. He holds a Class A CDL from Maine. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

4. Lawrence M. Daley

Mr. Daley, 55, has had a central field defect in his left eye due to histoplasmosis since 1997. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/150. Following an examination in 2003, his ophthalmologist certified, "In light of Mr. Daley having operated a commercial vehicle safely for the last 6 years with this condition, I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Daley reported that he has driven straight trucks for 3 years, accumulating 150,000 miles, and tractor-trailer combinations for 30 years, accumulating 300,000 miles. He holds a Class D driver's license from South Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

5. Allan Darley

Mr. Darley, 44, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/125. Following an examination in 2003, his ophthalmologist stated, "According to findings of my examination, I feel that he would, therefore, qualify to have sufficient vision to perform his driving tasks as required for operating a commercial vehicle." Mr. Darley submitted that he has driven straight trucks for 23 years, accumulating 460,000 miles, and tractor-trailer combinations for 18 years, accumulating 360,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

6. Charley Davis

Mr. Davis, 50, lost his left eye due to an injury 30 years ago. His visual acuity in the right eye is 20/20. Following an examination in 2003, his optometrist certified, "In my opinion, due to his excellent visual acuity, good peripheral vision, and many years of driving experience, he has sufficient vision for driving a commercial vehicle." Mr. Davis reported that he has driven tractor-trailer combinations for 29 years, accumulating 3.5 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

7. Ray L. Emert

Mr. Emert, 44, lost his left eye due to an injury in 1982. His visual acuity in the right eye is 20/20. Following an examination in 2003, his optometrist certified, "It is my opinion that Mr. Emert has sufficient and stable vision to perform any tasks needed to drive a commercial vehicle." Mr. Emert reported that he has driven straight trucks for 9 years, accumulating 765,000 miles, and tractor-trailer combinations for 8 years, accumulating 960,000 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

8. Robin S. England

Mr. England, 40, is blind in his left eye due to an accident at age 11. The visual acuity in his right eye is 20/20. His optometrist examined him in 2003 and certified, "In my opinion, Mr. English has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. England submitted that he has driven straight trucks and tractor-trailer combinations for 23 years, accumulating 1.2 million miles in the former and 2.9 million miles in the latter. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

9. Jessie W. Ford

Mr. Ford, 58, has a corneal scar in his right eye due to trauma 42 years ago. His visual acuity in the right eye is 20/200 and in the left, 20/20. His optometrist examined him in 2003 and certified, "It is my medical opinion that Mr. Ford has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ford reported that he has driven straight trucks for 39 years, accumulating 1.7 million miles, and tractor-trailer combinations for 29 years, accumulating 1.5 million miles. He holds a Class A CDL from Louisiana. His driving record shows no crashes or convictions for moving violations in a CMV during the last 3 years.

10. Richard Hailey, Jr.

Mr. Hailey, 48, is blind in his right eye due to an injury at age 9. His visual acuity in the left eye is 20/20. Following an examination in 2003, his ophthalmologist certified, "In my opinion, Mr. Hailey has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hailey reported that he has driven buses for 6 years, accumulating 84,000 miles. He holds a Class D operator's license from the District of Columbia currently, but at the time of his application he held a Class B CDL, now expired. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

11. Spencer N. Haugen

Mr. Haugen, 55, has amblyopia in his right eye. The visual acuity in his right eye is 20/600 and in the left, 20/20. Following an examination in 2003, his optometrist stated, "In my opinion, he has sufficient vision to perform required driving tasks and has sufficient vision to operate a commercial vehicle." Mr. Haugen submitted that he has driven straight trucks and tractor-trailer combinations for 35 years, accumulating 280,000 miles in the former and 2.1 million miles in the latter. He holds a Class AM CDL from North Dakota. His driving record shows no crashes or convictions for moving violations in a CMV during the last 3 years.

12. Thomas R. Hedden

Mr. Hedden, 49, lost his right eye due to an injury in 1956. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 2003, his optometrist certified, "I certify in my medical opinion, Mr. Hedden has adequate vision in his left eye to allow him to operate a commercial vehicle safely." Mr. Hedden reported that he has driven straight trucks and tractor-trailer combinations for 30 years, accumulating 300,000 miles in each, and buses for 1 year, accumulating 500 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

13. William G. Hix

Mr. Hix, 49, lost his left eye due to an injury in 1994. His visual acuity in the right eye is 20/15. His optometrist examined him in 2003 and certified, "In my opinion, Mr. Hix does have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hix reported that he has driven straight trucks for 25 years, accumulating 200,000 miles, and tractor-trailer combinations for 20 years, accumulating 80,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

14. Robert V. Hodges

Mr. Hodges, 53, has amblyopia in his left eye. His visual acuity in the right eye is 20/20 and in the left, 20/800. His ophthalmologist examined him in 2003 and stated, "To summarize, I certify that Mr. Hodges has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Hodges reported that he has driven straight trucks and tractor-trailer combinations for 32 years, accumulating 320,000 miles in the former and 1.3 million miles in the latter. He holds a Class A CDL from Illinois. His driving record shows no crashes or convictions for moving violations in a CMV during the last 3 years.

15. Jay W. Jarvis

Mr. Jarvis, 53, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/100. His optometrist examined him in 2003 and stated, "At this time Mr. Jarvis has sufficient distance and peripheral field of vision to perform the driving tasks that he has been performing during the past nine and a half years. Mr. Jarvis' driving record shows his ability to operate commercial vehicles without any contraindications." Mr. Jarvis reported that he has driven tractor-trailer combinations for 18 years, accumulating 1.8 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

16. George R. Knavel

Mr. Knavel, 63, experienced a retinal detachment in his left eye at age 10. The visual acuity in his right eye is 20/15 and in the left, hand motion. His ophthalmologist examined him in 2003 and certified, "It is my medical opinion that he should be allowed to continue to drive commercially, and would request that you renew his operating license." Mr. Knavel reported that he has driven straight trucks for 3 years, accumulating 75,000 miles, and tractor-trailer combinations for 42 years, accumulating 4.6 million miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

17. John R. Knott, III

Mr. Knott, 47, lost his right eye due to trauma at age 8. The visual acuity in his left eye is 20/20. Following an examination in 2003 his ophthalmologist stated, "I informed the patient that as long as he continues to turn his head to the right in order to fully visualize objects to his right, that he should be able to continue to operate a commercial vehicle safely." Mr. Knott reported that he has driven tractor-trailer combinations for 21 years, accumulating 2.0 million miles. He holds a Class AM CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

18. Duane R. Krug

Mr. Krug, 59, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/80. Following an examination in 2003, his optometrist certified, "I certify that, in my professional opinion, Mr. Krug has adequate vision to safely operate a commercial vehicle." Mr. Krug reported that he has driven straight trucks for 11 years, accumulating 275,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

19. Eric M. Moats, Sr.

Mr. Moats, 34, lost his left eye due to an injury 27 years ago. His visual acuity in the right eye is 20/15. Following an examination in 2003, his ophthalmologist certified, "I see no difficulty in having this patient operate a commercial vehicle, since he has sufficient vision, color vision, and visual field." Mr. Moats reported that he has driven straight trucks for 8 years, accumulating 260,000 miles. He holds a Class B CDL from Maryland. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

20. Lester T. Papke

Mr. Papke, 61, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/60 and in the left, 20/20. Following an examination in 2003, his optometrist stated, "In my opinion, this patient's vision is stable and does not restrict him in the operation of a commercial vehicle." Mr. Papke submitted that he has driven straight trucks for 20 years, accumulating 400,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.0 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

21. Edward D. Pickle

Mr. Pickle, 60, lost his left eye due to trauma at age 2. His best-corrected visual acuity in the right eye is 20/15. His optometrist examined him in 2003 and stated, "From his past record and considering our findings, I would conclude that Mr. Pickle has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Pickle reported that he has driven straight trucks for 10 years, accumulating 250,000 miles, and tractor-trailer combinations for 10 years, accumulating 500,000 miles. He holds a Class AM CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

22. Charles D. Pointer

Mr. Pointer, 61, is blind in his left eye due to an injury at age 2. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2003, his optometrist certified, "Visual deficiency is stable and patient does have sufficient vision to perform driving tasks required for commercial vehicle." Mr. Pointer reported that he has driven straight trucks and tractor-trailer combinations for 6 years, accumulating 30,000 miles in the former and 600 miles in the latter. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

23. Richard A. Pruitt

Mr. Pruitt, 46, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2003, his ophthalmologist certified, "Our recommendation is that the patient should be able to drive a commercial vehicle well with use of glasses." Mr. Pruitt reported that he has driven tractor-trailer combinations for 18 years, accumulating 1.5 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows two crashes and no convictions for moving violations in a CMV. According to the police report for the first crash, another driver failed to stop before entering the roadway from a parking lot and struck Mr. Pruitt's vehicle. The other driver was cited for "reckless driving." According to the police report for the second crash, Mr. Pruitt's vehicle struck a cow. Mr. Pruitt was not cited in either crash.

24. Kent S. Reining

Mr. Reining, 30, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/15. Following an examination in 2003 his optometrist certified, "In my medical opinion, Kent Reining has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Reining submitted that he has driven straight trucks for 10 years, accumulating 35,000 miles, and tractor-trailer combinations for 13 years, accumulating 910,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and two convictions for moving violations—speeding and "failure to obey a traffic sign"—in a CMV. He exceeded the speed limit by 13 mph.

25. Bruce K. Robb

Mr. Robb, 48, has amblyopia in his left eye. The visual acuity in his right eye is 20/20 and in the left, light perception. Following an examination in 2003 his optometrist certified, "It is my medical opinion Mr. Robb has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Robb submitted that he has driven straight trucks for 8 years, accumulating 320,000 miles, and tractor-trailer combinations for 10 years, accumulating 900,000 miles. He holds a Class A CDL from South Dakota. His driving record shows no crashes or convictions for moving violations in a CMV during the last 3 years.

26. James J. Rouse

Mr. Rouse, 52, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is counting fingers and in the left, 20/20. His ophthalmologist examined him in 2003 and certified, "In my medical opinion, he has sufficient vision to continue driving commercial vehicles." Mr. Rouse submitted that he has driven straight trucks for 32 years, accumulating 960,000 miles, tractor-trailer combinations for 4 years, accumulating 80,000 miles, and buses for 13 years, accumulating 26,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

27. Ronald D. Ulmer

Mr. Ulmer, 56, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is count fingers and in the left, 20/20. Following an examination in 2003, his optometrist certified, "In my medical opinion, I do think that Ronald has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ulmer reported that he has driven straight trucks for 12 years, accumulating 480,000 miles. He holds a Class B CDL from Montana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

28. Mitchell A. Webb

Mr. Webb, 52, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/400. His optometrist examined him in 2003 and stated, "In my opinion, Mr. Webb has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle." Mr. Webb reported that he has driven straight trucks for 30 years, accumulating 900,000 miles, and tractor-trailer combinations for 20 years, accumulating 100,000 miles. He holds a Class A CDL from Virginia. His driving record for the past 3 years shows no crashes or convictions for moving violations in a CMV.

29. Jerry L. Wilder

Mr. Wilder, 39, lost the vision in his right eye due to trauma in 1984. The visual acuity in his left eye is 20/20. Following an examination in 2003 his ophthalmologist stated, "It is clear that Mr. Wilder has normal vision in the left eye, and I see no reason why he cannot drive safely using the mirrors that are the standard operating equipment in a truck/vehicle cab. It is clear that Mr. Wilder has been driving safely commercially for several years, and I feel that he is well adapted to continue to do so." Mr. Wilder reported that he has driven straight trucks for 4 years, accumulating 376,000 miles, and tractor-trailer combinations for 11 years, accumulating 1.4 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and one conviction for a moving violation —speeding— in a CMV. He exceeded the speed limit by 10 mph.

Requests for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: December 12, 2003.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 03–31752 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP03–004

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency investigate alleged increased vehicle stopping distance due to certain failures of the EC–17, Version 2.3 (EC–17), antilock braking system electronic control unit (ABS ECU) and the Dura Drain M–12 modulator (M–12), both manufactured by Bendix Commercial Vehicle Systems, LLC (Bendix). The petition is identified as DP03–004.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: In June 2003, Mr. Jing Tang (Petitioner) filed a petition for a defect investigation alleging that potential safety defects existed in both the EC–17, Version 2.3 (EC–17), antilock braking system electronic control unit (ABS ECU) and the Dura Drain M–12 modulator (M–12), both manufactured by Bendix Commercial Vehicle Systems, LLC (Bendix). The Petitioner asserted that the defects in both components resulted in extended vehicle stopping distances. Both components are used in the pneumatic antilock braking systems of commercial type vehicles. The EC–17 is an electronic controller for the antilock braking system of large trucks, truck tractors and buses, while the M–12 is a modulator and relay valve combination used on large trailers. The Petitioner, a former staff control engineer with the Bendix Braking Control Group, cited his personal familiarity with the components as the basis for his allegations.

The Petitioner contacted ODI in September 2002 to convey his concerns regarding these components. During the intervening months, prior to the submission of his petition, ODI monitored its consumer complaint database and attempted to follow up with possible complainants.

After receiving the petition for a defect investigation, ODI reviewed and analyzed data and information from multiple sources that included material provided by the Petitioner, vehicle owner complaints contained within the NHTSA consumer complaint database, and information provided by Bendix in response to an ODI inquiry.

EC–17 ECU Issue

Background

In July 2000, Bendix initiated a recall (NHTSA #00E–041) of the EC–17 1030R ECU primarily because the unit's software was unable to differentiate false incoming signals. The controller's interpretation of the signals activated the antilock feature, which extended braking distances under certain conditions. The EC–17 1030R was manufactured between November 3, 1997 and August 16, 2000.

At the time NHTSA was notified of the recall decision, Bendix reported that they had conducted an investigation and identified the underlying issues that prompted the action. The Bendix investigation concluded that the EC–17 1030R controller was receiving "false" signals through the wheel speed sensor input. The controller was then interpreting these false signals as impending wheel lock-up. In response to the impending wheel lock-up interpretation, the controller would command the reduction of pneumatic pressure to the vehicle brake chamber at the affected wheel. Under such conditions, with the braking system antilock feature now activated, the vehicle could experience an extended stopping distance.

Bendix identified two potential sources of the false wheel speed signals. The first source was identified as chafing to the wheel speed sensor wire due to contact with other moving or rotating components. The other source of aberrant signals was identified as damaged or displaced wheel components, such as tone rings.

Bendix concluded that by itself, the EC–17 1030R controller was not defective, but in the presence of false or aberrant wheel speed signals, the controller lacked the sufficient software codes to differentiate these signals from otherwise valid signals. Beginning mid-June 2000, Bendix introduced the EC–17 Version 2.3,[1] which contained software that adequately addressed the issue of wheel speed signal differentiation. The EC–17 Version 2.3 controller was introduced to replace the recalled EC–17 1030R controllers. In addition, Bendix introduced the EC–30 in mid-2001 to supercede the EC–17 series. As the EC–30 controller was introduced, it was also used as a remedy part for the EC–17 1030R recall.

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[1] Production of 210,913 units between 06/13/00 and 09/25/01.

The Petitioner alleges that the algorithm used in the EC–17 Version 2.3 only corrected for potential low speed (less than 12 MPH) braking problems on rough road surfaces. His concern is that extended vehicle braking distances could otherwise occur at higher speeds on rough surfaces. To illustrate his concern, the Petitioner referenced a "hardware-in-loop simulation" that depicted an extended vehicle braking distance on a washboard-type surface. During the simulation, the Petitioner reported that there was no air "pressure in the brake chamber for the first 15 seconds." The Petitioner also referenced a Kansas City area customer who complained of "non-effective brakes" when the vehicle was operated on a rough surface as a possible example of such an occurrence.

Bendix Response

Subsequent to the recall, Bendix continued to monitor complaints of extended vehicle braking distances and identified the potential for extended vehicle stopping distances on unpaved and "severely bumpy" road surfaces, such as those occasionally found in rural areas. The company's analysis, which included individual contact with complainants, revealed that an extended braking distance event was only likely to occur on severely rough road surfaces that extended for more than 100 feet. During field-testing, Bendix was unable to reproduce an extended braking event on a typical "washboard" [2] surface.

Regarding the Petitioner's allegation that extended braking distances could occur at high speeds on washboard surfaces, Bendix reported that such occurrences have not materialized in field testing or through owner complaints. Bendix advised that the Petitioner's allegations are based upon computer simulations "involving artificially induced electronic inputs" that "are more extreme even than worst case scenarios." According to Bendix, although "many of these signals are not realistic or real world conditions," they are often bench-tested with an ECU [3] to assist engineers with evaluating possible algorithm changes. Bendix concludes that although the Petitioner cites potential scenarios of extended braking distances, the basis for his conclusions involve conditions not applicable to "real world" conditions.

Regarding the Petitioner's allegation that a Kansas City-area complaint concerned extended vehicle braking distances on rough road surfaces, Bendix noted that at the time of the complaint, the remedy for the EC–17 1030R recall had not been performed on several vehicles from the fleet in question. Bendix reported satisfactory resolution of the complaint upon completion of the recall remedy and, for two of the vehicles, the correction of foundation brake problems.

Bendix reasserted that potential events of extended braking distances are only likely to occur on severe rough roads where the "washboard" surface extends more than 100 feet. The company concludes that such conditions are atypical highway conditions and that the potential can be mitigated through driver intervention. Bendix stated that investigation of the few complaints of extended braking distances revealed that the vehicles were being operated on unpaved surfaces and that by assuring increased driver awareness of ABS operation the complaints or concerns were resolved.

In consideration of these "extreme conditions," Bendix introduced the EC–30 ABS controller in June 2001. The company reports that the EC–30 Version 2.02 "provides improved performance on extreme washboard surfaces." In sum, Bendix asserts that there is no safety defect with the EC–17 Version 2.3 controller.

Bendix reported no knowledge of any crashes or injuries attributable to poor performance of either EC–17 version. Although Bendix did acknowledge the occurrence of a property damage collision [4] wherein an ABS-equipped bus rear ended another bus, separate investigations by law enforcement, the local school system, and Bendix all concluded that the sole cause was unrelated to the brake system operation and was attributed to driver inattention.

Bendix Complaint and Warranty History

ODI queried Bendix with regard to complaints and warranty claims that referenced the EC–17 controller, excluding those that referenced the model 1030R that was recalled. Bendix reported that it has received 18 complaints (including reports of incidents or inquiries) regarding poor performance, including extended braking distances (complaint rate equals to 8.5 per 100,000 units). Of the 18 complaints, only four specifically mentioned performance issues related to the vehicle being operated on a rough or "washboard" surface (corrected complaint rate 1.8 per 100,000 units). Within these complaints, where the surface condition was known, it was described as unpaved. Of the remaining 14 complaints, five were conclusively identified as unrelated to the ABS ECU. The nine remaining complaints were resolved through other component repairs or by providing additional information to the complainant (presumably the complainant used the information to resolve the complaint).

Bendix identified a total of 10th [5] warranty claims related to the EC–17 ABS control unit between September 2000 and January 2003.[6] Although the basis for the warranty claims are not identified, at least two claims were identified as involving the 1030R model in circumstances where the recall remedy had not been installed.

ODI Actions

ODI research of the NHTSA vehicle owner (or consumer) complaint database revealed no complaints regarding malfunction, failure, or extended vehicle braking distance with regard to a Bendix brand pneumatic antilock braking system component.

ODI also communicated informally with International and Blue Bird (two manufacturers that participated in the 1030R recall) and was advised that these manufacturers had not received any new complaints after the recall remedy was performed.

M–12 Modulator Issue

Background

The Petitioner alleges that his review and work on the modulator revealed that it could become ineffective at maintaining pneumatic brake pressure under cold ambient temperatures (less than 20-degrees Fahrenheit). The Petitioner stated that his research revealed that under cold ambient temperatures, the rubber diaphragm in the modulator could become rigid, thereby not permitting it to effectively seal the pilot chamber drain hole during a brake application. Should the drain not seal, sufficient pneumatic pressure may not be delivered to the brake chamber. The Petitioner reported that "an internal test" confirmed his suspicion of the diaphragm becoming rigid at cold temperatures.

M–12 Modulator and Relay Valve Assembly

Bendix describes the M–12 as a combination modulator and relay valve assembly[7] for the pneumatic antilock brake system on large trailers. Information provided by Bendix indicates that the M–12 was manufactured between November 1997 and March 2001 with a total production of approximately 78,509 units. Additional information indicates that the M–12 underwent four modifications during the years of production. Those modifications are summarized in the table below.

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[2] Bendix advised ODI that there is not an industry "benchmark" for the evaluation of rough road or "washboard" performance.

[3] Defined as "hardware in loop" simulation.

[4] March 2002, West Virginia—paved, straight, level, dry road surface at a controlled intersection.

[5] Corrected warranty rate is 3.7 per 100,000 units.

[6] As of June 2003.

Date	Modification
March 1998	Change in solenoid supplier.
August 1998	Dura Drain Feature Added.
September 1999	Housing Casting Improved.
October 2000	Dura Drain Feature Discontinued.

With regard to the defect petition, the most applicable modification would appear to be the introduction of the Dura Drain feature, which was added as a product improvement. Bendix reported an approximate production of 50,778 units (approximately 64% of the total units) with this feature. The Dura Drain feature was subsequently discontinued, reportedly as a means to reduce cost. Production of the M–12/MC–12 was discontinued approximately 5 months later (March 2001), as it was replaced by the MC–30 modulator/ECU assembly.

M–12—Bendix Response

Bendix advised ODI that with regard to the defect alleged by the Petitioner, the company conducted an investigation that consisted of multiple tests and studies. This investigation began in November 2000 after a Bendix representative, while on a routine customer contact visit, was informed of an issue that was described as "inconsistent trailer braking." The customer, a vehicle fleet owner with facilities near the Bendix headquarters, regularly participated in the evaluation of Bendix products. According to Bendix, the complaint concerned reports of three fleet drivers who described an occurrence of "trailer push," in which the vehicle driver senses that the trailer brakes appear to operate more slowly or less effectively than the tractor brakes. The ensuing investigation determined that the likely cause was a diminished build up of air pressure in the trailer brake system.

During the early stages of the investigation, the Petitioner's allegation and analysis that diaphragm rigidity due to cold ambient temperatures was considered as a possible cause. Bendix reported that further evaluation and testing "cast doubt" on the Petitioner's contentions. The company reported that there had been no similar complaints during the winter months of 1998, 1999 and early 2000. Furthermore, the compound used in the M–12 diaphragm was specified for adequate performance to −40 degrees Fahrenheit. Bendix reported that testing at cold ambient temperatures could not "consistently replicate the predicted (poor) performance" due to a rigid diaphragm.[8]

Nonetheless, Bendix continued to receive trailer-braking complaints, many outside of winter months. As Bendix conducted detailed inspections of the M–12 modulators, the company observed "a strong correlation (of braking complaints) to the presence of solid or fibrous contamination in the air intake valve area." The company also observed that the complaints "were regionally clustered" and "specific to certain vehicle (trailer) makes." The conclusion of their investigation was that contamination in the intake port of the valve and not the rigidity of the diaphragm was the most likely cause for a majority of the "trailer push" or extended braking distance complaints. Bendix also noted that an evaluation of some complaints revealed other causes such as kinked air lines or external valve damage. Regarding the source of the contamination, Bendix cited the observation of material consistent with insect infiltration or hibernation as well as possible maintenance practices.

Bendix reported no known occurrences of crashes or injuries associated with the lack of performance or failure of the M–12 modulator.

Bendix Complaint and Warranty History

ODI queried Bendix with regard to complaints and warranty claims that referenced the M–12. Bendix provided ODI with data indicating that between April 1999 and early August 2003, the company received complaints on 139 M–12 units[9] that were in use on trailers owned by seven (7) fleets. Nearly 70% of the complaints were received from one large fleet described by Bendix as one that regularly participates in product evaluations. A second large fleet accounted for approximately 18% of the complaints, revealing that nearly 88% of the complaints originated with two fleet operations.

Bendix reported that in those cases in which it was able to investigate the basis for the complaint, contamination of the air system was identified in approximately 94% of the complaints. With regard to the contamination, Bendix reported that the majority consisted of evidence of insect nesting and fibrous/cloth material likely to have been introduced during vehicle assembly or maintenance.

For all but 27 complaints, Bendix provided information on the month and year of the complaint (identified as the date of occurrence). Review of the data revealed that more than half of the complaints were received during 2001. The data also revealed that less than one half of the complaints occurred during the winter months of November through February. These trends are illustrated in the tables below.

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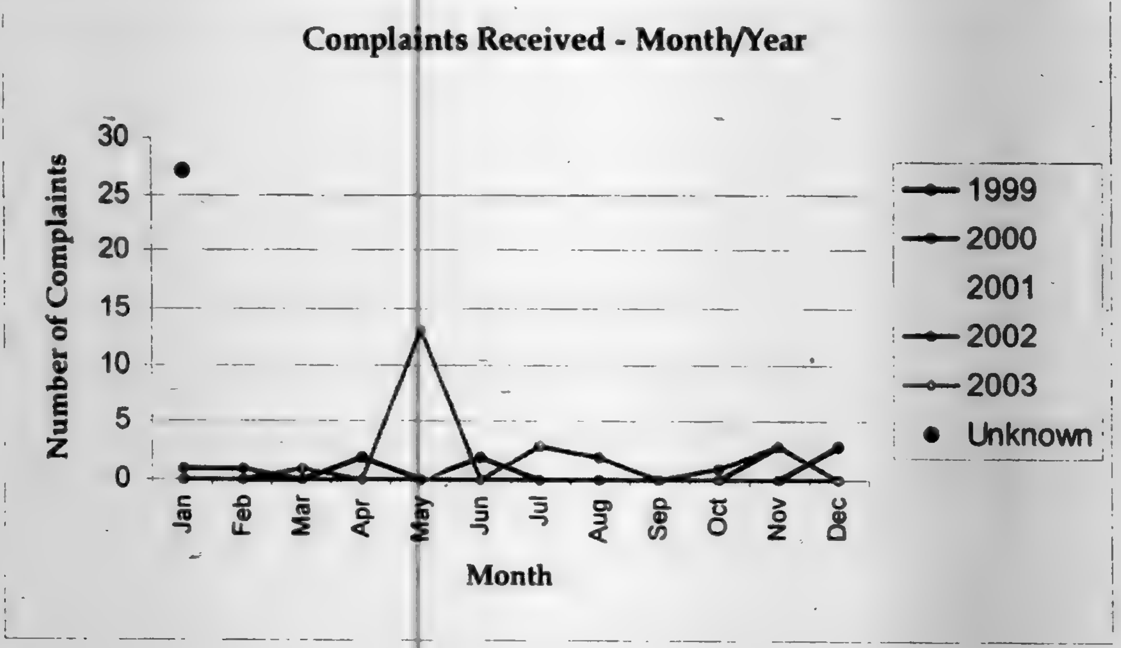
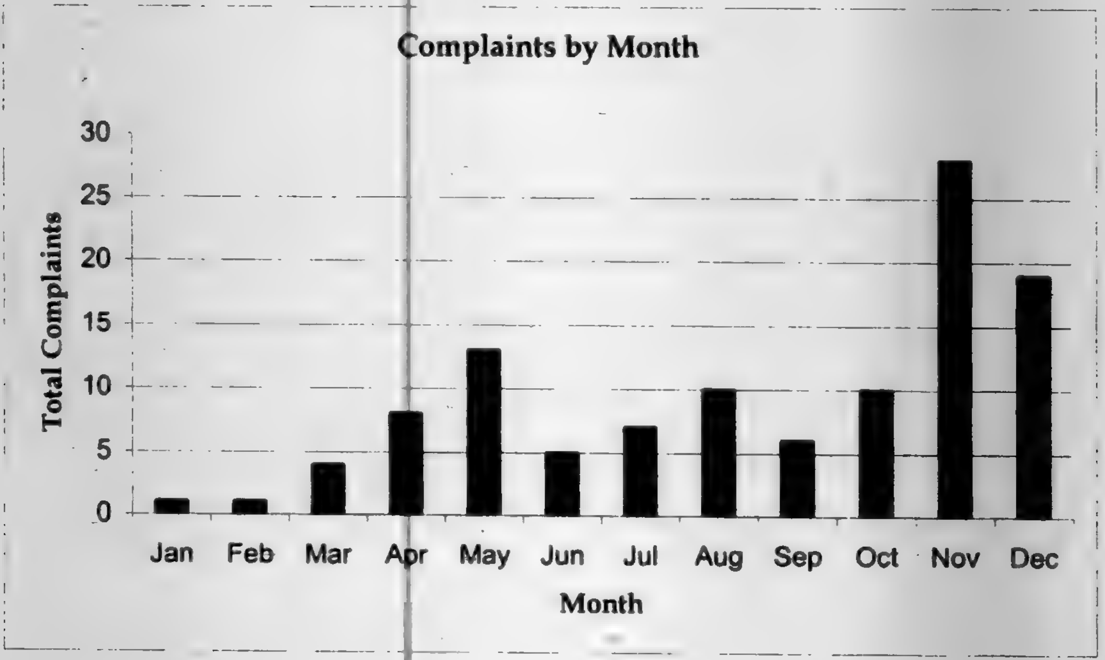
[7] The M–12 also carries the designation of MC–12 when an ECU is combined with the modulator/relay valve assembly.

[8] Data provided by Bendix does indicate that some early testing revealed occasional leakage of Dura Drain at colder temperatures when the antilock system is active. Additionally, Bendix concedes that a rigid diaphragm could lead to degradation in antilock brake performance.

[9] Complaints appear to reflect all M–12 units. There was no differentiation between units produced with and without the Dura Drain feature, resulting in an overall complaint rate of 17.7 per 10,000 units.





Bendix reported processing 65 warranty claims[10] between October 1999 and June 2003. Review of the data indicates that less than one half of the warranty claims were processed during the winter months of November through February. Information provided with the warranty claims offered few analytical details regarding the reason for the warranty claim. It is also noteworthy that the product descriptions for warranty claims reference both the M–12 (9.5% of the claims) and the MC–12 (90.5% of the claims). Since the MC–12 also contains the ECU, some of the claims may be related to components other than the Dura Drain feature. The warranty data provided no differentiation between units equipped or not equipped with the Dura Drain feature. Warranty trends are illustrated in the tables below.

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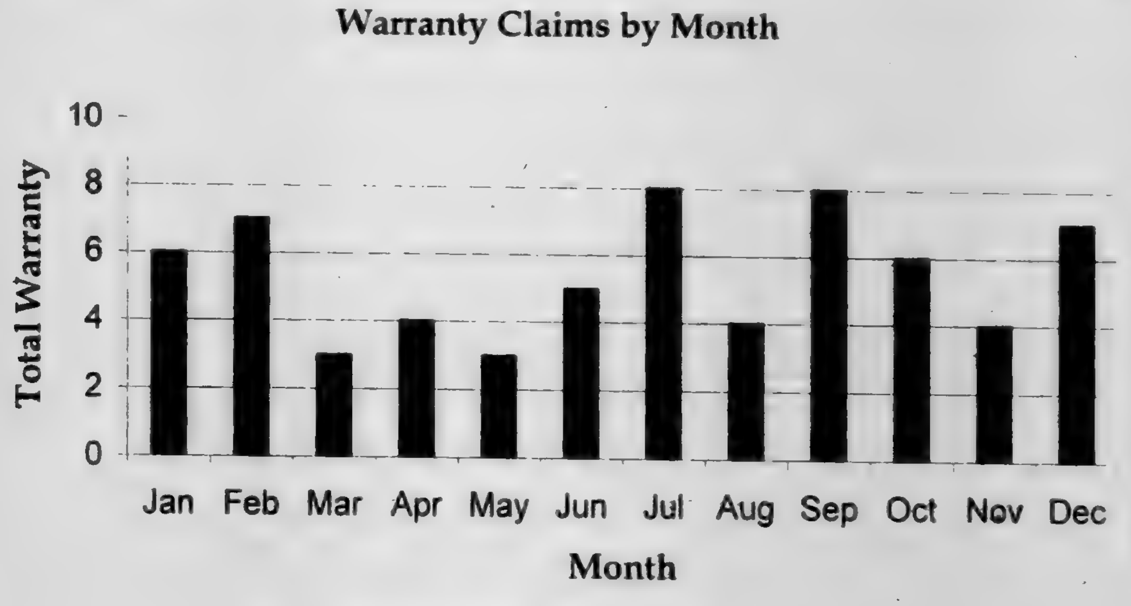
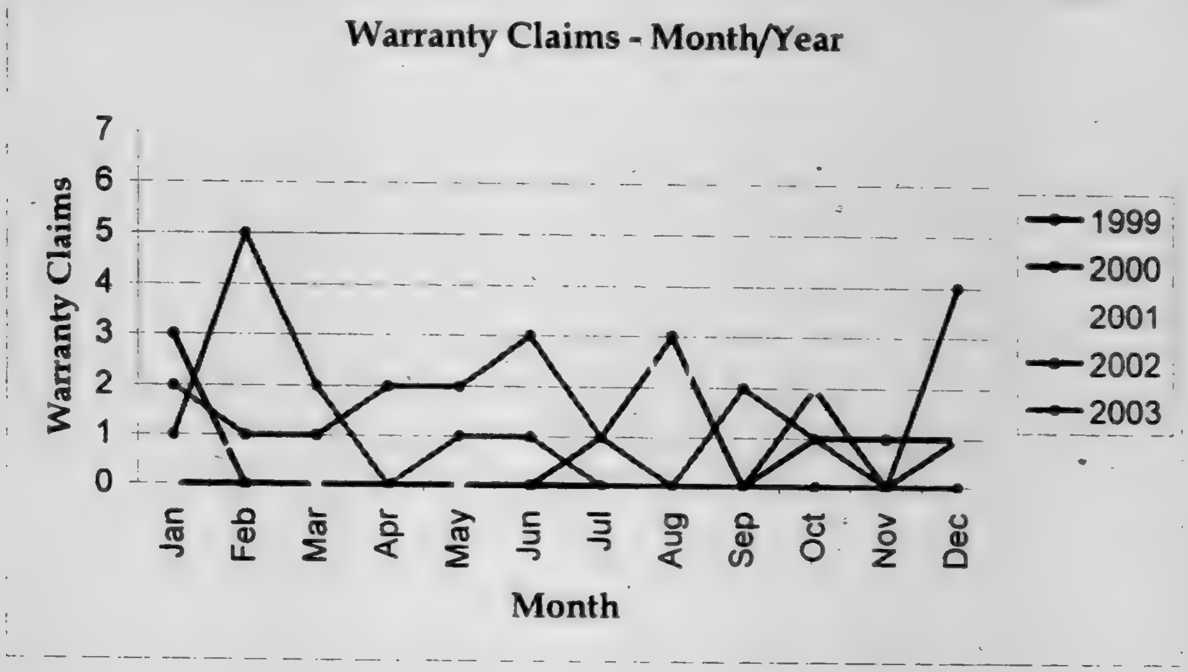
[10] Warranty rate of 8 per 10,000 units.



Warranty Claims by Month



Warranty Claims - Month/Year

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ODI Actions

Review of the NHTSA vehicle owner complaint database revealed no complaints regarding the M–12 modulator or extended trailer stopping distances. ODI staff did contact one of the vehicle fleet owners identified by the Petitioner. The fleet representative advised ODI that although Bendix evaluated the performance of their trailers, driver training appeared to be the greater problem. The fleet had no continuing concerns.

Conclusion

ODI acknowledges the Petitioner's personal involvement in the evaluation of the performance of both the EC–17 Version 2.3 ABS controller and the M–12 modulator assembly. Although the Petitioner offers information that is not entirely disputed by Bendix, his contention that the components contain defects that relate to motor vehicle safety is not supported by the available data.

With regard to the EC–17 Version 2.3 ABS controller, data provided by Bendix revealed that extended braking distances were only likely on extremely rough surfaces (over long distances) characteristic of unpaved surfaces. Although the company's next generation ECU reportedly improves performance in this type of setting, Bendix reported that enhanced vehicle driver awareness has mitigated the issue for the EC–17. ODI has no independent information that contradicts this assertion.

With regard to the M–12 modulator, data provided by Bendix revealed that although diaphragm rigidity (due to cold ambient temperatures) may degrade antilock performance (*i.e.*, extend braking distance during an ABS event), the company's investigation and analysis failed to consistently replicate the poor performance. Furthermore, Bendix provided data that showed a greater number of complaints and warranty claims occurring during warmer weather. Their analysis also identified the presence of air system contamination in an overwhelming number of complaints.

Upon review of the available data it is unlikely that NHTSA would issue an order requiring the notification and remedy of a safety-related defect in either the EC–17 Version 2.3 or the M–12 modulator at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: December 18, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–31753 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34075]

Six County Association of Governments—Construction and Operation Exemption—Rail Line Between Juab and Salina, UT

ACTION: Notice of availability of draft Scope of Analysis for the Environmental Impact Statement.

SUMMARY: On July 30, 2001, the Six County Association of Governments (SCAOG), a regional association representing Juab, Millard, Sevier, Sanpete, Piute, and Wayne counties in central Utah, filed a Petition for Exemption with the Surface Transportation Board (Board) pursuant to 49 U.S.C. 10502 for authority for construction and operation of a new rail line between Juab and Salina, Utah. The project would involve approximately 43 miles of new rail line and ancillary facilities to serve shippers in central Utah, particularly Southern Utah Fuels Company (SUFCO) coal operations. Because the construction and operation of this project has the potential to result in significant environmental impacts, the Board's Section of Environmental Analysis (SEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. SEA held public scoping meetings as part of the EIS process, as discussed in the Notice of Scoping Meetings and Request for Comments published by the Board on October 20, 2003. As part of the scoping process, SEA has developed a draft Scope of Analysis for the EIS.

SEA has made available for public comment the draft Scope of Analysis contained in this notice. SEA will issue a final Scope of Analysis shortly after the close of the comment period. Written comments on the Scope of Study are due January 26, 2004.

Filing Environmental Comments: Interested persons and agencies are invited to participate in the EIS scoping process. A signed original and 10 copies of comments should be submitted to: Surface Transportation Board, Case Control Unit, STB Finance Docket No. 34075, 1925 K Street, NW., Washington, DC 20423–0001, with the following designation written in the lower left-hand corner of the envelope: Attention: Phillis Johnson-Ball, Environmental Project Manager, Environmental Filing.

FOR FURTHER INFORMATION CONTACT: Ms. Phillis Johnson-Ball, Section of Environmental Analysis, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. The Web site for the Surface Transportation Board is *www.stb.dot.gov.*

SUPPLEMENTARY INFORMATION:

Draft Scope of Analysis for the EIS

Proposed Action and Alternatives

The proposed action, known as the Central Utah Rail project, involves the construction and operation of approximately 43 miles of new rail line connecting the existing Union Pacific Railroad (UPRR) line near Juab, Utah, to a proposed coal transfer terminal facility near Salina, Utah. Implementation of the proposed project would restore rail service to the Sevier Valley, providing a more direct connection to rail service for the coal industry (primarily SUFCO), provide rail service to other shippers in the Sevier Valley, and reduce the number of trucks on highways in the Sevier Valley.

The reasonable and feasible alternatives that will be evaluated in the EIS are (1) construction and operation of the proposed project, (2) the no-action alternative, and (3) alternative alignments identified during the scoping process.

Environmental Impact Analysis

Proposed New Construction

Analysis in the EIS will address the proposed activities associated with the construction and operation of new rail facilities and their potential environmental impacts, as appropriate.

Impact Categories

The EIS will address potential impacts from the proposed construction and operation of new rail facilities on the human and natural environment. Impact areas addressed will include the categories of land use, biological resources, water resources, geology and soils, air quality, noise, energy resources, socioeconomics as they relate to physical changes in the environment, safety, transportation systems, cultural and historic resources, recreation, aesthetics, and environmental justice. The EIS will include a discussion of each of these categories as they currently exist in the project area and will address the potential impacts from the proposed project on each category as described below:

1. Land Use

The EIS will:

a. Describe existing land use patterns within the project area and identify those uses that would be potentially impacted by proposed rail line construction.

b. Describe the potential impacts associated with the proposed new rail line construction on land uses identified in the project area. Such impacts may include impacts on farming and ranching activities, incompatibility with existing land uses, and conversion of land to railroad uses.

c. Propose mitigative measures to minimize or eliminate potential project impacts on land use, as appropriate.

2. Biological Resources

The EIS will:

a. Describe existing biological resources within the project area, including vegetative communities, wildlife and fisheries, and federal and state threatened or endangered species, and the potential impacts on those resources resulting from construction and operation of proposed rail facilities.

b. Describe any wildlife sanctuaries, refuges, and national or state parks, forests, or grasslands within the project area and potential impacts on these resources resulting from construction and operation of the proposed rail line and ancillary facilities.

c. Propose mitigative measures to minimize or eliminate potential project impacts on biological resources, as appropriate.

3. Water Resources

The EIS will:

a. Describe the existing surface and groundwater resources within the project area, including lakes, rivers, streams, ponds, wetlands, and flood plains, and the potential impacts on these resources resulting from construction and operation of the proposed rail line and ancillary facilities.

b. Describe the permitting requirements for the proposed new rail line construction regarding wetlands, stream and river crossings, water quality, and erosion and sedimentation control.

c. Describe the existing private water wells located within the project area and potential impacts, if any, to water quality due to vibration from haul trains.

d. Describe current access to irrigation water within the project area and potential impacts due to alignment location.

e. Propose mitigative measures to minimize or eliminate potential project impacts on water resources, as appropriate.

4. Geology and Soils

The EIS will:

a. Describe the geology and soils within the project area, including unique formations, problematic/hazardous geology or soils, prime or unique farmland soils, hydric soils, and the potential impacts on these resources resulting from the construction and operation of the proposed rail line.

b. Propose mitigative measures to minimize or eliminate potential project impacts on geological resources and/or soils, as appropriate.

5. Air Quality

The EIS will:

a. Describe the attainment status of the project area, including proximity to any Class I or non-attainment area as designated under the Clean Air Act. Estimates of air emissions related to the construction and operation of the proposed new rail line will be prepared.

b. Discuss and evaluate the potential air emissions changes from diversion of existing vehicle-related emissions to rail.

c. Propose mitigative measures to minimize or eliminate potential impacts related to the construction and operation of the proposed rail line.

6. Noise

The EIS will:

a. Describe the potential noise impacts of new rail line construction and operation for those sensitive receptors (houses, schools, etc.) where the increase may exceed 3 dbA Ldn or exceed a total of 65 dbA Ldn.

b. Propose mitigative measures to minimize or eliminate potential project impacts on noise receptors, as appropriate.

7. Energy Resources

The EIS will:

a. Describe the potential impact of the new rail line on the distribution of energy resources in the project area, including petroleum and gas pipelines and overhead electric transmission lines.

b. Propose mitigative measures to minimize or eliminate potential project impacts on energy resources, as appropriate.

8. Socioeconomics

The EIS will:

a. Describe the potential environmental impacts on residences, residential areas, and communities within the project area as a result of new rail line construction and operation activities.

b. Describe the potential environmental impacts on commercial and industrial activities and development in the project area as a result of new rail line construction and operation activities.

c. Propose mitigative measures to minimize or eliminate potential project impacts on socioeconomic resources, as appropriate.

9. Safety

The EIS will:

d. Describe new at-grade rail crossings that would result from construction of the rail line and the potential for an increase in accidents related to the new rail line operations, as appropriate.

e. Describe rail operations and the potential for increased probability of train accidents, as appropriate.

f. Describe safety factors, as appropriate, for rail/pipeline crossings, if any exist in the project area.

g. Describe existing trucking operations for coal hauling and the potential for accidents from those operations.

h. Describe the potential for disruption and delays to the movement of emergency vehicles due to new rail line construction and operations.

i. Propose mitigative measures to minimize or eliminate potential project impacts on safety, as appropriate.

9. Transportation Systems

The EIS will:

a. Describe the potential impacts of new rail line construction and operation on the existing transportation network in the project area, including vehicular delays at at-grade road/rail crossings.

b. Describe potential impacts on navigation associated with proposed new bridges.

c. Describe effects of current coal trucking operations on the existing road network and communities.

d. Describe current access to recreation locations within the project area and potential impacts from rail line construction and operation.

e. Propose mitigative measures to minimize or eliminate potential project impacts on transportation systems, as appropriate.

10. Cultural and Historic Resources

The EIS will:

a. Describe the potential impacts on historic structures or districts previously recorded and determined potentially eligible, eligible, or listed on the National Register of Historic Places (NRHP) that are within or immediately adjacent to the right-of-way for the proposed and alternative rail alignments.

b. Describe the potential impacts on archaeological sites previously recorded and either listed as unevaluated or determined potentially eligible, eligible, or listed on the NRHP that are within or immediately adjacent to the right-of-way for the proposed and alternative rail alignments.

c. Describe the potential impacts on historic structures or districts determined to be potentially eligible, eligible, or listed on the NRHP that are within the right-of-way for the proposed and alternative rail alignments.

d. Describe the likelihood for unrecorded, buried archaeological sites to exist within the right-of-way for the proposed and alternative rail alignments, the potential that the sites are eligible for listing on the NRHP, and the potential impact of the rail construction on the sites.

e. Describe the potential general impacts on paleontological resources in the project area due to project construction, if necessary.

f. Propose mitigative measures to minimize or eliminate potential project impacts on cultural and historic resources, as appropriate.

11. Recreation

The EIS will:

a. Describe potential impacts of the proposed new rail line construction and operation on recreational opportunities provided in the project area.

b. Propose mitigative measures to minimize or eliminate potential project impacts on recreation resources, as appropriate.

12. Aesthetics

The EIS will:

a. Describe the potential impacts of the proposed new rail line construction and operation on any areas determined to be of high visual quality.

b. Describe the potential impacts of the proposed new rail line construction and operation on any waterways designated or considered for designation as wild and scenic.

c. Propose mitigative measures to minimize or eliminate potential project impacts on aesthetics, as appropriate.

13. Environmental Justice

The EIS will:

a. Describe demographics in the project area and the immediate vicinity of the proposed new construction, including communities potentially impacted by the construction and operation of the proposed new rail line.

b. Evaluate whether proposed new rail line construction or operation would have a disproportionately high and adverse impact on minority or low-income groups.

c. Propose mitigative measures to minimize or eliminate potential project impacts on environmental justice communities, as appropriate.

14. Cumulative Impacts

The EIS will address the cumulative impacts on the environment that may result from the proposed action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or individuals undertake such actions.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 03–31718 Filed 12–23–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Passengers Denied Confirmed Space—BTS Form 251

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on September 22, 2003 (68 FR 55085–55086).

DATES: Written comments should be submitted by January 23, 2004.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–14, Room 4125, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383, or e-mail *bernard.stankus@bts.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Report of Passengers Denied Confirmed Space.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2138–0018.

Forms: BTS Form 251.

Affected Public: U.S. and foreign air carriers that provide scheduled passenger service with aircraft having over 60 seats.

Abstract: BTS Form 251 is a one-page report on the number of passengers denied boarding voluntarily and involuntarily, whether the bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. U.S. and foreign air carriers that operate scheduled passenger service with large aircraft (over 60 seats) must submit Form 251. However, carriers do not report data from inbound international flights because the protections of Part 250 *Oversales* do not apply to these flights. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. The involuntary denied-boarding rate has decreased over the years from 4.38 per 10,000 passengers in 1980 to 0.89 for the nine months ended September 2003. The improvement has been made in a period when load factors and passenger enplanements have risen. These statistics demonstrate the effectiveness of the "volunteer provision." The publishing of the air carriers' individual denied boarding rates has negated the need for more intrusive regulation. The rate of denied boarding can be examined as a continuing fitness factor. This rate provides an insight into a carrier's policy of treating passengers and its compliance disposition. A rapid sustained increase in the rate of denied boarding often is an indicator of operational difficulty. Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with low bumping incidents when booking a trip. This information is made available to the public in the *Air Travel Consumer Report* and on the Web at *http://www.dot.gov/airconsumer.* The *Air Travel Consumer Report* is also sent to newspapers, magazines, and trade journals. Without Form 251, determining the effectiveness of the Department's oversales rule, would be impossible.

Estimated Annual Burden Hours: 2,200 hours.

Address: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department concerning consumer protection. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on December 17, 2003.

Donald W. Bright,

Assistant Director, Office of Airline Information.

[FR Doc. 03–31727 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is

soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, January 15, 2004

FOR FURTHER INFORMATION CONTACT: Judi Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, January 15, 2004, from 2 p.m. Pacific time to 4 p.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: December 17, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31691 Filed 12–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0358]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 23, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0358."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0358" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions prescribed by Title 38 U.S.C., Section 3691. A claimant can normally make one change of program without VA approval. If that claimant makes any additional change of program, VA approval is required. Before VA may approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's aptitudes, interests, and abilities, or that the cause of any unsatisfactory progress or conduct has been resolved before entering into a different program. VA Form 22–8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA education records or the results of academic or vocational counseling are not available to VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2003, at page 59244–59245.

Affected Public: Individuals or households.

Estimated Annual Burden: 9,150 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 18,300.

Dated: December 8, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–31621 Filed 12–23–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0646]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 23, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0646."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0646" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Medication Prescribed by Non-VA Physicians; VA Transitional Pharmacy Benefit, VA Form 10–0411.

OMB Control Number: 2900–0646.

Type of Review: Extension of a currently approved collection.

Abstract: Under existing law and regulations, a veteran desiring medical care from VA must enroll in VA's health care system. When a veteran first enrolls in the VA system, and requests an appointment for care, VA schedules an appointment for a visit with a primary care physician. The primary care physician generally learns from the veteran what medication the veteran is taking, if any, assesses the need for the medication and writes prescriptions for any needed medication. Those prescriptions written by the VA physician are filled by a VA pharmacy. In recent years, there has been an increase in the enrollment of veterans into the health care system to obtain pharmacy benefits at no cost or at a reasonable cost. With the dramatically increased enrollment, VA has been unable to provide all enrolled veterans with health care services in a timely manner. Many of those veterans have prescriptions, written by non-VA physicians, that VA primary care physicians may subsequently confirm and renew when the veterans are able to have initial primary care visits. In an effort to ease financial burden on enrolled veterans currently waiting lengthy periods of time for their initial primary care visits, VA will provide these veterans with medication prior to their initial primary care visits at VA if these veterans present valid prescriptions from the non-VA physicians. VA will fill prescriptions written by non-VA physicians only for a period of time such veterans are awaiting a scheduled appointment with a VA health care provider. VA Form 10–0411, VA Transitional Pharmacy Benefit will be used to collect the data necessary to safely administer these medications.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 7, 2003, at pages 57955–57956.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 30,287 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 363,446.

Estimated Number of Respondents: 181,723.

Dated: December 11, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–31622 Filed 12–23–03; 8:45 am]

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Part II

Securities and Exchange Commission

17 CFR Parts 270, 275, and 279
Compliance Programs of Investment Companies and Investment Advisers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270, 275, and 279

[Release Nos. IA–2204; IC–26299; File No. S7–03–03]

RIN 3235–AI77

Compliance Programs of Investment Companies and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comments.

SUMMARY: The Securities and Exchange Commission is adopting new rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 that require each investment company and investment adviser registered with the Commission to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer to be responsible for administering the policies and procedures. In the case of an investment company, the chief compliance officer will report directly to the fund board. These rules are designed to protect investors by ensuring that all funds and advisers have internal programs to enhance compliance with the federal securities laws.

DATES: *Effective Date:* February 5, 2004.

Comment Date: Comments requested in section II.F of this release should be received on or before February 5, 2004.

Compliance Date: October 5, 2004. Section III of this release contains more information on the compliance date.

ADDRESSES: To help us process and review your comments more efficiently, comments may be sent to us in either paper or electronic format. Comments should not be sent by both methods.

Comments in paper format should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments in electronic format may be submitted at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–03–03; if e-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will also be posted on the Commission's Internet Web site *(http://www.sec.gov)*.[1]

FOR FURTHER INFORMATION CONTACT: Hester Peirce, Senior Counsel, Office of Regulatory Policy at (202) 942–0690, or Jamey Basham, Special Counsel, Office of Investment Adviser Regulation at (202) 942–0719, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("SEC" or "Commission") is adopting new rule 38a–1 (17 CFR 270.38a–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) ("Investment Company Act"), new rule 206(4)–7 (17 CFR 275.206(4)–7) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) ("Investment Advisers Act" or "Advisers Act"), and amendments to rule 204–2 (17 CFR 275.204–2) under the Advisers Act, and to Part 1, Schedule A, Item 2(a) of Form ADV (17 CFR 279.1).[2]

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I. Background

Earlier this year the Commission proposed rules that would require investment companies ("funds")[3] and investment advisers to adopt written compliance procedures, review the adequacy of those procedures annually, and designate a chief compliance officer responsible for their administration.[4] We proposed the rules because it is critically important for funds and advisers to have strong systems of controls in place to prevent violations of the Federal securities laws and to protect the interests of shareholders and clients. The proposed rules were designed to foster, among other things, improved compliance by clarifying the compliance obligations of fund management and to strengthen the hand of fund boards and compliance personnel when dealing with them.[5]

In recent months, the Commission and State securities authorities have discovered unlawful conduct involving a number of fund advisers, broker-dealers, and other service providers that confirms the need for these rules. Fund advisory or distributor personnel have engaged in, or actively assisted others in engaging in, inappropriate market timing, late trading of fund shares, and the misuse of material, nonpublic information about fund portfolios.[6]

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[1] We do not edit personal or identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, when we refer to rule 38a–1 or any paragraph of the rule, we are referring to 17 CFR 270.38a–1 of the Code of Federal Regulations in which the rule is published, as amended by this release; when we refer to rule 206(4)–7 or any paragraph of the rule, we are referring to 17 CFR 275.206(4)–7 of the Code of Federal Regulations in which the rule is published, as amended by this release; and when we refer to rule 204–2 or any paragraph of the rule, we are referring to 17 CFR 275.204–2 of the Code of Federal Regulations in which the rule is published, as amended by this release.

[3] In this release, we use the term "fund" to mean a registered investment company or a business development company, which is an unregistered closed-end investment company. *See* section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)). We use the term "mutual fund" to mean a registered investment company that is an open-end management company defined in section 5(a) of the Investment Company Act (15 U.S.C. 80a–5(a)).

[4] Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 25925 (Feb. 5, 2003) (68 FR 7038 (Feb. 11, 2003)) ("Proposing Release").

[5] Forty-eight commenters, most of which were investment advisers, fund management companies, and organizations representing those groups, submitted comments in response to the Proposing Release. Commenters generally supported the proposal to require funds and advisers to adopt and implement compliance programs, but many sought changes. The comment letters and a summary of comments prepared by our staff are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC (File No. S7–03–03). The comment summary is also available on the Commission's Internet Web site (*http://www.sec.gov/rules/extra/s70303summary.pdf.*)

[6] The Commission has already obtained settlements in a number of actions arising from such violations. *See, e.g.*, In re Putnam Investment Management, Investment Advisers Act Release No. 2192 (Nov. 13, 2003) (finding that an investment adviser failed to disclose potentially self-dealing

These personnel, including in some cases senior executives of fund advisers, have placed their personal interests or the business interests of the fund adviser ahead of the interests of fund shareholders, thus breaching their fiduciary obligations to the funds involved and their shareholders. These individuals have harmed the funds, their management organizations, and the confidence of fund investors.

Our response to these events is twofold. First, we are conducting an intensive investigation of funds, advisers, broker-dealers, and others.[7] We will aggressively pursue and punish those who have violated the Federal securities laws and breached their fiduciary obligations to clients. When appropriate, we will actively work with other Federal law enforcement authorities and State authorities to see that the full weight of the law is brought to bear against those who have betrayed mutual funds and fund investors. Second, we will review all of our rules to determine what changes may be required to prevent this type of conduct.

We are taking our first regulatory actions designed to curb the abusive practices recently uncovered and to prevent their recurrence. In companion releases, we are proposing to amend our rules regarding mutual fund share pricing and prospectus disclosure.[8] In this release, we are adopting new rules requiring advisers and funds to adopt strong compliance controls administered by a chief compliance officer.

II. Discussion

The Commission is adopting new rule 206(4)–7 under the Advisers Act and new rule 38a–1 under the Investment Company Act.[9] The new rules require each registered investment adviser and each fund to adopt and implement compliance programs that conform to the new rules. Failure of an adviser or fund to have adequate compliance policies and procedures in place will constitute a violation of our rules independent of any other securities law violation. The new rules will thus permit the Commission to address the failure of an adviser or fund to have in place adequate compliance controls, before that failure has a chance to harm clients or investors.

A. Adoption and Implementation of Policies and Procedures

1. Investment Advisers

Under rule 206(4)–7, it is unlawful for an investment adviser registered with the Commission to provide investment advice unless the adviser has adopted and implemented written policies and procedures reasonably designed to prevent violation of the Advisers Act by the adviser or any of its supervised persons.[10] The rule requires advisers to consider their fiduciary and regulatory obligations under the Advisers Act and to formalize policies and procedures to address them.[11]

Commenters generally supported these new requirements, but some expressed concerns for how they would be applied to smaller advisers. The Commission is sensitive to the burdens the rule may impose upon smaller advisory firms.[12] The rule requires only that the policies and procedures be *reasonably* designed to prevent violation of the Advisers Act, and thus need only encompass compliance considerations relevant to the operations of the adviser. We would expect smaller advisory firms without conflicting business interests to require much simpler policies and procedures than larger firms that, for example, have multiple potential conflicts as a result of their other lines of business or their affiliations with other financial service firms.[13] The preparation of these simpler policies and procedures and their administration should be much less burdensome.

Rule 206(4)–7 does not enumerate specific elements that advisers must include in their policies and procedures.[14] Commenters agreed with

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securities-trading by several of its employees, failed to have reasonable procedures to prevent misuse of material nonpublic information, and failed to reasonably supervise the employees who committed violations); In re Connelly, Securities Act Release No. 8304 (Oct. 16, 2003) (finding that a former executive of an investment adviser to a fund complex, in contravention of fund disclosures, approved agreements that permitted select investors to time certain funds in the complex); In re Markovitz, Securities Act Release No. 8298 (Oct. 2, 2003) (finding that a former hedge fund trader violated the Federal securities laws and defrauded investors by engaging in late trading of mutual fund shares).

[7] To date, we have brought 10 enforcement actions. *See SEC* v. *Mutuals.com, Inc.*, Civil Action No. 303 CV 2912D (N.D. Tex. Dec. 4, 2003) (alleging that dually registered broker-dealer and investment adviser, three of its executives, and two affiliated broker-dealers assisted institutional brokerage customers and advisory clients in carrying out and concealing thousands of market timing trades and illegal late trades in shares of hundreds of mutual funds); *SEC* v. *Invesco Funds Group*, Civil Action No. 03–N–2421 (PAC) (D. Colo. Dec. 2, 2003) (alleging that investment adviser, with approval of its president and chief executive officer, entered into market timing arrangements with more than 60 broker dealers, hedge funds, and advisers without disclosing these arrangements to the affected mutual funds' independent directors or shareholders); *SEC* v. *Security Trust Company*, Civil Action No. 03–2323 (D. Ariz. Nov. 24, 2003) (alleging that unregistered financial intermediary and three of its senior executives facilitated and participated in late trading and market timing schemes by a group of related hedge funds); *SEC* v. *Pilgrim*, Civil Action No. 03–CV–6341 (E.D. Penn. filed Nov. 20, 2003) (alleging that investment adviser and two senior executives permitted a hedge fund, in which one of the executives had a substantial financial interest, to engage in repeated short-term trading of several mutual funds and that one of the executives provided nonpublic portfolio information to a broker-dealer, which passed it on to its customers); *SEC* v. *Druffner*, Civil Action No. 03–12154–RCL (D. Mass. Nov. 4, 2003) (alleging that five brokers, with the assistance of their branch office manager, evaded attempts to restrict their trading and conducted thousands of market timing trades in numerous mutual funds); *SEC* v. *Scott*, Civil Action No. 03–12082–EFH (D. Mass. filed Oct. 28, 2003) (alleging that two senior investment executives of an investment adviser engaged in repeated short-term trading in their personal accounts of funds over which they had investment decision-making responsibility and about which they had access to nonpublic information); In re Sihpol, Administrative Proceeding No. 3–11261 (Sept. 16, 2003) (charging former broker with playing a key role in enabling certain hedge fund customers to engage in late trading in shares of funds). See also supra note . A number of State actions are also pending.

[8] Amendments to Rules Governing Pricing of Mutual Fund Shares, Investment Company Act Release No. 26288 (Dec. 11, 2003) (68 FR 70388 (Dec. 17, 2003)) ("Companion Late Trading Release"); Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Investment Company Act Release No. 26287 (Dec. 11, 2003) (68 FR 70402 (Dec. 17, 2003)) ("Companion Disclosure Release").

[9] We also are adopting related amendments to rule 204–2 under the Advisers Act and a technical amendment to Form ADV.

[10] Rule 206(4)–7(a). *See also* section 202(a)(25) of the Advisers Act (15 U.S.C. 80b–2(a)(25)) (defining "supervised person" as "any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser").

[11] In response to several comments, we revised the text of the rule so that a violation of the rule would be deemed to be "unlawful" rather than "a fraudulent, deceptive, or manipulative act, practice or course of business." This change, which responds to commenters' concerns regarding the optics of the rule, does not change its substance; failure to comply with its terms will result in a violation of section 206(4) of the Act.

[12] In the Proposing Release, we requested comment on whether we should except a subset of investment advisers or funds from the requirements of the rules. Some commenters suggested that we except small advisers, but we believe that the flexibility of the rules obviates the need for this exception.

[13] Even small advisers may have arrangements, such as soft dollar agreements, that create conflicts. Advisers of all sizes, in designing and updating their compliance programs, must identify these arrangements and provide for the effective control of the resulting conflicts.

[14] Advisers already are subject to requirements to maintain written compliance policies and procedures in certain areas. The new rules do not alter those requirements. *See, e.g.*, Investment Company Act rule 17j–1(c)(1) (17 CFR 270.17j–1(c)(1)) (requiring each investment adviser and principal underwriter of a fund to "adopt a written code of ethics containing provisions reasonably necessary to prevent" certain persons affiliated with the fund, its investment adviser or its principal underwriter from engaging in certain fraudulent,

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our assessment that funds and advisers are too varied in their operations for the rules to impose of a single set of universally applicable required elements. Each adviser should adopt policies and procedures that take into consideration the nature of that firm's operations. The policies and procedures should be designed to prevent violations from occurring, detect violations that have occurred,[15] and correct promptly any violations that have occurred.[16]

Each adviser, in designing its policies and procedures, should first identify conflicts and other compliance factors creating risk exposure for the firm and its clients in light of the firm's particular operations, and then design policies and procedures that address those risks. We expect that an adviser's policies and procedures, at a minimum, should address the following issues to the extent that they are relevant to that adviser:

- Portfolio management processes, including allocation of investment opportunities among clients and consistency of portfolios with clients' investment objectives, disclosures by the adviser, and applicable regulatory restrictions;[17]
- Trading practices, including procedures by which the adviser satisfies its best execution obligation, uses client brokerage to obtain research and other services ("soft dollar arrangements"), and allocates aggregated trades among clients;
- Proprietary trading of the adviser and personal trading activities of supervised persons;[18]
- The accuracy of disclosures made to investors, clients, and regulators, including account statements and advertisements;
- Safeguarding of client assets from conversion or inappropriate use by advisory personnel;
- The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;[19]
- Marketing advisory services, including the use of solicitors;[20]
- Processes to value client holdings and assess fees based on those valuations;
- Safeguards for the privacy protection of client records and information;[21] and
- Business continuity plans.[22]

Rule 206(4)–7 does not require advisers to consolidate all compliance policies and procedures into a single document. Nor does it require advisers to memorialize every action that must be taken in order to remain in compliance with the Advisers Act. In some cases, it may be enough for the compliance policies and procedures to allocate responsibility within the organization for the timely performance of many obligations, such as the filing or updating of required forms.[23]

2. Investment Companies

Rule 38a–1 requires fund boards to adopt written policies and procedures reasonably designed to prevent the fund from violating the Federal securities laws.[24] The procedures must provide for the oversight of compliance by the fund's advisers, principal underwriters,[25] administrators,[26] and

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manipulative, and deceptive actions with respect to the fund); Advisers Act rule 206(4)–6 (17 CFR 275.206(4)–6) (requiring investment advisers to adopt and implement written policies and procedures reasonably designed to ensure that the adviser votes securities in the best interest of clients); Advisers Act section 204A (15 U.S.C. 80b–4a) (requiring each adviser registered with us to have written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the adviser or persons associated with the adviser); Regulation S-P ("Privacy of Consumer Financial Information") (17 CFR 248.30) (requiring investment advisers to "adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information").

[15] Where appropriate, advisers' policies and procedures should employ, among other methods of detection, compliance tests that analyze information over time in order to identify unusual patterns, including, for example, an analysis of the quality of brokerage executions (for the purpose of evaluating the adviser's fulfillment of its duty of best execution), or an analysis of the portfolio turnover rate (to determine whether portfolio managers are overtrading securities), or an analysis of the comparative performance of similarly managed accounts (to detect favoritism, misallocation of investment opportunities, or other breaches of fiduciary responsibilities).

[16] In the Proposing Release, we noted that the compliance policies and procedures should be designed to prevent, detect, and correct promptly any material violation of the federal securities laws (or in the case of advisers, the Advisers Act). A number of commenters suggested that these objectives were unrealistic and recommended that the rules be designed instead to promote compliance with the securities laws. While we understand that compliance policies and procedures will not prevent every violation of the securities laws, we believe that prevention should be a key objective of all firms' compliance policies and procedures.

[17] Rule 206(4)–6 under the Advisers Act (17 CFR 275.206(4)–6) requires registered investment advisers to adopt and implement written policies and procedures that are reasonably designed to ensure that the adviser votes securities in the best interest of clients. Similarly, funds must disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. Form N–1A, Item 13(f) (17 CFR 239.15A; 274.11A); Form N–2, Item 18.16 (17 CFR 239.14; 274.11a–1); Form N–3, Item 20(o) (17 CFR 239.17a; 17 CFR 274.11b); and Form N–CSR, Item 7 (17 CFR 249.331; 17 CFR 274.128).

[18] Section 204A of the Advisers Act (15 U.S.C. 80b–4a) requires registered investment advisers to have written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the advisers or persons associated with the advisers. Rule 17j–1(c)(1) under the Investment Company Act (17 CFR 270.17j–1(c)(1)) requires funds and each investment adviser and principal underwriter of a fund to "adopt a written code of ethics containing provisions reasonably necessary to prevent" certain persons affiliated with the fund, its investment adviser or its principal underwriter from engaging in certain fraudulent, manipulative, and deceptive actions with respect to the fund.

[19] Rule 204–2(g)(3) under the Advisers Act (17 CFR 275.204–2(g)(3)) and rule 31a–2(f)(3) under the Investment Company Act (17 CFR 270.31a–2(f)(3)) require advisers and funds that maintain records in electronic formats to establish and maintain procedures to safeguard the records.

[20] Rule 206(4)–3 under the Advisers Act (17 CFR 275.206(4)–3) requires written agreements setting forth procedures to govern solicitation activities conducted by certain third parties on behalf of an adviser.

[21] Regulation S–P requires investment advisers to "adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information." Regulation S–P ("Privacy of Consumer Financial Information") (17 CFR 248.30). Regulation S–P also applies to funds.

[22] We believe that an adviser's fiduciary obligation to its clients includes the obligation to take steps to protect the clients' interests from being placed at risk as a result of the adviser's inability to provide advisory services after, for example, a natural disaster or, in the case of some smaller firms, the death of the owner or key personnel. The clients of an adviser that is engaged in the active management of their assets would ordinarily be placed at risk if the adviser ceased operations.

[23] Advisers who are also registered as broker-dealers are not required to segregate their investment adviser compliance policies and procedures from their broker-dealer compliance policies and procedures.

[24] Rule 38a–1(a)(1). For purposes of rule 38a–1, "Federal securities laws" means the Securities Act of 1933 (15 U.S.C. 77a), the Securities Exchange Act of 1934 (15 U.S.C. 78a), the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)), the Investment Company Act, the Advisers Act, Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801) (governing disclosure of nonpublic personal information), any rules adopted by the Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311–5314; 5316–5332) (imposing restrictions designed to prevent financial intermediaries from being used in money laundering activities) as it applies to funds, and any rules adopted thereunder by the Commission or the Department of the Treasury. Rule 38a–1(e)(1).

[25] A "principal underwriter" of a fund (other than a closed-end fund) is "any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company." Section 2(a)(29) of the Investment Company Act (15 U.S.C. 80a–2(a)(29)).

[26] An "administrator" is "any person who provides significant administrative or business management services to an investment company." Investment Company Act rule 0–1(a)(5) (17 CFR 270.0–1(a)(5)).

transfer agents[27] (collectively, "service providers") through which the fund conducts its activities.[28]

a. *Service Providers.* Most of the operations of funds are carried out by service providers, which have their own compliance policies and procedures. Commenters pointed out that the proposed rule appeared to require a fund to adopt, as its own, the policies and procedures of its service providers.[29] The final rule requires fund boards to approve the policies and procedures of fund service providers, and requires the fund's policies and procedures to include provisions for the fund to oversee compliance by its service providers.

Rule 38a–1 provides fund complexes with flexibility so that each complex may apply the rule in a manner best suited to its organization.[30] A fund complex could, for example, adopt compliance policies and procedures that encompass the activities of the funds, the adviser and affiliated underwriters and transfer agents, while approving the policies and procedures of other service providers, such as subadvisers, over which it has oversight responsibility under the rule. Another fund complex could adopt policies and procedures that would cover solely activities of the funds, and could approve the policies and procedures of each of its service providers.

b. *Board Approval.* Rule 38a–1 requires a fund's board, including a majority of its independent directors, to approve the policies and procedures of the fund and each of its service providers.[31] The approval must be based on a finding by the board that the policies and procedures are reasonably designed to prevent violation of the Federal securities laws by the fund and its service providers.[32]

Some commenters expressed concern that the rule would require directors to review lengthy compliance manuals and devote considerable time at each meeting to approving numerous amendments. Directors may satisfy their obligations under the rule by reviewing summaries of compliance programs prepared by the chief compliance officer, legal counsel or other persons familiar with the compliance programs. The summaries should familiarize directors with the salient features of the programs (including programs of service providers) and provide them with a good understanding of how the compliance programs address particularly significant compliance risks.[33]

In considering whether to approve a fund's or service provider's compliance policies and procedures, boards should consider the nature of the fund's exposure to compliance failures. In the case of a money market fund, for example, the board should consider whether the policies and procedures sufficiently address the fund's compliance with rule 2a–7.[34] Boards should also consider the adequacy of the policies and procedures in light of their recent compliance experiences, which may demonstrate weaknesses in the fund or service provider's compliance programs. We urge boards to also consider best practices used by other fund complexes, and to consult with fund counsel (and independent directors with their counsel), compliance specialists and other experts familiar with compliance practices successfully employed by similar funds or service providers.

The Commission understands that, in some cases, the fund may employ the services of a service provider that is not an affiliated person of the fund, such as a transfer agent or administrator, and that provides similar services to a large number of funds. In such cases, it may be impractical for the fund or its compliance officer to directly review all of the service provider's policies and procedures. In such cases, we will consider a fund's policies and procedures to have satisfied the requirements of this rule if the fund uses a third-party report on the service provider's procedures instead of the procedures themselves when the board is evaluating whether to approve the service provider's compliance program.[35] The third-party report must describe the service provider's compliance program as it relates to the types of services provided to the fund, discuss the types of compliance risks material to the fund, and assess the adequacy of the service provider's compliance controls.[36]

c. *Policies and Procedures.* Funds' or their advisers' policies and procedures should address the issues we identified for investment advisers above.[37] In

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[27] Section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–(3)(a)(25)) defines a "transfer agent" as "any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates."

[28] In this release, we use the term "service provider" to refer only to a fund's advisers, principal underwriters, administrators, and transfer agents. By limiting the term in this manner, we are not lessening a fund's obligation to consider compliance as part of its decision to employ other entities, such as pricing services, auditors, and custodians.

[29] Some commenters urged us to permit funds to simply rely on their service providers' policies and procedures. We have not adopted this suggestion because it would permit funds and their boards to absolve themselves of responsibility for compliance activities of the service providers through which funds conduct most of their activities.

[30] In this release, we use the term "fund complex" to mean a group of funds that share a compliance program and a common investment adviser and/or distributor.

[31] In this release, we refer to directors who are not "interested persons" of the fund as "independent directors." Section 2(a)(19) identifies persons who are "interested persons" of a fund. 15 U.S.C. 80a–2(a)(19).

[32] Rule 38a–1(a)(2). In response to comments seeking clarification of the board's responsibilities, we have added language to the rule text explicitly stating the basis for approval. If the policies and procedures of a service provider are included within the policies and procedures adopted by the fund, separate approval by the board is not required. A fund that is approving policies and procedures of service providers is required to make findings only with respect to activities of the service provider that could affect the fund.

[33] Rule 38a–1 does not require fund boards to approve amendments to policies and procedures of the fund or its service providers. Such a requirement would, as commenters pointed out, inundate fund boards with review of minor changes and detract from their ability to address significant responsibilities committed to them by the Act and our rules. Moreover, such a requirement could delay funds and their service providers from making needed changes. Instead, the rule requires the fund's chief compliance officer to discuss material changes to the compliance policies and procedures in his or her annual report to the fund board. Rule 38(a)–1(a)(4)(iii)(A). As we note below, however, serious compliance issues must be raised with the board immediately. *See infra* note 83.

[34] 17 CFR 270.2a–7.

[35] In these limited circumstances, we would also consider the fund to have satisfied the rule's requirement with regard to annual review of service providers, as discussed in section II.B.2. of this release, *supra*, and with respect to the chief compliance officer's annual report with regard to service providers, as discussed in section II.C.2. of this release, *supra*, if such reviews and reports use such third-party reports provided to the fund no less than annually. If the fund uses such reports for its approval of a service provider's compliance program or the annual review or reporting on the program, the fund must also gather and take into account other relevant information, such as its experience with the service provider.

[36] *See, e.g.*, Codification of Accounting Standards and Procedures, Statement on Auditing Standards No. 70, Reports on Processing of Transactions by Service Organizations (American Inst. of Certified Public Accountants).

[37] *See supra* text accompanying notes 17 through 22. Funds are also subject to requirements to maintain written compliance policies and procedures in certain of our rules. The new rules do not supplant these requirements. *See, e.g.*, Investment Company Act rules 2a–7(c)(7) (17 CFR 270.2a–7(c)(7)) (requiring boards of money market funds to establish written procedures "reasonably designed * * * to stabilize the money market fund's net asset value per share") and 17j–1(c)(1) (17 CFR 270.17j–1(c)(1)) (requiring funds to "adopt a written code of ethics containing provisions reasonably necessary to prevent" certain persons affiliated with the fund, its investment adviser or

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addition, we expect policies and procedures of funds (or fund service providers) to cover certain other critical areas. In light of our recent enforcement actions against a number of fund managers and service providers,[38] we are taking this opportunity to review the application of these policies and procedures to several important areas of compliance with the Federal securities laws by funds and their service providers.

- *Pricing of portfolio securities and fund shares.* The Investment Company Act requires funds to sell and redeem their shares at prices based on their current net asset value, and to pay redemption proceeds promptly.[39] The Investment Company Act requires funds to calculate their net asset values using the market value of their portfolio securities when market quotations for those securities are "readily available," and, when a market quotation for a portfolio security is not readily available, by using the fair value of that security, as determined in good faith by the fund's board.[40] These pricing requirements are critical to ensuring fund shares are purchased and redeemed at fair prices and that shareholder interests are not diluted.

When fund shares are mispriced, short-term traders have an arbitrage opportunity they can use to exploit a fund and disadvantage the fund's long-term investors by extracting value from the fund without assuming any significant investment risk. Mispricing may occur with respect to portfolio securities traded on a foreign market that closes before the time at which the fund prices its shares.[41] If an event affecting the value of the portfolio securities occurs *after* the foreign market closes but *before* the fund prices its shares, the foreign market closing price for the portfolio security will not reflect the correct current value of those securities when the fund prices its shares. In 1984, we stated that, in these circumstances, a fund "*must*, to the best of its ability, determine the fair value of the securities, as of the time" that the fund prices its shares.[42] We believe that funds that fail to fair value their portfolio securities under such circumstances may violate rule 22c–1 under the Investment Company Act.[43] Fund directors who countenance such practices fail to comply with their statutory valuation obligations[44] and fail to fulfill their fiduciary obligation to protect fund shareholders. Accordingly, rule 38a–1 requires funds to adopt policies and procedures that require the fund to monitor for circumstances that may necessitate the use of fair value prices; establish criteria for determining when market quotations are no longer reliable for a particular portfolio security;[45] provide a methodology or methodologies by which the fund determines the current fair value of the portfolio security;[46] and regularly review the appropriateness and accuracy of the method used in valuing securities, and make any necessary adjustments.[47]

- *Processing of fund shares.* Our rules require forward pricing of fund shares.[48] An investor submitting a purchase order or redemption request must receive the price next calculated after receipt of the purchase order or redemption request.[49] Accordingly, rule 38a–1 requires that a fund have in place procedures that segregate investor orders received before the fund prices its shares (which will receive that day's price) from those that were received after the fund prices its shares (which will receive the following day's price).[50] Because fund purchase and redemption orders are ultimately transmitted to transfer agents engaged by the fund, we have expanded the service providers covered by the rule to include transfer agents.

Many funds today have contractual provisions with transfer agents and other intermediaries that obligate those

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its principal underwriter from engaging in certain fraudulent, manipulative, and deceptive actions with respect to the fund); Form N–1A, Item 13(f) (17 CFR 239.15A; 274.11A) (requiring funds to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities); 31 CFR 103.130(c) (requiring funds to develop an anti-money laundering program, which includes the establishment and implementation of "policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder"); Regulation S–P ("Privacy of Consumer Financial Information") (17 CFR 248.30) (requiring funds to "adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information").

[38] *See supra* notes 6 and 7 and accompanying text.

[39] Section 22(e) of the Investment Company Act generally prohibits mutual funds from suspending the right of redemption and prohibits funds from postponing the payment of redemption proceeds for more than seven days. 15 U.S.C. 80a–22(e). Rule 22c–1(b) under the Act generally requires that a fund's net asset value be computed at least once daily, Monday through Friday, at a time or times specified by the fund's board of directors. 17 CFR 270.22c–1(b).

[40] Section 2(a)(41) of the Investment Company Act and rule 2a41–1 (17 CFR 270.2a41–1).

[41] Mispricing may also occur when a domestic trading market in a security closes before the time the fund prices its shares, or when market quotations for a security are not reliable because, *e.g.*, sales have been infrequent or there is a thin market in the security. *See* Accounting Series Release No. 118 (Dec. 23, 1970) (35 FR 19986 (Dec. 31, 1970)). Thus, in addition to monitoring for events that may necessitate fair value pricing, funds must pay attention to circumstances that would suggest the need for using fair value pricing.

[42] Pricing of Redeemable Securities for Distribution, Redemption, and Repurchase, Investment Company Act Release No. 14244 (Nov. 21, 1984) (49 FR 46558 (Nov. 21, 1984)), at n. 7 (emphasis added) (proposing amendments to rule 22c–1). Subsequent to the issuance of this release, our staff has reminded funds of their fair valuation obligations. In 1999 and 2001, the Division of Investment Management issued interpretive letters elaborating on funds' obligations under sections 2(a)(41) of the Investment Company Act and rule 22c–1 (17 CFR 270.22c–1) thereunder. Letter from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management, to Craig S. Tyle, General Counsel, Investment Company Institute (Dec. 8, 1999) (*http://www.sec.gov/divisions/investment/guidance/tyle120899.htm*); letter from Douglas Scheidt, Associate Director and Chief Counsel, SEC Division of Investment Management, to Craig S. Tyle, General Counsel, Investment Company Institute (Apr. 30, 2001) (*http://www.sec.gov/divisions/investment/guidance/tyle043001.htm*).

[43] 17 CFR 270.22c–1.

[44] Section 2(a)(41) (15 U.S.C. 80a–2(a)(41)) of the Investment Company Act.

[45] In some cases, funds have adopted policies and procedures requiring the use of fair value pricing in circumstances when prices may be affected by events subsequent to the close of trading, but have established criteria that result in infrequent use of fair value pricing, which provides an opportunity for price arbitrage. *See, e.g.*, Susan Lee, *The Dismal Science: The Feeling's Not Mutual*, Wall St. J., Nov. 24, 2003, at A15. As we have stated previously, funds must fair value their portfolio securities whenever market quotations become unreliable. *See supra* note 42. The failure of a fund to establish sufficiently sensitive criteria for using fair value pricing should be recognizable in subsequent reviews of the accuracy of the prices used to compute the net asset value of the fund.

[46] In determining fair value, some funds use correlations between the exchange prices of foreign securities and other appropriate instruments or indicators, such as relevant indices, American Depository Receipts, and futures contracts. Software developed by vendors is today available to assist funds to determine the fair value of portfolio securities.

[47] In a companion release, we are proposing to amend funds' disclosure requirements with respect to the use and the effects of fair value pricing. *See* Section II.B of Companion Disclosure Release, *supra* note 8.

[48] Rule 22c–1(a) (17 CFR 270.22c–1(a)).

[49] *Id.* We adopted the forward pricing requirement in 1968 to eliminate so-called "backward pricing" that permitted sales and purchases of fund shares at a stated price. We concluded that backward pricing resulted in dilution of the value of fund shares, and that it disrupted fund management by encouraging short-term trading in funds by speculators seeking to take advantage of fund prices that did not reflect the current value of the fund portfolio. Adoption of Rule 22c–1 under the Investment Company Act of 1940 Prescribing the Time Pricing of Redeemable Securities for Distribution, Redemption, and Repurchase, and Amendment of Rule 17a–3(a)(7) under the Securities Exchange Act of 1934 Requiring Dealers to Time-Stamp Orders, Investment Company Act Release No. 5519 (Oct. 16, 1968) (33 FR 16331 (Nov. 7, 1968)).

[50] Rule 38a–1(a)(1). In most cases, we expect these matters will be addressed by the policies and procedures of fund transfer agents. *See* Companion Late Trading Release, *supra* note 8, for a detailed discussion of how fund share transactions are processed by intermediaries.

parties to segregate orders received by time of receipt in order to prevent "late trading" based on a previously determined price. Reliance on those contractual provisions alone would be insufficient to meet the requirements of the new rule.[51] Funds should not only approve and periodically review the policies and procedures of transfer agents, as required by the rule, but should also take affirmative steps to protect themselves and their shareholders against late trading by obtaining assurances that those policies and procedures are effectively administered.[52]

- *Identification of Affiliated Persons.* To prevent self-dealing and overreaching by persons in a position to take advantage of the fund, the Investment Company Act prohibits funds from entering into certain transactions with affiliated persons.[53] Funds should have policies and procedures in place to identify these persons and to prevent unlawful transactions with them.
- *Protection of Nonpublic Information.* The federal securities laws prohibit insider trading, and section 204A of the Advisers Act requires advisers (including advisers to funds) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the adviser or any of its associated persons from misusing material, nonpublic information. Fund advisers should incorporate their section 204A policies into the policies required by rule 38a–1. These policies typically include prohibitions against trading portfolio securities on the basis of information acquired by analysts or portfolio managers employed by the investment adviser. A fund's compliance policies and procedures should also address other potential misuses of nonpublic information, including the disclosure to third parties of material information about the fund's portfolio,[54] its trading strategies,[55] or pending transactions, and the purchase or sale of fund shares by advisory personnel based on material, nonpublic information about the fund's portfolio.[56]
- *Compliance with Fund Governance Requirements.* A fund's board plays an important role in overseeing fund activities to ensure that they are being conducted for the benefit of the fund and its shareholders. Fund boards, among other things, are tasked with approving the fund's advisory contracts,[57] underwriting agreements,[58] and distribution plans.[59] The Investment Company Act requires that fund boards of directors be elected by fund shareholders,[60] and that a certain percentage be "independent directors."[61] To rely on many of our exemptive rules, independent directors must constitute a majority of the board, must be selected and nominated by other independent directors, and if they hire legal counsel, that counsel must be an independent legal counsel.[62]

The consequences of failing to meet the Investment Company Act's governance requirements are severe.[63] Therefore, a fund's policies and procedures should be designed to guard against, among other things, an improperly constituted board,[64] the failure of the board to properly consider matters entrusted to it, and the failure of the board to request and consider information required by the Investment Company Act from the fund adviser and other service providers.[65]

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[51] In a companion release, we are proposing amendments to rule 22c–1 under the Investment Company Act that would eliminate the need for funds and their transfer agents to rely on the segregation of orders by fund intermediaries other than a registered transfer agent or clearing agency. *See* Companion Late Trading Release, *supra* note 8.

[52] We discuss methods funds can use to oversee such policies and procedures later in this Adopting Release, in connection with the chief compliance officer's oversight of service providers. *See infra* text accompanying footnote 91.

[53] *See, e.g.*, section 17(a) (15 U.S.C. 80a–17(a)) (prohibiting first and second-tier affiliates of a fund from borrowing money or other property from, or selling or buying securities or other property to or from the fund, or any company that the fund controls); section 17(d) (15 U.S.C. 80a–17(d)) (making it unlawful for first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of Commission rules); rule 17d–1(a) (270 CFR 270.17d–1(a)) (prohibiting first- and second-tier affiliates of a fund, the fund's principal underwriter, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which any such fund or company controlled by a fund is a participant unless an application regarding such enterprise, arrangement or plan has been filed with the Commission and has been granted); section 10(f) (15 U.S.C. 80a–10(f)) (prohibiting a fund from purchasing securities in a primary offering if certain affiliated persons of the fund are members of the underwriting or selling syndicate); section 17(e) (15 U.S.C. 80a–17(e)) (limiting the remuneration that first- and second-tier affiliates of a fund may receive in transactions involving the fund, and companies that the fund controls); and section 12(d)(3) (15 U.S.C. 80a–12(d)(3)) and rule 12d3–1 (270 CFR 270.12d3–1) (together prohibiting a fund from acquiring securities issued by, among others, its own investment adviser).

[54] In a companion release, we are proposing to require funds to disclose their policies and procedures with respect to the disclosure of fund portfolio holdings. *See* Section II.C of Companion Disclosure Release, *supra* note 8.

[55] Thus, funds' and investment advisers' policies and procedures should preclude fund or advisory personnel from divulging a fund's portfolio schedule that has not been made generally available to the public. Divulging portfolio holdings to selected third parties is permissible only when the fund has legitimate business purposes for doing so and the recipients are subject to a duty of confidentiality. *See, e.g.*, Selective Disclosure and Insider Trading, Securities Act Release No. 7881 at text accompanying n. 29 (Aug. 15, 2000) (65 FR 51716 (Aug. 24, 2000)) (noting that "issuers and their officials may properly share material nonpublic information with outsiders, for legitimate business purposes, when the outsiders are subject to duties of confidentiality"). *See also Dirks* v. *SEC*, 463 U.S. 646, 655 at n. 14 (1983) ("Under certain circumstances, such as where corporate information is revealed legitimately to an underwriter, accountant, lawyer, or consultant working for the corporation, these outsiders may become fiduciaries of the shareholders. The basis for recognizing this fiduciary duty is not simply that such persons acquired nonpublic corporate information, but rather that they have entered into a special confidential relationship in the conduct of the business of the enterprise and are given access to information solely for corporate purposes.") (citations omitted). We understand that many funds provide portfolio information in response to requests by rating agencies and similar organizations only after receiving written assurances that the information will be kept confidential and that persons with access to the information will not use the information to trade securities.

[56] We urge funds and advisers to require persons who have access to nonpublic information to trade securities of the fund exclusively through identifiable accounts to enable the fund to monitor for excessive, short-term trading. Alternatively, although not required by section 17(j) of the Investment Company Act (15 U.S.C. 80a–17(j)) or rule 17j–1 (17 CFR 270.17j–1), funds and advisers should consider amending their codes of ethics to cover, and thus require reporting of, trades by persons who have access to nonpublic information about the portfolio, including information about the accuracy of the prices of portfolio securities used to calculate net asset value.

[57] Sections 15(a) and (c) of the Investment Company Act (15 U.S.C. 80a–15(a) and (c)).

[58] Sections 15(b) and (c) of the Investment Company Act (15 U.S.C. 80a–15(b) and (c)).

[59] Section 12(b) of the Investment Company Act (15 U.S.C. 80a–12(b)) and rule 12b–1(b)(2) (17 CFR 270.12b–1(b)(2)).

[60] Section 16(a) of the Investment Company Act (15 U.S.C. 80a–16(a)).

[61] Section 10(a) of the Investment Company Act (15 U.S.C. 80a–10(a)) (prohibiting more than 60 percent of a fund's directors from being interested persons of the fund); section 10(b)(2) of the Investment Company Act (15 U.S.C. 80a–10(b)(2)) (requiring, in effect, that independent directors comprise a majority of a fund's board if the fund's principal underwriter is an affiliate of the fund's investment adviser); section 15(f)(1) of the Investment Company Act (15 U.S.C. 80a–15(f)(1)) (providing a safe harbor for the sale of an advisory business if directors who are not interested persons of the investment adviser constitute at least 75 percent of a fund's board for at least three years following the assignment of the advisory contract). *See also* rule 6e–3(T)(b)(15) (17 CFR 270.6e–3(T)(b)(15)) (exempting certain funds underlying insurance products from various Investment Company Act provisions provided that independent directors constitute a majority of the boards of those funds).

[62] *See* rule 10f–3 (17 CFR 270.10f–3), rule 12b–1 (17 CFR 270.12b–1), rule 15a–4 (17 CFR 270.15a–4), rule 17a–7 (17 CFR 270.17a–7), rule 17d–1(d)(7) (17 CFR 270.17d–1(d)(7)), rule 17e–1 (17 CFR 270.17e–1), rule 17g–1(j) (17 CFR 270.17g–1(j)), rule 18f–3 (17 CFR 270.18f–3), and rule 23c–3 (17 CFR 270.23c–3). *See also* rule 0–1(a)(6) (17 CFR 270.0–1(a)(6)) (defining "independent legal counsel").

[63] *See, e.g.*, In re Charles G. Dyer, Investment Company Act Release No. 25107 (Aug. 9, 2001) and SEC v. Centurion Growth Fund, No. 94–8199–CIV–UNGARO–BENAGES, (S.D. Fla. Apr. 22, 1994), Litigation Release No. 14063 (Apr. 28, 1994) (56 SEC Docket 1776).

- *Market Timing.* In a companion release today, we are proposing amendments to our mutual fund disclosure rules to require funds to disclose their policies on "market timing," *i.e.*, the excessive short-term trading of mutual fund shares that may be harmful to the fund.[66] Many funds' prospectuses already disclose market timing policies, and failure to adhere to those disclosed policies violates the antifraud provisions of the Federal securities laws.[67] Moreover, a fund adviser that waives or disregards those policies for the benefit of itself or a third party has breached its fiduciary responsibilities to the fund.[68] Thus, under rule 38a–1 a fund must have procedures reasonably designed to ensure compliance with its disclosed policies regarding market timing. These procedures should provide for monitoring of shareholder trades or flows of money in and out of the funds in order to detect market timing activity, and for consistent enforcement of the fund's policies regarding market timing.[69] If the fund permits any waivers of those policies, the procedures should be reasonably designed to prevent waivers that would harm the fund or its shareholders or subordinate the interests of the fund or its shareholders to those of the adviser or any other affiliated person or associated person of the adviser. In this regard, we strongly urge fund boards to require fund advisers, or other persons authorized to waive market timing policies, to report to the board at least quarterly all waivers granted, so that the board can determine whether the waivers were proper.

B. Annual Review

1. Investment Advisers

Rule 206(4)–7 requires each registered adviser to review its policies and procedures annually to determine their adequacy and the effectiveness of their implementation.[70] The review should consider any compliance matters that arose during the previous year, any changes in the business activities of the adviser or its affiliates, and any changes in the Advisers Act or applicable regulations that might suggest a need to revise the policies or procedures. For example, an adviser that is acquired by a broker-dealer or by the corporate parent of a broker-dealer should assess whether its policies and procedures are adequate to guard against the conflicts that arise when the adviser uses that broker-dealer to execute client transactions, or invests client assets in funds or other securities distributed or underwritten by the broker-dealer.

Although the rule requires only annual reviews, advisers should consider the need for interim reviews in response to significant compliance events, changes in business arrangements, and regulatory developments. For example, we expect all registered advisers will begin reviewing their policies and procedures in light of our adoption of these rules.

2. Investment Companies

Similarly, rule 38a–1 requires a fund to review its policies and procedures, as well as those of its service providers, annually.[71] The rule does not require a fund board to conduct the review; the board would, however, have the benefit of the review in the report submitted by the compliance officer. We expect all funds will begin reviewing their compliance policies and procedures currently, not only in light of the adoption of these rules, but also in light of the recent revelations of unlawful practices involving fund market timing, late trading, and improper disclosures and use of nonpublic portfolio information.

C. Chief Compliance Officer

1. Investment Advisers

Rule 206(4)–7 requires each adviser registered with the Commission to designate a chief compliance officer to administer its compliance policies and procedures.[72] An adviser's chief compliance officer should be competent and knowledgeable regarding the Advisers Act and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures for the firm.[73] Thus, the compliance officer should have a position of sufficient seniority and authority within the organization to compel others to adhere to the compliance policies and procedures.[74]

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[64] A board lacking a sufficient number of disinterested directors, for example, would be improperly constituted. To avoid this, fund procedures should provide for a process of determining that independent director candidates are not "interested persons" and, after their election, for a periodic reassessment that they continue not to be interested persons. *See* rule 31a–2 (17 CFR 270.31a–2(a)(4)) under the Investment Company Act (requiring the maintenance of "any record of the initial determination that a director is not an interested person of the investment company and each subsequent determination that the director is not an interested person * * * includ[ing] any questionnaire and any other document used to determine that a director is not an interested person of the company").

[65] Section 15(c) requires fund directors "to request and evaluate * * * such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company." A board that fails to acquire sufficient information about the advisory fee and other fund expenses will be unable to negotiate effectively on behalf of the fund. As a result, the fund may pay a higher than necessary advisory fee, fail to benefit from economies of scale as a result of insufficient breakpoints in the advisory fee, or bear too many operating expenses.

[66] *See* Section II.A. of the Companion Disclosure Release, *supra* note 8.

[67] Failure to adhere to statements made in the prospectus may render the prospectus disclosure materially misleading and thus violate provisions of the Federal securities laws that prohibit fraud. *See, e.g.*, section 17(a) of the Securities Act (15 U.S.C. 77q), section 10(b) of the Securities Exchange Act (15 U.S.C. 78j) and rule 10b–5 (17 CFR 240.10b–5) thereunder, and section 34(b) of the Investment Company Act (15 U.S.C. 80a–33(b)).

[68] An investment adviser has a fiduciary duty to act in the best interests of a fund it advises. Section 206 under the Advisers Act (15 U.S.C. 80b–6) and section 36(a) under the Investment Company Act (15 U.S.C. 80a–35(a)). *See also Rosenfeld* v. *Black*, 445 F.2d 1337 (2d Cir. 1971); *Brown* v. *Bullock*, 194 F. Supp. 207, 229, 234 (S.D.N.Y.), aff'd, 294 F.2d 415 (2d Cir. 1961); In re Provident Management Corp., Securities Act Release No. 5115 (Dec. 1, 1970) at text accompanying note 12.

[69] *See, e.g.*, C. Meyrick Payne, *Strengthening the Role of Mutual Fund Directors after the Canary Scandal*, Management Practice Bulletin (Oct. 2003) (*http://www.mfgovern.com/reports/2_canaryscandal.html*) (explaining that "periodic sales and redemption data" are useful for detecting practices such as late trading and market timing).

[70] Rule 206(4)–7(b).

[71] Rule 38a–1(a)(3).

[72] Rule 206(4)–7(c). We are also making a technical amendment to the item related to chief compliance officers on Form ADV, the registration form that advisers use to register with us under the Advisers Act. Form ADV, Part 1, Schedule A, Item 2(a) (17 CFR 279.1). The revision requires each registered adviser and each applicant for registration as an adviser to identify a *single* compliance officer.

[73] Having the title of chief compliance officer does not, in and of itself, carry supervisory responsibilities. Thus, a chief compliance officer appointed in accordance with rule 206(4)–7 (or rule 38a–1) would not necessarily be subject to a sanction by us for failure to supervise other advisory personnel. A compliance officer who does have supervisory responsibilities can continue to rely on the defense provided for in section 203(e)(6) of the Advisers Act (15 U.S.C. 80b–3(e)(6)). Section 203(e)(6) provides that a person shall not be deemed to have failed to reasonably supervise another person if: (i) The adviser had adopted procedures reasonably designed to prevent and detect violations of the federal securities laws; (ii) the adviser had a system in place for applying the procedures; and (iii) the supervising person had reasonably discharged his supervisory responsibilities in accordance with the procedures and had no reason to believe the supervised person was not complying with the procedures.

[74] The rule does not require advisers to hire an additional executive to serve as compliance officer, but rather to designate an individual as the adviser's chief compliance officer. Several commenters who complained of the burdens this proposed requirement would impose on them

2. Investment Companies

Rule 38a–1 requires each fund to appoint a chief compliance officer who is responsible for administering the fund's policies and procedures approved by the board under the rule.[75] A fund's chief compliance officer should be competent and knowledgeable regarding the Federal securities laws and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures for the fund. The chief compliance officer of a fund, like the chief compliance officer of an investment adviser, should have sufficient seniority and authority to compel others to adhere to the compliance policies and procedures.

The rule contains several provisions, some of which were not included in our proposal, designed to promote the independence of the chief compliance officer from the management of the fund.[76] First, the chief compliance officer will serve in her position at the pleasure of the fund's board of directors, which can remove her if it loses confidence in her effectiveness. The fund board (including a majority of independent directors) must approve the designation of the chief compliance officer, and must approve her compensation (or any changes in her compensation).[77] The board (including a majority of the independent directors) can remove the chief compliance officer from her responsibilities at any time,[78] and can prevent the adviser or another service provider from doing so.[79]

Second, the chief compliance officer will report directly to the board of directors. She must annually furnish the board with a written report on the operation of the fund's policies and procedures and those of its service providers.[80] The report must address, at a minimum: (i) The operation of the policies and procedures of the fund and each service provider since the last report, (ii) any material changes to the policies and procedures since the last report,[81] (iii) any recommendations for material changes to the policies and procedures as a result of the annual review,[82] and (iv) any material compliance matters since the date of the last report.[83] We have added a definition of the term "material compliance matter" to the rule, to clarify that the report should inform the board of those compliance matters about which the fund's board reasonably needs to know in order to oversee fund compliance.[84]

Third, we are requiring that the chief compliance officer meet in executive session with the independent directors at least once each year, without anyone else (such as fund management or interested directors) present.[85] The executive session creates an opportunity for the chief compliance officer and the independent directors to speak freely about any sensitive compliance issues of concern to any of them, including any reservations about the cooperativeness or compliance practices of fund management.

Fourth, we have added a provision to protect the chief compliance officer from undue influence by fund service providers seeking to conceal their or others' non-compliance with the federal securities laws. Rule 38a–1 prohibits the fund's officers, directors, employees or its adviser, principal underwriter, or any person acting under the direction of these persons, from directly or indirectly taking any action to coerce, manipulate, mislead or fraudulently influence the fund's chief compliance officer in the performance of her responsibilities under the rule.[86]

The appointment of a chief compliance officer with overall responsibility for management of a fund complex's compliance program is a key element of the investor protections we are today adopting. Some commenters representing fund management companies urged us to permit funds to continue to use multiple compliance managers employed by different service providers, rely on the policies of the fund service providers, and omit the requirement that fund boards approve the compliance officer. These commenters would have us maintain funds' current approach to compliance management. Current practices, however, balkanize responsibility for fund compliance and isolate fund boards from compliance personnel, thus impeding boards' abilities to exercise their oversight responsibilities effectively. We decline to accept current practices, which we believe have contributed to the serious compliance lapses that are now the subject of our enforcement actions.

We have observed that executives at service providers have overruled their own compliance personnel because of business considerations. For example, some fund advisers have continued to permit investors with whom they had other business relationships to engage in harmful market timing in fund shares after compliance personnel and portfolio managers brought the market timing activity to their attention. These compliance personnel may not have had access to fund directors or, having been overruled by their own management,

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appeared to have assumed that they would be required to hire an additional person to fill the position of chief compliance officer.

[75] Rule 38a–1(a)(4).

[76] In the Proposing Release we requested comment on whether the chief compliance officer should be a senior manager of the fund because such a person would be in a better position to compel compliance with the fund's policies and procedures, and would less likely be intimidated in the performance of her duties. We are not adopting such a requirement because, as several commenters pointed out to us, it is very difficult to ascertain who is a "senior manager" in some organizations. Instead, we have described the authority we believe an individual must possess to be designated as a chief compliance officer, and have added a provision to the rule making it unlawful to exert undue influence on the chief compliance officer in the performance of her duties (*see infra* text accompanying note 86).

[77] Rule 38a–1(a)(4)(i). These requirements were not included in proposed rule 38a–1. Compensation would include any bonus. In approving a change in compensation, the board should assure itself that the chief compliance officer is not denied any customary cost of living increase or any full customary bonus and that fund managers are not otherwise retaliating against the chief compliance officer for having informed the board of a compliance failure or for having taken aggressive actions to ensure compliance with the federal securities laws by the fund or service provider.

[78] Rule 38a–1(a)(4)(ii).

[79] In a change from the proposed rule, the chief compliance officer can only be discharged from her responsibilities with the approval of the board. Rule 38a–1(a)(4)(ii).

[80] If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the chief compliance officer, must receive all annual reports, and must approve the removal of the chief compliance officer from his or her responsibilities. Rule 38a–1(b).

[81] A change would be "material" in this context if it is a change that a fund director would reasonably need to know in order to oversee fund compliance.

[82] *Id.* The report should also discuss the fund's particular compliance risks and any changes that were made to the policies and procedures to address newly identified risks.

[83] Rule 38a–1(a)(4)(iii). Our proposal would have required the report to include only compliance matters that resulted in remedial action: our final rule contains no such limitation because we are concerned that a fund or its service providers might abuse the limitation and fail to impose remedial actions in order to avoid having to report a compliance failure to the board.

[84] Rule 38a–1(e)(2). Serious compliance issues must, of course, always be brought to the board's attention promptly, and cannot be delayed until an annual report. In addition, individual compliance matters that, taken in isolation, may not be material may collectively suggest a material compliance matter, such as a material weakness in the compliance programs of the fund or its service providers. *See, e.g.*, Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958, at n. 25 (Aug. 20, 1999) (64 FR 46821 (Aug. 27, 1999)).

[85] Rule 38a–1(a)(4)(iv). Independent counsel to the independent directors may be present.

[86] Rule 38a–1(c). This prohibition is similar to the prohibition on unduly influencing auditors found in section 303(a) of the Sarbanes-Oxley Act (Pub. L. 107–204, 116 Stat. 745 (2002)) and rule 13b2–2(b)(1) (17 CFR 240.13b2–2(b)(1)) under the Securities Exchange Act.

may have felt they were not in a position to approach the board.

To address these concerns, rule 38a–1 provides fund boards with direct access to a single person with overall compliance responsibility for the fund who answers directly to the board. The rule provides the board with a powerful tool to exercise its oversight responsibilities over fund compliance matters. The new rule also strengthens the hand of compliance personnel by establishing a direct line of reporting to fund boards that is not controlled by management.[87] We have observed that compliance failures have occurred when a fund service provider has denied information to the fund's board, or has been less than forthright, because the service provider viewed full disclosure as detrimental to its own interests. Under the new rule, the chief compliance officer will be responsible for keeping the board apprised of significant compliance events at the fund or its service providers and for advising the board of needed changes in the fund's compliance program.

We expect that a fund's chief compliance officer will often be employed by the fund's investment adviser or administrator.[88] We are not adopting a requirement that the chief compliance officer be employed by only the fund because we believe that such a provision would actually weaken her effectiveness. Funds today typically have no employees, and delegate management and administrative functions, including the compliance function, to one or more service providers. If we were to preclude the chief compliance officer from being an employee of an adviser or any other service provider, she would be divorced from all fund operations.[89] The adviser's chief compliance officer would continue to administer the adviser's compliance programs, and the role of the fund's chief compliance officer would be limited to oversight of the service providers' compliance policies and providing advice to the board on their operation. As a result, the fund's chief compliance officer would be almost entirely dependent on information filtered through the senior management of the fund's adviser rather than, for example, information received directly from a trading desk. Moreover, fund management would be unlikely to consult with an "outside" compliance officer on a prospective business decision to ascertain the compliance implications.

We recognize, however, that a chief compliance officer who is an employee of the fund's investment adviser might be conflicted in her duties, and that the investment adviser's business interests might discourage the adviser from making forthright disclosure to fund directors of its compliance failures. The rule, as adopted, is designed to address these concerns by requiring a fund's chief compliance officer to report directly to the board. The board, and the board alone, can discharge the officer if she fails to live up to the position. Thus, a chief compliance officer who fails to fully inform the board of a material compliance failure, or who fails to aggressively pursue non-compliance within the service provider, would risk her position. She would also risk her career, because it would be unlikely for another board of directors to approve such a person as chief compliance officer.[90]

The chief compliance officer, in exercising her responsibilities under the rule, will oversee the fund's service providers, which will have their own compliance officials. A chief compliance officer should diligently administer this oversight responsibility by taking steps to assure herself that each service provider has implemented effective compliance policies and procedures administered by competent personnel. The chief compliance officer should be familiar with each service provider's operations and understand those aspects of their operations that expose the fund to compliance risks. She should maintain an active working relationship with each service provider's compliance personnel. Arrangements with the service provider should provide the fund's chief compliance officer with direct access to these personnel, and should provide the compliance officer with periodic reports and special reports in the event of compliance problems. In addition, the fund's contracts with its service providers might also require service providers to certify periodically that they are in compliance with applicable federal securities laws, or could provide for third-party audits arranged by the fund to evaluate the effectiveness of the service provider's compliance controls.[91] The chief compliance officer could conduct (or hire third parties to conduct) statistical analyses of a service provider's performance of its duties to detect potential compliance failures.[92]

D. Recordkeeping

New rule 38a–1 (for funds) and amendments to rule 204–2 (for advisers) require firms to maintain copies of all policies and procedures that are in effect or were in effect at any time during the last five years.[93] In addition, new rule 38a–1 will require funds to maintain materials provided to the board of directors in connection with their approval of the fund's and its service providers' policies and procedures and the annual written reports by the fund's chief compliance officer.[94] New rule 38a–1 and amended rule 204–2 will require funds and advisers to keep any records documenting their annual review.[95] Our rules permit funds and advisers to maintain these records electronically.[96] These new recordkeeping requirements will assist our examination staff in determining whether the adviser or fund is adhering to the new rules and in identifying weaknesses in the compliance program if violations do occur or are uncorrected.

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[87] Rules 38a–1(a)(4)(ii) (providing that the board's approval is required to remove the chief compliance officer) and 38a–1(a)(4)(iii) (requiring the chief compliance officer to provide a written compliance report to the board).

[88] Indeed, she is likely to be the chief compliance officer of that organization inasmuch as the duties of the positions will have significant overlap. Alternatively, the chief compliance officer of the fund may be another member of the adviser or administrator's legal or compliance departments.

[89] Internalizing the compliance function while retaining an externalized management function would also raise a number of practical issues, such as whether the chief compliance officer could use the adviser's office space and other resources, including support staff. In addition, it would be costly for funds, particularly small funds, to hire a chief compliance officer and pay her benefits. Those costs would be borne by investors.

[90] If such a person were approved by another fund, our staff would enhance its scrutiny of the fund accordingly.

[91] Mutual funds already rely on these types of measures in connection with their responsibility to ensure that their service providers carry out anti-money laundering compliance programs. Rules under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107–56 (USA PATRIOT Act) require funds to maintain procedures reasonably designed to prevent them from being used for money laundering or the financing of terrorist activities. *See, e.g.*, Anti-Money Laundering Programs for Mutual Funds, 67 FR 21117, 21119 (Apr. 29, 2002) (mutual fund may contractually delegate functions under 31 CFR 103.130 to a service provider, but must take steps to ensure that the service provider's compliance program is reasonably designed, and to monitor its implementation and ensure its effectiveness).

[92] In the case of an insurance company separate account, the principal service providers typically will be the sponsoring insurance company. Therefore, the chief compliance officer must oversee the insurance company's compliance program with respect to the separate accounts, including the processing of new account applications, premium payments, and exchanges.

[93] Rules 38a–1(d)(1) and 204–2(a)(17)(i). As discussed above, the required policies and procedures do not all need to be contained in a single document. *See supra* text following note 22. We understand many firms issue policies and procedures in loose-leaf form, distributing revised sections periodically within their firms. These firms may comply with the recordkeeping requirements by keeping the current policies and procedures and retaining the superseded section(s) for the requisite period of time, so long as the firm can indicate to our examining staff the version of compliance policies and procedures that were in effect as of a given date.

[94] Rule 38a–1(d)(2). In a change from proposed rule 38a–1, funds will have to maintain materials provided to the board of directors in connection with their approval of service providers' policies and procedures in addition to the annual compliance report. These records must be maintained for at least five years after the end of the fiscal year in which the documents were

E. Private Sector Initiatives

In the Proposing Release, we requested that commenters consider four additional approaches that we might take to require the private sector to assume greater responsibility for compliance with the Federal securities laws. These possible approaches included: (i) A requirement that funds and advisers undergo third-party compliance reviews; (ii) an expansion of the role of independent public accountants to include the performance of certain compliance reviews; (iii) the formation of one or more self-regulatory organizations for advisers or funds; and (iv) the requirement that certain advisers obtain fidelity bonds from reputable insurance companies.

We appreciate the many comments we received. Although we are not moving forward with any of these approaches at this time, we continue to regard them as viable options should the measures we are taking today fail to adequately strengthen the compliance programs of funds and advisers. In particular, we may reconsider whether to propose rules requiring funds and advisers to obtain compliance reviews from third-party compliance experts. Such compliance audits could be a useful supplement to our examination program and would assure the frequent examination of advisers and funds.

F. Additional Request for Comment

Rule 38a–1 includes provisions designed to promote the chief compliance officer's independence from fund management while still maintaining her effectiveness. The fund's board of directors must approve the chief compliance officer's designation and compensation, and has the sole power to remove her from her position.[97] The chief compliance officer reports directly to the board, and must meet with the independent directors in executive session at least annually.[98] The rule also protects the chief compliance officer by prohibiting persons from coercing or fraudulently influencing her in the course of her responsibilities.[99] Today, in addition to adopting rule 38a–1, we request comment on these provisions. Are there other measures (or refinements to these provisions) that would further enhance the independence and effectiveness of chief compliance officers under the rule? We also request comment whether our definition of the "material compliance matters" that must be reported to fund boards by chief compliance officers adequately addresses our concern that fund boards receive compliance information they reasonably need to know in order to oversee fund compliance.[100]

III. Effective Date

New rules 38a–1 and 206(4)–7 and the amendments to rule 204–2 will be effective on February 5, 2004. The compliance date of the new rules and rule amendments is October 5, 2004. On or before the compliance date, all funds and advisers must have designated a chief compliance officer and fund boards must have approved the chief compliance officer. In addition, on or before the compliance date, funds and advisers must adopt compliance policies and procedures that satisfy the requirements in the new rules. In the case of funds, these policies and procedures must have been approved by the board on or before the compliance date. Funds and advisers must complete their first annual review of the compliance policies and procedures no later than 18 months after the adoption or approval of the compliance policies and procedures. The chief compliance officer of a fund must submit the first annual report to the board within 60 calendar days of the completion of the annual review.

Our allowance for a nine month transition period does not reduce the immediacy of the need for all funds, including those that already have compliance policies in place, to undertake a review of their policies and procedures, in light of recent revelations of unlawful practices involving market timing, late trading, and improper disclosures of nonpublic portfolio information.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. The new rules require each fund and adviser to adopt and implement policies and procedures reasonably designed to prevent violations of the securities laws, to review these annually, and to designate an individual as chief compliance officer. In the Proposing Release, we identified possible costs and benefits of the rules and requested comment on our analysis.

A. Benefits

We expect that fund investors, advisory clients, funds, and advisers will benefit from the new rules. Commenters generally agreed that comprehensive compliance programs are beneficial. Although many funds and advisers already have such programs in place, the new rules will make this standard practice for all funds and advisers. One commenter, a compliance officer, noted that the benefits of the new measures in the form of increased investor protection would far exceed the costs.

Requiring funds and investment advisers to design and implement a comprehensive internal compliance program will serve to reduce the risk

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provided to the board, the first two years in an easily accessible place. Funds already are required to document in the fund board's minute books the board's deliberations in connection with the approval of the compliance policies and procedures and their annual review of the chief compliance officer's report. Board minute books must be maintained pursuant to rule 31a–1(b)(4) under the Investment Company Act (17 CFR 270.31a–1(b)(4)). All reports required by our rules are meant to be made available to the Commission and the Commission staff and, thus, they are not subject to the attorney-client privilege, the work-product doctrine, or other similar protections.

[95] Rules 38a–1(d)(3) and 204–2(a)(17)(ii). In a change from proposed rule 38a–1, funds will have to maintain any records documenting their annual review for at least five years after the end of the fiscal year in which the annual review was conducted, the first two years in an easily accessible place. Advisers will have to maintain any records documenting their annual review in an easily accessible place for at least five years after the end of the fiscal year in which the review was conducted, the first two years in an appropriate office of the investment adviser. Rule 204–2(e)(1).

[96] *See* rules 31a–2(f) (17 CFR 270.31a–2(f)) and 204–2 (17 CFR 275.204–2(g)). Funds and advisers that maintain records electronically must provide those records to our staff in electronic format upon request. Rule 31a–2(f)(2)(ii)(A) under the Investment Company Act (17 CFR 270.31a–2(f)(2)(ii)(A)) and rule 204–2(g)(2)(ii)(A) under the Investment Advisers Act (17 CFR 275.204–2(g)(2)(ii)(A)).

[97] Rule 38a–1(a)(4)(i)–(ii). *See supra* notes 76–79 and accompanying text.

[98] Rule 38a–1(a)(4)(iii)–(iv). *See supra* notes 80–85 and accompanying text.

[99] Rule 38a–1(c) prohibits the fund's officers, directors, employees, or its adviser or principal underwriter or any person acting under the direction of these persons, from directly or indirectly taking any action to coerce, manipulate, mislead, or fraudulently influence the fund's chief compliance officer in the performance of compliance responsibilities under the rule. *See supra* note 86 and accompanying text, and note 76.

[100] Rule 38a–1(e)(2) defines the term "material compliance matter" to mean those compliance matters—including violations of the federal securities laws or compliance policies and procedures by the fund or its service providers, as well as weaknesses in the design or implementation of those policies and procedures—about which the fund's board reasonably needs to know in order to oversee fund compliance. *See supra* note 84 and accompanying text.

that fund investors and advisory clients (collectively, "investors") will be harmed by violations of the securities laws. With limited exception, commenters agreed that comprehensive written compliance programs are the first line of defense in investor protection. Recent allegations of violations related to market timing and late trading confirm the need for strong compliance programs that do not permit compliance objectives to be subordinated to the business objectives of fund advisers or their affiliated persons.

The appointment of a chief compliance officer for each fund will also provide important investor protection benefits. Funds currently rely on multiple compliance personnel working for different service providers. Fund boards do not receive compliance information directly from these compliance officers; it is filtered through the management of the fund's investment adviser or other service providers. We believe these structures have contributed to serious compliance lapses that are now the subject of our enforcement actions. Rule 38a–1, by requiring each fund to have a compliance officer who serves at the pleasure of the fund's board and who is responsible for oversight of these service providers, and who cannot be unduly influenced will strengthen the hand of compliance personnel by giving them a direct line of reporting to the fund board that is not controlled by management.

The rules will also benefit funds and investment advisers by diminishing the likelihood of securities violations, Commission enforcement actions, and private litigation. For a fund or adviser, the potential costs associated with a securities law violation may consist of much more than merely the fines or other penalties levied by the Commission or civil liability. The reputation of a fund or adviser may be significantly tarnished, resulting in redemptions (in the case of an open-end fund) or lost clients. Advisers may be denied eligibility to advise funds.[101] In addition, advisers could be precluded from serving in other capacities.[102]

The designation of a chief compliance officer also should enhance the efficiency of funds' and advisers' operations by centralizing responsibility for the compliance function. While many commenters agreed that fund and investment adviser compliance benefits from clear allocation of compliance responsibilities, they argued that large firms would benefit little from requiring a single person to be designated. We believe that the designation of a single officer will increase the coordination with which distributed compliance functions are executed.

In addition, because the new rules complement our examination program for investment advisers and for fund complexes, they will enhance our ability to protect investors. The existence of a structured compliance program at funds and investment advisers, together with the designation of a chief compliance officer to serve as a point of contact, will facilitate the examination staff's efforts to conduct each examination in an organized and efficient manner and thus to allocate resources to maximize investor protection. Most commenters noted that the proposed rules would enhance the effectiveness of the Commission's examination program and oversight of funds and advisers.

B. Costs

The new rules will result in some additional costs for funds and investment advisers, which, in the case of funds, we expect would be passed on to investors. A number of commenters expressed concern about the costs that the new rules would impose.[103] One commenter, noting that existing compliance mandates place a significant burden on investment advisers, expressed concern that the costs of new compliance obligations might outweigh the benefits. However, because all funds and most investment advisers currently have some written compliance policies and procedures in place, the costs of the new rules in many instances already are reflected in the fees investors currently pay.

We would expect that funds and advisers with substantial commitments to compliance would incur only minimal costs in connection with the adoption of the new rules as they reviewed their internal compliance programs for adequacy. Funds and larger advisory firms typically have adopted and implemented comprehensive, written policies and procedures. Many of these funds and advisers also have well-staffed compliance departments. Many conduct periodic reviews of their compliance programs and some hire independent compliance experts to review the adequacy of their compliance programs and the effectiveness of their implementation.

A number of commenters expressed particular concern about the relative cost of the new rules for small investment advisers.[104] This concern is consistent with our experience that investment advisers (as well as small funds) are less likely than their larger counterparts to have comprehensive, written internal compliance programs in place. Based on our examination experience, we estimate that as many as one half of SEC-registered investment advisers do not have comprehensive, written internal compliance programs in place.

However, we expect a number of factors will enable small investment advisers to control and minimize these costs. Because small firms typically engage in a limited number and range of transactions and have one or two employees, their internal compliance programs would be markedly less complex than those of their large firm counterparts.[105] In addition, we anticipate that these firms will turn to a variety of industry representatives, commentators, and organizations that have developed outlines and model programs that these firms can tailor to fit their own situations.[106] If these firms need individualized outside assistance, we expect that the number of independent compliance experts will grow to fill this demand at competitive prices, as has been the case in comparable situations. Estimates of the cost of developing compliance policies and procedures vary greatly depending on the type of help that an investment adviser seeks.[107]

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[101] Section 9(a) of the Investment Company Act (15 U.S.C. 80a–9(a)) prohibits a person from serving as an adviser to a fund if, within the past 10 years, the person has been convicted of certain crimes or is subject to an order, judgment, or decree of a court prohibiting the person from serving in certain capacities with a fund, or prohibiting the person from engaging in certain conduct or practice.

[102] *See, e.g.*, 29 U.S.C. 1111(a) (prohibiting a person from acting in various capacities for an employee benefit plan, if within the past 13 years, the person has been convicted of, or has been imprisoned as a result of, any crime described in section 9(a)(1) of the Investment Company Act (15 U.S.C. 80a–9(a)(1)).

[103] We believe that many of these concerns stemmed from the incorrect perception that the new rules would require the adoption and implementation of one-size-fits-all compliance programs. As discussed above, the new rules require each firm to adopt a compliance program that conforms with the scope and nature of its operations, thus eliminating concerns that the new rules will require duplicative or excessively detailed compliance programs.

[104] The Investment Counsel Association of American ("ICAA"), for example, noted that in small firms with few employees, the responsibility for developing a compliance program, if done in-house, would likely be borne by a highly-paid employee.

[105] The ICAA estimated that, depending on an adviser's size and complexity, the adviser could purchase an off-the-shelf compliance manual for under $1,000, but would have to spend time adjusting the manual to correspond to its organizational structure. Alternatively, the ICAA also estimated that the adviser could enlist the assistance of a third-party compliance firm to draft a firm-specific manual for a small to mid-size firm for between $2,500 and $3,500. The ICAA also estimated that a law firm would charge between $10,000 and $120,000 to draft procedures (and an accounting firm would charge between $50,000 and $200,000), depending on the size and complexity of the adviser's operations.

[106] Firms will incur a cost in tailoring these programs to their specific needs.

The requirement that each investment adviser designate a chief compliance officer likely will impose only a minimal cost. Many investment advisers already have large compliance staffs headed by an individual who officially or effectively serves as a chief compliance officer.[108] For other investment advisers, costs associated with designating a chief compliance officer also would be minimized by the fact that the new rules would not require firms to hire an individual exclusively charged with serving in this capacity.[109] One commenter characterized the chief compliance officer requirement as unduly burdensome because it would conflict with the complex and varied organizational structures of investment advisers. As noted above, we believe that it is important for each firm to have one person who coordinates compliance efforts on behalf of the firm, even though that individual may rely heavily on others within and outside the firm for assistance. The cost to funds of appointing a chief compliance officer also should not be significant. Like many investment advisers, many fund complexes already have large compliance staffs headed by an individual who officially or effectively serves as a chief compliance officer. We expect this individual will typically be qualified to serve the fund's board of directors as the fund's chief compliance officer.[110]

We anticipate that costs associated with the annual review requirement also will be limited. Many large funds and investment advisers with comprehensive compliance programs periodically review portions of their compliance programs. These firms may incur a cost associated with transforming their periodic reviews into a more systematic annual review, but this cost is difficult to quantify. Most of the firms without any review mechanism in place are small. For these firms, the annual review requirement likely will be less extensive and, therefore, less costly than for their larger counterparts. We have determined that requiring more frequent reviews would impose unnecessary costs on funds and advisers.

Several commenters stated that there would be a substantial cost associated with the requirement that fund boards approve the compliance policies and procedures and review the annual report prepared by the chief compliance officer. We have clarified in this release that the new rules do not require the board of directors to read every policy and procedure. The board may make its decisions about the adequacy of the compliance policies and procedures based on summary reports. Similarly, the board's review of the chief compliance officer's annual report should focus on ensuring that the compliance programs of the fund and its service providers are reasonably designed and functioning effectively. In light of these clarifications, we do not believe that funds will incur excessive costs in connection with board oversight of compliance under the new rules.

One commenter, a large fund complex, suggested that there would be substantial recordkeeping costs associated with the new rules, and suggested that firms be required to maintain for five years copies of only those policies and procedures that form the backbone of the firm's compliance program. Because records may be maintained electronically, the cost of maintaining copies of all compliance policies and procedures in place during the past five years will be contained.

V. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act (15 U.S.C. 80a–2(c)) and section 202(c) of the Advisers Act (15 U.S.C. 80b–2(c)) mandate that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

As discussed above, the new rules would require funds and investment advisers to adopt and implement written policies and procedures designed to prevent violations of the Federal securities laws, and review those policies and procedures at least annually. Although we recognize that a compliance program may divert resources from funds' and advisers' primary businesses, we expect that the new rules may indirectly increase efficiency in a number of ways. These compliance programs should increase efficiency by deterring Federal securities law violations, or by facilitating the fund's or adviser's early intervention to decrease the severity of any violations that do occur. In addition, funds and advisers will be required to carry out their internal compliance functions in an organized and systematic manner, which may be more efficient than their current approach to these functions. The existence of an industry-wide compliance program requirement may enhance efficiency further by encouraging third parties to create new informational resources and guidance to which industry participants can refer in establishing and improving their compliance programs.

Since the new rules apply equally to all funds and advisers, we do not anticipate that they will introduce any competitive disadvantages. To the contrary, the new rules may encourage competition on a more level basis than exists in the current environment, in which compliance-oriented industry participants incur greater costs to maintain compliance programs than other firms. Several commenters cautioned, however, that the new rules could have anti-competitive effects on the advisory industry because they would disproportionately burden small advisers and could even force them to merge with their larger, more established counterparts or go out of business. While small advisers will incur the largest relative costs as a result of the new rules, the rule's requirements are essential for the protection of small advisers' clients. Moreover, the existence of a strong compliance program may assist small advisers to attract client assets.

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[107] One commenter stated that prohibitive costs may be the reason that some firms, particularly small firms, do not have compliance programs. The Financial Planning Association, however, estimated, based on discussions with a number of compliance vendors, a small adviser (with five employees) would spend $675 to purchase compliance software and customize it in-house. Alternatively, the FPA estimated that such an adviser could purchase a turn-key manual customized for the adviser for $1,500. Finally, the FPA estimated that the adviser could retain an outside consultant to develop a written compliance manual for $3,900.

[108] The ICAA noted that most of its members have employees responsible for compliance and many of these have designated a chief compliance officer.

[109] Several commenters expressed concern about the cost to small firms of hiring a chief compliance officer. The rules that we are adopting do not require funds or investment advisers to hire a separate chief compliance officer, and we expect that many small investment advisers will designate a principal or employee of the firm to serve as chief compliance officer. However, a firm that does not currently have a person qualified to serve as chief compliance officer will incur costs associated with training someone in the firm.

[110] The requirement that fund boards approve the designation and compensation of the chief compliance officer, or take action to remove a chief compliance officer, will impose minimal costs, if any, beyond the current costs incurred to prepare briefing materials for directors and convene board meetings. With rare exception, fund boards should be able to take up these issues during their existing schedule of meetings.

We anticipate that the new rules will indirectly foster capital formation by bolstering investor confidence. It has been our experience that funds and advisers with effective compliance programs are less likely to violate the Federal securities laws and harm to investors is less likely to result. To the extent such an environment enhances investor confidence in funds and client confidence in investment advisers, investors and clients are more likely to make assets available through these intermediaries for investment in the capital markets.

VI. Paperwork Reduction Act

As we discussed in the Proposing Release, the new rules and amendments would impose "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[111] These collections of information are mandatory. Two of the collections of information are new. The titles of these new collections are "Rule 38a–1" and "Rule 206(4)–7." The Commission submitted these new collections to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The other collection of information takes the form of amendments to a currently approved collection titled "Rule 204–2," under OMB control number 3235–0278. The Commission also submitted the amendments to this collection to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collection of information under rule 38a–1 is necessary to ensure that investment companies maintain comprehensive internal programs that promote the companies' compliance with the federal securities laws. This collection of information is mandatory. The respondents are investment companies registered with us and business development companies. Our staff, conducting the Commission's examination and oversight program, will use the information collected to assess funds' compliance programs. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[112] Rule 38a–1 requires that certain records be retained for at least five years.[113]

The collection of information under rule 206(4)–7 is necessary to ensure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Advisers Act. This collection of information is mandatory. The respondents are investment advisers registered with us. Our staff, conducting the Commission's examination and oversight program, will use the information collected to assess investment advisers' compliance programs. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[114]

The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. This collection of information is mandatory. The respondents are investment advisers registered with us. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[115] The records that an adviser must keep in accordance with the new rules must be retained for at least five years.[116]

A. Rule 38a–1

We estimated in the Proposing Release that there are approximately 5,030 registered investment companies and 53 business development companies (or a total of approximately 5,083 funds) that will be subject to rule 38a–1.[117] We estimated that the average annual hour burden for a fund to document the policies and procedures that make up its compliance program as required by rule 38a–1 would be 60 hours.[118] We further estimated that each fund would spend five hours annually, on average, documenting the conclusions of its annual compliance review for its board of directors as required by rule 38a–1.

We also estimated that each fund would spend 0.5 hours annually, on average, maintaining copies of their compliance policies and procedures and chief compliance officer's annual reports for five years as required by rule 38a–1. In adopting rule 38a–1, we have expanded this recordkeeping requirement to also include copies of briefing materials provided to a fund's board of directors in connection with their approval of the fund and its service providers' compliance programs and board review of the chief compliance officer's annual reports, and to include copies of any records documenting a fund's annual review. Since these changes only require funds to retain copies of a limited number of records they have already created (rather than requiring funds to record any new information), we continue to estimate that the average annual hour burden for each adviser is 0.5 hours.

Most commenters addressing the paperwork burden of rule 38a–1 supported them as reasonable, though one large fund management firm predicted funds would find it burdensome to maintain copies of their compliance policies and procedures for five years as required by the rule. Because of the importance of these copies to our examination and oversight program, we are adopting rule 38a–1 without removing this requirement.

Therefore, our total hour burden estimate for the collections of information under rule 38a–1 remains 332,936.5 burden hours, as we estimated in our proposal.[119]

B. Rule 206(4)–7

In the Proposing Release, we estimated the total annual average burden hours for advisers to document the policies and procedures that make up their compliance programs, as required by rule 206(4)–7, would be 623,200 hours, based on 7,790 investment advisers registered with us spending an annual average of 80 hours on such documentation.[120]

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[111] 44 U.S.C. 3501 to 3520.

[112] *See* section 31(c) of the Investment Company Act (15 U.S.C. 80a–30(c).

[113] *See* rule 38a–1(c).

[114] *See* section 210(b) of the Advisers Act (15 U.S.C. 80b–10(b)).

[115] *Id.*

[116] *See* rules 204–2(a)(17)(i) and (ii) and rule 204–2(e)(1) (17 CFR 275.204–2(e)(1)).

[117] These numbers are based on Commission filings as of January 2003.

[118] While each fund would be required to maintain written policies and procedures under rule 38a–1, this average estimate took into account that many fund complexes already have written policies and procedures documenting their compliance programs and can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations to supplement these programs, if necessary. The estimate also took into account that most funds are located within a fund complex, and would be able to draw extensively from the fund complex's "master" compliance program.

[119] 5,083 funds (5,030 registered investment companies + 53 business development companies) × (60 hours for documenting compliance policies and procedures + 5 hours for documenting conclusions of annual compliance review + 0.5 hours for maintaining records) = 332,936.5 burden hours.

[120] 7,790 was the number of investment advisers registered with us on our Investment Adviser Registration Depository System as of January 14, 2003. 7,790 registered investment advisers x 80 annual average burden hours = 623,200 hours.

This 80 hour average estimate took into account that many advisers would be the primary drafters of compliance policies and procedures for funds under rule 38a–1, and would be able to draw extensively from their fund compliance programs to supplement, as necessary, compliance policies and procedures for the advisory firm. Our estimate also took into account that approximately half of the investment advisers registered with us already have drafted procedures addressing many aspects of their compliance programs, and many investment advisers in this group have drafted comprehensive procedures.

Our 80 hour estimate also took into account that a significant number of smaller registered investment advisers—who typically employ one or a few persons and have complete oversight of their business operations—have not adopted written policies and procedures, but can draw on a number of outlines and model programs, and can develop less complex programs because they often do not participate in arranging or effectuating securities transactions that they recommend to their clients. Comments from a trade association representing many smaller advisers generally supported our underlying assessment in this regard. Comments from another investment adviser trade association noted that it would likely be the owner of (or senior person at) a smaller firm who tailors a model compliance program to suit the firm's particular business, and use of this person's time would be more costly to the firm than the compliance personnel used by larger firms.

We are adopting rule 206(4)–7 without change to its paperwork collection requirements. Accordingly, our estimate of the annual aggregate burden of collection for the amended rule remains 623,200 hours.

C. Rule 204–2

In the Proposing Release, we estimated that the amendments to rule 204–2 requiring investment advisers to maintain copies of their compliance policies and procedures and copies of any records documenting the adviser's annual review of those policies, as required by rule 206(4)–2, would increase each registered investment adviser's average annual collection burden under rule 204–2 by 0.5 hours to 211.98 hours. We further estimated the amendments would increase the rule's annual aggregate burden by 3,895 hours.[121] One commenter objected that it would be onerous for advisers to maintain copies of records generated by the adviser's annual compliance review. Because of the importance of these copies to our examination and oversight program, we are adopting the amendments to rule 204–2 without change.[122]

VII. Summary of Final Regulatory Flexibility Analysis

We have prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604, related to the new rules and rule amendments that we are adopting today. A summary of the Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. Copies of the FRFA and the IRFA may be obtained by contacting Hester Peirce, Senior Counsel, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

The FRFA summarizes the background of the new rules and rule amendments and discusses why these regulatory changes are needed to enhance compliance with the Federal securities laws by funds and advisers. These issues are addressed above. The FRFA also discusses comments received in response to the IRFA, the effect of the new rules and rule amendments on small entities, and the Commission's efforts at minimizing the effect on small entities. These issues are summarized below.

The FRFA explains that the new rules and rule amendments will govern all registered investment companies, business development companies, and advisers registered with the Commission, including small entities. For purposes of the Regulatory Flexibility Act,[123] a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[124] The staff estimates, based on Commission filings, that there are approximately 186 small open- and closed-end investment companies, 18 small unit investment trusts, and 29 small business development companies.[125]

For purposes of the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[126] The Commission estimates that, as of October 14, 2003, there were approximately 571 small investment advisers registered with us.[127]

The FRFA discusses the comments that we received in response to issues raised in the IRFA.[128] Several commenters, including one trade association for investment advisers, cautioned that the new rules would impose significant costs on small advisers. Another trade association for advisers acknowledged that small advisers would bear a higher relative cost than their larger counterparts, but anticipated that the cost to small advisers would be offset by the fact that compliance policies and procedures would not have to cover as broad a range of activities as the policies and procedures of their larger counterparts.[129] A third commenter, however, noted that even though small firms might have less complex policies and procedures, the cost of drafting the basic policies and procedures would be the same as for larger firms and for some small firms the cost would be prohibitive.

Commenters recommended the following accommodations for small entities: (i) Exempt small firms from the requirement to designate a chief compliance officer, (ii) exempt small advisers from all of the new requirements, (iii) identify procedures that are relevant to small firms, (iv) identify issues that do not apply to small advisers or advisers that do not manage assets and therefore would not have to be addressed in their compliance policies and procedures, (v) create a template that firms could adapt to fit their unique characteristics, or (vi) permit small advisers to maintain records outside their office space in an easily accessible location.

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[121] 7,790 registered investment advisers x 0.5 hours = 3,895 hours.

[122] Accordingly, our estimate in the Proposing Release of the annual aggregate burden of collection for the amended rule remains 1,651,324.2 hours. This estimate was based on the OMB's approved burden of 1,625,638.5 hours before the amendments (shared by 7,687 investment advisers at an annual average of 211.48 hours per adviser), plus an increase of 21,790.7 hours attributable to an increase in the number of investment advisers registered with us to 7,790 as of January 2003, (each incurring an average annual burden of 211.48 hours) and an increase of 3,895 additional burden hours associated with the amendments to rule 204–2 (7,790 registered investment advisers × 0.5 hours).

[123] 5 U.S.C. 601–612.

[124] 17 CFR 270.0–10.

[125] The number of small entities, which is current as of June 2003, is derived from analyzing information from Form N–SAR and various databases including Lipper. Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[126] 17 CFR 275.0–7(a).

[127] The number of small investment advisers is derived from the Commission's Investment Adviser Registration Depository.

[128] The comment letters and a summary of comments prepared by our staff are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC (File No. S7–03–03). The comment summary is also available on the Commission's Internet Web site (*http://www.sec.gov/rules/extra/s70303summary.pdf*).

[129] The Financial Planning Association estimated that it would cost a small firm with five employees between $675 and $3,900 to develop a compliance program.

The FRFA explains that the rules do not introduce new reporting requirements, but do introduce new compliance requirements, including new recordkeeping obligations. The FRFA sets forth the requirements of the rule (which are described above in detail) and explains that all funds and advisers, regardless of size, are subject to the compliance requirements. The FRFA also explains that while most firms already have instituted a compliance program and have designated someone charged with implementing it, small advisers are disproportionately represented among the firms that have not taken such steps. The FRFA notes that these firms will bear costs in developing and implementing policies and procedures.[130] The FRFA explains that the new rules and rule amendments are designed to achieve their objectives without imposing undue costs on affected firms.

The FRFA discusses the alternatives considered by the Commission in adopting the new rules and rule amendments that might minimize adverse effects on small advisers, including: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rules, or any part thereof, for small entities.

We do not presently believe that the establishment of special compliance requirements or timetables for small entities is feasible or necessary.[131] Modifying these requirements for small funds or advisers would place their clients at unnecessary risk. The requirement that each fund or adviser implement written policies and procedures reasonably designed to prevent violation of the Federal securities laws, is essential to promote systematic and organized reviews by funds and advisers of their operations and activities. The requirement that funds obtain board approval of their programs and annually report about the programs to their boards is necessary to preserve the crucial oversight role of fund boards of directors.[132] Annual reviews are integral to detecting and correcting any gaps in the program before irrevocable or widespread harm is inflicted upon investors. The required designation of a chief compliance officer is necessary to achieve centralized supervisory authority over all aspects of the compliance program and to reduce the likelihood of gaps in the compliance program. The requirement that funds and advisers keep file copies of their written policies, procedures, reports, and other records for five years, imposes an inconsequential burden on small funds and advisers. The establishment of a special compliance timetable to allow a transition period of more than six months would delay the rules' investor protection benefits without assisting small funds and advisers.

The Commission does not presently believe that clarification, consolidation, or simplification of compliance requirements for small entities is feasible or necessary. The compliance requirements, which are integral to the effectiveness of the rules, are not technical or complex in any sense. The FRFA explains that some commenters requested more specific guidance about the type of compliance policies and procedures that would be required. In the Proposing Release and in this release, we have provided illustration and guidance to firms about the topics that should be addressed by their compliance policies and procedures. Because of the great variety across firms, any template that we could provide would be voluminous and would require extensive tailoring to the unique characteristics of each firm. Thus, it does not appear that Commission templates would effectuate significant burden reduction.

The FRFA explains that the new rules, to the greatest extent possible, embody performance rather than design standards. The rules do not enumerate specific required elements of the policies and procedures, but will allow all firms, including small firms, to tailor their internal compliance programs to the nature and scope of their own business. The FRFA explains that the rules do not set forth a list of attributes that the chief compliance officer must possess and permit firms to designate an existing employee with other responsibilities to fill that role, which the staff anticipates that most small firms will do.

The FRFA explains that we do not believe that the objectives of the rules could be achieved if small entities were exempted from coverage of any part of the proposals. It has been our experience that strong internal compliance programs are essential to investor protection in funds and advisers of all sizes.

VIII. Statutory Authority

We are adopting new rule 38a–1 under the Investment Company Act pursuant to the authority set forth in sections 31(a) and 38(a) of the Act (15 U.S.C. 80–30(a) and 80a–37(a)).[133] We are adopting new rule 206(4)–7 pursuant to the authority set forth in sections 206(4) and 211(a) under the Advisers Act (15 U.S.C. 80b–6(4) and 80b–11(a)).[134] We are adopting amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act (15 U.S.C. 80b–4 and 80b–11).

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[130] The staff estimates that approximately half of these firms will develop these policies internally, while the remaining firms will seek outside assistance from compliance consultants, the number of which is expected to rise after the new rules are adopted.

[131] As stated above, the rules impose no reporting requirements.

[132] In the case of investment advisers, for which such governance issues are not present, we have not included comparable requirements.

[133] Section 38(a) authorizes the Commission to "make * * * such rules and regulations * * * as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in (the Investment Company Act)." We are adopting rule 38a–1 as necessary and appropriate to the exercise of the authority specifically conferred on us elsewhere in the Act, including sections 9(b) (authority to prohibit certain persons from serving in certain capacities with respect to investment companies), 31(b) (authority to examine funds), 36(a) (authority to bring actions for the breach of fiduciary duty); and 42 (authority to enforce the provisions of the Investment Company Act) of the Investment Company Act (15 U.S.C. 80a–9(b), 80a–30(b), and 80a–41). Further, requiring the maintenance of internal compliance policies and procedures and an annual compliance report falls under the authority granted to us under section 31(a), which authorizes us to require funds to maintain and preserve records, including memoranda, books, and other documents.

[134] Section 206(4) permits the Commission to define and prescribe rules to prevent conduct that is unlawful under section 206. Rule 206(4)–7 defines an activity that is unlawful under section 206. Further, section 211(a) of the Advisers Act authorizes the Commission to "make * * * such rules and regulations * * * as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in (the Act)." We are adopting rule 206(4)–7 as necessary and appropriate to the exercise of the authority specifically conferred on us elsewhere in the Act, including sections 203(e) (authority to censure, place limitations on, suspend, or revoke the registration of certain investment advisers), 204

We are amending rule 279.1, Form ADV, under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a) and 78bb(e)(2)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

List of Subjects

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Rules

■ For reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 2. Section 270.38a–1 is added to read as follows:

§ 270.38a–1 Compliance procedures and practices of certain investment companies.

(a) Each registered investment company and business development company ("fund") must:

(1) *Policies and procedures.* Adopt and implement written policies and procedures reasonably designed to prevent violation of the Federal Securities Laws by the fund, including policies and procedures that provide for the oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund;

(2) *Board approval.* Obtain the approval of the fund's board of directors, including a majority of directors who are not interested persons of the fund, of the fund's policies and procedures and those of each investment adviser, principal underwriter, administrator, and transfer agent of the fund, which approval must be based on a finding by the board that the policies and procedures are reasonably designed to prevent violation of the Federal Securities Laws by the fund, and by each investment adviser, principal underwriter, administrator, and transfer agent of the fund;

(3) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures of the fund and of each investment adviser, principal underwriter, administrator, and transfer agent and the effectiveness of their implementation;

(4) *Chief compliance officer.* Designate one individual responsible for administering the fund's policies and procedures adopted under paragraph (a)(1) of this section:

(i) Whose designation and compensation must be approved by the fund's board of directors, including a majority of the directors who are not interested persons of the fund;

(ii) Who may be removed from his or her responsibilities by action of (and only with the approval of) the fund's board of directors, including a majority of the directors who are not interested persons of the fund;

(iii) Who must, no less frequently than annually, provide a written report to the board that, at a minimum, addresses:

(A) The operation of the policies and procedures of the fund and each investment adviser, principal underwriter, administrator, and transfer agent of the fund, any material changes made to those policies and procedures since the date of the last report, and any material changes to the policies and procedures recommended as a result of the annual review conducted pursuant to paragraph (a)(3) of this section; and

(B) Each Material Compliance Matter that occurred since the date of the last report; and

(iv) Who must, no less frequently than annually, meet separately with the fund's independent directors.

(b) *Unit investment trusts.* If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the fund's policies and procedures and chief compliance officer, must receive all annual reports, and must approve the removal of the chief compliance officer from his or her responsibilities.

(c) *Undue influence prohibited.* No officer, director, or employee of the fund, its investment adviser, or principal underwriter, or any person acting under such person's direction may directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence the fund's chief compliance officer in the performance of his or her duties under this section.

(d) *Recordkeeping.* The fund must maintain:

(1) A copy of the policies and procedures adopted by the fund under paragraph (a)(1) that are in effect, or at any time within the past five years were in effect, in an easily accessible place; and

(2) Copies of materials provided to the board of directors in connection with their approval under paragraph (a)(2) of this section, and written reports provided to the board of directors pursuant to paragraph (a)(4)(iii) of this section (or, if the fund is a unit investment trust, to the fund's principal underwriter or depositor, pursuant to paragraph (b) of this section) for at least five years after the end of the fiscal year in which the documents were provided, the first two years in an easily accessible place; and

(3) Any records documenting the fund's annual review pursuant to paragraph (a)(3) of this section for at least five years after the end of the fiscal year in which the annual review was conducted, the first two years in an easily accessible place.

(e) *Definitions.* For purposes of this section:

(1) *Federal Securities Laws* means the Securities Act of 1933 (15 U.S.C. 77a–aa), the Securities Exchange Act of 1934 (15 U.S.C. 78a–mm), the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), Title V of the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999), any rules adopted by the Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311–5314; 5316–5332) as it applies to funds, and any rules adopted thereunder by the Commission or the Department of the Treasury.

(2) A *Material Compliance Matter* means any compliance matter about which the fund's board of directors would reasonably need to know to oversee fund compliance, and that involves, without limitation:

(i) A violation of the Federal securities laws by the fund, its investment adviser, principal underwriter, administrator or transfer agent (or officers, directors, employees or agents thereof),

(ii) A violation of the policies and procedures of the fund, its investment

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(authority to examine advisers), and 209 (authority to enforce the provisions of the Advisers Act) of the Advisers Act (15 U.S.C. 80b–3(e), 80b–4, and 80b–9).

adviser, principal underwriter, administrator or transfer agent, or

(iii) A weakness in the design or implementation of the policies and procedures of the fund, its investment adviser, principal underwriter, administrator or transfer agent.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 3. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

■ 4. Section 275.204–2 is amended by adding new paragraph (a)(17) and by revising paragraph (e)(1). The additions and revisions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(17)(i) A copy of the investment adviser's policies and procedures formulated pursuant to § 275.206(4)–7(a) of this chapter that are in effect, or at any time within the past five years were in effect, and

(ii) Any records documenting the investment adviser's annual review of those policies and procedures conducted pursuant to § 275.206(4)–7(b) of this chapter.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this section (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(16), and (a)(17)(i) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

■ 5. Section 275.206(4)–7 is added to read as follows:

§ 275.206(4)–7 Compliance procedures and practices.

If you are an investment adviser registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3), it shall be unlawful within the meaning of section 206 of the Act (15 U.S.C. 80b–6) for you to provide investment advice to clients unless you:

(a) *Policies and procedures.* Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act;

(b) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

(c) *Chief compliance officer.* Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 6. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

■ 7. Form ADV (referenced in 279.1) is amended by:

In Part 1, Schedule A, revising Item 2(a), to read "each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer (Chief Compliance Officer is required and cannot be more than one individual), director and any other individuals with similar status or functions;"

Dated: December 17, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31544 Filed 12–23–03; 8:45 am]

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Federal Register

Wednesday,
December 24, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 239 and 274
Disclosure of Breakpoint Discounts by Mutual Funds; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–8347; 34–48939; IC–26298; File No. S7–28–03]

RIN 3235–AI95

Disclosure of Breakpoint Discounts by Mutual Funds

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 to require an open-end management investment company to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. Under the proposed amendments, an open-end management investment company would be required to describe in its prospectus any arrangements that result in breakpoints in sales loads and to provide a brief summary of shareholder eligibility requirements.

DATES: Comments must be received on or before February 13, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–28–03; this file number should be included in the subject line if electronic mail is used. All comments received will be posted on the Commission's Internet Web site (*http://www.sec.gov*) and made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.[1]

FOR FURTHER INFORMATION CONTACT: Christian L. Broadbent, Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, or with respect to questions about disclosure by financial intermediaries, Joseph P. Corcoran, Special Counsel, Office of Chief Counsel, Division of Market Regulation, at (202) 942–0073, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Form N–1A (17 CFR 239.15A and 274.11A), the registration form used by open-end management investment companies to register under the Investment Company Act of 1940 ("Investment Company Act") and to offer their securities under the Securities Act of 1933 ("Securities Act").

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I. Introduction and Background

The shares of open-end management investment companies ("mutual funds") are sold to investors in a variety of ways. Many shares are sold without a sales load, including shares sold directly by the fund and those sold through retirement plans. An estimated 37% of mutual fund shareholders purchase shares through a broker-dealer or another financial intermediary.[2] Fund shares sold through a broker-dealer or other intermediary often are subject to a front-end sales load. A front-end sales load is a sales charge that applies at the time the fund shares are purchased to compensate the broker-dealer that sells the fund shares, and is based on a percentage of the purchase price.

Mutual funds with a front-end sales load typically establish a schedule of sales load percentages that are used to calculate the sales load that an investor pays. Some mutual funds that charge front-end sales loads will charge lower sales loads for larger investments. For example, a fund might charge a 5% front-end sales load for investments up to $50,000, but charge a load of 4% for investments between $50,000 and $100,000 and 3% for investments exceeding $100,000. The investment levels required to obtain a reduced sales load are commonly referred to as "breakpoints."[3] A broker-dealer who sells fund shares to retail customers must disclose breakpoint information to its customers and must have procedures reasonably designed to ascertain information necessary to determine the availability and appropriate level of breakpoints.[4]

Each mutual fund company establishes its own formula for how it will calculate whether an investor is entitled to receive a breakpoint. Funds typically offer investors two principal options that enable them to take advantage of breakpoints in sales loads for purchases made over time: a letter of intent and a right of accumulation. A letter of intent is a written statement by an investor to a fund in which the investor states that he or she intends to purchase a stated dollar amount of fund shares over a specified period (frequently, 13 months). As a result, the investor is charged the reduced sales charge that applies to the total amount of the investor's intended purchase on his or her first purchase and all subsequent purchases. If a shareholder fails to fulfill his or her obligation to purchase the intended total dollar amount of fund shares, the shareholder must reimburse the discount.

A right of accumulation permits an investor to aggregate shares owned in related accounts in some or all funds in a fund family to reach a breakpoint discount. Funds typically allow investors to aggregate fund shares owned by a person or group of persons related to the investor (*e.g.*, family members). This option also gives a fund shareholder the ability to count earlier purchases of shares of funds in his or her accounts and in related accounts towards the reduction of the sales charge on a current purchase. A right of accumulation may often be combined with a letter of intent for further benefits.

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[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] Investment Company Institute, 2001 Profile of Mutual Fund Shareholders 13–14 (Fall 2001).

[3] Information for investors concerning mutual fund breakpoints—including how funds calculate breakpoints and the steps investors can take if they fail to receive the benefit of a breakpoint to which they were entitled—is available on the Commission's Web site at *http://www.sec.gov/answers/breakpt.htm*.

[4] *NASD Special Notice to Members 02–85* (Dec. 23, 2002) (directing all member firms to immediately review the adequacy of their existing policies and procedures to ensure that investors are charged the correct sales load on mutual fund transactions); *NASD Notice to Members 94–16* (Mar. 1994) (discussing the obligation of member firms to ensure that communications with customers are accurate and complete regarding mutual fund breakpoints). *See* NASD Conduct Rule 2110 (Standards of Commercial Honor and Principles of Trade) and NASD Conduct Rule IM–2830–1 ("Breakpoint" Sales); *In the Matter of Application of Harold R. Fenocchio for Review of Disciplinary Action Taken by the NASD*, 46 SEC 279 (1976) (sustaining NASD's finding of violation of its Rules of Fair Practice where registered representatives failed to have customers execute a letter of intent or to inform them of their rights of accumulation in connection with mutual fund purchases).

Typically, a mutual fund values accounts in order to determine whether aggregate holdings have reached a sales load breakpoint using one of three methods: net asset value, public offering price, and historical cost. Most mutual fund families use the net asset value of an investor's holdings to determine whether a breakpoint discount is available. Some fund families, however, permit an investor's holdings to be valued using the public offering price, which is determined by adding the maximum front-end sales load charged to the net asset value. In addition, some fund families permit holdings to be valued based on the greater of market value (net asset value or public offering price) and historical cost, which is what the investor actually paid for a mutual fund at the time of purchase.

A mutual fund that offers breakpoint discounts must disclose its schedule of breakpoints in its prospectus.[5] A fund must disclose its aggregation rules for determining breakpoints, such as letters of intent and rights of accumulation, in either its prospectus or statement of additional information ("SAI").[6]

In late 2002, the staffs of the Commission and the NASD identified concerns regarding the extent to which mutual fund investors were receiving breakpoint discounts, which were first uncovered by NASD's routine examination program. As a result, the Commission and NASD launched a multifaceted action plan to address these concerns.[7] First, broker-dealers were required to review the adequacy of their policies and procedures in this area, make necessary changes, and report information concerning their mutual fund businesses. Second, the Commission and NASD, along with the New York Stock Exchange ("NYSE"), initiated an examination sweep of 43 broker-dealers that sell front-end sales load mutual funds to evaluate whether samples of transactions received the sales load discounts offered by the fund. Third, NASD, the Securities Industry Association ("SIA"), and the Investment Company Institute ("ICI") formed a task force to recommend ways in which the mutual fund and broker-dealer industries could prevent breakpoint problems in the future.

The Commission, NASD, and NYSE conducted their examination sweep of broker-dealers between November 2002 and January 2003. The examination revealed that most firms, in some instances, did not provide investors with breakpoint discounts for which they appeared to have been eligible.[8] Of the more than 9,000 transactions reviewed, examiners identified 5,515 transactions that appeared to be eligible for a reduced sales charge. Of these 5,515 transactions, examiners found 1,757 transactions that did not receive a breakpoint discount or appeared to have incurred other unnecessary sales charges (representing 20% of all the transactions reviewed, and 32% of the transactions that were eligible for a discount). For these 1,757 transactions, the average discount not provided was $364 per transaction. The most frequent causes for not providing a breakpoint discount involved problems with rights of accumulation, including not linking a customer's ownership of different funds in the same mutual fund family, not linking shares owned in a fund or fund family in all of a customer's accounts at the firm, and not linking shares owned in the same fund or fund family by persons related to the customer (*e.g.*, spouse, children) in accounts at the firm.[9]

The NASD formed the Joint NASD/Industry Task Force on Breakpoints together with the SIA and ICI in February 2003, to recommend ways in which the mutual fund and brokerage industries can assure that investors are not overcharged when they purchase funds with front-end sales loads.[10] The Task Force issued its report in July 2003.[11] Consistent with the findings of the joint examination sweep of broker-dealers, the Task Force reported that many of the significant challenges in applying breakpoints correctly were with respect to rights of accumulation. The Task Force explained that to deliver breakpoint discounts based on rights of accumulation, the parties involved with the transaction must be able to link the accounts containing shares eligible to be aggregated and to ascertain the value of the accounts in order to determine whether a shareholder has met sales load breakpoints. The Task Force identified particular challenges to delivering breakpoints based on investors' rights of accumulation. First, broker-dealers have experienced difficulty in accessing and understanding the terms upon which mutual funds allow investors to aggregate both their holdings and those of related parties to reach breakpoints. Second, broker-dealers and mutual funds must communicate to investors the terms concerning rights of accumulation, and broker-dealers must obtain from investors necessary information regarding accounts eligible to be linked and, if applicable, historical costs.[12]

To address the challenges in providing correct breakpoint discounts to investors, the Task Force provided 13 recommendations, including: That mutual fund companies take steps to make investors aware of the availability of breakpoint discounts; that broker-dealers adopt policies and practices to gather the appropriate information from investors so that they can take advantage of all available breakpoint discounts; that transfer agents and broker-dealers modify the systems used to execute mutual fund transactions; and that regulators and the mutual fund and securities industries continue to educate investors about breakpoint opportunities. Two of the recommendations called for Commission rules that would require a fund to disclose certain information regarding breakpoints in its prospectus and on its Web site.[13] First, the Task Force recommended that the Commission require a mutual fund to provide critical data regarding pricing methods, breakpoint schedules, and linkage rules in its prospectus and on its website, in a prominent and clear format.[14] Second, the Task Force recommended that the Commission require a fund to disclose in its prospectus that an investor may need to provide his or her broker-dealer with the information and records necessary to take full advantage of breakpoint discounts. The information and records could be used to aggregate, for example, holdings in retirement accounts, holdings of related parties, and holdings in accounts at other broker-dealers. In addition, the Task Force recommended that, if funds permit investors to rely on historical costs, the Commission require the prospectus to advise the investor to keep records necessary to demonstrate historical costs.[15]

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[5] Item 8(a)(1) of Form N–1A. Rule 22d–1 under the Investment Company Act (17 CFR 270.22d–1) permits a mutual fund to sell shares at prices reflecting scheduled breakpoints if it meets certain requirements, such as furnishing to existing shareholders and prospective investors the information regarding breakpoints required by applicable registration statement form requirements.

[6] Items 8(a)(2) and 18(a) of Form N–1A. The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System.

[7] *SEC and NASD Action Plan on Mutual Fund Sales Load Charges*, Securities and Exchange Commission Press Release, Jan. 16, 2003, *http://www.sec.gov/news/press/2003–7.htm*.

[8] Securities and Exchange Commission *et al.*, Joint SEC/NASD/NYSE Report of Examinations of Broker-Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds 14–15 (Mar. 2003) (hereinafter Joint Report), available at *http://www.sec.gov/spotlight/breakpoints.htm*.

[9] *Id.* at 1–2, 14–17.

[10] *NASD Announces Joint NASD/Industry Breakpoint Task Force*, NASD News Release, Feb. 18, 2003, *http://www.nasdr.com/news/pr2003/release_03_006.html*.

[11] *Joint NASD/Industry Breakpoint Task Force Issues Report*, NASD News Release, July 22, 2003, *http://www.nasdr.com/news/pr2003/release_03_030.html*.

[12] NASD *et al.*, Report of the Joint NASD/Industry Task Force on Breakpoints 5 (July 2003) (hereinafter Task Force Report), available at *http://www.nasdr.com/pdf-text/breakpoints_report.pdf*.

Today, the Commission is proposing rules that would implement these recommendations. Specifically, we are proposing to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we are proposing to require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also proposing to require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our proposals would also require a mutual fund to state in its prospectus whether it makes available on or through its website information regarding its sales loads and breakpoints. This enhanced disclosure is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors as to the information that they may need to provide to funds and broker-dealers to take full advantage of all available breakpoint discounts. It also should help broker-dealers to access information about available breakpoint discounts.

II. Discussion

The Commission is proposing amendments to Form N–1A, the registration form for mutual funds, that would require enhanced disclosure regarding breakpoint discounts on front-end sales loads. These proposed disclosure requirements are intended to assist investors in receiving the benefit of any breakpoint discounts to which they are entitled. Nothing in the proposed amendments would eliminate, or diminish in any respect, a broker-dealer's obligations to its customers with respect to mutual fund breakpoints, including its obligations to disclose information about breakpoints.[16]

A. Disclosure of Arrangements That Result in Breakpoints in Sales Loads

We are proposing to revise Form N–1A to require a mutual fund to provide a brief description in its prospectus of arrangements that result in sales load breakpoints, including a summary of shareholder eligibility requirements. Currently, Item 8(a)(2) of Form N–1A requires disclosure of arrangements that result in breakpoints in, or elimination of, sales loads, including letters of intent and rights of accumulation. Item 8(a)(2) also requires that each class of individuals or transactions to which the arrangements apply be identified and that each different breakpoint be stated as a percentage of both the offering price and the amount invested. This information may be provided in either the prospectus or the SAI.

The proposed amendments would require that a mutual fund include the description required by Item 8(a)(2) of arrangements that result in breakpoints in, or elimination of, sales loads in its prospectus and not the SAI. We believe that information regarding breakpoints, which can significantly affect the cost of a shareholder's investment, should be included in the prospectus that is delivered to all shareholders. This will provide greater prominence to breakpoint disclosure than inclusion in the SAI, which is delivered to investors upon request. Our proposals would direct that prospectus disclosure regarding breakpoints be brief, in order to avoid overwhelming investors with excessively detailed information. Proposed Item 8(a)(2) would not require the prospectus to include the information currently required in the SAI regarding breakpoints for affiliated persons of the fund and breakpoints in connection with a reorganization.[17] This information would continue to be required in the SAI.

We are proposing to amend Item 18(a) of Form N–1A to require that information regarding breakpoint arrangements that is not included in the prospectus be included in the SAI. We are also proposing to modify Item 18(a) to conform the enumeration of types of special purchase plans or methods in that Item to the enumeration in Item 8(a)(2) of types of arrangements that result in breakpoints, so that references to "dividend reinvestment plans," "employee benefit plans," and "redemption reinvestment plans" would be added to Item 18(a) and "services in connection with retirement plans" would be eliminated from Item 18(a). The proposals would also add "waivers for particular classes of investors" to the enumeration in both Items 8(a)(2) and 18(a). To assist investors and financial intermediaries in finding all information about breakpoints, the prospectus would be required to state, if applicable, that additional information concerning sales load breakpoints is available in the SAI.

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[13] The Task Force also made a number of recommendations to the NASD, NYSE, and mutual fund and brokerage industries. Working groups have been formed to address the other Task Force recommendations. *See, e.g., Breakpoints Training Outline, http://www.nasdr.com/breakpoints_training_outline.asp* (last modified Nov. 19, 2003) (training outline developed by NASD and working group in response to recommendation that broker-dealers provide enhanced training regarding mutual fund breakpoint discounts); *Breakpoints Checklist and Worksheet, http://www.nasdr.com/breakpoints_checklist.asp* (last modified Nov. 3, 2003) (checklist and worksheet designed by NASD and working group to assist member firms in implementing recommendations that broker-dealers require registered representatives to complete standardized checklists or worksheets, which record relevant account data, when executing transactions that carry front-end sales loads).

In addition, the NASD is heading an Omnibus Account Task Force consisting of members of the fund and brokerage industries, as well as other intermediaries, to study the issue of trading through omnibus accounts. Statement of William H. Donaldson, Chairman, U.S. Securities and Exchange Commission, Testimony Before the Senate Committee on Banking, Housing and Urban Affairs 14 (Nov. 18, 2003). Typically, a brokerage firm has one omnibus account with each of the mutual funds with which it does business and through which all of its brokerage customers purchase and redeem shares of those mutual funds. Consequently, these mutual funds do not have information on the identity of the underlying brokerage customer who is purchasing or redeeming the funds' shares. In the breakpoint context, omnibus accounts make it difficult for funds to track information about the underlying shareholder that might have entitled the shareholder to breakpoint discounts.

[14] Task Force Report, *supra* note 12, at 10.

[15] *Id.* at 13–14.

[16] *See supra* note 4 and accompanying text; *In re Russell C. Turek*, Exchange Act Release No. 45459 (Feb. 20, 2002) (Commission sanctioned registered representative for, among other violations, failing to inform customers of the availability of breakpoint discounts); *In re Mason, Moran & Co.*, Exchange Act Release No. 4832 (Apr. 23, 1953) (registrant claimed it complied with disclosure requirements of the federal securities laws by furnishing the customer with a prospectus which included breakpoint information; Commission held that while the prospectus requirements were intended to provide the investor with more information than had theretofore been generally available in the ordinary securities transaction, these requirements were not intended to abrogate the greater disclosure duties traditionally imposed on brokers and dealers in a fiduciary position).

[17] Proposed Instruction 3 to Item 8(a)(2) of Form N–1A. Item 13(d) of Form N–1A requires that a mutual fund disclose any arrangements that result in breakpoints in, or elimination of, sales loads for directors and other affiliated persons of the fund. Item 18(b) of Form N–1A requires that a mutual fund disclose any arrangements that result in breakpoints in, or elimination of, sales loads in connection with the terms of a merger, acquisition, or exchange offer made under a plan of reorganization.

Our proposed amendments would add an instruction to require that the description of arrangements resulting in breakpoints include a brief summary of shareholder eligibility requirements. This summary would be required to include a description or list of the types of accounts (*e.g.*, retirement accounts, accounts held at other financial intermediaries), account holders (*e.g.*, immediate family members, family trust accounts, solely-controlled business accounts), and fund holdings (*e.g.*, funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for sales load breakpoints. We believe that requiring such a summary of the eligibility requirements for sales load breakpoints in the mutual fund prospectus would assist investors and financial intermediaries in better understanding the ways in which investors may take full advantage of breakpoint opportunities.

We request comment generally on the proposed requirement to disclose in the prospectus arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements, and specifically on the following issues:

- Is the proposed requirement for a brief description in the prospectus of arrangements that result in breakpoints in, or elimination of, sales loads appropriate or necessary? Should this description include a brief summary of shareholder eligibility requirements with respect to sales load breakpoints? Is there any additional information that we should require? Would these proposed requirements benefit investors or other parties?
- As discussed above, our proposals would require a mutual fund to provide a brief description of arrangements that result in breakpoints in its prospectus, and would require any additional details regarding these arrangements in the SAI. Is this proposed division of disclosure regarding breakpoints appropriate? Is there information that would be required in the prospectus under our proposals that is more appropriate for the SAI, or vice versa? Is the information regarding breakpoints for affiliated persons of the fund and breakpoints in connection with a reorganization more appropriately included in the SAI or in the prospectus? Should we permit a mutual fund to choose whether to include information regarding breakpoints in either its prospectus or SAI? Should we require that all information regarding breakpoints be included in the prospectus? Would the breakpoint information that we propose to require in the prospectus detract from other important information in the prospectus? How should we strike a balance between requiring enhanced disclosure and not overwhelming investors with information that they do not consider important?
- Should the information we are proposing to require in the prospectus be required in another location, such as the confirmation, account statement, document provided by a financial intermediary prior to share purchases, or shareholder report?

B. Disclosure of Methods Used to Value Accounts

We are also proposing to require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints, including the circumstances in which and the classes of individuals to whom each method applies.[18] The methods required to be disclosed, if applicable, would include historical cost, net amount invested, and offering price.[19] We believe that requiring a mutual fund to describe in its prospectus the methods that it uses to value accounts in determining breakpoint eligibility would assist investors and financial intermediaries in more effectively determining investors' eligibility.

We request comment generally on the proposed requirement to describe the methods used to value accounts and specifically on the following issues:

- Is our proposed requirement that a mutual fund describe the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints appropriate? Would our proposals provide sufficient information to investors? Should we require any additional information about these methods?
- Is the prospectus the most appropriate location for a description of the methods used to value accounts? Should we require or permit this disclosure to be included in the SAI, confirmation, account statements, shareholder reports, document provided by a financial intermediary prior to share purchase, or some other location?

C. Disclosure Regarding Information and Records Necessary to Aggregate Holdings

The proposals would also require a mutual fund to state in its prospectus, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints.[20] In addition, a mutual fund would be required to describe any information or records, such as account statements, that may be necessary for a shareholder to provide to the fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. The description would be required to include, if applicable:

- Information or records regarding shares of the fund or other funds held in all accounts (*e.g.*, retirement accounts) of the shareholder at the financial intermediary;[21]
- Information or records regarding shares of the fund or other funds held in any account of the shareholder at another financial intermediary;[22] and
- Information or records regarding shares of the fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.[23]

In addition, if a mutual fund permits breakpoints to be determined based on historical cost, it would be required to state in its prospectus that a shareholder should retain any records necessary to substantiate historical costs because the fund, its transfer agent, and financial intermediaries may not maintain this information.[24]

We believe that prospectus disclosure regarding the information or records that may be necessary for a shareholder to provide would facilitate the correct application of breakpoint discounts in transactions in which shares are aggregated to meet sales load breakpoints. As the Task Force report noted, in order to deliver breakpoint discounts where investor eligibility is based on rights of accumulation, financial intermediaries must obtain the necessary information from investors regarding accounts that may be linked (and, if applicable, historical costs).[25] In addition, our proposed disclosure may heighten investors' awareness of the importance of maintaining records when breakpoints are determined using the historical cost method. The Task Force reported that broker-dealers would not generally have historical cost information for customer positions transferred into their firm or for positions held at another firm that a customer may be able to link in order to receive a breakpoint discount.[26] In addition, the fund and its transfer agent may not have historical cost information for shareholders, for example, in the many cases where a financial intermediary places an omnibus order to purchase and sell fund shares on behalf of all its customers without identifying individual customer transactions.

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[18] Proposed Item 8(a)(3) of Form N–1A.

[19] *See* Section I, "Introduction and Background," *supra* (discussing net asset value, public offering price, and historical cost methods of valuing accounts). We refer here to "net amount invested" rather than "net asset value," and to "offering price" rather than "public offering price," because these are the terms currently used in Form N–1A. *See* Instruction 3(a) and (b) to Item 8(a)(1) of Form N–1A.

[20] Proposed Item 8(a)(4)(i) of Form N–1A.

[21] Proposed Item 8(a)(4)(i)(A) of Form N–1A.

[22] Proposed Item 8(a)(4)(i)(B) of Form N–1A.

[23] Proposed Item 8(a)(4)(i)(C) of Form N–1A.

[24] Proposed Item 8(a)(4)(ii) of Form N–1A.

We request comment generally on the proposed disclosure requirement regarding information or records that may be necessary for a shareholder to provide and specifically on the following issues:

- Should we require a mutual fund to state in its prospectus that it may be necessary for a shareholder to inform the fund or a financial intermediary of the existence of accounts that are eligible to be aggregated to meet sales load breakpoints? Should we require a mutual fund to describe the information and records that it may be necessary for a shareholder to provide in order to verify his or her eligibility for breakpoint discounts? Is there any additional information that we should require in this description?
- Do the proposed disclosure requirements reflect the appropriate allocation of responsibility among the mutual fund, the financial intermediary, and the shareholder for ensuring that the shareholder obtains a breakpoint discount to which he or she is entitled? Will the proposed disclosures be adequate to enable shareholders to obtain the breakpoint discounts for which they are eligible, or would this proposed approach place too great a burden on shareholders?
- Is the prospectus the most appropriate location for the proposed disclosure regarding the need for a shareholder to inform the fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated, and the information and records necessary to aggregate holdings? Should we require or permit any, or all, of this disclosure to be included in the SAI? Should this disclosure be required in shareholder reports, confirmations, account statements, or a document delivered by a financial intermediary prior to a purchase of mutual fund shares? Should shareholders be notified periodically, *e.g.*, in shareholder reports or account statements, that it is their responsibility to monitor whether they have qualified for breakpoint discounts?

D. Disclosure of Availability of Sales Load and Breakpoint Information on Fund's Web Site

We are proposing to require that a mutual fund state in its prospectus whether it makes available free of charge, on or through its Web site at a specified Internet address, and in a clear and prominent format, the information that would be required regarding the fund's sales loads and breakpoints in the prospectus and SAI pursuant to Items 8(a) and 18(a), including whether the Web site includes hyperlinks that facilitate access to the information.[27] A mutual fund that does not make the sales load and breakpoint information available in this manner would be required to disclose the reasons why it does not do so (including, where applicable, that the fund does not have an Internet Web site).

This proposal is intended to encourage mutual funds to provide accessible Web site disclosure regarding the availability of breakpoint discounts to complement the prospectus disclosure regarding breakpoints that we are proposing. Modernizing the disclosure system under the Federal securities laws involves recognizing the importance of the Internet in fostering prompt and more widespread dissemination of information.[28] We believe that mutual fund disclosure should be more readily available to investors in a variety of locations to facilitate investor access to that information. We also believe that it is important for funds to make investors aware of the different sources that provide access to information about a fund. In addition, we believe that encouraging website disclosure of information regarding breakpoint discounts may assist broker-dealers and other financial intermediaries to more easily access and understand the terms upon which mutual funds allow investors to aggregate their holdings and the holdings of related parties.

Our proposal would require that the disclosure about website availability of sales load and breakpoint information indicate whether the information is in a clear and prominent format, including whether the website includes hyperlinks that facilitate access to the information. We believe that it is important for website disclosure regarding sales loads and breakpoint discounts to be clear and prominent, in order to help investors and financial intermediaries to find this information easily. Hyperlinks that facilitate access to the information may contribute to a clear and prominent presentation. Thus, websites could provide sales load and breakpoint information in a clear and prominent format by, for example, using clear and prominent hyperlinks that provide direct linkage to the relevant portions of the fund's prospectus and SAI or the specific pages on a third-party website containing the information.[29]

We request comment on the proposed requirement to disclose whether sales load and breakpoint information is available on or through a fund's website and specifically on the following issues:

- Is the proposed requirement for a mutual fund to state in its prospectus whether the required information regarding its sales loads and breakpoints is available on or through its Web site necessary or appropriate? Should a mutual fund that does not maintain a Web site be required to state that it does not make this information available because it does not have a Web site? What other disclosures in this area, if any, should funds be required to make?
- Is the prospectus the appropriate location for a mutual fund to provide the proposed disclosure regarding Web site availability? Would this disclosure be more appropriately located in the SAI, Form N–CSR, shareholder reports, account statements, confirmations, a document provided by a financial intermediary prior to share purchase, or another location?
- Should we require mutual funds with Web sites to include sales load and

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[25] Task Force Report, *supra* note 12, at 5.

[26] *Id.* at 5 n.7.

[27] Proposed Item 8(a)(5) of Form N–1A.

[28] *See* Securities Act Release No. 8128 (Sept. 5, 2002) (67 FR 58480 (Sept. 16, 2002)) (adopting requirement for an operating company to disclose in its annual report on Form 10–K whether it makes available free of charge on or through its Web site its annual reports on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and amendments).

[29] *See* Securities Act Release No. 8128 (Sept. 5, 2002) (67 FR 58480, 58493 (Sept. 16, 2002)). We direct funds to this release for guidance concerning satisfaction of this requirement through hyperlinking to a third-party Web site.

breakpoint disclosure information on their Web sites?

- Are there other measures that we should consider in order to encourage mutual funds to provide disclosure regarding sales loads and breakpoints on their Web sites in a prominent and readily accessible manner?
- Are there other mechanisms besides prospectus and Web site disclosure to better inform investors about breakpoints to which they may be entitled (*e.g.*, requiring a financial intermediary to provide a document prior to share purchase that describes breakpoint discounts, or requiring this information to be included in shareholder reports, account statements, or confirmations)?

E. Presentation Requirements

Our proposals would require that the disclosure in Item 8(a)(2) regarding arrangements resulting in breakpoints in, or elimination of, sales loads, and all other sales load disclosure required by Item 8(a), be adjacent to the table of sales loads and breakpoints required by Item 8(a)(1).[30] This would include the description of sales loads required by Item 8(a)(1), as well as the information about breakpoints, including valuation methods, shareholder information and records, and Web site availability that would be required by proposed Items 8(a)(3), (4), and (5). The proposals also would require that a mutual fund present the information required by Item 8(a) in a clear, concise, and understandable manner, and include tables, schedules, and charts as expressly required by Item 8(a)(1) or where doing so would facilitate understanding.[31] These requirements are intended to encourage mutual funds to present information regarding sales loads and breakpoints in an integrated manner that will be easily understood by investors, which would address the Task Force recommendation that critical data regarding pricing methods, breakpoint schedules, and linkage rules be presented in a prominent and clear format.

General Instruction C.3.(a) to Form N–1A currently requires the information required by Item 8 to be in one place in the prospectus. This includes the information about sales loads and breakpoints required by Item 8(a)(1), information about 12b–1 fees required by Item 8(b), and information about multiple class and master-feeder funds required by Item 8(c). It does not include the information on breakpoints required by Item 8(a)(2) because this information may be included in the SAI or in a separate purchase and redemption document pursuant to Item 7(f). Item 7(f) of Form N–1A permits a mutual fund to omit from the prospectus information about purchase and redemption procedures required by Items 7(b)–(d)[32] and 8(a)(2) and provide it in a separate disclosure document if the fund delivers the document with the prospectus, incorporates the document into the prospectus by reference and files the document with the prospectus, and provides disclosure explaining that the information disclosed in the document is part of, and incorporated into, the prospectus.

Under our proposals, Item 7(f) would continue to permit the information required by Item 8(a)(2) to be included in a separate purchase and redemption document.[33] In addition, we are proposing to amend Item 7(f) to permit the information about breakpoints required by proposed Items 8(a)(3), (4), and (5) (*i.e.*, valuation methods, shareholder information and records, and Web site availability) to be included in the separate purchase and redemption document. We are also proposing to amend General Instruction C.3.(a) to Form N–1A to make it clear that this information may be disclosed in a separate purchase and redemption document, provided that all the information required by paragraphs 8(a)(2), (3), (4), and (5) is included in the separate document. This instruction will also clarify that if the information required by paragraphs 8(a)(2)–(5) is disclosed in a separate purchase and redemption document, the table of sales loads and breakpoints required by Item 8(a)(1) must be included in the separate purchase and redemption document, as well as the prospectus, in order to comply with the proposed requirement that all disclosure required by Item 8(a) be adjacent to the table of sales loads and breakpoints.

We request comment generally on the proposed requirements for presentation of information about sales loads and breakpoints and specifically on the following:

- Will our proposal to require that the disclosure regarding sales loads and breakpoints required by Item 8(a)(1) and (a)(2) be presented in a clear, concise, and understandable manner, and include tables, schedules, and charts where expressly required by Item 8(a)(1) or where doing so would facilitate understanding result in disclosure that is easily understood by investors? Are there additional requirements that we should adopt regarding the presentation of this information?
- Should we require that the sales load and breakpoint information required by Item 8 be adjacent to the table of sales loads and breakpoints required by Item 8(a)(1)? Are there other ways to ensure that all information related to breakpoints is provided in an integrated manner that will facilitate investor understanding? Should we adopt a "close proximity" or other standard instead of an "adjacent" standard?
- For a mutual fund that includes information about breakpoints in a separate purchase and redemption document, would the requirement that the table of sales load and breakpoint information required by Item 8(a)(1) appear in both the prospectus and the separate document result in unnecessary duplication? If so, how should we address this duplication, which arises from the existing requirement that the table be included in the prospectus along with other information currently required by Item 8 and the proposed requirement that all information about breakpoints be adjacent to the table? If we do not require the information about breakpoints required by proposed Items 8(a)(2)–(5) to be adjacent to the table, how should we address the Task Force recommendation that we require a mutual fund to provide critical data regarding pricing methods, breakpoint schedules, and linkage rules in a prominent and clear format? Should we require all information required by Item 8 to be in the prospectus? Should we permit all information required by Item 8 to be in the separate purchase and redemption document?
- Should we continue to permit the separate purchase and redemption document? Does this document facilitate investor understanding of the information it contains? We note that, in a recent release, we proposed to amend Item 7 to require new disclosure regarding frequent purchases and redemptions to be included in the prospectus and not a separate purchase and redemption document.[34] To what extent do funds currently use the separate purchase and redemption document? If we should continue to permit this document, what information

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[30] Proposed Instruction to Item 8(a) of Form N–1A.

[31] *Id. Cf.* rule 421 under the Securities Act of 1933 (17 CFR 230.421) (plain English requirements for prospectuses).

[32] Items 7(b)–(d) require a description of the procedures for purchasing and redeeming the fund's shares, as well as the fund's policy with respect to dividends and distributions.

[33] We are, however, proposing to eliminate, as duplicative, the reference to this procedure in Item 8(a)(2).

[34] Investment Company Act Release No. 26287 (Dec. 11, 2003).

should it be permitted to include? Are there other means for effectively communicating purchase and redemption information to investors?

F. Compliance Date

If we adopt the proposed disclosure requirements, we expect to require all new registration statements, and all post-effective amendments that are either annual updates to effective registration statements or that add a new series, filed on or after the effective date of the amendments to comply with the proposed amendments. The Commission requests comment on this proposed compliance date.

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), and the Commission is submitting the proposed collection of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N–1A (OMB Control No. 3235–0307) was adopted pursuant to section 8(a) of the Investment Company Act (15 U.S.C. 80a–8) and section 5 of the Securities Act (15 U.S.C. 77e). We are proposing amendments to Form N–1A to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we are proposing to require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also proposing to require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our proposals would also require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints. In addition, our proposals would require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner. This enhanced disclosure is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and broker-dealers to take full advantage of all available breakpoint discounts.

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial Form N–1A filing is 809 hours per portfolio. The current annual hour burden for preparing post-effective amendments of Form N–1A is 101 hours per portfolio. The Commission estimates that, on an annual basis, registrants file initial registration statements on Form N–1A covering 483 portfolios, and file post-effective amendments on Form N–1A covering 6,542 portfolios. Additional burdens of 6,524 hours for the preparation and filing of initial registration statements and 49,065 hours for the filing of post-effective amendments are expected to result from the Commission's recent proposed rules relating to "fund of funds" arrangements, and the recent proposed rule relating to frequent purchases and redemptions of fund shares and selective disclosure of portfolio holdings.[35] Thus, the Commission estimates that the current total annual hour burden for the preparation and filing of Form N–1A is 1,107,078 hours.[36]

We estimate that the proposed amendments would increase the hour burden per portfolio per filing of an initial registration statement on Form N–1A by 2 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement on Form N–1A by 1 hour. We also estimate that 30% of mutual fund portfolios would be affected by the proposed amendments.[37] The additional incremental hour burden resulting from the proposed amendments would be 2,252 hours (2 hours for initial registration statements × 483 portfolios × 30%) + (1 hour per post-effective amendment × 6,542 portfolios × 30%). Thus, if the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A would be 1,109,330 hours (2,252 hours + 1,107,078 hours).

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive

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[35] *See* Investment Company Act Release No. 26198 (Oct. [illegible], 2003) (68 FR 58226 (Oct. 8, 2003)); Investment Company Act Release No. 26287 (Dec. 11, 2003).

[36] This estimate is based on the following calculation: (809 hours × 483 portfolios) + (101 hours × 6,542 portfolios) = 1,051,489 hours. An additional annual hour burden of 24,591 hours (1,694 hours for initial registration statements and 22,897 hours for post-effective amendments) resulting from the proposed rules described in the fund of funds proposing release, and an additional annual hour burden of 30,998 hours (4,830 hours for initial registration statements and 26,168 hours for post-effective amendments) resulting from the proposed rule relating to market timing and selective disclosure, yield a total annual hour burden of 1,107,078 hours.

[37] This estimate is based on information regarding the number of mutual fund portfolios with one or more classes of shares that have front-end sales loads, derived by the staff from Commission filings and third-party information sources.

Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–28–03. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our proposals would require mutual funds to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. Specifically, the proposals would:

- Require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements;
- Require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints;
- Require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary;
- Require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints; and
- Require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner.

A. Benefits

The proposed form amendments are expected to benefit mutual fund investors by providing them with enhanced disclosure about breakpoint discounts on front-end sales loads. This enhanced disclosure is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts. An examination sweep by the Commission, the NASD, and the NYSE between November 2002 and January 2003 found that in 32% of the transactions reviewed that appeared to be eligible for a reduced sales charge, investors did not receive a breakpoint discount or appeared to have incurred other unnecessary sales charges.[38] The average discount not provided was $364 per transaction.[39] We anticipate that our proposals, if adopted, may result in a decrease in the number of transactions in which investors do not receive breakpoint discounts to which they are entitled.

Specifically, we believe that the proposed amendments relating to disclosure of arrangements that result in breakpoints in sales loads would benefit investors by requiring that information regarding breakpoints, which can significantly affect the cost of a shareholder's investment, be included in the prospectus that is delivered to all shareholders. In addition, the proposed requirement that this prospectus disclosure include a summary of the eligibility requirements for sales load breakpoints may assist investors in better understanding the ways in which they may take full advantage of breakpoint opportunities.

The proposed amendments relating to disclosure of methods used to value accounts in determining breakpoint eligibility also may benefit investors by assisting them and their financial intermediaries in more effectively determining investors' eligibility. Also, the proposed disclosure relating to information and records necessary to aggregate holdings may benefit investors because prospectus disclosure regarding the information or records that it may be necessary for a shareholder to provide may facilitate the correct application of breakpoint discounts in transactions in which shares are aggregated to meet sales load breakpoints. In addition, the proposed disclosure may heighten investors' awareness of the importance of maintaining records when breakpoints are determined using the historical cost method.

The proposed amendments relating to disclosure regarding the availability of sales load and breakpoint information on a mutual fund's Web site may benefit investors by encouraging mutual funds to provide accessible Web site disclosure regarding the availability of breakpoint discounts to complement the proposed prospectus disclosure regarding breakpoints. In addition, the proposed amendments relating to the presentation of disclosure regarding breakpoints may benefit investors by encouraging mutual funds to present information regarding sales loads and breakpoints in an integrated manner that will be easily understood by investors.

We seek comment on the benefits of the proposed amendments (and any alternatives suggested by commenters) as well as any data quantifying those benefits.

B. Costs

The proposals would impose new requirements on mutual funds that have front-end sales loads to provide several new prospectus disclosures regarding breakpoint discounts on these front-end sales loads. We estimate that complying with the proposed new disclosures would entail a relatively small financial burden. The information regarding breakpoint discounts should be available to management and the board of directors of a fund, and mutual funds already disclose much of the breakpoint disclosure that would be required by the proposed amendments in their registration statements (although they are not required to include this information in their prospectuses). Therefore, we expect that the cost of compiling and reporting this information should be limited.

Specifically, we are proposing amendments to Form N–1A to require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements. In addition, we are proposing to require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints. We are also proposing to require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary. Our proposals would also require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints.

The costs of adding these new prospectus disclosures may include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure). For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would add 2,252 hours to the total annual burden of completing Form N–1A.[40] We estimate that this additional burden would equal total internal costs of $101,903 annually, or approximately $48 per fund portfolio.[41]

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[38] Joint Report, *supra* note 8, at 14–15.

[39] *Id.* at 16.

We expect the external costs of providing the new prospectus disclosure will be limited, because the amendments relating to disclosure of arrangements that result in breakpoints in sales loads require the description of the arrangements to be brief. We expect that the proposed disclosure would not add significant length to the prospectus. We request comment on the nature and magnitude of our estimates of the costs of the additional disclosure that would be required if our proposals were adopted.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act (15 U.S.C. 80a–2(c)) and section 2(b) of the Securities Act (15 U.S.C. 77(b)) require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments are intended to provide greater transparency for mutual fund shareholders regarding breakpoint discounts on front-end sales loads. These changes may improve efficiency. The enhanced disclosure requirements are intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and financial intermediaries to take full advantage of all available breakpoint discounts, which could promote more efficient allocation of investments among mutual funds. The proposed amendments may also improve competition, as enhanced disclosure regarding the ways in which investors can aggregate holdings to meet sales load breakpoints may prompt investors to seek out mutual funds that offer the most favorable breakpoint schedules and aggregation rules for their particular circumstances, and may prompt funds to compete for the business of these better informed investors. Finally, the effects of the proposed amendments on capital formation are unclear.

Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation, and the extent to which they would be offset by the costs of the proposals, are difficult to quantify. We note that, with respect to our proposals, in many cases mutual funds currently provide disclosure in their registration statements regarding breakpoint discounts on front-end sales loads.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed form amendments under the Securities Act and the Investment Company Act to require mutual funds to provide enhanced disclosure about breakpoint discounts on front-end sales loads. Specifically, the proposals would:

- Require a mutual fund to describe briefly in its prospectus any arrangements that result in breakpoints in sales loads, including a summary of shareholder eligibility requirements;
- Require a mutual fund to describe in its prospectus the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints;
- Require a mutual fund to state in its prospectus, if applicable, that in order to obtain a breakpoint discount, it may be necessary for a shareholder to provide information and records, such as account statements, to a mutual fund or financial intermediary;
- Require a mutual fund to state in its prospectus whether it makes available on or through its Web site, and in a clear and prominent format, information regarding its sales loads and breakpoints; and
- Require a mutual fund to provide prospectus disclosure regarding sales loads and breakpoints adjacent to the table of sales loads and breakpoints, and to present the information in a clear, concise, and understandable manner.

A. Reasons for, and Objectives of, Proposed Amendments

The Commission is proposing rules to address the concerns that have been identified regarding the extent to which mutual fund investors receive breakpoint discounts. An examination sweep by the Commission, the NASD, and the NYSE between November 2002 and January 2003 found that in 32% of the transactions reviewed that appeared to be eligible for a reduced sales charge, investors did not receive a breakpoint discount or appeared to have incurred other unnecessary sales charges.[42] The enhanced disclosure that would be required by the Commission's proposed rules is intended to assist investors in understanding the breakpoint opportunities available to them, and to alert investors to the information that they may need to provide to funds and broker-dealers to take full advantage of all available breakpoint discounts.

B. Legal Basis

The Commission is proposing amendments to Form N–1A pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)), and sections 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37).

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[43] Approximately 145 investment companies registered on Form N–1A meet this definition.[44]

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[40] This estimate is based on the following calculation: (2 hours per initial registration statement × 483 portfolios × 30% of portfolios) + (1 hour per post-effective amendment × 6,542 portfolios × 30% of portfolios) = 2,252 hours.

[41] These figures are based on a Commission estimate that approximately 781 registered investment companies, with 2,108 portfolios, would file initial registration statements or post-effective amendments annually that would be subject to the proposed disclosure requirements, and an estimated hourly wage rate of $45.25. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage figure is based on published compensation for compliance attorneys outside New York City ($37.60) and programmers ($29.44), and the estimate that attorneys and programmers would divide time equally on compliance with the proposed disclosure requirements, yielding a weighted wage rate of $33.52 (($37.60 × .50) + (29.44 × .50)) = $33.52). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2002* (Sept. 2002). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $45.25 (33.52 × 1.35) = $45.25.

[42] Joint Report, *supra* note 8, at 14–15.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would require mutual funds that have front-end sales loads to provide several new prospectus disclosures regarding breakpoint discounts on these sales loads, as described above.

The Commission estimates some one-time formatting and ongoing costs and burdens that would be imposed on all mutual funds, including funds that are small entities. We note, however, that in many cases funds currently provide disclosure in their registration statements regarding breakpoint discounts. For purposes of the Paperwork Reduction Act, we have estimated that the proposed new disclosure requirements would increase the hour burden per portfolio per filing of an initial registration statement on Form N–1A by 2 hours and would increase the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 1 hour. We estimate that this additional burden would increase total internal costs of filing an initial registration statement by $91 per affected mutual fund portfolio annually, and would increase total internal costs of filing a post-effective amendment by $45 per affected mutual fund portfolio annually.[45]

We expect the external costs of providing the new prospectus disclosure will be limited, because some funds currently provide some of this information in their registration statements, and we do not expect that the disclosure will add significant length to the prospectus. The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed disclosure amendments would provide shareholders with greater transparency of breakpoint discounts on front-end sales loads. Different disclosure requirements for mutual funds that are small entities may create the risk that the shareholders in these funds would not be as able as investors in larger funds to assess the terms upon which breakpoint discounts in sales loads are offered. We believe it is important for the disclosure that would be required by the proposed amendments to be provided to shareholders by all mutual funds, not just funds that are not considered small entities.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–28–03; this file number should be included on the subject line if E-mail is used. All comments received will be posted on the Commission's Internet Web site (*http://www.sec.gov*) and made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102.[46]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[47] a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to Form N–1A pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)) and sections 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37).

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[43] 17 CFR 270.0–10.

[44] This estiamte is based on analysis by the Division of Investment Management staff of information from databases compiled by third-part information providers, including Morningstar, Inc., and Lipper.

[45] These figures are based on an estimated hourly wage rate of $45.25. *See supra* note 41.

[46] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[47] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

List of Subjects

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

2. The authority citation for part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

3. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Replacing the final sentence of General Instruction C.3.(a) with two new sentences;

b. Revising the introductory language to Item 7(f);

c. Revising Item 8(a)(2);

d. Adding new Instructions to Items 8(a)(1) and (2);

e. Adding new Items 8(a)(3), (4), and (5);

f. Adding a new Instruction to Item 8(a); and

g. Revising Item 18(a).

These additions and revisions read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–1A

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General Instructions

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C. Preparation of the Registration Statement

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3. Additional Matters:

(a) * * * Disclose the information required by Item 8 (Distribution Arrangements) in one place in the prospectus, except that the information required by paragraphs 8(a)(2), (3), (4), and (5) may be disclosed in a separate purchase and redemption document pursuant to Item 7(f), provided that all the information required by paragraphs 8(a)(2), (3), (4), and (5) is included in the separate document. If the information required by paragraphs 8(a)(2), (3), (4), and (5) is disclosed in a separate purchase and redemption document, the table required by paragraph 8(a)(1) must be included in the separate purchase and redemption document, as well as the prospectus, in order to comply with the Instruction to Item 8(a), which states that all information required by paragraph 8(a) must be adjacent to the table required by paragraph 8(a)(1).

* * * * *

Item 7. Shareholder Information

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(f) *Separate Disclosure Document.* A Fund may omit from the prospectus information about purchase and redemption procedures required by Items 7(b)–(d) and 8(a)(2)–(5) and provide it in a separate document if the Fund:

* * * * *

Item 8. Distribution Arrangements

(a) * * *

(2) Unless disclosed in response to paragraph (a)(1), briefly describe any arrangements that result in breakpoints in, or elimination of, sales loads (*e.g.*, letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of investors). Identify each class of individuals or transactions to which the arrangements apply and state each different breakpoint as a percentage of both the offering price and the net amount invested. If applicable, state that additional information concerning sales load breakpoints is available in the Fund's SAI.

Instructions.

1. The description, pursuant to paragraph (a)(1) or (a)(2) of this Item 8, of arrangements that result in breakpoints in, or elimination of, sales loads should include a brief summary of shareholder eligibility requirements, including a description or list of the types of accounts (*e.g.*, retirement accounts, accounts held at other financial intermediaries), account holders (*e.g.*, immediate family members, family trust accounts, solely-controlled business accounts), and fund holdings (*e.g.*, funds held within the same fund complex) that may be aggregated for purposes of determining eligibility for sales load breakpoints.

2. The description pursuant to paragraph (a)(2) of this Item 8 need not contain any information required by Items 13(d) and 18(b).

(3) Describe, if applicable, the methods used to value accounts in order to determine whether a shareholder has met sales load breakpoints, including the circumstances in which and the classes of individuals to whom each method applies. Methods that should be described, if applicable, include historical cost, net amount invested, and offering price.

(4)(i) State, if applicable, that, in order to obtain a breakpoint discount, it may be necessary at the time of purchase for a shareholder to inform the Fund or his or her financial intermediary of the existence of other accounts in which there are holdings eligible to be aggregated to meet sales load breakpoints. Describe any information or records, such as account statements, that it may be necessary for a shareholder to provide to the Fund or his or her financial intermediary in order to verify his or her eligibility for a breakpoint discount. This description must include, if applicable:

(A) Information or records regarding shares of the Fund or other funds held in all accounts (*e.g.*, retirement accounts) of the shareholder at the financial intermediary;

(B) Information or records regarding shares of the Fund or other funds held in any account of the shareholder at another financial intermediary; and

(C) Information or records regarding shares of the Fund or other funds held at any financial intermediary by related parties of the shareholder, such as members of the same family or household.

(ii) If the Fund permits eligibility for breakpoints to be determined based on historical cost, state that a shareholder should retain any records necessary to substantiate historical costs because the Fund, its transfer agent, and financial intermediaries may not maintain this information.

(5) State whether the Fund makes available free of charge, on or through the Fund's website at a specified Internet address, and in a clear and prominent format, the information required by paragraphs (a)(1) through (a)(4) and Item 18(a), including whether the website includes hyperlinks that facilitate access to the information. If the Fund does not make the information

required by paragraphs (a)(1) through (a)(4) and Item 18(a) available in this manner, disclose the reasons why it does not do so (including, where applicable, that the Fund does not have an Internet website).

Instruction. All information required by paragraph (a) of this Item 8 must be adjacent to the table required by paragraph (a)(1) of this Item 8; must be presented in a clear, concise, and understandable manner; and must include tables, schedules, and charts as expressly required by paragraph (a)(1) of this Item 8 or where doing so would facilitate understanding.

* * * * *

Item 18. Purchase, Redemption, and Pricing of Shares

(a) *Purchase of Shares.* To the extent that the prospectus does not do so, describe how the Fund's shares are offered to the public. Include any special purchase plans or methods not described in the prospectus or elsewhere in the SAI, including letters of intent, accumulation plans, dividend reinvestment plans, withdrawal plans, exchange privileges, employee benefit plans, redemption reinvestment plans, and waivers for particular classes of shareholders.

* * * * *

By the Commission.

Dated: December 17, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–31545 Filed 12–23–03; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Wednesday,
December 24, 2003

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635
Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 030721180–3316–02; I.D. 010903D]

RIN 0648–AQ95

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishing season notification.

SUMMARY: This final rule is necessary to ensure that shark regulations are based on the results of the 2002 stock assessments for large coastal sharks (LCS) and small coastal sharks (SCS). The results of these stock assessments indicate that the LCS complex continues to be overfished, and overfishing is occurring; that sandbar sharks are not overfished, but overfishing is occurring; that blacktip sharks are rebuilt and healthy; that the SCS complex is healthy; and that finetooth sharks are not overfished, but overfishing is occurring. Based on these results, NMFS is revising the rebuilding timeframe for LCS to 26 years from 2004, changing some of the commercial regulations, changing some of the recreational regulations, implementing measures to reduce bycatch and bycatch mortality including a time/area closure, removing the deepwater/other sharks from the management unit, establishing criteria regarding adding or removing sharks from the prohibited species group, and establishing a display permit for fishermen who wish to harvest highly migratory species (HMS) for public display. NMFS also updates essential fish habitat (EFH) identifications for sandbar, blacktip, finetooth, dusky, and nurse sharks. NMFS also notifies eligible participants of the opening and closing dates for the Atlantic large coastal, small coastal, and pelagic shark fishing seasons.

DATES: This final rule is effective February 1, 2004, except for the amendments to §§ 635.20(e), 635.22(c), and 635.27(b) which are effective on December 30, 2003.

Fishing Season Opening and Closing Dates

The fishery opening for large coastal sharks (LCS) in the North Atlantic region is effective January 1, 2004, through 11:30 p.m., local time, April 15, 2004, and the closure is effective 11:30 p.m., local time, April 15, 2004, through June 30, 2004. The fishery opening for LCS in the South Atlantic region is effective January 1, 2004, through 11:30 p.m., local time, February 15, 2004, and the closure is effective 11:30 p.m., local time, February 15, 2004, through June 30, 2004. The fishery opening for LCS in the Gulf of Mexico region is effective January 1, 2004, through 11:30 p.m., local time, February 29, 2004, and the closure is effective 11:30 p.m., local time, February 29, 2004, through June 30, 2004. The fishery opening for small coastal sharks (SCS) in all regions, pelagic sharks, blue sharks, and porbeagle sharks is effective January 1, 2004, through June 30, 2004, unless otherwise modified or superseded through publication of a closure notification in the **Federal Register**.

ADDRESSES: For copies of Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (Amendment 1) and its Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FEIS/RIR/FRFA), contact Karyl Brewster-Geisz at NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910 or at (301) 713–1917 (fax). Copies can also be obtained on the web at *http://www.nmfs.noaa.gov/sfa/hms/*. Comments regarding the collection-of-information requirements contained in this rule should be sent to the HMS Management Division at the address noted above and to the Office of Management and Budget (OMB) by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Heather Stirratt, or Chris Rilling at 301–713–2347 or fax 301–713–1917 or Greg Fairclough at 727–570–5741 or fax 727–570–5656.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, and Amendment 1 to the HMS FMP are implemented by regulations at 50 CFR part 635.

NMFS published a Notice of Intent to conduct an EIS and draft Amendment 1 to the HMS FMP on November 15, 2003 (67 FR 69180). On January 27, 2003, NMFS announced the availability of an Issues and Option paper and scheduled seven scoping meetings (68 FR 3853). On August 1, 2003, NMFS published the proposed rule regarding Amendment 1 (68 FR 45196) and announced the availability of the Draft EIS (68 FR 45237). NMFS held six public hearings and one Advisory Panel meeting during the public comment period, which was extended to October 3, 2003, due to Hurricane Isabel (68 FR 47904, August 12, 2003; 68 FR 51560, August 27, 2003; 68 FR 54885, September 19, 2003). Additionally, NMFS attended several Fishery Management Council meetings regarding Amendment 1 and its proposed rule.

Information regarding the management history of Atlantic sharks, Exempted Fishing Permits (EFP), and EFH and the alternatives considered in Amendment 1 was provided in the preamble of the proposed rule and is not repeated here. Additional information can be found in the Final Amendment 1 available from NMFS (*see* **ADDRESSES**). A description of the changes to the proposed rule can be found after the response to comments, followed by information on the available quota and the length of the first 2004 fishing season.

Most of the measures in this rule, such as the requirement to carry and use linecutters and dipnets, the change in authorized gear in the recreational fishery, and the removal of deepwater and other sharks from the management unit, will be effective on February 1, 2004. However, some of the management measures that relieve restrictions, such as the changes to the commercial quotas (including the quota level for large coastal sharks (LCS), small coastal sharks (SCS), and establishment of regional quotas (§ 635.27(b))), changes to the recreational bag and size limit (§§ 635.22(c) and 635.20(e)), and changes to the commercial minimum size (§ 635.20(e)), will be effective on December 30, 2003. Additionally, in order to give fishermen time to adjust to the new regulations and, if necessary, revise their business plans, some of the final measures will be implemented after February 1, 2004. For instance, the Mid-Atlantic shark closure off of North Carolina (§ 635.21(d)(1)) and the trimester seasons for the commercial fisheries (§ 635.27(b)(1)(i)) will be effective on January 1, 2005. Furthermore, the requirements of installing and activating a vessel monitoring system (VMS) for bottom longline and gillnet vessels (§ 635.69(a)(2) and (3)) and possessing and using a dehooking device (§ 635.21(d)(3)(ii)) are delayed indefinitely pending type approval notifications to be published at a later date in the **Federal Register**.

Response to Comments

A number of individuals and groups provided both written and verbal comments during the public comment period. The comments are summarized below together with NMFS' responses. Additionally, several questions were raised during the waiting period for the FEIS. While not required, NMFS has, along with the other comments below, provided further clarification to respond to some of the questions raised. All comments are grouped in a layout similar to the layout of the preamble of the proposed rule.

1. LCS Rebuilding Time Frame

Comment 1: The proposed rebuilding time frame is illegal and runs counter to the precautionary approach. The LCS complex can and must be rebuilt within the 10-year time limit envisioned by Congress.

Response: The National Standard 1 Guidelines, 50 CFR § 600.310, specify two strategies for determining the rebuilding time frame. First, if a stock can rebuild in less than 10 years, the rebuilding time frame can be no longer than 10 years. Second, if a stock will take 10 years or more to rebuild, the rebuilding time frame can be as long as the time to rebuild with no fishing plus a mean generation time. The HMS FMP specifies that, because of their slow growth and low reproductive potential, a 70-percent probability should be used for rebuilding the stock for sharks. The HMS FMP states that a 70-percent probability should be used as a guide to ensure that the intended results of management actions are realized and to assess the relative merits of one rebuilding time frame over another (*see* the HMS FMP at 3–61 and 3–289). The HMS FMP also uses a low probability of a negative outcome (less than 20-percent probability) as a guide for evaluating management measures.

Under the 70-percent probability, the amount of time required for rebuilding under no fishing is 10 years or greater. Thus, the second rebuilding strategy, discussed above, would apply. After taking into account the biology of the stocks, the results of the 2002 LCS stock assessment, the requirements of the Magnuson-Stevens Act and the National Standard Guidelines, the criteria in the HMS FMP, and the status of the fishing communities that rely on economic activities involving the capture of these fish, NMFS does not believe that a 10-year rebuilding period is appropriate for the LCS complex. The 26-year rebuilding period established in Amendment 1 is consistent with the Magnuson-Stevens Act, the National Standard Guidelines at 50 CFR part 600, subpart D, and the HMS FMP.

Comment 2: If prohibiting fishing for 10 years does not quite give a 70-percent chance of rebuilding the LCS complex to MSY, then prohibit fishing for 20 years.

Response: As discussed above, the HMS FMP establishes a 70-percent probability as a guide for shark management measures. Eliminating fishing would not achieve a 70-percent probability of rebuilding within 10 years; therefore, NMFS has established a rebuilding period of 11 years (no fishing period) plus one mean generation time. Prohibiting shark fishing for 20 years would give an 86-percent chance of rebuilding the LCS complex to maximum sustainable yield (MSY). However, prohibiting shark fishing for 20 years is not required by the Magnuson-Stevens Act, which allows NMFS to consider a number of factors when determining the rebuilding time frame, including impacts on fishing communities. If NMFS were to prohibit fishing for 20 years, a number of businesses including fishermen, processors, and suppliers, could be forced out of business and a number of communities, including recreational fishing communities, would be adversely affected. Additionally, prohibiting fishing for 20 years would eliminate the fishery-dependent data that is needed to accurately assess the status of the stocks. Given these impacts, the objectives of the HMS FMP and Amendment 1, the requirements of the Magnuson-Stevens Act and other domestic law, and the results of the 2002 large and small coastal shark stock assessments, NMFS does not believe that shark fishing should be prohibited for 20 years.

Comment 3: Our confidence in the 70-percent chance to rebuild figure is low given the number of uncertainties and deficiencies in the plan particularly the fact that the quota is not reduced by 50 percent, the time/area closures to protect juveniles will not be implemented immediately, there is no size limit in place, and NMFS has not accounted for all sources of mortality such as state landings.

Response: While some uncertainty is inherent in developing any rebuilding plan, based on the best available scientific information, NMFS is confident that the combination of management measures in Amendment 1 should have a 70-percent chance of rebuilding the LCS complex. The 2002 LCS stock assessment found that reducing the catches by 50 percent would have, on average, a 67-percent chance of rebuilding LCS in 30 years. While the rebuilding time frame in the amendment is shorter than 30 years and the commercial quota is reduced by 45 percent, not 50 percent, NMFS is implementing a number of other management measures that should reduce fishing mortality and increase the reproductive potential of several stocks in the LCS complex. For example, the time/area closure will protect juvenile sharks as recommended by the 2002 LCS stock assessment. Numerous studies have shown that protecting this life stage provides the greatest benefit to increasing the population size. Thus, the time/area closure will be more effective at protecting juvenile sharks and rebuilding the population than a commercial minimum size because a minimum size would force commercial fishermen to discard undersized sharks, which would not be counted against the commercial trip limit. This could result in more sharks being caught and potentially discarded. In the long-term, if dead discards were to increase as a result of a minimum size, then the commercial and recreational portions of the optimum yield would decrease and both the commercial quota level and recreational retention limit could be reduced. A minimum size in the recreational fishery does not raise the same concerns because the recreational fishery is believed to have low post-release mortality rates and has already been limited to one shark per trip, not including the exception for Atlantic sharpnose and bonnethead sharks.

NMFS is also implementing other management measures, such as the requirement for commercial fishermen to carry and use line cutters and dehooking devices, that should minimize the mortality of sharks that are caught and released. Together, these management measures, along with accounting for all sources of fishing mortality (including both Federal and State commercial landings, dead discards, and recreational catches), increasing and improving education and outreach, and increasing compliance with the recreational regulations, should give the LCS complex a 70-percent chance of rebuilding within the rebuilding time frame.

An additional significant aspect of the HMS FMP is the requirement that NMFS conduct periodic stock assessments for species or species-groups. If new information indicates that the LCS complex is not likely to be rebuilt within the required time frame, NMFS can adjust management measures, as necessary, to ensure the

70-percent probability of rebuilding the stock over the course of the 26-year rebuilding period. Additionally, as more species-specific information becomes available, NMFS will attempt to conduct species-specific assessments and evaluate possible management measures that could focus on those species that are the most vulnerable or that need the most protection.

Comment 4: In considering the management options and probability of rebuilding sharks, having an additional set of alternatives with a higher probability of success would have been useful for comparison purposes. As it stands, the most conservative alternatives are the ones chosen as the preferred alternatives and they may be insufficient to meet the management goals. As such, the preferred alternatives in the amendment should be considered the absolute minimum necessary to manage sharks consistent with the advice of the 2002 stock assessments.

Response: As required under NEPA, NMFS considered a wide range of alternatives designed to rebuild LCS. The range of alternatives included those that could be considered risk-prone (*e.g.*, removing the retention and/or size limits in the recreational fishery) to risk-averse (*e.g.*, allowing no retention in the recreational fishery). From all the alternatives considered, NMFS selected a group of alternatives that, consistent with the Magnuson-Stevens Act, is likely to rebuild the LCS complex within the revised rebuilding time frame while allowing for a viable shark fishery. If warranted based on the results of future stock assessments, NMFS can adjust the commercial quota or other management measures to ensure the 70-percent probability of rebuilding the stock over the course of the 26-year rebuilding period.

Comment 5: The proposed rebuilding time frame is the maximum allowed under the National Standard guidelines and is set using the entire complex rather than considering the biology of each individual species. We encourage NMFS to consider stratifying the time frame by considering the biology for individual species.

Response: NMFS would like to move toward more species-specific management in the future and will do so if fishermen can demonstrate a better ability to target and/or avoid certain species of sharks, species-identification among commercial and recreational fishermen and commercial dealers improves, and enough scientific data are collected that allows for more species-specific stock assessments. Thus, NMFS will consider revising the basis for calculating the commercial quota and the classification scheme to consider a more species-specific approach to management when sufficient data are available to do so effectively.

Comment 6: The rebuilding time frame should be calculated from the time the fishery was declared overfished, in this case 1999. Restarting the clock based on new assessment information is not required by the Magnuson-Stevens Act.

Response: NMFS had originally finalized a rebuilding plan in the 1999 HMS FMP that was designed to rebuild ridgeback LCS in 39 years and non-ridgeback LCS in 30 years. This rebuilding plan was based on the projections from the 1998 LCS stock assessment. Based on a peer review of that stock assessment, NMFS determined that the projections from that stock assessment should not be used as the basis for management decisions. For this reason and as a result of the change in status of the two primary LCS species in the fishery, NMFS determined it was necessary to revise the rebuilding plan. Under National Standard 1, a rebuilding plan begins when the first measures to rebuild the stock are implemented. NMFS notes that under this revised rebuilding plan, the LCS complex will be rebuilt by 2030, which coincides with the time period projected for rebuilding non-ridgeback LCS sharks under the 1999 HMS FMP (2029) and is less than the 1999 HMS FMP rebuilding time period projected for ridgeback LCS sharks (2038).

Comment 7: Applying a 70-percent probability to the setting of a time frame does nothing to enhance conservation and increases risk to the sharks. Choosing the 27-year time frame over a 10-year time frame is, at best, conservation neutral because the management measures, at least for 2004, are the same regardless of the rebuilding end date. At worst, choosing the longer time frame is riskier because it allows shark stocks to linger longer at lower biomass levels and could allow for inappropriate increases in fishing effort in future years before the complex is rebuilt.

Response: The 70-percent probability of achieving the rebuilding target will enhance conservation, reduce risk, and facilitate rebuilding of LCS. NMFS disagrees that a 10-year time frame would be consistent with the same management measures applied under the revised 26-year time frame. In the HMS FMP, NMFS decided to use a higher probability standard for sharks because the biology of sharks is different than other HMS and fish in that they take a number of years to mature, have few pups per brood, and generally only reproduce every other or every three years. This, combined with the fact that they are migratory and that some of their prey species are overfished, has led to the determination that a higher level of certainty is required when setting management actions for sharks. Under a 10-year rebuilding time frame, even with a closure of the fishery, NMFS still would not reach a 70-percent probability of rebuilding the LCS complex.

Comment 8: Probabilities of success should be applied only once a rebuilding time frame is set. The HMS FMP, other FMPs, and courts have all noted that management measures must have at least a 50-percent chance of success. The 2002 LCS stock assessment found that a 50-percent reduction in catch has a 50-percent chance of rebuilding the LCS complex within 10 years. Thus, the plan meets the minimum probability of success. Ironically, NMFS does not apply the 70-percent guide to the selected time frame, noting instead that 64 percent is close enough.

Response: By applying probabilities of success only once a rebuilding time frame is set, NMFS would have no basis for determining whether or not a stock could likely rebuild in less than 10 years or more than 10 years. This could result in unrealistic rebuilding time frames that could be so short as to leave no option other than closing the fishery or that could be so long as to never result in rebuilding the stock. Instead, NMFS uses the probability of success both in setting the rebuilding time frame and in selecting all the alternatives to ensure that, taken together, the suite of alternatives will meet the probability standard. Thus, in Amendment 1, while reducing the overall catch by 45 percent does not give a 70-percent probability of success, the combination of catch reductions with other management actions that will likely reduce mortality of released catch or protect juvenile sharks does have a 70-percent probability of success.

2. Commercial Management Measures

A. LCS Classification

Comment 1: NMFS received a range of comments regarding the proposed classification. Comments received included: It is easier to comply with one closure date; violators can take advantage of two closure dates. We support the preferred alternative because it will simplify the regulations and reduce regulatory discards. We agree that species-specific quotas are not reasonable now and therefore support the re-aggregating the LCS complex; however, NMFS should not abandon the goal of species-specific management. Because fishermen can actively target sandbar and blacktip sharks, we prefer the alternative that allows for species-specific shark groupings or, alternatively, the ridgeback/non-ridgeback species groupings. The stock assessment recommended that every effort be made to manage the LCS fishery on a species by species basis; thus, we support LCS groupings with different closure dates possible.

Response: NMFS considered five different LCS classifications in developing the proposed and final rule. The aggregate LCS classification with one closure date is preferred because, in combination with the other preferred alternatives, it is (1) expected to maintain historic fishing practices (since 1993) and food availability in the market place, (2) expected to reduce burden on fishermen for sorting, (3) expected to decrease, or at least not increase, the number of protected resource interactions; and (4) not expected to increase regulatory discards. During this rulemaking process NMFS heard that many fishery participants cannot accurately identify or effectively target individual shark species. As such, NMFS does not believe that a species-based classification is warranted at this time, but will reconsider this issue when the ability to identify and target shark species improves.

Comment 2: The preferred alternative is the same classification that was in place from 1993 through 2002 but is not consistent with the rebuilt status of sandbar and blacktip shark or the economic needs of shark fishermen.

Response: The final action for LCS classification (*i.e.*, aggregate LCS, one closure date) seeks to minimize bycatch (*i.e.*, regulatory discards) of both rebuilt and overfished species of LCS, which would otherwise occur under separate closure dates or partial closures of a mixed fishery. While sandbar and blacktip sharks are no longer overfished and, in the case of blacktip sharks, may be able to withstand an increase in harvest, NMFS also needs to rebuild overfished LCS. As noted above, species-specific management is not feasible at this time. This final action allows fishermen the opportunity to catch the entire quota without decreasing efficiency (*i.e.*, increased time to sort catch, increased time at sea to make up for lost catch resulting from regulatory discards, etc.), thus, maximizing economic benefits as compared with the other classification alternatives considered.

Comment 3: NMFS should increase research, survey, and monitoring efforts to acquire the critical information on individual life histories, ecological requirements, and stock conditions to enable more species-specific management. NMFS should develop a plan of action for moving towards species-specific management in the future.

Response: NMFS is supportive of increasing scientific research, surveys, and monitoring efforts of shark populations, provided that funding is available to do so. Currently, NMFS funds a number of shark focused research programs including, but not limited to: (1) Cooperative shark research (*i.e.*, between Southeast Fisheries Science Center and Mote Marine Laboratory), (2) reducing blue shark bycatch in pelagic longline fisheries, (3) delineation of winter nursery grounds, migratory patterns, and critical habitat of juvenile sandbar sharks in the western Atlantic Ocean, and (4) various observer programs in the shark fishery. NMFS will review species-specific information and incorporate such information into stock assessments, as appropriate, as it becomes available and intends to pursue workshops to improve species identification by fishermen and dealers in the future. As such, NMFS may consider implementation of species-based LCS classifications when the ability to accurately identify and effectively target shark species improves.

Comment 4: National Standard 1 requires NMFS to adopt alternatives that result in the lowest quotas for vulnerable and overfished species and minimize bycatch to the greatest extent possible. Therefore, NMFS should adopt the alternative that aggregates LCS and closes the fishery when the quota for the most vulnerable species is meet.

Response: Of the LCS classification alternatives considered, the LCS classification final action best complies with National Standard 1 because it, in combination with the final action for the quota basis, prevents overfishing and facilitates rebuilding of LCS while achieving optimum yield on a continuous basis from the fishery. Additionally, the selected alternative is expected to decrease, or at least not increase, the number of protected resource interactions and not expected to increase regulatory discards, which is consistent with National Standard 9. Closing the fishery when the quota for the most vulnerable species is met is not a viable alternative at this time because to date there is limited data available on individual LCS species beyond that of sandbar and blacktip. Without species-specific assessments, it is difficult to say which LCS species have highest vulnerability or even what the quota should be for any individual species. NMFS may consider this alternative as more information becomes available in the future.

B. Shark Quota Administration

Comment 1: NMFS received a range of comments regarding the combination of regional quotas and trimester seasons (*i.e.*, three four-month periods). Comments included: We support the proposed administration of regional and trimester seasons. We cannot support the proposed administration of regional and trimester seasons. Regional and trimester seasons will provide for more flexible management and improve quotas as a management tool. The regional quotas and trimester seasons will force vessels down to Florida for the January opening and will force them to fish for a shorter amount of time.

Response: NMFS considered three separate alternatives regarding seasons and two alternatives pertaining to regional quotas. NMFS is implementing trimester seasons with regional quotas because this combination will (1) aggregate the majority of shark pupping into one fishing season (*i.e.*, second trimester) as opposed to divide it into two or more seasons, which is possible with either the semi-annual or quarterly season approaches, (2) provide managers with flexibility to adjust regional quotas, where necessary, to prevent mortality on juveniles and reproductive female sharks, (3) provide a higher degree of resolution on which to manage seasonal fisheries, (4) minimize the social and economic costs associated with switching gear more often (*i.e.*, only three times as opposed to four per year), (5) give a higher percentage of the quota to each open season than would occur under a quarterly season approach, and (6) will increase the number of open seasons (*i.e.*, three as opposed to two) and spread them across the calendar year, thereby promoting greater economic stability of fishery participants.

Comment 2: NMFS received a range of comments regarding the proposed trimester approach. Comments included: The entire season, from January through November, should be closed to protect fish. The second semi-annual season closes too early. The trimester seasons will spread out the landings and avoid current price drops. The trimester approach will allow fishermen to catch sharks when grouper prices are lower and helps sharks be available year-round. Trimester seasons appear to have the greatest potential to accommodate shark pupping activities. The second trimester season should be closed to all shark fishing to reduce the catch of juveniles.

Response: NMFS considered three different seasons for the shark fishery in the development of the proposed and final rule. Trimester seasons (*i.e.*, three four-month fishing seasons) are preferred because they will allow managers the flexibility to open and close seasons to match species requirements such as aggregating shark pupping seasons into one fishing season, as opposed to spreading pupping time-frames over multiple open seasons. Trimesters will also avoid undesirable dates (*i.e.*, July 1st) for market openings. Additionally, trimester seasons will give fishermen a greater chance to build new markets for sharks, given that there will be more open seasons (*i.e.*, three as opposed to two) spread across the calendar year. Increasing the number of open seasons and effectively spreading open seasons out more evenly over the calendar year will, in the long-term, result in greater economic stability for fishermen and associated communities.

Comment 3: NMFS should keep the semi-annual seasons and open the second season on July 15th each year.

Response: Maintaining semi-annual seasons could have negative ecological, social, and/or economic impacts should semi-annual seasons continue to extend into pupping seasons. Given that LCS are overfished and overfishing is occurring, continued mortality levels on juvenile and reproductive females could cause the complex to decline further over time. Further declines in LCS stock status could result in additional reductions in available quota and/or other management measures, which could impact fishermen and fishing communities both economically and socially. Trimester seasons will aggregate the majority of shark pupping into one fishing season (*i.e.*, second trimester) and simultaneously avoid market problems associated with a July 1st opening by providing for openings on January 1, May 1, and September 1 of each year.

Comment 4: NMFS should start each season at the same time to help disperse fishing effort and promote equitable distribution of the allowable quota.

Response: While opening shark seasons at the same time for all regions may help to disperse fishing effort and promote equitable distribution of the allowable quota, allowing managers flexibility to determine alternative season opening dates (*i.e.*, by region) will promote further consideration of safety at sea and give greater fishing opportunities based upon fish availability in each region.

Comment 5: August and September are not good times for shark fishing. Most of the effort should be in October through December. Therefore, the quota should be reapportioned from the first two trimesters to the last trimester.

Response: NMFS recognizes that there are temporal differences in catch-per-unit-effort as well as catch composition in the shark fishery. As such, annual quotas need not be split equally between trimester seasons. Instead, trimester seasons will allow managers to establish quotas for each open season based on markets, pupping season, effort concerns, and other relevant factors. Initially, NMFS will split the available quota equally between trimesters for the first year or two and will re-evaluate this approach via rulemaking, if necessary, based upon observed catch rates and other factors, such as stock status.

Comment 6: NMFS received a range of comments specific to the proposed percentages for regional quotas. The comments included: The historical percentage of small coastal sharks in the Gulf of Mexico is incorrect due to improper identification and reporting. The regional quota proposed for the North Atlantic is below the actual take and would be filled quickly between the vessels fishing in the region. The North Atlantic proposed portion of the LCS quota is too large and should be reduced; the percentage was probably inflated due to misidentification of sandbar sharks. The South Atlantic proposed portion for SCS is too large due to misinformation and misidentification; there are just as many LCS reported in that region as SCS. We can only support regional quotas if one region does not prevent another region from having a fair shot at the fishery.

Response: NMFS combined information from two separate databases containing regional landings information as reported by dealers and states to NMFS over several years. These landings data represent the best available information pertaining to regional data. Given that the regional quotas seek to maintain historical landings, as opposed to reducing landings, NMFS does not expect this alternative to change previous fishing practices or result in any significant economic impact. Fishery participants will be allowed to fish in any region, provided that the season for the region in question is open and that the quota for that region has not been taken. Over time, this alternative may allow NMFS the flexibility to manage quotas to each region's maximum economic advantage. Additionally, if reporting indicates that participation in one region increases or decreases, NMFS may, through another rulemaking, modify the percentages available to each region to ensure that fishermen in all regions have a reasonable opportunity to fish for sharks. NMFS recognizes the need for more accurate species identification and as such, the agency will pursue mandatory workshops through a future rulemaking that will focus on improving species identification by fishery participants and possibly dealers and enforcement agents.

Comment 7: How will NMFS enforce the regional quota approach? Will there be three separate permits for vessels fishing within the regions or can a vessel fish in an open region and land catch in a closed region? We are only supportive of the regional quota approach if permitted vessels can fish in any region.

Response: Federal fishery participants will be allowed to fish in any region, provided that the season for the region in question is open and that the quota for that region has not been taken. As such, NMFS will not be issuing regional permits to vessels authorizing them to fish in a given region. Rather, each regional quota will be enforced by monitoring illegal fishing activity in each region, as is done in the Atlantic bluefin tuna fishery. As is current practice, the closure date for each region will be announced before the start of the season. Additionally, state agencies may have different permit and closure requirements. As such, fishery participants are encouraged to check with state agencies, where state permit and/or closure requirements are in question.

Comment 8: NMFS should not use data from 1999 to 2001 to establish the regional quotas. Instead, NMFS should use data from the 1980s (*i.e.*, before management) in order to get an idea of where the fishery historically operated. If this is done, the North Atlantic will account for over half the landings.

Response: Calendar years 1999–2001 were used as the basis for establishing regional quotas because they (1) represent the period of time following the last major change in management of the shark fishery, (2) fall after implementation of limited access permits, and (3) represent the time-frame for which the best regional data are available. Using a longer timeframe or only data from the past may not provide an accurate representation of the current fishery. Over time, NMFS may, if warranted, decide to adjust the regional quotas via rulemaking to ensure each region has an opportunity to fish.

Comment 9: NMFS should pay particular attention to regional differences in shark pupping activity and use its discretion in allocating quotas and setting seasons so as to best prevent mortality of congregating pregnant females, pups, and juveniles.

Response: Spatial differences in fishery practices and catches warrant further consideration, and regional quotas provide a means of preventing mortality of congregating reproductive females, pups, and juvenile sharks. Shark pupping data indicate that spatial differences exist between species utilization of various shark pupping grounds. For example, species within the SCS complex utilize pupping grounds between South Carolina and the Gulf of Mexico, whereas some species within the LCS complex utilize only the Atlantic coast for pupping grounds. NMFS will periodically assess regional differences in shark pupping activity and should changes be required, quota adjustments will be carried out via framework action.

C. Shark Quota Basis

Comment 1: We support the preferred alternative of an MSY basis. In the future, NMFS should estimate MSY on a species-specific basis for all LCS. NMFS should establish a similar approach for pelagic sharks when a validated assessment is available.

Response: Amendment 1 uses MSY as a basis for establishing commercial quotas. NMFS must determine MSY as well as optimum yield (OY) and specify status determination criteria to determine the status of the stock. As such, the 1999 HMS FMP defined fishing mortality and biomass levels necessary to produce MSY and OY on a continuing basis. Given that these definitions are not subject to change in this final rule, MSY-based quotas provide a direct means for determining appropriate fishery management action. MSY and OY estimates are readily available from stock assessment outputs and can be updated annually if necessary. NMFS is currently limited in its ability to estimate MSY for all shark species within each of the management units. However, as new information becomes available, NMFS will strive to integrate more species-specific information into stock assessments, where MSY could be calculated. Once the international stock assessment for pelagic sharks is complete, NMFS will re-evaluate the appropriateness of existing pelagic shark quotas and the basis for calculating commercial quotas for these species.

Comment 2: NMFS received several comments regarding the reduction in LCS quota by 40 percent instead of the recommended 50 percent. Comments included: Because the proposed alternative reduces MSY by only 40 percent instead of the recommended 50 percent, NMFS should adopt other conservation methods such as gear restrictions and time/area closures whose effects can be quantified to show that they achieve the mortality goal of rebuilding with a 70-percent probability. The 40-percent reduction is not reasonable; there is no reliable basis to stray from the scientific advice. The assessment recommendation is based on a 50-percent probability of successful rebuilding; if NMFS were to apply the 70-percent guide, the proposed reduction would be larger not smaller than 50 percent. Therefore, NMFS should reduce the quota by a minimum of 50 percent.

Response: The preferred quota alternatives will implement an LCS aggregate quota based upon a 45-percent reduction of average maximum sustainable catch (MSC) for LCS, multiplied by the percentage of commercial catch attributable to the LCS complex. NMFS reduced the 50 percent recommended reduction by five percent after considering the following factors: (1) While the stock assessment did say that the LCS complex should be reduced by 50 percent, it also said that the reductions should be on species other than sandbar and blacktip; (2) observer data indicates that sandbar and blacktip sharks comprise approximately 67 percent of the LCS catch, indicating that a quota reduction would mostly apply to those species; (3) peer reviews of the 2002 LCS stock assessment indicated that the complex assessment may not be as accurate as individual species because of biological differences between species; (4) catch per unit effort (CPUE) data for silky, tiger, and scalloped hammerhead do not indicate a decline; and (5) the other preferred measures such as the time/area closure will reduce mortality and/or dead discards. Furthermore, the percent reduction has been revised upward from the 40-percent reduction originally proposed in the draft Amendment based upon public comment received during public hearings. The Southeast Fisheries Science Center has indicated that the combination of the preferred alternatives, namely the 45-percent quota reduction and time/area closure, would increase compliance in the fishery and allow for the LCS complex to rebuild within the specified timeframe. As such, further reductions in the LCS commercial quota are not necessary at this time. However, NMFS will adjust the quota over time based upon future stock assessments to ensure that the LCS complex rebuilds within the 26-year rebuilding time frame.

Comment 3: NMFS must also account for state fisheries mortality estimates when setting quotas.

Response: State landings are included as part of the commercial landings percentage used to calculate the commercial quotas. Thus, the commercial quota is established to include landings by Federal and state fishermen. Any overharvests or underharvests will be accounted for in the same season of the following year.

Comment 4: We support the preferred alternative but the draft amendment is unclear on how information from future stock assessments will be used in setting quotas. Would the same percent of MSY always be used regardless of the population level?

Response: The LCS aggregate quota is based upon a 45-percent reduction of average MSC for LCS, multiplied by the percentage of commercial catch attributable to the LCS complex. As such, this percent reduction may not be used when setting future quotas. Instead, NMFS will assess the appropriateness of percent reductions and/or increases as new information becomes available in future stock assessments in order to ensure that the LCS complex rebuilds within the rebuilding timeframe.

Comment 5: We support the proposed MSY basis as long as that calculation continues to incorporate a target fishing mortality rate at 75 percent of the fishing mortality at MSY (F_{MSY}). We would also support expanding this precautionary buffer by lowering the percent of F but not increasing the rate toward F_{MSY}.

Response: The 1999 HMS FMP defined fishing mortality and biomass levels necessary to produce MSY and OY on a continuing basis. In summary, a species is considered overfished when the current biomass (B) is less than the minimum stock size threshold. The minimum stock size threshold is determined based on the natural mortality of the stock and the biomass at Maximum Sustainable Yield (B_{MSY}). The MSY is the maximum long-term average yield that can be produced by a stock on a continuing basis. Overfishing is occurring on a species if the current fishing mortality (F) is greater than F_{MSY}. When one or both of these measures occur, a species is declared overfished and action to rebuild the stock and/or prevent overfishing is needed within one year.

A species is considered rebuilt when B is greater than B_{MSY} and F is less than F_{MSY}. A species is considered healthy when B is greater than or equal to the biomass at optimum yield (B_{OY}) and F is less than or equal to the fishing mortality at optimum yield (F_{OY}). NMFS is not changing these definitions in this rule, thus the target control rule for managing healthy stocks continues to be 75 percent of F_{MSY}. This definition is consistent with the National Standard guidelines.

D. Minimum Size Restrictions

Comment 1: NMFS received a range of comments regarding what the commercial minimum size should be. Comments included: We support the no commercial minimum size alternative. The minimum size in the HMS FMP was based on sandbar sharks but does not fit for all ridgeback LCS species. We support the proposed no minimum size because the minimum size was established for sandbar sharks which is no longer overfished and because it will help reduce regulatory discards. We support a minimum size for sharks. The minimum size of any shark should be 15 feet. If recreational fishermen have a minimum size to protect juveniles, commercial fishermen should have a minimum size as well. We could support no commercial minimum size if juveniles of all species were protected by time/area closures; the proposed time/area closure does not do this.

Response: NMFS considered six different minimum size alternatives in the commercial fishery. Not implementing a commercial minimum size is preferred because, in combination with the other preferred alternatives, it will minimize regulatory discards and economic and social impacts to commercial fishermen, while providing adequate protection for juvenile and neonate sharks through the time/area closure off of North Carolina. Furthermore, commercial gear, unlike recreational gear, can have high post-release mortality rates. Therefore commercial management measures, which are aimed at reducing (*i.e.*, quota reductions) or preventing (*i.e.*, via time/area closures) catch are better for protecting juvenile and neonate sharks.

Comment 2: NMFS made a strong case in the HMS FMP for a minimum size based on protecting the age classes with the highest reproductive potential, demographic information, and the proportion of sharks brought to the boat dead. Now that NMFS is backing away from a ridgeback LCS quota, this measure is needed to protect the most sensitive life stages of ridgeback LCS (sandbar and dusky sharks in particular). NMFS should maintain the minimum size, show quantitative analyses that indicate a minimum size is not needed, or replace it with more effective species-specific measures to protect juvenile dusky and sandbar sharks.

Response: Maintaining the commercial minimum size is not warranted at this time. This rule finalizes several commercial management measures including, but not limited to, trimester seasons, regional quotas, reductions in the LCS quota, bycatch reduction measures, and a time/area closure to protect juvenile dusky and sandbar sharks, which will facilitate rebuilding of LCS.

Comment 3: If NMFS does not adopt a minimum size, it must adopt a time/area closure to reduce bycatch of juvenile and neonate sharks to levels at least as great as would be achieved with minimum sizes.

Response: Implementation of a time/area closure would reduce bycatch of juvenile and neonate sharks, but alone, it would not be sufficient to meet the rebuilding target for the LCS complex. As such, NMFS is implementing multiple management measures including, but not limited to reductions in the LCS quota, bycatch reduction measures, and the time/area closure, which are intended reduce bycatch of juvenile and neonate sharks.

Comment 4: NMFS should establish sub-group or species-specific minimum sizes within the LCS, SCS, and/or pelagic shark species groups as justified by new or updated research.

Response: Minimum sizes for sub-groups or individual species within each management unit are not necessarily the most effective management measures. While a commercial minimum size would seek to protect and reduce fishing mortality on juvenile sharks, any conservation benefits gained may be offset by increases in regulatory discards and associated post-release mortality if commercial fishermen are unable to avoid mixed-size aggregations of some shark species. For instance, while sandbar sharks tend to segregate by size, blacktip sharks and other species do not. Regulatory discards may also result in effort increases by fishermen in order to make up for lost catches, which could also result in increased interactions with protected (*i.e.*, sea turtles and marine mammals) and non-targeted (*i.e.* prohibited sharks and other finfish) species. Additionally, regulatory discards of LCS are not counted against the 4,000 pound trip limit. Thus, if a fisherman should catch a set full of undersized sharks, those sharks would be discarded and the fisherman could set the gear again, possibly in another school of small sharks. If the ability of fishermen to target certain species of sharks improves, then NMFS may reconsider minimum sizes in the commercial fishery.

Comment 5: Commercial fishermen have long claimed that most sharks come in alive. Therefore, there does not seem to be any rationale for a recreational minimum size while similar commercial measures are eliminated. A commercial minimum size for mako sharks is overdue. Longliners are willing to compromise for a minimum size on mako sharks.

Response: Commercial fishery observer data indicate that a number of LCS exhibit low survivability following longline capture. These species include spinner (63 percent dead when brought to the vessel), dusky (81 percent), scalloped hammerhead (87 percent), blacktip (88 percent), silky (90 percent), and great hammerhead (95 percent). As such, NMFS believes that implementation of a minimum size in the commercial fishery would result in significant increases in regulatory dead discards of LCS. However, sharks caught on recreational gear are thought to have low post-release mortality rates and, as such, a minimum size in the recreational fishery would contribute to LCS rebuilding by protecting juvenile and subadult sharks.

E. Commercial Shark Quota: General

Comment 1: NMFS received a range of comments regarding what the commercial quota level should be, including: Commercial quota levels should be reduced or even eliminated until the complex recovers. Quotas should be reduced by 700 percent. We support the quota alternatives (classification, administration, and basis) insofar as that together they result in the lowest overall quotas to ensure sustainable levels for all species and protect juveniles.

Response: NMFS did not propose a specific quota level. Instead, NMFS considered a wide range of quotas that resulted from the combination of classification and quota basis alternatives, specifically seven different commercial quotas for LCS and three different commercial quotas for SCS. Each quota alternative carefully considered the results of the 2002 stock assessments for LCS and SCS. The preferred quota alternatives will implement commercial quota levels of 1,017 mt dw for the LCS aggregate and 454 mt dw for the SCS aggregate. These quota levels are expected to rebuild the LCS complex within the necessary time frame and prevent overfishing of SCS. If future stock assessments indicate adjustments are necessary to meet these goals, then the preferred quota basis alternative will allow NMFS the flexibility to address such adjustments.

Comment 2: The most recent stock assessment called for a 50-percent reduction in catches for the LCS complex but the preferred alternatives combined result in a 34-percent reduction in commercial catch from recent years (1,692.7 mt dw to 1,109 mt dw). While the additional measures may result in further reductions in mortality, the other proposed measures could increase the quotas and undermine management.

Response: The combination of preferred alternatives including, but not limited to, a commercial quota with a 45-percent reduction in catches and a time/area closure aimed at protecting juvenile and neonate sharks will rebuild the LCS complex. Analyses by the Southeast Fisheries Science Center indicate that the combination of the preferred alternatives in the draft Amendment would allow for the LCS complex to rebuild within the rebuilding time frame. Furthermore, the other final actions (*i.e.*, trimester seasons and regional quotas) will not result in an increase in quotas, but will allow for more flexibility in management to better refine management measures to protect juvenile sharks and rebuild overfished LCS.

Comment 3: NMFS received several comments regarding the apparent increase in quota from the total of 816 mt dw in the HMS FMP to the proposed 1,109 mt dw. Comments included: Even though LCS are overfished and overfishing is occurring, NMFS is proposing to increase the LCS quota by 35 percent; this is hard to understand. NMFS should move forward with the MSY quota basis but maintain the 816 mt dw quota level until a new, validated stock assessment can be carried out.

Response: The no action alternative would implement commercial quota levels for LCS (*i.e.*, 620 mt dw for ridgeback LCS and 196 mt dw for non-ridgeback LCS) totaling 816 mt dw, which were approved in the 1999 HMS FMP based on projection models in the 1998 LCS stock assessment. These quota levels were never implemented due to litigation. Taking into consideration the court-approved settlement agreement, the results of the 1998 stock assessment peer reviews, and other information, NMFS maintained the 1997 commercial quotas for LCS (*i.e.*, 1,285 mt dw) as an interim measure pending completion of Amendment 1. As such, except for 2003, commercial fishermen have been fishing under the LCS quota of 1,285 mt dw, since 1997. The preferred alternatives, which would implement a LCS quota of 1,017, represent a 21-percent reduction in available quota compared to the 1,285 mt dw baseline.

Comment 4: The LCS quota component of the species-specific quota alternatives is too low and should be doubled in order to reduce the potential for regulatory discards.

Response: The species-specific quota alternatives (*i.e.*, MSY and average landings) incorporated an appropriate percent reduction for each species or species group, as recommended in the 2002 LCS stock assessment. Additionally, the 2002 stock assessment clearly indicated that LCS reductions should focus on species other than sandbar and blacktip. Because regulatory discards will occur as a result of implementing species-specific quotas in the LCS fishery, NMFS selected alternatives, which in combination with one another will aggregate LCS species and establish one commercial quota for the complex.

Comment 5: Fishing pressure on all LCS species except sandbar and blacktip has been abated since the HMS FMP. Any need to reduce the potential for bycatch of the other species via the use of an aggregate quota at a low quota level is inconsistent with the status and biomass levels of the principal commercial species and subject to the practicability standard of National Standard 9. It is not practicable to reduce the commercial fishery now that the primary commercial species are rebuilt.

Response: Amendment 1 seeks to rebuild the LCS complex, which is overfished. Consistent with National Standard 9, the preferred alternatives, which would aggregate LCS species and establish one commercial quota for the complex, will , to the extent practicable, minimize bycatch (*i.e.*, regulatory discards of shark) resulting from partial closures (*i.e.*, multiple closure dates by LCS grouping or individual species as a result of quotas being taken) of a mixed fishery and allow fishermen the opportunity to catch the entire quota. Additionally, the number of protected resource interactions may decrease, or at least not increase, because fishermen would not have to increase effort in order to make up for lost catch during partial closures and the LCS quota will be lower as a result of the preferred alternatives.

Comment 6: Mexican fishermen catch huge amounts of sharks. Why are U.S. fishermen limited? These limitations on U.S. fishermen has kept prices down.

Response: NMFS has regulatory jurisdiction over the exclusive economic zone (*i.e.*, from generally 3 nautical miles seaward to the 200 nautical mile limit) in U.S. waters but cannot regulate the fishing activities of other countries. However, consistent with the National Plan of Action and the Shark Finning Prohibition Act, NMFS is continuing cooperative research efforts with other countries (*e.g.*, Canada and Mexico) and engaging in deeper dialogues with international fishery management organizations such as the International Commission for the Conservation of Atlantic Tunas (ICCAT), the United Nations General Assembly, Food and Agriculture Organization (FAO), and others as appropriate for shark management.

Comment 7: We need an adequate incidental quota to reduce/eliminate regulatory discards and cover the inevitable secondary catches in many fisheries.

Response: An incidental quota or similar alternatives could be a viable alternatives for reducing regulatory discards. NMFS will investigate this issue in a future rulemaking.

3. Recreational Management Measures

A. Retention Limit

Comment 1: NMFS received a range of comments regarding the appropriate recreational retention limit, including: We support the preferred alternative and suggest that anglers also be allowed one additional blacktip shark because the stock is rebuilt. Only one shark of any species per vessel per trip should be allowed because most recreational anglers cannot identify individual shark species. The proposed alternative is appropriate and precautionary because the recreational sector has been fishing under regulations based on a stock assessment that was overturned and, therefore, contributed more to rebuilding. We do not oppose the proposed addition of bonnethead, but urge NMFS to monitor this species to prevent overexploitation. South Carolina has already taken the proposed action based on the same stock assessment results. Any additional catch reductions that may be required to meet management goals should come from the commercial sector before considering further cuts to the recreational sector. Recreational fishermen kill sharks for no reason and cause numerous dead discards to wash up on the beach. Recreational take levels should be reduced.

Response: One shark per vessel per trip plus one Atlantic sharpnose and one bonnethead shark per person per trip is appropriate for the recreational shark fishery. This alternative could reduce recreational harvest levels by the 80–85 percent required under the rebuilding plan in Amendment 1 if angler compliance increases. NMFS analyzed other alternatives in Amendment 1 that would have allowed the retention of additional LCS, SCS, and pelagic sharks. However, because the 2002 LCS stock assessment indicates that the LCS complex needs a reduction in fishing mortality and many recreational anglers cannot correctly identify sharks, those alternatives would not achieve the level of reduction needed to rebuild LCS. With regard to discards and mortality in the recreational fishery, NMFS urges anglers to comply with size and retention limits and release sharks in a manner that maximizes their survival. NMFS may adjust size and retention limits in the future based on the results of future stock assessments.

Comment 2: NMFS received several comments regarding methods of increasing compliance within the recreational fishery, including: Any non-compliance by the recreational sector is due to confusion with the current regulations and, to a lesser extent, the proper identification of different shark species. NMFS can solve these problems by increasing angler education and outreach. Compliance and enforcement is not strong in Federal waters. NMFS should increase outreach by using the internet, linking the HMS regulations to the NOAA weather page, and printing flyers for marinas, Sea Grant, port agents, and states.

Response: Compliance in the recreational fishery, outreach, and the availability of educational materials needs to be increased. NMFS will distribute a revised Atlantic shark recreational fishery brochure after the final rule for Amendment 1 is published. It will contain information regarding HMS Angling category permits, HMS Charter/Headboat permits, bag limits and minimum sizes, release information, landing restrictions, the no sale provision, HMS tournament registration, tagging information, as well as species that may be retained, and species that must be released. Additional brochures on other HMS fisheries are available. NMFS is also currently producing an identification guide for sharks, tunas, and billfishes of the Atlantic and Gulf of Mexico that should be available shortly. Further, NMFS received public comment in favor of mandatory educational workshops for anglers and commercial fishermen discussing species identification, release techniques, and regulations. NMFS intends to move forward with requiring participation in mandatory workshops in a future rulemaking and will attempt to make voluntary workshops available to the public in the interim.

Comment 3: The one-shark per boat limit is not a problem except in tournaments where anglers may be forced to decide between keeping an eligible shark or taking a chance on catching a larger one. The difference between allowing one or two recreationally caught sharks would be minuscule on an annual basis, in comparison with what a longliner could kill during the same time period.

Response: Allowing recreational anglers an additional shark each would not have minor impacts compared to the commercial fleet. Currently, recreational fishermen take more sharks than commercial fishermen (142,000 LCS in 2001 versus 99,200 LCS in the commercial fishery). Additionally, recreational fishermen catch smaller sharks than commercial fishermen (average size of approximately 10 pounds versus 36 pounds in the commercial fishery). This information, combined with the facts that most anglers cannot correctly identify sharks and the LCS stock assessment recommended protecting juvenile LCS, provides support for the one shark limit. Further, the vast numbers of recreational anglers could lead to large numbers of LCS being taken. NMFS analyzed an alternative that would have allowed vessels with HMS Angling category permits participating in registered tournaments, or HMS CHB permit holders on for hire trips, to retain one shark per person, up to two sharks per vessel, per trip, as well as one Atlantic sharpnose and one bonnethead per person per trip. This alternative would have resulted in mortality levels greater than those expected from some of the other alternatives considered and is not consistent with the 2002 LCS stock assessment which indicates that the LCS complex needs a reduction in fishing mortality. Additionally, without more information regarding the status of pelagic sharks, this alternative could have been detrimental to pelagic sharks. However, this alternative could be combined with other fishing controls (*e.g.*, increased minimum sizes) so that overall mortality is not increased. NMFS may consider this approach in the future.

Comment 4: Many tournaments have restricted eligible species only to makos and threshers in order to avoid the waste of sharks not normally taken for food.

Response: NMFS appreciates and encourages conservation efforts by anglers and tournament organizers.

B. Minimum Size Restrictions

Comment 1: NMFS received a range of comments regarding the recreational minimum size, including: We support the proposed alternative because a minimum size helps to promote the live release of young sharks. The number of recreational fishermen who fish for sharks from Maine to Texas could number in the millions, which could significantly affect the mortality of juvenile sharks especially if there is no minimum size. South Carolina has already taken this proposed measure; most recreational anglers support a minimum size larger than is being proposed. Because many fish are killed before they are measured, particularly if they are dangerous, we cannot support a recreational minimum size. An exception to the minimum size for blacknose sharks should be added, because they are not overfished and do not reach the proposed minimum size.

Response: A 4.5 feet fork length for all sharks and no size limit for Atlantic sharpnose and bonnethead sharks is appropriate for the recreational shark fishery. Sharks caught in recreational fisheries are thought to have low post-release mortality rates and the preferred 4.5 foot fork length minimum size limit should minimize fishing mortality on the stages that contribute the most to population growth by maintaining catch-and-release fishing on juvenile and subadult sharks. The allowances for the retention of Atlantic sharpnose and bonnethead sharks without a minimum size were preferred because these species are easily identified, not overfished or experiencing overfishing, do not commonly reach the current 4.5 foot fork length minimum size limit, and are important recreational catches in some regions. Exceptions for other SCS species were not analyzed in Amendment 1 because of difficulties with identification (*e.g.*, blacknose sharks) or because they are currently experiencing overfishing (*e.g.*, finetooth sharks).

Concerning the safety of anglers who are required to measure live sharks in order to retain them, NMFS recommends that anglers mark areas on the outside of fishing vessel hulls (*e.g.*, at the waterline or boot stripe) with the minimum size. If a shark is smaller than this measurement or if it is a prohibited species, it should be released.

Comment 2: Information on proper release techniques and equipment should be made available to the recreational sector.

Response: Workshops demonstrating proper handling and release techniques for finfish, sharks, and protected resources, and discussing regulations and species identification could reduce bycatch mortality, improve compliance with current regulations, and improve accuracy of reported data. NMFS intends to move forward with requiring participation in mandatory workshops in a future rulemaking and will attempt to make voluntary workshops available to the public in the interim.

C. Authorized Gears

Comment 1: NMFS received a range of comments regarding authorized gears, including: We support the preferred alternative. Recreational fishing techniques should be limited to rod and reel and handlines. Spearfishing gear should also be added to the list of allowable recreational fishing gears. Bandit gear is not appropriate for the recreational fishery. Bandit gear should be an allowable gear. Harpoon gear should be added to the list because many fishermen feel it is easier and safer to use harpoons than gaffs.

Response: Rod and reel and handline gear are appropriate gears for the recreational shark fishery, because they have lower bycatch and bycatch mortality of sharks, finfish, and protected species, and are being used in other recreational HMS fisheries. Bandit gear was not selected because it has traditionally been considered a commercial fishing gear and because the vast majority of recreational fishermen use rod and reel or handline gear. Spearfishing gear has not been an allowable gear in the recreational shark fishery and therefore was not included. However, implements used to secure rod and reel or handline catches alongside a vessel (*e.g.*, gaffs and harpoons) are being allowed.

Comment 2: Limiting the recreational fishery to handline and rod and reel would prohibit landings by recreational gillnet fishermen.

Response: This is correct. All sharks caught recreationally with gears other than rod and reel and handline in Federal waters must be released. NMFS does not believe that this measure will increase discards substantially, because the vast majority of recreational fishermen already use rod and reel or handline gear and recreational fishermen, including those using gillnets, have been limited to one shark per vessel per trip since 1999.

Comment 3: NMFS should provide a provision that would allow disabled anglers who cannot hold the gear to fish.

Response: NMFS will continue to allow fishermen who are unable to operate rod and reel or handline gear to apply for an EFP that would allow them to fish for sharks recreationally with alternative gear.

4. Bycatch Reduction Management Measures

A. Gear Restrictions

i. Authorized gear.

Comment 1: NMFS received a range of comments regarding the proposed regulation to ban drift gillnet fishing and allow strikenet fishing only, including: Strikenetting and drift gillnetting should be stopped. No observations of these gear types is accurate. Because of bycatch problems, many states have passed regulations banning drift gillnets; therefore, NMFS should as well. Gillnets should not be allowed because, in addition to unacceptable levels of bycatch of sea turtles, marine mammals, red drum, tarpon, and other game fish, the small shark gillnet fishery in Federal waters off Georgia drains limited law enforcement resources that are needed elsewhere. We support the preferred alternative allowing strikenets only if observer coverage is maintained to document a reduction in bycatch. If there is no reduction, this gear type should be removed from the list of authorized gear types. There is no reason to close the shark gillnet fishery because bycatch of protected resources is within the allowance for those species. NMFS should not eliminate a viable fishery that has reliable observer science behind it. There are only five vessels remaining in the fishery, which is down from the historic twelve vessels that used to participate.

Response: The intent of the proposed bycatch alternatives were to minimize bycatch and bycatch mortality to the extent practicable. The strikenet only alternative minimizes interactions with protected resources and reduces the bycatch of non-target species, while allowing the commercial shark gillnet fishery to operate. However, NMFS received public comment that allowing the use of strikenets only would not accomplish this objective because strikenet gear cannot target SCS. Therefore, the final regulations permit the use of drift gillnets with possible gear modifications or other measures being implemented through a future rulemaking, based upon further study.

Comment 2: The State of Georgia has requested a ban on gillnets since 1992 and continues to request this ban. Because Georgia has banned gillnets, the presence of a gillnet fishery in adjacent Federal waters compromises State management and regulatory statutes and does not meet the standards for consistency required under Georgia's Coastal Zone Management Act (CZMA) program. Using Global Positioning System (GPS) technology, it may be possible for NMFS to close the Exclusive Economic Zone (EEZ) to gillnets adjacent to Georgia to alleviate ongoing consistency and enforcement problems.

Response: The CZMA (1972, reauthorized 1996) requires that Federal actions be consistent with the enforceable policies of all state coastal zone management programs. NMFS has determined that the final actions in Amendment 1 and this rule, which seek to rebuild the LCS complex, prevent overfishing of the LCS complex, and prevent overfishing of other species of sharks, will be implemented in a manner consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have federally approved coastal zone management programs.

The State of Georgia objects to the consistency determination due to the continuing operation of the shark gillnet fishery in Federal waters. NMFS has analyzed several bycatch alternatives in Amendment 1, including elimination of the shark gillnet fishery. However, data currently available indicate relatively low rates of bycatch and bycatch mortality of protected species and other finfish in this fishery. In the Biological Opinion (BiOp) conducted for this rulemaking, NMFS determined that the continued operation of the shark gillnet fishery would not jeopardize any endangered or threatened resources and issued a new incidental take statement for the fishery. Therefore, NMFS is not prohibiting the use of this gear at this time, consistent with National Standard 2 which requires that management measures be based on the best scientific information available. NMFS is finalizing a measure that will require all shark gillnet vessels to install and activate a VMS during right whale calving season, and will examine gear modifications or other alternatives to reduce bycatch and bycatch mortality in future rulemakings. NMFS will also work with existing take reduction teams and relevant Fishery Management Councils to examine methods of reducing bycatch. Thus, NMFS finds that the final regulations implemented in Amendment 1 are consistent with Georgia's Coastal Zone Management Program to the maximum extent practicable.

Comment 3: If only strikenetting is allowed, the State of Georgia would continue to ask for 100 percent observer coverage because the reduction of bycatch using strikenet gear in or near Georgia waters has not been adequately investigated. Unlike the waters off Florida, the waters off Georgia are highly turbid. Without adequate observer data, allowing strikenetting for sharks is not a risk-averse strategy to reduce bycatch.

Response: This rule does not remove gillnet gear from the list of authorized gears in the commercial shark fishery. The Agency understands the concerns about the need for adequate observer data documenting gillnet operations and catch near Georgia waters and will continue to monitor catch and bycatch, protected species interactions, and fishery characteristics through continued observer coverage.

Comment 4: Many states ban both longling and gillnetting without adequate data. If longlines are allowed in Federal waters, then gillnets should similarly be allowed.

Response: NMFS has banned gear types (*e.g.*, gillnets in the swordfish fishery) and restricted the use of other gear types (*e.g.*, area closures in the pelagic longline fishery) for a variety of reasons including reducing bycatch and bycatch mortality. In this case, NMFS is not removing gillnet gear from the list of authorized gears at this time.

Comment 5: Blacktip and Atlantic sharpnose sharks make up the majority of our drift gillnet landings and are not overfished or experiencing overfishing according to the latest stock assessments. Our biggest discard species in the LCS fishery are rays. In the small coastal shark fishery, our biggest discard species is king mackerel and we have petitioned the South Atlantic Fishery Management Council to allow us to retain more of this catch per trip.

Response: The latest LCS and SCS stock assessments indicate that Atlantic sharpnose and blacktip sharks are not overfished and overfishing is not occurring. In regard to the reduction of bycatch and discards, NMFS supports the reduction of bycatch, including regulatory discards, in HMS fisheries. According to 2002 shark gillnet fishery observer data, king mackerel was observed to be the species most commonly discarded from drift gillnet sets, with approximately 248 fish discarded; however, great barracuda (approximately 4 fish) and cownose rays (one fish) were observed to be the most commonly discarded species from strikenet sets. Little tunny, king mackerel, and great barracuda were the three non-target species most commonly observed caught in the shark gillnet fishery in 2002. In a future rulemaking, NMFS will consider additional alternatives such as gear modifications to reduce bycatch of all species in the gillnet fishery.

Comment 6: The preferred alternative allowing only strikenet gear appears as if the Agency is trying to supercede the actions of both the Atlantic Large Whale Take Reduction Plan and the Bottlenose Dolphin Take Reduction Plan. Negotiated actions with members working on these plans are about to become final. If NMFS eliminates the use of gillnet gear, it would be wrong and set a dangerous precedent. Instead, NMFS should start a buyout program for these vessels and regularly attend take reduction plan meetings. There is no support from either take reduction team to ban drift gillnetting.

Response: As part of this rulemaking, NMFS analyzed the impacts of various bycatch alternatives on bycatch species and protected resources in an attempt to minimize bycatch and bycatch mortality in HMS fisheries to the extent practicable. In this final action, NMFS is not implementing measures to limit or remove gillnet gear from the list of authorized gears. A buyout program is beyond the scope of this rulemaking, but could be considered in the future should funding become available.

Comment 7: The only way to fish for small sharpnose sharks is with a drift gillnet in deep water. Strikenet gear will not work because it only catches large coastal sharks.

Response: NMFS has reviewed available shark gillnet fishery observer data and agrees that strikenet gear does not appear to be effective at catching Atlantic sharpnose sharks. For this reason, and reasons discussed above, drift gillnet gear will not be banned in this rulemaking.

Comment 8: Enforcement efforts in the EEZ could be complicated due to similarities between drift gillnet and strikenet gear.

Response: NMFS agrees that enforcement efforts could be complicated due to similarities between drift gillnet and stikenet gear. For this reason, and reasons discussed above, drift gillnet gear will not be banned in this rulemaking.

Comment 9: The five vessels actively using drift gillnet should be given gillnet endorsements on their directed shark permits to limit entry into the fishery. NMFS should consider allowing the five fishing vessels currently in the fishery to continue and prevent any new vessels from entering the fishery.

Response: NMFS did not consider specific permit endorsements in this rulemaking, but may consider options to limit vessel participation in the shark gillnet fishery in the future.

Comment 10: NMFS received several comments regarding the modification of shark gillnet gear to reduce protected resources interactions. The comments include: Instead of banning the gear, NMFS should reduce the allowable length of the gear. NMFS should consider gear modifications to reduce bycatch. My vessel accounted for a large number of interactions between marine mammals and sea turtles until I replaced a large section of my gear; while I still have some interactions with them, they swim away unharmed and are observed to be healthy. I used new gear this past summer with tighter mesh and this increased my sharpnose catch and decreased my interactions with protected species. Fishermen who use shark drift gillnet gear have adapted their gear using corks to keep the gear high in the water and allow any entangled turtles to get to the surface and survive. Fishermen who do not usually fish in the fishery or who use stab nets are the fishermen who catch dead turtles. Instead of banning drift gillnets, NMFS should consider the use of pingers to reduce interactions with protected species.

Response: Gear modifications have been shown to be effective in other fisheries; however, some modification measures can be difficult to enforce or can be circumvented by altering fishing patterns, resulting in no bycatch reduction. NMFS continues to support research projects regarding effectiveness of gear modifications, to the extent that funding allows, and will consider the possibility gear modifications in a future rulemaking.

Comment 11: NMFS received several comments regarding sea turtle interactions in the shark gillnet fishery. The comments include: In terms of actual numbers, relatively few sea turtles have been captured in the shark gillnet fisheries. While this fishery is supposed to have high levels of observer coverage, this is not always the case. As noted in the June 2001 BiOp, this fishery can have a large impact on leatherback sea turtles at a time when reproductive females are in the area. I have been fishing 18 years and carried an observer for 10 years; in those 10 years, I have only caught one sea turtle.

Response: The best available information indicates that relatively few sea turtles have been captured in the shark gillnet fishery. The October 2003 BiOp estimated that over a five-year period the expected take of sea turtles in the shark gillnet fishery would be 10 total loggerhead sea turtle captures with one mortality, and 22 total leatherback sea turtles captures with three mortalities. The BiOp concluded that the continued operation of the shark fisheries, including the shark gillnet fishery, are not likely to jeopardize the continued existence of the endangered Kemp's Ridley, green, hawksbill, and leatherback sea turtles, and the threatened loggerhead sea turtle. Although there were multiple interactions with leatherback turtles during 2001, NMFS believes this was an anomalous event, possibly associated with changes in environmental conditions. NMFS believes that events such as this can be mitigated through observer coverage, gear modifications, and enforcement.

Comment 12: I can strike at sharks without "striking" as you define it. I do not use the second vessel.

Response: NMFS is aware that some vessels have experimented with setting strikenet without using a second vessel. To the extent that these methods are more economical for fishermen, NMFS supports these methods. However, the use of shark strikenet gear in a method inconsistent with the current definitions inside the restricted area could constitute a violation. Requirements for strikenet vessels operating in the restricted area are described in the Atlantic Large Whale Take Reduction Plan regulations.

Comment 13: NMFS says that only six vessels are in the drift gillnet fishery. There are actually about a dozen that would be affected.

Response: The best available information indicates that there are five vessels that actively target sharks in the shark gillnet fishery. NMFS believes that there are a number of fishermen who land sharks incidental to their target species in other gillnet fisheries (*e.g*, bluefish, croaker, mackerel). All of these fishermen are affected by the general management measures such as changes in the commercial quota and the establishment of regional quotas. However, only those fishermen who actively targeted sharks would have been affected by the proposed measure to prohibit drift gillnet gear. NMFS is not finalizing that prohibition in this rule.

Comment 14: The bycatch of red drum in the shark gillnet fishery is of serious concern, given interstate effort to reduce bycatch of this species. Red drum is an overfished species whose harvest is strictly regulated with slot limits to promote its recovery.

Response: Red drum is caught incidentally in the shark gillnet fishery. However, the limited amounts of observed bycatch of this species in the shark gillnet fishery is not expected to impede recovery of the stock. Observer data indicate that the shark gillnet fishery does not catch large numbers of red drum. In 2002, 28 red drum were observed caught, of which, 50 percent were released alive.

Comment 15: Finetooth sharks are rare in trawl catches off Georgia. However, significant numbers are taken by the shark drift gillnet fishery. Elimination of the shark drift gillnet fishery would contribute towards reducing the overfishing of finetooth sharks.

Response: The shark gillnet fishery has been observed to target Atlantic sharpnose and blacktip sharks. Elimination of the shark drift gillnet fishery would not be expected to reduce significantly overfishing of finetooth sharks, because they are not a target species. In 2002, 21,978 sharks were observed caught in the shark gillnet fishery. Of those sharks observed caught, 1,615 (7.3 percent) were finetooth sharks.

Comment 16: The Atlantic sharpnose I catch have stomachs full of juvenile sea turtles. NMFS should calculate how many sea turtles are saved by allowing the drift gillnet fishery to continue.

Response: NMFS is concerned with all sources of mortality for protected resources and realizes that the ecosystem as a whole needs to be considered when rebuilding species. However, NMFS' can only influence and mitigate anthropogenic sources of mortality, specifically, those due to interactions with fishing gear within NMFS' jurisdiction.

ii. VMS.

Comment 1: The use of VMS on bottom longline and gillnet vessels, combined with time/area closures to protect juveniles, may help reduce mortality of vulnerable shark stocks beyond what the quota cuts will achieve.

Response: The preferred time/area closure is designed to reduce bycatch and mortality of neonate and juvenile dusky and sandbar sharks in a known pupping and nursery area. The preferred time/area closure could reduce fishing mortality on the stages that contribute the most to population growth. The use of VMS on shark bottom longline and gillnet vessels will contribute to the enforcement of time/area closures and may enhance the rebuilding of LCS to maximum sustainable yield.

Comment 2: As a gillnet fisherman, I prefer observers over VMS.

Response: While NMFS understands that individual fishermen may prefer using observers over VMS, the VMS alternative is preferred as an aid in enforcing time/area closures. Fishery observers are used to monitor catch and bycatch, protected species interactions, and fishery characteristics, and not used specifically for enforcement purposes.

Comment 3: One commenter was concerned with the utilization of VMS to monitor activities when vessels are engaged in normal fishing operations and not operating illegally.

Response: Currently, VMS is used in many fisheries managed by NMFS. VMS is the best technology at this time for monitoring vessel locations. It can be used by NMFS to reduce observer program costs, improve the enforcement of time/area closures, to deter illegal fishing, and to increase the efficiency of surveillance patrols. With respect to the shark gillnet and bottom longline time/area closures in particular, the size of the closed areas significantly diminishes the likelihood of detection through conventional means. Traditional methods of surveillance in these areas would be cost prohibitive. Other possible benefits of the VMS include increased safety at sea and dependable and confidential communications.

Comment 4: If VMS is implemented, NMFS should hold operators, not vessel owners, responsible for violations because the owner has little control over what the operator does with the vessel once it leaves the dock.

Response: NMFS is aware of vessel owners' concerns, however, for enforcement purposes, both vessel owners and operators will continue to be subject to liability for violations. Vessel owners can employ or terminate operators based on their compliance with fishery regulations.

Comment 5: VMS should be phased in to reduce negative economic impacts and blended with a communication adaptation that the U.S. Coast Guard uses as a homeland security technique.

Response: The VMS requirement will only be required for five shark gillnet vessels and any shark bottom longline vessels operating near the time/area closure (approximately 14 vessels). Because this measure will be required for only a select few vessels, it can be implemented with minimal economic impacts and will not affect the vast majority of the shark fishing fleet. To minimize impacts and to give time to NMFS to issue a type approval notice, NMFS is delaying the effective date of VMS in the shark fishery. In regards to communications adaptions and uses of VMS for homeland security, NMFS supports these uses.

Comment 6: NMFS received several comments regarding the number of vessels required to install and activate a VMS unit. The comments include: VMS is required for all pelagic longline vessels, why would it only be required for a portion of the bottom longline fleet? VMS should be expanded to all vessels all-year round.

Response: VMS is required for all pelagic longline vessels to aid in the enforcement of multiple large scale closed areas in a highly mobile fishery. In addition to approximately five shark gillnet vessels, the VMS requirement analyzed in this rule would require vessels located near the time/area closure (approximately 14 vessels) to install and activate a VMS unit. Analyses indicate that while vessels in the pelagic longline fleet are highly mobile, vessels in the bottom longline fleet rarely fish far from their reported homeport. Thus, NMFS believes that requiring VMS for only that sub-population of the shark fishing fleet that fishes in the vicinity of the time/area closures is appropriate because the intent of the measure is to monitor vessel activity to ensure that time/area closures are effective.

Comment 7: If gillnet gear remains authorized for use in the shark fishery, VMS must be mandatory to ensure compliance during right whale calving season and to facilitate cooperative state/Federal enforcement efforts to monitor this fishery.

Response: The final action requires shark gillnet vessels to install and activate VMS units during the right whale calving season (November 15–March 31). This measure is expected to facilitate enforcement efforts.

iii. Other Gear Restrictions.

Comment 1: We support all of the alternatives being considered including limited soak times, reducing the length of the gear, and, especially requiring circle hooks. Reducing soak time and requiring the use of circle hooks could be an effective means of protecting juvenile sharks. These measures could reduce discard mortality of dusky sharks, which remains a candidate for listing under ESA, and other bycatch species.

Response: NMFS considered multiple gear restriction alternatives in Amendment 1. The preferred alternatives that require VMS on a sub population of commercial shark fishing vessels as well as require shark bottom longline vessels to use corrodible hooks, possess release equipment, and move one nautical mile after an interaction with a protected species.

Comment 2: It is unclear from the analyses presented in the draft amendment whether the most effective measure to reduce mortality of small sharks would be a series of time/area closures, a minimum size combined with measures to reduce bycatch, or some other plan. Therefore, we express support for measures that seem likely to reduce juvenile shark mortality, especially area closures. However, we encourage NMFS to do a more thorough analysis of the effectiveness of each bycatch reduction measure and to develop a comprehensive bycatch reduction plan.

Response: NMFS believes that a combination of measures will be most effective in reducing bycatch and bycatch mortality of protected species and small sharks in the shark fishery. Thus, NMFS is implementing a time/area closure, a requirement to possess and use release equipment, and a minimum size in the recreational fishery. NMFS has also issued an implementation plan to enhance current bycatch reduction efforts in HMS fisheries under the guidance of the 1998 NMFS Report, Managing the Nation's Bycatch. This report, which is posted on the NMFS website, contains the Agency's national bycatch goal, which is "to implement conservation and management measures for living marine resources that will minimize, the extent practicable, bycatch and the mortality of bycatch that cannot be avoided." The NMFS National Bycatch Strategy and the HMS Bycatch Implementation Plan are discussed in Amendment 1.

Comment 3: The requirement of non-stainless steel corrodible hooks should be readily accepted by the industry and, because most vessels already use these hooks, there will be little or no economic hardships or changes in fishing practices. These hooks corrode in a much shorter period of time and would decrease impairment of feeding and wounding of sea turtles and thus, increase post-release survival.

Response: NMFS agrees and is implementing a requirement for their use on shark bottom longline vessels.

Comment 4: NMFS received several comments regarding the requirement for shark bottom longline vessels to move one nautical mile after an interaction with a marine mammal or sea turtle. The comments include: Requiring vessels to move one nautical mile after an interaction with a sea turtle or marine mammal should not significantly affect normal fishing operations because most vessels already move more than one mile after hauling their gear particularly if the set caught sea turtles or a lot of juvenile sharks. Some vessels travel substantially further to dump carcasses from dressed fish in order to prevent contamination of the fishing grounds. Requiring a vessel to move after an interaction with a protected species can be difficult to enforce unless enforcement personnel are on the scene when the gear is retrieved. If sea turtles are caught in gear, the vessel should move 20 nautical miles away, not one.

Response: NMFS believes that the requirement for shark bottom longline vessels to move one nautical mile after an interaction with a protected species is appropriate for the shark bottom longline fishery. This requirement would reduce the probability of another interaction with a protected species because marine mammals, sawfish, and sea turtles often aggregate in clusters. By requiring vessels to move after an interaction, the vessel would increase the likelihood of avoiding additional animals in a cluster when setting subsequent gear. This requirement could increase fuel costs due to increased the time transiting to another fishing area and increase time needed to fish if alternate fishing grounds are not as productive for target species. However, because few marine mammals, sawfish, or sea turtles have been observed caught, NMFS does not believe that this requirement would affect more than a few trips for all vessels combined, each year. Moreover, NMFS expects that vessels will comply with the requirement because, during normal fishing practices, vessels may already move more than one mile after hauling their gear. Moving more than one mile increases the chance of a vessel encountering another cluster of protected species.

Comment 5: NMFS received several comments regarding the possession of release equipment on shark bottom longline vessels. The comments include: The safe removal of hooks and line before release can dramatically increase the chances of survival of the released bycatch and has been endorsed by the U.S. pelagic longline fleet, ICCAT, Inter-American Tropical Tuna Commission (IATTC), and various non-governmental organizations (NGOs). The Southeast Fisheries Science Center has developed a line cutter that is safe and effective in removing line from entangled marine mammals and sea turtles in the pelagic longline fishery. Vessels that can boat smaller sea turtles should boat them in order to better control their gear removal procedures. Dehooking devices, line cutters, and dip nets are relatively simple to use and techniques can easily be transferred from fishery to fishery and nation to nation.

Response: NMFS agrees that there are benefits of using release equipment and is implementing an alternative that will require the possession of release equipment on shark bottom longline vessels.

Comment 6: Requiring workshops to certify that a permit holder has passed a training course on the proper use of release equipment would aid enforcement and be more cost effective as a whole. These workshops could also serve as an educational forum for fishermen to learn the latest research and regulations, share concepts for their fishery that could be transferred to other fisheries (*e.g.*, recreational to commercial), gain a feeling of stewardship of the environment and their fishery, learn release techniques in a controlled environment, and develop and promote educational video tapes or literature. The workshops would also give fishermen a chance to talk to, and receive answers from, people in NMFS about regulations they do not understand. This could lead to a better working relationship over time.

Response: NMFS intends to move forward with this measure in a future rulemaking that will evaluate alternatives and implementation issues. In the interim, NMFS will attempt to make voluntary workshops available to the public.

Comment 7: We remain deeply concerned that NMFS has failed to offer options for increasing compliance in the recreational fishery after repeatedly acknowledging that anglers do not adhere to the shark regulations and that this non-compliance may be inhibiting stock rebuilding. We urge NMFS to develop programs for angler education in species identification and other efforts to improve compliance. Angler training should be a pre-requisite for obtaining an HMS Angling category permit.

Response: NMFS agrees that angler education could significantly improve compliance in the recreational shark fishery. In Amendment 1, NMFS analyzed an alternative that would require commercial and recreational fishermen to attend mandatory workshops discussing shark (and possibly other) species identification, marine mammal, sawfish, and sea turtle release techniques, and current regulations. NMFS received public comment in favor of mandatory workshops, and while it appears that mandatory workshops would be beneficial, outstanding implementation and operational issues remain that need to be addressed. Based on these issues, NMFS intends to move forward with this measure in a future rulemaking, and will attempt to make voluntary workshops, informational pamphlets, and an identification guide available in the interim.

Comment 8: At this time, we cannot support mandatory workshops. Rather, increased fiscal and other agency resources need to be expanded to significantly increase the distribution and availability of educational materials such as improved printed materials, electronic media, and more. Specific instructional/training workshops should be developed to focus on commercial fishing fleets/organizations, charter fishermen, tournament organizers, Marine Recreational Fisheries Statistics Survey (MRFSS)/other survey clerks, state/federal enforcement agencies, and more. Partnerships with other federal and state agencies to distribute this material should be explored.

Response: NMFS is working to increase outreach and available educational materials. Currently, NMFS is distributing Atlantic shark recreational fishery brochures containing information regarding HMS Angling category permits, HMS Charter/Headboat permits, bag limits and minimum sizes, release information, landing restrictions, the no sale provision, HMS tournament registration, tagging information, as well as species that may be retained, and species that must be released. NMFS is also currently producing an identification guide for sharks, tunas, and billfishes of the Atlantic and Gulf of Mexico. As discussed above, NMFS will explore mandatory workshops in a future rulemaking.

Comment 9: While the United States is trying to protect sea turtles, fishermen in Florida watch fishermen just outside the U.S. EEZ in Cuba and the Bahamas kill them. I recently watched one vessel in the Bahamas kill 39 sea turtles.

Response: Sea turtles are classified as endangered or threatened species in the United States and NMFS has implemented many measures to conserve these species. NMFS does not have the authority to determine how neighboring countries manage their resources, but will continue to pursue improvements in international sea turtle conservation measures.

Comment 10: Amendment 1 does not adequately address the incidental capture of threatened and endangered sea turtles in shark fisheries, especially shark bottom longlines. Reducing the rate of bycatch and reducing the mortality of sea turtles needs to be a primary priority. The impact of shark fisheries on sea turtles appears to be purposefully masked by key omissions in Amendment 1 about the level of sea turtle take and associated past-hooking mortality. The June 2001 BiOp estimates that 207 to 517 loggerheads are caught in the shark bottom longline fishery annually. Many of these animals probably die after release. Significantly more observer coverage is needed to improve confidence intervals. Amendment 1 fails to estimate and discuss the implications of post-hooking mortality of sea turtles. The June 2001 BiOp provides estimates of post-hooking mortality on pelagic longlines. This mortality rate in bottom longlines is expected to be higher because the turtles are trapped on the bottom unable to breathe. Because effort in shark fisheries has increased since 2001, many hundreds of sea turtles are being killed annually in shark longline fisheries.

Response: NMFS Protected Resources Division has prepared a new BiOp for this rulemaking that analyzes the incidental capture of protected resources in the shark fisheries. An estimated 222 loggerhead sea turtles were incidentally caught in the shark bottom longline fishery from 1994 through 2002. Based on observer data and the reported effort in the shark bottom longline fishery, it is estimated that 51 loggerhead turtles will be killed as a result of an interaction with a bottom longline. The highest estimate of post release mortality for sea turtles interacting with pelagic longlines is 42 percent for turtles ingesting hooks. Assuming all loggerhead turtles that ingest a hook are subject to this mortality rate, results in another 72 loggerhead turtles will be killed. This gives a total of 123 loggerhead turtles killed per year as a result of an interaction with a bottom longline. An estimate of 30 leatherback sea turtles were incidentally caught from 1994 through 2002 in the shark bottom longline fishery. Using the same methodology for leatherback sea turtle interactions results in an estimate of 17 leatherback turtles killed each year in this fishery. The leatherback mortality is very conservative because it is known that leatherback turtles rarely ingest or bite hooks, most are usually foul hooked on their flippers or carapaces, reducing the likelihood of post-hooking release mortality. However, leatherback-specific data for this fishery are not available and therefore the most conservative estimate was used. NMFS agrees that the precision of the estimates is likely to improve with greater observer coverage. One of the conditions of the BiOp is that NMFS must continue to implement an observer program at current or higher levels to monitor incidental takes of protected resources in Atlantic (including Gulf of Mexico) shark fisheries. NMFS disagrees that effort in shark fisheries has increased since 2001. Based on reported effort in the logbook data and the observer programs, the total number of hooks set in the shark bottom longline fishery in 2000–2002, ranged from 2.5 to 2.7 million hooks per year. This level of effort is approximately 62 percent less than the reported effort in 1996. In addition, based on current and historical participation, implementation of limited access in the shark fisheries reduced the number of shark permit holders from over 2,200 before limited access to 584 in October of 2003.

Comment 11: Only one alternative addresses sea turtle bycatch by recommending that fishing vessels move one nautical mile after an interaction with a sea turtle. Dip nets and line cutters should also be required.

Response: To reduce sea turtle mortality, NMFS is implementing an alternative that will require vessels with shark bottom longline gear to use corrodible hooks, possess release equipment (line cutters, dip nets, and when approved, dehooking devices), as well as move one nautical mile after an interaction with a marine mammal or sea turtle.

Comment 12: NMFS needs to conduct experiments to determine if circle hooks are effective in reducing the number of turtles caught and the position of the hooks in captured animals.

Response: The June 14, 2001, BiOp included a recommendation that NMFS conduct a three-year experimental fishery in the northeast distant statistical reporting area (NED) to attempt to reduce the interactions between pelagic longline gear and sea turtles. In the summer and fall of 2002, tested the use of circle hooks, mackerel bait, and shortened daylight soak time to examine their usefulness in reducing the capture of sea turtles. Although NMFS did not specifically investigate the use of circle hooks to reduce interactions with sea turtles in the shark bottom longline fishery, information from the NED experiments could be transferable to or provide helpful information for other fisheries.

Comment 13: We support the preferred alternatives of line cutters, dip nets, and dehooking devices and feel they would reduce mortality by recreational fishermen as well.

Response: Release gear may be beneficial in recreational fisheries; however, requiring this equipment for anglers who generally do not use heavy monofilament line and rarely encounter protected species is not practical at this time. NMFS does support the voluntary use of release gear in recreational shark fisheries.

Comment 14: NMFS should consider a variation of the no discard alternative (retention of all sharks with no discards allowed) in order to encourage reducing regulatory discards. This is possible but not practicable in today's marketplace and would be tough to enforce. Other portions of the regulations, such as no filleting at sea or the current trip limit, would need to be changed.

Response: NMFS analyzed the no-discard alternative and determined that it could virtually eliminate the bycatch of sharks in the commercial shark fishery and reduce fishing effort needed to reach trip limits and fill quotas, thereby reducing potential interactions with prohibited species. However, this alternative could also increase the mortality of juvenile sharks, prohibited species, and other sharks not normally retained. Fishermen may also illegally high-grade and discard less marketable species to avoid reaching the trip limit, increasing waste. If no discards were allowed, trip limits and quotas could be reached more quickly, resulting in derby fishing conditions. Derby conditions may result in depressed ex-vessel prices, reduced revenues, market gluts, and concerns for the safety of fishermen at sea. Due to ecological, social, and economic concerns, NMFS does not believe this alternative is appropriate for the commercial shark fishery at this time. NMFS may consider a variation of this alternative in a future rulemaking.

Comment 15: NMFS received several comments regarding bycatch of sharks and non-target species. The comments include: Amendment 1 does not contain a comprehensive strategy to avoid and reduce shark bycatch, as mandated by law. For years NMFS has highlighted the shrimp trawl and menhaden purse seine fisheries as problem fisheries for shark bycatch, yet NMFS has not offered any suggestion on how to address these bycatch sources. NMFS must take action to address these continual problems. The non-targeted species and sub-legal bycatch that are routinely discarded as a result of indiscriminate gillnets and longlines is disturbing and a waste of our marine resources.

Response: Bycatch of sharks in trawl, set-net, and hook and line fisheries is discussed in Amendment 1. In this rule, NMFS specifically addresses shark bycatch in HMS fisheries by implementing several measures designed to reduce bycatch and bycatch mortality including: a time/area closure, VMS requirements for shark bottom longline and gillnet vessels, requiring the use of corrodible hooks, and requiring the possession of release equipment (line cutters, dipnets, and, when approved, dehooking devices). As described above, NMFS has also issued a bycatch implementation plan.

Comment 16: NMFS needs to examine the bycatch of sharks in monk fishing gear.

Response: NMFS will investigate the bycatch of sharks in a number of fisheries to determine if measures are needed to minimize shark bycatch and bycatch mortality.

B. Time/Area Closure

Comment 1: NMFS received several comments regarding the use of time/area closures in general. These included: NMFS should establish sanctuaries for all fish species. The entire fishery should be closed from January through July to protect pupping females and pups. NMFS should implement seasonal closures to longlines and gillnets in coastal nursery grounds to protect all shark species.

Response: The time/area closure is based on specific information from the shark bottom longline observer program that indicates a high proportion of prohibited dusky shark and juvenile sandbar sharks being caught off North Carolina from January through July. Closing the entire shark fishery from January through July is not warranted. The closure will afford some protection to all species that are caught on bottom longline gear during that time of year.

Comment 2: One commenter noted that NMFS should implement the time/area closure alternative that would close all shark nursing and pupping grounds based on EFH for neonate and juvenile sharks, in order to protect juvenile sharks from indiscriminate commercial gears. Alternatively, another commenter noted that they cannot support the blanket alternative for closing all pupping and nursery grounds because each proposal needs to be fully evaluated and based on acceptable understanding of stock status, life histories, and defined EFH for each species.

Response: NMFS considered an alternative that would close all pupping and nursery grounds, *i.e.*, nearly all coastal waters off the U.S. Atlantic coast and the Gulf of Mexico, but this final rule would implement a targeted time/area closure for a specific time period. Currently, there are insufficient data to support a closure of all EFH pupping and nursery areas. Moreover, a closure of all coastal waters would have had a severe economic impact on fishing communities.

Comment 3: Any delay in implementation of closures may undermine management objectives.

Response: Delayed effectiveness of time/area closures has been used in the past, and is a reasonable approach to allow fishermen to adjust to the regulations that affect fishing areas and to the potential economic changes incurred by a time/area closure.

Comment 4: NMFS should consider time/area closures to protect adult dusky sharks as well as juveniles.

Response: The time/area closure is based on information relating to all life stages of dusky sharks, including adults. The time/area closure is expected to reduce the catch of all dusky sharks by approximately 79 percent and adult dusky sharks by 65 percent.

Comment 5: Any closure that is considered should be imposed on all commercial and recreational shark gear.

Response: Recreational gears have the capability to release sharks alive, whereas many sharks, and dusky sharks in particular, have low survival rates when caught with commercial gear. This is due in part to the longer soak times required in the commercial fishery. Dusky sharks, for example, have an at-vessel mortality rate of 82 percent. If data in the future indicate adverse impacts from other gears, NMFS will consider closures for other gear types, including recreational.

Comment 6: The Environmental Protection Agency (EPA) recommends marine protected areas (MPAs) for overfished stocks; marine protected areas for sharks that exhibit territorial behavior in breeding would likely benefit.

Response: NMFS has selected an alternative that implements a targeted time/area closure to protect prohibited dusky sharks and juvenile sandbar sharks which are currently experiencing overfishing. This time/area closure is a type of MPA and is also an effective means to reduce fishing mortality and help rebuild stocks. Based on the best available scientific data, NMFS has taken steps to identify and protect EFH and Habitat Areas of Particular Concern (HAPCs) for both dusky and sandbar sharks. The time/area closure will prevent the catch of both pregnant females and neonates during the critical pupping stage.

Comment 7: Any regulations imposing a closure should have a clear scientific exit strategy to reduce and/or eliminate the closure when scientifically justified.

Response: NMFS agrees that closed areas should be re-opened when scientifically justified and will thus be reviewing the status of both dusky and sandbar sharks, the two species most affected by the time/area closure, in the near future. Based on the status of those stock assessments and other information regarding the effectiveness of the closure, NMFS may consider revising the size and scope of the closure, the duration of the closure, and potentially elimination of the closure.

Comment 8: NMFS received several comments specific to the proposed time/area closure. These comments included: Closing nursery areas has always been seen as one of the most beneficial management measures possible for sharks and has been recommended by nearly every shark stock assessment group assembled; thus we support the proposed time/area closure and NMFS efforts to work with the two Fishery Management Councils to protect important state nursery waters. NMFS should close the proposed mid-Atlantic region to bottom longline fishing from January through July to protect nursery and pupping areas.

Response: Time/area closures are an important tool in reducing mortality of prohibited species and juvenile life stages of sharks, and the current time/area closure will help to protect dusky sharks and rebuild sandbars sharks.

Comment 9: NMFS should look at the fish being sold; this will show that the fishermen are not selling small sharks. NMFS should look at the average carcass weight, not length.

Response: One of the principal reasons for the time/area closure was to protect prohibited dusky sharks, which are illegal to sell. Additionally, because dusky sharks do not mature until approximately 10 ft (3 m) fork length (FL), even large dusky sharks are considered juveniles. For years, the shark observer program and many other researchers have been collecting length data for sharks because many sharks are released without being landed and weights would be difficult if not impossible to collect. The length-to-weight relationship is used by scientists to determine the life stage and sexual maturity of most fish species, including sharks. Shark bottom longline observer data show high rates of neonate and juvenile sandbar sharks less than 137 cm FL being caught and landed in the winter fishery off of North Carolina. The 137 cm FL corresponds to the recreational minimum size limit for sharks which is 4.5 feet FL. It also corresponds to the female smallest size at maturity. For instance, one data series for the winter fishery off North Carolina in 2001 shows approximately 83 percent of 1,188 sandbar sharks observed caught were less than 137 cm FL, with an average length of approximately 120 cm FL. Sandbar shark pups are born from March to early August and measure about 60 cm FL at birth.

Comment 10: The information used to support the time/area closure is flawed because shark observers are mis-identifying dusky sharks.

Response: The commercial shark bottom longline fishery observers are trained to identify all species of sharks, including dusky sharks. NMFS acknowledges that some misidentification of sharks may occur; however, the preponderance of the data, including fishery independent data collected by researchers and trained biologists who participate in tagging efforts indicates that the area off North Carolina is a pupping and nursery area for dusky as well as sandbar sharks. NMFS did not rely solely on information from the shark observer program to make its determination for a time/area closure, but relies on many other data sources as well.

Comment 11: Dusky shark catches before 1999 should not be considered because we could not land them then; since 1999, our catch of dusky sharks has decreased.

Response: Since dusky sharks were prohibited in June 2000, the data from that point forward has been analyzed separately from earlier data in the final Amendment. However, it is also important to examine data prior to 2000 because it helps to establish the high rate of historical bycatch and the importance of the area as a pupping and nursery ground for both dusky and sandbar sharks. In analyzing the shorter time period, NMFS found that the number of dusky sharks being caught off North Carolina and elsewhere has declined since June 2000, but that a much higher percentage of dusky shark are observed caught in the time/area closure than in other areas, particularly when the relatively small size of the time/area closure is compared to all other open areas of the Atlantic and Gulf of Mexico.

Comment 12: We do not support the time/area closure at this time because of the significant economic and social impacts that would result in the affected fishing communities and the fact that the document does not sufficiently analyze the closure or enforcement of the closure. If done properly, a time/area closure can benefit all concerned; however, the proposed time/area closure is not reasonable. The decision to close the area seems to be driving the science.

Response: The original time/area closure proposed in the draft Amendment would have closed a large area (31,487 square nautical miles) and may have had severe economic and social impacts. Based on public comments, NMFS re-analyzed the data and proposed a revised time/area closure of 4,490 square nautical miles in part to mitigate social and economic impacts on fishing communities in

North Carolina. The revised time/area closure will still be effective at reducing dusky catch by 79 percent, and neonate and juvenile sandbar catch by 55 percent.

Comment 13: It is not clear if other measures are sufficient to rebuild sandbar and dusky sharks without the addition of time/area closures.

Response: Rebuilding of dusky and sandbar sharks is based on the combination of management measures including the reduction in quota, the time/area closure, gear restrictions that should reduce post-release mortality, and a minimum size on recreationally caught sharks. Without the time/area closure, NMFS would need to implement other reductions or restrictions in order to ensure that LCS are rebuilt within the necessary time frame.

Comment 14: NMFS received a number of comments regarding the depth of the closures. Comments included: most nursery grounds are in nearshore areas; closing areas 20 fathoms in depth to the shore should be suitable to protect neonates and juveniles. NMFS does not need to close areas out to the 200 mile limit unless the desire is to fiercely impact these shark fishing entities. Regions outside of 20 fathoms should remain open. We question any justification for closing anything other than state waters during pupping seasons. We cannot support closures inside of 10, 20, or any other fathom mark at this time.

Response: NMFS examined catches based on depth and found that both dusky sharks and juvenile sandbar sharks are caught at depths of up to 50 fathoms. Since large numbers of sharks appear to be caught in a line along the 50 fathom contour, a buffer of approximately two miles was included to extend the seaward boundary of the time/area closure to approximately 60 to 80 fathoms. The time/area closure is one of the few known areas where shark pupping and nursery grounds extend into Federal waters. It is also one of the only areas designated as a HAPC (for sandbar sharks) in Federal waters.

Comment 15: NMFS received several comments regarding the proposed time/area closure and the burden being placed on North Carolina fishermen. Comments included: Juvenile sharks are caught all along the coast and North Carolina fishermen are being targeted unfairly. If closures are needed to rebuild sharks, then fishermen in all states need to share the task, not just North Carolina fishermen. The time/area closure is payback for previous lawsuits by the commercial industry.

Response: Juvenile sharks are caught along much of the U.S. Atlantic and Gulf of Mexico coasts; however, the proportion of juvenile and neonate dusky and sandbar sharks being caught off North Carolina is substantially higher than in other areas. This is because the waters off North Carolina are pupping and nursery areas for these two species, and pregnant females, pups and juveniles aggregate in the area. EFH areas for both sandbar and dusky sharks, and HAPC areas for sandbar sharks have been designated off North Carolina. Data indicate that from 1994–2002, 1,099 or 79 percent of all dusky sharks were caught in the time/area closure from January through July. Of these, 1,016 or 92 percent were neonates or juveniles. Of the 12,445 sandbar sharks observed caught in the Atlantic from 1994–2002, 6,755 or 54 percent were caught in the time/area closure between January and July, of which 61 percent were juveniles and neonates. While there may be other nursery and pupping areas in coastal waters, this is one of the only areas where such a high proportion of neonate and juvenile sharks have been documented being caught in Federal waters.

Comment 16: The proposed time/area closure is absurd; the period should be April 1 through June 30 or maybe July 15. NMFS should not close the area for the entire time from January through July because most fishermen do not see any pregnant females in the area after mid-July.

Response: Data from the commercial shark observer program indicates that there are substantial numbers of juvenile and neonate sharks being caught in all months from January through July, not just from April through July. This is because in addition to being a primary pupping area from May to August, the area is also a secondary nursery and overwintering ground for young-of-the-year and juvenile sharks.

Comment 17: The five vessels with a history of landing most of the juvenile sandbar sharks should be given some options on how to catch bigger sharks.

Response: NMFS has not analyzed specific information regarding which vessels are catching small or large sharks, but has relied instead upon analysis of all data gathered in the time/area closure over various time periods to form the basis for the closure. Even if information were available to indicate that certain vessels were responsible for the majority of juvenile landings, options to remedy the problem would have to be made available to the entire fleet, not just selected vessels. Commercial shark fishery participants who fish in the area are encouraged to share information on fishing gears, methods, and locations that might reduce the catch of juvenile sharks. The intent of the closure is to reduce all interactions between commercial fishing operations and pupping and nursery grounds and hence reduce both the catch and mortality of dusky and juvenile sandbar sharks.

Comment 18: Shrimp nets catch more small sharks than the directed shark fishery in North Carolina.

Response: NMFS agrees that the shrimp fishery is responsible for large catches of SCS. The bycatch of SCS in the shrimp trawl fishery in the Gulf of Mexico has been documented and was taken into account during the latest 2002 SCS stock assessment which indicates that SCS are not overfished and overfishing is not occurring. While there may be benefits to the SCS stock as a result of the closure, the intent of the closure was to reduce the catch of juvenile sandbar sharks and prohibited dusky sharks.

Comment 19: If an area is closed, landings should not be allowed in states adjacent to the area no matter where the fish are harvested.

Response: NMFS does not agree that adjacent states should be closed as well, or that landings should not be allowed in adjacent states. The time/area closure is based on specific information about catches off North Carolina in a known pupping and nursery area. Although there are pupping and nursery areas in state waters, most notably Chesapeake Bay, Maryland, and Delaware Bay, Delaware, fishing effort there has historically been low. Additionally, most other areas adjacent to the closure off North Carolina are not known pupping and nursery areas and have a much higher proportion of adult sandbar sharks, and far fewer dusky sharks. NMFS is implementing VMS to aid in enforcement of the time/area closure. VMS will benefit fishermen by allowing them to traverse the closed area to offload.

Comment 20: The time/area closure will push more vessels into other areas such as the Florida East Coast. This combined with the regional quotas and trimester seasons will mean that all the vessels will be working for one sixth of the normal January opening quota. There is only a small area off of Florida where you can shark fish. If more vessels go to that area, there will not be enough room to set gear.

Response: The original time/area closure proposed in the draft Amendment would have closed all waters off North Carolina, and portions of Virginia and South Carolina to commercial bottom longline fishing. Based on public comments that the catch of dusky sharks has declined in recent years, and that the time/area closure would have severe economic impacts on commercial fishing entities in those states, NMFS re-examined the data for the time/area closure, specifically by looking at a shorter time period of catches from 2001–2002. Based on an analysis of the data, NMFS revised the time/area closure to close the portion of the original time/area closure which had the highest catch rate of dusky and juvenile sandbar sharks. NMFS believes that the revised time/area closure will reduce the catch of dusky and juvenile sandbar sharks, while also mitigating the economic impact of the closure by allowing vessels to continue fishing in waters north and south of the time/area closure off North Carolina from January through July. This should prevent vessels from having to fish in Florida, and will allow the quota to be harvested over a larger area.

Comment 21: NMFS received several comments regarding how the proposed boundaries were established. Comments included: NMFS needs to improve the transparency in how the time/area boundaries were established and include maps of all observed trips and research cruises, not just observed takes of sandbar and dusky sharks.

Response: The final Amendment provides a more thorough explanation and justification for the boundaries established for the revised time/area closure. The seaward boundary of the revised area follows the 60 to 80 fathom contour, and was selected to include all observed catches of dusky sharks and sandbar sharks. No dusky or sandbar sharks were observed caught east of approximately 50 fathoms. Since large numbers of sharks appear to be caught in a line along the 50 fathom contour, a buffer of approximately two miles was included thus extending the boundary to 60 to 80 fathoms. The northern boundary was selected to include the HAPC for sandbar sharks off Cape Hatteras, and because areas north of Cape Hatteras have historically had low catches of both dusky and sandbar sharks. The southern boundary was selected based on low numbers of dusky sharks that have been observed caught there in recent years, and because the proportion of juvenile and neonate sandbar sharks is much lower there than in the time/area closure. In summary, the revised time/area closure will reduce the catch of dusky sharks by 79 percent versus 85 percent under the original proposal, and will reduce the catch of sandbar sharks by 51 percent versus 66 percent under the original proposal. Detailed maps of the revised time/area closure, all observed trips, and research cruises are provided in the final Amendment.

Comment 22: Why is Virginia closed? The marginal benefit of extending the closed area into Virginia does not appear as great as it would be off of Cape Canaveral, Florida. There appears to be another area of high sandbar and dusky abundance off central Atlantic Florida; NMFS should have proposed a similar closed area in that region.

Response: Based on public comments received, NMFS re-examined the data and concluded that the waters off Virginia did not warrant being closed at this time. The time/area closure boundary has been revised to include only waters south of the HAPC off Cape Hatteras. For the area near Cape Canaveral, Florida, NMFS found that the area accounted for only 8 percent of the observed dusky shark catch from 1994–2002, and less than 14 percent of sandbar sharks, of which a very high proportion were adults. Given the low percentage of catch of prohibited dusky sharks from this area, and the high proportion of adult sandbar sharks, NMFS did not feel it was appropriate to close the area at this time.

Comment 23: NMFS must adopt the alternative that would establish a time/area closure for smalltooth sawfish critical habitat. The smalltooth sawfish is the first marine fish to be listed under ESA, and although critical habitat has not yet been designated, NMFS should act immediately.

Response: NMFS does not have the basis for implementing a time/area closure for smalltooth sawfish at this time. Without information about smalltooth sawfish critical habitat, NMFS does not have sufficient information to identify an appropriate time/area closure. Once a recovery plan is developed and critical habitat identified, NMFS will reconsider a closure to protect smalltooth sawfish.

Comment 24: The depths on the maps depicting the time/area closure are incorrect.

Response: NMFS has provided updated maps showing the correct bathymetry in the final Amendment.

Comment 25: NMFS needs to compare the number of dusky shark takes in the commercial and recreational fisheries. MRFSS data are not credible.

Response: NMFS has provided estimates of the number of dusky sharks caught in the commercial and recreational fisheries in the final Amendment. The estimates show that the number of dusky sharks caught in the commercial fishery was considerably higher (18,867) than in the recreational fishery (5,570) in 1999, but that the recreational fishery may have caught more dusky sharks in 2000–2001 (8,100 vs. 6,063). MRFSS data are not the only data used in calculating recreational catch estimates. Other data are obtained from the NMFS Headboat Survey (HBOAT) and the Texas Parks and Wildlife Recreational Fishing Survey (TXPWD).

Comment 26: The proposed time/area closure splits South Carolina. How will enforcement enforce the regulation?

Response: The revised time area closure is located entirely off the coast of North Carolina and enforcement should no longer be an issue off South Carolina. Other time/area closures have been implemented that did not fully encompass a state's waters, and NMFS utilized VMS to ensure the effectiveness and enforcement of the closures. NMFS intends to implement VMS for the current time/area closure as well. VMS will have the added benefit of allowing vessels to transit the closed area.

5. Other Management Measures

A. Deepwater and Other Sharks

Comment 1: NMFS received a range of comments regarding the alternatives for the deepwater and other species group. The comments include: Deepwater sharks should be protected. Because there is little practical effect of leaving or removing them from the management unit, deepwater and other sharks should be left in the management unit. Leaving the deepwater and other sharks in the management unit could decrease the time needed to act, if necessary. Deepwater and other sharks should remain in the management unit because if any fishery should develop, it could take years to create an FMP following section 305(a) of the Magnuson-Stevens Act in terms of gear evaluation and notification of entry. We support the preferred alternative. NMFS should continue to collect data on these species until such a time that they can be assessed or until a potential fishery develops. If needed, NMFS should move to put them back in the management unit to protect them.

Response: Maintaining data collection only on the deepwater and other sharks is sufficient because there are not significant landings of the species in this group and no known fishermen target these species. If directed fisheries were to start, NMFS would evaluate data available at that time to see if an FMP amendment or other regulatory measures would be warranted.

Comment 2: Fishing for deepwater and other sharks should be prohibited because they are more likely to be overfished than coastal sharks.

Response: At this time, there are no known fishermen targeting deepwater and other sharks. Prohibiting these species would be precautionary, but it may not significantly reduce mortality because these species are only caught rarely in non-HMS fisheries. Further, prohibiting landings of these species in HMS fisheries could reduce the availability of important data on them.

Comment 3: To the extent that deepwater sharks are a target of fisheries in the Caribbean, the complex should be assessed and managed.

Response: NMFS will assess this species group when more biological and fishery information becomes available.

Comment 4: Deepwater and other sharks were added to the management unit not only to ban their finning, but also to preclude possession of species that may be vulnerable to overfishing and to help prevent development of directed fisheries or markets for uncommon or seriously depleted species.

Response: The species added to the prohibited species group in the HMS FMP were added because they were known to be vulnerable to overfishing, uncommon, or seriously depleted. The deepwater and other group was included in the management unit only to prohibit finning of these species. No other regulations were placed on this group (*e.g.*, no permitting or reporting requirements). Presently, the only protection afforded under the HMS FMP, a ban on finning, is now afforded nationally under the Shark Finning Prohibition Act (February 11, 2002, 67 FR 6194). Given the national protection, maintaining data collection only on these species is sufficient at this time.

B. Prohibited Species

Comment 1: Fishermen should be fined $10,000 for every prohibited species they capture.

Response: Currently, the possession and landing of prohibited species is illegal. Penalties and fines vary with the severity of the infraction. At this time, NMFS does not believe a $10,000 fine for capturing a prohibited species would be appropriate under all circumstances.

Comment 2: NMFS received a range of comments stating that dusky sharks should be removed from the prohibited species list in order to determine where and how many are caught. Alternatively, some commenters stated that NMFS should not remove dusky sharks because they have suffered a severe population decline and all measures to reduce mortality should be imposed.

Response: Dusky shark catch rate data indicate large population declines since the early 1970s. Dusky sharks have a high bycatch mortality, approximately 80 percent, and are usually dead when gear is retrieved. Although commercial shark fishery observer data shows that dusky sharks comprise approximately one percent of total catch in recent years, removing dusky sharks from the prohibited species list could result in increased mortality of this overfished species by allowing the retention of individuals that may otherwise be released alive. NMFS determined that removing dusky sharks from the current prohibited species group would likely have significant ecological impacts.

Comment 3: NMFS received several comments regarding the addition of the deepwater and other species to the prohibited species group. The comments include: Because they are slow growing and because new fisheries can spring up and deplete populations before action can be taken, deepwater and other sharks should be added to the prohibited species list. Removing deepwater and other sharks reduces the chances for conserving slow growing deepwater sharks. NMFS continues to assert the lack of a fishery for deepwater sharks and yet has failed to reconcile their previous finding in the National Plan of Action for Reducing Fishing Capacity that deepwater sharks are overcapitalized.

Response: NMFS determined that adding the deepwater and other species to the prohibited species group would likely have only minor positive ecological impacts. Prohibiting these species takes a precautionary approach, but may not significantly reduce mortality because these species are only caught rarely in non-HMS fisheries. Further, prohibiting the landing of these species in HMS fisheries may limit the availability of data pertaining to them. If directed fisheries started, NMFS would evaluate data available at that time to see if an FMP amendment or other regulatory measures would be warranted. The draft National Plan of Action for Reducing Fishing Capacity stated that deepwater sharks are overcapitalized. NMFS believes the deepwater and other species were given this designation because the management group was included along with other shark management groups which are overcapitalized. The Highly Migratory Species Management Division has recommended that this finding for the deepwater and other species be amended because there are no known fishermen who target these species.

Comment 4: We support adding finetooth sharks to the prohibited species list. Possession should be prohibited until effective management measures to stop overfishing are implemented.

Response: NMFS analyzed an alternative that would add the finetooth sharks to the prohibited species group, but determined that this alternative would likely have limited positive ecological impacts as finetooth sharks are common bycatch in non-HMS fisheries and prohibiting them in HMS fisheries will not prevent their capture. Additionally, finetooth sharks are not overfished and are commonly caught in HMS fisheries. As such, finetooth sharks do not appear to meet the criteria established in the selected alternative. As described in Amendment 1, NMFS will take a long-term approach of identifying where finetooth sharks are caught and work with the appropriate Fishery Management Council to reduce fishing effort, as appropriate.

Comment 5: NMFS received several comments regarding the preferred alternative for prohibited species. The comments include: We support the proposed alternative for prohibited species. We support the proposed alternative but recommend removing the criterion of rarity in LCS catch. If a species is commonly caught in the LCS fishery, but is depleted and warrants protection according to the biological criteria, then the species should be prohibited. We support the proposed mechanism but note that the criteria and procedures in the draft Amendment 1 require further investigation and clarification regarding appropriateness before finalization. We support the proposed mechanism but suggest that the criterion for adding and removing species be separated because the action may be contrary.

Response: NMFS believes the mechanism for adding and removing species to and from the prohibited species list and the associated criteria are appropriate for addressing the biological needs of individual shark species. In regard to concern over the second criterion, a species may be rarely caught in HMS fisheries but stock assessments show few signs of depletion (*e.g*, HMS gear types are not efficient at catching the shark species or the species is caught in areas not fished by HMS fishermen). Before any species is added or removed from the list, NMFS would issue a proposed and final rule that fully describes how and if the species meets the criteria. If adjustments to the criteria are found to be needed in the future, NMFS can modify the criteria in a future rulemaking.

Comment 6: NMFS should return to the original five prohibited species. All

LCS should be assessed. If they remain on the prohibited species list, NMFS will not have the data they need to assess them. Similarly, we support the proposed mechanism but NMFS should also remove any species that are logically not likely to be overfished (*e.g.*, rarely caught species).

Response: The 1997 prohibition on the possession of whale, basking, sand tiger, bigeye sand tiger, and white sharks within Federal waters was a precautionary measure developed to ensure that directed fisheries did not develop for these species. These five species were identified as highly susceptible to over exploitation. In 1999, the HMS FMP prohibited the retention of the remainder of the prohibited species because they were known to be vulnerable to overfishing, uncommon, or seriously depleted. Although the preferred alternative includes a mechanism and lays out criteria for the inclusion and removal of species from the prohibited species group, NMFS does not believe any changes to this group are warranted at this time. Each species will be considered on a case by case basis in future rulemakings. In the 2002 LCS stock assessment, there was sufficient information to assess the LCS complex as a whole, and sandbar and blacktip sharks individually. NMFS will assess individual species as more biological and fishery information become available.

Comment 7: If the proposed mechanism is finalized, what type of request would we be required for NMFS to start rulemaking to remove species?

Response: NMFS would require a petition for rulemaking to alter the prohibited species list. A petition for rulemaking should contain sufficient information for NMFS to consider the substance of the petition. For a petition regarding changes to the prohibited species list, the petition should, at a minimum: (1) Indicate what species are requested to be added to or removed from the list; (2) identify how the criteria warrant the addition or removal of the species; (3) provide data and other information relevant to those identified criteria; (4) state if additional research may be necessary to develop the requested change; (5) explain the interest of the petitioner or other stakeholders regarding the requested change; and (6) explain the importance of the action requested to promoting established NMFS' priorities and policies.

Comment 8: If the proposed mechanism is finalized, will NMFS conduct an annual assessment regarding which species will be placed on the prohibited species list?

Response: NMFS will assess individual species as additional data becomes available and not necessarily on an annual basis.

C. EFPs

Comment 1: We support the preferred alternative as long as NMFS maintains some accountability on how the sharks are used, particularly the prohibited species. Any demographic information for age, growth, and offspring that evolves from aquarium use should be provided to NMFS annually for use as a comparative database for life history analyses versus wild stocks.

Response: NMFS maintains an EFP database which accounts for each highly migratory species requested, authorized, taken/collected, and/or tagged under an approved EFP. As for data reporting, each permitted individual is required to submit interim reports throughout the calendar as well as submit an annual report documenting the amount, composition, and disposition of the catch as well as information pertaining to fishing activities. Additionally, NMFS has finalized a rule that amends HMS reporting requirements under EFPs (68 FR 63738, November 10, 2003). Additional issues regarding EFPs and Display permits may be addressed in a future rulemaking.

Comment 2: We support a separate display permitting system, apart from research or EFPs. NMFS should overhaul the EFP system and establish separate classifications of permits for each specific use (*e.g.*, public display, research, and other exempted activities).

Response: NMFS agrees and is establishing display permits in this rule. Other purpose classifications of exempted fishing permits may be addressed in future rulemakings.

Comment 3: NMFS received several comments regarding the issuance of permits. Comments included: NMFS should not issue any more permits for scientific research. Background checks should be made of all permit holders; anyone with previous violations of any kind should be denied a permit. Requests for EFPs and SRPs need to be fully evaluated, taking into consideration past performance and other background, particularly for species that are already critically overfished.

Response: Valuable information is gathered from activities under scientific research permits (SRPs) that would otherwise be prohibited. For example, SRPs have facilitated the collection of life history, migration, and age and growth information from prohibited shark species. As noted above, NMFS recently amended the reporting regulations for EFPs and SRPs and will be investigating additional improvements in the permitting processes.

Comment 4: Fishermen catching sharks for display purposes should be required to have a purchase order from an aquarium in hand before going out. Annual follow-up investigations to the aquarium should be made to ensure that the shark is cared for properly. If someone is caught without a purchase order, the fine should be $10,000 per shark.

Response: NMFS will be investigating these issues further in a future rulemaking.

Comment 5: Several changes are needed to the EFP process including incorporating more public comment into the EFP allocation process and letting the public know what the final decision is and what the environmental impacts are of its decision.

Response: NMFS will be investigating alternatives to improve the process in a future rulemaking and notes that information on the types of and number of permits issued are presented in the annual Stock Assessment and Fishery Evaluation (SAFE) reports.

Comment 6: Efforts should continue with the Atlantic States Marine Fisheries Commission (ASMFC) regarding coordination between state and federal permits. There often appears to be too many permits and too little oversight.

Response: NMFS supports continuing dialogues with the ASMFC regarding coordination between state and federal permits and has been working on improving its own database and collection methods, in part, to improve communication between NMFS and state agencies.

Comment 7: While criteria for each EFP may vary, there should be uniform standards of performance, reporting, and accountability that are equally applicable to fishermen, aquariums, researchers, and educational institutions. Implementation of measures to ascertain the educational need justifying the harvest of these animals and improving reporting should be investigated.

Response: NMFS will be investigating these issues further in a future rulemaking.

6. Essential Fish Habitat Update

Comment 1: EPA recommends including a discussion on whether shark EFH is being affected by other fishery practices. For example, if shark EFH is protected by limiting clamming or trawling in coastal bays, then the fishery may support higher quotas.

Response: Because sharks use both estuarine and coastal inshore habitats, their EFH may be negatively impacted by fisheries that target species other than sharks. These fisheries may be either state or Federally managed. In particular, shark pupping and nursery habitats may be subjected to fishing impacts from gears of other fisheries, *e.g.*, shrimp trawling, but the degree of overlap between the various trawl fisheries and shark EFH, the extent to which habitat is altered by these gears, and the resulting impact on EFH are currently not known. Further research would be required to determine habitat-related production rates for sharks (the highest, most refined level of information available with which to identify EFH, and which is currently not available for sharks) and the potential impact of other fisheries on these production rates. Even if clamming or trawling were limited in some way to reduce impacts on shark EFH, the decision to raise quotas would only be made after appropriate stock assessments were conducted to determine whether the status of the stock had improved as a result of the conservation and enhancement actions.

Comment 2: NMFS should identify EFH based on the entire geographic range of the species.

Response: The EFH final rule recommends distinguishing EFH from all habitats potentially used by a species (50 CFR 600.815(a)(1)(iv)(A)). NMFS considered identifying EFH based on the entire geographic range of the species, but because specific information from scientists, observers, and tagging programs was available, decided to identify EFH more precisely based on observed distributions and knowledge about habitat requirements of individual species. The final action identifies EFH based on an initial analysis of 100 percent of the observed distribution, which may then either be expanded or reduced based on the status of the stock. If new information is not available, the existing EFH identifications would be maintained. The basis for this alternative is to provide flexibility to increase or decrease the extent of EFH based on the status of the stock. Since overfished resources are considered to be at greater risk, the percentage of habitat identified as EFH for overfished species would be greater than that of fully fished or not overfished species. Identifying the entire range could potentially have resulted in inclusion of the entire EEZ for certain species, which would include more than the range of areas necessary for spawning, feeding, breeding and growth to maturity as defined in the EFH regulations. Areas currently identified as EFH in Amendment 1 are based upon the best available science and represent the most accurate identification of EFH.

Comment 3: We support the use of the preferred alternatives to identify EFH as specifically as possible and the use of data to increase or decrease the identifications for each species.

Response: The final action provides an objective way of identifying EFH, and allows for the expansion or contraction of EFH based on the status of a particular species or life stage. For example, for overfished species, 90 percent of the range of distribution could hypothetically be identified as EFH, and for a species that is not overfished, 75 percent of the range of distribution might be identified as EFH.

Comment 4: Sandbar shark EFH should include areas in the northern Gulf of Mexico.

Response: Current sandbar shark EFH for all life stages includes areas in the northeastern Gulf of Mexico from Key West, Florida, as far west as Cape San Blas, Florida, on the Florida Gulf coast at 80° 15′ North, including Apalachicola Bay, Florida. NMFS did not have sufficient information to include areas farther west at this time.

Comment 5: NMFS should work with Mexico and Cuba to include their waters as EFH. Twenty percent of all dusky shark tags are returned from Mexico after having been tagged in the mid-Atlantic region. Expanding EFH would help present all information possible about EFH throughout the immediate range.

Response: Habitats that satisfy the criteria in the Magnuson-Stevens Act and the EFH regulations have been identified and described as EFH; some additional habitats may lie outside the U.S. EEZ, and therefore cannot be identified as EFH under the Magnuson-Stevens Act. Instead, these areas may be highlighted as particularly important habitats and actions that may adversely affect the habitat may be addressed through international agreements as recommended in the EFH regulations (50 CFR 600.805(b)(2)). The U.S. has engaged in discussions with Mexico regarding fisheries issues in the past, and met again October 22–24, 2003, for U.S. Mexico Bilateral Consultations in Mazatlan, Mexico. Currently the U.S. does not have diplomatic relations with Cuba, and working cooperatively to determine shark habitat in Cuban waters would be difficult.

Comment 6: The Amendment discusses changes to EFH based on human impacts but does not discuss natural impacts such as red tide or rising temperatures.

Response: Both red tide and rising temperatures may influence EFH. Red tides may have a short term impact by altering distribution of organisms, and temperature rise may have a long term influence by changing the distribution and abundance of predators and prey, benthic and water column habitat characteristics, and a host of other related issues. Red tides and rising temperatures have been linked to human activities, and as such, the final Amendment includes conservation measures that could reduce the runoff of coastal pollution which may influence or exacerbate red tides, and discusses many other influencing factors that are land-based and may have an impact on coastal waters and EFH.

7. The Stock Assessments and the Status of the Sharks

Comment 1: NMFS received a range of comments regarding the current abundance of sharks. One commenter noted that a research scientist told him that there are plenty of sharks and that the scientist has seen more in his research this year than in other years. Another commenter noted that he no longer sees as many large coastal sharks as he used to and that shark harvesting should be stopped.

Response: Because of a number of factors including, but not limited to, environmental changes, the gear used, the random sampling scheme used, and past experience of the fisherman, the number of sharks seen by one person or in one year of a time series compared to other years or other people can vary. The models used in the 2002 large and small coastal shark stock assessments take this variation into account when examining the data provided by fishermen and scientists and are considered to be the best available science and an appropriate basis for management action.

Comment 2: How could blacktip sharks be overfished in 1998 and now be rebuilt?

Response: As a result of a settlement agreement with commercial fishermen, NMFS had the 1998 LCS stock assessment peer reviewed. Those reviews found that the scientific conclusions and recommendations in the 1998 stock assessment were not based on scientifically reasonable uses of appropriate stock assessment techniques. As a result of these peer reviews, NMFS went back to the 1998 stock assessment and conducted a number of sensitivity analyses on the data and the models used at that time.

These analyses found that the data and models used for blacktip sharks were particularly sensitive to a number of factors and that changing some of the factors could lead to results that indicated the stock was either rebuilt or was well below sustainable levels. The sensitivity of the results (to computational issues) was largely attributed to the CPUE series within the analyses, which showed contradictory trends. As a result of these sensitivity analyses, before the actual 2002 stock assessment was conducted, scientists and other stakeholders examined each time series and model available and determined which ones were the most appropriate for use. Given these decisions on data inputs and modeling approaches, the condition of blacktip sharks was determined to be rebuilt. The peer review of the 2002 LCS stock assessment found that the models and data used were appropriate.

Comment 3: Given the short period of shark management and the long time required for sandbars to attain maturity, the assertion that sandbar sharks are restored is something of a scientific miracle. Sandbar sharks used to be so common in the mid-Atlantic that they could be counted upon to save almost every summer shark trip. After a few years of intense commercial shark fishing, that species was practically wiped out. We still do not see them.

Response: The latest LCS stock assessment constitutes the best scientific information available. It was conducted by some of the most respected shark and stock assessment scientists in the United States and, as is attested by the results of the peer review, used state-of-the-art models. Additionally, the data and models used in the stock assessment were examined and debated by scientists, environmentalists, and fishermen in a stock evaluation workshop before the stock assessment itself. The assessment found that sandbar sharks are no longer overfished but are experiencing overfishing. It is important to note that a change in status from overfished to rebuilt does not mean that the population is restored to levels of an unexploited or lightly exploited population. In general, a fish population that is capable of producing MSY on a continuous level (*i.e.*, a population that is not overfished) is roughly half that of an unexploited population. Thus, NMFS would not expect sandbar shark catch rates to return to the catch rates that occurred at the start-up phases of either the recreational or commercial fisheries.

Comment 4: How can a species have overfishing occurring but not be overfished?

Response: Overfishing relates to the rate of fishing mortality and indicates that the standing stock is being reduced because removals exceed the capacity of the stock to replace itself. Fishing pressure or fishing mortality needs to be reduced on a species that is experiencing overfishing or the species will become overfished. A species is overfished if the biomass or the number of fish in the population is too low to produce the desired level of harvest on a continuing basis. In the case of an overfished species, fishing mortality must be reduced in order to keep more individuals in the population and contributing to reproduction. An overfished population cannot rebuild unless overfishing is stopped.

Comment 5: NMFS received several comments regarding the accuracy of species identification and its impact on data quality and the accuracy of stock assessments. Comments included: NMFS needs to improve species identification and reporting by shark dealers. The data you are using is wrong because fishermen have normally listed everything as a "sandbar shark." NMFS should work within the Atlantic Coastal Cooperative Statistics Program (ACCSP) to better standardize fishery-dependent survey data collection and address the tendency of dealers to simply categorize shark landings as "sharks."

Response: Since 1993, species-specific reporting has been required. However, some fishermen and dealers still report sharks as "shark" or as "large coastal." Both the small and large coastal shark stock assessments use a variety of data including fishery-dependent (*e.g.*, self-reported data such as logbooks) and fishery-independent data (*e.g.*, research cruises with a set sampling scheme). While some fishermen or dealers may report the incorrect species on logbooks, other fishermen and dealers do report the correct species, as is required by the regulations, and observers or scientists trained in species-identification report the correct species level data. Both stock assessments conducted numerous sensitivity analyses to examine what happens to the results of the models if only relative abundance data reported by fishermen or only data reported by scientists are used. The overall results of the stock assessments consider these sensitivity analyses and constitute the best scientific information available at this time. Recognizing that the accuracy of stock assessments and management can be improved with correct species-identification, NMFS will be releasing a species-identification guide shortly and will be examining, in a future rulemaking, methods of requiring mandatory workshops for both commercial and recreational fishermen in order to improve, among other things, species-identification. NMFS continues to work within the ACCSP and other relevant forums to improve the reporting process of shark data.

Comment 6: How independent were the peer reviews?

Response: For the 1998 and 2002 LCS stock assessments, Natural Resources Consultants, Inc. (NRC) hired several non-NMFS scientists to conduct the peer review. These non-NMFS scientists provided information to show they had no conflict of interest. NMFS provided NRC with all the supporting documentation the scientists required such as copies of the stock assessment and the related documents. However, pursuant to a court-approved settlement agreement, NRC did not disclose the identities of the peer reviewers to fisheries management staff at NMFS until after the reviews were complete.

Comment 7: All shark fishing should be stopped. The PEW Report and other reports by independent, unbiased scientists indicate that overfishing is occurring. NMFS is not accurate when it says "sandbar sharks are no longer overfished."

Response: As explained above, the current LCS stock assessment underwent an independent peer review and is the best available science on the status of the stocks.

Comment 8: NMFS received a range of comments regarding the menhaden fishery and shark bycatch. These comments included: The menhaden fishery catches a lot of sharks. Does NMFS incorporate bycatch information from the menhaden fishery in the stock assessment? NMFS should monitor and control the bycatch in the menhaden fishery.

Response: The Gulf of Mexico menhaden purse seine fishery does have some bycatch of sharks. It is estimated that approximately 75 percent of the sharks encountered in the fishery die, and 97 percent of the sharks encountered are LCS while 3 percent are SCS. The 2002 LCS stock assessment included these discard estimates for LCS, blacktip, and sandbar in the Gulf of Mexico menhaden purse seine fishery from 1981 to 2001. Additionally, different sensitivity analyses were conducted to determine how much the results would change if data extended back to 1964. Results from those sensitivity analyses indicated that extending the series of menhaden discard estimates back in time had almost no effect. NMFS will continue to work with the Gulf States Marine Fisheries Commission and the Gulf of

Mexico Fishery Management Council to monitor the situation and, as needed, examine methods of reducing bycatch of sharks in this fishery.

Comment 9: The two species that have been assessed outside the LCS complex have been shown to be not overfished; NMFS needs to assess the other 20 LCS species to find out what their status is. All LCS, except sandbar and blacktip sharks, are considered overfished. Some of these species are rare event animals in the ecosystem; they have never, nor will ever be, overfished because they cannot be targeted in U.S. waters. These species should not be considered overfished. Despite 10 years of management, NMFS has failed to conduct species-specific assessments for all LCS. Similarly, some of the prohibited LCS, such as bigeye sand tiger and narrowtooth sharks, are listed as overfished but should not be. These animals are rarely caught or found in U.S. waters.

Response: NMFS continues to collect species-specific data in support of species-specific stock assessments. To date, NMFS has conducted individual stock assessments for sandbar, blacktip, Atlantic sharpnose, finetooth, blacknose, and bonnethead sharks. As additional biological and fishery-related data become available, NMFS will conduct other species-specific stock assessments. As noted in the 2002 LCS stock assessment, NMFS plans to conduct a dusky shark stock assessment in the near future. Until that time, NMFS must use the best available data to conduct stock assessments. For many species of sharks, this means conducting group stock assessments of the entire complex. These results indicate that some species in the LCS complex are in apparent decline while other species are not. Until stock assessments can be conducted on individual shark species, NMFS is implementing a mechanism that uses a number of criteria to determine if the species should be on the prohibited species list. If a species, such as narrowtooth sharks, is rarely caught but does not meet the other criteria, such as sufficient biological data to indicate a decline, then the species can be removed. However, if the species is rarely caught because its stock is depleted, the species would be added to, or maintained on, the prohibited species list.

Comment 10: NMFS' dusky data is incorrect and is not a true indicator of what is being caught. Juvenile dusky sharks are not caught off the east coast of Florida. Only giant dusky sharks were reported in logbooks in the past.

Response: The data collected on dusky sharks is from a variety of sources including fishermen, dealers, observers, and scientists. While there may be some problems with species identification on the part of those individuals not trained, observers and scientists who have been trained to identify sharks do provide species level data. These data indicate that juvenile dusky sharks (dusky sharks do not mature until they are approximately 10 ft (3 m) FL) are caught off the east coast of Florida.

Comment 11: NMFS received several comments regarding the assessment results for finetooth sharks. Comments include: The data on finetooth sharks is flawed; I only land a few and there is only a small area where they are caught. Assessments for finetooth sharks can be improved with better landings and bycatch information. NMFS states that overfishing is occurring for finetooth sharks because of excessive bycatch, yet according to the SCS stock assessment, no bycatch numbers were used in the model; NMFS should improve the data on finetooth sharks.

Response: Results for finetooth sharks are uncertain, possibly due to limited catch and CPUE series, lack of bycatch estimates, and no catches reported in some years. NMFS is also examining which fisheries are actually landing the majority of the finetooth sharks. The majority of finetooth shark landings come from gillnets in the South Atlantic fishery; however, observer data indicate that the gillnet vessels that are known to be targeting small coastal sharks, including finetooth sharks, do not land as many finetooth sharks as are reported. Given the uncertainty of the results of the models and the need to collect information on these non-HMS fisheries that are landing finetooth sharks, NMFS intends to prevent overfishing of finetooth sharks by improving species-identification, particularly by recreational fishermen, and working with the Fishery Management Councils to identify and improve monitoring of fisheries that land finetooth sharks.

Comment 12: NMFS received several comments regarding future assessments. Comments included: NMFS should use an assessment protocol similar to the South Atlantic Fishery Management Council's Southeast Data and Assessment Review (SEDAR) process for future stock assessments. Species level assessments for several of the primary LCS species need to be developed as soon as possible. NMFS needs to schedule LCS and SCS stock assessments for 2004 to prepare plans for future shark issues of importance. An assessment for the pelagic shark group needs to be completed as soon as possible.

Response: The process for conducting shark stock assessments continues to evolve and improve over time. As new data and techniques become available, NMFS makes every effort to examine the possibility of using those data and techniques for assessing the status of sharks. Additionally, NMFS considers and will continue to consider the process of other fisheries stock assessments and the needs of the fishing communities to improve the overall stock assessment process. Under the HMS FMP, NMFS committed to hold stock assessments for each complex every two to three years. At this time, NMFS has not yet decided when the next SCS or LCS stock assessments will be conducted. However, NMFS will make every effort to ensure interested parties can attend the shark evaluation workshop. As for pelagic sharks, because of their migratory nature, NMFS is working with ICCAT to collect data and conduct an international stock assessment of several species of pelagic sharks. That stock assessment should occur in 2004.

Comment 13: NMFS should make efforts to document fully landings in Mexican waters and to work with that country in coordinating shark management.

Response: NMFS agrees and is working through international means and with Mexican scientists to improve communication and facilitate the exchange of data.

8. Economic Impacts

Comment 1: NMFS received several comments regarding the range of economic impacts that should be analyzed. Comments included: NMFS should focus on the probability of extinction of sharks instead of the economic impacts on commercial fishermen. NMFS should not focus on the economic impacts on commercial fishermen but on U.S. citizens as a whole.

Response: In this rulemaking, NMFS considered the status and biology of the stock, the ecological impacts of management measures, and social and economic impacts, as required under the National Environmental Policy Act, 1969 (42 U.S.C. 4321 *et seq.*), Regulatory Flexibility Act, 1980 (5 U.S.C. 601 *et seq.*), Small Business Regulatory Enforcement Fairness Act, 1996 (5 U.S.C. 801 *et seq.*), Regulatory Planning and Review, 1993 (Executive Order 12866), and Proper Consideration of Small Entities in Agency Rulemaking, 2002 (Executive Order 13272). NMFS conducted economic and ecological analyses in an EIS, Initial Regulatory Flexibility Analysis (IRFA), Final

Regulatory Flexibility Analysis (FRFA), and a Regulatory Impact Review (RIR), which document economic impacts on the affected fishery, small entities, and the nation as a whole.

Comment 2: The revised quotas will put fishermen out of business. The current quotas are good and the overall fishery is improving.

Response: According to the 2002 LCS stock assessment, the LCS complex is overfished and overfishing is occurring (Cortes, 2002). As such, the 2002 stock assessment recommends that adjustments to quotas be made in the form of percent reductions in catch. Economic analyses indicate that the LCS quota was worth $2,895,521 in 2001 under the baseline for comparison (*i.e.*, 1,285 mt dw). Implementation of the preferred alternatives will result in a 21-percent reduction in total gross revenues for both the fishery as a whole as well as small entities. If NMFS did not act, the quotas from the 1999 HMS FMP, which are 20-percent lower than the LCS quotas finalized in this rule, would go automatically into place and result in a 24-percent reduction in total gross revenues for both the fishery as a whole and small entities.

Comment 3: The combination of the classification for LCS and quota basis would stabilize some of the economic impacts that have unfolded upon the directed shark participants since 1997 due to regulations and inadequate science.

Response: While the combination of the final actions would increase total gross revenues by 33 percent to both the fishery as a whole as well as small entities, this economic benefit may be short-lived if the fishery continues to decline as a result of substantial increases of regulatory discards that are anticipated with multiple closures in a mixed LCS fishery. Fishermen would likely need to increase effort in order to make up for lost catches during partial closures, which may result in increased protected resource interactions and mortality on non-targeted species. Moreover, longer sorting times per set are likely to increase opportunity costs to fishery participants. Additionally, lengthening of trips may occur in order for fishermen to compensate for lost catches during a partial closure. Increased time at sea reduces the profits fishermen gain due to increased costs for fuel, bait and ice, and could raise safety at sea concerns if fishermen fish longer or harder to counteract for lost revenues.

Comment 4: The regional quotas and estimates of catches by region are flawed and will put North Atlantic fishermen out of business. This regional quota and a trimester approach will give the North Atlantic 1.3 percent of the quota or 14.4 mt dw for each season. This is not sufficient to maintain a crew.

Response: NMFS combined information from two separate databases containing regional landings information as reported by dealers and states to NMFS. The landings information represent the best available information pertaining to regional data. Given that regional quotas seek to maintain historical landings, as opposed to reducing landings, NMFS does not expect that regional quotas would change previous fishing practices or result in any significant economic impact. To the extent that the LCS quota itself is being reduced, fishermen in all regions will likely have reduced landings. However, NMFS believes that having more open seasons (*i.e.*, three as opposed to two) and spreading the open seasons out more evenly, will result in greater economic stability for fishery participants, including crew members. Additionally, over time, regional quotas may allow NMFS the flexibility to manage quotas to each region's maximum economic advantage.

Comment 5: NMFS received a range of comments regarding the economic impact of a trimester approach. Comments include: We cannot support the trimester season approach because it would hurt the market and because it could have economic costs for fishermen who would need to switch their gear types three times a year instead of two times. Grocers need at least a month to develop their advertising and know their potential supply and price; a trimester approach would not give enough time for grocers to advertise. I like the trimester approach because it would allow for more advertising and therefore a higher price. I do not need to switch my gear because I use the same gear for grouper, sharks, and tuna. NMFS, as part of the Department of Commerce, should be more sensitive to seafood markets and should know that changing the seasons from biannual to trimesters will cause extreme harm to the established market routine for sharks.

Response: NMFS recognizes that trimesters may take time for fishermen and associated communities (*e.g.*, dealers, processors, retail agents) to adapt to, given that new markets will need to be established at different times of the year. Fishery participants will need time (*i.e.*, between two weeks and a month) to work with grocers to advertise shark products and under trimester seasons the time available for such advertisements may be further limited, as compared with the no action alternative. Additionally, since fishermen may be able to land sharks at the same time as other fish, there could be fluctuations in markets for other fisheries. Spreading open seasons out more evenly over the calendar year could, in the long-term, result in greater economic stability for fishermen and associated communities because the amount of time between open and closed seasons would be reduced and sharks would be available in the market more frequently throughout the year. In order to reduce the economic impacts associated with trimesters, NMFS will implement a delay in effectiveness to give fishery participants an opportunity to work with dealers and grocers to enhance markets and advertising solutions in advance of season openings. NMFS also recognizes that variation in open seasons could result in short-term social and economic burdens, given that fishermen will need to adjust fishing practices, including but not limited to, re-rigging gear more often to fish for shark, as opposed to other species, during what would otherwise be a closed season. Social and economic costs associated with switching gear more often may be minimized, if shark fishery participants use the same gear in other fisheries (*e.g.* similar gear is used to fish for shark, grouper, and tuna). Trimester seasons are preferred to quarterly seasons because trimesters will minimize the costs of switching gear (*i.e.*, only three times as opposed to four per year) and give a higher percentage of the quota to each open season than would occur under a quarterly season approach.

Comment 6: I want a buyout if you are going to set the regional quotas and trimester seasons. My vessel is worth more than $200,000 to me.

Response: NMFS has the authority to reduce capacity under the Magnuson-Stevens Act (Section 312(b)–(e)) and may investigate options to reduce capacity during a future rulemaking.

Comment 7: If NMFS bans drift gillnet, all shark gillnet fishermen, including those already using strikenet gear, will go out of business because you can only use strikenet from January through April when the LCS are schooling and the season is open. You cannot use strikenet to target SCS which is what shark gillnet fishermen rely on when the LCS season is closed. You also cannot use strikenet gear in the summer because the sharks in this area are not schooling. Shark gillnet fishermen cannot fish for Mackerel due to the Florida net ban; therefore, most of their money comes from shark fishing. Strikenet fishing requires two large vessels to retrieve the gear, two small vessels to deploy the gear, and an airplane. Buying new gear itself costs at least $70 K. That is a large amount of capital investment and because it captures a large amount of blacktip sharks at a time, the gear can only support two vessels.

Response: As explained above, NMFS no longer prefers the alternative that would allow only strikenet method in the shark gillnet fishery. Based on public comment, NMFS re-examined available data. These data indicate that allowing the use of strikenets only would not accomplish the objective of allowing the gillnet fishery to continue while minimizing interactions with protected resources as well as reducing bycatch of non-target species because strikenet fishermen do not target SCS. Therefore, the final regulations will permit the use of drift gillnets with possible gear modifications or other measures designed to reduce interactions and mortality of bycatch being implemented through a future rulemaking, based upon further study.

Comment 8: The complete prohibition of a gear in a fishery is not unusual in fisheries management, especially in regards to entanglement gear. Gillnets have been disallowed in other fisheries that are considerably larger and with more socioeconomic impact than the six to eight gillnet vessels in this fishery. Beside protected species, gillnets kill gamefish species such as tarpon and large red drum that support recreational and charter fisheries that contribute over $500 million to Georgia's economy. The kill of these premier gamefish in this gear presents a clear threat to Georgia's growing recreational and charter fishing fleets, with distinct economic implications to the State.

Response: While it may be true that prohibitions of gear types exist in other fisheries and that those actions may have resulted in economic impact to the concerned fishery as well as small entities, it is likely that the decision-making associated with why those prohibitions were originally considered and ultimately approved differs. In this instance, NMFS proposed the strikenet method only to minimize interactions with protected resources and reduce bycatch of non-target species to the extent practicable while allowing the commercial shark gillnet fishery to continue. Through public comment it has been brought to the attention of NMFS that allowing the use of strikenets only would not accomplish this objective. Therefore, the final regulations will permit the use of drift gillnets with possible gear modifications or other measures being implemented through a future rulemaking.

Comment 9: I use small mesh monofilament stab nets to fish for whiting, bluefish, Spanish mackerel, and croakers. I normally land more than the incidental limit of sharks. If you allow only strikenets, I will go out of business.

Response: NMFS originally proposed allowing the strikenet method only in the shark gillnet fishery in order to reduce bycatch of protected species. This alternative would have allowed incidental shark landings from vessels participating in other gillnet fisheries, such as those mentioned in the comment above. However, as explained above, NMFS is not implementing this alternative at this time.

Comment 10: The time/area closure off of North Carolina will put many fishermen out of business.

Response: NMFS acknowledges that some fishermen may go out of business as a result of the time/area closure. Original economic analyses in the draft Amendment indicated that the time/area closure offshore of South Carolina, North Carolina, and Virginia could have a direct economic impact on a total of 34 vessels (out of 251 total directed permits issued in 2002 ~ 14 percent) with directed shark permits. In response to comments, NMFS revised the time/area closure. Economic analyses, based on revisions to the time/area closure, indicate that 23 vessels (out of 256 total directed permits issued in 2003 ~ 9 percent) with directed shark permits may experience direct economic impacts. Additionally, original analyses pointed toward a total of 13 vessels with home ports located in South Carolina, North Carolina, and Virginia as having reported shark landings during 2001. These vessels reported gross revenues totaling $351,600 during that year. Revised economic analyses indicate that only 8 vessels with home ports located in North Carolina reported shark landings during 2001. This revised analysis indicates that the time/area closure off of North Carolina will result in a 15-percent reduction in total gross revenues for the fishery as a whole and in a three-percent reduction of revenues for the small entities directly affected by the proposed closure. As such, the revised time/area closure mitigates the economic impacts by $17,956 in total gross revenues for the small entities directly affected by the closure as compared with the original preferred alternative as outlined in the draft Amendment.

Comment 11: NMFS received several comments regarding VMS. Comments included statements that the proposed VMS is not as expensive as the program run out of the Northeast; therefore, we encourage your program. VMS is expensive and a violation of privacy. A VMS requirement would put bottom longline fishermen out of business.

Response: Economic analyses of the impacts associated with the VMS requirements indicate that only five percent of the fleet would be affected and that this will result in a eight-percent reduction in total gross revenues for the fishery as a whole and a 26-percent reduction in total gross revenues for the 12 vessels directly affected by this proposed requirement during the first year of implementation. For every year thereafter, economic analyses indicate that annual costs will result in a seven-percent reduction in total gross revenues for the fishery as a whole and a seven-percent reduction in total gross revenues for the 12 vessels directly affected by this proposed requirement.

Comment 12: Will the agency pay for VMS for this fishery?

Response: Implementation of the VMS requirement in this final rule will result in five gillnet vessel owners and seven bottom long-line vessel owners having to pay for VMS units and all associated costs. Specifically, the costs associated with implementing a VMS program in the Atlantic shark gillnet fishery include an initial average cost per vessel of approximately $2,275 (not including postage costs for returning certification statement), an average annual maintenance cost of approximately $500/year, and approximately $197.28/year for communications during the right whale calving season. Costs associated with implementing a VMS program in the directed shark bottom longline fishery include an initial average cost per vessel of approximately $2,275 (not including postage costs for returning certification statement), an average annual maintenance cost of approximately $500/year, and approximately $305.28/year for communications during the 212 day shark bottom longline time/area closure.

Comment 13: The fuel that it takes to move one nautical mile after an interaction with a protected species is not significant and should not have a large economic impact.

Response: NMFS believes that most fishing vessels will move at least one nautical mile during the course of normal operations. As such, fuel costs associated with a requirement to move one nautical mile after an interaction with a protected species are insignificant and would have minimal, if any, economic impacts.

Comment 14: The retrieval of fishing gear (*i.e.*, hooks, leaders, and crimps) saves the fisherman money replacing the lost gear and time and effort. Dehooking and disentanglement techniques would speed up, in most cases, their fishing operation and reduce CPUE. Additionally, line cutters and dehooking devices are relatively inexpensive and are a one-time cost that could be paid back with the savings from retrieved hooks from one or two trips.

Response: NMFS agrees that costs associated with purchasing release equipment are minimal and that retrieval of fishing gear will reduce some of the costs associated with replacement of lost gear.

Comment 15: If HMS fishermen properly use release equipment, they would have the ability to call their target species "sea turtle friendly" at the marketplace. This would allow for a market edge for US-caught fish over imports.

Response: NMFS agrees that economic costs associated with purchase of release equipment could be minimized if consumers perceive the shark fishery as conservation minded and correspondingly begin to support the sale of shark products in the marketplace. Examples of eco-labeling programs, such as those supported by the Marine Stewardship Council, illustrate this effect.

Comment 16: Private sector gear technologists, NGOs, educational grants, and other interested parties may be willing to help pay for educational workshops. Trainers could donate their time. Fishermen and anglers could absorb the costs of travel and time and contribute assistance in funding if necessary.

Response: NMFS will pursue the requirement of mandatory workshops during a future rulemaking and intends to investigate these funding options at that time.

Comment 17: NMFS is proposing a number of measures that may change the allocation methodology of potential future quotas and cause expensive and unnecessary negative impacts to the current commercial shark fleet. NMFS should be patient with the shark fishing community and minimize the potential for socioeconomic impacts until further efforts to stabilize the fleet through better analysis, sufficient quotas, buyback program, *etc.*, become more progressed. NMFS should not be in a hurry to put fishermen out of business.

Response: The 2002 stock assessment for LCS documents that the complex is overfished and that overfishing is occurring. Under the Magnuson-Stevens Act, NMFS must take action to prevent overfishing and rebuild overfished stocks. However, to the extent practicable, NMFS is delaying implementation of certain measures such as VMS and the time/area closure to give fishermen time to adjust and will implement relief restrictions such as the quota and commercial minimum size immediately. This delay in implementation is aimed at minimizing some of the economic impacts associated with VMS and the time/area closure.

Comment 18: NMFS should consider some type of individual quota evolved from the current directed shark limited access permit holders. These quotas could reduce derby effects and seasonal market gluts.

Response: Individual transferable quotas (ITQs) may be a viable alternative and NMFS may investigate this and other alternatives in a future rulemaking.

Comment 19: NMFS should consider restricting imports of shark products to help boost the domestic market.

Response: The Magnuson-Stevens Act authorizes use of import prohibitions under certain circumstances, most notably where another country is not complying with an applicable international fishery agreement. To date, no such agreement has been reached with regard to Atlantic sharks. As such, NMFS cannot impose importation restrictions on other countries. However, NMFS is supportive of continuing dialogues with international fishery management organizations such as ICCAT, FAO, and others as appropriate for developing international fishery agreements aimed at shark management.

Comment 20: NMFS shark management has been both an ecological disaster and a knife in the backs of recreational shark fishermen. While NMFS spends millions of taxpayer's money to buy out commercial fishermen who destroyed the stocks with overfishing, there is no offer to compensate those in the recreational fishing business who have been bankrupted by NMFS policies.

Response: There are a variety of Federal programs, which provide economic relief to fishermen and other businesses affected by fishery management measures. A summary of these programs can be found in Chapter 8 of the FEIS. As such, NMFS believes that equal opportunities are given to all members of the affected environment, where fishing regulations and economic relief are concerned.

Comment 21: Amendment 1 claims that shark fishermen are paid $0.91 per pound for LCS. This is quite an achievement given that dealers are selling meat for $0.70 to $1.20 per pound to seafood chains.

Response: The average price used in this rulemaking comes from the data submitted to NMFS on weigh-out slips submitted by dealers. The average ex-vessel price changes based on which gear was used and which area the fish was sold in. For example, LCS caught on pelagic longline and sold in the states bordering the Gulf of Mexico had an average ex-vessel price of $0.45 per pound while pelagic longline-caught LCS sold in the South Atlantic had an average ex-vessel price of $1.69 per pound. The average of the average prices by gear and region equals the $0.91 used in this rulemaking to estimate the gross revenues of Federally-permitted fishermen. NMFS does not collect information regarding wholesale prices; however, some information from the Fulton Fish Market indicates that the average wholesale price also varies depending on the species, the state sold, and the month sold.

In 2003, NMFS began collecting mandatory cost-earnings trip level information from 20 percent of all Federal shark permit holders. The information collected via this mandatory system should allow NMFS to more accurately estimate gross and net revenues of shark fishermen. Additionally, the information collected in that system will allow NMFS to verify the weigh-out data submitted by dealers.

Comment 22: In the 2003 SAFE Report produced by the Highly Migratory Species Management Division, NMFS reported that over 3 million pounds dw of LCS had been landed in 2001. In the economic analyses of Amendment 1, NMFS reports that only 1.5 million pounds dw of LCS had been landed in 2001. These numbers should match.

Response: The numbers in the SAFE Report include all sharks that were reported landed from all available data including landings by state fishermen. The SAFE Report numbers are the actual tally of sharks landed and are the numbers used in the stock assessment and throughout most of Amendment 1. The numbers in the economic analyses in Amendment 1 are limited in scope and include only those sharks reported landed in 2001 by fishermen who hold a current Federal shark permit. Thus, the numbers in the SAFE Report and the economic analyses of Amendment 1 should not match.

Some fishermen who held a permit in 2001 and reported landings, may not currently hold a permit, may have let their permit lapse during the time NMFS queried the permit database, or may have transferred their permit onto another vessel. Thus, their landings would not be included in the economic analyses of Amendment 1. Similarly, some fishermen fish for sharks only in state waters and do not hold a Federal permit. Those landings were not included in the economic analyses for Amendment 1. In terms of the economic analyses for Amendment 1, this approach is appropriate because any management action will have a direct impact on those fishermen who currently have Federal permits.

9. General

Comment 1: The EPA stated that in some cases it is unclear how the No Action alternative is assessed for impacts and recommended including further information. As an example, EPA refers back to the statement on page 4–10 of the draft environmental impact statement that semi-annual seasons would not have any ecological impacts because the fishery had been managed that way since 1993.

Response: In the final environmental impact statement, NMFS has clarified the No Action alternatives, particularly the explanation of any impacts of continuing a particular course of action. In the specific example cited by EPA, NMFS does not agree that semi-annual seasons have caused adverse ecological impacts. Semi-annual seasons can have some ecological impacts if they extend into pupping seasons; however, it is unlikely that providing fishermen two fishing seasons caused the decline of the stock. Rather, it is likely that the overall level of fishing mortality, combined with environmental factors, led to the decline of the stock.

Comment 2: The EPA states that it would be useful for a baseline comparison if NMFS could explain why a No Fishing alternative would be reasonable or unreasonable.

Response: In the case of Atlantic sharks, NMFS does not believe that a No Fishing alternative is reasonable nor would such an alternative be consistent with the Magnuson-Stevens Act. The latest stock assessments indicate that the SCS complex is not overfished and overfishing is not occurring and that while the LCS complex is overfished, the two primary LCS species are not. Given the status of the SCS complex, there is no reason why NMFS would consider a No Fishing alternative. For the LCS complex, alternatives are available that would allow fishing to continue while still allowing the stock to rebuild. As described in the Amendment, NMFS feels a No Fishing alternative is not consistent with the Magnuson-Stevens Act in that it would not minimize social and economic impacts, to the extent practicable, nor would it be based on the best available science.

Comment 3: EPA notes that summary tables that provide clear and relevant background information and recommends including a glossary of terms, a list of acronyms, and other visual diagrams such as pie charts.

Response: In the final environmental impact statement, NMFS has included a list of acronyms and several more diagrams and figures. Many of the tables presented in Amendment 1 come straight from the stock assessments or other supporting documents, and NMFS feels it would be best to rely on the information as it was first presented rather than to convert it to an unfamiliar format. Throughout the FEIS, NMFS provided definitions for fishing-related terms, such as MSY, in the text.

Comment 4: EPA comments that NMFS should clarify the effects of other fisheries on the stocks of sharks and clearly connect relevant information throughout the document. As an example, EPA refers to a quote regarding the amount of commercial landings of SCS compared to bycatch (page 3–13 of the draft Amendment) and compares this quote to other quotes regarding the amount of LCS bycatch in the menhaden fishery (page 3–75 of the draft Amendment). EPA also mentioned the need to clarify and expand upon the discussion of collection of sharks for public display.

Response: NMFS has tried to clarify and connect relevant information throughout the final Amendment in order to provide a context for any related analyses. Regarding the specific example given by EPA, NMFS notes that the SCS and LCS fisheries are two different fisheries with different species of sharks and that bycatch of SCS is not necessarily related to bycatch of LCS. For example, while the menhaden fishery catches both SCS and LCS, 97 percent of the catch of sharks are LCS and only 3 percent are SCS. Regarding the example of public display, NMFS has added details regarding the number of sharks taken for public display each year and the impact on the stocks.

Comment 5: EPA comments that NMFS should clarify the impact of other fishery practices on sharks. If sharks are being significantly diminished by other fishery practices, the FEIS should contain a short discussion of what other FMPs are doing to minimize impacts on sharks and provide a webpage link to that other FMP.

Response: NMFS agrees that knowledge regarding the relationship between shark catches in other fisheries and their impact on shark stocks needs to be examined and improved. For several years, NMFS has been working on including this type of information in the stock assessments. For example, the 1998 LCS stock assessment included Mexican catches for the first time and the 2002 LCS stock assessment expanded upon the Mexican catches and included information regarding shark bycatch in the menhaden fishery. However, while the total number of sharks taken as bycatch in other fisheries might be large, most fishery managers consider the bycatch in individual fisheries under their purview to be a low priority, particularly compared to the target catch and bycatch of other managed or protected species. Thus, many FMPs do not analyze in detail the impacts of the specific target fisheries on sharks. Additionally, as described above, NMFS recently released National Bycatch Implementation Plans for different fisheries. Several of the implementation plans for other fisheries outline recommendations for improving monitoring of bycatch in these fisheries. As information on shark bycatch in these fisheries becomes available, it will be incorporated in future stock assessments.

Comment 6: Draft Amendment 1 was too large. The document needs to be condensed to be easily understood.

Response: Legal requirements dictate the content of fishery management plans and plan amendments, the analyses that are required, and the need to respond to public comments. However, to enhance the public's ability to understand the final Amendment, NMFS has provided an executive summary in the final Amendment, an updated one-page chart that outlines the regulations and highlights major changes from the draft Amendment, and summary and explanatory tables and figures throughout the document. As required by the Regulatory Flexibility Act, NMFS will also be providing a small entity compliance guide for the final rule. Additionally, NMFS will be updating and revising the current recreational and commercial brochures based on the changes to the regulations.

Comment 7: NMFS should accept comments via e-mail.

Response: NMFS is working towards a system that would allow the public to submit comments electronically over the web. In 2001, NMFS issued the first "e-comment" pilot program for a proposed rule regarding issues in HMS charter/headboat fisheries. Based on the results from this pilot, NMFS made a number of improvements and continues to test the program on other rules in order to ensure that the final e-comment program is user-friendly and provides an adequate method of providing comments. A link to regulations that are accepting comments via the web can be found off the main NMFS Web page at: *http://www.nmfs.noaa.gov*. NMFS is also working on a system that would allow commenters to submit comments via e-mail. This system may be available for use in 2004.

Comment 8: NMFS received a range of comments on the rule and Amendment as a whole. Comments included: NMFS should be commended for adhering to the scientific recommendations from recent stock assessments and proposing conservation measures that have a reasonable chance to protect all shark species. This proposed rule is an encouraging step forward in the long process of rebuilding; management is on the correct path to rebuilding and sustaining this fishery. The continued communication and cooperation between various stakeholders and the inclusion of interested parties and user groups from the inception of the process has helped to ensure the success of these management measures. NMFS has proposed a rule that walks down the middle to allow for a viable commercial fishery while protecting the most vulnerable species; all the alternatives are linked to account for the 50-percent reduction that is needed. The proposed measures will not be enough catalyst to regain a healthy population across the whole spectrum of the shark species; the "collective impact of humanity" on the total population has to be addressed as well as the simplistic concept of the population being overfished.

Response: Management measures in this document are a step forward towards rebuilding and are a result of the participation and cooperation of various stakeholders and user groups. Consistent with the Magnuson-Stevens Act, the measures in the final Amendment and this rule are based on the best available science, will rebuild the LCS complex, prevent overfishing of Atlantic sharks, provide for commercial and recreational fisheries, and will clarify other shark-related management measures. Without these management measures, some management measures that are not based on the best available science, such as the 1999 commercial quotas, will go in place, contrary to the Magnuson-Stevens Act. NMFS will continue to work with stakeholders on issues not addressed in this rulemaking during a future rulemaking process.

Comment 9: NMFS received a range of comments regarding who is influencing agency decisions. One commenter noted that NMFS settled with the commercial fishing industry but is fighting the environmental groups tooth and nail in order to protect commercial fish profits. Another commenter was concerned that NMFS is being overly influenced by environmentalists.

Response: Environmental groups, recreational fishermen, and commercial fishermen all had the chance to participate in the process and submit comments on the scoping documents and the Draft Amendment 1 and proposed rule. While NMFS considers these comments in selecting the alternatives, the Agency follows the mandates of the Magnuson-Stevens Act and other domestic law when finalizing actions, not the influence of particular stakeholders.

Comment 10: While state waters are outside of NMFS' jurisdiction, ensuring rebuilding of overfished sharks is not. NMFS must develop a strategy for working with states and state commissions to implement cooperative shark management in nearshore waters.

Response: NMFS will continue to work with states and the Fishery Management Councils with a goal of consistent management in mind. At the time of finalization of the HMS FMP, several states indicated their intent to develop more consistent regulations but decided to postpone their efforts due to the unstable legal environment for Federal shark management. Upon completion of this rule and during the scoping processes for future rulemakings, NMFS hopes to work with those and other states, possibly through the implementation of Memorandum of Understandings, to ensure that, at the minimum, NMFS can have access to all state shark landings and catches from all fisheries for use in future stock assessments.

Comment 11: NMFS must reduce bycatch and mortality of sharks in both directed and non-directed fisheries; establish a standardized bycatch reporting methodology; account for all sources of mortality when determining shark quotas and closures; and allocate levels of observer coverage that are adequate to provide statistically significant estimates of catch and bycatch.

Response: As described above, NMFS recently issued National Bycatch Implementation Plans for various fisheries, including HMS fisheries. Sources of shark mortality other than the directed fishery landings are included as part of the stock assessments from which the quotas were developed. Levels of observer coverage are generally set at five percent of the total effort in each fishery unless there is a concern that more coverage would be beneficial, as is the case for the shark gillnet fishery where 100 percent observer coverage is required during the right whale calving season.

Comment 12: NMFS should identify and quantify the potential impacts of any HMS fisheries on seabirds so that appropriate protocols can be developed to alleviate potential chronic mortalities associated with the fishery or gear. This will be especially important in future actions associated with pelagic sharks and other components with the HMS FMP.

Response: Potential impacts to seabird populations should continue to be monitored and where appropriate, protocols developed to alleviate bycatch problems. Relatively few seabird interactions have been identified in the Atlantic shark fisheries. If a potential problem is identified with the pelagic longline fishery this can be addressed in a future rulemaking.

Comment 13: Draft documents need to ensure that detailed effort data is incorporated into the text and tables, especially regarding the bycatch of sea turtles, marine mammals, and sea birds. For example, draft Amendment 1 does not properly quantify the level of observer effort involved in documenting seabird bycatch in the Atlantic pelagic longline fishery (Table 3.38). Therefore, the conclusion that seabird interactions are relatively low holds little merit.

Response: The Final Amendment 1 provides an overview of the types of seabird interactions in the shark fishery. The conclusion regarding the level of seabird interactions in Amendment 1 is based on the take of a single seabird in nine years of observer data from the shark bottom longline fishery.

Comment 14: NMFS should increase boat and catch monitoring efforts.

Response: NMFS already requires 100 percent observer coverage for shark gillnet vessels operating during the right whale calving season and approximately 50 percent outside of the calving season. Observer coverage in the shark bottom longline fishery is targeted as five percent while pelagic longline vessels operating in the NED experimental area are required to carry an observer at all times. A target of five percent observer coverage for pelagic longline vessels fishing outside of the NED is in place. Additional resources would need to be identified in order to increase observer coverage.

Comment 15: I need time to prepare for other fisheries and hire crew between notice of the final rule and implementation.

Response: For a number of regulations, such as implementation of the time/area closure and VMS requirement, NMFS is providing time for fishermen to adjust to and prepare for the changes. The commercial quotas, elimination of the commercial minimum size, and certain other measures will be effective at the start of the 2004 fishing year to ensure that more restrictive measures do not go into effect. NMFS provided the approximate dates of effectiveness for the requirements in the Executive Summary of Amendment 1 and before the Response to Comments section of this rule.

Comment 16: Are you leaving the 4,000 lb LCS trip limit alone? NMFS should consider some type of trip limit tolerance because the trip limit is not working well now that sandbar and blacktip sharks are not overfished.

Response: This rule will not change the 4,000 lb LCS directed trip limit. In the Issues and Options paper released during the public scoping phase of Amendment 1, NMFS indicated that changing the 4,000 lb LCS directed trip limit could be one of the management measures addressed in Amendment 1. However, given the possible changes as a result of Amendment 1, NMFS felt some of the items in the Issues and Options paper, including the 4,000 lb LCS trip limit were beyond the scope of this rulemaking. NMFS may consider those issues in a future rule.

Comment 17: NMFS should allow fishermen to fish until the quota is caught instead of scheduling closure dates. I am afraid that if we have a couple of years where we do not catch the quota because of weather, that the quota will be taken away from us. NMFS should monitor landings and allow the season to remain open until the quota is filled.

Response: Before the HMS FMP, NMFS monitored the landings and gave five days notice before closing the fishery. This technique led to the quota being exceeded, derby fishing, and unreliable markets because no one knew when the fishery would be closing. Additionally, some dealers and fishermen delayed sending in their reports in an effort to keep the fishery open longer. To address these concerns, in the HMS FMP, NMFS decided to announce, based on previous catch rates, the closing date of the fishery before the fishery opened. Additionally, any over-or underharvest would come off of or be added to the same season's quota of the following year (*e.g.*, first semi-annual season to first semi-annual season). This technique appears to be working (*e.g.*, fewer seasonal quotas have been exceeded and fishing seasons have lengthened) and during scoping few fishermen wanted to change the current system. With the transition to trimester and regional quotas, there may be some adjustment needed in terms of calculating catch rates and estimating the length of the seasons in each region; however, NMFS does not intend to "take quota away" because of underharvests. In the future, NMFS might adjust the percent of quota available in each fishing season (*e.g.*, if one season is always exceeded while another season always has quota left, some of the quota may be moved to the first season from the second) or might adjust the percent of quota available to each region (*e.g.*, if one region always exceeds its quota while another region does not land its full portion, some of the quota from the second region might be transferred to the first region). However, any such adjustment would require a rulemaking and would not change the overall total quota available.

Comment 18: NMFS should be relying on an observer report from 1994 through 2002, not a report from recent years.

Response: NMFS is using the best available science which includes several observer reports that cover only one or two years each.

Comment 19: NMFS should re-examine the five percent fin ratio rule. The legal percentage does not work accurately unless the sandbar shark catch is blended down by other LCS with smaller fins.

Response: NMFS first implemented the five percent fin ratio in the 1993 Shark FMP. This ratio was based on research that indicated that the average ratio of fin weight (including first dorsal, pectorals, and lower caudal fins) to dressed weight of the carcass was 3.6 percent and the sandbar fin ratio was 5.1 percent. Observer data indicate that, except for a couple of years, the fin ratio for all observed sharks has been under five percent. In December 2000, the Shark Finning Prohibition Act was signed. This Act, which implements the five percent finning ratio for all shark fisheries in the United States, was fully implemented through a final rule released in February 2002. Thus, any changes to the five percent fin ratio would have to be the result of Congress modifying the Act.

Comment 20: Because porbeagle sharks are often caught while pursuing cod, mackerel, and other New England finfish, northeast groundfish commercial fishermen should be allowed to keep one porbeagle shark per day per trip without a commercial shark fishing permit.

Response: Since 1993, fishermen who have caught and sold sharks in Federal waters have been required to have a Federal shark permit. In 1999, NMFS implemented a limited access program for the Atlantic shark fisheries. Under this program, any fisherman who had a Federal shark permit and reported landing a limited number of sharks could qualify for either a directed or incidental Federal shark limited access permit. This program was implemented to reduce latent effort in the shark fishery and reduce overcapitalization in order to rebuild the LCS complex and prevent overfishing on other shark species. From past experience, NMFS knows that porbeagle sharks are highly susceptible to overfishing. Until a stock assessment on porbeagle sharks indicates that the porbeagle shark is not overfished and is not experiencing overfishing, NMFS does not want to re-open that sector of the shark fishery. However, those fishermen wishing to land porbeagle sharks can either obtain a commercial permit from someone leaving the fishery or obtain a recreational permit. Any porbeagle sharks that are landed would have to be caught with an authorized gear type.

Comment 21: NMFS has not done one iota to protect mako sharks except limit recreational fishermen. While the proposed rule does have some positive proposals that limit commercial fishing, conservation of the most important recreational sharks left, pelagic sharks, continues to be ignored.

Response: NMFS is working with ICCAT to collect data in order to conduct an international stock assessment of pelagic sharks. Because pelagic sharks traverse the Atlantic Ocean, NMFS is not able to conduct an accurate stock assessment without data from other countries. The international stock assessment is expected to occur in 2004. Once the international stock assessment is complete, NMFS will consider the results and will modify the management measures for pelagic sharks, as appropriate.

Comment 22: NMFS should consider converting directed shark permits that have been inactive since July 1999 to incidental permits. This could help reduce latent effort from becoming active during the rebuilding period.

Response: NMFS is considering several options to could lead to changes in the current limited access program in a future rule. NMFS will consider comments such as this one at that time.

Comment 23: The number of shark permits should be reduced to 10.

Response: In 1999, NMFS implemented a limited access program in the commercial shark fishery to reduce latent effort and capitalization in the fishery. This program established two types of commercial shark permits: directed and incidental. The directed permits allow fishermen to target sharks while the incidental permits were designed to allow fishermen who target other species to land a limited number of sharks, thus reducing regulatory discards. At this time, NMFS recently approved a Saltonstall-Kennedy Grant to researchers who are examining the feasibility of a buyout program for commercial shark fishermen. Additionally, NMFS will consider other options, such as conversion of directed to incidental permits or individual transferable quotas, to revise and refine the current limited access program in a future rule.

Comment 24: Enforcement personnel should be hired and trained to catch fishermen who illegally take and kill any fish species. The budget for enforcement is too small and should be increased by 800 percent.

Response: Enforcement personnel are trained to catch fishermen who illegally take and kill any fish species. With a budget increase, more enforcement personnel could be hired and additional resources could be obtained to enhance enforcement efforts throughout the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

Comment 25: The more information NMFS has, the more money fishermen lose.

Response: Improved information ensures that NMFS can better address economic, social, and ecological impacts of proposed management measures. For example, in the 1999 HMS FMP, NMFS finalized commercial shark quotas that are lower than those quotas selected in Amendment 1. However, based on new information and analyses, the latest stock assessment indicates that two species of LCS are no longer overfished. Thus, NMFS is able to select the higher quotas in Amendment 1 than those finalized in 1999. Ideally, as the status of LCS improves, the commercial quota should be able to increase. However, without data from the fishermen, NMFS will not know if the status is improving and therefore would not be able to increase the quota. Indeed, with less data, NMFS may decide that the best, most risk-averse, course of action would be to lower the quotas.

Comment 26: NMFS should integrate the Large Pelagic Survey (LPS) within the MRFSS in order to expand and improve the acquisition of recreational landings data for sharks and other HMS.

Response: NMFS continues to explore improvements to the design of the LPS and has implemented some of these for the 2003 fishing year. The biggest change was integrating the charterboat and headboat sectors of the LPS and MRFSS into a single For-Hire Survey for the Atlantic Coast. A separate For-Hire Survey was implemented in 2001 for the Gulf of Mexico. Both of these efforts should provide improved estimates of recreational catch and landings of HMS as well as non-HMS. Evaluation of other modifications already implemented for the LPS are ongoing and may lead to additional changes to survey design and estimation procedures.

Comment 27: NMFS received several comments regarding where public hearings should have been held because there are a lot of fishermen who could be affected by the proposed regulations. These areas included New Jersey, Virginia, and Fort Pierce, Florida. NMFS also heard that Montauk, New York should not have had a public hearing because there are no fishermen in the area and it is too far to drive.

Response: NMFS tries to schedule a number of public hearings along the Atlantic and Gulf of Mexico coasts in areas where there are a number of fishermen but understands that some areas with many fishermen will likely be unintentionally missed. For Amendment 1, NMFS tried to coordinate public hearings with Fishery Management Council meetings in order to reduce travel for stakeholders who were interested in attending both meetings. In other cases, NMFS scheduled hearings at areas where attendance at previous hearings has been large. People who are unable to attend a public hearing are always welcome to submit written comments or to call NMFS and speak to someone directly. Comments provided over the phone during the comment period are considered part of the public record.

Comment 28: NMFS needs to mail fishermen information about public hearings to notify permit holders. While we were mailed information about the hearings for the proposed rule, we did not hear about the scoping meetings.

Response: NMFS announces its intentions in a variety of methods including automated infolines, the HMS Fax network, the HMS web page, the weekly electronic newsletter *FishNews*, and through mailings. Because some permit holders have told NMFS that they feel many of the mailings sent are equivalent to junk mail, in this case NMFS limited the mailing to information regarding the actual proposed rule and not the scoping meetings. However, for both the scoping and proposed rules, NMFS used all other methods to announce relevant information. If you would like to be included on any of these automatic distributions (*e.g.*, the HMS Fax network or *FishNews*) please call the HMS Management Division at (301) 713–2347 or visit the NMFS home page at *http://www.nmfs.noaa.gov* for more information.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule. These changes are outlined below.

(1) In the proposed rule, NMFS proposed a LCS rebuilding time frame of 27 years from 2004. In the final rule, NMFS corrects an error in calculating the mean generation time for LCS. The correction of this error leads to a rebuilding time frame of 26 years from 2004 in the final rule.

(2) In the proposed rule, NMFS proposed a LCS quota of 1,109 mt dw (2.4 million lbs dw) based on a 40-percent reduction from MSY. Based on public comment regarding the proposed reduction, a review of the draft Amendment 1 by the Southeast Fisheries Science Center, and revisions to the proposed time/area closure, NMFS increased the quota reduction to 45 percent. Thus, this final rule establishes the annual LCS quota at 1,017 mt dw (approximately 2.2 million lbs dw) based on a 45-percent reduction from MSY.

(3) NMFS proposed a prohibition on drift gillnet gear while allowing strikenet gear in order to reduce protected species interactions while allowing gillnet vessels to continue to fish. In the comment period, NMFS heard that strikenet gear was not an efficient method of fishing for SCS, almost all the gillnet fishermen would go out of business, and it would be difficult for enforcement to tell if a shark was taken via strikenet or drift gillnet gear. Thus, this final rule does not prohibit drift gillnet. Instead, NMFS will consider other methods to reduce bycatch in the drift gillnet fishery in a future rulemaking.

(4) NMFS proposed a time/area closure for bottom longline gear off the coasts of Virginia, North Carolina, and South Carolina in order to reduce catch of dusky sharks and juvenile sandbar sharks. While some fishermen agreed with the principle of closing areas in nursery grounds, they commented that the proposed area was too large and encompassed more than just nursery grounds. Fishermen also suggested closing areas only in shallow waters. As a result, NMFS refined the time/area closure. The time/area closure for bottom longline gear in this final rule encompasses an area off of part of North Carolina out to approximately 60 fathoms.

(5) In order to enforce the proposed time/area closure for bottom longline

gear and the existing time/area closure for gillnet gear, NMFS proposed the installation and use of VMS on vessels with bottom longline and gillnet gear on board. Analyses indicated that shark bottom longline vessels are not mobile. Therefore, the proposed rule required VMS on bottom longline vessels only between 32° and 38° N. latitude. Because NMFS has reduced the size of the time/area closure for bottom longline gear, this final rule also reduces the size of the area where VMS is required for directed shark vessels with bottom longline gear. This final rule requires directed shark vessels with bottom longline gear on board to have VMS on board from January through July when they are located between 33° and 36°30′ N. latitude, and directed shark vessels with gillnet gear on board to have VMS on board right whale calving season.

(6) NMFS also made several non-substantial changes to the final regulatory text to facilitate enforcement and clarify the regulations and their intent.

Annual Landings Quotas

The 2004 annual landings quotas for LCS and SCS are established at 1,017 mt dw (2,242,078 lbs dw) for LCS and 454 mt dw (1,000,888.4 lbs dw) for SCS. The 2004 quota levels for pelagic, blue, and porbeagle sharks are established at 488 mt dw (1,075,844.8 lbs dw), 273 mt dw (601,855.8 lbs dw), and 92 mt dw (202,823.2 lbs dw), respectively. These quotas are split equally between the two 2004 fishing seasons. The trimester seasons (*i.e.*, three four-month periods), finalized in this rule, will not go into effect until January 1, 2005.

In 2003, the first semiannual fishing season quota for ridgeback LCS was set at 391.5 mt dw and for non-ridgeback LCS was set at 465.5 mt dw. As of September 2003, approximately 451 mt dw ridgeback LCS and 461 mt dw non-ridgeback LCS had been reported landed. This constitutes an overharvest for the first 2003 semiannual fishing season for the LCS complex of 55.4 mt dw. Thus, consistent with § 635.27(b)(1)(vi), the first 2004 semiannual fishing quota for LCS is established at 453.1 mt dw (508.5 mt dw–55.4 mt dw). Consistent with § 635.27(b)(1)(iii), this semiannual fishing season quota is further split between the three fishing regions as follows: Gulf of Mexico—190.3 mt dw (419,535.4 lbs dw); South Atlantic—244.7 mt dw (539,465.6 lbs dw); and North Atlantic—18.1 mt dw (39,903.3 lbs dw).

In the 2003 first semiannual fishing season for SCS, the quota was established at 163 mt dw. As of September 2003, approximately 109 mt dw had been reported landed. This constitutes an underharvest for the first 2003 semiannual fishing season of 54 mt dw. Thus, consistent with § 635.27(b)(1)(vi), the first 2004 semiannual fishing quota for SCS is established at 281 mt dw (227 + 54 mt dw). Consistent with § 635.27(b)(1)(iv), this semiannual fishing season quota is further split between the three fishing regions as follows; Gulf of Mexico—11.2 mt dw (24,691.5 lbs dw); South Atlantic—233.2 mt dw (514,112.7 lbs dw); and North Atlantic—36.5 mt dw (80,467.9 lbs dw).

The first 2004 semiannual quotas for pelagic, blue, and porbeagle sharks are established at 244 mt dw (537,922.4 lbs dw), 136.5 mt dw (300,927.9 lbs dw), and 46 mt dw (101,411.6 lbs dw), respectively. These are the same quotas that were established for the first 2003 semiannual season. As of September 2003, approximately 39 mt dw had been reported landed in the first 2003 semiannual fishing season in total for pelagic, blue, and porbeagle sharks combined. Additionally, data indicate that in 2002, 68 mt whole weight (ww) of blue sharks were discarded dead in the pelagic longline fishery. Thus, the pelagic shark quota does not need to be reduced consistent with § 635.27(b)(1)(vi).

NMFS will take appropriate action before July 1, 2003, in order to determine and announce the second 2004 semiannual quotas for Atlantic sharks.

Fishing Season Notification

The first semiannual fishing season of the 2004 fishing year for the commercial fishery for LCS, SCS, pelagic sharks, blue sharks, and porbeagle sharks in all regions in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open January 1, 2004. To estimate the closure dates of the LCS, NMFS calculated the average reported catch rates for each region from the first seasons from recent years (2000, 2001, 2002, and 2003) and used these average catch rates to estimate the amount of available quota that would likely be taken by the end of each dealer reporting period. Because state landings after a Federal closure are counted against the quota, NMFS also calculated the average amount of quota reported received after the Federal closure dates of the years used to estimate catch rates. Additionally, pursuant to § 635.5(b)(1), shark dealers must report any sharks received twice a month: those sharks received between the first and fifteenth of every month must be reported to NMFS by the twenty-fifth of that month and those received between the sixteenth and the end of the month must be reported to NMFS by the tenth of the following month. Thus, in order to simplify dealer reporting and aid in managing the fishery, NMFS will close the Federal LCS fishery on either the fifteenth or the end of any given month.

Based on average LCS catch rates in recent years in the Gulf of Mexico region, approximately 78 percent of the available LCS quota would likely be taken by the last week of February and 103 percent of the available LCS quota would likely be taken by the second week of March. Dealer data also indicate that, on average, approximately 27 mt dw of LCS have been reported received by dealers after a Federal closure. This is approximately 14 percent of the available quota. Thus, if catch rates in 2004 are similar to the average catch rates from 2000 to 2003, 92 percent (78 + 14 percent) of the quota could be caught over the entire semiannual season if Federal waters are closed during the last week of February. If the fishery remains open until the second week of March, the quota would likely be exceeded. Accordingly, the Assistant Administrator for Fisheries (AA) has determined that the Gulf of Mexico LCS quota for the first 2004 semiannual season will likely be attained by February 29, 2004. Thus, the Gulf of Mexico LCS fishery will close on February 29, 2004, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the South Atlantic region, approximately 73 percent of the available LCS quota would likely be taken by the second week of February and 94 percent of the available LCS quota would likely be taken by the end of February. Dealer data also indicate that, on average, approximately 58 mt dw of LCS are reported received by dealers after a Federal closure. This is approximately 24 percent of the available quota. Thus, if catch rates in 2004 are similar to the average catch rates from 2000 to 2003, 97 percent (73 + 24 percent) of the quota could be caught over the entire semiannual season if Federal waters are closed during the second week of February. If the fishery remains open until the end of February, the quota would likely be exceeded. Accordingly, the AA has determined that the South Atlantic LCS quota for the first 2004 semiannual season will likely be attained by February 15, 2004. Thus, the South Atlantic LCS fishery will close on February 15, 2004, at 11:30 p.m. local time.

Based on average LCS catch rates in recent years in the North Atlantic region, approximately 33 percent of the available LCS quota would likely be taken by the second week of April and 42 percent of the available LCS quota would likely be taken by the end of April. Dealer data also indicate that, on average, approximately 10 mt dw of LCS are reported received by dealers after a Federal closure. This is approximately 60 percent of the available quota. Thus, if catch rates in 2004 are similar to the average catch rates from 2000 to 2003, 93 percent (33 + 60 percent) of the quota could be caught over the entire semiannual season if Federal waters are closed during the second week of April. If the fishery remains open until the last week of April, the quota would likely be exceeded. Accordingly, the AA has determined that the North Atlantic LCS quota for the first 2004 semiannual season will likely be attained by April 15, 2004. Thus, the North Atlantic LCS fishery will close on April 15, 2004, at 11:30 p.m. local time.

When quotas are projected to be reached for the SCS, pelagic, blue, or porbeagle shark fisheries, the AA will file notification of closure at the Office of the Federal Register at least 14 days before the effective date.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under 50 CFR 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

This final rule has been determined to be not significant for purposes of Executive Order 12866.

As required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the draft Amendment 1 and its proposed rule (68 FR 45196, August 1, 2003) and prepared an FRFA for the final Amendment 1 and this final rule. The FRFA examines the economic impacts of the management alternatives on small entities in order to determine ways to minimize economic impacts. A summary of the information presented in the FRFA is below. Amendment 1 provides further discussion of the economic impacts of all the alternatives considered.

The need for and objective of the final rule are fully described in the preamble of the proposed rule (68 FR 45196, August 1, 2003) and in final Amendment 1 and are not repeated here.

As set forth above, NMFS received many comments on the proposed rule and draft Amendment 1 during the comment period. NMFS did not receive any comments specific to the IRFA, but did receive a limited number of comments on the potential for substantial impacts related to the proposed commercial quota reductions, implementation of trimester seasons and regional quotas, gillnet restrictions, VMS requirements, and the time/area closure. In summary, commenters noted that commercial quota reductions, VMS requirements, and the bottom longline time/area closure offshore North Carolina would put fishermen out of business and create less economic stability among industry participants; implementation of trimester seasons and regional quotas could disrupt existing markets and lead to insufficient income; and requiring the strikenet method only would not allow the commercial shark gillnet fishery to continue while minimizing interactions, as it was originally intended.

The economic analyses and IRFA for the proposed rule acknowledged that reductions in commercial quotas, implementation of trimesters, regional quotas, VMS requirements, and the time/area closure would likely result in economic impacts to the fishery as a whole, some of which may be significant for small entities/vessel owners. However, all of these alternatives, when compared to the other alternatives considered, mitigate undesirable or greater economic impacts associated with continued overfishing, shortened seasons, bycatch of vulnerable species, and economic instability of fishery participants and associated fishing communities in the long-term. The combination of these preferred alternatives is necessary for LCS to rebuild and SCS to achieve optimum yield, consistent with the objectives of this rule, the Magnuson-Stevens Act, and other domestic laws.

In order to mitigate some of the economic impacts, NMFS will delay effectiveness of trimester seasons, VMS requirements, and the time/area closure in order to give fishermen time to (1) purchase VMS units, (2) work with dealers to enhance market prices and plan out advertising strategies with grocers, and (3) prepare and plan for the closure. Furthermore, NMFS re-evaluated and refined the size of the proposed time/area closure. The revised time/area closure, which is anticipated to affect only eight vessels as opposed to 13 anticipated in the proposed rule, mitigates the economic impacts to small entities directly affected by the revised closure by $17,956 in total gross revenues as compared with the original preferred alternative. Finally, the final regulations will permit the use of drift gillnets with possible gear modifications or other measures being implemented in a future rulemaking, based upon further study.

NMFS considers all permit holders to be small entities. In October 2002, there were approximately 251 directed shark permit holders and 376 incidental shark permit holders for a total of 627 permit holders who were authorized to fish for sharks. As of September 2003, there were approximately 256 directed permit holders and 351 incidental permit holders for a total of 607 permit holders who are authorized to fish for sharks and could be affected by the preferred alternatives outlined in the final rule. Only about 20 percent of all permit holders are actually active in the fishery. Currently, 120 vessels (*i.e.*, number of vessels that reported landings of shark during 2001) would be directly affected by changes (*i.e.*, increases/decreases) in shark quotas or other changes to the commercial management measures.

The revised time/area closure would have a direct economic impact on a total of 23 vessels (out of 256 total directed permits issued in 2003 ~ 9 percent) with directed shark permits. As of September 2003, only eight vessels with home ports in North Carolina reported shark landings during 2001.

NMFS knows of fewer than 11 shark fishermen who have used drift gillnet gear to target sharks at some point in the past and only five in recent years. These five vessels would have been affected by the strikenet only requirement in the proposed rule; however, NMFS is not implementing that requirement.

The recreational requirements proposed in this rulemaking could affect all recreational HMS permit holders including HMS angling category permit holders (~ 18,249 as of September 2003) and HMS charter/headboat permit holders (~ 4,041 as of September 2003). These permit holders can target any HMS; however, few actually target sharks.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers might be affected by these regulations, particularly the shift to trimester seasons for commercial fisheries, reduction in commercial LCS quota/increase in commercial SCS quota, and time/area closure off North Carolina during the winter commercial fishery. However, the final rule does not apply directly to them. Rather it applies only to permit holders and fishermen. As such, the economic impacts on these other sectors are not discussed in the FRFA.

Some of the preferred alternatives in this document may result in additional reporting, record-keeping, and compliance requirements. The final rule requires Atlantic directed shark fishermen located near the bottom longline time/area closure (approximately eight vessels) and approximately five shark gillnet vessels to install and activate a VMS unit. As discussed below, OMB has approved this collection of information. The costs associated with implementing a VMS program in the Atlantic shark gillnet fishery include an initial average cost per vessel of approximately $2,275 (not including postage costs for returning certification statement), an average annual maintenance cost of approximately $500/year, and approximately $197.28/year for communications during the right whale calving season. Costs associated with implementing a VMS program in the directed shark bottom longline fishery include an initial average cost per vessel of approximately $2,275 (not including postage costs for returning certification statement), an average annual maintenance cost of approximately $500/year, and approximately $305.28/year for communications during the seven month shark bottom longline time/area closure. The position reports generated by the VMS units are automatic so no time burden is imposed on the vessel operator. Installation of VMS will likely increase costs to the vessel owner but should not increase the needed skill level required for HMS fisheries.

The increase in the recreational bag and size limits, change in authorized gear types, addition of the bottom longline time/area closure, requirement to have and use release equipment, and requirement to move 1 nmi after interacting with a protected species may change the way and areas in which fishermen can fish and set their gear, require the possession and use of specific equipment, limit the gears authorized for use in recreational shark fisheries, and increase the skill level needed to participate in HMS fisheries. The increased recreational bag and size limit could result in positive economic benefits if they result in increased tournament participation and business profits within the charter/headboat industry for sharks. NMFS does not expect changes to the recreational authorized gear to have any substantive economic impacts, because sharks caught recreationally in Federal waters cannot be sold and the majority of HMS recreational fishermen already use the gears being authorized in this final rule. The bottom longline time/area closure and VMS could have significant economic impacts, particularly for those fishermen in states bordering the closure (*i.e.*, North Carolina). However, for vessels not directly affected by the closure there might be a few economic benefits, and NMFS anticipates long-term benefits to the fishery as a whole when the LCS complex rebuilds. The bycatch release equipment and moving 1 nmi after an interaction would likely only have minor economic impacts (*e.g.*, the purchase of stainless-steel hooks and release equipment and minor increases in fuel costs to move one mile after an interaction). Although the release equipment is relatively simple to use, limited training may be required to use them effectively.

No economic impacts are anticipated from the display permit alternative, because this is an administrative name change that does not affect current application processes or related regulations. In addition, the quotas and fishing seasons in this final rule are not likely to change reporting or compliance in the fishery.

NMFS considered a number of alternatives that could minimize the economic impact of the preferred alternatives, particularly those pertaining to LCS commercial quota reductions, revised time/area closures, VMS requirements, and use of corrodible hooks and release equipment aboard bottom longline vessels. Detailed analyses relating to the economic impacts of each alternative considered are provided in the final Amendment 1; a summary is provided here.

The final actions for commercial management measures (*i.e.*, the LCS complex classification, regional quotas, trimester seasons, MSY based quotas, and no minimum size) were designed to minimize economic impacts incurred on fishermen, while simultaneously enhancing equity among users groups, allowing healthy stocks to be managed at optimum yield, and allowing overfished stocks to rebuild. For the LCS complex classification, NMFS considered four alternatives: (1) Ridgeback/non-ridgeback groups with different closure dates (no action); (2) ridgeback/non-ridgeback groups with the same closure date; (3) aggregate LCS complex (final action); and (4) species-specific groups. Compared with the other alternatives considered, aggregating the LCS complex may reduce costs associated with the lengthening of trips (*i.e.*, fuel, bait, and ice) due to sorting inefficiencies and simplify compliance and reporting requirements. The other classification alternatives, in conjunction with the preferred alternative for the quota basis alternatives, could result in larger quotas; however, those classification alternatives were rejected because they could increase confusion in the fishery and, inconsistent with the Magnuson-Stevens Act, may result in delays for LCS to rebuild.

For quota administration, NMFS considered five alternatives: (1) Semi-annual seasons (no action); (2) no regional quotas (no action); (3) regional quotas (final action); (4) trimester seasons (final action); and (5) quarterly seasons. Implementation of regional quotas is not anticipated to result in any changes to economic benefits or costs because it maintains current fishing patterns based on dealer reports and is anticipated to enhance equity among user regions. Trimester seasons would spread open seasons out more evenly over the calendar year and could, in the long-term, result in greater economic stability for fishermen and associated communities because the amount of time between open and closed seasons would likely be reduced. Thus, in the long-term, the combination of regional quotas and trimester seasons could help minimize any economic impacts caused by other final actions. While maintaining the semiannual seasons and no regional quotas would have no negative economic impacts in the long- or short-term, these alternatives would have no positive economic benefits either.

NMFS considered a wide range of quotas that resulted from the combination of the four LCS complex classification alternatives and the three quota basis alternatives which included: (1) Quota basis from the 1999 HMS FMP (no action); quota based on MSY (final action); and (3) quota based on average landings for past three years. The economic impacts of the quota basis alternatives vary depending on the classification alternatives, thus, the two issues are considered together. Specifically, NMFS evaluated seven different commercial quotas for LCS (ranging from 816 mt dw and 2,559 mt dw) and three different commercial quotas for SCS (ranging from 300 mt dw to 454 mt dw). NMFS carefully considered the results of the 2002 stock assessments for LCS and SCS in evaluating possible quotas. The final action alternatives (quota based on MSY and aggregating the LCS complex) will implement commercial quota levels of 1,017 mt dw for the LCS aggregate and 454 mt dw for the SCS aggregate, resulting in a 21-percent reduction in LCS quota and a 10-percent increase in SCS quota, respectively, from the baseline quotas outlined in Amendment 1. While combinations of other alternatives could result in increased quotas for LCS, those combinations were rejected because they are likely to result in rebuilding delays for the LCS stock, which is inconsistent with the Magnuson-Stevens Act. Moreover, economic impacts could be incurred in the fishery over the long-term should LCS stocks continue to decline.

NMFS considered six commercial minimum size alternatives: a 4.5 ft FL for ridgeback LCS (no action), no minimum size (final action), and four other alternatives with varying minimum size requirements. This final rule eliminates the current commercial minimum size, thus relieving a restriction that would impose negative economic impacts on the commercial shark fishery. The other alternatives would have imposed varying minimum sizes and were rejected because they would have had greater economic impacts and because other alternatives that protect juvenile sharks, as recommended in the stock assessment, are being implemented in this rule. Given that the current minimum size for commercial fishery has never been implemented due to litigation, NMFS does not anticipate any significant changes in economic benefits or costs from this final action.

Similar to the final actions for commercial quotas, the final action alternatives for recreational retention (*i.e.*, existing limits plus one bonnethead) and minimum size limits (*i.e.*, existing size limits plus no minimum size for bonnethead) were designed to minimize the economic impacts on recreational fishermen, while simultaneously allowing healthy stocks to be managed at optimum yield and overfished stocks to rebuild. NMFS considered seven recreational retention limits including: (1) One shark per vessel per trip plus one Atlantic sharpnose shark per person (no action); (2) one shark per vessel per trip plus one Atlantic sharpnose and one bonnethead shark per person per trip (final action); (3) no limit; (4) catch and release only; and (5) other retention limits. Since the final retention allows the additional retention of bonnethead sharks, this alternative may increase revenues to charter/headboats and other small entities above the no action and catch and release only alternatives. Even though other alternatives were considered, such as no retention limit, that might further minimize economic impacts, they were rejected because they do not meet fishery management plan goals and objectives including rebuilding overfished LCS and preventing overfishing of Atlantic sharks.

NMFS considered six size limit alternatives including: (1) 4.5 ft FL for all sharks and no size limit for Atlantic sharpnose sharks (no action); (2) 4.5 ft FL for all sharks and no size limit for Atlantic sharpnose and bonnethead sharks (final action); and (3) various other size limits ranging from no size limit to different size limits depending on the species and the area fished. The final size limit alternative takes into account the fact that bonnethead sharks do not reach the minimum size currently in place and simplifies compliance for small entities with the final retention limits for bonnethead sharks. The final size limit alternative is anticipated to increase the willingness to pay, angler consumer surplus, and current revenues to charter/headboat captains and other small entities who rely on the recreational shark fishery for income. Other recreational size limit alternatives were rejected because of economic and stock status concerns.

The final action regarding recreational authorized gear limits fishermen in the recreational fishery to handline and rod and reel and addresses the need for NMFS to clarify which gear types are authorized specifically for recreational fishing activities. Most recreational HMS fishermen already use handline as well as rod and reel in the fishery. As such, there are no anticipated economic costs or benefits associated with implementation of the final action. The no action alternative would have no economic costs but was rejected because it is not consistent with other HMS fisheries and because other, more commercial gears, have higher post-release mortality rates, which could delay rebuilding of LCS. No other alternatives were considered because handline and rod and reel are the only gears typically used for recreational fishing for sharks.

The final action to remove the deepwater and other sharks from the management unit seeks to simplify compliance and reporting requirements under the final rule for small entities. No economic costs are anticipated with from this alternative or from the no action alternative.

The final action that retains the current 19 prohibited species and establishes a criteria for the addition/removal of other species to/from the prohibited species group, also simplifies compliance and reporting requirements. Given the possibility that recreationally or commercially valuable species may either be added/removed from the prohibited species group, it is possible that economic impacts/benefits would be experienced by small entities. While removing or adding sharks to the prohibited list could have economic impacts, maintaining the status quo while establishing a process to add or remove, should not have economic impacts on a substantial numbers of small entities. Some of the other alternatives considered (returning to five prohibited species, adding finetooth sharks, or removing dusky sharks) could have varying positive or negative economic impacts. These alternatives were rejected because they could delay rebuilding of LCS, inconsistent with Magnuson-Stevens Act, and could result in long-term negative economic impacts if stocks decline further. The other alternative considered (adding deepwater and other sharks) was rejected for similar reasons to those that resulted in removing the group from the management unit.

NMFS considered nine alternatives for bycatch reduction including a no action alternative, modifying authorized gears, limiting gears or soak times, and not allowing any discards. The final actions for bycatch reduction (*i.e.*, install and activate VMS, obtain and use release equipment, use non-stainless steel corrodible hooks, and move 1 nmi after an interaction with a protected species) were designed to minimize the economic impacts on fishermen, while simultaneously promoting bycatch reduction of protected species in shark fisheries. Installation of VMS units could result in economic impacts to small entities in the short-term. However, in the long-term, this alternative could result in increased revenues by preventing more burdensome regulations and allowing more fishing time. Additionally, bottom longline vessels would be able to traverse the closed area, while gillnet vessels may require less observer coverage. No other alternatives are available at this time that are as effective at enforcing closed areas.

Under the VMS requirement approximately five gillnet shark fishing vessels and approximately eight directed category bottom longline shark fishing vessels will need to install VMS units. Requiring VMS for only a portion of the shark fishing fleet, minimizes the economic impact on the remainder of the fleet. Economic analyses of the impacts associated with VMS requirements on small entities indicate that the average gross revenue by permit holder, during the first year of implementation, will be reduced by nine percent. For every year thereafter, economic analyses on small entities indicate that the average gross revenue by permit holder will be reduced by two percent. As noted above, to minimize economic impacts, NMFS is delaying the effective date of this requirement and will, in the future, type approve VMS units for use in the Atlantic shark fisheries.

The final alternative regarding release equipment, corrodible hooks, and moving after an interaction with a protected species would likely result in minor economic impacts to small entities, primarily because the cost associated with purchasing release equipment is minimal and is a one time cost. Although many shark fishermen may already use non-stainless steel corrodible hooks, this may increase the financial burden on fishermen who will have to purchase new hooks. The requirement to move one nautical mile after an interaction with a marine mammal, sea turtle, or sawfish would likely increase fuel costs due to increased time transiting to another fishing area and increased time needed to fish if alternate fishing grounds are not as productive for target species. However, because few marine mammals, sea turtles, or protected species have been observed caught, NMFS does not believe that this requirement would affect more than a few trips for all vessels combined, each year.

Because the no action alternative does not modify the existing regulations, this alternative is not expected to have any substantive economic impacts. However, this alternative also does not reduce bycatch to the extent practicable as required by the Magnuson-Stevens Act. Some of the other alternatives considered (banning gillnet gear or allowing only strikenet gear) could have significant economic impacts and put some vessels out of business. While these alternatives would reduce bycatch, NMFS has made a commitment to consider other, less burdensome alternatives in a future rulemaking. The alternative that would limit the length of the mainline, limit the soak time, and require corrodible steel hooks could have various negative economic impacts depending on the fishing practices of the fishermen. These alternatives were rejected due to safety and enforcement concerns and due to a lack of sufficient information.

NMFS is also finalizing a time/area closure for sandbar and dusky shark nursery and pupping areas offshore North Carolina during the winter fishery. This alternative is designed to reduce bycatch of neonate and juvenile sandbar sharks and prohibited dusky sharks by 92 percent and 61 percent, respectively. This alternative is likely to have significant impacts on the small entities/vessel owners directly affected by the closure. As discussed above, NMFS has refined the size of the time/area closure in this final action, thus reducing the number of vessels affected from 13 to 8 and mitigating the economic impacts by $17,956 in total gross revenues for the small entities directly affected by the closure as compared with the original preferred alternative.

For those vessels affected by the time/area closure, the closure would impose a reduction in catch and income from areas traditionally relied upon and affect fishing practices by requiring fishermen to travel further offshore. Due to greater distances traveled, fishermen would spend more time at sea, and associated costs of food, fuel, and labor could increase. This could cause some fishermen to go out of business, move to new areas, or alter fishing patterns in other ways. This alternative could result in a change in the distribution of benefits and costs, with the financial costs of operating in the fishery increasing and benefits decreasing. However, the time/area closure will facilitate rebuilding of the LCS complex, thus providing for longer term economic stability, and it minimizes the economic impacts compared to the other larger time/area closure alternative considered. The no action/no closure alternative would not impose short-term economic impacts, but could have long-term economic impacts if LCS do not rebuild.

None of the four alternatives considered for identifying EFH would affect small entities in any way that would complicate compliance and reporting requirements for EFH or result in significant economic impacts for small entities.

For EFPs, NMFS considered a no action alternative and an alternative that would administratively separate EFPs for scientific research from display permits. Neither alternative is expected to affect small entities in any way that would complicate compliance and reporting requirements for EFPs or result in significant economic impacts for small entities.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This final rule contains new collection-of-information requirements subject to review and approval by OMB under the PRA. The requirement for installation and activation of VMS aboard vessels with bottom longline or shark gillnet gear on board has been cleared by OMB under control number 0648–0483. The public reporting burden for this collection of information is estimated at: 4 hours for installation of a VMS, 5 minutes for completion of a VMS certification statement, 2 hours per year for VMS maintenance, and 0.3 seconds for an automated position report from a VMS.

This final rule also contains collection-of-information requirements that have been approved by OMB under control number 0648–0471. These requirements and their estimated response times are 30 minutes for an application for a shark display permit, 5 minutes for a catch report from a holder of a shark display permit, 30 minutes for a year-end report by a permit holder, 5 minutes for a notification 24 hours prior to a fishing trip, and 2 minutes for the application of a Passive Integrated Responder tag at the time of collection of a shark.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden to NMFS and OMB (*see* **ADDRESSES**).

These regulations are not expected to have an adverse impact on protected species under the ESA. A BiOp issued October 29, 2003, in response to the proposed rule for Amendment 1 concluded that the level of anticipated take in the Atlantic shark fishery is not likely to jeopardize the continued existence of endangered green, leatherback, and Kemp's ridley sea turtles, the endangered smalltooth sawfish, or the threatened loggerhead sea turtle. Furthermore, it concluded that the actions in the rule are not likely to adversely affect marine mammals.

The species of sea turtles that are expected to be affected by the actions in this final rule are all highly migratory. NMFS believes that no individual members of any of the species are likely to be year-round residents of the action area. Individual animals will make migrations into nearshore waters as well as other areas of the North Atlantic

Ocean, Gulf of Mexico, and the Caribbean Sea. Therefore, the range-wide status of the affected species of sea turtles most accurately reflects the species' status within the action area. Sea turtles can be captured as a result of the use of bottom longlines, gillnets and rod and reel/handline fishing gear. Captured turtles can be released alive uninjured or can be killed as a result of the interaction. Some turtles that are released alive from bottom longline gear may die later as a result of the ingestion of a hook, endangerment in the gear, or the trailing of gear that was not cut away prior to release.

Smalltooth sawfish are not highly migratory species, although some large, mature individuals may engage in seasonal north/south movements. The U.S. Distinct Population Segment (DPS) of smalltooth sawfish is confined to only a small portion of the action area, mainly waters off Florida and possibly occasionally off Georgia. Only large, mature individuals are known to occur in the action area. Information is not available regarding how much time smalltooth sawfish of different sizes spend at different depths. Generally smaller (younger) animals are restricted to shallower waters, whereas large animals are believed to roam over a larger depth range. The smalltooth sawfish may only be present in the U.S. EEZ intermittently, spending the rest of their time in shallower waters. Based on this information, the range-wide status of smalltooth sawfish most accurately reflects the species' status within the action area. Smalltooth sawfish can also be captured as a result of the use of bottom longlines, gillnets and rod and reel/handline. The October 2003 BiOp for Atlantic shark fisheries represents the first Federal fishery to undergo formal consultation for this species.

In the bottom longline fishery a total of 43 sea turtles were observed caught from 1994 through 2002 based on 862 observed sets. Of the 43 sea turtles observed, 31 were loggerhead sea turtles of which 17 were released alive. Another nine loggerheads were released in an unknown condition and five were released dead. Based on extrapolation of observer data and reported effort from the logbook data, the BiOp estimates that a total of 2,003 loggerhead sea turtles were taken in the shark bottom longline fishery from 1994 through 2002. An additional 503 unidentified sea turtles were estimated to have been taken. On average, 222 loggerhead sea turtles and 56 unidentified sea turtles were taken annually during this time period in the shark bottom longline fishery. The BiOp estimates that approximately 123 loggerheads are killed per year on bottom longline gear.

Four of the 43 observed sea turtles taken in the bottom longline fishery were leatherback sea turtles; three of these were released in an unknown condition and one was released dead. Based on these observations, the BiOp estimates that 269 leatherback sea turtles were taken in the shark bottom longline fishery during 1994 through 2002. On average, approximately 30 leatherback sea turtles each year were taken by the shark bottom longline fishery during 1994 through 2002 and an estimated 17 leatherbacks were killed per year.

Smalltooth sawfish have also been observed caught (seven known interactions, six released alive, one released in unknown condition) in shark bottom longline fisheries from 1994 through 2002. Based on extrapolation of these observations, a total of 466 sawfish are estimated to have been taken in this fishery from 1994 to 2002, resulting in an average of 52 takes per year. All of the sawfish takes observed, except for one, were released alive. Based on this information, NMFS expects no smalltooth sawfish will be killed on bottom longline gear as a result of the measures in this final rule over the next five years.

In the shark gillnet fishery, loggerhead sea turtles are rarely caught. During the 1999 right whale calving season no loggerhead sea turtles were caught in this fishery. No loggerhead sea turtles were observed caught with strikenets during the 2000–2002 right whale calving seasons. However, three loggerhead sea turtles have been observed caught with drift gillnets during right whale calving season, one each year from 2000 to 2002. During the 2000 and 2001 non-right whale calving seasons, no loggerhead sea turtles were observed caught in gillnets fished in a strikenet method while one loggerhead sea turtle was observed caught and released alive in gillnets fished in a driftnet method. No loggerhead sea turtles were caught outside of the right whale calving season in 2002. Expanded take estimates for sea turtles in the shark drift gillnet fishery provides the following estimated takes of loggerhead sea turtles by year: 1999—none; 2000—one mortality and 4.4 live takes; 2001—one live take; and 2002—1.7 live takes.

In the shark gillnet fishery, leatherback sea turtles are sporadically caught. During the 1999 right whale calving season, two leatherback sea turtles were caught in this fishery, and both were released alive. No leatherback sea turtles were observed caught with strikenets during the 2000–2002 right whale calving seasons. Leatherback sea turtles have also been observed caught with gillnets including fourteen in 2001 and two in 2002. NMFS temporarily closed the shark gillnet fishery (strikenetting was allowed) from March 9 to April 9, 2001, due to the increased number of leatherback interactions that year (66 FR 15045, March 15, 2001). During the 2000 and 2001 non-right whale calving seasons, no leatherback sea turtles were observed caught in gillnets fished in strikenet or driftnet methods. No leatherback sea turtles were caught outside of the right whale calving season in 2002. The estimated takes of leatherback sea turtles by year were as follows: 1999—none; 2000—none; 2001—two mortalities and 12 live takes; and 2002—3.4 live takes.

To date there has been only one observed catch of a smalltooth sawfish in shark gillnet fisheries. The sawfish was taken on June 25, 2003, in a gillnet set off of southeast Florida and it was released alive. The set was characteristic of a typical drift gillnet set, with gear extending 30 to 40 feet deep in 50 to 60 feet of water. The previous absence of smalltooth sawfish incidental capture records is likely attributable to the relatively low effort in this fishery and the rarity of smalltooth sawfish, especially in Federal waters. These factors may result in little overlap of the species with the gear. The recently observed smalltooth sawfish was cut from the net and released alive with no visible injuries. This indicates that smalltooth sawfish can be removed safely if entangled gear is sacrificed.

As discussed in the proposed action, gillnets are also used to "strikenet". When strike gillnetting fishers target and encircle specific schools of sharks after visually detecting them (usually by spotter pilot). Given the large and or distinct morphology of smalltooth sawfish, this species would likely be detected visually, as well as distinguished from shark species, and thus avoided. This fishing method has also been shown to reduce potential encounters by limiting the time that gear is in the water. Strikenet sets are typically only one to two hours in contrast to six to 10 hours for each drift gillnet set. Endangered and threatened species, or protected marine mammals have never been observed taken in strikenet sets.

Given the high rate of observer coverage in the shark gillnet fishery, NMFS believes that smalltooth sawfish takes in this fishery are very rare. The fact that there were no smalltooth sawfish caught during the year 2001, when 100 percent of the fishing effort was observed, indicates that smalltooth sawfish takes (observed or total) most likely do not occur on annual basis.

Recreational fishermen targeting sharks generally use bait and hook. Sea turtles are known to take baited hooks. NMFS has no data specifically showing that sea turtles are taken by recreational anglers fishing for sharks. Most recorded sea turtle captures by recreational fishermen occur off fishing piers where sea turtles are known to frequent due to lighting and the concentration of bait. There were no sea turtles caught during the June Gulf Coast Shark Census held each year between 1991 and 1999 (operating out of Sarasota) which happens offshore and not on fishing piers. The selected measures in Amendment 1 pertain to recreational shark fishing in Federal waters. Based on the information above NMFS believes that the chances of a recreational shark fishermen catching a sea turtle in Federal waters is discountable.

Smalltooth sawfish are known to be occasionally hooked with rod and reel and/or handline during recreational fishing. These captures occur most frequently in state waters in the vicinity of the Everglades National Park and Florida Bay, where the current population is concentrated. North of this area, the number of reported captures declines greatly. The National Park Service, Everglades National Park, monitors fishing activity and harvest in this area in part by conducting interviews with anglers and fishing guides at local boat ramps. These interviews indicate that the majority of anglers do not try to catch any particular kind of fish. Target species of the minority group that did try to catch a particular type, however, included snook, spotted sea trout, red drum, and tarpon. Thus the vast majority of incidental smalltooth sawfish captures are not from shark fishing.

The only indication that smalltooth sawfish may be occasionally hooked by a fishermen targeting sharks stems from the June Gulf Coast Shark Census between 1991 and 1999. Five smalltooth sawfish were captured and released in 20,000 line hours of recreational fishing effort. The captures, however, were all from either inside the barrier islands or just offshore from barrier islands, along the southwest Florida coast between Cape Romano and Saint Petersburg; thus all within state waters.

Given the overall scarcity of smalltooth sawfish encounters in state waters where this species is believed to occur in greater abundance and density, the chances of a smalltooth sawfish being encountered during recreational fishing in Federal waters are extremely rare. The MRFSS database has no records of smalltooth sawfish captured in Federal waters, let alone one during fishing targeting sharks. Therefore, NMFS believes that the chances of a recreational shark fisherman catching a smalltooth sawfish in Federal waters are discountable.

The final action to reduce the LCS commercial quota from 1997–2002 levels, resulting in a 45 percent reduction, is expected to reduce fishing effort for the shark bottom longline fishery. Effort reductions are not expected in the shark gillnet fishery because it primarily targets SCS, and drift gillnet fishing will not be eliminated by this final rule. The 2003 BiOp for the Atlantic shark fishery found that the reduction in bottom longline effort may result in a reduction of the number of sea turtle interactions. NMFS has no way of quantifying the effect on sea turtles at this time. Any such effort reductions will only reduce smalltooth sawfish interactions if effort reductions occur in the southern fishing areas where smalltooth sawfish are known to occur.

Although the time/area closure of North Carolina is expected in part to reduce the bycatch of prohibited species such as the dusky shark, the 2003 BiOp found it may have the added benefit of reducing potential sea turtle interactions. This benefit depends however, on how much effort reduction actually results from this action. Most bottom longline fishermen tend to fish close to their home port, so if redistribution of effort does occur, the effort is expected to redistribute to areas adjacent to or seaward of the closure. Sea turtle interactions may occur in these areas as well, thus reduced sea turtle interactions may not be realized if effort is merely redistributed. The time/area closure occurs north of where smalltooth sawfish occur, thus will provide no benefit to smalltooth sawfish. Conversely, should effort redistribute to the southern fishing grounds, smalltooth sawfish interactions could potentially increase as a result of the time/area closure. Based on the expected area of any effort redistribution, however, NMFS believes the time/area closure will have no smalltooth sawfish impacts.

The requirement to have VMS on directed shark gillnet and bottom longline vessels will aid in enforcement of the time/area closure. Additionally, this measure could lead to improvements in effort data in this area which is used in estimating takes of protected species. Any such improvements however, would only potentially benefit sea turtles, as again this would be in areas outside the range of smalltooth sawfish.

NMFS is not reducing the recreational bag limit but is working towards increasing compliance with existing regulations. NMFS is also restricting the authorized gear in the recreational fishery to handline and rod and reel. Post-release mortality of these gear types is lower than that of traditional commercial gears such as bottom longline or gillnet. Since these gears are presently not used in recreational fishing, little benefit to sea turtles and smalltooth sawfish is expected.

Some of the regulations in this final rule were specifically designed to reduce, to the extent practicable, bycatch and bycatch mortality of sea turtles and marine mammals. These alternatives include: requiring the use of corrodible hooks, de-hooking devices (once a de-hooking device is approved), dipnets, and line cutters on bottom longline vessels (similar to the requirements for pelagic longline vessels); and requiring bottom longline vessels to move 1 nmi after an interaction with a protected species (also similar to the requirement for pelagic longliners). The 2003 BiOp found these measures are expected to have a positive impact on protected species. Additionally, the 2003 BiOp concluded that non-stainless steel corrodible hooks for the directed shark bottom longline fishery will minimize impacts to sea turtles and smalltooth sawfish if they are accidentally hooked. De-hooking equipment should also safely release incidentally caught sea turtles.

Based on observer data, observed and self-reported effort data, and the distribution and density of sea turtles in the action area, NMFS anticipates that the continued prosecution of the Atlantic shark fisheries may result in take of protected species. Currently available information on the relationship between sea turtles and sawfish and the Atlantic shark fishery indicates that injury and/or death of sea turtles and smalltooth sawfish is likely to occur. Therefore, pursuant to section 7(b)(4) of the ESA, the 2003 BiOp anticipates an actual 5-year total incidental take for the Atlantic shark fishery of: (1) 172 leatherback turtles, of which 88 will be lethal; (2) 1370 loggerhead turtles of which 755 will be lethal; (3) 30 total in any combination of hawksbill, green, and Kemp's ridley, with 5 lethal takes per species; and (4) 261 smalltooth sawfish, of which no lethal takes are expected. The above take estimates were further broken down by gear type. These limits represent the number of total estimated takes, based on observed takes extrapolated across total effort levels for this fishery. Each gear type must be considered independently, and if the actual calculated incidental captures or mortalities exceed the amount estimated below for a gear type, the 2003 BiOp specifies that formal consultation for that gear type must be re-initiated immediately.

The AA has determined that the list of actions in this rule, which seek to rebuild the LCS complex, prevent overfishing of the LCS complex, and prevent overfishing of other species of sharks, are consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the CZMA. NMFS asked for states' concurrence with this determination during the proposed rule stage. Ten states replied affirmatively regarding the consistency determination. NMFS presumes that the remaining states that have not yet responded also concur with the determination. One state, Georgia, replied that allowing the use of gillnets, including the proposed strikenet method, is not consistent with the State's CZMA program.

The State of Georgia objects to the consistency determination due to the continuing operation of the shark gillnet fishery in Federal waters impacting resources shared by adjacent state waters. Specifically, the State of Georgia raises a concern regarding the impact of the shark gillnet fishery on sea turtles, marine mammals, and sport fish. NMFS acknowledges the concern raised; however, under the Magnuson-Stevens Act's (16 U.S.C. 1801 *et seq.*) National Standards, the Agency must, among other things, base its actions upon the best scientific information available; implement conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery; and minimize bycatch and bycatch mortality to the extent practicable (16 U.S.C. 1851(a)(2), (1), and (9)).

National Standard 2, which requires that management measures be based on the best scientific information available, would preclude a closure of the shark gillnet fishery in Federal waters, or a partial closure just off Georgia, in this action. At this time, there is insufficient information to support such management measures. Data currently available indicate relatively low rates of bycatch and bycatch mortality of protected species and other finfish in this fishery. Incidental capture of threatened and endangered species is regulated under the ESA. As discussed above, according to the October 29, 2003, BiOp prepared pursuant to the ESA, there are relatively low rates of bycatch and bycatch mortality in the shark gillnet fishery. The BiOp, which incorporates the best scientific information available, did not conclude that continuation of the shark gillnet fishery would jeopardize any endangered or threatened resources and included a new incidental take statement for the fishery. Therefore, NMFS is not prohibiting the use of this gear at this time.

In its decision to not ban gillnet gear, NMFS also considered other requirements of the Magnuson-Stevens Act, including but not limited to National Standards 1 and 9. Shark gillnets are the commercial gear that are used to primarily target SCS, a complex that is not, according to the latest SCS stock assessment, overfished. Based on the best scientific information available, this Amendment will manage the fishery for OY, consistent with National Standard 1, by preferring a quota level that would increase the SCS commercial quota from the level in the 1999 HMS FMP. Given that a quota increase is warranted under the stock assessment, closing the shark gillnet fishery in Federal waters would not achieve, on a continuing basis, the OY from the fishery.

With regard to bycatch, this Amendment minimizes bycatch and bycatch mortality to the extent practicable, consistent with National Standard 9. While this final rule does not prohibit the use of gillnet gear, NMFS did consider an alternative that would allow only the strikenet method in the shark gillnet fishery and also a permanent closure of the fishery, which would make this rule fully consistent with Georgia's CZMA program. However, NMFS did not prefer either alternative, due to the lack of sufficient data and also taking into consideration the significant, negative social and economic impacts on the five vessels actively fishing in the shark gillnet fishery. Instead, this final rule will require all shark gillnet vessels to install and activate VMS during right whale calving season. In a future rulemaking, NMFS will examine additional gear modifications or other alternatives to reduce bycatch and bycatch mortality in this fishery. NMFS will also continue to work with existing take reduction teams and Fishery Management Councils to examine methods of reducing bycatch. Thus, NMFS finds that the final regulations implemented in the FMP Amendment are consistent with Georgia's Coastal Zone Management Program to the maximum extent practicable.

Several measures in this final action (implementation of the commercial LCS and SCS quotas through regional quotas, removal of the commercial minimum size, and allowing recreational fishermen to retain one bonnethead shark per person per vessel with no minimum size) relieve restrictions. Currently, the Atlantic commercial shark fishery is operating under quotas established under an emergency rule extension that will expire on December 29, 2003 (68 FR 31983, May 29, 2003). The extension implements quotas based upon the 2002 LCS and SCS stock assessments and temporarily suspends a commercial minimum size and quotas from the 1999 HMS FMP, which were based upon a 1998 assessment. When the extension expires, the 1999 quotas and commercial minimum size will go back into effect. This final rule would increase the LCS and SCS quotas that would come into effect on December 30, 2003, with the expiration of the existing emergency rule. Specifically, the overall LCS quota would increase from 816 mt dw (1999 HMS FMP) to 1,017 mt dw and the SCS quota would increase from 359 mt dw (1999 HMS FMP) to 454 mt dw, thus relieving a restriction by allowing more retention of fish. Removal of the commercial minimum size and changes to the recreational minimum size and retention limit would also relieve regulatory requirements. Because this regulation relieves requirements, as stated above, pursuant to 5 U.S.C. 553(d)(1), the 30-day delayed effectiveness period for the above management measures is not applicable and these provisions will become effective on December 30, 2003.

In addition, there is good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness for the commercial quotas and removal of the commercial minimum size. After reviewing peer reviews of the 1998 assessment, which were required as part of a court-approved settlement agreement, NMFS determined that portions of that assessment did not constitute the best available science. The LCS and SCS quotas in this final action, which are based on the 2002 assessments, must be effective by December 30, 2003, otherwise, quotas that are more restrictive and not based on the best available science will go into effect, which is inconsistent with National Standard 2 of the Magnuson-Stevens Act. If the commercial minimum size is not removed by December 30, 2003, fishermen may incur additional fuel and supply costs in order to fish further offshore to target larger fish. During development of this final rule, NMFS provided many opportunities for public participation and made the FEIS for Amendment 1 available to the public for 30 days prior to making its final decision (68 FR 64621, November 14, 2003). Thus, members of the public were aware of what the rule was likely to contain. It would be contrary to the public interest to delay the implementation of these measures because of the economic impact on fishermen. Therefore, pursuant to 5 U.S.C. 553(d)(3), there is good cause to waive the delay in effectiveness for the commercial quotas and minimum size.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: December 17, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 600 and 635 are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, section IX of the list of authorized fisheries and gears in paragraph (v) is revised to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	*Authorized gear types*
* * * *	* * *
IX. SECRETARY OF COMMERCE	
1. Atlantic Tunas, Swordfish, and Sharks Fisheries (FMP):	
A. Swordfish handgear fishery	A. Rod and reel, harpoon, handline, bandit gear.
B. Pelagic longline fishery	B. Longline.
C. Shark gillnet fishery	C. Gillnet
D. Shark bottom longline fishery	D. Longline.
E. Shark handgear fishery	E. Rod and reel, handline, bandit gear.
F. Shark recreational fishery	F. Rod and reel, handline.
G. Tuna purse seine fishery	G. Purse seine.
H. Tuna recreational fishery	H. Rod and reel, handline.
I. Tuna handgear fishery	I. Rod and reel, harpoon, handline, bandit gear.
J. Tuna harpoon fishery	J. Harpoon.
2. Atlantic Billfish Fishery (FMP):	
Recreational fishery	Rod and reel.
3. Commercial Fisheries (Non-FMP)	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine.

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 3. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 4. In § 635.2, in the definition of "Management unit," paragraph (5) is revised, and new definitions for "Display permit," and "Mid-Atlantic shark closed area," are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Display permit means a permit issued in order to catch and land HMS for the purpose of public display pursuant to § 635.32.

* * * * *

Management unit means in this part:

* * * * *

(5) For sharks, means all fish of these species in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, excluding those species listed in Table 2 of Appendix A.

* * * * *

Mid-Atlantic shark closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 35°41′ N. lat. just south of Oregon Inlet, North Carolina, and connecting by straight lines the following coordinates in the order stated: 35°41′ N. lat., 75°25′ W. long. proceeding due east to 35°41′ N. lat., 74°51′ W. long.; then proceeding southeast to 35°30′ N. lat., 74°46′ W. long.; then proceeding southwest, roughly following the 55 fathom mark, to 33°51′ N. lat., 76°24′ W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°51′ N. lat., 77°53′ W. long. near Cape Fear, North Carolina.

* * * * *

■ 5. In § 635.3, paragraph (d) is revised to read as follows:

§ 635.3 Relation to other laws.

* * * * *

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing or exempted educational activity, or for public display, as specified in § 635.32.

■ 6. In § 635.5, paragraph (e) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 or § 635.32 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a permit under this part, or anyone responsible for offloading, storing, packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

* * * * *

§ 635.16 [Removed and Reserved]

■ 7. Remove and reserve § 635.16.

■ 8. In § 635.20, paragraph (e) is revised to read as follows:

§ 635.20 Size limits.

* * * * *

(e) *Sharks.* All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins attached. All sharks, except Atlantic sharpnose and bonnethead sharks, landed under the recreational retention limits specified at § 635.22(c) must be at least 54 inches (137 cm) FL.

* * * * *

■ 9. In § 635.21, paragraph (d) is redesignated as paragraph (e), a new paragraph (d) is added, and the newly redesignated paragraphs (e)(3)(i) through (e)(3)(iv) and (e)(3)(vi) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) *Bottom longlines.* For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of bottom longline gear. Bottom longline vessels may have a limited number of floats and/or high flyers onboard for the purposes of marking the location of the gear but removal of these floats does not constitute removal of bottom longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section with bottom longline gear on board, it is a rebuttable presumption that any fish on board such a vessel were taken with bottom longline in the closed area.

(1) Effective January 1, 2005, if bottom longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the mid-Atlantic shark closed area from January 1 through July 31 each calendar year.

(2) When a marine mammal, sea turtle, or smalltooth sawfish is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at least 1 nmi (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(3) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must:

(i) Undertake the same bycatch mitigation measures as specified in paragraphs (c)(5)(i), (ii), and (iii)(B) of this section to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate. If a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags and the line should be cut as close to the hook as possible.

(ii) Possess and use a dehooking device that meets the minimum design standards. The dehooking device must be carried on board and must be used to remove the hook from any hooked sea turtle, prohibited shark, or other animal, as appropriate. The dehooking device should not be used to release smalltooth sawfish. NMFS will file with the Office of the Federal Register for publication the minimum design standards for approved dehooking devices. NMFS may also file with the Office of the Federal Register for publication any additions and/or amendments to the minimum design standards. **Note:** This paragraph (d)(3)(ii) is not effective until further notification is published in the **Federal Register**.

(e) * * *

(3) * * *

(i) No person may possess a shark in the EEZ taken from its management unit without a permit issued under § 635.4. No person issued a shark LAP under § 635.4 may possess a shark by any gear other than rod and reel, handline, bandit gear, longline, or gillnet. No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/headboat permit and a shark LAP may possess sharks taken with rod and reel, handline, bandit gear, longline, or gillnet if the vessel is not engaged in a for-hire fishing trip.

(ii) No person may fish for sharks with a gillnet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(f) of this title.

(iv) While fishing for Atlantic sharks with a gillnet, the gillnet must remain attached to at least one vessel at one end, except during net checks.

* * * * *

(vi) Vessel operators are required to conduct net checks every 0.5 to 2 hours to look for and remove any sea turtles, marine mammals, or smalltooth sawfish. Smalltooth sawfish should not be removed from the water while being removed from the net.

* * * * *

■ 10. In § 635.22, paragraph (c) is revised as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) *Sharks.* One shark from either the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel. No prohibited sharks from the management unit, which are listed in table 1(d) of appendix A to this part, may be retained. The recreational retention limit for sharks applies to any person who fishes in any manner, except to a person aboard a vessel who has been issued an Atlantic shark LAP under § 635.4. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire fishing trip.

* * * * *

■ 11. In § 635.27, paragraph (b) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) *Sharks.* (1) *Commercial quotas.* The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks. No prohibited sharks from the management unit, which are listed in table 1(d) of appendix A to this part, may be retained except as authorized under § 635.32.

(i) *Fishing seasons.* For the 2004 fishing year, the commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split between two fishing seasons: January 1 through June 30 and July 1 through December 31. Starting on January 1, 2005, and for each following year, the commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks will be split between three fishing seasons: January 1 through April 30, May 1 through August 30, and September 1 through December 31.

(ii) *Regions.* The commercial quotas for large coastal sharks and small coastal sharks are split between three regions. The regions are: Gulf of Mexico, South Atlantic, and North Atlantic. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c). The South Atlantic region includes all waters east of the Gulf of Mexico region north to the border between North Carolina and Virginia at roughly 36°30′ N. lat., including the waters surrounding the Caribbean. The North Atlantic region includes all waters north of the North Carolina and Virginia border at roughly 36°30′ N. lat.

(iii) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,017 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split between the regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. The length of each fishing season will be determined based on the projected catch rates, available quota, and other relevant factors. At least 30 days prior to the beginning of the season, NMFS will file with the Office of the Federal Register for publication the length of each season.

(iv) *Small coastal sharks.* The annual commercial quota for small coastal sharks is 454 mt dw, unless adjusted pursuant to paragraph (b)(1)(vi) of this section. This annual quota is split between the regions as follows: 4 percent to the Gulf of Mexico, 83 percent to the South Atlantic, and 13 percent to the North Atlantic.

(v) *Pelagic sharks.* The annual commercial quotas for pelagic sharks are 92 mt dw for porbeagle sharks, 273 mt dw for blue sharks, and 488 mt dw for pelagic sharks other than porbeagle or blue sharks, unless adjusted pursuant to paragraph (b)(1)(vi) of this section.

(vi) *Annual adjustments.* (A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1. NMFS will file any adjustment with the Office of the Federal Register for publication at least 30 days prior to the start of the next fishing season.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded at least 30 days prior to the start of the next fishing season.

(C) Sharks taken and landed from state waters are counted against the fishery quota for the applicable region and time period.

(2) *Public display and research quota.* The annual quota for persons who collect sharks from any of the management groups under a display permit or EFP is 60 mt whole weight (43 mt dw). All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against this quota.

* * * * *

■ 12. In § 635.28, paragraph (b) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) *Sharks.* (1) The commercial fishery for large coastal sharks will remain open in each region under the fishing seasons and regional quotas, as specified at § 635.27(b)(1). From the effective date and time of a season closure in a particular region until additional quota becomes available, the fishery for large coastal sharks in that particular region is closed.

(2) When the fishing season quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1) is reached for a particular region, or is projected to be reached, NMFS will file for publication with the Office of the Federal Register, a notice of closure at least 14 days before the effective date. From the effective date and time of the closure until additional quota becomes available, the fishery for the appropriate shark species group in that particular region is closed.

(3) When the fishery for a shark species group in a particular region is closed, a fishing vessel, issued an Atlantic Shark LAP pursuant to § 635.4, may not possess or sell a shark of that species group in that region, except under the conditions specified in § 635.22 (a) and (c), and a shark dealer in that region, issued a permit pursuant to § 635.4, may not purchase or receive a shark of that species group from a vessel issued an Atlantic Shark LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the regional closure and were held in storage. Under a regional closure for a shark species group, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with state regulations, purchase or receive a shark of that species group if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued a Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

* * * * *

■ 13. In § 635.32, paragraph (a) is revised; paragraphs (c)(2) and (c)(3) are removed; paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), respectively; a new paragraph (d) is added; and the newly redesignated paragraphs (e) and (f) are revised to read as follows:

§ 635.32 Specifically authorized activities.

(a) *General.* Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize for the conduct of scientific research or the acquisition of information and data, for the enhancement of safety at sea, for the purpose of collecting animals for public education or display, or for investigating the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational activities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, or display permit issued in response to requests for authorization under this section. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization. Inspection requirements specified in 635.5(e) of this part apply to the owner or operator of a fishing vessel that has been issued a exempted fishing permit, scientific research permit, or display permit.

* * * * *

(d) *Display permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue display permits.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid display permit is required to fish for, take, retain, or possess an HMS in or from the Atlantic EEZ for the purposes of public display. A valid display permit must be on board the harvesting vessel, must be available when the fish is landed, must be available when the fish is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A display permit is valid for the specific time, area, gear, and species specified on it. Species landed under a display permit shall be counted against the appropriate quota specified in § 635.27 or as otherwise provided in the display permit.

(3) To be eligible for a display permit, a person must provide all information concerning his or her identification, numbers by species of HMS to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Collectors of HMS for public display must notify the local NMFS Office for Law Enforcement at least 24 hours, excluding weekends and holidays, prior to departing on a collection trip, regardless of whether the fishing activity will occur in or outside the EEZ, as to collection plans and location and the number of animals to be collected. In the event that a NMFS agent is not available, a message may be left.

(5) All live HMS collected for public display are required to have either a conventional dart tag or a microchip Passive Integrated Transponder (PIT) tag applied by the collector at the time of the collection. Both types of tags will be supplied by NMFS. Conventional dart tags will be issued unless PIT tags are specifically requested in the permit application and their use approved by NMFS. Terms and conditions of the permit will address requirements associated with the use of the tags supplied on a case-by-case basis.

(e) *Applications and renewals.* Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purpose of obtaining public comment. In such cases, NMFS may file with the Office of the Federal Register for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized exempted fishing, scientific research, or public display activities and to solicit public comment on anticipated EFP, SRP, LOA, or public display permit requests. Applications for EFP, SRP, and public display permit renewals are required to include all reports specified in the applicant's previous EFP, SRP, or public display permit including the year-end report, all delinquent reports for EFPs, SRPs, and public display permits issued in prior years, and all other specified information, in order for the renewal application to be considered complete. In situations of delinquent reports, renewal applications will be deemed incomplete and a permit will not be issued under this section.

(f) *Terms and conditions.* (1) Written reports on fishing activities and disposition of catch for all HMS either retained, discarded alive or dead, or tagged and released under a permit issued under this section, must be submitted to NMFS, at an address designated by NMFS, within 5 days of the fishing activity, without regard to whether the fishing activity occurs in or outside the EEZ. Also, an annual written summary report of all fishing activities and disposition of all fish captured under the permit must be submitted to NMFS, at an address designated by NMFS, within 30 days after the expiration date of the permit. NMFS will provide specific conditions and requirements as needed, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, in the permit. If an individual issued a Federal permit under this section captures no HMS in any given month, either in or outside the EEZ, a "no-catch" report must be submitted to NMFS within 5 days of the last day of that month.

(2) Permit conditions regarding fishing activities, such as gear deployment, monitoring, or soak time, may be specified by NMFS if warranted, on a case-by-case basis.

(3) NMFS may select for at-sea observer coverage any vessel issued a permit under this section. Selected vessels must comply with the requirements for observer accommodation and safety specified at §§ 635.7, 600.725, and 600.746 of this chapter.

14. In § 635.34, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 635.34 Adjustment of management measures.

* * * * *

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

(c) NMFS may add species to the prohibited shark species group specified in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in the appropriate shark species group in Table 1 of appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

(1) Biological information indicates that the stock warrants protection.

(2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries.

(3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS.

(4) The species is difficult to distinguish from other prohibited species.

■ 15. In § 635.69, paragraphs (a), (e), and (h) are revised to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel, permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or strikenet gear, is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit under the following circumstances:

(1) Whenever the vessel is away from port with pelagic longline gear on board;

(2) Whenever a vessel, issued a directed shark LAP, is away from port with bottom longline gear on board, is located between 33°00′ N. lat. and 36°30′ N. lat., and the mid-Atlantic shark closed area is closed to bottom longline fishing as specified in § 635.21(d)(1); or

(3) Whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board during the right whale calving season specified in the Atlantic Large Whale Take Reduction Plan in § 229.32(f) of this title. **Note:** Paragraphs (a)(2) and (a)(3) of this section are not effective until further notification is published in the **Federal Register.**

(4) A vessel is considered to have pelagic longline gear on board, for the purposes of this section, when gear as specified at § 635.21(c) is on board. A vessel is considered to have bottom longline gear on board, for the purposes of this section, when gear as specified at § 635.21(d) is on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in § 600.10, is on board a vessel that has been issued a shark LAP.

* * * * *

(e) *Operation.* Owners or operators of vessels permitted, or required to be permitted, to fish for HMS, that have pelagic or bottom longline gear or gillnet gear on board, and that are required to have a VMS unit installed, as specified in paragraph (a), must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and continuing until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

* * * * *

(h) *Access.* As a condition to obtaining a LAP for Atlantic swordfish, sharks, or tunas, all vessel owners or operators using pelagic or bottom longline or gillnet gear, subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

■ 16. In § 635.71, paragraphs (a)(1), (a)(2), (a)(7), (a)(14), (a)(17), (a)(18), (a)(23), (a)(26), (a)(34), (a)(37), (b)(7), (b)(8), (c)(1), (d)(10), (d)(12), and (d)(13) are revised, and paragraphs (a)(39) and (a)(40) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.32.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, SRP, or display permit on board the vessel, as specified in §§ 635.4 and 635.32.

* * * * *

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) or § 635.32.

* * * * *

(14) Fail to install, activate, repair, or replace a vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or gillnet gear on board the vessel as specified in § 635.69.

* * * * *

(17) Fish for Atlantic tunas or swordfish with a gillnet or possess Atlantic tunas or swordfish on board a vessel with a gillnet on board, as specified in § 635.21 (b), (e)(1), and (e)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a protected species, as specified in § 635.21 (c)(3) or (d)(2).

* * * * *

(23) Fail to comply with the restrictions on use of a pelagic longline, bottom longline, or gillnet as specified in § 635.21 (c), (d), or (e)(3).

* * * * *

(26) Violate the terms and conditions or any provision of a permit issued under §§ 635.4 or 635.32.

* * * * *

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21 (c)(5) or (d)(3).

* * * * *

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear and sea turtle mortalities associated with pelagic longline gear as required by § 635.5.

* * * * *

(39) Deploy or fish with any fishing gear, from a vessel with a bottom longline on board, in any closed area during the time periods specified at § 635.21(d)(1).

(40) Deploy or fish with any fishing gear, from a vessel with bottom longline gear on board, without carrying a dipnet, line clipper, and dehooking device as specified at § 635.21(d)(3).

(b) * * *

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have such gear on board when in possession of a BFT, as specified in § 635.21(e)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(e)(1)(vi)(B).

* * * * *

(c) * * *

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(e)(2).

* * * * *

(d) * * *

(10) Retain, possess, sell, or purchase a prohibited shark, as specified under § 635.22(c) and § 635.27(b)(1) or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d)(3).

* * * * *

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21(e)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(e)(3).

* * * * *

[FR Doc. 03–31483 Filed 12–23–03; 8:45 am]

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Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 491

Medicare Program; Rural Health Clinics: Amendments to Participation Requirements and Payment Provisions; and Establishment of a Quality Assessment and Performance Improvement Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405 and 491

[CMS–1910–F]

RIN 0938–AJ17

Medicare Program; Rural Health Clinics: Amendments to Participation Requirements and Payment Provisions; and Establishment of a Quality Assessment and Performance Improvement Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends Medicare certification and payment requirements for rural health clinics (RHCs) as required by the Balanced Budget Act of 1997 (BBA). It changes the definition of a qualifying rural shortage area in which a Medicare RHC must be located; establishes criteria for identifying RHCs essential to delivery of primary care services that we can continue to approve as Medicare RHCs in areas no longer designated as medically underserved; and limits waivers of certain nonphysician practitioner staffing requirements. This final rule imposes payment limits on provider-based RHCs and prohibits "commingling" (the use of the space, professional staff, equipment, and other resources) of an RHC with another entity. The rule also requires RHCs to establish a quality assessment and performance improvement program that goes beyond current regulations. Finally, this final rule addresses public comments received on the February 28, 2002 proposed rule and makes other revisions for clarity and uniformity and to improve program administration.

EFFECTIVE DATE: These regulations are effective on February 23, 2004.

FOR FURTHER INFORMATION CONTACT: David Worgo (payment and certification policy), (410) 786–5919.

Mary Collins (quality policy issues), (410) 786–3189.

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I. Background

A. General

The Rural Health Clinic Services Act of 1977 (Pub. L. 95–210, enacted December 13, 1977), amended the Social Security Act (the Act) by enacting section 1861(aa) to extend Medicare and Medicaid entitlement and payment for primary and emergency care services furnished at a rural health clinic (RHC) by physicians and certain nonphysician practitioners, and for services and supplies incidental to their services. "Nonphysician practitioners" included nurse practitioners and physician assistants. (Subsequent legislation extended the definition of covered RHC services to include the services of clinical psychologists, clinical social workers, and certified nurse midwives).

According to House Report No. 95–548(I), the purpose of Pub. L. 95–210 was to address an inadequate supply of physicians to serve Medicare and Medicaid beneficiaries in rural areas. The program addressed this problem by providing qualifying clinics located in rural, medically underserved communities with payment on a cost-related basis for outpatient physician and certain nonphysician services furnished to Medicare and Medicaid beneficiaries. (The Medicare payment provisions for rural health clinics are in sections 1833(a)(3) and 1833(f) of the Act and in our regulations beginning at 42 CFR 405.2462.)

Qualifying clinics, among other criteria, had to be located in a nonurbanized area as defined by the Census Bureau and in a health professional shortage area or medically underserved area as designated by the Health Resources and Services Administration or (since the Omnibus Budget Reconciliation Act of 1989 (OBRA '89, Pub. L. 101–239, enacted on December 19, 1989), section 6213(c)) by the chief executive officer of the State. (*See* section 1861(aa)(2) of the Act, following subparagraph (K).) There are three types of shortage area designations applicable to RHC qualification: health professional shortage areas, medically underserved areas, and governor-designated shortage areas. The clinic's service area must have, in addition to being located in a nonurbanized area, one of these shortage area designations if the clinic is to qualify to receive RHC status.

Qualifying clinics also must employ a nonphysician practitioner and, to meet requirements of the OBRA '89, must have a nurse practitioner, a physician assistant, or a certified nurse midwife available to furnish patient care services at least 50 percent of the time the RHC operates.

Growth of RHCs in the Medicare Program

After a slow start, the program has recently grown at a rapid rate—from less than 1,000 Medicare-approved RHCs in 1992 to more than 3,300 in early 2001. While part of this increase has improved access to primary care services in rural areas for Medicare and Medicaid beneficiaries, there are instances in which these additional RHCs have not expanded access.

Continuing Participation

A significant factor in the growth of RHCs stems from the original (pre-BBA) RHC legislation, which included a "grandfather clause" to promote the development of RHCs. (See section 1(e) of Pub. L. 95–210, 42 U.S.C. 1395x *note*. Also see 42 CFR 491.5(b)(2).) Specifically, the third sentence of section 1861(aa)(2) of the Act stated that:

> A facility that is in operation and that qualifies as a rural health clinic (under the Medicare or Medicaid program) and that subsequently fails to satisfy the requirements of clause (i) (in the second sentence of section 1861(aa)(2), pertaining to the rural and underserved location requirement), is considered as still satisfying the requirement of this clause.

This provision protected the clinic's RHC status despite any possible changes to the rural or underserved status of its service area. It allowed clinics to remain in the RHC program even though their service areas were no longer considered rural or medically underserved.

The Congress established this protection to encourage clinics to attract needed health care professionals to underserved rural areas and to retain them without being concerned about losing the shortage area designation, which would make the clinics ineligible for RHC status and its reimbursement incentives. Once the clinic successfully attracted the needed health care professionals to the area, the Congress wanted to ensure that the service area did not return to its previous underserved status because we removed the clinic's RHC status and reimbursement incentives.

Although the grandfather provision was based on justifiable policy considerations, we are now confronted with RHC participation in some service areas with extensive health care delivery systems where Medicare and Medicaid beneficiaries are not having difficulty obtaining primary care. Both the General Accounting Office (GAO) and the Department of Health and Human Services' Inspector General (DHHS/IG) recommended the establishment of a mechanism, under the survey and certification process for Medicare facilities, to discontinue RHC status and its payment incentives in those service areas where they are no longer justified. (See the next paragraph.) In section 4205(d)(3) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33, enacted on August 05, 1997), the Congress responded to these recommendations by amending the grandfather provision to provide protection only to clinics essential to the delivery of primary care.

Medically Underserved Designations

Another reason for the continued growth of the RHC program was that two types of shortage area designations, specifically the medically underserved area (MUA) and Governor's designations, did not have a statutory requirement for regular review and were not systematically reviewed and updated for some time. As a result, some new RHCs may have been certified in areas that would no longer be designated as underserved if reviewed with current data. In response, as discussed below, the Congress amended the legislation by requiring that only those clinics located in shortage areas that were recently designated or updated will qualify for purposes of the RHC program.

Commingling

The growth of RHCs has also been stimulated by industry practices that are designed to maximize Medicare payment by obtaining RHC status for an integrated practice that submits both RHC and non-RHC Medicare claims. We define the term "commingling" to mean the simultaneous operation of an RHC and another physician practice, thereby mixing the two practices. The two practices share hours of operation, staff, space, supplies, and other resources. Commingling occurs in RHCs that are an integral part of another provider, such as a hospital, as well as in RHCs that are independent.

A common approach taken by independent RHCs is to operate a private physician practice in the RHC at the same time the physician is furnishing RHC services to patients. We believe this could lead to incorrect billing or duplicate payments.

Government Reports

Both the GAO and the DHHS/IG concluded that the growth of RHCs is not proportional to community need and that many RHCs no longer require cost-based reimbursement as a payment incentive. They also concluded that the payment methodology for provider-based RHCs lacks sufficient cost controls and recommended establishing payment limits and screens on reasonable costs for these providers. (A provider-based RHC is an integral and subordinate part of a Medicare participating hospital, skilled nursing facility, or home health agency, and is operated with other departments of the provider under common licensure, governance, and professional supervision. All other RHCs are considered to be independent.) For more information on these reports see "Rural Health Clinics: Rising Program Expenditures Not Focused on Improving Care in Isolated Areas" (GAO/HEHS–97–24, November 22, 1996), and "Rural Health Clinics: Growth, Access and Payment" (OEI–05–94–00040, July 1996).

B. Legislation

Refinement of Shortage Area Requirements

Refinement of the shortage area requirements involves two phases.

1. *Phase I.* Section 4205(d)(1) and (2) of the BBA pertain to the requirements in the second sentence of section 1861(aa)(2) of the Act that RHCs must be located in a nonurbanized area as defined by the Bureau of the Census, as well as in a health professional shortage area (HPSA), an MUA, or in a shortage area designated by a State governor. The Congress amended those provisions to state that the rural area must also be one in which there are insufficient numbers of needed health care practitioners as determined by the Secretary. This BBA change will be addressed by our sister agency, the Health Resources and Services Administration (HRSA), under separate rules. The Congress also amended that sentence to specify that, to be used in RHC certification, shortage area designations made by the Department or by a State governor must have been made within the previous 3-year period.

2. *Phase II.* Section 4205(d)(3)(A) of the BBA, which amended the third sentence of section 1861(aa)(2) of the Act, the Congress revised the "grandfather clause" that permitted an exception to the termination of RHC status for a clinic located in an area that is no longer a rural area or a shortage area. This revision amended the grandfather clause to specify that an exception is available only if the RHC is determined to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the RHC. These amendments were made effective upon issuance of implementing regulations that the Congress directed us to issue by January 1, 1999.

Staffing Waiver

Previous to the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508, enacted on November 5, 1990), an RHC was required to employ a physician assistant, nurse practitioner, or certified nurse midwife who must furnish their services 50 percent of the time the RHC operates. Section 4161(b)(2) of the OBRA added section 1861(aa)(7) to the Act to provide us with the authority to grant a 1-year staffing waiver of this requirement if the clinic can demonstrate that it has been unable, in the previous 90-day period, to hire one of these non-physician primary care providers.

Section 4205(c) of the BBA amended section 1861(aa)(7)(B) of the Act to restrict our authority to waive RHC staffing requirements. Under section 4205(c) of the BBA, a staffing waiver may only be granted to an RHC that is qualified and participating in the Medicare program.

Payment Limits for Provider-Based RHCs

Before the BBA, the payment methodology for an RHC depended on whether it was "provider-based" or "independent." Payment to provider-based RHCs for services furnished to Medicare beneficiaries was made on a reasonable cost basis by the provider's fiscal intermediary in accordance with our regulations at part 413. Payment to independent RHCs for services furnished to Medicare beneficiaries was made on the basis of a uniform all-inclusive rate payment methodology in accordance with part 405, subpart X. Payment to independent RHCs was also subject to a maximum payment per visit as set forth in section 1833(f) of the Act.

Section 4205(a) of the BBA amended section 1833(f) of the Act. It now holds provider-based RHCs to the same payment limit and all-inclusive payment methodology as independent RHCs. This provision also provides an exception to the payment limit for those clinics based in small rural hospitals with fewer than 50 beds.

Expanding Access to Rural Health Clinics

Under the BBA, the independent RHC all-inclusive payment methodology and annual payment limit was also used for provider-based RHCs. This BBA provision also provided an exception to the RHC payment limit for those RHCs based in small "rural" hospitals.

Section 224 of BIPA expanded the eligibility criteria for receiving an exception to the RHC annual payment limit, effective July 1, 2001. Specifically, this section of BIPA extends the exemption to RHCs based in small urban hospitals. Thus, all hospitals of less than 50 beds (see section 1833(f) of the Act) are now eligible to receive an exception from the per visit payment limit for their RHCs.

Payment for Certain Physician Assistant Services

Sections 4511 and 4512 of the BBA removed the restrictions on the types of areas and settings in which the Medicare Part B program pays for the professional services of nurse practitioners, clinical nurse specialists, and physician assistants. This provision also expanded the professional services benefits for nurse practitioners and clinical nurse specialists by authorizing them to bill the program directly for their services when furnished in any area or setting. However, these BBA provisions maintained the current policy that payment for physician assistant services can be made only to the physician assistant's employer regardless of whether the physician assistant is directly employed or serving as an independent contractor.

Section 4205(d)(3)(B) of the BBA amended section 1842(b)(6)(C) of the Act to provide that payment for physician assistant services may be made directly to a physician assistant under certain circumstances. As an exception to the payment requirement under the physician assistant professional services benefit, this provision permits Medicare to pay a physician assistant directly who was the owner of an RHC (as described in section 1861(aa)(2) for a continuous period beginning before the date of the enactment of the BBA and ending on the date the Secretary determines the RHC no longer meets the requirements of section 1861(aa)(2) of the Act, for those services provided before January 1, 2003).

Section 222 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) (Pub. L. 106–554, enacted on December 21, 2000) amended section 1842(b)(6)(C) of the Act to permit physician assistants who owned RHCs, and subsequently lost RHC status, to receive direct Medicare payment for their services, effective December 21, 2000. This BIPA provision eliminates the January 1, 2003 sunset date.

Quality Assessment Program

Currently, quality of RHC care is addressed in § 491.11, which requires a clinic to evaluate its total program annually. The evaluation must include reviewing the utilization of the clinic's services, a representative sample of both active and closed clinical records, and the clinic's health care policies. The purpose of the evaluation is to determine whether the utilization of services was appropriate, the established policies were followed, and any changes are needed. The clinic's staff considers the findings of the evaluation and takes the necessary corrective action. These requirements focus on the meeting and documentation of the clinic's evaluation of its quality care and do not account for the outcome of these activities. Section 4205(b) of the BBA amended section 1861(aa)(2)(I) of the Act to authorize us to require that an RHC have a quality assessment and performance improvement program. A quality assessment and performance improvement program enables the organization to systematically review its operating systems and processes of care to identify and implement opportunities for improvement.

We recognize that some RHCs are already incorporating a QAPI program into their normal operating activities. Others will begin to search for guidance in developing an appropriate QAPI program as they transition from complying with the current annual evaluation requirement. For some time now, professional and governmental organizations have been engaged in formulating guidance and in providing samples of QAPI related activities to entities interested in developing QAPI programs. In addition, state offices of rural health are excellent resources at a local level.

The Department of Health and Human Services has previously contracted with the National Association of Rural Health Clinics to develop technical assistance materials for Rural Health Clinics to provide guidance in complying with QAPI requirements. The Department, working through the Health Resources and Services Administration's Office of Rural Health Policy (*http://www.ruralhealth.hrsa.gov*), will make those materials available widely and develop other technical assistance material as needed to help RHCs make the transition to the quality requirements of the final rule.

There are additional on-line resources that offer a wide range of support services to RHCs. Some of the more well known are as follows: The Rural Assistance Center (*http://www.raconline.org*), The National Rural Health Association (http://www.nrharural.org), The Rural Policy Research Center (*http://www.rupri.org*), and The National Association for Rural Health Clinics (*http://www.narhc.org*).

We expect RHCs that have no experience with QAPI programs to take advantage of the resources that are available. RHCs are encouraged to explore a variety of resources so that they can become familiar with the variety of approaches that exist to develop a QAPI program. An RHC that chooses to implement the QAPI resources (that is, model QAPI programs) provided by the Department and other on-line resources mentioned in this regulation will be considered to meet the QAPI condition for certification (CfC) provided that the model program chosen is one that is relevant to the RHC and its patient population.

II. Provisions of the Proposed Rule

On February 28, 2000, we published a proposed rule in the **Federal Register** (65 FR 10450) to implement the BBA amendments concerning the participation of RHCs in Medicare or Medicaid programs.

Definition of Shortage Area for RHC Certification

Section 6213 of OBRA '89 amended 1861(aa)(2) of the Act to expand the types of shortage areas eligible for RHC certification. Until then, the eligible areas included only those designated by the Secretary as areas having a shortage of personal health services and those designated as geographic health professional shortage areas under section 332(a)(1)(A) of the PHS Act. The OBRA '89 amendment expanded the eligible areas to also include high impact migrant areas designated under section 329(a)(5) of the PHS Act; areas containing a population group HPSA designated under section 332(a)(1)(B) of the PHS Act; and areas designated by the Governor of a State and certified by the Secretary as having a shortage of personal health services. Later, however, the Health Centers Consolidation Act of 1996 (Pub. L. 104–299) renumbered section 329 of the PHS Act and repealed the requirement for designation of high migrant impact areas.

We proposed to amend § 491.2 to conform the regulations to the above statutory changes, by defining shortage areas for RHC purposes to include all four remaining types of designated areas. The types of shortage areas eligible for RHC certification are geographic and population based HPSAs, MUAs, and areas designated by the Governor of the State.

A. Refinement of Shortage Area Requirements

As noted above, section 4205(d)(1) of the BBA amended the second sentence of section 1861(aa)(2) of the Act to require the use of shortage areas designated "within the previous 3-year period." We proposed to amend § 491.3(b), to refer to "a current shortage area for which a designation is made or updated within the current year or the previous 3 years." In §§ 491.3 and 491.5, we proposed to establish the procedures and standards for granting an exception to clinics essential to the delivery of primary care that would otherwise be unavailable in the geographic area served by the clinic.

Eligibility for an Exception

In § 491.3, we specified that an RHC located in a rural area that is no longer designated as medically underserved, is eligible to apply for an exception. Those RHCs located in an area no longer designated as a nonurbanized area as defined by the Census Bureau are not eligible to apply for an exception.

Additionally, in § 491.3(c), we specified procedures for submitting an exception request.

Criteria for Exception

We proposed, in § 491.5, to allow an exception to an existing RHC that can satisfy one of the following tests:

Sole Community Provider. We proposed to classify an existing RHC as "essential" if it is the only Medicare or Medicaid primary care provider within the service area. Specifically, it is the only participating provider within 30 minutes travel time.

Traditional Community Provider. We also proposed to classify an existing RHC as essential if it is the sole RHC for its community and the only primary care provider that has traditionally served Medicare, Medicaid, and uninsured patients in the community despite the fact that there may be other primary care providers that have recently begun participating within reasonable travel time of the RHC.

Major Community Provider. We also proposed to classify an existing RHC as essential if it is treating a disproportionate greater share of the patients in its community compared to other RHCs that are within 30 minutes travel time.

Specialty Clinic Test. We proposed to classify an existing RHC as "essential" if it exclusively provides pediatric services or obstetrical/gynecological (OB/GYN) services for its community.

Graduate Medical Education (GME) Test. We proposed to classify an existing RHC as "essential" if it is actively participating in an accredited GME program.

B. Payment Limits for Provider-Based RHCs

We proposed to amend § 405.2462 to provide payment to all RHCs on the basis of an all-inclusive rate per visit, subject to the per-visit payment limit. We also proposed to include within this section the definition for identifying small rural hospitals with fewer than 50 beds for purposes of the exception to the payment limit.

For hospitals that are the primary source of health care in their rural community as defined at § 412.92, we proposed to look to the hospital's average daily census rather than bed size in determining whether RHC services are subject to the upper payment limit.

C. Staffing Requirements

Practitioners Available 50 Percent of the Time

Under our current regulations, an NP or PA must be available to furnish patient care services at least 60 percent of the time the RHC operates. However, section 6213(a)(3) of OBRA '89 amended the staffing requirements for an RHC, described in section 1861(aa)(2)(J) of the Act, to require that a CNM, NP, or PA be available to furnish patient care services at least 50 percent of the time the RHC operates.

Therefore, we proposed to revise § 491.8(a) to require that a nurse practitioner, physician assistant, or certified nurse midwife be available to furnish patient care at least 50 percent of the time the RHC operates.

Temporary Staffing Waiver

We proposed to amend § 491.8 to provide that only currently participating RHCs (not facilities applying for participation) are eligible for this waiver. We also proposed to amend § 491.8 to include procedures for when the waiver expires.

D. Commingling

We proposed to revise § 405.2401(b), "Scope and definitions," to clarify that the term "rural health clinic" means a facility that meets certain other requirements, and does not share professional staff, space, supplies, records, and other resources with another Medicare and Medicaid entity.

E. Quality Assessment and Performance Improvement Program

We proposed the requirement that an RHC set priorities for performance improvement based on the prevalence and severity of identified problems. We proposed to replace the existing requirements in § 491.11 with the proposed quality assessment and performance improvement (QAPI) program that contains three standards that would address: (1) The components of a performance improvement program; (2) monitoring performance activities; and (3) program responsibilities. In § 491.11(a), the first standard, would require that an RHC objectively evaluate the following critical areas: clinical effectiveness; access to care; and patient satisfaction. We did not propose specific language to set a minimum level of effort for clinics. Instead, we specifically invited comments on the best approaches to achieve a minimum level of effort.

Section 491.11(b), the second standard, would require that for each of the areas listed under the standard in § 491.11(a), the clinic must measure, analyze, and track aspects of performance that the clinic adopts or develops that reflect processes of care and clinic operations.

Section 491.11(c), the third proposed standard, would require that the RHC's professional staff, administration officials, and governing body (where applicable) ensure that there is an effective quality assessment and performance improvement program as well as the current requirement for assessing utilization.

III. Analysis of and Responses to Public Comments on the Proposed Rule

On February 28, 2000, we published a proposed rule on RHCs in the **Federal Register** (65 FR 10450), on which we received 110 letters of comments. Commenters included individuals and health care professionals. A summary of those comments and responses follows:

Several comments were not directed to a specific provision of the February

2000 proposed rule, but concerned the implementation of the proposed rule and the potential impact on RHCs financial viability and access to care. Specifically, the loss of RHC status and the cost of additional regulatory requirements on clinics could negatively impact providers, especially small clinics, and their patients.

We share the commenters' concerns with preserving access to care for Medicare and Medicaid beneficiaries and the cost impact of establishing additional regulatory requirements. However, we believe the clarifications and changes that we are making to the regulations will eliminate or significantly reduce negative impact on rural providers and their communities.

Several commenters raised issues unrelated to the provisions of this rule. In this final rule, we only address the comments pertaining to the RHC proposed rule published on February 28, 2000, in the **Federal Register** (65 FR 10450).

Scope and Definitions (§ 405.2401)

Comment: Several commenters indicated that the definition of "shared space" should be clarified. For example, can an RHC lease or rent to a specialist during RHC hours of operation? Also, can an independent laboratory operate within RHC space during clinic hours as long as the cost is not included on the clinic's cost report?

Response: We are revising, in § 405.2401(b), the definition of *Rural health clinic (RHC)* to state that the RHC definition applies to physicians and nonphysician practitioners working for the entity to furnish RHC services. These practitioners are prohibited from operating a private Medicare or Medicaid practice during RHC hours of operation. Therefore, a specialist and an independent diagnostic laboratory can operate practices in leased or rented space within the RHC. The RHC definition was never intended to prohibit the operation of a multipurpose facility. The operation of a multipurpose facility and the sharing of common space (for example, waiting room), staff, and other resources is permissible as long as the costs are appropriately excluded from the RHC cost report.

Comment: Several commenters indicated belief that the proposed rule would prohibit RHCs from performing nonprimary care services. The commenters suggested that we not force the provider to set up two separate facilities.

Response: As discussed above, the RHC definition was never intended to prohibit the operation of a multipurpose facility. The operation of a multipurpose facility and sharing a common space, staff, and resources is permissible as long as the costs are appropriately excluded from the RHC cost report. Therefore, in § 405.2401(b)(1), we are revising the regulation to clarify that physicians and nonphysician practitioners working for the RHC cannot operate a private Medicare or Medicaid practice during RHC hours of operation, using clinic resources.

Comment: Several commenters pointed out that problems associated with commingling should be addressed by improving cost reporting. The commenters stated that we should require the fiscal intermediaries to pay close attention to the Medicare Part B services on the Medicare cost report.

Response: We disagree with the commenters. We believe that the issue of commingling cannot be effectively addressed through the cost reports. When a practitioner who is working for an RHC shifts from patient to patient for billing Medicare and Medicaid (for example, simultaneously operates as a private practice under Medicare Part B and as an RHC under Medicare Part A), both the provider and the Medicare fiscal intermediary would have a difficult time accurately apportioning the cost associated with RHC patients. We believe the administrative burden of accurately allocating cost for the Medicare and Medicaid programs, as well as for the provider, would out weigh the benefits derived from this type of commingling.

Comment: One commenter suggested that we prohibit a single health care professional from billing both Medicare Part A and Part B in the RHC setting.

Response: Our proposed policy was established for the primary purpose of prohibiting health care professionals assigned to the RHC from billing Medicare Part B during clinic hours, using clinic resources. Therefore, we are revising proposed § 405.2401(b)(1) to clarify that physicians and nonphysician practitioners working for the RHC cannot operate a private Medicare or Medicaid practice during RHC hours of operation, using RHC space and resources.

Comment: A commenter indicated that it would be extremely difficult to conduct a pediatric practice in which publicly funded patients and privately funded patients were not treated equally in the same environment at the same time.

Response: The RHC definition prohibits physicians and nonphysician practitioners who are working for the RHC from billing fee-for-service under Medicare and Medicaid during RHC hours, using RHC space and resources. We do not intend to regulate clinic policies for privately insured patients.

Comment: A commenter suggested that we allow more flexibility in the provisions of this regulation to recognize unique rural situations. Improving or maintaining access to care in rural communities requires adaptability to local situations.

Response: RHCs should not be paid for professional and facility costs through the Medicare cost reports while its practitioners simultaneously use RHC space and resources to bill fee-for-service benefits, which include these costs. Furthermore, we believe that the clarifications and changes that we are making to this policy, based on public comments, will provide sufficient flexibility for rural clinics to address access problems within their communities.

Comment: A commenter asked us to clarify § 495.2401(b)(1) that addresses practices other than Medicare, such as Medicaid and private pay, to ensure that practitioners are able to comply with the commingling rule.

Response: The RHC definition will preclude RHC practitioners from operating private Medicare and Medicaid practices during clinic hours, using RHC space and resources.

Comment: A commenter suggested that RHCs eligible for essential provider status should be given an exception to the commingling rules.

Response: The proposed changes to the RHC definition are intended to remove opportunity to duplicate billing and payments. This concern applies to all RHCs. Therefore, all RHCs must comply with the definition as stated in § 405.2401(b).

Comment: A commenter recommended that we provide RHCs with a specific list of CPT codes that should be included in the cost report. Many RHCs provide services beyond primary care and bill these services to Medicare Part B and deduct the costs from the RHC cost report. The commenter believes that an RHC definition specifying CPT codes would resolve the current issue of commingling.

Response: We disagree with the commenter. We do not believe it is appropriate to dictate the scope of the RHC practice by creating a list of medical services that must be billed and paid for outside the RHC benefit. We would run the risk of creating either an incomplete or overly inclusive list for participating RHCs, which vary in size and scope. Moreover, to do so would be contrary to the statute and therefore unenforceable. We believe the best approach for maintaining program integrity for the RHC benefit is to require that RHC physicians and nonphysician practitioners remain devoted to the RHC and its patients during clinic hours of operation as stated in § 405.2401(b)(1).

Comment: Several commenters suggested that an exception to the commingling rule should be granted to all rural hospitals or at a minimum to small rural hospitals with less than 50 beds. Rural hospitals, other than critical access hospitals (CAHs), experience difficulty recruiting sufficient staff to cover the RHC and emergency room simultaneously.

Response: We wish to clarify that the sharing of staff between hospital and the RHC is not commingling. We agree that any rural hospital with limited resources should be allowed to share staff between its RHC and emergency room. As discussed above, the primary purpose of § 405.2401 is to preclude physicians and nonphysician practitioners working for the RHC from operating a private Medicare or Medicaid practice during RHC hours of operation, using RHC space and resources. Therefore, it is permissible for any hospital-based RHC to share its health care practitioners with emergency rooms, as long as the clinic continues to meet RHC certification requirements and sufficient documentation is provided to allocate costs on consistent and rational basis.

Comment: A commenter expressed belief that the CAH exemption should be expanded to include rural hospitals that meet CAH requirements, but have chosen not to participate in the CAH program.

Also, several commenters suggested that in proposed § 405.2401, we should consider exempting RHCs located in extremely rural communities, such as frontier areas (less than six persons per square mile). These facilities face limitations on their available medical resources similar to CAHs.

Response: We agree that any rural hospital with limited resources should be allowed to share staff between its RHC and emergency room. We removed references to CAH and have clarified the purpose and scope of § 405.2401 to address both concerns.

Comment: Two commenters raised concerns about the necessary documentation to receive an exception to the commingling rule. The commenters suggested that the documentation should be done through the cost reports instead of through detailed practitioner logs, which can be very burdensome.

Response: We revised the regulation to clarify that any rural hospital with limited resources should be allowed to share staff between its RHC and emergency room. With regard to the documentation issue, we will delegate to our intermediaries the decisions regarding acceptable accounting methods for allocation of staff costs between the RHC and other entities to be used in this documentation. We agree that maintenance of detailed practitioner logs on an ongoing basis is very burdensome, and other alternatives exist to achieve the desired results of assuring a proper allocation of costs, on a consistent and rational basis.

Comment: Several commenters recommended that RHCs be allowed to have nonclinic providers and medical specialists in their establishments during RHC hours of operation as long as all expenses are deducted out of the cost report.

Response: We never intended to restrict or preclude these arrangements. We are revising the regulation to clarify that physicians and nonphysicians who are employed to furnish RHC services are precluded from billing fee-for-service under Medicare and Medicaid during RHC hours of operation. Medical specialists who lease or rent space from the clinic can bill for their services during the clinic's hours. RHCs are also allowed to share common space (for example, waiting room), staff, and other resources with these specialists as long as the RHC appropriately removes the costs from its cost report.

Comment: Two commenters asked us to clarify whether RHC physicians who are on-call with an emergency room would violate the commingling rule. RHC physicians who provide on-call services, as opposed to being on-duty, should be allowed under this rule. Failure to amend the regulations to clarify this issue could reduce the availability of emergency room care for many rural communities.

Response: We agree that RHC physicians who provide on-call services for an emergency room should not be considered in violation of the commingling rule. It is clearly permissible for RHC physicians to provide on-call services for an emergency room as long as the clinic continues to meet RHC certification requirements and costs are appropriately excluded from the RHC cost report.

Comment: A commenter believes that sole community providers also need to commingle staff and equipment for financial and operational reasons.

Response: We agree with the commenter. We are revising proposed § 405.2401 to state that any hospital-based RHC is allowed to share its health care practitioners with the emergency room as long as sufficient documentation is provided allocating costs.

Comment: A commenter believes providers should be allowed to operate an RHC and an emergency room in the same facility (especially small rural hospitals). There should be no sharing of staff during the hours of RHC operation, but we should acknowledge there are instances of common resource sharing. For example, it is customary for providers to share medical supply cabinets.

Response: We agree that providers should be allowed to operate an RHC and an emergency room in the same facility. In the case of shared storage space (shared medical supply cabinets), patient care supplies should be clearly distinguishable from those of any other entity in every respect.

Payment for Rural Health Clinic Services and Federally Qualified Health Clinic Services (§ 405.2462)

Comment: Several commenters suggested that the United States Department of Agriculture (USDA) Urban Influence Codes 5 through 7 should also be considered for rural hospital eligibility for the exception. There are many smaller rural communities surrounding cities, but they do not fall within the codes of 8 or 9.

Response: In defining rural for the Medicare program, we have consistently used the definition of Metropolitan Statistical Area (MSA) as established by the Office of Management and Budget (OMB). The available bed definition at § 412.105 is also a longstanding definition used in the Medicare program. We believe that these definitions are reasonable and appropriate for identifying eligible RHCs based in small rural hospitals. The alternative definition of bed size and rural was proposed to accommodate, based on industry concerns, extremely rural hospitals operating under extenuating circumstances. Communities that fall in the levels 5 through 7 are considerably less rural than those in level 8 or level 9. For example, a level 5 is a rural county with a city exceeding a population of 10,000 adjacent to a metropolitan area where a level 8 is a rural county that has a city with a population of less than 10,000 not adjacent to a metropolitan area. In light of the stark differences in rurality of these areas, we see no basis for changing the standard.

Comment: Several commenters strongly urged the adoption of the broader rural definition under the Balanced Budget Refinement Act of 1999 (BBRA) for the exception to the payment limit for RHCs based in small rural hospitals. This definition, which is purported to be an improvement over the MSA definition, addresses the problem experienced in certain western States.

Response: In 2000, section 224 of BIPA expanded the eligibility criteria for receiving an exception to the RHC annual payment limit, effective July 1, 2001. Specifically, this section of BIPA extends the exemption from the upper payment limit to RHCs based in small urban hospitals. Thus, all hospitals of less than 50 beds are now eligible to receive an exception from the per visit payment limit for their RHCs. Therefore, we are revising § 405.2462(a)(3) to reflect changes made by BIPA. Please note that we will continue to use the bed size definition at § 412.105(b) to determine which RHCs are eligible for the payment limit exception. We will continue to apply to the alternative definition of bed size (patient census) only extremely rural hospitals operating under extenuating circumstances as set forth at § 405(a)(3)(ii)(A).

Comment: A commenter encouraged us to adopt the RHC definition of rural for purposes of exemption to the payment limit. This rural definition resolves the problems with the MSA definition as it relates to western States.

Response: As discussed above, we are revising § 405.2462(a)(3) to reflect changes made by BIPA.

Comment: A commenter recommended that the payment limit exception should be based on whether the provider is in a rural area or whether its average daily census is less than 50 beds.

Response: Although section 224 of BIPA expanded the eligibility criteria for receiving an exception to recognize RHCs based in small urban and rural hospitals, it maintained the bed size test. Consequently, we are retaining that requirement in our rules at § 405.2462(a)(3).

Comment: A commenter believes that allowing any hospitals with an average daily census of 40 is very generous and will probably continue the abuse of the RHC program.

Response: We agree with the commenter; therefore, we will retain the requirement in § 405.2462(a)(3)(ii)(A), which states that the average daily census criterion would apply only to extremely rural, sole community hospitals.

Comment: Several commenters indicated that the 50-bed requirement should be defined using average daily census. Rural hospitals with an average daily census of below 50 beds are the types of facilities the Congress is concerned about. Also, this information is reflective of the number of patients served and the size of the hospital.

Response: Although there are a number of ways to define a hospital bed size (that is, licensed, certified, staffed, or patient census), we believe our available bed definition (staffed) is appropriate and generous compared to the other existing definitions. We believe it is the most reflective method for identifying the actual size of a hospital. As a general measure, the average daily census definition for counting inpatient hospital beds would be too generous for this provision, as it is less reflective in terms of identifying the actual size of a hospital. For example, this definition could qualify hospitals staffed or licensed for 75 beds or more. We believe qualifying those hospitals for the RHC payment limit exception would be inconsistent with the congressional intent.

Comment: Several commenters suggested changing the proposed threshold pertaining to the fluctuation of patient census at or above 150 percent of the lowest monthly average census to a more reasonable level or eliminating the standard. Many vulnerable hospitals do not have a single period of seasonal fluctuation in census, but instead experience multiple, and unpredictable, fluctuation in patient census.

Response: We share the commenters' concerns that some rural hospitals may experience multiseasonal activity making it impossible, for an otherwise eligible facility, to meet the 150 percent fluctuation occupancy threshold. Therefore, we are revising proposed § 405.2462(a)(3)(ii) to eliminate the proposed 150 percent fluctuation threshold for patient census.

Comment: Two commenters suggested that we use the ambulatory payment classification (APC) system when defining rural for the payment limit exception. The commenters believe that this system would allow physicians in the rural census tracks of MSAs to be considered rural. The commenter asked us to use the same rural definition being used for the APC system.

Response: The current APC system uses the OMB "rural" definition as well as the Goldsmith modifier. As discussed above, the BIPA expanded the location requirement to include rural and urban areas. Consequently, the Congress has resolved this issue by recognizing small hospitals in urban and rural communities as qualifying for the payment exception.

Comment: Two commenters suggested an automatic exception should be given to small rural hospitals with an average daily census of 15 beds or less, regardless of the number of licensed or staffed beds, and any hospital in a frontier area.

Response: We do not have the discretion to waive the 50-bed requirement for hospitals located in frontier areas. Furthermore, we fail to see the merit, as it relates to the intent of this provision, in providing an automatic exception to hospitals with very low occupancy rates that are staffed or licensed with more than 50 beds. This provision was established to help small rural hospitals and their clinics that represent the sole source of health for their communities remain financially viable. An automatic exception of this type could grant an exception to hospitals with significant excess capacity located in marginally rural areas. Even for hospitals in frontier areas, we do not have the authority to grant an automatic exception to extremely rural hospitals that cannot satisfy the 50-bed requirement.

Comment: A commenter recommended extending the payment limit exception in § 405.2462 to clinics based in rural hospitals with less than 50 beds and to freestanding clinics in the same rural area.

Response: We do not have the authority to grant exceptions to the RHC payment limit for these providers. Only RHCs based in small hospitals with fewer than 50 beds are eligible for the exception.

Comment: Two commenters recommended that the 40 or less average daily patient census requirement should be increased to 45. Hospitals in remote rural areas should not be required to hold their inpatient acute care occupancy to a level that is significantly below the 50-bed maximum requirement in the BBA. Very rural hospitals do not have the ability to transfer, and should not be required to reject patients just to meet this requirement.

Response: We believe this requirement is necessary and appropriate for this provision. The 40 or less average daily patient census requirement was established to meet the needs of small hospitals in extremely rural areas experiencing seasonal fluctuations. Without significant fluctuations in patient census, these hospitals would be operating with less than 50 staffed beds. Hospitals with an average daily patient census in excess of 40, in spite of seasonal fluctuations, would likely have to operate with more than 50 staffed beds, which is contrary to the statute.

Definition of Shortage Area for RHC Purposes (§ 491.2)

Comment: Several commenters suggested that we clarify in proposed § 491.2 that an area designated as a low-income HPSA would qualify for RHC certification.

Response: We believe the rule is sufficiently clear regarding the applicability of low-income HPSAs for RHC certification. Section 491.2(c) states that population group HPSAs, which include low-income population group HPSAs, meet the definition of shortage area for RHC purposes.

Comment: A commenter asked for clarification of the guidelines that would be used to determine HPSAs. Specifically, will there be changes that would impact those areas that are currently designated as HPSAs?

Response: The designation of HPSAs and medically underserved populations (MUPs) is delegated by the Secretary to HRSA, and is not covered by these RHC regulations. HRSA issued a proposed rule in September 1998 (63 FR 46538) to revise the regulations for designation of shortage areas, but this proposal was withdrawn in July 1999 because of a high level of public concern about its potential impact. HRSA has been conducting further analysis to address these concerns, and plans to issue new proposed rules for designation of HPSAs and MUPs in 2004.

Comment: A commenter pointed out that the BBA amended the RHC provisions to state that "the rural area must also be one in which there are insufficient numbers of needed practitioners as determined by the Department." The January 2000 proposed rule does not address this amendment. There is a need for regulations in this area because current designations do not define an acceptable range for supply of providers to population.

Response: By statute, we are required to rely on HRSA to designate areas as medically underserved. As previously discussed, HRSA is currently developing another proposed rule to revise its methods and standards for designating shortage areas. HRSA's regulation will address the issue of provider supply to population.

RHC Procedures (§ 491.3)

Comment: A commenter pointed out that it is unfair to apply the 3-year currency requirement for MUAs. There is not a systematic review of MUAs. The 3-year requirement should only apply to underserved designations that are systematically reviewed.

Response: Section 4205(d) of the BBA requires clinics entering the RHC program, as well as participating RHCs, to be located in a service area designated or updated within the previous 3-year period. This statutory requirement also applies to all medically underserved designations for RHC qualification purposes. We do not have the authority to exclude certain designations, such as MUAs. However, we believe that affected clinics must be given sufficient time to submit an application to update their service areas. We believe it is imperative that these clinics be given adequate time to submit applications to avoid being unnecessarily disqualified from the RHC program. We also believe these clinics should be protected from RHC disqualification while their applications are under review. Therefore, we are revising § 491.3(b)(2) to clarify that RHCs located in service areas with outdated shortage area designations will have 120 days, from the date we notify the facility about its compliance issue, to submit an application to update its medically underserved designation. In addition, we clarify in new § 491.3(b)(3) that the RHC will be protected from disqualification while its applications are under review. That is, affected clinics will not be considered out of compliance with the 3-year currency requirement for 120 days from the date HRSA formally receives the application. In rare cases where HRSA or the State cannot complete their review within 120 days, clinics will continue to be protected from RHC disqualification until a formal decision is made.

Typically, applications for updating shortage area designations are reviewed within 90 days. We will work closely with HRSA to ensure that all applications are processed within this timeframe.

As stated above, HRSA is responsible for the designation of HPSAs and MUAs, and certification of Governor's designations of eligible areas for the RHC program. HRSA works closely with the State Primary Care Office (PCO) in each State in administering the HPSA and MUA review activity, and in the certification of Governor's designations. Individuals or facilities interested in seeking a new or updated HPSA or MUA, or who wish to inquire regarding a possible Governor's designation, are encouraged to contact the appropriate State PCO. (A list of these contacts is available by calling 1–800–400–2742, or online at *http://www.bphc.hrsa.gov/*.) Information on the HPSA and MUA criteria, procedures, frequently asked questions, and current designation status is also available at this web site. (For further information on HPSAs and MUAs, please contact Andy Jordan, Acting Chief, Shortage Designation Branch, National Center for Health Workforce Analysis, Bureau of Health Professions, at HRSA (301–594–0816).)

Comment: Several commenters indicate belief that an extension from RHC disqualification should be granted to clinics while their medically underserved status is being formally updated. The application process for updating underserved designation may unintentionally disqualify otherwise eligible clinics.

Response: We agree that some clinics, that are otherwise eligible, may be disqualified as an RHC if their service area cannot be updated in a timely manner. In § 491.3, paragraphs (b)(2) and (b)(3), we clarify the regulation to protect RHCs from disqualification that are in the process of formally updating their shortage area designations. Clinics that exceed the 3-year requirement will not be disqualified from RHC participation while their service area is in the process of being formally updated by HRSA or the State.

Comment: Two commenters suggested that the 3-year currency requirement in § 491.3(b) is too short. The costs and structural changes needed to set up an RHC cannot be recouped in 3 years.

Response: Section 4205(d) of the BBA requires clinics entering the RHC program, as well as participating RHCs, to be located in a service area designated or updated within the previous 3-year period. We do not have the authority to modify this requirement.

Comment: A commenter recommended that we require States to contact all providers by mail before an underserved area designation is revoked. If the community or clinic appeal the decision, CMS regional offices should have the authority to stop an RHC from having its designation revoked.

Response: We rely on HRSA to designate shortage areas. HRSA's review process provides affected communities and providers with advanced notice of a designation withdrawal and the right to appeal this decision. Our process for terminating RHC status does not start until HRSA formally withdraws the shortage area designation.

Comment: A commenter suggested that we should continue to recognize an area for RHC certification unless the area has been de-designated two times in a 3-year succession.

Response: We do not have the authority to recognize an area for RHC participation unless it has been recently designated or updated (within the previous 3 years). The BBA mandates the use of current shortage area designations.

Comment: A commenter suggested the proposed rule should be coordinated with the rules for designating shortage areas. Some RHCs may have a difficult time coping with these regulations if they are finalized all at once.

Response: We are aware of the interrelationship between these regulations and their potential impact on rural providers. HRSA is developing a new proposed rule that would address the major issues raised through the public comment period on its proposed rule published on September 1, 1998 in the **Federal Register** (63 FR 46538) Designation of Medically Underserved Populations and Health Professional Shortage Areas. Although we do not know exactly when a new proposed rule will be issued, the two agencies are in close contact and are striving to establish and coordinate their policies in a way that is sensitive to the needs and concerns of rural underserved communities.

Comment: Several commenters recommended that we revise the proposed 90-day timeframe for submitting an application for an exception.

Several commenters recommended a 6-month timeframe. The commenters believe that the data needed to qualify for exception may not be readily available; therefore, RHCs should be given ample time to gather and submit the necessary information.

Another commenter supported the proposed 90-day timeframe as reasonable, but recommended that we build in some flexibility to extend this application period if the time is too short.

Further, a commenter suggested that the sole and traditional community provider tests are needed, but suggested that the 90-day timeframe for submitting an exception application based on this test be extended. The commenter indicated belief that it will be difficult for providers to research and demonstrate compliance.

Response: Although we believe the proposed 90-day timeframe for submitting an application for an exception is sufficient for most cases, we recognize that some applicants may need additional time. Thus, we revise § 491.3(c)(2) to provide clinics with 180 days to submit an application.

Comment: Several commenters recommended extending the proposed 90-day timeframe for removing RHC status. The adjustment period following de-certification needs to be longer to allow practitioners who choose to remain after de-certification to establish independent practices. For example, the affected RHCs will need to obtain a new provider number, which could take 4 to 6 months.

Response: Although we believe that the 90-day timeframe for removing RHC status is a sufficient amount of time for most providers to arrange to receive Medicare and Medicaid fee-for-service payments, we acknowledge that some providers may need additional time. Consequently, we are revising § 491.3(c)(5) to provide until the final day of the 6th month from the date of notification for ineligible clinics to transition from RHC status to a different Medicare and Medicaid payment and billing system.

Comment: Several commenters, in addition to extending the timeframe for removing RHC status, suggested making the termination effective date the last day of the month for administrative reasons.

Response: In terms of cost reporting and billing, we see merit in making the effective date for RHC termination the last day of the month. Consequently, we are revising proposed § 491.3(c)(5) to specify that the effective date for termination will be the final day of the 6th month from the date of notification that the clinic's location no longer meets program requirements. However, the RHC may be terminated earlier based on noncompliance with other certification requirements.

Comment: A commenter recommended that the regulation clearly state that we are responsible for notifying a clinic that its RHC status is in jeopardy and the 90-day timeframe should begin after receipt of this notice.

Response: We believe that this final rule is sufficiently clear regarding this issue. Sections 491.3(c)(2) and 491.3(c)(5) state that we notify the clinic of its ineligibility to participate in the Medicare program as an RHC.

Comment: A commenter suggested making an exception permanent unless the community is no longer considered rural. To reapply is an unnecessary waste of the provider's limited time.

Response: Clinics receiving essential provider status must meet certain conditions. Therefore, we believe it is necessary and reasonable to expect these clinics to demonstrate continued compliance with these conditions. Clinics receiving this special status will be required to provide to us, every 3 years, assurances that they continue to meet the conditions for being an essential clinic.

Comment: A commenter asked us to clarify that an exception can be renewed every 3 years.

Response: We are revising proposed § 491.3(c)(3) to clarify that an essential clinic can renew its RHC status every 3 years as long as the facility can provide assurances to us that they continue to meet one of the tests at § 491.5(b).

Location of Clinic (§ 491.5)

Comment: A commenter suggested that we extend the grandfather provision for a limited period of 10 years for existing clinics in areas no longer designated as rural and underserved. A less favorable option would be to implement a phase-out over a minimum of 10 years, with reimbursement reduced from 100 percent to 80 percent. In a 10-year period, an RHC affected by de-designation would have adequate time to plan for its future.

Response: Section 4205(d) of the BBA requires us to terminate RHC status for clinics no longer located in a rural or underserved area. An exception from termination is only available if the RHC is determined to be essential to the delivery of primary care. Consequently, we do not have the authority to grant an automatic 10-year extension from RHC disqualification, nor do we have the discretion to implement a phase-out of RHC reimbursement.

Comment: A commenter believes an RHC should be considered "essential" if there is a lack of resources to absorb and appropriately serve the client population in the absence of the RHC. If an RHC has a Medicaid, Medicare, uninsured payer mix of 60 percent or greater, it should be considered an essential RHC.

Response: The major community provider test is based on the premise that the clinic is essential because it cares for a substantial number of low-income patients (Medicaid and uninsured) within the community and that there are insufficient providers willing or capable of serving these patients. In order to ensure that the major community provider test takes into account this issue, CMS will consider willingness and resources of other providers to accept Medicare, Medicaid, and uninsured patients when determining essential provider status. For example, CMS will look at the size and scope of the other participating providers as well as their level of participation in the Medicaid program. Additional guidance regarding this review criterion will be provided through Medicare manuals following issuance of this final rule. As explained in the proposed rule, the issuance of an exception as a major community provider was not intended to be a routine occurrence. We examined the issue of using an absolute Medicare, Medicaid and uninsured payer mix threshold for defining a major community provider and we rejected this idea because it may not accurately determine essential clinics at the community level due to wide variability in population composition and utilization. However, for those clinics applying as major community providers, CMS would require the RHC applicant to have, at a minimum, Medicare, Medicaid and uninsured utilizations rates reasonably consistent with the national average.

The Office of Rural Health Policy, within the Department of Health and Human Services, recently conducted a national RHC survey. Their survey-based data indicate that the average RHC utilization rates are as follows: Medicare (30 percent), Medicaid (25 percent) and uninsured (15 percent). An RHC applicant would be required to demonstrate under the major community provider test that their combined utilization rates for low-income patients (Medicaid and uninsured) would, at a minimum, equal or exceed 31 percent to even be considered eligible to apply for a major community provider exception. An RHC applicant could also meet a combined minimal utilization rate for Medicare, Medicaid and uninsured patient threshold of 51 percent to satisfy this screen. CMS believes the above minimal national utilization patient threshold is reasonable in light of the national average utilization rates and necessary to ensure consistency and fairness with respect to identifying major community providers.

Comment: A commenter suggested that priority be given to clinics that provide a real medical home for their patients. For example, clinics that have a full time physician with hospital admitting privileges and provide 24-hour coverage for their patients should be granted priority as essential clinics.

Response: The proposed tests for identifying an essential clinic are based on whether the RHC is the sole or major source of primary care for Medicare beneficiaries and low-income patients (Medicaid beneficiaries and uninsured). Although we believe that an after hours coverage system and full time physician care are important factors, the clinic must still demonstrate that it has an open door policy regarding low-income patients. As discussed above, CMS is requiring that these essential provider tests must take into account the willingness and resources of other providers to accept and treat Medicare and Medicaid beneficiaries and the uninsured.

Comment: Several commenters believe clinics that have lost their rural status should be allowed to apply for an exception as an essential clinic. The regulation could exclude some RHCs that are still in medically underserved communities but fail to meet the rural location requirement. The CMS proposed policy could result in the loss of an essential RHC for uninsured and Medicaid patients.

Response: We agree with the commenters that an RHC that has lost its rural status but is still located in a valid shortage (geographic and population-based HPSAs, MUAs, and areas designated by the Governor of the State) area should be permitted an opportunity to apply for an exception from RHC disqualification. CMS recognizes that there may be some RHCs located in small, isolated urbanized service areas that are marginally above the minimum population threshold for qualifying as non-urbanized but represent the sole or major source of outpatient physician care for outlying rural areas designated as medically underserved. Consequently, we are revising § 491.5 to allow RHCs located in medically underserved "urban" service areas to apply for an exception as a sole, major, or specialty community provider. However, we believe that these clinics should also be required to demonstrate that they are an essential provider of primary care for patients residing in a rural area. The RHC program was established for the purpose of improving and maintaining access to primary care for "rural" underserved communities. In order to retain RHC status, CMS believes every RHC must be able to show that it continues to satisfy this basic program objective. It would be inconsistent with Congressional intent to grant exceptions from RHC disqualification to clinics non-essential to the delivery of primary care for rural patients. Consequently, CMS is requiring that at least 51 percent of the applicant's clinic patients reside in rural areas. We believe that a rural patient origin threshold of 51 percent is very reasonable in light of the statutory objective of the RHC.

Comment: Two commenters suggested that we conduct an extensive needs assessment of each community before rescinding the clinic's designation. If RHC status is removed, it may diminish the quantity and quality of health care services to an already underserved population.

Response: We believe that an extensive needs assessment is unnecessary in light of the fact that HRSA already has made a determination that the area is no longer medically underserved. Furthermore, the purpose of granting essential provider status to RHCs is to ensure that access to quality care for Medicare, Medicaid, and uninsured patients is preserved despite the fact that the area is no longer considered rural or medically underserved.

Comment: A commenter suggested that the grandfather protection regarding essential provider status should be extended to rural clinics that lose their medically underserved designation. The commenter believes that if protection cannot be provided to these clinics in this manner, we should amend the exception process by including poverty level and access problems to transportation as eligibility factors.

Response: Section 4205(b) of the BBA requires us to determine whether a clinic is essential despite the fact that its area is no longer considered rural or medically underserved. We believe it would be inconsistent with congressional intent to provide an automatic exception to every clinic no longer located in a designated shortage area without making a determination whether the clinic is essential.

Comment: A commenter believes that any clinic that received its underserved designation to establish an RHC should be able to retain its status. Providers that have established clinics in very rural areas and successfully recruited physicians to these areas should receive an exception.

Response: We believe clinics that can demonstrate that they are essential based on the proposed conditions should be granted an exception. With regard to expanding the exception process to include clinics located in very rural areas, we believe this suggestion merits consideration. Please see the discussion below on how we intend to address this concern.

Comment: A commenter pointed out that some of the proposed exception tests may not be based on community need. Some of the tests do not distinguish between clinics with one physician and clinics with several physicians.

Response: We agree that the proposed tests need to take into account the willingness and resources of other providers to accept and treat Medicare, Medicaid, and uninsured patients. In light of this, we are requiring that the essential provider test must take into account the willingness and resources of other providers to treat and accept Medicare and Medicaid beneficiaries, and the uninsured.

Comment: A commenter encouraged us to establish an extension process for the RHC certification of the area losing its underserved designation if it can be demonstrated that with the closure of the RHC, the areas would qualify as an underserved area.

Response: We believe the proposed conditions for being considered essential addresses this type of situation. However, as discussed above, we are clarifying § 491.5 to require that the proposed tests for determining essential provider status must take into account the willingness and resources of other providers to accept and treat Medicaid, Medicaid, and uninsured patients.

Comment: A commenter encouraged us to look at why and how the service area has solved its shortage problem. It may to be due the RHC recruiting additional providers.

Response: We believe that our proposed conditions for granting essential provider status speak directly to this issue. This is particularly true for the sole community provider test. We will grant an exception when the successful recruitment of additional health care professionals by an RHC results in the dedesignation of the shortage area. This was proposed to make sure that these sole community clinics and their new practitioners remain viable providers.

Comment: A commenter encouraged us to more clearly define "community" as it is used in the exception process. For example, does it mean the service area of the RHC or the town in which the clinic operates?

Response: The RHC's service area for determining essential provider status is based on 30 minutes travel time from the RHC applicant. We are revising proposed § 491.5(b)(1) to clarify this determination at it relates to all the essential provider tests.

Comment: A commenter questioned whether more than one RHC could qualify for an exception in a given geographic area, assuming that each RHC meets the requirements for an exception.

Response: It is very possible that more than one RHC within a particular service area could receive essential provider status. In other words, there is no restriction on granting multiple exceptions within a specific service area as long as each RHC meets the conditions for receiving an exception.

Comment: Several commenters believe special consideration should be given to clinics that make house calls and provide after hours coverage for their community. These providers may be essential in communities with inadequate transportation services.

Response: We believe that these are important factors, but supplementary to the provider's overall importance to community. In other words, providers that have devoted their practice to treating Medicare beneficiaries and low-income patients (Medicaid beneficiaries and the uninsured) should be able to satisfy one of the tests in this final rule without relying on an after hours coverage system or on making house calls. Our proposed essential provider tests were designed to recognize clinics that are the sole or major source of primary care for Medicare beneficiaries and low-income patients (Medicaid beneficiaries and the uninsured.)

Comment: The commenter suggested that special consideration should be given to clinics that provide pharmacy, x-ray, and lab services that otherwise would be unavailable.

Response: Although these are important services, we believe that essential provider status must focus on the professional services of physicians and nonphysicians, which are core RHC services. We also believe that these exceptions must be based on the clinic's dedication towards treating low-income patients (Medicaid beneficiaries and the uninsured).

Comment: Several commenters believe that the criteria for identifying essential clinics should factor in rural service areas with inadequate transportation services.

Response: We believe the proposed tests for identifying essential providers should address the issue of inadequate transportation services. However, since this condition cannot be easily measured or identified on a national level, we believe the best way of addressing this issue is by allowing for more than one RHC in a given service area to receive an exception as an essential clinic under the major and specialty provider tests. As discussed below, we are revising the proposed rule to permit, when warranted, multiple exceptions in a service area.

Comment: A commenter suggested that in counties that lose their underserved classification, we should apply a standard deviation or percentage test to determine if the county is so vulnerable that they should be granted an exception.

Response: Section 4205(d) of the BBA requires us to determine whether the facility is essential to the delivery of primary care for its community. Although the tests in this final rule indirectly take into account these issues, we cannot grant an exception without assessing the importance of the clinic to primary care for Medicare, Medicaid, and uninsured patients within that community. In other words, we are obligated by statute to determine whether the facility is essential to the delivery of primary care.

Comment: A commenter believes that we should provide our regional offices the authority to grant an exception on a case-by-case basis. There may be legitimate circumstances that would warrant an exception as an essential clinic that cannot be properly identified under our specific tests.

Response: We disagree with the commenter. We believe that the proposed specific tests and the additional refinements that we have made to these conditions, based on provider comments, will minimize or eliminate any negative impact on access to care for rural communities. We also believe the additional clarifications and changes to the essential provider tests should provide our regional offices with enough flexibility to recognize these circumstances.

Comment: Several commenters believe clinics located in very rural areas should automatically be granted an exception. We should recognize frontier areas and consider at least the inclusion of level 8 and level 9 USDA urban influence codes. Recruiting and retaining practitioners in remote areas is a constant struggle and we should eliminate the anxiety and cost associated with the possible loss of RHC status.

Response: We believe this suggestion has merit. Rural areas that are sparsely populated are more vulnerable to losing their shortage area designations. For example, the recruitment of just one additional practitioner in a frontier area could trigger a disqualification of the area's underserved status. In light of this, we believe clinics located in very rural areas should receive an exception. Consequently, we are revising § 491.5 to grant an exception to any RHC located in a frontier county or a rural area or in a level 8 or level 9 nonmetropoltan county using urban influence code as defined by the USDA. However, we will only provide an exception to these very rural clinics if they can demonstrate that they have traditionally served Medicare, Medicaid, and uninsured patients and continue to maintain an open door policy.

Comment: A commenter suggested that any RHC 50 miles or more from the next nearest hospital should be granted an exception.

Response: We believe that these clinics will qualify as an essential RHC under one of the tests. The commenter seems to be describing a situation where the area is very remote and has limited health care resources. Because our proposed tests target these situations, we see no reason for changing the regulation.

Comment: Several commenters indicate that we should automatically recognize essential provider status for clinics affiliated with critical access hospitals (CAHs), Medicare dependent hospitals (MDHs), and sole community hospitals (SCHs). The criteria for essential provider status are extensive, ranging from shortage area status to treating the uninsured. Consequently, it would seem appropriate and consistent with essential provider status for the RHC program.

Response: Although we agree that some of the criteria for CAH and SCH status are consistent with essential provider status for the RHC program, clinics applying for this special status should not automatically receive an exception because of their hospital affiliation. There could be cases where the clinic of the CAH or SCH would not satisfy the requirements for being an essential RHC. Therefore, the RHC should be required on its own to demonstrate compliance with the essential provider conditions.

Comment: Several commenters suggested that we should reduce the time and distance standard, for example, change it to 20 minutes or 15 miles. Many Medicare and Medicaid patients have a barrier to transportation services in rural areas. Furthermore, some rural communities have special populations, such as prison, indigent, or Medicaid.

Response: We agree that the proposed tests for identifying essential providers should address the issue of inadequate transportation services. However, regarding this specific issue, we believe it more appropriate and effective to grant an exception to more than one RHC in a given service area under the major and specialty provider tests than reducing the time and distance standards. Consequently, we are revising § 491.5 to clarify that we will, for the major and specialty provider tests, grant multiple exceptions within a specific service area as long as each RHC meets the conditions for receiving an exception.

Comment: A commenter suggested that we should establish a special population exception criteria to reflect certain populations (for example, the Amish) and rural communities with a high proportion of elderly or low-income residents. Additionally, rural areas designated as a low income HPSA or MUA should also qualify for the special population exception.

Response: The proposed essential provider tests already address the issue of special populations. All of the tests focus on the clinic's devotion to treating Medicaid, Medicaid, and uninsured patients. For establishing a special population exception for low-income HPSAs or MUAs, rural clinics located in service areas that have a current (within the previous 3 years) designation of this type are not in jeopardy of RHC disqualification.

Sole Community Provider Test

Comment: Several commenters suggested that the sole community provider test should be applied to clinics that are the sole source of primary care for their small rural town that are 8 to 10 miles apart from other small rural towns. The commenter believes that, under the proposed 30-minute test, the time and distance of the roundtrip may deny access to care for Medicare and Medicaid patients.

Response: Although we believe the time and distance standards in the proposed rule are reasonable, we acknowledge the need to preserve RHC status for sole community clinics located in small rural towns. The residents of these rural towns, especially those who lack access to transportation, may experience difficulty obtaining needed health care if the clinic cannot remain financially viable. Consequently, we are revising proposed § 491.5(b) at § 491.5(b)(l)(ii) to clarify that we will, when appropriate, grant an exception to more than one RHC within a specific service area, as long as each RHC meets the conditions for receiving an exception. We believe this will allow RHCs that are the major or primary source of health care for their small rural town to receive an exception.

Comment: A commenter believes the our proposed 30-mile test is inconsistent with published HPSA criteria of 25 miles.

Response: We agree that HRSA applies a 25-mile test for areas connected by interstate highways. We are revising proposed § 491.5(b)(1)(iii) to correct this inconsistency.

Comment: A commenter asked how the distances would be measured for determining the sole community provider test. The commenter questioned, for example, whether the distance will be based on actual driving time or on results from a mapping software program.

Response: For administrative efficiency, we will apply the time and distance test using a mapping software program.

Comment: A commenter pointed out that using the RHC as the geographic center does not take into account the distance a large percentage of patients travel in the opposite direction of the "other" primary care practice.

Response: We believe the proposal to use the RHC as the geographic center for identifying sole community provider status is reasonably accurate and feasible from an administrative standpoint. We have applied this method for the SCH and CAH programs. Therefore, we believe it is also appropriate for the RHC program.

Comment: A commenter believes that we need to provide a standard definition under this rule for the terms such as "secondary roads" and "primary roads." The use of these terms without providing a clear definition could lead to misinterpretation.

Response: HRSA has consistently applied the definitions in the Rand McNally Road Atlas for identifying primary, secondary, and interstate highways for purposes of the 30-minute travel test. We will also apply these standard definitions when reviewing essential provider applications.

Comment: A commenter recommended that RHCs requesting exception status should be immune from the 30-minute test if they have a formal sliding fee scale in place and 10 percent or more of their encounters are indigent patients.

Response: The sole community provider test already requires the applicant to demonstrate that it accepts Medicare, Medicaid, and uninsured patients that present themselves for treatment. Therefore, to waive the 30-minute test would simply make the sole community provider test a weakened form of the major community test, and would mean that it would no longer be focused on clinics that are the sole source of primary care for Medicare and Medicaid patients in their community.

This specific essential provider test recognizes clinics as sole community providers for Medicare beneficiaries and low-income patients (Medicaid beneficiaries and the uninsured). For example, a clinic could receive this sole clinic status if it is the sole source of primary care for Medicaid and uninsured patients. If the clinic is not the sole source of care for Medicare, Medicaid, or uninsured patients, it can qualify as a major community provider by demonstrating it is a significant source of health care for indigent patients, such as Medicaid and uninsured patients.

Comment: A commenter recommended that the "participating primary care provider" language under the sole and traditional community provider test should be expanded to require that these other providers must actively accept and treat uninsured patients, be engaged in full-time practice and be currently accepting new patients. Allowing an RHC to be de-designated because of the presence of other primary care providers who are semi-retired or only work part-time would place access to care for the community at risk.

Response: We agree that the proposed tests need to take into account the willingness and resources of other providers to accept and treat Medicaid, Medicaid, and uninsured patients. In light of this, we are requiring that the essential provider test must take into account the willingness and resources of other providers to treat and accept Medicare, Medicaid, and uninsured patients. The major and specialty provider tests must take into account the acceptance and treatment of Medicare and Medicaid beneficiaries, and the uninsured (regardless of their ability to pay.) The sole community provider test already stipulates that other providers in the community must accept Medicare, Medicaid, and uninsured patients to be considered.

Comment: A commenter suggested consideration for a system of care network under the exception process for essential clinics. A single multisite health care system is often the sole organization providing health care in a rural area. The commenter believes a system's clinics could lose their designation due to the physical location of another clinic.

Response: If the service area is no longer considered medically underserved or rural, each RHC will be required to demonstrate that it is essential based on the specific tests set forth in this final rule. An entity that owns and operates several RHCs would not be permitted to submit one application on behalf of all its clinics. The essential provider tests can only be appropriately applied on a facility specific basis.

Comment: A commenter questioned why we did not establish a time and distance standard based on the standard used for sole community hospitals. The commenter indicated belief that we should make the criteria more consistent to avoid confusion and ensure more equitable treatment of sole community RHCs and hospitals.

Response: Our proposed time and distance criteria are based on published HPSA criteria because these shortage area designations represent a core qualification requirement for RHC participation. In light of this linkage, we believe it is more appropriate to apply the HRSA criteria instead of the SCH standards.

Traditional Community Provider Test

Comment: Several commenters believe the traditional community provider test should require that new providers must demonstrate that they have been accepting Medicare, Medicaid, and uninsured patients for a 5-year period. In addition, a determination should be made whether the non-RHC providers have the resources to treat an expanded patient population that would be created if the RHC would be closed.

Response: We are folding the traditional community provider test into the major community provider test to streamline and simplify the exception process for potential applicants. CMS believes, based on the many comments and different scenarios presented, that it would be more reasonable to combine these two tests. Clinics with an open door policy that are also the sole participating RHC for its community should be allowed to receive an exception as long as they represent a major source of primary care for its community. With regard to the specific issue of non-RHC providers having sufficient resources, we are requiring that the major community provider test must take into account the willingness and resources of other providers to accept Medicare, Medicaid and uninsured patients.

Comment: A commenter asked for clarification regarding the 5-year status for treating Medicare, Medicaid, and uninsured patients and how it is affected by a change of ownership.

Response: As stated above, CMS is combining the traditional and major community provider test for simplification. Consequently, CMS is no longer explicitly imposing the 5-year requirement. However, CMS expects the sole participating RHC to be a traditional primary care provider compared to other Medicare and Medicaid participating providers within the community.

Comment: A commenter suggested that the traditional community provider test should be expanded to address the situation where the rural community has two RHCs and both see Medicare, Medicaid, and uninsured patients.

Response: In addition to combining the traditional and major community provider tests, we are revising the major community provider test to address this issue. We acknowledge that there could be a situation where a rural community may have more than one RHC that represents a major source of primary care for its Medicare, Medicaid, and uninsured patients. We are revising proposed § 491.5(b) at (b)(1)(ii) to clarify that more than one RHC in a given service area may receive an exception as a major community provider.

We are also revising this provision to eliminate the requirement that an RHC must be treating a "disproportionately greater share" of Medicare, Medicaid, and uninsured patients compared to other participating RHCs to allow for more than one exception. As stated above, there could be a situation where there are two RHCs in the service area and both equally share the responsibility of treating the indigent patients within the community.

Comment: A commenter asked us to clarify the length of time requirement for treating Medicare, Medicaid, and uninsured patients.

Response: As stated above, CMS is combining the traditional and major community provider test for simplification. Consequently, CMS is no longer explicitly imposing the 5-year requirement.

Comment: Several commenters recommended, for the essential provider tests, independent verification of information submitted by another community provider. This type of information is critical to accurately determining whether the provider has an open or closed practice to Medicaid and uninsured patients.

Response: Our regional offices require supporting information to verify these claims and use, when feasible, their own data (enrollment and billing information) to determine whether the other primary care providers have an open practice to Medicare, Medicaid, and uninsured patients.

Major Community Provider Test

Comment: Several commenters requested specific guidelines for the major community provider. The proposed language could lead to misapplications and misuse. For example, how will the term "disproportionate" be defined and how will the percentages be calculated?

Response: The applicant will not be required to meet an absolute threshold in terms of Medicare and Medicaid utilization. The premise behind this test is to grant an exception to an RHC that has an open practice to indigent patients (Medicaid and uninsured) and represents a major source of health care for these patients when other RHCs in the same service area do not provide or limit services to these patient groups. The applicant will be required to demonstrate that it has devoted its practice to serving Medicare, Medicaid, and uninsured patients, and continues to maintain this open door policy. Furthermore, the clinic's utilization rates for low-income patients would have to be consistent with the claim that it is a major source of primary care for its service area. For example, if there are three RHCs located in a rural town, which is no longer considered medically underserved, and two of the RHCs claim to be major community providers because their utilization rates for low-income patients exceed 45 percent, we would consider these RHCs with the higher utilization rates as major community providers if the third RHC has utilization rates of less than 10 percent for low-income patients. Also, as explained above, CMS would require the RHC applicant to have, at a minimum, Medicare, Medicaid and uninsured utilization rates consistent with the national minimal patient utilization threshold. An RHC applicant would be required to demonstrate under the major community provider test that their combined utilization rates for low-income patients (Medicaid and uninsured) would, at a minimum, equal or exceed 31 percent to be eligible to apply for a major community provider exception.

Comment: Several commenters pointed out that multiple RHCs may be necessary to share the uncompensated and indigent care load. Multiple RHCs do not necessarily mean excess capacity.

Response: We acknowledge that there may be a situation where more than one RHC in a particular rural area represents the major source of primary care for Medicare, Medicaid, and uninsured patients. For example, there may be three RHCs located in a rural town that is no longer considered medically underserved, but only two of the three RHCs treat the Medicaid and uninsured population for that rural community. Therefore, we are revising proposed § 491.5(b)(1)(ii) to clarify that more than one RHC in a given service area can receive an exception as a major community provider. However, as discussed above, there must be supporting evidence that the applicants represent a major source of primary care for the patient population of the service area.

Comment: A commenter recommended that if we establish a national minimum utilization standard for the major community provider test, it should be set no higher than a combined Medicare, Medicaid, and uncompensated care rate of 60 percent.

Response: We rejected the idea of using a specified Medicare, Medicaid, and uninsured payer mix for defining a major community provider because it may not accurately determine essential clinics at the community level due to a wide variability in utilization from region to region. We believe the best approach is to require the clinic to demonstrate that it represents a significant source of primary care for Medicare and indigent patients (Medicaid and uninsured).

Comment: Several commenters requested clarification of the situation when a "provider" may not be limited to one discreetly certified site.

Response: Health care entities that own and operate multiple RHCs would not be permitted to submit one application on behalf of all its clinics. The essential provider tests can only be appropriately applied on a facility specific basis.

Comment: A commenter believes we should state, for the major community provider test, that a disproportionate share of Medicare, Medicaid, and uninsured patients is defined as serving a higher percentage of these patients than the percentage in the community at large.

Response: The goal of this essential provider test is to identify clinics that are the major source of primary care for Medicare, Medicaid, and uninsured patients. We believe the test must *not* be solely based on whether the clinic is serving a higher percentage of these patients compared to other RHCs in the community, but based on whether the clinic represents a major source of primary care for these patients. The test, for example, will identify whether, without the presence of the clinic, other RHCs have the capacity or willingness to fill the void in terms of furnishing care to Medicare, Medicaid, and uninsured patients.

Comment: A commenter asked whether the RHC applying for the exception would be compared to other RHCs or all primary care providers.

Response: Clinics applying under this exception test will be compared only to other RHCs. However, in situations where the clinic is the only participating RHC, the test will compare the RHC to other primary care providers.

Specialty Provider Test

Comment: Several commenters expressed belief that the specialty provider test should be expanded to include mental health services. Recent reports have indicated a serious need for mental health services in rural underserved areas.

Response: We acknowledge that many rural areas are seriously underserved in terms of mental health services. We see the merit of expanding the specialty provider test to include RHCs that provide mental health services. Therefore, we are revising proposed § 491.8(a)(6) to expand this essential provider test to recognize RHCs that employ a clinical psychologist or clinic social worker. We are expanding the specialty provider test in § 491.5 to grant exceptions to RHCs that represent the sole source of mental health care for their communities and that furnish these covered mental health services on-site.

Comment: Several commenters recommended that the exclusive provider language under the specialty provider test should be changed to give exemptions to specialty providers that see the majority of Medicare, Medicaid, and uninsured patients. There could be two pediatric clinics in the community, but only one clinic sees a disproportionate share of Medicare, Medicaid, and uninsured patients.

Response: We agree with the commenters that this essential provider test should take into account the possibility that there may be more than one specialty clinic furnishing primary care to Medicare, Medicaid, and uninsured patients. We share the commenters' concern that there may be two specialty clinics in the service area that equally share in treating indigent patients or, as described above, there may be two clinics and only one sees the majority of low-income patients. Consequently, we are revising § 491.5(b)(1)(ii) to eliminate the sole source of care requirement. We clarify that more than one RHC within a service area can receive an exception under this test as long as the applicant can demonstrate that it represents a major source of care for indigent patients (Medicaid and uninsured). Furthermore, the RHC applicants would be required to demonstrate that their utilization rates for low-income patients (Medicaid and uninsured) would, at a minimum, exceed equal or 31 percent to even be considered eligible to apply for a specialty clinic test as a major source of pediatric or OB/GYN care. We are making this change to be consistent with the major community provider test.

Comment: A commenter believes clarification may be needed, under the specialty test, regarding general medicine RHCs that include part-time or full-time OB/GYN or pediatric care.

Response: This test was established to specifically target clinics that exclusively provide pediatric and OB/GYN care. We believe the other tests in this final rule will give those clinics that do not limit their practice by gender or age an opportunity to qualify as an essential provider.

Comment: Several commenters suggested that the specialty provider test should recognize other services, such as geriatrics, cardiology, gastroenterology, orthopedics, oncology, and other specialty services at the discretion of the Secretary.

Response: The specialty provider test was established to specifically target clinics that exclusively provide pediatric and OB/GYN care. Although we agree that these are vital services, they go beyond the intended scope of the RHC program. The only exception to this will be geriatrics, which we believe is addressed by the other essential provider tests.

Comment: A commenter asked us to consider expanding the test over a wider geographic area. RHCs may be the sole providers of specialty services in the surrounding communities.

Response: We are revising § 491.5(b)(2)(iii) for this test to grant exceptions to specialty clinics that are the sole or major source of primary care for their communities. We believe this change diminishes the importance of how we define the boundaries of the clinic's service area.

Comment: A commenter recommended that the definition of specialty clinic provider should be revised to address a defined population rather than the entire census population.

Response: We are revising § 491.5(b)(2)(iii) to grant exceptions to specialty clinics that are the sole or major source of primary care for Medicare (where applicable), Medicaid, and uninsured patients. We acknowledge that pediatric clinics that have lost their medically underserved status may only be able to demonstrate that they are the sole or major source of primary care for Medicaid, and uninsured patients.

Comment: A commenter suggested that this test should be expanded to include women's health services as an essential service provider. In some States, RHCs are the exclusive provider of breast and cervical screening for Medicare, Medicaid, and uninsured patients.

Response: The specialty provider test was established to specifically target clinics that exclusively provide pediatric and OB/GYN care. We believe it is unnecessary to further target other specialties. Rural clinics that provide these important services should easily qualify under one of the other tests as set forth in this final rule.

GME Test

Comment: Several commenters recommended that RHCs providing supervised training to nonphysician practitioners should also be eligible under the GME test. They pointed out that this would bolster the Congress' intent to encourage the use of these practitioners to improve access in rural areas. The commenters also indicated that the Federal government has for many years actively supported training through title VII and title VIII of the PHS Act.

Response: We disagree that this essential provider test should be expanded to include RHCs that are part of a formal training program for nonphysician practitioners. CMS believes that the GME test is no longer needed in light of all the refinements and clarifications made to the other essential community provider tests. In other words, CMS strongly believes that any RHC receiving direct GME payment will now be able to easily satisfy one of the several other tests for being considered essential to the delivery of primary care. When this test was first proposed on February 28, 2000, CMS expected that there would be a significant number of RHCs receiving direct GME payments by the time this test was formally issued. Unfortunately, this has not occurred. In light of this fact and the many refinements to the rule, which have expanded on the other essential community provider tests, CMS is revising the regulation to eliminate the GME test.

Comment: Several commenters suggested that we should expand the GME test to include clinics that have a formal arrangement with a medical school to rotate medical students through the clinic.

Response: As discussed above, we are eliminating the GME test.

Staffing and Staff Responsibilities (§ 491.8)

Comment: A commenter suggested that an RHC that can document ongoing recruitment efforts should be allowed additional time for waivers in filling the vacancy. The commenter stated that for some rural communities it is difficult to attract nonphysician providers.

Response: We disagree with the commenter. Section 4161(b)(2) of the OBRA '90 added section 1861(aa)(7) to the Act to provide us with the authority to grant a 1-year waiver of the mid-level requirement for existing RHCs and RHC applicants. The BBA amended section 1861(aa)(7)(B) of the Act to restrict our authority to allow a waiver for RHC applicants. Therefore, we are retaining the requirement in the new § 491.8(d)(1).

Comment: We received several comments regarding the nonphysician practitioner requirement for RHCs. One commenter recommended that the requirement be eliminated for areas that are no longer health professional shortage areas. The commenter believes that a community that has been successful in recruiting physicians may no longer need a nonphysician practitioner to serve the area. A second commenter believes that the requirement may be difficult to comply with and mandate the hiring of personnel that are not cost effective.

Response: We do not have the authority to eliminate the nonphysician staffing requirement. Both the Federal statute and regulations mandate the use of nonphysician practitioners. Specifically, § 491.8(a)(6) clearly specifies that a nonphysician practitioner must be available to furnish patient care services at least 50 percent of the time the RHC operates.

Comment: A commenter suggested that start-up RHCs in extremely rural areas, such as a designated frontier county (less than six persons per square mile) should receive an exception from the staffing requirements in § 491.8 The difficulty in establishing, much less maintaining providers in frontier areas is well documented.

Response: Section 491.8(a)(6) states that a physician or nonphysician practitioner must be available to furnish patient services at all times during RHC hours of operation. Section 4205(c) of the BBA restricts our authority to grant a waiver to clinics applying for RHC status. The RHC applicant must demonstrate that it employs a nonphysician practitioner before it can receive approval as an RHC.

Comment: A commenter asked us to clarify the term "operates" as it relates to the requirement of staffing a nonphysician practitioner 50 percent of the time. For example, does it mean normal business hours and excludes extended hours?

Response: The term "operates" in § 491.8(a)(6) means the total operating schedule during which the clinic furnishes RHC services.

Quality Assessment and Performance Improvement (§ 491.11) (Condition for Certification (CFC) for Rural Health Clinics)

Comment: Most of the commenters agree that a quality assessment and performance improvement program is needed for RHCs. They also agreed with the flexibility of RHCs to design and carry out their own performance improvement programs. One commenter stated support for our interpretation of congressional intent to implement quality assessment and performance improvement (QAPI) programs in RHCs. Another commenter was in favor of replacing the current "annual evaluation" process, stating that the current process is of little value.

Response: We appreciate the supportive comments. Our revised quality requirements in § 491.11 are directed at improving outcomes of care and satisfaction for patients while eliminating unnecessary procedural requirements. A QAPI program must be based on a continuous, proactive approach to both managing the RHC and improving outcomes of care and patient satisfaction. As stated in section II. E of this preamble discussion, the BBA requirement, the new QAPI standard will replace the current program evaluation condition for certification at § 491.11.

Comment: Many commenters stated that the requirement, as proposed, is too burdensome and would be counterproductive for clinics with limited staff and resources. They stated the clinics do not have the resources to carry out the volume of evaluation proposed. Further, some commenters stated that a QAPI program would increase the cost to deliver care at a rural health clinic. One commenter suggested a pilot program in provider-based facilities that can be later expanded to independent clinics with a cost allowance. Also, two commenters suggested a phase-in period be considered.

Response: There are two distinct steps to a QAPI program. The first step is to compare care delivered against an identified standard for a particular type of health care provider or delivery system. The second step is to correct or improve processes of care and clinic operations that are predictive of improved outcomes of care or actual care outcomes. Currently, RHCs are required to carry out or arrange for an annual evaluation or assessment of their total program, take necessary actions to correct remedial problems, review policies and guidelines for medical management of health problems, and review the utilization of clinic services. Currently, resources that are allocated to the annual program evaluation can be used to comply with the new QAPI requirement.

We anticipate that both large and small RHCs will use a variety of performance measures in their QAPI program. These measures may be designed by the clinic itself or by other sources outside the clinic. We are clarifying proposed § 491.11(b)(3) to state that the RHC will determine the number and frequency of distinct improvement projects it will conduct. The QAPI program could result in some immediate costs to an individual clinic. However, we believe that the QAPI program will result in real, but difficult to estimate, long-term economic benefits to the clinics (such as cost-effective performance practices or higher patient satisfaction that could lead to increased business for the clinic).

We disagree with a phase-in or pilot approach for the QAPI program. Clinics are currently performing, at a minimum, the evaluation or assessment portion of the new standard. The final rule will change the focus in performing the evaluations. Instead of focusing on the processes, we want clinics to focus on improving outcomes and patient satisfaction. Rather than making remedial changes (fixing problems once they occur), we prefer clinics to continuously improve the quality of care they provide. We expect a clinic's assessments to be based on objective data or information that will enable them to assess if changes are needed and to subsequently evaluate the effectiveness of the changes or interventions. Striving to improve care that is given must be the number one priority in delivering care for any provider. As currently permitted in existing § 491.11 for annual evaluation, clinics will be free to arrange for or to solicit outside assistance with their QAPI efforts.

Comment: A few commenters stated many RHCs already have quality assurance programs in place and those current programs should be considered for content and value. To eliminate duplication for provider-based clinics, several commenters recommended that we should accept QAPI programs designed to meet the requirement of an accrediting agency (that is, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) as meeting the minimum level of effort required by the proposed rule.

Response: There are no accrediting organizations that have been approved and granted deemed status for RHCs. Any assertion that RHC meet the QAPI requirements of any accrediting body does not substitute for onsite inspection by State survey agencies to ensure compliance with the Medicare requirements. We believe that the standards in § 491.11 are very basic to any QAPI program. For example, JCAHO's accreditation process for ambulatory care providers requires measurement in areas of clinical effectiveness, access to care, and patient satisfaction. All of these areas are under the umbrella of "organizational processes, functions and services" areas in which we require clinics to perform a self-assessment and improve performances. If a clinic currently has a QAPI program that addresses the requirements of this final rule, we do not see a need to require a clinic to duplicate its quality activities. To the extent that clinics are currently evaluating their processes, functions and services, they will be better prepared to comply with our QAPI rule. We expect RHCs that have no experience with QAPI programs to take advantage of the resources that are available. RHCs are encouraged to explore a variety of resources so that they can become familiar with the variety of approaches that exist to develop a QAPI program. An RHC that chooses to implement the QAPI resources (that is, model QAPI programs) provided by the Department and other on-line resources mentioned elsewhere in this regulation will be considered to meet the QAPI CfC provided that the model program chosen is one that is relevant to the RHC and its patient population.

Comment: One commenter stated that because of the physician credentialing process, board oversight process, State sentinel event laws, and malpractice suits, there is very little need for more quality assessment regulations from us. A few commenters stated that the introduction of the issue of specific attention to medical errors is troublesome in that there appears to be no legislative requirement for this specific area. These commenters believe that medical errors should not be addressed or required in the QAPI requirement. Another commenter stated that the responsibility for medical errors should be left to each State's licensing authority.

Response: While we agree that credentialing, oversight, and the reporting of sentinel events are fundamental activities that occur and are required on a State level, we disagree that these activities, or malpractice suits, negate the requirement for RHCs to have a QAPI program. The focus of any QAPI is to improve outcomes and patient care without being prompted by negative activities such as sentinel events or lawsuits. In fact, the prevention of the occurrences must be considered by the clinic when developing its QAPI strategy.

In the 1999 report entitled "To Err is Human: Building a Safer Health System," the Institute of Medicine (IOM) of the National Academy of

Sciences discussed medical errors as one of the nation's leading causes of death and injury. The report estimated that more people die from medical errors each year than from highway accidents, breast cancer, or autoimmune deficiency syndrome. The Administration called for increased awareness and accountability in America's health care system. Further, the Secretary may impose requirements on providers if they are found necessary in the interest of the health and safety of the individuals who receive services from the providers. We believe it is appropriate to include a discussion on medical errors in the preamble language for the QAPI standards. In lieu of proposing a specific standard requiring RHCs to track and analyze medical errors, we believe that errors and the potential for errors will be detected and resolved through the clinic's QAPI activities.

Comment: Several commenters expressed caution about the elimination of structure and process criteria in favor of outcome measures. They stated that quality of care is a function, as well as a result of all three of the domains (clinical effectiveness, access to care, and patient satisfaction) in the proposed rule. One commenter further stated that there is insufficient evidence and experience to support a comprehensive shift solely to outcome standards. They also stated that care involving low-volume and high-risk procedures should also be a focus of assessment and improvement as needed.

Also, several commenters stated that the QAPI requirement provides very little flexibility and seems to require that improvement projects be done in all clinical and nonclinical areas annually on the basis of performance criteria that have yet to be determined.

Response: The fundamental purpose of the QAPI requirement is to set a clear expectation that RHCs must take a proactive approach to improve their performance and focus on outcomes of care. This does not eliminate the need for improving structures and processes that are indicative of improving outcomes.

However, after further consideration, in response to the commenters' concerns, we have removed, in this final rule, reference to the specific domains: access to care, patient satisfaction, and clinical effectiveness. While the domains are critical areas in which a clinic must evaluate its performance, the final rule allows clinics the flexibility to identify their own areas to address. RHCs are required to use objective measures to analyze organizational processes, functions, and services annually. RHCs are required to develop, implement, maintain, and evaluate an on-going self-assessment of the quality and appropriateness of care provided through their data-driven QAPI program. We do not intend and are not in a position to judge the measures themselves; instead, we will assess their utility for the clinic in its own efforts to improve its performance.

We also believe that it is critically important that RHCs identify opportunities to improve and expand the use of information technology (IT) to prevent medical errors and improve quality of care. This Administration is committed to working with other public and private stakeholders to develop means for improving and expanding the use of information technologies (such as, computerized patient records). We encourage RHCs, as they assess their organizational processes, functions, and services, to identify opportunities and make use of information technologies. We believe that the effective use of IT systems could prove invaluable to improving the quality and safety of patient care over time. We will allow RHCs to undertake programs of investment and development of IT systems that are designed to result in improvements in patient safety and quality of care as an alternative to performance improvement projects (see § 491.11(b)(5)). In recognition of the time and resources required to develop and implement these IT programs, we would not require that associated activities have a demonstrable benefit in their initial stages, but would expect that quality improvement goals and their achievement would be incorporated in the plans for these programs. We believe that this modification demonstrates this Administration's deep commitment to patients, high quality care, and flexibility to our partners.

Comment: Several commenters stated that quality assurance programs should be applied to all clinics that provide care to Medicare and Medicaid beneficiaries, not just those in underserved areas.

Response: We agree that all providers must have an effective quality assurance program. The purpose of this final rule is to implement requirements for RHCs as required by the BBA. We plan to systematically update regulations for all Medicare and Medicaid providers to require quality assessment and performance programs. We have already required quality assessment and performance programs for certain Medicare providers.

Comment: Several commenters stated that the proposed rule grossly underestimated the time required to implement the data requirements mandated by the QAPI program. Commenters further stated that it would take approximately 70 to 80 hours per year for an RHC to maintain this program. Commenters requested we minimize the data requirement in light of limited staff time.

Response: Under the Paperwork Reduction Act of 1995, we are required to provide notice and solicit comment before a collection of information requirement is submitted to OMB. In that proposed rule, under section III of that preamble, Collection of Information Requirements, we estimated that it would take each clinic a total of 1 hour per year to maintain the data required by the QAPI requirement. This estimation does not include the time it will take to collect and analyze data or perform the activities for the program. The hour is an estimation of the time it will take a member of the clinic's staff to store or file the documentation of the QAPI program activities. RHC resources that are currently used to comply with existing annual program evaluation can be used to comply with the new QAPI requirement. We have not established a specific amount of data to be collected. The minimum data, or information, required is that which will enable a clinic, with its available staff and resources, to assess change or improvement.

This QAPI CoP will replace the existing program evaluation CoP found at § 491.11. RHCs are currently required to perform an annual program evaluation and the burden reported for the annual evaluation will be used in the new QAPI requirement. We agree that the PRA collection (0938–0334) should be updated to increase burden for RHCs to develop a QAPI program and train staff. The estimation of 70 to 80 hours to maintain a QAPI program may be realistic for the clinic that commented. However, it is difficult to accurately state the impact of the QAPI requirement on RHCs without knowing the size and scope of the clinics and how complex the QAPI program will be for each clinic. We have developed this requirement with the flexibility that allows both large and small clinics to develop a program that reflects the resources and complexity of each clinic's organization and services.

We estimate that on average it will take a clinic approximately 40 hours to develop a QAPI program. For those clinics that are provider based and have experience with the QAPI process, this time will be reduced. This time will also vary based on the simplicity or complexity of the program that a clinic develops. The QAPI CfC will replace the existing annual program evaluation CfC (42 CFR 491.11). The activities that are currently covered by the existing PRA on file with OMB are found in § 491.9—"Provisions of Services." These activities include—Patient care policies; guidelines for medical management of health care problems; and procedures to review and evaluate services furnished by the RHC. In the existing PRA for the current regulations, the burden hours for provisions of services include 10 hours (one time) for initial development, and 2 hours annually for review and revision. The next time we update its PRA submission for Part 491, we will add the 10 hours and 2 hours with the 40-hour initial burden for the QAPI program. We used the previous burden estimate for the annual evaluation, in part, to estimate the new QAPI requirement. It is difficult to accurately state the impact of the QAPI requirement on RHCs without knowing the size and scope of the clinics and how complex the QAPI program will be for each clinic. In developing the requirement, we wanted to assure flexibility for RHCs so that both large and small clinics can develop a program that reflects the resources and complexity of each clinic's organization and services. We estimate it will take a clinic approximately 40 hours to develop a QAPI program from a variety of assumptions. First, the hospital QAPI condition of participation estimates 80 hours for a hospital to develop the program. We expect that at the level-of-effort for a RHC would be less than that for a hospital QAPI program as hospitals provide more services than RHCs. For hospital provider-based clinics, we expect that they would already have experience with the QAPI process. Therefore, their level-of-effort would be reduced. The 40-hour time estimate also recognizes that the time will vary based on the simplicity or complexity of the program that a clinic develops. We also estimate that the RHC will spend an additional 4 hours a year collecting and analyzing data. In addition, we estimate that clinics will spend 3 hours a year training and or updating staff on their QAPI program. Since the QAPI program will replace the current annual evaluation requirement, the administrative burden and annual review of policies and procedures are currently covered by 0938–0334.

Requirement	Annual burden hours	One-time burden hours
Program Development		40 hrs × 3,300 = 132,000
Data Collection and Analysis	13,200	
Training		3 hrs × 3,300 = 9,000
Total	13,200	141,000

These are preliminary projections that may change slightly as we update the PRA submission.

Comment: Most of the commenters recommended that, rather than requiring a minimum number of QAPI projects, we require RHCs to demonstrate to the survey agency what projects they are doing and what progress is being achieved. Some commenters suggested requiring two projects annually, while others suggested only one project annually. Another commenter stated that the minimum level should be defined as requiring the RHCs to choose a single domain in which to undertake an evaluation and to perform a single performance improvement project within that selected domain on an annual basis. Still, other commenters stated that the rule should include specific and limited definition of minimal expectations of the QAPI program, particularly for the smaller clinics. Several commenters wanted clarification on how our expectation that the use of performance measures will be commensurate with the size and resources available to the clinic.

Response: We appreciate the comments regarding what must be the minimum expectation for the quality standard. We believe it is important to allow RHCs the flexibility to fulfill this requirement in a variety of ways. As evidenced by the variance in the comments received, clinics have different views regarding the manner in which a clinic must comply with the standard. Each clinic will approach this requirement differently based on its resources and orientation to performance improvement.

The final rule does not require a specific number of improvement projects to be conducted annually. However, we will require that an RHC conduct distinct improvement projects. The number and frequency of distinct improvement projects to be conducted by the clinic as a result of its self-assessment must reflect the level and complexity of the clinic's organization and services. While large provider-based clinics might be involved in a complex QAPI program with its host facility, small independent clinics might develop very simple straightforward mechanisms to evaluate and improve their performance. The QAPI standard is the same for both large and small clinics but it can be fulfilled in a number of ways. We do not expect or insist that very small independent clinics develop a complex program. In both instances, we expect clinics to be proactive in assessing and improving outcomes and patient satisfaction.

Comment: One commenter stated that proposed § 491.11(a)(2) and (a)(3) are misplaced and inappropriate as regulation. They recommended that these instructions be included in the interpretive guidance for surveyors. They further suggested that we replace "and" with "or" and remove the "at a minimum" statement.

Response: We agree with replacing "and" with "or" and removing the "at a minimum" statement and have done so in the final rule.

We disagree that proposed § 491.11(a)(2) and (a)(3) are misplaced and inappropriate for regulation. However, we have made minor clarifying changes to these provisions. Since we allow flexibility in areas of performance measures and the number and frequency of improvement projects, we maintain that it is important to state in the QAPI standards that RHCs are expected to prioritize their improvement activities that most directly affect patient safety and clinical outcomes. Therefore, we have combined the provisions of proposed § 491.11(a)(2) and (a)(3) and included them at § 491.11(b)(2) under the program activities standard.

In section II of the preamble, page 10459, of the February 28, 2000 proposed rule, we included a discussion clarifying how we would apply the term "measure" as it pertains to the QAPI requirement for RHCs. We defined the word "measure" to mean that the RHC would have to use objective means of tracking performance that enables a clinic (and a surveyor) to identify the difference in performance between two points in time. Not all objective measures would have to be shown to be valid and reliable based on scientific methodology in order to be usable in improvement projects. These measures may be designed by the clinic itself or by other sources outside the clinic. We anticipate that both large and small RHCs will use a variety of performance measures in their QAPI program. The proposed standard at § 491.11(b) is now stated in paragraphs (b)(1)(i) and (b)(1)(ii).

In order to promote consistency in the language to describe quality activities, we have replaced the term "performance criteria" in the first sentence of the proposed provision at § 491.11(b) with "performance measures" in § 491(b)(1)(i). We also replaced the word "criteria" in the second sentence of § 491(b) with the word "measures" in § 491(b)(1)(ii).

Comment: One commenter recommended that there be requirements for providing preventive health care services. However, a few commenters stated that the issue of prevention should be withdrawn from the rule, unless we would agree to reimburse for preventive services provided.

Response: Section 1861(aa)(1)(A) of the Act describes rural health clinic services as physicians' services and those services and supplies covered under section 1861(s)(2)(A) of the Act if they are furnished as an incident to a physician's professional service and items and services described in section 1861(s)(10) of the Act. We agree that there are no requirements for the provision of preventive primary health services for an RHC and stated so in the February 28, 2000 proposed rule. However, since section 1861(s)(10) of the Act allows RHCs to provide pneumococcal, influenza, and hepatitis B vaccines, the topic of prevention was included under clinical effectiveness as an example of an area to evaluate if clinics were involved in these activities.

Comment: One commenter stated that availability of personnel to communicate with the patients they serve should be included under cultural competency.

Response: We agree that the ability to communicate with the patient population is an important part of cultural competency. However, the list in the February 2000 proposed rule under the "access to care" domain was given as an example and was not meant to be all-inclusive. Clinics will be free to identify and concentrate on areas that are priorities for them.

Comment: One commenter asked if emergency intervention meant that the clinic should have staff trained and competent in the delivery of cardiopulmonary resuscitation (CPR) and other services that might be necessary to maintain a very ill patient until care could be transferred to the emergency medical services system.

Response: A clinic is required to provide medical emergency procedures as a first response to common life threatening injuries and acute illnesses. The Emergency Medical Services (EMS) Systems Act defines first response services as a preliminary level of prehospital emergency care that includes CPR, monitoring vital signs and control of bleeding. Therefore, the clinic's staff should be competent in the delivery of first response emergency services.

Comment: One commenter stated that the surveyor should not be the only one to determine what constitutes an "identifiable unit of measure."

Response: As stated in section II of the preamble of the February 2000 proposed rule, we will not judge the measures themselves. Instead, we will assess how useful the measures are to the clinic in its overall program.

Comment: One commenter stated that surveyors should not have the authority to require an RHC to demonstrate what projects they are doing and the progress of the projects. Surveyors should only review and offer suggestions.

Response: The authority for surveyors to conduct onsite reviews of RHCs is contained in section 1864(a) of the Act. Surveyors acting on our behalf are expected to interview staff and probe on significant issues to determine if an entity meets RHC qualifications under section 1861(aa) of the Act.

We will develop interpretive guidelines and survey procedures to train surveyors on how to review QAPI program requirements, in addition to all other RHC requirements. As stated above, surveyors will not judge the performance measures but will look at elements that comprise each RHC's QAPI program, such as assessment data, rationale for prioritizing improvement activities, and progress on achieving improvement goals. As part of oversight, we would expect an RHC to make information on its QAPI program available to surveyors during initial certification, routine recertification, and complaint surveys to demonstrate how they meet the requirement.

We have stressed improvement in systems in order to improve processes and patient outcomes. The RHC's QAPI program will be evaluated for its effectiveness on the quality of care provided. Surveyors will not criticize the performance measures that RHCs choose to use in their QAPI program. Rather, surveyors will look at how well the RHC was able to mount an effective QAPI program. The surveyors will look at what the RHC has identified as an area for improvement, what the clinic did to address those areas of concern and what they are doing to maintain their improvement efforts. We will train surveyors on how to survey for an effective QAPI program. QAPI standards are designed to ensure that the providers have an effective process for continually measuring and improving care. The RHC QAPI supports the flexibility to establish, implement, maintain, and evaluate its individual QAPI program. Each RHC can custom-design a program that analyzes its own organizational processes, functions, and services, while maintaining the appropriate accountability. Performance improvement, as the basis for QAPI, fosters a "blame-free" environment and encourages providers to be proactive instead of being reactive.

Comment: One commenter suggested that the rule explicitly state that RHCs include the medical director of the clinic, a health care professional with experience in the delivery of services, or other "reasonable" individuals in determining appropriate measures.

Response: In § 491.11(c), we state that the RHC's professional staff, administrative officials, and governing body (if applicable) are responsible for the development, implementation, and evaluation of improvement actions. In addition, the clinic may develop a QAPI program using staff and resources it deems appropriate in accordance with its policies and procedures.

Comment: One commenter expressed concern regarding the reporting requirements, especially on small clinics. The commenter stated that small clinics should either be exempt from the proposed requirements or we should develop different standards for large and small clinics.

Response: The Congress has mandated that RHCs have a QAPI program as specified by the Secretary of the Department of Health and Human Services. We have not proposed that RHCs report the results of their evaluation and subsequent improvement activities to us. As a result, there is no need for any exemptions. However, as stated in § 491.11(b)(4), we will require a clinic to maintain records on its program and have them available for review by a surveyor.

Comment: One commenter noted that we did not emphasize the importance of pharmacists to quality care. As medication experts, pharmacists can play a significant role in ensuring that appropriate medications are given to patients in RHCs.

Response: We agree that pharmacists play a significant role in ensuring that appropriate medications are given to patients. The focus of the QAPI requirement is for RHCs to have a program to assess its processes, functions and services. If a clinic identifies a medication administration or dispensing problem, or is interested in assessing other quality of care issues, that involves pharmaceutical services, it would be appropriate for the RHC to solicit a pharmacist input into the QAPI activity.

Comment: One commenter stated the current requirements regarding protocols for the mid-level practitioners are restrictive and, in many cases, conflict with scopes of practices permitted in States' law. The commenter believes that midlevels should be allowed to practice to the highest level of scope of practice permitted by State law. This will ensure appropriate care to patients and enhance patient care and satisfaction.

Response: While we appreciate the commenter's concern, this issue is beyond the scope of this final rule.

Comment: Two commenters stated that since § 405.243(a) provides that a Federally Qualified Health Center (FQHC) must agree in its provider agreement with us to maintain compliance with requirements set forth in part 491, it could be read to apply to FQHCs. The commenter requested that we revise the February 2002 proposed rule to specifically state that § 491.11 does not apply to FQHCs stating that it would be duplicative to require FQHCs to meet this QAPI requirement because they are currently required to meet extensive performance standards established by the PHS. Section 330 of the Public Health Service Act requires grantees to undergo a rigorous PHS grant application process and the grantees are answerable to PHS in carrying out their grant activities; it is unnecessary to apply the RHC certification compliance process to FQHCs.

Response: We agree with the commenters that FQHCs currently have a QAPI program, as required under the PHS grant, that is more comprehensive than the requirements for RHCs. FQHCs and other health centers are required to have quality improvement systems to examine topics such as patient satisfaction and access, quality of clinical care, work force, work environment, and health status outcomes. In addition, FQHCs' quality improvement systems must have the capacity to measure performance using standard performance measures and accepted scientific approaches. In analyzing performance data, FQHCs must compare their results with other comparable providers at the State and national level and set realistic goals for improvement.

Since the BBA language did not specifically include FQHCs, and FQHCs are currently required under the section 330 grantees' program to have a continuous quality improvement and performance measurement program, we agree that it would be redundant to require health centers to comply with this condition. Even though FQHCs are required to comply with part 491 of the regulations, there are instances in part 491, based on statutory requirements, where the RHC requirements are different from the FQHC requirements. For example, FQHCs are allowed to contract for midlevels but as specified in § 491.8(a)(3), RHCs are not. Therefore, FQHCs must continue to comply with part 491 of the regulations except where noted.

IV. Provisions of the Final Rule

For the most part, this final rule incorporates the provisions of the February 28, 2002 proposed rule. However, we are making the following changes to the regulations:

We are revising, in § 405.2401(b), the definition of rural health clinic as follows:

- The definition of RHC only applies to physicians and nonphysician practitioners working for the entity to furnish RHC services.
- Those physicians and nonphysician practitioners may not operate a private Medicare or Medicaid practice during RHC hours of operation, using clinic resources.

We are revising § 405.2462 to eliminate a standard used to qualify RHCs that are based in small rural hospitals for an exception to the national RHC payment limit.

We are revising § 491.3(b)(1) to clarify that both participating RHCs as well as applicants must be located in a current shortage area.

We are revising § 491.3(b)(2) to specify that RHCs with outdated shortage area designations will have 120 days to submit an application to update their medically underserved designation with protection from disqualification while the application is under review.

We are revising § 491.3(c)(2) to increase the period that RHCs may apply for an exception from disqualification.

We are revising § 491.5(b) to clarify the test used to determine if an RHC is essential to the delivery of primary care.

We are revising § 491.5(b) to establish rural patient utilization thresholds for RHCs located in nonurbanized areas that demonstrate they are essential to the delivery of primary care.

We are revising § 491.5(b) to combine the traditional community provider test with the major community provider test.

We are revising § 491.5(b) to establish a minimum national utilization patient threshold for RHCs applying for an exception as a major community provider.

We are removing the graduate medical education test at proposed § 491.5(b)(5). This test is no longer needed due to the refinements and clarifications we have made to the other essential community provider tests.

We are revising § 491.11 to clarify the requirements of the quality assessment performance improvement program the RHCs must develop, implement, evaluate, and maintain.

V. Regulatory Impact Analysis

Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually (see 65 FR 69432). For purposes of the RFA, all RHCs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1998 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal government, in the aggregate, or by the private sector of $110 million. The rule does not have an effect on the governments mentioned, and private sector costs are less than the $110 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. The rule does not have an effect on the governments mentioned.

Although we view the anticipated results of these regulations as beneficial to the Medicaid and Medicare programs as well as to Medicare and Medicaid beneficiaries and State governments, we recognize that some of the provisions could be controversial and may be responded to unfavorably by some affected entities. We also recognize that not all of the potential effects of these provisions can definitely be anticipated, especially in view of their interaction with other Federal, State, and local activities regarding outpatient services. In particular, considering the effects of our simultaneous efforts to improve the delivery of outpatient services, it is impossible to quantify meaningfully a projection of the future effect of all of these provisions on RHC's operating costs or on the frequency of substantial noncompliance and termination procedures.

We believe the foregoing analysis concludes that this regulation does not have a significant financial impact on a substantial number of small entities, such as RHCs. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by the RFA.

Anticipated Effects

Effects on Rural Health Clinics

The total number of participating RHCs under Medicare and Medicaid as of February 1, 2001, was 3,341. Using 2000 Census data, there are approximately 100 urban clinics. At least 20 of these urban clinics do "not" have valid shortage area designations and would lose their RHC status.

With regard to the participating clinics that are still located in rural areas (about 3,200), at least 100 of these RHCs no longer have valid shortage area designations. Based on the above estimates, we know that about 180 would be eligible to apply for exception from RHC disqualification, but it is impossible to accurately predict how many will qualify for an exception. However, the estimated Medicare savings associated with the disqualification of certain RHCs from the Medicare program would be less than $10 million. Participating RHCs that are no longer located in rural, underserved areas could lose their RHC status and their cost-based reimbursement, which could cause them to reduce services or discontinue serving our beneficiaries. We believe, based on a recent study by the Maine Rural Health Research Center, that approximately 150 clinics will lose their RHC status. However, to minimize the impact of this provision on rural health care, the Congress has authorized us to grant, if needed, an exception to clinics essential to the delivery of primary care in these affected areas. Our criteria in § 491.5 identify the areas and clinics where RHC status and its payment methodology are still needed despite the fact the service area is no longer considered medically underserved.

Implementing the statutory requirement to replace the current payment method used by provider-based RHCs to the payment method used by independent RHCs will establish payment equity and consistency within the RHC program. Before the BBA, payment to provider-based RHCs was made without considering the number of patient visits provided by the RHC, and without a limit on the payment per visit. These criteria are applicable to independent RHCs that furnish the same scope of services. We have codified the statutory requirement to pay all RHCs under an all-inclusive rate per visit, which will avoid allocation of excessive administration costs to RHCs. We believe that about a thousand RHCs are affected by this rule.

We believe the fiscal impact of limiting payment to provider-based RHCs to the independent RHC rate per visit will result in program savings. Provider-based RHCs that have costs above the all-inclusive cost-per-visit limit required by the law could experience some decrease in their current reasonable cost basis payments. To reduce detrimental impacts of this decrease, the Congress authorized an exception to the annual payment limit to those clinics affiliated with small hospitals, that is, a hospital with fewer than 50 beds.

The QAPI requirement may increase burden in the short term because resources currently used for quality measurement will need to be directed to the development of a quality assessment and performance improvement program that covers the complexity and scope of the particular clinic. However, while the requirements could result in some immediate costs to an individual clinic, we believe that the QAPI program will result in real, but difficult to estimate, long-term economic benefits to the clinic (for example, cost-effective performance practices or higher patient satisfaction that could lead to increased business for the clinic).

Moreover, the QAPI and utilization review requirements replace the current annual evaluation requirement. Resources that the clinics are currently using for the annual evaluation could be devoted to the QAPI program. Therefore, we believe that there is no long-term increased burden to the clinics. Currently, a number of RHCs, primarily provider-based, have some type of quality improvement program in place. To the extent that clinics are familiar with collecting data on their operations and measuring quality, the new requirement will not impose significant additional burden.

Impact of the QAPI Provisions

We estimate that the additional one-time impact for the initial development of the QAPI provisions will be as follows:

Hours/Estimated Salary/Number of RHCs	One-time cost	Annual cost
1 physician/administrator at $58/hr × 3 hrs × 3,300 clinics for medical direction and overview of QAPI program	$574,200	
1 Mid-level practitioner (physician assistant, nurse practitioner) at $28/hr × 32 hrs × 3,300 clinics for program development	2,956,800	

Hours/Estimated Salary/Number of RHCs	One-time cost	Annual cost
1 clerical staff at $6/hr × 5 hrs × 3,300 clinics	99,000	
1 mid-level practitioner at $28/hr × 4 hrs × 3,300 clinics for data collection and analysis		369,600
1 mid-level practitioner—3 hrs training	277,200	
Totals	3,907,200	369,000

In developing our estimates, we obtained information on the salaries and wage estimation from the American Medical Association.

OBRA '89 reduced the nonphysician staffing requirement for RHC qualification from 60 percent to 50 percent. This reduction should have a positive effect on RHCs by providing them more flexibility in satisfying their overall staffing needs.

Effects on Other Providers

We are aware of situations in which an RHC and a physician's private practice occupy the same space and Medicare is billed for the service, either as an RHC or physician service, depending upon which payment method produces the greater payment. Our revision requires an RHC to be a distinct entity that is not used simultaneously as a private physician office or the private office of any other health care professional. As a result, private physicians or other practitioners who have used this approach under the Medicare program may experience some change in the operation of their practices from an administrative standpoint.

Effects on the Medicare and Medicaid Programs

As a result of this final rule, most provider-based RHCs are subject to payment limits and some RHCs will lose their RHC status and cost-based payment rates. Although these changes will likely result in program savings, we believe the aggregate amount is negligible for both programs. We cannot accurately estimate the payment differential between the new payment system for provider-based RHCs and the previous payments because the old system made payments without considering the number of patient visits. Without these data, we cannot precisely determine the fiscal impact.

However, in light of the fact that total expenditures for this program represent a small fraction of the Medicare and Medicaid total budget and that less than half of all RHCs will experience changes to their payment rates, we believe any aggregate savings will be insignificant. We also believe an insignificant amount of Medicare and Medicaid program savings will result from the provision that will terminate RHC status for certain providers. Less than 5 percent of all participating RHCs could lose their status, and these affected clinics will continue to participate under Medicare and Medicaid and receive payment for their services on a fee-for-service basis.

Alternatives Considered

Section 4205 of the BBA imposes new requirements that an RHC program must meet. We considered some of the following alternatives to implement these provisions:

- *"Essential" RHCs.* Since the statute mandates an exception process for essential clinics, we considered using a national utilization test to recognize clinics that are accepting and treating a disproportionately greater number of Medicare, Medicaid, and uninsured patients, compared to other participating RHCs, for the purpose of addressing the situation of RHC clusters. For example, using an aggregate threshold based on the average Medicare, Medicaid, and uninsured utilization rates of participating RHCs, applicants will have to demonstrate that their utilization rates exceed the threshold.

Although this test would be administratively feasible, we concluded, based on our analysis of available Medicare and Medicaid RHC data, that it would not accurately determine "essential" clinics at the community level because of the wide variability in the percentage of services furnished to Medicare and Medicaid patients by RHCs. Despite our rejection of a national utilization test, we are open to suggestions on developing a minimum national percentage, which could be integrated with our major community provider test. We also considered the option of establishing less generous tests for identifying RHCs as essential clinics to the delivery of primary care. That is, the establishment of tests narrowly focused on a few extreme cases, such as an exception test for only sole community providers for a very rural community. We rejected this option because of concern that the disqualification of a clinic from the RHC program could harm access to primary care for the entire community. We believe a comprehensive set of tests is needed to avoid harming access to care for rural areas.

- *QAPI Program.* Because the statute mandates that an RHC have a QAPI program, and appropriate procedures for review of utilization of clinic services, no alternatives for the requirement were considered. However, in the preamble of the February 28, 2002 proposed rule, we described alternative ways of satisfying the "minimum level requirement" for the QAPI program and asked for comments. Among the alternatives that we considered were the following:
- Require RHCs to engage in an improvement project in each domain annually.
- Require a minimum number of improvement projects in any combination of the domains annually.
- Require a minimum number of projects annually based on patient population.
- Rather than requiring a minimum number of projects, require RHCs to demonstrate to the survey agency what projects they are doing and what progress is being achieved. After considering the public comments, which were not conclusive, we decided not to establish a minimum requirement. We did consider alternatives for the final rule. One alternative was to take a more rigid approach to QAPI whereby the final rule would be more prescriptive in the process RHCs must follow to develop the QAPI program including setting forth specific performance measures to be utilized, the frequency and number of QAPI "interventions" that must be done, as well as the type and frequency of data to be collected. While a more rigid approach would increase RHC burden, we realize there would be no assurance that it would result in better or more predictable outcomes.

We decided to promote a more flexible and less prescriptive approach to the QAPI condition. We are more concerned with an RHC identifying its own best practices and the outcomes of an agency individualized QAPI program than in specific steps one takes to achieve the improvement. A more moderate QAPI requirement will allow an RHC the flexibility to utilize staff and other resources in ways that more directly supports its needs. An RHC can design a program to analyze its own organizational processes, functions and services, while still being held accountable for results. This decision allows clinics the flexibility to fulfill this requirement based on their resources.

Conclusion

We do not expect a significant change in the operations of RHCs generally, nor do we believe a substantial number of small entities in the community, including RHCs and a substantial number of small rural hospitals, will be adversely affected by these changes. The commingling provision of this regulation adds little savings. One reason for this conclusion is that the outpatient visit rate for HCPCS code 99214 was about $59.00 and the RHC visit was also about $59.00. If an adjustment is made for lower physician overhead than that of the RHC, the savings will probably be marginal.

Therefore, we are not preparing analyses for either the regulatory impact analysis or section 1102(b) of the Act since we believe that this rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the OMB.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the OMB for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 491.3 Rural Health Clinic (RHC) Procedures

Section 491.3(c)(2) states that an existing RHC located in an area no longer considered a shortage area may apply for an exception from disqualification by submitting a written request to our regional offices within 180 days from the date we notify it that it is no longer located in a shortage area. We believe that this information collection requirement is exempt in accordance with 5 CFR 1320.4(a)(2) since this activity is in accordance with the conduct of an investigation or audit against specific individuals or entities.

Section 491.3(c)(4) states that clinics can renew their essential provider status by submitting written assurances to our regional office that they continue to meet the conditions at § 491.5.

The burden associated with this requirement is the time and effort for the clinic to prepare and submit written assurances that they continue to meet the conditions. It is estimated that this requirement will take each clinic 30 minutes. There are approximately 400 clinics that may be affected by this requirement for a total of 200 burden hours.

Section 491.8 Staffing and Staff Responsibilities

Section 491.8(d)(1) states that we may grant a temporary waiver if the RHC requests a waiver and demonstrates that it has been unable, despite reasonable efforts in the previous 90-day period, to hire a nurse midwife, nurse practitioner, or physician assistant to furnish services at least 50 percent of the time the RHC operates.

The burden associated with this requirement is the time and effort for the RHC to request a waiver and demonstrate that it has been unable to hire a nurse midwife, nurse practitioner, or physician assistant to furnish services at least 50 percent of the time the RHC operates. It is estimated that this requirement will take each RHC 3 hours. There are approximately 45 RHCs that will be affected by this requirement for a total of 135 burden hours.

Section 491.11 Quality Assessment and Performance Improvement

Section 491.11 states that the RHC must develop, implement, evaluate, and maintain an effective, ongoing, data-driven quality assessment and performance improvement program. The self-assessment and performance improvement program must be appropriate for the complexity of the RHC's organization and services and focus on maximizing outcomes by improving patient safety, quality of care, and patient satisfaction.

Most of the burden of this section is covered by the paperwork requirements of § 491.9(b)(3), patient care policies, which requires the RHCs to have in place a description of services the clinic furnishes, guidelines for management of health problems, and procedures for periodic review and evaluation of clinic services. This burden is approved under 0938–0334 and expires in April, 2003.

This QAPI CoP will replace the existing program evaluation CoP found at § 491.11. RHCs are currently required to perform an annual program evaluation and the burden reported for the annual evaluation will be used in the new QAPI requirement. We agree that the PRA collection (0938–0334) should be updated to increase burden for RHCs to develop a QAPI program and train staff. The estimation of 70 to 80 hours to maintain a QAPI program may be realistic for the clinic that commented. However, it is difficult to accurately state the impact of the QAPI requirement on RHCs without knowing the size and scope of the clinics and how complex the QAPI program will be for each clinic. We have developed this requirement with the flexibility that allows both large and small clinics to develop a program that reflects the resources and complexity of each clinic's organization and services.

We estimate that on average it will take a clinic approximately 40 hours to develop a QAPI program. For those clinics that are provider based and have experience with the QAPI process, this time will be reduced. This time will also vary based on how simplicity or complexity of the program that a clinic develops. The QAPI CfC will replace the existing annual program evaluation CfC (42 CFR 491.11). The activities that are currently covered by the existing PRA on file with OMB are found in § 491.9—"Provisions of Services." These activities include: Patient care policies, guidelines for medical management of health care problems, and procedures to review and evaluate services furnished by the RHC. In the existing PRA for the current regulations, the burden hours for provisions of services include 10 hours (one time) for initial development, and 2 hours annually for review and revision. The next time we updates its PRA submission for Part 491, we will add the 10 hours and 2 hours with the 40 hr initial burden for the QAPI program. We used the previous burden estimate for the annual evaluation, in part, to estimate the new QAPI requirement. It is difficult to accurately state the impact of the QAPI requirement on RHCs without knowing the size and scope of the clinics and how complex the QAPI program will be for each clinic. In developing the requirement, we wanted to assure flexibility for RHCs so that both large and small clinics can develop a program that reflects the resources and complexity of each clinic's organization and services. We estimate it will take a clinic approximately 40 hours to develop a QAPI program from a variety of assumptions. First, the hospital QAPI condition of participation estimates 80 hours for a hospital to develop the program. We expect that at the level-of-effort for a RHC would be less than that for a hospital QAPI program as hospitals provide more services than RHCs. For hospital provider-based clinics, we expect that they would already have experience with the QAPI process. Therefore, their level-of-effort would be reduced. The 40-hour time estimate also recognizes that the time will vary based on the simplicity or complexity of the program that a clinic develops. We also estimate that the RHC will spend an additional 4 hours a year collecting and analyzing data. In addition, we estimate that clinics will spend 3 hours a year training and or updating staff on their QAPI program. Since the QAPI program will replace the current annual evaluation requirement, the administrative burden and annual review of policies and procedures are currently covered by 0938–0334.

Requirement	Annual burden hours	One-time burden hours
Program Development	....	40 hrs × 3,300 = 132,000
Data Collection and Analysis	13,200	
Training	....	3 hrs × 3,300 = 9,000
Total	13,200	141,000

These are preliminary projections that may change slightly as we update the PRA submission.

To maintain the data required by § 491.11, we estimate it will take each clinic 1 hour per year to meet this requirement. Since there are an estimated 3,341 facilities, the total burden associated with this requirement is 3,341 annual hours.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: Dawn Willinghan (Attn: CMS–1910–F), Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 491

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

■ For the reasons set forth in the preamble, The Centers for Medicare & Medicaid services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart X—Rural Health Clinic and Federally Qualified Health Center Services

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 405.2401(b), revise the definition of "rural health clinic" to read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) *Definitions.*

* * * * *

Rural health clinic (RHC) means an entity that:

(1) Meets the requirements of section 1861(aa)(2) of the Act and part 491 of this chapter concerning RHC services and conditions for approval.

(2) Has filed an agreement with CMS that meets the basic requirements described in § 405.2402 to provide RHC services under Medicare.

(3) Does not share space, staff, supplies, records, and other resources during RHC hours of operation with a private Medicare or Medicaid practice operated by the same physicians and nonphysician practitioners working for the RHC. Operation of a multipurpose clinic with other types of health providers or suppliers is permissible subject to the provisions in paragraph (4) of this definition.

(4) Appropriately allocates and excludes from the RHC cost report the net non-RHC costs if it operates at a multipurpose location that involves the sharing of common space, medical support staff, or other physical resources with other health care providers or suppliers.

* * * * *

■ 3. Revise § 405.2410 to read as follows:

§ 405.2410 Application of Part B deductible and coinsurance.

(a) *Application of deductible.* (1) Medicare payment for RHC services begins only after the beneficiary has incurred the deductible. Medicare applies the Medicare Part B deductible as follows:

(i) If the deductible is fully met by the beneficiary before the RHC visit, Medicare pays 80 percent of the all-inclusive rate.

(ii) If the deductible is not fully met by the beneficiary before the visit and the amount of the RHC's reasonable customary charge for the service that is applied to the deductible is—

(A) Less than the all-inclusive rate, the amount applied to the deductible is subtracted from the all-inclusive rate and 80 percent of the remainder, if any, is paid to the RHC; or

(B) Equal to or exceeds the all-inclusive rate, no payment is made to the RHC.

(2) Medicare payment for FQHC services is not subject to the usual Part B deductible.

(b) *Application of coinsurance.* (1) The beneficiary is responsible for the coinsurance amount that cannot exceed 20 percent of the clinic's reasonable customary charge for the covered service.

(2) The beneficiary's deductible and coinsurance liability for any one service furnished by the RHC may not exceed a reasonable amount customarily charged by the RHC for that particular service.

(3) For any one service furnished by an FQHC, the coinsurance liability may not exceed 20 percent of reasonable amount customarily charged by the FQHC for that particular service.

■ 4. Revise § 405.2462 to read as follows:

§ 405.2462 Payment for rural health clinic services and Federally qualified health clinic services.

(a) *General rules.* (1) RHCs and FQHCs are paid on the basis of 80 percent of an all-inclusive rate per visit determined by the fiscal intermediary for each beneficiary visit for covered services, subject to an annual payment limit.

(2) The fiscal intermediary determines the all-inclusive rate in accordance with this subpart and instructions issued by CMS.

(3) If an RHC is an integral and subordinate part of a hospital, it can receive an exception to the per-visit payment limit if the hospital has fewer than 50 beds as determined by using one of the following methods:

(i) The determination of the number of beds at § 412.105(b) of this chapter.

(ii) The hospital's average daily patient census count of those beds described in § 412.105(b) of this chapter, and the hospital meets all of the following conditions:

(A) It is a sole community hospital as determined in accordance with § 412.92 or 412.109(a) of this chapter.

(B) It is located in a level 8 or level 9 nonmetropolitan county using urban influence codes as defined by the U.S. Department of Agriculture.

(C) It has an average daily patient census that does not exceed 40.

(b) *Payment procedures.* To receive payment, an RHC or FQHC must follow the payment procedures specified in § 410.165 of this chapter.

(c) *Mental health limitation.* Payment for the outpatient treatment of mental, psychoneurotic, or personality disorders is subject to the limitations on payment in § 410.155(c) of this chapter.

PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES

■ 1. The authority citation for part 491 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 2. Revise § 491.2 to read as follows:

§ 491.2 Definition of shortage area for RHC purposes.

Shortage area means a geographic area that meets one of the following criteria. It is—

(a) Designated by the Secretary as an area with shortage of personal health services under section 330(b)(3) of the Public Health Service Act;

(b) Designated by the Secretary as a health professional shortage area under section 332(a)(1)(A) of the public Health Service Act because of its shortage of primary medical care professionals;

(c) Determined by the Secretary to contain a population group that has a health professional shortage under section 332(a)(1)(B) of that Act; or

(d) Designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services.

■ 3. Revise § 491.3 to read as follows:

§ 491.3 RHC procedures.

(a)-*General.* (1) CMS processes Medicare participation matters for RHCs as specified in §§ 405.2402 through 405.2404 of this chapter, and with the applicable procedures in part 486 of this chapter.

(2) If CMS approves or disapproves the participation request of a prospective RHC, CMS notifies the State agency for that RHC.

(3) CMS deems an RHC that is approved for Medicare participation to meet the standards for certification under Medicaid.

(b) *Current designation.* (1) Participating RHCs and an applicant requesting entrance into the Medicare program as an RHC must be located in a current shortage area for which a designation is made or updated within the current year or within the previous 3 years.

(2) RHCs with outdated shortage area designations will have 120 days, from the date CMS notifies the facility that its designation is no longer current, to submit an application to update its medically underserved designation.

(3) RHCs located in service areas with outdated shortage area designations will be protected, for 120 days, from RHC disqualification while their applications for updating the medically underserved designations are under review by HRSA.

(c) *Exception process.* (1) An RHC's location fails to satisfy the definition of a shortage area if it is no longer designated by the Secretary or by the chief executive officer of the State as medically underserved, or if it is no longer designated as nonurbanized by the Census Bureau.

(2) An existing RHC may apply for an exception from disqualification by submitting a written request to a CMS regional office within 180 days from the date CMS notifies the RHC that it is no longer located in a shortage area. The request must contain all information necessary to establish whether an exception is warranted.

(3) The CMS regional office may grant a 3-year exception based on its review of an RHC request and other relevant information, if the CMS regional office determines that the RHC is essential to the delivery of primary care services that otherwise are not available in the geographic area served by the RHC as specified in § 491.5(b).

(4) Clinics can renew their essential provider status by submitting written assurances to the CMS regional office that they continue to meet the conditions at § 491.5.

(5) CMS terminates an ineligible clinic from participation in the Medicare program as an RHC, effective the final day of the 6th month from the date CMS notifies the clinic of a final determination of ineligibility (including denial of any exception request submitted). CMS may terminate RHC status earlier based on noncompliance with other certification requirements.

■ 4. In § 491.5, remove paragraphs (d) and (e), redesignate paragraph (f) as paragraph (d), and revise paragraph (b) to read as follows:

§ 491.5 Location of clinic.

* * * * *

(b) *Exceptions.* CMS will not disqualify an RHC approved for Medicare participation located in an area that no longer meets the definition of a shortage or rural area, if it determines that the RHC has established that it is essential to the delivery of primary care services that otherwise are not available in the geographic area served by the RHC. An RHC no longer located in a rural area must have a valid shortage area designation (underserved area or population) and meet the criteria set forth in paragraphs (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this setion. The RHC that is no longer located in a rural area must also establish that it is essential to the delivery of primary care for patients residing in a rural area by demonstrating that at least 51 percent of the clinic's patients reside in an adjacent nonurbanized area.

(1) *Essential provider exception criteria.* In order to make the final decision to grant an exception as an

essential provider under this section, CMS will:

(i) Grant an exception to one or more RHCs in a given service area if CMS determines the clinics each meet the criteria set forth in paragraphs (b)(2)(ii) or (b)(2)(iii) of this section.

(ii) Use the following criteria in determining distances corresponding to 30 minutes travel time:

(A) Under normal conditions with primary roads available within 20 miles.

(B) In areas with only secondary roads available within 15 miles.

(C) In flat terrain or in areas connected by interstate highways within 25 miles.

(2) *Conditions for exception.* To receive an exception, the RHC must meet one of the following conditions:

(i) *Sole community provider.* The RHC is the only participating primary care provider within 30 minutes travel time. For purposes of this exception, a participating primary care provider means an RHC, an FQHC, or a physician practicing in either general practice, family practice, or general internal medicine that is actively accepting and treating Medicare beneficiaries and low-income patients (Medicaid beneficiaries and the uninsured, regardless of their ability to pay).

(ii) *Major community provider.* The RHC has Medicare and low-income patient (Medicaid and uninsured) utilization rates equal to or above 51 percent or low-income patient utilization rates equal to or above 31 percent. The RHC is also actively accepting and treating a major share of Medicare, Medicaid, and uninsured patients (regardless of their ability to pay) compared to other participating RHCs that are within 30 minutes travel time; or, if the clinic is the only participating RHC within 30 minutes travel, the RHC is actively accepting and treating a major share of Medicare, Medicaid, and uninsured patients (regardless of their ability to pay) compared to other participating primary care providers.

(iii) *Specialty clinic.* The RHC (located within 30 minutes travel time) is the sole or major source of pediatric or OB/GYN services for Medicare (where applicable), Medicaid, and uninsured patients (regardless of their ability to pay) and is actively accepting and treating these patients. Only clinics that exclusively provide pediatric or OB/GYN services can receive an exception under this test. A specialty clinic is also an RHC that is the sole source of mental health services, as defined in § 405.2450. For purposes of meeting this test, mental health services must be furnished onsite to clinic patients. Clinics applying as a major source of pediatric or OB/GYN services must have low-income patient (Medicaid and uninsured) utilization rates equal to or above 31 percent.

(iv) *Extremely rural community provider.* The RHC is actively accepting and treating Medicare, Medicaid, and uninsured patients (regardless of their ability to pay) and is located in a frontier county (less than six persons per square mile) or in a level 8 or level 9 nonmetropolitan county using urban influence codes as defined by the U.S. Department of Agriculture.

* * * * *

■ 5. In § 491.8, revise paragraph (a)(6) and add a new paragraph (d) to read as follows:

§ 491.8 Staffing and staff responsibilities.

(a) * * *

(6) A physician, nurse practitioner, physician assistant, nurse-midwife, clinical social worker, or clinical psychologist is available to furnish patient care services at all times the clinic or center operates. In addition, for RHCs, a nurse practitioner, physician assistant, or certified nurse midwife is available to furnish patient care services at least 50 percent of the time the RHC operates.

* * * * *

(d) *Temporary staffing waiver.* (1) CMS may grant a temporary waiver of the RHC staffing requirements in paragraphs (a)(1) and (a)(6) of this section for a 1-year period to a qualified RHC, if the RHC requests a waiver and demonstrates that it has been unable, despite reasonable efforts in the previous 90-day period, to hire a nurse midwife, nurse practitioner, or physician assistant to furnish services at least 50 percent of the time the RHC operates.

(2) CMS terminates the RHC from participation in the Medicare program, if the RHC is not in compliance with the provisions waived under paragraphs (a)(1) and (a)(6) of this section at the expiration of the waiver.

(3) The RHC may submit its request for an additional waiver of staffing requirements under this paragraph no earlier than 6 months after the expiration of the previous waiver.

■ 6. Revise § 491.11 to read as follows:

§ 491.11 Quality assessment and performance improvement.

The RHC must develop, implement, evaluate, and maintain an effective, ongoing, data-driven quality assessment and performance improvement (QAPI) program. The self-assessment and performance improvement program must be appropriate for the complexity of the RHC's organization and services and focus on maximizing outcomes by improving patient safety, quality of care, and patient satisfaction.

(a) *Standard: Components of a QAPI program.* The RHC's QAPI program must include, but not be limited to, the use of objective measures to evaluate the following:

(1) Organizational processes, functions, and services.

(2) Utilization of clinic services, including at least the number of patients served and the volume of services.

(b) *Standard: Program activities.* (1) For each of the areas listed in paragraph (a)(1) of this section, the RHC must do the following:

(i) Adopt or develop performance measures that reflect processes of care and RHC operation and is shown to be predictive of desired patient outcomes or be the outcomes themselves.

(ii) Use the measures to analyze and track its performance.

(2) The RHC must set priorities for performance improvement, considering either high-volume, high-risk services, the care of acute and chronic conditions, patient safety, coordination of care, convenience and timeliness of available services, or grievances and complaints.

(3) The RHC must conduct distinct improvement projects; the number and frequency of distinct improvement projects conducted by the RHC must reflect the scope and complexity of the clinic's services and available resources.

(4) The RHC must maintain records on its QAPI program and quality improvement projects.

(5) An RHC may undertake a program to develop and implement an information technology system explicitly designed to improve patient safety and quality of care. This activity will be considered to fulfill the requirement for a project under this section.

(c) *Standard: Program responsibilities.* The RHC's professional staff, administrative officials, and governing body (if applicable) are responsible for the following:

(1) Ensuring that quality assessment and performance improvement efforts effectively address identified priorities.

(2) Identifying or approving those priorities and for the development, implementation, and evaluation of improvement actions.

Dated: February 28, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 28, 2003.

Tommy G. Thompson,

Secretary.

Editorial note: This document was received at the Office of the Federal Register on December 18, 2003.

[FR Doc. 03–31572 Filed 12–23–03; 8:45 am]

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Federal Register

Wednesday,
December 24, 2003

Part VI

Securities and Exchange Commission

17 CFR Part 270

Request for Comments on Measures To Improve Disclosure of Mutual Fund Transaction Costs; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. 33–8349; 34–48952; IC–26313; File No. S7–29–03]

RIN 3235–AI94

Request for Comments on Measures To Improve Disclosure of Mutual Fund Transaction Costs

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission is seeking public comment on a number of issues related to the disclosure of mutual fund transaction costs. We seek comment on, among other things, whether mutual funds should be required to quantify and disclose to investors the amount of transaction costs they incur, include transaction costs in their expense ratios and fee tables, or provide additional quantitative or narrative disclosure about their transaction costs. We also seek comment on whether mutual funds should be required to record some or all of their transaction costs as an expense in their financial statements. The Commission requests comment from investors, investment companies, investment advisers, the financial services industry, academics, regulators, and the public generally on the issues summarized in this release, the specific questions located in Sections III (Alternatives for Quantifying Transaction Costs), IV (Accounting Issues), V (Alternatives that Provide Additional Information About the Level of Transaction Costs), and VI (Review of Transaction Costs by Fund Directors) of the release, and on any other issues that commenters believe relevant.

DATES: Comments must be received by February 23, 2004.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or electronic mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–29–03; this file number should be included in the subject line if electronic mail is used. All comments received will be posted on the Commission's Internet Web site (*http://www.sec.gov*) and made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.[1]

FOR FURTHER INFORMATION CONTACT: Paul Goldman, Assistant Director, or Jacquelyn Rivas, Staff Accountant, Office of Financial Analysis, Division of Investment Management, (202) 942–0510, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

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I. Introduction

The Securities and Exchange Commission ("Commission") is considering various alternatives designed to improve the information that mutual funds disclose about their portfolio transaction costs. Mutual funds incur transaction costs when they buy or sell portfolio securities. Transaction costs are significant for two reasons. First, for many funds, the amount of transaction costs incurred during a typical year is substantial. One study estimates that commissions and spreads alone cost the average equity fund as much as 75 basis points.[2] Second, fund managers are subject to a number of conflicts. Commissions, which are paid out of fund assets, may, for example, be used to pay for research or trading support functions (brokerage services) that might otherwise be paid for by the fund's investment adviser (soft dollar commissions).[3]

Fund directors play a pivotal role in monitoring these conflicts. As explained in further detail below, transaction costs are not readily apparent to investors. These costs, however, must be disclosed to a fund's board of directors where such costs bear on the reasonableness of the fund's payments to the fund manager or its affiliates. Thus, it is imperative that the fund's directors both understand and heavily scrutinize the payment of such costs by the fund. The fund's board should demand, and the fund's adviser should provide, all information needed to undergo this review process. In the absence of vigilant oversight by the fund's boards, transaction costs may include payment for services that benefit the fund's adviser at the expense of the fund.

Although transaction costs are taken into account in computing a fund's total return, they are not included in a fund's expense ratio because under generally accepted accounting principles they are either included as part of the cost basis of securities purchased or subtracted from the net proceeds of securities sold and ultimately are reflected as changes in the realized and unrealized gain or loss on portfolio securities in the fund's financial statements. As a result, current disclosure requirements focus on providing fund investors with information about two items that are related to transaction costs—portfolio turnover rate and dollar amount of brokerage commissions. All mutual funds (except money market funds) are required to disclose in their prospectuses the annual rate of portfolio turnover that they have incurred during the last five fiscal years. Investors can compare turnover rates to obtain an indication of how transaction costs are likely to vary among different funds. Funds (with the exception of money market funds) also must disclose in the Statement of Additional Information ("SAI") the actual dollar amount of brokerage commissions that they have paid during their three most recent fiscal years.[4] The Commission is concerned that the current disclosure requirements do not directly address a fund's overall transaction costs or elicit sufficient information about these costs.

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[1] We do not edit personal-identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] John M.R. Chalmers, Roger M. Edelen, Gregory B. Kadlec, *Fund Returns and Trading Expenses: Evidence on the Value of Active Fund Management*, Aug. 30, 2001, at 10 (available at *http://finance.wharton.upenn.edu/edelen/PDFs/MF_tradexpenses.pdf*). These estimates omit the effect of market impact and opportunity costs, the magnitude of which may exceed commissions and spreads.

[3] *But see* NASD Rule 2839 (K).

Some investors and financial industry observers have expressed similar concerns. For example, at hearings held on March 12 and November 4, 2003 by the U.S. House of Representatives Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, and on November 3, 2003 by the Senate Subcommittee on Financial Management, the Budget and International Security, a number of witnesses testified that inadequate information about portfolio transaction costs makes it difficult for mutual fund shareholders to know the overall cost of their investment.[5]

The Commission is aware of the need for transparency of mutual fund fees and expenses and committed to improving disclosure of the costs that are borne by mutual fund investors; but it is mindful of the complexities associated with identifying, measuring, and accounting for transaction costs. Thus, the Commission is considering how mutual fund transaction cost disclosure requirements should be revised to provide more meaningful information to fund investors. In particular, the Commission is considering whether mutual funds should be required among other things to (1) quantify in some meaningful way and disclose some or all of their portfolio transaction costs without including these costs in their expense ratios and fee tables; (2) quantify some or all transaction costs and include them in expense ratios and fee tables; (3) provide other quantitative information about the level of transaction costs, or (4) some combination of the above. The Commission also seeks comment on whether mutual funds should be required to treat transaction costs, or a portion thereof, as an expense in their financial statements.

This release invites comment on both the general topic of how to improve the disclosure of mutual fund transaction costs and a number of specific questions. For "yes or no" questions, please explain the reasons for your response. For questions with respect to alternatives for disclosing some or all transaction costs in fund expense ratios, fee tables or in other numerical formats, please be as specific as possible about how these alternatives may be accomplished, or why these alternatives are not feasible. Discussion is encouraged with respect to specific formulas that should be used, and specific recordkeeping and operational procedures that should be required in order to implement numerical disclosures.

The remainder of this release examines a number of major issues with respect to disclosure of portfolio transaction costs. Section II describes the different types of portfolio transaction costs and estimates their magnitude. Section III identifies and discusses various proposals for additional quantitative disclosures. Section IV discusses issues related to how funds account for transaction costs and report them in their financial statements. Section V explains the current requirements with respect to disclosure and identifies and requests comment on possible new disclosures related to the level of transaction costs. Section VI discusses the review of transaction costs by fund directors.

II. Background

A. Types of Transaction Costs

Broadly defined, a mutual fund's transaction costs include all of its costs that are associated with trading portfolio securities.[6] Transaction costs include commissions, spreads, market impact costs and opportunity costs.

1. Commissions

Commissions generally refer to charges that a broker collects to act as agent for a customer in the process of executing and clearing a trade. Commissions are the only type of transaction cost that can be measured directly. Measurement is easy because the commission is separately stated on the transaction confirmation and is paid directly from fund assets.[7] Trades for which commissions are paid generally involve equity securities traded on the exchanges. Equity securities are also traded on NASDAQ and through dealers. Although historically NASDAQ trading has been effected primarily on a spread basis, more and more equity trades are being done as single price riskless principal trades,[8] and the cost of these trades is now more frequently charged and identified as a commission equivalent.[9] Consequently, it appears that quantification of commission-type fees on equities has become easier. In fact, the commission on the average NASDAQ trade (almost 16 basis points) now approaches the commission on the average NYSE trade (18 basis points).[10]

2. Spread Costs

Spread costs are incurred indirectly when a fund buys a security from a dealer at the "asked" price (slightly above current value) or sells a security to a dealer at the "bid" price (slightly below current value). The difference between the bid price and the asked price is known as the "spread." Spread costs include both an imputed commission on the trade and any market impact cost associated with the trade as discussed below.[11]

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[4] All funds are required to provide their SAI to investors upon request. In addition, the SAI of any fund may also be accessed via the Commission's Web site (*http://www.sec.gov*) and frequently on a fund's or a fund sponsor's Web site.

[5] The House of Representatives recently passed legislation entitled the "Mutual Funds Integrity and Fee Transparency Act of 2003" (HR 2420) that would, among other things, mandate a new document in which mutual funds would disclose their fees to investors and directed the Commission to issue a concept release on issues related to mutual fund transaction cost disclosure. H.R. 2420, 108th Cong. (2003). HR 2420 would also require funds to disclose their portfolio turnover rate in the new fee disclosure document and provide a textual explanation of the impact of high portfolio turnover rates on fund expenses and performance. Additionally, the Commission has proposed that fund shareholder reports be required to include, among other things, the costs in dollars associated with an investment of $10,000, based on a fund's actual expenses and return for the period. Investment Company Act Release No. 25870 (Dec. 18, 2002). The Commission is also today proposing to enhance disclosure regarding breakpoint discounts on front-end sales loads.

[6] *See* Larry Harris, *Trading and Exchanges: Market Microstructure for Practitioners* (2003) at 420–441 (discussing the components of transaction costs, including explicit and implicit costs, as well as alternative methods for estimating the magnitude of transaction costs).

[7] Stephen A Berkowitz and Dennis E. Logue, *Transaction Costs: Much ado about everything,* Journal of Portfolio Management (Winter 2001) at 68.

[8] *See* Harold Bradley, Senior Vice President, American Century Investment Management, Statement Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (Mar. 12, 2003).

[9] The Commission has recognized that money managers opting for certain riskless principal transactions would now be informed of the entire amount of the market maker's charge for effecting the trade. *See* Exchange Act Release No. 45194 (Dec. 27, 2001).

[10] Justin Schack, *Trading Places,* Institutional Investor (Nov. 2003) at 32.

[11] Funds incur spread costs on trades that are made on a principal basis (*e.g.,* NASDAQ trades executed from dealer inventory). Dealer spreads compensate brokers and broker-dealers for maintaining a market's trading infrastructure (*i.e.,* price discovery and execution services) and may also reflect the impact of large orders on the prices of securities. The proportion of these two components varies among different trades. The market impact cost component of dealer spreads reflects dealers' inventory management costs. These costs have a significant impact on the spread between the dealer's bid (buy price) and ask (sell price). Although spread costs cannot be directly calculated, they can be estimated with data collected some time after the trade is executed. See Berkowitz and Logue, *supra* note at 65–68.

3. Market Impact Costs

Market impact costs are incurred when the price of a security changes as a result of the effort to purchase or sell the security.[12] Stated formally, market impacts are the price concessions (amounts added to the purchase price or subtracted from the selling price) that are required to find the opposite side of the trade and complete the transaction.[13]

Market impact cost cannot be calculated directly. It can be roughly estimated by comparing the actual price at which a trade was executed to prices that were present in the market at or near the time of the trade.[14] Impact cost may be reduced by stretching out a trade over a long time period. The benefit of reduced impact cost may be reduced or eliminated by an increase in opportunity cost.

4. Opportunity Costs

Opportunity cost is the cost of missed trades.[15] The longer it takes to complete a trade, the greater the likelihood that someone else will decide to buy (or sell) the security and, by doing so, drive up (or down) the price.[16]

Opportunity cost cannot be measured directly. The joint effect of market impact and opportunity cost can be estimated by comparing market prices at the time that the transaction was conceived to the price at which the transaction was actually executed. Consulting firms have developed quantitative tools that attempt to estimate these costs for their clients.[17]

5. Magnitude of Transaction Costs

Although estimates of the magnitude of transaction cost and its components vary, the following estimates are representative. For the average stock fund, commission costs have been estimated at almost .30% of net assets[18] (an amount equal to approximately 20% of the 1.42% expense ratio of the average long-term mutual fund in 2002); and spread costs have been estimated at approximately .45% of net assets[19] (approximately 30% of the average expense ratio.)[20] Market impact cost and opportunity cost are more difficult to measure. One study estimates that total transactions costs (including market impact and opportunity costs) for large capitalization equity transactions range from 0.18% to as much as 1% of the principal amount of the transaction.[21] Another study estimates that for institutional investors, under relatively stable market conditions, opportunity costs may amount to 0.20% of value.[22]

To summarize, commissions are explicit costs, readily identifiable and quantifiable. Spread, impact, and opportunity costs are implicit costs. Because the implicit costs, which are difficult to identify and quantify, can greatly exceed the explicit costs, there is no generally agreed-upon method to calculate securities transaction costs.[23]

III. Proposals To Quantify Transaction Costs

During recent years, a number of commentators have argued that although transaction costs represent a significant portion of the overall expenses incurred by a mutual fund, current disclosure requirements fail to provide investors with adequate information about these costs. Most recently, during hearings held on March 12, 2003 by the House Committee on Financial Services, Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, and on November 3, 2003 by the Senate Committee on Governmental Affairs, Subcommittee on Financial Management, the Budget, and International Security, several witnesses testified about the opacity of portfolio trading costs and made suggestions for additional narrative and quantitative disclosure. Suggested improvements tend to fall into three broad alternatives that would require funds to: (1) Quantify and disclose their commission costs; (2) quantify and disclose all of their transaction costs; or (3) provide other information related to the level of transaction costs. In this section of the release, we describe in more detail the alternatives for quantifying transaction costs and request comment on the alternatives. Alternatives for providing additional information about the level of transaction costs are described and comment is requested in Section V of this release.

A. Quantify Commission Costs Only

The dollar amount of commissions paid is easily determined. As previously indicated, the commission appears on the confirmation of each transaction and funds already report in their SAIs the aggregate dollar amounts of commissions paid.

Some commentators have proposed that mutual funds be required to disclose the commissions they pay to effect securities transactions and include the result in their expense ratios and fee tables.[24] They argue that disclosing portfolio commissions would provide additional information about the amount of transaction costs that funds incur, thus permitting investors to make better informed investment decisions. The average commission paid by institutional investors is about 5 to 6 cents per share, but can range from 1 cent to 12 cents per share.[25] A portion of these commissions may be used to obtain soft dollar benefits (*i.e.*, research and other services as permitted by section 28(e) of the Securities Exchange Act of 1934) that may benefit the manager. The limited transparency of soft dollar commissions may provide incentives for managers to misuse soft dollar services.

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[12] *See* Harris, *supra* note 6 at 421. The average trade on the New York Stock Exchange and on NASDAQ is approximately 1,700 shares. The average order placed by institutions (including mutual funds) is 44,600 shares, according to an estimate from Plexus, Inc. *See* Wayne H. Wagner, Chairman, Plexus Group and Senior Vice President, Chase JPMorgan Chase Co., Statement Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the Committee on Financial Services (Mar. 12, 2003). Basic economics dictate that, if the supply of a good or service is held steady, increased demand drives up the price. Large trades have an impact on price. They "move the market" (drive the price up if the fund is buying; down if the fund is selling.)

[13] *See* Berkowitz and Logue, *supra* note 7 at 67.

[14] *See* Harris *supra* note 6 at 422–423. Theory suggests comparing the actual price paid or received to what would have prevailed had the order never been placed. In practice, however, only the market prices and bids and offers near the time of the trade can be observed.

[15] *See* Harris, *supra* note 6 at 421.

[16] An opportunity cost is incurred when three conditions hold: (1) The price of a stock rises (falls) after an investor decides to buy (sell) it, but before he or she is actually able to do so; (2) the price change is independent of the investor's decision; and (3) the price change is "permanent"—*i.e.*, it is caused by the dissemination of information relevant to the valuation of the asset. Other factors may influence the price of an asset, such as temporary liquidity imbalances, but they do not generate opportunity costs. *See* Robert A. Schwartz and Benn Steil, ***Controlling Institutional Transactions Costs***, The Journal of Portfolio Management (Spring 2002) at 43.

[17] *See* Berkowitz and Logue, *supra* note 7 at 70.

[18] Miles Livingston and Edward O'Neal, *Mutual Fund Brokerage Commissions*, Journal of Financial Research, Vol. XIX, No. 2 (Summer 1996) at 280. *See also*, Chalmers, Edelin, and Kadlec, *supra* note 2 at 2; Rich Fortin and Stuart Michelson, *Mutual Fund Trading Costs*, Journal of Investing, Vol. 7, No. 1 (Spring 1998) at 67.

[19] *See* Chalmers, Edelen, and Kadlec, *supra* note 2 at 10.

[20] Morningstar Principia Pro Database, Apr. 2003 edition.

[21] *See* Berkowitz and Logue, *supra* note 7 at 67.

[22] *See* Schwartz and Steil, *supra* note 16 at 43–44.

[23] "Transaction cost measurement is as much an art as a science. It's very difficult to accurately measure implicit trading costs. Not all companies use the same methodology, and there's no commonly accepted standards as to how to measure price impact." *See* Alison Sahoo, *SEC Weighs Trading Cost Rule, Seeks Industry Input, Ignites.com* (July 22, 2003) (quoting Ananth Madhavan, managing director of ITG, a provider of equity-trading services and transaction research to institutional investors and brokers).

[24] *See* John Montgomery, President, Bridgeway Funds, and Gary Gensler, Former Undersecretary of the Treasury for Domestic Finance and Author of *The Great Mutual Fund Trap*, Statements Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (Mar. 12, 2003).

[25] *See* Harris, *supra* note 6 at 151. In 1998, the Commission's Office of Compliance Inspections and Examinations (OCIE) conducted limited scope on-site inspections of the soft dollar activities of 75 broker dealers and 280 investment advisers and investment companies. OCIE found the average cost

B. Quantify All Transaction Costs

Some commentators have suggested that mutual funds be required to quantify and disclose all of the transaction costs that they incur.[26] This alternative would provide the advantages associated with the previous alternative (including commissions in the expense ratio) while eliminating any disadvantages associated with quantifying some, but not all transaction costs.[27]

This alternative raises the issue of the difficulty of quantifying spreads, market impacts, and opportunity costs. Consultants and academics derive transaction cost estimates that include spreads and market impact costs by using a variety of algorithms to compare the actual price that was paid in each transaction with the market price that prevailed at some time before[28] or after[29] the transaction was completed. Perhaps the most all-inclusive way to measure transaction cost is another method called "implementation shortfall." Implementation shortfall measures the transaction cost of each trade as the difference between the price of all trades you intend to make (trades actually made plus intended trades that fail to execute) and the price that prevailed in the market *when each decision to trade was made.*[30]

With respect to the before trade and after trade methods, a common standard would need to be chosen from among the wide variety of estimation techniques that are used, opportunity costs would remain unaccounted for, and some measures in this category may be vulnerable to being "gamed."[31]

The advantages of the implementation shortfall method are that it includes all trading costs and is not vulnerable to being gamed. However, there is no generally accepted manner to calculate a portfolio's implementation shortfall. To monitor performance and comply with their best execution responsibilities, many fund advisers already gather a substantial amount of data about transaction costs and execution quality.[32] Of course, there may be substantial differences in the types of data that fund advisers currently gather that would require changes to their systems. However, there may be a fair amount of uniformity, at least on the general types of information (*e.g.*, trade decision time, time orders are given to brokers, trade execution time and price, *etc.*) that fund advisers maintain.

C. Quantify the Effect of Daily Decisions to Trade

Another, more inclusive alternative for measuring transaction costs would capture the combined effect of transaction costs and gains and losses from short term trading. This "trade effect" measure would reflect the annual average daily difference between the actual value of the portfolio as of the close of each trading day and the hypothetical value of the portfolio if no trades had been made that day.

Trade effect is easy to measure in practice. It is equal to the total mark-to-market profits or losses on the security purchases and sales made by the fund. For a purchase, the mark-to-market profits or losses are computed by multiplying the total quantity traded in the security times the difference between the volume-weighted average fill price and the price at the end of the period over which the profits or losses are measured. For a sale, it is the negative of this quantity.[33]

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of soft dollar executions was 6 cents per share. *See* Office of Compliance Inspections and Examination, SEC, Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds (Sept. 22, 1998) (available at *http://www.sec.gov/news/studies/softdolr.htm*) (*"Inspection Report"*).

[26] *See* John C. Bogle, Founder and Former Chief Executive, Vanguard Group and President, Bogle Financial Markets Research Center, Statement Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises (Mar. 12, 2003); and Mercer Bullard, Founder and President, Fund Democracy, Inc., Statement Before the Senate Subcommittee on Financial Management, the Budget, and International Security (Nov. 3, 2003).

[27] "The ability to figure out trading costs is there. When these companies want internal efficiencies to reduce expenses or improve sales there's no shortage of money to do that. But as soon as someone asks them to spend money on what they are charging shareholders, they bellyache. Trading costs are paid out of shareholders' money. They should decide what they pay." *See* Sahoo, *supra* note 23 (quoting Max Rottersman of fundexpenses.com, a website that monitors mutual fund costs and expenses).

[28] A "before trade" measure compares the actual price of each trade with the price that prevailed in the market before the transaction was completed. *See* Andre F. Perold, *The Implementation Shortfall: Paper vs. Reality*, Journal of Portfolio Management (Spring 1988) at 8.

[29] In an "after trade" measure, the market price might be today's closing price, tomorrow's closing price, some other price in effect after the fund completed the trade, the average of the high and the low for the day, or a weighted average of all prices at which market participants transacted on that day. *See* Perold, *supra* note 28 at 7.

[30] The concept of "implementation shortfall" was introduced by Treynor in 1981. *See* Jack L. Treynor, *What Does it Take to Win the Trading Game?*, Financial Analysts Journal (Jan.–Feb. 1981), at 55–60; *see also* Perold, *supra* note 28 at 8. Implementation shortfall is defined as a measure of the degree to which execution, market impact and opportunity costs prevent the investor from taking advantage of his or her stock selection skills. *See* Perold, *supra* note 28 at 5–6. Implementation shortfall can be interpreted as the difference in value between an actual portfolio and a corresponding paper portfolio. A paper portfolio is an imaginary portfolio that is constructed on paper to see what would happen if certain trades were actually made. To measure transaction costs, a trader must specify a benchmark price at which he buys or sells securities for his paper portfolio. The difference in value between the actual portfolio and the corresponding paper portfolio measures the trader's cost of implementing trading decisions relative to this benchmark. Since implementation is generally accomplished at a cost, paper portfolios typically earn better returns than the corresponding actual portfolios. Harris, *supra* note 6 at 426. Leinweber illustrates the implementation shortfall concept by noting that from 1979 to 1991 stocks classified as "Group 1" by Value Line had an annualized return of 26.3% while the Value Line mutual fund that contained the same stocks returned only 16.1%. The difference between the paper return and the actual portfolio return is the cost of trading. David J. Leinweber, *Using Information from Trading in Trading and Portfolio Management*, 4 Journal of Investing, No. 1 (1995) at 40.

[31] For example, because a before trade measure compares the actual price of each trade with the market price in effect before the transaction was completed, the market price is known in advance. A trader working on behalf of a fund could "manufacture" low transaction costs if, after each decision to trade is made, the trader would wait to take action on the order list, implement only the buy orders for which prices have fallen since the receipt of the order, implement only the sell orders for which the prices have risen, and dismiss the rest of the orders as "too expensive" to execute. *See* Perold, *supra* note 28 at 7–8.

[32] "Virtually all the major institutions have a transaction-cost measuring system in place. They compare their actual execution costs to pre-trade benchmarks from models or peer comparisons from different firms. That puts pressure on the trading desks to control costs. So the guys who aren't doing it are being left behind." Sahoo, *supra* note 23 (quoting Ananth Madhavan). "* * * [M]ore pension funds and investment managers are measuring transaction costs—either by using proprietary systems or third party services * * *. Since the wrenching bear market of 2000–'02, institutions have learned that transaction costs can be a significant drag on performance, and they have begun managing them as intently as they research stocks." Schack, *supra* note 10, at 32.

[33] For example, a mutual fund purchases 500 shares of ABC Company at a volume-weighted average fill price of $19. The price of the security at the end of the measurement period is $20. The mark-to-market profit or loss associated with this trade would be the difference between the fill price and the measurement price (−$1) times the number of shares transacted (500), or −$500. Alternatively, a mutual fund sells 500 shares of XYZ Company at a volume-weighted average fill price of $15. The price of the security at the end of the measurement period is $17. The mark-to-market profit or loss associated with this trade would be the negative of the difference between the fill price and the measurement price (+$2) times the number of shares transacted (500), or $1,000. In this example, the cost of trading—the trade effect—would be $500 (−$500 + $1,000), indicating that the trading was

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For disclosure purposes, each fund could be asked to sum these mark-to-market profits and losses across all trades on a given day. Funds would divide this sum by total assets for that day and report on an annual basis the average of this ratio across all trading days.

Trade effect includes all realized costs of trading—commission, spread and price impacts—plus any short-term trading profits or losses incurred as a result of the timing of the trade. Funds produce short-term trading profits if they can successfully capitalize on short-term price changes, for example, when they buy before prices rise. They incur short-term trading losses when they poorly time their trades, for example, when they buy before prices fall.

Investors may benefit from disclosure of short-term trading impact information because it would allow them to better understand the benefits and costs associated with fund portfolio trading. This information may particularly help investors interpret fund turnover. Although high turnover generally is correlated with poor performance due to excessive transaction costs and poor timing, high turnover may be desirable for funds that can implement profitable short-term trading strategies. Presently, investors lack the information necessary to meaningfully discriminate among funds on this basis. Trade effect disclosure may allow investors to determine the extent to which fund performance—for better or worse—is due to its trading activities.

If the Commission were to mandate trade effect disclosure, it would have to determine the period over which funds would measure their trade effect mark-to-market profits and losses. It might seem most natural to measure trade effect over the trading day on which each trade occurred by comparing trade prices to trade day closing prices. However, this comparison could cause some managers to shift their trading towards the end of the trading day to minimize their reported trade effect. To reduce such incentives, trade effect could be measured by comparing trade prices to closing prices on the next trading day.[34]

D. Sell-Side Alternatives

Thus far, the discussion in this release has focused primarily on the disclosure by mutual funds of their transaction costs and execution quality. The Commission also wishes to request comment on whether disclosure by markets or broker-dealers of their execution quality for large, institutional orders would be helpful to funds in evaluating execution costs. For example, broker-dealers handling large orders potentially could be required to disclose statistics that compare the prices at which their orders are executed with the quotes for a security at the time they received the order. To enhance their comparability, the statistics could be divided into categories based on the size of the order compared to the average daily trading volume in the security. Similar disclosure could be required of other venues that directly receive and execute institutional orders, such as floor brokers, specialists, and electronic trading venues. Such sell-side disclosure could represent one part of a comprehensive approach that attempted to measure transaction costs throughout the trading cycle. Standardized market statistics, which would encompass orders from many different institutions, potentially could provide benchmarks for execution quality that might assist fund managers and their boards in evaluating the execution quality obtained from different broker-dealers. For example, such statistics might be helpful in evaluating the execution quality obtained from affiliated or related broker-dealers compared to that obtained from those that are independent of the fund.[35]

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General Questions About Quantifying Transaction Costs

1. Is investor decision-making harmed because investors lack numerical information about mutual fund transaction costs?

2. What would be the best way to provide investors with additional numerical information about the amount of transaction costs that mutual funds incur? Would the information most appropriately be located in the prospectus, the SAI, or in another disclosure document?

Questions About Quantifying Commissions and Spreads

3. Would a requirement to quantify (express as a percentage) and disclose brokerage commissions, but not other transaction costs provide useful information to fund investors? If funds are required to quantify and disclose their brokerage commissions, should the number be included in fund expense ratios and fee tables?

4. Does the increased use of riskless principal trades on NASDAQ make it easier to quantify the cost of NASDAQ trades? What proportion of NASDAQ trades are subject to commission-equivalent fees?

5. Would quantifying commissions mislead investors because it would result in a number that includes some transaction costs and excludes others? Please explain the reasons for your answer.

6. If the answer to question 5 is yes, would the concern be alleviated if funds were required to quantify commissions and provide investors with disclosure that details the portion of trades that are performed on a commission basis; spread basis; or some other basis (*e.g.*, directly from an issuer)?

7. What effect, if any, would a requirement to quantify commissions have on the incentives of fund managers with respect to (1) use of principal versus agency transactions; and (2) use of soft dollar transactions?

8. Could any possible adverse effects identified in questions 5 and 6 be mitigated or eliminated by requiring funds, in addition to reporting their commission costs, to estimate the spread cost of their principal trades (for example, by imputing to principal trades the fund's average commission rate on agency trades)? If yes, should this number be included in fund expense ratios and fee tables?

9. Alternatively, can the portion of spread cost that represents payment for executing a trade be measured separately from the portion of the spread that represents the market impact cost associated with that trade? If yes, should this number be included in fund expense ratios and fee tables?

Questions About Quantifying All Transaction Costs

10. Would a requirement to quantify *all* transaction costs provide useful information to fund investors? Would a requirement to quantify *all transaction costs, except opportunity costs* be a better alternative? If you advocate that we mandate either of these alternatives, please explain as specifically as possible, how the alternative should be

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not beneficial. If assets for the measurement period were $100,000, the trade effect would be 0.5%.

[34] As noted above, trade effect measures the combined effect of transaction costs and short-term trading profits (or losses). The use of next day closing prices instead of same day closing prices would increase the importance of the short-term trading profits in the determination of the trade effect measure. Although variation in trade effect due to unpredictable market fluctuations would increase, averaging over many securities and over all days in the year would largely eliminate the impact of such fluctuations. Moreover, since most funds simultaneously buy and sell when effecting portfolio adjustments, the effects of unpredictable market fluctuations on the mark-to-market profits for buy and sell trades often would offset each other.

[35] For a fuller discussion of fund director's review of transaction costs, see Section VI of this Release, "Review of Transaction Costs by Fund Directors."

implemented. Please discuss the specific algorithms, formulas, definitions, recordkeeping requirements, and internal control requirements that should be used. Commenters are encouraged to address the following specific topics:

A. How should funds measure their spread costs?

B. How should funds measure their market impact costs?

C. How should funds measure their opportunity costs?

D. Should spread, market impact and opportunity costs be measured trade-by-trade or for all transactions?

E. Should spread, market impact and opportunity costs be measured absolutely or relative to a benchmark?

F. Should this number be included in fund expense ratios and fee tables?

11. Would the trade effect measure provide useful information to investors, and if so, should we require its disclosure? If the Commission mandated trade effect disclosure, should trade effect be measured with respect to same day closing prices or next day closing prices?

12. More generally, if the Commission were to choose to require disclosure of only one transaction cost measure, which measure should it be?

* * * * *

IV. Accounting Issues

Under generally accepted accounting principals, most portfolio transaction costs are either included as part of the cost basis of securities purchased or subtracted from the net proceeds of securities sold and ultimately are reflected as changes in the realized and unrealized gain or loss on portfolio securities in the fund's financial statements.[36] Unfortunately, this accounting treatment provides a mutual fund shareholder with an opaque view of portfolio transaction costs in a fund's financial statements.[37] One effect of this lack of transparency is that it has impaired the ability of investors to evaluate the use of fund assets to obtain research services (as that term is defined in section 28(e) of the Securities Exchange Act of 1934) that are paid for through commissions or spreads.

The component of commissions that represent execution and clearing costs are the equivalent of acquisition or disposition costs incurred on physical assets and current accounting principles dictate that they be included in the cost basis of securities purchased or in the net proceeds from securities sold.[38] However, the component of commissions that represent the costs of services is conceptually an operating expense of a fund and should not be included in the cost basis of securities purchased or in the net proceeds from securities sold.[39]

We have attempted to improve the transparency of financial reporting when reliable information is available. For example, the aggregate value of all fund operating expenses paid for by brokers in brokerage offset arrangements are identifiable and measurable, even if the brokerage offset credits cannot be allocated to individual trades. Accordingly, we adopted a rule under Regulation S–X in 1995 that requires a mutual fund to record the value of services received under brokerage-offset arrangements as an expense.[40] The practical result is that the portion of commission or spread cost that can be reliably identified and measured and that also represents operating expenses of the fund is reflected in the expense ratio and in fund expenses.[41]

We are considering whether all transaction costs can be and should be captured in fund expense ratios and fee tables contained in a fund's prospectus. We also are considering whether the cost information obtained would be reliable and relevant for financial reporting purposes or whether alternatively, some subset of transaction costs (*e.g.*, all non-execution and clearing costs) can be reliably measured and expensed for financial reporting purposes. We may conclude that the standard for including these costs in the fee table is different than the standard for including these costs in the fund financial statements thereby creating a discrepancy between the two measures. If we conclude transaction costs or some subset of transaction costs should be included in fund financial statements, those statements would not be comparable to other similar entities, such as pension funds, hedge funds, and other investment vehicles. We are interested in the perspectives of fund investors and fund financial statement preparers on the desire for and feasibility of including some or all of this information in the prospectus and the fund financial statements.

* * * * *

Questions About Accounting Issues

13. Would it be appropriate to include some or all transaction costs in fund expense ratios and fee tables without accounting for these items as an expense in fund financial statements?

14. Would it be feasible to account for some or all transaction costs as an expense in fund financial statements? If it is not feasible to reliably measure market impact and opportunity costs, should we still require that commission costs be expensed? If yes, should the requirement apply to all commission costs or only those commission and spread costs that do not relate to the execution and clearing of a portfolio transaction (*i.e.*, soft dollars)? If it is not feasible to reliably measure all research costs, should we still expense those costs that can be reliably measured (*i.e.*, payments to third parties for research)?

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[36] For example, if a mutual fund purchases 1 share of XYZ Company at a price of $10 with a commission of 5 cents, the mutual fund will record the cost of that security as $10.05. However, the mutual fund will record the security on its statement of assets and liabilities at its market value, for example, $10.03. The fund will then record the difference between the cost basis ($10.05) and the market value ($10.03) as unrealized gain or loss, in this case, an unrealized loss of 2 cents. Therefore, the portfolio transaction costs are not reflected directly as expenses of the fund, but are reflected in the statement of operations as changes in the realized or unrealized gain or loss on portfolio securities. *See* AICPA Audit and Accounting Guide for Investment Companies, paragraph 2.40 (May 1, 2002).

[37] Regardless of whether transaction costs are included in the costs basis/settlement proceeds of securities transactions or separately identified as operating expenses of the fund, the total return of the fund remains the same. Total return is calculated based on the net asset value of the fund, which would not be impacted by the alternatives in recognizing transaction costs. *See* Item 9 of Form N–1A. Form N–1A is the registration form used by open-end investment companies to register under the Investment Company Act of 1940 and to offer their shares under the Securities Act of 1933 [15 U.S.C. 77a].

[38] *See* Financial Accounting Standards Board Statement of Financial Accounting Concepts No. 2, *Qualitative Characteristics of Accounting Information*.

[39] *See* Financial Accounting Standards Board Statement of Financial Accounting Concepts No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises*.

[40] *See* Rule 6–07(2)(g) of Regulation S–X [17 C.F.R. 210.6–07(2)(g)]. Prior to adoption of this rule, funds would report fund expenses, such as expenses for transfer agency, custody, and other services net of direct payments made by brokerage firms on behalf of funds under brokerage offset arrangements. Rule 6–07(2)(g) requires these fund expenses reflect the total amounts paid to fund service providers whether directly paid by the fund or by another entity on its behalf. The fund is allowed to show after total fund expenses the amount of those expenses paid by the brokerage firms. This presentation results in a gross-up of income and expenses in the statement of operations; however, it provides transparency to shareholders on the impact of these arrangements on the fund's financial statements. Additionally, this presentation allows the expense ratio to properly reflect a component of commission/spread costs as an expense.

[41] When we adopted this requirement, we also requested comment on whether the cost of research services provided by broker-dealers should be expensed. Many commentators pointed out the difficulty of allocating research received by an adviser among accounts when the brokerage of those accounts is used to acquire the research. Some commentators, however, supported the additional disclosure of research soft dollar practices. *See* Investment Company Act Release No. 21221 (July 21, 1995).

15. Are mutual funds and their managers better able than they were in the past to track the portion of commission costs that purchase research services from brokers? Has the improvement been sufficient to make it feasible for us to require funds to expense these items in their financial statements? Since soft dollars are earned based on complex-wide trading activity, how should research and other non-execution costs be allocated among funds? Can soft dollars be traced to individual portfolio transactions? (This would entail adjusting the basis of the securities purchased in those transactions for the portion of the commission cost that was used to purchase research services.) Alternatively, should an aggregate adjustment (not specified to a particular portfolio transaction) be made to realized and unrealized gain or loss? If funds and their managers are not yet capable of tracking the portion of commission costs that purchase research services from brokers, what factors continue to prevent funds and managers from developing this capability?

* * * * *

V. Alternatives That Provide Additional Information About the Level of Transaction Costs

A. Existing Disclosure Requirements

1. Portfolio Turnover

All mutual funds (except money market funds) provide investors with information about two items that are related to transaction costs "portfolio turnover rate and dollar amount of brokerage commissions.[42] Funds disclose in their prospectuses the annual rate of portfolio turnover that they have incurred during the last five fiscal years.[43] Portfolio turnover rate measures the average length of time that a security remains in a fund's portfolio.[44] The requirement to disclose portfolio turnover rate is premised on the observation that a fund's transaction costs tend to be highly correlated with its turnover rate, other factors held equal.[45] Thus, by comparing turnover rates, investors can obtain an indication of how transaction costs are likely to vary among different funds. The advantage that turnover rate (an indirect indicator of fund transaction costs) has over the dollar amount of brokerage costs (a more direct measure) is that turnover rate is less affected by the asset size of a fund. For example, a fund with assets of $1 billion is likely to pay many more dollars of brokerage commissions than a fund with assets of $100 million, even if their turnover rates are identical.

2. Dollar Amount of Commissions Paid

In addition to providing their portfolio turnover rates, funds are required to disclose in their prospectus whether they may engage in active and frequent trading of portfolio securities to achieve their investment strategies. If so, funds must explain the tax consequences to shareholders of the increased portfolio turnover, and how the trading costs and tax consequences may affect investment performance.[46]

Funds (with the exception of money market funds) also must disclose in their SAIs the dollar amount of brokerage commissions that they have paid during their three most recent fiscal years.[47] Brokerage commission amounts, although they must be interpreted carefully, can nevertheless provide useful information to fund investors. This disclosure informs investors of the magnitude of the fund's overall assets that are expended on commissions.

B. Improving Disclosure Related to the Level of Transaction Costs

Another set of alternatives for improving mutual fund transaction cost disclosure consists of approaches aimed at improving current transaction cost related disclosures or adding new types of disclosure that would provide information that is more meaningful and understandable to the average investor.

1. Disclose Transaction Costs in Terms of Rated Categories

One commentator has suggested transaction costs (including commissions, spreads, and market impact costs) could be disclosed in terms of rated categories, instead of as part of the expense ratio or as a stand-alone ratio. The commentator suggested funds would categorize their trading costs as either very high, high, average, low or very low. The commentator acknowledged this disclosure might be a rough estimate, but a "rough estimate was better than no estimate at all."[48]

Each fund would be compared to an industry standard. In order for such a comparison to be made, a transaction cost measure would have to be developed. In addition, we would have to determine whether any comparison should be against other funds generally or only against similar funds. For example, the transaction costs of an equity fund are likely not comparable to transaction costs of a fixed-income or money market fund.

2. Portfolio Turnover

Another possible approach would be to require funds to give greater prominence to the portfolio turnover ratio.[49] Portfolio turnover can be calculated easily by all funds. The ratio is simple and easy to understand and readily comparable among funds. If portfolio turnover is highly correlated with transaction costs, then the portfolio turnover ratio may be a good proxy for these costs.[50] The advantages of being able to easily calculate, understand, and compare portfolio turnover rates may justify any imprecision in their correlation to transaction costs.

3. Information About Average Net Flows

Another approach to providing information about transaction costs is to provide additional information about the sale and redemption of fund shares. The sale and redemption of fund shares often generates portfolio transaction costs that all fund investors must bear. Sales of fund shares often lead to security purchases as new monies are invested in the fund's portfolio. Redemptions often lead to security sales to raise money to pay for redemptions. To the extent that sales and redemptions do not offset each other, the net difference ultimately will generate portfolio transactions. These transactions usually incur transaction costs that all investors (in the case of net sales) or all remaining investors (in the case of net redemptions) must bear.

Investors therefore may be interested in the average level of net flows into and out of funds. The disclosure of average daily net flow, measured as a fraction of total assets, therefore might help investors predict the losses that they will bear when holding funds that other traders trade. This measure may provide investors with information about whether the other shareholders in the fund tend to be long-term or short-term investors, and may allow them to gauge the portfolio transaction costs generated by short-term investors. This measure also would help investors understand the extent to which a fund is used by other investors for short-term trading—*i.e.*, market timing.

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[42] Money market funds purchase and sell securities on a principal basis. Transaction costs for these securities are embedded in the purchase price or sale proceeds and are not separately stated.

[43] *See* Item 9 of Form N–1A.

[44] For example, a fund that has a portfolio turnover rate of 100% holds its securities for one year, on average. A fund with a portfolio turnover rate of 200% holds its securities for six months, on average.

[45] *See, e.g.*, Livingston and O'Neal, *supra* note 18 at 283; Fortin and Michelson, *supra* note at 67. *But see*, Chalmers, Edelen, and Kadlec, *supra* note 2 at 2 ("Turnover is likely to be an unreliable proxy for funds trading expenses because it does not account for heterogeneity in the per-unit costs of trading an asset. For example, an uninformed manager that frequently trades assets with a low cost-per-trade may incur lower trading expenses than an uninformed manager who infrequently trades assets with high cost-per-trade.")

[46] *See* Instruction 7 to Item 4(b) of Form N–1A.

[47] *See* Item 16(a) of Form N–1A.

[48] *See* Statement of Wayne H. Wagner, *supra* note 12.

[49] HR 2420 would require funds to disclose their portfolio turnover rate in a new document in which mutual funds would disclose their fees to investors.

[50] *See supra* note 45.

4. Other Narrative Disclosures

Another possible approach is to require a discussion of transaction costs and portfolio turnover in the prospectus, the report to shareholders, or in another disclosure document. Currently, funds are required to discuss the impact of active and frequent portfolio trading, which results in a higher portfolio turnover ratio, if it is a principal investment strategy. The Commission could require that all funds discuss the impact that their management style would have on portfolio turnover. Funds also could be required to discuss the impact on portfolio transaction costs by: trading in various types of securities in which the fund will invest; markets in which they will invest (*e.g.*, on an exchange or through over-the-counter transactions, or in foreign or domestic markets); and the portfolio management strategies that a fund's adviser will employ. In addition, the Commission could require a fund to disclose the portfolio turnover rate that the fund would not expect to exceed.

5. Brokerage Costs and Average Commission Rate per Share

The Commission could require that the information on brokerage costs that is currently included in the SAI be moved to the fund prospectus and prominently displayed with the portfolio turnover information to give shareholders a more complete understanding of the underlying transaction costs of the fund. Another possibility would be to reinstate some form of average commission rate per share disclosure,[51] with appropriate revisions to make it more meaningful than the previously eliminated disclosures of such information in the fund's financial highlights table.

6. Disclosure of Gross Returns

Up to this point in the release, we have described the many sources of costs incurred by fund investors. We could require an alternative disclosure that captures indirectly the total cost of investing in funds. Funds could report the return on their investments prior to all identifiable costs along with the investment return after such costs have been deducted. By reporting both measures side by side, investors could get a reasonable idea of how much they are paying for the return they receive.

Current Commission regulations mandate the disclosure of the returns that funds generate after fees and expenses (standardized returns).[52] These standardized returns differ from the gross returns generated by the fund's portfolio manager.[53] Gross returns are the returns that investment managers produce while standardized returns are the returns that are available to shareholders.

Gross returns are generally higher than standardized returns because the standardized returns reflect the loads, fees, expenses, and other charges that shareholders pay to obtain and maintain their investments. Dilution due to market timing may also cause standardized returns to be lower than the associated gross returns.

If gross returns were disclosed to investors, they could compare the returns produced by their managers with the standardized returns. Investors would be able to evaluate the efficiency of fund management by examining the difference between these two returns. In particular, they would be able to determine how much of the portfolio return they will actually receive on a net basis.

The disclosure of gross returns would also allow investors to compare the performance of investment managers on an equivalent basis. Such comparisons now require that investors take into account differences across funds, such as loads, fees, expenses, and dilution. Although loads, fees, and expenses are now disclosed, dilution caused by portfolio trading is not. Accordingly, investors cannot now compare investment managers on a completely equivalent basis.

* * * * * *

Questions About Improving Disclosure Related to the Level of Transaction Costs

16. Are there ways to provide a rough estimate of transaction costs, or develop a scheme to categorize these costs (for example, "very high," "high," "average," "low," or "very low") under general guidelines set by the Commission that would mitigate the difficulties involved in coming up with a more precise measure, and yet still provide useful information to investors? Could such an approach produce results that are consistent enough to permit meaningful comparison among funds? If yes, please provide specific suggestions.

17. In general, do the current disclosure requirements relating to transaction costs described in this section of the release provide investors with adequate information? If not, what additional information should funds provide? Would one or more of the alternatives described in this section provide useful information to investors, or would the alternatives lengthen the prospectus while providing no real benefit? If one or more of these alternatives would provide meaningful information, would the information most appropriately be located in the prospectus, the SAI, the report to shareholders, or in another disclosure document?

18. Does existing portfolio turnover disclosure provide useful information about transaction costs? If additional narrative disclosure concerning portfolio turnover and its relationship to transaction cost is needed, what information should be required?

19. Does the existing requirement to disclose the dollar amount of commissions paid provide investors with meaningful information about transaction costs? How can the existing requirement be improved?

20. Would an average daily net flow measure provide useful information to investors?

21. Should the Commission consider policies to encourage funds to charge purchasers and redeemers of fund shares a fee payable to the funds to compensate existing and remaining investors for the costs they bear when their funds accommodate the purchases and redemptions of other investors? If yes, should the Commission consider requiring funds to disclose how they compute these fees, if they require them; and why they do not require these fees, if they do not?

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[51] In 1995 the Commission amended Form N–1A to require funds to disclose in the financial highlights table their average commission rate per share. *See* Investment Company Act Release No. 21221 (July 21, 1995). This amount was calculated by dividing the total dollar amount of commissions paid during the fiscal year by the total number of shares purchased and sold during the fiscal year for which commissions were charged. In 1998 the Commission eliminated this requirement in the belief that the fund prospectus is not the most appropriate document through which to make this information public. *See* Investment Company Act Release No. 23064, (Mar. 13, 1998). The Commission noted that industry analysts had informed the staff that average commission rate information is only of marginal benefit to them and to typical fund investors, and that the analysts support the view that these rates are technical information that typical investors are unable to understand.

[52] *See* Item 21(b)(1) of Form N–1A.

[53] Gross return refers to the aggregate performance of the holdings of a portfolio.

22. Should the requirement to disclose average commission rate per share be reinstated, in either its original form or in a revised form? If you advocate that it be reinstated in a revised form, please provide specific suggestions.

23. Is "transaction costs" as described in this release a useful concept, or would it be more useful for investors to see the effect of all costs combined, for example, by showing the following:

- Gross or "pure" portfolio return;
- Net return to shareholders; and
- The resulting difference?

24. If it would be useful for investors to see the effect of all costs combined, could funds calculate and report the gross or "pure" portfolio return, net return to shareholders and the resulting difference on an annual basis?

25. Should the Commission require disclosure of gross returns? If so, what definition would be most useful? Of what benefit would these returns be to investors? How expensive would it be for funds to compute these returns?

26. Would the disclosure of gross returns allow investors to better identify dilution due to market timers?

27. If portfolio returns are to be disclosed, how should the returns be adjusted for fund flows into and out of the portfolio? Should they be computed using internal rate of return methods; time-weighted average methods; or should other methods be used?

28. If portfolio returns are to be disclosed, should these returns only be disclosed, or should the differences between these returns and the shareholder returns be disclosed?

29. Where should these returns or return differences be disclosed, and how should they be described?

* * * * *

VI. Review of Transaction Costs by Fund Directors

Although a mutual fund's investment adviser has an obligation to seek the best execution of securities transactions arranged for or on behalf of the fund, the adviser is not necessarily obligated to obtain the lowest possible commission cost. The adviser's obligation is to seek to obtain the most favorable terms for a transaction reasonably available under the circumstances.[54] Given the fact that portfolio transactions costs can be substantial and that they involve the use of fund assets, portfolio transaction costs must be a significant issue for consideration by fund directors. The transaction costs incurred by a mutual fund are also generally reviewed by the fund's board of directors because section 15(c) of the Investment Company Act requires a fund's board to request and review such information as may reasonably be necessary to evaluate the terms of the advisory contract between the adviser and the fund. Even if the investment adviser obtains best execution, research, distribution, and other services purchased by the adviser with the fund's brokerage bear on the reasonableness of the fund's management fee because the research, distribution and other services may otherwise have to be purchased by the adviser itself, resulting in higher expenses and lower profitability for the adviser. Therefore, for example, mutual fund advisers that have soft dollar arrangements provide their funds' boards with information regarding their soft dollar practices.[55]

In evaluating the use of commissions, fund directors also consider the appropriateness of entering directed brokerage arrangements. Under a directed brokerage arrangement, the fund asks the investment adviser to direct securities transactions to a particular broker that has agreed to provide services, pay for services provided by others, or make cash rebates to the fund. Funds typically enter into directed brokerage arrangements to offset fund expenses, such as audit, legal, and custodial fees. Although directed brokerage does not involve the conflicts posed by soft dollars, it does raise issues related to how a fund's assets are being expended and other issues, including disclosure.[56]

* * * * *

Questions About Board Review of Transaction Costs

30. Are existing requirements for board review of transaction costs adequate? If they are not adequate, how can they be improved?

31. Should boards be required to receive reports with mandated information regarding soft dollars and directed brokerage payments? Should investors be provided periodically with a summary of these reports?

32. One problem in evaluating execution cost measurements is in identifying a standard of comparison. It may be difficult for fund directors to assess the fund's execution performance statistics in a vacuum, without comparison with other funds' statistics. Should the Commission or other independent body collect these statistics from similar funds and make available aggregate statistics for comparison purposes?

33. Should fund advisers be required to provide fund boards with an internal allocation of their uses of brokerage commissions, indicating the amounts and percentage used by the adviser to obtain execution services and soft dollar benefits, specifically detailing the types and amounts of the various kinds of benefits? Should there be separate allocations among types of research, such as research produced by underwriters, or other broker-dealer affiliates?

* * * * *

In conclusion, the Commission believes that shareholders need to better understand a fund's trading costs in order to evaluate the costs of operating a fund. As outlined above, the Commission intends to examine what steps can be taken to improve the disclosure of transaction costs in order to make the information more useful and understandable to the average investor.

By the Commission.

Dated: December 18, 2003.

Margaret H. McFarland,

Deputy Secretary.

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[54] *See* Securities Exchange Act Release No. 23170 (Apr. 23, 1986).

[55] *See* Section 15(c) of the 1940 Act. *See also,* Inspection Report, *supra* note 25.

[56] All advisers, including the investment advisers of mutual funds, have an obligation to act in the best interests of their clients and to place client interests before their own. They also have an affirmative duty of full and fair disclosure of all material facts to their clients. *See* 15 U.S.C. 80b–6 (2000) (Section 206 of the Investment Advisers Act of 1940); *S.E.C.* v. *Capital Gains Research Bureau,* 375 U.S. 180 (1963). Some of the funds that engage in directed brokerage disclose the practice in the prospectus, the SAI, and/or the annual report to shareholders. Others use the footnotes to the financial statements to make the disclosure. In 1995, the Commission adopted accounting rules which require funds to report all expenses gross of off-sets or reimbursements pursuant to a directed brokerage arrangement. *See supra* note 40. HR 2420 would create a specific fiduciary duty for fund boards to review soft dollar and directed brokerage arrangements, as well as require an annual report to the board on soft dollar and directed brokerage payments, as well as summary disclosure in annual reports to shareholders regarding the report to the board in these areas.

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- California; published 11-24-03

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Production and utilization facilities; domestic licensing:
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- Nuclear power plants; decommissioning trust provisions; published 12-24-02
- Nuclear power plants; decommissioning trust provisions; correction; published 3-17-03

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- Titeflex Corp.; published 11-19-03

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- Beef, lamb, pork, fish, perishable agricultural commodities, and peanuts; mandatory labeling definitions, requirements, and recordkeeping responsibilities; comments due by 12-29-03; published 10-30-03 [FR 03-27249]

Organic producers and marketers; exemption from assessments for market promotion activities; comments due by 1-2-04; published 12-2-03 [FR 03-29958]

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  - Hawaii State waters; sea turtle interactions with fishing activities; environmental impact statement and scoping meeting; comments due by 12-31-03; published 9-22-03 [FR 03-23994]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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H.R. 100/P.L. 108–189

Servicemembers Civil Relief Act (Dec. 19, 2003; 117 Stat. 2835)

H.R. 622/P.L. 108–190

To provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes. (Dec. 19, 2003; 117 Stat. 2867)

H.R. 1006/P.L. 108–191

Captive Wildlife Safety Act (Dec. 19, 2003; 117 Stat. 2871)

H.R. 1012/P.L. 108–192

Carter G. Woodson Home National Historic Site Act (Dec. 19, 2003; 117 Stat. 2873)

H.R. 2620/P.L. 108–193

Trafficking Victims Protection Reauthorization Act of 2003 (Dec. 19, 2003; 117 Stat. 2875)

S. 686/P.L. 108–194

Poison Control Center Enhancement and Awareness Act Amendments of 2003 (Dec. 19, 2003; 117 Stat. 2888)

S. 1680/P.L. 108–195

Defense Production Act Reauthorization of 2003 (Dec. 19, 2003; 117 Stat. 2892)

S. 1683/P.L. 108–196

Federal Law Enforcement Pay and Benefits Parity Act of 2003 (Dec. 19, 2003; 117 Stat. 2896)

S. 1929/P.L. 108–197

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S. 1947/P.L. 108–198

Preserving Independence of Financial Institution Examinations Act of 2003 (Dec. 19, 2003; 117 Stat. 2899)

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Rules and Regulations

Federal Register
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Monday, December 29, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1178]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending Regulation C (Home Mortgage Disclosure) and the staff commentary that interprets the requirements of Regulation C. The regulation and staff commentary are amended to conform them to changes in the Standards for Defining Metropolitan and Micropolitan Statistical Areas published by the U.S. Office of Management and Budget (OMB) in December 2000. The staff commentary also is amended to increase the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The adjustment from $32 million to $33 million reflects the increase of that index by 2.30 percent during the twelve-month period ending in November 2003. Thus, depository institutions with assets of $33 million or less as of December 31, 2003, are exempt from data collection in 2004.

DATES: Effective January 1, 2004.

FOR FURTHER INFORMATION CONTACT: John C. Wood or Kathleen C. Ryan, Counsels, or Dan S. Sokolov, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report that data to their federal supervisory agencies and make the data available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA.

Metropolitan Statistical Areas

The Board is making revisions to Regulation C to conform it to OMB's Standards for Defining Metropolitan and Micropolitan Areas issued in December 2000 under the Metropolitan Area program (the 2000 Standards). 65 FR 82228 (December 27, 2000). The purpose of the Metropolitan Area program is to provide nationally consistent definitions for the federal government to use in collecting, tabulating, and publishing statistics for a set of geographic areas.

Regulation C has incorporated OMB's definitions of a Metropolitan Statistical Area (MSA) and a Primary Metropolitan Statistical Area (PMSA) for determining coverage under HMDA, reporting property location, providing disclosures and reports of lending activity, and posting notices about the availability of HMDA data. OMB's 1990 standards defined an MSA as an urbanized area with at least 50,000 population. *See, e.g.*, 63 FR 70526, 70531 (December 21, 1998). Large MSAs of 1 million or more population were called Consolidated Metropolitan Statistical Areas (CMSAs); CMSAs were subdivided into two or more PMSAs (generally a county or group of counties with at least 100,000 population). Regulation C provided that the relevant geographic unit was the PMSA; if the lender or the property was located in an MSA that was not large enough to be a CMSA, then the MSA was the applicable geographic unit. CMSAs were not used under HMDA.

The 2000 standards supersede OMB's 1990 standards, necessitating a change to Regulation C. Although the 2000 standards retain the concept of an MSA as an urbanized area of 50,000 or more population, the standards no longer designate areas as CMSAs and PMSAs. Instead, the 2000 standards provide that a large MSA (with a population of at least 2.5 million) is divided into "Metropolitan Divisions." Each Metropolitan Division consists of one or more counties that represent an employment center within an MSA.

In June 2003, OMB released the list of MSAs and Metropolitan Divisions, Micropolitan Statistical Areas, and Combined Statistical Areas, based on the application of the 2000 standards to data from the 2000 Census. Each MSA and Metropolitan Division is assigned a 5-digit number (previously, all MSAs and PMSAs were assigned 4-digit numbers). OMB Bulletin No. 03–04, June 6, 2003. In July 2003, the FFIEC instructed lenders to use the newly released MSAs and Metropolitan Divisions for collecting and reporting HMDA data beginning January 1, 2004. *See http://www.ffiec.gov/hmda/pdf/spec2004.pdf.* Regulation C refers to the MSA and the PMSA for determining coverage under HMDA, reporting property location, providing disclosures and reports of lending activity, and posting notices about the availability of HMDA data. The MSA, and in the case of large MSAs, the Metropolitan Division, are the geographic units most analogous to MSAs and PMSAs under the 1990 standards. Thus, their use minimizes any disruption in HMDA data caused by the changes to OMB standards.

The revisions to Regulation C formalize the FFIEC's July 2003 guidance. The regulation, Appendix A, and the staff commentary are amended to use the terms "MSA" and "Metropolitan Division." Additionally, references to obsolete Census materials have been deleted from Appendix A.

Asset Threshold

Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. Prior to 1997, HMDA exempted depository institutions with assets totaling $10 million or less, as of the preceding year-end. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to $28 million for 1997 data collection.

Section 203.2(e)(1)(i) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Board raised the threshold to $29 million for 1998 data collection, raised it to $30 million for 1999 data collection, and kept it at that level for data collection in 2000. The Board raised the threshold to $31 million for data collection in 2001 and to $32 million for data collection in 2002; the Board kept the threshold at $32 million in 2003.

During the period ending November 2003, the CPIW increased by 2.30 percent. As a result, the exemption threshold is raised to $33 million. Thus, depository institutions with assets of $33 million or less as of December 31, 2003, are exempt from data collection in 2004. An institution's exemption from collecting data in 2004 does not affect its responsibility to report the data it was required to collect in 2003.

Final Rule

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary. 5 U.S.C. 553(b)(3)(B). The amendments in this notice are technical. The Board is amending various provisions of the regulation and commentary to conform them to the current OMB standards that are analogous to standards used previously under HMDA. Comment 2(e)–2 to section 203.2 of the regulation is amended to implement the increase in the exemption threshold. This amendment merely applies the formula established by Regulation C for determining adjustments to the exemption threshold. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendments are adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

■ 2. Section 203.2 is amended by revising paragraphs (c)(2), (e)(1)(ii), (e)(2)(ii), and (j).

§ 203.2 Definitions.

* * * * *

(c) * * *

* * * * *

(2) Any office of a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for home purchase loans, home improvement loans, or refinancings. A for-profit mortgage-lending institution is also deemed to have a branch office in an MSA or in a Metropolitan Division, if, in the preceding calendar year, it received applications for, originated, or purchased five or more home purchase loans, home improvement loans, or refinancings related to property located in that MSA or Metropolitan Division, respectively.

* * * * *

(e) * * *

(1) * * *

(ii) On the preceding December 31, had a home or branch office in an MSA;

* * * * *

(2) a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

* * * * *

(ii) On the preceding December 31, had a home or branch office in an MSA; and

* * * * *

(j)(1) Metropolitan Statistical Area or MSA means a metropolitan statistical area as defined by the U.S. Office of Management and Budget.

(2) Metropolitan Division or MD means a metropolitan division of an MSA, as defined by the U.S. Office of Management and Budget.

* * * * *

■ 3. Section 203.4 is amended by revising paragraphs (a)(9) and (e).

§ 203.4 Compilation of loan data.

(a) * * *

(9) The location of the property to which the loan or application relates, by MSA or by Metropolitan Division, by state, by county, and by census tract, if the institution has a home or branch office in that MSA or Metropolitan Division.

* * * * *

(e) *Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA.* Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) shall also collect the location of property located outside MSAs and Metropolitan Divisions in which the institution has a home or branch office, or outside any MSA.

■ 4. Section 203.5 is amended by revising paragraphs (b)(3)(i) and (ii), (c), (e), and (f):

§ 203.5 Disclosure and reporting.

* * * * *

(b) * * *

(3) In addition, an institution shall either:

(i) Make its disclosure statement available to the public, within ten business days of receiving it, in at least one branch office in each other MSA and each other Metropolitan Division where the institution has offices (the disclosure statement need only contain data relating to the MSA or Metropolitan Division where the branch is located); or

(ii) Post the address for sending written requests in the lobby of each branch office in other MSAs and Metropolitan Divisions where the institution has offices; and mail or deliver a copy of the disclosure statement within fifteen calendar days of receiving a written request (the disclosure statement need only contain data relating to the MSA or Metropolitan Division for which the request is made). Including the address in the general notice required under paragraph (e) of this section satisfies this requirement.

* * * * *

(c) *Public disclosure of modified loan/application register.* A financial institution shall make its loan/application register available to the public after removing the following information regarding each entry: the application or loan number, the date that the application was received, and the date action was taken. An institution shall make its modified register available following the calendar year for which the data are compiled, by March 31 for a request received on or before March 1, and within thirty calendar days for a request received after March 1. The modified register need only contain data relating to the MSA or Metropolitan Division for which the request is made.

* * * * *

(e) *Notice of availability.* A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in an MSA and Metropolitan Division. An institution shall provide promptly upon request the location of the institution's offices where the statement is available for inspection and copying, or it may include the location in the lobby notice.

(f) *Loan aggregation and central data depositories.* Using the loan data submitted by financial institutions, the FFIEC will produce reports for individual institutions and reports of aggregate data for each MSA and Metropolitan Divison, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race. These reports will be available to the public at central data depositories located in each MSA and Metropolitan Division. A listing of central data depositories can be obtained from the Federal Financial Institutions Examination Council, Washington, DC 20006.

■ 5. Appendix A to Part 203 is amended by:

■ a. Revising Paragraph I.A.6.c. introductory text.

■ b. Revising Paragraph I.C

■ c. Revising Paragraphs I.C.1., 3., 4., 5., and 6.

■ d. Revising the Loan/Application Register.

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

I. * * *

A. * * *

6. * * *

* * * * *

Code 3—Not applicable

* * * * *

c. Use Code 3 if the property to which the loan relates is a multifamily dwelling; is not located in an MSA; or is located in an MSA or an MD in which your institution has neither a home nor a branch office. Alternatively, at your institution's option, you may report the actual occupancy status, using Code 1 or 2 as applicable.

* * * * *

C. Property Location. Except as otherwise provided, enter in these columns the applicable codes for the MSA, or the MD if the MSA is divided into MDs, state, county, and census tract to indicate the location of the property to which a loan relates.

1. *MSA or Metropolitan Division.* For each loan or loan application, enter the MSA, or the MD number if the MSA is divided into MDs. MSA and MD boundaries are defined by OMB; use the boundaries that were in effect on January 1 of the calendar year for which you are reporting. A listing of MSAs and MDs is available from your supervisory agency or the FFIEC.

* * * * *

3. *Census Tract.* Indicate the census tract where the property is located. Notwithstanding paragraph 6, if the property is located in a county with a population of 30,000 or less in the 2000 Census, enter "NA" (even if the population has increased above 30,000 since 2000), or enter the census tract number. County population data can be obtained from the U.S. Census Bureau.

4. *Census Tract Number.* For the census tract number, consult the resources provided by the U.S. Census Bureau or the FFIEC.

5. *Property Located Outside MSAs or Metropolitan Divisions.* For loans on property located outside the MSAs and MDs in which an institution has a home or branch office, or for property located outside of any MSA or MD, the institution may choose one of the following two options. Under option one, the institution may enter the MSA or MD, state and county codes and the census tract number; and if the property is not located in any MSA or MD, it may enter "NA" in the MSA or MD column. (Codes exist for all states and counties and numbers exist for all census tracts.) Under this first option, the codes and census tract number must accurately identify the property location. Under the second option, which is not available if paragraph 6 applies, an institution may enter "NA" in all four columns, whether or not the codes or numbers exist for the property location.

6. *Data Reporting for Banks and Savings Associations Required to Report Data on Small Business, Small Farm, and Community Development Lending Under the CRA Regulations.* If your institution is a bank or savings association that is required to report data under the regulations that implement the CRA, you must enter the property location on your HMDA/LAR even if the property is outside the MSAs or MDs in which you have a home or branch office, or is not located in any MSA.

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BILLING CODE 6210–01–P

LOAN/APPLICATION REGISTER Page___of___

Form FR HMDA–LAR

Name of Reporting Institution

City State ZIP

Reporter's Identification Number

Agency Code

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details

Application or Loan Information								Action Taken		Property Location				Applicant Information A - Applicant CA - Co Applicant									Other Data		
														Ethnicity		Race		Sex							
Application or Loan Number	Date Application Received (mm/dd/ccyy)	Loan Type	Property Type	Purpose	Owner Occupancy	Loan Amount in Thousands	Preapproval	Type	Date (mm/dd/ccyy)	Five Digit MSA/MD Number	Two Digit State Code	Three Digit County Code	Six Digit Census Tract	A	CA	A	CA	A	CA	Gross Annual Income in thousands	Type of Purchaser of Loan	Reasons for Denial (optional)	Rate Spread	HOEPA Status	Lien Status
Example of Loan Originated Following Preapproval LB-687439	01/15/2004	1	1	1	1	65	1	1	02/22/2004	47894	51	059	4219.05	2	5	3 5	8	1	5	24	7		NA.	[illegible]	1
Example of Preapproval Request Denied 5678904321-1234098765	06/01/2004	1	1	1	1	125	1	7	06/20/2004	NA	NA	NA	NA	[illegible]	2	3	2	1	2	40	0	1, [illegible]	NA.	2	1
Example of Application Denied Following Preapproval 0123456789-9876543210	03/20/2004	1	1	1	1	50	1	3	04/30/2004	11500	01	015	0021.00	1	1	[illegible]	3	[illegible]	1	30	0	4, 5	NA.	2	1

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3. In Supplement I to part 203:

a. Under section 203.2 Definitions, *2(c) Branch Office*, paragraphs 2. and 3. are revised.

b. Under section 203.2 Definitions, *2(e) Financial Institution*, paragraph 2. is revised.

c. Under section 203.2 Definitions, a new paragraph title *2(j) Metropolitan Statistical Areas and Metropolitan Divisions* is added, and a new paragraph 1. is added.

d. Under section 203.4 Compilation of Loan Data, *4(a)(9) Property Location*, paragraph 3. is revised.

e. Under section 203.5 Disclosure and Reporting, *5(a) Reporting to Agency*, paragraphs 4. and 8. are revised.

Supplement I to Part 203—Staff Commentary

Section 203.2 Definitions

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2(c) *Branch office.*

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2. *Depository institution.* A branch of a depository institution does not include a loan-production office, the office of an affiliate, or the office of a third party such as a loan broker. (But see Appendix A, paragraph I.C.6, which requires certain depository institutions to report property location even for properties located outside those MSAs or Metropolitan Divisions in which the institution has a home or branch office.)

3. *Nondepository institution.* For a nondepository institution, "branch office" does not include the office of an affiliate or other third party such as a loan broker. (But note that certain nondepository institutions must report property location even in MSAs or Metropolitan Divisions where they do not have a physical location.)

* * * * *

2(e) Financial Institution

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2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2004, the asset-size exemption threshold is $33 million. Depository institutions with assets at or below $33 million are exempt from collecting data for 2004.

* * * * *

2(j) Metropolitan Statistical Areas and Metropolitan Divisions

1. *Use of terms "Metropolitan Statistical Area" and "Metropolitan Division."* The U.S. Office of Management and Budget defines Metropolitan Statistical Areas and Metropolitan Divisions to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. OMB divides every Metropolitan Statistical Area (MSA) with a population of 2.5 million or more into Metropolitan Divisions (MDs); MSAs with populations under 2.5 million population are not so divided. 67 FR 82228 (December 27, 2000). For all purposes under Regulation C, if an MSA is divided by OMB into MDs, the appropriate geographic unit to be used is the MD; if an MSA is not so divided by OMB into MDs, the appropriate geographic unit to be used is the MSA.

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Section 203.4 Compilation of Loan Data

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4(a)(9) Property location.

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3. *Property location—loans purchased from another institution.* The requirement to report the property location by census tract in an MSA or Metropolitan Division where the institution has a home or branch office applies not only to loan applications and originations but also to loans purchased from another institution. This includes loans purchased from an institution that did not have a home or branch office in that MSA or Metropolitan Division and did not collect the property-location information.

* * * * *

Section 203.5 Disclosure and Reporting

5(a) Reporting to Agency

* * * * *

4. *Options for collection.* An institution may collect data on separate registers at different branches, or on separate registers for different loan types (such as for home purchase or home improvement loans, or for loans on multifamily dwellings). Entries need not be grouped on the register by MSA or Metropolitan Division, or chronologically, or by census tract numbers, or in any other particular order.

* * * * *

8. *Transmittal sheet—revisions or deletions.* If a data submission involves revisions or deletions of previously submitted data, it must state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. Depository institutions must provide a list of the MSAs or Metropolitan Divisions in which they have home or branch offices.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 18, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–31694 Filed 12–24–03; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE80

Small Business Size Standards; Information Technology Value Added Reseller

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is establishing a new industry category and size standard of 150 employees for Information Technology Value Added Resellers under the industry of Other Computer Related Services, North American Industry Classification System industry code 541519. This industry category and size standard is being established to better apply small business eligibility requirements under Federal contracts that combine substantial services with the acquisition of computer hardware and software.

DATES: This rule is effective on January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Assistant Administrator for Size Standards, at (202) 205–6464 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On July 24, 2002, the SBA proposed to establish a size standard for businesses described as Information Technology Value Added Resellers (ITVAR) (67 FR 48419). Under the North American Industry Classification System (NAICS), value added resellers are classified in the Wholesale Trade Sector along with merchant wholesalers, distributors, drop shippers, brokers, and agents. For purposes of Federal contracting, a wholesale trade firm that provides supplies to the Federal Government that it did not manufacturer is small if it, including its affiliates, has not more than 500 employees. The SBA proposed to retain the 500 employee size standard applicable to value added resellers and other wholesale trade nonmanufacturers for the proposed industry category of ITVARs.

In response to a large number of comments objecting to the 500 employee size standard for ITVAR, the SBA reassessed its decision to retain the nonmanufacturer size standard for this new industry category. As described below, the SBA has decided to establish a size standard of 150 employees for ITVARs. This decision is based on a review of the comments received to the proposed rule and an analysis of the characteristics of firms in the computer services and wholesale trade industries that are engaged in providing services along with information technology (IT) equipment. Below is a discussion of the comments received on the proposed rule and the size standard analysis.

Discussion of Comments

The SBA received 291 timely comments on the proposed rule. Two hundred and seventy six comments

(94.8%) opposed the 500 employee size standard for ITVAR. Twelve comments (4.1%) supported the proposed size standard. The remaining three comments either supported a higher size standard or addressed other issues related to the proposed rule.

Comments Opposing the Proposal

More than three-fourths of the 276 comments that strongly objected to the proposed ITVAR size standard submitted an identical or very similar comment. These comments stated that the average size of an ITVAR is 15 employees and 88% have 100 or fewer employees, based on data from the SBA and from a survey conducted by Computer News Reseller titled "State of the Market 2002 Research." Based on these facts, the comments contended that a 500 employee size standard is inconsistent with the Small Business Act and the foundation of the SBA. These comments further recommended that SBA also adopt a 100 employee size standard for nonmanufacturers under the industry of Computer and Computer Peripheral Equipment and Software Merchant Wholesalers, NAICS 423430 (formally NAICS 421430).

The other comments opposing the proposed ITVAR size standard cited similar data on ITVARs to argue that businesses with up to 500 employees are not small businesses in this industry and provided additional reasons for their position. Many of these comments argued that smaller IT businesses are not competitive against businesses with several hundred employees. Although smaller ITVARs may be competitive in terms of quality and service, the low margins in the industry make them uncompetitive with larger resellers. Under the proposed size standard, they argued that Federal agencies would tend to award contracts to the larger small businesses at the expense of much smaller businesses. Several comments considered a 500 employee ITVAR to be dominant in this field, and therefore, does not meet the Small Business Act's statutory definition of a small business which excludes dominant businesses as small (*see* 15 U.S.C. 632(a)(1)). Several comments also criticized the 500 employee size standard as merely an attempt to help Federal agencies to achieve their small business goals.

Comments Supporting the Proposal

The 12 comments supporting the proposed ITVAR size standard gave several reasons for their position. Many of these comments noted that many firms outgrow the $21 million receipts-based IT industry size standards because a sizable proportion of receipts on Federal contracts are for the purchase of hardware and software from manufacturers rather than strictly for services performed by ITVAR firms. Related to this point, one comment stated that the proposed ITVAR size standard allows larger small businesses to continue to operate in an industry category after they outgrow other IT industry size standards. Another comment supported the proposed size standard by comparing the activities of value added resellers with small businesses that function as an order processing or clearing house for the resale of computer and related products. The comment contended that small businesses that provide staff involved in engineering, re-configuration, systems integration, and turnkey operations must have a large number of employees to perform these functions and to grow to compete with large businesses. One of the supporting comments also recommended adding a receipts-size standard of $50 million with the proposed 500 employee size standard to prevent large businesses from qualifying as small.

Comments on establishing an ITVAR Industry Category

The SBA received seven comments on the issue of establishing an industry category for ITVAR. All seven commented in support of the new category. Three of these were from comments that opposed the 500 employee size standard. One comment recommended changing the proposed service percentage range of 15% to 50% of contract value in the ITVAR definition to a range of 0% to 100% since contracts exclusively for hardware also include an implicit services component that contractors will provide to their customers.

The SBA's Response to Comments

The SBA agrees that 500 employees is not an appropriate size standard for ITVARs. As the comments pointed out, a large number of firms engaged in this activity are much smaller than 500 employees. A business can enter into the ITVAR industry at a relatively small size and grow into a highly competitive business well before it reaches 500 employees. The reasons given for comments in support of the proposed size standard support focused on being eligible as small businesses for large-sized contracts after firms have grown beyond the $21 million computer services size standard.

While the SBA agrees that a size standard lower than 500 employees should be adopted, it does not agree that 100 employees is the appropriate size standard. The reasons provided by those comments focused on the average employee size of ITVARs and the percent of ITVARs with 100 or fewer employees. As described more fully below, the SBA considers several industry characteristics to assess a size standard for an industry. Average firm size is one industry factor, which is compared to the average size firm in other industries. The percent of industry firms at various sizes is not used. This factor is not as useful as other industry characteristics in assessing a size standard. The statistic is overwhelmingly driven by the concentration of firms with only a few employees. These firms have much turnover and account for an insignificant proportion of industry employment and receipts. For example, ITVARs with less than five employees comprise 71% of industry firms but account for between 6% to 7% of industry employment and sales. A more useful measure to assess the economic significance of firms of varying sizes in an industry is the distribution of industry receipts by firm size. Data on this characteristic is discussed in the size standard analysis below.

Based on a review of ITVAR industry characteristics, the SBA is adopting a 150 employee size standard, which it believes more sufficiently considers the overall characteristics of the types of firms engage in ITVAR activities. In addition, 150 employees is equivalent to the average number of employees of firms under the $21 million size standard for computer services (NAICS 5415 industry group). Since firms in these industries also act as ITVARs, the SBA believes that it is beneficial to firms in these industries to have a consistent size standard, even though the size standard measures differ. As discussed as options in the proposed rule, the SBA considered proposing the $21 million receipts size standard and an employee equivalent of 150 employees. An employee size standard is considered a better measure of the size of ITVARs operation than receipts since a substantial proportion of their receipts merely reflect the dollar value of equipment and software sold.

The SBA does not agree with the comment recommending changing the percentage of services that must be present in an ITVAR contract range from 0% to 100%. It is unlikely that a contract for computer equipment would later include a significant amount of services. As explained in the proposed rule, the purpose of the ITVAR industry category is to treat computer contracts with a meaningful amount of computer services, but where the majority of contract dollars consists as equipment, in the same manner as other computer services contracts. Removing the requirement for a specific percentage of services defeats the purpose of the rule and would unintentionally change the size standards applicable to nonmanufacturers of computer equipment and for computer services.

Size Standards Methodology: Congress granted the SBA discretion to establish detailed size standards (15 U.S.C. 632(a)(2)). The SBA's Standard Operating Procedure (SOP) 90 01 3, "Size Determination Program" (available on SBA's Web site at *http:/www.sba.gov/library/soproom.html*) sets out four categories for establishing and evaluating size standards: (1) The structure of the industry and its various economic characteristics; (2) the SBA program objectives and the impact of different size standards on these programs; (3) whether a size standard successfully excludes those businesses which are dominant in the industry; and (4) other factors if applicable. Other factors, including the impact on other agencies' programs, may come to the attention of the SBA during the public comment period or from the SBA's own research on the industry. No formula or weighting has been adopted so that the factors may be evaluated in the context of a specific industry. Below is a discussion of the SBA's analysis of the economic characteristics of an industry, the impact of a size standard on SBA programs, and the evaluation of whether a firm at or below a size standard could be considered dominant in the industry under review.

Industry Analysis: Section 3(a)(3) of the Small Business Act (15 U.S.C. 632 (a)(3)), requires that size standards vary by industry to the extent necessary to reflect differing industry characteristics. SBA has two "base" or "anchor" size standards that apply to most industries—500 employees for manufacturing industries and $6 million in average annual receipts for nonmanufacturing industries. SBA established 500 employees as the anchor size standard for the manufacturing industries at SBA's inception in 1953 and shortly thereafter established a $1 million average annual receipts size standard for the nonmanufacturing industries. The receipts-based anchor size standard for the nonmanufacturing industries was adjusted periodically for inflation so that, currently, the anchor size standard is $6 million. Anchor size standards are presumed to be appropriate for an industry unless its characteristics indicate that larger firms have a much greater significance within that industry than the "typical industry."

When evaluating a size standard, the characteristics of the specific industry under review are compared to the characteristics of a group of industries, referred to as a comparison group. A comparison group is a large number of industries grouped together to represent the typical industry. It can be comprised of all industries, all manufacturing industries, all industries with receipt-based size standards, or some other logical grouping.

If the characteristics of a specific industry are similar to the average characteristics of the comparison group, then the anchor size standard is considered appropriate for the industry. If the specific industry's characteristics are significantly different from the characteristics of the comparison group, a size standard higher or, in rare cases, lower than the anchor size standard may be considered appropriate. The larger the differences between the specific industry's characteristics and the comparison group's characteristics, the larger the difference between the appropriate industry size standard and the anchor size standard. SBA will consider adopting a size standard below the anchor size standard only when (1) all or most of the industry characteristics are significantly smaller than the average characteristics of the comparison group, or (2) other industry considerations strongly suggest that the anchor size standard would be an unreasonably high size standard for the industry under review.

The primary evaluation factors that the SBA considers in analyzing the structural characteristics of an industry are listed in 13 CFR 121.102 (a) and (b). Those factors include average firm size, distribution of firms by size, start-up costs, and industry competition. The analysis also examines the possible impact of a size standard revision on SBA's programs. The SBA generally considers these five factors to be the most important evaluation factors in establishing or revising a size standard for an industry. However, it will also consider and evaluate other information that it believes relevant to the decision on a size standard for a particular industry. Public comments submitted on proposed size standards are also an important source of additional information that the SBA closely reviews before making a final decision on a size standard. Below is a brief description of each of the five evaluation factors.

1. "Average firm size" is simply total industry receipts (or number of employees) divided by the number of firms in the industry. If the average firm size of an industry is significantly higher than the average firm size of a comparison industry group, this fact would be viewed as supporting a size standard higher than the anchor size standard. Conversely, if the industry's average firm size is similar to or significantly lower than that of the comparison industry group, it would be a basis to adopt the anchor size standard or, in rare cases, a lower size standard.

2. "Distribution of firms by size" is the proportion of industry receipts, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's economic activity is by smaller firms, this tends to support adopting the anchor size standard. A size standard higher than the anchor size standard is supported for an industry in which the distribution of firms indicates that economic activity is concentrated among the largest firms in an industry. In this rule, SBA is comparing the size of firms within an industry to the size of firms in the comparison group at which predetermined percentages of receipts are generated by firms smaller than a particular size firm. For example, assume for the industry under review that 50% of total industry receipts are cumulatively generated by firms of 200 employees and less. This contrasts with the comparison group (composed of industries with the nonmanufacturing anchor size standard of $6 million) in which firms of 64 employees and less cumulatively generated 50% of total industry receipts. Viewed in isolation, the higher figure for the industry under review suggests that a size standard higher than the nonmanufacturing anchor size standard may be warranted. Other size distribution comparisons in the industry analysis include 40%, 60%, and 70%, as well as the 50% comparison discussed above.

3. "Start-up costs" affect a firm's initial size because entrants into an industry must have sufficient capital to start and maintain a viable business. To the extent that firms entering into one industry have greater financial requirements than firms in other industries, the SBA is justified in considering a higher size standard. In lieu of direct data on start-up costs, the SBA uses a proxy measure to assess the financial burden for entry-level firms. For this analysis, the SBA has calculated nonpayroll costs per establishment for each industry. This is derived by first calculating the percentage of receipts in an industry that is either retained or expended on costs other than payroll costs. (The

figure comprising the numerator of this percentage is mostly composed of capitalization costs, overhead costs, materials costs, and the costs of goods sold or inventoried.) This percentage is then applied to average establishment receipts to arrive at nonpayroll costs per establishment (an establishment is a business entity operating at a single location). An industry with a significantly higher level of nonpayroll costs per establishment than that of the comparison group is likely to have higher start-up costs, which would tend to support a size standard higher than the anchor size standard. Conversely, if the industry showed significantly lower nonpayroll costs per establishment when compared to the comparison group, the anchor size standard would be considered the appropriate size standard.

4. "Industry competition" is assessed by measuring the proportion or share of industry receipts obtained by firms that are among the largest firms in an industry. In this final rule, the SBA compares the proportion of industry receipts generated by the four largest firms in the industry—generally referred to as the "four-firm concentration ratio"—with the average four-firm concentration ratio for industries in the comparison groups. If a significant proportion of economic activity within the industry is concentrated among a few relatively large producers, the SBA tends to set a size standard relatively higher than the anchor size standard in order to assist firms in a broader size range to compete with firms that are larger and more dominant in the industry. In general, however, the SBA does not consider this to be an important factor in assessing a size standard if the four-firm concentration ratio falls below 40% for an industry under review.

5. "Impact of a size standard revision on the SBA programs" refers to the possible impact a size standard change may have on the level of small business assistance. This assessment most often focuses on the proportion or share of Federal contract dollars awarded to small businesses in the industry in question. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal contracting revenues, the greater is the justification for a size standard higher than the existing one.

Another factor to evaluate the impact of a proposed size standard on the SBA's programs is the volume of guaranteed loans within an industry and the size of firms obtaining those loans. This factor is sometimes examined to assess whether the current size standard may be restricting the level of financial assistance to firms in that industry. If small businesses receive significant amounts of assistance through these programs, or if the financial assistance is provided mainly to small businesses much lower than the size standard, a change to the size standard (especially if it is already above the anchor size standard) may not be necessary.

Evaluation of Industry Size Standard: The SBA reviewed data on firms in two industry categories to evaluate a size standard for ITVARs. Most ITVARs operate either in the Computer Systems Design and Related Services industry group (NAICS 5415) or in the Computer and Computer Peripheral Equipment and Software Merchant Wholesalers industry (NAICS 423430, formally code 421430). Instead of equally combining the data from these two industries, the SBA adjusted the data by the proportion of sales of firms that provide both services and equipment. Data from the U.S. Bureau of the Census show that firms in the Computer Systems Design and Related Services industry that provide both services and equipment generate 23% of total industry receipts (*see Sources of Receipts or Revenue,* 1997 Economic Census, Professional, Scientific, and Technical Services, Subject Series, EC975545–LS, U.S. Bureau of the Census, August 2000). In the Computer and Computer Peripheral Equipment and Software Merchant Wholesalers industry, firms providing both equipment and services (service contracts, installing computers, and sales of integrated systems) generate 14% of total industry sales from these and all other activities (*see Commodity Line Sales,* 1997 Economic Census Wholesale Trade, Subject Series, EC97W425–LS, U.S. Bureau of the Census, August 2000). The results of combining the two industries are evaluated using the SBA's size standards methodology described above.

The SBA is aware of ITVAR data from private sector sources. The SBA considered these data but decided not to use them for three reasons. First, it is unclear whether the private sector data collected include the receipts and employees of affiliates. Second, whether the data separately show the receipts and employees of all industry activities and from just ITVAR activities. These are key conceptual features of the Census Bureau data that the SBA relies upon to evaluate size standard. Without taking those factors into consideration, misleading data on firm size may be relied upon. Third, private sector data usually consist of a limited sample that tends to miss smaller sized firms. Given these uncertainties, the SBA decided to assess the Census Bureau data.

Tables 1 and 2 below show the structural characteristics for the derived ITVAR industry and for two size standards comparison groups. The first comparison group is comprised of all industries with a $6 million receipts-based size standard, referred to as the "nonmanufacturing anchor group." A firm with $6 million in receipt size in these industries has, on average, 65 employees. SBA assumes that this size standard is appropriate for a nonmanufacturing industry. This is the most logical set of industries to group to assess whether the anchor size standard is appropriate. The second comparison group consists of the nonmanufacturing industries with the highest receipt-based size standards established by the SBA. The SBA refers to this comparison group as the "nonmanufacturing higher-level size standard group." This group's size standards range from $21 million to $30 million. Firms within this size range average in size between 165 employees to 230 employees. If an industry's characteristics are significantly larger than those of the nonmanufacturing anchor group, the SBA will compare them to the characteristics of the higher-level size standards group. By doing so, the SBA can assess whether a size standard should be among the highest size standards or somewhere between the anchor size standard and the highest size standards.

Industry Structure Considerations: Table 1 lists three evaluation factors for the ITVAR industry and the two size standards comparison groups. These include two measures of average firm size and start-up costs (as measured by nonpayroll receipts per establishment), and the four-firm concentration ratio.

TABLE 1.—INDUSTRY CHARACTERISTICS OF THE ITVARs INDUSTRY, THE NONMANUFACTURING ANCHOR GROUP AND HIGHER-LEVEL SIZE STANDARD GROUP

Category	Average firm size		Start-up Costs		Four-firm concentration ratio (percentage)
	Receipts (millions)	Employees	Non-payroll receipts per establishment (millions)	Employee equivalent	
IT value added reseller	$3.47	14	$2.42	10	18.3
Nonmanufacturing anchor group	0.95	11	0.56	6	14.4
Higher-level size standard group	4.60	21	1.80	14	26.7

The average employment size of an ITVAR of 14 employees is about the same as for the nonmanufacturer anchor group level of 11 employees. In terms of average receipts size, ITVARs average receipts size are more than triple that of the nonmanufacturer anchor group's average receipts size. This difference reflects the larger proportion of equipment sales by ITVARs than by firms in other nonmanufacturing industries. Since the size standard under consideration is based on number of employees, the evaluation of this factor will not be based on average receipts size, but is shown for information. The average firm size of ITVARs is two-thirds of the higher size standards group's average employment firm size of 21 employees. Based on the ratio between the ITVAR's and the two comparison groups' average firm size, a size standard at or slightly above the nonmanufacturer level is supportable, or between 65 to 100 employees.

The nonpayroll receipts per establishment indicator is a measurement of entry barriers. Based on this measure, start-up costs for ITVARs are almost five times larger than those of the nonmanufacturer group and about one-third of the higher-level size standard group. As with the average firm size factor, the receipts levels are misleading when considering an employee size standard. To make this measure more useful, the receipts levels were adjusted by the sales per employee for each industry category to show what number of employees it would take, on average, to earn those levels of receipts. This conversion shows that ITVARs with 10 employees generate the estimated average nonpayroll receipts per establishment. This level falls in the middle between the employment sizes calculated for the nonmanufacturer anchor and higher size standards comparison groups, 6 and 14, employees, respectively. This industry characteristic supports a size standard between the nonmanufacturer anchor and higher size standard group levels, or between 100 to 125 employees.

The ITVAR industry's four-firm concentration ratio is estimated to be 18.3%. This is derived from a weighted average of the four-firm concentration ratios of 23% for the Computer and Computer Peripheral Equipment and Software Merchant Wholesalers industry (NAICS 423430, formally code 4421430) and 15.5% for the Computer Systems Design and Related Services industry group (NAICS 5415). A ratio of 18.3% indicates that a small number of businesses do not dominate this industry. As discussed earlier in the description of the size standards methodology, this is not an important factor in assessing a size standard when the four-firm concentration ratio is below 40%.

Table 2 below shows data on the distribution of receipts by firm employment size. For this factor, the SBA is evaluating the cumulative size of firm that accounts for predetermined percentages of total industry receipts (40%, 50%, 60%, and 70%). The table shows firms up to a specific employment size, along with all other smaller firms, account for a specific percentage of total industry receipts.

TABLE 2.—PERCENT OF RECEIPTS BY FIRM SIZE OF THE ITVARs INDUSTRY, THE NONMANUFACTURING ANCHOR GROUP, AND THE HIGHER-LEVEL SIZE STANDARD GROUP

[Number of employees]

Category	Size of firm at 40%	Size of firm at 50%	Size of firm at 60%	Size of firm at 70%
IT Value Added Reseller	250	1,000	>2,500	>2,500
Nonmanufacturing Anchor Group	35	64	130	307
Higher-level Size Standard Group	188	391	1,051	>2,500

The ITVAR industry consists of firms many times larger than firms in the nonmanufacturing anchor group. ITVARs with 250 employees and less obtained 40% of the industry's total receipts whereas firms of 35 employees and less in the nonmanufacturing anchor group obtained 40% of the industry's total receipts. For the other size distribution percentages, ITVARs more than 15 times the size of the firms in the nonmanufacturing anchor group. These data support an ITVAR size standard significantly above the anchor nonmanufacturing level of 65 employees.

Relative to the higher-level size standards group, ITVARs that obtained 40% of industry sales were approximately one-third larger than the size of firms that cumulatively obtained 40% of industry receipts in the higher-level size standard group (250 employees and 188 employees, respectively). The size of ITVARs is more than twice the size of firms for the higher-level size standard group at the 50% and 60% levels. At the 70% level, firms of at least 2,500 employees and less cumulatively captured that proportion of industries sales for the ITVAR industry and the higher-level size standard group. The analysis of these distributions of receipts support a size standard no less than the highest employee-equivalent size standard of the higher-size standards group and up to about twice that level, or between 230 to 400 employees.

SBA Program Considerations: As part of the review of a size standard, the SBA reviews how a change might impact its programs. Most of the impact of a change to the ITVAR size standard will occur in Federal contracting. Data are not collected on Federal contracts designated as ITVAR contracts. These types of contracts are reported in several industry categories. For purposes of the ITVAR size standard analysis, the SBA sorted data by NAICS codes and the Federal Procurement Data Center's (FPDC) Product and Service (PCS) codes to assess small business participation in Federal contracting. Under the existing size standards, an ITVAR contract is classified under a NAICS manufacturing code since the majority of the dollar value of an ITVAR contract (as defined in the proposed rule) is for computer equipment. Some of these contracts, however, are also classified under a wholesale trade code, albeit improperly. The SBA examined contracts awarded during fiscal years 2001–02 in three NAICS industries—Electronic Computer Manufacturing (NAICS 334111), Other Computer Peripheral Equipment Manufacturing (NAICS 334119), and Computer and Computer Peripheral Equipment and Software (NAICS 421430). From these contracts, ITVAR contracts were identified as those that the contracting agency had also designated the services PSC of "Automatic Data Processing and Telecommunication Services" (PSC codes D301 through D399). The resulting list of contracts therefore consisted primarily of computer equipment but also require related services to be performed by the contractor.

The SBA recognizes that this set of Federal contracting data only approximates Federal ITVAR contracting. However, the types of contracts identified capture the types of activities described by the ITVAR size standard description. Also, the large volume of contracting identified by the SBA's approach ($925.7 million) is highly likely to capture significant trends in small business participation. For these two considerations, the SBA believes that data are sufficient to assist in evaluating an ITVAR size standard.

Table 3 shows the amount of estimated ITVAR Federal contracting for fiscal years 2001–02.

TABLE 3.—FEDERAL CONTRACTS FOR INFORMATION TECHNOLOGY VALUE ADDED RESELLERS, FISCAL YEARS 2001–02

Fiscal year	Actions			Dollars		
	Total	Small business	Percent	Total	Small business	Percent
2001	1,514	714	47.2	$405,048,000	$143,432,000	35.4
2002	1,790	937	52.3	$520,676,000	$137,987,000	26.5
2001–02	3,304	1,651	50.0	$925,724,000	$281,419,000	30.4

Source: SBA estimates from the Federal Procurement Data System, U.S. General Services Administration.

These data show small businesses obtaining half of ITVAR contact actions. These small business awards represent about 30% of the total dollar of contract awards. Compared to the share of total industry receipts, small ITVARs obtained 45.5% of total industry sales. This discrepancy between the small business shares suggests that small businesses as a group are less competitive in the Federal ITVAR market than in the private sector. The overall level of small ITVAR participation in Federal contracting does not support the need to lower the current 500 employee size standard.

The comments opposing the proposed 500 employee size standard, however, argued that many small businesses are not competitive against the larger small businesses that are hundreds of employees in size. The SBA examined this point in greater detail. The data show that larger small businesses, those between 200 to 500 employees, accounted for only one-fifth of the ITVAR contracts awarded to small businesses. Furthermore, most contracts identified as ITVAR contracts were full and open contracts. In terms of the dollar value of all Federal ITVAR contracts, the larger small businesses obtain 6.2% of contracts dollars, which is slightly below their estimated 8.7% share of total industry sales. Thus, it does not appear that a compelling argument exists that Federal ITVAR awards to small businesses are dominated by the larger small businesses.

The SBA believes that much of the concern about larger small businesses dominating small business awards are associated with contracts exclusively for IT equipment. The SBA is examining in a similar manner those Federal contracts and will assess the implications of its findings on the nonmanufacturer size standard.

The 7(a) Loan Guaranty Program is SBA's primary business loan program. Table 4 below summarizes the number and amount of 7(a) loans that SBA guaranteed to firms in the two industries comprising ITVARs over the past two fiscal years. The SBA does not identify firms below an industry level to more specifically identify ITVARs.

TABLE 4.—7(A) LOANS IN NAICS 421430 AND NAICS 5415

	FY 2001		FY 2002	
	No.	Amount	No.	Amount
7(a) Loans	227	$41,802,575	921	$139,293,461
Average Loan Size	184,152		151,242	

Source: SBA internal data base.

Small business eligibility for an SBA 7(a) guaranteed loan is based on the size standard of the primary industry of the applicant. For ITVARs that are primarily engaged in the Wholesale Trade Sector, the applicable size standard is 100 employees. For ITVARs primarily engaged in computer services, $21 million in average annual receipts is the applicable size standards. Computer services firms near the $21 million size standard average in size between 125 to 150 employees.

A review of the distribution of 7(a) loans by employment size of the firm shows that only 10 loans, amounting to $6.6 million, were made in fiscal years 2001–02 to firms of 100 or more employees. Moreover, all of these loans were to firms in the computer services industries, with only one loan to a computer wholesale trade firm of more than 50 employees. These loans represent only 1% of the number of loans and less than 4% of the dollar value of loans in the two ITVAR industries. This experience indicates the current size standards are not hindering access to this program for small ITVARs. Thus, no need exists to change the current size standards to broaden access to capital for small ITVARs.

Overview: Based on the above analysis, SBA is adopting a 150 employee size standard. All of the industry factors support a size standard lower than the current 500 employee size standard. The factor of distribution of receipts suggests a size standard in the range of 230 to 400 employees since the industry consists of larger-sized businesses that obtain more than half of industry receipts. The industry factors of average size firm and nonpayroll receipts per establishment support a size standard between 65 to 125 employees. The four-firm concentration ratio is a neutral factor. The assessment of program considerations does not indicate a size standard change from the current 500 employee size standard for Federal contracting or the 100 employee size standard for ITVAR in Wholesale Trade. In light of the comments strongly supporting a 100 employee size standard, the SBA believes the evaluation of the industry characteristics should give greater consideration to the smaller range of size standard levels supported by the data, or between the 65 to 230 employee levels. The SBA believes a 150 employee size standard is an appropriate balance between the available information on the industry and the strong view of the comments for a size standard significantly below 500 employees. In addition, 150 employees would be equivalent to a $21 million employee size standard applicable to Federal computer services contracts. Since many ITVARs provide primarily computer services, having a size standard at a similar level results in these firms being small for both computer service contracts and ITVAR contracts. The SBA believes this administrative consideration is both practical and desirable. It results in a common size standard for closely related activities and avoids complicating the size standards with a significantly different size standard level applicable to small businesses that operate in the two industry activities.

Dominant in Field of Operation: Section 3(a) of the Small Business Act defines a small concern as one that is (1) independently owned and operated, (2) not dominant in its field of operation, and (3) within detailed definitions or size standards established by the SBA Administrator. When the SBA evaluates a size standard, it considers whether a business concern at or below a size standard could be dominant in its field of operation.

For this assessment the SBA generally considers the market share of firms at the contemplated size standard, or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged. The SBA has determined that no firm at or below a 150 employee size standard would dominate the ITVAR industry on a national basis. The average size firm meeting the size standard of 150 employees generates approximately 0.1% of total industry receipts. This level of market share effectively precludes any firm at or below the proposed size standard from controlling this industry.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that the final rule is a "significant" regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. Below is a regulatory impact a of this size standard change.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. Establishing an industry category and size standard for ITVARs more realistically applies small business eligibility requirements under Federal contracts that combine substantial services with the acquisition of computer hardware and software.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZone). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a new industry category and size standard would accrue to two groups. First, small businesses competing for ITVAR Federal procurements that contain requirements more similar to industry practices. Second, Federal agencies that will be able to more easily classify IT contracts that combine equipment purchases and services.

Newly defined small businesses would benefit from the SBA's financial programs, in particular its 7(a) Guaranteed Loan Program. Currently, an ITVAR primarily engaged in wholesale trade qualifies for these loans if they have 100 or fewer employees. This final rule would expand eligibility to about 60 additional firms. Since over the last two years only one loan was guaranteed to a computer wholesaler with more than 50 employees, it is unlikely that this rule would expand the use of the 7(a) Program.

Newly defined small businesses would also benefit from the SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

The SBA estimates that 192 currently defined small businesses (those firms that qualify as a nonmanufacturer under a 500 employee size standard) would lose small business status and not be eligible businesses for Federal small business procurement preference programs. The benefits of the rule in Federal contracting will be in terms of clarifying requirements on Federal contracts combining IT supplies and services and increasing Federal procurement opportunities for small businesses that are much smaller than 500 employees. It is uncertain how much additional contracting may go to the small businesses with 150 or fewer employees. The SBA expects many of the Federal contracts obtained by ITVARs between 151 to 500 employees would be awarded to the smaller small businesses. This is estimated to be between $10 million to $25 million annually.

This rule is not expected to increase administrative costs to the Federal Government associated with bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and firms eligible for enrollment in SBA's PRO-Net data base program. For the limited number of businesses affected by this rule, it is unlikely to materially change the costs associated with compliance and verification of small business status and protests of small business status, since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. With a more appropriate contract requirement for IT value added service, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set aside is likely to result in competition among fewer bidders for a contract. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or under the 8(a) and HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The final size standard may have distributional effects among currently defined small businesses and the newly defined small businesses. Although the actual outcome of the gains and losses among these small businesses cannot be estimated with certainty, it is likely that a transfer of some Federal contracts from small businesses above 150 employees to those under 150 employees. An analysis of Federal ITVAR contracts for fiscal years 2001–02 showed about $57 million was awarded to small ITVARs of about 200 employees to 500 employees. Of these contracts, $23 million was awarded under the 8(a) Program to firms within that size range. If contracting officers continued with about the same level of 8(a) contracting and decided to set-aside additional ITVAR contracts, $10 million to $25 million annually could be shifted from small ITVARs above 150 employees to those with less than 150 employees.

The creation of an ITVAR industry category and size standard is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, the SBA sets forth a final regulatory flexibility analysis (FRFA) of this proposed rule addressing the reasons and objectives of the rule; the SBA's description and estimate of the number of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate overlap or conflict with the final rule; and alternatives considered by the SBA.

(1) What is reason for this action?

As discussed in the supplemental information, the purpose of this final rule is to establish more reasonable and eligibility requirements and size standard for Federal IT contracts that combine the acquisition of computer equipment and services. The adopted changes will better assist small ITVARs in obtaining Federal contracts.

(2) What is the objective and legal basis for the rule?

Section 3(a) of the Small Business Act (15 U.S.C. 632(a)) gives SBA the authority to establish and change size standards. Size standards are developed on an industry basis and vary by industry to reflect differing characteristics of firms in an industry or other appropriate factors regarding an industry. This rule establishes an industry category of ITVAR that SBA believes is necessary to appropriately apply its small business assistance program to small businesses in this category.

(3) What is SBA's description and estimate of the number of small entities to which the rule will apply?

SBA estimates that approximately 1,737 small businesses could receive assistance as a result of this proposed rule. In SBA's PRO-Net data base, 1,760 businesses indicated that they are wholesalers of IT equipment and are capable of providing some other services. All but 23 of these firms have 150 or fewer employees. It cannot be determined how many could actually meet the requirements of the ITVAR definition. Thus, the actual number of affected businesses is likely to be smaller. A few small computer manufacturers could be adversely affected by this rule since small business set-aside, 8(a), or HUBZone contracts classified under the ITVAR industry would not apply the nonmanufacturer rule. However, the SBA believes the impact would be minimal since the ITVAR contracts are most likely not currently being awarded to small manufacturers under these programs.

Description of Potential Benefits of the Rule: The most significant benefit to businesses obtaining small business status as a result of this rule is their eligibility for Federal small business assistance programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, SDBs, and small businesses located in HUBZones.

In fiscal years 2001–02, $925.7 million were awarded in contracts that were primarily for IT equipment but also included services. Small businesses received $281.4 million. The SBA estimates that approximately $10 million to $25 million in additional Federal contracts could be awarded annually to smaller small businesses under the ITVAR 150 employee size standard. Most of these contracts would consist of a potential transfer from ITVARs with between 150 and 500 employees to small ITVARs with fewer than 150 employees. This does not represent the creation of new contracting activity by the Federal government, merely a possible reallocation or transfer to different sized firms.

The SBA does not believe any additional loans would be made under its 7(a) Guaranteed Loan Program as a result of changes the SBA is proposing in this rulemaking. ITVARs primarily engaged in wholesale trade are currently eligible for this program if they have 100 or fewer employees. In the last two years, only one 7(a) loan was made to wholesale trade firm with more than 50 employees.

Description of Potential Costs of the Rule: The changes in size standards as they affect Federal contracting are not expected to add any significant costs to the Federal Government. As a matter of policy, procurements may be set aside for small businesses or under the 8(a) and HUBZone Programs only if awards are expected to be made at reasonable prices. Although fewer small businesses will be competing for ITVAR contracts, the large number of small businesses should have little discernable impact on competition. Similarly, this rule should not result in any added costs associated with the 7(a) Program. The amount of lending authority SBA can make or guarantee is established by appropriation.

The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation and mergers. A change to a size standard is not anticipated to have any appreciable effect on any of these factors, although small businesses, 8(a) firms, or SDBs between 150 to 500 employees may be less successful in competing for some Federal procurement opportunities. On the other hand, with more realistic eligibility requirements, Federal agencies may increase the overall number of contracting opportunities available under these programs, and this could result in greater opportunities for businesses much smaller than the current size standard.

(4) Will this rule impose any additional reporting or record keeping requirements on small businesses?

This final rule does not impose any new information collection requirements which require OMB approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Changing size standards alters the access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(5) What are the relevant Federal rules which may duplicate, overlap or conflict with the final rule?

This final rule overlaps rules of other Federal agencies that use the SBA's size standards to define a small business. Under section 3(a)(2)(c) of the Small Business Act, unless specifically authorized by statute, Federal agencies must use SBA's size standards to define a small business. In 1995, the SBA published in the **Federal Register** a list of statutory and regulatory size standards that identified the application of the SBA's size standards as well as other size standards used by Federal agencies (60 FR 57988–57991, dated November 24, 1995). The SBA is not aware of any Federal rule that would duplicate or conflict with establishing size standards.

(6) What alternatives did the SBA consider?

The SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. In cases where an SBA size standard is not appropriate, the Small Business Act and the SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (§ 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with the SBA's Office of Advocacy when developing different size standards for their programs.

SBA considered revising its definition of a manufacturer. On April 1, 1999, the SBA published in the **Federal Register** a "Request for Comments" asking for comments on a modern definition of the term manufacturer and a new definition for "Remanufacturer" (64 FR 15708, dated April 1, 1999). The SBA received only six comments on this issue, none of which provided sufficient information to support a revision to the SBA's current manufacturer definition. After further review, the SBA now believes that establishing an ITVAR industry category is a more effective approach to addressing the size eligibility requirements of nonmanufacturers providing substantial services along with IT products on Federal contracts.

As discussed in the proposed rule, the SBA considered three other size standards along with its proposed 500 employee size standard. One of those alternatives was the 100 employee size standard advocated by many of the comments. As explained in this final rule, the SBA believes that available industry data and Federal contracting trends support a size standard much lower than the proposed 500 employee size standard but higher than 100 employees.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business. Loan programs—business, Small businesses.

■ For the reasons set forth in the preamble, the SBA amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

■ 1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 636(b), 637(a), 644(c) and 662(5) and sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

■ 2. In § 121.201, in the table "Small Business Size Standards by NAICS Industry," under the heading Subsector 541—Professional, Scientific, and Technical Services, revise the entry for 541519 to read as follows:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
	Subsector 541—Professional, Scientific and Technical Services		
*	* * * *	*	*
541519	Other Computer Related Services	$21.0	
EXCEPT	Information Technology Value Added Resellers [18]		[18]150

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■ 3. In § 121.201, add footnote 18 at the end of the footnote section, under the table to read as follows:

Footnotes

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18. NAICS code 541519—An Information Technology Value Added Reseller provides a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant services. Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15% and not more than 50% of value added services as measured by the total price less the cost of information technology hardware, computer software, and profit. If the contract consists of less than 15% of value added services, then it must be classified under a NAICS manufacturing industry. If the contract consists of more than 50% of value added services, then it must be classified under the NAICS industry that best describes the predominate service of the procurement. To qualify as an Information Technology Value Added Reseller for purposes of SBA assistance, other than for Government procurement, a concern must be primarily engaged in providing information technology equipment and computer software and provide value added services which account for at least 15% of its receipts but not more than 50% of its receipts.

Dated: September 24, 2003.

Hector V. Barreto,

Administrator

[FR Doc. 03–31795 Filed 12–24–03; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE78

Small Business Size Standards; Testing Laboratories

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting the proposed increase to the size standard for the Testing Laboratories industry (North American Industry Classification System (NAICS) code 541380) from $6 million to $10 million in average annual receipts. This action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs.

DATES: This rule is effective January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: On April 9, 2002, the SBA issued a proposed rule in the **Federal Register** (67 FR 17020) to increase the size standard for the Testing Laboratories industry (NAICS 541380) from $6 million to $10 million in average annual receipts (available at *http://www.sba.gov/size/indexwhatsnew.html*). The SBA proposed this size standard after receiving requests from testing laboratories to review the $6 million size standard for that industry in light of upgraded capacities and skills that Federal agencies have recently required among contractors that specialize in environmental and radiochemical testing. The requesting testing laboratories claimed that these minimum requirements have raised the costs of doing business in this industry, and reduced the pool of eligible small testing laboratories capable of satisfying these requirements. If this trend persists, they maintain, Federal agencies could be hampered in using Government preference programs designed to assist small testing laboratories.

Based on these concerns, the SBA conducted a review of this industry's size standard. In addition to reviewing patterns of Federal procurement in this industry, the SBA evaluated data on the industry structure. This review involved comparisons of average firm size, the size distribution of firms, measures of start-up costs and the degree of concentration of activity among very large firms in the industry. Based on its review of each evaluation factor, and the amount of participation of small testing laboratories in Federal Government procurement, the SBA concluded that the data supported a size standard in this industry of $10 million in average annual receipts. (For more detailed information on the reasons for proposing a $10 million size standard see the April 9, 2002, (67 FR 17020) proposed rule.) After careful consideration of the comments received on the proposed rule, the SBA has decided to adopt the proposed size standard of $10 million.

Discussion of Comments on the Proposed Rule

The SBA received 35 comments on the proposed rule after extending the comment period through September 30, 2002 (67 FR 56966, September 6, 2002). Of the 35 commentators, 21 supported the proposed increase, while 14 opposed it. Below is a summary of the major issues raised by the comments and the SBA's response.

Comments Supporting the Proposed Increase to $10 Million

The 21 comments in favor of the proposed rule raised a number of issues in support of a higher size standard. The most important issue discussed was the requirements contained in Federal contracts. Six commentators cited a pattern of increased Government requirements in recent years as leading to the result in which testing laboratories under the present size standard of $6 million often cannot adequately perform on a Federal contract. These Federal Government requirements for laboratory operations include: reporting requirements, quality assurance plans, emergency contingency plans, analytical requirements, electronic data deliverable requirements, audit requirements, management costs, health and safety requirements, regulatory requirements and insurance and liability requirements. In addition, radioactive and non-radioactive hazards often required testing by environmental radiochemistry laboratories that have the licenses, procedures, insurance protection, and approvals for both types of hazardous samples. Therefore, the general belief among these commentators is that large capital and labor expenses are required for a testing laboratory to be active as a successful Federal contractor. These commentators believed that the size standard should be raised so that more Federal contracts will be set aside for small businesses, and there will be a larger pool of small testing laboratories to compete for those contracts.

Three commentators cited a recent pattern of increasing consolidation in the industry as one or more very large testing laboratories have acquired a number of smaller testing laboratories, while competing testing laboratories have gone out of business. They claimed that this trend has resulted in greater concentration in the industry, and less ability for small testing laboratories to compete for Federal contracts.

Two commentators, both large firms, supported the higher size standard because they have found it difficult to find competent small testing laboratories to meet their Federal subcontracting goals under the present size standard. A higher size standard would immediately qualify more testing laboratories as small, while permitting additional small testing laboratories to expand in size and still be qualified as small.

Finally, two commentators believed that a higher size standard would allow them to expand. These commentators contended that the present size standard tends to frustrate growth and reduce competition.

Comments Opposing the Proposed Increase

The strongest criticism of the proposed increase focused on the claim that testing laboratories in the $6 million to $10 million size range are relatively successful and well capitalized compared to testing laboratories with less than $6 million in sales. Eight of the 14 commentators opposing the proposed change asserted that testing laboratories in this size range are too successful to be considered small. They indicated that these larger testing laboratories have lower costs than smaller testing laboratories due to higher volume. They also view larger laboratories as better able to target Federal contracts. A common observation is that testing laboratories in the $6 million to $10 million size range have larger facilities than smaller testing laboratories, and that Federal contracts are often awarded on the basis of individual facility qualifications. Four commentators believed that a higher size standard would give significant advantages to the large, single-site testing laboratories when competing for Federal contracts.

Commentators opposing the proposed change also generally believed that there is a stagnant market for Federal contracts and that increasing the size standard in such an environment would increase competition for Federal contracts. This additional competition would have a negative impact on testing laboratories that are presently under the $6 million size standard.

The comments opposing the proposed size standard also raised an issue regarding the performance of small testing laboratories on subcontracts awarded by large businesses in fulfillment of subcontracting goals on Federal contracts. They contended that small testing laboratories are very successful and competitive in obtaining subcontracts, and thus, a higher size standard was not needed. One comment provided data on such subcontracts awarded by several large businesses. These data indicated that small testing laboratories were able to achieve a higher proportion of subcontracts than Federal contracts.

Other commentators opposing the proposed change cited information in two key areas identified in the proposed rule as reasons supporting an increase in the size standard. First, three commentators noted that the trend toward consolidation in the industry was associated with one or more very large companies buying out smaller, less successful, testing laboratories. These commentators recognized that there has been a shakeup in the industry, with smaller testing laboratories often unsuccessfully competing with very large testing laboratories for Federal Government contracts. Second, three commentators also contended that recent Federal Government requirements have tended to reduce the pool of small testing laboratories that can effectively bid on Federal contracts. They viewed these developments as reasons for retaining the current size standard rather than supporting an increase.

Response to Significant Issues Raised by Comments

The SBA believes that the trends in the Testing Laboratories industry and the level of small business participation in Federal contracting support a size standard higher than $6 million and the adoption of the proposed $10 million size standard. Since the time of the proposed rule, Federal contracting data have become available for fiscal years (FY) 2001–02. These data show small testing laboratories have increased their level of participation in Federal contracting over previous years. Small testing laboratories obtained 23.1% of testing contract dollars in FY 2002, and 29.7% in FY 2001. However, these levels remain significantly below the small business share of 44% of total industry revenues. The SBA found in a detailed review of fiscal years 2001–02 Federal testing contracts that small testing laboratories are successful in obtaining contracts of varying sizes. However, the consistent discrepancy between the Federal and industry share does lend credence to the arguments advanced by the comments supporting the proposed size standard that Federal contract requirements have become more restrictive in recent years, and that this pattern favors larger, more heavily capitalized firms. The SBA also agrees with the view that the industry has become more concentrated over time with a much greater presence of very large testing laboratories. In 1997, $3.1 billion out of $6.4 billion in sales were generated by testing laboratories with more than $10 million in sales. This share, almost 50%, has probably increased significantly with the recent consolidation in the industry and the departure of small testing laboratories. The SBA believes that these patterns of more stringent contracting requirements and greater industry concentration support a higher size standard.

The SBA is aware that firms that are larger in size will often possess greater capabilities than smaller firms. This pattern occurs in most industries. Regardless of where a size standard is established, there will be a variation in firm size and capabilities within the pool of eligible small businesses and this variation will generally favor larger firms in the distribution. However, Federal contract requirements vary from procurement to procurement, and there is no certainty that firms with less than $6 million in sales will be unable to compete with firms in the $6 million to $10 million range for most contracts. The SBA is concerned that small testing laboratories under the current $6 million size standard need to be able to grow to a larger size to capably handle Federal testing requirements and to develop a stronger competitive base before they grow beyond the size standard.

The SBA does not agree that subcontract awards to small testing laboratories should be used as a basis to retain the current size standard. Subcontract awards by industry activity on Federal contracts are not reported by large businesses. Without a systematic collection of testing subcontract data, the SBA is unable to adequately assess the implications of Federal subcontracting on the size standard. In addition, the SBA received comments from two large businesses supporting the proposed size standard because they were experiencing difficulty in finding capable small testing laboratories to satisfy their testing requirements. The SBA believes that the industry data offer an alternative to considering Federal subcontracting trends. These data reflect the amount of revenues obtained by testing laboratories from all sources. As discussed in this rule and the proposed rule, the SBA has concluded that data on the characteristics of testing laboratories support the proposed size standard.

Explanation of Revised and Updated Federal Contracting Data

Comments expressed a concern about the accuracy of the Federal procurement data discussed in the proposed rule. In table 3 of the proposed rule, a formatting error occurred that showed the Federal testing contract data in thousands of dollars instead of millions of dollars. The table below shows the correct data as well as the recently available contract data for fiscal years 2001–02.

SMALL BUSINESS PRIME CONTRACT AWARDS, FISCAL YEARS 1998–2002

[Data in millions of dollars]

Category	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Testing laboratories awards	$861.6	$628.0	$84.7	$176.7	$233.7
Small testing laboratories awards	$44.1	$45.3	$42.1	$52.5	$54.0
Percent to small testing laboratories	5.1%	7.2%	49.7%	29.7%	23.1%

Source: Federal Procurement Data Center, U.S. General Services Administration.

Note: Data for FY 2000 for Testing Laboratories are not representative of most years due to deobligations of $135 million from procurements initiated in previous years.

The concerns regarding the Federal contracting data also questioned the overall quality of the testing contracts reported. While a certain degree of error exists with all large databases, the SBA believes the data collected by the Federal Procurement Data System (FPDS), the official database on Federal contract award information, satisfactorily reports the overall level of Federal testing contracts and the amount of contracting to various organizational categories. FPDS collects detailed information on all Federal contracts with a value of $25,000 or more. The table above shows data on Federal contracts for testing services as evidenced by the assignment of an industry code for the testing laboratories industry (NAICS 541380 and SIC 8734). For these contracts, testing comprises the predominate activity of the contract. The dollar amounts reported show that amount of funds obligated to a contract within a fiscal year. That is, for a contract that is more than 1 year in duration, the amount of funds spent in a fiscal year are reported rather than the entire anticipated dollar value of the contract in the year awarded. For indefinite delivery/indefinite quantity contracts, only amounts actually awarded through a task order are reported, not potential amounts. The SBA recognizes that testing may be included within other Federal contracts; however, no method exists to accurately identify those contracts. Further, testing would tend to comprise only a minor part of those contracts. The SBA does not believe that those contracts have a bearing on the size standard for testing laboratories.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences (the Small Business Act is available at *http://www.sba.gov/library/lawroon.html*). The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry. Based on that analysis, and comments received on the proposed rule, the SBA believes that a revision to the current size standard for testing laboratories is needed to better define small businesses in this industry.

2. What are the potential benefits and costs of this regulatory action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 120 additional firms generating 9.9% of sales in this industry would obtain small business status and could be eligible for these programs. These programs include the SBA's financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses (SDB), and small businesses located in Historically Underutilized Business Zones (HUBZones). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA's size standards for their programs for a variety of regulatory and program purposes. The SBA does not have information on each of these uses sufficient to evaluate the impact of the size standard change. If an agency believes that a different size standard is appropriate for its programs, it must contact the SBA. If an agency is seeking to change size standards in a general rulemaking context, then the agency should contact the SBA's Office of Size Standards. (*See* 13 CFR 121.901–904. The SBA's regulations are available at *http://www.sba.gov/library/lawroon.html.*) If the agency is seeking to change size standards for the purposes of a Regulatory Flexibility Act (RFA) analysis then the SBA's Office of Advocacy should be contacted pursuant to the RFA (5 U.S.C. 603(a)), available at *http://www.sba.gov/advo/laws/regflex.html*). Section 601(3) of the RFA requires the agency to consult with the Office of Advocacy and provide an opportunity for public comment when using a different size standard for the RFA analysis.

The benefits of a size standard increase to a more appropriate level would affect three groups: (1) Businesses that benefit by gaining small business status from the proposed size standard and use small business assistance programs; (2) growing small businesses that may exceed the current size standard in the near future and who will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses could benefit from the SBA's 7(a) Guaranteed Loan Program. The SBA estimates that approximately $2 million in new Federal loan guarantees would be made to these newly defined small businesses. This represents approximately 9.9% of the annual average of $19 million in loans that were guaranteed by the SBA under this financial program to testing laboratories firms during fiscal years 1998–2002. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus, increasing the size standard will likely result in only a small increase in small business guaranteed loans to testing laboratories, and the $2 million estimated figure may overstate the actual impact.

The newly defined small businesses would also benefit from the SBA's Economic Injury Disaster Loan (EIDL) program. Since this program is contingent upon the occurrence and severity of a disaster, however, no meaningful estimate of benefits can be projected.

The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth an additional $42 million in sales. This represents 9.9% of approximately $424 million that the Federal Government awarded per year in this industry during fiscal years 1998–2002.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and would lower the prices on set-aside procurements. A larger base of small businesses may create an incentive for Federal agencies to set aside more contracts, resulting in greater opportunities for all small businesses. Small business opportunities will be enhanced in full and open procurements as newly eligible firms gain experience in Federal contracting through set aside and other small business procurement preference programs. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals at lower prices. No estimate of cost savings from these contracting decisions can be made, since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that up to 120 additional firms could become active in Federal Government small business programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal procurements, additional firms seeking assistance from the SBA's guaranteed lending programs, and additional firms eligible for enrollment in the SBA's PRO-Net database program. Among businesses in this group seeking the SBA's assistance, there will be some additional costs associated with compliance, protests, and verification of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts. With a greater number of businesses defined as small, Federal agencies may choose to set aside more contracts for competition among small businesses rather than using full and open competition. The movement from full and open to set-aside contracting is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders and price evaluation preferences, however, are likely to be minor since, as a matter of policy, procurements may be set aside for small businesses or reserved for the 8(a) and HUBZone programs, only if awards are expected to be made at fair and reasonable prices.

The new final size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and losses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts from large businesses to small businesses will probably occur. Large businesses may have fewer Federal contract opportunities if Federal agencies decide to set aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUBZone and SDB businesses instead of large businesses, since those two categories of small business are eligible for price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer, however, may be offset by a greater number of

Federal procurements set-aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government, however, would limit the potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying whether a business is small or other-than-small, without regard to the exact size of business.

The revision to current size standards for testing laboratories is consistent with the SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing, and modifying size standards when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, State and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the RFA, this rule may have a significant impact on a substantial number of small entities. As described in the regulatory impact analysis, this rule may impact small entities seeking SBA 7(a) Guaranteed Loans or Economic Injury Disaster Loans as well as the Federal Government's procurement preference programs.

The size standard may also affect small businesses participating in the programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. No comments were received that identified a program or regulation that would be adversely affected by the proposed size standard. In cases where an SBA size standard is not appropriate, the Small Business Act and the SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (15 U.S.C. 632(a)(2)(c) and 13 CFR 121.902). If the agency is seeking to change size standards for the purposes of an RFA analysis, then the SBA's Office of Advocacy should be contacted pursuant to the RFA).

Immediately below, the SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the reasons and objective of the rule; a description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

(1) What is the need for and objective of this rule?

The objective of this rule is to establish an appropriate size standard for the Testing Laboratories industry. The revision to the size standard for the Testing Laboratories industry more accurately defines the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs. Significant changes in the industry and in the requirements of Government clients support the need for a different size standard.

(2) What significant issues were raised by the public comments in response to the Initial Regulatory Flexibility Act (IRFA)?

About a third of commentators believe that the SBA is permitting testing laboratories to be eligible that are already very successful and that do not need the additional advantage of being considered small. The SBA, however, believes that a higher size standard is necessary due to Federal contract requirements that require a high degree of competence and physical investment, a tendency for very large firms to acquire smaller testing laboratories, and the fact that small testing laboratories have been awarded Federal procurements significantly less than their overall share in the industry.

(3) What is the SBA's description and estimate of the number of small entities to which the rule will apply?

Within the Testing Laboratories industry, 3,762 out of 4,126 businesses are small under the $6 million size standard that is presently in place. The number of small businesses will increase by 120 testing laboratories to 3,882 under a $10 million size standard. Testing laboratories becoming newly eligible for the SBA's assistance as a result of this rule cumulatively generate $635 million in receipts. The amount of receipts by small testing laboratories would increase from $2.7 billion to $3.3 billion out of a total of $6.4 billion in receipts. The small business coverage in this industry would increase by 9.9% of total receipts. This is based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for the SBA's Office of Size Standards, which shows industry characteristics by firm size.

(4) Will this rule impose any additional reporting or recordkeeping requirements or other compliance requirements on small businesses?

A new size standard does not impose any additional reporting, recordkeeping or other compliance requirements on small entities for the SBA's programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determine "voluntary access" to the SBA's and other Federal programs that assist small businesses, but do not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collection requirements from the SBA which require approval by the OMB under the Paperwork Reduction Act of 1980, U.S.C. 3501–3520.

(5) What are the steps the SBA has taken to minimize the significant economic impact on small business?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this rule are eligibility for the SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance and eligibility for the Federal Government's procurement preference programs for small business, 8(a) firms, SDBs, and HUBZone small businesses The SBA estimates that approximately $42 million per year of additional Federal prime contracts may be awarded to businesses becoming newly designated small businesses in the Testing Laboratories industry and that approximately $2 million in new Federal loan guarantees could be made annually to these newly defined small businesses. The projected increase of three additional loans totaling approximately $2 million in new

Federal loan guarantees will have virtually no impact on the overall availability of loans for the SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

(6) What alternatives were considered by the SBA to accomplish its regulatory objectives while minimizing the impact on small entities?

In the proposed rule of April 9, 2002, the SBA considered alternative size standards which included a more limited increase to $7.5 million, and a larger increase to $12.5 million. The SBA decided not to propose the more moderate increase to $7.5 million because it believed that the very low share of Federal procurements to small testing laboratories indicated the need for a higher size standard to include those testing laboratories that can meet and perform on the majority of Federal analytical testing contracts. The SBA also considered, but rejected, the larger increase to $12.5 million based on the fact that two of the five factors considered in determining the appropriate size standard pointed to a size standard at, or only slightly above, the $6 million nonmanufacturing anchor size standard. The SBA believes that the evaluation factors should be virtually unanimous for an increase of this magnitude.

List of Subjects in 13 CFR Part 121

Administrative practice and procedures, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

For reasons set forth in the preamble, the SBA amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 636(b), 637(a), 644(c) and 662(5) and Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

■ 2. In § 121.201, in the table "Small Business Size Standards by NAICS Industry", under the heading NAICS "Subsector 541—Professional, Scientific and Technical Services," revise entry 541380 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
	Subsector 541—Professional, Scientific and Technical Services		
*	* * * *	*	*
541380	Testing Laboratories	$10.0	
*	* * * *	*	*

Dated: September 27, 2003.

Hector V. Barreto,

Administrator.

Editorial Note: This document was received in the Office of the Federal Register on December 19, 2003.

[FR Doc. 03–31794 Filed 12–24–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9103]

RIN 1545–BC97

Information Statements for Certain Substitute Payments

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6045(d) that reflect the changes to information reporting for payments in lieu of dividends effected by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA). These regulations provide that brokers must file information returns and furnish information statements reporting substitute payments in lieu of dividends to individuals who receive substitute payments in lieu of dividends on or after January 1, 2003.

DATES: *Effective Date:* These final regulations are effective December 29, 2003.

Applicability Date: These regulations apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Hara of the Office of Associate Chief Counsel (Procedure and Administration), (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 302 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the JGTRRA), Public Law No. 108–27 (117 Stat. 752), reduced the tax rate for "qualified dividends" paid to an individual shareholder to the same tax rate as capital gains for taxable years beginning after December 31, 2002, and beginning before January 1, 2009. The legislative history states, however, "Payments in lieu of dividends are not eligible for the lower rates." See H.R. Rep. No. 108–94, 108th Cong., 1st Sess. 31 n.36 (2003).

Explanation of Provisions

Section 6045(a) of the Internal Revenue Code (Code) provides that every person doing business as a broker shall, when required by the Secretary, make a return showing the name and address of each customer, together with information as required by forms and regulations. Section 6045(d) provides that brokers who transfer a customer's securities for use in a short sale or similar transaction, and receive payments in lieu of a dividend, tax-exempt interest, or other items set forth in regulations (substitute payments), must furnish the customer with a written statement identifying the payment as being in lieu of the dividend, tax-exempt interest, or other item. This section authorizes the Secretary to prescribe regulations that require brokers to file information returns that include the information contained in the written statement.

Section 1.6045–2 of the existing Income Tax Regulations provides rules for reporting substitute payments under section 6045(d). In general, § 1.6045–2(a)(3)(i) of the existing regulations excludes payments in lieu of dividends received by a broker on behalf of an individual from the broker reporting requirements of section 6045(d). Section 1.6045–2(a)(3)(ii) of the existing regulations requires reporting for certain dividend substitute payments received by a broker on behalf of an individual, such as payments in lieu of exempt interest dividends distributed by regulated investment companies.

These regulations contain amendments to the existing regulations to require reporting under section 6045(d) for payments in lieu of dividends made to individuals on or after January 1, 2003. For taxable years beginning on or after January 1, 2003, brokers must use Form 1099–MISC, "Miscellaneous Income", to report substitute payments to individuals, including payments in lieu of dividends.

The IRS issued interim guidance regarding provisions of the JGTRRA that affect information reporting for payments in lieu of dividends in Notice 2003–67 (2003–40 I.R.B. 752). The notice also provided guidance on the definition of loanable shares and the allocation and selection of transferred shares (that is, shares giving rise to payments in lieu of dividends to customers). The IRS intends to issue comprehensive regulations amending § 1.6045–2 in the future. The IRS anticipates that these regulations will define payments in lieu of dividends, provide rules for determining loanable shares, and provide rules for allocating and selecting transferred shares to customers. Pending issuance of further amendments to § 1.6045–2 of the existing regulations, brokers may rely on Notice 2003–67 to comply with the requirements of the JGTRRA and section 6045(d).

In addition, pending issuance of further amendments to § 1.6045–2, the IRS will permit brokers to continue to use the rules of § 1.6045–2 of the existing regulations for allocating transferred shares to customers. A broker may continue to allocate transferred shares to shares of stock that the broker has borrowed under a security agreement with the customer. In addition, if a broker uses the lottery method of allocation and selection of loanable shares specified in § 1.6045–2(f)(2)(ii), the broker may make the selection of the transferred shares within the individual pool described in § 1.6045–2(f)(2)(ii)(C) using the methods of selection of transferred shares used within the nonindividual pool as prescribed in § 1.6045–2(f)(2)(ii)(B).

Special Analyses

These final regulations are necessary to provide brokers and taxpayers with immediate guidance regarding provisions in the JGTRRA that affect information reporting for substitute payments in lieu of dividends. The regulations apply to information returns required to be filed, and information statements required to be furnished, after December 31, 2003. Based on these considerations, it is determined that these final regulations will provide brokers and taxpayers with the necessary guidance and authority to comply with the tax laws. Because of the need for immediate guidance, notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B) and delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 (*et seq.*) do not apply. Further, it has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Michael Hara, Office of Associate Chief Counsel (Procedures and Administration), Administrative Provisions and Judicial Practice.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6045–2 is amended by:

■ 1. Paragraph (a)(3)(i) is revised.

■ 2. The heading for paragraph (a)(3)(ii) is revised.

The revisions read as follows:

§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.

(a) * * *

(3) * * * (i) *In general.* Except as otherwise provided in paragraph (a)(3)(ii) of this section, for taxable years beginning before January 1, 2003, a broker that receives a substitute payment in lieu of a dividend on behalf of a customer who is an individual ("individual customer") need not furnish a statement to the customer.

(ii) *Reporting for certain dividends.* * * *

* * * * *

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

[FR Doc. 03–31671 Filed 12–24–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9106]

RIN 1545–AW99

Awards of Attorney's Fees and Other Costs Based Upon Qualified Offers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the qualified offer rule, including the requirements that an offer must satisfy to be treated as a

qualified offer under section 7430(g) and the requirements that a taxpayer must satisfy to qualify as a prevailing party by reason of having made a qualified offer. The regulations implement certain changes made by section 3101(e) of the Internal Revenue Service Restructuring and Reform Act of 1998. The final regulations affect taxpayers seeking attorney's fees and costs.

DATES: *Effective Date:* These regulations are effective December 24, 2003.

Applicability Date: These regulations apply to qualified offers postmarked or delivered after December 24, 2003, in administrative or court proceedings described in section 7430.

FOR FURTHER INFORMATION CONTACT: Tami C. Belouin (202) 622–7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations contain amendments to the Procedure and Administration Regulations (26 CFR part 301) reflecting changes to section 7430 made by section 3101(e) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 686), to recover reasonable administrative and litigation costs in a court proceeding with respect to the determination or refund of any tax, interest or penalty. Proposed and temporary regulations under sections 7430(c)(4)(E) and 7430(g) were contemporaneously issued on January 3, 2001 (REG–121928–98, TD 8922, C.B. 2001–1 [66 FR 725]). Written comments were submitted in response to the proposed regulations and are discussed in more detail below. The proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

These final regulations generally adopt the provisions of the proposed regulations. The changes to the proposed regulations reflected in these final regulations, as well as the comments received, are discussed below.

1. Adjustments Affected by the Outcome of Another Proceeding

A taxpayer's tax liability may be affected by the outcome of a separate court or administrative proceeding. The proposed regulations stated that the portion of the liability to be fully resolved, by stipulation of the parties, through another proceeding is ignored for purposes of applying the qualified offer rule. One commentator requested clarification regarding this rule. The final regulations clarify this rule and state that the types of proceeding contemplated include, but are not limited to, state or Federal court proceedings. For example, a taxpayer's tax liability may be affected by the outcome of a separate court proceeding, such as a probate, tort liability, or trademark action.

2. Specified Amount of Offer

The proposed regulations provided that a qualified offer must state a specific dollar amount. Commentators noted that there are instances in which it would be difficult to calculate the taxpayer's tax liability and offer a specific dollar amount. To address those situations, the final regulations provide that a qualified offer may specify either a dollar amount of liability or a percentage of the adjustments at issue.

3. Requirement To Disclose All Relevant Information

In order for an offer to be treated as a qualified offer, the proposed regulations required a taxpayer to disclose all relevant information concerning any issue raised by the taxpayer subsequent to the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals that remained unresolved at the time the qualified offer was made. This disclosure had to occur contemporaneously with or prior to the making of the qualified offer. One commentator requested that this requirement be modified to lower the standard. The final regulations do not adopt this comment because the proposed regulations reflected the standard set out in Treas. Reg. § 301.7430–1 for exhaustion of administrative remedies.

4. End of Qualified Offer Period

One commentator suggested that if a case is removed from the trial calendar within 30 days of the trial date, the period for making a qualified offer should be reopened. The final regulations do not adopt this comment. The Treasury Department and the IRS do not believe that the purpose of the statute would be furthered if a taxpayer were permitted to submit a qualified offer after the period for doing so has expired, even if the case subsequently is continued. Like the statute of limitations, once the qualified offer period has expired, it should not be revived.

5. Multiple Tax Years

The proposed regulations do not specifically address the requirements for making a valid qualified offer when multiple tax years are at issue in a court or administrative proceeding. One commentator requested clarification of the application of the qualified offer rule in these situations. The final regulations provide that if adjustments in different tax years arise from separate and distinct issues such that the resolution of issues in one or more tax years will not affect the taxpayer's liability in one or more of the other years at issue in the proceeding, then a qualified offer may be made for less than all of the tax years involved in the proceeding. A qualified offer, however, must resolve all of the issues for the tax years covered by the offer and also must cover all tax years in the proceeding affected by those issues. A tax year (affected year) is affected by an issue if the treatment of the issue in another tax year involved in the proceeding necessarily affects the treatment of the issue in the affected year. The final regulations include three new examples illustrating the operation of the qualified offer rule in cases involving multiple tax years.

6. Settlement After Certain Court Rulings

A federal tax case may be settled after a court has ruled on a motion relating to the merits of one or more of the adjustments covered by a qualified offer, even if the ruling does not fully resolve those adjustments. For example, a court's granting of a motion for partial summary judgment may resolve the underlying legal issue for an adjustment covered by a qualified offer but still leave open issues of substantiation or valuation. The parties at that time may resolve the adjustment based on the court's ruling and the parties' evaluation of the remaining issues not addressed by the court's ruling that affect that adjustment. The final regulations provide that if one or more adjustments covered by a qualified offer are settled following a ruling by the court that substantially resolves those adjustments, then those adjustments will not be treated as having been settled prior to the entry of the judgment by the court and instead will be treated as amounts included in the judgment as a result of the court's determinations. Whether an adjustment covered by a qualified offer is substantially resolved by a court ruling will depend on the facts and circumstances, including the scope of the ruling and the nature and importance of the issues affecting the adjustment that remain to be resolved after the court ruling. The final regulations further provide, however, that rulings relating to discovery, admissibility of evidence, and burden of proof are not treated as rulings that substantially resolve adjustments covered by a qualified offer. These changes have been made in response to the Tax Court's opinion in *Gladden* v. *Commissioner*, 120 T.C. 446 (2003). The Department of Treasury and the IRS will give further consideration to this issue and may issue additional guidance regarding the matter in the future.

7. Spousal Defenses

The proposed regulations do not address specifically how spousal defenses affect the qualified offer rule. The preamble to the temporary regulations stated that the qualified offer rule applies in multiple taxpayer situations, such as those involving joint returns, but did not address the potential aggregation or segregation of the qualified offer or liability in situations that may present special circumstances, such as claims for innocent spouse relief. Commentators requested more specific rules addressing multiple taxpayer situations. The Treasury Department and the IRS have decided not to include additional rules involving multiple taxpayer situations in the final regulations. As the law in this area continues to evolve, the Treasury Department and the IRS may give further consideration to the issues raised and may issue additional guidance regarding how the qualified offer rule applies in these situations.

8. Recovery of Fees Relating to Settled Issues

The proposed regulations provided that a prevailing party may not recover fees under the qualified offer rule for any issue that is settled. Recovery is limited to issues that are actually determined by a court. One commentator recommended that the final regulations permit the recovery of fees attributable to adjustments that are settled. The final regulations do not adopt this comment. Section 7430(c)(4)(E)(ii)(I) provides that any case resolved pursuant to a settlement is not eligible for recovery of fees under the qualified offer rule. The qualified offer rule was enacted to encourage settlements. Requiring the government to pay administrative and litigation costs with respect to issues resolved exclusively pursuant to a settlement would be contrary to that goal.

9. Delivery of Qualified Offer to the Proper Party

The proposed regulations specify where an offer must be delivered in order to be treated as a qualified offer. One commentator requested further clarification of these provisions and greater flexibility with respect to delivery locations. The Treasury Department and the IRS have considered this comment but no change has been made to the regulations because the regulations already provide specific instructions for the delivery of an offer under a variety of circumstances, as well as a default location for all other situations. Thus, the provision is sufficiently comprehensive. With respect to the request for greater flexibility, the comment was not adopted because it is important that a qualified offer be received by the office with jurisdiction over the case at the time the qualified offer is made in order that the government may act expeditiously on the offer. The locations specified in the regulations are designed to achieve that objective.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Tami C. Belouin, Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.7430–7 is added to read as follows:

§ 301.7430–7 Qualified offers.

(a) *In general.* Section 7430(c)(4)(E) (the qualified offer rule) provides that a party to a court proceeding satisfying the timely filing and net worth requirements of section 7430(c)(4)(A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted the last qualified offer of the party as defined in section 7430(g). For purposes of this section, the term *judgment* means the cumulative determinations of the court concerning the adjustments at issue and litigated to a determination in the court proceeding. In making the comparison between the liability under the qualified offer and the liability under the judgment, the taxpayer's liability under the judgment is further modified by the provisions of paragraph (b)(3) of this section. The provisions of the qualified offer rule do not apply if the taxpayer's liability under the judgment, as modified by the provisions of paragraph (b)(3) of this section, is determined exclusively pursuant to a settlement, or to any proceeding in which the amount of tax liability is not in issue, including any declaratory judgment proceeding, any proceeding to enforce or quash any summons issued pursuant to the Internal Revenue Code (Code), and any action to restrain disclosure under section 6110(f). If the qualified offer rule applies to the court proceeding, the determination of whether the liability under the qualified offer would have equaled or exceeded the liability pursuant to the judgment is made by reference to the last qualified offer made with respect to the tax liability at issue in the administrative or court proceeding. An award of reasonable administrative and litigation costs under the qualified offer rule only includes those costs incurred on or after the date of the last qualified offer and is limited to those costs attributable to the adjustments at issue at the time the last qualified offer was made that were included in the court's judgment other than by reason of settlement. The qualified offer rule is inapplicable to reasonable administrative or litigation costs otherwise awarded to a taxpayer who is a prevailing party under any other provision of section 7430(c)(4). This section sets forth the requirements to be satisfied for a taxpayer to be treated as a prevailing party by reason of the taxpayer making a qualified offer, as well as the circumstances leading to the application of the exceptions, special rules, and coordination provisions of the qualified offer rule. Furthermore, this section sets forth the elements necessary for an offer to be treated as a qualified offer under section 7430(g).

(b) *Requirements for treatment as a prevailing party based upon having made a qualified offer*—(1) *In general.* In order to be treated as a prevailing party by reason of having made a qualified offer, the liability of the taxpayer for the type or types of tax and the taxable year or years at issue in the proceeding (as calculated pursuant to paragraph (b)(2) of this section), based on the last qualified offer (as defined in paragraph (c) of this section) made by the taxpayer in the court or administrative proceeding, must equal or exceed the liability of the taxpayer pursuant to the judgment by the court for the same type or types of tax and the same taxable year or years (as calculated pursuant to paragraph (b)(3) of this section). Furthermore, the taxpayer must meet the timely filing and net worth requirements of section 7430(c)(4)(A)(ii). If all of the adjustments subject to the last qualified offer are settled prior to the entry of the judgment by the court, the taxpayer is not a prevailing party by reason of having made a qualified offer. The taxpayer may, however, still qualify as a prevailing party if the requirements of section 7430(c)(4)(A) are met. If one or more adjustments covered by a qualified offer (see paragraph (c)(3)) are settled following a ruling by the court that substantially resolves those adjustments, then those adjustments will not be treated as having been settled prior to the entry of the judgment by the court and instead will be treated as amounts included in the judgment as a result of the court's determinations. For purposes of the preceding sentence, rulings relating to discovery, admissibility of evidence, and burden of proof are not rulings that substantially resolve adjustments covered by a qualified offer.

(2) *Liability under the last qualified offer.* For purposes of paragraph (b)(1) of this section, the taxpayer's liability under the last qualified offer is the change in the taxpayer's liability that would have resulted if the United States had accepted the taxpayer's last qualified offer on all of the adjustments that were at issue in the administrative or court proceeding at the time that the offer was made compared to the amount shown on the return or returns (or as previously adjusted). The portion of a taxpayer's liability that is attributable to adjustments raised by either party after the making of the last qualified offer is not included in the calculation of the liability under that offer. The taxpayer's liability under the last qualified offer is calculated without regard to adjustments that the parties have stipulated will be resolved in accordance with the outcome of a separate pending Federal, state, or other judicial or administrative proceeding. For example, the parties may stipulate that the taxpayer's liability will be resolved in accordance with the outcome of an alternative dispute resolution proceeding or a separate court proceeding, such as a probate, tort liability, or trademark action. Furthermore, the taxpayer's liability under the last qualified offer is calculated without regard to interest, unless the taxpayer's liability for, or entitlement to, interest is a contested issue in the administrative or court proceeding and is one of the adjustments included in the last qualified offer.

(3) *Liability pursuant to the judgment.* For purposes of paragraph (b)(1) of this section, the taxpayer's liability pursuant to the judgment is the change in the taxpayer's liability resulting from amounts contained in the judgment as a result of the court's determinations, and amounts contained in settlements not included in the judgment, that are attributable to all adjustments that were included in the last qualified offer compared to the amount shown on the return or returns (or as previously adjusted). This liability includes amounts attributable to adjustments included in the last qualified offer and settled by the parties prior to the entry of judgment regardless of whether those amounts are actually included in the judgment entered by the court. The taxpayer's liability pursuant to the judgment does not include amounts attributable to adjustments that are not included in the last qualified offer, even if those amounts are actually included in the judgment entered by the court. The taxpayer's liability under the judgment is calculated without regard to adjustments that the parties have stipulated will be resolved in accordance with the outcome of a separate pending Federal, state, or other judicial or administrative proceeding. Furthermore, the taxpayer's liability pursuant to the judgment is calculated without regard to interest, unless the taxpayer's liability for, or entitlement to, interest is a contested issue in the administrative or court proceeding and is one of the adjustments included in the last qualified offer. Where adjustments raised by either party subsequent to the making of the last qualified offer are included in the judgment entered by the court, or are settled prior to the court proceeding, the taxpayer's liability pursuant to the judgment is calculated by treating the subsequently raised adjustments as if they had never been raised.

(c) *Qualified offer*—(1) *In general.* A qualified offer is defined in section 7430(g) to mean a written offer which—

(i) Is made by the taxpayer to the United States during the qualified offer period;

(ii) Specifies the offered amount of the taxpayer's liability (determined without regard to interest, unless interest is a contested issue in the proceeding);

(iii) Is designated at the time it is made as a qualified offer for purposes of section 7430(g); and

(iv) By its terms, remains open during the period beginning on the date it is made and ending on the earliest of the date the offer is rejected, the date the trial begins, or the 90th day after the date the offer is made.

(2) *To the United States.* (i) A qualified offer is made to the United States when it is delivered to the office or personnel within the Internal Revenue Service, Office of Appeals, Office of Chief Counsel (including field personnel) or Department of Justice that has jurisdiction over the tax matter at issue in the administrative or court proceeding. If those offices or persons are unknown to the taxpayer making the qualified offer, the taxpayer may deliver the offer to the appropriate office, as follows:

(A) If the taxpayer's initial pleading in a court proceeding has been answered, the taxpayer may deliver the offer to the office that filed the answer.

(B) If the taxpayer's petition in the Tax Court has not yet been answered, the taxpayer may deliver the offer to the Office of Chief Counsel, 1111 Constitution Avenue, NW., Washington, DC 20224.

(C) If the taxpayer's initial pleading in any Federal court, other than the Tax

Court, has not yet been answered, the taxpayer may deliver the offer to the Attorney General of the United States, 950 Pennsylvania Ave., NW., Washington, DC 20530–0001. For a suit brought in a United States district court, a copy of the offer should also be delivered to the United States Attorney for the district in which the suit was brought.

(D) In any other situation, the taxpayer may deliver the offer to the office that sent the taxpayer the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(ii) Until an offer is received by the appropriate personnel or office under this paragraph (c)(2), it is not considered to have been made, with the following exception. If the offer is deposited in the United States mail, in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the appropriate personnel or office under this paragraph (c)(2), the date of the United States postmark stamped on the cover in which the offer is mailed shall be deemed to be the date of receipt of that offer by the addressee. If any offer is deposited with a designated delivery service, as defined in section 7502(f)(2), in lieu of the United States mail, the provisions of section 7502(f)(1) shall apply in determining whether that offer qualifies for this exception.

(3) *Specifies the offered amount.* A qualified offer specifies the offered amount if it clearly specifies the amount for the liability of the taxpayer, calculated as set forth in paragraph (b)(2) of this section. The offer may be a specific dollar amount of the total liability or a percentage of the adjustments at issue in the proceeding at the time the offer is made. This amount must be with respect to all of the adjustments at issue in the administrative or court proceeding at the time the offer is made and only those adjustments. The specified amount must be an amount, the acceptance of which by the United States will fully resolve the taxpayer's liability, and only that liability (determined without regard to adjustments that the parties have stipulated will be resolved in accordance with the outcome of a separate pending Federal, state, or other judicial or administrative proceeding, or interest, unless interest is a contested issue in the proceeding) for the type or types of tax and the taxable year or years at issue in the proceeding. In cases involving multiple tax years, if adjustments in different tax years arise from separate and distinct issues such that the resolution of issues in one or more tax years will not affect the taxpayer's liability in one or more of the other tax years in the proceeding, then a qualified offer may be made for less than all of the tax years involved. A qualified offer, however, must resolve all of the issues for the tax years covered by the offer and also must cover all tax years in the proceeding affected by those issues. A tax year (affected year) is affected by an issue if the treatment of the issue in another tax year involved in the proceeding necessarily affects the treatment of the issue in the affected year.

(4) *Designated at the time it is made as a qualified offer.* An offer is not a qualified offer unless it designates in writing at the time it is made that it is a qualified offer for purposes of section 7430(g). An offer made at a time when one or more adjustments not included in the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals have been raised by the taxpayer and remain unresolved, is not considered to be a qualified offer unless contemporaneously or prior to the making of the offer, the taxpayer has provided the United States with the substantiation and legal and factual arguments necessary to allow for informed consideration of the merits of those adjustments. For example, a taxpayer will be considered to have provided the United States with the necessary substantiation and legal and factual arguments if the taxpayer (or a recognized representative of the taxpayer described in § 601.502 of this chapter) participates in an Appeals office conference, participates in an Area Counsel conference, or confers with the Department of Justice, and at that time, discloses all relevant information. All relevant information includes, but is not limited to, the legal and factual arguments supporting the taxpayer's position on any adjustments raised by the taxpayer after the issuance of the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. A taxpayer has disclosed all relevant information if the taxpayer has supplied sufficient information to allow informed consideration of the taxpayer's tax matter to the extent the information and its relevance were known or should have been known to the taxpayer at the time of the conference.

(5) *Remains open.* A qualified offer must, by its terms, remain open for acceptance by the United States from the date it is made, as defined in paragraph (c)(2)(ii) of this section, until the earliest of the date it is rejected in writing by a person with authority to reject the offer, the date the trial begins, or the 90th day after being received by the United States. The offer, by its written terms, may remain open after the occurrence of one or more of the above-referenced events. Once made, the period during which a qualified offer remains open may be extended by the taxpayer prior to its expiration, but an extension cannot be used to make an offer meet the minimum period for remaining open required by this paragraph (c)(5).

(6) *Last qualified offer.* A taxpayer may make multiple qualified offers during the qualified offer period. For purposes of the comparison under paragraph (b) of this section, the making of a qualified offer supersedes any previously made qualified offers. In making the comparison described in paragraph (b) of this section, only the qualified offer made most closely in time to the end of the qualified offer period is compared to the taxpayer's liability under the judgment.

(7) *Qualified offer period.* To constitute a qualified offer, an offer must be made during the qualified offer period. The qualified offer period begins on the date on which the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals is sent to the taxpayer. For this purpose, the date of the notice of claim disallowance will begin the qualified offer period in a refund case. If there has been no notice of claim disallowance in a refund case, the qualified offer period begins on the date on which the answer or other responsive pleading is filed with the court. The qualified offer period ends on the date which is thirty days before the date the case is first set for trial. In determining when the qualified offer period ends for cases in the Tax Court and other Federal courts using calendars for trial, a case will be considered set for trial on the date scheduled for the calendar call. A case may be removed from a trial calendar at any time. Thus, a case may be removed from a trial calendar before the date that precedes by thirty days the date scheduled for that trial calendar. The qualified offer period does not end until the case remains on a trial calendar on the date that precedes by 30 days the scheduled date of the calendar call for that trial session. The qualified offer period may not be extended beyond the periods set forth in this paragraph (c)(7), although the period during which a qualified offer remains open may extend

beyond the end of the qualified offer period.

(d) [Reserved]

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Definition of a judgment. The Internal Revenue Service (IRS) audits Taxpayer A for year X and issues a notice of proposed deficiency (30-day letter) proposing to disallow deductions 1, 2, 3, and 4. A files a protest and participates in a conference with the Internal Revenue Service Office of Appeals (Appeals). Appeals allows deduction 1, and issues a statutory notice of deficiency for deductions 2, 3, and 4. A's petition to the United States Tax Court for year X never mentions deduction 2. Prior to trial, A concedes deduction 3. After the trial, the Tax Court issues an opinion allowing A to deduct a portion of deduction 4. As used in paragraph (a) of this section, the term judgment means the cumulative determinations of the court concerning the adjustments at issue in the court proceeding. Thus, the term judgment does not include deduction 1 because it was never at issue in the court proceeding. Similarly, the term judgment does not include deduction 2 because it was not placed at issue by A in the court proceeding. Although deduction 3 was at issue in the court proceeding, it is not included in the term judgment because it was not determined by the court, but rather by concession or settlement. For purposes of section 7430(c)(4)(E), the term judgment only includes the portion of deduction 4 disallowed by the Tax Court.

Example 2. Liability under the offer and liability under the judgment. Assume the same facts as in *Example 1* except that A makes a qualified offer after the Appeals conference, which is not accepted by the IRS. A's offer is with respect to all adjustments at issue at that time. Those adjustments are deductions 2, 3, and 4. At the conclusion of the litigation, A's entitlement to an award based upon the qualified offer will depend, among other things, on a comparison of the change in A's liability for income tax for year X resulting from the judgment of the Tax Court with the change that would have resulted had the IRS accepted A's qualified offer. In making this comparison, the term judgment (as discussed in *Example 1*) is modified by including the amounts of settled or conceded adjustments that were at issue at the time the qualified offer was made. Any settled or conceded adjustments that were not at issue at the time the qualified offer was made, either because the settlement or concession occurred before the offer or because the adjustment was not raised until after the offer, are not included in the comparison. Thus, A's offer on deductions 2, 3, and 4 is compared with the change in A's liability resulting from the Tax Court's determination of deduction 4, and the concessions of issues 2 and 3 by A.

Example 3. Offer must resolve full liability. Assume the same facts as in *Example 2* except that A's offer after the Appeals conference explicitly states that it is only with respect to adjustments 2 and 3 and not with respect to adjustment 4. Even if A's liability pursuant to the judgment, calculated under paragraph (b)(3) of this section as illustrated in *Example 2,* is equal to or less than it would have been had the IRS accepted A's offer after the Appeals conference, A is not a prevailing party under section 7430(c)(4)(E). A qualified offer must include all adjustments at issue at the time the offer is made. Since A's offer excluded adjustment 4, which was an adjustment at issue at the time the offer was made, it does not constitute a qualified offer pursuant to paragraph (b)(2) of this section.

Example 4. Offer must resolve full liability. Assume the same facts as in *Example 1,* except that A makes a qualified offer that is accepted by the IRS. After the offer is accepted, A attempts to reduce the amount A will pay pursuant to the offer by applying net operating loss carryovers to the years in issue. Because the net operating losses were not at issue when the offer was made, A's offer was a qualified offer. Whether A is entitled to apply net operating losses to reduce the amount stated in the offer will depend upon the application of contract principles, local court rules, and, because net operating losses are at issue, section 6511(d) and related provisions.

Example 5. Qualified offer rule for multiple tax years, partial resolution offer is a qualified offer. Taxpayer B receives a notice of deficiency for taxable years 2001, 2002, and 2003. For 2001, the statutory notice disallows business deductions. For 2002, the statutory notice increases income for unreported lottery winnings. For 2003, the statutory notice disallows a child care credit. B submits a qualified offer only with respect to 2002. Since the adjustments for the three tax years are separate and distinct, B may submit a qualified offer for a single year. If B's liability under the judgment is equal to or less than the qualified offer with respect to 2002, irrespective of 2001 and 2003, B is a prevailing party for 2002 for purposes of section 7430(g). Assuming B satisfies the remaining requirements of section 7430, B may recover reasonable administrative and litigation costs that are attributable to 2002 from the date of the qualified offer. To qualify for any costs with respect to 2001 or 2003, B must satisfy the requirements of section 7430(c)(4).

Example 6. Qualified offer rule for multiple tax years, partial resolution offer is not a qualified offer. Assume the same facts as in *Example 5* except that with respect to 2002, in addition to increasing B's income for the unreported lottery winnings, the statutory notice also disallows a charitable contribution deduction. B submits a settlement offer that purports to be a qualified offer, but only covers the unreported lottery winnings. B's offer is not a qualified offer because it does not address the charitable contribution issue, and thus, does not fully resolve B's liability for 2002.

Example 7. Qualified offer rule for multiple tax years, partial resolution offer is not a qualified offer. Taxpayer C receives a notice of deficiency for taxable years 2001, 2002, and 2003 adjusting the amount of a depreciation deduction due to the Internal Revenue Service's increase to the recovery period. C submits a settlement offer relating only to 2003 that purports to be a qualified offer. C's offer is not a qualified offer because the issue in the three tax years is not separable given that the treatment of the issue in one of the years necessarily affects the treatment of the issue in the other years, and C's offer only applies to one of the years in the proceeding. In cases involving multiple tax years with nonseparable tax issues affecting all tax years, an offer is not a qualified offer unless it resolves the liability for all tax years at issue in the administrative or judicial proceeding.

Example 8. Qualified offer rule inapplicable when all issues settled. Taxpayer D receives a notice of proposed deficiency (30-day letter) proposing to disallow both a personal interest deduction in the amount of $10,000 (Adjustment 1), and a charitable contribution deduction in the amount of $2,000 (Adjustment 2), and to include in income $4,000 of unreported interest income (Adjustment 3). D timely files a protest with Appeals. At the Appeals conference, D presents substantiation for the charitable contribution and presents arguments that the interest paid was deductible mortgage interest and that the interest received was held in trust for Taxpayer E. At the conference, D also provides the Appeals officer assigned to D's case a written offer to settle the case for a deficiency of $2,000, exclusive of interest. The offer states that it is a qualified offer for purposes of section 7430(g) and that it will remain open for acceptance by the IRS for a period in excess of 90 days. After considering D's substantiation and arguments, the Appeals Officer accepts the $2,000 offer to settle the case in full. Although D's offer is a qualified offer, because all three adjustments contained in the qualified offer were settled, the qualified offer rule is inapplicable.

Example 9. Qualified offer rule inapplicable when all issues contained in the qualified offer are settled; subsequently raised adjustments ignored. Assume the same facts as in *Example 8* except that D's qualified offer was for a deficiency of $1,800 and the IRS rejected that offer. Subsequently, the IRS issued a statutory notice of deficiency disallowing the three adjustments contained in *Example 8,* and, in addition, disallowing a home office expense in the amount of $5,000 (Adjustment 4). After petitioning the Tax Court, D presents the field attorney assigned to the case with a written offer, which is not designated as a qualified offer for purposes of section 7430(g), to settle the three adjustments that had been the subject of the qualified offer, plus adjustment 4, for a total deficiency of $2,500. After negotiating with D, a settlement is reached on the three adjustments that were the subject of the rejected qualified offer, for a deficiency of $1,800. Adjustment 4 is litigated in the Tax Court and the court determines that D is entitled to the full $5,000 deduction for that adjustment. Consequently, a decision is entered by the Tax Court reflecting the $1,800 settlement amount, which matches exactly the amount of D's only qualified offer in the case. Although the determined liability for adjustments 1, 2, and 3 equals that of the rejected qualified offer, because all three adjustments contained in the qualified offer were settled, the qualified offer rule is inapplicable.

Example 10. Exclusion of adjustments made after the qualified offer is made. Assume the same facts as in *Example 9* except the settlement is reached only on adjustments 1 and 2, for a liability of $1,500. Adjustments 3 and 4 are tried in the Tax Court and in accordance with the court's opinion, the taxpayer has a $300 deficiency attributable to adjustment 3, and a $1,550 deficiency attributable to adjustment 4. Consequently, a decision is entered reflecting the $1,500 settled amount, the $300 liability on adjustment 3, and the $1,550 liability on adjustment 4. The $3,350 deficiency reflected in the Tax Court's decision exceeds the last (and only) qualified offer made by D. For purposes of determining whether D is a prevailing party as a result of having made a qualified offer in the proceeding, the liability attributable to adjustment 4, which was raised after the last qualified offer was made, is not included in the comparison of D's liability under the judgment with D's offered liability under the last qualified offer. Thus, D's $1,800 liability under the judgment, as modified for purposes of the qualified offer rule comparison, is equal to D's offered liability under the last qualified offer. Because D's liability under the last qualified offer equals or exceeds D's liability under the judgment, as calculated under paragraph (b)(3) of this section, D is a prevailing party for purposes of section 7430. Assuming D satisfies the remaining requirements of section 7430, D may recover those reasonable administrative and litigation costs attributable to adjustment 3. To qualify for any further award of reasonable administrative and litigation costs, D must satisfy the requirements of section 7430(c)(4)(A).

Example 11. Qualified offer in a refund case. Taxpayer E timely files an amended return claiming a refund of $1,000. This refund claim results from several omitted deductions which, if allowed, would reduce E's tax liability from $10,000 to $9,000. E receives a notice of claim disallowance and files a complaint with the appropriate United States District Court. Subsequently, E makes a qualified offer for a refund of $500. The offer is rejected and after trial the court finds E is entitled to a refund of $700. The change in E's liability from the tax shown on the return that would have resulted from the acceptance of E's qualified offer is a reduction in that liability of $500. The change in E's liability from the tax shown on the return resulting from the judgment of the court is a reduction in that liability of $700. Because E's liability under the qualified offer exceeds E's liability under the judgment, E is a prevailing party for purposes of section 7430. Assuming E satisfies the remaining requirements of section 7430, E may recover those reasonable litigation costs incurred on or after the date of the qualified offer. To qualify for any further award of reasonable administrative and litigation costs E must satisfy the requirements of section 7430(c)(4)(A).

Example 12. End of qualified offer period when case is removed from Tax Court trial calendar more than 30 days before scheduled trial calendar. Taxpayer F has petitioned the Tax Court in response to the issuance of a notice of deficiency. F receives notice that the case will be heard on the July trial session in F's city of residence. The scheduled date for the calendar call for that trial session is July 1st. On May 15th, F's motion to remove the case from the July trial session and place it on the October trial session for that city is granted. The scheduled date for the calendar call for the October trial session is October 1st. On May 31st, F delivers a qualified offer to the field attorney assigned to the case. On August 31st, F delivers a revised qualified offer to the field attorney assigned to the case. Neither offer is accepted. The case is tried during the October trial session, and at some time thereafter, a decision is entered by the court. Assume the judgment in the case, as calculated under paragraph (b)(3) of this section, is greater than the amount offered, as calculated under paragraph (b)(2) of this section, in the qualified offer delivered on May 31st, but less than the amount offered, as similarly calculated, in the qualified offer delivered on August 31st. Because the qualified offer period did not end until September 1st, and the offer of August 31st otherwise satisfied the requirements of paragraph (c) of this section, the offer delivered on August 31st is a qualified offer. Furthermore, because the August 31st qualified offer is closer in time to the end of the qualified offer period than the May 31st qualified offer, the August 31st qualified offer is the last qualified offer made by F. Consequently, the August 31st offer is the qualified offer that is compared to the judgment for purposes of determining whether F is a prevailing party under section 7430(c)(4)(E). Because F's liability under the August 31st qualified offer equals or exceeds F's liability under the judgment as calculated under paragraph (b)(3) of this section, F is a prevailing party for purposes of section 7430.

Example 13. End of qualified offer period when case is removed from Tax Court trial calendar less than 30 days before scheduled trial calendar. Assume the same facts as in *Example 12* except that F's motion was granted on June 15th. Because the qualified offer period ended on June 1st when the case remained on the July trial session on the date that preceded by 30 days the scheduled date of the calendar call for that trial session, the offer delivered on May 31st was F's last qualified offer. The August 31st offer is not a qualified offer for purposes of this rule. Consequently, F is not a prevailing party under the qualified offer rule. Therefore, F must satisfy the requirements of section 7430(c)(4)(A) to qualify for any award of reasonable administrative and litigation costs.

Example 14. When a qualified offer can be made and to whom it must be made. During the examination of Taxpayer G's return, the IRS issues a notice of deficiency without having first issued a 30-day letter. After receiving the notice of deficiency G timely petitions the Tax Court. The next day G mails an offer to the office that issued the notice of deficiency, which offer satisfies the requirements of paragraphs (c)(3) through (6) of this section. This is the only written offer made by G during the administrative or court proceeding, and by its terms it is to remain open for a period in excess of 90 days after the date of mailing to the office issuing the notice of deficiency. The office that issued the notice of deficiency transmitted the offer to the field attorney with jurisdiction over the Tax Court case. After answering the case, the field attorney refers the case to Appeals pursuant to Rev. Proc. 87–24 (1987–1 C.B. 720). See § 601.601(d)(2)(ii)(*b*) of this chapter. After careful consideration, Appeals rejects the offer and holds a conference with G during which some adjustments are settled. The remainder of the adjustments are tried in the Tax Court and G's liability resulting from the Tax Court's determinations, when added to G's liability resulting from the settled adjustments, is less than G's liability would have been under the offer rejected by Appeals. Because the Tax Court case had not yet been answered when the offer was sent, G properly mailed the offer to the office that issued the notice of deficiency. Thus, G's offer satisfied the requirements of paragraph (c)(2) of this section. Furthermore, even though G did not receive a 30-day letter, G's offer was made after the beginning of the qualified offer period, satisfying the requirements of paragraph (c)(7) of this section, because the issuance of the statutory notice provided G with notice of the IRS's determination of a deficiency, and the docketing of the case provided G with an opportunity for administrative review in the Internal Revenue Service Office of Appeals under Rev. Proc. 87–24. See § 601.601(d)(2)(ii)(*b*) of this chapter. Because G's offer satisfied all of the requirements of paragraph (c) of this section, the offer was a qualified offer and G is a prevailing party.

Example 15. Substitution of parties permitted under last qualified offer. Taxpayer H receives a 30-day letter and participates in a conference with the Office of Appeals but no agreement is reached. Subsequently, H receives a notice of deficiency and petitions the Tax Court. Upon receiving the Internal Revenue Service's answer to the petition, H sends a qualified offer to the field attorney who signed the answer, by United States mail. The qualified offer stated that it would remain open for more than 90 days. Thirty days after making the offer, H dies and, on motion under Rule 63(a) of the Tax Court's Rules of Practice and Procedure by H's personal representative, I is substituted for H as a party in the Tax Court proceeding. I makes no qualified offers to settle the case and the case proceeds to trial, with the Tax Court issuing an opinion partially in favor of I. Even though I was not a party when the qualified offer was made by H, that offer constitutes a qualified offer because by its terms, when made, it was to remain open until at least the earlier of the date it is rejected, the date of trial, or 90 days. If the liability of I under the qualified offer, as determined under paragraph (b)(2) of this section, equals or exceeds the liability under the judgment of the Tax Court, as determined under paragraph (b)(3) of this section, I will be a prevailing party for purposes of an award of reasonable litigation costs under section 7430.

(g) *Effective date.* This section is applicable with respect to qualified offers made in administrative or court proceedings described in section 7430 after December 24, 2003.

§ 301.7430–7T [Removed]

■ **Par. 3.** Section 301.7430–7T is removed.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

[FR Doc. 03–31822 Filed 12–24–03; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 28

[OAG 101; AG Order No. 2699–2003]

RIN 1105–AA78

Regulations Under the DNA Analysis Backlog Elimination Act of 2000

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is publishing this final rule to implement section 3 and related provisions of the DNA Analysis Backlog Elimination Act of 2000, as amended by the USA PATRIOT Act. The rule specifies the Federal offenses that will be treated as qualifying offenses for purposes of collecting DNA samples from Federal offenders, sets forth the responsibilities of the Federal Bureau of Prisons for collecting DNA samples from individuals in its custody, and sets forth related responsibilities of the Federal Bureau of Investigation for analyzing and indexing DNA samples.

DATES: *Effective date:* This rule is effective January 28, 2004.

FOR FURTHER INFORMATION CONTACT: David J. Karp, Senior Counsel, Office of Legal Policy. Telephone: (202) 514–3273.

SUPPLEMENTARY INFORMATION: All 50 states authorize the collection and analysis of DNA samples from convicted State offenders, and entry of resulting information into the Combined DNA Index System ("CODIS"), which the Federal Bureau of Investigation ("FBI") has established pursuant to 42 U.S.C. 14132. The DNA Analysis Backlog Elimination Act of 2000 (the "Act"), Public Law 106–546, similarly authorized the collection, analysis, and indexing of DNA samples from convicted Federal, military, and District of Columbia offenders.

Section 3 of the Act addresses the offenses that are to be treated as qualifying Federal offenses for purposes of DNA sample collection, which determines the categories of Federal offenders from whom DNA samples are collected. Section 3 also addresses the responsibility of the Federal Bureau of Prisons ("BOP") and federal probation offices to collect DNA samples from offenders in their custody or supervision, and the responsibility of the FBI to analyze and index DNA samples. On June 28, 2001, the Department of Justice published an interim rule in the **Federal Register**, pursuant to subsection (e) of section 3, which provides that, with the exception of the activities of the probation offices, the section shall be carried out under regulations prescribed by the Attorney General. *See* 66 FR 34363 (June 28, 2001). The interim rule also addressed certain responsibilities of BOP and the FBI under other sections of the Act that are closely related to the matters addressed in section 3.

Subsequent to the publication of the interim rule, Congress enacted Public Law 107–56, the USA PATRIOT Act. Section 503 of the USA PATRIOT Act provided that three additional categories of offenses shall be treated for purposes of DNA sample collection as qualifying federal offenses, as determined by the Attorney General: (1) Any offense listed in section 2332b(g)(5)(B) of title 18, United States Code; (2) any crime of violence (as defined in section 16 of title 18, United States Code); and (3) any attempt or conspiracy to commit any of the above offenses. See 42 U.S.C. 14135a(d)(2). The Department of Justice published a proposed rule in the **Federal Register** on March 11, 2003, to implement this expanded sample collection authority. See 68 FR 11481 (March 11, 2003).

The Department received comments from two individuals concerning the interim rule published on June 28, 2001. No comments were received concerning the proposed rule published on March 11, 2003. One commenter on the interim rule claimed that the rule violated numerous provisions of the Constitution. The other commenter asked about the relationship of the interim rule to statute of limitations provisions and its consistency with the Constitution's prohibition of ex post facto laws. The Department of Justice has considered the constitutional question and is confident that the interim rule, the proposed rule, this final rule, and the statutory provisions that they implement, are consistent with the Constitution. See, *e.g.*, *United States* v. *Kimler*, 335 F.3d 1132 (10th Cir. 2003); *Shaffer* v. *Saffle*, 148 F.3d 1180 (10th Cir. 1998); *Rise* v. *Oregon*, 59 F.3d 1556 (9th Cir. 1995); *Gilbert* v. *Peters*, 55 F.3d 237 (7th Cir. 1995); *Jones* v. *Murray*, 962 F.2d 302 (4th Cir. 1992). But see *United States* v. *Kincade*, 345 F.3d 1095 (9th Cir. 2003). These rules have no effect on the statutory limitation periods for commencing the prosecution of crimes.

The interim rule published on June 28, 2001, added a new part 28 to title 28 CFR relating to the DNA identification system. The proposed rule published on March 11, 2003, involved a modification of § 28.2 in the new part 28, to reflect the expanded range of qualifying federal offenses authorized by section 503 of the USA PATRIOT Act. This final rule integrates the proposed rule's revision of § 28.2 with the other regulatory provisions adopted by the interim rule. The list of offenses in the final version of § 28.2 is generally the same as in the proposed rule, but includes two additional offenses (18 U.S.C. 2332f and 2339C) that appear in the listing of 18 U.S.C. 2332b(g)(5)(B), as discussed below. In addition, some citations have been updated or added for conformity to the current versions of the cited statutes, or to ensure consistent coverage of attempts and conspiracies to commit offenses that are otherwise covered. The changes affect specifically the citations relating to provisions of 18 U.S.C. 43, 1512, 1513, and 1594, and also involve substituting citations relating to 40 U.S.C. 5104 and 5109 for former citations relating to 40 U.S.C. 193f and 193h.

Like the interim rule published on June 28, 2001, this final rule sets forth a part 28 of title 28 CFR relating to the DNA identification system. Part 28 contains subparts A and B, which relate respectively to the federal offenses for which DNA samples will be collected, and the responsibilities of BOP and the FBI in collecting, analyzing, and indexing DNA samples:

Subpart A—Qualifying Federal Offenses for Purposes of DNA Sample Collection

Subpart A of the rule specifies qualifying federal offenses for purposes of DNA sample collection. Section 3 of the Act, in part, requires BOP and probation offices to collect DNA samples from individuals in their custody or supervision who are, or have been, convicted of a "qualifying Federal offense." Subsection (d)(1) of section 3 of the Act states that qualifying Federal offenses include those in a specified list, as determined by the Attorney General.

The offense list in subsection (d)(1) was included in the Act as originally enacted and is, for the most part, explicit about which code sections are covered. Subsection (d)(2) of section 3 of the Act identifies additional categories of offenses that are qualifying Federal offenses, as determined by the Attorney General, reflecting the expansion of the range of covered offenses by section 503 of the USA PATRIOT Act.

Section 28.2 in this final rule provides a comprehensive listing of qualifying Federal offenses, reflecting both subsection (d)(1) and subsection (d)(2) of section 3 of the Act. The offenses listed in § 28.2 as revised are generally grouped by title of the United States Code for convenience in readability and application. The derivation of the listing is as follows:

Offenses in the Original Act and Rule

Section 3(d)(1) of the Act (42 U.S.C. 14135a(d)(1)) identifies the qualifying offenses authorized by the original version of the Act. These offenses were specified in the original version of 28 CFR § 28.2 that was adopted by the interim rule published on June 28, 2001. The rationale for the specification of these offenses in the original § 28.2 is explained in the preamble to the interim rule. See 66 FR 34363, 34363–64 (June 28, 2001).

These offenses from the earlier rule are all carried forward in the final version of § 28.2. In some instances, however, offenses in the earlier rule are subsumed in broader references in the final rule that reflect the new categories added by section 503 of the USA PATRIOT Act. *See* 42 U.S.C. 14135a(d)(2). In particular, under the original § 28.2 listing, only voluntary manslaughter under 18 U.S.C. 1112 was covered, reflecting a limitation in the original statute. *See* 42 U.S.C. 14135a(d)(1)(A). In accordance with section 503 of the USA PATRIOT Act, however, the expanded offense categories now include crimes of violence as defined in 18 U.S.C. 16. See 42 U.S.C. 14135a(d)(2)(B). The revised listing in the final version of § 28.2 includes 18 U.S.C. 1112 without qualification, reflecting the Attorney General's determination that involuntary manslaughter constitutes such an offense.

Likewise, the original listing in § 28.2 included a narrower set of offenses under 18 U.S.C. 1153, an Indian country jurisdictional provision, based on limited statutory language. *See* 42 U.S.C. 14135a(d)(1)(F). Specifically, of the offenses identified in 18 U.S.C. 1153, the original listing did not include "assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years," or "a felony under section 661 of this title." 18 U.S.C. 1153. However, the previously excluded assaultive crimes are crimes of violence as defined in 18 U.S.C. 16. The revised listing encompasses a broader range of offenses under 18 U.S.C. 1153, excluding only felonies under section 661 of title 18, which defines nonviolent larceny offenses.

Offenses Listed in 18 U.S.C. 2332b(g)(5)(B)

Section 503 of the USA PATRIOT Act added offenses listed in 18 U.S.C. 2332b(g)(5)(B)—a statutory list of crimes that are often committed by terrorists—as qualifying offenses for purposes of DNA sample collection. The final version of 28 CFR 28.2 incorporates all of these offenses.

In some instances, offenses listed explicitly in 18 U.S.C. 2332b(g)(5)(B) are subsumed in broader references in the final version of 28 CFR 28.2. For example, 18 U.S.C. 2332b(g)(5)(B) includes offenses under section "844(f)(2) or (3)" of title 18. Since the offense defined by section 844(f)(1) of title 18 is a crime of violence—and hence includable on the basis of 42 U.S.C. 14135a(d)(2)(B)—the listing in the final version of § 28.2 includes all offenses under 18 U.S.C. 844(f) without qualification.

The offenses listed in the final version of § 28.2 on the basis of 18 U.S.C. 2332b(g)(5)(B) are the same as those listed in the version of § 28.2 in the proposed rule published on March 11, 2003, with two additions: Legislation enacted to implement international counterterrorism conventions created two new offenses in the terrorism chapter of the criminal code, 18 U.S.C. 2332f and 2339C, and added these new offenses to the offense list in 18 U.S.C. 2332b(g)(5)(B). See Public Law 107–197, 116 Stat. 721 (June 25, 2002). The final version of § 28.2 accordingly includes these offenses.

Crimes of Violence

Section 503 of the USA PATRIOT Act also added offenses that are crimes of violence under the definition of 18 U.S.C. 16. According to that provision, a crime of violence is "(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

Some offenses that satisfy this definition are independently covered by the original offense categories in 42 U.S.C. 14135a(d)(1) or the listing of offenses in 18 U.S.C. 2332b(g)(5)(B). However, there are a large number of Federal crimes that satisfy this definition and are not otherwise included in the offense categories in the DNA sample collection statute. The final version of § 28.2 includes an extensive listing of such provisions.

Many crimes of violence are defined or referenced in discrete sections, subsections, or paragraphs of the United States Code. The listing in proposed § 28.2 identifies such offenses by referring to the appropriate sections, subsections, or paragraphs.

In some instances, however, sections of the United States Code effectively define a number of offenses—some violent and some nonviolent under the definition of 18 U.S.C. 16—without structural subdivisions that can readily be referenced in identifying the violent offenses. For such provisions, the listing in the final version of § 28.2 identifies the covered crimes of violence by including appropriate phrases that specify the relevant limitations.

For example, 18 U.S.C. 241 generally prohibits conspiracies to violate federally protected rights. The basic offense under the section is punishable by imprisonment for up to 10 years. The section also includes aggravated offenses, punishable by imprisonment for any term of years or for life, for cases in which "death results" or that involve "kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill." The aggravated offenses under 18 U.S.C. 241 are crimes of violence under the definition of 18 U.S.C. 16. Consequently, the listing in the final version of § 28.2 refers to offenses under section 241 "involving an offense punishable by imprisonment for any term of years or for life." Similarly, the subsequent section of the code, 18 U.S.C. 242, generally prohibits willful deprivations of federally protected rights under color of law, and the basic offense it defines is graded as a misdemeanor. The section also includes aggravated offenses, punishable at the felony level, that constitute crimes of violence. The listing in the final version of § 28.2 accordingly covers offenses under section 242 "if a felony."

Other types of qualifying phrases are also used, as appropriate, in relation to sections that set forth alternative grounds of liability that effectively define both violent and nonviolent offenses under 18 U.S.C. 16. For example, 18 U.S.C. 874 prohibits securing kickbacks from public works employees "by force [or] intimidation," or alternatively by "threat of procuring dismissal from employment, or by any other manner whatsoever." The listing in proposed § 28.2 accordingly refers to offenses under section 874 "involving force or intimidation."

In addition to crimes of violence that are currently included in the United States Code, the listing in the final rule includes two sections defining offenses involving rape or sexual abuse of children that have been repealed, 18 U.S.C. 2031 and 2032. Notwithstanding the repeal of these provisions, offenders who were convicted under them may currently be in custody or under supervision. The inclusion of these sections in the rule ensures that DNA samples will be collected from these offenders.

Attempts and Conspiracies

The Act provides that any attempt or conspiracy to commit a qualifying Federal offense is a qualifying Federal offense for the purpose of DNA sample collection. *See* 42 U.S.C. 14135a(d)(1)(G) and (2)(C). In part, this is implemented through the inclusion in § 28.2(a)–(h) of various specific provisions that encompass liability for attempts or conspiracies. However, there are also cross-cutting attempt and conspiracy provisions in the United States Code, including 18 U.S.C. 371 and 844(n) and 21 U.S.C. 846, which apply to categories of offenses that include both offenses that are qualifying Federal offenses for DNA sample collection purposes and offenses that are not. Paragraph (i) in § 28.2 makes it clear that any attempt or conspiracy under these provisions is a qualifying Federal offense, if the object of the attempt or conspiracy includes an offense that is a qualifying Federal offense.

In addition to enlarging the offense listing in § 28.2 to reflect the USA PATRIOT Act amendment, the final rule makes a conforming change in § 28.1. Section 28.1 of the original rule stated in part that section 3(d) of the Act "states that the offenses that shall be treated as qualifying Federal offenses are offenses under title 18, United States Code, contained in a list of descriptive terms and code sections, as determined by the Attorney General." This statement is no longer accurate in light of the USA PATRIOT Act's addition of a second offense list in section 3(d)(2) of the Act (42 U.S.C. 14135a(d)(2)) that covers many offenses outside of title 18. The final rule accordingly revises this sentence in § 28.1.

Subpart B—DNA Sample Collection, Analysis, and Indexing

Section 28.11 in the rule provides definitions for "DNA sample" and "DNA analysis" that are taken verbatim from section 3(c) of the Act.

Section 28.12, in paragraph (a), directs BOP to collect a DNA sample from each individual in its custody who is, or has been, convicted of a qualifying Federal offense, a qualifying military offense, or a qualifying District of Columbia offense. The requirement that BOP collect DNA samples from individuals convicted of qualifying Federal offenses and qualifying military offenses appears in section 3(a)(1) of the Act. The requirement to collect samples from individuals convicted of qualifying District of Columbia offenses appears in section 4, rather than section 3, of the Act (specifically, section 4(a)(1)). It is included in this regulation for logical completeness in describing BOP's DNA sample collection responsibilities under the Act.

Section 28.12, in paragraph (b), qualifies paragraph (a)'s requirement by affording BOP discretion about taking a DNA sample from an individual who is already in CODIS, or from whom a DNA sample has been collected pursuant to the provisions for collection of DNA samples from military offenders by the Department of Defense. This discretionary authority, which BOP could utilize to avoid duplicative sample collection, tracks sections 3(a)(3) and 4(a)(3) of the Act.

Section 28.12, in paragraph (c), provides in part that individuals described in paragraph (a) shall cooperate in the collection of DNA samples by BOP. This obligation on inmates is correlative to BOP's legal duty to collect DNA samples from them, and arises directly from sections 3(a)(5) and 4(a)(5) of the Act, which prescribe criminal penalties for individuals who fail to cooperate in DNA sample collection authorized by the Act.

Section 28.12, in paragraph (c), further provides that BOP may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual described in paragraph (a) who refuses to cooperate in the collection of the sample. This is taken directly from sections 3(a)(4) and 4(a)(4) of the Act. While inmates will normally cooperate voluntarily in DNA sample collection, or be persuaded to do so by the prospect of disciplinary action if they refuse to cooperate, taking a sample involuntarily from a recalcitrant individual may occasionally be necessary. The involuntary taking of a blood sample may in some instances be required under existing procedures for other purposes, such as medical evaluation, see 28 CFR 549.13, or compliance with a court order to take such a sample for evidentiary purposes. Existing regulations regarding the use of force where necessary to enforce institutional regulations or for other purposes will continue to apply in relation to inmates who refuse to cooperate in the collection of a DNA sample. *See* 28 CFR part 552, Subpart C.

Section 28.12, in paragraph (d)—tracking sections 3(a)(4)(B) and 4(a)(4)(B) of the Act—states that BOP may enter into agreements with units of State or local government or with private entities to provide for the collection of DNA samples. This provision makes it clear, for example, that BOP can arrange to have DNA samples collected from inmates in contract facilities by contract facility personnel.

Section 28.12, in paragraph (e), directs BOP to furnish each DNA sample to the FBI (for purposes of analysis and indexing in CODIS). This is explicitly required by sections 3(b) and 4(b) of the Act.

Section 28.13 directs the FBI to carry out a DNA analysis on each DNA sample furnished to it pursuant to section 3(b) or 4(b) of the Act, and to include the results in CODIS. The cited statutory provisions explicitly require the FBI to carry out these functions. Section 28.13 further provides that the FBI must include in CODIS the results of analyses furnished by the Department of Defense, which is required by 10 U.S.C. 1565(b)(2). The FBI is not required to analyze the samples collected by the Department of Defense, because the Department of Defense is responsible for carrying out that function, as provided in 10 U.S.C. 1565(b)(1).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulation concerns the collection, analysis, and indexing by Federal agencies of DNA samples from certain offenders.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 28

Crime, Information, Law enforcement, Prisons, Prisoners, Records, Probation and parole.

■ For the reasons stated in the preamble, the Department of Justice revises 28 CFR Chapter I part 28 to read as follows:

PART 28—DNA IDENTIFICATION SYSTEM

Subpart A—Qualifying Federal Offenses for Purposes of DNA Sample Collection

Sec.
28.1 Purpose.
28.2 Determination of offenses.

Subpart B—DNA Sample Collection, Analysis, and Indexing

28.11 Definitions.
28.12 Collection of DNA samples.
28.13 Analysis and indexing of DNA samples.

Authority: 28 U.S.C. 509, 510; 42 U.S.C. 14132, 14135a, 14135b; 10 U.S.C. 1565; Pub. L. 106–546, 114 Stat. 2726; Pub. L. 107–56, 115 Stat. 272.

Subpart A—Qualifying Federal Offenses for Purposes of DNA Sample Collection

§ 28.1 Purpose.

Section 3 of Public Law 106–546 directs the collection, analysis, and indexing of a DNA sample from each individual in the custody of the Bureau of Prisons or under the supervision of a probation office who is, or has been, convicted of a qualifying Federal offense. Subsection (d) of that section states that the offenses that shall be treated as qualifying Federal offenses are offenses in certain listed code sections or categories, as determined by the Attorney General.

§ 28.2 Determination of offenses.

The following offenses shall be treated for purposes of section 3 of Public Law 106–546 as qualifying Federal offenses:

(a) Any offense under any of the following sections of title 18, United States Code: 32, 33, 34, 36, 37, 43(b)(3)–(4), 81, 111, 112(a), 112(b) involving intimidation or threat, 113, 114, 115, 116, 175, 175b, 229, 231, 241 involving an offense punishable by imprisonment for any term of years or for life, 242 if a felony, 245, 247, 248 unless the offense involves only a nonviolent physical obstruction, 351, 372, 373, 593 involving force, threat, or intimidation, 594, 610 involving intimidation or threat, 751 if a felony, 752 if a felony, 753, 757, 758, 831, 842(d), (i), (m), (n), or (p), 844(d), (e), (f), (h), (i), (m), or (o), 871, 874 involving force or intimidation, 875 unless involving only a threat to injure reputation or to accuse a person of a crime, 876 unless involving only a threat to injure reputation or to accuse a person of a crime, 877 unless involving only a threat to injure reputation or to accuse a person of a crime, 878, 879, 892, 894, 922(a)(4), (7), or (8), 922(b)(4), 922(b)(5) involving sale or delivery of armor-piercing ammunition, 922(d), (g), (o), or (p), 924(c), (h), (j), (k), or (o), 929, 930(b) or (c), 956, 970(a), 1030(a)(1), 1030(a)(5)(A)(i) resulting in damage as defined in 1030(a)(5)(B)(ii) through (v), 1091, 1111, 1112, 1113, 1114, 1116, 1117, 1118, 1119, 1120, 1121, 1153 unless involving only a felony under section 661, 1201, 1203, 1204, 1361, 1362, 1363, 1364, 1365(a), (d), or (e), 1366, 1368, 1470, the second paragraph of 1501, 1503 involving threat or force, 1505 involving threat or force, 1509, 1512(a) , 1513(a) or (b), the final subsection of 1513 involving a conspiracy to violate 1513(a) or (b), 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1594(a), 1651, 1652, 1653, 1655, 1659, 1661, 1751, 1791 involving a weapon, 1792, 1859, 1864 if a felony, 1951, 1952(a)(2), 1958, 1959, 1962 (b) or (c) involving a pattern of racketeering activity that includes any act or threat of murder, kidnapping, arson, robbery, or extortion or any act that otherwise constitutes a crime of violence under this rule, 1991, 1992, 1993, 2031 notwithstanding the repeal of that provision, 2032 notwithstanding the repeal of that provision, 2101, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2152 involving injury or destruction of property described in that section, 2153 involving injury or destruction of property described in that section or an attempt or conspiracy to do so, 2155, 2191, 2192, 2193, 2194 involving force or threat, 2231, 2232(a) or (b), 2233, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2252, 2252A, 2260(a), 2260(c) involving a conspiracy or attempt to violate 2260(a), 2261, 2261A, 2262, 2272, 2273, 2274, 2275, 2276, 2280, 2281, 2332, 2332a, 2332b, 2332f, 2339, 2339A, 2339B, 2339C, 2340A, 2381 involving levying war against the United States, 2383, 2384, 2385, 2389, 2390, 2421, 2422, 2423, 2425, or 2441(c)(4).

(b) Any offense under any of the following sections of title 8, United States Code: 1324(a)(1)(B)(iv) or 1328.

(c) Any offense under any of the following sections of title 16, United States Code: 773g if the offense is a felony or involves a violation of 773e(a)(3), 1859 if the offense is a felony or involves a violation of 1857(1)(E), 2438 involving a violation of 2435(4), (5), or (6), 3637(c) if the offense is a felony or involves a violation of 3637(a)(3), or 5010(b) if the offense is a felony or involves a violation of 5009(6).

(d) Any offense under any of the following sections of title 21, United States Code: 461(c), 675, 841(d), 848(e), 858, or 1041(b).

(e) Any offense under any of the following sections of title 26, United States Code: 5861, 7212(a) involving force or threat, or 7212(b).

(f) Any offense under any of the following sections of title 42, United States Code: 1973gg–10(1), 2000e–13, 2283, 2284, 3631, or 9152(d) if the offense is a felony or involves a violation of 9151(3).

(g) Any offense under any of the following sections of title 49, United States Code: 46502, 46503, 46504, 46505, 46506(1) unless involving only an act that would violate section 661 or 662 of title 18 if committed in the special maritime and territorial jurisdiction of the United States, 46507 involving false information or a threat relating to the foregoing offenses, 60123(b), or 80501.

(h) Any offense under any of the following sections of the United States Code: section 2146(b) of title 7, section 1463 of title 30 if the offense is a felony or involves a violation of section 1461(4) of that title, section 1232(b)(2) of title 33, section 5104(e)(1) or (2)(F) of title 40 or section 5109 of that title involving a violation or attempted violation of section 5104(e)(1) or (2)(F), section 1063 of title 43 involving force, threat, or intimidation, or section 606(b) of title 47.

(i) Any offense that is an attempt or conspiracy to commit any of the foregoing offenses, including any such attempt or conspiracy under section 371 of title 18, section 844(n) of title 18, or section 846 of title 21 of the United States Code.

Subpart B—DNA Sample Collection, Analysis, and Indexing

§ 28.11 Definitions.

DNA analysis means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

DNA sample means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

§ 28.12 Collection of DNA samples.

(a) The Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of—

(1) A qualifying Federal offense as described in § 28.2;

(2) A qualifying military offense, as determined under 10 U.S.C. 1565; or

(3) A qualifying District of Columbia offense, as determined under section 4(d) of Public Law 106–546.

(b) Notwithstanding paragraph (a) of this section, the Bureau of Prisons may, but need not, collect a DNA sample from an individual described in paragraph (a) of this section if the Combined DNA Index System contains a DNA analysis with respect to that individual, or if a DNA sample has been collected from that individual under 10 U.S.C. 1565.

(c) Each individual described in paragraph (a) of this section shall cooperate in the collection of a DNA sample from that individual by the Bureau of Prisons. The Bureau of Prisons may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual described in paragraph (a) of this section who refuses to cooperate in the collection of the sample.

(d) The Bureau of Prisons may enter into agreements with units of State or local government or with private entities to provide for the collection of samples under this section.

(e) The Bureau of Prisons shall furnish each DNA sample collected under this section to the Federal Bureau of Investigation.

§ 28.13 Analysis and indexing of DNA samples.

(a) The Federal Bureau of Investigation shall carry out a DNA analysis on each DNA sample furnished to the Federal Bureau of Investigation pursuant to section 3(b) or 4(b) of Public Law 106–54, and shall include the results in the Combined DNA Index System.

(b) The Federal Bureau of Investigation shall include in the Combined DNA Index System the results of each analysis furnished to the Federal Bureau of Investigation pursuant to 10 U.S.C. 1565(b)(2).

Dated: December 16, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–31889 Filed 12–24–03; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 548

[BOP–1105–F]

RIN 1120–AB04

Religious Beliefs and Practices: Nomenclature Change

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau amends its regulations on religious beliefs and practices to rename the special diet with which it accommodates inmates' religious dietary practices. The special diet, formerly known as the common fare menu, will now be called the religious diet menu. This change in name is necessary in order to reflect more equitably the variety of faith groups with religious dietary needs.

EFFECTIVE DATE: December 29, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (Bureau) amends its regulations on religious beliefs and practices (28 CFR part 548). We published a final rule on this subject in the **Federal Register** on September 6, 1995 (60 FR 46486) and amended it on August 22, 1997 (62 FR 44836).

What Change Is the Bureau Making?

The Bureau's regulations on religious dietary practices (§ 548.20) note that inmate requests to observe religious dietary practices are addressed through a common fare menu or program. The Bureau renames the "common fare menu or program" as "the religious diet menu or program".

Why Is the Bureau Making This Change?

The common fare menu originated in 1983 as a pilot program designed to meet the needs of Jewish and Muslim inmates. The menu used food acceptable (or "common") to both religious groups to meet nutritional standards. The number of religious groups within the inmate population has increased during the last few years. The increase in the number of religious groups has also increased the variety in religious dietary needs.

In equitably addressing the varied needs of the inmate population, we believe that it is more accurate to say that we offer a religious diet program rather than a program which emphasizes the commonality of a menu for two of the faith groups.

From a more technical point of view, the change in nomenclature will result in the more consistent use in the regulations of the phrases "religious diet menu" and "religious diet program".

Who Does This Change Affect?

While the regulations apply to Federal inmates housed in Bureau facilities, no one is materially affected because the rule merely changes the name of a program.

Because the change is merely a nomenclature change, we find good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. If you would like to comment, you may submit comments on this rule by writing to the previously cited address. We will consider these comments but will not respond to them in the **Federal Register**.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 548

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend part 548 in subchapter C of 28 CFR, chapter V as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 548—RELIGIOUS PROGRAMS

■ 1. The authority citation for 28 CFR part 548 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 42 U.S.C. 1996; 28 CFR 0.95–0.99.

§ 548.20 [Amended]

■ 2. Revise the phrase "common fare" in the first and second sentences of paragraph (a) and in the first sentence of paragraph (b) to read "religious diet".

[FR Doc. 03–31703 Filed 12–24–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts, 341, 342, 348, 350, 353, 363, 364, 365, 366, 367A, 368, 369, 370, 373, 376, 377, 380, 381, 382, 384, 385, 386, 387, 391, 394, 396, and 399

Removal of Parts

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense is removing various parts (organizational charters) from chapter I, Office of the Secretary of Defense. This administrative action removes obsolete information from the Code of Federal Regulations and notifies readers of the availability of the current version of the DoD documents.

DATES: This rule is effective December 29, 2003.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, (703) 601–4722

SUPPLEMENTARY INFORMATION: The chart below identifies the parts being removed. All documents listed are DoD Directives which may be found at the Washington Headquarters Services website at *http://www.dtic.mil/whs/directives/corres/html/ai7.htm*.

Part No.	DoD Directive	Status
341	5105.2	Current.
342	5124.4	Canceled by DoD Directive 5100.89.
348	5136.11	Canceled by DoD Directive 5136.12.
350	5137.1	Current.
353	5142.1	Current.
363	5105.38	Canceled by DoD Directive 5105.65.
364	5110.4	Current.
365	3030.1	Current.

Part No.	DoD Directive	Status
366	5141.1	Current.
367a	5105.45	Current.
368	5100.1	Current.
369	5134.6	Canceled by DoD Directive 5134.12.
370	....	No document available.
373	5106.1	Current.
376	5100.81	Completely canceled 9/30/2003.
377	5105.41	Current.
380	5141.2	Current.
381	5105.31	Canceled by DoD Directive 5105.62.
382	5134.1	Current.
384	5134.1	Current.
385	5105.21	Current.
386	5105.56	Canceled by DoD Directive 5105.60.
387	5105.36	Current.
391	5105.53	Current.
394	5145.1	Current.
396	....	No document available.
399	5105.40	Canceled by DoD Directive 5105.60.

List of Subjects in 32 CFR Parts 341, 342, 348, 350, 353, 363, 364, 365, 366, 367A, 368, 369, 370, 373, 376, 377, 380, 381, 382, 384, 385, 386, 387, 391, 394, 396, and 399

Organization and functions (Government agencies).

PARTS 341, 342, 348, 350, 353, 363, 364, 365, 366, 367A, 368, 369, 370, 373, 376, 377, 380, 381, 382, 384, 385, 386, 387, 391, 394, 396, and 399—[REMOVED]

■ Accordingly, by the authority of 10 U.S.C. 301, 32 CFR Parts 341, 342, 348, 350, 353, 363, 364, 365, 366, 367A, 368, 369, 370, 373, 376, 377, 380, 381, 382, 384, 385, 386, 387, 391, 394, 396, and 399 are removed.

Dated: December 19, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03-31792 Filed 12-24-03; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Morgan City-03-011]

RIN 1625-AA00

Safety Zone; Gulf Intracoastal Waterway, Mile 134 West of the Harvey Locks, Louisa, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone 100 feet east and west of the Louisa Bridge on the Gulf Intracoastal Waterway (GIWW), mile 134 West of the Harvey Locks (WHL), extending the entire width of the waterway. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with erecting the north bascule leaf tow section of the new Louisa Bridge. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City, or a designated representative.

DATES: This rule is effective from 7 a.m. CDT on January 19, 2004, until 5 p.m. CDT on January 23, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Morgan City-03-011] and are available for inspection or copying at Marine Safety Office Morgan City, 800 David Drive, Morgan City, Louisiana 70380, between 8 a.m. CDT and 4 p.m. CDT, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT (Lieutenant) Norm Witt, Marine Safety Office Morgan City, at (985) 380-5320.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying this rule's effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with the construction of the new bridge.

Background and Purpose

The Louisiana Department of Transportation and Development will be erecting the north bascule leaf tow section of the new Louisa Bridge. The bridge will be in the closed-to-navigation position during that time. Vessel traffic must remain 100 feet east or west of the bridge from 7 a.m. to 5 p.m. each day, from January 19–23, 2004, to avoid potential hazards while construction is being conducted. Entry into this zone is prohibited to all vessels unless authorized by the Captain of the Port Morgan City, or a designated representative.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone 100 feet east and west of the Louisa Bridge on the Gulf Intracoastal Waterway (GIWW), mile 134 West of the Harvey Locks (WHL), extending the entire width of the waterway. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Morgan City, or a designated representative.

This rule is effective from 7 a.m. CDT on January 19, 2004, until 5 p.m. CDT on January 23, 2004. This rule will only be enforced from 7 a.m. until 5 p.m. CDT each day that it is effective. During non-enforcement hours, all traffic will be allowed to transit through the zone. Vessels desiring to transit through the zone during enforcement hours must request permission to do so from the Captain of the Port Morgan City, or a designated representative. The Captain of the Port Morgan City will inform the public via broadcast notice to mariners of the enforcement periods for the safety zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal. Although this rule is effective for a period of five days, it will only be enforced for a period of ten hours each day. Vessels desiring to transit through the zone during enforcement hours must request permission to do so from the Captain of the Port Morgan City, or a designated representative. During non-enforcement hours, all traffic will be allowed to transit through the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through within 100 feet east or west of the Louisa Bridge, located on the GIWW at mile 134 WHL, from 7 a.m. CDT on January 19, 2004 until 5 p.m. CDT on January 23, 2004. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only five days, and will only be enforced for a period of 10 hours each day. During non-enforcement hours, all traffic will be allowed to transit through the zone.

If you are a small business entity and are significantly affected by this regulation, please contact LT Norm Witt, Marine Safety Office Morgan City, at (985) 380–5320.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental

Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T08–153 to read as follows: § 165.T08–153 Safety Zone; 100 Feet East and West of the Louisa Bridge, Gulf Intracoastal Waterway, Mile 134 West of the Harvey Locks, Louisa, LA.

(a) *Location.* The following area is a temporary safety zone: all waters within 100 feet east and west of the Louisa Bridge located on the Gulf Intracoastal Waterway at mile 134 West of the Harvey Locks, Louisa, Louisiana.

(b) *Effective Date.* This rule is effective from 7 a.m. CDT on January 19, 2004, until 5 p.m. CDT on January 23, 2004.

(c) *Periods of Enforcement.* The safety zone in this section will be enforced from 7 a.m. until 5 p.m. CDT each day of the effective period.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into the zone established in this section is prohibited unless authorized by the Captain of the Port Morgan City.

(2) Vessels requiring entry into or passage through the safety zone established in this section must request permission from the Captain of the Port Morgan City, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (985) 380–5320.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Morgan City and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel are commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: November 17, 2003.

S.P. Garrity,

Captain, U.S. Coast Guard, Captain of the Port Morgan City.

[FR Doc. 03–31893 Filed 12–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–030]

RIN 1625–AA00

Security Zone; Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). In light of recent terrorist actions against the United States, the security zone is necessary to ensure the safe onloading and offloading of military equipment and to ensure the safety of the nearby public from potential subversive acts. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding the MOTCO unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective from 7 a.m. PST on December 21, 2003, to 11:59 p.m. PST on January 3, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–030] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation. Publishing a NPRM and delaying this rule's effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS *Cole* and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared and ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California, establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents or criminal acts. This zone is also necessary to protect military operations from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, encompassing the navigable waters, extending from the surface to the sea floor, within a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point. The area encompassed by these connecting points includes the Seal Island Channel, all of the Port Chicago Reach section of the deepwater channel, and a small portion of both the Roe Island Channel and Middle Ground West Reach sections of the deepwater channel. Persons and vessels are prohibited from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP) or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, will also face imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation. The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to portions of navigable waters, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to anchor or transit to or from Suisun Bay via the Port Chicago Reach section of the channel. Although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels may receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing will have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where located under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–099 to read as follows:

§ 165.T11–099 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, within a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Patrol Commander on scene on VHF–FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective period.* This section becomes effective at 7 a.m. PST on December 21, 2003, and terminates at 11:59 p.m. PST on January 3, 2004.

Dated: December 17, 2003.

Gerald M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–31892 Filed 12–24–03; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–200328; FRL–7596–6]

Approval and Promulgation of Air Quality Implementation Plans; Memphis-Shelby County; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is revising the format of 40 CFR part 52 for materials submitted by Memphis-Shelby County that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by the local agency and approved by EPA.

This format revision will affect the "Identification of Plan" sections of 40 CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center, and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or local-submitted materials not subject to IBR review remain unchanged.

EFFECTIVE DATE: This action is effective December 29, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Marie Hoffman at the above Region 4 address, by phone at (404) 562–9074, or by electronic mail at *hoffman.anne@epa.gov*.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of Plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On June 30, 1999 EPA published a document in the **Federal Register** (64 FR 35009) beginning the new IBR procedure for Tennessee. In this document EPA is beginning the new IBR procedures for Memphis-Shelby County, Tennessee.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 26, 2003.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. Section 52.2220 is amended:

■ a. By revising paragraph (b) and

■ b. By revising the heading of the existing table in paragraph (c) to read "Table-1 EPA APPROVED TENNESSEE REGULATIONS" and adding a new table "Table-2 EPA APPROVED MEMPHIS-SHELBY COUNTY REGULATIONS" to the end of paragraph (c) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section with an EPA approval date prior to December 1, 1998, was approved for Tennessee (Table 1 of the Tennessee State Implementation Plan) and January 1, 2003 for Memphis-Shelby County (Table 2 of the Tennessee State Implementation Plan) and paragraph (d) of this section with an EPA approval date prior to December 1, 1998, was approved for Tennessee (Source-Specific Requirements) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in Table 2 of paragraph (c) of this section with EPA approval dates after January 1, 2003, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State and Local Implementation Plans listed in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460.

(c) * * *

TABLE 2.—EPA APPROVED MEMPHIS-SHELBY COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
	Division I Generally			
Section 16–46	Definitions	8/14/89	6/15/89, 54 FR 25456	
Section 16–47	Abbreviations, Acronyms & Symbols	8/14/89	6/15/89, 54 FR 25456	
Section 16–48	Words, Phrases Substituted in State Regulations Adopted by Reference.	8/14/89	6/15/89, 54 FR 25456	
Section 16–49	Ambient Air Quality Standards	8/14/89	6/15/89, 54 FR 25456	
Section 16–50	Open Burning	8/14/89	6/15/89, 54 FR 25456	
Section 16–51	Severability of Parts of Articles	8/14/89	6/15/89, 54 FR 25456	
	Division II Enforcement			
Section 16–56	Violations of Chapter—Notice; Citation; Injunctive Relief	8/14/89	6/15/89, 54 FR 25456	
Section 16–57	Penalties, Misdemeanor, Civil, Noncompliance	8/14/89	6/15/89, 54 FR 25456	
Section 16–58	Variances	8/14/89	6/15/89, 54 FR 25456	
Section 16–59	Emergency Powers of Health Officer	8/14/89	6/15/89, 54 FR 25456	
	Division III Air Pollution Control Board			
Section 16–71	Created; Membership; Term of Office; Jurisdiction; Hearings; Appeals.	8/14/89	6/15/89, 54 FR 25456	
	Division IV Source Emissions Standards			
Section 16–77	Construction and Operating Permits	8/14/89	6/15/89, 54 FR 25456	
Section 16–78	Process Emissions Standards	8/14/89	6/15/89, 54 FR 25456	
Section 16–79	Nonprocess Emission Standards	8/14/89	6/15/89, 54 FR 25456	
Section 16–80	Volatile Organic Compounds	8/14/89	6/15/89, 54 FR 25456	

TABLE 2.—EPA APPROVED MEMPHIS-SHELBY COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 16–82	Control of Sulfur Dioxide Emissions	8/14/89	6/15/89, 54 FR 25456	
Section 16–83	Visible Emissions	8/14/89	6/15/89, 54 FR 25456	
Section 16–84	Particulate Matter from Incinerators	8/14/89	6/15/89, 54 FR 25456	
Section 16–85	Required Sampling, Recording, and Reporting	5/20/96	3/19/96, 61 FR 11136	
Section 16–86	Methods of Sampling and Analysis	8/14/89	6/15/89, 54 FR 25456	
Section 16–87	Limits on Emissions due to Malfunctions, Startups & Shutdowns.	8/14/89	6/15/89, 54 FR 25456	
Section 16–88	Nuisance Abatement	8/14/89	6/15/89, 54 FR 25456	
Section 16–89	Fugitive Dust	8/14/89	6/15/89, 54 FR 25456	
Section 16–90	General Alternate Emission Standard	8/14/89	6/15/89, 54 FR 25456	
Section 16–91	Lead Emission Standards	8/14/89	6/15/89, 54 FR 25456	

* * * * *

[FR Doc. 03–31587 Filed 12–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA 124–4222; FRL–7603–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Pennsylvania; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the Commonwealth of Pennsylvania (the Commonwealth) municipal solid waste landfill plan (the plan) for implementing emission guideline (EG) requirements promulgated under the Clean Air Act (the Act). The plan establishes enforceable nonmethane organic compounds (NMOC) emissions limits for existing landfills within the Commonwealth, excluding the geographic areas under the authority of Allegheny County and the City of Philadelphia.

EFFECTIVE DATE: This final rule is effective January 28, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 24, 2003, EPA published a direct final rule (68 FR 37421) approving the Pennsylvania section 111(d) landfill plan (the plan). Also, on that date, EPA published a proposed rule (68 FR 37449) to allow interested parties to submit comments. During the public comment period, EPA received numerous adverse comments and questions from The Alliance for A Clean Environment (ACE). As a result, on August 19, 2003, EPA withdrew the direct final rule granting approval of the Pennsylvania plan (68 FR 49706).

II. Response(s) to Public Comments

Many of the comments and questions EPA received from ACE (the "commenter") are not relevant or germane to the Pennsylvania plan approval process in the context of section 111(d) Clean Air Act requirements, and the related regulatory provisions of 40 CFR part 60, subparts B, Cc, and WWW. In this section of the **Federal Register** notice, EPA is responding primarily to those adverse comments and questions that possibly could be considered relevant or germane to the plan approval process in the context of section 111(d) requirements only. The many ACE comments and questions, which are not relevant to the plan approval, address the following generic and source specific issues:

(a) Ambient air quality and emission standards for criteria pollutants, and related health impacts, as regulated under section 110 of the Act;

(b) Toxic air pollutants, and related health impacts, as regulated under section 112 of the Act;

(c) Radioactive landfill gas emissions, and related health impacts;

(d) Suggested revisions or amendments to EPA's promulgated landfill rules—EG and new source performance standards (NSPS); and

(e) Clean Air Act violations at a specific landfill facility and EPA's enforcement response.

All of the above listed issues are beyond the scope of EPA's section 111(d) plan requirements and approval authority. Any ACE issue, which is not listed generically above is also considered irrelevant to this plan approval action. EPA's responses to possible relevant issues and questions are given below.

A Summary of Comments and Questions—EPA Responses

1. How were Pennsylvania communities notified that they had an opportunity to comment on the plan? *Response*—Three separate PADEP public hearings were held on the plan in June 1997. Prior to each hearing, a thirty (30) day notice was published in one or more newspapers that serve the public hearing site area. These notices were published in six (6) prominent Pennsylvania newspapers and the Pennsylvania bulletin. The PADEP has met EPA's public notification and public participation requirements of 40 CFR 60.23. This is discussed in EPA's June 24, 2003 **Federal Register** notice (68 FR 37421), paragraph II. J, A Record of the Public Hearing on the State Plan.

2. On what basis does EPA view the plan approval as a non-controversial action? *Response*—EPA's action is based on section 111(d) requirements of the Act, not sections 110 and 112, relating to state plans and requirements for criteria (*e.g.*, ozone) and hazardous (*e.g.*, dioxins/furans, mercury compounds, and radionuclides) air pollutants, respectively. The Pennsylvania landfill plan contains requirements that are no less stringent than those required by section 111(d) of the Act and the related provisions of 40 CFR part 60, subparts B and Cc. Also, the plan contains

facility specific compliance schedules that are expeditious, as required by subpart B, and require final compliance by a date earlier than that of the generic compliance schedule under the Federal Plan, 40 CFR part 62, subpart GGG, promulgated on November 8, 1999. The Federal plan is applicable to all affected landfills located in those states without an approved plan, such as Pennsylvania, until the state plan is approved by EPA. The Pennsylvania plan meets all applicable federal requirements, as discussed in EPA's June 24, 2003 **Federal Register** notice and the related technical support document (TSD).

3. What does "controlled" mean to EPA? *Response*—Section 111 of the Act requires EPA to promulgate EG and NSPS based on the application of what is referred to as best demonstrated technology (BDT), considering costs and any nonair quality health and environmental impacts and energy requirements, at the time the EG and NSPS are promulgated. The EG and NSPS establish a nationwide minimum level of control, for specific stationary source categories, based on the use of BDT. BDT for landfills, emitting 50 megagrams per year of NMOC or more, requires the reduction of MSW landfill gas emissions with: (a) A well designed and operated gas collection system and (b) a control device capable of reducing NMOC in the collected gas by 98 weight percent. Both EPA landfill rules (the EG and NSPS) recognize that various combustion devices, including flares, can be an effective means of reducing, by 98% or better, the NMOC emissions collected from a landfill. The BDT requirements for landfills are stipulated in the promulgated March 12, 1996 MSW landfill EG and the related NSPS, subparts Cc and WWW, sections 60.33c(c); and 60.752(b)(2)(ii) and (iii), respectively. More details about landfill gas control technologies and their performance are discussed in the preamble to the proposed EPA landfill rules (56 FR 24476, May 30, 1991). Also, additional information is given in EPA's proposed landfill rule amendments, as published in the May 23, 2002 **Federal Register** (67 FR 36477).

4. EPA admits to the public health dangers of landfill gas (*i.e.*, NMOC) emissions, so why wouldn't EPA require the safest technology? *Response*—Consistent with the requirements of section 111 of the Act, EPA's landfill rules set a nationwide minimum level of control based on the use of BDT. EPA believes BDT control alternatives are safe for the operators and impacted community, providing the control equipment is properly designed, constructed, and operated. Because NMOC are health-related, states plans must ordinarily be at "least as stringent" as the EG. However, nothing under EPA's section 111 plan regulations, 40 CFR part 60, subpart B, prohibits the PADEP from adopting and enforcing more stringent emission standards. Nevertheless, the submitted Pennsylvania plan control requirements are no less stringent than BDT, as stipulated and required in subpart B and the EG, subpart Cc.

5. Does Pennsylvania have the legal authority to do anything about Clean Air Act [MSW landfill rule] violations in the past? *Response*—A state can only enforce section 111(d) plan requirements if (a) it has received EPA approval of the state plan, or (b) it has requested and received delegation of the Federal plan, 40 CFR part 62, subpart GGG. Neither is the case with the PADEP. At this time, the PADEP can enforce state only requirements. When EPA approves the Pennsylvania plan, PADEP will then have the authority under federal law to enforce the state plan , including possible "past" violations. PADEP has satisfactorily demonstrated its authority to implement the state plan, as stated in EPA's approval notice (68 FR 37422) of June 24, 2003.[1]

6. Why hasn't the Pottstown Landfill been included in this source inventory? *Response*—Any landfill that was modified or reconstructed after May 30, 1991 is subject to subpart WWW, and not the requirements of section 111(d) of the Act. A modification occurs if there is a physical change at the landfill that increases the capacity of the landfill beyond its permitted capacity. Based on documents from the PADEP and the Pottstown's landfill engineer, the landfill is a modified source, and thus subject to the NSPS, subpart WWW, and not section 111(d) requirements of either the Pennsylvania or Federal plan. Although the landfill EG and NSPS both require use of the same BDT, both stipulate different initial reporting and final compliance date requirements. However, if we assume that the Pottstown Landfill is a designated facility, subject to section 111(d) requirements, and was somehow overlooked in the Pennsylvania plan inventory, EPA's earlier plan approval notice (68 FR 37424) states, "* * * if an unknown designated landfill is not covered by the scope of this plan and is discovered after EPA plan approval, that landfill will be subject to the promulgated Federal plan requirements until the PADEP amends its plan to include the previously unknown designated landfill." In other words, under EPA's approval action, the Pottstown landfill would be covered by the promulgated Federal plan, even if at a later date it is determined that the facility is in fact subject to section 111(d) requirements.

7. With a health threat of NMOC emissions, why would a landfill get 2½ years to comply? *Response*—Considering the size and NMOC applicability thresholds of affected landfills, EPA believes 2½ years is generally expeditious. This timeframe is reflected in the promulgated EG, NSPS, and the Federal plan. As noted above, the Pennsylvania plan requires final compliance earlier than what is stipulated in the Federal plan.

8. How is the applicability threshold (50 megagrams per year) determined and by whom? *Response*—The measurement methods, applicable to both existing and new landfills, are specified in the landfill NSPS at section 60.754, Test Methods and procedures. Although the landfill owner/operator conducts the tests, both PADEP and EPA have oversight authority and can require a source retest with regulatory personnel on site during the test.

9. Were violations reported to EPA by PADEP under the plan provision that requires state submittal of annual reports on plan enforcement? *Response*—Under the plan, the noted reports are not due until one year after EPA approval of the plan. See the EPA **Federal Register** notice of June 24, 2003 (68 FR 37423), section II. K, Provision for Annual State Progress Reports to EPA. Within one year of EPA's approval of the plan, EPA expects the PADEP will begin submittal of annual compliance reports.

10. How were the people notified about changes to the original plan? *Response*—Other than changes in order to meet EPA promulgated revisions to the EG, we know of no plan changes, subsequent to its original submittal, that relaxes plan applicability, emission standards, operating requirements, recordkeeping and reporting, and compliance dates.

11. The commenter objects to PADEP's retention of source "trade secret" information, and its unavailability to the public, and questions what method or process trade secret information can be expected from operating a landfill. *Response*—It appears that PADEP's willingness to

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[1] With respect to the enforcement of NSPS requirements, on May 8, 1985, PADEP received automatic delegation of all NSPS from EPA. See the August 23, 1985 **Federal Register**. Accordingly, the PADEP has had the authority to enforce subpart WWW requirements since March 12, 1996, the date of rule promulgation

release all source compliance and emissions data, except for that relating to "trade secrets," is consistent with EPA's subpart B requirements, 40 CFR 60.25(c). 40 CFR 60.25(c) only requires public access to compliance and emissions data that is correlated with applicable emissions standards (*e.g.*, NMOC).

12. The commenter questions the Pennsylvania plan requirements regarding the frequency of emissions monitoring and the reliability of collected data. *Response*—The frequency of monitoring and the collection of reliable data are consistent with applicable EG requirements, 40 CFR 60.34c and 60.35c, as noted in EPA's June 24, 2003 **Federal Register** notice (68 FR 37423), and the related technical support document (TSD).

III. Final Action

EPA is approving the Pennsylvania plan. This determination is based upon the rationale discussed in the proposed and related direct final rulemakings (68 FR 37449 and 37421, June 24, 2003) and EPA's evaluation of submitted public comments and questions, as dicussed above. Any revisions to the plan or associated landfill air quality operating permits will not be considered part of the applicable plan until submitted by the PADEP in accordance with the provisions of 40 CFR 60.28.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d) plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d) plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d) plan submission, to use VCS in place of a 111(d) plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for sixteen (16) specific sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the Pennsylvania section 111(d) MSW landfill plan, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 15, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 62, subpart NN, is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. Sections 62.9635, 62.9636, and 62.9637 are added to subpart NN, "Landfill Gas Emissions From Existing Municipal Solid Waste Landfills" to read as follows:

§ 62.9635 Identification of plan.

Section 111(d) plan for municipal solid waste landfills, as submitted on July 1, 1997, and as amended through April 9, 2003 by the Pennsylvania Department of Environmental Protection. The plan excludes the geographical areas under the authority of Allegheny County and the City of Philadelphia.

§ 62.9636 Identification of sources.

The plan applies to existing Pennsylvania landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.9637 Effective date.

The effective date of the plan for municipal solid waste landfills is January 28, 2004.

[FR Doc. 03–31866 Filed 12–24–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 110–OPPa; FRL–7603–1]

Approval and Promulgation of Operating Permits Program; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Diego County Air Pollution Control District Operating Permits (Title V) Program. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a rule revision that addresses a change in the major source threshold for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X). This change is based on the redesignation of San Diego County as in attainment of the federal one-hour ozone standard. As a result of this action, some sources that would have previously been considered major sources, and therefore would have been required to obtain a Title V operating permit, would no longer need to apply for a Title V permit. We are also approving revisions to several other parts of San Diego's Title V program. For more information see "What is being addressed in this document," below.

DATES: These rule revisions are effective on February 27, 2004 without further notice; unless EPA receives adverse comments by January 28, 2004. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that these revisions will not take effect.

ADDRESSES: Send comments to Gerardo Rios, Permits Office Chief (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *rios.gerardo@epa.gov*. Comments may also be submited at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment.

FOR FURTHER INFORMATION CONTACT: Kathleen Stewart, EPA Region IX, (415) 947–4119, *stewart.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. The Part 70 Operating Permits Program
  A. What is the part 70 operating permits program?
  B. What is the Federal approval process for revisions to an operating permits program?
  C. What does Federal approval of State revisions mean to me?
II. This Action
  A. What revisions are being approved?
  B. Have the requirements for approval been met?
  C. Public comment and final action.
III. Statutory and Executive Order Reviews

I. The Part 70 Operating Permits Program

A. What Is the Part 70 Operating Permits Program?

The Clean Air Act Amendments (CAA) of 1990 require all states to develop an operating permits program that meets federal criteria listed in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program (also known as a Title V program) is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

B. What Is the Federal Approval Process for Revisions to an Operating Permits Program?

In order for state regulations to be incorporated into the federally-enforceable part 70 operating permits program, states must formally adopt regulations consistent with state and federal requirements. Once a state regulation is adopted, the state submits it to the EPA for inclusion into the approved operating permits program. The EPA must provide public notice and seek additional public comment regarding the proposed federal action on the state submission. If adverse comments are received, they must be addressed prior to any final federal action by EPA.

C. What Does Federal Approval of State Revisions Mean to Me?

Enforcement of a state regulation is primarily a state responsibility both before and after incorporation into the federal program. However, after a state regulation has been federally approved, the EPA is authorized to take enforcement action against violators, and under section 304 of the CAA, citizens are authorized to take civil action to address violations. In addition, federal approval of state regulations ensures that the state program is consistent with federal requirements.

II. This Action

A. What Revisions Are Being Approved?

EPA has requested that each permitting authority periodically submit any revised part 70 rules for approval as a revision to their approved part 70 program. In a letter dated August 19, 2003, San Diego County Air Pollution Control District requested that EPA approve revisions to Rules 1401(c); 1410(i), (j), (l), and (q); 1418(b), (c), and (e); 1415 (a); 1421(a) and (b); and 1425(a) and (b). A complete listing of each rule change is contained in the technical support document which is a part of the docket for this action and which is available from the EPA contact above. A few of the rule revisions which may be of interest, however, are discussed here. The remaining revisions are administrative in nature and do not change the substantive requirements of the rule.

Rule 1401(c): The District added language to exclude non-road engines from the definition for major stationary source; added a definition for non-road engine by reference to 40 CFR part 89; changed the major source threshold for VOCs and NO_X from 50 tons per year (tpy) to 100 tpy in response to the redesignation of San Diego County as in attainment of the federal one-hour ozone standard (*see* 68 FR 37976, June 26, 2003); and clarified the role of fugitive emissions in determining if a source is major.

Rule 1410(j): The District clarified the requirements needed to qualify for a minor permit modification and clarified that the time frame for action applies to complete applications.

Rule 1410(l): The District clarified the requirements for making section 502(b)(10) changes under Title V of the Clean Air Act, added requirements to notify the federal EPA of such changes, shortened the time period for notifying the Air Pollution Control Officer (APCO) and the federal EPA of such changes from 45 to 7 days, shortened the time period for the APCO and the federal EPA to object to such changes from 45 to 7 days, added provisions for incorporating changes into the permit, and added language requiring that any Title V monitoring or compliance certifications be based on the changed characteristic(s).

Rule 1410(q): The District added language expanding compliance plan requirements, clarifying the requirements for processing applications for minor or significant permit modifications using the Administrative Permit Amendment procedures in Rule 1410(i); shortened the public review and comment period from 45 to 30 days; added language committing the APCO to consider and respond to only those comments which are relevant to the permit review and appropriate for public comment; and clarified under what conditions the applicant may commence operation.

Rule 1415(a): The District shortened the period for public notice and comment from 45 to 30 days.

Rule 1418(c): In order to allow time for an appeal to the Hearing Board, the District increased the time period allowed for delay in the submission of decisions on permits to operate and appeals to the federal EPA from 10 to 30 days after notice has been provided to the applicant.

Rule 1418 (e): The District has added language to allow 30 days following the end of EPA review to address comments.

Rule 1421(b): The District clarified that the reports that must be maintained for at least five years and submitted to the District are monitoring reports.

B. Have the Requirements for Approval Been Met?

Our review of the material submitted indicates that the District has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the federal rule, 40 CFR part 70, and has met the requirement for a program revision as established in 40 CFR 70.4(i).

C. Public Comment and Final Action

EPA is fully approving the revisions to San Diego County's part 70 operating permits program because we believe they are consistent with Title V of the Clean Air Act and 40 CFR part 70. We are processing this action as a direct final action because the revisions to the existing rules are noncontroversial. Therefore, we do not think anyone will object to this approval. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 28, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 27, 2004. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state operating permits programs submitted pursuant to Title V of the CAA, EPA will approve state programs provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 15, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 70, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Appendix A to Part 70 is amended by adding under "California" paragraph (x)(5) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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California

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(x) * * *

(5) Revisions were submitted on August 19, 2003, effective February 27, 2004.

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[FR Doc. 03–31872 Filed 12–24–03; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 68, No. 248
Monday, December 29, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1131

[Docket No. AO–368–A32, AO–271–A37; DA–03–04]

Milk in the Pacific Northwest and Arizona-Las Vegas Marketing Areas; Reconvening of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1124	Pacific Northwest ..	AO–368–A32
1131	Arizona-Las Vegas	AO–271–A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule; Notice of reconvened public hearing on proposed rulemaking.

SUMMARY: This notice announces the reconvening of the public hearing begun on September 23, 2003, in Tempe, Arizona, and reconvened on November 17, 2003, in Seattle, Washington, to consider proposals to amend the producer-handler provisions of the Arizona-Las Vegas and Pacific Northwest orders and to consider elimination of the ability to simultaneously pool the same milk on the Arizona-Las Vegas milk order and on a State-operated order that provides for marketwide pooling. The proposals seek to, among other things, end the regulatory exemption of producer-handlers from the pooling and pricing provisions of these two milk marketing orders if their Class I route distribution exceeds three million pounds of milk per month in either order.

DATES: The hearing will reconvene at 8:30 a.m. on Tuesday, January 20, 2004.

ADDRESSES: The reconvened hearing will be held at the Embassy Suites Hotel Alexandria, 1900 Diagonal Road, Alexandria, VA 22314, telephone: (703) 684–5900.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231-Room 2971, 1400 Independence Avenue, SW, Washington, DC 20250–0231, (202) 720–2357, e-mail address *jack.rower@usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Joanne Walter via email *jwalter@fmmaseattle.com* before the reconvened hearing begins.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Notice of Hearing: Issued July 31, 2003; published August 6, 2003 (68 FR 46505).

Correction to Notice of Hearing: Issued August 20, 2003; published August 26, 2003 (68 FR 51202).

Notice of Reconvened Hearing: Issued October 27, 2003; published October 31, 2003 (68 FR 62027).

Notice is hereby given that the reconvened hearing that was adjourned in Seattle, Washington, on November 21, 2003, by the Administrative Law Judge designated to hold said hearing and preside thereof will reconvene in session at 8:30 a.m., January 20, 2004, at the Embassy Suites Hotel Alexandria Hotel, 1900 Diagonal Road, Alexandria, VA 22314. At this reconvened hearing, additional testimony will be received on proposed amendments 1 through 5, listed in the initial hearing notice (68 FR 46505) and as corrected (68 FR 51202), to the tentative marketing agreements and to the orders regulating the handling of milk in the Arizona-Las Vegas and Pacific Northwest marketing areas.

List of Subjects in 7 CFR Parts 1124 and 1131

Milk marketing orders.

Authority: 7 U.S.C. 601–674.

Dated: December 18, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31790 Filed 12–24–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–43–AD]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all AeroSpace Technologies of Australia Pty Ltd Model N22B, N22S, and N24A airplanes. This proposed AD would require you to inspect the forward and aft face of the rear fuselage frame for cracks and to repair or modify accordingly. This proposed AD is the result of mandatory continuing airworthiness information issued by the airworthiness authority for Australia. We are issuing this proposed AD to detect and correct cracks in the rear fuselage frame, which could result in failure of the fuselage rear bulkhead and consequent loss of structural integrity.

DATES: We must receive any comments on this proposed AD by February 2, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2000–CE–43–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from AeroSpace Technologies of Australia Pty Ltd; 226 Lorimer Street, Port Melbourne Victoria 3207, Australia.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No.

2000–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Senior Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone: (562) 627–5224; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2000–CE–43–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are there any specific portions of this proposed AD I should pay attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What events have caused this proposed AD?

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified FAA that an unsafe condition may exist on all AeroSpace Technologies of Australia Pty Ltd N22 and N24 series airplanes. The CASA received a number of reports of airplanes with cracks around the rivet heads on the rear bulkhead frame. The cracks could result in failure of the fuselage rear bulkhead and consequent loss of airplane control.

What are the consequences if the condition is not corrected?

We are issuing this proposed AD to detect and correct cracks in the rear fuselage frame, which could result in failure of the fuselage rear bulkhead and consequent loss of airplane control.

Is there service information that applies to this subject?

AeroSpace Technologies of Australia Pty Ltd has issued the Nomad Alert Service Bulletin—53–15, which incorporates the following pages.

Effective pages	Revision level	Date
1–31 (reprint of entire service bulletin)	2	October 6, 1997.
1 through 4, 13 through 19, and 23 and 24	3	June 1, 1999.

What are the provisions of this service information?

The service bulletin includes procedures for inspecting the rear fuselage bulkhead of aircraft for cracks and making required repairs and/or modifications.

What action did the CASA take?

The CASA classified this service bulletin as mandatory and issued Australian AD Number AD/GAF–N22/65 amendment 3, dated May 5, 2000, to ensure the continued airworthiness of these airplanes in Australia.

Did the CASA inform the United States per the bilateral airworthiness agreement?

These AeroSpace Technologies of Australia Pty Ltd Model N22B, N22S, and N24A airplanes are manufactured in Australia and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the CASA has kept us informed of the situation described above.

FAA's Determination and Requirements of this Proposed AD

What has FAA decided?

We have examined the CASA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other AeroSpace Technologies of Australia Pty Ltd Models N22B, N22S, and N24A airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct cracks in the rear fuselage frame.

What would this proposed AD require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD?

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact?

We estimate that this proposed AD affects 14 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
General Visual Inspection—0.5 work hours est. $60 per hour = $30.	No parts needed for inspection	$30	$420
Detailed Visual Inspection—5 work hours est. $60 per hour = $300.	No parts needed for inspection	$300	$4,200

We estimate the following costs to accomplish any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need these repairs:

Labor cost	Parts cost	Total cost per airplane
Repair—20 work hours est. $60 per hour = $1,200	$1,000	$2,200

We estimate the following costs to accomplish the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
Modification—24 work hours est. $60 per hour = $1,440	$500	$1,940	$27,160

Regulatory Findings

Would this proposed AD impact various entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action?

For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2000–CE–43–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

AeroSpace Technologies of Australia Pty Ltd: Docket No. 2000–CE–43–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by February 2, 2004.

What Other ADs Are Affected By This Action?

(b) None.

What Airplanes Are Affected By This AD?

(c) This AD affects the following airplane models and line sequence numbers (serial numbers) that are certificated in any category:

Models	Line sequence numbers
(1) N22B and N22S.	1 through 9, 11 through 29, 31, 33, 35, 37, 39 through 41, 43, 45, 47 through 59, 61, 63, 65 through 70, 82 through 88, 90 through 95, 97, 100, 102 through 114, 116, 118, 125, 126, 131 through 134, 136 through 138, 141, and 143 through 170.
(2) N24A	10, 30, 32, 34, 36, 38, 42, 44, 46, 60, 62, 64, 71 through 81, 89, 96, 98, 99, 101, 115, 117, 119 through 124, 127 through 130, 135, 139, 140, and 142.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of cracks around the rivet heads on the rear bulkhead frame. The actions specified in this AD are intended to detect and correct cracks in the rear fuselage bulkhead. The cracks could result in failure of the fuselage rear bulkhead and consequent loss of structural integrity.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Action	Compliance	Procedures
(1) Perform a general visual inspection of the forward face of the rear fuselage frame for cracks.	*For airplanes that have not been repaired as described in the service bulletin:* Inspect within 50 hours time in service (TIS) after the effective date of this AD, if not already inspected. Repetitively inspect every 100 hours TIS thereafter until the modification in paragraph (e)(4) of this AD is done. *For airplanes that have been repaired as described in the service bulletin:* Inspect within 500 hours TIS after repair or next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect every 100 hours TIS thereafter until the modification in paragraph (e)(4) of this AD is done.	Do the inspection following Section 2.A of Nomad Service Bulletin ANMD–53–15. (*See* paragraph (f) of this AD for a list of effective pages.)
(2) Perform a detailed visual inspection of the aft face of the rear fuselage frame for cracks.	*For airplanes that have not been repaired as described in the service bulletin:* Inspect within 100 hours TIS after the effective date of this AD. Repetitively inspect every 300 hours TIS thereafter until the modification in paragraph (e)(4) of this AD is done.. *For airplanes that have been repaired as described in the service bulletin:* Inspect within 500 hours TIS after repair or 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect every 300 hours TIS thereafter or until the modification in paragraph (e)(4) of this AD is done.	Do the inspection following Section 2.A of Nomad Service Bulletin ANMD–53–15. (*See* paragraph (f) of this AD for a list of effective pages.)
(3) Repair any cracks found during any general or detailed inspection required by this AD.	If any cracks are found during a general or detailed inspection, the airplane must be repaired before further flight. *See* compliance for modification below.	Do repairs following Section 2.B of Nomad Service Bulletin ANMD–53–15. (*See* paragraph (f) of this AD for a list of effective pages.)
(4) Modify the airplane by installing AeroSpace Technologies of Australia Modification N806.	*For airplanes that have not been repaired before the effective date of this AD:* Modification is mandatory within 100 hours TIS or 12 months of the effective date of this AD, whichever occurs sooner. Modification terminates the inspection requirements of this AD. *For aircraft that have been repaired before the effective date of this AD:*. Modification is mandatory within 3,000 effective hours TIS after incorporation of the repair or 18 months after the effective date of this AD, whichever occurs later. Modification terminates the inspection rerquirements of this AD.	Do modification following Section 2.C of Nomad Service Bulletin ANMD–53–15. (*See* paragraph (f) of this AD for a list of effective pages.)

(f) The Aerospace Technologies of Australia Pty Ltd has issued the Nomad Alert Service Bulletin-53–15, which incorporates the following pages.

Effective pages	Revision level	Date
1–31 (reprint of entire service bulletin)	2	October 6, 1997
1 through 4, 13 through 19, and 23 and 24	3	June 1, 1999

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to Ron Atmur, Senior Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone: (562) 627–5224; facsimile: (562) 627–5210. For information on any already approved alternative methods of compliance, contact Ron Atmur at the above mentioned address.

May I Get Copies of the Documents Referenced in This AD?

(h) You may get copies of the documents referenced in this AD from AeroSpace Technologies of Australia Pty Ltd, 226 Lorimer Street, Port Melbourne Victoria 3207, Australia. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(i) Australian Airworthiness Directive AD/GAF–N22/65 Amdt 3, dated May 5, 2000, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on December 17, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31847 Filed 12–24–03; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Bath Seats; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing a rule to ban bath seats that do not meet certain requirements under the authority of the Federal Hazardous Substances Act. Bath seats are used to support infants in a tub or sink while they are bathed. The Commission is aware of 106 deaths and 163 non-fatal incidents and complaints from January 1983 through October 2003 involving bath seats. The Commission proposes three requirements with which bath seats must comply.

DATES: Written comments in response to this document must be received by March 15, 2004.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–7923. Comments also may be filed by telefacsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*. Comments should be captioned "NPR for Bath Seats."

FOR FURTHER INFORMATION CONTACT: Patricia Hackett, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7577.

SUPPLEMENTARY INFORMATION:

A. Background

In July 2000, the Consumer Federation of America and eight additional organizations petitioned the Commission to ban bath seats under the Federal Hazardous Substances Act ("FHSA").[1] In August 2000, an additional organization, U.S. Public Interest Research Group, submitted a letter requesting to be added to the list of petitioners. On May 30, 2001, the Commission voted to grant the petition and issue an advance notice of proposed rulemaking ("ANPR") to begin a rulemaking proceeding. The ANPR was published in the **Federal Register** on August 1, 2001. 66 FR 39692. The Commission received 10 comments on the ANPR. The Commission held a public briefing on bath seats on July 28, 2003. Four people submitted written testimony and gave oral testimony at the briefing. Since the briefing, the Commission received six additional written comments. Significant issues raised by these comments and the Commission's responses are discussed in section G below. On October 16, 2003, the Commission voted to issue a notice of proposed rulemaking ("NPR") proposing that bath seats meet requirements for stability, leg openings and labeling or be considered banned hazardous substances.[2]

When the ANPR was published, the Commission had reports of 78 deaths and 110 non-fatal incidents and complaints associated with bath seats (or bath rings, which are no longer marketed in the U.S.) between January 1983 and May 2001. 66 FR 39693. When the staff presented a briefing package to the Commission in May 2003, the Commission had reports of 96 deaths and 153 non-fatal incidents involving bath seats that occurred from January 1983 to December 2002.[2] [3] As of October 2003, the Commission has reports of 106 deaths and 163 non-fatal incidents involving bath seats. As discussed more fully below, the staff identified three major scenarios that were related to the bath seats' design and materials: (1) The bath seat tipping over during use; (2) the child coming out of the bath seat; and (3) the child becoming entrapped and/or submerged in the leg openings of the bath seat.

B. Statutory Authority

This proceeding is conducted pursuant to the FHSA, 15 U.S.C. 1261 *et seq*. Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard can include a risk of injury or illness "(3) from points or other protrusions, surfaces, edges, openings, or closures, * * * or (8) because of instability, or (9) any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

Section 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)–(i), governs a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding began with an ANPR. 66 FR 39692. After considering the comments submitted in response to the ANPR, the Commission is now issuing a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. The Commission will then consider the comments received in response to the proposed rule and decide whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i)(1). Before the Commission can issue a final rule it must find: (1) If an applicable voluntary standard has been adopted and implemented, that compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) that benefits expected from the regulation bear a reasonable relationship to its costs; and (3) that the regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id*. 1261(i)(2).

C. The Product

Bath seats are used in a tub or sink to support a seated infant while he/she is bathed. They are marketed for use only by infants capable of sitting upright unassisted and who cannot yet pull to a standing position. Current bath seats contain a seating area and are usually held in place by suction cups located at the bottom of the seat. When the Commission first began looking at this issue, bath rings were also being manufactured and marketed in the U.S. Bath rings consisted of a plastic ring with three or four legs with suction cups. The infant would sit directly on the tub or on a sponge pad that was fitted within the ring. Such bath rings are no longer manufactured for the U.S. market, but they would be covered under the proposed definition of "bath seat" if they were to be re-introduced into the U.S. market.[2] As used in this NPR, the term "bath seat" includes bath rings.

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[1] The other petitioners are Drowning Prevention Foundation; Danny Foundation for Crib and Child Product Safety; Intermountain Injury Control Research Center; California Coalition for Children's Safety and Health; California Drowning Prevention Network; Contra Costa County Childhood Injury Prevention Coalition; Greater Sacramento SAFE KIDS Coalition; and Kids in Danger.

[2] Commissioners Mary Sheila Gall and Thomas H. Moore issued statements. Copies of these statements are available from the Commission's Office of the Secretary or from the Commission's Web site, *http://www.cpsc.gov*.

[3] Numbers in brackets refer to documents listed at the end of this notice.

Current bath seats provide a molded plastic seat for the infant to sit on. They provide support to a seated infant. In addition, there are now some infant bathtubs that convert to bath seats. These convertible bath seats would also be included in the proposed rule's definition of "bath seat" because, in the bath seat configuration, they provide support to the front and back of a seated infant.[2]

The traditional infant bath tubs that are used to bathe a reclining infant are not within the scope of the proposed rule. Essential to the proposed definition of "bath seat" is that the item provides support at least to the back and front of an infant in a seated position. Although there have been drowning incidents involving infant bath tubs, the hazard scenarios are different from incidents involving bath seats. The bath tub incidents do not involve tipovers, leg opening entrapments and children coming out of the products as the bath seat incidents do.

Bath seats are produced and/or marketed by juvenile product manufacturers and distributors. At the present time, there are two manufacturers and one importer of bath seats active in the U.S. market.[2&8]

In 2000, the Juvenile Products Manufacturers Association ("JPMA") estimated that there may be up to two million bath seats in use. This is generally consistent with an estimate derived from the American Baby Group's *Baby Products Tracking Study*, 2000. According to the Tracking Study, about 33 percent of new mothers own bath seats or rings. Given the approximately four million annual births in the U.S., the 33 percent ownership rate suggests about 1.3 million bath seats are available for use for infants under the age of one. Including bath seats used by infants older than one, the total number of bath seats in use may be close to two million, as estimated by JPMA.

Retail sales of new bath seats may range from 700,000 to 1,000,000 annually. The American Baby Group survey indicated that 46 percent of bath seats or rings owned by new or expectant mothers were obtained after being used for an older child or borrowed. This suggests that about 54 percent of the bath seats were acquired new, resulting in annual sales of about 700,000 (.54 × 1.3 million). The JPMA estimate of sales is somewhat higher, about 1 million annually.

Bath seats currently sell for about $10 to $16. Bath seats which convert from an infant bath tub to a bath seat sell for about $20 to $25.

D. The Risk of Injury

1. Incident Data

The Commission has reports of 106 deaths and 163 non-fatal incidents and complaints associated with bath seats between January 1983 and October 2003. One hundred-three of the deaths occurred in the absence of a caregiver. In many incidents it is difficult to know the amount of time the caregiver was out of the room. Some reasons that caregivers have cited for leaving children unattended are answering unexpected phone calls, retrieving towels, tending to another child in the home, performing household chores, or watching television. The victims involved in fatal drowning incidents ranged in age from 5 months to 20 months.[2&3]

2. Hazard Scenarios

After examining the bath seat incident reports, the Commission staff identified three major hazard scenarios that were related to the bath seats' design and materials. These are: (1) The bath seat tipping over during use; (2) the child coming out of the bath seat; and (3) the child becoming entrapped and/or submerged in the leg openings of the bath seat.[2&3]

Bath seat tipping over. The staff identified 32 fatalities and 85 non-fatal incidents or complaints involving bath seats tipping over that were reported from January 1983 through October 2003. The children involved ranged from 4 months to 15 months in age. In most of the fatal incidents, a caregiver was not present. However, a caregiver was present in two of the fatalities. The majority of non-fatal incidents were supervised.[2&3]

In many of the tip-over incidents, it appears that the suction cups may not have completely adhered to the tub's surface. It is often difficult to determine the type of surface involved in individual incidents.[2]

Child coming out of bath seat. The staff identified 22 fatalities and 13 non-fatal incidents and complaints involving children coming out of bath seats that were reported from January 1983 through October 2003. In these incidents, the children were found out of the bath seat in the bath water, and the bath seat was still in its upright position. The scenario suggests that the bath seat was unable to restrain the child in the seat. Children involved in these incidents ranged in age from 6 months to 14 months. In all of the fatal incidents and in the majority of non-fatal incidents no caregiver was present.[2&3]

Entrapment and submersion. The staff identified 3 fatalities and 18 non-fatal incidents and complaints involving children entrapped or submerged in bath seats that were reported from January 1983 through October 2003. The children involved in these incidents ranged in age from 3 to 16 months. In one of the fatalities the child was supervised. In the other two, no caregiver was present. The majority of non-fatal incidents were supervised.[2&3]

E. Voluntary Standard

Currently, there is a voluntary standard for bath seats, ASTM F 1967–03. The standard was first published in June 1999. At that time, the standard included marking, labeling, and literature requirements as well as performance requirements addressing stability, static load, latching/locking mechanisms, restraint systems, leg opening sizes and other requirements commonly found in juvenile product standards. A revised standard with requirements for suction cup integrity and a durability requirement for latching/locking mechanisms was published in June 2001. The current version of the standard, ASTM F 1967–03, contains additional revisions that were approved in March 2003 and published in April 2003.[2]

Following is a summary of the performance requirements and their respective test methods specified in ASTM F 1967–03.[2]

Restraint System: If the seat provides back support and side or front support, then a passive crotch restraint must be provided. The ASTM standard does not allow additional restraints that require any action on the part of the caregiver to secure the restraint.

Stability: The bath seat is tested on a smooth surface, in 2 inches of water. A 17-pound force (lbf.) is applied horizontally from the seat. The bath seat complies with the voluntary standard if it does not tip over. Testing is not required on slip-resistant surfaces unless the manufacturer recommends use on slip-resistant surfaces (the Commission is unaware of any bath seats currently sold that are recommended for slip-resistant surfaces).

Static Load: A 30-pound load is placed in the seat for 20 minutes. There shall be no breakage or deformation of the product.

Requirements for Suction Cups (added in 2001): Seats with suction cups are tested as follows. After soaking in water, a 25-pound vertical pull test is performed in an attempt to remove the suction cups from the seat. After soaking in water, a 25-pound pull test is performed on a seat installed on a smooth bathing surface, in an attempt to disengage the suction cups from the bathing surface. The seat is installed and removed 2000 times on a smooth bathing surface and the second pull test is repeated.

Leg Openings (added in 2003): A torso probe is inserted in the most adverse orientation into each opening of the bath seat from the direction of the occupant seating surface. A 15-pound force is applied. To comply, the bath seat must not permit passage of the torso probe. The tapered end of a shoulder probe is inserted in the most adverse orientation into each opening of the bath seat from the direction of the occupant seating surface. A 15-pound force is applied to the probe in the direction of the major axis. The force is released and a 10-pound force is applied to the top 1.0 inch perimeter of the probe in a direction vertically toward the seating surface. To comply, the 1.0 inch perimeter shall not be permitted to contact the seating surface of the bath seat.

October 2003 ASTM Meeting. On October 1, 2003, the ASTM Bath Seat Subcommittee met and voted to issue a concurrent Main and Subcommittee ballot that will include proposed new stability and labeling requirements.[1] The proposed stability requirement is identical to the stability requirement the Commission is proposing in this NPR. The proposed labeling requirement being balloted is similar to the first two lines of the label the Commission proposes in this NPR. The ASTM proposed label states:

> **WARNING**
>
> Children have drowned when left unattended in bath seats. ALWAYS keep child within arm's reach.

The ballot with these two proposals was issued on November 3, 2003, and results are due back December 8, 2003. The results should be reviewed and discussed at the next ASTM Bath Seat Subcommittee meeting in March 2004.[1]

F. The Proposed Ban

The proposed rule would ban bath seats that do not meet specified requirements for stability, leg openings, and labeling. After considering the incident reports, the Commission believes that these proposed requirements will address the major hazard scenarios involved in bath seat drownings.

1. Stability Requirement

As discussed above, 117 reported incidents involved the bath seat tipping over (32 deaths and 85 non-fatal incidents or complaints). Bath seats currently on the market depend on suction cups for all or part of their stability. If the suction cups fail, either by detaching from the product or detaching from the tub surface, the bath seat can become unstable and tip over.[2]

Most of the reports concerning bath seats tipping over were based on incidents where suction cups on the bottom of the bath seat failed to adhere to the bathtub surface during a child's entire bath. This can happen for several reasons including degradation of the suction cups over time, or dirty or soapy surfaces that affect adhesion of the cups to the tub. In addition, suction cups will not reliably adhere to slip-resistant tubs. In these incidents, failure of the bath seat to continuously adhere to the surface results in an unstable product.[2]

The ASTM subcommittee for bath seats identified this problem, and the current ASTM F 1167–03 requires that manufacturers include warnings against using bath seats on slip-resistant surfaces. However, the current voluntary standard does not require testing on slip-resistant surfaces.[2]

It can be difficult for a consumer to identify a "slip-resistant" tub. Although many slip-resistant tubs have texturing that is easily identified (such as a sandpaper-like finish, a pattern of ridges, or consumer-added appliqués) some slip-resistant surfaces have a very subtle finish. A convenience sampling of slip-resistant tubs at a home improvement store by CPSC staff showed some tubs that appeared to be smooth, even though they were "slip-resistant." During testing, CPSC staff noted that suction cups can temporarily form a seal on some abrasive surfaces if the surface has already been flooded with water, but the seal does not last.[2]

Because identifying slip-resistant tubs might be difficult, and testing can be misleading, the Commission believes that warning against the use of bath seats on slip-resistant surfaces will not be effective at preventing incidents. Therefore, the Commission proposes that bath seats' stability be tested on slip-resistant surfaces.

The proposed performance requirement is similar to the stability requirement in ASTM F 1967–03, but instead of testing on a smooth surface, it requires the product to be tested on a slip-resistant surface. The Commission proposes that the slip-resistant test surface be defined as a surface on which commercially available, adhesive backed, slip-resistant tread strips have been applied. Slip-resistant tread strips are used in many applications such as walkways and stairs, as well as bathtubs, to provide traction against slipping. The Commission is not aware of any standard for slip-resistant tread strips, but the desired result of an uneven surface is an inherent characteristic of any slip-resistant tread.[2&4]

A performance requirement that requires all products to remain stable on slip-resistant bathing surfaces should reduce the likelihood of tip-over incidents that are due to surface adhesion failure. A bath seat that is stable on slip-resistant surfaces could depend on its geometry and construction for stability rather than on suction cups. An object will fall over when its center of gravity lies outside its supporting base. The supporting base of bath seats could be designed to be wide enough to prevent tip-overs. Another potential approach might be a bath seat that attaches to one or both of the tub sides.[2&4]

2. Leg Opening Requirement

As discussed above, 21 reported incidents involved children submerged or entrapped in bath seats (3 deaths and 18 non-fatal incidents or complaints). Over the last two years, CPSC staff worked as part of an ASTM task group to develop a performance requirement to address the entrapment and submersion hazard. The performance requirement the task group developed tests all side and leg openings with two test probes—a torso probe and a shoulder probe. To comply with the requirement, the torso probe must not pass through any side or leg openings, and the shoulder probe must not slide through any side or leg openings nor be able to rotate in a manner that allows the upper end of the probe to touch the seating surface.[2&4]

The torso probe is identical to the probe used in the current high chair standard, ASTM F 404–99a, since high chairs are intended for the same minimum developmental stage occupants. Prohibiting passage of the probe is intended to prevent the torso of the occupant from sliding through a side or leg opening. The design of current bath seats can be modified to eliminate openings that are large enough for an infant to slide through, for example by adding more vertical "bars" or increasing the width of existing "bars."[2&4]

The dimensions of the shoulder probe represent the shoulder breadth and buttock depth of the smallest intended occupant. During the test, the shoulder probe is inserted into each leg opening and a force is applied to the "shoulder" end of the probe in an attempt to push it through the opening, or to have it touch the seat base. Prohibiting the probe from contacting the seating surface is intended to prevent an occupant from sliding and rotating in the bath seat to a point where the occupant's shoulder and face is under water. The interior volume of current bath seats can be reduced to prevent an infant from lying down (and possibly becoming entrapped underwater) without preventing older users from occupying the seat.[2&4]

This leg opening performance requirement was recently approved by ASTM and is included in ASTM F 1967–03, published in April of 2003.[2] The Commission is including it in this NPR because, at this time, the leg opening requirement of the voluntary standard has not been implemented. According to relevant legislative history, a voluntary standard is implemented when "substantial industrywide production of products that comply with the standard has begun." H.R. Cong. Rep. No. 208, at 875; U.S. code cong. & Admin. News, 97th Cong., 1st Sess. 1982, Vol. 2 at 1237. This has not yet occurred.

3. Labeling Requirement

As discussed above, 35 reported incidents involved children coming out of bath seats (22 deaths and 13 non-fatal incidents or complaints). The Commission staff considered the incident reports to determine whether performance criteria could be developed that would address this hazard scenario. For the reasons explained below, the staff concluded that no performance criteria could effectively address the hazard scenario of children coming out of the bath seats at this time.

The Commission is concerned that adding an effective restraint system to the seat may change the utility of the bath seat. It could change the product from a bath aid to a bath restraint, making it impractical for its intended purpose of aiding caregivers when bathing children. Essentially, current bath seats maintain the children's seated posture as loosely as possible, so that caregivers have room for their hands to wash children without worrying that the children will fall over or slip down. Bath seats are "loose supports." They are poorly adapted to restraining functions because it is difficult to make an effective "loose restraint." Preventing children from coming out of a bath seat requires a restraint system that is reasonably comfortable and still allows washing. Moreover, in a bathing environment it is easier for children to escape because they are naked and wet. Restraining their slippery bodies comfortably, with room to wash, is extremely difficult because humans are so flexible and jointed.[2&5]

The Commission is also concerned that making the bath seat's seating area smaller by requiring a standard size will not prevent all users from coming out of the bath seat. One approach for a restraint might be simply to reduce the occupant retention area so that it is "tighter" on the child. However, this would not be effective for all users because children who may use the bath seat range greatly in size. For example, bath seats that fit large 6-month-old children may still allow small 10-month-old children ample clearance to fit into the seat and come out. Moreover, the large variability in sizes among same-age children in this age range is greater than the growth from age 5 months to 10 months. Thus, requiring that bath seats be made in a smaller, standardized size would be insufficient to create an effective passive restraint system for bath seats.[2&5]

Because a restraint performance requirement does not appear to be a practical approach for preventing children from coming out of a bath seat, the Commission proposes a forceful warning label to warn about the need for constant caregiver attendance.

The Commission believes that the label currently specified in the ASTM standard (see above) needs to be stronger so that consumers understand that the danger of drowning is a real possibility. Some consumers report that leaving a child unattended momentarily is "understandable," to get a towel, answer the phone or doorbell, or help another child, even though some admit they understand that it is a risk to the infant. They may rationalize that they are still "attending" to the child if they can "hear what's going on," or if they are "just in the next room" and will soon return. Caregivers reading the current warning label may admit that drowning is possible, but may rationalize that it has never happened before. Since they think the event is unlikely, they feel comfortable ignoring the warning and believing the hazard is unlikely. They trust the bath seat and over-apply the success of their prior experiences with it when their child did not come out. A strong warning may counteract some of this behavior. The Commission proposes strengthening the ASTM warning label with statements that expressly explain the danger. The Commission proposes the following language:

⚠ WARNING

Children have drowned while using bath seats.
ALWAYS keep baby within arm's reach.
This bathing aid is NOT a safety device.
Stop using when a child is able to pull to a standing position.

G. Response to Comments

The Commission received ten comments from nine individuals during the ANPR comment period. Eight of the 10 comments supported a ban of the product. One of the 10 supported a mandatory performance standard, and the other commenter supported the development of a voluntary standard. In addition, four individuals submitted written testimony before the Commission's public briefing and gave oral testimony at the briefing. Three of these supported a ban of all bath seats and one supported voluntary standards. After the briefing, the Commission received six additional comments, two supporting a ban of all bath seats, one supporting a mandatory standard, and one supporting terminating the rulemaking (the other two did not express support for any of the options).

Responses to the primary issues raised by the comments follow. The numbers found in parentheses after a comment refer to the commenter number assigned by the Office of the Secretary.

1. Adequacy of Bath Seat Designs and the Voluntary Standard

Comment: Several comments (CH 01–5–3; 5; 6; 7; 8) stated that no standard can adequately address the risk of death and injury associated with bath seats and that ASTM F 1967–01 does not adequately address these issues. Some commenters (CH 01–5–1; 4; 5; 6) specifically pointed out that the size of the leg openings was hazardous.

Response: The Commission believes that the proposed leg opening requirement will address incidents that involve entrapment/submersion, and that the proposed stability requirement can adequately address tip-over incidents.

Comment: Comment CH 01–5–9 asserted that certain design safety measures can be added to make bath seats safer, including the addition of user-activated restraints, and that ASTM should include these safety measures in the voluntary standard.

Response: The Commission agrees that bath seats can be made safer by implementing design safety measures to address the tip-over hazard and the entrapment and submersion hazard. However, a user-activated restraint system that prevents a child from coming out of a seat could make the bath seat impractical for its intended purpose. In addition, the Commission is concerned that caregivers may not use such restraints. As a result, a performance requirement for a restraint system is not a viable approach at this time. The Commission proposes that the coming out hazard be addressed with a forceful warning label to stress the need for constant caregiver attendance.

2. Bath Seat Suction Cups and Performance on Slip-Resistant Surfaces

Comment: Several commenters (CH 01–5–3; 3a; 5; 6) were concerned about the compatibility of bath seats with slip-resistant surfaces, and they stated that ASTM F 1967–01 is not compatible with slip-resistant surfaces. Three comments (CH 01–5–1; 2; 6) concentrated on the poor performance of suction cups in terms of ability to adhere to surfaces.

Response: Current bath seat designs that rely on suction cups for stability will not reliably adhere to non-smooth surfaces such as textured tub surfaces, non-slip abrasive surfaces, or surfaces on which non-slip adhesive treads have been applied. Bath seats that do not rely on suction cups or any kind of surface adhesion for stability should not encounter the same stability problems identified with current bath seats when used on slip-resistant surfaces. The Commission proposes that stability tests on bath seats be performed on a slip-resistant surface.

The ASTM bath seat voluntary standard does not require testing bath seats on slip-resistant surfaces if the manufacturer's instructions state that the product should only be used on a smooth surface. The Commission is not aware of any current bath seat where the instructions state the product can be used on slip-resistant surfaces.

Comment: Comment CH 01–5–2 stated "if the suction works well enough to keep the seat always upright, it will also work to hold the child underwater, even with a parent struggling to free the child, if the child submarines or slips out of the bath seat."

Response: The danger of being unable to free a child in a stable, upright seat is only possible if the child can submarine and become entrapped in the seat. The proposed leg opening requirement should prevent this from occurring.

3. A False Sense of Security and Parental Absence

Comment: Several comments (CH 01–5–1; 2; 3; 4; 5; 6; 7; 8) asserted that caregivers are more likely to leave a child alone in a bath seat because the child looks safe in one and warning labels are insufficient to prevent this behavior.

Response: If consumers believe that a bath seat is safe due to its appearance or features, they may choose to ignore the warning. This phenomenon, called "risk compensation," can occur with many products, even those not intended to be safety devices, if the user trusts the device to prevent injury. However, strengthening the warning on the product may help combat any appearance of safety in bath seats. For this reason, the warning should be as powerfully worded as possible.

Comment: Comment CH–01–5–9 implied the problem is not with bath seat designs, but with the people who leave children unattended. This commentor also states "If the bath seat/ring was 'designed and manufactured' to allow the caregiver to place the child in the tub and walk away then I would heartily agree that these articles constitute a "mechanical hazard". But the fact is, these bath aides were not designed or manufactured to be used in such a way."

Response: As the Commission stated in the ANPR: "Some caregivers may perceive that the product provides a greater degree of safety than it does. Leaving the child alone could be considered a reasonably foreseeable abuse of the product." 66 FR 39697. Existing bath seats do not appear to be adequately designed to protect children against the consequences of this foreseeable misuse. In addition, some mechanical failures—*e.g.*, the seat tipping over or children slipping into leg openings—have occurred in the presence of a caregiver.

4. Utility Age Range

Comment: Comment CH 01–5–8 questioned the age recommendation of 5 to 10 months for bath seats. The commenter suggests that "6 to 8 months is a much more realistic age range for average children to sit securely and to begin to pull up on objects."

Response: The relevant developmental milestones for bath seat use are "sitting unassisted" and "pulling to a standing position." A significant portion of the population will sit unassisted somewhere between 5 months and 6 months of age, even though the average will fall somewhere just after 6 months. As well, a significant portion of the population will not be able to pull to a stand until sometime after their 9-month birthday. To encompass a reasonable majority of typical users, the Commission believes that bath seat usage will likely occur in the 5- to 10-month age range. However, some users may well achieve the milestones in shorter time spans.

ASTM recently approved a modification to its standard to include an age recommendation for the product of between 5 and 10 months. In addition, the revised standard also requires packaging and instructions wording as follows: "Product is suitable for children able to sit up unassisted. Product is not suitable for children able to pull up to a standing position who may attempt to climb out." The Commission concurs with this recommendation.

5. Bath Seat Incident Rates

Comment: Two comments (CH 01–5–1 and 8) stated that the "* * * standard has done nothing to slow the bath seat mortality rate." and "* * * the standard has failed to reduce the numbers of drowning and near drowning incidents* * *"

Response: Because the date of manufacture of the bath seats involved in the incidents is not recorded, the Commission cannot determine if the bath seat was manufactured prior to the effective date of a particular ASTM standard. However, as noted in this NPR, the Commission has concerns about the adequacy of the current voluntary standard in addressing deaths and incidents associated with bath seats.

6. Water Level Mark

Comment: Two statements submitted at the Commission briefing (by Rachel Weintraub for CFA and Jack Walsh for the Danny Foundation) recommended putting a water level mark on the bath seat to indicate that the bath water should not be higher than that level. One of the commenters discussed incident data that he claimed supported his opinion. The other commenter recommended that the following be added to the warning label or instructional literature: "ALWAYS use the least amount of water necessary when bathing a child."

Response: The Commission is concerned that a water level mark may be interpreted by some caregivers to mean there is a safe water level at which children do not drown. There is no such level. Therefore, the Commission does not support this recommendation. The current ASTM standard requires the following wording on instructional literature: "Babies can drown in as little as 1 inch of water. ALWAYS bathe your infant using as little water as necessary." The Commission believes this is adequate. With regard to incidents cited by the commenter, many of those involved overflowing bath tubs where parents or siblings turned on the water and failed to turn it off. The Commission does not believe that the presence of a water level mark on the product would have addressed these incidents.

7. Labeling

Comment: One statement at the Commission briefing (by Rachel Weintraub for CFA) and one comment submitted after the briefing (by Paul Ware, Chair of ASTM F15.20 Subcommittee) commented on the proposed warning label for bath seats. One stated that it is counterintuitive to come up with a warning label to address the coming out hazard. Another commenter stated that he does not believe that there is adequate rationale for changing the wording from what is currently in the ASTM standard to the wording the Commission is proposing.

Response: As discussed in section F.3 above, the staff explored whether a performance requirement could be developed that would address the coming out hazard, but concluded that no practical and effective performance criteria were possible. As for the need for improvements to the label required by the ASTM standard, the Commission believes that the current label allows parents to rationalize that children have not actually drowned while using a bath seat. The Commission believes its proposed warning label is an improvement because it uses language to warn parents that children actually have drowned while using a bath seat. Incidents involving the absence of caregivers continue to occur, and no other strategy directly addresses this caregiver behavior. The Commission believes that strengthening the label may more strongly influence caregiver behavior and thereby reduce drowning incidents.

Comment: Two commenters (Ms. Weintraub of CFA and Heather Paul of National Safe Kids Campaign) asked that the Commission require a label on bath seats that indicates the product meets the mandatory rule.

Response: The Commission has included such a requirement in other CPSC regulations, such as bike helmets, and believes that this is a reasonable suggestion. Therefore the Commission proposes this requirement in the NPR.

Comment: One commenter (Ms. Weintraub of CFA) requested that there be a requirement that the warning label be "readable" when tested for permanence. Another commenter recommended a stronger permanency test for labels than what is currently required in the ASTM standard.

Response: The ASTM standard for bath seats contains a requirement for labels to withstand submersion in water for 20 minutes. CPSC is not aware of any consumer complaints or incidents with regard to illegible labeling on bath seats. Therefore the Commission has no basis to propose a change to the current ASTM test.

Comment: One commenter (Ms. Paul of Safe Kids Campaign) recommends that the warning label on the product also be required to be on the front and back of the packaging.

Response: The Commission believes this is a reasonable suggestion to better ensure that consumers are made aware of the hazards associated with bath seats. Therefore the Commission is including this in the NPR.

8. Data Regarding Bathing Environments of Infants

Comment: One commenter (CH 03–3–5) presented data on bathing environments for a group of children age 5 to 10 months old who drowned in bath tubs from 1994–1999. From these data, she drew conclusions about parental behavior, sibling presence, and the potential effects of a ban of bath seats.

Response: The commenter puts forth the contention that bath seats lead parents to leave their babies alone in the bath, which leads to their greater risk of drowning. This conclusion cannot be drawn from the data she presents. In order to draw conclusions about bath seats leading parents to leave children unattended, we would need to have data on how many bath seat users leave their children unattended and how many non-bath seat users leave their children unattended. These data do not exist.

In addition, in order to draw conclusions about whether bath seat users are at greater or lesser risk of drowning (regardless of the reason), we need data on the number of babies bathed in bath seats and the number bathed without bath seats. These data are not presented by the commenter. The only source of any data on this topic is the Baby Products Tracking Study discussed in the staff's 2001 briefing package and 2003 briefing package. CPSC staff has calculated death data and risk estimates derived from this study.

These data indicate that the risk of drowning in a bathtub is greater with a bath seat than without a bath seat for 5–7 month olds. The risk of drowning with a bath seat is less than that of drowning without a bath seat for 8–10 month olds. Given this analysis, and given that this information alone cannot be used to predict what effect a ban of bath seats may have on caregiver behavior, the Commission concluded that available information cannot predict whether a ban of bath seats would reduce bathtub related drownings.

The Commission is proposing requirements for bath seats that address the mechanical design characteristics that contribute to bath seat drowning incidents. By making bath seats safer, the Commission believes that the number of drowning fatalities can be reduced.

9. Adequacy of ASTM F 1967–03

Comment: Two commenters (Mr. Ware, Chair of ASTM F15 Subcommittee and Frederick Locker, Counsel for the Juvenile Products Manufacturers Association) stated that they believed the existing voluntary standard is adequate and addresses issues previously raised by the Commission.

Response: The Commission believes that the current ASTM standard for bath seats (ASTM F 1967–03) is not adequate. Specifically, there are no performance requirements to ensure that all bath seats are stable on slip-resistant surfaces. This was an issue that was discussed during the May 2001 Commission briefing, and it is not addressed in the newest version of the standard. In addition, it is the Commission's opinion that the labeling requirements of ASTM F 1967–03 need to be strengthened to more effectively alert caregivers to possible hazards associated with bath seats.[1]

H. Alternatives

The Commission has considered other alternatives to address the drowning hazard posed by bath seats. As discussed below, the Commission does not believe that any of these would adequately reduce the risk of injury.

1. *Propose only two requirements.* The Commission could issue a proposed rule that requires bath seats to comply only with a stability requirement and labeling requirement (or else they would be banned hazardous substances). The Commission considered proposing a rule without a leg opening requirement because the ASTM standard approved in March 2003 includes a leg opening requirement that is identical to the one the staff recommended to the Commission.[2] However, the Commission believes it is appropriate to propose all three requirements since the industry has not had time yet to produce bath seats that comply with the ASTM leg opening requirement. The Commission will re-examine the question of including a leg opening requirement in its rule when the Commission considers whether to issue a final rule.

2. *Ban of all bath seats.* The Commission considered proposing a rule declaring that all bath seats are hazardous substances and therefore banned. However, at this time, it is unclear what the effect of removing all bath seats from the market would be. Available information cannot predict whether fewer children would drown if bath seats were unavailable or if more would drown. CPSC staff examined bath seat-related deaths and bath tub-related deaths for the period 1994 through 1999. The staff's analysis suggests that children ages 5 to 7 months are more at risk from drowning when bathed in bath seats as opposed to being bathed in a bathtub. However, children ages 8 to 10 months, as a group are at a higher risk of drowning when bathed in a bathtub than when bathed in a bath seat. The staff concluded that it could not measure the effect a ban would have on bathing-related drowning because: (1) The analysis suggests that bathing while using a bath seat is riskier for younger bathers, while bathing in bathtubs without a bath seat is riskier for older bathers; (2) the staff necessarily made assumptions to estimate a bath seat user population—these assumptions could affect the accuracy of the results; and (3) the analysis cannot be applied to children younger than 5 months and older than 10 months, so deaths in those age groups are not addressed by the analysis.[2&3]

In contrast to these questions about the possible effect of a total ban on drowning deaths, the Commission believes that the three requirements it proposes should make bath seats safer. The proposed requirements are directed to addressing the specific hazard scenarios that are identified in most fatal incidents.

3. *Voluntary Standard.* The current voluntary standard, ASTM F 1967–03, contains many provisions that the CPSC staff has recommended, including a leg opening requirement. However, it does not require stability testing on slip-resistant surfaces. As discussed above, the suction cups currently used to attach bath seats to a tub's surface do not reliably adhere to slip-resistant surfaces. Many of today's bath tubs have slip-resistant surfaces, and they can be difficult for consumers to identify.[2] The Commission believes that bath seats should be stable when used on the surfaces that are likely to be in consumers' homes. The existing ASTM standard is not adequate in this respect.

The label currently specified in the ASTM F 1967–03 standard may not advise caregivers forcefully enough that a child can drown in a bath seat. The Commission believes that the proposed label would send a stronger message that the caregiver should remain with the child by expressly stating that children have drowned in bath seats and that the bath seat is not a safety device.

I. Preliminary Regulatory Analysis

The Commission has preliminarily determined to ban bath seats that do not meet specified requirements for stability, leg openings, and labeling. Section 3(h) of the FHSA requires the Commission to prepare a preliminary regulatory analysis containing a preliminary description of the potential benefits and costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms; an identification of those likely to be affected; discussion of existing or developing standards submitted in response to the ANPR; and a description of reasonable alternatives. 15 U.S.C. 1261(h). The following discussion addresses these requirements.[8] The preliminary regulatory analysis is based on incident data that was reported in the staff's briefing package of May 8, 2003. Since that time there have been additional incidents reported which are included in the incident data discussion at section D.1 of this notice.

Discussion of Proposed Rule

The proposed rule would require bath seats to meet certain requirements, some of which are not currently covered by the voluntary standard. The requirements involve additional criteria for stability, openings, and labeling.

The proposed stability requirement will require the product to resist tip-over when the bath seat is installed on a smooth surface to which commercially available adhesive backed slip resistant tread strips (for bathtub use) have been applied.

In addition to the stability requirement, two probe tests are being proposed that would limit the size of the product's leg openings as well as the seating space, to address the hazards of submersion and entrapment below the water surface. This requirement is part of the newly approved ASTM voluntary standard, but currently marketed bath seats do not meet it.

The labeling requirement would change from what is currently specified in the voluntary standard. The proposed labeling requirement specifies that the product and its packaging be labeled with the safety alert symbol (exclamation mark within an equilateral triangle), the single word WARNING in all capital letters, as well as the following: "Children have drowned while using bath seats. ALWAYS keep baby within arm's reach. This bathing aid is NOT a safety device. Stop using when child is able to pull up to a standing position."

Potential Costs of the Proposed Rule

Efforts are underway by at least one U.S. manufacturer to develop a bath seat that will conform to the requirements of the proposed rule. Costs to manufacturers to meet the proposed rule include product development costs and increased costs of production. Product development costs involve costs associated with redesign of the product and retooling of manufacturing equipment. According to an industry representative, new molds for the redesigned product are estimated to cost about $350,000. Product development overhead costs include product design, development and marketing staff time, product testing and focus group expenses. However, these "product development costs" will be treated as with any new product development and be amortized over time.

Manufacturers report that there will be an increase in the cost of production associated with additional material, labor and shipping. According to an industry representative, its redesigned bath seat will be larger, heavier, and more complex to assemble. At the present time, most bath seats are manufactured in the U.S. The proposed rule would require that bath seats entering commerce meet the new requirements within a year of publication of the final rule. Bath seats already in commerce (for example, those on store shelves) will not be affected and will still be saleable. According to one manufacturer, they plan to have bath seats that meet the new voluntary standard leg opening requirement as well as the stability requirement that is part of the proposed rule by the end of 2003. Also, the second manufacturer will probably have bath seats that meet the leg opening requirement by the end of 2003.

Revenues may be affected if sales do not match current levels. Sales may be reduced because of price increases and possible reductions in the utility of the new, safer bath seats. Consumer utility could be reduced if the product is more difficult to use or the age range of users is reduced. On the other hand, the added safety of the product may increase the utility of the product to some consumers, a factor that may be a positive influence on sales.

Currently, bath seats sell for about $10 to $16. Convertible seats, which convert from an infant bathtub to an infant bath seat, sell for about $20 to $25. Based on discussions with an industry representative, bath seat prices will increase to reflect the increased cost associated with producing a complying product. Although exact costs and price increases are not known at this time, industry representatives estimate that complying bath seats will retail for about $20 to $25, with a likely price closer to $25.

All else equal, a price increase of $10 (which represents an increase of more than 50 percent) may reduce the quantity of bath seats demanded, and hence sales. The magnitude of such a reduction is unknown, but would be affected by a number of other factors, including the perceived usefulness of the product, the expected useful life of the product, and other variables such as the number of births, household incomes, and the availability of substitutes.

Despite the relatively large price increase over that of existing bath seats, the reduction in sales may be small if consumers find the product convenient and useful, and expect to use it for a long time. If, for example, a consumer would use a bath seat for a year or more (*i.e.*, for one or more children) the price increase would amount to less than $1 per month. Moreover, all else is not equal. The product will change—it will presumably be safer than the earlier models. If consumers perceive the increased safety, and if safety is an important factor when they purchase products for use with their infant children, the demand for bath seats could increase. Thus, product improvements can conceivably mitigate or even offset the reduction in the quantity demanded associated with the price increase.

Although product design is not specified by the proposed requirement, consumer utility could be affected if changes intended to make bath seats safer also make them more difficult to use, or if the changes tend to limit the age of children that can use them. The analysis by Human Factors indicates that bath seats meeting the proposed requirements could still accommodate the current user population, without a loss of utility. However, since the design is not specified, and we do not know how manufacturers will modify the seats to meet the proposed requirements, we cannot predict if the new designs will provide the same level of usefulness or convenience to caregivers. Any reductions in utility could lead to the reduced use of bath seats, either by reducing sales or actual amount of use. While reduced use would also reduce the risk of drowning in bath seats, the overall risk of drowning would not be eliminated since other modes of bathing children also present a drowning risk.

Potential Benefits of the Proposed Rule

The benefits of the proposed rule will result from a reduction in deaths and injuries due to product failure from tip-over, entrapment and submersion. CPSC is aware of 96 deaths associated with bath seats from January 1983 through December 2002. Eighty-three of these reported deaths occurred in the past ten years (1993 through 2002), a period during which about one-third of all new mothers owned bath seats and the number of bath seats in use remained relatively constant at about two million.[4] Of the 83 reported deaths since 1993, the hazard scenario is known in 57 of the deaths (leaving 26 with unknown scenarios).

Of the 57 deaths in which the scenario is known, 28 (about 50 percent) involved hazards addressed by the performance requirements of the proposed rule (26 involved the tip-over hazard and two involved entrapment/submersion). While we do not know the hazard scenarios in the remaining 26 deaths, if we assume that they are distributed proportionally to the known cases, another 13 deaths (*i.e.* 50 percent) might be also be addressed by the proposed rule. This amounts to about 2.8 to 4.1 deaths annually (*i.e.* 28 deaths/10 years to 41 deaths/10 years), or about 1.4 to 2.05 deaths per million bath seats in use (since about two million were in use annually).

Comparison of Costs and Benefits

As described above, the proposed rule may result in an increase in the retail price of bath seats by about $10. Assuming a $10 price increase, the costs of the proposed rule (*i.e.*, the costs of making bath seats safer) will increase consumer outlays by $10 million per million bath seats sold. Additionally, according to the *Baby Products Tracking Study*, about half of the bath seats were acquired used and therefore are likely used for more than one child. If we assume that bath seats are used for an average of about two years (*i.e.* more than one use cycle), and there are about 1.4 to 2.05 deaths per million bath seats in use annually, each million bath seats would be associated with about 2.8 to 4.1 deaths over their two-year product life.

If the proposed rule eliminates all of these tip-over deaths and entrapment and submersion deaths (*i.e.*, is 100 percent effective in preventing the deaths addressed), then the cost per life saved would range from about $2.4 million to about $3.6 million ($10 million/4.1 deaths to $10 million/2.8 deaths). If the rule were 50 percent effective in preventing the tip-over and entrapment/submersion deaths, then the cost per life saved would range from about $4.9 to $7.1 million per death prevented ($10 million/(4.1 × .5) deaths to $10 million/(2.8 × .5) deaths). Based on current economic literature, empirical estimates of the statistical value of life have generally ranged from about $3 million to $7 million. Thus, for purposes of cost-benefit analysis, even the high estimates of the cost per life saved are generally within the accepted range and suggest that the benefits of the rule would be in line with the costs, even if the standard were only 50 percent effective in preventing addressable deaths.

The proposed rule has the potential to bring about a reduction in deaths from tip-over and entrapment/submersion hazards. However, it is not clear at this time whether manufacturers will design baby bath seats that are safer, while maintaining the current level of consumer utility. If some consumers do not accept the redesigned seats, or use them less frequently (or for a shorter period), and decide instead to bathe their children by other means, the risk of drowning from these alternative bathing methods will be substituted for the bath seat drowning risk.

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[4] The benefits assessment is limited to the 1993 to 2002 time frame because the number of baby bath seats in use, which is needed to calculate the risk that will be addressed by the proposed rule, was less clear prior to 1993. In addition, there has been improved reporting and collecting of death data in the later years.

Alternatives

As discussed above, alternatives to the regulation include a total ban of infant bath seats, relying on a voluntary standard, promulgating a subset of the requirements of the above proposed rule and taking no action.

Option To Ban

The Commission considered the option of proposing a ban that would eliminate bath seats from the marketplace entirely. With this option, the costs would consist of the lost use value, or utility, that consumers derive from the product. Money not spent on bath seats will be spent on other products that provide utility, but there is expected to be some loss in utility that cannot be quantified.

The benefits of a total ban would be the net reduction in deaths that would be prevented by the action. The primary alternative to a ban is the proposed rule for baby bath seats already discussed. Since the proposed rule addresses about half of the child drownings, the additional drownings addressed by a ban would be only a subset of all bath seat drownings—the remaining half.

Furthermore, while a ban would effectively address (on net) only about half of the bath seat drownings, it would expose all bath seat users (*i.e.*, those who would be precluded from using bath seats) to the drowning risks in alternative bathing settings. The risk in alternative settings is not trivial. For example, the analysis by the Directorate for Epidemiology suggests that, for some restricted age groups (*e.g.*, drownings involving children age 8–10 months), the risk of drowning in a bath seat may be substantially lower than in alternative bathing settings. Moreover, when all children age 5–10 months were grouped together in the analysis (the age group for which bath seats are generally recommended), the average bath seat drowning risk was almost 40 percent lower than that of alternative bathtub scenarios. While grouping children across the 5 to 10 month age categories may mask the drowning risk disparities associated with the developmental differences between the younger and older children, as noted by the Directorate for Epidemiology, it nonetheless highlights the fact that the risks associated with alternative bathing methods are substantial and should not be ignored.

If the proposed rule were fully effective in preventing the deaths it addresses, it would likely reduce the risk of drowning in a bath seat by about 50 percent. On the other hand, while a ban would address all bath seat drownings (by eliminating bath seats), it would also expose all the children who would have been bathed in bath seats to the drowning risks in other bathing settings.

In summary, a ban of all bath seats from the marketplace would result in some reduction in consumer utility; however, the impact on child drownings is uncertain, and fatalities could increase.

A Subset of the Performance Requirements: Excluding the Leg Opening Requirement in the Proposed Rule

The Commission considered a subset of the three requirements developed by the staff and discussed earlier as a proposed rule. One reasonable alternative is to publish as a proposed rule the stability and labeling requirements and not the leg opening performance requirement.

If this alternative were proposed, the costs and benefits which were discussed in the foregoing analysis of the proposed rule would change little. Because the entrapment and submarining deaths accounted for only two of the 57 deaths for which the cause was known, exclusion of the leg opening requirement would reduce the benefits by only about 3.5 percent (*i.e.*, 2/57). At the same time, the elimination of the leg opening requirement will not reduce the costs of the proposed rule by much. Based on discussions with the manufacturers of bath seats, the stability requirement requires product redesign and will drive most, if not all, the cost increase associated with the proposed rule. The leg opening requirement, by itself, would not necessitate a product redesign, but would require "modification" to the current design, resulting in perhaps a small increase in the product's retail price. Therefore, the elimination of the leg opening requirement would have, at most, a very small impact on the overall cost of the proposed rule as well as on its potential benefits.

No Action

A decision by the Commission to take no action would eliminate the retail price increase associated with making baby bath seats safer. At the same time (and assuming no change in the voluntary standard), absent any intervention by the Commission, additional preventable deaths will likely continue as new parents buy and use baby bath seats that are currently available in the marketplace.

Voluntary Standards

As an alternative to a proposed rule, the Commission has the option of finding that the voluntary standard is adequate and terminating rulemaking. ASTM has recently revised the voluntary standard to address hazards associated with bath seat submersion and entrapment. It is possible that later revisions might incorporate tip-over and labeling requirements that are similar to the proposed rule. If the voluntary standard addresses the same tip-over hazards that are addressed in the proposed rule with equivalent effectiveness, and all suppliers of baby bath seats comply with the voluntary standard, the net benefits of the voluntary standard would be virtually the same as those of the proposed rule. However, at this time, the voluntary standard does not address the tip-over deaths. Nor does it require the stronger label that the staff recommended.

J. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act ("RFA"), when an agency issues a proposed rule, it generally must prepare an initial regulatory flexibility analysis describing the impact that the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities. *Id.* 605(b).

No available information indicates that the proposed bath seat requirements will have a significant adverse impact on a substantial number of small businesses. Currently, three companies, two U.S. manufacturers and one importer, are known to supply bath seats in the U.S. Two of the firms (one of the manufacturers and the one importer) are small, meeting the U.S. Small Business Administration's definition of small businesses. The two U.S. manufacturers are aware of the progress of this rulemaking, and at least one manufacturer is in the process of developing bath seats to meet the requirements of the proposed rule. The third firm, an importer, may have to find another source for baby bath seats that would meet the proposed rule.[8]

For these reasons, the Commission certifies that the proposed rule banning bath seats that do not meet the specified requirements would not have a significant effect on a substantial number of small entities.

K. Environmental Considerations

Pursuant to the National Environmental Policy Act, 15 U.S.C. 4321–4347, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, 40 CFR part 1500 and 16 CFR part 1021, the Commission has assessed the possible environmental effects associated with the proposed rule banning certain bath seats.

The Commission's regulations state that rules providing design or performance requirements for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this proposed rule alters that expectation.

The transition to bath seats that meet the proposed rule is not expected to have an adverse environmental impact, especially if the effective date of a rule enables the firms to substantially deplete existing non-complying inventory. The U.S. manufacturers are already aware of the Commission's actions, and since there is a proposed one-year lead-time (after issuance of a final rule) before the rule becomes effective, no environmental impact is expected. Moreover, any existing inventory in manufacturers' stocks has the potential to be recycled, *i.e.* reground in order to reuse the plastic components, which constitute the bulk of the seat's construction.[8]

Therefore, because the proposed rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

L. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state the preemptive effect, if any, of new regulations.

The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) Provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2).

Thus, with the exceptions noted above, the proposed rule banning certain bath seats would preempt non-identical State or local requirements applicable to bath seats designed to protect against the same risk of injury.

The Commission has also evaluated this proposed rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the proposed rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

M. Effective Date

The rule would become effective one year from publication of a final rule in the **Federal Register** and would apply to bath seats entering the chain of distribution on or after that date. The two U.S. manufacturers are aware of the Commission's proposed requirements. At least one manufacturer has begun product development on a bath seat that meets the proposed requirements. Thus, one year should allow sufficient time for the manufacturers to develop a product that meets the requirements.[2&8]

N. Proposed Findings

When the Commission issues a rule under section 2(q)(1) of the FHSA classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include these findings in the regulation. 15 U.S.C. 1262(i)(2). The Commission proposes the following findings.

Voluntary standard. The FHSA requires the Commission to make certain findings concerning compliance with and adequacy of a voluntary standard if a relevant voluntary standard has been adopted and implemented. 15 U.S.C. 1262(i)(2). The voluntary standard, ASTM F 1967–03, as it is currently adopted and implemented does not adequately reduce the risk of injury. The current stability provisions do not require testing on slip-resistant surfaces. The current label prescribed by the ASTM standard does not state a strong enough warning. The leg opening requirement has been adopted, but at this time has not yet been implemented. Thus, the Commission proposes to find that the voluntary standard, as it is currently adopted and implemented, does not adequately reduce the risk of injury.

Relationship of benefits to costs. The FHSA requires the Commission to find that the benefits expected from a regulation bear a reasonable relationship to its costs. The Commission estimates the potential benefits of its proposed changes to bath seats to be elimination of 2.8 to 4.1 deaths annually. The Commission estimates that the costs of the rule will be about $10 million per million bath seats sold. If the proposed rule eliminates all of the tipover and entrapment/submersion deaths, the cost per life saved would range from about $2.4 million to about $3.6 million. Even if the proposal were only 50% effective, then the cost per life saved would be from about $4.9 to $7.1 million. Thus, the Commission proposes to find that there is a reasonable relationship between the expected benefits of the rule and its costs.

Least burdensome requirement. The FHSA requires the Commission to find that a regulation imposes the least burdensome alternative that would adequately reduce the risk of injury. *Id.* The Commission considered proposing only two requirements (stability and labeling requirements, but not a leg opening requirement), banning all bath seats, or taking no action and following the ASTM voluntary standard. The Commission is proposing three requirements because at this time, the leg opening requirement in the ASTM standard has not been fully implemented. The Commission will reconsider this issue when it considers a final rule. As discussed above, it is not clear that a ban of all bath seats would reduce drowning deaths any more than the proposed three requirements, and could have the effect of increasing bathtub-related drowning deaths. Thus, the Commission proposes that a ban of bath seats that do not meet the proposed requirements for stability, leg openings and labeling is the least burdensome alternative that would adequately reduce the risk of injury.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

Conclusion

For the reasons stated above, the Commission preliminarily concludes that infant bath seats that do not meet the requirements for stability, leg openings, and labeling that are specified in the proposed rule are hazardous substances under section 2(f)(1)(D) of the FHSA. Such bath seats are intended for children and present a mechanical hazard under section 2(s) of the FHSA because in normal use or when subjected to reasonably foreseeable damage or abuse their design or manufacture presents an unreasonable risk of injury. 15 U.S.C. 1261(s). The risk of injury is from the bath seats' instability, openings, and other aspects of their design or manufacture. Therefore, the Commission proposes to amend title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

2. Section 1500.18 is amended to add a new paragraph (a)(18) to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) * * *

(20) Any bath seat (as defined in § 1514.2 of this chapter) that does not comply with the requirements of part 1514 of this chapter.

* * * * *

3. Add part 1514 to read as follows:

PART 1514—REQUIREMENTS FOR BATH SEATS

Sec.
1514.1 Scope.
1514.2 Definitions.
1514.3 Requirements.
1514.4 Test Methods.
1514.5 Marking and Labeling.
FIGURE 1 TO PART 1514—DIAGRAM OF FORCE APPLICATION
FIGURE 2 TO PART 1514—BATH SEAT TORSO PROBE
FIGURE 3 TO PART 1514—BATH SEAT SHOULDER PROBE

Authority: 15 U.S.C. 1261, 1262.

§ 1514.1 Scope.

This part 1514 sets forth the requirements for a bath seat as defined in § 1514.2. Bath seats meeting these requirements are exempted from 16 CFR 1500.18(a)(20).

§ 1514.2 Definitions.

As used in this part 1514:

(a) *Bath seat* means an article that is used in a bath tub, sink, or similar bathing enclosure and that provides support, at a minimum, to the front and back of a seated infant during bathing by a caregiver.

(b) *Most adverse* means a test condition that produces the most severe result that would indicate a failure of the test.

(c) *Test surface* means a smooth surface (cleaned thoroughly with an alcohol or other solvent-based cleaner and dried) upon which commercially available adhesive backed safety tread strips (for bath use) have been applied over the Test Surface Coverage Area in the following manner. The safety tread strips shall be rectangular in shape, approximately .75 inch (1.9 cm) wide by 7 inches (17.8 cm) or greater in length, and evenly applied from edge to edge so that they are .5 inch (1.3 cm) or less apart from each other.

(d) *Test Surface Coverage Area* means the area of the test surface that extends a minimum of 1 inch (2.5 cm) beyond the perimeter outlined by any part of the bath seat that is designed to contact a surface.

§ 1514.3 Requirements.

(a) *Stability.* The geometry and construction of the bath seat shall not allow the bath seat to tip over after being tested in accordance with § 1514.4(a).

(b) *Leg openings.* (1) All openings on the sides of the bath seat through which a seated occupant can slide or otherwise insert any extremity shall not permit the passage of the Bath Seat Torso Probe when tested in accordance with § 1514.4(b)(1).

(2) All openings on the sides of the bath seat through which a seated occupant can slide or otherwise insert any extremity shall not permit any portion of the top 1 inch (2.5 cm) perimeter of the shoulder breadth end of the Bath Seat Shoulder Probe to contact the seating surface of the bath seat when tested in accordance with § 1514.4(b)(2).

§ 1514.4 Test methods.

(a) *Stability.* (1) Install the bath seat according to the manufacturer's instructions onto the prepared Test Surface. Flood the Test Surface with water that is at an initial temperature of 100 to 105° F (37.8 to 10.6° C) and a depth of 2 inch (51 mm) above the highest point of the occupant seating surface.

(2) Rigidly attach a 1 by ¼-inch (25 × 6-mm) aluminum flat bar to the inside edge of the occupant seating space in a vertical orientation at the most adverse position of the bath seat. The length of the flat bar must be such that it extends beyond the uppermost edge or surface of the bath seat at least as far as the maximum distance D as shown in Figure 1.

(3) Calculate the distance D for a tip-over force to be applied to the aluminum bar using the following formula:

D = (20.4 inch − H)/2; [(518 mm − H)/2]

(4) Apply a force of 17.0 lbf. (76.5 N) to the aluminum bar at this distance D above the height H. Apply the force in a horizontal plane and outward from the center of the bath seat over a period of 5 seconds (*see* Figure 1). Maintain this force for an additional 10 seconds. If the bath seat begins to release from the test surface, continue to maintain this force and its orientation relative to the aluminum bar until the bath seat tips over or the 10 second time limit is attained. If necessary, to prevent the bath seat from sliding horizontally on the test surface during this test protocol, the bottom edge of the bath seat may be blocked or wedged to prevent such sliding. However, such blocking should in no way move the fulcrum point of the tip-over to a location that increases the tip-over force.

(5) Repeat this test protocol three additional times at 90 degree increments, including the re-calculation of the distance D.

(6) Repeat this test protocol with the bath seat in each of the use positions recommended by the bath seat's manufacturer.

(b) *Leg openings.* (1) For each of the use positions recommended by the bath seat's manufacturer, insert the tapered end of the Bath Seat Torso Probe (Figure 2) in the most adverse orientation into each opening from the direction of the occupant seating surface. Apply a force of 15 lbf (67 N) in the direction of the major axis of the probe. The force shall be applied gradually within 5 seconds and maintained for an additional 10 seconds.

(2) For each of the use positions recommended by the bath seat's manufacturer, insert the tapered end of the Bath Seat Shoulder Probe (Figure 3) in the most adverse orientation into each opening from the direction of the occupant seating surface. Apply a force of 15 lbf (67 N) in the direction of the major axis of the probe. The force shall be applied gradually within 5 seconds and maintained for an additional 10 seconds. Release the force, leaving the probe in position. Apply a force of 10 lbf (44.4 N) to the highest point on the probe, in a direction vertically

downward toward the seating surface. The force shall be applied gradually within 5 seconds and maintained for an additional 10 seconds.

§ 1514.5 Marking and labeling.

(a) Each bath seat, and the front and back of its packaging, shall be labeled with the safety alert symbol (exclamation mark in an equilateral triangle), the word WARNING, and the following warning:

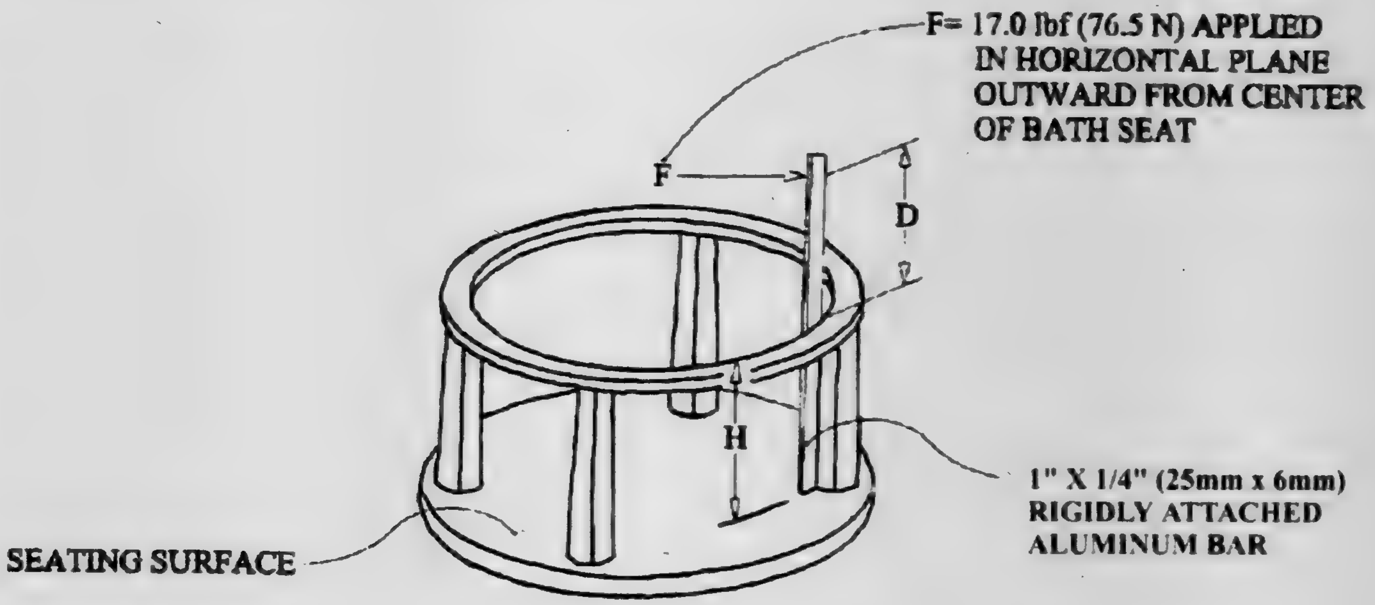
Proposed Bath Seat Warning Label

> ⚠ WARNING
> Children have drowned while using bath seats.
> ALWAYS keep baby within arm's reach.
> This bathing aid is NOT a safety device.
> Stop using when child is able to pull to a standing position.

(b) The signal word shall be written in capital letters using a sans serif type face with letters not less than 0.2 inches (5 mm) in height, with all the remainder of text not less than 0.1 inch (2.5 mm) in height. The words shall also be in contrasting color to the background on which they are located. The words "ALWAYS" and "NOT" in the list of warnings shall be capitalized. The word "drowned" shall be underlined.

(c) The specified warning label shall be located so that it is visible to the caregiver when the bath seat is in the use position recommended by the manufacturer and the occupant is in the bath seat.

(d) Each bath seat and its packaging shall display a label stating that the bath seat complies with U.S. CPSC Requirements for Bath Seats.


F= 17.0 lbf (76.5 N) APPLIED IN HORIZONTAL PLANE OUTWARD FROM CENTER OF BATH SEAT
F
D
H
1" X 1/4" (25mm x 6mm) RIGIDLY ATTACHED ALUMINUM BAR
SEATING SURFACE

D=(20.4 in.-H)/2;[(518mm-H)/2]

H=HEIGHT OF UPPERMOST EDGE OR SURFACE ABOVE THE LOWEST POINT OF THE SEATING SURFACE

FIG. 1 Diagram of Force Application

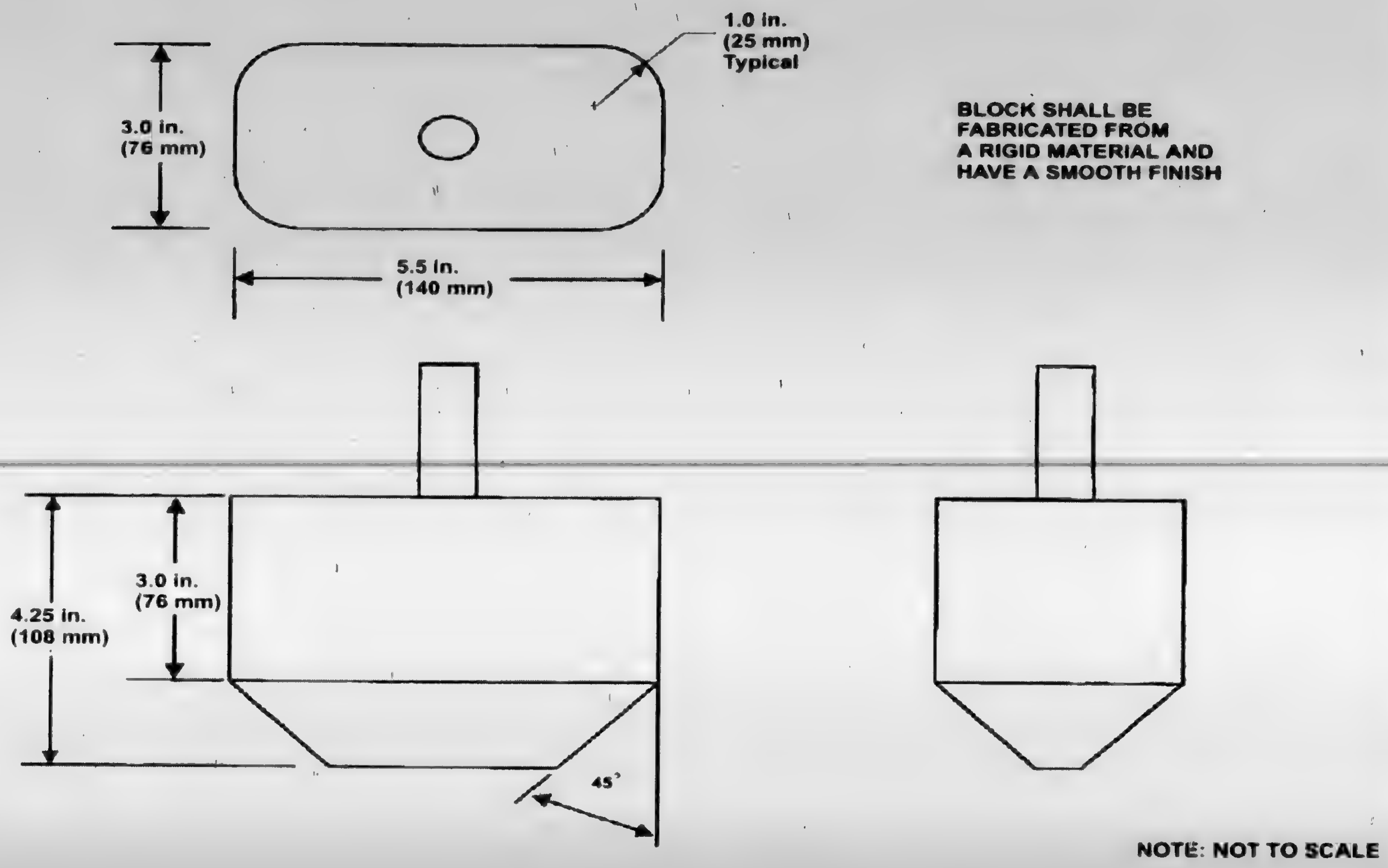

1.0 in.
(25 mm)
Typical
BLOCK SHALL BE
FABRICATED FROM
A RIGID MATERIAL AND
HAVE A SMOOTH FINISH
3.0 in.
(76 mm)
5.5 in.
(140 mm)
4.25 in.
(108 mm)
3.0 in.
(76 mm)
45°
NOTE: NOT TO SCALE

Figure 2. Bath Seat Torso Probe

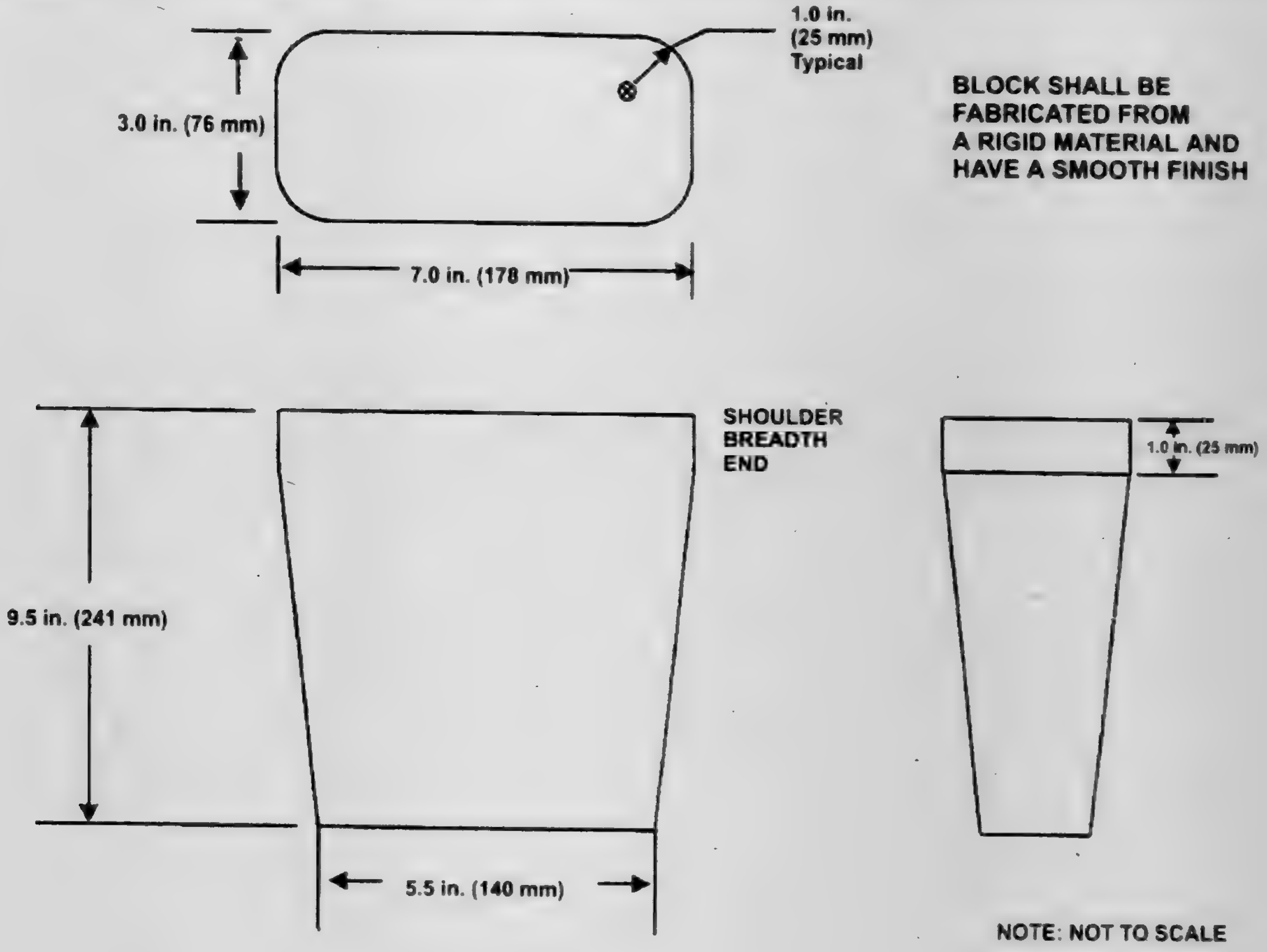


Figure 3. Bath Seat Shoulder Probe

BILLING CODE 6355-01-C

Dated: December 12, 2003.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Memorandum from Jacqueline Elder, AED, Office of Hazard Identification and Reduction and Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, to the Commission, "Rulemaking Options for Bath Seats—Response to Comments," October 7, 2003.

2. Briefing memorandum from Jacqueline Elder, AED, Office of Hazard Identification and Reduction and Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, to the Commission, "Rulemaking Options for Bath Seats," May 8, 2003.

3. Memorandum from Debra Sweet, Division of Hazard Analysis, to Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, "Hazard Analysis Memorandum for Bath Seat NPR Briefing Package," April 8, 2003.

4. Memorandum from Caroleene Paul, Directorate for Engineering Sciences, to Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, "Draft Proposed Requirements for Bath Seats," April 7, 2003.

5. Memorandum from Jonathan Midgett, Ph.D, Division of Human Factors, to Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, "Human Factors Issues in Bath Seat Design and Use," April 10, 2003.

6. Memorandum from Caroleene Paul, Directorate for Engineering Sciences, to Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, "Response to ANPR Comments on Baby Bath Seats," January 27, 2003.

7. Memorandum from Jonathan Midgett, Ph.D, Division of Human Factors, to Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, "Human Factors Staff Responses to Comments about Bath Seats," April 10, 2003.

8. Memorandum from Mary Donaldson, Directorate for Economic Analysis, to Patricia L. Hackett, Project Manager, Directorate for Engineering Sciences, "Preliminary Regulatory Analysis of Proposed Rule for Baby Bath Seats," April 9, 2003.

9. Briefing memorandum from Ronald Medford, Assistant Executive Director, Office of Hazard Identification and Reduction and Celestine Kiss, Project Manager, Division of Human Factors, to the Commission, March 30, 2001.

10. Petition HP 00–4 from the Consumer Federation of America, The Drowning Prevention Foundation, *et al.* to Ban Baby Bath Seats, July 25, 2000.

11. Memorandum from Mary F. Donaldson, Directorate for Economic Analysis, "Baby Bath Seat Petition, HP–00–4," February 16, 2001.

12. Memorandum from Suad W. Nakamura, Ph.D., Physiologist and Sandra E. Inkster, Ph.D., Pharmacologist, Directorate for Health Sciences, "The Pathophysiology of Drowning," December 7, 2000.

13. Memorandum from Debra Sweet, Division of Hazard Analysis, "Hazard Analysis Memorandum for Bath Seat Petition," January 29, 2001.

14. Memorandum from Celestine T. Kiss, Division of Human Factors, "Human Factors Response to Bath Rings/Seats Petition (HP–00–04)," January 25, 2001.

15. Memorandum from M. Kumagai, Directorate for Engineering Sciences, "Review of BATH SEAT ASTM STANDARD

F1967 and Response to Comments to Petition HP 00–4," March 2, 2001.

16. Memorandum from M. Kumagai, Directorate for Engineering Sciences, "Evaluation of Bath Seat Design," March 2, 2001.

17. Letter dated May 7, 2001 from Dr. Kimberly Thompson to Chairman Ann Brown re: Comments on Briefing Package Petition No. HP 00–4, Request to Ban Baby Bath Seats.

18. Memorandum dated May 21, 2001 to the Commission from Debra Sweet, Statistician, Division of Hazard Analysis, re: Comments from Kimberly M. Thompson, Sc.D., on Briefing Package for Petition HP 00–4, Request to Ban Baby Bath Seats.

[FR Doc. 03–31135 Filed 12–24–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP–1088–P]

RIN 1120–AB20

Administrative Safeguards for Psychiatric Treatment and Medication

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its regulations on Psychiatric Treatment and Medication. We make several minor word changes to conform more closely with the language of 18 U.S.C. 4241–4247 on psychiatric hospitalization. We remove from the rule two elements of the standard for determining whether treatment or psychotropic medication is necessary because this element is inconsistent with community standards and case law. We also change the rules to conform with statutory authority regarding military prisoners and District of Columbia (DC) Code violators in Bureau custody. Previously, our procedures for involuntary psychiatric treatment and medication did not apply to military prisoners or DC Code violators. Under new statutory authority, military prisoners who are incompetent to stand trial, or who have been found not guilty by reason of lack of mental responsibility may now be committed to the Bureau's custody. Sentenced DC Code offenders may now be involuntarily committed to a Bureau psychiatric hospital. Such military prisoners and DC Code violators are subject to our regulations. We revise the applicability statement accordingly.

DATES: Please submit comments by February 27, 2004.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau amends its regulations on providing psychiatric treatment and medication to inmates. We published a final rule on this subject in the **Federal Register** on September 25, 1995 (60 FR 49444).

The following is a section-by-section analysis of the changes we are making:

Section 549.40 Use of Psychotropic Medications. In this rule, we merely clarify that psychotropic medication is to be used only for a diagnosable psychiatric disorder or *symptoms* for which such medication is accepted treatment. Previously, the rule allowed medication for "symptomatic behavior." The word "symptoms" is more accurate medical terminology.

Section 549.41 Voluntary Admission And Psychotropic Medication. In this section, we revise subparagraph (a) to more closely conform with the language of 18 U.S.C. 4241–4247. We change the words "psychiatric treatment and medication" to "psychiatric hospitalization and treatment." We also clarify that inmates may be voluntarily admitted for psychiatric hospitalization and treatment when determined necessary by a clinician with hospital-admitting privileges, which is more accurate than the former term "qualified health personnel."

Section 549.42 Involuntary Admission. In this section, as in the previous section, we alter the first sentence by changing the words "psychiatric treatment" to "psychiatric hospitalization" to more closely conform with the language of 18 U.S.C. 4245.

Section 549.43 Involuntary Psychiatric Treatment and Medication. In this section, we revise the second sentence of the introductory paragraph by deleting", and no further judicial authorization is needed for the admission decision." and inserting "for the involuntary admission." The current rule explains that "[c]ourt commitment for the hospitalization provides the judicial due process hearing." The remaining phrase, which states that no further judicial authorization is needed, is redundant and unnecessary. We therefore make this change to streamline and clarify the language of this rule.

In subparagraph (a)(5), we clarify that the psychiatrist conducting a hearing to determine whether treatment or psychotropic medication is necessary will no longer consider whether the inmate is unable to function in the open population of a mental health referral center or a regular prison as a separate basis to justify involuntary administration of medication. We make this change because we found this element to be inconsistent with community standards and applicable case law. *See Cochran* v. *Dysart*, 965 F.2d 649 (8th Cir. 1992).

Also in subparagraph (a)(5), we delete language that allowed the psychiatrist conducting an administration hearing to determine whether psychotropic medication is necessary to make an inmate competent to stand trial. This revision stems from the Supreme Court decision in *Sell* v. *U.S.*, 2003 WL 21372478, decided on June 16, 2003. Under the *Sell* decision, where involuntary treatment is considered solely for the purpose of rendering the defendant competent to stand trial, only the trial court may order involuntary medication after applying the standards set forth by the Court.

Finally, we change subparagraph (c) for the following reasons: Title 18 U.S.C. 4241–4247 and various Federal court decisions required certain due process procedures before involuntary hospitalization or involuntary psychiatric treatment. Under former 18 U.S.C. 4247(j), these due process procedures did not apply to military prisoners or DC Code violators.

However, new 10 U.S.C. 876b provides that military prisoners who are incompetent to stand trial or who have been found not guilty by reason of lack of mental responsibility may be committed to the custody of the Attorney General and that the procedures authorized under 18 U.S.C. 4241(d), 4246, and 4243 apply. Likewise, under new 18 U.S.C. 4247(j), DC Code violators are subject to commitment procedures specified at 18 U.S.C. 4245 and 4246.

Accordingly, we revise the list of exceptions in 28 CFR 549.43(c) to remove the reference to military prisoners and DC Code violators. We also clarified the last sentence of paragraph (c).

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 549

Prisoners.

Harley G. Lappin,
Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we propose to amend 28 CFR part 549 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. Revise the authority citation for 28 CFR part 549 to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 876b; 18 U.S.C. 3621, 3622, 3524, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise § 549.40 to read as follows:

§ 549.40. Use of psychotropic medications.

Psychotropic medication is to be used only for a diagnosable psychiatric disorder or symptoms for which such medication is accepted treatment.

3. Revise § 549.41(a) to read as follows:

§ 549.41 Voluntary admission and psychotropic medication.

(a) A sentenced inmate may be voluntarily admitted for psychiatric hospitalization and treatment when, in the professional judgment of a clinician with hospital-admitting privileges such inmate would benefit from such treatment and demonstrates the ability to give informed consent to such admission. The assessment of the inmate's ability to give informed consent will be documented in the inmate's medical record by qualified health personnel.

* * * * *

§ 549.42 [Amended]

4. Amend § 549.42 by removing the words "for psychiatric treatment" from the first sentence and adding in their place the word "psychiatric" before the word "hospitalization" in the first sentence.

5. Amend § 549.43 as follows:

a. In the second sentence of the introductory paragraph remove ", and no further judicial authorization is needed for the admission decision." and add in its place "for the involuntary admission."

b. Revise paragraph (a)(5).

c. In the second sentence of paragraph (b), add the words "or disorder," after "mental illness."

d. Revise paragraph (c) to read as follows:

§ 549.43 Involuntary psychiatric treatment and medication.

(a) * * *

(5) The psychiatrist conducting the hearing shall determine whether treatment or psychotropic medication is necessary because the inmate is dangerous to self or others, or is gravely disabled. The psychiatrist shall prepare a written report regarding the decision.

* * * * *

(c) Exceptions. Title 18 U.S.C. 4241–4247 do not apply to unsentenced Department of Homeland Security (DHS) detainees, unsentenced prisoners in Bureau custody as a result of a court order (*e.g.*, a civil contemnor), and state or territorial prisoners. For those persons not covered by sections 4241–4247, the decision to involuntarily admit the person to the hospital must be made at an administrative hearing, meeting the requirements of *Vitek* v. *Jones*, 445 U.S. 480 (1980). The decision to provide involuntary treatment, including medication, accordingly is to be made at an administrative hearing in compliance with § 549.43(a).

[FR Doc. 03–31704 Filed 12–24–03; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 2

RIN 2900–AK10

Standards for Collection, Compromise, Suspension, or Termination of Collection Effort, and Referral of Civil Claims for Money or Property; Regional Office Committees on Waivers and Compromises; Salary Offset Provisions; Delegations of Authority

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to revise its current regulations concerning the collection, compromise, suspension, termination, and referral of debts owed to VA. The proposed revision clarifies and simplifies debt collection standards and reflects changes to Federal debt collection procedures under the Debt Collection Improvement Act of 1996. VA also proposes to revise regulations pertaining to the administration of regional office Committees on Waivers and Compromises, as well as a regulation pertaining to delegations of authority to the Assistant Secretary for Management.

DATES: Comments must be received on or before February 27, 2004.

ADDRESSES: Mail or hand deliver written comments to: Director, Regulations Management (00REG1), 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AK10." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Cash and Debt Management Division (047GC1), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 273–5570.

SUPPLEMENTARY INFORMATION: The "Debt Collection Improvement Act (DCIA) of 1996," Pub. L. 104–134, 110 Stat. 1321, 1358 (April 26, 1996) authorizes several new methods for collecting debts and is the most significant legislation for the administrative collection of Federal debt since the Debt Collection Act of 1982, Pub. L. 97–365, 96 Stat. 1749 (October 25, 1982). The DCIA authorizes new debt collection procedures, including centralized administrative offset, the transfer or referral of delinquent debt to the Department of the Treasury (Treasury) or Treasury-designated debt collection centers for collection (cross-servicing), and administrative wage garnishment. Treasury and the Department of Justice (DOJ) subsequently issued revised Federal Claims Collection Standards (FCCS) on November 22, 2000, with an effective date of December 22, 2000. The revised FCCS are found at Title 31 of the Code of Federal Regulations (CFR), chapter IX, parts 900 through 904 and conform with relevant statutory changes to Federal debt collection procedures under the DCIA. Additional rules concerning these new debt collection procedures have also been issued by Treasury at Title 31 of the CFR part 285.

The following major changes were incorporated into the revised FCCS:

1. The Comptroller General was removed as a co-promulgator of the FCCS and the Secretary of the Treasury was added as a co-promulgator.

2. The revised FCCS reflect the elimination of the Comptroller General's role in Federal debt collection.

3. The revised FCCS provides agencies with greater latitude to streamline and customize debt collection procedures to accommodate agency-specific requirements or unique circumstances.

4. The revised FCCS reflects the requirement that agencies use government-wide debt collection contracts for referrals to private collection contractors.

5. The revised FCCS reflects the increase in the maximum principal amount for a claim, from $20,000 to $100,000, agencies are authorized to compromise or to suspend or terminate collection activity thereon, without concurrence by DOJ. In addition, the minimum amount of a claim that may be referred to DOJ for enforced collection is increased from $600 to $2,500.

6. The revised FCCS reflects several new debt collection procedures under the DCIA, including, but not limited to:

(a) Transfer or referral of debt delinquent for more than 180 days to Treasury or Treasury-designated debt collection centers, for collection known as "cross-servicing;"

(b) Mandatory, centralized administrative offset by disbursing officials; and

(c) Mandatory prohibition against extending federal financial assistance in the form of a loan or loan guarantee to delinquent debtors.

In conjunction with the publication of the Treasury/DOJ FCCS and Treasury's debt collection regulations, VA reviewed its debt collection regulations in order to identify those regulations that required revision or could be deleted as either obsolete or duplicative of Treasury and Treasury/DOJ regulations, as well as to ensure that our regulations are consistent with statutory mandates and that they are clearly written. Consequently, VA has prepared the attached proposed amendments that will remove some debt collection regulations, add new regulations, and revise the remainder.

As part of the revision of our debt collection regulations, VA also proposes to revise its interest-charging regulation. Section 1.919 implements VA's authority to assess interest and administrative costs on debts that arise as a result of participation in a VA benefits, medical care, or home loan program. The authority for this regulation is derived from 38 U.S.C. 5315. The recent review of this regulation indicated that one portion needs to be deleted. Specifically, the current regulation states that when a debtor requests a waiver, interest and administrative costs shall not be assessed until either an initial determination is made on the request or the statutory time limit for requesting waiver has expired. We propose to amend § 1.919 by removing this portion, since it has no basis in 38 U.S.C. 5315. Likewise, there is no such language in the statutory requirement for waiver consideration of VA benefit and home loan program debts (38 U.S.C. 5302). Finally, the FCCS does not contain such a requirement in its government-wide interest regulation (31 CFR 901.9).

VA also is proposing to add two new debt collection regulations. Section 1.923, "Administrative wage garnishment," is another collection tool derived from the DCIA and is written in accordance with Treasury's implementing regulation (31 CFR 285.11). It allows, but does not mandate, VA to request a non-Federal employer to garnish the disposable pay of an individual to collect non-tax delinquent debt owed to VA. VA may do this directly or it may request that Treasury initiate administrative garnishment procedures after VA has referred the debt to Treasury for collection. The other proposed new regulation is § 1.924, "Barring delinquent debtors from obtaining federal loans or loan insurance or guarantees." This is also derived from the DCIA and a Treasury regulation (31 CFR 285.13), as well as the FCCS (31 CFR 901.6). This regulation states that a person owing an outstanding non-tax debt that is in delinquent status shall not be eligible for certain Federal financial assistance.

At the request of the Veterans Benefits Administration, we are proposing to amend § 1.955(c), "Regional Office Committees on Waivers and Compromises." The amendment would continue to state that the administrative control function of the Committees remains with the fiscal officer. However, it would authorize the station director to reassign the function to another station activity when the director determines that another station activity is more appropriate. We believe this amendment would provide each regional office director with needed greater management latitude in assigning responsibility for the administrative control of that station's Committee on Waivers and Compromises.

The Office of Personnel Management has made changes to their government-wide salary offset regulations (5 CFR part 550, Subpart K) in order to comply with the DCIA, which amended 5 U.S.C. 5514. The DCIA requires that all Federal agencies, to which outstanding delinquent debts are owed, must participate in an annual computer match of their delinquent debt records with records of federal employees. In addition, agencies must notify Treasury of all non-tax debts over 180 days delinquent. Treasury will match payments to the debtors from the Federal Government, including federal salary payments, against these debts. Where a match occurs, the payment will be offset to satisfy the debt. We are proposing to amend VA's regulations to reflect the use of centralized administrative offset, including salary offset.

Our regulations also would be revised to reflect the fact that the DCIA amended 5 U.S.C. 5514 so that pay adjustments made to correct clerical or administrative errors or delays that resulted in overpayments occurring within the four pay periods next preceding the adjustment, are excluded from the normally required notice and hearing procedures. Collection of a debt amounting to $50 or less also would be excluded from such procedures.

Finally, the review of VA regulations also indicated a need to revise § 2.6, which delegates certain debt collection authorities to the Assistant Secretary for Management. Current internal directives redelegate these authorities directly from the Assistant Secretary to field personnel. We are proposing to revise the regulation to correspond to this delegation.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule directly affect only individuals indebted to VA, and do not affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects

38 CFR Part 1

Claims, Administrative practice and procedure, Veterans.

38 CFR Part 2

Delegations of authority.

Approved: September 25, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. The authority citation preceding § 1.900 is revised to read as follows:

Authority: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, unless otherwise stated.

3. Section 1.900 is revised to read as follows:

§ 1.900 Prescription of standards.

(a) The standards contained in §§ 1.900 through 1.953 are issued pursuant to the Federal Claims Collection Standards, issued by the Department of the Treasury and the Department of Justice (DOJ) in parts 900 through 904 of 31 CFR, as well as other debt collection authority issued by Treasury in part 285 of 31 CFR 1.900 through 1.953, and apply to the collection, compromise, termination, and suspension of debts owed to VA, and the referral of such debts to Treasury (or other Federal agencies designated by Treasury) for offset and collection action and to DOJ for litigation, unless otherwise stated in this part or in other statutory or regulatory authority, or by contract.

(b) Standards and policies regarding the classification of debt for accounting purposes (for example, write-off of uncollectible debt) are contained in the Office of Management and Budget's Circular A–129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables."

4. Section 1.901 is revised to read as follows:

§ 1.901 No private rights created.

Sections 1.900 through 1.953 do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of VA to comply with any of the provisions of §§ 1.900 through 1.953 be available to any debtor as a defense.

5. Section 1.902 is revised to read as follows:

§ 1.902 Antitrust, fraud, and tax and interagency claims.

(a) The standards in §§ 1.900 through 1.953 relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only DOJ has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in §§ 1.900 through 1.953 relating to the administrative collection of claims do apply, but only to the extent authorized by DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, VA shall promptly refer the case to DOJ. At its discretion, DOJ may return the claim to VA for further handling in accordance with the standards in §§ 1.900 through 1.953.

(b) Sections 1.900 through 1.953 do not apply to tax debts.

(c) Sections 1.900 through 1.953 do not apply to claims between Federal agencies.

(d) Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

6. Section 1.903 is revised to read as follows:

§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.

Nothing in §§ 1.900 through 1.953 precludes VA settlement, waiver, compromise, or other disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in Title 31 CFR, parts 900 through 904. See, for example, the Federal Medical Care Recovery Act (42 U.S.C. 2651 *et seq.*) and applicable regulations, 28 CFR, part 43. In such cases, the laws and regulations that are specifically applicable to claims collection activities of VA generally take precedence over 31 CFR, parts 900 through 904.

7. Section 1.904 is revised to read as follows:

§ 1.904 Form of payment.

Claims may be paid in the form of money or, when a contractual basis exists, VA may demand the return of specific property or the performance of specific services.

8. Section 1.905 is revised to read as follows:

§ 1.905 Subdivision of claims not authorized.

Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered as a single debt in determining whether the debt is one of less than $100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise, suspension, or termination of collection activity.

9. Section 1.906 is revised to read as follows:

§ 1.906 Required administrative proceedings.

(a) In applying §§ 1.900 through 1.953, VA is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing contained in §§ 1.900 through 1.953 is intended to foreclose the right of any debtor to an administrative proceeding, including appeals, waivers, and hearings provided by statute, contract, or VA regulation (*See* 38 U.S.C. 3720(a)(4) and 5302 and 42 U.S.C. 2651–2653).

10. Section 1.907 is revised to read as follows:

§ 1.907 Definitions.

(a) The definitions found in the Federal Claims Collection Standards issued in § 900.2 of Title 31 of the CFR shall apply to §§ 1.900 through 1.953.

(b) As used in §§ 1.900 through 1.953, *referral for litigation* means referral to the Department of Justice for appropriate legal action, except in those specified instances where a case is referred to VA Regional Counsels for legal action.

(c) As used in §§ 1.900 through 1.953, *VA benefit program* means medical care, home loan, and benefits payment programs administered by VA under Title 38 of the United States Code, unless stated otherwise.

(Authority: 31 U.S.C. 3701, 3711 and 38 U.S.C. 5316)

11. The authority citation preceding § 1.910 is removed.

12. Section 1.910 is revised to read as follows:

§ 1.910 Aggressive collection action.

(a) VA will take aggressive collection action on a timely basis, with effective follow-up, to collect all claims for money or property arising from its activities.

(b) In accordance with 31 U.S.C. 3711(g) and the procedures set forth at 31 CFR 285.12, VA shall transfer to Treasury any non-tax debt or claim that has been delinquent for a period of 180 days or more so that Treasury may take appropriate action to collect the debt or terminate collection action. This requirement does not apply to any debt that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;

(5) Will be collected under internal offset procedures within 3 years after the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States. VA may request that the Secretary exempt specific classes of debts.

(c) In accordance with 31 U.S.C. 3716(c)(6) and the procedures set forth in 31 CFR part 285, VA shall notify Treasury of all past due, legally enforceable non-tax debt that is over 180 days delinquent for purposes of administrative offset, including tax refund offset and federal salary offset. Procedures for referral to Treasury for tax refund offset are found at 31 CFR 285.2 and procedures for referral to Treasury for federal salary offset are found at 38 CFR 1.995 and 31 CFR 285.7.

13. Section 1.911 is amended by:

A. Revising paragraphs (a) and (b).

B. Revising paragraphs (c)(3), (d)(4) and (d)(5).

C. Adding paragraphs (d)(6) and (d)(7).

D. Revising paragraphs (f)(1) and (f)(5).

The revisions and addition read as follows:

§ 1.911 Collection of debts owed by reason of participation in a benefits program.

(a) *Scope.* This section applies to the collection of debts resulting from an individual's participation in a VA benefit or home loan program. It does not apply to VA's other debt collection activities. Standards for the demand for payment of all other debts owed to VA are set forth in § 1.911a. School liability debts are governed by § 21.4009 of this title.

(b) *Written demands.* When VA has determined that a debt exists by reason of an administrative decision or by operation of law, VA shall promptly demand, in writing, payment of the debt. VA shall notify the debtor of his or her rights and remedies and the consequences of failure to cooperate with collection efforts. Generally, one demand letter is sufficient, but subsequent demand letters may be issued as needed.

(c) * * *

* * * * *

(3) *Appeal.* In accordance with parts 19 and 20 of this title, the debtor may appeal the decision underlying the debt.

(d) * * *

* * * * *

(4) That collection may be made by offset from current or future VA benefit payments (*see* § 1.912a). In addition, the debtor should be advised of any policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; any other remedies to enforce payment of the debt, including administrative wage garnishment, Federal salary offset, tax refund offset, and litigation; and the requirement that any debt delinquent for more than 180 days be transferred to Treasury for administrative offset or collection.

(5) That interest and administrative costs may be assessed in accordance with § 1.915, as appropriate;

(6) That the debtor shall have the opportunity to inspect and copy records; and

(7) That the debtor shall have the opportunity to enter into a repayment agreement.

* * * * *

(f) * * *

(1) Appellate rights, in parts 19 and 20 of this title;

* * * * *

(5) The assessment of interest and administrative costs, in § 1.915.

* * * * *

14. Section 1.911a is added to read as follows:

§ 1.911a Collection of non-benefit debts.

(a) This section is written in accordance with 31 CFR 901.2 and applies to the demand for payment of all debts, except those debts arising out of participation in a VA benefit or home loan program. Procedures for the demand for payment of VA benefit or home loan program debts are set forth in § 1.911.

(b) Written demand as described in paragraph (c) of this section shall be made promptly upon a debtor of VA in terms that inform the debtor of the consequences of failing to cooperate with VA to resolve the debt. Generally, one demand letter is sufficient, but subsequent letters may be issued as needed. In determining the timing of the demand letter, VA should give due regard to the need to refer debts promptly to DOJ for litigation, in accordance with §§ 1.950 through 1.953. When necessary to protect VA's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under 38 CFR 1.900 through 1.953, including immediate referral for litigation.

(c) The written demand letter shall inform the debtor of:

(1) The basis for the indebtedness and any rights the debtor may have to seek review within VA, including the right to request waiver;

(2) The applicable standards for imposing any interest or other late payment charges;

(3) The date by which payment should be made to avoid interest and other late payment charges and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed;

(4) The name, address, and phone number of a contact person or office within the agency;

(5) The opportunity to inspect and copy VA records related to the debt; and

(6) The opportunity to make a written agreement to repay the debt.

(d) In addition to the items listed in paragraph (c) of this section, VA should include in the demand letter such items as VA's willingness to discuss alternative methods of payment and its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies. The letter should also indicate the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, Federal salary offset, tax refund offset, administrative offset, and litigation) and the requirement that any debt delinquent for more than 180 days be transferred to Treasury for collection.

(e) VA should respond promptly to communications from debtors and should advise debtors who dispute debts, or request waiver, to furnish available evidence to support their contentions.

(f) Prior to referring a debt for litigation, VA should advise each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification may be given as part of a demand letter under paragraph (c) of this section or in a separate letter.

(g) When VA learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, VA should immediately seek legal advice from either VA General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless VA determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.

(1) After seeking legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. VA should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If VA is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is prohibited in most cases by the automatic stay. However, VA should seek legal advice from VA's General Counsel or Regional Counsel to determine whether payments to the debtor and payments of other agencies available for offset may be frozen by VA until relief from the automatic stay can be obtained from the bankruptcy court. VA also should seek legal advice from VA's General Counsel or Regional Counsel to determine whether recoupment is available.

15. Section 1.912 is amended by:

A. Revising paragraphs (a), (c)(2), (d)(1), (d)(2), and (f).

B. Adding paragraphs (d)(3), (d)(4), (g), (h), and (i).

The additions and revisions read as follows:

§ 1.912 Collection by offset.

(a) *Authority and scope.* In accordance with the procedures set forth in 31 CFR 901.3, as well as 31 CFR, part 285, VA shall collect debts by administrative offset from payments made by VA to an individual indebted to VA. Also in accordance with 31 CFR 901.3(b), as well as 31 CFR part 285, VA shall refer past due, legally enforceable non-tax debts which are over 180 days delinquent to Treasury for collection by centralized administrative offset (further procedures are set forth in paragraph (g) of this section). This section does not pertain to offset from either VA benefit payments or from current salary, but does apply to offset from all other VA payments, including an employee's final salary check and lump-sum leave payment. Procedures for offset from benefit payments are found in § 1.912a. Procedures for offset from current Federal salary are found in §§ 1.980 through 1.995. NOTE: VA cannot offset, or refer for the purpose of offset, either under the authority of this section or under any other authority found in §§ 1.900 through 1.953 and §§ 1.980 through 1.995, any VA home loan program debt described in 38 U.S.C. 3726 unless the requirements set forth in that section have been met.

* * * * *

(c) * * *

(2) If the debtor, within 30 days of the date of the required notification by VA, requests in writing the waiver of collection of the debt in accordance with § 1.963, § 1.963a, or § 1.964, offset shall not commence until VA has made an initial decision to deny the waiver request.

* * * * *

(d) * * *

(1) Offset may commence prior to either resolution of a dispute or decision on a waiver request as discussed in paragraph (c) of this section, if collection of the debt would be jeopardized by deferral of offset (for example, if VA first learns of the debt when there is insufficient time before a final payment would be made to the debtor to allow for prior notice and opportunity for review or waiver consideration). In such a case, notification pursuant to paragraph (b) of this section shall be made at the time offset begins or as soon thereafter as possible. VA shall promptly refund any money that has been collected that is ultimately found not to have been owed to the Government.

(2) If the United States has obtained a judgment against the debtor, offset may commence without the notification required by paragraph (b) of this section. However, a waiver request filed in accordance with the time limits and other requirements of § 1.963, § 1.963a, or § 1.964 will be considered, even if filed after a judgment has been obtained against the debtor. If waiver is granted, in whole or in part, refund of amounts already collected will be made in accordance with § 1.967.

(3) The procedures set forth in paragraph (b) of this section may be omitted when the debt arises under a

contract that provides for notice and other procedural protections.

(4) Offset may commence without the notification required by paragraph (b) of this section when the offset is in the nature of a recoupment. As defined in 31 CFR 900.2(d), recoupment is a special method for adjusting debts arising under the same transaction or occurrence.

* * * * *

(f) When collecting multiple debts by administrative offset, VA shall apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation. In accordance with 31 CFR 901.3(a)(4), VA may not initiate offset to collect a debt more than 10 years after VA's right to collect the debt first accrued (with certain exceptions as specified in § 901.3(a)(4)).

(g) When VA refers delinquent debts to Treasury for centralized administrative offset in accordance with 31 CFR part 285, VA must certify that:

(1) The debts are past due and legally enforceable; and

(2) VA has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraphs (b) and (c) of this section. Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

(h) In accordance with 31 U.S.C. 3716(f), the Secretary of the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) and paragraphs (b) and (c) of this section have been met. The certification of a debt in accordance with paragraph (g) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g).

(i)(1) Unless the offset would not be in VA's best interest, or would otherwise be contrary to law, VA will comply with requests by creditor agencies to offset VA payments (except for current salary or benefit payments) made to a person indebted to the creditor agency. However, before VA may initiate offset, the creditor agency must certify in writing to VA that the debtor has been provided:

(i) Written notice of the type and amount of the debt and the intent of the creditor agency to use administrative offset to collect the debt;

(ii) The opportunity to inspect and copy agency records related to the debt;

(iii) The opportunity for review within the agency of the determination of the indebtedness; and,

(iv) The opportunity to make a written agreement to repay the debt.

(2) Procedures for current salary offset are set forth at §§ 1.980–1.995. Procedures for offset of VA benefit payments are set forth at § 1.912a.

16. Section 1.912a is amended by adding paragraph (c)(4) to read as follows:

§ 1.912a Collection by offset—from VA benefit payments.

* * * * *

(c) * * *

(4) VA will pursue collection action once an adverse initial decision is reached on the debtor's request for waiver and/or the debtor's informal dispute (as described in § 1.911a(c)(1)) concerning the existence or amount of the debt, even if the debtor subsequently pursues appellate relief in accordance with parts 19 and 20 of this title.

* * * * *

§ 1.913 [Removed]

§ 1.914 [Removed]

§ 1.915 [Removed]

17. Sections 1.913, 1.914, and 1.915 are removed.

§ 1.916 [Redesignated as § 1.913]

18. Section 1.916 is redesignated as § 1.913 and is revised to read as follows:

§ 1.913 Liquidation of collateral.

(a) VA should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt, if the debtor fails to pay the debt within 180 days after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor, unless such action is expressly required by statute or contract.

(b) When VA learns that a bankruptcy petition has been filed with respect to a debtor, VA should seek legal advice from the VA General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 1.917 [Redesignated as § 1.914]

19. Section 1.917 is redesignated as § 1.914 and is revised to read as follows:

§ 1.914 Collection in installments.

(a) Whenever feasible, VA shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, VA may accept payment in regular installments. VA should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible. If VA agrees to accept payments in regular installments, VA should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in 3 years or less.

(c) Security for deferred payments should be obtained in appropriate cases. However, VA may accept installment payments if the debtor refuses to execute a written agreement or to give security.

§ 1.918 [Removed]

20. Section 1.918 is removed.

§ 1.919 [Redesignated as § 1.915]

21. Section 1.919 is redesignated as § 1.915 and is amended by:

A. Revising the heading and paragraphs (a) and (c).

B. In paragraph (d), removing "§ 1.919" and adding, in its place, "this section".

C. Removing paragraphs (f)(2)(i) and (ii).

D. Revising paragraph (g).

The revisions read as follows:

§ 1.915 Interest, administrative costs, and penalties.

(a) Except as otherwise provided by statute, contract, or other regulation to the contrary, and subject to 38 U.S.C. 3485(e) and 5302, VA shall assess:

(1) Interest on all indebtedness to the United States arising out of participation in a VA benefit, medical

care, or home loan program under authority of Title 38, U.S. Code.

(2) Interest and administrative costs of collection on such debts described in paragraph (a)(1) of this section where repayment has become delinquent (as defined in 31 CFR 900.2(b)), and

(3) Interest, administrative costs, and penalties in accordance with 31 CFR 901.9 on all debts other than those described in paragraph (a)(1) of this section.

* * * * *

(c) The rate of interest charged by VA shall be based on the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and shall be adjusted annually by VA on the first day of the calendar year. Once the rate of interest has been determined for a particular debt, the rate shall remain in effect throughout the duration of repayment of that debt. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, VA may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on accrued interest and administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, interest and administrative costs that accrued but were not collected under the defaulted agreement shall be added to the principal under the new agreement.

* * * * *

(g) Administrative costs assessed under this section shall be the average costs of collection of similar debts, or actual collection costs as may be accurately determined in the particular case. No administrative costs of collection will be assessed under this section in any cases where the indebtedness is paid in full prior to the 30-day period specified in paragraph (e) of this section, or in any case where a repayment plan is proposed by the debtor and accepted by VA within that 30-day period, unless such repayment agreement becomes delinquent (as defined in 31 CFR 900.2(b)).

§ 1.920 [Removed]

22. Section 1.920 is removed.

§ 1.921 [Removed]

23. Section 1.921 is removed.

§ 1.922 [Redesignated as § 1.916]

24. Section 1.922 is redesignated as § 1.916 and is amended by:

A. Revising paragraph (d)(2)(i).

B. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 1.916 Disclosure of debt information to consumer reporting agencies (CRA).

* * * * *

(d) * * *

(2)(i) In accordance with § 1.911 and § 1.911a, VA shall notify each individual of the right to dispute the existence and amount of the debt and to request a waiver of the debt, if applicable.

* * * * *

(Authority: 38 U.S.C. 5701(g), (i); 31 U.S.C. 3711(e))

§ 1.923 [Redesignated as § 1.917]

25. Section 1.923 is redesignated as § 1.917 and is amended by:

A. Revising paragraph (b) introductory text.

B. Adding paragraphs (c) through (e).

The revision and additions read as follows:

§ 1.917 Contracting for collection services.

* * * * *

(b) In accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law, collection service contracts may be funded in the following manner:

* * * * *

(c) VA shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, VA may refer debts to private collection contractors pursuant to a contract between VA and a private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for debt collection. *See* 31 U.S.C. 3711(g); 31 CFR 285.12(e), and 38 CFR 1.910.

(d) VA may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets.

(e) VA may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the agency for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

(Authority: 31 U.S.C. 3718)

§ 1.924 [Redesignated as § 1.918]

26. Section 1.924 is redesignated as § 1.918 and is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.918 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to compromise or collect a debt in accordance with §§ 1.900 through 1.953, VA may send a request to the Secretary of the Treasury, or his/her designee, in order to obtain the debtor's most current mailing address from the records of the Internal Revenue Service.

(b) VA is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

* * * * *

§ 1.925 [Redesignated as § 1.919]

27. Section 1.925 is redesignated as § 1.919 and is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 1.919 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.

(a) Unless otherwise prohibited by law or regulation, and in accordance with 31 CFR 901.3(d), VA may request that money which is due and payable to a debtor from either the Civil Service Retirement and Disability Fund or FERS be administratively offset in reasonable amounts in order to collect, in one full payment or a minimal number of payments, debts that are owed to VA by the debtor. Such requests shall be made to the appropriate officials at the Office of Personnel Management (OPM) in accordance with such regulations prescribed by the Director of OPM. (*See* 5 CFR 831.1801 through 831.1808). In addition, VA may also offset against a Federal employee's final salary check and lump sum leave payment, unless such offset represents continuation of an offset against current salary initiated in accordance with §§ 1.980 through 1.995. *See* § 1.912 for procedures for offset against a final salary check and lump sum leave payment.

(b) * * *

(3) VA has complied with §§ 1.911, 1.911a, 1.912, 1.912a, or 31 CFR § 901.3, including any required hearing or review.

* * * * *

§ 1.926 [Redesignated as § 1.920]

28. Section 1.926 is redesignated as § 1.920 and amended by:

A. Revising paragraph (a).

B. Revising paragraph (c)(6).

C. Revising paragraph (e).

The revisions read as follows:

§ 1.920 Referral of VA debts.

(a) When authorized, VA may refer an uncollectible debt to another Federal or

State agency for the purpose of collection action. Collection action may include the offsetting of the debt from any current or future payment, except salary (*see* paragraph (e) of this section), made by such Federal or State agency to the person indebted to VA.

* * * * *

(c) * * *

(6) Other applicable notices required by §§ 1.911, 1.911a, 1.912, and 1.912a.

* * * * *

(e) The referral by VA of a VA debt to another agency for the purpose of salary offset shall be done in accordance with 38 CFR 1.980 through 1.995 and regulations prescribed by the Director of the Office of Personnel Management (OPM) in 5 CFR part 550, subpart K.

* * * * *

§ 1.927 [Redesignated as § 1.921]

29. Section 1.927 is redesignated as § 1.921 and is revised to read as follows:

§ 1.921 Analysis of costs.

VA collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.

§ 1.928 [Redesignated as § 1.922]

30. Section 1.928 is redesignated as § 1.922 and is revised to read as follows:

§ 1.922 Exemptions.

(a) Sections 1.900 through 1.953, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of §§ 1.900 through 1.953 when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.

(Authority: 31 U.S.C. 3711)

31. Section 1.923 is added to read as follows:

§ 1.923 Administrative wage garnishment.

(a) In accordance with the procedures set forth in 31 U.S.C. 3720D and 31 CFR 285.11, VA or Treasury may request that a non-Federal employer garnish the disposable pay of an individual to collect delinquent non-tax debt owed to VA. VA may pursue wage garnishment independently in accordance with this section or garnishment may be pursued after VA refers a debt to Treasury in accordance with 31 CFR 285.12 or with § 1.910 of this title. For the purposes of this section, any reference to Treasury also includes any private collection agency under contract to Treasury.

(b) At least 30 days prior to the initiation of garnishment proceedings, VA or Treasury shall send a written notice, as described in 31 CFR 285.11(e), by first class mail to the debtor's last known address. This notice shall inform the debtor of:

(1) The nature and amount of the debt;

(2) The intention of VA or Treasury to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest, and other late payment charges, are paid in full, and;

(3) An explanation of the debtor's rights, including the opportunity:

(i) To inspect and copy VA records pertaining to the debt;

(ii) To enter into a written repayment agreement with VA or Treasury under terms agreeable to VA or Treasury, and;

(iii) To request a hearing in accordance with 31 CFR 285.11(f) and paragraph (c) of this section concerning the existence or amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(3)(ii) of this section.

(c) Any hearing conducted as part of the administrative wage garnishment process shall be conducted by the designated hearing official in accordance with the procedures set forth in 31 CFR 285.11(f). This hearing official may be any VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official. This hearing official may also conduct administrative wage garnishment hearings for other Federal agencies.

(1) The hearing may be oral or written as determined by the designated hearing official. The hearing official shall provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issue in dispute cannot be resolved by review of documentary evidence. The hearing official shall establish the time and place of any oral hearing. At the debtor's option, an oral hearing may be conducted either in person or by telephone conference call. A hearing is not required to be a formal, evidentiary-type hearing, but witnesses who testify in oral hearings must do so under oath or affirmation. While it is not necessary to produce a transcript of the hearing, the hearing official must maintain a summary record of the proceedings. All travel expenses incurred by the debtor in connection with an in-person hearing shall be borne by the debtor. VA or Treasury shall be responsible for all telephone expenses. In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

(2) If the hearing official determines that an oral hearing is not necessary, then he/she shall afford the debtor a "paper hearing." In a "paper hearing," the hearing official will decide the issues in dispute based upon a review of the written record.

(3) If the debtor's written request for a hearing is received by either VA or Treasury within 15 business days following the mailing of the notice described in paragraph (b) of this section, then VA or Treasury shall not issue a withholding order as described in paragraph (d) of this section until the debtor is afforded the requested hearing and a decision rendered. If the debtor's written request for a hearing is not received within 15 business days following the mailing of the notice described in paragraph (b) of this section, then the hearing official shall provide a hearing to the debtor, but will not delay issuance of a withholding order as described in paragraph (d) of this section, unless the hearing official determines that the delay in filing was caused by factors beyond the debtor's control.

(4) The hearing official shall notify the debtor of:

(i) The date and time of a telephone conference hearing;

(ii) The date, time, and location of an in-person oral hearing, or;

(iii) The deadline for the submission of evidence for a written hearing.

(5) Except as provided in paragraph (c)(6) of this section, VA or Treasury shall have the burden of going forward to prove the existence or amount of the debt, after which the debtor must show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect. In general, this means that the debtor must show that it is more likely than not that a debt does not exist or that the amount of the debt is incorrect. The debtor may also present evidence that terms of the repayment agreement are unlawful, would cause a financial hardship, or that collection of the debt may not be pursued due to operation of law.

(6) If the debtor has previously contested the existence and/or amount of the debt in accordance with § 1.911(c)(1) or § 1.911a(c)(1) of this title and VA subsequently rendered a decision upholding the existence or amount of the debt, then such decision shall be incorporated by reference and become the basis of the hearing official's decision on such matters described in paragraph (c)(7) of this section.

(7) The hearing official shall issue a written decision as soon as practicable, but not later than 60 days after the date on which the request for such hearing was received by VA or Treasury. The decision will be the final action for the purposes of judicial review under the Administrative Procedures Act (5 U.S.C. 701 *et seq.*). The decision shall include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis, and conclusions, and;

(iii) The terms of the repayment schedule, if applicable.

(d) In accordance with 31 CFR 285.11(g) and (h), VA or Treasury shall send a withholding order and certification form (Treasury Form SF-29) by first class mail to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing. If a timely request for a hearing has been filed by the debtor, then VA or Treasury shall send a withholding order and certification form by first class mail to the debtor's employer within 30 days after a final decision (*see* paragraph (c)(6) of this section) is made to proceed with the garnishment. The employer shall complete and return the certification form as described in § 285.11(h).

(e) After receipt of the garnishment order, the employer shall withhold the amount of garnishment as described in 31 CFR 285.11(i) from all disposable pay payable to the applicable debtor during each pay period.

(f) A debtor whose wages are subject to a wage withholding order under 31 CFR 285.11 may request a review, under the procedures set forth in paragraph (k) of § 285.11, of the amount garnished. A request for review shall only be considered after garnishment has been initiated. The request must be based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship that limits the debtor's ability to provide food, housing, clothing, transportation, and medical care for himself/herself and his/her dependents.

32. Section 1.924 is added to read as follows:

§ 1.924 Suspension or revocation of eligibility for federal loans, loan insurance, loan guarantees, licenses, permits, or privileges.

(a) In accordance with 31 U.S.C. 3720B and the procedures set forth in 31 CFR 285.13 and § 901.6, a person owing an outstanding non-tax debt that is in delinquent status shall not be eligible for Federal financial assistance unless exempted under paragraph (d) or waived under paragraph (e) of this section.

(b) Federal financial assistance or financial assistance means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.

(c) For the purposes of this section only, a debt is in a delinquent status if the debt has not been paid within 90 days of the payment due date or by the end of any grace period provided by statute, regulation, contract, or agreement. The payment due date is the date specified in the initial written demand for payment. Further guidance concerning the delinquent status of a debt may be found at 31 CFR 285.13(d).

(d) Upon the written request and recommendation of the Secretary of Veterans Affairs, the Secretary of the Treasury may grant exemptions from the provisions of this section. The standards for exemptions granted for classes of debts are set forth in 31 CFR 285.13(f).

(e)(1) VA's Chief Financial Officer or Deputy Chief Financial Officer may waive the provisions of paragraph (a) of this section only on a person-by-person basis.

(2) The Chief Financial Officer or Deputy Chief Financial Officer should balance the following factors when deciding whether to grant a waiver:

(i) Whether the denial of the financial assistance to the person would tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal government; and

(ii) Whether the granting of the financial assistance to the person is contrary to the government's goal of reducing losses by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (e)(1) and (e)(2) of this section, the Chief Financial Officer or Deputy Chief Financial Officer should consider:

(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and

(ii) The amount of the total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) A centralized record shall be retained of the number and type of waivers granted under this section.

(f) In non-bankruptcy cases, in seeking the collection of statutory penalties, forfeitures, or other similar types of claims, VA may suspend or revoke any license, permit, or other privilege granted a debtor when the debtor inexcusably or willfully fails to pay such a debt. The debtor should be advised in VA's written demand for payment of VA's ability to suspend or revoke licenses, permits, or privileges. VA may suspend or disqualify any lender, contractor, or broker who is engaged in making, guaranteeing, insuring, acquiring, or participating in loans from doing further business with VA or engaging in programs sponsored by VA if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time, or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to Treasury.

(g) In bankruptcy cases, before advising the debtor of the intention to suspend or revoke licenses, permits, or privileges, VA should seek legal advice from the VA General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

(Authority: 31 U.S.C. 3720B)

33. The authority citation preceding § 1.930 is removed.

34. Sections 1.930 through 1.936 are revised to read as follows:

§ 1.930 Scope and application.

(a) The standards set forth in this part apply to the compromise of debts pursuant to 31 U.S.C. 3711. VA may exercise such compromise authority when the amount of the debt due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with DOJ. If VA receives an offer to compromise any debt in excess of $100,000, VA should evaluate the compromise offer using the same factors as set forth in 38 CFR 1.931. If VA believes the offer has merit, it shall refer the debt to the Civil Division or other appropriate division in DOJ using a Claims Collection Litigation Report (CCLR). The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if VA decides to reject a compromise offer.

(c) The $100,000 limit in paragraph (b) of this section does not apply to debts that arise out of participation in a VA loan program under Chapter 37 of Title 38 of the U.S. Code. VA has unlimited authority to compromise debts arising out of participation in a Chapter 37 loan program, regardless of the amount of the debt.

§ 1.931 Bases for compromise.

(a) VA may compromise a debt if it cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) VA is unable to collect the debt in full within a reasonable time by enforced collection proceedings;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning VA's ability to prove its case in court.

(b) In determining the debtor's inability to pay, VA will consider relevant factors such as the following:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) VA will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. VA should consider the applicable exemptions available to the debtor under State and Federal law in determining the ability to enforce collection. VA also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning VA's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for VA's claim. In determining the risks involved in litigation, VA will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) VA may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, VA will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle.

(f) VA generally will not accept compromises payable in installments. If, however, payment of a compromise in installments is necessary, VA will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, VA will also obtain security for repayment.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, VA will obtain a current financial statement from the debtor showing the debtor's assets, liabilities, income and expenses. Agencies also may obtain credit reports or other financial information to assess compromise offers.

§ 1.932 Enforcement policy.

VA may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if VA's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by VA's acceptance of the sum to be agreed upon.

§ 1.933 Joint and several liability.

(a) When two or more debtors are jointly and severally liable, VA will pursue collection activity against all debtors, as appropriate. VA will not attempt to allocate the burden of payment between the debtors but should proceed to liquidate the indebtedness as quickly as possible.

(b) VA will ensure that a compromise agreement with one debtor does not release VA's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 1.934 Further review of compromise offers.

If VA is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within its delegated compromise authority, it may refer the offer to VA General Counsel or Regional Counsel or to the Civil Division or other appropriate division in DOJ, using a CCLR accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to the agency with instructions or advice.

§ 1.935 Consideration of tax consequences to the Government.

In negotiating a compromise, VA will consider the tax consequences to the Government. In particular, VA will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

§ 1.936 Mutual releases of the debtor and VA.

In all appropriate instances, a compromise that is accepted by VA shall be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount, and VA and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction that the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against VA and its officials related to the transaction giving rise to the compromised debt.

§ 1.937 [Removed]

§ 1.938 [Removed]

35. Sections 1.937 and 1.938 are removed.

36. Sections 1.940 and 1.941 are revised to read as follows:

§ 1.940 Scope and application.

(a) The standards set forth in §§ 1.940 through 1.944 apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to DOJ for litigation, VA may suspend or terminate collection under this part with respect to the debt.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If VA believes that suspension or termination of any debt in excess of $100,000 may be appropriate, it shall refer the debt to the Civil Division or other appropriate division in DOJ, using the CCLR. The referral should specify the reasons for VA's recommendation. If, prior to referral to DOJ, VA determines that a debt is plainly erroneous or clearly without legal merit, VA may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

§ 1.941 Suspension of collection activity.

(a) VA may suspend collection activity on a debt when:

(1) It cannot locate the debtor;

(2) The debtor's financial condition is expected to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) Based on the current financial condition of the debtor, VA may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, and with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(c) Collection action may also be suspended, in accordance with §§ 1.911, 1.911a, 1.912, and 1.912a, pending VA action on requests for administrative review of the existence or amount of the debt or a request for waiver of collection of the debt. However, collection action will be resumed once VA issues an initial decision on the administrative review or waiver request.

(d) When VA learns that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless VA can clearly establish that the automatic stay does not apply, has been lifted, or is no longer in effect. VA shall seek legal advice immediately from either the General Counsel or Regional Counsel and, if legally permitted, take the necessary steps to ensure that no funds or money are paid by VA to the debtor until relief from the automatic stay is obtained.

37. Section 1.942 is amended by adding paragraphs (g) and (h) to read as follows:

§ 1.942 Termination of collection activity.

* * * * *

(g) *Discharge in bankruptcy.* Generally, VA shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. VA may continue collection activity, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge.

(h) Before terminating collection activity, VA should have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude VA from retaining a record of the account for purposes of:

(1) Selling the debt, if the Secretary of the Treasury determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

38. Section 1.943 is revised and § 1.944 is added to read as follows:

§ 1.943 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, VA may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 1.944 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), VA shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury or Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under §§ 1.940 through 1.943 and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in § 1.900 *et seq.* When VA discharges a debt in full or in part, further collection action is prohibited. Therefore, VA should make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, VA must terminate debt collection action.

(b) Upon discharge of an indebtedness, VA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. VA may request

Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on VA's behalf.

(c) When discharging a debt, VA must request that any liens of record securing the debt be released.

(d) 31 U.S.C. 3711(i)(2) requires agencies to sell a delinquent nontax debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), VA may not discharge a debt until the requirements of Section 3711(i)(2) have been met.

39. The authority citation preceding § 1.950 is removed.

40. Sections 1.950 through 1.953 are revised to read as follows:

§ 1.950 Prompt referral.

(a) VA shall promptly refer debts to DOJ for litigation where aggressive collection activity has been taken in accordance with §§ 1.900 *et seq.*, and such debts cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with parts §§ 1.930 through 1.936 and §§ 1.940 through 1.944. Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and other late payment charges, shall be referred to the Civil Division or other division responsible for litigating such debts at DOJ. Debts for which the principal amount is $1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to DOJ's Nationwide Central Intake Facility as required by the CCLR instructions. Debts should be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in §§ 1.900 *et seq.*, and, in any event, well within the period for initiating timely lawsuits against the debtors. VA shall make every effort to refer delinquent debts to DOJ for litigation within 1 year of the date such debts last became delinquent. In the case of guaranteed or insured loans, VA should make every effort to refer these delinquent debts to DOJ for litigation within 1 year from the date the loan was presented to VA for payment or reinsurance.

(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. VA shall immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. VA should advise DOJ of the collection activities that have been utilized to date, and their result. VA shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to DOJ. VA shall immediately notify DOJ of any payments credited to the debtor's account after referral of a debt under this section. DOJ shall notify VA, in a timely manner, of any payments it receives from the debtor.

§ 1.951 Claims Collection Litigation Report (CCLR).

(a) Unless excepted by Justice, VA shall complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. VA shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.

(b) VA shall indicate clearly on the CCLR the actions it wishes DOJ to take with respect to the referred claim.

(c) VA shall also use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate agency collection activity.

§ 1.952 Preservation of evidence.

VA must take care to preserve all files and records that may be needed by DOJ to prove its claims in court. VA ordinarily should include certified copies of the documents that form the basis for the claim when referring such claims to DOJ for litigation. VA shall provide originals of such documents immediately upon request by DOJ.

§ 1.953 Minimum amount of referrals to the Department of Justice.

(a) VA shall not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. DOJ shall promptly notify referring agencies if the Attorney General changes this minimum amount.

(b) VA shall not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with VA's policies or programs;

(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to VA for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(c) VA should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys, in DOJ, prior to referring claims valued at less than the minimum amount.

§ 1.954 [Removed]

41. Section 1.954 is removed.

42. Section 1.955 is amended by revising paragraphs (b) through (d) to read as follows: :

§ 1.955 Regional Office Committees on Waivers and Compromises.

* * * * *

(b) *Selection.* The Director shall designate the employees to serve as Chairperson, members, and alternates. Except upon specific authorization of the Under Secretary for Benefits, when workload warrants a full-time committee, such designation will be part-time additional duty upon call of the Chairperson.

(c) *Control and staff.* The administrative control of each Committee on Waivers and Compromises is the responsibility of the station's Fiscal Officer. However, the station Director has the authority to reassign the administrative control function to another station activity, rather than the Fiscal Officer, whenever the Director determines that such reassignment is appropriate. The quality control of the professional and clerical staff of the Committee is the responsibility of the Chairperson.

(d) *Overall control.* The Assistant Secretary for Management is delegated complete management authority, including planning, policy formulation, control, coordination, supervision, and evaluation of Committee operations.

* * * * *

43. Section 1.956 is amended by:

A. Revising paragraphs (a)(2)(i) and (a)(2)(ii).

B. Removing paragraph (a)(2)(iii).

C. Redesignating paragraph (a)(2)(iv) as new paragraph (a)(2)(iii).

D. Revising newly redesignated paragraph (a)(2)(iii).

E. Revising paragraphs (a)(3) and (b).

The revisions read as follows:

§ 1.956 Jurisdiction.

* * * * *

(a) * * *

(2) Arising out of operations of the Veterans Health Administration:

(i) Debts resulting from services furnished in error (§ 17.101(a) of this chapter).

(ii) Debts resulting from services furnished in a medical emergency (§ 17.101(b) of this chapter).

(iii) Other claims arising in connection with transactions of the Veterans Health Administration (§ 17.103(c) of this chapter).

(3) Claims for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees (5 U.S.C. 5584)

(b) The Under Secretary for Benefits may, at his or her discretion, assume original jurisdiction and establish an ad hoc Board to determine a particular issue arising within this section.

* * * * *

44. Section 1.957 is amended by:

A. Revising paragraphs (a)(1) introductory text and (a)(1)(iii).

B. Removing paragraph (a)(3).

The revision reads as follows:

§ 1.957 Committee authority.

(a) * * *

(1) *Waivers.* A decision may be rendered to grant or deny waiver of collection of a debt in the following debt categories:

* * * * *

(iii) Services erroneously furnished (§ 17.101(a)).

* * * * *

45. Section 1.958 is revised to read as follows:

§ 1.958 Finality of decisions.

A decision by the regional office Committee, operating within the scope of its authority, denying waiver of all or part of a debt arising out of participation in a VA benefit or home loan program, is subject to appeal in accordance with 38 CFR parts 19 and 20. A denial of waiver of an erroneous payment of pay and allowances is subject to appeal in accordance with § 1.963a(a). There is no right of appeal from a decision rejecting a compromise offer.

46. Section 1.963a is revised to read as follows:

§ 1.963a Waiver; erroneous payments of pay and allowances.

(a) The provisions applicable to VA (including refunds) concerning waiver actions relating to erroneous payments to VA employees of pay and allowances, and travel, transportation, and relocation expenses and allowances are set forth in 5 U.S.C. 5584. The members of Committees on Waivers and Compromises assigned to waiver actions under § 1.955 of this part are delegated all authority granted the Secretary under 5 U.S.C. 5584 to deny waiver or to grant waiver in whole or in part of any debt regardless of the amount of the indebtedness. Committee members also have exclusive authority to consider and render a decision on the appeal of a waiver denial or the granting of a partial waiver. However, the Chairperson of the Committee must assign the appeal to a different Committee member or members than the member or members who made the original decision that is now the subject of the appeal. The following are the only provisions of §§ 1.955 through 1.970 of this part applicable to waiver actions concerning erroneous payments of pay and allowances and travel, transportation, and relocation expenses and allowances under 5 U.S.C. 5584: §§ 1.955(a) through (e)(2), 1.956(a)(introductory text) and (a)(3), 1.959, 1.960, 1.963a, 1.965(c) and 1.967(c).

(b) Waiver may be granted under this section and 5 U.S.C. 5584 when collection would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or other person having an interest in obtaining a waiver of the claim. Generally, waiver is precluded when an employee receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard will depend upon the facts existing in each case.

(c) An application for waiver must be received within 3 years immediately following the date on which the erroneous payment was discovered.

(Authority: 5 U.S.C. 5584, 38 U.S.C. 501)

§ 1.965 [Amended]

47. Section 1.965 is amended by removing paragraph (b)(3).

§ 1.970 [Amended]

48. Section 1.970 is amended by removing "§§ 1.900 through 1.937" and adding, in its place, "§§ 1.930 through 1.936".

49. Section 1.980 is amended by:

A. Revising paragraphs (a) and (b).

B. Redesignating paragraphs (f) and (g) as (h) and (i).

C. Adding new paragraphs (f) and (g).

D. Revising newly redesignated paragraph (h).

The revisions and additions read as follows:

§ 1.980 Scope.

(a) In accordance with 5 CFR part 550, subpart K, the provisions set forth in §§ 1.980 through 1.995 implement VA's authority for the use of salary offset to satisfy certain debts owed to VA.

(b) These regulations apply to offsets from the salaries of current employees of VA, or any other agency, who owe debts to VA. Offsets by VA from salaries of current VA employees who owe debts to other agencies shall be processed in accordance with procedures set forth in 5 CFR part 550, subpart K.

* * * * *

(f) These regulations do not apply to a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and amount of the adjustment and a point of contact for such adjustment.

(g) These regulations do not apply to any adjustment to collect a debt amounting to $50 or less, if at the time of such adjustment, or as soon thereafter as practicable, the individual is provided with written notice of the nature and amount of the adjustment and a point of contact for contesting such adjustment.

(h) These regulations do not preclude the compromise, suspension, or termination of collection action under the FCCS (31 CFR parts 900 through 904) and VA regulations 38 CFR 1.930 through 1.953.

* * * * *

50. Section 1.982 is amended by revising paragraphs (a), (b), and (c)(3) to read as follows:

§ 1.982 Salary offsets of debts involving benefits under the laws administered by VA.

(a) VA will not collect a debt involving benefits under the laws administered by VA by salary offset unless the Secretary or appropriate designee first provides the employee with a minimum of 30 calendar days written notice.

(b) If the employee has not previously appealed the amount or existence of the debt under 38 CFR parts 19 and 20 and the time for pursuing such an appeal has not expired (§ 20.302), the Secretary or appropriate designee will provide the employee with written notice of the debt. The written notice will state that the employee may appeal the amount and existence of the debt in accordance with the procedures set forth in 38 CFR parts 19 and 20 and will contain the determination and information required by § 1.983(b)(1) through (5), (7), (9), (10), and (12) through (14). The notice will also state that the offset schedule under the procedures set forth in § 1.984 and such a request will stay the commencement of salary offset.

(c) * * *

(3) That the employee may request a waiver of the debt pursuant to 38 CFR 1.911(c)(2) subject to the time limits of 38 U.S.C. 5302.

* * * * *

51. Section 1.983 is amended by revising paragraphs (b)(8) and (b)(13) to read as follows:

§ 1.983 Notice requirements before salary offsets of debts not involving benefits under laws administered by VA.

* * * * *

(b) * * *

(8) The VA employee's right to request an oral or paper hearing on the Secretary or appropriate designee's determination of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed by the Secretary. A VA Board of Contract Appeals Administrative Judge or Hearing Examiner shall conduct such a hearing for all VA employees. A VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official, may also conduct an oral or paper hearing at the request of a non-VA employee on the determination by an appropriately designated official of the employing agency of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a hearing request is filed by the non-VA employee as prescribed by the employing agency.

* * * * *

(13) The employee's right, if applicable, to request waiver under 5 U.S.C. 5584 and 38 CFR 1.963a and any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

* * * * *

§ 1.984 [Amended]

52. Section 1.984 is amended by:

A. In paragraph (a), removing "20 calendar days" and adding, in its place, "30 calendar days".

B. In paragraph (b), removing "20 day period" and adding, in its place, "30-day period".

§ 1.989 [Amended]

53. In § 1.989 paragraph (a) is amended by removing "20 calendar days" and adding, in its place, "30 calendar days".

§ 1.990 [Amended]

54. In § 1.990, paragraph (a) is amended by removing "20 calendar days" and adding, in its place, "30 calendar days".

55. Section 1.991 is amended by revising paragraph (d) to read as follows:

§ 1.991 Procedures for salary offset: when deductions may begin.

* * * * *

(d) If an employee retires, resigns, or his or her employment ends before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to procedures for administrative offset (*see* 31 CFR 901.3, 38 CFR 1.912, and 5 CFR 831.1801 through 831.1808).

56. Section 1.992 is amended by revising paragraph (c) to read as follows:

§ 1.992 Procedures for salary offset.

* * * * *

(c) *Imposition of interest, penalties, and administrative costs.* Interest, penalties, and administrative costs shall be charged in accordance with 31 CFR 901.9 and 38 CFR 1.915.

57. Section 1.995 is added to read as follows:

§ 1.995 Requesting recovery through centralized administrative offset.

(a) Under 31 U.S.C. 3716, VA and other creditor agencies must notify Treasury of all debts over 180 days delinquent so that recovery of such debts may be made by centralized administrative offset. This includes those debts that VA and other agencies seek from the pay account of an employee of another Federal agency via salary offset. Treasury and other disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part.

(b) Prior to submitting a debt to Treasury for the purpose of collection by offset, including salary offset, VA shall provide written certification to Treasury that:

(1) The debt is past due and legally enforceable in the amount submitted to Treasury and that VA will ensure that any subsequent collections are credited to the debt and that Treasury shall be notified of such;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred to Treasury for offset within 10 years after VA's right of action accrues;

(3) VA has complied with the provisions of 31 U.S.C. 3716 and 38 CFR 1.912 and 1.912a including, but not limited to, those provisions requiring that VA provide the debtor with applicable notices and opportunities for a review of the debt; and

(4) VA has complied with the provisions of 5 U.S.C. 5514 (salary offset) and 38 CFR 1.980 through 1.994 including, but not limited to, those provisions requiring that VA provide the debtor with applicable notices and opportunities for a hearing.

(c) Specific procedures for notifying Treasury of debts for purposes of collection by centralized administrative offset are contained in the 31 CFR 285.7. VA and other creditor agencies may notify Treasury of debts that have been delinquent for 180 days or less, including debts that VA and other creditor agencies seek to recover from the pay of an employee via salary offset.

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, unless otherwise noted.

2. Section 2.6 is amended by:

A. Revising the heading of paragraph (c).

B. In paragraph (c)(1), removing the "Assistant Secretary for Finance and Information Resources Management" and adding, in its place, "Assistant Secretary for Management".

C. In paragraph (c)(2), removing the "Assistant Secretary for Finance and Information Resources Management" each time it appears and adding, in its place, "Assistant Secretary for Management".

D. Revising paragraph (d).

The revisions read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(c) *Office of Management.*

* * * * *

(d) The Assistant Secretary for Management (Chief Financial Officer) is delegated authority to take appropriate action (other than provided for in paragraph (e)(3) and (e)(4) of this section) in connection with the collection of civil claims by VA for money or property, as authorized in § 1.900 *et seq.* The Assistant Secretary for Management (Chief Financial Officer) may redelegate such authority as he/she deems appropriate to administration heads and staff office directors.

* * * * *

[FR Doc. 03-31620 Filed 12-24-03; 8:45 am

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CA 110-OPPb; FRL-7602-8]

Revisions to the Operating Permits Program, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Diego County Air Pollution Control District's Part 70 Operating Permits (Title V) Program. The proposed revisions address a change in the major source threshold for volatile organic compounds (VOCs) and oxides of nitrogen (NO_X). This change is based on the redesignation of San Diego County as in attainment of the federal one-hour ozone standard (see 68 FR 37976, June 26, 2003). As a result of this action, some sources that would have previously been considered major sources, and therefore would have been required to obtain a Title V operating permit, would no longer need to apply for a Title V permit. We are also approving revisions to several other parts of San Diego's Title V program. For more information see "What is being addressed in this document," below.

DATES: Any comments on this proposal must arrive by January 28, 2004.

ADDRESSES: Send comments to Gerardo Rios, Permits Office Chief (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to *rios.gerardo@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment.

FOR FURTHER INFORMATION CONTACT: Kathleen Stewart, EPA Region IX, (415) 947-4119, *stewart.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following Rules: 1401(c); 1410(i), (j), (l), and (q); 1418(b), (c), and (e); 1415 (a); 1421(a) and (b); and 1425(a) and (b). In the Rules and Regulations section of this **Federal Register**, we are approving these rules in a direct final action without prior proposal because we believe these revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: December 15, 2003.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 70, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Appendix A to Part 70 is amended by adding under "California" paragraph (x) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

California

* * * * *

(x) * * *

(5) Revisions were submitted on August 19, 2003, effective February 27, 2004.

* * * * *

[FR Doc. 03-31871 Filed 12-24-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[RCRA—2002-0031; FRL-7602-9]

RIN 2050-AE98

Proposed Revisions to the Definition of Solid Waste—Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is extending the comment period for the proposed rule entitled "Revisions to the Definition of Solid Waste," which appeared in the **Federal Register** on October 28, 2003 (68 FR 61558). The public comment period for this proposed rule was to end on January 26, 2004. The purpose of this notice is to extend the comment period to end on February 25, 2004.

DATES: EPA will accept public comments on this proposed regulation until February 25, 2004. Comments submitted after this date will be marked "late" and may not be considered.

ADDRESSES: Comments may be submitted by mail to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA-2002-0031. Comments may also be submitted electronically, or through hand delivery/courier; follow the detailed instructions as provided below in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information on the proposed regulation, contact the RCRA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For more detailed information on specific aspects of this rulemaking, contact Dave Fagan at (703) 308-0603 (*fagan.david@epa.gov*), or Ingrid Rosencrantz at (703) 605-0709 (*rosencrantz.ingrid@epa.gov*).

SUPPLEMENTARY INFORMATION: The proposed rule that is the subject of this notice, and which was published in the **FEDERAL REGISTER** on October 28, 2003, would revise the definition of solid waste under the Resource Conservation and Recovery Act (RCRA), by identifying certain recyclable hazardous secondary materials as not "discarded," and thus not subject to regulation as wastes under Subtitle C of RCRA. The proposed rule would also establish specific regulatory criteria for determining whether or not hazardous secondary materials are recycled legitimately.

The comment period for the proposed rule was scheduled to end on January 26, 2004. However, a public commenter (the National Paint and Coatings Association) has requested that EPA extend the comment period by 30 days, noting that it (and other organizations) is working to respond to several other important EPA rulemaking proposals whose comment periods overlap with that of this proposal. This commenter also noted that the comment period for this proposed rule extends over the holiday season, which additionally impacts their ability to fully review the proposal and formulate a comprehensive set of comments.

EPA believes this request is reasonable. EPA also notes that this rule is not subject to any statutory or judicial deadlines. We are therefore extending the comment period for this proposal until February 25, 2004.

How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2002–0031. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *rcra-docket@epamail.epa.gov*, Attention Docket ID No. RCRA–2002–0031. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in the following paragraph. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Hand Delivery or Courier. Deliver your comments to: OSWER Docket, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC., Attention Docket ID No. RCRA–2002–0031. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays).

Dated: December 16, 2003.

Matt Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 03–31868 Filed 12–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 2003–16128]

RIN 2127–AJ17

Reforming the Automobile Fuel Economy Standards Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document seeks comment on various issues relating to the corporate average fuel economy (CAFE) program. In particular, this document seeks comments relating to possible enhancements to the program that will assist in furthering fuel conservation while protecting motor vehicle safety and the economic vitality of the auto industry. The agency is particularly interested in improvements to the structure of the CAFE program authorized under current statutory authority. The focus of this document is to solicit comment on the structure of the CAFE program, not the stringency level for a future CAFE standard.

DATES: Comments must be received on or before April 27, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number 2003–16128] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the

Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Ken Katz, Lead Engineer, Fuel Economy Division, Office of Planning and Consumer Standards, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov*. For legal issues, call Otto Matheke, Office of the Chief Counsel, at (202) 366–5263, electronic mail *omatheke@nhtsa.dot.gov*.

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I. Background

Congress enacted the Energy Policy and Conservation Act (EPCA Pub. L. 94–163) during the aftermath of the energy crisis created by the oil embargo of 1973–74. The Act established an automotive fuel economy regulatory program by adding Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. Title V has been amended from time to time and codified without substantive change as Chapter 329 of title 49, United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Congress established a statutory corporate average fuel economy standard applicable to passenger automobiles, and NHTSA has from time to time amended that statutory standard. The Secretary of Transportation has the authority to change the standard if it no longer represents the "maximum feasible" standard consistent with the criteria set forth in the statute.[1] Pursuant to that authority, the Secretary amended the passenger car standard with regard to model years (MYs) 1986–1989 to address situations in which, despite manufacturers' good faith compliance plans, market conditions rendered the statutory standard impracticable and infeasible.[2] Since 1990, the CAFE standard for passenger automobiles has been 27.5 miles per gallon (mpg).

Congress did not establish by statute a CAFE standard for light trucks. Instead, Congress directed the Secretary to consider appropriate CAFE standards applicable to a light truck fleet, or alternatively, to classes of light trucks, and to establish CAFE standards at least 18 months prior to the start of each model year. The first light truck fuel economy standards were established for MY 1979 and applied to light trucks with Gross Vehicle Weight Ratings (GVWR) up to 6,000 pounds. Beginning with MY 1980, NHTSA raised this GVWR ceiling to 8,500 pounds.

In 1977, NHTSA issued regulations indicating which vehicles should be subject to the CAFE program and establishing the distinction, imbued throughout the statute, between passenger and non-passenger automobiles (42 FR 38362). These regulations reflect the vehicle fleet prevalent at that time, and in particular, sought to distinguish between vehicles primarily designed for the transport of passengers and those designed for the transport of cargo. To some extent, that distinction was meant to reflect a difference between personal transportation and that designed for commercial, agricultural or recreational activity. The regulations accordingly attempt to define vehicles by the type of use to which they were generally put in the mid-1970s (in part in accordance with whether they were usually built on passenger car or truck platforms).

In 1994, the agency departed from its past practice of considering light truck standards for one or two model years at a time and published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** outlining NHTSA's intention to set standards for some, or all, of the model years from 1998 to 2006 (59 FR 16324, April 6, 1994).

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 (Pub. L. 104–50) was enacted. Section 330 of that Act provided:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

This prohibition applied to both passenger automobiles and non-passenger automobiles, and language continuing the prohibition was included in the Appropriations Acts for each of FYs 1997–2001.

While the Department of Transportation and Related Agencies Appropriations Act for FY 2001 (Pub. L. 106–346) contained a restriction on CAFE rulemaking identical to that contained in prior appropriation acts, the conference committee report for that act directed that NHTSA fund a study by National Academy of Sciences (NAS) to evaluate the effectiveness and impacts of CAFE standards (H. Rept. No. 106–940, at p. 117–118).

The NAS submitted its preliminary report to the Department of Transportation on July 30, 2001. The final report was released in January 2002. The report concludes that technologies exist that could significantly increase passenger car and light truck fuel economy within 15 years, while maintaining vehicle size, weight, utility, and performance. However, their development cycles—as well as future economic, regulatory, safety and consumer preferences—will influence the extent to which these technologies could lead to increased fuel economy in the U.S. market. Recognizing the many trade-offs that must be considered in setting fuel economy standards, the committee took no position on what the appropriate

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[1] In setting CAFE standards, the statute directs the Secretary to consider technological feasibility, economic practicability, the effect of other government regulations on fuel economy and the nation's need to conserve energy.

[2] To date, the agency has not considered whether a more stringent fuel economy standard than 27.5 mpg might better represent the "maximum feasible" level for the passenger car fleet. By statute, NHTSA was prohibited from considering any change between MYs 1996 and 2004.

CAFE standards should be for future years.

The NAS found that to minimize financial impacts on manufacturers, their suppliers, their employees and consumers, sufficient lead-time (consistent with normal product life cycles) should be given when considering increases in CAFE standards. The report stated that there are advanced technologies that could be employed, without negatively affecting the automobile industry, if sufficient lead-time were provided to manufacturers. In the NAS" view, the selection of future fuel economy standards will require uncertain and difficult trade-offs among environmental benefits, vehicle safety, cost, energy independence, and consumer preferences.

All but two members of the NAS committee concluded: "the downweighting and downsizing that occurred in the late 1970s and early 1980s; some of which was due to CAFE standards, probably resulted in an additional 1300 to 2600 traffic fatalities in 1993." (NAS, pp. 3, 111.) Specifically, the Committee concluded, "to the extent that the size and weight of the fleet have been constrained by CAFE requirements' those requirements have caused more injuries and fatalities on the road than would otherwise have occurred." (NAS, p. 29). The NAS also suggested that changing the CAFE regulatory program to one based on vehicle attributes, such as weight, could eliminate the current CAFE program's encouragement of "downweighting" or the production and sale of more small cars. In addition, "credit trading" would also reduce costs. (NAS, pp. 5; 113)

In a letter dated July 10, 2001, Secretary of Transportation Norman Y. Mineta asked the House and Senate Appropriations Committees to lift the restriction prohibiting agency expenditures for the purposes of considering CAFE standards. The Department of Transportation and Related Agencies Appropriations Act for FY 2002 (Pub. L. 107–87), which was enacted on December 18, 2001, contained no provision restricting the Secretary's authority to prescribe fuel economy standards. NHTSA began work towards the establishment of light truck CAFE standards, and has since set standards applicable to light trucks for MYs 2004 through 2007 (68 FR 16868).

The Department has also focused on improvements to the fuel economy program. In February 2002, Secretary Mineta asked Congress "to provide the Department of Transportation with the necessary authority to reform the CAFE program, guided by the NAS report's suggestions." On February 7, 2002, the agency issued a Request for Comments (67 FR 5767) seeking, in addition to data on which to base an analysis of appropriate CAFE standards for light trucks for upcoming model years, comments on possible reforms to the CAFE program. In particular, the agency sought input on possible reforms that could enhance fuel economy, protect occupant safety, advance fuel-efficient technologies, and obtain the benefits of market-based approaches. In the rulemaking establishing light truck CAFE standards for MYs 2005–2007, the agency restated its intention to pursue the potential for such reforms.

The agency is also issuing, along with this notice, a request for comments seeking information on future product plans and other matters to assist in assessing the potential impacts of any changes to the CAFE program.

II. Why CAFE Reform?

There are four prominent criticisms of the light truck CAFE program. They relate to energy security, traffic safety, economic practicability, and modernization of the definition and classification of light trucks.

First, concern has been raised that the energy-saving potential of the CAFE program is hampered by the current regulatory structure. The difference between the fuel economy standards for passenger cars and light trucks (27.5 mpg and 20.7 mpg, respectively in 2004) encourages vehicle manufacturers to offer vehicles classified as light trucks for purposes of CAFE. In addition, the CAFE program currently applies to vehicles with a gross vehicle weight rating (GVWR) of less than 8,500 lbs, encouraging manufacturers to offer products with a GVWR larger than this limit. Reconsideration of these classification rules may encourage the development of a relatively more fuel efficient fleet of vehicles.

CAFE reform may also encourage more companies to pursue strategies to comply with established CAFE standards instead of paying fines for non-compliance. Some manufacturers regularly pay penalties rather than comply with the standards. To date, the U.S. Treasury has collected over $600 million in CAFE penalties, averaging more than $33 million in the past ten years. A different CAFE system might induce more vehicle manufacturers to innovate with fuel-saving technologies rather than pay fines for noncompliance.

Second, concern has been raised that the current light truck CAFE standards could create safety risks by encouraging vehicle manufacturers to achieve greater fuel economy by downweighting their light truck offerings. As the NAS report and a more recent NHTSA study have found, downweighting of the light truck fleet, especially those trucks in the low and medium weight ranges, creates more safety risk for occupants of light trucks and all motorists combined. However, both studies also suggest that if downweighting is concentrated on the heaviest light trucks in the fleet there could be a small fleetwide safety benefit. An alternative CAFE system may allow more energy savings while protecting and enhancing the safety of the motoring public.

As recommended by the NAS Report, NHTSA has updated its 1997 size and safety study and placed this updated report in the docket for technical comment. The NHTSA study considered the historical fatality statistics of model year 1991–1999 vehicles to find the average fatality increase per 100-pound reduction. This "fatality increase per 100-pound reduction" does not mean the effect of literally removing 100 pounds from a specific vehicle. It is the average increase in the fatality rates of 1991–99 models weighing W–100 pounds curb weight relative to other 1991–99 models weighing W pounds curb weight, given drivers of the same age/gender, and accounting for a variety of other factors.

In cars weighing[3] 2,950 pounds or more, overall fatality rates increased by an average of 1.98 percent per 100-pound weight reduction. If this percentage effect were applied to the baseline of all calendar year 1999 crash fatalities in the U.S. it would be equivalent to an increase of 216 fatalities per year. In cars weighing less than 2,950 pounds, the average increase in the fatality rate per 100-pound weight reduction was 4.39 percent, equivalent to 597 fatalities per year.

The findings were similar for light trucks. In light trucks weighing less than 3,870 pounds, the average increase in the fatality rate per 100-pound weight reduction was 2.90 percent, equivalent to 234 fatalities per year. In light trucks weighing 3,870 pounds or more, the average increase in the fatality rate per 100-pound reduction was 0.48 percent, equivalent to 71 fatalities per year.[4]

The study also found that trucks, starting with those weighing around 5,000 pounds (this number is an approximate arithmetic mean of the possible safety break points identified in the study) and including those that were heavier, would have actually reduced fatalities by a small amount if their weights were reduced. Therefore, as cars and trucks increased in size, the severity of the safety impacts due to weight reduction lessens and eventually disappears. For vehicles above a certain weight, weight reduction may produce safety benefits.[5]

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[3] The weights in the size and weight study are curb weights, whereas those in the context of CAFE standards are gross vehicle weights.

[4] The increase is not statistically significant, since the study provides an interval estimate from -1.06 to +1.64 percent.

The NHTSA study approach is retrospective, and not necessarily predictive of the future, since it examines a specific group of model year 1991–99 vehicles, often in relation to the other vehicles on the road, in calendar years 1995–2000. The study does not examine a reduction of 100 pounds in a specific vehicle, but rather the effect of a vehicle mix shift resulting in the average vehicle fleet being 100 pounds lighter. For light trucks, a change in the sales mix to certain vehicles (*e.g.*, minivans) could reduce weight, improve fuel economy and be safer for society overall. Even within vehicle classes we already see the potential for overall safety improvements (*e.g.*, crossover SUVs are lighter, more fuel efficient, and appear to be safer for society overall than larger SUVs).

It is important to note that the configuration of light vehicles, particularly the height of their center-of-gravity (CG), also has an impact on safety. In particular, vehicles with a higher CG are more likely to be involved in rollover crashes than vehicles with a lower CG. About one-third of all light vehicle occupant deaths involve rollover. More than half of all single vehicle crashes resulting in fatalities involve a rollover event. Fatalities in rollover crashes accounted for 82 percent of the total fatality increase in 2002. In 2002, 10,666 people died in rollover crashes, up 5 percent from 10,157 in 2001. The number of persons killed in SUVs that rolled over rose 14 percent. Sixty-one percent of all SUV fatalities involved rollovers.

The NAS found that "technologies exist that, if applied to passenger cars and light trucks, would significantly reduce fuel consumption within 15 years (NSA, pp. 3). NAS also noted that technology changes require very long lead times to be introduced into product lines. Under the current regulatory structure, rapid increases in the light truck CAFE standard could have substantial safety and economic consequences. An analysis performed by the Energy Information Administration (EIA), based on their National Energy Modeling System (NEMS), indicates that if the light truck CAFE standard were increased by 0.6 mpg annually under the current system starting with MY 2008 (0.6 mpg was the rate of increase for the last two MYs of the recently published MY 2005–2007 CAFE light truck rule), average light truck weight would be reduced by about 100 pounds annually over the MY 2010–2015 period, about 200 pounds annually over the MY 2016–2020 period, and more than 350 pounds annually by MY 2025. Moreover, the study suggests that most of the weight reduction would occur in the small and medium end of the weight range. The EIA analysis and NHTSA's updated safety study together suggest that highway fatalities could increase significantly if such increases in CAFE standards for light trucks are implemented under the existing program.

A third reason for considering CAFE reform relates to the adverse economic impacts that may result from such future increases in the stringency of CAFE standards. The EIA analysis predicts that a sustained gradual increase in the light truck standard (0.6 mpg per year from 2007 to 2025) would increase the cost of light trucks, reduce real Gross Domestic Product (GDP), and reduce employment. The incremental cost of light duty trucks is predicted to rise steadily for the entire forecast period through 2025, ultimately reaching a price increase of $720 (in constant 2001 dollars), although the rate of increase slows over time. The loss in real GDP grows over time. By 2015, real GDP is predicted to be $15 billion smaller, which represents a loss of 0.1 percent when compared to the reference case. By 2025, the loss in GDP is predicted to be $19 billion (−0.10 percent). Viewed over the entire forecast period, the sum of the discounted changes (billions of dollars discounted at 7 percent from 2004 through 2025) in real GDP totals a loss of $84 billion, which represents a loss of approximately 0.6 percent of the reference case value of real GDP over the 2004–2025 period. Non-agricultural employment, under such a scenario, would decline in 2015 by 86,000 jobs compared to no increase in light truck CAFE standards. This adverse effect would attenuate in the long run as fuel savings from tighter CAFE standards induce some employment gains and the economy adjusts to a new steady-state equilibrium. By 2025, the net employment loss in the non-agricultural sector is 16,000 jobs.

Although the NEMS model is useful as a long term forecasting tool, the model is a simplified representation of the macro-economy and its projections are subject to considerable uncertainty. NEMS is a generalized model that treats all manufacturers identically. Other approaches, such as the technology model used by NHTSA in its recent 2005–2007 light truck rulemaking, rely heavily on detailed manufacturer-specific data. Models of this type have advantages for analyzing the effects of short-term modest increases in CAFE standards, while the NEMS approach is more useful for analyzing longer-term increases in CAFE standards. When longer-term analysis of significant increases in CAFE standards is required, current differences in manufacturer capabilities become much less relevant. In addition, NEMS' ability to estimate macroeconomic "feedbacks" from long run increases in CAFE standards is useful.

Table 1 provides data on light truck manufacturers in the U.S. market, their sales volumes, and market shares by vehicle type.

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[5] This new study explores the relationship between vehicle size, crash compatibility and vehicle weight for 1991 through 1999 light vehicles. The study finds that weight reductions in passenger cars and most light trucks increase the risk of fatalities significantly more than previously thought. However, the results are not uniform over the entire weight range of trucks and cars. Reducing the weight of lighter cars and trucks results in more fatalities than down-weighting heavier cars and trucks.

Table 1
U.S. Sales, Market Share, and Production Data for Major Light Truck Manufacturers*

Mfg.		Total	<3,100 lb	3,101 to 3,400 lb	3,401 to 3,700 lb	3,701 to 4,000 lb	4,001 to 4,300 lb	4,301 to 4,600 lb	4,601 to 4,900 lb	>4,901 lb	North American Built	Domestic Content
GM	Sales	2,412 K	41 K	88 K	101 K	256 K	188 K	390 K	363 K	985 K	100 %	90 %
	Share	30 %	16 %	15 %	13 %	26 %	12 %	32 %	44 %	55 %		
Ford	Sales	2,060 K	59 K	106 K	285 K	118 K	410 K	493 K	237 K	352 K	98 %	81 %
	Share	26 %	23 %	18 %	36 %	12 %	27 %	40 %	28 %	20 %		
DCX	Sales	1,772 K	0	178 K	70 K	293 K	575 K	172 K	140 K	344 K	100 %	79 %
	Share	22 %	0 %	31 %	9 %	30 %	38 %	14 %	17 %	19 %		
Toyota	Sales	747 K	117 K	16 K	198 K	162 K	50 K	66 K	43 K	95 K	59 %	37 %
	Share	9 %	46 %	3 %	25 %	16 %	3 %	5 %	5 %	5 %		
Honda	Sales	336 K	29 K	109 K	0	0	149 K	49 K	0	0	64 %	46 %
	Share	4 %	7 %	19 %	0 %	0 %	10 %	4 %	0 %	0 %		
Nissan	Sales	287 K	0	35 K	5 K	121 K	114 K	12 K	0	0	69 %	40 %
	Share	4 %	0 %	6 %	1 %	12 %	8 %	1 %	0 %	0 %		
Isuzu	Sales	79 K	0	6 K	5 K	42 K	18 K	8 K	0	0	78 %	47 %
	Share	1 %	0 %	1 %	1 %	4 %	1 %	1 %	0 %	0 %		
Hyundai	Sales	83 K	0	0	83 K	0	0	0	0	0	0 %	1 %
	Share	1 %	0 %	0 %	10 %	0 %	0 %	0 %	0 %	0 %		
Suzuki	Sales	51 K	6 K	10 K	35 K	0	0	0	0	0	46 %	15 %
	Share	1 %	2 %	2 %	4 %	0 %	0 %	0 %	0 %	0 %		
Kia	Sales	97 K	0	30 K	17 K	0	0	0	50 K	0	0 %	0 %
	Share	1 %	0 %	5 %	2 %	0 %	0 %	0 %	6 %	0 %		
BMW	Sales	39 K	0	0	0	0	0	31 K	0	8 K	100 %	35 %
	Share	>1 %	0 %	0 %	0 %	0 %	0 %	3 %	0 %	>1 %		
VW	Sales	11 K	0	0	0	0	10 K	0	0	1 K	0 %	1 %
	Share	>1 %	0 %	0 %	0 %	0 %	1 %	0 %	0 %	>1 %		
Total		7,974 K	252 K	578 K	799 K	992 K	1,514 K	1,221 K	833 K	1,785 K		

* Sales data from NHTSA's CAFE Database for MY 2002. Percent North American Built are data from 2002 calendar year from Automotive News 2003 Market Data Book. Domestic content percentages were calculated using AALA Reports and sales data from NHTSA's CAFE Database for MY 2002. All weight ranges listed in the table signify curb weights.

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As stated by NAS, the current structure of the CAFE program favors manufacturers with a product mix dominated by small light trucks and disfavors manufacturers with a full line of light trucks or those with a product mix that is dominated by heavier trucks. The potentially adverse effects of tighter light truck CAFE standards on the economic vitality of the auto industry can be seen by ranking vehicle manufacturers by their current CAFE averages and their average fuel economy ratings within weight classes. The fuel economy data in Table 2 suggest that reform toward a weight-class system will affect both domestic and foreign manufacturers. For example, within weight classes, GM vehicles generally rank high in overall fuel economy, while DaimlerChrysler vehicles do not rank high in several heavier weight classes. Similarly, Honda ranks high in the weight classes where it has substantial volume while Toyota products do not rank as high in fuel economy in several weight classes. These data are only for one model year but such trends are likely to continue in the near term. In the long run, all manufacturers will have sufficient lead time to make new product offerings under a reformed system.

The vulnerability of full-line firms to tighter CAFE standards does not arise primarily from poor fuel economy ratings within weight classes. Their overall CAFE averages are low compared to manufacturers that produce more relatively light vehicles because their sales mixes comprise a much larger quantity of bigger and heavier vehicles. For example, within given weight classes, the average fuel economy average of GM vehicles weighing in excess of 3,400 lbs. curb weight is actually greater than Toyota's. Yet, Toyota's overall fuel economy average, across all weight classes over 3,400 lbs., is greater than GM's due to the fact that Toyota sells more vehicles in the lower weight classes than GM does and because GM's market share in the three heaviest classes is so large. An attribute-based (weight and/or size) system could neutralize disparate impacts on full-line manufacturers that could result from a sustained increase in CAFE standards. NHTSA seeks comment on these economic concerns, which ultimately relate to the economic practicability of more stringent light-truck CAFE standards. We also seek comment on potential reforms that could reduce or eliminate these adverse economic effects.

TABLE 2

Manufacturer	<3,100 lb.	3,101 to 3,400 lb.	3,401 to 3,700 lb.	3,701 to 4,000 lb.	4,001 to 4,300 lb.	4,301 to 4,600 lb.	4,601 to 4,900 lb.	>4,901 lb.	Overall mpg
GM	29.8	25.7	23.1	24.7	21.2	20.3	19.6	18.0	19.9
Ford	28.8	24.8	23.0	20.0	21.1	19.6	19.1	17.5	20.3
DaimlerChrysler	N/A	25.5	19.5	21.1	22.3	20.6	18.1	16.9	20.4
Toyota	29.0	28.3	22.6	23.4	20.5	19.3	18.0	17.8	22.1
Honda	29.7	27.8	N/A	N/A	24.0	22.6	N/A	N/A	25.3
Nissan	N/A	26.2	24.3	20.6	19.5	19.0	N/A	N/A	20.7
Isuzu	N/A	22.4	22.5	21.2	20.7	19.5	N/A	N/A	21.0
Hyundai	N/A	N/A	24.5	N/A	N/A	N/A	N/A	N/A	24.5
Suzuki	23.3	22.4	21.4	N/A	N/A	N/A	N/A	N/A	21.8
Kia	N/A	23.3	23.0	N/A	N/A	N/A	19.8	N/A	21.4
BMW	N/A	N/A	N/A	N/A	N/A	20.3	N/A	17.5	20.2
VW	N/A	N/A	N/A	N/A	20.6	N/A	N/A	20.0	20.6
Total	29.0	25.7	22.7	22.1	21.6	20.1	19.1	17.7	20.6

Light Truck Fuel Economy (mpg) by Weight Class (lbs.) for MY 2002

A fourth reason for considering CAFE reform is to modernize the definitions and classifications of light trucks within the program. The markets for, and designs of, cars and light trucks have changed substantially since the inception of the CAFE program in the late 1970's. The existing CAFE program creates a bright line distinction between passenger and non-passenger automobiles (light trucks) and that distinction—found in both the statute and subsequent rulemakings—reflects the vehicle fleet prevalent in the 1970's.

Since then, the American public has resoundingly responded to the development of new types of vehicles, such as minivans and sport utility vehicles (SUVs). As compared to traditional passenger cars, these multipurpose vehicles are better able to satisfy the demand for family transportation, cargo carrying capability and recreational use. The market for traditional pick-up trucks has also expanded, giving rise to a broader variety of sizes, performance abilities and uses.

The market suggests that while some light trucks may be used primarily to transport passengers, their "peak use or value" capability (towing boats, hauling heavy loads, etc.) may be a critical factor in the purchase decision. In other words, a consumer may require substantial towing capability only periodically, but nevertheless may base his purchasing decision on a vehicle's ability to meet that peak need rather than his daily needs. The motor vehicle market has thus developed a demand for vehicles capable of cross-servicing traditional needs—that is, for vehicles capable of transporting people and cargo, for vehicles capable of servicing personal transportation needs as well as recreational and commercial ones, and for vehicles capable of substantial performance, even if such performance is only needed periodically.

While minivans, SUVs and pick-up trucks dominated the market of the 1990s, "crossover" vehicles are an emerging motor vehicle trend. Many of these vehicles reverse some of the adverse consequences of the past vehicle fleet. As previously mentioned, they tend to be smaller, lighter, potentially more fuel efficient and designed with lower centers of gravity than the more traditional light trucks of the 1990s.

Any potential reforms to the CAFE system should be considered in light of their ability not only to enhance fuel economy but also to ensure the economic well-being and safety of the American public. In considering CAFE reforms, our aim is to develop a CAFE program consistent with, and not in any way adverse to, our economic and safety objectives.

III. Comments to Date on CAFE Reform

In February 2002, NHTSA issued a request for comments (RFC) seeking information, views and data regarding future fuel economy standards and potential changes to the CAFE program. Published in the **Federal Register** on February 7, 2002 (26 FR 5767; Docket No. 2002–11419), the RFC requested comments on the recommendations in the National Energy Policy, the conclusions found in the NAS report on fuel economy, and the technical, economic and regulatory obstacles to improvements in fuel economy. The RFC sought to elicit comments on possible reforms to the CAFE program, as it applies to both passenger cars and light trucks, with an eye toward protecting passenger safety, advancing fuel-efficient technologies, and obtaining the benefits of market-based approaches.

We have received comments relating to CAFE reform both in response to the RFC and in response to our Notice of Proposed Rulemaking to establish light truck fuel economy standards for MYs 2005–2007.[6] (Docket No. 2002–11419, Notice 2) Many argued for a variety of amendments to the current system and others argued against any form of reform—whether through revisions to the current regulatory scheme or more fundamental changes in the way corporate average fuel economy is measured and applied.

While we have considered these comments, the original RFC was quite general and the comments received tended to focus on the various alleged shortcomings of the current program—

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[6] We received comments from, amongst others, Public Citizen, Insurance Institute for Highway Safety (IIHS), Sierra Club, American Council for an Energy-Efficient Economy (ACEEE), Union of Concerned Scientists (UCS), Alliance to Save Energy (Alliance) and Coalition for Vehicle Choice (CVC), the Recreation Vehicle Industry Association (RVIA), Japan Automobile Manufacturers Association, Inc. (JAMA), National Truck Equipment Association (NTEA), National Automobile Dealers Association (NADA), Association of International Automobile Manufacturers, Inc. (AIAM), Alliance of Automobile Manufacturers (AAM), and Rubber Manufacturers Association (RMA). Manufacturers filing comments included General Motors (GM), Daimler Chrysler (DC), Ford Motor Company (Ford), Toyota Motor Corporation (Toyota), American Honda Motor Company (Honda) and Nissan North America (Nissan). A number of individuals also provided comments—Marc Ross from the University of Michigan both individually (Ross) and in conjunction with Tom Wenzel from the Lawrence Berkeley National Laboratory (Wenzel and Ross) and a class from Harvey Mudd College Engineering Department; Professor Patrick Little, Hans Meyer, Leryn Gorlitsky, Naomi Tomimatsu, Jordan Kwan, Anna Olson, Chris Holcomb, and Carman Ng.

or the generic admonishment against CAFE reform—and not on specific potential options or the various findings necessary to adopt them. This document, while not espousing any particular form of reform, seeks more specific input on various options set forth in an effort to adapt CAFE to today's vehicle fleet.

A brief review of the comments relating to CAFE reform already received follows:

A. Attribute-Based Standards

Our request for comments sought information on adopting an attribute-based system under which fuel economy standards would be tied to some vehicle attribute or attributes rather than having one fixed standard for passenger automobiles and another for light trucks. With some notable exceptions, many commenters supported adopting attribute-based fuel economy standards.

While private citizens generally favored attribute-based standards, a number of interest groups did not. Manufacturers and trade associations viewed them with caution. Public Citizen, Sierra Club, ACEEE, and UCS expressed concern that an attribute-based system may give manufacturers an incentive to increase production of vehicles in the attribute class with the lowest fuel economy. If an attribute system were to be used, ACEEE opposed weight-based standards and recommended consideration of an interior volume-based system stating that weight-based standards would provide automakers with an incentive to add mass to trucks in order to lower the fuel economy requirements for those vehicles. Professor Patrick Little suggested consideration of attributes that more accurately reflect likely usage of a vehicle, such as a ratio of unenclosed cargo space to passenger seating, in order to properly distinguish between passenger vehicles and light trucks and to avoid minivan/SUV loopholes that would incorrectly place these vehicles in the light truck category.

Other commenters favored an attribute-based system. IIHS favored a system of fuel economy requirements indexed to weight, although it commented that the CAFE structure must be modified to ensure that increased fleet fuel economy does not come about through weight reductions of the lightest, least safe vehicles or through increased sales of those vehicles. The organization stated that such a system would remove downweighting as a means of compliance and force the use of new technologies. IIHS also suggested that an attribute system could be established requiring each automaker to meet a manufacturer-specific, production-weighted average derived from the specific combination of vehicle types/weights sold by the automaker. This could be accomplished, according to IIHS, by the agency determining the target fuel economy for each vehicle weight, with the sum of any manufacturer's deviations from the target having to be zero or negative.

Carman Ng suggested that an attribute-based system could include power to weight ratio, number of cylinders, coefficient of drag, maximum recommended load, engine type, fuel sources, and number of passengers as attributes to be considered because these attributes can be measured quantitatively and avoid the gray areas of qualitative judgment. The Coalition for Vehicle Choice advised caution, arguing that there are no universal "bright lines" along which vehicles may be grouped.

DaimlerChrysler and Toyota objected to adoption of an attribute-based system, arguing that no method discussed as of that time is superior to the current system. Toyota added that a weight-based system, wherein lighter vehicles would be required to meet a more stringent standard than heavier vehicles, would result in "up-weighing" and increased fuel consumption. Ford and Nissan indicated that a weight based attribute system would be more equitable than the current system because vehicle weight directly correlates to vehicle fuel consumption. Ford also stated that it continues to believe that uniform industry fuel economy standards are inefficient and unfairly penalize full line manufacturers.

GM did not support use of a weight based attribute system, but both GM and Ford stated that a well-designed attribute-based system would be an improvement in that it would make sales mix less of a factor in meeting the standards. GM further indicated that a weight-based system would promote safety by removing incentives to remove weight.

Honda stated that there were several advantages to a size-based system as opposed to a weight-based system, including preserving incentives for fuel economy improvements through use of lightweight materials and improved vehicle packaging, less susceptibility to erosion of overall fleet economy, and safety. AIAM did not favor a weight or attribute-based system but believes that whatever system is chosen should be competitively neutral. In general, while some manufacturers believed a weight-based system had merit, there was considerable concern that the uncertainties of such a system might have untold effects.

B. Increasing GVWR Limit on Vehicles Subject to CAFE Standards

An issue relating to classification is the size of vehicles subject to CAFE. We noted in the RFC that one aspect of the growth in the light truck fleet has been the appearance of increasing numbers of large SUVs whose GVWR is above the current CAFE upper weight limit of 8,500 pounds. We asked commenters to provide us with views and data relating to raising the CAFE limit to the statutory maximum of 10,000 pounds GVWR to include larger vehicles in the light truck fleet. There was a general split between consumer groups and industry on whether expanding the scope of the CAFE program to encompass larger trucks is advisable.

Public Citizen supported the expansion. Citing the GVWRs of several larger SUVs as alleged examples of how manufacturers made the vehicles just large enough to escape regulation, Public Citizen argued that both safety considerations and the need to conserve energy dictated that larger vehicles should be subject to CAFE. Similarly, the ACEEE, 20/20 Vision, and Sierra Club also supported expanding the CAFE program's coverage to reach these larger vehicles, arguing that many of the large SUVs and pickup trucks are used as passenger vehicles (ACEEE). Chris Holcomb states that expanding CAFE would increase safety as manufacturers would discontinue production of vehicles at the high end of the weight range due to an inability to make them fuel efficient.

With the exception of Honda, manufacturers did not support the expansion. They argue that most trucks in this category are domestically built to meet a special need for the commercial consumer needing heavy-duty pick-up truck capabilities for heavy cargo or passenger (more than six passenger) load. They stated that only a small fraction of these vehicles are SUVs and many of them were purchased to tow heavy loads.

General Motors argued that raising the maximum GVWR for CAFE would severely damage domestic manufacturers and exacerbate the problems and inequities created by the CAFE program. Moreover, GM attacked the premise that these large vehicles should be considered because they are passenger vehicles by noting that models within the 8,500–10,000 pound segment have "sisters" or twins with equivalent passenger carrying capability in the under 8,500 pound category. GM stated that customers interested in passenger capacity would not be interested in the heavier models, which cost more to purchase and operate and that the heavier vehicles are used and purchased by consumers needing features found only in these vehicles.

DaimlerChrysler opposed the expansion on the basis that it would not produce a demonstrable benefit. According to DC, the market segment involved is so small that no significant fuel savings would be realized by including large vehicles in the CAFE fleet. In DC's view, such action would only serve to lower the truck fleet fuel economy average.

The AAM, Ford, NTEA, and RVIA echoed the views of GM and DC. These organizations argued that expansion of the CAFE program into the heavier weight category would be unwarranted and unwise. Large vehicles, according to the Alliance, meet consumer needs and including these large vehicles in the CAFE fleet would force manufacturers to stop producing them or otherwise compromise the characteristics making them desirable to consumers.

C. Vehicle Classification

The agency's request for comments observed that the tremendous changes in the light truck market compelled reexamination of the definitions of light trucks and passenger automobiles. We asked commenters to provide suggestions for modifications of the vehicle classification scheme now used in the CAFE program. In particular, we requested that commenters identify characteristics that would help delineate the differences between passenger automobiles and trucks and the pros and cons of various classification schemes.

Public interest groups responding to this request were highly critical of the existing classification scheme, particularly the "flat floor" provision allowing vehicles (such as the PT Cruiser and many minivans) to be classified as light trucks based on the ability to enlarge their cargo carrying capacity by physically changing their passenger carrying ability into cargo carrying ability. The ACEEE and Sierra Club object to the "flat floor" provision, but without offering any specific recommendations for a new definition.

Public Citizen also criticized the current classification scheme and offered its view that the light truck class should be restricted to vehicles with significant off-road characteristics, such as a very high ground clearance, or more commercial "truck-like" qualities, such as the ability to carry or tow their own weight. In Public Citizen's view, the truck category should be limited to vehicles that are used commercially rather than lighter truck-like vehicles that may also serve as personal transportation.

Vehicle manufacturers and industry trade groups generally offered an opposite view—the existing classification system provides appropriate differentiation between passenger and non-passenger automobiles. This judgment is based on the view that the expansion of the light truck market has stemmed solely from consumer demand for more versatile and larger vehicles. DaimlerChrysler indicated that moving truck-like "passenger vehicles," such as SUVs and minivans, from the truck fleet to the car fleet would require making the car standard less stringent or result in the elimination of an entire category of vehicle that consumers obviously value.

Alternatively, in its response to the RFC, DC indicated that an attribute-based approach to segment the fleet might have advantages.[7] However, DC indicated that no classification system was ideal and all systems would have their own set of rewards and drawbacks.

Ford supported the existing scheme in response to the request for comments. According to Ford, light trucks, including SUVs, are purchased and used for different reasons than passenger automobiles. Ford stated that the utility and corresponding differences between passenger automobiles and light trucks should be carefully considered before implementing any vehicle classification modifications. Ford argued that removing SUVs, minivans, and multi-activity vehicles from the truck fleet and adding them to the car fleet, or even creating a third category would negatively impact both the car and truck CAFE compliance, and might also have negative safety consequences.

GM similarly stated that no change in the system of vehicle classification is necessary. Although some vehicles have been introduced that combine various car-like and truck-like features, GM believes that the distinction between passenger automobiles and trucks has not been removed.

Toyota stated that all manufacturers should be subject to the same set of standards for any given category, class, fleet or similar set of vehicles regulated under any type of CAFE program. Further, Toyota argued that NHTSA should not restructure the current CAFE system in such a way that would provide a disincentive for companies to achieve greater fuel economy than required.

Honda stated that SUVs and vans should be removed from the truck fleet. In addition, Honda asserted that large pick-up trucks are often used for work purposes, but adds that any exemption criteria, with respect to pick-up trucks, should include a minimum bed width and length. AIAM commented that weight or size based systems could either be incorporated into a continuous function or market segment classes in an attempt to reconcile the truck/passenger car distinction.

A number of individuals also responded to this question. Jordan Kwan suggested dividing the fleet into a separate and third category to include SUVs, minivans and extended cab pick-up trucks as light trucks used primarily for transporting passengers. Hans Meyer states that the classification of light trucks should be further broken down into subcategories by separating SUVs and minivans from pick-up trucks. He argues that manufacturers would have to improve the fuel efficiency of SUVs rather than use more fuel-efficient pick-up trucks to raise the average and suggests using passenger-seating space as a measurement to differentiate between the subclasses.

D. Credit Availability

The RFC also sought comments on the possibility of manufacturers being allowed the opportunity to trade fuel economy credits—either with each other or by averaging their own credits across different classes of their own vehicles. The use of credits in these ways was not well received by public interest groups, while industry generally viewed it favorably.

The Sierra Club outright opposed these uses of credits citing automakers' history of "gaming" the current credit program. ACEEE, Little, Gorlitsky, and Ng stated that cross-class averaging should not be permitted. Public Citizen suggested that any initial system should be designed conservatively so as not to create unexpected loopholes and was opposed to linking credits to a broader greenhouse gas reduction registry or credit system. The group was also concerned that allowing such uses of credits could jeopardize the effectiveness of penalties.

Some industry members and trade groups believe credit averaging and trading would improve the CAFE program by offering manufacturers a means of dealing with unexpected conditions and events. For example, AIAM noted that credit averaging between classes and between companies could provide manufacturers with increased compliance flexibility in dealing with unanticipated market shifts. AIAM also argued that a broad credit trading system would provide a strong incentive for manufacturers to earn credits through voluntary fuel economy improvements since there would be a strong likelihood that buyers would exist for the earned credits.

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[7] However, in its comments to the light truck NPRM, DC was more cautious of any effort to reform the CAFE program, stating: "No method to modify CAFE that has been described in the literature or discussed in the political debate is clearly superior to the current CAFE system in ensuring energy savings or a fair distribution of tasks."

DaimlerChrysler and Toyota supported credit trading for the same reasons. In addition, Honda believes that credit trading between companies in other sectors of the market would increase competitive bidding and pricing of the credits. However, Ford opposed a credit trading system on the basis that such a system would likely cause a transfer of wealth from domestic full line manufacturers to foreign companies.

Although GM expressed reservations about NHTSA's authority to permit credit trading, the company indicated that a broad credit trading system would prompt all manufacturers to exceed CAFE standards. Nissan and Honda both applauded the flexibility that a broad-based credit-trading program would introduce into the CAFE program. Nissan believed that credit trading would encourage innovation by allowing manufacturers the ability to risk the use of new technologies.

E. Two-Fleet Rule

Under what is known as the "two-fleet rule," manufacturers must, for CAFE purposes, place their domestically manufactured vehicles and non-domestically manufactured vehicles in separate fleets. Commenters, especially domestic manufacturers, generally expressed the view that the elimination of the two-fleet rule would not have major impacts on manufacturer actions. More specifically, the Alliance of Automobile Manufacturers suggested that this scheme might have encouraged the sourcing of non-domestic parts. Foreign manufacturers and trade associations generally believe the two-fleet rule is outdated and may constitute a trade barrier.

F. Separate Standards for Cars and Light Trucks

All public interest groups and individuals who commented believe that separate standards for cars and light trucks do not have any practical value under the CAFE standards. Sierra Club, ACEEE, IIHS, and PIRG called for the elimination of separate standards and advocated combining passenger automobiles and light trucks into a single class. IIHS suggested a single CAFE standard indexed to weight and cargo capacity. Public Citizen recognized that the car and truck fleets might not be combined absent Congressional authority, but stated that the loophole could be closed by substantially increasing the fuel standards for light trucks. If the rule is not eliminated, Public Citizen recommended utilizing a different set of criteria in distinguishing passenger automobiles from light trucks, such as ground clearance, four-wheel drive capacity, and/or tow weight.

G. Uniform Percentage Increase

While not addressed specifically in the RFC, the NAS study discussed a Uniform Percentage Increase (UPI) approach that would require every manufacturer to increase its current CAFE level by a specific percentage. Toyota, AIAM and AIADA opposed any efforts to adopt a uniform percentage improvement format. Toyota argued that UPI encourages manufacturers to "rush to the bottom" and violates that concept of "same vehicle, same standard." AIAM stated that a system that is fair and equitable to all manufacturers is one that applies the same standards to all manufacturers at the same time. AIADA argued that the UPI approach penalizes auto manufacturers who historically have made the greatest commitments to improving fuel economy.

Similarly, the Alliance and DaimlerChrysler asserted several negatives to a UPI approach including penalizing manufacturers for early CAFE improvements, not accounting for fleet mix changes, focusing only on new vehicles, not affecting consumer behavior, and impacting manufacturers differently.

IV. The EPCA and CAFE Reform

In its January 2002 report, the NAS suggested a number of reforms, including: applying an attribute-based system to a combined car and light truck fleet, creating a credit trading program between manufacturers, and eliminating the two fleet rule for foreign and domestic content. The agency does not believe that the EPCA provides it with the authority to implement such reforms. However, on February 1, 2002, Transportation Secretary Norman Mineta wrote a letter to Congress requesting the necessary authority to reform the CAFE program, guided by the NAS report's suggestions. While Congress has not yet provided such express statutory authority, there have been legislative proposals that would require the agency to consider the NAS report when establishing CAFE standards.

Unlike many statutes, the EPCA is a particularly prescriptive one. It contains a number of provisions providing specific definition and structure to the CAFE program. We set forth below those aspects of any CAFE program we tentatively believe to be required by the EPCA. However, we seek comment on whether the EPCA provides us with more or less authority to implement potential reforms to the CAFE program.

Our review leads us to believe that the language and structure of the EPCA requires that we state any CAFE standard in terms of "miles per gallon," that a CAFE standard for a class of any particular model year be considered as an "average," and that we apply a single standard for all passenger automobiles. The statute provides more flexibility to establish classes of vehicles within the light truck category than is the case with passenger automobiles.

The statute defines "fuel economy" in Section 32901(10) as the average number of miles traveled by an automobile for each gallon of gasoline used. The fuel economy of individual vehicle models is measured in accordance with procedures established pursuant to Section 32904(c).[8] For passenger automobiles, but not light trucks, Section 32904(c) commands that testing and measurement procedures be the same as used in 1975. This data is then used to derive a manufacturer's average fuel economy level for each fleet. For passenger automobiles, Section 32904(a)(1)(B) requires use of a formula that results in derivation of the harmonic sales weighted average of a manufacturer's fleet. For light trucks, Section 32904(a)(1)(A) provides that a manufacturer's average fuel economy shall be calculated pursuant to a formula established by regulation.[9]

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[8] Credit, penalty and alternative fuel incentive provisions are all predicated on the use of miles per gallon as a basic measure of fuel use. Because the statutory scheme relies on mpg as a basic unit of measure, we tentatively believe that any standard should either rely on mpg or be readily converted to a mpg measurement.

[9] The House Report for the Cost Savings Act suggests that Congress, while not mandating it, expected that a similar procedure would be used for light trucks: "Average fuel economy (except when used with non-passenger automobiles) is a production-weighted average of the fuel economy of the manufacturer's entire production of passenger automobiles in a model year (subject to the special rules for imports). It is intended that the rules of the Secretary would provide for a similar computation for each class of non-passenger automobile."

The EPCA expressly permits the implementation of different CAFE standards for differing classes of non-passenger automobiles (light trucks), but contains no evident corollary provision for passenger automobiles. Instead, embedded throughout the statute's terminology are references to a unified standard for passenger cars. The passenger car standard is established by statute. For non-passenger automobiles, Section 32902(a) directs the Secretary to establish average fuel economy standards and authorizes the establishment of different standards for different classes of these vehicles.

In light of these statutory constraints, the following sections present alternatives in three major areas for which the agency believes it clearly has the authority to implement reforms to the CAFE system: (1) Revising the structure of light truck standards to create differing classes of light truck CAFE requirements; (2) revising the vehicle classification definitions for determining whether a vehicle is a light truck or passenger car for CAFE purposes; and (3) increasing the weight limit for vehicles covered by CAFE standards from 8,500 lbs. GVWR to 10,000 lbs. GVWR. Although each option is presented separately on its own merits, the agency could consider combinations of various reforms. The impacts of various combinations have not been analyzed at this time. However, the agency welcomes comments regarding combinations of reforms.

V. The Structure of Light Truck Standards

In this section, two structural reforms for light truck standards are discussed. The first divides light trucks into two or more classes based on vehicle attributes. The second is an attribute-based "continuous-function" system, such as that discussed in the NAS report. In the discussion below, we have chosen measures of vehicle weight and/or size to illustrate the possible design of an attribute-based system. However, we also seek comment as to the merits of other vehicle attributes as the basis of an attribute-based system.

An attribute-based standard for light trucks based on vehicle weight is worthy of serious consideration for several reasons. First, a weight-based standard, by applying more stringent standards to lighter trucks, would reduce or eliminate the incentive for manufacturers to comply through downsizing, downweighting, or through offering for sale more products at the lighter end of the weight spectrum. These CAFE compliance strategies can increase safety risks and, depending on their application, could have safety implications if used with light trucks in the future. Second, a weight-based standard would provide a level playing field for manufacturers who choose a product mix tilted toward the low, middle, or heavy end of the light truck spectrum. Finally, a weight-based standard would provide an alternative basis for establishing "maximum feasible levels" of fuel economy, since the top performing vehicles within each weight class could, subject to mitigating factors (*e.g.*, acceleration capability and towing capacity), serve as a starting point for an analysis of the "maximum feasible level" of average fuel economy achievable by manufacturers competing in each weight class. Without the structure provided by weight classes, the determination of a "maximum feasible level" must be geared to the overall fleet.

The Japanese government is already using a simple weight-based standard to reduce fuel consumption in the transportation sector of the Japanese economy. There are eight weight classes in the Japanese system, which encompasses both cars and light trucks. Average fuel economy targets are set within each weight class, and the targets are more stringent for the lighter weight classes and less stringent for the heavier weight classes. The targets for gasoline-powered passenger vehicles were set for 2010 and represent about a 23% improvement in fuel economy compared to the 1995 baseline. Fuel economy targets are selected by a "top runner" method, whereby the targets for each weight class are established in part based on the best performing vehicle in that weight class. The original system was established without any opportunity for a multi-class manufacturer to average compliance across classes, as is the case in the present U.S. system (where manufacturers can "offset" under-compliance in one vehicle class on a one-for-one basis with over-compliance in the other). However, more recently the Japanese system was modified to allow "offsets" on a two-for-one basis: credits earned by a better-than-required fuel economy performance in one weight class are discounted by 50% when applied to compensate for worse-than-required performance in another weight class.

There are two basic objections to a weight-based system. The first objection is that such a system will increase the cost of compliance to manufacturers and consumers by removing the substitution of lightweight materials as a compliance strategy. Although this objection is theoretically valid, the NAS—after examining a wide range of CAFE compliance strategies—did not find the substitution of lightweight materials to be one of the more cost-effective strategies. Thus, it is not clear how important this objection will be for near-term regulatory policy.

The second objection is that a weight-based standard might not reduce fuel consumption because it will permit or cause light trucks to become larger and heavier over time. Consumers may demand larger light trucks and/or manufacturers may offer heavier light trucks if they are regulated less stringently. If more light trucks are offered in the heavier weight classes, it is theoretically possible that the overall fuel economy of the fleet would not increase significantly or might even decline under a weight-based standard. In order to prevent such an outcome, some have suggested that a weight-based standard must be accompanied by an overall fuel economy target for the entire light-truck fleet.

Although some of the fuel savings under a weight-based standard may be offset by "upsizing" or "weight creep," it would not be wise to reject a weight-based standard on the basis of this argument alone. First, over time, the relative stringency of the standards for different weight classes can be adjusted or new weight classes created in order to dampen or eliminate any incentives to "upsize" into the less stringent class. Second, it is instructive to note that the Japanese government did not accompany their weight-based standards with a binding target for the entire fleet of new vehicles. It is too early to draw firm conclusions from the Japanese experience, but the early evidence suggests that the overall fuel economy of the Japanese fleet improved about 5% from 1995 to 2000, despite some upsizing trends in that fleet. Third, while vehicle manufacturers can be expected to make small, strategic adjustments in the weights of products that happen to be on the border between two weight classes, it is doubtful that they would make a vehicle significantly heavier (and possibly more expensive)—beyond what consumers demand—simply to be classified in a slightly more permissive weight class. Light truck manufacturers know that product design decisions must be made on the assumption that a particular design will be produced for at least 4 to 8 years and they know that fuel economy standards—and definitions of weight classes—could be changed during the life of a product. Finally, any strategic behavior by vehicle manufacturers would be much greater under the current CAFE system than under a Japanese-style, weight-based standard because the compliance incentive to "upsize" from cars to light trucks is quite large (27.5 mpg versus 20.7 mpg in model year 2004) now and would be lessened by the creation of multiple classes of light trucks.

Although the Japanese system uses vehicle weight as the key attribute, a measure of vehicle size, such as "shadow" (defined as exterior length multiplied by vehicle width), warrants further examination. A size-based standard would reduce or eliminate any incentive to downsize vehicles, thus contributing to safety. Vehicle width contributes to a vehicle's stability (thereby reducing rollover risk) while vehicle length provides "crush space" for occupant protection. However, the empirical relationships between size and safety are less well known than the relationships between weight and safety. We seek further comments on the relative merits of a size versus weight-based approach.

A key question for attribute-based class systems is whether a manufacturer should be permitted to count superior fuel economy in one class to compensate for less-than-required fuel economy in another class. The EPCA does not directly address this issue, and the legislative history with regard to it is ambiguous. The EPCA conference committee report suggests (at p. 159) that Congress either intended that credit trading be disallowed between passenger automobiles and non-passenger automobiles or that it be disallowed between established classes of non-passenger automobiles:

> "Any credit earned under this provision by exceeding an average fuel economy standard applicable to passenger automobiles may only be applied against a civil penalty assessed for failure to comply with an average fuel economy standard applicable to passenger automobiles. With respect to non-passenger automobiles, any credit earned under this provision may only be applied to automobiles of the same class for which the credit was earned.

The reference to "the same class" may imply a Congressional intent to limit credits to the particular class of non-passenger automobiles. The statute itself, however, appears to use the term more precisely to distinguish between passenger automobiles and non-passenger automobiles. Section 32903(e) states that:

> Credits for a manufacturer of automobiles that are not passenger automobiles are earned and applied to a model year in which the average fuel economy of that class of automobiles is below the applicable average fuel economy standard under section 32902(a) of this title, to the same extent and in the same way as provided in this section for passenger automobiles.

The phrase "that class of automobiles" appears to refer to those that are not passenger automobiles, rather than to different classes of non-passenger automobiles.

When enacted in the 1970s, the EPCA anticipated averaging among classes, or 1-to-1 credit averaging. More recent credit trading constructs, however, may advance the goals of the EPCA in ways not directly anticipated during that time. For example, a credit system like the one employed by the Japanese could advance the energy conservation objectives of the statute (by encouraging over-compliance due to the 2-to-1 ratio in credits), while providing valuable compliance flexibility to vehicle manufacturers.

Proponents of discounting credits, such as the Japanese averaging system described above, argue that discounts are beneficial because they guarantee greater fuel savings than would occur without discounting. In the Japanese example, only half the fuel economy in excess of a standard may be used to offset vehicles that would not otherwise meet the standard. The remaining half would effectively be applied to greater fuel economy. As a consequence, to the extent that manufacturers make use of averaging, the overall level of fuel economy they achieve will be greater with discounts than without, other things equal.

Opponents of discounting point out that discounting effectively functions as a tax on averaging. As such, it will reduce the amount of averaging that would otherwise take place and diminish the cost savings that averaging could provide. The magnitude of the deterrent effect of a discount is directly related to its magnitude.

The general trend in Federal averaging programs in environmental regulation is away from discounting credits. For example, the Environmental Protection Agency typically mandates discounts on averaging and trading programs only in special cases, such as to account for uncertainties in how credits are calculated or enforced. Comments on the merits of different options for averaging across vehicle classes, as well as comments on whether NHTSA has the statutory authority to consider such options, are requested.

Below we discuss in more detail a range of different attribute-based standards. We seek comment on each system presented with regard to practical considerations, such as lead-time, potential approaches to a phase-in and the treatment of credits and penalties during a transition period. We seek comment on potential ideas that would discourage or preclude the possibility of manufacturers' increasing the weight and size of their vehicles under each system, which could actually lower fleet fuel economy and—if concentrated at the high end—have negative safety implications. We also seek comments on whether other measures of vehicle utility, such as payload capacity, interior volume, number of designated seating positions, towing capacity, etc., could be utilized as attributes, and how each of these systems would possibly operate.

A. Two or More Classes of Light Trucks

With the exception of different standards for 2-wheel vs. 4-wheel drive trucks, to date the agency has not attempted to create differing classes of light trucks. The creation of two or more light truck classes might have many benefits. The use of multiple classes might allow standards to better reflect the fuel economy potential of different vehicle types. Minivans, for example, tend to have greater fuel economy than SUVs, and many SUVs have greater fuel economy than pickup trucks. A system with multiple light truck classes could distinguish between these types of vehicles and more closely align them with their real-world use and performance.

One possible approach would be to divide light trucks into two weight or size classes, one above and one below the vehicle weight identified in NHTSA's updated size and safety study as the point where weight reductions begin to produce fleet-wide or net safety benefits. The light trucks having an attribute that is above this weight "break point" (or a comparable size "break point" derived from the weight "break point") would be subjected to a relatively more challenging (but still feasible and practicable) fuel economy standard than the other class of trucks. This would provide some incentive to downweight or downsize these larger vehicles to improve their fuel economy, and as a result, may improve the overall safety of the light vehicle fleet. This approach would appear to achieve some of the same objectives as the continuous function weight-based system suggested by the NAS committee.

In determining possible classes under a weight-based or a size-based system, an analysis was performed to attempt to identify analogous classes under both systems. This analysis attempted to identify a logical safety plateau for size that coincides with the weight safety plateau in a two-class system. The results show a good correlation between size and weight. However, there are no absolute matches between vehicles in each of the size or weight classes. This is largely due to vehicles with a somewhat smaller size having the same or greater weight than larger vehicles. These vehicles are generally SUVs that are designed to be very capable in off-road situations in addition to their utility for carrying people and cargo.

Under a weight-based scenario, it appears that a logical break point would be at a vehicle curb weight of above 4,900 pounds. This is consistent with the approximate safety plateau weight (5,085 lbs.) reported in NHTSA's updated size and safety study regarding the point at which weight reduction would have safety benefits.[10] Setting the break point at this weight also enables multiple configurations of some vehicles to stay within the same weight class, providing manufacturers with flexibility in meeting the potential standard that could be established for this class. This weight is based on the composition of the MY 2002 light truck fleet and may need to be adjusted depending on the composition of the light truck fleet in future model years. The break point of 4,900 pounds was chosen because vehicles weighing in excess of that weight appear to be the ones most likely to be used for commercial and agricultural purposes. If the break point was raised to 5,085 lbs., many vehicles designed for commercial and agricultural purposes would be lumped together with vehicles generally designed for carrying passengers in a lower weight class. Including many of these vehicles weighing in excess of 4,900 lbs. in a lower weight class could remove any incentive manufacturers may have to downweight or downsize these larger vehicles to improve their fuel economy, and as a result, possibly improve the overall safety of the light vehicle fleet.

Vehicles with curb weights above 4,900 pounds include the heaviest SUVs. They also include the heavier full-size pickup trucks, such as those with a larger cab and those with long cargo beds, and long-wheelbase cargo and passenger vans. If manufacturers choose to reduce the weight of these heavier light trucks to achieve higher fuel economy, there might be an overall improvement in the safety and compatibility of the light-duty fleet.

Under a size-based scenario, the analysis looked at a measure of vehicle "shadow" (length multiplied by width in square inches) as the size parameter. We determined a logical safety break point to be a size of at least 16,001 square inches. As noted, this break point is derived from the weight break point. This class of vehicles would include the biggest SUVs, but not necessarily all of the vehicles in the over 4,900 lb GVWR weight class. It would also include all full-size pickup trucks and all full-size cargo and passenger vans. These vehicles appear to be the ones most likely to be used for commercial and agricultural purposes and generally have lower fuel economies than other light trucks.

Another approach to refining the light truck CAFE program would be to create multiple classes of light trucks based on vehicle weight or size. Such a system might increase fuel savings by giving regulators the ability to set different standards for vehicles with different capabilities. A multiple size class system recognizes that some vehicles must, to fulfill their functions as trucks, be large and use more fuel. Such a system would create a variety of classes, each aimed at a particular segment of the light truck fleet.

An example of a multiple class system can be found in Japan. The Japanese government has implemented fuel economy standards pursuant to the Law Concerning the Rational Use of Energy. With regard to light trucks, the Japanese have established fuel economy performance targets for eight classes of gasoline-fueled trucks. These eight classes are divided by vehicle weight and range from small cars (under 1,547 lbs) up to large trucks (above 3,342 lbs). The lightest two classes each encompass 125 kilogram (275 lb.) intervals, while the largest 6 classes encompass 250 kilogram (551 lb.) intervals. Standards are set by identifying a "top runner"—a vehicle with the best fuel economy performance within a particular segment—and requiring the sales weighted average of all vehicles within that segment to meet the top runner's performance at a future date. If a manufacturer exceeds the performance required in a certain segment, it earns credits that may be applied to offset a failure to meet the requirements in another segment. However, any credits used in this fashion are discounted by 50% before they are applied.

The "top runner" concept emphasizes the technological feasibility of achieving fuel economy within a certain class. While NHTSA must also consider other factors such as economic practicability and safety when establishing CAFE standards, the Japanese concept of creating various classes of light trucks might be employed. In determining possible classes under a weight-based or a size-based system, an analysis was performed to attempt to identify logical classes. This analysis attempted to identify a logical safety break point for both weight and size in a four- and five-class system based on available data for MY 2002 light trucks.

The agency has attempted to separate vehicles into possible classes with those having similar utility, function and capability. In arriving at the possible weight and size classes, NHTSA took into consideration all available information regarding the future light truck market and took measures to assure that new vehicles would be placed in appropriate classes. NHTSA is well aware that many of the attributes of the MY 2002 fleet may change by MY 2008, with some of these vehicles being discontinued and others being newly introduced into the market.

The agency is also considering defining either a weight-based, multi-class system or a size-based, multi-class system. Each system incorporates the safety break point discussed in the two-class system described above (4,900 lbs. or comparable size), and then creates either three or four additional classes.

Under a four-class system, the possible weight classes are (1) up to 3,400 pounds curb weight; (2) from 3,401 pounds to 4,300 pounds curb weight; (3) from 4,301 pounds curb weight to 4,900 pounds curb weight; and (4) above 4,900 pounds curb weight. In a five-class system, the second weight class could be broken out into two separate weight classes: (i) from 3,401 pounds to 3,900 pounds curb weight and (ii) from 3,901 pounds to 4,300 pounds curb weight.

The class of light trucks up to 3,400 pounds curb weight would comprise almost all car-based SUVs, many small pickup trucks powered by 4-cylinder engines with standard cabs and short beds, and some smaller SUVs with off-road capability. As a class, these vehicles had an average fuel economy of 26.6 mpg based on the MY 2002 fleet.

The 3,401 pounds to 4,300 pounds curb weight class would comprise many small- to medium-sized 2WD SUVs, most minivans, medium-sized crossover vehicles, small pickup trucks powered by 6-cylinder engines with extended cabs and long beds, some full-size pickup trucks with standard cabs and short beds, and medium-sized cargo and passenger vans. As a class, these vehicles had an average fuel economy of 22.0 mpg based on the MY 2002 fleet.

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[10] The interval estimate of the safety break point in the NHTSA study ranges from 4,224 to 6,121 pounds. The range suggests considerable uncertainty regarding the exact location of the safety break point in MY 1991–1999. Setting the upper weight class at over 4,900 pounds is well within this range.

This weight range can be broken down into two additional weight classes. These separate weight classes would be from 3,401 pounds to 3,900 pounds curb weight and from 3,901 pounds to 4,300 pounds curb weight. The lighter weight class would comprise mostly smaller SUVs, medium-sized crossover vehicles and 2WD small pickup trucks. As a class, these vehicles would have an average fuel economy of 22.6 mpg based on the MY 2002 fleet.

The higher weight class would mostly comprise medium-sized 2WD SUVs, the larger minivans, 4WD small pickup trucks, some full-size pickup trucks with standard cabs and short beds, and medium-sized cargo and passenger vans. As a class, these vehicles would have an average fuel economy of 21.8 mpg based on the MY 2002 fleet.

The 4,301 pounds to 4,900 pounds curb weight class would comprise many medium-sized 4WD SUVs, some medium-sized 2WD SUVs, a few larger minivans including those with 4WD, medium-sized pickup trucks, some full-size pickup trucks with standard cabs and short beds, some with 4WD, and some short-wheelbase cargo and passenger vans. As a class, these vehicles would have an average fuel economy of 19.7 mpg based on the MY 2002 fleet.

As noted above, vehicles with curb weights above 4,900 pounds include the heaviest SUVs and the heavier full-size pickup trucks, such as those with larger than the standard cab and those with long cargo beds, and long-wheelbase cargo and passenger vans. As a class, these vehicles would have a MY 2002 average fuel economy of 17.7 mpg.

Under a size-based scenario, the analysis looked at exterior vehicle "length times width" (sq. in.) as the size parameter. It appears that a logical safety break point is vehicles that have a size above 16,000 sq. in. (111 sq. ft.) As a class it appears that these vehicles would have an average fuel economy of 18.3 mpg based on the MY 2002 fleet. This size delineation generally corresponds to the distinction between vehicles weighing less and more than 4900 lbs.

Under a 4-class system, the possible size classes are (1) up to 12,450 sq. in. (86.5 sq. ft.); (2) from 12,451 sq. in. to 14,500 sq. in. (86.5 sq. ft. to 100.7 sq. ft.); (3) from 14,501 sq. in. to 16,000 sq. in. (100.7 sq. ft. to 111 sq. ft.); and (4) greater than 16,000 sq. in. (112 sq. ft. or more). Under a 5-class system, the second size class could be broken out into two separate size classes (i) from 12,451 sq. in. to 13,100 sq. in. and (ii) from 13,101 sq. in. to 14,500 sq. in.

The up to 12,450 sq. in. size class would comprise almost all car-based SUVs and many smaller SUVs that have very capable off-road ability, such as Jeep Wranglers. As a class, these vehicles would have an average fuel economy of 23.8 mpg based on the MY 2002 fleet. In comparing the smallest size class to that of the lightest weight class, one may have expected the average fuel economy for each class to be much closer. The lower average fuel economy associated with the smallest size class is largely caused by the inclusion of some small, heavy SUVs in this class. Many of those same vehicles would reside within heavier weight classes under a possible weight-based system.

The 12,451 sq. in. to 14,500 sq. in. size class would comprise the vast majority of the personal use SUV and crossover market, all small and medium-sized pickup trucks (except those with "crew cabs") and minivans with smaller wheelbases than those in the next largest size class. As a class, these vehicles would have an average fuel economy of 20.9 mpg based on the MY 2002 fleet.

This size class can be broken down into two additional size classes. As discussed earlier, these separate size classes would be from 12,451 sq. in. to 13,100 sq. in. and from 13,101 sq. in. to 14,500 sq. in. The smaller size class would comprise mostly smaller personal use SUVs, and many of the smaller pickup trucks. As a class, these vehicles would have an average fuel economy of 22.4 mpg based on the MY 2002 fleet. The larger size class would comprise the vast majority of the medium-sized personal use SUV and crossover market, the remaining small and medium-sized pickup trucks (except those with "crew cabs"), and minivans with smaller wheelbases. As a class, these vehicles would have an average fuel economy of 20.7 mpg based on the MY 2002 fleet.

The 14,501 sq. in. to 16,000 sq. in. size class would comprise many full-sized SUVs (*i.e.*, those without extended wheelbases), many larger minivans, some large crossover vehicles, some medium-sized pickup trucks with "crew cabs," and all medium-sized cargo and passenger vans. As a class, these vehicles would have an average fuel economy of 20.8 mpg based on the MY 2002 fleet. Although it is logical to expect the 14,501 sq. in. to 16,000 sq. in. size class to have a lower CAFE than the next smallest size class, it's instructive to note that this size class is comprised of a large quantity of minivans that possess relatively high fuel economies. Because CAFE is a sales-weighted average, the MY 2002 average fuel economy for this class is not unexpected.

The 16,001 sq. in. and up size class would comprise all full-size pickups, all full-size cargo/passenger vans, and the largest of the full-size SUVs (*i.e.*, those with extended wheelbases). As a class, these vehicles would have an average fuel economy of 18.3 mpg based on the MY 2002 fleet.

Although these possible weight and size classes exhibit a fair correlation between classes, especially in regards to the overall quantity of vehicles in each relative class, there are no absolute matches between vehicles in each of the relative classes. This is largely due to vehicles with smaller sizes weighing more than other vehicles in the same size class. Specific examples include some of the larger minivans, some luxury imported SUVs, and some small off-road capable SUVs (*i.e.*, Wrangler, Rodeo Sport).

The above discussion focused on two, three and four category class systems with specific boundaries. There is no reason that systems with more categories, or different category boundaries cannot be considered. The agency invites comment on both the number of classes in a system and the delineation of categories within a classification system.

While it has advantages, a multiple class weight or size-based classification system may also present some disadvantages. Because the CAFE standard for each class would likely decrease as the weight or size of the vehicles in each class increased, the system might encourage manufacturers to increase vehicle weight or size at or near each upper boundary. This "size or weight creep" could result in increased overall fuel consumption. The agency notes that a size-based system might be less susceptible to that problem. Further, if manufacturers are unable to average credits between classes, a system with many classes would lack the flexibility of one with a single class or just two classes.

B. Functional Attribute-Based System

1. Weight-Based Standard

It is possible that future CAFE standards could be based on a continuous function relating one or more attributes to fuel economy. The NAS report suggested the adoption of a fuel economy standard that decreases as vehicle weight increased. One of the principal advantages of a weight-based system, according to the NAS, is that it removes the incentive to reduce vehicle weight to improve fleet fuel economy, and thereby helps to improve safety.

A simple weight-based standard could be based on a relationship in which fuel consumption (gallons per mile) varies with respect to curb weight. Compared to a single value standard, a simple weight-based standard could discourage manufacturers from complying by reducing vehicle weight or reduce the incentive that exists under the current program. However, NHTSA's updated size and safety study suggests that fleet-wide safety is unlikely to be compromised—and may actually be enhanced—by modest reductions in the weight of vehicles of curb weight greater than approximately 5,000 pounds. Such considerations led the NAS to suggest a standard that would be weight-based below 4,000 pounds and fixed for vehicles weighing above 4,000 pounds.[11] This concept is illustrated in Figure 1.

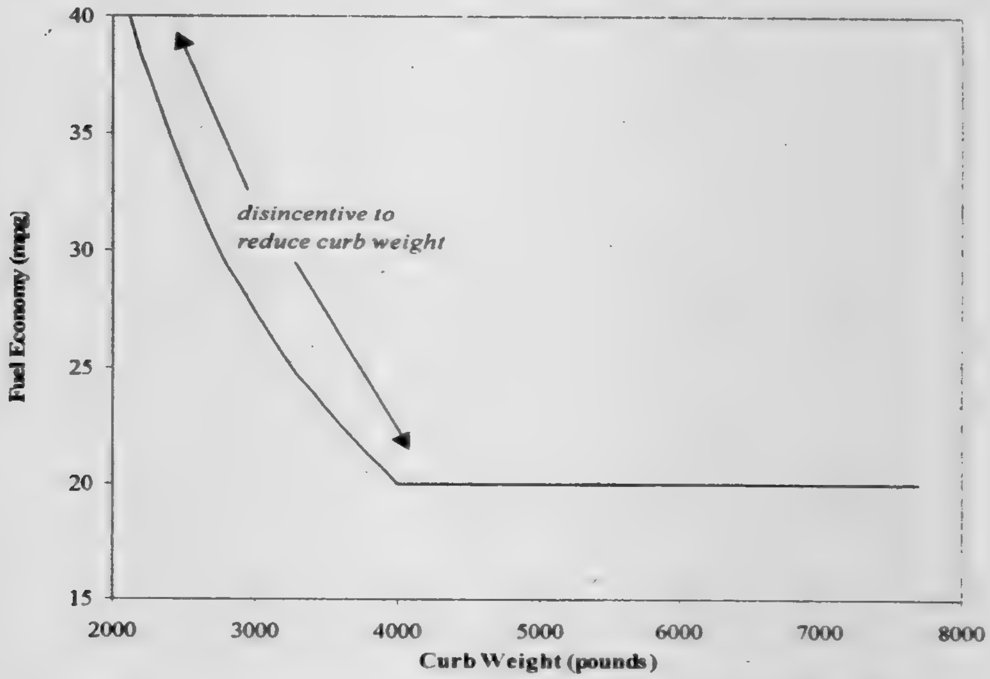

Figure 1. NAS E-CAFE Standard (mile per gallon basis)

As observed by the NAS, while limiting the incentive to reduce the weight of lighter vehicles, this approach would create "a strong set of incentives to improve the fuel economy of the heaviest vehicles." (NAS, p. 108) As is true under the current fixed-value CAFE system, the E-CAFE standard would not discourage weight reduction as a compliance strategy above this 4,000-pound break point.

Using the NAS E–CAFE concept as a model, we have considered how such a weight-based standard might be applied to the light truck fleet. We considered a similarly discontinuous function with a fixed value at curb weights over 5,000 pounds. However, our analysis is focused on light trucks alone, rather than light trucks and cars together. For illustrative purposes, we used the prevailing standard for passenger cars, 27.5 mpg, as a constant at the lower end of the truck weight range. Because this function involves discontinuities near which behavior might be distorted, we also examined a continuous function (in this case, a logistic function) that approaches limits equal to the constant-value segments of the discontinuous function.

To better understand the implications of these two potential standards, we used data for the MY 2002 fleet and adjusted the constants for each function until the stringency as applied to the overall industry was equivalent to the stringency under the baseline standard (*i.e.*, a constant-value standard of 20.7 mpg). The individual data points plotted in Figure 2 show the curb weights and fuel economies of different light truck models sold in MY 2002. The dashed line shows the constant-value 20.7 mpg standard applicable in MY 2002. The two solid lines show weight-based standards that would have been equivalent in stringency (*i.e.*, that given the same mix of vehicles, would have resulted in the same net fines required) to the constant-value 20.7 mpg standard. The cross-marked solid line shows a standard modeled on the NAS E–CAFE approach and an underlying linear dependence of fuel consumption on curb weight. The unmarked solid line shows a standard that uses an underlying logistic dependence of fuel consumption on curb weight. While these examples both originated from statistical analysis of the MY 2002 data, because a CAFE standard fulfills a prescriptive rather than descriptive purpose, there is no a priori reason any attribute-based standard for a future model year would need to fit the historical data.

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[11] It should be noted that the 4,000 lb. break point identified by NAS is not based on the updated NHTSA size and safety study, and that the point selected by NAS reflects a system that combines both cars and light trucks into a single category. Therefore, that break point might not be appropriate under the system considered here.

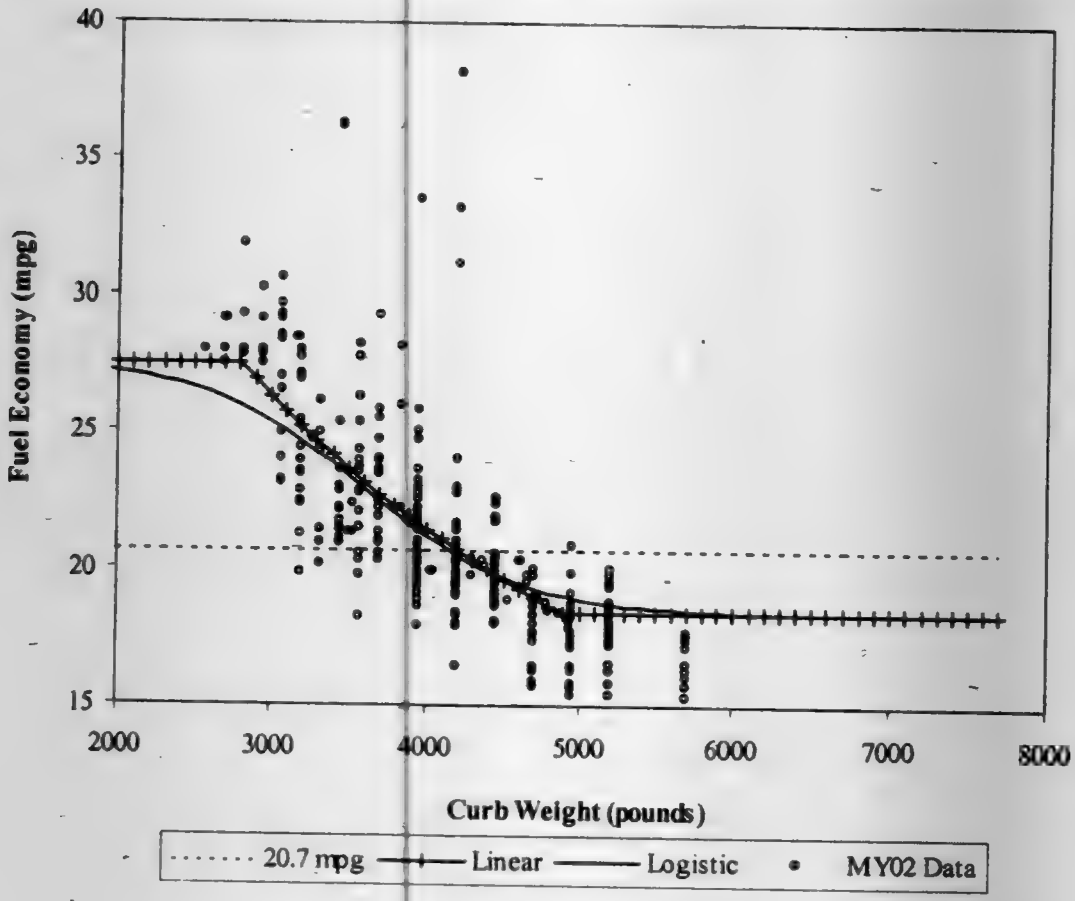

Figure 2. Weight-Based Standards

Figure 2. Weight-Based Standards

A primary concern with any attribute-based standard is the impact that such a standard could have on safety. Because fuel economy is heavily influenced by vehicle weight, the current standard for light trucks provides an incentive to reduce vehicle weight throughout the entire range of light trucks. Agency analysis indicates that safety would likely be preserved or even improved if such weight reductions were applied primarily to heavier light trucks. Therefore, the weight-based standards considered here would introduce a disincentive to reduce the weight of vehicles with curb weights below 5,000 pounds, but would also provide an incentive to reduce the weight of heavier vehicles.

A weight-based standard would have different impacts on different manufacturers based on the characteristics of their respective fleets. Depending on the uncertain economics and market implications of weight increases for vehicles below 5,000 pounds, a weight-based standard could possibly induce manufacturers to increase the weight of these vehicles and inhibit substantial increases in fuel economy. Nevertheless, the existence and extent of this effect will depend on the precise level of stringency that is established in future rulemaking, which will set the CAFE standard at the "maximum feasible" level subject to the existing statutory criteria.

2. Size-Based Standards

Vehicle size, expressed as "shadow," may present an alternative measure for a similar system. A size-based CAFE standard would help to hold size, rather than weight, constant while improving fuel economy. While the relationship between weight and safety has been more fully reviewed (and generally focuses on the effects of vehicle incompatibility), using shadow as a measure may encourage manufacturers to build vehicles with greater rollover resistance.

In order to evaluate the possibility of using a size-based system, we performed a similar analysis to that described above for weight-based standards. Consistent with the class-based approach discussed above, we considered standards that assumed or approached a constant value for all trucks whose "size" or shadow was greater than 111 square feet (16,000 square inches) in order to preserve neutrality with respect to downsizing as a compliance strategy for the largest vehicles. We also limited this standard to a maximum of 27.5 mpg for the smallest vehicles. As we did for weight-based standards, the agency considered both a discontinuous (piecewise linear) standard and a continuous (logistic) standard.

After developing these formulas, we then applied them to the MY 2002 model year in a fashion similar to that shown above for the weight-based standards. Using model year 2002 data, both standards were constructed to provide industry-wide stringency equivalent to the baseline constant-value standard of 20.7 mpg. These size-based standards are shown graphically in Figure 3, where the MY 2002 CAFE standard of 20.7 mpg is represented by a dashed line.

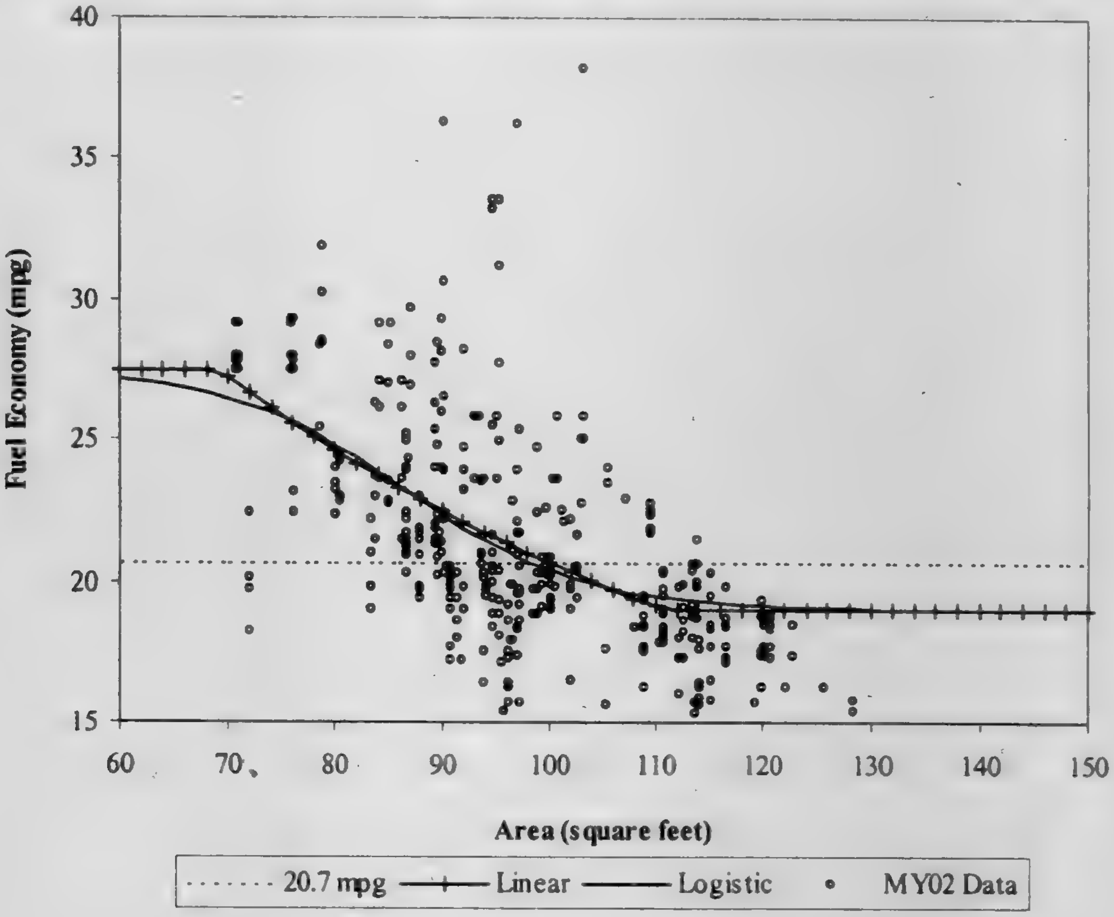

Figure 3. Size-Based Standards

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Analogous to the weight-based standards shown in Figure 3, the size-based standards shown in Figure 3 would introduce a disincentive to reduce the size of most vehicles of size less than approximately 110 square feet. Because of the relationships between size, weight, and fuel economy, NHTSA expects that this would provide a more positive safety incentive than a constant-value function due to the fact that, given similar height and weight, a larger vehicle usually provides greater occupant self-protection than the smaller vehicle.

A size-based standard would also entail similar concerns regarding the potential that fuel savings would be lower than expected because manufacturers would increase the size of many smaller vehicles (below 110 square feet). As under either a constant-value or weight-based standard, though, NHTSA would address this concern through the normal process of regularly updating light truck standards.

3. Mixed Attribute-Based Standards

Because weight-based and size-based standards would likely have different safety and economic implications, we also considered standards defined by functions of both weight and size. The first approach we considered was based on a functional form suggested in a recent report by Argonne National Laboratory.[12] This form begins with a linear dependence of fuel consumption (in gallons per mile, or gpm) on curb weight, but then provides "extra credit" for "weight-efficient" vehicles—that is, vehicles with curb weights that are not unusually heavy relative to their sizes. Table 3 and Figure 4 show how such a mixed standard might appear if applied to the light truck fleet at a level of overall stringency equivalent to a 20.7 mpg constant-value CAFE standard.[13]

TABLE 3.—WEIGHT-BASED STANDARD (MPG) WITH "EXTRA CREDIT" FOR "WEIGHT EFFICIENCY"

Curb weight (lb)	Area (square feet)									
	60	70	80	90	100	110	120	130	140	150
2000	33.5	32.7	32.2	31.9	31.6	31.3	31.1	30.9	30.8	30.7
2500	30.3	29.5	28.9	28.4	28.1	27.8	27.6	27.4	27.2	27.1
3000	27.9	27.0	26.3	25.8	25.4	25.1	24.9	24.7	24.5	24.3
3500	26.1	25.0	24.3	23.8	23.3	23.0	22.7	22.5	22.3	22.2

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[12] Argonne National Laboratory, "Examining the Potential for voluntary Fuel Economy Standards in the United States and Canada" Argonne, IL, October 2002.

[13] The standard shown is of the following form: gpm = a*(b*CW-c)*[d-e*CW/(f*A-g)], where CW is curb weight, A is area, and a, b, c, d, e, f, and g are constants.

TABLE 3.—WEIGHT-BASED STANDARD (MPG) WITH "EXTRA CREDIT" FOR "WEIGHT EFFICIENCY"—Continued

Curb weight (lb)	Area (square feet)									
	60	70	80	90	100	110	120	130	140	150
4000	24.7	23.5	22.7	22.1	21.7	21.3	21.0	20.8	20.6	20.4
4500	23.7	22.3	21.4	20.8	20.3	19.9	19.6	19.3	19.1	18.9
5000	22.9	21.4	20.4	19.7	19.2	18.7	18.4	18.1	17.9	17.7
5500	22.3	20.6	19.6	18.8	18.2	17.8	17.4	17.1	16.9	16.7
6000	21.9	20.1	18.9	18.0	17.4	16.9	16.6	16.3	16.0	15.8
6500	21.7	19.6	18.3	17.4	16.7	16.2	15.8	15.5	15.2	15.0
7000	21.6	19.3	17.9	16.9	16.2	15.6	15.2	14.9	14.6	14.3
7500	21.7	19.1	17.5	16.4	15.7	15.1	14.7	14.3	14.0	13.8
8000	22.0	19.0	17.2	16.1	15.3	14.7	14.2	13.8	13.5	13.2

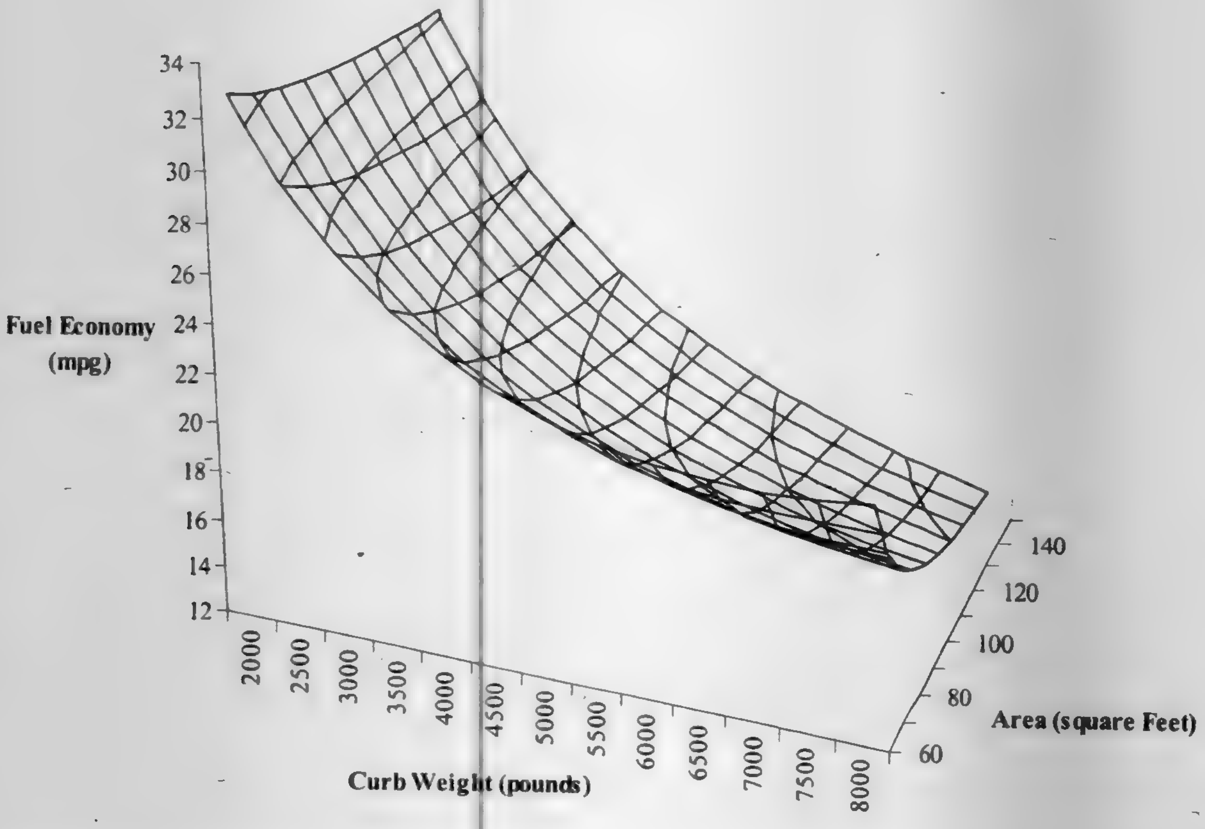

Figure 4. Weight-Based Standard with "Extra Credit" for "Weight Efficiency"

Figure 4. Weight-Based Standard with "Extra Credit" for "Weight Efficiency"

Similar to the weight-based standard shown in Figure 2, this standard would generally discourage weight reduction as a compliance strategy. This standard would also generally discourage size reduction, though not as strongly as the size-based standard shown in Figure 3.

Depending on the specific constants chosen, the standard could theoretically encourage compliance through weight reduction rather than other means (such as powertrain efficiency) for some vehicles. For the function shown in Figure 4, this would occur for vehicles that are simultaneously smaller than 70 square feet and heavier than 7000 pounds. Manufacturers may opt to reduce the weight of such vehicles in order to take advantage of a lower standard at lighter vehicle weights. However, such vehicles would be both smaller and heavier than all of the vehicles in the current U.S. fleet. Thus, further weight reduction appears to be an unlikely compliance strategy. Additionally, reducing the weight of such heavy vehicles would most likely improve highway safety.

The mixed standard would also discourage weight reduction as a compliance strategy even for vehicles with curb weights well above 5,000 pounds and, as mentioned above, would not strongly discourage size reduction. At low curb weights (less than 3,000 lbs.) and small sizes, this standard would impose class targets that exceed the existing 27.5 mpg standard for passenger cars.

We also considered a mixed standard that would combine the logistic weight- and size-based standards shown in Figure 2 and Figure 3, respectively. This approach is illustrated by the standard shown in Table 4 and Figure 5. Like the standard shown in Table 3 and Figure 4, this standard has a gradual "bowl" shape over most of the relevant region.

However, this logistic standard approaches an upper limit of 27.5 mpg limit at low curb weights and sizes as well as a lower limit at high curb weights and sizes.[14]

TABLE 4.—LOGISTIC WEIGHT- AND SIZE-BASED STANDARD (MPG) WITH "EXTRA CREDIT" FOR "WEIGHT EFFICIENCY"

Curb weight (lb)	Area (square feet)									
	60	70	80	90	100	110	120	130	140	150
2000	27.5	27.5	27.4	27.3	27.2	27.1	27.1	27.1	27.1	27.1
2500	27.5	27.4	27.2	26.9	26.6	26.5	26.4	26.4	26.4	26.4
3000	27.4	27.3	26.8	26.1	25.5	25.2	25.0	25.0	25.0	25.0
3500	27.3	27.0	26.1	24.8	23.6	23.0	22.7	22.7	22.7	22.6
4000	27.2	26.6	25.3	23.1	21.4	20.6	20.3	20.2	20.1	20.1
4500	27.1	26.3	24.5	21.9	19.8	18.9	18.5	18.4	18.4	18.4
5000	27.1	26.2	24.2	21.2	19.0	18.0	17.7	17.5	17.5	17.5
5500	27.0	26.1	24.0	21.0	18.7	17.7	17.3	17.2	17.1	17.1
6000	27.0	26.1	23.9	20.9	18.6	17.5	17.2	17.0	17.0	17.0
6500	27.0	26.1	23.9	20.8	18.5	17.5	17.1	17.0	17.0	16.9
7000	27.0	26.1	23.9	20.8	18.5	17.4	17.1	17.0	16.9	16.9
7500	27.0	26.1	23.9	20.8	18.5	17.4	17.1	17.0	16.9	16.9
8000	27.0	26.1	23.9	20.8	18.5	17.4	17.1	17.0	16.9	16.9

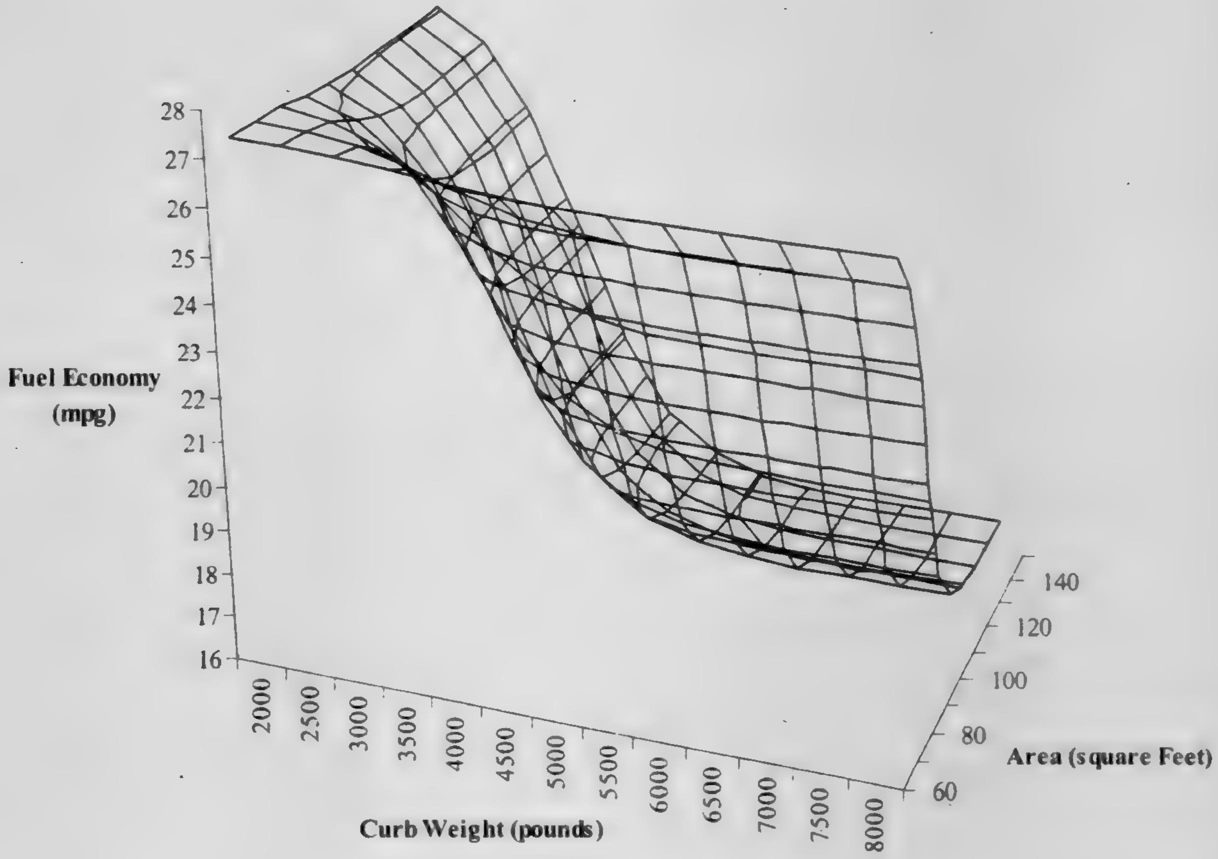

Figure 5. Logistic Weight- and Size-Based Standard

Figure 5. Logistic Weight- and Size-Based Standard

Similar to the standard shown in Figure 4, this standard would discourage both weight and size reduction. However, the logistic weight- and size-based standard shown in Figure 5 would more clearly focus this disincentive on those vehicles for which such reductions would most likely entail safety penalties. This standard would remain neutral with respect to size and weight reduction as a compliance strategy for the largest vehicles. For the smallest vehicles, this standard would be constrained by the constant-value standard for passenger automobiles.

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[14] Approximately 16.8 mpg for an overall stringency equivalent to a constant-value standard of 20.7 mpg.

C. Fixed Attribute System

A variant of the functional attribute system described above is a "fixed" attribute system.[15] The key difference is that, under a fixed attribute system, the relevant vehicle attribute(s) are "fixed" for each manufacturer at the levels reflecting that manufacturer's fleet mix in some prior ("reference") model year. For example, each manufacturer's vehicle weight mix might be "fixed" for as long as the standard remains in place.[16] The manufacturer would, of course, be free to vary the attribute levels in subsequent years, but its CAFE target in any future year would continue to be based on its vehicle attribute level in the reference year. A fixed attribute system would, in essence, "lock in" a corporate fleet's reference-year attribute (*e.g.*, weight or size) for the purpose of regulation. This approach was devised to address the potential for upsizing/weight-creep that could occur in a functional weight-based system.

Under a fixed attribute system, each manufacturer's overall effective CAFE for any given model year is determined by the CAFE standard and the mix of vehicles it produced in some prior ("reference") model year. For any given model year subject to a fixed-attribute standard, each manufacturer's effective CAFE target is independent of the mix of vehicles it produces. If, for example, manufacturer A produced a lighter vehicle mix than manufacturer B in the reference year, it would be subject to a more stringent effective CAFE than manufacturer B, even if manufacturer B chose a lighter vehicle mix than manufacturer A in a subsequent model year. Thus, compared to a functional attribute system, a fixed attribute system provides a somewhat different set of incentives. If, for example, weight is the relevant attribute, a fixed attribute system provides a relatively greater disincentive to increase (and relatively greater incentive to decrease) weight and than under a functional attribute system.

Given the relationship between weight and fuel economy, a fixed-attribute weight-based system such as that described above would, like the current system, provide an incentive to reduce vehicle weight throughout the range of light trucks. As discussed previously, the risk of adverse safety impacts caused by the current CAFE system could be mitigated by focusing weight reduction on some comparatively heavy vehicles, and discouraging weight reduction on some comparatively light vehicles. One possible means of focusing this incentive on the vehicle weight range in which weight reduction is the most compatible with safety considerations would be to apply a safety-based adjustment when calculating the CAFE level that would be required under a fixed-attribute system. For example, if weight reduction is expected to compromise overall safety when applied to vehicles below 5,000 pounds, but not when applied to vehicles above 5,000 pounds, the fixed-attribute CAFE level required of a given manufacturer could be adjusted using a "safety adjustment factor" that is based on that manufacturer's distribution of vehicle weights (*e.g.*, the fraction and average weight of that manufacturer's light trucks having curb weights above 5,000 pounds). The implications of such an adjustment would depend on each manufacturer's product mix. The Agency invites comment on how a practical fixed-attribute system should be designed and implemented, including both advantages and disadvantages.

VI. Definitional Changes to the Current Vehicle Classification System

In the EPCA, Congress created the basic distinction between passenger automobiles and non-passenger automobiles. Section 32901(16) defines a "passenger automobile" as an "automobile that is manufactured primarily for transporting not more than 10 individuals, but does not include an automobile capable of off-highway operation that the Secretary decides by regulation—(A) has a significant feature (except 4 wheel drive) designed for off-highway operation; and (B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight." This definition effectively divides the class of automobiles subject to CAFE into passenger and non-passenger automobiles (light trucks).

In December 1976, the agency promulgated a Notice of Proposed Rulemaking to further define the distinction between passenger and non-passenger automobiles for purposes of the CAFE program.[17] The agency reviewed the legislative history and concluded that Congress intended that passenger automobiles be defined as those used primarily for the transport of individuals and that all other vehicles would fall within the category of non-passenger automobiles. The agency pointed to the relevant text in the EPCA conference reports (H. Rept. 94–700):

> The passenger automobile category would exclude vehicles not manufactured primarily for transportation of individuals—such as light duty trucks, mobile homes, and multipurpose vehicles not manufactured primarily for transportation of individuals.

The agency then determined that, based on the nature of the vehicle fleet in the mid-1970s, it could best differentiate between vehicles built primarily to transport people from those built primarily for utilitarian purposes by focusing on whether the vehicle was built on a passenger car chassis versus a truck chassis. The agency also acknowledged, however, that this approach would not always achieve the distinction it was trying to create.

The agency issued regulations creating a specific classification scheme, which has served to distinguish between passenger car fleets and light truck fleets throughout the lifespan of the CAFE program. In 49 CFR 523.3, the agency defined what constitutes an "automobile" subject to the CAFE program. That provision includes automobiles weighing 6,000 lbs. GVWR or less and vehicles having a GVWR between 6,000–10,000 lbs. that the NHTSA Administrator has determined may feasibly be subject to the CAFE program. Feasibility is determined with regard to whether the vehicles are used substantially in the same way as other vehicles subject to the CAFE program and whether including those vehicles will result in significant energy conservation.

As part of that regulation, the NHTSA Administrator determined that vehicles satisfying the criteria for passenger automobiles set forth in 49 CFR 523.4 and certain vehicles satisfying the criteria for light trucks set forth in 49 CFR 523.5, except for their GVWR, would be considered automobiles for purposes of CAFE. The Administrator further determined that light trucks should be subject to the CAFE program if they have a basic frontal area of 45 square feet or less, have a curb weight of 6,000 pounds or less and have a GVWR of 8,500 pounds or less.

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[15] DeCicco, John. "Use a Vehicle-Based Approach, but Lock-In Each Company's Target." American Council for an Energy-Efficient Economy. 1992. This paper uses the example of a uniform percentage increase (UPI) to implement this approach. UPI is not an essential feature of this approach. NHTSA welcomes comments on alternative ways to implement this approach.

[16] The reference year could be modified periodically to reflect changing trends in the vehicle fleet.

[17] We note that the NPRM makes clear that one of the purposes of the classification scheme adopted was to encourage manufacturers to reduce the weight of their larger passenger cars. As the NAS report found, this weight reduction has had a negative impact on motor vehicle safety.

In 49 CFR 523.4, the agency defined a passenger automobile as "any automobile (other than an automobile capable of off-highway operation) manufactured primarily for use in the transportation of not more than 10 individuals." Under this definition, the remaining vehicles—the non-passenger or light truck category—not only includes vehicles capable of off-highway operation, but also includes other vehicles that are not manufactured primarily for transporting individuals. Therefore, a pickup truck that does not have features designed for off-highway operation is, because it is manufactured for carrying cargo, a light truck for CAFE purposes.

The agency's definition of a light truck (49 CFR 523.5) is substantially more detailed and sets up the parameters of what constitutes a vehicle capable of off-highway operation or other utilitarian uses. The regulation provides that an automobile is capable of off-highway operation if it has 4 wheel drive or if its GVWR is more than 6,000 pounds and it meets at least four out of five specified geometric measures (approach angle, break-over angle, departure angle, running clearance and front and rear axle clearance). The agency also included as light trucks vehicles designed to perform at least one of the following: (1) Transport more than 10 persons; (2) provide temporary living quarters; (3) transport property on an open bed; (4) provide greater cargo-carrying than passenger-carrying volume; or (5) permit expanded use of the automobile for cargo-carrying purposes or other non-passenger-carrying purposes through the removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level, surface extending from the forward most point of installation of those seats to the rear of the automobile's interior.

As discussed above, the regulatory scheme was adopted before the emergence of a more versatile vehicle fleet designed to accommodate today's consumer preferences. The regulation predated the widespread influx of minivans and SUVs. It did not anticipate the development of a market for vehicles that could easily be transformed to serve a variety of functions and which also provide basic passenger transportation needs. Nor did the regulation anticipate the emerging class of "cross-over vehicles," containing aspects of both passenger and non-passenger automobiles.[18]

The application of the regulation to the current vehicle fleet (designed with the regulatory distinctions in mind) less clearly differentiates between passenger cars and light trucks than it did in the 1970s. Many vehicles produced today, while smaller than many other passenger cars, qualify as light trucks because they have been designed so that their seats can be easily removed and their cargo carrying capacity significantly enhanced.[19] Other vehicles, while appearing no different than counterpart passenger automobiles, qualify through having designs that meet four out of five geometric criteria set forth in 49 CFR 523.5. And yet other vehicles are designed in such a way that they can be easily transformed from passenger carrying motor vehicles to motor vehicles with open cargo beds without the use of substantial tools.

We recognize that any system of distinctions will drive vehicle design and result in its own set of ambiguities and ultimately may lead to unintended results as vehicle designs continue to evolve. We seek input on whether amendments to the current classification regulation can be made to better clarify the distinction between passenger automobiles and non-passenger automobiles in light of the current and emerging motor vehicle fleet.

Possible approaches to updating the classification rules are set forth below. In seeking comments on these alternatives, the agency recognizes that any successful classification scheme must adequately account for the tremendous variety of needs that are served by light vehicles. Some need only carry one or two persons to work, while others must be able to carry large, relatively heavy loads. While some light trucks may be used primarily to transport passengers, their "peak use" or "peak value" (*e.g.*, towing boats, hauling heavy loads) may require substantial performance capabilities. In considering potential changes to the classification definitions, we intend to preserve the ability of consumers to obtain vehicles that meet their needs, while providing competitive equity among vehicle manufacturers, improving vehicle safety, and enhancing fuel economy.

We expect to receive comments both with regard to the concepts set forth below and with regard to some of the practical necessities that might accompany any amendments to the classification regulations. These would include any necessary lead-time, possible approaches to phasing-in new definitions and the treatment of credits and penalties during the transition period.

A. Vehicle Classification Using a Single Attribute

The definitions contained in 49 CFR 523.5 provide multiple methods of classifying a vehicle as a light truck. Alternatively, the agency could define a particular vehicle attribute as that most appropriate to distinguish between light trucks and passenger cars. Such a system has the advantage of being simple to apply and could help to avoid criticism that manufacturers can "game" the classification system by taking advantage of certain features, such as the flat floor provision, to include vehicles in their light truck fleet that are otherwise classified as passenger cars. In considering attributes that may be used, we must be cognizant of the need to choose distinctions that would continue to serve consumer choices, and thus would discourage any incentive to design vehicles just beyond the minimum necessary to be classified as a light truck.

We have considered two attributes, which could be used to distinguish between the light truck and passenger car fleets: vehicle curb weight and interior volume. To employ this type of classification system, the agency would need first to determine that a vehicle with either curb weight or interior volume above a specified minimum is not one manufactured primarily for transporting not more than ten individuals.[20] If curb weight were used as the determining factor in deciding whether to classify a vehicle as a passenger car or light truck, based on MY 2002 fleet and available information on MY 2003–2004 vehicles, the agency believes that a curb weight of approximately 3,700 pounds could serve as a possible minimum curb weight to classify vehicles as light trucks. MY 2002 data shows that all minivans and mid-size SUVs have curb weights of at least 3,700 pounds.

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[18] In developing the regulation, the agency struggled with defining pickup trucks constructed on passenger car frames. Pickups built on passenger car frames were to be considered light trucks, because, from a design perspective, they "have much less passenger carrying capacity and much more property carrying capacity than the passenger cars from which they are derived." This passage seems to suggest that, when issuing the regulation, the agency intended that a vehicle should be considered a non-passenger automobile unless it clearly was designed primarily for the transportation of people rather than cargo (42 FR 38362, 38367).

[19] In a letter dated March 21, 2000 to Gerald Plante (and published on the agency's Web site), the agency considered whether the flat floor provision was intended to permit vehicles to be classified as light trucks if their seats are folded into a flat floor, rather than removed to create a flat floor. The agency considered the vehicles under consideration when the regulatory provision was first issued and determined that the regulation did not anticipate that vehicles would be classified as light trucks by virtue of folding seats. This was based, in part, on the fact that seats that folded into a vehicle floor were found only in station wagons using a car chassis. Contemporary minivans are built on their own chassis and are not derived from either a car or a truck. If the resulting cargo area is indicative of a dual use beyond simply carrying passengers, it may not matter if the seats fold or are removable. Were we in the future to permit the folding of seats to create a flat floor to serve as the basis for classifying vehicles as light trucks, the enhancement of the cargo carrying capabilities of the vehicle must be significant, just as it would were the seats removed. .

In examining the MY 2002 CAFE data, the agency found that there are two main types of passenger cars that might be classified as light trucks if the minimum curb weight was established at 3,700 pounds: large sedans and "exotic" sport cars. There are also several types of light trucks that might be classified as passenger cars if the minimum curb weight was established at 3,700 pounds: small unibody SUVs, small ladder-on-frame SUVs, and some small pickups.

Interior volume presents another possible approach to using a single attribute to distinguish between passenger cars and light trucks. The agency used three methods for determining an interior volume measurement: (1) For cars with trunks, interior volume may be defined as the passenger compartment volume plus trunk volume; (2) for station wagons, SUVs, and crossover vehicles, interior volume may be defined as the volume enclosed within the combined passenger and cargo area; (3) for pickup trucks, interior volume may be defined as the interior volume of the cab plus twice the cargo bed volume.

In examining the MY 2002 fleet and available information on MY 2003–2004 vehicles, we believe that an interior volume measure in the range of 130–135 cubic feet could serve as a possible minimum interior volume to classify vehicles as light trucks. In examining the MY 2002 CAFE data, the agency found that there are two main types of passenger cars that might be classified as light trucks under such a system: large sedans and large station wagons. The agency also found that there are two main types of light trucks that might be classified as passenger cars: small two-wheel drive unibody SUVs and small two-wheel drive ladder-on-frame SUVs.[21]

B. The Flat Floor Provision

The current regulation classifies as a light truck any vehicle with readily removable seats that, once removed, leave a flat floor level surface extending from the forward most removable seat mount to the rear of the vehicle. The flat floor provision originally was based on the agency's determination that passenger vans with removable seats and a flat load floor were derived from cargo vans (42 FR 38367; July 28, 1977) and should be classified as trucks. Because these passenger vans were derived from cargo vans, the agency distinguished them from station wagons—which also had large flat areas with their seats folded—and were based on a car chassis.

In the preamble to the final rule establishing the 1983–1985 fuel economy standards, NHTSA responded to a request from Chrysler to revise the definition of light truck to assure that future compact passenger vans would be classified as light trucks. At that time, we indicated that the regulations classify large passenger vans as light trucks based on the ability of passenger van users to readily remove the rear seats to produce a flat, floor level cargo-carrying space (45 FR 81593; Dec., 11 1980). It is believed that this decision contributed to the development of the minivan market.

Many contemporary minivans are built on their own individual chassis or platform. Most of these vehicles are available only as passenger vans without any cargo variant. While they may be trucks in their own right, they do not necessarily share a common chassis or platform with cargo trucks. However, because minivans have removable seats and a flat floor, they have traditionally been classified as trucks for fuel economy purposes.[22] As the agency's recently updated size and safety study shows, minivans are among the safest vehicles on the road. In fact, the study found that large 4-door cars and minivans had the lowest overall fatal crash involvement rates per billion vehicle miles during the years studied (1991–1999).

We recognize that the flat floor provision may be essential to the minivan market and that many cross-over vehicles, which carry significant numbers of passengers while sporting a lower center of gravity than more traditional SUVs, are classified as light trucks as a result of the flat floor provision. We are concerned that the elimination of the flat floor provision may deter the emerging fleet of crossover vehicles and significantly impair the minivan market.

However, we also believe the program would benefit if the flat floor definition reflected more accurately those vehicles serving significant cargo carrying, recreational or utilitarian use, as opposed to those more generally classified as passenger cars. We have accordingly considered potential approaches to modifying the flat floor provision.

One such approach might be to establish a minimum flat floor length that vehicles must meet to be classified a light truck. A possible minimum length is 60 inches. Other potential approaches might include: (1) restricting the class of light trucks relying on the flat floor provision to those of a certain minimum level of interior volume, (such as 75 to 80 cubic feet) and (2) premising the flat floor provision on having a certain ratio of cargo space to passenger carrying space. The minimum flat floor length and the range for the minimum level of interior volume are offered as possible values because currently designed light trucks that have flat floor lengths and interior volumes above those values have ladder-on-frame designs, which are more closely associated with traditional light truck design and are generally designed for off-road use. Light trucks with flat floor lengths and interior volumes below these possible minimum values are generally those with unibody designs, which resemble passenger cars in size and shape and possess very limited off-road capability. A range for the possible minimum level of interior volume, rather than an absolute value, is provided due to the current mixture of unibody and ladder-on-frame designed light trucks within this range. These possible minimum values will be reassessed in light of the comments received from manufacturers and others.

We encourage specific comments on the possible revisions set forth above, and any other comments that would assist NHTSA in refining this part of the light truck regulatory definition.

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[20] The application of this concept might result in the substitution of a minimum curb weight or interior volume for the various definitions contained within 49 CFR 523.5(a). Of course, a vehicle meeting the other statutory criteria addressing vehicles capable of off-highway operation, as defined in 49 CFR 523.3(b), might continue to qualify as a light truck.

[21] Vehicles that are either four-wheel drive or have a gross vehicle weight above 6000 pounds are light trucks if they also have a significant feature (as defined by agency regulations) designed for off-highway operation (§ 32901(a)(16)). Four-wheel drive SUVs, regardless of their weight, would be classified as light trucks if they had features which NHTSA deemed to be indicative of design for off-road use.

[22] EPA also classifies minivans as light duty trucks for emissions purposes as derivatives of trucks.

C. Open Cargo Bed

49 CFR 523.5(a)(3) provides that a vehicle that transports property on an open bed is a light truck. However, this section contains no minimum dimension for how small an open bed may be before a vehicle can no longer be classified as a truck on that basis. Some new vehicle designs include relatively small open cargo beds or cargo beds that transform easily into passenger carrying compartments.[23] While these vehicles are designed for transporting cargo as well as people, it may be possible to differentiate between those more likely to be used in utilitarian fashion by specifying a minimum dimensional requirement for the cargo bed.

The Society of Automotive Engineers (SAE) Recommended Practice J1100, for example, provides a means for calculating the cargo volume of open bed trucks. The SAE formula (V5) uses a standard measure of the interior length of the bed, the interior width of the bed (width at floor plus width at wheelhouse divided by two), and the height of the cargo area (from the cargo floor to the uppermost point on the side of the bed). Measured in this fashion, most small ½ ton pickup trucks in today's market have a cargo volume of approximately 40 cubic feet. A number of truck configurations, particularly those with "crew cabs," have smaller beds whose cargo volumes are approximately 30 cubic feet.

Using SAE Recommended Practice J1100 it is also possible to calculate the cargo area of open bed trucks. According to the cargo volume calculation specified in J1100, the area of an open cargo bed can be obtained by multiplying the interior length of the bed by the interior width of the bed. Measured in this fashion, most small ½ ton pickup trucks in today's market have a cargo area of approximately 3,500 square inches. A number of truck configurations, particularly those with "crew cabs," have smaller beds whose cargo areas can be as small as 3,100 square inches.

The agency seeks comment on whether cargo volume, cargo area, or some other measure, might be an appropriate means for determining when an open bed vehicle should be classified as a car or a truck and what minimum dimensions should be used to differentiate between passenger cars and light trucks. We also invite comment on what cubic foot or square inch minimum could be specified for cargo carrying capability that would still provide manufacturers with sufficient design flexibility to build open bed vehicles that meet certain market needs, including vehicles with "crew cabs" or other extended cabs, necessary to provide both passenger carrying and cargo carrying capability. We are also interested in comments addressing other measurement criteria that would enable vehicles with "crew cabs" and extended cabs to be classified as light trucks.

D. Off-Highway Operation

Congress directed that the characteristics of vehicles capable of off-highway operation be established through regulations promulgated by NHTSA. 49 CFR 523.5(b) sets out the definition of an automobile capable of off-highway operation. Following the definition contained in § 32901 of Chapter 329, the regulation considers an automobile as being capable of off-highway operation if it has either 4-wheel drive or a GVWR above 6,000 pounds and meets four out of five characteristics.

The characteristics are: (A) an approach angle of not less than 28 degrees; (B) a break-over angle of not less than 14 degrees; (C) a departure angle of not less than 20 degrees; (D) a running clearance of not less than 20 centimeters; and (E) front and rear axle clearances of not less than 18 centimeters each. As NHTSA observed in the Notice of Proposed Rulemaking introducing these criteria, the dimensions were derived from examining the characteristics of off-road vehicles manufactured in the mid-1970's (41 FR 55368, 55371; December 20, 1976).

Four-wheel drive, found almost exclusively on larger trucks when the CAFE program was established, is now found on vehicles of all shapes and sizes. As technological advances have made four-wheel drive more suitable for use on smaller vehicles and easier for drivers to use, it is now appearing more frequently on sedans and station wagons as well as light trucks.[24] Some of these vehicles are classified as passenger cars for CAFE purposes while others have been classified as light trucks. As applied to passenger cars, four-wheel drive is intended to improve on-road performance in adverse weather and these vehicles do not have sufficient ground clearances for off-highway use. By itself, four-wheel drive is now far less indicative of whether a vehicle is likely to be used off-highway than it was when EPCA was enacted.

In the current fleet of utility vehicles that are classified as trucks for CAFE purposes because of their off-road attributes, the physical characteristics of the vehicles vary significantly. Approach angles, for example, vary from approximately 26 to 72 degrees. Departure angles range from approximately 14 to 42 degrees, while break-over angles range from 14 to 27.5 degrees. Axle clearances, for both axles and running clearance, also vary substantially.[25] Changing the definitions of the angles might serve to distinguish better the characteristics of vehicles currently used off-road from those currently used primarily on the public roads. Doing so, however, might also create the incentive to build vehicles meeting the new dimensions. Because amended dimensions are likely to lead to vehicles with higher centers of gravity, altering them might generally increase rollover risks and additional harm due to rollover crashes.

A different approach might be to modify 49 CFR 523.5(b) to provide that vehicles meeting certain individual qualifying criteria, or certain combinations of them, be classified as a light truck. For example, a vehicle that meets both the approach and departure angle criteria and any two out of the remaining three criteria (break-over angle, axle clearance or running clearance) might be less likely to be derived from a car. Having sufficiently large approach and departure angles are important for off-road vehicles when navigating steep and uneven terrain. Four-wheel drive vehicles derived from passenger cars are more likely to meet either the approach angle or departure angle criteria, but less likely to meet both.

VII. Expanding the Application of the CAFE Program

As noted above, beginning with MY 1980, the NHTSA Administrator determined that the CAFE program should include vehicles with a GVWR of up to 8,500 pounds. Some groups have espoused increasing the application of the CAFE program to the statutory limit of 10,000 lbs. GVWR to include some of the larger SUVs that have entered the market in recent years. During this time, a small number of vehicles classified as SUVs have been of sufficient GVWR to be beyond the reach of the CAFE program. These very large SUVs account for approximately 10% of the total number (approximately 500,000) of vehicles with a GVWR between 8,500 and 10,000 pounds, and less than 1% of all SUVs. Sales of these very large SUVs have remained stable over the last several years. Including additional vehicles within the CAFE program requires a finding that doing so is feasible and that it would significantly enhance energy conservation.

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[23] For example, the Subaru Baja is an open bed vehicle that is built on the same platform as the Subaru Outback wagon. Although the Baja has all-wheel drive, it does not meet the criterion for classification as an off-road vehicle. It is classified as a truck on the basis of having an open bed slightly less than three and one-half feet long.

[24] A number of manufacturers, including Audi and others, produce four-wheel drive performance cars. At least one manufacturer, Subaru, exclusively produces four-wheel drive passenger cars. In recent years, Volvo produced a two-wheel and four-wheel drive station wagon where the two-wheel drive version was classified as a car and the four-wheel drive model was classified as a truck.

[25] Not surprisingly, vehicles with extreme off-road capability—such as the Hummer H1—are at the upper range of these dimensions, while utility vehicles aimed more for on-road use are at the lower end of the range of these dimensions.

This document presents two potential options under which vehicles with a GVWR of up to 10,000 lbs. could be included under the CAFE program. One option would be adopting the definition established by EPA for medium duty passenger vehicles (65 FR 6698, 6749–50, 6851–6852) for use in the CAFE program. The definition applies to a heavy-duty vehicle with a gross vehicle weight rating of 8,501 to 10,000 pounds that is designed primarily for the transportation of persons. However, medium duty passenger vehicles (MDPV's) do not include vehicles that:

1. Are "incomplete trucks"; or
2. Have a seating capacity of more than 12 persons; or
3. Are designed for more than 9 persons seated rearward of the driver's seat; or
4. Are equipped with an open cargo area of 72 inches in interior length or more, or a covered box not readily accessible from the passenger compartment that is 72 inches or more in interior length.

This definition would essentially make SUVs between 8,500 and 10,000 lbs. GVWR subject to CAFE, while continuing to exclude most medium- and heavy-duty pickups and most medium- and heavy-duty cargo vans that are primarily used for agricultural and commercial purposes. The inclusion of these larger SUVs in CAFE could help reduce petroleum consumption. In addition, public policy directed towards reducing the weight of these vehicles may help address vehicle incompatibility and thus improve safety.

A second option would be to make all vehicles between 8,500 and 10,000 lbs GVWR subject to CAFE standards. Since the majority of trucks in this weight class are pickup trucks, the agency is concerned about the impacts this might have on farmers and small businesses, and in particular, the potential adverse impacts on the cost and utility of these vehicles. The agency nonetheless invites comments on this reform alternative, as well as the option to cover a more limited set of vehicles with a GVWR between 8,500 and 10,000 lbs.

VIII. Conclusion

The current structure of the CAFE program was created in the 1970s. It reflects efforts made to distinguish between vehicles prevalent at the time and bearing little resemblance to today's motor vehicle market or the current and emerging vehicle fleet. The Congressional "freeze" imposed during much of the 1990s prohibited the agency from reviewing the efficacy of the regulations defining passenger cars and light trucks, or the manner in which the CAFE program is structured. The current structure of the CAFE program encourages the development of vehicles that are larger and heavier, and which may have higher centers of gravity. Thus, the CAFE program may contribute to the two principal vehicle safety problems on the road today: vehicle compatibility and rollover.

Through this document, the agency intends to begin a public discussion on potential ways, within current statutory authority, to modernize the CAFE program and to make it more consistent with our public policy objectives. The agency has set forth a number of possible concepts and measures, and invites the public to present additional concepts not presented here. This discussion is not intended to address the stringency of proposed CAFE standards in the future, but rather the basic structure of the CAFE program. The agency is interested in any suggestions towards revamping the CAFE program in such a way as to enhance overall fuel economy while protecting occupant safety and the economic vitality of the auto market.

IX. Public Participation

Interested persons are invited to comment on this advance notice of proposed rulemaking. It is requested, but not required, that two copies be submitted to the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by April 27, 2004.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date.

NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket for this advance notice of proposed rulemaking in the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

X. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the potential impacts of this advance notice of proposed rulemaking under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. The Office of Management and Budget reviewed this document under E.O. 12866, "Regulatory Planning and Review." This document has been determined to be significant under the Department's regulatory policies and procedures.

This document seeks comment on potential changes to the agency's regulations relating to Corporate Average Fuel Economy, including potential changes to vehicle classification and to the fuel economy standards applicable to those vehicles. The agency could take a variety of regulatory actions regarding these issues. Further, this agency has not identified any regulatory actions sufficiently likely to warrant calculation of possible benefits and costs. If NHTSA were to initiate rulemaking and develop a rulemaking proposal, the agency would calculate the costs and benefits associated with the specific proposal and place its analysis in the docket for that proposal. The agency would also conduct the various other rulemaking analyses required by applicable statutes and Executive Orders.

NHTSA will reassess this rulemaking in relation to the Executive Order, the DOT Regulatory Policies and Procedures, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act of 1995 and other requirements for analyzing rulemaking impacts if, after using the information received in response to this advanced notice, the agency decides to issue a proposal to amend its current regulations. To that end, the agency solicits comments, information, and data useful in assessing the impacts of making the potential changes discussed in this document.

Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Issued: December 22, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–31890 Filed 12–22–03; 3:44 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 2003–16709]

RIN 2127–AJ26

Reforming the Automobile Fuel Economy Standards Program; Request for Product Plan Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: The purpose of this request for comments is to acquire information regarding vehicle manufacturers' future product plans to assist the agency in analyzing possible reforms to the corporate average fuel economy (CAFE) program which are discussed in a companion notice published today. The agency is seeking information that will help it assess the effect of these possible reforms on fuel economy, manufacturers, consumers, the economy, motor vehicle safety and American jobs.

DATES: Comments must be received on or before April 27, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number 2003–16709] by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Ken Katz, Lead Engineer, Fuel Economy Division, Office of Planning and Consumer Standards, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov*. For legal issues, call Otto Matheke, Office of the Chief Counsel, at (202) 366–5263, electronic mail *omatheke@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a companion document, an advanced notice of proposed rulemaking, published today in the **Federal Register**, NHTSA is seeking comments relating to possible enhancements and reforms to the CAFE program that will assist in furthering fuel conservation, while protecting motor vehicle safety and American jobs. To assist the agency in analyzing possible reforms to the CAFE program, in addition to the questions found in the body of the advanced notice of proposed rulemaking, NHTSA has included a number of additional questions, found in an appendix to this notice, directed primarily toward vehicle manufacturers.

The appendix requests information from manufacturers regarding their product plans from MY 2003 through MY 2012, and the assumptions underlying those plans. The agency would appreciate answers that are as responsive as possible so that the agency can analyze the impact of the reforms on the entire industry. Because some of the possible reforms may change the distinction between passenger cars and light trucks, the agency is requesting data from manufacturers for both their passenger car plans AND their light truck plans.

In an attempt to assure conformity in data submittal and to assist manufacturers with supplying information to the agency regarding their product plans from MY 2003 through MY 2012, NHTSA has developed spreadsheet templates for manufacturers' use. These templates are the preferred format for data submittal, and can be found on the agency's CAFE website at: *http://www.nhtsa.dot.gov/cars/rules/CAFE/rulemaking.htm*. The Appendix also includes sample tables that manufacturers should refer to when submitting their data to the Agency.

II. Public Participation

Interested persons are invited to comment in response to this request for comments. It is requested, but not required, that two copies be submitted to the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by April 27, 2004.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on

"Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. If you submit a computer disk containing your confidential plans, please submit only one copy. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512). If you submit both a hard copy and a computer disk containing confidential business information, please include a separate cover letter for each submission.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the potential impacts of this request for comments under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This document has been determined to be nonsignificant under the Department's regulatory policies and procedures.

This document seeks information regarding future manufacturer product plans, capabilities and costs in order to assess potential changes to the agency's regulations relating to Corporate Average Fuel Economy, including potential changes to vehicle classification and to the fuel economy standards applicable to those vehicles. The agency could take a variety of regulatory actions regarding these issues. Further, this agency has not identified any regulatory actions sufficiently likely to warrant calculation of possible benefits and costs. If NHTSA were to initiate rulemaking and develop a rulemaking proposal, the agency would calculate the costs and benefits associated with the specific proposal and place its analysis in the docket for that proposal. The agency would also conduct the various other rulemaking analyses required by applicable statutes and Executive Orders.

NHTSA will reassess this rulemaking in relation to the Executive Order, the DOT Regulatory Policies and Procedures, the Unfunded Mandates Reform Act of 1995 and other requirements for analyzing rulemaking impacts if, after using the information received in response to this request for comments, the agency decides to issue a proposal to amend its current regulations.

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

Issued on: December 22, 2003.

Stephen R. Kratzke,

Associate Administrator For Rulemaking.

Appendix

I. Definitions

As used in this appendix—

1. "Automobile," "fuel economy," "manufacturer," and "model year," have the meaning given them in Section 32901 of Chapter 329 of Title 49 of the United States Code, 49 U.S.C. 32901.

2. "Cargo-carrying volume," "gross vehicle weight rating" (GVWR), and "passenger-carrying volume" are used as defined in 49 CFR 523.2.

3. "Basic engine" has the meaning given in 40 CFR 600.002–85(a)(21). When identifying a basic engine, respondent should provide the following information:

(i) Engine displacement (in liters). If the engine has variable displacement (*i.e.*, cylinder deactivation) the respondent should provide both the minimum and maximum engine displacement.

(ii) Number of cylinders or rotors.

(iii) Number of valves per cylinder.

(iv) Cylinder configuration (V, in-line, etc.).

(v) Other engine characteristics, abbreviated as follows:

DI—Direct Injection
ID—Indirect Injection
MPFI—Multipoint Fuel Injection S.I.
PFI—Port Fuel Injection
SEFI—Sequential Electronic Fuel Injection
TBI—Throttle Body Fuel Injection
T—Turbocharged
S—Supercharged
FFS—Feedback Fuel System
2C—Two-stroke engines
OHV—Overhead valve
SOHC—Single overhead camshaft
DOHC—Dual overhead camshaft
VVT—Variable valve timing
VVLT—Variable valve lift and timing
CYDA—Cylinder deactivation
IVT—Intake valve throttling
CVA—Camless valve actuation
VCR—Variable compression ratio
LBFB—lean burn-fast burn combustion

4. "Domestically manufactured" is used as defined in Section 32904(b)(2) of Chapter 329, 49 U.S.C. 32904(b)(2).

5. "Passenger car" means an automobile of the type described in 49 CFR Part 523.3 and 523.4.

6. A "model" of passenger car is a line, such as the Chevrolet Impala, Ford Taurus, Honda Accord, etc., which exists within a manufacturer's fleet.

7. "Model Type" is used as defined in 40 CFR 600.002–85(a)(19).

8. "Percent fuel economy improvements" means that percentage which corresponds to the amount by which respondent could improve the fuel economy of vehicles in a given model or class through the application of a specified technology, averaged over all vehicles of that model or in that class which feasibly could use the technology. Projections of percent fuel economy improvement should be based on the assumption of maximum efforts by respondent to achieve the highest possible fuel economy increase through the application of the technology. The baseline for determination of percent fuel economy improvement is the level of technology and vehicle performance with respect to acceleration and gradeability for respondent's 2003 model year passenger cars in the equivalent class.

9. "Percent production implementation rate" means that percentage which corresponds to the maximum number of passenger cars of a specified class, which could feasibly employ a given type of technology if respondent made maximum efforts to apply the technology by a specified model year.

10. "Production percentage" means the percent of respondent's passenger cars of a specified model projected to be manufactured in a specified model year.

11. "Project" or "projection" refers to the best estimates made by respondent, whether or not based on less than certain information.

12. "Redesign" means any change, or combination of changes, to a vehicle that would change its weight by 50 pounds or more or change its frontal area or aerodynamic drag coefficient by 2 percent or more.

13. "Relating to" means constituting, defining, containing, explaining, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

14. "Respondent" means each manufacturer (including all its divisions) providing answers to the questions set forth in this appendix, and its officers, employees, agents or servants.

15. "Test Weight" is used as defined in 40 CFR 86.082–2.

16. "Transmission class" is used as defined in 40 CFR 600.002–85(a)(22). When identifying a transmission class, respondent also must indicate whether the type of transmission, and whether it is equipped with a lockup torque converter (LUTC), a split torque converter (STC), and/or a wide gear ratio range (WR) and specify the number of forward gears or whether the transmissions a continuously variable design (CVT). If the transmission is of a hybrid type, that should also be indicated.

17. "Truckline" means the name assigned by the Environmental Protection Agency to a

different group of vehicles within a make or car division in accordance with that agency's 2001 model year pickup, van (cargo vans and passenger vans are considered separate truck lines), and special purpose vehicle criteria.

18. "Variants of existing engines" means versions of an existing basic engine that differ from that engine in terms of displacement, method of aspiration, induction system or that weigh at least 25 pounds more or less than that engine.

II. Assumptions

All assumptions concerning emission standards, damageability regulations, safety standards, etc., should be listed and described in detail by the respondent.

III. Specifications—Passenger Car Data

Go to *http://www.nhtsa.dot.gov/cars/rules/CAFE/rulemaking.htm* for spreadsheet templates.

1. Identify all passenger car models offered for sale in MY 2003 whose production you project discontinuing before MY 2008 and identify the last model year in which each will be offered.

2. Identify all basic engines offered by respondent in MY 2003 passenger cars which respondent projects it will cease to offer for sale in passenger cars before MY 2008, and identify the last model year in which each will be offered.

3. For each model year 2003–2012, list all projected passenger car model types and provide the information specified below for each model type. Model types that are essentially identical except for their nameplates (*e.g.*, Chrysler Sebring/Dodge Stratus) may be combined into one item. Engines having the same displacement but belonging to different engine families are to be grouped separately. Separate tables should be provided for domestic and import passenger car fleets. Within a domestic or import passenger car fleet, the vehicles are to be sorted first by passenger car line, second by basic engine, and third by transmission type. Spreadsheet templates can be found at *http://www.nhtsa.dot.gov/cars/rules/CAFE/rulemaking.htm*. These templates include codes and definitions for the data that the Agency is seeking.

a. General Information
1. A unique identifying number or code assigned to each model.
2. Vehicle manufacturer.
3. Vehicle model (*e.g.*, Camry)
4. Vehicle nameplate (*e.g.*, Camry Solara)
5. Weighted average fuel economy
6. Engine code
(a) Engine manufacturer
(b) Engine name
(c) Engine's country of origin
(d) Fuel
(e) Engine oil viscosity
(f) Combustion cycle
(g) Air/fuel ratio
(h) Fuel system
(i) Aspiration
(j) Valvetrain design
(k) Valve actuation/timing
(l) Valve lift
(m) Number of engine cylinders
(n) Configuration
(o) Valves per cylinder
(p) Cylinder deactivation
(q) Engine displacement
(r) Compression ratio (Min)
(s) Compression ratio (Max)
(t) Horsepower
(u) Torque
7. Transmission code
(a) Transmission manufacturer
(b) Name of transmission
(c) Transmission's country of origin
(d) Transmission type
(e) Number of forward gears
(f) Control
(g) Logic
(h) Gear ratios for all forward gears
(i) Reverse gear ratio
(j) Torque converter ratio
(k) Axle ratio
(l) Torque converter lockup/bypass status
(m) Transmission fluid specification
(n) Transmission lubricant viscosity
8. Domestic or Import
b. Projected U.S. sales
c. Vehicle information
1. Style (*e.g.*, convertible, sedan, coupe)
2. EPA Size Class
3. Construction (*e.g.*, Unibody, ladder)
4. Drive (*e.g.*, rear wheel drive, front wheel drive, all-wheel drive, 4-wheel drive)
5. Final drive ratio
6. N/V
7. Front axle lubricant viscosity
8. Rear axle lubricant viscosity
9. Overall length (per code L103 of SAE J1100, revised July 2002)
10. Overall width (per code W116 of SAE J1100, revised July 2002)
11. Overall height (per code H100 of SAE J1100, revised July 2002)
12. Wheelbase (per code L101 of SAE J1100, revised July 2002)
13. Track width (front) (per code W101–1 of SAE J1100, revised July 2002)
14. Track width (rear) (per code W101–2 of SAE J1100, revised July 2002)
15. Ground clearance (per 49 CFR 323.5)
16. Front axle clearance (per 49 CFR 323.5)
17. Rear axle clearance (per 49 CFR 323.5)
18. Angle of approach (per 49 CFR 323.5)
19. Breakover angle (per 49 CFR 323.5)
20. Angle of departure (per 49 CFR 323.5)
21. Height of the center of gravity (per NCAP Static Stability Factor procedures)
22. Curb weight, in lbs.
23. Test weight, in lbs.
24. Power absorption unit setting, in horsepower.
25. Gross Vehicle Weight Rating, in lbs.
26. Towing capacity (standard), in lbs.
27. Towing capacity (maximum), in lbs.
28. Payload, in lbs.
29. Minimum designated seating positions
30. Maximum designated seating positions
31. Designated seating positions in the first row
32. Cargo volume behind the front row in ft^3 (per Table 28 of SAE J1100, revised July 2002)
33. Designated seating positions in the second row
34. Capability of second row seats to fold flat
35. Cargo volume behind the second row in ft^3 (per Table 28 of SAE J1100, revised July 2002)
36. Designated seating positions in the third row
37. Capability of third row seats to fold flat
38. Cargo volume behind the third row in ft^3 (per Table 28 of SAE J1100, revised July 2002)
39. Enclosed volume in ft^3
40. Passenger volume in ft^3 (The volume measured using SAE Recommended Practice J1100 as per EPA Fuel economy regulations, reg. 40 CFR 600.315–82 "Classes of Comparable Automobiles." This number is what automobile manufacturers calculate and submit to EPA.)
41. Cargo volume index (per Table 28 of SAE J1100, revised July 2002)
42. Open box length (per L506 of SAE J1100, revised July 2002)
43. Open box width (min) (per W201 of SAE J1100, revised July 2002)
44. Open box width (max) (per W500 of SAE J1100, revised July 2002)
45. Open box area
46. Open box height (per H503 of SAE J1100, revised July 2002)
47. Fuel capacity in gallons
48. Tire rolling resistance, Crr
49. Frontal area
50. Aerodynamic drag coefficient, Cd
d. Hybridization
1. Type
2. Voltage or pressure
3. Energy storage capacity, in MJ
4. Battery type
5. Energy transfer
6. Percentage of braking energy recovered and stored
7. Percentage of maximum motive power provided by stored energy system
e. Planning and assembly
1. Predecessor model
2. Last freshening
3. Next freshening
4. Last redesign
5. Next redesign
6. Domestic content
7. Final assembly city
8. Final assembly state
9. Final assembly country
f. Manufacturers' suggested retail price (in constant 2003 dollars)
g. Emissions
1. EPA class (LDV, LLDT, HLDT, MDPV)
2. EPA certification bin
3. LEV class

The agency also requests that each manufacturer provide an estimate of its overall domestic and passenger car CAFE for each model year. This estimate should be included as an entry in the spreadsheets that are submitted to the agency.

4. Does respondent project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to Question 3, in its passenger car fleets in MYs 2003–2012? If so, for each basic engine or variant indicate:

a. The projected year of introduction.

b. Type (*e.g.*, spark ignition, direct injection diesel, 2-cycle, alternative fuel use).

c. Displacement. (If engine has variable displacement, please provide the minimum and maximum displacement)

d. Type of induction system (*e.g.*, fuel injection with turbocharger, naturally aspirated).

e. Cylinder configuration (*e.g.*, V–8, V–6, I–4).

f. Number of valves per cylinder (*e.g.*, 2, 3, 4).

g. Valvetrain Design (*e.g.*, overhead valve, overhead camshaft,

h. Valve technology (*e.g.*, variable valve timing, variable valve lift and timing, intake valve throttling, camless valve actuation, etc.)

i. Horsepower and torque ratings.

j. Models in which engines are to be used, giving the introduction model year for each model if different from "a," above.

5. Relative to MY 2003 levels, for MYs 2005–2012, please provide information, by model and as an average effect on a manufacturer's entire passenger car fleet, on the weight and/or fuel economy impacts of the following standards or equipment:

a. Federal Motor Vehicle Safety Standard (FMVSS 208) Automatic Restraints

b. FMVSS 201 Occupant Protection in Interior Impact

c. Voluntary installation of safety equipment (*e.g.*, antilock brakes)

d. Environmental Protection Agency regulations

e. California Air Resources Board requirements

f. Other applicable motor vehicle regulations affecting fuel economy.

6. For each of the model years 2003–2012, and for each passenger car model projected to be manufactured by respondent (if answers differ for the various models), provide the requested information on new technology applications for each of items "6a" through "6r" listed below:

(i) description of the nature of the technological improvement;

(ii) the percent fuel economy improvement averaged over the model;

(iii) the basis for your answer to 6(ii), (*e.g.*, data from dynamometer tests conducted by respondent, engineering analysis, computer simulation, reports of test by others);

(iv) the percent production implementation rate and the reasons limiting the implementation rate;

(v) a description of the 2003 baseline technologies and the 2003 implementation rate; and

(vi) the reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 6(ii) and 6(iv) a tabular presentation, a sample portion of which is shown in Table III-A.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include benefits of lock-up or bypassed torque converters, electronic control of shift points and torque converter lock-up, and other measures which should be described.

b. Improved manual transmissions. Projections of percent of fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in "a" or "b" above, project the percentage of fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratios. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcase lubricants of lower viscosity or with additives to improve friction characteristics or accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 2003 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine-driven accessories or accessory drives. Typical engine-driven accessories include water pump, cooling fan, alternator, power steering pump, air conditioning compressor, and vacuum pump.

f. Reduction of tire rolling losses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (*e.g.*, reduced aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 2003 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improved lubricants in the differential and wheel bearing, and optimizing suspension geometry (*e.g.*, to minimize tire scrubbing loss).

h. Reduction of aerodynamic drag.

i. Turbocharging or supercharging.

j. Improvements in the efficiency of 4-cycle spark ignition engines including (1) increased compression ratio; (2) leaner air-to-fuel ratio; (3) revised combustion chamber configuration; (4) fuel injection; (5) electronic fuel metering; (6) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (8) variable valve timing or valve lift; (9) multiple valves per cylinder; (10) cylinder disablement; (11) friction reduction by means such as low tension piston rings and roller cam followers; (12) higher temperature operation; and (13) other methods (specify).

k. Gasoline direct injection engines.

l. Naturally aspirated diesel engines, with direct or indirect fuel injection.

m. Turbocharged or supercharged diesel engines with direct or indirect fuel injection.

n. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

o. Two cycle spark ignition engines.

p. Use of hybrid drivetrains

q. Use of fuel cells; provide a thorough description of the fuel cell technology employed, including fuel type and power output.

r. Other technologies for improving fuel economy or efficiency.

7. For each model of respondent's passenger car fleet, projected to be manufactured in each of MYs 2003–2012, describe the methods used to achieve reductions in average test weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used.

a. Substitution of materials.

b. "Downsizing" of existing vehicle design to reduce weight while maintaining interior roominess and comfort for passengers, and utility, *i.e.*, the same or approximately the same, payload and cargo volume, using the same basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts, which provides reduced weight for approximately the same payload and cargo volume.

8. Indicate any MY 2004–2012 passenger car model types that have higher average test weights than comparable MY 2003 model types. Describe the reasons for any weight increases (*e.g.*, increased option content, less use of premium materials) and provide supporting justification.

9. For each new or redesigned vehicle identified in response to Question 3 and each new engine or fuel economy improvement identified in your response to Questions 3, 4, 5, and 6, provide your best estimate of the following, in terms of constant 2003 dollars:

(a) Total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in your response. Subdivide the capital costs into tooling, facilities, launch, and engineering costs.

(b) The maximum production capacity, expressed in units of capacity per year, associated with the capital expenditure in (a) above. Specify the number of production shifts on which your response is based and define "maximum capacity" as used in your answer.

(c) The actual capacity that is planned to be used each year for each new/redesigned model or fuel economy improvement.

(d) The increase in variable costs per affected unit, based on the production volume specified in (b) above.

(e) The equivalent retail price increase per affected vehicle for each new/redesigned model or improvement. Provide an example describing methodology used to determine the equivalent retail price increase.

10. Please provide respondent's actual and projected U.S. passenger car sales, for each model year from 2003 to 2012, inclusive. Please subdivide the data into the following vehicle categories:

i. Two-Seater Car (*e.g.*, Chevrolet Corvette, Ford Thunderbird, Honda Insight)

ii. Mini-compact Car (*e.g.*, Audi TT Coupe, Lexus SC 300/430, Mitsubishi Eclipse Spyder)

iii. Subcompact Car (*e.g.*, Ford Mustang, Toyota Celica, Volkswagen New Beetle)

iv. Compact Car (*e.g.*, Chevrolet Cobalt, Dodge Neon, Ford Focus)

v. Midsize Car (*e.g.*, Chevrolet Malibu, Dodge Stratus, Honda Accord, Toyota Camry)

vi. Large Car (*e.g.*, Chevrolet Impala, Dodge Intrepid, Ford Crown Victoria)

vii. Small Station Wagon (*e.g.*, BMW 325 Sport Wagon, Subaru Impreza Wagon, Volkswagen Jetta Wagon)

viii. Midsize Station Wagon (*e.g.*, Ford Taurus Wagon, Saab 9–5 Wagon, Subaru Legacy Wagon)

See Table III–B for a sample format.

11. Please provide your estimates of projected *total industry* U.S. passenger car sales for each model year from 2003 through 2012, inclusive. Please subdivide the data

into the vehicle categories listed in the sample format in Table III–C.

12. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 2003 through 2012.

13. Please provide projected production capacity available for the North American market (at standard production rates) for each of your company's passenger carline designations during MYs 2003–2012.

14. Please provide your estimate of production lead time for new models, your expected model life in years, and the number of years over which tooling costs are amortized.

Note: The parenthetical numbers in Tables III–A through C refer to the items in Section III, *Specifications.*

TABLE III–A—TECHNOLOGY IMPROVEMENTS

Technological improvement	Baseline technology	Percent fuel economy improvement, (percent)	Basis for improvement estimate	Models on which technology is applied	Production share of model with technological improvement				
					2003	2004	2005	2006	2007+
(6a) Improved Auto Trans.									
LT–1		7.0			0	0	15	25	55
LT–2		6.5			0	0	0	20	25
LT–3		5.0			0	10	30	60	60
(6b) Improved Manual Trans.									
LV–1		1.0			2	5	5	5	5
U–1		0.7			0	0	0	8	10

TABLE III–B—ACTUAL AND PROJECTED U.S. PASSENGER CAR SALES

Apex motors passenger car sales projections

Model line	Model year					
	2003	2004	2005	2006	2007	2008+
Two-Seater	43,500					
Mini-compact Car	509,340					
Subcompact Car	120,000					
Compact Car	60,000					
Midsize Car	20,000					
Large Car	29,310					
Small Station Wagon	54,196					
Midsize Station Wagon	38,900					
Other (Specify)						
Total	TBD					

TABLE III–C—TOTAL U.S. PASSENGER CAR SALES

Model type	2003	2004	2005	2006	2007	2008+
a. Two-Seater						
b. Mini-compact						
c. Subcompact						
d. Compact						
e. Midsize						
f. Large						
g. Small Station Wagon						
h. Midsize Station Wagon						
i. Other (Specify)						
Total Passenger Cars						

IV. Specifications—Light Truck Data

Go to *http://www.nhtsa.dot.gov/cars/rules/CAFE/rulemaking.htm* for spreadsheet templates.

1. Identify all light truck models currently offered for sale in MY 2003 whose production you project discontinuing before MY 2008 and identify the last model year in which each will be offered.

2. Identify all basic engines offered by respondent in MY 2003 light trucks which respondent projects it will cease to offer for sale in light trucks before MY 2008, and identify the last model year in which each will be offered.

3. For each model year 2003–2012, list all projected trucklines and provide the information specified below for each model type. Model types that are essentially identical except for their nameplates (*e.g.*, Chrysler Town & Country/Dodge Caravan) may be combined into one item. Engines having the same displacement but belonging to different engine families are to be grouped separately. Within the fleet, the vehicles are to be sorted first by truckline, second by basic engine, and third by transmission type. Spreadsheet templates can be found at *http://www.nhtsa.dot.gov/cars/rules/CAFE/rulemaking.htm*. These templates include codes and definitions for the data that the Agency is seeking.

a. General Information

1. A unique identifying number or code assigned to each model.
2. Vehicle manufacturer.
3. Vehicle model (*e.g.*, Camry)
4. Vehicle nameplate (*e.g.*, Camry Solara)
5. Weighted average fuel economy

6. Engine code

A. Engine manufacturer

B. Engine name

C. Engine's country of origin

D. Fuel

E. Engine oil viscosity

F. Combustion cycle

G. Air/fuel ratio

H. Fuel system

I. Aspiration

J. Valvetrain design

K. Valve actuation/timing

L. Valve lift

M. Number of engine cylinders

N. Configuration

O. Valves per cylinder

P. Cylinder deactivation

Q. Engine displacement

R. Compression ratio (Min)

S. Compression ratio (Max)

T. Horsepower

U. Torque

7. Transmission code

A. Transmission manufacturer

B. Name of transmission

C. Transmission's country of origin

D. Transmission type

E. Number of forward gears

F. Control

G. Logic

H. Gear ratios for all forward gears

I. Reverse gear ratio

J. Torque converter ratio

K. Axle ratio

L. Torque converter lockup/bypass status

M. Transmission fluid specification

N. Transmission lubricant viscosity

b. Projected U.S. sales

c. Vehicle information

1. Style (*e.g.*, pickup, van, utility)

2. EPA Size Class

3. Construction (*e.g.*, unibody, ladder)

4. Drive (*e.g.*, rear wheel drive, front wheel drive, all-wheel drive, 4-wheel drive)

5. Final drive ratio

6. N/V

7. Front axle lubricant viscosity

8. Rear axle lubricant viscosity

9. Overall length (per code L103 of SAE J1100, revised July 2002)

10. Overall width (per code W116 of SAE J1100, revised July 2002)

11. Overall height (per code H100 of SAE J1100, revised July 2002)

12. Wheelbase (per code L101 of SAE J1100, revised July 2002)

13. Track width (front) (per code W101–1 of SAE J1100, revised July 2002)

14. Track width (rear) (per code W101–2 of SAE J1100, revised July 2002)

16. Front axle clearance (per 49 CFR 323.5)

17. Rear axle clearance (per 49 CFR 323.5)

18. Angle of approach (per 49 CFR 323.5)

19. Breakover angle (per 49 CFR 323.5)

20. Angle of departure (per 49 CFR 323.5)

21. Height of the center of gravity (per NCAP Static Stability Factor procedures)

22. Curb weight, in lbs.

23. Test weight, in lbs.

24. Power absorption unit setting, in horsepower

25. Gross Vehicle Weight Rating, in lbs.

26. Towing capacity (standard), in lbs.

27. Towing capacity (maximum), in lbs.

28. Payload, in lbs.

29. Minimum designated seating positions

30. Maximum designated seating positions

31. Designated seating positions in the first row

32. Cargo volume behind the front row in ft^3 (per Table 28 of SAE J1100, revised July 2002)

33. Designated seating positions in the second row

34. Capability of second row seats to fold flat

35. Cargo volume behind the second row in ft^3 (per Table 28 of SAE J1100, revised July 2002)

36. Designated seating positions in the third row

37. Capability of third row seats to fold flat

38. Cargo volume behind the third row in ft^3 (per Table 28 of SAE J1100, revised July 2002)

39. Enclosed volume in ft^3

40. Passenger volume in ft^3 (The volume measured using SAE Recommended Practice J1100 as per EPA Fuel economy regulations, reg. 40 CFR 600.315–82 "Classes of Comparable Automobiles." This number is what automobile manufacturers calculate and submit to EPA.)

41. Cargo volume index (per Table 28 of SAE J1100, revised July 2002)

42. Open box length (per L506 of SAE J1100, revised July 2002)

43. Open box width (min) (per W201 of SAE J1100, revised July 2002)

44. Open box width (max) (per W500 of SAE J1100, revised July 2002)

45. Open box area

46. Open box height (per H503 of SAE J1100, revised July 2002)

47. Fuel capacity in gallons

48. Tire rolling resistance, Crr

49. Frontal area

50. Aerodynamic drag coefficient, Cd

d. Hybridization

1. Type

2. Voltage or pressure

3. Energy storage capacity, in MJ

4. Battery type

5. Energy transfer

6. Percentage of braking energy recovered and stored

7. Percentage of maximum motive power provided by stored energy system

e. Planning and assembly

1. Predecessor model

2. Last freshening

3. Next freshening

4. Last redesign

5. Next redesign

6. Domestic content

7. Final assembly city

8. Final assembly state

9. Final assembly country

f. Manufacturers' suggested retail price (in constant 2003 dollars)

g. Emissions

1. EPA class (LDV, LLDT, HLDT, MDPV)

2. EPA certification bin

3. LEV class

The agency also requests that each manufacturer provide an estimate of its overall light truck CAFE for each model year. This estimate should be included as an entry in the spreadsheets that are submitted to the agency.

4. Does respondent project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to Question 3, in its light truck fleets in MYs 2003–2012? If so, for each basic engine or variant indicate:

a. The projected year of introduction,

b. Type (*e.g.*, spark ignition, direct injection diesel, 2-cycle, alternative fuel use),

c. Displacement (If engine has variable displacement, please provide the minimum and maximum displacement),

d. Type of induction system (*e.g.*, fuel injection with turbocharger, naturally aspirated),

e. Cylinder configuration (*e.g.*, V–8, V–6, I–4),

f. Number of valves per cylinder (*e.g.*, 2, 3, 4),

g. Valvetrain design (*e.g.*, overhead valve, overhead camshaft,

h. Valve technology (*e.g.*, variable valve timing, variable valve lift and timing, intake valve throttling, camless valve actuation, etc.)

i. Horsepower and torque ratings,

j. Models in which engines are to be used, giving the introduction model year for each model if different from "a," above.

5. Relative to MY 2003 levels, for MYs 2005–2012, please provide information, by truckline and as an average effect on a manufacturer's entire light truck fleet, on the weight and/or fuel economy impacts of the following standards or equipment:

a. Federal Motor Vehicle Safety Standard (FMVSS 208) Automatic Restraints

b. FMVSS 201 Occupant Protection in Interior Impact

c. Voluntary installation of safety equipment (*e.g.*, antilock brakes)

d. Environmental Protection Agency regulations

e. California Air Resources Board requirements

f. Other applicable motor vehicle regulations affecting fuel economy.

6. For each of the model years 2003–2012, and for each light truck model projected to be manufactured by respondent (if answers differ for the various models), provide the requested information on new technology applications for each of items "6a" through "6r" listed below:

(i) description of the nature of the technological improvement;

(ii) the percent fuel economy improvement averaged over the model;

(iii) the basis for your answer to 6(ii), (*e.g.*, data from dynamometer tests conducted by respondent, engineering analysis, computer simulation, reports of test by others);

(iv) the percent production implementation rate and the reasons limiting the implementation rate;

(v) a description of the 2003 baseline technologies and the 2003 implementation rate; and

(vi) the reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 6(ii) and 6(iv) a tabular presentation, a sample portion of which is shown in Table IV-A.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include benefits of lock-up or bypassed torque converters, electronic control of shift points and torque converter lock-up, and other measures which should be described.

b. Improved manual transmissions. Projections of percent of fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in "a" or "b" above, project the percentage of fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratios. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcase lubricants of lower viscosity or with additives to improve friction characteristics or accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 2002 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine-driven accessories or accessory drives. Typical engine-driven accessories include water pump, cooling fan, alternator, power steering pump, air conditioning compressor, and vacuum pump.

f. Reduction of tire rolling losses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (e.g., reduced aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 2002 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improves lubricants in the differential and wheel bearing, and optimizing suspension geometry (*e.g.*, to minimize tire scrubbing loss).

h. Reduction of aerodynamic drag.

i. Turbocharging or supercharging.

j. Improvements in the efficiency of 4-cycle spark ignition engines including (1) increased compression ratio; (2) leaner air-to-fuel ratio; (3) revised combustion chamber configuration; (4) fuel injection; (5) electronic fuel metering; (6) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (8) variable valve timing or valve lift; (9) multiple valves per cylinder; (10) cylinder deactivation; (11) friction reduction by means such as low tension piston rings and roller cam followers; (12) higher temperature operation; and (13) other methods (specify).

k. Direct injection gasoline engines.

l. Naturally aspirated diesel engines, with direct or indirect fuel injection.

m. Turbocharged or supercharged diesel engines with direct or indirect fuel injection.

n. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

o. Two cycle spark ignition engines.

p. Use of hybrid drivetrains

q. Use of fuel cells; provide a thorough description of the fuel cell technology employed, including fuel type and power output.

r. Other technologies for improving fuel economy or efficiency.

7. For each model of respondent's light truck fleet projected to be manufactured in each of MYs 2003–2012, describe the methods used to achieve reductions in average test weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used. Separate listings are to be used for 4x2 light trucks and 4x4 light trucks.

a. Substitution of materials.

b. "Downsizing" of existing vehicle design to reduce weight while maintaining interior roominess and comfort for passengers, and utility, *i.e.*, the same or approximately the same, payload and cargo volume, using the same basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts, which provides reduced weight for approximately the same payload and cargo volume.

8. Indicate any MY 2003–2012 light truck model types that have higher average test weights than comparable MY 2002 model types. Describe the reasons for any weight increases (*e.g.*, increased option content, less use of premium materials) and provide supporting justification.

9. For each new or redesigned vehicle identified in response to Question 3 and each new engine or fuel economy improvement identified in your response to Questions 3, 4, 5, and 6, provide your best estimate of the following, in terms of constant 2003 dollars:

(a) Total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in your response. Subdivide the capital costs into tooling, facilities, launch, and engineering costs.

(b) The maximum production capacity, expressed in units of capacity per year, associated with the capital expenditure in (a) above. Specify the number of production shifts on which your response is based and define "maximum capacity" as used in your answer.

(c) The actual capacity that is planned to be used each year for each new/redesigned model or fuel economy improvement.

(d) The increase in variable costs per affected unit, based on the production volume specified in (b) above.

(e) The equivalent retail price increase per affected vehicle for each new/redesigned model or improvement. Provide an example describing methodology used to determine the equivalent retail price increase.

10. Please provide respondent's actual and projected U.S. light truck sales, 4x2 and 4x4, 0–8,500 lbs. GVWR and 8501–10,000 lbs., GVWR for each model year from 2002 through 2004, inclusive. Please subdivide the data into the following vehicle categories:

i. Standard Pickup Heavy (*e.g.*, C2500/3500, F–250/350)

ii. Standard Pickup Light (*e.g.*, C1500, F–150)

iii. Compact Pickup (*e.g.*, S–10, Ranger, Dakota)

iv. Standard Cargo Vans Heavy (*e.g.*, G3500, E–250/350)

v. Standard Cargo Vans Light (*e.g.*, G1500/2500, E–150)

vi. Standard Passenger Vans Heavy (*e.g.*, G3500, E–250/350)

vii. Standard Passenger Vans Light (*e.g.*, G1500/2500, E–150)

viii. Compact Cargo Vans (*e.g.*, Astro/Safari)

ix. Compact Passenger Vans (*e.g.*, Sienna, Odyssey, Caravan)

x. Full-size Sport Utilities (*e.g.*, Tahoe, Expedition, Sequoia)

xi. Mid-size Sport Utilities (*e.g.*, Trailblazer, Explorer)

xii. Compact Utilities (*e.g.*, Wrangler, RAV4)

xiii. Crossover Vehicle (*e.g.*, Pacifica, Rendezvous, RX 330)

xiv. Other (*e.g.*, Avalanche)

See Table IV–B for a sample format.

11. Please provide your estimates of projected *total industry* U.S. light (0–10,000 lbs, GVWR) truck sales for each model year from 2003 through 2012, inclusive. Please subdivide the data into 4x2 and 4x4 sales and into the vehicle categories listed in the sample format in Table IV–C.

12. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 2003 through 2012.

13. Please provide projected production capacity available for the North American market (at standard production rates) for each of your company's light truckline designations during MYs 2003–2012.

14. Please provide your estimate of production lead-time for new models, your expected model life in years, and the number of years over which tooling costs are amortized.

Note: The parenthetical numbers in Tables IV–A refer to the items in Section IV, *Specifications*.

TABLE IV–A—TECHNOLOGY IMPROVEMENTS

Technological improvement	Baseline technology	Percent fuel economy improvement (percent)	Basis for improvement estimate	Models on which technology is applied	Production share of model with technological improvement				
					2003	2004	2005	2006	2007+
(6a.) Improved Auto Trans. LT–1		7.0			0	0	15	25	55

TABLE IV–A—TECHNOLOGY IMPROVEMENTS—Continued

Technological improvement	Baseline technology	Percent fuel economy improvement (percent)	Basis for improvement estimate	Models on which technology is applied	Production share of model with technological improvement				
					2003	2004	2005	2006	2007+
LT–2		6.5			0	0	0	20	25
LT–3		5.0			0	10	30	60	60
(6b) Improved Manual Trans.									
LV–1		1.0			2	5	5	5	5
U–1		0.7			0	0	0	8	10

TABLE IV–B—ACTUAL AND PROJECTED U.S. LIGHT TRUCK SALES

Amalgamated Motors light truck sales projections

Model line	Model year					
	2003	2004	2005	2006	2007	2008+
Compact Pickup	43,500					
Standard Pickup—Light	209,340					
Standard Pickup—Heavy	120,000					
Compact Cargo Van	60,000					
Standard Cargo Van—Light	20,000					
Standard Cargo Van—Heavy	29,310					
Compact Passenger Van/Minivan	54,196					
Standard Passenger Van—Light	38,900					
Standard Passenger Van—Heavy.						
Compact Sport Utility						
Mid-Size Sport Utility						
Full-Size Sport Utility						
Crossover Vehicle						
Other (Specify)						
Total	TBD					

TABLE IV–C—TOTAL U.S. LIGHT TRUCK SALES

Model type	2003	2004	2005	2006	2007	2008+
Compact Pickup						
Standard Pickup—Light						
Standard Pickup—Heavy						
Compact Cargo Van						
Standard Cargo Van—Light						
Standard Cargo Van—Heavy						
Compact Passenger Van/Minivan						
Standard Passenger Van—Light						
Standard Passenger Van—Heavy						
Compact Sport Utility						
Mid-Size Sport Utility						
Full-size Sport Utility						
Crossover Vehicle						
Other (Specify)						
Total						

[FR Doc. 03–31891 Filed 12–22–03; 3:44 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122203A]

RIN 0648–AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 13, incorporating the Draft Final Supplemental Environmental Impact Statement (FSEIS) to the NE Multispecies Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. Amendment 13 was developed by the Council to end overfishing and rebuild NE multispecies (groundfish) stocks managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make other changes in the management of the groundfish fishery. The proposed measures include: Changes in the days-at-sea (DAS) baseline for determining historical participation in the groundfish fishery; DAS reductions from the baseline; creation of new categories of DAS and criteria for their allocation and use in the fishery; changes in minimum fish size and possession limits for recreationally caught fish; a new limited access permit category for Handgear vessels; elimination of the northern shrimp fishery exemption line; access to groundfish closed areas for tuna purse seiners; an exemption program for southern New England scallop dredge vessels; modifications to Vessel Monitoring System requirements; changes to procedures for exempted fisheries; changes to the process for making periodic adjustments to management measures in the groundfish fishery; revisions to trip limits for cod and yellowtail flounder; changes in gear restrictions, including minimum mesh sizes and gillnet limits; a DAS Transfer Program; a DAS Leasing Program; implementing measures for the U.S./Canada Resource Sharing Understanding for cod, haddock, and yellowtail flounder on Georges Bank (GB); Special Access Programs (SAPs) to allow targeted harvest of healthy stocks of groundfish; revisions to overfishing definitions and control rules; measures to protect Essential Fish Habitat (EFH); new reporting requirements; sector allocation procedures; and a GB Cod Hook Gear Sector Allocation. The effort-reduction measures in Amendment 13 are intended to end overfishing on all stocks and constitute rebuilding programs for those groundfish stocks that require rebuilding. Other measures are intended to provide flexibility and business options for permit holders, such as allowing the fishery to pursue the healthy groundfish stocks, and DAS transfer and leasing options.

DATES: Comments must be received on or before February 27, 2004.

ADDRESSES: Comments on Amendment 13 should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Groundfish Amendment 13.” Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of Amendment 13, the FSEIS, Regulatory Impact Review (RIR), and the Preliminary Regulatory Economic Evaluation (PREE) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

Copies of the Initial Regulatory Flexibility Analysis (IRFA) are available from the Regional Administrator at the address above.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; email: *thomas.warren@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Council has been developing Amendment 13 since 1999, in order to bring the FMP into conformance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks.

On December 28, 2001, a decision was rendered by the U.S. District Court for the District of Columbia (Court) on a lawsuit brought by the Conservation Law Foundation, Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al.*, v. *Evans, et al.*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Act (18 U.S.C. 1801, *et seq.*), as amended by the Sustainable Fisheries Act (SFA), and the Court granted plaintiffs’ Motion for Summary Judgment on all counts. The Court did not impose a remedy, but instead asked the parties to the lawsuit to propose remedies consistent with the Court’s findings.

From April 5–9, 2002, plaintiffs, defendants and intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement Among Certain Parties (Settlement Agreement) on April 16, 2002. The Settlement Agreement called for short-term measures to reduce overfishing while the Council completed its development of Amendment 13.

On April 29, 2002, NMFS published an interim final rule (67 FR 21139) under the authority of section 304(e), consistent with section 305(c), of the Magnuson-Stevens Act, which allows for interim measures to reduce overfishing until an amendment to stop overfishing and rebuild fish stocks is implemented, and to implement the short-term measures called for by the Settlement Agreement. On May 6, 2002 (67 FR 30331), NMFS corrected the April 29, 2002, interim final rule to bring it into full compliance with the Order. NMFS further amended the April 29, 2002, interim final rule on June 5, 2002 (67 FR 38608) to bring the regulations into conformance with a May 23, 2002, Order issued by the Court in response to a motion for reconsideration. NMFS proposed additional, more restrictive interim measures on July 1, 2002 (67 FR 44139), and implemented those measures on August 1, 2002 (67 FR 50292), also as required by the terms of the Settlement Agreement. A final rule implementing a regulatory amendment to correct minor oversights in the August 1, 2002, interim final rule, was published on January 28, 2003 (68 FR 4113), and another minor correction to the August 1, 2002, interim final rule was published March 25, 2003 (68 FR

14347). Descriptions of the measures implemented through the interim rules can be found in the preamble to those rules and are not repeated here.

The Order specified that management measures implemented by the August 1, 2002, interim final rule remain in effect until the completion of Amendment 13, which was initially scheduled to be in effect no later than August 22, 2003. However, due to the need for additional time to address concerns related to NMFS' Northeast Fisheries Science Center's trawl survey and new biological reference points developed for the NE multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

On January 22, 2003, NMFS published a Notice of Continuation of Regulations in the **Federal Register** to inform the public that NMFS was continuing the interim regulations for a second 180–day period, ending July 27, 2003. Under section 305(c)(3)(B) of the Magnuson-Stevens Act, interim regulations implemented under section 305(c) are limited to two consecutive 180–day periods. Because the Order required that the interim management measures remain in effect until Amendment 13 is implemented, and because the Court granted an extension of the original schedule for implementation of Amendment 13 to May 1, 2004, in response to unanticipated events, NMFS proposed, on April 24, 2003 (68 FR 20096), an emergency action under authority of section 305(c) of the Magnuson-Stevens Act. In addition to continuing the August 1, 2002, measures specified in the Settlement Agreement and Order, the April 24, 2003, emergency rule proposed a pilot program to allow limited access NE multispecies vessels to lease their NE multispecies DAS. The proposed emergency rule was corrected on May 9, 2003 (68 FR 24914) and notification of changes to that rule was published June 20, 2003 (68 FR 36970). Due to the newness and potential controversiality of the DAS Leasing Program, NMFS extended the comment period through June 10, 2003, on the DAS leasing aspect of the proposed emergency rule only (68 FR 28188; May 23, 2003). On June 27, 2003 (68 FR 38234), NMFS published a final emergency rule that implemented many of the same measures implemented through the August 1, 2002, interim final rule, with some modifications in response to public comment, but did not implement the DAS Leasing Program. Because of the public comments received and the controversial aspects of the DAS Leasing Program, NMFS concluded that it would be better to develop such a program through the Council process than through emergency rulemaking; thus, NMFS withdrew the proposed DAS Leasing Program (68 FR 41549, July 14, 2003). The measures implemented through the June 27, 2003, emergency rule remain in effect at this time. The emergency measures were continued in effect through publication of a notice of continuation in the **Federal Register** on December 22, 2003 (68 FR 71032).

A notice of availability of a Draft Environmental Impact Statement for the EFH components of Amendment 13 was published on April 4, 2003 (68 FR 16511), with public comment accepted through July 2, 2003. A notice of availability of the Draft Supplemental Environmental Impact Statement (DSEIS), which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on August 29, 2003 (68 FR 52018), with public comments accepted through October 15, 2003. A correction to the DSEIS was published on September 19, 2002 (68 FR 54900).

Amendment 13 contains numerous measures to end overfishing and rebuild stocks. In accordance with the Settlement Agreement resulting from the legal challenge *American Oceans Campaign, et al.* v *Daley, et al.* (Civil Case Number 99–982 (GK)), Amendment 13 also evaluates the impacts of fishing on EFH through analysis in the FSEIS and includes management measures designed to minimize the adverse effects of fishing on EFH to the extent practicable. The major measures proposed in Amendment 13 are listed in the **SUMMARY**.

A proposed rule that would implement Amendment 13 will be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 13 to be considered in the approval/disapproval decision on the amendment. All comments received by February 27, 2004, whether specifically directed to Amendment 13 or the proposed rule, will be considered in the approval/disapproval decision on the amendment. Any comments on the proposed rule received after that date will not be considered in the decision to approve or disapprove Amendment 13.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 2003.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–31895 Filed 12–23–03; 9:12 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 248
Monday, December 29, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Announcement of Meeting of 2005 Dietary Guidelines Advisory Committee, Invitation for Oral Testimony, and Solicitation of Written Comments

AGENCIES: U.S. Department of Health and Human Services (HHS), Office of Public Health and Science; and U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services and Research, Education and Economics.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services and the U.S. Department of Agriculture (a) provide notice of the second meeting of the Committee, (b) invite requests for oral testimony, and (c) solicit written comments.

DATES: (1) The Committee will meet on January 28 and 29, 2004, 8:30 a.m. to 5:30 p.m. on both days. (2) Requests to present oral testimony, to be presented in the afternoon of the first day, must be received by 5 p.m. E.S.T. on January 16, 2004. (3) Written comments on the guidelines must be received by 5 p.m. E.S.T. on January 16, 2004, to ensure transmittal to the Committee prior to this meeting.

ADDRESSES: Requests for oral testimony and written comments can be sent to dietaryguidelines@osophs.dhhs.gov or mailed to Kathryn McMurry, HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: HHS Co-Executive Secretaries: Kathryn McMurry or Karyl Thomas Rattay (phone 202–690–7102), HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201. USDA Co-Executive Secretaries: Carole Davis (phone 703–305–7600), USDA Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302, or Pamela Pehrsson (phone 301–504–0716), USDA Agricultural Research Service, Beltsville Agricultural Research Center-West, Building 005, Room 309A, Beltsville, Maryland 20705. Additional information is available on the Internet at *http://www.health.gov/dietaryguidelines.*

SUPPLEMENTARY INFORMATION: *Dietary Guidelines Advisory Committee:* The thirteen-member Committee appointed by the two Departments is chaired by Janet King, Ph.D., R.D., Children's Hospital Oakland Research Institute, Oakland, California. Other members are Lawrence J. Appel, M.D., M.P.H., Johns Hopkins University School of Medicine, Baltimore, Maryland; Yvonne L. Bronner, Sc.D., R.D., L.D., Morgan State University, Baltimore, Maryland; Benjamin Caballero, M.D., Ph.D., Johns Hopkins University Bloomberg School of Public Health, Baltimore, Maryland; Carlos A. Camargo, M.D., Dr.P.H., Harvard University, Boston, Massachusetts; Fergus M. Clydesdale, Ph.D., University of Massachusetts, Amherst, Amherst, Massachusetts; Vay Liang W. Go, M.D., University of California at Los Angeles, Los Angeles, California; Penny M. Kris-Etherton, Ph.D., R.D., Pennsylvania State University, University Park, Pennsylvania; Joanne R. Lupton, Ph.D., Texas A&M University, College Station, Texas; Theresa A. Nicklas, Dr.P.H., M.P.H., L.N., Baylor College of Medicine, Houston, Texas; Russell R. Pate, Ph.D., University of South Carolina, Columbia, South Carolina; F. Xavier Pi-Sunyer, M.D., M.P.H., Columbia University College of Physicians and Surgeons, New York, New York; and Connie M. Weaver, Ph.D., Purdue University, West Lafayette, Indiana.

Purpose of Meeting: The appointment of the Committee reflects the commitment by the Departments of Health and Human Services and Agriculture to provide sound and current dietary guidance to consumers. The National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445, Title III) requires the Secretaries of HHS and USDA to publish the *Dietary Guidelines for Americans* at least every five years. During its first meeting, the Dietary Guidelines Advisory Committee decided that the science has changed since the 2000 edition of *Nutrition and Your Health: Dietary Guidelines for Americans* and further evaluation of the science is necessary. Therefore, it will conduct a review of current scientific and medical knowledge and provide a technical report of any recommendations to the Secretaries for the year 2005 edition.

Announcement of Meeting: The Committee's second meeting will take place on January 28 and 29, 2004 from 8:30 a.m. to 5:30 p.m. The meeting will be held at the Hotel Washington, located on 15th St. and Pennsylvania Ave., NW., Washington, DC 20004, in the Ballroom on the lower lobby. The location is three blocks from the Metro Center metro station and about three blocks from the McPherson Square metro station. Parking is available at a local garage located on F Street, next to the hotel. The main entry to the building is located on 15th Street and a side entrance is available on the F Street side of the hotel. The agenda will include (a) presentations from invited experts, (b) oral testimony from pre-registered individuals or groups, (c) discussion of scientific reviews and related issues, and (d) formulation of plans for future work of the Committee.

Public Participation at Meeting: Space is limited for all sessions. The meeting is open to the public. Pre-registration is required. To pre-register, please email *dietaryguidelines@osophs.dhhs.gov,* with "Meeting Registration" in the subject line or call Marianne Augustine at (202) 260–2322 by 5 p.m. E.S.T., January 16, 2004. Registration must include your name, affiliation, phone number, and days attending. Visitors must bring proper identification to attend the meeting. If you require a sign language interpreter, please call Marianne Augustine at (202) 260–2322 by January 13, 2004. Documents pertaining to Committee deliberations will be available for public inspection and copying in Room 738–G, 200 Independence Avenue, SW., Washington, DC 20201 on the day before the meeting and following the meeting. Please call (202) 690–7102 to schedule an appointment to view the documents.

Oral Testimony: By this notice, the Committee is inviting submission of applications for oral testimony from the public. Oral testimony will be held in the afternoon of January 28, 2004. Due to time limitations, pre-registration is required. Registration to present oral testimony will be confirmed on a first-come, first-serve basis, as time on the meeting agenda permits. Requests to testify must include a written outline of the intended testimony not exceeding one page in length. Requests can be submitted electronically with "Oral Testimony Registration" in the subject line, to *dietaryguidelines@osophs.dhhs.gov*. All requests must be received by 5 p.m. E.S.T., January 16, 2004. Presenters are required to disclose their affiliation and their source of funding to give oral testimony at the meeting and limit their comments to three minutes. More detailed, written comments may be submitted separately. Please call Marianne Augustine at (202) 260–2322 if you have questions.

Written Comment: By this notice, the Committee is soliciting submission of written comments, views, information and data pertinent to review of the *Dietary Guidelines for Americans*. For those submitting comments more than 5 pages in length, please provide a 1-page summary of key points related to the comments submitted for the Dietary Guidelines Advisory Committee. To ensure transmittal to the Committee prior to the second meeting, they must be submitted by 5 p.m. E.S.T. on Tuesday, January 16, 2004. Comments are welcome throughout the Committee's deliberations. Comments should be sent to *dietaryguidelines@osophs.dhhs.gov* or to Kathryn McMurry, HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: December 17, 2003.

Carter Blakey,

Acting Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

Dated: December 19, 2003.

Eric J. Hentges,

Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: December 17, 2003.

Edward Knipling,

Acting Administrator, Agricultural Research Service, U.S. Department of Agriculture.

[FR Doc. 03–31801 Filed 12–24–03; 8:45 am]

BILLING CODE 4150–32–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

Comments Must Be Received on or Before: January 29, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Administrative Service, National Park Service, 12795 W. Alameda Parkway, Lakewood, Colorado.

NPA: Bayaud Industries, Inc., Denver, Colorado.

Contract Activity: National Park Service, Lakewood, Colorado.

Service Type/Location: Custodial Services, VA Medical Center, Washington, DC.

NPA: Opportunities, Inc., Alexandria, Virginia.

Contract Activity: Department of Veterans Affairs, Washington, DC.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Document Processing, Defense Reutilization and Marketing Office, McClellan AFB, California.

NPA: PRIDE Industries, Roseville, California.

Contract Activity: Department of the Air Force, McClellan AFB, California.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 03–31909 Filed 12–24–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122203C]

Proposed Information Collection; Comment Request; South Pacific Tuna Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 27, 2004

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Raymond Clarke at 808–973–2935, ext. 205, or at Raymond.Clarke@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States, signed in Port Moresby, Papua New Guinea, in 1987, and its annexes, schedules and implementing agreements, as amended (Treaty), authorize U.S. tuna vessels to fish within fishing zones of a large region of the Pacific Ocean. The South Pacific Tuna Act (16 U.S.C. 973g and 973f) and U.S. implementing regulations (50 CFR282.3 and 282.5), authorize the collection of information from participants in the Treaty fishery. Vessel operators who wish to participate in the Treaty fishery must submit annual license and registration applications and periodic written reports of catch and unloading of fish from a licensed vessel. The information collected is submitted to the Forum Fisheries Agency (FFA), on forms generated by the FFA, through the U.S. government (National Marine Fisheries Service). License and registration application information is used by FFA to determine the operational capability and financial responsibility of a vessel operator interested in participating in the Treaty fishery. The information obtained from vessel catch and unloading reports is used by FFA to assess fishing effort and fishery resources in the region and to track the amount of fish caught within each Pacific island state's exclusive economic zone for fair disbursement of Treaty monies. If the information is not collected, the U.S. government will not meet its obligations under the Treaty, and the lack of fishing information will result in poor management of the fishery resources.

II. Method of Collection

The information is collected using forms required under the Treaty.

III. Data

OMB Number: 0648–0218.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 32.

Estimated Time Per Response: 15 minutes for a license application form; 30 minutes for a registration application form; 15 minutes for a Vessel Monitoring System (VMS) application form; 1 hour for a catch report; 30 minutes for an unloading logsheet; 4 hours to install a VMS; 2 hours per year to maintain a VMS; and 24 seconds per day for automated VMS position messages.

Estimated Total Annual Burden Hours: 430.

Estimated Total Annual Cost to Public: $53,000.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31896 Filed 12–24–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122203B]

Proposed Information Collection; Comment Request; Vessel Monitoring System Requirements in the Western Pacific Pelagic Longline Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 27, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alvin Katekaru at 803–973–2935, ext. 207, or at Alvin.Katekaru@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Commercial fishing vessels active in the Hawaii-based pelagic longline fishery must allow NOAA to install vessel monitoring system (VMS) units on their vessel when directed to do so by NOAA enforcement personnel. The VMS units automatically send periodic reports on the position of the vessel. NOAA uses the reports to monitor the vessel's location and activities while enforcing area closures. NOAA pays for the units and messaging.

II. Method of Collection

The only information collected is vessel position reports, which are automatically transmitted via the VMS.

III. Data

OMB Number: 0648–0441.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 164.

Estimated Time Per Response: 4 hours to install a VMS unit; 2 hours per year to repair and maintain a VMS unit; and 24 seconds a day to transmit hourly automated position reports from a vessel.

Estimated Total Annual Burden Hours: 743.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–31897 Filed 12–24–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of an Import Limit for Knit Fabric, Category 222, Produced or Manufactured in the People's Republic of China

December 23, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (Committee).

ACTION: Notice

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On December 24, 2003, as provided for under paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization (Accession Agreement), the United States requested consultations with the Government of the People's Republic of China with respect to imports of Chinese origin knit fabric in Category 222. In accordance with paragraph 242 of the Accession Agreement and the procedures set forth by the Committee on May 21, 2003 (68 FR 27787), as clarified on August 18, 2003 (68 FR 49440), the United States is establishing a twelve-month limit on knit fabric in Category 222 from China, beginning on December 24, 2003, and extending through December 23, 2004 at a level of 9,664,477 kilograms.

Paragraph 2.B. of the U.S.-China Textile Visa Arrangement provides that if additional categories become subject to import quotas, those categories shall be automatically included in the coverage of the Visa Arrangement. This Visa Arrangement was notified to the World Trade Organization Textiles Monitoring Body as an agreed administrative arrangement on May 21, 2002. Consequently, the United States will require that shipments of Chinese origin knit fabric in Category 222 be accompanied by an export visa and Electronic Visa Information System (ELVIS) transmission issued by the Government of the People's Republic of China. In order to provide a period for adjustment, the United States will allow shipments of goods in this category that are not accompanied by an export visa and an ELVIS transmission to enter the United States if exported prior to January 23, 2004. However, shipments exported from China on or after January 23, 2004 must be accompanied by an export visa and ELVIS transmission issued by the Government of the People's Republic of China, and shipments without an export visa and ELVIS transmission will be denied entry.

Paragraph 242 of the Accession Agreement allows World Trade Organization Members that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with the People's Republic of China with a view to easing or avoiding such market disruption. Upon receipt of the request, the People's Republic of China has agreed to hold its shipments to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request for consultations. The Member requesting consultations may implement such a limit. Consistent with paragraph 242, consultations with the People's Republic of China will be held within 30 days of receipt of the request for consultations, and every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of receipt of the request for consultations. If agreement on a different limit is reached, the Committee will issue a **Federal Register** Notice containing a directive to the Bureau of Customs and Border Protection to implement the negotiated limit.

On July 24, 2003, the Committee received a request from the American

Yarn Spinners Association, American Manufacturing Trade Action Coalition, American Textile Manufacturers Institute and the National Textile Association alleging that imports from the People's Republic of China of knit fabric (Category 222) are, due to market disruption, threatening to impede the orderly development of trade in this product, and requesting that an Accession Agreement textile and apparel safeguard action be taken on imports of knit fabric. The Committee determined that this request provided the information necessary for the Committee to consider the request, and, on August 18, 2003, the Committee solicited public comments on the request (68 FR 49440). This public comment period ended on September 17, 2003. The Committee determined that imports of Chinese origin knit fabric are, due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in knit fabric, and that imports of knit fabric from China play a significant role in the existence and threat of market disruption. A summary statement of the reasons and justifications for the U.S. request for consultations concerning imports of Category 222 from the People's Republic of China follows this notice.

A description of the textile and apparel categories in terms of Harmonized Tariff Schedule of the United States numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63891, published on October 16, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 24, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of knit fabric textile products in Category 222, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on December 24, 2003, and extending through December 23, 2004, in excess of 9,664,477 kilograms.

Paragraph 2.B. of the U.S.-China Textile Visa Arrangement provides that if additional categories become subject to import quotas, those categories shall be automatically included in the coverage of the Visa Arrangement. This Visa Arrangement was notified to the World Trade Organization Textiles Monitoring Body as an agreed administrative arrangement on May 21, 2002. Consequently, the United States will require that shipments of Chinese origin knit fabric in Category 222 be accompanied by an export visa and Electronic Visa Information System (ELVIS) transmission issued by the Government of the People's Republic of China. In order to provide a period for adjustment, the United States will allow shipments of goods in this category that are not accompanied by an export visa and an ELVIS transmission to enter the United States if exported prior to January 23, 2004. However, shipments exported from China on or after January 23, 2004 must be accompanied by an export visa and ELVIS transmission issued by the Government of the People's Republic of China, and shipments without an export visa and ELVIS transmission will be denied entry.

Products which have been exported to the United States prior to December 24, 2003, shall not be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

SUMMARY OF THE REASONS AND JUSTIFICATIONS FOR U.S. REQUEST FOR CONSULTATIONS WITH CHINA PURSUANT TO PARAGRAPH 242 OF THE REPORT OF THE WORKING PARTY ON THE ACCESSION OF CHINA TO THE WORLD TRADE ORGANIZATION

Knit Fabric

Category 222

The United States believes that imports of Chinese origin knit fabric are, due to market disruption, threatening to impede the orderly development of trade in knit fabric, and that imports of knit fabric from China play a significant role in the existence of market disruption. Further, the United States believes that imports of Chinese origin knit fabric are, due to the threat of market disruption, threatening to impede the orderly development of trade in knit fabric, and that imports of knit fabric from China play a significant role in the threat of market disruption. Either finding supports a request for consultations with the Government of the People's Republic of China under Paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization ("Paragraph 242"). The following facts, and others contained in the full Statement, support these beliefs:

U.S. Imports from China Are Increasing Rapidly in Absolute Terms. U.S. imports of knit fabric from China increased from 42,505 kilograms in 2000 to over 7 million kilograms in 2002 (an increase of 16,396 percent) and to 9.1 million kilograms in the year ending in October 2003 (an increase of 21,307 percent from the 2000 level).

U.S. Imports from China Are Increasing Rapidly Relative to Other Imports. In 2001, China was the 30th largest exporter of knit fabric to the United States. Just one year later, China was the 5th largest exporter. In the year ending October 2003, China surpassed Mexico, becoming the 4th largest exporter of knit fabric to the United States.

Chinese Average Unit Values Are Well Below Values from Other Countries. In the year ending October 2003, the average unit value of knit fabric imports from China was US$5.26 per kilogram, compared to a "rest of world" average unit import value of US$6.46 per kilogram.

U.S. Imports from China Are Likely to Increase Further in the Near Future. China is the world's largest textile machinery importing country. Between January and May 2003, China imported $1.8 billion worth of textile machinery, an increase of 71 percent compared to the same period last year. According to Chinese Customs data, China imported over US$243 million of knitting machines in the first five months of 2003 - an increase of over 105.4 percent over the same period in 2002.

The U.S. Knit Fabric Industry Is Vulnerable to Any Increase in Imports. U.S. production of knit fabric fell 27 percent from 2000 to 2002 (from 657,040 kilograms to 479,960 kilograms), while the share of the market held by U.S. producers fell by 9.6 percentage points (from 86.9 percent to 77.3 percent) during this period.

[FR Doc. 03–32031 Filed 12–24–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of an Import Limit for Brassieres and Other Body Supporting Garments, Category 349/649, Produced or Manufactured in the People's Republic of China

December 23, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (Committee).

ACTION: Notice

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On December 24, 2003, as provided for under paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization (Accession Agreement), the United States requested consultations with the Government of the People's Republic of China with respect to imports of Chinese origin brassieres and other body supporting garments in Category 349/649. In accordance with paragraph 242 of the Accession Agreement and the procedures set forth by the Committee on May 21, 2003 (68 FR 27787), as clarified on August 18, 2003 (68 FR 49440), the United States is establishing a twelve-month limit on brassieres and other body supporting garments in Category 349/649 from China, beginning on December 24, 2003, and extending through December 23, 2004 at a level of 16,828,971 dozen.

Paragraph 2.B. of the U.S.-China Textile Visa Arrangement provides that if additional categories become subject to import quotas, those categories shall be automatically included in the coverage of the Visa Arrangement. This Visa Arrangement was notified to the World Trade Organization Textiles Monitoring Body as an agreed administrative arrangement on May 21, 2002. Consequently, the United States will require that shipments of Chinese origin brassieres and other body supporting garments in Category 349/649 be accompanied by an export visa and Electronic Visa Information System (ELVIS) transmission issued by the Government of the People's Republic of China. In order to provide a period for adjustment, the United States will allow shipments of goods in this category that are not accompanied by an export visa and an ELVIS transmission to enter the United States if exported prior to January 23, 2004. However, shipments exported from China on or after January 23, 2004 must be accompanied by an export visa and ELVIS transmission issued by the Government of the People's Republic of China, and shipments without an export visa and ELVIS transmission will be denied entry.

Paragraph 242 of the Accession Agreement allows World Trade Organization Members that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with the People's Republic of China with a view to easing or avoiding such market disruption. Upon receipt of the request, the People's Republic of China has agreed to hold its shipments to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request for consultations. The Member requesting consultations may implement such a limit. Consistent with paragraph 242, consultations with the People's Republic of China will be held within 30 days of receipt of the request for consultations, and every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of receipt of the request for consultations. If agreement on a different limit is reached, the Committee will issue a **Federal Register** Notice containing a directive to the Bureau of Customs and Border Protection to implement the negotiated limit.

On July 24, 2003, the Committee received a request from the American Manufacturing Trade Action Coalition, American Textile Manufacturers Institute and the National Textile Association alleging that imports from the People's Republic of China of brassieres and other body supporting garments (Category 349/649) are, due to market disruption, threatening to impede the orderly development of trade in this product, and requesting that an Accession Agreement textile and apparel safeguard action be taken on imports of brassieres and other body supporting garments. The Committee determined that this request provided the information necessary for the Committee to consider the request, and, on August 18, 2003, the Committee solicited public comments on the request (68 FR 49448). This public comment period ended on September 17, 2003. The Committee determined that imports of Chinese origin brassieres and other body supporting garments are, due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in brassieres and other body supporting garments, and that imports of brassieres and other body supporting garments from China play a significant role in the existence of and threat of market disruption. A summary statement of the reasons and justifications for the U.S. request for consultations concerning imports of Category 349/649 from the People's Republic of China follows this notice.

A description of the textile and apparel categories in terms of Harmonized Tariff Schedule of the United States numbers is available in the CORRELATION: Textile and Apparel Category with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63891, published on October 16, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 24, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of brassieres and other body supporting garments in Category 349/649, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on December 24, 2003, and extending through December 23, 2004, in excess of 16,828,971 dozen.

Paragraph 2.B. of the U.S.-China Textile Visa Arrangement provides that if additional categories become subject to import quotas, those categories shall be automatically included in the coverage of the Visa Arrangement. This Visa Arrangement was notified to the World Trade Organization Textiles Monitoring Body as an agreed administrative arrangement on May 21, 2002. Consequently, the United States will require that shipments of Chinese origin brassieres and other body supporting garments in Category 349/649 be accompanied by an export visa and Electronic Visa Information System (ELVIS) transmission issued by the Government of the People's Republic of China. In order to provide a period for adjustment, the United States will allow shipments of goods in this category that are not accompanied by an export visa and an ELVIS transmission to enter the United States if exported prior to January 23, 2004. However, shipments exported from China on or after January 23, 2004 must be accompanied by an export visa and ELVIS transmission issued by the Government of the People's Republic of China, and shipments without an export visa and ELVIS transmission will be denied entry.

Products which have been exported to the United States prior to December 24, 2003, shall not be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

SUMMARY OF THE REASONS AND JUSTIFICATIONS FOR U.S. REQUEST FOR CONSULTATIONS WITH CHINA PURSUANT TO PARAGRAPH 242 OF THE REPORT OF THE WORKING PARTY ON THE ACCESSION OF CHINA TO THE WORLD TRADE ORGANIZATION

Brassieres and Other Body Supporting Garments

Category 349/649

The United States believes that imports of Chinese origin brassieres and other body supporting garments are, due to market disruption, threatening to impede the orderly development of trade in brassieres and other body supporting garments, and that imports of brassieres and other body supporting garments from China play a significant role in the existence of market disruption. Further, the United States believes that imports of Chinese origin brassieres and other body supporting garments are, due to the threat of market disruption, threatening to impede the orderly development of trade in brassieres and other body supporting garments, and that imports of brassieres and other body supporting garments from China play a significant role in the threat of market disruption. Either finding supports a request for consultations with the Government of the People's Republic of China under Paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization ("Paragraph 242"). The following facts, and others contained in the full Statement, support these beliefs:

U.S. Imports from China Are Increasing Rapidly in Absolute Terms. U.S. imports of brassieres and other body supporting garments from China increased from 4,084,363 dozens in 2000 to 10,580,029 dozens in 2002 (an increase of 159 percent), and to 15,967,519 dozens in the year ending October 2003 (an increase of 291 percent from the 2000 level).

U.S. Imports from China Are Increasing Rapidly Relative to Other Imports. In 2001, China was the 6th largest exporter of brassieres and other body supporting garments to the United States. Just one year later, China was the largest exporter of brassieres and other body supporting garments to the United States and has remained so through the year ending October 2003.

Chinese Average Unit Values Are Well Below Values from Other Countries. In 2002, the average unit value of U.S. brassieres and other body supporting garments imports from China was US$33.43 per dozen, compared to a "rest of world" import average unit value of US$42.24 per dozen. In the year ending October 2003, the average unit value of imports from China fell to US$32.08 per dozen, compared to US$43.17 per dozen for "rest of world" imports.

U.S. Imports from China Are Likely to Increase Further in the Near Future. China's capacity to produce apparel, including brassieres and other body supporting garments, and the low prices of China imports of these products threaten to disrupt the U.S. market for brassieres and other body supporting garments. Due to the vulnerability of the U.S. industry today, even a relatively small increase in low-priced imports from China in the near future could have a considerable impact.

The U.S. Brassieres and Other Body Supporting Garments Industry Is Vulnerable to Any Increase in Imports. U.S. production including outward processing of brassieres and other body supporting garments fell 2 percent from 2000 to the year ending June 2003 (from 28,375 thousand dozen to 27,781 thousand dozen), while the share of the market held by U.S. producers fell by 9 percentage points (from 52.8 percent to 43.8 percent) during this period.

[FR Doc. 03–32032 Filed 12–24–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations with the Government of the People's Republic of China and the Establishment of an Import Limit for Cotton and Man-Made Fiber Dressing Gowns and Robes, Category 350/650, Produced or Manufactured in the People's Republic of China

December 23, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (Committee).

ACTION: Notice

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On December 24, 2003, as provided for under paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization (Accession Agreement), the United States requested consultations with the Government of the People's Republic of China with respect to imports of Chinese origin cotton and man-made fiber dressing gowns and robes in Category 350/650. In accordance with paragraph 242 of the Accession Agreement and the procedures set forth by the Committee on May 21, 2003 (68 FR 27787), as clarified on August 18, 2003 (68 FR 49440), the United States is establishing a twelve-month limit on cotton and man-made fiber dressing gowns in Category 350/650 from China, beginning on December 24, 2003, and extending through December 23, 2004 at a level of 4,094,382 dozen.

Paragraph 2.B. of the U.S.-China Textile Visa Arrangement provides that if additional categories become subject to import quotas, those categories shall be automatically included in the coverage of the Visa Arrangement. This Visa Arrangement was notified to the World Trade Organization Textiles Monitoring Body as an agreed administrative arrangement on May 21, 2002. Consequently, the United States will require that shipments of Chinese origin cotton and man-made fiber dressing gowns and robes in Category 350/650 be accompanied by an export visa and Electronic Visa Information System (ELVIS) transmission issued by the Government of the People's Republic of China. In order to provide a period for adjustment, the United States will allow shipments of goods in this category that are not accompanied by an export visa and an ELVIS transmission to enter the United States if exported prior to January 23, 2004. However, shipments exported from China on or after January 23, 2004 must be accompanied by an export visa and ELVIS transmission issued by the Government of the People's Republic of China, and shipments without an export visa and ELVIS transmission will be denied entry.

Paragraph 242 of the Accession Agreement allows World Trade Organization Members that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with the People's Republic of China with a view to easing or avoiding such market disruption. Upon receipt of the request, the People's Republic of China has agreed to hold its shipments to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request for consultations. The Member requesting consultations may implement such a limit. Consistent with paragraph 242, consultations with the People's Republic of China will be held within 30 days of receipt of the request for consultations, and every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of receipt of the request for consultations. If agreement on a different limit is reached, the Committee will issue a **Federal Register** Notice containing a directive to the Bureau of Customs and Border Protection to implement the negotiated limit.

On July 24, 2003, the Committee received a request from the American Manufacturing Trade Action Coalition, American Textile Manufacturers Institute and the National Textile Association alleging that imports from the People's Republic of China of cotton and man-made fiber dressing gowns and robes. (Category 350/650) are, due to market disruption, threatening to impede the orderly development of trade in this product, and requesting that an Accession Agreement textile and apparel safeguard action be taken on imports of cotton and man-made fiber dressing gowns and robes. The Committee determined that this request provided the information necessary for the Committee to consider the request, and, on August 18, 2003, the Committee solicited public comments on the request (68 FR 49444). This public comment period ended on September 17, 2003. The Committee determined that imports of Chinese origin cotton and man-made fiber dressing gowns and robes are, due to market disruption and the threat of market disruption, threatening to impede the orderly development of trade in cotton and man-made fiber dressing gowns and robes, and that imports of cotton and man-made fiber dressing gowns and robes from China play a significant role in the existence and threat of market disruption. A summary statement of the reasons and justifications for the U.S. request for consultations concerning imports of Category 350/650 from the People's Republic of China follows this notice.

A description of the textile and apparel categories in terms of Harmonized Tariff Schedule of the United States numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63891, published on October 16, 2002.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 24, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber dressing gowns and robes. in Category 350/650, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on December 24, 2003, and extending through December 23, 2004, in excess of 4,094,382 dozen.

Paragraph 2.B. of the U.S.-China Textile Visa Arrangement provides that if additional categories become subject to import quotas, those categories shall be automatically included in the coverage of the Visa Arrangement. This Visa Arrangement was notified to the World Trade Organization Textiles Monitoring Body as an agreed administrative arrangement on May 21, 2002. Consequently, the United States will require that shipments of Chinese origin cotton and man-made fiber dressing gowns and robes in Category 350/650 be accompanied by an export visa and Electronic Visa Information System (ELVIS) transmission issued by the Government of the People's Republic of China. In order to provide a period for adjustment, the United States will allow shipments of goods in this category that are not accompanied by an export visa and an ELVIS transmission to enter the United States if exported prior to January 23, 2004. However, shipments exported from China on or after January 23, 2004 must be accompanied by an export visa and ELVIS transmission issued by the Government of the People's Republic of China, and shipments without an export visa and ELVIS transmission will be denied entry.

Products which have been exported to the United States prior to December 24, 2003, shall not be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

SUMMARY OF THE REASONS AND JUSTIFICATIONS FOR U.S. REQUEST FOR CONSULTATIONS WITH CHINA PURSUANT TO PARAGRAPH 242 OF THE REPORT OF THE WORKING PARTY ON THE ACCESSION OF CHINA TO THE WORLD TRADE ORGANIZATION

Cotton and Man-Made Fiber Dressing Gowns and Robes

Category 350/650

The United States believes that imports of Chinese origin cotton and man-made fiber dressing gowns and robes are, due to market disruption, threatening to impede the orderly development of trade in cotton and man-made fiber dressing gowns and robes, and that imports of cotton and man-made fiber dressing gowns and robes from China play a significant role in the existence of market disruption. Further, the United States believes that imports of Chinese origin cotton and man-made fiber dressing gowns and robes are, due to the threat of market disruption, threatening to impede the orderly development of trade in cotton and man-made fiber dressing gowns and robes, and that imports of cotton and man-made fiber dressing gowns and robes from China play a significant role in the threat of market disruption. Either finding supports a request for consultations with the Government of the People's Republic of China under Paragraph 242 of the Report of the Working Party on the Accession of China to the World Trade Organization ("Paragraph 242"). The following facts, and others contained in the full Statement, support these beliefs:

U.S. Imports from China Are Increasing Rapidly in Absolute Terms. U.S. imports of cotton and man-made fiber dressing gowns and robes from China increased from 259,868 dozens in 2000 to 2,171,896 dozens in 2002 (an increase of 736 percent), and to 4,117,377 dozens in the year ending in October 2003 (an increase of 1,484 percent from the 2000 level).

U.S. Imports from China Are Increasing Rapidly Relative to Other Imports. In 2001, China was the 5th largest exporter of cotton and man-made fiber dressing gowns and robes to the United States. Just one year later, China was the largest exporter of cotton and man-made fiber dressing gowns and robes and has remained so through the year ending October 2003.

Chinese Average Unit Values Are Well Below Values from Other Countries. In 2002, the average unit value of U.S. imports of cotton and man-made fiber dressing gowns and robes from China was US$66.61 per dozen, compared to a "rest of world" import average unit value of US$74.60 per dozen. In the year ending October 2003, the average unit value of imports from China fell to US$56.46 per dozen, compared to US$65.74 per dozen for "rest of world" imports.

U.S. Imports from China Are Likely to Increase Further in the Near Future. China's capacity to produce apparel, including cotton and man-made fiber dressing gowns and robes, and the low prices of Chinese imports of these products threaten to disrupt the U.S. market for cotton and man-made fiber and dressing gowns and robes. Due to the vulnerability of the U.S. industry today, even a relatively small increase in low-priced imports from China in the near future could have a considerable impact.

The U.S. Cotton and Man-Made Fiber Dressing Gowns and Robes Industry is Vulnerable to Any Increase in Imports. U.S. production including outward processing of cotton and man-made fiber dressing gowns and robes fell 38.6 percent from 2000 to the year ending June 2003 (from 1,990 thousand dozens to 1,221 thousand dozens), while the share of the market held by U.S. producers fell by 17.9 percentage points (from 30 percent to 12.1 percent) during this period.

[FR Doc. 03–32033 Filed 12–24–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Mandatory Declassification Review Addresses

AGENCY: Department of Defense

ACTION: Notice.

SUMMARY: Pursuant to the Information Security Oversight Office's Classified National Security Information Directive No. 1, this notice provides Department of Defense addresses to which Mandatory Declassification Review requests may be sent. This notice benefits the public in advising them where to send such requests for declassification review and makes administrative corrections that were previously published on November 17, 2003 (68 FR 64865).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Storer, 703–601–4722

The following chart identifies the offices to which mandatory declassification review requests should be addressed

OSD/JS—Washington Headquarters Services, Chief, Declassification and Historical Research Branch, Suite 501, 1155 Jefferson Davis Highway, Arlington, VA 22202.

ARMY—Department of the Army, Army Declassification Activity, ATTN: TAPC–PDD, Suite 509, 4600 N. Fairfax Drive, Arlington, VA 22203–1553.

NAVY—Department of the Navy, Chief of Naval Operations, N09B11, RM 1D469, 2000 Navy Pentagon, Washington, DC 20350–2000.

AIR FORCE—Department of the Air Force, 11 CS/SCSR (MDR), 1000 Air Force Pentagon, Washington, DC 20330–1000.

MARINE—Commandant of the Marine Corps, U.S. Marine Corps, 2 Navy Annex, Room 1010, Washington, DC 20830–1775.

DARPA—Defense Advance Research, Project Agency, 3701 North Fairfax Dr., Arlington, VA 22203–1714.

DCAA—Director, Defense Contract Audit Agency, ATTN: CPS, 8725 John J. Kingman Rd., Ste. 2135, Ft. Belvoir, VA 22060–6219.

DIA—Defense Intelligence Agency, ATTN: D A N–1A, Rm E4–234, Washington, DC 20340–5100.

DISA—Defense Information Systems Agency, ATTN: Security Division, MPS 6, 5111 Leesburg Pike, Ste. 100, Falls Church, VA 22041.

DSS—Defense Security Service, Office of FOIA & Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.

DLA—Defense Logistics Agency, ATTN: DLA/DSS–S, 8725 John J. Kingman Rd., Ste. 2533, Ft. Belvoir, VA 22060–6221.

NIMA National Geospatial-Intelligence Agency, 4600 Sangamore Rd., Mail Stop D–10, Bethesda, Md. 20816–5000.

NSA National Security Agency, Information Policy Office, DC323 Room S2CW113, Suite 6884, Bldg SAB2, 9800 Savage Road, Ft. George G. Meade, MD, 20755–6248.

DTRA Defense Threat Reduction Agency, ATTN: SCR, 8725 John J. Kingman Rd, Ft. Belvoir, VA 22060–6201.

EUCOM U.S. European Command (HQ USEUCOM), Attn: ECJ1–AX (FOIA Officer), SMSgt Greg Outlaw, USAF, Unit 30400, APO, AE 09131.

SOUTHCOM U.S. Southern Command, Attn: Mr. Marco T. Villalobos, SCJ1–A (FOIA), 3511 NW 91st Avenue, Miami, FL 33172–1217.

SOCOM U.S. Special Operations Command, Attn: Kathryn Meeks, SOCS–SJS–SI (FOIA), 7701 Tampa Point Boulevard, MacDill AFB, FL 33621–5323.

CENTCOM U.S. Central Command, Attn: Jacqueline J. Scott, CCJ6–DM, 7115 South Boundary Blvd, MacDill AFB, FL 33621–5101.

NORTHCOM U.S. Northern Command, HQNORAD, USNORTHCOM/CSM, Attn: Lynn Bruns, 250 Vandenberg Street, Suite B016, Peterson Air Force Base, CO, 80914–3804.

JFCOM U.S. Joint Forces Command, Attn: Ms. Joyce Neidlinpa, Code J024, 1562 Mitscher Ave, Suite 200, Norfolk, VA 23511–2488.

PACOM U.S. Pacific Command, Attn: Maureen Jones, USPACOM FOIA Coordinator (J042), Administrative Support Division, Joint Secretariat, Box 28, Camp Smith, HI 96861–5025.

STRATCOM U.S. Strategic Command, 901 SAC Blvd, STE 1C15, Offutt AFB, NE 68113–6653.

TRANSCOM U.S. Transportation Command, Chief, Resources Information, Communications, and Records Management, Attn: TCJ6–RII, 508 Scott Drive, Bldg 1961, Scott AFB, IL 62225–5357.

Dated: December 18, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31793 Filed 12–24–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Joint Draft Environmental Impact Statement/Environmental Impact Report for the Wilson Creek/Oak Glen Creek Feasibility Study in the City of Yucaipa, San Bernardino County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Los Angeles District, in cooperation with the County of San Bernardino Flood Control District, will prepare a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) in support of the proposed Wilson Creek/Oak Glen Creek Feasibility Study for flood protection for City of Yucaipa, in San Bernardino County, California. The study will also investigate the feasibility of habitat restoration opportunities and preservation of watershed resources in balance with the need for economic development. The drainage from Wilson Creek/Oak Glen Creek creates a high volume of sediment and debris through the City of Yucaipa. This condition creates a threat of flood damage to existing residential and commercial development and infrastructure along these creeks. The EIS/EIR will address foreseeable environmental impacts, including beneficial effects, associated with alternative flood protection plans. The U.S. Army Corps of Engineers and the County of San Bernardino Flood Control District will cooperate in conducing this Feasibility Study. The U.S. Army Corps of Engineers is the lead Federal Agency for this study.

DATES: A public scoping meeting is scheduled at the City of Yucaipa Council Chambers, 34272 Yucaipa

Boulevard, Yucaipa, California 92399 from 6 pm to 9 pm on January 14, 2004.

Comments: Written comments concerning the Draft EIS/EIR should be submitted by February 12, 2004.

ADDRESSES: Submit comments to District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RL (L. Goodman), P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Goodman, Environmental Coordinator, telephone (213)–452–3869, or Mr. Robert Stuart, Study Manager, telephone (213)–452–3811. The cooperating entity, the County of San Bernardino Flood Control District, requests that inquiries be addressed to Mr. Jim Borcuk, at (909)–387–7962.

SUPPLEMENTARY INFORMATION: 1. Authorization. Congress has authorized the U.S. Army Corps of Engineers to conduct a Feasibility Study to investigate flood damage prevention and related opportunities along the Wilson Creek and Oak Glen Creek confluence area in Yucaipa, California, pursuant to House Resolution of the Committee on Public Works, dated May 8, 1964. Section 105 of the Water Resources Development Act of 1986 (Pub. L. 99–662, as amended) specifies the cost sharing requirements applicable to this study.

2. Background. The proposed study will investigate the feasibility of providing improved flood protection for the City of Yucaipa in San Bernardino County, California. The city of Yucaipa is located approximately 20 miles southeast of the city of San Bernardino. Wilson and Oak Glen Creeks originate in the San Bernardino Mountains and flow in a southerly direction through the city of Yucaipa, where they join.

Wilson Creek is an earth-bottomed channel from Yucaipa Boulevard, downstream to Interstate 10. A system of rail, cable, wire fencing, and corrugated steel protects the toe of the banks. The channel width averages about 50 feet, and the channel depth is about 10 feet. At Yucaipa Boulevard, the low bridge clearance severely restricts the channel depth. This constriction would likely divert major flood overflows to the southeast, away from the channel, where they could inundate a large portion of the developed area of Yucaipa before returning to the channel near the freeway. Based on Flood Insurance Rate Maps (FIRM), the 100-year floodplain is up to one half mile wide along one and one half miles of the north bank of Wilson Creek. The FIRM also indicates a significantly wide floodplain from 2nd street downstream top Oak Glen Boulevard, a distance of about two miles. Proposed new development along both sides of the creek may increase runoff in the near future. Overflows from Oak Glen Creek could inundate existing structures located along about one mile of the south overbank. The County of San Bernardino Flood Control District owns and operates a series of five large, interconnected, off-line water conservation basins along the south overbank of Wilson Creek, between Fremont Street and Bryant Street.

3. Proposed Action/Preliminary Alternatives. Two preliminary alternatives, in addition to the No Action alternative, were identified in the Reconnaissance Study. Preliminary Alternative 1 involves converting the off-line water conservation basins on the south overbank of Wilson Creek to flood detention basins. These basins appear to have the potential to contain substantial flood storage volume. Preliminary Alternative 2 involves deepening and widening sections of the channel in order to control the 100-year flood event, possibly in combination with additional detention basins upstream from the flooding problem. Subsequent to completion of the Reconnaissance Study, the City of Yucaipa developed a preliminary plan that includes a series of six interconnected in-stream detention basins at the confluence of Wilson Creek and Oak Glen Creek and immediately upstream on both Creeks. This preliminary plan also includes a nature trail and interpretive features.

4. Scoping Process. All interested Federal, State, County and local resource agencies, as well as Native American peoples, groups with environmental interests, and all interested individuals are encouraged to participate in the scoping process. Benefits of public involvement include: identification of pertinent environmental issues that need to be addressed; identification of issues that are not significant that may be eliminated from detailed study; contribution of useful information, such as published or unpublished data, direct personal experience, or knowledge which may support the decision-making process; assistance in defining the scope of appropriate plans and alternatives to be considered; and recommendations for suitable measures to mitigate potential adverse impacts of implementing plans or alternatives.

A public scoping meeting is scheduled on January 14, 2004 (*see* **DATES**). The purpose of the scoping meeting will be to gather information from the general public and interested organizations about issues and concerns that they would like to see addressed in the EIS/EIR. Comments may be delivered verbally at the meeting or sent in writing to the Los Angeles District. (*See* **DATES** and **ADDRESSES** above.)

5. Availability of the Draft EIS/EIR. The Draft EIS/EIR is expected to be available to the public for review and comment beginning in late 2005.

Dated: December 16, 2003.

Richard G. Thompson,

Colonel, US Army, District Engineer.

[FR Doc. 03–31894 Filed 12–24–03; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 27, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 19, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New Collection.

Title: Integrated Postsecondary Education Data System (IPEDS) Minimum Data Set (MDS) (KA).

Frequency: Other: one time.

Affected Public: Businesses or other for-profit (primary); Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 13,000.
Burden Hours: 1,827.

Abstract: IPEDS is a system of surveys designed to collect basic data from postsecondary institutions in the U.S. To date, the main focus of IPEDS has been Title IV institutions, but institutions that do not participate in these federal student financial aid programs are becoming an increasingly important source of educational opportunity in the country. But their scope and nature are not well known. This survey is designed to arrive at a statistical estimate of the number of non-Title IV institutions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2432. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address, *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–31817 Filed 12–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Preferred Nevada Rail Corridor

AGENCY: Office of Civilian Radioactive Waste Management, U.S. Department of Energy.

ACTION: Notice of the Preferred Nevada Rail Corridor.

SUMMARY: On July 23, 2002, the President signed into law (Pub. L. 107–200) a joint resolution of the U.S. House of Representatives and the U.S. Senate designating the Yucca Mountain site in Nye County, Nevada, for development as a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste. The Department of Energy (DOE or Department) is now responsible for planning and implementing a transportation program for the shipment of spent nuclear fuel and high-level radioactive waste, in the event the Nuclear Regulatory Commission authorizes receipt and possession of spent nuclear fuel and high-level radioactive waste at Yucca Mountain.

In the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS–0250F) (Final EIS), the Department evaluated various modes of transportation including mostly rail, mostly legal-weight truck and mostly heavy-haul truck. The Department identified the mostly rail alternative as its preferred mode of transportation in the Final EIS.

In the event that DOE selects the mostly rail alternative, a rail line would need to be constructed to connect the repository site at Yucca Mountain to an existing rail line in the State of Nevada. Accordingly, the Final EIS evaluated five rail corridors [1]—Caliente, Carlin, Caliente-Chalk Mountain, Jean, and Valley Modified. The Department, however, did not identify a preferred rail corridor in the Final EIS, but indicated it would do so at least 30 days before making any decisions on the selection of a corridor.

The Department is now announcing the Caliente rail corridor as its preferred corridor in which to construct a rail line in Nevada, and Carlin as a secondary preference. If the Department adopts the mostly rail mode in Nevada, DOE will issue a Record of Decision selecting a rail corridor no sooner than 30 days after publication of this preference announcement. If the Department selects a rail corridor, DOE will issue a Notice of Intent in the **Federal Register** to initiate the preparation of a rail alignment EIS under the National Environmental Policy Act (NEPA) to consider alternative alignments within the selected corridor for construction of a rail line. Under this scenario, the Department would anticipate holding public scoping meetings in early-to-mid February, 2004. The exact date, time and locations of the meetings would be announced in the Notice of Intent.

FOR FURTHER INFORMATION CONTACT:

To obtain a copy of the Final EIS or for further information contact: Ms. Robin Sweeney, Office of National Transportation, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1551 Hillshire Drive, M/S 011, Las Vegas, NV 89134, Telephone 1–800–967–3477. The Final EIS is available on the Internet at *ocrwm.doe.gov*.

For further information regarding the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

In the Final EIS, DOE analyzed a Proposed Action to construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain. As part of the Proposed Action, DOE analyzed the potential impacts of transporting spent nuclear fuel and high-level radioactive waste from 72 commercial and 5 DOE sites to the Yucca Mountain site.[2] Transportation

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[1] A corridor is a strip of land, approximately 400 meters (0.25 mile) wide, that encompasses one of several possible routes through which DOE could build a branch rail line. An alignment is the specific location of a rail line in a corridor.

[2] Additional sites (primarily research reactors) will ship spent nuclear fuel to DOE for disposal at the repository. Shipment from these sites to DOE is covered under a separate Environmental Impact Statement, *Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environment Restoration and Waste Management Programs Environmental Impact Statement* (DOE/EIS–0203; April 1995), and associated Record of Decision (June 1, 1995; 60 FR 28680)). Two of these research reactors were recently closed and the spent fuel removed. Adding

Continued

could be accomplished using a variety of modes, including legal-weight truck, rail, heavy-haul truck, and possibly barge.

The Final EIS examined various national transportation scenarios and Nevada transportation implementing alternatives to estimate the range of potential environmental impacts that could occur. Two national transportation scenarios, referred to as the mostly legal-weight truck[3] scenario and the mostly rail[4] scenario, and three Nevada implementing alternatives, referred to as the legal-weight truck alternative, the rail alternative, and the heavy-haul truck[5] alternative are evaluated. In the Final EIS, the Department identified the mostly rail scenario as its preferred mode of transportation, both nationally and in the State of Nevada.

Implementation of the mostly rail scenario would require the construction of a rail line to connect the repository site at Yucca Mountain to an existing rail line in the State of Nevada. Accordingly, the Final EIS evaluated five rail corridors—Caliente, Carlin, Caliente-Chalk Mountain[6], Jean and Valley Modified. The Department, however, did not identify a preferred rail corridor in the Final EIS.

Preferred Nevada Rail Corridor

After consideration of public comments, the analyses of the Final EIS and other information, the Department has identified the Caliente corridor as its preferred rail corridor with the Carlin Corridor as the secondary preference. The Department's preference for Caliente takes into consideration many factors, including its more remote location, the diminished likelihood of land use conflicts, concerns raised by Nevadans, and national security issues raised by the U.S. Air Force on the Caliente-Chalk Mountain corridor. Approximately one-third of the Caliente and Carlin corridors overlap. Since the Carlin corridor has similar attributes overall, DOE has identified the Carlin corridor as the secondary preference in the event the Caliente corridor is not selected.

If the Department adopts the mostly rail mode, DOE will issue a Record of Decision selecting a rail corridor no sooner than 30 days after publication of this preference announcement. If the Department selects a rail corridor, DOE will issue a Notice of Intent in the **Federal Register** to initiate the preparation of a rail alignment EIS under NEPA to consider alternative alignments within the selected corridor for construction of a rail line.

Issued in Washington, DC, December 23, 2003.

Margaret S.Y. Chu,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 03–32029 Filed 12–24–03; 8:45 am]

BILLING CODE 6450–01–P

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these sites to the 77 sites listed above results in a total of 129 sites with spent nuclear fuel or high-level waste destined for repository disposal.

[3] A truck with a gross vehicle weight (truck and cargo) of less than 80,000 pounds having dimensions, axle spacing, and if applicable, axle loads within Federal and state limits.

[4] Rail is defined to include vehicles, such as locomotives and specialized freight cars, with steel wheels running on steel rails using standard gauge that is compatible with the U.S. freight rail network.

[5] A heavy-haul truck is an overweight, overdimension vehicle that must have permits from state highway authorities to use public highways. An intermodal transfer station is a facility at the junction of rail and road transportation used to transfer shipping casks containing radioactive materials from rail to truck, and empty casks from truck to rail.

[6] As stated in the Final EIS, DOE considers the Caliente-Chalk Mountain rail corridor to be non-preferred, because of adverse effects on the security and operations of the Nevada Test and Training Range.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–11–000]

CAlifornians for Renewable Energy, Inc., (CARE), Complainant, v. Calpine Energy Services, L.P., and the California Department of Water Resources, Respondents; Notice of Complaint

October 23, 2003.

Take notice that on October 20, 2003, CAlifornians for Renewable Energy, Inc. (CARE) (Complainant) submitted a complaint against Calpine, a seller of long term contracts to the California Department of Water Resources (CDWR), a buyer, collectively (Respondents) alleging that the prices, terms, and conditions of such contracts are unjust and unreasonable, Calpine and CDWR failed to file their rates pursuant to Section 205 of the Federal Power Act (FPA), they abrogate the terms and conditions under their revised contract 2 product 1 requiring performance on specific construction milestones, to provide timely status reports and, to the extent applicable, are not in the public interest. Complainant alleges that Respondents obtained the prices, terms, and conditions in the contracts through the exercise of market power, in violation of the FPA, and that the rates charged do not serve the "public interest" under the FPA and are in fact unduly preferential and discriminatory against third party customers, and impose an "excessive burden" on these customers among whom are CARE's members who CARE is representing. Complaint alleges Respondents' actions are causing injury to the citizens and ratepayers, including CARE's members that CARE is representing.

CARE states that copies of this filing were served upon Respondents and other interested parties.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov,* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 10, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00650 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–32–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

December 18, 2003.

Take notice that on December 12, 2003, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP04–32–000 an application pursuant to CEGT's blanket authority granted on September 1, 1982, at Docket No. CP82–401–000. CEGT notes that its initial blanket authority was amended on February 10, 1983, in Docket Nos. CP82–384–000 and CP82–384–001. CEGT's application requests for authorization to abandon by sale and transfer certain above ground facilities in Oklahoma, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, at (318) 429–2804.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.fed.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 855.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: February 2, 2004.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00635 Filed 12–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–59–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

December 18, 2003.

Take notice that on December 11, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Substitute Thirteenth Revised Sheet No. 5, with an effective date of January 1, 2004.

Chandeleur states that the filing is being made to support an adjustment to its Fuel and Line Loss Allowance effective January 1, 2004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00647 Filed 12–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–38–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

December 18, 2003.

Take notice that on December 15, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, bearing a proposed effective date of November 30, 2003:

Fourth Revised Sheet No. 100
Fourth Revised Sheet No. 105
Sixth Revised Sheet No. 116
Original Sheet No. 116A
Fourth Revised Sheet No. 130
Fifth Revised Sheet No. 166
Seventh Revised Sheet No. 295

Columbia states that on October 31, 2003, it made a filing with the Commission in Docket No. RP04–38 to allow shippers the ability to separate previously combined service agreements. Columbia states that on November 28, 2003, the Commission approved the filing effective November 30, 2003, subject to certain modifications.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC OnlineSupport at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00645 Filed 12–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–055]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

December 18, 2003.

Take notice that on December 15, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of January 1, 2004:

Sixty-sixth Revised Sheet No. 25
Sixty-sixth Revised Sheet No. 26
Sixty-sixth Revised Sheet No. 27
Thirtieth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408 *et al.*, approved by the Commission on April 17, 1997 (79 FERC ¶61,044 (1997)). Columbia states that under the approved section of the Settlement, Columbia is required to true-up its collections pursuant to the Settlement Component for 12-month periods commencing November 1, 1996 and ending October 31, 2004. The seventh 12-month period (Period VII) ended October 31, 2003. Columbia further states it is making this true-up filing in compliance with the Settlement to return a net over-recovery of $3,250,607 for Period VII, which includes interest and the true-up of the Period VI Settlement Component adjustment, through an adjustment to the Settlement Component of the base rates for the period January 1, 2004 through October 31, 2004.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00648 Filed 12–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–39–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

December 18, 2003.

Take notice that on December 15, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, bearing a proposed effective date of November 30, 2003:

Second Revised Sixth Revised Sheet No. 39
Second Revised Sixth Revised Sheet No. 46
Original Sheet No. 46.01
Ninth Revised Sheet No. 154

Columbia Gulf states that on October 31, 2003, it made a filing with the Commission in Docket No. RP04–39 to allow shippers the ability to combine multiple service agreements under the same rate schedule into a single service agreement and to separate previously combined service agreements as necessary. Columbia Gulf states that the instant filing is in compliance with the Commission's Order issued on November 28, 2003, effective November 30, 2003, subject to certain modifications.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00646 Filed 12–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–107–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

December 18, 2003.

Take notice that on December 12, 2003, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing its annual reconciliation filing pursuant to Section 35 of its General Terms and Conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1–B.

KMIGT has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00642 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–111–008]

Midwest Independent Transmission System Operator, Inc.; Notice of Application

October 23, 2003.

Take notice that on October 17, 2003, pursuant to the Commission's October 14, 2003 Order in Docket No. EL02–111–000, the GridAmerica Companies and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing revised tariff sheets reflecting revisions to the effective date component of the previously proposed revisions to its Tariff filed on August 22, 2003 to eliminate certain of the inter-RTO Regional Through and Out Rates.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. The Midwest ISO also states that the filing has been electronically posted on the Midwest ISO's Website at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 7, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00651 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–42–001]

NewCorp Resources Electric Cooperative, Inc.; Notice Of Application

December 18, 2003.

Take notice that on December 12, 2003, NewCorp Resources Electric Cooperative, Inc. (NewCorp) submitted an application pursuant to section 204 of the Federal Power Act seeking an amendment to prior authority granted in Docket No. ES03–42–000 to include authorization for a loan to NewCorp from its parent company, Cap Rock Energy Corporation, in an amount of $5,962,000.

NewCorp also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: December 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00636 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–507–002]

Northern Border Pipeline Company; Notice of Compliance Filing

December 18, 2003.

Take notice that on December 12, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 2003:

Second Substitute Fifth Revised Sheet No. 272
Second Substitute Original Sheet No. 272A
Substitute Original Sheet No. 272A.01

Northern Border states that the purpose of this filing is to comply with the Commission's Order at Docket No. RP03–507–001 dated November 18, 2003, 105 FERC ¶ 61,228, wherein the Commission directed Northern Border to file revised tariff sheets consistent with the conditions as discussed in the body of the Order.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00641 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–38–008]

Northern Natural Gas Company; Notice of Compliance Filing

December 18, 2003.

Take notice that on December 15, 2003, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, with an effective date of February 23, 2003:

3 Substitute Third Revised Sheet No. 285
2 Substitute Original Sheet No. 285B

Northern states that it is filing the above-referenced tariff sheets in compliance with the Commission's November 18, 2003 Order, relating to creditworthiness tariff provisions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00637 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2105–089]

Pacific Gas and Electric Company; Notice Granting Late Intervention

December 18, 2003.

On December 26, 2002, the Commission issued a notice of application accepted for filing and soliciting motions to intervene and protests for the Upper North Fork Feather River Hydroelectric Project 2105, located in the vicinity of the community of Chester, Plumas County, California. The notice established June 20, 2003, as the deadline for filing motions to intervene.

On September 10, 2003, the Anglers Committee Against Artificial Whitewater filed a late motion to intervene. Granting the motion to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the motion to intervene filed by the Anglers Committee against Artificial Whitewater is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00639 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–67–001]

Southwest Gas Storage Company; Notice of Motion To Vacate

December 18, 2003.

On December 9, 2003, Southwest Gas Company (Southwest), filed in Docket No. CP01–67–001 a motion to vacate, in part, the certificated authority previously granted by an Order issued in Docket No. CP01–67–000 which permitted Southwest to abandon, by removal, and replace certain pipeline facilities and recomplete five existing injection/withdrawal wells at its Howell Storage Field in Livingston County, Michigan, all as more fully set forth in the motion which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" (formerly "FERRIS") link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

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[1] 18 CFR 385.214 (2003).

Any questions regarding the application should be directed to William Grygar, Vice President, Rates and Regulatory Affairs, P. O. Box 4967, Houston, Texas, at (713) 989–7000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: January 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00649 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–019]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

December 18, 2003.

Take notice that on December 15, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for a copy of the executed Rate Schedule FT service agreements with Atmos Energy Corporation (Atmos) and Municipal Electric Authority of Georgia (MEAG) that contain the negotiated rates for firm transportation service under Phase II of Transco's Momentum Expansion Project. Transco states that the effective dates of these negotiated rate transactions are February 1, 2004 for MEAG and May 1, 2004 for Atmos.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00633 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–30–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

December 18, 2003.

Take notice that on December 12, 2003, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application in Docket No. CP04–30–000 pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157(A) of the Federal Energy Regulatory Commission's Regulations (Commission), for a certificate of public convenience and necessity authorizing Transco's construction and operation of certain facilities at Compressor Station No. 140 (Station 140) in Spartanburg County, South Carolina to comply with the Clean Air Act Amendments of 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any questions regarding this application should be directed to David LaGroue, P.O. Box 1396, Houston, Texas 77251–1396, (713) 215–2721.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: January 9, 2004.

Magalie R. Salas,
Secretary.

[FR Doc. E3–00634 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–108–000]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

Take notice that on December 11, 2003, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, effective as of January 17, 2004:

Third Revised Sheet No. 1
Sixth Revised Sheet No. 37C
First Revised Sheet No. 37D
First Revised Sheet No. 100

Tuscarora states that the purpose of this filing is to reflect on revised tariff sheets all of the tariff modifications previously accepted in two letter orders issued on November 18, 2003, in Docket Nos. RP00–487 and RP01–14, and in Docket No. RP04–28.

Tuscarora states that copies of the filing were mailed to all affected customers of Tuscarora and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.

[FR Doc. E3–00643 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12063–001]

Little Wood River; Ranch II Hydro; Notice of Paper Scoping and Soliciting Scoping Comments

December 18, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* 12063–001.

c. *Date filed:* October 17, 2003.

d. *Applicant:* Mr. William Arkoosh.

e. *Name of Project:* Little Wood River Ranch II Hydroelectric Project.

f. *Location:* On the Little Wood River, near the Town of Shoshone, Lincoln County, Idaho. No lands of the United States would be affected.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* William Arkoosh, 2005 Highway 26, Gooding, Idaho 83330, (208) 934–5387.

i. *FERC Contact:* Gaylord Hoisington, (202) 502–6032, *gaylord.hoisington@FERC.gov.*

j. Deadline for filing scoping comments is January 20, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *http://www.ferc.gov*, under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The proposed new run-of-river project would consist of: (1) A 10-foot-high, 220-foot-long rock rubble diversion dam; (2) a 2,800-foot-long open feeder canal; (3) a concrete intake structure having two parallel 5-foot-diameter, 250-foot-long steel penstocks; (4) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel power house containing two hydraulic Francis turbines with a total installed capacity of 1,500 kilowatts; (5) a 3,500-foot-long tailrace channel; (6) a 10,500-foot-long, 12.5-kilovolt transmission line; (7) an access road and (8) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/*

esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* Scoping is intended to advise all parties regarding the proposed scope of the environmental analysis and to seek additional information pertinent to this analysis. The Commission intends to prepare an environmental assessment (EA) for the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

At this time, the Commission staff do not propose to conduct any formal public or agency meetings or an on-site visit. Instead, we will solicit comments, recommendations, information, and alternatives by conducting paper scoping through issuing this scoping document.

Copies of the scoping document outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the scoping document are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERConline@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

As part of scoping the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from comments all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis. Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the subject project's impacts to the aforementioned.

o. The tentative schedule for preparing the Little Wood River Ranch II EA is:

Major milestone	Target date
Ready for Environmental Analysis Notice.	February 2004
EA Issued	May 2004

Magalie R. Salas,
Secretary.

[FR Doc. E3–00638 Filed 12–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 18, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 382–026.

c. *Date filed:* February 26, 2003.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Borel Hydroelectric Project.

f. *Location:* On the Kern River near the town of Bodfish, Kern County, California. The canal intake for the project is located on approximately 188 acres of Sequoia National Forest Service lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Nino J. Mascolo, Senior Attorney, Southern California Edison Co., 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770.

i. *FERC Contact:* Emily Carter at (202) 502–6512 or *Emily.Carter@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eLibrary" link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Borel Hydroelectric Project (Project) consists of: (1) A 158-foot long, 4-foot-high concrete diversion dam with fishway; (2) a 61-foot-long intake structure with three 10- by 10-foot radial gates; (3) a canal inlet structure consisting of a canal intake, trash racks, and a sluice gate; (4) a flowline with a combined total length of 1,985 feet of tunnel, 1,651feet of steel Lennon flume, 3,683 feet of steel siphon, and 51,835 feet of concrete-lined canal; (5) four steel penstocks—penstocks 1 and 2 are 526 feet long and 565 feet long, respectively with varying diameters between 42 and 60 inches, and penstocks 3 and 4 each have a 60-inch-diameter and extend 622 feet at which point they wye together to form a single 84-inch-diameter, 94-foot-long penstock; (6) a powerhouse with two 3,000-kW generators and one 6,000-kW generator for a total installed capacity of 12,000 kW or 12 MW; and (7) other appurtenant facilities. The Project has no storage capability and relies on water releases from Lake Isabella made by the U.S. Army Corp of Engineers.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent.

Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00640 Filed 12-24-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-12-000]

Florida Gas Transmission Company; Notice Of Technical Conference

December 18, 2003.

The Commission, in its order of October 31, 2003 in the referenced docket directed that a technical conference be held to address proposals by Florida Gas Transmission Company (FGT) regarding shipper reconversion to Rate Schedule SFTS and minimum nominations under Rate Schedule NNTS.[1]

Take notice that a technical conference will be held on Wednesday, January 7, 2004, at 9 a.m., in a room to be designated at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All interested parties are permitted to attend. For further information please contact: Andrea Hilliard at (202) 502-8288 or Frank Sparber at (202) 502-8335.

Magalie R. Salas,

Secretary.

[FR Doc. E3-00644 Filed 12-24-03; 8:45 am]

BILLING CODE 6717-01-P

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[1] 105 FERC ¶61,171 (2003), at p.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7602-7]

Proposed CERCLA Administrative Cost Recovery Settlement; In Re: Old Colony Railroad Superfund Site, East Bridgewater, Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Old Colony Railroad Superfund Site in East Bridgewater, Massachusetts, with the following settling parties: Karl Fisher, Edith Fisher and West Union Corporation. In the settlement, which is based upon inability-to-pay, the Settling Parties have agreed to provide EPA access to certain site property to conduct any further investigation or response action as may be necessary, and to place, or to cooperate in the placement, of institutional controls on certain site property as may be determined by EPA to be necessary. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection with the Regional Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA 01-2003-0039).

DATES: Comments must be submitted on or before January 28, 2004.

ADDRESSES: The proposed settlement is available for public inspection with the Regional Docket Clerk, One Congress Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from Ronald Gonzalez, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918-1786. Comments should reference the Old Colony Railroad Superfund Site, East Bridgewater, Massachusetts and EPA Docket No. 01-2003-0039 and should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214.

FOR FURTHER INFORMATION CONTACT: Ronald Gonzalez, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918-1786.

Dated: December 5, 2003.

Susan Studlien,

Director, Office of Site Remediation and Restoration.

[FR Doc. 03-31870 Filed 12-24-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7602-6]

T.H. Agriculture & Nutrition Company Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1), the United States Environmental Protection Agency (EPA) has entered into an Agreement for Recovery of Past Costs (Agreement) at the T.H. Agriculture & Nutrition Company Superfund Site (Site) located in Albany, Dougherty County, Georgia, with Schwerman Trucking Company. EPA will consider public comments on the Agreement until January 28, 2004. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the

Agreement is inappropriate, improper, or inadequate. Copies of the Agreement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Sharron T. Carter-Rogers at the above address within thirty (30) days of the date of publication.

Dated: December 15, 2003.

Rosalind H. Brown,

Chief, Superfund Enforcement Information & Management Branch, Waste Management Division.

[FR Doc. 03–31869 Filed 12–24–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

[Petition No. P10–03]

Petition of National Customs Brokers and Forwarders Association of America, Inc. for Rulemaking; Notice of Filing

Notice is hereby given that National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA") ("Petitioner") has petitioned for the issuance of a rulemaking pursuant to 46 CFR 502.51. The NCBFAA seeks a rulemaking that would amend the financial responsibility requirements of regulations set forth in 46 CFR 515.21 *et seq.* The purpose of the proposed rule would be to provide a mechanism by which licensed non-vessel operating common carriers ("NVOCCs") would be able on a voluntary basis to amend their existing bonds, filed pursuant to section 19 of the Shipping Act, 46 U.S.C. app. § 1718, and 46 CFR 515.21, as an alternative to making cash deposits in banks located in the People's Republic of China ("PRC") as otherwise required by the PRC's new Regulations on International Maritime Transportation ("RIMT") and the Implementing Rules promulgated thereunder. The NCBFAA believes that the proposed rulemaking would be an appropriate way of implementing recently negotiated provisions of the Agreement on Maritime Transport (the "AMT") and Memorandum on Consultations ("Memorandum") between the U.S. and PRC governments, both of which were signed on December 8, 2003.

Specifically, the NCBFAA proposes that the FMC allow NVOCCs to amend their existing bonds by adding a Rider, which would comply with the RIMT requirement that all NVOCCs operating in the U.S.-PRC trades provide evidence of financial responsibility in the total amount of RMB 800,000 (or approximately U.S. $96,000). NCBFAA asserts that the Rider is necessary because the Commission's regulations generally only require a bond in the amount of U.S. $75,000 (not including an additional $10,000 for branch offices) for licensed NVOCCs. They believe that the proposed regulation would therefore be in accordance with the Memorandum because it would authorize licensed NVOCCs to add a Rider to existing bonds that would (1) increase the base amount of the bond by U.S. $21,000 and (2) provide that the bond would also be available for the payment of fines or reparation awards that might be imposed by the Chinese authorities due to the NVOCC's violation of the RIMT.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the petition no later than January 12, 2004. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel Edward D. Greenberg, Esq., Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., Attorneys At Law, Canal Square, 1054 Thirty-First Street, NW., Washington, DC 20007–4492. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or emailed to *Secretary@fmc.gov.* The Petition will be posted on the Commission's homepage at *http://www.fmc.gov/Docket%20Log/Docket%20Log%20Index.htm.* All replies filed in response to the Petition will also be posted on the Commission's homepage at this location.

Interested parties may also make oral presentations in this proceeding. At the discretion of individual Commissioners, interested persons may request one-on-one meetings at which they may make presentations describing their views on the petition. Any meeting or meetings shall be completed before the close of the comment period. A summary or transcript of each oral presentation will be included in the record and must be submitted to the Secretary of the Commission within 5 days of the meeting. Persons wishing to make oral presentations should contact the Office of the Secretary to secure contact names and numbers for individual Commissioners.

Copies of the Petition also may be obtained by sending a request to the Office of the Secretary, Room 1046, or by calling (202) 523–5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through email in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made. Such request should be directed to *secretary@fmc.gov.*

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–31888 Filed 12–24–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at*www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 23, 2004.

Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

Locust Street, St. Louis, Missouri 63166-2034:

1. *Mercantile Bancorp, Inc.*, Quincy, Illinois; to acquire 56.07 percent of the voting shares of Mid-America Bancorp, Inc., Leawood, Kansas, and thereby indirectly acquire Heartland Bank, Leawood, Kansas.

Board of Governors of the Federal Reserve System, December 19, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–31816 Filed 12–24–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221]

GSA Board of Contract Appeals Rules Procedure

AGENCY: GSA Board of Contract Appeals, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the GSA Board of Contract Appeals (GSBCA) Rules Procedures. A request for public comments was published at 68 FR 57463, October 3, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Margaret Pfunder, Chief Counsel, GSA Board of Contract Appeals, Room 7022, 1800 F Street, NW., Washington, DC 20405 or telephone (202) 501–0272.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 55

Responses Per Respondent: 1

Hours Per Response: .117

Total Burden Hours: 6.4

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0221, GSA Board of Contract Appeals Rules Procedure, in all correspondence.

Dated: December 17, 2003.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 03–31879 Filed 12–24–03; 8:45 am]

BILLING CODE 6820–AL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04019]

Capacity Building Assistance To Improve the Delivery and Effectiveness of HIV Prevention Services for Racial/Ethnic Minority Populations; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Capacity Building Assistance to Improve the Delivery and Effectiveness of HIV Prevention Services for Racial/Ethnic Minority Populations was published in the **Federal Register**, Tuesday, December 2, 2003, Volume 68, Number 231, pages 67558–67566. The notice is amended as follows:

Page 67558, first column, Catalog of Federal Domestic Assistance Number, delete 93.943, and replace with 93.939.

Dated: December 18, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31840 Filed 12–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Competitive Funds for National Programs to Improve the Health, Education, and Well-Being of Young People, Program Announcement Number 04010

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Competitive Funds for National Programs to Improve the Health, Education, and Well-Being of Young People, Program Announcement Number 04010.

Times and Dates: 8 a.m.–8:30 a.m., January 27, 2004 (Open), 8:30 a.m.–4:30 p.m., January 27, 2004 (Closed), 8:30 a.m.–4:30 p.m., January 28, 2004 (Closed).

Place: The Westin Atlanta North at Perimeter Center, 7 Concourse Parkway, Atlanta, GA 30328, Telephone 770.395.3900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04010.

FOR FURTHER INFORMATION CONTACT: Nosrat Irannejad, MPH, Lead Education Program Specialist, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, MS-K31, Atlanta, GA 30341, Telephone 770.488.6124.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 19, 2003.

Diane C. Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31832 Filed 12–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following committee meeting.

Name: Board of Scientific Counselors, NCHS.

Times and Dates: 2 p.m.–5:40 p.m., January 22, 2004.

8:30 a.m.–3:15 p.m., January 23, 2004.

Place: National Center for Health Statistics, Conference Rooms 1430A and 1405B, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters to be Discussed: The agenda will include welcome remarks by the Director, NCHS; introductions of members and key NCHS staff; scientific presentations and discussions; and an open session for comments from the public.

Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business January 12, 2004. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, January 12, 2004.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Linda Blankenbaker, Executive Secretary, National Center for Health Statistics, Office of the Director, 3311 Toledo Road, Room 7204, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 18, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31841 Filed 12–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, review of Mentored Clinical Scientist Development Awards (K08s).

Date: March 4–5, 2004.

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roy L. White, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7192, MSC 7924, Bethesda, MD 20892, 301–435–02897.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31910 Filed 12–24–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "National Hispanic Science Network on Drug Abuse".

Date: January 13, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: December 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31799 Filed 12–24–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Pediatric Off-Patient Drug Study (PODS) Center-Sodium Nitroprusside.

Date: January 28, 2004.

Time: 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kishena C. Wadhwani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–31800 Filed 12–24–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–52]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988, court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 18, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–31757 Filed 12–24–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: January 15, 2004, at 8:45 a.m.

ADDRESSES: Captain Cook Hotel, 4th Avenue and K Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The meeting agenda will feature discussions about the small parcel habitat program and the Fiscal Year 2005 annual work plan.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–31780 Filed 12–24–03; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Service Regulations Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service (hereinafter Service) will conduct an open meeting on January 29, 2004, to identify and discuss preliminary issues concerning the 2004–05 migratory bird hunting regulations.

DATES: The meeting will be held January 29, 2004.

ADDRESSES: The Service Regulations Committee will meet at the Arlington Square Building, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 200 A/B, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Representatives from the Service, the Service's Migratory Bird Regulations Committee, and Flyway Council Consultants will meet on January 29, 2004, at 8:30 a.m. to identify preliminary issues concerning the 2004–05 migratory bird hunting regulations for discussion and review by the Flyway Councils at their March meetings.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee attended by any person outside the Department, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

Dated: December 2, 2003.

Paul R. Schmidt,

Assistant Director, Migratory Birds and State Programs, U.S. Fish and Wildlife Service.

[FR Doc. 03–31852 Filed 12–24–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–03–840–1610–241A]

Canyons of the Ancients National Monument Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Canyons of the Ancients National Monument (Monument) Advisory Committee (Committee), will meet as directed below.

DATES: Meetings will be held January 27th, February 17th, March 9th, March 30th, and April 13th, 2004 at the Anasazi Heritage Center in Dolores, Colorado at 9 a.m. The public comment period for each meeting will begin at approximately 2:30 p.m. and the meetings will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: LouAnn Jacobson, Monument Manager or Stephen Kandell, Monument Planner, Anasazi Heritage Center, 27501 Hwy 184, Dolores, Colorado 81323; Telephone (970) 882–5600.

SUPPLEMENTARY INFORMATION: The eleven member committee provides counsel and advice to the Secretary of the Interior, through the BLM, concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument. At these meetings, topics we plan to discuss include planning issues and management concerns, planning alternatives, partnerships, science and other issues as appropriate.

All meetings will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Committee meetings will be maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Committee can be obtained from the Monument planning Web site at: *http://www.blm.gov/rmp/canm* which will be updated following each Committee meeting.

Dated: December 18, 2003.

Stephen J. Kandell,

Acting Manager, Canyons of the Ancients National Monument.

[FR Doc. 03–31842 Filed 12–24–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–77880; 4–08807]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has received a request from the Department of Energy to withdraw 308,600 acres of public land from surface entry and mining for a period of 20 years to evaluate the land for the potential construction, operation, and maintenance of a branch rail line for the transportation of spent nuclear fuel and high-level radioactive waste in the event the Nuclear Regulatory Commission authorizes a geologic repository at Yucca Mountain as provided for under the Nuclear Waste Policy Act of 1982, as amended. This notice segregates the land from surface entry and mining for up to 2 years while various studies and analyses are made to support a final decision on the withdrawal application.

DATES: Comments and requests for a meeting should be received on or before March 29, 2004.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., PO Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–861–6532.

SUPPLEMENTARY INFORMATION: The Department of Energy has filed an application (NVN 77880) to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws and the mineral leasing laws, subject to valid existing rights:

Mount Diablo Meridian

A corridor one mile in width that contains a portion of, or are wholly encompassed within, the following sections:

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The area described contains 308,600 acres in Clark, Esmeralda, Lincoln, and Nye Counties.

This withdrawal approximates the land encompassed by the Caliente rail corridor as described in the Department of Energy's Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, February 2002. The purpose of the withdrawal is to evaluate the land for the potential construction and operation of a branch rail line for the transportation of spent nuclear fuel and high-level radioactive waste in the event the Nuclear Regulatory Commission authorizes a geologic repository at Yucca Mountain as provided for under the Nuclear Waste Policy Act of 1982, as amended.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that there will be at least one public meeting in connection with the proposed withdrawal to be announced at a later date. A notice of the time, place, and date will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of a meeting.

Comments, including names and street addresses of commenters, will be available for public review at the Nevada State Office, 1340 Financial Boulevard, Reno, Nevada, during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to hold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from December 29, 2003, in accordance with 43 CFR 2310.2(a), the lands described in this notice will be segregated from surface entry and mining, unless the application is denied or canceled, or the withdrawal is approved prior to that date. Other uses which may be permitted during this segregative period are rights-of-way, leases, and permits as long as they do not conflict with the proposed withdrawal.

Dated: December 19, 2003.

Margaret L. Jensen,

Deputy State Director, Natural Resources, Lands, and Planning.

[FR Doc. 03–31901 Filed 12–24–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0110).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled Training and Outreach Evaluation Forms.

DATES: Submit written comments on or before February 27, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781 or e-mail *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: Training and Outreach Evaluation Forms (Form MMS–4420A–H).

OMB Control Number: 1010–0110.

Bureau Form Number: Form MMS–4420A–H.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out the DOI Indian trust responsibility.

MMS provides training and outreach to our constituents to facilitate their compliance with laws and regulations and to ensure that constituents are well informed. We use training and outreach evaluation questionnaires to improve our training and outreach efforts and to assure its continued relevance. We present training sessions to the oil and gas and solid minerals reporters on various aspects of royalty reporting, production reporting, and valuation. We also provide outreach sessions to individual Indian minerals owners, Indian tribes, and the Bureau of Indian Affairs on Indian royalty management issues. Additionally, we provide training sessions to our financial and systems contractors and State and tribal auditors.

During the last few minutes of each training or outreach session, we ask participants to complete and return evaluation questionnaires. Participant response is voluntary. Some questions are uniform across all of the evaluation questionnaires; however, we also ask questions specific to each type of training or outreach or specific to our audiences.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is voluntary.

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 1,750 industry representatives, State auditors, Indian auditors, Indian tribes, Indian allottees, MMS contractors, and MMS employees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 175 hours.

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour cost" burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: December 17, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–31796 Filed 12–24–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1023 (Final)]

Certain Ceramic Station Post Insulators From Japan

Determination

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of certain ceramic station post insulators,[2] provided for in subheading 8546.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective December 31, 2002, following receipt of a petition filed with the Commission and Commerce by Lapp Insulator Company LLC (Lapp), LeRoy, NY; Newell Porcelain Co., Inc. (Newell), Newell, WV; Victor Insulators, Inc. (Victor), Victor, NY; and the IUE–CWA, AFL–CIO, Washington, DC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain ceramic station post insulators from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 21, 2003 (68 FR 43162). The hearing was held in Washington, DC, on October 29, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 2003. The views of the Commission are contained in USITC Publication 3655 (December 2003), entitled *Certain Ceramic Station Post Insulators from Japan: Investigation No. 731–TA–1023 (Final).*

By order of the Commission.

Issued: December 19, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–31782 Filed 12–24–03; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Civil Procedure, scheduled for January 9, 2004, in Houston, Texas, has been canceled. [Original notice of hearing appeared in the **Federal Register** of September 10, 2003.]

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 19, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–31833 Filed 12–24–03; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 28 U.S.C. 50.7, notice is hereby given that on December 12, 2003, a proposed Consent Decree in *United States* v. *William J. Gallagher, Executor of the Estate of Sara Noznesky*, Civ. No. 00–5707–BWK (E.D. Pa.), was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree would resolve the United States' claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606, 9607, against William J. Gallagher, Executor of the Estate of Sara Noznesky ("Settling Defendant") for response costs incurred by EPA at the Kennett Square Junkyard Superfund Site ("Site") located in Chester County, Pennsylvania. The Estate of Sara Noznesky is the current owner and operator of the Site and thus is liable under CERCLA section 107(a)(1).

EPA has thoroughly evaluated the Settling Defendant's ability to pay, and has determined that the Settling Defendant can afford to pay: (1) An initial payment of $100,000; (2) one hundred percent (100%) of the net proceeds from the sale of the Site property; and (3) fifty percent (50%) of the funds that will be generated from amended tax returns. The total settlement amount is estimated at approximately $500,000. Settling Defendant has agreed to make the above stated payments to EPA to resolve its liability for the conditions at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *William J. Gallagher, Executor of the Estate of Sara Noznesky*, Civ. No. 00–5707 (E.D. Pa.), D.J. Ref. 90–11–3–07086.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615, Chestnut Street, Philadelphia, PA, 19106, and at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029. During the public comment period, the Consent

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The subject products include station post insulators manufactured of porcelain, of standard strength, high strength, or extra-high strength, solid core or cavity core, single unit or stacked unit, assembled or unassembled, and with or without hardware attached, rated at 115 kilovolts (kV) voltage class and above (550 kilovolt Basic Impulse Insulation Level (BIL) and above).

Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31783 Filed 12–24–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and Erwin Grant and the Real Property Located at 3368 N.E. Martin Luther King, Jr. Boulevard Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on December 19, 2003, a proposed Consent Decree ("Consent Decree") in the case of *United States of America* v. *Erwin Grant and Real Property Located at 3368 N.E. Martin Luther King, Jr. Boulevard,* Civil Action No. 00–1536–BR (D. Or.), was lodged with the United States District Court for the District of Oregon.

In this action the United States sought recovery of costs incurred in connection with the response action taken at the Grant Warehouse Superfund Site, located at 3368 N.E. Martin Luther King, Jr. Boulevard, Portland, Oregon. The Consent Decree requires Erwin Grant, acting through his conservator, Ken Grant, to sell the Grant Warehouse to the Portland Development Commission, and to provide in the purchase and sale agreement that $88,500 (an amount expected to be half of the sale price) of the proceeds will be paid to the United States in reimbursement of response costs. In exchange, the United States will provide a covenant not to sue and contribution protection applicable to both the Grant Warehouse property and to Erwin Grant personally.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Erwin Grant and Real Property Located at 3368 N.E. Martin Luther King, Jr. Boulevard,* D.J. Ref. 90–11–3–06611/1.

The Consent Decree may be examined at the Office of the United States Attorney, District of Oregon, 1000 SW Third Ave., Suite 6000, Portland, OR 97204–2902, and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.50 (25 cents per page reproduction cost) payable to the United States Treasury for payment.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–31876 Filed 12–24–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 16, 2003, two proposed consent decrees in *United States* v. *Ponderosa Fibres of America, Inc., et al.,* Civil Action No. 99–CV–1305, were lodged with the United States District Court for the Northern District of New York.

The first of the two proposed Consent Decrees ("Bernstein et al. Decree") resolves cost recovery, Federal Debt Collection Procedures Act ("FDCPA") and Federal Priority Statute ("FPS") claims against Martin Bernstein, Nathan Bernstein, Robert Pitman and Roland Fjallstrom, collectively, for $140,000, plus interest. The second proposed Decree ("PFA Decree") resolves the United States' cost recovery claim against Ponderosa Fibres of America, Inc. ("PFA") for $775,000, to be collected as an allowed general unsecured claim in the Bankruptcy Action. To become effective, the PFA Decree must be approved by both the United States District Court for the Northern District of New York and the United States Bankruptcy Court for the District of Delaware.

For a period of thirty (30) days from the date of this publication, the U.S. Department of Justice will accept comments relating to the proposed Bernstein et al. and PFA Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, c/o David L. Weigert, Esq., Environmental Enforcement Section, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Ponderosa Fibres of America, Inc., et al.,* Civil Action No. 99–CV–1305 (FJS/RWS), DJ # 90–11–2–1223/1.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, Northern District of New York, 231 Foley U.S. Courthouse, 445 Broadway, Albany, New York and at U.S. Environmental Protection Agency Region II, 290 Broadway, New York, New York. During the public comment period, the Consent Decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the proposed Consent Decrees may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting copies of one or both the proposed Consent Decrees, please specify the requested Decree(s) and enclose a check in the amount of $4.75 per Decree (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 03–31784 Filed 12–24–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,828]

AK Steel Corp., Rockport Works, Shipping, Receiving and Packaging Department, Rockport, IN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at AK Steel Corporation, Rockport Works, Shipping, Receiving and Packaging Department, Rockport, Indiana. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–52,828; AK Steel Corporation, Rockport Works, Shipping, Receiving and Packaging Department, Rockport, Indiana (December 4, 2003)

Signed at Washington, DC this 18th day of December 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–31858 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,766]

American Suessen Corp., Charlotte, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at American Suessen Corporation, Charlotte, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–52,766; American Suessen Corporation (December 4, 2003)

Signed at Washington, DC this 18th day of December 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–31859 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,128, TA–W–52,128A, and TA–W–52,128B]

Control Engineering Company, Pellston, MI; Control Engineering Company, Harbor Springs, MI; Control Engineering Company, Boyne City, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 5, 2003, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on August 15, 2003, and published in the **Federal Register** on September 2, 2003 (68 FR 52227).

The Department reviewed the request for reconsideration and has determined that the Department will conduct a survey of additional customers that were not contacted in the initial investigation to establish whether imports contributed importantly to separations at the petitioning workers' facilities.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31862 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,622]

Descartes Systèms (USA) LLC, an Affiliate of the Descartes Systems Group, Inc., Atlanta, GA; Notice of Negative Determination Regarding Application for Reconsideration

By application of October 9, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Descartes Systems (USA) LLC, Atlanta, Georgia was signed on September 4, 2003, and published in the **Federal Register** on October 10, 2003 (68 FR 58719).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Descartes Systems (USA) LLC, Atlanta, Georgia engaged in employment related to providing electronic data interchange services. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner appears to imply that the petitioning worker group should be considered eligible for TAA on the basis that they created an article as part of a "paperless" process.

Data exchange services are not tangible commodities, that is, marketable products, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), which describes all products imported to or exported from the United States.

Further, the TAA program was established to help workers who produce articles and who lose their jobs as a result of trade agreements. Throughout the Trade Act an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule an article will have a value that makes it marketable, fungible and interchangeable for commercial purposes. But, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted, are not listed in the HTS. Such products are not the type of products that customs officials inspect and that the TAA program was generally designed to address.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31861 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,972]

Exfo Gnubi Products Group, Inc., Gnubi Communications, L.P., Gnubi Communications, Inc., Addison, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 17, 2003, applicable to workers of Exfo Gnubi Products Group, Inc., Addison, Texas. The notice was published in the **Federal Register** on November 6, 2003 (68 FR 62834).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of telecommunications test equipment.

New information shows that Exfo Gnubi Products Group, Inc. purchased Gnubi Communications in October 2002. Workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts for Gnubi Communications, L.P. and Gnubi Communications, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Exfo Gnubi Products Group, Inc., Addison, Texas who were adversely affected by a shift in production of telecommunications test equipment to Canada.

The amended notice applicable to TA–W–52,972 is hereby issued as follows:

> All workers of Exfo Gnubi Products Group, Inc., Gnubi Communications, L.P., and Gnubi Communications, Inc., Addison, Texas, who became totally or partially separated from employment on or after September 9, 2002, through October 17, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 21st day of November 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31857 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,725]

Fishing Vessel (F/V) Bad Betty, Homer, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Fishing Vessel (F/V) Bad Betty, Homer, Alaska. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–52,725; Fishing Vessel (F/V) Bad Betty, Homer, Alaska (December 4, 2003)

Signed at Washington, DC this 18th day of December 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–31860 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 8, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 8, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of December 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
Petitions Instituted Between 11/17/2003 and 11/21/2003				
53,541	Gentry Mills, Inc. (Comp.)	Wadesboro, NC	11/17/2003	11/10/2003
53,542	Bunnies By The Bay (Comp.)	Anacortes, WA	11/17/2003	11/01/2003
53,543	Charmilles Technologies Manufacturing (stat)	Owosso, MI	11/17/2003	11/05/2003
53,544	Levi Strauss and Co. (Comp.)	San Antonio, TX	11/17/2003	11/14/2003
53,545	MJ Soffe Co. (Comp.)	Fayetteville, NC	11/17/2003	11/14/2003
53,546	Randolph Products (Wkrs.)	Carlstadt, NJ	11/17/2003	11/14/2003
53,547	Hartz and Co., Inc. (Comp.)	Broadway, VA	11/17/2003	11/11/2003
53,548	Comet Tool (State)	Pitman, NJ	11/17/2003	11/13/2003
53,549	General Electric Financial Assurance (Comp.)	Greenfield, MA	11/17/2003	11/10/2003
53,550	Woholert Corp. (Comp.)	Lansing, MI	11/17/2003	11/07/2003
53,551	Allegheny Ludlum Corp. (Comp.)	Brackenridge, Pa	11/17/2003	11/03/2003
53,552	Carson Industries, Inc. (Comp.)	Freeport, PA	11/17/2003	11/14/2003
53,553	Level 1, Inc. (Comp.)	Rockland, MA	11/17/2003	11/04/2003
53,554	Waltrich Plastic Corp. of Mass (Comp.)	Clinton, MA	11/17/2003	11/03/2003
53,555	Vector Tobacco Inc. (Comp.)	Timberlake, NC	11/17/2003	11/13/2003
53,556	Dan River Inc. (Wkrs.)	Sevierville, TN	11/17/2003	11/14/2003
53,557	Paxar Americas (Comp.)	Snow Hill, NC	11/17/2003	11/17/2003
53,558	Red Wing Shoe Co., Inc. (Comp.)	Potosi, MO	11/18/2003	11/05/2003
53,559	Marathon Oil Company (Comp.)	Findlay, OH	11/18/2003	10/31/2003
53,560	International Paper (Wkrs)	Memphis, TN	11/18/2003	11/17/2003
53,561	Luceme Technologies LLC (Comp.)	Bolivar, TN	11/18/2003	11/03/2003
53,562	Weyerhauser (IAW)	Longview, WA	11/18/2003	11/13/2003
53,563	Pillowtex Corp., (Wkrs)	Commerce, GA	11/18/2003	11/14/2003
53,564	Allegheny Ludlum Corp. (Comp.)	Leechburg, PA	11/18/2003	11/03/2003
53,565	Nylstar, Inc. (Comp.)	Ridgeway, VA	11/18/2003	11/10/2003
53,566	Fishman and Tobin (UNITE)	Conshohocken, PA	11/18/2003	11/07/2003
53,567	Ampacet Texas LP (Comp.)	Latexo, TX	11/18/2003	11/12/2003
53,568	EJE Research (Comp.)	Buffalo, NY	11/18/2003	01/03/2003
53,569	Irving Tanning Co. (Comp.)	Hartland, ME	11/18/2003	11/06/2003
53,570	Thermo Forma (Wkrs)	Marietta, OH	11/18/2003	10/26/2003
53,571	Maynard Steel Casting Co. (Comp.)	Milwaukee, WI	11/18/2003	11/03/2003
53,572	Johnson and Johnson (NJ)	N. Brunswick, NJ	11/18/2003	11/17/2003
53,573	Textron PFPD (Wkrs)	Rockfrord, IL	11/18/2003	11/05/2003
53,574	Spring Industries (Comp.)	Fort Lawn, SC	11/18/2003	11/13/2003
53,575	PolyOne Corp. (AR)	Wynne, AR	11/18/2003	11/17/2003
53,576	Kraft Foods (Comp)	Northlake, IL	11/18/2003	11/17/2003
53,577	TDK Texas Corp. (Wkrs)	El Paso, TX	11/19/2003	11/17/2003
53,578	MT Picture Display Corp. of America (Comp)	Horseheads, NY	11/19/2003	11/07/2003
53,579	Dillon Floral Corp. (Comp)	Bloomsburg, PA	11/19/2003	11/11/2003
53,580	Piedmont Bottling and Vending, Inc. (Comp)	Hickory, NC	11/19/2003	11/12/2003
53,581	NW Services, Inc. (Comp)	Hickory, NC	11/19/2003	11/12/2003
53,582	Avondale Mills (Wkrs)	Burnsville, NC	11/19/2003	10/31/2003
53,583	Procter and Gamble Paper Products Co. (PACE).	Green Bay, WI	11/19/2003	11/11/2003
53,584	Advantek (MN)	Minnetonka, MN	11/19/2003	11/03/2003
53,585	Sealed Air Corp. (PACE)	Salem, IL	11/19/2003	10/30/2003
53,586	MacBrad Wholesale Flowers, Inc. (Wkrs)	Pasadena, TX	11/19/2003	11/06/2003
53,587	Sensient Imaging Technologies, Inc. (Comp)	Piqua, OH	11/19/2003	10/28/2003
53,588	Severna an Amphina Co. (NJ)	Parsippany, NJ	11/19/2003	11/18/2003
53,589	Charmilles Technologies Mfg. (Comp)	Owosso, MI	11/19/2003	11/05/2003
53,590	Noble Construction Equipment (Comp)	Lubbock, TX	11/19/2003	11/17/2003
53,591	Steward, Inc. (Wkrs)	Chattanooga, TN	11/20/2003	10/29/2003
53,592	DyStar LP (Comp)	Charlotte, NC	11/20/2003	11/18/2003
53,593	Phoenix Metal Technologies (Comp)	Lexington, KY	11/20/2003	11/12/2003
53,594	Kaneka Delaware Corp. (Comp)	Delaware City, DE	11/20/2003	11/12/2003
53,595	Perm Cast LLC (Comp)	Cynthiana, KY	11/20/2003	11/11/2003
53,596	Jeld-Wen (Wkrs)	Susanville, CA	11/20/2003	11/10/2003
53,597	Fashion Technologies (Wkrs)	Gaffney, SC	11/20/2003	11/01/2003
53,598	Hercules, Inc. (Comp)	Hattiesburg, MS	11/20/2003	11/11/2003
53,599	American Allsafe Co. (Comp)	Tonawanda, NY	11/20/2003	11/07/2003
53,600	Leica Microsystems, Inc. (USWA)	Depew, NY	11/20/2003	11/12/2003
53,601	Paxar Americas (Comp)	Cowpens, SC	11/21/2003	11/20/2003
53,602	GST Autoleather, Inc. (Comp)	Reading, PA	11/21/2003	11/20/2003
53,603	Carrier Corporation (SMWIA)	Syracuse, NY	11/21/2003	11/14/2003
53,604	Springs Industries, Inc. (Comp)	Rock Hill, SC	11/21/2003	11/14/2003
53,605	TNS Intersearch (Wkrs)	Youngstown, OH	11/21/2003	11/19/2003
53,606	Extreme Tool and Engineering (Comp)	Wakefield, MI	11/21/2003	11/13/2003
53,607	Med Data, Inc. (MT)	Corvalis, MT	11/21/2003	11/18/2003
53,608	Avery Dennison (Comp)	Meridian, MS	11/21/2003	11/06/2003

APPENDIX—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
53,609	Conn-Selmer, Inc. (UAW)	E. Lake, OH	11/21/2003	11/17/2003
53,610	Besly Products Corporation (UAW)	S. Beloit, IL	11/21/2003	11/17/2003
53,611	Intercontinental Polymers, Inc. (Comp)	Lowland, TN	11/21/2003	11/13/2003
53,612	Glatfelter (Comp)	Neenah, WI	11/21/2003	11/19/2003
Petitions Instituted Between 11/24/2003 and 11/28/2003				
53,613	Houston/NANA (AK)	Fairbanks, AK	11/24/2003	11/17/2003
53,614	Advance Transformer Co. (Comp)	Chicago, IL	11/24/2003	11/10/2003
53,615	Teleflex Medical (Comp)	Fall River, MA	11/24/2003	11/14/2003
53,616	Watlow Controls (MN)	Winona, MN	11/24/2003	11/18/2003
53,617	Cummins Engine Co. (Wkrs)	Neillsville, WI	11/24/2003	10/30/2003
53,618	DAY International, Inc. (Comp)	Greenville, SC	11/24/2003	11/17/2003
53,619	Timken US Corp (Wkrs)	Rockford, IL	11/24/2003	11/13/2003
53,620	Creekwood, Inc. (Comp)	Columbia, TN	11/24/2003	11/14/2003
53,621	Rainbow Ranch (Comp)	Chehalis, WA	11/25/2003	11/20/2003
53,622	JVC Magnetics America Co. (Comp)	Tuscaloosa, AL	11/25/2003	11/20/2003
53,623	Fashion Sportswear Corp. (Comp)	Fall River, MA	11/25/2003	11/19/2003
53,624	GE Lighting, Inc. (Comp)	Logan, OH	11/25/2003	11/12/2003
53,625	Valentine Tool and Stamping (Comp)	Norton, MA	11/25/2003	11/21/2003
53,626	P and R Trucking Services, Inc. (Comp)	St. Joseph, MO	11/25/2003	11/19/2003
53,627	Washout Co. (The) (Comp)	St. Joseph, MO	11/25/2003	11/19/2003
53,628	G and R Transport (Comp)	St. Joseph, MO	11/25/2003	11/19/2003
53,629	Twitchell Corp. (Comp)	Dothan, AL	11/25/2003	11/19/2003
53,630	Pechiney Plastic Packaging (Wkrs)	Des Moines, IA	11/25/2003	11/19/2003
53,631	Main Street Textiles LP (Comp)	Fall River, MA	11/25/2003	11/18/2003
53,632	Coventry Narrow Fabrics, Inc. (UNITE)	Coventry, RI	11/25/2003	11/18/2003
53,633	IBM Technology Group (Wkrs)	Essex Junction, VT	11/25/2003	11/24/2003
53,634	Virginia KMP Corp. (Comp)	Dallas, TX	11/25/2003	11/18/2003
53,635	Keykert USA (Comp)	Webberville, MI	11/25/2003	11/21/2003
53,636	CIM Harris Systems (Comp)	Skokie, IL	11/25/2003	11/10/2003
53,637	Melton's Metals (Comp)	Concord, NC	11/25/2003	11/17/2003
53,638	American Shoe Corp. (ME)	Skowhegan, ME	11/25/2003	11/16/2003
53,639	Honeywell Sensing and Control (Wkrs)	Shelby, NC	11/25/2003	11/20/2003
53,640	Wormuth Brothers (Comp)	Athens, NY	11/25/2003	11/11/2003
53,641	Wentworth Mold, Inc. (Comp)	Pawcatuck, CT	11/25/2003	11/19/2003
53,642	Hayworth Roll and Panel Co., Inc. (Comp)	High Point, NC	11/26/2003	11/20/2003
53,643	Stod Win Co., Inc. (Comp)	Danville, VA	11/26/2003	11/17/2003
53,644	Hussey Copper Ltd. (NJ)	Kenilworth, NJ	11/26/2003	11/20/2003
53,645	SB Power Tools (AR)	Walnut Ridge, AR	11/26/2003	11/24/2003
53,646	Washout Co. (The) (Comp)	St. Joseph, MO	11/26/2003	11/19/2003
53,647	Gates Corporation (Comp)	Denver, CO	11/26/2003	11/24/2003
53,648	International Business Machines (IBM) (Wkrs)	Tulsa, OK	11/26/2003	11/19/2003
53,649	Pavallax Power Computer LLC (Wkrs)	Bridgeport, CT	11/26/2003	11/18/2003
53,650	Stimson Lumber Co. (Comp)	Coeur d'Alene, ID	11/28/2003	11/25/2003
53,651	Cannon ITT Industries (Comp)	Santa Ana, CA	11/28/2003	11/24/2003
53,652	Ericsson (Wkrs)	Framingham, MA	11/28/2003	11/20/2003
53,653	Portland Forge (Wkrs)	Portland, IN	11/28/2003	11/21/2003
53,654	Fresenius Kabi Clayton LP (Comp)	Clayton, NC	11/28/2003	11/25/2003
53,655	John Plant Co., Inc. (The) (Comp)	Ramseur, NC	11/28/2003	11/25/2003
53,656	Halliburton Energy Services (Comp)	Houston, TX	11/28/2003	11/25/2003
53,657	RMG Foundry (Comp)	Mishawaka, IN	11/28/2003	11/18/2003
53,658	Dana Corp. (Wkrs)	Oklahoma City, OK	11/28/2003	11/11/2003
53,659	Bristol Compressors, Inc. (Comp)	Bristol, VA	11/28/2003	11/07/2003
53,660	J.R. Simplot Co., (IBT)	Caldwell, ID	11/28/2003	11/17/2003
53,661	Newstech Pa. (Comp)	Northampton, PA	11/28/2003	11/19/2003
53,662	Newstech NY, Inc. (Comp)	Deferiet, NY	11/28/2003	11/17/2003
53,663	Renfro Corp. (Comp)	Mt. Airy, NC	11/28/2003	11/20/2003
53,664	Owens-Illinois Glass Container (Comp)	Hayward, CA	11/28/2003	08/22/2003
53,665	Brown and Williamson Tobacco Corp. (Comp)	Macon, GA	11/28/2003	11/14/2003
53,666	Falcon Products (Comp)	Canton, MS	11/28/2003	11/10/2003
53,667	Toro Irrigation (Comp)	El Paso, TX	11/28/2003	11/14/2003

[FR Doc. 03–31854 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,008]

Martens Manufacturing, LLC, Kingsford, Michigan; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 6, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on October 10, 2003 and published in the **Federal Register** on November 6, 2003 (68 FR 62833).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional customer information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 4th day of December, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31856 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,022, TA–W–52,022A, and TA–W–52,022B]

Nortel Networks Corporation, Optical Global Technical Assistance Center, Research Triangle Park, NC; Nortel Networks Corporation, Optical Global Technical Assistance Center, Pittsburgh, PA; Nortel Networks Corporation, Optical Global Technical Assistance Center, Centennial, CO; Notice of Revised Determination on Reconsideration

By application of August 15, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 22, 2003, based on the finding that the petitioning workers of this firm do not produce an article within the meaning of section 222 of the Trade Act of 1974. The denial notice was published in the **Federal Register** on August 14, 2003 (68 FR 48645).

In a review of the initial investigation, it was revealed that the work performed by the worker group did perform testing and product modification, and that subject firm workers produced an article as part of the finishing work performed on fiber optic backbone telecommunication networks. It was further revealed that employment declines occurred at all three facilities and that the company is now relying on a Canadian facility to serve the same customer base as that which is served by the three domestic facilities where the petitioners are employed.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Nortel Networks Corporation, Optical Global Technical Assistance Center (GTAC), Research Triangle Park, North Carolina (TA–W–52,022); Nortel Networks Corporation, Optical Global Technical Assistance Center, Pittsburgh, Pennsylvania (TA–W–52,022A); and Nortel Networks Corporation, Optical Global Technical Assistance Center, Centennial, Colorado (TA–W–52,022B), contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

> All workers of Nortel Networks Corporation, Optical Global Technical Assistance Center (GTAC), Research Triangle Park, North Carolina (TA–W–52,022); Nortel Networks Corporation, Optical Global Technical Assistance Center, Pittsburgh, Pennsylvania (TA–W–52,022A); and Nortel Networks Corporation, Optical Global Technical Assistance Center, Centennial, Colorado (TA–W–52,022B), who became totally or partially separated from employment on or after May 26, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 15th day of December 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31863 Filed 12–24–03; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of November 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–53,176; TCI Machinery, Inc., including leased workers of Oasis Outsourcing, Gastonia, NC
TA–W–53,308; Burger Structural Steel Co., a subsidiary of Burger Iron Co., Akron, OH
TA–W–53,437; Sequel Manufacturing, Willow Springs, MO
TA–W–53,469; Wexco Corp., Lynchburg, VA
TA–W–53,198; Celanese Acetate, a div. of Celanese AG, Narrows, VA
TA–W–53,023; Cardinal Glass Industries, Inc., Sextonville, WI
TA–W–53,084; Eaton Corp., Watertown, WI
TA–W–52,943; Composites Solutions, Inc. (CSI), West Columbia, SC
TA–W–53,190; The Carriage House Companies, Inc., a subsidiary of Ralcorp Holdings, Inc., Streator, IL
TA–W–53,252; Cytec Industries, Woodbridge, NJ
TA–W–53,258; Allied Machine and Engineering Corp., Dover, OH
TA–W–53,131; Thermotek, Inc., Carrollton, TX
TA–W–53,089; East Coast Hydraulics Operations, Inc. (ECHO), Camp Hill, PA
TA–W–53,146; Metalforming Technologies/Northern Tube, Pinconning, MI
TA–W–53,107; Rapid Mold Solutions, Inc., Erie, PA
TA–W–53,301; Celanese Acetate, LLC, Celriver Plant, Rock Hill, SC
TA–W–52,729; TRW Automotive, Body Controls Systems, NA, Winona, MN
TA–W–53,044; Intermet Corp., Archer Creek Foundry, Lynchburg, VA
TA–W–53,059; Rockwell Automation, LNK Div., Gallipolis, OH
TA–W–53,062; Wallner Tool, Inc., Maple Grove, MN
TA–W–53,358; B.P.B. Manufacturing, Pittston Plant Div., Pittston, PA
TA–W–53,228; Aurora Acquisition Corp., Formerly Clarksburg Casket Co., Hepzibah, WV
TA–W–53,145; General Aluminum Manufacturing Co., Hudson Forge, Hudson, MI
TA–W–53,923; Delphi Chassis, Home Ave./Vandalia Operations, Dayton, OH
TA–W–53,441; Coca Cola North America, Minute Maid Div., Hightstown, NJ
TA–W–53,265; Panoramic, Inc., Janesville, WI
TA–W–53,507; Northern Aluminum Foundry, North Fond du Lac, WI
TA–W–53,453; Giddings and Lewis Foundry, LLC, a company of Thyssen Krupp Technologies, a div. of Thyssen Krupp AG, Menominee, MI
TA–W–53,427; Puzzle-Craft, Wabasso, MN
TA–W–53,385; Bowater, Inc., Calhoun Woodlands Operations, Kingston, TN
TA–W–53,314; Acrotech Midwest, Inc., Crosby, MN
TA–W–53,118; SPX Contech Metal Forge, Dowagiac, MI
TA–W–53,032; The Plastek Group, Master Mold Company, a div. of Triangle Tool Co., Erie, PA

The investigation revealed that criteria (a)(2)(A)(I.C) (increased imports) and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–53,156; Halmode Apparel, Inc., a div. of Kellwood Co., Roanoke, VA
TA–W–53,211; Rogers Corp., South Windham, CT

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–53,309; Candle Corp., El Segundo, CA
TA–W–52,330; Air Products and Chemicals, Inc., Corporate Headquarters, Global Engineering Department, Allentown, PA
TA–W–53,376; The Boeing Co., Los Angeles Distribution Center, Torrance, CA
TA–W–53,311; Honeywell Sensing and Controls, Design Drafting Workers, Freeport, IL
TA–W–53,422; United Air Lines, Inc., Cargo Div., Elk Grove, IL
TA–W–53,375; Wyeth Research, Collegeville, PA
TA–W–53,290; Finisar Corp., Sunnyvale, CA
TA–W–53,485; Coutts Library Services, Inc., Niagara Falls, NY
TA–W–53,486; Stanley Services, Smithfield, NC
TA–W–53,516; Delphi Mechatronic Systems, a subsidiary of Delphi Corp., Downers Grove, IL
TA–W–53,225; ASML Track Division Sales and Service, Hillsboro, OR
TA–W–53,231; GE IT Solutions, Inc., Erlanger, KY
TA–W–53,403; Pillowtex Corp., Fieldcrest Cannon, Mesa, AZ
TA–W–53,331; The Budd Group, Grover, NC
TA–W–53,607; Med-Da
TA, Inc., Seattle, WA
TA–W–53,349; Ethan Allen Manufacturing, Inc., Ethan Allen Interiors, Inc., Beecher Falls, VT
TA–W–53,367; Fishing Vessel (F/V), Ginny C, Sitka, AK
TA–W–53,178; Solectron, Solectron CRM Global Services Div., Beaverton, OR

TA–W–53,203; Vibren Technology, a subsidiary of NEC Corp., Boxborough, MA

TA–W–53,074; Finisar Corp., Hayward, CA

TA–W–53,461; Symtech, Inc., Spartanburg, SC

TA–W–53,488; Ferguson Enterprises, Inc., a div. of Wolseley PLC, Portland, OR

TA–W–53,394; Klear Knit, Inc., d/b/a Wales Fabric, Gastonia, NC

TA–W–53,404; Arrow Electronics, Inc., Tellabs In-Plant Store, Boilingbrook, IL

TA–W–53,332; NXL Investments, Inc., Euclid, OH

TA–W–53,229; Conoco-Phillips, Ponca City, OK

TA–W–53,106; Tree Source Industries, Inc., Portland, OR

TA–W–53,164; Agilent Technologies, Manufacturing Test Business Unit, Electronic Manufacturing Test Div. Loveland, CO

TA–W–53,419 & A, B; Encee, Inc., Eden, NC, Kannapolis, NC and Smimfield, NC

TA–W–53,374; Manufacturers' Services Ltd, Charlotte, NC

TA–W–53,280; Allegheny Ludlum Corp., Accounts Payable/Receivable Department, Pittsburgh, PA

TA–W–53,563; Pillowtex Corp., Fieldcrest Cannon, Commerce, GA

TA–W–53,577; TDK Texas Corp., a subsidiary of TDK USA Corp., El Paso, TX

TA–W–53,549; GE Group Life Assurance Co., a subsidiary of General Electric Co., Greenfield, MA

TA–W–53,274; Duluth, Missabe & Iron Range Railway Co. (DM&IR), Duluth, MN

TA–W–53,392; The Montgomery Co., Opelika, AL

TA–W–53,396; Haband Operations, LLC, Peckville, PA

TA–W–53,403; Pillowtex Corp., Fieldcrest Cannon, Mesa, AZ

The investigation revealed that criterion (a)(2)(A)(I.A) (no employment decline) has not been met.

TA–W–53,323; Franklin Electric Co., Inc., Motor Components Div., Jonesboro, IN

TA–W–53,491; State Pattern Works, Inc., Greendale, WI

TA–W–53,267; Columbia Forest Products, Chatham, VA

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–53,312; Ethan Allen, Inc., Dublin, VA

TA–W–53,428; Hawkeye Concrete Products Co., Mediapolis, IA

TA–W–53,328; International Paper Co., Kaukauna Mill, Kaukauna, WI

TA–W–53,249; Riley Creek Lumber Co., formerly known as Louisiana Pacific Corp., Moyie Springs, ID

The investigation revealed that criteria (2) has not been met. The worker's firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–53,175; Ciber, Inc., Fairport, NY

TA–W–53,341; Viking Products, a div. of Underwood Industries of New York, Waverly, NY

TA–W–53,262; Graphic Packaging International, Inc., Carton Plant, Fort Atkinson, WI

The investigation revealed that criteria (3) (A) or (B) has not been met. The workers firm is not a supplier and the component parts it supplied for the firm (or subdivision) did not account for at least 20 percent of the production or sales of the workers' firm; or the loss of business by the workers' firm with the firm (or subdivision) did not contribute importantly to the workers' separation or threat of separation.

TA–W–53,356; Heraeus Electro-Nite Co., Philadelphia, PA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a) (2) (A) (increased imports) of Section 222 have been met.

TA–W–53,484; Powerwave Technologies, El Dorado Hills, CA: October 30, 2002.

TA–W–53,481; Springs Industries, Inc., including leased workers of Phillips Staffing, Springfield Plant, Laurel Hill, NC: October 31, 2002.

TA–W–53,213; Viking Pump, Inc., Viking Engineered Cast Products " Iron Foundry Div., Cedar Falls, IA: October 2, 2002.

TA–W–53,096; H. Warshow and Sons, Inc., Milton, PA: September 17, 2002.

TA–W–53,310; Endeavor Mold and Design, Inc., Erie, PA: October 2, 2002.

TA–W–53,246; Twin City Knitting Co., Inc., Conover, NC: October 10, 2002.

TA–W–53,245; Piedmont Industries, Inc., Icard Location, Conover, NC: October 10, 2002.

TA–W–53,236; Analog Devices, Final Test Department, Santa Clara, CA: October 10, 2002.

TA–W–52,823; Channel Products, Inc., Cleveland, OH: August 25, 2002.

TA–W–52,890; Riverdale Decorative Products, div. of Alagold Corp., Montgomery, AL: September 16, 2002.

TA–W–53,087; Manchester Tool Co., Akron, OH: September 18, 2002.

TA–W–53,285; Mastecraft Fabrics, LLC, Oakland Plant, including leased workers of Coxe Personnel Services and Personnel Services Unlimited, Spindale, NC: September 20, 2002.

TA–W–52,208; Randolph Knitting, Inc., Ramseur, NC: October 6, 2002.

TA–W–53,171; IMPC Acquisitions LLC, a div. of Packaging Dynamics LLC, Detroit, MI: September 30, 2002.

TA–W–53,259; O'Neal Steel, Inc., Weldment Div., Roanoke, VA: October 10, 2002.

TA–W–53,264; Burlington House Finishing, a div. of Burlington House, Burlington, NC: October 10, 2002.

TA–W–53,273 & A; Tietex International, Interiors Div., Rocky Mount Plant, Rocky Mount, NC and Williamsburg Plant, Burlington, NC: September 22, 2002.

TA–W–53,076; Griffin Manufacturing, Inc., Fall River, MA: September 26, 2002.

TA–W–53,183; Group Seven Systems, Inc., Lenoir, NC: October 3, 2002.

TA–W–53,256 & A; Connector Service Corp., including leased workers of On-Site Temporary Services, The BECO Group, and Account Resource, Franklin Park, IL and Elgin, IL October 14, 2002.

TA–W–53,269; Weyco Group, Inc., Beaver Dam, WI: October 14, 2002.

TA–W–53,215; Kingsport Foundry and Manufacturing Corp., Kingsport, TN: September 29, 2002.

TA–W–53,253; W. R. Thread Cutting Works, Inc., Union City, NJ: October 15, 2002.

TA–W–53,417; National Pattern, Inc., Saginaw, MI: October 3, 2002.

TA–W–53,579; Dillon Floral Corp., Bloomington, PA: November 11, 2002.

TA–W–53,233; T.D.K. Ferrites Corp., a subsidiary of T.D.K. U.S.A. Corp., Shawnee, OK: August 30, 2003.

TA–W–53,104; Webb Wheel Products, Inc., Cullman, AL: September 25, 2002.

TA–W–53,137; Weave Corporation, Denver, PA: September 10, 2002.

TA–W–53,147; Eagle Picher, Inc., Hillsdale, MI: September 26, 2002.

TA–W–53,150; Rayovac Corp., Manufacturing Div., Fennimore, WI: October 2, 2002.

TA–W–53,284; Jolly Tundra, Inc., Winthrop, MN: October 20, 2002.

TA–W–53,288; Biddeford Blankets, LLC, a subsidiary of Microlife Corp., Biddeford, ME: October 17, 2002.

TA–W–52,878; CID Hosiery Mills, Inc., Lexington, NC: September 16, 2002.

TA–W–53,045; Pennsylvania Machine Works, Inc., Aston, PA: September 10, 2002.

TA–W–53,083; Evy of California, Inc., Los Angeles, CA: September 22, 2002.

TA–W–53,072; Congress Industries, Inc., Hawthorne, NJ: September 4, 2002.

TA–W–53,054; The Doe Run Resources, Corp., Glover Smelting Div., including leased workers of Workforce, Annapolis, MO: September 23, 2002.

TA–W–53,102; Carbone Kirkwood LLC, Cleveland, OH: September 30, 2002.

TA–W–53,120 & A; DVDA, Inc., New York, NY, and D'Angelis Designs, Inc., New York, NY: September 28, 2002.

TA–W–53,174; Sinclair Collins, div. of Parker Hannafin Corp., Akron, OH: October 1, 2002.

TA–W–53,139; Totally Traditional, Inc., Monroe, LA: October 2, 2002.

TA–W–53,130; Oregon Woodworking Co., including leased workers of Mid-Oregon Personnel Services, Bend, OR: October 1, 2002.

TA–W–53,167; Wirco Castings, Inc., including leased workers of Processional Staffing, Inc., New Athens, IL: October 7, 2002.

TA–W–53,158; Zawick Manufacturing Co., Hellertown, PA: October 6, 2002.

TA–W–Newell Porcelain Co., Inc., Newell, WV: October 14, 2002.

TA–W–53,202; Arctic Cat, Inc., Thief River Falls, MN: October 8, 2002.

TA–W–53,279; Atchison Products, Inc., Atchison, KS: September 30, 2002.

TA–W–53,313; Classic Hosiery, Inc., Burlington, NC: October 17, 2002.

TA–W–53,319; Meadwestvaco, Lakewood Mold, a div. of AGI Polymatrix Group, Pittsfield, MA: October 15, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–53,458; 807 Cutting Services, Inc., El Paso, TX: October 28, 2002.

TA–W–53,438; L. Hardy Co., Inc., Worcester, MA: October 31, 2002.

TA–W–53,421; Seamless Textiles, Inc., a subsidiary of Sara Lee Intimate Apparel, Humacao, PR: October 10, 2002.

TA–W–53,315 & A; OBG Manufacturing Co., Oshkosh B'Gosh, Inc., Liberty, KY and Albany, KY: March 22, 2003.

TA–W–53,303; Champagne Dye Works, Inc., Asheboro, NC: October 20, 2002.

TA–W–53,525; Rene Composite Materials, a subsidiary of Rene Materiaux Composites, Pearisburg, VA: November 12, 2002.

TA–W–53,222; Eastman Kodak Co., Film Finishing Operations, Rochester, NY: October 10, 2002.

TA–W–53,283; Remy Reman, LLC, Bay Springs, MS: October 2, 2002.

TA–W–53,353; LAPP Insulator Co. LLC, Sandersville Facility, Sandersville, GA: October 22, 2002.

TA–W–53,116; Cogent Power, Inc., a subsidiary of Corus and SSAB, Bridgeport, CT: October 2, 2002.

TA–W–53,393; National Mills, Inc., Yates Center Plant, Yates Center, KS: October 30, 2002.

TA–W–53,316; Robert Bosch Tool Corp., Magna Div., a Part of Robert Bosch North America, Elizabethtown, KY: October 21, 2002.

TA–W–53,271; Stahlsac, Inc., Weaverville, NC: October 3, 2002.

TA–W–52,978; Carmel Textile, Inc., Hialeah, FL: August 28, 2002.

TA–W–53,026; Metaldyne Driveline/Hydraulics Group, Bedford Heights, OH: September 17, 2002.

TA–W–53,099; Border Apparel Laundry, Ltd, El Paso, TX: September 29, 2002.

TA–W–53,114; Philchem, Inc., d/b/a Process Chemicals, LLC, Greer, SC: September 30, 2002.

TA–W–53,224; Nevemar Co., High Pressure Laminates Div., Odenton, MD: October 8, 2002.

TA–W–53,277; Ken Lee Precision Corp., Baltimore, MD: October 13, 2002.

TA–W–53,463; Wings West, Inc., Santa Ana, CA: October 23, 2002.

TA–W–53,322; John Crane, Inc., Vandalia, IL: October 22, 2002.

TA–W–53,307; Wetherill Associates, Inc., a div. of Wetherill Enterprises, Inc., including leased workers of Manpower, Miami, FL: October 6, 2002.

TA–W–53,456; Asbury Fluxmaster of Utah, Inc., a subsidiary of Asbury Carbons, Inc., SOS Staffing, Ogden, UT: November 4, 2002.

TA–W–53,306; Springs Window Fashions, LP, Springs Wood Products, including leased workers of Kelly Services, Inc., Wausau, WI: October 20, 2002.

TA–W–53,514; Art Leather Manufacturing Co., Inc., Elmhurst, NY: October 29, 2002.

TA–W–53,523; Wellington Leisure Products, Inc., a wholly owned subsidiary of Standard Industries, Greensboro, GA, A; Madison, GA, B; Granite Quarry, NC and C; Eatonton, GA: November 3, 2002.

TA–W–53,462; Marshall Brass, a div. of S.H. Leggitt Co., Marshall, MI: November 3, 2002.

TA–W–53,474; Etco, Inc., Cord Products Div., Warwick, RI: November 6, 2002.

TA–W–53,431; Sweetwater Apparel, Inc., including leased workers of Skilstaff, Inc., Collinwood, TN: October 31, 2002.

TA–W–53,347; Thomas Apparel Co., a div. of Stone County Garment Co., Hartville, MO: October 31, 2002.

TA–W–53,363; Kelly-Springfield Tire Co., a subsidiary of The Goodyear Tire and Rubber Co., Tyler, TX: October 22, 2002.

TA–W–53,373; AVI Corp., including leased workers of Manpower, Inc., Queensbury, NY: October 22, 2002.

TA–W–53,379; JWD Machine, Inc., Fife, WA: October 13, 2002.

TA–W–53,407; Alice Manufacturing Co., Inc., Foster Plant Div., Easley, SC: October 28, 2002.

TA–W–53,412; Fort Payne Socks, Inc., Hosiery Div., Fort Payne, AL: October 29, 2002.

TA–W–53,210; Connector Service Corp., Dallas, TX: October 9, 2002.

TA–W–53,040; Bowling Green Spinning Co., Bowling Green, SC: September 9, 2002.

TA–W–53,530; Stone County Garment Co., Crane, MO: November 4, 2002.

TA–W–53,557; Paxar Americas, formerly Paxar Corp., Printed Label Div., (Snow Hill Tape), Snow Hill, NC: November 17, 2002.

TA–W–53,226; Cavalier Specialty Yarn Co., Gastonia, NC: October 10, 2002.

TA–W–53,207; Extrasport, Inc., a div. of Johnson Outdoors, Miami, FL: October 3, 2002.

TA–W–53,205; Lear Corp., Interior Systems Div., Lewistown, PA: September 25, 2003.

TA–W–53,292; Salmon Falls Precision Fabricators, Inc., Rochester, NH: October 16, 2002.

TA–W–53,195; Solectron, Systems Integration Div., including leased workers from Express Personnel and Kelly Service, Creedmoor, NC: September 25, 2002.

TA–W–53,180; 3M Company, Electronic Solutions Div., Columbia, MO: September 26, 2002.

TA–W–53,055; Leonard Electric Products of Texas, Brownsville, TX: September 17, 2002.

TA–W–53,123; Reed Rico, Precision Specialty Products, Inc., Holden, MA: September 10, 2002.

TA–W–53,148; Avanex Corp., including leased workers of Accountemps, Electronix Staffing Services, Certified Employment Group, Andiamol Group LLC and Facilities

First, Freemont, CA: September 24, 2002.

TA–W–53,455; Glacier West Sportswear, Inc., a subsidiary of Cascade West Sportswear, Inc., Puyallup, WA: November 4, 2002.

TA–W–53,409; Delta International Machinery, Pentair Tool Group, Tupelo Manufacturing Center, Tupelo, MS: October 11, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–53,338; Diversified Tool Corp., Cambridge Springs, PA: October 17, 2002.

TA–W–52,910; Safer Textiles Processing Corp., a subsidiary of Safer Holding Corp., Newark, NJ, A; Safer Paper and Transfer Printing Corp., a subsidiary of Safer Holding Corp., East Rutherford, NJ, B; Safer Pigment Corp., a subsidiary of Safer Holding Corp., Newark, NJ, C; Meadows Knitting Corp., a subsidiary of Safer Holding Corp., Newark, NJ and D; Kuttner Prints, Inc., a subsidiary of Safer Holding Corp., Newark, NJ: September 10, 2002.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–53,375; Wyeth Research, Collegeville, PA

TA–W–53,376; The Boeing Co., Los Angeles Distribution Center, Torrance, CA

TA–W–53,252; Cytec Industries, Woodbridge, NJ

TA–W–53,308; Burger Structural Steel Co., a subsidiary of Burger Iron Co., Akron, OH

TA–W–53,229; Conoco-Phillips, Ponca City, OK

TA–W–53,106; Tree Source Industries, Inc., Portland, OR

TA–W–53,164; Agilent Technologies, Manufacturing Test Business Unit, Electronic Manufacturing Test Div., Loveland, CO

TA–W–53,419 &A,B; Encee, Inc., Eden, NC, Kannapolis, NC and Smithfield, NC

TA–W–53,374; Manufacturers' Services Ltd., Charlotte, NC and Commercial Loan Technology Div., Houston, TX

TA–W–53,280; Allegheny Ludlum Corp., Accounts Payable/Receivable Dept., Pittsburgh, PA

TA–W–53,563; Pillowtex Corp., Fieldcrest Cannon, Commerce, GA

TA–W–53,577; TDK Texas Corp., a subsidiary of TDK USA Corp., El Paso, TX

TA–W–53,549; GE Group Life Assurance Co., a subsidiary of General Electric Co., Greenfield, MA

TA–W–53,274; Duluth, Missabe and Iron Range Railway Co. (DM&IR), Duluth, MN

TA–W–53,392; The Montgomery Co., Opelika, AL

TA–W–53,396; Haband Operations, LLC, Peckville, PA

TA–W–53,403; Pillowtex Corp., Fieldcrest Cannon, Mesa, AZ

TA–W–53,301; Celanese Acetate, LLC, Celriver Plant, Rock Hill, SC

TA–W–53,107; Rapid Mold Solutions, Inc., Erie, PA

TA–W–53,146; Metalforming Technologies/Northern Tube, Pinconning, MI

TA–W–52,729; TRW Automotive, Body Controls Systems, NA, Winona, MN

TA–W–53,044; Intermet Corp., Archer Creek Foundry, Lynchburg, VA

TA–W–53,059; Rockwell Automation, LNK Div., Gallipolis, OH

TA–W–53,062; Wallner Tool, Inc., Maple Grove, MN

TA–W–53,358; B.P.B. Manufacturing, Pittston Plant Div., Pittston, PA

TA–W–53,228; Aurora Acquisition Corp., Formerly Clarksburg, Casket Co., Hepzibah, WV

TA–W–53,145; General Aluminum Manufacturing Co., Hudson Forge, Hudson, MI

TA–W–52,923; Delphi Chassis Home Ave./Vandalia Operations, Dayton, OH

TA–W–53,441; Coca Cola North America, Minute Maid Div., Hightstown, NJ

TA–W–53,265; Panoramic, Inc., Janesville, WI

TA–W–53,507; Northern Aluminum Foundry, North Fond du Lac, WI

TA–W–53,453; Giddings and Lewis Foundry, LLC, a company of Thyssen Krupp Technologies, a div. of Thyssen Krupp AG, Menominee, MI

TA–W–53,427; Puzzle-Craft, Wabasso, MN

TA–W–53,385; Bowater, Inc., Calhoun Woodlands Operations, Kingston, TN

TA–W–53,314; Acrotech Midwest, Inc., Crosby, MN

TA–W–53,118; SPX Contech Metal Forge, Dowagiac, MI

TA–W–53,032; The Plastek Group, Master Mold Co., a div. of Triangle Tool Company, Erie, PA

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–53,304; Molecular Bioproducts, Inc., Quality Scientific Plastics, Inc., Petaluma, CA: September 24, 2002.

TA–W–53,122; North Pacific Processors, Inc., Cordova, AK: September 3, 2002.

TA–W–53,128; Wilson Sporting Goods, Springfield, TN: October 1, 2002.

TA–W–53,017; Sunbeam Products, Inc., Hattiesburg, MS: September 23, 2002.

TA–W–53,031; Randco Tool and Die, Inc., Meadville, PA: September 12, 2002.

TA–W–53,105; American & Efird, Inc., Maiden Facility, a div. of The Ruddick Corp., Mt. Holly, NC: October 1, 2002.

TA–W–53,007; Contempora Fabrics, Inc. Lumberton, NC: September 4, 2002.

TA–W–52,976; Upholstery Fabric Mill of Georgia, Inc., Jasper, GA: September 19, 2002.

TA–W–52,902; Buffalo China, Inc., Buffalo, NY: September 4, 2002.

TA–W–52,934; Lego Systems, Inc., Shows and Events Div., Enfield, CT: September 26, 2002.

TA–W–52,940; Motor Coach Industries International, Inc., Roswell, NM: September 14, 2002.

TA–W–53,239; Acme Mills Co., Fairway Products, Quincy, MI: September 26, 2002.

TA–W–53,163; Zapata Industries, Inc., Muskogee, OK: October 3, 2002.

TA–W–53,110; Zorlu Manufacturing Co., LLC, Warrenton, GA: September 24, 2002.

TA–W–53,015; Texas PMW, Inc., Pennsylvania Machine Works, Inc., Houston, TX: September 10, 2002.

TA–W–53,028; Bic Corp., Lighters Div., Gaffney, SC: September 23, 2002.

TA–W–52,998; Saint-Gobain Calmar, Inc., City of Industry, CA: September 25, 2002.

TA–W–52,991; Select Elastics of America, Inc., McAllen, TX: September 22, 2002.

TA–W–52,924 & A; Techneglas, Inc., Columbus, OH and Pittston, PA: October 20, 2003.

TA–W–52,925; SKF USA, Inc., Altoona, PA: September 11, 2002.

TA–W–52,931; PCS Nitrogen Fertilizer, LP, a/k/a Memphis Plant, a div. of Potash Corp., Millington, TN: September 2, 2002.

TA–W–52,944; Chiquola Fabrics, LLC, Kingsport, TN: September 15, 2002.

TA–W–52,964; Phelps Dodge Mining Co., Tyrone Mining, LLC, Tyrone, NM: September 3, 2002.

TA–W–52,973; Cortina Fabrics, Swepsonville, NC: September 24, 2002.

TA–W–52,983; Escod Industries, Inc., BKB, Inc., Insilso Technologies, North Myrtle Beach, SC: September 16, 2002.

TA–W–52,768; Titan Plastics Group, Portage, MI: August 27, 2002.

TA–W–52,874; PMW Illinois, Inc. Pennsylvania Machine Works, Inc., Carlinville, IL: September 10, 2002.

TA–W–52,880; Dayton Superior Corp., Birmingham, AL: September 18, 2002.

TA–W–52,858; Wetsel-Oviatt Lumber Company, El Dorado Hills, CA: August 25, 2002.

TA–W–52,796, A,B,C; Halliburton Energy Services, Alaska Operations, Prudhoe Bay, AK, Sterling, AK, Fairbanks, AK and Anchorage, AK: September 2, 2002.

TA–W–52,786; Excelsior Foundry Co., Belleville, IL: August 21, 2002.

TA–W–53,081; Robert Manufacturing Co., Rancho Cucamonga, CA: September 8, 2002.

TA–W–53,011; General Dynamics, Mosses Lake, WA: September 24, 2002.

TA–W–53,022; Ideal Forging Corp., Southington, CT: September 24, 2002.

TA–W–53,038; Coats and Clark, Inc., Toccoa, GA: September 26, 2002.

TA–W–53,042; Solon Manufacturing Co., Rhinelander, WI: September 24, 2002.

TA–W–53,043; Honeywell Airframe Systems, Torrance, CA: September 26, 2002.

TA–W–53,004; Xerox Corp., Business Group Operations (BGO), Webster, NY: September 15, 2002.

TA–W–52,863; Thantex Specialties, Inc., Abbeville, SC: August 27, 2002.

TA–W–52,565; Johns Manville Corp., Engineered Products Group, Vienna, VA: August 8, 2002.

TA–W–52,718; I.T.W. Foils, East Burnswick, NJ: August 21, 2002.

TA–W–52,722; Conso International Corp., Union, SC: August 29, 2002.

TA–W–52,754; ACS Industries, Inc., Villanova Plant, Woonsocket, RI: August 20, 2002.

TA–W–52,762; TT Group, Inc., a wholly owned subsidiary of TT Group, Ltd, Aurora, MO: August 29, 2002.

TA–W–52,792; RST&B Curtain and Drapery, Woodruff, SC: September 2, 2002.

TA–W–52,813; Eastman Kodak Co., HISIS Finishing Department B–313, Rochester, NY: September 2, 2002.

TA–W–52,853; Trenton Technology, Inc., Utica, NY: September 4, 2002.

TA–W–52,572; Allsteel, Inc., a div. of Hon Industries, West Hazleton, PA: August 14, 2002.

TA–W–52,575; Volex, Inc., including leased workers of Accuforce, Manpower and Foothills, Conover, NC: August 13, 2002.

TA–W–52,631; Northland, a Scott Fetzer Co., Watertown, NY: August 12, 2002.

TA–W–52,649; Tellabs Operations, Inc., Bolingbrook, IL: August 19, 2002.

TA–W–52,655; Takata Petri, Inc., a subsidiary of TK Holdings, Port Huron, MI: August 22, 2002.

TA–W–52,664; Slater Steel Corp., a wholly owned subsidiary of Slater Steel, Inc., Fort Wayne, IN: April 7, 2003.

TA–W–52,688; Howes Leather Corp., Curwensville and Cutting Div., Curwensville, PA and Clearfield Whole Leather Div., Curwensville, PA: September 25, 2003.

TA–W–52,793; Milligan and Higgins, a div. of Hudson Industries Corp., Johnstown, NY: September 2, 2002.

TA–W–52,862; Paxar Corp., Fabric Label Group, Lenoir, NC: August 26, 2002.

TA–W–52,573; Gentry Mills, Inc., Albemarle, NC: August 11, 2002.

TA–W–52,603; Sierra Pine Ltd, Medite Div., Medford, OR: August 18, 2002.

TA–W–53,141; Atlas Model Railroad Co., Inc., Hillside, NJ: October 2, 2002.

TA–W–53,238; West Linn Paper Co., West Linn, OR: October 7, 2002.

TA–W–53,151; Cole-Hersee Co., Boston, MA: October 3, 2002.

TA–W–53,160; Biddle Precision Components, Sheridan, IN: September 10, 2002.

TA–W–53,165; Thermal Ceramics, RPC, Elgin, IL: October 1, 2002.

TA–W–53,108; The Hon Co., Chair Department including leased workers of Corestaff and Kimco, South Gate, CA: September 22, 2002.

TA–W–53,125; Ranco North America, Invensys Climate Controls Div., including leased workers of Manpower, Link, and Select, Brownsville, TX: September 23, 2002.

TA–W–53,126; Siemens Energy and Automation, Inc., Machine Tool Business Unit, Lebanon, OH: September 23, 2002.

TA–W–53,127; Ault, Inc., Minneapolis, MN: October 2, 2002.

TA–W–53,073; OK–1 Manufacturing Co., Inc., Altus, OK: September 26, 2002.

TA–W–52,955; Andritz, Inc., Muncy Plant #2, a subsidiary of Andritz AG, Muncy, PA: September 5, 2002.

TA–W–52,986; Alcoa Fujikura Ltd, Telecommunications Div., Duncan, SC: September 15, 2002.

TA–W–53,189; Campbell Foundry Co., Harrison, NJ: October 7, 2002.

TA–W–53,212 & A; Heraeus Quartztech, LLC, a subsidiary Heraeus Holding GMBH, Austin, TX and Round Rock, TX: October 8, 2002.

TA–W–53,186; Arlon, Inc., Engineered Coatings and Laminates Div., East Providence, RI: September 29, 2002.

TA–W–53,155; Brazeway, Inc., Brazeway Dewitt Div., including leased workers of Talent Tree, DeWitt, IA: October 6, 2002.

TA–W–52,967; Stoneridge, Inc., Alphabet Div., Mebane, NC: September 20, 2002.

TA–W–52,773; Lebanite Corp., Hardboard Div., Lebanon, OR: November 1, 2002.

TA–W–52,650; PPG Industries, Fiber Glass Division, Lexington, NC: July 26, 2002.

TA–W–53,005; Canton Drop Forge, Canton, OH: September 12, 2002.

TA–W–52,961; IPAC Fabrics, Inc., a subsidiary of Industrial Polymers and Chemicals, Inc., Lewiston, ME: September 5, 2002.

TA–W–52,882; APW, Inc., Erie, PA: September 19, 2002.

TA–W–52,887; Connie Rose Manufacturing, Inc., Philadelphia, PA: September 17, 2002.

TA–W–52,889; Fox River Paper Co., Appleton, WI: September 18, 2002.

TA–W–52,864; Cooper-Atkins Corp., Middlefield, CT: August 19, 2002.

TA–W–53,240; Friedrich Air Conditioning Co., San Antonio, TX: September 30, 2002.

TA–W–52,834; The Safety Stitch, Inc., Harrisville, WV: August 22, 2002.

I hereby certify that the aforementioned determinations were issued during the months of November. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 15, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–31855 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standard Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

Arkansas
  AR030001 (June 13, 2003)
  AR030003 (June 13, 2003)
  AR030008 (June 13, 2003)
  AR030027 (June 13, 2003)
Louisiana
  LA030004 (June 13, 2003)
  LA030009 (June 13, 2003)
  LA030014 (June 13, 2003)
  LA030015 (June 13, 2003)
  LA030017 (June 13, 2003)

Volume VI

None

Volume VII

Nevada
  NV030002 (June 13, 2003)
  NV030005 (June 13, 2003)
  NV030009 (June 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help Desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of December 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–31609 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Kingwood Mining Company, LLC

[Docket No. M–2003–091–C]

Kingwood Mining Company, LLC, Route 1, Box 294C, Newburg, West Virginia 26410 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its Whitetail K-Mine (MSHA I.D. No. 46–08751) located in Preston County, West Virginia. The petitioner requests that paragraph 1(e) of its previously approved petition for modification, docket number M–2001–049–C be amended to read as follows: Sensors shall be installed not more than 100 feet downwind of all electrical installations in the belt or neutral entry(s) and any equipment or location in the conveyor belt entry where a potential fire source exists. Where an electrical installation is part of a belt drive installation, then only one sensor per statement 1(d) above is required at the belt drive location. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Genwal Resources, Inc.

[Docket No. M–2003–092–C]

Genwal Resources, Inc., PO Box 1077, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.352 (Return air courses) to its South Crandall Canyon Mine (MSHA I.D. No. 42–02356) located in Emery County, Utah. The petitioner requests a modification of the existing standard to allow the use of the belt entry as a return air course during longwall development. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. The Banner Company

[Docket No. M–2003–094–C]

The Banner Company, 2700 Lee Highway, Bristol, Virginia 24609 has filed a petition to modify the application of 30 CFR 75.364(b)(2) and (4) (Weekly examination) to its Honey Branch Mine (MSHA I.D. No. 44–06599) located in Wise County, Virginia. The petitioner states that due to deteriorating roof and rib conditions in a portion of the main return entry extending from the surface to a point approximately 150 feet inby, combined with a roof fall in this area, which extends from the outby #1E seal location to the main return travelway, traveling the area to perform weekly examinations would be unsafe. The petitioner proposes to establish evaluation points and have a certified person monitor the affected area to determine the quantity and quality of air at each monitoring station. The petitioner has listed specific terms and conditions in this petition that would be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Dickenson-Russell Coal Company, LLC

[Docket No. M–2003–095–C]

Dickenson-Russell Coal Company, LLC, P.O. Box 2345, Abingdon, Virginia 24212 has filed a petition to modify the application of 30 CFR 75.1710–1(a) (Canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Laurel Mountain Mine (MSHA I.D. No. 44–06444) located in Russell County, Virginia. The petitioner proposes to operate self-propelled electric face equipment without canopies or cabs in mining heights less than 50 inches. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners.

5. Sierra Minerals Corporation

[Docket No. M–2003–005–M]

Sierra Minerals Corporation, 6164 S. Newport Street, Suite 2000, Centennial, Colorado 80111 has filed a petition to modify the application of 30 CFR 57.15031 (Location of self-rescue devices) to its Yule Quarry Operation (MSHA I.D. No. 05–04438) located in Gunnison County, Colorado. The petitioner requests a modification of the existing standard to eliminate the use of self-rescue devices for persons underground during non-operating hours. The petitioner asserts that application of the existing standard would result in a diminution of safety to visitors at the mine and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before January 28, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 19th day of December, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–31797 Filed 12–24–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–157)]

NASA Advisory Council, Planetary Protection Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Planetary Protection Advisory Committee (PPAC).

DATES: Monday, January 12, 2004, 8:30 a.m. to 5:15 p.m., Tuesday, January 13, 2004, 8:30 a.m. to 5 p.m.

ADDRESSES: NASA Jet Propulsion Laboratory, Building 167, 4800 Oak Grove Drive, Pasadena, CA 91103.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4452, e-mail *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Planetary Protection Program Update
—Planetary Protection Status of Current and Planned Mars Missions
—Concepts for Returned Mars Sample Handling
—Solar System Exploration Program Status
—Planetary Protection Status of Current and Planned Solar System Exploration Missions

Due to increased security measures at the NASA Jet Propulsion Laboratory (JPL), interested members of the public including the news media must contact Cecil Brower, (818) 354–6974, no later than Monday, January 5, 2004, to make arrangements for badging, parking, and being escorted while at JPL. Access to JPL will be limited to those who show proper photo identification and who have made prior arrangements to attend.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 03–31903 Filed 12–24–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–156)]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, January 29, 2004, 9 a.m. to 11 a.m. eastern standard time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Room 5H46A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Erminger, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0914.

SUPPLEMENTARY INFORMATION: The newly reconstituted Aerospace Safety Advisory Panel will hold its first Quarterly Meeting. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be: Space Shuttle Program, International Space Station Program, and Cross-Program Areas. The Aerospace Safety Advisory Panel is composed of nine members and one ex-officio member.

The meeting will be open to the public up to the seating capacity of the room (45). Seating will be on a first-come basis. Please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance to reserve a seat. Visitors will be requested to sign a visitor's register and asked to comply with NASA security requirements, including the presentation of a valid picture ID before receiving an access badge. Foreign Nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; Green card/visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of visitor. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Susan Burch via e-mail at *Susan.Burch.nasa.gov* or by telephone at (202) 358–0914.

Photographs will only be permitted during the first 10 minutes of the meeting.

During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance.

Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentation and written comments should be limited to the subject of safety in NASA.

Michael F. O'Brien,

Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 03–31904 Filed 12–24–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–158)]

Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming meeting of the Aviation Safety Reporting System Subcommittee (ASRSS).

DATES: Thursday, January 29, 2004, 9 a.m. to 5 p.m.; and Friday, January 30, 2004, 9 a.m. to 12 noon.

ADDRESSES: Monterey Marriott Hotel, 350 Calle Principal, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—ASRS Program
- Status Overview
- Strategic Planning
- Runway Safety Project

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Michael F. O'Brien,

Assistant Administrator for External Relations.

[FR Doc. 03–31902 Filed 12–24–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before January 28, 2004, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Jonathan Womer, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on October 1, 2003 (68 FR 56651 and 56652). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Applicant Background Survey.

OMB number: 3095–0045.

Agency form number: NA Form 3035.

Type of review: Regular.

Affected public: Applicants for NARA jobs.

Estimated number of respondents: 2,593.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when an individual applies for a job at NARA).

Estimated total annual burden hours: 216 hours.

Abstract: A diverse workforce enhances our agency by ensuring that we can draw on the widest possible variety of viewpoints and experiences to improve the planning and actions we undertake to achieve our mission and goals. By promoting and valuing workforce diversity, we create a work setting where these varied experiences contribute to a more efficient and dynamic organization and employees can develop to their full potential. To achieve these ends and in accordance with our Strategic Plan, we constantly work to improve our performance in hiring and promoting people in underrepresented groups.

This form is used to obtain source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Use of this form allows us to objectively determine the barriers to recruitment and selection that affect underrepresented groups. There is no source of this information other than directly from applicants.

Response is optional. The information is used for evaluating recruitment only and plays no part in the selection of who is hired. The information is not provided to selecting officials and plays no part in the selection of individuals. Instead, it is used in summary form to determine trends over many selections within a given occupation or organizational area. The information is treated in a very confidential manner. No information from the form is entered into the personnel file of the individual selected and all the forms are destroyed after the conclusion of the selection process.

The format of the questions on ethnicity and race are compliant with OMB requirements and comparable to those used by other Federal agencies. This form is a further simplification and update of a similar DOI applicant background survey used by NARA for many years.

Dated: December 12, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–31785 Filed 12–24–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection, NATF Form 36, Microfilm Publication Order Form, used by customers/researchers for ordering roll(s) or microfiche of a microfilm publication. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 27, 2004, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Microfilm Publication Order Form.

OMB number: 3095–0046.

Agency form number: NATF Form 36.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 5,200.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 867 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. The National Archives Trust Fund (NATF) Form 36 (11/03), Microfilm Publication Order Form, is used by customers/researchers for ordering a roll, rolls, or a microfiche of a microfilm publication.

Dated: December 12, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–31786 Filed 12–24–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting of the National Museum Services Board

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the board. Notice of this meeting is required under the Sunshine in Government Act.

TIME/DATE: 1:30 a.m.–4:30 p.m. on Thursday, January 8, 2004.

STATUS: Open.

ADDRESSES: San Diego Museum of Natural History, 1450 El Prado, San Diego, CA, (619) 696–1935.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. Section 9101 *et seq.*, advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

The meeting on Thursday, January 8, 2004 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

1st Meeting of the National Museum and Library Services Board at San Diego Museum of Natural History, 1450 El Prado, San Diego, CA

Thursday, January 8, 2004.

1:30 p.m.–2:30 p.m.
  I. Welcome
  II. Ratification of Minutes from the 87th NMSB Meeting
  III. Opening Remarks
  IV. Carla Hayden, President, ALA Welcomes Board
  V. Committee Reports
2:30 p.m.–2:45 p.m. Break
2:45 p.m.–4:15 p.m. Dialogue on Creating and Sustaining a Nation of Learners—San Diego Perspectives:
  Mick Hager, Director of the San Diego Natural History Museum
  Jeffery Kirsch, Director of the Reuben H. Fleet Science Center
  Hugh Davies, Director of the Museum of Contemporary Art
  Anna Tatar, Director of San Diego Public Library
4:15 p.m.–4:30 p.m. Other business
4:30 p.m. Adjourn

Dated: December 22, 2003.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 03–32003 Filed 12–23–03; 12:17 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–8989; SMC–1559]

Envirocare of Utah, Inc.; Order Modifying Exemption From Requirements Relative to Possession of Special Nuclear Material

Envirocare of Utah, Inc., (Envirocare) operates a low-level waste (LLW) disposal facility in Clive, Utah. This facility is licensed by the State of Utah, an Agreement State. Envirocare is also licensed by Utah to dispose of mixed radioactive and hazardous wastes. In addition, Envirocare has a U.S. Nuclear Regulatory Commission (NRC) license to dispose of byproduct material as defined in 10 CFR part 40.

Section 70.3 of 10 CFR part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer special nuclear material (SNM) to obtain a license pursuant to the requirements in 10 CFR part 70. The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities as defined in 10 CFR 150.11.

Pursuant to 10 CFR 70.14, "the Commission may. * * * grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

On May 24, 1999, the NRC transmitted an Order to Envirocare of Utah, Inc. The Order was published in the **Federal Register** on May 21, 1999 (64 FR 27826). The Order exempted Envirocare from certain NRC regulations and permitted Envirocare, under specified conditions, to possess waste containing SNM in greater quantities than specified in 10 CFR part 150, at Envirocare's LLW disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. The methodology used to establish these limits is discussed in the 1999 Safety Evaluation Report (SER) that supported the 1999 Order.

On January 30, 2003, the NRC revised the Order to (1) Include stabilization of liquid waste streams containing SNM; (2) include the thermal desorption process; (3) change the homogenous contiguous mass limit from 145 kg to 600 kg; (4) change the language and SNM limit associated with footnotes "c" and "d" of Condition 1 to reflect all materials in Conditions 2 and 3; and (5) omit the confirmatory testing requirements for debris waste. The revised Order was published in the **Federal Register** on February 13, 2003 (68 FR 7399).

Envirocare, in a letter dated July 8, 2003, proposed that NRC amend the 2003 Order to: (1) Include additional SNM concentration limits to Condition 1 of the Order, including limits for SNM with and without magnesium oxide and limits for additional enrichments of uranium-235; (2) revise the limits in Condition 1 to be in units of gram of SNM per gram of waste rather than the current units of pCi of SNM per gram of waste; and (3) increase the limits of plutonium isotopes and uranium-233 to allow for greater flexibility in accepting liquid SNM waste. In addition, Envirocare has requested an evaluation of three new waste treatment technologies. The NRC is evaluating Envirocare's request in two phases. This modification of the Order addresses the revisions to the table in Condition 1, to include criticality-based concentration limits without magnesium oxide. Phase two will be subject to a separate evaluation and revision of the Order.

A principal emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The staff considers that criticality safety can be maintained by relying on concentration limits, under the conditions specified below. Safeguarding SNM against diversion or sabotage is not considered a significant issue because of the diffuse form of the SNM in waste meeting the conditions specified. These conditions are considered an acceptable alternative to the criticality definition provided in 10 CFR 150.11, thereby assuring the same level of protection. The staff reviewed safety aspects of the proposed action (*i.e.*, granting Envirocare's request) in the Safety Evaluation Report, dated September 23, 2003. The staff concluded that additional conditions were required to maintain sufficient protection of health, safety, and the environment. The exemption conditions would be revised as follows:

1. Concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

Radionuclide	Maximum concentration with MgO (g SNM/g waste)	Maximum concentration without MgO (g SNM/g waste)
U–235[a]	8.6E–4	9.9E–4
U–235[b]	5.4E–4	6.2E–4
U–235[c]	1.2E–5	1.2E–5
U–235[d]	3.1E–4	3.1E–4
U–235[e]	7.3E–5	7.3E–5
U–233	7.7E–6	4.7E–4
Pu–239	1.6E–7	2.8E–4
Pu–241	3.5E–9	2.2E–4

[a] for uranium below 10 percent enrichment. Column 1 considers a maximum of 20 percent of the weight of the waste of materials listed in Condition 2. Column 2 considers that materials in condition 2 are not present in bulk quantities.

[b] For uranium at or above 10 percent enrichment. Column 1 considers a maximum of 20 percent of materials listed in Condition 2 of the weight of the waste of materials listed in Condition 2

[c] For uranium at any enrichment with unlimited quantities of materials listed in Conditions 2 and 3

[d] For uranium at any enrichment with sum of materials listed in Conditions 2 and 3 not exceeding 45 percent of the weight of the waste

[e] For uranium at any enrichment with unlimited MgO or beryllium

Plutonium isotopes other than Pu-239 and Pu-241 do not need to be considered in demonstrating compliance with this condition. When mixtures of these SNM isotopes are present in the waste, the sum-of-the-fractions rule, as illustrated below, should be used.

$$\frac{\text{U}-233\text{ conc}}{\text{U}-233\text{ limit}}+\frac{100\text{wt\%U}-235\text{ conc}}{100\text{wt\%U}-235\text{ limit}}+\frac{10\text{wt\%U}-235\text{ conc}}{10\text{wt\%U}-235\text{ limit}}+\frac{\text{Pu}-239\text{ conc}}{\text{Pu}-239\text{ limit}}+\frac{\text{Pu}-241\text{ conc}}{\text{Pu}-241\text{ limit}}\leq 1$$

The concentration values in Condition 1 are operational values to ensure criticality safety. Where the values in Condition 1 exceed concentration values in the corresponding conditions of the State of Utah Radioactive Material License (RML), the concentration values in the RML, which are averaged over the container, may not be exceeded. Higher concentration values are included in Condition 1 to be used in establishing the maximum mass of SNM for non-homogeneous solid waste and liquid waste. The measurement uncertainty values should be less than or equal to 15 percent of the concentration limit, and represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide.

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms of waste.

2. Except as allowed by notes a, b, c, and d in Condition 1, waste must not contain "pure forms" of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (*e.g.*, a pallet of drums, a B–25 box). By "pure forms," it is meant that mixtures of the above elements such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc., do not contain other elements. These chemicals would be added to the waste stream during processing, such as at fuel facilities or treatment such as at mixed waste treatment facilities. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

3. Except as allowed by notes c, d, and e in Condition 1, waste accepted must not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one percent of the total weight of the waste. The presence of the above materials will be determined by the generator, based on process knowledge, physical observations, or testing.

4. Waste packages must not contain highly water soluble forms of uranium greater than 350 grams of uranium-235 or 200 grams of uranium-233. The sum of the fractions rule will apply for mixtures of U–233 and U–235. Highly soluble forms of uranium include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, and uranyl sulfate. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

5. Waste processing of waste containing SNM will be limited to stabilization (mixing waste with reagents), micro-encapsulation, macro-encapsulation using low-density and high-density polyethylene and thermal desorption.

When waste is processed using the thermal desorption process, Envirocare shall confirm the SNM concentration following processing and prior to returning the waste to temporary storage.

Liquid waste may be stabilized provided the SNM concentration does not exceed the SNM concentration limits in Condition 1. For containers of liquid waste with more than 600 kilograms of waste, the total mass of SNM shall not exceed the SNM concentration in Condition 1 times 600 kilograms of waste. Waste containing free liquids and solids shall be mixed prior to treatment. Any solids shall be maintained in a suspended state during transfer and treatment.

6. Envirocare shall require generators to provide the following information for each waste stream:

Pre-shipment

a. Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

b. Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

c. Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

d. Manifest Concentration. The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

Envirocare shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that Envirocare has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, Envirocare shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. Envirocare shall retain this information as required by the State of Utah to permit independent review.

At Receipt

Envirocare shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets Conditions 2 through 4.

7. Sampling and radiological testing of waste containing SNM must be performed in accordance with the following: one sample for each of the first ten shipments of a waste stream; or one sample for each of the first 100 cubic yards of waste up to 1,000 cubic yards of a waste stream, and one sample for each additional 500 cubic yards of waste following the first ten shipments or following the first 1,000 cubic yards of a waste stream. Sampling and radiological testing of debris waste containing SNM (that is exempted from sampling by the State of Utah) can be eliminated if the SNM concentration is lower than one tenth of the limits in Condition 1.

8. Envirocare shall notify the NRC, Region IV office within 24 hours if any of the above conditions are not met, including if a batch during a treatment process exceeds the SNM concentrations of Condition 1. A written notification of the event must be provided within 7 days.

9. Envirocare shall obtain NRC approval prior to changing any activities associated with the above conditions.

Based on the staff's evaluation, the Commission has determined, pursuant to 10 CFR 70.14, that the exemption of above activities at the Envirocare disposal facility is authorized by law, and will not endanger life or property or the common defense and security and is otherwise in the public interest. Accordingly, by this Order, the Commission grants an exemption subject to the stated conditions. The exemption will become effective after the State of Utah has incorporated the above conditions into Envirocare's radioactive materials license. In addition, at that time, the Order transmitted in January 2003 will no longer be effective.

Pursuant to the requirements in 10 CFR part 51, the Commission has prepared an Environmental Assessment for the proposed action and has determined that the granting of this exemption will have no significant impacts on the quality of the human environment. This finding was noticed in the **Federal Register** on October 16, 2003 (68 FR 59645).

The request for the modifying the Order are available for inspection at NRC's Public Electronic Reading Room at *<http://www.nrc.gov/reading-rm/adams.html>* ML031950334. Staff's Environmental Assessment and Safety Evaluation Report may be obtained at the above web site using ML032691442 and ML032680942. Any questions with respect to this action should be referred to Anna H. Bradford, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5228, Fax: (301) 415–5397.

Dated at Rockville, Maryland this 16th day of December, 2003.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–31875 Filed 12–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Radiac Research Corp., Brooklyn, New York; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated November 3, 2003, Mr. Michael B. Gerrard, representing Neighbors Against Garbage, *et al.* (petitioners), have requested that the Nuclear Regulatory Commission (NRC) take action with regard to Radiac Research Corporation Brooklyn, New York, a licensee with the New York State Department of Labor.

The petitioners requested that the NRC use its authority to protect the common defense and security under the Atomic Energy Act of 1954 to close the Radiac facility. As the basis for the request, the petitioner stated that the radioactive waste storage operation adjoining a hazardous waste transfer and storage operation at the Radiac Research Corporation in Brooklyn, New York represented a significant risk.

The request is being addressed pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. A copy of the petition is available for inspection in the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 17th day of December, 2003.

For the U.S. Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–31874 Filed 12–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.138, "Laboratory Investigations of Soils and Rocks for Engineering Analysis and Design of Nuclear Power Plants," describes field investigations and testing practices acceptable to the NRC staff for for determining soil and rock properties and characteristics needed for engineering analysis and design for foundations and earthworks for nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. Y. Li, (301) 415–4141; email *yxl1@nrc.gov.*

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov.* Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov/.* Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 16th day of December 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–31873 Filed 12–24–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 22, 2003:

A Closed Meeting will be held on Tuesday, December 23, 2003 at 2 p.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), and (10) and 17 CFR 200.402(a) (5), (7), and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the item listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, December 23, 2003 will be: Settlement of an injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 23, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–32027 Filed 12–23–03; 1:44 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48948; File No. SR–Amex–2003–105]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Exceptions to the Exchange's Firm Quote Rule

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 958A to eliminate the application of the Rule's exceptions to different series within the same option class. The text of the proposed rule change is set forth below in its entirety. Proposed deletions are in brackets.

* * * * * *

Rule 958A Application of the Firm Quote Rule

(a) through (b) No change

(c) *Obligations of a Responsible Broker or Dealer*—(i) No change.

(ii) No responsible broker or dealer shall be obligated to execute a transaction for any listed options as provided in paragraph (c)(i) when:

(A)(1) Prior to the presentation of an order to sell (buy), a responsible broker or dealer has communicated to the exchange, a revised quotation size;

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(2) At the time an order to sell (buy) is presented, a responsible broker or dealer is in the process of effecting a transaction in such [class and/or] series of option, and immediately after the completion of such transaction it communicates to the Exchange a revised quotation size, such responsible broker or dealer shall not be obligated by paragraph (c)(i) of this Rule to sell (buy) that option in an amount greater than such revised quotation size;

(3) Before the order sought to be executed is presented, a responsible broker or dealer has communicated to the Exchange a revised bid or offer; or

(4) At the time the order sought to be executed is presented, a responsible broker or dealer is in the process of effecting a transaction in such [class and/or] series of option, and, immediately after the completion of such transaction, a responsible broker or dealer communicates to the exchange a revised bid or offer; provided, however, that the responsible broker or dealer shall nonetheless be obligated to execute any such order as provided in paragraph (c)(i) at its revised bid or offer in any amount up to its published quotation size or revised quotation size; or

(B) No change.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In November 2000, the Commission determined to impose market-wide firm quote obligations on the options markets effective April 1, 2001.[3] Rule 11Ac1–1 under the Act (known as the Quote Rule) requires all national securities exchanges to establish procedures for collecting from their members and making available to quotation vendors, bids, offers and quotation sizes with respect to reported securities. It also requires that quotation information be "firm" for the disseminated size, subject to certain exceptions. In applying the Quote Rule to the options markets, the SEC required the options exchanges to amend their rules to conform to the requirements of the Quote Rule. The Amex amended Rule 958A as required and received final SEC approval of the amendments in June 2001.[4]

The purpose of the Quote Rule is to make information on prices, volume and quotes for securities in all markets available to all investors so that they can make informed investment decisions. However, the SEC also recognized that the rule needs to prevent responsible brokers or dealers from being required to execute more than one order on the basis of the disseminated bid or offer and that the responsible brokers or dealers need sufficient time to update their quotations following completion of a transaction. Thus, in conforming Amex Rule 958A to the Quote Rule, the Amex included two exceptions, among others, from SEC Rule 11Ac1–1, with revisions to clarify the manner in which the Amex planned to interpret and enforce the Quote Rule in its options market.

The Quote Rule exceptions provide that the specialist would be relieved of his obligation to effect transactions at his published bid or published offer if (i) before an order is presented for execution, the specialist has communicated to the Exchange a revised bid or offer superseding his published bid or offer (a "revised bid or offer") or, (ii) at the time an order is presented, the specialist is in the process of effecting a transaction in that security, and, immediately after the completion of such transaction, he communicates a revised bid or offer to the Exchange.[5]

The exceptions to the Quote Rule as set forth in Rule 11Ac1–1(c)(3) apply to "subject security" and it was unclear at the time the Amex amended Rule 958A whether the exceptions applied to an option class, option series or both. The definition of subject security found in Rule 11Ac1–1 suggests both.[6] As a result, in order to clarify its understanding of the scope of the exceptions, the Amex specified in its amendment to Rule 958A that the exceptions would apply to the entire class as well as each individual series in an option class. Thus, pursuant to the exceptions set forth in Amex Rule 958A(c)(ii), the specialist and registered options traders, as responsible brokers or dealers, are not required to execute more than one order at their published bid or offer in that series or in any series within that option class. The period of time within which the specialist and registered options traders are relieved of their obligation to effect additional transactions at the published bid or offer would begin to run for all series in a given option class whenever a transaction was being effected in any one of the series in that option class.

The Exchange believed at the time it filed its amendments to Rule 958A and continues to believe that the exceptions should apply to the entire class as well as each individual series in a given option class. It is appropriate to allow the exceptions to apply to the entire class as an effective way for specialists and registered options traders to manage their overall risk in an option class. In determining competitive quotes and sizes for each series, specialists and registered options traders take into consideration their overall risk in the option class. If there is a change in the price of the underlying stock or an execution in one series, the specialist and registered options trader will seek to re-quote all series in that class. The exceptions provide specialists with the ability to update quotes on a timely basis without having to be firm to multiple orders in different series within the same class submitted simultaneously by one or more market participants. Given the numerous series within each option class that are traded by the Exchange,[7] the requirements for specialists to make two-sided markets with size in each series, and the dependence upon a limited supply of stock available to hedge risk taken by specialists and registered options traders who submit narrow quotes in large size for each series within an option class it was believed to be appropriate for the Exchange to apply the exception to the class as well as the series. In addition, the Exchange's surveillance and enforcement program for the options Quote Rule was designed based upon the rule text as approved and the interpretation that would allow specialists and registered options traders to avail themselves of the exceptions to the Quote Rule for all series within a class after having received an order in one series in that option class.

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[3] *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75450 (December 1, 2000).

[4] *See* Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001).

[5] In the Quote Rule adopting Release the SEC further clarified the second exception by stating "[a] responsible broker or dealer should be deemed to be in the process of effecting a transaction from the moment an order is presented to him for execution until the completion of communication of all information necessary to complete the transaction." *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978), at footnote 33.

[6] The term subject security is defined in subparagraph (a)(25) of Rule 11Ac1–1 as an "exchange-traded security" meeting certain executed volume thresholds. An "exchange-traded security" is defined in subparagraph (a)(10) as any "covered security" or "class of covered securities" listed or registered on an exchange. A "covered security" is defined in subparagraph (a)(6) and means any "reported security," which is defined in subparagraph (a)(20) and means any security or class of securities.

[7] For a typical equity option class, the Exchange initially lists 24 series, that is, both puts and calls in four expiration months with three strike prices within each expiration month. As the underlying stock price moves, additional series are added. Options on volatile stocks can have well over 100 different series trading at any given time.

However, in recent discussions with SEC staff regarding the Amex's enforcement of the Quote Rule for options, the Exchange has been advised that the exceptions should only be applied on a series-by-series basis. The SEC staff has, therefore, requested that the Amex amend Rule 958A to eliminate the exception for the entire class. The Amex is submitting this proposed rule change in compliance with that request.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[8] in general and furthers the objectives of section 6(b)(5) of the Act[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–105 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31803 Filed 12–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48950; File No. SR–CBOE–2003–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Amend Provisions of its Constitution and Rules Pertaining to the Governance of the Exchange

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 19, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On December 11, 2003, CBOE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend various provisions of its Constitution and Rules pertaining to the governance of the Exchange. The text of the proposed rule change appears below. Added text is in italics. Deleted text is in brackets.

Chicago Board Options Exchange, Incorporated Constitution

Article I

Definitions

Section 1.1 When used in this Constitution, except as expressly otherwise provided or unless the context otherwise requires:

(a) The term "Exchange" means the Chicago Board Options Exchange, Incorporated or its exchange market.

(b) The term "member" means an individual member or a member organization of the Exchange (or a registered nominee of such a member organization) that is a regular member in good standing described in Section 2.1(b) of Article II of the Constitution.

(c) The term "member organization" means a partnership or corporation which owns *or leases* a membership, or a partnership or corporation for which a membership is registered in accordance with Section 2.4 of Article II of the Constitution.

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[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(d) The term "Board" means the Board of Directors of the Exchange.

(e) The term "Rules" means the rules of the Exchange as adopted or amended from time to time.

Article II

Membership

Section 2.1 Number of Memberships

(a) Membership in the Exchange shall be made available by the Exchange at such times, under such terms and in such number as shall be proposed by the Board and approved by the affirmative vote of the majority of *voting* [the] members present in person or represented by proxy at a regular or special meeting of the membership. Such an affirmative vote by the members shall be required for the issuance of all new memberships, whether regular or special, whether having expanded or limited rights, whether designated memberships or permits or as a classification using any other description, which grant the holders thereof the right to enter into securities transactions at the Exchange.

(b) The regular membership of the Exchange shall consist of persons who acquire regular memberships made available by the Exchange in accordance with the Rules, and shall also consist of those members of the Board of Trade of the City of Chicago who, pursuant to paragraph (b) of Article FIFTH of the Certificate of Incorporation, elect to apply for membership and are approved for membership in accordance with the Rules. Except as otherwise expressly provided in the Certificate of Incorporation, the Constitution or the Rules, every regular member of the Exchange shall be entitled to the same rights and privileges, and shall be subject to the same obligations, as every other regular member.

(c) [Reserved for special memberships.]

(d)(1) Seventy-five "Options Trading Permits" ("Permits") shall be issued or made available for leasing in accordance with the Rules. All Permits shall expire, and all rights of their holders shall cease, on the seventh anniversary of the date determined pursuant to agreement between the Exchange and the New York Stock Exchange ("NYSE") on which trading begins on the floor of the Exchange in options that were listed on the NYSE.

(2) Permit holders shall have no right to petition or to vote at Exchange membership meetings or elections or to be counted as part of a quorum, shall have no interest in the assets or property of the Exchange and no right to share in any distribution by the Exchange, and shall have none of the other rights or privileges accorded members under any provision of the Constitution and Rules other than those specified in the Rules.

Section 2.2 Eligibility for Membership; Good Standing

Membership shall be limited to individuals, partnerships and corporations, subject to their meeting the conditions of approval as stated in the Constitution and Rules. Members must have as the principal purpose of their membership the conduct of a public securities business as defined in the Rules.

The good standing of a member may be suspended, terminated or otherwise withdrawn, as provided in the Rules, if any of said conditions for approval cease to be maintained or the member violates any of its agreements with the Exchange or any of the provisions of the Constitution or the Rules. Unless a member is in good standing, the member shall have no rights or privileges of membership except as otherwise provided by statute, the Certificate of Incorporation, the Constitution or the Rules, shall not hold himself or itself out for any purpose as a member, and shall not deal with the Exchange on any basis except as a non-member.

Section 2.3 Nominees of Member Organizations

Every applicant for membership as a member organization and every member organization shall, in accordance with the Rules, designate an individual nominee with respect to each membership owned *or leased* by it, who shall be subject to the same requirements for approval as if he were himself applying for membership as an individual member and shall be authorized to represent the organization in all matters relating to the Exchange.

Section 2.4 Registration of Individual Memberships for Member Organizations

Every individual member or applicant who is or intends to become an executive officer, director, principal shareholder or general partner of an organization engaged or proposing to engage in business as a broker or dealer in options may apply to register his membership for such organization. Additional individual members may register their memberships for a member organization in accordance with the Rules. Such organization shall be subject to the same requirements for approval as if it were itself applying for membership as a member organization, except that the individual member so applying shall represent the organization in lieu of a nominee. Registration of an individual membership for an organization may be withdrawn by the Exchange for any reason which would justify withdrawal of the approval of either the individual or the organization for membership.

Section 2.5 Acquisition and Transfer of Memberships

Memberships acquired pursuant to paragraph (b) of Article FIFTH of the Certificate of Incorporation shall not be transferable. All other memberships may be offered for sale and transferred by the owners thereof, or under certain circumstances by the Exchange, as provided in the Rules.

Section 2.6 Voting and Other Rights and Powers

Each regular member shall have the voting rights and power provided by law and by the Certificate of Incorporation and the Constitution.

Article III

Meetings of Members

Section 3.1 Place of Meetings

Each meeting of the members shall be held at such a place, within or without the State of Delaware, as the *Secretary* [Board] may designate prior to the giving of notice of such meeting, but if no such designation is made, then on the *fourth* floor of the Exchange.

Section 3.2 Annual Election Meeting

An annual election meeting of members shall be held on the *1st business day preceding the* 3rd Friday in November of each year [unless such day is a legal holiday, in which case on the next succeeding business day which is not a legal holiday], at such time as may be designated by the *Secretary* [Board] prior to the giving of notice of the meeting, for the purpose of electing directors to fill expiring terms and any vacancies in unexpired terms and electing members of the Nominating Committee to fill expiring terms and any vacancies in unexpired terms.

Section 3.3 Annual Report Meeting

An annual report meeting of members shall be held within 120 days following the end of the Exchange's fiscal year, at a time as determined by the *Secretary* [Board], for the purpose of *presentation of the Exchange's annual report as provided for in Section 6.11 of the Constitution* [transacting such business as may properly be brought before the meeting].

Section 3.4 Special Meetings

Special meetings of members, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the Chairman of the Board, the Vice Chairman of the Board or the Board of Directors, and shall be called by the Secretary at the request in writing of 150 voting members, provided that such request shall state the purpose or purposes of the proposed meeting and the day and hour at which such meeting shall be held.

Section 3.5 Notice of Members' Meetings

Unless otherwise prescribed by statute, the Certificate of Incorporation, the Constitution or the Rules, written notice of each meeting of members *at which a vote of members is to be taken,* stating the date, time and place thereof, and, in the case of special meetings, the purpose or purposes for which such meeting is called, shall be *given* [delivered] to each member entitled to vote thereat not more than 60 days and at least 10 days before the date of the meeting.

Section 3.6 Quorum and Adjournments

Except as otherwise provided by statute, the Certificate of Incorporation or the Constitution, a majority of the members entitled to vote, when present in person or represented by proxy, shall constitute a quorum at all meetings of members for the transaction of business, provided that in respect to uncontested elections, one-third of the members entitled to vote, when present in person or represented by proxy, shall constitute a quorum. If such quorum shall not be present or represented by proxy at any meeting of members, a majority of the members present in person or represented by proxy at the meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting unless otherwise required by statute, until a quorum shall be present or represented. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally notified. Nothing in the Constitution shall affect the right to adjourn a meeting from time to time where a quorum is present.

Section 3.7 Voting by Members

With respect to any question brought before a meeting, when a quorum is present, a majority of voting members present in person or represented by proxy shall decide the question, unless the question is one upon which by express provision of statute, the Certificate of Incorporation or the Constitution, a different vote is required, in which case such express provision shall govern and control. Voting on any question brought before any meeting of members shall be, so far as applicable, in accordance with the procedure provided by Article V of the Constitution for the conduct of the annual election.

Section 3.8 Determination of Members of Record

(a) The Board of Directors may fix a record date to determine the members entitled to notice of and to vote at a meeting of the members or any adjournment thereof ("Record Date"). The Record Date shall not be more than 60 days nor less than 10 days before the date of the meeting.

(b) If no Record Date is fixed by the Board of Directors for a meeting of members, the Record Date for the meeting shall be at the close of business on the day preceding the date on which notice of the meeting is given by the Exchange.

(c) A Record Date shall apply to any adjournment of a meeting of members; provided, however, that the Board of Directors may fix a new Record Date for the adjourned meeting.

Article IV

Nominations

Section 4.1 Nominating Committee

(a) There shall be a Nominating Committee composed of four members who are primarily engaged in business on the floor of the Exchange in the capacity of a member (floor members); two *persons* [members] who are officers of member organizations that primarily conduct a non-member public customer business (firm members); two *persons* [members] each of whom directly or indirectly owns and controls (as defined in Section 6.1(a)) one or more memberships in respect of which he acts solely as lessor (lessor members), at least one of whom is not actively engaged in business as a "broker-dealer" or as a "person associated with a broker-dealer" as those terms are defined in the Securities Exchange Act of 1934; and two representatives of the public (public members).

(b) All of the members of the Nominating Committee shall be elected by the voting members of the Exchange. [In the 1999 annual election meeting, one floor member shall be elected for a three year term, and two firm members, two lessor members and two public members shall be elected, one firm member, one lessor member and one public member for terms expiring at the second annual election meeting following the 1999 annual election meeting, and one firm member, one lessor member and one public member for terms expiring at the third annual election meeting following the 1999 annual election meeting. In the 2000 annual election meeting, one floor member shall be elected for a three year term.] At each [subsequent] annual election meeting, members of the Nominating Committee shall be elected to succeed those whose terms expire, each to serve for a term expiring at the third succeeding annual election meeting and until their successors are duly elected and qualified *or until their earlier death, resignation or removal.* Elected members of the Nominating Committee shall be ineligible for reelection for a period of three years after their terms expire*; provided that this limitation shall not apply to any member of the Nominating Committee whose most recent term on the Nominating Committee was less than three years.*

Section 4.2 Nominating Committee Vacancies

Any vacancy occurring among the members of the Nominating Committee may be filled by a qualified person appointed by the Vice Chairman of the Board with the approval of the Board [to hold office until the next annual election meeting, at which time a qualified successor shall be elected to serve the unexpired term, if any, of his predecessor in office]. *The term of any Nominating Committee member so chosen shall be from the date of appointment until the next annual election meeting and until the person's successor is duly elected and qualified or until the person's earlier death, resignation or removal. The remaining portion of the unexpired term of a Nominating Committee member, if any, shall be served by a person elected at the next annual election meeting.*

Section 4.3 Nominating Procedure

[During October of each year the] *The* Nominating Committee shall hold at least three meetings, at least two of which shall be open to the membership, for the purpose of selecting not less than one nominee for each of the following offices to be voted upon at the following annual election meeting:

(a) Directors to fill expiring terms and vacancies.

(b) Nominating Committee members to fill expiring terms and vacancies.

The Nominating Committee shall select nominees to fulfill the requirements of Sections 6.1 and 4.1 of the Constitution with an obligation to have the various interests of the membership represented on the Board and the Nominating Committee, respectively.

Notice of each of the meetings of the Nominating Committee shall be posted on the *Exchange* bulletin board [on the floor of the Exchange].

The Nominating Committee shall post its nominees of Directors and Nominating Committee members on the Exchange bulletin board not later than October 10th, or the first business day thereafter if October 10th is not a business day.

Section 4.4 Replacement Nominees

In the event any nominee named by the Nominating Committee withdraws or becomes ineligible, the Nominating Committee may select an additional qualified nominee to replace the withdrawn or ineligible nominee, and it shall select an additional qualified nominee if, as a result of the withdrawal or ineligibility, there is not at least one nominee for each of the offices to be elected.

Section 4.5 Nomination by Petition

Nominations of candidates for election to the Board or the Nominating Committee may be made by petition, signed by not less than 100 voting members of the Exchange and filed with the Secretary no later than 5:00 p.m. (Chicago time) on the Monday preceding the 1st Friday in November, or the first business day thereafter in the event that Monday occurs on a holiday.

Section 4.6 Posting of Names of Nominees

Names of nominees and replacement nominees selected by the Committee and nominees named by petition shall, immediately following their selection, be given to the Secretary who shall promptly post them upon the *Exchange* bulletin board.

Section 4.7 Qualifications of Nominees

Candidates for election to the Board or the Nominating Committee, whether nominated by the Nominating Committee or by petition, shall be eligible for election in any of the categories for which they qualify both at the time of their nomination and at the time of their election. The sole judge of whether a candidate satisfies the applicable qualifications for election to the Board or the Nominating Committee in a designated category shall be the Nominating Committee in the case of candidates nominated by that Committee, and shall be the Executive Committee in the case of candidates nominated by petition, and the decision of the respective committee shall be final.

Section 4.8 Qualifications of Nominating Committee Members

Following election or appointment to the Nominating Committee, each Nominating Committee member must continuously satisfy the applicable qualifications for service on the Nominating Committee. The sole judge of whether a Nominating Committee member satisfies the applicable qualifications for service on the Nominating Committee shall be the Board of Directors. Notwithstanding the foregoing, a member of the Nominating Committee who fails to maintain the applicable qualifications will be allowed 45 days from the date when the Board determines the Nominating Committee member is unqualified in which to requalify. During any such period up until the time when the Nominating Committee member requalifies, the Nominating Committee member shall be deemed not to hold office and the seat formerly held by the Nominating Committee member shall be deemed to be vacant for all purposes. The Board of Directors shall be the sole judge of whether the Nominating Committee member has requalified.

Section 4.9 Removal of Nominating Committee Members

In the event of the refusal, failure, neglect, or inability of any Nominating Committee member to discharge that person's duties, or for any cause affecting the best interests of the Exchange, the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the power, by the affirmative vote of at least two-thirds of the Directors then in office, to remove that Nominating Committee member from the Committee.

Article V

Conduct of Annual Election

Section 5.1 Election Committee

The Vice Chairman of the Board, with the approval of the Board, shall appoint not less than three tellers, none of whom may be a member of the Exchange or a partner or officer of a member organization, who shall constitute a Committee to conduct the annual election. The Committee shall have authority to decide all questions pertaining to the conduct of the annual election, and its decision shall be final.

Section 5.2 Voting Procedure

(a) Immediately following the expiration of the time within which nominations may be made by petition, the Secretary shall prepare a ballot listing all candidates nominated for offices to be voted upon at the annual election, the order of the listing to be determined by lot. A ballot, a form of proxy, an envelope marked "For Ballot Only" and a return envelope shall be mailed by the Secretary to each member eligible to vote, together with the notice of the annual election. Members may vote, either in person or by proxy, by marking the ballot which shall remain unsigned and sealing the same in the unmarked ballot envelope. Members desiring to vote by proxy shall mail *or deliver* the sealed ballot, accompanied by a signed proxy card, to the Secretary so that it is received by the Secretary prior to the election. At the election, members voting in person shall deliver their sealed ballot envelopes to at least two members of the Election Committee, who shall keep a list of the members voting and shall place the sealed ballot envelopes in the ballot box. [Following the completion of voting in person, the] *The* Secretary shall deliver to the Election Committee all of the proxies, each with its accompanying sealed ballot envelope. At least two members of the Election Committee shall check the names of the members voting by proxy on the voting list, file the proxies, and place the sealed ballot envelopes in the ballot box.

(b) The Exchange may permit electronic submission of ballots and proxies, or implement a confidential electronic voting process, in a form and manner prescribed by the Exchange. The Exchange may modify the procedures in paragraph (a) of this Section to accommodate electronically submitted voting materials and votes.

Section 5.3 Counting of Ballots

Following the conclusion of the annual election meeting, the Election Committee shall count all of the properly submitted votes. [When all of the ballots properly submitted at the election have been placed in the ballot box, members of the Election Committee shall open the ballot box and the sealed ballot envelopes, and shall count the ballots.] A plurality of the votes shall elect the directors; provided, however, that where a plurality of votes cast would not elect the number of directors from each of the categories specified in Section 6.1, then the specified number of candidates from each of such categories who receive the highest votes among all those candidates in each such category shall be elected in lieu of those candidates who receive what would otherwise be the lowest winning pluralities. A plurality of the votes shall elect the members of the Nominating Committee; provided, however, that in the same manner as described above for the election of directors, in any case where a plurality of votes cast would not elect the number of members of the Nominating Committee from each of the categories specified in Section 4.1, then the specified number of candidates in each such category who receive the highest votes among all candidates in that category shall be elected. The Election Committee shall cause election results to be posted on the *Exchange* bulletin board [on the floor of the Exchange].

Article VI

Board of Directors

Section 6.1 Number, Election and Term of Office of Directors

(a) The Board of Directors shall consist of 22 Directors as described below and the Chairman of the Board, who by virtue of his office shall be a member of the Board. The Directors elected by the membership shall be divided into three classes which, commencing with the 2002 annual election meeting, shall be composed as follows:[1]

Class I shall consist of one member who directly or indirectly owns and controls a membership and is primarily engaged in business on the floor of the Exchange in the capacity of a member (floor director), one *person* [member] who directly or indirectly owns and controls a membership with respect to which he acts solely as lessor and who is not actively engaged in business as a "broker-dealer" or as a "person associated with a broker-dealer" as those terms are defined in the Securities Exchange Act of 1934, (lessor director), and three *persons who are not members and* [non-members] who are not broker-dealers or persons affiliated with broker-dealers (public directors).

Class II shall consist of one floor director, one *person* [member] who functions as a member in any recognized capacity either individually or on behalf of a member organization (at-large director), two *persons* [members] who are executive officers of member organizations that primarily conduct a non-member public customer business and are not individually engaged in business on the Exchange floor (off-floor directors) and four public directors.

Class III shall consist of two floor directors, one at-large director, two off-floor directors and four public directors.

The ordinary place of business of at least one of the two off-floor directors in each Class shall be a location more than 80 miles from the Exchange's trading floor.

For purposes of this Section 6.1, a *person* [member] shall be considered to directly own and control a membership only if the *person* [member] individually and directly owns of record and beneficially all right, title and interest in the membership, and a *person* [member] shall be considered to indirectly own and control a membership only if the *person* [member] (A) has the sole and exclusive right to vote the membership and control its sale, and (B) is in possession of and subject to all of the risks and rewards of a direct owner of at least a fifty percent (50%) interest in a membership, either through ownership of an equity interest in a member organization or of a beneficial interest in a trust, which in either case is the owner of one or more memberships as permitted under the Rules.

(b) The terms of Class I, Class II and Class III directors shall terminate following the annual election meetings to be held in 2002, 2003 and 2004, respectively. At the 2002 annual election meeting, all of the Class I directors shall be elected for three-year terms, and directors shall be elected to fill vacancies in Classes II and III. At *each* [subsequent] annual election *meeting* [meetings], [the] directors [of each class] shall be elected for three year terms to succeed those whose terms are then about to expire, and they shall hold office for the terms for which elected and until their successors shall have been duly elected and qualified[,] or until their earlier death, resignation or removal. *The term of office of each director elected at an annual election meeting shall commence on January 1st of the year following that annual election meeting and shall continue until December 31st of the final year of the director's term of office.* [Terms of office of directors shall expire at the first regular meeting of the Board of Directors held on or after January 1 following the annual election meetings at which their successors are elected.]

Section 6.2 Powers of the Board

The Board of Directors shall be the governing body of the Exchange and shall be vested with all powers necessary for the management of the business and affairs of the Exchange and for the promotion of its welfare, objects and purposes. The Board shall regulate the business conduct of members and may exercise all such powers of the Exchange and do all such lawful acts and things as are not by statute, the Certificate of Incorporation, the Constitution or the Rules directed or required to be exercised or done by members. In the exercise of such powers, the Board may organize such subsidiary corporations, impose such fees and charges, adopt or amend such Rules, issue such orders and directions, and make such decisions as it deems necessary or appropriate. It may prescribe and impose penalties for violations of the Constitution or Rules, for neglect or refusal to comply with orders, directions or decisions of the Board, or for any other offenses against the Exchange.

Section 6.3 Resignation, Disqualification and Removal of Directors

(a) A Director may resign at any time by giving written notice of his resignation to the Chairman of the Board or the Secretary, and such resignation, unless specifically contingent upon its acceptance, will be effective as of its date or of the date specified therein.

(b) In the event (i) any Director other than a public director ceases to be a member or executive officer of a member organization or (ii) the number of Directors in any designated category within a Class falls below the number for that category and Class *(*as specified in Section 6.1*)* because of the failure of a Director to maintain the qualifications for the designated category, of which failure the Board of Directors shall be the sole judge, the Director shall thereupon cease to be a Director, his office shall become vacant and the vacancy may be filled [at the next scheduled meeting of] *by* the Board of Directors with a person who qualifies for the category in which the vacancy exists. [, provided that] *Notwithstanding the foregoing:*

(A) A Director who fails to maintain the applicable qualifications will be allowed the later of (i) 45 days from the date when the Board determines the Director is unqualified or (ii) until the next regular Board meeting following the date when the Board makes such determination, in which to requalify. During any such period up until the time when the Director requalifies, the Director shall be deemed not to hold office and the seat formerly held by the Director shall be deemed to be vacant for all purposes. The Board of Directors shall be the sole judge of whether the Director has requalified.

(B) A Director other than a public director whose membership is

suspended may remain a Director during the period of suspension unless he is removed pursuant to paragraph (c) of this Section.

(c) In the event of the refusal, failure, neglect or inability of any Director to discharge his duties, or for any cause affecting the best interests of the Exchange the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the power, by the affirmative vote of at least two-thirds of the Directors then in office, to remove such Director and declare his office vacant.

Section 6.4 Filling of Vacancies

Any vacancy in the Board of Directors resulting from a Director ceasing to hold office prior to the expiration of his term may be filled by a person who is qualified to *fill the position on* [serve in the category of] the Board in which the vacancy exists and who is appointed by the affirmative vote of a majority of the Directors then in office[,]. [and] *The term of* any Director so chosen shall [serve] *be from the date of appointment* until *December 31st of the year of appointment* [the next annual election meeting] and [until his] *the Director's* successor is duly elected and qualified *or until the Director's earlier death, resignation or removal.* The remaining portion of the unexpired term of a Director, if any, shall be served by a Director elected at such next annual election meeting.

Section 6.5 Quorum

At all meetings of the Board, two-thirds of the number of Directors then in office shall constitute a quorum for the transaction of business, and the vote of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate of Incorporation, the Constitution or the Rules. If a quorum shall not be present at any meeting of the Board, a majority of the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6.6 Regular Meetings

Regular meetings of the Board shall be held at such time and at such place as shall from time to time be provided by resolution of the Board without notice other than such resolution.

Section 6.7 Special Meetings

Special meetings of the Board may be called by the Chairman of the Board or the Vice Chairman of the Board and shall be called by the Secretary upon the written request of any 4 Directors. The Secretary shall give at least one hour's notice of such meeting to each Director, either *in person, by mail, messenger, overnight courier, facsimile machine, electronic mail, telephone, or* by announcement on the Exchange floor during trading hours on business days[, or personally, or by mail, telegram or cablegram]. Every such notice shall state the time and place of the meeting which shall be fixed by the person calling the meeting, but need not state the purpose thereof except as otherwise required by statute, the Constitution or the Rules.

Section 6.8 Participation in Meeting

Members of the Board or of any committee may participate in a meeting of the Board or committee by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such a meeting.

Section 6.9 Informal Action

Unless otherwise restricted by statute, the Certificate of Incorporation, the Constitution or the Rules, any action required or permitted to be taken at any meeting of the Board or of any committee may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or of the committee.

Section 6.10 Interested Directors

No Director shall be disqualified from participating in any meeting, action or proceeding of the Board by reason of being or having been a member of a committee which has made prior inquiry, examination or investigation of the subject under consideration. No Director shall participate in the adjudication of any matter in which he is personally interested, although interested Directors may be counted in determining the presence of a quorum at the meeting of the Board or of a committee which authorizes actions with respect to such matter.

Section 6.11 Annual Report to Members

At each Annual Report Meeting of members, the Board shall present a complete report of the financial condition of the Exchange, including a statement of all receipts and expenditures for the preceding year.

Article VII

Committees

Section 7.1 Designation of Committees

The committees of the Exchange shall consist of an Executive Committee, an Audit Committee, a Compensation Committee, a Floor Directors Committee, and such other standing and special committees as may be provided in the Constitution or Rules or as may be from time to time appointed by the Vice Chairman of the Board with the approval of the Board. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board with the approval of the Board shall appoint the members of all committees and may designate a Chairman and a Vice-Chairman thereof.

Section 7.2 The Executive Committee

The Executive Committee shall consist of the Chairman of the Board, the Vice Chairman of the Board, and at least 4 other persons appointed as provided in Section 7.1, each of whom must be a Director. Not less than 50% of the members of the Executive Committee (excluding the Chairman) shall be public directors. Members of the Executive Committee shall not be subject to removal except by the Board. The Chairman of the Board shall be the Chairman of the Executive Committee. Each member of this Committee shall be a voting member. The members of the Executive Committee shall serve for a term of one year expiring at the first regular meeting of Directors following the annual election meeting in each year. The Executive Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange, except it shall not have the power or authority of the Board in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the members the sale, lease or exchange of all or substantially all of the Exchange's property and assets, recommending to the members the dissolution of the Exchange or a revocation of a dissolution, or amending the Constitution or Rules of the Exchange.

Section 7.3 The Audit Committee

The Audit Committee shall consist of at least three Directors appointed by the Chairman of the Board with the approval of the Board, the exact number to be determined from time to time by the Board. Not less than 50% of the members of the Audit Committee shall be public directors. Members of the Audit Committee shall not be subject to removal except by the Board. The Chairman of the Audit Committee shall be a public director appointed by the Chairman of the Board. The Audit Committee shall have such duties and may exercise such authority as may be prescribed in the Constitution or Rules or by resolution of the Board.

Section 7.4 The Compensation Committee

The Compensation Committee shall consist of the Vice Chairman of the Board, the lessor director, the Chairman of the Financial Planning Committee, one or more off-floor directors, and such number of public directors that will constitute at least 50% of the members of the Committee. The off-floor director(s) and the public directors shall be appointed to the Compensation Committee by the Chairman of the Board with the approval of the Board. Members of the Compensation Committee shall not be subject to removal except by the Board. The Chairman of the Compensation Committee shall be a public director appointed by the Chairman of the Board. The Compensation Committee shall have such duties and may exercise such authority as may be prescribed in the Constitution or Rules or by resolution of the Board.

Section 7.5 The Floor Directors Committee

The Floor Directors Committee shall consist of those Directors who are primarily engaged in business on the floor of the Exchange (whether serving as floor directors or at-large directors), the lessor director as a non-voting member of the Committee, and such other persons as may be appointed as voting or nonvoting members of the Committee by the Vice Chairman of the Board with the approval of the Board. The Vice Chairman of the Board shall be the Chairman of the Floor Directors Committee. The Floor Directors Committee shall have such duties and may exercise such authority as may be prescribed in the Constitution or Rules or by resolution of the Board.

Section 7.6 Other

All other committees shall have such duties and may exercise such authority as may be prescribed for them in the Constitution or Rules or by resolution of the Board.

Section 7.7 Conduct of Proceedings

Except as otherwise provided in the Certificate of Incorporation, Constitution or Rules, or by resolution of the Board, each committee may determine the manner in which its proceedings shall be conducted. Committees shall keep minutes of their meetings and periodically report their proceedings to the Board of Directors *and appropriate committees of the Board to the extent requested by the Board or Board committee.*

Article VIII

Officers

Section 8.1 Designation; Number; Election

(a) The officers of the Exchange shall be a Chairman of the Board, a Vice Chairman of the Board, a President, one or more Vice-Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer, and such other officers as the Board may determine. The Chairman of the Board shall be elected by the affirmative vote of at least two-thirds of the Directors then in office exclusive of the Chairman, who shall not vote. Such affirmative vote may also prescribe his duties not inconsistent with the Constitution or Rules and may prescribe a tenure of office.

The Vice Chairman of the Board shall be a director who owns or directly controls his own membership and is primarily engaged in business on the floor of the Exchange in the capacity of a member. He shall be elected by a plurality of members voting at a meeting of the membership held on the *1st business day preceding the* 3rd Friday in December of each year [(or if that day is not a business day, on the next succeeding business day)] *to serve as Vice Chairman of the Board during the following year. The term of office of the Vice Chairman of the Board shall run from January 1st to December 31st of each year. Provided that the Vice Chairman of the Board remains qualified to serve in that office, he* [and] shall serve until *the expiration of his term in that office and* his successor is duly chosen and qualified or until his earlier death, [or his] resignation or removal. Once a director has held the office of the Vice Chairman of the Board for six months or more of a one-year term and for the next two succeeding one-year terms, the director shall thereafter be ineligible to again hold the office until a period of not less than six months has elapsed during which the director has not held that office. Candidates for the office of Vice Chairman of the Board must notify the Secretary of the Exchange in writing no later than the close of business on November 23rd (or if that day is not a business day, on the next succeeding business day). In the event there is only one candidate, no election need be held, and the Board of Directors shall declare the office filled by the sole announced candidate.

The remaining officers of the Exchange shall be appointed by the Chairman of the Board, subject to the approval of the Board, [at the first regular meeting of the Board of Directors held on or after January 1 following each annual election meeting,] each to serve until a successor has been duly chosen and qualified or until the officer's earlier death, [or] resignation or removal.

(b) No officer, other than the Vice Chairman of the Board, shall be a member or affiliated with a member or a broker or a dealer in securities or commodities. Two or more offices may be held by the same person, except the offices of Chairman of the Board and President, Chairman of the Board and Secretary, or President and Secretary may not be held by the same person. The compensation of all officers of the Exchange chosen by the Board shall be fixed by the Board.

Section 8.2 Chairman of the Board of Directors

The Chairman of the Board shall be the chief executive officer of the Exchange, responsible to the Board for the management of its business affairs, and shall be the official representative of the Exchange in all public matters. The Chairman shall not engage in any other business during his incumbency except with approval of the Board, and by his acceptance of the office of Chairman of the Board he shall be deemed to have agreed to uphold the Constitution and Rules of the Exchange. He shall by virtue of his office be a member and presiding officer of the Board of Directors and an ex-officio member, without a right to vote, of all committees, without prejudice to his being specifically appointed as a voting member of any committee.

Section 8.3 Vice Chairman of the Board

The Vice Chairman of the Board shall preside at meetings of the members. Subject to the approval of the Board, the Vice Chairman of the Board may appoint standing and special committees unless the method of appointment is otherwise provided for in the Constitution or Rules or in the resolution of the Board establishing the committee. The Vice Chairman of the Board shall be responsible for the coordination of the activities of all committees, with the exception of committees of the Board, including the Executive Committee, the Audit Committee and the Compensation

Committee. The Vice Chairman of the Board shall be an ex-officio member, without a right to vote, of all committees, without prejudice to being specifically appointed as a voting member of any committee. In the case of the absence or inability to act of the Chairman of the Board, or in case of a vacancy in the office of the Chairman of the Board, the Vice Chairman of the Board shall exercise the powers and discharge the duties of the Chairman of the Board.

Section 8.4 Acting Chairman *and Vacancy in Office of Chairman*

(a) In the absence or inability to act of both the Chairman of the Board and the Vice Chairman of the Board, the Board may designate an Acting Chairman of the Board. In the absence of such a designation by the Board, the President, or in his absence or inability to act, the senior available Vice-President, shall assume all the functions and discharge all the duties of the Chairman of the Board.

(b) If a vacancy occurs in the office of Chairman, the Board, by the affirmative vote of at least two-thirds of the Directors then in office, shall fill such vacancy pursuant to Section 8.1(a).

Section 8.5 Vacancy in Office of Vice Chairman of the Board

(a) If the Vice Chairman of the Board shall cease to satisfy the requirements for election to that office, *of which failure the Board of Directors shall be the sole judge,* he shall thereupon cease to hold his office and such office shall become vacant, provided that if his membership is suspended he may continue to hold office unless he is removed pursuant to paragraph (a) of Section 8.7.

(b) If a vacancy occurs in the office of Vice Chairman of the Board pursuant to paragraph (a) of this Section or if for any other reason the office becomes vacant, the Board, by the affirmative vote of a majority of the Directors then in office, shall fill such vacancy by the election to such office of a Director then in office who satisfies the requirements for election to such office.

Section 8.6 President

The President shall be the chief operating officer of the Exchange. The President shall, by virtue of his office, be an ex-officio member, without a right to vote, of all committees other than committees whose membership is limited to directors of the Exchange, without prejudice to his being specifically appointed as a voting member of any committee other than a committee limited to directors. Except as is otherwise provided in the Certificate of Incorporation, the Constitution or the Rules, the President shall have the power to employ and dismiss employees of the Exchange, and to establish their qualifications, duties, and salaries; he shall [execute] *approve, but may delegate the execution of,* all authorized contracts on behalf of the Exchange and shall perform such other duties as may be prescribed by the Board from time to time. The President shall not engage in any other business during his incumbency as President, *except with approval of the Board.* [and by] *By* his acceptance of the office of President, he shall be deemed to have agreed and he shall have agreed to uphold the Constitution and Rules. In case of his temporary absence or inability to act he may designate any other officer to assume all the functions and discharge all the duties of the President. Upon his failure to do so, or if the office of President be vacant, the Chairman of the Board or any officer designated by him shall perform the functions and duties of the President. When the President returns or is again able to act, he shall resume his duties.

Section 8.7 Removals

(a) In the event of the refusal, failure, neglect or inability of the Vice Chairman of the Board to discharge his duties, or for any cause affecting the best interests of the Exchange, the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the power, by the affirmative vote of at least two-thirds of the Directors then in office exclusive of the Vice Chairman of the Board, to remove the Vice Chairman of the Board and declare such office vacant.

(b) Any officer, other than the Vice Chairman of the Board, chosen by the Board may be removed at any time by the Board, *Chairman of the Board or President* [whenever in its judgment the best interests of the Exchange would be served thereby]; provided, that the Chairman of the Board or the President may be removed only by the affirmative vote of at least two-thirds of the Directors then in office exclusive of the Chairman of the Board, who shall not vote. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed.

(c) Any vacancies occurring in any office of the Exchange at any time may be filled by the Board for the unexpired term.

Section 8.8 Vice Presidents

Vice Presidents shall perform the duties prescribed by the Board, [or the] Chairman of the Board *or President.*

Section 8.9 Secretary

The Secretary shall attend all meetings of members and of the Board*; the Secretary* [and] shall keep official records of *meetings of members at which action is taken and of meetings of the Board* [proceedings thereof]; [he] *the Secretary* shall, in person or by representative, perform like services for the standing and special committees when required; [he] *the Secretary* shall give notice of meetings of members and of special meetings of the Board in accordance with the provisions of the Constitution or Rules or as required by statute; [, he] *the Secretary* shall post all notices which may be required to be posted upon the *Exchange* bulletin board; [he shall collect all monies due the Exchange for assessments, fines, dues, and otherwise, and pay the same to the Treasurer; he] *the Secretary* shall be custodian of the books, records, and corporate seal of the Exchange and attest, upon behalf of the Exchange, all contracts and other documents requiring authentication; [he] *the Secretary* shall perform such other duties as may be prescribed by the Board, [or the] Chairman of the Board or *President.*

Section 8.10 Treasurer

The Treasurer shall have general charge of the corporate funds and securities and shall keep full accounts of receipts and disbursements in permanent books belonging to the Exchange; *he shall collect all monies due the Exchange for assessments, fines, dues, and otherwise;* he shall deposit all monies and other valuable effects in the names and to the credit of the Exchange in such depositories as may be designated by the Board; he shall disburse the funds of the Exchange as may be ordered by the Board; he shall render to the Board when required by the Board an account of all his transactions as Treasurer and of the financial condition of the Exchange; he shall perform other duties as may be prescribed by the Board, [or the] Chairman of the Board *or President.*

Article IX

Indemnification

Section 9.1 Indemnification of Directors, Officers and Members of Committees

The Exchange shall, to the fullest extent permitted by the law, indemnify any person who was or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a Director, officer or member of a committee of the Exchange, or is or was serving at the request of the Exchange as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees), judgment, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.

Section 9.2 Contract with the Exchange

The provisions of this Article IX shall be deemed to be a contract between the Exchange and each Director, officer or member of a committee of the Exchange who serves in any such capacity at any time while this Article is in effect, and any repeal or modification of any applicable law or of this Article IX shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

Section 9.3 Indemnification of Other Persons

Persons not expressly covered by the foregoing provisions of this Article IX, such as those (a) who are or were employees or agents of the Exchange, or are or were serving at the request of the Exchange as employees or agents of another corporation, partnership, joint venture, trust or other enterprise, or (b) who are or were directors, officers, employees or agents of a constituent corporation absorbed in a consolidation or merger in which the Exchange was the resulting or surviving corporation, or who are or were serving at the request of such constituent corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified to the extent authorized at any time or from time to time by the Board.

Section 9.4 Other Rights of Indemnification

The indemnification provided or permitted by this Article IX shall not be deemed exclusive of any other rights to which those indemnified may be entitled by law or otherwise, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Article X

Notices

Section 10.1 Notices

(a) Any notice required to be given by the Constitution, the Rules or otherwise shall be deemed to have been given:

(i) in person *upon delivery of the notice* [if delivered] in person to the person to whom such notice is addressed[,]*;* [and shall be deemed to have been given]

(ii) by mail *upon deposit of the notice* [to any person entitled thereto at the time it shall have been deposited] in the United States mail, enclosed in a postage prepaid envelope[,]*;* [and shall be deemed to have been given by wireless, telegraph or cable when the same shall have been delivered for prepaid transmission into the custody of a company ordinarily engaged in the transmission of such messages]

(iii) by messenger or overnight courier service upon provision of the notice to the messenger or courier service, provided that the delivery method does not require payment of the messenger or courier service fee to deliver the notice by the person to whom the notice is addressed;

(iv) by facsimile machine upon acknowledgment by the facsimile machine used to transmit the notice of the successful transmission of the notice;

(v) by electronic mail upon electronic transmission of the notice; and [shall be deemed to have been given]

(vi) by telephone when received[,].

Any such notice must be addressed to its intended recipient [such postage prepaid envelope or such wireless, telegraph or cable message being addressed to such person] at *the intended recipient's* [his] address *(including the intended recipient's business or residence address, facsimile number, electronic address, or telephone number, as applicable)* as it appears on the books and records of the Exchange, or if no address appears on such books and records, then at such address as shall be otherwise known to the Secretary, or if no such address appears on such books and records, then in care of the registered agent of the Exchange in the State of Delaware. *In the event that a notice is not provided in conformity with the provisions of this Section, the notice will be deemed to have been given to its intended recipient upon any receipt of the notice by its intended recipient.* Whenever, by any provisions of statute, the Certificate of Incorporation, the Constitution, the Rules or otherwise, any notice is required to be given any specified number of days before any meeting or event, the day on which such notice was given shall be counted but the day of such meeting or other event shall not be counted in determining whether or not notice has been given in proper time in a particular case.

(b) The Exchange may provide to all members and associated persons by electronic mail only those notices provided in the Exchange Bulletin and Regulatory Bulletin and any other types of notices designated by the Board of Directors. If requested in a form and manner prescribed by the Exchange, the Exchange may permit members and associated persons to request that such notices be given by other means.

Section 10.2 Waiver of Notice

Whenever notice is required to be given under the provisions of any statute, the Certificate of Incorporation, the Constitution, the Rules or otherwise, a written waiver thereof, signed by the person entitled to notice, or his proxy in the case of a member, whether before or after the time stated therein shall be deemed equivalent to notice. Except as may be otherwise specifically provided by statute, any waiver by mail, *messenger, overnight courier, facsimile machine, or electronic mail* [telegraph, cable or wireless], bearing the name of the person entitled to notice shall be deemed a written waiver duly signed. Attendance of a person at a meeting, including attendance by proxy in the case of a member, shall constitute a waiver of notice of such meeting except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business the meeting is not lawfully called or convened. Except as required by statute, the Certificate of Incorporation, the Constitution or the Rules, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the members, Directors or any committee need be specified in any written waiver of notice.

Article XI

General Provisions

Section 11.1 Fiscal Year

The fiscal year of the Exchange shall be as determined from time to time by the Board.

Section 41.2 Checks, Drafts and Other Instruments

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Exchange shall be signed by such officer or officers, or by such agent or agents of the Exchange and in such manner as the Board may from time to time determine.

[Section 11.3 Departments

The Chairman of the Board, with the approval of the Board, is authorized to establish and maintain such departments as may be deemed necessary from time to time, and the Board shall make all needful regulations applicable thereto.]

[Section 11.4 Officers and Employees Restricted

(a) Every salaried officer or employee of the Exchange, except the Vice Chairman of the Board, and every salaried officer or employee of any corporation in which the Exchange owns the majority of the stock, shall report promptly to the Exchange every purchase or sale for his or her own account or the account of others of any security which is the underlying security of any option contract admitted to dealings on the Exchange.

(b) With the exception of the Vice Chairman of the Board, no salaried officer or employee of the Exchange or salaried officer or employee of any corporation in which the Exchange owns the majority of the corporate stock may purchase or sell for his or her own account or for the account of others any option contract which entitles the purchaser to purchase or sell any security described in paragraph (a) of this Section.

(c) Paragraphs (a) and (b) above of this Section shall not be construed to preclude any salaried officer or employee of the Exchange or of any corporation in which the Exchange owns a majority of the stock from performing his duties and responsibilities as assigned to him by such organization.]

Article XII

Amendments

Section 12.1 Constitution

The Constitution may be amended at any regular or special meeting of members by the affirmative vote of a majority of *voting* [the] members present in person or represented by proxy at the meeting.

Section 12.2 Rules

The Rules may be amended by the affirmative vote of a majority of the Directors present at a meeting at which such amendment is proposed, provided, however, that promptly upon the adoption of an amendment to the Rules, notice thereof shall be sent to each member, and within 15 days after such notice has been given, 150 or more voting members may request in writing that a special meeting of members be held to vote upon whether the amendment to the Rules shall be approved. The notice of the meeting shall state that the approval of such a proposed amendment will be considered.

Section 12.3 Effectiveness of Amendments

Subject to applicable federal or state regulatory requirements, amendments to the Constitution shall be effective upon their adoption by the members, and amendments to the Rules shall be effective at the expiration of the 15-day notice period, or, if a special meeting of members has been requested to vote upon the amendment or if the amendment otherwise requires membership approval, at the time the amendment is approved by the requisite vote of the members; provided, however, that, except in the case of a Rule that expressly requires amendments to be approved by the membership or by a class of members, the Board may declare an amendment to the Rules effective immediately upon its adoption by the Board whenever the Board determines that, under the circumstances, such accelerated effectiveness is appropriate. Any amendment to the Rules which is declared effective by the Board upon its adoption nevertheless remains subject to being voted upon at a special meeting of members in accordance with Section 12.2, and any such amendment which is so voted upon but not approved shall be rescinded and shall cease to be effective from and after the time of its failure to be approved by the members. The rights and obligations of persons who rely in good faith on an amendment to the Rules declared immediately effective by the Board shall not be affected in the event such amendment is subsequently disapproved by the members.

* * * * *

Rules

Chapter II—Organization and Administration

Committees of the Exchange

RULE 2.1 (a) Establishment of Committees. In addition to committees specifically provided for in the Constitution, there shall be the following committees: Appeals, Arbitration, Business Conduct, appropriate Floor Procedure Committees, Floor Officials, appropriate Market Performance Committees, Membership, Product Development and such other committees as may be established in accordance with the Constitution. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board, with the approval of the Board, shall appoint the chairmen and members of such committees to serve for terms expiring at the *first* regular meeting of the Board *of Directors* [following the next succeeding Annual Election Meeting or] *of the next calendar year and until their* successors are appointed *or their earlier death, resignation or removal*. Consideration shall be given to continuity and to having, where appropriate, a cross section of the membership represented on each committee. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board may, at any time, with or without cause, remove any member of such committees. Any vacancy occurring in one of these committees shall be filled by the Vice Chairman of the Board for the remainder of the term. Notwithstanding the foregoing, the Chairman of the Board, with the approval of the Board, shall appoint Directors to serve on the Audit and Compensation Committees, whose members shall not be subject to removal except by the Board. Whenever the Vice Chairman of the Board is, or has reason to believe he may become, a party to any proceeding of an Exchange committee, he shall not exercise his power to appoint or remove members of that committee, and the Chairman of the Board shall have such power.

(b) Committee Procedures. Except as otherwise provided in the Constitution, the Rules or a resolution of the Board, each committee shall determine the time and manner of conducting its meetings, and the vote of a majority of the members of a committee *voting* [present] at a meeting at which a quorum is present shall be the act of the committee. Committees may act informally by written consent of all of the members of the committee.

(c)–(d) No Changes.

* * * * *

Chapter VIII—Market Makers, Trading Crowds and Modified Trading Systems

MTS Committee

RULE 8.82. (a) The MTS Committee shall consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine *persons* [members] elected by the membership of the Exchange.

(b) The nine elected MTS Committee members shall include: *three* [four] members whose primary business is as a Market-Maker;[,] *three* [two] members whose primary business is as a Market-Maker or as a DPM Designee;[,] *and three* [one] members whose primary business is as a Floor Broker*, at least two of whom represent public customer orders in the course of their activities as a Floor Broker*[and who is not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. No more than two of the nine elected MTS Committee members may be associated with a DPM]. *One of the nine elected positions on the MTS Committee may instead be filled by a person (i) who directly or indirectly owns and controls a membership with respect to which the person acts as a lessor, (ii) whose primary business is not as a Market-Maker, DPM Designee, or Floor Broker, and (iii) whose primary residence is located within 80 miles of the Exchange's trading floor. No elected member of the MTS Committee may be affiliated (as defined under Rule 1.1(j)) with any other elected member of the MTS Committee.* The nine elected MTS Committee members shall have three-year terms, three of which shall expire each year.

(c) The election procedures for the nine elected MTS Committee members shall be the same as the election procedures for elected Directors that are set forth in Article IV and Article V of the Exchange Constitution. Accordingly, the following shall occur as part of these procedures: [During October of each year, the] *The* Nominating Committee shall select nominees to fill expiring terms and vacancies on the MTS Committee. Nominations may also be made by petition, signed by not less than 100 voting members and filed with the Secretary of the Exchange no later than 5:00 p.m. (Chicago time) on the Monday preceding the 1st Friday in November, or the first business day thereafter in the event that Monday occurs on a holiday. The election to fill the expiring terms and vacancies on the MTS Committee shall be held as part of the annual election. *The term of office of each MTS Committee member elected at an annual election meeting shall commence at the time of the first regular Board of Directors meeting of the calendar year following that annual election meeting and shall continue until the first regular Board meeting of the third succeeding calendar year. Elected MTS Committee members shall hold office for the terms for which they are elected and until their successors are duly elected and qualified or until their earlier death, resignation, or removal.*

(d) Candidates for election to the MTS Committee, whether nominated by the Nominating Committee or by petition, shall be eligible for election in any of the categories for which they qualify both at the time of their nomination and at the time of their election. The sole judge of whether a candidate satisfies the applicable qualifications for election to the MTS Committee in a designated category shall be the Nominating Committee in the case of candidates nominated by the Nominating Committee, and shall be the Executive Committee in the case of candidates nominated by petition, and the decision of the respective committee shall be final. In the event a person's status changes following election to the MTS Committee, the sole judge of whether the person continues to satisfy the applicable qualifications for service on the MTS Committee shall be the Board of Directors.

(e) In the event of the refusal, failure, neglect, or inability of any MTS Committee member to discharge that person's duties, or for any cause affecting the best interests of the Exchange, the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the power, by the affirmative vote of at least two-thirds of the Directors then in office, to remove that MTS Committee member from the Committee.

(f) Any vacancy occurring among the members of the MTS Committee may be filled by a qualified person appointed by the Vice Chairman of the Board with the approval of the Board of Directors. The term of any MTS Committee member so chosen shall be from the date of appointment until the first regular Board meeting of the calendar year following the next annual election meeting and until the person's successor is duly elected and qualified, or until the person's earlier death, resignation, or removal. The remaining portion of the unexpired term of an MTS Committee member, if any, shall be served by a person elected at the next annual election meeting.

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Chapter IX—Doing Business With the Public

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Transactions of Certain Customers

RULE 9.17. No member organization shall execute any transaction in securities or carry a position in any security in which (a) an officer or employee of the Exchange, [or any other national securities exchange which is a participant of the Clearing Corporation,] or an officer or employee of a corporation in which the Exchange [or such other exchange] owns the majority of the capital stock is directly or indirectly interested, without the prior written consent of the Exchange, or (b) a partner, officer, director, principal shareholder or employee of another member organization is directly or indirectly interested, without the consent of such other member organization. Where the required consent has been granted, duplicate reports of the transaction and position shall be promptly sent to the Exchange or member organization, as the case may be.

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[1] Prior to the 2002 annual election meeting, the three classes of Directors elected by the membership are composed as follows: Class I: one floor director, one at-large director, one lessor director, two off-floor directors, and two public directors; Class II: one floor director, one at-large director, two off-floor directors, and three public directors.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE states that the purpose of the proposed rule change is to make certain revisions to provisions of the Exchange's Constitution and rules pertaining to the governance of the Exchange. These proposed changes are intended to further enhance the fair and efficient governance of the Exchange and modernize various provisions of the Exchange's governance structure.

With respect to Constitution provisions relating to the Board of Directors and the Vice Chairman of the Board, the proposed rule change amends Constitution Sections 6.1(b), 6.4, and 8.1 to specify that Directors and the Vice Chairman take office on January 1st. Currently, the Constitution provides that the term of office of Directors starts at the first regular meeting of the Board held after January 1 following the annual election, and continues until their successors are duly elected and qualified, whereas the term of office of the Vice Chairman starts on the 3rd Friday in December of each year, assuming the incoming candidate is qualified on that date, and continues until his successor is duly chosen and qualified.

The proposed rule change also amends Constitution Section 6.3(b) to provide the later of 45 days or until the next regular Board meeting for a Director who fails to maintain qualifications for a designated category to requalify. During any period in which a Director fails to maintain qualifications for a designated category, the Director shall be deemed not to hold office and the seat formerly held by the Director shall be deemed vacant for all purposes.

With respect to Constitution provisions relating to the Exchange's Nominating Committee, the proposed rule change amends Section 4.1(b) to exempt members of the Nominating Committee who have not served a full 3-year term from the Constitutional provision that provides that "Elected members of the Nominating Committee shall be ineligible for reelection for a period of three years after their terms expire." This amendment will allow a member of the Nominating Committee who was elected to a short term as a result of a vacancy to stand for reelection.

The proposed rule change also amends Constitution Section 4.3 to delete the requirement that the Nominating Committee must hold three meetings in October, and also to require that the Nominating Committee announce its slate of candidates not later than October 10th or the first business day thereafter if the 10th is not a business day.

The proposed rule change also adopts new Constitution Section 4.8 to require that members of the Nominating Committee shall meet the eligibility criteria for the category to which they were elected (floor, firm, lessor or public member) continuously and not only during the time periods in which the Nominating Committee is in session. New Section 4.8 also specifies that the sole judge of whether a Nominating Committee member satisfies the qualification criteria for the category to which the committee member was elected is the Board of Directors. In addition, this new Section also provides that a member of the Nominating Committee who fails to maintain the applicable qualifications has 45 days from the date the Board determines the member is not qualified to requalify.

The proposed rule change also adopts new Constitution Section 4.9 which specifies that the Board may remove Nominating Committee members in the event of the refusal, failure, neglect, or inability of any Nominating Committee member to discharge that person's duties, or for any cause affecting the best interests of the Exchange. This proposed new Section 4.9 is consistent with Constitution Section 6.3(c), which allows the Board to remove a Director for cause.

With respect to the election and voting procedures for membership votes, the proposed rule change adopts new Constitution Section 3.8 to authorize the Board to set a "record date" to determine those members who are entitled to receive notice and to vote in any Exchange election/vote. The record date would be the day preceding the date on which notice of the vote is given, if an alternate record date is not fixed by the Board. An individual or organization must be an effective, voting member on the record date to cast a ballot in an election or membership vote.

The proposed rule change also amends Constitution Section 5.2 to provide that the Exchange may allow voting members to electronically submit ballots and proxies. This amendment would also provide the flexibility to allow for a confidential electronic or on-line voting process in the future, if the Board determines to do so.

With respect to the communication methods by which the Exchange may provide notice to members, the proposed rule change amends Constitution Section 10.1 to allow the Exchange to give notice to members and associated persons by messenger, courier service, facsimile or electronic mail ("e-mail"), as well as in-person or by mail or telephone as is currently provided in Section 10.1. The proposed rule change deletes wireless, telegraph, and cable as available communication methods. In addition, the Board proposes to amend Constitution Section 10.2 to allow for waiver of notice by the same means as notice may be given. Amending these sections will modernize and make more flexible the Constitutional requirements with respect to notice and waiver of notice.[3]

The proposed rule change also adopts new Constitution Section 10.1(b) which limits the types of notices that may be given via email to only those notices provided in the Exchange Bulletin and Regulatory Bulletin and any other types of notices designated by the Board. Constitution Section 10.1(b) specifically provides that the Exchange may provide the *Exchange Bulletin* and the *Regulatory Bulletin* (including the notices contained therein) by email. This section also allows the Exchange to permit members and associated persons to request delivery of the *Bulletins* (or such other notices as the Board may designate) by other means, in a form and manner prescribed by the Exchange.

The proposed rule change also deletes Constitution Section 11.4, which prohibits officers and employees of the Exchange (except the Vice Chairman of the Board) from trading any option listed on CBOE. Section 11.4 also requires officers and employees to report to the Exchange every purchase or sale of any security underlying an option listed on CBOE. The above trading restriction and reporting requirement are also set forth in the Exchange's Employee Conflict of Interest Policy. Upon the deletion of Section 11.4, the Exchange proposes to liberalize the securities transaction policies to allow employees (with certain restrictions applicable to Regulatory Services Division employees) to trade CBOE listed products and to require employees to report transactions in CBOE listed products to the Exchange. The securities transaction policy would be included solely in the Exchange Employee Handbook, rather than the Exchange's Constitution.[4]

In connection with the foregoing change, the Exchange also proposes to amend Exchange Rule 9.17 to delete the requirement that a member organization must obtain authorization from the CBOE before executing securities transactions for officers or employees of any national securities exchange that is a participant of the Clearing Corporation. The rule will continue to require member organizations to obtain such authorization from the CBOE before executing securities transactions for CBOE officers and employees.

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[3] Currently, the Constitution does not allow the Exchange to provide notice via e-mail or facsimile, unless a member submits a waiver of notice. For example, the Constitution and Rules, in certain specific instances, require the Exchange to provide notice to members. To satisfy these requirements, the Exchange gives notice to members via the *Exchange Bulletin* and the *Regulatory Bulletin*, which are mailed to all effective members unless a member submits a written consent to provision of the *Bulletins* by e-mail.

[4] A copy of CBOE's securities transaction policies, as proposed to be amended in connection with the deletion of Constitution Section 11.4, was provided to the Commission for its information but is not a rule change and thus was not included as part of this rule filing.

With respect to CBOE rules relating to the MTS Committee, the proposed rule change proposes to amend Rule 8.82 to provide that the nine elected MTS Committee members will include: Three persons whose primary business is as a Market-Maker, three persons whose primary business is as a Market-Maker or as a DPM Designee, and three persons whose primary business is as a Floor Broker, at least two of whom represent public customer business in the course of their activities as a Floor Broker. The Vice Chairman of the Exchange and the Chairman of the Market Performance Committee will continue to serve on the MTS Committee.[5] The amendment to Rule 8.82 also provides that one of the nine elected positions on the MTS Committee may be filled by a lessor whose primary business is not as a Market-Maker, DPM Designee, or Floor Broker, and whose primary residence is located within 80 miles of the Exchange's trading floor. This distance is equivalent to the distance requirement for certain off-floor Directors under Constitution Section 6.1. Because the MTS Committee meets frequently, it is important that its members reside locally to be available for regular and impromptu meetings.

Further, the proposed amendments to Rule 8.82 provide that: (i) No elected member of the MTS Committee may be affiliated with (as defined under CBOE Rule 1.1(j)) any other elected member of the MTS Committee; (ii) the term of office of elected MTS Committee members will commence at the time of the first regular Board meeting of the calendar year; (iii) the Board of Directors is the sole judge of whether or not an MTS Committee member no longer qualifies to serve on the Committee; (iv) the Board may remove MTS Committee members for cause; and (v) the Vice Chairman, with the approval of the Board, may fill vacancies on the MTS Committee until the first regular Board meeting of the calendar year following the next annual election.

The proposed rule change also amends CBOE Rule 2.1 to provide that the term of office for committee members who are appointed pursuant to that rule will continue until the first regular Board meeting of the next calendar year and until their successors are appointed or until death, resignation or removal. The proposed rule change also amends Rule 2.1 to provide that a majority of the committee members voting, as opposed to present, at a meeting shall be the act of the committee.

Finally, the proposed rule change proposes to make several changes to the Exchange's Constitution and rules that are housekeeping in nature and designed to modernize and clarify the Exchange's Constitution and rules, and update the Constitution and rules to reflect current rules and practice. Specifically, the proposed rule change:

- Amends Constitution Sections 1.1(c) and 2.3 to include the concept of leased memberships, as well as owned memberships, in the definition of member organizations and the requirement that member organizations designate an individual nominee to be consistent with the Constitution's provisions and Exchange rules.
- Amends Constitution Sections 2.1(a) and 12.1 to add "voting" to the term "members" to clarify who may vote at a membership meeting.
- Amends Constitution Section 3.1 to specify that membership meetings will take place on the 4th floor of the Exchange (as opposed to on the trading floor), unless otherwise determined by the Secretary, to conform to current practice.
- Amends Constitution Section 3.2 to provide that the annual election meeting will be held on the 1st business day preceding the 3rd Friday in November (rather than on the 3rd Friday).
- Amends Constitution Sections 3.2 and 3.3 to specify that the Secretary, rather than the Board, will determine the time of the annual election and annual report meetings, because the Board does not generally become involved in this level of detail with respect to membership meetings.
- Amends Constitution Section 3.3 to clarify that the purpose of the annual report meeting is to present the Exchange's annual report.
- Amends Constitution Section 3.5 to specify that written notice of each membership meeting at which a vote will be taken shall be "given" (rather than "delivered") to each member entitled to vote not more than 60 days and at least 10 days before the date of the meeting to be consistent with Delaware law.
- Amends Constitution Sections 4.1 and 6.1 and Rule 8.82 to make it clear whether the term "member" in the eligibility criteria for the Board of Directors, the Nominating Committee, and the MTS Committee is referring to a "member of the Exchange" or a "member of the Board or Committee," as applicable.
- Amends Constitution Sections 4.1 and 4.2 to clarify that a Nominating Committee member's term ends upon the expiration of his/her term or upon the Nominating Committee member's death, resignation or removal.
- Amends Constitution Sections 4.3, 4.6, 5.3 and 8.9 to clarify and make consistent references requiring the posting of information on the Exchange bulletin board.
- Amends Constitution Sections 5.2 and 5.3 to be consistent with the current procedures for the receipt, verification and counting of ballots.
- Amends Constitution Section 6.7 to allow the Exchange to provide notice of a special Board meeting to each Director either in person, by mail, messenger, overnight courier, facsimile machine, e-mail, telephone, or announcement on the Exchange trading floor. The amendment proposes to delete telegram and cablegram as methods of notice to directors for special Board meetings.
- Amends Constitution Section 8.1 to provide that the vote to elect a Vice Chairman of the Board (if any) will be held on the 1st business day preceding the 3rd Friday in December (rather than the 3rd Friday) and to clarify that the Board does not have to reappoint all officers at the beginning of each year.
- Amends Constitution Section 8.4 to clarify, consistent with Constitution Section 8.1(a), that if a vacancy occurs in the office of Chairman, the Board shall appoint a new Chairman by the affirmative vote of at least two-thirds of the Directors then in office.
- Amends Constitution Section 8.6 to specifically allow the Board to grant an exemption to the prohibition against the President engaging in any other business in the same manner that the Board may grant such an exemption to the Chairman of the Board pursuant to Constitution Section 8.2.
- Amends Constitution Sections 8.6, 8.7(b), 8.8, 8.9 and 8.10 to update the Constitution with respect to officer duties and responsibilities (*i.e.*, clarify that the President shall be required to approve all contracts on behalf of the Exchange but may delegate responsibility for executing contracts, specify when the Secretary must maintain records of meetings, specify that the Chairman of the Board and the President, as well as the Board, may remove any officer, clarify that the President may assign duties to officers, and move the duty to collect all monies due the Exchange from the Secretary to the Treasurer).

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[5] Currently, Rule 8.82 provides that the MTS Committee is comprised of the Vice Chairman, the Chairman of the Market Performance Committee, and nine elected members as follows: Four members whose primary business is as a Market-Maker, two members whose primary business is as a Market-Maker or as a DPM Designee, one member whose primary business is as a Floor Broker and who is not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business.

- Deletes Constitution Section 11.3, which authorizes the Chairman of the Board to establish Exchange departments. The section is unnecessary because the authority is encompassed within the Chairman's responsibility as Chief Executive Officer and inconsistent with the Exchange's current organizational structure, which consists of divisions made up of departments.

2. Statutory Basis

CBOE believes that the proposed rule change further enhances the fair and efficient governance of the Exchange and modernizes various provisions of the Exchange's governance structure. Therefore CBOE believes the proposed rule change furthers the objectives of section 6(b)(3) of the Act[6] to assure fair representation of the members of the Exchange in the selection of its directors and in the administration of its affairs. CBOE also believes that the proposed rule change furthers the objectives of section 6(b)(5) of the Act[7] to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2003–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–55 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31804 Filed 12–24–03; 8:45 am]

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[6] 15 U.S.C. 78f(b)(3).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48953; File No. SR–CBOE–2003–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Trading of Index Options and Options on ETFs on the CBOE Hybrid System

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2003, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to provide for the trading of index options and options on exchange traded funds ("ETFs") on the CBOE Hybrid System ("Hybrid System"). The text of the proposed rule change appears below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

(a)–(d) No change.

(e) [Effective Date of Rule] *Classes Trading on Hybrid.*

[The Exchange will commence rollout of the Hybrid System by May 30, 2003.] By December 31, 2003, Hybrid will be operational in CBOE's 200 most active equity option classes and, by December 31, 2004, Hybrid will be operational in CBOE's 500 most active equity option classes. The Exchange intends to implement Hybrid floorwide in all other equity classes by the fourth quarter of 2006. *Index option classes and options on ETFs specifically designated by the appropriate Floor Procedure Committee may trade on the Hybrid System. In order to be eligible for trading on Hybrid, index option classes and options on ETFs must utilize an in-crowd Designated Primary Market Maker.*

* * * * *

Rule 24.13 Trading Rotations

The opening rotation for index options shall be held at or as soon as practicable after 8:30 a.m. Chicago time. Except as the appropriate Floor Procedures Committee may direct, opening rotations shall be conducted in the order and manner the Order Book

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

Official determines to be appropriate under the circumstances. The appropriate Floor Procedure Committee may provide for the opening rotation to be conducted by use of the Exchange's Rapid Opening System as set forth in Rule 6.2A *or the Exchange's Hybrid Opening System as set forth in Rule 6.2B.* The Order Book Official, with the approval of two Floor Officials, may deviate from any rotation policy or procedure issued by the appropriate Floor Procedures Committee when they conclude in their judgment that such action is appropriate in the interests of a fair and orderly market.

Interpretations and Policies

.01 No Change.

.02 Modified Opening Rotation—In conducting the opening rotation in S&P 100 options, certain option series having the nearest expiration may be opened as described in Interpretation .01 to Rule 6.2 ("main rotation"). The remaining series having the nearest expiration and other series having more distant expirations may be divided into one or more zones and be opened simultaneously with the main rotation by an Order Book Official in the following manner. One or more Lead Market Makers (LMM) in each zone shall be responsible for quoting a two-sided market in each of the series assigned to the zone. The markets will generally be set without prior indication of the imbalances to be facilitated. Only in the case of extreme market conditions or an extremely large imbalance of opening orders may the Order Book Official indicate the direction or size of the order imbalance. Upon receiving the LMM market, the Order Book Official will state the net imbalance in each series to the LMM who shall buy or sell it.

Instead of the procedure described in the paragraph above, the opening rotation in S&P 100 options may be conducted using the Exchange's Rapid Opening System. *Index options that trade on the Hybrid System must utilize the Hybrid Opening System, as described in CBOE Rule 6.2B.*

Upon conclusion of the main rotation, the Order Book Official conducting the main rotation will declare open trading in all series. Such declaration shall apply to the main rotation and to all zones which have completed opening rotation. Open trading in the series assigned to the zones shall not commence before the Order Book Official conducting the main rotation has made such declaration.

Market-Makers who wish to participate in the opening of series in which they do not hold LMM or SMM appointments may transmit written non-cancelable proprietary and Market-Maker orders to the LMM in that zone ten minutes prior to the opening of trading. The participation on the opening imbalance will not exceed the participation of a Supplemental Market-Maker ("SMM") in that zone.

.03 No Change.

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Rule 24.15 [RAES Operations in] *Automatic Execution* **of Index Options**

The operations of the Retail Automated Execution System (RAES) for index options *not trading on the Hybrid System* are subject to Rule 6.8. *Rule 6.13 governs the automatic execution of index options trading on the Hybrid System.*

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Rule 24.19 Multi-Class Broad-Based Index Spread Orders

(a) No change.

(b)(i)–(iii) No change.

(iv) The priority of bids or offers received from the primary trading station will be determined, with respect to each other, by the terms of paragraphs (a) and (b) of Rule 6.45 *for non-Hybrid classes or by paragraphs (a)–(d) of Rule 6.45A for Hybrid classes.* Bids or offers received promptly from the other trading crowd may participate equally with equal bids or offers from the primary trading station that were received prior to the bids or offers from the other trading station. The meaning of promptly will be determined according to the size of the order and other relevant circumstances.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the mose significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In May of 2003, the Commission approved the Hybrid System.[6] The Hybrid System merges the electronic and open outcry trading models, offering market participants the ability to stream electronically their own firm disseminated market quotes representing their trading interest. Currently, the Exchange trades only equity options on the Hybrid System. The purpose of this rule filing is to provide for the trading of index options and options on exchange traded funds ("ETFs") on the Hybrid System.

Uniformity of Operation Between Equity and Index Options and Options on ETFs

The Exchange proposes that the Hybrid System will function in the exact same manner in index classes and options on ETFs as it does in equity option classes, the operation of which was described in detail in the Hybrid Release. All of the Hybrid rules, including CBOE Rules 6.13 and 6.45A, would apply to the indexes and options on ETFs in the exact same manner they apply to options on equities. As such, incoming electronic orders in index/ETF options would be eligible for automatic execution pursuant to CBOE Rule 6.13 and would be allocated via the Ultimate Matching Algorithm ("UMA"). Open outcry trades would be allocated pursuant to CBOE Rule 6.45(b) and the Quote Trigger and Quote Lock features of CBOE Rules 6.45A(c) and (d) would apply to index/ETF option trading. Index and ETF option market makers would be subject to the same market maker obligations as their equity brethren. The only rule changes necessary to accommodate Hybrid trading in index options are minor and non-substantive in nature, as described below.[7]

Changes to Index CBOE Rules 24.13, 24.15, and 24.19

CBOE proposes to amend CBOE Rule 24.13.02 clarifying that the Hybrid Opening System ("HOSS") will be utilized for all index classes trading on the Hybrid System.[8] The proposed rule change to CBOE Rule 24.15 would provide that retail automated execution systems ("RAES") will continue to be operational for non-Hybrid classes while CBOE Rule 6.13 will govern automatic executions in Hybrid classes.[9] Finally, the Exchange proposes to amend paragraph (b)(iv) of CBOE Rule 24.19 to delineate priority principles applicable to multi-class index option spreads in non-Hybrid versus Hybrid classes.

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[6] *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) ("Hybrid Release").

[7] Equity option trading rules govern ETF trading.

[8] Currently, options on indexes and ETFs generally open in accordance with the opening procedures described in CBOE Rule 6.2A, Rapid Opening System. The HOSS rules were approved in the Hybrid Release.

Designation of Indexes Trading on Hybrid

CBOE also proposes to amend CBOE Rule 6.45A(e), which governs the rollout schedule for equity option classes, to give the appropriate Floor Procedure Committee ("FPC") the discretion to determine which index option classes and options on ETFs will trade on the Hybrid Sytem. The exchange represents that this is identical to the equity option rule, where the appropriate committee determines the rollout schedule for equity option classes.

The current Hybrid rules only allow the trading of products in which there is a Designated Primary Market Maker ("DPM"). The Exchange does not propose any changes to these rules. As such, only those index or ETF option classes that have DPMs would be eligible to trade on the Hybrid System. An Index or ETF option class that does not have a DPM may not trade on the Hybrid System until such time that the DPM system is in place in that index or ETF option class or until the Exchange adopts additional rules allowing the introduction of Hybrid trading with other than a DPM (*e.g.*, a Lead Market Maker or other type of trading structure.[10] The Exchange proposes amending language to Exchange CBOE Rule 6.45A(e) to incorporate the above restriction.

In determining which index or ETF option classes to trade on the Hybrid System, the appropriate committee would consider several factors. First, it would look to the level of trading volume in a particular index/ETF option class. Generally, active index/ETF option classes (of those with DPMs) would be introduced to Hybrid trading sooner than will those index/ETF option classes with low trading volume. Second, the FPC would consider the readiness of the trading crowd. Before the Exchange lists a product on the Hybrid System, it would provide education to the affected market participants in several different areas, such as: how Hybrid operates, how market participants connect to the Hybrid System, *etc.* Trading crowds exhibiting more readiness to trade likely would begin trading on the Hybrid System more quickly than will crowds not demonstrating the same level of readiness. Third, the FPC would consider market share in a particular index/ETF option class. An index or ETF option class in which the FPC believes the Exchange can obtain or maintain a high market share would be a prime candidate for Hybrid trading.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirement under section 6(b)(5) of the Act[11] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest by providing automatic executions for eligible electronic orders; by providing an open outcry trading environment for trades to occur on the floor; and offer market participants the ability to electronically disseminate their own firm market quotes, which should result in a greater number of automatic executions for orders on the Exchange.

The Exchange also believes that extending Hybrid to selected index and ETF options, thereby adding market makers to the quoting equation, may have the effect of narrowing spreads and increasing depth.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange satisfied the five-day pre-filing requirement. The Exchange further requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii)[14] and designated the proposed rule change to become operative immediately to enable index options and options on ETFs to be traded on the Hybrid System immediately.

The Commission believes that it is consistent with the protection of investors and the public interest to designate the proposal immediately operative.[15] CBOE currently trades equity options on the Hybrid System. The Exchange represents that the Hybrid System will function in the exact same manner in index classes and options on ETFs as it does in equity classes. The Commission notes that the operation of the Hybrid System was previously the subject of a full comment period pursuant to section 19(b) of the Act.[16] The Commission does not believe that proposed rule change raises any new issues of regulatory concern. Accordingly, the Commission believes that there is good cause, pursuant to section 19(b)(3)(A)(iii) of the Act,[17] to designate that the proposal become operative immediately.

At anytime within 60 days of the filing of the proposed rule change, the

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[9] This is the same as for equity options on Hybrid, which are governed by CBOE Rule 6.13. Non-Hybrid equity option classes continue to be governed by CBOE Rule 6.8.

[10] Any such rules, of course, would be filed with the Commission. Options on the OEX, SPX, DJX, and DIA trade under a Lead Market Maker ("LMM") System. CBOE will not commence trading these products on Hybrid until it either adopts LMM rules applicable to Hybrid trading or until they convert to a DPM system. The Exchange currently has no intention of converting SPX, OEX, DJX, or DIA to a DPM system.

[11] 15 U.S.C. 78f(B)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C 78s(b).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CBOE–2003–57. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2003–57 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31807 Filed 12–24–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48955; File No. SR–ISE–2003–31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Extending the Waiver of Its Marketing Fee

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the waiver of its marketing fee until June 30, 2004.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the ISE's Schedule of Fees to extend the waiver of its marketing fee until June 30, 2004.[3] That waiver currently is scheduled to expire on December 31, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement of section 6(b)(4) of the Act[4] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that by extending the fee waiver it is lessening the cost of trading on the ISE and thus encouraging greater competition between exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–ISE–2003–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods.

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[18] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the ISE's marketing fee is $.10 per contract and applies to market makers only for each public customer contract executed. In its filing initially adopting this fee, the ISE stated that the purpose of the fee is to provide the ISE with a source of funding for marketing efforts aimed at increasing order flow from Electronic Access Members to the Exchange. *See* Securities Exchange Act Release No. 44101 (March 26, 2001), 66 FR 17590 (April 2, 2001) (SR–ISE–01–06) (implementing the marketing fee). The marketing fee was first waived in SR–ISE–2002–16. Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 27587 (July 19, 2002). The waiver has subsequently been extended twice. *See* Securities Exchange Act Release Nos. 46976 (December 9, 2002), 67 FR 72116 (December 16, 2002) (SR–ISE–2002–26); and 48129 (July 3, 2003), 68 FR 41409 (July 11, 2003) (SR–ISE–2003–16).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. ISE–2003–31 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31806 Filed 12–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48958; File No. SR–NYSE–2003–29]

Self-Regulatory Organizations; New York Stock Exchange Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 412 and Its Interpretation Relating to Partial Customer Account Transfers

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 1, 2003, the New York Stock Exchange Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend Rule 412 and the Interpretation of Rule 412 in order to apply the same procedural standards regarding use of the Automated Customer Account Transfer System ("ACATS") to both standard and partial customer account transfers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 412 of the NYSE's Rules ("Customer Account Transfer Contracts") prescribes procedures for member organizations to transfer customer accounts. It requires use of the Automated Customer Account Transfer Service ("ACATS"), an electronic system administered by the National Securities Clearing Corporation ("NSCC") to facilitate the transfer of customer assets between broker-dealers. Since its inception in 1985, numerous enhancements to ACATS and to Rule 412 allowed for faster and more efficient transfers of customer accounts. For example, the most recent amendments to the Interpretation of Rule 412 have provided for the expedited transfer of accounts containing third party or proprietary products (*e.g.*, mutual funds).[3]

Currently, the requirements of Rule 412 and its Interpretation apply only to "standard" transfers (*i.e.*, instances where account assets in their entirety are transferred from one member organization to another) processed through ACATS. While ACATS is also utilized to process "partial" or "non-standard" transfers (*i.e.*, the transfer of specifically designated assets from an account held at one member organization to an account held at another member organization), Rule 412 currently does not require that partial transfers be accomplished in accordance with Rule 412 timeframes and does not require use of automated processing capabilities of ACATS.

There is strong industry support to generally apply the same procedural standards, where applicable, to both standard and partial transfers of customer account assets. NYSE has worked closely with industry representatives in the development of amendments to that purpose. The proposed amendments are expected to significantly expedite partial transfers and to increase accountability through use of ACATS. This, in turn, will improve customers' services and will reduce customers' problems related to transfers.

1. Partial Transfers

The requirements of Rule 412 and its Interpretation, as currently applied to standard transactions, include specified response times between a delivering and a receiving firm within which to verify assets, resolve discrepancies, and complete the transfer. Standard transfers processed through ACATS are also subject to the automated processing of transfer-related fails (*e.g.*, monies posted by a delivering firm where the security to be transferred is not transferred), reclaims (*e.g.*, claims by delivering firm for the return of securities transferred), and of residual credits (*e.g.*, transfer of dividends, *etc.*, received after an account has been transferred).

The NYSE proposes to amend Rule 412 and its Interpretation that would generally apply the same procedural standards to both standard and partial transfers processed through ACATS. The proposed amendments would mandate use of ACATS for partial transfers unless otherwise specifically requested by a customer.[4] For example, customers would not be precluded from using alternate authorized instructions to effect partial transfers.

However, certain aspects of Rule 412 and its Interpretation, as proposed to be amended, would be applicable to standard transfers but not partial transfers. The amendments would distinguished between the transfer of security account assets "in whole" (*i.e.*, standard transfers) and security account assets "in specifically designated part" (*i.e.*, partial transfers). This distinction is necessary given differing customer and broker-dealer obligations that result from transferring an entire account from a delivering firm as opposed to obligations related to the transfer of specified assets from an account that will remain active at the delivering firm.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the NYSE.

[3] Securities Exchange Act Release No. 44596 (July 26, 2001), 66 FR 40306 (August 2, 2001) (SR–NYSE–00–61). See also NYSE Information Memorandum No. 01–23 (August 16, 2001).

[4] As proposed, Rule 412(e)(1) would provide for an exception to the members' obligation to accomplish transfers in accordance with NSCC's rules when the customer authorizes alternative instructions to transfer "specifically designated assets." The phrase "specifically designated assets" refers to partial transfers only. Telephone conversation between the NYSE, NSCC, and Commission staff (November 20, 2003).

For example, should a customer request the transfer of an entire account, she must authorize the liquidation of any nontransferable proprietary money market fund assets in the account and the transfer of any resulting credit balance to the receiving organization.[5] In addition, any residual credit balance resulting from dividend payments subsequent to the transfer must be forwarded to the receiving organization.[6] Clearly, these are obligations that would attach only in instances of account asset transfers in whole, and not in instances of specifically designated asset transfers.

Another procedural distinction between the transfer of an entire account and the transfer of specifically designated asset transfers can be found in the treatment of "non-transferable assets" which are defined as either a proprietary product of a delivering organization or an asset that is the product of a third party (*e.g.*, a mutual fund). When transferring account assets in whole, the Interpretation of Rule 412 requires that a customer be provided a letter with disposition options consistent with closing out an account regarding any non-transferable assets.[7] This requirement would not be applicable to partial transfers since a request to transfer specifically designated assets would not result in closing the customer's account at the delivering firm.

2. Customer Authorization

Rule 412 and its Interpretation currently make reference to "written" customer authorization requirements. For example, Rule 412(a) requires customers to give "written notice" of their intention to transfer an account from one member organization to another. Rule 412(b)(1) further indicates that such notice be in the form of a "signed" broker-to-broker transfer instruction. Likewise, the Interpretation of Rule 412(a) refers to the requirement of an authorized "letter" from customers who intend to transfer a portion of an account outside ACATS, and the Interpretation of Rule 412(b)(1) refers to the "transfer instruction form the customer is required to complete and sign."

Proposed amendments to Rule 412(a) would clarify the scope of such customer authorization to include electronic signatures "in a format recognized as valid under federal law to conduct interstate commerce." This modification and others in the filing contemplate legal alternatives to "pen and paper" methods of customer authorization on the condition that such methods otherwise comply with Rule 412 and its Interpretation.

3. Prescribed Forms

The Interpretation of Supplementary Material .30 to Rule 412 currently requires that member organizations use "the transfer instructions and provide the reports prescribe by the Exchange when accomplishing account transfers pursuant to Rule 412 * * *" and that such instructions and reports must be the same as or "substantially similar" to those required by NSCC. Since NSCC no longer requires specific formats with respect to transfer instructions or reports, the NYSE is proposing that the Interpretation to Supplementary Material .30 be deleted.

In order to allow member organizations sufficient time to develop and implement necessary system changes to comply with amended Rule 412, the NYSE proposes to set an effective date six months from Commission approval of the proposed amendments.

Section 6(b)(5) of the Act that requires rules of an exchange are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[8] The NYSE believes that the proposed rule is consistent with its obligations under section 6(b)(5) of the Act because these interests are served when the procedures governing the transfer of customer accounts are made more efficient.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NYSE will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2003–29 and should be submitted by January 20, 2004.

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[5] Rule 412 Interpretation (b)(1)/01.

[6] NYSE Rule 412(e)(3) and (e)(4).

[7] Rule 412 Interpretation (b)(1)/06.

[8] 15 U.S.C. 78f(b)(5).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31805 Filed 12–24–03; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48928; File No. SR–PCX–2003–59]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend Its Rules Governing Market-Maker Obligations on the Archipelago Exchange

December 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the PCX. On December 2, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its rules governing Market Maker obligations on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the Exchange proposes to modify PCXE Rule 7.25(b) to eliminate the stipulation that Market Makers must become Odd Lot Dealers in the securities in which they are registered. Furthermore, the Exchange proposes to modify PCXE Rule 7.34(b) to eliminate the requirement that Market Makers must maintain one Cleanup Order for all of the securities in which they are registered. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Rule 7

Equities Trading

Registration of Odd Lot Dealers

Rule 7.25(a)—No change.

(b) Market Makers Registered in a Security. For each security in which a Market Maker is registered, the Market Maker [must] *may* become an Odd Lot Dealer in that security.

(c)–(e)—No change.

Trading Sessions

Rule 7.34(a)—No change.

(b) *Market Maker Obligations.*

(1)—No change.

(2) Market Makers [must] *may, at their discretion,* maintain one Cleanup Order for [all] *any* securities in which they are registered for each Market Order Auction.

(c)–(f)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on the ArcaEx, the PCX is proposing to eliminate the stipulation that Market Makers[4] must become Odd Lot Dealers[5] in the securities for which they are registered. In addition, the Exchange is seeking to eliminate the requirement for Market Makers to maintain Cleanup Orders.[6] The Exchange believes these restrictions currently impose a competitive barrier vis-à-vis other market centers in attracting Market Maker participation on ArcaEx because competing market centers do not impose such requirements.[7] Hence, the Exchange believes that removal of these restrictions will place the ArcaEx at competitive parity with other market centers.

Currently, PCXE Rule 7.25(b) requires Market Makers to become Odd Lot Dealers in each security in which they are registered. Once registered, an Odd Lot Dealer is obligated to maintain an Odd Lot Tracking Order[8] during each day in which the PCXE is open for business for each security in which the Odd Lot Dealer is registered. The Exchange proposes to modify the requirement for all Market Makers to become Odd Lot Dealers making it optional rather than a requirement. The Exchange represents that the overall system impact from elimination of this requirement would be minimal due to the fact that current Market Maker activity on the ArcaEx affects a small number of securities.[9]

Furthermore, pursuant to PCXE Rule 7.34(b), Market Makers are required to maintain one Cleanup Order[10] in all securities for which they are registered for each Market Order Auction.[11] The Exchange proposes to allow Market Makers to submit Cleanup Orders at their discretion. As the Cleanup Orders are only utilized during Market Order Auction (when there is an imbalance of order), as well as for the reasons stated above, the impact on the system from removing this requirement would be minimal on the ArcaEx.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the originally filed Form 19b–4 in its entirety.

[4] *See* PCXE Rule 1.1(u) (definition of "Market Maker"). *See also* PCXE Rules 7.20–7.23 relating to the registration and obligations of Market Makers.

[5] *See* PCXE Rule 1.1(gg) (definition of "Odd Lot Dealer"). *See also* PCXE Rule 7.25 relating to the registration of Odd Lot Dealers.

[6] *See* PCXE Rule 7.31(u) (definition of "Cleanup Order").

[7] *See e.g.*, NASD Rules 4611 and 4612.

[8] If an unfilled order or portion of an order that enters the Tracking Order Process is an odd lot, ArcaEx would match the order against any Odd Lot Tracking Orders ("OLTO"), using the same rotation process as the Tracking Order Process. An OLTO, which could only be submitted to ArcaEx by a registered Odd Lot Dealer, is a Tracking Order in which: (1) The maximum aggregate size is unlimited; (2) the maximum tradeable size is 99 shares; (3) the price is set at the NBBO; (4) the security is one in which the Odd Lot Dealer is registered as such; and, (5) the instruction would have to be in effect for the duration of Core Trading Hours. *See* PCXE Rule 7.31(f)(3), 7.31(g), and 7.37(c).

[9] Currently, odd lots are able to receive execution by matching to other odd lot or round lot orders. Under the proposed rule change, odd lots would be handled in the same manner. Hence, elimination of the requirement for Market Makers to become an Odd Lot Dealer would have minimal impact on how odd lots are treated in the marketplace as odd lots interact with round lot orders on a pure price, time priority basis.

[10] Cleanup Up Orders are only applicable to Market Order Auctions. Cleanup Orders (1) could be submitted only by Market Makers; (2) would have to be submitted to ArcaEx before 6:15 a.m. (Pacific time) and remain in effect until the conclusion of the Market Order Auction; (3) would have to be 2500 shares in size; (4) would have to be entered as both buy or sell orders, provided, however, the Cleanup Order could be executed only on the side of the market opposite the Imbalance; (5) would be executed at the Indicative Match Price as of the time of the Market Order Auction; and (6) would be executed only if: (i) there was an Imbalance of eligible orders at the conclusion of the Market Order Auction, as provided in proposed PCXE Rule 7.35; and (ii) the Imbalance is less than or equal to aggregate size of all Cleanup Orders in the relevant security. If there is an Imbalance and Cleanup Orders would be executed, the market orders which make up the Imbalance would be divided equally among, and allocated to, all Market

The Exchange believes eliminating the aforementioned requirements will facilitate additional Market Maker participation on ArcaEx and will further enhance order interaction, provide greater depth in liquidity, and foster price competition. Moreover, the Exchange believes that the elimination of such requirements will place ArcaEx on a level playing field with other market centers and allow ArcaEx to fairly compete for Market Maker participation.

2. Statutory Basis

The PCX believes that the rule change is consistent with section 6(b) of the Act in general [12] and section 6(b)(5) of the Act in particular.[13] The Exchange believes that the proposed rule change is intended to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–59 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31809 Filed 12–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48936; File No. SR–PCX–2003–32]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change to Incorporate New PCX Rules Into Its Minor Rule Plan

December 17, 2003.

On July 8, 2003, the Pacific Stock Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new PCX Rules 10.13(h)(40)–(44) and 10.13(k)(i)(40)–(44) in order to incorporate five existing PCX rules into the Minor Rule Plan and Recommended Fine Schedule.

The proposed rule change was published for comment in the **Federal Register** on November 12, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(6) [6] of the Act because it should enable the Exchange to appropriately discipline its members and others associated with its members for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the Exchange.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in

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makers registered in the relevant security and executed against such market makers' Cleanup Orders. If no Imbalance exists at the time of the Market Order Auction, all Cleanup Orders would be cancelled at that time.

[11] *See* PCXE Rule 7.35(c) for a discussion of the Market Order Auction process.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48746 (November 4, 2003), 68 FR 64182.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the PCX will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

In addition, the Commission notes that proposed rules 10.13(h)(40), 10.13(h)(41), and 10.13(h)(43) relate to market making obligations. The Commission believes that only the most technical and non-substantive violations of a market maker's obligations should be handled pursuant to a minor rule plan.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PCX–2003–32) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31808 Filed 12–24–03; 8:45 am]

BILLING CODE 8010–01–P

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[7] *See, e.g.*, Securities Exchange Act Release No. 27878 (April 14, 1990), 55 FR 13345, (SR–NYSE–89–44).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48947; File No. SR–Phlx–2003–81]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Pilot Program To Deploy the Options Floor Broker Management System

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that on December 17, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot program pertaining to the Options Floor Broker Management System (the "System") from November 14, 2003, until February 6, 2004.[3] The System is a new component of the Exchange's Automated Options Market (AUTOM) and Automatic Execution (AUTO–X) System.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of the rules governing the System beyond the current effective date of November 14, 2003, in order to continue to have rules in place concerning the System and to ensure that Floor Brokers using the System during the continuing deployment would not be in violation of current Exchange rules regarding ticket marking requirements. The rules had previously been effective through August 29, 2003, extended through September 12, 2003, and extended again through November 14, 2003.[5]

The System is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. Floor Brokers or their employees access the System through an electronic Exchange-provided handheld device on which they have the ability to enter the required information as set forth in Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System will eventually replace the Exchange's current Floor Broker Order Entry System ("FBOE"),[6] as part of a roll-out of the new System floor-wide.

All of the rules pertaining to the System effective November 14, 2003 are proposed to be extended until February 6, 2004, including: Exchange Rules 1014(g), 1015, 1051, 1063, 1064, and 1080.06, as well as Option Floor Procedure Advices ("Advice") A–11, B–6, B–8, C–2, C–3, F–1, F–2, and F–4.

The Exchange believes that the System will enable Floor Brokers to handle orders they represent more efficiently, and will further enable the Exchange to comply with the audit trail requirement for non-electronic orders required under the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 31, 2003, the Exchange filed a proposed rule change to implement a pilot program to deploy the Exchange's new System. The proposed rule change was noticed, and accelerated approval was granted thereto, on July 31, 2003. The pilot was scheduled to expire on August 29, 2003. *See* Securities Exchange Act Release No. 48266 (July 31, 2003), 68 FR 152 (August 7, 2003) (SR–Phlx–2003–56). On August 29, the Commission extended the pilot to September 12, 2003. *See* Securities Exchange Act Release No. 48425 (August 29, 2003), 68 FR 53210 (September 9, 2003) (SR–Phlx–2003–60). On September 12, 2003, the Commission extended the pilot again until November 14, 2003. *See* Securities Exchange Act Release No. 48490 (September 12, 2003), 68 FR 54926 (September 19, 2003). In order to avoid a lapse in the effectiveness of this pilot, the Commission now is approving the Exchange's proposal to extend the rule from November 14, 2003 until February 6, 2004. The Exchange has also filed for permanent approval of the proposed rules. *See* Securities Exchange Act Release No. 48265 (July 31, 2003), 68 FR 47137 (August 7, 2003) (SR–Phlx–2003–40). The Exchange acknowledges that SR–Phlx–2003–40 and Amendment No. 1 thereto are subject to public comment, which may result in amendments to the proposed rules.

[4] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[5] *See* note 3, *supra*.

[6] *See* Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR–Phlx–99–11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Exchange Rule 1080(b). The new System would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Phlx Rule 1063(e).

Securities Exchange Act of 1934, Making Findings and Imposing Sanctions.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by providing a System that enables Floor Brokers to handle orders they represent more efficiently, while enabling the Exchange to comply with the requirement in the Order to provide an electronic audit trail for non-electronic orders entered on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Phlx–2003–81. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–81 and should be submitted by January 20, 2004.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular the Commission finds that the proposed rule to extend the rules relating to the System on a pilot basis until February 6, 2004 is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities System, and protect investors and the public interest.[11]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change on a pilot basis will allow the Exchange to have enforceable rules governing use of the Exchange's new System in effect prior to permanent approval of the rules, and will help ensure that members are properly trained and familiar with the rules. In addition, Commission is granting accelerated approval retroactively to November 14, 2003, in order to prevent a lapse in the effectiveness of the Exchange's rules governing operation of the System to ensure continuity of the pilot.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2003–81) is approved on an accelerated basis and is effective retroactively from November 14, 2003, on a pilot basis until February 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31810 Filed 12–24–03; 8:45 am]

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[7] *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282 (the "Order").

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposed rule change, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48954; File No. SR–SCCP–2003–04]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Approving a Proposed Rule Change Relating to Permanent Approval of SCCP's Restructured Limited Clearing Business

December 18, 2003.

On June 20, 2003, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on October 30, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

This order permanently approves SCCP's business whereby it provides limited clearance and settlement services.

A. Background

Through an agreement dated June 18, 1997 ("Agreement"), among SCCP, the Philadelphia Stock Exchange, Inc. ("Phlx"), the Philadelphia Depository Trust Company ("Philadep"), the National Securities Clearing Corporation ("NSCC"), and The Depository Trust Company ("DTC"), Philadep and SCCP transferred most of their depository and clearance services to DTC and NSCC. As a result, SCCP stopped providing its continuous net settlement ("CNS") system for conducting settlements between SCCP and its participants and its cash settlement services attendant to Philadep's same-day funds settlement system and the Philadep settlement process. However, pursuant to the Agreement, SCCP continued to offer limited clearing and settlement services to Phlx members.[3]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 48692 (Oct. 24, 2003), 68 FR 61846.

In December 1997, the Commission approved proposed rule changes that implemented the Agreement.[4] These rule changes reflected Philadep's withdrawal from the depository business and temporarily approved for one year SCCP's restructured and limited clearance and settlement business.[5] Subsequently, the Commission has extended the temporary approval several times so that SCCP could continue to offer restructured and limited clearance and settlement services.[6]

B. SCCP's Proposed Rule Change

In its current rule filing, SCCP proposed that the Commission permanently approve SCCP's limited clearance and settlement business. SCCP believes that its restructured operations have functioned consistent with its original proposed rule change and are functioning well under actual working conditions.

Accordingly, because this proposed rule change would not result in any substantive or textual changes to its rules or its restructured operations, SCCP will continue to offer the same services as it has been since the 1997 rule changes took affect. Specifically, SCCP will continue to offer trade confirmation and recording services to Phlx members effecting transactions through what SCCP refers to as regional interface operations ("RIO") accounts and ex-clearing accounts. SCCP will not provide clearing guarantees for these transactions. In addition, SCCP will also continue to provide margin accounts for margin members that clear and settle their transactions through SCCP's Omnibus Clearance and Settlement Account at NSCC.[7]

II. Discussion

Section 17A(b)(3)(F) of the Act[8] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that SCCP's proposed rule change is consistent with SCCP's obligations under section 17A(b)(3)(F) of the Act because permanently approving the rules relating to SCCP's restructured business should eliminate any uncertainty about and therefore provide greater confidence in SCCP's long-term ability and commitment to provide prompt and accurate clearance and settlement services to the securities industry. In addition, since the proposed rule change does not alter any of SCCP's rules or structure of its services and in light of SCCP's actual performance since 1997, SCCP should be able to provide for the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act[9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–2003–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31811 Filed 12–24–03; 8:45 am]

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[3] This Agreement was executed in connection with Phlx's withdrawal from the securities depository business (offered by its wholly-owned subsidiary, Philadep) and Phlx's restructured and limited clearance and settlement business (offered by its wholly-owned subsidiary, SCCP).

[4] Securities Exchange Act Release No. 39444 (Dec. 11, 1997), 62 FR 66703 (Dec. 19, 1997) [File Nos. SR–TC–97–16, SR–NSCC–97–08, SR–Philadep–97–04, and SR–SCCP–97–04].

[5] At that time, the Commission stated that "because a part of SCCP's proposed rule change concerns the restructuring of SCCP's operations to enable SCCP to offer limited clearing and settlement services to certain Phlx members, the Commission finds that it is appropriate to grant only temporary approval to the portion of SCCP's proposed rule change that amends SCCP's By-Laws, Rules, or Procedures. This will allow the Commission and SCCP to see how well SCCP's restructured operations are functioning under actual working conditions and to determine whether any adjustments are necessary. Thus, the Commission is approving the portion of SCCP's proposal that amends its By-Laws, Rules and Procedures through Dec. 31, 1998."

[6] Securities Exchange Act Release Nos. 40872 (Dec. 31, 1998), 64 FR 1264 (Jan. 8, 1999) [File No. SR–SCCP–98–05]; 42320 (Jan. 6, 2000), 65 FR 2218 (Jan. 13, 2000) [File No. SR–SCCP–99–04]; 43781 (Dec. 28, 2000), 66 FR 1167 (Jan. 5, 2001) [File No. SR–SCCP–00–05]; 45227 (Jan. 3, 2002), 67 FR 1259 (Jan. 9, 2002) [File No. SR–SCCP–2001–11]; and 47016 (Dec. 17, 2000), 67 FR 78556 (Dec. 24, 2002) [File No. SR–SCCP–2001–12].

[7] For a detailed discussion of the clearance and settlement services SCCP will continue to provide, refer to the notice, *supra* note 2.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4575]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Middle East Partnership Initiative (MEPI) U.S. Business Internship Program for Young Middle Eastern Women

SUMMARY: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for Middle East Partnership Initiative (MEPI) U.S. Business Internship Program for Young Middle Eastern Women. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer the participant preparation and support component of the Middle East Partnership Initiative (MEPI) U.S. Business Internship Program for Young Middle Eastern Women for participants from Algeria, Bahrain, Egypt, Iraq (excluding Iraqi expatriates), Israel (limited to the Israeli Arab sector), Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, West Bank/Gaza and Yemen. ECA anticipates supporting 40 participants with $1,580,000 in funding through MEPI. Participants will be placed in three- or six-month management internships or three-month entry-level internships, depending on professional experience.

Important Note: This Request for Grant Proposals contains language in the "Shipment and Deadline for Proposals" section that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Program Information

Overview

Subject to the availability of funds, the Bureau of Educational and Cultural Affairs (ECA) requests proposals for the administration of the participant preparation and support component of the Middle East Partnership Initiative (MEPI) U.S. Business Internship Program for Young Middle Eastern Women for participants from Algeria, Bahrain, Egypt, Iraq (excluding Iraqi expatriates), Israel (limited to the Israeli Arab sector), Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, West Bank/Gaza and Yemen. ECA anticipates supporting 40 participants with $1,580,000 in funding through MEPI. Participants will be placed in three- or six-month management internships or three-month entry-level internships, depending on professional experience.

Applicant organizations must demonstrate the ability to effectively administer the participant preparation and support component of the U.S. Business Internship Program for Young Middle Eastern Women. Participant preparation and support responsibilities in four (4) administrative categories are listed below. It should be understood that in the implementation of all of these responsibilities, the Bureau must be consulted, especially in the resolution of any and all problems that may arise. The administrative portion of the grant should be kept to a minimum, and the Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of this project.

1. U.S. Orientations and Academic Preparation Programs

The proposal should include a plan for two separate four-week orientation and academic preparation programs prior to the internship placements in order to assist participants with the transition to the United States, its culture, and the business environment. The first three days of the program should be conducted jointly for both groups in Washington, DC. Following this introduction, the remainder of the orientation and preparation program should be conducted in two cohorts and reflect the professional level of the participants (entry level and management interns) at a location, possibly a university campus, in the U.S. Each orientation and academic preparation program should have a maximum of 20 participants. The orientation and academic preparation program should follow an interdisciplinary approach that addresses both the opportunities and challenges of interning in a U.S. business. The program should aim to provide participants with the skills to function successfully in the United States culturally and professionally, and to inspire professional achievement. The academic portion of the program should be modeled on an MBA executive education program and could include coursework in management, finance, accounting, business strategy, marketing, organizational behavior, information technology, governance and ethics. The orientation portion of the program should include workshops on cross-cultural adaptation, U.S. history and society, the development of the business sector, women in business and leadership development.

Applicant organizations are encouraged to partner with qualified U.S. institutions that are experienced in delivering customized MBA-level training to international students. It is also highly desirable that the program participants receive a certificate of achievement from an accredited institution upon the successful completion of the academic preparation program.

2. End-of-Program Washington Workshop

The proposal should include a plan for two four-day workshops in Washington, DC. One workshop should take place at the conclusion of the three-month entry-level internship period for these interns and one should take place at the conclusion of the six-month management internship period for this group. The goals of both workshops are to provide a forum for reflection on the overall experience in the U.S., the creation of an alumnae network and the development of leadership skills. Workshop sessions should include, but not be limited to, career development, opportunities for alumni leadership, and program evaluation. Upon completion of the workshop, participants should immediately return to their countries.

3. Internship Placement Support

Internships in U.S. companies will be identified and prepared by the Bureau of Near Eastern Affairs and the Bureau of Educational and Cultural Affairs of the U.S. Department of State, in consultation with the Department of Commerce. The Department of State is working to identify internship spots for up to 40 women in both Fortune 500 companies as well as small and medium size enterprises in a variety of industries. Additionally, the Department of State is working to identify companies in the same metropolitan areas so interns will be co-located in the same cities. Businesses may accept more than one intern, but the interns should not be managed or supervised by the same person. The U.S. business will be responsible for providing professional development and management experience; a workplace orientation that includes meeting supervisors, assigning mentors, and reviewing the work outline; and assisting with the identification and arrangement of housing (prior to the intern's arrival).

Applicant organizations will be responsible for coordination with the U.S. Department of State and the participating U.S. businesses to ensure a smooth transition to the internship component of the program. Coordination includes making participant travel arrangements, ensuring that appropriate housing is available during the internship period and preparing the participants for living independently in a U.S. city. Additionally, the applicant organization should be prepared to assist in identifying additional internship placements in the event a business withdraws its offer of an internship after the participants arrive in the U.S.

4. Participant Monitoring and Support

The proposal should include a plan for monitoring and support of program participants during the U.S. portion of the program, including travel, housing and living stipend, and program evaluation. Proposals must discuss how the participants' progress in achieving program goals and objectives will be monitored. Proposals should cite the intended frequency and form of communication with the participants during the orientation and academic preparation program and during the subsequent internship period. The use of email lists and a program Web site should be utilized where possible and cost-efficient. The proposal should outline performance goals or benchmarks. Grantee organizations should define their policies for working with fellows who do not meet the academic standards of the academic portion of the program or violate program regulations.

Applicant organizations should propose qualified professional staff, able to efficiently carry out all aspects of the program in the United States. Applicant organizations must demonstrate institutional records of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements. Applicant organizations will be expected to maintain procedures and manuals for all components of the program to ensure that all staff operates the program according to an established protocol.

Applicant organizations should ensure that the Department of State, through the Bureau of Educational and Cultural Affairs and the Middle East Partnership Initiative, is acknowledged as the program sponsor in all publicity materials and advertising. Applicant organizations should calculate their budgets on an anticipated caseload of 40 principal candidates. Note that all program materials must emphasize that participants will not be able to extend or transfer their U.S. visa sponsorship at the completion of their MEPI-sponsored internship, as they are expected to return to their home countries to fulfill the two-year home residency requirement of the J visa.

Additionally, the Bureau requests that the applicant organization discuss how it plans to cooperate with the overseas recruitment partner to:

(a) Establish and maintain participant statistical database.

(b) Open, maintain and close intern files. Retain records of grants and other pertinent documentation.

(c) Conduct a technical review of applications for eligibility and thoroughness: checking for accurate bio-data, transcripts, recommendations, TOEFL scores and follow-up, if necessary, to secure missing documentation.

Guidelines: Program administration activities should cover the time frame from August 1, 2004 to March 5, 2005. The expected grantee caseload for the summer 2004 to spring 2005 time fame is projected to be 40 individuals. The Bureau's Office of Academic Exchange Programs will administer and coordinate the Middle East Partnership Initiative (MEPI) U.S. Business Internship Program for Young Middle Eastern Women. Subject to the availability of funds, the Bureau expects to award one grant of up to $1,580,000.

The Middle East Partnership Initiative (MEPI) is a Presidential initiative to support economic, political, and educational reform efforts in the Middle East and champion opportunity for all people of the region, especially women and youth. The initiative strives to link Middle Eastern, U.S., and global private sector businesses, non-governmental organizations, civil society elements, and governments together to develop innovative policies and programs to achieve this mission.

The U.S. Business Internship Program will provide young women from the Middle East unique opportunities to learn management and business skills while working in the dynamic and productive U.S. business environment. This MEPI program will establish substantive internships for skilled, qualified Middle Eastern businesswomen in cooperating U.S. businesses and create a cadre of professionals infused with an experience that only hands-on training can provide. Immersion in the American business environment will give these future business leaders unique tools and skills to bring home and incorporate into regional enterprises while creating mutually beneficial professional and personal relationships between Middle Eastern and American partners.

Participant recruitment and alumni support will be administered through a separate grant agreement. Recruitment efforts will specifically target young Middle Eastern women outside of the traditional urban areas in economically diverse and disadvantaged sectors. A review panel in Washington DC, including representatives of ECA and MEPI, will make the final selection of participants.

Competition for the MEPI U.S. Business Internship Program for Young Middle Eastern Women will be open, merit-based, and fair to all applicants. Applicants will be evaluated based on academic excellence, leadership potential, proficiency in written and spoken English (with a minimum TOEFL score of 550), maturity, and flexibility and suitability to operate successfully in an American corporate environment. Selected applicants must also demonstrate a sufficient level of information technology knowledge and word processing ability to operate in a U.S. business at the appropriate entry or management level.

In-country interview panels will be comprised of representatives from the Public Affairs section of U.S. embassies, embassy Economic/Commercial sections, locally qualified businessmen/women, NGO officials, and alumni of USG exchange programs.

All program participants must be sponsored under Exchange Visitor Program No. G–1–0332 on a J–1 Visa and comply with J–1 Visa regulations. In addition, administration of the program must comply with reporting and withholding regulations for federal, state, and local taxes as applicable.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines: The Bureau anticipates awarding one grant in the amount of $1,580,000 to support program and administrative costs required to implement this phase of the U.S. Business Internship Program for Young Middle Eastern Women. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $1,580,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Allowable costs for the program include the following:

Program Costs

- Domestic travel, coach class or equivalent, from Washington, DC to the orientation site and from the orientation site to the internship location, and from the internship location to Washington, DC;
- Washington Orientation Workshop expenses (not to exceed $800 per participant);
- Tuition, fees (including all staffing and professional fees), room and board for orientation and academic preparation program;
- Educational materials (not to exceed $1,000 per participant);
- Cultural allowance (not to exceed $500 per participant);
- Monthly stipend (please develop an average based on current MMR rates);
- End of Program Workshop expenses (not to exceed $1000 per participant, per workshop);
- Accident and sickness insurance;
- Withholding for taxes as necessary.

Domestic Administrative Costs

- Staff salaries and fringe benefits (Each staff member and his/her position must be listed separately, including the percentage of his/her total time spent on this program and duties performed on behalf of the program. Proposed salaries and time on task must be certified as true and accurate representations of actual costs and percentage of time. Resumes must be included for new staff.);
- Staff travel and per diem;
- Communication costs (fax, telephone, postage, equipment, etc.);
- Administration of tax withholding and reporting as required by Federal, State, and local authorities and in accordance with relevant tax treaties;
- A–133 Audit fees if not included in the indirect cost pool;
- Other direct costs;
- Indirect costs (per OMB Circular A–122, Cost Principles for Non-Profit Organizations, organizations receiving more than $10 million in Federal funding of direct costs in a fiscal year must break out the indirect cost component into two broad categories, Facilities and Administration, as defined in subparagraph C.3).

The above cost allocations are subject to the availability of funds. ECA reserves the right to modify any of the above cost allocations to achieve program efficiency and cost savings.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E–04–02 MEPI.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Exchange Programs, ECA/A/E, Room 234, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–619–4360 (phone), 202–401–5914 (fax), *http://exchanges.state.gov/education/fulbright/* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Senior Program Officer Robert Greenan on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement: An OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals:

Important Note: The deadline for this competition is February 17, 2003. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E–04–02 MEPI, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547. Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Section at the U.S. embassy for its review.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards and grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the mission of the Bureau and the Middle East Partnership Initiative.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

11. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation. The funding for this program is provided through the Middle East Partnership Initiative (MEPI).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 19, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31882 Filed 12–24–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

Office of the Deputy Secretary of State

[Delegation of Authority 267–1]

Exceptions from Port-of-Entry Special Registration, Fingerprinting and Photographing (Class A Referrals)

By virtue of the authority vested in me by Delegation of Authority 245, and in accordance with 8 CFR 264.1(f), I hereby delegate to Richard H. Jones the authority to determine that special registration, fingerprinting and photographing requirements shall not apply to an individual nonimmigrant alien upon arrival in the United States. Such a determination may be made only for an individual nonimmigrant alien when Mr. Jones determines in writing that an exception from such requirements for such individual is in the national interest and will not compromise national security interests. Mr. Jones may exercise the delegated authority only during the period of his detail to the Coalition Provisional Authority in Iraq and only in his capacity as a State Department employee operating under the direction and supervision of the Secretary of State.

Notwithstanding any provision of this Delegation of Authority, the Secretary of State, the Deputy Secretary of State, the Under Secretary of State for Management, and the Assistant Secretary of State for Consular Affairs may at any time exercise any authority delegated by this delegation of authority.

Mr. Jones may not redelegate the authority delegated by this delegation.

The statutes, regulations, and procedures referenced in this delegation shall be deemed to be such statutes, regulations or procedures as amended from time to time.

This delegation is in addition to Delegations of Authority 253 and 254 regarding Exceptions from Port-of-Entry Special Registration, Fingerprinting and Photographing. This delegation supersedes Delegation of Authority 267.

This delegation shall be published in the **Federal Register**.

Dated: November 28, 2003.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 03–31881 Filed 12–24–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 267]

Special Exemptions From Port-of-Entry Special Registration, Fingerprinting and Photographing by Patrick J. Kennedy (National Interest)

By virtue of the authority vested in me as Secretary of State, including the authority of Section 1 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a), as amended, and the authority conferred on me by 8 CFR 264.1 (f), I hereby delegate the following functions as indicated.

Section 1. Functions Delegated to Patrick J. Kennedy

The functions vested in me as the Secretary of State by 8 CFR 264.1(f)(1) to determine that special registration, fingerprinting and photographing requirements shall not apply to an individual nonimmigrant alien upon arrival in the United States are delegated to Patrick J. Kennedy. Such a determination may be made only for an individual nonimmigrant alien when Mr. Kennedy determines in writing that an exception from such requirements for such individual is in the national interest and will not compromise national security interests. Mr. Kennedy may exercise the delegated functions only in his capacity as a State Department employee operating under the direction and supervision of the Secretary of State.

Section 2. Technical Provisions

a. Notwithstanding any provision of this Delegation of Authority, the Secretary of State, the Deputy Secretary of State and the Under Secretary of State for Management may at any time exercise any function delegated by this delegation of authority.

b. The functions delegated by this memorandum of authority may not be redelegated.

c. The statutes, regulations, and procedures referenced in this delegation shall be deemed to be such statutes, regulations or procedures as amended from time to time.

d. This delegation is in addition to delegations Nos. 253 and 254 regarding Exceptions from Port-of-Entry special Registration, Fingerprinting and Photographing.

This delegation and related delegations referenced herein shall be published in the **Federal Register**.

Dated: September 9, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–31880 Filed 12–24–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 12, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–16671.

Date Filed: December 9, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC23 EUR–SASC 0115 dated December 5, 2003, TC23 Europe-South Asian Subcontinent Expedited Resolutions 002ae, 002cd, 070h r1–r3, Intended effective date January 15, 2004.

Docket Number: OST–2003–16708.

Date Filed: December 11, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 345, PTC COMP 1111 dated December 12, 2003, PTC1/2/3/12/23/31/123, General Increase Resolution 002mm (amending) (except within Europe, between USA/US Territories and Austria, Chile, Czech Republic, Finland, France (including French Guiana, French Polynesia, Guadeloupe, Martinique, New Caledonia, Reunion, Saint Pierre and Miquelon), Germany, Iceland, Italy, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland), Intended effective date: January 1, 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–31886 Filed 12–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 12, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–16677.

Date Filed: December 9, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 30, 2003.

Description: Application of Flight One Airline USA, pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity authorizing foreign scheduled air transportation of persons, property, and mail.

Docket Number: OST–2003–16716.

Date Filed: December 12, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2004.

Description: Application of Blackstar Airlines Corporation, pursuant 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property and mail.

Docket Number: OST–2003–16717.

Date Filed: December 12, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2004.

Description: Application of Blackstar Airlines Corporation, pursuant to 49 U.S.C. 41102 and subpart B, requesting a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–31885 Filed 12–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice and Request for Comments

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on October 20, 2003 (68 FR 59981).

DATES: Comments must be submitted on or before January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 20, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 68 FR 59981.

FRA received two comments after issuing this notice. The first comment or letter that FRA received was from the Brotherhood of Maintenance of Way Employees (BMWE). The BMWE supports the proposed study and remarked:

> Those employees categorized as "construction/production" generally are assigned work over vast territories encompassing an entire railroad system, and report to an ever changing designated lodging facility or rally point at the beginning of each work week or "compressed half" work period (a compressed half may consist of 8 consecutive 10 hour days, followed by 7 consecutive days off or some similar variation) * * * It is not uncommon for MW production/construction crew members to travel 500–1,500 miles from home to reach the designated lodging facility at the beginning of the work period. These employees often work 10 or more hours per day for 8–10 days straight, and then drive back home at the end of the work period * * *
>
> For all MW workers, there are no FRA imposed limits on the number of hours worked. MW work is physically taxing and is conducted under extreme weather conditions, including the heat of summer, the cold of winter, and in rain, snow, and other inclement conditions. MW employees working construction/production are also susceptible to the stresses of long periods of separation from their families, and are also subject to call outside scheduled work hours.
>
> Fatigue has been a huge factor in our industry and recent railroad mergers have resulted in greatly expanded territories for MW production/construction crews. Extensive travel, shared away-from-home lodging, and constantly changing work hours and locations have become the norm for MW employees. The fatigue associated with MW work continues to get worse and has been a contributing factor, if not the sole cause, in numerous accidents and incidents in the rail industry.

The BMWE contends that the Work Schedules and Sleep Patterns of Maintenance of Way Employees study will help FRA and the rail industry develop an understanding of the work schedule-related fatigue issues that affect MW employees. Once this study is complete, the BMWE will continue to work with the FRA and the rail industry to reduce the fatigue level of MW employees.

The second comment or letter that FRA received came from the Brotherhood of Railroad Signalmen (BRS). The BRS also supports the proposed study and stated:

> Fatigue has been a huge factor in our industry. Maintenance of way territories have been expanded. Outside of large metropolitan areas, it is not uncommon for maintenance of way employees to have to travel anywhere from 500–1,500 miles. The BRS contends that the erratic call schedule of maintenance of way employees along with no limitations on the amount of hours that they can work produce an environment where fatigue is the norm. It is a way of life for maintenance of way employees. It continues to get worse * * *

The BRS contends that the Work Schedules and Sleep Patterns of Maintenance of Way Employees study will help FRA and the rail industry to develop an understanding of the work-schedule-related fatigue issues that affect MW employees. Once this study is complete, the BRS will continue to work with the FRA and the rail industry in order to promote work schedules and initiatives that will reduce the fatigue level of maintenance of way employees.

Neither BMWE nor BRS addressed the issue of burden hour estimates or burden cost estimates. After carefully reviewing these comments, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden, and are being submitted for clearance by OMB as required by the PRA.

Title: Work Schedules and Sleep Patterns of Maintenance of Way Employees.

OMB Control Number: 2130–NEW.

Type of Request: New collection.

Affected Public: Rail workers.

Abstract: In a continuing effort to improve rail safety and to reduce the number of injuries and fatalities to rail workers, FRA and the rail industry have recently focused on the issue of fatigue among train and engine crew personnel. Because railroading is an around-the-clock, seven-days-a-week operation and because a wide array of workers are needed to both operate and to maintain the nation's railroads, other crafts—

besides train and engine crews—can also be subject to fatigue. The non-operating crafts, including locomotive and car repair, track maintenance, signal system maintenance and telecommunications, fall into this second category. FRA is proposing a study which will focus on maintenance of way employees, one of the non-operating railroad crafts. The project will be very similar in both method and scope to a current study focusing on railroad signalmen. To develop an understanding of the work schedule-related fatigue issues for maintenance of way employees, FRA proposes to undertake this study. The proposed study has two primary purposes: (1) It aims to document and characterize the work/rest schedules and sleep patterns of the maintenance of way employees; and (2) it intends to examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules. The intent is to report results in the aggregate, not by railroad. Subjective ratings from participants of their alertness/sleepiness on both work and non-work days will be an integral part of this study. The data will be collected through the use of a daily diary or log, as well as a brief background questionnaire for each participant. Analysis of the diary data will allow FRA to assess whether or not there are any work-related fatigue issues for maintenance of way employees.

Form Number(s): FRA F 6180.113; FRA F 6180.114.

Affected Public: Rail Workers.

Respondent Universe: 338 Maintenance of Way Employees.

Frequency of Submission: On occasion.

Annual Estimated Burden Hours: 874 hours.

Status: Regular Review.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on December 19, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–31911 Filed 12–24–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2004–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2004 rail cost adjustment factor (RCAF) filed by the Association of American Railroads. The first quarter 2004 RCAF (Unadjusted) is 1.025. The first quarter 2004 RCAF (Adjusted) is 0.517. The first quarter 2004 RCAF–5 is 0.492.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: ASAP Document Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006, telephone (202) 293–7878. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 18, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–31865 Filed 12–24–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–863X]

City of Venice—Abandonment Exemption—in Venice, IL, and St. Louis, MO

The City of Venice (City) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its entire 2.00-mile line of railroad, between milepost 0.55 near Branch Street Yard in St. Louis, MO, and milepost 0.0 at the state line at Venice, IL, and milepost 0.00 at Venice and milepost 1.45 at McKinley Junction, IL. The line traverses United States Postal Service ZIP Codes 62090 and 63147.

The City has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence of: (1) A corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. *See Wellsville, Addison & Galeton R. Corp.—Abandonment*, 354 I.C.C. 744 (1978); and *Northampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784 (1978). Because the City does not appear to have a corporate affiliate or parent that could benefit from the proposed abandonment, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January

28, 2004,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 8, 2004.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 20, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to the City's representative: Charles H. Montange, 426 NW 162d St., Seattle, WA 98177.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

The City has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by January 2, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), the City shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by the City's filing of a notice of consummation by December 29, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: December 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–31719 Filed 12–24–03; 8:45 am]

BILLING CODE 4915–00–P

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[1] In its notice, the City indicated a proposed consummation date of January 12, 2004. Under 49 CFR 1152.50(d)(2), however, the earliest the exemption could become effective is 50 days after the verified notice of exemption was filed. The notice was filed on December 9, 2003. Therefore, the effective date of the exemption can be no earlier than January 28, 2004, and consummation may not take place prior to that date. The City's representative has been notified and has confirmed that consummation will not take place before January 28, 2004.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[4] Madison County Transit (MCT) concurrently filed a request for issuance of a notice of interim trail use for the entire line under the National Trails System Act, 16 U.S.C. 1247(d). Also by letter filed December 12, 2003, the Terminal Railroad Association of St. Louis (Terminal) states that it intends to file a reply to the City's notice of exemption and to MCT's trail use request, and that it will seek a stay of the effective date of the exemption. The Board will address MCT's trail use request, along with any others that may be filed, and any further filings by Terminal in subsequent decisions.

DEPARTMENT OF TREASURY

Internal Revenue Service

Addition of New Transmitter Encryption Options and Pending Discontinuance of Non-Encrypted Options for IRS e-file

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Internal Revenue Service will provide the ability for *IRS e-file* program participants to use approved encryption methods for the 2005 and later filing seasons, beginning with the Acceptance Testing System (ATS) in late 2004. For the 2005 filing season, IRS intends to begin discontinuing support of non-encrypted transmissions whether by dedicated or dial-up links on the Public Switched Telephone Network (PSTN).

DATES: Questions or concerns should be directed to the Internal Revenue Service by January 31, 2004.

SUPPLEMENTARY INFORMATION: This information pertains to *IRS e-filer* transmitters (EROs) who are transmitting both individual and business electronic returns and electronic tax documents to the IRS EMS Front-End Processing Systems and also to state taxing authorities who retrieve state returns from the State Retrieval Systems located in Austin, TX and Memphis, TN.

Background

The Internal Revenue Service is charged with protecting taxpayer information using the most feasible, efficient and appropriate methods of protection available. Encrypting the transmissions between the trading partners and the IRS would enhance and complete the existing security provided by the trading partners' systems and by the IRS security zone.

Dedicated Line Filers

Based on an analysis of various e-file trading partner capabilities, the Internal Revenue Service announces that effective for the 2005 Filing Season, it will require the use of a minimum 128-bit FIPS approved but trading partner-chosen, procured, and installed method of encryption for use on trading partner-provided dedicated line(s) These dedicated lines may continue to be terminated at the Austin and Memphis EMS locations, and will permit use of the existing TELNET and FTP protocol methods. Each dedicated line trading partner will need to submit a new application and will identify the evaluation number referencing the chosen encryption method (*e.g.*, Brand, Model Number, FIPS 140-x, Evaluation Number xxx, and Evaluation Date). For filers using dedicated lines terminating on IRS network equipment, the IRS will provide the IOS implemented 128-bit IPSec 3DES encryption services.

Internet Transmission Filers

Recognizing that the majority of e-commerce and e-government applications are migrating to the Internet and using standard technologies, the Internal Revenue Service will provide the ability for registered users to electronically transmit return information to an IRS-provided and certified "Secure Web" site. Use of this Web site for the EMS e-filer program will require the use of Secure Sockets Layer (SSL) Version 3.0 using 128-bit encryption keys in an operational mode using the current modem based file transmission commands within a client commonly termed "TELNET/S". A very similar web and SSL technology is also being used for the IRS/FMS EFTPS program, *pay.gov*, the IRS modernized e-file RUP, as well as for other commercial applications, such as on-line banking. Support for SSL is provided at no extra cost in most Operating Systems available for the last five years, and is supported by the majority of Internet Service Providers (ISPs).

Extranet Connectivity

The IRS is capable of supporting a moderate number of Trading Partners who wish to use an encryption technology termed "IPSec", with a shared secret key from their facilities, over the Internet to IRS selected ISPs handling IRS EXTRANET termination points. These termination points will contain only IRS equipment. The protocol within this connection would be the same as the current dedicated line filers, but would not guarantee any level of performance. Transmitters wishing to use this method would need to notify the IRS, following procedures outlined in IRS Publication 1346.

Cost Impacts and Taxpayer Burdens

The cost impact of the Internet SSL method to IRS e-filers is expected to be minimal. The transmitters will incur the cost of the ISP, however, many of them already have and use an ISP. Currently the e-filers must pay for the long distance telephone call to the IRS front-end sites, and must make multiple calls if their transmission volume is high. Historic technologies also incur "dropped" calls. These occurrences are expected to be reduced when the Internet is used. Calls now would be to the usually local ISP phone number and its alternates.

Implementation Schedule

The Internal Revenue Service will make known to the registered trading partners and software developers the software standards and scripting opportunities on or before March 31, 2004, to allow completion of any software changes in their products. The IRS will attempt to ensure that those standards are generally compliant to those adopted by other IRS e-commerce Internet interfaces. The Internal Revenue Service will make known to the registered trading partners and software developers the URLs for the "Secure Web" service model by July 31, 2004. The Internal Revenue Service will make a "Secure Web" test facility available to its registered users on or about July 31, 2004, and have a production Assurance Testing (ATS) facility for the "Secure Web" method by November 1, 2004.

The Internal Revenue Service encourages all current and prospective e-filers to begin using one or both of the two new encryption methods by November 1, 2004. Dedicated line filers are encouraged to implement encryption at their earliest convenience and at a time that is mutually agreeable to both the trading partner and the Internal Revenue Service, prior to November 1, 2004.

Discontinuance of Existing Dial-Up Analog and Dial-Up ISDN Service

Effective December 1, 2003, the Service is no longer accepting requests for support of IRS dial-up ISDN services. During 2005, the IRS will phase down the number of its existing analog, PSTN dial-up line services and its companion existing ISDN dial-up line services, and will discontinue them on November 30, 2005.

ADDRESSES: Carolyn E. Davis, Senior Program Analyst, IRS, Electronic Tax Administration, OS:CIO:I:ET:S:SP, 5000 Ellin Road, Room C4-187, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Carolyn Davis—202-283-0589 (not a toll-free number). You may e-mail responses entitled *e-file Transmission Encryption* to *efile.transmission.encryption@irs.gov*.

Dated: December 18, 2003.

Jo Ann Bass,

Director Strategic Services Division, Electronic Tax Administration.

[FR Doc. 03-31825 Filed 12-24-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, January 21, 2004, at 8 a.m., central time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or (414) 297-1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, January 21, 2004, at 8 a.m., central time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297-1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 297-1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: December 19, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03-31826 Filed 12-24-03; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The committee is soliciting public comments, ideas and suggestions on improving the administration of the Earned Income Tax Credit by the IRS.

DATES: The meeting will be held Wednesday, January 21, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1-888-912-1227 (toll-free), or 718-488-2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, January 21, 2004, from 2 p.m. to 3 p.m. e.t. via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins.

The agenda will include various Earned Income Tax Credit issues.

Dated: December 19, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31827 Filed 12–24–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, January 20, 2004, from 11 a.m. to 12 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel.

The agenda will include the following: Various IRS issues.

Dated: December 19, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31828 Filed 12–24–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, January 20, 2004, at 1:30 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, January 20, 2004, from 1:30 to 3 p.m. Eastern time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Dated: December 19, 2003.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–31829 Filed 12–24–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Medical Research Service Merit Review Committee will meet from 9 a.m. to 3 p.m. on January 13, 2004, at the Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC.

The purpose of the Committee is to provide advice to the Under Secretary for Health on the review of the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The meeting will be open to the public for approximately one hour at the start to discuss the general status of the program. The remaining portion of the meeting will be closed to the public for discussion and evaluation of the scientific review of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, reference to and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During the portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing a portion of the meeting is in accordance with 5 U.S.C. 552b(c)(b) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the meeting should contact LeRoy G. Frey, Ph.D., Chief, Program Review Division, Medical Research Service (121F), Department of Veterans Affairs, Washington, DC, (202) 254–0288.

Dated: December 19, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–31815 Filed 12–24–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet January 27–29, 2004, from 8 a.m. to 4:30 p.m., in VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. On January 27 and 29, the meeting will be held in room C–7 and on January 28, the meeting will be held in room 630. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On January 27, the agenda will include briefings and updates on issues related to women veterans' issues in VA Veterans Health Administration, research studies on women veterans' health, the Capital Asset Realignment for Enhanced Services (CARES) process, focus group site visits, the Stakeholder Engagement Survey administered by the General Services Administration, and presentations of Certificates of Appointment to two new Committee members. On January 28, the Committee will be briefed on legislative issues affecting women veterans, compensation and pension benefits, and the Veterans' Employment and Training Service administered by the Department of Labor. On January 29, the Committee will receive updates on the VA Homeless Program, the required ethics briefing, and any new issues that the Committee members may introduce.

Any member of the public wishing to attend should contact Ms. Rebecca Schiller, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Schiller may be contacted either by phone at (202) 273–6193, fax at (202) 273–7092, or e-mail at *00W@mail.va.gov*. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: December 18, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–31814 Filed 12–24–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled, "Agent Orange Registry—VA" (105VA131) as set forth in the **Federal Register** 66 FR 3653–3656 dated January 16, 2001. VA is amending the system by revising the System Location, the Categories of Individuals Covered by this System, the Authority for Maintenance of the System, the Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, and the Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System. VA is republishing the system notice in its entirety.

DATES: Comments on the establishment of this system of records must be received no later than January 28, 2004. If no public comment is received, the amended system will become effective January 28, 2004.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed amended system of records to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to "*OGCRegulations@mail.va.gov*". All relevant material received before January 28, 2004, will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer (19F2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 320–1839.

SUPPLEMENTARY INFORMATION: VA expanded the Agent Orange Registry Program to provide registry examinations not only to the veterans who served in Vietnam between 1962 and 1975 and veterans who served in Korea between 1968 and 1969, but all other United States veterans who may have been exposed to dioxin or other toxic substances in a herbicide or defoliant during the conduct of or as a result of testing, transporting or spraying of herbicides for military purposes.

The Agent Orange Registry (AOR) located at the Austin Automation Center (AAC), Austin, Texas, is an automated integrated system containing demographic and medical data of all these registry examinations from 1988. These data were entered manually on code sheets by VA facility staff and copies sent to the AAC for entry into the AOR data set.

The AOR system of records located at VA Central Office, Washington, DC, is an optical disk system containing images of paper records, *i.e.*, code sheets, medical records, correspondence and questionnaires relating to the veterans exposed to agent orange. Once these paper records are scanned on optical disks, they are disposed of in accordance with VHA Records Control Schedule (RCS) 10.1.

The System Location has been amended to include the AOR system's change to a secure web-based data entry procedure. The process moved to a secure web-based data entry system at each VA facility during the first quarter of calendar year 2003. The secure web-based data entry system is maintained by the AAC and provides retrievable images to users. The optical disk system is currently being utilized where there is no access to the secure web-based system. However, the optical disk system is scheduled to be discontinued in 2004 and all access to the AOR system will be through the secure web-based data entry system.

The Categories of Individuals Covered by this System has been amended to the following:

Veterans who may have been exposed to dioxin or other toxic substance in an herbicide or defoliant during:

1. Active military service in the Republic of Vietnam between 1962 and 1975,
2. The Republic of Korea between 1968–1969,
3. The conduct of or as a result of testing, transporting or spraying herbicides for military purposes, and
4. Have had an AOR examination at a VA medical facility.

The Authority for Maintenance of the System has been amended to delete a duplicate reference to U.S.C. 1710(e)(1)(B).

VA is proposing to amend the following routine use disclosures of information to be maintained in the system:

- Routine use number seven (7) is being amended in its entirety. VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to state or local agencies charged with protecting the public's health as set forth in state law. The routine use will be as follows:

On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR parts 160 and 164. VHA may not disclose individually-identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information.

The Storage section of Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System has been amended to address the data collection process move to a web-based system.

References throughout the system notice to VA Headquarters have been amended to VA Central Office.

The Report of Intent to Publish an Amended System of Records and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: December 18, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

105VA131

SYSTEM NAME:

Agent Orange Registry—VA.

SYSTEM LOCATION:

Character-based data from Agent Orange Registry (AOR) Code Sheets are maintained in a registry dataset at the Austin Automation Center (AAC), 1615 Woodward Street, Austin, Texas 78772. Since the data set at the AAC is not all-inclusive, *i.e.*, narratives, signatures, *etc.*, noted on the code sheets are not entered into this system, images of the code sheets are maintained at the Department of Veterans Affairs, Environmental Agents Service (131), 810 Vermont Avenue, NW., Washington, DC 20420. These are electronic images of paper records, *i.e.*, code sheets, medical records, questionnaires and correspondence that are stored on optical disks.

The secure web-based data entry system is maintained by the AAC and provides retrievable images to users. The optical disk system is currently being utilized where there is no access to the secure web-based system. However, the optical disk system is scheduled to be discontinued in 2004 and all access to the AOR system will be through the secure web-based data entry system.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Veterans who may have been exposed to dioxin or other toxic substance in a herbicide or defoliant during:

1. Active military service in the Republic of Vietnam between 1962 and 1975,
2. The Republic of Korea between 1968 and 1969,
3. The conduct of or as a result of testing, transporting or spraying herbicides for military purposes, and
4. Have had an AOR examination at a Department of Veterans Affairs (VA) medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records may contain the following information: Code sheet records recording VA facility code identifier where the veteran was examined or treated; veteran's name; address; social security number; military service serial number; claim number; date of birth; race/ethnicity; marital status; sex; branch of service; periods of service; areas of service in Vietnam; list of military units where veteran served; method of exposure to herbicides; veteran's self-assessment of health; date of registry examination; veteran's complaints/symptoms; reported birth defects among veteran's children; consultations; diagnoses; disposition (hospitalized, referred for outpatient treatment, etc.) and name and signature of examiner/clinician coordinator, when available.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.) 1710(e)(1)(B) and 1720E.

PURPOSE(S):

The purpose of this AOR system of records is to provide information about: Veterans who have had an AOR examination at a VA facility; to assist in generating hypotheses for research studies; provide management with the capability to track patient demographics; reported birth defects among veterans' children; dioxin-related diseases; planning and delivery of health care services and associated costs; and with relation to claims for compensation which may assist in the adjudication of claims possibly related to herbicide exposure although more comprehensive medical records are required for evaluation of subject claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR parts 160 and 164.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person

acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited service organization representatives, and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures, and in the presentation and prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

(a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

(b) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

4. Disclosure may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of 44 U.S.C.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the Armed Services and/or their dependents may be disclosed

(a) To a Federal department or agency, or

(b) Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

7. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

9. Records from this system of records may be disclosed to the Department of Justice (DOJ) or in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear when: (a) The Department, or any component thereof; or (b) any employee of the Department in his or her official capacity where the DOJ or the Department has agreed to represent the employee; or (c) the U.S., when the Department determines that litigation is likely to affect the Department or any of its components; is a party to litigation, and has an interest in such litigation, and the use of such records by the DOJ or the Department is deemed by the Department to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In 2003, the data collection process moved to a secure web-based system. Data previously recorded manually and converted to electronic format is now input through the secure VA Intranet system. Data is stored on a web server hosted by the AAC and is retrievable by the facility. Three levels of access are provided for the data that is input, using password security linked to the AAC Top Secret Security system, with mandated changes every 90 days. Data from individual facilities is uploaded nightly and stored on Direct Access Storage Devices at the AAC, Austin, Texas, and on optical disks at VA Central Office, Washington, DC. AAC stores registry tapes for disaster back up at an off-site location. VA Central Office also has back-up optical disks stored off-site. In addition to electronic data, registry reports are maintained on paper documents and microfiche.

The optical disk system is currently being utilized where there is no access to the secure web-based system. The optical disk system is scheduled to be discontinued in 2004 and all access to the AOR system will be through the secure web-based data entry system. Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

RETRIEVABILITY:

Records are retrieved by name of veteran and social security number.

SAFEGUARDS:

Access to records at VA Central Office is only authorized to VA personnel on a "need to know" basis. Records are maintained in manned rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel. Registry data maintained at the AAC can only be updated by authorized AAC personnel.

Data is securely located behind the VA firewall and only accessible from the VA Local Area Network (LAN) through the VA Intranet. Read access to the data is granted through a telecommunications network to authorized VA Central Office staff. AAC reports are also accessible through a telecommunications network on a read-only basis to the owner (VA facility) of the data. Access is limited to authorized employees by individually unique access codes which are changed periodically.

Physical access to the AAC is generally restricted to AAC staff, VA Central Office staff, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records stored off-site for both the AAC and VA Central Office are safeguarded in secured storage areas. A disaster recovery plan is in place and system recovery is tested at an off-site facility in accordance with established schedules.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Environmental Agents Service (131), Office of Public Health and Environmental Hazards, (clinical issues) and Management/Program Analyst, Environmental Agents Service (131) (administrative issues), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Director, Environmental Agents Service (131), Office of Public Health and Environmental Hazards or the Management/Program Analyst, Environmental Agents Service (131), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Inquiries should include the veteran's name, social security number and return address.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name may write or visit the nearest VA facility or write to the Director, Environmental Agents Service (131) or the Management/Program Analyst, Environmental Agents Service (131), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORDS PROCEDURES:

Refer to previous item "Record Access Procedures."

RECORD SOURCE CATEGORIES:

VA patient medical records, various automated record systems providing clinical and managerial support to VA health care facilities, the veteran, family members, and records from the Veterans Benefits Administration, Department of Defense, Department of the Army, Department of the Air Force, Department of the Navy and other Federal agencies.

[FR Doc. 03–31812 Filed 12–24–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled "Ionizing Radiation Registry—VA" (69VA131) as set forth **Federal Register** 56 FR 26186 dated June 6, 1991, and last amended in the **Federal Register** 66 FR 30271–30273 dated June 5, 2001. VA is amending the system by revising the System Location, the Categories of Individuals Covered by this System, the Authority for Maintenance of the System, the Purpose(s) of the system, the Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, and the Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than January 28, 2004. If no public comment is received, the amended system will become effective January 28, 2004.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed amended system of records to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to "*OGCRegulations@mail.va.gov*". All relevant material received before January 28, 2004, will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer (19F2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 320–1839.

SUPPLEMENTARY INFORMATION: The Ionizing Radiation Registry (IRR) program is located at the Austin Automation Center (AAC), Austin, Texas, is an automated integrated system containing demographic and medical data of registry examinations from 1981 through the current date. These data were entered manually on code sheets by VA facility staff and hard copies were sent to the AAC for entry into the IRR data set. The IRR system of records located at VA Central Office, Washington, DC, is an optical disk system containing images of paper records, *i.e.*, code sheets, medical records, correspondence and questionnaires relating to the veterans exposed to ionizing radiation. Once these paper records are scanned on optical disks, they are disposed of in accordance with VHA Records Control Schedule (RCS) 10–1.

The System Location has been amended to include the IRR system's change to a secure web-based data entry procedure. The process moved to a secure web-based data entry system at each VA facility during the first quarter of calendar year 2003. The secure web-based data entry system is maintained by the AAC and provides retrievable images to users. The optical disk system is currently being utilized where there is no access to the secure web-based system. However, the optical disk system is scheduled to be discontinued in 2004 and all access to the IRR system will be through the secure web-based data entry system.

As amended by Title 38, Code of Federal Regulations, the Categories of Individuals Covered by this System has been amended. This system will continue to include data collected for veterans who may have been exposed to a radiation-risk activity, as authorized by Title 38, U.S.C., under the following conditions:

1. On-site participation in a test involving the atmospheric detonation of a nuclear weapon, whether or not the testing nation was the United States. Note: Reference to the timeframe

between 1945 and 1962 has been deleted.

2. Participation in the occupation of Hiroshima or Nagasaki from August 6, 1945, through July 1, 1946; or

(a) Internment as a Prisoner-of-War in Japan during World War II that the Secretary of Veterans Affairs determines resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans involved in the occupation of Hiroshima or Nagasaki;

3. Who have received nasopharyngeal (NP) radium treatments during active military, naval or air service.

4. Participated in radiation-risk activities, at the:

a. Department of Energy gaseous diffusion plants at Paducah, KY, Portsmouth, OH, or K25 area at Oak Ridge, TN, for at least 250 days before February 1, 1992;

b. Underground nuclear tests at Amchitka Island, AK, before January 1, 1974

The Categories of Individuals Covered by this System has also been amended as this system of record describes registries, not treatment or claims. Upon review of the system, the following former statements were found to be no longer necessary and are being deleted:

- 3 (a) veterans who apply for hospital or nursing home care under Title 38 United States Code, Chapter 17;
- 3 (b) files a claim for compensation under Title 38 United States Code, Chapter 11; or
- 3 (c) dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation under Title 38 United States Code, Chapter 3;

A duplicate reference to U.S.C. 1710(e)(1)(B) in this paragraph has also been deleted.

In addition to the categories of records maintained in the IRR system, clinicians' names and titles are included but may not be retrievable. Outdated information related to the estimate of the radiation doses to which the veterans are exposed while on active military duty has been deleted from these records.

These IRR records may have several identifiers—Department of Defense data are identified by military service number and only 25 percent are identified by social security numbers.

The Authority for Maintenance of the System has been amended to delete a duplicate reference to U.S.C. 1710(e)(1)(B).

The Purpose(s) of this system of records has been amended to further define the use of the records. The purpose of this IRR system of records is to provide information about veterans who have had an IRR examination at a VA facility, to assist in generating hypotheses for research studies, provide management with the capability to track patient demographics, reported birth defects among veterans' children or grandchildren; and radiogenic related diseases and planning and delivery of health care services and associated costs. The records are used to assist in generating hypotheses for research studies. Because of the self-selected nature of the registry participants, *i.e.* the individuals decide themselves to be part of the registry rather than being "chosen" in a scientific manner, this group cannot be used for scientific research. However, the IRR may assist researchers by providing clues or suggestions of specific health problems that then form the basis for the design and conduct of specific scientific studies.

VA is amending the following routine use disclosures of information to be maintained in the system:

- Routine use number nine (9) is being amended in its entirety. VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to state or local agencies charged with protecting the public's health as set forth in state law. The routine use will be as follows: On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR parts 160 and 164. VHA may not disclose individually-identifiable health information (as defined in HIPAA and the Privacy Rule, 42 U.S.C. 1320(d)(6) and 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information.

The Storage section of Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System has been amended to address the data collection process move to a web-based system.

Safeguards have been amended to state that data is securely located behind the VA firewall and only accessible from the VA Local Area Network (LAN) through the VA Intranet.

References throughout the system notice to VA Headquarters have been amended to VA Central Office.

The Report of Intent to Publish an Amended System of Records and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: December 18, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

69VA131

SYSTEM NAME:

Ionizing Radiation Registry—VA.

SYSTEM LOCATION:

Character-based data from Ionizing Radiation Code Sheets are maintained in a registry data set at the Austin Automation Center (AAC), 1615 Woodward Street, Austin, Texas 78772. Since the data set at the AAC is not all-inclusive, *i.e.*, narratives, signatures, etc., noted on the code sheets are not entered into this system, images of the code sheets are maintained at the Department of Veterans Affairs, Environmental Agents Service (131), 810 Vermont Avenue, NW., Washington, DC 20420. These are electronic images of paper records, *i.e.*, code sheets, medical records, questionnaires and correspondence that are stored on optical disks.

The secure web-based data entry system is maintained by the AAC and provides retrievable images to users. The optical disk system is currently being utilized where there is no access to the secure web-based system. However, the optical disk system is scheduled to be discontinued in 2004 and all access to the Ionizing Radiation Registry (IRR) system will be through the secure web-based data entry system.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Veterans who may have been exposed to ionizing radiation while on active military duty and have had an IRR examination at a Department of Veterans Affairs (VA) medical facility under conditions described in Title 38 United States Code (U.S.C.) 1710(e)(1)(B) and 1720E. These conditions include:

1. On-site participation in a test involving the atmospheric detonation of a nuclear device at a nuclear device testing site—the Pacific Island, *e.g.*, Bikini, New Mexico, Nevada, etc. (whether or not the testing nation was the United States);

2. Participation in the occupation of Hiroshima or Nagasaki, Japan, from August 6, 1945, through July 1, 1946;

(a) Internment as a POW in Japan during World War II which the Secretary of Veterans Affairs determines resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans involved in the occupation of Hiroshima or Nagasaki, Japan;

3. Treatment with nasopharyngeal (NP) radium irradiation while in the active military, naval or air service; and

4. Participated in radiation-risk activities at the:

(a) Department of Energy gaseous diffusion plants at Paducah, KY, Portsmouth, OH, or K25 area at Oak Ridge, TN, for at least 250 days before February 1, 1992;

(b) Underground nuclear tests at Amchitka Island, AK, before January 1, 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records consist of code sheet records containing VA facility code identifier where the veteran was examined or treated; veteran's name; address; social security number; military service serial number; claim number; date of birth; telephone number; sex; report of birth defects among veteran's children or grandchildren; dates of medical examinations; consultations; radiogenic related diseases; and name and signature of examiner/physician coordinator.

In addition, there may be medical records with information relating to the examination and/or treatment, including laboratory findings on vision, hearing, blood tests, electrocardiograms, chest x-rays, urinalysis, laboratory report displays, medical certificates to support diagnosis; progress notes; military unit assignments; questionnaires; correspondence relating to veteran's exposure history; personal history, *e.g.*, education, marital status, occupational history, family history, complaints/symptoms; personal medical history, habits, recreation, reproductive and family history, physical measurements; military discharge records; and VA claims for compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code (U.S.C.) 1710(e)(1)(B) and 1720E.

PURPOSE(S):

The records will be used for the purpose of providing information about veterans who have had an IRR examination at a VA facility; assisting in generating hypotheses for research studies; providing management with the capability to track patient demographics, and radiogenic related diseases; and planning and delivery of health care services and associated costs. The records are used to assist in generating hypotheses for research studies. Because of the self-selected nature of the registry participants, *i.e.*, the individuals decide themselves to be part of the registry rather than being "chosen" in a scientific manner, this group cannot be used for scientific research. However, the IRR may assist researchers by providing clues or suggestions of specific health problems that then form the basis for the design and conduct of specific scientific studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR parts 160 and 164.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited service organization representatives, and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures, and in the presentation and prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

(a) To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

(b) To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a standing written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

4. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 U.S.C.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requestor) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the Armed Services and/or their dependents may be disclosed

(a) To a Federal department or agency or

(b) Directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to insure the appropriateness of the disclosure to the contractor.

7. Any information in this system may be disclosed to a Federal grand jury, a Federal court or a party in litigation, or a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for VA to respond to and comply with the issuance of a Federal subpoena.

8. Any information in this system may be disclosed to a state or municipal grand jury, a state or municipal court or a party in a litigation, or to a state or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, in order for VA to respond to and comply with the issuance of a state or municipal subpoena; provided, that any disclosure or claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

9. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

10. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In 2003, the data collection process moved to a secure web-based system. Data previously recorded manually and converted to electronic format is now input through the secure VA Intranet system. Data is stored on a web server hosted by the AAC and is retrievable by the facility. Three levels of access are provided for the data that is input, using password security linked to the AAC Top Secret Security system, with mandated changes every 90 days. Data from individual facilities is uploaded nightly and stored on Direct Access Storage Devices at the AAC, Austin, Texas, and on optical disks at VA Central Office, Washington, DC. AAC stores registry tapes for disaster back up at an off-site location. VA Central Office also has back-up optical disks stored off-site. In addition to electronic data, registry reports are maintained on paper documents and microfiche.

The optical disk system is currently being utilized where there is no access to the secure web-based system. The optical disk system is scheduled to be discontinued in 2004 and all access to the IRR system will be through the secure web-based data entry system. Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

RETRIEVABILITY:

Documents are retrieved by name of veteran, social security number and service serial number.

SAFEGUARDS:

Access to records at VA Central Office is only authorized to VA personnel on a "need to know" basis. Records are maintained in manned rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel. Registry data maintained at the AAC can only be updated by authorized AAC personnel.

Data is securely located behind the VA firewall and only accessible from the VA Local Area Network (LAN) through the VA Intranet. Read access to the data is granted through a telecommunications network to authorized VA Central Office personnel. AAC reports are also accessible through a telecommunications network on a read-only basis to the owner (VA facility) of the data. Access is limited to authorized employees by individually unique access codes which are changed periodically.

Physical access to the AAC is generally restricted to AAC staff, VA Central Office, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records stored off-site for both the AAC and VA Central Office are safeguarded in secured storage areas. A disaster recovery plan is in place and system recovery is tested at an off-site facility in accordance with established schedules.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Program Chief for Clinical Matters, Office of Public Health and Environmental Hazards (13) (for clinical issues) and Management/Program Analyst, Environmental Agents Service (131) (for administrative issues), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Program Chief for Clinical Matters, Office of Public Health and Environmental Hazards (13) or the Management/Program Analyst, Environmental Agents Service (131), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Inquiries should include the veteran's name, social security number, service serial number, and return address.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name may write or visit the nearest VA facility or write to the Program Chief for

Clinical Matters, Office of Public Health and Environmental Hazards (13) or the Management/Program Analyst, Environmental Agents Service (131), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

CONTESTING RECORDS PROCEDURES:

Refer to previous item "Record Access Procedures."

RECORD SOURCE CATEGORIES:

VA patient medical records, various automated record systems providing clinical and managerial support to VA health care facilities, the veteran, family members, and records from Veterans Benefits Administration, Department of Defense, Department of the Army, Department of the Air Force, Department of the Navy and other Federal agencies.

[FR Doc. 03–31813 Filed 12–24–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 68, No. 248
Monday, December 29, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR-2003-0178; FRL-7554-3]

RIN 2060-AK59

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

Correction

In rule document 03-22928 beginning on page 69164 in the issue of Thursday, December 11, 2003, make the following correction:

§63.7995 [Corrected]

On page 69186, in §63.7995(b), in the final line, the date "December 11, 2005," should read, "December 11, 2006."

[FR Doc. C3-22928 Filed 12-24-03; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-7599-7]

RIN 2060-AL85

Deferral of Effective Date of Nonattainment Designations for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

Correction

In proposed rule document 03-31109 beginning on page 70108 in the issue of Tuesday, December 16, 2003, make the following correction:

On page 70119, in the third column, the signature date of "November 11, 2003" should read, "December 11, 2003".

[FR Doc. C3-31109 Filed 12-24-03; 8:45 am]

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Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, et al.
Ownership and Control Settlement Rule; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 774, 778, 843 and 847

RIN 1029–AC08

Ownership and Control Settlement Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), propose to amend certain provisions of our December 19, 2000, final ownership and control rule (hereinafter referred to as the 2000 final rule) in order to effectuate a settlement agreement we entered into with the National Mining Association (NMA). Specifically, we propose to amend the provisions of the 2000 final rule pertaining to the definitions of ownership and control; permit eligibility determinations; eligibility for provisionally issued permits; improvidently issued permits; challenges to ownership or control listings or findings; post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information; providing applicant, operator, and ownership and control information; improvidently issued State permits; and alternative enforcement. This proposed rule does not suspend any of the provisions of the 2000 final rule. The proposed revisions are authorized under the Surface Mining Control and Reclamation Act of 1977, as amended (hereinafter referred to as SMCRA or the Act).

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern Time, on February 27, 2004.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 5 p.m., Eastern Time, on January 20, 2004. If you wish to attend a hearing, but not speak, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held. If you wish to attend and speak at a hearing, you should follow the procedures under "III. Public Comment Procedures."

ADDRESSES: If you wish to provide written comments, you may submit your comments by any one of three methods (see "III. Public Comment Procedures"). We will make comments available for public viewing during regular business hours. You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240. You may also submit comments electronically to OSM at the following Internet address: *osmrules@osmre.gov.*

If you wish to comment on the information collection aspects of this proposed rule, submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to *OIRA_DOCKET@omb.eop.gov* or via facsimile to (202) 395–6566.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. We will announce the address, date and time for any hearing in the **Federal Register** before the hearing. If you are disabled and require special accommodation to attend a public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy, Jr., Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Applicant/Violator System Office, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (859) 260–8424 or (800) 643–9748. E-Mail: *ebandy@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background to the Proposed Rule

This proposed rule would amend certain provisions of our 2000 final ownership and control rule published on December 19, 2000 at 65 FR 79582. That rule, which took effect for Federal programs (*i.e.*, SMCRA programs for which OSM is the regulatory authority) on January 18, 2001, primarily addresses ownership or control of surface coal mining operations under section 510(c) of SMCRA. 30 U.S.C. 1260(c). Under section 510(c), a permit applicant is not eligible to receive a permit if the applicant owns or controls any surface coal mining operation that is in violation of SMCRA or other applicable laws. In addition to implementing section 510(c), the rule also addresses, among other things, permit application information requirements, post-permit issuance information requirements, entry of information into the Applicant/Violator System (AVS), application processing procedures, and alternative enforcement. *See generally* 65 FR 79661–71.

On February 15, 2001, the National Mining Association (NMA) filed a lawsuit in the U.S. District Court for the District of Columbia in which it challenges the 2000 final rule on multiple grounds. *National Mining Ass'n* v. *Office of Surface Mining,* No. 01–366 (CKK) (D.D.C.). NMA's lawsuit is the latest chapter in litigation concerning ownership and control and related issues. Litigation in this area—involving, at various times, OSM, State regulatory authorities (administering OSM-approved State programs), NMA, and environmental groups—has been contentious and ongoing, virtually uninterrupted, since at least 1988. The 2000 final rule, which we are proposing to revise, replaced a 1997 interim final rule (62 FR 19451), which was partially invalidated by the U.S. Court of Appeals for the District of Columbia Circuit. *National Mining Ass'n* v. *Department of the Interior,* 177 F.3d 1 (D.C. Cir. 1999) (*NMA* v. *DOI II*). The interim final rule replaced three sets of predecessor regulations dating back to 1988 and 1989 (53 FR 38868 [1988], 54 FR 8982 [1989], 54 FR 18438 [1989]), which were invalidated by the D.C. Circuit because the court found that one aspect of the rules was inconsistent with section 510(c) of the Act. *National Mining Ass'n* v. *Department of the Interior,* 105 F.3d 691 (D.C. Cir. 1997) (*NMA* v. *DOI I*). The preamble to the 2000 final rule contains a detailed discussion of the prior rules and the related litigation. *See generally* 65 FR 79582–84.

This ongoing cycle of litigation has created a great deal of regulatory uncertainty for OSM, State regulatory authorities (administering OSM-approved State programs), the regulated community, and the public in general. Thus, in an effort to introduce regulatory stability and bring the litigation between OSM and NMA to an end, we entered into negotiations with NMA in an attempt to settle NMA's challenge to the 2000 final rule. Ultimately, the parties were able to settle all of the issues presented in NMA's rule challenge. Under the terms of the settlement, we agreed to propose certain regulatory amendments "which are the subject of this proposed rulemaking—in accordance with the

Administrative Procedure Act's standard notice and comment procedures. We did not agree to finalize any of the provisions as proposed. We also agreed to publish—in this proposed rulemaking—certain clarifications to our preamble supporting the 2000 final rule.

We are not obligated, as a result of the settlement agreement, to issue a final rule based on this proposal. We will give due consideration to any public comments received on the proposed rule before deciding whether to issue a final rule and whether to finalize any provisions as proposed. However, we do view this rulemaking effort as an opportunity to ensure that we have the tools we need to enforce SMCRA, clarify ambiguous provisions, and reduce any unnecessary reporting burdens on industry and regulatory authorities. We are hopeful that any final rule flowing from this proposal will introduce a measure of regulatory stability to an area that has been in flux since at least 1988. As stated earlier, this proposed rule does not suspend any of the provisions of the 2000 final rule.

II. Discussion of the Proposed Rule

In this section, we discuss the proposed regulatory revisions to each section of the Code of Federal Regulations (CFR). The revisions include both those we propose in accordance with our settlement with NMA as well as certain non-substantive modifications that flow logically from the settlement proposals.

At the end of this section, we include certain clarifications to the preamble to our 2000 final rule. Although these aspects of the 2000 preamble did not impose any regulatory requirements, we agreed to publish clarifications as part of our settlement with NMA. Like the corresponding preamble provisions in the 2000 final rule, the clarifications we announce today do not impose regulatory requirements. As such, we are not seeking public comments on these issues, and we do not plan to address these topics again in a final rule.

30 CFR 701.5—Definitions

Control or Controller

In the 2000 final rule, we defined *control* or *controller* in terms of certain relationships that establish control of a surface coal mining operation. We also provided examples of persons who may be, but are not necessarily, controllers. NMA challenged the definition on multiple grounds, including that the definition is vague, arbitrary and capricious, and contrary to *NMA* v. *DOI II*. Given the alleged vagueness of the definition, NMA also objected to the requirement that a permit applicant must list all of its controllers in the permit application.

In order to settle this claim, we agreed to propose removing from the definition of *control* or *controller* at 30 CFR 701.5 the following: all of paragraph (3)—general partner in a partnership; all of paragraph (4)—person who has the ability to commit financial or real property assets; from paragraph (5), the phrase "alone or in concert with others," the phrase "indirectly or directly," and the list of examples at paragraphs (5)(i) through (5)(vi). Both parties agreed that if the proposed revisions were finalized, the remaining portion of the definition would still allow the regulatory authority to reach any person or entity with the "ability" to determine the manner in which a surface coal mining operation is conducted. Both parties also agreed that standard could encompass indirect and direct control, as well as control in concert with others, where there is actual ability to control.

While we are proposing to remove from the regulatory text two categories of controllers (general partner in a partnership; person who has the ability to commit financial or real property assets), as well as the list of examples of persons who may be controllers, we stress that, under this proposal, all of these persons may still be controllers. In fact, general partners and persons who can commit assets are almost always controllers. *See, e.g., NMA* v. *DOI II*, 177 F.3d at 7. However, because these persons are already covered under the "ability to control" standard, we propose to remove them from the regulatory text in order to simplify the definition. Likewise, although we propose to remove the examples of controllers, these persons may still be controllers if they in fact have the ability to control a surface coal mining operation. In our experience implementing section 510(c) of the Act since 1977, the persons identified in the examples are often controllers. Therefore, our discussion of these examples in the preamble to the 2000 final rule remains instructive, though it is important to remember that these examples are not exhaustive. *See* 65 FR 79598–600.

The proposed modification of the definition of *control* or *controller* is coupled with a proposal to remove the requirement to list all controllers in a permit application under current 30 CFR 778.11. Instead, we propose that only the natural person that is expected to have the greatest level of control must be disclosed as a controller. Permit applicants will continue to be required to include in a permit application the information required to be disclosed under sections 507 and 510(c) of SMCRA. We propose this modification to the permit application information requirements in order to establish a "bright line," objective standard for both applicants (who must submit certain information in a permit application) and regulatory authorities (who review applications for completeness and compliance with the Act). The "ability to control" standard discussed above gives regulatory authorities flexibility to consider all of the relevant facts, on a case-by-case basis, in determining whether control is present; regulatory authorities also have the leeway to follow control wherever it may exist in a series of business relationships. However, while it is important for regulatory authorities to retain this flexibility and leeway, it is difficult, or impossible, to have an objective information disclosure standard based on this type of definition. By removing the requirement for applicants to list all of their controllers in a permit application, this proposal would greatly reduce any uncertainty or subjectivity associated with the relevant permit information disclosure requirements. In sum, the proposals discussed above would give regulatory authorities the flexibility they need to enforce the Act, while simultaneously making the permit information requirements more objective.

Own, Owner, or Ownership

In its judicial challenge, NMA claimed that the definition of *own, owner,* or *ownership* at 30 CFR 701.5 in our 2000 final rule is inconsistent with SMCRA, arbitrary and capricious, and contrary to *NMA* v. *DOI II*. NMA also took issue with the "downstream" reach of the rule, as it pertains to ownership. The term "downstream," as used by the D.C. Circuit in the *NMA* v. *DOI I* and *NMA* v. *DOI II* litigation, refers to surface coal mining operations that are down a corporate (or other business) chain from the applicant. For example, if the applicant has a subsidiary, the subsidiary would be considered "downstream" from the applicant; by contrast, if the applicant has a parent company, the parent company would generally be considered "upstream" from the applicant. NMA's claim pertained to how far downstream the regulatory authority can look when making a permit eligibility determination based on ownership (as distinct from control) of a surface coal mining operation.

In order to settle this claim, we agreed to propose revisions to the definition of *own, owner,* or *ownership* at current 30 CFR 701.5 and the provision at current 30 CFR 773.12(a)(2) that governs the downstream reach of the definition. The first revision is to the definition itself. The current definition, at 30 CFR 701.5, includes persons "possessing or controlling in excess of 50 percent of the voting securities or other instruments of ownership of an entity." This definition could be confusing in that it uses the word "controlling," which is a separately defined term. In order to remove any potential confusion, we propose to add the term "owning of record" in place of "possessing or controlling." The term "owning of record" is a variant of "owners of record," which is found in section 507(b) of the Act. Thus, regulatory authorities and the regulated industry will be familiar with the term and its meaning. This proposed revision would not change the substance of the definition of *own, owner,* or *ownership.*

The second proposed revision is at current 30 CFR 773.12(a)(2), which addresses the downstream reach of the rule. In *NMA* v. *DOI II,* the U.S. Court of Appeals for the Federal Circuit clearly held that we can deny a permit based on limitless "downstream" *control* relationships. *NMA* v. *DOI II,* 177 F.3d at 4–5. That is, if the applicant indirectly controls an operation with a violation, through its ownership or control of intermediary entities, it is not eligible for a permit. *Id.* at 5. The operation with a violation can be limitlessly downstream from the applicant. While we believe the court's logic arguably extends to ownership, the *NMA* v. *DOI II* decision is not entirely clear on this point.

At present, the 2000 final rule allows us to reach downstream with regard to both ownership and control. Thus, under the current rule, we can deny a permit if the applicant indirectly *owns* an operation in violation of SMCRA or other applicable laws. The operation in violation can be infinitely downstream from the applicant—meaning that ownership of the operation can be indirect, through intermediary entities—as long as there is an uninterrupted chain of ownership between the applicant and the operation. NMA argued that this provision is contrary to the plain meaning of SMCRA and violates principles of corporate law. NMA claimed that ownership of a corporation does not equate to ownership of the corporation's assets (including mining operations). Thus, according to NMA, we should only be able to block a permit based on ownership if one of the applicant's own operations has a violation.

While we do not necessarily agree with NMA's analysis, in order to settle this claim, we agreed to propose a regulatory revision at 30 CFR 773.12(a), the effect of which would be to limit the reach of permit blocking based on ownership to "one level down" from the applicant. For example, if an applicant *directly* owns an entity with an unabated or uncorrected violation of SMCRA or other applicable laws—meaning there are no intermediary entities between the applicant and the entity with a violation—the applicant would not be eligible for a permit. In other words, the rule would reach one level down from the applicant to the entity the applicant owns. However, if the applicant *indirectly* owns an entity with a violation—meaning that there is at least one intermediary entity between the applicant and the entity with a violation—the applicant would not be ineligible for a permit based on ownership of a violator entity. Of course, the same applicant would be ineligible for a permit if it controlled the violator entity.

While we do not believe this approach is compelled by SMCRA or the decision in *NMA* v. *DOI II,* it is a reasonable interpretation of the Act. Moreover, as it pertains to control, the rule will continue to reach limitlessly "downstream." That is, in determining an applicant's eligibility for a permit, we may continue to consider violations at "downstream" operations, as long as there is control by the applicant. Because we can still deny a permit based on indirect *control* of an operation with a violation, through intermediary entities, the proposed modification to the downstream reach of *ownership* will not impair our ability to adequately enforce section 510(c) of the Act.

The proposed revision at 30 CFR 773.12(a) that pertains to the downstream reach of the definition of *own, owner,* or *ownership* is further discussed below in 30 CFR 773.12.

30 CFR 773.8—General Provisions for Review of Permit Application Information and Entry of Information Into AVS

We propose to revise current 30 CFR 773.8 by removing the phrase "ownership and control" from paragraph (b)(1). The proposed revision at (b)(1) would read: "We will enter into AVS the information you submit under §§ 778.11 and 778.12(c) of this subchapter." We note that this proposed revision would require regulatory authorities to enter into AVS one piece of information that they typically have not loaded into the system in the past: the identity of the person(s) responsible for submitting the Coal Reclamation Fee Report (Form OSM–1) and for remitting the reclamation fee payment to OSM. *See* current 30 CFR 778.11(a)(4). With this one minor exception, this is a non-substantive proposed revision that flows logically from our proposed revision to 30 CFR 778.11, discussed below.

30 CFR 773.9—Review of Applicant, Operator, and Ownership and Control Information

We propose to revise 30 CFR 773.9 by removing the phrase "applicant, operator, and ownership and control" where it occurs in paragraph (a). Revised paragraph (a) would read: "We, the regulatory authority, will rely upon the information that you, the applicant, submit under § 778.11 of this subchapter, information from AVS, and any other available information, to review your and your operator's business structure and ownership or control relationships." This non-substantive proposed revision flows logically from our proposed revision to 30 CFR 778.11, discussed below.

30 CFR 773.10—Review of Permit History

We propose to revise sections 30 CFR 773.10(b) and (c). In paragraph (b), we would remove the phrase "any of your controllers disclosed under §§ 778.11(c)(5) and 778.11(d)" and replace it with the phrase "your designated controller disclosed under § 778.11(d)." Paragraph (b) would then read: "We will also determine if you, your operator, or your designated controller disclosed under § 778.11(d) of this subchapter have previous mining experience." In paragraph (c), we would remove the language "your controllers, or your operator's controllers" from the first sentence and replace it with "or your designated controller." In the second sentence of paragraph (c), we would remove "and was not disclosed under § 778.11(c)(5) of this subchapter." Paragraph (c) would then read: "If you, your operator, or your designated controller do not have any previous mining experience, we may conduct additional reviews under § 774.11(f) of this subchapter. The purpose of this review will be to determine if someone else with mining experience controls the mining operation." These proposed revisions flow logically from our proposed revision to 30 CFR 778.11, discussed below.

30 CFR 773.12—Permit Eligibility Determinations

As indicated above, under our discussion of the definition of *own, owner,* or *ownership,* we also propose to revise 30 CFR 773.12(a), the provision in the 2000 final rule that affects the "downstream" reach of the rule. Specifically, we propose to revise paragraph (a)(2) so that we can no longer deny a permit based on indirect *ownership* of a surface coal mining operation with a violation; but we would retain the right to deny a permit based on indirect *control.* In order to simplify the rule, we also propose to merge paragraphs (a)(2) and (a)(3). The proposed revision to paragraph (a)(2), which would remove references to ownership, would provide that you, a permit applicant, are not eligible for a permit if any surface coal mining operation that "You or your operator indirectly control has an unabated or uncorrected violation and your control was established or the violation was cited after November 2, 1988." Thus, as explained above, with regard to ownership, we could only look "one level down" from the applicant in making a permit eligibility determination.

We are also proposing to revise 30 CFR 773.12(b). Consistent with the D.C. Circuit's ruling on retroactivity in *NMA* v. *DOI II,* 30 CFR 773.12(b) of our 2000 final rule provides that an applicant is eligible to receive a permit, notwithstanding the fact that the applicant or the applicant's operator indirectly owns or controls an operation with an unabated or uncorrected violation, if both the violation and the assumption of ownership or control occurred before November 2, 1988. However, 30 CFR 773.12(b) also provides that the applicant is *not* eligible to receive a permit under this provision if there "was an established legal basis, independent of authority under section 510(c) of the Act, to deny the permit * * *." NMA challenged 30 CFR 773.12(b), claiming that if there is an "independent authority" to deny the permit, that authority exists whether or not it is referenced in the regulatory language. According to NMA, the provision is superfluous and potentially confusing. We agree that any "independent authority" exists independent of this regulatory provision. Thus, in order to settle this claim, we propose to remove 30 CFR 773.12(b). Because we propose to remove 30 CFR 773.12(b), we also propose to redesignate paragraphs (c), (d), and (e) as (b), (c), and (d), respectively.

30 CFR 773.14—Eligibility for Provisionally Issued Permits

Section 773.14 of our 2000 final rule allows for the issuance of a provisionally issued permit if the applicant meets the criteria under 30 CFR 773.14(b). The promulgated regulatory language uses the word "*may,*" which indicates that the regulatory authority retains discretion to grant a provisionally issued permit, even if the applicant otherwise meets the eligibility criteria at 30 CFR 773.14(b). While our preamble discussion is not explicit on this point, we intended in this context that an applicant *is* eligible to receive a provisionally issued permit under the specified circumstances. *See, e.g.,* 65 FR 79618–19, 79622–24, 79632, 79634–35, and 79638.

In order to reconcile any ambiguity, and to settle a claim brought by NMA, today we propose to amend our rule language at 30 CFR 773.14(b) to clarify that an applicant who meets the 30 CFR 773.14(b) eligibility criteria will be eligible for a provisionally issued permit. We stress that an applicant must also meet all other permit application approval and issuance requirements before receiving a provisionally issued permit and that the provisional permittee must comply with all performance standards. *See generally* 65 FR 79622.

30 CFR 773.21—Initial Review and Finding Requirements for Improvidently Issued Permits

Sections 773.21 through 773.23 of our 2000 final rule set forth provisions relating to "improvidently issues permits," which are, in this context, permits that we should not have issued in the first instance because of the applicant's ownership or control of a surface coal mining operation with a violation. We propose two substantive revisions to 30 CFR 773.21(c).

The first revision relates to our burden of proof in making a preliminary finding that a permit was improvidently issued. This proposed revision would clarify that a preliminary finding of improvident issuance "must be based on reliable, credible, and substantial evidence and establish a *prima facie* case that [the] permit was improvidently issued." This proposed revision flows from the related proposed revisions to 30 CFR 773.27(a), which is discussed in more detail below.

We also propose to remove current 30 CFR 773.21(c)(2), which requires us to post notices of our *preliminary* findings of improvident permit issuance at our office closest to the permit area and on the Internet. This proposed revision is similar to one of our proposed revisions to 30 CFR 843.21; our rationale for removing these and similar posting requirements is set forth more fully under the discussion of 30 CFR 843.21, below.

30 CFR 773.22—Notice Requirements for Improvidently Issued Permits

We propose to remove current 30 CFR 773.22(d), which contains similar posting requirements to those found at current 30 CFR 773.21(c)(2), discussed above. Specifically, we propose to remove the requirement to post a notice of *proposed* suspension or rescission at our office closest to the permit area and on the Internet. Our rationale for removing these and similar posting requirements is set forth under the discussion of 30 CFR 843.21, below. Because we propose to remove paragraph (d), we further propose to redesignate current paragraphs (e) through (h) accordingly.

30 CFR 773.23—Suspension or Rescission Requirements for Improvidently Issued Permits

We propose to revise the posting requirements contained in current 30 CFR 773.23. Current 30 CFR 773.23(c)(2) requires us to post a *final* notice of permit suspension or rescission (which requires the holder of the improvidently issued permit to cease all surface coal mining operations on the permit) at our office closest to the permit area and on the Internet. As with the proposed revisions to sections 30 CFR 773.21 and 773.22, we propose to remove the requirement to post the final notices on the Internet. However, because this section pertains to *final* findings (as opposed to the *preliminary* and *proposed* findings under sections 30 CFR 773.21 and 773.22, respectively), we propose to retain the requirement to post the final notice at our office closest to the permit area. It is appropriate to post notices of such final actions for public view. Our rationale for revising these and similar posting requirements is set forth more fully under the discussion of 30 CFR 843.21, below.

30 CFR 773.26—How to Challenge an Ownership or Control Listing or Finding

Sections 773.25 through 773.28 of our 2000 final rule set forth provisions for challenging ownership or control listing or findings. Generally speaking, an ownership or control *listing* arises when a permit applicant identifies, or "lists," a person as an owner or controller in a permit application. That information is, in turn, entered into the AVS by the regulatory authority. By contrast, an ownership or control *finding* under 30 CFR 774.11(f) constitutes a regulatory authority's fact-specific determination that a person owns or controls a surface coal mining operation.

In its judicial challenge to our 2000 final rule, NMA claimed that 30 CFR 773.26(a) is confusing. That section explains how and where a person may challenge an ownership or control listing or finding. NMA claimed that the provision does not clearly delineate the appropriate forum in which to bring a challenge. Also, NMA was concerned that the provision seems to refer only to applicants and permittees, but not other persons who are identified in the AVS as owners or controllers.

Section 773.25 of the 2000 final rule provides that any person listed in a permit application or in the AVS as an owner or controller, or found by a regulatory authority to be an owner or controller, may challenge the listing or finding. As we explained in the preamble, our intent was, in fact, to allow any person listed in a permit application or in the AVS, or found to be an owner or controller, to initiate a challenge at *any* time, regardless of whether there is a pending permit application (or issued permit). *See* 65 FR 79631. Section 773.26(a) was not intended to limit in any way the universe of persons who may avail themselves of the challenge procedures under 30 CFR 773.25; rather, it merely specifies the procedure and forum in which to challenge an ownership or control listing or finding.

Nonetheless, in order to provide greater clarity and to settle NMA's claim, today we propose to amend our regulations at 30 CFR 773.26(a) to specify more clearly the forum in which to initiate an ownership or control challenge. The proposed revision specifies that challenges pertaining to a pending permit application are to be submitted to the regulatory authority with jurisdiction over the permit application. All other challenges concerning ownership or control of a surface coal mining operation are to be submitted to the regulatory authority with jurisdiction over that surface coal mining operation.

We note that, in meeting its obligations under section 510(c) of the Act and the State counterparts to that provision, each State, when it receives a permit application, must apply its own ownership and control rules to determine whether the applicant owns or controls any surface coal mining operations with violations. *See generally* 65 FR 79637. Further, we stress that an ownership or control decision by one State is not necessarily binding on any other State. This provision comports with principles of State primacy, and recognizes that not all States will have identical ownership and control rules.

We also propose to add new 30 CFR 773.26(e) in partial satisfaction of our settlement with NMA concerning the relative burdens of proof in ownership or control challenges. This new provision would allow a person who is unsure why he or she is shown in the AVS as an owner or controller of a surface coal mining operation to request an explanation from our AVS Office. The new provision would require us to respond to such a request within 14 days. Our response would be informal and would set forth in simple terms why the person is shown in AVS. In most, if not all, cases, the explanation would be as simple as specifying that the person was found to be an owner or controller under 30 CFR 774.11(f) (of which the person should already be aware due to that section's written notice requirement) or was listed as an owner or controller in a permit application. Understanding the basis for being shown in the AVS will give persons a better sense of the type of evidence they will need to introduce in an ownership or control challenge.

30 CFR 773.27—Burden of Proof for Ownership or Control Challenges

As mentioned above, our 2000 final rule contains provisions for challenging ownership or control listings or findings. A successful challenger must prove by a preponderance of the evidence that he or she is not, or was not, an owner or controller. In its judicial challenge, NMA argued that the rule should be amended so that we must first demonstrate at least a *prima facie* case so that the challenger can know what evidence he or she must rebut. The preamble to our 2000 final rule already states:

> [I]n making a finding under final § 774.11(f), the regulatory authority must indeed make a *prima facie* determination of ownership and control, based on the evidence available to the regulatory authority. In making a *prima facie* determination, the finding should include evidence of facts which demonstrate that the person subject to the finding meets the definition of *own, owner,* or *ownership* or *control* or *controller* in § 701.5.
> 65 FR 79640.

Nonetheless, in order to set forth more clearly the relative burdens of the parties, we agreed to propose regulatory revisions to sections 30 CFR 773.27(a) and 774.11(f), as well as a related change to 30 CFR 773.21(c), discussed above. We also agreed to propose a new 30 CFR 773.26(e), discussed above. The proposed revision to 30 CFR 774.11(f), discussed further under the proposed revisions to 30 CFR 774.11, below, clarifies that a regulatory authority's finding of ownership or control must be based on reliable, credible, and substantial evidence and establish a *prima facie* case of ownership or control. The proposed revision to 30 CFR 773.27(a) merely clarifies that a person can challenge either an ownership or control listing or a *prima facie* finding of ownership or control under 30 CFR 774.11(f).

If the challenge concerns a finding of ownership or control, the regulatory authority bears the initial burden of establishing a *prima facie* case of ownership or control based on reliable, credible, and substantial evidence. (In this context, a *prima facie* case is one consisting of sufficient evidence to establish the elements of ownership or control and that would entitle the regulatory authority to prevail unless the evidence is overcome by other evidence.) If the challenge concerns an ownership or control listing, the regulatory authority's initial burden is substantially lower: the regulatory authority must specify only the circumstances of the listing, such as who listed the person, the date of the listing, and in what capacity the person was listed. In either type of challenge, after the regulatory authority meets its initial burden, the burden shifts to the challenger to prove, by a preponderance of the evidence, that he or she does not, or did not, own or control the relevant surface coal mining operation. The challenger bears the ultimate burden of persuasion.

30 CFR 773.28—Written Agency Decision on Challenges to Ownership or Control Listings or Findings

We propose to revise the posting requirements contained in current 30 CFR 773.28. Current 30 CFR 773.28(d) requires us to post final decisions on ownership and control challenges on the AVS and on the Internet. We propose to remove the requirement to post these decisions on the Internet. However, because this section pertains to final decisions on ownership or control challenges, we propose to retain the requirement to post these decision on the AVS. Because these final findings may have permit eligibility consequences, it is appropriate to make such findings publicly available by posting them on the AVS. Our rationale for revising these and similar posting requirements is set forth more fully under the discussion of 30 CFR 843.21, below.

30 CFR 774.11—Post-permit Issuance Requirements for Regulatory Authorities and Other Actions Based on Ownership, Control, and Violation Information

We propose several revisions to 30 CFR 774.11 of our 2000 final rule, which contains, among other things, requirements for regulatory authorities after a permit is issued. The first proposed revision is to current 30 CFR 774.11(a)(3), which requires the regulatory authority to enter into AVS all "[c]hanges of ownership or control within 30 days after receiving notice of a change." We propose to revise 30 CFR 774.11(a)(3) by removing "Changes of ownership or control" and replacing it with "Changes to information initially required to be provided by the applicant under 30 CFR 778.11." This proposed change flows from the proposed revision to 30 CFR 778.11, discussed under 30 CFR 701.5 (definition of *control* or *controller*), above, and under 30 CFR 778.11, below.

The second proposed revision is to current 30 CFR 774.11(e). Under the specified circumstances, 30 CFR 774.11(c) of our 2000 final rule requires us to make a preliminary finding of permanent permit ineligibility. Section 30 CFR 774.11(d) provides for administrative review of the preliminary finding. Section 30 CFR 774.11(e), as promulgated, reads as follows: "We must enter the results of the finding and any hearing into AVS." Confusion has arisen as to whether a preliminary finding must be entered into AVS before administrative resolution.

To settle a claim brought by NMA, we today clarify that a finding of permanent permit ineligibility may only be entered into AVS if it is affirmed on administrative review or if the person subject to the finding does not seek administrative review and the time for seeking administrative review has expired. We propose to revise 30 CFR 774.11(e) to effectuate this clarification. At paragraph (e), we propose to create a subheading "Entry into AVS." Revised paragraph (e)(1) would then read, "If you do not request a hearing, and the time for seeking a hearing has expired, we will enter our finding into AVS." Revised paragraph (e)(2) would read, "If you request a hearing, we will enter our finding into AVS only if that finding is upheld by the Office of Hearings and Appeals."

The next proposed revision relates to a regulatory authority's finding of ownership or control. As explained above, under the discussion of the burden of proof provisions in 30 CFR 773.27, we propose to revise 30 CFR 774.11(f) to clarify that a regulatory authority's written finding of ownership or control must be based on reliable, credible, and substantial evidence and establish a *prima facie* case of ownership or control. The written finding requirement is found at current 774.11(f)(1); we propose to incorporate the requirement into revised 30 CFR 774.11(f). In the preamble to our 2000 final rule, we already explained that a finding of ownership or control must be based on a *prima facie* determination of ownership or control (65 FR 79640); the proposed revision makes this requirement explicit. The proposed revision would add the requirement that a finding of ownership or control must be based on reliable, credible, and substantial evidence.

Another proposed revision to 30 CFR 774.11 concerns NMA's claim that our 2000 final rule denies a person the right to challenge a decision to "link" it by ownership or control to a violation before the link is entered into AVS, which is an "automated information system of applicant, permittee, operator, violation and related data OSM maintains to assist in implementing the Act." 30 CFR 701.5. In order to settle this claim, we agreed to propose a new paragraph (g) at 30 CFR 774.11 and related regulatory revisions.

The new paragraph (g) would provide that after we make a finding of ownership or control under 30 CFR 774.11(f), and before we enter the finding into AVS, we will allow the person subject to the finding 30 days in which to submit information tending to demonstrate a lack of ownership or control. After reviewing any information submitted, if we are persuaded that the person is not an owner or controller, we will serve the person with a written notice to that effect; if we still find the person to be an owner or controller, we will enter the finding into AVS and require the person to satisfy the requirements of 30 CFR 778.11(d), if appropriate. The latter two requirements—entry of the decision into AVS and compliance with 30 CFR 778.11(d)—are found, in substance, at 30 CFR 774.11(f)(2) and (f)(3); we propose to incorporate them into proposed sections 30 CFR 774.11(g)(1) and (g)(2). The process envisioned in proposed paragraph (g) will be informal and non-adjudicatory.

Finally, we propose to add new paragraph (h). This new paragraph would provide that we do not need to make a finding of ownership or control before entering into AVS the information that permit applicants are required to disclose under sections 30 CFR 778.11(b) and (c). For example, if we find that an applicant failed to disclose the operator in a permit application, we can enter the operator into AVS without making a finding of ownership or control. This is so because the applicant is required to identify the operator under section 507(b)(1) of the Act, 30 U.S.C. 1257(b)(1), and under 30 CFR 778.11(b)(3). However, proposed paragraph (h) would also make clear that the *mere listing* of a person in the AVS pursuant to 30 CFR 778.11(b) or (c) does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation. Of course, some of the persons required to be disclosed under sections 30 CFR 778.11(b) and (c) *will* be owners or controllers, but that is because they meet the definition of *own, owner,* or *ownership* or *control* or *controller* at 30 CFR 701.5, not because they are listed in AVS. We propose to make non-substantive revisions to current paragraph (g) and redesignate that provision as paragraph (i).

30 CFR 778.11—Providing Applicant, Operator, and Ownership and Control Information

We are proposing several revisions in 30 CFR 778.11. First, we propose to remove the term "ownership and control" from the heading of the section. Thus, the heading for 30 CFR 778.11 would be revised to read "Providing applicant and operator information." We are proposing this revision largely because we are also proposing to remove current 30 CFR 778.11(c)(5), which requires an applicant to disclose all of its owners and controllers in a permit application (*see* discussions under 30 CFR 701.5, definition of *control* or *controller,* and below). As a result of this change, together with the proposed revisions discussed below, revised 30 CFR 778.11 would comport more closely with certain of the permit information requirements contained in section 507(b) of the Act. 30 U.S.C. 1257(b). While some of the persons identified in revised 30 CFR 778.11 will in fact be owners or controllers, we believe the broad term "applicant and operator information" more aptly describes the range of information an applicant would be required to disclose under revised 30 CFR 778.11.

Current 30 CFR 778.11(a)(1) requires an applicant to identify whether it and its operator are "corporations, partnerships, sole proprietorships, or other business entities." We propose to add "associations" to this list of business entities to conform the provision more closely to section 507(b)(4) of the Act. Similarly, an applicant must provide certain information for the persons identified in

30 CFR 778.11(c). We propose to add "partner" to this list of persons. We also propose to redesignate current 30 CFR 778.11(c)(4) as 30 CFR 778.11(c)(5) and revise it to read "Person who owns 10 percent or more of the applicant or the operator." These changes likewise comport with section 507(b)(4) of the Act.

As we explain under the discussion of 30 CFR 701.5, above, in conjunction with revising the definition of *control* or *controller*, we propose to remove the requirement at 30 CFR 778.11(c)(5), which requires an applicant to identify all of its owners or controllers in a permit application. We propose this revision because we believe it is important to establish "bright line," objective permit information requirements. Since we propose to retain a definition of control that vests regulatory authorities with discretion to make fact-specific findings of control on a case-by-case basis, it is difficult, or impossible, to have an objective reporting requirement based on that definition. Even though we propose to remove this reporting requirement, we are confident that the disclosure requirements at sections 507(b) and 510(c) of the Act will give regulatory authorities all the information they need to enforce section 510(c). Further, we note that this information is not required to be disclosed under the Act. We have submitted a request to the Office of Management and Budget that modifies the information collection requirements for Part 778 to reflect this proposed change.

Finally, in litigation concerning our 2000 final rule, NMA challenged 30 CFR 778.11(d). This section provides that "[t]he natural person with the greatest level of effective control over the entire proposed surface coal mining operation must submit a certification, under oath, that he or she controls the proposed surface coal mining operation." NMA challenged the provision on procedural and substantive grounds, claiming, among other things, that it is vague and raises self-incrimination concerns. In order to settle this claim, we propose to revise the regulatory language at 30 CFR 778.11(d) to clarify the applicability and scope of the provision.

Particularly, we are proposing that a permit applicant must designate the natural person expected to have the greatest level of control over the entire proposed surface coal mining operation. That person would, in turn, sign the permit application, thereby acknowledging the designation. The proposed amendment would also clarify that a designation will not, by itself, be sufficient evidence on which to base the imposition of an individual civil penalty under sections 30 CFR 724.12 or 846.12 or an alternative enforcement action under sections 30 CFR 847.11 or 847.16. However, if the operation that the designated person controls has an unabated or uncorrected violation, the designated person would not be eligible to receive a permit under 30 CFR 773.12 or section 510(c) of SMCRA, unless he successfully challenges his control of the operation under sections 30 CFR 773.25 through 773.28. *See, e.g.*, 65 FR 79631 (explaining that even persons who must currently certify as to their control can, in effect, "de-certify" if they can demonstrate changed circumstances).

30 CFR 843.21—Procedures for Improvidently Issued State Permits

Section 843.21 of our 2000 final rule revised the procedures governing State permits that have been improvidently issued based on ownership or control relationships. This section provides for direct Federal enforcement, including notices of violation and cessation orders, if a State fails to take appropriate action. NMA objected to a provision that requires Internet posting of our initial notice that we have reason to believe a State permit may have been improvidently issued. In order to settle this claim, we agreed to propose a regulatory revision at paragraph (a), but we did not agree to remove the Internet posting requirement. The revision at paragraph (a) would provide that the initial notice must be based upon reliable and credible information. Since a finding of improvident issuance can have potentially serious ramifications, it is only fair that the initial notice be based on reliable and credible information.

Upon further consideration, we propose to remove all Internet posting requirements found in the 2000 final rule. These Internet posting requirements can be found at current sections 30 CFR 773.21(c)(2), 773.22(d), 773.23(c)(2), 773.28(d), 843.21(a)(2), 843.21(c)(2), and 843.21(d). We also propose to remove the requirement to post certain *preliminary* decisions "at our office closest to the permit area." These posting requirements are found at current sections 30 CFR 773.21(c)(2), 773.22(d), 843.21(a)(2), and 843.21(c)(2). We propose to retain the requirement to post certain *final* decisions at our office closest to the permit area (or, in one instance, on AVS). These final decision posting requirements are found at proposed sections 30 CFR 773.23(c)(2), 773.28(d), and 843.21(d).

Our inclusion of the Internet posting requirements in the first instance was primarily based on comments that we should expand the public's access to our decisions. *See, e.g.*, 65 FR 79632. While public access to final decisions remains important, we have come to believe that the various Internet posting requirements in the 2000 final rule could be unduly burdensome to regulatory authorities, especially when public notice of final decisions can be accomplished by the less burdensome, conventional method of posting them at our office closest to the permit area. Further, regulatory authorities are already required to enter much of the relevant information into AVS, which is available to the public. Posting *preliminary* findings by any method could likewise become unduly burdensome; further, posting of preliminary findings is of questionable value to the public. For these reasons, we propose to remove all Internet and *preliminary* finding posting requirements, but retain public posting of our final decisions. In terms of information collection burdens on regulatory authorities, we note that we have not yet required the States to implement these posting requirements. Thus, because we propose to eliminate an information collection that never took effect for the States, there is no net change to the information collection burden.

30 CFR 847.11—Criminal Penalties

30 CFR 847.16—Civil Actions for Relief

During the course of litigation over our 2000 final rule, NMA claimed that certain of the rule's "alternative enforcement" provisions unlawfully abrogate State prosecutorial discretion by making it mandatory for States to seek criminal penalties or institute civil actions for relief upon the occurrence of certain specified conditions. *See* sections 30 CFR 847.11 (criminal penalties), 847.16 (civil actions for relief), and 847.2(c) (requiring State regulatory programs to include criminal penalty and civil action provisions that are no less stringent than the Federal requirements). Upon further reflection, we agree that the regulatory authority—Federal or State—should retain the discretion to evaluate the severity of a violation and ultimately to determine whether referral for alternative enforcement is warranted. As such, and in order to settle NMA's claim, we propose to amend our regulations at sections 30 CFR 847.11 and 847.16 to remove the mandatory nature of referrals for alternative enforcement. We propose to accomplish this by changing the word "will" to "may" in the operative provisions to underscore that a regulatory authority “may,” but is not obligated to, refer a particular matter for alternative enforcement.

Clarifications to the Preamble to Our 2000 Final Ownership and Control Rule

As explained above, as part of our settlement with NMA, we agreed to publish certain clarifications to the preamble supporting our 2000 final rule. Like the corresponding preamble provisions in our 2000 final rule, the clarifications we announce today do not impose regulatory requirements. As such, we are not seeking public comments on these issues, and we do not plan to address these topics again in a final rule.

1. In *NMA* v. *DOI I,* the court of appeals explained that, as a general rule, we may not deny a permit based on violations of persons who own or control the applicant (so-called “upstream” owners and controllers). However, the court explained: “OSM has leeway in determining who the applicant is. As [NMA] concedes, OSM has the authority, in instances where there is subterfuge, to pierce the corporate veil in order to identify the real applicant.” *NMA* v. *DOI I,* 105 F.3d at 695. Thus, the court held, “once OSM has determined that it has the true applicant before it, OSM’s power is constrained by the specific statutory language of section 510(c)—only those violations of operations owned or controlled by the applicant are relevant.” *Id.*

At 65 FR 79609 through 79611 of the preamble of our 2000 final ownership and control rule, there is substantial discussion of the “true applicant” concept and a related discussion of corporate veil-piercing. In that portion of the 2000 final rule’s preamble, our intent was to explain why we chose not to define the term “true applicant,” as well as to identify a non-exclusive list of theories that may be available to a regulatory authority in attempting to ascertain the identity of the true applicant. This general preamble language was not intended to impose any regulatory requirement on regulatory authorities.

Nonetheless, confusion has arisen as to whether we are directing State regulatory authorities, via preamble language, to use any of the identified theories to identify the true applicant. To settle a claim brought by NMA in its judicial challenge to our 2000 final rule, we today clarify that we are not directing State regulatory authorities to use any of the three identified tools, or any other particular means, in ascertaining whether the nominal permit applicant is also the true applicant. Should a State attempt to pierce a corporate veil or otherwise ascertain the identity of the true applicant, it is for the State to decide which legal authorities it can and will advance. Ultimately, however, each permitting authority—whether State or Federal—must be satisfied that it indeed has the “true applicant before it.” *NMA* v. *DOI I,* 105 F.3d at 695. As we stated in the preamble of the 2000 final rule:

> In most cases, the nominal applicant (the person whose name appears on the permit application) will also be the true applicant. * * * However, if the regulatory authority has reason to believe that the nominal applicant is not the true applicant, the regulatory [authority] should conduct an investigation to determine the identity of the true applicant. In short, each regulatory authority should consider the totality of circumstances in determining whether the nominal applicant is also the true applicant.

65 FR 79610–11.

2. Section 773.12 of our 2000 final rule requires regulatory authorities to determine whether permit applicants are eligible to receive a permit under section 510(c) of SMCRA, based on certain ownership or control relationships. At 65 FR page 79616 of the preamble, in response to public comments, we explained that permit revisions and renewals are not necessarily exempt from the requirements of section 510(c) of SMCRA. Specifically, we stated that regulatory authorities may evaluate all permitting actions, including revisions and renewals, for eligibility under section 510(c). Confusion has arisen as to whether we are directing States to conduct a section 510(c) permit eligibility review for permit revisions and renewals.

To settle a claim brought by NMA, today we clarify that we are not requiring States to conduct such a review for permit renewals and revisions other than transfers, assignments, or sales of permit rights under 30 CFR 774.17. However, in our view, States retain the discretion to require section 510(c) reviews for any revision or renewal. Nonetheless, we do not believe a section 510(c) review is necessarily warranted when a regulatory authority orders a revision under 30 CFR 774.10. In that circumstance, we believe that it would make little sense to conduct a section 510(c) review if such a review would preclude the permittee from correcting the problem that resulted in issuance of the revision order. Other than the clarification we announce today, the 2000 final rule’s preamble discussion on this topic, including the legal rationale supporting our position, remains in force.

III. Public Comment Procedures

Electronic or Written Comments: If you submit written comments, they should be specific, confined to issues pertinent to the proposed rule, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on a final rule will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

Except for comments provided in an electronic format, you should submit three copies of your comments if practicable. We will not consider anonymous comments. Comments received after the close of the comment period (*see* DATES) or at locations other than those listed above (*see* ADDRESSES) will not be considered or included in the Administrative Record.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (*see* ADDRESSES). Individual respondents may request that we withhold their home address from the rulemaking record. We will honor this request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent’s identity, to the extent allowed by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public hearings: We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating in a hearing should inform Mr. Earl Bandy (*see* FOR FURTHER INFORMATION CONTACT), either orally or in writing by 5 p.m., Eastern time, on January 20, 2004. If no one has contacted Mr. Bandy to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her testimony.

Public meeting: If there is only limited interest in a hearing at a particular location, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with us to discuss the proposed rule may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All meetings will be open to the public and, if possible, notice of the meetings will be posted at the appropriate locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the administrative record of this rulemaking.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The revisions to the provisions governing the section 510(c) review required by SMCRA and related provisions will not have an adverse economic impact on the coal industry or State regulatory authorities. It may in fact reduce expenses for the coal industry and States by reducing the reporting and posting requirements contained in our existing regulations.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As previously stated, the revisions to the existing provisions may reduce the cost of doing business for the regulated industry and State regulatory authorities. Further, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The revisions being proposed are procedural in nature and do not affect the use or value of private property.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13132—Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the proposed revisions pertaining to section 510(c) reviews required by SMCRA and related provisions would not have substantial direct effects on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a significant energy action under Executive Order 13211. The revisions to the provisions governing the section 510(c) review required by SMCRA and related provisions would not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), OSM has submitted the information collection and recordkeeping requirements of 30 CFR part 778 to the Office of Management and Budget (OMB) for review and approval.

30 CFR Part 778

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information—30 CFR 778.

OMB Control Number: 1029–XXX3.

Summary: Sections 507(b) and 510(c) of Pub. L. 95–87 provide that applicants for permits to engage in or carry out surface coal mining operations must submit certain information to the regulatory authority in a permit application. The required disclosures include information about the applicant's legal identity, business structure and business relationships, permit and violation histories, and related information. This information is used to ensure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 301 Surface coal mining permit applicants and 24 State regulatory authorities.

Total Annual Responses: 2,388.

INFORMATION COLLECTION FOR 30 CFR PART 778

Section	Respondents	Responses	Hours per response	Total hours
778.9	301	888	1.15	1,024
778.11	301	376	1.4	526
778.12	301	75	2.4	180
778.13	301	75	2.4	180
778.14	301	45	2.6	120
778.15	324	324	5.6	1,806
778.16	213	213	8	1,710
778.17	324	324	2.8	903
778.22	68	68	2	135
Totals	301	2,388	2.75	6,584

Total Annual Burden Hours: 6,584.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of OSM and State regulatory authorities, including whether the information will have practical utility;

(b) The accuracy of OSM's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents.

Under the Paperwork Reduction Act, OSM must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. This number appears in section 778.8 of 30 CFR part 778. To obtain a copy of OSM's information collection clearance requests, explanatory information, and related forms, contact John A. Trelease at (202) 208–2783 or by e-mail at *jtreleas@osmre.gov*.

By law, OMB must respond to OSM's request for approval within 60 days of publication of this proposed rule, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and recordkeeping requirements by January 28, 2004, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to *OIRA_DOCKET@omb.eop.gov*, or via facsimile to (202) 395–6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov*.

National Environmental Policy Act

OSM has reviewed this rule and determined that it is categorically excluded from the National Environmental Policy Act process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

How Will This Rule Affect State and Indian Programs?

Following publication of a final rule, we will evaluate the State and Indian programs approved under section 503 of SMCRA to determine any changes in those programs that may be necessary. When we determine that a particular State program provision should be amended, the particular State will be notified in accordance with the provisions of 30 CFR 732.17. On the basis of the proposed rule, we have made a preliminary determination that State program revisions will be required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, *etc.* aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections (a "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 773.14)? (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? (6) What else could we do to make the proposed rule easier to understand? Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 773

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 774

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 778

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 847

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: December 19, 2003.

Patricia E. Morrison,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM proposes to amend 30 CFR Parts 701, 773, 774, 778, 843, and 847 as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Amend § 701.5 as follows:
a. Revise the definition of *control* or *controller*.
b. Revise the definition of *own, owner*, or *ownership*.
The revised definitions read as follows.

§ 701.5 Definitions.

* * * * *

Control or *controller*, when used in parts 773, 774, and 778 and § 843.21 of this chapter, refers to or means—

(1) A permittee of a surface coal mining operation;

(2) An operator of a surface coal mining operation; or

(3) Any other person who has the ability to determine the manner in which a surface coal mining operation is conducted.

* * * * *

Own, owner, or *ownership*, as used in parts 773, 774, and 778 and § 843.21 of this chapter (except when used in the context of ownership of real property), means being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

* * * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

3. The authority citation for part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*; and 16 U.S.C. 1531 *et seq.*

4. In § 773.8, revise paragraph (b)(1) to read as follows:

§ 773.8 General provisions for review of permit application information and entry of information into AVS.

* * * * *

(b) * * *

(1) The information you submit under §§ 778.11 and 778.12(c) of this subchapter.

* * * * *

5. In § 773.9, revise paragraph (a) to read as follows:

§ 773.9 Review of applicant, operator, and ownership and control information.

(a) We, the regulatory authority, will rely upon the information that you, the applicant, submit under § 778.11 of this subchapter, information from AVS, and any other available information, to review your and your operator's business structure and ownership or control relationships.

* * * * *

6. In § 773.10, revise paragraphs (b) and (c) to read as follows:

§ 773.10 Review of permit history.

* * * * *

(b) We will also determine if you, your operator, or your designated controller disclosed under § 778.11(d) of this subchapter have previous mining experience.

(c) If you, your operator, or your designated controller do not have any previous mining experience, we may conduct additional reviews under § 774.11(f) of this subchapter. The purpose of this review will be to determine if someone else with mining experience controls the mining operation.

7. In § 773.12, revise paragraphs (a)(1) and (a)(2), remove paragraphs (a)(3) and (b), and redesignate paragraphs (c), (d) and (e) as paragraphs (b), (c), and (d), respectively, to read as follows:

§ 773.12 Permit eligibility determination.

(a) * * *

(1) You directly own or control has an unabated or uncorrected violation; or

(2) You or your operator indirectly control has an unabated or uncorrected violation and your control was established or the violation was cited after November 2, 1988.

* * * * *

8. In § 773.14, revise paragraph (b) introductory text to read as follows:

§ 773.14 Eligibility for provisionally issued permits.

* * * * *

(b) We, the regulatory authority, will find you eligible for a provisionally issued permit under this section if you demonstrate that one or more of the following circumstances exists with respect to all violations listed in paragraph (a) of this section—

* * * * *

9. In § 773.21, revise paragraph (c) to read as follows:

§ 773.21 Initial review and finding requirements for improvidently issued permits.

* * * * *

(c) When we make a preliminary finding under paragraph (a) of this section, we must serve you with a written notice of the preliminary finding, which must be based on reliable, credible, and substantial evidence and establish a *prima facie* case that your permit was improvidently issued.

* * * * *

10. Amend § 773.22 by removing paragraph (d) and redesignating paragraphs (e), (f), (g) and (h) as (d), (e) (f), and (g), respectively.

11. In § 773.23, revise paragraph (c)(2) to read as follows:

§ 773.23 Suspension or rescission requirements for improvidently issued permits.

* * * * *

(c) * * *

(2) Post the notice at our office closest to the permit area.

* * * * *

12. In § 773.26, revise the table in paragraph (a) and add paragraph (e) to read as follows:

§ 773.26 How to challenge an ownership or control listing or finding.

* * * * *

(a) * * *

If the challenge concerns . . .	then you must submit a written explanation to . . .
(1) A pending State or Federal permit application . . .	the regulatory authority with jurisdiction over the application.
(2) Your ownership or control of a surface coal mining operation, and you are not currently seeking a permit . . .	the regulatory authority with jurisdiction over the surface coal mining operation.

* * * * *

(e) At any time, you, a person listed in AVS as an owner or controller of a surface coal mining operation, may request an explanation from the AVS Office as to the reason you are shown in AVS in an ownership or control capacity. Within 14 days of your request, the AVS Office will provide a response describing why you are listed in AVS.

13. In § 773.27, revise paragraph (a) to read as follows:

§ 773.27 Burden of proof for ownership or control challenges.

* * * * *

(a) When you challenge a listing of ownership or control or a *prima facie* finding of ownership or control made under § 774.11(f) of this subchapter, you must prove by a preponderance of the evidence that you either—

(1) Do not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

(2) Did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

* * * * *

14. In § 773.28, revise paragraph (d) to read as follows:

§ 773.28 Written agency decision on challenges to ownership or control listings or findings.

* * * * *

(d) We will post all decisions made under this section on AVS.

* * * * *

PART 774—REVISION; RENEWAL; TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS; POST-PERMIT ISSUANCE REQUIREMENTS; AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL, AND VIOLATION INFORMATION

15. The authority citation for part 774 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

16. In § 774.11, revise paragraphs (a)(3), (e), (f), redesignate paragraph (g) as paragraph (i), add new paragraphs (g) and (h), and revise newly designated paragraph (i) to read as follows:

§ 774.11 Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information.

(a) * * *

We must enter into AVS all . . .	within 30 days after . . .
* * *	* *
(3) Changes to information initially required to be provided by the applicant under 30 CFR 778.11.	receiving notice of a change.
* * *	* *

* * * * *

(e) *Entry into AVS.* (1) If you do not request a hearing, and the time for seeking a hearing has expired, we will enter our finding into AVS.

(2) If you request a hearing, we will enter our finding into AVS only if that finding is upheld by the Office of Hearings and Appeals.

(f) At any time, we may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof. If we identify such a person, we must issue a written finding to the person and the applicant or permittee describing the nature and extent of ownership or control; our written finding must be based on reliable, credible, and substantial evidence and establish a *prima facie* case of ownership or control.

(g) After we issue a written finding under paragraph (f) of this section, we will allow you, the person subject to the finding, 30 days in which to submit any information tending to demonstrate your lack of ownership or control. If, after reviewing any information you submit, we are persuaded that you are not an owner or controller, we will serve you a written notice to that effect. If, after reviewing any information you submit, we still find that you are an owner or controller or if you do not submit any information within the 30-day period, we must—

(1) Enter our finding under paragraph (f) of this section into AVS; and

(2) Require you to satisfy the requirements of § 778.11(d) of this subchapter, if appropriate.

(h) We need not make a finding as provided for under paragraph (f) of this section before entering into AVS the information required to be disclosed under §§ 778.11(b) and (c) of this subchapter; however, the mere listing of a person in the AVS pursuant to §§ 778.11(b) or (c) does not create a presumption or constitute a determination that such person owns or controls a surface coal mining operation.

(i) If we identify you as an owner or controller under paragraph (f) of this section, you may challenge the finding using the provisions of §§ 773.25, 773.26 and 773.27 of this subchapter.

PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

17. The authority citation for part 778 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

18. In § 778.11, revise the section heading and paragraphs (a)(1), (c)(2), (c)(3), (c)(4), (c)(5) and (d) to read as follows:

§ 778.11 Providing applicant and operator information.

(a) * * *

(1) A statement indicating whether you and your operator are corporations, partnerships, associations, sole proprietorships, or other business entities;

* * * * *

(c) * * *

(2) Partner.

(3) Director.

(4) Person performing a function similar to a director.

(5) Person who owns 10 percent or more of the applicant or the operator.

(d) In the permit application, you must designate the natural person expected to have the greatest level of control over the entire proposed surface coal mining operation. That person must also sign the permit application, acknowledging the designation. Such designation will not, by itself, be sufficient evidence on which to base the imposition of an individual civil penalty under §§ 724.12 or 846.12 or an alternative enforcement action under §§ 847.11 or 847.16 of this chapter.

* * * * *

PART 843—FEDERAL ENFORCEMENT

19. The authority citation for part 843 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

20. In § 843.21, revise paragraphs (a) and (d), remove paragraph (c)(2), redesignate paragraph (c)(3) as paragraph (c)(2), to read as follows:

§ 843.21 Procedures for improvidently issued State permits.

(a) *Initial notice.* If we, OSM, on the basis of any reliable and credible information available to us, including any such information submitted by any person, have reason to believe that a State-issued permit meets the criteria for an improvidently issued permit under § 773.21 of this chapter, or the State regulatory program equivalent, and the State has failed to take appropriate action on the permit under the State regulatory program equivalents of §§ 773.21 through 773.23 of this chapter, we must issue a notice, by certified mail, to the State, to you, the permittee, and to any person providing information under paragraph (a) of this section. The notice will state in writing the reasons for our belief that your permit was improvidently issued. The notice also will request the State to take the appropriate action, as specified in paragraph (b) of this section, within 10 days.

* * * * *

(d) *Federal inspection and written finding.* No less than 10 days but no more than 30 days after providing notice under paragraph (c) of this section, we will conduct an inspection and make a written finding as to whether your permit was improvidently issued under the criteria in § 773.21 of this chapter. In making that finding, we will consider all available information, including information submitted by you, the State, or any other person. We will post that finding at our office closest to the permit area. If we find that your permit was improvidently issued, we must issue a notice to you and the State by certified mail. The notice will state in writing the reasons for our finding under this section.

* * * * *

PART 847—ALTERNATIVE ENFORCEMENT

21. The authority citation for part 847 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

22. In § 847.11, revise the introductory text to read as follows:

§ 847.11 Criminal penalties.

Under sections 518(e) and (g) of the Act, we, the regulatory authority, may request the Attorney General to pursue criminal penalties against any person who—

* * * * *

23. In § 847.16, revise paragraph (a) introductory text to read as follows:

§ 847.16 Civil actions for relief.

(a) Under section 521(c) of the Act, we, the regulatory authority, may request the Attorney General to institute a civil action for relief whenever you, the permittee, or your agent—

* * * * *

[FR Doc. 03–31791 Filed 12–24–03; 8:45 am]

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Part III

Securities and Exchange Commission

17 CFR Part 240

Recordkeeping Requirements for Registered Transfer Agents; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–48949; File No. S7–13–03]

RIN 3235–AI87

Recordkeeping Requirements for Registered Transfer Agents

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rule.

SUMMARY: The Commission is amending its rule concerning recordkeeping requirements for registered transfer agents. The amendments will make clear that registered transfer agents may use electronic, microfilm, and microfiche media as a substitute for hard copy records, including cancelled stock certificates, for purposes of complying with the Commission's transfer agent recordkeeping rules and that a third party on behalf of a registered transfer agent may place into escrow the required software information.

EFFECTIVE DATE: January 28, 2004.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or David Karasik, Special Counsel, at 202–942–4187, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

I. Discussion of Amendments to Rule 17Ad–7(f)

A. Background

Rule 17Ad–6 [1] sets forth the records that transfer agents must make and preserve and Rule 17Ad–7 describes how and for how long the required records must be maintained. On April 27, 2001, the Commission adopted amendments[2] to Rule 17Ad–7, that (1) allows registered transfer agents to use electronic storage media[3] to maintain records that they are required by Rule 17Ad–6 to retain and (2) modified the requirements for using micrographic media [4] as a method of record storage. Specifically, Rule 17Ad–7(f) requires transfer agents that use electronic or micrographic media to store records to:

- Use electronic or micrographic storage mechanisms that are designed to ensure the accessibility, security, and integrity of the records, detect attempts to alter or remove the records, and provide means to recover altered, damaged, or lost records;
- Create an index of the records that are electronically or micrographically stored and store the index with the underlying records;
- Keep a duplicate of all records and indexes that are stored using electronic or micrographic storage media;
- Be able to promptly download electronically or micrographically stored records to an alternate medium such as paper, microfilm, or microfiche; and
- Keep in escrow an updated copy of the software or other information that is necessary to access and download electronically stored records.

Rule 17Ad–7 does not require transfer agents that wish to continue to maintain their records in hard copy format to maintain their records any differently from the way they stored them prior to the rule change. The purpose of those amendments was to increase the flexibility and efficiency of transfer agent recordkeeping while maintaining necessary controls over accuracy, integrity, and access to transfer agent records.

B. Discussion of Rule Amendments

Since the amendments to Rule 17Ad–7(f) were adopted in April 2001, we have learned that there is some uncertainty whether (1) Rule 17Ad–7(f) allows transfer agents to rely exclusively on electronic or micrographic records for purposes of the Commission's transfer agent recordkeeping rules and to no longer maintain hard copy records, including cancelled certificates and (2) a third party on behalf of the transfer agent may deposit with an independent escrow agent a copy of all the documentation required under Rule 17Ad–7(f)(5)(ii) for the purpose of complying with Rule 17Ad–7(f)(5)(ii).[5] In order to eliminate this uncertainty, the Commission issued a release requesting comment on proposed textual changes to Rule 17Ad–7(f) ("Proposing Release").[6]

We proposed to amend paragraph (f) of Rule 17Ad–7 to clarify that records, including cancelled securities certificates, stored electronically or micrographically in accordance with the provisions of Rule 17Ad–7 may serve as a substitute for hard copy records required to be maintained pursuant to Rule 17Ad–6. Accordingly, this "substitution" provision would allow, but not mandate, the destruction of hard copy records, including securities certificates, if electronic or micrographic records have been created in conformity with Rule 17Ad–7(f).[7]

In addition, we proposed to amend paragraph (f)(5)(ii) of Rule 17Ad–7 to clarify that a transfer agent may fulfill its software escrow obligation by having a third party deposit with an independent escrow agent a copy of all the documentation required under Rule 17Ad–7(f)(5)(ii) on behalf of the transfer agent.[8] A transfer agent using a third party vendor to maintain its records would be allowed to have the third party vendor place in escrow a copy of the vendor's proprietary source code on behalf of the transfer agent using the vendor's services. This amendment also would allow a third party vendor maintaining the records of more than one transfer agent to place in escrow one copy of the vendor's proprietary source code for all the transfer agents for which it acts.[9]

II. Discussion of Comment Letters

We received three comment letters in response to the Proposing Release.[10]

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[1] 17 CFR 240.17Ad–6. All references to Rules 17Ad–6 and 17Ad–7 or to any paragraph of those rules will be to 17 CFR 240.17Ad–6 and 240.17Ad–7, respectively.

[2] Securities Exchange Act Release No. 44227 (Apr. 27, 2001), 66 FR 21648 (May 1, 2001) ("Adopting Release").

[3] Under Rule 17Ad–7(f)(1)(ii), the term "electronic storage media" refers to any digital storage medium or system.

[4] Under Rule 17Ad–7(f)(1)(i), the term "micrographic media" refers to microfilm or microfiche or any similar medium.

[5] Under Rule 17Ad–7(f)(5)(ii), transfer agents that choose to use electronic storage media must, among other things, "place in escrow with an independent third party and keep current a copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code and the appropriate documentation and information necessary to access records and indexes * * *"

[6] Securities Exchange Act Release No. 48036 (June 16, 2003); 68 FR 36951 (June 20, 2003).

[7] The Commission has proposed new Rule 17Ad–19 that would require transfer agents to establish and implement written procedures for the cancellation, storage, transportation, and destruction of securities certificates. Securities Exchange Act Release No. 43401 (Oct. 2, 2000); 65 FR 59766 (Oct. 6, 2000). In addition, while amended Rule 17Ad–7 will permit the destruction of paper records for purposes of our recordkeeping requirements, a transfer agent may have an obligation to preserve such paper records under other applicable law or rules.

[8] One situation that calls for this clarifying amendment is when a software provider licenses its electronic records storage system software to a transfer agent but does not grant a license for the source code. In this case, the transfer agent does not have access to the source code.

[9] Rule 17Ad–7(f)(5)(ii) requires the third party to file a written undertaking with the Commission stating that it agrees to furnish the Commission with the appropriate documentation and information necessary to access the records and indexes promptly upon request.

[10] Letters from Jeffrey G. Rutowski, Vice President, Integrated Fund Services (June 30, 2003); Cathy Danahy, Assistant Director, Nebraska Secretary of State's Office, Records Management Division (July 14, 2003); and Charles V. Rossi, Division President, EquiServe, Inc. (July 29, 2003).

Integrated Fund Services ("IFS") argued that the general requirement that an escrow agent be independent of both the transfer agent and the third party software provider is overly burdensome to transfer agents and software developers and that sufficient legal and regulatory remedies exist that provide the Commission access to the software should the transfer agent fail to do so. IFS believes that these factors discourage transfer agents from using electronic records management systems.

The Records Management Division of the Nebraska Secretary of State contended that (1) electronic documents are not as widely accepted as evidence in state and federal judicial proceedings compared to paper and microfilm records, (2) in addition to the software, the hardware (including printers and ink cartridges) necessary to retrieve and reproduce hard copy images of the records should also be kept in escrow, (3) paper and microfilm are easier to access than electronic records, and (4) paper and microfilm records should be subject to the same performance requirements as electronic records, specifically that they should be indexed, kept in duplicate, and kept safe and secure (*e.g.*, from heat and sunlight).

While we will consider these two commenters' observations and suggestions as we continue to assess the effectiveness of the transfer agent recordkeeping rules, their comments do not address the issues presented in the Proposing Release, which was to clarify that (1) electronic records may be maintained in lieu of paper records and (2) a third party may escrow the required software on behalf of a transfer agent. These comments relate more to the previously adopted amendments to Rule 17Ad–7 that allow transfer agents to use electronic storage media to maintain their records.[11]

EquiServe supported the proposed amendments. EquiServe stated that the proposed amendments will resolve an ambiguity, especially with respect to cancelled certificates, whether hard copy records need to be maintained if they are also stored electronically pursuant to the requirements set forth in Rule 17Ad–7. In addition, EquiServe agreed with the need to make clear that third parties may escrow the source code on behalf of transfer agents.

After careful consideration of the comment letters, we are adopting the proposed amendments to Rule 17Ad–7(f) as proposed.

III. Paperwork Reduction Act

The amendments to Rule 17Ad–7(f) do not contain new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA")[12] and therefore do not impose any new collection of information requirements that would require approval of the Office of Management and Budget ("OMB"). OMB initially approved the paperwork burden for Rule 17Ad–7(f) (OMB Control No. 3235–0136) when the Commission proposed amendments for Rule 17Ad–7(f) in 1999.[13]

IV. Costs and Benefits of the Proposed Rule Amendments

The Commission has identified certain costs and the benefits of the amendments to Rule 17Ad–7(f) as described below. Commenters did not provide any quantitative or other specific data relating to the costs or benefits of the proposed rule. We expect that registered transfer agents will choose to adopt electronic or micrographic recordkeeping if it is cost effective for them to do so.

A. Benefits

The amendments to Rule 17Ad–7(f) should also provide specific benefits to U.S. investors, issuers, transfer agents, and other financial intermediaries. The proposed software escrow provision should enable transfer agents to more conveniently comply with the current Rule 17Ad–7(f)(5)(ii) requirement that a copy of the electronic storage system the transfer agent utilizes to store its records be placed in escrow with an independent third party. Transfer agents that choose to exclusively adopt electronic or micrographic-based records systems in lieu of paper records may realize cost-savings and reduce certain risks associated with paper-based recordkeeping. While these benefits are not readily quantifiable in terms of dollar value, the use of electronic and storage media should reduce storage burdens (*e.g.*, the need for storage space) that transfer agents currently face in maintaining paper records. By further clarifying the ramifications of each records format system, transfer agents might now choose to use a broader range of storage methods. In addition, transfer agents that decide to store records electronically or micrographically will no longer have the facility or operational costs of a traditional paper based system. Transfer agents could then pass the cost savings to issuers who can, in turn, see a similar reduction in their transfer agent service fees. Also, by eliminating any legal uncertainty whether electronically and micrographically-retained records may serve as a substitute for hard copy records, registered transfer agents will be free to assess which storage method will best suits their business needs. Should they choose to benefit from advances in electronic recordkeeping technology, the time and labor in maintaining and accessing records should be reduced, resulting in operational and financial efficiencies. Other benefits include:

- Increased efficiency of recordkeeping operations by reducing the need to maintain records in hard copy format;
- Reduced likelihood that documents will be lost or misfiled;
- Ability to retrieve documents more quickly;
- Audit trails can be automated;
- Reduction of risk for natural disasters;
- File centralization is automatic (file and records need not be removed from their storage in order to reference them);
- Multiple persons can view the same document simultaneously;
- Access authorization can be automated;
- Space required for document storage is drastically reduced;
- Document indexing and cross-referencing can be automatic; and
- Documents can be copied, faxed, printed, and e-mailed without the paper originals.

B. Costs

The amendments to Rule 17Ad–7(f) should not impose costs on any particular person or entity because compliance with this provision would apply only to those transfer agents that choose to store any of their records exclusively in electronic form. Nevertheless, transfer agents that elect to use micrographic media or electronic storage media may incur some costs in destroying or otherwise disposing hard copy records that they elect to dispose or destroy. Any costs related to the use of micrographic or electronic storage media should be at least partly offset by the resulting elimination of the need to maintain and store records in hard copy format. This cost is likely to depend upon the volume of hard copy records needed to be disposed. We expect these costs to be relatively minimal.[14]

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[11] See *supra* note 2 and accompanying text.

[12] 44 U.S.C. 3501 *et seq.*

[13] Securities Exchange Act Release No. 41442 (May 25, 1999), 64 FR 29608 (June 2, 1999). Subsequently, OMB approved the extension of this paperwork collection.

We estimate that approximately 60 transfer agents will use a third party to escrow the required source code.[15] Each transfer agent will evaluate the risk and cost effectiveness of its records management solution differently based upon the solution that is best for its business model, such as its business practices and volume, and that assures its ability to comply with Rule 17Ad–7. Moreover, we cannot predict the effect of future market competition and innovation on the technologies that transfer agents might employ for their recordkeeping.

In addition, there will be some cost associated with the escrow requirement amendment. However, the Commission the Commission considered these costs in the April 2001 adopting release and any new costs associated with the escrow amendment (*i.e.*, having a third party escrow the source code on the transfer agent's behalf) would likely be included in the software contract between the parties.

V. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Act[16] requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

Section 23(a)(2) of the Act requires us to consider the anti-competitive effects of any rules that we adopt under the Act. This section prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In the Proposing Release, the Commission solicited comments on whether the amendments to Rule 17Ad–7 would have any effects on competition, efficiency and capital formation. We received no comments in response to this solicitation.

The Commission believes the amendments should improve efficiency, competition, and capital formation. The amendments should promote efficiency by allowing registered transfer agents to benefit from advances in recordkeeping technology. The amendments should promote competition between the vendors who create and manufacture the new storage technologies and between the transfer agents who use the new methods. Vendors can compete with each other to develop systems that can allow transfer agents to manage their records on a more economical basis. The improvement in storage technologies would allow transfer agents to compete among one another in offering to companies a more cost-effective and efficient service. Finally, the amendments should not adversely affect capital formation because the amendments relate solely to post-issuance activity.

The Commission does not anticipate that the amendments will impose any burden on competition that is not necessary or appropriate in furtherance of the Act. The amended rule permits, but does not require, registered transfer agents to use electronic or micrographic media to retain their records in lieu of hard copies and a third party to place the required software code into escrow on behalf of a registered transfer agent. The amendments are intended to remove legal uncertainties facing transfer agents who decide to store records in an electronic or micrographic form. The Commission believes that by adopting these amendments, transfer agents will have greater certainty to assess which storage method will best suits their business needs.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act ("RFA").[17] This analysis relates to amendments to Rule 17Ad–7(f) under the Securities Exchange Act of 1934("Act")[18] to determine whether the rule amendments will have a significant economic impact on a substantial number of small entities. The amendments will allow registered transfer agents to take advantage of improvements in electronic recordkeeping technology by being able to store their records exclusively using electronic storage technology and by being able to have a third party place in escrow the source code on behalf of the transfer agent.

A. Need for the Rule

Notwithstanding recent amendments to Rule 17Ad–7,[19] there appeared to be some uncertainty whether (1) Rule 17Ad–7(f) allows transfer agents to rely exclusively on electronic or micrographic records for purposes of the Commission's transfer agent recordkeeping rules and to no longer maintain hard copy records, including cancelled certificates, and (2) a third party may deposit with an independent escrow agent a copy of all the documentation required under Rule 17Ad–7(f)(5)(ii) on behalf of the transfer agent for the purpose of complying with Rule 17Ad–7(f)(5)(ii).[20]

In order to eliminate this uncertainty, the Commission is amending Rule 17Ad–7(f) to clarify that records, including cancelled securities certificates, required to be maintained pursuant to Rule 17Ad–6 may be retained electronically or micrographically and may serve as a substitute for hard copy records required to be maintained pursuant to Rule 17Ad–6. Accordingly, this substitution provision allows, but would not mandate, the destruction of hard copy records, including securities certificates, after electronic or micrographic records have been created in conformity with Rule 17Ad–7(f).[21]

The amendments make it clear that transfer agents may use electronically and micrographically retained records to comply with the Commission's transfer agent recordkeeping requirements. We note that the Commission did not take a position on whether transfer agents should store their records using electronically or micrographically instead of in paper.

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[14] In the adopting release to Rule 17Ad–7(f), we estimated that approximately 500 transfer agents were likely to use electronic or micrographic storage systems. During the year-and-a-half since Rule 17Ad–7(f) has been effective, however, five transfer agents have taken advantage of the record storage alternatives provided by the rule.

[15] Although this estimate represents less than 10% of the number of currently-registered transfer agents, we expect that many of the largest bank, corporate, and independent transfer agents, which represent over 90% of the entire transfer agent industry volume, will eventually convert their records-management systems to electronic-based solutions.

[16] 15 U.S.C. 78c(f).

[17] 5 U.S.C. 603.

[18] 15 U.S.C. 78a *et seq.*

[19] *Supra* note 2.

[20] Under Rule 17Ad–7(f)(5)(ii), transfer agents that choose to use electronic storage media to store the required records must, among other things, "place in escrow with an independent third party and keep current a copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code and the appropriate documentation and information necessary to access records and indexes. * * * "

[21] While Rule 17Ad–7 would permit destruction of paper records for purposes of our recordkeeping requirements, a transfer agent may have an obligation to preserve paper records under other applicable laws or rules. The Commission proposed new Rule 17Ad–19 that would require transfer agents to establish and implement written procedures for the cancellation, storage, transportation, and destruction of securities certificates. Securities Exchange Act Release No. 43401 (Oct. 2, 2000); 65 FR 59766 (Oct. 6, 2000). In addition, while Rule 17Ad–7 would permit the destruction of paper records for purposes of our recordkeeping requirements, a transfer agent may have an obligation to preserve such paper records under other applicable law or rules.

In addition, we are amending paragraph (f)(5)(ii) of Rule 17Ad–7 to clarify that a transfer agent may fulfill its software escrow obligation by having a third party deposit with an independent escrow agent a copy of all the documentation required under Rule 17Ad–7(f)(5)(ii) on behalf of the transfer agent.[22]

Amendments to Rule 17Ad–7 are adopted under the Commission's authority set forth in Sections 17, 17A, and 23 of the Act.

B. Significant Issues Raised by Public Comment

We received three comment letters in response to the Proposing Release.[23] Integrated Fund Services ("IFS") argued that the general requirement that an escrow agent be independent of both the transfer agent and the third party software provider is overly burdensome to transfer agents and software developers and that sufficient legal and regulatory remedies exist that provide the Commission access to the software should the transfer agent fail to do so. IFS believes that these factors discourage transfer agents from using electronic records management systems.

The Records Management Division of the Nebraska Secretary of State contended that (1) electronic documents are not as widely accepted as evidence in state and federal judicial proceedings compared to paper and microfilm records, (2) in addition to the software, the hardware, including printers and ink cartridges, necessary to retrieve and reproduce hard copy images of the records should also be kept in escrow, (3) paper and microfilm are easier to access than electronic records, and (4) paper and microfilm records should be subject to the same performance requirements as electronic records, specifically that they should be indexed, kept in duplicate, and kept safe and secure (*e.g.* from heat and sunlight).

While we will consider these two commenters' observations and suggestions as we continue to assess the effectiveness of the transfer agent recordkeeping rules, such comments do not address the issues presented in the Proposing Release, which was to clarify that (1) electronic records may be maintained in lieu of paper records and (2) a third party may escrow the required software on behalf of a transfer agent. Their comments relate more to the issues raised when we adopted amendments to Rule 17Ad–7 that allowed transfer agents to use electronic storage media to maintain their records.

EquiServe supported the proposed amendments. EquiServe stated that the proposed amendment will resolve an ambiguity, especially with respect to cancelled certificates, whether hard copy records need to be maintained if they are also stored electronically pursuant to the requirements set forth in Rule 17Ad–7. In addition, EquiServe agreed with the need to make clear that third parties may escrow the source code on behalf of transfer agents.

Accordingly, we are adopting the proposed amendments to Rule 17Ad–7(f) entirely as proposed.

C. Small Entities Subject to the Rule

The rule amendments should not affect registered transfer agents that are small entities. Rule 0–10(h) under the Act defines the term "small business" or "small organization" to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed "small business" or "small organizations" as defined in Rule 0–10 under the Exchange Act; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10.[24] We estimate that 180 registered transfer agents qualify as small entities and would be subject to the amendment to Rule 17Ad–7(f).

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments do not impose any new reporting, recordkeeping, or other compliance costs or requirements on any particular person or entity. First, the amendments do not in any way change the manner that transfer agents are currently maintaining their records today. Second, compliance with this provision is purely voluntary depending on whether registered transfer agents choose to exclusively use electronic or micrographic media to store the required records. While transfer agents that elect to exclusively use micrographic media or electronic storage media may incur some costs in destroying or otherwise disposing hard copy records. However, the Commission believes that this cost is minimal. Finally, while there will be some cost imposed by the proposed escrow requirement provision, these costs were contemplated by the Commission in the Adopting Release and any new costs associated with the escrow amendment (*i.e.*, having a third party escrow the source code on the transfer agent's behalf) would likely be included in the software contract between the parties.

Accordingly, we believe that amendments to Rule 17Ad–7(f) should not have a significant economic impact on a substantial number of small entities.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective while minimizing any significant adverse impact on small entities. In connection with the adopted amendments, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance standards rather than design standards; and (d) an exemption from coverage of the proposed amendment or any part thereof for small entities.

The adopted amendments are designed to enable registered transfer agents to take advantage of improvements in electronic recordkeeping technology by being able to store their records exclusively using electronic storage technology and by being able to have a third party place in escrow the source code on behalf of the transfer agent. The Commission believes that different compliance or reporting requirements for small entities are not necessary because the amendments do not establish any new reporting, recordkeeping, or compliance requirements for small entities. In addition, the Commission has concluded that it is not feasible to further clarify, consolidate, or simplify the proposed amendments for small entities. The Commission also believes that creating an exemption from the requirements of the amendments would not reduce the impact of the proposed amendments on small entities. We note that Rule 17Ad–4(b) under the Exchange Act[25] already exempts small transfer agents from many of the recordkeeping requirements of Rules 17Ad–6 and 17Ad–7. In addition, any burdens imposed by the amendments apply only to those transfer agents that choose to use electronic or micrographic storage media.

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[22] One situation that necessitates this clarifying amendment is when a software provider licenses its electronic records storage system software to a transfer agent but does not grant a license for the source code. As a result, the transfer agent does not have access to the source code.

[23] Letters from Jeffrey G. Rutowski, Vice President, Integrated Fund Services (June 30, 2003); Cathy Danahy, Assistant Director, Nebraska Secretary of State's Office, Records Management Division (July 14, 2003); and Charles V. Rossi, Division President, EquiServe, Inc. (July 29, 2003).

[24] 17 CFR 240.0–10(h).

VII. Statutory Authority

The Commission is adopting amendments to § 240.17Ad–7 of chapter II of title 17 of the *Code of Federal Regulations* pursuant to sections 17, 17A, and 23(a)[26] of the Act in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Transfer agents.

Text of Amendment

■ In accordance with the foregoing, title 17, chapter II of the *Code of Federal Regulations* is to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 240.17Ad–7 is amended by:

■ a. Adding introductory text to paragraph (f); and

■ b. In the first sentence of paragraph (f)(5)(ii), revise the phrase "Place in escrow" to read "Place, or have a third party place on your behalf, in escrow".

The addition reads as follows:

§ 240.17Ad–7 Record retention.

* * * * *

(f) Subject to the conditions set forth in this section, the records required to be maintained pursuant to § 240.17Ad–6 may be retained using electronic or micrographic media and may be preserved in those formats for the time required by § 240.17Ad–7. Records stored electronically or micrographically in accordance with this paragraph may serve as a substitute for the hard copy records required to be maintained pursuant to § 240.17Ad–6.

* * * * *

Dated: December 18, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31640 Filed 12–24–03; 8:45 am]

BILLING CODE 8010–01–P

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[25] 17 CFR 240.17Ad–4(b).

[26] 15 U.S.C. 78q, 78q–1, and 78w(a).

National Archives and Records Administration
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Federal Register

Monday,
December 29, 2003

Part IV

Securities and Exchange Commission

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17 CFR Parts 211, 231, and 241

Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations; Interpretation; Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231 and 241

[Release Nos. 33–8350; 34–48960; FR–72]

Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission is publishing interpretive guidance regarding the disclosure commonly known as Management's Discussion and Analysis of Financial Condition and Results of Operations, or MD&A, which is required by Item 303 of Regulation S–K, Items 303(b) and (c) of Regulation S–B, Item 5 of Form 20–F and Paragraph 11 of General Instruction B of Form 40–F. This guidance is intended to elicit more meaningful disclosure in MD&A in a number of areas, including the overall presentation and focus of MD&A, with general emphasis on the discussion and analysis of known trends, demands, commitments, events and uncertainties, and specific guidance on disclosures about liquidity, capital resources and critical accounting estimates.

EFFECTIVE DATE: December 29, 2003.

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. General questions about this release should be referred to Todd Hardiman, Karl Hiller, Nina Mojiri-Azad, Mara Ransom, or Sondra Stokes, Division of Corporation Finance, at (202) 824–5300, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0401.

SUPPLEMENTARY INFORMATION:

I. Overview

A. Purpose

This release interprets requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A").[1] It provides guidance to assist companies:

- In preparing MD&A disclosure that is easier to follow and understand; and
- In providing information that more completely satisfies our previously enunciated principal objectives of MD&A.

We believe that management's most important responsibilities include communicating with investors in a clear and straightforward manner. MD&A is a critical component of that communication. The Commission has long sought through its rules, enforcement actions and interpretive processes to elicit MD&A that not only meets technical disclosure requirements but generally is informative and transparent. We believe and expect that when companies follow the guidance in this release, the overall quality of their MD&A will improve. The Division of Corporation Finance will continue to review MD&A submitted after this guidance is released and take action as appropriate. In addition, we have instructed the Division to keep us apprised of whether this guidance has produced improved disclosure, and to suggest additional Commission action related to MD&A as appropriate.

B. Approach to MD&A

The purpose of MD&A is not complicated. It is to provide readers information "necessary to an understanding of [a company's] financial condition, changes in financial condition and results of operations."[2] The MD&A requirements are intended to satisfy three principal objectives:

- To provide a narrative explanation of a company's financial statements that enables investors to see the company through the eyes of management;
- To enhance the overall financial disclosure and provide the context within which financial information should be analyzed; and
- To provide information about the quality of, and potential variability of, a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.[3]

MD&A should be a discussion and analysis of a company's business as seen through the eyes of those who manage that business. Management has a unique perspective on its business that only it can present. As such, MD&A should not be a recitation of financial statements in narrative form or an otherwise uninformative series of technical responses to MD&A requirements, neither of which provides this important management perspective. Through this release we encourage each company and its management to take a fresh look at MD&A with a view to enhancing its quality. We also encourage early top-level involvement by a company's management in identifying the key disclosure themes and items that should be included in a company's MD&A.

Based on our experience with many companies' current disclosures in MD&A, we believe there are a number of general ways for companies to enhance their MD&A consistent with its purpose. The recent review experiences of the staff of the Division of Corporation Finance, including its Fortune 500 review,[4] have led us to conclude that additional guidance would be especially useful in the following areas:

- The overall presentation of MD&A;
- The focus and content of MD&A (including materiality, analysis, key performance measures and known material trends and uncertainties);
- Disclosure regarding liquidity and capital resources; and
- Disclosure regarding critical accounting estimates.

Therefore, in this release, we emphasize the following points regarding overall presentation:

- Within the universe of material information, companies should present their disclosure so that the most important information is most prominent;

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[1] The requirements are set forth in Item 303 of Regulation S–K (Management's Discussion & Analysis of Financial Condition and Results of Operations) [17 CFR 229.303], Items 303(b) and (c) of Regulation S–B (Management's Discussion & Analysis of Financial Condition and Results of Operations, and Off-balance sheet arrangements) [17 CFR 228.303(b) and (c)], Item 5 of Form 20–F (Operating and Financial Review and Prospects) [17 CFR 249.220f], and General Instruction B.(11) of Form 40–F (Off-balance sheet arrangements) [17 CFR 249.240f].

Although the wording of the MD&A requirement in Form 20–F was revised in 1999, the Commission's adopting release noted that we interpret that Item as calling for the same disclosure as Item 303 of Regulation S–K. See Release No. 33–7745 (Sept. 28, 1999) [64 FR 53900 at 59304]. In addition, Instruction 1 to Item 5 in Form 20–F provides that issuers should refer to the Commission's 1989 interpretive release on MD&A disclosure under Item 303 of Regulation S–K (Interpretive Release: Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Release No. 33–6835 (May 18, 1989) [54 FR 22427] (the "1989 Release")) for guidance in preparing the discussion and analysis by management of the company's financial condition and results of operations required in Form 20–F. Therefore, although this release refers primarily to Item 303 of Regulation S–K, it also is intended to apply to MD&A drafted pursuant to Item 5 of Form 20–F.

In addition, the guidance in this release applies to small business issuers that are subject to the disclosure requirements of Items 303(b) and (c) of Regulation S–B. Small business issuers, like all other companies subject to SEC reporting obligations, should consider the interpretive guidance based on their own particular facts and circumstances.

[2] Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[3] *See* Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746] ("January 2002 Release").

[4] *See* Summary by the Division of Corporation Finance of Significant Issues Addressed in the Review of the Periodic Reports of the Fortune 500 Companies (Feb. 27, 2003) ("Fortune 500 Summary") available at *www.sec.gov/divisions/corpfin/fortune500rep.htm*.

- Companies should avoid unnecessary duplicative disclosure that can tend to overwhelm readers and act as an obstacle to identifying and understanding material matters; and
- Many companies would benefit from starting their MD&A with a section that provides an executive-level overview that provides context for the remainder of the discussion.

We also emphasize the following points regarding focus and content:

- In deciding on the content of MD&A, companies should focus on material information and eliminate immaterial information that does not promote understanding of companies' financial condition, liquidity and capital resources, changes in financial condition and results of operations (both in the context of profit and loss and cash flows);[5]
- Companies should identify and discuss key performance indicators, including non-financial performance indicators, that their management uses to manage the business and that would be material to investors;
- Companies must identify and disclose known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on financial condition or operating performance;[6] and
- Companies should provide not only disclosure of information responsive to MD&A's requirements, but also an analysis that is responsive to those requirements that explains management's view of the implications and significance of that information and that satisfies the objectives of MD&A.

C. Impact of Increased Amounts of Information Available to Companies

Companies have access to and use substantially more detailed and timely information about their financial condition and operating performance than they did when our MD&A requirements initially were introduced or when we last provided general interpretive guidance.[7] Some of this information is itself non-financial in nature, but bears on companies' financial condition and operating performance. The increased availability of information is relevant to companies in preparing MD&A for the following reasons:

- First, companies must evaluate an increased amount of information to determine which information they must disclose. In doing so, companies should avoid the unnecessary information overload for investors that can result from disclosure of information that is not required, is immaterial, and does not promote understanding.
- Second, in identifying, discussing and analyzing known material trends and uncertainties, companies are expected to consider all relevant information, even if that information is not required to be disclosed.

D. Liquidity and Capital Resources

We devote a separate section of this release to disclosure in MD&A regarding liquidity and capital resources. In that section, we emphasize the need for attention to disclosure of cash requirements and sources of cash. We believe that:

- Companies should consider enhanced analysis and explanation of the sources and uses of cash and material changes in particular items underlying the major captions reported in their financial statements, rather than recitation of the items in the cash flow statements;
- Companies using the indirect method[8] in preparing their cash flow statements should pay particular attention to disclosure and analysis of matters that are not readily apparent from their cash flow statements; and
- Companies also should consider whether their MD&A should include enhanced disclosure regarding debt instruments, guarantees and related covenants.

E. Critical Accounting Estimates

Finally, we have included a separate section in this release regarding accounting estimates and assumptions that may be material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change, and that have a material impact on financial condition or operating performance. Companies should consider enhanced discussion and analysis of these critical accounting estimates and assumptions that:

- Supplements, but does not duplicate, the description of accounting policies in the notes to the financial statements; and
- Provides greater insight into the quality and variability of information regarding financial condition and operating performance.

F. Effect on Prior Commission Statements

This release does not modify existing legal requirements or create new legal requirements. Rather, we intend this release to assist companies in preparing MD&A by providing interpretive guidance and, in some cases, providing additional guidance in areas that the Commission has addressed previously. We do not believe that the guidance in this release conflicts with prior Commission guidance, nor is it our intention to alter any prior Commission guidance.

II. Background

The following is a chronology of certain prior Commission action regarding MD&A:

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[5] In this release we sometimes use the term "financial condition and operating performance" to refer to the required subjects of MD&A of financial condition, liquidity and capital resources, changes in financial condition and results of operations (both in the context of profit and loss and cash flows).

[6] Note 27 to the 1989 Release states, "MD&A mandates disclosure of specified forward-looking information, and specifies its own standards for disclosure—*i.e.*, reasonably likely to have a material effect. The specific standard governs the circumstances in which Item 303 requires disclosure. The probability/magnitude test for materiality approved by the Supreme Court in *Basic* v. *Levinson*, 108 S.Ct. 978 (1988), is inapposite to Item 303 disclosure."

[7] *See, e.g., Improving Business Reporting—A Customer Focus; Meeting the Information Needs of Investors and Creditors*, Comprehensive Report of the Special Committee on Financial Reporting, American Institute of Certified Public Accountants (AICPA) (1994) ("Jenkins Report").

[8] In Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards (SFAS) No. 95, *Statement of Cash Flows* (Nov. 1987), the FASB allowed the indirect method of reporting net cash flow from operating activities by adjusting net income to reconcile it to net cash flow from operating activities. Under that method, the major classes of operating cash receipts and payments are determined indirectly by determining the change in asset and liability accounts that relate to operating income. However, in SFAS 95, the FASB encouraged companies to use the direct method of reporting net cash flow from operating activities rather than the indirect method. The direct method reports net cash flow from operations by summing major classes of gross cash receipts, such as customer payments, and gross cash payments, such as cash paid to employees. The direct method also requires a reconciliation of net income to net cash flow from operating activities. The FASB gave its opinion that the direct method is "the more comprehensive and presumably more useful approach."

While this release refers primarily to U.S. GAAP, the underlying events and circumstances described in the release ordinarily will be applicable to foreign private issuers and should be discussed to the extent material. Consistent with the Instructions to Form 20–F, however, companies using that form should focus on the primary financial statements in their discussion and analysis in Item 5 (Operative and Financial Review Prospects). Also, companies are required to discuss in Item 5 of Form 20–F any aspects of the differences between foreign and U.S. GAAP that they believe are necessary for an understanding of the financial statements as a whole. *See* Instruction 2 to Item 5 of Form 20–F [17 CFR 249.220f].

1980—We adopted the present form of the disclosure requirements for MD&A.[9]

1981—We published the staff's interpretive guidance for MD&A after its review of disclosures that were prepared in accordance with the then-recently adopted disclosure requirements.[10]

1987—We sought public comment on the adequacy of MD&A and on proposed revisions submitted by members of the professional accounting community.[11]

1989—We published an interpretive release that addressed a number of disclosure matters that should be considered by companies in preparing MD&A.[12] The 1989 Release provided guidance in various areas, including required prospective information, analysis of long- and short-term liquidity and capital resources, material changes in financial statement line items, required interim period disclosure, segment analysis, participation in high-yield financings, highly leveraged transactions or non-investment grade loans and investments, the effects of federal financial assistance upon the operations of financial institutions and the disclosure of preliminary merger negotiations.

December 2001—As part of its process of reviewing financial and non-financial disclosures made by public companies, the Division of Corporation Finance announced that it would preliminarily review the annual reports filed in 2002 by the Fortune 500 companies, and undertake further review as appropriate, consistent with its selective review program. The focus of the project was to identify "disclosure that appeared to be critical to an understanding of each company's financial position and results, but which, at least on its face, seemed to conflict significantly with generally accepted accounting principles [GAAP] or SEC rules, or to be materially deficient in explanation or clarity."[13] As a result of this review, comment letters, many of which commented on companies' MD&A, were sent to more than 350 of the Fortune 500 companies. Earlier this year, the Division published a summary of the most frequent general areas of comment resulting from this review.[14]

December 2001—The Commission issued cautionary advice to companies regarding the need for greater investor awareness of the sensitivity of financial statements to the methods, assumptions, and estimates underlying their preparation. This cautionary advice encouraged public companies to include in their MD&A full explanations of their "critical accounting policies," the judgments and uncertainties affecting the application of those policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions.[15]

January 2002—After receiving a petition requesting additional MD&A interpretive guidance,[16] we issued a statement "to suggest steps that issuers should consider in meeting their current disclosure obligations with respect to the topics described."[17] The statement provided explicit interpretive guidance on certain MD&A topics considered material to an understanding of companies' operations. The topics addressed by the release were liquidity and capital resources (including off-balance sheet arrangements), trading activities involving non-exchange traded contracts accounted for at fair value, and relationships and transactions with persons or entities that derive benefits from their non-independent relationships with the company or the company's related parties.[18]

May 2002—We proposed additional MD&A disclosure requirements, which remain under consideration, regarding the application of companies' critical accounting estimates.[19]

January 2003—We adopted additional disclosure requirements regarding off-balance sheet arrangements and aggregate contractual obligations.[20] The new rules require the disclosure of off-balance sheet arrangements in a designated section of MD&A and an overview of certain known contractual obligations in a tabular format.[21]

We also have brought numerous enforcement actions based on alleged violations of MD&A requirements and will continue to bring such actions under appropriate circumstances.[22]

Based on recent experiences, we have determined that additional interpretive guidance regarding the requirements of MD&A will be useful to companies in enhancing overall disclosure under MD&A requirements.

III. Overall Approach to MD&A

A. The Presentation of MD&A

Since the introduction of our MD&A requirements, many companies have become larger, more global and more complex. At the same time, the combination of our rules and investors' demands have led to an increase in the number of subjects and matters addressed in MD&A. For these and other reasons, many companies' MD&A have become necessarily lengthy and complex. Unfortunately, the presentation of the MD&A of too many companies also may have become unnecessarily lengthy, difficult to understand and confusing.

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[9] Final Rule: Amendments to Annual Report Form, Related Forms, Rules, Regulations, and Guides; Integration of Securities Acts Disclosure Systems, Release No. 33–6231 (Sept. 2, 1980) [45 FR 63630].

[10] Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–6349 (Sept. 28, 1981) 23 SEC Docket 962 [Release not published in the **Federal Register**].

[11] Concept Release on Management's Discussion and Analysis of Financial Condition and Operations, Release No. 33–6711 (April 24, 1987) [52 FR 13715].

[12] 1989 Release.

[13] Fortune 500 Summary.

[14] *Id.*

[15] Cautionary Advice Regarding Disclosure About Critical Accounting Policies, Release No. 33–8040 (Dec. 12, 2001) [66 FR 65013] ("December 2001 Release").

[16] On December 31, 2001 the Commission received a petition from Arthur Andersen LLP, Deloitte and Touche, LLP, Ernst & Young LLP, KPMG LLP and PricewaterhouseCoopers LLP. The American Institute of Certified Public Accountants endorsed the petition. A copy of the petition is available at *www.sec.gov/rules/petitions/petndiscl_12312001.htm.*

[17] *See* January 2002 Release.

[18] *Id.*

[19] Proposed Rule: Disclosure in Management's Discussion and Analysis About the Application of Critical Accounting Policies, Release No. 33–8098 (May 10, 2002) [67 FR 35620] ("2002 Critical Accounting Policies Proposal").

[20] Final Rule: Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations, Release No. 33–8182 (Jan. 28, 2003) [68 FR 5982] ("2003 Off-Balance Sheet Release").

The overall guidance in this Interpretive Release is applicable to all MD&A discussions, including those related to off-balance sheet arrangements. As such, it should be applied to General Instruction B.(11) of Form 40–F and Item 303(c) of Regulation S–B, in addition to the other sections set out in note 1, above. We are not addressing specifically disclosures of off-balance sheet arrangements in this release, however, because we have little experience with companies' application of the new rules, which are effective for companies' registration statements, annual reports and proxy or information statements that are required to include financial statements for their fiscal years ending on or after June 15, 2003. Companies (other than small business issuers) must include the table of contractual obligations in registration statements, annual reports, and proxy or information statements that are required to include financial statements for the fiscal years ending on or after December 15, 2003. In addition, Section 401(c) of the Sarbanes-Oxley Act requires us to complete a study and report to the President and Congress next year on these types of disclosures.

[21] The tabular disclosure is not required for small business issuers by Item 303 of Regulation S–B.

[22] *See*, e.g., *In the Matter of Edison Schools, Inc.*, Release No. 34–45925 (May 14, 2002); *In the Matter of Sony Corporation and Sumio Sano*, Release No. 34–40305 (Aug. 5, 1998); *In the Matter of Bank of Boston Corp.*, Initial Decision Release No. 81 (Dec. 22, 1995); *In the Matter of Gibson Greetings, Inc., Ward A. Cavanaugh, and James H. Johnsen*, Release No. 34–36357 (Oct. 11, 1995); *In the Matter of America West Airlines, Inc.*, Release No. 34–34047 (May 12, 1994); *In the Matter of Salant Corporation and Martin F. Tynan*, Release No. 34–34046 (May 12, 1994); *In the Matter of Shared Medical Systems Corporation*, Release No. 34–33632 (Feb. 17, 1994); *In the Matter of Caterpillar Inc.*, Release No. 34–30532 (Mar. 31, 1992); *In the Matter of American Express Company*, Release No. 34–23332 (June 17, 1986).

MD&A, like other disclosure, should be presented in clear and understandable language. We understand that complex companies and situations require disclosure of complex matters and we are not in any way seeking over-simplification or "dumbing down" of MD&A. However, we believe that companies can improve the clarity and understandability of their MD&A by using language that is clearer and less convoluted. We believe that efforts by companies to provide clearer and better organized presentations of MD&A can result in more understandable disclosure that does not sacrifice the appropriate level of complexity or nuance. In order to engender better understanding, companies should prepare MD&A with a strong focus on the most important information, provided in a manner intended to address the objectives of MD&A. In particular:

- Companies should consider whether a tabular presentation of relevant financial or other information may help a reader's understanding of MD&A. For example, a company's MD&A might be clearer and more concise if it provides a tabular comparison of its results in different periods, which could include line items and percentage changes as well as other information determined by a company to be useful, followed by a narrative discussion and analysis of known changes, events, trends, uncertainties and other matters. A reader's understanding of a company's fair value calculations or discounted cash flow figures also could, in some situations, be enhanced by providing a tabular summary of the company's various material interest and discount rate assumptions in one location.
- Companies should consider whether the headings they use assist readers in following the flow of, or otherwise assist in understanding, MD&A, and whether additional headings would be helpful in this regard.
- Many companies' MD&A could benefit from adding an introductory section or overview that would facilitate a reader's understanding. As with all disclosure, what companies would appropriately include in an introduction or overview will depend on the circumstances of the particular company. As a general matter, an introduction or overview should include the most important matters on which a company's executives focus in evaluating financial condition and operating performance and provide the context for the discussion and analysis of the financial statements. Therefore, an introduction or overview should not be a duplicative layer of disclosure that merely repeats the more detailed discussion and analysis that follows.
- While all required information must of course be disclosed, companies should consider using a "layered" approach. Such an approach would present information in a manner that emphasizes, within the universe of material information that is disclosed, the information and analysis that is most important. This presentation would assist readers in identifying more readily the most important information. Using an overview or introduction is one example of a layered approach. Another is to begin a section containing detailed analysis, such as an analysis of period-to-period information, with a statement of the principal factors, trends or other matters that are the principal subjects covered in more detail in the section.

We would expect a good introduction or overview to provide a balanced, executive-level discussion that identifies the most important themes or other significant matters with which management is concerned primarily in evaluating the company's financial condition and operating results. A good introduction or overview would:

- Include economic or industry-wide factors relevant to the company;
- Serve to inform the reader about how the company earns revenues and income and generates cash;
- To the extent necessary or useful to convey this information, discuss the company's lines of business, location or locations of operations, and principal products and services (but an introduction should not merely duplicate disclosure in the Description of Business section); and
- Provide insight into material opportunities, challenges and risks, such as those presented by known material trends and uncertainties, on which the company's executives are most focused for both the short and long term, as well as the actions they are taking to address these opportunities, challenges and risks.

Because these matters do not generally remain static from period to period, we would expect the introduction to change over time to remain current. As is true with all sections of MD&A, boilerplate disclaimers and other generic language generally are not helpful in providing useful information or achieving balance, and would detract from the purpose of the introduction or overview.

An introduction or overview, by its very nature, cannot disclose everything and should not be considered by itself in determining whether a company has made full disclosure. Further, the failure to include disclosure of every material item in an introduction or overview should not trigger automatically the application of the "buried facts" doctrine, in which a court would consider disclosure to be false and misleading if its overall significance is obscured because material is "buried," such as in a footnote or an appendix.[23]

Throughout MD&A, including in an introduction or overview, discussion and analysis of financial condition and operating performance includes both past and prospective matters. In addressing prospective financial condition and operating performance, there are circumstances, particularly regarding known material trends and uncertainties, where forward-looking information is required to be disclosed. We also encourage companies to discuss prospective matters and include forward-looking information in circumstances where that information may not be required, but will provide useful material information for investors that promotes understanding.

B. The Content and Focus of MD&A

In addition to enhancing MD&A through the use of clearer language and presentation, many companies could improve their MD&A by focusing on the most important information disclosed in MD&A. Disclosure should emphasize material information that is required or promotes understanding and de-emphasize (or, if appropriate, delete) immaterial information that is not required and does not promote understanding.

Our MD&A requirements call for companies to provide investors and other users with material information that is necessary to an understanding of the company's financial condition and operating performance, as well as its prospects for the future.[24] While the desired focus of MD&A for a particular company will depend on the facts and circumstances of the company, some guidance about the content and focus of MD&A is generally applicable.

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[23] *See, e.g.*, Final Rule: Plain English Disclosure, Release No. 33–7497 (Jan. 28, 1998) [63 FR 6370 at 6375] *(citing Gould* v. *American Hawaiian Steamship Company*, 331 F. Supp. 981 (D. Del. 1971); *Kohn* v. *American Metal Climax, Inc.*, 322 F. Supp. 1331 (E.D. Pa. 1970), *modified*, 458 F.2d 255 (3d Cir. 1972).)

[24] *See* 1989 Release, Part III.A.

1. Focus on Key Indicators of Financial Condition and Operating Performance

As discussed, one of the principal objectives of MD&A is to give readers a view of the company through the eyes of management by providing both a short and long-term analysis of the business.[25] To do this, companies should "identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary for an understanding and evaluation of the individual company." [26]

Financial measures generally are the starting point in ascertaining these key variables and other factors. However, financial measures often tell only part of how a company manages its business. Therefore, when preparing MD&A, companies should consider whether disclosure of all key variables and other factors that management uses to manage the business would be material to investors, and therefore required.[27] These key variables and other factors may be non-financial, and companies should consider whether that non-financial information should be disclosed.

Many companies currently disclose non-financial business and operational data.[28] Academics, authors, and consultants also have researched the types of information, outside of financial statement measures, that would be helpful to investors and other users.[29] Such information may relate to external or macro-economic matters as well as those specific to a company or industry. For example, interest rates or economic growth rates and their anticipated trends can be important variables for many companies. Industry-specific measures can also be important for analysis, although common standards for the measures also are important. Some industries commonly use non-financial data, such as industry metrics and value drivers.[30] Where a company discloses such information, and there is no commonly accepted method of calculating a particular non-financial metric, it should provide an explanation of its calculation to promote comparability across companies within the industry. Finally, companies may use non-financial performance measures that are company-specific.

In addition, if companies disclose material information (historical or forward-looking) other than in their filed documents (such as in earnings releases or publicly accessible analysts' calls or companion website postings) they also should evaluate that material information to determine whether it is required to be included in MD&A, either because it falls within a specific disclosure requirement or because its omission would render misleading the filed document in which the MD&A appears. We are not seeking to sweep into MD&A all the information that a company communicates. Rather, companies should consider their communications and determine what information is material and is required in, or would promote understanding of, MD&A.

Since we adopted the MD&A requirements, and even since the last comprehensive guidance on MD&A we released in 1989, there have been significant advancements in the ability to develop and access information quickly and effectively. Changes in business enterprise systems, communications and other aspects of information technology have significantly increased the amount of information available to management, as well as the speed with which they receive and are able to use information.[31] There is therefore a larger and more up-to-date universe of information, financial and non-financial alike, that companies have and should evaluate in determining whether disclosure is required. This situation presents companies with the challenge of identifying information that is required to be disclosed or that promotes understanding, while avoiding unnecessary information overload for readers by not disclosing a greater body of information, just because it is available, where disclosure is not required and does not promote understanding. Further, with advances in technology contributing to increasing amounts and currency of information, the factors relied upon by companies to operate and analyze the business may change. As this occurs, the discussion in MD&A should change over time to maintain an appropriate focus on material factors.

The focus on key performance indicators can be enhanced not only through the language and content of the discussion, but also through a format that will enhance the understanding of the discussion and analysis. The order of the information need not follow the order presented in Item 303 of Regulation S–K if another order of presentation would better facilitate readers' understanding. MD&A should provide a frame of reference that allows readers to understand the effects of material changes and events and known material trends and uncertainties arising during the periods being discussed, as well as their relative importance. To satisfy the objectives of MD&A, companies also should provide a balanced view of the underlying dynamics of the business, including not only a description of a company's successes, but also of instances when it failed to realize goals, if material. Good MD&A will focus readers' attention on these key matters.

2. Focus on Materiality

Companies must provide specified material information in their MD&A,[32] and they also must provide other material information that is necessary to make the required statements, in light of the circumstances in which they are made, not misleading.[33] MD&A must specifically focus on known material events and uncertainties that would cause reported financial information not to be necessarily indicative of future operating performance or of future financial condition.[34] Companies must determine, based on their own particular facts and circumstances, whether disclosure of a particular matter is required in MD&A. However, the effectiveness of MD&A decreases with the accumulation of unnecessary detail or duplicative or uninformative disclosure that obscures material information.[35] Companies should view this guidance as an opportunity to evaluate whether there is information in their MD&A that is no longer material or useful, and therefore should be deleted, for example where there has been a change in their business or the information has become stale.

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[25] *See, e.g.*, Release No. 33–6711 (Apr. 24, 1987) [52 FR 13715 at 13717] ("an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company.").

[26] 1989 Release, Part III.A (*citing* Release No. 33–6349 (Sept. 28, 1981) 23 SEC Docket 962 at 964 [Release not published in the **Federal Register**]).

[27] Examples of such other factors, depending on the circumstances of a particular company, can include manufacturing plant capacity and utilization, backlog, trends in bookings and employee turnover rates. *See, e.g., Quality, Transparency, Accountability*, Lynn E. Turner, Chief Accountant, Securities and Exchange Commission, Remarks before Financial Executives Institute (Apr. 26, 2001), available at *www.sec.gov/news/speech/spch485.htm*.

Companies should also consider disclosing information that may be peripheral to the accounting function, but is integral to the business or operating activity. Examples of such measures, depending on the circumstances of a particular company, can include those based on units or volume, customer satisfaction, time-to-market, interest rates, product development, service offerings, throughput capacity, affiliations/joint undertakings, market demand, customer/vendor relations, employee retention, business strategy, changes in the managerial approach or structure, regulatory actions or regulatory environment, and any other pertinent macroeconomic measures. Because these measures are generally non-financial in nature, we do not believe that their disclosure generally will raise issues under Item 10(e) of Regulation S–K [17 CFR 229.10(e)] or Item 10(h) of Regulation S–B [17 CFR 228.10(h)].

[28] *See Improving Business Reporting: Insights into Enhancing Voluntary Disclosures*, Steering Committee Report of the Business Reporting Research Project of the FASB (2001) available at www.fasb.org; the Jenkins Report; Financial Accounting Series Special Report, *Business and Financial Reporting, Challenges from the New Economy* (FASB) (2001) ("Special Report on Improving Business Reporting").

[29] *See* Special Report on Improving Business Reporting.

[30] *See, e.g.*, the Jenkins Report; the Special Report on Improving Business Reporting.

[31] *See* the Jenkins Report.

[32] *See, e.g.*, Item 303(a)(1) of Regulation S–K [17 CFR 229.303(a)(1)] (requiring the identification of "known trends or known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way"). *See also* Item 303(a)(2)(i) of Regulation S–K [17 CFR 229.303(a)(2)(i)] (requiring a description of registrant's material commitments for capital expenditures).

As the complexity of business structures and financial transactions increase, and as the activities undertaken by companies become more diverse, it is increasingly important for companies to focus their MD&A on material information. In preparing MD&A, companies should evaluate issues presented in previous periods and consider reducing or omitting discussion of those that may no longer be material or helpful, or revise discussions where a revision would make the continuing relevance of an issue more apparent.

Companies also should focus on an analysis of the consolidated financial condition and operating performance, with segment data provided where material to an understanding of consolidated information. Segment discussion and analysis should be designed to avoid unnecessary duplication and immaterial detail that is not required and does not promote understanding of a company's overall financial condition and operating performance.

Both Instruction 4 to Item 303 of Regulation S–K and the 1989 Release address the requirement of discussion and analysis of changes in line items. A review of current MD&A provided by some companies, however, reveals that this is a portion of MD&A that can include an excessive amount of duplicative disclosure, as well as disclosure of immaterial items that do not promote understanding. The 1989 Release explicitly provides for the grouping of line items for purposes of discussion and analysis in a manner that avoids duplicative disclosure. In addition, Instruction 4 and the guidance in the 1989 Release do not require a discussion of every line item and its changes without regard to materiality. Discussion of a line item and its changes should be avoided where the information that would be disclosed is not material and would not promote understanding of MD&A.

Companies also must assess the materiality of items in preparing disclosure in their quarterly reports. There may be different quantitative and qualitative factors to consider when deciding whether to include certain information in a specific quarterly or annual report. The 1989 Release addresses some aspects of MD&A disclosure in the context of quarterly filings. That release clarifies that material changes to items disclosed in MD&A in annual reports should be discussed in the quarter in which they occur.[36] There also may be circumstances where an item may not be material in the context of a discussion of annual results of operations but is material in the context of interim results.

Disclosure in MD&A in quarterly reports is complementary to that made in the most recent annual report and in any intervening quarterly reports. Therefore, there may be cases, particularly where adequate disclosure is included in the MD&A in those earlier reports, where further disclosure in a quarterly report is not necessary. If, however, disclosure in those earlier reports does not adequately foreshadow subsequent events, or if new information that impacts known trends and uncertainties becomes apparent in a quarterly period, additional disclosure should be considered and may be required.

3. Focus on Material Trends and Uncertainties

One of the most important elements necessary to an understanding of a company's performance, and the extent to which reported financial information is indicative of future results, is the discussion and analysis of known trends, demands, commitments, events and uncertainties. Disclosure decisions concerning trends, demands, commitments, events, and uncertainties generally should involve the:

- Consideration of financial, operational and other information known to the company;
- Identification, based on this information, of known trends and uncertainties; and
- Assessment of whether these trends and uncertainties will have, or are reasonably likely to have, a material impact on the company's liquidity, capital resources or results of operations.

As we have explained in prior guidance, disclosure of a trend, demand, commitment, event or uncertainty is required unless a company is able to conclude either that it is not reasonably likely that the trend, uncertainty or other event will occur or come to fruition, or that a material effect on the company's liquidity, capital resources or results of operations is not reasonably likely to occur.[37] (In this release we sometimes use the term "known material trends and uncertainties" to describe trends, demands, commitments, events or uncertainties as to which disclosure is required.)

In identifying known material trends and uncertainties, companies should consider the substantial amount of financial and non-financial information available to them, and whether or not the available information itself is required to be disclosed. This information, over time, may reveal a trend or general pattern in activity, a departure or isolated variance from an established trend, an uncertainty, or a reasonable likelihood of the occurrence of such an event that should be disclosed.

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[33] *See* Securities Act Rule 408 [17 CFR 230.408], Securities Exchange Act of 1934 Section 10(b) [15 U.S.C. 78j(b)], Exchange Act Rule 10b–5 [17 CFR 240.10b–5], and Exchange Act Rule 12b–20 [17 CFR 240.12b–20]. *See also, In the Matter of Edison Schools, Inc.*, Release No. 34–45925 (May 14, 2002) (finding, among other things, that the company failed to provide accurate and complete disclosure about its reported revenues); *In the Matter of Sony Corporation and Sumio Sano*, Release No. 34–40305 (Aug. 5, 1998) (finding that the company violated Section 13(a) of the Exchange Act by making inadequate disclosures about the nature and the extent of Sony Pictures' net losses and their impact on the consolidated results Sony was reporting); *In the Matter of Caterpillar Inc.*, Release No. 34–30532 (Mar. 31, 1992) (finding failure to disclose the impact of a subsidiary's foreign operations on the company's results of operations violated Section 13(a) of the Exchange Act).

[34] Instruction 3 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[35] *See, e.g.*, Instruction 4 to Item 303(a) of Regulation S–K (indicating that repetition and line-by-line analysis is not required nor is it appropriate when the causes for a change in one line item also relate to other line items and indicating that, to the extent the changes from year to year are readily computable from the financial statements, the changes need not be recited in the discussion). The 1989 Release also addressed these points directly. *See* 1989 Release, Part III.D.

Where companies believe that information from the face of financial statements is helpful to readers in MD&A, they should consider using a tabular presentation that shows the decimal percentages of components or year-over-year percentage changes of the financial statement line items. An appropriate analysis of this data, to the extent that it is material, should accompany the tabular presentation consistent with the guidance in Section III.B.3 of this Release.

[36] *See* 1989 Release, Part III.E.

[37] *See* January 2002 Release at 3748 ("two assessments management must make where a trend, demand, commitment, event or uncertainty is known: 1. Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required. 2. If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur" (*citing* the 1989 Release)).

One of the principal objectives of MD&A is to provide information about the quality and potential variability of a company's earnings and cash flow, so that readers can ascertain the likelihood that past performance is indicative of future performance. Ascertaining this indicative value depends to a significant degree on the quality of disclosure about the facts and circumstances surrounding known material trends and uncertainties in MD&A. Quantification of the material effects of known material trends and uncertainties can promote understanding. Quantitative disclosure should be considered and may be required to the extent material if quantitative information is reasonably available.

As discussed in the 1989 Release, the disclosures required to address known material trends and uncertainties in the discussion and analysis should not be confused with optional forward-looking information. Not all forward-looking information falls within the realm of optional disclosure. In particular, material forward-looking information regarding known material trends and uncertainties is required to be disclosed as part of the required discussion of those matters and the analysis of their effects.[38] In addition, forward-looking information is required in connection with the disclosure in MD&A regarding off-balance sheet arrangements.[39]

4. Focus on Analysis

MD&A requires not only a "discussion" but also an "analysis" of known material trends, events, demands, commitments and uncertainties. MD&A should not be merely a restatement of financial statement information in a narrative form. When a description of known material trends, events, demands, commitments and uncertainties is set forth, companies should consider including, and may be required to include, an analysis explaining the underlying reasons or implications, interrelationships between constituent elements, or the relative significance of those matters.

Identifying the intermediate effects of trends, events, demands, commitments and uncertainties alone, without describing the reasons underlying these effects, may not provide sufficient insight for a reader to see the business through the eyes of management. A thorough analysis often will involve discussing both the intermediate effects of those matters and the reasons underlying those intermediate effects. For example, if a company's financial statements reflect materially lower revenues resulting from a decline in the volume of products sold when compared to a prior period, MD&A should not only identify the decline in sales volume, but also should analyze the reasons underlying the decline in sales when the reasons are also material and determinable. The analysis should reveal underlying material causes of the matters described, including for example, if applicable, difficulties in the manufacturing process, a decline in the quality of a product, loss in competitive position and market share, or a combination of conditions.

Similarly, where a company's financial statements reflect material restructuring or impairment charges, or a decline in the profitability of a plant or other business activity, MD&A should also, where material, analyze the reasons underlying these matters, such as an inability to realize previously projected economies of scale, a failure to renew or secure key customer contracts, or a failure to keep downtime at acceptable levels due to aging equipment. Whether favorable or unfavorable conditions constitute or give rise to the material trends, demands, commitments, events or uncertainties being discussed, the analysis should consist of material substantive information and present a balanced view of the underlying dynamics of the business.

If there is a reasonable likelihood that reported financial information is not indicative of a company's future financial condition or future operating performance due, for example, to the levels of subjectivity and judgment necessary to account for highly uncertain matters and the susceptibility of such matters to change, appropriate disclosure in MD&A should be considered and may be required. For example, if a change in an estimate has a material favorable impact on earnings, the change and the underlying reasons should be disclosed so that readers do not incorrectly attribute the effect to operational improvements. In addition, if events and transactions reported in the financial statements reflect material unusual or non-recurring items, aberrations, or other significant fluctuations, companies should consider the extent of variability in earnings and cash flow, and provide disclosure where necessary for investors to ascertain the likelihood that past performance is indicative of future performance. Companies also should consider whether the economic characteristics of any of their business arrangements, or the methods used to account for them, materially impact their results of operations or liquidity in a structured or unusual fashion, where disclosure would be necessary to understand the amounts depicted in their financial statements.

IV. Liquidity and Capital Resources

Our rules require companies to provide disclosure in the related categories of liquidity and capital resources.[40] This information is critical to an assessment of a company's prospects for the future and even the likelihood of its survival.[41] A company is required to include in MD&A the following information, to the extent material:

- Historical information regarding sources of cash and capital expenditures;
- An evaluation of the amounts and certainty of cash flows;
- The existence and timing of commitments for capital expenditures and other known and reasonably likely cash requirements;
- Discussion and analysis of known trends and uncertainties;
- A description of expected changes in the mix and relative cost of capital resources;
- Indications of which balance sheet or income or cash flow items should be considered in assessing liquidity; and
- A discussion of prospective information regarding companies' sources of and needs for capital, except where otherwise clear from the discussion.[42]

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[38] *See* 1989 Release, Part III.B.

[39] In connection with our adoption of the off-balance sheet arrangements disclosure requirements, we eliminated a portion of the instructions in Item 303 of Regulation S–K that stated that registrants were not required to provide forward-looking information. Deleting that portion of the instructions did not affect requirements to provide forward-looking information in other circumstances where required or reduce the availability of any safe harbor for forward-looking information. *See also* 2003 Off-Balance Sheet Release. *See* Securities Act Section 27A [15 U.S.C. 77z–2], Securities Act Rule 175 [17 CFR 230.175], Exchange Act Section 21E [17 U.S.C. 78u–5], and Exchange Act Rule 3b–6 [17 CFR 240.3b–6].

[40] *See* Item 303(a)(1) and (2) of Regulation S–K [17 CFR 229.303(a)(1) and (2)].

[41] *See* January 2002 Release; 2003 Off-Balance Sheet Release.

[42] *See* 1989 Release, Part III.C. *See also* Item 303(a)(1) and (2) of Regulation S–K [17 CFR

Discussion and analysis of this information should be considered and may be required to provide a clear picture of the company's ability to generate cash and to meet existing and known or reasonably likely future cash requirements.

In determining required or appropriate disclosure, companies should evaluate separately their ability to meet upcoming cash requirements over both the short and long term.[43] Merely stating that a company has adequate resources to meet its short-term and/or long-term cash requirements is insufficient unless no additional more detailed or nuanced information is material. In particular, such a statement would be insufficient if there are any known material trends or uncertainties related to cash flow, capital resources, capital requirements, or liquidity.

A. Cash Requirements

In order to identify known material cash requirements, companies should consider whether the following information would have a material impact on liquidity (discussion of immaterial matters, and especially generic disclosure or boilerplate, should be avoided):

- Funds necessary to maintain current operations, complete projects underway and achieve stated objectives or plans;
- Commitments for capital or other expenditures;[44] and
- The reasonably likely exposure to future cash requirements associated with known trends or uncertainties, and an indication of the time periods in which resolution of the uncertainties is anticipated.

One starting point for a company's discussion and analysis of cash requirements is the tabular disclosure of contractual obligations,[45] supplemented with additional information that is material to an understanding of the company's cash requirements.[46]

For example, if a company has incurred debt in material amounts, it should explain the reasons for incurring that debt and the use of the proceeds, and analyze how the incurrence of that debt fits into the overall business plan, in each case to the extent material.[47] Where debt has been incurred for general working capital purposes, the anticipated amount and timing of working capital needs should be discussed, to the extent material.[48]

Companies should address, where material, the difficulties involved in assessing the effect of the amount and timing of uncertain events, such as loss contingencies, on cash requirements and liquidity. Any such discussion should be specific to the circumstances and informative, and companies should avoid generic or boilerplate disclosure. In addition, because of these difficulties and uncertainties, companies should consider whether they need to make or change disclosure in connection with quarterly as well as annual reports.

B. Sources and Uses of Cash

As with the discussion and analysis of the results of operations, a company's discussion and analysis of cash flows should not be a mere recitation of changes and other information evident to readers from the financial statements. Rather, MD&A should focus on the primary drivers of and other material factors necessary to an understanding of the company's cash flows and the indicative value of historical cash flows.

In addition to explaining how the cash requirements identified in MD&A fit into a company's overall business plan, the company should focus on the resources available to satisfy those cash requirements. Where there has been material variability in historical cash flows, MD&A should focus on the underlying reasons for the changes, as well as on their reasonably likely impact on future cash flows and cash management decisions. Even where reported amounts of cash provided and used by operations, investing activities or financing have been consistent, if the underlying sources of those cash flows have materially varied, analysis of that variability should be provided. The discussion and analysis of liquidity should focus on material changes in operating, investing and financing cash flows, as depicted in the statement of cash flows, and the reasons underlying those changes.

1. Operations

The discussion and analysis of operating cash flows should not be limited by the manner of presentation in the statement of cash flows.[49] Alternate accounting methods of deriving and presenting cash flows exist, and while they generally yield the same numeric result in the major captions, they involve the disclosure of different types of information. When preparing the discussion and analysis of operating cash flows, companies should address material changes in the underlying drivers (*e.g.* cash receipts from the sale of goods and services and cash payments to acquire materials for manufacture or goods for resale), rather than merely describe items identified on the face of the statement of cash flows, such as the reconciling items used in the indirect method of presenting cash flows.[50]

For example, consider a company that reports an overall increase in the components of its working capital other than cash[51] with the effect of having a material decrease in net cash provided by operations in the current period. If the increase in working capital was driven principally by an increase in accounts receivable that is attributable not to an increase in sales, but rather to a revised credit policy resulting in an extended payment period for customers, these facts would need to be addressed in MD&A to the extent material, along with the resulting decrease in cash provided by operations, if not otherwise apparent. In addition, if there is a material trend or uncertainty, the impact of the new credit policy on cash flows from operations should be disclosed.[52] While a cash flow statement prepared using the indirect method would report that various individual components of working capital increased or decreased during the

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229.303(a)(1) and (2)], and Instructions 2 and 5 thereto.

[43] Short-term liquidity is defined as a period of twelve months or less and long-term is defined as a period in excess of twelve months. *See* 1989 Release, Part III.C. Note that the period of time over which a long-term discussion of liquidity is relevant is dependent upon the timing of the cash requirements of a company, as well as the period of time over which cash flows are managed. A vague reference to periods in excess of twelve months may not be sufficient.

[44] *See* Item 303(a)(2)(i) of Regulation S–K [17 CFR 229.303(a)(2)(i)].

[45] *See* Item 303(a)(5) of Regulation S–K [17 CFR 229.303(a)(5)].

[46] For example, the cash requirements for items such as interest, taxes or amounts to be funded to cover post-employment (including retirement) benefits may not be included in the tabular disclosure, but should be discussed if material.

[47] For example, debt may have been issued to fund the construction of a new plant, which will allow the company to expand its operations into a specific geographic area. Understanding that relationship and the expected commencement date of plant operations puts the cash requirement for the debt into an appropriate context to understand liquidity.

[48] Companies are reminded of their related disclosure obligations under Item 504 (Use of Proceeds) of Regulation S–K [17 CFR 229.504] and the requirement to update this disclosure in Item 701(f) (Use of Proceeds) of Regulation S–K [17 CFR 229.701(f)].

[49] *See* Instruction 4 to Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[50] See SFAS No. 95.

[51] Working capital is defined as current assets less current liabilities. *See* Chapter 3, AICPA Accounting Research Bulletin (ARB) No. 43, *Restatement and Revision of Accounting Research Bulletins* (June 1953).

[52] To the extent that this change also materially impacts results of operations, discussion and analysis would also be required in that section, but companies should attempt to avoid unnecessary or confusing duplication.

period by a specified amount, it would not provide a sufficient basis for a reader to analyze the change. If the company reports negative cash flows from operations, the disclosure provided in MD&A should identify clearly this condition, discuss the operational reasons for the condition if material, and explain how the company intends to meet its cash requirements and maintain operations. If the company relies on external financing in these situations, disclosure of that fact and the company's assessment of whether this financing will continue to be available, and on what terms, should be considered and may be required.

A company should consider whether, in order to make required disclosures, it is necessary to expand MD&A to address the cash requirements of and the cash provided by its reportable segments or other subdivisions of the business, including issues related to foreign subsidiaries, as well as the indicative nature of those results.[53] A company also should discuss the effect of an inability to access the cash flow and financial assets of any consolidated entities. For example, an entity may be consolidated but, because the company lacks sufficient voting interests or the assets are legally isolated, the company may be unable to utilize the entity's cash flow, cash on hand, or other assets to satisfy its own liquidity needs.

2. Financing

To the extent material, a company must provide disclosure regarding its historical financing arrangements and their importance to cash flows, including, to the extent material, information that is not included in the financial statements. A company should discuss and analyze, to the extent material:

- Its external debt financing;
- Its use of off-balance sheet financing arrangements;
- Its issuance or purchase of derivative instruments linked to its stock;
- Its use of stock as a form of liquidity; and
- The potential impact of known or reasonably likely changes in credit ratings or ratings outlook (or inability to achieve changes).

In addition to these historical items, discussion and analysis of the types of financing that are, or that are reasonably likely to be, available (or of the types of financing that a company would want to use but that are, or are reasonably likely to be, unavailable) and the impact on the company's cash position and liquidity, should be considered and may be required. For example, where a company has decided to raise or seeks to raise material external equity or debt financing, or if it is reasonably likely to do so in the future, discussion and analysis of the amounts or ranges involved, the nature and the terms of the financing, other features of the financing and plans, and the impact on the company's cash position and liquidity (as well as results of operations in the case of matters such as interest payments) should be considered and may be required.[54]

C. Debt Instruments, Guarantees and Related Covenants

There are at least two scenarios in which companies should consider whether discussion and analysis of material covenants related to their outstanding debt (or covenants applicable to the companies or third parties in respect of guarantees or other contingent obligations)[55] may be required.[56]

First, companies that are, or are reasonably likely to be, in breach of such covenants[57] must disclose material information about that breach and analyze the impact on the company if material. That analysis should include, as applicable and to the extent material:

- The steps that the company is taking to avoid the breach;
- The steps that the company intends to take to cure, obtain a waiver of or otherwise address the breach;
- The impact or reasonably likely impact of the breach (including the effects of any cross-default or cross-acceleration or similar provisions) on financial condition or operating performance; and
- Alternate sources of funding to pay off resulting obligations or replace funding.

Second, companies should consider the impact of debt covenants on their ability to undertake additional debt or equity financing. Examples of these covenants include, but are not limited to, debt incurrence restrictions, limitations on interest payments, restrictions on dividend payments and various debt ratio limits. If these covenants limit, or are reasonably likely to limit, a company's ability to undertake financing to a material extent, the company is required to discuss the covenants in question and the consequences of the limitation to the company's financial condition and operating performance. Disclosure of alternate sources of funding and, to the extent material, the consequences (including but not limited to the cost) of accessing them should also be considered and may be required.

D. Cash Management

Companies generally have some degree of flexibility in determining when and how to use their cash resources to satisfy obligations and make other capital expenditures. MD&A should describe known material trends or uncertainties relating to such determinations. For example, a decision by a company in a highly capital-intensive business to spend significantly less on plant and equipment than it has historically may result in long-term effects that should be disclosed if material. Material effects could include more cash, less interest expense and lower depreciation, but higher future repair and maintenance expenses or a higher cost base than the company would otherwise have.

V. Critical Accounting Estimates

Many estimates and assumptions involved in the application of GAAP have a material impact on reported financial condition and operating performance and on the comparability of such reported information over different reporting periods. Our December 2001 Release reminded companies that, under the existing MD&A disclosure requirements, a company should address material implications of uncertainties associated with the methods, assumptions and estimates underlying the company's critical accounting measurements.[58] In May 2002 we proposed rules, which remain under consideration, that would broaden the scope of disclosures beyond those currently required.[59]

When preparing disclosure under the current requirements, companies should consider whether they have made accounting estimates or assumptions where:

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[53] *See* Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

[54] We believe that disclosure satisfying the requirements of MD&A can be made consistently with the restrictions of Section 5 of the Securities Act. *See, e.g.*, Securities Act Rules 135c [17 CFR 230.135c].

[55] *See* FASB Interpretation No. (FIN) 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (Nov. 2002); 2003 Off-Balance Sheet Release; and the discussion *infra*, regarding off-balance sheet arrangements.

[56] *See In the Matter of America West Airlines, Inc.*, Release No. 34–34047 (May 12, 1994) (finding that the company failed to discuss uncertainties regarding its ability to comply with covenants).

[57] Companies also must take a similar approach to discussion and analysis with respect to mandatory prepayment provisions, "put" rights and other similar provisions.

[58] December 2001 Release.

[59] *See* 2002 Critical Accounting Policies Proposal.

- The nature of the estimates or assumptions is material due to the levels of subjectivity and judgment necessary to account for highly uncertain matters or the susceptibility of such matters to change; and
- The impact of the estimates and assumptions on financial condition or operating performance is material.

If so, companies should provide disclosure about those critical accounting estimates or assumptions in their MD&A.

Such disclosure should supplement, not duplicate, the description of accounting policies that are already disclosed in the notes to the financial statements. The disclosure should provide greater insight into the quality and variability of information regarding financial condition and operating performance. While accounting policy notes in the financial statements generally describe the method used to apply an accounting principle, the discussion in MD&A should present a company's analysis of the uncertainties involved in applying a principle at a given time or the variability that is reasonably likely to result from its application over time.

A company should address specifically why its accounting estimates or assumptions bear the risk of change. The reason may be that there is an uncertainty attached to the estimate or assumption, or it just may be difficult to measure or value. Equally important, companies should address the questions that arise once the critical accounting estimate or assumption has been identified, by analyzing, to the extent material, such factors as how they arrived at the estimate, how accurate the estimate/assumption has been in the past, how much the estimate/assumption has changed in the past, and whether the estimate/assumption is reasonably likely to change in the future. Since critical accounting estimates and assumptions are based on matters that are highly uncertain, a company should analyze their specific sensitivity to change, based on other outcomes that are reasonably likely to occur and would have a material effect. Companies should provide quantitative as well as qualitative disclosure when quantitative information is reasonably available and will provide material information for investors.

For example, if reasonably likely changes in the long-term rate of return used in accounting for a company's pension plan would have a material effect on the financial condition or operating performance of the company, the impact that could result given the range of reasonably likely outcomes should be disclosed and, because of the nature of estimates of long-term rates of return, quantified.

Amendments to the Codification of Financial Reporting Policies

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] is updated:

1. By adding to the following new sections to the Financial Reporting Codification from the release:

(III) Overall Approach to MD&A.

(IV) Liquidity and Capital Resources.

(V) Critical Accounting Estimates.

2. By revising the footnotes from those sections of the release which contain a short form citation to include the complete citation form rather than the short form.

3. By renumbering the footnotes from those sections of the release to run in the Financial Reporting Codification consecutively from number 1 through number 37.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations System.

List of Subjects in 17 CFR Parts 211, 231 and 241

Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set forth above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

■ 1. Part 211, Subpart A, is amended by adding Release No. FR–72 and the release date of December 19, 2003 to the list of interpretive releases.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 2. Part 231 is amended by adding Release No. 33–8350 and the release date of December 19, 2003 to the list of interpretive releases.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. Part 241 is amended by adding Release No. 34–48960 and the release date of December 19, 2003 to the list of interpretive releases.

Dated: December 19, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31802 Filed 12–24–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Monday,
December 29, 2003

Part V

Environmental Protection Agency

40 CFR Part 451

Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 451

[FRL–7602–5]

Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: In 2002, EPA proposed technology-based effluent limitations and new source performance standards for the concentrated aquatic animal production (CAAP) point source category. The proposal applied to new and existing CAAP facilities that discharge pollutants directly to waters of the United States.

This notice summarizes the data received since proposal and describes how the Agency may use the data to address comments and develop the final rule. The notice also discusses refinements EPA may make to its methods for estimating costs, load reductions and financial impacts. It also presents revised results for these analyses reflecting the refinements and incorporating new data.

DATES: Submit comments on or before February 12, 2004.

ADDRESSES: Public comments regarding this document should be mailed to Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0026 (formerly W–02–01), or submitted electronically at *http://www.epa.gov/edocket*. For additional information on how to submit comments, *see* section B in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's proposed rule, contact Ms. Marta Jordan at (202) 566–1049. For economic information, contact Mr. Christopher Miller at (202) 566–0395.

SUPPLEMENTARY INFORMATION:

A. Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	Primary NAICS codes
Industry and Government	Facilities engaged in concentrated aquatic animal production, which may include these sectors:	
	Finfish Farming and Fish Hatcheries	112511
	Other Animal Aquaculture	112519

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR 451.1, 451.10, 451.20 and 451.30 of the proposed rule. If you have questions regarding the applicability of this proposed action to a particular entity, contact the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0026. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include information as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For access to docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the page limit plus an administrative fee of $25.00.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, information claimed as CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit information you claim as CBI or information that is otherwise protected by statute, please follow the instructions in Section D. Do not use EPA Dockets or e-mail to submit information you claim as CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OW–2002–0026. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov*, Attention Docket ID No. OW–2002–0026. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in Section C.2. These electronic submissions will be accepted in Word Perfect, Microsoft Word, or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three (3) copies of your comments and enclosures as well as any references cited in your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0026.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2002–0026. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send information identified as CBI by mail only to the following address: Engineering and Analysis Division, Mail Code 4303T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Marta Jordan, Docket ID No. OW–2002–0026. For hand delivery or courier deliver the information to the Engineering and Analysis Division, EPA West, Room 6233M, 1301 Constitution Avenue, NW., Washington, DC, Attention: Marta Jordan, Docket ID No. OW–2002–0026.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, indicate on the outside of the disk or CD–ROM that it contains information claimed as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disc or CD–ROM, mark the outside of the disk or CD–ROM to clearly indicate that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

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I. Purpose of This Document

Today's document has several purposes. First, EPA is summarizing new data and information we received during public comment on the proposed concentrated aquatic animal production (CAAP) regulations (67 FR 57872, September 12, 2002). The document also describes data EPA collected since it published the proposed rule. For example, EPA evaluated the data from detailed industry surveys, EPA's Permit Compliance System (PCS) database, Discharge Monitoring Reports (DMRs), National Pollutant Discharge Elimination System (NPDES) permits and the industry. This notice summarizes major issues raised in comments on the proposal and how the additional data and comments affect EPA's thinking on these issues. Finally, this document discusses possible changes in our methodology for estimating costs, removals, economic impacts, and benefits associated with the modified options, and includes revised estimates for costs, removals, and economic impacts.

Today's document includes six main components:

1. Discussion of new data and information.
2. Discussion of comments and EPA's preliminary assessments based upon these comments.
3. Possible Modifications to the Proposed Options and Technologies.
4. Possible Revisions to Costs, Loadings, Economic, and Benefits Models.
5. Revised Estimates of Costs, Loadings, and Economic Impacts.
6. Solicitation of Comments.

Through this NODA, EPA seeks further public comment on any and all aspects of the specific data and issues it has identified here. EPA continues to review the comments we received on the proposed rule and will address those comments and the comments submitted in response to this notice in the final action.

II. New Data and Information

This section provides a brief overview of new data from these general sources:

- EPA post-proposal sampling.
- National Pollutant Discharge Elimination System (NPDES) permits, permit fact sheets, and Discharge Monitoring Report (DMR) data for facilities that responded to the detailed survey.
- Information submitted with comments on the proposed rule.
- Detailed surveys of aquatic animal production (AAP) facilities.
- Literature searches.
- Data from a study that evaluated the effect of sample holding times on subsequent chemical analysis.

A. EPA Site Visits and Sampling Episodes

During the comment period and at the public meetings on the proposal, commenters raised concerns about the representativeness of the data EPA used as the basis for the proposed rule. In response to these concerns, EPA undertook additional wastewater sampling at a State trout hatchery using flow-through system technology (one of the technology options evaluated for the proposal) and visited 17 additional sites, including flow-through systems raising warm water species.

1. Sampling Episode

The facility selected for post-proposal wastewater sampling was a State hatchery in Pennsylvania producing cold water species (trout for stocking enhancement) using flow-through system technology. EPA considered this facility a good candidate for sampling because it used wastewater treatment similar to the treatment systems on which EPA based the proposed limitations. Those systems rely on primary settling of solids generated during cleaning of quiescent zones in an offline settling basin, and secondary settling of the primary effluent, and full or bulk flow from the raceways. Primary settling generally involves physical separation of particles through either quiescent zones and offline settling or a full-flow basin. Secondary settling is sequential solids removal after primary by using a second settling basin (*i.e.*, polishing pond) or a technology unit such as a microscreen. EPA considers this facility to be representative of a well operated facility with effective wastewater treatment. EPA sampled wastewater for five days at this facility during a time of year when the facility approached a maximum stocking density. For more information, refer to the sampling episode report for this facility (Document Control Number (DCN) 62386).

2. Site Visits

EPA selected 17 additional sites to visit based, in part, on public comments regarding specific gaps in the information EPA considered at proposal. Commenters raised concerns about the production of warm water aquatic animals and the use of green water production systems and the ability of these types of production facilities to achieve the proposed effluent limits. Commenters also raised concerns about EPA's assumptions concerning the application of microscreen treatment to achieve proposed limits for Total Suspended Solids (TSS).

To address comments about the lack of representation of warm water and green water systems, EPA visited two facilities that use warm water culture systems and four facilities that use green water systems. Warm water culture systems refer to the culture of aquatic animals such as catfish, tilapia, or shrimp, that normally live in warmer water. These species can survive water temperatures that exceed 70–75°F for extended periods. Cold water species, such as salmonids, live and are cultured in much colder water and would become severely stressed or die in warmer water. Green water systems contain algae and zooplankton in the water with the cultured fish. Although most green water systems are warm water, some may be used for cold water species. Some green water systems are used to grow species, such as marine fish (*e.g.*, cod or flounder), crustaceans (*e.g.*, shrimp), and freshwater fish (*e.g.*, larval striped bass, walleye or yellow perch) that consume the algae and/or zooplankton as a major part of their diets. Other facilities use green water cultures to remove metabolic wastes from the aquatic animals in the process water. Green water systems could contain measurable amounts of TSS in effluents, primarily because of the plankton present in the culture water.

To address public comments about the effectiveness of microscreen treatment, especially in cold temperatures, EPA visited four facilities reporting the use of microscreen technology to treat wastewater. We chose these four facilities from a population of 13 facilities that reported in their responses to the detailed survey that they used microscreen technology as a primary or secondary solids removal treatment system. During the visits to these four facilities, EPA observed microscreens being used to remove solids from effluent streams. EPA also evaluated how these facilities incorporated microscreens into the daily operation and maintenance activities. *See* Section III.A. for further discussion of this issue.

Other facilities that EPA visited included several State and Federal hatcheries in California, Washington, Idaho, Pennsylvania, and Utah. EPA looked at the differences in mission, operation, and management of government facilities compared to commercial facilities.

B. Monitoring and Permit Data From the Permitting Authorities

To further assess facilities with NPDES permits, EPA asked the EPA regional offices for updated copies of permits, fact sheets, and DMR data for many of the 125 facilities. EPA evaluated NPDES permits and DMR data for 43 of the 125 facilities identified as having a NPDES permit. EPA used the detailed surveys and NPDES permit information to identify discharge points and the nature of discharges (*e.g.*, full flow from raceways or solids collection decant water) in the DMR data.

To better evaluate the quality of current facility discharges compared to the proposed limits, EPA used the detailed surveys to determine the number of facilities reporting NPDES permits. Of the 203 facilities that responded to the detailed survey, EPA found 125 potentially in-scope facilities (*i.e.*, facilities that are subject to the proposed regulation) with existing NPDES permits. The facilities with NPDES permits use these systems:

- 108 flow-through systems.
- 6 recirculating systems.
- 8 pond systems.
- 3 mixed flow-through and recirculating systems.

EPA found that 78 facilities did not report having NPDES permits,

- 9 facilities that are not discharging or indirectly discharge.
- 9 net pen facilities.
- 25 pond facilities.
- 4 recirculating system facilities.
- 31 flow-through system facilities.

Many of these facilities are not subject to existing requirements for NPDES permits (*i.e.*, ponds that discharge less than 30 days, warm water facilities producing less than 100,000 pounds, and cold water facilities producing less than 20,000 pounds).

EPA was primarily interested in getting information on the permit requirements and effluent monitoring data to better assess the baseline performance of facilities (*i.e.*, current effluent treatment conditions) that are in-scope for the proposed regulation. A listing of the NPDES permit numbers for the facilities identified for additional data gathering is available in the record (see DCN 70264). See Section III.G. for discussion of the analysis on the NPDES permits and DMR data.

EPA was also interested in getting information about best management practices (BMPs) required in NPDES permits to compare with the BMPs required in the proposed regulation. For those facilities that have BMP requirements in the NPDES permit, EPA observed that the requirements were primarily related to developing overall facility BMP plans and to practices that addressed drugs and chemicals.

C. Information Submitted With Comments

In the proposal, EPA asked for data and information from commenters. EPA received about 300 public comments on the proposed rule. A wide range of stakeholders representing Federal, State, and local government agencies, industry associations, environmental groups, individual facilities, and members of the public provided comments. Comments addressed many aspects of the proposed regulation and EPA's supporting analysis, including scope of the rule, environmental impacts, regulatory authority, cost, economic impact, and benefit analyses. In some cases, commenters submitted supporting materials (in the form of engineering, economic, scientific, or regulatory reports or journal articles; data summaries or compilations of engineering, economic, scientific, or regulatory data; or references to such information). *See* Section 7.5 of the Public Docket for this rulemaking for these materials.

The comments included information on the costs associated with flow-through systems for the structural, labor, and land components described in each proposed flow-through option. In preparing this notice, EPA used this cost information to help fill gaps in the detailed survey data and to better understand industry diversity. EPA plans to use this additional cost information in refining its estimates of compliance costs for the final rule. The Agency included this information in developing the revised cost estimates presented in this notice. You can find non-confidential cost information in Section 6.5.3 of the public record. Several comments provided monitoring data, used in conjunction with the DMR data described in Section II.B.

The Joint Subcommittee on Aquaculture (JSA) has a task force known as the Aquaculture Effluents Task Force (AETF) that concentrates on the effluent guidelines efforts. The AETF is a group of interested parties representing Federal, State and local governments, academia, industry and environmental organizations. The AETF submitted detailed comments on aspects of the proposed rule such as the use of drugs and chemicals, production systems, costs and economic analyses. In response to EPA's follow-up requests, the AETF provided additional information, primarily papers that were referenced by their comments, or that supported statements made in their comments. Reviewers can find this additional information at DCN 45232 and we cited it often in this notice.

Additional information included:

- References documenting the presence of viral hemorrhagic septicemia in west coast salmonids.
- Documents on the fate and environmental effects of copper sulfate as a treatment for catfish ponds.
- Feed conversion rates including the effect that feed formulation has on the excretion and discharge of various pollutants.
- Information on BMPs and permit requirements for net pen systems.
- Information on the economic impacts of additional costs for aquatic animal production to the farm operations and nearby communities.

This notice also addresses questions and concerns raised during three public meetings on the proposed rule held in late October to mid-November of 2002. EPA used the public meetings to update the public on the status of the CAAP effluent guidelines and to discuss the proposal. Several attendees submitted comments to EPA after the meetings. DCNs 40520, 40521, 40522 summarize the discussions and comments at those meetings.

D. Detailed Survey Results

In August 2001, EPA mailed about 6,000 screener surveys to aquatic animal production facilities. EPA received responses from 4,900 facilities, of which about 2,300 facilities reported that they produce aquatic animals. EPA based its proposed regulations on the data collected from the screener questionnaire.

Consistent with EPA's intentions described in the preamble to the proposed rule, EPA based its analyses for this notice on data collected from the detailed questionnaire. The preamble described the detailed questionnaire (DCN 62452) and EPA's plans to recalculate estimates for costs and benefits associated with the proposed regulatory options. The preamble also stated that the Agency would describe these data and analyses in this notice. (67 FR 57881, September 12, 2002). EPA reviewed the responses from the detailed questionnaire, performed follow-up activities on the detailed questionnaires resulting from inconsistencies or questions from an initial review of responses, and completed analyses of the data contained in these responses. This section describes the facilities that EPA selected to receive the detailed questionnaire and those that responded.

EPA used the screener responses to select a stratified random sample to receive the detailed questionnaire. Sample criteria were designed to primarily capture facilities that produce aquatic animals and are likely to be covered by the proposed rule. EPA also developed sample criteria to capture facilities that are out of scope (based on information in the screener survey) to validate its assumptions about the applicability of the proposed regulation. For example, the sample criteria includes facilities with ponds, which are out of scope in the proposed regulation, to confirm that additional regulations for ponds are unnecessary. The Technical Development Document (TDD), page A11, describes in detail the criteria and includes facilities that are in-scope and out of scope. The facilities selected met one of these criteria:

- Aquariums.
- Production includes alligators and total biomass exceeds 100,000 pounds.
- Production includes trout or salmon and total biomass exceeds 20,000 pounds.
- Predominant production method is ponds; predominant species is catfish; and total biomass exceeds 2,200,000 pounds.
- Predominant production method is ponds; predominant species is shrimp, tilapia, other finfish, or hybrid striped bass; and total biomass exceeds 360,000 pounds.
- Predominant production method is any method except ponds, and total biomass exceeds 100,000 pounds.

Applying these criteria resulted in 539 facilities from the screener questionnaire responses with these characteristics. We then classified the 539 facilities into 44 groups defined by facility type (commercial, government, research, or tribal), the predominant species, and predominant production. A sample was drawn from the 539 facilities ensuring sufficient representation of facilities in each of the 44 groups. The sample drawn consisted of 263 facilities. From these 263 facilities EPA excluded 11 facilities that were duplicates on the mailing list or, after revising production estimates, did not meet the production thresholds for a CAAP facility. Detailed questionnaires were finally sent to 252 facilities.

EPA received responses on 215 of the 252 questionnaires. A few responses contained information on more than one facility. Subsequently, EPA separated that information into several questionnaires so that a single questionnaire represented an individual facility. EPA also excluded data from 12 facilities that returned incomplete responses. Because these facilities would not have been subject to the proposed limitations, EPA did not ask for more information. After separating multiple responses and excluding incomplete responses, information is available from 205 facilities. Table II.D.1, Questionnaire Summary, provides a breakdown of this information.

TABLE II.D.1.—QUESTIONNAIRE SUMMARY

Information identifier	Number of questionnaires
Sample frame	263
Mailed	252
Received	215
Incomplete and not followed-up	12
Received and usable	203
Received and usable + separated	205

Because we selected the 205 facilities using a statistical design (see Appendix A of the Technical Development Document for more information), the responses allowed us to build a database to be used for estimating population characteristics reflecting the above criteria. For national (*i.e.*, population) estimates, EPA applied survey weights to the facility responses that incorporate the statistical probability of a particular facility being selected to receive the detailed questionnaire and adjust for non-responses. (The response rate was about 80 percent for the detailed questionnaire. Appendix A of the proposed TDD addresses the non-response adjustments for the screener questionnaire.) In this case, a survey weight of 3 means that the facility represents itself and two others in the population. EPA will continue its analysis to refine the survey weights for the detailed questionnaire.

From the sample for the detailed survey, EPA estimated the distribution of facilities by: production systems, ownership type, species produced, and geographic regions. We describe the distribution here and in Tables II.D.2, II.D.3, II.D.4, and II.D.5.

For production systems, EPA estimates that 14 percent of the surveyed population use multiple production system types, 70 percent use flow-through systems, 11 percent use ponds, 3 percent use recirculating systems, and 2 percent use net pens.

For ownership type, EPA estimates that 34 percent of the surveyed population are State-owned facilities, 14 percent are Federal facilities, 1 percent are academic facilities, 2 percent are Tribal facilities, 1 percent are private non-profit facilities, and 48 percent are private commercial facilities.

For species produced, EPA estimates that 78 percent of the surveyed population grow trout and/or salmon, 11 percent grow catfish, 3 percent grow tilapia, 2 percent grow striped/hybrid bass, 1 percent grow shrimp, 5 percent grow "other" species such as walleye, sturgeon, sunfish, ornamentals, baitfish. We estimate that about 16 percent of the population produce more than one species.

For geographic regions, EPA found that the surveyed population is widely distributed throughout the United States. We estimate that 10 percent of the population are located in Region 1, 1 percent in Region 2, 6 percent in Region 3, 16 percent in Region 4, 13 percent in Region 5, 8 percent in Region 6, 5 percent in Region 7, 11 percent in Region 8, 11 percent in Region 9, and 19 percent in Region 10.

TABLE II.D.2.—PRODUCTION SYSTEMS

Production system	Percentage of facilities
Flow-through	70
Recirculating	3
Ponds	11
Net Pens	2
Multiple production systems	14

TABLE II.D.3.—OWNERSHIP TYPE

Ownership type	Percentage of facilities
State governments	34
Federal facilities	14
Academic facilities	1
Tribal facilities	2
Private non-profit	1
Private commercial	48

TABLE II.D.4.—SPECIES IDENTIFIED AT FACILITY IN SURVEY SAMPLE

Species*	Percentage of facilities
Trout/Salmon	78
Catfish	11
Tilapia	3
Hybrid Striped Bass	2
Shrimp	1
Other (walleye, sturgeon, sunfish, etc.)	5

*Based on predominant species, facility may produce more than one species.

TABLE II.D.5.—GEOGRAPHICAL DISTRIBUTION

EPA region	Percentage of facilities
1 (CT, ME, MA, NH, RI, VT)	10
2 (NJ, NY, PR, VI)	1
3 (DE, DC, MD, PA, VA, WV)	6
4 (AL, FL, GA, KY, MS, NC, SC, TN)	16
5 (IL, IN, MI, OH, WI)	13
6 (AR, LA, NM, OK, TX)	8
7 (IA, KS, MO, NE)	5
8 (CO, MT, ND, SD, UT, WY)	11
9 (AZ, CA, HI, NV, AS, GU)	11
10 (AK, ID, OR, WA)	19

Although EPA received and used responses from 205 surveys for various analyses, we use only a subset to estimate national CAAP costs for the industry sectors affected by the proposed rule. From the cost analyses, we excluded eight responses from facilities that discharge indirectly or do not discharge, because these facilities are not affected by the rule. For salmon net pens, the detailed questionnaire responses confirmed our assumptions at proposal (*i.e.*, no costs would be incurred in eight net pen facilities as a result of the proposed option). EPA will continue to evaluate cost and impacts for other net pen systems. We excluded pond data from the costs analyses because ponds were not within the scope of the proposed rule. However, EPA is using the pond information from 33 detailed questionnaires to validate assumptions on the applicability of the proposed regulation to ponds. EPA generated cost and loadings information for 13 facilities, but we excluded these from the economic analysis because the facilities produced less than 20,000 pounds of aquatic animals per year. As a result of these exclusions, EPA used the data from 143 facilities in its costs and loading analyses to evaluate economic impacts presented in this notice.

E. Literature Searches and Other Information Collection Activities

EPA continued to collect technical, scientific, and regulatory information from many sources on key issues about the CAAP industry, including those described in the preceding subsections of Section II of today's notice. In some cases, EPA started targeted literature searches or other types of investigations to assess issues raised by stakeholders and commenters (*see* Section III for a summary of major issues raised in comments). Several of these efforts are:

1. Net Pens

EPA received several comments about the relative significance of environmental impacts from net pen operations, as well as whether or not there is a need to establish requirements to mitigate environmental impacts (*see* Section III.B.2. of today's notice). To address these comments, EPA is updating its literature evaluation for net pen impacts and current practices and requirements. We placed a draft preliminary reference list in the public record (DCN 62399). EPA is examining new and re-examining previously available literature on the environmental impacts of discharges of solids, nutrients, BOD, and drugs and chemicals from net pen facilities. This updated literature search will examine existing permit requirements and other practices used by net pen facilities. This new information will improve EPA's understanding of environmental concerns with net pen systems and the actual impacts of present-day operations in the U.S., in light of existing State requirements and industry practices. However, current EPA analysis indicates that practices to minimize solids released at most net pen facilities are at least as stringent as the requirements we are considering. EPA does not expect further reductions in solids and pollutants associated with solids from net pens to result from this rule.

2. Chemicals, Including Therapeutants, Used at CAAP Facilities

EPA also received comments about the application of chemicals, including therapeutic substances, at CAAP facilities. These comments address:

- Antibiotics (residues in fish, antibiotic resistance, estimated volumes of antibiotic use in the U.S. CAAP industry).
- Regulatory authority and need for action (asserting that EPA should or should not include requirements about the use of chemicals, including therapeutants, at CAAP facilities; that FDA, American Veterinary Medical Association, and other entities' requirements or guidelines already ensure environmental safety of therapeutant applications).
- Chemicals in fish feed (including color additives).

These comments are further discussed in Section III.C. In some cases, supporting materials and referenced literature were also provided to EPA.

To address these comments, EPA is updating its literature search about environmental fate and effects studies of chemicals/therapeutic substances reported in the public comments, detailed surveys, and literature as used at CAAP facilities in the U.S. These chemical/therapeutic substances include anaesthetics, antibiotics, pesticides, antifungals, disinfectants, algicides, antifoulants, feed additives, and hormones used under EPA-approved, FDA-approved, and veterinary prescribed extra-label use, and FDA's investigational new animal drug (INAD) provisions. For several of the more commonly used substances, EPA collected information on quantities used from the detailed survey and industry-supplied data. EPA also has environmental assessments from the FDA docket for oxytetracycline, formalin, Romet, and canthaxanthin (see DCNs 40417, 40477, 40492, 40567). In addition, EPA obtained and is evaluating studies of the fate and effects of these chemical/therapeutic substances, when available. We placed a draft preliminary reference list in the public record (DCN 62454). EPA will work with appropriate internal and external experts to interpret these studies.

Second, EPA met with FDA to clarify FDA's environmental assessment requirements for the substances over which FDA has jurisdiction (DCN 31126). EPA met with USDA's Animal and Plant Health Inspection Service (APHIS) to discuss how the requirements and objective of the CAAP rule relate to authorities under their jurisdiction (DCN 31123). At the meeting, USDA discussed the Animal Health Protection Act ("2002 Farm Bill"), which gives APHIS the authority to develop and implement aquatic animal health programs. This law gives authority to APHIS for aquatic farm-raised animal disease management including emergency responses actions to invasive pathogen outbreaks. APHIS is also authorized to implement control programs using drugs or chemicals and biosecurity practices to reduce disease risk and impact on the industry.

EPA is also reviewing, industry and professional association guidelines on using antimicrobial agents responsibly (*e.g.*, DCN 70720). EPA will continue to work closely with the JSA National Aquatic Animal Health Task Force and other Federal, State, and scientific experts to better understand the relationships between current technical and regulatory aspects of chemical applications at CAAP facilities and EPA's proposed requirements.

3. Non-Native Species

EPA also received comments about non-native species (described in more detail in Section III.D). Briefly, comments included:

- Arguments supporting or opposing the establishment of controls on non-native species.
- EPA's regulatory involvement with non-native species issues.
- Specific scientific information to correct or supplement data on potential impacts of CAAP non-native species that EPA considered in developing the proposed rule.
- Descriptions of specific Federal, State, local, or industry requirements and programs to reduce or mitigate non-native concerns at CAAP facilities.

First, EPA is evaluating the comments and the supplementary literature submitted with them. Second, we continue our dialogue with Federal agencies that set policy for non-native species to facilitate coordination among relevant programs. EPA met with the APHIS, which has a broad mandate to address import and interstate movement of exotic species under the Federal Plant Pest Act and the Plant Quarantine Act (DCN 31123). EPA is also communicating with the National Invasive Species Council (NISC) regarding the non-native species aspects of the CAAP rule. Third, as some commenters urged, EPA is also more closely examining State, regional, and other requirements and programs designed to reduce or mitigate concerns about non-native species and that may already apply to facilities within the scope of the CAAP rule. One source of information of which EPA has become aware since proposal is the Environmental Law Institute's August 2002—*Halting the Invasion—State Tools for Invasive Species Management.* This publication analyzes legal tools available at the State level to address non-native species (including aquatic invasive species), identifies critical components of such tools and discusses examples of effective programs. The document also describes specific legal tools in each State (DCN 40637).

EPA is also considering supplemental information provided by members of the National Association of State Aquaculture Coordinators (NASAC). NASAC gave EPA a summary of information from their members regarding non-native species requirements and State regulating agencies (DCN 40607). Several States recognize and actively implement measures to address potential risks about non-native aquatic species. For example, the California Department of Fish and Game (CDFG) instituted several requirements to prevent the introduction of non-native species into bodies of water and to prevent the dissemination of fish diseases and parasites to wild populations and cultured stocks (DCNS 40593, 40594). A forthcoming report (*Non-native Oysters in the Chesapeake Bay*) by the National Research Council (NRC) may also provide insight into the effectiveness of existing regulations and programs, and recommendations for more effective approaches to non-native species issues (DCN 62456). While this study targets an industry sector EPA is not proposing to regulate (molluscan shellfish), certain discussions and findings regarding approaches for addressing non-native species concerns may be informative.

EPA has identified several non-North American species currently raised at CAAP facilities that might pose an environmental threat if they were to escape and become established (*e.g.*, several species commonly referred to as tilapia) (DCN 40649). To identify species of interest, EPA reviewed the database of facility responses to EPA's 2001 screener survey (DCN 10001). The database includes information on facility location and species raised for each of over 2,300 respondents who produce aquatic animals. Although this is a much larger population than the facilities covered by the proposed rule, EPA used this information to identify general trends in the production of non-native fish that could become invasive. EPA compared species and facility location with a State-by-State list of invasive fish derived from the United States Geologic Survey (USGS) (Fuller *et al.*, 1999).

We faced several challenges with using this information for our evaluation. Most of the facilities contained in the screener survey database did not provide enough taxonomic detail to determine if cultured species were non-native and potentially invasive. In several cases where we had enough taxonomic detail, the species being cultured had already been widely introduced throughout North America. In addition, several facilities in the database raise fish hybrids, and evaluating the invasive potential of hybrids poses a unique challenge because the characteristics may not be a simple blending of parent species' characteristics. Genetic effects may influence the ecological niche of a hybrid, making it difficult to predict its possible geographic distribution. Such genetic effects include dominance, polygenic inheritance (where traits are influenced by the cumulative effects of multiple genes), epistasis (where one gene influences the expression of another), and pleiotropy (where a single gene influences the multiple traits).

For several of these species, EPA is using an ecological niche model (DCN 40650) to predict their possible geographic distributions in the United States. EPA is also examining the geographic distribution of CAAP facilities raising these non-North American species, potential habitat for these species, and existing requirements (*e.g.*, those contained in State regulations) for reducing escapes of non-natives that already apply to CAAP facilities producing non-natives. There are many limitations on data in such an evaluation (*e.g.*, limited information on escape rates, the likelihood of escapes, and the consequences of escapement), but this analysis provides some insight into the scope of non-native species concerns at CAAP facilities. EPA will consider this analysis as one factor to assess the need, if any, for reporting, BMP implementation, or other requirements regarding non-native species in the final regulation. You can find a draft memorandum describing EPA's preliminary analysis in the record for this notice (DCN 40649). EPA will continue to collect and evaluate data to assess concerns associated with escaped non-native aquatic animals from CAAP facilities and the effectiveness of technologies and management practices to prevent animals from escaping in the effluents from CAAP facilities.

Finally, EPA is also performing literature searches to collect examples of risk and cost-benefit analyses that have been performed for non-native or invasive species. Such analyses include:

- Leung, B., D.M. Lodge, D. Finoff, J.F. Shogren, M.A. Lewis, and G. Lamberti. 2002. "An ounce of prevention or a pound of cure: bioeconomic risk analysis of invasive species." *Proceedings of the Royal Society of London, Series B 269:* 2407–2413. This paper describes a quantitative modeling framework to analyze risks from non-indigenous species to economic activity and the environment. The model identifies the best allocation of resources to prevention vs. control, acceptable invasion risks and consequences of invasion to optimal investments. The paper reports on an application of this model to a non-CAAP invasive species (zebra mussels), but the quantitative and systematic risk analysis approach may be useful for its examples (DCN 40568).
- Kolar, C.S. and D.M. Lodge. 2002. "Ecological predictions and risk assessment for alien fishes in North America." *Science* 298: 1233–1236. This paper uses a risk assessment approach and statistical models of fish introductions into the Great Lakes to develop a quantitative approach for targeting prevention efforts on species most likely to cause damage (DCN 40569).
- **Federal Register**. 2003. Ballast Water Management Program for U.S. Waters, proposed rule. 68 FR 44691–44696. The U.S. Department of Homeland Security/Coast Guard recently proposed mandatory ballast water management practices for vessels equipped with ballast tanks to address possible threats to marine and freshwater resources, biological diversity, and coastal infrastructures from unintentional introduction of nonindigenous species. The Coast Guard performed a regulatory evaluation including an estimate of the proposed rule's effects on invasion rates. The regulatory evaluation also included monetized damages from invasions, but did not attempt to monetize the benefits of their proposed rule (DCN 40570).

These examples describe tools that could potentially be used to assess risks and benefits of control options for escapes. Even if EPA can not conduct assessments of risks and benefits from controls on CAAP facility escapes, examples such as those mentioned above may provide useful context for a qualitative discussion and highlight data needs.

4. Water Quality Impacts

At proposal, EPA described data and literature it compiled on water quality impacts of CAAP facilities in the United States. EPA drew on several sources to characterize these impacts, including open literature publications reporting on water quality and biological observations downstream of CAAP facilities. Another resource EPA evaluated was the National report of State listings of impaired waters (TMDL listings or State 303(d) reports). EPA also used a water quality model (QUAL2E) to simulate potential downstream water quality impacts under baseline and proposed regulatory scenarios. EPA's proposal estimated that the regulatory requirements would create pollutant load reductions at 23 flow-through and recirculating facilities in the scope of the proposed regulation, leading in turn to water quality improvements valued at $22,000 to $113,000 annually. Based upon these sources and its water quality modeling, EPA concluded that some CAAP facilities may have measurable adverse downstream impacts.

EPA will use materials submitted with public comment on the proposed rule (*see* Section III.E. of today's notice) and other data and literature to improve our characterization of the likelihood for CAAP facilities to affect water quality and aquatic ecosystems. Key highlights of this new information include:

First, the National Association of State Aquaculture Coordinators (NASAC) submitted a report describing NASAC's close examination of the States' listings of impaired waters that EPA used in analyses supporting the proposal to help characterize the prevalence of water quality impairments in the U.S. due to aquaculture (DCN 70583). (*See* Section III.E. for details.) NASAC found that of the seven States listing aquaculture as a possible source of impairment to certain specific waterbodies within their borders, only two verified that aquaculture facilities actually were a source of impairment. NASAC also found that for the two States that did confirm aquaculture as the source of reported impairments for the listed waterbody, changes at the facilities had been undertaken to address the source of impairments. (Refer to Section III.E. for a discussion of the NASAC report.)

Second, EPA received more publications and unpublished technical reports of which it was not aware at proposal and which describe studies of downstream water quality and biological impacts of CAAP facility effluents. Covering a range of facilities and geographic regions, some of the studies report adverse water quality and ecological impacts; others report limited or no impacts. These reports will help characterize the potential range of environmental impacts of CAAP facilities and we have put them in the record supporting this action. Examples include:

- Fries, L.T. and D.E. Bowles. 2002. "Water quality and macroinvertebrate community structure associated with a sportfish hatchery outfall." *North American Journal of Aquaculture* 64: 257–266. These authors examined aquatic impacts associated with a large CAAP facility (four million largemouth bass fingerlings, one million channel catfish fingerlings, 12,000 kg live forage for captive broodstock, and 67,000 rainbow trout (winter only)). Based on the data covering a period from October 1996 to July 1998, the authors concluded that "the hatchery effluent did not substantially affect downstream water quality and benthic communities, despite the relatively high total suspended solids and chlorophyll-a levels in the effluent." Their data showed "* * * that sportfish hatchery operations can have negligible effects on receiving waters, even in environmentally sensitive systems" (DCN 40621).

- Loch, D.D., J.L. West, and D.G. Perlmutter. 1996. "The effect of trout farm effluent on the taxa richness of benthic macroinvertebrates." *Aquaculture* 147: 37–55. These authors studied three large trout flow-through facilities in North Carolina. Their data "* * * indicate that trout farm effluent has a definite effect on stream insect communities, suggesting that water quality is reduced just below their outfalls, and to a lesser extent, 1.5 km further downstream. We were able to demonstrate quite clearly that taxa richness was significantly lower just below the outfalls compared to the control, and that although richness did increase further downstream, the recovery was not complete." The authors noted that impacts were seasonal, and that water quality and taxa richness improved during the winter. The authors also noted that sewage fungus (which they defined as a community of organisms that consist mainly of bacteria and ciliated protozoans and is the product of concentrated organic matter) "was present in great abundance at Site 2 of each trout farm" (DCN 61497).
- The Virginia Water Resources Research Center. *Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins,* Submitted by the Virginia Department of Environmental Quality, (Richmond, VA: Virginia Department of Conservation and Recreation, 2002), 207 pp. This document reports on a Total Maximum Daily Load (TMDL) calculation performed for six impaired stream segments in Virginia (*see* Section III.E. of today's notice). The report states that aquaculture effluents were confirmed as the primary source of the organic solids that impaired these short segments (0.02 to 0.8 miles), constituting from 86 percent to 99 percent of the organic solids loading in these largely first-order, spring-fed streams (DCN 40571). You can find this document on the Internet at *http://www.deq.state.va.us/tmdl/apptmdls/shenrvr/trout.pdf.*
- Memoranda, correspondence, and discussion with staff of the South Central Region of the Pennsylvania Department of Environmental Protection (PA DEP) regarding reports of environmental impacts at several CAAP facilities (200,000 to 400,000 lbs annual production) in Pennsylvania. PA DEP provided data and reports documenting adverse impacts of hatchery effluents in receiving spring-fed streams. The materials described observations and/or concerns including those about discharges of carbonaceous BOD and TSS and other pollutants, and results of aquatic biological surveys showing adverse impacts in hatchery receiving waters. While recognizing unique characteristics of these hatcheries (all located on limestone spring creeks and all capture most, if not all, of the streamflow) and seasonality of these impacts, staff biologists were concerned about adverse environmental impacts observed at several sites (DCNS 40596, 40597, 40598, 40599, 40600, 40601, 40602, 40603, 40604, 40605, 40606).

F. Holding Time Study

EPA took samples at aquatic animal facilities for a holding time study. The holding time study consisted of analyzing samples at different time intervals prior to analysis (*i.e.*, holding times) to determine whether varying holding times for the samples yielded comparable results to samples analyzed within the required time specified in the analytical method. EPA conducted the holding time study (1) to evaluate the data collected during sampling episodes at aquatic animal facilities and (2) for possible revisions to current holding time requirements. We assessed changes in target bacterial (total coliforms, fecal coliforms, *Escherichia coli, Aeromonas,* fecal streptococcus, and *Enterococcus*) concentrations over time (between 8 and 48 hours holding time) in wastewater samples.

When EPA designed the holding time study, we considered a range of model technologies for treating CAAP effluents, including some that would provide reductions in bacterial concentrations. EPA found the costs associated with using disinfection technologies at CAAP facilities to treat effluents are economically burdensome to the industry. The disinfection cost assessment is described in the preamble to the proposal (67 FR 57872, September 12, 2002). Because of the cost, EPA did not include technologies that reduce bacterial concentrations (such as disinfection) in the technology basis for the proposed rule. The TSS removal technologies we considered at proposal are not designed to reduce bacterial concentrations in effluents. Therefore, the original purposes for the study are no longer relevant for this rulemaking. However, study results may be useful for facilities, permit writers, and others. For this reason, this NODA summarizes the results and DCN 62398 in Section 6.20 of the rule-making record provides the complete results.

In summary, EPA conducted the study to evaluate sample concentrations at 8, 24, 30, and 48 hours after sample collection. Table II in 40 CFR part 136 specifies a maximum holding time of six hours for fecal coliforms, total coliforms, and fecal streptococci tests used for compliance with NPDES regulations. As a matter of practicality, EPA generally considers eight hours acceptable because the analytical laboratories require some sample preparation time before a sample can be processed. In addition, Section 9060B (Preservation and Storage) of *Standard Methods,* 20th Edition, recommends that nonpotable water samples be held below 10°C for a maximum of 6 hours transport plus 2 hours to begin analysis for bacterial analyses performed for compliance purposes.

As holding times increase, we expect that bacteria concentrations will change. Many CAAP facilities are remotely located and would have difficulty meeting the required 6 hour transport time to a laboratory. In conducting the study, EPA hoped to gain insight into the length of time that would still give comparable results to samples held for eight hours.

The study results for *Aeromonas* and fecal coliforms indicate that holding times over 8 hours did not provide comparable results to results at 8 hour holding times. For total coliforms, *E. coli,* fecal streptococcus, and *Enterococcus* holding times of 30 hours or less provided results comparable to results at 8 hour holding times.

III. Summary of Comments and EPA's Preliminary Assessment

In these sections, we discuss some of the major comments received on the proposed rule and EPA's current thinking on the issues.

A. Representativeness of EPA's Sampling Database

During the comment period and at the public meetings on the proposal, commenters raised concerns over the representativeness of the sampling and DMR data (EPA's sampling database) used to evaluate options and determine limits.

Some of the commenters were concerned about the lack of representation of green water systems that produce warm water species, which they claim have very different water characteristics, especially regarding the effluent concentrations of TSS. Commenters were concerned about the ability of both green water and warm water types of production systems to be able to comply with the proposed limitations for TSS. With assistance from industry representatives and detailed survey responses, EPA identified and visited six warm water or green water production facilities. To assess these concerns, EPA obtained and examined DMR data for two of the six warm water facilities we visited, data for the remaining four facilities was not available. For both facilities, the data indicate that the discharges are lower than the proposed limits when evaluating TSS on a net basis (*i.e.*, which accounts for the concentrations in the source water). These discharges are consistent with the facilities' current NPDES permits. The second warm water facility also consistently meets its NPDES permit limits for phosphorus. Although these two warm water species production facilities differ in many ways from facilities engaged in the production of cold water species, the data confirms that these facilities can achieve the proposed effluent TSS concentrations. Thus, the proposed limits for recirculating systems may be achievable for green water/warm water facilities generally. Therefore, based on current data, there is no basis for differentiating between warm water and cold water production systems for any limitations for TSS in the final rule. (*See* the site visit reports DCNs 62393, 62394, 62395 and DMR data DCNs 31093, 30850). EPA seeks comment on this issue and requests any additional data for these types of systems to supplement EPA's current data set.

Other commenters questioned whether the database we used is sufficiently representative to evaluate the effectiveness of microscreen treatment, especially in cold temperatures. (Microscreens are one component of the Option 3 technology that was the basis for the proposed limitations and standards for certain subcategories.) EPA identified 13 facilities from the detailed surveys that reported using microscreen technology as a primary or secondary solids removal system. To observe the operation of the microscreen, EPA also made site visits to five facilities (three with recirculating systems and two with flow-through systems) that use microscreens. We visited facilities in areas that experience freezing temperatures in winter and concluded that operating a microscreen filter year round is possible because the facilities demonstrated satisfactory performance.

However, unlike our assumptions for the proposal, these facilities operate the microscreen filters in indoor spaces that are protected from freezing. Their microscreens are installed in existing heated spaces or, in one case, in a recently-constructed building that houses other effluent treatment system components. The facilities using microscreens were satisfied with their performance and at least one was planning renovations that included additional microscreens (*see* site visit reports DCN 62388, 62389, 62390, 62391, 62392). For the NODA and in its evaluation of the costs of second stage solids removal technology, EPA adjusted costing to include either full-flow settling basins where appropriate or microscreens in heated spaces of existing buildings. Our analysis shows that, based on available data, either of these technologies, the full-flow settling basin or microscreen, can achieve the proposed limits so we used the lower cost option for each facility in our analysis.

B. Production Systems

1. Flow-Through and Recirculating Systems

Based on comments, EPA may combine the two separate subcategories for flow-through and recirculating systems into a single subcategory. We received comments with engineering descriptions for identifying recirculating systems, including assertions that EPA had not adequately evaluated green water systems; however, the commenters did not give a specific regulatory definition that EPA could use. While we found that a widely-accepted formal definition for recirculating systems does not exist, these systems are generally distinguished by some form of engineered biological treatment, that allows for extended water reuse. (EPA uses the term "engineered" biological treatment to distinguish a recirculating system from a pond, having a "natural" biological treatment process that allows for extended water reuse.) A green water system, in turn, takes advantage of the algae's and bacteria's ability to improve water quality. The commenters based the distinction between the categories on hydraulic residence time or cumulative feed burden, which they define as the feed application rate divided by the flushing rate. Based on comments, we realize that the distinction between the two systems is less obvious than we assumed for the proposal. Further, some facilities may commingle components of both systems. Therefore, EPA may combine the two subcategories into a single subcategory and we seek comment on this approach.

Regardless of whether the subcategories are combined, EPA is considering the same modified BMP plan for both systems (Section III.F describes this BMP plan and Section III.G. presents potential TSS limitations.

2. Net Pens

EPA proposed best management practices, rather than numeric limits, for facilities raising fish in net pens. At proposal, we stated that net pen facilities discharged pollutants into receiving waters. We also noted that researchers had documented environmental impacts due to discharges in limited areas near and beneath some U.S. net pen facilities. EPA found reports documenting rapid recoveries of benthic areas impacted by net pen operations. We are also aware that State regulatory programs have addressed a number of concerns associated with these discharges and require regular benthic monitoring at sites to identify problems early so they can be corrected. Public comments on the proposal also asserted that State regulatory programs effectively address environmental concerns associated with pollutant discharges from net pen operations and no further environmental benefits from additional effluent guideline requirements are likely (DCN 70236, 70283, 70104). However, we also received comments that asserted the proposed requirements were not adequate or reflective of scientific understanding of environmental impacts (including impacts from solids deposition and from the use of drugs and chemicals). These comments also suggested how such impacts might be managed (*e.g.*, DCNs 70253, 70269, and 70270).

In light of these comments, EPA tried to collect more information to support evaluation of regulatory options for controlling pollutant discharges from net pen systems. EPA updated its literature search on the environmental effects of discharges of solids, nutrients, BOD, and drugs and chemicals from net pen facilities. The search included examining existing permit requirements and other practices currently used by net pen facilities. It also involved recognizing modeling tools that were developed and described in research literature that may be useful in translating pollutant load reductions into environmental responses. We do not expect to use these models to estimate environmental benefits for the net pen subcategory because our analysis suggests that practices relating to minimizing releases of solids at most net pen facilities would already meet the requirements we are considering (see Section II.E and DCN 62399).

EPA is also aware of a recently-updated major scientific review of non-native Atlantic salmon at net pen farms in the Pacific Northwest. This review updates an assessment that was considered at proposal (DCN 40149) and appears in a group of six articles published in Volume 62 (2003) of the journal, *Fisheries Research*. The updated information helps EPA better understand environmental concerns with net pen systems and the actual impacts of current operations in the U.S. in the context of existing State and other requirements. At present, EPA concludes that net pens should continue to be included in the CAAP rule. Again, it appears that most net pen operations potentially in the scope of the regulation are already using practices and technologies at least as stringent as those EPA is considering for this subcategory.

One commenter questioned the need for a national regulation when the extent and size of the net pen industry is small. Data regarding in-scope facilities indicate that net pen facilities are used to raise salmon in three States (Alaska, Maine and Washington). A limited number of net pen facilities also produce other fish species as well. While net pen systems in Maine and Washington raise salmon to harvestable weights, net pen systems in Alaska also rear salmon before their release in the ocean.

Offshore aquatic animal production is another new area under development. The National Marine Fisheries Service (NMFS) proposed codes of conduct for these offshore operations announced in an August 2002 **Federal Register** notice (67 FR 54644). NMFS held six regional workshops in the fall of 2000 to discuss the codes of conduct for these types of operations. In 2002, NMFS published *Current and Future Regulation of Marine Aquaculture,* which describes best management practices similar to those we are considering in this rule. These include feed management to minimize waste, minimizing escapes, and minimizing negative effects of escapees on wild populations. The NMFS report also states that disease prevention through vaccinations is preferred over using antibiotics. NMFS has five research stations of which three have aquatic animals. Demonstration projects include sea cages in Puerto Rico, Hawaii, Gulf of Mexico, and eastern Gulf of Maine. EPA did not identify quantitative estimates of future U.S. mariculture activity. However, as research efforts move forward, offshore aquatic animal production may be of greater interest and provide opportunities for future industry growth in this area (*see* DCN 20428 for information about programs and future prospects). EPA is considering whether to identify as new sources subject to these requirements new offshore production facilities located in the territorial seas (*e.g.*, three to eight miles from shore) that use open water net-like structures.

3. Molluscan Shellfish Operations

EPA did not propose to include certain categories or types of facilities within the scope of the proposed rule. Floating or bottom culture molluscan shellfish operations were among the production systems not within the scope of the proposal. Although these operations were excluded, the proposed regulation did not specifically address nursery operations for molluscan shellfish, whose shellfish nurseries tend to be flow-through systems. We received requests to clarify the scope of the proposal and exclude shellfish nurseries from the regulation. We reviewed the information provided in the comments on this issue (*see* DCNs 70147, 70218, 70236, 70238, and 70268). Based on our review, EPA determined that these operations (*e.g.*, shellfish hatcheries, nursery operations, shore based wet storage (live holding) facilities and depuration (cleaning shellfish of impurities) facilities) discharge or add very little, if any pollutants to the receiving water. In some cases, they may remove some of the materials in source water. Some of these comments (DCNs 70147 and 70236) also indicated that shellfish hatcheries and nurseries produce less than 100,000 pounds annually and thus would not be subject to the proposed regulations.

Two comments indicated that adverse environmental effects, primarily accumulation of silt and solids, of excessively large and densely seeded molluscan shellfish operations were reported in the scientific literature (*e.g.*, DCN 70270, 70511). However, these sources acknowledge that adverse impacts are unusual and have not been reported in the United States.

EPA is, however, aware of concerns about deliberately introducing non-native shellfish into coastal waters of the United States. For example, there is ongoing debate about the comparison of possible benefits compared to the possible risks of introducing non-native pacific oysters (*Crassostrea ariakensis*) in the Chesapeake Bay. The National Academy of Sciences (NAS) issued a report (DCN 62456) summarizing the potential risks and benefits of introducing *C. ariakensis* in the Chesapeake Bay. The NAS report also recommends that States and regional authorities develop protocols to reduce the possibility of release of reproductively viable non-native oysters into the bay, including hatchery biosecurity. Although the National Academy of Sciences concludes that there is not an adequate group of laws and regulations in the United States to address the introduction of non-native shellfish into marine waters, the Academy does recommend that the Chesapeake Bay Program be evaluated as a model for interjurisdictional decision-making system with binding authority over introductions that might affect the coastal areas of several States.

C. Drugs and Chemicals

EPA's proposal and technical literature in the record identified several human and aquatic life health and environmental issues of potential concern related to using drugs and chemicals at AAP facilities. These issues included evidence of drug and/or chemical residues in sediments in the receiving waters of AAP facilities or in non-target organisms in the receiving waters (*e.g.*, DCN 20141). The Agency proposed limited reporting requirements for certain types of drug applications. It also proposed establishment and implementation of BMP plans that would help reduce the unintended release of covered drugs and chemicals. EPA could not, however, quantify either baseline loadings of drugs and chemicals, or expected reductions in these loadings due to proposed requirements. Consequently, we did not try to quantify environmental benefits for measures addressing drugs and chemicals.

Some comments asserted that those who apply drugs and chemicals at CAAP facilities consider environmental safety in their decision-making process (DCNs 70236 and 70263). Other commenters added that EPA did not provide evidence that drugs and chemicals used at aquatic animal production facilities lead to environmental problems. They also argued that FDA is the appropriate Federal agency to assess the environmental safety of drugs used in aquatic animal culture (DCNs 70165, 70192, 70216, 70228, 70230, 70236, 70239, 70262, 70263, 70273, 70286). EPA also received other comments arguing that the proposed reporting and BMP requirements relating to drugs and chemicals should be more stringent (DCN 70145).

In addition to drugs and chemicals used as therapeutants or to maintain process water quality, some commenters believe that EPA should regulate the discharge of feeds that contain pigments (such as astaxanthin or canthaxanthin). They believe that these color additives are harmful to humans, especially in the fish flesh of cultured fish that consume the feed. Astaxanthin and canthaxanthin, two widely used color additives in fish feed, are approved by FDA as color additives in fish feed when used in accordance with prescribed conditions on the label. FDA found that these additives would not have a significant impact on human health and the environment (DCN 40417 and 40421).

EPA also collected more information about CAAP drugs and chemicals (*see* Section II.E of today's notice). EPA has met with other Federal authorities such as USDA/APHIS and FDA to clarify and coordinate regulatory and program goals. EPA will work closely with Federal, State, and other appropriate scientific experts to fully consider the available information described here.

Based on our consideration of public comments and information described in Section II.E relating to chemicals applied at CAAP facilities, EPA believes that further evaluation is needed to fully understand the potential for adverse environmental impacts from discharges of chemicals, including therapeutants, applied at CAAP facilities. However, the information we have reviewed to date suggests that the FDA environmental assessment process and site-specific regulatory, professional, or industrial requirements or practices address adverse impacts to a significant degree. We will continue to evaluate this information and consult with relevant authorities.

In addition, EPA and FDA are working on a formal agreement that would address environmental concerns about the discharge of drugs used at aquatic animal production facilities. This agreement, which might help protect the aquatic environment from harm, would facilitate information sharing about effluent concentrations of active drug ingredients. When appropriate, FDA would include in the labeling of approved new animal drugs, effluent concentrations of the active drug ingredient which should not be exceeded in wastewater discharges. EPA would notify permitting authorities who would incorporate these effluent concentrations into the NPDES permits as enforceable requirements. EPA seeks comments on including these labeling concentrations into NPDES permits.

EPA identified research on the use of activated carbon filtration to treat and remove active ingredients in drug and pesticides from CAAP facility wastewater. We also estimated the cost of applying this treatment at facilities (DCN 62451). Based on the information we collected, EPA estimated the cost of applying wastewater treatment to remove drugs and chemicals from CAAP effluent before discharge. EPA considers these costs to be economically unachievable, (see Section V.C. of this notice). However, management practices intended to ensure proper storage, use and disposal of drugs and chemicals and to minimize the need for their use may be an effective approach for minimizing their discharge. To address this issue, EPA is evaluating an additional option (Option A) that would be similar to Option 1 but would substitute a drugs and chemicals BMP plan for the solids control BMP plan proposed in Option 1. The Option A BMP plan would also have to address potential escapes of non-native species.

In developing this option, EPA evaluated practices that involve the early identification of health problems, recordkeeping, and proper use and storage of drugs and chemicals by employees. In addition, EPA found that biosecurity practices that contain and prevent the spread of disease throughout the facility are effective at reducing the use of drugs at CAAP facilities. Health screening involves observing the normal behavior of aquatic animals at a facility (*e.g.*, feeding behavior and abnormal activities). EPA recognizes that more intensive screening activities, such as diagnostic tests for specific pathogens, may not be technologically feasible or economically achievable. Recordkeeping and the regular review of the records should help facilities evaluate the effectiveness of health management and modify their practices to further reduce health problems in the aquatic animals that may lead to greater use and disposal of drugs and chemicals.

D. Non-Native Species

EPA received comments presenting discussions about CAAP as a pathway for the introduction of non-native species. Some commenters feel that existing State and local permitting programs and regulations provide adequate protection. Several State agencies commented that while they concur that measures to address potential risks associated with aquatic nuisance or invasive species are important, such measures are most appropriately and effectively developed at a State or Tribal level and that in many cases, specific requirements and policies already exist. Some of these States briefly described their relevant programs and regulations. We also received comments from States suggesting that proposed new national requirements might threaten existing State efforts addressing invasive species.

However, a State permitting authority (DCN 70067) and a State coastal resources agency (DCN 70225) commented that EPA should require CAAPs to report escapes of non-native species to the permitting authority. They gave their rationale for this requirement, including arguing that timely notification of escapes would allow State natural resource and environmental agencies to evaluate and, if necessary, control the spread of the non-natives. These agencies also recommended that EPA prohibit the intentional release from CAAPs of non-native species that might harm wild species. One of these agencies suggested that facilities should be equipped with physical barriers to prevent the incidental discharge of all life stages of non-native species. One agency supported a Federal regulation corresponding to existing State rules that would prohibit unauthorized release of harmful or potentially harmful exotic and non-native species.

Other commenters urged more coverage (*e.g.*, ponds, molluscan shellfish) and control for escapes. They identified several specific concerns: escapes of the cultured organisms themselves (*e.g.*, Atlantic salmon in the Pacific Northwest), including genetically modified species, and escapes of pathogens and parasites potentially associated with the cultured organisms. Commenters also proposed potential control requirements (*e.g.*, prohibitions on reproductively viable non-native species; containment requirements). Some commenters believe that current practices to minimize or prevent the release or escape of non-native species are effective.

EPA also received comments questioning our interpretations of technical literature about non-native species concerns. The JSA pointed out that EPA cited a comprehensive 2001 NOAA technical memorandum on the net pen salmon farming industry in the Pacific Northwest in its discussions on possible concerns with escapes of non-native species (DCN 40149) but that EPA did not also cite the conclusions of the report regarding the "very low or no" risk of interactions or problems from accidental releases of Atlantic salmon in the Pacific Northwest. That report states that the escape of Atlantic salmon, a non-native species, is "deemed to carry very little or no risk" with respect to potential for hybridization with other salmonids, colonization of salmonid habitat, competition with native species for forage, predation on indigenous species, and serving as vectors for the introduction of exotic pathogens. The report reviews and discusses scientific evidence and reasoning to support this conclusion. The report also states that "[t]he possible negative consequences of such [accidental escape] events have been limited in part by implementation of pre-prepared recovery plans, some of which have included deregulating catch limits for public fishing on escaped farm fish, and by programs to monitor the background populations of fish in nearby watersheds. These responses will continue to be effective management practices to minimize impact, together with further advances in the technology. Improvements in the design and engineering of net pens and their anchorages, and the use of new net materials, are continuing to reduce the incidents of loss following structural failure or damage from large predators."

In addition, JSA gave references updating information contained in earlier sources we cited in developing the proposed rule addressing viral hemorrhagic septicemia (VHS) on the West Coast. In contrast to that earlier information, the more recent references provided by JSA demonstrate that VHS was a pre-existing condition in marine fish throughout the Pacific Northwest. These references are:

- Amos, K.H., J. Thomas, B. Stewart, and C.J. Rodgers. 2001. "Pathogen transmission between wild and cultured salmonids: risk avoidance in Washington State, United States of America." *Risk Analysis in Aquatic Health: Proceedings of an International Conference,* Paris, France, 8–10 February, 2001:83–89 (DCN 40609).
- Amos, K.A., J. Thomas, and K. Hopper. 1998. "A case history of adaptive management strategies for viral hemorrhagic septicemia virus (VHSV) in Washington State." *Journal of Aquatic Animal Health* 10:152–159. (DCN 70732)
- Meyers, T.R. and J.W. Winton. 1995. "Viral hemorrhagic septicemia virus in North America." *Annual Review of Fish Diseases* 5:3–24. (DCN 40592)

Some commenters urged EPA to more effectively and appropriately align any considerations about invasive species with existing Federal (*e.g.*, the National Invasive Species Council), State, and other authorities and requirements. Other comments asserted that EPA should not regulate non-native species because they are already regulated by other agencies.

Commenters further stated that EPA should better define some of the terms we used in the proposal (such as "non-native species" and "biological pollutants"). The proposed non-natives definition applies to an individual, group or population of a species that is introduced into an area or ecosystem outside its historic or native geographic range and that was identified by the appropriate authority as non-native or invasive. Most States have, by statute or regulation, identified certain species of plants and animals as non-native, invasive or exotic species that could threaten native aquatic biota. The term excludes species raised for stocking by public agencies in a given State. EPA excluded these species because the action of stocking a species in public waters provides a sanctioned opportunity for the species to become established. In any given State, if an aquatic animal species that is otherwise defined as non-native is raised to be stocked in public waters, then any commercial facilities producing the same species, by definition, would not be producing a non-native species. EPA defers to the States to determine what species are considered non-native in their State.

EPA recognizes that non-native species do not always present a problem. The problem lies in a species becoming invasive or established in an area to the point where it creates adverse human health, economic or ecological/environmental impacts. EPA is evaluating the information described in Section II.E.3 of today's notice and comments on the proposal and will assess whether the requirements for minimizing and/or reporting on escapes of non-native species are appropriate. EPA is particularly interested to learn about prevention measures that reduce the likelihood that species or pathogens will become invasive or established (*e.g.*, regular inspection and maintenance of escape prevention devices). For the final rule, EPA will also consider costs, economic impacts, effectiveness, and possible benefits, and existing relevant Federal, State, Tribal, and other requirements or practices.

E. Water Quality Impacts From TSS, BOD, and Nutrients

EPA received several comments about water quality impacts from CAAP facilities. (This section addresses comments on discharges from flow-through and recirculating facilities. Section III.B.2 discusses comments on water quality impacts at net pen systems. Elsewhere in Section III. you will find discussions on impacts from other discharges.) As discussed in Section II.E.4, some information indicated that CAAP facilities may be a significant part of local water quality impacts. Commenters were especially concerned with one source of information EPA considered in developing the proposed rule (State CWA section 303(d) reports on the causes and status of impaired water bodies) and questioned whether water quality impacts from CAAP facilities were of sufficient national scope to warrant a national effluent guideline.

Commenters also discussed situations where CAAP effluents might contribute to positive water quality impacts. In addition, commenters reviewed existing regulatory structures that, they asserted, provided adequate water quality protection. Following public comment, EPA received materials from a State agency drawing attention to what they characterized as serious adverse water quality impacts at several CAAP facilities in their jurisdiction (Section II.E.4. describes additional information about water quality EPA compiled since proposal).

Two stakeholder groups (JSA and NASAC) argued that there is no evidence that CAAP is a "significant threat to our Nation's waters." They asserted that "[t]o justify promulgating national effluent rules for the U.S. aquaculture industry, EPA must provide scientific documents irrefutably identifying that most of the U.S. aquaculture facilities are compromising the water quality of the receiving waters from aquaculture facilities." These groups offered the results of a NASAC study documenting that a far smaller number of States (two) than discussed in EPA's proposal documents (seven) identified aquaculture as a major source of impairment in the 1998 and 2000 303(d) lists they submitted to EPA (DCN 70583).

EPA reviewed this information and concurs with several key findings of the NASAC 303(d) report. First, NASAC's analysis correctly shows that although seven States listed aquaculture as a possible source of impairment to water bodies within their borders, only two of these States (North Carolina and Virginia), when contacted by NASAC, verified that aquaculture facilities were a source of impairment. The remaining States indicated to NASAC that aquaculture was not a known source of impairment on the impaired stream segments reported to EPA. However, one of the States noted that aquaculture had subsequently been identified as a possible source of impairment on a different stream segment. EPA also concurs that, for the reported aquaculture-related water body impairments, local authorities reported that impairments are being addressed by site-specific solutions. In the case of North Carolina, according to the NASAC report, the State addressed water quality impairment in the affected arm of Santeetlah Lake by structuring a buy out that will remove the trout farms contributing to the impairment. In the case of the six stream segments that Virginia reported impaired due to trout farm effluents, a 2001 benthic macroinvertebrate survey confirmed that all six streams were still impaired. In 2002, the State prepared a TMDL for these six stream segments. The State affirmed that aquaculture effluents were the primary source of organic solids that impaired these short stream segments (ranging from 0.02 to 0.8 miles). They constitute from 86 to 99 percent of the organic solids loading in these largely first-order, spring-fed streams (DCN 40571).

F. Best Management Practices

Many commenters stated that EPA did not have enough information to develop best management practices that would apply to all CAAP facilities alike. Commenters also did not want the BMPs to be prescriptive. They wanted language changes to allow for flexibility and innovative technologies. Commenters asked EPA to consider alternatives to the preferred options selected for the proposal for certain subcategories. As a result, EPA is considering several changes to the BMP requirements in the proposed rule.

Among the comments received on BMPs are:

- Commenters preferred BMPs over direct monitoring to comply with numerical limits. One commenter reported that testing (including shipping) took about 600 employee hours and $40,000 per year. The commenter also stated that reliance on BMPs would ease the burden and allow them to shift the hours and dollars spent on testing to implementing BMPs.
- Other concerns should be addressed in developing a BMP plan, but the appropriate personnel at the facility should identify the selected practices or control options, subject to regional or State review. Commenters also stated that the BMPs should not be prescriptive due to regional and State variations in aquatic animal production operations as well as possible misinterpretation by permit writers.
- EPA should better define the term "BMPs" and the requirements of a BMP plan.
- EPA underestimated time and costs for development of BMPs.
- Some commenters supported BMPs but did not believe that EPA should issue a final guidance document (an updated version of the proposal document). Instead, EPA should give references to other sources such as land grant universities that have researched this area.
- The proposed BMPs would control effluent discharges poorly. Some commenters indicated that BMPs should not be used as a replacement for discharge limitations but as an added tool to achieve discharge reductions.

Based on comments, EPA is considering a simplified guidance document to identify recommended components of a BMP plan. In EPA's view, a list of these components may help guide producers in developing their own BMP plans. Such guidance might also help reduce the burden on producers of developing a plan and allow flexibility in meeting the facility's specific goals. (Section IV.C. describes these components)

G. Proposed TSS Limitations

EPA received comments stating that it lacked information to develop numerical limitations relevant to all CAAP facilities. Commenters stated that regional differences (among facilities) and effluent characteristic differences (between cold water and warm water species) would make it impractical for all facilities to meet the proposed limits.

The National Association of State Aquaculture Coordinators (*see* DCN 62387) asserted that there is no evidence to show that using best professional judgment to develop limitations associated with NPDES permits is not already protecting water quality effectively and that a national effluent guidelines regulation is not necessary. They later provided information on recent developments in some State programs on the use of BMPs in NPDES permits for CAAP facilities. EPA will consider this information with other information the Agency collected to further evaluate current wastewater treatment practices in the industry.

In response to these comments, EPA performed a preliminary assessment of the TSS limitations and found that most flow through facilities already have relatively low discharges of TSS in full flow or recombined flow effluents. The BMP approach will provide an additional control of TSS discharges. Thus, EPA is reconsidering whether monitoring of TSS concentrations is necessary for this industry. EPA seeks comment on this issue.

EPA proposed that, in the case of flow-through systems, TSS limitations would apply on a net basis (67 FR 57927). That is, the discharge limitation would apply to the amount of TSS added by the production system. This approach is consistent with the NPDES general permit conditions for CAAP facilities in at least one State (Idaho). For recirculating systems, by contrast, EPA proposed that TSS limitations would apply on a gross basis, without accounting for TSS in the source water. EPA's supporting documentation for the proposal shows that the data used to establish the proposed limitations for both subcategories was based on gross TSS concentrations.

The NPDES permit regulation provides a procedure for adjusting limitations to reflect credit for pollutants in intake source water in certain circumstances. These include a demonstration that a discharger's control system would meet the applicable limitations in the absence of pollutants in the intake water (*see* 40 CFR 122.45(g)). EPA is now considering whether to promulgate limitations for both subcategories that leave the decision of establishing permit limits on a net or gross basis to the permit writer. A requirement to establish limitations on a net basis could be interpreted to require all CAAP facilities to collect samples from both their effluent and influent, thus doubling the number of samples required and the analytical costs, which may be unnecessary under many circumstances. For example, facilities whose source water is spring fed may have very little TSS in the source water. Likewise, some recirculating facilities may use public water supplies that also have low TSS concentrations in their source water. Another approach would require monitoring of influent only where effluent monitoring shows a possible exceedence of the limit.

EPA asked for updated copies of NPDES permits, fact sheets, and DMR data for 125 permitted facilities from the EPA regional offices. EPA was able to get NPDES permits for 49 facilities in the detailed survey. EPA also obtained DMR data directly from facilities and PCS for 47 facilities. EPA got DMR data and permits for 43 facilities. There were six facilities for which EPA had NPDES permits but not DMR data and four facilities for which EPA had DMR data but not NPDES permits.

EPA used the detailed surveys and NPDES permit information to identify discharge points and the nature of discharges (*e.g.*, full flow from raceways or solids collection decant water) in the DMR data. EPA found reported TSS data in the DMR set from 31 of the 47 facilities for which it had DMR data. Sixteen facilities in the DMR set did not have TSS data. EPA concluded that 28 of the 31 facilities with TSS data use at least primary settling treatment. Two of the 31 facilities indicated that they have no treatment, and EPA was not able to verify in-place treatment for one facility.

To determine the ability of facilities to meet the primary treatment option, EPA then compared the reported TSS concentration data with the limits proposed for flow-through facilities that produce 100,000 to 475,000 pounds of aquatic animals a year and for recirculating systems that produce more than 100,000 pounds of aquatic animals a year. For the 31 facilities with TSS data, the number of effluent measurements per facility ranged from 424 to 2, with the average for all 31 facilities being 68 measurements. EPA compared facility TSS monitoring data with the proposed limits for similar types of discharges and found:

- Recombined effluent—Two of the three facilities in this category exceeded the proposed daily maximum limit of 11 mg/L in 28 of 178 reported measurements. We did not find monthly average measurements for this group
- Full flow settling basin discharges—Two of six facilities exceeded the proposed daily maximum limit of 11 mg/L in 15 of 110 reported measurements, and exceeded the proposed monthly average limitation of 6 mg/L in 10 of 113 reported measurements
- Bulk flow effluent—One of three facilities exceeded the proposed daily maximum limit of 11 mg/L in four of 104 reported measurements and exceeded the proposed monthly average limitation of 6 mg/L in six of 104 reported measurements
- Offline settling basins—Neither of the two facilities with TSS data exceeded the proposed daily maximum limit of 87 mg/L or the proposed monthly average limitation of 67 mg/L in 81 reported measurements
- Recirculating system combined effluent—The one facility with reported TSS data exceeded in one of nine reported measurements the proposed daily maximum limit of 50 mg/L, and they exceeded in three of 87 reported measurements the proposed monthly average limitation of 30 mg/L.

EPA found that all of the reported TSS measurements that exceeded the proposed limits occurred in the earlier data reported by an individual facility. The time periods varied by facility from 1990 through 2001 for the data used to compare proposed limits with reported monitoring data. Facility data in the most recent year were all within the proposed TSS limits for the corresponding outfall type. The record discusses the analysis in these data (*see* DCNs 62641 and 31137).

EPA also compared sampling data from the four sampling episodes with the proposed daily maximum limits and found:

- Full flow settling basin discharges—Neither of the two facilities with full flow discharges exceeded the proposed daily maximum limit of 11 mg/L in any of the 10 sample measurements.
- Bulk flow effluent—One facility with a bulk discharge did not exceed the proposed daily maximum limit of 11 mg/L in any of five sample measurements.
- Offline settling basins—One of three facilities with offline settling basins exceeded the proposed daily maximum limit of 87 mg/L in four of the total 21 sample measurements taken at the three facilities.
- Recirculating system combined effluent—The one facility sampled exceeded the proposed daily maximum limit of 50 mg/L in one of five reported measurements.

H. Feed Conversion Ratios

Improving the conversion of feed to live weight positively affects water quality, generating less wastes by reducing the amount of uneaten feed. Some commenters raised a concern about the feed conversion ratios (FCRs) EPA assumed in the cost model and the frequency factor adjustment (*see* Section III.I.). The FCR is the weight of feed used to produce a unit weight of aquatic animals. Commenters said the FCRs we used for proposal were too high, and most facilities are achieving better feed conversion ratios than assumed.

Many facilities responding to the detailed survey estimated their FCR or submitted detailed information on feed use and production. EPA found reported FCRs to be quite variable, even among facilities with similar systems, ownership types, and species. EPA calculated FCRs facility-by-facility from the detailed survey to estimate possible load reductions. For the purpose of estimating costs and pollutant load reductions, EPA assigned target FCRs as the 25th percentile value for facilities in each combination of species, production system, and ownership type group. EPA does not currently plan to establish any limits on FCRs. We used facility-specific FCRs to estimate baseline loads and compare them to the target FCR to estimate possible load reductions from implementation of solids control BMPs.

In comparing FCRs with effluent concentration data on a facility basis, EPA found that the raw wastewater pollutant loading at a facility is still largely linked with feed inputs. To address comments about the impact of the FCR values, EPA will perform sensitivity analyses to compare the target FCR and resulting pollutant load reduction estimates.

I. Cost Analyses

Comments stated that the proposed model facility approach used was not adequate. Many of the comments suggested that EPA's cost estimates were not accurate, but only a few commenters (*e.g.*, JSA AETF, NASAC, and the U.S. Trout Growers Association) provided detailed cost data. These commenters also suggested that EPA's model facilities were an inaccurate representation of the industry because the model facilities do not capture the diversity of actual facilities. One commenter stated that the labor rates for managers and laborers were too low. To address these concerns, EPA used facility-specific information from the detailed survey to perform the analyses for the NODA. *See* Section V.A.2.

Commenters also criticized our use at proposal of the frequency factor approach to major national estimates. For this approach, EPA applied a "frequency factor" to the cost for each model facility to estimate the national cost for all facilities represented by the single model facility. EPA estimated frequency factors based on these sources: EPA site visits, screener surveys, observations by industry experts, USDA's 1998 Aquaculture Census, USDA APHIS National Animal Health Monitoring System, and State regulatory programs. Commenters argued that the frequency factors underestimated compliance costs, so EPA may have underestimated impacts.

For the NODA, EPA changed its approach by using data from the detailed survey to estimate facility-level compliance costs and associated loads. Instead of applying the frequency factors used at proposal, we applied statistically-derived weights from the survey design to scale detailed survey facility estimates to national estimates based on the probability that a facility was selected for the detailed survey sample. Because not all sampled facilities would be within the scope of the rule, we used a subset of the detailed survey sample to estimate national CAAP costs for industry sectors affected by the proposed rule (*see* Section II.D. for a description of the survey weights and the subset).

IV. Regulatory Options Considered for the Proposal and Modifications Being Considered for the Final Rule

A. Proposed Regulatory Options

In subcategorizing the industry for the proposal, EPA considered several factors (*e.g.*, age of the equipment and facilities, location, processes employed, and the available types of treatment technology.) We identified the types of production systems (*e.g.*, flow-through systems, recirculating systems, net pens) to create subcategories with similar operating practices, quality and quantity of effluent type and discharge frequency.

We then proposed limitations based on these CAAP subcategories: flow-through, recirculating, and net pen systems. Flow-through systems tend to have high effluent flows that can exceed a complete system volume exchange per hour. Some flow-through facilities may treat two discharges: a bulk discharge and a discharge from a settling basin referred to as off-line settling. The bulk discharge is large volume and flows directly from the areas where the animals are confined. The off-line settling discharge is water drawn from, without disturbing, the solids collected from the production process that are treated in a basin through settling. Compared to the bulk flow discharge, the volume of discharge from the off-line settling basin is small but more concentrated in pollutants such as TSS, BOD, or nutrients. Other flow-through facilities choose to treat their entire discharge through a single treatment system (full-flow settling) that includes the solids generated from the production process and the entire production volume of water. Facilities that use full-flow settling with a single discharge point usually have relatively low concentrations of TSS, BOD, and nutrients.

Some recirculating systems have single discharges with relatively small volumes (often a fraction of the system volume per day) of treated effluent with concentrations of TSS, BOD, and nutrients comparable to the off-line settling basin discharge at some flow-through facilities. Other recirculating systems (called dual discharge) may have two discharges, one from a solids treatment process and one often described as "overtopping" water. Overtopping water is process water that drains from production tanks or process water treatment units as a result of continually adding a small amount of water to the recirculating system. This practice provides make-up water that offsets losses and some dilution for a "margin of safety" that ensures adequate process water quality. The overtopping water effluent TSS, BOD, and nutrients are typically less concentrated than solids treatment system effluent, but they are more concentrated than bulk discharges from flow-through systems. Solids treatment effluents from a dual discharge recirculating system are similar in concentration to flow-through offline settling basin and single discharge recirculating systems. Net pen systems release TSS, BOD, and nutrients directly to receiving waters.

EPA then divided the subcategories by facility size (*i.e.*, the amount of aquatic animals produced) because of differences in economic factors related to production size. The proposal did not include facilities with annual production below 100,000 pounds due to economic achievability concerns. We also proposed less stringent requirements for flow-through facilities with production between 100,000 and 475,000 pounds a year (again based on concerns about economic achievability). EPA based its proposed conclusions on economic achievability of limitations based on the model technology and model facility analysis. The proposed model facilities represented specific size ranges in pounds produced. Pounds produced were derived from annual revenue ranges and price data from the 1998 Census of Aquaculture. Most of the impacts that EPA identified would adversely affect trout producers below an annual threshold of 94,000 pounds production. Therefore, EPA proposed to establish the applicability threshold for the effluent guideline at 100,000 pounds a year to avoid projected impacts in the trout sector. Production of other species also faced similar economic stress at lower production levels. EPA proposed the same applicability threshold for other species because doing otherwise would add needless complexity to the regulation, with little corresponding environmental benefit.

EPA identified technology options for each of the system/size subcategories based on technologies and practices found at facilities in the subcategory. We evaluated the options in order of increasing stringency, both in the degree of pollutant reduction achieved as well as in cost. Each successive option incorporates the technologies and practices of the previous option.

Option 1 for flow-through systems includes primary settling (*e.g.*, quiescent zones and settling basins) and developing and implementing a BMP plan for solids control. Option 1 for recirculating systems includes similar technologies/practices to those for flow-through systems. Option 1 for net pens includes feed management and BMP plan development for solids control.

Option 2 for all subcategories combined the Option 1 requirements with identifying and implementing BMPs to control discharges of drugs, chemicals, and non-native species. Option 2 also included a reporting requirement for the use of Investigational New Animal Drug (INAD) and extra-label use drugs. Option 3 combines Option 2 requirements with solids polishing (*e.g.*, microscreen filtration) for flow-through and recirculating systems and active feed monitoring for net pens.

EPA selected the proposed regulatory options for each subcategory based, in part, on the costs and economic impacts of installing and implementing these options. The proposed regulation for flow-through systems applied a two-tiered approach reflecting economic achievability concerns. For facilities that produce between 100,000 and 475,000 pounds of aquatic animals a year, EPA proposed to base BPT, BCT, BAT and NSPS on Option 1. For facilities that produce more than 475,000 pounds of aquatic animals per year, we proposed BPT, BCT, BAT and NSPS requirements on Option 3. For recirculating systems, EPA proposed Option 3 as the basis for the BPT, BCT, BAT and NSPS requirements. For net pen systems, EPA also proposed Option 3 as the basis for BPT, BCT, BAT and NSPS. The components for each option for flow-through and recirculating systems are summarized in Table IV.B.1.

EPA is still considering a no further regulation option. EPA received many comments supporting a no rule option for this industry. Comments referred to programs within the Federal and State governments such as the NPDES permitting process and TMDLs, indicating that these programs are better equipped to address local problems than national guidelines. They also argued that the baseline discharge loadings do not warrant national guidelines. The Agency will fully consider this option and the comments when it issues the final action.

B. Modifications Being Considered for the Final Rule

The following sections discuss several alternatives EPA is considering. We present the revised costs, pollutant reductions, and economic impact estimates for both the proposed options (1 to 3) and two new options (A&B) (*see* Section VI of today's notice). These revised estimates reflect:

- Data from EPA's detailed surveys.
- Data received with comments to the proposed rule.
- Effluent monitoring (DMR) data received from EPA regional and State permitting authorities.
- Changes resulting from methodological revisions to EPA's analytical approach. Before final action, EPA will consider these and any further revisions resulting from comment on today's notice. The following sections describe alternatives we are considering for the different regulatory levels of control (*e.g.*, BPT, BCT, BAT, NSPS).

1. Description of Modified Options—Flow-through and Recirculating System Subcategories

As a result of the facility-level analysis from detailed surveys and comments, EPA re-evaluated the flow-through and recirculating system technology options for BPT, BCT, BAT, and NSPS limitations or standards from proposal. In addition to the three proposal options, EPA is considering two new options that represent changes to the proposed options. We will also continue to consider a no further regulation option.

The first new option (Option A) would, like Option 1, include primary settling. It would also include the requirement to develop and implement a BMP plan that minimizes both the discharge of drugs and chemicals and the possible escape of non-native species. Option A would also include the requirement for reporting Investigational New Animal Drugs (INADs) and extra-label use drugs as included in the proposed Option 2. The only difference between Option A and the proposed Option 2 is that Option A does not require the development and implementation of BMPs to address solids control.

Like Option 1, Option A would ensure that all covered facilities remove solids by primary settling. Based on the detailed survey data, primary settling is used at 468 out of 506 (92.5%) of all flow-through and recirculating CAAP facilities. However, where Option 1 would require using BMPs to control solids, Option A does not. Option A would instead require BMPs to (1) address the use, storage, and disposal of drugs and chemicals and (2) minimize or prevent the release or escape of non-native species. This substitution may be appropriate for two reasons. First, many facilities have already established these practices. The detailed survey indicates that drug and chemical management practices are in use at 44% of flow-through and recirculating CAAP facilities. The practices are also used at 46% of flow-through facilities with annual production between 100,000 and 475,000 pounds. Over 90 percent of facilities producing species that would be considered non-native use escape prevention practices. Second, EPA thinks this change may be appropriate because it addresses the environmental effects that most concerned commenters. Therefore, EPA will consider Option A as the basis for BPT, BCT, BAT, and NSPS for the flow-through and recirculating subcategories with annual production greater than 100,000 pounds in the final rule. Option A would identify aspects of the facility operation that must be addressed with appropriate management practices but not specify the particular practices.

The proposed Option 3 specified additional solids removal requirements that could be accomplished through secondary solids removal treatment technologies such as microscreen filtration or a solids polishing pond. Option 3 included a numeric TSS concentration limit of 10 mg/L maximum daily and 6 mg/L monthly average for full-flow, flow-through facilities; 69 mg/L maximum daily and 55 mg/L monthly average for offline settling at flow-through facilities; and 50 mg/L maximum daily and 30 mg/L monthly average for recirculating facilities. EPA estimates that solids polishing technologies (or some equivalent) are currently used at 264 of 506 (52.2%) of all flow-through and recirculating CAAP facilities.

The second modified option (Option B) being considered is similar to the proposed Option 3 in that it would require a greater degree of solids removal than achieved under Option A. However, Option B would offer facilities the choice to develop and implement a solids control BMP as included in Option 1 in lieu of installing secondary solids control technology, such as a second stage settling pond or a microscreen filter, and meeting numeric TSS limits. Facilities could still choose to install solids polishing technology and monitor TSS to achieve a numeric limit, but they could alternatively choose to instead implement solids control BMPs such as feed management.

Table IV.B.1 identifies the components or technologies we are considering for the proposed and modified options for flow-through and recirculating systems.

TABLE IV.B.1.—TECHNOLOGIES OR PRACTICES CONSIDERED FOR THE PROPOSED AND MODIFIED OPTIONS

Options	Technologies or practices				
	Primary settling	Solids control BMPs	Drugs and chemicals BMPs	Escape prevention	Secondary solids removal
1	√	√			
2	√	√	√	√	
3	√	√	√	√	√
A	√		√	√	
B*	√	√	√	√	√

*Option B would include primary settling, drugs and chemicals BMPs, escape prevention, and a choice between solids control BMPs or secondary solids removal technology.

EPA seeks comment on establishing BPT, BCT, BAT, and NSPS based on any one of these options for both flow-through and recirculating systems. We also seek comment on whether EPA should establish limitations and associated BMPs.

2. Continual Discharge Subcategory

Public comment (DCNs 70137 and 70236) suggests that EPA's proposal did not clearly define recirculating systems. A variety of systems are used to produce aquatic animals spanning a continuum from completely flow-through (single pass of water through culture tanks) to nearly complete recirculating (only small amounts of make-up water are added to offset evaporation and other losses). Closed ponds (*i.e.*, systems that do not regularly discharge) and net pens (systems located directly in the receiving water), are outside of this continuum. Many facilities operate flow-through systems with multiple uses of the water before discharge. Oxygen may be added and solids collected between uses to provide better quality of reused water. Some facilities operate flow-through systems with process treatments that are similar to some used in recirculating systems (*e.g.*, enhanced solids removal, extensive oxygenation, and carbon dioxide stripping).

Recirculating systems may have concentrated solids effluents from solids removal processes that require additional treatment prior to discharge.

These concentrated solids effluents from recirculating systems may be similar in quality to those discharged from quiescent zones in flow-through systems. Many recirculating systems also have an overflow or overtopping water discharge that is combined with the solids treatment effluent. Overtopping water quality is essentially the same as that of the process water in the recirculating system. The quality of the overtopping water is usually more concentrated in constituents (such as TSS, BOD, nitrogen, and phosphorus) than flow-through system bulk discharges. However, it is less concentrated in these constituents than effluents from solids treatment processes such as offline settling basins. Daily volume of discharged overtopping water is also typically less than 10% of the system volume compared to the multiple system volume exchanges per day in typical flow-through systems. Our proposal did not clearly state how the rule would cover overtopping water from recirculating systems. EPA intended overtopping water discharges to be treated like solids treatment water or combined effluents. That is, all discharges from recirculating systems would be subject to the same proposed effluent limits.

EPA may revise its proposed subcategorization scheme by combining the flow-through and recirculating subcategories into a single subcategory, called the "continual discharge" subcategory (*see* Section III.B.1). Both proposed subcategories operate with a continuous or frequent discharge of wastewater containing similar wastewater pollutants. The recirculating system wastewater discharge typically comes from two sources, backwash from solids removal and overflow water from production tanks, and has similar pollutant concentrations as offline treatment system effluents from flow-through systems. Combined recirculating system discharges (backwash from solids removal and overflow water from production tanks) are also like the wastewater discharged from offline treatment at a flow-through system.

The detailed survey data indicate that nationally 11 facilities use both flow-through and recirculating system technologies. Depending on the facility layout, wastewater from both systems may be commingled for discharge in a single effluent stream. Under the proposal, facilities that commingle recirculating and flow-through system wastewater would be subject to the recombined effluent limits that are the same as the full flow requirements for primary settling.

By combining the flow-through and recirculating systems into a single subcategory, EPA would basically apply two sets of effluent limits. One set would apply to the discharge of full flow effluents, and the other would apply to offline treatment or recirculating system effluents. The flow-through facilities would be subject to the proposed requirements (*i.e.*, remain unaffected by combining the separate subcategories into one), whereas the recirculating systems would be subject to offline treatment requirements. Offline treatment requirements had higher (less stringent) effluent concentration-based limits than the proposed recirculating system limits. They operate with a frequent continual discharge that contain similar wastewater characteristics.

EPA is also considering the same modified options (A & B) for the continual subcategory as for the separate flow-through and recirculating subcategories. Because the continual subcategory would include limits from the separate flow-through and recirculating systems, the results of the analyses for the continual subcategory would be similar to those presented for the separate subcategories. EPA would apply the same requirement for TSS in a continual discharge subcategory to discharges from stand-alone recirculating facilities and offline settling basins. EPA seeks comment on combining these two subcategories into a single subcategory.

3. Net Pen Subcategory

EPA is not considering changes to the proposed options for the net pen subcategory. For facilities that produce more than 100,000 pounds of aquatic animals per year, EPA proposed BPT limits based on:

- Option 3 active feed monitoring (*i.e.*, additional solids removal).
- Developing a BMP plan for solids control.
- General reporting requirements for use of certain drugs and chemicals for facilities.

EPA also proposed to establish BAT equal to BPT because no more stringent options representing BAT were available. EPA proposed to establish BCT equal to BPT because EPA did not identify any more stringent technologies representing BCT were available. Finally, EPA proposed NSPS equal to BAT because the proposed effluent limitations guidelines would be affordable and would not pose a barrier to entry for new source net pens.

V. Revisions to the Cost, Loadings, Economic, and Benefits Models

A. Revisions to Assumptions and Methodology Used in EPA's Cost Analyses

1. Proposed Costing Approach

At proposal, EPA used a model facility approach to estimate the cost of installing or upgrading wastewater treatment to achieve the proposed requirements. As described in the preamble to the proposed regulation (67 FR 57872), EPA developed 21 model facilities (based on the USDA's Census of Aquaculture and EPA's screener survey) characterized by different combinations of production systems, size categories, species and ownership types. We developed regulatory technology options based on screener survey responses, site visits, industry and other stakeholder input, and existing permit requirements.

EPA estimated the cost for each option component for each model facility. We then calculated costs for each regulatory option at each model facility based on model facility characteristics and the costs of the option's technologies or practices corresponding to the option.

EPA estimated frequency factors for treatment technologies and existing BMPs based on screener survey responses, site visits, and sampling visits (*see* Section III.1). Baseline frequency factors represented the portion of the operations that would not incur costs to comply with the proposed requirements because they were already using the technology or practice. EPA adjusted the component cost for each model facility represented by the model to account for those facilities then EPA derived national estimates of costs by aggregating the component costs applicable to each model facility across all model facilities.

2. Revised Costing Approach

EPA's detailed surveys captured information on the treatment in-place at the facility and other site-specific information (such as labor rates). EPA got additional cost information from data supplied from public comments and site visits. With the new data, EPA revised the method to estimate compliance costs. Instead of a model facility approach, EPA is presenting facility-level costs based on the available facility-specific data contained in the detailed survey responses. We then apply statistically-derived survey weights instead of the frequency factors used at proposal to estimate costs to the CAAP industry as a whole.

On the detailed survey, facilities operating flow-through and recirculating production systems reported a variety of BMPs that are used today. These BMPs include:

- Feed management.
- Cleaning of quiescent zones.
- Inventory control.
- Health screening.
- Cleaning screens in tanks or raceways.
- Mortality removal.
- Use of dam boards.
- Flow diversion during harvest and cleaning activities.

The detailed survey did not ask for detailed descriptions of the steps in the BMPs. Therefore, except for the feed management practice (see below), when a facility indicated a particular BMP in place, EPA assumed no additional cost to the facility for implementing that BMP.

The costs associated with BMP plan development include a one-time labor cost of 40 hours to develop and write the plan. The plan that EPA costed included (1) identifying all waste streams, wastewater structures, and wastewater and manure treatment structures at the site, (2) identifying and documenting standard operating procedures for all BMPs used at the facility, and (3) management and staff responsibilities for implementing the plan. We included an annual cost for four hours of management labor to maintain the plan and eight hours of management labor for an annual review of BMP performance. We included the cost of developing a solids control and drugs and chemicals BMP plan in the estimates for all facilities, except those in Idaho and Washington. (Facilities in Idaho and Washington would not incur this cost because NPDES permits in these States already require solids control and drugs and chemicals BMP plans.) EPA found that the components of the BMP plans required in Idaho and Washington are similar to those being considered for the final rule.

In evaluating facilities for solids controls, EPA first checked for evidence of a good feed management program. If the facility reported they practice feed management, EPA looked for evidence of solids management and good operation of the physical plant, including regular cleaning and maintenance of feed equipment and solids collection devices (*e.g.*, quiescent zones, sedimentation basins, screens, etc.). To evaluate the effectiveness of a facility's solids control practices, we calculated feed conversion ratios (FCRs) using pounds of feed per pound of live product (as reported in the detailed survey) and considered existing solids control equipment. We assumed facilities lacking evidence of good feed management or solids control programs would incur additional costs to improve or establish them.

EPA estimated FCRs from data in the detailed survey and follow-up with some facilities and compared FCRs for groups of facilities (*i.e.*, combinations of ownership, species and production system types such as commercial trout flow-through facilities or government salmon flow-through facilities). We found a wide range of FCRs (reported by facilities in their detailed surveys, which were validated by call backs to the facility) among apparently similar facilities within ownership-species-production system groupings.

For example, we had good data for 24 of 60 government trout producers using flow-through systems. They reported a range of FCRs of 0.79 to 1.80 with a median FCR of 1.30. If an individual facility's reported FCR was significantly greater than the median, EPA further evaluated the facility to ascertain the reason for the higher FCR. Facilities that produce larger fish, such as broodstock, might have higher FCRs because the larger fish produce less flesh per unit of food. Facilities with fluctuating water temperatures could also be less efficient than facilities with constant water temperatures. We did not apply costs for solids control BMPs for facilities with reasonable explanations for the higher FCRs. We evaluated facilities that did not report FCRs or provide enough data for an estimate using the methodology described in section III.H.

Costs for the solids control BMP component include staff time for recordkeeping for feed delivery and daily feeding observations. Management activities associated with the solids control plan were weekly data reviews of feeding records, regular estimates of changes to feeding regimes for each group of aquatic animals, and staff consultations about feeding. For facilities with no solids control equipment, we also estimated the costs for primary and secondary solids control. EPA evaluated each facility to identify the configuration of the existing treatment units and what upgrades would be required. We found that most flow-through systems not having any treatment structures can comply with Option 1 by adding a combination of quiescent zones and off-line settling basins. We assume quiescent zones can be retrofitted into existing raceways without expanding them and without impacting production levels in the raceways.

EPA also used industry cost information provided through public comment and the detailed survey to estimate costs for design and installation of primary settling equipment for effective settling of suspended solids. For example, we used the facility-level data included in the detailed survey responses to place and size the off-line settling basins on the facility site. For facilities that use earthen flow-through technologies, EPA estimated costs to construct and operate full flow settling structures rather than quiescent zones and off-line settling.

EPA classified each facility's wastewater treatment system based on the description provided in its survey response and available monitoring data, including DMR data. We assumed that treatment technologies indicated by a facility on the detailed survey are properly sized, installed, and maintained. EPA estimated facility-specific costs for each of the responding direct dischargers and used these estimates as the basis for national estimates. Because the survey did not collect information about many specific parameters used in individual facilities' production processes and treatment systems, EPA supplemented the facility-specific information with typical specifications or parameters from literature, survey results, and industry comments. For example, EPA assumed that facilities have pipes of typical sizes for their operations.

As a consequence of such assumptions, a particular facility might need a different engineering configuration from those modeled if it installed equipment that varies from the equipment or specifications we used to estimate costs. EPA nonetheless considers that costs for these facilities are generally accurate and representative, especially industry-wide. EPA applied typical specifications and parameters representative of the industry to a range of processes and treatment systems. We contacted facilities to get site-specific configuration information where possible.

In revising cost estimates, EPA paid particular attention to:

- Size of tanks, raceways, and culture units.
- Labor rates.
- Treatment components in place.
- BMPs and plans in place.
- Daily operations at the facility.

Site visits and analysis of the detailed surveys indicated that raceways and quiescent zones are cleaned as necessary to maintain system process water quality.

The effective operation of microscreen filters require that they be enclosed in heated buildings to prevent freezing when located in cold climates. EPA's revised estimates of costs for Option 3 are not based on the application of microscreen filters unless the detailed survey response indicated that such a structure existed at the site. When the detailed survey did not indicate a structure at the site, EPA estimated costs for a second stage settling structure rather than a microscreen filter. Based on data from two of EPA's sampling episodes at CAAP facilities, this technology will achieve the proposed limits for Option 3.

EPA agrees with concerns raised in comments that the cost associated with enclosing the filter in a heated structure would be prohibitive. Option B would allow facilities to choose between solids polishing treatment (*e.g.*, second stage settling) and solids control BMPs. For estimating compliance costs, EPA assumes that facilities will choose the least costly method which, in all cases, proved to be using the BMPs. Thus, EPA based Option B costs on the application of solids control BMPs.

To estimate costs for the drugs and chemical component of the BMP plan, EPA first looked at the detailed survey to determine if the facility reported using drugs, chemicals, or medicated feed. The detailed survey also asked if the facility has adopted health management BMPs. Although responses indicated that nearly half of the regulated population has some form of health management practices, we do not have information on the specific activities associated with these practices. Therefore, EPA assumed that all facilities reporting drugs and chemicals would incur additional costs to implement management practices (except in Idaho and Washington). These States have already issued NPDES permits that include requirements for drug and chemical management BMPs similar to those in our cost estimates. (EPA found evidence of other states with similar requirements, but no facilities in these states were in the group of in-scope facilities that responded to the detailed survey.) Costs include staff time for:

- Initial and annual plan review.
- Weekly inspections of storage facility.
- Completion of an application program worksheet (recordkeeping).
- Completion of a disposal worksheet (for out-of-date drugs or chemicals).
- Marking of production units being treated.
- Annual training sessions.

Management activities include:

- Initial plan development.
- Annual review and update of plan.
- Review of application worksheets.
- Leading facility training sessions.
- Quarterly inspections of entire facility.
- Management of veterinary assistance (*e.g.*, implementing vet recommendations).
- Biweekly review of drug and chemical records.
- Staff management consults.

Because therapeutic treatments vary considerably at a facility from year-to-year and also among facilities, EPA estimated the BMP costs based on monthly drug applications throughout the year. We estimated costs for a few hatcheries that produce only eggs and larvae for regular treatments to control fungus during the egg incubation period.

We also considered the use of activated carbon filtration to treat and remove drug or pesticide active ingredients from wastewater. Research indicates that this technology is effective at treating these compounds, and at least one aquatic animal production facility installed this technology. EPA estimated the costs for activated carbon treatment as a stand-alone technology. We estimated costs on a site-specific basis for facilities which reported using drugs and then added these costs for options A, B, 2, and 3 (*see* Section V.C.) to assess the economic achievability of this technology.

EPA estimated the costs to develop and implement escape management practices at facilities where (1) the cultured species was not commonly produced or regarded as native in the State, (2) the facility was a direct discharger, and (3) the species was expected to survive if released. (In contrast, producers of a warm water species in a cold climate, such as tilapia producers in Minnesota or Idaho, would not incur costs for this practice.) Costs for escape prevention include staff time for production unit and discharge point inspections and maintenance of escape prevention devices. We applied these costs to facilities that installed equipment conforming with State requirements for facilities producing non-native species (identified by the State). Management time includes quarterly production unit and discharge point inspections, eight hours a year to review applicable State and Federal regulations, and quarterly staff consultations.

EPA revised estimates for all labor costs using the employee and wage information supplied in the detailed surveys. For those facilities indicating they use unpaid labor for all or part of the facility operation or did not supply useable wage information, we used average State or regional wages.

B. Revisions to Assumptions and Methodology Used in Loadings Analyses

1. Proposed Approach

To estimate the baseline discharge loadings and load reductions for the proposal, EPA used the same model approach described in Section V.A.1. for the costing analyses. We first estimated pollutant loadings for untreated wastewater based on several factors for each model facility. Feed offered to the CAAP species contributed to pollutant discharges in three ways: feces, urine-contributing dissolved ammonia, and uneaten feed (dissolved and particulate forms). These byproducts of feed contribute to the pollutant load in the untreated culture water. EPA used typical efficiency rates of removing specific pollutants from water for the technology options and BMPs we are considering. Using the same frequency factors for technologies in place that were used to estimate costs, we estimated the baseline pollutant loads discharged. We then calculated load reductions for the options.

2. Revised Loadings Approach

Rather than using the proposed model approach, EPA revised the loadings approach to incorporate a facility-level approach using data primarily from the detailed surveys, but also taking into account suggestions concerning appropriate feed conversion ratios (FCRs) provided by commenters. EPA also applied statistically-derived survey weights to get national estimates.

Since pollutant loads are proportional to feed inputs, improving feeding efficiency and reducing wasted (uneaten) feed will reduce pollutants discharged from CAAP facilities. EPA expects that using feed management BMPs will reduce pollutant loads by improving the efficiency of converting feed to the final product (*i.e.*, less feces and uneaten feed). EPA determined pollutant loadings from revised estimates of pollutant loads for a unit of feed input. EPA's re-evaluation of the baseline or current practices changed the loading estimates, reflecting survey responses on practices or treatment-in-place at facilities. The revised results also reflect the estimated FCRs we used in the facility-level analyses (*see* Section III.H).

In its evaluation of data from the facilities responding to the detailed survey, EPA found no apparent relationships that explain why some facilities use drugs or medicated feeds and others do not. EPA also evaluated the amounts of drugs and medicated feed reported in the detailed survey as used at facilities and found no basis for predicting how much drugs or medicated feed would be used at a given facility. Information reported by facilities did not provide enough detail for EPA to estimate pollutant reductions associated with drug and chemical BMPs.

C. Revisions to Assumptions and Methodology Used in Economic Analyses

Due to new information and comments, EPA is considering several changes in the approaches for economic analysis. EPA seeks comments on the changes. Section VI describes new data and results for the revised economic analyses.

1. Economic Analysis Approach for the Proposed Rule

For the proposed rule, EPA evaluated projected economic impacts using screener questionnaire data which did not include financial or economic information beyond revenues and limited firm-level production data. As a consequence, the impact analysis was based on compliance costs for model facilities, frequency factors for extrapolating costs to a group of facilities represented by a model, and sales or revenue tests. Revenue tests involve simple comparisons of compliance costs with facility revenues. For non-commercial facilities, in lieu of revenues, we imputed a value to their production based on annual harvest and commercial prices. Similar revenues tests were applied to both commercial and non-commercial facilities. We estimated the number of small businesses from a special tabulation of the United States Department of Agriculture (USDA) *Census of Aquaculture* (1998) (for details, see "Economic and Environmental Impact Analysis of the Proposed Effluent Limitations Guidelines and Standards for the Concentrated Aquatic Animal Production Industry," EPA–821–R–02–015, September 2002, DCN 20141).

2. Clarifications Regarding Baseline Assumptions for Economic Analysis

Treatment in Place. In the proposed rule and this notice, EPA characterizes baseline conditions using existing compliance levels and treatment in place. This approach is consistent with past effluent guidelines and EPA's Guidelines for Preparing Economic Analyses (EPA 240–R–00–003, September 2003, DCN 20435) and Office of Management and Budget (OMB) guidelines. OMB guidelines state that "* * * the baseline should be the best assessment of the way the world would look absent the regulation * * * You may often find it reasonable to forecast the world absent the regulation will resemble the present." (OMB. 2002. "Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements," memorandum from Jacob J. Lew, Director to Heads of Departments and Agencies, M–00–08, March 22, DCN 20385). Thus, EPA does not agree with some commenters' suggestions that baseline conditions for impact analysis should assume no treatment in place.

Consideration of Market Conditions, Market Forecasts, and International Competition. EPA assumed in the proposed rule that CAAP producers cannot pass cost increases through to consumers. We do not expect to change this assumption for the final rule (foreign competition is so strong that the domestic market cannot raise prices at all). EPA used the 1999–2001 data from the detailed questionnaire to reflect current market conditions. We also used several publicly-available data sources to develop market forecasts, ranging from pessimistic to slightly optimistic, for future prices (*see* Section V.C.3.b.i). This approach addresses comments suggesting the need to account for foreign competition and sluggish market outlooks for U.S. aquaculture in the economic analysis for this rule.

3. Revisions of the Approaches and Assumptions Used in the Economic Analysis

Data collected from the detailed questionnaire will form the basis for the economic analysis supporting the final rule. These financial analyses use the standard methodology for developing effluent limitations guidelines with some changes to address impacts to non-commercial (*e.g.*, State, Tribal or Federal government) facilities. Comments recommended changes to the proposed methodology. The following sections describe the revisions, based on comments and the availability of detailed questionnaire responses, to the economic analyses we are considering.

a. *Revisions to Estimates of Numbers of Small Business.* EPA received several comments questioning the number of facilities identified as small businesses in the proposed rule. EPA revised its estimates of affected small businesses based on the results of the detailed survey and designed the detailed questionnaire to collect revenue information for both individual facilities and the companies that own the facilities. We compared these data to Small Business Administration size standards for the industry (up to $750,000 annual revenues). If a facility earned more than the size standard, we did not consider it a small business. If a facility did not earn more than the size standards, EPA examined company revenues to determine whether the company was a small business as defined by SBA. EPA collected public information on company ownership and revenues as needed to complete each determination. At this time, EPA identified 117 facilities out of 522 facilities within the scope of the rule that are owned by small businesses, seven that belong to small organizations, and one that is an academic/research facility.

b. *Revisions to Economic Analyses for Commercial Facilities.* For the final rule, EPA intends to use (1) facility-specific data supplied by the detailed questionnaire, (2) results from forecasting methods (see Section V.C.3.b.i) to improve cost and price estimates, and (3) several economic impact measures that were not used in the proposal. In particular, the detailed questionnaire data should help us address comments suggesting that we underestimated costs and overestimated prices and that our extrapolation of impacts based on model facilities misstated the impacts on many facilities.

i. *Measures of Economic Impacts for Commercial Facilities.* For the final rule, EPA will use several measures to evaluate possible impacts on commercial facilities that we did not use for the proposed rule due to lack of data. These measures examine the possibility of closure, direct impacts on employment and communities, indirect and national impacts, and changes in financial health and borrowing capacity.

Closure Analysis. The closure analysis compares costs from 2005 to 2015 to earnings during the same period. We used two methods to estimate earnings: (1) cash flow and (2) net income. We discounted both costs and earnings with a 7 percent real discount rate to account for the time value of money and place earnings and costs on a comparable basis. To be considered a closure as a result of this rule, a facility must show for two out of three forecasting scenarios (1) positive discounted cash flow (or net income) without the rule and (2) negative discounted cash flow (or net income) with the rule. In the detailed questionnaire, EPA asked commercial respondents whether their facility did more than raise fish. If they did, the questionnaire asked them to report the financial performance of both the aquaculture enterprise and the entire farm/company. EPA will perform the closure analysis for the enterprise, facility, and company levels. These analyses involve several complexities (*e.g.*, what to consider as earnings, what costs are included, and the number and type of forecasting methods used). Section V.C.3.b.ii contains our detailed responses to comments on these and other aspects of the closure analysis.

Closure Analysis—Forecasting methods. EPA examines the possibility of closure under three forecasting methods to project future earnings. The first method uses U.S. Department of Agriculture (USDA) long-run baseline projections for the Consumer Price Index, Food at Home, Fish and Seafood Sector for 2004 through 2012 (USDA Agricultural Baseline Projections to 2012, Staff Report WAOB–2003–1. February, DCN 20363). This projection reflects the current industry downturn which then changes to a long-run annual increase of 1.5 percent. This index is used to adjust the revenue information in the detailed questionnaire to project revenue in future years.

The second method uses historic time-series data collected and published by several government agencies to estimate price trends and project them into the future. For trout, EPA uses USDA trout price data for 1994–2002 (Trout Production, Sales of fish 12″ or longer, U.S. Average price per pound). For all other fish, EPA uses U.S. Department of Labor, Bureau of Labor Statistics, Fish PPI, Producer Price Index—Unprocessed and packaged fish, not seasonally adjusted, (Series ID: WPU0223) from January 1980 through February 2003. EPA examined Series ID: WPU–223–1–3 (salmon) not seasonally adjusted but could find no trend in the data. EPA converts the data to constant dollars where needed. For time series with monthly observations, EPA converts the series to a 12-month centered moving average to smooth seasonal variations. We performed a regression analysis using this price data to derive kinked trend lines for prices (*e.g.*, Chow Breakpoint Test, see DCN 20366 and DCN 20371 for details). This type of regression allows the slope of the price line to differ before and after suggested breakpoints in time. Both data sets (trout and all fish) show downward trends for prices. We converted price level forecasts into an index using 2001 as the base period (this is the most recent year for which data were collected in the detailed questionnaire). We also applied this index to base year (2001) data from the detailed survey to project future revenues. The third forecasting method assumes constant future revenues using the average of 1999–2001 earnings collected in the detailed questionnaire.

For this notice, EPA projected impacts only when the same impacts occurred using two of the three forecasting methods. EPA seeks comment on basing its closure analysis for the final rule on impacts that occur using one of the three methods.

The forecasting methods give a range of trends (*i.e.*, upward (USDA), downward (estimated price indices), and no change (survey earnings average)). However, EPA expects to adjust the forecasts to reflect more recent data for the final rule, so this range of trends may change (*see* DCN 20450).

Closure Analysis—Baseline Industry Conditions. We can not analyze facilities with negative net earnings under 2 or 3 of the forecasting methods before they incur pollution control costs with the methodology used for the facility closure analysis. EPA seeks comment on omitting such facilities from the closure analysis. Such facilities represent situations such as:

- Start-ups (where the first year of income is negative but does not indicate future earnings)
- Cost centers (that transfer production to other facilities under the same ownership at no cost, or the cost is set to the operating costs)
- Facilities where the company does not record income statement information at the facility level.
- Facilities that are likely to fail with or without the rule.

Direct and Community Impacts. When the analysis projects that a facility will close as a result of the rule, EPA then tracks the direct and indirect impacts from that closure. We consider all associated revenues, production wages, and employment (both paid and unpaid labor and management) lost. We will also examine the increase in local unemployment resulting from the facility closure. These approaches respond to comments that suggested the need to determine how the CAAP industry impacts communities (*e.g.*, employment) in several areas of the country.

Indirect and National Impacts. Impacts on the CAAP industry are known as direct effects. Impacts due to lost CAAP output and employment in sectors that directly support the CAAP industry are known as indirect effects. Induced effects are overall changes in household and business spending due to direct and indirect effects. The U.S. Department of Commerce's Bureau of Economic Analysis (BEA) tracks these effects both nationally and regionally in large "input-output" tables, published as the Regional Input-Output Modeling System (RIMS II) multipliers (DCN 20386). EPA used the multipliers for the RIMS II industry number 1.0302 (miscellaneous livestock) because it includes all of SIC code 0273. EPA used national final demand multipliers for output (3.7163) and employment (45.2228) because they include direct, indirect, and induced effects. For example, for every $1 million in output lost due to the projected closure of a CAAP facility, nearly $3.8 million in output and 45 jobs are lost nationwide. When a facility is projected to fail as a result of the rule, EPA may estimate the loss in output associated with facility closure and then use the RIMS II multipliers to estimate national level impacts.

Impact on Financial Health. EPA will calculate impacts on financial health at the company level using USDA's four-state categorization of financial health based on a combination of net cash income and debt/asset ratio (*i.e.*, favorable, marginal solvency, marginal income, and vulnerable). EPA calculates the financial state of each company before and after incremental pollution control costs. EPA considers any change in categorization an impact of the rule.

Impact on Borrowing Capacity ("Credit Test"). Commenters suggested that impacts on borrowing capacity should be considered. Based on several measures used by USDA, EPA developed a method to examine whether a bank would lend a farm/company the amount needed to cover the costs of incremental pollution control. According to the USDA, "Lenders generally require that no more than 80 percent of a loan applicant's available income be used for repayment of principle and interest on loans" (DCN 20395, p. 19). EPA considered the income available for debt coverage as after-tax cash flow for 2001 for the farm or company (typically, the worst year represented in the questionnaire data). For sole proprietors, EPA collected data for aquatic animal production from Schedule F or Schedule C from the IRS tax forms submitted with a proprietor's Form 1040. EPA intentionally did not request information from the proprietor's Form 1040 (the Agency specifically excluded the collection of off-farm income data). We multiplied the after-tax cash flow by 80 percent to obtain a proxy for USDA's "maximum feasible loan payment" (MFLP). We then calculated the ratio of the pre-tax annualized cost of an option and the after-tax MFLP. We assumed that a bank would compare the pre-tax cost to the

MFLP to be conservative. To be more conservative, EPA identified any company with a ratio exceeding 80 percent of MFLP being impacted under this test (*i.e.*, the test threshold is actually 64 percent of the after-tax cash flow).

ii. *Economic Topics Raised in Comments to the Proposed Rule.* Commenters raised several issues about assumptions for closure analysis including (1) the definition of what constitutes earnings for the discounted cash flow analysis (including questions about how to incorporate depreciation, cash flow, net income, sunk costs, capital replacement, and unpaid labor), (2) forecasting methods used to project earnings, and (3) assumptions EPA makes to address trade impacts.

Cash Flow. In projecting closures, EPA estimated earnings using (1) cash flow and (2) net income. We calculated the difference between gross revenues and total expenses reported in the detailed questionnaire and reduced the value by the estimated federal and State taxes to calculate net income. We then added the non-cash expense of depreciation (when it was reported in the questionnaire) to net income to calculate cash flow. The difference between cash flow and net income is, therefore, depreciation, consistent with the guidance from the Farm Financial Standards Council (FFSC; *Financial Guidelines for Agricultural Producers,* DCN 20095) and several business financial references (DCNs, 20378, 20382, and 20388).

Some commenters were concerned about using cash flow analysis because of how earnings are calculated, the extent of the fixed costs, and, in older facilities, sunk costs. These comments are covered in the following discussions of: (1) Depreciation, (2) sunk costs, (3) capital replacement, and (4) unpaid family labor and management.

Depreciation. Depreciation is an annual allowance for the exhaustion, wear, and tear of a firm's fixed assets. Depreciation reflects a previous expenditure for a fixed asset to which the entity makes no payments in the current period. Although depreciation theoretically reflects wear and tear spread out evenly over the useful life of an asset, depreciation (as calculated for tax purposes) does not. First, the recovery period for costs is shorter than the asset lifetime and, second, accelerated recovery factors are skewed to the initial years of useful life. EPA identified information (*e.g.*, Financial Accounting Standards Board, DCN 20382, DCN 20378, DCN 20388) suggesting that cash flow may be appropriate for some types of economic analyses. EPA seeks comment on the appropriateness of cash flow and net income analyses as they apply to this rulemaking. Because depreciation reported on an accounting statement may or may not correspond to true "economic" depreciation, EPA estimated closure impacts with depreciation as an expense (*i.e.*, net income analysis) and without depreciation (*i.e.*, cash flow).

Sunk costs. Some commenters argued that the analysis should consider sunk costs. Comments characterized cash flow analysis as inappropriate because it does not account for sunk costs, particularly in older facilities. Sunk costs paid out of capital (as opposed to financing) already occurred and, therefore, are not incremental cash flows. They should not affect future investment or the economic viability of the firm. Therefore, EPA excludes this category of sunk costs from the closure analysis. Sunk costs that are financed have interest, and this interest is included in interest payments reported in the income statements. Unpaid principle from previously financed sunk costs is reflected in a farm's debt/asset ratio, and EPA will include it in our evaluation of farm financial health and the ability of facilities (or companies) to carry additional debt (*see* Section V.C.3.b.i).

Capital replacement. EPA received comments that the facility financial analysis should include an allowance for capital replacement. EPA evaluated data on capital expenditures and capital replacement. The Census Bureau collects data on annual capital expenditures including forestry, fishing, and agricultural services (U.S. Census Bureau, Annual Capital Expenditures Survey 1999, DCN 20384). However, Census Bureau capital expenditure data includes intra-company transfers of capital equipment and ownership changes (*see* DCN 20384, Appendix D–10, Instructions, Definitions, and Codes List).

As a consequence, it is difficult to know whether capital expenditures help maintain existing production or whether they support expanded production. Capital expenditures for an industry undergoing consolidation, such as salmon, include acquisitions reflecting transfers of capital rather than purchases of new or replacement capital. Further, the Census data includes expansion in productive capacity, whether in new plants or in existing plants. Aggregate industry data on capital expenditures cannot be used to specify the level of capital expenditure that is necessary to maintain productive capacity at an individual facility.

EPA includes costs for capital replacement as they occur within the depreciation and interest payments reported on income statement. When EPA relies on net income calculations, capital replacement costs (as approximated by financial depreciation, in addition to interest payments captured in cash flow) are considered in the closure analysis. Capital replacement costs that are capitalized and not expensed are reflected in the asset, debt, and equity components of the balance sheet as appropriate. Past capital replacement costs are represented in the farm financial health measures and credit tests that are based on balance sheet data. When estimating compliance costs, EPA includes replacement costs for pollution control capital. EPA's cost estimates include all capital expenditures (whether initial or replacement) that are projected to occur within the 10-year analytical time frame.

Unpaid family labor and management. EPA received suggestions that the financial analysis of aquatic animal production should include a "proxy" cost to reflect unpaid family labor and management. Unpaid family labor and management is "unpaid" only with respect to the income statement. Distributions from the business to cover family living and other personal expenses are generally referred to as "family living withdrawals" or "owner withdrawals." These withdrawals are shown in the statement of owner equity in the balance sheet and not the income statement. As a consequence, the financial health and credit tests incorporate any withdrawals from equity for unpaid labor and management, because these tests are based on balance sheet data. Note that EPA includes estimates for labor costs when estimating compliance costs in order to include the effects of the additional labor and management in closure analysis. EPA also includes unpaid labor and management as lost jobs in the total count of lost employment from facilities projected to close as a result of the rule.

EPA reviewed USDA Economic Research Service data on off-farm income by farm category (USDA, 2003. Economic Research Service. Agriculture Income and Finance Outlook. AIS–80. March, DCN 20396). USDA data indicate that farm operation's contribution to total household income ranges from a substantial amount for "Very Large Farms" to a negative contribution that is subsidized by off-farm income for limited resource and "small low-sales farms." These data indicate that it is possible for labor to earn a zero or negative return in the short run. EPA recognizes that, under standard economic theory, an enterprise in which labor is earning no return, either as wages or profit, is unlikely to be viable in the long run. The Farm Financial Standards Council also discusses the issue of unpaid labor (DNC 20095, pp. II–3 and II–22). EPA does not estimate a charge for unpaid labor when calculating farm income under discounted cash flow or net income analysis for this NODA. However, EPA seeks comment on whether it should impute a cost for unpaid labor and management in the closure analysis and, if so, on what data and methods the wage should be based.

c. Revisions to Economic Analyses for Non-commercial Facilities. EPA uses a methodology for non-commercial facilities where pre-tax annualized costs are compared with the operating budgets for Federal, State, Tribal (owned and operated by Tribal governments), and research facilities. For Alaskan non-profit facilities, EPA compares pre-tax annualized costs to reported salmon revenues. EPA is also considering calculations, such as the increased need for taxes or fees to cover the additional costs, that can be made as detailed questionnaire data permit. EPA seeks comment on methodologies for investigating impacts on non-commercial operations, including methods for characterizing the implications or consequences of percent reductions in facility budgets.

D. Revisions to Assumptions and Methodology Used in Benefits Analyses

The proposal established limits for total suspended solids (TSS) loads from flow-through and recirculating systems and required practices to minimize accumulation of excess feed from net pen systems. These requirements, according to EPA loadings calculations, would reduce facility discharges of TSS, total nitrogen (TN), total phosphorus (TP), and biochemical oxygen demand (BOD). The proposal also required facility operators to minimize releases of non-native species, pathogens, and therapeutants. At proposal, EPA did not quantify baseline or regulated loads for these latter parameters.

Reductions in these loadings (TSS, TN, TP, BOD, non-native species, pathogens, and therapeutants) could affect water quality, the uses supported by varying levels of water quality, and other aquatic environmental variables (*e.g.*, primary production and populations or assemblages of native organisms in the receiving waters of regulated facilities). EPA discussed several of these possible responses to loading reductions qualitatively at proposal. The proposal also estimated the monetized benefits based on changes in the recreational use value of freshwater streams affected by the rule.

EPA anticipates that its overall approach for characterizing benefits for the final rule will be similar to that used for the proposed rule. The proposal approach involved three efforts. First, EPA developed an estimate of national monetized benefits of the rule. We derived the monetized benefit estimate by applying (1) the QUAL2E (a water quality model) to a range of model facilities and receiving water conditions and (2) an economic monetization method that related water quality improvements to monetized benefits. Second, EPA discussed the possible impacts from rule-related reductions in BOD, TN, TP, and TSS loads on stream water quality relative to national water quality criteria. This discussion was primarily qualitative. Third, EPA included qualitative discussions of possible benefits of the rule that could not be quantified. Examples of such possible benefits include those that might arise from reductions in releases of non-native species or reductions in inadvertent spills of drugs and chemicals used at CAAP facilities. Again, these were qualitative discussions only, and EPA neither quantified nor monetized these possible benefit areas. While we expect to retain this overall approach, the Agency may revise inputs, methods, or information in each of these areas. Sections V.D.1–V.D.3 discuss these improvements further.

EPA's analysis of possible benefits of the final rule will address public comments about the proposal benefits analysis. We received some comments addressing the Agency's water quality-based monetized benefit estimate. One commenter criticized EPA's monetized benefit estimate as insufficiently reflecting the value of water quality. Other commenters asserted that EPA overestimated environmental benefits of the regulation. One of these commenters argued that EPA's use of frequency factors led to overestimation of benefits. Another commenter questioned whether EPA should extrapolate estimates of freshwater benefits for reductions in pollutant discharges to Alaska facilities that are discharging to marine environments. This commenter also asserted that, in many nutrient-poor streams where salmonid fish are found, hatchery-related nutrients lead to improved downstream fishing, and that a rule-related reduction in these nutrient inputs should be subtracted from EPA's benefits estimate.

In addition to comments on EPA's monetized benefit estimate, EPA received some comments on whether and how to characterize benefits from rule-related reductions in discharges of non-native species, pathogens, antibiotics or other therapeutants, and other chemicals. One commenter argued that it is extremely complex and controversial to make statements about benefits as a result of controlling non-native species, pathogens, antibiotics, or chemical releases is extremely complex and controversial.

1. Revisions to Monetized Benefits Estimate

At proposal, EPA used an approach for estimating national benefits from rule-related improvements in water quality that relied on (1) simulating improvements in downstream water quality parameters for model facilities, and (2) applying a monetization method that related changes in water quality to "willingness to pay" (WTP) values for water quality improvements. For the monetization method, we combined four simulated water quality parameters to generate a water quality index (WQI–4). The parameters were dissolved oxygen (DO), biochemical oxygen demand (BOD), total suspended solids (TSS), and fecal coliform (FC). Because we do not expect loadings for FC to be discharged from CAAP facilities, we assumed that background levels of this parameter remain unchanged. The WQI is a 0–100 scale that weighs each water quality parameter to reflect its significance for determining the suitability of water for progressively more demanding uses. We converted changes in the WQI–4 to monetary values based on a contingent valuation survey (Carson and Mitchell, 1993, DCN 20157).

At proposal, data were not available for site-specific estimates of water quality responses to reduced pollutant loadings. Neither were they available for facility-specific estimates of pollutant loadings and loading reductions nor individual facility locations for all potentially regulated facilities. Therefore, to simulate possible ranges in downstream water quality improvements for regulated facilities, we used estimates of pollutant loadings and loading reductions for representative ("model") facilities and a hypothetical receiving water with a wide range of assumed background water quality and flow conditions. We used the Enhanced Stream Water Quality (QUAL2E) model to perform these simulations. We then applied the monetization method described above to calculate WTP values for the simulated water quality improvements for each model facility. Finally, we estimated and summed WTP values for other potentially regulated facilities of that model facility type to produce a national benefit estimate. (For more details of the methodology, see DCN 20141).

We expect to apply a similar water quality modeling and monetization approach for estimating water quality-related benefits. However, we expect that the final methodology will address certain limitations that we did not recognize at proposal. We will take advantage of refined estimates of facility loads. That is, we will improve the water quality-related benefits analysis using:

- Significantly improved facility-specific loadings estimates based on new data from the detailed surveys and new information on feed conversion ratios (FCRs). These improved loadings estimates help us evaluate contributions of specific facilities to improved water quality (*see* Section V.B).
- Site-specific water quality simulations using new information from the survey on the geographical distribution of facilities. EPA intends to use specific facility receiving water simulations when data are available, and model receiving water conditions when data are unavailable, for an individual site.
- A more refined method for selecting a subset of QUAL2E application sites from which we can develop a national benefits estimate. Sites will be selected based on the availability of data (*e.g.*, water quality and discharge data) for model calibration. The sites should represent geographic regions and environmental conditions where most of the facilities are located. We expect to select between five to ten QUAL2E application sites.
- An improved method for calculating the WQI that better reflects water quality changes associated with CAAP discharges. The WQI that EPA used previously included four water quality parameters (WQI–4). EPA more recently developed a six-parameter WQI ("WQI–6") based on TSS, BOD, DO, FC, plus nitrate (NO_3) and phosphate (PO_4). The new index more completely reflects the type of water quality changes that will result from loading reductions for TSS, total nitrogen (TN), total phosphorus (TP), and BOD. We may present results from both the WQI–4 and WQI–6 indices in the final benefits analysis for the CAAP rule.
- An improved method for monetizing water quality benefits. We based the water quality benefits monetization method we used for the proposed rule on results from a stated-preference survey conducted by Carson and Mitchell (1993) (DCN 20157). We divided household willingness-to-pay (WTP) values for changes in recreational water "use classes" by the number of WQI–4 points in each use class. We assigned a portion of the value for each unit change to achieving the whole step. Recently, EPA developed an alternative approach, also based on Mitchell and Carson's work. The authors also expressed their results as an equation relating a household's WTP for improved water quality to the change in the water quality index and household income. An important feature of this approach is that it is less sensitive to the baseline use of the water body. This approach is also consistent with economic theory in that it exhibits a declining marginal WTP for water quality. (See more information on this approach in DCNS 40138 and 40595.) Caution must be used in manipulating valuations derived from stated preference surveys, but this valuation function approach helps address some concerns about earlier applications of the water quality benefits monetization method. (See DCN 40595 for a more detailed discussion.)

2. Other Revisions to Benefits Analysis About Reductions in BOD, TN, TP, and TSS Loads

At proposal, EPA examined additional ways of characterizing environmental benefits from rule-related reductions in BOD, TN, TP, and TSS loads using the same QUAL2E modeling results from the proposal monetized benefits estimate. Specifically, we compared water quality in receiving streams simulated by QUAL2E modeling with national water quality criteria for DO, ammonia, TN, and TP. EPA discussed this comparison in light of the possibility for rule-related reductions in exceedences of these criteria. We did not monetize the results of that evaluation. They were intended to illustrate an alternate indicator of possible rule-related changes in water quality (Section 10.5.1., DCN 20141).

For the final benefits analysis, EPA may update this evaluation in several ways. First, we expect to use the improved site-specific water quality modeling results described in Section V.D.1. for the comparison with national water quality criteria. We are also evaluating the possibility of using an aquatic ecosystem model to further translate load reductions and water quality changes at a subset of facilities into other ecosystem changes (*e.g.*, effects on benthic fauna, fish populations, and other ecosystem variables). The model, AQUATOX (*http://www.epa.gov/waterscience/models/aquatox/)*, represents stream, river, lake, reservoir, and pond ecosystems by modeling:

- Periphyton.
- Moss.
- Macrophytes.
- Major guilds and taxonomic groups of invertebrates and fish, as well as phytoplankton.

The model can also simulate constant or time-varying discharges of BOD, nutrients, and TSS like those that might be discharged by a CAAP facility. Finally, we expect to update our discussions of research literature that describes water quality impacts. We will consider literature that we have compiled since the proposal as well as information from stakeholder comments (see Sections II.E and III.E). As at proposal, the purpose of these analyses is to provide supplemental information of possible rule-related benefits to receiving waters.

3. Other Revisions to Benefits Analysis

EPA concurs with one commenter's assertion that determining benefits of non-native species, pathogens, antibiotics, or chemical releases from facilities is complex and controversial. Ideally, an analysis of benefits from mandated reductions in such discharges would draw from an understanding of environmental impacts from each discharge; quantitative estimates of both baseline discharges and reductions in discharges under any regulatory regime; and the relationship between changes in discharges and environmental response. In some cases, economic valuation techniques can then be applied to monetize the environmental responses. In the case of water quality improvements due to reductions in TSS, BOD, and nutrients from flow-through and recirculating systems, this information is available for estimates of quantitative and monetized benefits of the rule.

In most other cases, EPA will not estimate monetized or even quantitative benefits. Rather, we will discuss qualitative benefit areas including:

- Possible benefits from reducing escapes of non-native species, recognizing existing State and other requirements for escapes and mitigation (see Section II.E.3), and
- Possible benefits from reducing inadvertent releases of applied chemicals (including therapeutic substances) from CAAP facilities (see Sections II.E.2 and III.C).

VI. Revised Estimates of Costs and Economic Impacts

EPA revised estimates of costs and economic impacts based on the detailed survey results, comments, information from States, and methodological changes (*see* Section V). In the tables presented in Section VI, the options labeled "Option 1", "Option 2", and "Option 3" correspond to the options presented in the proposal, but the revised costs are based on detailed questionnaire data and other factors. EPA also considered two additional sets of requirements listed as "Option A" and "Option B" in the economic analysis. These analyses incorporate costs and loadings that reflect assumptions for feed conversion ratios (FCR) and production for those facilities that did not report these in the detailed questionnaire (*see* Section V.A.2). For cost annualization and the closure analysis, we used a 7 percent discount rate. Results are in 2001 dollars. Additional details about costs and impacts are provided in the record (DCN 20446). EPA will consider these revised results for all options in its decisions for the final rule.

Table VI.1 summarizes the types of public and private organizations that operate facilities represented in the national population of in scope facilities (*i.e.*, after applying the survey weights). Facilities that might incur costs include all facilities in the proposed subcategories that are large enough to meet the current CAAP definition. At proposal, EPA proposed to exclude facilities with less than 100,000 pounds of annual production; however, for information purposes, we included these facilities in the Tables in this Section. At proposal, EPA indicated that it would continue to analyze the costs and impacts associated with including such facilities (meeting the CAAP definition) within the scope of the rule. Facilities listed in the tables as not incurring costs would still be within the scope of the rule if they exceed the final production thresholds; however, EPA does not expect that these facilities would have to do anything more to meet the requirements of the regulation.

TABLE VI.1.—ESTIMATED NUMBER AND TYPE OF ORGANIZATIONS

Organization	Estimated number of facilities		
	Would incur costs	Would not incur costs	Total
Commercial	181	15	196
Academic/Research	1	0	1
Government	302	1	303
Tribal	14	0	14
Alaska Non-profits	7	0	7
Total	506	16	522

Note: We calculated the national estimates with survey weights and rounded them to whole numbers in each cell. Numbers may, therefore, not sum due to rounding.

Table VI.2 provides more detailed information on the facilities estimated to incur costs under the rule. There are 141 unweighted facilities (questionnaire respondents) that correspond to a national estimate of 506 facilities (*see* Section II.D). Table VI.2 further differentiates facilities by production system, size (in terms of lbs/yr production), owner, and the number of facilities that are projected to be baseline closures (assuming cash flow analysis), before we include compliance costs (*see* Section V.C.3.b.i). Table VI.2 also shows the number of facilities we used to derive cost and facility closure results, assuming discounted cash flow analysis. EPA proposed different requirements for the size of facilities. You will find the proposed option for each category in the right-hand column in Table VI.2.

TABLE VI.2.—NUMBER AND TYPE OF FACILITIES

Production system	Size (lbs/yr)	Owner	Estimated number of facilities					Options at proposal
			Potentially in scope	Incur costs	Baseline closures[1]	In cost totals[2]	In closure analysis[3]	
Flow-Through	20,000 to 100,000[4]	Commercial	75	75	25	50	45	
		Non-commercial	135	135	0	135	NA	
		Alaska Non-profit	7	7	0	7	NA	
	100,000 to 475,000	Commercial	62	62	8	54	54	Option 1.
		Non-commercial	121	121	0	121	NA	Option 1.
	475,000+	Commercial	26	26	15	11	11	Option 3.
		Non-commercial	46	46	0	46	NA	Option 3.
Recirculating	20,000 to 100,000[4]	Commercial[4]	6	5	n.d.	n.d.	n.d.	
		Non-commercial	n.d.	n.d.	n.d.	n.d.	n.d.	
	100,000 to 475,000	Commercial	7	7	1	6	6	Option 3.
	475,000+	Commercial	n.d.	n.d.	n.d.	n.d.	n.d.	Option 3.
		Non-commercial	n.d.	n.d.	n.d.	n.d.	n.d.	Option 3.
Mixed Flow-Through Recirculating.	20,000 to 100,000	Non-commercial	11	11	0	11	NA	
Net Pen	20,000 to 100,000	Non-commercial	1	0	0	n.d.	NA	
	100,000 to 475,000	Commercial	n.d.	n.d.	n.d.	n.d.	n.d.	Option 3
	475,000+	Commercial	15	0	0	0	0	Option 3

TABLE VI.2.—NUMBER AND TYPE OF FACILITIES—Continued

Production system	Size (lbs/yr)	Owner	Estimated number of facilities					Options at proposal
			Potentially in scope	Incur costs	Baseline closures[1]	In cost totals[2]	In closure analysis[3]	
Total			522	506	59	452	447	

n.d. Not disclosed for reasons of confidentiality.

NA not applicable.

[1] Numbers of commercial facilities that are projected baseline closures assuming cash flow analysis. Section VI.B.1.a discusses baseline closures using net income.

[2] Facilities used to derive values in Table VI.A.1. Excludes baseline closures (based on cash flow analysis) which we assume will close before promulgation and, thus, incur no costs under the rule.

[3] Facilities used to derive values in Table VI.B.1. Excludes baseline closures (based on cash flow analysis), start-ups, and other facilities where we did not have enough information to conduct closure analysis.

[4] Facilities with less than 100,000 pounds annual production were not within the scope of the proposed rule.

Table VI.3 breaks out the estimated 181 commercial facilities with costs by financial organization. Slightly over half (55 percent) of the commercial facilities are organized as corporations. C and S corporations are named after the Subchapters in the IRS code under which they are organized and are taxed in different ways. C corporation earnings are taxed at the corporate rate. S corporation earnings are paid to individuals, who then pay taxes at the personal rate on those earnings.

TABLE VI.3.—COMMERCIAL FACILITIES WITH COSTS BY FINANCIAL ORGANIZATION

Financial organization	Estimated number of facilities
C Corporation	42
S Corporation	58
Sole Proprietorship	49
Limited Partnership	24
General Partnership	5
Other	5
Total	181

Note: Numbers do not sum due to rounding.

A. National Cost Estimates

Table VI.A.1 summarizes the cost of the rule by subcategory. We estimated national costs on the number of facilities we expect to incur compliance costs if they exceed the production threshold in the final rule. We assume that possible compliance costs will occur in all facilities that are not baseline closures. This includes some facilities for which EPA could not make baseline closure determinations (*e.g.*, start-up operations, facilities with insufficient data) that we excluded from the closure analysis. The number of baseline closures increases under net income analysis, implying that national costs decrease when we use net income analysis (*see* Table VI.B.2). Table VI.2 indicates that non-commercial flow-through facilities make up about two-thirds of the facilities projected to incur costs. They incur about 80 to 83 percent of the total cost for each option.

TABLE VI.A.1.—NATIONAL COSTS—TOTAL BY SUBCATEGORY AND OPTION[1]

Production system[2]	Owner	Pre-tax annualized costs[4] (thousands, 2001 dollars)				
		Option A	Option B	Option 1	Option 2	Option 3
Flow-through	Commercial 20–100K production	$45	$50	$22	$50	$89
	Commercial 100–475K production	151	371	315	362	779
	Commercial >475K production	17	17	7	17	53
	Non-commercial	1,351	2,796	2,528	2,794	5,612
	Alaska Non-profit	141	172	165	176	188
Recirculating	Commercial[3]	8	8	3	8	8
	Non-commercial	18	55	44	60	81
	Alaska Non-profit	0	0	0	0	0
Net Pen	Commercial	0	0	0	0	0
	Non-commercial	0	0	0	0	0
	Alaska Non-profit	0	0	0	0	0
Total	Pre-Tax	1,731	3,469	3,084	3,466	6,809
	Post-Tax	1,693	3,375	3,004	3,372	6,695

[1] Does not include costs for facilities projected to close before implementation of the rule, where baseline closures are determined using cash flow. Number of baseline closures increases if net income is used, implying decreased costs.

[2] Costs for facilities that use both flow-through and recirculating technologies were divided according to production and placed in the appropriate category. For example, for a facility that splits production equally between flow-through and recirculating, we would split costs equally and add to flow-through and recirculating costs.

[3] All costs for the recirculating commercial category in the table are incurred by facilities producing between 20,000 and 475,000 lbs. Due to the small number of facilities (*i.e.*, confidentiality) in the recirculating category, costs are not presented by size.

[4] Cost equaling zero ($0) in the table indicate that facilities already meet the requirements of the option. Zero cost does not imply that facilities are exempt.

Note: Numbers do not sum due to rounding.

Due to differences in option requirements for the various subcategories, as well as differences in facility counts between the proposed rule and this notice, it is difficult to compare costs in Table VI.A.1 directly to costs for the proposal (67 FR 57908). As a consequence, Table VI.A.2 facilitates comparisons between costs at proposal and costs summarized in this notice.

TABLE VI.A.2.—COMPARISON OF COSTS—PROPOSAL AND NOTICE OF DATA AVAILABILITY (NODA)

Production system	Total pre-tax annual costs (2001$)	
	Proposal	NODA
Flow-through	$1,032,942	$2,076,456
Recirculating	46,354	5,409
Net Pens	35,322	0

Note: Proposal costs, taken from Table IX.G.1 (67 FR 57908) of the preamble from the proposed rule, were inflated to 2001 dollars. For closest comparison to proposal results, NODA results in this table do not include costs for facilities that produce 20,000 to 100,000 lbs/year. We assume Option 1 for flow-through facilities in the size category 100,000 to 475,000 lbs/yr, and we assume Option 3 for all other flow-through and recirculating facilities.

B. Economic Analysis

Sections VI.B.1 and VI.B.2 provide details about the impact analysis for commercial and non-commercial facilities.

1. Economic Results for Commercial Facilities

EPA projects economic impacts based on two procedures for estimating earnings: (1) cash flow analysis and (2) net income analysis. Table VI.B.1 summarizes the economic impacts for commercial facilities based on cash flow analysis, and Table VI.B.2 summarizes results based on net income analysis. All impacts fall on flow-through systems: no impacts fall on recirculating or net pen systems. No impacts fall on facilities with flow-through systems that produce more than 475,000 lbs per year.

TABLE VI.B.1.—IMPACTS FOR COMMERCIAL FLOW-THROUGH FACILITIES (CASH FLOW BASIS)[1]

Analysis level[2]	Impact	Size (1,000 lbs/yr)	Number of entities in analysis[3]	Option				
				A	B	1	2	3
Facility	Closure	100–475	54	5	5	5	5	11
	Direct Employment Loss (lost jobs).	100–475	54	5	5	5	5	24
	Increase in County Unemployment Rate (%).	100–475	54	<0.2	<0.2	<0.2	<0.2	<1
	National Employment Loss	100–475	54	20	20	20	20	90
	National Loss in Output ($ millions).	100–475	54	$1.6	$1.6	$1.6	$1.6	$7.4
	Sales test: >1 percent	20–100	50	15	15	5	15	25
		100–475	54	13	23	21	23	29
	Sales test: >3 percent	20–100	50	10	10	0	10	10
		100–475	54	5	11	11	11	16
Company	Closure		32	1	1	1	1	2
	Farm Financial Health[4]		43	1A	1A	1A	1A	1A 1B
	Credit Test		32	1	1	1	1	2

[1] All impacts fall on flow-through systems; recirculating or net pen systems display no impacts. In addition, facilities with flow-through systems that produce more than 475,000 lbs per year display no impacts.

[2] Rows are shown only when there are impacts. The 20,000 to 100,000 size category shows impacts only under the 1 percent and 3 percent sales test. No impacts at enterprise level or for 475,000 lb/yr or more size category (see DCN 20446 for details); no closure analysis at the enterprise level was conducted for facilities that are projected to close.

[3] Number of entities projected to incur compliance costs and are not baseline closures, assuming cash flow analysis, and for which enough data were available. For closure analysis, this is the number of weighted facilities or the unweighted number of companies. The statistical procedure used to draw the sample and develop the facility survey weights do not allow us to make inferences about company characteristics at the national level. Of the facilities projected to incur costs in this NODA, more than 90 percent are single facility companies.

[4] 1A: one company shifts from marginal solvency to vulnerable.

1B: one company shifts from favorable to vulnerable.

TABLE VI.B.2.—IMPACTS FOR COMMERCIAL FACILITIES (NET INCOME BASIS)[1]

Analysis level[2]	Impact	Size (1,000 lbs/yr)	Number of entities in analysis[3]	Option				
				A	B	1	2	3
Facility	Closure	20–100	45	5	5	0	5	5[6]
		100–475	50	5	5	5	5	11
	Direct Employment Loss (lost jobs).	20–100	45	14	14	0	14	14
		100–475	50	5	5	5	5	24

TABLE VI.B.2.—IMPACTS FOR COMMERCIAL FACILITIES (NET INCOME BASIS) [1]—Continued

Analysis level [2]	Impact	Size (1,000 lbs/yr)	Number of entities in analysis [3]	Option				
				A	B	1	2	3
	Increase in County Unemployment Rate (%).	20–100	45	<0.1	<0.1	0	<0.1	<0.1
		100–475	50	<0.2	<0.2	<0.2	<0.2	<1
	National Employment Loss	20–100	45	26	26	0	26	26
		100–475	50	20	20	20	20	90
	National Loss in Output ($ millions).	20–100	45	$2.1	$2.1	$0.0	$2.1	$2.1
		100–475	50	$1.6	$1.6	$1.6	$1.6	$7.4
	Sales test: >1 percent	20–100	50	15	15	5	15	25
		100–475	54	13	23	21	23	29
	Sales test: >3 percent	20–100	50	10	10	0	10	10
		100–475	54	5	11	11	11	16
Company [5]	Closure		26	2	2	1	2	3
	Farm Financial Health [4]		43	2A	2A	2A	2A	2A 1B

[1] All impacts fall on flow-through systems; recirculating or net pen systems display no impacts. In addition, facilities with flow-through systems that produce more than 475,000 lbs per year display no impacts.

[2] Rows are shown only when there are impacts. No impacts at enterprise level, recirculating, or net pen systems, or for flow-through facilities in the 475,000 lb/yr or more size category; we did not conduct closure analysis at the enterprise level for facilities that are projected to close.

[3] Number of entities projected to incur costs and are not baseline closures, assuming net income analysis, and for which enough data were available. For the closure analysis, this is the weighted number of facilities or the unweighted number of companies. The statistical procedures we used to draw the sample and develop the facility survey weights do not support inferences on a national level about company characteristics. Of the facilities projected to incur costs in this NODA, more than 90 percent are single facility companies.

[4] 2A: two companies shift from marginal solvency to vulnerable. 1B: one company shifts from favorable to vulnerable.

[5] Credit test not performed on net income basis because USDA methodology specifies maximum feasible loan payment (MFLP) be calculated from borrower's cash flow, without deducting depreciation.

[6] Due to rounding of survey weights, the total number of facilities (20,000 to 475,000 size categories) projected to close under Option 3 is 15, not 16.

a. Closure Analysis Results. For commercial facilities, EPA examined the possibility of closure on several levels: enterprise, facility, and company. Sixteen respondents to the detailed survey supplied enterprise level financial information in Question C9 of the detailed survey. EPA based the facility closure analysis on the facility financial data supplied in Question C.6 of the detailed survey. The company level analysis differs from the facility analysis in that it reflects costs for all aquatic animal production facilities owned by the company. To identify all sites belonging to each company, we compiled a list of companies from the costed facilities (45 companies) and examined the screener survey data and responses to Question 2. Where EPA did not have detailed survey data for a particular facility, we assigned the average cost for the other facilities owned by that company.

Section V.C.3.b describes the forecasting methods and closure methodology. The analysis predicts that about one-third of the facilities (*e.g.*, 64 of 181 commercial facilities) fall into the closure category under baseline conditions (*i.e.*, they show negative long-term earnings before the rule). This is consistent with comments indicating the industry has gone through difficult times in the recent past. We could analyze all sixteen enterprises for impacts (*i.e.*, none failed in the baseline). We did not conduct closure analysis at the enterprise level when the facility was projected to close. No impacts are estimated to occur at the enterprise level under any of the regulatory options. Thirteen of the 45 companies are projected as baseline failures.

Based on cash flow analysis, five flow-through facilities close as a result of the added costs under Options A, B, 1, and 2, (Table VI.B.1). We do not expect any other types of facilities to close under these options. The closures result in the direct loss of five jobs and an increase in the county unemployment rate of less than 0.2%. We estimate national impacts to be a loss of 20 jobs (includes the five jobs lost from facility closure) and $1.6 million in output (calculated with the Commerce Department, Bureau of Economic Analysis, Regional Input-Output Modeling System (RIMS II) final demand multipliers for the miscellaneous livestock industry (industry code 1.0302).

The analysis also shows that, under Option 3, eleven flow-through facilities close as a result of the added costs. We do not expect any other types of facilities to close under this option. These closures result in the direct loss of 24 jobs and an increase in the county unemployment rate of up to 1 percent, depending on the location. We estimate National level impacts to be a loss of 90 jobs and $7.4 million in output.

EPA also conducted a facility level closure analysis using net income rather than cash flow (Table VI.B.2). The difference between the two is depreciation, a non-cash charge theoretically representing the capital "used up" during operation. Cash flow is calculated as net income plus depreciation (see Section V.C.3.b for comparison of cash flow and net income). We predict 84 of the 181 facilities to be baseline closures before incurring incremental pollution control cost, representing 46% of the population. We estimate 35% of facilities to be baseline closures under the discounted cash flow analysis. The results are the same for Option 1 for net income analysis: five facilities are still projected to fail. A single unweighted facility represents the five facilities that fail under Option 1. This facility uses cash basis accounting and does not record depreciation as a cost. That is, the earnings estimate is the same for the cash flow and net income versions of the closure analysis. Under Options A, B, and 2, we project ten facilities to close (as opposed to five closures projected using discounted cash flow) with an associated loss of 19 jobs. The increase in the number of projected failures using net income is due to a single unweighted facility failing the closure analysis. Under Option 3, we project that 15 facilities will close with an associated loss of 38 jobs. Using discounted cash flow analysis, we project that 11 facilities will close.

b. Financial Health Results. EPA uses the USDA farm financial health test (see Section V.C.3.b.i) that categorizes farms into four categories:

- Favorable (positive income and debt/asset ratio no more than 40 percent)
- Marginal income (negative income and debt/asset ratio no more than 40 percent)
- Marginal solvency (positive income and debt/asset ratio more than 40 percent)
- Vulnerable (negative income and debt/asset ratio more than 40 percent)

Two of the 45 companies did not supply complete balance sheet information in the detailed survey and were not analyzed using the farm financial health test. Under Options A, B, 1, and 2, one company shifts from marginal solvency to vulnerable. Baseline closures, based on the discounted cash flow and net income analyses, were not excluded from the financial health test. Under Option 3, a second company shifts from favorable to vulnerable under the cash flow analysis (Table VI.B.1). We conducted this analysis at the company level. Both companies that shift categories are small and produce between 100,000 and 475,000 lbs/yr. Financial health results under net income analysis (Table VI.B.2) are similar, except that two companies shift from "marginal solvency" to "vulnerable" instead of the one company under cash flow analysis.

c. Credit Test Results. EPA examined whether commercial companies would be unable to get credit for expenses associated with compliance (see Section V.C.3.b.i above), assuming cash flow analysis. We did not use the credit test under net income analysis as noted in Table VI.B.2. All 45 companies provided the data needed for the credit test. One company/facility fails the credit test under Options A, B, 1, and 2. Under Option 3, a second company fails the credit test. We also conducted this analysis at the company level. Both companies that fail the credit test are small and produce between 100,000 and 475,000 lbs/yr.

d. Sales or Revenue Test Results. The sales or revenue test is calculated on a facility basis. This test corresponds to the sales test performed at proposal but is calculated on the basis of detailed survey information for the facility. Impact results under the sales test, using cash flow analysis, are the same as sales test results using net income analysis. For the 20,000 to 100,000 lb/year category, five facilities "fail" the one percent sales test (*i.e.*, compliance costs that exceed one percent of sales) under Option 1 (see Table VI.B.2). Fifteen facilities fail under Options A, B, and 2, and 25 facilities fail under Option 3. For the 3 percent sales test for this size group, ten facilities "fail" (*i.e.*, compliance costs that exceed 3 percent of sales) under Options A, B, 2 and 3. No facilities fail under Option 1. For the 100,000 to 475,000 lb/year category, 13 facilities fail the 1 percent test under Option A, 21 facilities fail test under Option1, 23 facilities fail under Options B and 2, and 29 facilities fail under Option 3. For the 3 percent sales test for this size group, 5 facilities fail under Option A, 11 facilities fail under Options B, 1, and 2, and 16 fail under Option 3.

Due to differences in option requirements for the subcategories and differences in facility counts between the proposed rule and this NODA, it is difficult to compare sales test results in Table VI.B.1 with results in the proposed rule (67 FR 57906, Table IX.E.1). As a consequence, we present Table VI.B.3 to facilitate comparisons between proposal and NODA. The only test in both the proposal and NODA analyses is the 3 percent revenue test. Even this is not strictly comparable for non-commercial facilities because the denominator in the ratio changed from imputed revenues at proposal to operating budget for the NODA.

The threshold levels shown in Table VI.B.1 (*i.e.*, 1% and 3%) do not necessarily reflect the threshold levels that EPA will use to measure regulatory impacts for the final rule using a revenue test. For the Agency's final regulatory analysis, EPA anticipates using the same revenue test thresholds that were used to evaluate impacts for the proposed rule: greater than 3 percent, greater than 5 percent, and greater than 10 percent. EPA solicits comment on these thresholds.

TABLE VI.B.3.—COMPARISON OF 3% REVENUE TEST, NODA AND PROPOSAL RESULTS

Size	Facilities regulated	Facilities incurring costs greater than 3% of revenue or budget
Proposal:		
Commercial	78	25
Non-Commercial	57	0
NODA:		
Commercial	71	11
Non-Commercial	169	30

Notes: To allow for closest comparison to results at proposal, NODA results in this table do not include costs or loads for facilities that produce 20,000 to 100,000 lbs/year. We assume Option 1 for flow-through facilities in the size category 100,000 to 475,000 lbs/yr and Option 3 for all other flow-through and recirculating facilities. Alaska non-profit facilities that we previously thought produce greater than 100,000 pounds actually produce less than 100,000 pounds annually. They are, therefore, not included in the Table.

e. Sensitivity Analysis for Commercial Impacts. EPA estimated ranges of impacts (DCN 20430) based on minimum, mean, and maximum values for operating and maintenance (O&M) costs for Options B, 1, 2, and 3 (see Section V.A.2 for cost estimates and estimation procedures), assuming earnings based on cash flow analysis. There are no differences in impacts for commercial facilities between the minimum and mean O&M costs. Under maximum O&M costs, we project that another five facilities (weighted) will close under Options B, 2, and 3. Under the maximum O&M, weighted employment losses total 5 under Options A and 1, 22 under Options B and 2, and 40 under Option 3. There is no difference in the change in local unemployment rate among the minimum, mean, and maximum O&M costs.

EPA also examined other technology options, using activated carbon, for removing drugs. As part of sensitivity analysis, EPA also examined the economic impacts for Options A, B, 2, and 3 with and without activated carbon costs (DCN 20443), assuming earnings based on cash flow analysis. These options include BMPs, but not treatment for drugs and chemicals. Activated carbon could be used to treat CAAP effluent for drugs. We estimated the costs for activated carbon treatment to analyze the impacts of requiring treatment as well. When we add activated carbon costs (costs for drug and chemical BMPs subtracted to avoid double-counting costs), direct employment losses are about four times higher, and company closure and financial health impacts are roughly double. About one in four companies would have difficulty raising the capital to meet the activated carbon costs (*e.g.*, six to nine companies fail the credit test with the activated carbon costs).

2. Economic Results for Non-commercial Facilities

The non-commercial category includes four types of facilities: Federal and State hatcheries, tribal operations, academic or research facilities, and Alaska non-profit organizations. We performed the economic analysis on 302 Federal and State facilities, 14 Tribal operations, one academic/research, and seven Alaska non-profits. These facilities are not operated commercially, and the types of tests used to examine impacts on commercial facilities are not applicable. Each group is slightly different, and we will discuss the economic tests performed on each group within each section.

a. Federal and State Facilities. For Federal and State facilities, EPA compared the pre-tax annualized costs to the 2001 operating budget ("budget test"). Table VI.B.4 summarizes the results by production system, test threshold, and size. Of the 302 Federal and State facilities, 39 have Option A costs that we project will exceed one percent of the budget (35 flow-through and four mixed flow-through and recirculating facilities). We project that 27 of these 39 facilities have costs that will exceed 3 percent of budget. For Option B, 120 have costs that we project will exceed one percent of the budget. We project that 75 of these 120 facilities have costs that will exceed three percent of budget. For Option 1, we project that 112 have costs that will exceed one percent of the budget. Fifty-nine of these 112 facilities have costs that we project will exceed three percent of budget. For Option 2, 123 have costs that we project will exceed one percent of the budget. We project that 71 of these 123 facilities have costs that will exceed three percent of budget. For Option 3, 223 (nearly three-fourths of the population) have costs that we project will exceed one percent of the budget. Of these 223 facilities, 108 have costs that we project will exceed three percent of budget.

The threshold levels shown in Table VI.B.4 (*i.e.*, 1% and 3%) do not necessarily reflect the threshold levels that EPA will use to measure regulatory impacts for the final rule using a budget test. For the Agency's final analysis, EPA anticipates using the same thresholds that are used to evaluate impacts a revenue test: greater than 3 percent, greater than 5 percent, and greater than 10 percent. EPA solicits comment on these threshold levels.

TABLE VI.B.4.—BUDGET TEST NON-COMMERCIAL FACILITIES

Production technology	Budget threshold	Size (1,000 lbs/yr)	Estimated number of facilities in analysis	Number of facilities estimated to exceed budget threshold by option [1]				
				A	B	1	2	3
Flow Through	1%	20–100	135	20	55	51	55	89
		100–475	121	15	49	46	49	88
		475+	46	0	8	11	11	39
	3%	20–100	135	16	40	32	40	48
		100–475	121	12	27	19	23	45
		475+	46	0	4	4	4	11
Recirculating	1%	20–100	n.d.	0	0	0	0	0
		475+	n.d.	0	0	0	0	0
	3%	20–100	n.d.	0	0	0	0	0
		475+	n.d.	0	0	0	0	0
Mixed	1%	20–100	11	4	8	4	8	8
	3%	20–100	11	0	4	4	4	4

n.d. not disclosed to protect confidentiality.

[1] Numbers in Table may not sum to numbers in text due to rounding

Part C of the detailed survey asked the respondent for the portion of the budget due from user fees, such as angler licenses, commercial fishing licenses, car vanity plates, and special purpose stamps. EPA examined the number of facilities that could pass through increased costs to the public by increasing user fees. Where user fees were already in place, we estimated the size of the increase they would need to cover the incremental costs ("User Fee" analysis, see Section V.C.3.c) (see Table VI.B.5). Costs for thirty-nine facilities exceed one percent of the operating budget under Option A (20 flow-through facilities that produce between 20,000 and 100,000 lb/yr, 15 flow-through facilities that produce between 100,000 and 475,000 l/yr, and 4 mixed facilities producing between 20,000 and 100,000 lb/yr, shown in Table VI.B.4). Twenty-three of the 39 facilities do not have user fees. Of the remaining 16 facilities, eight can offset the increased costs by increasing user fees by less than five percent. The other eight facilities would need more than a five percent increase in user fees to offset the incremental costs incurred under Option A. Between 60 percent and 70 percent of the facilities that have costs that exceed one percent of budget do not have user fees through which to offset increased pollution control costs.

TABLE VI.B.5.—USER FEE ANALYSIS FOR NON-COMMERCIAL FACILITIES

User Fee Increase	Estimated number of facilities that have costs exceeding threshold							
	Percent of budget							
	1 Percent				3 Percent			
	All	20 to 100	100 to 475	475+	All	20 to 100	100 to 475	475+
Option A:								
All	39	23	15	0	27	16	12	0
No Fee [1]	23	12	12	0	23	12	12	0
>5 Percent [2]	8	8	0	0	4	4	0	0
<5 Percent [2]	8	4	4	0	0	0	0	0
Option B:								
All	120	63	49	8	75	44	27	4
No Fee [1]	76	34	34	8	50	27	19	4
>5 Percent [2]	28	20	8	0	24	16	8	0
<5 Percent [2]	16	9	7	0	1	1	0	0
Option 1:								
All	112	55	46	11	59	36	19	4
No Fee [1]	76	34	31	11	35	19	12	4
>5 Percent [2]	24	16	8	0	24	16	5	0
<5 Percent [2]	12	5	7	0	0	0	0	0
Option 2:								
All	123	63	49	11	71	44	23	4
No Fee [1]	80	34	34	11	46	27	15	4
>5 Percent [2]	28	20	8	0	24	16	8	0
<5 Percent [2]	16	9	7	0	1	1	0	0
Option 3:								
All	223	96	88	39	108	51	45	11
No Fee [1]	143	57	52	35	77	34	32	11
>5 Percent [2]	41	24	17	0	30	16	13	0
<5 Percent [2]	38	16	19	3	1	1	0	0

[1] Facilities that exceed threshold and do not rely on user fees.

[2] Facilities that must raise fees by more/less than 5% (>5%/<5%) to cover compliance costs.

b. Tribal Facilities. Tribal operations that returned detailed surveys are all owned and operated by the tribal government and operate on a non-commercial basis. EPA performed a budget test and determined that no Tribal facility incurs costs in excess of three percent of budget under any Option. Five of 14 facilities have costs that exceed one percent of their budgets under Option 3. No Tribal facility fails the one percent budget test under Options A, B, 1, and 2. For additional information about analyses for Tribal facilities, see DCN 20447.

c. Academic/Research Facilities. Of the academic/research facilities that returned a detailed survey, only one met the criteria of being a CAAP within the scope of the rule, and might incur costs under the rule. EPA performed the budget test and determined that the facility would not incur costs in excess of one percent of budget.

d. Alaska Non-profit Facilities. EPA analyzed the impact of possible costs on Alaska non-profit facilities by comparing the pre-tax annualized cost to reported salmon revenues. Alaska non-profits may harvest and market salmon that return to their release areas. We excluded grants, enhancement tax revenue, and income from miscellaneous sources such as visitor centers from the comparison. Fiscal Year 2000 had an unusually high salmon return (*i.e.*, large harvest). Therefore, we used Fiscal Year 2001 data from Alaska (2002, DCN 20074). For Option A, costs range from 0.97 to 1.8 percent of salmon revenues for 1998, 1999, and 2001 and 0.6 percent of salmon revenues for 2000. For Options B, 1, and 2, costs range from 1.2 to 2.3 percent of salmon revenues for 1998, 1999, and 2001 and 0.6 to 0.7 percent of salmon revenues for 2000. For Option 3, costs range from 1.3 to 2.4 percent of salmon revenues for 1998, 1999, and 2001 and 0.7 percent of salmon revenues for 2000.

e. Sensitivity Analysis for Non-commercial Facilities. EPA estimated ranges of impacts (DCN 20430) based on minimum, mean, and maximum value for operating and maintenance (O&M) costs (*see* Section V.A.2 for costing methods) for Options B, 1, 2, and 3. Table VI.B.6 summarizes the results for the sensitivity analysis for non-commercial facilities. For the one percent budget test, the impacts based on the mean values would not increase markedly if maximum O&M values were assumed. On the other hand, if evidence appears that the O&M costs resemble the minimum values, the impacts would drop by about half compared to impacts under mean O&M costs for Options B, 1, and 2. For the three percent budget test, the impacts associated with the maximum O&M costs are approximately three times higher than the impacts associated with minimum costs for Options B, 1, and 2. There is less than a two-fold spread for Option 3.

TABLE VI.B.6.—NUMBER OF NON-COMMERCIAL FACILITIES THAT HAVE COSTS EXCEEDING BUDGET THRESHOLDS

[O&M sensitivity analysis]

Budget test	O&M cost assumption	Option A	Option B	Option 1	Option 2	Option 3
1 Percent	Minimum	39	61	49	61	199
	Mean	39	120	112	123	223
	Maximum	39	134	126	134	223
3 Percent	Minimum	27	42	38	42	83
	Mean	27	75	59	71	108
	Maximum	27	112	112	112	134

EPA also examined alternative technology options for removing drugs, using activated carbon. As part of sensitivity analysis, EPA also examined the economic impacts for Options A, B, 2, and 3 with and without activated carbon costs (DCN 20443), assuming earnings based on cash flow analysis. Activated carbon could be used to treat CAAP effluent for drugs. These options include BMPs, but not treatment for drugs and chemicals. By estimating the costs for activated carbon treatment, EPA analyzed the impacts of requiring treatment as well. When activated carbon costs are added (costs for drug and chemical BMPs were subtracted to avoid double-counting costs), direct employment losses are about four times higher, and company closure and financial health impacts are roughly double. About one in four companies would have difficulty raising the capital needed to meet the activated carbon costs (*e.g.*, six to nine companies fail the credit test with the activated carbon costs).

C. Cost-effectiveness and Cost-reasonableness Analysis

EPA performed a revised nutrient cost-effectiveness (CE) and cost reasonableness (CR) analysis based on revised estimates of costs, loadings and removals (*see* Development Document for details). We do not expect benchmarks or thresholds for assessing CE/CR results to differ from those used in the proposed rule (that is, $4/lb for nitrogen, $10/lb for phosphorus cost-effectiveness and $0.73/lb for cost-reasonableness (*see* 68 FR 7249–7250 for discussion of benchmarks)). Option costs include costs for BMP components that address invasive species, drugs, and chemicals that have no effect on nutrients, BOD, or TSS. That is, cost-effectiveness and cost-reasonableness values are overstated.

1. Nutrient Cost-effectiveness Results

The tables in this section provide the nutrient cost-effectiveness values for nitrogen and phosphorus. Table VI.C.1 presents the results for nitrogen by production system, commercial and non-commercial sector, and option. For commercial flow-through facilities, the average cost-effectiveness for nitrogen is $24/lb for Option A and ranges from $11/lb to $14/lb for the other options. Incrementally, the effects of the different BMP requirements result in Options B, 1, and 2 having the same removals but different costs. The incremental calculations are based on the option with the lowest of the three costs (*e.g.*, Option 1) and ranges from $6/lb to $12/lb. Nutrient cost-effectiveness values are higher for non-commercial facilities. The average cost-effectiveness for nitrogen is $1,096/lb for Option A, and cost-effectiveness ranges from $30/lb to $49/lb for the other options. Again, we base the incremental calculations on the option with the lowest of the three costs with the same removals and ranges from $20/lb to $23/lb.

For commercial recirculating facilities, the table shows no average and incremental cost-effectiveness value for nitrogen because no nitrogen is removed. For non-commercial recirculating facilities, no nitrogen removals are seen for Option A. For the remaining options, average cost effectiveness ranges from $183/lb to $518/lb, and incremental cost-effectiveness ranges from $112/lb to $232/lb.

TABLE VI.C.1.—NUTRIENT COST-EFFECTIVENESS: NITROGEN

Subcategory, sector, and option	Pre-tax annualized costs ($2001)	Nitrogen removals (lb)	Cost-effectiveness ($2001/pound)	
			Average	Incremental
Commercial Flow-Through				
Option A	$213,030	8,970	$24	[1] $24
Option 1	344,350	30,998	11	6
Option 2	429,441	30,998	14	NA
Option B	438,443	30,998	14	NA
Option 3	920,663	79,960	12	12
Non-Commercial Flow-Through				
Option A	$1,492,671	1,362	$1,096	[1] $1,096
Option 1	2,692,963	60,203	45	20
Option B	2,968,001	60,203	49	NA
Option 2	2,969,498	60,203	49	NA
Option 3	5,799,459	194,534	30	23

TABLE VI.C.1.—NUTRIENT COST-EFFECTIVENESS: NITROGEN—Continued

Subcategory, sector, and option	Pre-tax annualized costs ($2001)	Nitrogen removals (lb)	Cost-effectiveness ($2001/pound)	
			Average	Incremental
Commercial Recirculating				
Option 1	$2,784	0	[2]	[2]
Option A	7,744	0	[2]	[2]
Option B	7,744	0	[2]	[2]
Option 2	7,744	0	[2]	[2]
Option 3	7,744	0	[2]	[2]
Non-Commercial Recirculating				
Option A	$17,594	0	[2]	[2]
Option 1	44,268	115	385	232
Option B	55,107	115	480	NA
Option 2	59,558	115	518	NA
Option 3	80,965	443	183	112

NA: The option higher costs, not related to nutrient removal, and equal removals compared to previous options.

[1] Option A is incremental to baseline, so the average and incremental values are the same.

[2] Undefined: Option costs are costs for BMP components that address invasive species, drugs, and chemicals that have no effect on nutrients, or facilities in these groups have adequate treatment to achieve requirements for pollutants in this table (*i.e.*, no incremental removals are estimated).

Table VI.C.2 presents the results for phosphorus by production system, commercial and non-commercial sector, and option. For commercial flow-through facilities, the average cost-effectiveness for phosphorus is $131/lb for Option A; the average cost-effectiveness ranges from $41/lb to $81/lb for the other options. Incrementally, the effects of the different BMP requirements result in Options B, 1, and 2 having the same removals but different costs. The incremental calculations are based on the option with the lowest of the three costs (*e.g.*, Option 1), and the incremental cost-effectiveness is estimated to be roughly $34/lb to $35/lb. Nutrient cost-effectiveness values are higher for non-commercial facilities. The average cost-effectiveness for phosphorus is $925/lb for Option A and ranges from $112/lb to $258/lb for the other options. Again, the incremental calculations are based on the option with the lowest of the three costs (*e.g.*, Option 1) with the same removals and ranges from $77/lb to $121/lb.

For commercial recirculating facilities, the average and incremental cost-effectiveness for phosphorus is undefined for commercial because no phosphorus is removed. For non-commercial recirculating facilities, no phosphorus removals are seen for Option A. For the remaining options, average cost effectiveness ranges from $481/lb to $2,987/lb and incremental cost-effectiveness ranges from $247/lb to $1,338/lb.

TABLE VI.C.2.—NUTRIENT COST-EFFECTIVENESS: PHOSPHORUS

Subcategory, sector, and option	Pre-tax annualized costs ($2001)	Phosphorus removals (lb)	Cost-effectiveness ($2001/pound)	
			Average	Incremental
Commercial Flow-Through				
Option A	$213,030	1,631	$131	$131[1]
Option 1	344,350	5,396	64	35
Option 2	429,441	5,396	80	NA
Option B	438,443	5,396	81	NA
Option 3	920,663	22,290	41	34
Non-Commercial Flow-Through				
Option A	$1,492,671	1,614	$925	$925[1]
Option 1	2,692,963	11,510	234	121
Option B	2,968,001	11,510	258	NA
Option 2	2,969,498	11,510	258	NA
Option 3	5,799,459	51,976	112	77
Commercial Recirculating				
Option 1	$2,784	0	[2]	[2]
Option A	7,744	0	[2]	[2]
Option B	7,744	0	[2]	[2]
Option 2	7,744	0	[2]	[2]
Option 3	7,744	0	[2]	[2]

TABLE VI.C.2.—NUTRIENT COST-EFFECTIVENESS: PHOSPHORUS—Continued

Subcategory, sector, and option	Pre-tax annualized costs ($2001)	Phosphorus removals (lb)	Cost-effectiveness ($2001/pound)	
			Average	Incremental
Non-commercial Recirculating				
Option A	$17,594	0	[2]	[2]
Option 1	44,268	20	2,220	1,338
Option B	55,107	20	2,764	NA
Option 2	59,558	20	2,987	NA
Option 3	80,965	168	481	247

NA: The option higher costs, not related to nutrient removal, and equal removals compared to previous options.

[1] Option A is incremental to baseline, so the average and incremental values are listed as being the same.

[2] Undefined: Option costs are costs for BMP components that address invasive species, drugs, and chemicals that have no effect on nutrients, or facilities in these groups have adequate treatment in place to achieve requirements for pollutants in this table (*i.e.*, no incremental removals are estimated).

Due to differences in option requirements for the subcategories, as well as differences in facility counts between the proposed rule and this NODA, it is difficult to compare cost-effectiveness values in Tables VI.C.1 and VI.C.2 directly to cost effectiveness values for the proposed rule. As a consequence, Table VI.C.3 facilitates comparisons between proposal and this NODA.

TABLE VI.C.3.—COMPARISON OF NUTRIENT RESULTS—PROPOSAL AND NODA

Production system	Total pre-tax annual costs ($2001)	Average nutrient cost effectiveness (TN+TP)		Average nutrient cost effectiveness (TN)		Average nutrient cost effectiveness (TP)	
		Removals	$/lb	Removals	$/lb	Removals	$/lb
Proposal							
Flow-Through	1,032,942	66,103	15.63	50,273	20.55	15,830	65.25
Recirculating	46,354	32,453	1.43	25,090	1.85	7,363	6.30
Net Pens	35,322	86,890	0.41	74,477	0.47	12,413	2.85
NODA							
Flow-Through	2,076,456	114,933	18.07	92,026	22.56	22,907	90.65
Recirculating	5,409	0	[1]	0	[1]	0	[1]
Net Pens	0	0	[1]	0	[1]	0	[1]

Note: Proposal costs, taken from Table IX.G.3 of the preamble from the proposed rule, were inflated to 2001 dollars. NODA results do not include costs or loads for facilities that produce 20,000 to 100,000 lbs/year. Option 1 is assumed for flow-through facilities in the size category 100,000 to 475,000 lbs/yr; Option 3 is assumed for all other flow-through and recirculating facilities.

[1] Undefined.

2. Cost-reasonableness Results

Table VI.C.4 shows the cost-reasonableness values for conventional pollutants. EPA estimated BOD and TSS removals for each facility for each option. Because BOD can be correlated with TSS, EPA selected the higher of the two values (not the sum) to avoid possible double-counting of removals. In general, TSS is the more frequently the higher of the two. In Option 3 for example, TSS is higher than BOD in nearly four out of five facilities. For commercial flow-through facilities, cost-reasonableness ranges from $1.53/lb to $1.94/lb for Options A, B, 1, and 2. Option 3 shows a lower cost-reasonableness value than for the other options—$0.64/lb. For non-commercial flow-through facilities, cost-reasonableness is $1.01/lb for option A and ranges from $1.18/lb to $1.70/lb for the other options. While cost-reasonableness is less than $2/lb for all options for flow-through facilities, it is undefined for commercial recirculating facilities and ranges from $5/lb to $100/lb for non-commercial recirculating facilities.

TABLE VI.C.4.—COST-REASONABLENESS: BOD AND TSS

Subcategory, sector, and option	Pre-tax annualized costs ($2001)	BOD and TSS Removals (lb) [1]	Cost-reasonableness ($2001/pound)
Commercial Flow-Through			
Option A	213,030	114,162	1.87
Option 1	344,350	225,797	1.53
Option 2	429,441	225,797	1.90

TABLE VI.C.4.—COST-REASONABLENESS: BOD AND TSS—Continued

Subcategory, sector, and option	Pre-tax annualized costs ($2001)	BOD and TSS Removals (lb) [1]	Cost-reasonableness ($2001/pound)
Option B	438,443	225,797	1.94
Option 3	920,663	1,447,954	0.64
Non-commercial Flow-Through			
Option A	1,492,671	1,480,192	$1.01
Option 1	2,692,963	1,743,075	1.54
Option B	2,968,001	1,743,075	1.70
Option 2	2,969,498	1,743,075	1.70
Option 3	5,799,459	4,925,784	1.18
Commercial Recirculating			
Option 1	2,784	0	[2]
Option A	7,744	0	[2]
Option B	7,744	0	[2]
Option 2	7,744	0	[2]
Option 3	7,744	0	[2]
Non-commercial Recirculating			
Option A	17,594	0	[2]
Option 1	44,268	598	73.98
Option B	55,107	598	92.09
Option 2	59,558	598	99.53
Option 3	80,965	16,150	5.01

[1] EPA determines the higher of BOD or TSS mass removal for each facility and then aggregates pounds across facilities.

[2] Undefined: Option costs are costs for BMP components that address invasive species, drugs, and chemicals that have no effect on BOD or TSS, or facilities in these groups have adequate treatment to achieve requirements for pollutants in this table (*i.e.*, no incremental removals are estimated).

Due to differences in option requirements for the subcategories and differences in facility counts between the proposed rule and this NODA, it is difficult to compare results in Table VI.C.4 directly to values in the proposed rule. As a consequence, Table VI.C.5 facilitates comparisons between proposal and this NODA.

TABLE VI.C.5.—COMPARISON OF COST-REASONABLENESS RESULTS—PROPOSAL AND NODA

Proposal				NODA		
Production system	Total pre-tax annual costs ($2001)	Conventional pollutant removals	Average cost per pound ($/lb)	Total pre-tax annual costs ($2001)	Conventional pollutant removals	Average cost per pound ($/lb)
Flow-Through	1,032,942	4,450,465	0.23	2,076,456	2,524,102	0.82
Recirculating	46,354	638,365	0.07	5,409	0	[1]
Net Pens	35,322	868,899	0.04	0	0	[1]

Note: Proposal costs, taken from Table IX.G.1 of the preamble from the proposed rule, were inflated to 2001 dollars. NODA results do not include costs or loads for facilities that produce 20,000 to 100,000 lbs/year. Option 1 is assumed for flow-through facilities in the size category 100,000 to 475,000 lbs/yr; option 3 is assumed for all other flow-through and recirculating facilities.

[1] Undefined.

D. Small Business Analysis

EPA evaluates the economic impacts of proposed and final rules on small entities where required by the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The RFA/SBREFA defines several types of small entities, including small governmental jurisdictions (population less than 50,000), small organizations (not-profit organization that is independently owned and operated and is not dominant in its field), and small businesses. The CAAP industry includes sites that fall within the North American Industry Classification codes 112511 (finfish farming and fish hatcheries). The Small Business Administration size standard for this code is $0.75 million. A facility is owned by a small business if its corporate parent earns $750,000 or less in annual revenues.

For the purposes of the RFA, Federal, State, and Tribal governments are not considered small governmental jurisdictions (EPA, 1999, DCN 20121). Thus, facilities owned by these governments are not considered small entities, regardless of their production levels. EPA identified no public facilities owned by small local governments in the analysis. For the purpose of this rulemaking, EPA considers many of the non-profit organizations that produce salmon for the State of Alaska to be "small." These non-profit facilities have assumed a public function: to raise fish (in this case salmon) in hatcheries to be released into the wild to supplement wild populations and sustain the Alaska commercial and recreational fishing industries.

Among the costed facilities, EPA identified 117 facilities belonging to small businesses, seven belonging to small organizations, and one academic/research facility. For commercial facilities, the small business results for the facility closure analysis and associated loss in jobs and increase in local unemployment rates, financial health, credit test, and the sales test results for 20,000 to 100,000 lb/yr category are the same as those presented in Table VI.B.1 (see DCN 20448 for details about small business analysis), assuming cash flow analysis. That is, all these impacts fall on small businesses. The only difference from Table VI.B.1 is in the one percent sales test for the 100,000 to 475,000 lb/yr category, where the number of facilities exceeding the test threshold drops from 54 to 53 when restricted to small businesses.

VII. Solicitation of Comments

A. Alligator Production

As discussed in the proposal, alligator production is not subject to Part 451. As ascertained through contacts with industry experts, alligator production facilities do not discharge effluents from their production systems. Instead, effluents are treated in one-or two-stage lagoons and then applied to crop or forested land. EPA verified the information by reviewing the data from the detailed survey. Alligator producers do not meet the definition of a CAAP because they do not exceed the minimum threshold of discharging 30 days annually. In EPA's view, after having reviewed detailed data, these operations are not CAAPs and are similarly operated to CAFOs. EPA may recommend to permit writers that they consider applying requirements similar to CAFOs when permitting alligator production facilities. EPA seeks comment on whether this would be an appropriate approach for these operations.

B. BMPs

EPA also seeks comment on BMP language that might be included in the final rule or accompanying guidance. For example, in Idaho's general permit, these practices by CAAP facilities are prohibited to ensure protection of State Water Quality Standards for hazardous materials, deleterious materials, and floating, suspended or submerged matter.

- Discharging hazardous materials is prohibited.
- Discharging sludge, grit, and accumulated solid residues associated with CAAP operations and fish processing is prohibited.
- Practices (e.g., the removal of dam boards in raceways or ponds) which allow accumulated solids to be discharged to waters of the United States is prohibited.
- Discharging untreated cleaning wastewater (e.g., obtained from a vacuum or standpipe bottom drain system or rearing/holding unit disinfection) to waters of the United States is prohibited.
- Sweeping, raking, or intentionally discharging accumulated solids from raceways or ponds to waters of the United States is prohibited.
- Containing, growing or holding fish within an offline or full-flow settling basin is prohibited.

EPA seeks comments on whether these prohibitions, or any other specific requirements for BMP plans, should be included in the final rule or accompanying guidance.

EPA also seeks comment on whether it should modify the structure of the proposed BMP provisions so that the regulation would require specific best management practices and, separately, require sources to develop a BMP plan describing how they intend to meet those requirements. For example, EPA proposed that the BMP plan for flow-through systems must minimize excess feed entering the aquatic animal production system. (See proposal at 40 CFR 451.15(a); see also proposal at 40 CFR 451.25(a) (recirculating systems).) EPA may restructure the regulation so that a source would be required by its NPDES permit to minimize excess feed and, separately, to develop a BMP plan to describe how the source intends to comply with that requirement. Under this approach, the BMP plan, while required by permit, would simply be a tool to help the source implement the substantive permit requirement: minimizing excess feed. EPA also seeks comment on whether to require review of BMP plans by the permitting authority and, if so, how such a requirement should be expressed.

C. Disposal of Drugs and Chemicals

Information on practices for the disposal of drugs and chemicals is limited. EPA seeks comment on existing practices for the disposal of expired drugs and chemicals.

D. Differentiating Between Warm and Cold Water Species

Data from two warm water facilities indicated that they appear to comply with the proposed limits, but EPA recognizes that such facilities can have different wastewater characteristics than cold water species production facilities. EPA seeks comments and data regarding the ability or inability of warm water facilities to achieve the proposed limits for either flow-through or recirculating system effluents, as appropriate.

E. Combining the Proposed Recirculating and Flow-Through Subcategories Into One Subcategory

EPA may combine flow-through production systems and recirculating systems under a single subcategory with two sets of effluent limits: one that would apply to the discharge of full flow effluents and one that would apply to off-line treatment or recirculating system effluents. We received several comments indicating that there is not a clear distinction between recirculating and flow-through systems. EPA seeks comments on the establishment of a continuous discharge subcategory which would apply to wastewater discharges from both recirculating and flow-through systems.

F. Revised Economic Impact Methodology

For this notice, EPA projected impacts only when they occur using two out of the three forecasting methods. EPA seeks comment on basing its closure analysis for the final rule on impacts that occur using one of the three methods.

G. Factoring Unpaid Labor Charges in the Impact Analysis

EPA is not estimating a charge for unpaid labor reported by CAAP facilities when conducting its economic impact analysis. EPA seeks comment on methods and data that support the estimation of charges for unpaid labor and management in cash flow and net income analyses.

H. Facilities Excluded From the Economic Impact Analysis

Facilities that are excluded from closure analysis include:

- Start-ups (where the first year of income is negative yet this is not indicative of future earnings).
- Cost centers (that transfer production to other facilities under the same ownership at no cost or the cost is set to the operating costs).
- Facilities where the company does not record income statement information at the facility level.
- Facilities that are likely to close under baseline conditions without regard to the rule.

EPA seeks comment on omitting such facilities from the closure analysis.

Dated: December 19, 2003.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water.

[FR Doc. 03–31867 Filed 12–24–03; 8:45 am]

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- California; published 10-30-03
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- Digital cable products; commercial availability of navigation devices and compatibility between cable systems and consumer electronics equipment; published 11-28-03

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- Religious nonmedical health care institutions and advance directives; published 11-28-03

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- Medicare+Choice plans; Medicare Part B premium reduction; published 11-28-03

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- Native Hawaiian Housing Block Grant and Loan Guarantees for Native Hawaiian Housing Programs; published 11-28-03

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- Surface coal mining; special rules; published 11-28-03

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- Management's discussion and analysis of financial condition and results of operations; guidance; published 12-29-03

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- Substitute payments; information statements; published 12-29-03

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Alcohol and Tobacco Tax and Trade Bureau

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- Bennett Valley, Sonoma County, CA; published 10-30-03

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Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Bovine spongiform encephalopathy; minimal risk regions and importation of commodities; comments due by 1-5-04; published 11-4-03 [FR 03-27611]

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  - Gulf of Alaska groundfish; comments due by 1-5-04; published 12-5-03 [FR 03-30283]
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico Fishery Management Council; meetings; comments due by 1-9-04; published 12-22-03 [FR 03-31488]
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- Magnuson-Stevens Act provisions—
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- West Coast and Western Pacific fisheries—
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- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 1-5-04; published 12-5-03 [FR 03-30284]
  - Pacific Coast groundfish; comments due by 1-6-04; published 11-7-03 [FR 03-28131]

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- Patent term extension and patent term adjustment provisions related to Board of Patent Appeals and Interferences decisions; revision; comments due by 1-5-04; published 12-4-03 [FR 03-30151]

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Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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- Nevada; comments due by 1-9-04; published 12-10-03 [FR 03-30590]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 1-5-04; published 12-4-03 [FR 03-30167]
- Delaware; comments due by 1-5-04; published 12-5-03 [FR 03-30041]
- Maryland; comments due by 1-8-04; published 12-9-03 [FR 03-30509]
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- New Jersey; comments due by 1-8-04; published 12-9-03 [FR 03-30514]

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  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:
- Louisiana; comments due by 1-8-04; published 12-9-03 [FR 03-30511]

Water pollution control:
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  - Arizona; Sewage Sludge (Biosolids) Management Program; modification application; comments due by 1-5-04; published 11-21-03 [FR 03-29177]
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- Digital television stations; table of assignments:
  - Idaho; comments due by 1-5-04; published 11-28-03 [FR 03-29626]
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- Alcohol; viticultural area designations:
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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 108th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the first session of the 108th Congress will appear in the issue of January 30, 2004.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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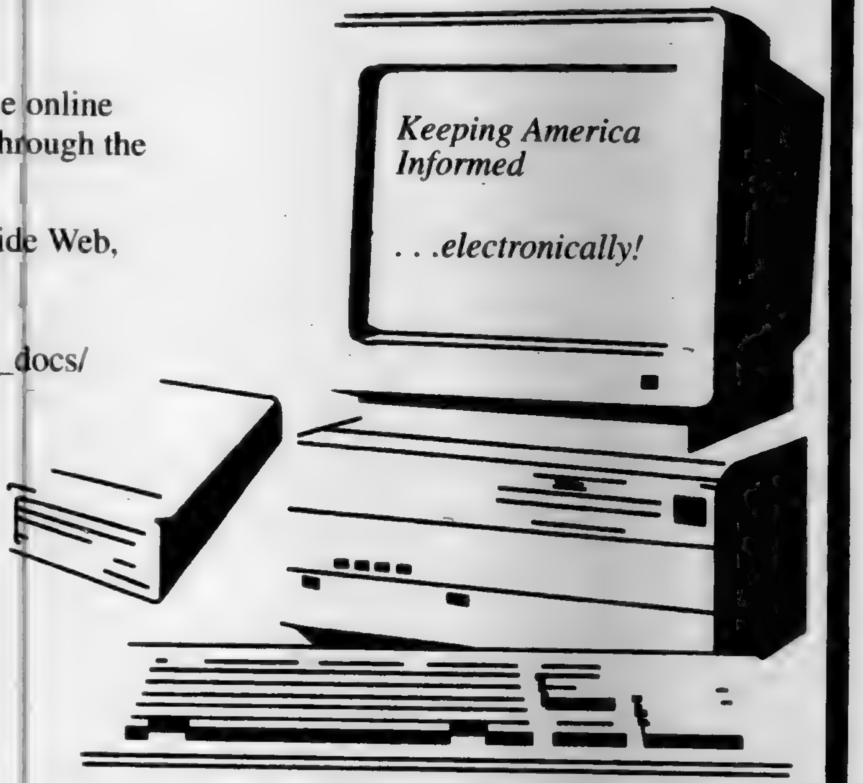

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Federal Register
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Tuesday, December 30, 2003

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

7 CFR 3200

RIN 0599–AA10

Office of Procurement and Property Management (OPPM); Uniform Procedures for the Acquisition and Transfer of Excess Personal Property

AGENCY: Office of Procurement and Property Management.

ACTION: Direct final rule.

SUMMARY: The Office of Procurement and Property Management of the Department of Agriculture (USDA) proposes to amend its procedures for the acquisition and transfer of excess personal property to 1994 Institutions (as defined in section 532 of the Equity in Education Land Grant Status Act of 1994 (Pub. L. 103–382; 7 U.S.C. 301 note)); any Hispanic-Serving Institution (as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)); and any college/university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*), including Tuskegee University, in support of research, educational, technical, and scientific activities or for related programs. This amendment would clarify administrative rules regarding equipment transfer and reduce the administrative burden placed on the Institutions.

DATES: This rule is effective March 1, 2004 without further action, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before January 29, 2004. If we receive adverse comments, the Office of Procurement and Property Management will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments should be sent to USDA, OPPM, PMD, 1400 Independence Ave., SW., Mail Stop 9304, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Kathy Fay on 202–720–9779.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order Number 12866.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
III. Electronic Access Addresses

I. Background

This direct final rule amends the final rule which was published in the **Federal Register** at 63 FR 57233–57236, Oct. 27, 1998.

II. Procedural Requirements

A. Executive Order Number 12866

This proposed rule was reviewed under EO 12866, and it has been determined that it is not a significant regulatory action because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

B. Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, for the reason that this regulation imposes no new requirements on small entities.

C. Paperwork Reduction

The forms necessary to implement these procedures have been cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act, 44 U.S.C. 2500, *et seq.*

III. Electronic Access Addresses

You may send electronic mail (E-mail) to *kathy.fay@usda.gov* or contact us via fax at (202) 720–3339.

CHAPTER 32—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3200—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE ACQUISITION AND TRANSFER OF EXCESS PERSONAL PROPERTY

■ 1. The authority citation for part 3200 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 2206a.

■ 2. Amend § 3200.4 by revising paragraphs (a), (d) and (e)(2) to read as follows:

§ 3200.4 Procedures.

(a) To receive information concerning the availability of Federal excess personal property, an eligible institution's property management officer may contact their regional GSA, Area Utilization Officer. For information on USDA excess personal property, visit the USDA Web site at *http://www.nfc.usda.gov/propexcs.* USDA excess property will first be screened by USDA agencies through the Departmental Excess Personal Property Coordinator (DEPPC) using the Departmental Property Management Information System.

* * * * *

(d) Eligible institutions may submit property requests by mail or fax on a Standard Form 122, "Transfer Order Excess Personal Property".

(e)(1) * * *

(2) This statement needs to be added following the property description:

> "The property requested hereon is certified to be used in support of research, educational, technical, and scientific activities or for related programs. This transfer is requested pursuant to the provisions of Section 923 Pub. L. 104–127 (7 U.S.C. 2206a). Also, in accordance with these provisions USDA authorizes transfer of title of this property to the college/university/institution."

* * * * *

■ 3. Amend § 3200.6 by revising paragraph (a), redesignating paragraphs (b) and (c) as (c) and (d), and adding a new paragraph (b) to read as follows:

§ 3200.6 Restrictions.

(a) Property in the following Federal Supply Groups are prohibited from transfer.

INELIGIBLE FEDERAL SUPPLY CODE GROUPS

FSC Group	Name
10	Weapons.
11	Nuclear ordinance.
13	Ammunition and explosives.
14	Guided missiles.
18	Space vehicles.

(b) The property in the FSC's listed below are discouraged from transfer and not approved on a routine basis. However, Institutions may request items in these FSC groups, but all requests will be referred to the Director, Office of Procurement and Property Management for consideration and approval:

FSC Group	Name
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing and ground handling equipment.
20	Ship and marine equipment.

* * * * *

■ 4. Revise § 3200.10 to read as follows:

§ 3200.10 Disposal.

Once the requirements in § 3200.9 are met for retention and use of property by the Institution and title is transferred, Federal excess personal property (FEPP) no longer needed by an Institution will be disposed of in accordance with the Institution's disposal practices. Regardless of ownership, FEPP must never be disposed of in any manner which is detrimental or dangerous to public health or safety. Also, any costs incurred during the disposal process are the responsibility of the Institution.

Done at Washington, DC, this 22nd day of December, 2003.

W. R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 03–32013 Filed 12–29–03; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 506, 550, 560, 563, 563g, and 575

[No. 2003–68]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications, updated statutory and other references, and corrections of typographical errors.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn K. Burton, Senior Paralegal (Regulations), (202) 906–6467, or Karen A. Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate a number of technical and conforming amendments. OTS is making the following miscellaneous changes:

- *Part 506—Information Collection Requirements under the Paperwork Reduction Act (PRA).* The final rule updates the table displaying the OMB control numbers assigned to various OTS regulations under the PRA by adding and amending references to a control number. *See* 12 CFR 506.1(b).
- *Part 550—Fiduciary Powers of Savings Associations.* The final rule corrects typographical errors in the chart in § 550.70.
- *Part 560—Lending and Investment.* The final rule corrects a typographical error in § 560.30.
- *Part 563—Savings Associations—Operations.* The final rule adds a regulatory reference to § 563.41(b) and deletes a citation to an outdated regulation in § 563.180(c).
- *Parts 563g—Securities Offerings.* The final rule updates a reference to an OTS Office and revises citations in §§ 563g.1(a)(6), (a)(9) and (a)(10), and 563g.5.
- *Part 575—Mutual Holding Companies.* The final rule corrects a typographical error in § 575.7.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.[1] OTS believes that these procedures are unnecessary and contrary to public interest because the rule merely corrects and clarifies existing provisions. Because the amendments in the rule are not substantive, these changes will not detrimentally affect savings associations.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.[2] This section does not apply because this final rule imposes no additional requirements and makes only technical changes to existing regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[3] the OTS Director certifies that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 506

Reporting and recordkeeping requirements.

12 CFR Part 550

Savings associations, Trusts and trustees.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

---

[1] 5 U.S.C. 553.

[2] Pub. L. No. 103–325, 12 U.S.C. 4802.

[3] Pub. L. No. 96–354, 5 U.S.C. 601.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 575

Administrative practice and procedure, Capital, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

■ Accordingly, the Office of Thrift Supervision amends title 12, chapter V of the Code of Federal Regulations, as set forth below.

PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. Amend the table in § 506.1(b) by:

■ a. Revising the entries for §§ 563.22 and 563.81; and

■ b. Removing the entries for §§ 552.6, 552.7, 563.80, 563b.4, and 563b.20 through 563b.32.

§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	* *
563.22	1550–0016, 1550–0025
* * * * *	* *
563.81	1550–0030
* * * * *	* *

PART 550—FIDUCIARY POWERS OF SAVINGS ASSOCIATIONS

■ 3. The authority citation for part 550 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

■ 4. Revise the table in § 550.70 at paragraphs (b) and (d) to read as follows:

§ 550.70 Must I obtain OTS approval or file a notice before I exercise fiduciary powers?

* * * * *

If you will conduct . . .	Then . . .
* * * *	* * *
(b) Fiduciary activities that are materially different from the activities that OTS has previously approved for you, including fiduciary activities that OTS has previously approved for you that you have not exercised for at least five years.	You must obtain prior approval from OTS under §§ 550.80 through 550.120 before you conduct the activities
* * * *	* * *
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OTS approval or file a notice with OTS.

PART 560—LENDING AND INVESTMENT

■ 5. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

■ 6. Revise the fifth entry in the table in § 560.30 to read as follows:

§ 560.30 General lending and investment powers of Federal savings associations.

* * * * *

LENDING AND INVESTMENT POWERS CHART

Category	Statutory authorization [1]	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
* *	* * *	* *
Community development loans and equity investments.	5(c)(3)(A)	5% of total assets, provided equity investments do not exceed 2% of total assets.[4]
* *	* * *	* *

Endnotes:

1. All references are to section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) unless otherwise indicated.

* * * * * * *

4. The 2% of assets limitation is a sublimit for investments within the overall 5% of assets limitation on community development loans and investments. The qualitative standards for such loans and investments are set forth in HOLA section 5(c)(3)(A) (formerly 5(c)(3)(B), as explained in an opinion of the OTS Chief Counsel dated May 10, 1995 (available at *http://www.ots.treas.gov*)).

* * * * *

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 7. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 42 U.S.C. 4106.

■ 8. Revise the last sentence of the introductory paragraph of § 563.41(b) to read as follows:

§ 563.41 Transactions with affiliates.

* * * * *

(b) * * * In addition, a savings association should read all references to "the Board" or "appropriate federal banking agency" to refer only to "OTS," except for references at 12 CFR 223.2(a)(9)(iv), 223.3(h), 223.3(z), 223.14(c)(4), 223.43, and 223.55.

* * * * *

§ 563.180 [Amended]

■ 9. Amend § 563.180(c) by removing the last sentence.

PART 563g—SECURITIES OFFERINGS

■ 10. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78*l*, 78m, 78n, 78p, 78w.

§ 563g.1 [Amended]

■ 11. In § 563g.1, amend paragraph (a)(6) by removing "Corporate and Securities Division" and by adding in lieu thereof "Business Transactions Division'; amend paragraph (a)(9) by removing "§ 563b.2(a)(27)" and adding in lieu thereof "§ 563b.25"; and amend paragraph (a)(10) by removing "§ 563b.2(a)(29)" and adding in lieu thereof "§ 563b.25".

§ 563g.5 [Amended]

■ 12. Amend § 563g.5(a) by removing the phrase "§ 563b.8(e)(1), (e)(3), and (e)(4), (f) through (q), and (s)" and adding in lieu thereof "§§ 563b.115(a), 563b.150(a)(6), 563b.155, 563b.180(b), and Form AC, General Instruction B".

PART 575—MUTUAL HOLDING COMPANIES

■ 13. The authority citation for part 575 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828, 2901.

§ 575.7 [Amended]

■ 14. Amend § 575.7 by removing "12 CFR Form OC" in paragraph (d)(6)(i) and by adding in lieu thereof "Form OC".

Dated: December 17, 2003.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 03–31692 Filed 12–29–03; 8:45 am]

BILLING CODE 6720–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is updating and clarifying the definitions of certain terms used in NCUA's loan participation rule. Specifically, the definition of "credit union organization" is amended to conform to the terms of the credit union service organizations (CUSOs) rule. Also, the definition of "financial organization" is broadened to provide federal credit unions (FCUs) greater flexibility in choosing appropriate loan participation partners.

DATES: This final rule is effective January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA issued a proposed rule on June 26, 2003 to update and clarify § 701.22, its loan participation rule. 68 FR 39866 (July 3, 2003). In the proposal, NCUA noted many of the benefits loan participation offers FCUs. Specifically, engaging in loan participations is an effective tool for FCUs to manage liquidity and concentration risk. Loan participation is also a way for FCUs to comply with NCUA or self-imposed lending limits. Small FCUs are able to improve the diversification of their loan portfolios by participating in loans originated by larger FCUs that have the resources to underwrite a wider variety of loan types.

Section 701.22 of NCUA's regulations provides that an FCU may engage in loan participations with "eligible organizations" and defines that term as a credit union, credit union organization, or financial organization. 12 CFR 701.22(b), 12 CFR 701.22(a)(2). The rule further defines "credit union organization" and "financial organization." 12 CFR 701.22(a)(4) and (a)(5).

The Federal Credit Union Act (Act) defines "credit union organization" as "any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve." 12 U.S.C. 1757(5)(D). Section 701.22(a)(4) echoes this definition, but specifically excludes, among others, some CUSOs, which it describes as "corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions." 12 CFR 701.22(a)(4). Formerly, NCUA's CUSO rule distinguished between CUSOs providing operational services to FCUs and those providing financial services to FCU members.

In a 1998 final rule, NCUA eliminated that distinction in the CUSO rule. 63 FR 10743 (March 5, 1998). Under NCUA's regulations, CUSOs are entities that engage in providing products and services related to the routine daily operations of credit unions to credit unions and credit union members. 12 CFR 712.3, 712.5. In the June 2003 proposal, NCUA proposed to amend the definition of "credit union organization" in the loan participation rule to conform to NCUA's interpretation of that term in the CUSO rule.

The Act does not define the term "financial organization." Section 701.22(a)(5) defines it as "any federally chartered or federally insured financial institution." 12 CFR 701.22(a)(5). Although the Act is silent, the rule derives its definition from the legislative history of the 1977 public law that granted FCUs various additional authorities, including the authority to engage in loan participations. H.R. Rep. No. 95–23, at 12 (1977), *reprinted* in 1977 U.S.C.C.A.N. 115. In granting this authority, Congress expressed its intent to enhance the ability of FCUs to serve their members' loan demands.

Consistent with congressional intent to enhance the ability of FCUs to serve their members' loan demands through participations, NCUA proposed to expand the regulatory definition of "financial organization" to include state and federal government agencies. NCUA is aware that there are various state and federal government supported loan programs that are particularly geared to underserved borrowers. These types of programs, which include agricultural and small business lending, are ideally suited to the mission of FCUs. Also, the proposal was intended to afford FCUs greater flexibility in choosing appropriate participation partners.

B. Summary of Comments

NCUA received twelve comment letters regarding the proposed rule: three from FCUs, two from state credit unions, one from a corporate credit union, five from credit union trade organizations, and one from a banking trade organization. Nine commenters completely supported the proposal as written. One commenter supported the proposed amendment to the definition of "financial organization," but stated the current definition of "credit union organization" is sufficient to accomplish NCUA's goals. One commenter stated that there should be even fewer restrictions regarding the entities that may engage in loan participations than as proposed. The banking trade organization stated that NCUA's proposal exceeds congressional intent regarding who may engage in loan participations.

NCUA believes the proposed amendments improve the loan participation rule and strike an appropriate balance between enhancing flexibility for FCUs and adhering to statutory limitations. Accordingly, NCUA adopts the proposed amendments into the final rule without change.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule expands the pool of eligible organizations with whom an FCU may engage in loan participations, without imposing any additional regulatory burden. The final amendments will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 18, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and Pub. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

■ 2. Section 701.22 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 701.22 Loan participation.

(a) * * *

(4) *Credit union organization* means any credit union service organization meeting the requirements of part 712 of this chapter. This term does not include trade associations or membership organizations principally composed of credit unions.

(5) *Financial organization* means any federally chartered or federally insured financial institution; and any state or federal government agency and their subdivisions.

* * * * *

[FR Doc. 03–31843 Filed 12–29–03; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its share insurance rules to simplify and clarify them and provide parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). Specifically, the amendments: Provide continuation of coverage following the death of a member and for separate coverage after the merger of insured credit unions for limited periods of time; clarify that the interests of nonqualifying beneficiaries of a revocable trust account are treated as the individually owned funds of the owner even where the owner has not actually opened an individual account; and clarify that there is coverage for Coverdell Education Savings Accounts, formerly Education IRAs.

DATES: This final rule is effective January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA staff identified part 745 as a regulation in need of updating, clarification and simplification. To that end, NCUA issued a proposed rule on June 26, 2003 to improve part 745 and maintain parity between the separate federal insurance programs administered by NCUA and FDIC. 68 FR 39868 (July 3, 2003).

NCUA proposed to provide a six-month grace period for members to restructure their insured accounts to maximize insurance coverage in each of two separate occurrences. Specifically, NCUA proposed the grace periods would take effect upon the death of a member and the merger of insured credit unions.

NCUA explained that the death of a member results in an immediate change in the ownership of the member's share accounts. This change in ownership could significantly change the amount of share insurance coverage available for those accounts, most likely reducing coverage.[1]

NCUA recognizes the practical difficulties a member's survivors might encounter in attempting to restructure the member's share accounts immediately after the member's death, and that these difficulties are worsened as they would occur at a time of grief when dealing with financial matters may be particularly difficult for the member's survivors. Accordingly, NCUA proposed to grant a six-month grace period after a member's death for his or her survivors to restructure the accounts. During this grace period, the insurance coverage of the deceased member's accounts would not change from that available immediately before the member's death, unless the accounts are restructured during the grace period by those authorized to do so. Because the intent of the proposal is to avoid reduced insurance coverage, the grace period would not be applied if doing so would result in decreased share insurance coverage.

NCUA also proposed a six-month grace period for members to restructure their insured accounts after the merger of insured credit unions. NCUA explained that a member's share accounts at an insured credit union are insured separately from that member's share accounts at any other separately chartered, insured credit union. When a member has accounts at more than one insured credit union, a merger of those credit unions could reduce the amount of share insurance coverage the member had before the merger.[2]

NCUA does not believe members should immediately have reduced share insurance coverage as a result of credit union mergers. Accordingly, NCUA proposed to provide members with a six-month grace period following the merger of insured credit unions, during which members will receive separate insurance of their accounts as though no merger had occurred. NCUA also proposed a methodology for extending insurance coverage for share certificates that mature at varying times in relation to the merger.[3]

NCUA believes insured credit unions should help their members benefit from these grace periods wherever possible and reasonable. We believe this can be done in a number of ways. For example, insured credit unions should make reasonable efforts to explain to their members how the grace periods operate. Merging credit unions are encouraged to make their members aware of the pending merger as soon as possible so members can evaluate their existing accounts and begin to plan how to restructure their accounts to maximize their coverage after the merger. Once a merger is completed, the surviving credit union should make reasonable efforts to notify members with uninsured funds as a result of the merger that the grace period has begun to run and assist members to restructure their accounts to maximize coverage. NCUA encourages insured credit unions to do all of these things as a service to their members and to minimize the potential for confusion regarding the coverage of their accounts.

In May 2000, Education IRAs were specified as insurable under NCUA's share insurance rules as irrevocable trust accounts. 65 FR 34921 (June 1, 2000). Since that time, Education IRAs have been replaced with Coverdell Education Savings Accounts. NCUA proposed to revise the share insurance rules to reflect that change.

NCUA also proposed to revise its revocable trust account insurance rule to address the frequent inquiries NCUA receives regarding how: (1) Revocable trusts are created; (2) an owner demonstrates testamentary intent; and (3) the interests of nonqualifying beneficiaries are treated. In brief, NCUA explained that simple revocable trusts can be created at the credit union without the need for a formal written trust. NCUA proposed that the member's intent to create a revocable trust be noted in the title to the account. NCUA explained that common terms used in the account title to create a revocable trust and indicate the owner's intent include "payable on death," "in trust for," and "as trustee for," or acronyms for these phrases, respectively, POD, ITF and ATF. NCUA explained that the account title "John Smith POD" is sufficient to create a revocable trust account. NCUA stated in the proposal it believed that naming the beneficiaries in the account *title* is the most effective way of establishing insurance coverage, but made it clear that, to be insurable, the beneficiaries must only be specifically named somewhere in the credit union's account *records*, not necessarily in the account *title*.

Finally, NCUA explained that it treats the interests of nonqualifying beneficiaries, those beneficiaries that are not the owner's spouse, child, grandchild, parent, brother or sister, as the individually owned funds of the owner of the account. In this context, these funds would be aggregated with all other individual accounts of the owner and insured up to $100,000. NCUA acknowledged that the current language of the rule could be read as providing that these nonqualifying beneficiary interests would only be insured as the individually owned funds of the owner if the owner has actually opened an individual account in the insured credit union where the revocable trust account is held. NCUA proposed to revise the rule to clarify that it will treat nonqualifying beneficiary interests as the individually owned funds of the owner even if the owner has not actually opened an individual account at the credit union. This is consistent with FDIC's treatment of these funds.

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[1] For example, a husband and wife may hold a joint account, a joint revocable trust account for the benefit of their two children, and two individual accounts in their own names. Assuming these accounts satisfy all applicable requirements, these four accounts would be insured up to a maximum of $800,000. The $800,000 is broken down as follows: $200,000 for the joint account; $400,000 for the joint revocable trust account; and $100,000 for each of the two individual accounts. Upon the death of either the husband or wife, however, the surviving spouse would become the sole owner of the joint account and the joint revocable trust account. Under NCUA share insurance rules, the joint account would be transformed into an individual account subject to aggregation with the surviving spouse's other individual account and insured up to a maximum of $100,000. The single ownership (individual) account in the name of the deceased spouse would continue to be insured separately from the other accounts. The maximum coverage of the joint revocable trust account would be reduced from $400,000 to $200,000, because coverage for this type of account is calculated as $100,000 for each combination of settlors and qualifying beneficiaries. In sum, the maximum coverage of the four accounts would be reduced immediately upon the death of the husband or wife from $800,000 to $400,000.

[2] For example, member X has a $75,000 individual account at insured credit union A and a $50,000 individual account at insured credit union B. Both accounts are fully insured because a member is entitled to $100,000 of coverage in the aggregate for all individual accounts in each insured credit union. 12 CFR 745.1; 12 CFR 745.3. If the credit unions merge, then X would have individual accounts in the surviving insured credit union totaling $125,000. X's individual accounts would be uninsured for $25,000.

[3] A share certificate that matures after the six-month grace period will receive the separate insurance treatment until the first maturity date following the grace period. One that matures during the six-month grace period and is renewed for the same term and amount will receive the separate insurance treatment until the first maturity date after the grace period under the terms of the renewed certificate. One that matures during the grace period that is not renewed, or is renewed on any basis other than for the same term and amount as the original certificate, is separately insured only for the six-month grace period.

B. Summary of Comments

NCUA received sixteen comment letters regarding the proposed rule: Six from federal credit unions (FCUs), two from state credit unions, and eight from credit union trade organizations.

The commenters expressed general support for all of the proposed amendments, except for the titling requirement in the revocable trust account provision. Fifteen commenters strongly opposed the titling requirement and expressed the same or similar concerns. The concerns they cited included the great expense of updating their forms and systems. The commenters noted a host of problems the titling requirement would create for their computer-based data processing systems, which they stated presently cannot accommodate the additional titling information required by the proposal. Many of these commenters stated that the information NCUA proposes to be included in the account title could just as easily be captured elsewhere in the account documentation without the need to update forms or data processing systems. Six commenters were concerned that the titling requirement would apply to existing accounts and that it would be expensive and labor intensive to identify those accounts to alter their titles to comply with the proposal.

It appears from the comment letters that a significant number of commenters misread the titling requirement of the proposal and are under the impression it requires that beneficiaries be named in the title. As noted above, that is not the case. NCUA proposed only that a member's intent to create a revocable trust must be demonstrated in the title of the account using commonly accepted terms such as "in trust for," "as trustee for," "payable on death to," or any acronym for these terms. As noted, NCUA stated that, while it prefers the beneficiaries also be listed in the title, it only requires that the beneficiaries be named somewhere in the share account records of the insured credit union.

NCUA's intent in proposing the titling requirement was to make it simpler for credit union members to create revocable trust accounts and to obtain the expanded insurance coverage they seek. NCUA did not anticipate the proposed requirement would create any significant, additional burden for credit unions and, moreover, did not intend to impose the requirement retroactively to existing revocable trust accounts. Nevertheless, as a result of the information provided by the commenters and other interested parties, NCUA has decided not to adopt the proposed titling requirement at this time because of the difficulties commenters identified that some FCUs would have in adapting their data processing systems and account forms. NCUA continues to believe that titling of revocable trust accounts so as to indicate the nature of the account would benefit FCUs in a number of ways, including enabling FCUs to help members better appreciate the nature of their accounts and share insurance coverage. NCUA encourages FCUs to modernize and maximize their data processing systems' capabilities as much as is practicable, given their circumstances, in this regard.

As noted, there was general support for all the other proposed amendments which include: Providing a six-month grace period for members to restructure their insured accounts upon the death of a member and the merger of insured credit unions; clarifying that the interests of nonqualifying beneficiaries of a revocable trust account are treated as the individually owned funds of the owner even where the owner has not actually opened an individual account; and clarifying that there is coverage for Coverdell Education Savings Accounts, formerly Education IRAs. There was little specific comment on these proposals except that two commenters suggested extending the six-month grace periods to one year. NCUA believes six months is a sufficient amount of time to restructure insured accounts and consistent with the FDIC's deposit insurance rules. Accordingly, these proposed amendments are adopted in the final rule without change.

C. Technical Correction

In 2000, NCUA amended Part 724 of its regulations to permit an FCU in a territory, including trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, to act as a trustee or custodian for certain pension or profit sharing plans. 65 FR 10933 (March 1, 2000). At the same time, NCUA amended § 745.9–2 of the share insurance rules to clarify that these accounts would be entitled to separate share insurance coverage. *Id.*

In a subsequent separate rulemaking, NCUA further amended § 745.9–2 to address coverage of accounts unrelated to the prior amendments to § 745.9–2 providing coverage of trust or custodial accounts. 65 FR 34921 (June 1, 2000). Inadvertently, the subsequent amendments to § 745.9–2 deleted the provision providing coverage for trust or custodial accounts. Accordingly, NCUA is reinstating those provisions as a technical amendment.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule only clarifies the share insurance coverage available to credit union members, without imposing any regulatory burden. The final amendments would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 745

Credit unions, Share insurance.

By the National Credit Union Administration Board on December 18, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

■ 2. Section 745.2 is amended by adding paragraphs (e) and (f) to read as follows:

§ 745.2 General principles applicable in determining insurance of accounts.

* * * * *

(e) *Continuation of insurance coverage following the death of a member.* The death of a member will not affect the member's share insurance coverage for a period of six months following death unless the member's share accounts are restructured in that time period. If the accounts are restructured during the six-month grace period, or upon the expiration of the six months if not restructured, the share insurance coverage will be provided on the basis of actual ownership of the accounts in accordance with the provisions of this part. The operation of this grace period, however, will not result in a reduction of coverage.

(f) *Continuation of separate share insurance coverage after merger of insured credit unions.* Whenever the liability to pay the member accounts of one or more insured credit unions is assumed by another insured credit union, whether by merger, consolidation, other statutory assumption or contract: The insured status of the credit unions whose member account liability has been assumed terminates, for purposes of this section, on the date of receipt by NCUA of satisfactory evidence of the assumption; and the separate insurance of member accounts assumed continues for six months from the date the assumption takes effect or, in the case of a share certificate, the earliest maturity date after the six-month period. In the case of a share certificate that matures within the six-month grace period that is renewed at the same dollar amount, either with or without accrued dividends having been added to the principal amount, and for the same term as the original share certificate, the separate insurance applies to the renewed share certificate until the first maturity date after the six-month period. A share certificate that matures within the six-month grace period that is renewed on any other basis, or that is not renewed, is separately insured only until the end of the six-month grace period.

■ 3. Section 745.4 is amended by revising paragraph (c) to read as follows:

§ 745.4 Revocable trust accounts.

* * * * *

(c) If the named beneficiary of a revocable trust account is other than the spouse, child, grandchild, parent, brother or sister of the account owner, the funds corresponding to that beneficiary shall be treated as an individually owned account of the owner, aggregated with any other individually owned accounts of the owner, and insured up to $100,000. For example, if A establishes an account payable upon death to his nephew, the account would be insured as an individual account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for revocable trust account coverage up to $200,000 corresponding to the two qualifying beneficiaries, the spouse and child. The amount corresponding to the non-qualifying beneficiary, the nephew, would be deemed to be owned by B as an individual account and insured accordingly.

* * * * *

■ 4. Section 745.9–1 is amended by revising paragraph (c) to read as follows:

§ 745.9–1 Trust accounts.

* * * * *

(c) This section applies to trust interests created in Coverdell Education Savings Accounts, formerly Education IRAs, established in connection with section 530 of the Internal Revenue Code (26 U.S.C. 530).

■ 5. Section 745.9–2 is amended by revising paragraph (a) to read as follows:

§ 745.9–2 IRA/Keogh accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) (Keogh account), section 408(a) (IRA) and section 408A (Roth IRA) of the Internal Revenue Code (26 U.S.C. 401(d), 408(a) and 408A), or similar provisions of law applicable to a U.S. territory or possession, will be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. For insurance purposes, IRA and Roth IRA accounts will be combined together and insured in the aggregate up to $100,000. A Keogh account will be separately insured from an IRA account, Roth IRA account or, where applicable, aggregated IRA and Roth IRA accounts.

* * * * *

■ 6. The Appendix to part 745 is amended by revising the third sentence of Section B to read as follows:

Appendix to Part 745—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

* * * * *

B. How Are Revocable Trust Accounts Insured?

* * * If the named beneficiary of a revocable trust account is other than the spouse, child, grandchild, parent, brother or sister of the account owner, the funds corresponding to that beneficiary shall be treated as an individually owned account of the owner, aggregated with any other individually owned accounts of the owner, and insured up to $100,000. * * *

* * * * *

[FR Doc. 03–31844 Filed 12–29–03; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–28–AD; Amendment 39–13382; AD 2003–24–13]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–24–13, which was published in the **Federal Register** on December 4, 2003 (68 FR 67789), and applies to certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H

airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. We inadvertently duplicated affected airplane serial numbers and included a serial number that should not be affected by this AD in the applicability section. This action corrects the applicability section of AD 2003–24–13, Amendment 39–13382.

EFFECTIVE DATE: The effective date of this AD remains January 20, 2004.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On November 25, 2003, FAA issued AD 2003–24–13, Amendment 39–13382 (68 FR 67789, December 4, 2003), which applies to certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This AD requires you to install an update to the operating software of the KAP 140 autopilot computer system, change the unit's part number, and change the software modification identification tag.

Need for the Correction

The FAA inadvertently duplicated affected airplane serial numbers for Model T206H airplanes in the applicability section of this AD. We also inadvertently included serial number T20608368 for Model T206H airplanes in the applicability section of this AD that is not affected by this AD. This correction is needed to ensure that the affected airplane owners/operators do not have unnecessary action performed on their airplanes.

Correction of Publication

■ Accordingly, the publication of December 4, 2003 (68 FR 67789), of Amendment 39–13382; AD 2003–24–13, which was the subject of FR Doc. 03–30075, is corrected as follows:

§ 39.13 [Corrected]

■ On page 67791, in section 39.13 [Amended], 2., replace paragraph (c) of the AD with the following text:

"What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are:

(1) equipped with a KAP 140 autopilot computer system, part number (P/N) 065–00176–2602, P/N 065–00176–5402, or P/N 065–00176–7702; and

(2) certificated in any category;

Model	Serial No.
172R	17280001 through 17281073, 17281075 through 17281127, and 17281130
172S	172S8001 through 172S9195, 172S9197, 172S9198, and 172S9200 through 172S9203
182S	18280001 through 18280944
182T	18280945 through 18281064, 18281067 through 18281145,18281147 through 18281163, 18281165 through 18281167, and 18281172
T182T	T18208001 through T18208109, and T18208111 throughT18208177
206H	20608001 through 20608183, 20608185, 20608187, and 20608188
T206H	T20608001 through T20608039, T20608041 through T20608367, T20608369 through T20608379, T20608381, T20608382, and T20608385"

Action is taken herein to correct this reference in AD 2003–24–13 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains January 20, 2004.

Issued in Kansas City, Missouri, on December 16, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31667 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–22–AD; Amendment 39–13369; AD 2003–23–05]

RIN 2120–AA64

Airworthiness Directives; Titeflex Corporation; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2003–23–05 applicable to certain Titeflex Corporation hoses installed on Boeing 737–300, –400, –500, –600, –700, –700C, –800, –900, 747–400, 757–200, –300, 767–200, –300, and –300F airplanes, that was published in the **Federal Register** on November 19, 2003 (68 FR 65157). The AD number is incorrect in the Preamble Section and in the Regulatory Section five corrections are needed in Table 1. This document corrects these errors. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 03–28730, applicable to certain Titeflex Corporation hoses installed on Boeing 737–300, –400, –500, –600, –700, –700C, –800, –900, 747–400, 757–200, –300, 767–200, –300, and –300F airplanes, was published in the **Federal Register** on November 19, 2003 (68 FR 65157). The following corrections are needed:

§ 39.13 [Corrected]

■ On page 65157, in the first column, in the Preamble Section, in the fifth line, "39–13369; AD 2003–23–05–AD "is corrected to read "39–13369; AD 2003–23–05". Also, on page 65158, in Table 1, the following changes are made:

■ In the fifth column, for item (2) 737–600, –700, –700C, –800, and –900 airplanes, first line, "737–26A1109, Revision 12, dated May 8, 2003" is corrected to read "737–26A1109, Revision 2, dated May 8, 2003".

■ In the second column, for item (3) 747–400 airplanes, "BACH5R0186XX" is corrected to read "BACH5S0186XX" and "BACH5S0080YY" is deleted.

■ In the second column, for item (4) 757–200 airplanes, under BACH5S0110XN, add "No number" and add in the third column on the same line, "109422".

■ Also, on page 65159, in Table 1, in the second column, for item (5) 757–300 airplanes, under BACH5S0074XN, add: "Optional 453N2240–33"

Issued in Burlington, MA, on December 19, 2003.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–31850 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 135, and 145

[Docket No. FA–2000–7952]

RIN 2120–A113

Service Difficulty Reports

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule; delay of effective date.

SUMMARY: The Federal Aviation Administration (FAA) is further delaying the effective date of a final rule that amends the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. This action is prompted by the FAA's decision to address industry concerns about the final rule. Delaying the effective date of the final rule will allow the agency time for consideration of industry concerns.

DATES: The effective date of the rule amending 14 CFR parts 121, 125, 135, and 145 published at 65 FR 56191 (Sept. 15, 2000) and most recently delayed at 67 FR 78970 (Dec. 27, 2002) is further delayed from January 16, 2004, until January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Jose E. Figueroa, Flight Standards Service, Tampa Flight Standards District Office, 5601 Mariner Street, Suite 310, Tampa, Florida 33609–3413, telephone 813–287–4932.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 2000, the FAA published the final rule entitled "Service Difficulty Reports" (65 FR 56191). We also requested comments on the information collection requirements. The final rule, which had an effective date of January 16, 2001, amended the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. The FAA received extensive written comments on the Service Difficulty Reporting (SDR) requirements and on the potential duplicate reporting of certain failures, malfunctions, and defects.

On November 30, 2000, the FAA announced (65 FR 71247) that a public meeting on this rulemaking would be held on December 11, 2000. Participants at that meeting raised novel issues that the FAA was not aware of when preparing the final rule.

As a result of the concerns expressed at the meeting and those raised during the comment period for information collection requirements on the final rule, the FAA delayed the effective date on four separate occasions to January 16, 2004. The purpose of these delays was to allow the agency time to consider industry's concerns and to consider issuing a notice of proposed rulemaking (NPRM). Unfortunately, we have not completed action on this initiative, and a further delay of the effective date is necessary to allow additional time for us to address industry concerns.

Related Activity

Revised Aeronautical Repair Station Regulations

On August 6, 2001, the FAA published revisions to its repair station rule (66 FR 41088). As a part of that action, we removed §§ 145.63 and 145.79, and created a new § 145.221 to contain SDR requirements for repair stations. The FAA intends for the § 145.221 amendment to take effect on January 31, 2004, concurrent with other repair station requirements (*see* 66 FR 41088 (Aug. 6, 2001) delayed until Jan. 31, 2004, at 68 FR 55819 (Sept. 29, 2003).)

Good Cause for Immediate Adoption

Since the delay in the effective date of the final rule does not impose any new requirements or any additional burden on the regulated public, the FAA finds that good cause exists for immediate adoption of the new effective date without a 30-day notice.

The Effect of Our Decision

Our decision delays the effective date of the SDR final rule from January 16, 2004 until January 31, 2006. The FAA cautions the industry that the existing rules will remain in effect until the new dates are effective, with the exception of the § 145.221 amendment that will be effective on January 31, 2004.

Issued in Washington, DC, on December 19, 2003.

Marion Blakey

Administrator.

[FR Doc. 03–31883 Filed 12–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 600

[Docket No. 2003N–0528]

Revision of the Requirements for Spore-Forming Microorganisms

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations by providing options to the existing requirement for separate, dedicated facilities and equipment for work with spore-forming microorganisms. FDA is amending the regulations due to advances in facility, system, and equipment design and in sterilization technologies that will allow work with spore-forming microorganisms to be performed in multiproduct manufacturing areas. We are publishing this rule because the existing requirement for always using separate, dedicated facilities and equipment for work with spore-forming microorganisms is no longer necessary. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection. We are issuing these amendments directly as a final rule because they are noncontroversial and there is little likelihood that we will receive any significant comments opposing the rule. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under our usual procedures for notice and comment in the event that we receive any significant adverse comments on the direct final rule. If we receive any significant adverse comments that warrant terminating the direct final rule, we will consider such comments on the proposed rule in developing the final rule.

DATES: This rule is effective June 1, 2004. Submit written or electronic comments on or before March 15, 2004. If we receive no significant adverse comments during the specified comment period, we intend to publish a confirmation document on or before the effective date of this direct final rule confirming that the direct final rule will go into effect on June 1, 2004. If we receive any significant adverse comments during the comment period, we intend to withdraw the direct final rule before its effective date by publication of a document in the **Federal Register**.

ADDRESSES: Submit written comments on the direct final rule to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Spore-forming microorganisms are used in the production of certain biological products. These microorganisms may be used as source material for further manufacture into final products used in the prevention, treatment, or cure of a disease or condition of human beings. By their very nature, these microorganisms pose a great challenge to manufacturers. Bacteria produce spores as a means to survive adverse environmental conditions, while some fungi use them as a form of reproduction. Spores show great resistance to high temperature, freezing, dryness, antibacterial agents, radiation, and toxic chemicals. Under favorable conditions, spores can germinate into actively growing bacteria and fungi. Many of these spore-forming microorganisms are pathogenic to humans and have been implicated in causing morbidity and mortality. To ensure the safety of a biological product manufactured in a facility in which spore-forming microorganisms are present, these microorganisms must be kept under tight control to avoid the release of spores into the manufacturing atmosphere and potential contamination of other products.

Due to the unique survival properties of spore-forming microorganisms, current FDA regulations require that work with these microorganisms be conducted separately from manufacturing operations for other products. (Currently, FDA regulations use the term "spore-bearing" microorganisms. In this rulemaking, we are revising these regulations to use the term "spore-forming" because it is a more commonly used term. For the purposes of these regulations, spore-forming microorganisms include both the spore and vegetative cells.) Under § 600.11(e)(3) (21 CFR 600.11(e)(3)), all work with spore-forming microorganisms must be performed in an entirely separate building, or in a completely walled-off portion of a if that portion is constructed so as to prevent contamination of other areas and if entrances to such portion are independent of the remainder of the building. Section 600.11(e)(3) further requires that all vessels, apparatus, and equipment used for spore-forming microorganisms be permanently identified and reserved exclusively for use with those organisms. This provision also states that any materials destined for further manufacturing may be removed from this area only under conditions that will prevent the introduction of spores into other manufacturing areas.

In accordance with Executive Order 12866, which directs Federal agencies to review their regulations and eliminate or modify those that are outdated or otherwise in need of reform, we are revising § 600.11(e)(3) to allow greater manufacturing flexibility regarding work with spore-forming microorganisms. The revisions provide that work with spore-forming microorganisms may be performed in multiproduct manufacturing areas when appropriate controls to prevent contamination of other products and areas exist. We recognize that advances in facility, system, and equipment design and in sterilization technologies have increased the ability of manufacturers to control and analyze the manufacture of biological products and the equipment used in their manufacture. The use of appropriate controls and procedures and processes provide an adequate degree of confidence that a product meets the expected levels of safety and purity. Areas of special concern, such as containment, contamination with pathogenic and/or toxic agents, sterilization, and disinfection can be addressed using currently available and required procedures and processes.

This direct final rule does not apply to spore-forming microorganisms used for testing of biological products to determine the growth-promoting qualities of test media used to ensure the sterility of each lot of product or as biological indicators for validation of steam sterilization cycles. The rule also does not change the requirements for those products set forth in §§ 600.11(e)(2) and 610.12 (21 CFR 610.12).

II. Highlights of the Direct Final Rule

We are amending our regulations involving spore-forming microorganisms as set forth below.

A. Work With Spore-Forming Microorganisms

We are revising § 600.11(e)(3) to provide greater flexibility in production facilities and procedures for work with spore-forming microorganisms.

Revised § 600.11(e)(3)(i) states that manufacturing processes using spore-forming microorganisms conducted in a multiproduct manufacturing site must be performed under appropriate controls to prevent contamination of other products and areas within the site. We regard a manufacturing site as an entire complex of buildings, connected or separate, that belongs to one entity engaged in the manufacture of any one product or multiple products. An area within a manufacturing site is a specified location within a facility (physical structure) associated with the manufacturing of any one product or multiple products. Revised § 600.11(e)(3)(i) further states that prevention of spore contamination can be achieved by using a separate, dedicated building or, if manufacturing is conducted in a multiproduct manufacturing building, by using process containment. Finally, revised § 600.11(e)(3)(i) states that all product and personnel movement between the area where the spore-forming microorganisms are manufactured and other manufacturing areas must be conducted under conditions that will prevent the introduction of spores into other areas of the facility.

Revised § 600.11(e)(3)(ii) states that if process containment is employed in a multiproduct manufacturing area, procedures must be in place to demonstrate adequate removal of the spore-forming microorganism(s) from the manufacturing area for subsequent manufacture of other products. Revised § 600.11(e)(3)(ii) further states that these procedures must provide for adequate removal or decontamination of the spore-forming microorganisms on and within manufacturing equipment, facilities, and ancillary room items as well as the removal of disposable or product dedicated items from the manufacturing area. Finally, revised § 600.11(e)(3)(ii) states that environmental monitoring specific for the spore-forming microorganism(s) must be conducted in adjacent areas during manufacturing operations and in the manufacturing area after completion of cleaning and decontamination.

Under revised § 600.11(e)(3)(ii), processing and propagation of spore-forming microorganisms must be conducted in areas and using systems that are not used for any other purpose at the same time. Prior to processing and propagation of any organism, procedures must be designed and in place to prevent contamination with pathogenic and/or toxic agents, as well as to decontaminate, sterilize and/or disinfect, as appropriate, all affected areas and systems. It is important to demonstrate control over and containment of spore-forming microorganisms during their propagation and processing in order to prevent contamination of the product. Products derived from spore-forming microorganisms should not be removed from designated areas unless this can be done in a manner that prevents contamination of other products. These containment procedures will provide a level of assurance that products made using spore-forming microorganisms remain safe, pure, and of high quality.

The agency anticipates developing a guidance document to assist manufacturers in complying with these more flexible provisions on work with spore-forming microorganisms.

B. Substitution of "Spore-Forming" for "Spore-Bearing"

As noted previously in this document, we are replacing the term "spore-bearing" in our regulations with the term "spore-forming" because the latter has become the more commonly used term to describe these microorganisms. Accordingly, in addition to § 600.11(e)(3), we are revising §§ 600.10(c)(3) (21 CFR 600.10(c)(3)) and 600.11(e)(1) and (e)(2) by substituting the term "spore-forming" for the term "spore-bearing".

III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how the agency will employ direct final rulemaking. We have determined that this rule is appropriate for direct final rulemaking because we believe that it includes only noncontroversial amendments and we anticipate no significant adverse comments. Consistent with our procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register** a companion proposed rule to revise the biologics regulations to allow greater flexibility in production facilities and procedures for work with spore-forming microorganisms. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event that the direct final rule is withdrawn because of any significant adverse comments. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments received in response to the companion proposed rule will be considered as comments regarding the direct final rule.

We are providing a comment period on the direct final rule of 75 days after date of publication in the **Federal Register**. If we receive any significant adverse comments, we intend to withdraw this direct final rule action before its effective date by publication of a notice in the **Federal Register**. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553). Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subjects of a significant adverse comment.

If any significant adverse comments are received during the comment period, FDA will publish, before the effective date of this direct final rule, a document withdrawing the direct final rule. If we withdraw the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period, FDA intends to publish a confirmation document, before the effective date of the direct final rule, confirming the effective date.

IV. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of the direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the direct final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant economic impact on a substantial number of small entities. Because the direct final rule allows for greater flexibility in production facilities and procedures for work with spore-forming microorganisms, it would not result in any increased burden or costs on small entities. Therefore, we certify that the direct final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Reform Act requires that agencies prepare a written statement under section 202(a) of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). Because the rule does not impose mandates on State, local, or tribal governments, or the private sector, that will result in an expenditure in any one year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

We have analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

VI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this direct final rule. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 600 is amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

■ 1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

§ 600.10 [Amended]

■ 2. Section 600.10 *Personnel* is amended in paragraph (c)(3) by removing the words "spore-bearing" and adding in their place the words "spore-forming".

■ 3. Section 600.11 is amended in paragraph (e)(1) by removing the words "spore-bearing" and adding in their place the words "spore-forming"; in paragraph (e)(2) by removing the words "spore-bearing" in the heading and text, and adding in their place the words "spore-forming"; and by revising paragraph (e)(3) to read as follows:

§ 600.11 Physical establishment, equipment, animals, and care.

* * * * *

(e) * * *

(3) *Work with spore-forming microorganisms.* (i) Manufacturing processes using spore-forming microorganisms conducted in a multiproduct manufacturing site must be performed under appropriate controls to prevent contamination of other products and areas within the site. Prevention of spore contamination can be achieved by using a separate dedicated building or by using process containment if manufacturing is conducted in a multiproduct manufacturing building. All product and personnel movement between the area where the spore-forming microorganisms are manufactured and other manufacturing areas must be conducted under conditions that will prevent the introduction of spores into other areas of the facility.

(ii) If process containment is employed in a multiproduct manufacturing area, procedures must be in place to demonstrate adequate removal of the spore-forming microorganism(s) from the manufacturing area for subsequent manufacture of other products. These procedures must provide for adequate removal or decontamination of the spore-forming microorganisms on and within manufacturing equipment, facilities, and ancillary room items as well as the removal of disposable or product dedicated items from the manufacturing area. Environmental monitoring specific for the spore-forming microorganism(s) must be conducted in adjacent areas during manufacturing operations and in the manufacturing area after completion of cleaning and decontamination.

* * * * *

Dated: December 11, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31919 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9101]

RIN 1545–BC79

Information Reporting Relating to Taxable Stock Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains temporary regulations concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of these temporary regulations also serves as the text of proposed regulations set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 30, 2003.

Applicability Dates: For dates of applicability, *see* §§ 1.6043–4T(i) and 1.6045–3T(g).

FOR FURTHER INFORMATION CONTACT: Nancy Rose at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The forms referenced in these regulations have been, or will be, reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 6043(c) provides that if any person acquires control of a corporation, or if there is a recapitalization or other substantial change in capital structure of a corporation, the corporation, when required by the Secretary, shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

On November 18, 2002, the IRS published temporary regulations under section 6043(c) (TD 9022). The transactions covered by the reporting requirement were certain acquisitions of control and substantial changes in the capital structure of a corporation. These regulations required a corporation to attach a form to its income tax return describing these transactions and to file information returns with respect to certain shareholders in such transactions. On November 18, 2002, the IRS also published temporary regulations under section 6045, which provided for information reporting with respect to these transactions by brokers (together with the section 6043(c) temporary regulations, the 2002 temporary regulations). The 2002 temporary regulations were applicable to acquisitions of control and substantial changes in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder was required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction.

The text of the 2002 temporary regulations also served as the text of proposed regulations set forth in a cross-referencing notice of proposed rulemaking published in the Proposed Rules section of the same issue of the **Federal Register** (2002 proposed regulations) (REG–143321–02). The provisions of the proposed regulations were proposed to apply with respect to any acquisition of control or substantial change in capital structure occurring after the date on which final regulations would be published in the **Federal Register**. The preamble to the notice of proposed rulemaking invited public comments with respect to the potential for duplicate reporting and with respect to the burden of compliance with the reporting requirements.

The IRS received a number of written public comments with respect to the information reporting requirements set forth in the 2002 temporary and proposed regulations. In addition, the IRS met with representatives of the Information Reporting Program Advisory Committee (IRPAC) and other representatives of the securities industry to discuss their concerns and suggestions for revisions to the regulations.

After considering the issues concerning affected taxpayers, the IRS has decided to revise the 2002 temporary regulations. The revised temporary regulations set forth information reporting rules that will help ensure that brokers and shareholders receive information regarding these corporate transactions, without unduly burdening brokers and other members of the securities industry.

The text of the revised temporary regulations also serves as the text of new proposed regulations (reproposed regulations) set forth in the cross-referencing notice of proposed rulemaking published in the proposed rules section of this issue of the **Federal Register**. The preamble to that notice of proposed rulemaking invites public comments with respect to the revised temporary and reproposed regulations, particularly with respect to the ability of brokers to obtain the information necessary for reporting under revised § 1.6045–3T and proposed § 1.6045–3.

Summary of Comments

The commentators noted certain gaps in the transmission of information under the 2002 temporary and proposed regulations between corporations subject to reporting and brokers. Information reporting by brokers depends upon the effective dissemination of information from the corporation to the reporting community, and broker reporting is difficult to effectuate if there are gaps in the process of transmitting this information.

As provided in the 2002 temporary regulations, a reporting corporation would file Forms 1099–CAP, "Changes in Corporate Control and Capital Structure", with respect to its shareholders of record, including brokers, under § 1.6043–4T(b). Brokers who received Forms 1099–CAP would then file Forms 1099–CAP with respect to their customers pursuant to § 1.6045–3T. The commentators pointed out that a large majority of U.S. publicly issued securities are actually held on behalf of brokerage firms through clearing organizations. Pursuant to the 2002 temporary regulations, clearing organizations would receive Forms 1099–CAP from the reporting corporation; however, because clearing organizations are not treated as brokers, they in turn would not be required under § 1.6045–3T to file Forms 1099–CAP with respect to their broker-members. Consequently, brokers (who otherwise had the requirement to file a Form 1099–CAP upon receiving one) would not receive Form 1099–CAP if they held their shares through a clearing organization. In addition, brokers may not be aware of the requirement to report with respect to a particular corporate transaction, or may have difficulty obtaining the information necessary for reporting. Thus, under the 2002 temporary regulations, the actual shareholders of the reporting corporation, the broker's customers, may not receive information returns to assist them in preparing their income tax returns.

To address this issue, commentators suggested an alternative procedure to ensure that brokers receive the required information for reporting and to bridge any potential gaps in the chain of reporting. Commentators recommended that the IRS act as a central repository of information necessary for brokers and issue a publication containing information needed for brokers to satisfy their reporting obligations. Brokers and commercial tax services that publish current developments could access this information, and brokers could use this information in preparing Forms 1099–CAP with respect to their customers. An alternative suggested by commentators was to require the reporting corporation to post essential information for reporting, from its Form 8806, "Information Return for Acquisition of Control or Substantial Change in Capital Structure", to an IRS Web site.

Based on the comments, the revised temporary regulations provide in § 1.6043–4T(a)(1)(vi) that reporting corporations may elect on Form 8806 to consent to the publication by the IRS of information necessary for brokers to file information returns with respect to their customers. To provide every corporation with the ability to make this election, the revised temporary regulations require reporting corporations to file Form 8806 even though the corporation may also report the transaction under sections 351, 355, or 368. In order to enable the IRS to publish the information timely, the revised temporary regulations require reporting corporations to file Form 8806 within 45 days after the transaction, and in no event later than January 5 of the year following the calendar year in which the transaction occurs.

The role of clearing organizations was also the subject of comments. Commentators suggested that the regulations use existing processes for distributing information to minimize the cost of and the time required for implementing reporting by the industry. Those existing processes include the dissemination of information by clearing organizations. Under current practices, important information regarding corporate transactions (including tax information) is disseminated by clearing organizations to their members. The new temporary regulations try to take advantage of this existing information flow by continuing to require corporations to provide a Form 1099–CAP to clearing organizations that are listed as shareholders of record at the time of an acquisition of control or substantial change in capital structure. It is anticipated that clearing organizations will disseminate information obtained from the Form 1099–CAP to their members and that broker-members will use that information (and information obtained from other sources) to satisfy their own reporting obligations under revised § 1.6045–3T. Under the revised temporary regulations, a broker is required to report information if the broker knows or has reason to know, based on readily available information, that there was an acquisition of control or substantial change in capital structure with respect to shares held by the broker on behalf of a customer. If a clearing organization disseminates information identifying an acquisition of control or a substantial change in capital structure to a broker-member, the broker-member has readily available information about the transaction and must satisfy its § 1.6045–3T reporting obligations with respect to the transaction.

The revised temporary regulations provide that a reporting corporation is not required to file Forms 1099–CAP with respect to its shareholders which are clearing organizations, or to furnish Forms 1099–CAP to such clearing organizations, if the corporation makes the election to permit the IRS to publish information regarding the transaction. The IRS' publication of such information pursuant to the corporation's consent will provide readily available information for brokers, who must satisfy their reporting obligations with respect to the transaction.

Commentators also requested that brokers be permitted to use Form 1099–B, "Proceeds from Broker and Barter Exchange Transactions," for reporting under § 1.6045–3T, rather than overhaul their systems to report on Form 1099–CAP. The commentators point out that this would also avoid any confusion stemming from the issuance of both types of forms to the same taxpayer in the same transaction. The revised temporary regulations provide that Form 1099–B should be used by brokers for reporting under § 1.6045–3T. With respect to transactions occurring in 2003, brokers may use either Form 1099–B or 1099–CAP.

Explanation of Provisions

The revised temporary regulations require a domestic corporation involved in certain large taxable transactions to file Form 8806 reporting and describing such transactions. The revised temporary regulations require the filing of Form 8806 within 45 days following an acquisition of control or substantial change in capital structure, as defined in §§ 1.6043–4T(c) and (d), or, if earlier, by January 5th of the year following the calendar year in which such event occurred.

The revised temporary regulations do not change the definition of *acquisition of control* or *substantial change in capital structure* as set forth in the 2002 temporary regulations. An acquisition of control of a corporation is defined as a transaction or series of related transactions in which stock representing control of that corporation is distributed by a second corporation or in which stock representing control of that corporation is acquired (directly or indirectly) by a second corporation and the shareholders of the first corporation receive cash, stock or other property. For these purposes, control is determined in accordance with the first sentence of section 304(c)(1). With certain limitations, the constructive ownership rules of section 318(a) apply to determine ownership. Acquisitions of control within an affiliated group are excepted from this definition, as are acquisitions in which the fair market value of the stock acquired in the transaction or series of related transactions is less than $100,000,000.

A corporation has a substantial change in its capital structure if the corporation in a transaction or series of related transactions (a) undergoes a recapitalization with respect to its stock, (b) redeems its stock, (c) merges, consolidates or otherwise combines with another entity or transfers substantially all of its assets to one or more entities, (d) transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation, or (e) changes its identity, form or place of organization. Transactions in which the amount of any cash plus the fair market value of any property (including stock) provided to shareholders of the corporation is less than $100,000,000 are excepted from this definition, as are transactions within an affiliated group.

The revised temporary regulations require a domestic corporation involved in the specified transactions to issue, with respect to each of its shareholders of record, a Form 1099–CAP reporting the amount of any cash plus the fair market value of any property (including certain stock) exchanged in the transaction. Corporations are not required to report the fair market value of any stock provided to a shareholder if the corporation reasonably determines that the receipt of such stock would not cause the shareholder to recognize gain (if any). Corporations also are not required to report amounts distributed to certain exempt recipients. The list of exempt recipients has been expanded to include brokers.

Penalties under section 6652(l) may be imposed for failing to file required returns under section 6043(c) (including failure to file on magnetic media, as required under section 6011(e) and § 1.6011–2). The penalty under section 6652(l) is $500 for each day the failure continues, but the total amount imposed with respect to a return cannot exceed $100,000. The revised temporary regulations provide that the information returns required under these regulations shall be treated as one return for purposes of the section 6652(l) penalty, so that the penalty shall not exceed $500 per day ($100,000 in total) with respect to any acquisition of control or change in capital structure. Further, as provided in section 6652(l), such penalty does not apply if the failure is due to reasonable cause. Until regulations are promulgated under section 6652(l) to set forth specific standards for determining reasonable cause, the IRS will use the reasonable cause standards set forth in § 301.6724–1 as a guideline for determining reasonable cause.

The 2002 temporary regulations under section 6045 required a broker who, as the record holder of stock, received a Form 1099–CAP from a corporation pursuant to the reporting requirements of § 1.6043–4T to file a Form 1099–CAP with respect to the actual owner and furnish such Form 1099–CAP to the actual owner. Under the revised temporary regulations, brokers should not receive Forms 1099–CAP from a corporation and are not required to issue Forms 1099–CAP. Instead, revised § 1.6045–3T requires a broker that knows or has reason to know, based on readily available information, that a transaction described in § 1.6043–4T(c) or (d) has occurred to file an information return reporting the required information with respect to its customers who are not exempt recipients. In order to allow brokers to use their existing information reporting systems, the new temporary regulations require Form 1099–B, Proceeds from Broker and Barter Exchange Transactions, to be used for such reporting. It is anticipated that brokers will obtain the information regarding the corporate transactions from the IRS website or an IRS publication, from information provided by clearing organizations, as well as from other sources regularly consulted within the industry.

The revised temporary regulations are effective only for acquisitions of control and substantial changes of capital structure that occur after December 31, 2002, and for which the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a). The cross-referencing proposed regulations published in Proposed Rules section of this issue of the **Federal Register** will apply to all acquisitions of control and substantial changes in capital structure occurring after the date that such regulations are published as final regulations (regardless of whether section 367(a) applies).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these temporary regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 1.6043–4T is revised to read as follows:

§ 1.6043–4T Information returns relating to certain acquisitions of control and changes in capital structure (temporary).

(a) *Information returns for an acquisition of control or a substantial change in capital structure*—(1) *General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation (reporting corporation), the reporting corporation must file a completed Form 8806, "Information Return for Acquisition of Control or Substantial Change in Capital Structure", in accordance with the instructions to that form. Form 8806 will request the information required in paragraphs (a)(1)(i) through (vi) of this section and any other information specified in the instructions.

(i) *Reporting corporation.* Provide the name, address, and taxpayer identification number (TIN) of the reporting corporation.

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(iii) *Acquiring corporation.* Provide the name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section (acquiring corporation). State whether the acquiring corporation is foreign (as defined in section 7701(a)(5)) or is a dual resident corporation (as defined in § 1.1503–2(c)(2)). In either case, state whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Common parent, if any, of acquiring corporation.* If the acquiring corporation named in paragraph (a)(1)(iii) of this section was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(v) *Information about acquisition of control or substantial change in capital structure.* Provide—

(A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure;

(C) A description of and a statement of the fair market value of any stock provided to the reporting corporation's shareholders in exchange for their stock if the reporting corporation reasonably determines that the shareholders are not required to recognize gain (if any) from the receipt of such stock for U.S. federal income tax purposes; and

(D) A statement of the amount of cash plus the fair market value of any property (including stock if the reporting corporation reasonably determines that its shareholders would be required to recognize gain (if any) on the receipt of such stock, but excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to the reporting corporation's shareholders in exchange for each share of their stock.

(2) *Consent election.* Form 8806 will provide the reporting corporation with the ability to elect to permit the IRS to publish information that will inform brokers of the transaction and enable brokers to satisfy their reporting obligations under § 1.6045–3T. The information to be published, on the IRS website and/or in an IRS publication, would be limited to the name and address of the corporation, the date of the transaction, a description of the shares affected by the transaction, and the amount of cash and the fair market value of any property (excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to each class of shareholders in exchange for a share.

(3) *Time for making return*—(i) *In general.* Form 8806 must be filed on or before the 45th day following the acquisition of control or substantial change in capital structure of the corporation, or, if earlier, on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurs.

(ii) *Transition rule.* If an acquisition of control or a substantial change in capital structure of a corporation occurs after December 31, 2002, and before December 29, 2003, Form 8806 must be filed on or before January 5, 2004.

(4) *Exception where transaction is reported under section 6043(a).* No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under paragraph (a) of this section if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(5) of this section.

(b) *Information returns regarding shareholders*—(1) *General rule.* A corporation that is required to file Form 8806 pursuant to paragraph (a)(1) of this section shall file a return of information on Forms 1096, "Annual Summary and Transmittal of U.S. Information Returns", and 1099–CAP, "Changes in Corporate Control and Capital Structure", with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure and who is not an exempt recipient as defined in paragraph (b)(5) of this section. A corporation is not required to file a Form 1096 or 1099–CAP with respect to a clearing organization if the corporation makes the election described in paragraph (a)(2) of this section.

(2) *Time for making information returns.* Forms 1096 and 1099–CAP must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(3) *Contents of return.* A separate Form 1099–CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(5) of this section) showing—

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder;

(iv) The aggregate amount of cash and the fair market value of any stock (other than stock described in paragraph (a)(1)(v)(C) of this section) or other property provided to the shareholder in exchange for its stock; and

(v) Such other information as may be required by the instructions to Form 1099–CAP.

(4) *Furnishing of forms to shareholders.* The Form 1099–CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure. The Form 1099–CAP filed with respect to a clearing organization must be furnished to the clearing organization on or before January 5th of the year following the calendar year in which the acquisition of control or substantial change in capital structure occurred. A Form 1099–CAP is not required to be furnished to a clearing organization if the reporting corporation makes the election described in paragraph (a)(2) of this section.

(5) *Exempt recipients.* A corporation is not required to file a Form 1099–CAP pursuant to this paragraph (b) of this section with respect to any of the following shareholders that is not a clearing organization:

(i) Any shareholder who receives solely stock described in paragraph (a)(1)(v)(C) of this section in exchange for its stock in the corporation.

(ii) Any shareholder who is required to recognize gain (if any) as a result of the receipt of cash, stock, or other property if the corporation reasonably determines that the amount of such cash plus the fair market value of such stock and other property does not exceed $1,000. Stock described in paragraph (a)(1)(v)(C) of this section is not taken into account for purposes of this paragraph (b)(5)(ii).

(iii) Any shareholder described in paragraphs (b)(5)(iii)(A) through (M) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(5)(iii)(A) through (M) of this section or if the corporation has a properly completed exemption certificate from the shareholder (as provided in § 31.3406(h)–3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(5)(iii)(A) through (M) of this section based on the applicable indicators described in § 1.6049–4(c)(1)(ii).

(A) A corporation, as described in § 1.6049–4(c)(1)(ii)(A) (except for corporations for which an election under section 1362(a) is in effect).

(B) A tax-exempt organization, as described in § 1.6049–4(c)(1)(ii)(B)(1).

(C) An individual retirement plan, as described in § 1.6049–4(c)(1)(ii)(C).

(D) The United States, as described in § 1.6049–4(c)(1)(ii)(D).

(E) A state, as described in § 1.6049–4(c)(1)(ii)(E).

(F) A foreign government, as described in § 1.6049–4(c)(1)(ii)(F).

(G) An international organization, as described in § 1.6049–4(c)(1)(ii)(G).

(H) A foreign central bank of issue, as described in § 1.6049–4(c)(1)(ii)(H).

(I) A securities or commodities dealer, as described in § 1.6049–4(c)(1)(ii)(I).

(J) A real estate investment trust, as described in § 1.6049–4(c)(1)(ii)(J).

(K) An entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), as described in § 1.6049–4(c)(1)(ii)(K).

(L) A common trust fund, as described in § 1.6049–4(c)(1)(ii)(L).

(M) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(5)(iv), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by using the terms *corporation* and *shareholder* in place of the terms *withholding agent* and *payee* and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of § 1.6049–5(d) shall apply by using the terms *corporation* and *shareholder* in place of the terms *payor* and *payee*. Nothing in this paragraph (b)(5)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure.

(6) *Coordination with other sections.* In general, no reporting is required under paragraph (b) of this section with respect to amounts that are required to be reported under section 6042 or section 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections. A corporation must satisfy the requirements under paragraph (b) of this section with respect to any shareholder of record that is a clearing organization.

(c) *Acquisition of control of a corporation*—(1) *In general.* For purposes of this section, an acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions, either—

(i) Stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the fair market value of such stock on the date of distribution is $100,000,000 or more; or

(ii) (A) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(B) After the acquisition, the second corporation has control of the first corporation;

(C) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is $100,000,000 or more; and

(D) The shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1).

(3) *Constructive ownership.* (i) Except as otherwise provided in this section, the constructive ownership rules of section 318(a) (except for section 318(a)(4), providing for constructive ownership through an option to acquire stock), modified as provided in section 304(c)(3)(B), shall apply for determining whether there has been an acquisition of control.

(ii) The determination of whether there has been an acquisition of control shall be made without regard to whether the person or persons from whom control was acquired retain indirect control of the first corporation under section 318(a).

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 318(a) shall not apply to cause a second corporation to be treated as owning, before an acquisition of stock in a first corporation (directly or indirectly) by the second corporation, any stock that is acquired in the first corporation. For example, if the shareholders of a domestic corporation form a new holding company and then transfer their shares in the domestic corporation to the new holding company, the new holding company shall not be treated as having control of the domestic corporation before the acquisition. The new holding company acquires control of the domestic corporation as a result of the transfer. Similarly, if the shareholders of a domestic parent corporation transfer their shares in the parent corporation to a subsidiary of the parent in exchange for shares in the subsidiary, the subsidiary shall not be treated as having control of the parent before the transaction. The subsidiary acquires control of the parent as a result of the transfer.

(4) *Corporation includes group.* For purposes of this paragraph (c), if two or more corporations act pursuant to a plan or arrangement with respect to acquisitions of stock, such corporations will be treated as one corporation for purposes of this section. Whether two or more corporations act pursuant to a plan or arrangement depends on the facts and circumstances.

(5) *Section 338 election.* For purposes of this paragraph (c), an acquisition of stock of a corporation with respect to which an election under section 338 is made is treated as an acquisition of stock (and not as an acquisition of the assets of such corporation).

(d) *Substantial change in capital structure of a corporation*—(1) *In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is $100,000,000 or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if the corporation in a transaction or series of transactions—

(i) Undergoes a recapitalization with respect to its stock;

(ii) Redeems its stock (including deemed redemptions);

(iii) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(iv) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(v) Changes its identity, form or place of organization.

(e) *Reporting by successor entity.* If a corporation (transferor) transfers all or substantially all of its assets to another entity (transferee) in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) or (b) of this section. If transferor does not satisfy the reporting obligations in paragraph (a) or (b) of this section, then transferee must satisfy those reporting obligations. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed $500 for each day the failure continues (up to a maximum of $100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the requirement to file on magnetic media as required by section 6011(e) and § 1.6011–2. In addition, criminal penalties under sections 7203, 7206 and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under sections 6042, 6043(a) or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds $100,000,000. The examples are as follows:

Example 1. The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a newly formed foreign holding corporation. After the transaction, Y owns all the outstanding X stock. The X shareholders must recognize gain (if any) on the exchange of their stock as a result of the application of section 367(a). Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. X must file Form 8806 reporting the transaction. X must also file a Form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the Form 1099–CAP to that shareholder. If X elects on the Form 8806 to permit the IRS to publish information regarding the transaction, X is not required to file or furnish Forms 1099–CAP with respect to shareholders that are clearing organizations.

Example 2. C, a domestic corporation, and parent of an affiliated group merges into D, an unrelated domestic corporation. Pursuant to the transaction, the C shareholders exchange their C stock for D stock or for a combination of short term notes and D stock. The transaction does not satisfy the requirements of section 368, and the C shareholders must recognize gain (if any) on the exchange. Because the transaction results in a substantial change in the capital structure of C, C (or D as the successor to C) must comply with the rules in paragraphs (a) and (b) of this section. C must file Form 8806. C (or D as the successor to C) also must file a Form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the short term notes and the fair market value of the D stock provided to that shareholder. In addition, C (or D) must furnish a copy of the Form 1099–CAP to that shareholder.

Example 3. (i) The facts are the same as in *Example 2*, except that C reasonably determines that—

(A) The transaction satisfies the requirements of section 368;

(B) The C shareholders who exchange their C stock solely for D stock will not be required to recognize gain (if any) on the exchange; and

(C) The C shareholders who exchange their C stock for a combination of short term notes and D stock will be required to recognize gain (if any) on the exchange solely with respect to the receipt of the short term notes.

(ii) C is required to file Form 8806 under paragraph (a) of this section. C (or D as the successor to C) must also comply with the rules in paragraph (b) of this section. With respect to each shareholder who receives a combination of short term notes and D stock, and who is not an exempt recipient, C (or D) must file a Form 1099–CAP showing the fair market value of the short term notes provided to the shareholder, and C (or D) must furnish a copy of the Form 1099–CAP to that shareholder. The Form 1099–CAP should not show the fair market value of the D stock provided to the shareholder. C and D are not required to file and furnish Forms 1099–CAP with respect to shareholders who receive only D stock in exchange for their C stock.

Example 4. The facts are the same as in *Example 3,* except C hires a transfer agent to effectuate the exchange. The transfer agent is treated as a broker under section 6045 and is required to report the fair market value of the short term notes provided to C's shareholders under § 1.6045–3T. Under paragraph (b)(6) of this section, C and D are not required to file information returns under paragraph (b) of this section with respect to a shareholder of record, unless C or D knows or has reason to know that the transfer agent does not satisfy its information reporting obligation under § 1.6045–3T with respect to that shareholder. Thus, if the transfer agent satisfies its information reporting requirements under § 1.6045–3T with respect to shareholder I, an individual who receives both D stock and short term notes, C and D are not required to file a Form 1099–CAP with respect to I. Conversely, if the transfer agent does not have an information reporting obligation under § 1.6045–3T with respect to one of C's shareholder's of record (for example, a clearing organization that is an exempt recipient under § 1.6045–3T(b)(ii)), or if C or D knows or has reason to know that the transfer agent has not satisfied its information reporting requirement with respect to a shareholder, then C (or D) must provide a Form 1099–CAP to that shareholder.

(i) *Effective date.* This section applies to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. However, paragraphs (a) through (h) of this section apply to acquisitions of control and substantial changes in capital structure occurring after December 31, 2002, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. For transactions prior to January 1, 2003, see § 1.6043–4T as published in 26 CFR part 1 (revised as of April 1, 2003). This section expires on November 14, 2005.

■ 3. Section 1.6045–3T is revised to read as follows:

§ 1.6045–3T Information reporting for an acquisition of control or a substantial change in capital structure (temporary).

(a) *In general.* Any broker (as defined in § 1.6045–1(a)(1)) that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know based on readily available information (including, for example, information from a clearing organization or from information published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter)) has engaged in a transaction described in § 1.6043–4T(c) (acquisition of control) or § 1.6043–4T(d) (substantial change in capital structure), shall file a return of information with respect to the customer, unless the customer is an exempt recipient as defined in paragraph (b) of this section.

(b) *Exempt recipients.* A broker is not required to file a return of information under this section with respect to the following customers:

(1) Any customer who receives only cash in exchange for its stock in the corporation, which must be reported by the broker pursuant to § 1.6045–1(a).

(2) Any customer who is an exempt recipient as defined in § 1.6043–4T(b)(5) or § 1.6045–1(c)(3)(i).

(c) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on Forms 1096, "Annual Summary and Transmittal of U.S. Information Returns", and 1099–B, "Proceeds from Broker and Barter Exchange Transactions," or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(d) *Contents of return.* A separate Form 1099–B must be prepared for each customer showing—

(1) The name, address and taxpayer identification number (TIN) of the customer;

(2) The name and address of the corporation which engaged in the transaction described in § 1.6043–4T(c) or (d);

(3) The number and class of shares in the corporation exchanged by the customer;

(4) The aggregate amount of cash and the fair market value of any stock (other than stock described in 1.6043–4T(a)(1)(v)(C)) or other property provided to the customer in exchange for its stock; and

(5) Such other information as may be required by Form 1099–B.

(e) *Furnishing of forms to actual owners.* The Form 1099–B prepared for each customer must be furnished to the customer on or before January 31 of the year following the calendar year in which the customer receives stock, cash or other property.

(f) *Single Form 1099.* If a broker is required to file a Form 1099–B with respect to a customer under both this § 1.6045–3T and § 1.6045–1(b) with respect to the same transaction, the broker may satisfy the requirements of both sections by filing and furnishing one Form 1099–B that contains all the relevant information, as provided in the instructions to Form 1099–B.

(g) *Effective date.* (1) This section applies with respect to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. However, paragraphs (a) through (f) of this section apply to acquisitions of control and substantial changes in capital structure occurring after December 31, 2002, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. For transactions prior to that date, see § 1.6045–3T as published in 26 CFR Part 1 (revised as of April 1, 2003). This section expires on November 14, 2005.

(2) For any acquisition of control or any substantial change in capital structure occurring during the 2003 calendar year, a broker may elect to satisfy the requirements of this section by using Form 1099–CAP in lieu of Form 1099–B.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 12, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–31361 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9109]

RIN 1545–AY97

Establishing Defenses to the Imposition of the Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that affect the defenses available to the imposition of the accuracy-related penalty when taxpayers fail to disclose reportable transactions or fail to disclose that they have taken a return position based on the conclusion that a regulation is invalid. The final regulations are intended to promote disclosure of reportable transactions and positions based on the conclusion that a regulation is invalid by narrowing a taxpayer's ability to establish good faith and reasonable cause as a defense. The final regulations also clarify the existing regulations with respect to the facts and circumstances to be considered in determining whether a taxpayer acted with reasonable cause and in good faith.

DATES: *Effective Date:* These regulations are effective December 30, 2003.

Applicability Dates: These regulations apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jamie G. Bernstein at (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On December 31, 2002, the IRS and the Treasury Department published in the **Federal Register** (67 FR 79894) proposed amendments to the regulations (REG–126016–01) under sections 6662 and 6664 of the Internal Revenue Code (Code). No public hearing was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations under section 6662 and 6664 are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Revisions and Summary of Comments

These final regulations generally adopt the provisions of the proposed regulations. The changes to the proposed regulations reflected in these final regulations, as well as comments received, are discussed below.

1. Applicability of Disclosure Regulations Under Section 6011 and Effective Date

These final regulations were proposed to apply to returns filed after December 30, 2002, with respect to transactions entered into on or after January 1, 2003, to coincide with temporary regulations relating to disclosure, promulgated under section 6011 and applicable for transactions entered into on or after January 1, 2003 (the Temporary Disclosure Regulations). The Temporary Disclosure Regulations were published in the **Federal Register** on October 22, 2002. *See* 67 FR 64799 and 67 FR 64840 (October 22, 2002). Final regulations under section 6011 were published on March 4, 2003, and apply to transactions entered into on or after February 28, 2003. *See* 68 FR 10161, 10163 (March 4, 2003) (the Final Disclosure Regulations). The Final Disclosure Regulations define reportable transactions more narrowly than the Temporary Disclosure Regulations. For transactions entered into on or after January 1, 2003, and before February 28, 2003, the taxpayer may apply the Final Disclosure Regulations instead of the Temporary Disclosure Regulations. Revisions throughout these final regulations refer to the definition of reportable transaction in § 1.6011–4(b) or 1.6011–4T(b), as applicable, to accommodate situations in which the Temporary Disclosure Regulations apply to a transaction.

One commentator suggested that the final regulations under sections 6662 and 6664 apply to transactions entered into on or after February 28, 2003, because that date is the effective date for the Final Disclosure Regulations. *See* 68 FR 10161, 10163 (March 4, 2003). The final regulations do not adopt this recommendation. The proposed regulations under sections 6662 and 6664 provided adequate notice that failure to comply with the Temporary or Final Disclosure Regulations could limit the penalty defenses available under sections 6662 and 6664.

2. Applicability of the Reasonable Cause and Good Faith Defense

The proposed regulations prohibited reliance on tax advice to establish a reasonable cause and good faith defense to the accuracy-related penalties if a taxpayer failed to disclose a reportable transaction pursuant to the Final or Temporary Disclosure Regulations, as applicable. Three commentators suggested that it is inappropriate to preclude a taxpayer from relying on the advice of a tax advisor in circumstances in which the taxpayer does not lack good faith in failing to disclose a reportable transaction. The Treasury Department and the IRS believe that good faith requires taxpayers to be forthcoming and that taxpayers should construe the Final and Temporary Disclosure Regulations broadly in favor of disclosure. Nonetheless, there may be circumstances in which a taxpayer does not lack good faith in failing to disclose a reportable transaction. Accordingly, the final regulations revise the proposed regulations to provide that a taxpayer's failure to disclose a reportable transaction is a strong indication that the taxpayer failed to act in good faith, which would bar relief under section 6664(c).

These final regulations also adopt the requirement in the proposed regulations that a taxpayer may not rely on an opinion or advice that a regulation is invalid to establish that the taxpayer acted with reasonable cause and in good faith unless the taxpayer adequately disclosed its position that the regulation is invalid. One commentator suggested that this provision is inappropriate because it would be difficult for a taxpayer to discern whether its position is contrary to a regulation without consulting with a tax advisor. This suggestion was rejected because the requirement of revised § 1.6664–4(c)(2)(iii) does not apply to situations in which a taxpayer has taken a position that is merely contrary to a regulation, but instead applies to situations in which a taxpayer has taken a return position based on advice or an opinion that a regulation is invalid.

3. Definition of Advice

One commentator suggested that the proposed regulations more clearly define what constitutes professional advice or opinion. Section 1.6664–4(c)(2) defines the term *advice*. Neither the proposed nor the final regulations change the definition of the term advice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jamie Bernstein, Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 1.6662–0 is amended by adding an entry for § 1.6662–2(d)(5) to read as follows:

§ 1.6662–0 Table of contents.

* * * * *

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * *

(5) Returns filed after December 31, 2002.

* * * * *

■ 3. Section 1.6662–2 is amended by:

■ 1. Revising the first sentence of paragraph (d)(2).

■ 2. Adding new paragraph (d)(5).

The revision and addition read as follows:

§ 1.6662–2 Accuracy-related penalty.

* * * * *

(d) * * * (1) * * *

(2) * * * Except as provided in paragraphs (d)(3), (4) and (5) of this section and the last sentence of this paragraph (d)(2), the provisions of §§ 1.6662–1 through 1.6662–4 and § 1.6662–7 (as revised to reflect the changes made to the accuracy-related penalty by the Omnibus Budget Reconciliation Act of 1993) and of § 1.6662–5 apply to returns the due date of which (determined without regard to extensions of time for filing) is after December 31, 1993. * * *

* * * * *

(5) *For returns filed after December 31, 2002.* Sections 1.6662–3(a), 1.6662–3(b)(2) and 1.6662–3(c)(1) (relating to adequate disclosure) apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003. Except as provided in paragraph (d)(1) of this section, §§ 1.6662–3(a), 1.6662–3(b)(2) and 1.6662–3(c)(1) (as contained in 26 CFR part 1 revised April 1, 2003) apply to returns filed with respect to transactions entered into prior to January 1, 2003.

■ 4. Section 1.6662–3 is amended by revising paragraph (a), the last sentence of paragraph (b)(2), and the first sentence of paragraph (c)(1) to read as follows:

§ 1.6662–3 Negligence or disregard of rules or regulations.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under subtitle A of the Internal Revenue Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. The penalty for disregarding rules or regulations does not apply, however, if the requirements of paragraph (c)(1) of this section are satisfied and the position in question is adequately disclosed as provided in paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in § 1.6011–4(b) (or § 1.6011–4T(b), as applicable), the transaction is disclosed in accordance with § 1.6011–4 (or § 1.6011–4T, as applicable)), or to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. In addition, if a position with respect to an item (other than with respect to a reportable transaction, as defined in § 1.6011–4(b) or § 1.6011–4T(b), as applicable) is contrary to a revenue ruling or notice (other than a notice of proposed rulemaking) issued by the Internal Revenue Service and published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), this penalty does not apply if the position has a realistic possibility of being sustained on its merits. See § 1.6694–2(b) of the income tax return preparer penalty regulations for a description of the realistic possibility standard.

(b) * * *

(2) * * * Nevertheless, a taxpayer who takes a position (other than with respect to a reportable transaction, as

defined in § 1.6011–4(b) or § 1.6011–4T(b), as applicable) contrary to a revenue ruling or notice has not disregarded the ruling or notice if the contrary position has a realistic possibility of being sustained on its merits.

* * * * *

(c) * * * (1) * * * No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section (and, if the position relates to a reportable transaction as defined in § 1.6011–4(b) (or § 1.6011–4T(b), as applicable), the transaction is disclosed in accordance with § 1.6011–4 (or § 1.6011–4T, as applicable)) and, in case of a position contrary to a regulation, the position represents a good faith challenge to the validity of the regulation. * * *

* * * * *

§ 1.6662–4 [Amended]

■ 5. Section 1.6662–4(g)(1)(iv) is amended by removing the reference to "§ 1.6664–4(e)" and adding the reference "§ 1.6664–4(f)" in its place.

■ 6. Section 1.6664–0 is amended by:

■ 1. Adding entries for § 1.6664–1 (b)(2)(i), (b)(2)(ii) and 1.6664–4(c)(1)(iii).

■ 2. Redesignating the entries for § 1.6664–4(d), (e), (f), and (g), as § 1.6664–4(e), (f), (g), and (h), respectively.

■ 3. Adding a new entry for § 1.6664–4(d).

The additions read as follows:

§ 1.6664–0 Table of contents.

* * * * *

§ 1.6664–1 Accuracy-related and fraud penalties, definitions and special rules.

* * * * *

(b) * * *

(2) * * *

(i) For returns due after September 1, 1995.

(ii) For returns filed after December 31, 2002.

* * * * *

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(c) * * *

(1) * * *

(iii) Reliance on the invalidity of a regulation.

(d) Underpayments attributable to reportable transactions.

* * * * *

■ 7. Section 1.6664–1 is amended by:

■ 1. Redesignating the text of paragraph (b)(2) as (b)(2)(i).

■ 2. Adding a new paragraph heading for newly designated paragraph (b)(2)(i).

■ 3. Adding paragraph (b)(2)(ii).

The revisions and additions are as follows:

§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

* * * * *

(b) * * * (1) * * *

(2) * * * (i) *For returns due after September 1, 1995.* * * *

(ii) *For returns filed after December 31, 2002.* Sections 1.6664–4(c) (relating to relying on opinion or advice) and (d) (relating to underpayments attributable to reportable transactions) apply to returns filed after December 31, 2002, with respect to transactions entered into on or after January 1, 2003. Except as provided in paragraph (b)(2)(i) of this section, § 1.6664–4 (as contained in 26 CFR part 1 revised April 1, 2003) applies to returns filed with respect to transactions entered into before January 1, 2003.

■ 8. Section 1.6664–4 is amended by:

■ 1. Removing the language "(g) of this section" from the last sentence of paragraph (a) and adding the language "(h) of this section" in its place.

■ 2. Revising paragraph (c)(1) introductory text and the last sentence of paragraph (c)(1)(i).

■ 3. Adding paragraph (c)(1)(iii).

■ 4. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (e), (f), (g) and (h), respectively.

■ 5. Adding a new paragraph (d).

■ 6. Removing the language "(e)" wherever it appears in newly designated paragraphs (f)(1), (f)(2)(i), (f)(2)(ii), (f)(3), and (f)(4) and adding the language "(f)" in its place.

■ 7. Removing the language "(g)" wherever it appears in newly designated paragraphs (h)(1), (h)(1)(i), (h)(2), and (h)(3) and adding the language "(h)" in its place.

The revisions and additions read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(c) *Reliance on opinion or advice*—(1) *Facts and circumstances; minimum requirements.* All facts and circumstances must be taken into account in determining whether a taxpayer has reasonably relied in good faith on advice (including the opinion of a professional tax advisor) as to the treatment of the taxpayer (or any entity, plan, or arrangement) under Federal tax law. For example, the taxpayer's education, sophistication and business experience will be relevant in determining whether the taxpayer's reliance on tax advice was reasonable and made in good faith. In no event will a taxpayer be considered to have reasonably relied in good faith on advice (including an opinion) unless the requirements of this paragraph (c)(1) are satisfied. The fact that these requirements are satisfied, however, will not necessarily establish that the taxpayer reasonably relied on the advice (including the opinion of a tax advisor) in good faith. For example, reliance may not be reasonable or in good faith if the taxpayer knew, or reasonably should have known, that the advisor lacked knowledge in the relevant aspects of Federal tax law.

(i) * * * In addition, the requirements of this paragraph (c)(1) are not satisfied if the taxpayer fails to disclose a fact that it knows, or reasonably should know, to be relevant to the proper tax treatment of an item.

* * * * *

(iii) *Reliance on the invalidity of a regulation.* A taxpayer may not rely on an opinion or advice that a regulation is invalid to establish that the taxpayer acted with reasonable cause and good faith unless the taxpayer adequately disclosed, in accordance with § 1.6662–3(c)(2), the position that the regulation in question is invalid.

(d) *Underpayments attributable to reportable transactions.* If any portion of an underpayment is attributable to a reportable transaction, as defined in § 1.6011–4(b) (or § 1.6011–4T(b), as applicable), then failure by the taxpayer to disclose the transaction in accordance with § 1.6011–4 (or § 1.6011–4T, as applicable) is a strong indication that the taxpayer did not act in good faith with respect to the portion of the underpayment attributable to the reportable transaction.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–31899 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 9108]

RIN 1545–BC76

Confidential Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations modify and clarify the rules relating to confidential transactions under the Income Tax Regulations, and make minor conforming changes to the list maintenance rules under the Procedure and Administration Regulations. These regulations affect taxpayers participating in reportable transactions and persons responsible for maintaining and furnishing lists of investors in reportable transactions.

DATES: *Effective Date:* These regulations are effective December 29, 2003.

Applicability Dates: For dates of applicability, see § 1.6011–4(h) and § 301.6112–1.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis or Charlotte Chyr, 202–622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control numbers 1545–1685 and 1545–1686.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR parts 1 and 301 by modifying and clarifying the rules relating to the disclosure of reportable transactions by certain taxpayers on their Federal income tax returns under section 6011 and by making conforming changes to the rules under section 6112.

On October 17, 2002, the IRS issued temporary and proposed regulations modifying the rules under sections 6011, 6111, and 6112 (TD 9017, REG–103735–00, REG–154117–02, REG–154116–02, REG–154115–02, REG–154429–02, REG–154423–02, REG–154426–02, REG–110311–98; TD 9018, REG–103736–00) (the October 2002 regulations). The October 2002 regulations were published in the **Federal Register** (67 FR 64799, 67 FR 64840; 67 FR 64807, 67 FR 64842) on October 22, 2002. On December 11, 2002, and on January 7, 2003, the IRS and Treasury Department held a public hearing on these regulations. On February 28, 2003, the IRS issued final regulations under sections 6011, 6111, and 6112 (TD 9046) (the February 2003 regulations). The February 2003 regulations were published in the **Federal Register** (68 FR 10161) on March 4, 2003.

Since finalizing the disclosure regulations, the IRS and Treasury Department have received numerous comments concerning the confidentiality filter. The IRS and Treasury Department received requests to exclude certain transactions from the scope of the confidentiality filter, and requests to modify the language of the regulation itself. After reviewing these comments, the IRS and Treasury Department have decided to narrow the confidentiality filter under § 1.6011–4(b)(3).

Explanation of Provisions

Section 1.6011–4(b)(3) provides that certain transactions are identified as confidential transactions. Confidential transactions are reportable transactions that are subject to the disclosure rules under § 1.6011–4 and the list maintenance rules under § 301.6112–1. Currently, a confidential transaction is a transaction that is offered under conditions of confidentiality. The confidentiality filter generally provides a presumption of non-confidentiality if the taxpayer receives written authorization to disclose the tax treatment and tax structure of the transaction.

The IRS and Treasury Department have concluded that the confidentiality filter should be limited to situations in which an advisor is paid a large fee and imposes a limitation on disclosure that protects the confidentiality of the advisor's tax strategies. The IRS and Treasury Department believe that the confidentiality filter should not apply to transactions in which confidentiality is imposed by a party to the transaction acting in such capacity. Accordingly, the confidentiality filter has been narrowed to reflect this policy. Further, the exceptions and presumption language have been removed because the IRS and Treasury Department have concluded that they no longer are necessary under this narrower rule. Conforming changes have been made to the rules under § 301.6112–1.

The IRS and Treasury Department also have made minor clarifying changes under § 1.6011–4. The regulations clarify that a return includes amended returns for purposes of determining when a disclosure must be made. The IRS and Treasury Department will continue to accept comments and will make other changes as appropriate.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined pursuant to 5 U.S.C. 553(b)(B) that notice and public procedure are unnecessary and contrary to the public interest. These final regulations substantially reduce taxpayer compliance burdens by limiting the scope of transactions subject to the disclosure requirements of § 1.6011–4. For the same reason, pursuant to 5 U.S.C. 553(d)(1) and (3) a delayed effective date for these final regulations is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the IRS and Treasury Department welcome comments on whether these final regulations impose additional costs and compliance burdens on small businesses. Any such comments should provide specific information concerning those costs and burdens. In addition, the IRS and Treasury Department will consider holding a public hearing concerning these regulations if there is sufficient interest from affected parties. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Charlotte Chyr, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Administrative practice and procedure, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 2. Section 1.6011–4 is amended as follows:

■ 1. Paragraph (b)(3) is revised.

■ 2. Paragraph (e)(1) is amended by removing the second sentence and adding two new sentences in its place.

■ 3. Paragraphs (e)(2)(i) and (h) are revised.

The revisions and additions read as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by taxpayers.

* * * * *

(b) * * *

(3) *Confidential transactions*—(i) *In general.* A confidential transaction is a transaction that is offered to a taxpayer under conditions of confidentiality and for which the taxpayer has paid an advisor a minimum fee.

(ii) *Conditions of confidentiality.* A transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid the minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies. A transaction is treated as confidential even if the conditions of confidentiality are not legally binding on the taxpayer. A claim that a transaction is proprietary or exclusive is not treated as a limitation on disclosure if the advisor confirms to the taxpayer that there is no limitation on disclosure of the tax treatment or tax structure of the transaction.

(iii) *Minimum fee.* For purposes of this paragraph (b)(3), the minimum fee is:

(A) $250,000 for a transaction if the taxpayer is a corporation.

(B) $50,000 for all other transactions unless the taxpayer is a partnership or trust, all of the owners or beneficiaries of which are corporations (looking through any partners or beneficiaries that are themselves partnerships or trusts), in which case the minimum fee is $250,000.

(iv) *Determination of minimum fee.* For purposes of this paragraph (b)(3), a minimum fee includes all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction. These fees include consideration in whatever form paid, whether in cash or in kind, for services to analyze the transaction (whether or not related to the tax consequences of the transaction), for services to implement the transaction, for services to document the transaction, and for services to prepare tax returns to the extent that the fees exceed the fees customary for return preparation. For purposes of this paragraph (b)(3), a taxpayer also is treated as paying fees to an advisor if the taxpayer knows or should know that the amount it pays will be paid indirectly to the advisor, such as through a referral fee or fee-sharing arrangement. A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property.

(v) *Related parties.* For purposes of this paragraph (b)(3), persons who bear a relationship to each other as described in section 267(b) or 707(b) will be treated as the same person.

(e) * * *

(1) * * * In addition, the disclosure statement for a reportable transaction must be attached to each amended return that reflects a taxpayer's participation in a reportable transaction. A copy of the disclosure statement must be sent to OTSA at the same time that any disclosure statement is first filed by the taxpayer. * * *

(2) * * *

(i) *Listed transactions.* If a transaction becomes a listed transaction after the filing of a taxpayer's tax return (including an amended return) reflecting either tax consequences or a tax strategy described in the published guidance listing the transaction (or a tax benefit derived from tax consequences or a tax strategy described in the published guidance listing the transaction) and before the end of the period of limitations for the final return (whether or not already filed) reflecting the tax consequences, tax strategy, or tax benefit, then a disclosure statement must be filed as an attachment to the taxpayer's tax return next filed after the date the transaction is listed regardless of whether the taxpayer participated in the transaction in that year.

* * * * *

(h) *Effective dates.* This section applies to Federal income tax returns filed after February 28, 2000. However, paragraphs (b)(3), (e)(1), and (e)(2)(i) of this section apply to transactions entered into on or after December 29, 2003. All the rules in this section may be relied upon for transactions entered into on or after January 1, 2003, and before December 29, 2003. Otherwise, the rules that apply with respect to transactions entered into before December 29, 2003, are contained in § 1.6011–4 in effect prior to December 29, 2003, (see 26 CFR part 1 revised as of April 1, 2003).

PART 301—PROCEDURE AND ADMINISTRATION

■ 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ 4. § 301.6112–1, paragraph (c)(3)(iii) is amended by revising the first sentence, removing the language "for advice or implementation" from the third sentence, and adding two sentences after the third sentence, to read as follows:

§ 301.6112–1 Requirement to prepare, maintain, and furnish lists with respect to potentially abusive tax shelters.

* * * * *

(c) * * *

(3) * * *

(iii) * * * In determining whether the minimum fee threshold is satisfied, all fees for a tax strategy or for services for advice (whether or not tax advice) or for the implementation of a transaction that is a potentially abusive tax shelter are taken into account. * * * A fee does not include amounts paid to a person, including an advisor, in that person's capacity as a party to the transaction. For example, a fee does not include reasonable charges for the use of capital or the sale or use of property. * * *

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–31900 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–023]

RIN 1625–AA00

Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the established safety zone at the Cove Point Liquefied Natural Gas (LNG) Terminal. This is in response to the re-opening of the terminal by Dominion Corporation on July 25, 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area around the Cove Point LNG Terminal.

DATES: This rule is effective January 29, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–023 and are available for inspection or copying at Commander, U. S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland" in the **Federal Register** [68 FR 13647]. We received five written comments on the proposed rule. On May 15, 2003, we published a notice of public meeting entitled "Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland" in the **Federal Register** [68 FR 26247]. On June 5, 2003, a public meeting was held at the Holiday Inn, Solomons, Maryland. We received a total of 12 written comments and 12 oral comments on the proposed rule.

Background and Purpose

As a result of re-opening of the LNG terminal at Cove Point, MD, the Coast Guard has re-evaluated the safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated LNG vessels. To better manage the safety and security of the LNG terminal, this rule incorporates necessary security provisions and changes the size of the existing safety zone. This rule establishes a combined safety zone and security zone for the LNG terminal at Cove Point.

The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks [67 FR 58317 (September 13, 2002) Continuing national emergency with respect to terrorist attacks], [67 FR 59447 (September 20, 2002) Continuing national emergency with respect to persons who commit, threaten to commit or support terrorism]. The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks [E.O. 13273, 67 FR 56215 (September 3, 2002) Security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations]. As such, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to section 104 of the Maritime Transportation Security Act (MTSA) of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Comments

The Coast Guard received 12 written comments and 12 oral comments on the proposed rule.

Nine comments requested a reduction in the size of the proposed 500-yard zone to 50 or 200 yards. Three comments approved of the size of the proposed 500-yard safety and security zone. One comment stated that the NPRM does not sufficiently address the need for such security provisions. The comment stated that the mere existence of an exclusion zone does "absolutely nothing" to further its stated goals, and the mere implementation of a zone does little to impede a "would be" terrorist. The commenter does not believe that the terminal is a terrorist target. The commenter further stated that 33 CFR part 6, the Maritime Transportation Security Act, the Magnuson Act, and the Espionage Act do not apply. The Coast Guard has determined (68 FR 39249, July 1, 2003, Implementation of National Security Initiatives) that significant public benefit accrues if a transportation security incident, as defined in the MTSA, is avoided or the effects of a transportation security incident can be reduced.

These public benefits include human lives saved, pollution avoided, and "public" infrastructure, such as national landmarks and utilities, protected. The safety and security zone serves the purpose of lowering the risk of a transportation security incident and therefore, is a necessary provision. LNG facilities have been determined to be at high risk for a transportation security incident and therefore are subject to such security and safety regulations.

Six comments addressed the size of the zone as a question of balancing public access for fishing and the need for terminal security. Two comments emphasized the need for balance between fishing and security. Three comments stated that the existing 50-yard onshore/200 yard offshore zone is sufficient for security and that fishing should be allowed when a vessel is not docked at the facility. One comment suggested moving the western border to 250 yards to provide fishing and crabbing opportunities along the 13–32 foot drop-off. The Coast Guard recognizes the need for balance between terminal security and access to the waterway for fishing and other uses. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502 [67 FR 70696, November 26, 2002, Safety Zone; Cove Point; Chesapeake Bay, MD, Notice of enforcement of regulation]. Recreational and commercial vessel operators have been using the area on a regular basis for fishing, passenger tours, and fishing parties.

The reopening of the terminal warrants reevaluation of the current zone, and the increased risk of a transportation security incident warrants the enforcement of the security zone. The Coast Guard has evaluated and weighed the comments it has received regarding this security zone and has addressed the concerns of those who may be affected by it. The purpose of the safety zone is to protect the public from the hazards associated with the cryogenic liquid that is always present at the offshore terminal. The purpose of the security zone is to lower the risk of a potential transportation security incident. The Coast Guard believes that a 500-yard safety and security zone is the appropriate size to provide for both public safety and security of the terminal. In addition, the Coast Guard has coordinated its security evaluation with federal, State, and local agencies prior to the issuance of this rule.

Five comments offered suggestions. Two comments requested that the local community, Coast Guard, and Dominion Corporation come up with an artificial reef somewhere nearby to replace the "gas docks." Another comment stated that security can be managed by painting the charter fleet international orange and letting the charter fleet fish near the docks in the hope that they would defend the docks. Another comment stated that the Coast Guard or Dominion Corporation should provide notice of scheduled LNG vessel arrivals. Another comment suggested marking the zone with buoys. The Coast Guard appreciates these five suggestions, but considers them beyond the scope of this rulemaking.

Discussion of Changes in Rule

The final rule remains the same as the rule we proposed in our NPRM with the exception of the elimination of the paragraph on authority. Since publication of the NPRM, the authorities citation for 33 CFR part 165 has changed. This new authorities citation for the part eliminates the need to cite to 33 U.S.C. 1226 in § 165.502. Therefore we have eliminated the authority paragraph and redesignated the enforcement paragraph as paragraph (c).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

There will be adverse effects on members of the local maritime community that have been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502 (see notice of enforcement, 67 FR 70696, November 26, 2002). Recreational and commercial vessel operators have been using the area on a regular basis for recreational fishing, commercial fishing, passenger tours, and fishing parties. However, enforcement of the current zone would also prohibit these recreational and commercial vessel operators from using this area.

Eleven comments addressed the potential economic impact of this rule on the local fishing industry. Three comments offered separate business cost estimates as a result of the implementation and enforcement of this exclusion zone. One commenter estimated that each year between May 15 and November 15, 70 boats per day fish at the "gas docks." The commenter further estimated that implementation of this safety and security zone would result in an economic impact to the local economy of $1.986 million for his business alone, and a total economic impact of at least $9 million per year for all vessels fishing there. Additionally, the commenter estimated that a 500-yard zone would totally eliminate fishing around this popular fishing area. By closing this fishing area the commenter believes anglers will place undue fishing pressure on other fishing areas. Another comment cited the Maryland Department of Natural Resources figures that estimate the economic impact of the Cove Point LNG fishery to be $5–$10 million per year. A third comment stated that its business gets half its fishing income from fishing the "gas docks." It is important to note that while this regulation does restrict activities at a specific location, similar activities can still take place outside of the zone and elsewhere throughout the Chesapeake Bay. As a result, this regulation may inconvenience some businesses, but this rule does not constitute a complete cessation of business. Businesses may continue to operate and fish in areas that are not within the safety and security zone. While this makes it difficult for the Coast Guard to accurately determine the level of impact that each business will face, it is unlikely that the cumulative economic impact of this restriction would reach the threshold of a "significant regulatory action" ($100,000,000 per year) and therefore a regulatory assessment is not necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect vessels intending to transit the area surrounding the Cove Point LNG facility. It will also affect anglers intending to fish in the area around the Cove Point LNG facility.

Ten comments stated that this rule would have a significant impact on the local fishing community. Two comments stated that this rule would create an adverse economic impact on 100 small businesses in five surrounding counties. It is likely that this proposed rule would impact a substantial number of small entities; however, it is unlikely that they would be impacted significantly. Therefore, additional guidance to small businesses will not be necessary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. This was accomplished by publishing a notice of proposed rulemaking outlining the Coast Guard's intentions and inviting comments regarding the rule's potential impact to small entities. Additionally, the Coast Guard held a public meeting where it invited owners of small entities to speak out and provide additional and amplifying information to the Coast Guard on the potential impact this rule may have on their small businesses.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

The Coast Guard received one comment concerning Unfunded Mandates. The comment stated that this rule is an Unfunded Mandate because the cost to the private sector will be millions of dollars. The Coast Guard has determined that there will be minimal impact on State, local, or tribal governments because representatives of State and local governments infrequently use this area. Furthermore, the impact on State and local governments will be minimal because state and local government representatives can be admitted to the safety and security zone after consultation with the Captain of the Port.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a safety and security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.502 to read as follows:

§ 165.502 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24′27″ N, 76°23′42″ W, thence to 38°24′44″ N, 76°23′11″ W, thence to 38°23′55″ N, 76°22′27″ W, thence to 38°23′37″ N, 76°22′58″ W, thence to beginning at 38°24′27″ N, 76°23′42″ W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576–2693 or via VHF Marine Band Radio Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: December 15, 2003.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–31787 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–204]

RIN 1625–AA00

Safety/Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety/security zone at the Cove Point Liquefied Natural Gas (LNG) Terminal. This is in response to the re-opening of the terminal by Dominion Power in July 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area of 500 yards in all directions around the Cove Point LNG Terminal.

DATES: This rule is effective from January 6, 2004, through January 28, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD05–03–204] and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled "Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland" (68 FR 13647). In it we proposed a permanent safety and security zone. And in response to a request for a public meeting, we announced a June 5, 2003 public meeting and reopened the comment period to June 12, 2003. (68 FR 26247, May 15, 2003). On August 1, 2003, we published a temporary final rule (TFR) entitled "Safety and Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, MD," in the **Federal Register** (68 FR 45165), that expired on September 26, 2003. On September 26, 2003, we issued a TFR entitled "Safety/Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, MD," and published this TFR in the **Federal Register** on October 16, 2003 (68 FR 59538). That temporary final rule will expire January 5, 2004. The final rule is being published elsewhere in this same issue of the **Federal Register** and will become effective January 29, 2004.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking and under 5 U.S.C. 553(d)(3) for making this rule effective less than 30 days after publication in the **Federal Register**. It took longer to resolve issues related to the final rule than we expected at the time we issued the last TFR. This new TFR is necessary because it would be contrary to public interest not to maintain a temporary safety and security zone until the final rule becomes effective January 29, 2004, at which time this temporary rule will be removed.

Background and Purpose

In preparation for the re-opening of the LNG terminal at Cove Point, MD, the Coast Guard is evaluating the current safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated vessels. To better manage the safety and security of the LNG terminal, this proposed rule incorporates necessary security provisions and changes the size of the zone. This rule establishes a 500 yard combined safety zone and security zone in all directions around the LNG terminal at Cove Point.

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon building in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) ("Magnuson Act"), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Rule

This temporary final rule is identical to the previous rules published in the **Federal Register** on August 1, 2003 (68 FR 45165), and October 16, 2003 (68 FR 59538). The Coast Guard was unable to publish an extension to this rule. However, the practical effect of this new temporary final rule is the same and continues the safety and security zone currently in effect.

The Coast Guard is establishing a temporary safety/security zone on specified waters of the Chesapeake Bay near the Cove Point Liquefied Natural Gas Terminal to reduce the potential threat that may be posed by vessels or persons that approach the terminal. The zone will extend 500 yards in all directions from the terminal. The effect will be to prohibit vessels or persons entry into the security zone, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. Federal, state and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This regulation is of limited size, and vessels may transit around the zone.

There may be some adverse effects on the local maritime community that has been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502. Commercial vessel operators have been using the area on a regular basis for commercial fishing, passenger tours, and fishing parties. Enforcement of the proposed zone or the current zone would prohibit these commercial vessel operators from using this area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Chesapeake Bay near the Cove Point LNG Terminal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a security zone.

A final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226,1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191,195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064, Department of Homeland Security Delegation No. 0170.1.

■ 2. From January 6, 2004, through February 4, 2004, add § 165.T05–204 to read as follows:

§ 165.T05–204 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24′27″ N, 076°23′42″ W, thence to 38°24′44″ N, 076°23′11″ W, thence to 38°23′55″ N, 076°22′27″ W, thence to 38°23′37″ N, 076°22′58″ W, thence to beginning at 38°24′27″ N, 076°23′42″ W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23

and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576–2693 or via VHF Marine Band Radio channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: December 15, 2003.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–31788 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596–AC04

Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska

AGENCY: Forest Service, USDA.

ACTION: Final rule and record of decision.

SUMMARY: The Department of Agriculture is adopting this final rule to amend regulations concerning the Roadless Area Conservation Rule (hereinafter, referred to as the roadless rule) to temporarily exempt the Tongass National Forest (hereinafter, referred to as the Tongass) from prohibitions against timber harvest, road construction, and reconstruction in inventoried roadless areas. This temporary exemption of the Tongass will be in effect until the Department promulgates a subsequent final rule concerning the application of the roadless rule within the State of Alaska, as announced in the agency's second advance notice of proposed rulemaking published on July 15, 2003 (68 FR 41864).

In *State of Alaska* v. *USDA*, the State of Alaska and other plaintiffs alleged that the roadless rule violated a number of Federal statutes, including the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Passed overwhelmingly by Congress in 1980, ANILCA sets aside millions of acres in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges, and Wilderness Areas with the understanding that sufficient protection and balance would be ensured between protected areas established by the act and multiple-use managed areas. The Alaska lawsuit alleged that USDA violated ANILCA by applying the requirements of the roadless rule to Alaska's national forests. USDA settled the lawsuit by agreeing to publish a proposed rule which, if adopted, would temporarily exempt the Tongass from the application of the roadless rule (July 15, 2003, 68 FR 41865), and to publish a separate advance notice of proposed rulemaking (July 15, 2003, 68 FR 41864) requesting comment on whether to permanently exempt the Tongass and the Chugach National Forests in Alaska from the application of the roadless rule.

Under this final rule, the vast majority of the Tongass remains off limits to development as specified in the 1997 Tongass Forest Plan. Commercial timber harvest will continue to be prohibited on more than 78 percent of the Tongass as required under the existing forest plan. Exempting the Tongass from the application of the roadless rule makes approximately 300,000 roadless acres available for forest management—slightly more than 3 percent of the 9.34 million roadless acres in the Tongass, or 0.5 percent of the total roadless acres nationwide. This rule also leaves intact all old-growth reserves, riparian buffers, beach fringe buffers, and other protections contained in the 1997 Tongass Forest Plan.

The preamble of this rule includes a discussion of the public comments received on the proposed rule published July 15, 2003 (68 FR 41865) and the Department's responses to the comments. This final rule also serves as the record of decision (ROD) for selection of the Tongass Exempt Alternative identified in the November 2000 final environmental impact statement for the roadless rule.

EFFECTIVE DATE: This rule is effective January 29, 2004.

FOR FURTHER INFORMATION: In Washington, DC contact: Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA, (202) 205–1019; and in Juneau, Alaska contact: Jan Lerum, Regional Planner, Forest Service, USDA, (907) 586–8796.

SUPPLEMENTARY INFORMATION:

Background and Litigation History

On January 12, 2001 (66 FR 3244), the Department published a final roadless rule at Title 36 of the Code of Federal Regulations, part 294 (36 CFR part 294). The roadless rule was a discretionary rule that fundamentally changed the Forest Service's longstanding approach to management of inventoried roadless areas by establishing nationwide prohibitions generally limiting, with some exceptions, timber harvest, road construction, and reconstruction within inventoried roadless areas in national forests. The draft environmental impact statement (DEIS) (May 2000) and final environmental impact statement (FEIS) (November 2000) included alternatives that specifically exempted the Tongass from the roadless rule's prohibitions. As described in the FEIS, the roadless rule was predicted to cause substantial social and economic hardship in communities throughout Southeast Alaska (FEIS Vol. 1, 3–202, 3–326 to 3–352, 3–371 to 3–392). Nonetheless, the final roadless rule's prohibitions were extended to the Tongass.

Since its promulgation, the roadless rule has been the subject of a number of lawsuits in Federal district courts in Idaho, Utah, North Dakota, Wyoming, Alaska, and the District of Columbia. In one of these lawsuits, the U.S. District Court for the District of Idaho issued a nationwide preliminary injunction prohibiting implementation of the roadless rule. The preliminary injunction decision was reversed and remanded by a panel of the Ninth Circuit Court of Appeals. The Ninth Circuit's preliminary ruling held that the Forest Service's preparation of the environmental impact statement for the roadless rule was in conformance with the general statutory requirements of the National Environmental Policy Act (NEPA).

Subsequently, the U.S. District Court for the District of Wyoming held that the Department had violated NEPA and the Wilderness Act in promulgating the roadless rule. As relief, the court directed the roadless rule be set aside and the agency be permanently enjoined from implementing the roadless rule at 36 CFR part 294. An appeal is pending in the Tenth Circuit. Several other cases remain pending in other Federal district courts.

In another lawsuit, the State of Alaska and six other parties alleged that the roadless rule violated the Administrative Procedure Act, National Forest Management Act, National

Environmental Policy Act, Alaska National Interest Lands Conservation Act, Tongass Timber Reform Act, and other laws. In the June 10, 2003, settlement of that lawsuit, the Department committed to publishing a proposed rule with request for comment that would temporarily exempt the Tongass from application of the roadless rule until completion of a rulemaking process to make permanent amendments to the roadless rule. Also pursuant to the settlement agreement, the Department agreed to publish an advance notice of proposed rulemaking (ANPR) to exempt both the Tongass and Chugach National Forests from the application of the roadless rule. The ANPR and the proposed rule were both published in Part II of the **Federal Register** on July 15, 2003 (68 FR 41864). The Department made no representations in the settlement agreement regarding the content or substance of any final rule that might result.

Most Southeast Alaska Communities Are Significantly Impacted by the Roadless Rule

There are 32 communities within the boundary of the Tongass. Most Southeast Alaska communities lack road and utility connections to other communities and to the mainland systems. Because most Southeast Alaska communities are nearly surrounded on land by inventoried roadless areas of the Tongass, the roadless rule significantly limits the ability of communities to develop road and utility connections that almost all other communities in the United States take for granted. Under this final rule, communities in Southeast Alaska can propose road and utility connections across National Forest System land that will benefit their communities. Any such community proposal would be evaluated on its own merits.

In addition, the preponderance of Federal land in Southeast Alaska results in communities being more dependent upon Tongass National Forest lands and having fewer alternative lands to generate jobs and economic activity. The communities of Southeast Alaska are particularly affected by the roadless rule prohibitions. The November 2000 FEIS for the roadless rule estimated that a total of approximately 900 jobs could be lost in the long run in Southeast Alaska due to the application of the roadless rule, including direct job losses in the timber industry as well as indirect job losses in other sectors.

Roadless Areas Are Common, Not Rare, on the Tongass National Forest

The 16.8-million-acre Tongass National Forest in Southeast Alaska is approximately 90 percent roadless and undeveloped. Commercial timber harvest and road construction are already prohibited in the vast majority of the 9.34 million acres of inventoried roadless areas in the Tongass, either through Congressional designation or through the Tongass Forest Plan. Application of the roadless rule to the Tongass is unnecessary to maintain the roadless values of these areas.

Congress has designated 39 percent of the Tongass as Wilderness, National Monument, or other special designations, which prohibit timber harvest and road construction with certain limited exceptions. An additional 39 percent of the Tongass is managed under the Forest Plan to maintain natural settings where timber harvest and road construction are generally not allowed. About 4 percent of the Tongass is designated suitable for commercial timber harvest, with about half of that area contained within inventoried roadless areas. The remaining 18 percent of the Forest is managed for various multiple uses. The Tongass Forest Plan provides high levels of resource protection and has been designed to ensure ecological sustainability over time, while allowing some development to occur that supports communities dependent on the management of National Forest System lands in Southeast Alaska.

In addition, within the State of Alaska as a whole, there is an extensive network of federally protected areas. Alaska has the greatest amount of land and the highest percentage of its land base in conservation reserves of any State. Federal lands comprise 59 percent of the State and 40 percent of Federal lands in Alaska are in conservation system units. The Southeast Alaska region contains 21 million acres of additional protected lands in Glacier Bay National Park and Preserve, and the Wrangell-St. Elias National Park and Preserve.

Different Approaches Considered for the Tongass National Forest

The unique situation of the Tongass has been recognized throughout the Forest Service's process for examining prohibitions in inventoried roadless areas. The process for developing the roadless rule included different options for the Tongass in each stage of the promulgation of the rule and each stage of the environmental impact statement. At each stage, however, the option of exempting the Tongass from the rule's prohibitions was considered in detail.

In February 1999, the agency exempted the Tongass and other Forests with recently revised forest plans from an interim rule prohibiting new road construction. The October 1999 notice of intent to prepare an environmental impact statement for the roadless rule specifically requested comment on whether or not the rule should apply to the Tongass in light of the recent revision of the Tongass Forest Plan and the ongoing economic transition of communities and the timber program in Southeast Alaska. The May 2000 DEIS for the roadless rule proposed not to apply prohibitions on the Tongass, but to determine whether road construction should be prohibited in unroaded portions of inventoried roadless areas as part of the 5-year review of the Tongass Forest Plan.

The preferred alternative was revised in the November 2000 FEIS to include prohibitions on timber harvest, as well as road construction and reconstruction on the Tongass, but with a delay in the effective date of the prohibitions until April 2004. This was one of four Tongass alternatives analyzed in the FEIS, including the Tongass Exempt Alternative, under which the prohibitions of the roadless rule would not apply to the Tongass. The FEIS recognized that the economic and social impacts of including the Tongass in the roadless rule's prohibitions could be of considerable consequence in communities where the forest products industry is a significant component of local economies. The FEIS also noted that if the Tongass were exempt from the roadless rule prohibitions, loss of habitat and species abundance would not pose an unacceptable risk to diversity across the forest.

However, the final January 12, 2001, roadless rule directed an immediate applicability of the nationwide prohibitions on timber harvest, road construction and reconstruction on the Tongass, except for projects that already had a notice of availability of a draft environmental impact statement published in the **Federal Register**.

Why Is USDA Going Forward With This Rulemaking?

This final rule has been developed in light of the factors and issues described in this preamble, including (1) serious concerns about the previously disclosed economic and social hardships that application of the rule's prohibitions would cause in communities throughout Southeast Alaska, (2) comments received on the proposed rule, and (3) litigation over the last two years.

Given the great uncertainty about the implementation of the roadless rule due to the various lawsuits, the Department has decided to adopt this final rule, initiated pursuant to the settlement agreement with the State of Alaska, to temporarily exempt the Tongass National Forest from the prohibitions of the roadless rule. This final rule at § 294.14 allows the Forest to continue to be managed pursuant to the 1997 Tongass Forest Plan, which includes the non-significant amendments, readopted in the February 2003 record of decision (2003 Plan) issued in response to the District Court's remand of the 1997 Plan in *Sierra Club* v. *Rey* (D. Alaska), until the 2003 Plan is revised or further amended. Both documents were developed through balanced and open planning processes, based on years of extensive public involvement and thorough scientific review. The 2003 Tongass Forest Plan provides a full consideration of social, economic, and ecological values in Southeast Alaska. This final rule does not reduce any of the old-growth reserves, riparian buffers, beach fringe buffers, or other standards and guidelines of the 2003 Tongass Forest Plan or in any way impact the protections afforded by the plan. The final rule maintains options for a variety of social and economic uses of the Tongass, which was a key factor in the previous decision to approve the plan in 1997.

The final rule also addresses the important question of whether the rule should apply on the Tongass in the short term if the roadless rule were to be reinstated by court order. The Department has determined that, at least in the short term, the roadless values on the Tongass are sufficiently protected under the Tongass Forest Plan and that the additional restrictions associated with the roadless rule are not required. Further, reliance on the Tongass Forest Plan in the short term does not foreclose options regarding the future rulemaking associated with the permanent, statewide consideration of these issues for Alaska. Indeed, this final rule reflects a conclusion similar to that identified as the preferred alternative in the original proposed roadless rule and draft EIS; that is, not to impose the prohibitions immediately, but to allow for future consideration of the matter when more information may be available.

Finally, the Department fully recognizes the unusual posture of this rulemaking, as it is amending a rule that has been set aside by a Federal court. The Department maintains that such an amendment is contrary neither to law nor to the court's injunction. Instead, it is a reasonable and lawful exercise of the Department's authority to resolve policy questions regarding management of National Forest System land and resources, especially in light of the conflicting judicial determinations. Adopting this final rule reduces the potential for conflicts regardless of the disposition of the various lawsuits.

Changes Between Proposed Rule and Final Rule

Only one substantive change has been made between the proposed rule and the final rule. At § 294.14, the proposed rule stated at paragraph (d) that the temporary exemption of the Tongass would be in effect until the USDA promulgates a revised final roadless area conservation rule, for which the agency sought public comments in the July 10, 2001, advance notice of proposed rulemaking (66 FR 35918). Intervening events necessitate an adjustment, and, therefore, § 294.14 of the final rule now states at paragraph (d) that the temporary exemption of the Tongass National Forest remains in place until the USDA promulgates a final rule concerning applicability of 36 CFR part 294, subpart B within the State of Alaska, as announced in the agency's second advance notice of proposed rulemaking published on July 15, 2003 (68 FR 41864). A minor change also has been made for clarity by adding the word "road" before "reconstruction."

The Department has previously indicated that it would proceed with the roadless rulemakings, while taking numerous factors into consideration, including the outcomes of ongoing litigation. The Wyoming District Court's setting aside of the roadless rule with the admonition that the Department "must start over" represents such a circumstance. Since the roadless rule has been set aside, the Department has determined that the best course of action is to clarify that the duration of this Tongass-specific rulemaking will last until completion of rulemaking efforts associated with the application of the roadless rule in Alaska.

Summary of Public Comments and the Department's Responses

The proposed rule was published in the **Federal Register** on July 15, 2003, for a 30-day public comment period (68 FR 41865). Due to public requests for additional time, the comment period was extended by 19 days for a total of 49 days. The Forest Service received approximately 133,000 comments on the proposed rule. All comments were considered in reaching a decision on the final rule. In addition, appropriate sections of Volume 3 of the November 2000 roadless rule FEIS (Agency Responses to Public Comments) that addressed the Tongass alternatives were also reviewed and considered. A summary of comments and the Department's responses to them are summarized as follows.

General Comments. Virtually all of the Southeast Alaska municipalities that responded to the proposed rule expressed strong support for it. Many noted that Alaska contains more land in protected status than all other States combined, and that applying the roadless rule to the Tongass would foreclose opportunities for sustainable economic development throughout Southeast Alaska. Several respondents asked the Department to discontinue or abandon this rulemaking based on their preference to retain the roadless rule prohibitions for the Tongass. Others argued that it was illegal for USDA to pursue amendments to a rule that has been set aside by a Federal district court.

Respondents expressed different views regarding the roadless rule and its applicability to the Tongass. In general, they took one of two positions: (1) Some saw the exemption of the Tongass as a positive step toward reversing what they consider to be overly restrictive management direction imposed by the roadless rule, and therefore they recommended the exemption; and (2) others wanted the Forest Service to retain the roadless rule as adopted in 2001 because they believed it offers a well-balanced approach to forest management that has received overwhelming public support.

Response. The Department believes that the best course of action is to complete this rulemaking for the Tongass that would govern should the roadless rule come back into effect as a result of the pending litigation.

Environmental Effects of the Proposed Rule. The agency received comments regarding the effects the proposed exemption from the roadless rule would have on the natural resources of the Tongass. Some respondents expressed their view that 70 percent of the highest volume timber stands in Southeast Alaska have been harvested, and exempting the Tongass from the roadless rule would lead to the harvest of most or all of the remainder of such stands. Some regarded the highest volume stands as "the biological heart of the forest," and believed any additional harvest would have severe adverse effects on the environment, especially fish and wildlife habitat. Other respondents stated that the Tongass Forest Plan provides stringent environmental protection measures that will minimize the effects of timber harvest activities on the other resources of the Tongass.

Response. The Tongass has about 9.4 million acres of old-growth forest, of which about 5 million acres contain trees of commercial size. These 5 million acres are referred to as productive old-growth forest. The Tongass Forest Plan allows no timber harvest on nearly 90 percent of the 5 million acres of existing productive old growth. The agency calculates that, at most, 28 percent of the highest volume stands have been harvested, not the 70 percent as claimed. The Tongass Forest Plan prohibits harvest on the vast majority of the remaining highest volume stands.

Although timber volume has often been used as a proxy for habitat quality, a variety of forest attributes and ecological factors influence habitat quality, with different attributes being important for different species. The Tongass Forest Plan, developed over several years with intensive scientific and public scrutiny, takes these and other factors into consideration in its old-growth habitat conservation strategy. The forest plan includes a system of small, medium, and large old growth reserves, well distributed across the Forest, and a stringent set of measures to protect areas of high quality wildlife habitat, such as areas along streams, rivers, estuaries, and coastline. As explained in the 1997 Tongass Forest Plan FEIS and the 2003 supplemental environmental impact statement (SEIS), good wildlife habitat is abundant on the Tongass, on which 92 percent of the productive old-growth forest that was present in 1954 remains today. Even if timber is harvested for 120 years at the maximum level allowed by the Tongass Forest Plan, 83 percent of the productive old-growth forest that was present on the Tongass in 1954 would remain. Extensive, unmodified natural environments characterize the Tongass and will continue to do so. Even with the exemption of the Tongass from the prohibitions in the roadless rule, old-growth is and will continue to be the predominant vegetative structure on the Tongass.

Desirability of a National Standard for Roadless Protection. Some respondents, including a number of Members of Congress, expressed support for the roadless rule as adopted in January, 2001, which these respondents regard as a landmark national standard that is essential to ensure the long-term protection of roadless values. These respondents maintained that the proposed rule would seriously undermine that national standard by exempting the largest national forest in the country, which contains nearly 16 percent of the acreage protected by the roadless rule. Other respondents stated that the ecological, geographic, and socioeconomic conditions on the Tongass and among the local communities of Southeast Alaska are so different from those on national forests outside of Alaska that any nationwide approach, such as the prohibitions contained in the roadless rule, would necessarily impose undue hardship on the communities of Southeast Alaska.

Response. The agency recognized the unique situation of the Tongass in the discussion of a national roadless policy throughout the development of the EIS for the roadless rule. In addition to the range of policy alternatives considered in the EIS, the agency developed a full range of alternatives specifically applicable to the Tongass, ranging from the Tongass Not Exempt Alternative (selected as part of the final rule in the 2001 record of decision) to the Tongass Exempt Alternative (now proposed for selection). The tradeoffs involved in these alternatives are fully evaluated in the roadless rule EIS. The comments raised no new issues that are not already fully explored in the EIS.

The Tongass has a higher percentage of roadless acres, over 90 percent, than nearly any other national forest except the Chugach National Forest. The Tongass Forest Plan generally prohibits road construction on 74 percent of the roadless acres, which will ensure that the Tongass remains one of the most unroaded and undeveloped national forests in the system. Even if timber were to be harvested at maximum allowable levels for 50 years, at least 80 percent of the currently existing roadless areas will remain essentially in their natural condition after 50 years of implementing the Forest Plan. Roadless areas and their associated values are and will continue to be abundant on the Tongass, even without the prohibitions of the roadless rule. Southeast Alaska is also unique in that 94 percent of the area is Federal land (80 percent Tongass National Forest, 14 percent Glacier Bay National Park), and 6 percent is State, Native Corporation, and private lands.

The impacts of the roadless rule on local communities in the Tongass are particularly serious. Of the 32 communities in the region, 29 are unconnected to the nation's highway system. Most are surrounded by marine waters and undeveloped National Forest System land. The potential for economic development of these communities is closely linked to the ability to build roads and rights of ways for utilities in roadless areas of the National Forest System. Although Federal Aid Highways are permitted under the roadless rule, many other road needs would not be met. This is more important in Southeast Alaska than in most other States that have a much smaller portion of Federal land. Likewise, the timber operators in Southeast Alaska tend to be more dependent on resource development opportunities on National Forest System land than their counterparts in other parts of the country because there are few neighboring alternative supplies of resources for Southeast Alaska.

The agency also recognized the unique situation on the Tongass during the development of the roadless rule, and proposed treating the Tongass differently from other national forests until the final rule was adopted in January 2001. At that time, the Department decided that ensuring lasting protection of roadless values on the Tongass outweighed the attendant socioeconomic losses to local communities. The Department now believes that, considered together, the abundance of roadless values on the Tongass, the protection of roadless values included in the Tongass Forest Plan, and the socioeconomic costs to local communities of applying the roadless rule's prohibitions to the Tongass, all warrant treating the Tongass differently from the national forests outside of Alaska.

Scientific Basis for the Proposed Rule. The agency received comments that there is no scientific basis for exempting the Tongass from the roadless rule, and that the old growth conservation strategy included in the 1997 Tongass Forest Plan is scientifically inadequate. Indeed, some of the scientists who provided input during the development of that plan commented in opposition to exempting the Tongass from the roadless rule. Others noted that the 1997 Forest Plan, developed with over 10 years of intensive public involvement and scientific scrutiny, and embodied an appropriate balance between the ecological, social, and economic components of sustainability.

Response. Science can predict, within certain parameters, the impacts of policy choices, but it cannot tell what policy to adopt. The 1997 Tongass Forest Plan FEIS and roadless rule FEIS describe the impacts of a wide range of possible land management policies. The science underlying these predictions was subject to rigorous peer review. However, ultimately, the role of science is to inform policy makers rather than to make policy.

The Tongass Forest Plan is based on sound science. As an example, the forest plan includes an old growth habitat conservation strategy, outlined in the response to comments on environmental effects of the proposed rule that is one of the best in the world. The strategy provides habitat to maintain well-distributed, viable populations of old-growth-associated species across the Forest. The strategy also considers development on adjacent State and private lands. Many existing roadless areas were also incorporated into reserves using non-development land use designations. The strategy was scientifically developed and was subjected to independent scientific peer review.

The science consistency review process used in developing the 1997 Tongass Forest Plan is seen as a model for science-based management that has been emulated in other Forest Service planning efforts. Planning is not a process of science, but rather is a process that uses scientific information to assist officials in making decisions. Under the scientific consistency process, the role of science in planning is explicitly defined as requiring that all relevant scientific information available must be considered; scientific information must be understood and correctly interpreted, including the uncertainty regarding that information; and the resource risks associated with the decision must be acknowledged and documented. The 1997 Tongass Forest Plan meets these criteria, as documented in "Evaluation of the Use of Scientific Information in Developing the 1997 Forest Plan for the Tongass," published by the Department's Pacific Northwest Research Station in 1997. Exempting the Tongass from the prohibitions of the roadless rule returns management of the Tongass to the direction contained in a forest plan that has undergone thorough scientific review, which found the Tongass Forest Plan to be consistent with the available science.

Compliance with Executive Order 13175 and Finding of No "Tribal Implications." An Alaska Native community disagreed with the agency's finding that the proposed rule does not have "Tribal implications" under Executive Order 13175. The community's comment included concerns about "catastrophic economic and social losses due to the shutdown of the Tongass," and noted that more than 200 timber-related jobs have been lost in that community since the roadless rule was implemented. The comment also outlined Federal law and policy that mandates consideration of Tribal economic well-being.

Response. The agency did not conclude that the roadless policy has "no impact" on Tribes, because clearly the loss of jobs and economic opportunity has greatly affected some of them. The stated severe effect on the social and economic fabric of life in Southeast Alaska from the decline in the timber industry is one of the reasons the Department is adopting an exemption to the roadless rule for the Tongass. Exempting the Tongass from the prohibitions in the roadless rule will mean that more options will be available to alleviate some of these impacts. A primary focus of the exemption is to reduce the social and economic impacts to Tribes.

The agency did conclude that the proposed rule to exempt the Tongass from the roadless rule would not impinge on Tribal sovereignty, would not require Tribal expenditures of funds, and would not change the distribution of power between the Federal government and Indian or Alaska Native Tribes. It is under this narrow sense of Executive Order 13175 that the finding of no Tribal implications was made for the proposed rule. For this final rule, the Department has determined that there could be substantial future direct effects to one or more Tribes, and that these effects are anticipated to be positive. A discussion regarding consultation and coordination with Indian Tribal Governments about this final rule in accordance with Executive Order 13175 can be found in the Regulatory Certification section of this preamble.

Volume of Public Comment and Support for the Roadless Rule. Many comments discussed the volume of public comment received over the past 5 years in support of the roadless rule and its application to the Tongass. Some people said that the roadless rule is a landmark conservation policy that has been supported by 2.2 million people, and, therefore the proposed rule ignored the wishes of the vast majority of roadless rule comments supporting protection of roadless areas in all national forests, including Alaska's. Other people noted that nearly all elected officials in Alaska opposed the roadless rule and supported the exemption.

Response. Every comment received is considered for its substance and contribution to informed decisionmaking whether it is one comment repeated by tens of thousands of people or a comment submitted by only one person. The public comment process is not a scientifically valid survey process to determine public opinion. The emphasis in the comment review process is on the content of the comment rather than on the number of times a comment was received. The comment analysis is intended to identify each unique substantive comment relative to the proposed rule to facilitate its consideration in the decisionmaking process. In matters of controversial national policy, it is impossible to please everyone. When those commenting do not see their view reflected in the final decision, they should not conclude that their comments were ignored. All comments are considered, including comments that support and that oppose the proposal. That people do not agree on how public lands should be managed is a historical, as well as modern dilemma faced by resource managers. However, public comment processes, while imperfect, do provide a vital avenue for engaging a wide array of the public in resource management processes and outcomes.

Adequacy of Timber Volume along Existing Roads. The agency received comments regarding the effect of the roadless rule's prohibitions on supplies to forest product industries in Southeast Alaska. Some respondents stated the exemption of the Tongass from the roadless rule was not necessary because the roadless rule FEIS projected 50 million board feet could be harvested annually in the developed areas along the existing road system on the Tongass. Some commented they believed there was an adequate amount of national forest timber currently under contract to keep the forest products industry supplied for a number of years. Other respondents stated the exemption was necessary if forest product industries in Southeast Alaska were to have enough timber volume to maintain their operations.

Response. Only 4 percent of the Tongass is available for commercial timber harvest under the forest plan. About half of this is in inventoried roadless areas. Further reductions in areas available for timber harvest to an already very limited timber supply would have unacceptable social, aesthetic, and environmental impacts. As was disclosed in the roadless rule FEIS, a sustained annual harvest level of 50 million board feet would not support all of the timber processing facilities in the region.

The Tongass Timber Reform Act directs the Secretary of Agriculture to seek to provide a supply of timber from the Tongass, which (1) meets the annual market demand for timber from the forest and (2) meets the market demand from the forest for each planning cycle, consistent with providing for the multiple use and sustained yield of all renewable forest resources, and subject to appropriations, other applicable law, and the requirements of the National Forest Management Act.

Benchmark harvest levels displayed in the roadless rule FEIS for the Tongass Exempt Alternative were based on a long-term market demand estimate of 124 million board feet (MMBF) per year. The procedure used to derive this figure is documented in a 1997 report by Forest Service economists, which predicted Tongass National Forest timber demand through 2010, relying upon such factors as current processing capacity in the region and the market share of Southeast Alaskan products in their principal markets (Timber Products Output and Timber Harvests in Alaska: Projections for 1997 to 2010. Brooks and Haynes, 1997. Pacific Northwest Research Station). Copies of this report may be obtained at 333 Southwest First Avenue, P.O. Box 3890, Portland, OR 97208–3890. Three different market scenarios (low, medium, and high) were considered, and the 124 MMBF figure represents the average value of the low market scenario estimates for the years 2001 through 2010. Comparable estimates for the medium and high scenarios are 151 and 184 MMBF per year, respectively.

Though the 1999 harvest level, at 146 MMBF, more closely approximates the medium market demand scenario, the roadless rule FEIS chose the low market for its benchmark analysis, and recent developments support this decision. If anything, the low market scenario appears optimistic in light of the 48 MMBF of Tongass National Forest timber harvested in 2001, the 34 MMBF harvested in 2002, and the 51 MMBF harvested in 2003 (fiscal years). At the end of fiscal year 2003, the amount of timber under contract on the Tongass was 193 MMBF, although the agency seeks to provide a sustained flow of timber sale offerings sufficient to maintain a volume under contract equal to 3 years of estimated timber demand. Recently, Congress enacted P.L. 108–108, Department of Interior and Related Agencies Appropriation Act for fiscal year 2004. Section 339 of this Act authorizes cancellation of certain timber sale contracts on the Tongass National Forest and provides that the timber included in such cancelled contracts shall be available for resale by the Secretary of Agriculture. Complete descriptions of the timber scheduling and pipeline process are found in Appendix A of all timber sale project environmental impact statements for the Tongass.

The last three years represent a significant aberration from historical harvest levels. The 1980–2002 average harvest was 269 MMBF, and in no year prior to 2001 did the harvest level fall below 100 MMBF. As recently as 1995, the Tongass National Forest harvests were in excess of 200 MMBF, and the average harvest over the 1995–2002 time period was approximately 120 MMBF. In light of this historical performance, the 124 MMFB low market estimate is not an unreasonable expectation for the coming decade, particularly if the current slump is merely a cyclical downturn. Of course market conditions may continue to deteriorate, and current low or even lower levels of harvest may become the norm. But in this case both the "negative" impacts of roading in roadless areas as well as the "positive" impacts related to employment would be reduced.

The Department believes that the roadless rule prohibitions operate as an unnecessary and complicating factor limiting where timber harvesting may occur. Accomplishment of social, economic, and biological goals can best be met through the management direction established through the Tongass Forest Plan.

Need for a Supplemental Environmental Impact Statement. Some respondents said a supplemental environmental impact statement (SEIS) is necessary before a decision can be made to exempt the Tongass from the prohibitions in the roadless rule. They suggested that new information or changed circumstances have occurred that have changed the effects disclosed in the roadless rule FEIS, so a supplement is required. The changes most often cited included the set aside of the 1999 record of decision (ROD) for the Tongass Forest Plan and the changes in timber harvest levels and related employment in Southeast Alaska. Others also mentioned the updated roadless area inventory that was completed for the 2003 record of decision on wilderness recommendations and the pending land exchange with Sealaska, an Alaska Native Corporation.

Response. The determination of whether a supplemental EIS is required involves a two-step process. First new information must be identified and, second, an analysis of whether the new information is significant to the proposed action must be completed. The Forest Service has prepared a supplemental information report that describes this process, the analysis completed, and the conclusions reached. This report is available on the World Wide Web/Internet on the Forest Service Roadless Area Conservation Web site at *http://www.roadless.fs.fed.us.*

The conclusion in the supplemental information report is that the identified new information and changed circumstances do not result in significantly different environmental effects from those described in the roadless rule FEIS. Such differences as may exist are not of a scale or intensity to be relevant to the adoption of this final rule or to support selection of another alternative from the roadless rule FEIS. Consequently, the overall decisionmaking picture is not substantially different from what it was in November 2000, when the roadless rule FEIS was completed. The effects of adopting the proposed rule as final have been displayed to the public and thoroughly considered. For all these reasons, no additional environmental analysis is required.

Economic Effects of the Roadless Rule. The agency received many comments regarding the economic effects that the roadless rule has had or would have in Southeast Alaska. People who commented were concerned about the ability of Southeast Alaska to develop a sustainable economy if the Tongass is not exempted from the roadless rule prohibitions. Concerns expressed included the limitation of the development of infrastructure, such as roads and utilities that are taken for granted elsewhere in the United States, the loss of jobs, and the loss of opportunity for Southeast Alaska to grow and develop responsibly. Other people said that any economic benefits from exempting the Tongass from the prohibitions in roadless rule are far smaller than estimated, while the adverse effects to the environment will be far greater.

Response. In the January 2001 record of decision on the roadless rule, the Secretary of Agriculture acknowledged the adverse economic effects to some forest-dependent communities from the prohibitions in the roadless rule. The decision was made to apply the roadless rule to the Tongass even though it was recognized there would be adverse effects to some communities. Due to serious concerns about these previously disclosed economic and social hardships the roadless rule would cause in communities throughout Southeast Alaska, the Department moved forward to reexamine the rule.

The Department has concluded that the social and economic hardships to Southeast Alaska outweigh the potential long-term ecological benefits because the Tongass Forest Plan adequately provides for the ecological sustainability of the Tongass. Every facet of Southeast Alaska's economy is important, and the potential adverse impacts from application of the roadless rule are not warranted, given the abundance of roadless areas and protections already afforded in the Tongass Forest Plan. Approximately 90 percent of the 16.8 million acres in the Tongass National Forest is roadless and undeveloped. Over three-quarters (78 percent) of these 16.8 million acres are either Congressionally designated or managed under the forest plan as areas where timber harvest and road construction are not allowed. About 4 percent are designated suitable for commercial timber harvest, with about half of that area (300,000 acres) contained within inventoried roadless areas.

As discussed in the roadless rule FEIS (Vol. 1, 3–202, 3–326 to 3–350, 3–371 to 3–392), substantial negative economic effects are anticipated if the roadless rule is applied to the Tongass, which include the potential loss of approximately 900 jobs in Southeast Alaska. With the adoption of this final rule, the potential negative economic effects should not occur in Southeast Alaska. Even if the maximum harvest permissible under the Tongass Forest Plan is actually harvested, at least 80 percent of the currently remaining roadless areas will remain essentially in their natural condition after 50 years of implementing the forest plan. If the Tongass is exempted from the prohibitions in the roadless rule, the nation will still realize long-term ecological benefits because of the large area that will remain undeveloped and unfragmented, with far less social and economic disruption to Southeast Alaska's communities.

Alaska National Interest Lands Conservation Act (ANILCA). Some people said that ANILCA was enacted with the promise that it provided sufficient protection for Alaska land and that no further administrative withdrawals could be allowed without express Congressional approval. Others said that the roadless rule does not violate the provisions in ANILCA.

Response. In passing ANILCA in 1980, Congress established 14 wildernesses totaling 5.5 million acres on the Tongass, and found that this act provided sufficient protection for the national interest in the scenic, natural, cultural, and environmental values on the public lands in Alaska, and at the same time provided adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people. Accordingly, the designation and disposition of the public lands in Alaska pursuant to this act were found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition. Congress believed that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, had been obviated by provisions in ANILCA.

In 1990, Congress enacted the Tongass Timber Reform Act (TTRA) to amend ANILCA by directing the Secretary of Agriculture, subject to certain limitations, to seek to provide a supply of timber from the Tongass National Forest, which (1) meets the annual market demand for timber and (2) meets the market demand for timber for each planning cycle, consistent with providing for the multiple use and sustained yield of all renewable forest resources, and subject to appropriations, other applicable laws, and the requirements of the National Forest Management Act.

Further, the TTRA designated 5 new wildernesses and 1 wilderness addition on the Tongass, totaling 296,000 acres. The act also designated 12 permanent Land Use Designation (LUD) II areas, totaling 727,765 acres. Congressionally designated LUD II areas are to be managed in a roadless state to retain their wildland characteristics; however, they are less restrictive on access and activities than wilderness, primarily to accommodate recreation and subsistence activities and to provide vital Forest transportation and utility system linkages, if necessary.

These statutes provide important Congressional determinations, findings, and information relating to management of National Forest System lands on the Tongass National Forest, and were considered carefully during this rulemaking. Expressions of legal concerns and support for the various rulemakings have also been considered. This final rule reflects the Department's assessment of how to best implement the letter and spirit of congressional direction along with public values, in light of the abundance of roadless values on the Tongass, the protection of roadless values already included in the Tongass Forest Plan, and the socioeconomic costs to local communities of applying the roadless rule's prohibitions.

Roadless areas are common, not rare, on the Tongass National Forest, and most Southeast Alaska communities are significantly impacted by the roadless rule. The Department believes that exempting the Tongass from the prohibitions in the roadless rule is consistent with congressional direction and intent in the ANILCA and the TTRA legislation.

Adequacy of the Roadless Rule Concerning NEPA and Other Laws. Some people commented that the roadless rule was adopted in violation of NEPA because, according to those commenters, the roadless rule EIS failed to take the hard look that NEPA requires. Other concerns expressed about the roadless rule included alleged violations of the National Forest Management Act, Multiple Use Sustained Yield Act, and Wilderness Act, and concerns that the roadless rule failed to explicitly acknowledge valid and existing access rights to private lands.

Response. The roadless rule continues to be the subject of ongoing litigation in the district courts and one Federal appeals court. Hence, the validity of the roadless rule is still in question. However, the Department believes that application of the roadless rule to the Tongass is inappropriate, regardless of whether the roadless rule is otherwise found to be valid or lawful. Given the pending litigation, the Department believes it is prudent to proceed with a decision on temporarily exempting the Tongass from the prohibitions in the roadless rule.

Effects of the Roadless Rule on Construction of Roads and Utility Corridors. Some people who commented said that because the roadless rule allows construction of Federal Aid Highway projects and roads needed to protect public health and safety, there are no significant limits on the ability of communities to develop road and utility connections in Southeast Alaska. Similarly, they said that utility corridors can be built and maintained without roads by using helicopters, so the opportunities for utility transmissions would not be limited either. Others, including local communities and elected officials, said that the roadless rule would impact the development of the Southeast Alaska Electrical Intertie System that is planned to provide communities throughout the region with clean, reliable, and affordable power.

Response. There is a need to retain opportunities for the communities of Southeast Alaska regarding basic access and utility infrastructure. This is related primarily to road systems, the State ferry system, electrical utility lines, and hydropower opportunities that are on the horizon. This need reflects in part the overall undeveloped nature of the Tongass and the relationship of the 32 communities that are found within its boundaries. Most, if not all, of the communities are lacking in at least some of the basic access and infrastructure necessary for reasonable services, economic stability, and growth that almost all other communities in the United States have had the opportunity to develop.

The roadless rule permits the construction of Federal Aid Highways only if the Secretary of Agriculture determines that the project is in the public interest and that no other reasonable and prudent alternative exists (36 CFR 294.12). Such a finding may not always be possible for otherwise desirable road projects.

Similarly, although some utility corridors can be constructed and maintained without a road, others may require a road. Even where a utility corridor without a road may be physically possible, it may be more expensive or otherwise less desirable than a utility accompanied by a service road. If the road construction is inexpensive or needed for other reasons, then utility corridors may often adjoin the road because of the ease of access for maintenance and repairs of utility systems. Indeed, most utility corridors in the United States were developed next to a pre-existing road.

The history of road development in Southeast Alaska since statehood is that most State highway additions have been upgraded from roads built to harvest timber. In the last 20 years, this has occurred predominantly on Prince of Wales Island, better connecting the communities of Hollis, Hydaburg, Craig, Klawock, Thorne Bay, Whale Pass, Naukati, Kaasan, and Coffman Cove with all-weather highways. Without the pioneering work done by the Forest Service in building roads to harvest timber, it is unclear whether the State would have undertaken the construction of those road connections. By precluding the construction of roads for timber harvest, the roadless rule reduces future options for similar upgrades, which may be critical to economic survival of many of the smaller communities in Southeast Alaska. Moreover, roads initially developed for timber or other resource management purposes often have value to local communities and sometimes become important access links between communities, even if they are never upgraded as Federal Aid Highways. By exempting the Tongass from the prohibitions in the roadless rule, each utility or transportation proposal can be evaluated on its own merit.

Tongass Roads and Fiscal Considerations. Some people said that because the Tongass has a backlog of road maintenance and fish passage problems, primarily inadequate culverts, it makes no sense to spend money on new roads until these problems are corrected. Others said that the funds the Tongass receives from Congress to prepare timber sales and do roadwork could be better spent on other needs.

Response. The Tongass is currently spending about $2 million per year to correct fish passage barriers and continues to seek funding and opportunities to clear the maintenance backlog. Forest Service roads in Alaska are vital to neighboring communities because most areas have at most an underdeveloped road system. Permanent Forest Service roads (known as classified roads) are often the only roads available to communities and for recreation opportunities. The Alaska Region, with only 3,600 miles of classified Forest Service roads, has the fewest miles of roads of all the regions of the Forest Service, and about one-third of these are closed to motorized use. New roads will be necessary to access sufficient timber to support existing small sawmills. Over the years, standards for construction and maintenance of roads have changed significantly. Roads and stream crossings built today adhere to very high standards designed to protect fisheries, important wetlands, unstable soils, wildlife use and habitats, and other resource values.

Roads on the Tongass are used by the public for a variety of reasons, including recreation, subsistence access, and other personal uses. The roads are also used by the Forest Service in accomplishing work for various resource programs. None of these programs is sufficient to provide for all the road maintenance needs. In the 2003 Tongass Forest-Level Roads Analysis, fish passage and sedimentation maintenance needs were identified as the critical categories of the deferred maintenance cost schedule.

Transportation planning is an integral part of the interdisciplinary process used to develop site-specific projects on the Tongass. The transportation planning process includes collaboration between the agency and local communities to identify the minimum road system that is safe and responsive to public needs while minimizing maintenance costs.

Relationship of This Rule to Other Rulemaking. One commenter read 40 CFR 1506.1 as requiring an EIS for the temporary exemption of the Tongass. The commenter reasoned that because the agency was considering whether to adopt a permanent exemption for the Tongass, the agency may not take any action that tends to prejudice the choice of alternatives on that decision unless reviewed in a separately sufficient, stand-alone EIS. One commenter suggested that the effort the agency might put into preparing site-specific EISs for timber sales in roadless areas under this final rule might prejudice the decision on the advance notice of proposed rulemaking. Others viewed the proposed rule as an emergency rule that has not been adequately justified by the Forest Service, and recommended action be delayed until the permanent exemption is resolved.

Response: The decision to adopt the proposed rule as final is supported by the environmental analysis presented in the roadless rule FEIS, which considered in detail the alternative of exempting the Tongass from the prohibitions of the roadless rule, as well as the analysis and disclosure of alternative management regimes for roadless lands presented in the 1997 Tongass Forest Plan EIS and the 2003 Supplemental EIS. The Department has determined that no additional environmental analysis is warranted. The Supplemental Information Report documenting that decision is available on the World Wide Web/Internet at *http://www.roadless.fs.fed.us.* In any event, the temporary rules on the Tongass and the proposal set forth in the advance notice of proposed rulemaking are separate and have separate utility. The July 15, 2003, advance notice of proposed rulemaking sought comment on whether both forests in Alaska should be exempted permanently from the prohibitions of the roadless rule. This final rule has separate utility in temporarily preventing socioeconomic dislocation in Southeast Alaska while protecting forest resources, regardless of whether the agency ultimately decides to exempt both national forests from the prohibitions of the roadless rule on a permanent basis.

Promulgating this final rule would not prejudice the ultimate decision on the advance notice of proposed rulemaking. An action prejudices the ultimate decision on a proposal when it tends to determine subsequent development or limit alternatives. The preparation of EISs does neither.

Finally, this final rule is not an emergency rule. All the requirements and procedures for public notice and comment established by the Administrative Procedure Act for Federal rulemaking have been met with the publication of the proposed rule with request for comment and with the subsequent publication of this final rule. Emergency rulemaking involves the promulgation of a rule without providing for notice and public comment prior to adoption, when conditions warrant immediate action. That is not the case with this final rule.

Alternatives Considered

The alternatives considered in making this decision are the Tongass National Forest Alternatives identified in the November 2000 FEIS for the roadless rule, as further described in the rule's record of decision (66 FR 3262). These include the Tongass Not Exempt, Tongass Exempt, Tongass Deferred, and Tongass Selected Areas alternatives. The Tongass Not Exempt Alternative was selected by the Department as set out in the final roadless rule in January 2001, with mitigation explained in that record of decision. The Tongass Exempt Alternative would not apply the prohibitions of the roadless rule to the Tongass. Under the Tongass Deferred Alternative, the decision whether to apply the prohibitions of the roadless rule to the Tongass would be made in 2004 as part of the 5-year review of the Tongass Forest Plan. Under the Tongass Selected Areas Alternative, the prohibitions on road construction and reconstruction would apply only to certain land use designations, where commercial timber harvest would not be allowed by the forest plan. These areas comprise approximately 80 percent of the land in inventoried roadless areas on the Tongass.

The Environmentally Preferable Alternative

Under the National Environmental Policy Act, the agency is required to identify the environmentally preferable alternative (40 CFR 1505.2(b)). This is interpreted to mean the alternative that would cause the least damage to the biological and physical components of the environment, and which best protects, preserves, and enhances historic, cultural, and natural resources (Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026).

The Department concurs in the assessment described in the January 12, 2001, roadless rule record of decision (66 FR 3263) that the environmentally preferable alternative is the portion of Alternative 3 of the roadless rule FEIS combined with the Tongass Not Exempt Alternative, which would apply the roadless rule's prohibitions to the Tongass without delay.

Record of Decision Summary

For the reasons identified in this preamble, the Department has decided to select the Tongass Exempt Alternative described in the roadless rule FEIS, until the Department promulgates a final rule concerning the application of the roadless rule within the State of Alaska, to which the agency sought public comments in the July 15, 2003, second advance notice of proposed rulemaking (68 FR 41864). Until such time, the Department is amending paragraph (d) of § 294.14 of the Roadless Area Conservation Rule set out at 36 CFR part 294 to exempt the Tongass National Forest from prohibitions against timber harvest, road construction, and reconstruction in inventoried roadless areas.

The Tongass Not Exempt Alternative (identified as the environmentally preferable alternative in the previous section) is not selected because the Department now believes that, considered together, the abundance of roadless values on the Tongass, the protection of roadless values included in the Tongass Forest Plan, and the socioeconomic costs and hardships to local communities of applying the roadless rule's prohibitions to the Tongass, outweigh any additional potential long-term ecological benefits; and therefore, warrant treating the Tongass differently from the national forests outside of Alaska.

The Tongass Deferred Alternative is not selected because there is no reason to delay a decision until 2004. On the contrary, a decision is needed now to reduce uncertainty about future timber supplies, which will enable the private sector to make investment decisions needed to prevent further job losses and economic hardship in local communities in Southeast Alaska.

The Tongass Selected Areas Alternative is not selected because it also would "be of considerable consequence at local levels where the timber industry is a cornerstone of the local economy and where the Forest Service has a strong presence," as stated in the roadless rule's record of decision. While these adverse socioeconomic consequences would be less than those under the Tongass Not Exempt Alternative, the roadless rule's record of decision states, "For most resources, the effects of this alternative would probably not be noticeably different from those under the Tongass Exempt Alternative." Accordingly, there is no noticeable environmental benefit to selecting the Tongass Selected Areas Alternative over the Tongass Exempt Alternative that would justify the additional socioeconomic costs.

This decision reflects the facts, as displayed in the FEIS for the roadless rule and the FEIS for the 1997 Tongass Forest Plan that roadless values are plentiful on the Tongass and are well protected by the Tongass Forest Plan. The minor risk of the loss of such values is outweighed by the more certain socioeconomic costs of applying the roadless rule's prohibitions to the Tongass. Imposing those costs on the local communities of Southeast Alaska is unwarranted.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review. It has been determined that this is not an economically significant rule. This final rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This final rule will not interfere with an action taken or planned by another agency. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because this final rule raises novel legal or policy issues arising from legal mandates or the President's priorities, it has been designated as significant and, therefore, is subject to Office of Management and Budget (OMB) review in accordance with the principles set forth in E.O. 12866.

A cost-benefit analysis has been conducted on the impact of this final rule and incorporates by reference the detailed regulatory impact analysis prepared for the January 12, 2001, roadless rule, which included the Tongass Exempt Alternative. Much of this analysis was discussed and disclosed in the final environmental impact statement (FEIS) for the roadless rule. A review of the data and information from the original analysis and the information disclosed in the FEIS found that it is still relevant, pertinent, and sufficient in regard to exempting the Tongass from the application of the roadless rule. As documented in the Supplemental Information Report, the Department has concluded that no new information exists today that would significantly alter the results of the original analysis.

Moreover, this final rule has been considered in light of E.O. 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final regulatory flexibility analysis conducted on the roadless rule included the effects associated with the Tongass National Forest. The agency solicited comments on the regulatory flexibility analysis for the roadless rule. Although numerous comments were provided that indicated a concern about the roadless rule's impacts on small entities, only a small portion provided data documentation on their status as a small entity and the likely effects of the roadless rule. In many cases, the agency was unable to determine the effects quantitatively, based on comments on the regulatory flexibility analysis. However, all of the businesses in Southeast Alaska engaged in timber harvest and processing of Tongass timber are small businesses. Therefore, this final rule would be expected to have future positive impacts on the small entities in Southeast Alaska due to the increased opportunity to remain viable in the marketplace. This opportunity would be reduced if the prohibitions in the roadless rule are applied to the Tongass.

Therefore, based on the final regulatory flexibility analysis conducted for the roadless rule, which is available electronically on the World Wide Web/Internet on the Forest Service Roadless Area Conservation Web site at *http://www.roadless.fs.fed.us,* a small entities flexibility assessment has been made for this final rule. It has been determined that this action will not have a significant negative economic impact on a substantial number of small entities as defined by SBREFA. This final rule will not impose record keeping requirements; will not affect small entities' competitive position in relation to large entities; and will not affect small entities' cash flow, liquidity, or ability to remain in the market.

Environmental Impact

A draft environmental impact statement (DEIS) was prepared in May 2000 and a final environmental impact statement (FEIS) was prepared in November 2000 in association with promulgation of the roadless area conservation rule (January 12, 2001 (66 FR 3244). The DEIS and FEIS examined in detail sets of Tongass-specific alternatives. In the DEIS, the agency considered alternatives which would not have applied the rule's prohibitions to the Tongass National Forest, but would have required that the agency make a determination as part of the 5-year plan to review whether to prohibit road construction in unroaded portions of inventoried roadless areas. In the FEIS, the Department identified the Tongass Not Exempt as the Preferred Alternative, which would have treated the Tongass National Forest the same as all other national forests, but would have delayed implementation of the rule's prohibitions until April 2004. This delay would have served as a social and economic mitigation measure by providing a transition period for communities most affected by changes in management of inventoried roadless areas in the Tongass. In the final rule published on January 12, 2001, however, the Department selected the Tongass Not Exempt Alternative without any provision for delayed implementation. Therefore, the rule's prohibition applied immediately to inventoried roadless areas on the Tongass, but the rule also allowed road construction, road reconstruction, and the cutting, sale, and removal of timber from inventoried roadless areas on the Tongass where a notice of availability for a DEIS for such activities was published in the **Federal Register** prior to January 12, 2001.

In February 2003, in compliance with a district court's order in *Sierra Club* v. *Rey* (D. Alaska), the Forest Service issued a record of decision and a supplemental environmental impact Statement (SEIS) to the 1997 Tongass Forest Plan that examined the site-specific wilderness and non-wilderness values of the inventoried roadless areas on the Forest as part of the forest planning process. The February 2003 ROD readopted the 1997 Tongass Forest Plan with non-significant amendments as the current forest plan. Congress has prohibited administrative or judicial review of the February 2003 ROD. Section 335 of the 2003 Omnibus Appropriations Act provides that the ROD for the 2003 SEIS for the 1997 Tongass Land Management Plan shall not be reviewed under any Forest Service administrative appeal process, and its adequacy shall not be subject to judicial review by any court in the United States.

Because the 2000 FEIS for the roadless rule included an alternative to exempt the Tongass National Forest from the provisions of the roadless rule, the decision to adopt this final rule may be based on the FEIS, as long as there are no significant changed circumstances or new information relevant to environmental concerns bearing on the proposed action or its impacts that would warrant additional environmental impact analysis. The Forest Service reviewed the circumstances related to this rulemaking and any new information made available since the FEIS was completed; including the SEIS and public comments received on the proposed rule, and documented the results in a Supplemental Information Report (SIR), dated October 2003. The agency concluded—and the Department agrees—that no significant new circumstances or information exist, and that no additional environmental analysis is warranted. The SIR and the FEIS are available on the World Wide Web/Internet on the Forest Service Roadless Area Conservation Web site at *http://www.roadless.fs.fed.us.* The Tongass Forest Plan is available at *http://www.fs.fed.us/r10/tlmp,* and the 2003 SEIS is available at *http://www.tongass-seis.net/.*

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the final rule does not pose the risk of a taking of private property, as the rule is limited to temporarily exempting the applicability of the roadless rule to the Tongass National Forest.

Energy Effects

This final rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect will be given to this final rule; and (3) this final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on a review of the comments received on the proposed rule, the Department has determined that no additional consultation is needed with State and local governments prior to adopting this final rule, because virtually all comments received from State and local governments supported the proposed rule.

Consultation and Coordination With Indian Tribal Governments

This final rule has Tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Forest Service line officers in the field have contacted Tribes to ensure their awareness of this rulemaking, provide an overview of this final rule, and conduct government-to-government dialog with interested Tribes. A letter from the Alaska Regional Forester (Region 10) was sent on July 15, 2003, to Tribal officials via e-mail notifying them that the proposed rule to temporarily exempt the Tongass from the prohibitions of the roadless rule was published in the **Federal Register** that same day. A follow up informational meeting was requested and held with Sitka Tribal officials. One comment was received on the proposed rule from the Metlakatla Indian Community regarding the catastrophic economic and social losses due to the shutdown of the Tongass was in reference to the roadless rule. This final rule to temporarily exempt the Tongass from the prohibitions of the roadless rule would potentially reduce the social and economic impacts the Tribe noted. Therefore, the Department has determined that there could be substantial future direct effects to one or more Tribes, and that these effects are anticipated to be positive.

Controlling Paperwork Burdens on the Public

This final rule does not contain any record keeping or reporting requirements, or other information collection requirements as defined in 5 CFR part 1320, and therefore imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Government Paperwork Elimination Act Compliance

The Department of Agriculture is committed to compliance with the Government Paperwork Elimination Act (44 U.S.C 3504), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 36 CFR Part 294

National Forests, Navigation (air), Recreation and recreation areas, Wilderness areas.

■ Therefore, for the reasons set forth in the preamble, the Department of Agriculture is amending part 294 of Title 36 of the Code of Federal Regulations as follows:

PART 294—SPECIAL AREAS

Subpart B—Protection of Inventoried Roadless Areas

■ 1. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

■ 2. Revise paragraph (d) of § 294.14 to read as follows:

§ 294.14 Scope and applicability.

* * * * *

(d) Until the USDA promulgates a final rule concerning application of this subpart within the State of Alaska [to which the agency originally sought public comments in the July 15, 2003, second advance notice of proposed rulemaking (68 FR 41864)], this subpart does not apply to road construction, road reconstruction, or the cutting, sale, or removal of timber in inventoried roadless areas on the Tongass National Forest.

* * * * *

Dated: December 23, 2003.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 03–32077 Filed 12–23–03; 4:47 pm]

BILLING CODE 3410–11–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–34 and 00–248; FCC 03–154]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule, announcement of effective date.

SUMMARY: The Commission adopted rule revisions to require use of new satellite and earth station application forms. Certain rules contained new and modified information requirements and were published in the **Federal Register** on November 12, 2003. This document announces the effective date of these published rules.

DATES: The amendments to §§ 25.103, 25.111, 25.114, 25.115, 25.117, 25.118, 25.121, 25.131, 25.141, and part 25, Subpart H, published at 68 FR 63994, November 12, 2003, will become effective March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, International Bureau, Satellite Policy Branch, (202)418–1539.

SUPPLEMENTARY INFORMATION: On December 1, 2003, the Office of Management and Budget (OMB) approved the information collection requirement contained in §§ 25.103, 25.111, 25.114, 25.115, 25.117, 25.118, 25.121, 25.131, 25.141, and part 25, Subpart H pursuant to OMB Control No. 3060–0678. Accordingly, the information collection requirement contained in these rules will become effective on March 1, 2004.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–31968 Filed 12–29–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126295 3295 01; I.D. 121703A]

Fisheries of the Exclusive Economic Zone off Alaska; Shortraker/Rougheye and Northern Rockfish in the Bering Sea Subarea and "Other Species" in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Community Development Quota (CDQ) reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and "other species" in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 interim CDQ reserve amounts of shortraker/rougheye rockfish, northern rockfish, and "other species" in these areas.

DATES: Effective 0001 hrs, Alaska local time (A.l.t.), January 1, 2004, until superseded by the notice of Final 2004 Harvest Specifications of Groundfish for the BSAI, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and "other species" in the BSAI are 3 metric tons (mt), 2 mt, and 606 mt respectively, as established by the Interim 2004 Harvest Specifications of Groundfish in the BSAI (68 FR 68265, December 8, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and "other species" in the BSAI will be necessary as incidental catch to support other anticipated groundfish CDQ fisheries for the 2004 fishing year. Consequently, the Regional Administrator is establishing directed fishing allowances of zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and "other species" in the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent the Agency from responding to the most recent fisheries data in a timely fashion and would delay the closure of the interim CDQ reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and "other species" in the BSAI.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–32074 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 249
Tuesday, December 30, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Docket No. FV03–900–1 EXT]

Proposed Rule To Exempt Organic Producers and Marketers From Assessments for Market Promotion Activities Under Marketing Order Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Notice is hereby given that the comment period on the proposal to exempt producers and marketers from assessments for marketing promotion activities under marketing order programs is extended.

DATES: Comments must be received by February 2, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237, Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk at the Marketing Order Administration Branch, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237 during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: George Kelhart or Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this proposed regulation by contacting: Jay Guerber, Marketing Order Information Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: The proposed rule on the exemption of organic producers and marketers from assessments for market promotion activities under marketing orders was published in the **Federal Register** on December 2, 2003 (68 FR 67381). The proposed rule invited comments through January 2, 2004.

The Executive Director of the Organic Trade Association requested, in consideration of the holiday season, that the comment period be extended thirty days to provide ample time for a thorough review and to ensure that those most likely to be affected by the proposed rule have the opportunity to calculate the impact.

An extension would provide interested persons more time to review and assess the proposed rule's impacts. Therefore, USDA is extending the period in which to file written comments until February 2, 2004. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937 and the Farm Security and Rural Investment Act (Pub. L. 107–171).

Authority: 7 U.S.C. 601–674 and 7 U.S.C. 7401.

Dated: December 22, 2003.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 03–31945 Filed 12–23–03; 10:27 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV04–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2003–2004 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 2003–2004 crop year. The percentages are 75 percent free and 25 percent restricted and would establish the proportion of cherries from the 2003 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by January 14, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html*.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301)

734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule would establish final free and restricted percentages for tart cherries for the 2003–2004 crop year, beginning July 1, 2003, through June 30, 2004. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District seven—Utah; District eight—Washington and District nine—Wisconsin. Districts four, five, and six (New York, Oregon, and Pennsylvania, respectively) would not be regulated for the 2003–2004 season.

The order prescribes under § 930.52 that those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded six million pounds. A district not meeting the six million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of Oregon, and Pennsylvania, handlers in those districts would not be subject to volume regulation during the 2003–2004 crop year. Section 930.52 also prescribes that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established. Because New York's production is less than 50 percent of the previous 5-year production average, handlers in New York also would not be subject to volume regulation during the 2003–2004 crop year.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast or by an average of such other crop estimates for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board is required to announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 26, 2003, and computed, for the 2003–2004 crop year, an optimum supply of 180 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 218 million pounds; a 10 million pound carryin added to that estimate results in a total available supply of 228 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 180 million pounds from the total estimated available supply results in a surplus of 48 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (205 million pounds) and resulted in a restricted percentage of 23 percent for the 2003–2004 crop year. The free percentage was 77 percent (100 percent minus 23 percent). The Board established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2003–2004 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	180
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	180
Preliminary Percentages:	
(4) USDA crop estimate	218
(5) Plus carryin held by handlers as of July 1, 2003	10
(6) Total available supply for current crop year	228
(7) Surplus (item 6 minus item 3)	48
(8) USDA crop estimate for regulated districts	205

Percentages	Free	Restricted
(11) Preliminary percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	77	23

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage. The Board met on September 12, 2003, to recommend final free and restricted percentages.

The actual production reported by the Board was 222 million pounds, which is a four million pound increase from the USDA crop estimate of 218 million pounds.

A 10 million pound carryin was added to the Board's reported production of 222 million pounds, yielding a total available supply for the current crop year of 232 million pounds. The optimum supply of 180 million pounds was subtracted from the total available supply which resulted in a 52 million pound surplus. The total surplus of 52 million pounds is divided by the 210 million-pound volume of tart cherries produced in the regulated districts. This results in a 25 percent restricted percentage and a corresponding 75 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in September for the 2003–2004 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	180
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the October meeting	180
Final Percentages:	
(4) Board reported production	222
(5) Plus carryin held by handlers as of July 1, 2003	10
(6) Tonnage available for current crop year	232
(7) Surplus (item 6 minus item 3)	52
(8) Production in regulated districts	210

Percentages	Free	Restricted
(11) Final Percentages (item 7 divided by item 8 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	75	25

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive on the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 18 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1998/99 through 2002/03, approximately 91 percent of the U.S. tart cherry crop, or 240.6 million pounds, was processed annually. Of the 240.6 million pounds of tart cherries processed, 55 percent was frozen, 30 percent was canned, and 15 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 36,900 acres in 2002/03. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2003/04 crop is moderate in size at 222.1 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than six million pounds.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be over-supplied, resulting in lower grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The econometric model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, along with the districts in Utah, Washington, and Wisconsin are the restricted areas for this crop year and their combined total production is 210 million pounds. A 25 percent restriction means 158 million pounds is available to be shipped to primary markets from these three states. Production levels of 7 million pounds for New York, 1.3 million pounds for Oregon, and 3.8 million pounds for Pennsylvania, result in an additional 12.1 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 18 million pounds being available for the primary market. The 158 million pounds from Michigan, Utah, Washington, and Wisconsin, the 12 million pounds from the other producing states, the 18 million pound release, and the 10 million pound carryin inventory gives a total of 198 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without the volume controls, the estimated grower price would be approximately $0.36 per pound. With volume controls, the estimated grower price would increase to approximately $0.43 per pound.

The use of volume controls is estimated to have a positive impact on grower's total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $79.9 million in 2003–2004. In this scenario, production is 222 million pounds and price, without regulation, is estimated to be $0.36 per pound. With regulation, growers' revenues from processed cherries are estimated to be $85.1 million. In this scenario, 198 million pounds are available for the primary markets with an estimated price of $0.43 per pound. Over the past several seasons, growers received approximately $0.10 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as average grower prices are $0.38 per pound or greater, then growers' are better off with the regulation. With a price of $0.38 per pound, the estimated revenues under no regulation would be similar to the revenues with a 25 percent regulation assuming that all the production would be sold and marketed under the no regulation scenario.

It is concluded that the 25 percent volume control would not unduly burden producers, particularly smaller growers. The 25 percent restriction would be applied to the growers in Michigan, Utah, Washington, and Wisconsin. The growers in the other three regulated states will benefit from this restriction. Michigan, New York, and Washington produced over 91 percent of the tart cherry crop during the 2001–2002 crop year.

Recent grower prices have been as high as $0.44 per pound in the 2002–2003 crop year. At current production and yield levels, the cost of production is reported to be $0.43 per pound. Thus, the estimated $0.43 per pound received by growers under the regulation scenario just covers the cost of production. Under the no regulation scenario, estimated grower prices would not cover the total cost of production. Lower yields and production result in higher costs of production. Overhead or fixed costs are spread over lower levels of production which result in higher costs of production per acre. Even in years when no production is harvested, growers face fixed costs of production and additional costs associated with maintaining the orchard for future years of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to start to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carryin inventories, a decrease in grower prices of $0.0033 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products. The use of reserve cherries in the production shortened 2002/03 crop year proved to be very useful and beneficial to growers and packers.

In discussing the possibility of marketing percentages for the 2003–2004 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in September 2003 of the restricted percentages proposed in this rule (75 percent free and 25 percent restricted).

One alternative to this action would be not to have volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry due to the size of the 2003–2004 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 2003–2004 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR Part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.253 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.253 Final free and restricted percentages for the 2003–2004 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2003, which shall be free and restricted, respectively, are designated as follows: Free percentage, 75 percent and restricted percentage, 25 percent.

Dated: December 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31946 Filed 12–29–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1720

RIN 0572–AB83

Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish procedures for a guarantee program for cooperatives and other not-for-profit lenders that make loans eligible for assistance under the Rural Electrification Act of 1936 (the RE Act). Criteria for eligibility of lenders and transactions are set forth in the rule together with application procedures. Program participants are required to pay an annual fee for the guarantee. The fee will be credited to the Rural Development Subaccount to provide funds for zero-interest loans and grants pursuant to section 313 of the RE Act. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), amended the RE Act, by adding section 313A which establishes this program.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than March 1, 2004.

ADDRESSES: Written comments should be addressed to Blaine D. Stockton, Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 5156 South Building, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone (202) 720–9545. RUS requires a signed original and three copies of all comments (7 CFR Part 1700). All comments received will be made available for inspection in room 4037 South Building during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick R. Sarver, Management Analyst, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5158, Washington, DC 20250–1560. Telephone number (202) 690–2992, Facsimile (202) 690–0717.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the

Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this proposed rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), the Administrator of RUS has determined that this proposed rule will not have significant impact on a substantial number of small entities. No small entities meet the statutory criteria for participation in the program that is the subject of this rulemaking.

Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the "Act"), OMB must approve all "collection of information" by RUS. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this proposed rule will involve less than 10 persons and do not require approval under the provisions of the Act.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109–Stat. 48)) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

The Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 901 *et. seq.*) authorizes the Secretary of Agriculture (the "Secretary") to guarantee and make loans to persons, corporations, states, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to the Rural Utilities Service (RUS) under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administrating the programs and activities of RUS, *see* 7 CFR 1700.25.

Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, 116 Stat. 413) ("FSRIA") amends the RE Act by adding a new section 313A: Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes (7 U.S.C. 940c–1). FSRIA became law on May 13, 2001, and requires the Secretary of Agriculture to promulgate regulations for issuing guarantees under section 313A.

Section 313A of the RE Act provides that under certain specified circumstances, the Secretary shall guarantee payments on bonds or notes issued by cooperative or other lenders organized on a not-for-profit basis. Section 313A provides limits to the amount of a guarantee, the purposes for the guarantee, and the qualifications of eligible lenders seeking a guarantee of a bonds or notes. Section 313A requires that a guarantee be no greater than the principal amount of outstanding loans of the lender for electrification or telephone purposes that have been made concurrently with loans approved for such purposes under the RE Act. The section also provides for charging an annual fee of 30 basis points on the outstanding balance of the guaranteed bonds or notes to lenders that receive a guarantee under section 313A. Proceeds of the fee are required, except in limited circumstances specified in section 313A, to be deposited into the Rural Economic Development Subaccount. From this subaccount, zero interest loans and grants are made to promote rural development programs as described in section 313(b)(2)(B) of the RE Act (7 U.S.C 940c–1(b)(2)(B)).

The FSRIA limits eligibility under this program to not-for-profit third party lenders that make loans for any electrification or telephone purpose eligible for assistance under the Rural Electrification Act of 1936. Currently there are two lenders that meet this eligibility criterion; the National Rural Utilities Cooperative Finance Corporation (CFC) and CoBank.

RUS is proposing new procedures for the guarantee program established by section 313A. In order to produce a comprehensive regulation that will carry out the objectives set forth in the FSRIA, and provide for a program consistent with established RUS guiding principles, RUS discussed program options with other federal agencies, and examined recently established federal guarantee programs. Furthermore, RUS retained the services of an outside consultant with experience in capital markets and establishing federal guarantee programs to assist it in the development of this program.

Requests for section 313A guarantees will be considered according to eligibility requirements and the strength of the lender seeking such a guarantee. A guaranteed lender must demonstrate by sufficient evidence in its application and periodically while any guarantee is in effect, that the guaranteed lender will at all times be able to make timely payments on the bonds or notes being guaranteed.

Program Summary

The rule establishes general standards for issuing a guarantee consistent with statutory requirements. The general standards provide limitations on the bonds and the use of the proceeds.

Eligibility criteria are established according to statute and RUS program requirements. To be eligible to participate in the program, a guaranteed lender must be a bank or other lending institution organized as a private, not-for-profit cooperative association or otherwise on a non-profit basis and be able to demonstrate to the Secretary that it possesses the appropriate expertise, experience and qualifications to make loans for electrification or telephone purposes. To be eligible to receive a guarantee, a guaranteed lender must furnish the Secretary with a certified list of the principal balances of concurrent loans then outstanding evidencing that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding. Also, the guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee and the final maturity of the guaranteed bonds may not exceed 15 years.

The rules establish an application process where the applicant is required to submit eligibility data and certifications for on-going review. The application information includes background information, a term sheet summarizing the proposed terms and conditions of the guarantee agreement, a statement as to how the proceeds are to be used and the financial benefit it anticipates deriving from participating in the program, a pro-forma cash flow projection or business plan for the next five years, consolidated financial statements of the guaranteed lender for the previous three years, evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee; and other application documents deemed necessary by the Secretary for the evaluation of applicants.

Each application will be reviewed by the Secretary to determine whether it meets the eligibility requirements. The application is then evaluated based upon the extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds, the adequacy of the proposed provisions to protect the Federal government, the applicant's demonstrated performance of financially sound business practices; the extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, and the amount of fee income available to be deposited into the Rural Economic Development Subaccount.

After the guarantee is approved, other conditions must be met prior to receiving final endorsement by the Secretary. Bond documents must be executed by the applicant and the applicant must certify to the Secretary that the guaranteed bonds proceeds will be applied to fund eligible new loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans. The applicant must also provide a final certified list of concurrent loans and their outstanding balances as of the date the guarantee is issued. Counsel to the applicant must furnish an opinion as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents. No material adverse change can occur between the date of the application and date of execution of the guarantee. The Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary) must certify acknowledging the applicant's commitment to submit to the Secretary an annual credit assessment of the applicant by a Rating Agency and acknowledging the guaranteed lender's commitment to deliver annual consolidated financial statements audited by an independent certified public accountant for each year during which the guaranteed bonds are outstanding. It should be emphasized that the Secretary will not issue the guarantee if, in the sole judgment of the Secretary, there has occurred a material adverse change in the condition (financial or otherwise) or prospects of the guaranteed lender or its subsidiaries.

The rule establishes an annual fee for the guarantee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guaranteed bond. The fee is deposited into the Rural Economic Development Subaccount maintained under section 313(b)(2)(A) of the RE Act. The Secretary also has the authority to structure the schedule for payment of the annual fee, with the consent of the lender, so that sufficient funds are available to pay the subsidy costs for the guarantee.

As long as any guaranteed bonds remain outstanding, the guaranteed lender agrees to provide the Secretary on an annual basis consolidated financial statements and accompanying footnotes, audited by independent certified public accountants, pro forma projections of the guaranteed lender's balance sheet, income statement, and statement of cash flows over the ensuing five years, a credit assessment issued by a Rating Agency, a review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, a review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and other such information requested by the Secretary. Additionally the bond documents will specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

Economic Impact

The Guarantees for Bonds and Notes Issued for Electrification and Telephone Purposes Program (the "Program") facilitates the continued improvement of electric and telephone service in rural America, by providing Federal loan guarantees on debt issued by non-profit, cooperative and other rural lending institutions (the "Lenders"). However, by providing bond guarantees under the Program, financial default risk is transferred to the Federal government. Under the most likely scenario, the fees collected from the Lenders would offset all of the expected credit subsidy costs of the Program. As a result, the expected cost to taxpayers would be zero. However, there is a possibility that the Lender could default, which, depending on the timing of the default, could expose the government to a maximum liability of approximately $3 billion. Based on historical experience for unsecured corporate bonds of this quality, the government could be expected to recover at least one-half of the defaulted amounts, making it more likely that the government's maximum exposure is approximately $1.5 billion. The exposure may be even less depending upon the annual appropriation by Congress to fund guarantees through this program.

Without this new program lenders would continue to obtain debt financing at prices that reflect the financial risk of uninsured bonds. The higher rates associated with this financing as compared to Federally guaranteed debt would be passed on to the cooperatives and other borrowers and eventually to the consumers in rural America in the form of higher electric or telephone rates. Under the proposed Rule lenders could refinance outstanding debt at a lower rate and pass the savings in one form or another on to its borrowers consistent with 1720.4(a)(4) and the statute.

Lenders could alternatively elect to directly pass through to the cooperative borrowers the lower interest rates it obtains under the Program by reducing the rate on a like amount of eligible loans consistent with 1720.4(a)(4) and the statute. Eligible loans consist of either new or existing loans made for electrification or telephone projects that are eligible for assistance under the RE Act and are made concurrently with RUS-funded loans. The Secretary has the authority to require that borrowers seek concurrent loans for up to 30 percent of their request as provided in Section 307 of the RE Act. Using current interest rates as a guideline, lenders with a mid investment grade credit rating are able to issue long-term debt at approximately 2 percent over the comparable term U.S. Treasury bond yield. Similar-term debt guaranteed by the U.S. government is estimated to trade at a yield spread of approximately 0.5 percent over Treasuries. Thus, there is a potential interest rate savings of approximately 1.5 percent for lenders under this guarantee program. However, the 30 basis point average annual fee associated with the guarantees reduces the potential savings. Subtracting out the fee, average interest rate savings of approximately 1.2 percent could still be realized by qualified lenders under the guarantee program.

The Federal government would deposit the annual guarantee fees it charges the Lender, less any portion necessary to pay the subsidy cost, into an account for grants and zero interest rate rural economic development loans under the Rural Economic Development Loan and Grant Program ("REDLG"). Assuming $3 billion of loan guarantees were made under this program, approximately $90 million dollars of investment capital could be infused into the REDLGP over the next 15 years.[1] Past performance indicates that this amount could be leveraged to approximately $265.5 million in total investment in rural America through further investment by private lenders and investors.[2] Using USDA's Economic Research Service multiplier for rural employment, an investment of this size could be expected to generate over 6,000 jobs in rural America.[3]

The RUS program has been very successful over the years in effectively managing the government's risk. This has been accomplished by ensuring that borrowers meet strict financial and engineering requirements. Since the late 1930's the REA and now RUS has administered the Electric and Telecommunications programs which currently hold a cumulative outstanding balance of over $45 billion. During that time the Electric and Telecommunications programs have experienced only ten defaults that required a write-off of debt in the amount of $4.9 billion.

Federal government guarantee programs by their nature expose the taxpayer to financial risk. For the Program, the risks are estimated to be minimal because of the non-competitive nature of many of the businesses for which loans could be made (*e.g.*, electric distribution cooperatives) and the requirement for guarantee recipients to pay an annual fee that offsets expected losses. Steps that will be taken to further reduce risk include stipulating minimum credit ratings without guarantees, establishing sound underwriting criteria, and requiring the participant to demonstrate industry expertise.

FIRREA Requirements

For this program the Federal Government proposes using capital adequacy standards of the banking industry as defined by the Federal Institutions Reform, Recovery and Enforcement Act (FIRREA). FIRREA provides regulatory oversight of all Savings and Loan institutions under the Office of Thrift Supervision. FIRREA contains a number of provisions relating to capital standards and consequences for failure to meet those standards.

The Capital Adequacy standards in FIRREA will be utilized by the Program. The investment grade rating required by the Program statute indicates that applicants must satisfy capital adequacy requirements necessary to meet their payment obligations. As part of the financial covenants in the final guarantee agreement between RUS and the participant, language will be included that is designed to address the capital adequacy standards of FIRREA. These may include financial indicators such as loan loss reserves, debt-to-equity ratios, and times-interest-earned ratios.

FIRREA contains specific language that addresses non-compliance with capital adequacy requirements to limit the institution's ability to grow, restrict its growth to correspond with capital, or submit plans to reach compliance. As part of the financial covenants in the Program legal documents, language will be included to address non-compliance with capital adequacy standards or credit rating downgrades to include specific remedies—such as requiring the obligor to post additional collateral until the capital adequacy standards are met or increases in the interest rates on the guaranteed bonds or notes.

Issues for Public Comment

In this proposed rulemaking RUS is soliciting information from the public on all aspects including terms, limitations and conditions of this program with the goal of attaining the greatest possible public benefits without assuming undue risks for the U.S. Treasury and taxpayers. Furthermore, RUS asks that commenters give consideration to the following questions.

1. A description of the impacts on rural America is presented in the preamble. Is this description complete or are there other concerns with regard to the potential benefits for, or costs to, rural communities, lenders making use of the program, or taxpayers?

2. The proposed rule requires collateral for securitization of a bond under this program as well as the establishment of a bankruptcy remote trust fund capitalized at 5% of the guaranteed amount outstanding. This trust fund would be viewed as a risk-sharing mechanism in light of the government's potential 100% guarantee of an applicant's obligations. The trust fund would establish additional collateral for reimbursement of any advances the government makes on its guarantee. Please comment on this risk-sharing methodology and other methods to protect the guarantor's interests through collateralization.

3. The capital adequacy standards of FIRREA will be utilized by this program. Please comment on the use of FIRREA standards as a model and the use of FIRREA-like restrictions in the event of noncompliance. Please also comment on whether the use of financial triggers is an effective mechanism for protecting the guarantor's interests.

4. The proposed rule does not impose a limitation on the proceeds of the bond or note guaranteed. One consideration for this program is to limit the amount of refinancing to 25% of the amount guaranteed. It is believed that such a

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[1] Assumes 20 basis points (.20 percent) of the 30 basis point (.30 percent) guarantee fee is deposited in the REDLG account annually. .20 percent × $3 billion = $6 million × 15 years = $90 million.

[2] Estimated using historical investment leveraged from the flow of funds into the REDLG account where every $1 in investment into the REDLG account leveraged $2.95 in further investment in rural America. Data provided by RBS.

[3] Estimated using the USDA's Economic Research Service multiplier for rural employment, which estimates that for every $1 million in investment, 23 jobs are created nationwide.

limitation would increase new loans for rural areas. Please discuss the benefit and/or detriment to using this type of limitation.

5. The regulation contemplates monitoring compliance with terms of the guarantee through qualified third parties acting as agents for the guarantor but hired by the lender obtaining the guarantee. Does this mechanism provide adequate protection of the guarantor's interest? Are other mechanisms available that present fewer potential conflicts of interest while relying primarily on qualified private sector monitors?

6. Does the program envisioned by the rule adequately minimize the financial risk to taxpayers? If not, what changes should be made to best reduce the risk while still providing the kind of guarantee program envisioned by Congress?

7. Issuance of a guarantee may provide an incentive for recipients to reduce the quality of their lending/management policies and practices. Does the rule adequately ensure that the recipient's management and lending practices are sound, effective, and minimize default risk?

8. Is the accompanying economic analysis for this rule objective and does it provide a reasonably complete assessment of each significant cost and benefit of the rule?

List of Subjects in 7 CFR Part 1720

Electric power, Electric utilities, Loan program—energy, reporting and recordkeeping requirements, Rural areas.

For reasons set out in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1720 to read as follows:

PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES

Sec.

1720.1 Purpose.
1720.2 Background.
1720.3 Definitions.
1720.4 General standards.
1720.5 Eligibility criteria.
1720.6 Application process.
1720.7 Application evaluation.
1720.8 Issuance of the guarantee.
1720.9 Guarantee Agreement.
1720.10 Fees.
1720.11 Servicing.
1720.12 Reporting requirement.
1720.13 Limitations on Guarantees.
1720.14 Nature of guarantee; acceleration of guaranteed bonds.
1720.15 Equal opportunity requirements.

Authority: 7 U.S.C. 901 *et seq;* 7 U.S.C. 940c.

§ 1720.1 Purpose.

This part prescribes regulations implementing a guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the Rural Electrification Act of 1936 (7 U.S.C. 940c–1).

§ 1720.2 Background.

The Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 901 *et. seq.*) authorizes the Secretary to guarantee and make loans to persons, corporations, states, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to RUS under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, see 7 CFR § 1700.25. Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub.L. 107–171) (FSRIA) amended the RE Act to include a new program under section 313A entitled Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes. This measure became law on May 13, 2002, and directs the Secretary of Agriculture to promulgate regulations that carry out the Program.

§ 1720.3 Definitions.

For the purpose of this part:

Administrator means the Administrator of RUS.

Applicant means a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis, that is applying for RUS to guarantee a bond or note under this part.

Bond Documents means the trust indenture, bond resolution, guarantee, guarantee agreement and all other instruments and documentation pertaining to the issuance of the guaranteed bonds.

Borrower means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification or rural telephony under the RE Act, or that is seeking such financing.

Concurrent Loan means a loan that a guaranteed lender extends to a borrower for up to 30 percent of the cost of an eligible electrification or telephone purpose under the RE Act, concurrently with an insured loan made by the Secretary pursuant to section 307 of the RE Act.

Federal Financing Bank means a government corporation and instrumentality of the United States of America under the general supervision of the Secretary of the Treasury.

Guarantee means the written agreement between the Secretary and a guaranteed bondholder, pursuant to which the Secretary guarantees full repayment of the principal, interest, and call premium, if any, on the guaranteed lender's guaranteed bond.

Guarantee Agreement means the written agreement between the Secretary and the guaranteed lender which sets forth the terms and conditions of the guarantee.

Guaranteed Bond means any bond, note, debenture, or other debt obligation issued by a guaranteed lender on a fixed or variable rate basis, and approved by the Secretary for a guarantee under this part.

Guaranteed Bondholder means any investor in a guaranteed bond.

Guaranteed Lender means an applicant that has been approved for a guarantee under this part.

Investment Grade Rating means a bond rating of "BBB−" or higher or "Baa3" or higher, or its equivalent, assigned by a rating agency.

Loan means any credit instrument that the guaranteed lender extends to a borrower for any electrification or telephone purpose eligible under the RE Act, including loans as set forth in section 4 of the RE Act for electricity transmission lines and distribution systems (excluding generating facilities) and as set forth in section 201 of the RE Act for telephone lines, facilities and systems.

Loan documents means the loan agreement and all other instruments and documentation between the guaranteed lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of a loan.

Program means the guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the RE Act as amended.

Rating Agency means a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization.

RE Act means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) as amended.

RUS means the Rural Utilities Service, an agency of the U.S. Department of Agriculture.

Secretary means the Secretary of Agriculture acting through the Administrator of RUS.

Subsidy Amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal government of a guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on government receipts or outlays, in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*)

§ 1720.4 General standards.

(a) In accordance with section 313A of the RE Act, a guarantee will be issued by the Secretary only if the Secretary determines, in accordance with the requirements set forth in this part, that:

(1) The proceeds of the guaranteed bonds will be used by the guaranteed lender to make loans to borrowers for electrification or telephone purposes eligible for assistance under this chapter, or to refinance bonds or notes previously issued by the guaranteed lender for such purposes;

(2) At the time the guarantee is executed, the total principal amount of guaranteed bonds outstanding would not exceed the principal amount of outstanding concurrent loans previously made by the guaranteed lender;

(3) The proceeds of the guaranteed bonds will not be used directly or indirectly to fund projects for the generation of electricity; and

(4) The guaranteed lender will not use any amounts obtained from the reduction in funding costs provided by the program to reduce the interest rates borrowers are paying on new or outstanding loans, other than new concurrent loans as provided in 7 CFR part 1710, of this chapter.

(b) The Secretary shall guarantee payments on guaranteed bonds in such form and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as determined appropriate for satisfying the requirements of this part. The Secretary shall require the guaranteed lender to enter into a guaranty agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering.

§ 1720.5 Eligibility criteria.

(a) To be eligible to participate in the program, a guaranteed lender must be:

(1) a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis; and

(2) able to demonstrate to the Secretary that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

(b) To be eligible to receive a guarantee, a guaranteed lender's bond must meet the following criteria:

(1) The guaranteed lender must furnish the Secretary with a certified list of the principal balances of concurrent loans then outstanding evidencing that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding;

(2) The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee;

(3) The final maturity of the guaranteed bonds may not exceed 15 years, and

(4) The guaranteed bonds must be issued to the Federal Financing Bank on terms and conditions consistent with Federal Financing Bank lending policy and satisfactory to the Secretary.

(c) During the term of the guarantee, the guaranteed lender must maintain the following:

(1) Establish a bankruptcy remote trust fund capitalized at 5% of the guaranteed amount outstanding; and

(2) As long as the guarantee is in effect, the lender shall not issue cash patronage refunds in excess of five percent of the total patronage refund eligible. Additionally, stock issued as part the patronage refund shall not be redeemable in cash during the term of any part of the guarantee. The lender shall not issue any dividends on any class of stock during the term of any part of the guarantee.

(d) A lending institution's status as an eligible applicant does not assure that the Secretary will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Secretary from declining to issue a guarantee.

§ 1720.6 Application process.

(a) Applications shall contain the following:

(1) Background and contact information on the applicant;

(2) A term sheet summarizing the proposed terms and conditions of, and the security pledged to assure the applicant's performance under, the guarantee agreement;

(3) A statement by the applicant as to how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program;

(4) A pro-forma cash flow projection or business plan for the next five years, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed bonds in accordance with their terms;

(5) A description of the specific and identifiable loans comprising the collateral or other pledge securing the guaranteed bonds;

(6) Consolidated financial statements of the guaranteed lender for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(7) Evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee;

(8) A review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and

(9) Such other application documents and submissions deemed necessary by the Secretary for the evaluation of applicants.

(b) The application process occurs as follows:

(1) The applicant submits an application to the Secretary;

(2) The application is screened by RUS pursuant to 7 CFR 1720.7(a) of this part, to ascertain its threshold eligibility for the program;

(3) RUS evaluates the application pursuant to the selection criteria set forth in 7 CFR 1720.7(b) of this part;

(4) If RUS provisionally approves the application, the applicant and RUS negotiate terms and conditions of the bond documents, and

(5) The applicant offers its guaranteed bonds to the Federal Financing Bank, and the Secretary upon approval of the pricing, redemption provisions and other terms of the offering, executes the guarantee.

(c) If requested by the applicant at the time it files its application, the General Counsel of the Department of Agriculture shall provide the Secretary with an opinion regarding the validity and authority of a guarantee issued to the lender under section 313A of the RE Act.

§ 1720.7 Application evaluation.

(a) *Eligibility screening*. Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5 of this part, the information required under 7 CFR 1720.6 of this part, is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

(b) *Evaluation*. Pursuant to paragraph (a) of this section, applications will be subject to a substantive review, on a competitive basis, by the Secretary based upon the following evaluation factors, listed in order of importance:

(1) The extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds;

(2) The adequacy of the proposed provisions to protect the Federal government, based upon items including, but not limited to the nature of the pledged security, the priority of the lien position, if any, pledged by the applicant, and the provision for an orderly retirement of principal such as an amortizing bond structure or an internal sinking fund;

(3) The applicant's demonstrated performance of financially sound business practices;

(4) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, or generate other economic benefits; and

(5) The amount of fee income available to be deposited into the Rural Economic Development Subaccount, maintained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c–1(b)(2)(B)), after payment of the subsidy amount.

(c) *Independent Assessment*. Before a guarantee decision is made by the Secretary, the Federal Financing Bank shall review the adequacy of the structure of the note or bond offering and the determination by the Rating Agency, required under 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without the guarantee. The Federal Financing Bank will seek Office of Management and Budget's review of its findings prior to submittal of its report to the Secretary.

(d) *Decisions by the Secretary*. The Secretary shall approve or deny applications in a timely manner as such applications are received. The Secretary may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS shall notify the applicant in writing of the Secretary's approval or denial of an application. Approvals for guarantees shall be conditioned upon compliance with 7 CFR 1720.6 of this part.

§ 1720.8 Issuance of the guarantee.

(a) The following requirements must be met by the applicant prior to the endorsement of a guarantee by the Secretary.

(1) A guarantee agreement suitable in form and substance to the Secretary must be delivered.

(2) Bond documents must be executed by the applicant setting forth the legal provisions relating to the guaranteed bonds, including but not limited to payment dates, interest rates, redemption features, pledged security, additional borrowing terms including an explicit agreement to make payments even if loans made using the proceeds of such bond or note is not repaid to the lender, other financial covenants, and events of default and remedies;

(3) Prior to the issuance of the guarantee, the applicant must certify to the Secretary that the proceeds from the guaranteed bonds will be applied to fund eligible new loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans;

(4) The applicant provides a certified list of concurrent loans and their outstanding balances as of the date the guarantee is to be issued;

(5) Counsel to the applicant must furnish an opinion satisfactory to the Secretary as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents;

(6) No material adverse change occurs between the date of the application and date of execution of the guarantee;

(7) The applicant shall provide evidence of an investment grade rating from a Rating Agency for the proposed guaranteed bond without regard to the guarantee; and

(8) Certification by the Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary), acknowledging the applicant's commitment to submit to the Secretary, an annual credit assessment of the applicant by a Rating Agency, an annual review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, an annual review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, the lender's commitment to deliver annual consolidated financial statements audited by an independent certified public accountant each year, during which the guaranteed bonds are outstanding, and other such information requested by the Secretary

(b) The Secretary shall not issue a guarantee if the applicant is unwilling or unable to satisfy all requirements.

§ 1720.9 Guarantee agreement.

(a) The guaranteed lender will be required to sign a guarantee agreement with the Secretary setting forth the terms and conditions upon which the Secretary guarantees the payment of the guaranteed bonds.

(b) The guaranteed bonds shall refer to the guarantee agreement as controlling the terms of the guarantee.

(c) The guarantee agreement shall address the following matters:

(1) Definitions and principles of construction;

(2) The form of guarantee;

(3) Coverage of the guarantee;

(4) Timely demand for payment on the guarantee;

(5) Any prohibited amendments of bond documents or limitations on transfer of the guarantee;

(6) Limitations on acceleration of guaranteed bonds;

(7) Calculation and manner of paying the guarantee fee;

(8) Consequences of revocation of payment on the guaranteed bonds;

(9) Representations and warranties of the guaranteed lender;

(10) Representations and warranties for the holder of the guaranteed bonds;

(11) Claim procedures;

(12) What constitutes a failure by the guaranteed lender to pay;

(13) Demand on RUS;

(14) Assignment to RUS;

(15) Conditions of guarantee which may include requiring the guaranteed lender to adopt measures to ensure adequate capital levels are retained to absorb losses relative to risk in the guaranteed lender's portfolio and requirements on the guaranteed lender to hold additional capital against the risk of default;

(16) Payment by RUS;

(17) RUS payment does not discharge guaranteed lender;

(18) Undertakings for the benefit of the holders of guaranteed bonds, including: Notices, registration, prohibited amendments, prohibited transfers, indemnification, multiple bond issues;

(19) Governing law;

(20) Notices;
(21) Benefit of agreement;
(22) Entirety of agreement;
(23) Amendments and waivers;
(24) Counterparts;
(25) Severability; and
(26) Such other matters as the Secretary believes to be necessary or appropriate.

§ 1720.10 Fees.

(a) *Guarantee fee.* An annual fee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guaranteed bond will be deposited into the Rural Economic Development Subaccount maintained under section 313(b)(2)(A) of the RE Act.

(b) Subject to part (c) of this section, up to one-third of the 30 basis point guarantee fee may be used to fund the subsidy amount of providing guarantees, to the extent not otherwise funded through appropriation actions by Congress.

(c) Notwithstanding subsections (c) and (e)(2) of section 313A of the RE Act, the Secretary shall, with the consent of the lender, structure the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees.

§ 1720.11 Servicing.

The Secretary, or other agent of the Secretary on his or her behalf, shall have the right to service the guaranteed bond, and periodically inspect the books and accounts of the guaranteed lender to ascertain compliance with the provisions of the RE Act and the bond documents.

§ 1720.12 Reporting requirements.

(a) As long as any guaranteed bonds remain outstanding, the guaranteed lender shall provide the Secretary with the following items each year within 90 days of the guaranteed lender's fiscal year end:

(1) Consolidated financial statements and accompanying footnotes, audited by independent certified public accountants;

(2) A review and certification of the security of the government guarantee, audited by reputable, independent certified public accountants or a federal banking regulator, who in the judgment of the Secretary, has the requisite skills, knowledge, reputation, and experience to properly conduct such a review;

(3) Pro forma projection of the guaranteed lender's balance sheet, income statement, and statement of cash flows over the ensuing five years;

(4) Credit assessment issued by a Rating Agency;

(5) A review and certification of the lender's capital adequacy utilizing the capital adequacy standards of FIRREA by a reputable, independent certified public accounting firm or federal banking regulator, and

(5) Other such information requested by the Secretary.

(b) The bond documents shall specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

§ 1720.13 Limitations on guarantees.

In a given year the maximum amount of guaranteed bonds that the Secretary may approve will be subject to budget authority, together with receipts authority from projected fee collections from guaranteed lenders, the principle amount of outstanding concurrent loans made by the guaranteed lender, and Congressionally-mandated ceilings on the total amount of credit. The Secretary may also impose other limitations as appropriate to administer this guarantee program.

§ 1720.14 Nature of guarantee; acceleration of guaranteed bonds.

(a) Any guarantee executed by the Secretary under this part shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the guaranteed bondholder had actual knowledge at the time it purchased the guaranteed bonds.

(b) Amounts due under the guarantee shall be paid within 30 days of demand by a bondholder, certifying the amount of payment then due and payable.

(c) The guarantee shall be assignable and transferable to any purchaser of guaranteed bonds as provided in the bond documents.

(d) The following actions shall constitute events of default under the terms of the guarantee agreements:

(1) The guaranteed lender failed to make a payment of principal or interest when due on the guaranteed bonds;

(2) The guaranteed bonds were issued in violation of the terms and conditions of the bond documents;

(3) The guarantee fee required by 7 CFR 1720.9 of this part has not been paid;

(4) The guaranteed lender made a misrepresentation to the Secretary in any material respect in connection with the application, the guaranteed bonds, or the reporting requirements listed in 7 CFR 1720.11 of this part; or

(5) The guaranteed lender failed to comply with any material covenant or provision contained in the bond documents.

(e) In the event the guaranteed lender fails to cure such defaults within the notice terms and the timeframe set forth in the bond documents, the Secretary may demand that the guaranteed lender redeem the guaranteed bonds. Such redemption amount will be in an amount equal to the outstanding principal balance, accrued interest to the date of redemption, and prepayment premium, if any. To the extent the Secretary makes any payments under the guarantee, the Secretary shall be deemed the guaranteed bondholder.

(f) To the extent the Secretary makes any payments under the guarantee, the interest rate the government will charge to the guaranteed lender for the period of default shall accrue at an annual rate of the greater of 1.5 times the 91-day Treasury-Bill rate or 200 basis points (2.00%) above the rate on the guaranteed bonds.

(g) Upon guaranteed lender's event of default, under the bond documents, the Secretary shall be entitled to take such other action as is provided for by law or under the bond documents.

§ 1720.15 Equal opportunity requirements.

"Executive Order 12898, "Environmental Justice." To comply with Executive Order 12898, RUS will conduct a Civil Rights Analysis for each guarantee prior to approval. Rural Development Form 2006–28, "Civil Rights Impact Analysis", will be used to document compliance in regards to environmental justice.

Dated: December 22, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–31928 Filed 12–29–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001, 1292

[EOIR No. 138P; AG Order 2700–2003]

RIN 1125–AA39

Executive Office for Immigration Review Attorney/Representative Registry

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations pertaining to appearances by attorneys and representatives before the Executive Office for Immigration Review (EOIR). This proposed rule authorizes the Director, EOIR, or his designee to register attorneys and representatives as

a condition of practicing before immigration judges and the Board of Immigration Appeals. The proposed rule also provides that the Director or his designee will establish registration procedures including a requirement for electronic registration, and may administratively suspend from practice before EOIR any practitioner who fails to provide certain registration information.

DATES: Written comments must be submitted on or before March 1, 2004.

ADDRESSES: Please submit written comments to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference RIN No. 1125–AA39 on your correspondence. The public may also submit comments electronically to EOIR at *regulations.comments@usdoj.gov*. When submitting comments electronically, you must include RIN No. 1125–AA39 in the subject box.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This proposed rule would authorize the Director, Executive Office for Immigration Review ("EOIR"), or his designee to register all attorneys and representatives ("practitioners") entering appearances before immigration judges and the Board of Immigration Appeals ("Board") as a condition of practicing before EOIR. The Director or his designee also would be authorized under the proposed rule to establish procedures for registration. Following an initial registration period, practitioners would need to include their registration identification ("UserID") on any new entry of appearance (*i.e.*, the filing of Forms EOIR–27 or EOIR–28).

Reasons for Issuing This Proposed Rule

The Department is updating and integrating its immigration court and Board databases, and designing an electronic case access and filing system, to comply with the Government Paperwork Elimination Act ("GPEA"), to achieve the Department's vision for improved immigration adjudication processing, and to meet the public expectations for electronic government. 44 U.S.C. 3504 note. The GPEA provides that the Office of Management and Budget ("OMB") must ensure that no later than October 21, 2003, executive agencies provide for the option of electronic submission of information, when practicable, as a substitute for paper.

The practitioner registration process contemplated by the Department for EOIR will initially enable EOIR to distribute a unique UserID to all practitioners. The UserIDs will be a core component in a redesigned case tracking system, ensuring a single, unique identification for each practitioner appearing before immigration judges and the Board. Application of the unique UserID will reduce system errors in scheduling matters and will provide improved notice to practitioners. In conjunction with a UserID, passwords will also be issued to practitioners to permit them to maintain and update registration information electronically (via the Internet) and, in the future, to access the EOIR electronic filing system for submission and retrieval of documents.

Procedures for Registering With EOIR

EOIR will implement an on-line registration process that will be mandatory for practitioners. For practitioners without access to the Internet, a dedicated Practitioner Workstation will be made available at each public EOIR facility, including the immigration courts and Board clerk's office. For the initial registration, practitioners must complete an electronic registration that includes the following information: Full name, date of birth, last four digits of social security number, mailing addresses, and e-mail address. Only one e-mail address will be permitted; however, multiple mailing addresses may be used by practitioners with multiple office locations. Registrants will also be required to submit limited background data, such as bar admissions (for attorneys) and the recognized organization with which the individual is associated (for accredited representatives), in order to demonstrate that they meet the regulatory requirements for authorization to practice before EOIR.

Upon completion of the registration process, the EOIR registration system will send a password and a verification of registration to the practitioner's e-mail address. Registrants who have completed only the initial registration requirements (full name, date of birth, last four digits of social security number, mailing addresses, and e-mail address) will be prompted electronically to complete registration. In such cases, both e-mail and mail notices will be generated to the addresses entered in the initial registration, allowing a two-week deadline for completing the full registration process.

Required Registrants

All attorneys and representatives, as defined by 8 CFR 1001.1(f) and (j), will be required to register with EOIR as a condition of representing individuals before the immigration judges and the Board. Law firms or other similar entities will not be issued a UserID. Practitioners working on behalf of a law firm (including attorneys, law graduates, and law students) or other entity (such as accredited representatives employed by recognized organizations) must individually register with EOIR.

Registration Deadline

Using a number of media, EOIR will provide practitioners with advance notice of the deadline for registering and obtaining a UserID. During the transition period to the newly integrated EOIR case management system, procedures will be in place to permit practitioners to associate existing cases with their new UserID and password. The Department contemplates that the full development of the system will take substantial time, and the system will be activated initially to permit an "open season" for registration before making compliance with registration requirements mandatory. Therefore, EOIR will provide a minimum of 60 days advance publicity of the availability of the system before adherence to the registration system's requirements will become mandatory for practitioners.

Practitioners Who Do Not Have an E-Mail Address

An e-mail address will be a required field in the Registration Form. If an e-mail address is not entered, a registration system prompt will request that practitioners re-enter their e-mail address. A second system prompt will ask if the practitioner possesses an e-mail address. If the practitioner does not have an e-mail address, a message will be displayed that the system will send the notice automatically to the practitioner's physical address using the United States Post Office's e-mail postal addressing capabilities. EOIR will assume the cost of mailing this notice.

Entry of Appearance Requires a UserID

After the effective date of the final registration regulation, practitioners will be required to have a UserID to file an Entry of Appearance in a case. If a practitioner appears in person at any public office of EOIR to file an Entry of Appearance but does not have a UserID, the staff will direct the practitioner to a

Practitioner Workstation in the public area of the Board's clerk's office or the immigration court on which he or she may register and receive a UserID.

The practitioner will enter all information he or she has available and will be permitted to choose a UserID. The registration system will accept the full or initial registration data, and send the practitioner an e-mail message containing a password.

If an unregistered practitioner mails an Entry of Appearance to the Board clerk's office or immigration court, with or without other documents (pleadings, etc.), the clerk's office or court staff may reject the Entry of Appearance and return it for completion of the registration process. The clerk's office staff will process any accompanying documents as if they had been filed by the unregistered practitioner's client acting on his or her own behalf.

Failure To Register or Failure To Complete the Registration Process

Practitioners who fail to register will not be allowed to represent clients before the immigration judges or the Board.

Practitioners who only complete an initial registration will be notified by e-mail (or United States mail, if appropriate) of the two-week deadline for completing registration. If registration is not completed by that deadline, a second notice setting an additional two-week deadline will be sent to the same practitioner address(es), warning of administrative suspension from practice before EOIR if registration is not completed timely. A third notice will inform the practitioner that his or her right to practice before immigration judges and the Board has been suspended administratively until registration is completed. Copies of this notice will be sent to all identifiable clients with matters before EOIR. Additionally, the practitioner's UserID and password that EOIR provided during initial registration will be deactivated.

Extraordinary Circumstances

After the effective date of the final regulation, and under extraordinary and rare circumstances, an immigration judge may permit an unregistered practitioner to appear at a single hearing by registering before the immigration judge. For example, an unregistered practitioner unfamiliar with immigration practice before immigration judges and the Board, or an unregistered practitioner hired immediately before a hearing commences, may be permitted to appear before an immigration judge. However, the immigration judge must secure the required practitioner's registration information on the record proceedings, in addition to the practitioner's Notice of Appearance on Form EOIR–28. The immigration judge will also instruct the practitioner to register on-line immediately after the hearing. At the time the Form EOIR–28 information that is received during the hearing is entered into the case management information system, the EOIR staff will inquire of the system whether the practitioner has completed registration pursuant to the immigration judge's instructions. If not, EOIR staff will enter into the database the practitioner's information previously secured by the immigration judge. The system will then create a permanent UserID for the practitioner, using an algorithm based on last name and first name, and assign a password. An e-mail message will notify the practitioner of the UserID and password. As previously noted, a practitioner without an e-mail address will be notified at the practitioner's physical address using the United States Post Office's e-mail postal addressing capabilities. Thereafter, the practitioner will be able to modify the password but not the UserID.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

As described more fully below in the Executive Order 12866 certification, the Department estimates that approximately 26,000 attorneys and representatives will electronically register. It is not known how many of these attorneys and representatives are "small entities" as defined by the Regulatory Flexibility Act. There is no fee to register. Consequently, the Department believes the costs to practitioners to electronically register with EOIR will be nominal.

Practitioners will greatly benefit under this registration process by paving the way to future access to an electronic EOIR case access and filing system. Moreover, the future ability to electronically file a Notice of Appearance will reduce the practitioner's costs.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The proposed rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the regulation has been submitted to the Office of Management and Budget for review.

The rule establishes procedures for attorneys and representatives to enroll formally with EOIR as a condition of representing aliens before immigration judges and the Board. Requiring practitioners to register electronically with EOIR is a necessary precursor to implementing an electronic case access and filing system.

Under the registration process, EOIR will be able to determine whether a practitioner is authorized to represent aliens before immigration judges or the Board. EOIR will also distribute to each authorized registrant a unique EOIR UserID and password that will permit future access to an electronic filing system for submission and retrieval of information and documents pertaining to administrative immigration proceedings.

An on-line registration process will be required for practitioner registration. For practitioners without access to the Internet, a dedicated Practitioner Workstation will be made available at each public facility of EOIR.

For the initial registration, practitioners must complete an electronic registration in which they must provide the following information: full name, date of birth, last four digits of social security number, mailing addresses, and e-mail address. Registrants will also be required to submit limited background data, such as bar admissions (for attorneys) and the recognized organization with which the individual is associated (for accredited representatives).

The Department estimates that approximately 26,000 attorneys and representatives will electronically register, a process that will take approximately 10 minutes for each registrant. There is no fee to register. Consequently, the Department believes the costs to practitioners to electronically register with EOIR will be nominal.

Practitioners will greatly benefit under this registration process by paving the way to future access to an electronic EOIR case access and filing system. The future system will allow practitioners to electronically submit and retrieve information pertaining to administrative immigration proceedings.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

The United States Department of Justice has submitted a request for approval of a new information collection instrument to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995. The proposed new information collection is published in this document to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days in conjunction with the proposed rule. This process is in accordance with 5 CFR. 1320.10.

If you have any comments, especially on the estimated public burden or associated response time, or suggestions, or need a copy of the proposed new information collection instrument with instructions or additional information, please contact the Department as noted above. Written comments and suggestions from the public and affected agencies concerning the proposed new information collection instrument are encouraged.

Your comments should address one or more of the following four points: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) how the Department could enhance the quality, utility, and clarity of the information to be collected; and (4) how the Department could minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

The new information collection instrument sponsored by the Department will apply to practitioners and has been designated as "Practitioner Registration Before the Executive Office for Immigration Review." The new collection will be administered through electronic means exclusively (Internet and/or dedicated terminals at EOIR locations).

The collected information will be used to (1) determine whether or not a responding attorney or representative, as defined by 8 CFR 1001.1(f) and (j) (as amended herein), meets the regulatory criteria to be authorized to represent aliens before EOIR (Board of Immigration Appeals or immigration judges) and (2) distribute a unique EOIR UserId and password to each registrant that will permit future access to an electronic EOIR filing system for submission and retrieval of information and documents pertaining to administrative immigration proceedings.

The Department estimates an average response time for the new information collection instrument at 10 minutes per response, with a total number of respondents at 26,000 individuals. The total public burden associated with the new collection is 4,333 burden hours.

List of Subjects

8 CFR Part 1001

Administrative practice and procedure, Aliens, Definitions, Immigration, Legal Services, Organization and functions (Government agencies).

8 CFR Part 1292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 8 CFR Parts 1001 and 1003 are proposed to be amended as follows:

PART 1001—DEFINITIONS

1. The authority citation for part 1001 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103; 6 U.S.C. 521, 522; 8 CFR part 2.

2. In § 1001.1, revise paragraphs (f) and (j) to read as follows:

§ 1001.1 Definitions.

* * * * *

(f) The term *attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law, and who is registered to practice with the Executive Office for Immigration Review pursuant to 8 CFR 1292.1.

* * * * *

(j) The term *representative* means a person who is entitled to represent others as provided in 8 CFR 1292.1(a)(2), (3), (4), (5), (6), and 1292.1(b) and who is registered to practice with the Executive Office for Immigration Review pursuant to 8 CFR 1292.1.

* * * * *

PART 1292—REPRESENTATIVES AND APPEARANCES

3. The authority citation for part 1292 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1302, 1359; 6 U.S.C. 521, 522.

4. Section 1292.1 is amended by adding a new paragraph (f) to read as follows:

§ 1292.1 Representation of others.

* * * * *

(f) *Registration requirement for attorneys and representatives.* The Director or his designee is authorized to register, and establish procedures for registering, attorneys and representatives, as defined by 8 CFR 1001.1(f) and (j), as a condition of practice before immigration judges or the Board of Immigration Appeals. Such registration procedures will include a requirement for electronic registration. The Director or his designee may administratively suspend from practice before the immigration judges and the Board any attorney or representative who fails to provide the following required registration information: practitioner name, address(es), date-of-birth, last four digits of social security number, e-mail address (if applicable) and bar admission information (if applicable). After such a system has been established, an immigration judge may, under extraordinary and rare circumstances, permit an unregistered practitioner to appear at one, and only one, hearing if the immigration judge first acquires from the attorney or representative, on the record, the required registration information. An unregistered practitioner who is permitted to appear at a hearing in such circumstances shall complete the electronic registration process immediately after the hearing at which he or she is permitted to appear.

Dated: December 22, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–32019 Filed 12–29–03; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 40

[Docket No. 03–27]

FEDERAL RESERVE SYSTEM

12 CFR Part 216

[Docket No. R–1173]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

RIN 3064–AC77

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 573

[Docket No. 2003–62]

RIN 1550–AB86

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 716

FEDERAL TRADE COMMISSION

16 CFR Part 313

RIN 3084–AA94 Project No. 034815

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AC04

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–48966, IA–2206, IC–26316; File No. S7–30–03]

RIN 3235–AJ06

Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Office of Thrift Supervision, Treasury (OTS); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Federal Trade Commission (FTC); Commodity Futures Trading Commission (CFTC); and Securities and Exchange Commission (SEC).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The OCC, OTS, Board, FDIC, NCUA, FTC, CFTC, and SEC (the Agencies) are requesting comment on whether the Agencies should consider amending the regulations that implement sections 502 and 503 of the Gramm-Leach-Bliley Act (GLB Act) to allow or require financial institutions to provide alternative types of privacy notices, such as a short privacy notice, that would be easier for consumers to understand.

DATES: Comments must be submitted on or before March 29, 2004.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, interested parties may send comments to any of the Agencies and need not send comments (or copies) to all of the Agencies. Commenters that submit trade secrets or confidential commercial or financial information may request confidential treatment of that information in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Agencies' respective regulations regarding availability of information. Because paper mail in the Washington area and at the Agencies is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title "Alternative Forms of Privacy Notices" to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

Office of the Comptroller of the Currency: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mail stop 1–5, Washington, DC 20219, Attention: Docket No. 03–27, Fax number (202) 874–4448 or Internet address: *regs.comments@occ.treas.gov.* Comments may be inspected and photocopied at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect the comments by calling (202) 874–5043.

Office of Thrift Supervision: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2003–62. *Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–62. *Facsimiles:* Send facsimile transmissions to FAX Number (202) 906–6518, Attention: No. 2003–62. *E-*

Mail: Send e-mails to *regs.comments@ots.treas.gov,* Attention: No. 2003–62 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible. *Availability of comments:* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

Board of Governors of the Federal Reserve System: Comments should refer to Docket No. R–1173 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov,* or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

Federal Deposit Insurance Corporation: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments also may be mailed electronically to *comments@fdic.gov.* Comments may be hand delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.; Fax Number (202) 898–3838. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 5 p.m. on business days.

National Credit Union Administration: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. You are encouraged to fax comments to (703) 518–6319 or email comments to *regcomments@ncua.gov.* Whatever method you choose, please send comments by one method only.

Federal Trade Commission: Comments should refer to "Alternative Forms of Privacy Notices, Project No. P034815." Comments filed in paper form should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) should be sent to: *GLBnotices@ftc.gov.* If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] Regardless of the form in which they are filed, the Commission will consider all timely comments, and will make the comments available (with confidential material redacted) for public inspection and copying at the Commission's principal office and on the Commission Web site at *www.ftc.gov.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site.

Commodity Futures Trading Commission: Comments should be directed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528 or by e-mail to *secretary@cftc.gov.*

Securities and Exchange Commission: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–30–03. This file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. All comments received will be posted on the Commission's Internet Web site (*http://www.sec.gov*) and made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.[2]

FOR FURTHER INFORMATION CONTACT:

OCC: Amy Friend, Assistant Chief Counsel, (202) 874–5200; Stephen Van Meter, Assistant Director, Community and Consumer Law Division, (202) 874–5750; or Heidi Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

OTS: Elizabeth C. Baltierra, Program Analyst (Compliance) Compliance Policy, (202) 906–6540; or Paul Robin, Special Counsel, Regulations and Legislation Division, (202) 906–6648.

Board: Thomas E. Scanlon, Counsel, Legal Division, (202) 452–3594; Minh-Duc T. Le or Ky Tran-Trong, Senior Attorneys, Division of Consumer and Community Affairs, (202) 452–3667.

FDIC: April A. Breslaw, Chief, Compliance Section, (202) 898–6609; David P. Lafleur, Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6569; Ruth R. Amberg, Senior Counsel, (202) 898–3736, or Robert A. Patrick, Counsel, Legal Division, (202) 898–3757.

NCUA: Regina Metz, Staff Attorney, (703) 518–6561, or Ross Kendall, Staff Attorney, Office of General Counsel, (703) 518–6562.

FTC: Toby Milgrom Levin, Senior Attorney, (202) 326–3713, or Loretta Garrison, Senior Attorney, (202) 326–3043.

CFTC: Laura Richards, Senior Assistant General Counsel, (202) 418–5126, or David B. Jacobsohn, Counsel, (202) 418–5161, Office of the General Counsel.

SEC: Brian Baysinger, Special Counsel, Office of Chief Counsel, Division of Market Regulation, (202) 942–0073; or Penelope Saltzman, Senior Counsel, Division of Investment Management, (202) 942–0690.

SUPPLEMENTARY INFORMATION:

I. Background

Subtitle A of title V of the GLB Act, captioned Disclosure of Nonpublic

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[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] The FDIC and SEC do not edit personal, identifying information such as names or e-mail addresses from electronic submissions. Submit only information you wish to make publicly available.

Personal Information (codified at 15 U.S.C. 6801 *et seq.*), requires each financial institution to provide a notice of its privacy policies and practices to its consumer customers. In general, the privacy notices must describe a financial institution's policies and practices with respect to disclosing nonpublic personal information about a consumer to both affiliated and nonaffiliated third parties and provide a consumer a reasonable opportunity to direct the institution not to share nonpublic personal information about the consumer with nonaffiliated third parties. The privacy notice must also provide, where applicable under the Fair Credit Reporting Act (FCRA), a notice and an opportunity for a consumer to opt out of the sharing of certain information among affiliates.[3]

The Agencies have published consistent final regulations that implement the privacy provisions of the GLB Act (collectively referred to as "the privacy rule").[4] The privacy rule requires a financial institution to include in its privacy notices specific items of information, such as the categories of nonpublic personal information that the institution collects and the categories of third parties to which the institution may disclose the information. The rule contains sample clauses that institutions may use in privacy notices. The rule does not, however, prescribe any specific format or standardized wording for these notices. Instead, institutions may design their own notices based on their individual practices provided they are consistent with the law and meet the "clear and conspicuous" standard in the rule.

Financial institutions first were required to distribute privacy notices to their customers by July 1, 2001. Many privacy notices in this initial effort were long and complex. Moreover, because the privacy rule allows institutions flexibility in designing their privacy notices, notices have been difficult to compare, even among financial institutions with identical privacy policies.

In response to broad-based concerns expressed by representatives of financial institutions, consumers, privacy advocates, and Members of Congress, the Agencies conducted a workshop in December 2001 to provide a forum to consider how financial institutions could provide more useful privacy notices to consumers. The workshop featured panel presentations by financial institutions, consumer advocates, and communications experts, and highlighted key communication principles to improve the notices. A number of institutions, particularly those with complex information-sharing practices, described the challenges they faced in explaining their practices and the choices available to consumers in a simple fashion while meeting all of the legal requirements for notice. Some institutions described results of consumer testing and efforts to make their privacy notices clearer and more useful to consumers.

A number of financial institutions have since sought to improve their notices. Additionally, some industry groups have been working to formulate short, consumer-friendly notices that could accompany the longer, legally mandated notices under the rule. The Agencies applaud the efforts by consumer advocates and industry to improve privacy notices to make them more readable and useful to consumers.

To encourage and facilitate the efforts already underway, the Agencies are considering proposing amendments to the privacy rule to provide for privacy notices that are more understandable and useful to consumers. The Agencies believe that this effort could benefit significantly from the breadth and depth of experience that many institutions have gained over the past two years in designing privacy notices, as well as the expertise of communications experts and the input of consumer organizations and comments from the public. Accordingly, the Agencies seek comment on a wide range of issues associated with the format, elements, and language used in privacy notices that would make the notices more accessible, readable, and useful. The Agencies also solicit examples of forms, model clauses, and other information, such as applicable research that has been conducted in this area, that may provide concrete illustrations or evidence to assist the Agencies in considering whether and how to develop various proposals.[5]

Some of the terms and examples used in this Advance Notice of Proposed Rulemaking (ANPR) and sample notices are not suitable for credit unions, which have an organizational and operational structure that is different than other financial institutions. For example, the term *customer*, in the context of credit unions, generally will mean *member*, and while credit unions may form subsidiaries, they do not establish corporate affiliations like other financial institutions. Nevertheless, because of the predominance of issues that are common to all types of financial institutions, the NCUA believes its participation is important at this ANPR stage, whether or not it ultimately determines to publish a separate, but consistent and comparable, rule for credit unions.

Based on the information collected for this ANPR, including information collected through independent research conducted by the Agencies, the Agencies will determine whether to propose changes to the privacy rule and, if so, will seek further public comment on specific proposals. The Agencies expect that consumer testing would be a key component in the development of any specific proposals.

II. General Considerations for Improving Privacy Notices

The Agencies are considering developing a range of alternative proposals for public comment to improve the privacy notices that financial institutions must provide to consumers under the GLB Act. The primary matter the Agencies are now considering is whether to develop a model privacy notice that would be short and simple. In order to illustrate, generally, this type of short notice and to spur specific suggestions for additional ideas that the Agencies should consider, a few of the potential alternative approaches are summarized below. These alternatives are also intended to help frame a number of important questions beyond the design of a short notice, such as whether all financial institutions should be required to use the same form of notice and whether a short notice could be a substitute for or should be a supplement to a longer, more detailed notice. The sample notices included in the appendices do not reflect a determination by the Agencies that any of these notices would be satisfactory under the privacy rule or for any particular financial institution. The Agencies note that these alternatives have not been developed as a result of specific research or consumer testing and are not being proposed for adoption. The Agencies specifically invite suggestions for other approaches to improve the readability and usefulness of privacy notices as set out in section III.

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[3] 15 U.S.C. 1681a(d)(2)(A)(iii) (FCRA); 15 U.S.C. 6803(b)(4) (GLB Act).

[4] 12 CFR part 40 (OCC); 12 CFR part 216 (Board); 12 CFR part 332 (FDIC); 12 CFR part 573 (OTS); 12 CFR part 716 (NCUA); 16 CFR part 313 (FTC); 17 CFR part 160 (CFTC); and 17 CFR part 248 (SEC).

[5] As stated above, the Agencies will jointly review all of the comments submitted, including those comments submitted to only one agency. Commentors may request confidential treatment of any trade secrets and commercial or financial information that is privileged or confidential information provided to the Agencies in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Agencies' respective regulations regarding availability of information. 12 CFR part 4, subparts B and C (OCC); 12 CFR part 505 (OTS); 12 CFR part 261, subparts A and B (Board); 12 CFR part 309 (FDIC); 12 CFR 792.29 (NCUA); 16 CFR 4.10 (FTC); 17 CFR 145.9 (Petition for Confidential Treatment) (CFTC); 17 CFR part 200, subpart D (SEC).

As an initial matter, the Agencies request comment on whether to pursue the development of a short privacy notice. The Agencies note that, should they do so, there are several ways the Agencies could exercise their authority for developing a short notice, and the Agencies have not settled on any single approach. The Agencies could, for example, explore whether an interagency interpretation of the privacy rule, perhaps with model forms or language, would promote the development of privacy notices that are more understandable and useful to consumers. Similarly, the Agencies could develop a set of guidelines or best practices that would enable financial institutions to improve their privacy notices, or the Agencies could propose amendments to the privacy rule. The Agencies request comment on what approaches would be most useful to consumers while taking into consideration the burden on financial institutions.

The Agencies have identified the following approaches to simplify the privacy notices for consideration by commenters. One approach would be for the Agencies to develop a specific format and standardized language for a short notice that highlights key elements of an institution's privacy policy. For instance, a short notice could describe the types of nonpublic personal information an institution collects, the institution's policies for sharing that information with third parties, and a description of how consumers can opt out of information sharing. Like a nutrition label, a standardized notice would permit consumers easily to compare these elements of the privacy policies of different institutions and to become familiar with the standardized format and text. This type of form could include a description of how the consumer could obtain a longer, detailed privacy notice or be provided in combination with a longer, detailed privacy notice. An example illustrating this kind of format and language for a short notice appears in Appendix A.

In a similar approach, the Agencies could develop a short notice with a specific format and standardized language that would be designed to address all of the relevant elements listed in the GLB Act and the privacy rule. Such a notice would permit consumers to compare all relevant elements listed under federal law of the privacy policies of different institutions. However, since information sharing practices may vary, a financial institution may need flexibility in describing the categories of affiliated and nonaffiliated parties to whom it discloses nonpublic personal information. An example illustrating this kind of format and language appears in Appendix B and the categories of parties that may be modified by a financial institution appear in brackets.

Another approach to simplifying privacy notices would involve establishing a standardized format for privacy notices, but allowing financial institutions to provide their own descriptions of their privacy policies and practices. This potential approach may simplify privacy notices and make them more accessible for consumers, yet would permit each financial institution to tailor the language in the notice to suit its own privacy policies and practices. An example of a standardized format is included in Appendix C. Alternatively, the Agencies could prescribe standardized language that a financial institution would use to design its own notice without a format specified by the privacy rule. Standardized language may facilitate comparisons among financial institutions' policies and describe key consumer rights so that consumers could become familiar with circumstances under which information about them may be disclosed to third parties.

Another approach would be to focus attention on the consumer's right to opt out of disclosures available under the institution's privacy policies. For example, the opt-out notice could be provided by itself, with a statement that the institution's privacy policy is available on request. Alternatively, a description of the consumer's opt out right and how it could be exercised could be provided on the first page of a financial institution's privacy notice. The Agencies could prescribe the language, and its placement so as to ensure prominence and readability, but not require any further standardization of privacy notices. An example of this type of notice is included in Appendix D.

Detailed descriptions of ways to improve privacy notices, such as examples of language that may be used, illustrations of formats, and references to the particular requirements of the privacy rule that may need to be amended, will assist the Agencies in learning about and evaluating particular proposals. This ANPR outlines several potential approaches. The Agencies invite comment on the advantages and disadvantages of these approaches. Also, the Agencies request comment on any other approach the Agencies should consider.

III. Request for Comments

Any change in the privacy rule to provide for short notices raises a number of issues. In addition to comment on the various approaches discussed above or illustrated in the appendices, the Agencies request comment and supporting research and documentation on other matters that may be raised by the implementation of a short privacy notice. In particular, the Agencies invite comment on the following questions and supporting documentation where available:

A. Goals of a Privacy Notice

1. What should be the goals of a privacy notice? What goals are most important?

2. Should the Agencies pursue the development of a short notice to achieve these goals?

3. Are there any special issues for the Agencies to consider in developing a short privacy notice that may arise from potential differences between federal and state law requirements?

4. In what ways should a privacy notice be useful to a consumer? Please identify those ways that are the most or least important.

a. To permit ready comparison among different institutions' privacy policies?

b. To provide sufficient information to make an informed decision about whether to opt out?

c. To highlight the consumer's right to opt out?

d. To provide convenient mechanisms for the consumer to opt out?

e. To provide a mechanism for the consumer to opt out in the same medium used to provide the privacy notice?

f. Other ways?

B. Elements of a Privacy Notice

1. What are the key elements of a privacy policy that a short notice should contain?

2. Are these key elements the same from the perspective of institutions and consumers? If not, explain the differences and why.

3. Is there an optimal number of elements (beyond which would be too many) to include in a short notice?

4. Should a short privacy notice contain, at a minimum, all of the relevant elements listed in the GLB Act and the privacy rule? If not, should it include a statement advising the consumer that an institution's complete privacy policy will be provided upon request?

5. Should certain elements, such as a description of a consumer's opt-out rights (if applicable), be given prominence or be presented in a certain order?

6. Should statements describing information sharing practices not subject to a consumer's right to opt-out, such as whether a financial institution discloses information to nonaffiliated financial institutions under joint marketing agreements for financial products or services, be highlighted in the short notice?

C. Language of a Privacy Notice

1. Are there particular "privacy" terms or words that consumers readily understand that should be included in a short notice? Should any terms or language currently used in notices be avoided?

2. Should a financial institution be required to use standardized clauses in a short notice?

3. Rather than using standardized language, should a financial institution be permitted to develop its own language in a short notice so long as the short notice incorporates specified items of information?

D. Format of a Privacy Notice

1. Should the Agencies develop a standardized graphic design for a short notice that financial institutions would use? If so, what graphic design would be most suitable for the format of a short notice?

2. Based on experiences with the current privacy notices or tests that have been conducted in this area, what alternative forms of notice are likely to be useful to consumers and/or to financial institutions?

3. Is there a suggested length for a short privacy notice? Is there a suggested length for phrases or sentences within a short notice?

4. Are there suggestions for overall design of the notice, including layout, use of color, graphic devices, font(s), and size(s) of the text in the notice?

5. If a financial institution does not disclose information to third parties that would be subject to a consumer's right to opt out (under either the FCRA or the GLB Act), what form should the privacy notice take?

6. Should an institution be allowed to modify its short privacy notice to include elements that may be required under state laws? If so, then how can a short notice be designed to include those elements?

E. Mandatory or Permissible Aspects of a Privacy Notice

1. Should use of a short notice be mandatory for all financial institutions?

2. Should use of standardized language and/or format for a short notice be mandatory for all financial institutions? Or should each institution be permitted to create its own short notice following agency guidelines?

3. If a short notice is standardized, should only part(s) of the notice be mandatory, and, if so, what part(s)? Or should all of a standardized short notice be mandatory?

4. If use of standardized part(s), such as standardized clauses, is not required, should the Agencies create a safe harbor from administrative enforcement for financial institutions that use the standardized parts in their notices (or a whole, standardized notice)?

5. Should an institution be required or permitted to deliver both a short notice and a long notice?

6. Financial institutions that generally do not share information with third parties—such as those that do not have any affiliates and do not share information in a manner that is subject to a consumer's right to opt out under the FCRA or the GLB Act and do not engage in joint marketing agreements—currently may have abbreviated and simple notices. If a short notice is mandated, should the Agencies make an exception to allow these institutions to continue to use the simple, abbreviated notices they currently use? Alternatively, should the Agencies prescribe a special short notice for these institutions to use?

7. Some financial institutions offer consumers choices to opt out of information-sharing arrangements that are not mandated by either the FCRA or the GLB Act, such as the ability to opt out of an institution's own marketing or joint marketing arrangements with nonaffiliated financial institutions for financial products or services. If a short notice is mandated, should the Agencies allow these institutions to include in the short notice information about these additional choices to opt out?

8. Should the Agencies allow financial institutions to include other information that relates to their privacy policies and practices in their short notices? For instance, should a financial institution that shares information with affiliates for marketing purposes only if a customer opts in to the sharing be permitted to include this information in a short notice?

F. Costs and Benefits of a Short Notice

With respect to consumers or financial institutions, or both:

1. What are the costs and benefits of providing a short notice and how do they compare with the requirements under the current privacy rule?

2. How, if at all, do the costs and benefits of a short notice depend on:

a. Whether the notice is mandatory or permissible?

b. Whether the format of the notice is standardized? On whether the language is standardized?

c. Whether the use of a short notice requires financial institutions to make supplemental privacy information available upon request?

G. Additional Information

1. Are there any models or samples of notices that work particularly well with consumers that the Agencies should consider? Provide any samples and research or supporting documentation.

2. Provide the results and supporting research or documentation of any consumer testing that has been conducted in this area.

3. What processes or types of consumer testing should the Agencies use to evaluate standardized terms or language, formats for notices, and short notices?

4. If the Agencies adopt an alternative form of notice, should consumer education accompany introduction of the new type of notice? If so, what type of consumer education would be effective?

IV. Conclusion

In the event that the Agencies decide to proceed, the Agencies expect to do so through proposed rulemaking. In addition to evaluating the comments submitted in response to this ANPR, the Agencies contemplate that consumer testing would be an important element of the development of any alternative type of privacy notice.

By Order of the Board of Directors.

Dated at Washington, DC, this 2nd day of December, 2003. Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By the National Credit Union Administration Board on December 18, 2003.

Becky Baker,

Secretary of the Board.

Dated: December 22, 2003.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

Dated: December 8, 2003.

By the Office of Thrift Supervision,

James E. Gilleran,

Director.

Dated: December 18, 2003.

Jean A. Webb,

Secretary of the Commodity Futures Trading Commission.

Dated: November 14, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

Dated: December 17, 2003.

By Direction of the Commission.

Donald S. Clark,

Secretary.

By order of the Board of Governors of the Federal Reserve System, December 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P; 6750–01–P; 6351–01–P; 8010–01–P

Appendix A

Important Privacy Information

WE MAY COLLECT INFORMATION ABOUT YOU FROM—	
• Your account, including your transactions and payment history	YES
• Applications you file with us	YES
• Credit reports we obtain about you	YES
• Other sources as described in our complete privacy notice	YES
We maintain physical, electronic, and procedural safeguards that comply with federal standards to protect your personal information.	

WE USE INFORMATION ABOUT YOU TO OFFER OUR PRODUCTS AND SERVICES TO YOU	YES

WE SHARE INFORMATION ABOUT YOU WITH—	
• **Companies in our corporate family** so that they may offer their products and services to you or for other purposes.	YES
(1) We share information from your credit reports, financial or personal information from your applications, or information from other sources as described in our complete privacy notice.	YES
If you wish us to stop sharing this information, follow the instruction in the attached opt out form. (2) We share identifying information, such as your name and address, or information about our transactions or experiences with you such as your payment history with us.	YES
• **Unrelated companies or persons** so that they may offer their products and services to you or for other purposes. *If you wish us to stop this information sharing, follow the instruction in the attached opt out form.*	YES
• **Unrelated financial companies** that work with us to jointly offer you additional financial products and services.	YES
• **Any company or person** under limited circumstances specified by law, such as to process your transactions, prevent fraud, or respond to judicial process.	YES

Appendix A

YOU CAN OBTAIN A COPY OF OUR COMPLETE PRIVACY NOTICE by calling us toll-free at 877-###-#### or contacting us at www.websiteaddress.com, or writing to us at Financial Institution, 2003 Opt Out Hwy, Elgin, TX 75258.

Please cut here.

OPT OUT SELECTIONS

If you wish us to stop sharing information you can tell us by:

- calling us toll-free at 877-###-#### or
- contacting us at www.websiteaddress.com; or
- providing us with your name,

  ____

  and your address,

  ____

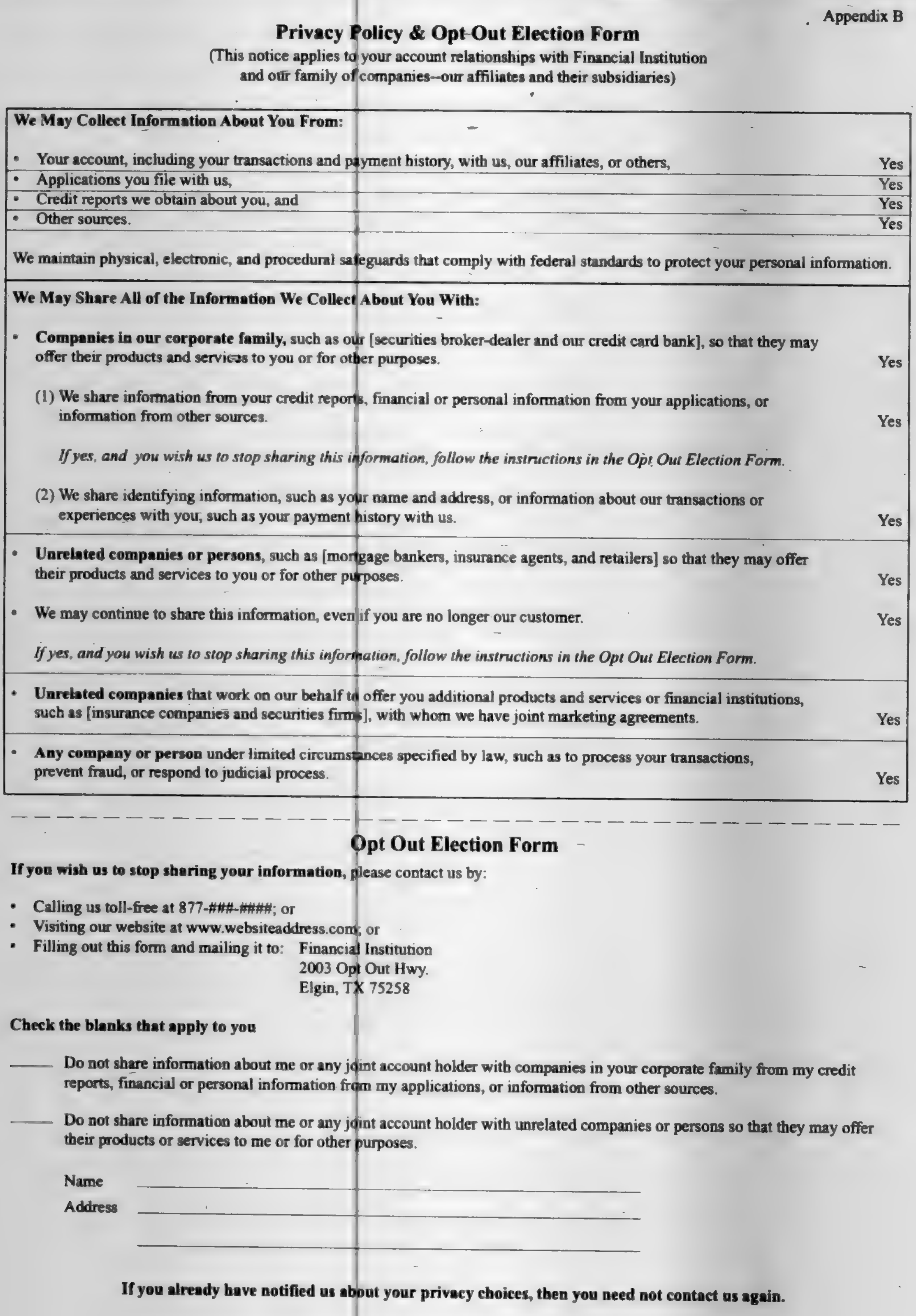
  checking the blanks that apply to you, and mailing this form to us at:

  Financial Institution
  2003 Opt Out Hwy.
  Elgin, TX 75258

  ___ Do not share information about me with companies in your corporate family from my credit reports, financial or personal information from my applications, or information from other sources.

  ___ Do not share information about me with unrelated companies or persons so that they may offer their products or services to me or for other purposes.

IF YOU ALREADY HAVE NOTIFIED US ABOUT YOUR PRIVACY CHOICES, THEN YOU NEED NOT CONTACT US AGAIN.



Appendix B

Privacy Policy & Opt-Out Election Form

(This notice applies to your account relationships with Financial Institution
and our family of companies--our affiliates and their subsidiaries)

We May Collect Information About You From:	
• Your account, including your transactions and payment history, with us, our affiliates, or others,	Yes
• Applications you file with us,	Yes
• Credit reports we obtain about you, and	Yes
• Other sources.	Yes
We maintain physical, electronic, and procedural safeguards that comply with federal standards to protect your personal information.	
We May Share All of the Information We Collect About You With:	
• **Companies in our corporate family,** such as our [securities broker-dealer and our credit card bank], so that they may offer their products and services to you or for other purposes.	Yes
(1) We share information from your credit reports, financial or personal information from your applications, or information from other sources.	Yes
If yes, and you wish us to stop sharing this information, follow the instructions in the Opt Out Election Form.	
(2) We share identifying information, such as your name and address, or information about our transactions or experiences with you, such as your payment history with us.	Yes
• **Unrelated companies or persons**, such as [mortgage bankers, insurance agents, and retailers] so that they may offer their products and services to you or for other purposes.	Yes
• We may continue to share this information, even if you are no longer our customer.	Yes
If yes, and you wish us to stop sharing this information, follow the instructions in the Opt Out Election Form.	
• **Unrelated companies** that work on our behalf to offer you additional products and services or financial institutions, such as [insurance companies and securities firms], with whom we have joint marketing agreements.	Yes
• **Any company or person** under limited circumstances specified by law, such as to process your transactions, prevent fraud, or respond to judicial process.	Yes

Opt Out Election Form

If you wish us to stop sharing your information, please contact us by:

- Calling us toll-free at 877-###-####; or
- Visiting our website at www.websiteaddress.com; or
- Filling out this form and mailing it to: Financial Institution
  2003 Opt Out Hwy.
  Elgin, TX 75258

Check the blanks that apply to you

_____ Do not share information about me or any joint account holder with companies in your corporate family from my credit reports, financial or personal information from my applications, or information from other sources.

_____ Do not share information about me or any joint account holder with unrelated companies or persons so that they may offer their products or services to me or for other purposes.

Name ______________________________

Address ______________________________

____

If you already have notified us about your privacy choices, then you need not contact us again.

APPENDIX C

PRIVACY NOTICE

WHO WE ARE
[Describe here the institutions to whom this privacy notice applies.]

INFORMATION COLLECTION
[Describe here the information you collect.]

INFORMATION SHARED
[Describe here the information you disclose to third parties.]

YOUR PREFERENCES
[Describe here the choices that a consumer has, if any, to opt out of disclosures.]

IMPORTANT INFORMATION
[Describe here other information that is important to your consumers.]

HOW TO CONTACT US
[Describe here how a consumer can obtain a copy of your complete privacy policy.]

INFORMATION SHARING OPT-OUT FORM

Your Privacy Choices

You may instruct us not to share your personal information with our related companies and other nonrelated companies for marketing purposes. If you choose to tell us that you do not want us to share your personal information, please check the appropriate box or boxes below, fill in the requested identifying information, and send this completed form to the address below.

☐ Limit the information about me that you share with nonrelated companies.

☐ Limit the information about me that you share with related companies from my credit reports, financial or personal information from my applications, or information from other sources.

Your Name

Your Address

City State Zip

Account Type Account Number

If you checked any of the boxes above, please mail this form in a stamped envelope to

Institution name
[Address]

[You may also inform us of your privacy choices by calling us toll-free at 800-XXX-XXXX or by contacting us at our website address which is ______.]

Please read the rest of this notice for an explanation of our information sharing practices.

[FR Doc. 03–31992 Filed 12–29–03; 8:45 am]

BILLING CODE 4810–33–C; 6210–01–C; 6714–01–C; 6720–01–C; 7535–01–C; 6750–01–C; 6351–01–C; 8010–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–39–AD]

RIN 2120–AA64

Airworthiness Directives; GARMIN International Inc. GTX 330 Mode S Transponders and GTX 330D Diversity Mode S Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain GARMIN International Inc. GTX 330/GTX 330D Mode S transponders. This proposed AD would require you to install GTX 330/330D Software Upgrade Version 3.03. This proposed AD is the result of observations that the GTX 330 and GTX 330D may detect, from other aircraft, the S1 (suppression) interrogating pulse below the Minimum Trigger Level (MTL) and, in some circumstances, not reply. The GTX 330/330D should still reply even if it detects

S1 interrogating pulses below the MTL. We are issuing this proposed AD to prevent interrogating aircraft from possibly receiving inaccurate replies due to suppression from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the MTL. The inaccurate replies could result in reduced vertical separation or unsafe TCAS resolution advisories.

DATES: We must receive any comments on this proposed AD by February 3, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–39–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.*

Comments sent electronically must contain "Docket No. 2003–CE–39–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from GARMIN International Inc., 1200 East 151st Street, Olathe, KS 66062, 913–397–8200.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–39–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4134; facsimile: 316–946–4107; email address: *roger.souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–39–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

The GTX 330/GTX 330D may detect from other aircraft the S1 (suppression) interrogating pulse below the MTL and, in some circumstances, does not reply. The GTX 330/330D should still reply even if it detects S1 interrogating pulses below the MTL. GARMIN International Inc. suspected the suppression problem after observation between GARMIN company aircraft that were equipped with the GTX 330 and Ryan Traffic and Collision Alert Device (TCAD). Engineering bench tests and test flights confirmed that this suppression problem existed.

What Are The Consequences If the Condition Is Not Corrected?

Interrogating aircraft could possibly receive inaccurate replies due to suppression from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the MTL. The inaccurate replies could result in reduced vertical separation or unsafe TCAS resolution advisories.

Is There Service Information That Applies To This Subject?

GARMIN International Inc. has issued the Software Service Bulletin No.: 0304, Rev B, dated June 12, 2003.

What Are the Provisions of This Service Information?

The service bulletin includes:

—Modification instructions for upgrading to software version 3.03 and

—A listing of parts required to perform the modification.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 1300 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

GARMIN International Inc. will cover all workhours and parts cost associated with this modification under warranty. The proposed AD would not impose any cost upon the owners/operators of any airplane that has the GTX 330/330D Software Upgrade to Version 3.03 installed.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is within 30 days after the effective date of the AD.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-In-Service (TIS)?

The unsafe condition exists or could develop on airplanes equipped with the affected equipment regardless of airplane operation. For example, the unsafe condition has the same chance of occurring on an airplane with 50 hours TIS as it does on one with 5,000 hours TIS. Therefore, we are presenting the compliance time of the proposed AD in calendar time instead of hours TIS.

Regulatory Findings

Would This Proposed AD Impact Various Entities?

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–39–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

GARMIN International Inc.: Docket No. 2003–CE–39–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by February 3, 2004.

What Other ADs Are Affected By This Action?

(b) None.

What Products Are Affected by This AD?

(c) This AD affects GARMIN International Inc. GTX 330/330D Mode S transponders that are installed on, but not limited to, the following airplanes, certificated in any category:

Manufacturer	Model
(1) Aermacchi S.p.A.	S.205–18/F, S.205–18/R, S.205–20/R, S.205–22/R, S208, S.208A, F.260, F.260B, F.260C, F.260D, F.260E, F.260F, S.211A.
(2) Aeronautica Macchi S.p.A.	AL 60, AL 60–B, AL 60–F5, AL 60–C5, AM–3.
(3) Aerostar Aircraft Corporation	PA–60–600 (Aerostar 600), PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), PA–60–700P (Aerostar 700P), 360, 400.
(4) Alexandria Aircraft, LLC	14–19, 14–19–2, 14–19–3, 14–19–3A, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, 17–31ATC.
(5) Alliance Aircraft Group LLC	15A, 20, H–250, H–295 (USAFU–10D), HT–295, H391 (USAFYL–24), H391B, H–395 (USAFL–28A or U–10B), H–395A, H–700, H–800, HST–550, HST–550A (USAF AU–24A), 500.
(6) American Champion Aircraft Corp.	402, 7GCA, 7GCB, 7KC, 7GCBA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, 8GCBC.
(7) Sky International Inc.	A–1, A–1A, A–1B, S–1S, S–1T, S–2, S–2A, S–2S, S–2C.
(8) B–N Group Ltd.	BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–8, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, N–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN–2A MK.III, BN2A MK. III–2, BN2A MK. 111–3.
(9) Bellanca	14–13, 14–13–2, 14–13–3, 14–13–3W.
(10) Bombardier Inc.	(Otter) DHC–3, DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300.

Manufacturer	Model
(11) Cessna Aircraft	170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F (USAF T–41A), 172G, 172H (USAF T041A), 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172R, 172S, 172RG, P172D, R172E (USAF T–41 B) (USAF T–41 C AND D), R172F (USAF T–41 D), R175G, R172H (USAF T–41 D), R172J, R172K, 175, 175A, 175B, 175C, 177, 177A, 177B, 177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182S, 182T, R182, T182, TR182, T182T, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 190, (LC–126A, B, C) 195, 195A, 195B, 210, 210A, 210B, 210C, 210D, 210E, 210F, T210F, 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, T210M, 210N, P210N, T210N, 210R, P210R, T210R, 210–5 (205), 210–5A (205A), 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TU206D, TU206E, TU206F, TU206G, 206H, T206H, 207, 207A, T207, T207A, 208, 208A, 208B, 310, 310A (USAF U–3A), 310B, 310C, 310D, 310E (USAF U–3B), 310F, 310G, 310H, E310H, 310I, 310J, 310J–1, E310J, 310K, 310L, 310N, 310P, T310P, 310Q, T310Q, 310R, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320–1, 335, 340, 340A, 336, 337, 337A (USAF 02B), 337B, T337B, 337C, 337E, T337E, T337C, 337D, T337D, M337B (USAF 02A), 337F, T337F, T337G, 337G, 337H, P337H, T337H, T337H–SP, 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425, 404, 406, 441.
(12) Cirrus Design Corporation	SR20, SR22.
(13) Commander Aircraft Company	112, 112TC, 112B, 112TCA, 114, 114A, 114B, 114TC.
(14) de Havilland Inc.	DHC–2 Mk. I, DHC–2 Mk.II, DHC–2 Mk. III.
(15) Dynac Aerospace Corporation	(Volaire) 10, (Volaire) 10A, (Aero Commander) 100, (Aero Commander) 100A, (Aero Commander) 100–180.
(16) Diamond Aircraft Industries	DA–20 A1, DA20–C1, DA 40.
(17) Empressa Brasileira de Aeronautica S.A. EMBRAER	EMB–110P1, EMB–110P2.
(18) Extra Flugzeugbau Gmbh	A300, EA300L, EA300S, EA300/200, EA–400.
(19) Fairchild Aircraft Corporation	SA26–T, SA26–AT, SA226–T, SA226–AT, SA226–T(B), SA227–AT, SA227–TT, SA226–TC, SA227–AC (C–26A), SA227–CC, SA227–DC (C–26B).
(20) Global Amphibians, LLC	Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, Lake Model 250.
(21) Grob-Werke	G115, G115A, G115B, G115C, G115C2, G115D, G115D2, G115EG, G120A.
(22) Lancair Company	LC40–550FG.
(23) LanShe Aerospace, LLC	MAC–125C, MAC–145, MAC–145A, MAC–145B.
(24) Learjet Inc.	23.
(25) Lockheed Aircraft Corporation	18.
(26) Luscombe Aircraft Corporation	11A, 11E.
(27) Maule Aerospace Technology, Inc.	Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4180C, M–4–180S, M–4–180T, M–4–210, M–4–210C, M–4–210S, M–4–210T, M–4–220, M–4–220S, M–4–220T, M–5–180C, M–5–200, M–5–210C, M–5–210TC, M–5–220C, M–5–235C, M–6–180, M–6–235, M–7–235, MX–7–235, MX–7–180, MX–7–420, MXT–7–180, MT–7–235, M–8–235, MX–7–160, MXT–7–160, MX–7–180A, MXT–7–180A, MX–7–180B, M–7–235B, M–7–235A, M–7–235C, MX–7–180C, M–7–260, MT–7–260, M–7–260C, M–7–420AC, MX–7–160C, MX–7–180AC, M–7–420A, MT–7–420.
(28) Mitsubishi Heavy Industries, Ltd	MU–2B–25, MU–2B–35, MU–2B–26, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–2B–40, MU–2B–60, MU–2B, MU–2B–20, MU–2B–20, MU–2B–15.
(29) Mooney Airplane Company, Inc	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, M22.
(30) Moravan a.s.	Z–242L, Z–143L.
(31) Navion Aircraft Company, Ltd.	NAVION, Navion (L–17A), Navion (L17B), Navion (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, Navion H.

Manufacturer	Model
(32) New Piper Aircraft, Inc	PA–12, PA–12S, PA–18, PA–18S, PA–18 "105" (Special), PA–18S "105" (Special), PA–18A, PA–18 "125" (Army L–21A), PA–18S "125," PA–18AS "125'," PA–18 "135" (Army L–21B), PA–18A "135," PA–18S "135," PA–18 "150," PA–18A "150," PA–18S "150," PA–18AS "150," PA–19 (Army L–18B), PA–19S, PA–20, PA–20S, PA–20 "115," PA–20S "115," PA–20, "135," PA–20S "135," PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160, PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–24, PA–24–250, PA–24–260, PA–24–400, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–235, PA–28S–160, PA-28R–180, PA–28S–180, PA–28–181, PA–28R–200, PA-28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–28–201T, PA–28–236, PA–30, PA–39, PA–40, PA-31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–31P-350, PA–32–260, PA–32–300, PA–32S–300, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32R–301 (SP), PA-32R–301 (HP), PA–32R–301T, PA–32–301, PA–32–301T, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42-720, PA–42–1000, PA–42–720R, PA–44–180, PA–44–180T, PA–46–310P, PA–46–350P, PA–46–500TP
(33) Ostmecklenburgische Flugzeugbau GmgH	OMF–100–160.
(34) Piaggio Aero Industries S.p.A.	P–180.
(35) Pilatus Aircraft Ltd.	PILATUS PC–12, PILATUS PC–12/45, PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PA–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–7.
(36) Prop-Jets, Inc.	200, 200A, 200B, 200C, 200D, 400.
(37) Panstwowe Zakladv Lotnicze (PZL)	PZL–104 WILGA 80, PZL–104M WILGA 2000, PZL–WARSZAWA, PZL–KOLIBER 150A, PZL–KOLIBER 160A.
(38) PZL WSK/Mielec Obrsk	PZL M20 03, PZL M26 01.
(39) Raytheon	35–33, 35-A33, 35-B33, 35-C33, 35-C33A, E33, E33A, E33C, F33, F33A, F33C, G33, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 36, A36, A36TC, B36TC, 35, A35, B35, C35, D35, E35, F35, G35, 35R, F90, 76, 200, 200C, 200CT, 200T, A200, B200, B200C, B200CT, B200T, 300, 300LW, B300, B300C, 1900, 1900C, 1900D, A100–1 (U–21J), A200 (C–12A), A200 (C–12C), A200C (UC–12B), A200CT (C–12D), A200CT (FWC–12D), A200CT (RC–12D), A200CT (C–12F), A200CT (RC–12G), A200CT (RC–12H), A200CT (RC–12K), A200CT (RC–12P), A200CT (RC–12Q), B200C (C–12F), B200C (UC–12F), B200C (UC–12M), B200C (C–12R), 1900C (C–12J), 65, A65, A65–8200, 65–80, 65–A80, 65A80–8800, 65–B80, 65–88, 65–A90, 70, B90, C90, C90A, E90, H90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, 95, B95, B95A, D95A, E95, 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B (T–42A), 95–C55, 95–C55A, D55, D55A, E55, E55A, 56TC, A56TC, 58, 58A, 58P, 58PA, 58TC, 58TCA, 99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U–21F), A100A, A100C, B100, 2000, 3000, 390, 19A, B19, M19A, 23, A23, A23A, A23–19, A23–24, B23, C23, A24, A24R, B24R, C24R, 60, A60, B60, 18D, A18A, A18D, S18D, SA18A, SA18D, 3N, 3NM, 3TM, JRB–6, D18C, D18S, E18S, RC–45J (SNB–5P), E18S–9700, G18S, H18, C–45G, TC–45G, C–45H, TC–45H, TC–45J, UC–45J (SNB–5), 50 (L–23A), B50 (L–23B), C50, D50 (L–23E), D50A, D50B, D50C, D50E–5990, E50 (L–23D, RL–23D), F50, G50, H50, J50, 45 (YT–34), A45 (T–34A or B–45), D45 (T–34B).
(40) Rockwell International Corporation	BC–1A, AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNF–6), SNJ–7, T–6G, NOMAD NA–260.
(41) Short Brothers & Harland Ltd.	SC–7 Series 2, SC–7 Series 3.
(42) Slingsby Aviation Ltd	T67M260, T67M260–T3A.
(43) SOCATA—Group Aerospatiale	TB9, TB10, TB20, TB21, TB200, TBM 700, M.S. 760, M.S. 760 A, M.S. 760 B, Rallye 100S, Rallye 150ST, Rallye 150T, Rallye 235E, Rallye 235C, MS 880B, MS 885, MS 894A, MS 893A, MS 892A–150, MS 892E–150, MS 893E, MS 894E, GA–7.
(44) Tiger Aircraft LLC	AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, AA–5B, AG–5B.
(45) Twin Commander Aircraft Corporation	500, 500–A, 500–B, 500–U, 500–S, 520, 560, 560–A, 560–E, 560F, 680, 680E, 680F, 680FL, 680FL(P), 680T, 680V, 680W, 681, 685, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B, 720, 700.
(46) Univair Aircraft Corporation	108, 108–1, 108–2, 108–3, 108–5.
(47) Vulcanair S.p.A.	P68, P68B, P68C, P68C–TC, P68 "Observer," P68 "Observer 2," P68TC "Observer," AP68TP300 "Spartacus," AP68TP 600 "Viator."
(48) Zenair Ltd.	CH2000.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to prevent interrogating aircraft from possibly receiving inaccurate replies, due to suppression, from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the Minimum Trigger Level (MTL). The inaccurate replies could result in reduced vertical separation or unsafe TCAS resolution advisories.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Action	Compliance	Procedures
Install GTX 330/330D software upgrade to version 3.03.	Install the software upgrade within 30 days after the effective date of this AD, unless already accomplished.	Follow GARMIN International Inc. Service Bulletin No.: 0304, Rev B, dated June 12, 2003.

How Do I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from GARMIN International Inc. 1200 East 151st Street, Olathe, KS 66062. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 19, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31978 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 600

[Docket No. 2003N–0528]

Revision of the Requirements For Spore-Forming Microorganisms; Companion to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by providing options to the existing requirement for separate, dedicated facilities and equipment for work with spore-forming microorganisms. FDA is proposing this amendment due to advances in facility, system, and equipment design and in sterilization technologies that would allow work with spore-forming microorganisms to be performed in multiproduct manufacturing areas. We are amending the regulations because the existing requirement for always using separate, dedicated facilities and equipment for work with spore forming microorganisms is no longer necessary. We are taking this action as part of our continuing effort to reduce the burden of unnecessary regulations on industry and to revise outdated regulations without diminishing public health protection. This proposed rule is a companion document to the direct final rule published elsewhere in this issue of the **Federal Register**. We are taking this action because the proposed changes are noncontroversial and we do not anticipate any significant adverse comments. If we receive any significant adverse comments that warrant terminating the direct final rule, we will consider such comments on the proposed rule in developing the final rule.

DATES: Submit written comments on or before March 15, 2004.

ADDRESSES: Submit written or electronic comments on the proposed rule to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule receives any adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion rule will also be considered as comments regarding the direct final rule. We are publishing the direct final rule because the rule contains noncontroversial changes, and we do not anticipate that it will receive any significant adverse comments.

An adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not subjects of significant adverse comments.

If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, we will publish a confirmation document, before the effective date of the direct final rule, confirming that the direct final rule will go into effect on June 1, 2004. Additional information about direct rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

Spore-forming microorganisms are used in the production of certain biological products. These microorganisms may be used as source material for further manufacture into final products used in the prevention, treatment or cure of a disease or condition of human beings. By their very nature, these microorganisms pose a great challenge to manufacturers. Bacteria produce spores as a means to survive adverse environmental conditions, while some fungi use them as a form of reproduction. Spores show great resistance to high temperature, freezing, dryness, antibacterial agents, radiation, and toxic chemicals. Under favorable conditions, spores can germinate into actively growing bacteria and fungi. Many of these spore-forming microorganisms are pathogenic to humans and have been implicated in causing morbidity and mortality. To ensure the safety of a biological product manufactured in a facility in which spore-forming microorganisms are present, these microorganisms must be kept under tight control to avoid the release of spores into the manufacturing atmosphere and potential contamination of other products.

Due to the unique survival properties of spore-forming microorganisms, current FDA regulations require that work with these microorganisms be conducted separately from manufacturing operations for other products. (Currently, FDA regulations use the term "spore-bearing" microorganisms. In this rulemaking, we are proposing to revise these regulations to use the term "spore-forming" because it is a more commonly used term. For the purposes of these regulations, spore-forming microorganisms include both the spore and vegetative cells.) Under § 600.11(e)(3) (21 CFR 600.11(e)(3)), all work with spore-forming microorganisms must be performed in an entirely separate building, or in a completely walled-off portion of a building if that portion is constructed so as to prevent contamination of other areas and if entrances to such portion are independent of the remainder of the building. Section 600.11(e)(3) further requires that all vessels, apparatus, and equipment used for spore-forming microorganisms be permanently identified and reserved exclusively for use with those organisms. This provision also states that any materials destined for further manufacturing may be removed from this area only under conditions that will prevent the introduction of spores into other manufacturing areas.

In accordance with Executive Order 12866, which directs Federal agencies to review their regulations and eliminate or modify those that are outdated or otherwise in need of reform, we are revising § 600.11(e)(3) to allow greater manufacturing flexibility regarding work with spore-forming microorganisms. The revisions provide that work with spore-forming microorganisms may be performed in multiproduct manufacturing areas when appropriate controls to prevent contamination of other products and areas exist. We recognize that advances in facility, system, and equipment design and in sterilization technologies have increased the ability of manufacturers to control and analyze the manufacture of biological products and the equipment used in their manufacture. The use of appropriate controls and procedures and processes provide an adequate degree of confidence that a product meets the expected levels of safety and purity. Areas of special concern, such as containment, contamination with pathogenic and/or toxic agents, sterilization, and disinfection can be addressed using currently available and required procedures and processes.

This proposed rule does not apply to spore-forming microorganisms used for testing of biological products to determine the growth-promoting qualities of test media used to ensure the sterility of each lot of product or as biological indicators for validation of steam sterilization cycles. The rule also does not change the requirements for those products set forth in § 600.11(e)(2) and 21 CFR 610.12.

II. Highlights of the Proposed Rule

We are proposing to amend our regulations involving spore-forming microorganisms as set forth below.

A. Work With Spore-Forming Microorganisms

We are revising § 600.11(e)(3) to provide greater flexibility in production facilities and procedures for work with spore-forming microorganisms.

Revised § 600.11(e)(3)(i) states that manufacturing processes using spore-forming microorganisms conducted in a multiproduct manufacturing site must be performed under appropriate controls to prevent contamination of other products and areas within the site. We regard a manufacturing site as an entire complex of buildings, connected or separate, that belongs to one entity engaged in the manufacture of any one product or multiple products. An area within a manufacturing site is a specified location within a facility (physical structure) associated with the manufacturing of any one product or multiple products. Revised § 600.11(e)(3)(i) further states that prevention of spore contamination can be achieved by using a separate, dedicated building or, if manufacturing is conducted in a multiproduct manufacturing building, by using process containment. Finally, revised § 600.11(e)(3)(i) states that all product and personnel movement between the area where the spore-forming microorganisms are manufactured and other manufacturing areas must be conducted under conditions that will prevent the introduction of spores into other areas of the facility.

Revised § 600.11(e)(3)(ii) states that if process containment is employed in a multiproduct manufacturing area, procedures must be in place to demonstrate adequate removal of the spore-forming microorganism(s) from the manufacturing area for subsequent manufacture of other products. Revised § 600.11(e)(3)(ii) further states that these procedures must provide for adequate removal or decontamination of the spore-forming microorganisms on and within manufacturing equipment, facilities, and ancillary room items as well as the removal of disposable or product dedicated items from the manufacturing area. Finally, revised § 600.11(e)(3)(ii) states that environmental monitoring specific for the spore-forming microorganism(s) must be conducted in adjacent areas during manufacturing operations and in the manufacturing area after completion of cleaning and decontamination.

Under revised § 600.11(e)(3(ii), processing and propagation of spore-forming microorganisms must be conducted in areas and using systems that are not used for any other purpose at the same time. Prior to processing and propagation of any organism, procedures must be designed and in place to prevent contamination with pathogenic and/or toxic agents, as well as to decontaminate, sterilize and/or disinfect, as appropriate, all affected areas and systems. It is important to demonstrate control over and containment of spore-forming microorganisms during their propagation and processing in order to prevent contamination of the product. Products derived from spore-forming microorganisms should not be removed from designated areas unless this can be done in a manner that prevents contamination of other products. These containment procedures will provide a level of assurance that products made using spore-forming microorganism remain safe, pure, and of high quality.

The agency anticipates developing a guidance document to assist manufacturers in complying with these more flexible provisions on work with spore-forming microorganisms.

B. Substitution of "Spore-Forming" for "Spore-Bearing"

As noted previously in this document, we are replacing the term "spore-bearing" in our regulations with the term "spore-forming" because the latter has become the more commonly used term to describe these microorganisms.

Accordingly, in addition to §600.11(e)(3), we are revising §§ 600.10(c)(3) (21 CFR 600.10(c)(3)) and 600.11(e)(1) and (e)(2) by substituting the term "spore-forming" for the term "spore-bearing".

III. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this proposal is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze whether a rule may have a significant economic impact on a substantial number of small entities. Because the proposed rule allows for greater flexibility in production facilities and procedures for work with spore-forming microorganisms, it would not result in any increased burden or costs on small entities. Therefore, FDA certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, and no further analysis is required under the Regulatory Flexibility Act.

The Unfunded Mandates Reform Act requires that agencies prepare a written statement under section 202(a) of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). Because the rule does not impose mandates on State, local, or tribal governments, or the private sector, that will result in an expenditure in any one year of $100 million or more, FDA is not required to perform a cost-benefit analysis according to the Unfunded Mandates Reform Act.

B. Environmental Impact

The agency determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

IV. The Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

V. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this proposal. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 600 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

§ 600.10 [Amended]

2. Section 600.10 *Personnel* is amended in paragraph (c)(3) by removing the words "spore-bearing" and adding in their place the words "spore-forming".

3. Section 600.11 is amended in paragraph (e)(1) by removing the words "spore-bearing" and adding in their place the words "spore-forming"; in paragraph (e)(2) by removing the words "spore-bearing" in the heading and text, and adding in their place the words "spore-forming"; and by revising paragraph (e)(3) to read as follows:

§ 600.11 Physical establishment, equipment, animals, and care.

* * * * *

(e) * * *

(3) *Work with spore-forming microorganisms.* (i) Manufacturing processes using spore-forming microorganisms conducted in a multiproduct manufacturing site must be performed under appropriate controls to prevent contamination of other products and areas within the site. Prevention of spore contamination can be achieved by using a separate dedicated building or by using process containment if manufacturing is conducted in a multiproduct manufacturing building. All product and personnel movement between the area where the spore-forming microorganisms are manufactured and other manufacturing areas must be conducted under conditions that will prevent the introduction of spores into other areas of the facility.

(ii) If process containment is employed in a multiproduct manufacturing area, procedures must be in place to demonstrate adequate removal of the spore-forming microorganism(s) from the manufacturing area for subsequent manufacture of other products. These procedures must provide for adequate removal or decontamination of the spore-forming microorganisms on and within manufacturing equipment, facilities, and ancillary room items as well as the removal of disposable or product dedicated items from the manufacturing area. Environmental monitoring specific for the spore-forming microorganism(s) must be conducted in adjacent areas during manufacturing operations and in the manufacturing area after completion of cleaning and decontamination.

* * * * *

Dated: December 11, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31918 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143321–02; REG–156232–03]

RIN 1545–BB60; RIN 1545–BC80

Information Reporting Relating to Taxable Stock Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of previous proposed rules; notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document withdraws proposed regulations published in the **Federal Register** on November 18, 2002 (REG–143321–02). In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to information reporting relating to taxable stock transactions. This document contains proposed regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains proposed regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of the temporary regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 29, 2004. Outlines of topics to be discussed at the public hearing scheduled for March 31, 2004, at 10 a.m., must be received by March 10, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–156232–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–156232–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy L. Rose (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The forms referenced in these regulations have been, or will be, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document withdraws the Notice of Proposed Rulemaking (REG–143321–02) that was published in the **Federal Register** on November 18, 2002 (67 FR 65496). Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) relating to sections 6043 and 6045. The temporary regulations set forth information reporting requirements relating to acquisitions of control and substantial changes in capital structure. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

On November 18, 2002, the IRS published temporary regulations under section 6043(c) (TD 9022). The transactions covered by the reporting requirement were certain acquisitions of control and substantial changes in the capital structure of a corporation. These regulations required a corporation to attach a form to its income tax return describing these transactions and to file information returns with respect to certain shareholders in such transactions. On November 18, 2002, the IRS also published temporary regulations under section 6045, which provided for information reporting with respect to these transactions by brokers (together with the section 6043(c) temporary regulations, the "2002 temporary regulations". The 2002 temporary regulations were effective for acquisitions of control and substantial changes in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder was required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction.

The text of the 2002 temporary regulations also served as the text of proposed regulations set forth in a cross-referencing notice of proposed rulemaking published in the Proposed Rules section of the same issue of the **Federal Register** (2002 proposed regulations) (REG–143321–02). The provisions of the proposed regulations were proposed to be effective with respect to any acquisition of control or substantial change in capital structure occurring after the date on which final regulations would be published in the **Federal Register**. The preamble to the notice of proposed rulemaking invited public comments with respect to the potential for duplicate reporting and with respect to the burden of compliance with the reporting requirements.

The IRS received a number of written public comments with respect to the information reporting requirements set forth in the 2002 temporary and proposed regulations. In addition, the IRS met with representatives of the Information Reporting Program Advisory Committee (IRPAC) and other representatives of the securities industry to discuss their concerns and suggestions for revisions to the regulations.

After considering the issues concerning affected taxpayers, the IRS has decided to revise the 2002 temporary regulations. The revised temporary regulations set forth information reporting rules that will help ensure that brokers and shareholders receive information regarding these corporate transactions, without unduly burdening brokers and other members of the securities industry. The text of the revised temporary regulations also serves as the text of these proposed regulations (reproposed regulations).

Summary of Comments and Explanation of Provisions

The commentators noted certain gaps in the transmission of information under the 2002 temporary and proposed regulations between corporations subject to reporting and brokers. Information reporting by brokers depends upon the effective dissemination of information from the corporation to the reporting community, and broker reporting is difficult to effectuate if there are gaps in the process of transmitting this information.

As provided in the 2002 temporary and proposed regulations, a reporting corporation would file Forms 1099–CAP, "Changes in Corporate Control and Capital Structure", with respect to its shareholders of record, including brokers, under § 1.6043–4T(b) and proposed § 1.6043–4(b). Brokers who received Forms 1099–CAP would then file Forms 1099–CAP with respect to their customers pursuant to § 1.6045–3T and proposed § 1.6045–3. The commentators pointed out that a large majority of U.S. publicly issued securities are actually held on behalf of brokerage firms through clearing organizations. Pursuant to the 2002 temporary and proposed regulations, clearing organizations would receive Forms 1099–CAP from the reporting corporation; however, because clearing organizations are not treated as brokers, they in turn would not be required under § 1.6045–3T and reproposed § 1.6045–3 to file Forms 1099–CAP with respect to their broker-members. Consequently, brokers (who had the requirement to file a Form 1099–CAP upon receiving one) would not receive Form 1099–CAP if they held their shares through a clearing organization. In addition, brokers may not be aware of the requirement to report with respect to a particular corporate transaction, or may have difficulty obtaining the information necessary for reporting. Thus, under the 2002 temporary and proposed regulations, the actual shareholders of the reporting corporation, the broker's customers, may not receive information returns to assist them in preparing their income tax returns.

To address this issue, commentators suggested an alternative procedure to ensure that brokers receive the required information for reporting and to bridge any potential gaps in the chain of reporting. Commentators recommended that the IRS act as a central repository of information necessary for brokers and issue a publication containing information needed for brokers to satisfy their reporting obligations. Brokers and commercial tax services that publish current developments could access this information, and brokers could use this information in preparing Forms 1099–CAP with respect to their customers. An alternative suggested by commentators was to require the reporting corporation to post essential information for reporting, from its Form 8806, "Information Return for Acquisition of Control or Substantial Change in Capital Structure," to an IRS Web site.

Based on the comments, revised § 1.6043–4T(a)(1)(vi) and reproposed § 1.6043–4(a)(1)(vi) provide that reporting corporations may elect on Form 8806 to consent to the publication by the IRS of information necessary for brokers to file information returns with respect to their customers. To provide every corporation with the ability to make this election, the revised temporary regulations require reporting corporations to file Form 8806 even though the corporation may also report the transaction under sections 351, 355, or 368. In order to enable the IRS to publish the information timely, the revised temporary regulations require reporting corporations to file Form 8806 within 45 days after the transaction, and in no event later than January 5 of the year following the calendar year in which the transaction occurs.

The role of clearing organizations was also the subject of comments. Commentators suggested that the regulations utilize existing processes for distributing information to minimize the cost of and the time required for implementing reporting by the industry. Those existing processes include the dissemination of information by clearing organizations. Under current practices, important information regarding corporate transactions (including tax information) is disseminated by clearing organizations to their members. The revised temporary and reproposed regulations try to take advantage of this existing information flow by continuing to require corporations to provide a Form 1099–CAP to clearing organizations that are listed as shareholders of record at the time of an acquisition of control or substantial change in capital structure. It is anticipated that clearing organizations will disseminate information obtained from the Form 1099–CAP to their members and that broker-members will use that information (and information obtained from other sources) to satisfy their own reporting obligations under section § 1.6045–3T and reproposed § 1.6045–3. Under the revised regulations, a broker is required to report information if the broker knows or has reason to know, based on readily available information, that there was an acquisition of control or substantial change in capital structure with respect to shares held by the broker on behalf of a customer. If a clearing organization disseminates information identifying an acquisition of control or a substantial change in capital structure to a broker-member, the broker-member has readily available information about the transaction and must satisfy its reporting obligations under § 1.6045–3T and reproposed § 1.6045–3 with respect to the transaction.

The revised temporary and reproposed regulations provide that a reporting corporation is not required to file Forms 1099–CAP with respect to its shareholders which are clearing organizations, or to furnish Forms 1099–CAP to such clearing organizations, if the corporation makes the election to permit the IRS to publish information regarding the transaction. The IRS' publication of such information pursuant to the corporation's consent will provide readily available information for brokers, who must satisfy their reporting obligations with respect to the transaction.

Commentators also requested that brokers be permitted to utilize Form 1099–B for reporting under § 1.6045–3T and reproposed § 1.6045–3, rather than overhaul their systems to report on Form 1099–CAP. The commentators point out that this would also avoid any confusion stemming from the issuance of both types of forms to the same taxpayer in the same transaction. The revised temporary regulations and reproposed regulations provide that Form 1099–B should be used by brokers for reporting under § 1.6045–3T and reproposed § 1.6045–3. With respect to transactions occurring in 2003, brokers may use either Form 1099–B or 1099–CAP.

Proposed Effective Date

The provisions of these regulations are proposed to be applicable for any acquisition of control and change in capital structure occurring after the date on which these regulations are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section

553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for March 31, 2004, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by March 10, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this notice of proposed rulemaking is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of a Previous Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking published in the **Federal Register** on November 18, 2002 (REG–143321–02) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.6043–4 is added to read as follows:

§ 1.6043–4 Information returns relating to certain acquisitions of control and changes in capital structure.

[The text of proposed § 1.6043–4 is the same as the text of § 1.6043–4T published elsewhere in this issue of the **Federal Register**]

3. Section 1.6045–3 is added to read as follows:

§ 1.6045–3 Information reporting for acquisitions of control or substantial changes in capital structure.

[The text of proposed § 1.6045–3 is the same as the text of § 1.6045–3T published elsewhere in this issue of the **Federal Register**]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–31362 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 90

[OJP Docket No. 1378]

RIN 1121–AA67

STOP Violence Against Women Formula Grant Program and STOP Violence Against Indian Women Discretionary Grant Program: Clarification of Match Requirement

AGENCY: Office on Violence Against Women, Office of Justice Programs, Department of Justice.

ACTION: Notice of proposed rule.

SUMMARY: This rule proposed to amend the regulations for the STOP (Services—Training—Officers—Prosecutors) Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Program in 28 CFR 90.17 and 90.55, respectively, to clarify the statutory provision in 42 U.S.C. 3796gg–1(f) requiring that each STOP fund grantee provide matching funds in an amount no less than 25% of the total costs of the projects described in the application for funds.

DATES: Written comments should be submitted by January 29, 2004.

ADDRESSES: Please send written comments, by U.S. mail, to: Marnie Shiels, Attorney-Advisor, Office on Violence Against Women, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531; or by e-mail, to: *OVWRegs@ojp.usdoj.gov.* To ensure proper handling, please reference OJP No. 1378 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Marnie Shiels, Attorney-Advisor, Office on Violence Against Women, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531, telephone: (202) 307–6026.

SUPPLEMENTARY INFORMATION: The STOP and STOP Violence Against Indian Women (VAIW) Programs are codified at 42 U.S.C. 3796gg *et seq.* The final rule for these programs, 28 CFR Part 90 (Subparts B and C), was promulgated on April 18, 1995. The STOP grants are awarded to states and territories to develop and strengthen the criminal justice system's response to violence against women and to support and enhance services for victims. The STOP VAIW grants are intended to develop and strengthen tribal law enforcement and prosecution efforts to combat violence against Indian women and to develop and enhance services for victims of such crimes.

Because this is a technical amendment to clarify the matching requirement within the authorizing statute, the deadline for written comments is 30-days from the date of publication of this proposed rule in the **Federal Register**.

Statutory Match Requirement

The STOP statute, 42 U.S.C. 3796gg–1(f), provides: "The Federal share of a grant made under [these grant programs] may not exceed 75 percent of the total costs of the projects described in the application submitted." In accordance with the statutory matching funds requirement, States and Indian tribal governments receiving funds under these two programs must ensure that only 75 percent of their total budget for the grant project comes from STOP grant funds. The purpose of requiring STOP formula fund grantees to provide a 25%

match is to augment the resources available to the project from grant funds and to foster the dedication of State, local, and community resources to the purposes of the project. States and tribal governments must calculate "matching funds" based on their entire grant awards, including amounts that they are allowed to allocate for administrative expenses or indirect costs. (In the case of American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands, the requirement for matching funds (up to $200,000) is waived pursuant to 48 U.S.C. 1469a(d).)

Grantees may satisfy this match requirement with either cash or in-kind services and may require sub-grantees to provide all or part of the match. The costs of activities counted as matching funds must be directly related to the project goals and objectives. For Indian tribes, as provided in 42 U.S.C. 3796gg–1(g), appropriations for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the match. The Office of Justice Programs Financial Guide, Part III, Chapter 3, provides information on additional sources of matching funds.

By statute, grantees under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Program are required to provide a 25% match—or 25% of the total funds associated with the project being funded. (Thus, OVW provides only 75% of the total funding for each project.) The current regulations prohibit state and Indian tribal government grantees from passing on any portion of the 25% match requirement to any subgrantees who are nonprofit, non-governmental victim services programs, even though the statute contains no such prohibition. The revised rule will conform OJP regulations to the statute by permitting grantees to require that those subgrantees provide a portion of the overall 25% match that is required for the project.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Cost/Benefit Assessment

This proposed rule is a technical amendment that clarifies the match requirement for entities awarded funds under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Programs. The only cost of this proposed rule is thus borne by grantees for whom the benefit of receiving funds outweighs any cost imposed by the matching funds requirement.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule is a technical amendment that clarifies the match requirement for entities awarded funds under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Programs, but has no effect on other funds granted to states. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: This proposed rule is a technical amendment that clarifies the match requirement for entities awarded funds under the STOP Violence Against Women Formula Grant Program and the STOP Violence Against Indian Women Discretionary Grant Programs, but has no effect on other funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

List of Subjects in 28 CFR Part 91

Grant programs, Judicial administration.

For the reason set forth in the preamble, the Office of Justice Programs proposes to amend 28 CFR Chapter I as follows:

PART 90—VIOLENCE AGAINST WOMEN

Subpart B—The STOP (Services—Training—Officers—Prosecutors) Violence Against Women Formula Grant Program

1. The authority citation for Part 90, subparts B and C, continues to read as follows:

Authority: 42 U.S.C. 3796gg *et seq.*

2. Paragraph (c) of § 90.17 is proposed to be revised to read as follows:

§ 90.17 Matching requirements.

* * * * *

(c) The match expenditures must be committed for each funded project under the grant, including administrative and indirect costs, and cannot be derived from other Federal funds.

* * * * *

Subpart C—Indian Tribal Governments Discretionary Program

3. Paragraph (c) of § 90.55 is proposed to be revised to read as follows:

§ 90.55 Matching requirements.

* * * * *

(c) The match expenditures must be committed for each funded project under the grant, including administrative and indirect costs, and, as provided in 42 U.S.C. § 3796gg–1(g), may be derived from appropriations for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands.

* * * * *

Dated: December 22, 2003.

Diane M. Stuart,

Director, Office on Violence Against Women.

[FR Doc. 03–32017 Filed 12–29–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG–122379–02]

RIN 1545–BA70

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This notice proposes modifications of the regulations governing practice before the Internal Revenue Service (Circular 230). These regulations affect individuals who are eligible to practice before the IRS. The proposed modifications set forth best practices for tax advisors providing advice to taxpayers relating to Federal tax issues or submissions to the IRS and modify the standards for certain tax shelter opinions. This document also provides notice of a public hearing regarding the proposed regulations.

DATES: *Comments:* Written or electronically generated comments must be received by February 13, 2004.

Public Hearing: Outlines of topics to be discussed at the public hearing scheduled for February 18, 2004, in the Auditorium of the Internal Revenue Building at 1111 Constitution Avenue, NW., Washington, DC 20224, must be received by February 11, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122379–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–122379–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at: *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning issues for comment, Heather L. Dostaler or Bridget E. Tombul at (202) 622–4940; concerning submissions of comments, Guy Traynor of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 1, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the Office of Professional Responsibility, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proper collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information (disclosure requirements) in these proposed regulations are in § 10.35(d). Section 10.35(d) requires a practitioner providing a tax shelter opinion to make certain disclosures in the beginning of marketed tax shelter opinions, limited scope opinions and opinions that fail to conclude at a confidence level of at least more likely than not. In addition, certain relationships between the practitioner and a person promoting or marketing a tax shelter must be disclosed. A practitioner may be required to make one or more disclosure at the beginning of an opinion. The collection of this material helps to ensure that taxpayers who receive a tax shelter opinion are informed of any facts or circumstances that might limit the taxpayer's use of the opinion. The collection of information is mandatory.

Estimated total annual disclosure burden is 13,333 hours.

Estimated annual burden per disclosing practitioner varies from 5 to 10 minutes, depending on individual circumstances, with an estimated average of 8 minutes.

Estimated number of disclosing practitioners is 100,000.

Estimated annual frequency of responses is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Internal Revenue Code.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. The Secretary has published the regulations in Circular 230 (31 CFR part 10). On February 23, 1984, the regulations were amended to provide standards for tax shelter opinions (49 FR 6719). On May 5, 2000, an advance notice of proposed rulemaking was published (65 FR 30375) which requested comments regarding amendments to the standards of practice governing tax shelters and other general matters. On January 12, 2001, a notice of proposed rulemaking (66 FR 3276) was published that proposed amendments to the regulations relating to practice before the Internal Revenue Service in general and addressing tax shelter opinions in particular. On July 26, 2002, final regulations (67 FR 48760) were issued incorporating only the non-tax shelter related matters. The IRS and the Treasury Department announced that regulations governing standards for tax shelter opinions would be proposed again at a later date.

This document proposes new proposed amendments to the standards governing tax shelter opinions and withdraws proposed amendments to §§ 10.33, 10.35 and 10.36 of the regulations governing practice before the IRS that were published in 2001. See 66 FR 3276 (Jan. 12, 2001).

Explanation of Provisions

Tax advisors play an increasingly important role in the Federal tax system, which is founded on principles of voluntary compliance. The tax system is best served when the public has confidence in the honesty and integrity of the professionals providing tax advice. To restore, promote, and maintain the public's confidence in those individuals and firms, these proposed regulations set forth best practices applicable to all tax advisors. These regulations also amend the mandatory requirements for practitioners who provide certain tax shelter opinions. These regulations are limited to practice before the IRS and do not alter or supplant other ethical standards applicable to practitioners.

The standards set forth in these proposed regulations differ from the January 12, 2001 proposed regulations in several ways. First, § 10.33 prescribes best practices for all tax advisors. Second, § 10.35 combines and modifies the standards applicable to marketed and more likely than not tax shelter opinions in former § 10.33 (tax shelter opinions used to market tax shelters) and former § 10.35 (more likely than not tax shelter opinions) of the January 12, 2001 proposed regulations. Third, these regulations revise proposed § 10.36, which provides procedures for ensuring compliance with §§ 10.33 and 10.35. Finally, provisions relating to advisory committees to the Office of Professional Responsibility are provided in new § 10.37. The Treasury Department and the IRS will publish conforming amendments to §§ 10.22 and 10.52 in a separate notice of proposed rulemaking.

Best Practices

To ensure the integrity of the tax system, tax professionals should adhere to best practices when providing advice or assisting their clients in the preparation of a submission to the IRS. Section 10.33 describes the best practices to be observed by all tax advisors in providing clients with the highest quality representation. These best practices include: (1) Communicating clearly with the client regarding the terms of the engagement and the form and scope of the advice or assistance to be rendered; (2) establishing the relevant facts, including evaluating the reasonableness of any assumptions or representations; (3) relating applicable law, including potentially applicable judicial doctrines, to the relevant facts; (4) arriving at a conclusion supported by the law and the facts; (5) advising the client regarding the import of the conclusions reached; and (6) acting fairly and with integrity in practice before the IRS.

Standards for Certain Tax Shelter Opinions

Section 10.35 prescribes requirements for practitioners providing *more likely than not* and *marketed* tax shelter opinions. A more likely than not tax shelter opinion is a tax shelter opinion that reaches a conclusion of at least more likely than not with respect to one or more material Federal tax issue(s). A marketed tax shelter opinion is a tax shelter opinion, including a more likely than not tax shelter opinion, that a practitioner knows, or has reason to know, will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing or recommending a tax shelter to one or more taxpayers.

Definition of Tax Shelter Opinion

These proposed regulations retain the definition of *tax shelter* proposed in January 2001 by applying the definition found in section 6662 to all taxes under the Internal Revenue Code. A number of commentators expressed concern that this definition is overly broad, encompasses routine tax matters, and is difficult to administer by practitioners and the IRS. After careful consideration of these issues, the Treasury Department and the IRS have determined that the definition in the proposed regulations best defines the scope of these regulations. Section 10.35 has been modified, however, to address commentators' concerns by excluding from the definition of a tax shelter opinion preliminary advice provided pursuant to an engagement in which the practitioner is expected subsequently to provide an opinion that satisfies the requirements of this section. In addition, under § 10.35(a)(3)(ii), a practitioner may provide an opinion that is limited to some, but not all, material Federal tax issues that may be relevant to the treatment of a tax shelter item if the taxpayer and the practitioner agree to limit the scope of the opinion. Such a limited scope opinion cannot be a marketed tax shelter opinion, and all limited scope opinions must contain the appropriate disclosures described below.

Requirements for Tax Shelter Opinions

The requirements for all more likely than not and marketed tax shelter opinions include: (1) Identifying and considering all relevant facts and not relying on any unreasonable factual assumptions or representations; (2) relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts and not relying on any unreasonable legal assumptions, representations or conclusions; (3) considering all material Federal tax issues and reaching a conclusion, supported by the facts and the law, with respect to each material Federal tax issue; and (4) providing an overall conclusion as to the Federal tax treatment of the tax shelter item or items and the reasons for that conclusion.

In addition to the exception to the requirements for limited scope opinions discussed above, in the case of a marketed tax shelter opinion, a practitioner is not expected to identify and ascertain facts peculiar to a taxpayer to whom the transaction is marketed, but the opinion must include the appropriate disclosure described below. Moreover, if a practitioner is unable to reach a conclusion with respect to one or more material Federal tax issue(s) or to reach an overall conclusion in a tax shelter opinion, the opinion must state that the practitioner is unable to reach a conclusion with respect to those issues or to reach an overall conclusion and describe the reasons that the practitioner is unable to reach such a conclusion. If the practitioner fails to reach a conclusion at a confidence level of at least more likely than not with respect to one or more material Federal tax issue(s), the opinion must include the appropriate disclosures described below.

Required Disclosures

Section 10.35(d) provides disclosures that are required to be made in the beginning of marketed tax shelter opinions, limited scope opinions, and opinions that fail to reach a conclusion at a confidence level of at least more likely than not. In addition, certain relationships between the practitioner and a person promoting or marketing a tax shelter must be disclosed. A practitioner may be required to make more than one of the disclosures described below.

1. Relationship Between Practitioner and Promoter

Under § 10.35(d)(1), a practitioner must disclose if the practitioner has a compensation arrangement with any person (other than the client for whom the opinion is prepared) with respect to the promoting, marketing or recommending of a tax shelter discussed in the opinion. A practitioner also must disclose if there is any referral agreement between the practitioner and any person (other than the client for whom the opinion is prepared) engaged in the promoting, marketing or recommending of the tax shelter discussed in the opinion.

2. Marketed Tax Shelter Opinion

Under § 10.35(d)(2), a practitioner must disclose that a marketed opinion may not be sufficient for a taxpayer to use for the purpose of avoiding penalties under section 6662(d) of the Code. The practitioner also must state that taxpayers should seek advice from their own tax advisors.

3. Limited Scope Opinion

Under § 10.35(d)(3), a practitioner must disclose in a limited scope opinion that additional issue(s) may exist that could affect the Federal tax treatment of the tax shelter addressed in the opinion, that the opinion does not consider or reach a conclusion with respect to those additional issues and that the opinion was not written, and cannot be used by the recipient, for the purpose of avoiding penalties under section 6662(d) of the Code with respect to those issues outside the scope of the opinion.

4. Opinions That Fail To Reach a Conclusion at a Confidence Level of at Least More Likely Than Not

Under § 10.35(d)(4), a practitioner must disclose that the opinion fails to reach a conclusion at a confidence level of at least more likely than not with respect to one or more material Federal tax issue(s) addressed by the opinion and that the opinion was not written, and cannot be used by the recipient, for the purpose of avoiding penalties under section 6662(d) of the Code with respect to such issue(s).

Procedures To Ensure Compliance

Section 10.36 provides that tax advisors with responsibility for overseeing a firm's practice before the IRS should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices described in § 10.33. In the case of tax shelter opinions, a practitioner with this oversight responsibility must take reasonable steps to ensure that the firm has adequate procedures in effect for purposes of complying with § 10.35.

Advisory Committees on the Integrity of Tax Professionals

Section 10.37 authorizes the Director of the Office of Professional Responsibility to establish one or more advisory committees composed of at least five individuals authorized to practice before the IRS. Under procedures prescribed by the Director and at the request of the Director, an advisory committee may review and make recommendations regarding professional standards or best practices for tax advisors or may advise the Director whether a practitioner may have violated §§ 10.35 or 10.36.

Proposed Effective Date

These regulations are proposed to apply on the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Persons authorized to practice before the IRS have long been required to comply with certain standards of conduct. The added disclosure requirements for tax shelter opinions imposed by these regulations will not have a significant economic impact on a substantial number of small entities because, as previously noted, the estimated burden of disclosures is minimal. This is because practitioners have the information needed to determine whether some of the disclosures are required before the opinion is prepared and for the other disclosures the regulations provide practitioners with the language to be included in the opinion. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before the regulations are adopted as final regulations, consideration will be given to any written comments and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

The public hearing is scheduled for February 18, 2004, at 10 a.m., and will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 13, 2004, and submit an outline of the topics to be discussed and the time to be devoted to each topic by February 11, 2004. A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of the regulations are Heather L. Dostaler, Bridget E. Tombul, and Brinton T. Warren of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division, but other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 31 CFR Part 10

Accountants, Administrative practice and procedure, Appraisers, Enrolled actuaries, Lawyers, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Regulations

Accordingly, 31 CFR part 10 is proposed to be amended as follows:

1. The authority citation for subtitle A, part 10 continues to read as follows:

Authority: Sec. 3, 23 Stat. 258, secs. 2–12, 60 Stat. 237 *et seq.*; 5 U.S.C. 301, 500, 551–559; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949–1953 Comp., P. 1017.

2. Section 10.33 is revised to read as follows:

§ 10.33 Best practices for tax advisors.

(a) *Best practices.* Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. Best practices include the following:

(1) Communicating clearly with the client regarding the terms of the

engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

(2) Establishing the facts, determining which facts are relevant, and evaluating the reasonableness of any assumptions or representations.

(3) Relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts.

(4) Arriving at a conclusion supported by the law and the facts.

(5) Advising the client regarding the import of the conclusions reached, including, for example, whether a taxpayer may avoid penalties for a substantial understatement of income tax under section 6662(d) of the Internal Revenue Code if a taxpayer acts in reliance on the advice.

(6) Acting fairly and with integrity in practice before the Internal Revenue Service.

(b) *Effective date.* This section is effective on the date that final regulations are published in the **Federal Register**.

3. Section 10.35 is added to subpart B to read as follows:

§ 10.35 Requirements for certain tax shelter opinions.

(a) *In general.* A practitioner providing a *more likely than not tax shelter opinion* or a *marketed tax shelter opinion* must comply with each of the following requirements.

(1) *Factual matters.* (i) The practitioner must use reasonable efforts to identify and ascertain the facts, which may relate to future events if a transaction is prospective or proposed, and determine which facts are relevant. The opinion must identify and consider all relevant facts.

(ii) The practitioner must not base the opinion on any unreasonable factual assumptions (including assumptions as to future events), such as a factual assumption that the practitioner knows or should know is incorrect or incomplete. For example, it is unreasonable to assume that a transaction has a business purpose or that a transaction is potentially profitable apart from tax benefits, or to make an assumption with respect to a material valuation issue. In the case of any *marketed tax shelter opinion*, the practitioner is not expected to identify or ascertain facts peculiar to a taxpayer to whom the transaction may be marketed, but the opinion must include the appropriate disclosure(s) required under paragraph (d) of this section.

(iii) The practitioner must not base the opinion on any unreasonable factual representations, statements or findings of the taxpayer or any other person, such as a factual representation that the practitioner knows or should know is incorrect or incomplete. For example, a practitioner may not rely on a taxpayer's factual representation that a transaction has a business purpose if the representation fails to include a specific description of the business purpose or the practitioner knows or should know that the representation is incorrect or incomplete.

(2) *Relate law to facts.* (i) The practitioner must relate the applicable law (including potentially applicable judicial doctrines) to the relevant facts.

(ii) The practitioner must not assume the favorable resolution of any material Federal tax issue except as provided in paragraphs (a)(3)(ii) and (b) of this section, or otherwise base an opinion on any unreasonable legal assumptions, representations, or conclusions.

(iii) The practitioner's opinion must not contain internally inconsistent legal analyses or conclusions.

(3) *Evaluation of material Federal tax issues.* (i) The practitioner must consider all material Federal tax issues except as provided in paragraphs (a)(3)(ii) and (b) of this section.

(ii) The practitioner may provide an opinion that considers less than all of the material Federal tax issues if—

(A) The taxpayer and the practitioner agree to limit the scope of the opinion to one or more Federal tax issue(s);

(B) The opinion is not a *marketed tax shelter opinion;* and

(C) The opinion includes the appropriate disclosure(s) required under paragraph (d) of this section.

(iii) The practitioner must provide his or her conclusion as to the likelihood that the taxpayer will prevail on the merits with respect to each material Federal tax issue. If the practitioner is unable to reach a conclusion with respect to one or more material Federal tax issue(s), the opinion must state that the practitioner is unable to reach a conclusion with respect to those issues. The practitioner must describe the reasons for the conclusions, including the facts and analysis supporting the conclusions, or describe the reasons that the practitioner is unable to reach a conclusion as to one or more material Federal tax issue(s). If the practitioner fails to reach a conclusion at a confidence level of at least more likely than not with respect to one or more material Federal tax issue(s), the opinion must include the appropriate disclosure(s) required under paragraph (d) of this section.

(iv) The practitioner must not take into account the possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be settled.

(4) *Overall conclusion.* The practitioner must provide an overall conclusion as to the likelihood that the Federal tax treatment of the tax shelter item or items is the proper treatment and the reasons for that conclusion. If the practitioner is unable to reach an overall conclusion, the opinion must state that the practitioner is unable to reach an overall conclusion and describe the reasons for the practitioner's inability to reach a conclusion.

(b) *Competence to provide opinion; reliance on opinions of others.* (1) The practitioner must be knowledgeable in all of the aspects of Federal tax law relevant to the opinion being rendered. If the practitioner is not sufficiently knowledgeable to render an informed opinion with respect to particular material Federal tax issues, the practitioner may rely on the opinion of another practitioner with respect to these issues unless the practitioner knows or should know that such opinion should not be relied on. If a practitioner relies on the opinion of another practitioner, the relying practitioner must identify the other opinion and set forth the conclusions reached in the other opinion.

(2) The practitioner must be satisfied that the combined analysis of the opinions, taken as a whole, satisfies the requirements of this section.

(c) *Definitions.* For purposes of this section—

(1) A *practitioner* includes any individual described in § 10.2(e).

(2) The term *tax shelter* includes any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code. A tax shelter may give rise to one or more tax shelter items.

(3) A *tax shelter item* is, with respect to a tax shelter, an item of income, gain, loss, deduction, or credit, the existence or absence of a taxable transfer of property, or the value of property.

(4) *Tax shelter opinion*—(i) *In general.* A *tax shelter opinion* is written advice by a practitioner concerning the Federal tax aspects of any Federal tax issue relating to a tax shelter item or items.

(ii) *Excluded advice.* A tax shelter opinion does not include written advice provided to a client during the course of an engagement pursuant to which the practitioner is expected subsequently to provide written advice to the client that satisfies the requirements of this section, or written advice concerning the qualification of a qualified plan.

(iii) *Included advice.* A tax shelter opinion includes the Federal tax aspects or tax risks portion of offering materials prepared by or at the direction of a practitioner. Similarly, a financial forecast or projection prepared by or at the direction of a practitioner is a tax shelter opinion if it is predicated on assumptions regarding Federal tax aspects of the investment.

(5) A *more likely than not tax shelter opinion* is a tax shelter opinion that reaches a conclusion at a confidence level of at least more likely than not (that is, greater than 50 percent) that one or more material Federal tax issues would be resolved in the taxpayer's favor.

(6) A *marketed tax shelter opinion* is a tax shelter opinion, including a more likely than not tax shelter opinion, that a practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing or recommending the tax shelter to one or more taxpayers.

(7) A *material Federal tax issue* is any Federal tax issue for which the Internal Revenue Service has a reasonable basis for a successful challenge and the resolution of which could have a significant impact, whether beneficial or adverse and under any reasonably foreseeable circumstance, on the Federal tax treatment of a taxpayer's tax shelter item or items.

(d) *Required disclosures.* An opinion must contain all of the following disclosures that apply—(1) *Relationship between promoter and practitioner.* A practitioner must disclose in the beginning of the opinion the existence of—

(i) Any compensation arrangement, such as a referral fee or a fee-sharing arrangement, between the practitioner (or the practitioner's firm) and any person (other than the client for whom the opinion is prepared) with respect to the promoting, marketing or recommending of a tax shelter discussed in the opinion; or

(ii) Any referral agreement between the practitioner (or the practitioner's firm) and a person (other than the client for whom the opinion is prepared) engaged in the promoting, marketing or recommending of the tax shelter discussed in the opinion.

(2) *Marketed tax shelter opinions.* A practitioner must disclose in the beginning of a *marketed tax shelter opinion* that with respect to any material Federal tax issue for which the opinion reaches a conclusion at a confidence level of at least more likely than not—

(i) The opinion may not be sufficient for a taxpayer to use for the purpose of avoiding penalties relating to a substantial understatement of income tax under section 6662(d) of the Internal Revenue Code; and

(ii) Taxpayers should seek advice based on their individual circumstances with respect to those material Federal tax issues from their own tax advisor(s).

(3) *Limited scope opinions.* If a practitioner provides an opinion that is limited to one or more Federal tax issue(s) agreed to by the taxpayer and the practitioner, the practitioner must disclose in the beginning of the opinion that—

(i) The opinion is limited to the one or more Federal tax issue(s) agreed to by the taxpayer and the practitioner and addressed in the opinion;

(ii) Additional issue(s) may exist that could affect the Federal tax treatment of the tax shelter addressed in the opinion and the opinion does not consider or provide a conclusion with respect to any additional issue(s); and

(iii) With respect to any material Federal tax issue(s) outside the limited scope of the opinion, the opinion was not written, and cannot be used by the recipient, for the purpose of avoiding penalties relating to a substantial understatement of income tax under section 6662(d) of the Internal Revenue Code.

(4) *Opinions that fail to reach a more likely than not conclusion.* If a practitioner does not reach a conclusion at a confidence level of at least more likely than not with respect to a material Federal tax issue addressed by the opinion, the practitioner must disclose in the beginning of the opinion that—

(i) The opinion does not reach a conclusion at a confidence level of at least more likely than not that with respect to one or more material Federal tax issues addressed by the opinion; and

(ii) With respect to those material Federal tax issues, the opinion was not written, and cannot be used by the recipient, for the purpose of avoiding penalties relating to a substantial understatement of income tax under section 6662(d) of the Internal Revenue Code.

(e) *Effect of opinion that meets these standards.* An opinion that meets these requirements satisfies the practitioner's responsibilities under this section, but the persuasiveness of the opinion with regard to the tax issues in question and the taxpayer's good faith reliance on the opinion will be separately determined under applicable provisions of the law and regulations.

(f) *Effective date.* This section applies to tax shelter opinions rendered after the date that final regulations are published in the **Federal Register**.

4. Section 10.36 is added to subpart B read as follows:

§ 10.36 Procedures to ensure compliance.

(a) *Best practices for tax advisors.* Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices described in § 10.33.

(b) *Requirements for certain tax shelter opinions.* Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with § 10.35. A practitioner will be subject to discipline for failing to comply with the requirements of this paragraph if—

(1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with § 10.35, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with § 10.35; or

(2) The practitioner knows or has reason to know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a practice, in connection with their practice with the firm, that does not comply with § 10.35 and the practitioner, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(c) *Effective date.* Paragraph (a) of this section is effective on the date that final regulations are published in the **Federal Register**. Paragraph (b) of this section applies to tax shelter opinions rendered after the date that final regulations are published in the **Federal Register**.

5. Section 10.37 is added to read as follows:

§ 10.37 Establishment of Advisory Committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Director of the Office of Professional Responsibility is authorized to establish one or more advisory committees composed of at least five individuals authorized to practice before the Internal Revenue Service. Under procedures prescribed by the Director, an advisory committee may review and make recommendations regarding professional standards or best practices for tax advisors, or more particularly, whether a practitioner may have violated §§ 10.35 or 10.36.

(b) *Effective date.* This section is effective on the date that final regulations are published in the **Federal Register**.

6. Section 10.93 is revised to read as follows:

§ 10.93 Effective date.

Except as otherwise provided in each section and subject to § 10.91, Part 10 is applicable on July 26, 2002.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 19, 2003.

George B. Wolfe,

Deputy General Counsel, Office of the Secretary.

[FR Doc. 03–31898 Filed 12–29–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD146–3106; FRL–7603–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; The 2005 ROP Plan for the Baltimore Severe One-Hour Ozone Nonattainment Area: Revisions to the Plan's Emissions Inventories and Motor Vehicle Emissions Budgets To Reflect MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions amend the Baltimore severe 1-hour ozone nonattainment area's (the Baltimore area's) rate-of-progress (ROP) plan for the 2005 milestone year. The intent of these revisions is to update the plan's emission inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 while continuing to demonstrate that the ROP requirement for 2005 will be met. The State of Maryland also submitted revisions which amend the contingency measures associated with the 2005 ROP plan. These revisions are being proposed for approval in accordance with the Clean Air Act (the Act).

DATES: Written comments must be received on or before January 29, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Martin T. Kotsch, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *Kotsch.Martin@EPA.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part 4 of the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Martin T. Kotsch, Energy, Radiation and Indoor Environment Branch, U.S. Environmental Protection Agency, 1650 Arch Street, Mail Code 3AP23, Philadelphia Pennsylvania 19103–20209, (215) 814–3335, or by e-mail at *Kotsch.Martin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act (the Act) requires that for certain ozone nonattainment areas, states are to submit plans demonstrating a reduction in volatile organic compound (VOC) emissions of at least three percent per year, grouped in consecutive three year periods, through the area's designated attainment date. This is known as the rate-of-progress (ROP), also referred to as the reasonable further progress (RFP), requirement of the Act. The first ROP requirement covers the period 1990–1996 and is commonly known as the 15 Percent Plan. Subsequent reductions are required by the end of serial three year intervals beginning after the milestone year 1996 (*i.e.*, ROP milestone years for the Baltimore area are 1999, 2002, 2005). Section 182(c)(2)(C) of the Act allows states to substitute nitrogen oxides (NO_X) emission reductions for VOC emission reductions in post-1996 ROP plans. To qualify for SIP credit in ROP plans, emission reduction measures, whether mandatory under the Act or adopted at the state's discretion, must ensure real, permanent and enforceable emission reductions.

Section 172(c)(9) of the Act requires ozone nonattainment areas, classified as moderate or above nonattainment, to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain the National Ambient Air Quality Standard (NAAQS) for ozone by its statutory attainment date. In addition, section 182(c)(9) of the Act requires ozone nonattainment areas classified as serious or above nonattainment to adopt contingency measures to be implemented if the area fails to meet any applicable milestone.

Under EPA's transportation conformity rule, an ROP plan is a "control strategy" SIP (62 FR 43780, August 15, 1997). Among other things, a control strategy SIP identifies and establishes the motor vehicle emissions budgets (MVEBs) to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The State of Maryland is required to identify MVEBs for both NO_X and VOCs in the Baltimore area's ROP plan for the 2005 milestone year.

EPA previously approved the 2005 ROP plan for the Baltimore area (66 FR 48209, September 19, 2001) which included mobile emissions inventories for the years 1990 and 2005 and identified MVEBs for the milestone year 2005 based on the EPA emissions model MOBILE5.

The attainment date for the Baltimore severe ozone nonattainment area is 2005. This rulemaking addresses the SIP revisions submitted by the Maryland Department of the Environment (MDE) to amend the Baltimore area's 2005 ROP plan to reflect the use of the new EPA emissions model MOBILE6. In this rulemaking, EPA is proposing to approve these revisions to the Baltimore area's ROP plan for the 2005 attainment year.

II. Maryland's SIP Revisions

On November 3, 2003, MDE submitted proposed SIP revisions, and requested that EPA parallel process its approval of those SIP revisions concurrent with the State's process for amending its SIP. As previously stated, these proposed SIP revisions revise the 1990 and 2005 motor vehicle emissions inventories and the 2005 MVEBs of the Baltimore area's 2005 ROP plan to reflect the use of MOBILE6. The November 3, 2003 submittal demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to demonstrate the required ROP for the Baltimore area by 2005.

Table 1 below summarizes the revised motor vehicle emissions inventories for the Baltimore area in tons per day (tpd). The revised 1990 base year inventories were updated using the MOBILE6 model. The 2005 inventories were developed using MOBILE6 and the latest planning assumptions, including 2002 vehicle registration data, vehicle miles traveled (VMT), speeds, fleet mix, and SIP control measures.

TABLE 1.—MARYLAND'S REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

Nonattainment area	1990		2005	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Baltimore	165.14	228.21	55.3	146.9

EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity".[1] EPA's policy guidance required the State to consider whether growth and control strategy assumptions for non-motor vehicle sources (*i.e.*, point, area, and non-road mobile sources) were still accurate at the time the November 3, 2003 submittal was developed. Maryland reviewed the growth and control strategy assumptions for non-motor vehicle sources, revised those which were not current and concluded that the remaining assumptions continue to be valid for the 2005 ROP plan.

Maryland's November 3, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support ROP for the projected attainment of the 1-hour ozone NAAQS by the attainment date of 2005 for the Baltimore area.

The Revised Motor Vehicle Emissions Budgets (MVEBs)

Table 2 below summarizes the revised MVEBs identified in MDE's November 3, 2003 submittal to EPA. These MVEBs were developed using the latest planning assumptions, including 2002 vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. Because Maryland's November 3, 2003 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support ROP for the projected attainment of the 1-hour NAAQS for ozone by the Baltimore area's November 15, 2005 attainment date, EPA is proposing to approve these budgets.

TABLE 2.—MARYLAND MOTOR VEHICLE EMISSIONS BUDGETS

Nonattainment area	2005 ROP	
	VOC (tpd)	NO_X (tpd)
Baltimore	55.05	144.5

III. EPA Evaluation of Maryland's Submittal

A. Rate-of-Progress (ROP) Plan

(1) Calculation of Needed Reductions—The first step in demonstrating ROP is to determine the target level of allowable emissions for the ROP milestone year. The target level of emissions represents the maximum amount of emissions that can be emitted in a nonattainment area in the given ROP milestone year, which in this case is 2005. The Act allows states to substitute NO_X emission reductions for VOC emission reductions in post-1996 ROP plans. The required ROP is demonstrated when the sum of all creditable VOC and NO_X emission reductions equal at least 3 percent per year grouped in three year periods (*i.e.*, 2002–2005), or for a total of 9 percent. If a state wishes to substitute NO_X for VOC emission reductions, then a target level of emissions demonstrating a representative combined 9 percent emission reduction in VOC and NO_X emissions must be developed for that milestone year. EPA approved the attainment demonstration for the Baltimore area on October 30, 2001 (66 FR 54687). The attainment demonstration modeling for the Baltimore area establishes that NO_X reductions are necessary to bring the area into attainment. Because NO_X reductions are necessary to attain the 1-hour NAAQS for ozone in the Baltimore area, MDE may and does use NO_X reductions to demonstrate ROP in the Baltimore area. MDE developed NO_X target levels to account for the NO_X substitution. The process for calculating the revised 2005 target levels to account for all required ROP reductions and noncreditable reductions (for each milestone year these exclude from the baseline those emissions that would be eliminated by the Federal Motor Vehicle Control Program, FMVCP, and Reid Vapor Pressure, RVP, regulations promulgated prior to enactment)[2] in baseline emissions is as follows:

(a) Develop the base year emissions inventories for NO_X and VOCs.

(b) Develop the 1990 ROP base year inventory (by subtracting biogenic emissions and sources located outside the nonattainment area from the base year inventory).

(c) Calculate the 1990 adjusted base year inventories for each milestone year (which in the case of Baltimore are 1996, 1999, 2002 and 2005) by reducing the 1990 ROP inventory by the total noncreditable FMVCP/RVP reductions to occur by that year.

(d) Calculate the required ROP reduction required for each milestone year: For VOC this entails multiplying the 1990 adjusted VOC base year inventory for 1996 by 15 percent and multiplying the 1990 adjusted VOC base year inventory for 1999 and later milestone years by the percentage of required ROP reductions to be achieved through VOC control measures; for NO_X, this entails multiplying the 1990 adjusted NO_X base year inventory for 1999 and later milestone years by the percentage of required ROP reductions to be achieved through NO_X substitution.

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[1] Memorandum, "Policy Guidance on the Use of MOBILE6 for SIP development and Transportation Conformity," issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*.

[2] Section 182(b)(1)(B) of the Act defines the baseline year of emissions as "the total amount of actual VOC and NO_X emissions from all anthropogenic sources in the area during the calendar year of 1990. This section prohibits crediting the ROP plan with the reductions in the baseline the emissions that would be eliminated by the FMVCP regulations promulgated by January 1, 1990. It also excludes any reductions associated from the RVP regulations promulgated at the time of enactment.

(e) Calculate the fleet turnover correction term for each milestone year: The fleet turnover correction is the difference between the FMVCP/RVP emission reductions calculated in step (c) for one milestone year and that for the previous milestone year; it is also the difference between the 1990 adjusted base year inventory for one milestone year and that of the following milestone year[3].

(f) Calculate the revised target level of emissions for the 2005 milestone year, by subtracting the sum of all the fleet turnover corrections, the sum of all the required ROP reductions for all milestone years from the 1990 ROP base year inventory.

Tables 3 and 4 below summarize the target level calculations for both NO_X and VOC emissions for the 2005 ROP milestone year. Using a combination of VOC and NO_X emission reductions, MDE's target level calculations show that the 2005 target level for VOC incorporates the 15 percent ROP reduction in baseline emissions by 1996, and show that the VOC and NO_X 2005 target levels incorporate at least a 9 percent total ROP reduction in baseline emissions for all milestone years, namely 1999, 2002 and 2005, after 1996. The MDE has correctly calculated the 2005 target levels for the Baltimore area.

TABLE 3.—BALTIMORE AREA 2005 VOC TARGET LEVEL

Row	Description	VOC (tpd)
0	1990 Base Year Inventory	554.29
	(Minus biogenic emissions)	(-180.09)
1	1990 Rate-of-Progress Base-Year Inventory	374.20
	1990 Inventory Adjusted to 1996	296.30
2	Reduction Required for 15% VOC Rate-of-Progress	44.445
3	Fleet Turnover Correction 1990 to 1996	77.9
	1990 Inventory Adjusted to 1999	286.59
4	Reduction Required for 1999 Rate-of-Progress to 1999: 0.15% VOC and 8.85% NO_X	0.43
5	Fleet Turnover Correction 96 to 99	9.7
	1990 Inventory Adjusted to 2002	279.4
6	Reduction Required for 2002 Rate-of-Progress: 2.5% VOC and 6.5% NO_X	6.99
7	Fleet Turnover Correction 1999 to 2002	7.19
	1990 Inventory Adjusted to 2005	274.43
8	Reduction Required for 2005 Rate-of-Progress: 0.38% VOC and 8.62% NO_X	1.05
9	Fleet Turnover Correction	4.97
10	2005 Target Level is row one minus the sum of rows two through nine	221.53

TABLE 4.—BALTIMORE AREA NO_X TARGET LEVEL

Row	Description	NO_X (tpd)
1	1990 Rate-of-Progress Base-Year Inventory	536.60
	1990 Inventory Adjusted to 1999	487.30
2	Reduction Required for Rate-of-Progress to 1999: 0.15% VOC and 8.85% NO_X	43.13
3	Fleet Turnover Correction 90 to 99	49.3
	1990 Inventory Adjusted to 2002	472.40
4	Reduction Required for Rate-of-Progress: 2.5% VOC and 6.5% NO_X	30.71
5	Fleet Turnover Correction 1999 to 2002	14.90
	1990 Inventory Adjusted to 2005	458.86
6	Reduction Required for Rate-of-Progress: 0.38% VOC and 8.62% NO_X	39.54
7	Fleet Turnover Correction	13.54
8	2005 Target Level = row one minus the sum of rows two through seven	345.49

The methodologies used by MDE to project emissions growth and EPA's evaluation are discussed in the technical support document (TSD) prepared in support of this proposed rulemaking action. Maryland used appropriate methodologies to project emissions growth in all source categories. The projection year inventories for NO_X and VOCs for the 2005 attainment year are shown in Tables 5 and 6 below. EPA has determined that these growth estimates are approvable.

TABLE 5.—BALTIMORE PROJECTED (UNCONTROLLED) VOC EMISSIONS

Source Category	1990 VOC baseline (tpd)	2005 VOC projected (tpd)
Point	42.0	54.2
Mobile	165.1	91.8
Nonroad	44.7	55.76

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[3] The aggregate noncreditable FMVCP/RVP reductions increase over time, and conversely, the 1990 adjusted base year inventory decreases over time. Thus the aggregate noncreditable FMVCP/RVP reductions through 2005 are larger than those for 2002, and the 1990 adjusted base year inventory for 2005 is less than that for 2002. The sum of the aggregate noncreditable FMVCP/RVP reductions up to and including those achieved in a milestone year and of the 1990 adjusted base year inventory for that year is always equal to the ROP base year inventory.

TABLE 5.—BALTIMORE PROJECTED (UNCONTROLLED) VOC EMISSIONS—Continued

Source Category	1990 VOC baseline (tpd)	2005 VOC projected (tpd)
Area	122.4	132.2
Total	374.2	321.67

TABLE 6.—BALTIMORE PROJECTED (UNCONTROLLED) NO_X EMISSIONS

Source category	1990 NO_X baseline (tpd)	2005 NO_X projected (tpd)
Point	223.2	251.9
Mobile	228.2	199.8
Nonroad	71.5	91.84
Area	13.7	15.4
Total	536.6	558.94

(2) Evaluation of Emission Control Measures—The purpose of the ROP plan is to demonstrate how the state has reduced emissions 3 percent per year, grouped in three year intervals, through the area's attainment year. In general, reductions toward ROP requirements are creditable provided the control measures occurred after 1990 and are real, permanent, quantifiable, federally enforceable and they occurred by the applicable ROP milestone year. An evaluation of each of the control measures implemented by Maryland in the Baltimore nonattainment area can be found in the TSD prepared for this rulemaking. Table 7 below provides a summary of the control measures used by Maryland to achieve ROP in the Baltimore nonattainment area. All control measures in the ROP demonstration have been adopted and implemented by the State of Maryland or are Federal measures being implemented nationally. All but one of the state control measures have been fully approved by EPA into the Maryland SIP and are permanent and enforceable. Final approval of the November 3, 2003 revisions are contingent upon EPA's approval of Maryland's new consumer product rule (COMAR 26.11.32) which was submitted to EPA on November 19, 2003 and was proposed by EPA for direct final approval on December 9, 2003 (68 FR 68523). The mobile source control programs include the total amount of reductions associated with enhanced vehicle inspection and maintenance, Tier 1 and Tier 2 motor vehicle emission standards, reformulated gasoline, the National Low Emissions Vehicle program, and highway heavy duty diesel engine standards. EPA's MOBILE6 emissions model was used to generate the mobile source emission reductions.

TABLE 7.—SUMMARY OF ROP EMISSION CONTROL MEASURES FOR BALTIMORE

Control measure	2005 VOC reduction (tpd)	2005 NO_X reduction (tpd)
Mobile Source Control Programs	*36.75	*55.3
Stage II Refueling	*12.65	0.00
Landfills	0.27	0.00
Open Burning	*3.52	*0.74
Surface Cleaning/Degreasing	5.76	0.00
Architectural Coatings	5.55	0.00
Consumer Products	2.83	0.00
Autobody Refinishing	8.07	0.00
Nonroad Small Gas Engines	17.51	*(0.45)
Nonroad Diesel Engines Tier I & II	0.0	*21.62
Marine Engine Standards	1.79	***(0.07)
Railroads	0.00	4.20
VOC RACT—Expandable Polystyrene	0.10	0.00
VOC RACT—Yeast Production	0.87	0.00
VOC RACT—Commercial Bakeries	0.72	0.00
VOC RACT—Screen Printing	0.20	0.00
Federal Air Toxics	0.50	0.00
Lithographic Printers	2.66	0.00
Flexographic and Rotogravure Printers	0.90	0.00
Enhanced Rule Compliance	5.10	0.00
State Air Toxics	0.96	0.00
NO_X RACT	0.00	5.01
OTC NO_X Phase II/III	0.00	*127.6
Nonroad RFG**	1.39	0.00
OTC—Consumer Products**	3.57	0.00
Large Spark Ignition Engines**	0.75	0.54
Total	112.43	214.48

* Estimated reductions revised from those in current, approved SIP in order to reflect updated growth and/or control strategy assumptions.

** New control measure with credit being applied to attaining ROP for 2005.

*** ( ) sign indicates increase in projected emissions.

(3) Summary of ROP Evaluation—Maryland's ROP demonstration for the Baltimore nonattainment area is summarized in tons per day in Table 8 below. The table shows that the projected control strategy inventories are less than or equal to the target level established for 2005. Therefore, the ROP plan demonstrates that emissions have been sufficiently reduced for the 2005 milestone year.

TABLE 8.—BALTIMORE NONATTAINMENT AREA ROP DEMONSTRATION

	2005 VOC (tpd)	2005 NO_X (tpd)
Projected Uncontrolled Emissions (includes growth) (refer to tables 3 and 4)	333.96	558.94
Reductions From Creditable Emission Control Measures (refer to table 5)	112.43	214.48
Emissions Level Obtained (uncontrolled emissions minus emission reductions)	221.53	344.47
Projected Target Levels (refer to tables 1 and 2)	221.53	345.47
Surplus Emission Reductions (target levels minus emissions obtained)	0.00	1.02

B. Motor Vehicle Emissions Budgets

Under EPA's transportation conformity rule, an ROP plan, like an attainment plan, is referred to as a control strategy SIP (40 CFR 93.124). A control strategy SIP identifies and establishes the MVEBs to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standard. Maryland is required to identify motor MVEBs for both NO_X and VOCs in the Baltimore area's post 96 ROP plans. The MVEBs for the Baltimore area for the milestone year 2005 are shown in Table 9 below.

TABLE 9.—ROP MOTOR VEHICLE EMISSION BUDGETS FOR THE BALTIMORE AREA

Attainment year	VOC (tpd)	NO_X (tpd)
2005	55.05	144.5

EPA approved new 2005 MOBILE6 based MVEBs for the Baltimore attainment demonstration on October 27, 2003 (68 FR 61106). Those MVEBs became effective on November 26, 2003. The approved 2005 attainment plan MVEBs budgets are 55.3 tons per day of VOC and 146.9 tons per day of NO_X.

Maryland's 2005 proposed ROP MVEBs, as shown above in Table 7 are less than those MVEBS in the approved attainment demonstration. These more restrictive MVEBs, contained in the proposed ROP plan will become the applicable MVEBs to be used in transportation conformity demonstrations for the year 2005 for the Baltimore area once the ROP plan is approved.

C. Contingency Measures

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures that would have to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone.

In the revised Baltimore area ROP plan, Maryland has reallocated some of the contingency measures established in prior SIP revisions to the control measures portion of the 2005 ROP plan. EPA guidance allows states an additional year to adopt new contingency measures to replace those which are used. In its November 3, 2003 SIP revision submittal, MDE is making an enforceable commitment to replace those contingency measures reallocated to the control measures portion of the plan and to submit an updated contingency plan reflecting these additional contingency measures by October 31, 2004.

EPA's review of Maryland's SIP revisions indicates that the post-1996 ROP requirements of the Act have been met for the Baltimore ozone nonattainment area. EPA is proposing to approve the revisions to the ROP plan for Baltimore area for milestone year 2005 that was submitted by MDE on November 3, 2003. EPA is soliciting public comments on its proposal to approve these revisions to the 2005 ROP plan and the contingency measures as discussed in this document. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed EPA Action

EPA is proposing to approve the SIP revisions submitted by the State of Maryland on November 3, 2003. These revisions amend the Baltimore area's ROP plan for the 2005 milestone year to update the plan's emission inventories and MVEBs to reflect the use of MOBILE6 and continue to demonstrate that the ROP requirement for 2005 will be met. EPA is also proposing to approve the revisions submitted on November 3, 2003 which amend the contingency measures associated with the 2005 ROP plan, including an enforceable commitment to replace those contingency measures reallocated to the control measures portion of the plan, and to submit an updated contingency plan reflecting these additional contingency measures by October 31, 2004. These revisions are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the state's procedures for amending its SIP. If the proposed revisions are substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a final rulemaking notice on the revisions. The final rulemaking action by EPA on these SIP revisions will occur only after Maryland has completed the state's procedures for amending the SIP and formally submitted the revisions to EPA for final approval. In addition, final approval of the November 3, 2003 revisions is contingent upon our approval of Maryland's new consumer product rule (COMAR 26.11.32) which was submitted to EPA on November 19, 2003 and was proposed by EPA for direct final approval on December 9, 2003 (68 FR 68523). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number MD146–3106 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Kotsch.Martin@EPA.gov*, attention MD146–3106. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov , EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments—Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply.

This rule proposing to approve revisions which amend the Baltimore area's ROP plan for the 2005 milestone year to update the plan's emission inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 and which amend the contingency measures associated with the 2005 ROP plan does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 19, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–32028 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 204, 211, 212, 243, and 252

[DFARS Case 2003–D081]

Defense Federal Acquisition Regulation Supplement; Unique Item Identification and Valuation

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending Defense Federal Acquisition Regulation Supplement (DFARS) policy pertaining to unique item identification and valuation. This rule contains changes resulting from comments received in response to an interim rule published in the **Federal Register** on October 10, 2003.

DATES: *Effective date:* January 1, 2004.

Applicability date: The requirements in this rule apply to all solicitations issued on or after January 1, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before March 1, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@osd.mil.* Please cite DFARS Case 2003–D081 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D081.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule in the **Federal Register** on October 10, 2003, applicable to all solicitations issued on or after January 1, 2004. The interim rule established requirements for contractors to furnish unique item identifiers, or other item identification, and to provide the Government's acquisition cost of items that are to be delivered under a DoD contract.

Twenty-six sources submitted comments on the interim rule. As a result of the significance of the comments, DoD has issued a second interim rule. The following is a discussion of the comments and the differences between the two rules. Where appropriate, similar comments have been grouped together.

1. *Comment:* Several comments were made with regard to the aggressiveness of the implementation schedule commencing January 1, 2004.

DoD Response: DoD agrees that the implementation schedule is aggressive. DoD considers the implementation of unique identification to be a strategic imperative, necessary to efficiently move supplies to warfighters. It will enhance logistics, contracting, and financial business transactions supporting U.S. and coalition troops; will enable DoD to consistently capture the value of items it buys, control these items during their use, and combat counterfeiting of parts; and will enable DoD to make appropriate entries into its property accountability, inventory, and financial management information systems toward achieving compliance with the Chief Financial Officers Act. Therefore, the implementation schedule can not be slipped. The clarification and streamlining of the "valuation" process in this new interim rule should assist in making implementation commencing January 1, 2004, achievable.

2. *Comment:* Several comments were made with regard to the timing of this new requirement, and the need to implement on an accelerated schedule when the aviation industry is suffering from the worst business conditions in the history of the industry.

DoD Response: DoD agrees that the implementation schedule is aggressive. A DoD Policy memo dated November 26, 2003, provides some relief for the aviation industry by including marking consistent with 14 CFR Part 45, Identification and Registration Marking, for aircraft, aircraft engines, propellers, propeller blades, and hubs as consistent with DoD unique identification policy.

3. *Comment:* Several comments were made with regard to the possibility of waivers from or exceptions to the new requirement.

DoD Response: The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. No waivers or exceptions can be granted.

4. *Comment:* Several comments were made with regard to citing MIL–STD–130K, recommending that the more current version be cited.

DoD Response: The rule is consistent with the current MIL–STD–130L. However, the clause at 252.211–7003 has been amended to eliminate reference to a specific MIL–STD–130 version, and to instead require compliance with the version of MIL–STD–130 cited in the contract Schedule.

5. *Comment:* Numerous comments were received addressing difficulties and confusion with the policy inserted in DFARS 204.7103 and 204.7104 concerning contract line and subline item number structure.

DoD Response: The policy added to DFARS 204.7103 and 204.7104 by the previous interim rule has been removed. The existing policy in DFARS Subpart 204.71 for contract line, subline, and exhibit line item structure is sufficient for the requirements of this rule. Valuation information will be included in the Material Inspection and Receiving Report provided at the time of delivery.

6. *Comment:* Numerous comments were received addressing the methodology for assessing the Government's acquisition cost of items for cost-type contracts.

DoD Response: As a result of the concerns raised in the comments, DoD has redefined the Government's unit acquisition cost for cost-type line, subline, or exhibit line items, as the Contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

7. *Comment:* Comments were received highlighting confusion among the definitions for "unique item identifier," "unique item identification," and the DoD data elements of unique identification.

DoD Response: As a result of the concerns raised in the comments, DoD has amended the clause at DFARS 252.211–7003 to add a definition of "DoD unique item identification" and to clarify the definition of "DoD recognized unique identification equivalent, including a reference to the Web site at *http://www.acq.osd.mil/uid,* where all DoD recognized unique identification equivalents are listed.

8. *Comment:* Numerous comments were received highlighting the cost of implementing these requirements, and five comments were received citing the cost burden of implementing these requirements for small businesses.

DoD Response: DoD has determined that it is a strategic imperative that items valued at or above $5,000, or meeting other specified conditions, be marked with unique identification. There are no exceptions. Small businesses will find there are a number of vendors, many of them small businesses, that can provide unique identification marking assistance. DoD considers the cost of implementing unique identification requirements to be an allowable cost under FAR Part 31.

9. *Comment:* Several comments cited confusion as to what items specifically require unique identification and which do not.

DoD Response: As a result of the concerns raised in the comments, DoD has restructured the policy in DFARS 211.274 and the clause at 252.211–7003 to clarify that all items over $5,000 in value require unique identification, items under $5,000 requiring unique identification must be identified in paragraph (c)(1)(ii) of the clause, and embedded items that require unique identification will be identified in a Contract Data Requirements List or other exhibit that is cited in paragraph (c)(1)(iii) of the clause.

10. *Comment:* A respondent suggested that a Contract Data Requirements List be used for unique identification when required below the contract line or subline item level.

DoD Response: DoD has revised the rule so that subassemblies, components, and parts that are embedded in items that require unique identification will be identified in a Contract Data Requirements List or other exhibit that is cited in paragraph (c)(1)(iii) of the clause at DFARS 252.211–7003.

11. *Comment:* Several respondents suggested that unique identification is inconsistent with FAR Part 12, Acquisition of Commercial Items, and that an exception be made for items acquired under FAR Part 12 contracts.

DoD Response: Do not concur. The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. DoD acquires a large number of items under FAR Part 12 contracts. These items can not be excluded from unique identification requirements.

12. *Comment*: A respondent asked whether unique identification requirements will apply to classified contracts; another respondent asked whether the requirements will apply to foreign military sales contracts.

DoD Response: Yes. There are no exceptions to the policy.

13. *Comment*: Several respondents cited problems and confusion resulting from the requirement that acquisition cost be identified a contract line, subline, or informational subline item when structuring the contract, while acquisition cost for cost-type contracts could not be identified until delivery.

DoD Response: The rule has been revised to clarify that the contractor is required to provide the unique identification and the acquisition cost at the time of delivery.

14. *Comment*: Several comments were received concerning applicability of the rule to existing contracts, orders under existing basic ordering agreements (BOAs), and options under existing contracts.

DoD Response: The rule applies to new solicitations issued on or after January 1, 2004. DoD Policy memorandum dated November 26, 2003, Update to Policy for Unique Identification (UID) of Tangible Items—New Equipment, Major Modifications, and Reprocurements of Equipment and Spares, addresses this issue as follows: "The UID policy strongly encourages Component Acquisition Executives to incorporate UID requirements into ongoing contracts where it makes business sense to do so. Since BOAs awarded before January 1, 2004, would be an ongoing agreement, UID requirements can be included in orders issued under the BOA whenever the program/item manager determines it is feasible to do so." Component Acquisition Executives should also incorporate UID requirements when exercising options where it makes business sense to do so.

15. *Comment*: A respondent suggested unique identification is inconsistent with the simplified acquisition threshold, and that the prescription for the clause at DFARS 252.211–7003 should exclude contracts below the simplified acquisition threshold.

DoD Response: Do not concur. The rule is considered to be a strategic imperative, necessary to efficiently move supplies to warfighters. Items acquired under the simplified acquisition threshold can not be excluded from unique identification requirements.

16. *Comment*: The semantics/syntax (ISO 15434/15418) use unprintable characters for record separators and group separators. It is impossible for the quality organization to verify the validity of the 2D Matrix content if the visual representation of "required" characters is, in-effect, "invisible (unprintable)". As a part is marked, the ISO 9000 quality requirements specify that the content of the information encoded into the 2D Matrix be verified. "Invisible" characters are "impossible" to verify. As so, this solution may not be ISO 9000 compliant. This should be verified.

DoD Response: The only standard that uses unprintable characters for record separators and group separators is ISO/IEC 15434. It will be sufficient to verify only that the software of the automatic information technology readers and printers used to construct and print the data matrix symbol is compliant with ISO/IEC 15434.

17. *Comment*: Procedures should be developed to address how unique identification will be constructed when the Government buys items that are surplus, remanufactured, or overhauled after initial manufacture.

DoD Response: If the item does not already have unique identification and meets the criteria for unique identification, the enterprise furnishing the item must provide unique identification marking as part of the purchase price.

18. *Comment*: In research and development contracting, software is often a deliverable item. In some cases, the software to be delivered is commercial software, and the acquisition cost would be the price paid for the license. However, most of the software being delivered under a research and development contract is software that was developed during performance. The "item" definition neither includes nor excludes software. Is commercial software considered an "item" by definition. Is developed software considered an "item"? Both are required to be delivered, are produced, and are tangible. However, one could also argue that developed software is data, because the source and object code and manuals are delivered via the use of Contract Data Requirements Lists. Therefore, the acquisition cost of the medium (CD, disk) in which the software is delivered would be minimal and would not meet the threshold requirements of the clause.

DoD Response: For purposes of unique identification and valuation, software, manuals, and other forms of information are not considered to be "items". The definition of "item" has been changed to refer to "a single hardware article or unit formed by a grouping of subassemblies, components, or constituent parts" to clarify this point.

19. *Comment*: Two respondents suggested there is no value to the rule.

DoD Response: Do not concur. These are subjective judgments. DoD finds considerable value in the rule.

20. *Comment*: One respondent suggested that the rule was unclear and should be redrafted.

DoD Response: DoD has redrafted significant portions of the rule to improve clarity.

21. *Comment*: One respondent asked how the Government would identify which type of identification system the contractor is using, if multiple choices were allowed, and whether Government personnel would have to be educated on the different identification systems?

DoD Response: Marking must be in accordance with the version of MIL–STD–130 in effect at the time of contract award, regardless of the system used to mark items. Government personnel are familiar with the MIL–STD–130.

22. *Comment*: A respondent asked whether references to "cost" should be changed to "value," and whether all references to contract line item structure should be incorporated in the prescriptive language of DFARS Part

204 rather than DFARS Part 11 requirements policy.

DoD Response: For clarity, all references to "value" have been removed, and "unit acquisition cost" has been more clearly defined. This interim rule removes the prescriptive policy in DFARS Part 204 that was added by the previous interim rule.

23. *Comment*: A respondent asked whether valuation needs to be captured down to zero. The respondent suggested that the cost of capturing the value of low-dollar items under cost-type contracts may exceed the benefits.

DoD Response: The definition of "unit acquisition cost" under cost-type line items has been changed to capture the contractor's estimate of the Government's unit cost. This should avoid the unnecessary administrative burden envisioned by the respondent.

24. *Comment*: A respondent asked how development items are to be handled. For example, how will a subline item for development work on one or more pieces of hardware be identified and part numbered?

DoD Response: The estimated unit acquisition cost for a development item will be handled the same as the estimated unit acquisition cost for any other delivered item. The contractor will use its business judgment to provide the Government with its best estimate of the fully burdened cost to the Government.

25. *Comment*: A respondent asked how modification kits that are not separately stock listed items, but comprise several hundred individual parts/items, would be handled.

DoD Response: Modification kits will be handled the same as any other delivered item. Subassemblies, components, or parts that are embedded within the kit will need to be separately identified if unique identification is required, but acquisition cost will not be required.

26. *Comment*: A respondent suggested that the clause at DFARS 252.211–7003 should be limited to the marking requirements (formerly paragraphs (a) thru (c)) and the flow down requirement (formerly paragraph (f)). The respondent suggested that former paragraph (d), Item records, duplicates data that already exists either in the contract or on the associated DD 250/Memo of Shipment. The only exception is the unique identification itself.

DoD Response: Concur in part. The rule has been amended to specify that the data required by the clause will be submitted in the Material Inspection and Receiving Report. As a result, DoD was able to eliminate the DFARS part 204 line item structure requirements for this data.

27. *Comment*: A respondent suggested that the contractor should be told how long the assigned unique identification data should be maintained. For example, most contract data presently must be maintained until final contract payment plus 3 years. If the Government wished the unique identification data to be maintained longer, it should be stated here. Alternatively, if the only requirement is that the contractor ensure that a unique identifier is not duplicated, this is not a records retention requirement, but rather a requirement to ensure a system is set up to avoid duplication. Therefore, record retention would be up to the contractor.

DoD Response: The clause at DFARS 252.211–7003 defines "Unique item identifier" as a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

28. *Comment*: A respondent suggested that the Valuation paragraph (formerly paragraph (e)) of the clause at 252.211–7003, is unnecessary. The assignment of value for items to be delivered to the Government should be a contracting officer responsibility under DFARS 204.7103. The language in the rule creates an additional "reporting" requirement that is inconsistent with existing processes and the Paperwork Reduction Act determination.

DoD Response: Do not concur. The valuation portion of the rule is the data currently provided on the DD Form 250, Material Inspection and Receiving Report.

29. *Comment*: DFARS Appendix F should be revised to specify the data the Government needs on the DD Form 250 or Memo of Shipment. These existing documents should be the vehicle through which the Government collects the desired data. Most of the data listed in the Item records paragraph (formerly paragraph (d)) of the clause at DFARS 252.211–7003 is already available in the contract and on the DD250/Memo of Shipment. The DFARS rule should require contractors to continue to provide that data on those documents with the addition of the unique identification specific data; once Wide Area WorkFlow revisions are fully operational, the Government will have the data and the mechanism to populate its data base without further contractor intervention.

DoD Response: Revisions to DFARS Appendix F are being considered separately under DFARS Case 2003–D085, as part of DoD's DFARS Transformation Initiative.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

This interim rule contains requirements for DoD contractors to provide unique identification for items delivered to DoD, through the use of item identification marking. In addition, the rule contains requirements for DoD contractors to identify the Government's unit acquisition cost of all hardware items delivered under a contract. The objective of the rule is to improve management of DoD assets. DoD considers this rule to be a strategic imperative, necessary to efficiently move supplies to warfighters. This rule will facilitate DoD compliance with the Chief Financial Officers Act of 1990 (Pub. L. 101–576). The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives that will accomplish the objectives of the rule.

A copy of the analysis may be obtained from the point of contact specified herein.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule contains requirements for contractors to uniquely mark and to identify the Government's unit acquisition cost of items delivered to DoD. DoD considers the implementation of unique identification to be a strategic imperative, necessary to efficiently move supplies to warfighters. It will enhance logistics, contracting, and financial business transactions supporting U.S. and coalition troops; will enable DoD to consistently capture the value of items it buys, control these items during their use, and combat counterfeiting of parts; and will enable DoD to make appropriate entries into its property accountability, inventory, and financial management information systems toward achieving compliance with the Chief Financial Officers Act.

On October 10, 2003, DoD issued an interim rule to implement unique identification policy, effective January 1, 2004. As a result of public comments received on the interim rule, DoD has determined that significant changes are needed to streamline and clarify the rule and to ensure effective implementation of DoD's unique identification policy. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 202, 204, 211, 212, 243, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 202, 204, 211, 212, 243, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 202, 204, 211, 212, 243, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101 is amended by removing the definition of "Unique item identifier", which was added at 68 FR 58632 on October 10, 2003, to become effective on January 1, 2004.

PART 204—ADMINISTRATIVE MATTERS

3. Section 204.7104–1 is amended by revising paragraph (a)(3) to read as follows:

204.7104–1 Criteria for establishing.

* * * * *

(a) * * *

(3) Informational subline items shall be used to identify each accounting classification citation assigned to a single contract line item number when use of multiple citations is authorized (see 204.7103–1(a)(4)(ii)).

* * * * *

204.7104–2 [Amended]

4. Section 204.7104–2 is amended by removing paragraphs (e)(10) and (11), which were added at 68 FR 58632 on October 10, 2003, to become effective on January 1, 2004.

PART 211—DESCRIBING AGENCY NEEDS

5. Sections 211.274 through 211.274–3, which were added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, are revised to read as follows:

211.274 Item identification and valuation.

211.274–1 Item identification.

(a) DoD unique item identification, or a DoD recognized unique identification equivalent, is required for—

(1) All items for which the Government's unit acquisition cost is $5,000 or more;

(2) Items for which the Government's unit acquisition cost is less than $5,000, when determined necessary by the requiring activity for serially managed, mission essential, or controlled inventory equipment, repairable items, or consumable items or material; and

(3) Subassemblies, components, and parts embedded within an item identified on a Contract Data Requirements List or other exhibit (see *http://www.acq.osd.mil/uid*).

(b) If unique item identification is not required, the contractor shall provide commonly accepted commercial marks.

211.274–2 Government's unit acquisition cost.

(a) Contractors shall identify the Government's unit acquisition cost for all items delivered.

(b) The Government's unit acquisition cost is—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery.

(2) For cost-type line, subline, or exhibit line items, the contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

(c) The Government's unit acquisition cost of subassemblies, components, and parts embedded in delivered items need not be identified.

211.274–3 Contract clause.

Use the clause at 252.211–7003, Item Identification and Valuation, in solicitations and contracts that require delivery of one or more "items" as defined at 252.211–7003(a).

(a) Complete paragraph (c)(1)(ii) of the clause with the contract line, subline, or exhibit line item number and description of any item(s) below $5,000 in unit acquisition cost for which the requiring activity determines that DoD unique item identification or a DoD recognized unique identification equivalent is required.

(b) Complete paragraph (c)(1)(iii) of the clause with the applicable exhibit number or Contract Data Requirements List item number, when DoD unique item identification or a DoD recognized unique identification equivalent is required for subassemblies, components, or parts embedded within deliverable items.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

6. Section 212.301 is amended by redesignating paragraph (f)(vii), which was added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, as paragraph (f)(vi).

PART 243—CONTRACT MODIFICATIONS

243.171 [Amended]

7. Amendment 7 to section 243.171, which was published at 68 FR 58633 on October 10, 2003, is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 252.211–7003, which was added at 68 FR 58633 on October 10, 2003, to become effective on January 1, 2004, is revised to read as follows:

252.211–7003 Item Identification and Valuation.

As prescribed in 211.274–3, use the following clause:

Item Identification and Valuation (Jan 2004)

(a) *Definitions.* As used in this clause—

Automatic identification device means a device, such as a reader or interrogator, used to retrieve data encoded on machine-readable media.

Commonly accepted commercial marks means any system of marking products for identification that is in use generally throughout commercial industry or within commercial industry sectors. Some examples of commonly accepted commercial marks are: EAN.UCC Global Trade Item Number; Automotive Industry Action Group B–4 Parts Identification and Tracking Application Standard, and B–2 Vehicle Identification Number Bar Code Label Standard; American Trucking Association Vehicle Maintenance Reporting Standards; Electronic Industries Alliance EIA 802 Product Marking Standard; and Telecommunications Manufacturers Common Language Equipment Identification Code.

Concatenated unique item identifier means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part number, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, original part number, and serial number within the part number.

Data qualifier means a specified character (or string of characters) that immediately precedes a data field that defines the general category or intended use of the data that follows.

DoD recognized unique identification equivalent means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at *http://www.acq.osd.mil/uid.*

DoD unique item identification means marking an item with a unique item identifier that has machine-readable data elements to distinguish it from all other like and unlike items. In addition—

(1) For items that are serialized within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, and a unique serial number.

(2) For items that are serialized within the part number within the enterprise identifier, the unique identifier shall include the data elements of issuing agency code, enterprise identifier, the original part number, and the serial number.

Enterprise means the entity (*i.e.*, a manufacturer or vendor) responsible for assigning unique item identifiers to items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by a registration (or controlling) authority.

Government's unit acquisition cost means—

(1) For fixed-price type line, subline, or exhibit line items, the unit price identified in the contract at the time of delivery; and

(2) For cost-type line, subline, or exhibit line items, the Contractor's estimated fully burdened unit cost to the Government for each item at the time of delivery.

Issuing agency code means a code that designates the registration (or controlling) authority.

Item means a single hardware article or unit formed by a grouping of subassemblies, components, or constituent parts required to be delivered in accordance with the terms and conditions of this contract.

Machine-readable means an automatic information technology media, such as bar codes, contact memory buttons, radio frequency identification, or optical memory cards.

Original part number means a combination of numbers or letters assigned by the enterprise at asset creation to a class of items with the same form, fit, function, and interface.

Registration (or controlling) authority means an organization responsible for assigning a non-repeatable identifier to an enterprise (*i.e.*, Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, Uniform Code Council (UCC)/EAN International (EAN) Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Code).

Serial number within the enterprise identifier or *unique serial number* means a combination of numbers, letters, or symbols assigned by the enterprise to an item that provides for the differentiation of that item from any other like and unlike item and is never used again within the enterprise.

Serial number within the part number or *serial number* means a combination of numbers or letters assigned by the enterprise to an item that provides for the differentiation of that item from any other like item within a part number assignment.

Serialization within the enterprise identifier means each item produced is assigned a serial number that is unique among all the tangible items produced by the enterprise and is never used again. The enterprise is responsible for ensuring unique serialization within the enterprise identifier.

Serialization within the part number means each item of a particular part number is assigned a unique serial number within that part number assignment. The enterprise is responsible for ensuring unique serialization within the part number within the enterprise identifier.

Unique item identification means marking an item with machine-readable data elements to distinguish it from all other like and unlike items.

Unique item identifier means a set of data marked on items that is globally unique, unambiguous, and robust enough to ensure data information quality throughout life and to support multi-faceted business applications and users.

Unique item identifier type means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at *http://www.acq.osd.mil/uid.*

(b) The Contractor shall deliver all items under a contract line, subline, or exhibit line item.

(c) *Unique item identification.*

(1) The Contractor shall provide DoD unique item identification, or a DoD recognized unique identification equivalent, for—

(i) All items for which the Government's unit acquisition cost is $5,000 or more; and

(ii) The following items for which the Government's unit acquisition cost is less than $5,000:

Contract Line, Subline, or
Exhibit Line Item Number

______

______

______

Item Description

______

______

______

(iii) Subassemblies, components, and parts embedded within items as specified in Exhibit Number ______ or Contract Data Requirements List Item Number ______.

(2) The unique item identifier and the component data elements of the unique item identifier shall not change over the life of the item.

(3) *Data syntax and semantics.* The Contractor shall—

(i) Mark the encoded data elements (except issuing agency code) on the item using any of the following three types of data qualifiers, as specified elsewhere in the contract:

(A) Data Identifiers (DIs) (Format 06).

(B) Application Identifiers (AIs) (Format 05), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and ASC MH 10 Data Identifiers and ASC MH 10 Data Identifiers and Maintenance.

(C) Text Element Identifiers (TEIs), in accordance with the DoD collaborative solution "DD" format for use until the final solution is approved by ISO JTC1/SC 31. The DoD collaborative solution is described in Appendix D of the DoD Guide to Uniquely Identifying Items, available at *http://www.acq.osd.mil/uid;* and

(ii) Use high capacity automatic identification devices in unique identification that conform to ISO/IEC International Standard 15434, Information Technology—Syntax for High Capacity Automatic Data Capture Media.

(4) *Marking items.*

(i) Unless otherwise specified in the contract, data elements for unique identification (enterprise identifier, serial number, and, for serialization within the part number only, original part number) shall be placed on items requiring marking by paragraph (c)(1) of this clause in accordance with the version of MIL–STD–130, Identification Marking of U.S. Military Property, cited in the contract Schedule.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) *Commonly accepted commercial marks.* The Contractor shall provide commonly accepted commercial marks for items that are not required to have unique identification under paragraph (c) of this clause.

(e) *Material Inspection and Receiving Report.* The Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Description.*

(2) Unique identifier**, consisting of—

(i) Concatenated DoD unique item identifier; or

(ii) DoD recognized unique identification equivalent.

(3) Unique item identifier type.**

(4) Issuing agency code (if DoD unique item identifier is used).**

(5) Enterprise identifier (if DoD unique item identifier is used).**

(6) Original part number.**

(7) Serial number.**

(8) Quantity shipped.*

(9) Unit of measure.*

(10) Government's unit acquisition cost.*

(11) Ship-to code.

(12) Shipment date.

(13) Contractor's CAGE code or DUNS number.

(14) Contract number.

(15) Contract line, subline, or exhibit line item number.*

(16) Acceptance code.

* Once per contract line, subline, or exhibit line item.

** Once per item.

(f) *Material Inspection and Receiving Report for embedded subassemblies, components, and parts requiring unique item identification.* The Contractor shall report at the time of delivery, as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Unique item identifier of the item delivered under a contract line, subline, or exhibit line item that contains the embedded subassembly, component, or part.

(2) Unique item identifier of the embedded subassembly, component, or part, consisting of—

(i) Concatenated DoD unique item identifier; or

(ii) DoD recognized unique identification equivalent.

(3) Unique item identifier type.**

(4) Issuing agency code (if DoD unique item identifier is used).**

(5) Enterprise identifier (if DoD unique item identifier is used).**

(6) Original part number.**

(7) Serial number.**

(8) Unit of measure.

(9) Description.

** Once per item.

(g) The Contractor shall submit the information required by paragraphs (e) and (f) of this clause in accordance with the procedures at *http://www.acq.osd.mil.uid.*

(h) *Subcontracts.* If paragraph (c)(1)(iii) of this clause applies, the Contractor shall include this clause, including this paragraph (h), in all subcontracts issued under this contract.

(End of clause)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 031017264–3317–02; I.D. 100103C]

RIN 0648–AR48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Referendum Procedures for a Potential Gulf of Mexico Red Snapper Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; revision and request for comments.

SUMMARY: NMFS issues this proposed rule to provide information about the schedule, procedures, and eligibility requirements for participating in referendums to determine whether an individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether it should subsequently be submitted to the Secretary of Commerce (Secretary) for review. This proposed rule revises a previously published proposed rule based on public comments that were received on the initial proposed rule. In response to those public comments, this proposed rule includes additional options regarding the procedure for weighting votes by eligible participants. NMFS is soliciting additional public comment on this proposed rule and, particularly, comments on the vote-weighting options. The intended effect of this proposed rule is to implement the referendums consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received no later than 5 p.m., eastern time, on January 20, 2004.

ADDRESSES: Written comments on the proposed rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of supporting documentation for this proposed rule, which includes a regulatory impact review (RIR) and a Regulatory Flexibility Act Analysis (RFAA) are available from NMFS at the address above.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *phil.steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

The following is a restatement of the material contained in the original proposed rule, with minor changes regarding: Scheduling; date and location of the Council meeting where results of the initial referendum, if approved, would be presented; and clarification of an example stated in the original proposed rule regarding the landings categories (poundage ranges) to be used. See "Additional Alternatives for a Vote-Weighting Formula," which follows this restatement of the original proposed rule, for a description of other vote-weighting alternatives that are under consideration and are provided for public comment. Restatement of the Original Proposed Rule Material.

Background

During the early to mid-1990s, the Council began development of an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. Development of this program involved extensive interaction with the fishing industry, other stakeholders, and the public through numerous workshops, public hearings, and Council meetings. The program was approved by NMFS and was scheduled for implementation in 1996. However, Congressional action in late 1995 prohibited implementation of any new IFQ programs in any U.S. fishery, including the Gulf of Mexico red snapper fishery, before October 2000. Subsequent Congressional action, passage of HR5666, incorporated this prohibition and related provisions into the 1996 amendments to the Magnuson-Stevens Act and ultimately extended the prohibition until October 1, 2002. However, HR5666 also provided authority to the Council to develop a profile for any fishery under its jurisdiction that may be considered for a quota management system.

Under Section 407(c) of the Magnuson-Stevens Act, the Council is authorized to prepare and submit a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery, but only if certain conditions are met. First, the preparation of such a plan amendment and regulations must be approved in a referendum. If the result of the referendum is approval, the Council would be responsible for preparing any such plan amendment and regulations through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. Second, the submission of the plan amendment and regulations to the Secretary for review and approval or disapproval must be approved in a subsequent referendum. Both referendums must be conducted in accordance with Section 407(c)(2). Section 407(c)(2) also specifies that, "Prior to each referendum, the Secretary, in consultation with the Council, shall: (A) identify and notify all such persons holding permits with red snapper endorsements and all such vessel captains; and (B) make available to all such persons and vessel captains information about the schedule, procedures, and eligibility requirements for the referendum and the proposed individual fishing quota program.''

Purpose of This Proposed Rule and the Referendums

NMFS, in accordance with the provisions of Section 407(c) of the Magnuson-Stevens Act, will conduct referendums to determine, based on the majority vote of eligible voters, whether a plan amendment and regulations to implement an IFQ program for the Gulf of Mexico commercial red snapper fishery should be prepared and, if so, whether any subsequently prepared plan amendment and regulations should be submitted to the Secretary for review and approval or disapproval. The primary purpose of this proposed rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums. The procedures and eligibility criteria used for purposes of conducting the referendums have no bearing on the procedures and eligibility requirements that might be applied in any future IFQ program that may be developed by the Council. The provisions of any proposed IFQ program would be developed independently by the Council through the normal plan amendment and rulemaking processes that would involve extensive opportunities for public review and comment during Council meetings, public hearings, and public comment on any proposed rule. There is no relation between eligibility to vote in the referendums, as described in this proposed rule, and any eligibility regarding a subsequent IFQ program.

Referendum Processes

Who Would Be Eligible to Vote in the Referendums?

Section 407(c)(2) of the Magnuson-Stevens Act establishes criteria regarding eligibility of persons to vote in the referendums. Those criteria are subject to various interpretations. After careful consideration of those criteria and the practicality and fairness of several possible interpretations, NMFS has determined that the following persons would be eligible to vote in the referendums.

(I) For the initial referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996, through the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of the final rule implementing these referendum procedures, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

(II) For the second referendum:

(A) A person who according to NMFS permit records has continuously held their Gulf red snapper endorsement/Class I license from September 1, 1996 through the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(B) In the case of a Class 1 license that has been transferred through sale since September 1, 1996, the person that according to NMFS' permit records holds such Class 1 license as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum;

(C) In the case of a Class 1 license that has been transferred through lease since September 1, 1996, both the final lessor and final lessee as of the date of publication in the **Federal Register** of a subsequent notice announcing the second referendum, as determined by NMFS' permit records; and

(D) A vessel captain who harvested red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996.

A person would only receive voting eligibility under one of the eligibility criteria, *i.e.*, a person would not receive dual voting eligibility by being both a qualifying vessel captain and a qualifying holder of an endorsement/Class I license.

NMFS will have sufficient information in the Southeast Regional Office fisheries permit database to identify those persons who would be eligible to vote in the referendums based on their having held a red snapper endorsement/Class 1 license during the required periods. However, NMFS did not have sufficient information to identify vessel captains whose eligibility would be based on the harvest of red snapper under a red snapper endorsement in each red snapper commercial fishing season occurring between January 1, 1993, and September 1, 1996. To obtain that information, NMFS prepared and distributed a fishery bulletin that described the general referendum procedures and provided a 20-day period (ending August 18, 2003) for submittal of detailed information by those vessel captains. That fishery bulletin was widely distributed to all Gulf reef fish permitees, including dealers, and to major fishing organizations, state fisheries directors, and others. Information received from that solicitation would be used to identify vessel captains whose eligibility to vote in the referendums is based on the red snapper harvest criterion.

How Would Votes Be Weighted?

Section 407(c)(2) of the Magnuson-Stevens Act requires that NMFS develop a formula to weight votes based on the proportional harvests under each eligible endorsement and by each eligible captain between the period January 1, 1993, and September 1, 1996. NMFS would obtain applicable red snapper landings data from the Southeast Fisheries Science Center reef fish logbook database. Information from NMFS' Southeast Regional Office permit database would be used to assign total applicable landings to each eligible voter (red snapper endorsement/Class 1 license holder, lessee/lessor, or vessel captain).

The weighting procedure is complicated somewhat by requirements to protect the confidentiality of landings data, when the applicable landings history involves landings by different entities. To address confidentiality concerns, NMFS would establish a series of categories (ranges) of red snapper landings based on 5,000-lb (2,268-kg) intervals, *e.g.*, 0–5,000 lb (0–2,268 kg); 5,001–10,000 lb (2,268–4,536 kg); *etc.*, concluding with the interval that includes the highest documented landings. Each eligible voter's total landings between the period January 1, 1993, and September 1, 1996, would be attributed to the appropriate category. The overall average landings attributed to each category would be determined. That average number of pounds would be the vote-weighting factor, *i.e.*, one vote for each such pound, for each eligible voter whose landings fall within that category. For example, if the overall average number of pounds attributed to the 5,001–10,000-lb (2,268–4,536-kg) category is 8,150 lb (3,697 kg), each eligible voter within that category would receive 8,150 votes.

How Would the Vote Be Conducted?

On or about January 23, 2004, NMFS would mail each eligible voter a ballot that would specify the number of votes (weighting) that that voter is assigned. NMFS would mail the ballots and associated explanatory information, via certified mail return receipt requested, to the address of record indicated in NMFS' permit database for endorsement/Class I license holders and, for vessel captains, to the address provided to NMFS by the captains during the prior information solicitation that ended August 18, 2003. All votes assigned to an eligible voter must be cast for the same decision, *i.e.*, either all to approve or all to disapprove the applicable referendum question. The ballot must be signed by the eligible voter. Ballots must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Ballots for the initial referendum must be received at that address by 4:30 p.m., eastern time, February 27, 2004; ballots received after that deadline would not be considered in determining the outcome of the initial referendum. Although it would not be required, voters may want to consider submitting their ballots by registered mail.

How Would the Outcome of the Referendums Be Determined?

Vote counting would be conducted by NMFS. Approval or disapproval of the referendums would be determined by a majority (*i.e.*, a number greater than half of a total) of the votes cast. NMFS would prepare a fishery bulletin announcing the results of each referendum that is conducted and would distribute the bulletin to all Gulf reef fish permitees, including dealers, and to other interested parties. The results would also be posted on NMFS' Southeast Regional Office's Web site at *http://caldera.sero.nmfs.gov.*

What Would Happen After the Initial Referendum?

NMFS would present the results of the initial referendum at the March 8–11, 2004, Council meeting in Mobile, AL. If the initial referendum fails, the Council cannot proceed with preparation of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. If the initial referendum is approved, the Council would be authorized, if it so decides, to proceed with development of a plan amendment and regulations to implement an IFQ program for the commercial red snapper fishery in the Gulf of Mexico. The proposed IFQ program would be developed through the normal Council and rulemaking processes that would involve extensive opportunities for industry and public review and input at various Council meetings, public hearings, and during public comment periods on the plan amendment and regulations. The plan amendment and regulations could only be submitted to the Secretary for review and approval or disapproval if in a second referendum approval of the submission was passed by a majority of the votes cast by the eligible voters as described in this proposed rule. NMFS would announce any required second referendum by publishing a notice in the **Federal Register** that would provide all pertinent information regarding the referendum. Any second referendum would be conducted in conformance with Section 407(c)(2) of the Magnuson-Stevens Act and the provisions outlined in this proposed rule.

Background Information About a Potential IFQ Program

In anticipation of the October 2002 expiration of the Congressional moratorium on development of IFQ programs, and recognizing that HR5666 provided the Council the authority to develop a profile for any fishery that may be considered for a quota management system, some members of the commercial red snapper fishery requested that the Council develop an IFQ profile for the fishery. Based on that request, the Council convened an Ad Hoc Red Snapper Advisory Panel (AHRSAP), comprised of participants in the commercial red snapper fishery and other individuals knowledgeable about the fishery and/or IFQ programs, to develop a profile. This profile, later referred to as an Individual Transferable Quota (ITQ) Options Paper for the Problems Identified in the Gulf of Mexico Red Snapper Fishery, provides background information about historical management of the red snapper fishery, problems in the fishery, management goals, and issues and management alternatives associated with a potential IFQ/ITQ program. The profile addresses such issues as: ITQ units of measurement (percentage of quota or pounds of red snapper), duration of ITQ rights, set-aside for non-ITQ catches under current commercial quota, actions to be taken if the quota increases or decreases, types of ITQ share certificates, initial allocation of ITQ shares and annual coupons (including eligibility, apportionment, transferability of landings histories, *etc.*), possible controls on ownership and transfer of ITQ shares, whether to include a "use it or lose it" provision, disposition of unused or sanctioned ITQ shares and coupons, possible landings restrictions, monitoring of ITQ share certificates and annual coupons, quota tracking, an appeals process, and size limit changes.

This profile represents an outline of an IFQ program as envisioned by the AHRSAP, with input from the Council—it does not reflect any final decisions by the Council regarding the structure of a proposed IFQ program for the red snapper commercial fishery. The Council may consider the options in the profile, and perhaps a variety of other options, if it chooses to pursue development of an IFQ program for the fishery. However, for purposes of the initial referendum, the Council intentionally refrained from adopting the profile. Any subsequent development of a proposed IFQ program for the red snapper commercial fishery would be conducted through the normal Council and Federal rulemaking processes that ensure numerous opportunities for review and comment by industry participants and members of the public.

Additional Alternatives for a Vote-Weighting Formula

On October 27, 2003, NMFS published a proposed rule that described procedures and eligibility requirements for participating in referendums regarding a potential individual fishing quota (IFQ) program for the Gulf of Mexico commercial red snapper fishery; comments were requested through November 12, 2003 (68 FR 61178). Public comment received on that October 27, 2003, proposed rule expressed concern about the vote-weighting procedure, and specifically objected to allowing both a qualified lessor and qualified lessee fully weighted votes, resulting in double counting. In response to those public comments, NMFS is issuing a second proposed rule to include a broader range of potential options for weighting votes. NMFS is seeking public input regarding these or other options.

NMFS evaluated several additional alternatives for a vote-weighting formula for the IFQ referendums. In addition to the one vote per-participant-per-pound approach specified in the initial proposed rule (68 FR 61178) each alternative below is based on varying the vote-per-pound weighting by specified eligible voting class based on their respective involvement in the fishery.

NMFS is expressly seeking comments as to alternative approaches for weighting votes, whether they focus on the following or propose entirely new alternatives not addressed below.

The following alternatives are not necessarily mutually exclusive and were considered individually and in combinations. For the purpose of these alternatives, the term "license" refers to a Class I license and/or endorsement, consistent with the context of Section 407(c)(2) of the Magnuson-Stevens Act:

(1) Allocating one half (or some other fraction) of a vote per qualifying pound to the qualifying historical vessel captain. Section 407(c)(2) of the Magnuson-Stevens Act specifically identifies such vessel captains as eligible to vote in the referendums; thus, implicitly it acknowledges the need for some level of multiple counting, unless all current license holders, whose license was previously fished by a qualifying historical captain, are subject to the same pound to vote ratio (see alternative 5 below). Fractionalizing historical captains' pound to vote ratio would reduce the impact of weighting multiple votes by the pounds from a single license's landings history, but this option alone would not eliminate such multiple counting of landings associated with a single license;

(2) Allocating one half vote (or some other fraction) per qualifying pound to both the lessor and lessee license holders to avoid double counting of the associated poundage. As is the case with historical captains, using this option alone would not eliminate the multiple counting of poundage associated with a single license. However, in combination with some fractionalization of historical captain weighting and associated reductions in lessor/lessee proportional votes, it would eliminate such multiple counting (see alternative 5);

(3) Allocating one vote per pound of landings to both lessors and lessees, while allocating two votes per pound to license holders who are not involved in lease arrangements with their license. This option addresses the multiple counting of landings by allowing all poundage to be counted at least twice, which while actually increasing the quantity of pounds multiple counted would provide the same treatment for virtually all poundage. This would result in increasing the voting weight of landings associated with non-leased licenses to the same level as the landings associated with leased licenses, *i.e.*, all pounds would be counted at least twice;

(4) Votes could be weighted based on an individual's level of participation in the fishery, measured by length of time they held a license. This could be applied to all license holders, or some portion thereof, such as only lessors and lessees, and would prorate the respective weight of a vote based on the number of years of participation in the fishery. For example, using the 3-year time period established for historical captain eligibility, a participant could be awarded one vote per pound if they held a license for 3 or more years, two-thirds of a vote per pound if they held a license for less than 3 but at least 2 years, and one-third of a vote if they held it less than 2 years. Once again, this would not eliminate multiple counting of poundage, but would increase the weighting factor for longer-term participants in the fishery;

(5) The total allowable weighted votes allocated to participants in each referendum could be capped by the total number of pounds harvested, which would eliminate all multiple counting of poundage. Then all participants with eligibility tied to a particular license would have their vote weighted at a ratio equal to all other participants associated with that license, so that their combined vote would be equal to one vote per one pound of landings associated with that license. For example, if a historical captain is eligible based on his landings under a specific license during the relevant time period, and that license is now held by a license holder who is not involved with lease arrangements with that license, but who is not the same historical captain, then each would get one-half of a vote per pound of landings associated with the license. In this example, should the current holder lease the same license, then each participant would have their vote weighted as one-third of a vote per pound, so that their combined vote would equal the total number of pounds associated with the license. While this option would eliminate all multiple counting, it is not directly tied to participation in the fishery.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows.

The Magnuson-Stevens Act, as amended, provides the statutory basis for the proposed rule. The proposed rule would implement up to two referendums on a potential Individual Fishing Quota (IFQ) for the commercial red snapper fishery in the Gulf of Mexico, consistent with the requirements of the Magnuson-Stevens Act. The primary purpose of this proposed rule is to notify potential participants in the referendums, and members of the public, of the procedures, schedule, and eligibility requirements that NMFS would use in conducting the referendums.

One hundred and thirty-seven entities have been identified as having a vessel permit with a red snapper Class 1 license during the specified eligibility time frame and, therefore, qualify for participation in the referendums. Approximately 37 of these licenses are currently being fished on vessels operated by other entities through lease arrangements. One additional vessel captain has been identified as a referendum qualifier. Although the number of Class 1 licenses and vessel captains is known with certainty, lease arrangements may be subject to cancellation prior to a referendum such that the total number of eligible entities due to lease arrangements is not known with certainty. Although new lease arrangements are also a possibility, such that the number of lease arrangements could increase from the current total, increased leasing is not expected since this would dilute the voting power of the Class 1 license holder, absent control over the subsequent vote by the lessee. Thus, it is expected that the number of lease qualifiers will decline by some unknown amount. Assuming, however, that all current qualifiers maintain their status, the total number of entities that qualify for participation in the referendum is 175.

The total red snapper fishery is valued at approximately $10 million in ex-vessel revenue on an annual basis. Although participants in this fishery do not harvest red snapper exclusively, among those vessels that target red snapper (as determined by whether the revenues from red snapper on an individual trip were greater than the revenues from any other individual species), approximately 57 percent of annual revenues for these vessels came from red snapper sales. If all qualifiers target red snapper and all red snapper ex-vessel revenues are attributed to these participants, and assuming red snapper revenues equal 57 percent of total commercial revenues for these participants, the average ex-vessel revenue per entity is approximately $100,000 (($10 million/0.57)/175). If evaluated over the number of Class 1 licenses (137), the appropriate average revenue is approximately $128,000. Although it is logical to assume that the qualifiers target red snapper, these estimates are biased high since all red snapper revenues cannot be attributed to either categories of entities. Thus, the average ex-vessel revenue per entity is less than either figure.

All referendum qualifiers that would be directly affected by the proposed rule are commercial fishing operations. The Small Business Administration defines a small business that engages in commercial fishing as a firm with receipts up to $3.5 million. Based on the revenue profile provided above, all commercial entities that would qualify for participation in the referendums are considered small entities. Since all qualifying entities would be affected by the proposed rule, it is concluded that the proposed rule would affect a substantial number of small entities.

The outcome of "significant economic impact" can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? Since all the entities that would be affected by the proposed rule are considered small entities, the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? Since the proposed rule would not directly affect fishery participation or harvest in any way, it would not reduce business profit for any fishery participants or related businesses. Profits are, therefore, not expected to be significantly reduced by the proposed action. On this basis, the proposed rule may be adjudged not to have a significant economic impact on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis was not prepared. Copies of the RIR and Regulatory Flexibility Act Analysis are available (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA which have been approved by OMB under control number 0648–0477. Public reporting burden is estimated to average 10 minutes for a response to an initial referendum regarding preparation of an IFQ program; 20 minutes for a response to a subsequent referendum; and 10 minutes per response for any information request regarding vessel captains, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed , and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2003.

Rebecca J. Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–32034 Filed 12–23–03; 3:17 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 68, No. 249

Tuesday, December 30, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance, the following proposal for an extension of a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: (1) Survey of Ocean Freight Revenues and Foreign Expenses of United States Carriers (BE–30).

(2) Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37).

Form Number(s): BE–30/BE–37.

Agency Approval Number: 0608–0011.

Type of Request: Extension of a currently approved collection.

Burden: 780 hours (BE–30); 304 hours (BE–37).

Number of Respondents: 39 (BE–30); 19 (BE–37).

Average Hours Per Response: 5 hours (BE–30); 4 hours (BE–37).

Needs and Uses: The Bureau of Economic Analysis is responsible for the compilation of the U.S. balance of payments accounts. The information collected in these surveys is an integral part of the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions and are used by government and private organizations for national and international policy formulation, and analytical studies. The information collected is also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund. Without the information collected in these surveys, quarterly data needed for estimating an integral component of the transportation account would be unavailable. No other Government agency collects comprehensive quarterly data on U.S. ocean carriers' freight revenues and foreign expenses or U.S. airline operators' foreign revenues and expenses.

These surveys request information from U.S. ocean and air carriers engaged in the international transportation of goods and/or passengers. Information is collected on a quarterly basis from U.S. ocean and air carriers with total annual covered revenues or total annual covered foreign expenses of $500,000 or more. U.S. ocean and air carriers with total annual covered revenues and total annual covered foreign expenses below $500,000 are exempt from reporting.

Affected Public: U.S. ocean and air carriers.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above extension of a currently approved collection can be obtained by calling or writing Diane Hynek, DOC Forms Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations in response to this extension of a currently approved collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503; fax: 202–395–7245; e-mail: *pbugg@omb.eop.gov*.

Dated: December 22, 2003.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 03–31999 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance, the following proposal for an extension of a currently approved collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Survey of Foreign Airline Operators' Revenues and Expenses in the United States.

Form Number(s): BE–36.

Agency Approval Number: 0608–0013.

Type of Request: Extension of a currently approved collection.

Burden: 360 hours.

Number of Respondents: 72.

Avg Hours Per Response: 5 hours.

Needs and Uses: The Bureau of Economic Analysis is responsible for the compilation of the U.S. balance of payments accounts. The information collected in this survey is an integral part of the "transportation" portion of the U.S. balance of payments accounts. The balance of payments accounts, which are published quarterly in the Bureau's monthly publication, the *Survey of Current Business*, are one of the major statistical products of BEA. The accounts provide a statistical summary of U.S. international transactions and are used by government and private organizations for national and international policy formulation, and analytical studies.

The information collected is also used for compiling the U.S. national income and product accounts, and for reporting to international organizations such as the International Monetary Fund. Without the information collected in this survey, annual data needed for estimating an integral component of the transportation account would be unavailable. No other Government agency collects comprehensive annual data on foreign airline operators' revenues and expenses in the United States.

The survey requests information from U.S. agents of foreign air carriers operating in the United States. Information is collected on an annual basis from foreign air carriers with total covered revenues or total covered expenses incurred in the United States of $500,000 or more. Foreign air carriers with total covered revenues and total covered expenses below $500,000 are exempt from reporting.

Affected Public: U.S. agents of foreign air carriers.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101–3108.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above extension of a currently approved collection can be obtained by calling or writing Diane Hynek, DOC Forms Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations in response to this extension of a currently approved collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503; fax: 202–395–7245; e-mail: *pbugg@omb.eop.gov*.

Dated: December 22, 2003.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 03–32000 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Report of New Privately-Owned Residential Building or Zoning Permits Issued (Building Permits Survey).

Form Number(s): C–404.

Agency Approval Number: 0607–0094.

Type of Request: Extension of a currently approved collection.

Burden: 24,166 hours.

Number of Respondents: 19,000.

Avg Hours Per Response: 10 and a half minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of a currently approved collection of the Form C–404, "Report of Privately-Owned Residential Building or Zoning Permits Issued" otherwise known as the Building Permits Survey (BPS.) The Census Bureau uses the Form C–404 to collect data that will provide estimates of the number and valuation of new residential housing units authorized by building permits. About one half of the permit offices are requested to report monthly. The remainder are only surveyed once per year. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family. The Census Bureau also uses these data to select samples for its demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services, and to develop production and marketing plans. The BPS is the only source of statistics on residential construction for states and smaller geographic areas.

Affected Public: State, local, or tribal government.

Frequency: Monthly or annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: December 22, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–32002 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Bulk Aspirin From the People's Republic of China: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final determination and amended order pursuant to final court decision on Bulk Aspirin from the People's Republic of China.

SUMMARY: On September 9, 2002, the Court of International Trade ("CIT" or "the Court") affirmed the Department's remand determination and entered a judgment order in *Rhodia, Inc.* v. *United States,* 240 F. Supp. 2d 1247 (CIT 2002) ("*Rhodia* II"), a lawsuit challenging certain aspects of the Department of Commerce's ("the Department") *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000) and accompanying Issues and Decision Memorandum (May 17, 2000) ("*Issues and Decision Memorandum*"), and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China,* 65 FR 39598 (June 27, 2000) (collectively, "*Final Determination*"). On October 14, 2003, the CIT's opinion upholding the Department's final remand was affirmed without opinion by the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). *See Rhodia II,* 240 F. Supp. 2d 1247 (CIT 2002) *aff'd mem.* Ct. No. 03–1097 (October 14, 2003); 2003 U.S. App. LEXIS 21424.

In its remand determination, the Department reviewed the record evidence regarding the extent to which the Indian surrogate producers are integrated and concluded that the evidence did not support the *Final Determination* in this regard. We also reconsidered our use of weighted-average ratios for overhead, SG&A, and profit, and amended our calculations using simple averages. Finally, in accordance with our voluntary request for remand, we removed "trade sales" (or "traded goods") from the denominator in calculating the overhead ratio.

As a result of the remand determination, Jilin Pharmaceutical ("Jilin") will be excluded from the antidumping duty order on bulk aspirin from the People's Republic of China

("PRC") because its antidumping rate was *de minimis* (1.27 percent).[1] The antidumping duty rate for Shandong Xinhua Pharmaceutical Factory, Ltd. ("Shandong") was decreased from 16.51 to 6.42 percent. The PRC-wide rate was unchanged from the *Final Determination*. As there is now a final and conclusive court decision in this action, we are amending our *Final Determination*.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Julie Santoboni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4207, or (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Determination,* Rhodia, Inc., the petitioner in this case, and the respondents, Jilin and Shandong, filed a lawsuit with the CIT challenging the Department's *Final Determination.* Rhodia challenged the Department's use of import data rather than domestic data as a surrogate value for the aspirin input, phenol. Rhodia also challenged the Department's normal value calculation for the respondent Shandong because the Department excluded purchased salicylic acid where it had determined this input was not used in the production of bulk aspirin for export. Jilin and Shandong challenged the Department's application of the factory overhead ratio and the Department's use of a weighted average to calculate surrogate factory overhead, selling general and administrative expenses, and profit ratios. Also, the respondents challenged, and the Department voluntarily requested remand on, the issue of including traded goods in the denominator of the factory overhead ratio.

On November 30, 2001, the CIT affirmed the Department's *Final Determination* with respect to the use of import price to value the input phenol and the calculation of Shandong's normal value excluding purchased salicylic acid. *See Rhodia, Inc.* v. *United States,* 185 F. Supp. 2d 1343 (CIT 2001) ("*Rhodia I*"). The Court remanded the above-referenced proceeding to the Department for reconsideration of the overhead calculation methodology applied in the *Final Determination.* In the underlying investigation, the Department was required to develop values for factory overhead, SG&A, and profit relying on "surrogate" data from Indian producers of comparable merchandise. *See* section 773(c) of the Act. Regarding factory overhead, the Department used information from three Indian producers: Andhra Sugars, Alta Laboratories, and Gujarat Organics, Ltd. In the *Final Determination,* the Department found that the PRC producers of bulk aspirin were more fully integrated than the Indian producers. Therefore, the Department reasoned, the PRC producers would have a higher overhead-to-raw material ratio than the surrogate Indian producers. To account for this in computing normal value, the Department applied the overhead ratio calculated from the Indian producers' data twice, once to reflect the overhead incurred in producing the inputs for aspirin, and again to reflect the overhead incurred in producing aspirin from those inputs.

The Court pointed to the lack of evidence or explanation regarding the Department's position that integrated producers would experience higher overhead ratios than non-integrated producers. Additionally, the Court questioned the Department's conclusion that the Indian producers were less integrated than the PRC producers. Specifically, the Court found that the Department could not reasonably infer this from the evidence cited in the *Issues and Decision Memorandum.* Therefore, the Court remanded this issue to the Department and asked the agency to identify the facts in the record that support its *Final Determination. Rhodia I,* 185 F. Supp. 2d at 1348–1349 (CIT 2001).

The second issue remanded to the Department related to the calculation of the ratios for overhead, SG&A, and profit. In the *Final Determination,* the Department computed a weighted average of the overhead, SG&A, and profit of the three Indian surrogate producers. However, citing to the agency's usual practice of using simple averages in these situations, the Court ruled that the Department had provided no explanation for departing from this practice. Thus, the Court directed the Department to explain its reasoning for computing weighted averages in this case. *Rhodia I,* 185 F. Supp. 2d at 1349–1351 (CIT 2001).

Finally, the Department sought, and the Court granted, a voluntary remand to correct the calculation of the overhead ratio by removing traded goods from the denominator. *Rhodia I,* 185 F. Supp. 2d at 1357 (CIT 2001).

To assist it in complying with the Court's instructions, the Department asked the parties to identify information on the record of the proceeding regarding the extent of integration of Indian producers of comparable merchandise. *See* the December 13, 2001, letter to Rhodia, Inc., Jilin and Shandong. Responses were received from the three parties on January 15, 2002, and rebuttals were received on January 22, 2002.

The *Draft Redetermination Pursuant to Court Remand* ("*Draft Results*") was released to the parties on February 4, 2002. In its *Draft Results,* the Department reviewed the record evidence regarding the extent to which the Indian surrogate producers are integrated and concluded that the evidence did not support the *Final Determination* in this regard. We also reconsidered our use of weighted-average ratios for overhead, SG&A, and profit, and amended our calculations using simple averages. Finally, in accordance with our voluntary request for remand, we removed "trade sales" (or "traded goods") from the denominator in calculating the overhead ratio.

Comments on the *Draft Results* were received from Rhodia, Inc. and Shandong on February 11, 2002, and rebuttal comments were received from the petitioner and Jilin on February 14, 2002. On March 29, 2002, the Department responded to the Court's Order of Remand by filing its Final Results of Redetermination pursuant to the Court remand ("*Final Results of Redetermination*"). The Department's *Final Results of Redetermination* were identical to the *Draft Results.*

The CIT affirmed the Department's *Final Results of Redetermination* on September 9, 2002. *See Rhodia II,* 240 F. Supp. 2d 1247 (CIT 2002). On October 14, 2003, the CIT's decision was affirmed by the Federal Circuit. *Rhodia II,* 240 F. Supp. 2d 1247 (CIT 2002) *aff'd mem.* Ct. No. 03–1097 (October 14, 2003); 2003 U.S. App. LEXIS 21424. We have recalculated the dumping margin for the respondents based upon the changes set forth above.

Amendment to the Final Determination

Because there is now a final and conclusive decision in the court proceeding, effective as of the publication date of this notice, we are amending the *Final Determination* and establishing the following revised weighted-average dumping margins:

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[1] In accordance with the Department's changed circumstances review (*see Bulk Aspirin from the People's Republic of China: Final Results of Changed Circumstances Review,* 67 FR 65537 (October 25, 2002)), Jilin Henghe Pharmaceutical Co. is the successor-in-interest to Jilin Pharmaceutical Co., and as such Jilin Henghe Pharmaceutical Co. will be excluded from the antidumping duty order on bulk aspirin from the PRC.

Company	Amended final determination 10/01/98–03/31/99
Jilin Henghe Pharmaceutical Co.	1.27 percent (*de minimis*).
Shandong Xinhua Pharmaceutical Co., Ltd.	6.42 percent.

The "PRC-wide Rate" was not affected by the *Final Results of Redetermination* and remains at 144.02 percent as determined in the LTFV *Final Determination.*

The Department will issue appraisement instructions directly to U.S. Customs and Border Protection ("CBP"). The Department will instruct CBP to liquidate entries from Jilin, without regard to antidumping duties, because Jilin is excluded from the antidumping duty order, effective September 30, 2002, the date on which the Department published a notice of the Court decision (*see Bulk Aspirin from the People's Republic of China: Notice of Court Decision and Suspension of Liquidation*, 67 FR 61315 (September 30, 2002)).

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–32071 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A-570–831)

Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.

SUMMARY: On September 26, 2003, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2001, through October 31, 2002. The new shipper review initially covered three producers/exporters of subject merchandise. The Department issued a separate notice of preliminary results of the new shipper review for Xiangcheng Yisheng Foodstuffs Co., Ltd. ("Yisheng"). Accordingly, this notice pertains solely to the final results of review for Yisheng. The notice of final results of the review applicable to the other two producers/exporters is due April 8, 2004.

We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made no changes to our preliminary determination that, based on the use of adverse facts available, the respondent sold subject merchandise to the United States at prices below normal value. The final dumping margin for Yisheng is listed in the "Final Results of Review" section below.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey Frank or Minoo Hatten, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 4203, Washington, DC 20230; telephone (202) 482–0090 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection ("Customs") to that effect.

Background

The Department of Commerce ("Department") is conducting this review of Yisheng in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"). On September 26, 2003, the Department published the preliminary results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China with respect to Yisheng. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review for Xiangcheng Yisheng Foodstuffs Co., Ltd.*, 68 FR 55583 ("*Preliminary Results*"). We invited parties to comment on that *Preliminary Results.* We received comments from Yisheng and rebuttal comments from the petitioners, the Fresh Garlic Producers Association[1] and its individual members. On November 5, 2003, we held a hearing during which the parties presented their comments.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to the new shipper review are addressed in the "Issues and Decision Memorandum for Final Results of the New Shipper Review of the Antidumping Duty Order of Fresh Garlic from the People's Republic of China" from Jeff May to James J. Jochum (December 22, 2003) ("Decision Memo"), which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Decision Memo is attached to this notice as an Appendix. The Decision Memo is a public document and is on file in the Central Records Unit, Main Commerce Building, Room B-099, and is accessible on the Web at www.ia.ita.doc.gov.

Separate Rates

In the *Preliminary Results*, the Department established that Yisheng is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate. See *Preliminary Results*, 68 FR at 55584. We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination.

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[1] The members of the Fresh Garlic Producers Association are Christopher Ranch LLC, Farm Gate LLC, The Garlic Company, Spice World, Inc., and Vessey and Company, Inc.

Use of Adverse Facts Available

In the *Preliminary Results*, the Department assigned Yisheng the rate of 376.67 percent based on the use of adverse facts available. See *Preliminary Results*, 68 FR at 55586. The Department has considered the issues raised by Yisheng and the petitioners and has addressed them in the Decision Memo. Based on its analysis of the parties' comments and for the reasons outlined in the *Preliminary Results*, the Department has not changed its determination with respect to the application of adverse facts available to subject merchandise exported by Yisheng. In summary, Yisheng withheld information requested by the Department, failed to provide requested information in a timely manner, significantly impeded the proceeding within the meaning of section 776(a)(2) of the Act, and did not act to the best of its ability to comply with the Department's request for information. Thus, for the final results of review, the Department has determined that it is appropriate to base Yisheng's antidumping margin on adverse facts available.

Final Results of Review

As a result of the application of adverse facts available, we find that a dumping margin of 376.67 percent exists for the period November 1, 2001, through October 31, 2002, on Yisheng's shipments of fresh garlic from the PRC.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise grown by Henan Yuyu Fruit & Vegetables Products Co., Ltd., and exported by Yisheng, the cash-deposit rate will be 376.67 percent; (2) for all other subject merchandise exported by Yisheng, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (3) for all other PRC exporters which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC countrywide rate; (4) for all PRC exporters of subject merchandise which have been found to be entitled to a separate rate, the cash-deposit rate will remain the rate applicable to that exporter; and (5) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter which supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

Bonding is no longer permitted to fulfill security requirements for shipments from Yisheng of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**.

This notice serves as a final reminder to importers covered by this determination of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these final results of review in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(i)(1) and 351.210(c).

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

Decision Memo

1. Use of Adverse Facts Available
2. Supplier is Not an Interested Party
3. AFA Should Have Been Applied Only to the FOP Segment

[FR Doc. 03–32065 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-862]

Notice of Antidumping Duty Order: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Finn at (202) 482–0065 or Michele Mire at (202) 482–4711, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of this order covers station post insulators manufactured of porcelain, of standard strength, high strength,[1] or extra-high strength, solid core or cavity core, single unit or stacked unit, assembled or unassembled, and with or without hardware attached, rated at 115 kilovolts (kV) voltage class and above (550 kV Basic Impulse Insulation Level and above), including, but not limited to, those manufactured to meet the following American National Standards Institute, Inc. standard class specifications: T.R.-286, T.R.-287, T.R.-288, T.R.-289, T.R.-291, T.R.-295, T.R.-304, T.R.-308, T.R.-312, T.R.-316, T.R.-362 and T.R.-391. Subject merchandise is classifiable under subheading 8546.20.0060 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading is provided for convenience and customs purposes, the written description above remains dispositive as to the scope of this order.

Antidumping Duty Order

On November 5, 2003, in accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) published its final determination that high and ultra-high voltage ceramic station post insulators (HVSPs) from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV). *See Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan* (68 FR 62560). On December 19, 2003, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (the ITC) notified the Department of its final determination that an industry in the United States is materially injured by reason of LTFV imports of subject merchandise from Japan.

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[1] Station post insulators are manufactured in various styles and sizes, and are classified primarily according to the voltage they are designed to withstand. Under the governing industry standard issued by the Institute of Electrical and Electronic Engineers, the voltage spectrum is divided into three broad classes: "medium" voltage (i.e., less than or equal to 69 kilovolts), "high" voltage (i.e., from 115 to 230 kilovolts), and "extra-high" or "ultra-high" voltage (i.e., greater than 230 kilovolts).

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of HVSPs from Japan. These antidumping duties will be assessed on all unliquidated entries of HVSPs that are entered, or withdrawn from warehouse, for consumption on or after June 16, 2003, the date on which the Department published its notice of an affirmative preliminary determination in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan* (68 FR 35627). CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins listed below. The weighted-average percentage dumping margins are as follows:

Manufacturer/Exporter	Weighted-Average Percent Margin
NGK Insulators Ltd.	105.80
All Others	105.80

This notice constitutes the antidumping duty order with respect to HVSPs from Japan. Interested parties may contact the Department's Central Records Unit, room B-099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 C.F.R. § 351.211.

Dated: December 22, 2003.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–32068 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A-427-009

Industrial Nitrocellulose from France: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On September 30, 2003, the Department of Commerce initiated an administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers one manufacturer/exporter, Bergerac, N.C. The period of review is August 1, 2002, through July 31, 2003. We are rescinding this review after receiving a timely withdrawal from the party requesting this review.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0180 or 202–482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2003, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on industrial nitrocellulose from France covering the period August 1, 2002, through July 31, 2003. See *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 FR 45218.

On September 30, 2003, pursuant to a request by the petitioner, Green Tree Chemical Technologies, Inc. (Green Tree), the Department initiated an administrative review of Bergerac, N.C. (Bergerac) for the period August 1, 2002, through July 31, 2003. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation In Part and Deferral of Administrative Review*, 88 FR 56262. On December 9, 2003, Green Tree withdrew its request for a review and asked the Department to rescind the administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because Green Tree submitted its request for rescission within the 90-day time limit and there were no requests for a review from other interested parties, we are rescinding this review. As such, we will issue appropriate assessment instructions directly to U.S. Customs and Border Protection.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 19, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–32064 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-423-808]

Notice of Extension of Time Limit for Preliminary Results of Administrative Antidumping Review: Stainless Steel Plate in Coils from Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Scot Fullerton at (202) 482–0197 or (202) 482–1386, respectively; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

Background

On May 21, 1999, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on stainless steel plate in coils from Belgium (64 FR 27756). On May 30, 2003, in accordance with Section 751(a) of the Tariff Act of 1930, as amended (the Act) and section 19 CFR 351.213(b) of the Department's regulations, Allegheny Ludlum, North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners) requested a review of the antidumping duty order on stainless steel plate in coils from Belgium for ALZ N.V. (ALZ) and its affiliate Arcelor International America Inc. for the period May 1, 2002 through April 30, 2003. On July 1, 2003, we published a notice of "Initiation of Antidumping Review." *See* 68 FR 39055.

On September 11, 2003, Ugine & ALZ Belgium (U&A Belgium) submitted its response to section A of the Department's questionnaire. On October 2, 2003, U&A Belgium submitted its response to sections B and D of the Department's questionnaire. On October 6, 2003, U&A Belgium submitted its response to section C of the Department's questionnaire. On October 9, 2003, U&A Belgium requested that the Department consider U&A Belgium to be the successor to ALZ. On October 14, 2003, U&A Belgium submitted a revised version of its section C questionnaire response. On October 30, 2003, U&A Belgium requested that the Department extend the deadline for issuance of the preliminary results of review to May 31, 2004. On November 21, 2003, petitioners submitted comments concerning U&A Belgium's response to sections B and C of the Department's questionnaire. On December 3, 2003, U&A Belgium submitted corrections to certain clerical errors contained in U&A Belgium's questionnaire response.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the last day of the anniversary month of the order for which the administrative review was requested. In this review, the Department must determine whether the respondent is the legal successor to another company by examining a number of factors. Because of the complexity and timing of this and other issues in this case, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act.

Consequently, in accordance with sections 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the preliminary results to 365 days from the last day of the anniversary month of the order. As the 365th day falls on a Sunday, and the following Monday is a federal holiday, the preliminary results will now be due no later than June 1, 2004.

Dated: December 17, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–32070 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-852]

Structural Steel Beams from Japan: Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed-circumstances review of the antidumping order on structural steel beams from Japan. The review will be conducted to determine whether Yamato Steel is the successor-in-interest to Yamato Kogyo for purposes of determining antidumping and countervailing duty liabilities.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: John D. A. LaRose or Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3794 or (202) 482–3208, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 2000, the Department of Commerce ("Department") published in the Federal Register an antidumping duty order resulting from the Department's investigation of Structural Steel Beams from Japan. *See Structural Steel Beams from Japan: Notice of Antidumping Duty Order*, 65 FR 37960 (June 19, 2000). On November 17, 2003 Yamato Kogyo Co., Ltd. ("Yamato Kogyo") submitted a request that the Department initiate a changed circumstances review to confirm that the newly-formed Yamato Steel Co., Ltd. ("Yamato Steel") is its successor-in-interest and should be entitled to the same cash deposit rate.

Scope of the Review

For purposes of this review, the products covered are doubly-symmetric shapes, whether hot or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products ("Structural Steel Beams") include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this review unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this review:

Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this review is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and U.S. Customs Service ("Customs") purposes, the written description of the merchandise under review is dispositive.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 351.216 of the Department's regulations, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding which shows changed circumstances sufficient to warrant a review of the order. Information submitted by Yamato Kogyo Co. Ltd. ("Yamato Kogyo") and Yamato Steel Co., Ltd. ("Yamato Steel") claims Yamato Steel as the successor-in-interest to Yamato Kogyo and shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c) (2003).

In accordance with section 751(b) of the Tariff Act and 351.216 of the Department's regulations, the Department is initiating a changed circumstances review to determine whether Yamato Steel Co., Ltd. is the successor company to Yamato Kogyo Co., Ltd. In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management, (2) organizational structure, (3) ownership, (4) production facilities, (5) supplier relationships, and (6) customer base. *See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 67513, 67515 (December 31, 2001) and *Brass Sheet and Strip from Canada; Final Results of Changed Circumstances Review*, 57 FR 20460, 20461 (May 13, 1992). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. *See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6946 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the new company as the successor-in-interest to the predecessor. *See Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with section 351.216(c), and 351.221(b)(4) and 351.221(c)(3)(i) of the Department's regulations. This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date of publication of this notice.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this review, unless a change is determined to be warranted pursuant to the final results of this review.

This notice of initiation is in accordance with sections 751(b)(1) of the Act and section 351.221(b)(1) of the Department's regulations.

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–32067 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

San Diego State University; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–050. Applicant: San Diego State University, San Diego, CA 92182–4614. Instrument: Electron Microscope, Model Tecnai G^2 12 TWIN. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 68 FR 65879, November 24, 2003.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of receipt of application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–32069 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Publication of Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

SUMMARY: The Department of Commerce ("the Department"), in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2002, through September 30, 2003. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 2002, through September 30, 2003.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: December 19, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX
SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
Austria	European Union (EU) Restitution Payments	$ 0.1	$ 0.1
Belgium	EU Restitution Payments	$ 0.05	$ 0.05
Canada	Export Assistance on Certain Types of Cheese	$ 0.25	$ 0.25
Denmark	EU Restitution Payments	$ 0.04	$ 0.04
Finland	EU Restitution Payments	$ 0.14	$ 0.14
France	EU Restitution Payments	$ 0.12	$ 0.12
Germany	EU Restitution Payments	$ 0.05	$ 0.05
Greece	EU Restitution Payments	$ 0.07	$ 0.07
Ireland	EU Restitution Payments	$ 0.08	$ 0.08
Italy	EU Restitution Payments	$ 0.07	$ 0.07
Luxembourg	EU Restitution Payments	$ 0.07	$ 0.07
Netherlands	EU Restitution Payments	$ 0.04	$ 0.04
Norway	Indirect (Milk) Subsidy	$ 0.34	$ 0.34
	Consumer Subsidy	$ 0.16	$ 0.16
		$ 0.50	$ 0.50
Portugal	EU Restitution Payments	$ 0.05	$ 0.05
Spain	EU Restitution Payments	$ 0.06	$ 0.06
Switzerland	Deficiency Payments	$ 0.07	$ 0.07
U.K.	EU Restitution Payments	$ 0.01	$ 0.01

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 03–32066 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303A]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Habitat, Groundfish and Scallop Oversight Committees and Scallop Advisory Panel in, January, 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between January 13–16, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Narragansett, RI and Mansfield, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, January 13, 2004 at 9:30 a.m.–Habitat/MPA Committee Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA; telephone: 508–339–2200.

The Committee will discuss upcoming Omnibus #2 Habitat Amendment including, but not limited to, the review of the Draft Timeline, Draft Notice of Intent, Draft Request for Proposals for Habitat Areas of Particular Concern and Dedicated Habitat Research Areas, and discussion of a draft Habitat Advisory Panel Process. The meeting will also include a recap of Council decisions in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Amendment 13 to the Multispecies FMP and a discussion of the upcoming Herring Amendment 1 and Monkfish Amendment 2 Draft Supplementary Environmental Impact Statement (DSEIS). In addition, the Committee will be updated on the status of the American Oceans Campaign V. Daley lawsuit settlement agreement requirements and any NMFS essential fish habitat (EFH) Consultations of particular interest to the Council. Lastly, the Committee will be updated on recent marine protected areas (MPA) work by the formerly separate MPA Committee. The timeline for development of a Council policy on MPAs will be developed. There will be a possible closed session for the discussion and selection of habitat advisory panel.

Wednesday, January 14, 2004 at 9:30 a.m. and Thursday, January 15, 2004 at 8:30 a.m.–Groundfish Oversight Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA; telephone: 508–339–2200.

The Groundfish Oversight Committee will meet to discuss Framework Action 39 and Framework Action 40 to the

Northeast Multispecies FMP. On Wednesday, January 14, the Committee will discuss Framework 40. The Committee will develop recommended objectives and alternatives for this framework, which will be considered by the full Council at its January 27–29, 2004 meeting. It is tentatively planned that this framework will identify opportunities and restrictions for the use of Category B days-at-sea (DAS). Category B DAS are identified in Amendment 13 and, if this amendment is approved, will be allocated on May 1, 2004. Some possible uses for Category B DAS include Special Access Programs, experimental fisheries, or to target healthy stocks subject to additional restrictions that will be specified in Framework 40. The Committee may also consider other issues for this framework that have been raised during the review of Amendment 13, such as, but not limited to, issues related to steaming time. On Thursday, January 15, the Committee will discuss Framework 39. This framework will specify the requirements and restrictions for scallop vessels that are fishing in groundfish closed areas. This framework is necessary to implement the area management system proposed in Scallop Amendment 10. If the proposed rule implementing Amendment 13 is published prior to the Committee meeting, the Committee may also review the proposed rule in order to develop recommendations for comments by the Council.

Thursday, January 15, 2004 at 6:30 p.m.–Scallop Advisory Panel Meeting.

The Scallop Advisory Panel will develop recommendations on draft alternatives in Framework Adjustment 16/39, including measures to manage scallop fishery access in the groundfish closed areas during 2004B07. Implementation of Amendment 10 and interim/emergency action may also be discussed. Advisors may want to arrive early to attend a Groundfish Oversight Committee meeting in the morning and afternoon that will discuss Framework Adjustment 39 alternatives.

Friday, January 16, 2004 at 9 a.m.–Scallop Oversight Committee Meeting.

The Committee will review advice from the Scallop Advisory Panel and Scallop Plan Development Team to guide development of measures to manage scallop fishery access in the groundfish closed areas during 2004–07 (Framework Adjustment 16/39). They may identify recommendations for a preferred alternative. Implementation of Amendment 10 and interim/emergency action may also be discussed.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 23, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00660 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121903E]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3–day Council meeting on January 27–29, 2004, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, January 27, 2004, beginning at 9:00 a.m. and on Wednesday and Thursday, January 28 and 29, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Viking Hotel, One Bellevue Avenue, Newport, RI, 02840; telephone (401) 847–3300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, January 27, 2004

Following introductions, the Council will receive reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. During her report, the Regional Administrator will brief the Council on a national commercial fisheries employment survey to be conducted by NOAA Fisheries early next year. There also will be a short presentation on the status of species reviewed at the 38th Northeast Regional Stock Assessment Workshop. Species will include ocean quahogs and butterfish. During the Tuesday afternoon session the Council will discuss and set Council work priorities for 2004. A Scallop Committee report will follow and focus on a request for emergency action. If approved, the emergency would likely remain in effect until NMFS publishes a final rule for Amendment 10 the Atlantic Sea Scallop Fishery Management Plan (FMP). Measures could include, but are not limited to closure of the Hudson Canyon and Elephant Trunk Areas. The areas contain a high abundance of small scallops that would be subject to harvesting without the protection specified in Amendment 10 or the emergency action. Late in the day, the Groundfish Committee will begin its report to the Council with guidance provided by the Transboundary Management Guidance Committee on U.S./Canada issues. This will include Total Allowable Catch recommendations for eastern Georges Bank cod, haddock and yellowtail flounder.

Wednesday, January 28, 2004

The Groundfish Committee will continue its report on Wednesday. It will propose initial action on Framework Adjustment 40 to the Northeast Multispecies FMP. At this meeting the Council intends to identify the objectives of the action as well as the alternatives that will specify the restrictions on the use of "B" days-at-sea. B days are among the effort controls included in Amendment 13 to the FMP. The Council also will likely prepare comments on the proposed rule implementing Amendment 13. Additionally, it may consider recommendations from the Groundfish Committee concerning the issues of steaming time and future access to the fishery by former participants who may be precluded from fishing under Amendment 13. If necessary, the Council also could discuss issues related to Congressional action as it affects NMFS funding in 2004.

Thursday, January 29, 2004

The Research Steering Committee will report to the Council on refinements to its policy on incorporating the results of cooperative research results into the management process and activities planned for 2004. The Council is then scheduled to review and approve its draft Statement of Organization, Practices and Procedures. The Habitat/Marine Protected Area Committee will ask for approval of its recommendations concerning the timing and scope of Essential Fish Habitat Amendment 2. There will also be a discussion of the committee's rationale to prohibit clam dredges from habitat closed areas designated in Amendment 13 to the Northeast Multispecies FMP. The afternoon session will include a report by the NOAA Fisheries Statistics Office on a proposed rule implementing mandatory dealer electronic reporting and scheduled for publication in 2004. The meeting will conclude with a briefing on NOAA Fisheries National Bycatch Strategy and regional implementation of a plan. Any other Council business that was postponed until the close of the meeting will also be addressed at this time.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 22, 2003.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 03–32073 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120302A]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing and Scientific Research Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reopening of comment period.

SUMMARY: Due to public request for an extension of the public comment period, NMFS is reopening the comment period for the notice of intent to issue Exempted Fishing Permits (EFPs) and Scientific Research Permits (SRPs) for the collection of Atlantic highly migratory species (HMS), previously published in the **Federal Register** on December 9, 2003.

DATES: The deadline of written comments on research and fishing activities is January 26, 2004.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The EFP/SRP applications and copies of the regulations under which EFPs/SRPs are issued may also be requested from this address. Comments also may be sent via facsimile (fax) to (301)713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt or Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs and SRPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

On December 9, 2003 (68 FR 68595), NMFS published a notice of intent to issue EFPs and SRPs for 2004. Due to public request, NMFS is reopening the comment period to January 26, 2004. Information regarding the issuance of EFPs and SRPs is contained in the previous notice and is not repeated here.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2003.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–32072 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2003–C–031]

Request For Comments and Notice of Round Table Meeting Regarding The Equities of Inter Partes Reexamination Proceedings

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments and notice of round table meeting.

SUMMARY: The United States Patent and Trademark Office (USPTO) seeks comments from former, current and prospective participants and other interested parties on whether *inter partes* reexamination proceedings are believed to be inequitable to any of the parties in interest and, if so, what changes are suggested to remove such inequities. As a part of this effort, USPTO announces the scheduling of a round table meeting to receive views on the effectiveness and possible improvement of *inter partes* reexamination proceedings.

DATES: Comments must be received by February 20, 2004, to ensure consideration. Requests to participate in the round table meeting must be received by January 28, 2004. The USPTO will make reasonable efforts to balance the interests represented at the round table meeting. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests to participate. The round table meeting is tentatively scheduled for February 17, 2004, at USPTO offices in Arlington, Virginia.

ADDRESSES: Written comments and requests to participate in the round table meeting should be (a) addressed to the United States Patent and Trademark Office, Office of Congressional Relations, Room 902, 2121 Crystal Drive, Arlington, VA 22202, ATTN: Anggie Reilly, Inter Partes Reexam; (b) faxed to Anggie Reilly's attention at (703) 305–8885; or (c) sent via electronic mail to *interpartesreexam@uspto.gov.* The specific time and location for the round table meeting will be communicated to participants and posted on USPTO's Web site at *www.uspto.gov.* That notice also will include information for persons wishing to observe the round table meeting.

FOR FURTHER INFORMATION CONTACT: Anggie Reilly by telephone at (703) 305–9300 or by electronic mail at *interpartesreexam@uspto.gov*.

SUPPLEMENTARY INFORMATION:

Background

Ex parte reexamination of patents, and the procedures for same, were enacted by Congress in 1980 to serve as expedited, low-cost alternatives to patent litigation in reviewing certain aspects of patent validity. Subsequent Congressional review indicated that *ex parte* reexamination of patents was being used infrequently, primarily because a third party who requested reexamination was unable to participate after initiating the reexamination proceeding. Interested parties suggested that the volume of lawsuits in district courts would be reduced if third parties were encouraged and able to use reexamination procedures that provided an opportunity to argue their case for patent invalidity at the USPTO. To address those concerns and provide such an opportunity, Congress enacted the "Optional *Inter Partes* Reexamination Procedure Act of 1999" as Subtitle F of the "American Inventors Protection Act of 1999" (Pub. L. 106–113). While the existing *ex parte* reexamination procedures remain intact, the separate optional *inter partes* reexamination procedures enacted in 1999 permit third party requesters to submit a written comment each time the patent owner files a response to the USPTO, to appeal an adverse decision of the patent examiner to the Board of Patent Appeals and Interferences (BPAI), and to participate in a patent owner's appeal to the BPAI in support of the patent examiner's rejection of claims. Third party requesters did not, however, have the ability to appeal further to the Court of Appeals for the Federal Circuit, nor to participate in the patent owner's appeal to the Court. In addition, an estoppel adverse to a third party requester (which does not exist in *ex parte* reexamination) attaches, if the requester is unsuccessful in the *inter partes* reexamination proceeding. The requester is estopped from later asserting in any civil action, or in a subsequent *inter partes* reexamination, the "invalidity/unpatentability" of any claim finally determined to be valid and patentable on any ground the third party requester raised or could have raised in the *inter partes* reexamination. (35 U.S.C. 315(c).) Also, the requester is estopped from later challenging in a civil action any "fact" determined in the *inter partes* reexamination. (Section 4607 of the Optional *Inter Partes* Reexamination Procedure Act of 1999.)

In order to make the optional *inter partes* procedures a more attractive alternative to litigation, Congress enacted, in 2002, sections 13105 and 13106 of subtitle A of the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. 107–273). Those sections (1) provide third party *inter partes* reexamination requesters with the right to appeal to the Court of Appeals for the Federal Circuit and to participate in the patent owner's appeal to the Court and (2) clarify that reexamination (both *ex parte* and *inter partes* reexamination) may be based on a patent or printed publication previously cited by or to USPTO, or considered by USPTO, as long as a substantial new question of patentability is raised. The estoppel provisions of the Optional *Inter Partes* Reexamination Procedure Act of 1999 were not, however, deleted by the Justice Appropriations Authorization Act.

To assist Congress in its continuing oversight of patent operations, Section 4606 of the "Optional *Inter Partes* Reexamination Procedure Act of 1999" includes the requirement that the USPTO submit to the Congress, within five years of the 1999 enactment, a report evaluating whether the *inter partes* reexamination proceedings established by the Act are "inequitable to any of the parties in interest." If inequity is determined to exist, the USPTO's report must then contain "recommendations for changes * * * to remove such inequity."

Request for Comments

To aid the USPTO in compiling the required report to Congress, the USPTO requests that interested parties having comments and/or recommendations on promoting equity in *inter partes* reexamination proceedings submit same to the USPTO. It is suggested that any such input to the USPTO include responses to the following questions:

(1) Do you qualify as, or do you represent, a small entity?

(2) Have you been a participant, *i.e.*, a third party requester or a patent owner party, in one or more *inter partes* reexamination proceedings?

(3) Are *inter partes* reexamination proceedings inequitable to any of the parties in interest?

(4) What particular procedures or lack of procedures do you feel are inequitable?

(5) What administrative action(s) should USPTO take to remove the identified inequities?

(6) What legislative/statutory action(s) should Congress take to remove the identified inequities?

Comments must be received by February 20, 2004, to ensure consideration. Such comments should be addressed as indicated above, and clearly identified as Comments in response to the **Federal Register** Notice titled "Request for comments and notice of round table meeting regarding The Equities of *Inter Partes* Reexamination Proceedings."

Round Table Meeting

In addition, the USPTO will conduct a round table meeting to hear views on the effectiveness and possible improvement of *inter partes* reexamination proceedings. The round table meeting is tentatively scheduled for February 17, 2004, in USPTO offices in Arlington, Virginia.

Requests to participate in the round table meeting must be received by January 28, 2004. Such requests should be addressed as indicated above, and clearly identified as requests to participate in the round table meeting. The USPTO will make reasonable efforts to balance the interests represented at the round table meeting tentatively scheduled for February 17, 2004. If it becomes necessary to limit the number of participants, preference will be given to first-in-time requests. Notice of the specific time and location for the round table meeting will be communicated to participants and posted on USPTO's Web site at *www.uspto.gov*. That notice also will include information for persons wishing to observe the round table meeting.

Dated: December 19, 2003.

Jon W. Dudas,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 03–31930 Filed 12–29–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 29, 2004.

Title, Form, and OMB Number: Vessel Operation Report; OMB Number 0710–0006.

Type of Request: Reinstatement.

Number of Respondents: 1,217.

Responses per Respondent: 159 (average).

Annual Responses: 193,906.

Average Burden per Response: 18 minutes.

Annual Burden Hours: 43,213.

Needs and uses: This is a U.S. Army Corps of Engineers information collection that serves as the basic instrument to collect waterborne commerce statistics. These data constitute the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors. These data, collected from vessel operating companies, are essential to plans for maintaining U.S. navigable waterways and are critical to the enforcement of the "Harbor Maintenance Tax" authorized under Pub. L. 99–662, Section 1402.

Affected Public: Business or other for profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–31920 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 29, 2004.

Title, Form, and OMB Number: TRICARE Prime Enrollment/Disenrollment Applications; OMB Number 0720–0008.

Type of Request: Reinstatement.

Number of Respondents: 20,689.

Responses per Respondent: 1.

Annual Responses: 20,689.

Average Burden Per Response: 7 minutes.

Annual Burden Hours: 2,150.

Needs and Uses: These collection instruments serve as applications for the enrollment, disenrollment, and Primary Care Manager (PCM) Change for the Department of Defense's TRICARE Prime program established in accordance with title 10 U.S.C. 1099, which calls for a healthcare enrollment system. Monthly payment options for retiree enrollment fees for TRICARE Prime are established in accordance with title 10 U.S.C. 1097a(c). The information collected on the TRICARE Prime Enrollment Application/PCM Change Form provides the necessary data to determine beneficiary eligibility, to identify the selection of a health care option, and to change the designated PCM when the beneficiary is relocating or merely requests a local PCM change, in accordance with the National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, Section 723(b)(E). The TRICARE Prime Disenrollment Application serves to disenroll an enrollee from TRICARE Prime on a voluntary basis.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–31921 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Critical Homeland Installation Protection will meet in closed sessions on January 20–21, 2004; February 26–27, 2004; April 1–2, 2004; May 10–11, 2004; June 17–18, 2004, in Arlington, VA (exact location to be determined). The Task Force will assess best practices for protecting U.S. homeland installations and recommend various approaches to enhancing security and protection of these facilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will assess investments in technology and manpower in order to ensure proper security levels at our nation's high-value installations with particular emphasis on airports, harbors, nuclear power facilities and military bases. To that end, the Task Force will review existing best practices in force protection and security at civil, industrial and military complexes; assess shortfalls and deficiencies associated with operational security; identify promising technology and/or processes that will enhance security; and recommend methods for reducing overall manpower requirements without relinquishing robust security measures.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31922 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Corrosion Control will meet in closed sessions on February 2–3, 2004; February 25–26, 2004; April 21–22, 2004, and May 10–11, 2004, in Arlington, VA (exact location to be determined). The Task Force will address corrosion control throughout a combat system's life cycle: design, construction, operation and maintenance.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will assess current on-going corrosion control efforts across the Department of Defense with particular attention to: Duplication for research efforts; application of current and future technology which currently exists in one area to other areas (*i.e.*, submarine applications which might translate to aircraft applications); the current state of operator and maintenance personnel training with regard to corrosion control and prevention; the current state of maintenance processes with regard to corrosion control and prevention; the incorporation of corrosion control and maintainability in current acquisition programs (during the design and manufacturing stages); the identity of unique environments important to National Security but with little commercial application (*e.g.*, nuclear weapons). The Task Force will conduct an analysis of the findings generated and determine which areas, if adequate resources were applied, would provide the most significant advances in combat readiness. In addition, the Task Force will assess best commercial practices and determine their applicability to DOD needs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–31923 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary is amending one system of records notice in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The changes will be effective on (insert date thirty days after publication in the Federal Register) unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Directives and Records Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific amendments to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DFOISR 11

SYSTEM NAME:

Mandatory Declassification Review Files (August 7, 2002, 67 FR 51235).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.'

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.'

* * * * *

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

* * * * *

DFOISR 11

SYSTEM NAME:

Mandatory Declassification Review Files.

SYSTEM LOCATION:

Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request Mandatory Declassification Review (MDR) or appeal an MDR determination of any classified document for the purpose of releasing declassified material to the public, as provided for under the applicable Executive Order(s) governing classified National Security Information. Other individuals in the system are action offers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of person making MDR request or appeal, identification of records requested, dates and summaries of action taken, and documentation for establishing and processing collectable fees.

Names, titles, and/or positions of security specialists and/or officials responsible for an initial or final denial on appeal of a request for declassification of a record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12958, Classified National Security Information, or other applicable Executive Order(s) governing classified National Security Information.

PURPOSE(S):

To manage requests and/or appeals from individuals for the mandatory review of classified documents for the purposes of releasing declassified material to the public; and to provide a research resource of historical data on release of records so as to facilitate conformity in subsequent actions.

Data developed from this system is used for the annual report required by the applicable Executive Order(s) governing classified National Security Information. This data also serves management needs, by providing information about the number of requests; the type or category of records requested; and the average processing time.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Magnetic media storage, computer database, paper computer printouts, and paper records in file folders.

RETRIEVABILITY:

Retrieved by name of requester and other pertinent information, such as organization or address, subject material describing the MDR item (including date), MDR request number using computer indices, referring agency, or any combination of fields.

SAFEGUARDS:

Paper records are maintained in security containers with access limited to officials having a need-to-know based on their assigned duties. Computer systems require user passwords and users are limited according to their assigned duties to appropriate access on a need-to-know basis.

RETENTION AND DISPOSAL:

Files that grant access to records are held in current status for two years after the end of the calendar year in which created, then destroyed. Files pertaining to denials of requests are destroyed 5 years after final determination. Appeals are retained for 3 years after final determination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

Written requests for information should include the full name and organizational affiliation of the individual at the time the record would have been created.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Declassification and Historical Research Branch, Suite 501, Crystal Gateway North, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306.

Written requests for information should include the full name and organizational affiliation of the individual at the time the record would have been created.

For personal visits to examine records, the individual should provide identification such as a driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Requests from individuals for Mandatory Declassification Review and subsequent release of records and information provided by form and memorandum by officials who hold the requested records, act upon the request, or who are involved in legal action stemming from the action taken.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–31924 Filed 12–29–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education—Special Focus Competition: European Community-United States of America Cooperation Program in Higher Education and Vocational Education and Training: Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116J.

DATES: *Applications Available:* January 16, 2004.

Deadline for Transmittal of Applications: April 16, 2004.

Deadline for Intergovernmental Review: June 16, 2004.

Eligible Applicants: Institutions of higher education and vocational education and training or combinations of these institutions and other public and private nonprofit educational institutions and agencies.

Estimated Available Funds: The Administration has requested $700,000 under this program for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $25,000–$200,000 total for up to three years.

Estimated Average Size of Awards: $25,000 for one-year preparatory projects; $75,000 for two-year complementary activities projects; $50,000 for year one of a three-year consortia implementation project with a $200,000 three-year total.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education. This program is a Special Focus Competition under the Fund for the Improvement of Postsecondary

Education (Title VII, Part B of the Higher Education Act of 1965, as amended) to support projects addressing a particular problem area or improvement approach in postsecondary education.

Priority: Under this program we are particularly interested in applications that meet the following priority.

Invitational Priority: For FY 2004 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is to encourage proposals designed to support the formation of educational consortia of institutions and organizations in the United States and the European Union to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities between the United States and the European Union. This includes the new member States scheduled to join the European Union in Summer 2004. The invitational priority is issued in cooperation with the European Union. European institutions participating in any consortium proposal responding to the invitational priority may apply to the European Commission's Directorate General for Education and Culture for additional funding under a separate European competition.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants or cooperative agreements.

Estimated Available Funds: The Administration has requested $700,000 under this program for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $25,000–$200,000 total for up to three years.

Estimated Average Size of Awards: $25,000 for one-year preparatory projects; $75,000 for two-year complementary activities projects; $50,000 for year one of a three-year consortia implementation project with a $200,000 three-year total.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education and vocational education and training or combinations of these institutions and other public and private nonprofit educational institutions and agencies.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116J.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program office at FIPSE, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8544. Telephone: 202–502–7500 or via the Internet at *www.ed.gov/FIPSE.* However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

You may also request application forms by calling 732–544–2504 (fax on demand), or application guidelines by calling 202–358–3041 (voice mail), or submitting the name of the competition and your name and postal address to *FIPSE@ed.gov* (e-mail). Applications also are available on the FIPSE Web site: *http://www.ed.gov/FIPSE.*

3. *Submission Dates and Times:*

Applications Available: January 16, 2004.

Deadline for Transmittal of Applications: April 16, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 16, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The European Community-United States of America Cooperation Program in Higher Education and Vocational Education and Training—CFDA Number 84.116J is one of the programs included in the pilot project. If you are an applicant under the EC–US Cooperation Program you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training, the EC–US Program Budget, the US and EC partner identification forms, and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training to the Application Control Center after following these steps:

1. Print the application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training.
4. Fax the signed application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the EC–US Cooperation Program in Higher Education and Vocational Education and Training and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the EC–US Cooperation Program in Higher Education and Vocational Education and Training at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 75.210.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project, you must submit a final performance report, including financial information as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), FIPSE performance is focused on (1) the extent to which funded projects are being replicated—*i.e.*, adopted or adapted—by others; and (2) the manner in which projects are being institutionalized and continued after grant funding. These two results constitute FIPSE's indicators of the success of our program. Consequently, applicants for FIPSE grants are advised to give careful consideration to these two outcomes in conceptualizing the design, implementation, and evaluation of the proposed project. If funded, you will be asked to collect and report data in your project's annual performance report on steps taken toward these goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Beverly Baker, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., suite 6140, Washington, DC 20006–8544. Telephone: (202) 502–7503 or by e-mail: *Beverly.Baker@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

For additional program information call the FIPSE office (202–502–7500) between the hours of 8 a.m. and 5 p.m., Eastern Time, Monday through Friday.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: December 23, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–32063 Filed 12–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–34–000]

Columbia Gas Transmission Corporation; Notice of Application

December 19, 2003.

Take notice that Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP04–34–000 on December 16, 2003, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), as amended, to abandon and construct and operate pipeline facilities in Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659.

Any questions regarding this application should be directed to counsel for Columbia, Fredric J. George, at (304) 357–2359, fax (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before January 9, 2004, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: January 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00659 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2493–006]

Puget Sound Energy, Inc.; Notice of Technical Meeting To Discuss Additional Information Filed With Regards to the Pending License Application

December 19, 2003.

a. *Date and Time of Meeting:* Tuesday, January 20, 2004, at 11 a.m. eastern standard time.

b. *Place:* Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. To participate by phone, see item (f).

c. *FERC Contact:* Nicholas Jayjack, 202–502–6073 or *Nicholas.Jayjack@ferc.gov.*

d. *Purpose of Meeting:* Puget Sound Energy (Puget) has requested a meeting with Commission staff to discuss Puget's "Summary of Proposed License Elements" filed with the Commission on December 9, 2003, for the Snoqualmie Falls Hydroelectric Project. The project is located on the Snoqualmie River in Snoqualmie, Washington.

e. *Proposed Agenda:* (1) Introduction of participants; (2) Puget Sound Energy's presentation on the purpose of the meeting; (3) Discussion; and (4) Meeting Wrap-up.

f. All local, State, and Federal agencies, Indian tribes, and other interested parties and individuals are invited to participate either in person or by telephone. Please RSVP Nicholas Jayjack at *Nicholas.Jayjack@ferc.gov* by no later than January 14, 2004, and indicate how you will participate (telephone or in person). If participating by telephone, you will receive calling instructions when you RSVP. It is encouraged that those participating by telephone assemble together as much as possible to ensure that there will be a sufficient number of open telephone lines to accommodate all participants.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00657 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

December 19, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No:* DI04–2–000.

c. *Date Filed:* December 15, 2003.

d. *Applicant:* Appalachian Mountain Club.

e. *Name of Project:* Zealand Falls Hut Hydroelectric Project.

f. *Location:* The Zealand Falls Hut Hydroelectric Project is located on Whitewall Brook, Grafton County, New Hampshire. The project is located on Federal land (White Mountain National Forest).

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dave Herring, AMC, P.O. Box 298, Gorham, NH 30581, telephone: (603) 466–2721 x204, FAX: (603) 466–2822, E-mail: *dherring@amcinfo.org*

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray (202) 502–8838, or E-mail: *diane.murray@ferc.gov.*

j. *Deadline for filing comments and/or motions:* January 23, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at: *http://www.ferc.gov.*

Please include the docket number (DI04–2–000) on any protests, comments or motions filed.

k. *Description of Project:* The existing Zealand Falls Hut Hydroelectric Project consists of: (1) A dam; (2) 3-inch-diameter, 1,500-foot-long polyethylene pipe; (3) a DC 12V/20 amp car-type alternator with a total rated capacity of 250 W; and (4) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the application*: Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00653 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 19, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12465–000.

c. *Date filed:* August 18, 2003.

d. *Applicant:* Glover Wilkins Hydro LLC.

e. *Name of Project:* Glover Wilkins By-Pass Project.

f. *Location:* On the Tombigbee Waterway, in Monroe County, Mississippi, utilizing the U.S. Army Corp of Engineers' Glover Wilkins Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 91(a)–825(r).

h. *Applicant Contact:* Mr. Brent Smith, Glover Wilkins Hydro LLC., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the U. S. Corps of Engineers' Glover Wilkins Dam by-pass and would consist of: (1) A proposed 100-foot-long, 9-foot-diameter steel penstock, (2) a proposed powerhouse containing a generating unit having an installed capacity of 1.875 megawatts, (3) a proposed 1-mile-long, 15 kilovolt transmission line, and (4) appurtenant facilities. Applicant estimates that the average annual generation would be 11 gigawatt-hours and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 C.F.R. 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00654 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2064–004]

Flambeau Hydro LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 19, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New minor license.

b. *Project No.:* 2064–004.

c. *Date Filed:* November 26, 1999.

d. *Applicant:* Flambeau Hydro LLC.

e. *Name of Project:* Winter Hydroelectric Project.

f. *Location:* Partially within the Chequamegon National Forest, on the East Fork of the Chippewa River near the town of Winter, Sawyer County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Loyal Gake, Flambeau Hydro LLC, P.O. Box 167, Neshkoro, WI 54960 (920) 293–4628 Ext.12.

i. *FERC Contact:* Michael Spencer,*michael.spencer@ferc.gov*, or (202) 502–6093

j. Pursuant to section 4.34(b) of the Commission's Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), the deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

k. *Status of environmental analysis:* This application is ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) A 14-foot-high, 140-foot-long concrete stop log diversion dam (2) a 55 acre reservoir with a normal storage capacity of 300 area-feet, at a normal pool elevation of 1367.7 mean sea level; (3) a 2,100-foot-long power canal; (4) an 18-foot-wide concrete intake structure; (5) two 5.5-foot-diameter 78-foot-long steel penstocks; (6) a powerhouse containing two generating units with a combined capacity of 600 kW, and an average annual generation 2,130 MWh (7) a 700-foot-long tailrace; and appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedures schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item k above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA: April 2004.

Ready for Commission decision on the application: June 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00655 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

December 19, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2210–098.

c. *Dates Filed:* November 10, 2003.

d. *Applicant:* Appalachian Power Company (APC).

e. *Name of Project:* Smith Mountain Pumped Storage Project.

f. *Location:* The project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Roanoke Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Teresa P. Rogers, Hydro Generation Department, American Electric Power, P.O. Box 2021, Roanoke, VA 24022–2121, (540) 985–2441.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov.*

j. *Deadline for filing comments and or motions:* January 20, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2210–098) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ("e-Filing") link. The Commission strongly encourages e-filings.

k. *Description of Request:* APC is requesting approval to permit Tilson Creations Inc. to install and operate within the project boundary two docks with a total of thirty-five covered stationary slips and 4 floaters. Construction would take place along the Roanoke River portion of the project at Grimes Creek in an area known as Timberlake Crossing. There is no dredging associated with the proposal.

l. *Location of the Application:* This filing is available for review at the

Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, D.C. 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00656 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Vist and Soliciting Scoping Comments

December 19, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2630–004.

c. *Date Filed:* June 27, 2003.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Prospect Nos. 1, 2, and 4 Hydroelectric Project.

f. *Location:* On the Rogue River, Middle Fork Rouge River, and Red Blanket Creek in Jackson County, near Prospect, Oregon. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* Toby Freeman, Hydro Licensing, 825 NE Multnomah Avenue, Suite 1500, Portland, OR 97232, (503) 813–6208.

i. *FERC Contact:* Nick Jayjack at (202) 502–6073 or *nicholas.jayjack@ferc.gov.*

j. *Deadline for filing scoping comments:* February 23, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The existing Prospect Nos. 1, 2, and 4 Hydroelectric Project consists of: (1) A 10-foot-high, 165-foot-long concrete gravity-type overflow diversion dam on the Middle Fork Rogue River; (2) a 10-foot-high, 1,160-foot-long concrete and earth-fill diversion dam on Red Blanket Creek; (3) a 50-foot-high, 384-foot-long concrete gravity diversion dam on the Rogue River; (4) a 260-acre-foot impoundment behind the North Fork diversion dam (the other two dams form minimal impoundments); (5) non-functional fishways at the Red Blanket Creek and Middle Fork Rogue River diversion dams; (6) a 9.25-mile-long water conveyance system composed of gunite-lined canals (24,967 feet), unlined earthen canals (4,426 feet), open-top woodstave flumes (6,609 feet), woodstave flow lines (7,139 feet), and steel penstocks (1,796 feet); (7) three powerhouses with a combined installed capacity of 41,560-kilowatts; (8) three 69-kilovolt (kV) transmission lines (0.26, 0.28, and 0.31 miles in length) and one 2.3-kV transmission line (0.6 miles in length); (9) a developed recreation area known as North Fork Park; and (10) appurtenant facilities. The applicant is proposing certain non-power resource enhancements. The applicant estimates that the total average annual generation is 280,657 megawatt-hours. Power from the project serves the applicant's residential and commercial customers in the communities of northern Jackson County and southern Douglas County, Oregon.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping process.

The Commission intends to prepare an Environmental Assessment (EA) for the proposed project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

Commission staff will conduct two scoping meetings. An evening meeting will focus on public input and a second, daytime meeting will focus on agency, Indian tribe, and non-governmental organization input. All interested individuals, organizations, agencies, and Indian tribes are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday, January 21, 2004.
Time: 7 p.m. to 9 p.m.
Location: Reston Hotel and Convention Center, 2300 Crater Lake Hwy., Medford, Oregon.

Daytime Scoping Meeting

Date: Thursday, January 22, 2004.
Time: 1 p.m. to 3 p.m.
Location: Reston Hotel and Convention Center, 2300 Crater Lake Hwy., Medford, Oregon.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (see item m above).

Site Visit

PacifiCorp and Commission staff will conduct a project site visit beginning at 8 a.m. on Thursday, January 22, 2004. If you would like to attend the site visit, please RSVP Arianne Poindexter, PacifiCorp at (503) 813–5513 by January 16, 2004. We will assemble at the Prospect Nos. 1, 2, and 4 Operator Office/Warehouse located at 1111 Mill Creek Drive, Prospect, Oregon. All participants will be responsible for their own transportation to the designated meeting site.

Objectives

At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially empirical data, on the resources at issue; (3) encourage statements from participants on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, agencies, and Indian tribes with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,
Secretary.
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BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Technical Conference on Supply Margin Assessment Screen and Alternatives

December 19, 2003.

Conference on Supply Margin Assessment (Docket No. PL02–8–000); AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc. (Docket Nos. ER96–2495–016, ER97–4143–004, ER97–1238–011, ER98–2075–010, and ER98–542–006 (Not consolidated)); Entergy Services, Inc. (Docket No. ER91–569–018); Southern Company Energy Marketing L.P. (Docket No. ER97–4166–010).

1. Take notice that a technical conference will be held on January 13 and 14, 2004, from 9:30 a.m. to 4 p.m. in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC. As discussed below, the goal of the technical conference is to discuss modifications or alternatives to the Supply Margin Assessment (SMA) interim generation market power screen and related mitigation measures announced in *AEP Power Marketing, Inc., et al.*, 97 FERC ¶ 61,219 at 61,969 (2001), *reh'g pending* (SMA Order). One or more of the Commissioners may participate in the conference. Additional details about the conference and a conference agenda will be provided in a subsequent notice.

2. In the SMA Order, the Commission announced a new market power screen for generation, the SMA, to be applied to market-based rate applications on an interim basis pending a generic review of new methods for analyzing market power and established mitigation measures applicable to entities that fail the SMA screen.[1] In a Notice Delaying Effective Date of Mitigation and Announcing Technical Conference, issued on December 20, 2001, the Commission deferred the date by which the companies in the above-captioned proceedings or any other public utilities failing the SMA screen must implement the mitigation for spot market energy sales set forth in the SMA Order, and announced its intention to hold a technical conference open to all interested persons, not only parties to the dockets captioned in the SMA Order.

3. On August 23, 2002, the Commission issued a notice establishing Docket No. PL02–8–000, Conference on Supply Margin Assessment, to provide an opportunity for all interested persons to comment. In preparation for the technical conference, the Commission invited all interested persons to submit written comments regarding the SMA screen and related mitigation measures. Those comments were filed on October 22, 2002.

4. In an effort to address concerns raised by commenters regarding the SMA screen and the price mitigation measures contained in the SMA Order, the Commission asked staff to prepare a staff paper identifying possible modifications or alternatives to both the SMA screen and price mitigation measures (such staff paper is set forth in the Attachment to this notice) and to hold a technical conference on these issues. In preparation for the technical conference, the Commission invites all interested persons to submit written comments on the staff paper no later than January 6, 2004. All comments should include an executive summary; the summary shall not exceed five pages. To conserve time and avoid unnecessary expense, persons with common interests or views are encouraged to submit joint comments.

5. Persons interested in participating in the technical conference should be prepared to discuss the proposals in the staff paper. In addition, we encourage interested persons to propose alternative approaches and demonstrate why any such alternatives are improvements to the SMA screen/mitigation measures and the proposals contained in the staff paper. Those proposing alternative approaches, either in their comments or at the conference, should address how their proposal meets data accessibility issues as well as the timing constraints the Commission faces in having to act upon many market-based rate filings within a 60-day statutory period. Finally, persons interested in participating in the technical conference should indicate what principles the Commission should apply in modifying

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[1] SMA Order, 97 FERC ¶ 61,219 at 61,967.

the SMA, such as what the generation dominance screen should measure, how rigorous the screen should be (*e.g.*, should it examine annual peak or monthly peak), how to factor in internal or external transmission constraints, and whether to look at installed capacity or uncommitted capacity.

6. As noted above, the SMA screen and related mitigation measures were designed as an interim measure for analyzing generation market power pending a generic review of new methods for analyzing markets and market power. The Commission has stated that it intends to launch a generic rulemaking proceeding to address other aspects of its market-based rate program.[2] The purpose of the technical conference will be to pursue what changes, if any, should be made to the SMA screen and to the mitigation measures applicable to entities failing the screen so that the interim screen for generation market power can be finalized and implemented (with mitigation measures where appropriate). Thus, the upcoming conference will be limited to a discussion of the alternative interim screens and mitigation measures.

7. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's e-Library two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening of the conference for a fee. Persons interested in this service should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

8. For more information about the conference, please contact Kermit Banks at 202–502–8217 or *Kermit.Banks@ferc.gov*.

Filing Requirements for Paper and Electronic Filings

9. Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. However, the Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

10. For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to the above-referenced Docket Nos.

11. Documents filed electronically via the Internet must be prepared in MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *www.ferc.gov*, click on "E-Filing" and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

12. All written comments will be placed in the Commission's public files and will be available for inspection at the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

Magalie R. Salas,

Secretary.

Attachment—Staff Paper Technical Conference on Supply Margin Assessment Screen and Alternatives

This paper sets forth Staff options for the Supply Margin Assessment (SMA) or alternative interim generation market power screen in electricity markets, and the appropriate mitigation to impose on those that fail the adopted screen. This paper is intended to serve as a focus for discussion at an upcoming technical conference that will be held on these matters. Staff stresses that the focus of this paper, and of the upcoming technical conference, is the appropriate interim generation market power screen, which is only one prong of the Commission's four-part test in reviewing applications for market-based rates, which examines: (1) Generation (horizontal) market power; (2) transmission (vertical) market power; (3) other barriers to entry; and (4) affiliate abuse. As the Commission has previously stated, it intends to initiate a generic rulemaking proceeding on potential new analytical methods for assessing markets and market power.[4] Thus, the Commission would be positioned to address all aspects of its market-based rate program as part of the generic rulemaking proceeding, while the focus of this paper and technical conference is on just one aspect of that market-based rate program.

In the SMA Order, the Commission announced a new generation market power screen, the Supply Margin Assessment (SMA), to be applied to market-based rate applications on an interim basis pending a generic rulemaking proceeding. Since the markets were evolving, the Commission felt its test for generation market power should also evolve. The SMA screen was to be applied to all sales other than those in independent system operator (ISO) or regional transmission organization (RTO) markets with Commission-approved market monitoring and mitigation.

In a Notice Delaying Effective Date of Mitigation and Announcing Technical Conference, issued on December 20, 2001, the Commission deferred the date by which the companies in the above-captioned proceedings or any other public utilities failing the SMA screen must implement the mitigation for spot market energy sales set forth in the SMA Order, and announced its intention to hold a technical conference open to all interested persons, not only parties to the dockets captioned in the SMA Order.

On August 23, 2002, the Commission issued a notice establishing Docket No. PL02–8–000, Conference on Supply Margin Assessment, to provide an opportunity for all interested persons to comment. In preparation for the technical conference, the Commission invited all interested persons to submit written comments regarding the SMA screen and related mitigation measures. Those comments were filed on October 22, 2002. Concerns expressed in the comments regarding the SMA screen included the conditions and factors that impact available supply when implementing the SMA screen (*e.g.*, the generation capacity of an applicant that is used to meet native load, pre-existing wholesale contractual obligations, and operating reserves). Commenters also expressed concern about the mitigation measures and their implementation, such as spot market energy sales mitigation. They objected to the split-the-savings requirement and argued that requiring the posting of incremental/decremental cost information would be ineffective and harmful to the competitive market.

In an effort to address concerns raised by commenters regarding the SMA screen and the price mitigation measures contained in the SMA Order, and to provide a framework for the technical conference, the Commission asked Staff to prepare a paper identifying possible modifications or alternatives to both the SMA screen and price mitigation measures.

The purpose of this paper is to outline Staff's current thinking on potential interim generation market power screens and methods for mitigation. While Staff is not recommending one screen over another or a mitigation method over any other, Staff is seeking comments and welcomes suggestions from commenters and technical conference participants.

Persons interested in participating in the technical conference should be prepared to discuss the proposals in this staff paper, and to propose alternative approaches and why any such alternatives are improvements to the SMA screen/mitigation measures and the proposals contained herein.

I. SMA Screen and Mitigation

SMA Screen

The SMA screen as adopted by the Commission in the SMA Order assesses whether an applicant has generation market power. In determining the geographic market, the SMA considers transmission constraints into the applicant's respective control area(s).

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[2] SMA Order, 97 FERC ¶61,219 at 61,967.

[3] *See AEP Power Marketing, Inc., et al.*, 97 FERC ¶61,219 at 61,967 (2001) (SMA Order).

In determining the size that triggers generation market power concerns, the SMA establishes a threshold based on whether an applicant is pivotal in the market, *i.e.*, whether at least some of the applicant's capacity must be used to meet the market's peak demand. An applicant will be pivotal if its capacity exceeds the market's surplus of capacity above peak demand—that is, the market's supply margin. Thus, an applicant will fail the SMA screen if the amount of its capacity exceeds the market's supply margin.

In applying the SMA screen, the control area market where the applicant is located is first considered. Next, the markets directly interconnected to the applicant's control area market are considered. An applicant will pass the screen if it or its affiliates own or control an amount of generation located in a control area which is less than the supply margin (generation in excess of load) in the control area. The margin will include the amount of generation that can be imported into the control area limited by the total transfer capability (TTC) of the transmission system (*i.e.*, the lesser of uncommitted generation capacity or TTC).[4] Under the Commission's current policy, market-based rate applicants are allowed to sell at market-based rates into any control area where they pass the screen.

All sales, including bilateral sales, into an ISO or RTO with Commission-approved market monitoring and mitigation (PJM, ISO–NE, NYISO, and CAISO) are currently exempt from the SMA and, instead, are governed by the specific thresholds and mitigation provisions approved for the particular markets. At the technical conference, Staff invites comments on whether this exemption should be continued.

Mitigation for Those Failing the SMA Screen

In the SMA Order, the Commission stated that the primary tools for exercising generation market power are physical and economic withholding. To prevent physical withholding, the Commission required that an applicant who fails the SMA screen offer uncommitted capacity (*i.e.*, generation in excess of each hourly projected peak load and minimum required operating reserves) for spot market sales in the relevant market. To prevent economic withholding, this uncommitted capacity would be priced using a split-the-savings formula.[5] The Commission required that an applicant implement split-the-savings pricing for spot market sales and purchases.[6]

The Commission reasoned that applying mitigation to spot market transactions will also result in mitigation of generation market power in longer term (forward) markets by creating a kind of competitive "standard offer" service for customers. If sellers attempt to charge excessive, non-competitive prices in forward markets, customers can avoid them by waiting to purchase in the real-time market. This puts market pressure on sellers to offer competitive prices in the forward markets. And when sellers offer competitive forward prices, many buyers will prefer to purchase in the forward markets in order to gain price certainty. Staff invites comments on the reasonableness of this assumption at the conference.

In the SMA Order, the Commission also imposed additional mitigation on applicants failing the screen. The Commission established mitigation for the size of a pivotal supplier (the Commission required that when a transmission provider performs a study pursuant to a request for interconnection, an unaffiliated entity may request that the output of its proposed project be modeled for study purposes to serve load within the control area in which it is located, without having to formally designate a particular load or without having to be selected as a designated network resource at the time of interconnection). In addition, to address concerns regarding residual transmission market power, the Commission required that the parties to the SMA Order employ an independent third party to operate and administer their OASIS sites. (*See* 97 FERC at 61,973).

II. Possible Revisions to the SMA Screen

Many commenters were critical of the SMA screen. In particular, some commenters claimed that the SMA screen overstates the amount of an applicant's capacity that is available to the wholesale market by including capacity committed to serve native load and pre-existing contract obligations as well as operating reserves set aside to meet regional reliability requirements. Other commenters raised concerns on the use of TTCs to determine import capability, since they claimed that TTCs may overstate transmission availability, thereby overstating the size of the geographic market to the benefit of market-based rate applicants. Some commenters objected that the SMA passes/fails applicants by using a bright-line standard which is overly narrow because it evaluates one hour's supply and demand, thereby neglecting to recognize non-peak generation market power or the lack thereof.

In response to these comments, Staff has identified for purposes of discussion at the technical conference two general methodologies for assessing generation market power that would constitute modifications to the interim SMA screen as announced in the SMA Order: Pivotal Supplier and Market Share.[7] Among the improvements Staff recommends are that the interim screen should recognize planned generation outages when calculating capacity under the pivotal supplier and market share models discussed below. In addition, Staff recommends that State and Regional Reliability Council operating requirements for reliability (*i.e.*, operating reserves) should be used when calculating capacity in both the pivotal supply and market share screens discussed below.

Staff continues to propose the use of TTCs in applying the interim SMA screen. However, Staff seeks comment on viable alternatives (*i.e.*, flexibility to consider historical firm transactions, losses, and transmission reserve margins affecting available transfer capability). In particular, Staff seeks comment on how much transmission capacity should be included in the analysis where transmission providers (whose control over transmission has not been transferred to an RTO or ISO) calculate the capacity and also participate in generation markets. There are also transmission and other operating constraints inside the control area being evaluated, such that some generators are not able to run to their maximum rated capacity. What percent of these generators' capacity should be included as participating in the market?

Also, to address the commenters' concerns as to the SMA's over reliance on system peak data, options discussed below propose to measure generation market power on a monthly basis. However, Staff solicits the input of technical conference participants as to how the Commission can obtain the data to make such monthly measurements practicable. Migrating to a monthly measurement using the proposed models will require collecting applicant and relevant control area supply and demand monthly information. Monthly data for the supply and the demand for control areas and applicants cannot presently be gathered from a single source. Although supply data could be obtained from the FERC Form No. 714, private or industry data services, and OASIS information, and demand data obtained from the FERC Form No. 714 and FERC Form No. 1, Staff would appreciate suggestions as to what current reporting requirements exist that include necessary data and what reporting requirements may need to be expanded to collect the data, if a monthly measurement is ultimately adopted.

In addition, some commenters contended that the SMA Order was flawed because it lacked clarity and explanation when defining the data that would be used. In response, Staff has developed definitions for the data used in the interim generation market power screens discussed below. These definitions are set forth in Appendix A and Staff seeks comment on the clarity and accuracy of these definitions.

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[4] As the Commission explained in the SMA Order, the total amount of TTC is used as only a point of reference to establish the maximum amount of uncommitted generation supply, even though this amount of generation could not be simultaneously imported into an applicant's control area. The Commission stated in the SMA Order that intervenors will be allowed to present arguments on a case-by-case basis that another factor limiting import capability is appropriate, if warranted by the facts.

[5] A seller's incremental cost (the out-of-pocket cost of producing an additional MW) is compared with a buyer's decremental cost (the cost of not producing the last MW). The average of the incremental and decremental costs is the split-savings price. The details of how split-the-savings pricing was to be implemented are described in the SMA Order. *See* 97 FERC at 61,971–73.

[6] For purposes of this paper, spot market sales are intended to include only hourly transactions.

[7] Although several alternative screens were proposed by commenters (which are summarized below), Staff is not focusing on them at this time because of the intensive data requirements associated with these screens that would make them burdensome and costly for many applicants, and would be administratively difficult for Staff to review and perform in the 60-day statutory time period.

Possible Alternatives to SMA Screen

A. Pivotal Supply Screen—Capacity Surplus Index (CSI)

The CSI is a Pivotal Supplier screen that is a modified version of, and an alternative to, the SMA. Much like the SMA, the CSI continues the use of a pivotal supplier concept. However, unlike the SMA, rather than considering the applicant's capacity in relation to the supply margin, the CSI eliminates the applicant's capacity from the analysis entirely and only focuses on whether there is sufficient competing supply in the market to meet peak load.

An important refinement of the CSI over the SMA is that under the SMA, the applicant is assumed to have market power in all months if its installed capacity is higher than the supply margin (which is calculated based on the system's peak day). Rather than calculating the supply margin based on the system's peak day, the CSI incorporates monthly data and determines whether the applicant is a pivotal supplier on a monthly basis. With respect to the applicant's control area, the CSI calculation first computes the Control Area Competing Supply (all non-applicant installed capacity, minus planned outages in the control area, plus imports that are the lesser of Uncommitted Capacity or TTC). The Control Area Competitive Supply is then compared to the Control Area Peak Demand (which includes operating reserves). If the Competitive Supply exceeds the Control Area Demand, then the applicant passes the CSI screen. In other words, if there is sufficient competing supply to meet peak load, the applicant passes the CSI; otherwise, it fails. A similar analysis is computed for markets directly interconnected to the applicant's control area market.

Under the CSI, an applicant may be found to be a pivotal supplier in one or more months and found not to be pivotal in other months. The CSI would only impose price mitigation on the applicant in the season(s) in which it was found to be a pivotal supplier.[8] For example, if an applicant is found to be a pivotal supplier (having the ability to exercise generation market power) during the months of July and August but not during the remaining months of the year, the CSI would impose price mitigation on the applicant only during the summer period (June through August).

B. Market Share Screens

Discussed below are two alternatives which incorporate a market share approach in determining whether an applicant has the ability to exercise generation market power. The Limited Competing Supplier screen assesses both installed and uncommitted capacity. The Wholesale Market Share screen only assesses uncommitted capacity.

Unlike the Pivotal Supplier concept which determines whether a seller's generation must run to meet peak load, Market Share Screens measure whether a seller has a dominant position in the market based on the number of megawatts of capacity owned or controlled, *i.e.*, is the applicant's control of the market excessive compared to competitive supplies. To the extent this is true, the applicant would have generation market power. Under the Market Share Screens, an applicant may be found to be dominant in the market in one or more months and found not to be dominant in the market in other months. Just like the CSI, the Market Share Screens would only impose price mitigation on the applicant in the season(s) in which it was found to be dominant in the market.[9]

1. Limited Competing Supplier Screen. This generation market power screen directly considers the impact of transmission constraints. As proposed, the Limited Competing Supplier Screen examines the applicant's installed and uncommitted capacity. Under this screen, available transmission (measured by TTC) will be factored in from OASIS sites and into the analysis of the applicant's market share of both installed and uncommitted capacity.

Under the installed capacity element of this screen, the applicant's market share is derived by dividing its installed capacity by the sum of the total installed capacity of all suppliers in that control area plus the generation that can be imported (as limited by TTC). Under the uncommitted capacity element of this screen, the applicant's market share is derived by dividing its uncommitted capacity[10] by the sum of the total uncommitted capacity of all suppliers in that control area plus the generation that can be imported (as limited by TTC).

If the applicant's market share is less than 20% for the month, applicant passes the generation market screen and would be authorized to sell at market-based rates. If the applicant's market share is greater than 35%[11] for the month, then applicant fails this generation market power screen. If the applicant's market share is between 20% and 35%, the Commission could consider other factors in granting/denying market-based rate authority (*e.g.*, transmission constraints). Staff seeks comments on what other factors the Commission should consider.

2. Wholesale Market Share (WMS). As noted above, the Limited Competing Supplier Screen examines the applicant's installed and uncommitted capacity. Many commenters were critical of using committed generation in determining market power. They contended that it is not possible for a utility to exercise market power over its regulated native load for two primary reasons: 1) state regulation removes the ability of a utility with significant native load responsibilities to exercise market power; and 2) a utility would lack any incentive to exercise market power from its regulated generation because its native load pays a regulated price.

An alternative generation market power screen that may address these concerns by more narrowly focusing dominance in the wholesale market is the Wholesale Market Share (WMS) screen. Like the Limited Competing Supplier Screen, this WMS screen would consider market share, but only for uncommitted capacity for the wholesale market. The intent of this model is to isolate the wholesale supply by first capturing the size of supply and demand for the entire relevant market, and then removing the supply serving retail demand and retail demand itself from the total (and the respective operating reserves.) This would isolate wholesale supplies and demand for a market share analysis. The WMS is calculated by measuring, on a monthly basis, an applicant's market share of uncommitted capacity relative to the market's total uncommitted capacity. Issues needing discussion at the technical conference are the ability of the applicant and vertically integrated utilities to segregate wholesale opportunity sales from retail sales and the reasonableness of seeking to isolate wholesale and retail supplies.

In the relevant geographic market for the WMS, an applicant's market share is determined by dividing the applicant's uncommitted capacity by that of the total uncommitted capacity in the relevant market. The applicant's uncommitted capacity is calculated by taking the applicant's total installed capacity (nameplate capacity plus firm purchases) less planned outages, native load, long-term sales, and operating reserves. An applicant's uncommitted capacity represents its control of resources available for wholesale trade within the relevant market. The relevant market's uncommitted capacity is determined by taking the total control area installed capacity, plus competing supplies which could be imported from adjacent control areas (such imports are assumed to be the lesser of uncommitted capacity or TTC), less peak load (native & long-term sales) and operating reserve margins.

Like the Limited Competing Supplier Screen, the WMS uses 20% to 35% pass/fail thresholds as discussed above.

III. Alternative Models Suggested by Commenters

Three commenters proposed alternative models to the SMA for consideration.

- Reliant proposed the Supply Duration Index (SDI). The SDI first calculates the sum of generation available from non-applicants, imported power, the applicant's committed forward contracts and new generation, and the applicant's existing uncommitted generation. Next, the SDI considers the firm load duration curve in percentage terms over the course of a year. For some period of time during the year, the sum of all available committed generation may be less than the firm load demanded. When this occurs, the SDI screen assumes that this firm load can only be supplied by the applicant's uncommitted generation resources. This represents a time when the applicant may have the potential to exercise market power. While this model is interesting, the data needed to verify the applicant and control area information is not readily available (hourly data). However, in the alternatives discussed below, many of the aspects of the SDI (*i.e.*, pivotal supplier concept) have been incorporated.[12]

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[8] Although the generation market screens are applied on a monthly basis, mitigation could be on a seasonal basis. These screens take a snap shot in time, therefore, the month in which companies pass/fail may vary (within the season). Accordingly, to capture the broader time period where market power may exist, seasonal mitigation could be adopted. *See* note 13.

[9] *See* note 13.

[10] Applicant's uncommitted capacity is calculated by taking the applicant's installed capacity (generation owned or controlled by applicant) less planned outages, native load, long-term sales, and operating reserves. The same type of calculation is used when determining the amount of uncommitted capacity of competitive supplies.

[11] A ceiling of 35% is consistent with the Department of Justice's safeharbor threshold, per the 1992 Horizontal Merger Guidelines, Section 2.211.

- CAISO proposed the Residual Supplier Index (RSI). The RSI determines if a supplier is pivotal during a specified set of hours or all hours, *i.e.*, without the applicant's supply the market demand cannot be met. Because applying a model down to the hour creates insurmountable data and administrative difficulties, this model is not practical. In particular, obtaining hourly data for markets outside of an organized market is not practical nor is monitoring such markets on an hourly basis. However, some of the critical concepts of the model have been incorporated into the Capacity Surplus Index (CSI) screen.[13]
- Lastly, Old Dominion Electric Cooperative proposed the Market Simulation Analysis. This modeling technique attempts to simulate market conditions using loadflow algorithms which identify parallel/looping power flows, and seasonal variations. While such models can identify load pockets, daily and seasonal variations, and may provide a more precise measure of generation market power, such models require extensive data from all market participants (including small merchants), could take up to 9 months or more to create, and it is unclear how such a model would be applied on a case-by-case basis. Accordingly, Staff does not consider this alternative to be viable as an interim generation market power screen.[14]

IV. Possible Revisions to the SMA Mitigation

With respect to the SMA mitigation measures, among other things, many commenters object to the spot market energy sales mitigation, and in particular to the split-the-savings requirement. Commenters also oppose as ineffective and harmful to the competitive market the requirement to post incremental/decremental cost information.

Set forth below are alternative mitigation approaches for discussion at the technical conference that address many of the concerns expressed by commenters. In each approach, Staff proposes that the mitigation being considered be applied seasonally.[15] If the applicant fails any month of a season, it would thus be mitigated for the entire season (but only that season).

In addition, to address some commenters' concerns, applicants that fail the screen, to the extent necessary, could be required to file incremental and decremental cost information only with the Commission on a confidential basis.

A. Traditional Cost-based Rate

This alternative would require mitigated sellers to have on file an up to rate or a cost-based rate for periods when they are mitigated. The cost-based rate could be based on an average cost of the units expected to run to meet peak demand with an annual revenue cap, or an average system or regionwide rate could be established.

B. Single Market Clearing Price

Under the single market clearing price approach, all transactions of the failing applicant would be executed at a single market clearing price instead of at multiple split-the-savings prices. The applicant would still be required to provide its own 24 hourly incremental and decremental energy costs by noon for the following trading day.[16] The incremental costs would represent offers to sell and the decremental costs would represent bids to buy energy during each hour of the trading day. All additional requests to purchase and offers to sell energy that are received by 6 p.m. for the following trading day would, in combination with the applicant's bids and offers, be used to determine a market clearing price for energy in each hour of the trading day. The market clearing price for any hour would be a price that corresponds to a total quantity of energy that just balances the accepted supply offers with the accepted purchase bids. That is, it is a price that is at least as great as any accepted supply offer and is no higher than any accepted purchase bid. It is also a price at which no entities whose bids and offers were not accepted would be willing to transact.

Appendix A—Data Definitions

The following definitions are recommended for use in the proposed generation market power screens.

Applicant's Peak Demand—Represents the largest electric power requirement (based on net energy for load) during a specific period of time, usually integrated over one clock hour and expressed in megawatts, for the Native Load and Firm Sales that the applicant has an "obligation to serve".

Applicant's Total Capacity—Represents the applicant's and their affiliate's installed generation nameplate capacity, adjusted for seasonal deratings, plus firm purchases.

Applicant's Uncommitted Capacity—This calculation takes the applicant's installed capacity and subtracts the applicant's planned outages and the peak demand and operating reserves; which then isolates the amount of capacity that is available for wholesale competition. The calculation follows:

Total Applicant Capacity (including imports)
—Planned Outages
—Peak Demand
—Operating Reserves

—Applicant Uncommitted Capacity

Control Area Peak Demand—For the control area, this represents the largest electric power requirement (based on net energy for load) during a specific period of time, usually integrated over one clock hour and expressed in megawatts, for the native load and firm sales that are under an "obligation to serve".

Control Area Uncommitted Capacity—This calculation takes the total control area capacity, adds imports and subtracts the planned outages and the peak demand and operating reserves; which then isolates the amount of capacity that is available for wholesale competition. The calculation follows:

Total Control Area Capacity
−Planned Outages
+Imports
−Peak Demand
−Operating Reserves

Control Area Uncommitted Capacity

Imports—The lesser of either the uncommitted capacity (Installed capacity less peak load and operating reserves) from each adjacent control area or the total transfer capability between each Adjacent Control Area.

Installed Capacity—Total generating resources (installed generation plus firm purchases).

Operating Reserves—Any operating reserves the applicant is required to carry by NERC regional reliability councils or by their state utility regulatory commissions to ensure system reliability. To accommodate this operating requirement, each applicant will submit and support the amount of operating reserves that are mandated.

Planned Outages—Refers to generators that are normally in an operating or stand-by status, but are derated or unavailable due to routine service or planned maintenance.

Relevant Geographic Market—The control area in which the applicant owns the bulk of its generation and the interconnected control areas adjacent to that control area.

Total Control Area Capacity—Total capacity capability for the control area, includes installed generation and firm purchases.

[FR Doc. E3–00652 Filed 12–29–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0004; FRL–7603–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only

AGENCY: Environmental Protection Agency (EPA).

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[12] Comments of Reliant Resources, Inc., pages 5–8.

[13] Comments of the California Independent System Operator Corporation, pages 13–18.

[14] Comments of Old Dominion Electric Cooperative, pages 8–10.

[15] The four seasons considered are: Summer (June/July/August); Fall (September, October, November); Winter (December/January/February), and Spring (March/April/May).

[16] In lieu of disclosing this information publicly, the mitigated applicant could be required to provide the Commission on a confidential basis with all relevant information that supports the clearing price.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2003–0004, to (1) EPA online using EDOCKET (our preferred method), by email to *opp-docket@epa.gov*, or by mail to: (1) Public Information and Records Integrity Branch, Office of Pesticide Programs, Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division, 7506C, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information published on February 26, 2003 (68 FR 8887). EPA received no comments on this ICR during the 60–day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2003–0004, which is available for public viewing at the Public Information and Records Integrity Branch, Office of Pesticide Programs, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Application for Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that before a pesticide product may be distributed or sold in the U.S., it must be registered by EPA. However, section 5 of FIFRA authorizes EPA to issue experimental use permits (EUPs) to allow companies to transfer, sell or distribute unregistered pesticide products labeled for experimental use for the purpose of gathering data necessary to support the application for registration. This information collection program is designed to provide EPA with data necessary to determine whether to issue an EUP under section 5 of FIFRA.

The information collected and reported under an EUP is a summary of that which is routinely submitted in connection with registration. The EUP allows for large scale field testing, if necessary in order to collect sufficient data to support registration. An EUP is not required if the person conducting the tests limits testing to laboratories or greenhouses; limited replicated field trials and other tests whose purpose is only to assess the pesticide's potential efficacy, toxicity or other properties, and does not expect to receive benefits in pest control.

The EUP applicant must submit information describing the who, what, where, when and how the experimental use permit will be used. Such information would include, but not limited to, the applicant's name and address, the proposed program, rate of applications, data (including identity of the chemical composition, toxicity, efficacy) and the proposed labeling for the product. This information from the applicant is necessary in order to grant and effectively monitor the EUP. A final report is submitted on the results of the experimental program which includes information such as: amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticide material, and affected food/feed commodities.

In addition, applicants are required to use EPA Form 8570–17 (Application for an Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only), and EPA Form 8570–4 (Confidential Statement of Formula) for the EUP application.

The authority for this information collection is section 5 of FIFRA. Compliance regulations are contained in 40 CFR part 172. CBI submitted to EPA in response to this information collection is protected from disclosure under FIFRA section 10.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Pesticide registrants who wish to obtain an EUP to ship and use a pesticide for experimental purposes only.

Estimated Number of Respondents: 75.

Frequency of Response: As needed.

Estimated Total Annual Hour Burden: 757 hours.

Estimated Total Annual Cost: $64,950.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: December 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–32055 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0028; FRL–7603–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units, EPA ICR Number 1927.03, OMB Control Number 2060–0451

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0028, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). No comments were received.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0028, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search", then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD).

Abstract: Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units (40 CFR part 60, subpart DDDD), was promulgated on December 1, 2000. The emission guidelines require a one-time waste management plan, initial performance tests for ten pollutants, annual performance testing for particulate matter (PM), hydrogen chloride (HCl), and opacity, continuous operating parameter monitoring, annual operator training, and annual reporting. A deviation report is required if any of the emission limitations or operating limits are exceeded. The frequency of these activities was chosen by EPA as the period that will provide an adequate margin of assurance that affected facilities will not operate for extended periods in violation of the standards.

The regulation addresses information collection activities imposed by the Commercial and Industrial Solid Waste Incineration (CISWI) Unit Emission Guidelines, subpart DDDD. The guidelines do not apply directly to CISWI unit owners and operators. The guidelines can be thought of as "model regulations" that States use in developing State plans to implement the emission guidelines. If a State does not develop, adopt, and submit an approved State plan, the Environmental Protection Agency (EPA) must develop a Federal plan to implement the emission guidelines. In the event that a State's plan is not approved, then a Federal plan must be developed.

The information will be used by the designated Administrator's enforcement personnel to ensure that the requirements of the State (or Federal) plan are being implemented and are complied with on a continuous basis. Specifically, the information will be used by the designated Administrator to: (1) Identify existing sources subject to the standards; (2) ensure that existing sources have a control plan to achieve compliance by the final compliance date; (3) ensure that subpart DDDD is being properly applied; (4) ensure that the emission standards are being complied with; and (5) ensure, on a continuous basis, that the operating parameters established during the initial stack test are not exceeded.

In addition, records and reports are necessary to enable the Designated Administrator to identify CISWI units that may not be in compliance with the standards. Based on reported information, the designated Administrator can decide which CISWI units should be inspected and what records or processes should be inspected at the CISWI unit. The records that CISWI units maintain would indicate to the designated Administrator whether the personnel are operating and maintaining control equipment properly and whether they have met the qualification requirements. In more than 95 percent of the cases, the enforcement of emission guidelines has been delegated to State air pollution control agencies. In such cases, the reports required by the standards will be submitted to the appropriate State agency, and not directly to the EPA. Thus, there is a minimal possibility for the duplication of information to State agencies and EPA. In those few cases where State agencies have not developed a State plan or requested delegation of the federal plan, Federal enforcement still requires information from the CISWI facility. The plant owner or operator may submit a copy of State or local reports to the Administrator in lieu of the report required by the standards, as specified in the General Provisions of 40 CFR part 60.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 262 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Commercial and Industrial Solid Waste Incineration Units.

Estimated Number of Respondents: 97.

Frequency of Response: Annually, Semi-annual and Initially.

Estimated Total Annual Hour Burden: 72,423 hours.

Estimated Total Annual Cost: $6,021,000, includes $87,000 annualized capital/startup costs, $12,000 annual O&M costs and $5,922,000 annual labor costs.

Changes in the Estimates: There is an increase of 63,278 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase was due to the implementation of the rules. In the active ICR, it was assumed that most of the burdens of the rule in conformity with the initial requirements, will not occur until years four or five of implementation of this rule, therefore, most of the respondent burden for those requirements is included in this renewal package.

There was no capital cost or operational and maintenance costs associated with the emission guidelines in the active ICR, therefore, the respondent burden for the active ICR is minimal, as compared to the renewal ICR.

Dated: December 17, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–32059 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0026; FRL–7604–1]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Aluminum Sulfate Manufacture, EPA ICR Number 1066.04, OMB Control Number 2060–0032

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 29, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0026, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (Mail code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564–4113; fax number (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0026, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NSPS for Ammonium Sulfate Manufacture (40 CFR part 60, subpart PP).

Abstract: The Administrator has judged that Particulate Matter (PM) emissions from ammonium sulfate manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

Owners or operators of ammonium sulfate manufacturing plants must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. The recordkeeping requirements for ammonium sulfate plants consist of the occurrence and duration of all start-ups and malfunctions, the initial performance test results, amount of ammonium sulfate feed material, and the pressure drop across the emission control system. Records of startups, shutdowns and malfunctions will be noted as they occur. Records of the performance test should include information necessary to determine the conditions of the performance test, and performance test measurements (including pressure drop across the emission control system) and results. The Continuous Monitoring System (CMS) will record pressure drop across the scrubbers continuously and automatically.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 31 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Ammonium sulfate manufacturing facilities.

Estimated Number of Respondents: 4.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 246 hours.

Estimated Total Annual Cost: $19,912, includes $0 annualized capital/startup costs, $0 annual O&M costs, and $19,912 labor costs. There are no annualized capital/startup costs and annual O&M costs associated with this ICR.

Changes in the Estimates: There is an increase in burden from the most recently approved ICR. The increase is an adjustment due to a revised hourly labor rate from the United States Department of Labor which resulted in an increase in burden over the next three-years of this ICR. A correction to the previous ICR was also made to include semiannual reporting as required by the general provisions to the standard.

Dated: December 17, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–32060 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[TRI–2003–0001; FRL 7532–1]

Toxic Chemical Release Reporting; Notice of On-Line Dialogue; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: This notice announces that EPA is extending the comment period for the stakeholder dialogue by 30 days until February 4, 2004. The comment period for this stakeholder dialogue was initially scheduled to close on January 5, 2004. Because of a request for additional time to gather and incorporate data into comments, the Agency is extending the comment period for 30 days. EPA has revised Appendix B of the Stakeholder Dialogue on Burden Reduction Options white paper to reflect the latest TRI data. Further, some of the data in those columns listed as percentages contained decimal values and have been corrected.

In addition, two new Tables have been added to Appendix B to show the impact on the number of forms and facilities affected by modifying the waste management activities included in the annual reportable amount threshold for Form A Certification Statement eligibility. The revised Appendix B has been posted as a separate document on the docket and on the TRI Web site. Instructions for participating in the on-line dialogue are posted at EPA's TRI Web site at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*.

DATES: Comments, identified by the docket control number TRI–2003–0001, must be received by EPA on or before February 4, 2004.

ADDRESSES: The Stakeholder Dialogue Paper will be accessible via the Internet at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*. Comments, identified by Docket ID No. TRI–2003–0001, may be submitted by these methods: electronically to EPA Dockets at *http://www.epa.gov/edocket* (EPA's preferred method) or the U.S. Government's online rulemaking Web site at *http://www.regulations.gov*; e-mailed to *oei.docket@epa.gov*; delivered to EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004; or mailed to Office of Environmental Information Docket, Mail Code: 28221T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001. Follow the detailed instructions in Unit III.A. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Larry Reisman, Environmental Protection Agency, Office of Environmental Information, Office of Information Analysis and Access, Toxics Release Inventory Program Division; telephone number: (202) 566–0751; fax number: (202) 566–0727; e-mail: *reisman.larry@epa.gov*. For general information on the Toxics Release Inventory contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be interested in this notice if you use data collected under EPCRA section 313, or if you manufacture, process, or otherwise use any of the EPCRA section 313 chemicals and you are required to report annually to EPA their environmental releases and other waste management quantities. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially interested entities
Public	Environmental groups, community groups, researchers.
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20 through 39, 4911 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 *et seq.*), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis).
Federal Government	Federal facilities in any SIC code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. How Can I Get Additional Information or Copies of Documents Associated With This Stakeholder Dialogue Process?

A. *Docket.* EPA has established an official public docket for this action under Docket ID No. TRI–2003–0001. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

B. *Electronic Access.* An electronic copy of the issue paper is available from EPA's TRI Web site at *http://www.epa.gov/tri/programs/stakeholders/outreach.htm*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/homepage/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in Docket ID No. "TRI–2003–0001". The stakeholder issue paper and the **Federal Register** notice announcing this stakeholder dialogue are also available on the EDOCKET.

Certain types of information will not be placed in the EDOCKET. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EDOCKET, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EDOCKET online or *see* 67 FR 38102, May 31, 2002.

III. What Does This Notice Do?

This notice announces that EPA is extending the comment period for the stakeholder dialogue by 30 days until February 4, 2004. The comment period for this stakeholder dialogue was initially scheduled to close on January 5, 2004. Because of a request for additional time to gather and incorporate data into comments, the Agency is extending the comment period for 30 days. EPA has revised Appendix B of the Stakeholder Dialogue on Burden Reduction Options white paper to reflect the latest TRI data. Further, some of the data in those columns listed as percentages contained decimal values and have been corrected. In addition, two new Tables have been added to Appendix B to show the impact on the number of forms and facilities affected by modifying the waste management activities included in the annual reportable amount threshold for Form A Certification Statement eligibility. The revised Appendix B has been posted as a separate document on the docket and on the TRI Web site.

A. How and To Whom Do I Submit Comments?

You may access the stakeholder dialogue issue paper, instructions for commenting on burden reduction options, and link to the electronic docket to submit and retrieve comments, from the TRI Stakeholder Outreach Web site at: *http://www.epa.gov/tri/programs/stakeholders/outreach.htm* during the time period specified in this notice.

Commenters are encouraged to use the TRI Stakeholder Outreach Web site to access the issue paper and the instructions for commenting on burden reduction options. The Outreach Web site also provides a link to the EDOCKET Web site for submission of comments and viewing of all comments submitted.

To assist in the organization of all comments received, commenters are asked to state in the beginning of their comments the specific burden reduction option(s) being addressed. If your comment addresses more than one of the options in the stakeholder paper, please indicate in the beginning of your comment the number associated with each of the options addressed. The stakeholder paper has 6 options. Option 6 requests comment on options not specifically discussed in the stakeholder paper. The stakeholder paper also requests comment on the ongoing Toxics Release Inventory—Made Easy (TRI–ME) software. If your comment addresses this software, please state in the beginning of your comment that it addresses "TRI–ME."

You may submit comments electronically, by mail, or through hand delivery/courier. To avoid unnecessary duplication of comments, please submit your comments through only one method of delivery. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically*. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *EDOCKET*. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. TRI–2003–0001. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *E-mail*. Comments may be sent by electronic mail (e-mail) to *oei.docket@epa.gov*, Attention Docket ID No. TRI–2003–0001. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A.2. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment. These electronic submissions will be accepted in MS Word, WordPerfect, or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail*. Send your comments to: Office of Environmental Information Docket, Environmental Protection

Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. TRI–2003–0001. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, telephone: 202–566–1744, Attention Docket ID No. TRI–2003–0001. Please state in the beginning of the comment the specific burden reduction option(s) being addressed by the comment. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address only, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OEI Document Control Officer, Mail Code: 2822T, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). The EPA will disclose information claimed as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: December 22, 2003.

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

[FR Doc. 03–32057 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7603–6]

Intent To Grant Exclusive License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exclusive license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in the patent application listed below, all U.S. patents issuing therefrom, and all reexamined and reissued patents granted in the United States in connection with such patent application to Analytical Engineering, Incorporated of Columbus, Indiana. The patent application is:

U.S. Patent Application No. 10/306,044, entitled "Exhaust Aftertreatment System and Method for an Internal Combustion Engine," filed November 27, 2002 and claiming priority from the first filed provisional application, filed November 29, 2001.

Normally, 37 CFR 404.7(a)(1) requires an agency to issue both a notice of availability of an invention for exclusive licensing, as well as a notice of intent to grant the exclusive license. However, EPA has authority under the same 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious transfer of rights will best serve the interest of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability of this invention for licensing. Analytical Engineering, Incorporated is co-owner by assignment from its employee inventors of an undivided interest in the invention. It is unlikely that any other party would be willing to take a license from EPA on a patent application or patent encumbered by co-ownership. Accordingly, EPA is relying on its authority under 37 CFR 404.7(a)(1) to proceed without such notice of availability.

The proposed exclusive license will contain appropriate terms, limitations and conditions in accordance with the limitations and conditions of 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and execute the exclusive license, unless within 30 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director of the National Vehicle Fuel Emissions Laboratory, who has been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments to this notice must be received by EPA at the address listed below by January 29, 2004.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A). U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Dated: December 10, 2003.

Marla E. Diamond,

Associate General Counsel.

[FR Doc. 03–32058 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7604–5]

Air Quality Criteria for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of drafts of chapters for public review and comment.

SUMMARY: On or about December 29, 2003, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, will make available for public review and comment revised drafts of Chapters 7 and 8 of EPA's document *Air Quality Criteria for Particulate Matter,* which incorporate revisions made in response to earlier external review of those chapters. Under sections 108 and 109 of the Clean Air Act, the purpose of this document is to provide an assessment of the latest

scientific information on the effects of airborne particulate matter (PM) on the public health and welfare for use in EPA's current review of the National Ambient Air Quality Standards (NAAQS) for PM.

DATES: Comments on the draft chapters must be submitted in writing no later than January 31, 2004.

ADDRESSES: Send the written comments to the Project Manager for Particulate Matter, National Center for Environmental Assessment—RTP (B243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

A copy of the revised Chapters 7 and 8 of the *Air Quality Criteria for Particulate Mater* will be available on CD–ROM from NCEA–RTP. Contact Ms. Diane Ray by phone (919–541–3637), fax (919–541–1818), or e-mail (*ray.diane@epa.gov*) to request these chapters. Please provide the document's title, *Air Quality Criteria for Particulate Matter,* and the EPA numbers for each of the two revised chapters (EPA/600/P–99/002aE, EPA/600/P–99/002bE), as well as your name and address, to properly process your request. Internet users will be able to download a copy from the NCEA home page. The URL is *http://www.epa.gov/ncea/.* Hard copies of the revised chapters can also be made available upon request.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Elias, National Center for Environmental Assessment–RTP (B243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4167; fax: 919–541–1818; e-mail: *elias.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is in the process of updating and revising, where appropriate, its *Air Quality Criteria for Particulate Matter* as issued in 1996 (usually referred to as the "Criteria Document"). Sections 108 and 109 of the Clean Air Act require that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria (embodied in the Criteria Document) and national ambient air quality standards (NAAQS) for "criteria" air pollutants such as PM. Details of EPA's plans for the review of the NAAQS for PM were initially announced in a previous **Federal Register** noitce (62 FR 55201, October 23, 1997). EPA made a First External Review Draft of the updated *Air Quality Criteria for Particulate Matter* available for review by the Clean Air Act Scientific Advisory Committee (CASAC) and members of the public in October 1999 (64 FR 57884, October 27, 1999). Following that public review period and a meeting of the CASAC in December 1999 (64 FR 61875, November 15, 1999), EPA revised the document as appropriate to incorporate CASAC and public comments, as well as to reflect many new studies on the effects of PM that were not available in time for discussion in the First External Review Draft.

EPA then made a Second External Review Draft of the *Air Quality Criteria for Particulate Matter* available for CASAC and public review in April 2001 (66 FR 18929, April 12, 2001). Following that public review period and a second CASAC meeting in July 2001 (66 FR 34924, July 2, 2001), EPA again revised the document as appropriate to incorporate changes in response to CASAC and public comments and also made further revisions reflecting new studies on effects of particulate matter that had become available between issuance of the First and Second External Review Drafts.

EPA then made a Third External Review Draft of the *Air Quality Criteria for Particulate Matter* available for CASAC and public review in May 2002 (67 FR 31303, May 9, 2002). Following that public review period and a third CASAC meeting in July 2002 (67 FR 41723, June 19, 2002), EPA again revised the document as appropriate to incorporate revisions in response to CASAC and public comments and also made further revisions reflecting new studies on effects of particulate matter that had become available between issuance of the Second and Third External Review Drafts, as well as reanalyses of certain existing studies occasioned after discovery of problems with applications of statistical software.

EPA made a Fourth External review Draft available for CASAC and public review in June 2003 (68 FR 36985).A public meeting with CASAC was held August 25–26, 2003, during which CASAC reached closure on Chapters 1, 2, 3, 4, 5, and 6, with only relatively minor final revisions to be made. No further public review is requested on these chapters. However, CASAC did not reach closure on Chapters 7 (toxicology), 8 (human health), and 9 (integrative synthesis), each of which are to be more extensively revised or, in the case of chapter 9, to be significantly restructured.

EPA is now making revised drafts of Chapters 7 and 8 available for CASAC and public review. These two revised draft chapters will be reviewed by CASAC via a publicly accessible teleconference call in late January, 2004 (date and time to be announced in a subsequent **Federal Register** notice). Following that CASAC teleconference, Chapter 9 will be released for CASAC and public review at a public meeting in early March (date and site to be announced in a later **Federal Register** notice).

Dated: December 22, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–32054 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7604–4]

Neurotoxicity of Tetrachloroethylene (Perchloroethylene): Discussion Paper

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of discussion document and plans for conducting a consultation workshop on the Neurotoxicity of Tetrachloroethylene.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of an External Review Draft entitled, "Neurotoxicity of Tetrachloroethylene (Perchloroethylene): Discussion Paper" (EPA/600//P–03/005A). EPA will accept public comments on the paper within 60 days of the date of this notice. The document was prepared by the EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development.

This document serves as background material for an EPA-sponsored workshop designed to consult with neurotoxicologists about the potential adverse effects of perchloroethylene. Versar, Inc., an EPA contractor, will convene a panel of experts and conduct a one-day meeting to discuss the available information and related issues in evaluating the neurotoxic potential of perchloroethylene to humans under environmental exposure conditions. Details of the expert consultation meeting will be announced at a later date.

NCEA will consider the opinions of the individual consultants as well as the submitted written public comments in preparing an Integrated Risk Information System (IRIS) Toxicological Review of Tetrachloroethylene. The IRIS document, which will evaluate all health effects and will estimate population risks, will be peer-reviewed at a subsequent time.

DATES: The sixty-day public comment period begins December 30, 2003, and ends March 1, 2004. Technical comments must be postmarked by March 1, 2004. An announcement of the date of the consultation meeting will be made in a forthcoming **Federal Register** (FR) notice.

ADDRESSES: The draft document is available primarily via the Internet on the National Center for Environmental Assessment's home page at *http://www.epa.gov/ncea* under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff, NCEA; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from the contractor.

Comments may be submitted electronically, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Technical Information Staff, National Center for Environmental Assessment; telephone: 202–564–3261; facsimile: 202–565–0050.

SUPPLEMENTARY INFORMATION:

I. How To Get a Copy of the Document and Submit Technical Comments

EPA has established an official public docket for this action under Docket ID No. ORD–2003–0014. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." Late comments may be considered if time permits.

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. ORD–2003–0014. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *ORDocket@epa.gov,* Attention: Docket ID No. ORD–2003–0014. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the OEI Docket mailing address. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. Avoid the use of special characters and any form of encryption.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

In addition to submitting written comments on the discussion paper, you will also have an opportunity at the consultation workshop to ask the experts their opinions and/or clarification of each issue to be discussed at the workshop. Details of the workshop will be announced in a forthcoming **Federal Register** Notice.

II. Information on the Document

This discussion document and the consultation workshop of neurotoxicology experts are part of the preparation of an IRIS Toxicological Review of Tetrachloroethylene (Perchloroethylene, or perc) by NCEA. In a review of the published literature, NCEA has found that impairment of visual information processing and other adverse neurobehavioral effects have been observed in several studies of employees working in dry cleaning and metal degreasing facilities using perc. Two studies of people living near dry cleaning facilities have also shown neurological effects, and their exposures have been at lower concentrations than the occupationally exposed workers. The discussion document reviews the published reports of neurotoxic effects of perc in humans and animals and discusses the strengths and limitations of the evidence of neurotoxicity. NCEA decided to seek consultation of experts in neurotoxicology to get their opinions about whether these findings for perc and similar findings for other agents imply that perc exposure to the general population results in an appreciable risk of deleterious neurological effects.

Dated: December 22, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–32056 Filed 12–29–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–3105]

NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the Nextel Partners Tennessee (Nextel Partners TN) petition. Nextel Partners TN seeks designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in non-rural wire centers currently served by BellSouth and portions of the rural study area served by United Inter MT–TN (United).

DATES: Comments are due on or before January 9, 2004. Reply comments are due on or before January 23, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* Supplementary Information for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice, CC Docket No. 96–45, released October 7, 2003. On June 12, 2003, NPCR, Inc. d/b/a Nextel Partners (Nextel Partners TN) filed with the Commission a petition under section 214(e)(6) of the Communications Act of 1934, as amended. In particular, Nextel Partners TN seeks designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in those portions of Nextel Partners TN's licensed service area located in rural study areas in Tennessee currently served by BellSouth and United Inter MT–TN (United).

Nextel Partners TN contends that the Tennessee Regulatory Authority (TRA) does not regulate Commercial Mobile Radio Service and presents a letter from TRA acknowledging its lack of jurisdiction. Hence, according to Nextel Partners TN, the Commission has jurisdiction under section 214(e)(6) to consider and grant its petition. Nextel Partners TN also maintains that it satisfies all the statutory and regulatory prerequisites for ETC designation, and that designating Nextel Partners TN as an ETC will serve the public interest.

In accordance with § 54.207(c) of the Commission's rules, Nextel Partners TN requests that the Commission designate Nextel as an ETC in a service area defined along boundaries that differ from the incumbent rural local exchange carrier's study area boundaries. The service area requested by Nextel Partners TN for ETC designation partially covers United's study area. Nextel Partners TN requests a redefinition of United's rural service area so each wire center in United's study area is a separate service area. Nextel Partners TN intends to serve each proposed wire center in its entirety. Nextel Partners TN maintains that the proposed redefinition of service areas for ETC purposes is consistent with the factors to be considered when redefining a rural telephone company service area, as enumerated by the Federal-State Joint Board on Universal Service. (Joint Board). The Wireline Competition Bureau seeks comment on the Nextel Partners TN Petition.

The petitioner must provide copies of its petition to the TRA. The Commission will also send a copy of this public notice to the TRA by overnight express mail to ensure that the TRA is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due January 9, 2004 and reply comments are due January 23, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties filing electronic media should be advised that the Commission released a public notice on August 22, 2003 providing new guidance for mailing electronic media.[1] In brief, electronic media should not be sent through USPS because of the eradiation process USPS mail must undergo to complete delivery. Hand or messenger delivered electronic media for the Commission's Secretary should be addressed for delivery to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, and other messenger-delivered electronic media should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Eric N. Einhorn,

Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–31969 Filed 12–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–129; DA 03–3832]

Joint Petition of Northeast Nebraska Telephone Company and Nebcom, Inc. and Petitions of Great Plains Communications, Inc. and the Nebraska Central Telephone Company for Waiver of the Requirement That a Local Exchange Carrier Verify Inbound Requests of Customers Who Want To Change to an Affiliated Interexchange Carrier

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks public comment on petitions filed requesting a waiver of the requirement that a local exchange carrier (LEC) verify the inbound carrier change request(s) when a customer seeks to switch to the LECs interexchange carrier affiliate.

DATES: Interested parties may file comments in this proceeding on or before January 2, 2004. Reply comments may be filed on or before January 20, 2004. Parties that may have already submitted comments in this proceeding need not resubmit those comments unless they choose to update them.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson, Consumer & Governmental Affairs Bureau, Policy Division at (202) 418–7039 (voice), or e-mail at *Nancy.Stevenson@fcc.gov.*

SUPPLEMENTARY INFORMATION: When filing comments, please reference CC Docket No. 94–129. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Nancy Stevenson, Consumer & Governmental Affairs Bureau, Policy Division, 445 12th Street, SW., Room 4–C763, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 94–129, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

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[1] *Reminder—Filing Locations for Paper Documents and Instructions for Mailing Electronic Media,* Public Notice, DA 03–2730 (rel. Aug. 22, 2003).

Pursuant to section 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure.

Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this *public notice* may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *public notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/policy*.

Federal Communications Commission.

Nancy Stevenson,

(Acting) Deputy Chief, Policy Division, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–31967 Filed 12–29–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Availability on Transforming Healthcare Quality Through Information Technology (THQIT)—Implementation Grants

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of availability.

SUMMARY: This notices announces the availability of a Request for Applications (RFA) on Implementation grants to evaluate the effects of health information technology (HIT) on improving patient safety and quality of health care.

The objective of this RFA is to support organization and community-wide implementation and diffusion of HIT and to assess the extent to which HIT contributes to measurable and sustainable improvement in patient safety, cost and overall quality of care. Research resulting from this RFA should inform AHRQ, providers, patients, payers, policymakers, and the public about how HIT can be successfully implemented in diverse health care settings and lead to safer and better health for all Americans.

DATES: The following dates will assist the applicant in timing the development of his/her application:

- Technical Assistance (TA)—Respond by January 27, 2004. TA conference call date: January 29, 2004, at 1 pm e.s.t.
- Letter of Intent Receipt Date—Due to AHRQ February 6, 2004.
- Application Receipt Date—April 22, 2004.

ADDRESSES: The RFA was published on November 20, 2003, in the NIH Guide for Grants and Contracts (NIH Guide). This document is available at *http://www.ahrq.gov* (under Funding Opportunities) *or* at the NIH Guide, *http://grants.nih.gov/grants/guide/rfa-files/RFA-HS-04-011.html.*

More information on the TA, where to send your application, etc. is described in the RFA.

FOR FURTHER INFORMATION CONTACT: Scott Young, M.D., Center for Primary Care, Prevention, and Clinical Partnerships, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Telephone: (301) 427–1580, FAX: (301) 427–1597, E-mail: *syoung@ahrq.gov*.

It is recommended you carefully review the RFA prior to attendance at the TA session.

SUPPLEMENTARY INFORMATION: With this notice potential applicants are informed that this RFA includes a cost sharing requirement. Specific details of the cost sharing component are included in the RFA.

This RFA uses the U01 Cooperative Agreement mechanism. The funds available for FY 04 for this RFA are up to $24 million. AHRQ intends to fund up to 48 new implementation grants with up to $14 million earmarked for rural and small hospitals. The project period for funded grants is up to three years.

Dated: December 17, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31958 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: January 22–23, 2004 (Open from 8 a.m. to 8:15 a.m. on January 22 and closed for remainder of the meeting).

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: February 19–20, 2004 (Open from 8 a.m. to 8:15 a.m. on February 19 and closed for remainder of the meeting).

3. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: February 23–24, 2004 (Open from 8 a.m. to 8:15 a.m. on February 23 and closed for remainder of the meeting).

4. *Name of Subcommittee:* Health Systems Research.

Date: February 26–27, 2004 (Open from 8 a.m. to 8:15 a.m. on February 26 and closed for remainder of the meeting).

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: February 26–27, 2004 (Open from 8 a.m. to 8:15 a.m. on February 26 and closed for remainder of the meeting).

All the meetings above will take place at: AHRQ, John Eisenberg Building, 540 Gaither road, Conference Center, Rockville, Maryland 20850.

For Further Information Contact: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Population, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554. Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 22, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31957 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04060]

Cooperative Agreement for Research on the Association Between Exposure to Media Violence and Youth Violence; Notice of Availability of Funds—Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements to conduct methodologically sound research on how media violence affects youth violent behavior was published in the **Federal Register** on November 28, 2003, Volume 68, Number 229, pages 66829–66834. The notice is amended as follows:

On page 66833, Column 3, Line 4 in the first paragraph after the "AR–25" requirement, delete "$250,000" and replace with "$500,000."

Dated: December 19, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31835 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04053]

Practices To Improve Training Skills of Home Visitors; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreement to conduct a systematic examination of the impact of home visitor training and factors related to the implementation of an existing efficacious or effective home visiting program on family outcomes of child maltreatment and risk behaviors for youth violence was published in the **Federal Register** on December 1, 2003, Volume 68, Number 230, pages 67171–67176. The notice is amended as follows: On page 67176, Column 1, Line 4, in the first paragraph after "AR–25" requirement, delete "$250,000" and replace with "$500,000."

Dated: December 19, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31834 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV Prevention Projects for the Pacific Islands

Announcement Type: New.

Funding Opportunity Number: 04069.

Catalog of Federal Domestic Assistance Number: 93.943.

Key Dates:

Application Deadline: February 2, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, 42 U.S.C., 241 and 247b(k)(2).

Purpose: The purpose of the program is to support HIV prevention projects in the U.S. Affiliated Pacific Island Jurisdictions. HIV prevention programs in these jurisdictions face unique challenges and circumstances. These jurisdictions often lack sufficient resources, program infrastructure, and technical support to fully implement a comprehensive HIV prevention program and to ensure that critical prevention program components are implemented and sustained. These island nations deal with many challenging dynamics that include reaching and supporting prevention activities in locations separated by vast expanses of ocean, highly mobile populations, a lack of primary health care providers and facilities, variable economic and social conditions, and the challenge of adequately managing the migration and movement of regional and international visitors and workers. This program addresses the Healthy People 2010 focus area of HIV infection.

The majority of HIV transmission is by persons unaware of their infection; one quarter of the people in the United States who are infected with HIV do not yet know they are infected. Knowledge of their HIV status would allow these people to receive the benefits of improved treatment and care, as well as ongoing prevention services that can help them avoid infecting others.

CDC is refocusing some HIV prevention activities to reduce the number of new HIV infections in the United States ("Advancing HIV Prevention: New Strategies for a Changing Epidemic—United States," MMWR 2003; 52(15): 329–332). This new initiative will put more emphasis on counseling, testing, and referral for the estimated 180,000 to 280,000 persons who are unaware of their HIV infection; partner notification, including partner counseling and referral services; and prevention services for persons living with HIV to prevent further transmission once they are diagnosed with HIV. In addition, since perinatal HIV transmission can be prevented, CDC is strengthening efforts to promote routine, universal HIV screening as a part of prenatal care. All of this will be accomplished through four strategies: (1) Making HIV screening a routine part of medical care; (2) creating new models for diagnosing HIV infection, including the use of rapid testing; (3) improving and expanding prevention services for people living with HIV; and (4) further decreasing perinatal HIV transmission.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for HIV, STD and TB Prevention (NCHSTP):

1. Decrease the number of persons at high risk for acquiring or transmitting HIV infection by delivering targeted, sustained, and evidence-based HIV prevention interventions, including prevention of perinatal HIV transmission.

2. Increase, through voluntary counseling and testing, the proportion of HIV-infected people who know they are infected, focusing particularly on populations with high rates of undiagnosed HIV infection by: Incorporating HIV rapid and other test technology where applicable; reconfiguring counseling and testing resources to increase the efficiency of such services; increasing the number of providers who routinely provide HIV screening in health care settings; and increasing the number of partners who receive partner counseling, testing, and referral services.

3. Increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services.

4. Strengthen the capacity of health department/ministry of health and community-based efforts to implement effective HIV prevention programs and to evaluate them.

To ensure quality programs and measure progress, applicants are required to report on a set of core program performance indicators appropriate for their program activities. (In this and other documents, these may also be referred to as core indicators, program indicators, performance indicators, or simply indicators). Each jurisdiction will set annual target levels of performance for each indicator.

Funded jurisdictions are accountable for achieving their target levels of performance. If a jurisdiction fails to achieve its target, CDC will work with the grantee to determine how to improve performance. CDC actions could include technical assistance, placing conditions or restrictions on the award of funds or, with chronic failure to improve, a reduction in funds.

Activities:

Awardee activities for this program are as follows: Recipients will implement a comprehensive HIV prevention program that includes the following components:

a. HIV prevention program planning and implementation using a formal process that involves meaningful community input and involvement

b. HIV prevention activities:

(1) HIV prevention counseling, testing, and referral services (CTR)

(2) Partner notification, including partner counseling and referral services (hereafter known as PCRS) with strong linkages to prevention and care services

(3) Prevention for HIV-infected persons

(4) Health education and risk reduction (HE/RR) activities

Information on HIV prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

(5) Public information programs

(6) Perinatal transmission prevention

c. Evaluation of major program activities, interventions, and services, including data collection on interventions and clients served

d. Collaboration and coordination with other related programs

e. Laboratory support

f. Core HIV/AIDS epidemiologic and behavioral surveillance

g. Quality assurance

h. Capacity-building activities are a recommended component of a comprehensive HIV prevention program and should be implemented depending upon program needs and availability of resources.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Provide consultation, technical assistance (TA), and support of capacity-building assistance in all aspects of grantee's comprehensive HIV prevention program, including (during the first year of this five-year project period) extensive support and assistance to design, develop, and implement a new model for HIV prevention planning and implementation that will incorporate community input and involvement

b. Work with grantees to assess training needs and provide training to managers, supervisors, and staff of CTR, outreach, or other prevention programs, either directly or through its network of TA providers and STD/HIV prevention training centers

c. Disseminate current information, including best practices, in all areas of HIV prevention; facilitate the adoption and adaptation of effective intervention models through workshops, conferences, and written materials; and provide TA in the development and evaluation of new or innovative prevention models

d. Develop intervention and program evaluation guidelines and program monitoring systems (including core program indicators)

e. Facilitate coordination of activities among other CDC-funded programs, health departments/ministries of health, community-based organizations (CBOs), national/international capacity-building assistance (CBA) providers, international governmental and non-governmental agencies and organizations, and care providers and recipients of Ryan White CARE Act funds

f. Monitor progress toward achieving target levels of performance for each core program indicator, provide feedback, and take appropriate steps when target levels of performance are not met

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year funds: 2004.

Approximate Total Funding: $1,624,005.

Approximate Number of Awards: 6.

Approximate Average Award: $270,667.

Floor of Award Range: $130,330.

Ceiling of Award Range: $541,759.

Anticipated Award Date: April 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by the six health departments/ministries of health of the United States Affiliated Pacific Island Jurisdictions: American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of the Marshall Islands, and Republic of Palau.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form CDC 1246. Forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

You must submit a signed hard copy original and two copies of your application.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access: *http://www.dnb.com/AU/index.asp?event=countrymenu&country=au*

Or: *http://www.dunandbradsteet.com.*

You may call the Dun and Bradstreet Australia office at: 61 3 9828 3448.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- *Maximum number of pages:* 50 pages. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- *Font size:* 12 point unreduced;
- *Paper size:* 8.5 by 11 inches;
- *Page margin size:* one inch;
- Printed only on one side of page;
- Held together only by rubber bands or metal clips; not bound in any other way.
- The Program Announcement title and number must appear in the application.
- Sequentially number all pages in the application and attachments, and include a Table of Contents reflecting major categories and corresponding page numbers.
- Provide only those attachments directly relevant to this application.

Your narrative should address activities to be conducted over the entire project period.

The following information describes program requirements and asks you to describe, in your application, how you will address the requirements. This section also includes core program performance indicators that are required for specific program activities. These indicators will be used to help measure program performance. In your application, you are required to report on the base-line level for each indicator, as well as a one-year interim target and a five-year overall target level of achievement (a technical guide, CDC Technical Assistance Guidelines for Health Department HIV Prevention Program Performance Indicators, is available to assist you in understanding and responding to the core program performance indicators). In subsequent progress reports, you will be required to report on progress in achieving target levels of performance for each core program performance indicator.

If your HIV prevention program cannot currently carry out aspects of a required HIV program activity and, as a result, limits your ability to formulate core program performance indicator baselines and targets, please provide a detailed description of the current status of your jurisdiction's ability to implement that particular program activity. In addition, please also describe your jurisdiction's needs in terms of program capacity development or technical assistance to implement this required HIV program activity.

a. HIV Prevention Program Planning and Implementation Using Community Input and Involvement

(1) As part of activities covered under this announcement, grantees will work with CDC to create and implement a suitable model that has been specifically developed considering the existing HIV prevention capacity and resources in the Pacific. Most of the activities related to the development of this new model must occur during the first year of the five-year project period.

(2) Attend and participate in CDC sponsored and supported consultations and activities provided to develop and construct a new model for community involvement in HIV prevention program planning and implementation. These events will take place in the Pacific and in other locations, as well as through facilitated teleconferences and meetings. Ensure that adequate funds are provided to support the development of this new HIV prevention program planning and implementation model and that your program is sufficiently represented during all phases of the development process

(3) Once a model for community input and involvement has been developed and formalized, all funded grantees must ensure that this process is implemented and supported. Reporting and evaluation requirements regarding the implementation of this required component would be defined and clarified during the five-year project period.

In your application:

Describe your jurisdiction's current process for ensuring that community involvement and input is part of HIV prevention program planning and implementation. Describe barriers, challenges and limitations in the current process or model. Describe ideas or suggestions for a new model that might achieve or increase community involvement in HIV prevention program planning and implementation.

b. HIV Prevention Activities

There are two overall HIV prevention core program performance indicators. Specify a base-line level for the following two core program performance indicators:

- Indicator A.1: Number of newly diagnosed HIV infections;
- Indicator A.2: Proportion of HIV/AIDS cases 13–24 years of age diagnosed each year among all HIV/AIDS cases.

(1) HIV Counseling, Testing, and Referral (CTR) Services

All jurisdictions must provide counseling, testing, and referral services with a focus on diagnosing as many new cases of HIV as possible and implementing HIV CTR strategies that increase opportunities for HIV testing in populations at high risk for HIV infection.

(a) Provide HIV CTR services. These services must be consistent with CDC's most current HIV CTR guidelines ("CDC Revised Guidelines for HIV Counseling, Testing, and Referral," MMWR 2001, 50 [RR–19]; 1–58) and should be implemented in order to diagnose as many new HIV infections as possible.

(b) Provide opportunities for persons to receive anonymous HIV CTR services, unless prohibited by law or regulation.

(c) Ensure that appropriate HIV CTR services are provided in settings most likely to reach persons who are likely to be infected, but who are unaware of their status. Settings should include community outreach and other non-traditional sites. These services should include use of rapid and other test technologies (*i.e.*, oral fluid-based test technology), where applicable.

(d) Provide opportunities for high-risk individuals who test HIV-negative to receive appropriate and effective HIV prevention interventions and risk reduction counseling. Information on HIV prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

(e) Ensure that clients receive test results, particularly those who test positive.

(f) Provide support (*e.g.*, financial, technical assistance, training, and coordination) to health care providers to increase the identification of HIV-positive persons through strengthening current CTR services or creating new services. Work with departments of corrections to encourage and, when appropriate, support routine voluntary HIV screening and referral in correctional facilities. Strengthen outreach into communities to increase the number of HIV infections diagnosed by increasing the number of high-risk persons participating in HIV counseling, testing, and referral services.

(g) Collect and report HIV CTR data as will be specified in the new Program Evaluation and Monitoring System (PEMS), including core program performance indicators. Report HIV CTR activities on a quarterly basis as specified in the Technical Reporting Section of this Announcement.

(h) Seek opportunities to integrate and enhance HIV CTR and STD services.

(i) Collect and report data that will provide useful and accurate information on the status and function of the HIV counseling, testing, and referral system. Ensure that there is sufficient capacity to collect and store electronic data and that data are secure.

In your application:

(a) Describe your plan to provide HIV CTR services, including:

- How you will establish or improve efforts to identify newly infected persons and to test persons most at risk for HIV.
- How you will improve the provision of test results (especially positive results).
- How you will expand the availability of HIV CTR services, especially in areas where testing is not currently available and where high-risk populations would seek testing.
- Your plan for providing referrals and tracking the completion of referrals for persons with positive test results.
- How you will provide HIV prevention interventions and risk reduction counseling for high-risk persons who have negative HIV test results.
- How you will work with medical care entities to encourage and support routine HIV screening in high prevalence settings.

(b) Specify a base-line level, one-year interim target, and five-year overall target level of performance for each of the following core program performance indicators:

- Indicator B.1: Percent of newly identified, confirmed HIV-positive test results among all tests reported by CDC-funded HIV counseling, testing, and referral sites.
- Indicator B.2: Percent of newly identified, confirmed HIV-positive test results returned to clients.

(2) Partner Counseling and Referral Services (PCRS)

All recipients must:

(a) Ensure that PCRS is a high priority within the jurisdiction's HIV prevention activities. These services must be consistent with the most current PCRS guidelines as found in HIV Partner Counseling and Referral Services Guidance (December 30, 1998).

(b) Provide PCRS for HIV-infected persons who have been tested anonymously or confidentially in CDC-funded sites. Ideally, PCRS should be offered to all persons with positive test results, regardless of where they were tested. Make a good faith effort to notify sexual or needle-sharing partners. PCRS efforts should be documented. Collaborate with the STD program and other health care providers to provide PCRS.

(c) Develop a plan to implement new techniques and approaches to increase PCRS, using such things as social networks and incentives.

(d) Collect and report PCRS data consistent with core data elements as will be specified in PEMS, including core program indicators.

In your application:

(a) Describe your current system for providing HIV Partner Counseling and Referral Services. Also describe your plan to provide PCRS for individuals who travel and migrate across jurisdictions within the Pacific, Hawaii, and the U.S. mainland, and how you will address the provision of PCRS for clients coming to or from non-health department/non-ministry of health settings.

(b) Specify a base-line level, one-year interim target, and five-year overall target level of performance for each of the following core program performance indicators:

- Indicator C.1: Percent of contacts with unknown or negative serostatus who receive an HIV test after PCRS notification
- Indicator C.2: Percent of contacts with a newly identified, confirmed HIV-positive test among contacts that are tested
- Indicator C.3: Percent of contacts with a known, confirmed HIV-positive test among all contacts

(3) Prevention for HIV-Infected Persons

All recipients must:

(a) Provide prevention services to persons infected with HIV/AIDS. These services could include individual or group HIV risk reduction and prevention counseling.

(b) Provide HIV risk reduction counseling to HIV-positive persons when they are given their test results, and continue to seek opportunities to provide HIV risk reduction counseling and interventions to HIV-positive individuals at intervals following the initial disclosure of test results.

Information on HIV prevention methods (or strategies) can include abstinence, monogamy, *i.e.*, being faithful to a single sexual partner, or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

(c) Work with primary care providers in the community that serve persons with or at risk for HIV to integrate HIV prevention services into care and treatment services.

(d) Collect and report data on prevention for HIV-positives, including core indicators, as will be specified in PEMS.

In your application:

(a) Describe your plan to provide prevention services for people living with HIV/AIDS. Describe how you will provide ongoing HIV risk reduction counseling and other interventions to HIV-positive persons.

(b) Describe how you will encourage primary care providers to integrate prevention and care services.

(4) Health Education and Risk Reduction Services (HE/RR)

This includes individual, group, community, and structural level interventions as well as outreach for high-risk seronegative and seropositive individuals.

All recipients must:

(a) Provide HE/RR services or fund providers that:

- Target those most at risk for transmitting or acquiring HIV infection.
- Implement interventions that are based on logic model, scientific theory, or have evidence of demonstrated or probable outcome effectiveness (see CDC's Compendium of HIV Prevention Interventions with Evidence of Effectiveness, 1999).
- Are carried out and directed by written procedures or protocols.
- Are acceptable to and understood by the target population, *i.e.*, they are culturally appropriate.

(b) Develop a plan for how you will work to establish or expand community capacity to provide, or assist the health department or ministry of health to implement, HIV prevention interventions and activities.

(c) Collect and report data on HE/RR activities including core indicators as will be specified in PEMS.

In your application:

(a) Identify and list priority populations and the HE/RR activities and interventions that will be funded and carried out for each prioritized population in the first year of the five-year project period. This prioritization process should consider all epidemiologic data and other evidence that is known about HIV/AIDS in the jurisdiction, and ensure that HIV positive individuals are the priority for prevention efforts.

(b) Describe your plan to establish and develop community capacity to assist with or provide HIV prevention services and interventions. Identify any existing providers, by prioritized populations and interventions that are currently funded or will be funded in this project period.

(c) Specify base line, one-year interim target, and five-year overall target levels of performance for the following core program indicator:

- Indicator H.3: the mean number of outreach contacts required to get one person to access any of the following services: counseling and testing, STD screening and testing, individual level interventions (ILI), or group level interventions (GLI)

(5) Public Information Programs

All recipients must:

(a) Develop public information programs and campaigns based on local needs with the involvement and input of the community.

(b) Collect and report data on public information activities as will be specified in PEMS.

In your application:

Describe your plan to develop and carry out HIV prevention public information programs. Describe the basic approach and messages that will be developed, including how and where the information will be disseminated. Describe how you will collect and analyze information to determine the scope and reach of public information programs, and how you intend to evaluate program components in order to guide and adjust future activities. Complete this section only if you are requesting program funds to support public information programs.

(6) Perinatal Transmission Prevention

All recipients must:

(a) Work with all health-care providers to promote routine, universal HIV screening to all of their pregnant patients. The Department of Health and Human Services recommends that all pregnant women in the United States be tested for HIV infection (see "Revised Recommendations for HIV Screening of Pregnant Women," MMWR 2001; 50 (RR19); 59–86 and "Advancing HIV Prevention: New Strategies for a Changing Epidemic—United States," MMWR 2003; 52 (15); 329–332).

(b) Work with organizations, institutions and health care workers that provide prenatal and postnatal care for HIV-infected women to ensure that these women are receiving the appropriate HIV prevention counseling, testing, and therapies needed to reduce the risk of perinatal transmission.

In your application:

(a) Describe the current system of perinatal care that exists within the jurisdiction, including:

- Who provides the care.
- How this care is monitored and managed.
- How you will work with health care providers to promote routine, universal HIV screening to their pregnant patients.
- How you will work with organizations and institutions that provide prenatal and postnatal care for HIV-infected women to ensure that they are receiving the appropriate HIV prevention counseling, testing, and therapies needed to reduce the risk of transmission.

(b) Specify base-line level, one-year interim target, and five-year overall target levels of performance for the following core program indicator:

- Indicator D.1: Proportion of women who receive an HIV test during pregnancy.

c. Evaluation

All recipients must:

(1) Conduct program evaluation. Follow the requirements for the new Program Evaluation and Monitoring System (PEMS) that will be specified in a forthcoming HIV program evaluation guidance. PEMS will be developed and implemented during the course of this five-year project period.

(2) Collect and report data for the core program performance indicators and for HIV prevention activities as specified in this Program Announcement and in a forthcoming HIV prevention program evaluation guidance. Respond only to the indicators that are specifically noted and required in this Program Announcement. For each core indicator, provide the information as specified on the indicator reporting form (see CDC Technical Assistance Guidelines for Health Department HIV Prevention Program Performance Indicators and as posted on a CDC Web site).

(3) Describe current HIV program evaluation activities that address the following topics:

- How your jurisdiction will meet the minimum data requirements for counseling, testing, and referral.
- Your current system of data collection and reporting of HIV prevention activities, including data system specifications and data management information systems.
- Procedures for ensuring that data quality and data security are consistent with CDC guidelines.

For 2005 and beyond, develop and implement a comprehensive evaluation plan that includes all of the above elements and addresses issues to be specified in a forthcoming HIV prevention program evaluation guidance. This future evaluation plan should include the following:

- A system for collection of process monitoring data, including client-level information.
- Data entry into CDC's browser-based system or a local system that is compatible with CDC's requirements, as outlined in the most current evaluation guidance.
- Adherence to HIV program evaluation reporting requirements for community input and involvement in the HIV prevention program planning and implementation model and process that will be developed during the first year of the five-year project period.

(4) Identify the prioritized populations and prevention activities funded under this cooperative agreement.

(5) Collect and report data consistent with the CDC requirements to ensure client confidentiality and security.

(6) Use either the CDC data system or compatible local systems to report data electronically as specified in the most recent evaluation guidance.

In your application:

(1) Describe your evaluation of HIV prevention activities for the first year of the five-year project period.

(2) Provide copies of your local data collection instruments, local program evaluation and data management system functions and specifications, and any jurisdiction-wide uniform data reporting forms, if they exist.

d. Collaboration and Coordination

All recipients must:

Coordinate and collaborate with other Pacific Islands (especially those covered under this program announcement), agencies, organizations, and providers to strengthen HIV prevention and care activities and minimize duplication of effort in the jurisdiction. Meaningful coordination and collaboration efforts are characterized by joint participatory planning to address common areas of service need; development of recommendations for program planning and implementation; development of relevant policy and/or legislative initiatives; identification of specific steps for furthering collaborative efforts within defined time-frames; and outcomes that reflect HIV prevention program goals. At a minimum, recipients are expected to coordinate and collaborate with the following:

(1) STD Prevention Programs

(a) Support efforts to identify persons with STDs that may facilitate the transmission of HIV infection.

- STD diagnosis is funded primarily through the STD prevention cooperative agreement. However, HIV prevention funds may be used to augment STD detection services if there is a documented opportunity to enhance HIV prevention efforts, *e.g.*, encourage and offer screening for syphilis in areas experiencing syphilis outbreaks.
- Funds may be used to underwrite the cost of STD treatment, as it relates to HIV prevention, only on a case-by-case basis, and only after approval by CDC.
- When feasible, HIV counseling and testing sites, including outreach settings, should offer STD diagnostic services and referrals for STD treatment.

(b) Whenever appropriate, incorporate STD prevention messages into HIV prevention messages.

(c) Collaborate with STD programs to provide PCRS.

(2) HIV/AIDS Care Programs

To ensure early treatment and coordinate health education and risk reduction services for HIV-positive individuals, jurisdictions are encouraged to collaborate with providers and planners of care services for persons living with HIV/AIDS, particularly those funded by the Health Resources and Services Administration (HRSA) through its Ryan White CARE Act programs. These programs include Title I Planning Councils; Title II consortia, Special Projects of National Significance, HIV/AIDS CBOs, and community groups; Title III Early Intervention Services Programs; and, Title IV Programs serving children, youth, women and their families. For a list of currently funded CARE Act Programs and for more information on the Ryan White CARE Act, please go to *http://hab.hrsa.gov/*.

(3) Other Programs

Collaboration and coordination should also occur with the following:

- Substance abuse prevention and treatment programs and other drug treatment or detoxification programs.
- Juvenile and adult criminal justice, correctional, and parole systems and programs.
- Hepatitis prevention programs—Support local efforts to integrate viral hepatitis services into existing public health programs serving persons at risk for multiple infections (including HIV, STDs, and hepatitis A, B, and C).

—When possible, HIV prevention services should include screening for hepatitis viruses, *e.g.*, hepatitis A and B in men who have sex with men (MSM) and hepatitis B and C in injection drug users, and provide or link those needing immunizations for hepatitis A and B to such services. HIV funds may be used for hepatitis testing, but not immunizations against hepatitis A or B.

—Collaborate with Hepatitis Coordinators in your jurisdiction to integrate services where feasible.

- TB clinics and programs.
- Public mental health departments and community mental heath centers.
- Family planning and women's health programs, including providers of services to women in high-risk situations.
- Educational agencies: Schools, boards of education, universities' schools of public health, and schools of nursing.
- Other community groups, businesses, and faith-based organizations.

In your application:

Describe your plans to collaborate and coordinate HIV prevention services and activities with the jurisdictions, programs and groups listed above. Also, describe the intended outcomes of your collaboration and coordination efforts, and your plan to strengthen these activities over the five-year project period.

e. Laboratory Support

All recipients should:

Use program funds to support the cost of HIV testing for specimens obtained via counseling and testing activities, including rapid tests and CD4 and viral load tests. Grantees must ensure that their testing laboratories provide tests of adequate quality, report findings promptly, and participate in a laboratory performance evaluation program for HIV 1 antibody testing. Grantees are encouraged to consider using a regional lab to maximize cost effectiveness and test quality. Jurisdictions should establish set protocols for the collection, maintenance, testing, tracking, and shipment of specimens that need laboratory confirmation. Grantees should develop and utilize testing methods and procedures that ensure the most effective testing outcomes. Grantees must ensure that adequate resources and supplies are available to ensure the safety of the blood supply in the jurisdiction. Jurisdictions are encouraged to consider the use of oral fluid-based and rapid HIV test kits.

In your application:

Briefly describe all laboratory support activities funded under this announcement. Describe your current or proposed methods for testing and confirmation of HIV and tell us also how you would expand testing options if laboratory capacity were enhanced and stabilized in the Region. Include in this description a detailed algorithm of how HIV tests are collected and processed, and how decisions are made to determine needs for confirmation.

f. HIV/AIDS Epidemiologic and Behavioral Surveillance

All recipients must:

(1) Respond to the surveillance data needs of HIV prevention program managers and planning bodies, including analysis, interpretation, and presentation of surveillance data; preparation of the epidemiologic profiles; and other reports for use in the support of the implementation and evaluation of HIV prevention activities. Although the Surveillance Cooperative Agreement can provide support to jurisdictions to meet surveillance needs, funds under this announcement may be used to help support unmet HIV/AIDS surveillance activities as described above. Funds may also be used to address data gaps or unmet state or local needs for supplemental surveillance, HIV incidence surveillance, or behavioral surveillance.

(2) Collaborate with surveillance programs to collect data needed for HIV incidence surveillance efforts.

(3) Collaborate with CDC for surveillance activities.

(4) For jurisdictions not yet reporting HIV or AIDS to CDC, determine the steps that are necessary to ensure that accurate, confidential and timely reporting of HIV and AIDS cases can be made to CDC.

In your application:

Describe any surveillance activities you expect to conduct with support provided through this program announcement. Complete this section only if you are requesting program funds to support this activity.

g. Quality Assurance

Recipients should develop, implement, and maintain quality assurance plans in the following program areas:

(1) CTR and PCRS:

(a) Counseling—Conduct routine, periodic assessments to ensure that the counseling being provided includes the recommended, essential counseling elements. Quality assurance elements may include (but are not limited to) the following components: training and continuing education; supervisor observation with feedback to counselors; case conferences; counselor or client satisfaction evaluations; and periodic evaluation of space, flow, and time concerns.

(b) HIV Testing—Develop and implement a quality assurance system for all CTR and PCRS activities and providers, with special attention to ensuring that HIV-positive clients learn their test results. Develop and implement a quality assurance system for implementing HIV rapid testing.

(c) Referral—Develop and implement a mechanism for assessing the proportion of HIV-positive persons referred for additional services who complete their referrals. Review data and improve process as necessary.

(d) PCRS—Develop, implement, and maintain a system to assess the PCRS program and improve its function, *e.g.*, improving the percentage of persons who receive PCRS, the quality of PCRS interview sessions, and the successful notification of partners.

(2) Health Education and Risk Reduction (HE/RR) Activities:

(a) Develop and implement a mechanism to ensure HE/RR activities are appropriate, understandable and acceptable for the specific populations served.

(b) Develop and maintain a mechanism to ensure the consistency, accuracy, and relevance of information provided to the public through various information dissemination channels, including information about referral services.

(c) Develop or use standard procedures or protocols for interventions implemented by the health department/health ministry or by any subcontracted providers.

(d) Actively monitor services and programs provided by individuals or entities outside of the health department or health ministry. This activity will help to identify training and technical assistance needs and to ensure that interventions are implemented as planned and that program objectives are met.

(e) Use feedback from client satisfaction surveys or other evaluation tools to assess the services provided, including prevention services for people living with HIV/AIDS.

(3) Policies, Procedures, and Training

(a) Develop comprehensive written quality assurance policies and procedures to ensure that all HIV prevention activities are delivered in an appropriate, competent, consistent, and sensitive manner.

(b) Make quality assurance policies and procedures available to all program staff (health department/health ministry and any subcontracted providers).

(c) Deliver training to all staff providing HIV prevention activities, especially those staff providing CTR, PCRS, and HE/RR (health department/health ministry and subcontracted providers).

(d) Train all managers to ensure that quality assurance policies and procedures are followed (health department/health ministry and subcontracted providers).

(4) Data Collection—Develop, implement, and maintain a system to assess the quality of data collection:

In your application:

Describe your quality assurance efforts regarding HIV CTR, PCRS, HE/RR, public information campaigns, data collection, training, program procedures, and any other relevant programmatic areas for which you have quality assurance plans.

h. Recommended Program Activities

This section describes capacity building, a program component that is not required through this program announcement. However, capacity building is recommended to improve the overall quality of your HIV prevention program and should be implemented depending upon program needs and availability of resources. Capacity building activities are as follows:

(1) Conduct a capacity building needs assessment for the jurisdiction's health department/health ministry HIV prevention service providers and other prevention agencies/partners including community-based organizations. This assessment should look at the capacity to provide outreach testing, PCRS, and prevention for people living with HIV.

(2) Develop a comprehensive capacity-building plan based on the assessment.

(3) Provide capacity-building assistance, based on the needs assessment, to HIV prevention service providers, and other prevention agencies/partners. Create linkages with national and international capacity-building assistance providers (CBAs), where necessary and appropriate. Capacity-building assistance may include, but should not be limited to:

(a) Strengthening organizational infrastructure, including financial management and compliance with grant regulations.

(b) Enhancing the design, implementation, and evaluation of HIV prevention interventions.

(c) Developing community infrastructure.

(d) Developing and implementing a new model for HIV prevention program planning that utilizes community involvement and input.

(4) Provide capacity-building assistance to staff of health department/health ministry HIV prevention programs and other staff.

(5) Provide capacity-building assistance to establish or develop community-based agencies or organizations to provide outreach testing and PCRS, including the use of rapid tests.

(6) Increase the capacity of medical providers to provide routine HIV testing, including the use of rapid HIV tests.

(7) Provide capacity-building assistance to develop, pilot, and sustain prevention interventions for persons living with HIV/AIDS and other prioritized target populations.

In your application:

(1) Describe your capacity-building activities in the areas listed above.

(2) Discuss your plans to strengthen your capacity-building activities over the five-year project period of this program announcement.

(3) Discuss how you will assess (initially, as well as ongoing) capacity-building needs throughout the project period.

i. Additional Information To Be Addressed in the Application Content

(1) Other Activities

All recipients must ensure that appropriate health department/ministry of health staff attends CDC-sponsored meetings, *i.e.*, the National HIV Prevention Conference, the United States Conference on AIDS, and any mandatory training sessions addressing specific HIV prevention program requirements under this cooperative agreement.

In your application:

(a) Budget funds provided through this cooperative agreement for three persons to attend at least three CDC-sponsored conferences or meetings each year. Also, for the first year of this project period, budget funds for meetings/activities related to the development of a new model for HIV prevention program planning and implementation.

(b) Describe any other planned travel or attendance at conferences or meetings not previously addressed.

(2) Summarize Unmet Needs

In your application:

Summarize any HIV prevention needs that will remain unmet even if the total application is funded. Provide an estimate of funds required to meet these needs.

(3) Management and Staffing Plan

All recipients must have the staff and infrastructure to implement the components of a comprehensive HIV prevention program for their jurisdiction. Recipients must maintain appropriate staffing to fulfill their responsibility to support programs and services provided directly by the health department/ministry of health or through community-based organizations or efforts; provide evaluation, and quality assurance; and support a community-driven process for HIV prevention program planning and implementation that will guide the disbursement and monitoring of funds.

In your application:

Describe your management and staffing plans to conduct or support the essential components of your comprehensive HIV prevention program. Please include an organizational chart that reflects the current management structure and a description of the roles, responsibilities, and relationships of all staff in the program, regardless of funding source. Identify the positions supported through this cooperative agreement and those funded through other sources, as well as any unfunded staffing needs.

j. Budget Information

In accordance with Form CDC 0.1246, *http://www.cdc.gov/od/pgo/forminfo.htm* (*http://www.cdc.gov/od/pgo/forms/01246.pdf*), provide a line item budget and narrative justification for all requested costs that are consistent with the purpose, objectives, and proposed program activities. Within this budget, please provide documentation for each cost category.

(1) Line item breakdown and justification for all personnel, *i.e.*, name, position title, annual salary, percentage of time and effort, and amount requested.

(2) Line item breakdown and justification for all contracts, including: (a) Name of contractor, (b) period of performance, (c) method of selection (*i.e.*, competitive or sole source), (d) description of activities, (e) target population and (f) itemized budget.

(3) Requests for any new Direct Assistance Federal assignees include:

- Justification for request.
- The number of assignees requested.
- A description of the position and proposed duties.
- The ability or inability to hire locally with financial assistance.
- An organizational chart and the name of the intended supervisor.
- The availability of career-enhancing training, education, and work experience opportunities for the assignee(s).
- Assignee access to computer equipment for electronic communication with CDC.

(4) Use of Funds/Funding Priorities: Funds may not be used to supplant other funds available for HIV prevention. Funds may not be used to provide direct patient medical care, *e.g.*, ongoing medical management and provision of medications.

(5) Carryover Funds: Carryover funds are available only from the previous 12-month budget period. Carryover funds are not available after the end of the five-year project period.

IV.3. Submission Dates and Times

Application Deadline Date: February 2, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospect applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html*

IV.5. Funding Restrictions

Funds may not be used to supplant other funds available for HIV prevention. Funds may not be used to provide direct patient medical care, *e.g.*, ongoing medical management and provision of medications.

Funds may be used to underwrite the cost of STD treatment, as it relates to HIV prevention, only on a case-by-case basis, and only after approval by CDC.

HIV funds may be used for hepatitis testing, but not immunizations against hepatitis A or B.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two copies of your application by mail or express delivery service to: Technical Information management—PA# 04069, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria: You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the

"Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation. Compliance with core program performance indicators will fulfill the above requirement.

Your application will be evaluated against the criteria listed below. All criteria are weighted equally.

1. HIV Prevention Program Planning and Implementation Using Community Input and Involvement

Does the applicant describe their jurisdiction's current process for ensuring that community involvement and input is part of HIV prevention program planning and implementation. Describe barriers, challenges and limitations in the current process or model. Describe ideas or suggestions for a new model that might achieve or increase community involvement in HIV prevention program planning and implementation.

2. HIV Prevention Activities

(a) Does the applicant describe their plan to provide HIV CTR, including:

- How the applicant will establish or improve efforts to identify newly infected persons and to test persons most at risk for HIV.
- How the applicant will improve the provisions of test results (especially positive results).
- How the applicant will expand the availability of HIV CTR services, especially in areas where testing is not currently available and where high risk populations would seek testing.
- Does the applicant have a plan for providing referrals and tracking the completion of referrals for persons with positive test results?
- How the applicant will work with medical care entities to encourage and support routine HIV screening in high prevalence settings.

(b) Does the applicant specify a base-line level, one-year interim target, and five-year overall target level of performance for each of the following core program indicators?

- Indicator B.1: Percent of newly identified, confirmed HIV-positive test results among all tests reported by CDC-funded HIV Counseling, testing, and referral sites.
- Indicator B.2: percent of newly identified, confirmed HIV positive test results returned to clients.

3. Partner Counseling and Referral Services (PCRS)

(a) Does the applicant describe their current system for providing HIV Partner Counseling and Referral Services? Also, do they describe their plan to provide PCRS for individuals who travel and migrate across jurisdictions within the Pacific, Hawaii, and the U.S. mainland, and how will they address the provision of PCRS for clients coming to or from non-health department/non-ministry of health settings.

(b) Does the applicant specify a base-line level, one-year interim target, and five-year overall target level of performance for each of the following core program indicators?

- Indicator C.1: Percent of contacts with unknown or negative serostatus who receives an HIV test after PCRS notification.
- Indicator C.2: Percent of contacts with a newly identified, confirmed HIV-positive test among contacts who are tested.
- Indicator C.3: Percent of contacts with a known, confirmed HIV-positive test among all contacts.

4. Prevention for HIV–Infected Persons

(a) Does the applicant describe their plan to provide prevention services for people living with HIV/AIDS? Does the applicant describe how they will provide ongoing HIV risk reduction counseling and other interventions to HIV positive persons?

(b) Does the applicant describe how they will encourage primary care providers to integrate prevention and cares services?

5. Health Education and Risk Reduction Services (HE/RR)

(a) Does the applicant Identify and list priority populations and the health education/risk reduction activities and interventions that will be funded and carried out for each prioritized populations in the first year of the five-year project period? (Use Draft Priority Population Summary Worksheet.) This priorization process should consider all epidemiologic data and other evidence that is known about HIV/AIDS in the jurisdiction, and ensure that HIV positive individuals are the priority for prevention efforts.

(b) Does the applicant describe their plan to establish and develop community capacity to assist with or provide HIV prevention services and interventions? Identify any existing providers, by prioritized populations and interventions that are currently funded or will be funded in this project period.

(c) Specify base-line, one year-year interim target, and five-year overall target levels of performance for the following core program indicator:

- Indicator H.3: The mean number of outreach contacts required to get one person to access any of the following services: counseling and testing, STD screening and testing, individual level interventions (ILI), or group level interventions (GLI).

6. Public Information Programs

(a) Does the applicant describe their plan to develop and carry out HIV prevention public information programs? Do they describe the basic approach and messages that will be developed, including how and where the information will be disseminated? Does the applicant describe how they will collect and analyze information to determine the scope and reach of public information programs, and how they intend to evaluate program components in order to guide and adjust future activities?

7. Perinatal Transmission Prevention

(a) Does the applicant describe the current system of perinatal care that exists within the jurisdiction, including:

- Who provides the care.
- How this care is monitored and managed.
- How they will work with health care providers to promote routine, universal HIV screening to their pregnant patients.
- How they will work with organizations and institutions that provide prenatal and postnatal care for HIV-infected women to ensure that they are receiving the appropriate HIV prevention counseling, testing, and therapies needed to reduce the risk of transmission.

(b) Does the applicant specify base-line level, one-year interim target, and five-year overall target levels of performance for the following core program indicator:

- Indicator D.1: Proportion of women who receive an HIV test during pregnancy.

8. Evaluation

(a) Does the applicant describe their plan for evaluation of HIV prevention activities for the first year of the five-year project period?

(b) Does the applicant provide copies of their local data collection instruments, local program evaluation and data management system functions and specifications, and any jurisdiction-wide uniform data reporting forms, if they exist.

9. Collaboration and Coordination

Does the applicant describe their plans to collaborate and coordinate HIV prevention services and activities with the jurisdictions, programs and groups listed in this announcement? Also, how do they describe the intended outcomes of their collaboration and coordination efforts, and their plan to strengthen these activities over the five-year project period?

10. Laboratory Support

Does the applicant briefly describe all laboratory support activities funded under this announcement? Does the applicant describe their current or proposed methods for testing and confirmation of HIV, and describe also how they would expand testing options if laboratory capacity were enhanced and stabilized in the region? Did they include in this description a detailed algorithm of how HIV tests are collected and processed, and how decisions are made to determine needs for confirmation?

11. HIV/AIDS Epidemiologic and Behavioral Surveillance

Does the applicant describe any surveillance activities they expect to conduct with support provided through this program announcement? [Note to applicant: Complete this only if you are requesting program funds to support this activity.]

12. Quality Assurance

Does the applicant describe their quality assurance efforts regarding HIV CTR, PCRS, HE/RR, public information campaigns, data collection, training, program procedures, and any other relevant programmatic areas for which they have quality assurance plans?

13. Capacity-Building Activities (Recommended Activity Based on Availability of Resources)

(a) Does the applicant describe their capacity-building activities in the areas listed?

(b) Does the applicant discuss their plans to strengthen their capacity-building activities over the five-year project period of this program announcement?

(c) Does the applicant discuss how they would assess (initially, as well as ongoing) capacity-building needs throughout the project period?

14. Other Activities

(a) Does the applicant budget funds through this cooperative agreement for three persons to attend at least three CDC-sponsored conferences or meetings each year? Also, for the first year of this project period, does the applicant budget funds for meetings/activities related to the development of a new model for HIV prevention program planning and implementation?

(b) Does the applicant describe any other planned travel or attendance at conferences or meetings not previously addressed?

15. Unmet Needs

Does the applicant summarize any HIV prevention needs that will remain unmet even if the total application is funded? Do they provide an estimate of funds required to meet these needs?

16. Management and Staffing Plan

Does the applicant describe their management and staffing plan to conduct or support the essential components of their comprehensive HIV prevention program? Does the applicant include an organizational chart that reflects the current management structure and a description of the roles, responsibilities, and relationships of all staff in the program, regardless of funding source? Does the applicant identify the positions supported through this cooperative agreement and those funded through other sources, as well as any unfounded staffing needs?

V.2. Review and Selection Process

As all eligible applicants will be funded, applications will undergo a Technical Acceptability Review.

V.3. Anticipated Announcement and Award Date

Award Date: April 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements:

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14¢Accounting System Requirements
AR–16 Security Clearance Requirement
AR–20 Conference Support

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with a hard copy original, plus two copies of the following reports:

1. Data reports of HIV interventions (including individual and group level); outreach; health communication/public information; HIV counseling, testing, and referral; partner counseling and referral service; are required 45 days after the end of each quarter or as specified in the most recent evaluation guidance. Project areas may request technical assistance to achieve this. Data should be submitted directly to the Program Evaluation Research Branch.

2. This program requires progress reports on a semi-annual basis. The first progress report (an original plus two copies) for each calendar year is due by April 1 of the following year. You will receive specific guidance on what to include at least three months before the due date. Generally, your report should include the following:

a. Base-line and actual level of performance on core and optional indicators

b. Current Budget Period Financial Progress

c. Additional Requested Information

3. The second report (an original and two copies), which is the interim progress report, is due by September 30 of each year. It should include:

a. Current Budget Period Financial Progress

b. Base-line and target level for core and optional indicators

c. Detailed Line-Item Budget and Justification

d. Additional Requested Information

4. Provide CDC with a Financial Status Report (original and two copies),

no more than 90 days after the end of each budget period.

5. Provide CDC with your final financial and performance reports (original and two copies), no more than 90 days after the end of the five-year project period.

6. Submit any newly developed public information resources and materials to the CDC National Prevention Information Network (formerly the AIDS Information Clearinghouse) so that they can be incorporated into the current database for access by other organizations and agencies.

Submit hard copies of materials to: CDC National Prevention Information Network, Attention Database Services, PO Box 6003, Rockville, MD 20849–6003; or submit electronic copies of materials by email to: *info@cdcnpin.org;* Subject: Database Services, For more information call: 1–800–458–5231.

7. HIV Content Review Guidelines

a. Submit completed Assurance of Compliance with the Requirements for Contents of AIDS-Related Written Materials Form (CDC form–0.1113) with your application. This form, which lists the members of your program review panel, can be downloaded from the CDC Web site: *http://www.cdc.gov/od/pgo/forminfo.htm*. The Program Director and authorized business/fiscal official must sign this form. In addition, you must certify that your program review panel represents a reasonable cross-section of the community in which the program is based.

b. You must also include with your application documentation of approval/disapproval by your program review panel of any HIV educational materials that you are currently using. Use the form, Report of Approval/Disapproval for this purpose. This form is attached to this announcement as posted on the CDC Web site. If you have previously sent this information to CDC, it is not necessary to send it again. If you have nothing to submit, you must complete the enclosed form, No Report Necessary. Either the Report of Approval/Disapproval or No Report Necessary must be included with your application, all progress reports, and all continuation requests. In addition to using the Report of Approval/Disapproval, you must certify that accountable jurisdictional health officials independently review the federally-funded HIV prevention materials for compliance with Section 2500 of the Public Health Service Act, and approve the use of such materials in their jurisdiction for directly and indirectly funded organizations.

c. Ensure that a Web page notice be used for those grantees whose Web sites contain HIV/AIDS educational information subject to the CDC content review guidelines. Contact your project officer for a copy of this guidance.

8. Address your organization's compliance with CDC policies for securing approval for CDC sponsorship of conferences. If you plan to hold a conference, you must send a copy of the agenda to CDC's Procurement and Grants Office.

9. If you plan to use materials using CDC's name, send a copy of the proposed material to CDC's Procurement and Grants Office for approval.

Note: Send all reports (except for items 1 and 6) to the Grants Management Specialist identified in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Victoria Rayle, Project Officer, Prevention Program Branch, Division of HIV/AIDS Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E58, Telephone: 404–639–4274, E-mail: *vdrl@cdc.gov*.

For budget assistance, contact: Jamie Legier, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2635, E-mail: *bzl3@cdc.gov*.

Dated: December 22, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31972 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04012]

HIV Prevention Projects; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for HIV prevention projects was published in the **Federal Register** July 10, 2003, Volume 68, Number 132, pages 41138–41147. The notice is amended as follows:

On page 41138, first column, section "A. Authority and Catalog of Federal Domestic Assistance Number," please amend the CFDA number from 93.943 to 93.340.

Dated: December 22, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31973 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04019]

Capacity Building Assistance To Improve the Delivery and Effectiveness of HIV Prevention Services for Racial/Ethnic Minority Populations; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for Capacity Building Assistance to Improve the Delivery and Effectiveness of HIV Prevention Services for Racial/Ethnic Minority Populations was published in the **Federal Register**, Tuesday, December 2, 2003, Volume 68, Number 231, pages 67558–67566. The notice is amended as follows:

Page 67558, second column, please do not include Arizona (AZ) in the South region; please do not include Arkansas (AK) in the West region, but do include AK in the South region.

Dated: December 22, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31974 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04057]

Grant for Injury Control Research Center; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for a grant for an Injury Control Research Center (ICRC) was published in the **Federal Register** on November 26, 2003, Volume

68, Number 228, pages 66442–66447. The notice is amended as follows: On page 66447, Column 1, Section "VI. Award Administration Information," on line 4 in the first paragraph after the "AR–25" requirement, delete "$250,000" and replace with "$500,000."

Dated: December 19, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31838 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04054]

Youth Violence Prevention Through Community-Level Change; Notice of Availability of Funds-Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for Youth Violence Prevention Through Community-Level Change was published in the **Federal Register** on December 2, 2003, Volume 68, Number 231, pages 67450–67455. The notice is amended as follows: On page 67453, Column 2, Section "IV. Application and Submission Information," under 5. Funding Restrictions, at the end of the paragraph add the word "None" and move Funding Priority and Funding Preference to page 67450, Column 3, Section "I. Funding Opportunity Description" after Research Objectives.

Dated: December 19, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31839 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Organization Strategies for the Prevention, Early Detection and Control of Chronic Disease by Chief Elected Officials of Cities

Announcement Type: New.

Funding Opportunity Number: 04072.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Application Deadline: February 13, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) of the Public Health Service Act, (42 U.S.C. 241(a)).

Purpose: The purpose of the program is to support a national organization in the development and implementation of educational initiatives that can be used by chief elected officials in applying effective strategies to prevent and control cancer and other chronic diseases, chronic disease risk factors, and chronic disease health disparities in their cities. This program addresses the "Healthy People 2010" focus areas of: Tobacco Use; Physical Activity and Fitness; Nutrition and Overweight; Public Health Infrastructure; Oral Health; Arthritis; Osteoporosis and Chronic Back Conditions; Educational and Community-Based Programs; Adolescent and School Health: Cancer; Diabetes; Disability and Secondary Condition; Health Communication; Heart Disease and Stroke; Maternal; Infant and Child Health; Substance Abuse. To accomplish the purpose of this program announcement, components of the project are to be addressed as indicated in section "IV.2. Content and Form of Submission" of this program announcement.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goals for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP):

- Promote health and reduce chronic disease associated with diet and weight.
- Improve health, fitness and quality of life through daily physical activity.
- Reduce illness, disability, and death related to tobacco use and exposure to secondhand smoke.
- Increase the proportion of women aged 40 years and older who have received a mammogram within the preceding two years.
- Increase the proportion of adults who receive a colorectal cancer screening examination.
- Increase the proportion of women who receive a Pap test.
- Increase the proportion of cancer survivors who are living 5 years or longer after diagnosis.
- Improve cardiovascular health and quality of life through the prevention, detection, and treatment of risk factors; early identification and treatment of heart attacks and strokes; and prevention of recurrent cardiovascular events.
- Through prevention programs, reduce the disease and economic burden of diabetes, and improve the quality of life for all persons who have or are at risk for diabetes.
- To support the missions of other chronic disease prevention and control programs at the National Center for Chronic Disease Prevention and Health Promotion.

Activities:

Awardee activities for this program are as follows:

a. Develop educational initiatives and provide an informational forum on cancer and other chronic disease prevention and health promotion issues in local communities. This activity may include a diversity of media such as printed materials, websites, and conferences.

b. Provide constituents with accurate, comprehensive and timely information on cancer and other chronic disease prevention and health promotion and control issues to encourage the formulation of educational programming.

c. Participate in CDC-sponsored meetings and events, as appropriate.

d. Coordinate activities with the National Association of County and City Health Officers, and local organizations within the scope of this program announcement, when feasible and appropriate.

e. Establish specific, measurable, and realistic short-term (one year) and long-term (three year) program objectives that are consistent with the purpose of this program announcement. Develop a well-designed evaluation plan of each goal and objective. Performance will be based on the submission of realistic, time-phased, and achievable goals and objectives.

f. Identify and select appropriate staff, based on experience and capability, to successfully implement the program activities.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

a. Partner with recipients in the development, implementation, evaluation, and dissemination of programs designed to improve knowledge and attitudes to prevent and control cancer and other chronic disease within constituent communities.

b. Provide periodic updates about public knowledge, attitudes, and practices regarding chronic disease prevention and control, including up-to-date scientific information.

c. Partner with recipient to identify appropriate and specific venues to share and disseminate information.

d. Partner with recipients in the development of publications and educational materials that relate to chronic disease prevention and health promotion.

e. Identify liaisons with other organizations that are interested in chronic disease prevention and health promotion at the local level.

f. Identify chronic disease and health promotion best practices for specific populations within selected communities.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $300,000 ($150,000 for chronic disease prevention and health promotion and $150,000 for cancer prevention and control).

Approximate Number of Awards: One.

Approximate Average Award: $300,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $300,000.

Anticipated Award Date: March 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations;
- Private nonprofit organizations; and
- Faith-based organizations.

Eligible organizations must have the capacity to coordinate a national collaborative initiative targeting local elected officials. Only organizations with a national reach are eligible to apply.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other Eligibility Requirements

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that you did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements. Applicants should have prior experience working with one or more chronic diseases and with chief elected officials from United States cities with populations of 30,000 or more. In addition, applicants must have the capacity and ability to conduct national programs and activities related to promoting health education, awareness, and information dissemination of chronic disease prevention and control issues in collaboration with chief elected officials of United States cities. The applicant should document eligibility by providing a concise summary that clearly describes (a) status as a national organization; (b) constituency of chief elected officials of cities; and (c) demonstrated outcome/ accomplishments from previous chronic disease prevention and control efforts. Sample materials produced can be provided in appendices.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: For both components is 50 pages—if your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced;
- Paper size: 8.5 by 11 inches;
- Page margin size: One inch;
- Printed only on one side of page, double spaced;
- Held together only by rubber bands or metal clips, not bound in any other way.

Your narrative should address activities to be conducted for cancer prevention and control and chronic disease prevention and control for the entire project period, and should include the following items in the order listed:

1. Executive Summary

Describe prior experience working with one or more chronic diseases and with chief elected officials from United States cities with populations of 30,000 or more. In Describe the level of capacity and ability to conduct national programs and activities related to promoting health education, awareness, and information dissemination of chronic disease prevention and control issues in collaboration with chief elected officials of United States cities. Document eligibility by providing a concise summary that clearly describes (a) status as a national organization; (b) constituency of chief elected officials of cities; and (c) demonstrated outcome/ accomplishments from previous chronic disease prevention and control efforts. Sample materials produced can be provided in appendices.

2. Background and Need

Describe the need for the proposed activities and the context in which the work will be conducted. Provide descriptions of the constituent population and how your organization will play a significant role in chronic disease prevention, either by direct or indirect impact.

3. Method

Submit a plan that describes the methodologies for conducting awardee activities outlined in the Activities section. Identify strategies and activities for increasing the applicant's involvement in promoting and supporting chronic disease prevention and control programs over the next three years.

Explain how planned activities relate to the purpose of this program announcement. The plan should identify and establish a timeline for the completion of each component or major activity. The plan should identify how previous experience in the prevention and control of cancer and other chronic diseases will inform the activities being planned.

4. Goals and Objectives

List goals specifically related to program requirements and indicate expected program outcomes at the end of the three-year project period. Provide objectives that are specific, measurable, feasible, and time phased to be accomplished during the projected 12-month budget period. Objectives should relate directly to the project goals and recipient activities.

Describe goals and objectives in narrative form and provide a timetable, with specific activities that are related to each objective during the projected 12-month budget period. Indicate when each activity will occur, as well as when preparations for activities will occur. Also indicate who will be responsible for each activity and identify staff assigned to each activity.

5. Project Management and Staffing Plan

a. Describe the proposed staffing for the project and submit job descriptions illustrating the level of organizational responsibility for professional staff that will be assigned to the project.

b. In the application appendices, include a curriculum vitae for each professional staff member named in the proposal.

c. Describe the organization's structure and function, how that structure supports health promotion and education activities, activities on the local level, and methods of current communication with members.

6. Evaluation Plan

Describe how each of the activities and their impact will be evaluated. Describe how progress toward meeting project objectives will be monitored.

The evaluation plan should address measures considered critical to determine the success of the plan outlined by the applicant, and results should be used for improvement of the intended plan.

7. Budget and Accompanying Justification

Provide a detailed line-item budget and narrative justification describing operating expenses consistent with the proposed objectives and planned activities. Provide a precise description for each budget item and itemize calculations when appropriate. Applicants should include budget items for travel trips to two CDC sponsored meetings. The budget and accompanying justification will not be counted in the stated page limit.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitae;
- Job Descriptions;
- Organizational Charts;
- Any other supporting documentation.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement for the federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: February 13, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

This program announcement is the definitive guide on application format, content, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services.
- Equipment may be purchased, with appropriate justification, including cost comparison of purchase with lease. Although contracts with other organizations are allowable, the recipient of this grant must perform a substantial portion of activities for which funds are requested.
- Cooperative agreement funds may not supplant existing funds from any other public or private source.
- Funds may not be expended for construction, renovation of existing facilities, or relocation of headquarters or affiliates.
- Funds may not be used for clinical services.
- If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months of age.
- Pre-award costs will not be reimbursed.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.ogv/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA04072, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria: Evaluation Criteria (100 points total).

1. Goals and Objectives (30 points)

The extent to which the applicant's plan for achieving the proposed activities appears realistic, feasible and relates to the programmatic requirements and purposes of this program announcement, including the degree to which short-term (one year) and long-term (three year) objectives are specific, time-phased, measurable, realistic and related to identified needs.

2. Project Management and Staffing (20 points)

The degree to which proposed staffing, organizational structure, staff experience and background, training needs or plan, job descriptions and curricula vitae for both proposed and current staff indicate past experience in carrying out similar programs, and the ability to carry out the purposes of the current program.

3. Method (20 points)

The extent to which the applicant describes the methodologies for carrying out the recipient activities as outlined in the program requirements with a corresponding timeline for the completion of each major activity.

4. Evaluation Plan (20 points)

The extent to which the proposed evaluation plan addresses progress toward meeting goals and objectives, assesses impact, and appears to be reasonable and feasible.

5. Background and Need (10 points)

The extent to which the applicant describes the chronic disease burden and specific needs related to the purpose of this program announcement.

6. Budget and Justification (Not scored)

The extent to which the budget is reasonable and consistent with the purpose and activities of the program.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by program staff. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement Award Date

March 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project: AR–10 Smoke-Free Workplace Requirements; AR–11 Healthy People 2010; AR–12 Lobbying Restrictions; AR–15 Proof of Non-Profit Status.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*

VI.3. Reporting Requirements

You must provide CDC with the original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about the announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: Jennifer Tucker, 4770 Buford Highway, MS K–40, Atlanta, GA 30341, Telephone: 770–488–6454, E-mail: *jrt5@cdc.gov.*

For business management and budget assistance, contact: Tracey Sims, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2739, E-mail: *atu9@cdc.gov.*

Dated: December 22, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–31971 Filed 12–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10000, CMS–10091 and CMS–10028A, B, and C]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Consumer Assessment of Health Plan Survey-Fee for Service (CAHPS–FFS); *Form No.:* CMS–10000 (OMB# 0938–0796); *Use:* Under the Balanced Budget Act of 1997, CMS is required to provide general and plan comparative information to beneficiaries that will help them make more informed plan choices. A CAHPS fee-for-service survey is needed to provide information comparable to those data collected from the CAHPS managed care survey; *Frequency:* Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 142,920; *Total Annual Responses:* 142,920; *Total Annual Hours:* 47,640.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* UPIN (Unique Physician Identification Number) Participating Physicians Directory; *Form No.:* CMS–10091 (OMB# 0938–0905); *Use:* In November of 2000, CMS launched the Participating Physicians Directory on *http://www.medicare.gov.* This particular directory was created to provide beneficiaries with the names, addresses, and specialties of Medicare participating physicians who have agreed to accept assignment on all Medicare claims and covered services. CMS is adding information from already existing sources; in addition, CMS wants to collect a new data element "Accepting New Patients Indicator" which is essential to a beneficiary's search for a physician; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 10,980; *Total Annual Responses:* 10,980; *Total Annual Hours:* 915.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Health Insurance Assistance Program (SHIP) Client Contact Form, Public and Media Activity Form, and Resource Report; *Form No.:* CMS–10028A, B, C (OMB# 0938–0850); *Use:* The State Health Insurance Assistance Program (SHIP) Client Contract form will be completed by SHIP counselors at each counseling event in order to collect SHIP performance data. This data will then be accumulated and analyzed to measure SHIP performance; *Frequency:* Semi-annually and annually; *Affected Public:* State, Local, or Tribal Government, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 12,000; *Total Annual Responses:* 1,000,000; *Total Annual Hours:* 116,747.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 18, 2003.

Melissa Musotto,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–32044 Filed 12–29–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–39, CMS–R–243, CMS–R–131, and CMS–10103]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home health Medicare Conditions of Participation (CoP) Information Collection Requirements and Supporting Regulations in 42 CFR 484.10, 484.12, 484.14, 484.16, 484.18, 484.36, 484.48, and 484.52; *Form No.:* CMS–R–39 (OMB# 0938–0365); *Use:* 42 CFR 484 outlines Home Health Agency Medicare CoP to ensure HHAs meet the Federal patient health and safety regulations; *Frequency:* Annually; *Affected Public:* Business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 7,122; *Total Annual Responses:* 7,122; *Total Annual Hours:* 854,891.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Agreement Application, Health Care Prepayment Plan and Supporting Regulations in 42 CFR 417.800–417.840.; *Form No.:* CMS–R–243 (OMB# 0938–0768); *Use:* An organization must meet certain requirements to be a Health Care Prepayment Plan that is eligible for a Medicare Section 1833 agreement. The application is the collection form to obtain the information from an organization that would allow CMS staff to determine compliance with the regulations.; Frequency: One-time Submission; *Affected Public:* Business or other for-profit, not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 1,125.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Advanced Beneficiary Notice and Supporting Regulations in 42 CFR 411.404, 411.406, and 411.408.; *Form No.:* CMS–R–131 (OMB# 0938–0566); *Use:* Physicians, practitioners, suppliers, and providers

furnishing Part A or Part B items or services may bill a patient for items of services denied by Medicare as not reasonable and necessary, under Medicare program standards (Section 1862(a)(1) of title XVIII of the Social Security Act (the Act), or under one of several other statutory bases (Section 1862(a)(9), Section 1814(a)(2)(C), Section 1835(a)(2)(A), Section 1861(dd)(3)(A), Section 1834(j)(1), Section 1834(a)(15), and Section 1834(a)(17)(B) of the Act), if they informed the patient, prior to furnishing the items or services and the patient, after being so informed, agreed to pay for the items or services.; *Frequency:* As-needed; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Individuals or households; *Number of Respondents:* 1,084,932; *Total Annual Responses:* 21,171,480; *Total Annual Hours:* 1,764,290.

4. *Type of Information Request:* New Collection; *Title of Information Collection:* Evaluation of PACE as a Permanent Program and a For-Profit Demonstration; *Form No.:* CMS–10103 (OMB# 0938–NEW); *Use:* The Balanced Budget Act of 1997 (BBA) established PACE as a permanent Medicare program and a state option under Medicaid. It also mandated a for-profit demonstration and a study of the "quality and cost" of the permanent program "under the Medicare and Medicaid programs." All PACE Demonstration sites must convert to permanent program sites in 2003. This evaluation will build on the efforts made in the first PACE evaluation (final reports in 2000). Data will be gathered to assess changes in access to care, patient satisfaction, mortality, organizational/operational changes, patient characteristics, outcomes, quality, etc. that have resulted from the BBA legislation. Patient surveys, site surveys, and claims and utilization data gathered at 12 sites will help answer these study questions. Mathematica Policy Research, Inc. is awarded a contract (No. 500–00–0033) to perform this evaluation. A final report is expected in the summer of 2006.; *Frequency:* Other: One-time; *Affected Public:* Individuals or Households, Not-for-profit institutions; *Number of Respondents:* 2,996; *Total Annual Responses:* 2,996; *Total Annual Hours:* 1,723.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 18, 2003.

Melissa Musotto,

Acting, Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–32045 Filed 12–29–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities (PCPID): Notice of Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), HHS.

ACTION: Notice of meeting.

DATES: Thursday, January 29, 2004, from 8:30 a.m. to 5 p.m. and Friday, January 30, 2004, from 8:30 a.m. to 12 p.m. The full Committee meeting of the President's Committee for People with Intellectual Disabilities will be open to the public.

ADDRESSES: The meeting will be held at the Aerospace Center Building, Aerospace Auditorium, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447. Individuals with disabilities who need special accommodations in order to attend and participate in the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Executive Director, Salley Atwater, at 202–619–0634 no later than January 16, 2004. Effort will be made to meet special requests received after that date, but availability of special needs accommodations to respond to these requests cannot be guaranteed. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues relating to individuals with intellectual disabilities concerning education and transition, family services and support, public awareness, employment, and assistive technology and information.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail—*satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with intellectual disabilities and their families.

Dated: December 16, 2003.

Sally Atwater,

Executive Director, President's Committee for People with Intellectual Disabilities.

[FR Doc. 03–32053 Filed 12–29–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0549]

Draft Guidance for Industry: Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing, Revision; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing." This draft guidance provides recommendations for sponsors of abbreviated new drug applications (ANDAs) on the design of bioequivalence studies for generic clozapine products. This draft guidance is being issued because an earlier guidance on this topic published in November 1996 needed to be revised to reflect current agency recommendations. Because of significant potential adverse effects, the agency no longer recommends in vivo bioequivalence testing in healthy subjects.

DATES: Submit written or electronic comments on the draft guidance by March 1, 2004. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lizzie Sanchez, Center for Drug Evaluation and Research (HFD–650), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5847.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Clozapine Tablets In Vivo Bioequivalence and In Vitro Dissolution Testing." This draft guidance is intended to provide information to sponsors of ANDAs on the design of bioequivalence studies for generic clozapine products, and revises the recommendations provided in a guidance on the same topic published in November 1996.

In the earlier version of this draft guidance, the agency recommended that doses of clozapine tablets be administered to healthy subjects in bioequivalence studies for generic clozapine products. The earlier guidance also provided the option of conducting studies in the appropriate patient population. Because a high number of healthy subjects in bioeqivalence studies for clozapine products have experienced serious adverse effects such as hypotension, bradycardia, syncope, and asystole during clozapine bioequivalence studies, FDA is no longer recommending such studies be done in healthy subjects.

The draft guidance provides recommendations for two approaches to study the product in the appropriate patient population. One approach is a study design using patients naive to clozapine. This design uses the recommended titration of dosing consistent with the reference product labeling. The alternative study design uses the appropriate patient population already stable on a dose of clozapine. This alternative also appeared in the earlier version of the guidance. The agency believes that the previously recommended design using healthy subjects was adequate to establish bioequivalence of generic clozapine products; however, the safety concerns associated with the use of clozapine in healthy subjects are significant, and the agency is no longer recommending this practice.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on studies to demonstrate the bioequivalence of clozapine tablets. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes or regulations.

II. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm*, or through the Division of Dockets Management website at *http://www.fda.gov/ohrmr/dockets/default.htm*.

Dated: December 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31917 Filed 12–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule, 42 CFR part 51—(OMB No. 0930–0172—Extension)—These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements. The Act authorized funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or emotional impairment (children/youth) (42 U.S.C. at 10802(4)). However, only entities designated by the governor of each State and six (6) territories (the American Indian Consortium, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), and the Mayor of the District of Columbia to protect and advocate the rights of persons with developmental disabilities under Part C of the Developmental Disabilities and Bill of Rights Act (42 U.S.C. 6041 *et seq.*, as amended in 2000) are eligible to receive PAIMI grants (42 U.S.C. at 10802(2)). PAIMI grants are based on a formula prescribed by the Secretary (42 U.S.C. at 10822(a)(1)(A)).

On January 1, each eligible State protection and advocacy (P&A) system is required to prepare and transmit to the Secretary and head of the State Mental Health Agency, in which the system is located, a report describing its activities, accomplishments, and expenditures during the most recently completed fiscal year. Section 10824(a) of the Act requires that the State P&A system's annual reports to the Secretary, shall describe its activities, accomplishments, and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI allotments, including:

(A) The number of (PAIMI-eligible) individuals with mental illness served;

(B) A description of the types of activities undertaken;

(C) A description of the types of facilities providing care or treatment to which such activities are undertaken;

(D) A description of the manner in which the activities are initiated;

(E) A description of the accomplishments resulting from such activities;

(F) A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI allotments;

(G) A description of activities conducted by States to protect and advocate such rights;

(H) A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights; and,

(I) A description of the coordination among such systems, activities and mechanisms;

(J) Specification of the number of systems that are public and nonprofit systems established with PAIMI allotments; and

(K) Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the needs for such activities and services which have not been met by the State P&A systems established under the PAIMI Act. [The PAIMI Rules 42 CFR section 51.32(b) state that P&A systems may place restrictions on case or client acceptance criteria developed as part of its annual PAIMI priorities. However, prospective clients must be informed of any such restrictions at the time they request service].

This summary report must include a separate section, prepared by the PAIMI Advisory Council, that describes the council's activities and its assessment of the operations of the State P&A system (42 U.S.C. 10805(7)). The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows.

42 CFR Citation	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total annual burden
51.8(8)(a)(2) Program Performance Report[1]	57	1	26.0	(1,482)
51.8(8)(a)(8) Advisory Council Report[1]	57	1	10.0	(570)
51.10 Remedial Actions: Corrective Action Plan	7	1	8.0	56
Implementation Status Report	7	3	2.0	42
51.23(c) Reports, materials and fiscal data provided to Advisory Council	57	1	1.0	57
51.25(b)(2) Grievance Procedure	57	1	.5	29
Total	57			184

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: December 18, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–31975 Filed 12–29–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of the Buprenorphine Waiver: Longitudinal Patient Survey—New—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating a program that permits office-based physicians to obtain Waivers from the requirements of the Narcotic Addict Treatment Act of 1974 (21 U.S.C. 823(g)). Under the Drug Addiction Treatment Act of 2000 (21 U.S.C. 823 (g)(2)), the Waiver Program permits qualifying physicians to prescribe and dispense buprenorphine, a schedule III narcotic drug recently approved by the FDA for the treatment of opiate addiction. Furthermore, the Drug Abuse Treatment Act specifies that the Secretary of the Department of Health and Human Services make a determination of whether: (1) Treatments provided under the Waiver Program have been effective forms of maintenance treatment and detoxification treatment in clinical settings; (2) the Waiver Program has significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and, (3) the Waiver Program has adverse consequences for the public health. In addition to the objectives above, the Evaluation of the Buprenorphine Waiver Program will examine other related objectives, including: (1) Describing the impact of the Waiver-based treatment on the existing treatment system; (2) providing information useful to guide and refine the processing/monitoring system being developed and maintained by CSAT/DPT; and (3) providing baseline data to inform future research and policy concerning the medicalization and mainstreaming of addiction treatment.

The evaluation of the Buprenorphine Waiver Program will be accomplished using three survey efforts. The first of these is a mail survey of addiction physicians from the American Society of Addiction Medicine (ASAM) and/or the American Academy of Addiction Psychiatry (AAAP). That survey (approved by OMB under control number 0930–0246) will assess early perceptions of physicians specializing in addiction medicine about whether buprenorphine, as it is prescribed and distributed under the Waiver, is a useful tool in the treatment of substance abuse, and whether they have encountered any negative consequences associated with it.

The Longitudinal Patient Survey will focus on patients who have received buprenorphine and will assess its availability and effectiveness from the patients' point of view. The Survey will collect longitudinal data from a cohort of about 420 buprenorphine patients to assess the effectiveness of buprenorphine therapy. Patients will be recruited through a sample of prescribing physicians' offices. Office staff will give each eligible buprenorphine patient a study brochure that explains the importance of the study, offers an incentive, and gives the patient a toll-free telephone number to call to complete the survey by telephone.

Patients will be asked a series of questions that will provide baseline data for the evaluation. Follow-up data on the services received, satisfaction with the treatment, and outcomes will be collected 30 days and 6 months later. Survey domains include the following: Patient demographics; Buprenorphine dose over time; Items from the short form of the Addiction Severity Index (ASI); Services being received in addition to medications; Needle-sharing and HIV status; Treatment and substance abuse history, in particular prior experience with medication-based treatment for opioid dependence; Experience, satisfaction with, and general knowledge of, buprenorphine.

A third survey will be conducted later, focusing on the clinical practice and perceived effectiveness of buprenorphine among only those physicians who are actively prescribing the medication. A separate clearance request will be submitted for this physician survey.

The estimated response burden for the longitudinal survey of buprenorphine patients over a period of one year is summarized below.

Respondent	Number of respondents	Responses/ respondent	Hours/response	Total hour burden
Physicians	120	12	.08	116
Patient baseline interview	420	1	.75	315
Patient 30-day followup interview	420	1	.67	281
Patient 6-month followup interview	420	1	.67	281
Total	540	....	....	993

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: December 18, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–31976 Filed 12–29–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

The municipalities of Vieques and Culebra for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–31963 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1501–DR]

Puerto Rico; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1501–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

The municipalities of Aibonito and Naranjito for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora

Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–31964 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1503–DR]

Virgin Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of the U.S. Virgin Islands (FEMA–1503–DR), dated December 9, 2003, and related determinations.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 9, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

> I have determined that the damage in the Territory of the U.S. Virgin Islands, resulting from severe storms, flooding, landslides, and mudslides on November 10–16, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Territory of the U.S. Virgin Islands.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Territory of the U.S. Virgin Islands, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response,

I do hereby determine the following areas of the U.S. Virgin Islands to have been affected adversely by this declared major disaster:

> St. Croix, St. John, and St. Thomas, including Water Island for Public Assistance.

All islands within the Territory of the U.S. Virgin Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household-Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–31966 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1502–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1502–DR), dated December 9, 2003, and related determinations.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 9, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

> I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from severe storms and flooding on November 18–19, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.
>
> Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive

Order 12148, as amended, Louis H. Botta, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Bland, Buchanan, Giles, Smyth, and Tazewell Counties, and the Independent City of Galax for Individual Assistance.

All jurisdictions within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–31965 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Braxton, Lewis, Logan, and Taylor Counties for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–31960 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Harrison County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–31961 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1500–DR]

West Virginia; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1500–DR), dated November 21, 2003, and related determinations.

EFFECTIVE DATE: December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 21, 2003:

Monongalia County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations;

97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–31962 Filed 12–29–03; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–24]

Announcement of Funding Award—FY 2000, Lead-Based Paint Hazard Control; Duke University of Durham, NC

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the Duke University of Durham, NC. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Emily Williams, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (336) 547–2434 x2067. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Health Homes Demonstration grant for the Duke University of Durham, NC was issued pursuant to Public Law 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of an additional $333,332.00 for a total award of $825,174.00 to the Duke University of Durham, NC, which will be used to extend the grant period and funding of the original grant to include measurements of contaminants in crawlspaces.

The Catalog of Federal Domestic Assistance number for this program is 14,900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

Duke University, Nicholas School of the Environment and Earth Sciences, 327 North Building, Box 90077, Durham County, Durham, NC 27708–0077.

Total Amount of Grant: $825,174.00.

Dated: December 3, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–31912 Filed 12–29–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–26]

Announcement of Funding Award—FY 2002 and FY 2003, Lead-Based Paint Hazard Control; National Academy of Sciences

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the National Academy of Sciences of Washington, DC. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Peter J. Ashley, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 755–1785, ext. 115. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Healthy Homes and Lead-Hazard Control Research grant for the National Academy of Sciences of Washington, DC was issued pursuant to Public Law 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of $700,000.00 to the National Academy of Sciences of Washington, DC, which will be used to fund a committee to review the research challenges and ethical issues that occur during the design and conduct of intervention research to control housing-related health hazards and protect the health of children and families, and compare and contrast them with those of traditional biomedical intervention research conducted on children.

The Catalog of Federal Domestic Assistance number for this program is 14,900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

National Academy of Sciences, Office of Contracts and Grants, 500 Fifth Street, NW., Washington, DC 20001.

Total Amount of Grant: $700,000.00.

Dated: December 18, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–31914 Filed 12–29–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4759–FA–25]

Announcement of Funding Award—FY 2000, Lead-Based Paint Hazard Control; President and Fellows of Harvard College of Boston, MA

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department to the National Academy of Sciences of Washington, DC President and Fellows of Harvard College of Boston, MA. This announcement contains the name and address of the awardee and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Peter J. Ashley, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 755–1785, ext. 115. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Health Homes Demonstration grant for the President and Fellows of Harvard College of Boston, MA was issued pursuant to Pub. L. 102–550, Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992.

This notice announces the award of an additional $202,281.00 for a total award of $1,200,000 to the President and Fellows of Harvard College of Boston, MA, which will be used to provide financial support and technical assistance to support asthma health outcomes and environmental sampling to the Winter of 2003.

The Catalog of Federal Domestic Assistance number for this program is 14,900.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

President and Fellows of Harvard College, Harvard School of Public Health, Office For Sponsored Research, 677 Huntington Avenue, Harvard, MA 02115.

Total Amount of Grant: $1,200,000.

Dated: December 3, 2003.

Joseph F. Smith,

Deputy Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 03–31913 Filed 12–29–03; 8:45 am]

BILLING CODE 4210–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
016016	George Carden Circus International, Inc	68 FR 61011; October 24, 2003	December 4, 2003.
072584	Columbia University	68 FR 62096; October 31, 2003	December 3, 2003.
072945	Mitchel Kalmanson	68 FR 43156; July 21, 2003	November 11, 2003.
072948	Mitchel Kalmanson	68 FR 43156; July 21, 2003	November 11, 2003.
073486	Mitchel Kalmanson	68 FR 43156; July 21, 2003	November 11, 2003.
077059	Cincinnati Zoo	68 FR 58125; October 8, 2003	November 17, 2003.
077372	Dr. Duane M. Rumbaugh	68 FR 61011; October 24, 2003	December 9, 2003.
077886	Gary H. Tennison	68 FR 59811; October 17, 2003	November 18, 2003.
078305	Clarence E. Ellis	68 FR 62096; October 31, 2003	December 4, 2003.
078306	T. F. Lambert	68 FR 62096; October 31, 2003	December 4, 2003.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
049136	Xavier University	68 FR 59811; October 17, 2003	December 9, 2003.
077783	Alfredo Julian	68 FR 59812; October 17, 2003	December 4, 2003.
077954	Richard G. Ferrara	68 FR 59812; October 17, 2003	December 4, 2003.

Dated: December 12, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–32041 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Robinson Rancheria of California Ordinance Governing the Regulation and Licensing of Liquor

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Robinson Rancheria of California Ordinance Governing the Regulation and Licensing of Liquor on lands of the Robinson Rancheria. The ordinance regulates and controls the sale, manufacture, and distribution of alcoholic beverages in public places on the Robinson Rancheria as the Robinson Rancheria Citizens Business Council may deem necessary.

EFFECTIVE DATE: This Ordinance is effective on December 30, 2003.

FOR FURTHER INFORMATION CONTACT: Duane T. Bird Bear, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Business Council of the Robinson Rancheria of California, also known as the Robinson Rancheria of Pomo Indians, adopted a Liquor Ordinance on March 21, 2003. The purpose of this ordinance is to govern the sale, manufacture, and distribution of alcoholic beverages in public places on the Robinson Rancheria, California.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs.

I certify that the Business Council Resolution No. 03–21–03A, enacting the "Robinson Rancheria of Pomo Indians of California Liquor Regulation and Licensing Ordinance," was duly adopted by the Business Council of the Robinson Rancheria of Pomo Indians on March 21, 2003.

Dated: December 19, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary-Indian Affairs.

The Robinson Rancheria of California liquor ordinance governing sale, manufacture, and distribution of alcoholic beverages in public places on the Robinson Rancheria reads as follows:

Robinson Rancheria of Pomo Indians of California, California Liquor Regulation and Licensing Ordinance

Article I Declaration of Public Policy and Purpose

Section 1.1. The introduction, possession and sale of liquor on the lands of the Robinson Rancheria is a matter of special concern to the Robinson Rancheria of Pomo Indians of California.

Section 1.2. Federal law, 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except as provided therein and in accordance with State law as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), and expressly delegates to the tribe the decision regarding when and to what extent liquor transactions shall be permitted on lands subject to the tribe's jurisdiction.

Section 1.3. The Robinson Rancheria Citizens Business Council of the Robinson Rancheria of Pomo Indians of California ("RRCBC") has the power under Article VIII(j) of the Constitution of the Robinson Rancheria to enact ordinances to safeguard and provide for the health, safety and welfare of the members of the Robinson Rancheria, and has determined that it is in the best interests of the Robinson Rancheria of Pomo Indians of California to enact a tribal ordinance governing the introduction, possession and sale of liquor on the Robinson Rancheria and which limits the purchase, distribution, and/or sale of liquor within the exterior boundaries of the Robinson Rancheria Reservation only to premises licensed and regulated by the RRCBC.

Section 1.4. The RRCBC finds that the sale or other commercial distribution of liquor on land owned or held in trust for individuals would be contrary to the best interests of the Robinson Rancheria of Pomo Indians of California and is therefore prohibited.

Section 1.5. The RRCBC finds that violations of this Ordinance would damage the Robinson Rancheria of Pomo Indians of California in an amount of five hundred dollars ($500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Ordinance the RRCBC may, in its discretion, impose a tax on the sale of liquor on the reservation.

Based upon the foregoing findings and determinations, the Robinson Rancheria of Pomo Indians of California, through the RRCBC, hereby ordains as follows.

Article II Definitions

As used in this title, the following words shall have the following meanings, unless the context clearly requires otherwise.

Section 2.1. "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

Section 2.2. "Alcoholic Beverage" has the same meaning as the term "liquor" as defined in Article II, Section 5 of this Ordinance.

Section 2.3. "Bar" means any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 2.4. "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, "beer" includes sake (Japanese rice wine), and any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as "strong beer."

Section 2.5. "Liquor" means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spiritous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than one percent (1%) of alcohol by weight, shall be conclusively deemed to be intoxicating.

Section 2.6. "Liquor Store" means any store at which liquor is sold in sealed pre-packaged form, and, for the purpose of this Ordinance, includes any store only a portion of which is devoted to the sale of liquor or beer.

Section 2.7. "Malt liquor" means beer, strong beer, ale, stout and porter.

Section 2.8. "Package" means any container or receptacle used for holding liquor.

Section 2.9. "Public Place" includes gaming facilities, eating facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access or to which the general public has been invited, and which generally are used by the public.

Section 2.10. "Sale" and "Sell" means any exchange, barter, and/or traffic in liquor; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person. "Sale" and "Sell" includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer or consumer, but title is retained by the vendor, retailer, manufacturer or wholesaler as security for payment of the purchase price. Specifically included is any transaction whereby, for any consideration, title or possession of alcoholic beverages is transferred from one person or entity to another, and includes the delivery of alcoholic beverages pursuant to an order placed for such beverages, or soliciting or receiving such beverages. "Sale" or "Sell" does not include the gift of alcoholic beverages among family members or personal acquaintances in non-commercial circumstances.

Section 2.11. "Spirits" means any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

Section 2.12. "RRCBC" means the Robinson Rancheria Citizens Business Council as defined in Article IV of the Constitution of the Robinson Rancheria of Pomo Indians of California.

Section 2.13. "Tribal Council" means the enrolled membership of the Robinson Rancheria eighteen years of age or older.

Section 2.14. "Tribal Land" means any land within or without the exterior boundaries of the Robinson Rancheria that is held in trust by the United States for the Robinson Rancheria of Pomo Indians of California.

Section 2.15. "Wine" means any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Article III Powers of Enforcement

Section 3.1. The RRCBC, in furtherance of this Ordinance, shall have the following powers and duties:

(a) To publish and enforce such rules and regulations governing the sale, manufacture and distribution of alcoholic beverages in public places on the Robinson Rancheria as the RRCBC may deem necessary;

(b) To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the RRCBC to perform its functions under this Ordinance.

(c) To issue licenses permitting the sale, manufacture and/or distribution of liquor on the Robinson Rancheria;

(d) To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in any court of competent jurisdiction to enforce this Ordinance as the RRCBC determines is necessary;

(f) To determine and seek damages for violation of this Ordinance;

(g) To make reports to the Tribal Council at least semi-annually concerning the implementation of this Ordinance;

(h) To set, levy and collect sales taxes and fees on liquor distribution, sales and/or consumption in commercial premises, and the issuance of liquor licenses, and to keep accurate records, books and accounts of such taxes and fees and expenditures therefrom; and

(i) To exercise such other powers as the RRCBC may determine by duly-enacted resolution may be necessary to implement this Ordinance and accomplish its purposes.

Section 3.2 Limitation on Powers. In the exercise of its powers and duties under this Ordinance, the RRCBC and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or

(b) Waive the immunity of the Robinson Rancheria of Pomo Indians of California from suit without the express and separate consent of the RRCBC.

Section 3.3 Inspection Rights. The public places on or within which liquor is sold, distributed or consumed shall be open for inspection by the RRCBC at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto. The RRCBC may delegate all or part of its inspection authority to the Robinson Rancheria Gaming Commission or other subordinate tribal entity or agency, or may contract with third parties for this purpose.

Article IV Sale of Liquor

Section 4.1 License Required. No sales of alcoholic beverages shall be made on or within the exterior boundaries of the Robinson Rancheria or other Tribal Land as defined in this Ordinance, except at a business duly licensed by the RRCBC.

Section 4.2 Sales for Cash. All liquor sales on the Robinson Rancheria or other Tribal Land shall be on a cash-only basis, and no credit shall be extended to any person, organization or entity in connection with any such sales, except that this provision does not prevent the payment for purchases with the use of cashier's or personal checks, money orders, payroll checks, or debit cards or credit cards issued by any federally-or state-regulated financial institution.

Section 4.3 Sale for Personal Consumption. Except as may be specifically licensed by the RRCBC, all retail sales of liquor shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation or other Tribal Land is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation or Tribal Land, and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from the Reservation or other Tribal Land or liability for money damages of up to five hundred dollars ($500), or both, as determined by the RRCBC after giving the alleged violator due notice and an opportunity to be heard concerning the fact of the alleged violation and the appropriateness of any penalty.

Article V Licensing

Section 5.1 Procedure. In order to control the proliferation of establishments on the Reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the Robinson Rancheria or on other Tribal Land must apply to the RRCBC for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor for non-commercial purposes within a private single-family residence on the Reservation for which no money is requested or paid.

Section 5.2 State Licensing. No person shall be allowed or permitted to sell or provide liquor on the Robinson Rancheria if s/he does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the Tribal license shall automatically be revoked or suspended as well.

Section 5.3 Application. Any person applying for a license to sell or provide liquor on the Robinson Rancheria shall complete and submit an application provided for this purpose by the RRCBC, and pay such application fee as may be set from time to time by the RRCBC for this purpose. Incomplete applications will not be considered.

Section 5.4 Issuance of License. The RRCBC may issue a license if it believes that the issuance of such license would be in the best interest of the Robinson Rancheria of Pomo Indians of California, the residents of the Robinson Rancheria and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the RRCBC.

Section 5.5 Duration of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5.6 Renewal of License. A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California; however, the RRCBC may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Robinson Rancheria of Pomo Indians of California.

Section 5.7 Suspension or Revocation of License. The RRCBC may suspend or revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked. The licensee shall have the burden of going forward and proving by a preponderance of the evidence that the RRCBC should not suspend or revoke the license.

Section 5.8 Transferability of Licenses. Licenses issued by the RRCBC shall not be transferable and may only be utilized by the persons or entities in whose name issued.

Article VI Taxes

Section 6.1 Sales Tax. There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the Reservation in the amount of one percent (1%) of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the Reservation, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 6.2 Payment of Taxes to the Tribe. All taxes from the sale of alcoholic beverages to the Robinson Rancheria shall be paid over to the General Treasury of the Robinson Rancheria of Pomo Indians of California and be subject to the distribution by the RRCBC in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the RRCBC and administration of this Ordinance.

Section 6.3 Taxes Due. All taxes upon the sale of alcoholic beverages on the Reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at eighteen percent (18%) per annum.

Section 6.4 Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 6.5 Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reservation. Said review or audit may be done periodically by the RRCBC through its agents or employees whenever in the discretion of the RRCBC such a review is necessary to verify the accuracy of reports.

Article VII Rules, Regulations and Enforcement

Section 7.1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this title.

Section 7.2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall operate or shall have liquor in his/her possession without a license required by this Ordinance, shall be guilty of a violation of this Ordinance and subject to civil damages assessed by the RRCBC. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Robinson Rancheria of Pomo Indians of California for their personal or other non-commercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Robinson Rancheria shall be governed solely by the laws of the State of California.

Section 7.3. Any person within the boundaries of the Robinson Rancheria who, in a public place, buys liquor from any person other than at a properly-licensed facility shall be guilty of a violation of this Ordinance.

Section 7.4. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 7.5. No person under the age of twenty-one (21) years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 7.6. Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7.7. Any person guilty of a violation of this Ordinance shall be liable to pay the Robinson Rancheria of Pomo Indians of California the amount of five hundred dollars ($500) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The amount of such damages in each case shall be determined by the RRCBC based upon a preponderance of the evidence available to the RRCBC after the person alleged to have violated this Ordinance has been given due notice and an opportunity to respond to such allegations.

Section 7.8. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27) years, the prospective purchaser shall be required to present any one of the following officially-issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(a) Driver's license of any state or identification card issued by any state Department of Motor Vehicles;

(b) United States Active Duty Military;

(c) Passport; or

(d) Gaming license, work permit or other identification issued by the RRCBC, if said license, permit or identification contains the bearer's correct age, signature and photograph.

Article VIII Abatement

Section 8.1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 8.2. The Tribal Chairperson, upon authorization by a majority of the RRCBC, or, if he/she fails to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall direct the tribal department of public safety or equivalent department of the tribal government to abate any such nuisance. If necessary, the RRCBC shall be authorized to institute and maintain an action in a court of competent jurisdiction in the name of the Robinson Rancheria of Pomo Indians of California to abate and perpetually enjoin any nuisance declared under this title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than twenty-five thousand dollars ($25,000) payable to the Robinson Rancheria of Pomo Indians of California and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of therein in violation of the provision of this Ordinance or of any other applicable tribal law, and that s/he will pay all fines, costs and damages assessed against him/her for any violation of this Ordinance or other Tribal laws. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Robinson Rancheria of Pomo Indians of California.

Section 8.3. In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought in a court of competent jurisdiction to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance. Unless a tribal court has been established or designated by contract at the time any such action is to be filed, the RRCBC shall sit as the tribal court for the purpose of ordering the abetement of such nuisance.

Article IX Profits

Section 9.1. The gross proceeds collected by the RRCBC from all licensing of the sale of alcoholic beverages on the Robinson Rancheria, and from proceedings involving violations of this Ordinance, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Robinson Rancheria of Pomo Indians of California and expended by the RRCBC for governmental services and programs on the Robinson Rancheria.

Article X Severability and Effective Date

Section 10.1. If any provision or application of this Ordinance is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 10.2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 10.3. Any and all prior enactments of the Robinson Rancheria of Pomo Indians of California that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 10.4. All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. 1154, but only to the extent required by the laws of the United States.

Article XI Amendment

This Ordinance may only be amended by majority vote of the RRCBC attending a duly-noticed meeting at which a quorum is present.

Article XII Certification and Effective Date

This Ordinance was passed at a duly-held, noticed and convened meeting of the Robinson Rancheria Citizens Business Council at which a quorum of at least four (4) members was present, by a vote of 3 for, 0 against and 0 abstaining, on the 21st day of March 2003, as certified and attested to by the Chairperson and Secretary-Treasurer of the Robinson Rancheria of Pomo Indians of California and shall be effective upon approval by the Secretary of the Interior or his designee as provided by Federal law.

Clara Wilson,
Chairperson.

Nicholas Medina,
Secretary-Treasurer.

[FR Doc. 03–32042 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–45–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
NACE003	Buzzard Point Boatyard	National Capital Parks-East.
CHOH001	Fletcher's Boat House, Inc	Chesapeake & Ohio Canal NHP.
ROCR003	Golf Course Specialists, Inc	Rock Creek Park.
PRWI001	Prince William Travel Trailer Village, Inc	Prince William Forest Park.
CHOH002	Swain's Lock	Chesapeake & Ohio Canal NHP
NACC006	Thanh Van Vo and Hung Thi Nguyen	National Capital Parks-Central.
NACC009	Thanh Van Vo and Hung Thi Nguyen	National Capital Parks-Central.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 7, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31934 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on April 14, 2004. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Concid ID No.	Concessioner name	Park
INDE001–94	City Tavern, Concepts by Staib, Ltd	Independence National Historic Park.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Management, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 11, 2003.

Richard G. Ring

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31935 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectus leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Concid ID No.	Concessioner Name	Park
BOST002–88	Boston Concessions Group	Boston National Historic Park.
CACO006–97	Hostelling International	Cape Code National Seashore.
DEWA004–98	DEWA Pepsi-Cola Company	Delaware Water Gap NRA.
FOMC001–95	Evelyn Hill, Inc	Fort McHenry NM & Historical Shrine.
GEWA001–95	GW Birthplace National Memorial Gift Shop	George Washington Birthplace NM.
SAHI001–97	Friends of Sagamore Hill	Sagamore Hill National Historic Site.
SHEN002–90	Potomac Appalachian Trail Club, Inc.	Shenandoah National Park.

EFFECTIVE DATE: Janaury 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 11, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31936 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 3 years, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Conc ID No.	Concessioner name	Park
ZION001	Xanterra Parks and Resorts	Zion National Park.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 25, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31937 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession permits, with the exception of construction on National Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term of up to 1 year from the date of permit expiration.

SUPPLEMENTARY INFORMATION: Under the provisions of current concession permits, with one exception, and pending the development and public solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period of up to 1 year from the expiration of the current concession permit. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity. The temporary contract does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
AMIS002	Forever Resorts, LLC	Amistad National Recreation Area.
AMIS003	Rough Canyon Marina	Amistad National Recreation Area.
BAND001	Bandelier Trading Company	Bandelier National Park.
CURE001	Elk Creek Marina	Curecanti National Recreation Area.
DINO010	Wilkins Firewood and Beverage	Dinosaur National Park.
GLCA001	Wilderness River Adventures	Glen Canyon National Recreation Area.
GLCA021	Banner Health, Page Hospital	Glen Canyon National Recreation Area.
GOSP001	McFarland Distributing	Golden Spike National Historic Area.
GRCA003	Grand Canyon Railroad	Grand Canyon National Park.
GRCA004	Grand Canyon Trail Rides	Grand Canyon National Park.
GRCA005	Verkamps, Inc	Grand Canyon National Park.
GRTE003	Signal Mountain	Grand Canyon National Park.
GRTE009	Exum Mountain Guides	Grand Teton National Park.
LAMR002	Forever Resorts, LLC	Lake Meredith National Recreation Area.
LIBI001	Little Bighorn Institute for Economic Development	Little Bighorn National Historic Site.
PAIS001	Forever Resorts, LLC	Padre Island National Seashore.
PEFO001	Xanterra Parks and Resorts	Petrified Forest National Park.
TICA001	Carl and Betsy Wagner	Timpanogos Cave National Monument.
YELL004	Yellowstone Park Service Stations, Inc	Yellowstone National Park.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: November 25, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31938 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 2 years, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Conc ID No.	Concessioner name	Park
BRCA003	Xanterra Parks and Resorts	Bryce Canyon National Park.
CACH001	Thunderbird	Canyon de Chelly National Park.

EFFECTIVE DATES: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 25, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31939 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby give that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering these operations.

Conc ID No.	Concessioner name	Park
BRCA002	Bryce Zion Trail Rides.	Bryce Canyon National Park.
CANY001–020.	Canyonlands River Runners.	Canyonlands National Park.
GRCA002	North Rim, Xanterra Parks and Resorts.	Grand Canyon National Park.
GRTE001	Grand Teton Lodge Company.	Grand Teton National Park.
WHSA001	White Sands Company, Inc.	White Sands National Monument.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 9, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31940 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUMMARY: Pursuant to the terms of existing contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contract listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contract and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended.

Conc ID No.	Concessioner Name	Park
MORU001	Xanterra Parks and Resorts	Mount Rushmore National Memorial.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 9, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31941 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF INTERIOR

National Park Service

Public Notice of Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Conc ID No.	Concessioner name	Park
CC–FOSU001–86	Fort Sumter Tours, Inc.	Fort Sumter National Park

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

Dated: December 9, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31942 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice of Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Services to complete and issue prospectus leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concession name	Park
CC–BUFF001–99	Buffalo Point	Buffalo National River.
LP–CUVA001–94	American Youth Hostels	Cuyahoga Valley National Park.
CC–HOSP004–88	Libbey Memorial Physical Medicine Center.	Hot Springs National Park.
CP–INDU003–94	Michiana Resources, Inc.	Indiana Dunes National Landmark.
CP–INSRO001–95	The Royale Line, Inc.	Isle Royale National Park.
CP–INSRO007–95	GRPO–ISRO Trans Line, Inc.	Isle Royale National Park.
CC–JEFF001–96	Compass Group USA, Inc.	Jefferson National Expansion Memorial.
CC–OZAR012–88	Akers Ferry Canoe Rental, Inc.	Ozark National Scenic Riverway.
LP–OZAR037–91	Akers Ferry Canoe Rental, Inc.	Ozark National Scenic Riverway.
CC–OZAR001–88	Alley Spring Canoe	Ozark National Scenic Riverway.
CC–OZAR025–97	Big Spring Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR050–97	Big Spring River Camp	Ozark National Scenic Riverway.
CC–OZAR016–89	Carr's Grocery/Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR040–97	Carr's Tube Rental	Ozark National Scenic Riverway.
CP–OZAR011–97	Current River Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR010–97	Deer Run Campground	Ozark National Scenic Riverway.
CP–OZAR013–97	Eminence Canoes, Cottages and Camp	Ozark National Scenic Riverway.
CP–OZAR023–97	Hawthorne Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR002–97	Jack's Fork Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR020–97	Jadwin Canoe Rental, Inc.	Ozark National Scenic Riverway.
CP–OZAR024–97	The Landing Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR036–97	Maggard Canoe/Boat, Inc.	Ozark National Scenic Riverway.
CP–OZAR008–97	Round Spring Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR028–97	Running River Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR007–97	Silver Arrow Canoe Rental, Inc.	Ozark National Scenic Riverway.
CP–OZAR049–97	Smalley's Motel Tube Rental	Ozark National Scenic Riverway.
CP–OZAR018–97	Two Rivers Canoe Rental	Ozark National Scenic Riverway.
CP–OZAR005–97	Wild River Canoe, Inc.	Ozark National Scenic Riverway.
CP–OZAR014–97	Windy's Canoe Rental	Ozark National Scenic Riverway.
CC–SLBE005–86	Manitou Island Transit	Sleeping Bear Dunes National Landmark.
CP–SLBE008–99	Blough Firewood	Sleeping Bear Dunes National Landmark.
CP–THRO001–98	Shadow County Outfitters	Theodore Roosevelt National Park.
LP–WICA002–98	Black Hills Parks and Forest Assn.	Wind Cave National Park

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 25, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31943 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice of Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2003. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
BOST002–88	Boston Concessions Group	Boston National Historic Park.
CACO006–97	Hostelling International	Cape Cod National Seashore.
DEWA004–98	DEWA Pepsi-Cola Company	Delaware Water Gap NRA.
FOMC001–95	Evelyn Hill, Inc	Fort McHenry NM & Historical Shrine.
GEWA001–95	GW Birthplace National Memorial Gift Shop.	George Washington Birthplace NM.
SAHI001–97	Friends of Sagamore Hill	Sagamore Hill National Historic Site.
SHEN002–90	Potomac Appalachian Trail Club, Inc	Shenandoah National Park.

EFFECTIVE DATE: January 2, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: November 11, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–31944 Filed 12–29–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final Rural Landscape Management Program Environmental Impact Statement for Cuyahoga Valley National Park, Ohio

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the final rural landscape management program environmental impact statement (EIS) for Cuyahoga Valley National Park, Ohio (Park). This notice is being furnished as required by National Environmental Policy Act Regulations 40 CFR 1501.7.

DATES: The required no-action period on this final EIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the final EIS in the **Federal Register**.

ADDRESSES: Copies of the final EIS are available by request by writing to: Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, OH 44141; by phone 440–546–5903; or by e-mail *cuva_superintendent@nps.gov*. A downloadable online version of the document is available at: *http://www.nps.gov/cuva/management/rmprojects/ruraleis/*.

FOR FURTHER INFORMATION CONTACT: Superintendent, Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, OH 44141, or by phone 440–546–5903.

SUPPLEMENTARY INFORMATION: The preservation of the rural landscape is central to the Park's legislative mandate. The law that established the Park mandates the "preservation of the historic, scenic, natural, and recreational values of the Cuyahoga Valley" (Pub. L. 93–555, 1974). One component of the historic and scenic values of the Park is the rural landscape—lands and structures modified by humans for agricultural use. Throughout the Park's history, efforts to preserve the rural landscape have been sporadic; there has never been a comprehensive program to manage the rural landscape. As a result, many of the Park's rural landscape resources have been lost. Therefore, the Park is proposing to better protect and revitalize this cultural resource by implementing an integrated rural landscape management program, with the goal of more effectively and systematically preserving and protecting the rural landscape resources in the Park. The final EIS describes and analyzes the environmental impacts of several alternative actions. In the Park's preferred alternative (alternative 2—Countryside Initiative), the rural landscape would be managed largely by issuing long-term leases to private individuals for the purpose of conducting sustainable agricultural activities. The final EIS evaluates two additional action alternatives and a no action alternative.

The Draft EIS was released to the public on February 14. Public meetings were held on March 19, from 12–2 p.m. and March 20, from 6–8 p.m. to solicit further comments. The public comment period ended April 15, though comments received through April 29, were considered.

The NPS received 77 formal written comments during the comment period in addition to verbal comments made at public meetings. All written comments are reprinted in full in the final EIS, as are a summary of verbal comments from the meetings. The NPS responses to substantive comments are also provided. The final EIS includes corrections and additions based on the substantive comments received. Additional revisions to correct errata and improve consistency but not affecting the analysis are also included in the final EIS.

The responsible official is Mr. Ernest Quintana, Midwest Regional Director, National Park Service.

Dated: September 15, 2003.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 03–31932 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–DE–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Field Museum of Natural History, Chicago, IL. The human remains and associated funerary objects were removed from Fort Peck Indian Reservation, MT, and from an unknown location in Montana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Field Museum of Natural History professional staff in consultation with representatives of Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

In July 1900, human remains representing a minimum of two individuals were removed from the Fort Peck Indian Reservation, MT. Field Museum of Natural History records state that anthropologist Stewart Culin removed the human remains from Fort Peck. In 1902, the human remains were transferred to the Field Museum of Natural History from the Free Museum of Science and Art (now the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA) as part of an exchange. No known individuals were identified. The 20 associated funerary objects are 1 bracelet (possibly bone), 3 stones, 1 small piece of dirt or clay, 13 copper alloy bracelets, 1 leather knife sheath, and 1 wooden stick.

Field Museum of Natural History staff consulted with University of Pennsylvania Museum of Anthropology and Archaeology staff who had no additional information about the human remains and associated funerary objects. University of Pennsylvania Museum of Archaeology and Anthropology records, however, indicate that Mr. Culin removed other human remains from a box grave outside of the Fort Peck Indian Reservation at the same time as the human remains and funerary objects held by the Field Museum of Natural History were removed.

The human remains and associated funerary objects have been identified as Native American, based on the identification of Sioux cultural affiliation in museum records and based on identification of origin on the Fort Peck Reservation, MT. The physical condition of the human remains and associated funerary objects indicates that they are of relatively recent historical origin. Field Museum of Natural History records identify the human remains as Sioux. Sioux descendents in Montana are represented by the present-day Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana.

At an unknown time, the Field Museum of Natural History acquired human remains representing a minimum of one individual. No known individual is identified. No associated funerary objects are present.

Field Museum of Natural History records identify the human remains as those of a "Montana, Sioux [sic]," indicating that the collector was aware of the cultural affiliation of the individual. Based on the specific cultural and geographic attribution in the museum records, the human remains are determined to be culturally affiliated with the Sioux tribes. Sioux descendents in Montana are represented by the present-day Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 20 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Helen Robbins, Repatriation Specialist, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL, 60605–2496, telephone (312) 665–7317, before January 29, 2004. Repatriation of the human remains and associated funerary objects to the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana that this notice has been published.

Dated: October 30, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–31933 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Field Office Technical Guidelines

AGENCY: National Park Service, Interior.

ACTION: Proposed Amendment two (Amdt. 2) to Southeast Region Order No. 6, Delegation of Authority, approved August 30, 1977, and as amended April 28, 1989.

SUMMARY: Pursuant to Department of the Interior 200 D.M. 2.4 and 200 D.M. 1.10, the National Park Service announces the proposed Amendment two (Amdt. 2) to Southeast Region Order No. 6, Delegation of Authority, to clarify the authority of Field Land Resources Officers.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hooks, Acting Regional Director, National Park Service, Southeast Region, Atlanta Federal Center, 1924 Building, 100 Alabama Street, SW., Atlanta, GA 30303. Telephone: 404–562–3148.

SUPPLEMENTARY INFORMATION: Proposed Amendment (Amdt. 2) is as follows: Southeast Region Order No. 6, approved August 30, 1977, and published in the **Federal Register** of November 17, 1977, (42 FR 59428), and as amended (Amdt. 1) and published in the **Federal Register** of April 28, 1989, (54 FR 18337), set forth in section 2 certain authority and limitations on authority to officers and employees. This amendment changes paragraph (i) to read as follows: Section 2, Delegation. * * *

(i) Field Land Resources Officers. All Field Land Resources Officers are authorized to execute their land acquisition program, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchange with the United States lands or interests in land when the amount does not exceed $500,000.00; and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States lands or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases when the amount involved does not exceed $250,000.00; and to approve claims for reimbursement under Pub. L. 91–646, as amended.

Dated: October 24, 2003.

Charlie Powell,

Acting Regional Director, Southeast Region.

[FR Doc. 03–31931 Filed 12–29–03; 8:45 am]

BILLING CODE 4310–C6–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Decision not to Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and Notice of Investigation To Add a Respondent to the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on November 26, 2003, granting complainant Auto Meter Products, Inc.'s motion to amend the complaint and notice of investigation to add Blitz Co., Ltd., as a respondent in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission issued a notice of investigation dated June 16, 2003, naming Auto Meter Products, Inc. ("Auto Meter") of Sycamore, Illinois, as the complainant and several companies, including Blitz North America Inc. ("Blitz NA"), as respondents. On June 20, 2003, the notice of investigation was published in the **Federal Register**. 68 FR 37023 (June 20, 2003). Auto Meter's complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos. 1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903,908, and infringement of the complainant's trade dress.

On October 2, 2003, Auto Meter moved to amend the complaint and notice of investigation to add Blitz Co., Ltd. as a respondent in the investigation. On October 23, 2003, respondent Blitz NA filed an opposition to Auto Meter's motion concurrently with a motion for an extension of time to file such opposition. On October 24, 2003, Auto Meter filed an opposition to Blitz NA's motion for an extension of time. On October 23, 2003, the Commission investigative attorneys filed a response in support of Auto Meter's motion to amend. No other party responded to Auto Meter's motion to amend.

On November 26, 2003, the ALJ issued an ID (Order No. 11) granting Auto Meter's motion to amend the complaint and notice to add Blitz Co., Ltd. as a respondent in the investigation. No party petitioned for review of that ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: December 22, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–32004 Filed 12–29–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–043]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: January 5, 2004, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–437 and 731–TA–1060–1061 (Preliminary)(Cabrazole Violet Pigment 23 from China and India)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on January 5, 2004; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before January 12, 2004.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 23, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–32224 Filed 12–24–03; 1:55 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Qualification and Certification Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) soliciting comments concerning the extension of the information collection related to the Title 30 CFR 75.153(a)(2) and 77.103(a)(2) require that a program be provided for the qualification of certain experienced personnel as mine electricians. A qualified person is one who has had at least one year of experience in performing electrical work underground in a coal mine, in the surface work area of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar

equipment, and has satisfactorily completed a coal mine electrical training program.

DATES: Submit comments on or before March 15, 2004.

ADDRESSES: Send comments to: Melissa Stoehr, Director of Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet e-mail to *Stoehr.mellissa@dol.gov*. Ms. Stoehr can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Melissa Stoehr, Director of Management Services Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 2134, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Stoehr can be reached at *Stoehr.melissa@dol/gov*, (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Persons performing tasks and certain required examinations at coal mines which are related to miner safety and health, and which required specialized experience, are required to be either "certified" or "qualified". The regulations recognize State certification and qualification programs. However, where state programs are not available, under the Mine Act and MSHA standards, the Secretary may certify and qualify persons for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same mine or by the same independent contractor. Applications for Secretarial certification must be submitted to the MSHA Qualification and Certification Unit in Denver, Colorado. MSHA Form 5000–1 provides the coal mining industry with a standardized reporting format that expedites the certification process while ensuring compliance with the regulations. The information provided on the forms enables the Secretary of Labor's delegate—MSHA, Qualification and Certification Unit—to determine if the applicants satisfy the requirements to obtain the certification or qualification. Persons must meet certain minimum experience requirements depending on the type of certification or qualification applied for.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

This request for collection of information contains provisions whereby persons may be temporarily qualified or certified to perform tests and examinations; requiring specialized expertise; related to inner safety and health at coal mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Qualification and Certification Program.

OMB Number: 1219–0001.

Recordkeeping: MSHA Form 5000–1 is used by instructors, who may be mining personnel, consultants, or college professors, to report to MSHA those miners who have satisfactorily completed a coal mine electrical training program. Based on the information submitted on Form 5000–1, MSHA issues certification cards that identify these individuals as qualified to perform certain tasks at the mine.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 3,921.

Estimated Time per Respondent: .083.

Total Burden Hours: 12,765.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $69.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 19th day of December, 2003.

Lynnette M. Haywood,

Deputy Director, Office of Administration and Management.

[FR Doc. 03–31980 Filed 12–29–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustments.

SUMMARY: This notice revises our [MSHA Approval and Certification Center (A&CC)] user fees. Fees compensate us for the costs that we incur for testing, evaluating, and approving certain products for use in underground mines. We based the 2004 fees on our actual expenses for fiscal year 2003. The fees reflect changes both in our approval processing operations and in our costs to process approval actions.

DATES: This fee schedule is effective from January 1, 2004, through December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Steven J. Luzik, Chief, Approval and Certification Center (A&CC), 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1987 (52 FR 17506), we published a final rule, 30 CFR Part 5—Fees for Testing, Evaluation, and Approval of Mining Products. The rule established specific procedures for calculating, administering, and revising user fees. We have revised our fee schedule for 2004 in accordance with the procedures of that rule and include this new fee schedule below. For approval applications postmarked before January 1, 2004, we will continue to calculate fees under the previous (2003) fee schedule, published on December 31, 2002.

Fee Computation

In general, we computed the 2004 fees based on fiscal year 2003 data. We calculated a weighted-average, direct cost for all the services that we provided during fiscal year 2003 in the processing of requests for testing, evaluation, and approval of certain products for use in underground mines. From this cost, we calculated a single hourly rate to apply uniformly across all of the product approval categories during 2004.

Dated: December 18, 2003.

John R. Correll,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

FEE SCHEDULE EFFECTIVE JANUARY 1, 2004

[Based on FY 2003 data]

Action title	Hourly rate
Fees for Testing, Evaluation, and Approval of all Mining Products[1]	$63
Retesting for Approval as a Result of Post-Approval Product Audit[2]	
30 CFR Part 15—Explosives Testing	
Permissibility Tests for Explosives:	
Weigh-in	462
Physical Exam: First size	325
Chemical Analysis	1,977
Air Gap—Minimum Product Firing Temperature	460
Air Gap—Room Temperature	352
Pendulum Friction Test	163
Detonation Rate	352
Gallery Test 7	7,436
Gallery Test 8	5,533
Toxic Gases (Large Chamber)	805
Permissibility Tests for Sheathed Explosives:	
Physical Examination	128
Chemical Analysis	1,044
Gallery Test 9	1,944
Gallery Test 10	1,944
Gallery Test 11	1,944
Gallery Test 12	1,944
Drop Test	648
Temperature Effects/Detonation	672
Toxic Gases	580

[1] Full approval fee consists of evaluation cost plus applicable test costs.

[2] Fee based upon the approval schedule in effect at the time of retest.

Note: When the nature of the product requires that we test and evaluate it at a location other than our premises, you must reimburse us for the traveling, subsistence, and incidental expenses of our representative in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 03-31798 Filed 12-29-03; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03-159]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by January 29, 2004.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory affairs; Office of management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358-1372.

Title: GLOBE Program Evaluation.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: The information collected is needed to guide implementation of the GLOBE Program based on feedback from participating teachers, students, and partners in order to help meet the Program's goal of improving student achievement in mathematics and science.

Affected Public: Individuals or households.

Number of Respondents: 2361.

Annual Responses: 499.

Hours Per Request: 30–90 minutes each.

Annual Burden Hours: 373.

Frequency of Report: Once.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03-32008 Filed 12-29-03; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03-160)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by February 28, 2004.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW, Code AO, Washington, DC 20546, (202) 358-1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals from offerors to award purchase orders and to use bank cards for required goods and services with an estimated value of $100,000 or less. Bids are requested and evaluated in accordance with the OFPP Policy Act as amended by Pub. L. 96-83, the NASA Space Act, 42 U.S.C. *et seq.* As the need arises for goods and services valued at less than $100,000, NASA follows the procedures set forth in Part 13 of the Federal Acquisition Regulations (FAR) and Part 1813 of the NASA FAR Supplement (NFS) before an order can be awarded. Similarly, quotes voluntarily submitted in response to Request for Quotations (RFQs), contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers in the selection of contractors for goods and services required to meet the Agency's mission.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Purchase Orders for Goods and Services With an Estimated Value of $100,000 or Less.

OMB Number: 2700–0086.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 242,955.

Estimated Time Per Response: Varies, depending on type of response. Bank card transactions take an average of 20 minutes per response. Bids take an average of 15 minutes per response.

Estimated Total Annual Burden Hours: 73,152.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32009 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–161)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within by February 28, 2004.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW, Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection, in the form of reports for contracts with a value more than $500,000, designed to monitor contract compliance in support of NASA's mission. The requirements for this information are set forth in the Federal Acquisition Regulation (FAR), the NASA FAR Supplement, and approved mission requirements. NASA technical program and contract management personnel use this information to effectively manage and administer contracts; to measure the contractor's performance; to evaluate contractor management systems; to ensure compliance with mandatory public policy provision; to evaluate and control costs charged against a contract; to detect and minimize conditions conducive to fraud, waste, and abuse; and to form a database for general overview reports to the Congressional and Executive branches.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Reports Required for Contracts With an Estimated Value More Than $500,000.

OMB Number: 2700–0089.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 1,652.

Estimated Time Per Response: Respondents submit an average of 53 reports annually, requiring an average of 7 hours per report response time, for a total of 371 annual hours per respondent.

Estimated Total Annual Burden Hours: 601.328.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32010 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–162)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by February 28, 2004.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street SW, Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals submitted to NASA for the award of contracts with a value less than $500,000 for goods and services in support of NASA's mission, and in response to contractual requirements. Solicitations for bids and proposals, and requirements for contract deliverables, are prepared in accordance with the OFPP Policy Act as amended by Pub. L. 96–83, the NASA Space Act, 42 U.S.C. *et seq.*, and approved mission requirements. As the need arises for goods and services, NASA follows the procedures set forth in Parts 14 and 15 of the FAR for the issuance of Invitation for Bids (IFBs) and Request for Proposals (RFPs) before a contract can be awarded. Similarly, in bids and proposals voluntarily submitted in response to IFBs and RFPs, contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers to determine the responsiveness of bids and proposals and come to a decision on which contractor can provide the greatest benefit to the Agency and, ultimately, who will be awarded a contract.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Bids and Proposals for Contracts With an Estimated Value Less than $500,000.

OMB Number: 2700–0087.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 7,900.

Estimated Time Per Response: Varies, depending on type of response. Bids take an average of 250 hours per response. Proposals take an average of 400 hours per response.

Estimated Total Annual Burden Hours: 2,560,000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32011 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–163)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by February 28, 2004.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Nancy Kaplan, NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Code AO, Washington, DC 20546, (202) 358–1372.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) plans to renew an ongoing collection designed to collect information needed to evaluate bids and proposals submitted to NASA for the award of contracts with a value greater than $500,000 for goods and services. Solicitations for bids and proposals, and requirements for contract deliverables, are prepared in accordance with the OFPP Policy Act as amended by Pub. L. 96–83, the NASA Space Act, 42 U.S.C. *et seq.* As the need arises for goods and services, NASA follows the procedures set forth in parts 14 and 15 of the FAR for the issuance of Invitation for Bids (IFBs) and Request for Proposals (RFPs) before a contract can be awarded. Similarly, in bids and proposals voluntarily submitted in response to IFBs and RFPs, contractors must furnish all information required by the FAR, the NFS, and Agency needs. This solicited information is used by NASA project and procurement managers to determine the responsiveness of bids and proposals and come to a decision on which contractor can provide the greatest benefit to the Agency and, ultimately, who will be awarded a contract.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Acquisition Process: Bids and Proposals for Contracts With and Estimated Value More Than $500,000.

OMB Number: 2700–0085.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, local, or tribal governments.

Estimated Number of Respondents: 1,313.

Estimated Time Per Response: Varies, depending on type of response. Bids take an average of 400 hours per response. Proposals take an average of 600 hours per response.

Estimated Total Annual Burden Hours: 750,000.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information collected has practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Dated: December 17, 2003.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–32012 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–155]

National Environmental Policy Act; Outrigger Telescopes Project

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and conduct scoping for the Outrigger Telescopes Project.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4231 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA intends to prepare an EIS for the proposed Outrigger Telescopes Project (OTP). The EIS will address environmental issues associated with the on-site construction, installation, and operation of four to six 1.8-meter (72-inch) Outrigger Telescopes. NASA proposes to fund the OTP at the W.M. Keck Observatory (WMKO) site within the Astronomy Precinct of the Mauna Kea Science Reserve on the Island of Hawaii, State of Hawaii.

DATES: Interested parties are invited to submit comments on or before February 16, 2004, to assure full consideration during the scoping process.

ADDRESSES: Comments should be addressed to Dr. Carl B. Pilcher, Office of Space Science, Code SZ; NASA Headquarters; 300 E Street, SW., Washington, DC 20546–0001. In addition, electronic comments may be sent to Dr. Carl B. Pilcher at *otpeis@nasa.gov* or by hardcopy facsimile at 202–358–3096.

FOR FURTHER INFORMATION CONTACT: Dr. Carl B. Pilcher, at telephone 877–283–1977 (toll-free), electronically at *otpeis@nasa.gov*, or by hardcopy facsimile at 202–358–3096.

SUPPLEMENTARY INFORMATION: The OTP is a key element in NASA's Origins Program. The Origins Program addresses two fundamental questions: (1) How do galaxies, stars, and planets form? (*i.e.*, "Where do we come from?"); and (2) Are there planets, aside from ours, that have the conditions necessary to support life? (*i.e.*, "Are we alone?"). The OTP has four scientific objectives that contribute to achieving the goals of the Origins Program:

- Detect the "wobble" of stars due to the gravity of unseen orbiting planetary companions as small as Uranus.
- Make images of disks of gas and dust surrounding young stars and stars that are still forming.
- Make high-resolution images of faint objects outside our galaxy.
- Make high-resolution images of objects within our solar system, including asteroids, comets, and outer planets.

The first of these four objectives can be accomplished with the Outrigger Telescopes alone linked together as an interferometer. (An interferometer combines the light from two or more separate telescopes so that they act like one big telescope.) The last three objectives require that the Outrigger Telescopes be linked as an interferometer to at least one 8-meter or larger telescope.

NASA proposes to fund the OTP at the W.M. Keck Observatory (WMKO) site located within the Astronomy Precinct of the Mauna Kea Science Reserve on the Island of Hawaii. WMKO is the site of the two largest optical telescopes in the world—the twin 10-meter Keck I and Keck II. The OTP, if fully implemented as proposed, would consist of up to six 1.8-meter (72-inch) telescopes placed strategically around the two existing Keck Telescopes.

The California Association for Research in Astronomy (CARA), a non-profit corporation established by the University of California and California Institute of Technology (Caltech), operates and maintains the WMKO. The approximately 2-hectare (5-acre) WMKO site is subleased to Caltech by the University of Hawaii (UH). The WMKO site is located within the Astronomy Precinct (approximately 212 hectares (525 acres)) of the Mauna Kea Science Reserve. The 4,500 hectare (11,000 acre) Science Reserve, is leased to UH by the State of Hawaii.

Because of present funding constraints, only four Outrigger Telescopes would initially be installed and operated, although the foundations for six would be constructed. It is anticipated that the on-site construction and installation of four of the six Outrigger Telescopes, along with on-site construction of the underground structures for Telescopes 5 and 6, would begin early in 2005, with initial operations anticipated in 2006. If funding were available, NASA would intend to complete the on-site construction, installation, and operation of Telescopes 5 and 6, with on-site construction and installation likely to begin no earlier than 2006.

In addition to the WMKO site, alternative sites with at least one existing 8-meter or larger telescope will be considered in the EIS. If NASA decides not to or cannot implement the OTP at the WMKO site or a reasonable alternative site with an existing 8-meter or larger optical telescope, NASA would consider sites where at least the one objective that does not require such a large telescope (*i.e.*,) the survey of stars for "wobble" due to the gravity of unseen orbiting planetary companions as small as Uranus) can be achieved. Alternative sites to be considered in the EIS under such a materially reduced science OTP option will include, but not necessarily be limited to, the Mt. Wilson Observatory in Los Angeles County, California, and the Navy Prototype Optical Interferometer (NPOI) site near Flagstaff, Arizona. The No Action alternative will also be addressed.

The EIS will analyze the potential environmental impacts associated with the on-site construction, installation, and operation of the Outrigger Telescopes at the WMKO site and other reasonable alternative sites. The potential environmental impacts at alternative sites for the materially reduced science OTP option will also be evaluated. Environmental issues to be emphasized will include, but not necessarily be limited to, cultural resources, flora and fauna, sewage, and cumulative impacts.

Because it is evident that there is substantial environmental controversy and concern about locating the Outrigger Telescopes on Mauna Kea, public scoping meetings will be held in the State of Hawaii on the following dates:

(a) January 5, 2004, King Kamehameha Beach Hotel; 75–5660 Palani Road, Kailua-Kona, Hawaii 96740 (paid parking at the hotel will be free for attendees);

(b) January 7, 2004, Hawaii Naniloa; 93 Banyan Drive, Hilo, Hawaii 96720 (parking is free);

(c) January 8, 2004, Waimea YMCA; 67–1435 Mamalahoa Hwy., Kamuela, Hawaii 96743 (parking is free);

(d) January 12, 2004, Japanese Cultural Center; 2554 South Beretania Street, Honolulu, Hawaii 96826 (paid parking at the Cultural Center will be free for attendees);

(e) January 13, 2004, Wai-Anae District Park; 85–601 Farrington Highway, Wai-anae, Hawaii 96792 (parking is free).

All of the meetings will begin with an informal open house from 5:15 to 6:15 p.m. The formal meetings to listen to public comments and concerns will begin at 6:30 p.m. NASA is planning to have a Hawaiian language translator at all of the meetings.

NASA will also consider conducting public scoping meetings near reasonable alternative sites in the United States as Wilson and NPOI sites, if there is sufficient public environmental interest and concern.

Written public input and comments on alternatives and environmental issues and concerns associated with the OTP are hereby requested.

Olga M. Dominguez,

Deputy Assistant Administrator for Management Systems.

[FR Doc. 03–32048 Filed 12–29–03; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before January 29, 2004, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Jonathan Womer, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on October 1, 2003 (68 FR 56652 and 56653). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Contractor/Agency Reviewer Identification Badge Authorization.

OMB number: 3095–NEW.

Agency form number: NA Form 6000B.

Type of review: Regular.

Affected public: Business or for-profit, Federal government.

Estimated number of respondents: 600.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 30 hours.

Abstract: The collection of information is necessary as a security measure to protect employees, information, and property in NARA facilities, and to facilitate the issuance of badges and cards. Use of the form is authorized by 44 U.S.C 2104. At the NARA College Park facility, individuals receive a proximity card with the identification badge that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The proximity card system is part of the security management system that meets the accreditation standards of the Government intelligence agencies for storage of classified information and serves to comply with E.O. 12958.

Dated: December 19, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–31925 Filed 12–29–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of Presidential Libraries; Proposed Disposal of Superseded Version of Clinton Administration Electronic Mail Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Presidential Records Act notice of proposed disposal of superseded version of Clinton Administration electronic mail records; request for public comment.

SUMMARY: The National Archives and Records Administration (NARA) has identified an incomplete version of Presidential records on electronic media, housed at the National Archives at College Park, Maryland facility, as appropriate for disposal under the provisions of 44 U.S.C. 2203(f)(3). This notice describes the records and our reasons for determining that the records have insufficient administrative, historical, informational, or evidentiary value to warrant their continued preservation, in light of the fact that NARA is maintaining a comprehensive set of the same records on a different set of electronic media. NARA will review timely public comments received on this notice before making a final determination on the disposal of the records.

This notice does not constitute a final agency action, as described in 44 U.S.C. 2203(f)(3), and no Presidential records will be disposed of following this notice. NARA will publish a second notice only after it has considered any comments received during this 45-day notice. The second, 60-day notice will constitute a final agency action, in the event NARA proceeds with disposal.

DATES: Comments must be received by February 13, 2004.

ADDRESSES: Comments regarding the proposed disposal of these Presidential records must be sent in writing to the

Assistant Archivist for Presidential Libraries, National Archives and Records Administration (NL), 8601 Adelphi Road, College Park, Maryland 20740–6001 or by fax to 301–837–3199; or by e-mail to *sharon.fawcett@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Fawcett at 301–837–3250.

SUPPLEMENTARY INFORMATION: The following materials are proposed for disposal because NARA has determined that they lack continuing administrative, historical, informational, or evidentiary value.

NARA is proposing the disposition of 27,866 class 3480 magnetic tape cartridges, consisting of an incomplete set of e-mail records created from July 15, 1994 through December 1999, and originally captured on the Automated Records Management System (ARMS) as created by staff in the Executive Office of the President (EOP) during the Clinton Administration. ARMS consisted of an electronic recordkeeping system for the preservation of e-mail records and any attachments thereto, plus pager and calendar records. These cartridges were transferred to NARA at the end of the Clinton Administration.

ARMS records on the 27,866 cartridges were in turn subject to reformatting pursuant to a Memorandum of Understanding entered into between NARA and the EOP, signed on October 6 and 8, 1999, respectively (1999 MOU). Under the 1999 MOU, NARA requested that the EOP Office of Administration (OA) convert attachments from hexadecimal to native format. NARA also asked OA to format the files to contain as many records as would fit in a single file. This reformatting resulted in reducing the number of tape cartridges necessary to store the records from approximately 28,000 down to 4,000. Accordingly, OA produced and transferred to NARA a second set of approximately 4,000 tape cartridges in a NARA-preferred format.

The latter reformatted set of cartridges also reflects the results of OA conducting an extensive Tape Restoration Project (TRP), pursuant to a second MOU between NARA and OA entered into on January 11, 2001, aimed at ensuring that a comprehensive set of e-mail records from the Clinton Administration be transferred to NARA. This restoration work has been completed, and as a result a separate and comprehensive set of Clinton Administration Presidential record e-mail records, as well as pager and calendar entries, currently resides on the 4,000 cartridges, in a preservation master copy set, and in an automated database operated and maintained by NARA staff. These latter collections, which incorporate the work of the TRP, contain approximately 1 million additional e-mail records that were not originally captured by ARMS and which are not otherwise preserved on the 27,866 cartridges at issue. (E-mail records on these cartridges separately covered under the Federal Records Act have also been captured on the 4,000 cartridges and will be included in the automated database, and thus may be disposed of under existing Federal Records Act disposition authority.)

The copies of Presidential e-mail records contained on the 27,866 cartridges constitute an incomplete and superseded subset of the Presidential e-mail record series from the Clinton Administration EOP that NARA has otherwise obtained in electronic form. NARA will be fully able to respond to future access requests for Clinton Administration e-mail records from the EOP through the above-described database, and has no need or use for the additional set of these records contained on these cartridges.

Dated: December 19, 2003.

Richard L. Claypoole,

Assistant Archivist for Presidential Libraries.

[FR Doc. 03–31926 Filed 12–29–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Exemption

1.0 Background

Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI or the licensee) is the holder of Renewed Facility Operating License Nos. DPR–53 and DPR–69, which authorizes operation of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CCNPP1–2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Calvert County, Maryland.

2.0 Purpose

Section IV.F.2.b of Appendix E, to 10 CFR part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years and indicates the exercise may be included in the full participation biennial exercise required by paragraph 2.c of the same section. In addition, licensees are to take actions necessary to ensure that adequate emergency response capabilities are maintained during the interval between biennial exercises by conducting drills. Paragraph 2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. Normally during such biennial full participation exercises, the NRC evaluates onsite and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee must coordinate and schedule an exercise that involves multiple governmental agencies at the Federal, State, and local level. Many local response organizations depend on volunteers. In order to accommodate this task, the NRC has allowed licensees to schedule full participation exercises at any time during the calendar biennium. This gives the licensee the flexibility to schedule the exercise within a 12- to 36-month window and still meet the biennial requirement specified in the regulations.

The licensee was scheduled to conduct a biennial full participation exercise on October 21, 2003. The licensee has requested a temporary exemption to 10 CFR part 50, Appendix E, Section IV.F.2.c that would reschedule the planned offsite full-participation emergency exercise from 2003 to 2004 and subsequent exercises would be scheduled biennially from the year 2003. The most recently evaluated biennial full-participation exercise at CCNPP was conducted on September 9, 2002.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under § 50.12(a)(2), special circumstances include, among other things, when application of the regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

The underlying purpose of 10 CFR part 50, Appendix E, Section IV.F.2.c is to establish requirements for the biennial exercise of offsite emergency plans for the purpose of exercising employees and offsite authorities having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every 2 years and shall, at least, partially participate in the other offsite plan exercised in this period.

CCNPPI had previously scheduled a full-participation emergency preparedness exercise to be conducted on October 21, 2003, to meet the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.c. However, preparation for Hurricane Isabel and subsequent recovery efforts have consumed the resources of the Maryland Emergency Management Agency (MEMA) and other local and State agencies having a role under the Emergency Response Plan. The drill occurred, as scheduled, without the State of Maryland and local agency participation.

Calvert Cliffs has previously conducted one full-participation emergency preparedness drill on September 9, 2002. Additionally, site-wide non-state participation drills were conducted on June 24, September 9, and October 21, 2003. Although not evaluated by NRC and FEMA, the June, September, and October 2003 drill results have been critiqued by the CCNPPI emergency response organization and independently by their Nuclear Plant Assessment Department. Issues identified during these drills and critiques are being resolved under the licensee's corrective action program.

Calvert Cliffs has maintained emergency preparedness in accordance with the Emergency Response Plan. Requirements for semi-annual health physics exercises were met by the conduct of the June, September, and October 2003 drills. The requirement for a post-accident sampling exercise was met on October 9, 2003. The annual requirement for an environmental sampling exercise was met on July 28, 2003. A dose assessment office exercise was conducted on October 17, 2003. The annual requirement for a severe accident management exercise was met on October 21, 2003. State and county agencies conducted a FEMA evaluated ingestion pathway exercise on October 22–24, 2003.

The State of Maryland and local governments have maintained radiological emergency preparedness by fully participating in the ingestion pathway exercise on October 22–24, 2003. Additionally, the State agencies participated in the federally evaluated Peach Bottom Atomic Power Station exercise on November 19, 2002. Calvert County Public Safety, Calvert Memorial Hospital, and local rescue squads participated in a simulated contaminated injury drill at CCNPP on August 15, 2002. Two FEMA areas requiring corrective action and one planning issue await final dispositioning pending completion of the next full participation exercise.

CCNPPI has discussed the proposed deferral of the full-participation exercise with FEMA, MEMA, and other local and State agencies having a role under the Emergency Response Plan. All of these agencies have indicated support for the proposed change in light of present circumstances that are beyond their control. Preparation for Hurricane Isabel and subsequent recovery efforts have consumed MEMA and local county resources that would have otherwise been used to support the evaluation scheduled for October 21, 2003.

The NRC has provided flexibility in scheduling full-participation emergency preparedness exercises by allowing licensees to schedule them at any time during the biennial calendar year. This provides a 12- to 36-month window to schedule full-participation exercises while still meeting the biennial requirement specified in the regulations. Conducting the Calvert Cliffs full-participation emergency preparedness exercise in calendar year 2004 places the exercise past the previously scheduled 2003 biennial exercise. However, the interval between biennial exercises would, at the most, be about 25 months, which is within the parameters of the existing general policy and practice.

The licensee states that between October 2003 and September 2004, measures will be taken to maintain emergency preparedness at CCNPP. The existing training and drill schedule currently in place for emergency response activities will remain in place and be adjusted as necessary to ensure the readiness of both onsite and offsite emergency response personnel. For onsite emergency responders, this includes annual training and participation in drills. Calvert Cliffs will conduct quarterly combined functional and/or activation drills and a self-evaluated annual exercise. These drills and the self-evaluated annual exercise satisfy the drill requirements of 10 CFR part 50, Appendix E, IV.F.2.b. Offsite agencies in Maryland are routinely invited to, and actively participate in, these drills and exercises as a training activity for offsite response personnel. Local response groups conduct annual training and participate in emergency operations center drills. Representatives of the Calvert Cliffs plant staff meet routinely with State and local emergency management and support groups. The rescheduling of the biennial exercise has been discussed with these parties and is supported by both State and local representatives. These measures will maintain an acceptable level of emergency preparedness during this period.

The licensee has met the special circumstances criteria of § 50.12(a)(2)(ii), (iv) and (v) of 10 CFR. The circumstances dictating the request for exemption are beyond the licensee's control and the licensee has made a good faith effort to conduct the exercise and comply with the regulations. The activities centered around Hurricane Isabel rendered the conduct of a full-participation exercise impossible. Application of the regulation would not have served the underlying purpose of the rule, which is to train employees and offsite authorities, in that State and local officials were not available to participate in the exercise. Postponement of exercise conduct was a benefit to public health and safety by allowing State and local resources to be applied to hurricane recovery. There is no decrease in safety as the evaluated exercise will be rescheduled in 2004, at a time when full-participation of State and local agencies will be possible and the licensee's drill program will include offsite agency participation as a compensating measure, thus contributing to the justification of the exemption. The exemption only provides temporary relief from the applicable regulation, in that the licensee is planning to conduct the exercise in the next calendar year and has not requested any permanent changes in future exercise scheduling. The regulations of this part do allow for the postponement of exercises and the regulations have been invoked previously for appropriate circumstances. This being the case, the occasional need to postpone exercises was considered as a potential circumstance. The staff has determined that the conduct of the full participation exercise as early as practical in 2004 is prudent.

The NRC staff examined the licensee's rationale to support the exemption request and as set forth above, has determined that the full-participation exercise for year 2003 be deferred to 2004 and subsequent exercises be scheduled biennially from year 2003.

Therefore, the staff concludes that granting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants CCNPPI a temporary exemption from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2.c with respect to the rescheduling of the planned offsite full-participation emergency exercise from 2003 to 2004 and subsequent exercises will be scheduled biennially from the year 2003.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 71172).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 22nd day of December, 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31956 Filed 12–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–186, License No. R–103, EA–02–256]

In the Matter of University of Missouri, University of Missouri Research Reactor; Confirmatory Order Modifying License (Effective Immediately)

I

The University of Missouri Research Reactor (MURR) is a research reactor regulated by the U.S. Nuclear Regulatory Commission (NRC). MURR is located on the campus of the University of Missouri (MU) in Columbia Missouri.

II

On December 18, 2001, the NRC initiated an investigation of the University of Missouri (the licensee) to determine if a former senior research scientist at the MURR facility was the subject of employment discrimination and continued retaliation by management for previous protected activities. The NRC Office of Investigations (OI) concluded in Office of Investigations Report No. 4–2001–054 that the former senior research scientist was the subject of employment discrimination and continued retaliation by management for previous protected activities.

By letter dated June 4, 2003, the NRC provided the licensee with its conclusions through issuance of an apparent violation of employee protection requirements and a synopsis of the referenced OI report. During subsequent discussions, NRC and MU agreed in principle regarding acceptable actions that, if performed, should better ensure that personnel involved with MURR will not be subject to employment discrimination or retaliation for engaging in protected activity, including raising safety concerns. The details of the agreement are set forth in Section V of this Order.

III

The licensee has agreed to take certain actions to modify its access authorization procedures to better ensure transparency and clarity, to assess the work environment at MURR, to perform periodic training, and to modify its organization to better ensure that university senior management is appropriately involved in ensuring a safety conscious work environment (SCWE). The agreed-upon actions noted in Section V of this order focus on (1) modifying the chain of command for MURR; (2) development of a long-term plan, which will better ensure a SCWE; and (3) ensuring timely review of access requests and providing for review of access authorization denials by an independent organization.

IV

Since the licensee has committed to take comprehensive actions to address NRC concerns, and since the licensee has committed to assess, train, and develop a long-term plan for ensuring a work environment conducive to employees raising safety concerns or engaging in any form of protected activity without fear of retaliation, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the licensee commitments as outlined in this Order.

I find that the licensee's commitments as set forth in Section V below are acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that these commitments be confirmed by this Order. Based on the above and the licensee's consent, this Order is immediately effective upon issuance. The licensee for MURR is required to provide the NRC with a letter summarizing its actions when all of the Section V commitments have been completed.

V

Accordingly, pursuant to Sections 104c, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered, effective immediately that:*

1. The licensee shall modify its chain-of-command for MURR to better ensure oversight of its activities by university senior management. It has been agreed that the modification of Figure 6.0 in the MURR Technical Specifications will reflect MURR reporting to the Office of the Provost, who in-turn, reports to the Office of the President, University of Missouri. The requisite technical specification change shall be submitted to the NRC within 30 days of this Order and upon being granted by the NRC, shall be effective no later than 30 days after the date of the NRC's issuance of the license amendment.

2. The licensee shall develop a long-term plan for ensuring a SCWE. This plan, which shall address a minimum of two years, shall include, at a minimum:

(a) Performance of an employee cultural survey developed by an independent consultant or entity. This survey shall be performed annually for not less than two years. During the two year period, the NRC shall be provided an annual report summarizing the findings of the culture assessment, including the questions used, the methodology applied, and any follow-up actions. The NRC would consider the use or partial use of MU's campus departments (*e.g.*, psychology) to constitute an independent entity for purpose of this action, with the stipulation that a separate independent consultant or entity shall review the assessment, including the questions used and the methodology applied, prepared by the MU campus department.

(b) Annual training of MURR employees and other personnel who routinely use the MURR facility on how to better ensure a SCWE. The first two years of the annual training shall be conducted by an independent consultant or entity with expertise in providing SCWE training. The licensee shall designate a specific manager to be responsible for ensuring annual SCWE training. SCWE training shall include, at a minimum:

1. Policies and programs designed to encourage employees to raise concerns, including a description of the multiple pathways for raising concerns.

2. Discussion of NRC regulations and any applicable federal and state laws pertaining to whistleblower protection, including a discussion of protected activities and adverse actions stated in 10 CFR 50.7.

3. Expectations for management to promote a SCWE

4. Expectations for employees to report concerns, especially safety concerns.

5. Other applicable procedures and processes related to implementing and maintaining a SCWE.

6. Additional training for managers and supervisors describing their specific responsibilities and obligations.

The plan for ensuring a SCWE shall be forwarded to the NRC within sixty (60) days after the date of this Order and implementation shall begin no later than ninety (90) days after the date of this Order.

3. Within forty-five (45) days after the date of this Order the licensee will modify MURR's access authorization procedures to better ensure transparency and clarity in its processes. The licensee shall maintain a process for granting access to the facility with two key components. The first component shall focus on the need for access. The second component shall involve routine background checks consistent with industry practices and other requirements contained in NRC regulations. The procedure modifications will, at a minimum, provide for the following:

(a) A requirement that personnel requesting sponsorship discuss the following issues, at a minimum:

—*Basis:* A detailed description of the basis for requesting access (escorted or unescorted) to the facility.

—*Funding:* Source of funding for the subject project; whether funding has already been obtained or when it is anticipated.

—*Resources:* Necessary project resources (*e.g.*, personnel, equipment, reactor time).

—*Benefits to MURR:* Is the subject project a collaborative project which will lead to credit for participation; does the subject project involve collaboration with MURR staff?

—*Strategic:* Is the subject project consistent with MURR's published strategic plan and research priorities?

(b) Any sponsor denying a written request for sponsorship by an applicant shall provide the Director of MURR in writing with the basis for such denial within fifteen (15) days of receipt of such a request.

(c) Access requests shall be addressed by MURR within sixty (60) days and a decision by the Director of MURR provided to the requestor in writing within that time. Requestors being denied access shall be informed in writing of the appeal provisions of (e).

(d) The Provost shall be informed of any denial of access by the Director of MURR.

(e) The Ombudsman Panel shall review any decision by the Director of MURR under (c) upon an appeal request in writing by the applicant within fifteen (15) days of receipt of such a denial. The Ombudsman Panel shall provide a report of recommendations regarding the denial to the Office of the Provost for its reconsideration of the Director's decision within forty-five (45) days of receipt of an appeal request.

4. The licensee shall post this Confirmatory Order at the MURR facility and inform MURR employees of its content.

5. The President of the University of Missouri shall within thirty (30) days of the date of this Order issue a letter to all individuals with access to the MURR facility which affirms the licensee's commitment to an SCWE and which provides a summary of the licensee's policy to promote an SCWE.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by the licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to MU. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel by means of facsimile transmission to 301–415–3725 or e-mail to *OGCMailCenter@nrc.gov*. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained. An answer or a request for a hearing shall not stay the effectiveness date of this Order.

Dated this 19th Day of December, 2003.

For the Nuclear Regulatory Commission.

Frank Congel,

Director, Office of Enforcement.

[FR Doc. 03–31954 Filed 12–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–03–042]

In the Matter of Scott P. Wolfe; Order Prohibiting Involvement in Certain NRC-Licensed Activities (Effective Immediately)

I

Scott P. Wolfe held Nuclear Regulatory Commission (NRC) senior operator's license SOP–43723–1. The license authorized Mr. Wolfe to operate the Waterford-3 Steam Electric Station in accordance with the conditions of the license and 10 CFR part 55. The Waterford-3 Steam Electric Station is a nuclear power plant in Killona, Louisiana, and is operated by Entergy Operations, Inc., under the provisions of NRC operating license NPF–38.

II

On May 7, 1990, Mr. Wolfe tested positive for an illegal substance in response to a random fitness-for-duty test. The test results were confirmed positive on May 14, 1990. On June 1, 1990, Mr. Wolfe signed a "re-entry agreement" in which he agreed to participate in Entergy Operation, Inc.'s employee assistance program, agreed to abstain from the use of illegal drugs, agreed to periodic unannounced drug and alcohol testing, and confirmed his understanding that a second positive test for drugs or alcohol may result in his employment being terminated.

On July 17, 2003, Mr. Wolfe again tested positive for an illegal substance in response to a random fitness-for-duty test. The test results were confirmed positive on July 21, 2003. On July 25, 2003, Mr. Wolfe's employment with Entergy Operations, Inc., was terminated. On August 21, 2003, Entergy Operations, Inc., requested that Mr. Wolfe's NRC operator's license be terminated. On August 26, 2003, the NRC terminated Mr. Wolfe's senior operator's license.

III

The NRC holds licensed reactor operators to high performance standards and entrusts them with assuring the public health and safety in the operation of nuclear power plants. Licensed reactor operators are expected to comply with all NRC requirements, including the fitness-for-duty requirements of the NRC (10 CFR part 26) and the facility at which they are employed. Mr. Wolfe's actions have violated the NRC's and the public's trust and demonstrated that he can not be relied upon to comply with fitness-for-duty requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Wolfe were permitted at this time to hold an NRC operator's license pursuant to 10 CFR part 55. Therefore, the public health, safety and interest require that Mr. Wolfe be prohibited from applying for or holding an NRC operator's license for a period of three years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Wolfe's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 55, and 10 CFR part 26, *it is hereby ordered, effective immediately, that:* Scott P. Wolfe is prohibited for three years from the date of this Order from applying for or holding an NRC license to operate a nuclear power plant pursuant to 10 CFR part 55.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Wolfe of good cause.

V

In accordance with 10 CFR 2.202, Scott P. Wolfe must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Wolfe or other person adversely affected relies and the reasons as to why the Order should not have been issued.

Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Wolfe if the answer or hearing request is by a person other than Mr. Wolfe. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Wolfe, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Wolfe may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 10th day of December, 2003.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Deputy Executive Director for Reactor Programs.

[FR Doc. 03–31955 Filed 12–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR) § 54.17(c) for Facility Operating License No. NPF–49, issued to Dominion Nuclear Connecticut, Inc. (DNC), for operation of Millstone Power Station, Unit No. 3 (MP3), located in Waterford, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a schedular exemption from the provision of 10 CFR 54.17(c), which stipulates that a licensee may not apply for a renewed operating license earlier than 20 years before the current license expires. The exemption would allow DNC to submit a renewal application for MP3 earlier than 20 years before expiration of its operating license.

The Need for the Proposed Action

The proposed action would allow DNC to submit one application for renewal of the operating licenses of both nuclear units located at the site, with the goal of attaining efficiencies for preparation and review of the application.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed exemption will not have a significant environmental impact. The proposed schedular exemption pertains solely to the future submission of an application to renew the MP3 operating license. It causes no changes to the current design or operation of MP3, and imparts no prejudice in the future review of the application for license renewal.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of radiological effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for MP3, dated December 1984.

Agencies and Persons Consulted

On November 5, 2003, the NRC staff consulted with the Connecticut official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 13, 2002, as supplemented on April 28, 2003, and September 3, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of December, 2003.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–31953 Filed 12–29–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Panel Meetings

January 20 and 21, 2004—Las Vegas, Nevada: The U.S. Nuclear Waste Technical Review Board's panel on the Engineered Barrier System and Panel on the Waste Management System will meet to discuss issues related to the proposed repository at Yucca Mountain in Nevada, including design of the engineered system and information needed to plan for a system to transport high-level radioactive waste spent nuclear fuel to the proposed repository.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, members of the U.S. Nuclear Waste Technical Review Board's Panel on the Engineered Barrier system and Panel on the Waste Management System will meet in Las Vegas, Nevada, on Tuesday, January 20, and Wednesday, January 21, 2004, respectively. The panels will discuss issues related to the proposed repository at Yucca Mountain in Nevada, including design of the engineered system and information needed as the Department of Energy (DOE) plans a system for transporting high-level radioactive waste and spend nuclear fuel to the proposed repository. The meetings will be open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of activities undertaken by the DOE as stipulated in the Nuclear Waste Policy Amendments Act.

The panel meetings will be held at the Crowne Plaza Hotel, 4255 South Paradise Road, Las Vegas, NV 89109; (tel.) 702–369–4400; (fax) 702–369–3770. The Panel on the Engineered Barrier System is scheduled to meet from 8:30 a.m. to 5 p.m. on Tuesday, January 20. The Panel on the Waste Management System is scheduled to meet from 8 a.m. to 6 p.m. on Wednesday, January 21. Meeting times will be confirmed when agendas are issued, approximately one week before the meeting dates.

At the Engineered Barrier System Panel meeting on Tuesday, the DOE will begin with a project update, followed by presentations on preclosure safety analysis and surface and subsurface facility design. In the afternoon, the DOE will present information on the design of the waste package, the drip shield, and the invert. Representatives of Nye County, Nevada, will then present an update on county oversight activities related to the engineered system. The final presentation of the day will be an update on the Office of Civilian Radioactive Waste Management's science and technology program.

On Wednesday, the Waste Management System Panel will consider the information the DOE will need as it plans its transportation system. Invited participants include representatives of the DOE and state and local governments; utilities; truck, rail, and barge operators; and those involved in other transportation campaigns, including WIPP and naval spent fuel.

During the session related to information flow, participants will be asked to address four questions:

1. What are your Key Yucca Mountain transportation safety and security concerns?
2. How have you been able to address those concerns on the basis of the information and resources that the DOE has provided to date?
3. What concerns have you been unable to address? What does the DOE need to provide to allow this to happen?
4. How long will it take you to address those outstanding concerns once the DOE has provided what you need?

A second session on Wednesday will focus on lessons learned in transporting spent nuclear fuel and other radioactive materials. During that session, participants will be asked to address three questions:

1. What were (or are) the objectives and characteristics of the shipping campaign?
2. From a safety and security perspective, what worked (works) well and what did not (does not)?
3. What experiences and lessons learned may be transferable to the Yucca Mountain transportation program?

Time will set aside at the end of each day for public comments. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individuals remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, questions relevant to the discussion may be asked by Board members.

Detailed agendas will be available approximately on week before the meeting. Copies of the agendas can be requested by telephone or obtained from the Board's Web site at *http://www.nwtrb.gov*. Transcripts of the meetings will be available on the Board's Web site, by e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board's staff, beginning on February 24, 2004.

A block of rooms has been reserved at the St. Tropez Hotel for meeting participants. The St. Tropez is located at 455 E. Harmon Avenue, Las Vegas, NV 89109; (tel.) 702–369–5400 and (fax) 702–369–1150. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. To receive the meeting rate, reservations should be made by December 31, 2003.

FOR FURTHER INFORMATION CONTACT: The NWTRB: Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel.) 703–235–4473; (fax) 703–235–4495; (e-mail) *info@nwtrb.gov*.

Dated: December 19, 2003.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 03–32046 Filed 12–29–03; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application to Act as Representative Payee; OMB 3220–0052. Under section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. A representative payee may be a court-appointed guardian, a statutory conservator or an individual selected by the RRB. The procedures pertaining to the appointment and responsibilities of a representative payee are prescribed in 20 CFR 266.

The forms furnished by the RRB to apply for representative payee status, and for securing the information needed to support the application follow. RRB Form AA–5, *Application for Substitution of Payee*, obtains information needed to determine the selection of a representative payee who will serve in the best interest of the beneficiary. RRB Form G–478, *Statement Regarding Patient's Capability to Manage Payments*, obtains information about an annuitant's capability to manage payments. The form is completed by the annuitant's personal physician or by a medical officer, if the annuitant is in an institution. It is not required when a court has appointed an individual or institution to manage the annuitant's funds, or in the absence of such appointment, when the annuitant is a minor. The RRB also provides representative payees with a booklet at the time of their appointment. The booklet, RRB Form RB–5, *Your Duties as Representative Payee-Representative Payee's Record*, advises representative payees of their responsibilities under 20 CFR 266.9 and provides a means for the representative payee to maintain records pertaining to the receipt and use of RRB benefits. The booklet is provided for the representative payee's convenience. The RRB also concepts records that were kept by representative payee's as part of a common business practice.

Completion is voluntary. One response is requested of each respondent. The RRB is proposing non-burden impacting formatting and editorial changes to Form AA–5. No changes are proposed for Form G–478 or Booklet RB–5. The estimated completion time(s) is estimated at 17 minutes for Form AA–5, 6 minutes for Form G–478 and 60 minutes for Booklet RB–5. The RRB estimates that approximately 3,000 Form AA–5's, 2,000 Form G–478's and 15,300 RB–5's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzw@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send e-mail to *Ronald.Hodapp@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 03–32047 Filed 12–29–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48957; File No. SR–Amex–2003–24]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 by the American Stock Exchange LLC Relating to the Dissemination of Customer Limit Orders

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2003, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 14, 2003, the Exchange filed Amendment No. 1 to the proposal.[3] On June 12, 2003, the Exchange filed Amendment No. 2 to the proposal.[4] The Commission published the proposal, as amended, for comment in the **Federal Register** on June 26, 2003.[5] The Commission received no comments on the proposal. On December 4, 2003, the Exchange filed Amendment No. 3 to the proposal.[6] In Amendment No. 3, the Amex proposes to replace the proposed rule change as set forth in the original notice in its entirety. The Commission is publishing this notice of Amendment No. 3 to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the dissemination of customer limit orders representing the best bid or offer (“BBO”) in sizes of less than ten (10) contracts. Below is the text of the proposed rule change as modified by Amendment No. 3. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Rule 958A. Application of the Firm Quote Rule

(a) No Change

(b) No Change

(c) Obligations of a Responsible Broker or Dealer—

(i) Pursuant to SEC Rule 11Ac1–1 each responsible broker or dealer for each series of each listed option class shall promptly communicate to the Exchange its best bid, best offer, quotation size and aggregate quotation size. No responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than ten contracts *with the exception that the size of customer limit orders representing the best bid or offer may be disseminated at less than ten (10) contracts, even though the responsible broker or dealer continues to have the obligation to quote a ten contract minimum*. This obligation may be fulfilled by the use of an automated quotation system.

(A) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any customer order in an option series in an amount up to its published quotation size.

(B) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any order for the account of a U.S. registered or foreign broker or dealer in a listed option in an amount up to the quotation size established and periodically published by the Exchange which quotation size shall be for at least one contract.

(C) Subject to the provisions of paragraph (d) of this Rule, each responsible broker or dealer shall comply with the Thirty Second Response provisions set forth in paragraph (d)(3) of SEC Rule 11Ac1–1.

(ii) No Change

(d) No Change

Commentary

.01 No specialist or registered options trader shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist and registered options traders responsible for the published bid or published offer shall be obligated as set forth in paragraph (c) of Rule 11Ac1–1 but only to the extent of ten contracts *or in cases where the best bid or offer is represented by a customer limit order the actual size of such order(s) if less than ten contracts.*

.02 No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2001, the Exchange amended the firm quote requirement in Exchange Rule 958A to accommodate the application of the SEC Rule 11Ac1–1 (the “Quote Rule”) under the Act.[7] The amendments to the Commission's Quote Rule in 2000 were made to apply the firm quote requirements to the option exchanges and option market makers, thereby, requiring a corresponding revision to the rules of the options exchanges.[8] At that time, the Amex proposed in Exchange Rule 958A that “no responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than ten (10) contracts."

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated May 12, 2003 (“Amendment No. 1”).

[4] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated June 11, 2003 (“Amendment No. 2”).

[5] Securities Exchange Act Release No. 48101 (June 26, 2003), 68 FR 39992 (July 3, 2003) (“Original Notice”).

[6] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 3, 2003 (“Amendment No. 3”). In Amendment No. 3, the Exchange proposes to modify the text of the rule proposal so that customer limit orders representing the best bid or offer are disseminated in actual size if less than ten (10) contracts.

[7] 17 CFR 240.11Ac1–1; *see* Securities Exchange Act Release Nos. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (notice) and 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (approval of File Nos. SR–Amex-2001–18; SR–CBOE–2001–15; SR–ISE–2001–07; SR–6PCX–2001–18; and SR–Phlx–2001–37).

[8] *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

In applying the Quote Rule to the options markets, the Commission has given the options exchanges the flexibility to determine whether they will collect from responsible brokers or dealers and make available to quotation vendors the size associated with each quotation or choose instead to establish by rule the size for which their disseminated bid and offer in each option series is firm and not collect and disseminate size with each quotation. The Commission has also given the options exchanges the flexibility to disseminate quotations with sizes at which the specialist and registered traders are firm for customer accounts, and, at the same time, establish by rule a different size for which specialists and registered traders must be firm for orders from the accounts of broker-dealers.

As indicated above, the Amex previously determined that it would disseminate a size of ten (10) contracts for all of its option quotations regardless of the underlying "actual" size associated with such quote. In connection with the dissemination of option quotations, the Exchange amended and received Commission approval of Exchange Rule 958A requiring that the communicated and disseminated size be a minimum of ten (10) contracts. Therefore, responsible brokers or dealers on the Amex are required to disseminate a minimum size of ten (10) contracts for all options quotations regardless of whether such quotations may represent a customer or broker-dealer order.

The operation of Exchange Rule 958A in paragraph (c)(i)(A) requires that each responsible broker or dealer execute customer orders in an option series in an amount up to its published quotation size. As a result, specialists and registered options traders ("ROTs") are required to be firm for customer orders of up to 10 contracts regardless of the actual size of the customer order. Paragraph (c)(i)(B) of Exchange Rule 958A provides that specialists and ROTs are obligated to be firm for the account of broker-dealer orders, including foreign broker-dealers, for at least one (1) contract.

The effect of the instant proposal will be that if a customer limit order representing the BBO is for less than ten (10) contracts, the Exchange would no longer disseminate a minimum size of ten (10) contracts, but instead, would disseminate the actual size of the customer limit order(s). As a result, the responsible broker or dealer would not be required to execute a minimum size of ten (10) contracts for a customer order in cases where the disseminated quote is represented by a customer limit order of less than ten (10) contracts. Therefore, under the proposed amendment to Exchange Rule 958A, the responsible broker or dealer will now be firm to customers for less than ten (10) contracts whenever the disseminated quote represents customer limit orders of less than ten (10) contracts.[9] The proposed rule change also provides for a corresponding amendment to Commentary .01 to Exchange Rule 958A so that the specialist and ROT responsible for the published bid or offer is obligated for the size of the customer limit order on the book representing the BBO if less than ten (10) contracts in connection with an erroneous bid or offer that is the result of an error or omission by the Exchange or a quotation vendor.

For purposes of the application of the Options Intermarket Linkage (the "Linkage"), the Amex represents that the proposal will not affect the Exchange's Linkage Rules. In particular, "Firm Customer Quote Size"[10] and "Firm Principal Quote Size"[11] as defined in Exchange Rule 940 will not be revised without amendment to the Linkage Plan by all options exchanges and approval by the Commission. The obligation of the specialist to execute at least a size of ten (10) contracts for Linkage Orders will be unchanged by the adoption of this proposal.[12] With respect to automatic executions ("Auto-Ex") outside of Linkage, the proposed change will not affect the current minimum Auto-Ex size of ten (10) contracts. Accordingly, orders that are not Auto-Ex eligible[13] or are subject to an exception in Exchange Rule 933(f), will be manually handled by the specialist and will receive an execution size of up to the disseminated size of the quoted market.

The Exchange believes that the instant proposal to revise the operation of Exchange Rule 958A so that customer limit orders representing the best bid or offer are disseminated in actual size if less than ten (10) contracts should provide greater transparency to investors and the marketplace because the actual size of orders will be disclosed rather than an artificial minimum size. In addition, the Amex further believes that the proposal to disseminate the actual size of booked customer limit orders representing the BBO will better reflect the true state of liquidity. The Exchange notes, that as a result of the proposed rule change, the responsible broker or dealer would be permitted to disseminate a size of less than ten (10) contracts when the BBO is reflected by customer limit orders. Currently, the responsible broker or dealer is required to disseminate a size of at least ten (10) contracts in all circumstances.

The Exchange submits that the adoption of this proposal will foster increased competition by the Amex against markets that disseminate quotes with actual size. The Auto-Ex system at the Amex available for both customer and broker-dealer orders would not be impacted by this proposal.[14] In

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[9] An example of the Rule's current operation is as follows: An Exchange specialist disseminates a market of 2 bid, 2.20 asked, in a particular option series at the minimum size of 10 contracts. An incoming order to buy one contract for 2.10 is entered making the new best bid and offer 2.10 bid, 2.20 asked. The Exchange disseminates 10 contracts as the size of the 2.10 bid. If a market order to sell 10 contracts is then entered in that series, the responsible broker-dealer (generally the specialist) is obligated to buy the 9 contracts at a price of 2.10. The risk of requiring a size of ten (10) contracts to be disseminated is that the specialist is discouraged from increasing guaranteed sizes because of the greater potential liability. This proposal accordingly seeks to reduce this exposure by disseminating the actual size of customer limit orders representing the BBO if less than ten (10) contracts so that the responsible broker or dealer is not obligated to buy the balance between the actual size and the guaranteed size.

[10] Exchange Rule 940(b)(7) defines "Firm Customer Quote Size" as the lesser of: (a) The number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10.

[11] Exchange Rule 940(b)(8) defines "Firm Principal Quote Size" as the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10.

[12] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Original Linkage Plan Approval); 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Plan Amendment No. 1 Approval); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002) (Plan Amendments Nos. 2 and 3 Approval); 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Plan Amendment No. 4 Approval); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003) (Plan Amendment No. 5 Approval); and 47297 (January 31, 2003), 68 FR 6526 (February 7, 2003) (Approval of Amex Linkage Rules).

[13] The minimum eligible Auto-Ex size is ten (10) contracts while the maximum eligible Auto-Ex size is determined by the Exchange subject to a 500 contract ceiling (except in the case of options on QQQs which may be 2,000 contracts for the two near term months and 1,000 contracts for all other months).

[14] *See* Securities Exchange Act Release Nos. 22610 (November 8, 1985), 50 FR 47480 (November 18, 1985) (pilot program for XMI options); 23544 (August 20, 1986), 51 FR 30601 (August 27, 1986)

Continued

addition, the dissemination of the actual size of customer limit orders representing the BBO should also enable specialists and ROTs to better manage their risks by enabling such specialists and/or ROTs to reflect the size in quotes based on market factors rather than regulatory requirements. The Amex seeks through this proposal to match other option exchanges that currently are able to disseminate actual size market quotations for customer orders.[15] The Exchange believes that this should lead to increased competition on the basis of size among the options exchanges, enabling investors to receive better executions.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[16] in general, and furthers the objectives of section 6(b)(5)[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 3, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–24 and should be submitted by January 20, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove.[19] The Commission believes that the proposed rule change, as amended, should provide greater transparency to investors and the marketplace and should better reflect the true state of liquidity in the marketplace, because the actual size of customer limit orders representing the best bid or offer will be disclosed rather than an artificial minimum size. In addition, the Commission notes that the proposed rule change is consistent with the rules of other options exchanges.[20] Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[21] for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change (SR–Amex–2003–24), as amended, is hereby approved, and Amendment No. 3 is approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

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(permanent approval of XMI pilot); 24714 (July 17, 1987), 52 FR 28396 (July 29, 1987) (expansion to competitively traded options); and 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (automatic execution of broker-dealer option orders). Auto-Ex is an automated execution system that enables member firms to route public customer market and limit orders in options for automatic execution at the bid or offer at the time the order is entered. Auto-Ex executes, at the displayed bid or offer, customer market and immediately executable limit option orders up to a specified number of contracts routed through the Common Message Switch ("CMS") and the Amex Order File ("AOF"). There are, however, some situations in which orders otherwise eligible for execution on Auto-Ex are routed to the specialist's book, known as the Amex Options Display Book or "AODB," for an execution. These situations occur when (i) the best bid or offer is represented by a limit order on the AODB, (ii) the best bid or offer is locked or crossed, (iii) there is a better bid or offer being displayed by a competing market, or (iv) when certain systems allowable parameters have been exceeded.

[15] *See* Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (File No. SR–Phlx–2002–15); 46029 (June 4, 2002), 67 FR 40362 (June 12, 2002) (File No. SR–PCX–2002–30); 45067 (November 16, 2001), 66 FR 58766 (November 23, 2001) (File No. SR–COE–2001–56); and 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (File No. SR–CBOE–2002–05).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* note 15.

[21] 15 U.S.C. 78s(b)(2).

[22] *Id.*

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48959; File No. SR–ISE–2003–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. To Increase the Number of Authorized Shares of Class B Common Stock, Series B–2 from 130 to 160

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B–2 from 130 to 160. This increase would result in the creation of 30 additional Competitive Market Maker ("CMM") Memberships. The text of the proposed rule change is available at the Office of the Secretary, the ISE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to increase the number of authorized shares of Class B Common Stock, Series B–2 from 130 to 160. This increase would result in the creation of 30 additional CMM Memberships.[3] CMMs are market makers that compete with a Primary Market Maker ("PMM") and other CMMs to provide liquidity on the Exchange. The Exchange has allocated its listed options into 10 groups or "Bins," and currently assigns one PMM and 13 CMMs to each Bin. Under this proposal, the Exchange will add three additional CMMs to each Bin.

The Board of Directors ("Board") has established a committee of three directors to sell the additional Memberships, identifying both the purchasers of these Memberships and the price at which these Memberships would be sold. The Board's intent is that the new Memberships be sold to broker-dealers that both would provide market making expertise and liquidity to the Exchange and that have significant customer order flow to send to the Exchange. There are no restrictions or limitations on the price at which the Memberships can be sold. The Exchange would distribute all net proceeds received from these sales to holders of Class A Common Stock by way of a dividend.

The ISE believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market. It also would provide more broker-dealers with an opportunity to participate on the Exchange. The Exchange has carefully evaluated its system capacity and believes that it has more than sufficient capacity to be able to handle the increased number of CMM Members without any adverse effects. Finally, the Exchange would require that a purchaser of one of these new Memberships that is not already a CMM to meet all Exchange requirements currently applicable to CMM Members.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[5] in general, and furthers the objectives of section 6(b)(5) of the Act[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the sale of 30 additional CMM Memberships would increase the depth and liquidity of the Exchange's market and provide more broker-dealers with an opportunity to participate on the Exchange as market makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition. The Exchange believes that the proposal will increase competition on the Exchange by increasing the number of market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–ISE–2003–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–38 and should be submitted by January 20, 2004.

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[3] ISE Rule 100(19) defines "Membership" as the "trading privileges associated with a share of Class B Common Stock."

[4] The ISE states that this proposed rule change is the same as a previous proposal to increase the number of Exchange CMM Memberships approved by the Commission. *See* Securities Exchange Act Release No. 47289 (January 30, 2003), 68 FR 5947 (February 5, 2003) (order approving SR–ISE–2002–28).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31950 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48965; File No. SR–NASD–2003–166]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Correct Inaccurate Descriptions of the Territorial Boundaries of Two NASD District Offices

December 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 12, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD amended the proposed rule change on December 18, 2003.[3] NASD filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act,[4] and Rule 19b–4(f)(1) thereunder,[5] as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend Schedule B to the NASD By-Laws to correct the inaccurate descriptions of the territorial boundaries of two NASD District Offices. The text of the proposed rule change is available at NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend Schedule B to the NASD By-Laws to correct inaccurate descriptions of Districts 9 and 10. Before 1997, the New York counties of Orange, Rockland, Putnam, and Westchester were assigned to NASD's District 10 office. In late 1997, during a reorganization of the District Offices, District 11 assumed responsibility for Orange, Rockland, Putnam, and Westchester counties. However, NASD failed to amend Schedule B to reflect this change.

In 2003, NASD conducted its most recent reorganization of the District Offices and, among other things, transferred responsibility for the New York counties of Orange, Rockland, Putnam, and Westchester from District 11 to District 9. After filing a rule change to Schedule B to the NASD By-Laws to reflect the Districts' new descriptions,[6] NASD became aware that the 1997 change was never reflected in Schedule B, and that Schedule B still lists District 10 as being responsible for the New York counties of Orange, Rockland, Putnam, and Westchester. Accordingly, NASD is filing the proposed rule change to amend Schedule B to the NASD By-Laws to accurately align these counties within District 9.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,[8] and Rule 19b–4(f)(1)[9] thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–166. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–166 and should be submitted by January 20, 2004.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 17, 2003 letter from Patricia M. Albrecht, Assistant General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, NASD corrected a typographical error in the proposed rule text, and added language to clarify the reason for the proposed rule change. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on December 18, 2003, the day NASD filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1)

[6] *See* Securities Exchange Act Release No. 48488 (September 3, 2003), 68 FR 54762 (September 12, 2003) (SR–NASD–2003–138).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–31948 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48967; File No. SR–NASD–03–191]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Short Sale Rule and Continued Suspension of the Primary Market Maker Standards Set Forth in NASD Rule 4612

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Nasdaq is proposing to extend the pilot program of the National Association of Securities Dealers' short sale rule retroactively to December 15 and prospectively until June 15, 2004. The Nasdaq is also seeking to continue the suspension of the effectiveness of the Primary Market Maker ("PMM") standards currently set forth in NASD Rule 4162, also retroactive to December 15, 2003 and prospective through June 15, 2004. The text of the proposed rule change is as follows. Additions are *italicized;* deletions are bracketed.

* * * * *

NASD Rule 3350

(a)–(k) No Change.

(l) This section shall be in effect until *June 15, 2004* [December 15, 2003].

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Description of the NASD's Short Sale Rule. Section 10(a) of the Act[3] gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. In 1992, the Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by Rule 10a–1 under the Act.[4] On June 29, 1994, the Commission approved the NASD's short sale rule (the "Rule") applicable to short sales[5] in Nasdaq National Market ("NNM") securities on an eighteen-month pilot basis through March 5, 1996.[6] The NASD and the Commission have extended NASD Rule 3350 numerous times, most recently, until December 15, 2003.

The Rule employs a "bid" test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. The Rule prohibits short sales at or below the inside bid when the current inside bid is below the previous inside bid. The Nasdaq calculates the inside bid from all market makers in the security and disseminates symbols to denote whether the current inside bid is an "up-bid" or a "down-bid." To effect a "legal" short sale on a down-bid, the short sale must be executed at a price at least $.01 above the current inside bid. The Rule is in effect from 9:30 a.m. until 4:00 p.m. each trading day.

In December of 2002, the Nasdaq modified the method it uses to calculate the last bid by having it refer to the "Nasdaq Inside" which is comprised of quotations from all participants in Nasdaq execution systems (*e.g.*, SuperMontage), rather than referring to the National Best Bid and Offer ("NBBO"). The Nasdaq currently calculates and applies the Nasdaq-based bid tick indicator to all SuperMontage trades. With respect to trades executed outside Nasdaq execution systems and reported to the Nasdaq, Nasdaq participants have been permitted to transition from the NBBO-based bid tick to the Nasdaq-based bid tick, provided that each firm select and apply a single bid tick indicator for all such trades executed by that firm. That transition has not been completed and, as explained below, in light of the Commission's proposal of Regulation SHO, the Nasdaq has alerted members that it would not be prudent to transition from the NBBO bid tick to the Nasdaq bid tick at this time.

To reduce the compliance burdens on its members, the Rule also incorporates seven exemptions contained in Rule 10a–1 under the Act,[7] and other exemptions that are relevant to trading on the Nasdaq.[8] For example, in an effort to not constrain the legitimate hedging needs of options market makers, the Rule also contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78a(10)(A).

[4] 17 CFR 240.10a–1.

[5] A short sale is a sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a "short sale" contained in Rule 3b–3 of the Act, which is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[6] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Short Sale Rule Approval Order").

[7] 17 CFR 240.10a–1.

Background of the Primary Market Maker Standards. To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, NASD Rule 3350 provides an exemption for "qualified" market makers (*i.e.*, market makers that meet the PMM standards). Presently, NASD Rule 4612 provides that a member registered as a market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards.

Since the Rule has been in effect, the Nasdaq has used three methods to determine whether a market maker is eligible for the market maker exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers that maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from the Rule for short sales in that security, provided the short sales were made in connection with bona fide market making activity ("the 20-day" test). From February 1, 1996 until the February 14, 1997, the "20-day" test was replaced with a four-part quantitative test known as the PMM standards.[9]

On February 14, 1997, the PMM standards were waived for all NNM securities due to the impact of the Commission's Order Handling Rules and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[10] For example, among other impacts, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the "102% Average Spread Standard". Since that time all Nasdaq Market Makers have been deemed to be PMMs.

In March 1998, the Nasdaq proposed PMM standards that received substantially negative comments.[11] In light of those comments, Nasdaq staff convened an advisory subcommittee to develop new PMM standards ("Subcommittee") in August 1998. The Subcommittee met nine times and formulated new PMM standards. NASD/Nasdaq staff requested to meet with the Commission staff and the Subcommittee to receive informal feedback on the new PMM standards. This meeting occurred on December 9, 1998. At the conclusion of the meeting, Commission staff noted the progress made by the Subcommittee and requested time to digest and more carefully analyze the proposed new PMM standards.

On July 29, 1999, members of the Nasdaq staff conducted a conference call with members of the Commission staff to receive feedback on the PMM standards that the Nasdaq presented at the December 9, 1998 meeting. During the meeting, the Commission staff requested that the Nasdaq modify several of the proposed standards and analyze the impact of those modifications on the primary market maker determination. On September 27, 1999, the Nasdaq reported that the NASD Economic Research staff had analyzed data based on the Commission's recommended revisions, and concluded that the Commission's modified standards produced unfavorable results. The Nasdaq requested that the Commission comment on the outcome of this test "as we intend to communicate your comments to the Subcommittee in an effort to resume the process of developing new standards."[12]

The Nasdaq suspended development of PMM standards in late-1999 after the Commission signaled to the securities industry that it is considering fundamental changes to Rule 10a–1, changes that could impact the manner in which the Nasdaq and the other markets regulate short sales. In October 1999, the Commission issued a Concept Release on Short Sales in which it sought comment on, among other things, revising the definition of a short sale, extending short sale regulation to non-exchange listed securities, and eliminating short sale regulation altogether. The Nasdaq believed that it would be inappropriate for the Nasdaq to dramatically alter its regulation of short sales while the Commission is considering fundamentally changing Rule 10a–1. At the request of the staff of the Division of Market Regulation, the Nasdaq has resumed development of PMM standards and has been working with the Commission staff towards that goal.

Proposal to Extend the Short Sale Rule and Suspend the PMM Standards. The Nasdaq believes that it is in the best interest of investors to extend the short sale regulation pilot program. When the Commission approved the NASD's short sale rule on a pilot basis, it made specific findings that the Rule was consistent with Sections 11A, 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Specifically, the Commission stated that, "recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act."[13] In addition, the Commission stated that it "believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure."[14] The benefits that the Commission recognized when it first approved NASD Rule 3350 apply with equal force today.

The Nasdaq notes that the Commission has proposed Regulation SHO, a unified short sale rule that, if approved, would apply to Nasdaq-listed securities and would supersede NASD Rule 3350. The Nasdaq has alerted market participants that the adoption of Regulation SHO would impact the regulation of short sales on the Nasdaq and on other markets in a number of ways. The adoption of Regulation SHO would supersede elements of this proposal, including requiring short sales on the Nasdaq to utilize an NBBO-based bid test and eliminating the application of primary market maker standards. The Nasdaq has encouraged firms to analyze the proposal and its impact on their execution and order management systems in anticipation of its adoption.

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[8] *See* NASD Rule 3350(c)(2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that Commission staff interpretations to Rule 10a–1 under the Act dealing with the liquidation of index arbitrage positions and an "international equalizing exemption" are equally applicable to the NASD's short sale rule.

[9] Under the PMM standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less that 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1 1/2 times its "proportionate" volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.* the "P" next to its market maker identification was removed). Market makers could re-qualify for designation as a PMM by satisfying the threshold standards in the next review period.

[10] *See* Securities Exchange Act Release No. 38294 (February 17, 1997), 62 FR 8289 (February 24, 1997).

[11] *See* Securities Exchange Act Release No. 39189 (March 30, 1998), 63 FR 16841 (April 6, 1998).

[12] *See* Letter, dated September 27, 1999 from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission.

[13] *See* Short Sale Rule Approval Order, *supra* note 2.

[14] *Id.*

2. Statutory Basis

The Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[15] in general and with Section 15A(b)(6) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b-4(f)(6)[18] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Nasdaq seeks to have the proposed rule change become operative on or before December 16, 2003, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii),[21] the Nasdaq is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission has waived the five-day pre-notice requirement for this proposed rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission notes that unless extended, the Pilot will expire, and this could disrupt the proper operation of the Nasdaq. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–191. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–191 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32037 Filed 12–29–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48972; File No. SR–NASD–2003–185]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Modify SuperMontage Pricing

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for Nasdaq's SuperMontage system. Pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] Nasdaq has designated the proposed rule change as non-controversial and requests that the Commission waive the 30-day pre-operative requirement contained in SEC

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[15] 15 U.S.C. 78o-3.

[16] 15 U.S.C. 78o-3(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] *Id.*

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Rule 19b–4(f)(6)(iii).[5] If the Commission grants such waiver, Nasdaq will implement the proposed rule change on January 1, 2004.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry	
Non-Directed Orders (excluding Preferenced Orders)	No charge
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge
Other Preferenced Orders	$0.02 per order entry
Directed Orders	$0.10 per order entry
Order Execution	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS	
Charge to member entering order:	[$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share)]
Average daily shares of liquidity provided through the NNMS by the member during the month:	
400,000 or less	*$0.003 per share executed (but no more than $120 per trade for trades in securities executed at $1.00 or less per share)*
400,001 to 5,000,000	*$0.0027 per share executed (but no more than $108 per trade for trades in securities executed at $1.00 or less per share)*
5,000,001 or more	*$0.0025 per share executed (but no more than $100 per trade for trades in securities executed at $1.00 or less per share)*
Credit to member providing liquidity	$0.002 per share executed (but no more than $80 per trade for trades in securities executed at $1.00 or less per share)
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS	[$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share)]
Charge to member entering order:	
Average daily shares of liquidity provided through the NNMS by the member during the month:	
400,000 or less	*$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share)*
400,001 or more	*$0.001 per share executed (but no more than $40 per trade for trades in securities executed at $1.00 or less per share, and no more than $10,000 per month)*
Directed Order	$0.003 per share executed
Non-Directed or Preferenced Order entered by a member that accesses its own Quote/Order submitted under the same or a different market participant identifier of the member.	No charge
Order Cancellation	
Non-Directed and Preferenced Orders	No charge
Directed Orders	$0.10 per order cancelled

(j)–(u) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to implement reduced pricing for execution of Non-Directed and Preferenced Orders in the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). Nasdaq's current fee schedule for SuperMontage features: (i) A $0.003 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through SuperMontage, (ii) a $0.001 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee, and (iii) a $0.002 per share credit to a member that provides the liquidity for an execution and does not charge an access fee.[6]

Nasdaq states that as part of an ongoing effort to reduce the costs incurred by market participants to use Nasdaq services, it proposes to reduce order execution fees for members that provide liquidity through the NNMS. These fees would be reduced in a manner that would make the per share fee charged to a member to access liquidity during a particular month depend on the extent to which such member provided liquidity through the NNMS during that month (regardless of whether such member charges an access fee). Liquidity provision would be measured by adding the number of shares executed through transactions in which the member's Quote/Order was accessed by another market participant.[7] Thus, during a month in which a member provided a daily average of more than 5,000,000 shares of liquidity through the NNMS, the member would pay $0.0025 per share executed in trades in which the member accessed liquidity provided by a market participant that does not charge an access fee (*i.e.*, in which the member's Non-Directed or Preferenced Orders accessed the Quotes/Orders of other market participants).[8] During a month in which a member provided a daily average of 400,001 to 5,000,000 shares of liquidity, the member would pay $0.0027 per share executed in trades in which the member accessed liquidity provided by a market participant that does not charge an access fee.[9] Finally, in a month in which a member provided a daily average of 400,000 or fewer trades, the member would pay the current fee of $0.003 per share executed.[10]

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[5] 17 CFR 240.19b–4(f)(6)(iii). Nasdaq provided written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, on November 26, 2003.

[6] Transactions in a security priced under $1.00 ("low-priced trades") are subject to a fee and credit cap applicable to trades in excess of 40,000 shares.

Similarly, the fee paid by a member to access the Quote/Order of a market participant that charges an access fee would depend upon the shares of liquidity provided by the member during the month. During a month in which a member provided a daily average of more than 400,000 shares of liquidity, the member would pay $0.001 per share executed for trades in which the member accessed liquidity provided by a market participant that charges an access fee;[11] however, the member's total monthly charge would be capped at $10,000. During a month in which a member provided a daily average of 400,000 shares of liquidity or less, the member would also pay the current fee of $0.001 per share, but no monthly cap would be applicable.[12]

Nasdaq states that although the proposal will result in members paying fees to access liquidity that vary depending on the extent to which they provide liquidity, Nasdaq strongly believes that the proposal is consistent with the Act and with Commission precedent. Nasdaq believes that the extent to which members provide liquidity through SuperMontage is the single most important factor in determining whether SuperMontage provides an attractive destination, and in turn, whether SuperMontage will generate sufficient revenues to cover the costs of operating and regulating a market. Nasdaq believes a member that offers significant liquidity at prices that establish, or that are near, the national best bid/best offer, makes SuperMontage a more attractive destination for market participants seeking to access liquidity. While many liquidity destinations have used increases in liquidity provider rebates to attract liquidity, Nasdaq believes that higher liquidity rebates are creating distortions in market structure that lead to increased instances of locked and crossed markets. Although Nasdaq's proposed pricing schedule must, for competitive reasons, continue to provide payments for liquidity providers, Nasdaq believes that it is more appropriate to recognize the value of liquidity provision through discounts on the fee for accessing liquidity.

The costs of operating SuperMontage and regulating the Nasdaq market are overwhelming fixed, rather than variable, costs. As SuperMontage's volume increases (*i.e.*, as more and more liquidity is provided through SuperMontage), Nasdaq's costs, on a per share basis, decrease. Accordingly, Nasdaq believes that it is appropriate and equitable to allocate these costs in a manner that takes account of the lower per share costs associated with higher volumes of liquidity provision. Put another way, lower volumes would translate into higher per share costs for market participants; higher volumes reduce per share costs, and Nasdaq believes that the benefits of these reduced costs can and should be made available to those market participants that make the higher volumes possible in the first place. Moreover, there are economies of scope associated with higher volumes of liquidity provision, because trades executed through SuperMontage also have market data revenue and (in some cases) Automated Confirmation Transaction ("ACT") fees associated with them.

Nasdaq notes that on several occasions in the past, the Commission has approved or allowed the immediate effectiveness of SRO proposals to establish tiered pricing in which the price that different members pay for a service varies, depending on a related variable. For example, Rule 11.10(c) of the NSX (formerly the Cincinnati Stock Exchange) provides that the fee a member pays for agency limit orders depends upon the percentage of public agency market order shares executed during a trading month. Similarly, according to Nasdaq, the New York Stock Exchange's Price List[13] reflects a display device charge for professional subscribers to market data feeds that varies on a per device (rather than a marginal) basis, depending on the number of devices. Thus, a subscriber with few devices pays high fees for each of its devices, while a subscriber with more devices pays lower fees for each of its devices. Nasdaq believes that such pricing structures, like the pricing proposed herein, are entirely appropriate, provided they base the price that a particular member pays upon cost and/or revenue factors associated with providing services to that member.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[14] in general, and with Section 15A(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and other persons using any facility or system which the NASD operates or controls. The proposed rule change bases the fees applicable to accessing liquidity through SuperMontage on the extent to which a member provides liquidity, thereby taking account of the lower per share costs and the economies of scope associated with higher volumes of liquidity provision.

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[7] If a particular corporate entity has multiple market participant identifiers ("MPIDs") associated with the Central Registration Depository ("CRD") number under which it conducts business, Nasdaq will aggregate shares of liquidity provided through all of its MPIDs. However, Nasdaq will not aggregate one corporate entity's trade reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

[8] As is true today, a low-priced trade would be subject to a fee cap applicable to trades in excess of 40,000 shares. Accordingly, when the fee that the member pays is $0.0025, the maximum per transaction charge for a low-priced trade would be $100.

[9] When the fee that the member pays is $0.0027, the maximum per transaction charge for a low-priced trade would be $108.

[10] When the fee that the member pays is $0.003, the maximum per transaction charge for a low-priced trade would be $120.

[11] The maximum per transaction charge for a low-priced trade would be $40.

[12] The maximum per transaction charge for a low-priced trade would be $40.

[13] *See www.nyse.com/pdfs/2003pricelist2.pdf.*

[14] 15 U.S.C. 78*o*–3.

[15] 15 U.S.C. 78*o*–3(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)[16] of the Act and Rule 19b–4(f)(6) thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 30-day operative delay. The Commission finds waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[18] Acceleration of the operative date will allow the proposed price reduction to take effect as quickly as possible and at the beginning of a calendar month, January 1, 2004. Implementation of the pricing change at the beginning of a calendar month will assist Nasdaq in automating the preparation of members' bills for January 2004, since the same pricing schedule would be in effect for each day of the month. It will also assist members' understanding of the bills that they receive for that month.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–185. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–185 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32038 Filed 12–29–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48973; File No. SR–NASD–2003–190]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Interpret Two Provisions of New NASD Rule 2790 Relating to Initial Public Offerings

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this amended notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing with the Commission portions of a *Notice to Members* discussing the application of NASD Rule 2790. The NASD is not proposing any textual changes to the rules of NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 24, 2003, the Commission approved new NASD Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings).[4] As stated in the Commission approval order, NASD will publish a *Notice to Members* discussing the application of its Rule 2790. In consulting with the Commission staff regarding the *Notice*, the Commission staff determined that two provisions in the *Notice* constitute interpretations of NASD Rule 2790 that, due to their nature, should be filed as a proposed rule change.

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 48701 (October 24, 2003), 68 FR 62126 (October 31, 2003) (approving File No. SR–NASD–99–60).

The first provision relates to paragraph (a)(4)(C) of Rule 2790, which provides an exclusion for "purchases by a broker/dealer (or owner of a broker/dealer), organized as an investment partnership, of a new issue at the public offering price, provided such purchases are credited to the capital accounts of its partners in accordance with paragraph (c)(4)." This exclusion is intended to allow a hedge fund that registers as a broker-dealer or that has a subsidiary that is a broker-dealer[5] to purchase new issues on the same terms as other investment partnerships. For instance, pursuant to paragraph (a)(4)(C), a JBO hedge fund may purchase new issues so long as the beneficial interests of restricted persons do not exceed in the aggregate 10% of the fund. The NASD recognizes that there are a number of legal structures that a JBO hedge fund can take. Accordingly, the *Notice* will state:

> Paragraph (a)(4)(C) refers specifically to "investment partnership" because we understand this is the most common organizational form of JBO hedge funds. We believe, however, that the decision to organize as a limited liability company, or some other corporate form, should not undermine the relief granted to hedge funds organized as JBOs or with JBO subsidiaries.

The second provision relates to the preconditions for sale in a fund-of-funds context. Paragraph (b) of Rule 2790 provides, in relevant part, that a member may not sell new issues to any account unless within the previous 12 months it has in good faith obtained a representation from either: (1) The beneficial owners of the account, or a person authorized to represent the beneficial owners of an account, that the account is eligible to purchase new issues in accordance with the rule; or (2) certain conduits (such as a bank, foreign bank, broker-dealer, or investment adviser) that all purchases of new issues are in compliance with the rule.

In a fund-of-funds context, a member must obtain a representation only from a person authorized to represent the beneficial owners of the fund/account that purchases new issues directly from the member ("master fund"). However, in making such a representation, a representative of the master fund would need to ascertain the status of investors of any feeder funds that invest in the master fund. In ascertaining the status of investors of any feeder funds, the NASD will allow the representative of the master fund to rely on information from any feeder fund. To address the practicalities of the certification process, the *Notice* will state:

> While the Rule specifies that a member must verify the status of the master fund annually, the Rule does not specify a time period during which a master fund may rely on information from a feeder fund. NASD recognizes that logistical impracticalities may prevent all authorized representatives of feeder funds from verifying information at the same time as the representative of the master fund. Thus, NASD will allow the representative of a master fund to rely on information from any feeder fund that is no more than 12 months old. Similarly, the representative of a feeder fund that in turn receives investments from other feeder funds may rely on information that is no more than 12 months old.

2. *Statutory Basis*

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and, in general, to protect investors and the public interest. The NASD believes that its Rule 2790, as described herein, protects investors and the public interest by: ensuring that members make a bona fide public offering of securities at the public offering price; ensuring that members do not withhold securities in a public offering for their own benefit or use such securities to reward certain persons who are in a position to direct future business to the member; and ensuring that industry "insiders," including members and their associated persons, do not take advantage of their "insider" position in the industry to purchase new issues for their own benefit at the expense of public customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has designated the proposed rule change as "non-controversial" pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] The NASD has represented that the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Rule 19b–4(f)(6) also requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The NASD fulfilled the five-day pre-filing notice requirement.

The NASD has requested that the Commission waive the 30-day pre-operative waiting period, which would make the proposed rule change operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case because the proposed rule change provides additional guidance to investors regarding the application of NASD Rule 2790 and will facilitate the implementation of the new rule in the time frame described in the approval order.[9] For these reasons, the Commission hereby waives the 30-day pre-operative period.[10] Therefore, the proposal becomes operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[5] Certain hedge funds, or subsidiaries thereof, elect to become registered broker-dealers and share a back office with another broker-dealer. These entities are called joint back office broker-dealers ("JBOs").

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *See supra* note 4.

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–190 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32039 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48970; File No. SR–PCX–2003–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Floor, Market Maker and Remote Market Maker Fees portion of its Schedule of Fees and Charges ("Schedule"). The text of the proposed change to the fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Floor, Market Maker and Remote Market Maker portion of its Schedule in order to create a connectivity fee of $300 per line per month.

Currently, the PCX maintains a significant number of telecommunications lines that support connectivity from various routing firms. Thus, the PCX dedicates a significant amount of resources to installation and maintenance. The proposed fee will provide for the recovery of the expenses that the PCX has incurred as part of the initial deployment and ongoing testing of these lines. The Exchange also believes that the proposed fee will indirectly promote efficiency for the PCX as the fee will create a disincentive for firms to retain inactive lines.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder[6] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–67 and should be submitted by January 20, 2004.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32035 Filed 12–29–03; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48971; File No. SR–PCX–2003–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

December 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the General Membership Fees and Floor, Market Maker and Remote Market Maker Fees portions of its Schedule of Fees and Charges ("Schedule"). The text of the proposed change to the fee schedule is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the General Membership Fees and Floor, Market Marker and Remote Market Maker portions of its Schedule in order to make a number of changes to member-related fees. According to the PCX, this proposal would increase existing fees to competitive levels of other self-regulatory organizations ("SROs") and would introduce new fees to recover costs associated with processes requiring staff research and documentation, and reproduction of materials. Each proposed new fee or amendment is described below.

a. *Initial Membership Fee.* The Exchange proposes to incorporate a flat fee of $1,500 for all seat activations. Currently, the PCX assesses each Member Organization an initial membership fee calculated as 5% of the average price of the last three membership seat sales, with an established per activation minimum of $1,000 and maximum of $4,000. The Exchange proposes to replace the calculation method with a simple flat fee of $1,500 for all Member Organizations and Nominees.[3] The Exchange believes that restructuring this fee will provide much needed simplicity for the membership as well as Exchange staff. Also, this fee amount is substantially similar to the initial membership fee assessed by the Philadelphia Stock Exchange, Inc ("Phlx").[4]

b. *Statutory Disqualification.* The Exchange proposes to amend the PCX statutory disqualification fee to $2,000 for all applications resulting in statutory disqualification proceedings. The PCX currently assesses $250 to process applications for approved status despite grounds for statutory disqualification. In order to bring this fee up to the competitive levels of other SROs, the Exchange proposes to increase the fee to $2,000 and assess the fee for all applications resulting in statutory disqualification proceedings.[5] Hence, the fee will not be assessed unless the review of the application reveals that such a proceeding is necessary.

c. *Issue Relinquishment Request.* The Exchange proposes to implement a new fee, in the amount of $100 per issue, to cover the cost associated with processing issue relinquishment requests from Lead Market Makers. Each issue relinquishment request, regardless of the number of issues, requires substantial Exchange resources, including dedicated staff time. Therefore, the Exchange believes it is necessary to implement a nominal fee of $100 per issue for cost recovery.

d. *Hard Copy Subscription—PCX Weekly Bulletin.* The Exchange proposes to establish a $200 annual subscription fee applicable to all Members that elect to receive the PCX Weekly Bulletin in a hard copy format as opposed to e-mail.[6] The purpose of this fee is twofold. First, the $200 annual fee is intended to offset the hard copy publication and dissemination cost, as well as the cost of dedicated staff time. Second, the Exchange believes that this fee will result in a positive effect in that it will promote the reduction of paperwork.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments with respect to the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The initial seat activation fee would apply to each Member Organization as well as each Nominee to a Member Organization, since activation for each Nominee requires a separate administrative process.

[4] *See* Phlx Fee Schedule, Appendix A. The Phlx also assesses a $1,500 fee for initial memberships.

[5] For example, the Chicago Board Options Exchange, Inc. ("CBOE") assesses a $2,750 fee for applications resulting in statutory disqualification proceedings. *See* CBOE Fee Schedule.

[6] All Members and Member Firms are required to maintain an e-mail address for communication with the Exchange. *See* PCX Rule 1.13.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder[10] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–69. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–69 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32036 Filed 12–29–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4577]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-three letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 17, 2003.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

October 31, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing agreement of the manufacture of significant military equipment abroad and the license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the Republic of Korea for full-scale production of the T–50 fighter/trainer aircraft for end use by the Republic of Korea Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 118–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 3, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Australia of technical data and defense services for the design and manufacture of the 382J/C–130J Composite Center and Outer Wing Flaps for use by the Australian Department of National Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 104–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 4, 2003.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Belgium of bolt-action, lever-action, semi-automatic sporting rifles, and semi-automatic pistols for distribution to the following commercial markets: Austria, Belgium, Denmark, Ireland, Finland, France, Germany, Greece, Iceland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 103–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 7, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the design, development and manufacture in the United Kingdom of the Nuclear-Biological-Chemical Improved Protective Mask for use by the U. S. Special Operations Command.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 108–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 7, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the Czech Republic to support the manufacture of turbine engine parts for use on multiple military aircraft and ground vehicles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 114–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 14, 2003.

Dear Mr. Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and to provide defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves providing technical support and exporting defense articles to the United Kingdom for the purpose of upgrading the United Kingdom's Defence Intelligence and Electronic Warfare (IEW) capability in the Soothsayer Programme.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 112–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 14, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of classified and unclassified technical data and assistance to NEC Corporation and NEC Network and Sensor Systems Ltd. of Japan, necessary to integrate the TOW Missile System on the Japanese AH–1S Cobra helicopters for end-use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 120–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 17, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Israel to support the manufacture and maintenance of the Modular Azimuth Positioning Land Navigation Systems for end-use in Israel, Canada, Turkey, Sweden, Denmark, Australia, Belgium, Japan, Netherlands, United Kingdom, Finland, Greece, Spain, Portugal, Norway, India, Singapore, and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 115–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 19, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of classified and unclassified technical data and assistance to the United Kingdom for the JAVELIN Light Forces Anti-Tank Guided Weapons System for end-use by the United Kingdom Ministry of Defence and the United States Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 092–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 19, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services for sale, delivery, and support of fifty-seven Pratt & Whitney F100–PW–229 engines for the F–16I aircraft for the government of Israel.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 119–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 20, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of classified and unclassified technical data and defense services to Saudi Arabia to support Patriot and Hawk Air Defense Systems for end-use by the Government of Saudi Arabia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 097–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of two proposed licenses for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 840 M16, 5.56MM caliber semi-auto/full auto rifles and associated equipment to the Ministry of Interior of the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. 105–03 DDTC

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of two proposed manufacturing license agreements for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Italy and Belgium to support the manufacture of NATO E–3A AWACS Group B communication systems in support of the NATO Mid-Term Modernisation Programme.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 106–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of two proposed licenses for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 1,800 M4, 5.56MM caliber semi-auto/full auto carbines, 20 M203 grenade launchers, 40 infrared laser aiming devices and associated equipment to the government of Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 107–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture in Turkey of the LN–93 Inertial Navigation Unit for use on the Turkish Air Force F–16.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 109–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to South Korea and Germany of technical data, defense services and hardware for the integration of the Korean Electro-Optical Tracking System into the Korean Flying Tiger Vehicles for end-use by the Republic of Korea Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 110–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the United Kingdom of technical data and defense services for design, development, analysis, integration and testing of the Joint Strike Fighter weapon system.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 113–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture of the AN/ARC–182(V) VHF/UHF AM FM Radio Sets for the end use by the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 116–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Canada for the manufacture of Infrared Detectors for the Paveway II, III, IV and the Enhanced Paveway II and III Weapon System for end-use in the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 121–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services related to the Rolling Airframe Missile (RAM) MK 31 Guided Missile Weapon System (GMWS) for the KDX–II Destroyer and LPX Transport Programs for end use by the Republic of Korea Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 122–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to the Kingdom of Saudi Arabia of spare parts and components for C–130 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 123–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to NATO countries (United Kingdom, Germany, Spain, Turkey, and The Netherlands) of components and spare parts for UH–1H, CH–47, AB212, CH–53, MD500, UH–60, and SH–60 helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 124–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

November 21, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export and launch of a commercial communications satellite, from Pacific/International waters.

The United States Government is prepared to license the export of this item having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 125–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 03–32052 Filed 12–29–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4532]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC), through the Subcommittee on Standards of Training, Certification and Watchkeeping, will conduct an open meeting at 9:30 a.m. on January 8, 2004. The meeting will be held in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–0001. The purpose of the meeting is to prepare for the 35th session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW), to be held on January 26–30, 2004, at the IMO Headquarters in London, England.

The primary matters to be considered include:

1. Measures to enhance maritime security, training and certification for ship, company and port facility security officers;
2. Watchkeeping at anchor;
3. Large passenger ship safety;
4. Training of crew in launching and recovery operations of fast rescue boats and the means of rescue in adverse weather conditions;
5. Measures to prevent accidents with lifeboats;
6. Education and training requirements for fatigue prevention, mitigation, and management;
7. Requirements for knowledge, skills and training for officers on WIG craft; and
8. Development of competencies for ratings.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: LCDR Luke Harden, U.S. Coast Guard (G–MSO–1), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling; (202) 267–0229.

Dated: December 18, 2003.

Steven Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–32049 Filed 12–29–03; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4533]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9 a.m. on Monday, January 26, 2004, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 47th Session of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety to be held at IMO Headquarters in London, England from September 13th to 17th.

The primary matters to be considered include:

—Harmonization of damage stability provisions in SOLAS Chapter II–1;
—Large passenger ship safety;
—Review of the Intact Stability Code;
—Revision of the Fishing Vessel Safety Code and Voluntary Guidelines;
—Review of the Offshore Supply Vessel Guidelines;
—Harmonization of the damage stability provisions in other IMO instruments, including the 1993 Torremolinos Protocol (probabilistic method);
—Revision of technical regulations of the 1966 Load Line Convention;
—Review pf the 2000 HSC Code and amendments to the DSC Code and the 1994 HSC Code.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Paul Cojeen, Commandant (G–MSE), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1308, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: December 18, 2003.

Steven D. Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–32050 Filed 12–29–03; 8:45 am]

BILLING CODE 4910–09–P

DEPARTMENT OF STATE

[Public Notice 4576]

Finding of No Significant Impact and Summary Environmental Assessment; Valero Logistics LP Pipeline in Webb County, TX

The proposed action is to issue a Presidential Permit to Valero Logistics Operations LP (Valero) to construct, connect, operate and maintain a 8⅝ inch outer diameter pipeline to convey liquid petroleum gas ("LPG") across the border from Webb County, Texas to the United States of Mexico. On behalf of Valero, URS Corporation of Austin, Texas, prepared a draft environmental assessment under the guidance and supervision of the Department of State (the "Department"). The Department placed a notice in the **Federal Register** (68 FR 44560 (July 29, 2003)) regarding the availability for inspection of Valero's Permit application and the draft environmental assessment.

Numerous Federal and state agencies independently reviewed the draft environmental assessment. They include: the United States Section of the International Boundary and Water Commission, the Department of Transportation, the Department of the Interior, the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the Federal Emergency Management Administration, the U.S. Department of Homeland Security, the Department of Defense, the Department of Commerce, the Council on Environmental Quality, the Texas Railroad Commission, the Texas Historical Commission, the Texas Parks and Wildlife Department, and the Texas Commission on Environmental Quality. Prior to publishing the notice, Valero hosted a public meeting on the behalf of the Department of State, where public input on the project was received. No formal written public comments were submitted on the draft environmental assessment.

Comments received from the Federal and state agencies and the public were either responded to directly, or addressed directly by incorporation into the analysis contained in the draft environmental assessment. In addition to inclusion in the analyses of impacts and risks, comments were used to develop measures to be undertaken by Valero to prevent or mitigate potentially adverse environmental impacts, which were included as commitments.

This summary environmental assessment, comments submitted by the Federal and state agencies and the public, responses to those comments, and the draft environmental assessment, as amended, together constitute the Final Environmental Assessment of the proposed action by the Department.

Summary of the Environmental Assessment

I. The Proposed Project

The Department is charged with the issuance of Presidential Permits for the construction, connection, operation and maintenance of pipelines crossing international boundaries. See Executive Order 11423 of August 16, 1968, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993). Valero Logistics LP ("Valero") has applied for a Presidential Permit to construct, connect, operate and maintain an 8⅝ inch outer diameter pipeline ("the Dos Laredos Pipeline") at the U.S.-Mexico border. The pipeline will connect the Valero terminal in Laredo, Texas, with a newly-constructed Valero terminal in the state of Tamaulipas, Mexico. The U.S. portion of the project as described in the final Environmental Assessment consists of approximately 10.6 miles of new pipeline from the Valero terminal to a location on the Rio Grande known as "La Bota" in Laredo, approximately 6 miles northwest of downtown Laredo. The Mexican portion consists of approximately 1.5 kilometers of new pipeline from the Rio Grande crossing to the newly constructed Valero Nuevo Laredo terminal.

A significant portion of the route of the Dos Laredos pipeline will utilize existing utility rights of way and cleared fenceline, minimizing the amount of additional environmental impact. The routing has also been designed to avoid, to the maximum extent possible, populated areas of Webb County.

The Dos Laredos pipeline is being designed to transport up to 32,400 barrels (1.36 million gallons) of LPG daily from the U.S. to Mexico. Originally, the pipeline will service Valero's contractual obligation to supply 5,000 barrels a day to MGI Supply Limited, a subsidiary of Pemex-Gas y Petroquimica Basica, with capacity available for future expansion.

II. Alternatives Considered

The Department considered two routing alternatives and one modal alternative to the proposed Dos Laredos Pipeline. These are described in detail in the Final Environmental Assessment and in a summary fashion below.

Alternative 1: The "no action" alternative would involve delivery of LPG to Nuevo Laredo via tanker trucks. There are two possible options for this delivery.

The current delivery system involves trucks carrying LPG from the Three Rivers facility to Eagle Pass (approximately 160 miles), crossing the border at Eagle Pass to Piedras Negras, and offloading at a terminal on the Mexican side of the border. A Mexican fleet then transports the LPG the approximately 120 miles from Piedras Negras to Nuevo Laredo to customers.

A second delivery routing could occur after Valero constructs a new LPG terminal to the west of Nuevo Laredo (the planned terminus of the Dos Laredos Pipeline). In this case, tanker trucks would carry LPG approximately 120 miles from Three Rivers to Laredo, cross the border to Nuevo Laredo at the World Trade Bridge, and proceed to the terminal location, where again it would be offloaded for pickup by local service vehicles.

While these "no action" alternatives would avoid the minor or temporary noise and air quality impacts associated with the construction of the pipeline, truck transport is not a preferred alternative. An average of 24 tanker trucks carrying LPG to travel from Three Rivers across the border per day would be needed to meet Valero's contractual obligations. This would result in (i) exhaust emissions of nitrogen oxides (NO_X), carbon dioxide (CO_2), sulfur dioxide (SO_2), volatile organic compounds (VOC), and particulate matter (PM) that exceed that of pipeline transport; (ii) extra loads on busy highways and road bridges, (iii) transportation-related environmental degradation, such as noise impacts and water contamination related to operation of a tanker truck fleet, including fueling and maintenance, (iv) a continuing safety risk, including increased exposure to emissions, spills, and accidents during truck loading and unloading operations, and (v) a long-term commitment to moving these hazardous liquids through more heavily populated transportation corridors in Webb County, rather than through pipeline rights-of-way which have been situated in a way which minimizes potential impacts to existing and currently planned communities.

If, as expected over time, population growth in Northern Mexico creates additional demand for cross-border shipments of LPG, the need for additional truck transport would result in greater impacts to the transportation infrastructure, public safety, and air quality. The added travel from tanker trucks, assuming the shorter round trip directly between Three Rivers and Nuevo Laredo (as compared to the current round trip between Three Rivers to Nuevo Laredo through Eagle Pass/Piedras Negras) would produce a substantially higher regional diesel exhaust burden, resulting in emission of 63 tons per year of NO_X, 30 tons per year of CO_2, 11 tons per year of PM, 8 tons per year of VOC, and 2 tons per year of SO_2.

Alternatives 2 and 3: Alternatives 2 and 3 considered for the project involved pipeline routings that roughly parallel the proposed route, to the north and south. The existing fencelines/utility corridors, and desire of local landowners not to have large tracts divided by a newly established pipeline corridor, limited the number of possible alternatives. Both routings would have also involved the laying of a new 8⅝ inch diameter pipeline.

The northern alternative was viewed as not preferred because it required approximately 3 additional miles of pipeline, while not providing substantial relief from any of the impacts documented for the proposed pipeline route.

The southern alternative was also viewed as not preferred. While it required roughly the same pipeline distance as the proposal, it passed through industrial corridors along Killen Industrial Road and Mines Road prior to crossing the river. The existing development within these corridors would have made right-of-way much more difficult to obtain, in light of the City of Laredo's existing ordinance requiring a 25-foot setback between any pipeline and a structure. This ordinance makes siting much more practicable in an undeveloped corridor such as that found along the proposed route.

In addition, neither alternative routing provided avoidance or mitigation of any of the unavoidable impacts attributable to the selected corridor. For these reasons, the Department concluded that these alternate routes were not preferred alternatives.

III. Summary of the Assessment of the Potential Environmental Impacts Resulting From the Proposed Action

A. Impacts of Construction and Normal Operation of the Pipeline

The Final Environmental Assessment contains detailed information on the environmental effects of the Dos Laredos Pipeline and the alternatives outlined above. In particular, the Final Environmental Assessment analyzed the impacts of construction and normal operation of the pipeline on air and sound quality, topography, water resources, soils, mineral resources, biological resources, land use, transportation, socioeconomic resources, and recreation and cultural resources. Based on the detailed environmental assessment and information developed by the Department and other federal and state agencies in the process of reviewing the draft environmental assessment, the Department concluded the following:

i. *Environmental Concerns:* There will be no impacts to or on, *inter alia,* geology and topography, groundwaters, the Heritage status of the Rio Grande, wetlands, mineral resources, and recreation resources. There will be insignificant, minor or temporary impacts to or on, *inter alia*, noise, surface waters, soils, and protected biological resources. Finally, there will be net benefits to air quality through the elimination of exhaust emissions of CO_2, NO_X, VOC_s, SO_X, and particulate matter that are generated when tankers move fuel across the border. Alternative 1, transporting product by tanker truck in the future will continue these emissions. Alternatives 2 and 3, the routing alternatives, are not judged to represent any major difference in impacts to environmental concerns than the preferred route, although by virtue of being 30% longer Alternative 2 (the northern routing) would result in incrementally higher construction-related impacts.

ii. *Transportation and Land Use:* In consultation with the U.S. Fish and Wildlife Service, certain crossings will be re-aligned or will be directionally drilled to protect riparian bands that may be used by migratory threatened and endangered species. The Dos Laredos Pipeline does not conflict with existing land use plans for Laredo or Webb County. By utilizing existing fenceline and utility line corridors, the pipeline avoids splitting parcels and thereby complicating future development, and minimizes new impacts. Following consultation with local environmental groups, the alignment of the pipeline in the area south and west of FM 1472 was adjusted to minimize impacts to trees adjoining Sombretillo Creek and also to provide (via the maintained right of way) a buffer to keep development away from the creek. When compared with the "no action alternative" of continued truck transport, the pipeline represents a net positive benefit to local transportation by removing additional truck traffic from roadways. There are no major transportation issue related differences in impacts between the preferred routing and the two alternatives evaluated.

iii. *Homeland Security:* Compared to the "no action" alternative, there will be net benefits to homeland security because the pipeline will reduce the truck traffic volume at border crossings. There are no homeland security related differences in impacts between the preferred routing and the two alternatives evaluated.

iv. *Irreversible and Irretrievable Commitments of Resources:* There is a small increase in the commitment of land resources which are dedicated to transporting LPG due to the establishment of the new pipeline ROW, as compared to the "no action" alternative. The preferred alignment is advantageous compared to the two alternatives because Alternative 2 would increase the length of the pipeline (and therefore the commitment of land) by approximately 30%, while not changing the land uses which would be affected, and Alternative 3 while not increasing the length of the pipeline, would require adding new restrictions to land use in an already developed light-industrial corridor.

The operation of the pipeline will greatly reduce the energy requirements for transporting LPG from Three Rivers to Nuevo Laredo in comparison with the "no action" alternative. The selection of the preferred alignment will not affect energy requirements for LPG transport to any notable degree when compared with the 2 alternative alignments.

v. *Cumulative Effects:* There are no cumulative impacts to the Nuevo Laredo-Laredo airshed due to consumption of LPG in Mexico, since this supply represents LPG which is already being delivered to Mexico via truck, and the pipeline will only represent a change in delivery system.

A more detailed analysis of each of these factors is provided in the Environmental Assessment, as amended, which addresses issues raised by Federal and state agencies and the public.

B. Impacts Due to Corrosion of the Pipeline or Damage From an Outside Agent

The Final Environmental Assessment also contains detailed assessment of the potential environmental effects of the Dos Laredos Pipeline arising from pipeline integrity issues. A release of LPG from the pipeline, though improbable, would have very different impacts from those associated with construction and normal operation.

i. *Human Health and Safety Concerns:* Potential human health and safety impacts that may result from a release of hazardous liquids include fire or explosion from LPG, and short-term exposure to hazardous vapors resulting from an LPG release.

The potential risks to human health and safety are most concentrated in areas where the pipeline is close to residences, businesses, or transportation corridors. Only two small portions of the Dos Laredos Pipeline will be located in areas where a pipeline accident could result in risk to nearby residences and businesses: (1) At the northern end where it exits the Valero Laredo Terminal and runs along I–35; and (2) near the midpoint of the line where it crosses FM 1472 (Mines Road). A large portion of the pipeline is located in areas where no development is likely in the near future.

Any mode of transporting hazardous liquids shares these potential safety impacts. The probability of accidents resulting in fire or explosion for pipelines on a product-mile basis is 35 times lower than that of tanker transport, and the probability of deaths resulting from hazardous liquids transport in pipelines is 87 times lower than transport by tanker trucks on a product-mile basis. For these reasons, the U.S. Department of Transportation considers pipeline transport to be the safest transportation for hazardous liquids.

In addition, as previously discussed, the Dos Laredos Pipeline will traverse fewer areas where impacts to human health and safety are likely to result from a major accident than the "no-action" alternative, and therefore the pipeline will result in substantially lower risks to human health and safety than the "no action" alternative. Alternative 2, the northern alternative routing, would result in a slightly higher risk due to the longer length of pipeline; while Alternative 3, the southern alternative routing, would result in a higher risk because it would pass through already developed industrial corridors for much of the alignment.

This pipeline project has incorporated many safety features to address health and safety concerns. These are presented as mitigation measures.

ii. *Environmental Concerns:* The air quality impacts from an accidental product release from the Dos Laredos Pipeline would be short term and would not constitute a significant impact. Groundwater contamination is unlikely to occur from an LPG leak, because the product immediately expands into a gas upon release. Along most of the alignment, release resulting in fire would cause damage to vegetation in the immediate vicinity of the release, but is unlikely to result in widespread fires because of the types and distribution of vegetation. The mesquite and cactus which dominate the uplands sections of the alignment are difficult to burn even during planned fires, usually requiring mechanical preparation of the site and cessation of grazing to build up sufficient fuel, due to the naturally wide spacing and sparse ground cover. A greater fire hazard is present immediately along the Rio Grande where frequent fires occur in bamboo stands, but the pipeline will be directionally drilled to depths greater than the standard 3-foot minimum cover in this area in order to avoid impacts to the riparian band along the river.

iii. *Possible Conflicts Between the Dos Laredos Pipeline and the Objectives of Federal, Regional, State and Local Use Plans, Policies and Controls for the Area Concerned:* The risks posed by the Dos Laredos Pipeline do not conflict with any local land use plans, policies, or controls.

iv. *Probable Adverse Environmental Effects Which Cannot Be Avoided:* There will be a long-term increase in health and safety risk in the immediate vicinity of the pipeline due to the nature of the product being transported, which represents a shifting of risk from other portions of the county that would handle substantial truck transport of product under the "No Action" alternative or the alternative alignment scenarios. Any potential impacts would be mitigated by the measures described below, which are proposed to prevent or mitigate potentially adverse environmental impacts and which Valero intends to take.

v. *Cumulative Effects:* There are two important considerations with respect to the cumulative impacts analysis for the Dos Laredos Pipeline. The first is the cumulative effect of risks to the pipeline, and correspondingly to those living or working near to the pipeline, due to potential accidents on other pipelines in the vicinity. The only major transmission line in the vicinity of the Dos Laredos Pipeline is the Duke Energy Pipeline, which shares a common right-of-way for a ¼ mile stretch of the proposed alignment just north of FM 1472. The second is the cumulative effect of the increased overall risk to surrounding populations from an industrial accident occurring along the right-of-way that results in the release of LPG from the Dos Laredos pipeline, industrial sources or both.

A study of U.S. DOT databases has not revealed any cases where a below ground pipeline has ruptured due to the effects of another accidental release, fire, or explosion of a nearby buried pipeline. No portions of the Dos Laredos pipeline will be above ground in the vicinity of any exposed portions of the Duke Energy pipeline. Therefore the proximity to the Duke Energy pipeline is not considered a significant cumulative impact.

Over much of the alignment there are no heavy industrial activities, particularly those involving hazardous liquids or gases, that would create a cumulative impact in combination with the Dos Laredos Pipeline. The Valero Laredo terminal at the north end of the alignment is situated in an industrialized area, along the railroad and I–35, and has storage tanks for gasoline. No storage of LPG will take place at this facility at this time. The industrial park along FM 1472 which will border a portion of the alignment appears to be dedicated to warehousing and transportation, and there are no current plans to incorporate any heavy industrial uses in the area. These factors all lead to a no significant cumulative impacts assessment.

C. Environmental Justice/Socio-Economic Concerns

The environmental justice assessment for this project analyzed the impact of the potential human, health, socioeconomic, and environmental effects of the Dos Laredos pipeline on minority and low-income populations. The population of Webb County is heavily minority, with dense population areas of the county around Laredo containing a higher percentages of minorities. To the extent that minority and low-income populations reside in the vicinity of the pipeline, they risk exposure to the insignificant, temporary and/or minor potential human health and environmental effects that are discussed in detail in the Final Environmental Assessment and summarized above. These include temporary, minor construction related noise and threats to human safety due to fire or accidental product release.

These risks, however, must be weighed against the benefits that would result from the removal of tanker trucks as the primary mode of LPG transportation. The removal of tanker trucks from roads, particularly border crossings, will increase safety at these highly sensitive locations and route LPG away from more populous areas of town while in transit. Emissions of hazardous air pollutants during LPG transfer operations within the Laredo-Nuevo Laredo airshed will be reduced. It is also worth noting that due to the overall makeup of the Laredo metropolitan area, all of the alternatives for consideration, including the "no-action" alternative of tanker truck transport of LPG, will impact primarily low-income and minority populations. There is no evidence to suggest that minority or low-income populations will experience disproportionate adverse impacts as a result of the construction and operation of the Dos Laredos Pipeline. To the contrary, since most of the Dos Laredos Pipeline is situated away from areas where human health and safety could be adversely impacted, while truck transport necessarily takes place in areas where human health and safety are at risk, the pipeline will result in lower risks to the health and safety of minority and low-income populations than the "no-action" alternative.

IV. Prevention and Mitigation Measures

In order to control risks associated with outside force, damage, corrosion and leaks, Valero has undertaken or intends to undertake the prevention and mitigation measures listed below. Valero has or will:

- Bury the pipeline a minimum of 3 feet below grade.
- Place and maintain prominent warning markers at all crossings and property lines along the pipeline.
- Participate in all applicable one-call notification systems and coordinate with the local emergency planning committee.
- Conduct regular ROW drive-overs or over flights in order to identify potential pipeline encroachments and unauthorized activities.
- Ensure that a Valero representative is physically present anytime there is construction activity within the pipeline right of way.
- Participate in on-going public education initiatives stressing pipeline safety and damage prevention.
- Use factory-applied fusion-bonded epoxy coating on all pipes.
- Use field applied coating on all welded joints.
- Conduct biennial surveys to determine effectiveness of corrosion control.
- Use a certified impressed current cathodic protection system.
- Use a heavy wall pipe in lieu of cased crossings.
- Use high resolution internal inspection tools (*i.e.*, pigs) at least every five years
- X-ray all girth welds completely.
- Use pipe manufactured at an ISO 9000-certified mill;
- Hydro test pipe in place to 125% of its maximum allowable operating pressure for 8 hours.
- Require that material specification, design, and construction meet or exceed all applicable standards and codes established by API, ASME, DOT/OPS, and TRC.
- Perform comprehensive construction and installation inspection.
- Provide continuous 24-hour monitoring of the Dos Laredos Pipeline from a dispatch and control center.
- Use computers to identify significant operational deviations, and to set-off appropriate alarms.
- Monitor remotely the pressure at the Rio Grande River.
- Provide on-going training and performance certification of employees responsible for pipeline operations and maintenance, as required by the

Operator Qualification regulation of DOT.

- Maintain a SCADA link via satellite to the Valero control center in San Antonio.
- Establish block valve spacing of less than 7.5 miles through industrial, commercial, or residential areas, as recommended under ASME/ANSI B31.4 standards for transport of LPG.

V. Conclusion: Analysis of the Environmental Assessment Submitted by the Sponsor

On the basis of the Final Environmental Assessment, the Department's independent review of that assessment, information developed during the review of the application and Environmental Assessment, comments received by the Department from Federal and state agencies and the public, and measures that Valero has or is prepared to undertake to mitigate prevent potentially adverse environmental impacts, the Department has concluded that issuance of a Presidential Permit authorizing construction of the proposed Dos Laredos Pipeline would not have a significant impact on the quality of the human environment within the United States. Accordingly, a Finding of No Significant Impact is adopted and an environmental impact statement will not be prepared.

The Final Environmental Assessment addressing this action is on file and may be reviewed by interested parties at the Department of State, 2200 C Street NW., Room 3535, Washington, DC 20520 (Attn: Mr. Pedro Erviti, Tel. 202–647–1291).

Dated: December 19, 2003.

Stephen J. Gallogly,

Director, Office of Energy and Commodity Policy, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 03–32051 Filed 12–29–03; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of public involvement practices. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Discussion of TVA public involvement practices.

(2) Discussion of order public involvement practices.

(3) Public comments on the topic of TVA's public involvement practices.

(4) Regional Council discussion on the topic of TVA's public involvement practices.

(5) Close out of open Council business (advice on TVA's role in recreation from September 2003 meeting).

(6) Regional Council discussion on the future of the Council.

The Regional Council will hear opinions and views of citizens of providing a public comment session. The public comment session will be held from 3 to 4 p.m. EST on Wednesday, January 21, 2004. Citizens who wish to express views and opinions on the topic of TVA's public participation practices may do so during the Public Comment portion of the agenda. Public comments participation is available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak are requested to register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday, January 21, 2004, from 8:30 a.m. to 5 p.m. and on Thursday, January 22, 2004, from 8 a.m. to 3 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the auditorium at the Tennessee Valley Authority headquarters, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: December 19, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 03–31977 Filed 12–29–03; 8:45 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2003 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in September 2003 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the ATPA eligibility criteria. This notice specifies the date of announcement of the results of the preliminary review of those petitions.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–9446, and the facsimile is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended.

In a **Federal Register** notice dated August 14, 2003, USTR initiated the 2003 ATPA Annual Review and announced a deadline of September 15, 2003 for the filing of petitions (68 FR 48657). Several of these petitions requested the review of certain practices in certain beneficiary developing countries regarding compliance with the eligibility criteria set forth in sections 203(c) and (d) and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3203(c) and (d); 19 U.S.C. 3203(b)(6)(B)).

In a **Federal Register** notice dated November 13, 2003, USTR published a list of the responsive petitions filed pursuant to the announcement of the annual review. The Trade Policy Staff Committee (TPSC) is conducting a preliminary review of these petitions. 15 CFR 2016.2(b) provides for announcement of the results of the preliminary review on or about December 1. 15 CFR 2016.2 also provides for modification of the schedule if specified by **Federal Register** notice. This notice specifies that the results of the preliminary review will be announced March 31, 2004. The results of the preliminary review will be published in the **Federal Register** on or about that date.

Bennett M. Harman,

Deputy Assistant United States Trade Representative for Latin America.

[FR Doc. 03–31927 Filed 12–29–03; 8:45 am]

BILLING CODE 3190–W3–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Australia Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed U.S.-Australia Free Trade Agreement (FTA). The interim environmental review is available at *http://www.ustr.gov/environment/environmental.shtml.* Copies of the review will also be sent to interested members of the public by mail upon request.

DATES: Comments on the draft environmental review are requested by January 16, 2004 to inform negotiations. Comments received after January 16, 2004 will be taken into account in the preparation of the review of the final agreement.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13121—*Environmental Review of Trade Agreements* (64 FR 63,169, Nov. 18, 1999) and its implementing guidelines (65 FR 79,442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml.*

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0407@ustr.gov* with the subject line: "Australia Interim Environmental Review." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 03–32076 Filed 12–29–03; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate, Prompt Payment Interest Rate, Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2004 and ending on June 30, 2004, the prompt payment interest rate is 4.000 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Crystal Hanna, Team Leader, Borrowings Accounting Team, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from *http://www.publicdebt.treas.gov.*

DATES: This notice announces the applicable interest rate for the January 1, 2004 to June 30, 2004 period.

FOR FURTHER INFORMATION CONTACT: Stephanie Brown, Manager, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5181; Crystal Hanna, Team Leader, Borrowings Accounting Team, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5139, Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–8692; or Geraldine J. Porco-Hubenko, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (202) 691–3708.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Public Law 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Public Law 95–563, 92 Stat. 2389 and, indirectly, the Prompt Payment Act of 1982, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury for the Renegotiation Board under Public Law 92–41.

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning January 1, 2004 and ending on June 30, 2004, is 4.000 *per centum per annum*. This rate is determined pursuant to the above-mentioned sections for the purpose of said sections.

Dated: December 22, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–31947 Filed 12–29–03; 8:45 am]

BILLING CODE 4810–39–M

Federal Register

Tuesday,
December 30, 2003

Part II

Department of Agriculture

Agricultural Marketing Service

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7 CFR Part 983

Pistachios Grown in California; Secretary's Decision and Referendum Order on Proposed Marketing Agreement and Order No. 983; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AO–F&V–983–2; FV02–983–01]

Pistachios Grown in California; Secretary's Decision and Referendum Order on Proposed Marketing Agreement and Order No. 983

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes the issuance of a marketing agreement and order (order) for pistachios grown in California, and provides growers with the opportunity to vote in a referendum to determine if they favor promulgation of the order. The proposed order would set standards for the quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. An eleven-member committee, consisting of eight producers, two handlers, and one public member, would locally administer the program. The program would be financed by assessments on handlers of pistachios grown in the production area. The program would enhance grower returns through the delivery of higher-quality pistachios to consumers.

DATES: The referendum will be conducted from January 12 to February 9, 2004. The representative period for the purpose of the referendum is September 1, 2002, through August 31, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 19, 2002, and published in the June 26, 2002, issue of the **Federal Register** (67 FR 43045); Recommended Decision and Opportunity to File Written Exceptions issued on July 23, 2003, and published in the August 4, 2003, issue of the **Federal Register** (68 FR 45990).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed marketing agreement and order regulating the handling of pistachios grown in California is based on the record of a public hearing held July 23–25, 2002, in Fresno, California. The hearing was held to receive evidence on the proposed marketing order from producers, handlers, and other interested parties located throughout the proposed production area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Notice of this hearing was published in the **Federal Register** on June 26, 2002.

The proposal was submitted for consideration to the Department by the Proponents Committee (proponents), a group representing the majority of producers and handlers of pistachios in California. The proponents are independent of the California Pistachio Commission and the Western Pistachio Association.

Provisions of this proposal would provide the California pistachio industry with a tool to regulate the quality of pistachios handled in California. This would include preventing pistachios containing aflatoxin above the proposed permitted maximum tolerance level of 15 parts per billion (ppb) from entering the market-place. The proposed order would also preclude defective and small pistachios from being sold. Under the proposed order, testing and certification of pistachios for quality (including aflatoxin) would be mandatory. A mandatory regulatory program would provide the industry with an effective means of ensuring product quality, thereby enhancing customer satisfaction.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on July 23, 2003, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by September 3, 2003. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were due by October 3, 2003.

One exception (and as corrected) was filed during the period provided on behalf of the proponents. The exception expressed general support of the proposed marketing order and requested that several changes be made to the proposed order provisions, including that one proposed definition be revised, one definition be deleted, and several editorial and clarifying changes be made. The specifics of the exception are discussed in the Findings and Conclusions; Discussion of Exceptions section of this document.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders are unique in that they are normally brought through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers that would be regulated under the proposed pistachio order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed pistachio marketing order program on small businesses. The record evidence is that while the program would impose some costs on the regulated parties, those costs would be outweighed by the benefits expected to accrue to the U.S. pistachio industry.

The record indicates that there are approximately 647 pistachio producers, which includes the members of the one existing pistachio producer cooperative. There are 19 handlers who process pistachios in the production area proposed to be regulated.

Statistics prepared by the California Pistachio Commission and submitted as evidence at the hearing show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 producers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers (9%) grow more than 500,000 pounds.

Using an average grower price of $1.10 per pound, 91 percent of the California pistachio producers receive less than $550,000 annually, and 9 percent receive more than $550,000 annually. Thus, at least 91 percent of these producers would meet SBA's definition of a small agricultural producer.

The record shows that 12 California pistachio handlers (63 percent of the total) handle less than 1,000,000 pounds per year; 4 handlers (21%) handle between 1,000,000 and 10,000,000 pounds; and 3 handlers (16%) handle more than 10,000,000 pounds annually. The largest handler processes over 50 percent of industry production.

Using an average handler price of $1.80 per pound, 63 percent of the pistachio handlers would receive annual receipts of less than $1.8 million, 2 percent would receive between $1.8 and $18.0 million, and 16 percent would receive more than $18.0 million. At least 12 of the pistachio handlers (or 63 percent of the total) could be considered small businesses under SBA's definition.

Record evidence concerning pistachio production and handling costs provide an understanding of the California pistachio industry and potential impacts of implementing the proposed order. Farming pistachios is a costly investment with a significant delay in benefits and an unreliable crop yield.

Although increasing yields have led to an increasing overall value of California pistachio production, producers must maintain a level of return per pound harvested that covers the cost of production in order for their pistachio operations to remain economically viable. Witnesses testified that maintaining a high level of quality product in the market would lead to increasing consumer demand and greater stability in producer returns.

Evidence suggests that poor quality pistachios impact the demand, and the potential growth of demand, for pistachios. Characteristics routinely deemed as "poor quality" by customers of the California pistachio industry include small size, and excessive internal and external blemishes. Market studies and customer comments presented by handler witnesses demonstrate that the presence of poor quality pistachios in the marketplace significantly impacts demand in a negative way.

Minimizing the level of aflatoxin in California pistachios is another significant quality factor, as aflatoxin is a known carcinogen. Consumer concerns over aflatoxin can affect their perception of pistachio quality, and therefore negatively impact demand. Moreover, any market disturbances related to aflatoxin in pistachios, regardless of the geographic origin of those pistachios, could have a detrimental effect on the California pistachio industry. A regulatory program limiting the amount of aflatoxin in pistachios could be useful in bolstering consumer confidence in the quality of California pistachios.

Pistachio acreage has been consistently increasing in California, from just over 20,000 bearing acres in 1979 to 78,000 bearing acres in 2001. The number of non-bearing acres (*i.e.* acres less than 7 years old, not yet in full production) has also shown consistent growth in recent years, rising from 13,400 acres in 1995 to 23,500 acres in 2001, a 75 percent increase. Yield per acre has also been steadily rising. Over the 1976–1980 period, average yield per bearing acre measured 1,110 pounds; by 1996–2000, this average had increased to 2,512 pounds.

Higher yields and increasing acreage has resulted in increasing production. According to information submitted by the CPC, production in 2000 totaled 242 million pounds, a 64-percent increase over 1995 production, which totaled 148 million pounds. Moreover, witnesses at the hearing indicated that maturing acreage, absent any additional new plantings, will likely result in a 60-percent increase in California pistachio production over the coming years.

Several witnesses at the hearing testified that, in light of increasing production, future stability of market returns is reliant on continually increasing consumer demand for pistachios. These witnesses stated that strong consumer demand, which is ultimately related to consumer perceptions of product quality, is essential to the continued economic well-being of the California pistachio industry. Moreover, witnesses discussed the importance of implementing a marketing order program that would provide them with a regulatory structure to monitor and assure that minimum quality standards are not compromised as production of California pistachios increases.

The relationship between product quality, consumer demand and producer returns in the pistachio industry was demonstrated at the hearing. Pistachio production is not only costly in terms of initial investment and cultural costs, but it is highly unpredictable in terms of producer returns. Between the initial processes of cleaning, hulling, sorting and drying, a significant portion of the initial volume harvested is reduced. This volume is further reduced as the handling process reaches its final stages of sorting for quality and final preparation for market. Witnesses explained that ultimate pistachio sales are based on approximately 30 percent of the volume initially harvested from the field. Because of this, witnesses stated that the process of extracting the highest quality portion of the harvest, and ensuring consumer satisfaction with that product, is crucial to determining the value of the crop.

Pistachio production is similar to other nut crops in that yield and total production vary substantially from year to year because of the alternate bearing nature of pistachio trees resulting in cyclical high and low production years. Total value and value per acre are generally higher in higher yielding years. Conversely, grower return per pound is generally higher in low yielding years.

Producer returns and total crop value are also dependent on the percentage of harvest that is either "open shell" or "closed shell." Each harvest yields a certain percentage of nuts that have not naturally opened prior to cultivation. These nuts are classified as "closed shell," "shelling stock" or "non-splits," and have a lower market value than those nuts that are naturally split, or "open shell." The proportion of open-shells is a key factor in year-to-year changes in the total value of production.

Economic evidence presented at the hearing, based on data from the National Agricultural Statistics Service (NASS) and the CPC, indicates that trends for total crop value and value per bearing acre have been increasing over the past 20 years. In 1980, the pistachio crop in California was valued at $55.8 million. By 2000, total crop value had increased more than four-fold, reaching $245 million. These gains are attributed to increases in both total pistachio producing acreage and yield per acre. Average value per bearing acre increased from $1,642 per acre in 1980–1984 to $2,665 per acre in 1996–2000.

According to CPC historical price data, price per pound has gradually decreased over the past 20 years, ranging from a high of $2.05 per pound in 1980 to a low of $0.99 per pound in 2001. According to the record, the proposed order would assist in improving producer returns for pistachios. The proposed order would not only assist in fortifying consumer demand by ensuring consumer satisfaction with product quality, but mandatory quality and aflatoxin requirements are also likely to boost domestic prices by culling lower quality pistachios, which tend to have price-depressing effects, from the market.

A University of California Cooperative Extension study presented as part of record evidence estimates total cost of production in 2001 at $2,643 per acre. According to industry data, the average grower return (value per bearing acre) for 1998–2001 was $2,619. This average revenue estimate is just below the Extension study's $2,643 estimate of typical cost. Record evidence indicates that over that 4-year period, the lowest value per bearing acre was $2,137 in 2001 and the highest was $3,207 in 2000.

Witnesses supplied an additional set of cost estimates, which ranged from a low-cost operation of $2,350 per acre to a high of $3,400 per acre. In their testimony, total costs of production were divided into three categories: The costs of orchard establishment, cultural costs and administrative costs. Establishment costs, or the overall cost to develop an acre of pistachios until revenues exceed growing expenses, were estimated at between $10,000 and $15,000, with an average tree maturation period of 7 years. In order to recover these investment costs, the hearing record states that producers generally target an 11% return on investment, estimated at between $1,100 and $1,650 per acre. Annual per acre cultural costs average between $1,100 and $1,600, once the trees are productive. Administrative costs include the cost of farm management and crop financing, and can vary between $150 and $200 per acre. The sum of cultural and administrative costs therefore range from $1,250 to $1,800.

Grower price per pound averaged approximately $1.10 between 1997 and 2001. Given that $1.10 average grower price and the cost estimates above, a producer would need to harvest an average of at least 2,000 pounds per acre to cover total production costs for the low-cost operation ($2,350 per acre). A producer would need to harvest at least 1,136 pounds per acre to cover the cultural and administrative costs of $1,250 per acre (not including a return on investment).

The CPC Annual Report for Crop Year 2001–2002 reveals that 6 out of 26 California counties with pistachio production yielded on average more than 2,000 pounds per acre between 1998 and 2001. These six counties, which together represented over 88 percent of total California pistachio production in 2000, are Colusa, Sutter, Madera, Fresno, Kings and Kern. Glenn, Butte, Placer, Yolo, Contra Costa, San Joaquin, Calaveras, Stanislaus, Merced, Tulare and Santa Barbara counties yield on average between 1,000 to 2,000 pounds per acre and represent roughly 12 percent of total state production. Shasta, Tehama, Yuba, Solano, Sacramento, San Luis Obispo, Los Angeles, San Bernardino and Riverside counties yield on average less than 1,000 pounds per acre and represent less than one percent of California pistachio production.

Given the assumptions made above, approximately 88 percent of the industry is covering total costs of production. Conversely, roughly 12 percent of the industry is currently covering cultural costs but not generating a return on their investment.

Simulation Model

Record evidence includes an economic analysis presented by Dr. Daniel Sumner, University of California-Davis on the potential impacts of the proposed marketing order provisions if the program were implemented. Dr. Sumner presented a cost-benefit analysis based on a simulation model, the purpose of which was to provide a framework for comparing costs of compliance to the benefits of improved quality through implementation of the standards.

Cost Estimates

Dr. Sumner's presentation focused on the regulatory features of the proposed marketing order: (1) Mandatory testing of pistachios for the presence of aflatoxin, with a maximum allowable tolerance of 15 ppb; and (2) mandatory minimum quality standards. The quality standards would specify minimum size and maximum allowable defects.

According to record testimony, the major costs associated with these features are the cost of aflatoxin testing and the cost of USDA presence in the handlers' plant to inspect and sample lots of pistachios. Expected benefits identified by the witnesses would be the increase in consumer confidence in pistachios as a result of aflatoxin regulation, and the combined increases in consumer demand for pistachios due to mandatory USDA regulation and stringent quality standards.

Dr. Sumner's analysis took into account many of the variables presented in testimony by other witnesses describing typical production and processing costs, and presented a weighted average cost computation for marketing order compliance. The average cost of compliance, as identified by several witnesses and reiterated in Dr. Sumner's analysis, is approximately one half cent per pound of domestic pistachio production, or $0.00525 per pound.

Record evidence suggests that the cost of having a USDA inspector in the plant, including mileage plus the standard fee per hour, is approximately $291 per day for the largest plants (which process about 80 percent of total production). Total production for the domestic market that would be processed by the largest plants (those that process over 10 million pounds annually) is estimated at 136 million pounds. If an average lot is 40,000 pounds (the most common lot size for testing cited by the largest handlers), then 3,400 lots would need to be tested to account for all 136 million pounds (166.67 million pounds times 80 percent). If a USDA official were to test 5.5 lots per day, then 618 person-days would be needed to test all of the lots. Multiplying $291 per day times 618 person-days yields an annual cost of $180,000 for testing 136 million pounds. Dividing the $180,000 annual cost by 136 million pounds yields an estimated cost per pound of $0.0013 for having USDA personnel in the plant to sample and certify that the pistachios meet minimum quality standards. Testimony suggests that this cost estimate is on the high side, since many handlers would already have USDA personnel in their plants to perform other grading services besides certification of lots for minimum quality.

The cost of aflatoxin testing in the witnesses' simulation analysis is estimated at the current rate charged by a private laboratory ($75 per test). Given this rate information, the aflatoxin testing cost per pound would be $0.0019 ($75 divided by the average lot size of 40,000 pounds).

For the largest handlers, the combined cost of aflatoxin testing and paying for the USDA presence in the plants would be equal to the sum of the quality and aflatoxin cost figures outlined above ($0.0013 + $0.0019), or $0.0032 per pound. To account for imprecision of data and other incidental costs, Dr. Sumner's analysis employs a median cost per pound for marketing order compliance, which is slightly higher, or $0.005 per pound. The analysis further assumes that per unit costs are somewhat higher for smaller plants. Thus, median costs for two categories of smaller plants are estimated at $0.006 and $0.007.

Weighting these cost figures for the three different size categories of plants yields an overall median estimated cost per pound for compliance of $0.00525. In terms of economic theory, this cost increase is represented by an upward shift in the supply curve of about one-half cent, as measured along the vertical axis in a supply-demand graph. The total direct cost of compliance is estimated at $875,000 in the median scenario ($0.00525 times 166.67 million pounds in the domestic market).

Benefit Estimates

The witness's economic analysis takes into account three separate demand benefits, which he considers distinct. The first, and largest, of the demand benefits is higher expected long run average demand due to the reduced chance of an aflatoxin event that would cause a major negative shock to demand. The mandatory aflatoxin testing under the marketing order would reduce the chance of a demand-decreasing market disturbance in the U.S.

Witnesses cited a 1996 pistachio aflatoxin case which occurred in Germany as an example of what could befall the U.S. pistachio industry if aflatoxin were not properly regulated. Widespread negative publicity about aflatoxin in foreign pistachios exported to Germany caused sales revenue to decline by 50 percent for a duration of three years or more. Witnesses estimate that a similar event in the United States could cost the industry over $300 million in gross revenue. Witnesses also pointed out that there were significant additional repercussions on pistachio sales worldwide as word of the German aflatoxin incident spread through the media of other nations, especially in Europe, affecting pistachio sales in those countries.

The witness's analysis assumes that an aflatoxin related market disturbance would cause a more moderate decrease, represented in the median simulation case as a 10 percent decline (18 cents) from the $1.80 per pound typical base price at the handler level.

By requiring aflatoxin testing for all pistachios destined for the domestic market, the marketing order would make the probability of an aflatoxin event less likely. As a starting point, witnesses argued that without mandatory aflatoxin testing through the proposed marketing order, there is a 5-percent annual probability of an aflatoxin related market disturbance. If such an incident were to occur, witnesses estimated that its impact would last for 3 years. Implementation of mandatory testing is then assumed to reduce the probability to 1 percent, a decline of 4 percentage points.

Mandatory testing under the marketing order therefore increases expected demand, or willingness to pay for pistachios, by $0.0216 per pound (4 per cent decline in probability times 18 cents times 3 years).

The witness's analysis includes two additional demand-side benefits. The witness asserts that USDA requirements convey a positive benefit in the market as reflected by the use of this claim in product promotion, labels, and displays. A median increase of $0.0025 in willingness to pay reflects a reasonably conservative estimate of the higher buyer confidence in pistachios due solely to USDA participation in the pistachio quality testing and certification process. The certification gives additional confidence in the quality of the product.

The third demand benefit is higher buyer perception of quality due to minimum standards. Witnesses assume a similarly small magnitude for this estimated increase in willingness to pay ($0.003 per pound).

Summing the median parameters for each of these three demand impacts, the increase in willingness to pay for pistachios supplied to the domestic market is a little under 3 cents per pound ($0.0271). In terms of economic theory, this figure represents an upward shift in the demand curve of nearly 3 cents, as measured along the vertical axis in a supply-demand graph. Most of the impact is from the first benefit, the reduced probability of aflatoxin being found in California pistachios.

Thus the median benefit in terms of increased per unit demand (willingness to pay) is estimated to be substantially larger than the estimated median per unit direct cost of marketing order compliance ($0.0271 versus $0.00525). Expected or average demand is higher, reflecting the lower probability of an aflatoxin event and the average quality and certification effects in the domestic market. Handlers would face higher costs to comply with the proposed requirements.

Simulation Results

These figures for increased cost and increased willingness to pay were combined with different demand and supply elasticities in the simulation model developed by Dr. Sumner to assess the net economic impact of marketing order implementation. The median elasticities used were unitary (−1.0 for demand and 1.0 for supply). The supply response that is modeled is a long run supply response (additional planting) due to the permanent change in market conditions resulting from the marketing order. These assumed elasticities are based on other prior econometric estimates for pistachios and other tree nuts. Witnesses cited a 1999 report by Lucinda Lewis of Competition Economics, Inc., "Charting a Direction for the U.S. Pistachio Industry," which found a −1.14 demand elasticity for pistachios. According to the record testimony, the range of elasticities used in the simulation scenarios are consistent with published economic studies of supply and demand for pistachios and other tree nuts.

The simulation model solves a system of supply and demand equations for a new set of industry prices and quantities from marketing order implementation. As stated above, the total direct cost of compliance is $875,000. In the simulation, there is an upward shift in the market supply curve, representing increased costs to firms in the pistachio market. The magnitude of the price and quantity change from the shift in the supply curve is determined by the higher cost of production (compliance cost) and the elasticity of supply. The resulting computed (simulated) loss to the handler segment of the industry from higher expenses for marketing order compliance is $490,000.

This $490,000 differs from the previously stated $875,000 cost of compliance figure by the amount of an implied price increase and the small equalization effect on the smaller handlers that process 20 percent of the product.

The witness's analysis assumes that with minimum quality requirements the relative position of the smaller firms would improve to match those of other handlers. This is because prior to the new mandatory requirements, these firms are assumed to have fewer quality controls than most other firms, and thus end up selling nuts to the part of the market that buys lower quality nuts at lower prices. The equalization effect resulting from uniform minimum quality specifications is a small positive benefit that offsets some of the cost of compliance for the smaller firms.

On the demand side, the higher willingness to pay is $0.0216 per pound for the reduced probability of aflatoxin in California pistachios, and $0.0055 for the two additional demand-side benefits (higher buyer confidence from USDA certification and higher buyer perception of quality). The magnitude of the price and quantity change from the shift in the demand curve is determined by the higher willingness to pay and the elasticity of demand.

In the median simulation, the amount sold in the domestic market rises by 1.6 million pounds. The benefit to industry participants is the total value of this increase in domestic sales which is the 1.6 million pound increase in quantity sold multiplied by the higher expected price level resulting from the shifting of the supply and demand curves in the simulation of marketing order impacts.

Using the median supply and demand elasticities in the simulation model, and the median compliance cost and willingness to pay figures, the computed benefit to the handler portion of the market from the reduced chance of an aflatoxin market disturbance is $1.545 million dollars. The value of the two additional demand-side benefits is $.392 million dollars. The total benefit to handlers is thus $1.938 million dollars.

When the loss due to compliance-related expenses ($490,000) is factored in, the resulting net benefit to pistachio handlers from the marketing order is $1.448 million dollars. This $1.448 million dollar estimate of net benefit to handlers is the key result from the witness's cost-benefit analysis.

In economic theory terminology, this part of the simulation is measuring the change in producer surplus. Viewed in terms of a supply-demand graph, producer surplus is the area below the price and above the supply curve. The $1.448 million dollar estimate of net benefit is a measure of the difference between producer surplus at the initial equilibrium (*e.g.* $1.80 average price at the handler level, or $1.10 at the grower level) and the new higher price and quantity after the supply and demand curves have been shifted to represent the median changes in cost (supply) and willingness to pay (demand).

TABLE 1.—SIMULATION OF PISTACHIO MARKETING ORDER IMPACTS ON PRODUCERS/HANDLERS

[Annual net costs and benefits with median parameter values]

Benefit 1: Reduced chance of aflatoxin event	$1,545,000
Benefit 2: USDA certification	178,000
Benefit 3: Improved quality perception	214,000
Total benefit	1,938,000
Impact of cost of compliance	−490,000
Net Total	1,448,000

It should be noted that although the witness asserts that Benefit 2 and Benefit 3 are conceptually distinct, one could argue that there is significant overlap between the value of USDA certification and improved quality perception on the part of pistachio buyers and consumers. However, the assumed benefits are small in both cases, and if either of the benefit figures is eliminated, net estimated benefits to handlers still exceed one million dollars.

Cost-benefit studies which use economic welfare analysis also typically include consumer impacts, and the witness's economic analysis includes a parallel set of computations for the buyer/consumer segment of the pistachio industry. The largest demand-side benefit, the reduced chance of an aflatoxin event, is estimated at $2.586 million. The combined value of the two additional demand-side benefits is $.655 million, yielding a total benefit estimate of $3.241 million. Subtracting the estimated impact on buyers/consumers of introducing added costs of marketing order compliance ($245,000) yields a buyer/consumer net benefit estimate of $2.996 million. A key aspect of this economic analysis is that consumer willingness to pay for pistachios rises as consumer confidence improves from the higher quality standards imposed by the order. With the demand and supply elasticities used in the analysis, the benefits to the domestic buyers/consumers in this simulation are larger than benefits to the handler side of the market.

In economic theory terminology, this part of the simulation is measuring the change in consumer surplus. Viewed in terms of a supply-demand graph, consumer surplus is the area above the price and below the demand curve. The $2.996 million dollar estimate of net benefit is a measure of the difference between consumer surplus at the initial equilibrium and the new price and quantity after the supply and demand curves have been shifted to represent the median changes in cost (supply) and willingness to pay (demand).

Summing the producer/handler and buyer/consumer net benefits ($2.996 + $1.448) yields a $4.444 million median estimated value of the marketing order to the economy.

Estimated Impacts on Small Producers

The proposed marketing order would not impose any direct compliance costs on producers. The direct impact is on the handlers who would be required to pay for testing and inspection. Producers would be affected to the extent that they may have to discard more low quality nuts than previously, if they produce quantities of nuts below the proposed size and quality standard. Witnesses stated there is no evidence that the proportion of low quality nuts is correlated with farm size.

Additionally, the record shows that handler costs of compliance are typically reflected in handler payments to producers. Witnesses stated that the anticipated benefit derived from increased consumer demand would offset the cost of compliance to producers.

Witnesses stated that most producers sell to large handlers (which handle 80 percent of production). Distinguishing among handlers by size does not indicate different economic impacts on individual farms, which are distributed broadly across handlers.

Witnesses also pointed out that there is substantial inter-handler competition in the pistachio industry, with at least 10 handlers out of 19 competing for producers' pistachios (with the remainder presumably processing for their own account). Given the distribution of producers across processing firms and the level of competition, the overall cost-benefit results may be taken as the impact on the full size range of producers.

Based on a farm price of $1.10 and a handler price of $1.80, producers receive about 60 percent of the revenue in the industry, and are likely (given certain supply elasticities) to receive more than 60 percent of the estimated handler net benefits. Producer total gain (out of the estimated $1.448 million in net benefits to the handler segment) is thus at least $870,000 per year ($1.448 million times 0.60). This is distributed across producers in proportion to output, with no differential impact on smaller or larger producers.

Based on the hearing record, AMS therefore concludes that pistachio producers would benefit from implementation of the proposed order. Further, there is no evidence of differing economic impacts between small and large producers.

Estimated Impact on Small Handlers

Most compliance costs are uniform across handlers, but some differences could be correlated with the size of a handler's operation. Two relevant points are the number of lots ready to be tested per day and the lot size to be tested. Larger firms, which are more likely to have larger lot sizes for testing and to have more lots ready per day (up to about 5), may experience some savings relative to firms with smaller lot sizes and fewer lots to be tested at one time.

The proposed marketing order includes provisions to reduce compliance costs for small handlers. Firms that handle less than 1,000,000 pounds per year would be subject to simplified aflatoxin testing procedures. Additionally, they would be exempt from testing for remaining minimum quality requirements. This should reduce the expenses for smaller handlers.

Some other handlers, which process substantially more, may face somewhat higher costs for at least part of their production. Those handlers are likely, however, to have more than $5 million in total revenue, and would thus not be classified as small business entities.

Table 2 shows that the compliance costs and net economic impacts for different sizes of handlers. A positive net economic impact would exist for all handler groups.

TABLE 2.—DISTRIBUTION OF ECONOMIC EFFECTS ACROSS HANDLERS OF DIFFERENT SIZES

[Pistachio marketing order simulation results with median parameter values]

Handler group*	Direct compliance cost	Net economic impact
Higher Volume/Lower Compliance Costs	$ −667,000	$1,178,000
Medium Volume/Compliance Costs	−150,000	208,000
Lower Volume/Higher Compliance Costs	−58,000	61,000
Total	−875,000	1,447,000

*80%, 15%, and 5%, respectively, of total quantity of pistachios marketed annually.

The above table shows that the net economic impact is in direct proportion to the volume of pistachios handled by each handler group. For example, the largest handler group, accounting for 80 percent of the pistachios marketed, would reap about 81 percent of the benefits of the program. AMS therefore concludes that the program would not have a disproportionate impact on small entities.

The cost and benefit estimates presented above focus on a single set of results using median parameter values. The witness's economic analysis involved simulating a number of scenarios, using alternative values for compliance costs, benefits, and elasticities of supply and demand. All scenarios, even the low benefit, high cost scenarios, indicated positive net economic impacts.

The witness's analysis concludes that the proposed marketing order would require minimal adjustments in current processing activities and would yield large estimated benefits. The simulation results indicate that costs of compliance are small relative to benefits for all firms, and that both small and large entities are likely to benefit significantly. Producers are likely to share net producer benefits in proportion to production. Large and small handlers both gain from the marketing order, also in proportion to the volumes handled. Some of the smallest handlers could have larger net benefits per unit because of the provision allowing special lower-cost testing arrangements.

The witness's net benefit analysis represents a reasonable, plausible set of estimates of the economic impact of mandatory aflatoxin testing and minimum quality standards through promulgation of a Federal marketing order. The median cost and benefit figures explained during the hearing are considered to adequately represent estimates of the economic impact of implementation of the proposed program and its regulatory provisions.

The proposed order would impose some reporting and recordkeeping requirements on handlers. However, handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under the peanut aflatoxin certification program (7 CFR part 996) impose an average annual burden on each regulated handler and importer of about 8 hours. It is reasonable to expect that a similar burden may be imposed under this proposed marketing order on the estimated 19 handlers of pistachios in California.

The record evidence also indicates that the benefits to small as well as large handlers are likely to be greater than would accrue under the alternatives to the order proposed herein, namely no marketing order, or an order without the proposed combination of quality, size and aflatoxin regulation.

In determining that the proposed order and its provisions would not have a disproportionate economic on a substantial number of small entities, all of the issues discussed above were considered. Based on hearing record evidence and USDA's analysis of the economic information provided, the proposed order provisions have been carefully reviewed to ensure that every effort has been made to eliminate any unnecessary costs or requirements.

Although the proposed order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for California pistachios. Therefore, any additional costs would be offset by the benefits derived from expanded sales benefiting handlers and producers alike. Accordingly, it is determined that the proposed order would not have a disproportionate economic impact on a substantial number of small handlers or producers.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the ballot material that will be used in conducting the referendum has been submitted to and approved by OMB. The forms to be used for nomination and selection of the initial administrative committee have also been reviewed and approved by OMB.

Any additional information collection and recordkeeping requirements that may be imposed under the order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB approval.

Civil Justice Reform

The marketing agreement and order proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Findings and Conclusions; Discussion of Exceptions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the August 4, 2003, issue of the **Federal Register** (68 FR 45990) are hereby approved and adopted subject to the following additions and modifications.

Material Issue Number 5(a)—Other Definitions

Based upon the exception filed, the findings and conclusions under material issue number 5(a) of the Recommended Decision (pertaining to the definition of "assessed weight") are revised by adding the following seven paragraphs after the fourteenth paragraph of that section:

In its exception, the proponents asked that the definition of "assessed weight" be revised to include a reference to § 983.39(b)(4) and (5), the sections that pertain to the maximum level of defects allowable in certified pistachios.

Proponents commented that the Recommended Decision definition of "assessed weight" differs from that which was published in the Notice of Hearing as the words "edible inshell" were removed in the former. Proponents agreed with the change. However, proponents commented that the elimination of those words makes the definition unclear as to what standards are to be used in determining "assessed weight." The proponents recommend that this uncertainty be eliminated by incorporating into the definition a reference to § 983.39(b)(4) and (5).

By referring to § 983.39 (b)(4) and (5) in the definition of "assessed weight," the applicable maximum defects allowed by that section are incorporated into "assessed weight." This reference makes clear that the "assessed weight" is determined after the test for defects is completed. This would also make this definition consistent with the determination of the weight of pistachios presently used by handlers to calculate their payments to producers. In § 983.53, the "* * *assessed weight of pistachios received by the handler" in each year would be used to determine each handler's pro-rata share of the expenses authorized by the Department for the operation of the proposed order.

The proponents' exception has merit, and § 983.6 of the proposed order has been revised accordingly.

Based upon the exception filed, the findings and conclusions under material issue number 5(a) of the Recommended Decision (pertaining to the definition of "districts") are revised by adding the following four paragraphs after the twenty-fourth paragraph of that section:

In its exception, proponents commented that the committee should be required to obtain a vote of at least seven concurring members in order to recommend any future changes in district boundaries, and that such requirement should be included in the definition of "districts". Proponents noted that this requirement was part of the process by which the industry reached a consensus on the proposed marketing order program.

Section 983.34 of the proposed order sets forth voting requirements for committee actions. That section provides that any recommendation for a change in the establishment of the committee (which would include revisions in district boundaries) would require at least seven concurring votes. It is not necessary to repeat this requirement under the definition of "districts."

The proponents' exception also stated that at least seven concurring votes should be required only if the recommended change is not based on an action of the California Pistachio Commission (CPC) to change district boundaries. If the change were based on a CPC action, only a simple majority vote would be required.

While the CPC's definition of districts could be considered by the committee in drawing up marketing order districts, any recommendation to change marketing order districts would be evaluated by USDA on its own merits. Thus, the same committee voting requirements would be appropriate for any recommendation to change district boundaries. Further, there was no testimony at the hearing in support of the lower voting threshold for some recommendations to change district boundaries. For these reasons, the proponents' exception relative to the definition of the term "districts" is denied.

Based upon the exception filed, the findings and conclusions under material issue number 5(a) of the Recommended Decision (pertaining to the definition of "edible pistachios") are revised by adding the following paragraph after the twenty-sixth paragraph of that section:

The proponents' exception recommended that the definition of "edible pistachios" in proposed § 983.13 be deleted. As previously discussed, the term "edible pistachios" has been deleted from § 983.6 and is not used elsewhere in the proposed order. Thus, this definition is not needed and should be deleted. This modification has been made.

Material Issue Number 5(d)—Quality and Inspection Requirements

Based upon the exception filed, the findings and conclusions under material issue number 5(d) of the Recommended Decision (pertaining to the aflatoxin requirements) are revised by adding the following four paragraphs at the end of the section entitled "Proposed Aflatoxin Provisions."

In its exception, the proponents suggested that § 983.38(b) be amended to specify that any recommendation by the committee for a change in the maximum allowable aflatoxin level would require a vote of at least seven concurring committee members.

Section 983.46 of the proposed order sets forth voting requirements for committee actions. That section states that any changes in the aflatoxin requirements require a vote of at least seven committee members. It is not necessary to repeat the voting requirement in § 983.38(b).

The proponents also took exception to the requirement (in § 983.46) that any change in the aflatoxin provisions of the proposed order must be because of "changed conditions".

While we agree that the language, "by reason of changed conditions" in § 983.46 is not necessary, we do note, as stated in a previous paragraph, that § 983.38(b) provides authority for changing the allowable level of aflatoxin in the event industry conditions change or research shows that a change in the aflatoxin level would be appropriate. Accordingly, § 983.46(a) is modified by deleting the words "by reason of changed conditions."

Based upon the exception filed, the findings and conclusions under material issue number 5(d) of the Recommended

Decision are revised by adding the following two paragraphs at the end of the section entitled "Aflatoxin Testing Procedures."

In its exception, the proponents requested two editorial changes in proposed § 983.38: one in paragraph (d)(3) and another in paragraph (d)(4). In paragraph (d)(3), the word "and" between the terms "High Pressure Liquid Chromatograph (HPLC)" and "Vicam Method (Aflatest)" should be replaced with a comma. Proponents state that these are two separate tests and should not be run together to appear as though it is one test, or that both are required. This change has been incorporated into the language of the proposed order.

In paragraph (d)(4) of § 983.38, the word "accreditation" should be changed to "accredited." The next to the last sentence should therefore begin, "The accredited laboratory shall * * *" This recommendation is consistent with the definition of "accredited laboratory" in § 983.1 and has been incorporated into the language of the proposed order.

Based upon the exception filed, the findings and conclusions under material issue number 5(d) of the Recommended Decision (pertaining to the minimum quality requirements) are revised by adding the following paragraph after the eighth paragraph of the section entitled "Proposed Minimum Quality Levels."

The proponents' exception requested that the definition of the term "loose kernels" in § 983.39(b)(1) be revised by eliminating the word "edible." As previously discussed, a definition of the term "edible" has been deleted from the proposed order as unnecessary. Thus, this change is needed as a conforming change and is being incorporated in the definitions section of the order.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Regulating the Handling of Pistachios Grown in California." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400) to determine whether the issuance of the annexed order regulating the handling of pistachios grown in California is approved or favored by growers, as defined under the terms of the order, who, during the representative period were engaged in the production of pistachios in the proposed production area.

The representative period for the conduct of such referendum is hereby determined to be September 1, 2002 through August 31, 2003.

The agents of the Secretary to conduct such referendum are hereby designated to be Kurt Kimmel, Regional Manager, California Marketing Field Office, and Rose Aguayo, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California, 93721; telephone (559) 487-5901.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

Dated: December 11, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

Order Regulating the Handling of Pistachios Grown in California [1]

Findings and Determinations

Pursuant to the provisions of the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of pistachios grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The proposed marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate the handling of pistachios in California in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The proposed marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The proposed marketing agreement and order prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pistachios grown in the production area; and

(5) All handling of pistachios grown in California as defined in the proposed marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative To Handling

It is therefore ordered, That on and after the effective date hereof, all handling of pistachios grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on July 23, 2003, and published in the **Federal Register** on August 4, 2003 (68 FR 45990), as revised herein, shall be and are the terms and provisions of this agreement and order and are set forth in full herein. Sections 983.90 through 983.92 apply only to the proposed marketing agreement and not the proposed order.

Title 7, chapter IX is proposed to be amended by adding part 983 to read as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

Definitions

Sec.

983.1 Accredited laboratory.

983.2 Act.

983.3 Affiliation.

983.4 Aflatoxin.

983.5 Aflatoxin inspection certificate.

983.6 Assessed weight.

983.7 Certified pistachios.

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

983.8 Committee.
983.9 Confidential data or information.
983.10 Department or USDA.
983.11 Districts.
983.12 Domestic shipments.
983.14 Handle.
983.15 Handler.
983.16 Inshell pistachios.
983.17 Inspector.
983.18 Lot.
983.19 Minimum quality requirements.
983.20 Minimum quality certificate.
983.21 Part and subpart.
983.22 Person.
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983.24 Processing.
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983.69 Effect of termination or amendment.
983.70 Exemption.
983.71 Relationship with the California Pistachio Commission.
*983.90 Counterparts.
*983.91 Additional parties.
*983.92 Order with marketing agreement.

Authority: 7 U.S.C. 601–674.

*Sections identified with an asterisk (*) apply only to the proposed marketing agreement.

Definitions

§ 983.1 Accredited laboratory.

An *accredited laboratory* is a laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin.

§ 983.2 Act.

Act means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Order Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 983.3 Affiliation.

Affiliation. This term normally appears as "affiliate of", or "affiliated with", and means a person such as a producer or handler who is: A producer or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the producer or handler specified; or a producer or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified producer or handler with one or more other producers or handlers. As used in this part, the term "control" (including the terms "controlling", "controlled by", and "under the common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a producer, whether through voting securities, membership in a cooperative, by contract or otherwise.

§ 983.4 Aflatoxin.

Aflatoxin is one of a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus.* Aflatoxins are naturally occurring compounds produced by molds, which can be spread in improperly processed and stored nuts, dried fruits and grains.

§ 983.5 Aflatoxin inspection certificate.

Aflatoxin inspection certificate is a certificate issued by an accredited laboratory or by a USDA laboratory.

§ 983.6 Assessed weight.

Assessed weight means pounds of inshell pistachios, free of internal defects as defined in § 983.39(b)(4) and (5), with the weight computed at 5 percent moisture, received for processing by a handler within each production year: *Provided,* That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; or based on such other elements as may be recommended by the committee and approved by the Secretary.

§ 983.7 Certified pistachios.

Certified pistachios are those for which aflatoxin inspection and minimum quality certificates have been issued.

§ 983.8 Committee.

Committee means the administrative committee for pistachios established pursuant to § 983.32.

§ 983.9 Confidential data or information.

Confidential data or information submitted to the committee consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

§ 983.10 Department or USDA.

Department or USDA means the United States Department of Agriculture.

§ 983.11 Districts.

(a) *Districts* shall consist of the following:

(1) *District 1* consists of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties of California.

(2) *District 2* consists of Kings, Fresno, Madera, and Merced Counties of California.

(3) *District 3* consists of all counties in California where pistachios are produced that are not included in Districts 1 and 2.

(b) With the approval of the Secretary, the boundaries of any district may be changed by the committee to ensure proper representation. The boundaries need not coincide with county lines. In addition, the boundaries in the production area may be adjusted to conform to changes to the boundaries of the districts established for those of the California Pistachio Commission upon the recommendation of the committee and approval of the Secretary.

§ 983.12 Domestic shipments.

Domestic shipments means shipments to the fifty states of the United States or to territories of the United States and the District of Columbia.

§ 983.14 Handle.

Handle means to engage in:

(a) Receiving pistachios;

(b) Hulling and drying pistachios;

(c) Further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in the current of interstate or foreign commerce; and/or

(d) Placing pistachios into the current of commerce from within the production area to points outside thereof: *Provided*, however, that transportation within the production area between handlers and from the orchard to the processing facility is not handling

§ 983.15 Handler.

Handler means any person who handles pistachios.

§ 983.16 Inshell pistachios.

Inshell pistachios means pistachios that have a shell that has not been removed.

§ 983.17 Inspector.

Inspector means any inspector authorized by the USDA to inspect pistachios.

§ 983.18 Lot.

Lot means any quantity of pistachios that is submitted for testing purposes under this part.

§ 983.19 Minimum quality requirements.

Minimum quality requirements are permissible maximum defects and minimum size levels for inshell pistachios and kernels specified in § 983.39.

§ 983.20 Minimum quality certificate.

Minimum quality certificate is a certificate issued by the USDA or Federal/State Inspection Service.

§ 983.21 Part and subpart.

Part means the order regulating the handling of pistachios grown in the State of California, and all rules, regulations and supplementary orders issued there under. The aforesaid order regulating the handling of pistachios grown in California shall be a subpart of such part.

§ 983.22 Person.

Person means an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit.

§ 983.23 Pistachios.

Pistachios means the nuts of the pistachio tree of the genus *Pistacia vera* grown in the production area whether inshell or shelled.

§ 983.24 Processing.

Processing means hulling and drying pistachios in preparation for market.

§ 983.25 Producer.

Producer means any person engaged within the production area in a proprietary capacity in the production of pistachios for sale.

§ 983.26 Production area.

Production area means the State of California.

§ 983.27 Production year.

Production year is synonymous with "fiscal period" and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the committee and approved by the Secretary. Pistachios harvested and received in August of any year shall be applied to the subsequent production year for marketing order purposes.

§ 983.28 Proprietary capacity.

Proprietary capacity means the capacity or interest of a producer or handler that, either directly or through one or more intermediaries, is a property owner together with all the appurtenant rights of an owner including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

§ 983.29 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his/her stead.

§ 983.30 Shelled pistachios.

Shelled pistachios means pistachio kernels, or portions of kernels, after the pistachio shells have been removed.

§ 983.31 Substandard pistachios.

Substandard pistachios means pistachios, inshell or shelled, which do not comply with the maximum aflatoxin and/or minimum quality regulations of this part.

Administrative Committee

§ 983.32 Establishment and membership.

There is hereby established an administrative committee for pistachios to administer the terms and provisions of this part. This committee, consisting of eleven (11) member positions, each of whom shall have an alternate, shall be allocated as follows:

(a) *Handlers.* Two of the members shall represent handlers, as follows:

(1) One handler member nominated by one vote for each handler; and

(2) One handler member nominated by voting based on each handler casting one vote for each ton (or portion thereof) of the assessed weight of pistachios processed by such handler during the two production years preceding the production year in which the nominations are made.

(b) *Producers.* Eight members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2 and one producer from District 3. The Secretary, upon recommendation of the committee, may reapportion producer membership among the districts to ensure proper representation.

(c) *Public member.* One member shall be a public member who is neither a producer nor a handler and shall have all the powers, rights and privileges of any other member of the committee. The public member and alternate public member shall be nominated by the committee and selected by the Secretary.

§ 983.33 Initial members and nomination of successor members.

Nomination of committee members and alternates shall follow the procedure set forth in this section or as may be changed as recommended by the committee and approved by the Secretary.

(a) Initial members. Nominations for initial grower and handler members shall be conducted by the Secretary by either holding meetings of handlers and producers, or by mail.

(b) Successor members. Subsequent to the first nomination of committee members under this part, persons to be nominated to serve on the committee as producer or handler members shall be selected pursuant to nomination procedures that shall be established by the committee with the approval of the Secretary: *Provided*, That:

(1) Any qualified individuals who seek nomination as a producer member shall submit to the committee an intent to seek office in one designated district on such form and with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all

producers who are on record with the committee within the respective districts; the person(s) receiving the highest number of votes shall be the member nominee(s) for that district, and the person(s) receiving the second highest number of votes shall be the alternate member nominee(s). In case of a tie vote, the nominee shall be selected by a drawing.

(2) Any qualified individuals who seek nomination as a handler member shall submit to the committee an intent to seek office with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all handlers who are on record with the committee. For the first handler member seat, the person receiving the highest number of votes shall be the handler member nominee for that seat, and the person receiving the second highest number of votes shall be the alternate member nominee. For the second handler member seat, the person receiving the highest number of votes representing handler volume shall be the handler member nominee for that seat, and the person receiving the second highest number of votes representing handler volume shall be the alternate member nominee. In case of a tie vote, the nominee shall be selected by a drawing.

(c) Handlers. Only handlers, including duly authorized officers or employees of handlers, may participate in the nomination of the two handler member nominees and their alternates. Nomination of the two handler members and their alternates shall be as follows:

(1) For one handler member nomination, each handler entity shall be entitled to one vote;

(2) For the second handler member nomination, each handler entity shall be entitled to cast one vote respectively for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which the nominations are made. For the purposes of nominating handler members and alternates by volume, the assessed weight of pistachios shall be credited to the handler responsible under the order for the payment of assessments of those pistachios. The committee with the approval of the Secretary, may revise the handler representation on the committee if the committee ceases to be representative of the industry.

(d) Producers. Only producers, including duly authorized officers or employees of producers, may participate in the nomination of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote, whether directly or through an authorized officer or employee, for each position to be filled in the district in which the producer produces pistachios. If a producer is engaged in producing pistachios in more than one district, such producer shall select the district in which to participate in the nomination. If a person is both a producer and a handler of pistachios, such person may participate in both producer and handler nominations, provided, however, that a single member may not hold concurrent seats as both a producer and handler.

(e) Member's affiliation. Not more than two members and not more than two alternate members shall be persons employed by or affiliated with producers or handlers that are affiliated with the same handler and/or producer. Additionally, only one member and one alternate in any one district representing producers and only one member and one alternate representing handlers shall be employed by, or affiliated with the same handler and/or producer. No handler, and all of its affiliated handlers, can be represented by more than one handler member.

(f) Cooperative affiliation. In the case of a producer cooperative, a producer shall not be deemed to be connected in a proprietary capacity with the cooperative notwithstanding any outstanding retains, contributions or financial indebtedness owed by the cooperative to a producer if the producer has not marketed pistachios through the cooperative during the current and one preceding production year. A cooperative that has as its members one or more other cooperatives that are handlers shall not be considered as a handler for the purpose of nominating or voting under this part.

(g) Alternate members. Each member of the committee shall have an alternate member to be nominated in the same manner as the member. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. An alternate member, in the absence of the member for whom that alternate is selected shall serve in place of that member on the committee, and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on the committee. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the committee until a successor member is selected and has been qualified.

(h) Selection by Secretary. Nominations under paragraph (g) of this section received by the committee for all handler and producer members and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the committee to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the ten producer and handler members of the committee and an alternate for each member.

(i) Acceptance. Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

(j) Failure to nominate. If nominations are not made within the time and manner specified in this part, the Secretary may, without regard to nominations, select the committee members and alternates qualified to serve on the basis of the representation provided for in § 983.32.

(k) Term of office. Selected members and alternate members of the committee shall serve for terms of two years: *Provided,* That four of the initially selected producer members and one handler member and their alternates shall, by a drawing, be seated for terms of one year so that approximately half of the memberships' terms expire each year. Each member and alternate member shall continue to serve until a successor is selected and has qualified. The term of office shall begin on July 1st of each year. Committee members and alternates may serve up to four consecutive, two-year terms of office. In no event shall any member or alternate serve more than eight consecutive years on the committee. For purposes of determining when a member or alternate has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(l) Qualifications. (1) Each producer member and alternate shall be, at the time of selection and during the term of office, a producer or an officer, or employee, of a producer in the district for which nominated.

(2) Each handler member and alternate shall be, at the time of selection and during the term of office,

a handler or an officer or employee of a handler.

(3) Any member or alternate member who at the time of selection was employed by or affiliated with the person who is nominated, that member shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(4) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pistachio growing or handling operation.

(m) *Vacancy.* Any vacancy on the committee occurring by the failure of any person selected to the committee to qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the committee for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the committee shall be certified in writing to the Secretary. The Secretary shall notify the committee if the Secretary determines that any such person is not qualified.

(n) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.32, 983.33 and 983.34.

§ 983.34 Procedure.

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the committee: *Provided,* That actions of the committee with respect to the following issues shall require at least seven concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

(1) Minimum quality levels;
(2) Aflatoxin levels;
(3) Inspection programs;
(4) The establishment of the committee.

(b) *Voting.* Members of the committee may participate in a meeting by attendance in person or through the use of a conference telephone or similar communication equipment, as long as all members participating in such a meeting can communicate with one another. An action required or permitted to be taken by the committee may be taken without a meeting, if all members of the committee shall consent in writing to that action.

(c) *Compensation.* The members of the committee and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided,* That the committee may request the attendance of one or more alternates not acting as members at any meeting of the committee, and such alternates may be allowed their necessary expenses; and, *Provided further,* That the public member and the alternate for the public member may be paid reasonable compensation in addition to necessary expenses.

§ 983.35 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt bylaws, rules and regulations to effectuate the terms and provisions of this part with the approval of the Secretary;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 983.36 Duties.

The committee shall have, among others, the following duties:

(a) To adopt bylaws and rules for the conduct of its meetings and the selection of such officers from among its membership, including a chairperson and vice-chairperson, as may be necessary, and define the duties of such officers; and adopt such other bylaws, regulations and rules as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(b) To employ or contract with such persons or agents as the committee deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such subcommittees as may be necessary;

(d) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rate of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and handlers for examination at the office of the committee;

(g) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The committee shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual or handler information that may be contained in them, available for examination at the offices of the committee;

(h) To act as intermediary between the Secretary and any producer or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios;

(j) To apprise the Secretary of all committee meetings in a timely manner;

(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To provide, through communication to producers and handlers, information regarding the activities of the committee and to respond to industry inquiries about committee activities;

(n) To oversee the collection of assessments levied under this part;

(o) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part.

Marketing Policy

§ 983.37 Marketing policy.

Prior to August 1st each year, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed crop conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting, processing and storage conditions of that crop. The committee may also give consideration to current prices being received and the probable general level of prices to be received for pistachios by producers and handlers. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

Regulations

§ 983.38 Aflatoxin levels.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of more than 15 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in Failed lots/rework procedure of this part.

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds on the basis of such recommendation or other information that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot and divided between those pistachios for aflatoxin testing and those for minimum quality testing ("lot samples") in sufficient weight to comply with Table 1, Table 2 and Table 4 of this part.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of Tables 1 and 2 of this paragraph (d)(2)("test samples"). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the number of samplings required are shown in the following Table 1. The gross weight of the kernel lot sample for aflatoxin testing and the number of incremental samples required is shown in the following Table 2 of this paragraph.

TABLE 1.—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	3.0	1.0
221–440	15	4.5	1.5
441–1100	20	6.0	2.0
1101–2200	30	9.0	3.0
2201–4400	40	12.0	4.0
4401–11,000	60	18.0	6.0
11,001–22,000	80	24.0	8.0
22,001–150,000	100	30.0	10.0

TABLE 2.—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.5	.5
221–440	15	2.3	.75
441–1100	20	3.0	1.0
1101–2200	30	4.5	1.5
2201–4400	40	6.0	2.0
4401–11,000	60	9.0	3.0
11,001–22,000	80	12.0	4.0
22,001–150,000	100	15.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatograph (HPLC), Vicam Method (Aflatest) or other methods as recommended by not less than seven members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots "negative" as to aflatoxin.* Lots will be certified as "negative" on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 5 ppb. If the aflatoxin level of Test Sample #1 is above 25 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. If the aflatoxin level of Test Sample #1 is above 5 ppb and below 25 ppb, the accredited laboratory may at the handler's discretion analyze Test Sample #2 and the test results of Test Samples #1 and #2 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and re-submit it for testing after re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 is at or below 10 ppb. If the

averaged aflatoxin level of the Test Samples #1 and #2 is at or above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. If the averaged aflatoxin level of Test Sample #1 and #2 is above 10 ppb and below 20 ppb, the accredited laboratory may, at the handler's discretion, analyze Test Sample #3 and the results of Test Samples #1, #2 and #3 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, re-work the lot, and re-submit it for testing after a re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #3, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Samples #1, #2 and #3 is at or below 15 ppb. If the averaged aflatoxin results of Test Samples #1, #2 and #3 is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. The accredited laboratory shall send a copy of the failed lot notification report to the committee and to the failed lot's owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight, grade and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of California pistachios shipped domestically does not exceed the aflatoxin levels as required in § 983.38(d)(4). Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the crop year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes the handler may request the laboratory to return them to the handler.

§ 983.39 Minimum quality levels.

(a) *Maximum defect and minimum size.* No handler shall ship for domestic human consumption, pistachios that exceed permissible maximum defect and minimum size levels shown in the following Table 3 of this paragraph.

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
EXTERNAL (SHELL) DEFECTS		
1. Non-splits & not split on suture	10.0	....
(i) Maximum non-splits allowed	4.0	....
2. Adhering hull material	2.0	....
3. Dark stain	3.0	....
4. Damage by other means, other than 1, 2 and 3 above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot.	10.0	....
INTERNAL (KERNEL) DEFECTS		
1. Damage: Immature kernel (Fills <75%–>50% of the shell); Kernel spotting (Affects ⅛ aggregate surface)	6.0	3.0
2. Serious damage: Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay	4.0	2.5
(i) Maximum insect damage allowed	2.0	0.5
Total external or internal defects allowed	9.0	....
OTHER DEFECTS		
1. Shell pieces and blanks (Fills <50% of the shell)	2.0	....
(i) Maximum blanks allowed	1.0	....
2. Foreign material, No glass, metal or live insects permitted	0.25	0.1
3. Particles and dust	0.25	....
4. Loose kernels	6.0	....
	Minimum permissible defects (percent by weight)	
Maximum allowable inshell pistachios that will pass through a $^{30}/_{64}$ inch round hole screen	5.0	....

(b) *Definitions applicable to permissible maximum defect and minimum size levels:* The following definitions shall apply to inshell pistachio and pistachio kernel maximum defect and minimum size:

(1) *Loose kernels* means kernels or kernel portions that are out of the shell and which cannot be considered particles and dust.

(2) *External (shell) defects* means any abnormal condition affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material or dark stains.

(3) *Damage by external (shell) defects* shall also include any specific defect described in paragraphs (b)(3)(i) through (iv) of this section or an equally objectionable variation of any one of these defects, any other defect or any combination of defects which materially detracts from the appearance or the

edibility or the marketing quality of the individual shell or the lot.

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an 18/1000 (.018) inch thick by 1/4 (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an 18/1000 (.018) inch thick by 1/4 (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount of hull covers more than one-eighth (1/8) of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Dark stain* on raw or roasted nuts means an aggregate amount of dark brown, dark gray or black discoloration that affects more than one-eighth of the total shell surface. Pistachios that are dyed or color-coated to improve their marketing quality are not subject to the maximum permissible defects for dark stain. Speckled discoloration on the stem end, bottom quarter of the nut is not considered damage.

(4) *Internal (kernel) defects* means any damage affecting the kernel. Such damage includes, but is not limited to evidence of insects, immature kernels, rancid kernels, mold or decay.

(i) *Damage by internal (kernel) defects* shall also include any specific defect described in paragraphs (b)(4)(i)(A) and (B) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Immature kernels* in inshell are excessively thin kernels, or when a kernel fills less than three-fourths, but not less than one-half of the shell cavity. “Immature kernels” in shelled pistachios are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(B) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(ii) *Serious damage* by internal (kernel) defects means any specific defect described in paragraphs (b)(4)(ii)(A) through (E) of this section, or an equally objectionable variation of any one of these defects, which seriously detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(B) *Insect damage* means an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(C) *Mold* that is readily visible on the shell or kernel.

(D) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(E) *Decay* means 1/16th or more of the kernel surface is decomposed.

(5) *Other defects* means defects that cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign materials or particles and dust. The following shall be considered other defects:

(i) *Shell pieces* means open inshell without a kernel, half shells or pieces of shell which are loose in the sample.

(ii) *Blanks* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half of the shell cavity.

(iii) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(iv) *Particles and dust* means pieces of nut kernels that will pass through 5/64 inch round opening.

(v) *Undersized* means inshell pistachios that fall through a 30/64-inch round hole screen.

(c) *Minimum quality certificate.* Each shipment for domestic human consumption must be covered by a USDA certificate certifying a minimum quality or higher. Pistachios that fail to meet the minimum quality specifications shall be disposed of in such manner as described in § 983.40.

(d) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the minimum quality regulation of this section.

(e) *Minimum quality testing procedures.* To obtain a minimum quality certificate, each lot to be certified shall be uniquely identified, shall be traceable from testing through shipment by the handler and shall be subjected to the following procedure:

(1) *Sampling of pistachios for maximum defects and minimum size.* The gross weight of the inshell and kernel sample, and number of samplings required to meet the minimum quality regulation, is shown in Table 4 of this paragraph (e)(1). These samples shall be drawn from the lot that is to be certified pursuant to § 983.38(d)(1) under the supervision of an inspector or as approved under an alternative USDA recognized inspection program.

TABLE 4.—INSHELL AND KERNEL PISTACHIO LOT SAMPLING INCREMENTS FOR MINIMUM QUALITY CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (grams)	Weight of inshell and kernel test sample (grams)
220 or less	10	500	500
221–440	15	500	500
441–1100	20	600	500
1101–2200	30	900	500
2201–4400	40	1200	500
4401–11,000	60	1800	500
11,001–22,000	80	2400	1000
22,001–150,000	100	3000	1000

(2) *Testing of pistachios for maximum defect and minimum size.* The sample shall be analyzed according to USDA protocol, current or as subsequently revised, to insure that the lot does not exceed maximum defects and meets at least the minimum size levels as specified in Table 3 of paragraph (a) of this section. For inshell pistachios, those nuts with dark stain, adhering hull, and those exhibiting apparent serious defects shall be shelled for

internal kernel analysis. The USDA protocol currently appears in USDA inspection instruction manual "Pistachios in the Shell, Shipping Point and Market Inspection Instructions," June 1994: Revised September 1994, HU–125–9(b). Copies may be obtained from the Fresh Products Branch, Agricultural Marketing Service, USDA. Contact information may be found at *http://www.ams.usda.gov/fv/fvstand.htm.*

(f) *Certification of minimum quality.* Each inspector shall complete minimum quality testing and reporting and shall certify that every lot of California pistachios or portion thereof shipped domestically meets minimum quality levels. A record of each test, along with a record of final shipping disposition, shall be kept by each handler. These records must be maintained for three years following the production year in which the pistachios were shipped, and are subject to audit by the committee at any time.

§ 983.40 Failed lots/rework procedure.

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet minimum quality requirements.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the minimum quality requirements of this part, a failed lot notification report shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or the minimum quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee.

(c) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38 except that the lot sample size and the test sample size shall be doubled. The reworked lot shall also be sampled and tested for the minimum quality requirements. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(d) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of § 983.38, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38.

(e) *Minimum quality rework procedure for inshell pistachios and kernels.* If rework is selected as a remedy to meet the minimum quality requirements of § 983.39, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and processed to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for the minimum quality requirements as specified in the minimum quality regulations of § 983.39.

§ 983.41 Testing of minimal quantities.

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year, have the option of utilizing both of the following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test his or her entire inventory of hulled and dried pistachios for the aflatoxin certification before further processing.

(2) The handler may segregate receipts into various lots at the handler's discretion and have an inspector sample and test each specific lot. Any lots that have less than 15 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15 ppb may be tested after reworking in the same manner as specified in § 983.38.

(b) *Minimum quality.* Handlers who handle less than 1 million pounds of assessed weight can apply to the committee for an exemption from minimum quality testing. If the committee grants an exemption, then the handler must pull and retain samples of the lots and make samples available for review by the committee. The handler shall maintain the samples for 90 days.

§ 983.42 Commingling.

After a lot is issued an aflatoxin inspection certificate and minimum quality certificate, it may be commingled with other certified lots.

§ 983.43 Reinspection.

The Secretary, upon recommendation of the committee, may establish rules and regulations to establish conditions under which pistachios would be subject to reinspection.

§ 983.44 Inspection, certification and identification.

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part, shall be identified by appropriate seals, stamps, tags, or other identification to be affixed to the containers by the handler. All inspections shall be at the expense of the handler.

§ 983.45 Substandard pistachios.

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the outgoing maximum aflatoxin tolerance and minimum quality requirements prescribed by §§ 983.38 and 983.39 shall not be shipped for domestic human consumption.

§ 983.46 Modification or suspension of regulations.

(a) In the event that the committee, at any time, finds that the order provisions contained in § 983.38 through § 983.45 should be modified or suspended, it shall by vote of at least seven concurring members, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that the aflatoxin or minimum quality provisions in § 983.38 and § 983.39 should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the Act, the Secretary shall modify or suspend such provisions. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

(c) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.38 through 983.45.

Reports, Books and Records

§ 983.47 Reports.

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such reports and information on such forms as are needed to enable the Secretary and the committee to perform their functions and enforce the regulations under this part. The committee shall provide a uniform report format for the handlers.

§ 983.48 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include confidential data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such data and information to no person except the Secretary. However, such data or information may be disclosed only with the approval of the Secretary, to the committee when reasonably necessary to enable the committee to carry out its functions under this part.

§ 983.49 Records.

Records of pistachios received, held and shipped by him, as will substantiate any required reports and will show performance under this part will be maintained by each handler for at least three years beyond the crop year of their applicability.

§ 983.50 Random verification audits.

(a) All handlers' pistachio inventory shall be subject to random verification audits by the committee to ensure compliance with the terms of the order, and regulations adopted pursuant thereto.

(b) Committee staff or agents of the committee, based on information from the industry or knowledge of possible violations, may make buys of handler product in retail locations. If it is determined that violations of the order have occurred as a result of the buys, the matter will be referred to the Secretary for appropriate action.

§ 983.51 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary and the committee, through their duly authorized agents, shall have access to any premises where pistachios and records relating thereto may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any pistachios so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all pistachios which may be held or which may have been shipped by him/her.

Expenses and Assessments

§ 983.52 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each production year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

§ 983.53 Assessments.

(a) Each handler who receives pistachios for processing in each production year shall pay the committee on demand, an assessment based on the pro rata share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

(b) The committee, prior to the beginning of each production year, shall recommend and the Secretary shall set the assessment for the following production year, which shall not exceed one-half of one percent of the average price received by producers in the preceding production year. The committee, with the approval of the Secretary, may revise the assessment if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

§ 983.54 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses.

§ 983.55 Delinquent assessments.

Any handler who fails to pay any assessment within the time required by the committee, shall pay to the committee a late payment charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of one and one-half percent per month. The late payment and interest charges may be modified by the Secretary upon recommendation of the committee.

§ 983.56 Accounting.

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.53: *Provided,* That any sum paid by a person in excess of his/her pro rata share of the expenses during any production year may be applied by the committee at the end of such production year as credit for such person, toward the committee's fiscal operations of the following production year;

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided,* That funds already in the reserve do not exceed approximately two production years' budgeted expenses. In the event that funds exceed two production years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two production years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any production year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements for which that member was personally responsible, deliver all committee property and funds in the possession of such member to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the committee property, funds, and claims vested in such member pursuant to this part.

§ 983.57 Implementation and amendments.

The Secretary, upon the recommendation of a majority of the committee, may issue rules and regulations implementing or modifying § 983.47 through § 983.56, inclusive.

Miscellaneous Provisions

§ 983.58 Compliance.

Except as provided in this part, no handler shall handle pistachios, the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle pistachios except in conformity to the provision of this part.

§ 983.59 Right of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension at the discretion of the Secretary, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 983.60 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 983.61 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 983.62 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 983.63 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 983.64 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as agent or representative of the Secretary in connection with any of the provisions of this part.

§ 983.65 Effective time.

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.66 or § 983.67.

§ 983.66 Suspension or termination.

The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the Act.

§ 983.67 Termination.

(a) The Secretary may at any time terminate the provisions of this part.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of pistachios: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such pistachios produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this part the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two-thirds (2/3) majority of voting producers, or a two thirds (2/3) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of pistachios in the production area. Such termination shall be announced on or before the end of the production year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease.

§ 983.68 Procedure upon termination.

Upon the termination of this part, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this part. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ 983.69 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this part or any regulation issued there under,

(b) Release or extinguish any violation of this part or any regulation issued there under, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

§ 983.70 Exemption.

Any handler may handle pistachios within the production area free of the requirements in §§ 983.38 through 983.45 and 983.53 if such pistachios are handled in quantities not exceeding 1,000 dried pounds during any marketing year. This subpart may be changed as recommended by the committee and approved by the Secretary.

§ 983.71 Relationship with the California Pistachio Commission.

In conducting committee activities and other objectives under this part, the committee may deliberate, consult, cooperate and exchange information with the California Pistachio Commission. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

§ 983.90 Counterparts.

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pistachios handled during a representative period, enter into such an agreement, then a marketing agreement shall exist for the pistachio marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

§ 983.91 Additional parties.

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by the handler and delivered to the Secretary.

§ 983.92 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pistachios in the same manner as is provided for in this agreement.

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Part III

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also provides multiple issues for comment, some of which are contained within proposed amendments.

The specific proposed amendments and issues for comment in this notice are as follows: (1) Proposed amendments that implement directives to the Commission contained in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 ("PROTECT Act"), Public Law 108–21, regarding child pornography and sexual abuse offenses, and related issues for comment; (2) proposed amendments to Chapter Eight (Sentencing of Organizations) to provide a new guideline regarding compliance programs, and related issues for comment; (3) proposed new guideline at § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) that addresses the new offense at 18 U.S.C. 931 pertaining to the possession of body armor by certain prohibited persons; (4) proposed amendments to Chapter Two, Part C (Offenses Involving Public Officials) that increase the penalties for offenses involving public corruption, and related issues for comment; (5) proposed amendments that (A) address the directive in section 608 of the PROTECT Act pertaining to increased penalties for offenses involving gamma hydroxybutyric acid ("GHB"); (B) provide a penalty structure for controlled substance analogues in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt and Conspiracy); (C) add white phosphorous and hypophosphorous acid to the Drug Quantity Table in § 2D1.1(c); and (D) make various technical changes to §§ 2D1.1, 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical; Attempt and Conspiracy), and Appendix A (Statutory Index), and related issues for comment; (6) proposed amendment to repeal the "mitigating role cap" in § 2D1.1(b)(3) and replace it with an alternative approach, and a related issue for comment; (7) proposed amendments to the homicide and assault guidelines that implement the directive in section 11008(e) of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273, and that address proportionality concerns, and related issues for comment; (8) proposed amendments that makes various technical and conforming amendments to the guidelines, and related issues for comment; (9) proposed amendment to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) that increases the penalties for offenses involving man-portable air defense systems ("MANPADS") and other similar destructive devices, and related issues for comment; (10) an issue for comment regarding aberrant behavior; and (11) issues for comment regarding the treatment under the guidelines of offenses involving the illegal transportation of hazardous materials.

DATES: Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 1, 2004.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p).

The Commission seeks comment on the proposed amendments, issues for comment, and any other aspect of the sentencing guidelines, policy statements, and commentary.

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part on comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission also requests public comment regarding whether the Commission should specify for retroactive application to previously sentenced defendants any of the proposed amendments published in this notice. The Commission requests comment regarding which, if any, of the proposed amendments that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range).

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *www.ussc.gov*.

Authority: 28 U.S.C. § 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Diana E. Murphy,
Chair.

Proposed Amendment 1: Child Pornography and Sexual Abuse of Minors

Synopsis of Proposed Amendment: This proposed amendment contains a number of proposals designed to implement the directives to the Commission regarding child pornography and sexual abuse offenses in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, (the "PROTECT Act"), Public Law 108–21.

Furthermore, this amendment addresses a number of issues in response to comments from the Department of Justice's Child Exploitation and Obscenity Section ("CEOS"), calls to the Commission's Helpline, and issues identified through case law regarding the sexual abuse and pornography guidelines. This proposed amendment makes changes to Chapter Two, Part A (Criminal Sexual Abuse), Chapter Two, Part G (Offenses Involving Commercial Sex Acts, Sexual Exploitation of Minors, and Obscenity), §§ 3D1.2 (Groups of Closely Related Counts), 5B1.3 (Conditions of Probation), 5D1.2 (Term of Supervised Release), 5D1.3 (Conditions of Supervised Release), and Appendix A (Statutory Index). Several issues for comment regarding these guidelines and § 4B1.5 (Repeat and Dangerous Sex Offender Against Minors) follow the proposed amendments.

I. Child Pornography Offenses

This part of the proposed amendment covers offenses sentenced under §§ 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic), 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production). Issues for comment regarding the scope of specific enhancements in these guidelines and the application of the "image tables" and "sado-masochistic" enhancements at §§ 2G2.2 and 2G2.4 follow the proposed amendments.

A. Trafficking Offenses Under § 2G2.2

Section 103 of the PROTECT Act creates five year mandatory minimum terms of imprisonment for offenses related to trafficking of child pornography under 18 U.S.C. 2252(a)(1)–(3) and 2252A(a)(1), (2), (3), (4), and (6). This section also increases the statutory maximum terms of imprisonment for these offenses from 15 years to 20 years. As a result, this proposed amendment provides two options for increasing the base offense level in § 2G2.2 to reflect the new five year mandatory minimum term of imprisonment. Option 1 increases the base offense level for all offenses covered by this guideline from level 17 to level [22][24][25][26]. Option 2 provides alternative base offense levels of level [20][22][24] if the conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor and level [22][24][25][26] for all other offenses.

Section 503 of the PROTECT Act creates two new offenses in 18 U.S.C. 2252A. The new offense at 18 U.S.C. 2252A(a)(3)(B) prohibits advertising, promoting, presenting, distributing, or soliciting any material or purported material that the defendant believes, or intends to cause another to believe, contains actual or obscene child pornography. No actual materials need to exist in order to be convicted under this provision, thus even fraudulent offers to buy or sell such materials are covered under this provision. The new offense at 18 U.S.C. 2252A(a)(6) prohibits using any type of real or apparent child pornography to induce a child to commit a crime. Section 513(c) of the PROTECT Act directs the Commission to review and, as appropriate, amend the guidelines to ensure that penalties are adequate to deter and punish conduct that involves a violation of these new offenses. In addition, the Commission is directed to "consider the relative culpability of promoting, presenting, describing, or distributing material" in violation of 18 U.S.C. § 2252A(a)(3)(B) as compared to soliciting such material.

In response to this directive, several options are proposed. First, the amendment refers both of these new offenses to the trafficking guideline, § 2G2.2. Currently, § 2G2.2(b)(2) provides, for offenses involving distribution of child pornography, a two-to seven-level enhancement, depending on the type of distribution. Section 2G2.2(b)(2)(C) provides a five-level enhancement for offenses involving distribution to a minor, and § 2G2.2(b)(2)(D) provides a seven-level enhancement for "distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct." In response to the new offense at 18 U.S.C. 2252(A)(a)(b), the proposed amendment adds a six-level enhancement at § 2G2.2(b)(2) if the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce a minor to engage in any illegal activity.

This proposal addresses in two ways the directive to compare the relative culpability of a defendant who promotes, presents, describes, or distributes child pornographic material to the culpability of a defendant who merely solicits such material. First, the amendment provides an alternative base offense level "if (A) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material." Second, the proposal amends § 2G2.2(b)(2) and the commentary of that guideline to make clear that the enhancement only applies to defendants whose conduct involves some form of distribution. In addition, this proposal adds commentary to the definition of "distribution" that makes clear that distribution does not include merely soliciting child pornography. Therefore, defendants who merely solicit child pornography will not be subject to the distribution enhancement at § 2G2.2(b)(2) unless their conduct involves some other act related to the transfer of material involving the sexual exploitation of a minor. Third, the amendment contains an option in the distribution enhancement at § 2G2.2(b)(2) to change the enhancement from "if the offense involved" to "if the defendant's conduct involved", which would limit the defendant's exposure under the enhancement to that of the defendant's own conduct.

Section 504 of the PROTECT Act creates a new offense at 18 U.S.C. 1466A that prohibits producing, distributing, receiving, possessing, or possessing with intent to distribute visual depictions (including drawings, cartoons, sculptures or paintings) that depict (1) a minor engaging in sexually explicit conduct and is obscene; or (2) an image that is, or appears to be, a minor engaging in sexually explicit conduct and lacks serious literary, artistic, political, or scientific value. Trafficking in such materials is covered under subsection (a) and carries a mandatory minimum term of imprisonment of five years and a maximum term of imprisonment of 20 years. Simple possession of such materials is covered under 18 U.S.C. 1466A(b) and punishable by a term of imprisonment of not more than ten years. Although 18 U.S.C. 1466A covers offenses of trafficking in, possession with intent to traffic in, and simple possession of, obscene material, section 504 of the PROTECT Act directs the Commission to punish these offenses consistent with child pornography trafficking offenses sentenced under § 2G2.2. By strictly complying with the language of this directive, however, the Commission would create an anomaly with regard to simple possession cases. For example, a defendant convicted of possessing an obscene cartoon drawing depicting minors engaged in sexually explicit conduct under 18 U.S.C. § 1466A(b) would receive a sentence equivalent to a five year mandatory minimum term of imprisonment under § 2G2.2, while a defendant convicted under 18 U.S.C. 2252(a)(4) of possessing a picture of actual minors engaged in sexually explicit conduct would receive a sentence of only two years' imprisonment under § 2G2.4.

According to the legislative history, the intent of the directive in section 504 was to ensure that offenses under 18 U.S.C. 1466A are "subject to the penalties applicable to child pornography, not the lower penalties that apply to obscenity." See H.R. Conf. Rep. No. 66, 108th Cong. 1st Sess. (2003). Obscenity offenses are sentenced under § 2G3.1, which has a base offense level of level 10. Simple possession offenses under 18 U.S.C. 1466A(b) more appropriately may be covered under the simple possession guideline, § 2G2.4. Therefore, the proposed amendment refers offenses under 18 U.S.C. 1466A(a) involving trafficking and possession with intent to traffic to § 2G2.2, as directed by Congress, but refers offenses under 18 U.S.C. 1466A(b) involving simple possession to § 2G2.4.

This proposed amendment also makes a number of changes to Appendix A (Statutory Index) and the statutory provisions in § 2G2.2. Offenses under 18 U.S.C. 2252 and 2252A currently are referenced to both §§ 2G2.2 and 2G2.4 because these statutes contain prohibitions on both trafficking in and simple possession of child pornography. This proposal amends Appendix A and the statutory provisions in § 2G2.2 to refer trafficking offenses in 18 U.S.C. 2252(a)(1)–(3) and 2252A(a)(1), (2), (3), (4), and (6) to § 2G2.2 only, thereby ensuring that the trafficking offenses receive the appropriate base offense level which corresponds to the five year mandatory minimum term of imprisonment. This amendment makes a similar change with respect to offenses under 18 U.S.C. 2251(d)(1)(A) (formerly (c)(1)(A), redesignated by the PROTECT Act). This section prohibits making, printing, or publishing any notice or advertisement seeking to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction if the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct and the visual depiction is of such conduct. Currently, these offenses are referenced to § 2G2.2 instead of § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) because they are more like trafficking offenses than production offenses. However, the PROTECT Act increases the mandatory minimum term of imprisonment for these offenses from 10 to 15 years. Therefore, these offenses are proposed to be referenced to the production guideline, § 2G2.1. Subpart D of the proposed amendment increases the base offense level in § 2G2.1 to level [30][32][34][35][36] to reflect the increased mandatory minimum term of imprisonment.

In response to comments from CEOS, calls to the Helpline, and issues identified through case law regarding inconsistencies in the application of the use of a computer enhancement at § 2G2.2(b)(5), the amendment proposes to broaden the enhancement in two ways. First, the amendment proposes to expand the enhancement to include "interactive computer devices" (*e.g.*, Internet access devices), as defined in 47 U.S.C. 230(f)(2). Currently, § 2G2.2(b)(5) provides an enhancement if only a computer was used for "the transmission, receipt or distribution" of the pornographic material, in contrast to similar enhancements in other pornography or sexual abuse guidelines that provide an enhancement for the use of a "computer or Internet-access device". (See *United States* v. *Albright*, 67 Fed. Appx. 751 (3d Cir. 2003)(unpub.) (use of a WebTV device used to access the Internet is not a computer for purposes of the enhancement)). Use of the term "interactive computer device" may be preferable to "Internet access device" in the applicable guidelines because it is statutorily defined. Conforming changes are proposed for §§ 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct), proposed 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Use of Interstate Facilities to Transport Information about a Minor), 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct), 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts), and 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact). Second, the amendment proposes to broaden the enhancement to apply to offenses in which the computer (or an interactive computer service) was used for the possession of pornographic material. Currently, the enhancement provides a two-level increase if only a computer was used for "the transmission, receipt, or distribution" of the pornographic material.

Finally, in response to CEOS comments, calls to the Helpline, and issues identified through training, this proposal makes the following minor changes to the commentary to § 2G2.2:

(1) Provides a definition of "computer".

(2) Makes clear that the definition of "minor" includes (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represents to a participant (i) had not attained the age of 18 years, and (ii) could be provided to a participant for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

(3) Provides a definition of "image" for purposes of applying the enhancement at § 2G2.2(b)(6).

(4) Makes clear that "distribution" includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include soliciting such material.

B. Simple Possession Offenses Under § 2G2.4

The PROTECT Act raised the statutory maximum term of imprisonment for simple possession offenses from five to ten years. As a result, this proposed amendment includes an option for increasing the base offense level from level 15 to level [18][20]. An increase in the base offense level also may be justified to maintain proportionality with the child pornography trafficking guideline because of a proposed increase in the base offense level at § 2G2.2 for trafficking and receipt cases (see subpart A of this amendment).

In response to comments from CEOS, the proposed amendment addresses a recent Seventh Circuit decision in *United States* v. *Sromalski*, 318 F.3d 748 (7th Cir. 2003), regarding the cross reference at § 2G2.4(c)(2). Currently, the cross reference requires application of § 2G2.2 if the offense "involved trafficking in material involving the sexual exploitation of a minor (including receiving, transporting, shipping, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic)". In *Sromalski*, the appellate court found that in cases involving possession of child pornography where receipt can be shown, the cross reference at § 2G2.4(c)(2) applies only if the receipt involved the intent to traffic. Thus, under the Seventh Circuit's interpretation of the guidelines, convictions for receipt of child pornography (which do not require proof of an intent to traffic) are sentenced under § 2G2.2, but convictions for possession of child pornography, even where receipt can be shown, are sentenced under § 2G2.4 unless there is proof of receipt with an intent to traffic. The proposed amendment provides an option that clarifies that the cross reference should be applied without regard to whether or not there was offense conduct that involved receipt with an intent to traffic.

In addition, the proposed amendment makes the following clarifying and conforming changes to § 2G2.4 in response to changes made to § 2G2.2:

(1) Expands use of a computer enhancement at § 2G2.4(b)(3) to include "interactive computer services".

(2) Provides a definition of "computer".

(3) Provides a definition of "image" for purposes of applying the enhancement at § 2G2.4(b)(5).

(4) Makes clear that, for purposes of the cross reference at § 2G2.4(c)(1), the definition of "minor" includes (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

C. Consolidation of §§ 2G2.2 and 2G2.4

This part of the proposed amendment consolidates §§ 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic), and 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct, into one guideline, § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct). Consolidation addresses concerns raised over several years by probation officers, judges, and practitioners regarding difficulties in determining the appropriate guideline (§ 2G2.2 or § 2G2.4) for cases involving convictions of 18 U.S.C. 2252 or § 2252A. Furthermore, as a result of amendments directed by the PROTECT Act, these guidelines have a number of similar specific offense characteristics.

This proposed consolidation provides two options for the base offense level. Option One provides alternative base offense levels of (1) level [15][18][20] if (A) the conduct was limited to the possession, receipt, or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; (2) level [22][24][26] for all other offenses. Option Two provides three alternative base offense levels of (1) level [15][18][20] if the defendant's conduct was limited to the possession of material involving the sexual exploitation of a minor without an intent to traffic in, or distribute, such material; (2) level [20][22][24] if (A) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (3) level [22][24][25][26] for all other offenses sentenced at this guideline. The proposed consolidation would subject § 2G2.4 cases to enhancements if the offense involved distribution or if the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor. Currently, these enhancements do not exist in § 2G2.4

D. Production Offenses Under § 2G2.1

Section 103 of the PROTECT Act increases the mandatory minimum term of imprisonment from 10 to 15 years for offenses related to production of child pornography under 18 U.S.C. 2251. This section also increases the statutory maximum term of imprisonment for these offenses from 20 to 30 years. As a result, this proposed amendment increases the base offense level in § 2G2.1 from level 27 to level [30][32][34][35][36] to reflect the new 15 year mandatory minimum term of imprisonment. Furthermore, the proposed amendment adds a number of enhancements that may be associated with the production of child pornography. The addition of these enhancements also helps to maintain the proportionality between these offenses and offenses covered under § 2G2.2. The proposed enhancements increase the offense level if the offense involved any of the following: (1) Material that portrays sadistic or masochistic conduct; (2) the commission of a sexual act or sexual contact; (3) conduct described in 18 U.S.C. 2241(a) or (b); and (4) distribution.

The proposed amendment also adds to the commentary of § 2G2.1 definitions of "sexual act", "sexual contact", "sexually explicit conduct", "computer", "interactive computer service", "minor", and "distribution".

II. Travel and Transportation Cases

This proposed amendment creates a new guideline, § 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Use of Interstate Facilities to Transport Information about a Minor), to specifically address offenses under Chapter 117 of title 18, United States Code (Transportation for Illegal Sexual Activity and Related Crimes). Currently, Chapter 117 offenses, primarily 18 U.S.C. 2422 (coercion and enticement) and 2423 (transportation of minors), are referenced by Appendix A to either § 2G1.1 or § 2A3.2. Offenses under 18 U.S.C. 2422 and 2423(a) (transportation with intent to engage in criminal sexual activity) are referenced to § 2G1.1 (Promoting A Commercial Sex Act or Prohibited Sexual Conduct) but are cross referenced from § 2G1.1 to § 2A3.2 (Statutory Rape) to account for underlying behavior. Application of this cross reference has led to confusion among courts and practitioners. Offenses under 18 U.S.C. 2423(b) (travel with intent to engage in sexual act with a juvenile) are referenced to § 2A3.1, § 2A3.2, or § 2A3.3, but most are sentenced at § 2A3.2. Until recently, the majority of cases sentenced under § 2A3.2 were statutory rape cases that occurred on Federal property (*e.g.* military bases) or Native American lands. In fiscal years 2001 and 2002, the majority of cases sentenced under the statutory rape guideline were coercion, travel, and transportation offenses.

Creating a new guideline for these cases is intended to address more appropriately the issues specific to these offenses. In addition, the removal of these cases from § 2A3.2 will permit the Commission more appropriately to tailor the guideline to statutory rape cases.

Currently, § 2A3.2 provides alternative base offense levels of (1) level 24 for a Chapter 117 violation with a sexual act, (2) level 21 for a Chapter 117 violation with no sexual act (*e.g.*, a sting case), or (3) level 18 for statutory rape with no travel. The PROTECT Act created a five year mandatory minimum term of imprisonment for 18 U.S.C. 2422 and 2423(a) and increased the statutory maximum term of imprisonment for these offenses from 15 to 30 years. However, the PROTECT Act did not increase the penalties for offenses under 18 U.S.C. 2243 (sexual abuse of a minor), which prohibits statutory rape.

The proposed guideline provides a base offense level of level [22][24][25][26] to account for the new mandatory minimum terms of imprisonment as required by the PROTECT Act. The guideline proposes a number of enhancements, including enhancements for offenses involving victims under the age of 12 years, commission of a sexual act, use of force, use of a computer, misrepresentation of identity, and custody issues. The proposed amendment also provides two options for a specific offense characteristic to address the conduct from 18 U.S.C. 2423(d), a new offense created by the PROTECT Act. Offenses under 18 U.S.C. 2423(d) prohibit a person, for the purpose of commercial advantage or private financial gain, from arranging, inducing, procuring, or facilitating the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in an illicit sexual act. The maximum term of imprisonment for an offense under 18 U.S.C. 2423(d) is 30 years.

The proposed amendment also makes conforming changes to § 2G1.1 (Promoting A Commercial Sex Act or Prohibited Sexual Conduct).

In addition, an issue for comment regarding which guideline is the most appropriate for violations of 18 U.S.C. 2425, use of interstate facilities to transport information about a minor, follows the proposed amendments.

III. Misleading Domain Names

Section 521 of the PROTECT Act creates a new offense at 18 U.S.C. 2252B (misleading domain names on the Internet). Section 2252B of title 18, United States Code, prohibits the knowing use of a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity, and offenses under this statute are punishable by a maximum term of imprisonment of two years, or if the misleading domain name was intended to deceive a minor into viewing material that is harmful to minors, a maximum term of imprisonment of four years. The proposed amendment refers the new offense to § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor), modifies the title of the guideline to include "Misleading Domain Names", and provides a two-level enhancement if "the offense involved the use of a misleading domain name on the Internet with the intent to deceive a [minor][person] into viewing material on the Internet that is harmful to minors." In addition, the proposed amendment also provides enhancements for the following: (1) Distribution to a minor that was intended to persuade, induce, entice, or coerce a minor to engage in any illegal activity; (2) use of a computer or interactive computer service; and (3) material that was advertised or described to include minors engaged in sexually explicit conduct. Finally, the proposed amendment adds § 2G3.1 to the list of guidelines at subsection (d) of § 3D1.2 (Groups of Closely Related Counts). Grouping multiple counts of these offenses pursuant to § 3D1.2(d) is appropriate because typically these offenses, as well as other pornography distribution offenses, are continuous and ongoing in nature. The proposal makes other minor technical changes to the Commentary to make this guideline consistent with other Chapter Two, Part G guidelines.

IV. Conditions of Supervised Release

In response to a circuit conflict, this amendment proposes amending §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release) to add a condition "limiting [or prohibiting] the use of a computer or an interactive computer service" in cases in which the [defendant used][the offense involved the use of] such items. The circuit courts have disagreed over imposition of restrictive computer use and Internet-access conditions. Some circuit courts have refused to allow complete restrictions on computer use and Internet access (see *United States* v. *Sofsky*, 287 F.3d 122 (2nd Cir. 2002) (invalidating restrictions on computer use and Internet use); *United States* v. *Freeman*, 316 F.3d 386 (3d Cir. 2003) (same)), but some circuit courts have upheld restrictions on computer use and Internet access with probation officer permission (see *United States* v. *Fields*, 324 F.3d 1025 (8th Cir. 2003) (upholding condition prohibiting defendant from having Internet service in his home and allowing possessing of a computer only if granted permission by his probation officer); *United States* v. *Walser*, 275 F.3d 981 (10th Cir. 2001) (prohibiting Internet use but allowing Internet use with probation officer's permission); *United States* v. *Zinn*, 321 F.3d 1084 (11th Cir. 2003) (same)). Other courts have permitted a complete ban on a convicted sex offender's Internet use while on supervised release. (See *United States* v. *Paul*, 274 F.3d 155 (5th Cir. 2001) (upholding complete ban of Internet use)).

In addition, this proposed amendment amends § 5D1.2 (Term of Supervised Release) to make the guideline consistent with changes provided in the PROTECT Act to the applicable terms of supervised release under 18 U.S.C. 3583 for sex offenders.

V. Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse) Amendments

Section 401(i)(2) of the PROTECT Act directs the Commission to "amend the Sentencing Guidelines to ensure that the Guidelines adequately reflect the seriousness of the offenses" under sections 2243(b) (sexual abuse of a ward), 2244(a)(4) (sexual contact), and 2244(b) (sexual contact with a person without that person's permission) of title 18, United States Code. This amendment proposes several amendments to the guidelines in Chapter Two, Part A (Criminal Sexual Abuse) to address the directive and to account for proportionality issues created by the increases in the Chapter Two, Part G guidelines. In addition, the amendment makes changes to the Commentary to make the definitions in these guidelines consistent with the definitions in the pornography guidelines.

An issue for comment regarding proportionality issues and implementation of the directive follows the proposed amendments.

Proposed Amendment:

I. Child Pornography Offenses

A. Trafficking Offenses Under § 2G2.2

Proposed Amendment: Section 2G2.2 is amended in the heading by inserting "Soliciting," after "Shipping,".

[Option 1:

Section 2G2.2(a) is amended by striking "17" and inserting "[22][24][25][26]".]

[Option 2:

Section 2G2.2 is amended by striking subsection (a) in its entirety and inserting the following:

"(a) Base Offense Level:

(1) [20][22][24], if (A) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; or

(2) [22][24][25][26], otherwise.".]

[Section 2G2.2(b)(2) is amended by striking "If the offense involved" and inserting "If the defendant's conduct involved"];

by redesignating subdivisions (D) and (E) as subdivisions (E) and (F), respectively; and by inserting after subdivision (C) the following new subdivision (D):

"(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, increase by 6 levels.";

in subdivision (F), as redesignated by this amendment, by striking "(D)" and inserting "(E)".

Section 2G2.2(b)(5) is amended by inserting "or an interactive computer service" before "was used"; and by inserting ["possession,"] before "transmission,".

The Commentary to § 2G2.2 captioned "Statutory Provisions" is amended by striking "2251(c)(1)(A), 2252(a)(1)–(3), 2260" and inserting "[1466A(a),] 2252(a)(1)–(3), 2252A(a)(1)(4), (6), 2260(b)".

The Commentary to § 2G2.2 captioned "Application Notes" is amended in Note 1 by striking:

"For purposes of this guideline—

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor."

and inserting:

"Definitions.—For purposes of this guideline:

'Computer'—has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Image' means any visual depiction described in 18 U.S.C. 2256(5) and (8).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing, but does not include the mere solicitation of such material by a defendant.";

by striking "'Minor' means an individual who had not attained the age of 18 years." and inserting the following:

"'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.";

and in the paragraph that begins "'Pattern of activity" by striking "victims" and inserting "minors".

The Commentary to § 2G2.2 captioned "Application Notes" is amended by redesignating Notes 2 and 3 as Notes 3 and 4, respectively; and by inserting after Note 1 the following new Note 2:

"2. Application of Subsection (b)(4).—Prior convictions taken into account under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).".

The Commentary to § 2G2.2 captioned "Application Notes" is amended in the first paragraph of Note 3, as redesignated by this amendment, by inserting "Upward Departure Provision.—" before "If the defendant"; and by striking "Prior convictions" and all that follows through "(Criminal History).".

The Commentary to § 2G2.2 captioned "Application Notes" is amended in Note 4, as redesignated by this amendment, by inserting "Cross Reference at Subsection (c)(1).—" before "The cross reference".

B. Simple Possession Offenses Under § 2G2.4

Section 2G2.4(a) is amended by striking "15" and inserting "[18][20]".

Section 2G2.4(b) is amended [by striking subdivision (2) in its entirety;] by striking subdivision (3) in its entirety; by redesignating subdivisions (4) and (5) as subdivisions (3) and (4), respectively; and by inserting after subdivision (1) the following new subdivision (2):

"(2) If the [defendant's possession of the material resulted from the defendant's][offense involved the] use of a computer or an interactive computer service, increase by 2 levels.".

Section 2G2.4(c)(2) is amended by striking "(including receiving, transporting, shipping, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic)" and inserting "including (A) receiving material involving the sexual exploitation of a minor [with intent to traffic]; (B) transporting, shipping, or advertising material involving the sexual exploitation of a minor; or (C) possessing with intent to traffic material involving the sexual exploitation of a minor".

The Commentary to § 2G2.4 captioned "Statutory Provision" is amended by striking "Provision: 18 U.S.C. 2252(a)(4)" and inserting "Provisions: 18 U.S.C. 1466A(b), 2252(a)(4), 2252A(a)(5)".

The Commentary to § 2G2.4 captioned "Application Notes" is amended in Note 1 by striking:

"For purposes of this guideline—"

and inserting:

"Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Image' means any visual depiction described in 18 U.S.C. 2256(5) and (8).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).".

[The Commentary to § 2G2.4 captioned "Application Notes" is amended by striking Note 2 in its entirety.]

The Commentary to § 2G2.4 captioned "Application Notes" is amended by adding at the end the following:

"2. Cross Reference at Subsection (c)(1).—For purposes of subsection (c)(1), "minor" includes (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

3. Upward Departure Provision.—If the offense involved substantially more than 600 images, an upward departure may be warranted, regardless of whether subsection (b)(5) applies.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1466 the following new lines:

"18 U.S.C. 1466A(a) 2G2.2
18 U.S.C. 1466A(b) 2G2.4";

by striking the following:

18 U.S.C. 2252 2G2.2, 2G2.4
18 U.S.C. 2252A 2G2.2, 2G2.4",

and inserting the following:

"18 U.S.C. 2252 (a)(1)–(3) 2G2.2
18 U.S.C. 2252(a)(4) 2G2.4
18 U.S.C. 2252A(a)(1)–(4), (6) 2G2.2
18 U.S.C. 2252A(a)(5) 2G2.4";

and by striking the following:

"18 U.S.C. 2260 . 2G2.1, 2G2.2",

and inserting the following:

"18 U.S.C. 2260(a) 2G2.1
18 U.S.C. 2260(b) 2G2.2".

C. Consolidation of §§ 2G2.2 and 2G2.4

Chapter Two, Part G, Subpart 2, is amended by striking §§ 2G2.2 and 2G2.4 in their entirety and inserting the following new guideline and replacement commentary:

"§ 2G2.2. Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor With Intent To Traffic; Possessing Material Depicting a Minor Engaged in Sexually Explicit Conduct

(a) Base Offense Level

[Option 1: (1) [15][18][20], if (A) the defendant's conduct was limited to the possession, receipt, or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; or

(2) [22][24][25][26], otherwise.]

[Option 2:(a) (1) [15][18][20], if the defendant's conduct was limited to the possession of material involving the sexual exploitation of a minor without an intent to traffic in, or distribute, such material;

(2) [20][22][24], if (A) the defendant's conduct was limited to the receipt or solicitation of material involving the sexual exploitation of a minor; and (B) the defendant did not intend to traffic in, or distribute, such material; or

(3) [22][24][25][26], otherwise.]

(b) Specific Offense Characteristics

(1) If the material involved a prepubescent minor or a minor under the age of 12 years, increase by 2 levels.

(2) (Apply the Greatest) If the [defendant's conduct] [offense] involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, increase by 6 levels.

(E) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(F) Distribution other than distribution described in subdivisions (A) through (E), increase by 2 levels.

(3) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

(4) If the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor, increase by 5 levels.

(5) If a computer or an interactive computer service was used for the possession, transmission, receipt, or distribution of the material or a notice or advertisement of the material, increase by 2 levels.

(6) If the offense involved—

(A) at least 10 images, but fewer than 150, increase by 2 levels;

(B) at least 150 images, but fewer than 300, increase by 3 levels;

(C) at least 300 images, but fewer than 600, increase by 4 levels; and

(D) 600 or more images, increase by 5 levels.

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 1466A, 2252, 2252A, 2260(b).

Application Notes:

1. Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Image' means any visual depiction described in 18 U.S.C. 2256(5) and (8).

'Interactive computer service' has the meaning given that term in 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

'Distribution for pecuniary gain'' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the 'thing of value' is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Pattern of activity involving the sexual abuse or exploitation of a minor' means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same minor; or (C) resulted in a conviction for such conduct.

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Sexual abuse or exploitation' means conduct constituting criminal sexual abuse of a minor, sexual exploitation of a minor, abusive sexual contact of a minor, any similar offense under state law, or an attempt or conspiracy to commit any of the above offenses. "Sexual abuse or exploitation' does not include trafficking in material relating to the sexual abuse or exploitation of a minor.

'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. 2256.

2. Application of Subsection (b)(4).—Prior convictions taken into account under subsection (b)(4) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).

3. Upward Departure Provision.—If the defendant engaged in the sexual abuse or exploitation of a minor at any time (whether or not such abuse or exploitation occurred during the course of the offense or resulted in a conviction for such conduct) and subsection (b)(4) does not apply, an upward departure may be warranted. In addition, an upward departure may be warranted if the defendant received an enhancement under subsection (b)(4) but that enhancement does not adequately reflect the seriousness of the sexual abuse or exploitation involved.

4. Cross Reference at Subsection (c)(1).—The cross reference in subsection (c)(1) is to be construed broadly to include all instances where the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

Background: Section 401(i)(1)(C) of Public Law 108–21 directly amended subsection (b) to add subdivision (6), effective April 30, 2003.'.

D. Production Offenses Under § 2G2.1

Section 2G2.1(a) is amended by striking "27" and inserting "[30][32][34][35][36]".

Section 2G2.1(b) is amended in subdivision (1) by striking "victim" and inserting "minor"; by redesignating subdivisions (2) and (3) as subdivisions (6) and (7), respectively; and by inserting after subdivision (1) the following:

'(2) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by [2][4] levels.

(3) If the offense involved the commission of a sexual act or sexual contact, increase by 2 levels.

(4) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by [2][4] levels.

(5) If the offense involved distribution, increase by [2][5][7] levels.".

Section 2G2.1(b) is amended in subdivision (7), as redesignated by this amendment, by striking "Internet-access device" and inserting "interactive computer service".

Section 2G2.1 is amended by redesignating subsection (c) as subsection (d); and by inserting after subsection (b) the following:

"(c) Cross reference

(1) If the victim was killed in circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.".

The Commentary to § 2G2.1 captioned "Statutory Provisions" is amended by striking "(a), (b), (c)(1)(B)".

The Commentary to § 2G2.1 captioned "Application Notes" is amended by striking Notes 1, 2, 3, and 4 in their entirety and inserting the following:

"1. Definitions.—For purposes of this guideline:

'Conduct described in 18 U.S.C. 2241(a) or (b)' is: Using force against the minor; threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; rendering the minor unconscious; or administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to appraise or control conduct was substantially impaired by drugs or alcohol.

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Sexual act' has the meaning given that term in 18 U.S.C. 2246(2).

'Sexual contact' has the meaning given that term in 18 U.S.C. 2246(3).

'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. 2256.

2. Custody, Care, or Supervisory Control Enhancement.—

(A) In General.—Subsection (b)(6) is intended to have broad application and includes offenses involving a minor entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this adjustment, the court should look to the actual relationship that existed between the defendant and the child and not simply to the legal status of the defendant-child relationship.

(B) Inapplicability of Enhancement.—If the adjustment in subsection (b)(6) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).";

by redesignating Note 5 as Note 3; by inserting after Note 3, as redesignated by this amendment, the following:

"4. Special Instruction at Subsection (d)(1).—For the purposes of Chapter Three, Part D (Multiple Counts), each minor exploited is to be treated as a separate minor. Consequently, multiple counts involving the exploitation of different minors are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). Subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes more than one minor being exploited, whether specifically cited in the count of conviction or not, each such minor shall be treated as if contained in a separate count of conviction.";

and by redesignating Note 6 as Note 5.

The Commentary to § 2G2.1 captioned "Application Notes" is amended in Note 3, as redesignated by this amendment, by inserting before "The enhancement in subsection" the following:

"Application of Subsection (b)(7)(A).—

(A) Misrepresentation of Participant's Identity.—

by striking "(3)(A)" each place it appears and inserting "(7)(A)"; by striking "Subsection (b)(3)(B)(i) provides" and inserting:

"(B) Use of a Computer or an Interactive Computer Service.—

Subsection (b)(7)(b)(i) provides";

by striking "(b)(3)(B)(i) is intended" and inserting "(b)(7)(B)(i) is intended"; and by striking "Internet-access device" each place it appears and inserting "interactive computer service".

The Commentary to § 2G2.1 captioned "Application Notes" is amended in Note 5, as redesignated by this amendment, by striking "victims" and inserting "minors".

II. Travel and Transportation Cases

Chapter Two, Part G, Subpart 1 is amended by adding at the end the following new guideline and accompanying commentary:

"§ 2G1.3 Promoting a Commercial Sex Act or Prohibited Sexual Conduct With a Minor; Transportation of Minors To Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel To Engage in Commercial Sex Act or Prohibited Sexual Conduct With a Minor; Use of Interstate Facilities To Transport Information About a Minor

(a) Base Offense Level: [22][24][25][26]

(b) Specific Offense Characteristics

(1) If the offense involved a sexual act or sexual contact, increase by 2 levels.

(2) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by 4 levels.

[Option 1A: (3) If the offense involved a minor who had not attained the age of 12 years, increase by [4][6][8] levels.]

(4) If (A) the minor sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) the minor sustained serious bodily injury, increase by 2 levels; or (C) the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.

(5) If the defendant was a parent, relative, or legal guardian of the minor; or the minor was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

(6) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of the minor to engage in a commercial sex act or prohibited sexual conduct, increase by 2 levels.

(7) If [the defendant used][the offense involved the use of] a computer or an interactive computer service to (A) persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in a commercial sex act or prohibited sexual conduct; or (B) entice, encourage, offer, or solicit a person to engage in a commercial sex act or prohibited sexual conduct with the minor, increase by 2 levels.

[Option 2A: (8) If, for the purposes of commercial advantage or private financial gain, the defendant knowingly arranged, induced, procured, or facilitated the travel of a participant knowing that the participant was traveling for the purpose of engaging in illicit sexual conduct, increase by [2] levels.]

[Option 2B: (8) If the offense involved conduct described in 18 U.S.C. 2423(d), increase by [2] levels.]

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

(2) If a minor was killed under circumstances that would constitute murder under 18 U.S.C. 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply § 2A1.1 (First Degree Murder), if the resulting offense level is greater than that determined above.

[Option 1B: (3) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), if the resulting offense level is greater than that determined above. If the offense involved criminal sexual abuse of a minor who had not attained the age of 12 years, § 2A3.1 shall apply, regardless of the 'consent' of the minor.]

(d) Special Instruction

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the travel or transportation to engage in a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. 1328 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense); 18 U.S.C. 1591 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2421 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2422 (only if the offense involved a victim who had not attained the age of 18 years at the time of the commission of the offense), 2422(b), 2423, [2425].

Application Notes:

1. Definitions.—For purposes of this guideline:

'Commercial sex act' has the meaning given that term in 18 U.S.C. 1591(c)(1).

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Illicit sexual conduct' has the meaning given that term in 18 U.S.C. 2423(f).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

'Permanent or life-threatening bodily injury,' 'serious bodily injury,' and 'abducted' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions). However, for purposes of this guideline, 'serious bodily injury' means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Sexual act' has the meaning given that term in 18 U.S.C. 2246(2).

'Sexual contact' has the meaning given that term in 18 U.S.C. 2246(3).

2. Application of Subsection (b)(2).—'Conduct described in 18 U.S.C. 2241(a) or (b)' is: using force against the minor; threatening or placing the minor in fear that any person will be subject to death, serious bodily injury, or kidnapping; rendering the minor unconscious; or administering by force or threat of force, or without the knowledge or permission of the minor, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the minor to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the minor to

appraise or control conduct was substantially impaired by drugs or alcohol.

3. Custody, Care, or Supervisory Control Enhancement.—

(A) In General.—Subsection (b)(5) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

(B) Inapplicability of Enhancement.—If the enhancement in subsection (b)(5) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

4. Misrepresentation of Participant's Identity.—The enhancement in subsection (b)(6) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in a commercial sex act or prohibited sexual conduct. Subsection (b)(6) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(6) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(6) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in a commercial sex act or prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

5. Use of a Computer or an Interactive Computer Service.—Subsection (b)(7) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(7) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.

6. Cross Reference.—The cross reference in subsection (c)(1) is to be construed broadly to include all instances in which the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. For purposes of subsection (c)(1), 'sexually explicit conduct' has the meaning given that term in 18 U.S.C. § 2256.

7. Special Instruction for Cases Involving Multiple Victims at Subsection (d)(1).—

(A) In General.—For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes travel or transportation to engage in a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

(B) Definition of Victim.—For purposes of subsection (d)(1), a victim includes (A) an individual who had not attained the age of 18 years; or (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

8. Aggravating Role.—For the purposes of § 3B1.1 (Aggravating Role), a minor, as defined in this guideline, is considered a participant only if that minor assisted in the promoting of a commercial sex act or prohibited sexual conduct in respect to another minor.

9. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than ten victims.

Background: This guideline covers offenses under Chapter 117 of title 18, United States Code, involving transportation of a minor for illegal sexual activity through a variety of means.".

Chapter Two, Part G, Subpart 1 is amended by striking § 2G1.1 and accompanying commentary in its entirety and inserting the following new guideline:

§ 2G1.1. Promoting a Commercial Sex Act or Prohibited Sexual Conduct With an Individual Other Than a Minor

(a) Base Offense Level: 14

(b) Specific Offense Characteristic

(1) If the offense involved the use of physical force, fraud, or coercion, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(d) Special Instruction

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

Statutory Provisions: 8 U.S.C. 1328 (only if the offense involved a victim who had attained the age of 18 years at the time of the commission of the offense); 18 U.S.C. 1591 (only if the offense involved a victim who had attained the age of 18 years at the time of the commission of the offense), 2421 (only if the offense involved a victim who had attained the age of 18 years at the time of the commission of the offense), 2422(a) (only if the offense involved a victim who had attained the age of 18 years at the time of the commission of the offense).

Application Notes:

1. Definitions.—For purposes of this guideline:

'Commercial sex act' has the meaning given that term in 18 U.S.C. 1591(c)(1).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Promoting a commercial sex act' means persuading, inducing, enticing, or coercing a person to engage in a commercial sex act, or to travel to engage in, a commercial sex act.

'Victim' means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, a commercial sex act or prohibited sexual conduct, whether or not the person consented to the commercial sex act or prohibited sexual conduct. Accordingly, 'victim' may include an undercover law enforcement officer.

2. Application of Subsection (b)(1).—Subsection (b)(1) provides an enhancement for physical force, fraud, or coercion, that occurs as part of a commercial sex act offense and anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures). For purposes of subsection (b)(1)(B), 'coercion' includes any form of conduct that negates the voluntariness of the behavior of the victim. This enhancement would apply, for example, in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. This characteristic generally will not apply if the drug or alcohol was voluntarily taken.

3. Application of Aggravating Role Enhancement.—For the purposes of § 3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of a commercial sex act or prohibited sexual conduct in respect to another victim.

4. Special Instruction at Subsection (d)(1).—For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, a commercial sex act or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of a commercial sex act or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

5. Cross Reference at Subsection (c)(1).—Subsection (c)(1) provides a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. 2241 or 2242. For example, the cross reference to § 2A3.1 shall apply if the offense involved criminal sexual abuse and the victim was threatened or placed in fear other than fear of death, serious bodily injury, or kidnapping (see 18 U.S.C. 2242(1)).

6. Upward Departure Provision.—An upward departure may be warranted if the offense involved more than ten victims.

Background: This guideline covers offenses that involve promoting prostitution or prohibited sexual conduct with an adult through a variety of means. Offenses that involve promoting prostitution or prohibited sexual conduct are sentenced under this guideline, unless criminal sexual abuse occurs as part of the offense, in which case the cross reference would apply.

This guideline also covers offenses under section 1591 of title 18, United States Code, that involve recruiting or transporting a person, other than a minor, in interstate commerce knowing that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act.

Offenses of promoting prostitution or prohibited sexual conduct in which a minor victim is involved are to be sentenced under § 2G1.3 (Promoting Prostitution or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Use of Interstate Facilities to Transport Information about a Minor).".

II. Misleading Domain Names

Section 2G3.1 is amended in the heading by adding at the end "; Misleading Domain Names" after "Minor".

Section 2G3.1(b)(1) is amended by redesignating subdivisions (D) and (E) as subdivisions (E) and (F), respectively; and by inserting after subdivision (C) the following new subdivision:

"(D) Distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, increase by 6 levels.";

and in subdivision (F), as redesignated by this amendment, by striking "(D)" and inserting "(E)".

Section 2G3.1(b) is amended by redesignating subdivision (2) as subdivision (4); by inserting after subdivision (1) the following new subdivisions (2) and (3):

"(2) If the offense involved the use of a misleading domain name on the Internet with the intent to deceive a [minor][person] into viewing material on the Internet that is harmful to minors, increase by 2 levels.

(3) If [the defendant used][the offense involved the use of] a computer or an interactive computer service, increase by 2 levels."[;

and by adding at the end the following new subdivision:

"(5) If the offense involved material that was advertised or described to include a minor engaged in sexually explicit conduct, increase by [2][4] levels."].

The Commentary to § 2G3.1 captioned "Statutory Provisions" is amended by inserting "; 2252B" after "1470".

The Commentary to § 2G3.1 captioned "Application Note" is amended by striking "Note" and inserting "Notes"; in Note 1 by striking "For purposes of this guideline.—" and inserting "Definitions.—For purposes of this guideline:"; in the paragraph that begins " 'Distribution' means" by inserting "Accordingly, distribution includes posting material on a website for public viewing." after "obscene matter."; by striking the paragraph that begins " 'Minor' means" and inserting the following:

" 'Material that is harmful to minors' has the meaning given that term in 18 U.S.C. 2252B(d)(3).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.";

by adding at the end the following new paragraph:

" 'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. 2256(2)(A).";

and by adding after Note 1 the following new note:

"2. Use of a Computer or an Interactive Computer Service.—Subsection (b)(5) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(5) would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.".

Appendix A (Statutory Index) is amended by inserting before the line reference to "18 U.S.C. 2257" the following new line:

"18 U.S.C. 2252B 2G3.1".

Section 3D1.2(d) is amended by inserting ", 2G3.1" after "2G2.4".

III. Conditions of Supervised Release

Section 5B1.3(d)(7) is amended by striking "If the instant" and all that follows through "sex offenders." and inserting the following:

"If the instant offense of conviction is a sex offense, as defined in § 5D1.2 (Term of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

[(B) A condition limiting [or prohibiting] the use of a computer or an interactive computer service in cases in which the [defendant used][offense involved] the use of such items.]".

Section 5D1.2 is amended in subsection (a) by striking "Subject to" and inserting "Except as provided in"; in subsection (b) by inserting "(1)" before "shall"; and by inserting before the period the following:

"; or (2) in the case of a sex offense conviction, shall be not less than the minimum term of years specified for that class of offense under subdivisions (a)(1) through (a)(3), and may be up to life".

Section 5D1.3(d)(7) is amended by striking "If the instant" and all that follows through "sex offenders." and inserting the following:

"If the instant offense of conviction is a sex offense, as defined in § 5D1.2 (Terms of Supervised Release)—

(A) A condition requiring the defendant to participate in a program approved by the United States Probation Office for the treatment and monitoring of sex offenders.

[(B) A condition limiting [or prohibiting] the use of a computer or an interactive computer service in cases in which the [defendant used][the offense involved] the use of such items.]".

IV. Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse) Amendments

[Option 1:

Section 2A3.1 is amended by striking subsection (a) in its entirety and inserting the following:

"(a) Base Offense Level:

(1) [30][32][34][36], if the offense involved a minor; or

(2) [27–30], otherwise.]".

[Option 2:

Section 2A3.1 is amended by striking subsection (a) in its entirety and inserting the following:

"(a) Base Offense Level: [27–30]";

Section 2A3.1(b) is amended by striking subdivision (1) in its entirety and inserting the following:

"(1) If the offense involved conduct described in 18 U.S.C. 2241(a) or (b), increase by 4 levels.".]

Section 2A3.1(b) is amended in subdivision (6) by striking "Internet-access device" and inserting "interactive computer service".

[Option 2:

Section 2A3.1(b) is amended by adding at the end the following:

"(7) If (A) a minor was involved; and (B) the offense was committed in connection with the possession, distribution, or production of child pornography, increase by [3][5][7] levels.".]

[Option 3:

Section 2A3.1(c) is amended by striking "Cross Reference" and inserting "Cross References"; and by adding at the end the following:

"(2) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above."].

Section 2A3.1(c)(1) is amended by inserting ", if the resulting offense level is greater than that determined above" after "Murder)".

The Commentary to § 2A3.1 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. Definitions.—For purposes of this guideline:

'Child pornography' has the meaning given that term in 18 U.S.C. 2256(8).

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing, but does not include the mere solicitation of such material by a defendant.

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Permanent or life-threatening bodily injury,' 'serious bodily injury,' and 'abducted' are defined in the Commentary to § 1B1.1 (Application Instructions). However, for purposes of this guideline, 'serious bodily injury' means conduct other than criminal sexual abuse, which already is taken into account in the base offense level under subsection (a).

'Prohibited sexual conduct' (A) means any sexual activity for which a person can be charged with a criminal offense; (B) includes the production of child pornography; and (C) does not include trafficking in, or possession of, child pornography. 'Child pornography' has the meaning given that term in 18 U.S.C. 2256(8).

'Conduct described in 18 U.S.C. 2241(a) or (b)' is: using force against the victim; threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; rendering the victim unconscious; or administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished.

'Victim' includes an undercover law enforcement officer.".

The Commentary to § 2A3.1 captioned "Application Notes" is amended by striking Notes 2 and 3 in their entirety and inserting the following:

"2. Custody, Care, or Supervisory Control Enhancement.—Subsection (b)(5) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

3. Inapplicability of Enhancement.—If the enhancement in subsection (b)(5) applies, do not apply § 3B1.3 (Abuse of

Position of Trust or Use of Special Skill).".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 4 by inserting before "The enhancement" the following:

"Application of Subsection (b)(6).—

(A) Misrepresentation of Participant's Identity.—";

and by striking the last paragraph in its entirety and inserting the following new paragraph:

"(B) Use of a Computer or Interactive Computer Service.—Subsection (b)(6)(B) provides an enhancement if a computer or an interactive computer service was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the minor from an airline's Internet site.".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 5 by inserting "Upward Departure Provision.—" before "If a victim".

[Option 2: The Commentary to § 2A3.1 captioned "Application Notes" is amended by adding at the end the following:

"6. Application of Subsection (b)(7).—Subsection (b)(7) is intended to apply in cases in which the offense involved the production of child pornography. For purposes of this subsection, 'child pornography' has the meaning given that term in 18 U.S.C. 2256.".]

Section 2A3.2 is amended by striking subsection (a) in its entirety and inserting the following:

"(a) Base Offense Level: 18".

Section 2A3.2(b) is amended by striking subsections (2) through (4) in their entirety and inserting the following:

"(2) If (A) subsection (b)(1) does not apply; and (B)(i) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct or a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct; or (ii) a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct, increase by 2 levels.

(3) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct, increase by 2 levels.".

The Commentary to § 2A3.2 captioned "Application Notes" is amended in Note 1 by inserting after "Definitions.—For purposes of this guideline:" the following:

"'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).";

by striking "'Sexual act'" and all that follows through "16 years." and inserting the following:

"'Victim' means (A) an individual who had not attained the age of 16 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 16 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 16 years.".

The Commentary to § 2A3.2 captioned "Application Notes" is amended in Note 2 by striking "and" after "Care," in the heading and inserting "or"; by inserting "(A) In General.—" before "Subsection (b)(1)"; and by adding at the end the following new paragraph:

"(B) Inapplicability of Enhancement.—If the enhancement in subsection (b)(1) applies, do not apply subsection (b)(2) or § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to § 2A3.2 captioned "Application Notes" is amended by striking Note 3 in its entirety; and by redesignating Notes 4 through 7 as Notes 3 through 6, respectively.

The Commentary to § 2A3.2 captioned "Application Notes" is amended in Note 3, as redesignated by this amendment, by striking "(b)(2)(A)" each place its appears and inserting "(b)(2)(B); by striking "(A) persuade" and inserting "persuade"; by striking "; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct" each place it appears; by striking "(b)(2)(B)" and inserting "(b)(2)(B)(ii)"; and by striking "If the victim" and all that follows through "(c)(1) will apply.".

The Commentary to § 2A3.2 captioned "Application Notes" is amended by striking Note 4, as redesignated by this amendment, in its entirety and inserting the following:

"4. Use of Computer or an Interactive Computer Service.—Subsection (b)(3) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct. Subsection (b)(3) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with the victim or with a person who exercises custody, care, or supervisory control of the victim. Accordingly, the enhancement would not apply to the use of a computer or an interactive computer service to obtain airline tickets for the victim from an airline's Internet site.".

The Commentary to § 2A3.2 captioned "Background" is amended by striking "or chapter 117 of title 18, United States Code".

Section 2A3.3(a) is amended by striking "9" and inserting "[10][12]".

Section 2A3.3(b) is amended by striking "(A)" each place it appears; and by striking "; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct" each place it appears; and in subdivision (2) by striking "Internet-access device" and inserting "interactive computer service".

The Commentary to § 2A3.3 captioned "Application Notes" is amended in Note 1 by striking "For purposes of this guideline—" and inserting the following: "Definitions.—For purposes of this guideline:

'Computer' has the meaning given that term in 18 U.S.C. 1030(e)(1).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).".

The Commentary to § 2A3.3 captioned "Application Notes" is amended by striking Notes 2 and 3 in their entirety and inserting the following:

"2. Misrepresentation of a Participant's Identity.—The enhancement in subsection (b)(1) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(1) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor.

The misrepresentation to which the enhancement in subsection (b)(1) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

3. Use of a Computer or an Interactive Computer Service.—Subsection (b)(2) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(2) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.".

Section 2A3.4(a) is amended by striking subdivisions (1) and (2) in their entirety and inserting the following:

"(1) 16, if the offense involved conduct described in 18 U.S.C. 2241(a) or (b);

(2) 12, if the offense involved conduct described in 18 U.S.C. 2242;".

Section 2A3.4(b) is amended by striking subdivisions (4) through (6) in their entirety and inserting the following:

"(4) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.

(5) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.".

The Commentary to § 2A3.4 captioned "Application Notes" is amended in Note 1 by striking "For purposes of this guideline"—and all the follows through "18 years." and inserting the following:

"Definitions.—For purposes of this guideline:

'Minor' means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; and (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.".

The Commentary to § 2A3.4 captioned "Application Notes" is amended in Note 2 by striking " 'The means set forth" and inserting "Application of Subsection (a)(1).—'Conduct described"; by striking "are" and inserting "is"; and by striking "by" each place it appears.

The Commentary to § 2A3.4 captioned "Application Notes" is amended in Note 3 by striking " 'The means set forth" and inserting "Application of Subsection (a)(2).—'Conduct described"; by striking "are" and inserting "is"; and by striking "by" each place it appears.

The Commentary to § 2A3.4 captioned "Application Notes" is amended in Note 4 by inserting before "Subsection (b)(3)" the following:

"Custody, Care, or Supervisory Control.—

(A) In General.—";

and by adding at the end the following new paragraph:

"(B) Inapplicability of Enhancement.—If the adjustment in subsection (b)(3) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).".

The Commentary to § 2A3.4 captioned "Application Notes" is amended by striking Note 5 in its entirety; and by redesignating Notes 6 and 7 as Notes 5 and 6, respectively.

The Commentary to § 2A3.4 captioned "Application Notes" is amended in Note 5, as redesignated by this amendment, by inserting "Misrepresentation of a Participant's Identity.—" before "The enhancement in subsection (b)(4) applies"; by striking "(A)" each place it appears; and by striking "; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct" each place it appears.

The Commentary to § 2A3.4 captioned "Application Notes" is amended in Note 6, as redesignated by this amendment, by striking the text and inserting the following:

"Use of a Computer or an Interactive Computer Service.—Subsection (b)(5) provides an enhancement if a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct. Subsection (b)(5) is intended to apply only to the use of a computer or an interactive computer service to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor.".

The Commentary to § 2A3.4 captioned "Background" is amended by striking "For cases involving" and all that follows through "level 6.".

Issues for Comment:

1. The PROTECT Act contains substantial increases in penalties for defendants sentenced under a number of the sexual abuse and pornography guidelines, including new mandatory minimum penalties. Do the increased penalties provided in the PROTECT Act necessitate amending the base offense levels and specific offense characteristics in these guidelines to target more accurately the specific conduct of the defendant, thereby reserving the most severe penalties for the most serious offenders? Guidelines 2G2.1, 2G2.2, and 2G2.4 contain numerous specific offense characteristics addressing a wide variety of conduct involved in the production of, trafficking in, or possession of, child pornography. Currently, the application of these specific offense characteristics is based on either (A) the actions of only the defendant (*e.g.*, § 2G2.4(b)(3) provides a two-level increase "if the defendant's possession of the material resulted from the defendant's use of a computer"), or (B) all the conduct within the scope of relevant conduct (*e.g.*, § 2G2.1(b)(3) provides, in part, a two-level increase if the "offense involved" the use of a computer or Internet-access device). Specifically, the Commission requests comment on whether the specific offense characteristics in these guidelines should be based on all conduct within the scope of relevant conduct, or based on only the actions of the defendant; *i.e.*, should the enhancement apply if the defendant used or directed the use of a computer, rather than if others within the defendant's jointly undertaken criminal activity used a computer?

2. Sections 401(i)(1)(B) and (C) of the PROTECT Act added new subsections in §§ 2G2.2 and 2G2.4 which provide a two- to five-level enhancement based on the number of child pornography "images" involved in the offense. See §§ 2G2.2(b)(6) and 2G2.4(b)(5). The PROTECT Act did not, however, define what constitutes an "image" for purposes of applying these new "image tables." The Commission seeks comment regarding whether a definition of "image," or instructions for counting images, for purposes of applying these subsections, is necessary. If the Commission provides instructions, how should the Commission decide how to count images? For example, is a photograph of two minors engaged in sexually explicit conduct to be considered one image, or two images? How should videos, films, or AVI files be considered? For example, if a video includes numerous scenes, each of which portrays the same minor engaging in sexually explicit conduct with a different adult, is each scene with a different adult to be considered a separate image?

3. The Commission seeks comment regarding whether it should address a circuit conflict involving the application

of the specific offense characteristics in §§ 2G2.2 and 2G2.4 (effective April 30, 2003) for material portraying sadistic or masochistic conduct or other depictions of violence. Currently, the circuit courts are split on this issue, with three circuits finding that application of the enhancement requires proof that the defendant intended to possess or traffic material portraying sadistic or masochistic conduct, or other depictions of violence (see *United States* v. *Kimbrough*, 69 F.3d 723 (5th Cir. 1995); *United States* v. *Burnette*, 234 F.3d 1270 (6th Cir. 2000)(unpub.); *United States* v. *Tucker*, 136 F.3d 763 (11th Cir. 1998)), while the Seventh Circuit requires a strict liability standard (see *United States* v. *Richardson*, 238 F.3d 837 (7th Cir. 2001)). The Commission requests comment on whether it should resolve this circuit conflict. If so, how should the Commission handle this issue?

Further, the Commission seeks comment regarding whether it should provide a definition of sadistic or masochistic conduct or other depictions of violence for purposes of application of the specific offense characteristic. Circuit courts have struggled with whether material portraying sexual penetration of prepubescent minors is per se sadistic or violent; whether the enhancement requires that depictions contain material portraying bondage or restraints; whether sadistic or masochistic conduct requires purposefully degrading or humiliating conduct that causes mental, psychological, or emotional injury; or whether the conduct depicted must be painful, coercive, degrading, and abusive. See *United States* v. *Delmarle*, 99 F.3d 80 (2d Cir. 1996); *United States* v. *Kimbrough*, 69 F.3d 723 (5th Cir. 1995); *United States* v. *Turchen*, 187 F.3d 735 (7th Cir. 1999); *United States* v. *Parker*, 267 F.3d 839 (8th Cir. 2001); *United States* v. *Hall*, 312 F.3d 1250 (11th Cir. 2002). If the Commission provides a definition of these terms, what should that definition be?

Finally, some argue that material that depicts bestiality or excretory functions is just as harmful as material that depicts sadistic or masochistic conduct or other depictions of violence and should be treated accordingly. The Commission seeks comment regarding whether the enhancement for material portraying sadistic or masochistic conduct or other depictions of violence in §§ 2G2.2, 2G2.4, and 2G3.1 (as well as the proposed enhancement in § 2G2.1) should be expanded to include material portraying bestiality or excretory functions.

4. The Commission seeks comment regarding which guideline is the most appropriate for violations of 18 U.S.C. 2425, relating to use of interstate facilities to transport information about a minor. Section 2425 prohibits the use of interstate facilities to transmit the name, address, telephone number, social security number, or e-mail address of a minor, with the intent to encourage, entice, offer, or solicit any person to engage in prohibited sexual conduct with that minor. Violations of this section carry a statutory maximum term of imprisonment of five years and are currently covered by § 2G1.1 (proposed § 2G1.3). Other offenses covered by § 2G1.1 carry a five year mandatory minimum term of imprisonment and substantially higher statutory maximums. Some practitioners claim that section 2425 offenses might be more like harassment or threatening communications offenses covered by § 2A6.1 (Threatening or Harassing Communications). Is § 2G1.1 (proposed § 2G1.3) or § 2A6.1 the more appropriate guideline for section 2425 offenses? If § 2G1.1 (proposed § 2G1.3) is not the most appropriate guideline, what guideline should be used to sentence violators of section 2425? Is there conduct specific to section 2425 offenses that necessitates the addition of any specific offense characteristic (*e.g.*, age, intent to encourage, entice, offer, or solicit any person to engage in prohibited sexual conduct with a minor)?

5. The Commission seeks comment regarding whether the offense levels in Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse), specifically, §§ 2A3.1, 2A3.2, and 2A3.3, 2A3.4, should be increased to maintain proportionality with increases proposed for the Chapter Two, Part G guidelines, in response to statutory penalty changes provided by the PROTECT Act. If so increased, what should be the appropriate offense levels? Are there additional specific offense characteristics, cross references, or departure considerations that should be added to these guidelines? Additionally, how should the Commission address the interaction between the pattern of activity enhancement at § 4B1.5 (Repeat and Dangerous Sex Offender Against Minor) and offenses sentenced under § 2A3.2. The PROTECT Act changed the definition of pattern of activity so that, instead of requiring the abuse of two minors on two separate occasions, a pattern of activity now requires two separate occasions of prohibited sexual conduct with only one minor. Therefore, under the new definition, repeat acts against one minor will lead to a five-level increase under § 4B1.5. Preliminary data suggest this enhancement will apply to the majority of defendants sentenced at § 2A3.2. Thus, should the Commission consider this enhancement when deciding whether to increase the base offense level at § 2A3.2?

6. The Commission requests comment regarding whether the guidelines in Chapter Two, Part A, Subpart 3 (Criminal Sexual Abuse) and Chapter Two, Part G (Offenses Involving Commercial Sexual Acts, Sexual Exploitation of Minors, and Obscenity) should provide an enhancement if the offense involved incest. Some commentators have argued that offenses involving incest result in a violation of trust, making these offenses more egregious than offenses in which a defendant has care, custody, or control of the victim but is not a family member. If the Commission added this enhancement to the Chapter Two, Part A, Subpart 3 offenses, should the enhancement apply as an alternative or as an additional enhancement to the current two-level enhancement that applies "if the victim was in the custody, care, or supervisory control of the defendant"? Furthermore, if the Commission added this enhancement, what relationships should be covered under the definition of incest?

Proposed Amendment 2: Effective Compliance Programs in Chapter Eight

Synopsis of Proposed Amendment: The proposed amendment is intended to provide greater guidance to organizations and courts regarding the criteria for an effective program to prevent and detect violations of the law ("compliance programs"). The proposed amendment adds to Chapter Eight, Part B, a new guideline, § 8B2.1 (Effective Program to Prevent and Detect Violations of Law), that identifies the purposes of an effective compliance program, sets forth seven minimum steps for such a program, and provides guidance for their implementation. This proposed amendment was developed by the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines empaneled by the Commission for the purpose of reviewing the general effectiveness of the guidelines for organizations, with particular emphasis on examining the criteria for an effective compliance program. The Advisory Group's review and analysis can be found in its report of October 7, 2003, to the Commission at *www.ussc.gov*.

Under subsection (g) of § 8C2.5 (Culpability Score), the existence of an effective compliance program is a mitigating factor that reduces an organization's culpability score and ultimately its fine range. Also, the implementation of a compliance program may be a condition of probation for organizations under § 8D1.4(c) (Recommended Conditions of Probation—Organizations).

The proposed amendment incorporates the seven minimum steps for a compliance program, currently located in the commentary to § 8A1.2 (Application Instructions—Organizations) at Application Note 3(k), into a new guideline at § 8B2.1 in order to emphasize the importance of compliance programs and provide more prominent guidance on the attributes of such programs. The proposed amendment defines the obligations and purposes of such programs, adds more detail to the seven minimum requirements, and provides definitions throughout the associated commentary.

The proposed amendment expands the scope of the objective of a compliance program by defining the term "violation of law" more broadly than in the current guidelines, which refer only to violations of criminal law and prevention of criminal conduct. The proposed amendment expands the objective of a compliance program more broadly to include prevention and detection of "violations of any law, whether criminal or noncriminal (including a regulation), for which the organization is, or would be, liable." This language also replaces the prior reference to "employees and agents", relying instead on the legal standard of vicarious liability.

The proposed amendment retains the requirement that an organization exercise due diligence to prevent and detect violations of law, and adds at subsection (a) the requirement that an organization shall also "otherwise promote an organizational culture that encourages a commitment to compliance with the law." This proposed addition is intended to reflect the emphasis on ethics and values incorporated into recent legislative and regulatory reforms, as well as the proposition that compliance with all laws is the expected behavior within organizations.

The proposed amendment retains the existing seven minimum steps of an effective compliance program but provides greater guidance regarding some of the requirements by adding definitions and clarifying terms at subsection (b). First, for the requirement of the "establishment of compliance standards and procedures that are reasonably capable of reducing the prospect of criminal conduct", Application Note 1 defines "compliance standards and procedures" as "standards of conduct and internal control systems that are reasonably capable of reducing the likelihood of violations of law."

Second, for the requirement that "specific individuals within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance", subsection (b)(2) defines the specific roles and reporting relationships of particular categories of high-level personnel with respect to compliance programs. In particular, the proposed amendment provides that the "organizational leadership shall be knowledgeable about the content and operation of the program to prevent and detect violations of law." The accompanying commentary at Application Note 1 defines "organizational leadership" as "(A) high-level personnel of the organization; (B) high-level personnel of a unit of the organization; and (C) substantial authority personnel" and retains existing definitions for the terms "high-level personnel of the organization" and "substantial authority personnel".

The proposed amendment also provides at subsection (b)(2) that the "organization's governing authority shall be knowledgeable about the content and operation of the program to prevent and detect violations of the law and shall exercise reasonable oversight with respect to the implementation and effectiveness of the program to prevent and detect violations of law." Application Note 1 defines "governing authority" as "(A) Board of Directors, or (B) if the organization does not have a Board of Directors, the highest-level governing body of the organization." Subsection (b)(2) retains the existing requirement that "specific individual(s) within high-level personnel of the organization shall be assigned direct, overall responsibility for the program," and specifies that their responsibility is to "ensure the implementation and effectiveness of the program." The proposed amendment also requires that the individual responsible for compliance be given adequate resources and authority to carry out such responsibility, and provides that such individual shall report directly to the governing authority.

Third, the proposed amendment at subsection (b)(3) replaces the current requirement that substantial authority personnel be screened for their "propensity to engage in violations of law" with a requirement that the organization "use reasonable efforts and due diligence not to include within the substantial authority personnel any individual whom the organization knew, or should have known, has a history of engaging in violations of law or other conduct inconsistent with an effective program". For purposes of this subsection only, the proposed amendment defines the term "violations of law" as "any official determination of a violation or violations of any law, whether criminal or noncriminal (including a regulation)." This is meant to ensure that an individual is screened on the basis of his or her culpability and not on the basis of an organization's vicarious liability. The corresponding commentary enumerates factors to be considered in this determination, among them, the recency of the individual's violations of law and other misconduct, the relatedness of the individual's violations of law and other misconduct to his or her responsibilities, and whether the individual has engaged in a pattern of such violations of law and other misconduct.

Fourth, the proposed amendment at subsection (b)(4) makes compliance training a requirement, and specifically extends the training requirement to the upper levels of an organization as well as to the organization's employees and agents, as appropriate.

Fifth, the proposed amendment at subsection (b)(5) expands the existing criterion for using auditing and monitoring systems by expressly providing that such systems are to be designed to detect violations of law. The proposed amendment adds the specific requirement that there be periodic evaluation of the effectiveness of its compliance program. The proposed amendment replaces the existing reference to "reporting systems without fear of retribution" with the more specific requirement for the implementation of "mechanisms to allow for anonymous reporting." The proposed amendment expands the stated focus of internal reporting from "the criminal conduct * * * of others" to using internal systems for both "seeking guidance and reporting potential or actual violations of law."

Sixth, the proposed amendment at subsection (b)(6) broadens the existing criterion that the compliance standards be enforced through disciplinary measures by adding that such standards also be encouraged through "appropriate incentives to perform in accordance with a [compliance] program." Finally, at subsection (b)(7) the amendment retains the existing requirement that an organization take reasonable steps to respond to and prevent further similar violations of law.

In addition to the seven criteria for a compliance program, the proposed amendment expressly provides at subsection (c) that ongoing risk assessment is an essential component of the design, implementation, and modification of an effective program. The proposed amendment includes at Application Note 5(A) certain requirements in conjunction with the performance of risk assessments, namely, that organizations assess the nature and seriousness of potential violations of law, the likelihood that certain violations of law may occur because of the nature of the organization's business, and the prior history of the organization. Corresponding commentary specifies that organizations must prioritize the actions taken to implement an effective compliance program and modify such actions in light of the risks identified in the risk assessment.

The proposed amendment also provides additional guidance with respect to the implementation of compliance programs by small organizations by making more frequent references to small organizations throughout the commentary and providing illustrations (*e.g.*, § 8B2.1, Application Note 2(B)(ii)).

This proposed amendment also makes two changes to the factors that affect the culpability score of an organization under § 8C2.5 (Culpability Score). First, rather than precluding an organization from obtaining the compliance program credit if certain categories of high-level personnel are involved in the offense of conviction, the proposed subsection (f) establishes that "an offense by an individual within high-level personnel of the organization results in a rebuttable presumption" that effective prevention and detections program did not exist.

Under the existing guidelines, an organization cannot receive the three-point reduction in its culpability score under § 8C2.5(f) if any one of three categories of individuals participated in, condoned, or was willfully ignorant of the offense: (1) An individual within high-level personnel of the organization; (2) a person within high-level personnel of a unit having more than 200 employees and within which the offense was committed; or (3) an individual responsible for the administration or enforcement of a compliance program. The existing guidelines also provide for a rebuttable presumption that an organization did not have an effective compliance program if an individual within substantial authority personnel participated in an offense. The proposed amendment provides for a rebuttable presumption that the organization did not have an effective compliance program where high-level personnel of the organization participated in, condoned, or were wilfully ignorant of the offense. This modification is intended to assist smaller organizations that currently may be automatically precluded, because of their size, from arguing for a culpability score reduction for their compliance efforts under § 8C2.5(f).

Second, the proposed amendment addresses concerns about the relationship between obtaining credit under subsection (g) of § 8C2.5 and waiving the attorney-client privilege and the work product protection doctrine. Pursuant to § 8C2.5(g)(1) and (2), an organization's culpability score will be reduced if it "fully cooperated in the investigation" of its wrongdoing, among other factors. The Commission's Ad Hoc Advisory Group on the Organizational Sentencing Guidelines studied the relationship between waivers and § 8C2.5(g) by obtaining testimony and conducting its own research, including a survey of United States Attorney's Offices (all of which are described at Part V of the Advisory Group Report of October 17, 2003, located at *www.ussc.gov*). The commentary in the proposed amendment addresses some of these concerns by providing that waiver of the attorney-client privilege and of work product protections "is not a prerequisite to a reduction in culpability score under subsection (g)" but in some circumstances "may be required in order to satisfy the requirements of cooperation."

Proposed Amendment:

Chapter Eight is amended in the Introductory Commentary by striking "criminal conduct" each place it appears and inserting "violations of law".

Section 8A1.2(a) is amended by inserting ", Subpart 1" after "Part B".

Section 8A1.2(b)(2)(D) is amended by adding at the end the following: "To determine whether the organization had an effective program to prevent and detect violations of law for purposes of § 8C2.5(f), apply § 8B2.1 (Effective Program to Prevent and Detect Violations of Law).".

The Commentary to § 8A1.2 captioned "Application Notes" is amended in Note 3(c) in the second sentence by inserting "of the organization" after "high-level personnel".

The Commentary to § 8A1.2 captioned "Application Notes" is amended by striking Note 3(k) in its entirety.

Chapter Eight, Part B is amended by striking the heading and inserting the following:

"PART B—REMEDYING HARM FROM CRIMINAL CONDUCT, AND PREVENTING AND DETECTING VIOLATIONS OF LAW

1. REMEDYING HARM FROM CRIMINAL CONDUCT";

and by adding at the end the following new subpart:

"2. PREVENTING AND DETECTING VIOLATIONS OF LAW

§ 8B2.1. Effective Program to Prevent and Detect Violations of Law

(a) To have an effective program to prevent and detect violations of law, for purposes of subsection (f) of § 8C2.5 (Culpability Score) and subsection (c)(1) of § 8D1.4 (Recommended Conditions of Probation—Organizations), an organization shall—

(1) exercise due diligence to prevent and detect violations of law; and

(2) otherwise promote an organizational culture that encourages a commitment to compliance with the law.

Such program shall be reasonably designed, implemented, and enforced so that the program is generally effective in preventing and detecting violations of law. The failure to prevent or detect the instant offense does not necessarily mean that the program is not generally effective in preventing and detecting violations of law.

(b) Due diligence and the promotion of an organizational culture that encourages a commitment to compliance with the law within the meaning of subsection (a) minimally require the following steps:

(1) The organization shall establish compliance standards and procedures to prevent and detect violations of law.

(2) The organizational leadership shall be knowledgeable about the content and operation of the program to prevent and detect violations of law.

The organization's governing authority shall be knowledgeable about the content and operation of the program to prevent and detect violations of law and shall exercise reasonable oversight with respect to the implementation and effectiveness of the program to prevent and detect violations of law.

Specific individual(s) within high-level personnel of the organization shall be assigned direct, overall responsibility to ensure the implementation and effectiveness of the program to prevent and detect violations of law. Such individual(s) shall be given adequate resources and authority to carry out such responsibility and shall report directly to the governing authority or an appropriate subgroup of the governing authority regarding the implementation and effectiveness of the program to prevent and detect violations of law.

(3) The organization shall use reasonable efforts not to include within the substantial authority personnel of the organization any individual whom the organization knew, or should have known through the exercise of due diligence, has a history of engaging in violations of law or other conduct inconsistent with an effective program to prevent and detect violations of law.

(4)(A) The organization shall take reasonable steps to communicate in a practical manner its compliance standards and procedures, and other aspects of the program to prevent and detect violations of law, to the individuals referred to in subdivision (B) by conducting effective training programs and otherwise disseminating information appropriate to such individual's respective roles and responsibilities.

(B) The individuals referred to in subdivision (A) are the members of the governing authority, the organizational leadership, the organization's employees, and, as appropriate, the organization's agents.

(5) The organization shall take reasonable steps—

(A) to ensure that the organization's program to prevent and detect violations of law is followed, including using monitoring and auditing systems that are designed to detect violations of law;

(B) to evaluate periodically the effectiveness of the organization's program to prevent and detect violations of law; and

(C) to have a system whereby the organization's employees and agents may report or seek guidance regarding potential or actual violations of law without fear of retaliation, including mechanisms that allow for anonymous reporting.

(6) The organization's program to prevent and detect violations of law shall be promoted and enforced consistently through appropriate incentives to perform in accordance with such program and disciplinary measures for engaging in violations of law and for failing to take reasonable steps to prevent or detect violations of law.

(7) After a violation of law has been detected, the organization shall take reasonable steps to respond appropriately to the violation of law and to prevent further similar violations of law, including making any necessary modifications to the organization's program to prevent and detect violations of law.

(c) In implementing subsection (b), the organization shall conduct ongoing risk assessment and take appropriate steps to design, implement, or modify each step set forth in subsection (b) to reduce the risk of violations of law identified by the risk assessment.

Commentary

Application Notes:

1. Definitions.—For purposes of this guideline:

'Compliance standards and procedures' means standards of conduct and internal control systems that are reasonably capable of reducing the likelihood of violations of law.

'Governing authority' means the (A) the Board of Directors, or (B) if the organization does not have a Board of Directors, the highest-level governing body of the organization.

'Organizational leadership' means (A) high-level personnel of the organization; (B) high-level personnel of a unit of the organization; and (C) substantial authority personnel. The terms 'high-level personnel of the organization' and 'substantial authority personnel' have the meaning given those terms in the Commentary to § 8A1.2 (Application Instructions—Organizations). The term 'high-level personnel of a unit of the organization' has the meaning given that term in the Commentary to § 8C2.5 (Culpability Score).

'Violations of law' means violations of any law, whether criminal or noncriminal (including a regulation), for which the organization is, or would be, liable, or in the case of Application Note 4(A), for which the individual would be liable.

2. Factors to Consider in Meeting Requirements of Subsections (a) and (b).—

(A) In General.—Each of the requirements set forth in subsections (a) and (b) shall be met by an organization; however, in determining what specific actions are necessary to meet those requirements, factors that shall be considered include (i) the size of the organization, (ii) applicable government regulations, and (iii) any compliance practices and procedures that are generally accepted as standard or model practices for businesses similar to the organization.

(B) The Size of the Organization.—

(i) In General.—The formality and scope of actions that an organization shall take to meet the requirements of subsections (a) and (b), including the necessary features of the organization's compliance standards and procedures, depend on the size of the organization. A larger organization generally shall devote more formal operations and greater resources in meeting such requirements than shall a smaller organization.

(ii) Small Organizations.—In meeting the requirements set forth in subsections (a) and (b), small organizations shall demonstrate the same degree of commitment to compliance with the law as larger organizations, although generally with less formality and fewer resources than would be expected of larger organizations. While each of the requirements set forth in subsections (a) and (b) shall be substantially satisfied by all organizations, small organizations may be able to establish an effective program to prevent and detect violations of law through relatively informal means. For example, in a small business, the manager or proprietor, as opposed to independent compliance personnel, might perform routine audits with a simple checklist, train employees through informal staff meetings, and perform compliance monitoring through daily "walk-arounds" or continuous observation while managing the business. In appropriate circumstances, such reliance on existing resources and simple systems can demonstrate a degree of commitment that, for a much larger organization, would only be demonstrated through more formally planned and implemented systems.

(C) Applicable Government Regulations.—The failure of an organization to incorporate within its program to prevent and detect violations of law any standard required by an applicable government regulation weighs against a finding that the program was an "effective program to prevent and detect violations of law" within the meaning of this guideline.

3. Application of Subsection (b)(2).—

(A) Governing Authority.—The responsibility of the governing authority under subsection (b)(2) is to exercise reasonable oversight of the organization's efforts to ensure compliance with the law. In large organizations, the governing authority likely will discharge this responsibility through oversight, whereas in some organizations, particularly small ones, it may be more appropriate for the governing authority to discharge this responsibility by directly managing the organization's compliance efforts.

(B) High-Level Personnel.—The organization has discretion to delineate the activities and roles of the specific individual(s) within high-level personnel of the organization who are assigned overall and direct responsibility to ensure the effectiveness and operation of the program to detect and prevent violations of law; however, the individual(s) must be able to carry out their overall and direct responsibility consistent with subsection (b)(2), including the ability to report to the governing authority, or to an appropriate subgroup of the governing authority, the effectiveness and operation of the program to detect and prevent violations of law.

In addition to receiving reports from the foregoing individual(s), individual(s) with day-to-day operational responsibility for the program should periodically provide to the governing authority or an appropriate subgroup thereof information on the implementation and effectiveness of the program to detect and prevent violations of law.

(C) Organizational Leadership.—Although the overall and direct responsibility to ensure the effectiveness and operation of the program to detect and prevent violations of law is assigned to specific individuals within high-level personnel of the organization, it is incumbent upon all individuals within the organizational leadership to be knowledgeable about the content and operation of the program to detect and prevent violations of law pursuant to subsection (b)(2); to perform their assigned duties consistent with the exercise of due diligence; and to promote an organizational culture that encourages a commitment to compliance with the law, under subsection (a).

4. Application of Subsection (b)(3).—

(A) Violations of Law.—Notwithstanding Application Note 1, "violations of law," for purposes of subsection (b)(3), means any official determination of a violation or violations of any law, whether criminal or noncriminal (including a regulation).

(B) Consistency with Other Law.—Nothing in subsection (b)(3) is intended to require conduct inconsistent with any Federal, State, or local law, including any law governing employment or hiring practices.

(C) Implementation.—In implementing subsection (b)(3), the organization shall hire and promote individuals consistent with Application Note 3, subdivision (C) so as to ensure that all individuals within the organizational leadership will perform their assigned duties with the exercise of due diligence, and the promotion of an organizational culture that encourages a commitment to compliance with the law, under subsection (a). With respect to the hiring or promotion of any specific individual within the substantial authority personnel of the organization, an organization shall consider factors such as: (i) the recency of the individual's violations of law and other misconduct (*i.e.*, other conduct inconsistent with an effective program to prevent and detect violations of law); (ii) the relatedness of the individual's violations of law and other misconduct to the specific responsibilities the individual is anticipated to be assigned as part of the substantial authority personnel of the organization; and (iii) whether the individual has engaged in a pattern of such violations of law and other misconduct.

5. Risk Assessments under Subsection (c).—Risk assessment(s) required under subsection (c) shall include the following:

(A) Assessing periodically the risk that violations of law will occur, including an assessment of the following:

(i) The nature and seriousness of such violations of law.

(ii) The likelihood that certain violations of law may occur because of the nature of the organization's business. If, because of the nature of an organization's business, there is a substantial risk that certain types of violations of law may occur, the organization shall take reasonable steps to prevent and detect those types of violations of law. For example, an organization that, due to the nature of its business, handles toxic substances shall establish compliance standards and procedures designed to ensure that those substances are always handled properly. An organization that, due to the nature of its business, employs sales personnel who have flexibility to set prices shall establish compliance standards and procedures designed to prevent and detect price-fixing. An organization that, due to the nature of its business, employs sales personnel who have flexibility to represent the material characteristics of a product shall establish compliance standards and procedures designed to prevent fraud.

(iii) The prior history of the organization. The prior history of an organization may indicate types of violations of law that it shall take actions to prevent and detect. Recurrence of similar violations of law creates doubt regarding whether the organization took reasonable steps to prevent and detect those violations of law.

(B) Periodically, prioritizing as most likely to occur and most serious, the actions taken under each step set forth in subsection (b), in order to focus on preventing and detecting the violations of law identified under subdivision (A).

(C) Modifying, as appropriate, the actions taken under any step set forth in subsection (b) to reduce the risk of violations of law identified in the risk assessment.

Background: This section sets forth the requirements for an effective program to prevent and detect violations of law. This section responds to section 805(a)(2)(5) of the Sarbanes-Oxley Act of 2002, Public Law 107–204, which directed the Commission to review and amend, as appropriate, the guidelines and related policy statements to ensure that the guidelines that apply to organizations in this Chapter 'are sufficient to deter and punish organizational criminal misconduct.'

The requirements set forth in this guideline are intended to achieve reasonable prevention and detection of violations of law, both criminal and noncriminal, for which the organization would be vicariously liable. The prior diligence of an organization in seeking to detect and prevent violations of law has a direct bearing on the appropriate penalties and probation terms for the organization if it is convicted and sentenced for a criminal offense.".

The Commentary to § 8C2.4 captioned "Application Notes" is amended in Note 2 by striking "(Larceny, Embezzlement, and Other Forms of Theft)" and inserting (Theft, Property Destruction, and Fraud)".

The Commentary to § 8C2.4 captioned "Background" is amended in the fourth sentence by striking "criminal conduct" each place it appears and inserting "violations of law".

Section 8C2.5 is amended by striking subsection (f) in its entirety and inserting the following:

"(f) Effective Program to Prevent and Detect Violations of Law

(1) If the offense occurred even though the organization had in place, at the time of the offense, an effective program to prevent and detect violations of law, as provided in § 8B2.1 (Effective Program to Prevent and Detect Violations of Law), subtract 3 points.

(2) This section does not apply if, after becoming aware of an offense, the organization unreasonably delayed reporting the offense to appropriate governmental authorities.

(3) Participation in, condoning of, or willful ignorance of, an offense by an individual within high-level personnel of the organization results in a rebuttable presumption that the organization did not have an effective program to prevent and detect violations of law.".

The Commentary to § 8C2.5 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. Definitions.—For purposes of this guideline, 'condoned,' 'prior criminal adjudication,' 'similar misconduct,' 'substantial authority personnel,' and 'willfully ignorant of the offense' have the meaning given those terms in the Commentary to § 8A1.2 (Application Instructions—Organizations).".

The Commentary to § 8C2.5 captioned "Application Notes" is amended in Note 3 in the last sentence by striking "entire organization" and inserting "organization in its entirety".

The Commentary to § 8C2.5 captioned "Application Notes" is amended in Note 10 by striking "The second proviso in subsection (f)" and inserting "Subsection (f)(2)"; and by striking "this proviso" and inserting "subsection (f)(2)".

The Commentary to § 8C2.5 captioned "Application Notes" is amended in Note 12 by adding at the end the following:

"If the defendant has satisfied the requirements for cooperation set forth in this note, waiver of the attorney-client privilege and of work product protections is not a prerequisite to a reduction in culpability score under subsection (g). However, in some circumstances, waiver of the attorney-client privilege and of work product protections may be required in order to satisfy the requirements of cooperation.".

Section 8C2.8(a) is amended in subdivision (9) by striking "and"; in subdivision (10) by striking the period and inserting "; and"; and by adding at the end the following:

"(11) whether the organization failed to have, at the time of the instant offense, an effective program to prevent and detect violations of law within the meaning of § 8B2.1 (Effective Program to Prevent and Detect Violations of Law).".

The Commentary to § 8C2.8 captioned "Application Notes" is amended in Note 4 in the first sentence by inserting "within high-level personnel of" after "organization or".

The Commentary to § 8C4.1 captioned "Application Note" is amended by striking "Note" and inserting "Notes"; in Note 1 by inserting "Intent of Provision.—" before "Departure" [; and by adding at the end the following:

"2. Waiver of Certain Privileges and Protections.—If the defendant has satisfied the requirements for substantial assistance set forth in subsection (b)(2), waiver of the attorney-client privilege and of work product protections is not a prerequisite to a motion for a downward departure by the government under this section. However, the government may determine that waiver of the attorney-client privilege and of work product protections is necessary to ensure substantial assistance sufficient to warrant a motion for departure."].

Section 8C4.10 is amended by adding at the end the following paragraph:

"Similarly, if, at the time of the instant offense, the organization was required by law to have an effective program to prevent and detect violations of law, but the organization did not have such a program, an upward departure may be warranted.".

Section 8D1.1(a) is amended by striking subdivision (3) in its entirety and inserting the following:

"(3) if, at the time of sentencing, (A) the organization (i) has 50 or more employees, or (ii) was otherwise required by law to have an effective program to prevent and detect violations of law; and (B) the organization does not have such a program;".

Section 8D1.4(b)(4) is amended by striking "(1)" and inserting "(A)"; by striking "(2)" and inserting "(B)"; and by striking "(3)" and inserting "(C)".

Section 8D1.4(c) is amended by striking subdivision (1) in its entirety and inserting the following:

"(1) The organization shall develop and submit to the court an effective program to prevent and detect violations of law, consistent with § 8B2.1 (Effective Program to Prevent and Detect Violations of Law). The organization shall include in its submission a schedule for implementation of the program.";

and in subdivisions (2), (3), and (4) by striking "to prevent and detect violations of law" each place it appears and inserting "referred to in subdivision (1)".

The Commentary to § 8D1.4 captioned "Application Notes" by striking "Notes" and inserting "Note"; and in the third sentence by striking ", provided" and inserting "as long as"; by inserting "§ 8B2.1 (Effective Program to Prevent and Detect Violations of Law), and" after "with"; and by striking "or regulatory requirement" and inserting "and regulatory requirements".

Chapter Eight, Part D, Subpart One is amended by striking § 8D1.5 and accompanying commentary.

Chapter Eight is amended by adding at the end the following:

"PART F—VIOLATIONS OF PROBATION—ORGANIZATIONS

§ 8F1.1. Violations of Conditions of Probation—Organizations (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and resentence the organization.

Commentary

Application Notes:

1. Appointment of Master or Trustee.—In the event of repeated, serious violations of conditions of probation, the appointment of a master or trustee may be appropriate to ensure compliance with court orders.

2. Conditions of Probation.—Mandatory and recommended conditions of probation are specified in §§ 8D1.3 (Conditions of Probation—Organizations) and 8D1.4 (Recommended Conditions of Probation—Organizations).".

Issues for Comment:

1. Subsection (f) of § 8C2.5 (Culpability Score) currently prohibits receipt of the three-point reduction in the culpability score for an effective program to prevent and detect violations of law if the organization unreasonably delayed reporting an offense to appropriate governmental authorities after becoming aware of the offense. The proposed amendment retains that prohibition. The Commission requests comment regarding whether the prohibition should be eliminated so that an organization could be considered for the reduction under § 8C2.5(f) regardless of whether the organization unreasonably delayed reporting the offense after its detection. Elimination of this prohibition may be appropriate in light of the fact that § 8C2.5(g) provides for a five-point decrease for cooperation with authorities, including reporting the offense to authorities within a reasonable time.

2. Subsection (f) of § 8C2.5 also currently precludes receipt of the three-point reduction for an effective program to prevent and detect violations of law if certain high-level individuals within the organization participated in, condoned, or were willfully ignorant of the offense. The proposed amendment changes this automatic preclusion to a rebuttable presumption that the organization did not have an effective program to prevent and detect violations of law under such circumstances. The Commission requests comment regarding whether the automatic preclusion should continue to apply in the context of large organizations. Moreover, should the rebuttable presumption apply in the context of small organizations, in which high-level individuals within the organization almost necessarily will have been involved in the offense?

3. The reduction in the culpability score under § 8C2.5(f) for an effective

program to prevent and detect violations of law currently is a three-point reduction. Should the extent of that reduction be increased to four points given the heightened requirements for an effective program to prevent and detect violations of law under the proposed amendment?

4. Generally, are there factors or considerations that could be incorporated into Chapter Eight (Sentencing of Organizations), particularly § 8C1.2, to encourage small and mid-size organizations to develop and maintain compliance programs?

Proposed Amendment 3: Body Armor

Synopsis of Proposed Amendment: This proposed amendment implements the new offense at 18 U.S.C. 931, which was created by section 11009 of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273. Section 931 of title 18, United States Code, prohibits individuals with a prior state or federal felony conviction for a crime of violence from purchasing, owning, or possessing body armor. The statutory maximum term of imprisonment for 18 U.S.C. 931 is three years.

The proposed amendment provides a new guideline at § 2K2.6 (Possessing, Purchasing, or Owning Body Armor by Violent Felons) because there is no other guideline that covers conduct sufficiently analogous to a violation of 18 U.S.C. 931. Although § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) covers felons in possession of a firearm, the alternative base offense levels and specific offense characteristics of that guideline address offenses involving the more serious conduct of weapon possession or trafficking. The proposed new guideline provides a base offense level of [8][10][12].

The proposed amendment also (A) provides a specific offense characteristic for cases in which the body armor was possessed in connection with [a "crime of violence" or "drug trafficking crime"][another offense]; and (B) adds an application note to § 3B1.5 (Use of Body Armor in Drug Trafficking Crimes and Crimes of Violence) that addresses the interaction between the two guidelines.

Proposed Amendment: Chapter Two, Part K, Subpart 2, is amended by adding at the end the following new guideline and accompanying commentary:

"§ 2K2.6 Possessing, Purchasing, or Owning Body Armor by Violent Felons

(a) Base Offense Level: [8][10][2].

(b) Specific Offense Characteristic

(1) If the defendant used the body armor in connection with [a crime of violence or drug trafficking crime] [another offense], increase by [4] levels.

Commentary

Statutory Provision: 18 U.S.C. 931.
Application Notes:
1. Definitions.—For purposes of this guideline:
['Crime of violence' has the meaning given that term in 18 U.S.C. 16.
'Drug trafficking crime' has the meaning given that term in 18 U.S.C. 924(c)(2).]
'Offense' has the meaning given that term in Application Note 1 of the Commentary to § 1B1.1 (Application Instructions).
2. Application of Subsection (b)(1).—Consistent with § 1B1.3 (Relevant Conduct), the term "defendant", for purposes of subdivision (b)(1), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.".

The Commentary to § 3B1.5 captioned "Application Notes" is amended by adding at the end the following new note:

"3. If the defendant is convicted of 18 U.S.C. 931, do not apply this enhancement with respect to that offense of conviction. However, if, in addition to the count of conviction under 18 U.S.C. 931, the defendant is convicted of a crime of violence or a drug trafficking crime and the body armor was used in connection with that offense, this enhancement may be applied with respect to that crime of violence or drug trafficking crime.".

Proposed Amendment 4: Public Corruption

Synopsis of Proposed Amendment: This proposed amendment addresses offenses involving public corruption. The proposed amendment consolidates §§ 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and 2C1.7 (Fraud Involving Deprivation of the Intangible Right to the Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions). Also, the proposed amendment consolidates §§ 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity) and 2C1.6 (Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper). This proposed amendment aims at moving away from a guideline structure that relies heavily on monetary harm to determine the severity of the offense. While the proposed amendment generally provides increased punishment for all bribery and gratuity offenses, it also provides enhancements in both consolidated guidelines to address some of the aggravating factors that are involved in public corruption cases.

Base Offense Level Increases

The proposed amendment increases the base offense level for all bribery and gratuity cases. Currently, bribery offenses sentenced under § 2C1.1 or § 2C1.7 begin with a base offense level of level 10. The proposed consolidated guideline at § 2C1.1 would increase the base offense level for bribery cases to level [12]. With respect to gratuity offenses, § 2C1.2 and § 2C1.6 currently have a base offense level of level 7. The proposed consolidated guideline at § 2C1.2 increases the base offense level to level [9]. The proposed increases in the base offense levels for bribery and gratuity cases will ensure continued proportionality between these cases and those sentenced under §§ 2B1.1 (Theft, Fraud, and Property Destruction) and 2J1.2 (Obstruction of Justice).

18 U.S.C. §§ 1341–1343 Offenses

Under a consolidated § 2C1.1, 18 U.S.C. 1341–1343 offenses, which are currently sentenced under § 2C1.7, would be referenced in Appendix A (Statutory Index) to § 2C1.1 provided that the offense was a fraud involving the deprivation of the intangible right to honest services, as set forth in the proposed parenthetical in the Commentary captioned "Statutory Provisions". The proposed amendment also builds on Application Note 12 in § 2B1.1 (Theft, Property Destruction, and Fraud) which deals with application of the cross references in § 2B1.1(c). The note currently explains that in cases in which broad fraud statutes are used primarily for jurisdictional purposes, the offense may be covered more appropriately by another guideline. The proposed amendment adds fraud involving the deprivation of the intangible right to honest services as an example of an offense more aptly covered by § 2C1.1. The parenthetical and the expansion of Application Note 14 address concerns expressed by the Public Integrity Section of Department of Justice that 18 U.S.C. 1341–1343 offenses be sentenced under § 2C1.1 and not under the fraud guideline.

"Loss" and "Public Official" Enhancements

Under the current structure of § 2C1.1, an enhancement exists that provides for the application of the greater of either (A) the number of offense levels from the fraud/theft loss table corresponding to the value of the payment, the benefit received or to be received in return for the payment, and the loss to the government from the offense, whichever is greatest; and (B) 8 levels if the offense involved a payment to influence an elected official or an official holding a high-level decision-making or sensitive position. Similar enhancements exist in §§ 2C1.2 and 2C1.7. The proposed amendment makes two major changes to this enhancement in both proposed consolidated guidelines. First, it makes the enhancement cumulative so that the court would apply the appropriate number of levels from the loss table and also the revised public official enhancements, if applicable. Second, the proposed amendment proposes two new enhancements that focus on public officials. The first new enhancement modifies the current "high-level or sensitive position" enhancement. This enhancement provides [two] [four] levels, and in §§ 2C1.1 and 2C1.2, a minimum offense level of 18 and 15, respectively, if the offense involved an unlawful payment for the purpose of influencing an official act of a public official in a high position of public trust. Although the concept is the same as the current enhancement, the proposed amendment draws on case law interpreting the current enhancement and on the notion of "public trust" from § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) to give more guidance with respect to the type of case to which the enhancement applies. The proposed minimum offense level of level 18 in § 2C1.1 and of level 15 in § 2C1.2 ensures that an offense involving bribery of a higher level public official receives at least as high a sentence as it currently receives (*i.e.*, that the new construct does not result in lower sentences). This enhancement will apply regardless of whether the defendant was the giver or the recipient of the bribe.

The corresponding application note also explains that public officials in high positions of public trust are distinguished from other public officials by their direct authority to make decisions for, or on behalf of, a government department or government agency, and also by their substantial influence over the decision-making process. The note also includes jurors in the scope of the enhancement's application in order to be consistent with case law regarding the current enhancement and with the scope of 18 U.S.C. 201, the primary bribery and gratuity statute.

The second new enhancement pertaining to public officials provides a [two] [four]-level increase if the defendant was a public official at the time of the offense. Commission data indicate that the defendant was a public official in approximately half of all public corruption cases. This enhancement recognizes that although all bribery involving public officials corrupts the public trust in government, it is the public official who violates that public trust. Currently, application notes in §§ 2C1.1, 2C1.2, 2C1.6, and 2C1.7 instruct the court not to apply the abuse of position of trust enhancement in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill), suggesting that in all cases sentenced under these guidelines, there is some element of abuse of public trust. The proposed enhancement would distinguish among cases in which there is an abuse of a position of public trust on the part of the public official.

Enhancement for Obtaining Entry into United States and for Obtaining Certain Documents

The proposed amendment also provides a new [two] [four]-level enhancement if the offense involved an unlawful payment (A) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (B) to obtain a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) to obtain a government issued identification document. The definition of "government issued identification document" is derived from the definition of "identification document" in 18 U.S.C. 1028(d)(3). This enhancement addresses cases in which a small payment may be given to obtain such a document, but the harm that results from an individual obtaining an identification or immigration document cannot be quantified by use of the loss table. It also addresses cases, as identified by the Commission, in which a third party steers an individual to the public official in order for that individual to obtain, through bribery or a gratuity, such a document. The enhancement also recognizes the increased risk of domestic terrorism from foreign nationals who illegally enter or remain in the United States through the use of illegally obtained identification documents. Similarly, the enhancement addresses concerns identified by the Department of Homeland Security regarding bribery of customs inspectors who have the discretion to permit individuals, vehicles, and cargo into the United States without inspection.

Miscellaneous Amendments

The proposed amendment provides a definition of "public official" that builds on the current definition provided in § 2C1.7. It modifies this definition by explicitly incorporating the notion that public officials hold positions of public trust. This definition is derived from relevant case law and statutory provisions, as well as § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). One difference to note regarding the definition of "public official" in §§ 2C1.1 and 2C1.2 is that the definition in § 2C1.2 includes former public officials in order to be consistent with the scope of the primary gratuity statute, 18 U.S.C. 201(c)(1).

The proposed amendment also (A) clarifies that an unlawful payment may be anything of value, not necessarily a monetary payment; (B) adds to § 2C1.1 an application note currently found in § 2C1.2 regarding consideration of whether the public official was the instigator of the offense as an appropriate factor to determine the placement of the sentence within the applicable sentencing guideline range; and (C) updates Appendix A (Statutory Index) by deleting references to § 2C1.4, which was consolidated with § 2C1.3 (Conflict of Interest; Payment or Receipt of Unauthorized Compensation), effective November 1, 2001.

Several issues for comment follow the proposed amendment.

Proposed Amendment:

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 14 by adding at the end the following:

"For example, a state employee who improperly influenced the award of a contract and used the mails to commit the offense may be prosecuted under 18 U.S.C. 1341 for fraud involving the deprivation of the intangible right of honest services. Such a case would be more aptly sentenced pursuant to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud involving the Deprivation of the Intangible Right to Honest Services of Public Officials).".

Section 2C1.1 is amended in the heading by adding at the end "; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials".

Section 2C1.1(a) is amended by striking "10" and inserting "[12]".

Section 2C1.1(b)(1) is amended by striking "bribe or extortion" and inserting "incident".

Section 2C1.1(b) is amended by striking subdivision (2) in its entirety and inserting the following:

"(2) If the value of the unlawful payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest (A) exceeded $2,000 but did not exceed $5,000, increase by 1 level; or (B) exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.".

Section 2C1.1(b) is amended by adding at the end the following:

"(3) If the offense involved an unlawful payment for the purpose of influencing an official act of a public official in a high position of public trust, increase by [2][4] levels. If the resulting offense level is less than level 18, increase to level 18.

(4) If the defendant was a public official at the time of the offense, increase by [2][4] levels.

(5) If the offense involved an unlawful payment (A) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (B) to obtain a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) to obtain a government issued identification document, increase by [2][4] levels.".

The Commentary to § 2C1.1 captioned "Statutory Provisions" is amended by inserting after "872," the following:

"1341 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services), 1342 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services), 1343 (if the scheme or artifice to defraud was to deprive another of the intangible right of honest services),".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. Definitions.—For purposes of this guideline:

['Bribe' means anything of value given or accepted with the corrupt intent to influence, or to be influenced in, an official act. A bribe involves an agreed upon quid pro quo.]

'Government issued identification document' means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

'Official act' has the meaning given that term in 18 U.S.C. 201(a)(3).

'Public official,' means (A) an officer or employee in, or selected to be in, a position of public trust in a federal, state, or local government department or government agency; or (B) a juror. "Public official" also includes a government contractor if such contractor is in a position of public trust with respect to a government department or government agency.

'Unlawful payment' means anything of value. An 'unlawful payment' need not be monetary.".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 by inserting "Application of Subsection (b)(2).—" before "'Loss'".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by striking "5. Where the court finds" and all that follows through "(Departures).".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by redesignating Notes 3 and 4 as Notes 4 and 5, respectively; by inserting after Note 2 the following:

"3. Application of Subsection (b)(3).—Subsection (b)(3) applies in cases involving federal, state, or local public officials who hold high positions of public trust. Such officials are distinguished from other public officials by their direct authority to make decisions for, or on behalf of, a government department or government agency, and by their substantial influence over the decision-making process. Examples of public officials in high positions of public trust include (A) a legislator; (B) a judge or magistrate; (C) a prosecuting attorney; (D) an agency administrator; and (E) a [supervisory] law enforcement officer. Certain individuals may be considered, for purposes of subsection (b)(3), to be a public official who holds a high position of public trust because of the importance of the process over which the individual has substantial influence, as for example, a juror.

The degree of public trust involved in a high position of public trust is greater than that required for application of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Accordingly, the fact that a particular public official has managerial discretion does not, in and of itself, determine whether the public official holds a high position of public trust.";

and in Note 4, as redesignated by this amendment, by inserting "Inapplicability of § 3B1.3.—" before "Do not apply".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 5, as redesignated by this amendment, by inserting "Upward Departure Provisions.—" before "In some cases"; and by adding at the end the following new paragraph:

"In a case in which the court finds that the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted. See § 5K2.7 (Disruption of Governmental Function).".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 6 by inserting "Related Payments.—" before "Subsection (b)(1)"; by striking "either bribery or extortion" in the first sentence and inserting "bribery, extortion under color of official right, or fraud involving the deprivation of the intangible right to honest services"; by striking "of bribery or extortion" in the second sentence; by striking "single bribe or extortion" in the second sentence and inserting "single incident"; and by adding at the end the following new paragraph:

"In a case involving more than one incident of bribery, extortion, or fraud involving the deprivation of the intangible right to honest services, the applicable amounts under subsection (b)(2) (*i.e.*, the greatest of the value of the unlawful payment, the benefit received or to be received, or the loss to the government) are determined separately for each incident and then added together.".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 7 by inserting "Application of Subsection (c).—" before "For the purposes".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by adding at the end the following:

"8. Determining Sentence Within Guideline Range.—In some cases, the public official is the instigator of the offense. In others, a private citizen may be the instigator. This factor may appropriately be considered in determining the placement of the sentence within the applicable guideline range.".

The Commentary to § 2C1.1 captioned "Background" is amended by inserting before the paragraph that begins "Offenses involving attempted" the following new paragraph:

"Section 2C1.1 also applies to fraud involving the deprivation of the intangible right to honest services of government officials under 18 U.S.C. 1341–1343. Such fraud offenses typically involve an improper use of government influence that harms the operation of government in a manner similar to bribery offenses.".

Section 2C1.2(a) is amended by striking "7" and inserting "[9]".

Section 2C1.2 is amended by striking subsections (b)(1) and (b)(2) in their entirety and inserting the following:

"(b) (1) If the offense involved more than one incident, increase by 2 levels.

(2) If the value of the unlawful payment (A) exceeded $2,000 but did not exceed $5,000, increase by 1 level; or (B) exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(3) If the offense involved an unlawful payment for the purpose of influencing an official act of a public official in a high position of public trust, increase by [2][4] levels. If the resulting offense level is less than level 15, increase to level 15.

(4) If the defendant was a public official at the time of the offense, increase by [2][4] levels.

(5) If the offense involved an unlawful payment (A) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (B) to obtain a passport or a document relating to naturalization, citizenship, legal entry, or legal resident status; or (C) to obtain a government issued identification document, increase by [2][4] levels.".

The Commentary to § 2C1.2 captioned "Statutory Provision" is amended by striking "Provision" and inserting "Provisions"; by inserting "§ " after "18 U.S.C. §"; and by inserting ", 212–214, 217" after "201(c)(1)".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. Definitions.—For purposes of this guideline:

'Government issued identification document' means a document made or issued by or under the authority of the United States Government, a State, or a political subdivision of a State, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

['Gratuity' means anything of value given, or accepted for or because of an official act performed or to be performed.]

'Official act' has the meaning given that term in 18 U.S.C. 201(a)(3).

'Public official,' means (A) an officer or employee in, formerly in, or selected to be in, a position of public trust in a federal, state, or local government department or government agency; or (B) a juror. 'Public official' also includes a government contractor if such contractor is in a position of public trust with respect to a government department or government agency.

'Unlawful payment' means anything of value. An 'unlawful payment' need not be monetary.".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by redesignating Notes 2, 3, and 4 as Notes 3, 4, and 5, respectively; and by inserting after Note 1 the following new Note 2:

"2. Application of Subsection (b)(3).—Subsection (b)(3) applies in cases involving federal, state, or local public officials who hold high positions of public trust. Such officials are distinguished from other public officials by their direct authority to make decisions for, or on behalf of, a government department or government agency, and by their substantial influence over the decision-making process. Examples of public officials in high positions of public trust include (A) a legislator; (B) a judge or magistrate; (C) a prosecuting attorney; (D) an agency administrator; and (E) a [supervisory] law enforcement officer. Certain individuals may be considered, for purposes of subsection (b)(3), to be a public official who holds a high position of public trust because of the importance of the process over which the individual has substantial influence, as for example, a juror.

The degree of public trust involved in a high position of public trust is greater than that required for application of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Accordingly, the fact that a particular public official has managerial discretion does not, in and of itself, determine whether the public official holds a high position of public trust.".

The Commentary to § 2C1.2 captioned "Application Notes" is amended in Note 3, as redesignated by this amendment, by inserting "Inapplicability of § 3B1.3.—" before "Do not"; in Note 4, as redesignated by this amendment, by inserting "Determining Sentence Within Guideline Range.—" before "In some"; by striking "may be the initiator" and inserting "may be the instigator"; and in Note 5, as redesignated by this amendment, by inserting "Related Payments.—Subsection (b)(1) provides an adjustment for offenses involving more than one incident." before "Related payments that,".

The Commentary to § 2C1.2 captioned "Background" is amended by striking the second and third sentences and inserting the following:

"It also applies in cases involving (1) the offer to, or acceptance by, a bank examiner of a loan or gratuity; (2) the offer or receipt of anything of value for procuring a loan or discount of commercial bank paper from a Federal Reserve Bank; and (3) the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.".

Chapter Two, Part C, is amended by striking §§ 2C1.6, 2C1.7, and all accompanying commentary.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. § 209 by striking "2C1.4" and inserting "2C1.3";

in the line referenced to 18 U.S.C. 212 by striking "2C1.6" and inserting "2C1.2";

in the line referenced to 18 U.S.C. 213 by striking "2C1.6" and inserting "2C1.2";

in the line referenced to 18 U.S.C. 214 by striking "2C1.6" and inserting "2C1.2";

in the line referenced to 18 U.S.C. 217 by striking "2C1.6" and inserting "2C1.2";

in the line referenced to 18 U.S.C. 371 by striking "2C1.7,";

in the line referenced to 18 U.S.C. 1341 by striking "2C1.7" and inserting "2C1.1";

in the line referenced to 18 U.S.C. 1342 by striking "2C1.7" and inserting "2C1.1";

in the line referenced to 18 U.S.C. 1343 by striking "2C1.7" and inserting "2C1.1";

in the line referenced to 18 U.S.C. 1909 by striking ", 2C1.4"; and

in the line referenced to 41 U.S.C. 423(e) by striking ", 2C1.7".

Issues for Comment:

1. The Commission requests public comment regarding the proposed consolidation of §§ 2C1.1 and 2C1.7, and §§ 2C1.2 and 2C1.6. Should the Commission instead consolidate all four guidelines into one comprehensive guideline that would apply to bribery, gratuity, extortion under color of official right, and fraud involving the deprivation of the intangible right to honest services? For example, such a guideline could distinguish between bribery and gratuity offenses by alternative base offense levels in a structure that would be consistent with § 2E5.1 (Offering, Accepting or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare

or Pension Plan). Should a consolidated § 2C1.1 or § 2C1.2 specifically include conspiracy and attempts? Alternatively, should the Commission maintain the current structure of Chapter Two, Part C (Offenses Involving Public Officials) and not consolidate any of the guidelines in that part?

2. The Commission requests comment regarding whether it should eliminate any or all of the cross references in § 2C1.1. For example, the Commission has received input that the cross reference in subsection (c)(2) is confusing and may result in circular application of multiple cross references. This cross reference instructs the court to apply § 2X3.1 (Accessory After the Fact) or § 2J1.2 (Obstruction of Justice) if the offense was committed to conceal, or obstruct justice in respect to, another offense. If § 2J1.2 is applied, for example, and the offense involved obstructing the investigation or prosecution of an offense, then the cross reference in § 2J1.2(c)(1) instructs the court to apply § 2X3.1. For these reasons, should the Commission eliminate the cross reference in § 2C1.1(c)(2)?

3. The proposed amendment adds to § 2C1.1 an application note indicating that whether the initiator of the offense is the public official or a private citizen is relevant in determining the placement of the sentence within the applicable guideline range. This note currently exists in § 2C1.2. The Commission requests comment regarding whether solicitation of a bribe or gratuity is a more serious offense than receipt of a bribe or gratuity. If so, should the Commission provide an enhancement in § 2C1.1 for the solicitation of a bribe and in § 2C1.2 for the solicitation of a gratuity? If so, what would be an appropriate offense level increase for such an enhancement?

4. The proposed amendment provides three new enhancements in both consolidated guidelines: (A) A two-level increase for offenses that involve an unlawful payment (i) to a United States Customs Border Protection Inspector to permit a person, a vehicle, or cargo to enter the United States; (ii) to obtain a government issued identification document; or (iii) to obtain a United States passport, or a document relating to naturalization, citizenship, legal entry, or legal resident status; (B) a [two][four]-level increase for offenses involving public officials in high positions of public trust; and (C) a [two][four]-level increase if the defendant was a public official at the time of the offense. Are there other enhancements that the Commission should consider adding to the proposed consolidated guidelines, and if so, what are those enhancements? For example, should the Commission provide a specific offense characteristic for bribery, extortion, and honest services offenses that affect the integrity of the election process? With respect to the proposed enhancement for a public official in a high position of public trust, are there additional categories of public officials that the Commission should include within the scope of this enhancement? As an alternative to the proposed enhancement, should the Commission provide a two part enhancement that provides for different offense level increases based on the degree of public trust held by the public official involved in the offense? For example, should the Commission provide a two-level increase if the offense involved an unlawful payment for the purpose of influencing a public official holding a supervisory or managerial position, and a four-level enhancement if the offense involved an unlawful payment for the purposes of influencing a public official holding a high-level decision making or sensitive position? If so, what distinguishes one category from the other? Should any such enhancement, or any other proposed enhancement, provide for a minimum offense level and if so, what would be an appropriate minimum offense level?

5. According to Commission data, the enhancement for multiple incidents applies in approximately 64% of all § 2C1.1 cases and in approximately 69% of all § 2C1.2 cases. The Commission requests comment regarding whether the two levels from this enhancement should be incorporated into the base offense levels in §§ 2C1.1 and 2C1.2 to increase the proposed base offense level in those two guidelines an additional two levels.

6. The Commission requests comment regarding whether, in light of the proposed amendments to Chapter Two, Part C, it should amend other guidelines pertaining to bribery, gratuity, and extortion, and other similar offenses. For example, should the Commission increase the base offense levels for bribery and gratuity offenses in § 2E5.1 in order to maintain consistent and proportionate sentencing with respect to §§ 2C1.1 and 2C1.2? Should the Commission consider making any amendments to § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), or § 2B3.3 (Blackmail and Similar Forms of Extortion)?

Proposed Amendment 5: Drugs

Synopsis of Proposed Amendment: This proposed amendment makes a number of amendments to §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), and 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), and Appendix A (Statutory Index).

First, the proposed amendment addresses section 608 of the PROTECT Act, Public Law 108–21, by increasing the offense levels for gamma hydroxybutyric acid ("GHB"), a schedule I depressant, and gamma-butyrolactone ("GBL"), a precursor for GHB. Currently, GHB is sentenced with all other schedule I or II depressants (*i.e.*, 1 unit = 1 gram of marihuana). The proposed amendment provides two options for increasing the penalties for GHB in the Drug Equivalency Tables of Application Note 10 of § 2D1.1. The effect of Option One is that a five year term of imprisonment would be triggered by 3.785 liters (equivalent to one gallon) of GHB. The effect of Option Two is that a five year term of imprisonment would be triggered by 18.925 liters (equivalent to five gallons) of GHB. The proposed amendment provides two corresponding quantity options for increasing the penalties for GBL in § 2D1.11.

Second, the proposed amendment adds to Application Note 5 of § 2D1.1 a reference to controlled substance analogues. The note currently states that "[a]ny reference to a particular controlled substance in these guideline includes all salts, isomers, and all salts of isomers." The proposed amendment modifies the rule specifically to include that any reference to a particular controlled substance also includes any analogue of that controlled substance, unless otherwise provided (*e.g.*, the Drug Quantity Table currently references fentanyl analogue).

Third, the proposed amendment corrects a technical error in the Drug Quantity Table of § 2D1.1 with respect to schedule III substances. The maximum base offense level for schedule III substances is level 20 (see § 2D1.1(c)(10)), but there is no corresponding language in the Drug Quantity Table to indicate that level 20 is the maximum base offense level for these substances. The amendment corrects this error.

Fourth, the proposed amendment updates the statutory references in § 2D1.11(b)(2) and accompanying commentary to conform to statutory redesignations. Section 2D1.11(b)(2) currently provides a three-level reduction if the defendant was convicted of violating 21 U.S.C. 841(d)(2), (g)(1), or 960(d)(2), unless the defendant knew or believed that the listed chemical was to be used to manufacture a controlled substance unlawfully. Those statutory references should be 21 U.S.C. 841(c)(2), (f)(1), or 960(d)(2) to conform to statutory redesignations. The proposed amendment also expands application of § 2D1.11(b)(2) to include 21 U.S.C. 960(d)(3) and (d)(4) among the statutes of conviction for which the three-level reduction at subsection (b)(2) is available. Currently, the reduction applies in cases in which the defendant (convicted under 21 U.S.C. 841(c)(2), (f)(1), or 960(d)(2), as properly redesignated) did not have knowledge or actual belief that the listed chemical would be used to manufacture a controlled substance. Section 841(c)(2) of title 21, United States Code, requires a finding of either knowledge or a reasonable cause to believe that the listed chemical would be used to manufacture a controlled substance. Sections 960(d)(3) and (d)(4) of title 21, United States Code, similarly require a finding that a person who imports, exports, or serves as a broker for, a listed chemical knows or has a reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance. Appendix A (Statutory Index) currently references 21 U.S.C. 960(d)(3) and (d)(4) to § 2D1.11, but neither statute is included for purposes of the reduction. Given that the reduction applies in 21 U.S.C. 841(c)(2) cases in which the defendant had a reasonable cause to believe, but not knowledge or actual belief, that the listed chemical would be used to manufacture a controlled substance, and the mens rea in 21 U.S.C. 841(c)(2) is the same as in 21 U.S.C. 960(d)(3) and (d)(4), the proposed amendment adds 21 U.S.C. 960(d)(3) and (d)(4) to 2D1.11(b)(2).

Fifth, the proposed amendment adds white phosphorus and hypophosphorous acid to the Chemical Quantity Table in § 2D1.11(e). Both substances are List I chemicals used in the production of methamphetamine and, according to the DEA, are direct substitutes for red phosphorus. The Commission amended § 2D1.11(e) last amendment cycle to include red phosphorus but because of **Federal Register** notice issues was unable at that time to include white phosphorus and hypophosphorous acid.

Sixth, the proposed amendment also modifies Appendix A (Statutory Index) by deleting the reference to 21 U.S.C. 957, which is not a substantive criminal offense but rather a registration provision for which violations are prosecuted under 21 U.S.C. 960(a) or (b) (for controlled substances) or section 960(d)(6) (for listed chemicals).

Finally, four issues for comment follow the proposed amendment regarding (1) offenses involving anhydrous ammonia; (2) an enhancement for distribution of controlled substances and other illegal substances over the Internet; (3) drug facilitated sexual assault; and (4) a circuit conflict pertaining to Application Note 12 of § 2D1.1, which was most recently noted in *United States* v. *Smack*, _F.3d _, 2003 WL 22419914 (3rd Cir., October 24, 2003).

Proposed Amendment:

Section 2D1.1(c) is amended in subdivision (10) by striking "or Schedule III substances" in the thirteenth entry; and by inserting after the thirteenth entry the following:

"40,000 or more units of Schedule III substances;";

in subdivision (11) by striking "or Schedule III substances" in the thirteenth entry; and by inserting after the thirteenth entry the following:

"At least 20,000 but less than 40,000 units of Schedule III substances;"

in subdivision (12) by striking "or Schedule III substances" in the thirteenth entry; and by inserting after the thirteenth entry the following:

"At least 10,000 but less than 20,000 units of Schedule III substances;";

in subdivision (13) by striking "or Schedule III substances" in the thirteenth entry; and by inserting after the thirteenth entry the following:

"At least 5,000 but less than 10,000 units of Schedule III substances;";

in subdivision (14) by striking "or Schedule III substances" in the thirteenth entry; and by inserting after the thirteenth entry the following:

"At least 2,500 but less than 5,000 units of Schedule III substances;";

in subdivision (15) by striking "or Schedule III substances" in the fourth entry; and by inserting after the fourth entry the following:

"At least 1,000 but less than 2,500 units of Schedule III substances;";

in subdivision (16) by striking "or Schedule III substances" in the fourth entry; and by inserting after the fourth entry the following:

"At least 250 but less than 1,000 units of Schedule III substances;";

and in subdivision (17) by striking "or Schedule III substances" in the fourth entry; and by inserting after the fourth entry the following:

"Less than 250 units of Schedule III substances;".

Section 2D1.1 is amended in the subdivision captioned "*Notes to the Drug Quantity Table" in Note (F) in the first sentence by inserting "(except gamma-hydroxybutyric acid)" after "Depressants"; and in the second sentence by inserting "(except gamma-hydroxybutyric acid)" after "substance".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 5 by striking "and" after "includes all salts, isomers,"; and by inserting ", and, except as otherwise provided, any analogue of that controlled substance" after "all salts of isomers".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the Drug Equivalency Tables by striking the subdivision captioned "Schedule I or II Depressants" in its entirety and inserting the following new subdivisions:

"Schedule I or II Depressants (Except Gamma-Hydroxybutyric Acid)

1 unit of a Schedule I or II Depressant (except gamma-hydroxybutyric acid) = 1 gm of marihuana

Gamma-Hydroxybutyric Acid

[Option One: 1 liter of gamma-hydroxybutyric acid = 26,420 gm of marihuana]

[Option Two: 1 liter of gamma-hydroxybutyric acid = 5,284 gm of marihuana]".

Section 2D1.11(b)(2) is amended by striking "21 U.S.C. §§ 841(d)(2), (g)(1), or 960(d)(2)," and inserting "21 U.S.C. § 841(c)(2), (f)(1), or § 960(d)(2), (d)(3), or (d)(4),".

Section 2D1.11(e) is amended in subdivision (1) by striking "10,000 KG or more of Gamma-butyrolactone;" and inserting "[757][3785] L or more of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus";

in subdivision (2) by striking "At least 3,000 KG but less than 10,000 KG of Gamma-butyrolactone;" and inserting "At least [227.1][1135.5] L but less than [757][3785] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus";

in subdivision (3) by striking "At least 1,000 KG but less than 3,000 KG of Gamma-butyrolactone;" and inserting "At least [75.7][378.5] L but less than [227.1][1135.5] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or

Hypophosphorous Acid" after "Red Phosphorus";

in subdivision (4) by striking "At least 700 KG but less than 1,000 KG of Gamma-butyrolactone;" and inserting "At least [53][265] L but less than [75.7][378.5] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus";

in subdivision (5) by striking "At least 400 KG but less than 700 KG of Gamma-butyrolactone;" and inserting "At least [30.3][151.4] L but less than [53][265] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus";

in subdivision (6) by striking "At least 100 KG but less than 400 KG of Gamma-butyrolactone;" and inserting "At least [7.6][37.9] L but less than [30.3][151.4] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus";

in subdivision (7) by striking "At least 80 KG but less than 100 KG of Gamma-butyrolactone;" and inserting "At least [6.1][30.3] L but less than [7.6][37.9] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus";

in subdivision (8) by striking "At least 60 KG but less than 80 KG of Gamma-butyrolactone;" and inserting "At least [4.5][22.7] L but less than [6.1][30.3] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus";

in subdivision (9) by striking "At least 40 KG but less than 60 KG of Gamma-butyrolactone;" and inserting "At least [3][15.1] L but less than [4.5][22.7] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus"; and

in subdivision (10) by striking "Less than 40 KG of Gamma-butyrolactone;" and inserting "Less than [3][15.1] L of Gamma-butyrolactone;"; and by inserting ", White Phosphorus, or Hypophosphorous Acid" after "Red Phosphorus".

The Commentary to § 2D1.11 captioned "Statutory Provisions" is amended by inserting ", (3), (4)" after "(d)(1), (2)".

The Commentary to § 2D1.11 captioned "Application Notes" is amended in Note 5 by striking "21 U.S.C. 841(d)(2), (g)(1), and 960(d)(2)" and inserting "21 U.S.C. 841(c)(2), (f)(1), and 960(d)(2), (d)(3), and (d)(4)"; and by striking "Where" and inserting "In a case in which".

Appendix A (Statutory Index) is amended by striking the following:

"21 U.S.C. 957 2D1.1".

Issues for Comment:

1. A concern has been expressed to the Commission regarding offenses involving anhydrous ammonia. Anhydrous ammonia is a volatile chemical generally used in farming but that can also be used in the manufacture of methamphetamine. Section 864 of title 21, United States Code, prohibits stealing anhydrous ammonia or transporting stolen anhydrous ammonia across state lines. The statutory maximum term of imprisonment for an anhydrous ammonia offense is four years, except if the offense involved the intent to manufacture methamphetamine in which case the statutory maximum term of imprisonment is ten years. (A section 864 offense committed subsequent to a specified drug trafficking conviction carries a maximum term of imprisonment of eight years, unless the offense involved the intent to manufacture methamphetamine in which case the maximum term of imprisonment is 20 years.) Appendix A (Statutory Index) references 21 U.S.C. 864 to § 2D1.12 (Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Flask, Equipment, Chemical, Product, or Material; Attempt or Conspiracy). The Commission requests comment regarding whether it should provide a specific offense characteristic in § 2D1.12 specifically to cover anhydrous ammonia offenses. For example, the Commission could provide an enhancement that would apply if the offense involved anhydrous ammonia, or alternatively if the defendant was convicted under 21 U.S.C. 864. If such an enhancement should be provided, what would be an appropriate offense level increase? For example, should the Commission provide an offense level increase of eight or ten levels for convictions under 21 U.S.C. 864?

2. The Commission requests comment regarding whether it should amend the drug guidelines in Chapter Two, Part D, particularly, §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), 2D1.11 (Unlawful Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy), and 2D1.12 to provide a specific offense characteristic for defendants who unlawfully distribute controlled substances, precursors, listed chemicals, and other illegal substances and items used in the manufacture of controlled substances or listed chemicals over the Internet. There is a concern with the unlawful distribution over the Internet because of the ability to reach a broader market than possible through "traditional" drug trafficking methods. If the Commission provides such a specific offense characteristic, what would be an appropriate offense level increase?

3. The Commission requests comment regarding whether it should amend § 2D1.1 to account more adequately for offenses that involve drug facilitated sexual assault, specifically in a case in which the victim of the sexual assault knowingly and voluntarily ingested the drug. Currently, the cross reference in § 2D1.1(d)(2) applies if the defendant was convicted under 21 U.S.C. 841(b)(7) and the victim of the sexual assault did not knowingly ingest the drug. However, if the victim of the sexual assault knowingly and voluntarily ingested the drug, neither 21 U.S.C. 841(b)(7) nor the cross reference applies. The Commission requests comment regarding whether the scope of the cross reference should be expanded to include a case in which the victim of a sexual assault knowingly and voluntarily ingested the drug, even if the defendant is not convicted under 21 U.S.C. 841(b)(7). Alternatively, would the heightened base offense levels in § 2D1.1(a)(1) and (2) apply in such a case and, if so, would they account adequately for drug facilitated sexual assaults of this nature? If not, should the heightened base offenses levels be modified or should the Commission provide a specific offense characteristic to account more adequately for drug facilitated sexual assaults?

4. The Commission has become aware of a circuit split regarding the interpretation of the last sentence in Application Note 12 of § 2D1.1. The relevant language of the note states that "[i]f, however, the defendant establishes that he or she did not intend to provide, or was not reasonably capable of providing, the agreed-upon quantity of the controlled substance, the court shall exclude from the offense level determination the amount of controlled substance that the defendant establishes that he or she did not intend to provide or was not reasonably capable of providing." A conflict has arisen over whether this language is limited to a defendant who is the seller in a sting operation. See *United States* v. *Smack*, _F.3d _, 2003 WL 22419914 (3rd Cir., October 24, 2003) (opining that the language in Note 12 is ambiguous);

United States v. *Williams*, 109 F.3d 502, 511–12 (8th Cir. 1997) (same). Some circuits have concluded that the last sentence of the note is intended to apply only to sellers. See *United States* v. *Gomez*, 103 F.3d 249, 252–53 (2d Cir. 1997) (concluding that the last sentence of Note 12 applies only to sellers); *United States* v. *Perez de Dios*, 237 F.3d 1192 (10th Cir. 2001) (same); *United States* v. *Brassard*, 212 F.3d 54, 58 (1st Cir. 2000) (same). Others have concluded that the language also applies to buyers in reverse sting operations. See *United States* v. *Minore*, 40 Fed. Appx. 536, 537 (9th Cir. 2002) (mem.op.) (applying the final sentence of the new Note 12 to a buyer in reverse sting operation); *United States* v. *Estrada*, 256 F.3d 466, 476 (7th Cir. 2001) (same).

In light of the conflicting interpretations, the Commission requests comment regarding whether it should clarify the interpretation of the last sentence of § 2D1.1, Application Note 12. Specifically, should a buyer in a reverse sting operation be permitted to have excluded from the offense level determination the amount of controlled substance that the defendant establishes that he or she did not intend to purchase, or was not reasonably capable of purchasing? Should the last sentence in Application Note 12 be limited to sellers?

Proposed Amendment 6: Repeal of "Mitigating Role Cap"

Synopsis of Proposed Amendment: This amendment proposes to repeal the current "mitigating role cap" at § 2D1.1(a)(3) and replace it with an alternative approach. The proposed replacement would provide a gradually increasing mitigating role reduction based on drug quantity base offense levels under §§ 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possession a Listed Chemical; Attempt or Conspiracy), beginning at level [30]. In general, the reduction both is more gradual and less generous than the current approach. Under the current "mitigating role cap" approach, a defendant who qualifies for a minor role adjustment and whose drug quantity would otherwise result in a base offense level of level 34 will only receive a base offense level of level 30 under § 2D1.1(a)(3). This effectively is a four-level reduction. This defendant also receives the two-level adjustment under § 3B1.2 for minor role in the offense, resulting in an offense level of 28 (assuming no other adjustments). Thus, the net reduction for this defendant under the current mitigating role cap approach is six levels. Under the proposed alternative, however, the net reduction would only be [three] [four-] levels (two-level reduction for minor role in the offense and additional [one-][two-] level reduction for having a base offense level of level 34 under § 2D1.1). This alternative approach also maintains the current distinctions among mitigating role defendants under § 3B1.2 (*i.e.*, minor, minimal, or in-between), rather than capping the drug quantity base offense level at level 30 for all qualifying defendants. Effectively, this approach "compresses" the effect of increasing drug quantity above level 30, rather than capping it at that level.

Proposed Amendment:

Section 2D1.1(a)(3) is amended by striking ", except that if the defendant receives an adjustment under § 3B1.2 (Mitigating Role), the base offense level under this subsection shall be not more than level 30".

Section 3B1.2 is amended to read as follows:

"§ 3B1.2. Mitigating Role

(a) Based on the defendant's role in the offense, decrease the offense level as follows:

(1) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.

(2) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.

In cases falling between subsections (a)(1) and (a)(2), decrease by 3 levels.

(b) If a downward adjustment under subsection (a) is applied and the defendant's Chapter Two offense level was determined pursuant to §§ 2D1.1 or 2D1.11, apply an additional reduction according to the following:

Base offense level from § 2D1.1 or § 2D1.11	Additional reduction
(1) level [30]	[1] level
(2) level [32–34]	[1][2] levels
(3) level [36–38]	[1][2][3] levels.".

Issue for Comment:

The proposed amendment provides an alternative method to the mitigating role cap in § 2D1.1 for minimizing offense level severity for a certain category of drug defendants. Under this alternative approach, should the additional reduction for mitigating role defendants begin at a lower or higher base offense level? Should the reduction be scaled differently in relation to the drug quantity base offense level? Should certain offenses and/or offenders be disqualified from receiving the additional mitigating role reduction (*e.g.*, defendants convicted under 21 U.S.C. 849, 859, 860, or 861; defendants who used or threatened violence; defendants who possessed or used a weapon; defendants who involved a minor in the offense; or defendants who have a prior felony drug trafficking conviction)? Alternatively, should the Commission simply repeal the current mitigating role cap without providing any alternative method? Are there any other approaches that the Commission should consider, and if so, what are they?

Proposed Amendment 7: Homicide

Synopsis of Proposed Amendment: This amendment proposes a number of changes to the homicide and assault guidelines to address longstanding proportionality concerns and to implement the directive in section 11008(e) of the 21st Century Department of Justice Appropriations Authorization Act (the "Act"), Public Law 107–273.

First, this amendment proposes a number of changes to the homicide guidelines. Generally, the amendment proposes increases in the base offense levels in the guidelines for second degree murder, voluntary manslaughter, and involuntary manslaughter to address proportionality issues among the homicide guidelines and between the homicide guidelines and other offense guidelines in Chapter Two, such as kidnapping and the production of child pornography.

The amendment also proposes to add a special instruction in the involuntary manslaughter guideline (§ 2A1.4), providing that if the offense involved involuntary manslaughter of more than one victim, Chapter Three, Part D (Multiple Counts) should be applied as if the involuntary manslaughter of each victim had been contained in a separate count of conviction. The purpose of the instruction is to ensure incremental punishment for multiple victims. An issue for comment follows regarding whether such an instruction should be added to each of the other homicide guidelines.

The amendment also proposes to eliminate and/or revise existing outdated commentary in some of the homicide guidelines.

Second, this amendment proposes a number of changes to the assault guidelines and the Chapter Three adjustment relating to official victims to address section 11008(e) of the Act. That section directs the Commission as follows:

"(1) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in section 111 or 115 of title 18, United States Code.

(2) FACTORS FOR CONSIDERATION.—In carrying out this section, the United States Sentencing Commission shall consider, with respect to each offense described in paragraph (1)—

(A) any expression of congressional intent regarding the appropriate penalties for the offense;

(B) the range of conduct covered by the offense;

(C) the existing sentences for the offense;

(D) the extent to which sentencing enhancements within the Federal guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(E) the extent to which the Federal sentencing guideline sentences for the offense have been constrained by statutory maximum penalties;

(F) the extent to which the Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of the Federal sentencing guidelines for the offense to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factors that the Commission considers to be appropriate.".

Section 111 of title 18, United States Code, makes it unlawful to forcibly assault, resist, oppose, impede, intimidate, or interfere with (A) any person designated in section 1114 of title 18 (*i.e.*, any officer or employee of the United States, including any member of the uniformed services in the performance of that person's official duties, or any person assisting that person in the performance of those official duties); or (B) any person who formerly served as a person designated in section 1114 on account of that person's performance of official duties during the term of service.

The Act increased the statutory maximum term of imprisonment for offenses under 18 U.S.C. 111 from three years to eight years; and for the use of a dangerous weapon or inflicting bodily injury in the commission of an offense under 18 U.S.C. 111, from ten to 20 years.

Section 115 of title 18, United States Code, makes it unlawful to (A) assault, kidnap, or murder, attempt or conspire to kidnap or murder, or threaten to assault, kidnap, or murder, a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114; or (B) threaten to assault, kidnap, or murder a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114; in order to impede, intimidate, or interfere with the performance of the official's official duties.

Section 115 of title 18, United States Code, also makes it unlawful to assault, kidnap, or murder, attempt or conspire to kidnap or murder, or threaten to assault, kidnap, or murder, a former United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114, or a member of the former official's immediate family, in retaliation for the performance of the official's duties during the official's term of service.

The Act increased the maximum terms of imprisonment for threatened assaults under 18 U.S.C. 115 from three to six years, and for all other threats under 18 U.S.C. 115, from five to ten years.

In addition, the Act also increased the maximum term of imprisonment under 18 U.S.C. 876 from five years to ten years for mailing a communication to a United States judge, a Federal law enforcement officer, or an official covered by 18 U.S.C. 1114 containing a threat to kidnap or injure any person (the penalty remained five years for mailing such a communication to any other person).

The Act also increased the maximum term of imprisonment under 18 U.S.C. 876 from two years to ten years for mailing, with the intent to extort anything of value, a communication to a United States judge, a Federal law enforcement officer, or an official covered by 18 U.S.C. 1114 containing a threat to injure another's property or reputation or a threat to accuse another of a crime (the penalty remained two years for mailing such a communication to any other person). The other statutory maximum terms of imprisonment for offenses under 18 U.S.C. 876 were not changed by the Act. Mailing threatening communications containing a ransom demand for the release of a kidnapped person or containing a threat to kidnap with the intent to extort something of value remain punishable by up to 20 years' imprisonment.

The amendment proposes a number of changes to the assault guidelines and the Chapter Three adjustment relating to official victims to implement the directive and the changes in statutory maximum penalties. These proposed modifications to the offense levels in some of the assault guidelines complement the proposed amendments to the homicide guidelines, which are intended to address longstanding proportionality concerns. Issues for comment follow regarding whether the base offense level in the assault guideline should be reduced by [two] levels, whether the aggravated assault guideline should contain an enhancement for the involvement of a dangerous weapon, whether the assault guidelines should be consolidated, and whether the Chapter Three adjustment for official victims should provide a tiered approach, such that a [six]-level adjustment would apply if the victim was a government officer or employee (or family member thereof) and the offense was motivated by such status, and a three-level adjustment would apply if the victim was a law enforcement officer or prison employee and was assaulted in a certain manner.

Proposed Amendment:

The Commentary to § 2A1.1 captioned "Application Notes" is amended by striking Notes 1 and 2 in their entirety and inserting the following:

"1. Applicability of Guideline.—This guideline applies in cases of premeditated killing. This guideline also applies when death results from the commission of certain felonies. For example, this guideline may be applied as a result of a cross reference (*e.g.*, a kidnapping in which death occurs), or in cases in which the offense level of a guideline is calculated using the underlying crime (*e.g.*, murder in aid of racketeering).

2. Imposition of Life Sentence.—

(A) In General.—An offense level of 43 (*i.e.*, the base offense level under this guideline) results in a guideline sentence of life imprisonment in all criminal history categories. In cases in which a statutory mandatory minimum sentence is life imprisonment, the defendant shall be sentenced to life imprisonment, even if the defendant received a reduction for acceptance of responsibility under § 3E1.1 (Acceptance of Responsibility).

(B) Offenses Involving Premeditated Killing.—In the absence of capital punishment, life imprisonment is the appropriate sentence in the case of premeditated killing. A downward departure would not be appropriate in such a case.

(C) Unintentional or Unknowing Killing.—If the defendant did not cause the death intentionally or knowingly, a downward departure may be warranted. For example, a downward departure may be warranted if in robbing a bank, the defendant merely passed a note to the teller, as a result of which the teller had a heart attack and died. The extent of the departure should be based upon the defendant's state of mind (*e.g.*, recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct. However, departure below the offense level specified in § 2A1.2 (Second Degree Murder) is not likely to be appropriate. Also, because death obviously is an aggravating factor, it necessarily would be inappropriate to impose a sentence at a level below that which the guideline for the underlying offense requires in the absence of death. A downward departure from a mandatory statutory term of life imprisonment is permissible only in cases in which the government files a motion for a downward departure for the defendant's substantial assistance, as provided in 18 U.S.C. 3553(e).

3. Applicability of Guideline When Death Sentence Not Imposed.—If the defendant is sentenced pursuant to 18 U.S.C. 3591 *et seq.* or 21 U.S.C. 848(e), a sentence of death may be imposed under the specific provisions contained in that statute. This guideline applies when a sentence of death is not imposed under those specific provisions.".

Section 2A1.2(a) is amended by striking "33" and inserting "[37][38]".

The Commentary to § 2A1.2 is amended by striking the Background commentary in its entirety and inserting the following:

"Application Note:

1. Upward Departure Provision.—If the defendant's conduct was exceptionally heinous, cruel, brutal, or degrading to the victim, an upward departure may be warranted. See § 5K2.8 (Extreme Conduct).".

Section 2A1.3(a) is amended by striking "25" and inserting "[26]–[30]".

The Commentary to § 2A1.3 is amended by striking the Background commentary in its entirety.

Section 2A1.4(a) is amended in subdivision (1) by striking "conduct was criminally negligent" and inserting "offense involved negligent conduct"; and by striking subdivision (2) in its entirety and inserting the following:

"(2) Apply the greater:

(A) 18, if the offense involved reckless conduct; or

(B) [20]–[26], if the offense involved the reckless operation of a means of transportation.".

Section 2A1.4 is amended by adding at the end the following:

"(b) Special Instruction

(1) If the offense involved the involuntary manslaughter of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the involuntary manslaughter of each person had been contained in a separate count of conviction.".

The Commentary to § 2A1.4 captioned "Application Notes" is amended in the heading by striking "Notes" and inserting "Note"; by striking Notes 1 and 2 in their entirety and inserting the following:

"1. Definitions.—For purposes of this guideline:

'Criminally negligent' means conduct that involves a gross deviation from the standard of care that a reasonable person would exercise under the circumstances, but which is not reckless. Offenses with this characteristic usually will be encountered as assimilative crimes.

'Means of transportation' includes a motor vehicle (including an automobile or a boat) and a mass transportation vehicle. 'Mass transportation' has the meaning given that term in 18 U.S.C. 1993(c)(5).

'Reckless' means a situation in which the defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation. 'Reckless' includes all, or nearly all, convictions for involuntary manslaughter under 18 U.S.C. 1112. A homicide resulting from driving, or similarly dangerous actions, while under the influence of alcohol or drugs ordinarily should be treated as reckless.".

Section 2A1.5(a) is amended by striking "28" and inserting "[32]–[37]".

Section 2A2.1(a) is amended in subdivision (1) by striking "28" and inserting "[32]–[37]"; and in subdivision (2) by striking "22" and inserting "[26][28][30]".

The Commentary to § 2A2.1 captioned "Application Notes" is amended by striking Notes 1 and 2 in their entirety and inserting the following:

"1. Definitions.—For purposes of this guideline:

'First degree murder,' means conduct that, if committed within the special maritime and territorial jurisdiction of the United States, would constitute first degree murder under 18 U.S.C. 1111.

'Serious bodily injury' and 'permanent or life-threatening bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).";

by redesignating Note 3 as Note 2; and in Note 2, as redesignated by this amendment, by inserting "Upward Departure Provision.—" before "If the offense".

Section 2A2.2 is amended by striking subdivision (a) in its entirety and inserting the following:

"(a) Base Offense Level (Apply the greater):

(1) 15; or

(2) [27], if the defendant is convicted under 18 U.S.C. 111(b).".

The Commentary to § 2A2.2 captioned "Application Notes" is amended by striking Note 2 in its entirety; by redesignating Note 3 as Note 2; and by adding at the end the following:

"3. Application of Subsection (b)(2).—In a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and subsection (b)(2).

4. Application of Official Victim Adjustment.—The base offense level in subsection (a)(2) incorporates the fact (A) that the victim was a government official performing official duties; or (B) that the victim formerly was a government official and the assault occurred on account of the victim's performance of official duties during the time of the victim's official service. Accordingly, if subsection (a)(2) applies, do not apply § 3A1.2 (Official Victim).".

Section 2A2.3 is amended in subdivision (a)(1) by striking "6" and inserting "[9]"; and by striking "conduct" and inserting "offense"; and in subdivision (a)(2) by striking "3" and inserting "[6]".

Section 2A2.3(b)(1) is amended by striking "If" and inserting "(Apply the greater) If (A) the victim sustained bodily injury, increase by 2 levels; or (B)".

The Commentary to § 2A2.3 captioned "Application Notes" is amended by striking "Notes" and inserting "Note"; and by striking Notes 1, 2, and 3 in their entirety and inserting the following:

"1. Definitions.—For purposes of this guideline:

'Bodily injury', 'dangerous weapon', and 'firearm' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

'Minor assault' means a misdemeanor assault, or a felonious assault not covered by § 2A2.2 (Aggravated Assault).

'Substantial bodily injury' means "bodily injury which involves (A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty." See 18 U.S.C. 113(b)(1).".

Section 2A2.4(a) is amended by striking "6" and inserting "[12]".

Section 2A2.4(b) is amended by striking "Characteristic" and inserting "Characteristics"; in subdivision (1) by striking "conduct" and inserting "offense"; and by adding at the end the following:

"(2) If the victim sustained bodily injury, increase by 2 levels.".

The Commentary to § 2A2.4 captioned "Application Notes" is amended by striking Notes 1 and 2 in their entirety and inserting the following:

"1. Definitions.—For purposes of this guideline, 'bodily injury', 'dangerous weapon', and 'firearm' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

2. Application of Certain Chapter Three Adjustments.—The base offense level incorporates the fact that the victim was a governmental officer performing official duties. Therefore, do not apply § 3A1.2 (Official Victim) unless, pursuant to subsection (c), the offense level is determined under § 2A2.2 (Aggravated Assault) and the base offense level under § 2A2.2(a)(2) does not apply. Conversely, the base offense level does not incorporate the possibility that the defendant may create a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement official (although an offense under 18 U.S.C. 758 for fleeing or evading a law enforcement checkpoint at high speed will often, but not always, involve the creation of that risk). If the defendant creates that risk and no higher guideline adjustment is applicable for the conduct creating the risk, apply § 3C1.2 (Reckless Endangerment During Flight).".

The Commentary to 2A2.4 captioned "Application Notes" is amended in Note 3 by inserting "Upward Departure Provision.—" before "The base".

Section 3A1.2 is amended to read as follows:

"§ 3A1.2. Official Victim

Increase by [6] levels if—

(1) (A) the victim was (i) a government officer or employee; (ii) a former government officer or employee; or (iii) a member of the immediate family of a person described in subdivision (i) or (ii); and (B) the offense of conviction was motivated by such status; or

(2) in a manner creating a substantial risk of serious bodily injury, the defendant or a person for whose conduct the defendant is otherwise accountable—

(A) knowing or having reasonable cause to believe that a person was a law enforcement officer, assaulted such officer during the course of the offense or immediate flight therefrom; or

(B) knowing or having reasonable cause to believe that a person was a prison official, assaulted such official while the defendant (or a person for whose conduct the defendant is otherwise accountable) was in the custody or control of a prison or other correctional facility.".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 2 in the second sentence by striking "subdivision (a)" and inserting "this adjustment"; in the third sentence by striking "guideline" and inserting "guidelines"; and by striking "is" and inserting "are (A) subsection (a)(2) of § 2A2.2 (Aggravated Assault); and (B)".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 3 by striking "Subsection (a)" and inserting "Subdivision (1)"; and by striking "subsection (a)" and inserting "subdivision (1)".

The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 4 by striking "Subsection (b)" each place it appears and inserting "Subdivision (2)"; and by striking "subsection (b)" each place it appears and inserting "subdivision (2)".

The Commentary to § 3A1.2 captioned "Application Notes" is amended by striking Note 5 in its entirety and inserting the following:

"5. Upward Departure Provision.—If the official victim is an exceptionally high-level official, such as the President or the Vice President of the United States, an upward departure may be warranted due to the potential disruption of the governmental function.".

Issues for Comment:

1. Instead of the proposed alternative base offense level in § 2A2.2 (Aggravated Assault) in the case of a conviction under 18 U.S.C. 111(b) and the proposed three-level increase in the Chapter Three adjustment for official victims in § 3A1.2 (Official Victims), should the Commission provide an enhancement in the assault guidelines for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in 18 U.S.C. 111 or 115? If so, what would be an appropriate increase for such enhancement?

Are there additional, related enhancements that the Commission should provide in the assault guidelines, particularly given the directive to consider providing sentences at or near the statutory maximum for the most egregious cases? Would such an enhancement be appropriate for other Chapter Two guidelines that cover these offenses, such as the guidelines covering attempted murder (§ 2A2.1), kidnapping (§ 2A4.1), and threatening communications (§ 2A6.1)?

Should the Commission consider providing a tiered approach in the Chapter Three adjustment for official victims (§ 3A1.2) such that a [six]-level adjustment would apply if the victim was a government officer or employee (or family member thereof) and the offense was motivated by such status, and a three-level adjustment would apply if the victim was a law enforcement officer or prison employee and was assaulted in a certain manner?

2. Do the current base offense levels in each of the assault and threatening communications guidelines provide adequate punishment for the covered conduct? If not, what would be appropriate base offense levels for §§ 2A2.2, 2A2.3, 2A2.4, and 2A6.1? For example, should the base offense level for offenses involving obstructing or impeding officers under § 2A2.4 be level 15, the same as for aggravated assault, and contain the same enhancements as the aggravated assault guideline, so that an assault of an official unaccompanied by serious bodily injury would nevertheless be severely punished?

3. Should the Commission consider more comprehensive amendments to the assault guidelines as part of, or in addition to, its response to the directives? For example, should the Commission consolidate any or all of the assault guidelines?

In addition to the two-level enhancement for bodily injury proposed in §§ 2A2.3(b)(1) and 2A2.4(b)(2), are there other aggravating or mitigating circumstances that should be incorporated into those guidelines?

Should the base offense level in the aggravated assault guideline generally be decreased by two levels? Should it be decreased by two levels in cases in which none of the specific offense characteristics apply (*i.e.*, in cases in which there are no aggravating circumstances)?

Are there any other application issues pertaining to the assault guidelines that the Commission should address?

4. Should the base offense level in § 2A1.4 for involuntary manslaughter be increased, and if so, to what extent? Should additional specific offense characteristics be added for involuntary manslaughter offenses, including: (A) A four-level increase if death occurred while the defendant was driving intoxicated or under the influence of alcohol or drugs, or if alcohol and/or drugs otherwise were involved in the offense; (B) a two-level increase if the actions of the defendant resulted in multiple homicides; and (C) a two-level increase if the offense involved the use of a dangerous weapon?

The amendment proposes to add a special instruction in the involuntary manslaughter guideline to treat offenses involving multiple persons as if the conduct with respect to each person had been contained in a separate count of conviction. Should the Commission add this special instruction to each of the homicide guidelines?

5. Should specific offense characteristics be added in § 2A1.3 for voluntary manslaughter, including (A) a two-level increase for use of a weapon; and (B) a four-level increase for use of a firearm?

Proposed Amendment 8: Miscellaneous Amendments

Synopsis of Proposed Amendment: This proposed amendment makes changes to various sentencing guidelines as follows:

(A) Clarifies that the application of § 2B1.1(b)(7)(C) in the fraud/theft guideline, regarding a violation of a prior judicial order, is defendant based. Current Application Note 6(C) states that "[s]ubsection (b)(7)(C) provides an enhancement if the defendant commits a fraud in contravention of a prior, official judicial or administrative warning * * *". The note, however, seemingly conflicts with the language of the enhancement itself, at § 2B1.1(b)(7)(C), which uses a relevant conduct construct (*i.e.*, "if the offense involved"). Given that the underlying principle of the enhancement is to provide increased punishment for an individual who demonstrates aggravated criminal intent by knowingly ignoring a prior warning not to engage in particular conduct, see USSG § 2B1.1, comment. n. 6(C), the proposed amendment restructures § 2B1.1(b)(7) to clarify that application of the prior judicial order enhancement is defendant based. The proposed amendment also makes necessary technical and conforming amendments to the commentary.

(B) Expands the special multiple victim rule in the fraud/theft guideline, § 2B1.1, Application Note 4(B)(ii), for offenses involving stolen U.S. mail to include mail collection and delivery units that serve multiple postal customers (*e.g.*, apartment bank boxes). The special rule is that any offense that involves stolen mail from a Postal Service mail box, cart, or satchel shall be considered to have involved 50 or more victims. The Commission has been informed, however, that the rule as currently written does not apply in cases in which mail is stolen from privately owned mail boxes such as those found in apartment complexes or other multiple dwelling communities. The proposed amendment uses language suggested by the Postal Service to include privately owned mail boxes within the special rule.

(C) Modifies § 2B1.1(b)(9), which provides a two-level enhancement and a minimum offense level of level 12, in response to the SAFE ID Act (section 607 of the PROTECT Act, Pub. L. 108–21). That Act created a new offense at 18 U.S.C. § 1028(a)(8) prohibiting the trafficking of authentication features (*e.g.*, a hologram or symbol used by a government agency to determine whether a document is counterfeit, altered, or otherwise falsified), and amended 18 U.S.C. 1028 to prohibit the transfer or possession of authentication features. The proposed amendment makes § 2B1.1(b)(9) applicable to offenses involving authentication features.

(D) Addresses a new offense provided at 18 U.S.C. 25 (Use of minors in crimes of violence), which was created by section 601 of the PROTECT Act. Section 25 of title 18, United States Code, prohibits any person who is 18 years of age or older from intentionally using a minor to commit a crime of violence or to assist in avoiding detection or apprehension for such offense. The penalties for committing the offense are, for the first conviction, "subject to twice the maximum term of imprisonment * * * that would otherwise be authorized for the offense", and for each subsequent conviction, "subject to 3 times the maximum term of imprisonment * * * that would otherwise be authorized for the offense."

The guidelines currently address the use of a minor to commit an offense in § 3B1.4 (Using a Minor To Commit a Crime). That guideline provides a two-level adjustment and applies to any offense in which a defendant used or attempted to use a minor to commit the offense or assist in avoiding detection of, or apprehension for, the offense. Given that the PROTECT Act created a new substantive offense for the use of a minor in crimes of violence, the proposed amendment creates a new guideline for 18 U.S.C. § 25 offenses rather than build on § 3B1.4. The proposed guideline at § 2X6.1 (Use of a Minor to Commit a Crime of Violence) directs the court to increase by [2][4][6] levels the offense level from the guideline applicable to the offense of which the defendant is convicted of using a minor. A base offense level of [2], however, would be consistent with the offense level increase currently provided by § 3B1.4. An issue for comment follows the amendment regarding whether, if the Commission were to adopt an offense level increase of [4]or [6], the Commission also should amend § 3B1.4 to provide consistent penalties.

The proposed amendment also (i) provides application notes addressing the interaction of the new guideline with § 3B1.4 and the grouping of multiple counts; and (ii) amends Appendix A (Statutory Index) to reference the new offense.

(E) Corrects typographical error in Application Note 4 of § 3C1.1 (Obstruction or Impeding the Administration of Justice).

(F) Conforms the definition of "crime of violence" in § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to the definition provided in § 2L1.2 (Unlawfully Entering or Remaining in the United States), effective November 1, 2003, by including specific reference to statutory rape and sexual abuse of a minor.

The proposed amendment also adds to the definition of "crime of violence" possession of a sawed-off shotgun and other firearms of the type described in 26 U.S.C. 5845(a). Congress determined that such firearms are inherently dangerous and, when possessed unlawfully, serve only violent purposes. Accordingly, Congress passed The National Firearms Act, Public Law 90–618, which in part requires such firearms to be registered with National Firearms Registration and Transfer Record. See 26 U.S.C. 5861(d). Notwithstanding that Application Note 1 of § 4B1.2 excludes from the definition of "crime of violence" the offense of unlawful possession of a firearm by a felon, several circuit courts have held that possession of a sawed-off shotgun is a "crime a violence" because under § 4B1.2(a)(2) the offense "otherwise involves conduct that presents a serious potential risk of physical injury to another". *See, e.g., United States* v.

Serna, 309 F.3d 859, 864 (5th Cir. 2002) (unlawful possession of a sawed-off shotgun constitutes conduct that, by its nature, poses a serous potential risk of injury to another and is therefore a crime of violence under § 4B1.2(a)); *United States* v. *Johnson*, 246 F.3d 330 (4th Cir. 2001) (possession of a sawed-off shotgun always creates a serious risk of physical injury to another person and therefore is a crime of violence for career offender purposes); *United States* v. *Brazeau*, 237 F.3d 842, 845 (7th Cir. 2001) (sawed-off shotguns are inherently dangerous and the possession of such a firearm is a crime of violence); *see also United States* v. *Fortes*, 141 F.3d 1 (1st Cir. 1998) (possession of a sawed-off shotgun is a "violent felony" for purposes of 18 U.S.C. § 924(e) (the Armed Career Criminal Act)). An important distinguishing factor for these courts' holdings is that "most weapons do not have to be registered—only those weapons that Congress found to be inherently dangerous" must be registered. *Brazeau* at 845. "If the weapon is not so labeled, mere possession by a felon is not a crime of violence." *Id.* Indeed, at the time the Commission amended § 4B1.2 to exclude the offense of felon in possession from the definition of "crime of violence", it was only concerned with felons possessing ordinary handguns and rifles and did not address more serious firearms.

The proposed amendment addresses the issue by adopting a categorical rule that possession of a firearm described in 26 U.S.C. 5845(a) is a crime of violence. (Besides sawed-off shotguns, section 5845(a) includes silencers, machine guns, and destructive devices). This part of the proposed amendment addresses the case in which the court has to determine whether a prior offense (state or federal) for possessing a sawed-off shot gun (or other section 5845(a) weapon) qualifies as a crime of violence, as for example, in determining the appropriate base offense level in § 2K2.1. The proposed amendment also modifies the rule that excludes felon in possession offenses from the definition of "crime of violence" to except from that rule possession of firearms that are of the type described in 26 U.S.C. 5845(a).

(G) Generally updates Chapter Six (Sentencing Procedures and Plea Agreements), and in particular, incorporates amendments made to Rules 11 and 32 of the Federal Rules of Criminal Procedure, effective December 1, 2002. Those amendments made some substantive changes but mostly reorganized Rules 11 and 32 as part of a general restyling of the Federal Rules of Criminal Procedure to make the rules more easily understood and to make style and terminology consistent throughout the rules. This proposed amendment reflects relevant substantive amendments and stylistic changes (including redesignations).

While much of the proposed amendment of Chapter Six is stylistic and conforming, the more significant aspects of the proposal can be summarized as follows:

- Amends § 6A1.2 (Disclosure of Presentence Report; Issues in Dispute) to set out the specific procedural requirements governing the disclosure of the presentence report and any issues in dispute as required by Rule 32. Currently, § 6A1.2 provides that the court should adopt procedures for the timely disclosure of the presentence report, the resolution of disputed issues prior to the sentencing hearing, and the identification of any unresolved issues. Rule 32 was amended in 1997 to provide particular procedural deadlines and requirements for the disclosure of the presentence report and issues in dispute and, in December 2002, those deadlines and requirements were reorganized to read more easily. This proposed amendment reflects those changes.
- Moves Application Note 1 of § 6A1.2, regarding a requirement that the court provide notice of departure, to its own policy statement. The Commission added the application note in 1997 in light of *Burns* v. *United States*, 501 U.S. 129, 138–39 (1991), in which the Court held that, before a sentencing court may depart upward on a ground not previously identified in the presentence report, Rule 32 requires the court to give the parties reasonable notice that it is contemplating such a departure. The Court also stated that because the procedural entitlements in Rule 32 apply equally to both parties, it was equally appropriate to frame the issue as whether notice is required before the sentencing court departed either upward or downward. Proposed policy statement § 6A1.4 (Notice of Possible Departure) reflects the substantive amendment that added subsection (h) to Rule 32 specifically to incorporate the *Burns* holding.
- Deletes outdated commentary regarding pre-guidelines procedures.
- Fully incorporates into § 6B1.3 the procedure set forth in Rule 11(c)(5) that the court must follow when the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C).

Please note that the PROTECT Act amendments, effective October 27, 2003, updated the references to Rule 11 in § 6B1.2.

(H) Makes conforming amendments to various guideline provisions and commentary in light of PROTECT Act departure amendments promulgated at the October meeting.

(I) Corrects error in the examples provided in Application Note 3(B)(iii) of § 5G1.2 (Sentencing on Multiple Counts of Conviction).

(J) Provides an issue for comment regarding an apparent double-counting issue in cases in which (i) the defendant is convicted of 18 U.S.C. 922(g) (felon in possession), (ii) is an armed career criminal under § 4B1.4, and (iii) is convicted of an 18 U.S.C. 924(c) (use of a firearm during a drug trafficking offense or crime of violence).

Proposed Amendment:

(A) Clarifying Application of § 2B1.1(b)(7)(C)

Section 2B1.1(b)(7) is amended by inserting "(A)" before "the offense"; by striking "involved (A)" and inserting "involved (i)"; by striking "(B)" and inserting "(ii)"; by striking "(C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D)" and inserting "(iii)"; and by striking the comma after "education" and inserting "; or (B) the defendant violated a prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines,".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 6 in subdivision (B) by inserting "(i)" after "Subsection (b)(7)(A)" each place it appears; by striking subdivision (C) in its entirety; and by redesignating subdivision (D) as subdivision (C).

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 6 in subdivision (C), as redesignated by this amendment; by striking "subsection (b)(7)(D)" and inserting "subsection (b)(7)(A)(iii)"; and by inserting after subdivision (C), as redesignated by this amendment, the following:

"(D) Offenses Committed in Contravention of Prior Judicial Order.—Subsection (b)(7)(B) provides an enhancement if the defendant commits an offense in contravention of a prior, official judicial or administrative warning, in the form of an order, injunction, decree, or process, to take or not to take a specified action. A defendant who does not comply with such a prior, official judicial or administrative warning demonstrates aggravated criminal intent and deserves additional punishment. If it is established that an entity the defendant controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (*e.g.*, a violation of a condition of release addressed in § 2J1.7 (Commission of Offense While on Release) or a violation of probation addressed in § 4A1.1 (Criminal History Category)).".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 6 in subdivision (E)(i) by inserting "(i)" after "(b)(7)(A)" each place it appears; and in subdivision (E)(ii) by striking "(b)(7)(B) and (C)" and inserting "(b)(7)(A)(ii) and (B)"; and by striking "(b)(7)(B) or (C)" and inserting "(b)(7)(A)(ii) or (B)".

(B) Expanding Special Rule for Theft of Mail To Include Privately Owned Boxes

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 4 by striking subdivision (B)(ii) in its entirety and inserting:

"(ii)Special Rule.—A case described in subdivision (B)(i) of this note that involved a relay box, a collection box, a delivery vehicle, a satchel, a cart, a housing unit cluster box, an apartment box, or any other thing used or designed for use in the conveyance of [Option 1: a large volume of] United States mail [Option 2: to multiple addresses], whether such thing is privately owned or owned by the United States Postal Service, shall be considered to have involved 50 or more victims.".

(C) SAFE ID Act

Section 2B1.1(b)(9) is amended by inserting "(i)" before "device-making"; by inserting "; or (ii) authentication feature" after "equipment"; by inserting "(i)" before "unauthorized access"; and by inserting "; (ii) or authentication feature" after "access device".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 8(A) by inserting before the paragraph that begins "'Counterfeit access device'" the following paragraph:

"'Authentication feature' has the meaning given that term in 18 U.S.C. § 1028(d)(1).".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 8(A) in the paragraph that begins "'Means of identification'" by striking "(4)" and inserting "(7)".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 8(B) by inserting "Authentication Features and" before "Identification Documents"; and by inserting "authentication features" after "involving".

The Commentary to § 2B1.1 captioned "Background" is amended in the eleventh paragraph by inserting "(i)" after "(A)"; and by inserting "(i)" after "(B)".

(D) Use of Minor To Commit Crimes of Violence (PROTECT Act)

Chapter Two, Part X is amended by adding at the end the following new subpart:

"6. OFFENSES INVOLVING USE OF A MINOR IN A CRIME OF VIOLENCE

§ 2X6.1 Use of a Minor in a Crime of Violence

(a) Base Offense Level: [2][4][6] plus the offense level from the guideline applicable to the underlying offense.

Commentary

Statutory Provision: 18 U.S.C. 25.

Application Notes:

1. Definitions.—For purposes of this guideline, 'underlying offense' means the offense of which the defendant is convicted of using a minor. Apply the base offense level plus any applicable specific offense characteristic that were known, or reasonably should have been known, by the defendant. See Application Note 10 of the Commentary to § 1B1.3 (Relevant Conduct).

2. Non-applicability of § 3B1.4.—The base offense level in subsection (a) incorporates the use of a minor in the offense; accordingly, do not apply the adjustment in § 3B1.4 (Using a Minor to Commit a Crime).

3. Grouping of Multiple Counts.—In a case in which the defendant is convicted under 18 U.S.C. 25 and the underlying crime of violence, the counts shall be grouped pursuant to subsection (c) of § 3D1.2 (Groups of Closely Related Counts).".

Appendix A is amended by inserting after the line referenced to 18 U.S.C. 4 the following new line:

"18 U.S.C. 25 2X6.1".

Issue for Comment: The proposed new guideline for 18 U.S.C. 25 offenses directs the court to increase by [two][four][six] levels the offense level from the guideline applicable to the offense of which the defendant is convicted of using a minor. The statutory penalties for the new offense are as follows: For the first conviction, the defendant is "subject to twice the maximum term of imprisonment * * * that would otherwise be authorized for the offense", and for each subsequent conviction, the defendant is "subject to 3 times the maximum term of imprisonment * * * that would otherwise be authorized for the offense". A base offense level of [2] (plus the offense level from the guideline applicable to the underlying offense), however, would be consistent with the offense level increase currently provided by § 3B1.4 (Using a Minor to Commit a Crime). Notwithstanding the current increase in § 3B1.4, should the Commission provide a base offense level increase of [four] or [six] levels for proposed § 2X6.1? If so, should the Commission also amend § 3B1.4 to provide a greater offense level adjustment in order to maintain consistent penalties between § 3B1.4 and the proposed new guideline? Should the Commission amend § 3B1.4 to conform the definition of "used or attempt to use" ("includes directing, commanding, encouraging, intimidating, counseling, training, procuring, recruiting, or soliciting") to the definition of "uses" in 18 U.S.C. 25(a)(3) (defined as "employs, hires, persuades, induces, entices, or coerces")? Finally, are there any specific offense characteristics that the Commission should consider providing in the new guideline?

(E) Correcting Typographical Error in § 3C1.1

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 5(b) by striking "3(g)" and inserting "4(g)".

(F) "Crime of Violence" Definition in § 4B1.2

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 in the paragraph that begins "'Crime of violence' includes" by inserting "statutory rape, sexual abuse of a minor," after "forcible sex offenses,".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 in the paragraph that begins "'Crime of violence' does not" by striking ". Where" and inserting ", unless the possession was of a firearm of a type described in 26 U.S.C. 5845(a). If ".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 by inserting before the paragraph that begins "Unlawfully possessing a prohibited flask" the following paragraph:

"Unlawfully possessing a firearm that is of a type described in 26 U.S.C. 5845(a) (*e.g.*, a sawed-off shotgun, silencer, or machine gun) is a 'crime of violence'.".

(G) Chapter Six Update

Section 6A1.1 is amended by striking "A probation officer" and all that follows through "presentence report." and inserting the following:

"(a) The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless—

(1) 18 U.S.C. 3593(c) or another statute requires otherwise; or

(2) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. 3553, and the court explains its finding on the record. Rule 32(c)(1)(A), Fed. R. Crim. P.

(b) The defendant may not waive preparation of the presentence report.".

The Commentary to § 6A1.1 is amended by striking the second sentence in its entirety; in the third sentence by striking "Rule 32(b)(1)" and inserting "Rule 32(c)(1)(A)"; and by striking ", but only after explaining, on the record, why sufficient information is already available" and inserting "in certain limited circumstances, as when a specific statute requires or when the court finds sufficient information in the record to enable it to meaningfully exercise its statutory sentencing authority and explains its finding on the record".

Section 6A1.2 is amended by striking "Courts should adopt" and all that follows through "Fed. R. Crim. P." and inserting the following:

"(a) The probation officer must give the presentence report to the defendant, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period. Rule 32(e)(2), Fed. R. Crim. P.

(b) Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. An objecting party must provide a copy of its objections to the opposing party and to the probation officer. After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report accordingly. Rule 32(f), Fed. R. Crim. P.

(c) At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them. Rule 32(g), Fed. R. Crim. P.".

The Commentary to § 6A1.2 is amended by striking "Application Note:" and all that follows through "(1991).".

The Commentary to § 6A1.2 captioned "Background" is amended by striking "32(b)(6)(B)" and inserting "32(f)".

Section 6A1.3(b) is amended by striking "32(c)(1)" and inserting "32(i)".

The Commentary to § 6A1.3 is amended by striking the first paragraph in its entirety; in the third paragraph by striking "117 S. Ct. 633, 635" and inserting "519 U.S. 148, 154"; and by striking "117 S. Ct. at 637" and inserting "519 U.S. at 157".

Chapter Six, Part A, Subpart 1 is amended by adding at the end the following:

"§ 6A1.4 Notice of Possible Departure (Policy Statement)

Before the court may depart from the applicable sentencing guideline range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure. Rule 32(h), Fed. R. Crim. P.

Commentary

Background: The Federal Rules of Criminal Procedure were amended, effective December 1, 2002, to incorporate into Rule 32(h) the holding in *Burns* v. *United States,* 501 U.S. 129, 138–39 (1991). This policy statement parallels Rule 32(h), Fed. R. Crim. P.".

Chapter Six, Part B is amended in the "Introductory Commentary" by striking "Rule 11(e)(1)" and inserting "Rule 11(c)"; by striking "These policy statements are a first step toward implementing 28 U.S.C. 994(a)(2)(E)."; by striking "shall" and inserting "will continue to"; [by striking "and ultimately develop standards" and all that follows through "the Commission's work."]; in the last paragraph by striking "The present policy statements move in the desired direction in two ways. First, the" and inserting "These"; [by striking "This is a reaffirmation of pre-guidelines practice.] Second, the policy statements" and inserting "The policy statements also"; by inserting "continue to" after "Explanations will"; [and by striking "and will pave the way for more detailed policy statements presenting substantive criteria to achieve consistency in this aspect of the sentencing process".]

Section 6B1.1 is amended by striking subsections (a), (b), and (c) in their entirety and inserting:

"(a) The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera. Rule 11(c)(2), Fed. R. Crim. P.

(b) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request. Rule 11(c)(3)(B), Fed. R. Crim. P.

(c) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report. Rule 11(c)(3)(A).".

The Commentary to § 6B1.1 is amended in the first paragraph in the first sentence by striking "11(e)" and striking the second paragraph and inserting the following:

"Section 6B1.1(c) deals with the timing of the court's decision regarding whether to accept or reject the plea agreement. Rule 11(c)(3)(A) gives the court discretion to accept or reject the plea agreement immediately or defer a decision pending consideration of the presentence report. Given that a presentence report normally will be prepared, the court may defer acceptance of the plea agreement until the court has reviewed the presentence report.".

Section 6B1.3 is amended by striking "If the plea" and all that follows through "Fed. Crim. P." and inserting the following:

"If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(a) inform the parties that the court rejects the plea agreement;

(b) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(c) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

Rule 11(c)(5), Fed. R. Crim. P.".

The Commentary to § 6B1.3 is amended by striking "11(e)(4)"and inserting "11(c)(5)".

(H) Conforming PROTECT Act Amendments (Departures)

The Commentary to § 1B1.3 captioned "Application Notes" is amended in the fifth sentence of Note 5 by striking "When" and inserting "In a case in which creation of risk is"; by striking "creation of a risk may provide a ground for imposing a sentence above the applicable guideline range" and inserting "an upward departure may be warranted".

The Commentary to § 1B1.4 captioned "Background" is amended in the fifth sentence by striking "sentencing above the guideline range" and inserting "an upward departure".

The Commentary to § 1B1.8 captioned "Application Notes" is amended in the third sentence of Note 1 by striking "increase the defendant's sentence above the applicable guideline range by upward departure" and inserting "depart upward"; and in the last sentence by striking "below the applicable guideline range" and inserting "downward".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 7 by striking "sentence below the applicable guideline range"and inserting "downward departure".

The Commentary to § 2R1.1 captioned "Application Notes" is amended in Note 7 by striking ", or even above," and by inserting ", or an upward departure" after "guideline range".

The Commentary to § 2T1.8 captioned "Application Note" is amended in Note 1 by striking "a sentence above the guidelines" and inserting "an upward departure".

Chapter Two, Part T, Subpart 3 is amended in the "Introductory Commentary" by striking "imposing a sentence above that specified in the guideline in this Subpart" and inserting "departing upward".

The Commentary to § 3D1.3 captioned "Application Notes" is amended in Note 4 by striking "a sentence above the guideline range" and inserting "an upward departure".

Section 5C1.2(a) is amended by striking "verbatim".

Section 5H1.1 is amended by striking "sentence should be outside the applicable guideline range" and inserting "departure is warranted"; by striking "impose a sentence below the applicable guideline range when" and inserting "depart downward in a case in which"; and by inserting "; Gambling Addiction" after "Abuse".

Section 5H1.2 is amended by striking "sentence should be outside the applicable guideline range" and inserting "departure is warranted".

Section 5H1.3 is amended by striking "sentence should be outside the applicable guideline range" and inserting "departure is warranted".

Section 5H1.5 is amended by striking "sentence should be outside the applicable guideline range" and inserting "departure is warranted".

Section 5H1.6 is amended by striking "Family ties" and inserting "In sentencing a defendant convicted of an offense other than an offense described in the following paragraph, family ties"; by inserting after the first paragraph the following:

"In sentencing a defendant convicted of an offense involving a minor victim under section 1201, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.";

and by striking:

"***Note:** Section 401(b)(4) of Public Law 108–21 (the "Protect Act") directly amended § 5H1.6 to add the second paragraph, effective April 30, 2003. The Commission incorporated this direct amendment in the *Supplement to the 2002 Guidelines Manual* but inadvertently omitted the second paragraph in the **Federal Register** notice of amendments dated October 21, 2003. The policy statement should be read as containing the second paragraph, pursuant to the direct amendment made by Public Law 108–21.".

The Commentary to § 5H1.6 is amended by adding at the end the following:

"Background: Section 401(b)(4) of Public Law 108–21 directly amended this policy statement to add the second paragraph, effective April 30, 2003.".

Section 5H1.11 is amended by striking "sentence should be outside the applicable guideline range" and inserting "departure is warranted".

Section 5H1.12 is amended by striking "grounds for imposing a sentence outside the applicable guideline range" and inserting "in determining whether a departure is warranted".

Section 5K2.14 is amended by striking "increase the sentence above the guideline range" and inserting "depart upward".

Section 5K2.16 is amended by inserting "downward" before "departure"; and by striking "below the applicable guideline range for that offense".

Section 5K2.21 is amended by striking "increase the sentence above the guideline range" and inserting "depart upward".

Section 5K2.22 is amended by striking "impose a sentence below the applicable guideline range" each place it place it appears and inserting "depart downward"; and by striking "imposing a sentence below the guidelines" and inserting "a downward departure".

Section 5K2.23 is amended by striking "sentence below the applicable guideline range" and inserting "downward departure".

(I) Correction of Examples in § 5G1.2

The Commentary to § 5G1.2 captioned "Application Notes" is amended in Note 3(B)(iii) by striking "2113(a) (20 year" and inserting "113(a)(3) (10 year"; in the second sentence by striking "400" and inserting "460"; by striking "360–life" and inserting "460–485"; and in the third sentence by striking "40" and inserting"100"; and by striking "2113(a)" and inserting "113(a)(3)".

(J) Issue for Comment Regarding "Double Counting" Issue in § 4B1.4 (Armed Career Criminal)

Issue for Comment: The Commission requests comment regarding application of the guidelines in cases in which the defendant (1) is convicted under 18 U.S.C. 922(g) (felon in possession); (2) is an armed career criminal under § 4B1.4; and (3) is convicted under 18 U.S.C. 924(c) (use of a firearm during a drug trafficking offense or crime of violence).

Section 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) provides that in cases in which a defendant is convicted of 18 U.S.C. 924(c) and of the underlying offense, the weapon enhancement in the guideline for the underlying offense is not to be applied. This rule is provided because the mandatory minimum consecutive sentence required by 18 U.S.C. 924(c) is sufficient to account for the possession or use of the weapon in the underlying offense. Section 4B1.4 (Armed Career Criminal) provides for an "enhanced" sentence (*i.e.*, an offense level of level 34 pursuant to § 4B1.4(b)(3)(A) and Criminal History Category VI pursuant to § 4B1.4(c)(2)) for cases in which an armed career criminal uses or possesses a firearm in connection with a crime of violence or controlled substance offense. Unlike § 2K2.4, however, § 4B1.4 does not currently contain a rule to provide an exception to application of the "enhanced" sentence in cases in which the defendant also is convicted under 18 U.S.C. 924(c) (or a similar offense carrying a "flat" mandatory consecutive penalty *e.g.*, 18 U.S.C. 844(h) or 18 U.S.C. 929(a)). The Commission requests comment regarding whether such a rule should be provided in § 4B1.4.

For example, should the Commission add § 4B1.4 to the list of guidelines to which the special exception in § 2K2.4 applies? Should the Commission also provide an upward departure note to § 4B1.4 for the few cases in which the application of the exception may result in a guideline range that, when combined with the mandatory consecutive sentence under 18 U.S.C. 844(h), 924(c), or 929(a), produces a total maximum penalty that is less than the maximum of the guideline range that would have resulted if the enhanced offense level and criminal history category had been applied?

Proposed Amendment 9: MANPADS and Other Destructive Devices

Synopsis of Amendment: This amendment proposes to increase by [5]–[13] additional levels the existing two-level enhancement in § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) for cases in which the offense involved destructive devices that are portable rockets, missiles, or devices used for launching portable rockets or missiles, and by increasing the enhancement by up to [7] additional levels if the offense involved any other kind of destructive device. It also proposes to add certain attempts and conspiracies to the list of offenses for which the three-level reduction in § 2X1.1 (Attempt, Solicitation, or Conspiracy) is prohibited.

As defined in 26 U.S.C. 5845(f), a "destructive device" means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellent charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellent, the barrels of which have a bore of more than one-half inch in diameter; or (3) any combination of parts designed or intended for use in converting any device into a destructive device as described above.

In its annual submission to the Commission dated August 1, 2003, the Department of Justice recommended that guideline penalties be increased if the offense involved the use or attempted use of, or conspiracy to use, a kind of destructive device known as the man-portable air defense system (MANPADS) or any similar destructive device. MANPADS are portable rockets and missiles that pose particular risks due to their portability, potential range, accuracy, and destructive power. This amendment addresses that concern by increasing the enhancement in § 2K2.1(b)(3) for involvement of these types of destructive devices from 2 levels to [7]–[15] levels, correspondingly increasing the maximum cumulative offense level in that guideline from level 29 to level [30]–[42], and increasing the enhancement for all other destructive devices from two levels to up to [9] levels. An issue for comment follows regarding whether the increase should pertain to all destructive devices within the meaning of 26 U.S.C. 5845(f) or only to MANPADS and similar weapons, or to some other subcategory of destructive devices, or whether there should be a graduated increase for different kinds of destructive devices.

Similarly, the Department of Justice also urged the Commission to increase guideline penalties for attempts and conspiracies to commit certain offenses if those offenses involved the use of a MANPADS or similar destructive device. Those offenses include 18 U.S.C. 32 (destruction of an aircraft or aircraft facilities), 18 U.S.C. 1993 (terrorist attacks and other acts of violence against mass transportation systems), and 18 U.S.C. 2332a (use of certain weapons of mass destruction). In response to this concern, the amendment proposes to amend the special instruction in § 2X1.1(d) to prohibit application of the three-level reduction for attempts and conspiracies for these offenses generally, and not just in the context of the use of a MANPADS or similar destructive device. These offenses are comparable in nature to the offenses already listed in § 2X1.1(d). Issues for comment follow regarding the appropriate Statutory Index references for these offenses the definition of "destructive device."

Proposed Amendment:

Section 2K2.1(b) is amended by striking subdivision (3) in its entirety and inserting the following:

"(3) If the offense involved—

(A) a portable rocket, a missile, or a device for use in launching a portable rocket or a missile, increase by [7]–[15] levels; or

(B) a destructive device other than a destructive device referred to in subdivision (A), increase by [2]–[9] levels.".

Section 2K2.1(b) is amended in the paragraph beginning "Provided, that" by striking "29" and inserting "[30]–[42]".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 11 by striking "a two-level" and inserting "the applicable".

Section 2X1.1(d) is amended by striking subdivision (1) in its entirety and inserting the following:

"(1) Subsection (b) shall not apply to:

(A) Any of the following offenses, if such offense involved, or was intended to promote, a federal crime of terrorism as defined in 18 U.S.C. 2332b(g)(5):

18 U.S.C. 81;
18 U.S.C. 930(c);
18 U.S.C. 1362;
18 U.S.C. 1363;
18 U.S.C. 1992;
18 U.S.C. 2339A;
18 U.S.C. 2340A;
49 U.S.C. 46504;
49 U.S.C. 46505; and
49 U.S.C. 60123(b).

(B) Any of the following offenses:

18 U.S.C. 32;
18 U.S.C. 1993; and
18 U.S.C. 2332a.".

Issues for Comment:

1. The Commission requests comment regarding whether the proposed increase in the enhancement in § 2K2.1(b)(3) for involvement of a destructive device should pertain to all destructive devices within the meaning of 26 U.S.C. 5845(f) or only to man-portable air defense systems (MANPADS) and similar destructive devices or to some other subcategory of destructive devices. In addition, what is the appropriate extent of such an increase? Specifically, are there types of destructive devices other than MANPADS and similar destructive devices that should receive a [7]–[15] level enhancement, as is proposed for MANPADS and similar destructive devices? Should the extent of the increase vary according to the kind of destructive device involved? Should the limitation on the cumulative offense level of level 29 in § 2K2.1(b) be amended if the extent of the enhancement in § 2K2.1(b)(3) is increased, and, if so what should the limitation on the cumulative offense level be? Alternatively, should the limitation on the cumulative offense level be eliminated?

2. The Commission also requests comment regarding whether 18 U.S.C. 1993(a)(8), relating to attempts, threats, or conspiracies, to commit any of the substantive terrorist offenses in 18 U.S.C. 1993(a), should be referenced in Appendix A (Statutory Index) to § 2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Operation, or Maintenance of

Mass Transportation Vehicle or Ferry) rather than, or in addition to, § 2A6.1 (Threatening or Harassing Communications).

Similarly, the Commission requests comment regarding whether any or all of the substantive criminal provisions of 18 U.S.C. 32 should be referenced only to § 2A5.2.

3. The Commission also requests comment regarding whether there should be a cross reference to § 2A5.2 or § 2M6.1 in any guideline to which offenses under 18 U.S.C. 32, 1993, and 2332a are referenced, if the offense involved interference or attempted interference with a flight crew, interference or attempted interference with the dispatch, operation, or maintenance of a mass transportation system (including a ferry), or the use or attempted use of weapons of mass destruction.

4. The Commission seeks comment regarding whether the "destructive device" definition at Application Note 4 of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) should be amended. Practitioners have commented that it is unclear whether certain types of firearms qualify as "destructive devices". Should the Commission clarify the definition of "destructive device"? If so, what issues should be addressed?

Issue for Comment 10: Aberrant Behavior

Issue for Comment: The Commission requests comment regarding whether the departure provision in § 5K2.20 (Aberrant Behavior) should be eliminated (and departures based on characteristics described in § 5K2.20 should be prohibited) and whether those characteristics instead should be incorporated into the computation of criminal history points under § 4A1.1 (Criminal History Category). Specifically, are there circumstances or characteristics, currently forming the basis for a departure under § 5K2.20, that should be treated within § 4A1.1 instead, particularly for first offenders?

Issues for Comment 11: Hazardous Materials

Issue for Comment: In its annual submission to the Commission dated August 1, 2003, the Department of Justice urged the Commission to consider revising the guideline treatment for the illegal transportation of hazardous materials. According to the Department, the sentencing guideline applicable to hazardous materials, § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce), is not adequately suited to such offenses because (1) such offenses are different from more typical pollution offenses covered by that guideline and have characteristics that are not addressed by that guideline; and (2) the specific offense characteristics in that guideline are not characteristic of such offenses. As a consequence, the offense levels applicable to hazardous materials offenses often are inadequate given the severity of the offense.

Specifically, the Department stated that § 2Q1.2 originally was intended to cover the release of toxic substances and pesticides in the context of ongoing, continuous, or repetitive releases into the environment and the failure to obtain government permits to handle certain materials. Offenses involving hazardous materials, on the other hand, often involve a one-time, catastrophic occurrence that provide a "target-rich" environment for terrorists and that, because of the movement of these materials in commerce, could affect a large population or occur in a setting such as aboard an aircraft where corrective or preventive action is unlikely. Further aggravating the risks inherent in the transportation of hazardous materials is that, unlike other toxins, government permitting is not required.

In light of the Department of Justice's concerns, the Commission requests comment regarding whether existing guidelines should be revised, or whether a new guideline should be created, to address more adequately offenses involving hazardous materials. Specifically:

(1) How should the Commission define key terms regarding offenses involving the transportation of hazardous materials? For example, for purposes of enhanced penalties governing hazardous materials (as opposed to other toxic materials and pesticides) what hazardous materials, and/or what statutory provisions, should be covered? What activities constitute a "release" in the context of transportation of hazardous materials?

What is the appropriate definition of "environment" in the context of transportation of hazardous materials?

(2) What is an appropriate base offense level for offenses involving the transportation of hazardous materials?

(3) What aggravating and/or mitigating factors particular to such offenses should be incorporated into the guidelines as specific offense characteristics? For example, should the guidelines provide enhancements if the offense involved any of the following:

(A) The transportation of a hazardous material on a passenger-carrying or other aircraft.

(B) The transportation of a hazardous material on any passenger-carrying mode of mass transportation.

(C) The concealment of the hazardous material during its transportation, such as by misrepresentation, deception, or physical concealment.

(D) The release of a hazardous material.

(E) Disruption of, or damage to, critical infrastructure.

(F) The release of a hazardous material resulting in damage to the environment, or to public or private property.

(G) An emergency response and/or the evacuation of a community or part thereof.

(H) Repetition of the offense.

(I) The substantial likelihood of death or serious injury.

(J) Actual serious bodily injury or death.

(K) A substantial expenditure for remediation.

(L) The failure to provide, submit, file, or retain required information about a hazardous material, including the failure to notify for certain hazardous material incidents under 49 CFR 171.1.

(M) Financial gain to the defendant or the financial loss to others, excluding government costs of cleanup.

(N) The transportation of radioactive or explosive material.

(O) A terrorist motive.

(P) A controlled substance manufacturing or trafficking offense.

(Q) The failure to properly train transporters of hazardous materials (see, *e.g.*, 49 U.S.C. 5107).

(R) The procurement of a license through fraudulent means.

What should be the extent of any specific characteristic added to the guidelines for these enhancements, including gradation for seriousness of the specific offense characteristic involved?

(4) If a new guideline were to be promulgated covering only offenses involving the transportation of hazardous materials:

(A) What interaction should the new guideline covering hazardous materials transportation offenses have with the guidelines in Chapter Eight (Sentencing of Organizations)? For example, should a separate compliance program be established for persons involved in the transportation of hazardous materials, or should additional factors be added to the compliance requirements in Chapter Eight?

(B) What cross references, if any, should be included with this guideline?

(C) What impact, if any, should repeat civil penalties or regulatory infractions have on culpability under this proposed guideline?

(D) Under Chapter Three, Part D (Multiple Counts), what would be the appropriate grouping of counts involving the transportation of hazardous materials under this new guideline and counts involving environmental offenses covered under other existing guidelines, particularly § 2Q1.2?

[FR Doc. 03–31755 Filed 12–29–03; 8:45 am]

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December 30, 2003

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 145

Repair Stations: Service Difficulty Reporting; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 145

[Docket No.: FAA–2003–16772; Amendment No. 22]

RIN 2120–AI07

Repair Stations: Service Difficulty Reporting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule amends the regulations governing service difficulty reports (SDRs) submitted to the FAA by aeronautical repair stations. The FAA is clarifying which type of failures, malfunctions, and defects repair stations must report. Finally, FAA is replacing certain section references with part references. This action will eliminate the need to revise repair station regulations if the FAA revises SDR rules.

DATES: Effective January 31, 2004.

Comments for inclusion in the Rules Docket must be received on or before January 29, 2004.

ADDRESSES: You may send comments [identified by Docket Number FAA–2003–16772 using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diana L. Frohn, General Aviation and Repair Station Branch, AFS—340, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7027; facsimile (202) 267–5118, e-mail *diana.frohn@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

FAA is adopting this final rule without prior notice and prior public comment. FAA finds such action necessary for good cause. Notice and comment procedures would be impracticable, unnecessary, and contrary to the public interest. This amendment presents no change in current industry practice. Further, without this amendment, repair stations will not be able to comply with a recent revision to part 145 that becomes effective January 31, 2004, because it would contain section numbers that would not be in effect. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite interested persons to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2003–XXXXX." The postcard will be date-stamped by FAA and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On September 8, 2000, FAA issued "Service Difficulty Reports; Final rule, request for comments on the information collection" (65 FR 56192; September 15, 2000). That final rule amended the requirements in 14 CFR parts 121, 125, 135, and 145 for reporting failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. In that rulemaking action, FAA amended §§ 145.63 and 145.79 to—

(1) Increase the time period for repair stations to report failures, malfunctions, or defects from 72 hours to 96 hours; and

(2) Allow a repair station to submit service difficulty reports (SDRs) on behalf of part 121, 125, and 135 certificate holders.

Section 145.63, paragraphs (c) and (d) and § 145.79, paragraphs (e)(1) through (e)(3), specified the sections of parts 121, 125, and 135 that allow certificated repair stations to submit SDRs for part 121, 125, and 135 certificate holders.

On July 30, 2001, FAA issued "Repair Stations; Final rule with request for comments and direct final rule with request for comments," (66 FR 41088; August 6, 2001). In that rulemaking action, FAA further amended §§ 145.63 and 145.79 by—

(1) Combining the provisions of §§ 145.63 and 145.79 and re-designating the requirements as § 145.221, Service Difficulty Reporting;

(2) Standardizing the requirements for reporting failures, malfunctions, or defects to apply to all certificated repair stations, regardless of location;

(3) Replacing the phrases "serious defect" and "other unairworthy condition" with the phrase "failure, malfunction, or defect"; and

(4) Including language that would allow repair stations to submit SDRs to FAA in a format acceptable to the Administrator.

That amendment to part 145 becomes effective January 31, 2004.

Statement of the Problem

After issuing the SDR final rule, FAA received extensive comments opposing the rule. To give the agency time to consider industry's concerns about the SDR final rule, the FAA previously extended the effective date of the SDR rule. The FAA is again extending the effective date of the SDR rule this time to January 30, 2006. This extension affects the July 2001 repair station reporting final rule, because that amendment to part 145 will become effective January 31, 2004, and it references sections in parts 121, 125, and 135 that will now not become effective until January 30, 2006.

Also, several repair stations have expressed concern about FAA's removal in July 2001 of the word "serious" to describe the type of defect that must be reported. Repair stations contend the language in § 145.221(a) requires them to report all failures, malfunctions, or defects, regardless of severity.

FAA Action

To avoid the need to amend § 145.221 to track specific sections of parts 121, 125, and 135, FAA is amending § 145.221 by removing references to specific sections in parts 121, 125, and 135. FAA is replacing the specific section references with the applicable part numbers. This amendment will require repair stations to follow whatever requirements are set out in parts 121, 125, and 135, depending on the certificate holder.

Also, FAA agrees with the repair station industry concerning the word "serious". It was not the agency's intent to require repair stations to report "any" failure, malfunction, or defect. When FAA combined §§ 145.63 and 145.79 to create § 145.221, FAA standardized language in that section to match language in parts 121, 125, and 135, which do not include the word "serious." In doing so, FAA removed the word "serious" to describe the type of failures, malfunctions, and defects repair stations must report. Again, it was not FAA's intent to require repair stations to report *all* failures, malfunctions, and defects. Repair stations are required to report only serious failures, malfunctions, and defects. Therefore, FAA is reinserting the word "serious" before the word "failure" in § 145.211(a).

Effect of This Action

This action becomes effective on January 31, 2004, along with the new requirements for part 145 issued on July 30, 2001. Repair stations submitting SDRs for part 121, 125, or 135 certificate holders will be required to report in accordance with the requirements of the appropriate part: For example, a repair station reporting a failure, malfunction, or defect for a part 121 certificate holder would submit the report in accordance with whatever provisions of part 121 are in effect on the date the report is sent. By removing references to specific sections in parts 121, 125, and 135, FAA will be able to amend the requirements for SDRs in the future without making further amendments to part 145.

FAA notes the repair station industry should interpret the word "serious" the same way it is interpreted under the current rule. Repair stations should continue to report failures, malfunctions, or defects as they are currently reported. This amendment will not change current practice in determining which failures, malfunctions, or defects repair stations should report.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9-AWA-SBREFA@faa.gov*.

Paperwork Reduction Act

Information collection requirements on service difficulty reporting have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), and have been assigned OMB Control Number 2120–0682.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified some differences with these regulations.

Economic Summary, Regulatory Flexibility Act, Trade Impact Assessment, and Unfunded Mandates Assessment

Economic Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined that this rule: (1) Will generate benefits and will not impose any costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2)

will not have a significant economic impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Department of Transportation (DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for the determination is included in the preamble to the rule. Given the reasons presented below, FAA has determined the expected impact of this rule is minimal and the final rule does not warrant a full evaluation.

This amendment will remove specific references found in 14 CFR parts 121, 125, and 135 concerning the requirements for SDRs. This change will eliminate the need to revise part 145 when revising the SDR requirements in the future. Also, the amendment will require repair stations to submit the reports for "serious" failures, malfunctions, and defects, as intended originally. The costs associated with these provisions were addressed in both the Service Difficulty Reports final rule (65 FR 56192; September 15, 2000) and the Repair Stations final rule (66 FR 41088; August 6, 2001).

Regarding benefits, this rule will provide repair stations some cost savings by limiting reports to serious failures, malfunctions, or defects, rather than "any" defect. Also, FAA finds the removal of conflicting effective dates and potential cost savings justify adoption of this rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will have a minimal impact on repair stations since it reduces reporting and imposes no costs. FAA, therefore, certifies the rule will not have a significant economic impact on a substantial number of small operators.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FAA has assessed the potential effect of this final rule and has determined that it will impose the same requirements on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 145

Air carriers, Air transportation, Aircraft, Aviation safety, Recordkeeping and reporting, Safety.

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends part 145 of Title 14, Code of Federal Regulations as follows:

PART 145—REPAIR STATIONS

■ 1. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

■ 2. Section 145.221 is amended by revising paragraphs (a), (c), and (d)

§ 145.221 Reports of failures, malfunctions, or defects.

(a) A certificated repair station must report to the FAA within 96 hours after it discovers any serious failure, malfunction, or defect of an article. The report must be in a format acceptable to the FAA.

* * * * *

(c) The holder of a repair station certificate that is also the holder of a part 121, 125, or 135 certificate; type certificate (including a supplemental type certificate); parts manufacturer approval; or technical standard order authorization, or that is the licensee of a type certificate holder, does not need to report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported under parts 21, 121, 125, or 135 of this chapter.

(d) A certificated repair station may submit a service difficulty report (operational or structural) for the following:

(1) A part 121 certificate holder, provided the report meets the requirements of part 121 of this chapter, as appropriate.

(2) A part 125 certificate holder, provided the report meets the requirements of part 125 of this chapter, as appropriate.

(3) A part 135 certificate holder, provided the report meets the requirements of part 135 of the chapter, as appropriate.

* * * * *

Issued in Washington, DC, on December 19, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–31884 Filed 12–29–03; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Atlantic highly migratory species—
    - Atlantic shark; published 12-24-03

ENVIRONMENTAL PROTECTION AGENCY

- Air programs; approval and promulgation; State plans for designated facilities and pollutants:
  - Puerto Rico; published 10-31-03

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Federal Aviation Administration

- Airworthiness directives:
  - Titeflex Corp.; correction; published 12-30-03

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Internal Revenue Service

- Income taxes:
  - Accuracy-related penalty; imposition defenses establishment; published 12-30-03
  - Taxable stock transactions; information reporting requirements; published 12-30-03

TREASURY DEPARTMENT

Thrift Supervision Office

- Technical amendments; published 12-30-03

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Animal and Plant Health Inspection Service

- Exportation and importation of animals and animal products:
  - Bovine spongiform encephalopathy; minimal risk regions and importation of commodities; comments due by 1-5-04; published 11-4-03 [FR 03-27611]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

- Fishery conservation and management:
  - Alaska; fisheries of Exclusive Economic Zone—
    - Bering Sea and Aleutian Islands king and tanner crab and Gulf of Alaska scallop and salmon; comments due by 1-10-04; published 11-21-03 [FR 03-29173]
    - Gulf of Alaska groundfish; comments due by 1-5-04; published 12-5-03 [FR 03-30283]
  - Caribbean, Gulf, and South Atlantic fisheries—
    - Gulf of Mexico Fishery Management Council; meetings; comments due by 1-9-04; published 12-22-03 [FR 03-31488]
    - Snapper-Grouper; comments due by 1-5-04; published 11-4-03 [FR 03-27686]
    - Snapper-grouper; comments due by 1-9-04; published 11-25-03 [FR 03-29444]
  - Magnuson-Stevens Act provisions—
    - Domestic fisheries; exempted fishing permit applications; comments due by 1-8-04; published 12-24-03 [FR 03-31612]
  - West Coast and Western Pacific fisheries—
    - Highy migratory species; comments due by 1-5-04; published 11-6-03 [FR 03-27994]
  - West Coast States and Western Pacific fisheries—
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    - Pacific Coast groundfish; comments due by 1-6-04; published 11-7-03 [FR 03-28131]

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- Patent cases:
  - Patent term extension and patent term adjustment provisions related to Board of Patent Appeals and Interferences decisions; revision; comments due by 1-5-04; published 12-4-03 [FR 03-30151]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

- Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

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Federal Energy Regulatory Commission

- Electric rate and corporate regulation filings:
  - Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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- Air quality implementation plans; approval and promulgation; various States:
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  - Delaware; comments due by 1-5-04; published 12-5-03 [FR 03-30041]
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- Water pollution control:
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- Radio frequency devices:
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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 108th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the first session of the 108th Congress will appear in the issue of January 30, 2004.

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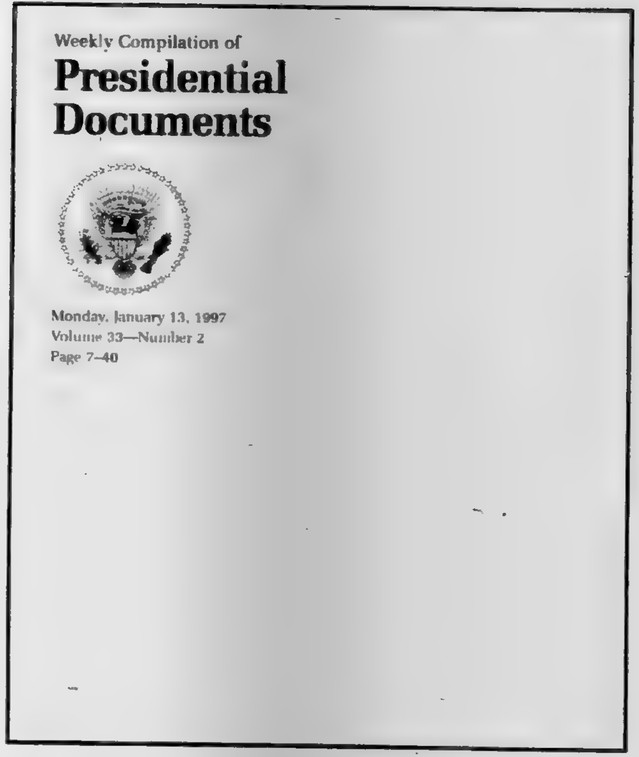

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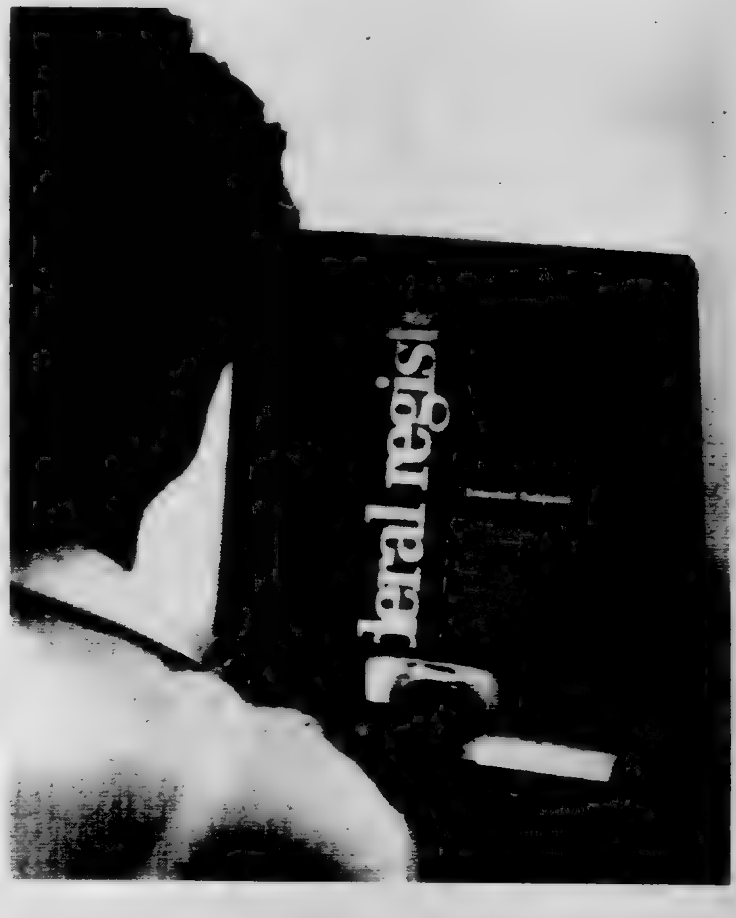

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Presidential Documents

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The President

Presidential Determination No. 2004–15 of December 16, 2003

Determination to Authorize Drawdown for Afghanistan

Memorandum for the Secretary of State [and] the Secretary of Defense

Consistent with the authority vested in me by the Constitution and laws of the United States, including section 202 and other relevant provisions of the Afghanistan Freedom Support Act (Public Law 107–327) and section 506 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318, I hereby direct the drawdown of up to $135 million of defense articles, defense services, and military education and training from the Department of Defense for the Transitional Islamic State of Afghanistan.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, December 16, 2003.

[FR Doc. 03–32300
Filed 12–30–03; 8:45 am]
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Parts 201 and 203

Update Office of Management and Budget Control Numbers

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Technical amendment.

SUMMARY: In compliance with the Paperwork Reduction Act, this technical amendment revises the control numbers assigned by the Office of Management and Budget approving our information collection activities. The purpose of this action is to update the control numbers in the Code of Federal Regulations. This amendment brings the regulations up to date with the current control numbers.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Tess Butler, Regulatory Specialist, USDA GIPSA, (202) 720–7486, 1400 Independence Avenue, SW, Room 1647–S, Washington, DC 20250–3604, or via e-mail at *h.tess.butler@usda.gov*.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

The P&S Act authorizes information collection for the purpose of enforcing the P&S Act and regulations and to conduct studies as requested by Congress. The information is needed for us to carry out our responsibilities under the P&S Act. The information is necessary to monitor and examine financial, competitive, and trade practices in the livestock, meat packing, and poultry industries.

This amendment corrects the displayed control numbers, as required by the Paperwork Reduction Act (44 U.S.C. 3501–3520) and the Office of Management and Budget (OMB) regulations (5 CFR part 1320). OMB regulations provide options for the display of control numbers to show the OMB approval of information collection activities; we will continue to use the option of displaying the OMB control numbers at the end of each regulation that requires recordkeeping, reporting, or other information collection activity.

The information collection activities approved under OMB control number 0580–0015, are the reporting, recordkeeping, and other information collection requirements in 9 CFR part 201, Regulations Under the Packers and Stockyards Act, and in 9 CFR part 203, Statements of General Policy Under the Packers and Stockyards Act. Formerly, these activities were approved under OMB control number 0590–0001 for the Packers and Stockyards Administration. After GIPSA was established, OMB assigned the new control number. Therefore, occurrences of 0590–0001 in the CFR need to be revised to 0580–0015 to reflect the current OMB control number. In addition, we need to add the current OMB control number at the end of section 201.108–1 of the regulations.

There will be no changes to the regulatory text or any information collection change as a result of this technical amendment. Therefore, we find that it is unnecessary to request comments and believe that there is good cause under 5 U.S.C. 553 (d)(3), to make this amendment to parts 201 and 203 final upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) designated this technical amendment as not significant for the purposes of Executive Order 12866. This technical amendment updates the OMB control numbers published at the end of specific regulations and statements of general policy in the Code of Federal Regulations (CFR) in 9 CFR parts 201 and 203. The information collection requirements approved by OMB under control number 0580–0015 have been previously approved. The current approval expires on September 30, 2004. This technical amendment does not change the information collection requirements.

There will be neither costs imposed by nor benefits resulting from this technical amendment. There are no potential economic effects on small entities. This technical amendment does not make any changes to the projected reporting or recordkeeping burden imposed on small entities. Therefore, as the GIPSA Administrator, I certify that this technical amendment will not significantly impact a substantial number of small entities, as required by the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Order 12988

This technical amendment has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This technical amendment will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this technical amendment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the information collection or recordkeeping requirements included in this technical amendment have been approved by the Office of Management and Budget (OMB) under OMB control number 0580–0018.

GPEA Compliance

GIPSA is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects

9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

9 CFR Part 203

Reporting and recordkeeping requirements, Stockyards.

■ For the reasons set forth above, GIPSA amends 9 CFR Parts 201 and 203 as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 222 and 228; 7 CFR 2.22 and 2.81.

§§ 201.10, 201.17, 201.27, 201.28, 201.34, 201.42, 201.43, 201.44, 201.45, 201.56, 201.61, 201.73–1, 201.86, 201.94, 201.95, 201.97, 201.99, 201.100, and 201.200 [Amended]

■ 2. Amend §§ 201.10, 201.17, 201.27, 201.28, 201.34, 201.42, 201.43, 201.44, 201.45, 201.56, 201.61, 201.73–1, 201.86, 201.94, 201.95, 201.97, 201.99, 201.100, and 201.200 by revising the OMB control number citation to read as follows:

"(Approved by the Office of Management and Budget under control number 0580–0015)"

§ 201.108–1 [Amended]

■ 3. Amend § 201.108–1 by adding at the end of the section the following:

"(Approved by the Office of Management and Budget under control number 0580–0015)"

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

■ 4. Revise the authority citation for part 203 to read as follows:

Authority: 7 CFR 2.22 and 2.81.

§§ 203.4, 203.14, 203.15, 203.16, 203.17, 203.18, and 203.19 [Amended]

■ 5. Amend §§ 203.4, 203.14, 203.15, 203.16, 203.17, 203.18, and 203.19 by revising the OMB control number citation to read as follows:

"(Approved by the Office of Management and Budget under control number 0580–0015)"

JoAnn Waterfield,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–32167 Filed 12–30–03; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 4, 19, 35, 39, 40, and 50

RIN 3150–AH34

Minor Correction Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to correct several miscellaneous errors in the Code of Federal Regulations (CFR). This document is necessary to inform the public of these corrective changes to NRC regulations.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Alzonia Shepard, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6864.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission is amending the regulations in 10 CFR parts 1, 4, 19, 35, 39, 40, and 50 to correct several miscellaneous errors in regulatory text. These changes in CFR text occurred in the process of preparing and printing of rulemaking documents. The corrections include changing the Zip+4 for Region IV in § 1.5; changing the name of the "Licensing Support System Advisory Review Panel (LSSARP)" to the "Licensing Support Network Advisory Review Panel (LSNARP)" in § 1.19; correcting the reference "20 U.S.C. 7801" to "20 U.S.C. 8801" in § 4.4(g)(2)(ii); correcting the misspelled word "covenant" in § 4.21(b); substituting "Title VI" for "Title VII" in § 19.32; changing the word "Megabecquerels" to "megabecquerels" in § 35.40(a); changing the word "Gigabecquerels" to "gigabecquerels" in §§ 35.390, 392, and 394; correcting the conversion from "MBq" to "GBq" in § 39.55(b); changing the reference from paragraphs (d)(4), (f) and (g) to paragraphs (d)(4), (g) and (h) in § 40.42(l) and correcting the ASTME code title in Appendix H to part 50.

Because these amendments constitute minor administrative corrections to the regulations, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(B). The amendment is effective upon publication in the **Federal Register**. Good cause exists under 5 U.S.C. 553(d) to dispense with the usual 30-day delay in the effective date of the final rule, because the amendments are of a minor and administrative nature dealing with corrections to certain CFR sections, which do not require action by any person or entity regulated by the NRC. Nor does the final rule change the substantive responsibilities of any person or entity regulated by the NRC.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0053; 3150–0044; 3150–0010; 3150–0130; 3150–0020; and 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information of an information collection requirement unless the requesting document displays a currently valid OMB control number.

List of Subjects

10 CFR Part 1

Organization and functions (Government agencies).

10 CFR Part 4

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal aid programs, Grant programs, Handicapped, Loan programs, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 4, 19, 35, 39, 40, and 50.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

■ 1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

■ 2. In § 1.5, paragraph (b) (4) is revised to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

* * * * *

(b) * * *

(4) Region IV, USNRC, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–4005.

■ 3. In § 1.19, paragraph (d) is revised to read as follows:

§ 1.19 Other committees, boards, and panels.

* * * * *

(d) The Licensing Support Network Advisory Review Panel (LSNARP) was established by the Commission on October 3, 1989, pursuant to 10 CFR 2.1011(e) of the Commission's regulations. The LSNARP provides advice to the Commission on the design, development, and operation of the Licensing Support Network (LSN) an electronic information management system for use in the Commission's high-level radioactive waste (HLW) licensing proceeding. Membership consists of those interests that will be affected by the use of the LSN, and selected Federal agencies with expertise in large-scale electronic information systems. The individual representatives of these interests and agencies possess expertise in management information science and in managing records of the Commission's licensing process for the HLW repository.

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

■ 4. The authority citation for Part 4 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–2000d–7); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891).

■ 5. In § 4.4, paragraph (g)(2)(ii) is revised to read as follows:

§ 4.4 Definitions.

* * * * *

(g) * * *

(2) * * *

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

* * * * *

■ 6. In § 4.21, the third sentence in paragraph (b) is revised to read as follows:

§ 4.21 General requirements.

* * * * *

(b) * * * Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the NRC to revert title to the property in the event of a breach of the covenant where, in the discretion of the NRC, such a condition and right of reverter is appropriate to the program and to the nature of the grant and the grantee. * * *

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTION AND INVESTIGATION

■ 7. The authority citation for Part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

■ 8. Section 19.32 is revised to read as follows:

§ 19.32 Discrimination prohibited.

No person shall on the ground of sex be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity licensed by the Nuclear Regulatory Commission. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964. This remedy is not exclusive, however, and will not prejudice or cut off any other legal remedies available to a discriminatee.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 9. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 35.40 [Amended]

■ 10. In § 35.40, paragraph (a), change the term "Megabecquerels" to "megabecquerels."

§ 35.390 [Amended]

■ 11. In § 35.390, paragraphs (b)(1)(ii)(G)(*1*) and (*2*), change the word "Gigabecquerels" to "gigabecquerels."

§ 35.392 [Amended]

■ 12. In § 35.392, in the introductory paragraph and paragraph (c)(2)(vi), change the term "Gigabecquerels" to "gigabecquerels."

§ 35.394 [Amended]

■ 13. In § 35.394, in the introductory paragraph and paragraph (c)(2)(vi), change the term "Gigabecquerels" to "gigabecquerels."

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

■ 14. The authority citation for Part 39 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

■ 15. Section 39.55 is revised to read as follows:

§ 39.55 Tritium neutron generator target sources.

(a) Use of a tritium neutron generator target source, containing quantities not exceeding 1,110 GBg [30 curies] and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this part except §§ 39.15, 39.41, and 39.77.

(b) Use of a tritium neutron generator target source, containing quantities exceeding 1,110 GBg [30 curies] or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this part except § 39.41.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 16. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 17. In § 40.42, paragraph (l) is revised to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

* * * * *

(l) Specific licenses for uranium and thorium milling are exempt from paragraphs (d)(4), (g) and (h) of this section with respect to reclamation of tailings impoundments and/or waste disposal areas.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 18. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(D.D.), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 19. In Appendix H to Part 50, in the Introduction, the first sentence of the second paragraph is revised to read as follows:

Appendix H to Part 50—Reactor Vessel Material Surveillance Requirements

I. Introduction

* * * * *

ASTM E 185–73, "Standard Recommended Practice for Surveillance Tests for Nuclear Reactor Vessels"; ASTM E 185–79, "Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels"; and ASTM E 185–82, "Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels"; which are referenced in the following paragraphs, have been approved for incorporation by reference by the Director of the Federal Register. * * *

* * * * *

Dated at Rockville, Maryland this 22nd day of December, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Division of Administrative Services, Office of Administration.

[FR Doc. 03–31952 Filed 12–30–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23 and 33

[Docket No. FAA–1998–4815; Amendment No. 23–54 and 33–20]

RIN 2120–AF84

Airworthiness Standards; Bird Ingestion; Correction

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations for bird ingestion type certification standards that the Federal Aviation Administration (FAA) published in the **Federal Register** on September 14, 2000 (65 FR 55848), with an effective date of December 13, 2000. These regulations revised the bird ingestion type certification standards for aircraft turbine engines.

DATES: Effective on January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration (FAA), New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7114; fax (781) 238–7199; electronic mail: *Marc.bouthillier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, revised the bird ingestion type certification standards for aircraft turbine engines to better address the actual bird threat encountered in service, and established nearly uniform bird ingestion standards for aircraft turbine engines certified by the United States under FAA standards and by the Joint Aviation Authorities (JAA) countries under JAA standards, thereby simplifying airworthiness approvals for import and export.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and need to be clarified.

List of Subjects

14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

■ Accordingly, 14 CFR parts 23 and 33 is corrected by making the following correcting amendments:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

■ 2. Correct paragraph (a)(2)(i) of § 23.903 to read as follows:

§ 23.903 [Corrected]

(a) In paragraph (a)(2)(i), the sentence should read "Sections 33.76, 33.77 and 33.78 of this chapter in effect on December 13, 2000, or as subsequently amended; or".

PART 33—AIRWORTHINESS STANDARDS; AIRCRAFT ENGINES

■ 3. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

■ 4. Correct paragraphs (b)(1), (c)(1), (c)(7)(ii), (c)(7)(iii), (c)(7)(viii), (c)(7)(i)(x), (c)(8)(v), (c)(8)(v)(i), Table 1 and Table 2 of § 33.76 to read as follows:

§ 33.76 [Corrected]

1. In § 33.76, paragraph (b)(1), in two instances in this sentence, remove the word "rotocraft" and add in its place the word "rotorcraft".

2. In § 33.76, in paragraph (c)(1), in the second sentence, remove the word "affects" and add in its place the word "effects" and remove the word "roto" and add in its place the word "rotor".

3. In § 33.76, in paragraph (c)(7)(ii), remove the word "level" and add in its place the word "lever".

4. In § 33.76, in paragraph (c)(7)(iii), remove the figure "175-percent" and add in its place the figure "75-percent".

5. In § 33.76, in paragraph (c)(7)(viii), remove the sentence "The durations specified are times at the defined conditions with the power lever being moved between each condition in less than 10 seconds."

6. In § 33.76, in paragraph (c)(7), add a new paragraph (c)(7)(ix) to read as follows:

* * * * *

(c) * * *

(7) * * *

(ix) The durations specified are times at the defined conditions with the power being changed between each condition in less than 10 seconds.

* * * * *

7. In § 33.76, in paragraph (c)(8)(v), remove the sentence "The duration specified are times at the defined conditions with the power being changed between each condition in less than 10 seconds."

8. In § 33.76, in paragraph (c)(8), add a new paragraph (c)(8)(vi) to read as follows:

* * * * *

(c) * * *

(8) * * *

(vi) The durations specified are times at the defined conditions with the power being changed between each condition in less than 10 seconds.

* * * * *

9. In § 33.76, in Table 1, in the first column heading, remove the words "Square/meters" and add in their place the words "Square-meters".

10. In § 33.76, in Table 1, in the first column, second row, remove the figure "(2,029) and add in its place "(2,092)".

11. In § 33.76, in Table 2, in the first column, second row, remove the figure ".05" and add in its place "0.05".

12. In § 33.76, in Table 2, in the third column, tenth row, remove the figure "(2,53)" and add in its place "(2.53)".

Issued in Burlington, Massachusetts, on December 18, 2003.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–32085 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–31–AD; Amendment 39–13403; AD 2003–26–06]

RIN 2120–AA64

Airworthiness Directives; Anjou Aeronautique Safety Belts and Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Anjou Aeronautique (ANJOU) (formerly TRW Repa S.A., formerly L'AIGLON) safety belts and restraint systems that are installed in aircraft. This AD requires you to inspect safety belts and restraint systems for defects and service life limits, and, if necessary, repair safety belts and restraint systems that have not reached service life limits; and replace safety belts and restraint systems that have reached service life limits. This AD is the result of reports of inadvertent unbuckling of the ANJOU seat belts and two safety recommendations to take AD action. We are issuing this AD to detect and correct defective safety belts and restraint systems, which could result in failure of the safety belts and restraint systems. This failure could lead to lack of occupant restraint during normal or crash loads.

DATES: This AD becomes effective on February 17, 2004.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of February 17, 2004.

ADDRESSES: You may get the service information identified in this AD from Anjou Aeronautique, 13 Avenue De L'Osier, 49125 Tierce, France; telephone: 33 0 2 41 42 88 92; facsimile: 33 0 2 41 42 15 77.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–31–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA issued Special Airworthiness Information Bulletin (SAIB) Number CE–02–44, dated September 4, 2002, for SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes, concerning ANJOU seat belts. At that time, FAA did not make a determination of an unsafe condition and take AD action.

Later, FAA issued SAIB Number CE–03–06, dated November 7, 2002, for SOCATA Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes, concerning ANJOU seat belts. Again, FAA then did not make a determination of an unsafe condition and take AD action.

We continued to receive field reports of inadvertent unbuckling of the ANJOU seat belts. The FAA received two safety recommendations to take AD action (NPRM) to propose to require replacement of certain safety belts and restraint systems.

In light of the field reports and safety recommendations, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 7, 2003 (68 FR 11015). The NPRM proposed to require you to replace certain safety belts and restraint systems.

Comments received on the NPRM suggest that FAA withdraw the proposal and that FAA consider issuing a new NPRM to propose that you:

—inspect certain ANJOU safety belts and restraint systems that are installed in airplanes for defects and service life limits;

—repair defective safety belts and restraint systems that have not reached service life limits; and

—replace safety belts and restraint systems that have reached service life limits.

We agree, and therefore, are withdrawing that NPRM.

What Is the Potential Impact if FAA Took No Action?

These defective safety belts and restraint systems could result in failure of the safety belts and restraint systems. This failure could lead to lack of occupant restraint during normal or crash loads.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain ANJOU (formerly TRW Repa S.A., formerly L'AIGLON) safety belts and restraint systems that are installed in aircraft. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 2, 2003 (68 FR 52145). The NPRM proposed to inspect safety belts and restraint systems for defects and service life limits, and, if necessary, repair safety belts and restraint systems that have not reached service life limits; and replace safety belts and restraint systems that have reached service life limits.

Comments

Was the Public Invited To Comment?

We gave the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What Is FAA's Final Determination on This Issue?

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 617 aircraft in the U.S. registry that could have the affected ANJOU safety belts and restraint systems installed. Some aircraft have more than one unit installed.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection and repair:

Labor cost	Parts cost	Total cost per 6 safety belts and restraint systems
1 workhour per 6 safety belts and restraint systems × $65 per hour = $65	No cost	$65

The applicable service information identifies that replacement parts are available free of charge. For replacement of a safety belt assembly, the parts cost is approximately $150 per seat belt assembly. The number of installed safety belts and restraint systems may vary by individual aircraft configuration. Therefore, we have no way of determining the replacement cost for this AD.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this AD is within 50 hours time-in-service (TIS) or 4 calendar months after the effective date of this AD, whichever occurs first.

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

Defective safety belts and restraint systems are a direct result of use of the safety belts and restraint systems. However, defective safety belts and restraint systems are not necessarily a result of repetitive airplane operation. For example, defective safety belts and restraint systems could occur on an affected airplane within a short period of airplane operation while you could operate another affected airplane for a considerable amount of time without experiencing defective safety belts and restraint systems. Therefore, to assure that any defective safety belt and restraint system is detected and corrected in a timely manner without inadvertently grounding any of the affected airplanes, we are using a compliance time based upon both hours TIS and calendar time.

Regulatory Findings

Will This AD Impact Various Entities?

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–31–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–26–06 Anjou Aeronautique (Formerly TRW REPA S.A., Formerly L'Aiglon): Amendment 39–13403; Docket No. 2003–CE–31–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 17, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Anjou Aeronautique safety belts and restraint systems specified in paragraph (c)(1) that are installed on, but not limited to, the aircraft specified in paragraph (c)(2) that are certificated in any category:

(1) *Anjou Aeronautique safety belts and restraint systems:* Part Numbers/Types 343, 343–1, 343AM, 343B, 343BM, 343C, 343CM, 343D, and 343M.

(2) *Affected aircraft:* The following is a list of aircraft that may incorporate the affected Anjou Aeronautique safety belts and restraint systems:

(i) EUROCOPTER FRANCE Models AS332C, AS332L, AS332L1, AS332L2, and AS350B2 helicopters; and

(ii) SOCATA—Groupe AEROSPATIALE TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of inadvertent unbuckling of the ANJOU seat belts and two safety recommendations to take AD action. The actions specified in this AD are intended to detect and correct defective safety belts and restraint systems, which could result in failure of the safety belts and restraint systems. This failure could lead to lack of occupant restraint during normal or crash loads.

What Must I Do To Address This Problem?

(e) To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the installed Anjou Aeronautique/ TRW Repa S.A./L'Aiglon safety belts and restraint systems (types 343, 343–1, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M) for: (i) defective buckle latch; and (ii) exceeded service life.	Within the next 50 hours time-in-service (TIS) after February 17, 2004 (the effective date of this AD) or 4 calendar months after February 17, 2004 (the effective date of this AD), whichever occurs first, unless already accomplished. Repetitively inspect thereafter at every 12 calendar months until the affected safety belt and restraint system is replaced as specified by paragraph (e)(3) of this AD.	*For types 343, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M:* Follow Anjou Aeronautique Service Bulletin No. No. 343–25–02, Issue 1, dated October 23, 2001. *For type 343–1:* Follow Anjou Aeronautique Service Bulletin No. 343–1–25–01, Issue 1, dated October 23, 2001.
(2) If any defective buckle latch or safety belt and restraint system with exceeded service life is found during any inspection required by paragraph (e)(1) of this AD: (i) For any defective buckle latch, replace defective parts with new parts. (ii) For any safety belt and restraint system that has exceeded its service life, replace with a non-Anjou Aeronautique/TRW Repa S.A./ L'Aiglon FAA-approved safety belt and restraint system. The service life limit for the Anjou Aeronautique/ TRW Repa S.A./L'Aiglon is 60 calendar months after the date of manufacture.	Prior to further flight after any inspection required by paragraph (e)(1) of this AD.	*For types 343, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M:* Follow Anjou Aeronautique Service Bulletin No. No. 343–25–02, Issue 1, dated October 23, 2001. *For type 343–1:* Follow Anjou Aeronautique Service Bulletin No. 343–1–25–01, Issue 1, dated October 23, 2001.
(3) Replace any installed Anjou Aeronautique/ TRW Repa S.A./L'Aiglon safety belts and restraint systems (types 343, 343–1, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M). Replacement of all safety belts and restraint systems eliminates the need for the repetitive inspections of paragraph (e)(1) of this AD.	Prior to exceeding the service life limit of 60 calendar months after the date of manufacture or 4 calendar months after February 17, 2004 (the effective date of this AD), whichever occurs later.	Not Applicable.

Actions	Compliance	Procedures
(4) Do not install any Anjou Aeronautique/TRW Repa S.A./L'Aiglon types 343, 343–1, 343–1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems.	As of February 17, 2004 (the effective date of this AD).	Not Applicable.

Note: All inertia-reel type safety belts and restraint systems or fixed rear safety belts and restraint systems from another manufacturer are not affected by this AD.

What About Alternative Methods of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

Is There Material Incorporated by Reference?

(g) You must do the actions required by this AD per Anjou Aeronautique Service Bulletin No. 343–25–02, Issue 1, dated October 23, 2001, and Anjou Aeronautique Service Bulletin No. 343–1–25–01, Issue 1, dated October 23, 2001. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Anjou Aeronautique, 13 Avenue De L'Osier, 49125 Tierce, France; telephone: 33 0 2 41 42 88 92; facsimile: 33 0 2 41 42 15 77. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Issued in Kansas City, Missouri, on December 17, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31666 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–36–AD; Amendment 39–13401; AD 2003–26–04]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E helicopters. This action requires certain inspections of the rod-end of the main rotor head damper for freedom of movement, and depending on the torque required to move the rod-end, either further inspection for a crack or replacing the rod-end. This amendment is prompted by reports of rod-end fractures due to fatigue failure resulting in increased helicopter vibrations. This condition, if not corrected, could result in failure of the rod-end, extreme vibrations, and a subsequent forced landing or loss of control of the helicopter.

DATES: Effective January 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 15, 2004.

Comments for inclusion in the Rules Docket must be received on or before March 1, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–36–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109E helicopters. The ENAC advises that inspections of the rod-end should be carried out as called for by the manufacturer's service information.

Agusta has issued Bollettino Tecnico (BT) No. 109EP–37, dated July 15, 2003; BT No. 109EP–37, Revision A, dated July 30, 2003; and Errata Corrige, dated September 2, 2003; which specify an inspection of each damper rod-end assembly, part number (P/N) Microtecnica 3637GR85, for seizure or a crack. Agusta reports rod-end fractures due to fatigue failure originating from the thread under cut of the rod-end resulting in increased helicopter vibrations. Also, during the first few hours of operation, the rotational torque of the spherical bearing increases generating additional loads on the rod-end. ENAC has classified this BT as mandatory and issued AD Nos. 2003–231, dated July 18, 2003, and 2003–249, dated August 1, 2003, to ensure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, ENAC has kept the FAA informed of the situation described above. The FAA has examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, this AD is being issued to prevent failure of the rod-end, extreme vibration, and a subsequent forced landing or loss of control of the helicopter. This AD requires the following:

- Within 25 hours time-in-service (TIS), inspect the rod-end to determine if it can be rotated by hand.
- If the rod-end can be rotated by hand, no further action is required.
- If the rod-end cannot be rotated by hand, determine the torque value

required to rotate it by use of a torque wrench.

- If the torque value is less than 20 Newton-meter (Nm) (177 in-lb) within 25 hours TIS, inspect the rod-end for a crack by a magnetic particle inspection. If a crack is found, replace the rod-end assembly with an airworthy part before further flight.
- If the torque value is 20 Nm or more, replace the rod-end assembly with an airworthy part before further flight.

The actions must be done using the BT 109EP–37, Revision A, as amended by the Errata Corrige, described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, within 25 hours TIS, inspecting the rod-end to determine if it can be rotated by hand is required. If the rod-end cannot be rotated by hand, determining the torque value required to rotate the rod end and, if necessary, replacing the rod-end assembly with an airworthy part before further flight are required, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will affect 34 helicopters of U.S. registry, and the required actions will take approximately 3 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $450 per helicopter. Based on these figures, we estimate the total cost of the AD on U.S. operators to be $21,930 ($645 per helicopter). However, Agusta states in its BT that it will supply the parts at no cost and will reimburse up to 2.5 work hours for each terminal at a fixed rate of $40. Assuming the warranty coverage, the estimated total cost impact on U.S. operators would be $3,230 ($95 per helicopter).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–36–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–26–04 Agusta S.p.A.: Amendment 39–13401. Docket No. 2003–SW–36–AD.

Applicability: Model A109E helicopters, with a main rotor head damper, part number (P/N) 109–0111–06–103, with a rod-end assembly, P/N 3637GR85, with a rod-end, P/N 3637–14, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rod-end, extreme vibrations, and a subsequent forced landing or loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS), inspect by hand the rod-end, P/N 3637–14, for freedom of movement around the spherical bearing, P/N 3637–40.

(1) If the rod-end can be rotated by hand, no further action is required by this AD.

(2) If the rod-end cannot be rotated by hand, by using a torque wrench, determine the torque required to rotate the rod-end around the spherical bearing by following the Compliance Instructions, Part I, paragraph 3.1, of Agusta Bollettino Tecnico No. 109EP–37, Revision A, dated July 30, 2003, as amended by the Errata Corrige, dated September 2, 2003 (BT).

(i) If the torque value is 20 or more Newton-meter (Nm) (177 in-lb), replace the rod-end assembly with an airworthy rod-end assembly containing a rod-end, P/N 3637–14, with the letters "T", "R", "RT", "TR", or "TRR" after the P/N, by following the Compliance Instructions, paragraphs 3.3.1. through 3.3.3., of the BT, except you are not required to return the removed rod-end assembly to Agusta.

(ii) If the torque value is less than 20 Nm, within the next 25 hours TIS, magnetic particle inspect the rod-end for a crack by following the Compliance Instructions, Part II, of the BT.

(A) If no crack is found, no further action is required by this AD.

(B) If a crack is found, replace the rod-end assembly with an airworthy rod-end assembly containing a rod-end, P/N 3637–14 with the letters "T", "R", "RT", "TR", or "TRR" after the P/N, by following the Compliance Instructions, paragraphs 3.3.1. through 3.3.3., of the BT, except you are not required to return the removed rod-end assembly to Agusta.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(c) The inspections and replacement of the rod-end assembly must be done using Agusta Bollettino Tecnico No. 109EP–37, Revision A, dated July 30, 2003, as amended by the Errata Corrige, dated September 2, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(d) This amendment becomes effective on January 15, 2004.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD Nos. 2003–231, dated July 18, 2003, and 2003–249, dated August 1, 2003.

Issued in Fort Worth, Texas, on December 15, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–31849 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–103–AD; Amendment 39–13404; AD 2003–26–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes, that requires a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary. This action is necessary to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

DATES: Effective February 4, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes was published in the **Federal Register** on June 11, 2003 (68 FR 34849). That action proposed to require a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request for Clarification of Applicability

The commenter, an operator, requests clarification of the applicability listed in the proposed AD. The commenter states that it has nine airplanes that are included in the applicability listed in the proposed AD. Because no Wood Electric circuit breakers were installed on its newly delivered airplanes or installed on any airplane during maintenance, those airplanes fall into "Group 1, Condition 1," as listed in Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003 (which was referenced as the appropriate source of service information for accomplishment of the inspection in the proposed AD). For those airplanes, the alert service bulletin states that no action is required. However, the proposed AD would require those airplanes to be inspected to determine if any Wood Electric circuit breaker is installed even though the commenter knows the circuit breakers are not installed.

The FAA agrees that clarification is necessary. Paragraph (a) of the AD does require that all airplanes listed in the applicability statement of the AD be inspected to verify installation of the discrepant circuit breaker. However, the airplane manufacturer has determined that no Model MD–90–30 airplanes were delivered with the subject discrepant circuit breakers installed. Therefore, instead of accomplishing the inspection provided in paragraph (a) of the AD, we will allow operators to review the airplane maintenance records to determine if any discrepant circuit breaker was installed on the airplane after delivery—if the part number of the circuit breakers can be positively determined from that review. We have revised paragraph (a) of this final rule accordingly.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Change to Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 126 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required inspection of the circuit breakers (over 700 installed on each airplane), and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $27,300, or $1,300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–26–07 McDonnell Douglas: Amendment 39–13404. Docket 2002–NM–103–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement

(a) Within 18 months after the effective date of this AD: Perform a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Brumfield Potter Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD90–24A081, dated February 14, 2002), per Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003. Instead of performing the one-time inspection, a review of the airplane maintenance records is acceptable if the part number of the discrepant circuit breakers can be positively determined by that review.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no discrepant circuit breaker is found: No further action is required by this paragraph.

(2) If any discrepant circuit breaker is found: Before further flight, replace the circuit breaker with a new, approved circuit breaker, per the service bulletin.

Part Installation

(b) As of the effective date of this AD, no person shall install a circuit breaker manufactured by Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise provided in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD90–24A081, Revision 01, dated March 7, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on February 4, 2004.

Issued in Renton, Washington, on December 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–31851 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–422–AD; Amendment 39–13405; AD 2003–26–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that requires replacing the existing pressure relief valve on the potable water tank with a new, improved pressure relief valve, which is made of stainless steel and is non-adjustable. For certain airplanes, this AD also requires modification of certain piping to re-locate the pressure relief valve. This action is necessary to prevent rupture of the potable water tank during flight of the airplane, which could result in structural damage to the

airplane and its inability to sustain flight loads. This action is intended to address the identified unsafe condition.

DATES: Effective February 4, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published as a supplemental Notice of Proposed Rulemaking in the **Federal Register** on June 23, 2003 (68 FR 37105). That action proposed to require replacing the existing pressure relief valve on the potable water tank with a new, improved pressure relief valve, which is made of stainless steel and is non-adjustable. For certain airplanes, that action also proposed to require modification of certain piping to relocate the pressure relief valve. For certain airplanes, that action proposed to revise the earlier proposed AD by correcting procedures for performing the proposed replacement of the pressure relief valve.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Agreement With Proposed AD

Two commenters agree with the proposed AD.

Request for Acceptable Method of Compliance

One commenter requests that Revision 1 of Boeing Service Bulletin 737–38A1047, dated September 27, 2001, be approved as an acceptable method of compliance for the terminating action requirements of the proposed AD. The commenter notes that Revision 2 of the service bulletin states that no more work is necessary on airplanes changed per Revision 1.

The FAA agrees. We have determined that the work instructions that depict the piping and fittings adjacent to the new relief valve are slightly different between Revision 2 and Revision 1 of Boeing Service Bulletin 737–38A1047. We acknowledge that the figures are similar enough to each other that an operator would correctly install the new relief valve per either Revision 1 or Revision 2 of the service bulletin. Consequently, we have revised paragraph (d) of the final rule to remove the qualifying phrase, "With the exception of airplanes specified as 'Group 9' or 'Group 10' in Boeing Service Bulletin 737–38A1047, Revision 2, dated July 18, 2002." Such revision of paragraph (d) will permit, for all airplanes, accomplishment of the actions specified in service bulletins issued prior to Revision 2 to be considered as an acceptable means of compliance with paragraph (d) of the final rule. However, Revision 2 was specified in paragraphs (a)(2), (b), and (c) of the proposed AD because it more accurately reflects the airplane installation than previous revisions, and those paragraphs remain unchanged in the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 2,049 Model 737–100, –200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet.

We estimate that, of the 1,144 airplanes of U.S. registry, only 2 airplanes will be affected by the required modification of piping to relocate the pressure relief valve. We estimate that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $780, or $390 per airplane.

We also estimate that all of the 1,144 airplanes of U.S. registry will be affected by the required replacement of the pressure relief valve, that it will take approximately 2 work hours per airplane to accomplish the replacement, and that the average labor rate is $65 per work hour. Required parts will cost approximately $300 per airplane. Based on these figures, the cost impact of the replacement of the pressure relief valve on U.S. operators is estimated to be $491,920, or $430 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003-26-08 Boeing: Amendment 39-13405. Docket 2000-NM-422-AD.

Applicability: Model 737-100, -200, -200C, -300, -400, and -500 series airplanes; line numbers 1 through 2696 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the potable water tank during flight of the airplane, which could result in structural damage to the airplane and its inability to sustain flight loads, accomplish the following:

Modification and Replacement

(a) For those airplanes listed in the effectivity section of Boeing Service Bulletin 737-38-1029, Revision 1, dated August 19, 1993, on which the modification of the potable water pressurization system specified in the service bulletin has not been accomplished: Within 18 months after the effective date of this AD, except as specified in paragraph (d) of this AD, perform the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Except as specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, modify the potable water pressurization system; in accordance with Boeing Service Bulletin 737-38-1029, dated June 6, 1991; or Revision 1, dated August 19, 1993.

(i) Do not reinstall the existing pressure relief valve having part number (P/N) 520A6DB50.

(ii) Do not perform the leak test procedures specified in the service bulletin.

(2) Install a new pressure relief valve having P/N RV05-362, in accordance with Boeing Service Bulletin 737-38A1047, Revision 2, dated July 18, 2002.

(b) For those airplanes listed in the effectivity section of Boeing Service Bulletin 737-38-1029, dated June 6, 1991; or Revision 1, dated August 19, 1993; on which the modification of the potable water pressurization system specified in that service bulletin has been accomplished: Within 18 months after the effective date of this AD, remove the existing pressure relief valve from the potable water tank, and replace the valve with a new pressure relief valve having P/N RV05-362; in accordance with Boeing Service Bulletin 737-38A1047, Revision 2, dated July 18, 2002.

(c) For all other airplanes having line numbers 1 through 2523 inclusive: Within 18 months after the effective date of this AD unless previously accomplished, remove the existing pressure relief valve from the potable water tank, and replace the valve with a new pressure relief valve having P/N RV05-362, in accordance with Boeing Service Bulletin 737-38A1047, Revision 2, dated July 18, 2002.

Acceptable Compliance With Certain Paragraphs

(d) Installation of a new pressure relief valve having P/N RV05-362, in accordance with Boeing Service Bulletin 737-38A1047, dated November 9, 2000; or Revision 1, dated September 27, 2001; is acceptable for compliance with paragraph (a)(2), (b), or (c) of this AD.

Replacement of Pressure Relief Valve for Certain Airplanes

(e) For airplanes having line numbers 2524 through 2696 inclusive: Within 18 months after the effective date of this AD, remove the existing pressure relief valve from the potable water tank and replace the valve with a new pressure relief valve having P/N RV05-362, in accordance with Boeing Service Bulletin 737-38A1038, Revision 2, dated September 25, 1997.

Acceptable for Compliance With Paragraph (e)

(f) For those airplanes having line numbers 2527 through 2696 inclusive and having air compressors installed in the potable water tank pressurization system: Removal of the existing pressure relief valve from the potable water tank and replacement of the valve with a new pressure relief valve having P/N RV05-362, in accordance with Boeing Service Bulletin 737-38A1038, dated December 1, 1994; or Revision 1, dated February 2, 1995; is acceptable for compliance with the requirements of paragraph (e) of this AD.

Part Installation

(g) As of the effective date of this AD, no person may install a pressure relief valve having P/N 520A6DB50, 520A6DB60, or D524TP6D60 on any airplane.

Alternative Methods of Compliance

(h) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with the service bulletins listed in Table 1 of this AD, as applicable:

TABLE 1.—APPLICABLE SERVICE BULLETINS

Boeing service bulletin—	Revision—	Date—
737-38-1029	original	June 6, 1991
737-38-1029	Revision 1	August 19, 1993
737-38A1038	original	December 1, 1994
737-38A1038	Revision 1	February 2, 1995
737-38A1038	Revision 2	September 25, 1997
737-38A1047	Revision 2	July 18, 2002

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on February 4, 2004.

Issued in Renton, Washington, on December 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-31853 Filed 12-30-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–52–AD Amendment 39–13410; AD 2003–24–12R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines, with gearbox pressure tube, part number (P/N) 697896, and No. 4 bearing front pressure manifold, P/N 670663, installed. That AD currently requires a one-time visual inspection of the gearbox pressure tube and No. 4 bearing front pressure manifold and the attaching clamp assemblies for correct positioning and for wear and damage, and replacement if necessary. This ad requires the same actions. This AD results from the need to correct errors in depicted clamping to ensure that AD compliance can be achieved, and to relax the level of maintenance required, as an optional method, when inspecting the affected tubing for dents. We are issuing this AD to prevent engine fires caused by failed gearbox pressure tubes or failed No. 4 bearing front pressure manifolds.

DATES: Effective December 18, 2003.

We must receive any comments on this AD by March 1, 2004.

ADDRESSES:

Use one of the following addresses to submit comments on this AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–52–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On November 25, 2003, the FAA issued AD 2003–24–12, Amendment 39–13381 (68 FR 67585, December 3, 2003). That AD requires a one-time visual inspection of the gearbox pressure tube and No. 4 bearing front pressure manifold and the attaching clamp assemblies for correct positioning and for wear and damage, and replacement if necessary. That AD was the result of a report of a failed gearbox pressure tube that resulted in an engine fire. That condition, if not corrected, could result in engine fires caused by failed gearbox pressure tubes or failed No. 4 bearing front pressure manifolds.

Actions Since AD 2003–24–12 Was Issued

Since that AD was issued, errors in the depicted clamping configuration have been found. The clamping configuration must be correct to ensure that AD compliance can be achieved. Also, an operator has requested that as an option to inspecting dented tubing by passing a ball bearing through the tube, to add dent depth limit criteria for each specific part number tube. The manufacturer supports this optional method and we have added it to the AD. This method avoids having to disconnect the tube from the engine.

FAA's Determination and Requirements of this AD

The unsafe condition described previously is likely to exist or develop on other PW JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines of the same type design. We are issuing this AD to prevent an engine fire caused by a failed gearbox pressure tube. This AD requires a one-time visual inspection of the gearbox pressure tube, P/N 697896, the No. 4 bearing front pressure manifold, P/N 670663, and the attaching clamp assemblies, P/Ns ST1594–06, ST1594–08, and ST1594–10, for correct positioning, for wear and damage, and replacement if necessary.

FAA's Determination of the Effective Date

The effective date of this AD is the same as AD 2003–24–12. We discussed the errors depicted in AD 2003–24–12 with the U.S. operators, and adding the optional dent inspection method, and conclude that there is no adverse impact from using the same effective date.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–52–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–52–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13381 (68 FR 67585, December 3, 2003), and by adding a new airworthiness directive, Amendment 39–13410, to read as follows:

2003–24–12R1 Pratt & Whitney: Amendment 39–13410. Docket No. 2003–NE–52–AD. Revises AD 2003–24–12, Amendment 39–13381.

Effective Date

(a) The effective date of this AD is the same as AD 2003–24–12, which is December 18, 2003.

Affected ADs

(b) This AD revises AD 2003–24–12.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7F, –7H, –7AH, and –7J turbofan engines, with gearbox pressure tube, part number (P/N) 697896, and No. 4 bearing front pressure manifold, P/N 670663, installed. These engines are installed on, but not limited to, Boeing 747–100, –200B, –200C, and –200F airplanes.

Unsafe Condition

(d) This AD results from the need to correct errors in depicted clamping, to ensure that AD compliance can be achieved. The actions specified in this AD are intended to prevent engine fires caused by failed gearbox pressure tubes or failed No. 4 bearing front pressure manifolds.

Compliance

(e) You are responsible for having the actions required by this AD performed within 250 hours-in-service or at the next shop visit, whichever occurs first, after the effective date of this AD, unless the actions have already been done.

One-Time Visual Inspection of Clamp Assemblies

(f) Visually inspect the clamp assemblies, P/Ns ST1594–06, ST1594–08, and ST1594–10, (see Figure 1 of this AD) that attach the gearbox pressure tube and the No. 4 bearing front pressure manifold to the engine. Replace clamp assemblies before further flight that are rejected by any of the following rejection criteria:

(1) Cracks, wear, or distortion in clamp metal.

(2) Clamp cushions that are worn, compacted, cracked, coming apart in chunks, deteriorated, or missing. A reddish powder found around the clamp is an indication of deterioration.

BILLING CODE 4910–13–P

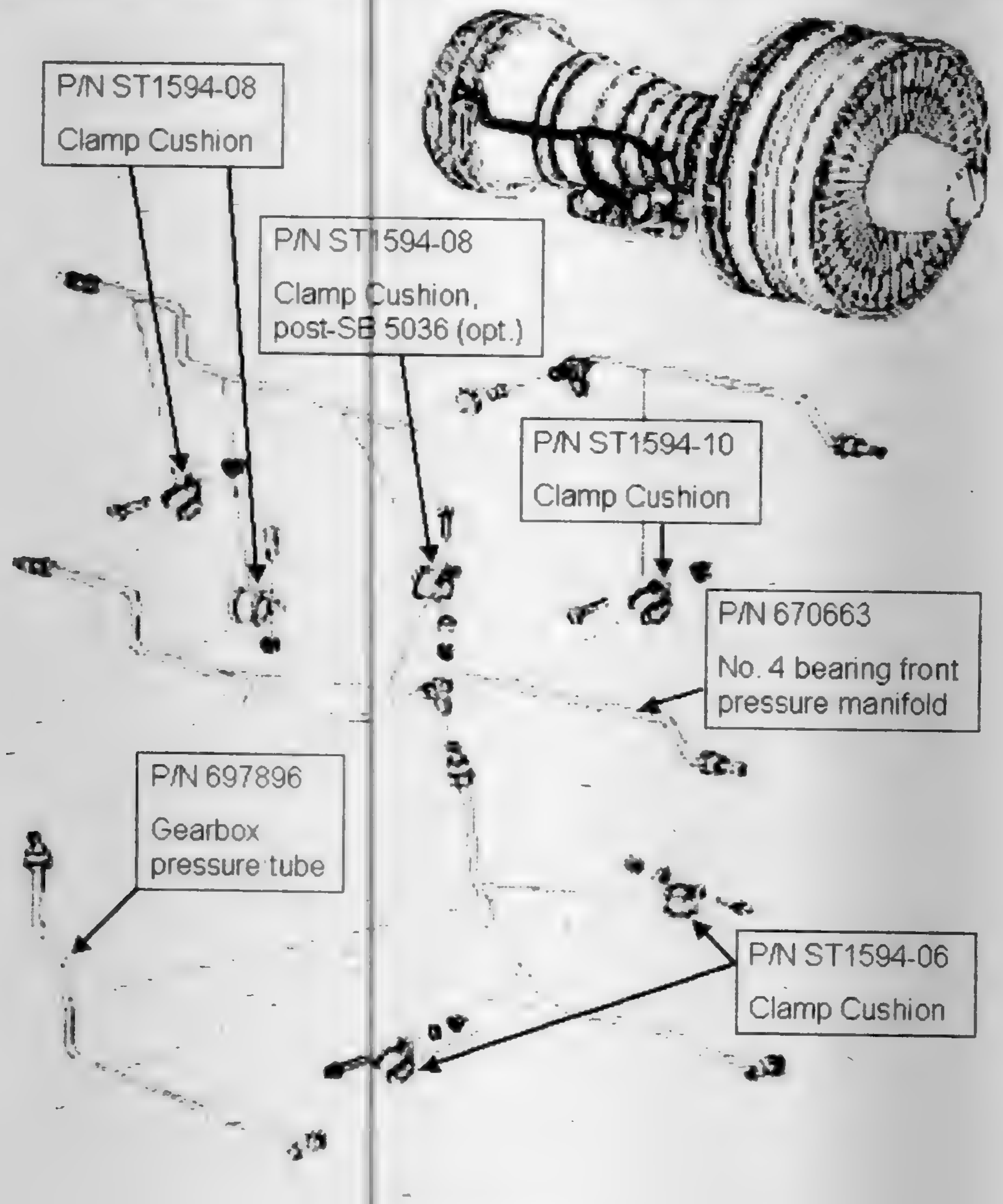

Figure 1

BILLING CODE 4910–13–C

Visual Inspection of Gearbox Pressure Tube and No. 4 Bearing Front Pressure Manifold

(g) If one or more clamp assemblies are rejected as described in paragraph (f) of this AD, or out of position or missing (see Figure 1 of this AD), clean any debris and oil from the outer surface of the gearbox pressure tube and No. 4 bearing front pressure manifold and visually inspect the tube and manifold. Repair or replace the affected tube or manifold before further flight if it is rejected by any of the following rejection criteria:

(1) Nicks, chafing, scratches, and or pitting 0.003 inch or greater in depth.

(2) Dents within 0.25 inch of the ferrules or will not permit free passage of a ball having a minimum diameter of 80% of the tubing inner diameter.

(3) Corrosion that is unable to be removed by a light polishing.

(4) Tube or manifold is leaking oil.

(5) As an option to the dent inspection method specified in paragraph (g)(2) of this AD, measure tube dent depth and use the following rejection criteria:

(i) Dents in the gearbox pressure tube, P/N 697896, greater than 0.055-inch depth.

(ii) Dents in the No. 4 bearing front pressure manifold, P/N 670663, forward of the tee fitting, greater than 0.100-inch depth.

(iii) Dents in the No. 4 bearing front pressure manifold, PN 670663, aft of the tee fitting, greater than 0.080-inch depth.

Gearbox Pressure Tube, No. 4 Bearing Front Pressure Manifold, and Clamp Assembly Positioning

(h) Ensure that the gearbox pressure tube, No. 4 bearing front pressure manifold, and clamp assemblies are properly positioned, before further flight, as shown in Figure 1 of this AD.

(i) Information on general inspection of these parts can be found in the Boeing 747 Aircraft Maintenance Manual, section 72–00–00, and in PW Standard Practices Manual, P/N 585005.

Reporting Requirements

(j) Report within 30 calendar days of the inspection, the results that equal or exceed the reject criteria to: Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199. Reporting requirements have been approved by the Office of Management and Budget control number 2120–0056.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) None.

Related Information

(m) None.

Issued in Burlington, Massachusetts, on December 23, 2003.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–32155 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–40–AD; Amendment 39–13407; AD 2003–26–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090D, PW4090–3, and PW4098 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090D, PW4090–3, and PW4098 turbofan engines. That AD requires initial and repetitive visual and borescope inspections of the No. 3 bearing weep tube and turbine exhaust case (TEC), and removal of the high pressure turbine (HPT) assembly and replacement of any heat distressed HPT assembly hardware if oil wetting or staining is found.

This ad requires the same actions. This AD results from the finding of a significant reference error in one of the borescope inspection compliance paragraphs. We are issuing this AD to prevent thermal distressed HPT assembly hardware from remaining in service, which could result in a cracked HPT stage 1 disk or HPT stage 1–2 air seal and an uncontained engine failure.

DATES: Effective December 3, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 3, 2003.

We must receive any comments on this AD by March 1, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You can get the service information referenced in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On October 24, 2003, the FAA issued AD 2003–22–09, Amendment 39–13357 (68 FR 62228, November 3, 2003). That AD requires:

- Borescope inspection of the No. 3 bearing weep tube, on engines with high oil consumption that troubleshooting procedures fail to determine the source of oil loss.
- For all engines, initial and repetitive visual inspections of the turbine exhaust case (TEC) in the vicinity of the No. 3 bearing oil vent tube for evidence of oil wetting or staining. If the vent tube borescope inspection is unsuccessful due to tube blockage, that AD also requires borescope inspections of the HPT assembly for oil wetting or staining.
- Removal of the HPT assembly and replacement of any heat distressed HPT assembly hardware if oil wetting or staining is found.

That AD is the result of engine HPT assembly hardware being damaged as a result of thermal distress from oil igniting after leaking from the No. 3 bearing compartment. That condition, if not corrected, could result in a cracked HPT stage 1 disk or HPT stage 1–2 air seal and an uncontained engine failure.

Actions Since AD 2003–22–09 Was Issued

Since that AD was issued, a comment was received that revealed an error in the compliance section. We have considered that comment.

Incorrect Inspection Reference

One commenter states that paragraph (i)(3) of the AD contains an incorrect reference. In that paragraph, the wording "since performing the visual inspection of the TEC specified in paragraph (h)(1) of this AD", is misleading as it should be referencing borescope inspection and not visual inspection.

We agree. Therefore, we have corrected the wording to read "since performing the borescope inspection of the No. 3 bearing oil vent tube specified in paragraph (i)(1) of this AD'.

AD Effectivity

The effective date of this AD is the same as AD 2003–22–09. We discussed the reference error in AD 2003–22–09 with the one U.S. operator, and conclude that there is no adverse impact from using the same effective date.

Relevant Service Information

We have reviewed and approved the technical contents of Pratt & Whitney Alert Service Bulletin (ASB) No. PW4G–112-A72-257, Revision 1, dated August 22, 2003, that describes procedures for:

- Borescope inspection of the No. 3 bearing weep tube, on engines with high oil consumption that troubleshooting procedures fail to determine the source of oil loss.
- For all engines, initial and repetitive visual inspections of the TEC, in the vicinity of the No. 3 bearing oil vent tube assembly and borescope inspections of the No. 3 bearing oil vent tube assembly, for evidence of oil wetting or staining.
- Borescope inspection of the HPT assembly for evidence of oil wetting or staining if the borescope inspection of the No. 3 bearing oil vent tube assembly is unsuccessful due to blockage.
- Removal of the engine if oil wetting or staining is found.

Differences Between This AD and the Service Information

Although ASB No. PW4G–112–A72–257, Revision 1, dated August 22, 2003, requires removal of the engine from service if oil wetting or staining is found, this AD requires removal of the HPT assembly and replacement of any heat distressed HPT assembly hardware if oil wetting or staining is found.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090D, PW4090–3, and PW4098 turbofan engines of the same type design. We are issuing this AD to prevent thermal distressed HPT assembly hardware to remain in service, which could result in a cracked HPT stage 1 disk or HPT stage 1–2 air seal and an uncontained engine failure. This AD requires:

- Borescope inspection of the No. 3 bearing weep tube on engines with high oil consumption that troubleshooting procedures fail to determine the source of oil loss.
- For all engines, initial and repetitive visual inspections of the TEC, in the vicinity of the No. 3 bearing oil vent tube assembly and borescope inspections of the No. 3 bearing oil vent tube assembly, for evidence of oil wetting or staining.
- Borescope inspections of the HPT assembly for oil wetting or staining, if the vent tube borescope inspection is unsuccessful due to tube blockage.
- Removal of the HPT assembly and replacement of any heat distressed HPT assembly hardware if oil wetting or staining is found.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003-NE-40-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–40–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13357 (68 FR 62228, November 3, 2003), and by adding a new airworthiness directive, Amendment 39–13407, to read as follows:

2003–26–09 Pratt & Whitney: Amendment 39–13407. Docket No. 2003–NE–40–AD. Supersedes AD 2003–22–09, Amendment 39–13357.

Effective Date

(a) The effective date of this AD is the same as AD 2003–22–09, which is December 3, 2003.

Affected ADs

(b) This AD supersedes AD 2003–22–09.

Applicability

(c) This AD applies to Pratt & Whitney PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090D, PW4090–3, and PW4098 turbofan engines. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Unsafe Condition

(d) This AD results from the finding of a significant reference error in one of the borescope inspection compliance paragraphs of AD 2003–22–09. This AD also results from reports of engine high pressure turbine (HPT) assembly hardware being damaged as a result of thermal distress from oil igniting after leaking from the No. 3 bearing compartment. We are issuing this AD to prevent thermal distressed HPT assembly hardware from remaining in service, which could result in a cracked HPT stage 1 disk and HPT stage 1–2 air seal and an uncontained engine failure.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Credit for Previous Inspections

(f) Inspections performed before the effective date of this AD, using AD 2003–22–09 or Pratt & Whitney Alert Service Bulletin (ASB) No. PW4G–112–A72–257, dated June 30, 2003, may be counted toward satisfying the initial and repetitive inspection requirements of paragraphs (g) through (k) of this AD.

Borescope Inspection of Engines With High Oil Consumption

(g) For engines with high oil consumption that troubleshooting procedures fail to determine the source of oil loss, borescope-inspect No. 3 bearing oil vent tube assembly and or HPT assembly within 100 cycles-in-service (CIS) of the high oil consumption event, using paragraphs (g)(1) through (g)(2) of this AD. Information on troubleshooting engines with high oil consumption can be found in Boeing 777 Fault Isolation Manual (FIM), section 71–05, Task 830. See paragraph (l) of this AD for a definition of high oil consumption.

(1) Borescope-inspect the No. 3 bearing oil vent tube assembly for evidence of oil wetting or staining. Follow Step 3, paragraphs 1. through 1.A.(8)(a) of Accomplishment Instructions of Pratt & Whitney ASB No. PW4G–112–A72–257, Revision 1, dated August 22, 2003.

(2) If the No. 3 bearing oil vent tube is blocked and attempts to clear it are unsuccessful, borescope-inspect the HPT assembly, following Step 4, paragraphs 1. through 1.B(14) of Accomplishment Instructions of ASB No. PW4G–112–A72–257, Revision 1, dated August 22, 2003.

(3) Remove the HPT assembly within 100 CIS of the high oil consumption event if evidence of oil wetting or staining is found in the No. 3 bearing oil vent tube or on the HPT first stage disk.

(4) Replace any heat distressed HPT assembly hardware if oil wetting or staining is found.

Turbine Exhaust Case (TEC) Inspections Of All Engines

(h) Inspect the TEC of all engines, within 500 hours-in-service (HIS) after the effective date of this AD as follows:

(1) Visually inspect the TEC in the vicinity of the No. 3 bearing oil vent tube assembly for evidence of oil wetting or staining, using Figure 2 of Pratt & Whitney ASB No. PW4G–112–A72–257, Revision 1, dated August 22, 2003, for location of inspection.

(2) If evidence of oil wetting or staining is found at the TEC, borescope-inspect the No. 3 bearing oil vent tube assembly within 100 additional CIS, to confirm the oil is from the vent tube. Follow Step 1, paragraphs 1.B. through 1.D.(8)(a) of Accomplishment Instructions of Pratt & Whitney ASB No. PW4G–112–A72–257, Revision 1, dated August 22, 2003.

(3) If the No. 3 bearing oil vent tube is blocked and attempts to clear it are unsuccessful, borescope-inspect the HPT assembly following Step 4, paragraphs 1. through 1.B.(14) of Accomplishment Instructions of ASB No. PW4G–112–A72–257, Revision 1, dated August 22, 2003.

(4) Remove the HPT assembly within 100 CIS since performing the visual inspection of the TEC specified in paragraph (h)(1) of this AD, if evidence of oil wetting or staining is found in the No. 3 bearing oil vent tube or found on the HPT first stage disk.

(5) Replace any heat distressed HPT assembly hardware if oil wetting or staining is found.

Borescope Inspections of All Engines

(i) Borescope-inspect the No. 3 bearing oil vent tube assembly of all engines at or before accumulating 600 CIS or 2,000 HIS, whichever occurs first, after the effective date of this AD, as follows:

(1) Borescope-inspect the No. 3 bearing oil vent tube assembly for evidence of oil wetting or staining. Follow Step 2, paragraphs 1. through 1.A.(8) of Accomplishment Instructions of Pratt & Whitney ASB No. PW4G–112–A72–257, Revision 1, dated August 22, 2003.

(2) If the No. 3 bearing oil vent tube is blocked and attempts to clear it are unsuccessful, borescope-inspect the HPT assembly following Step 4, paragraphs 1. through 1.B.(14) of Accomplishment Instructions of ASB No. PW4G–112–A72–257, Revision 1, dated August 22, 2003.

(3) Remove the HPT assembly within 100 CIS since performing the borescope inspection of the No. 3 bearing oil vent tube specified in paragraph (i)(1) of this AD, if evidence of oil wetting or staining is found in the No. 3 bearing oil vent tube or found on the HPT first stage disk.

(4) Replace any heat distressed HPT assembly hardware if oil wetting or staining is found.

Repetitive Inspections of All Engines

(j) Repeat the inspections of the TEC of all engines by following paragraphs (h)(1) through (h)(3) of this AD, at intervals not to exceed 500 HIS since last visual check of the TEC, and disposition the engine as specified in paragraphs (h)(4) through (h)(5) of this AD.

(k) Repeat borescope inspections of all engines by following paragraphs (i)(1) through (i)(2) of this AD, at intervals not to exceed 600 CIS or 2,000 HIS since last borescope inspection of the No. 3 oil vent tube, and disposition the engine as specified in paragraphs (i)(3) through (i)(4) of this AD.

Definition

(l) For the purposes of this AD, high oil consumption is defined as an engine consuming more than 0.5 quarts of oil per hour, as provided in the Boeing 777 FIM.

Alternative Methods of Compliance

(m) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(n) You must follow Pratt & Whitney Alert Service Bulletin specified in Table 1 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin as of December 3, 2003 (68 FR 62228, November 3, 2003) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700; fax (860) 565–1605. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

TABLE 1—INCORPORATION BY REFERENCE

Alert service bulletin No.	Page No.	Revision	Date
PW4G–112–A72–257	1–5	1	August 22, 2003.
	6–7	Original	June 30, 2003.
	8	1	August 22, 2003.
	9	Original	June 30, 2003.
	10	1	August 22, 2003.
	11	Original	June 30, 2003.
	12	1	August 22, 2003.
Total Pages: 22	13–22	Original	June 30, 2003.

Related Information

(o) Boeing 777 Fault Isolation Manual, section 71–05, Task 830, pertains to high oil consumption troubleshooting procedures referred to in this AD.

Issued in Burlington, Massachusetts, on December 23, 2003.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–32156 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16407; Airspace Docket No. 03–ACE–75]

Modification of Class D Airspace; and Modification of Class E Airspace; Topeka, Philip Billard Municipal Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class D and Class E airspace at Topeka, Philip Billard Municipal Airport, KS.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 12, 2003 (68 FR 63985). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 19, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on December 16, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–32086 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16411; Airspace Docket No. 03–ACE–77]

Modification of Class E Airspace; Johnson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Johnson, KS.

EFFECTIVE DATE: 0901 UTC, February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 19, 2003 (68 FR 65159). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 19, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on December 16, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–32087 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30400; Amdt. No. 3086]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 31, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs , Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on December 19, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

* * * *Effective January 22, 2004*

Frederick, MD, Frederick Muni, RNAV (GPS) RWY 23, Amdt 2, CANCELLED
Frederick, MD, Frederick Muni, RNAV (GPS) Y RWY 23, Orig
Frederick, MD, Frederick Muni, RNAV (GPS) Z RWY 23, Orig

* * * *Effective February 19, 2004*

Deadhorse, AK, Deadhorse, ILS OR LOC/DME RWY 4, Orig
Deadhorse, AK, Deadhorse, GPS RWY 22, Orig, CANCELLED
Deadhorse, AK, Deadhorse, GPS RWY 4, Orig, CANCELLED
Deadhorse, AK, Deadhorse, VOR/DME OR TACAN RWY 22, Amdt 3
Deadhorse, AK, Deadhorse, VOR/DME OR TACAN RWY 4, Amdt 1
Deadhorse, AK, Deadhorse, LOC/DME BC RWY 22, Amdt 9
Deadhorse, AK, Deadhorse, RNAV (GPS) RWY 22, Orig
Deadhorse, AK, Deadhorse, RNAV (GPS) RWY 4, Orig
Deadhorse, AK, Deadhorse, ILS/DME RWY 4, Amdt 8, CANCELLED
Harrison, AR, Boone County, ILS RWY 36, Orig–A
Harrison, AR, Boone County, NDB–B, Amdt 3A
Russellville, AR, Russellville Rgnl, NDB–A, Amdt 4B
Russellville, AR, Russellville Rgnl, RNAV (GPS) RWY 25, Orig
Russellville, AR, Russellville Rgnl, GPS RWY 25, Orig–B, CANCELLED
Hanford, CA, Hanford Muni, VOR–A, Amdt 9
Hanford, CA, Hanford Muni, RNAV (GPS) RWY 32, Orig
Hanford, CA, Hanford Muni, GPS RWY 32, Amdt 1, CANCELLED
Oceanside, CA, Oceanside Muni, VOR–A, Amdt 3D
San Carlos, CA, San Carlos, RNAV (GPS) RWY 30, Orig
San Carlos, CA, San Carlos, GPS RWY 30, Orig, CANCELLED
Statesboro, GA, Statesboro-Bulloch County, ILS OR LOC RWY 32, Amdt 1A
De Ridder, LA, Beauregard Parish, RNAV (GPS) RWY 36, Orig
De Ridder, LA, Beauregard Parish, LOC RWY 36, Amdt 2
De Ridder, LA, Beauregard Parish, NDB RWY 36, Amdt 4
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 14, Amdt 2
St Cloud, MN, St Cloud Regional, RNAV (GPS) RWY 31, Orig
St Cloud, MN, St Cloud Regional, RNAV (GPS) RWY 13, Orig
St Cloud, MN, St Cloud Regional, RNAV (GPS) RWY 5, Orig

St Cloud, MN, St Cloud Regional, RNAV (GPS) RWY 23, Orig
St Cloud, MN, St Cloud Regional, GPS RWY 23, Orig–B, CANCELLED
St Cloud, MN, St Cloud Regional, GPS RWY 5, Orig–B, CANCELLED
Mexico, MO, Mexico Memorial, RNAV (GPS) RWY 6, Orig
Mexico, MO, Mexico Memorial, GPS RWY 6, Orig–A, CANCELLED
Mexico, MO, Mexico Memorial, RNAV (GPS) RWY 18, Orig
Mexico, MO, Mexico Memorial, VOR/DME RWY 24, Amdt 2
Mexico, MO, Mexico Memorial, RNAV (GPS) RWY 24, Orig
Mexico, MO, Mexico Memorial, GPS RWY 24, Orig–A, CANCELLED
Mexico, MO, Mexico Memorial, RNAV (GPS) RWY 36, Orig
Plattsmouth, NE, Plattsmouth Muni, NDB RWY 16, Orig
Plattsmouth, NE, Plattsmouth Muni, NDB RWY 34, Orig
Plattsmouth, NE, Plattsmouth Muni, GPS RWY 34, Orig–B
Newburgh, NY, Stewart Intl, RNAV (GPS) RWY 9, Orig–A
Newburgh, NY, Stewart Intl, RNAV (GPS) RWY 27, Orig–A
White Plains, NY, Westchester County, RNAV (GPS) RWY 16, Orig–A
Seminole, OK, Seminole Muni, NDB RWY 16, Amdt 3A
Seminole, OK, Seminole Muni, RNAV (GPS) RWY 16, Orig–A
Harrisburg, PA, Harrisburg Intl, VOR RWY 31, Amdt 2
Pawtucket, RI, North Central State, LOC RWY 5, Amdt 5D
Dallas-Fort Worth, TX, Dallas/Fort Worth International, RNAV (GPS) RWY 17L, Orig–A
Kingsville, TX, Kleberg County, RADAR–1, Amdt 4, CANCELLED
Quinton, VA, New Kent County, RNAV (GPS) RWY 10, Orig
Quinton, VA, New Kent County, RNAV (GPS) RWY 28, Orig
Quinton, VA, New Kent County, VOR–A, Amdt 1
Elkins, WV, Elkins-Randolph Co—Jennings Randolph Field, LDA–C, Amdt 7
Janesville, WI, Southern Wisconsin Regional, ILS OR LOC RWY 32, Orig
Janesville, WI, Southern Wisconsin Regional, ILS OR LOC RWY 4, Amdt 12

[FR Doc. 03–32082 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 030910227–3318–02]

RIN 0691–AA53

International Services Surveys: BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations that set forth the reporting requirements for the BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

The survey is mandatory and will be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The first survey conducted under this rule will cover transactions in the first quarter of 2004. Data from the BE–45 survey are needed to monitor trade in insurance services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other government uses.

The survey will cover the same insurance services presently covered by the BE–48, Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies with Foreign Persons, and auxiliary insurance services presently covered by the Benchmark and Annual Surveys of Selected Services Transactions with Unaffiliated Foreign Persons (Forms BE–20 and BE–22).

EFFECTIVE DATE: This final rule will be effective January 30, 2004.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; or via the Internet at *obie.whichard@bea.gov* (telephone (202) 606–9890).

SUPPLEMENTARY INFORMATION: In the September 23, 2003, **Federal Register**, (68 FR 55202–55204), BEA published a notice of proposed rulemaking setting forth reporting requirements for the BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change.

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The major purposes of the survey are to monitor trade in insurance services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on insurance services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The first survey conducted under this rule will cover transactions in the first quarter 2004. BEA will send the survey to potential respondents in March of 2004; responses will be due by May 30, 2004. The survey will update the data provided on the universe of insurance services transactions between U.S. insurance companies and foreign persons. Reporting is required from U.S. insurance companies whose covered transactions with foreign persons exceeded $8 million for the previous fiscal year, or are expected to exceed that amount during the current fiscal year. In addition, the reporting threshold for this survey is applied separately to each of the eight individual types of transactions covered by the survey rather than to the sum of the data for all eight types combined. Insurance companies meeting these criteria must supply data on the amount of their insurance transactions for each type of insurance category, disaggregated by country. U.S. insurance companies that do not meet the mandatory reporting requirements are requested to provide voluntary estimates of their covered insurance transactions.

The transactions covered by this survey are: reinsurance premiums received, reinsurance premiums paid, reinsurance losses paid, reinsurance losses recovered, primary insurance premiums received, primary insurance losses paid, auxiliary insurance services receipts, and auxiliary insurance services payments. (Auxiliary insurance services include agent's commissions, insurance brokering and agency services, insurance consulting services, evaluation and adjustment services, actuarial services, salvage administration services, and regulatory and monitoring services on indemnities and recovery services.)

Executive Order 12866

This final rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0066) will be displayed.

The BE–45 survey is expected to result in the filing of approximately 210 reports on a quarterly basis, or 840 responses annually, and the average respondent burden for completing the survey is estimated at 8 hours. Thus, the total respondent burden of the survey is estimated at about 6,720 hours (840 responses times 8 hours average burden). The actual burden will vary from reporter to reporter, depending upon the number and variety of their insurance transactions and the ease of assembling the data. This estimate includes time for respondents to review the instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Comments regarding the burden estimate or any aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; or faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A., (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act. The factual basis for the certification was published with the proposed rule. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 801

Economic statistics, International transactions, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: December 10, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518 3 CFR, 1985 Comp., p. 348.

■ 2. Section 801.9 is amended by adding new paragraph (c)(5) to read as follows:

§ 801.9 Reports required.

(c) *Quarterly surveys.* * * *

(5) BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons:

(i) A BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, will be conducted covering the first quarter of the 2004 calendar year and every quarter thereafter.

(A) *Who must report—(1) Mandatory reporting.* Reports are required from each U.S. insurance company whose covered transactions with foreign persons exceeded $8 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year. This threshold is applied separately to each of the eight individual types of transactions covered by the survey rather than to the sum of the data for all eight types combined. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) *Voluntary reporting.* Reports are requested from each U.S. insurance company whose covered transactions with foreign persons were $8 million or less for the previous fiscal year and are not expected to exceed the $8 million amount during the current fiscal year. Provision of this information is voluntary. The estimates may be based on recall, without conducting a detailed records search.

(B) Any person receiving a BE–45 survey form from BEA must complete all relevant parts of the form and return the form to BEA. A person not subject to the mandatory reporting requirement in paragraph (c)(5)(i)(A) of this section and is not filing information on a voluntary basis must only complete the "Determination of reporting status" and the "Certification" sections of the survey. This requirement is necessary to ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary followup contact.

(C) *Covered insurance transactions.* The transactions covered by this survey are: reinsurance premiums received, reinsurance premiums paid, reinsurance losses paid, reinsurance losses recovered, primary insurance premiums received, primary insurance losses paid, auxiliary insurance services receipts, and auxiliary insurance services payments. (Auxiliary insurance services include agent's commissions, insurance brokering and agency services, insurance consulting services, evaluation and adjustment services, actuarial services, salvage administration services, and regulatory and monitoring services on indemnities and recovery services.)

(ii) [Reserved]

* * * * *

[FR Doc. 03–32123 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 030910228–3319–02]

RIN 0691–AA54

International Services Surveys: BE–25, Quarterly Survey of Transactions With Unaffiliated Foreign Persons in Selected Services and in Intangible Assets

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations that set forth the reporting requirements for the BE–25, Quarterly Survey of Transactions with Unaffiliated Foreign Persons in Selected Services and in Intangible Assets.

The survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act. Data from the BE–25 survey are needed to monitor trade in services and intangible assets, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other government and public uses.

The survey will cover some of the selected services presently covered by the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. The selected services covered by the BE–25 survey will be removed from the BE–22 survey after the survey for 2003 is conducted. The BE–22 survey will continue to be conducted for those services that were not moved to the BE–25 survey. The BE–25 survey will also cover construction, engineering, architectural, and surveying services presently covered by the BE–47, Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons, and will cover the same transactions in intangible assets presently covered by the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons; both of these annual surveys will be discontinued, following a final data collection for 2003.

EFFECTIVE DATE: This final rule will be effective January 30, 2004.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; or via the Internet at *obie.whichard@bea.gov* (telephone (202) 606–9890).

SUPPLEMENTARY INFORMATION: In the September 23, 2003, **Federal Register**, (68 FR 55204–55206), BEA published a notice of proposed rulemaking setting forth reporting requirements for the BE–25, Quarterly Survey of Transactions with Unaffiliated Foreign Persons in Selected Services and in Intangible Assets. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change.

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The major purposes of the survey are to monitor trade in services and in intangible assets, analyze the impact of this trade on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on services and intangible assets, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The BE–25 survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act. The first survey conducted under this rule will cover transactions in the first quarter of 2004. BEA will send the survey to potential respondents in March of 2004; responses will be due by May 15, 2004. The survey will update the data provided on the universe of transactions between U.S. and unaffiliated foreign persons in selected services and in intangible assets. Reporting is required from U.S. persons whose sales of covered services to unaffiliated foreign persons exceeded $6 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded $4 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year. U.S. persons meeting any of these criteria must supply data on the amount of their sales or purchases for each type of covered service, disaggregated by country. U.S. persons that do not meet the mandatory reporting requirements are requested to provide voluntary estimates of their total sales and purchases of each type of covered service or intangible asset.

The BE–25 survey will cover some of the selected services presently covered by the BE–22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons. It will also cover construction, engineering, architectural, and surveying services presently covered by the BE–47, Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons, and will cover the same transactions in intangible rights presently covered by the BE–93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons; both of these annual surveys will be discontinued, following a final data collection for 2003.

Executive Order 12866

This final rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608–0067) will be displayed.

The BE–25 survey is expected to result in the filing of reports containing mandatory data from about 700 respondents on a quarterly basis, or

2,800 responses annually. The average burden for completing the BE–25 is estimated to be 16 hours. Thus, the total respondent burden of the survey is estimated at 44,800 hours (2,800 responses times 16 hours average burden). The actual burden will vary from reporter to reporter, depending upon the number and variety of their covered services transactions and the ease of assembling the data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, and either faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A. (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act. The factual basis for the certification was published with the proposed rule. No comments were received regarding the economic impact of the rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: December 10, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518 3 CFR, 1985 Comp., p. 348.

■ 2. Section 801.9 is amended by adding new paragraph (c)(6) to read as follows:

§ 801.9 Reports required.

* * * * *

(c) Quarterly surveys. * * *

(6) BE–25, Quarterly Survey of Transactions with Unaffiliated Foreign Persons in Selected Services and in Intangible Assets:

(i) A BE–25, Quarterly Survey of Transactions with Unaffiliated Foreign Persons in Selected Services and in Intangible Assets, will be conducted covering the first quarter of the 2004 calendar year and every quarter thereafter.

(A) *Who must report*—(1) *Mandatory reporting.* Reports are required from each U.S. person that: (a) Had sales of covered services to unaffiliated foreign persons that exceeded $6 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year; or (b) had purchases of covered services from unaffiliated foreign persons that exceeded $4 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) *Voluntary reporting.* Reports are requested from each U.S. person that had sales of covered services to unaffiliated foreign persons that were $6 million or less for the previous fiscal year and are expected to be less than or equal to that amount during the current fiscal year, or had purchases of covered services from unaffiliated foreign persons that were $4 million or less for the previous fiscal year and are expected to be less than or equal to that amount during the current fiscal year. Provision of this information is voluntary. The estimates may be based on recall, without conducting a detailed records search. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) Any person receiving a BE–25 survey form from BEA must complete all relevant parts of the form and return the form to BEA. A person that is not subject to the mandatory reporting requirement in paragraph (c)(6)(i)(A) of this section and is not filing information on a voluntary basis must only complete the "Determination of reporting status" and the "Certification" sections of the survey. This requirement is necessary to ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary followup contact.

(C) *Covered services and intangible assets.* The services covered by this survey are: Accounting, auditing, and bookkeeping services; computer and data processing services; construction services; foreign expenses related to construction projects; data base and other information services; engineering, architectural, and surveying services; industrial engineering services; industrial-type maintenance, installation, alteration, and training services; legal services; management, consulting, and public relations services; operational leasing services; research, development, and testing services; and telecommunication services. The intangible assets covered by this survey are rights related to: industrial processes and products; books, compact discs, audio tapes and other copyrighted material and intellectual property; trademarks, brand names, and signatures; performances and events pre-recorded on motion picture film and television tape, including digital recording; broadcast and recording of live performances and events; general use computer software; business format franchising fees; and other intangible assets, including indefeasible rights of users.

(ii) [Reserved]

* * * * *

[FR Doc. 03–32124 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 2002F–0220]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Acesulfame Potassium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acesulfame potassium (ACK) as a general-purpose sweetener and flavor enhancer in food, not including meat and poultry. This action

is in response to a food additive petition filed by Nutrinova, Inc. It will simplify the existing regulations by replacing all of the currently listed uses of ACK with a single-use category for food.

DATES: This rule is effective December 31, 2003. Submit written or electronic objections and requests for a hearing by January 30, 2004.

ADDRESSES: Submit written objections and requests for a hearing to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections at *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3106.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** on May 20, 2002 (67 FR 35552), FDA announced that Nutrinova, Inc., 285 Davidson Ave., suite 102, Somerset, NJ 08873, had filed a food additive petition (FAP 2A4735). The petition proposed to amend § 172.800 *Acesulfame potassium* (21 CFR 172.800) to provide for the safe use of ACK as a general-purpose sweetener and flavor enhancer.

ACK is currently approved under § 172.800 for use in 12 food categories at levels determined by current good manufacturing practice. The existing regulation has resulted from the approval of seven food additive petitions (FAPs). The practical effect of the amendment requested in the current petition would be to broaden the regulation to include any additional food category not allowed by the current regulation, with the exception, as discussed in the following paragraphs, of meat and poultry, and to replace the 12 currently listed uses of ACK with a single-use category for food.

The acceptable daily intake (ADI) of 15 milligrams per kilogram body weight per day (mg/kg bw/d) or 900 mg per person per day (mg/p/d) was established for ACK as a result of FDA's review of FAP 2A3659 (53 FR 28379, July 28, 1988), which resulted in the agency's initial approval of ACK in several food categories. The ADI is the level of consumption that has been determined to be safe for human consumption every day over an entire lifetime. The present petition does not contain any new information that would cause FDA to alter this previously determined ADI for ACK.

FDA's review of the petitions submitted subsequent to FAP 2A3659 involved primarily the following factors: (1) An assessment of the estimated exposure from each additional use; and (2) a determination of whether the cumulative estimated exposure, including the newly requested use, would cause the ADI for ACK to be exceeded over a lifetime by individuals who consume ACK at high levels. In its evaluation of ACK for use in nonalcoholic beverages, including beverage bases, FDA also assessed the safety from exposure to acetoacetamide-N-sulfonic acid (AAS) and acetoacetamide (AAA), the two principal hydrolysis products of ACK (63 FR 36344 at 36346 to 36355, July 6, 1998).

Although the functionality of ACK was addressed in earlier FAPs, in the current petition, Nutrinova, Inc., provided the results from taste panel studies demonstrating the sweetness profile of ACK as a function of concentration in a variety of foods. These data demonstrate that ACK can be used alone or in blends with other intense sweeteners or bulk sweeteners (e.g., sucrose) at self-limiting levels depending on the food application (Ref. 1).

II. Determination of Safety

Under the general safety standard provisions of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as a "reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause (section 409(c)(3)(A) of the act) further provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to constituents of the additive. Thus, where an additive has not been shown to cause cancer, even though it contains a carcinogenic impurity, the additive is not subject to the legal effect of the Delaney clause. Rather, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

III. Evaluation of Safety for the Petitioned Uses of the Food Additive

To determine whether ACK can be safely used as a general-purpose sweetener and flavor enhancer, FDA focused its evaluation on whether human exposure to ACK from these uses would exceed the ADI of 15 mg/kg bw/d, and on the potential health risk from exposure to the primary hydrolysis products, AAS and AAA, and the impurity, methylene chloride.

A. Exposure to ACK, AAS, and AAA

FDA has determined the cumulative estimated daily intake (CEDI) for ACK from its use as a general-purpose sweetener and flavor enhancer in food for eaters-only at the 90th percentile intake to be 313 mg/p/d (Refs. 2 and 3). This CEDI is based on the following factors: (1) The amount of ACK that may be used in the currently regulated food categories and (2) the maximum use level of ACK in other representative food categories in which the sweetener may be used. FDA concludes that the updated CEDI for ACK is well below the ADI (900 mg/p/d). FDA has determined that the updated CEDIs for AAS and AAA are 250 micrograms per person per day (µg/p/day) and 0.36 µg/p/day, respectively (Refs. 1 and 3). These hydrolysis products are formed only under extreme conditions of temperature and/or pH. The agency has determined that the increase in exposure to AAS and AAA, due to the additional uses, is negligible and does not pose any safety concerns (Refs. 3, 4, and 5).

B. Methylene Chloride

Methylene chloride, a carcinogenic chemical, is a potential impurity in ACK resulting from its use as a solvent in the initial manufacturing step of the sweetener. Data previously submitted in FAP 0A4212 show that methylene chloride could not be detected in the final product at a limit of detection (LOD) of 40 parts per billion (ppb) as discussed in the July 6, 1998, final rule (63 FR 36344 at 36346). In the past, FDA has assumed that methylene chloride is present in ACK at the LOD of 40 ppb (worst-case scenario) and has evaluated its safety by performing a risk assessment for methylene chloride based on this level. No new information has been received to change FDA's previous risk assessment for methylene chloride. Moreover, FDA does not expect that methylene chloride will be present in ACK due to the following factors: (1) The multi-step purification process used in the manufacture of ACK and (2) the volatility of methylene chloride (Ref. 1).

IV. Conclusion

FDA has reviewed the information available in its files on ACK and its hydrolysis products, as well as the current petition, and concludes that there is a reasonable certainty that no harm will result from the use of ACK as a general-purpose sweetener and flavor enhancer in foods. However, in accordance with a memorandum of understanding between the Food Safety and Inspection Service (FSIS), United States Department of Agriculture, and FDA (65 FR 51758, August 25, 2000), a restriction from use "in meat and poultry" is included in the ACK regulation. This restriction is applied when the petitioner does not specify that the food additive is intended for such use. At this time, FSIS has not evaluated data on the suitability of use of ACK in meat or poultry. Therefore, FDA concludes that the food additive regulations should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person. As provided in § 171.1(h), FDA will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Effects

FDA has carefully considered the potential environmental effects of this action. FDA concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections on or before January 30, 2004. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from D. Robie, Division of Petition Review, Chemistry Review Group, to B. Anderson, Division of Petition Review, Regulatory Group II, October 7, 2002, and addendum memorandum from S. E. Carberry, Division of Petition Review, Chemistry Review Group, to B. Anderson, Division of Petition Review, Regulatory Group I, August 28, 2003.

2. Memorandum from D. Robie, Division of Petition Review, Chemistry Review Group to B. Anderson, Division of Petition Review, Regulatory Group II, March 19, 2003, and addendum memorandum from S. E. Carberry, Division of Petition Review, Chemistry Review Group, to B. Anderson, Division of Petition Review, Regulatory Group I, August 28, 2003.

3. Memorandum to the file, July 7, 2003.

4. Memorandum from M. Bleiberg, Division of Petition Review, Toxicology Review Group I, to B. Anderson, Division of Petition Review, Regulatory Group I, December 18, 2002.

5. Memorandum from M. Bleiberg, Division of Petition Review, Toxicology Review Group I, to B. Anderson, Division of Petition Review, Regulatory Group II, April 2, 2003.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.800 is amended by revising the introductory paragraph and paragraph (c), and by removing paragraphs (d) and (e) to read as follows:

§ 172.800 Acesulfame potassium.

Acesulfame potassium (CAS Reg. No. 55589–62–3), also known as acesulfame K, may be safely used as a general-purpose sweetener and flavor enhancer in foods generally, except in meat and poultry, in accordance with current good manufacturing practice and in an amount not to exceed that reasonably required to accomplish the intended technical effect in foods for which standards of identity established under section 401 of the Federal Food, Drug, and Cosmetic Act do not preclude such use, under the following conditions:

(a) * * *

(b) * * *

(c) If the food containing the additive is represented to be for special dietary uses, it shall be labeled in compliance with part 105 of this chapter.

Dated: December 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–32101 Filed 12–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 2002N–0058]

RIN 0910–AA01

Pediculicide Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph (FM) for over-the-counter (OTC) pediculicide drug products to revise labeling for the statement of identity, warnings, directions, and other required statements. Pediculicide drug products are used for the treatment of head, pubic (crab), and body lice. FDA is issuing this final rule as part of its ongoing review of OTC drug products after considering public comment on its proposed regulation and all relevant data and information that have come to the agency's attention.

DATES: *Effective Date*: This final rule is effective June 30, 2005.

Compliance Dates: The compliance date for OTC pediculicide drug products with annual sales less than $25,000 is January 3, 2006. The compliance date for all other OTC pediculicide drug products is June 30, 2005.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 14, 1993 (58 FR 65452), FDA published a final rule in the form of a FM in part 358 (21 CFR part 358, subpart G) establishing conditions under which OTC pediculicide drug products are generally recognized as safe and effective. The effective date of the final rule was December 14, 1994. Since that time, FDA has determined that labeling in the statement of identity, warnings, directions, and certain other required statements in the pediculicide monograph should be amended.

In the **Federal Register** of March 17, 1999 (64 FR 13254), FDA published a final rule that established a standardized format and standardized content requirements for OTC drug product labeling in § 201.66 (21 CFR 201.66). In that same final rule (64 FR 13254 at 13296), FDA amended the FM for OTC pediculicide drug products and removed the requirement in § 358.650(d)(1) that the direction "Important: Read warnings before using" be printed in all capital letters. The sentence now needs to appear in boldface type with only the word "Important" and the first letter in the word "Read" capitalized.

In the **Federal Register** of May 10, 2002 (67 FR 31739), FDA published a proposed rule to amend the FM for OTC pediculicide drug products to revise labeling for the statement of identity, warnings, directions, and other required statements to increase the probability of treatment success with these products. In response to that proposal, one OTC trade association and a professor of clinical toxicology submitted comments, which FDA is responding to in this document.

II. The Agency's Conclusion on the Comments

A. Comments in Agreement with the Proposed Rule

(Comment 1) One comment agreed completely with the proposed recommended label changes. Another comment agreed with the following proposed changes:

- New statement of identity (i.e., remove "pediculicide" and just state "Lice treatment" by itself);
- Simplified indications under the heading "Uses";
- Formatting changes using subheadings (i.e., "Do not use," "Ask a doctor before use," "When using this product," and "Stop use and ask adoctor if");
- Bulleted statements under each subheading.

B. Comments with Labeling Recommendations

(Comment 2) One comment contended that the proposed additional directions are too extensive to fit on pediculicide product carton labels. The comment stated that lengthy, detailed directions for environmental control of lice and combing the hair and "other information" would be more appropriately provided in a package insert than on a carton label. The comment agreed that essential treatment directions should be on the outer label, but that consumers do not need to be able to read the entire detailed instructions at the point of purchase. The comment recommended that the outer package have a statement directing consumers to an insert for more complete directions. The comment suggested "See brochure inside for other important information to help get rid of lice." The comment also added that a statement about use of a comb should be optional on the outer label and should instruct consumers to see the package insert for complete directions and could incorporate a reference to a comb provided in the package.

FDA considered the length of the additional directions and provided in the May 10, 2002 proposal (§ 358.650(e)) that the detailed information required under the heading "Other information" may appear in a package insert. If that occurs, the "Other information" section on the outer label only needs to include a statement that refers to the package insert for additional information. The information about use of a comb is part of the essential treatment directions (§ 358.650(d)(5)) and, thus, needs to appear on the outer label. If the product does not have a comb with it, consumers would need to know at the point of purchase that they may also need to purchase a special comb to use with the product. FDA is clarifying the introductory paragraph in § 358.650(e) to read that if a package insert is used, the "Other information" section on the outer label shall include a statement referring to the package insert for additional information.

(Comment 3) One comment recommended that the directions proposed in § 358.650(d)(4)(i) or (d)(4)(ii), (d)(6), (d)(7), and (d)(8) appear both on the outer package label and in the package insert. The information includes the following provisions:

- Application directions for shampoo or nonshampoo products,
- Directions for a followup treatment,
- Instructions to see doctor if the infestation continues,
- Instruction to consult a doctor for children under 2 years of age.

FDA agrees with the comment. Directions that appear on the outer package label in accordance with § 201.66(c) may be restated in a package insert.

(Comment 4) One comment disagreed with the agency's change from 2 weeks to 4 weeks for the time items that cannot be washed should be sealed in a plastic bag(§ 358.650(e)(1)). The comment stated that FDA gave no rationale for doubling the time and pediculicide manufacturers know of no evidence showing more than 2 weeks is needed to prevent reinfestation.

FDA initiated the change for sealing items that cannot be washed in a plastic bag from 2 to 4 weeks for greater assurance of preventing head lice reinfestation. In the last few years, pediculosis fact sheets have recommended longer sealing times. One sheet (Ref. 1) instructs to "pack the items in a sealed plastic bag for a minimum of two weeks." Another sheet (Ref. 2) instructs to "pack non-washable items in a sealed plastic bag for 21 days to eliminate the risk from dormant nits." Based on these recent recommendations, the agency has determined that a 4-week time period will give greater assurance of preventing head lice reinfestation.

(Comment 5) One comment stated that the amended final monograph should allow for special instructions specific to particular products to enhance product-specific directions. The comment gave examples of "shake the product well before use," "apply to dry hair," or conditions for storage. The comment requested that the monograph state that "a reasonable degree of flexibility will be given to companies choosing to amplify the directions appropriately."

The agency disagrees with the need to include the comment's suggested statements in the FM for OTC pediculicide drug products. That monograph does not prohibit manufacturers from including statements such as "shake well before using" or information about conditions for storage in the product's labeling. The direction under the heading "Treat" for shampoo and nonshampoo products in § 358.650(d)(4)(i) and (d)(4)(ii) imply that the hair is dry before the product is first applied. FDA is amending these sections to give the option of adding the word "dry" before "hair".

C. Will Labeling for New Drug Application (NDA) Products be Revised at the Same Time as the Monograph Products?

(Comment 6) One comment asked FDA to coordinate the revised NDA labeling for OTC pediculicide drug products marketed under NDAs and under the OTC drug monograph. The comment stated that the implementation for all products should occur at the same time.

FDA strives for consistency in labeling of similar products that are marketed OTC under an OTC drug monograph or an NDA. The effective date for the amended labeling in this final rule is 18 months after the date of publication in the **Federal Register**. The agency intends to notify NDA holders to make changes in labeling consistent with this final rule and believes these changes can be completed by the effective date.

III. The Agency's Final Conclusions

A. Summary of Major Labeling Changes

Based on the available evidence, FDA is issuing a final rule amending the FM for OTC pediculicide drug products to make the following changes:

- *Statement of Identity.* We revised the *"Statement of identity"* to read "lice treatment" and eliminated the term "pediculicide."
- *Warnings.*

(1) We shortened some warnings and stated all warnings in the new format in § 201.66 using the subheadings "Do not use", "Ask a doctor before use if you are", "When using this product", and "Stop use and ask a doctor if".

(2) We revised one warning for greater clarity by adding a few words after the statement "See a doctor" to read "Do not use • near eyes • inside nose, mouth, or vagina • on lice in eyebrows or eyelashes. See a doctor if lice are present in these areas."

- *Directions.* We added the following:

(1) Two introductory statements entitled "Important: Read warnings before use"[statement shall appear first and in bold type] and "adults and children 2 years and over" [in bold type];

(2) Headings entitled "Inspect", "Treat", and "Remove lice and their eggs (nits)";

(3) "Dry" as an optional word before "hair" in the first sentence in the heading for "Treat" for shampoo and nonshampoo products.

- *Other information.*

(1) We allow information to appear in a package insert.

(2) We expanded the time for sealing items in a plastic bag from 2 to 4 weeks.

(3) We added the statement "• vacuum all carpets, mattresses, upholstered furniture, and car seats that may have been used by affected people".

B. Statement About Warnings

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks (see 21 CFR 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, see Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use final rule (67 FR 72555, December 6, 2002).

C. Marketing Conditions

No OTC pediculicide drug product that is marketed under part 358, subpart G, and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved NDA:

- 24 months after the date of publication of this final rule in the **Federal Register** for products with sales less than $25,000;
- 18 months after the date of publication in the **Federal Register** for all other such drug products.

Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the compliance dates in the final rule must be in compliance with part 358, subpart G regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily as soon as possible.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section

202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

FDA concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. As discussed in this section, FDA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to revise and improve the statement of identity, warnings, directions, and other required labeling statements for OTC pediculicide drug products. The revised labeling provides more detailed information on the proper use of the product and should improve consumers' self-use.

The final rule requires relabeling of OTC pediculicide drug products containing pyrethrum extract with piperonyl butoxide. FDA's drug listing system identifies about 23 manufacturers and 36 marketers of approximately 75 stockkeeping units (SKU) (individual products, packages, and sizes) of OTC pediculicide drug products. There may be a few additional marketers and products that are not identified in the sources FDA reviewed.

FDA does not believe that manufacturers would need to increase the package size to add the additional labeling information. Almost all of these products are marketed in an outer carton which should have adequate space for the additional information. In addition, manufacturers may include the "Other information" section of the labeling in a package insert, which generally has a nominal cost. Assuming that there are about 75 affected OTC SKUs in the marketplace, FDA estimates (based on information provided by OTC drug manufacturers) that the rule would impose total one-time compliance costs on industry for relabeling of about $3,000 to $4,000 per SKU, for a total cost of $225,000 to $300,000.

FDA believes the actual cost could be lower for several reasons. First, most of the labeling changes will be made by private label small manufacturers that tend to use simpler and less expensive labeling.

Second, FDA is providing a period of 18 months (24 months for products with annual sales less than $25,000) for manufacturers to implement the new labeling. Thus, manufacturers should be able to use up existing labeling stocks and to make the labeling changes in the normal course of business. Further, manufacturers will not incur any expenses determining how to state the product's labeling because the final rule provides that information. The final rule does not require any new reporting and recordkeeping activities. Therefore, no additional professional skills are needed.

FDA considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, the agency also acknowledges that a shorter implementation period could significantly increase the compliance costs and these costs could be passed through to consumers. A longer time period would unnecessarily delay the benefit of new labeling to consumers who self-medicate with these drug products. The agency rejects an exemption for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, a longer compliance date (24 months) is being provided for products with annual sales less than $25,000.

OTC pediculicide drug products are not the sole products produced by manufacturers affected by this final rule. FDA believes that the incremental costs of this final rule will be less than 1 percent of any of the manufacturer's total sales. Therefore, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

V. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the statement of identity, warnings, directions, and other information are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

FDA has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency concludes that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Fact sheet from Mason County, Washington State Government Services, "Head Lice (Pediculosis)," *http://www.co.mason.wa.us/health/Headlice.shtml*.

2. Fact sheet from King County, Washington State Government Services, "Communicable Disease Fact Sheet Head Lice (Pediculosis)," *http://www.metrokc.gov/health/prevcont/headlice.htm*.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 358 is amended as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 358.650 is revised to read as follows:

§ 358.650 Labeling of pediculicide drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "lice treatment."

(b) *Indications.* The labeling of the product states, under the heading "Uses," the following: "treats head, pubic (crab), and body lice." Other truthful and nonmisleading statements, describing only the uses that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "For external use only" in accord with § 201.66(c)(5)(i) of this chapter.

(2) "Do not use [bullet][1] near eyes [bullet] inside nose, mouth, or vagina [bullet] on lice in eyebrows or eyelashes. See a doctor if lice are present in these areas."

(3) "Ask a doctor before use if you are [bullet] allergic to ragweed. May cause breathing difficulty or an asthmatic attack."

(4) "When using this product [bullet] keep eyes tightly closed and protect eyes with a washcloth or towel [bullet] if product gets in eyes, flush with water right away [bullet] scalp itching or redness may occur".

(5) "Stop use and ask a doctor if [bullet] breathing difficulty occurs [bullet] eye irritation occurs [bullet] skin or scalp irritation continues or infection occurs".

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) The labeling states "[bullet] Important: Read warnings before use" [statement shall appear first and in bold type].

(2) The labeling states "adults and children 2 years and over:" [in bold type].

(3) For head lice treatment products "Inspect [in bold type] [bullet] check eachhousehold member with a magnifying glass in bright light for lice/nits (eggs) [bullet]look for tiny nits near scalp, beginning at back of neck and behind ears [bullet] examinesmall sections of hair at a time [bullet] unlike dandruff which moves when touched, nitsstick to the hair [bullet] if either lice or nits are found, treat with this product".

(4) Select one of the following:

(i) *For shampoo products* "Treat [in bold type] [bullet] apply thoroughly to (optional, may add "dry") hair or other affected area. For head lice, first apply behind ears and to back of neck. [bullet] allow product to remain for 10 minutes, but no longer [bullet] use warm water to form a lather, shampoo, then thoroughly rinse [bullet] for head lice, towel dry hair and comb out tangles".

(ii) *For nonshampoo products* "Treat [in bold type] [bullet] apply thoroughly to (optional, may add "dry") hair or other affected area. For head lice, first apply behind ears and to back of neck. [bullet] allow product to remain for 10 minutes, but no longer [bullet] wash area thoroughly with warm water and soap or shampoo [bullet] for head lice, towel dry hair and comb out tangles".

(5) "Remove lice and their eggs (nits) [in bold type] [bullet] use a fine-tooth or special lice/nit comb. Remove any remaining nits by hand (using a throw-away glove). [bullet] hair should remain slightly damp while removing nits [bullet] if hair dries during combing, dampen slightly with water [bullet] for head lice, part hair into sections. Do one section at a time starting on top of head. Longer hair may take 1 to 2 hours. [bullet] lift a 1- to 2-inch wide strand of hair. Place comb as close to scalp as possible and comb with a firm, even motion away from scalp. [bullet] pin back each strand of hair after combing [bullet] clean comb often. Wipe nits away with tissue and discard in a plastic bag. Seal bag and discard to prevent lice from coming back. [bullet] after combing, thoroughly recheck for lice/nits. Repeat combing if necessary. [bullet] check daily for any lice/nits that you missed".

(6) The labeling states "[bullet] a second treatment must be done in 7 to 10 days to kill any newly hatched lice".

(7) The labeling states "[bullet] if infestation continues, see a doctor for othertreatments".

(8) The labeling states "children under 2 years:" [in bold type] "ask a doctor".

(e) *Other information.* The labeling of the product contains the following statements, as appropriate, under the heading "Other information." This information may appear in a package insert. If a package insert is used, the "Other information" section on the outer carton or container label shall include a statement referring to the package insert for additional information.

(1) "Head lice [highlighted in bold type] [bullet] lay small white eggs (nits) on hair shaft close to scalp [bullet] nits are most easily found on back of neck or behind ears [bullet] disinfect hats, hair ribbons, scarves, coats, towels, and bed linens by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes [bullet] items that cannot be washed (bedspreads, blankets, pillows, stuffed toys, etc.) should be dry-cleaned or sealed in a plastic bag for 4 weeks, then removed outdoors and shaken out very hard before using again [bullet] items that cannot be washed, dry-cleaned, or stored may be sprayed with a product designed for this purpose [bullet] soak all combs and brushes in hot water (above 54 °C (130 °F)) for at least 10 minutes [bullet] vacuum all carpets, mattresses, upholstered furniture, and car seats that may have been used by affected people".

(2) "Pubic (crab) lice [highlighted in bold type] [bullet] may be transmitted by sexual contact. Sexual partners should be treated simultaneously to avoid reinfestation [bullet] lice are very small and look like brown or grey dots on skin [bullet] usually cause intense itching and lay small white eggs (nits) on the hair shaft generally close to the skin surface [bullet] may be present on the short hairs of groin, thighs, trunk, and underarms, and occasionally on the beard and mustache [bullet] disinfect underwear by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes".

(3) "Body lice [highlighted in bold type] [bullet] body lice and their eggs (nits) are generally found in the seams of clothing particularly in waistline and armpit area [bullet] body lice feed on skin then return to clothing to lay their eggs [bullet] disinfect clothing by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes [bullet] do not seal clothing in a plastic bag because nits can remain dormant for up to 30 days".

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[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

Dated: December 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–32100 Filed 12–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–153–FOR; Administrative Cause No. 02–034R]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Indiana Department of Natural Resources (IDNR or Indiana) proposed revisions to and additions of rules concerning protection of ground water quality. Indiana revised its program to provide additional safeguards for ground water.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet address: *IFOMAIL@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the July 26, 1982, **Federal Register** (47 FR 32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

By letter dated September 3, 2003 (Administrative Record No. IND–1719), IDNR sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). IDNR proposed to amend its program by adding new definitions, application requirements, and performance standards concerning the protection of ground water quality. IDNR is amending the Indiana program because the Indiana Groundwater Protection Act of 1989 (Indiana Code (IC) 13–18–17) requires any State agency with jurisdiction over an activity that may affect the quality of Indiana's ground water to adopt rules to apply the groundwater quality standards established by the Indiana Water Pollution Control Board (WPCB). In accordance with IC 13–18–17, WPCB adopted ground water quality standards at 327 Indiana Administrative Code (IAC) 2–11. WPCB's rule at 327 IAC 2–11–2 specifically requires IDNR to adopt rules to apply the standards established in 327 IAC 2–11 to the facilities, practices, and activities it regulates.

We announced receipt of the proposed amendment in the October 15, 2003, **Federal Register** (68 FR 59352). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 14, 2003. We received comments from one industry group, one citizens group, and one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Definitions

Indiana added the definitions discussed below from WPCB's definitions at 327 IAC 2–11–3(5), (8) and (11). Indiana added these definitions to help in implementing its new performance standards concerning the protection of ground water quality at 312 IAC 25–6–12.5 and 25–6–76.5.

1. At 312 IAC 25–1–45.5, Indiana is adding the following definition for "drinking water well."

> "Drinking water well," for the purposes of 312 IAC 25–6–12.5 and 312 IAC 25–6–76.5, means a bored, drilled, or driven shaft or a dug hole that meets each of the following:
>
> (1) Supplies ground water for human consumption.
>
> (2) Has a depth greater than its largest surface dimension.
>
> (3) Is not permanently abandoned under 312 IAC 13–10–2.

Although there is no direct Federal counterpart definition for a drinking water well, Indiana's proposed definition is not inconsistent with the Federal definition of "drinking, domestic, or residential water supply" at 30 CFR 701.5. The Federal definition means, in part, water received from a well for direct human consumption or household use. Therefore, we are approving Indiana's definition at 312 IAC 25–1–45.5.

2. At 312 IAC 25–1–60.5, Indiana is adding the following definition for "Ground water management zone."

> "Ground water management zone" means a three (3) dimensional region of ground water around a potential or existing contaminant source where a contaminant is or was managed to prevent or mitigate deterioration of ground water quality such that the criteria established in 312 IAC 25–6–12.5(a) or 312 IAC 25–6–76.5(a) are met at and beyond the boundary of the region.

There is no Federal counterpart definition for the term "ground water management zone." However, Indiana's proposed definition is not inconsistent with sections 515(b)(10) and 516(b)(9) of SMCRA or the Federal requirements at 30 CFR 816.41 and 817.41 concerning protection of the hydrologic balance, including ground water quality protection. Therefore, we are approving Indiana's definition at 312 IAC 25–1–60.5.

3. At 312 IAC 25–1–109.5, Indiana is adding the following definition for "Property boundary."

> "Property boundary," for the purposes of 312 IAC 25–6–12.5 and 312 IAC 25–6–76.5, means the edge of a contiguous parcel of land owned by or leased to the permittee. Contiguous land shall include land separated by a public right-of-way, if that land would otherwise be contiguous.

There is no Federal counterpart definition for the term "property boundary." However, Indiana's proposed definition is not inconsistent with the Federal definition of "permit area" at 30 CFR 701.5 or the Federal requirements concerning permit boundaries at 30 CFR 779.24 and 783.24. Therefore, we are approving Indiana's definition at 312 IAC 25–1–109.5.

B. Surface Mining Permit Applications

1. At 312 IAC 25–4–43, Indiana is adding subdivision (4). This new subdivision requires the maps and plans of the proposed permit and adjacent areas to include all monitoring locations used to demonstrate compliance with 312 IAC 25–6–12.5.

There is no direct Federal counterpart to subdivision (4). However, the proposed provision is not inconsistent with the requirements of the Federal regulations at 30 CFR 780.21(i) concerning ground water monitoring plans. The Federal regulation at 30 CFR 780.21(i)(1) requires the ground water monitoring plan to include identification of site locations for ground water monitoring. Therefore, we are approving 312 IAC 25–4–43(4).

2. At 312 IAC 25–4–47(b), protection of hydrologic balance, Indiana is adding subdivision (9). This new subdivision requires the reclamation plan to contain a description, with appropriate maps and cross section drawings, of a plan to demonstrate compliance with 312 IAC 25–6–12.5.

Although there is no direct Federal counterpart to subdivision (9), the proposed provision is not inconsistent with the requirements of the Federal regulation at 30 CFR 780.21(h) concerning hydrologic reclamation plans. The Federal regulation at 30 CFR 780.21(h) requires the hydrologic reclamation plan to contain steps to be taken to meet applicable Federal and State water quality laws and regulations. Therefore, we are approving 312 IAC 25–4–47(b)(9).

C. Underground Mining Permit Applications

1. At 312 IAC 25–4–85(b), protection of hydrologic balance, Indiana is adding subdivision (8). This new subdivision requires the reclamation plan to contain a description, with appropriate maps and cross section drawings, of a plan to demonstrate compliance with 312 IAC 25–6–76.5.

Although there is no direct Federal counterpart to subdivision (8), the proposed provision is not inconsistent with the requirements of the Federal regulation at 30 CFR 784.14(g) concerning hydrologic reclamation plans. The Federal regulation at 30 CFR 784.14(g) requires hydrologic reclamation plans to contain steps to be taken to meet applicable Federal and State water quality laws and regulations. Therefore, we are approving 312 IAC 25–4–85(b)(8).

2. At 312 IAC 25–4–93, Indiana is adding subdivision (4). This new subdivision requires the maps and plans of the proposed permit and adjacent areas to include all monitoring locations used to demonstrate compliance with 312 IAC 25–6–76.5.

Although there is no direct Federal counterpart to subdivision (4), the proposed provision is not inconsistent with the requirements of the Federal regulation at 30 CFR 784.14(h) concerning ground water monitoring plans. The Federal regulation at 30 CFR 784.14(h)(1) requires the ground water monitoring plan to include identification of site locations for ground water monitoring. Therefore, we are approving 312 IAC 25–4–93(4).

D. Surface Mining—Hydrologic Balance; Ground Water Quality Standards

Indiana is adding a new rule at 312 IAC 25–6–12.5 to read as follows:

> 312 IAC 25–6–12.5 Hydrologic balance; application of ground water quality standards at surface coal mining and reclamation operations permitted under IC 14–34 on which coal extraction, including augering, coal processing, coal processing waste disposal, or spoil deposition, occurs after the effective date of this section, or on which disposal activity subject to IC 13–19–3–3 has occurred and the area is not fully released from the performance bond required by IC 14–34–6.
>
> (a) Ground water is classified under 327 IAC 2–11 to determine appropriate criteria that shall be applied to ground water.
>
> (b) Surface coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2–11.
>
> (c) Surface coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25–4–33 and 312 IAC 25–6–25 govern water replacement.
>
> (d) The ground water management zone described in 327 IAC 2–11–9 must be established as follows:
>
> (1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:
>
> (A) A coal extraction area.
>
> (B) A coal mine processing waste disposal site if not within a coal extraction area.
>
> (C) An area where coal is extracted by auger mining methods.
>
> (D) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site unless the location is within the coal extraction area.
>
> (E) A spoil deposition area.
>
> (2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.
>
> (3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.
>
> (e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

There is no direct Federal counterpart to the proposed regulation at 312 IAC 25–6–12.5. However, we find that the requirements of 312 IAC 25–6–12.5 are not inconsistent with Section 515(b)(10) of SMCRA or the Federal regulations at 30 CFR 780.21(h) and 816.41(a), concerning protection of the hydrologic balance. The Federal regulation at 30 CFR 780.21(h), concerning hydrologic reclamation plans, requires plans to contain steps to be taken to meet applicable Federal and State water quality laws and regulations. Section 515(b)(10) of SMCRA and the Federal regulation at 30 CFR 816.41(a) allow the regulatory authority to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Therefore, we are approving 312 IAC 25–6–12.5.

E. Underground Mining—Hydrologic Balance; Ground Water Quality Standards

Indiana is adding a new rule at 312 IAC 25–6–76.5 to read as follows:

312 IAC 25–6–76.5 Underground mining; hydrologic balance; application of ground water quality standards at underground coal mining and reclamation operations permitted under IC 14–34 on which coal extraction, coal processing, coal processing waste disposal, or underground development waste and spoil deposition occurs after the effective date of this section, or on which disposal activity subject to IC 13–19–3–3 has occurred and the area is not fully released from the performance bond required by IC 14–34–6.

(a) Ground water is classified under 327 IAC 2–11 to determine appropriate criteria that shall be applied to ground water.

(b) Underground coal mining and reclamation operations must be planned and conducted to prevent violations of ground water quality standards under 327 IAC 2–11.

(c) Underground coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well, that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. If a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from surface mining activities, 312 IAC 25–4–74 and 312 IAC 25–6–88 govern water replacement.

(d) The ground water management zone described in 327 IAC 2–11–9 must be established as follows:

(1) At each drinking water well that is within three hundred (300) feet from the edge of any of the following:

(A) A coal mine processing waste disposal site.

(B) A location at which coal is crushed, washed, screened, stored, and loaded at or near the mine site.

(C) An underground development waste and spoil deposition area.

(2) Within three hundred (300) feet from the edge of an area or site described in subdivision (1) where there is no drinking water well that is within three hundred (300) feet from the edge of an area or site described in subdivision (1). If the property boundary or permit boundary is located within three hundred (300) feet from the edge of an area or site described in subdivision (1), the director shall require that a monitoring well be placed at a location approved by the director between the property boundary or permit boundary and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (2) that the director determines was caused by an activity under subdivision (1), the permittee must submit to the director a plan describing, in detail, the steps to be taken to prevent material damage to the hydrologic balance beyond the permit boundary and a timetable for implementation. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(3) If a drinking water well is located within three hundred (300) feet of an area or site described in subdivision (1) and it is determined that there is a substantial likelihood of impact, the director may require that a monitoring well be placed at a location approved by the director between the drinking water well and the edge of an area or site described in subdivision (1). If a standard listed in 327 IAC 2–11 is exceeded at a monitoring well described in subdivision (3) that the director determines was caused by an activity under subdivision (1), the permittee shall submit to the director a plan describing, in detail, the steps to be taken and a timetable for taking the action that takes into account site-specific conditions to provide protection for the drinking water well. This plan must be submitted within thirty (30) days of the discovery of an exceedance and include information relative to access, additional monitoring, and any measures to be taken to minimize changes to the prevailing hydrologic balance and to prevent material damage to the hydrologic balance beyond the permit boundary.

(e) The criteria established in subsection (a) must be met at and beyond the boundary of the ground water management zone.

There is no direct Federal counterpart to the proposed regulation at 312 IAC 25–6–76.5. However, we find that the requirements of 312 IAC 25–6–76.5 are not inconsistent with Section 516(b)(9) of SMCRA or the Federal regulations at 30 CFR 784.14(g) and 817.41(a), concerning protection of the hydrologic balance. The Federal regulation at 30 CFR 784.14(g), concerning hydrologic reclamation plans, requires plans to contain steps to be taken to meet applicable Federal and State water quality laws and regulations. Section 516(b)(9) of SMCRA and the Federal regulation at 30 CFR 817.41(a) allow the regulatory authority to require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Therefore, we are approving 312 IAC 25–6–76.5.

IV. Summary and Disposition of Comments

Public Comments

On October 15, 2003, we asked for public comments on the amendment (68 FR 59352), and received comments from one industry group and one citizens group.

Industry Group. We received comments from the Indiana Coal Council, Inc. (ICC) on October 31, 2003 (Administrative Record No. IND–1723). ICC commented that the proposed amendment is not inconsistent with any provision of SMCRA or of OSM's permanent program regulations, and should be approved. ICC also commented that the proposed amendment would not repeal or revise the requirement of Indiana's counterpart to 30 CFR 816.41(a) that surface mining and reclamation activities be conducted to prevent material damage to the hydrologic balance outside the permit area. ICC provided support for these comments.

We agree with ICC's comments. As shown above in section III, OSM's Findings, we found that the provisions of Indiana's proposed amendment are not inconsistent with SMCRA or the Federal regulations concerning protection of the hydrologic balance.

Citizens Group. We received comments from the Hoosier Environmental Council (HEC) on November 14, 2003 (Administrative Record No. IND–1724).

HEC Comment 1

> The rules make no mention of wells used for purposes other than human consumption. The Indiana Ground Water Quality Standards state 'No person shall cause the ground water in a non-drinking water supply well, including an industrial, commercial, or agricultural supply well, to have a contaminant concentration that, based on best scientific information, renders the well unusable for it current use.' 327 IAC 2–11–2 Sec. 2(f) Despite this requirement, a definition is only provided for drinking water wells, and no mention is made in the rules about protection of non-drinking water supply wells.
>
> A definition for non-drinking water supply wells should be included in these rules. Language should be inserted requiring the protection of the use of these wells. While not used for human consumption, these wells are an important resource to their owners including farmers who often rely on ground water for irrigation and livestock. Farmers would be especially hard hit by the cost of replacing these wells with municipal water or other water supplies.

Response to Comment 1. We disagree with the commenter. Indiana's proposed rules do require protection for nondrinking water supply wells.

Specifically, Indiana's proposed rules at 312 IAC 25–6–12.5(c) for surface mining and 25–6–76.5(c) for underground mining provide that coal mining and reclamation operations must be planned and conducted to prevent impacts to the ground water in a drinking water well or a nondrinking water supply well, including an industrial, commercial, or agricultural supply well. The operations must prevent impacts to the ground water that result in a contaminant concentration that, based on best scientific information, renders the well unusable for its current use. These rules also provide remedies if a drinking water well or a nondrinking water supply well is affected by contamination, diminution, or interruption proximately resulting from mining activities. Indiana's rules at 312 IAC 25–4–33 and 312 IAC 25–6–25 govern water replacement for surface mining activities and 312 IAC 25–4–74 and 312 IAC 25–6–88 govern water replacement for underground mining activities. Although Indiana did not add a definition for non-drinking water supply wells, neither did the Water Pollution Control Board in its rules at 327 IAC 2–11.

HEC Comment 2

> The rule sets no provisions for minimizing ground water contamination within the mine itself. Indiana's Surface Mining Control and Reclamation Act (I–SMCRA), Ind. Code § 14–34 *et seq.*, requires mine operators to 'Minimize disturbances to the prevailing hydrologic balance at the mine site and associated offsite areas and to the quality and quantity of water in surface and ground water system during and after surface coal mining and reclamation operations.' (IC 14–34–10–2(13)) Under the proposed rule, no standards will apply within the ground water management zone. Under the IDEM [Indiana Department of Environmental Management] ground water standards, the standard for these areas becomes the amount of pollution caused by mining upon bond release. Thus these rules do not enforce the requirement to minimize the pollution of mine waters within mined properties.

Response to Comment 2. Indiana's proposed rules are in addition to Indiana's existing rules for the protection of the hydrologic balance at 312 IAC 25–6, which apply to the entire permit area and adjacent areas. The proposed rules do not replace or restrict the requirements of IC 14–34–10–2(13) or of Indiana's implementing rules at 312 IAC 25–6–12 and 25–6–21 through 25–6–23.

HEC Comment 3

> The provisions of federal and state mining law in concerns to ground water contamination will be enforced by the standards set by this proposed rule. Under its current language, it does not comply with the requirements of SMCRA and I–SMCRA of minimizing pollution within the mine boundaries and preventing pollution outside of the permit boundary.

Response to Comment 3. We disagree with the commenter. As discussed in our response to Comment 2 above, the proposed rules do not replace or restrict Indiana's existing rules concerning protection of the hydrologic balance, including ground water. Although Indiana's proposed rules at 312 IAC 25–6–12.5 and 25–6–76.5 will specifically enforce the ground water quality standards under 327 IAC 2–11, Indiana's existing rules enforce the hydrologic balance standards, including ground water, required by SMCRA and I–SMCRA.

Federal Agency Comments

On September 9, 2003, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1720). The U.S. Fish and Wildlife Service responded on October 8, 2003 (Administrative Record No. IND–1721), that it had no specific comments on the program amendment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to these air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On September 9, 2003, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IND–1720). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 9, 2003, we requested comments on Indiana's amendment (Administrative Record No. IND–1720), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Indiana sent us on September 3, 2003.

We approve the rules proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State that do not have Federal counterparts have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions have no substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 4, 2003.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

■ 1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 914.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
September 3, 2003	December 31, 2003	312 IAC 25–1–45.5, 60.5, 109.5; 25–4–43(4), 47(b)(9), 85(b)(8), 93(4); 25–6–12.5, 76.5.

[FR Doc. 03–32108 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–245–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; removal of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing the removal of a required amendment to the Kentucky regulatory program (the "Kentucky program"). The Kentucky program was established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and authorizes Kentucky to regulate surface coal mining and reclamation operations in Kentucky.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director; Telephone: (859) 260–8400; E-mail: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Purpose of the Rule
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Purpose of the Rule

The required amendment at 30 CFR 917.16(k) reads as follows:

> By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations (KAR) to require that the assessment Conference Officer's Report mentioned in 405 KAR 7:092 Section 4(5) be served in a manner consistent with 405 KAR 7:091 Section 5, and to specify that the time allowed under 405 KAR 7:092 Section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the Conference Officer's Report does not begin to run until service is obtained in this manner.

On March 28, 2003, OSM forwarded a letter to Kentucky requesting that the required amendment at 30 CFR 917.16(k) be addressed by forwarding to OSM a policy statement that established its procedures on mailing of Conference Officer's Reports and the date that begins the administrative petition process. In response to this request we received a letter from the Kentucky Natural Resources and Environmental Protection Cabinet, Office of Administrative Hearings, dated April 3, 2003, requesting that its policy of requiring all Conference Officer's Reports be sent by certified mail be considered by us as fulfilling the requirements of the above-mentioned amendment (Administrative Record No. KY–1576). Included in the letter was a copy of a memorandum, dated April 2, 2002, sent from the Chief Hearing Officer to the Penalty Assessments Coordinator and the Assessment Conference Officer. This memorandum reminded its recipients that, according to policy, all Conference Officer's Reports should be mailed via certified mail, return receipt requested, and that, in calculating the time for the filing of an administrative petition, the beginning date should be the date of service of the Conference Officer's Report, rather than the mailing date. The memorandum acknowledged that Kentucky's regulation, which allows service by regular mail, had been found by OSM to be less effective than a corresponding Federal regulation (Administrative Record No. KY–1605).

Based on the commitments included in the above-referenced letter and accompanying memorandum, we announced our proposal to remove this required amendment on October 3, 2003, in the **Federal Register** (68 FR 57398). In the same notice we opened the public comment period and provided an opportunity for a public hearing or meeting on whether the policy letter discussed above meets the requirements of the required amendment, thereby eliminating the need for a revision to the Kentucky regulatory program. We did not hold a public hearing or meeting because no one requested one. The public comment period closed on November 3, 2003. We received comments from two Federal agencies (U.S. Department of the Interior, Fish and Wildlife Service and the U.S. Army Corps of Engineers). We also received comments from the Kentucky Resources Council, Inc.

III. OSM's Findings

In our August 6, 1993, decision we determined that the required amendment was necessary because we were concerned that 405 KAR 7:092 section 4(5) was less effective than its Federal counterpart found at 30 CFR 845.18 because of the way in which Conference Officer's Reports were administratively handled (58 FR 42001, 42006). Although Kentucky has not amended its regulations in response to this required amendment, Kentucky's policy has been to serve all Conference Officer's Reports by certified mail and to begin the period for filing an administrative petition from the date of service of the report (Administrative Record No. KY–1605). Our analysis of this policy indicates that it clarifies the language of the Kentucky regulation, which requires service by "mail", without specifying whether the service must be made by "certified" or "regular" mail. 405 KAR 7:092, section 4(5). In addition, Kentucky's policy of starting the appeal period from the date of service indicates that the State interprets its regulation at 405 KAR 7:092, section 6(1)(b), which begins the appeal period on the mailing date, in a manner consistent with its policy, and with the Federal regulations. In other words, it is apparent that Kentucky interprets the term "mailing" to include service, *i.e.*, receipt, of the Conference Officer's Report. Furthermore, the record is devoid of any indication that Kentucky has failed to follow this policy in the last decade. With these policy clarifications now in place, these aspects of the Kentucky program clearly meet the requirements of, and are therefore consistent with, the Federal regulations at 30 CFR 845.17 and 845.18.

We do recognize that this determination is being made based on program implementation based on a State policy, rather than via a statutory or regulatory change. Should we find that in the future the State's actions concerning Conference Officer's Reports are no longer consistent with the requirements of 30 CFR 845.17 and 845.18, we will take the necessary action at that time to bring their program into compliance with this decision.

Therefore, we have determined that the required amendment at 30 CFR 917.16(k) is no longer needed and will be removed.

IV. Summary and Disposition of Comments

Public Comments

The Kentucky Citizens Coal Law Project (KCCLP), a division of the Kentucky Resources Council, submitted comments dated October 28, 2003 (Administrative Record No. KY–1603). These comments primarily relate to two specific concerns which we address below:

(1) KCCLP does not believe the Kentucky policy resolves the conflict between State and Federal regulations concerning the timing for appeal of the Conference Officer's Report.

As we discussed in the above finding, Kentucky has stated, in its policy, that the date for filing an administrative petition begins on the date of service. Therefore, we have determined that the implementation of this program is consistent with the Federal requirements. If we subsequently find that Kentucky is no longer able or willing to enforce its program in a manner consistent with Federal regulations, we will take appropriate action to bring the program back into compliance.

(2) KCCLP does not believe that a Kentucky policy of serving Conference Officer's Reports by certified mail is as effective as its Federal counterpart and violates State and Federal law. This comment appears to rest with both 30 U.S.C. 1253(1)–(7), which requires that State laws and regulations be consistent, and in accordance, with Federal requirements, and Kentucky Revised Statutes (KRS) 13A.130, which prohibits agencies in Kentucky from adopting or enforcing any policy that modifies or alters a regulation.

We agree with the commenter that 30 U.S.C. 1253(a)(1)–(7) require laws and regulations consistent with and in accordance with Federal requirements. We also agree with the commenter on what the Federal requirement is regarding service of Conference Officer Reports. However, we have determined that Kentucky's implementation of its program is consistent with the Federal requirements. The State regulation at issue, 405 KAR 7:092, section 4(5), sets forth that "[t]he Conference Officer's Report shall be promptly served *by mail* * * *" (Emphasis added.) The regulation does not specify, however, the type of mail delivery required. For example, it does not require the report to be served by "regular" mail. As such, a policy specifying that service be accomplished by "certified" mail is not inconsistent with the State regulatory requirement. Further, since documentation of receipt is an integral part of the certified mail process, a policy that begins the period for appeal upon receipt of the certified mail is not inconsistent with the State regulations even though it may not be expressly mandated by that regulation. Kentucky has been operating in a manner consistent with this policy and the Federal requirements for the past decade. Therefore that policy constitutes ample grounds for removing the required amendment. Nevertheless, if in the future we determine that Kentucky is not implementing its program in a manner consistent with the Federal requirements we will revisit this issue and take whatever action is necessary to ensure the State's administrative handling of Conference Officer's Reports occurs in accordance with Federal requirements.

Regarding the State's law, we believe that any step taken by OSM to analyze and interpret KRS 13A.130 in a manner inconsistent with Kentucky's documented policy and practice in applying that law is clearly outside the scope of our jurisdiction. We believe it is within the discretion of the Kentucky Natural Resources and Environmental Protection Cabinet to determine that it is complying with Kentucky's statutory limits in interpreting its regulation in the above-described way.

Federal Agency Comments

The U.S. Department of the Interior, Fish and Wildlife Service submitted a letter dated October 29, 2003 (Administrative Record No. KY–1605), in which they indicated it has no substantive comments regarding the removal of the required amendment.

The U.S. Army Corps of Engineers submitted a statement dated October 31, 2003 (Administrative Record No. KY–1606), in which it indicated it had no comments on the proposed rule.

V. OSM's Decision

Based on the above findings we have determined that the required amendment at 30 CFR 917.16(k) is no longer needed and will be removed.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule is a technical amendment and does not have takings implications.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section.

Executive Order 13132—Federalism

This rule is a technical amendment and does not have federalism implications.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This determination is based on the fact that the Kentucky program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Kentucky program has no effect on federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and will not have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an Environmental Impact Statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed state regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule is a technical amendment that does not impose any additional requirements on small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons stated above, this rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates

This rule is a technical amendment and will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 8, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

■ 1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 917.16 [Amended]

■ 2. Section 917.16 is amended by removing and reserving paragraph (k).

[FR Doc. 03–32107 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Charleston–03–171]

RIN 1625–AA00

Security Zones; Charleston Harbor, Cooper River, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary fixed security zone in the waters under the Don Holt I–526 Bridge on the Cooper River to the entrance of Foster Creek on the Cooper River. This security zone is needed for national security reasons to protect the public and ports from potential subversive acts during port embarkation operations. Vessels are prohibited from entering, transiting, anchoring, mooring, or loitering within this zone, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

DATES: This regulation is effective from 8 a.m. on December 10, 2003, until 8 a.m. on June 1, 2004. Comments and related material must reach the Coast Guard on or before March 30, 2004.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Charleston, 196 Tradd Street, Charleston, South Carolina 29401. Coast Guard Marine Safety Office Charleston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of (COTP Charleston 03–171), will become part of this docket and will be available for inspection or copying at Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Kevin Floyd, Coast Guard Marine Safety Office Charleston, at (843) 720–3272.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–03–171), indicate the specific section of this document to which each comment applies, and give the reason for each comment. The Coast Guard is especially interested in comments concerning the size and boundaries of this security zone and any economic impact this rule may have on you .

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Good Cause

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM). Publishing an NPRM would be contrary to public safety interests and national security. These regulations are needed to protect the public, the ports and waterways and the national security of the United States from the potential of subversive acts against vessels and port facilities and infrastructure during port embarkation operations occurring within the security zone. For the security concerns noted, it is in the public interest to have these regulations in effect during the port embarkation operations. In addition, notifications will be made via marine information broadcasts.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attack on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive terrorist activity could be launched by vessels or persons in close proximity to the Port of Charleston, South Carolina, against military installations or operations occurring within the security zone. This temporary security zone is necessary to protect the safety of life and property on the navigable waters, prevent potential terrorist threats aimed at military installations during strategic port of embarkation operations occurring within the security zone. The temporary security zone will encompass all waters under the Don Holt I–526 Bridge over the Cooper River to the entrance of Foster Creek on the Cooper River.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal so that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic effect on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the limited geographic area encompassed by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port of Charleston.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T07–171 is added to read as follows:

§ 165.T07–171 Security Zone; Charleston Harbor, Cooper River, South Carolina.

(a) *Regulated area.* The Coast Guard is establishing a temporary fixed security zone on all waters of the Cooper River, from bank to bank, under the Don Holt I–526 Bridge to the entrance of Foster Creek.

(b) *Regulations.* In accordance with the general regulations § 165.33 of this part, vessels are prohibited from entering, transiting, mooring, anchoring, or loitering within this zone unless specifically authorized by the Captain of the Port Charleston, South Carolina or his designated representative.

(c) *Effective period.* This section is effective from 8 a.m. on December 10, 2003, until 8 a.m. on June 1, 2004.

Dated: December 1, 2003.

Gary W. Merrick,

Commander, U. S. Coast Guard, Captain of the Port.

[FR Doc. 03–32079 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1840–AC84

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final rule.

SUMMARY: This document contains technical corrections to the regulations governing the Federal Perkins Loan (Perkins) Program, the Federal Family Education Loan (FFEL) Program, and the William D. Ford Federal Direct Loan (Direct Loan) Program. These amendments are needed to correct technical errors in the regulations, remove or modify language in the regulations that is now obsolete or outdated due to prior changes to the Higher Education Act of 1965, as amended (HEA), and the regulations, and where appropriate, provide consistent language in the regulations for the three loan programs.

EFFECTIVE DATE: These regulations are effective January 30, 2004.

FOR FURTHER INFORMATION CONTACT: For the Perkins and FFEL programs: Mr. Brian Smith, U.S. Department of Education, 1990 K Street, NW., (8th Floor) Washington, DC 20006, Telephone: (202) 502–7551, or via the Internet: *Brian.Smith@ed.gov.*

For the Direct Loan Program: Ms. Nicki Meoli, U.S. Department of Education, 1990 K Street, NW., (8th Floor) Washington, DC 20006, Telephone: (202) 377–4031, or via the Internet: *Nicki.Meoli@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: These final regulations make technical corrections to the existing regulations for the Perkins, FFEL, and Direct Loan programs in 34 CFR parts 674, 682, and 685. The existing regulations contain technical errors, erroneous cross-references, and language that is inconsistent with other regulations and the provisions of the HEA. These final regulations make the technical corrections, correct the cross-references, and remove or modify language that is obsolete, outdated, or otherwise inconsistent with other regulations and the HEA.

Waiver of Proposed Rulemaking and Negotiated Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect needed technical corrections to the Perkins, FFEL, and Direct Loan program regulations. These corrections do not affect the substantive rights or obligations of individuals or institutions and do not establish or affect substantive policy. Thus, the Secretary has concluded that these regulations are technical in nature and do not necessitate public comment. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations (and, accordingly, negotiated rulemaking under section 492(b)(2) of the HEA) are unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are small institutions of higher education. These regulations also affect lenders and guaranty agencies that participate in the title IV, HEA programs, and individual loan borrowers. These regulations contain technical corrections to current regulations. The changes will not have a significant economic impact on any of the entities affected.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: December 23, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

■ For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations parts 674, 682, and 685 as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421–429, unless otherwise noted.

■ 2. Section 674.5 is amended by:

■ A. In paragraph (c)(3)(i)(D), adding the word "or" after the semi-colon.

■ B. In paragraph (c)(3)(i)(E), removing "; or" and adding, in its place, a period.

■ C. Removing paragraph (c)(3)(i)(F).

■ D. In paragraph (c)(3)(ii)(C), removing the word "or".

■ E. In paragraph (c)(3)(ii)(D), removing the period and adding, in its place, "; or".

■ F. Adding a new paragraph (c)(3)(ii)(E).

■ The addition reads as follows:

§ 674.5 Federal Perkins Loan program cohort default rate and penalties.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(E) Assigned to and conditionally discharged by the Secretary in accordance with § 674.61(b).

* * * * *

■ 3. Section 674.61 is amended by revising the section heading to read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 4. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.102 [Amended]

■ 5. Section 682.102(e)(1) is amended by removing from the last sentence the words "nursing professions or perform certain kinds of national or community service", and adding, in their place, the words "child care professions".

■ 6. Section 682.201 is amended by revising paragraphs (b)(1)(vi) and (vii) and (b)(2), removing paragraph (b)(1)(viii), and adding paragraph (b)(3) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(b) * * *

(1) * * *

(vi) Meets the requirements of paragraphs (a)(4), (a)(5), (a)(6), and (a)(7) of this section, as applicable; and

(vii) In the case of a Federal PLUS loan made on or after July 1, 1993, does not have an adverse credit history or obtains an endorser who has been determined not to have an adverse credit history as provided in paragraph (b)(2)(ii) of this section.

(2)(i) For purposes of this section, the lender must obtain a credit report on each applicant from at least one national credit bureau. The credit report must be secured within a timeframe that would ensure the most accurate, current representation of the borrower's credit history before the first day of the period of enrollment for which the loan is intended.

(ii) Unless the lender determines that extenuating circumstances existed, the lender must consider each applicant to have an adverse credit history based on the credit report if—

(A) The applicant is considered 90 or more days delinquent on the repayment of a debt; or

(B) The applicant has been the subject of a default determination, bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment, or write-off of a Title IV debt, during the five years preceding the date of the credit report.

(iii) Nothing in this paragraph precludes the lender from establishing more restrictive credit standards to determine whether the applicant has an adverse credit history.

(iv) The absence of any credit history is not an indication that the applicant has an adverse credit history and is not to be used as a reason to deny a PLUS loan to that applicant.

(v) The lender must retain a record of its basis for determining that extenuating circumstances existed. This record may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

(3) For purposes of paragraph (b)(1) of this section, a "parent" includes the individuals described in the definition of "parent" in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

* * * * *

■ 7. Section 682.206 is amended by revising paragraph (e)(1) to read as follows:

§ 682.206 Due diligence in making a loan.

* * * * *

(e) * * *

(1) A FFEL Program loan must be made without security or endorsement, except as provided in paragraph (e)(2) of this section.

* * * * *

■ 8. Section 682.207 is amended by:

■ A. Removing paragraph (b)(1)(vi) immediately following paragraph (b)(1)(iii).

■ B. Adding a paragraph (b)(1)(iv).

■ C. In paragraph (b)(1)(v)(B)(*1*), in the first sentence, removing the word "a" and adding, in its place, the word "an".

■ D. In paragraph (b)(1)(vi), removing the reference to "(f)(1)" and adding, in its place, the reference "(f)".

■ E. Adding a paragraph (b)(2).

The additions read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender.

* * * * *

(2) Except as provided in paragraph (b)(1)(v)(C)(*2*) of this section, neither a lender nor a school may obtain a borrower's power-of-attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power-of-attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower pursuant to the borrower's endorsement or written certification under paragraph (b)(1)(ii)(A) of this section.

* * * * *

■ 9. Section 682.209 is amended by:

■ A. In paragraph (a)(2)(v), removing the reference to "(a)(2)(i)" and adding, in its place, the reference to "(a)(2)(ii)".

■ B. Revising paragraph (a)(3)(ii)(B).

The revision reads as follows:

§ 682.209 Repayment of a loan.

(a) * * *

(3) * * *

(ii) * * *

(B) 60 days from the expiration of a deferment or forbearance period;

* * * * *

§ 682.210 [Amended]

■ 10. Section 682.210 is amended in paragraph (c)(5), by adding the word "or" after the first occurrence of the word "internship".

■ 11. Section 682.211 is amended by:
■ A. In paragraph (a)(4), removing the reference to "(f)(9)" and adding, in its place, the reference to "(f)(10)".
■ B. Revising paragraph (f)(3).
■ C. In paragraph (f)(4), removing the period and adding, in its place, a semicolon.
■ D. In paragraph (f)(7), removing the word "or" after the semi-colon.
■ E. In paragraph (f)(8), removing the period and adding, in its place, a semicolon.
■ F. In paragraph (f)(9), removing the figure "45" and adding, in its place, the figure "60"; and removing the period and adding, in its place, a semi-colon.
■ G. In paragraph (f)(10), removing the period at the end of the last sentence and adding, in its place, "; or".

The revision reads as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(3) For the period beginning when the borrower entered repayment without the lender's knowledge until the first payment due date was established;

* * * * *

§ 682.213 [Amended]

■ 12. Section 682.213 is amended, in the first sentence, by removing the word "principle" and adding, in its place, the word "principal".

■ 13. Section 682.302 is amended by revising paragraph (b)(1) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(b) * * *

(1) Except for nonsubsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, FFEL loans that otherwise meet program requirements are eligible for special allowance payments as provided in paragraphs (b)(2), (b)(3), and (e) of this section.

* * * * *

§ 682.401 [Amended]

■ 14. Section 682.401 is amended by:
■ A. In paragraph (b)(6)(i), removing the reference to "§ 682.600" and adding, in its place, the reference to "§ 668.14(a)".
■ B. In paragraph (e), in the introductory sentence, removing the word "be" and adding, in its place, the word "not".

§ 682.402 [Amended]

■ 15. Section 682.402 is amended by:
■ A. In paragraph (k)(5)(i), removing the word "dies" and adding, in its place, the word "died".
■ B. In paragraph (r)(1), in the first sentence, removing the word "as" and adding, in its place, the word "has".

■ 16. Section 682.405 is amended by revising paragraph (b)(3) to read as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(3) An eligible lender purchasing a rehabilitated loan must establish a repayment schedule that meets the same requirements that are applicable to other FFEL Program loans made under the same loan type and provides for the borrower to make monthly payments at least as great as the average of the 12 consecutive monthly payments received by the guaranty agency. The lender must treat the first payment made under the 12 consecutive payments as the first payment under the applicable maximum repayment term, as defined under § 682.209(a) or (h). For Consolidation loans, the maximum repayment term is based on the balance outstanding at the time of loan rehabilitation.

§ 682.410 [Amended]

■ 17. Section 682.410(c)(1)(i)(B) is amended by removing the words "as defined in § 682.800(d)".

§ 682.415 [Amended]

■ 18. Section 682.415 is amended by:
■ A. In paragraph (c)(2)(i), removing the reference to "§§ 682.410(b)(6)(i) through (xii)" and adding, in its place, the reference to "§§ 682.410(b)(6)(i) through (vi)".
■ B. In paragraph (c)(4), in the first sentence, removing the reference to "§§ 682.410(b)(6)(i) through (xii)" and adding, in its place, the reference to "§§ 682.410(b)(6)(i) through (vi)".
■ C. In paragraph (c)(6)(i), in the first sentence, removing the reference to "§§ 682.410(b)(6)(i) through (xii)" and adding, in its place, the reference to "§§ 682.410(b)(6)(i) through (vi)".
■ D. In paragraph (d)(1), removing the reference to "§§ 682.410(b)(6)(i) through (xii)" and adding, in its place, the reference to "§§ 682.410(b)(6)(i) through (vi)".

§ 682.505 [Amended]

■ 19. Section 682.505 is amended by:
■ A. Revising the paragraph immediately after paragraph (b), by adding "(c)" before the heading "FISL loans—insurance premium calculation.".
■ B. Revising the paragraph immediately after paragraph (e)(2)(ii), by adding "(f)" before the heading "Collection from borrowers.".

§ 682.603 [Amended]

■ 20. Section 682.603(e) is amended, in the introductory sentence, by removing the word "student" and adding, in its place, the word "borrower".

■ 21. Section 682.604 is amended by:
■ A. Revising paragraph (b)(2)(i).
■ B. In paragraph (d)(4), revising the introductory sentence.
■ C. In paragraph (g)(2)(iv), removing the reference to "paragraph (f)(2)" and adding, in its place, the reference to "paragraphs (f)(2)(i) through (f)(2)(iv)".

The revisions read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(b) * * *

(2) * * *

(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student, or a parent in the case of a PLUS loan, if the school determines the student has continuously maintained eligibility in accordance with the provisions of § 682.201 from the beginning of the loan period for which the loan was intended.

* * * * *

(d) * * *

(4) If the school is unable for any other reason to document that a registered student attended school during the period of enrollment for which the loan is made, the school must determine the student's withdrawal date as required under § 682.605, and by the deadline described in § 682.607(c), shall notify the lender of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the lender—

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 22. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

§ 685.102 [Amended]

■ 23. Section 685.102(b)(2)(i)(A) is amended to revise the definition of "Estimated financial assistance" by removing the words "Direct PLUS Loan amounts" and adding, in their place, the words "PLUS loan amounts".

§ 685.200 [Amended]

■ 24. Section 685.200 is amended by:

■ A. In paragraph (a)(1)(iv)(C)(2), removing the words "requirement in paragraph (a)(1)(iv)(A)(1)" and adding, in their place, the words "requirements in paragraphs (a)(1)(iv)(A)(*1*) and (*2*)".

■ B. In paragraph (a)(1)(iv)(C)(*3*), removing the words "neither the prior loan nor the Direct Loan that the borrower receives may" and adding, in their place, the words "the loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot".

§ 685.203 [Amended]

■ 25. Section 685.203(b) is amended by removing the words "Federal Unsubsidized Stafford/Ford Loan Program" and adding, in their place, the words "Federal Unsubsidized Stafford Loan Program".

§ 685.205 [Amended]

■ 26. Section 685.205(b)(3) is amended by adding the words "without the Secretary's knowledge" after the word "repayment".

■ 27. Section 685.207 is amended by revising paragraph (f) to read as follows:

§ 685.207 Obligation to repay.

* * * * *

(f) *Determining the date on which the grace period begins for a borrower in a correspondence program.* For a borrower of a Direct Subsidized or Direct Unsubsidized Loan who is a correspondence student, the grace period specified in paragraphs (b)(2) and (c)(2) of this section begins on the earliest of—

(1) The day after the borrower completes the program;

(2) The day after withdrawal as determined pursuant to 34 CFR 668.22; or

(3) 60 days following the last day for completing the program as established by the school.

§ 685.210 [Amended]

■ 28. Section 685.210(b)(1) is amended, in the second sentence, by removing the reference to "§ 685.211(c)(3)(ii)" and adding, in its place, the reference to "§ 685.211(d)(3)(ii)".

§ 685.220 [Amended]

■ 29. Section 685.220 is amended by:

■ A. In paragraph (b)(1), adding the word "Subsidized" after the word "Federal".

■ B. In paragraph (d)(1)(ii)(F), removing the reference to "§ 685.209(d)(5)" and adding, in its place, the reference to "§ 685.209(c)(7)".

■ C. In paragraph (h)(2), removing the reference to "(d)(1)(ii)(E)" and adding, in its place, the reference to "(d)(1)(ii)(F)".

§ 685.301 [Amended]

■ 30. Section 685.301 is amended by:

■ A. In paragraph (a)(4)(i), adding a period after "§ 685.203" and removing the remainder of the sentence.

■ B. In paragraph (a)(7), removing the word "student" and adding, in its place, the word "borrower".

§ 685.302 [Removed and Reserved]

■ 31. Section 685.302 is removed and reserved.

§ 685.303 [Amended]

■ 32. Section 685.303 is amended in paragraph (b)(2)(i) by removing the words "described in the promissory note" and adding, in their place, the words "for which the loan was intended".

[FR Doc. 03–32062 Filed 12–30–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0377; FRL–7340–5]

Fluroxypyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluroxypyr in or on field corn, sweet corn, sorghum, range and pasture grass. Dow AgroSciences LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective December 31, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0377, must be received on or before March 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703)305–6224; e-mail address: *miller.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., Agricultural workers; Greenhouse, nursery, and floriculture workers; Farmers.
- Animal production (NAICS 112), e.g., Cattle ranchers and farmers, Dairy cattle farmers, Livestock farmers.
- Food manufacturing (NAICS 311), e.g., Agricultural workers; Farmers; Greenhouse, nursery, and floriculture workers; Ranchers; Pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., Agricultural workers; Commercial applicators; Farmers; Greenhouse, nursery, and floriculture workers; Residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0377. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html/*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of May 14, 2003 (68 FR 25883) (FRL–7301–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 9F6050) by Dow AgroSciences LLC, 9330 Zionville Road, Indianapolis, IN 46268. That notice included a summary of the petition prepared by Dow AgroSciences LLC, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.535 be amended by establishing tolerances for combined residues of the herbicide fluroxypyr 1-methylheptyl ester [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy) acetic acid, 1-methylheptyl] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy) acetic acid], free and conjugated, all expressed as fluroxypyr, in or on the following raw agricultural commodities: Sweet corn at 0.02 parts per million (ppm) for kernels plus cob with husk removed, and forage and stover at 1.0 ppm. Tolerances for residues of fluroxypyr in or on field corn are being proposed in support of this registration as follows: grain, 0.02 ppm; forage, 1.0 ppm; and stover, 0.5 ppm. Tolerances for residues of fluroxypyr in or on sorghum as follows: Grain, 0.02 ppm; forage, 2.0 ppm; and stover, 4.0 ppm. Tolerances for residues of fluroxypyr in or on grasses as follows: Forage, 120 ppm; hay, 160 ppm; and grass silage, 100 ppm. Increased tolerances are also proposed for fluroxypyr in or on the following animal commodities: Milk of cattle, goats, hogs, horses and sheep at 0.3 ppm; and kidney of cattle, goats, hogs, horses and sheep at 1.5 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of fluroxypyr on or in field corn, grain at 0.02 ppm; field corn, forage at 1.0 ppm; field corn, stover at 0.5 ppm; on or in sweet corn, kernels plus cob with husks removed at 0.02 ppm; sweet corn, forage at 1.0 ppm; sweet corn, stover at 2.0 ppm; on or in sorghum, grain at 0.02 ppm; sorghum, forage at 2.0 ppm; sorghum, stover (fodder) at 4.0 ppm; on or in grass, forage at 120 ppm; grass, hay at 160 ppm; and a tolerance for combined residues of fluroxypyr on cattle, milk; goat, milk; hog, milk; horse, milk; and sheep, milk at 0.3 ppm; and on cattle, kidney; goat, kidney; hog, kidney; horse, kidney; and sheep, kidney at 1.5 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fluroxypyr are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity—Rats	NOAEL = 700 milligram/kilogram/day (mg/kg/day) LOAEL = 1,000 mg/kg/day based on decreased body weight gain & testis weight (M), decreased brain weight (F), and increased kidney weight (M/F).
870.3100	90–Day oral toxicity—Mice	NOAEL = 1,342 mg/kg/day (Males)/ 1,748 mg/kg/day (Females) LOAEL not established.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3200	21/28–Day dermal toxicity	NOAEL = 1,000 mg/kg/day LOAEL not established
870.3700	Prenatal developmental—Rodents	Maternal NOAEL = 300 mg/kg/day LOAEL = 600 mg/kg/day based on increased maternal deaths and decreased body weight gains and food consumption. Developmental NOAEL = 600 mg/kg/day LOAEL not established.
870.3700	Prenatal developmental—Nonrodents	Maternal NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on increased abortions. Developmental NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on increased abortions.
870.3800	Reproduction and fertility effects	Parental/Systemic NOAEL = 100 mg/kg/day (Males) / 500 mg/kg/day (Females) LOAEL = 500 mg/kg/day (Males) / 1,000 mg/kg/day (Females), based on kidney effects (M&F) and increased deaths (F). Reproductive NOAEL = 750 mg/kg/day (Males) / 1,000 mg/kg/day (Females). LOAEL not established. Offspring NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on decreased pup weight and body weight gain and slightly lower survival.
870.4100	Chronic toxicity—Dogs	NOAEL = 150 mg/kg/day LOAEL not established.
870.4200	Carcinogenicity—Mice	NOAEL = 300 mg/kg/day (Males/Females) LOAEL = 1,000 mg/kg/day based on decreased body weight and body weight gain (M) and increased kidney lesions (F).(no) evidence of carcinogenicity
870.4300	Carcinogenicity—Rats	NOAEL = 100 mg/kg/day LOAEL = 500 mg/kg/day based on chronic progressive kidney glomerulonephropathy (M&F).(no) evidence of carcinogenicity
870.5100	Bacterial reverse mutation	Negative.
870.5300	*In vitro* mammalian cell gene mutation	Negative, but did not test a soluble dose.
870.5375	*In vitro* mammalian chromosome aberration (HL)	Negative.
870.5395	Mammalian micronucleus (mouse)	Negative.
870.7485	Metabolism and pharmacokinetics	Total recovery of the administered dose was 105%, with the principal route of excretion being expired $14CO_2$, which contained approximately 61% of the radioactivity for the fluroxypyr MHE. The urine contained approximately 30% and the feces contained 5% of the administered dose. At 48 hours post dose, approximately 7% of the administered dose was recovered in the blood, carcass, and skin. Approximately 52% of the administered dose was absorbed and expired as $14CO_2$ within 12 hours post dose, and an additional 18% of the administered dose was excreted in the urine within 12 hours post dose. Based on the percentage of dose in the expired $14CO_2$, urine, and tissues, approximately 90% of the dose was absorbed. Once absorbed, it was extensively metabolized and rapidly expired as $14CO_2$ and eliminated in the urine with a half-life of 6 hours. Peak plasma concentrations of 14C-radioactivity were attained by 7 hours post dose.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: “Traditional uncertainty factors;” the "special FQPA safety factor;" and the "default FQPA safety factor." By the term "traditional uncertainty factor," EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term "special FQPA safety factor" refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The "default FQPA safety factor" is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1 X 10^{-5}), one in a million (1 X 10^{-6}), or one in ten million (1 X 10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/ exposures) is calculated.

A summary of the toxicological endpoints for fluroxypyr used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUROXYPYR FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary(All populations)	NOAEL = NA UF = NA Acute RfD = NA	FQPA SF = NA aPAD = acute RfD/ FQPA SF = NA	No appropriate endpoint to quantify single dose exposure.
Chronic Dietary(All populations)	NOAEL= 100 mg/kg/day UF = 100 Chronic RfD =1 mg/kg/day	FQPA SF = 1x cPAD =chronic RfD/ FQPA SF = 1 mg/kg/day	Chronic/Onco-Rat LOAEL = 100 mg/kg/day based on kidney effects.
Short-TermIncidental Oral (1-30 days)	NOAEL= 100 mg/kg/day	Residential LOC for MOE = 100 Occupational = NA	Chronic/Onco-Rat LOAEL = 100 mg/kg/day based on kidney effects.
Intermediate-TermIncidental Oral (1- 6 months)	NOAEL= 100 mg/kg/day	Residential LOC for MOE = 100 Occupational = NA	Chronic/Onco-Rat LOAEL = 100 mg/kg/day based on kidney effects.
Dermal(All durations)	Dermal (or oral) study NOAEL=NA	Residential LOC for MOE = NA Occupational LOC for MOE = NA	Quantification not required since 21-Day dermal rabbit NOAEL = 1,000 mg/kg/day and there is no developmental toxicity concern.
Inhalation(All durations)	Inhalation (or oral) study NOAEL= 100 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Chronic/Onco-Rat LOAEL = 100 mg/kg/day based on kidney effects.
Cancer (oral, dermal, inhalation)	Classification: "not likely" human carcinogen		

UF = uncertainty factor, FQPA SF = Special FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern, NA = Not Applicable

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.535) for the combined residues of fluroxypyr, in or on a variety of raw agricultural commodities. Tolerances have also been established for the combined residues of fluroxypyr on meat and milk. Risk assessments were conducted by EPA to assess dietary exposures from fluroxypyr in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

No adverse effect attributable to a single exposure (dose) of fluroxypyr was observed in the oral toxicity studies. Therefore, EPA did not identify an acute dietary endpoint and a quantitative acute dietary assessment was not performed because no acute risk is expected.

ii. *Chronic exposure.* In conducting the chronic dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: 100% crop treated (PCT) and tolerance-level residues for fluroxypyr on all treated crops. This assessment was Tier I analysis. The exposures from fluroxypyr residues are below EPA's level of concern (<100% of the chronic population adjusted dose (cPAD)) for the general U.S. population (<1% of the cPAD) and all population subgroups.

iii. *Cancer.* Fluroxypyr is classified as "not likely" a human carcinogen and there was no concern for its mutagenicity potential.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fluroxypyr in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fluroxypyr.

The Agency used the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), a Tier 2 model, to estimate pesticide concentrations in surface water. PRZM/EXAMS incorporates an index reservoir environment and includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin. The Tier 1 Screening Concentration In Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fluroxypyr they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of fluroxypyr for acute exposures are estimated to be 32.9 parts per billion (ppb) for surface water and 0.04 ppb for ground water. The EECs for chronic exposures are estimated to be 3.3 ppb for surface water and 0.062 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluroxypyr is currently registered for use on the following residential non-dietary sites: Residential turfgrass and recreational sites such as golf courses and sports fields. The risk assessment was conducted using the following residential exposure assumptions: Adults and children may be exposed to fluroxypyr residues from dermal contact with turf during postapplication activities. Toddlers may receive short- and intermediate-term oral exposure from incidental ingestion during postapplication activities. Residential handlers may receive short-term dermal and inhalation exposure to fluroxypyr when mixing, loading and applying the formulations.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fluroxypyr has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluroxypyr and any other substances and fluroxypyr does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fluroxypyr has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in

calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10 X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no evidence of increased susceptibility of rat or rabbit fetuses following in utero exposure in the developmental studies with fluroxypyr. There is no evidence of increased susceptibility of rats in the reproduction study with fluroxypyr. EPA concluded there are no residual uncertainties for prenatal and/or postnatal exposure.

3. *Conclusion*. There is a complete toxicity data base for fluroxypyr and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be removed and instead, a different additional safety factor of 1X should be used. The FQPA factor is removed because: There is no evidence (quantitative/qualitative) of increased susceptibility following in utero exposure to the acid and the ester of fluroxypyr in rats and rabbits, or following pre and/or postnatal exposure to the acid of fluroxypyr in rats; there are no concerns or residual uncertainties for pre- and/or post-natal toxicity; there is no evidence of neurotoxicity or neuropathology in the available studies; the toxicological database is complete for FQPA assessment; the chronic dietary food exposure assessment utilizes tolerance level residue estimates and assumes 100% CT for all commodities, thus not likely to underestimate exposure/risk; the dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded; and the residential exposure assessment was conducted using standard assumptions which are based on carefully reviewed data.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/ 70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. A quantitative acute risk assessment was not performed. No adverse effect attributable to a single exposure(dose) of fluroxypyr was observed in the oral toxicity studies and no acute risk is expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fluroxypyr from food will utilize <1% of the cPAD for the U.S. population, <1% of the cPAD for all infants, and 1.4% of the cPAD for children (1-2 years old). In addition, there is potential for chronic dietary exposure to fluroxypyr in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit. Based upon the use pattern, chronic (non-dietary) residential exposure to residues of fluroxypyr is not expected.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUROXYPYR

PopulationSubgroup	cPADmg/kg/ day	%cPAD(Food)	Surface Water EEC(ppb)	Ground-Water EEC(ppb)	ChronicDWLOC (ppb)
U.S. Population	1	<1	3.3	0.042	35,000
All infants (<1 year old)	1	<1	3.3	0.042	10,000
Children (1-2 years old)	1	1.4	3.3	0.042	9,900

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluroxypyr is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for fluroxypyr.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 31,000 for the U.S. population and 4,500 for children (1-2 years old). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of fluroxypyr in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO FLUROXYPYR

PopulationSubgroup	AggregateMOE(Food + Residential)	Aggregate Level of Concern(LOC)	Surface Water EEC(ppb)	Ground-Water EEC(ppb)	Short-Term DWLOC (ppb)
U.S. Population	31,000	100	3.3	0.042	35,000
Children(1-2 years old)	4,500	100	3.3	0.042	9,800

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluroxypyr is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for fluroxypyr.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 31,000 for the U.S. population and 4,500 for children (1-2 years old). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of fluroxypyr in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO FLUROXYPYR

PopulationSubgroup	AggregateMOE(Food + Residential)	Aggregate Level of Concern(LOC)	Surface Water EEC(ppb)	Ground-Water EEC(ppb)	Intermediate-Term DWLOC (ppb)
U.S. Population	31,000	100	3.3	0.042	35,000
Children(1-2 years old)	4,500	100	3.3	0.042	9,800

5. *Aggregate cancer risk for U.S. population.* Fluroxypyr is classified as a not likely human carcinogen and is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fluroxypyr residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The gas chromatography/mass selective detector (GC/MSD) enforcement method, submitted by Dow AgroSciences LLC, has been validated for the determination of residues of fluroxypyr and fluroxypyr 1-MHE as the acid equivalent in plant commodities. The method for livestock commodities has been validated for the determination of residues of fluroxypyr and fluroxypyr 1-MHE in cow milk and liver. The proposed plant and animal method is adequate for enforcement of tolerances in/on field corn, sweet corn, sorghum, range and pasture grass, and animal commodities as a result of this use.

Fluroxypyr has been tested through the FDA's Multiresidue Methodology, Protocols C, D, and E. The results have been published in the FDA Pesticide Analytical Manual, Volume I.

B. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits, for residues of fluroxypyr in/on field corn, sweet corn, sorghum, range and pasture grass. Harmonization is not an issue for this petition.

C. Conditions

The following data are being required to confirm the results of the studies already reviewed by the Agency and/or to complete the database requirements prior to approval of an unconditional sweet corn registration:

i. Additional field trials - conduct and submit four (4) additional field trials in Regions III (1 trial), V(1 trial), XI(1 trial), and XII(1 trial). Residue analysis of sweet corn field trial samples should avoid using the DowElanco Method ACR 90.8, due to matrix interference cited in PP#2G04066.

ii. Storage stability data - submit to support the sweet corn field trial data.

iii. 28-Day Inhalation Toxicity Study

V. Conclusion

Therefore, the tolerances are established for combined residues of fluroxypyr 1-methylheptyl ester [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy) acetic acid, 1-methylheptyl] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy) acetic acid], free and conjugated, all expressed as fluroxypyr, in or on field corn, grain at 0.02 ppm; field corn, forage at 1.0 ppm; field corn, stover at 0.5 ppm; on or in sweet corn, kernels plus cob with husks removed at 0.02 ppm; sweet corn, forage at 1.0 ppm; sweet corn, stover at 2.0 ppm; on or in sorghum, grain at 0.02 ppm; sorghum, forage at 2.0 ppm; sorghum, stover (fodder) at 4.0 ppm; and on or in grass, forage at 120 ppm; grass, hay at 160 ppm. Tolerances are revised for combined residues of fluroxypyr on cattle, milk; goat, milk;

hog, milk; horse, milk; and sheep, milk at 0.3 ppm; and on cattle, kidney; goat, kidney; hog, kidney; horse, kidney; and sheep, kidney at 1.5 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0377 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 1, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0377, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 2003.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.535 is amended by alphabetically adding new commodities and revising the commodities "cattle, kidney," "goat, kidney," "hog, kidney," "horse, kidney," "milk," and "sheep, kidney" in the table in paragraph (a) to read as follows:

§ 180.535 Fluroxypyr; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Cattle, kidney	1.5
* * *	* *
Corn, field, forage	1.0
Corn, field, grain	0.02
Corn, field, stover	0.5
Corn, sweet, forage	1.0
Corn, sweet, kernel plus cob with husks removed	0.02
Corn, sweet, stover	2.0
* * *	* *
Goat, kidney	1.5
* * *	* *
Grass, forage	120
Grass, hay	160
* * *	* *
Hog, kidney	1.5
* * *	* *
Horse, kidney	1.5
* * *	* *
Milk	0.3
* * *	* *
Sheep, kidney	1.5
* * *	* *
Sorghum, grain, forage	2.0
Sorghum, grain, grain	0.02
Sorghum, grain, stover	4.0
* * *	* *

* * * * *

[FR Doc. 03–32007 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0394; FRL–7337–5]

Cyprodinil; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends the time-limited tolerances for residues of cyprodinil, 4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine in or on onion, dry bulb; onion, green; and strawberry. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on December 31, 2004.

DATES: This regulation is effective December 31, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0394, must be received on or before March 1, 2004.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailedinstructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address:*brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0394. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of November 12, 2003 (68 FR 64102) (FRL–7333–4), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 8E5012) by Interregional Research Project Number 4, 681 U.S. Highway 1 South, North Brunswick, NJ 08902. This notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.532 be amended by extending tolerances for residues of the fungicide cyprodinil, 4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine, in or on onion, dry bulb at 0.60 parts per million (ppm), onion, green at 4.0 ppm, and strawberry at 5.0 ppm. The tolerance will expire on December 31, 2004.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA , for tolerances for residues of cyprodinil, 4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine on onion, dry bulb at 0.60 ppm, onion, green at 4.0 ppm, and strawberry at 5.0 ppm ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cyprodinil are discussed in Unit III.A. of the final rule on Cyprodinil Time-Limited Pesticide Tolerance published in the **Federal Register** of June 22, 2001 (66 FR 33478) (FRL–6778–7).

B. Toxicological Endpoints

A summary of the toxicological endpoints for cyprodinil used for human risk assessment is discussed in

Unit III.B. of the final rule on Cyprodinil Time-Limited Pesticide Tolerance published in the **Federal Register** of June 22, 2001 (66 FR 33478) (FRL–6778–7).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.532) for the residues of cyprodinil, in or on a variety of raw agricultural commodities. Acute, and chronic exposure assessments conducted by EPA to assess dietary exposures from cyprodinil are discussed in Unit III.C.1 of the final rule on Cyprodinil Time-Limited Pesticide Tolerance published in the **Federal Register** of June 22, 2001 (66 FR 33478) (FRL–6778–7).

2. *Dietary exposure from drinking water.* PRZM/EXAMS and SCI-GROW model estimated environmental concentrations (EECs) for cyprodinil for acute and chronic exposures are discussed in Unit III.C.2 of the final rule on Cyprodinil Time-Limited Pesticide Tolerance published in the **Federal Register** of June 22, 2001 (66 FR 33478) (FRL–6778–7).

3. *From non-dietary exposure.* Cyprodinil is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether cyprodinil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyprodinil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Prenatal and postnatal sensitivity are discussed in Unit III.D.1.(ii) of the final rule on Cyprodinil Time-Limited Pesticide Tolerance published in the **Federal Register** of June 22, 2001 (66 FR 33478) (FRL–6778–7).

3. *Conclusion.* There is a complete toxicity data base for cyprodinil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be reduced to 1X. For further discussion, see Unit III.D.1.(iii) of the final rule on Cyprodinil Time-Limited Pesticide Tolerance published in the **Federal Register** of June 22, 2001 (66 FR 33478) (FRL–6778–7).

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* The acute risk assessment for cyprodinil is discussed in Unit III.E.1 of the final rule on Cyprodinil Time-Limited Pesticide Tolerance published in the **Federal Register** of June 22, 2001 (66 FR 33478) (FRL–6778–7).

2. *Chronic risk.* The chronic risk assessment for cyprodinil is discussed in Unit III.E.2 of the final rule on Cyprodinil Time-Limited Pesticide Tolerance published in the **Federal Register** of June 22, 2001 (66 FR 33478) (FRL–6778–7).

3. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic potential, cyprodinil was classified as not likely to be carcinogenic to humans. Therefore, cyprodinil is not expected to pose a cancer risk to humans.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to cyprodinil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The results of Multiresidue Method testing of cyprodinil and its metabolite

CGA –232449 have been forwarded to the Food and Drug Administration (FDA). Cyprodinil was tested according to the FDA Multiresidue protocols (Protocols C, D, and E), and acceptable recoveries were obtained for cyprodinil fortified in apples at 0.50 ppm using Protocol D. The petitioner is proposing the Method AG-631A as a tolerance enforcement method for residues of cyprodinil in/on the subject crops. The method includes confirmatory procedures using gas chromatography/nitrogen/phosphorus detector (GC/NPD). The method has successfully undergone radiovalidation using 14C-labeled tomato samples and independent laboratory validation. In addition, the method has been the subject of acceptable Agency petition method validations on stone fruits and almond nutmeat and hulls.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

Canada, Codex, and Mexico do not have maximum residue limits (MRLs) for residues of cyprodinil in/on the proposed crops. Therefore, harmonization is not an issue.

V. Conclusion

Therefore, the tolerance is established for residues of cyprodinil, 4-cyclopropyl-6-methyl-*N*-phenyl-2-pyrimidinamine, in or on onion, dry bulb at 0.60 ppm, onion, green at 4.0 ppm, and strawberry at 5.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0394 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 1, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0394, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801*et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 12, 2003.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.532 is amended by revising the commodities in the table in paragraph (a)(2) to read as follows:

§ 180.532 Cyprodinil; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million	Expiration/revocation date
Onion, dry bulb	0.60	12/31/04
Onion, green	4.0	12/31/04
Strawberry	5.0	12/31/04

* * * * *

[FR Doc. 03–32061 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 419

[CMS–1471–CN]

RIN 0938–AL19

Medicare Program; Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates; Final Rule; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects errors in the final rule with comment period that appeared in the **Federal Register** on November 7, 2003, entitled "Medicare Program; Changes to the Hospital Outpatient Prospective Payment System

and Calendar Year 2004 Payment Rates; Final Rule." This notice is a supplement to the November 7, 2003 final rule and is completely separate from any notice that promulgates new policy that results from enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Dana Burley, (410) 786–0378.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 03–27791 of November 7, 2003 (68 FR 63398), there were several technical errors as well as a number of public comments that were received timely, but that we inadvertently failed to address. The errors include incorrect or potentially misleading responses, and in Addenda A and B, omissions and typographical errors. In addition, we are adding information to the addenda that was not available when we published the final rule. This additional information does not affect payment under the hospital outpatient prospective payment system (OPPS). We ordinarily provide a 30-day delay in the effective date of the provisions of a notice. Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the notice issued. In addition, section 1871(e)(1) of the Social Security Act, as amended by section 903(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (DIMA), also requires that a substantive change in a regulation shall not become effective before the end of the 30-day period that begins on the date that the Secretary has issued or published the substantive change. Section 1871(e)(1) of the Social Security Act, as amended by section 903(b)(1) of DIMA, provides an exception to that requirement if the Secretary finds that the waiver of such 30-day period is necessary to comply with statutory requirements or that the application of such 30-day period is contrary to the public interest. We find good cause to waive the 30-day delay in effective date for this correction notice as set forth in section III, "Waiver of 30-Day Delay in Effective Date," below.

II. Correction of Errors

A. Correction of Inaccurate Information

On page 63423, first column, fifth sentence, we stated: "The case of APC 0108, we used the external device cost data that was used to set the median for the 2003 OPPS because we received no outside data for the 2004 OPPS for this APC and because the proposed median of $28,685.30 set forth in the proposed rule was considerably higher than the final rule data median of $23,944.80, which resulted when additional claims were used to calculate the median cost."

We subsequently determined that external data that met our preferred criteria for use in setting payment rates had been furnished as part of a timely, properly submitted comment for APC 0108. Therefore, we have revised the median cost and payment rate ($23,641.27) that was in the final rule for this APC using the data submitted in the comment. The new payment rate is $24,699.74. See Table 1 below for the complete revised values information.

To correct this error, we remove the fifth sentence in column 1 on page 63423 and replace it with the following: "In the case of APC 0108, we used external device cost data submitted in a comment on the proposed rule to set the median for the 2004 OPPS. The proposed median of $28,685.30 set forth in the proposed rule was considerably higher than the median calculated for the final rule, $23,944.80, which resulted when additional claims were used to calculate the median cost. The use of this external data raised the payment rate to a level we believe is more appropriate."

B. Responses to Comments Not Included in the Final Rule

Bone Marrow Harvesting

Comment: A commenter asserted that the claims data for Physicians' Current Procedural Terminology (CPT) codes 38230 (bone marrow harvesting), 38240 (bone marrow/stem cell transplantation, allogenic), and 38241 (bone marrow/stem cell transplantation, autologous) are seriously flawed. For instance, the median cost for CPT code 38230 (using data for 35 claims) was $74.81. The commenter stated that CPT code 38230 involves a 60–90 minute operating room procedure performed under general anesthesia, with costs more closely approaching the payment rate for APC 0111 (paying $718.67) than APC 0123 (paying $288.53), its current APC placement. The commenter expressed similar concern over the claims data for CPT codes 38240 and 38241, asserting that their placement in APC 0123 results in inadequate payment to cover the costs of bone marrow and stem cell transplantation.

The commenter urged us to move CPT codes 38230, 38240, and 38241 from APC 0123 (bone marrow harvesting/stem cell transplant, paying $288.53) to APC 0111 (blood product exchange, paying $718.67).

Response: We agree with the commenter that the claims data for CPT code 38230 appear to be based on flawed claims. We believe that the costs involved in performing CPT code 38230 (bone marrow harvesting) are more similar to the costs involved in performing CPT codes 38205 and 38206 (stem cell harvesting, placed in APC 0111); therefore, we will move CPT code 38230 from APC 0123 to APC 0111. We will maintain the payment rate for APC 0111 at $718.67 as stated in the November 7, 2003 final rule, since we believe the claims for CPT code 38230 represent aberrant data and should not be used to recalculate the payment rate for APC 0111.

In contrast, we do not believe that the claims data for CPT codes 38240 and 38241 are flawed. The resource utilization of performing bone marrow and stem cell transplantations is similar to the resource utilization of performing infusion therapy services (which are paid $210 in APC 0110), since bone marrow and stem cell transplantations involve no incision and no unusual instruments or equipment. Therefore, we believe that the APC placement of CPT codes 38240 and 38241 in APC 0123 sufficiently captures the costs involved in performing these services. Although these codes will remain in APC 0123, their payment rate in APC 0123 will increase by $47.01 (from $288.53 to $335.54) above the rate stated in the November 7, 2003 final rule, as a result of moving CPT code 38230 out of APC 0123 and recalculating the median for APC 0123 based on CPT codes 38240 and 38241 that remain in APC 0123.

Cobalt 60-Based Stereotactic Radiosurgery

Comment: A commenter requested that we combine CPT codes G0242 (Cobalt 60-based stereotactic radiosurgery plan) and G0243 (Cobalt 60-based stereotactic radiosurgery delivery). The commenter explained that, before 2000, we allowed Cobalt 60-based stereotactic radiosurgery to be appropriately billed using CPT code 61793 (stereotactic radiosurgery—particle beam, gamma ray or linear accelerator—one or more sessions), the same code that non-Medicare payers continue to use for this procedure.

However, our current guidelines for coding this procedure necessitate the billing of two codes (planning and delivery), and therefore, correct billing of this treatment using the current codes results in a multiple procedure claim. The commenter asserted that because we calculate medians using only single claims, the APC placement of Healthcare Common Procedure Coding System (HCPCS) codes G0242 and G0243 was based on aberrant single claims.

The commenter requested that these codes (G0242 and G0243) be combined into a single procedure code (that is, CPT code 61793) in order for us to accurately capture the costs of this treatment in a single claim because both parts of this treatment (planning and delivery) are always delivered on the same day in one surgical procedure. Based on resource consumption and clinical homogeneity, the commenter suggested that we place this single procedure code in one of the following APCs: 0222 (paying $12,670), 0226 (paying $7,437), or 0227 (paying $8,775).

Response: In addition to the above comment, we received several other comments stating that HCPCS code G0242 (Cobalt 60-based stereotactic radiosurgery plan) was being used inappropriately for linear accelerator-based stereotactic radiosurgery (SRS) planning in addition to Cobalt 60-based SRS planning, due to the nonexistence of a code to bill for linear accelerator-based SRS planning. Considering the current misuse of HCPCS code G0242 and the potential for causing greater confusion by combining CPT codes G0242 and G0243, we created a planning code for linear accelerator-based SRS (G0338) to distinguish this procedure from Cobalt 60-based SRS planning. Since the claims data for G0242 represent costs for linear accelerator-based SRS planning (due to misuse of the code) in addition to Cobalt 60-based SRS planning, we are uncertain of how to combine these data with G0243 (Cobalt 60-based SRS delivery) to determine an accurate payment rate for a combined code for planning and delivery of Cobalt 60-based SRS. Therefore, we will solicit input from the APC Panel at its next meeting in early 2004.

In the meantime, we will maintain two separate HCPCS codes (G0242 and G0243) for the planning and delivery of Cobalt 60-based SRS treatment, consistent with the use of two G codes for the planning (G0338) and delivery (G0173, G0251, G0339, G0340, as applicable) of each type of linear accelerator-based SRS treatment, as described below.

Correct Coding for Various Types of Stereotactic Radiosurgery (SRS):

- Cobalt 60-based, multi-source SRS—
  Planning—G0242 (APC 1516 paying $1,450)
  Delivery—G0243 (APC 1528 paying $5,250)
- Linear accelerator-based SRS—
  Non-robotic linear accelerator-based SRS (complete session)
  —Planning—G0338 (APC 1516 paying $1,450)
  —Delivery—G0173 (APC 1528 paying $5,250)
  Non-robotic linear accelerator-based SRS (fractionated sessions)
  —Planning—G0338 (APC 1516 paying $1,450)
  —Delivery—G0251 (APC 1513 paying $1,150, per session)
  Image-guided robotic linear accelerator-based SRS (complete session or first session of fractionated treatment)—
  —Planning—G0338 (APC 1516 paying $1,450)
  —Delivery—G0339 (APC 1528 paying $5,250)
  Image-guided robotic linear accelerator-based SRS (fractionated treatment, 2nd—5th sessions)—
  —Planning—G0338 (APC 1516 paying $1,450)
  —Delivery—G0340 (APC 1525 paying $3,750, per session)

Comment: A commenter urged us to recognize the cost and clinical differences between HCPCS codes G0243 and G0173 by placing them in separate APCs.

Response: We believe that the low volume of single claims for HCPCS code G0243 (172 single claims out of 1,033 total claims = 17 percent of total claims) does not substantiate movement of this code into a procedural APC at this time, and there is no clinical reason for a reassignment. Therefore, we will keep HCPCS code G0243 in new technology APC 1528 with a payment of $5,250 for CY 2004.

ProstacScint

Comment: The manufacturer of ProstaScint (indium capromab pendetide), a diagnostic agent used for the imaging of prostate cancer, indicated that this product's proposed payment rate is significantly below the cost that hospitals incur in acquiring ProstaScint. The manufacturer stated that reduced payment would restrict hospitals from providing ProstaScint studies to Medicare beneficiaries and have a significant negative effect on the treatment and outcomes of patients at risk for prostate cancer. The commenter submitted a survey of hospitals demonstrating their costs of purchasing ProstaScint.

Response: We agree with the commenter that the use of only hospital claims data to set the payment rate for ProstaScint may adversely impact beneficiary access. We believe that the external data submitted by the manufacturer meets our preferred criteria; therefore, we will use the external data to establish an adjusted median cost for this product by blending the median cost derived from our dampening methodology with the external cost data on a one-to-one ratio.

APC	HCPCS	Short descriptor	2004 adjusted median cost	External acquisition cost	2004 1:1 Blended median cost
1604	A9507	Indium/111 capromab pendetide	$726.50	$1,610.75	$1,168.63

Arthroscopy

Comment: One commenter requested that we assign CPT code 29827 to APC 0042 (Level II Arthroscopy). The code was new for 2003 and was assigned to APC 0041 (Level I Arthroscopy). The commenter provided information to support the assertion that the procedure described by CPT code 29827 is very similar to that described by CPT code 29826 with regard to operating room time required, equipment requirements, and complexity. However, procedures coded as CPT code 29826 are assigned to APC 0042.

Response: Our medical staff evaluated this request and decided that they would like the advice of the APC Panel before making a determination. In their analysis of the assignments for CPT codes 29826 and 29827, they determined that it would be appropriate to solicit input from the APC Panel regarding the clinical coherence of both APCs 0041 and 0042. The APC Panel will meet in early 2004, and we plan to include these APCs on the agenda for its consideration. The date for the APC Panel meeting and registration information will be published in the **Federal Register** and on the CMS OPPS Web site at least 60 days before the meeting date.

Photoselective Vaporization of the Prostate

Comment: Several commenters urged us to increase payment for CPT codes 52647 and 52648 (photoselective vaporization of the prostate (PVP)). They expressed concern that other less effective procedures requiring less skill have a significantly higher proposed payment rate. Commenters stated that the proposed payment rate for PVP under APC 0163 does not cover the costs of providing access to this new technology.

Response: Based on our claims data, we believe that CPT codes 52647 and 52648 are appropriately placed in APC 0163 for CY 2004, but the commenters may want to consider applying for a new CPT/HCPCS code for this procedure so that it is identifiable separately from other procedures. Alternatively, PVP may be a candidate for consideration under the OPPS new technology process. We refer interested parties to our Web site *www.cms.hhs.gov/providers/hopps/* for further information on the new technology application and evaluation process.

Inpatient-Only List

Comment: We received a comment requesting that we remove several codes from the inpatient-only list. The codes are: 44901 (Incision and drainage of appendiceal abscess; percutaneous); 49021 (Drainage of peritoneal abscess or localized peritonitis, exclusive of appendiceal abscess; percutaneous); 49041 (Drainage of subdiaphragmatic or subphrenic abscess; percutaneous); and 49061 (Drainage of retroperitoneal abscess; percutaneous). The commenters based their request on the fact that codes they believe are similar to 44901, 49021, 49041, and 49061 are not on the inpatient-only list. Codes that they used as examples included 32201 (Pneumonostomy; with percutaneous drainage of abscess or cyst); and 50021 (Drainage of perirenal or renal abscess; percutaneous).

Response: The information provided by the commenter did not provide an adequate basis for our medical staff to make a decision. Instead, our physicians will solicit input from additional specialty groups that provide care to the patients undergoing these procedures. We will also present this issue to the APC Panel for consideration at its next meeting in early 2004.

Neutron Radiotherapy

Comment: We received a comment requesting that we create a new "G" code for neutron radiotherapy so that these procedures can be assigned to a new APC. At this time, the procedures are coded using a CPT code that includes other procedures that the commenter does not believe are related to neutron radiotherapy. The commenter believes the combination of procedures in the CPT code is inappropriate.

Response: We evaluated this request and continue to believe that the current coding is appropriate. We do not believe that creation of a new "G" code is warranted in this case because there is a CPT code that specifically describes this procedure.

Magnetic Resonance Imaging and Magnetic Resonance Angiography

Comment: We received a comment requesting that we assign magnetic resonance imaging and magnetic resonance angiography to separate APCs. These procedures are currently assigned to APCs 0336 and 0337.

Response: We evaluated this request and continue to believe that the current assignments are appropriate and result in accurate payment for the procedures.

Fetal Echocardiogram

Comment: We received one comment requesting that we reassign codes for fetal echocardiograms (CPT 76825 through 76827) to APC 0269. The codes are currently assigned to APCs 0671 and 0697.

Response: We believe that the APC assignments for these CPT codes continue to be appropriate. We used most of the submitted claims for calculating medians for these codes. We believe the resource use and clinical coherence in the current APCs are appropriate.

New Orphan Drug

Comment: We received a comment requesting that arsenic trioxide (Trisenox) be considered as a single-indication orphan drug for Medicare OPPS. The drug has orphan status from the FDA for treatment of multiple myeloma, myelodysplastic syndrome, chronic myeloid leukemia, and chronic lymphocystic anemia.

Response: After careful evaluation, we agree that arsenic trioxide does meet our criteria for special payment as a single indication orphan drug. As we stated in our final rule (68 FR 63453), we are setting payment under the 2004 OPPS for single indication orphan drugs at 88 percent of the average wholesale price listed for these drugs in the April 1, 2003 single drug pricer unless we are presented with verifiable information that shows that our payment rate does not reflect the price that is widely available to the hospital market. For 2004, the payment rate for Trisenox will be $34.32 per unit.

C. Revisions and Corrections to Addenda A and B

As a result of a HCPCS coding change, the relative weight, payment rate, and minimum unadjusted copayment for APC 0012 as published on page 63478, are incorrect. Code 11057 moved from APC 0012 to APC 0013, and we failed to update the APCs in time for the final rule. The correct values for APC 0012 are: relative weight, 0.7612; payment rate, $41.53; and minimum unadjusted copayment amount, $8.31. The correct values for APC 0013 are relative weight, 1.1302; payment rate, $61.66; and the minimum unadjusted copayment is unchanged. These values are listed in bold type in Table 1 below.

As a result of our use of external data, APC 0108 has new values in Addendum A on page 63479. The correct relative weight is 452.6995, the payment rate increases to $24,669.74, and the minimum unadjusted copayment becomes $4,939.95. These values are listed in bold type in Table 1 below.

In response to a comment, we moved HCPCS code 43752 from APC 0272 to APC 0121. This move resulted in new Addendum A values for both of these APCs. The incorrect values on page 63479 for APC 0121 are corrected as follows: relative weight, 2.1114; payment rate, $115.2; and minimum unadjusted copayment amount, $23.04.

On page 63481, the incorrect values for APC 0272 are corrected as follows: relative weight, 1.4184; payment rate, $77.39; and minimum unadjusted copayment, $15.48.

In response to a comment that we overlooked, we moved CPT code 38230 from APC 0123 to APC 0111. This resulted in new values for APC 0123 in Addendum A. The values on page 63479 are corrected as follows: relative weight, 6.1499; payment rate, $335.54; and minimum unadjusted copayment amount, $67.11. There are no changes to the values for APC 0111. These values are listed in bold type in Table 1 below.

On page 63482, the values for APC 0321 are incorrect due to a change in the status indicator for HCPCS code 90901. The status indicator was changed to "A" and, therefore, does not contribute to the calculation of the APC median. We correct the values for APC 0321 by replacing the values on page 63482 with the following: relative weight, 1.4817; payment rate, $80.84; and minimum unadjusted copayment amount, $16.17. These values are listed in bold type in Table 1 below.

The status indicator for HCPCS code 96105 was changed to "A" and, therefore, should not contribute to the calculation of the APC median. The values for APC 0373 on page 63482 are incorrect because the code (96105) was used under its previous status indicator "X" and was therefore included in the media calculation. We replace the values in Addendum A on page 63482 with the following correct values: relative weight, 2.3288; payment rate, $127.06; and minimum unadjusted copayment amount, $25.41. These values are listed in bold type in Table 1 below.

The relative weight, copayment and payment rates are incorrect for APC 0384 as published on page 63482. Two HCPCS codes (43268 and 43269) were moved from APC 0151 into APC 0384, and those changes were not reflected in the published Addendum A. We replace the values for APC 0384 with the following: relative weight, 36.54; payment rate, $1,993.66; national unadjusted copayment, $433.01; and minimum unadjusted copayment, $398.73. The values for APC 0151 do not change. These values are listed in bold type in Table 1 below.

APC 0413 was listed in Addendum A on page 63483 in error. No codes are assigned to this APC, so it no longer exists. We remove APC 0413.

We correct Addenda A and B by adding the relative weight for APC 0734 on page 63484 in Addendum A and for CPT/HCPCS codes C1774 and Q0137 on pages 63610 and 36350, respectively, in Addendum B. The relative weight is 0.0594 for both of these codes.

The values for APC 1604 are incorrect as published on page 63486. Additional data were available but inadvertently were not used in the median calculation for this APC. The new values reflect use of the additional data. We correct the values for APC 1604 as follows: relative weight, 20.2752; payment rate, $1,106.24; and minimum unadjusted copayment, $221.25. These values are listed in bold type in Table 1 below.

On page 63487, the payment rate for APC 9012 is corrected to reflect its new status as a single-indication orphan drug. We correct the payment rate to $34.32 and the minimum unadjusted copayment to $6.86.

On page 63488, the descriptor for APC 9116 is incorrect. We correct it to read "Inj. Ertapenem sodium, per 500 mg."

For the following CPT/HCPCS codes on the pages identified, beginning on page 63488 and concluding on page 63644, we listed outdated descriptors. We correct the descriptor on page 63488 for code 0002T; page 63496 for code 15852; page 63548 for code 55870; page 63619 for code E0141; page 63622 for codes E0973 and E0974; page 63623 for code E0978; page 63624 for code E1226; page 63627 for codes G0210, G0213, G0214, G0215, G0230, G0246, G0247, G0248; page 63630 for code J1563; page 63631 for codes J2260 and J2324; page 63633 for code J8700; page 63636 for code K0560; page 63637 for codes K0600, K0607, K0614, K0615, K0616, and K0617; page 63643 for codes L4350, L4360, and L4386; and on page 63644 for codes L5646 and L5648. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the codes identified above.

On page 63627, CPT/HCPCS G0244 is listed with an incorrect relative weight, payment rate, and copayment amount. We correct the current relative weight, payment rate, and copayment, by inserting 6.6961, $365.35, and $73.07, respectively. See Table 2 below for the corrected values.

On page 63634, CPT/HCPCS J9017 is listed with an incorrect relative weight, payment rate, and copayment. J9017 is an orphan drug and is reimbursed at 88 percent of AWP. We correct the addendum by replacing current values with a payment rate of $34.32 and minimum unadjusted copayment of $6.86.

On page 63590, we incorrectly assigned status indicator A to CPT/HCPCS 90918 through 90925. These codes are replaced by G0320 through G0327. Therefore, codes 90918 through 90925 are assigned status indicator E. On page 63590, for CPT/HCPCS 90918, 90919, 90920, 90921, 90922, 90924, and 90925, we remove the status indicator A and insert status indicator E. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the codes identified above.

The following CPT/HCPCS codes were omitted from Addendum B of the November 7, 2003, final rule: 99375, status indicator E, home health care supervision, effective 1/1/03; 99378, status indicator E, hospice care supervision, effective 1/1/03; G0308, status indicator A, condition NI, ESRD related svc 4+mo<2yrs; G0309, status indicator A, condition NI, ESRD related svc 2–3mo<2rs; G0310, status indicator A, condition NI, ESRD related svc 1vst<2yr; G0311, status indicator A, condition NI, ESRD related svs 4+mo 2–11 yr; G0312, status indicator A, condition NI, ESRD related svs 2–3 mo 2–11 yr; G0313, status indicator A, condition NI, ESRD related svs 1 mon 2–11 yr; G0314, status indicator A, condition NI, ESRD related svs 4+mo 12–19; G0315, status indicator A, condition NI, ESRD related svs 2–3 mo 12–19; G0316, status indicator A, condition NI, ESRD related svs 1 vst 12–19y; G0317, status indicator A, condition NI, ESRD related svs 4+mo 20+yrs; G0318, status indicator A, condition NI, ESRD related svs 2–3 mo 20+y; G0319, status indicator A, condition NI, ESRD related svs 1 visit 20+y; G0320, status indicator A, condition NI, ESRD related svs home under 2; G0321, status indicator A, condition NI, ESRD related svs home mo<2ys; G0322, status indicator A, condition NI, ESRD related svs home mo12–19; G0328, status indicator A, condition NI, fecal blood scrn immunoassay; all effective 1/1/04; and P9603, status indicator A, One-way allow prorated miles, effective 1/1/92. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the codes identified above.

On page 63608, we incorrectly assigned status indicator B and condition NI to CPT/HCPCS A9527, I-131 tositumomab therapeutic. New code A9534, with the same descriptor, replaces A9527, effective 1/1/04. A9527 is removed effective 1/1/04, with no grace period. On page 63608, for CPT/HCPCS A9527, we remove the status indicator of B and insert a status indicator of D. We remove the condition NI and insert a condition of DNG. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the code identified above.

For the CPT/HCPCS codes on the pages identified, beginning on page 63490 and concluding on page 63653, we incorrectly listed status indicator E instead of status indicator B. We correct the status indicator on page 63490 for codes 0054T, 0055T, 0056T, 0057T, 0060T, and 0061T; page 63598 for codes 99002 and 99140; page 63604 for codes A4671, A4672, and A4673; page 63605 for codes A4674 and A4728; page 63624 for code E1634; page 63633 for J7330; page 63641 for L3350; and page 63653 for code V2761. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the codes identified above.

For the following CPT/HCPCS codes on the pages identified, beginning on page 63490 and concluding on page 63619, we incorrectly listed condition

DG (deleted with grace). These codes are not deleted for 2004, and the condition should be blank. We correct the condition on page 63490 for codes 00546, 00548, 00550, 00560, 00562, 00563, and 00566; and page 63539 for codes 47135, 47136, 47300, and 47350; and page 63619 for E0165. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the codes identified above.

On page 63569, CPT/HCPCS 76977 was inadvertently assigned an incorrect status indicator. We remove status indicator S and insert status indicator X. The payment rates are correct as is. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the code identified above.

On page 63590, CPT/HCPCS 92019 was assigned an incorrect status indicator. We remove status indicator S and insert status indicator T. The payment rates are correct as is. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the code identified above.

On page 63608, CPT/HCPCS A9700 was incorrectly assigned an APC, relative weight, payment rate, and copayment. A9700 is not payable under OPPS, and no payment should be made for this service. We remove the APC, relative weight, payment rate, and minimum unadjusted copayment. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the code identified above.

On page 63588, CPT/HCPCS codes 90296 and 90581 are incorrectly assigned a status indicator, APC, relative weight, payment rate, and copayment. Effective 1/1/04, codes 90296 and 90581 are packaged services and therefore are assigned status indicator N. For codes 90296 and 90581, we remove status indicator K, APC, payment rate, and minimum unadjusted copayment, and insert status indicator N. See Table 2—Corrections to Addendum B of the November 7, 2003, Final Rule for corrections to Addendum B for the codes identified above.

On page 63623, CPT/HCPCS code E1065 omits condition DG. This code is deleted with grace period effective January 1, 2004. We correct this by inserting DG in the condition column.

Many codes were incorrectly listed with status indicator A that should be listed with the new status indicator Y, indicating that the code is not paid under OPPS, but should be billed to the Durable Medical Equipment Regional Carrier (DMERC). They are listed in Tables 3–5. In addition, codes A4232, A4632, E0188, E0189, E0218, E0602, E0740, E0760, E0765, K0610, K0611, K0612, and K0613 were incorrectly listed with status indicator E, but should be listed with status indicator Y. Codes E0967, E0969, E0977, E0980, E0994, E0997, E0998, E0999, E1001, E1035, E1065, and E1227 were incorrectly listed with status indicator B, but should be listed with status indicator Y. For all these codes, we remove the current status indicator and insert status indicator Y. See Tables 3–5 for a list of codes for which the status indicator has changed from A, E, or B to Y.

On page 63471 of the November 7, 2002 Final Rule, we specify that HCPCS codes for drugs, biologicals, and radiopharmaceuticals that are new for 2004 yet have no predecessor will be assigned packaged status for 2004.

On pages 63608 and 63652, HCPCS codes A9526 and Q4078, respectively, were incorrectly assigned a status indicator, APC, relative weight, payment rate, and copayment. Effective 1/1/04, codes A9526 and Q4078 are packaged services and therefore are assigned status indicator N. For these codes, we remove status indicator K, APC, payment rate, and minimum unadjusted copayment, and insert status indicator N.

On page 63415 of the November 7, 2003 Final Rule, we state that we plan to delete HCPCS C1088 effective 1/1/04. Addendum B does not list this code as deleted. For HCPCS C1088, we remove status indicator T, APC, payment rate, and minimum unadjusted copayment, and insert status indicator D and condition DNG (deleted with no grace period).

III. Waiver of 30-Day Delay in Effective Date

We ordinarily provide a 30-day delay in the effective date of the provisions of a notice. Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause that the delay is impracticable, unnecessary, or contrary to the public interest. In addition, section 1871(e)(1) of the Social Security Act, as amended by section 903(b)(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (DIMA), also requires that a substantive change in a regulation shall not become effective before the end of the 30-day period that begins on the date that the Secretary has issued or published the substantive change. Section 1871(e)(1) of the Social Security Act, as amended by section 903(b)(1) of DIMA, provides an exception to that requirement if the Secretary finds that the waiver of such 30-day period is necessary to comply with statutory requirements or that the application of such 30-day period is contrary to the public interest. The agency must incorporate a statement of the good cause finding and rationale in the published rule.

In this case, we believe that it is in the public interest to make the corrections identified above effective January 1, 2004 without the 30-day delay in effective date. In most cases, these errors were the result of our inadvertent failure to address a number of public comments that were received timely, incorrect or potentially misleading responses, and omissions and typographical errors in Addenda A and B. In addition, we have added information to the addenda that was not available when we published the November 7, 2003 final rule. This information does not affect payment under the OPPS. A delay in the effective date of this notice would result, in most cases, in underpayment of hospitals beginning January 1, 2004. If we did not make these changes, hospitals would be paid improperly, and beneficiaries' access to care may be impeded. Therefore, we find good cause to waive the 30-day delay in effective date.

TABLE 1.—ADDENDUM A CORRECTIONS AS CORRECTED BY THIS FEDERAL REGISTER DOCUMENT

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0012	Level I Debridement & Destruction	T	0.7612	41.53	11.18	8.31
0013	Level II Debridement & Destruction	T	1.1302	61.66	14.20	12.33

TABLE 1.—ADDENDUM A CORRECTIONS AS CORRECTED BY THIS FEDERAL REGISTER DOCUMENT—Continued

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.	T	452.6995	24699.74		4939.95
0121	Level I Tube changes and Repositioning.	T	2.1114	115.20	43.80	23.04
0123	Bone Marrow Harvesting and Bone Marrow/Stem Cell Transplant.	S	6.1499	335.54		67.11
0272	Level I Fluoroscopy	X	1.4184	77.39	38.36	15.48
0321	Biofeedback and Other Training	S	1.4817	80.84	21.78	16.17
0339	Observation	S	6.6961	365.35		73.07
0373	Neuropsychological Testing	X	2.3288	127.06		25.41
0384	GI Procedures with Stents	T	36.5400	1993.66	433.01	398.73
APC 0413 is deleted						
0734	Injection, darbepoetin alfa (for non-ESRD, per 1 mcg.	K	0.0594	3.24		0.65
9012	Arsenic Trioxide	K		34.32		6.86
1604	IN 111 capromab pendetide, per dose.	K	20.2752	1106.24		221.25

TABLE 2.—ADDENDUM B CORRECTIONS AS CORRECTED BY THIS FEDERAL REGISTER DOCUMENT-

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0002T	C	DG	endo repair abd aa aorto uni					
00546	C		Anesth, lung, chest wall surg					
00548	N		Anesth, trachea, bronchi surg					
0054T	B	NI	Bone surgery using computer					
00550	N		Anesth, sternal debridement					
0055T	B	NI	Bone surgery using computer					
00560	C		Anesth, open heart surgery					
00562	C		Anesth, open heart surgery					
00563	N		Anesth, heart proc w/pump					
00566	N		Anesth, cabg w/o pump					
0056T	B	NI	Bone surgery using computer					
0057T	B	NI	Uppr gi scope w/ thrml txmnt					
0060T	B	NI	Electrical impedance scan					
0061T	B	NI	Destruction of tumor, breast					
11001	T		Debride infected skin add-on	0012	0.7612	41.53	11.18	8.31
11055	T		Trim skin lesion	0012	0.7612	41.53	11.18	8.31
11056	T		Trim skin lesions, 2 to 4	0012	0.7612	41.53	11.18	8.31
11057	T		Trim skin lesions, over 4	0013	1.1302	61.66	14.20	12.33
11200	T		Removal of skin tags	0013	1.1302	61.66	14.20	12.33
11300	T		Shave skin lesion	0012	0.7612	41.53	11.18	8.31
11301	T		Shave skin lesion	0012	0.7612	41.53	11.18	8.31
11302	T		Shave skin lesion	0012	0.7612	41.53	11.18	8.31
11305	T		Shave skin lesion	0013	1.1302	61.66	14.20	12.33
11306	T		Shave skin lesion	0013	1.1302	61.66	14.20	12.33
11307	T		Shave skin lesion	0013	1.1302	61.66	14.20	12.33
11308	T		Shave skin lesion	0013	1.1302	61.66	14.20	12.33
11310	T		Shave skin lesion	0013	1.1302	61.66	14.20	12.33
11311	T		Shave skin lesion	0013	1.1302	61.66	14.20	12.33
11312	T		Shave skin lesion	0013	1.1302	61.66	14.20	12.33
11730	T		Removal of nail plate	0013	1.1302	61.66	14.20	12.33
11732	T		Remove nail plate, add-on	0012	0.7612	41.53	11.18	8.31
11900	T		Injection into skin lesions	0012	0.7612	41.53	11.18	8.31
11901	T		Added skin lesions injection	0012	0.7612	41.53	11.18	8.31
15786	T		Abrasion, lesion, single	0012	0.7612	41.53	11.18	8.31
15787	T		Abrasion, lesions, add-on	0013	1.1302	61.66	14.20	12.33
15788	T		Chemical peel, face, epiderm	0012	0.7612	41.53	11.18	8.31
15792	T		Chemical peel, nonfacial	0012	0.7612	41.53	11.18	8.31
15793	T		Chemical peel, nonfacial	0012	0.7612	41.53	11.18	8.31
15852	X		Dressing change not for burn	0340	0.6314	34.45		6.89
16000	T		Initial treatment of burn(s)	0012	0.7612	41.53	11.18	8.31
16020	T		Treatment of burn(s)	0013	1.1302	61.66	14.20	12.33
16025	T		Treatment of burn(s)	0012	0.7612	41.53	11.18	8.31
17250	T		Chemical cautery, tissue	0013	1.1302	61.66	14.20	12.33
17271	T		Destruction of skin lesions	0013	1.1302	61.66	14.20	12.33
17340	T		Cryotherapy of skin	0012	0.7612	41.53	11.18	8.31
17360	T		Skin peel therapy	0012	0.7612	41.53	11.18	8.31

TABLE 2.—ADDENDUM B CORRECTIONS AS CORRECTED BY THIS FEDERAL REGISTER DOCUMENT—Continued

CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
17380	T		Hair removal by electrolysis	0012	0.7612	41.53	11.18	8.31
31502	T		Change of windpipe airway	0121	2.1114	115.20	43.80	23.04
38230	S		Bone marrow collection	0111	13.1719	718.67	200.18	143.73
38240	S		Bone marrow/stem transplant	0123	6.1499	335.54		67.11
38241	S		Bone marrow/stem transplant	0123	6.1499	335.54		67.11
43219	T		Esophagus endoscopy	0384	36.5400	1993.66	433.01	398.73
43256	T		Uppr gi endoscopy w stent	0384	36.5400	1993.66	433.01	398.73
43268	T		Endo cholangiopancreatograph	0384	36.5400	1993.66	433.01	398.73
43269	T		Endo cholangiopancreatograph	0384	36.5400	1993.66	433.01	398.73
43752	T		Nasal/orogastric w/stent	0121	2.1114	115.20	43.80	23.04
43760	T		Change gastrostomy tube	0121	2.1114	115.20	43.80	23.04
43761	T		Reposition gastrostomy tube	0121	2.1114	115.20	43.80	23.04
44370	T		Small bowel endoscopy/stent	0384	36.5400	1993.66	433.01	398.73
44379	T		S bowel endoscope w/stent	0384	36.5400	1993.66	433.01	398.73
44383	T		Ileoscopy w/stent	0384	36.5400	1993.66	433.01	398.73
44397	T		Colonoscopy w/stent	0384	36.5400	1993.66	433.01	398.73
44500	T		Intro, gastrointestinal tube	0121	2.1114	115.20	43.80	23.04
45327	T		Proctosigmoidoscopy w/stent	0384	36.5400	1993.66	433.01	398.73
45345	T		Sigmoidoscopy w/stent	0384	36.5400	1993.66	433.01	398.73
45387	T		Colonoscopy w/stent	0384	36.5400	1993.66	433.01	398.73
46916	T		Cryosurgery, anal lesion(s)	0013	1.1302	61.66	14.20	12.33
47135	C		Transplantation of liver					
47136	C		Transplantation of liver					
47300	C		Surgery for liver lesion					
47350	C		Repair liver wound					
51705	T		Change of bladder tube	0121	2.1114	115.20	43.80	23.04
54050	T		Destruction, penis lesion(s)	0013	1.1302	61.66	14.20	12.33
54056	T		Cryosurgery, penis lesion(s)	0012	0.7612	41.53	11.18	8.31
55870	T		Electroejaculation	0197	4.8280	263.42		52.68
62194	T		Replace/irrigate catheter	0121	2.1114	115.20	43.80	23.04
69220	T		Clean out mastoid cavity	0012	0.7612	41.53	11.18	8.31
70370	X		Throat x-ray & fluoroscopy	0272	1.4184	77.39	38.36	15.48
70371	X		Speech evaluation, complex	0272	1.4184	77.39	38.36	15.48
71023	X		Chest x-ray and fluoroscopy	0272	1.4184	77.39	38.36	15.48
71034	X		Chest x-ray and fluoroscopy	0272	1.4184	77.39	38.36	15.48
71090	X		X-ray & pacemaker insertion	0272	1.4184	77.39	38.36	15.48
74340	X		X-ray guide for GI tube	0272	1.4184	77.39	38.36	15.48
76000	X		Fluoroscope examination	0272	1.4184	77.39	38.36	15.48
76120	X		Cine/video x-rays	0272	1.4184	77.39	38.36	15.48
76496	X		Fluoroscopic procedure	0272	1.4184	77.39	38.36	15.48
76977	X		Us bone density measure	0340	0.6314	34.45		6.89
90296	N		Diphtheria antitoxin					
90581	N		Anthrax vaccine, sc					
90911	S		Biofeedback peri/uro/rectal	0321	1.4817	80.84	21.78	16.17
90918	E		ESRD related services, month					
90919	E		ESRD related services, month					
90920	E		ESRD related services, month					
90921	E		ESRD related services, month					
90922	E		ESRD related services, day					
90923	E		ESRD related services, day					
90924	E		ESRD related services, day					
90925	E		ESRD related services, day					
92019	T		Eye exam & treatment	0699	2.2303	121.69	47.46	24.34
96100	X		Psychological testing	0373	2.3288	127.06		25.41
96110	X		Developmental test, lim	0373	2.3288	127.06		25.41
96111	X		Developmental test, extend	0373	2.3288	127.06		25.41
96115	X		Neurobehavior status exam	0373	2.3288	127.06		25.41
96117	X		Neuropsych test battery	0373	2.3288	127.06		25.41
96920	T		Laser tx, skin < 250 sq cm	0012	0.7612	41.53	11.18	8.31
96921	T		Laser tx, skin 250–500 sq cm	0012	0.7612	41.53	11.18	8.31
96922	T		Laser tx, skin > 500 sq cm	0013	1.1302	61.66	14.20	12.33
99002	B		Device handling					
99140	B		Emergency anesthesia					
99375	E		Home health care supervision					
99378	E		Hospice care supervision					
A4671	B	NI	Disposable cycler set					
A4672	B	NI	Drainage ext line, dialysis					
A4673	B	NI	Ext line w easy lock connect					
A4674	B	NI	Chem/antisept solution, 8oz					
A4728	B	NI	Dialysate solution, non-dex					

TABLE 2.—ADDENDUM B CORRECTIONS AS CORRECTED BY THIS FEDERAL REGISTER DOCUMENT—Continued

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A9507	K		Indium/111 capromab pendetid	1604	20.2752	1106.24		221.25
A9526	N	NI	Ammonia N–13, per dose					
A9527	D	DNG	I–131 tositumomab therapeut					
A9700	E		Echocardiography Contrast					
C1088	D	DNG	Laser Optic Tr Sys					
C1774	K	DG	Darbepoetin alfa, 1 mcg	0734	0.0594	3.24		0.65
E0141	Y		Rigid wheeled walker adj/fix					
E0165	A		Commode chair stationry det					
E0973	B		W/Ch access det adj armrest					
E0974	B		W/Ch access anti-rollback					
E0978	B		W/C acc,saf belt pelv strap					
E1065	B	DG	Wheelchair power attachment					
E1226	B		W/C access fully reclineback					
E1634	B	NI	Peritoneal dialysis clamp					
G0210	S		PET img wholebody dxlung			1450.00		290.00
G0213	S		PET img wholbody dx			1450.00		290.00
G0214	S		PET img wholebod init			1450.00		290.00
G0215	S		PETimg wholebod restag			1450.00		290.00
G0230	S		PET myocard viability post			1450.00		290.00
G0244	S		Observ care by facility topt	0339	6.6961	365.35		73.07
G0246	V		Followup eval of foot pt lop	0600	0.9278	50.62		10.12
G0247	T		Routine footcare pt w lops	0009	0.6652	36.29	8.34	7.26
G0248	S		Demonstrate use home inr mon	1503		150.00		30.00
G0272	X	DG	Naso/oro gastric tube pl MD	0272	1.4184	77.39	38.36	15.48
G0299	T	NF	Inser/repos single icd+leads	0108	452.6995	24699.74		4939.95
G0300	T	NF	Insert reposit lead dual+gen	0108	452.6995	24699.74		4939.95
G0308	A	NI	ESRD related svc 4+mo<2yrs					
G0309	A	NI	ESRD related svc 2–3mo<2yrs					
G0310	A	NI	ESRD related svc 1vst<2yr					
G0311	A	NI	ESRD related svs 4+mo 2–11 yr					
G0312	A	NI	ESRD relate svs 2–3 mo 2–11 y					
G0313	A	NI	ESRD related svs 1 mon 2–11 y					
G0314	A	NI	ESRD related svs 4+mo 12–19					
G0315	A	NI	ESRD related svs 2–3 mo 12–19					
G0316	A	NI	ESRD related svs 1 vis/ 12–19y					
G0317	A	NI	ESRD related svs 4+mo 20+yrs					
G0318	A	NI	ESRD related svs 2–3 mo 20+y					
G0319	A	NI	ESRD related svs 1 visit 20+y					
G0320	A	NI	ESRD related svs home undr 2					
G0321	A	NI	ESRD related svs home mo<2ys					
G0322	A	NI	ESRD related svs hom mo12–19					
G0328	A	NI	Fecal blood scrn immunoassay					
J1563	K		IV immune globulin	0905	0.8057	43.96		8.79
J2260	K		Inj milrinone lactate/5 MG	7007	0.2129	11.62		2.32
J2324	G		Nesiritide	9114		151.62		22.66
J7330	B		Cultured chondrocytes implnt					
J8700	K		Temozolomide	1086	0.0690	3.76		0.75
J9017	K		Arsenic trioxide	9012		34.32		6.86
K0560	N	DG	MCP joint 2-piece for implnt					
K0600	Y	NF	Functional neuromuscularstim					
K0607	Y	NF	Repl batt for AED					
K0614	Y	DG	Chem/antisept solution, 8oz					
K0615	Y	DG	SGD prerec mes >8min <=20min					
K0616	Y	DG	SGD prerec mes>20min <=40min.					
K0617	Y	DG	SGD prerec mes > 40min					
L3350	B		Shoe heel wedge					
L4350	A		Ankle control orthosi prefab					
L4360	A		Pneumati walking boot prefab					
L4386	A		Non-pneum walk boot prefab					
L5646	A		Below knee cushion socket					
L5648	A		Above knee cushion socket					
P9603	A		One-way allow prorated miles					
Q0137	K	NI	Darbepoetin alfa, non esrd	0734	0.0594	3.24		0.65
Q4078	N	DG	Ammonia N–13, per dose					
V2761	B	NI	Mirror coating					

TABLE 3.— HCPCS WITH STATUS INDICATORS THAT CHANGED FROM B TO Y

CPT/HCPCS	Description
E0967	Wheelchair hand rims.
E0969	Wheelchair narrowing device.
E0977	Wheelchair wedge cushion.
E0980	Wheelchair safety vest.
E0994	Wheelchair arm rest.
E0997	Wheelchair caster w/ a fork.
E0998	Wheelchair caster w/o a fork.
E0999	Wheelchr pneumatic tire w/wh.
E1001	Wheelchair wheel.
E1035	Patient transfer system.
E1065	Wheelchair power attachment.
E1227	Wheelchair spec sz spec ht a.

TABLE 4.—HCPCS WITH STATUS INDICATORS THAT CHANGED FROM A TO Y.

CPT/HCPCS	Description
A4221	Maint drug infus cath per wk.
A4222	Drug infusion pump supplies.
A4230	Infus insulin pump non needle.
A4231	Infusion insulin pump needle.
A4253	Blood glucose/reagent strips.
A4254	Battery for glucose monitor.
A4255	Glucose monitor platforms.
A4256	Calibrator solution/chips.
A4257	Replace Lensshield Cartridge.
A4258	Lancet device each.
A4259	Lancets per box.
A4265	Paraffin.
A4556	Electrodes, pair.
A4557	Lead wires, pair.
A4558	Conductive paste or gel.
A4595	TENS suppl 2 lead per month.
A4608	Transtracheal oxygen cath.
A4609	Trach suction cath clsed sys.
A4610	Trach sctn cath 72h clsedsys.
A4611	Heavy duty battery.
A4612	Battery cables.
A4613	Battery charger.
A4615	Cannula nasal.
A4616	Tubing (oxygen) per foot.
A4617	Mouth piece.
A4618	Breathing circuits.
A4619	Face tent.
A4620	Variable concentration mask.
A4621	Tracheotomy mask or collar.
A4624	Tracheal suction tube.
A4628	Oropharyngeal suction cath.
A4630	Repl bat t.e.n.s. own by pt.
A4631	Wheelchair battery.
A4633	Uvl replacement bulb.
A4635	Underarm crutch pad.
A4636	Handgrip for cane etc.
A4637	Repl tip cane/crutch/walker.
A4639	Infrared ht sys replcmnt pad.
A4640	Alternating pressure pad.
A7000	Disposable canister for pump.
A7001	Nondisposable pump canister.
A7002	Tubing used w suction pump.
A7003	Nebulizer administration set.
A7004	Disposable nebulizer sml vol.
A7005	Nondisposable nebulizer set.
A7006	Filtered nebulizer admin set.
A7007	Lg vol nebulizer disposable.
A7008	Disposable nebulizer prefill.
A7009	Nebulizer reservoir bottle.
A7010	Disposable corrugated tubing.
A7011	Nondispos corrugated tubing.
A7012	Nebulizer water collec devic.
A7013	Disposable compressor filter.
A7014	Compressor nondispos filter.
A7015	Aerosol mask used w nebulize.
A7016	Nebulizer dome & mouthpiece.
A7017	Nebulizer not used w oxygen.
A7018	Water distilled w/nebulizer.
A7019	Saline solution dispenser.
A7020	Sterile H2O or NSS w lgv neb.
A7025	Replace chest compress vest.
A7026	Replace chst cmprss sys hose.
A7030	CPAP full face mask.
A7031	Replacement facemask interfa.
A7032	Replacement nasal cushion.
A7033	Replacement nasal pillows.
A7034	Nasal application device.
A7035	Pos airway press headgear.
A7036	Pos airway press chinstrap.
A7037	Pos airway pressure tubing.
A7038	Pos airway pressure filter.
A7039	Filter, non disposable w pap.
A7044	PAP oral interface.
E0100	Cane adjust/fixed with tip.
E0105	Cane adjust/fixed quad/3 pro.
E0110	Crutch forearm pair.
E0111	Crutch forearm each.
E0112	Crutch underarm pair wood.
E0113	Crutch underarm each wood.
E0114	Crutch underarm pair no wood.
E0116	Crutch underarm each no wood.
E0117	Underarm springassist crutch.
E0130	Walker rigid adjust/fixed ht.
E0135	Walker folding adjust/fixed.
E0141	Rigid wheeled walker adj/fix.
E0142	Walker rigid wheeled with se.
E0143	Walker folding wheeled w/o s.
E0144	Enclosed walker w rear seat.
E0145	Walker whled seat/crutch att.
E0146	Folding walker wheels w seat.
E0147	Walker variable wheel resist.
E0148	Heavyduty walker no wheels.
E0149	Heavy duty wheeled walker.
E0153	Forearm crutch platform atta.
E0154	Walker platform attachment.
E0155	Walker wheel attachment, pair.
E0156	Walker seat attachment.
E0157	Walker crutch attachment.
E0158	Walker leg extenders set of 4.
E0159	Brake for wheeled walker.
E0160	Sitz type bath or equipment.
E0161	Sitz bath/equipment w/faucet.
E0162	Sitz bath chair.
E0163	Commode chair stationry fxd.
E0164	Commode chair mobile fixed a.
E0165	Commode chair stationry det.
E0166	Commode chair mobile detach.
E0167	Commode chair pail or pan.
E0168	Heavyduty/wide commode chair.
E0169	Seatlift incorp commodechair.
E0175	Commode chair foot rest.
E0176	Air pressre pad/cushion nonp.
E0177	Water press pad/cushion nonp.
E0178	Gel pressre pad/cushion nonp.
E0179	Dry pressre pad/cushion nonp.
E0180	Press pad alternating w pump.
E0181	Press pad alternating w/pump.
E0182	Pressure pad alternating pump.
E0184	Dry pressure mattress.
E0185	Gel pressure mattress pad.
E0186	Air pressure mattress.
E0187	Water pressure mattress.
E0191	Protector heel or elbow.
E0192	Pad wheelchr low press/posit.
E0193	Powered air flotation bed.
E0194	Air fluidized bed.
E0196	Gel pressure mattress.
E0197	Air pressure pad for mattress.
E0198	Water pressure pad for mattr.
E0199	Dry pressure pad for mattress.
E0200	Heat lamp without stand.
E0202	Phototherapy light w/photom.
E0205	Heat lamp with stand.
E0210	Electric heat pad standard.
E0215	Electric heat pad moist.
E0217	Water circ heat pad w/pump.
E0220	Hot water bottle.
E0221	Infrared heating pad system.
E0225	Hydrocollator unit.
E0230	Ice cap or collar.
E0235	Paraffin bath unit portable.
E0236	Pump for water circulating p.
E0238	Heat pad non-electric moist.
E0239	Hydrocollator unit portable.
E0249	Pad water circulating heat u.
E0250	Hosp bed fixed ht w/mattress.
E0251	Hosp bed fixed ht w/o mattress.
E0255	Hospital bed var ht w/mattress.
E0256	Hospital bed var ht w/o matt.
E0260	Hosp bed semi-electr w/matt.
E0261	Hosp bed semi-electr w/o matt.
E0265	Hosp bed total electr w/matt.
E0266	Hosp bed total elec w/o matt.
E0271	Mattress innerspring.
E0272	Mattress foam rubber.
E0275	Bed pan standard.
E0276	Bed pan fracture.
E0277	Powered pres-redu air mattrs.
E0280	Bed cradle.
E0290	Hosp bed fx ht w/o rails w/m.
E0291	Hosp bed fx ht w/o rail w/o.
E0292	Hosp bed var ht w/o rail w/o.
E0293	Hosp bed var ht w/o rail w/.
E0294	Hosp bed semi-elect w/ mattrs.
E0295	Hosp bed semi-elect w/o matt.
E0296	Hosp bed total elect w/matt.
E0297	Hosp bed total elect w/o matt.
E0305	Rails bed side half length.
E0310	Rails bed side full length.
E0316	Bed safety enclosure.
E0325	Urinal male jug-type.
E0326	Urinal female jug-type.
E0371	Nonpower mattress overlay.
E0372	Powered air mattress overlay.
E0373	Nonpowered pressure mattress.
E0424	Stationary compressed gas 02.
E0431	Portable gaseous 02.
E0434	Portable liquid 02.
E0439	Stationary liquid 02.
E0441	Oxygen contents, gaseous.
E0442	Oxygen contents, liquid.
E0443	Portable 02 contents, gas.
E0444	Portable 02 contents, liquid.
E0450	Volume vent stationary/porta.
E0454	Pressure ventilator.

TABLE 4.—HCPCS WITH STATUS INDICATORS THAT CHANGED FROM A TO Y.—Continued

CPT/ HCPCS	Description
E0455	Oxygen tent excl croup/ped t.
E0457	Chest shell.
E0459	Chest wrap.
E0460	Neg press vent portabl/statn.
E0461	Vol vent noninvasive interfa.
E0462	Rocking bed w/ or w/o side r.
E0480	Percussor elect/pneum home m.
E0482	Cough stimulating device.
E0483	Chest compression gen system.
E0484	Non-elec oscillatory pep dvc.
E0500	Ippb all types.
E0550	Humidif extens supple w ippb.
E0555	Humidifier for use w/ regula.
E0560	Humidifier supplemental w/ l.
E0565	Compressor air power source.
E0570	Nebulizer with compression.
E0571	Aerosol compressor for svneb.
E0572	Aerosol compressor adjust pr.
E0574	Ultrasonic generator w svneb.
E0575	Nebulizer ultrasonic.
E0580	Nebulizer for use w/ regulat.
E0585	Nebulizer w/ compressor & he.
E0590	Dispensing fee dme neb drug.
E0600	Suction pump portab hom modl.
E0601	Cont airway pressure device.
E0605	Vaporizer room type.
E0606	Drainage board postural.
E0607	Blood glucose monitor home.
E0610	Pacemaker monitr audible/vis.
E0615	Pacemaker monitr digital/vis.
E0617	Automatic ext defibrillator.
E0620	Cap bld skin piercing laser.
E0621	Patient lift sling or seat.
E0627	Seat lift incorp lift-chair.
E0628	Seat lift for pt furn-electr.
E0629	Seat lift for pt furn-non-el.
E0630	Patient lift hydraulic.
E0635	Patient lift electric.
E0636	PT support & positioning sys.
E0650	Pneuma compresor non-segment.
E0651	Pneum compressor segmental.
E0652	Pneum compres w/cal pressure.
E0655	Pneumatic appliance half arm.
E0660	Pneumatic appliance full leg.
E0665	Pneumatic appliance full arm.
E0666	Pneumatic appliance half leg.
E0667	Seg pneumatic appl full leg.
E0668	Seg pneumatic appl full arm.
E0669	Seg pneumatic appli half leg.
E0671	Pressure pneum appl full leg.
E0672	Pressure pneum appl full arm.
E0673	Pressure pneum appl half leg.
E0691	Uvl pnl 2 sq ft or less.
E0692	Uvl sys panel 4 ft.
E0693	Uvl sys panel 6 ft.
E0694	Uvl md cabinet sys 6 ft.
E0701	Helmet w face guard prefab.
E0720	Tens two lead.
E0730	Tens four lead.
E0731	Conductive garment for tens/.
E0744	Neuromuscular stim for scoli.
E0745	Neuromuscular stim for shock.
E0747	Elec osteogen stim not spine.
E0748	Elec osteogen stim spinal.
E0776	Iv pole.
E0779	Amb infusion pump mechanical.
E0780	Mech amb infusion pump <8hrs.
E0781	External ambulatory infus pu.
E0784	Ext amb infusn pump insulin.
E0791	Parenteral infusion pump sta.
E0840	Tract frame attach headboard.
E0850	Traction stand free standing.
E0855	Cervical traction equipment.
E0860	Tract equip cervical tract.
E0870	Tract frame attach footboard.
E0880	Trac stand free stand extrem.
E0890	Traction frame attach pelvic.
E0900	Trac stand free stand pelvic.
E0910	Trapeze bar attached to bed.
E0920	Fracture frame attached to b.
E0930	Fracture frame free standing.
E0935	Exercise device passive moti.
E0940	Trapeze bar free standing.
E0941	Gravity assisted traction de.
E0942	Cervical head harness/halter.
E0943	Cervical pillow.
E0944	Pelvic belt/harness/boot.
E0945	Belt/harness extremity.
E0946	Fracture frame dual w cross.
E0947	Fracture frame attachmnts pe.
E0948	Fracture frame attachmnts ce.
E0962	Wheelchair 1 inch cushion.
E0963	Wheelchair 2 inch cushion.
E0964	Wheelchair 3 inch cushion.
E0965	Wheelchair 4 inch cushion.
E0968	Wheelchair commode seat.
E1011	Ped wc modify width adjustm.
E1012	Int seat sys planar ped w/c.
E1013	Int seat sys contour ped w/c.
E1014	Reclining back add ped w/c.
E1015	Shock absorber for man w/c.
E1016	Shock absorber for power w/c.
E1017	HD shck absrbr for hd man wc.
E1018	HD shck absrber for hd powwc.
E1020	Residual limb support system.
E1025	Pedwc lat/thor sup nocontour.
E1026	Pedwc contoured lat/thor sup.
E1027	Ped wc lat/ant support.
E1031	Rollabout chair with casters.
E1037	Transport chair, ped size.
E1038	Transport chair, adult size.
E1210	Whlchr moto ful arm leg rest.
E1211	Wheelchair motorized w/ det.
E1225	Wheelchair spec sz semi-recl.
E1228	Wheelchair spec sz spec ht b.
E1230	Power operated vehicle.
E1231	Rigid ped w/c tilt-in-space.
E1232	Folding ped wc tilt-in-space.
E1233	Rig ped wc tltnspc w/o seat.
E1234	Fld ped wc tltnspc w/o seat.
E1235	Rigid ped wc adjustable.
E1236	Folding ped wc adjustable.
E1237	Rgd ped wc adjstabl w/o seat.
E1238	Fld ped wc adjstabl w/o seat.
E1296	Wheelchair special seat heig.
E1297	Wheelchair special seat dept.
E1298	Wheelchair spec seat depth/w.
E1310	Whirlpool non-portable.
E1340	Repair for DME, per 15 min.
E1353	Oxygen supplies regulator.
E1355	Oxygen supplies stand/rack.
E1372	Oxy suppl heater for nebuliz.
E1390	Oxygen concentrator.
E1405	O2/water vapor enrich w/heat.
E1406	O2/water vapor enrich w/o he.
E1700	Jaw motion rehab system.
E1701	Repl cushions for jaw motion.
E1702	Repl measr scales jaw motion.
E1800	Adjust elbow ext/flex device.
E1801	SPS elbow device.
E1802	Adjst forearm pro/sup device.
E1805	Adjust wrist ext/flex device.
E1806	SPS wrist device.
E1810	Adjust knee ext/flex device.
E1811	SPS knee device.
E1815	Adjust ankle ext/flex device.
E1816	SPS ankle device.
E1818	SPS forearm device.
E1820	Soft interface material.
E1821	Replacement interface SPSD.
E1825	Adjust finger ext/flex devc.
E1830	Adjust toe ext/flex device.
E1840	Adj shoulder ext/flex device.
E2000	Gastric suction pump hme mdl.
E2100	Bld glucose monitor w voice.
E2101	Bld glucose monitor w lance.
K0001	Standard wheelchair.
K0002	Stnd hemi (low seat) whlchr.
K0003	Lightweight wheelchair.
K0004	High strength ltwt whlchr.
K0005	Ultralightweight wheelchair.
K0006	Heavy duty wheelchair.
K0007	Extra heavy duty wheelchair.
K0009	Other manual wheelchair/base.
K0010	Stnd wt frame power whlchr.
K0011	Stnd wt pwr whlchr w control.
K0012	Ltwt portbl power whlchr.
K0014	Other power whlchr base.
K0015	Detach non-adjus hght armrst.
K0016	Detach adjust armrst cmplete.
K0017	Detach adjust armrest base.
K0018	Detach adjust armrst upper.
K0019	Arm pad each.
K0020	Fixed adjust armrest pair.
K0022	Reinforced back upholstery.
K0023	Planr back insrt foam w/strp.
K0024	Plnr back insrt foam w/hrdwr.
K0025	Hook-on headrest extension.
K0026	Back upholst lgtwt whlchr.
K0027	Back upholst other whlchr.
K0028	Manual fully reclining back.
K0029	Reinforced seat upholstery.
K0030	Solid plnr seat sngl dnsfoam.
K0031	Safety belt/pelvic strap.
K0032	Seat uphols lgtwt whlchr.
K0033	Seat upholstery other whlchr.
K0035	Heel loop with ankle strap.
K0036	Toe loop each.
K0037	High mount flip-up footrest.
K0038	Leg strap each.
K0039	Leg strap h style each.
K0040	Adjustable angle footplate.
K0041	Large size footplate each.
K0042	Standard size footplate each.
K0043	Ftrst lower extension tube.
K0044	Ftrst upper hanger bracket.
K0045	Footrest complete assembly.
K0046	Elevat legrst low extension.
K0047	Elevat legrst up hangr brack.
K0048	Elevate legrest complete.
K0049	Calf pad each.
K0050	Ratchet assembly.
K0051	Cam relese assem ftrst/lgrst.
K0052	Swingaway detach footrest.
K0053	Elevate footrest articulate.
K0054	Seat wdth 10–12/15/17/20 wc.
K0055	Seat dpth 15/17/18 ltwt wc.

TABLE 4.—HCPCS WITH STATUS INDICATORS THAT CHANGED FROM A TO Y.—Continued

CPT/ HCPCS	Description
K0056	Seat ht <17 or >=21 ltwt wc.
K0057	Seat wdth 19/20 hvy dty wc.
K0058	Seat dpth 17/18 power wc.
K0059	Plastic coated handrim each.
K0060	Steel handrim each.
K0061	Aluminum handrim each.
K0062	Handrim 8–10 vert/obliq proj.
K0063	Hndrm 12–16 vert/obliq proj.
K0064	Zero pressure tube flat free.
K0065	Spoke protectors.
K0066	Solid tire any size each.
K0067	Pneumatic tire any size each.
K0068	Pneumatic tire tube each.
K0069	Rear whl complete solid tire.
K0070	Rear whl compl pneum tire.
K0071	Front castr compl pneum tire.
K0072	Frnt cstr cmpl sem-pneum tir.
K0073	Caster pin lock each.
K0074	Pneumatic caster tire each.
K0075	Semi-pneumatic caster tire.
K0076	Solid caster tire each.
K0077	Front caster assem complete.
K0078	Pneumatic caster tire tube.
K0079	Wheel lock extension pair.
K0080	Anti-rollback device pair.
K0081	Wheel lock assembly complete.
K0082	22 nf deep cycl acid battery.
K0083	22 nf gel cell battery each.
K0084	Grp 24 deep cycl acid battry.
K0085	Group 24 gel cell battery.
K0086	U–1 lead acid battery each.
K0087	U–1 gel cell battery each.
K0088	Battry chrgr acid/gel cell.
K0089	Battery charger dual mode.
K0090	Rear tire power wheelchair.
K0091	Rear tire tube power whlchr.
K0092	Rear assem cmplt powr whlchr.
K0093	Rear zero pressure tire tube.
K0094	Wheel tire for power base.
K0095	Wheel tire tube each base.
K0096	Wheel assem powr base complt.
K0097	Wheel zero presure tire tube.
K0098	Drive belt power wheelchair.
K0099	Pwr wheelchair front caster.
K0100	Amputee adapter pair.
K0102	Crutch and cane holder.
K0103	Transfer board < 25″.
K0104	Cylinder tank carrier.
K0105	Iv hanger.
K0106	Arm trough each.
K0107	Wheelchair tray.
K0108	W/c component-accessory NOS.
K0114	Whlchr back suprt inr frame.
K0115	Back module orthotic system.
K0116	Back & seat modul orthot sys.
K0195	Elevating whlchair leg rests.
K0268	Humidifier nonheated w PAP.
K0452	Wheelchair bearings.
K0455	Pump uninterrupted infusion.
K0460	WC power add-on joystick.
K0461	WC power add-on tiller cntrl.
K0462	Temporary replacement eqpmnt.
K0531	Heated humidifier used w pap.
K0532	Noninvasive assist wo backup.
K0533	Noninvasive assist w backup.
K0534	Invasive assist w backup.
K0538	Neg pressure wnd thrpy pump.
K0539	Neg pres wnd thrpy dsg set.
K0540	Neg pres wnd thrp canister.
K0541	SGD prerecorded msg <= 8 min.
K0542	SGD prerecorded msg > 8 min.
K0543	SGD msg formed by spelling.
K0544	SGD w multi methods msg/accs.
K0545	SGD sftwre prgrm for PC/PDA.
K0546	SGD accessory, mounting systm.
K0547	SGD accessory NOC.
K0549	Hosp bed hvy dty xtra wide.
K0550	Hosp bed xtra hvy dty x wide.
L3964	Seo mobile arm sup att to wc.
L3965	Arm supp att to wc rancho ty.
L3966	Mobile arm supports reclinin.
L3968	Friction dampening arm supp.
L3969	Monosuspension arm/hand supp.
L3970	Elevat proximal arm support.
L3972	Offset/lat rocker arm w/ ela.
L3974	Mobile arm support supinator.

TABLE 5.—HCPCS WITH STATUS INDICATORS THAT CHANGED FROM E TO Y

CPT/ HCPCS	Description
A4232	Syringe w/needle insulin 3cc.
A4632	Infus pump rplcemnt battery.
E0188	Synthetic sheepskin pad.
E0189	Lambswool sheepskin pad.
E0218	Water circ cold pad w pump.
E0602	Manual breast pump.
E0740	Incontinence treatment systm.
E0760	Osteogen ultrasound stimltor.
E0765	Nerve stimulator for tx n&v.
K0610	Peritoneal dialysis clamp.
K0611	Disposable cycler set.
K0612	Drainage ext line, dialysis.
K0613	Ext line w/easy lock connect.
K0614	Chem/antisept solution, 8oz.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 22, 2003.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 03–32016 Filed 12–24–03; 1:03 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

RIN 1660–AA29

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers; Extension of Term of Arrangement

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim final rule.

SUMMARY: FEMA is changing the current Financial Assistance/Subsidy Arrangement (the Arrangement) to extend its term of October 1, 2002, through December 31, 2003, to a term of October 1, 2002, through May 1, 2004. The Arrangement defines the duties and responsibilities of insurers that sell and service insurance under the Write Your Own (WYO) program. It also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers.

DATES: Effective January 1, 2004. Comments on this interim final rule, should be received on or before March 1, 2004.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, FEMA, 500 C Street, SW., Washington, DC 20472, 202–646–3429 (Phone), 202–646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On August 9, 2002, FEMA published in the **Federal Register**, 67 FR 51768, a final rule to revise the effective date of the Arrangement to agree with the new Arrangement year beginning October 1, 2002, and ending September 30, 2003.

FEMA had planned to make significant changes in the Arrangement regarding litigation issues effective October 1, 2003. The proposed rule for these changes was not published until October 14, 2003, 68 FR 59146. As an interim measure, an interim final rule was published September 5, 2003, 68 FR 52700, extending the Arrangement term beginning October 1, 2002, to December 31, 2003. No comments were received on that interim final rule. It was anticipated that comments on the October 14, 2003, proposed rule could be reviewed and a final rule published effective January 1, 2004. However, as the final rule for these changes has not yet been published in the **Federal Register**, it is not feasible to complete the rulemaking for an effective date of January 1, 2004. WYO insurers need to receive an offer to enter into the Arrangement each year well in advance of the beginning of the Arrangement year. By extending the current Arrangement for an additional four months, the revised Arrangement with the litigation changes can be effective May 1, 2004, instead of postponing these changes to October 1, 2004. WYO insurers can always elect to cease participation in the WYO program at any time, so any insurer not desiring to participate for the additional four months of this extension may cease participation as of January 1, 2004.

Under this extension of the current Arrangement, the expense allowance provided for in Article III.B of APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, FINANCIAL ASSISTANCE/SUBSIDY ARRANGEMENT will remain the same for the additional four months as it is now, including the additional expense allowance of up to two percentage points for meeting marketing goals. This additional expense allowance will be based on the period October 1, 2002, through April 1, 2004.

National Environmental Policy Act

This interim final rule falls within the exclusion category 44 CFR part 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this interim final rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that this interim final rule is neither an economically significant nor a significant regulatory action under the Executive Order. The interim final rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This interim final rule does not contain a collection of information and it is therefore not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

Executive Order 12778, Civil Justice Reform

This interim final rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. The public benefit of this rule is the continuation of the WYO arrangement without interruption. Therefore, we believe it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to be published without prior public comment and without a full 30-day delayed effective date.

List of Subjects in 44 CFR Part 62

Flood insurance.

■ Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. In Appendix A to part 62, revise the first sentence of Article V, Section A to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

Article V * * *

A. This Arrangement shall be effective for the period October 1, 2002 through May 1, 2004. * * *

* * * * *

Dated: December 23, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–32198 Filed 12–30–03; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[WC Docket No. 02–269; CC Docket No. 00–199; CC Docket No. 80–286; CC Docket No. 99–301; FCC 03–325]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: This document further delays the implementation of four previously adopted accounting and reporting rule changes from January 1, 2004 through June 30, 2004. The Commission extends the delay of implementation in order to allow time for receipt and consideration of comments in response to recommendations by the Federal-State Joint Conference on Accounting Issues (Joint Conference).

DATES: The effective date for amendments to 47 CFR 32.5200, 32.6562 and 32.6620 published at 67 FR 5670, February 6, 2002, and delayed at 68 FR 38641, June 30, 2003, is further delayed through June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jane E. Jackson, Associate Chief, Wireline Competition Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted on December 17, 2003, and released on December 23, 2003. The full text of the document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, e-mail *qualexint@aol.com.*

Synopsis of Order

On November 12, 2002, the Commission released an order, 67 FR 77432, December 18, 2002, delaying until July 1, 2003 the implementation of four accounting and reporting requirement rule modifications previously adopted by the Commission as part of its biennial review of accounting requirements and Automated Reporting Management System (ARMIS) reporting requirements, Report and Order, 67 FR 5670, February 6, 2002. On June 24, 2003, the Commission released another order, 68 FR 38641, June 30, 2003, further delaying implementation until January 1, 2004. The Commission deferred the implementation of these four accounting and reporting requirement rule modifications in order to allow the Federal-State Joint Conference on Accounting Issues time to consider these and other accounting issues in formulating their recommendations to the Commission. These accounting and reporting rule changes are as follows: (1) Consolidation of Accounts 6621 through 6623 into Account 6620, with sub-accounts for wholesale and retail; (2) consolidation of Account 5230, Directory revenue, into Account 5200, Miscellaneous revenue; (3) consolidation of the depreciation and amortization expense accounts (Accounts 6561 through 6565) into Account 6562, Depreciation and amortization expenses; and (4) revised "Loop Sheath Kilometers" data collection in Table II of ARMIS Report 43–07.

On October 9, 2003, the Joint Conference submitted the result of a year-long study of the Commission's accounting rules and on-going proceedings related to the Commission's accounting requirements. The Joint Conference makes several recommendations that directly relate to the four accounting rule modifications that are scheduled to go into effect on January 1, 2004. Here, the Commission extends through June 30, 2004 the Commission's current delay of the effective date of four accounting rule modifications, to allow time for receipt and consideration of comments in response to the Joint Conference's recommendations.

Federal Communications Commission

William F. Caton,

Deputy Secretary.

[FR Doc. 03–32149 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–07–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 382

Federal Aviation Administration

14 CFR Part 121

Federal Transit Administration

49 CFR Part 655

Federal Railroad Administration

49 CFR Part 219

Research and Special Programs Administration

49 CFR Part 199

[Docket OST–2002–13435]

RIN 2105–AD35

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Drug and Alcohol Management Information System Reporting

AGENCIES: Federal Motor Carrier Safety Administration, Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, and Research and Special Programs Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: Each of the Department of Transportation's drug and alcohol testing rules include requirements for select employers to submit drug and alcohol testing data to five Department of Transportation (DOT) agencies. In the past, these employers have been required to use agency-specific Management Information System (MIS) forms for this purpose, twenty-one different forms in all. The Department recently published a final rule revising these DOT agency MIS forms and transforming them into a single one-page form for use throughout all the DOT agencies. The requirement for use of the form is now in 49 CFR part 40. By this action, the DOT agencies endorse the use of this single form within their regulated industries,

provide their regulated employers with guidance for submission of the form, and amend their rules accordingly. The DOT agencies are: Federal Motor Carrier Safety Administration (FMCSA); Federal Aviation Administration (FAA); Federal Transit Administration (FTA); Federal Railroad Administration (FRA); and Research and Special Programs Administration (RSPA).

DATES: Effective December 31, 2003.

FOR FURTHER INFORMATION CONTACT:

Jim L. Swart, Drug and Alcohol Policy Advisor (S–1), Office of Drug and Alcohol Policy and Compliance, 400 Seventh Street, SW., Washington, DC 20590; telephone number (202) 366–3784 (voice), (202) 366–3897 (fax), or *jim.swart@ost.dot.gov* (e-mail).

Jerry Fulnecky, Office of Enforcement and Compliance (MC–EC), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone number (202) 366–2096, or *jerry.fulnecky@fmsca.dot.gov* (e-mail).

Diane J. Wood, Drug Abatement Division, AAM–800, Office of Aerospace Medicine, Federal Aviation Administration, Washington, DC 20591, telephone number (202) 267–8442.

Harry Saporta, Office of Safety and Security (TPM–30), Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone number (202) 366–2233, or *harry.saporta@fta.dot.gov*.

Lamar Allen, Alcohol and Drug Program Manager (RRS–11), Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590; telephone number (202) 493–6313, or *lamar.allen@fra.dot.gov* (e-mail); or Kathy Schnakenberg, Drug and Alcohol Program Specialist, Office of Safety, FRA, telephone number (202) 262–4998, or *kathy.schnakenberg@fra.dot.gov* (e-mail).

Sheila Wright, Office of Pipeline Safety (DPS–2), Research and Special Programs Administration, 400 Seventh Street, S.W., Washington, DC 20590, telephone number (202) 366–4554, or *sheila.wright@rspa.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION

Background and Purpose

The Department published a final rule on July 25, 2003 (68 FR 43946) regarding a single one-page MIS form for use throughout all DOT. The Department had issued a notice of proposed rulemaking (NPRM) on September 30, 2002 (67 FR 61306), asking for comments and suggestions for changes to the MIS form and process. In response to the NPRM, we received numerous comments from individuals, groups, and associations. The final rule responded to all those comments. The final rule also made significant modifications to the previous DOT agency MIS forms.

In the final rule, the Department stated that use of the new MIS form will be required for employer MIS submissions in 2004, which will document 2003 data. Therefore, employers must adopt provisions of the rule which will permit them to start, as appropriate, collection of the required data and which establish how companies are to determine the number of employees upon which 2003 random testing is based.

The Department also indicated that the new MIS form represents a reduction in the data elements for which an employer must account. The following is a listing for each DOT agency of most of the data elements that have been eliminated as reporting elements on the new MIS form:

FMCSA

1. Number of persons denied a position following a positive drug test.
2. Number of employees returned to duty following a refusal or positive drug test.
3. Supervisor initial drug training data.
4. Number of employees denied a position following an alcohol test of 0.04 or greater.
5. Number of employees returned to duty after engaging in alcohol misuse.
6. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
7. Actions taken for alcohol violations other than alcohol testing.
8. Supervisor initial alcohol training data.

FAA

1. Number of employees returned to duty after having failed or refused a drug test.
2. Actions taken for drug test refusals.
3. Number of persons denied employment for a positive drug test.
4. Actions taken for positive drug results.
5. Employee initial drug training data.
6. Supervisor initial drug training data.
7. Supervisor recurrent drug training data.
8. Number of persons denied a position for an alcohol test 0.04 or greater.
9. Number of employees returned to duty after engaging in alcohol misuse.
10. Actions taken for alcohol regulation violations.
11. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
12. Number of other violations of the alcohol regulation.
13. Actions taken for refusals to take an alcohol test.
14. Supervisor alcohol training data.
15. Periodic testing data.

FTA

1. Number of persons denied a position for alcohol results 0.04 or greater.
2. Number of accidents (noted as fatal and non-fatal) with alcohol results 0.04 or greater.
3. Number of fatalities from accidents resulting in alcohol results 0.04 or greater.
4. Number of employees returned to duty following an alcohol violation.
5. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
6. Actions taken for other alcohol rule violations.
7. Supervisor alcohol training data.
8. Number of persons denied a position for positive drug test results.
9. Number of accidents (noted as fatal and non-fatal) with positive drug test results.
10. Number of fatalities from accidents resulting in positive drug tests results.
11. Number of persons returned to duty following a positive drug test or refusal result.
12. Employee drug education data.
13. Supervisor drug training data.
14. Funding source information.

FRA

1. Number of applicants/transfers denied employment/transfer for a positive drug test.
2. Number of employees returned to duty after having failed or refused a drug test.
3. Detailed breakouts of for-cause drug and alcohol testing.
4. Non-qualifying accident drug testing data.
5. Supervisor drug training data.
6. Number of applicants/transfers denied employment/transfer for alcohol results 0.04 or greater.
7. Number of employees returned to duty after engaging in alcohol misuse.
8. Supervisor alcohol training data.

RSPA

1. Number of employees returned to duty after engaging in alcohol misuse.
2. Actions taken for alcohol test results equal to or greater than 0.04.

3. Number of other alcohol rule violations and actions taken for them.
4. Actions taken for alcohol test refusals.
5. Supervisor initial alcohol training data.
6. Number of persons denied a position following a positive drug test.
7. Number of employees returned to duty following a positive or refusal drug test.
8. Actions taken for positive drug tests.
9. Actions taken for drug test refusals.
10. Supervisor initial drug training data.

Finally, the Department stated that the DOT agencies would continue, in their regulations, to provide direction to their regulated employers regarding when, where, and how to report MIS data. The DOT agency final rules published today are designed to amend their rules so that regulated industries will report MIS data in accordance with 49 CFR part 40. In addition, the DOT agency final rules are designed so that no conflicts exist between them and part 40 regarding how the MIS form is to be completed and how the instructions are to be followed.

General Discussion of Rule Changes

The DOT agencies are amending several sections of their drug and alcohol testing regulations to incorporate references to the new one-page MIS form and its instructions found in 49 CFR part 40. In addition, other revisions are being made in an effort to conform MIS-related regulatory text used by the DOT agencies. Specifically, the items reflecting use of conforming language are as follows:

1. Definitions of "positive rate for random drug testing" and "violation rate for random alcohol testing" will conform throughout the regulations and will replace "annualized rate," "positive rate," and "violation rate," as appropriate. Both definitions will reflect how the DOT agencies will determine whether the random rates of testing within their regulated industries will rise, lower, or stay the same from year to year. It is important to note that RSPA has no random alcohol testing requirement and will, therefore, not include a definition for the "violation rate for random alcohol testing."

2. 49 CFR part 40 also clarified and made uniform among DOT agencies how employers determine the total number of employees to which the annual random rate applies. The averaging method highlighted in part 40 has been adopted in DOT agency rule text. The rules direct employers to add the number of covered employees eligible for random testing in each random testing selection period for the year and divide that total by the number of random testing periods. The rules also reference employers' use of service agents (*e.g.*, Consortium/Third-Party Administrators) in their random testing programs.

3. Each DOT agency rule incorporates common language requiring use of the MIS form and the instructions found in 49 CFR part 40. The rules also permit employers to use the electronic version of the MIS form as designated by DOT agency administrators and furnished by DOT. Specific internet addresses are provided in DOT agency rules. As referenced in the preamble to 49 CFR part 40, the Department's ultimate goal of having full automation for MIS submissions has been accomplished. Through Volpe Center development and field-testing, the automated system will be fully operational across all DOT agencies at the end of 2003.

4. DOT agency rules also include conforming language regarding how employers, with covered employees performing duties under more than one DOT agency rule, are to enter testing data for those employees. In short, the employee needs to be counted only on the MIS report for the DOT agency under which he or she is random tested. It is important to note, that the FAA requires all employees performing FAA safety-sensitive duties to be tested (including random) under FAA regulations. Otherwise, this will be the DOT agency under which the employee performs more than 50% of his or her duties.

5. Finally, the conforming language addresses the preparation of the MIS form and who must attest to its accuracy. The regulations give employers the ability to have service agents (*e.g.*, Consortium/Third-Party Administrators) prepare the report on their behalf. However, no matter who prepares the report, a company official (*e.g.*, Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the form.

Other Significant Issues

Regarding 49 CFR part 40 and the MIS form, the OMB number assigned to the form is 2105–0529. This number was issued by OMB on October 28, 2003.

The Docket number assigned to the part 40 MIS final rule was OST–2003–15676. It should have been, OST–2002–13433. This will serve to correct that error.

DOT has been asked how specimen results are to be counted if the verified result is a refusal because the specimen was found to be both adulterated and substituted. While these types of results rarely occur, they do nonetheless exist. Such a specimen result is to be counted as one test result. If this type of result is present in an employer's testing program, the data should be entered as "1" for the test result and as ".5" for the adulterated result and as ".5" for the substituted result.

In addition, it is possible for a positive test to also be identified as being a refusal because the specimen was either adulterated or substituted. If such a result is present in an employer's testing program, the data should be entered as "1" for the test result and as ".5" for the positive result and as ".5" for the adulterated result or the substituted result, as appropriate. The electronic MIS data entry system has been designed to accommodate these ".5" results, no matter how infrequently they occur.

Section 1, of the MIS form in 49 CFR part 40, references the "FMSCA." That should read, "FMCSA." MIS forms that appear on the DOT website reflect the appropriate change. Electronic formats designed for use by the FMCSA and their regulated industry also reflect the change.

Finally, the United States Coast Guard (USCG) will incorporate use of the new MIS form into their rules. Therefore, USCG-regulated employers will continue to report drug testing data on the new MIS form. The DOT supports the USCG in their desire to use and to incorporate use of DOT's MIS form into their regulation. Because the USCG is part of the Department of Homeland Security (DHS), their regulations must be published under the authority of DHS. Therefore, the USCG will publish a conforming amendment to 46 CFR part 16 incorporating use of the form.

Regulatory Analyses and Notices

These rules are not significant rules for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. Nor are the rules economically significant regulations. They represent a reworking of existing requirements, the economic burden of which are now incorporated into 49 CFR part 40; they impose no new mandates; and they will not create any new costs. In fact, use of the new MIS form has been shown to reduce requirements and costs. The DOT agencies will no longer account for the PRA cost associated with use of the form. These costs are now accounted for by the Office of the Secretary.

In addition, there is no need for the DOT agencies to publish an NPRM each regarding use of the new MIS form and to make the conforming regulation changes necessitated by use of the new form. The Department issued an NPRM in the **Federal Register** on September 30, 2002 (Vol. 67, No. 189) proposing use of a new MIS form and asking for comments and suggestions for changes to the old DOT agency MIS forms and the process for completing and submitting them. The final rule designating use and appearance of and instructions for the new MIS form was published in the **Federal Register** on July 25, 2003 (Vol. 68, No. 143). These DOT agency final rules are essentially administrative fix-ups to align DOT agency rules with part 40 on important MIS issues. Therefore, these DOT agency amendments are being issued as final rules.

Under the Administrative Procedure Act (APA), an agency may, for good cause, immediately promulgate a final rule if it finds that prior notice and opportunity for comment "are impracticable, unnecessary, or contrary to the public interest" [5 U.S.C. 553(b)(3)(B)]. There exists good cause for the final rules to be effective immediately rather than 30 days from today's publication date. It is imperative that companies are prepared to implement the new MIS system and know the DOT agency requirements for form submission. That preparation should not be delayed for an additional 30 days. For these and the reasons highlighted in the previous paragraph, the rules are effective today.

These final rules do not have sufficient Federalism impact to warrant a Federalism assessment under Executive Order 13132. With respect to the Regulatory Flexibility Act, the DOT agencies certify that these rules would not have a significant economic impact on a substantial number of small entities, so a Regulatory Flexibility analysis has not been prepared. Even though these rules might affect a large number of small entities, we do not expect the use of a single MIS form throughout all DOT-regulated industries to have a significant economic impact on anyone.

The Department's final MIS rule contained information collection requirements that were submitted, as required by the Paperwork Reduction Act of 1995 (the PRA, 44 U.S.C. 3507(d)), to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review. Therefore, the DOT agencies will remove PRA requirements for the MIS form from their next PRA submission packages. In addition, the Department will place its entire PRA package for the MIS form on the Internet when that submission is approved by OMB.

As stated in the Department's final MIS rule, according to OMB's regulations implementing the PRA (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person need not respond to a collection of information unless it displays a currently valid OMB number. As stated earlier, the OMB number issued to the form is 2105–0529.

A number of other Executive Orders can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of these rules, and we believe that these rules do not directly affect matters that the Executive Orders cover.

We have prepared these rulemakings in accordance with the Presidential Directive on Plain Language.

Federal Motor Carrier Safety Administration

Summary of Changes in Part 382

FMCSA has made the following changes to the regulatory text in part 382:

Section 382.107 Definitions

We have revised the definitions for "positive rate" for random drug testing and "violation rate" for random alcohol testing, consistent with the definitions for those terms in part 40.

Section 382.305 Random Testing

We have revised § 382.305(j), concerning how employers determine the number of covered employees eligible for random testing, to conform with the methodology prescribed in part 40.

Section 382.401 Retention of Records

We have revised § 382.401(c)(1)(viii) to replace "Consolidated annual calendar year summaries" with "Each annual calendar year summary."

Section 382.403 Reporting of results in a management information system

Section 382.403 was amended to require use of the new Management Information System (MIS) form in part 40, in place of the old FMCSA forms. In subparagraph (b), the requirement that the form should be in "the form and manner prescribed by the FMCSA" was deleted. We now require employers to use either the paper form in part 40 or an electronic version of the form through the FMCSA web site. We deleted former subparagraphs (c) and (d) specifying the data elements that were required to be reported because the instructions for the MIS form in part 40 specify new data elements to be reported. The former subparagraph (e), which addresses employers subject to more than one DOT agency, has been redesignated as paragraph (c), and was amended to conform with part 40 agencies. The former subparagraph (f), which addresses employers who use service agents (*e.g.*, a Consortia/third party administrator (C/TPA)), has been redesignated as paragraph (d) and was also amended.

List of Subjects in 49 CFR Part 382

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Chapter III

Authority and Issuance

■ For reasons discussed in the preamble, the Federal Motor Carrier Safety Administration amends part 382 of title 49, Code of Federal Regulations, as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for 49 CFR part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, 31502; and 49 CFR 1.73.

■ 2. Amend § 382.107 by removing the definitions of "positive rate" and "violation rate" and adding the following definitions in their place to read as follows:

§ 382.107 Definitions.

* * * * *

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

* * * * *

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

■ 3. Amend § 382.305 by revising paragraph (j) to read as follows:

§ 382.305 Random testing.

* * * * *

(j)(1)To calculate the total number of covered drivers eligible for random testing throughout the year, as an employer, you must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered drivers must be in the random pool. If you are an employer conducting random testing more often than once per month (*e.g.*, daily, weekly, bi-weekly) you do not need to compute this total number of covered drivers rate more than on a once per month basis.

(2) As an employer, you may use a service agent (*e.g.*, a C/TPA) to perform random selections for you, and your covered drivers may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

* * * * *

■ 4. Amend § 382.401 by revising paragraph (c)(1)(viii) to read as follows:

§ 382.401 Retention of records.

* * * * *

(c) * * *

(1) * * *

(viii) A copy of each annual calendar year summary as required by § 382.403.

* * * * *

■ 5. Amend § 382.403 by revising paragraph (b), removing paragraphs (c) and (d), redesignating paragraphs (e) and (f) as (c) and (d), respectively, and revising them, and adding a new paragraph (e) to read as follows:

§ 382.403 Reporting of results in a management information system.

* * * * *

(b) If an employer is notified, during the month of January, of a request by the Federal Motor Carrier Safety Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the FMCSA by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The employer must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.26 and appendix H to part 40). The employer may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (*e.g.*, electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see: *http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm.*

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(d) If you have a covered employee who performs multi-DOT agency functions (*e.g.*, an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the same employer), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (*e.g., Consortia/Third party administrator* as defined in 49 CFR 382.107) may prepare the MIS report on behalf of an employer. However, a company official (*e.g., Designated employer representative*) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

Dated: November 25, 2003.

Annette M. Sandberg,

Administrator, Federal Motor Carrier Safety Administration.

Federal Aviation Administration

FAA's Section-by-Section Discussion

14 CFR Part 121, Appendix I

II. Definitions

The FAA has eliminated the definition for "annualized rate" because the definition is no longer necessary in light of the DOT's final rule. However, the definition for annualized rate had contained instructions to estimate the number of employees that must be tested during the calendar year based on the number of safety-sensitive employees as of the beginning of the calendar year. The DOT's final rule changed this method of calculation. Now, to determine how many employees to randomly test during the calendar year, the employer must use the average number of safety-sensitive employees instead of the number of employees as of the beginning of the calendar year. Because this change occurred during the 2003 calendar year, we recognize that employers may have difficulty estimating the number of safety-sensitive employees to be tested in 2003. Therefore, for the calendar year 2003 only, employers may use the number of employees as of the beginning of the calendar year to determine the total number of safety-sensitive employees to be tested or the employers may use the averaging method described in this regulation and 49 CFR part 40. Beginning in 2004, the new methodology must be used by all employers.

In addition, we have revised the definition of "positive rate" and changed the defined term to "positive rate for random drug testing," for the reasons discussed in the DOT's General Discussion of Rule Changes.

V. Types of Drug Testing Required

C. Random Testing. We revised paragraph 6 under the random testing section to make it clear to employers how to calculate whether they have met the minimum annual percentage rate under 49 CFR part 40. For the reasons explained in the DOT's General Discussion of Rule Changes, we inserted paragraph 6(b) to address the use of service agents to conduct random testing for employers. We added paragraphs 6(b)(1)–(2) to explain what annual percentage rate applies to pools created by service agents.

VI. Administrative and Other Matters

F. DOT Management Information System Annual Reports. For consistency with 14 CFR part 121, appendix J, we have added this paragraph to make it clear that employers must keep copies of annual reports submitted to the FAA for a minimum of 5 years. This is not an additional record keeping requirement because the MIS reports were already required to be kept for 5 years under 14 CFR part 121, appendix J, section IV, A.2.(a)(1). Since the MIS reports for both drug and alcohol testing have been combined, this addition is merely a reminder to employers of an existing obligation to retain the record.

X. Reporting of Antidrug Program Results

We changed the title of this section to "Annual Reports" because the DOT's revisions to the MIS forms no longer require separate reporting of antidrug program results. The combined MIS form is now submitted for both drug and alcohol testing results.

The basic requirements of when to submit annual reports and who must submit them remain unchanged in this section. However, most of section X has been eliminated because it prescribed the specifics of the contents of annual reports, all of which are now prescribed by 49 CFR 40.26 and appendix H to 49 CFR part 40. For the reasons explained in the DOT's General Discussion of Rule Changes, we have adopted the DOT's language for submitting MIS reports and the role of service agents in those submissions.

14 CFR Part 121, Appendix J

I. General

D. Definitions. We have revised the definition of "violation rate" and changed the defined term to "violation rate for random alcohol testing," for the reasons discussed in the DOT's General Discussion of Rule Changes. Although there was no definition for "annualized percentage rate" under this appendix, the reasoning provided in the preamble to appendix I applies to calculating the number of employees to be tested in calendar year 2003 for appendix J also.

II. Covered Employees

In revising the annual reporting requirements of section IV.B., we decided to move former paragraph IV.B.2 to become a new paragraph under section II, which describes covered employees. Former paragraph IV.B.2 reminded employers to identify employees who are performing safety-sensitive functions under the regulations of more than one DOT agency. This is important because alcohol testing must be tied to the performance of safety-sensitive work. When the employer requires the employee to submit to an alcohol test, the employer must know what kind of safety-sensitive work the employee is performing and which DOT agency's testing regulations apply. In moving this paragraph to section II, we made minor editorial changes to the language and renumbered paragraphs accordingly.

III. Tests Required

C. Random Testing. We revised paragraph 2 under the random testing section to change the phrase "alcohol MIS reports" to "MIS reports." We made this change because the DOT's revisions to 49 CFR part 40 eliminated separate forms for alcohol testing results. There is now a combined form for reporting both drug and alcohol testing results.

As we have done in appendix I, we revised paragraph 6 under this section to make it clear to employers how to calculate whether they have met the minimum annual percentage rate under the DOT's final rule. For the reasons explained in the DOT's General Discussion of Rule Changes, we inserted paragraph 6(b) to address the use of service agents to conduct random testing for employers. We added paragraphs 6(b)(1)–(2), as we have done in appendix I, to explain what annual percentage rate applies to pools created by service agents.

IV. Handling of Test Results, Record Retention and Confidentiality

B. Reporting of Results in a Management Information System. We changed the title of this section to "Annual Reports" for consistency with appendix I.

The basic requirements of when to submit annual reports and who must submit them remain unchanged in this section. However, most of section IV has been eliminated because it prescribed the specifics of the contents of annual reports, all of which are now prescribed by 49 CFR 40.26 and appendix H to 49 CFR part 40. For the reasons explained in the DOT's General Discussion of Rule Changes, we have adopted the DOT's language for submitting MIS reports and the role of service agents in those submissions.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Chapter I

Authority and Issuance

■ For reasons set forth in the preamble, the Federal Aviation Administration amends part 121 of title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for 14 CFR part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Amend appendix I to part 121 as follows:

■ A. In section II., remove the definition of Annualized rate; remove the definition of Positive rate and add a new definition in its place;

■ B. In section V., revise paragraph C.6;

■ C. In section VI., add paragraph F;

■ D. In section X., revise section heading, revise paragraphs A introductory text and A.2, revise paragraph B, remove paragraphs C, D, E, F, add new paragraph C.

The revisions and additions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

II. Definitions * * *

* * * * *

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this appendix plus the number of refusals of random drug tests required by this appendix, divided by the total number of random drug test results (*i.e.*, positives, negatives, and refusals) under this appendix.

* * * * *

V. Types of Drug Testing Required * * *

* * * * *

C. Random Testing.

* * * * *

6. As an employer, you must select and test a percentage of employees at least equal to the minimum annual percentage rate each year.

(a) As an employer, to determine whether you have met the minimum annual percentage rate, you must divide the number of random testing results for safety-sensitive employees by the average number of safety-sensitive employees eligible for random testing.

(1) To calculate whether you have met the annual minimum percentage rate, count all random positives, random negatives, and random refusals as your "random testing results."

(2) To calculate the average number of safety-sensitive employees eligible for

random testing throughout the year, add the total number of safety-sensitive employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Only safety-sensitive employees are to be in an employer's random testing pool, and all safety-sensitive employees must be in the random pool. If you are an employer conducting random testing more often than once per month (*e.g.*, you select daily, weekly, bi-weekly) you do not need to compute this total number of safety-sensitive employees more than on a once per month basis.

(b) As an employer, you may use a service agent to perform random selections for you, and your safety-sensitive employees may be part of a larger random testing pool of safety-sensitive employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only safety-sensitive employees are in the random testing pool. For example:

(1) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(2) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(3) If the service agent has your employees in a random testing pool combined with other DOT-regulated companies, you must ensure that the testing is conducted at least at the highest rate required for any DOT-regulated company in the pool.

* * * * *

VI. Administrative and Other Matters * * *

* * * * *

F. *DOT Management Information System Annual Reports.* Copies of any annual reports submitted to the FAA under this appendix must be maintained by the employer for a minimum of 5 years.

* * * * *

X. Annual Reports.

A. Annual reports of testing results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions below.

* * * * *

2. Each entity conducting an antidrug program under this part, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

* * * * *

B. As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by DOT. The Administrator may designate means (*e.g.*, electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: *http://www.faa.gov/avr/aam/adap.*

C. A service agent may prepare the MIS report on behalf of an employer. However, a company official (*e.g.*, Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

* * * * *

■ 3. Amend appendix J to part 121 as follows:

■ A. In section I.D, remove the definition of Violation rate and add a definition in its place;

■ B. Revise section II;

■ C. In section III.C, revise paragraphs C.2 and C.6;

■ D. Revise section IV.B.

The revisions and additions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

* * * * *

I. General * * *

* * * * *

D. Definitions

* * * * *

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this appendix plus the number of refusals of random alcohol tests required by this appendix, divided by the total number of random alcohol screening tests (including refusals) conducted under this appendix.

* * * * *

II. Covered Employees

A. Each employee who performs a function listed in this section directly or by contract for an employer as defined in this appendix must be subject to alcohol testing under an FAA-approved alcohol misuse prevention program implemented in accordance with this appendix. The covered safety-sensitive functions are:

1. Flight crewmember duties.
2. Flight attendant duties.
3. Flight instruction duties.
4. Aircraft dispatcher duties.
5. Aircraft maintenance or preventive maintenance duties.
6. Ground security coordinator duties.
7. Aviation screening duties.
8. Air traffic control duties.

B. Each employer must identify any employee who is subject to the alcohol testing regulations of more than one DOT agency. Prior to conducting any alcohol test on a covered employee subject to the alcohol testing regulations of more than one DOT agency, the employer must determine which DOT agency authorizes or requires the test.

III. Tests Required * * *

* * * * *

C. Random Testing

* * * * *

2. The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for this determination is drawn from MIS reports required by this appendix. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

* * * * *

6. As an employer, you must select and test a percentage of employees at least equal to the minimum annual percentage rate each year.

(a) As an employer, to determine whether you have met the minimum annual percentage rate, you must divide the number of random alcohol screening test results for safety-sensitive employees by the average number of safety-sensitive employees eligible for random testing.

(1) To calculate whether you have met the annual minimum percentage rate, count all random screening test results below 0.02 breath alcohol concentration, random screening test results of 0.02 or greater breath alcohol concentration, and random refusals as your "random alcohol screening test results."

(2) To calculate the average number of safety-sensitive employees eligible for random testing throughout the year, add the total number of safety-sensitive employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Only safety-sensitive employees are to be in an employer's random testing pool, and all safety-sensitive employees must be in the random pool. If you are an employer conducting random testing more often than once per month (*e.g.*, you select daily, weekly, bi-weekly) you do not need to compute this total number of safety-sensitive employees more than on a once per month basis.

(b) As an employer, you may use a service agent to perform random selections for you, and your safety-sensitive employees may be part of a larger random testing pool of safety-sensitive employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only safety-sensitive employees are in the random testing pool. For example:

(1) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(2) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least

at the minimum annual percentage rate under this part.

(3) If the service agent has your employees in a random testing pool combined with other DOT-regulated companies, you must ensure that the testing is conducted at least at the highest rate required for any DOT-regulated company in the pool.

* * * * *

IV. Handling of Test Results, Record Retention, and Confidentiality * * *

* * * * *

B. Reporting of Results in a Management Information System

1. Annual reports of alcohol misuse prevention program results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions below.

(a) Each part 121 certificate holder shall submit an annual report each year.

(b) Each entity conducting an alcohol misuse prevention program under this part, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

(c) The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

2. As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (*e.g.*, electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: *http://www.faa.gov/avr/aam/adap.*

3. A service agent may prepare the MIS report on behalf of an employer. However, a company official (*e.g.*, Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

* * * * *

Dated: November 25, 2003.

Marion C. Blakey,

Administrator, Federal Aviation Administration.

Federal Transit Administration

List of Subjects in 49 CFR Part 655

Alcohol abuse, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Chapter VI

Authority and Issuance

■ For reasons set forth in the preamble, the Federal Transit Administration amends part 655 of title 49, Code of Federal Regulations, as follows:

PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

■ 1. The authority citation for 49 CFR part 655 continues to read as follows:

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

■ 2. In § 655.4, remove the definitions of "positive rate" and "violation rate" and add the following definitions in their place to read as follows:

§ 655.4 Definitions.

* * * * *

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positive, negative, and refusals) under this part.

* * * * *

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of alcohol random screening tests (including refusals) conducted under this part.

* * * * *

■ 3. Revise § 655.72(d) through (g) to read as follows:

§ 655.72 Reporting of results in a Management Information System.

* * * * *

(d) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40, § 40.25 and appendix H. You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (*e.g.*, electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: *http://transit-safety.volpe.dot.gov\DAMIS.*

(e) To calculate the total number of covered employees eligible for random testing throughout the year, as an employer, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random testing more often than once per month (*e.g.*, you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. As an employer, you may use a service agent (*e.g.*, C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(f) If you have a covered employee who performs multi-DOT agency functions (*e.g.*, an employee drives a paratransit vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(g) A service agent (*e.g.*, Consortia/Third Party Administrator as defined in 49 CFR part 40) may prepare the MIS report on behalf of an employer. However, a company official (*e.g.*, Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

Appendices A Through D [Removed]

■ 4. Remove Appendices A through D to part 655.

Dated: November 21, 2003.

Jennifer L. Dorn,

Administrator, Federal Transit Administration.

Federal Railroad Administration

Section-by-Section Analysis

Section 219.5 Definitions

Positive rate for random drug testing. A standardized DOT definition replaces the previous FRA definition of "positive rate."

Violation rate for random testing. A standardized DOT definition replaces the previous FRA definition of "violation rate."

Section 219.601 Railroad Random Drug Testing Programs

Paragraph (b)(2)(ii) Form of Programs

FRA amends this paragraph to conform with the Department's new directions on how to calculate the number of covered employees eligible for random testing. An employer or service agent acting on the employer's behalf (*e.g.*, a consortium or third party administrator) must recalculate this number for each random testing period to take into account seasonal or other fluctuations in the number of employees it has throughout the year. An employer had previously been allowed to calculate this number only once per year based on the number of employees it had at the beginning of the year.

Section 219.602 Administrator's Determination of Railroad Drug Testing Rate

Paragraphs (c) and (d)

FRA is revising these paragraphs to replace the references to § 219.803, which contained agency-specific railroad reporting requirements, with references to new § 219.800, which incorporates by reference the standardized and simplified DOT reporting requirements found in § 40.25 and in appendix H to part 40. Section 219.803 is removed and reserved.

Section 219.607 Railroad Random Alcohol Testing Programs

Subparagraph (b)(1) Form of Programs

As with § 219.601 discussed above, FRA revises this subparagraph to conform with the Department's new directions on how to calculate the number of covered employees eligible for random testing.

Subparagraph (b)(1)(i)

As with § 219.601 discussed above, FRA adds this new subparagraph to address the increasing use of service agents to perform random drug testing selections.

Section 219.608 Administrator's Determination of Railroad Alcohol Testing Rate

Paragraphs (c) and (d)

FRA is revising these paragraphs to replace the references to § 219.801, which contained agency-specific railroad reporting requirements, with references to new § 219.800, which incorporates by reference the standardized and simplified DOT reporting requirements found in § 40.25 and in appendix H to part 40. Section 219.801 is removed and reserved.

Section 219.800 Annual Reports

Paragraph (a)

As explained above, FRA is streamlining its MIS system by combining the annual reporting requirements formerly contained in §§ 219.801 and 219.803 into one section. This paragraph, which defines who must file an annual report, adopts the language formerly found in paragraph (a) of each of those sections.

Paragraphs (b)–(e)

Paragraph (b) incorporates part 40's forms and instructions by reference. Paragraphs (c)–(e) add standardized instructions on electronic reporting, reporting of multi-modal employee results, and reporting by service agents.

Section 219.801 Reporting Alcohol Misuse Program Results in a Management Information System

As explained above, this section is removed and reserved. The FRA-specific reporting requirements formerly contained in this section are removed and replaced by those contained in new § 219.800.

Section 219.803 Reporting Alcohol Misuse Program Results in a Management Information System

As explained above, this section is removed and reserved. The FRA-specific reporting requirements formerly contained in this section are removed and replaced by those contained in new § 219.800.

Federal Railroad Administration

List of Subjects in 49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Chapter II

Authority and Issuance

■ For reasons set forth in the preamble, the Federal Railroad Administration amends part 219 of title 49, Code of Federal Regulations, as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

■ 1. The authority citation for 49 CFR part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311, 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. In § 219.5, the definitions of "positive rate" and "violation rate" are removed and the following definitions are added in their place to read as follows:

§ 219.5 Definitions.

* * * * *

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

* * * * *

Violation rate for random alcohol testing means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

* * * * *

■ 3. Section 219.601 is amended by revising paragraph (b)(2)(ii) and adding paragraph (b)(2)(iii) to read as follows:

§ 219.601 Railroad random drug testing programs.

* * * * *

(b) * * *

(2) * * *

(ii) To calculate the total number of covered employees eligible for random testing throughout the year, as a railroad, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in a railroad's random testing pool, and all covered employees must be in the random pool. If you are a railroad conducting random testing more often than once per month (*e.g.*, you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis.

(iii) As a railroad, you may use a service agent (*e.g.*, C/TPA) to perform random selections for you, and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

* * * * *

■ 4. Section 219.602 is amended by revising paragraphs (c) and (d) to read as follows:

§ 219.602 Administrator's determination of random drug testing rate.

* * * * *

(c) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.800 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 219.800 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

* * * * *

■ 5. Section 219.607 is amended by revising paragraph (b)(1) to read as follows:

§ 219.607 Railroad random alcohol testing programs.

* * * * *

(b) * * *

(1) As a railroad, to calculate the total number of covered employees eligible for random testing throughout the year, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in a railroad's random testing pool, and all covered employees must be in the random pool. If you are a railroad conducting random testing more often than once per month (*e.g.*, you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis.

(i) As a railroad, you may use a service agent (*e.g.*, C/TPA) to perform random selections for you, and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(ii) [Reserved]

* * * * *

■ 6. Section 219.608 is amended by revising paragraphs (c) and (d) to read as follows:

§ 219.608 FRA Administrator's determination of random alcohol testing rate.

* * * * *

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.800 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.800 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 219.800 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 219.800 for any calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

* * * * *

■ 7. Section 219.800 is added to subpart I to read as follows:

§ 219.800 Annual reports.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA by March 15 of each year a report covering the previous calendar year (January 1–December 31), summarizing the results of its alcohol and drug misuse prevention program. As used in this paragraph, the term "employees of the railroad" includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

(b) As a railroad, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.25 and appendix H to part 40). You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (*e.g.*, electronic program transmitted via the Internet), other than hard-copy, for MIS form submission to FRA. For information on where to submit MIS forms and for the electronic version of the form, see: *http://www.fra.dot.gov/Content3.asp?P=504*.

(c) Each railroad shall ensure the accuracy and timeliness of each report submitted.

(d) As a railroad, if you have a covered employee who performs multi-DOT agency functions (*e.g.*, an employee drives a commercial motor vehicle and performs switchman duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Railroads may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (*e.g.*, a consortium/third party administrator) may prepare the MIS report on behalf of a railroad. However, a railroad official (*e.g.*, a designated employee representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

§§ 219.801 and 219.803 [Removed and Reserved]

■ 8. Sections 219.801 and 219.803 are removed and reserved.

Dated: November 20, 2003.

Allan Rutter,

Federal Railroad Administration.

Research and Special Programs Administration

Section-by-Section Discussion of Rule Changes for RSPA

RSPA has amended several sections of 49 CFR part 199 to conform to 49 CFR part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Drug and Alcohol Management Information System Reporting final rule. The specific changes to the regulatory text in part 199 are described below.

Section 199.3 Definitions

The definition for "positive rate" for random drug testing is being modified in § 199.3 in order to be consistent with the standardized DOT definition.

Section 199.117 Recordkeeping

Subparagraph (a)(2) of § 199.117 has been revised to include a requirement to maintain MIS drug testing data for 5 years to parallel the requirement for maintaining MIS alcohol testing data at § 199.227(b)(1). Subparagraphs (a)(2)(i)(ii)(iii) and (4) of § 199.117 have been removed because the retention of the data previously required by these paragraphs will be captured in the MIS data retention requirement. Subparagraph (5) of § 199.117 has been redesignated as subparagraph (4).

Section 199.119 Reporting of Anti-Drug Testing Results

Paragraph (a) of § 199.119 has been revised to require use of the new Management Information System (MIS) form and instructions required by part 40. Paragraph (b) of § 199.119 has been revised to include electronic submission of drug testing MIS reports and correct the room number for submitting paper versions of these reports. Paragraph (c) of § 199.119 has been revised to be consistent with part 40 on how operators are to determine the number of covered employees eligible for random drug testing. Paragraph (d) of § 199.119 has been revised to specify an operator's responsibility when using a service agent to perform random selections. Paragraph (e) of § 199.119 has been revised to provide instructions on how to report random drug testing MIS data for employees covered by more than one DOT agency, consistent with part 40. Paragraph (f) of § 199.119 has been revised to specify who may prepare drug testing MIS reports.

Section 199.229—Reporting of Alcohol Testing Results

Paragraph (a) of § 199.229 has been revised to require use of the new Management Information System (MIS) form and instructions required by part 40. Paragraph (b) of § 199.229 has been revised to provide instructions on how to report alcohol testing MIS data for employees covered by more than one DOT agency, consistent with part 40. Paragraph (c) of § 199.229 has been revised to include electronic submission of alcohol testing MIS reports and correct the room number for submitting paper versions of these reports. Former paragraph (d) and subparagraphs (d)(1)(2)(3)(i)(ii)(4)(5)(6)(7)(8)(9)(10) of § 199.229 have been removed because RSPA now requires use of the part 40 MIS form and the instructions for this form specify the data elements to be reported. Former paragraph (e) and subparagraphs (e)(1)(2)(3)(4)(5) of § 199.229 have been removed because the instructions for the MIS form in part 40 specify the data elements to be reported. Former paragraph (f) of § 199.229 permitting consortium to prepare MIS reports has been redesignated as paragraph (d) and revised to include service agents and third party administrators as defined in part 40.

List of Subjects in 49 CFR Part 199

Alcohol testing, Drug testing, Operators, Pipeline safety, Recordkeeping and reporting.

49 CFR Chapter I

Authority and Issuance

■ For reasons discussed in the preamble, the Research and Special Programs Administration amends part 199 of title 49, Code of Federal Regulations, as follows:

PART 199—DRUG AND ALCOHOL TESTING

■ 1. The citation of authority for 49 CFR part 199 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

■ 2. Amend § 199.3 by removing the definition for "positive rate" and adding the following definition in its place to read as follows:

§ 199.3 Definitions.

* * * * *

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

* * * * *

■ 3. Amend § 199.117 by revising paragraph (a)(2), removing paragraph (a)(4) and redesignating paragraph (a)(5) as paragraph (a)(4) and revising it to read as follows:

§ 199.117 Recordkeeping.

* * * * *

(a) * * *

(2) Records of employee drug test that indicate a verified positive result, records that demonstrate compliance with the recommendations of a substance abuse professional, and MIS annual report data shall be maintained for a minimum of five years.

* * * * *

(4) Records confirming that supervisors and employees have been trained as required by this part must be kept for at least 3 years.

* * * * *

■ 4. Revise § 199.119 to read as follows:

§ 199.119 Reporting of anti-drug testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.25 and appendix H to Part 40), not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

(b) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2103, 400 Seventh Street, SW., Washington, DC 20590. The operator may submit a paper report or data electronically using the version of the MIS form provided by DOT. This electronic version of the form can be accessed via the Internet at the following Office of Pipeline Safety web address: *http://ops.dot.gov/drug.htm.*

(c) To calculate the total number of covered employees eligible for random testing throughout the year, as an operator, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random testing more often than once per month (*e.g.*, you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis.

(d) As an employer, you may use a service agent (*e.g.*, C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(e) Each operator that has a covered employee who performs multi-DOT agency functions (*e.g.*, an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(f) A service agent (*e.g.*, Consortia/Third Party Administrator as defined in 49 CFR part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness.

■ 5. Revise § 199.229 to read as follows:

§ 199.229 Reporting of alcohol testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its alcohol testing results using the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.25 and appendix H to part 40), not later than March 15 of each year for the previous calendar year (January 1 through December 31). The Administrator may require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

(b) Each operator that has a covered employee who performs multi-DOT agency functions (*e.g.*, an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(c) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2103, 400 Seventh Street, SW., Washington, DC 20590. The operator may report data electronically using the version of the MIS form provided by DOT. This form can be accessed via the Internet at the following Office of Pipeline Safety web address: *http://ops.dot.gov/drug.htm.*

(d) A service agent (*e.g.*, Consortia/Third Party Administrator as defined in part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness.

Dated: December 11, 2003.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–31887 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D.122303H]

Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Quota transfers; fishery reopening.

SUMMARY: NMFS adjusts the coastwide General category quota for the Atlantic bluefin tuna (BFT) fishery by transferring 15.0 metric tons (mt) from the Longline North subcategory quota, 12 mt from the Longline South subcategory quota and 3 mt from the Trap category to the coastwide General category for a revised quota of approximately 564.4 mt. NMFS reopens the coastwide BFT General category for the time period of 12:30 a.m. January 2 through 11:30 p.m. January 3, 2004 inclusive. These actions are being taken to allow for maximum utilization of the U.S. BFT landings quota while maintaining a fair distribution of fishing opportunities, preventing overharvest of the adjusted quotas for the affected fishing categories, helping to achieve optimum yield in the General category fishery, and allowing the collection of a broad range of data for stock monitoring purposes, consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: The quota transfers are effective December 24, 2003, through May 31, 2004. The coastwide General category reopening is effective 12:30 a..m. January 2 through 11:30 p.m. January 3, 2004.

FOR FURTHER INFORMATION CONTACT: Brad McHale at 978–281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, and together with General category effort controls are specified annually as required under 50 CFR 635.23(a) and 635.27(a). The final initial 2003 BFT quota and General category effort controls were published on October 2, 2003 (68 FR 56783). A final rule to adjust certain size limits and commercial BFT seasons, including extending the General category through January 31 each year was published December 24, 2003 (68 FR 74504).

Quota Transfers

Under the implementing regulations at 50 CFR 635.27(a)(8), NMFS has the authority to transfer quotas among categories, or, as appropriate, subcategories, of the fishery, after considering the following factors: (1) The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; (2) the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded; (5) the effects of the transfer on BFT rebuilding and overfishing; and (6) the effects of the transfer on accomplishing the objectives of the HMS FMP.

If it is determined, based on the factors listed here and the probability of exceeding the total quota, that vessels fishing under any category or subcategory quota are not likely to take that quota, NMFS may transfer inseason any portion of the remaining quota of that fishing category to any other fishing category or to the Reserve quota.

General Category End Date

During the development of the HMS FMP, the emergence of a General category BFT fishery in the southern Atlantic region was extensively discussed by the HMS AP and the public. However, the HMS AP did not reach consensus on how the HMS FMP should address the scope of a southern area General category BFT fishery. Over the last couple of years, NMFS has performed a number of inseason quota transfers of BFT, consistent with the transfer criteria established in the HMS FMP, which has allowed the General category BFT fishery to extend into the winter months (i.e., late November - December) and provided fishing opportunities for southern Atlantic General category fishermen. In 2002, NMFS received a Petition for Rulemaking submitted by the North Carolina Department of Marine Fisheries to formalize this winter fishery and extend fishing opportunities into January. NMFS published a Notice of Receipt of Petition on November 18, 2002 (67 FR 69502).

In part to address some of the concerns raised in the Petition, as well as to increase fishing opportunities and optimum yield for the fishery overall, NMFS recently extended the General category end date from December 31 to January 31 (68 FR 74504, December, 24, 2003). This effectively alters the third General category time-period from October through December to October through January.

Quota Adjustments

The 2003 BFT quota specifications issued pursuant to § 635.27 set a General category quota of 684.4 mt of large medium and giant BFT to be harvested from the regulatory area during the 2003 fishing year, and divided the General category quota into time-period subquotas to provide for broad temporal and geographic distribution of fishing opportunities. On November 18, 2003, NMFS transferred 150 mt to the Reserve category, establishing an adjusted coastwide General category quota of 534.4 mt for the 2003 fishing year (68 FR 64990, November 18, 2003). Based on reported landings, NMFS closed the coastwide General category at 11:30 p.m. local time December 10, 2003. The intent of this closure was to prevent overharvest of the adjusted quota established for the General category. As of the December 10, 2003 closure, approximately 552.8 mt has been harvested by the coastwide General category, an overharvest of approximately 18.4 mt.

After considering the criteria established for making transfers between categories, NMFS has determined that 15 mt of the remaining Longline North subcategory quota of approximately 27.9 mt (not including the 25 mt set aside for BFT caught in the vicinity of the management boundary area) should be transferred to the coastwide General category quota. NMFS has also determined that 12 mt of the remaining Longline South subcategory quota of approximately 74.0 mt and 3 mt of the Trap category quota of approximately 3.8 should be transferred to the coastwide General category. These transfers provide a combined 30 mt to the coastwide General category fishery for an adjusted quota of 564.4 mt. This action addresses the cumulative overharvest of 18.4 mt to date and also provides a limited amount of additional quota (11.6 mt) to extend fishing opportunities in the southern Atlantic region.

Due to the expected General category catch rates late in the season and the amount of quota available, NMFS is limiting the coastwide General category reopening period for large medium and giant BFT to two days. Therefore, the coastwide General category is scheduled to reopen on 12:30 a.m. January 2, 2004, and close at 11:30 p.m. January 3, 2004. Fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or HMS Charter/Headboat categories must cease at 11:30 p.m. local time January 3, 2004.

Classification

The Assistant Administrator for fisheries, NOAA (AA), finds good cause that providing prior notice and public comment for this action, as required under 5 U.S.C. 553 (b) (B), is impracticable and contrary to the public interest. This transfer and reopening is intended to provide increased fishing opportunities in all areas without risking overharvest of the adjusted BFT quota established for the coastwide General category. The fishery is currently closed and any delay in reopening would not allow for maximum utilization of available quota and would be inconsistent with domestic requirements and objectives. NMFS provides prior notification of the reopening, and subsequent closure, by publishing a notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and to known fishery representatives, announcing the notice on the Atlantic Tunas Information Line, and announcing the notice over NOAA Weather and Coast Guard radio channels. For all of the above reasons, and because this action relieves a restriction (i.e., allows the utilization of quota and extends fishing opportunities), there is also good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action. This action is required under 50 CFR 635.28(a) (1) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 24, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–32223 Filed 12–24–03; 2:10 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 250
Wednesday, December 31, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–85–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135 and EMB–145 series airplanes. This proposal would require inspection of the housings of the main landing gear (MLG) leg strut bushings; repair of the housings if necessary; and replacement of the MLG leg strut bushings with new bushings. These actions are necessary to prevent corrosion of the housings of the MLG leg strut bushings and consequent failure of the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 30, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–85–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–85–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC advises that, during a sampling program inspection, corrosion was discovered on the housings of certain main landing gear (MLG) leg strut bushings due to water accumulation in the holes of those bushings. This condition, if not corrected, could result in failure of the MLG.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–32–0066, Change 01, dated August 15, 2002, which describes procedures for a detailed inspection of the housings of the main landing gear (MLG) leg strut bushings; repair of the housings if necessary; and replacement of the MLG leg strut bushings with new bushings without holes. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 2002–12–01, effective January 6, 2003, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 75 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 7 work hour per airplane to accomplish the proposed inspection of the bushing housings for corrosion, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $34,125, or $455 per airplane.

It would take approximately 7 work hours per airplane to accomplish the proposed replacement of the bushings, at an average labor rate of $65 per work hour. Required parts would cost approximately $250 per airplane. Based on these figures, the cost impact of the proposed replacement of bushings on U.S. operators is estimated to be $52,875, or $705 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has accomplished any of the proposed requirements of this AD action, and that no operators would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–85–AD.

Applicability: Model EMB–135 and –145 series airplanes, certificated in any category, equipped with main landing gear (MLG) leg strut, part number (P/N) 2309–3002–501 through 2309–3002–508 inclusive, and 2309–2002–501 through 2309–2002–510 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the housings of the main landing gear (MLG) leg strut bushings and consequent failure of the MLG, accomplish the following:

Inspection and Repair of Housings

(a) Within 5,500 flight hours after the effective date of this AD, perform a detailed inspection of the housings of the MLG leg strut bushings for corrosion per the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0066, Change 01, dated August 15, 2002. If any corrosion is found, prior to further flight, repair the housings in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Replacement of Bushings

(b) Within 5,500 flight hours after the effective date of this AD, replace the MLG leg strut bushing, P/N 2309–2022–001, with a new bushing without holes, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0066, Change 01, dated August 15, 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2002–12–01, effective January 6, 2003.

Issued in Renton, Washington, on December 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–32135 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–101–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, 700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, 700C, –800, and –900 series airplanes. This proposal would require replacement of the proximity switch electronics unit with a new, improved unit. This action is necessary to prevent a malfunction of the aural warning for the landing gear, leading the crew to open the circuit breaker for the aural warning horn which stops the operation

of other aural warnings of malfunctions in other systems and, thus, could jeopardize a safe flight and landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–101–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–101–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from at least seven operators of Boeing Model 737 airplanes of a malfunction of the aural warning horn for the landing gear. The aural warning operated during climb or cruise, after retraction of the landing gear and flaps. The malfunction can cause the flight crew's focus to change from operation of the airplane to identification of the cause of the malfunction. Malfunction of the aural warning for the landing gear, if not corrected, could lead the crew to open the circuit breaker for the aural warning horn which stops the operation of other aural warnings of malfunctions in other systems and, thus, could jeopardize a safe flight and landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–32A1343, dated July 26, 2001, which describes procedures for replacement of the proximity switch electronics unit (PSEU) with a new unit which will help prevent a malfunction of the aural warning horn for the landing gear. The Alert Service Bulletin indicates that Boeing Component Service Bulletins 285A1600–32–01 and 285A1600–32–02 are to be accomplished concurrently. Accomplishment of the actions specified in the Alert Service Bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences

Although the service bulletin recommends accomplishing the replacement "as soon as manpower and material are available," the FAA has determined that such an imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, the FAA finds a compliance time of 18 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

The FAA is not proposing in this NPRM that Boeing Component Service Bulletins 285A1600–32–01 and 285A1600–32–02 be accomplished concurrently with Boeing Alert Service Bulletin 737–32A1343, dated July 26, 2001.

Cost Impact

There are approximately 890 airplanes of the affected design in the worldwide fleet. The FAA estimates that 283 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $40 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $84,900, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–101AD.

Applicability: Model 737–600, –700, 700C, –800, and "900 series airplanes, as listed in Boeing Alert Service Bulletin 737–32A1343, dated July 26, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a malfunction of the aural warning for the landing gear, leading the crew to open the circuit breaker for the aural warning horn which stops the operation of other aural warnings of malfunctions in other systems and, thus, could jeopardize a safe flight and landing, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD: Remove the Proximity Switch Electronics Unit (PSEU) having part number 285A1600–2 or 285A1600–3 and replace it with a PSEU having part number 285A1600–4, per the Accomplishment Instructions of Boeing Alert Service Bulletin 737–32A1343, dated July 26, 2001.

Parts Installation

(b) As of the effective date of this AD, no person shall install a PSEU having part number 285A1600–2 or 285A1600–3 on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on December 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–32134 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–338–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposal would require inspection of the fitting assemblies located on the vent and scavenge lines routed immediately below the fuel tank access covers on both wings for proper installation, and corrective actions if necessary. This proposal also would require inspection of the stiffeners on the underside of fuel tank access covers on both wings for signs of chafing damage caused by incorrect orientation of the lockwire tail, and removal of damage. This action is necessary to prevent contact between the lockwire pigtail of the fitting and the stiffener located on the inside surface of the fuel access covers of the wings, which could serve as a potential ignition source within the fuel tank if a cover is struck by lightning and result in possible fuel tank explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 30, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–338–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–338–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York.

FOR FURTHER INFORMATION CONTACT: Sarbhpreet Singh Sawhney, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York

11590; telephone (516) 228–7340; fax (516) 794–5531

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–338–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–338–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. TCCA advises that it has received a report of a contact condition between the lockwire pigtail of a particular fitting and the stiffener located on the inside surface of a wing fuel access cover. Investigation revealed that these particular fittings were installed facing the outboard side of the wing, rather than the inboard side. This condition, if not corrected, could result in contact between the lockwire pigtail of the fitting and the stiffener located on the inside surface of the fuel access covers of the wings. Such contact could serve as a potential ignition source within the fuel tank if a cover is struck by lightning, which could result in possible fuel tank explosion.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A8–28–33, Revision "A," dated October 10, 2002, which describes the following procedures:

- A general visual inspection to verify proper installation of the fitting assemblies and lockwire located on the vent and scavenge lines routed immediately below the fuel tank access covers on both wings, and corrective actions if necessary. These corrective actions include changing the orientation of the fitting assembly; performing a general visual inspection of the O-ring for damage; replacing any damaged O-ring with a new O-ring; and replacing the lockwire with a new lockwire if necessary.
- A general visual inspection of the stiffeners on the underside of fuel tank access covers on both wings for signs of chafing damage caused by incorrect orientation of the lockwire tail, and removal of damage.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2002–44, dated October 22, 2002, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Referenced Service Bulletin/Canadian Airworthiness Directive

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain damage conditions, this proposal would require operators to remove the damage per a method approved by either the FAA or the TCCA (or its delegated agent). In light of the type of removal that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, removal of damage approved by either the FAA or TCAA would be acceptable for compliance with this proposed AD.

Operators should note that, although the Canadian airworthiness directive and the Accomplishment Instructions of the referenced service bulletin describe procedures for reporting inspection findings to the airplane manufacturer, this proposed AD would not require those actions. The FAA does not need this information from operators.

Cost Impact

The FAA estimates that 172 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,180, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–338–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 003 through 586 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent contact between the lockwire pigtail of the fitting and the stiffener located on the inside surface of the fuel access covers of the wings, which could serve as a potential ignition source within the fuel tank if a cover is struck by lightning and result in possible fuel tank explosion, accomplish the following:

Inspection of Fitting Assemblies and Lockwire

(a) Within 12 months after the effective date of this AD, do a general visual inspection to verify proper installation of the fitting assemblies and the lockwire located on the vent and scavenge lines routed immediately below the fuel tank access covers on both wings by accomplishing all the actions specified in Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–28–33, Revision "A," dated October 10, 2002. Do the actions per the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions for Any Improperly Installed Fitting Assembly or Lockwire

(b) If any fitting assembly is found to be improperly installed during the general visual inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD per Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–28–33, Revision "A," dated October 10, 2002.

(1) Change the orientation of the fitting assembly.

(2) Perform a general visual inspection of the O-ring for damage, and replace any damaged O-ring with a new O-ring.

(c) If any lockwire is found to be improperly installed during the general visual inspection required by paragraph (a) of this AD, before further flight, replace the lockwire with a new lockwire, per Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–28–33, Revision "A," dated October 10, 2002.

Inspection of the Stiffeners

(d) Within 12 months after the effective date of this AD, do a general visual inspection of the stiffeners on the underside of fuel tank access covers on both wings for signs of chafing damage caused by incorrect orientation of the lockwire tail, per Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–28–33, Revision "A," dated October 10, 2002.

Corrective Action for Chafing Damage

(e) If any chafing damage is found during the general visual inspection required by paragraph (d) of this AD, before further flight, remove the damage per Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–28–33, Revision "A," dated October 10, 2002, except where the service bulletin recommends contacting Bombardier for damage in excess of the given limits, before further flight, repair per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or the Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Exception to Service Bulletin Reporting

(f) Although the service bulletin referenced in this AD specifies to report inspection findings to the airplane manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–44, dated October 22, 2002.

Issued in Renton, Washington, on December 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–32133 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16437; Airspace Docket No. 03–AWP–02]

RIN 2120–AA66

Proposed Revision of VOR Federal Airway 137

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise VOR Federal Airway 137 (V–137) between the Thermal, CA, Very High Frequency Omnidirectional Radio Range and Tactical Air Navigation Aids (VORTAC) intersection and the Imperial, CA, VORTAC. The current route segment between the Thermal, CA, VORTAC, and the Imperial, CA, VORTAC is aligned to avoid a restricted area that no longer exists. The FAA is proposing this action to realign V–137 to form a direct route between the Thermal, CA, VORTAC, and the Imperial, CA, VORTAC. This action would improve the management of air traffic operations and reduce the route mileage between the Thermal, CA, VORTAC and the Imperial, CA, VORTAC.

DATES: Comments must be received on or before February 17, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2003–16437 and Airspace Docket No. 03–AWP–02, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2003–16437 and Airspace Docket No. 03–AWP–02) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2003–16437 and Airspace Docket No. 03–AWP–02." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal; any comments received; and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to revise V–137 between the Thermal, CA, VORTAC, and the Imperial, CA, VORTAC. The current route segment between the Thermal, CA, VORTAC, and the Imperial, CA, VORTAC, is aligned to avoid a restricted area that no longer exists. The FAA is proposing this action to realign V–137 to form a direct route between the Thermal, CA, VORTAC, and the Imperial, CA, VORTAC. This action would improve the management of air traffic operations and reduce the route mileage between the Thermal, CA, VORTAC, and the Imperial, CA, VORTAC.

Domestic VOR Federal airways are published in paragraph 6010(a), of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–137 [Revised]

From Imperial, CA, INT Imperial 336°M/350°T and Thermal, CA, 131°M/144°T radials; Thermal; Palm Springs, CA; Palmdale, CA; Gorman, CA; Avenal, CA; Priest, CA; Salinas, CA.

* * * * *

Issued in Washington, DC, December 22, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–32083 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–044]

RIN 1218–AA84

Occupational Exposure to 2-Methoxyethanol, 2-Ethoxyethanol and Their Acetates (Glycol Ethers)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Withdrawal of proposed rule; termination of rulemaking.

SUMMARY: OSHA is withdrawing its proposed standard on Occupational Exposure to 2-Methoxyethanol (2-ME), 2-Ethoxyethanol (2-EE), and their Acetates (2-MEA, 2-EEA) (four glycol ethers). Production and use of the four glycol ethers either have ceased or are virtually limited to "closed systems" where exposure levels more than 10 years ago already were at or below the proposed permissible exposure limits (PELs). Because there are few, if any, remaining opportunities for workplace exposure to these glycol ethers and little or no potential for exposure in the future because of the availability of less-toxic substitutes, OSHA has concluded that the proposed rule is no longer necessary.

DATES: This withdrawal is effective December 31, 2003.

FOR FURTHER INFORMATION CONTACT: OSHA, Mr. George Shaw, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1890 (OSHA's TTY number is (877) 889–5627).

For additional copies of this Federal Register notice, contact OSHA, Office of Communications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Webpage on the Internet at *http://www.OSHA.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 23, 1993, OSHA proposed to reduce the existing PELs for four glycol ethers (2-ME, 2-EE, 2-MEA, 2-EEA) (58 FR 15526). Based on a review of scientific studies and other available evidence, OSHA preliminarily determined that the existing PELs were not adequate to protect an approximately 46,000 exposed workers from significant risks of adverse reproductive and developmental health effects. The Agency held informal public hearings on the proposal, and the record closed in March 1994.

On August 8, 2002, OSHA reopened the rulemaking record to solicit information on the extent to which these glycol ethers are still produced and used in the workplace (67 FR 51524). The Agency also requested information on substitutes for the four glycol ethers that employers may be using, including information on patterns of use, degree of toxicity, and levels of employee exposure to the substitutes. The comment period closed on November 6, 2002. OSHA received only six comments. While this action does not meet any of the criteria for an economically significant or major rule as specified by Executive Order or relevant statutes, it was reviewed by OMB pursuant to Executive Order 12866.

II. Reasons for Withdrawal of the Proposed Standard

Based on evidence of adverse reproductive and developmental health effects associated with exposure to the four glycol ethers (*e.g.*, Exs. 19, 19A, 19B, 24 A–C), some commenters urged OSHA to issue a final standard on glycol ethers (*e.g.*, Exs. 64–2; 64–4; 64–5). However, OSHA has decided to terminate the rulemaking because production, use and exposure to these glycol ethers has ceased or is virtually limited to closed system production where there is little opportunity for employee exposure. Exposure levels in those operations already are at or below the proposed PELs. In addition, use of these glycol ethers has largely been replaced by less-toxic substitutes.

Production and use of the four glycol ethers have declined substantially or ceased completely since the proposed rule was published. Starting in the 1990s employers began moving away from using these glycol ethers due to increasing awareness of their adverse health effects. As early as the mid-1990s, production and use of these glycol ethers had dropped from peak production levels in the late 1980s (Ex. 302–X, pp. 597; 67 FR 51524). The four glycol ethers had been or were being eliminated from critical use areas (*e.g.*, construction paints and coatings, printing inks, military jet fuel) and key industry sectors (*e.g.*, automotive, electronics, semiconductor) (Exs. 11–18; 19B; 28; 29A; 48; 53; 58; 302–X, pp. 596–600). For example, these glycol ethers were no longer used in automotive refinishing, which had accounted for about 86 percent of the affected establishments and 57 percent of all exposed workers. Production of 2-MEA had been phased out completely and the use of 2-ME as a military jet fuel additive, its primary use, was to be phased out before 2000 (Ex. 302–X, pp. 597–98). Thus, by the close of the rulemaking record in 1994, most downstream use had been eliminated (Ex. 58; 302–X, pp. 596–600). Where 2-ME, 2-EE and 2-EEA were still manufactured, their production was virtually limited to "closed systems" where, even more than 10 years ago, average exposures (both arithmetic and geometric averages) already were at or below the proposed PELs (Ex. 302–X, pp. 597–98; 58 FR 15582).

More recent data confirm that use of and exposure to these glycol ethers have declined further and are now very limited (Ex. 64–1; 64–1–1. *See also*, SRI, Chemical Economics Handbook (CEH) 663.5000 *et seq.* (September 2000)). By 1999, use of 2-EE had fallen 70 percent, from a peak of 175 million pounds in 1980, and 2-ME use had dropped 96 percent, to just 3 million pounds, according to the Ethylene Glycol Ethers Panel of the American Chemistry Council (ACC), formerly Chemical Manufacturers Association (Ex. 64–1–1; CEH 663.5001A–H). Of the glycol ethers still produced, more than 55 percent was exported and more than 40 percent was used to produce 2-EEA in closed systems, where average exposure levels are at or below the proposed PELs and in most cases less than one-half the proposed PELs (Ex. 64–1–1; 58 FR 15582, Table VIII–2). All other domestic consumption totaled less than 4 percent (5 million pounds). (See Table 1.) Finally, OSHA also notes that the very few comments submitted in response to the record reopening may be further indication of the decline in use and exposure to the four glycol ethers:

TABLE 1.—CONSUMPTION OF ETHYLENE GLYCOL ETHERS, 1999 (MILLIONS OF POUNDS)

	Acetate production	Other U.S. consumption	Exports	Total
2-EE	52	1	0	53
2-EEA	0	1	71	72
2-ME	0	3	0	3
2-MEA	0	0	0	0
Total for all glycol ethers	52 (40.6%)	5 (3.9%)	71 (55.5%)	128 (100%)

Source: Ex. 64–1–1 (citing SRI, Chemical Economics Handbook (September 2000)).

There is now effectively only one producer of these glycol ethers remaining in the United States, Equistar Chemicals (Exs. 64–1; 64–1–1), whose production is virtually limited to closed systems so employees have little opportunity for exposure. According to ACC, Equistar exports the bulk of the glycol ethers it produces (Ex. 64–1). The *Chemical Economics Handbook* confirms this, reporting that the four glycol ethers are no longer sold in the United States (CEH 663.5000R–S). (OSHA notes that Eastman Chemical Company also produces a small amount of 2-EE in a closed system, but only for in-house use as a site-limited intermediate in the production of another product (Ex. 64–1).

Prior to 2001, Dow Chemical Company and Union Carbide, the largest producer of these glycol ethers, produced almost 60 percent of these glycol ethers (CEH 663.5000Q). In 2001, Dow acquired Union Carbide (Exs. 64–1; 64–1–1). Last year, Dow stopped manufacturing these glycol ethers, moving instead to producing less-toxic E-series butyl glycol ethers (*e.g.*, EB) (Exs. 64–1; 64–1–1. CEH 663.5000Q).

III. Substitutes

There is little or no future potential exposure to the four glycol ethers because their use has largely been replaced by less-toxic substitutes. According to ACC, a number of substitutes are available, including other ethylene glycol ethers, propylene glycol ethers and other types of solvents (Ex. 64–1). The *Chemical Economics Handbook* reports that use of the four glycol ethers has been replaced primarily by E-series butyl glycol ethers (EB), P-series glycol ethers, and ethyl-3-ethoxypropionate (EEP). For example, ethylene glycol monobutyl ether acetate, diethylene glycol monobutyl ether acetate, and propylene glycol monomethyl acetate have replaced the use of 2-EEA (CEH 663.5000O). By 1999, the various substitutes accounted for about 80 percent of all glycol ethers consumed domestically (CEH 663.5000E–F). Of these substitutes, EB is now the largest volume glycol ether (64 FR 42127, August 3, 1999), accounting for 44 percent of all glycol ethers consumed domestically (CEH 663.5000E).

Some commenters raised concerns about the potential toxicity of some substitutes, particularly longer chain ethylene glycol ethers, and urged OSHA to promulgate standards addressing these substances (Exs. 64–2, 64–4, 64–5). For example, the California Department of Health Services said the following glycol ethers have been shown to produce adverse reproductive and developmental health effects: ethylene glycol dimethyl ether, ethylene glycol diethyl ether, diethylene glycol dimethyl ether, diethylene glycol diethyl ether, triethylene glycol dimethyl ether, propylene glycol methyl ether-beta, and propylene glycol methyl ether acetate-beta (Ex. 64–5). However, OSHA received little information on the degree to which these substances are used in workplaces and the extent to which employees are currently exposed to them. Therefore, OSHA is not able to determine, based on this rulemaking record, whether those substitutes need to be addressed.

OSHA notes that information submitted to the Environmental Protection Agency indicates that some substitutes do not appear to have the level of toxicity of the four glycol ethers (65 FR 47342, August 2, 2000; 64 FR 42125, August 3, 1999. See also EPA Docket No. A–99–24). Based on such information, EPA is currently considering whether the delist EB from the hazardous air pollutants list established by the Clean Air Act. EB is the most prevalent of the substitutes, accounting for 44 percent of all glycol ether consumed domestically.

In conclusion, given the very limited production, use and exposure to these glycol ethers and the lack of potential future workplace exposure due to the availability and increasing use of less-toxic substitutes, OSHA is withdrawing the proposed standard. Accordingly, OSHA is devoting its resources to rulemaking projects where there is greater potential for employee exposure.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to section 6 of the Occupational Safety and Health Act of 1970 (84 Stat. 1594, 29 U.S.C. 655), 29 CFR 1911, and Secretary's Order 5–2002 (67 FR 65008).

Signed at Washington, DC, this 23rd day of December, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–32018 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–243–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: We are announcing a decision that House Bill 556, passed by the Kentucky General Assembly on March 15, 2002, designating the ridge top of Pine Mountain as the Pine Mountain Trail State Park, does not meet the criteria to be deemed an amendment to the Kentucky Regulatory Program.

EFFECTIVE DATES: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (859) 260–8400, e-mail: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act" *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

On March 15, 2002, the Kentucky General Assembly enacted House Bill No. 556 (HB 556), which established the Pine Mountain Trail State Park in southeastern Kentucky. The bill provides that HB 556 and its implementing regulations are to be administered by the Kentucky Department of Parks. On October 31, 2002, we requested that Kentucky submit HB 556 as an amendment to the Kentucky regulatory program. The State submitted its response to our request on March 27, 2003, sending HB 556 to us for processing as a State program amendment (Administrative Record No. 1574).

We announced our intent in the June 27, 2003 **Federal Register** (68 FR 38255) to determine whether HB 556 required us to issue a decision on the submission as an amendment to the Kentucky regulatory program and whether, if it is an amendment, HB 556 is consistent with Federal unsuitability provisions contained in the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Because we are answering the first question in the negative, we will not reach the second question.

In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the submission. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 28, 2003. We received comments from two Federal agencies (the U.S. Department of the Interior, Fish and Wildlife Service, and the U.S. Department of Labor, Mine Safety and Health Administration). We also received comments from the Kentucky Resources Council, Inc. and the Kentucky Coal Association.

III. OSM's Findings

Federal regulations at 30 CFR 732.17 establish procedures and requirements for processing and requiring State program amendments. That section of the regulations applies to any proposed changes which affect implementation of the approved regulatory program. We have reviewed HB 556 in the context of these criteria and have determined that HB 556 does not require OSM's approval as an amendment to the Kentucky regulatory program as discussed below.

HB 556 establishes the Pine Mountain Trail State Park in Southeastern Kentucky. The bill provides that HB 556 and its implementing regulations are to be administered by the Kentucky Department of Parks. Thus, the bill does not amend or alter the State's law or regulations that constitute the approved program in Kentucky. They remain intact. For this reason, we have determined that HB 556 does not meet any of the criteria contained in 30 CFR 732.17, and, therefore, does not qualify as a program amendment. Although HB 556 refers to the Kentucky regulatory program, it does not change the Kentucky Surface Mining Law or its implementing regulations.

We recognize that this notice leaves unanswered the question of whether or not HB 556 is consistent with SMCRA. However, in not answering this question, we are acting in a manner consistent with our June 27, 2003, **Federal Register** notice, which stated that we would address this question only if we determined that HB 556 constituted a program amendment. In any event, that question would need to be addressed through a separate rulemaking under 30 CFR 730.11, if we should initially determine that HB 556 is inconsistent with SMCRA or the Federal regulations. We have not made such an initial determination, nor do we conclude that we need to address the issue at this time.

Nevertheless, we recognize that the filing of a surface coal mining application for lands within boundaries of the Pine Mountain Trail State Park, or the filing of a petition to declare lands adjacent to or visible from the park unsuitable for surface coal mining operations, could raise the question of whether or not HB 556 adversely affects the implementation of the approved Kentucky regulatory program, with respect to the Pine Mountain Trail State Park. In the event of such an occurrence, we will address the question of whether any portion of HB 556 is inconsistent with SMCRA or the Federal regulations. If we make a preliminary determination in the affirmative, we will subsequently initiate a rulemaking wherein we will announce that preliminary determination and will propose that any offending portions of HB 556 be set aside and thereby rendered unenforceable by the State, in accordance with Section 505(b) of SMCRA, 30 U.S.C. 1255(b), and 30 CFR 730.11(a) of the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Kentucky Coal Association submitted comments dated July 24, 2003, (Administrative Record No. KY–1592) in which it indicated that HB 556 should not be considered an amendment to the Kentucky regulatory program because it does not revise the Kentucky law or regulations related to surface coal mining operations.

OSM agrees with this comment, for the reasons stated above in the findings.

The Kentucky Resources Council, Inc. (KRC) submitted comments dated July 28, 2003 (Administrative Record No. KY–1593). KRC stated that HB 556 must be considered a program amendment, because it "dramatically affects the administration and enforcement of the unsuitability and buffer zone provisions of the approved state program." For the reasons stated in our findings, above, we have concluded that HB 556 does not constitute a State program amendment. Therefore, we disagree with KRC on this point.

KRC further stated that HB 556 is inconsistent with Section 522 of SMCRA because it: (1) Mandates that the Department of Parks waive the 300 foot buffer zone provisions; and (2) precludes the filing of a petition to designate areas as unsuitable for mining within the viewshed of the park.

In response, we note that because we have determined that HB 556 is not a program amendment, we need not decide at this time whether any or all portions of the bill are inconsistent with SMCRA or the Federal regulations. As such, we need not respond to these KRC comments at this time.

However, the KRC also argues that we cannot defer our decision on the consistency of HB 556 with SMCRA until actual harm, *i.e.*, surface coal mining within the 300 feet buffer zone or within the viewshed of the Park, becomes imminent. We disagree. Neither SMCRA nor the Federal regulations place time limits on decisions as to whether State laws or regulations are inconsistent with SMCRA, and therefore must be set aside. Rather, 30 CFR 730.11(a) merely requires us to "publish a notice of proposed action * * * setting forth the text or a summary of the text of any State law or regulation *initially determined * * * to be inconsistent with the Act or this chapter.*" (Emphasis added) We have yet to make such an initial determination, nor do we need to do so at this time. However, should the State or others initiate actions that would warrant our addressing the consistency question, there will be ample time during the State's administrative processing of these actions for us to address the question and, if warranted, to institute set-aside proceedings pursuant to 30 CFR 730.11(a). We also note that the KRC is free to seek injunctive relief against the State or any mining applicant, to prevent mining within 300 feet of the Park, while our set-aside determination is pending, should KRC believe such mining would be inconsistent with the approved Kentucky program.

Federal Agency Comments

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) submitted a letter dated July 22, 2003, that it had no comments (Administrative Record No. KY–1591).

The U.S. Department of the Interior, Fish and Wildlife Service submitted comments dated July 31, 2003, (Administrative Record No. KY–1594) in which it indicated concern for the waiver of the 300 foot buffer zone.

As discussed in our findings, above, we have determined that HB 556 is not a program amendment. We will consider the buffer zone waiver issue only if and when it is ripe for a decision.

Dated: December 2, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–32106 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[WC Docket No. 02–269; CC Docket No. 00–199; CC Docket No. 80–286; CC Docket No. 99–301; FCC 03–326]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on recommendations by the Federal-State Joint Conference on Accounting Issues (Joint Conference).

DATES: Comments are due on January 30, 2004, and reply comments are due on February 17, 2004.

FOR FURTHER INFORMATION CONTACT: Jane E. Jackson, Associate Chief, Wireline Competition Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted on December 17, 2003, and released on December 23, 2003. The full text of the document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, e-mail *qualexint@aol.com.*

Synopsis of Order

In this Notice of Proposed Rulemaking, comment is sought on recommendations of the Joint Conference. The Commission convened the Joint Conference on August 27, 2002, as a Federal-State partnership to reexamine regulatory accounting requirements, and recommend additions and modifications thereto. On October 9, 2003, the Joint Conference submitted the result of a year-long study of the Commission's accounting rules and on-going proceedings related to the Commission's accounting requirements. Here, comment is sought on those recommendations. Comment also is sought on further delaying the implementation of four accounting and reporting rule changes, to allow time for receipt and consideration of comments responding to the Joint Conference's recommendations with regard to the four rule changes.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–32148 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 396

[Docket No. FMCSA–98–3656]

RIN 2126–AA38

General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM).

SUMMARY: FMCSA withdraws its February 17, 1999, ANPRM relating to responsibilities for the inspection, repair, and maintenance of intermodal container chassis and trailers. After reviewing the public comments received in response to the ANPRM, transcripts from three listening sessions held in November 1999, comments submitted in response to the agency's November 29, 2002, notice of intent to consider a negotiated rulemaking, and the neutral convenor's final report, the agency has determined that it would be inappropriate to move forward with a Notice of Proposed Rulemaking at this time. FMCSA believes there is insufficient data concerning the relationship between the mechanical condition of intermodal container chassis and trailers, and commercial motor vehicle accidents to quantify the extent to which the condition of container chassis or trailers contributed, in whole or in part, to accidents. Furthermore, the neutral convenor hired by the agency to interview individuals or organizations that might represent interests that are most likely to be substantially affected by a rulemaking concerning this subject, has concluded that a negotiated rulemaking process seeking to produce a set of consensus recommendations to FMCSA should not be undertaken. Therefore, no further consideration will be given to conducting a negotiated rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Chief of the Vehicle and Roadside Operations Division (MC–PSV), (202) 366–4009, Federal Motor Carrier Safety Administration, 400

Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The electronic file of this document is available from the DOT public docket at *http://dms.dot.gov*, docket number FMCSA–98–3656. It is also available from FMCSA's Web site at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings*; or the **Federal Register** Web site at *http://www.gpoaccess.gov*. If you do not have access to the Internet, you may request a copy of this document from the person identified above under **FOR FURTHER INFORMATION CONTACT.** You must identify the title and docket number of the document.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

Background

On February 17, 1999 (64 FR 7849), the Federal Highway Administration (FHWA) published an ANPRM to consider whether 49 CFR parts 390 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) should be amended to shift the responsibility for ensuring that intermodal container chassis and trailers comply with the applicable motor carrier safety regulations from motor carriers operating such vehicles, to entities (ocean carriers, rail carriers, intermodal terminal operators, ports) that offer these vehicles for transportation in interstate commerce. This action was in response to a petition for rulemaking filed by the American Trucking Associations, Inc. (ATA) and the ATA Intermodal Conference (the Petitioners). The Petitioners argued motor carriers have no opportunity to maintain this equipment and that the parties who do have the opportunity often fail to do so. The Petitioners requested the FMCSRs be amended to require rail carriers, ocean carriers, and other entities that offer intermodal container chassis for transportation in interstate commerce to ensure chassis meet applicable Federal safety requirements.

Discussion of ANPRM and Listening Session Comments

The agency received 104 comments from 71 interested parties in response to the ANPRM and 102 individuals spoke at one or more of the three listening sessions. Most of the commenters to the docket and speakers during the listening session were motor carriers, ocean carriers, rail carriers or terminal operators. The following table identifies participants by industry sector.

Industry sector	Docket	Chicago	New York	Seattle
Motor Carriers/Motor Carrier Industry	39	15	16	6
Port/Marine Terminal/Ocean Carrier/Representatives	24	8	12	12
Railroad/Representatives	2	11	8	6
Shipper	1			
State Agency	1			
Intermodal Association of North America (IANA)/Consultant/Other	3	2	3	1
Maritime Union Members	1			2
Total	71	36	39	27

Stakeholder opinions about potential resolutions were largely polarized into one of two basic positions:

- Motor carriers agreed with Petitioners and expressed concerns about the lack of attention to chassis maintenance on the part of the equipment providers.
- Terminal operators and equipment providers were opposed to amending the FMCSRs to shift responsibility from motor carriers to equipment providers.

The major issues raised and stakeholder perspectives are discussed below.

Lack of Data To Determine Safety Impacts Current Maintenance Practices

While the Petitioners and those in favor of the petition argued the lack of adequate maintenance by equipment providers is a safety issue, there appeared to be no data available to support this assertion. There was a lack of data presented in both the docket submissions and in the information offered at the listening sessions. The available data show a significant number of chassis dispatched from intermodal terminals are later shown to have safety defects during roadside inspection, but the relationship between these defects and accidents has not been substantiated. Overall, most of the information presented during the public meetings was anecdotal.

The responses to the questions presented in the ANPRM and questions asked by U.S. Department of Transportation representatives (Office of the Secretary, Office of Motor Carrier Safety (prior to the establishment of FMCSA), FHWA, Federal Railroad Administration, Maritime Administration) during the listening sessions produced no meaningful data to either define the problem or evaluate potential solutions. Commenters to the docket and participants in the meetings appeared to be in agreement that better data should be developed before a decision is made by the agency to pursue this issue.

Adequacy of Chassis Maintenance and Inspection

The comments submitted to the docket and the remarks of participants in the public meetings suggest there is a need to clarify industry practices concerning the maintenance of intermodal container chassis. Commenters and participants indicated most ocean carriers, rail carriers, terminal operators, and motor carriers take seriously their responsibility to operate only roadworthy equipment. However, they acknowledge other members of the intermodal transportation industry are doing only the minimum necessary to "get by."

Commenters and participants fundamentally disagree on the adequacy of preventive maintenance and inspection practices at many terminals. Terminal operators indicated they have effective maintenance and inspection programs in place. Equipment Interchange Discussion Agreement (EIDA), an association of nine ocean common carriers, stated its members have literally hundreds of facilities employing over a thousand mechanics and inspectors and that equipment maintenance is their single largest expense. American President Lines (APL) spends over $36 million annually on 63,000 chassis; Maersk spends $17 million on 32,000 chassis, a rough average of $500 per year per chassis. A representative of an ocean carrier explained that this attention to maintenance and comprehensive equipment inspection is driven by the market realities of customer expectations.

Generally, motor carriers agreed that some terminal operators made significant efforts to improve. However, they continue to have concerns about the equipment providers' inbound inspection process. Motor carriers believe it is in the financial interest of equipment providers to let chassis leave the terminal without noting defects or deficiencies and then pointing out mechanical problems when the container chassis is returned. The mechanical problems then are blamed on motor carriers and the costs for repairs are subsequently passed on to them.

Motor carriers argue chassis repair and maintenance should be done before motor carriers arrive at the terminal. They believe roadability lanes offered by some equipment providers are a good idea, but preventative maintenance would be better. Chassis maintenance is too often undertaken on an as-needed basis rather than as part of a scheduled preventive maintenance program.

Adequacy of Roadability/Walk-Around Inspections

Commenters and participants recognize that roadability lanes are available in some terminals, but they appear to be used by only a small percentage of drivers. If roadability lanes or similar facilities are available, the time involved in using them makes this option problematic since most drayage drivers are paid by the trip, not by the hour. It was observed company drivers who are paid by the hour take advantage of roadability lanes more often than owner-operators who are paid on a per trip basis.

Motor carriers argued that at many rail terminals drivers cannot get out of their trucks to do chassis inspection and they claim that there is no staff available to assist them. However, EIDA members and other terminal operators asserted that they provided drivers with ample opportunity to perform the required walk-around inspection prior to departure.

Commenters emphasized that some vehicle components cannot be inspected by one person working alone. For example, checking brake adjustment typically requires one person to apply the brakes while another person measures the push-rod travel. Motor carriers argue significant mechanical defects typically cited by roadside inspectors cannot be identified during a walk-around inspection. They assert walk-around inspections cannot substitute for routine inspection and maintenance by the terminal operator's mechanics.

Owner-operators agreed walk-around inspections do not typically reveal all the defects that Federal or State inspectors may find during a more thorough inspection. Also, if a defect is found during the walk-around inspection it is likely to generate a costly delay in leaving the terminal. Owner-operators argue the driver's walk-around inspection should be considered a back up to the routine and detailed inspection by the equipment provider, not the primary means to detect defects.

Impacts of Changing Responsibility for Chassis Roadability

EIDA estimates that the incremental cost of shifting this responsibility to the terminal operators would be about $200 per chassis per year. This would represent a 40-percent increase in operating costs. These increased operating costs would be ultimately borne by the transportation system and by consumers. These estimates do not include increased equipment, facility, and other capital costs. AAR estimates that it would cost the railroads over $200 million annually if maintenance responsibilities are shifted to terminals.

Since the current Federal regulations make the chassis' roadability the responsibility of motor carriers, violations concerning chassis defects become part of the motor carrier's safety record. Roadside violations are entered electronically directly into the FMCSA's database of safety performance information about motor carriers. Consequently, motor carriers are concerned about how the chassis violations may affect their safety profiles because: (1) FMCSA's Safety Status Measurement System (SAFESTAT) scores are available to the public and can be used by insurance companies and shippers as a basis for business decisions; and (2) the FMCSA's potential use of the violation data for selecting motor carriers for compliance reviews. Regardless of whether the chassis owner accepts responsibility for the violation and pays for the repairs, the violation remains on the motor carrier's safety record. As a result, the issue of assignment of responsibility is of importance to motor carriers.

Institutional Issues

Motor carriers involved in port drayage operations estimate their drivers spend 25 percent or more of their time waiting in line at terminals, without compensation. Motor carriers believe that because of the highly competitive nature of the drayage industry, they have no leverage. If a motor carrier or driver insists on improved business terms he will simply be replaced.

The National Association of Waterfront Employers (NAWE) acknowledged the economic pressures force drivers to leave the terminal as soon as possible. Some of the commenters to the docket and participants in the public meetings believe the situation would change significantly if drivers were paid by the hour.

The Uniform Intermodal Interchange Facilities Access Agreement (the Uniform Agreement) governs the relationship between equipment providers and motor carriers. The Uniform Agreement was initiated 20 years ago, and is continually reviewed by a multimodal committee. IANA estimates that its participants include more than 4,700 motor carriers, 6 railroads and 55 ocean carriers.

A nine-member board administers the agreement: 3 motor carriers; 3 rail carriers, and 3 ocean or water carriers. Participants in the public meetings indicated there is a willingness to re-negotiate terms of the Uniform Agreement but not to shift responsibility from motor carriers.

The Uniform Agreement states:

> The user, while in possession of interchange equipment, releases and agrees to hold harmless the owner from and against any and all loss, damage, liability, cost or expenses suffered or incurred arising out of or connected with injuries or death of any persons arising out of the user's use, operation, maintenance or possession of interchange equipment.

A copy of the Uniform Agreement is included in the Through Transport Mutual Insurance Association, Ltd. (TTClub) comments. The agreement specifically states that the equipment provider makes no warranties as to the fitness of the equipment. A common addendum to the Uniform Agreement requires that the driver warrant that the equipment he is receiving is roadworthy.

Equipment providers argue that making motor carriers responsible for the chassis is necessary because the equipment may be interchanged among several motor carriers after leaving the terminal. EIDA believes equipment providers accept responsibility for the equipment while it is in their possession and will repair any deficiencies prior to turning the equipment over to motor carriers. However, once a motor carrier accepts the chassis, the motor carrier must assume the duty of maintaining the equipment up to safety standards. The equipment providers believe the disclaimers in the agreement merely eliminate any strict liability that might otherwise be assumed.

State Regulations

Commenters expressed concern about a growing number of potentially conflicting State roadability laws. They believed the result would be a patchwork of inconsistent regulations negatively impacting the ability of the United States to operate a national intermodal transportation system.

Marine terminal operators, ocean carriers, and railroads emphasize the importance of taking action to preempt current and forthcoming State regulations concerning intermodal equipment inspection and interchange that will negatively impact interstate and international commerce, intermodal transportation, and the authority of the United States Department of Transportation.

Consideration of the Negotiated Rulemaking Process

On November 29, 2002 (67 FR 71127), the FMCSA published a notice announcing that the agency would study the feasibility of using the Negotiated Rulemaking process to develop rulemaking options concerning the maintenance of intermodal container chassis and trailers.

On February 24, 2003, FMCSA extended the comment period based upon a request by the counsel for the American Association of Railroads to allow additional time for filing comments after a planned meeting of IANA and the Ocean Carrier Equipment Management Association (OCEMA).

The IANA/OCEMA working group subsequently failed to develop a private-sector solution to the assignment of responsibility for maintaining intermodal chassis and trailers.

Results of the Convenor's Interviews

Typically, the first step in examining the feasibility of conducting a negotiated rulemaking is to conduct a "convening," or conflict assessment. During this process the convener identifies and interviews the interests that would be substantially affected by the proposed policy change and individuals or organizations that might represent those interests. Based upon the interviews, the convener identifies issues of concern that may warrant addressing, and explores whether the establishment of a committee is feasible and appropriate in the particular situation. The following are the issues the convenor identified in his report to FMCSA concerning the feasibility of conducting a negotiated rulemaking on container chassis maintenance. A copy of the report is in Docket No. FMCSA–98–3656.

Extent of the Chassis Roadability Problem

The interviewees that supported moving forward with the rulemaking believe equipment defects on container chassis are a serious safety problem. As with the case of commenters to the public docket, and participants in the public meetings, interviewees also indicated many of the serious defects on container chassis are not visible during a walk-around or visual inspection.

When motor carriers leave the port terminal, according to interviewees, they are supposed to certify that the equipment is roadworthy and that there is no damage. Many motor carriers said that some terminals do relatively little about inspecting outbound chassis, but considerably more about inspecting in-bound ones. Therefore, motor carriers may be held responsible for damage that was not reported outbound, even if it was pre-existing. Some interviewees suggested the solution includes holding the equipment provider responsible for inspecting and certifying a chassis before releasing it to the motor carrier.

Interviewees that were opposed to continuing the rulemaking believe there is a lack of data to support the Petitioners' argument that a safety problem exists with container chassis maintenance. While a number of them agreed that equipment violations are numerous, they argue that it is difficult to show the violations have caused accidents. These interviewees said that in many instances motor carriers receive citations for violations concerning equipment conditions that could not be detected during a walk-around or visual inspection. However, they do not believe such violations warranted additional Federal regulations. Some indicated they believe private-sector solutions would offer greater flexibility and be less costly and more effective than new Federal regulations.

State Laws and Regulations

Almost all of the interviewees expressed concern about a recent trend toward States enacting roadability laws. They indicated that in the late 1990s, Illinois, Louisiana, and South Carolina legislatures passed laws shifting responsibility for roadworthiness of intermodal chassis from motor carriers to the party tendering the intermodal equipment. Interviewees reported that most of the States are not enforcing their roadability laws.

Interviewees expressed concern the State laws have taken differing, sometimes inconsistent regulatory approaches to coverage. The State laws were viewed as a means of dealing with vehicles that were not being properly maintained, and assigning inspection, repair and maintenance responsibilities to ensure the proper and safe operation of the chassis. Nearly all interviewees reported that a growing patchwork of inconsistent State laws would adversely impact intermodal transportation.

There was widespread agreement among interviewees that FMCSA could make a major impact by adopting regulations, and preempting State laws and regulations. They noted States may have powerful economic incentives to limit enforcement of roadability legislation, especially given the possibility that they could risk the movement of shipping business and port operations to States with less stringent regulations, or no roadability rules at all. Two interviewees discussed personal stories where direct gubernatorial intervention halted enforcement efforts. Therefore, there is the belief State motor carrier enforcement agencies may face a difficult choice between maintaining major terminal operations that provide jobs and economic stimuli and enforcing their own rules.

Some interviewees favored the rights of States to pass roadability laws because they believe FMCSA has not done enough to improve the condition of container chassis. However, interests were divided over whether preemption should be the end process or merely the beginning. A few interviewees believed FMCSA should preempt the States but do nothing more. Others believed FMCSA should preempt the States only if it is part of a plan or program to resolve a number of issues concerning the intermodal industry.

Jurisdiction and Enforcement Issues

Interviewees expressed widely divergent views as to the limits of FMCSA's legal authority relating to equipment providers such as terminal operators, rail carriers and ocean carriers that furnish chassis for transportation by motor carriers. Many believed FMCSA lacks statutory authority to regulate non-motor carrier entities.

Uniform Agreement

Some motor carriers expressed concern their interests are not fully represented on the governing board because they are in a minority position relative to the rail and water carriers. These motor carriers believe the Department of Transportation should regulate the interchange agreement and address the unequal bargaining power between rail/water carriers and motor carriers. Others believed the Department of Transportation should not regulate the interchange agreement because it is the result of years of evolution of the commercial relationship between the motor carriers and the equipment providers.

Of concern to many motor carriers is that the interchange agreement states that equipment providers do not warrant the roadability of the equipment. Moreover, an addendum to the interchange agreement requires the motor carrier that picks up the equipment to accept responsibility for the roadworthiness of the chassis.

However, some interviewees did not believe the interchange agreement is the appropriate mechanism to implement changes in the intermodal industry because usage of the interchange agreement is only voluntary. They argue that the use of the interchange agreement is prevalent, but there is no data to indicate how much of the industry is actually covered by it. In contrast, other interviewees believe changes to the uniform agreement would become the industry standard and be sanctioned by DOT.

FMCSA Decision

FMCSA withdraws the ANPRM because there is insufficient data to support moving forward with the rulemaking at this time. While the agency could quantify the costs of regulatory options that could potentially result in improved maintenance practices by equipment providers, there is insufficient data currently to quantify the safety benefits of such a rulemaking. The agency has reviewed information provided by commenters responding to the ANPRM, transcripts from listening sessions, safety performance data concerning motor carriers engaged primarily in intermodal transportation, and the neutral convenor's final report. FMCSA has determined it is unlikely the agency could craft a rulemaking that would resolve the maintenance responsibility disputes between equipment providers and motor carriers, and be supported with sufficient safety data to prove its necessity, and subsequently its effectiveness. The available data show a significant number of container chassis dispatched from intermodal terminals are later shown to have safety defects during roadside inspection. However, the relationship between these defects and accident causation has not been substantiated.

FMCSA recognizes most motor carriers do not have the economic leverage to persuade equipment providers to ensure proper chassis maintenance. It is also true the Uniform Intermodal Interchange and Facilities Access Agreement that motor carriers typically must sign in order to do business has the effect of shifting both the maintenance or repair burden and the liability to motor carriers. Based on the comments to the ANPRM, statements from participants in the listening sessions, and the interviews conducted by the neutral convenor who examined the feasibility of conducting a negotiated rulemaking on this subject, there is no readily apparent regulatory option that would be well received among the many parties.

There are two data limitations that prevent the agency from proceeding with a defensible rulemaking: (1) chassis inspection and accident data is lumped in among "trailer" data; and (2) relatively few accidents are shown as involving chassis, possibly because the short distances chassis travel work to reduce accident exposure or possibly because the chassis are categorized as "trailers" in the accident reports. The first step toward a Federal rule must be data collection, addressing these data limitations, and possibly identifying chassis owners whose equipment shows a pattern of poor maintenance.

FMCSA is considering options to better capture data about chassis at the point of inspection and at accident scenes. A special study could be conducted if resources become available. However, the time required to complete a comprehensive data collection and analysis effort would prolong the period that the rulemaking is left unresolved, with no certainty regarding the outcome. Therefore, FMCSA believes it is in the best interests of all parties that the agency discontinue consideration of a negotiated rulemaking based on the convenor's final report, and withdraw its 1999 ANPRM.

Issued on: December 1, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–32075 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 68, No. 250
Wednesday, December 31, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 23, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20050–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: On-line Registration for FSA-sponsored Events and Conferences.

OMB Control Number: 0560–0226.

Summary of Collection: The Farm Service Agency (FSA) is seeking a blanket approval for all On-Line Registrations for FSA-sponsored events and conferences. The respondents will need to submit the information on-line to pay and to make reservation prior to attending any conferences and events. The respondents that do not have access to the Internet can mail or fax the information.

Need and Use of the Information: FSA will collect the name, organization, organizations address, country, phone number, State, payment options and special accommodations from respondents. FSA will use the information to get payment, confirm and make hotel and other necessary arrangement for the respondents.

Description of Respondents: Individuals or households; Farms; Business or other for-profit; Federal government, Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 900.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Farm Service Agency

Title: USDA Minority Farm Register.

OMB Control Number: 0560–NEW.

Summary of Collection: In order to conduct outreach to socially disadvantaged people, the Farm Service Agency (FSA) must first, identify the people who are to be the recipients of and who desires the outreach services; and second, obtain their permission under the Privacy Act to release information to the organizations that will be conducting the outreach. The purpose of this data collection is to establish a voluntary register of minority farmers, landowners, tenants and others with an agricultural interest. The Register will provide a name and address file of those interested in outreach efforts. The authority for the collection of this information can be found at 7 U.S.C. 2279.

Need and Use of the Information: FSA will collect the name, address, phone number, social security number, farm location, race, ethnicity and gender from the Minority Farm Register Permission Form, FSA–1045. FSA will manage the register and will release names, addresses and phone numbers of individuals to approved outreach organizations requesting lists of individuals with particular racial and ethnic characteristics.

Description of Respondents: Individuals or households; Farms; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 55,500.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 34,225.

Food and Nutrition Service

Title: Performance Reporting System, Management Evaluation.

OMB Control Number: 0584–0010.

Summary of Collection: The purpose of the Performance Reporting System is to ensure that each State agency and project area is operating the Food Stamp Program in accordance with the Act, regulations, and the State agency's Plan of Operation. Section 11 of the Food Stamp Act of 1977, amended, requires State agencies to maintain necessary records to ascertain that the Food Stamp Program is operating in compliance with the Act and regulations and must make these records available to the Food and Nutrition Service (FNS) for inspection.

Need and Use of the Information: FNS will use the information to evaluate state agency operations and to collect information that is necessary to develop solutions to improve the State's administration of Program policy and procedures. Each State agency is required to submit one review schedule every one, two, or three years, depending on the project areas make-up of the state.

Description of Respondents: State, local, or tribal government.

Number of Respondents: 54.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 492,356.

Food and Nutrition Service

Title: 7 CFR Part 226 Child and Adult Care Food Program.

OMB Control Number: 0584–0055.

Summary of Collection: Section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766), authorizes the Secretary of Agriculture to provide cash reimbursement and commodity assistance, on a per meal basis, for food service to children in nonresidential child care centers and family day care homes, and to eligible adults in nonresidential adult day care centers. The Food and Nutrition Service (FNS) has established application, monitoring, recordkeeping, and reporting requirements to manage the Program effectively, and ensure that the legislative intent of this mandate is responsibly implemented. The information collected is necessary to enable institutions wishing to participate in the Child and Adult Care Food Program (CACFP) to submit applications to the administering agencies, execute agreements with those agencies, and claim the reimbursement to which they are entitled by law.

Need and Use of the Information: FNS and State agencies administering the Program will use the collected information to determine eligibility of institutions to participate in the CACFP, ensure acceptance of responsibility in managing an effective food service, implement systems for appropriating Program funds, and ensure Compliance with all statutory and regulatory requirements.

Description of Respondents: State, local, or tribal government; Individuals or households; Not-for-profit institutions.

Number of Respondents: 2,930,467.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Biennially; Semi-annually; Monthly and Annually.

Total Burden Hours: 5,778,439.

Title: Application for the Senior Community Service Employment Program.

OMB Control Number: 0596–0099.

Summary of Collection: The Senior Community Service Employment Program (SCSEP) is administered by Title V of the Older Americans Act of 1965, as amended. The Secretary of Labor administers this program in order to foster and promote useful part-time opportunities in community services activities for unemployed low-income persons who are age 55 or older. The Forest Service (FS) participates as one of 13 national sponsors under a grant agreement from the Department of Labor, which operates the SCSEP in 40 states, the District of Columbia, and Puerto Rico. Under the grant agreement the FS recruits and enrolls approximately 5,000 economically disadvantaged persons annually to perform part-time community service assignments within the national forest and surrounding communities. Through the SCSEP the vast majority of applicants become self-reliant and independent of welfare program and have upgraded their skills and transition into the regular labor market. The FS will collect information using form FS 1800–21b "Application for Senior Community Service Employment Program."

Need and Use of the Information: FS will collect the following information: Identification data (name, address, and birth date); eligibility information (number in family, income and signature); applicant's disposition (family income level determination, eligibility determination, community service assignment determination); and other information such as age, sex, education level, ethnic group, social security number, his/her veteran and handicapped position. The information will be used to identify personal data. The information will also be used to provide the administrative office, Department of Labor, data on the program's target attainments. If the FS does not collection the above data from each applying to the SCSEP, participant eligibility determination could not be legally made thereby eliminating the FS as a national program sponsor.

Description of Respondents: Individuals households.

Number of Respondents: 6,500.

Frequency of Responses: Reporting: Other (initial application).

Total Burden Hours: 1,083.

Forest Service

Title: Guidelines for Eligibility and Required Documentation for the Golden Access Passport.

OMB Control Number: 0596–NEW.

Summary of Collection: The Golden Access Passport was created in 1980 by an amendment to the Land and Water Conservation Fund Act (LWCFA) of 1965. A Golden Access Passport is a free, lifetime permit that is issued without charge by the National Park Service, Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service, Department of the Interior, the Forest Service, Department of Agriculture, and the U.S. Army Corps of Engineers, Department of Defense to citizens or persons who are domiciled (permanent residents) in the United States, regardless of age, and who have a medical determination and documentation of blindness or permanent disability. Golden Access Passport may be obtained in person and upon proof of blindness or medically determined permanent disability in accordance with the criteria established in the LWCFA of 1965, as amended. In order to clarify and simplify the process for persons with disabilities to obtain the Golden Access Passport, all of the agencies that issue this free lifetime Passport cooperated in the development of the Guidelines for Eligibility and Required Documentation for the golden Access Passport. The authority for this information collection can be found at 16 U.S.C. 4601–6a(b).

Need and Use of the Information: Each agency will use the guidelines when assisting customers seeking to obtain the Passport. The applicant's document or signed statement is used to verify that the individual is qualified to receive the Golden Access Passport. The documentation must be shown or the statement signed in person to ensure that the person signing the Passport is the person to whom the documentation was issued. If the agencies did not have a process by which to determine that these golden Access Passports are only issued to persons who have been medically determined to be blind or permanently disabled, the agencies would not be able to issue Passports in accordance with the LWCFA requirements.

Description of Respondents: Individuals or households.

Number of Respondents: 59,810.

Frequency of Responses: Reporting: Other (Initial Application).

Total Burden Hours: 4,984.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–32014 Filed 12–30–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) introductions, (2) approval of minutes, (3) Public Comment, (4) Chairman Report (5) Reports from committees, (6) General discussion, (7) Next Agenda.

DATES: The meeting will be held on January 8, 2004, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939; (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 6, 2004, will have the opportunity to address the committee at those sessions.

Dated: December 23, 2003.

Arthur Quintana,

Acting Designated Federal Official.

[FR Doc. 03–32150 Filed 12–30–03; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, January 13–14, 2004, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 13, 2004

10:30–Noon Ad Hoc Committee on Public Outreach.
1:30–3 p.m. Technical Programs Committee.
3–4 p.m. Planning and Budget Committee.
4–5 p.m. Passenger Vessels Ad Hoc Committee (closed session).

Wednesday, January 14, 2004

9–10:30 a.m. Passenger Vessels Ad Hoc Committee (closed session).
10:30–Noon Public Rights-of-Way Ad Hoc Committee (closed session).
1:30–3:30 p.m. Board meeting.

ADDRESSES: The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items:

Open Meeting

- Approval of the November 19, 2003, Board Meeting minutes;
- Report of the Ad Hoc Committee on Public Outreach;
- Technical Programs Committee Report;
- Planning and Budget Committee Report.

Closed Meeting

- Passenger Vessels Accessibility Guidelines;
- Public Rights-of-Way Accessibility Guidelines;
- ADA and ABA Accessibility Guidelines Final Rule (Voting).

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

James J. Raggio,

General Counsel.

[FR Doc. 03–32218 Filed 12–30–03; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the clearance procedures of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Survey of Minority Commercial Broadcast Owners.

Agency Form Number(s): None.

OMB Approval Number: 0660–0017.

Type of Request: Regular submission.

Burden Hours: 250.

Number of Respondents: 500.

Average Hours Per Response: 30 minutes.

Needs and Uses: The Minority Telecommunications Development Program (MTDP), National Telecommunications and Information Administration has developed a survey to collect information for its periodic minority commercial broadcast ownership report. The survey is the principle method of systematically gathering information about the experiences of minority entrepreneurs entering the broadcast industry or expanding their operations. The report will provide a basis for national policies to increase minority participation in broadcasting, as well as Administration initiatives to promote economic opportunity for minority-owned businesses.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Kim Johnson, (202) 395–7232.

Copies of the above information collection proposal can be obtained by contacting Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 482–0266 or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication of this notice to Kimberly Johnson, OMB Desk Officer, Fax number (202) 395–7285 or *Kim_A._Johnson@omb.eop.gov.*

Dated: December 24, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–32221 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Amended Final Results of Seventh Administrative Review: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Charles Riggle, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2336, (202) 482–0650, respectively.

Scope of Order

The product covered by this order is canned pineapple fruit (CPF). CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Amended Final Determination

In accordance with section 751(a) the Tariff Act of 1930, as amended, (the Act), on November 19, 2003, the Department published its final results of the antidumping duty administrative review of CPF from Thailand (*Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand,* 68 FR 65247, (*Final Results*)).

1. Vita Food Factory (1989) Co., Ltd. (Vita)

On November 20, 2003, Vita alleged that a ministerial error had been made regarding the Department's final margin calculation. *See* Ministerial Error Letter from Vita Re: Canned Pineapple Fruit from Thailand: The Seventh Administrative Review for period of July 1, 2001 to June 30, 2002 (November 20, 2003). In accordance with section 751(h) of the Act, we have determined that a ministerial error was made in determining the calculation of Vita's variable overhead cost factor. *See* Memorandum to Holly Kuga; Subject: Seventh Administrative Review of Canned Pineapple Fruit from Thailand RE: Ministerial Error Allegation Vita Food Factory Ltd. (December 17, 2003). Pursuant to section 751(h) of the Act, we have corrected the error and are amending the final results of review accordingly. The corrected margin for Vita is 1.77 percent. *See* the Memorandum from Monica Gallardo to the File, Revised Analysis Memorandum for Vita Food Factory Ltd. Re: Amended Final Results of Seventh Administrative Review of Canned Pineapple Fruit from Thailand (December 17, 2003).

2. Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd.'s (collectively, Dole)

In addition, on November 20, 2003, we received timely ministerial error allegations from Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union (the petitioners) regarding Dole. We have determined that the petitioners' allegations with regard to Dole do not constitute ministerial errors as defined by section 351.224(f) of the Department's regulations. *See* Memorandum to Holly Kuga; Subject: Seventh Administrative Review of Canned Pineapple Fruit from Thailand RE: Ministerial Error Allegations for Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd.'s (December 17, 2003).

The Department shall determine, and the U.S. Customs and Border Protection shall assess, antidumping duties on all appropriate entries based on the amended final results. For details on the assessment of antidumping duties on all appropriate entries, *see Final Results.*

Dated: December 17, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–32226 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–849]

Notice of Initiation of Antidumping Investigation: Ready-to-Cook Kosher Chicken and Parts Thereof From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Investigation.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Magd Zalok at (202) 482–4162 or Howard Smith at (202) 482–5193, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Petition

On December 1, 2003, the Department of Commerce (the Department) received a petition against imports of ready-to-cook Kosher chicken and parts thereof from Canada, filed in proper form by Empire Kosher Poultry, Inc. (the petitioner). On December 9, 2003, the Department issued a questionnaire to the petitioner requesting additional information and clarification of certain information contained in the petition. The Department received a response to its questionnaire on December 11, 2003.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of ready-to-cook Kosher chicken and parts thereof from Canada are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV) within the meaning of section 731 of the Act, and that such imports from Canada are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party, as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. *See infra,* "Determination of Industry Support for the Petition."

Scope of Investigation

The merchandise covered by this investigation is ready-to-cook chicken from Canada, whether fresh, chilled or frozen and whether whole or cut-up in pieces, that has been certified as Kosher or Glatt Kosher. Symbols indicating kosher certification include, but are not limited to, COR, MK, OU, CRC. Ready to cook Kosher and Glatt kosher chicken is also identified by the number of the agricultural plant in Canada from which the product originated. For instance, ready-to-cook Kosher chicken manufactured in plant number 24 carries the COR symbol representing the Canadian Jewish Congress of Toronto.

Excluded from the scope of this investigation are Kosher or Glatt Kosher chicken wings (if unattached to any other chicken part) and offal, such as necks, gizzards, livers, and hearts. Cooked chicken or chicken parts, ready to cook non-kosher whole chicken or chicken parts are outside the scope of this investigation. The merchandise subject to this investigation is classifiable under subheadings 0207.11.00.20, 0207.11.00.40, 0207.12.00.20, 0207.12.00.40, 0207.13.00.00, and 0207.14.00.40 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Period of Investigation

The anticipated period of investigation (POI) is October 1, 2002, through September 30, 2003.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. The Department shall determine that the petition has been filed by, or on behalf of, the industry if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or ii) determine industry support for the petition using any statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, ready-to-cook Kosher chicken and parts thereof, which is defined in the "Scope of Investigation" section above, and we have analyzed industry support in terms of this domestic like product.

The petition identifies a number of U.S. companies, in addition to Empire Kosher Poultry, Inc., that are engaged in the production of ready-to-cook Kosher chicken. The petition includes a letter from one of these companies, David Elliot Poultry Farm, in which the company states that it supports the petition. The Department received no opposition to the petition from domestic producers of the like product.

Our review of the data provided in the petition indicates that the petitioner has established industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Finally, because the petition has established industry support representing over 50 percent of total production of the domestic like product, industry polling is unnecessary. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See also Office of AD/CVD Enforcement Initiation Checklist (Initiation Checklist), Attachment I, Industry Support section, dated December 22, 2003, on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

Export Price and Normal Value

The following is a description of the allegation of sales at LTFV upon which the Department based its decision to initiate this investigation. The sources of data used to derive the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine the information and revise the margin calculations, if appropriate.

Export Price

The petitioner alleged that the ready-to-cook Kosher chicken and parts thereof produced in Canada by Chai Poultry Inc. (Chai Poultry) and Marvid Poultry Inc. (Marvid) was sold to U.S. distributors prior to importation of the merchandise into the United States. Therefore, the petitioner based U.S. price on export price (EP). The petitioner based EP for ready-to-cook Kosher chicken and parts thereof on price quotes provided to U.S. distributors by Chai Poultry for whole ready-to-cook Kosher chicken, Kosher chicken legs, and boneless skinless Kosher chicken breasts, reduced by estimated freight charges.

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[1] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), *citing Algoma Steel Corp. Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988) ("the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV").

Normal Value

The petitioner based NV on prices reflected in three invoices that Chai Poultry issued to a Canadian distributor during the POI. These invoices are for sales of whole Kosher chicken, Kosher chicken legs, and boneless skinless Kosher chicken breasts. The petitioner adjusted the invoice prices for movement charges in the home market and differences in the costs incurred to pack merchandise for sale in the U.S. and home markets.

The estimated dumping margins in the petition, based on a comparison between EP and NV, range from 33.33 percent to 39.54 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of ready-to-cook Kosher chicken and parts thereof from Canada are being, or are likely to be, sold at LTFV.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports from Canada of the subject merchandise sold at less than NV.

The petitioner contends that the industry's injured condition is evident in the sales volume and market share lost to unfair imports, as well as in the rapidly declining and depressed U.S. prices. The allegations of injury and causation are supported by relevant evidence including U.S. import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See the Initiation Checklist, Attachment II.

Initiation of Antidumping Investigation

Based upon our examination of the petition on ready-to-cook Kosher chicken and parts thereof from Canada, we find that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping investigation to determine whether imports of ready-to-cook Kosher chicken and parts thereof from Canada are being, or are likely to be, sold in the United States at LTFV. Unless the deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been made available to the representatives of the Government of Canada. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR § 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than January 15, 2004, whether there is a reasonable indication that imports of ready-to-cook Kosher chicken and parts thereof from Canada are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 22, 2003.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–32228 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–807]

Stainless Steel Wire Rod From Spain: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff or Timothy Finn, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–1009 and (202) 482–0065, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2003, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from Spain. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* (68 FR 52181).

Pursuant to a request made by Carpenter Technology Corp. (the petitioner), on November 18, 2003, the Department initiated an administrative review of the antidumping duty order on SSWR from Spain for the period September 1, 2002, through August 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 68 FR 66799 (November 28, 2003).

On December 8, 2003, the petitioner withdrew its request for the administrative review of the order on SSWR from Spain.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws its request within 90 days of the date on which the notice announcing the initiation of the requested review was published. The Department is rescinding the administrative review of the order on SSWR from Spain for the period September 1, 2002, through August 31, 2003, because the petitioner withdrew its request for this administrative review within the 90-day time limit and no other interested parties requested a review of the order on SSWR from Spain for the period September 1, 2002, through August 31, 2003.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 24, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–32230 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2001–2002 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of 2000–2001 Administrative Review.

SUMMARY: On December 12, 2003, the Department of Commerce announced the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China for the period June 1, 2001, through May 31, 2002. These final results were published in the Federal Register on December 18, 2003.

On December 15, 2003, Yantai Timken Company Limited filed an allegation of ministerial error. Based on this allegation, we made changes to the margin calculation of Yantai Timken Company Limited. The final weighted-average dumping margin for this company is listed below in the section entitled "Amended Final Results."

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso or Andrew Smith, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3853 and (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 18, 2003, the Department of Commerce ("the Department") published the final results in this administrative review. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003) ("*Final Results*"). The period of review is June 1, 2001, through May 31, 2002.

On December 15, 2003, we received a ministerial error allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from Yantai Timken Company Limited ("Yantai Timken") regarding the Department's final margin calculation. Yantai Timken requested that we correct the error and publish a notice of amended final results in the **Federal Register**, pursuant to 19 CFR 351.224(e).

Scope of Review

Merchandise covered by this review includes tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China ("PRC"); flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Amended Final Results

In its ministerial allegation, Yantai Timken claimed that the Department failed to multiply the surrogate value per kilogram used for the finished product purchased by Yantai Timken by the weight of that finished product to calculate a part-specific value for the *Final Results*. After analyzing the record of this review, we have determined, in accordance with section 771(h) of the Tariff Act of 1930, as amended, ("the Act") and 19 CFR 351.224, that we made a ministerial error in the margin calculation for Yantai Timken. For a detailed discussion of the ministerial error allegation and the Department's analysis, *see* December 22, 2003 memorandum from team to Susan H. Kuhbach entitled *Ministerial Error Allegation*, which is on file in the Department's Central Records Unit located in the main Commerce building in Room B-099.

In the course of our analysis, we also noted that in the "Final Results of Review" section of the *Final Results*, we inadvertently stated that "{w}e determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001." *See Final Results*, 68 FR 70488, 70489. This should have read: "we determine that the following dumping margins exist for the period June 1, 2001, through May 31, 2002."

Therefore, in accordance with 19 CFR 351.224(e) we are amending the *Final Results* of tapered roller bearings from the PRC to reflect the corrections noted above. Based on these revisions, we determine that the following weighted-average dumping margins exist for the period June 1, 2001, through May 31, 2002:

Exporter/manufacturer	Revised weighted-average margin percentage
Yantai Timken-Company, Ltd.	0.00
Peer Bearing Company-Changshan	0.00
PRC-wide rate	33.18

Cash Deposit Rates

The following deposit rates will be effective upon publication of these final results for all shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) for Yantai Timken Company Limited and Peer Bearing Company-Changshan, which have separate rates, no antidumping duty deposit will be required; (2) for a company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters the case deposit rate will be the PRC-country wide rate, which is 33.18 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

The Department will issue appropriate assessment instructions directly to the Bureau of Customs and Border Protection within 15 days of publication of these amended final results of review.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 23, 2003.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–32227 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–848]

Hard Red Spring Wheat From Canada: Initiation of Expedited Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of expedited review of the countervailing duty order: Hard Red Spring Wheat from Canada.

SUMMARY: On November 18, 2003, the Department of Commerce received a request to conduct an expedited review of the countervailing duty order on hard red spring wheat from Canada. In accordance with 19 CFR 351.214(k), we are initiating this review.

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy or Stephen Cho, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1540 and (202) 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2003, the Department of Commerce (the "Department") received a request from Richelain Farms ("Richelain") to conduct an expedited review of the countervailing duty order on hard red spring wheat from Canada, issued October 23, 2003 (68 FR 60642). Richelain, a company that was not selected for individual examination during the investigation, made this request pursuant to 19 CFR 351.214(k).

Initiation of Expedited Review

In accordance with 19 CFR 351.214(k)(1)(i)–(iii), Richelain certified that it exported the subject merchandise to the United States during the period of investigation; that it is not affiliated with an exporter or producer that the Department individually examined in the investigation; and that it informed the Government of Canada, as the government of the exporting country, that the government will be required to provide a full response to the Department's questionnaire.

Therefore, in accordance with 19 CFR 351.214(k), we are initiating an expedited review of the countervailing duty order on hard red spring wheat from Canada. Pursuant to 19 CFR 351.214(k)(3), we intend to issue the preliminary results of this expedited review not later than 180 days from the date of initiation of this review. As specified by 19 CFR 351.214(k)(3)(i), the period of review will be based on the same period of time as the investigation, *i.e.*, August 1, 2001, through July 31, 2002.

This expedited review is intended to provide an individual cash deposit rate or exclusion to Richelain. The final results of this expedited review will not be the basis for the assessment of countervailing duties.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

Dated: December 23, 2003.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–32229 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Determination with Respect to Modification of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department has determined that no modification be made to the 2004 tariff rate quotas.

SUMMARY: The Department of Commerce has determined that the 2004 limitation on the quantity of imports of worsted wool fabrics that may be imported under the tariff rate quotas established by the Trade and Development Act of 2000 (TDA 2000) as amended by the Trade Act of 2002 should not be modified.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Background

Title V of the TDA 2000 created two tariff rate quotas (TRQs), providing for temporary reductions for three years in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12).

On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the TDA 2000. These include the extension of the program through 2005; the reduction of the in-quota duty rate on HTS 9902.51.12 (average fiber diameter 18.5 microns or less) from 6 percent to zero, effective for goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002; and an increase in the 2003 through 2005 TRQ levels to 3,500,000 square meters for HTS 9902.51.12 and to 4,500,000 square meters for HTS 9902.51.11. Both of these limitations may be modified by the President, not to exceed 1,000,000 square meters per year for each tariff rate quota.

The TDA 2000 requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel must be considered.

On January 22, 2001, the Department published regulations establishing procedures for considering requests for modification of the limitations (15 CFR 340) in the **Federal Register**. (See 66 FR 6459.) The regulations provide that not more than 30 days following the close of the comment period, the Department will determine whether the limitations on the quantity of imports under the tariff rate quotas should be modified and recommend to the President that appropriate modifications be made.

On September 26, 2003, the Department published a notice in the **Federal Register** soliciting requests for modification of the 2004 tariff rate quota limitations. (See 68 FR 55591.) The Department received one such request, from Hartmarx Corporation. The request is for the maximum increase (1,000,000 square meters) in each of the two tariff rate quota limitations (HTS 9902.51.11 and HTS 9902.51.12).

On November 4, 2003, the Department solicited comments on the request for a period of 20 days. (See 68 FR 62432.) The Department received comments from seven companies/trade associations. One of the respondents, Southwick Clothing LLC, supported the request for modification, and six of the respondents, Burlington Industries, Cleyn & Tinker, the National Textile Association, Victor Forstmann, Inc., Warren of Stafford, and the Association of Georgia's Textile, Carpet, and Consumer Products Manufacturers, opposed the request for modification.

After reviewing the request, the comments received, and other information obtained, including a report prepared by the U.S. International Trade Commission, and after considering the specific market conditions set forth in the TDA 2000, the Department determined that the 2004 limitations on the quantity of imports of worsted wool fabrics that may be imported subject to the tariff rate quotas established by the TDA 2000 as amended by the Trade Act of 2002 should not be modified.

Dated: December 24, 2003.

D. Michael Hutchinson,

Acting Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries

[FR Doc. 03–32163 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: This notice is to extend the previous notice and request for applications that was posted on November 15, 2003.

SUMMARY: The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Maui County Alternate, Kaua'i County Alternate, Education Alternate, Fishing Alternate, Native Hawaiian Member, and Native Hawaiian Alternate. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in Hawaii. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: January 5, 2004.

ADDRESSES: Application kits may be obtained from Keeley Belva (888) 55–WHALE or via e-mail at: *Keeley.Belva@noaa.gov*. Applications are also available online at *http://hawaiihumpbackwhale.noaa.gov*. Completed applications should be mailed to the Hawaiian Islands Humpback Whale National Marine Sanctuary, 6700 Kalaniana'ole Highway, Suite 104, Honolulu, Hawaii 96825, faxed to (808) 397–2650, or returned via e-mail.

FOR FURTHER INFORMATION CONTACT: Keeley Belva (see above for contact information).

Authority: 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 19, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–32138 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a work planning session which is open to the public.

DATES: The meeting will be held on Wednesday, January 14, 2004 is scheduled as a full day training opportunity for GMT members beginning at 8 a.m. The GMT session will reconvene from 8 a.m. to 5 p.m. Thursday, January 15 and 8 a.m. through noon Friday, January 16, 2004.

ADDRESSES: The meeting will be held at the Scipps Institution of Oceanography Campus Martin Johnson House, Building T–29; 8840 Biological Grade, La Jolla, CA 92037–1508; telephone: (858) 534–2102.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The primary goal of the work planning exercise is to identify team members who will be responsible for the requisite GMT work products for development of the 2005–06 management measures. Harvest specifications and management measures for 2005–06 will not be discussed at this meeting. The GMT will consider the 2005–06 management measures at a subsequent public meeting tentatively scheduled for February, 2004.

Although non-emergency issues not contained in this agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 23, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00663 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303B]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of the South Atlantic; Southeastern Data, Assessment, and Review (SEDAR) Workshop for Goliath grouper and hogfish.

SUMMARY: The SEDAR process for stock assessments consists of a series of three workshops, a Data Review Workshop, an Assessment Workshop, and a Review Workshop. As part of this series, an Assessment Workshop is being held for Goliath grouper and hogfish.

DATES: The workshop will take place January 27–30, 2004. The workshop will be held on January 27, 2004, 2 p.m.–5:30 p.m.; January 28–29, 2004, 8:30 a.m.–5:30 p.m.; January 30, 8:30 a.m.–3 p.m.

ADDRESSES: The workshop will be held at the Hilton Tampa Airport Westshore, 2225 North Lois Avenue, Tampa, FL 33607; telephone: (813) 877–6688.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The South Atlantic Fishery Management Council, in conjunction with NOAA Fisheries, has implemented the SEDAR process, a multi-step method for determining the status of fish stocks. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) the Review Workshop. The product of the Data Workshop and the Stock Assessment Workshop is a stock assessment report. This report is then peer reviewed at the Review Workshop and a final consensus report and advisory report is prepared that includes strengths and weaknesses in the stock assessment and recommendations to fishery managers for future data and research needs. The process includes data collectors, biologists, fishermen, environmental representatives, database managers, stock assessment scientists and Council members and staff.

SEDAR 6 consists only of a Review Workshop for Goliath grouper and hogfish. This deviation from the standard SEDAR process was recommended by the SEDAR Steering Committee to address an immediate need to review these two assessments for upcoming amendments to the Snapper/Grouper Fishery Management Plan. The hogfish stock assessment was prepared by the University of Miami under contract to the state of Florida and initiated before the SEDAR process existed. The State has requested that an Assessment Review be conducted prior to accepting the stock assessment. Goliath grouper was reviewed in a prior SEDAR Data Workshop (SEDAR 3) but not assessed during the Assessment Workshop. Upon consideration at the SEDAR 3 Review Workshop, the panel indicated that an assessment could be conducted. The National Marine Fisheries Service (NOAA Fisheries) conducted the assessment as instructed and has submitted it for review.

The Review Workshop involves a peer review of the report created from the earlier two workshops.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to the workshop.

Dated: December 23, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E3–00661 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Indirect Cost Rates for the National Marine Sanctuary Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: NOAA's National Marine Sanctuary Program (NMSP) is announcing the establishment of indirect cost rates and a policy on the recovery of indirect costs for its involvement in natural resource damage assessment and restoration activities. These rates and the NMSP policy will be applied to all damage assessment and restoration case costs as of October 1, 2001, for cases not settled prior to that date. More information on these rates and the NMSP policy can be obtained from the address provided below.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Harriet Sopher, 301–713–3125, ext. 109; (Fax: 301–713–0404; e-mail: *Harriet.Sopher@noaa.gov*.

SUPPLEMENTARY INFORMATION: The mission of the NMSP under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) is to manage and protect specifically designated areas of the nation's oceans and Great Lakes for their habitats, ecological value, threatened and endangered species, and historical archaeological, recreational and esthetic resources. The NOAA NMSP is part of the National Ocean Service, and consists of a system of individual sanctuary sites (13 at present) and a headquarters office.

The NMSP has the mandate to restore sanctuary resources injured as the result of physical harm (section 312, NMSA), or caused by releases of hazardous substances or oil (Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* and Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*) The NMSP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties and uses the funds recovered to restore injured sanctuary resources and to reimburse the NMSP for assessment costs incurred.

NOAA has promulgated natural resource damage regulations under the Oil Pollution Act (OPA), 33 U.S.C. 2701 *et seq.* While oriented towards claims arising under OPA, the regulations provide guidance to NOAA in developing natural resource damage claims under a variety of statutes including the NMSA. The OPA regulations define the scope of the costs of the damage assessment and specifically allow for the inclusion of indirect costs provided, however, that those costs are developed according to generally acceptable accounting practices. Specifically, the regulations state that "both direct and indirect costs contribute to the full cost of the assessment and restoration * * *" and are defined to mean "expenses that are jointly or commonly incurred to produce two or more products or services * * *. Indirect costs are not specifically identifiable with any of the products or services, but are necessary for the organization to function and produce the products or services. An indirect cost rate, developed in accordance with generally accepted accounting principles, may be used to allocate indirect costs to specific assessment and restoration activities." 15 CFR 990.30.

Accordingly, the NMSP includes both direct and indirect costs in damage assessment claims it presents to responsible parties. Direct costs are costs for activities that are clearly and readily attributable to a specific output. Outputs may be associated with on-scene emergency response as well as the damage assessment. In contrast, indirect costs reflect the costs for activities that collectively support the NMSP's damage assessment, restoration, and emergency response capabilities. For example, indirect costs include general administrative support and traditional overheads. Although these costs may not be readily traced back to a specific direct activity, indirect costs may be allocated to direct activities using an indirect cost distribution rate.

Consistent with Federal accounting requirements, the NMSP is required to account for and report the full costs of its programs and activities. Further, the NMSP is authorized by law to recover reasonable costs of damage assessment and restoration activities under the NMSA, CERCLA, and OPA. Within the constraints of these legal provisions and their regulatory applications, the NMSP has the discretion to develop indirect cost rates for its components and formulate policies on the recovery of indirect cost rates subject to its requirements.

The NMSP's Indirect Cost Effort

In October 2002, the NMSP hired the public accounting firm of Cotton & Company (C&C) to: (1) Evaluate the cost accounting system and allocation practices; (2) recommend the appropriate indirect cost allocation methodology; and, (3) determine the indirect cost rates for the components of the NMSP. The NMSP requested an analysis of its indirect costs for fiscal year 2002. The goal was to develop the most appropriate indirect cost rate allocation methodology and rates for the NMSP components.

C&C concluded that the cost accounting system and allocation practices of the NMSP are consistent with Federal accounting requirements. C&C also determined that the most appropriate indirect allocation method was the Direct Labor Cost Base for all NMSP components. The Direct Labor Cost Base is computed by allocating total indirect costs over the sum of direct labor dollars plus the application of NOAA's leave surcharge and benefits rates to direct labor. The indirect cost rates that C&C has computed for the NMSP were further assessed as being fair and equitable. A report on C&C's effort, their assessment of the NMSP's cost accounting system and practices, and their determination respecting the most appropriate indirect cost methodology and rates can be obtained from Michelle Chapman, 1305 East West Highway, Silver Spring, MD 20910, *michelle.chapman@noaa.gov*.

The NMSP's Indirect Cost Policy

The NMSP will include the costs of program policy work and techniques and methods development in indirect cost pools of its component organizations, but will monitor these activities annually to control costs. The indirect cost pools also include the cost of general management and administrative support and preparedness for emergency response work.

The NMSP will apply the rates recommended by C&C for fiscal year 2002 for each of the NMSP components as provided below:

Headquarters and all sanctuary field sites except as specified: 154.62%,
Florida Keys National Marine Sanctuary: 249.41%

Different components of the NMSP have different rates because of their different roles and responsibilities with respect to damage assessment and restoration. The Headquarters staff serves a coordinating function, providing overall policy direction and administrative support. Individual sanctuary sites support policy development, but also conduct techniques development and perform the field operational role, providing on-the-water emergency response and biological assessment of the injuries and conducting or overseeing restoration efforts. A separate rate was calculated for the Florida Keys National Marine Sanctuary (FKNMS) because the vast majority of incidents occur at that site. The FKNMS maintains an entire team of emergency response, damage assessment and restoration personnel, equipped and trained for their field operational role.

The rates identified in this policy will be applied to all damage assessment and restoration case costs as of October 1, 2001, using the Direct Labor Cost base allocation methodology. For cases that have settled and for cost claims paid prior to October 1, 2001, the NMSP will not reopen any resolved matters for the purpose of applying the rates in this policy. For cases not settled and cost claims not paid prior to October 1, 2001, costs will be recalculated using the rates in this policy. The NMSP will use the FY 2002 rates for future fiscal years until year-specific rates can be developed.

Alan Neuschatz,

Associate Assistant Administrator for Management, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–32137 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D 110403A]

Endangered Species; File No. 1418

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Lawrence D. Wood, Marinelife Center of Juno Beach, 14200 U.S. Hwy. #1, Juno Beach, FL, 33408, has been issued a permit to take hawksbill sea turtles (*Eretmochelys imbricata*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301) 713–1401 or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 20, 2003, notice was published in the **Federal Register** (68 FR 27535) that a request for a scientific research permit to take hawksbill sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant will hand capture, handle, measure, Passive Integrated Transponder (PIT) and flipper tag, photograph, tissue sample, paint a number on the carapace of, and release up to 75 hawksbill sea turtles annually. Only 6 turtles will be initially marked with the painted number to test the efficacy of the this procedure, and future decisions concerning the value and use of this technique will be based on the results. The purpose of the research is to determine the abundance, distribution and movement patterns of this species. It will also provide growth rate information about these turtles and the researcher will determine the feasibility of photographic identification through unique individual characteristics. The permit duration is 5 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 23, 2003.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–32233 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122203G]

Marine Mammals; File No. 116–1477

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821–8097 (Principal Investigator: Dudley Wigdahl, Sea World of Texas) has been issued an amendment to Permit No. 116–1477–01 to take Hawaiian monk seals, *Monachus schauinslandi*, for scientific research and enhancement purposes.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

This amendment extends the expiration date of the permit from December 31, 2003 to December 31, 2004.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 23, 2003.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–32231 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121103E]

Marine Mammals; File No. 259–1481

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Ronald Schusterman, Ph.D., Long Marine Laboratory, University of California Santa Cruz, 100 Shaffer Road, Santa Cruz, California 95060 has been issued an amendment to scientific research Permit No. 259–1481–01.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

This minor amendment extends the expiration date of the permit from December 31, 2003 to December 31, 2004, and adds Co-Investigators to the permit.

Dated: December 23, 2003.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–32232 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121003A]

Marine Mammals; File No. 821–1588–02

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Texas A&M University, Department of Marine Biology, P.O. Box 1675, Galveston, Texas 77551 (Principal Investigator: Dr. Randall W. Davis) has been issued an amendment to scientific research Permit No. 82–1588–01.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St.

Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan at (301)713–2289) or email: firstname.lastname@noaa.gov.

SUPPLEMENTARY INFORMATION: On November 19, 2002, notice was published in the **Federal Register** (67 FR 69725) that an amendment of Permit No. 821–1588–00 issued June 18, 2001 (66 FR 33237), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit authorizes the take of northern elephant seals (*Mirounga angustirostris*) for the purposes of scientific research. This study will investigate the behavioral and energetic adaptations that enable elephant seals to forage at depth in the north Pacific Ocean. Animals will be captured on Ano Nuevo.

Dated: December 23, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–32234 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; NTIA/FCC Web-Coordination Collection

ACTION: Notice.

SUMMARY: The U.S. Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 1, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, U.S. Department of Commerce, Room 6625, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Michael Doolan, Electronics Engineer, Spectrum Engineering and Analysis Division, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4099A, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *mdoolan@ntia.doc.gov).*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Telecommunications and Information Administration (NTIA) is developing a web-based system that will collect specific identification information (*e.g.*, company name, location and projected range of the operation, *etc.*) from applicants seeking to operate in existing and planned radio frequency (RF) bands that are shared on a co-primary basis by federal and non-federal users. The proposed web-based system will provide a means for non-federal applicants to rapidly determine the availability of RF spectrum in a specific location, or the need for detailed frequency coordination of a specific newly proposed assignment within the shared portions of the radio spectrum. The website will allow the non-federal applicant's proposed radio site information to be analyzed, and a real-time determination to be made as to whether there is a potential for interference to, or from, existing Federal government radio operations in the vicinity of the proposed site. This web-based coordination system will help expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security. The information provided by non-federal applicants will also assure the protection of the applicant's station from radio frequency interference from future government operations.

Non-federal applicants will be required to submit information regarding the physical characteristics of the proposed radio station and the proposed location of operation. This information is necessary for a determination of electromagnetic compatibility among radio stations in the frequency band to be made. The name and address of the proposed licensee of the station will also be required, as currently required by the Federal Communications Commission. All data requested by the website is currently required for the coordination of non-federal radio stations in RF spectrum that is shared with the federal government.

II. Method of Collection

The application and instructions for the application will reside on NTIA's website. Non-federal applicants will submit applications electronically through the website. NTIA responses will also be provided electronically to applicants.

III. Data

OMB Number: None.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, state or local government.

Estimated Number of Respondents: 3,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Respondent Burden Hours: 750.

Estimated Total Annual Respondent Cost Burden: None.

Legal Authority: 47 U.S.C. 902(b)(2)(L)(ii).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on applicants, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 24, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–32222 Filed 12–30–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent (NOI) To Prepare an Environmental Impact Statement (EIS) for the New Mexico Training Range Initiative (NMTRI)

AGENCY: Air Combat Command, United States Air Force, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and Air Force policy and procedures (32 CFR part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an EIS to assess the potential environmental impacts of a proposal known as the New Mexico Training Range Initiative (NMTRI).

The NMTRI proposal consists of three elements: creation and modification of training airspace, authorization for supersonic operations in Cannon Air Force Base's centrally located training airspace and use of chaff and flares in the new and modified training airspace. The purpose of the NMTRI is to provide more effective and realistic training conditions for the current airframes and munitions of the 27th FW and the New Mexico Air National Guard. In addition to the proposed action, two other alternatives and the no-action alternative, will be analyzed in the EIS.

The Air Force will conduct a series of scoping meetings to solicit public input concerning the proposal. The scoping process will help identify issues to be addressed in the environmental analysis. In addition to the comments received at the scoping meetings, written comments on the scope of the EIS will be accepted by the Air Force at the address below through Feb. 24, 2004. The Air Force will accept relevant comments at any time during the environmental analysis process.

Notices will also be made in local areas of concern. Scoping meetings will be held at the following locations:

Portales, NM, January 26, 2004, 6–8 p.m., Becky Sharpe Auditorium, Eastern New Mexico University College of Business;

Fort Sumner, NM, January 27, 2004, 6–8 p.m., Community Services Bldg., 514 Avenue C;

Vaughn, NM, January 28, 2004, 4–6 p.m., Vaughn Elementary Multi-Purpose Bldg., 101 East 4th Street;

Roswell, NM, January 29, 2004, 6–8 p.m., Goddard High School, 701 E. Country Club Rd.

Point of Contact: Please direct any written comments or requests for information to Ms. Brenda W. Cook, HQ ACC/CEVP, 129 Andrews St., Suite 102, Langley AFB, VA 23665–2769, (757) 764–9339.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–32015 Filed 12–30–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement for Stabilization of In-Water Facilities at Fox Island Laboratory, Fox Island, Washington

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969 and the regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (DEIS) for the stabilization of in-water facilities at Fox Island Laboratory (FIL) on Carr Inlet in southern Puget Sound, Washington. The Navy will conduct a public hearing to receive oral and written comments on the DEIS. Federal, state, and local agencies and interested individuals are invited to be present or represented at the public hearing. Navy representatives will be available to clarify information related to the DEIS.

DATES: The public hearing will be held on Wednesday, January 21, 2004, from 6:30 p.m. to 9 p.m.

ADDRESSES: The public hearing will be held at the Nichols Community Center, 690 9th Ave, Fox Island, Washington.

FOR FURTHER INFORMATION CONTACT: Mrs. Kimberly Kler, Environmental Planner, Engineering Field Activity, Northwest, Naval Facilities Engineering Command, Poulsbo, WA. Telephone: (360) 396–0927, facsimile (360) 396–0856, or E-Mail: *EFPB–EISFox @navy.mil.*

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare this DEIS was published in the **Federal Register**, 67 FR 14921, March 28, 2002. The public scoping meeting was held on April 17, 2002, at the Nichols Community Center, Fox Island, WA. The scoping meeting was advertised in the *Tacoma News Tribune* on April 7, 11, and 15, 2002, and in the *Peninsula Gateway* on April 10 and 17, 2002.

The proposed action is to stabilize the in-water facilities at Fox Island Laboratory on Carr Inlet in southern Puget Sound. In-water elements of the facility, consisting of several barges, a pier, and associated mooring components, have sustained substantial weather-related damage, and portions of the facility have reached a point of questionable structural integrity. The DEIS analyzes four alternatives, including the No Action Alternative. The Preferred Alternative is installation of a 240-foot pontoon barge and replacement of the existing mooring system. The Preferred Alternative is not expected to result in any significant short or long-term impacts on physical, biological, socio-economic resources, or on beach processes and erosive action occurring to the northwest of FIL.

The DEIS has been distributed to various Federal, state, and local agencies, elected officials, Native American Indian Tribes, and interested parties, and is available for public review at the Peninsula Branch Pierce County Library, 4424 Pt. Fosdick Drive NW, Gig Harbor, WA. The DEIS and other information may be viewed at the following Internet address: *http://www.dt.navy.mil/div/news/foxislandeis.html.*

Oral statements presented at the public hearing will be heard and transcribed by a stenographer; however, to ensure the accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on the DEIS and will be responded to in the Final Environmental Impact Statement (FEIS). Equal weight will be given to both oral and written statements.

Written comments and statements can be submitted at the public hearing or mailed to: Commander, Engineering Field Activity, Northwest, Naval Facilities Engineering Command, Attn: Mrs. Kimberly Kler, Code 053C3.KK, 19917 7th Ave NE., Poulsbo, WA, 98370. All written comments postmarked by February 2, 2004, will become part of the official public record and will be responded to in the FEIS.

Dated: December 23, 2003.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–32105 Filed 12–30–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Seahawk Biosystems Corporation

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Seahawk Biosystems Corporation, a revocable, nonassignable, exclusive license to practice in the field of pathogen detection and disease and infection diagnostic testing for veterinary applications (small and large animals, including equine); pathogen and toxin detection in food products derived from animals; pathogen and toxin detection in food processing; pathogen and toxin detection in, and monitoring of, public water, wastewater, and groundwater in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,981,297 entitled "Biosensor Using Magnetically-Detected Label", Navy Case No. 77,576 and U.S. Patent No. 6,180,418 entitled "Force Discrimination Assay", Navy Case No. 78,183.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 15, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E–Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: December 23, 2003.

S.K. Melancon,

Paralegal Specialist, Office of Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–32153 Filed 12–30–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 1, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 23, 2003.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Department of Education

Type of Review: Existing collection in use without an OMB control number.

Title: Education Resource Organizations Directory (EROD).

Frequency: On occasion annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary), businesses or other for-profit, not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3935.

Burden Hours: 664.

Abstract: The Education Resource Organizations Directory (EROD) is an electronic directory of educational resource organizations and services available at the State, regional, and national level. The goal of this directory is to help individuals and organizations identify and contact organizational sources of information and assistance on a broad range of education-related topics. Users of the directory include diverse groups such as teachers, librarians, students, researchers, and parents.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2434. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Schubart at 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–32141 Filed 12–30–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 03–77–NG]

Office of Fossil Energy; BG LNG Services, LLC; Order Granting Long-Term Authority To Import Liquefied Natural Gas From The Republic of Trinidad and Tobago

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) gives notice that it issued DOE/FE Order No. 1926 granting BG LNG Services, LLC authority to import up to 109 million British thermal units per year over a term of 22 years beginning on December 8, 2003. The liquefied natural gas (LNG) will be imported under a LNG Sale and Purchase Agreement with BG Gas Marketing LTD.

This Order may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0334, (202) 586–9478. The Docket 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC. December 22, 2003.

Clifford Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

[FR Doc. 03–32145 Filed 12–30–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filing

December 23, 2003.

In the matter of: ER03–1372–002, ER03–1372–001, ER02–1406–002, ER03–1207–001, ER00–891–003, ER03–287–001, ER00–33–004, ER02–1084–001, ER00–1372–002, ER02–2074–001, ER01–811–001, ER97–2153–013, ER00–2677–003, ER03–170–002, ER01–1302–003, ER03–1039–002, ER00–2117–002, ER00–2118–002, ER00–3751–002, ER00–1828–002, ER00–47–002, ER03–725–002, ER02–24–003, ER01–3103–004, ER01–3103–005, ER99–2781–004, ER02–40–003, ER02–1633–001, ER00–2398–005, ER99–2948–003, ER99–1522–002, ER02–669–003, ER99–3502–002, ER01–560–002, ER03–447–002, ER03–447–001, ER03–1284–001, ER03–25–001, ER02–506–003, ER02–2018–003, ER02–246–002, ER01–2104–004, ER00–38–004, ER03–597–002, ER03–290–001, ER00–1115–002, ER02–614–001, ER00–3562–002, ER03–36–002, ER02–1367–002, ER03–259–001, ER03–496–001, ER00–644–002, ER03–342–001, ER03–341–001, ER00–2917–003, ER03–736–002, ER01–2756–003, ER02–579–002, ER02–879–001, ER01–2301–003, ER98–651–002, ER98–4095–003, ER99–2541–004, ER02–2546–002, ER00–2885–003, ER01–2765–002, ER03–509–001, ER03–206–001, ER03–207–001, ER03–208–001, ER03–209–001, ER98–421–012, ER98–4055–009, ER00–1834–003, ER96–2506–006, ER96–2504–008, ER01–1820–005, ER01–1337–004, ER02–177–005, ER02–2569–003, ER03–1371–001, ER03–1369–001, ER03–1368–001, ER02–1486–002, ER95–1739–021, ER03–1326–001, ER01–2659–003, ER00–1770–006, ER02–453–003, ER02–2567–003, ER00–2918–003, ER02–699–002, ER00–607–003, ER01–3017–004, ER01–1363–004, ER96–25–024, ER02–1959–001, ER01–915–001, ER02–2227–002, ER02–2310–001, ER02–963–003, ER03–880–001, ER03–882–001, ER03–879–001, ER96–149–009, ER03–657–002, ER02–600–002, ER99–2506–002, ER03–1123–001, ER97–324–006, ER99–616–002, ER03–1088–001, ER04–72–001, ER02–22–003, ER03–774–001, ER01–3055–003, ER95–428–025, ER03–394–003, ER02–723–001, ER02–1632–001, ER98–4381–007, ER02–564–001, ER02–862–002, ER96–2709–013, ER02–783–002, ER02–852–002, ER02–855–002, ER04–31–001, ER99–1764–004, ER4–135–001, ER02–23–003, ER02–2228–001, ER97–2463–003, ER03–1292–001, ER99–3450–005, ER99–2769–006, ER02–554–002, ER03–775–001, ER03–983–001, ER02–1903–002, ER03–179–003, ER03–1104–001, ER03–1332–001, ER02–1838–002, ER03–1103–001, ER03–1025–002, ER02–2120–002, ER01–2262–004, ER02–1173–001, ER03–908–001, ER03–439–001, ER03–352–002, ER03–352–002, ER99–1983–002, ER01–2688–004, ER03–833–001, ER99–705–002, ER02–2229–001, ER03–114–001, ER02–159–006, ER02–725–002, ER00–3696–003, ER97–3583–003, ER01–556–002, ER02–388–002, ER01–2159–004, ER02–1257–001, ER03–1159–001, ER02–1366–001, ER97–4381–007, ER01–2641–003, ER03–155–002, ER01–558–002, ER00–2333–002, ER02–1081–001, ER00–1026–007, ER02–267–001, ER02–2330–021, ER02–237–001, ER03–796–002, ER01–2689–004, ER01–3121–002, ER02–418–001, ER03–416–004, ER02–2230–001, ER01–2398–006, ER02–73–003, ER03–653–002, ER03–24–001, ER02–2366–001, ER97–2414–006, ER02–361–001, ER02–2408–001, ER95–851–005, ER03–438–002, ER02–309–002, ER99–830–008, ER03–427–003, ER99–4102–002, ER00–2592–002, ER02–256–001, ER01–1265–003, ER01–1266–003, ER01–1268–004, ER02–1213–002, ER01–1271–004, ER03–160–002, ER01–1272–003, ER01–1274–004, ER01–1275–003, ER02–1331–003, ER02–900–002, ER01–480–002, ER02–137–002, ER02–1582–001, ER03–951–003, ER01–1336–003, ER01–751–004, ER03–1315–002, ER02–737–001, ER02–77–001, ER99–221–006, ER00–2887–003, ER01–1654–004, ER02–2085–001, ER02–257–001, ER02–41–004, ER99–220–009, ER02–2080–001, ER01–2783–005, ER00–3240–002, ER98–3897–009, ER02–1021–003, ER00–1463–003, ER02–2435–002, ER03–198–001, ER97–504–010, ER97–2801–004, ER02–2231–001, ER02–580–002, ER03–372–001, ER03–191–001, ER02–2166–002, ER03–1370–002, ER03–568–002, ER95–430–025, ER02–417–001, ER03–845–001, ER02–26–003, ER02–1485–004, ER03–1109–003, ER03–1108–003, ER03–838–002, ER02–1885–001, ER01–1949–003, R03–1151–001, ER01–48–003, ER02–1749–001, ER99–4503–003, ER02–1747–001, ER02–1325–001, ER02–1327–002, ER95–1096–023, ER01–2928–004, ER97–2374–015, ER03–674–001, ER03–745–001, ER03–618–001, ER03–382–001, ER01–3036–003, ER01–3035–003, ER02–1762–001, ER03–81–002, ER01–3109–003, ER03–49–001, ER03–611–001, ER99–970–003, ER03–1288–001, ER02–553–002, ER00–2080–002, ER02–308–001, ER00–1517–003, ER02–556–002, ER03–295–001, ER02–537–003, ER99–2109–005, ER02–2202–004, ER03–42–003, ER02–258–001, ER99–1261–005, ER01–2887–002, ER02–2263–002, ER02–2400–001, ER03–922–002, ER99–3427–005, ER03–1212–003, ER02–1342–002, ER96–2869–006, ER02–2558–001, ER00–840–003, ER94–389–023, ER03–175–005, ER00–1780–003, ER00–1171–002, ER02–25–003, ER01–852–002, ER02–820–001, ER99–3333–005, ER99–1744–004, ER02–360–001, ER02–973–001, ER99–2817–002, ER02–2042–002, ER02–999–003, ER97–2462–013, ER01–557–002, ER02–2101–001, ER02–1336–002, ER03–1283–002, ER03–1283–003, ER00–2839–001, ER03–28–001, ER03–398–002, ER02–1884–001, ER03–1375–001, ER01–3118–002, ER01–3117–002, ER02–1052–002, ER01–559–002, ER02–2232–001, ER98–411–011, ER03–54–001, ER02–2199–001, ER03–55–001, ER03–56–001, ER02–1028–002, ER01–205–003, ER01–2941–001, ER02–2610–001, ER02–1512–001, ER02–1319–001:

Acadia Power Partners, LLC, Acadia Power Partners, LLC, Acadia Power Partners, LLC, AES Delano, Inc., AES Delano, Inc., AES Placerita, Inc., AES Placerita, Inc., Alcan Power Marketing, Inc., Alcoa Power Generating Inc., Alcoa Power Marketing Inc., Allegheny Energy Supply Company, LLC, Amerada Hess Corporation, American Ref-Fuel Co. of Delaware Valley, L.P., American Ref-Fuel Co. of Essex County, American Ref-Fuel Company of Niagara, L.P., AmPro Energy Wholesale, Inc., ANP Bellingham Energy Company, ANP Blackstone Energy Company, ANP Funding I, L.L.C., ANP Marketing Company, Aquila Long Term, Inc., Aquila Piatt County Power L.L.C., Armstrong Energy Limited Partnership, LLLP, Astoria Energy, LLC, Astoria Generating Company, L.P., Atlantic City Electric Co., Attala Energy Company, LLC, Auburndale Peaker Energy Center, LLC, Baconton Power LLC, Baltimore Gas and Electric Company, Bangor Hydro-Electric Co, Bayswater Peaking Facility, LLC, Berkshire Power Company, LLC, Big Sandy Peaker Plant, LLC, Black Oak Energy, LLC, Black Oak Energy, LLC, Blue Canyon Windpower, LLC, Blue Spruce Energy Center, LLC, Bluegrass Generation Company, L.L.C., Blythe Energy, LLC, Boston Edison Co., Cambridge Electric Light & Cambridge Electric Co., Brascan Energy Marketing Inc., Broad River Energy LLC, Brookhaven Energy Limited Partnership, Calpine California Equipment Finance Company, LLC, Calpine Construction Finance Company, L.P., Calpine Energy Services, L.P., Calpine Energy Services, L.P., Calpine Northbrook Energy Marketing, LLC, Calpine Oneta Power, L.P., Calpine Parline, LLC, Calpine Parline, LLC, Calpine Philadelphia, Inc., Calpine PowerAmerica—CA, LLC, Calpine PowerAmerica—OR, LLC, Calvert Cliffs Nuclear Power Plant, Inc., CAM Energy Products, LP, Camden Cogen, L.P., Capital District Energy Center Cogeneration Association, Carolina Power & Light Company, Carolina Power & Light Company, Carolina Power & Light Company, Carr Street Generating Station, L.P., Cathage Energy LLC, CED Rock Springs, Inc., Cedar Brakes I, L.L.C., Cedar Breakes II, L.L.C., Gentennial Power, Inc., CES Marketing II, LLC, CES

Marketing III, LLC, CES Marketing IV, L.P., CES Marketing V, L.P., CinCap IV, LLC, CinCap V, LLC, CinCap VIII, LLC, Cincinnati Gas & Electric Company / PSI Energy, Inc, Cincinnati Gas & Electric Company / PSI Energy, Inc, Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Capital & Trading, Inc., Cinergy Power Investments, Inc., Clark Fork and Blackfoot, L.L.C., Cleco Evangeline LLC, Cleco Marketing & Trading LLC, Cleco Power LLC, Cogen Technologies NJ Venture, Cogentrix Energy Power Marketing, Inc., Colorado Green Holdings LLC, Combined Locks Energy Center, LLC, Conectiv Atlantic Generation, LLC & Conectiv Delmarva Generation, Inc., Conectiv Bethlehem, LLC, Constellation NewEnergy, Inc., Constellation Power Source Generation, Inc., Constellation Power Source Maine, LLC, Constellation Power Source, Inc., Coral Canada U.S. Inc., Coral Energy Management, LLC, Coral Power, L.L.C., CPN Bethpage 3rd Turbine, Inc., CPN Pleasant Hill, LLC and CPN Pleasant Hill Operating, LLC, Creed Energy Center, LLC, Crescent Ridge LLC, Crete Energy Venture, LLC, D.E. Shaw & Co. Energy, L.L.C., D.E. Shaw Plasma Power, L.L.C., D.E. Shaw Plasma Trading, L.L.C., Dartmouth Power Associates Limited Partnership, DB Energy Trading LLC, Delta Energy Center, LLC, Deseret Generation & Transmission Co-operative, Inc., Deseret Generation & Transmission Co-operative, Inc., Detroit Edison Company, Dighton Power Associates, L.P., Direct Energy Marketing Inc., Dispersed Generating Company, LLC, Dresden Energy, LLC, Eagle Energy Partners I, L.P., Eagle Point Cogeneration Partnership, El Paso Merchant Energy, L.P., Elk Hills Power, LLC, Emera Energy Services, Inc., Energy America LLC, Energy Atlantic, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Power Ventures, L.P., Entergy Services, Inc., EPCOR Merchant and Capital (US) Inc, EPCOR Power Development Inc., EPDC, Inc., Epic Merchant Energy, L.P., Erie Boulevard Hydropower, L.P., Eurus Combine Hills LLC, Fairless Energy, LLC, Feather River Energy Center, LLC, Fitchburg Gas and Electric Light Company, Florida Power & Light Company, Foote Creek II, LLC, Foote Creek III, LLC, Foothills Generating, L.L.C., FortisOntario, Inc., Fox Energy Company, LLC, FPL Energy Marcus Hook, L.P., FPL Energy New Mexico Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Seabrook, LLC, FPL Energy South Dakota Wind, LLC, FPL Energy Wyoming, LLC, FPLE Rohde Island State Energy, LP, Frederickson Power L.P., Front Range Power Company, LLC, Fulcrum Power Marketing LLC, Fulton Cogeneration Associates, L.P., GenWest, LLC, GenWest, LLC, Geysers Power Company, LLC, Gilroy Energy Center, LLC, Global Common Greenport, LLC, Golden Spread Electric Cooperative, Inc., Goose Haven Energy Center, LLC, Great Bay Power Marketing, Inc., Great Lakes Hydro America, LLC, Great Plains Power, Inc., Griffith Energy LLC, GS Electric Generating Cooperative, Inc., Handsome Lake Energy, LLC, HC Power Marketing LLC, Hermiston Generating Company, L.P., Hermiston Power Partnership, Hershey Chocolate & Confectionary Corp., Hess Energy Power & Gas Company, LLC, Hess Energy, Inc., High Desert Power Project, LLC, High Winds, LLC, Holland Energy, LLC, Horsehead Industries, Inc., Indeck-Oswego Limited Partnership, Indianapolis Power & Light Company, Intercom Energy, Inc., ISO New England, Inc., J. Aron & Company, Katahdin Paper Company LLC, King City Energy Center, LLC, Klamath Energy LLC, Klamath Generation LLC, Klondike Wind Power LLC, Lambie Energy Center, LLC, Liberty Electric Power, LLC, Llano Estacado Wind, LP, LMP Capital, LLC, Los Esteros Critical Energy Facility, LLC, Louis Dreyfus Energy LLC, Lowell Cogeneration Company Limited Partnership, Lowell Cogeneration Company Limited Partnership, Lower Mount Bethel Energy, LLC, Maine Public Service Co., ManChief Power Company, L.L.C., MEP Clarksdale Power, LLC, Merrill Lynch Capital Group, Inc., Mesquite Power, LLC, Milford Power Company, LLC, Milford Power Limited Partnership, Mill Run Windpower, LLC, Mirant Americas Energy Marketing, LP, Mirant Bowline, LLC, Mirant Canal, LLC, Mirant Energy Trading, LLC, Mirant Kendall, LLC, Mirant Las Vegas, LLC, Mirant Lovett, LLC, Mirant New England, LLC, Mirant NY-Gen, LLC, Mirant Oregon, LLC, Mirant Sugar Creek, LLC, Mobile Energy, LLC, Mohawk River Funding III, L.L.C., Mohawk River Funding IV, L.L.C., Moraine Wind LLC, Mountain View Power Partners II, LLC, Mountain View Power Partners, LLC, MS Retail Development Corp, MxEnergy Inc., New Mexico Electric Marketing, LLC, New York State Electric & Gas Corporation, Newark Bay Cogeneration Partnership, L.P., Nine Mile Point Nuclear Station, LLC, Northern Iowa Windpower II LLC, Northern Iowa Windpower, LLC, NorthWestern Energy Marketing, LLC, NYSEG Solutions, Inc., Ocean Peaking Power, LLC, ODEC Power Trading, Inc., Oleander Power Project, Limited Partnership, ONEOK Energy Marketing and Trading Company, L.P., Ontario Energy Trading International Corporation, Orion Power MidWest, L.P., Orion Power New York GP II, Inc., Pacific Gas and Electric Company, Pacific Northwest Generating Cooperative, PacifiCorp, Pajaro Energy Center, LLC, Pawtucket Power Associates Limited Partnership, Peak Power Generating Company, Inc., Peaker LLC, Pennsylvania Windfarms, Inc., Perryville Energy Partners, L.L.C., Phelps Dodge Energy Services, LLC, Philbro, Inc., Phoenix Wind Power LLC, Pinpoint Power, LLC, Pleasants Energy, LLC, Power Contract Finance, L.L.C., Power Contract Financing II, Inc., Power Contract Financing II, L.L.C., Power Contract Financing, L.L.C., Power Development Company, L.L.C., Power Provider LLC, Power Receivable Finance, LLC, Powerex Corp, PPL Edgewood Energy, LLC, PPL Great Works, LLC, PPL Shoreham Energy, LLC, PPL Sundance Energy, LLC, PPL University Park, LLC, PPM Energy, Inc., Progress Ventures, Inc., Quark Power L.L.C., Quest Energy, LLC, Reliant Energy Bighorn, LLC, Reliant Energy Choctaw County, Reliant Energy Electric Solutions, LLC, Reliant Energy Hunterstown, LLC, Reliant Energy Seward, LLC, Reliant Energy Solutions East, LLC, Reliant Energy Solutions West, LLC, Renaissance Power, L.L.C., Riverside Energy Center, LLC, Riverview Energy Center, LLC, RockGen Energy, LLC, Rocky Mountain Energy Center, LLC, Rolling Hills Generating, L.L.C., Rumford Power Associates, L.P., RWE Trading Americas, Inc., San Joaquin Cogen Limited, Select Energy New York, Inc., SESCO Enterprises, LLC, Shady Hills Power Company, LLC, Shell Energy Services Company, L.L.C., Sithe Energy Marketing, L.P., Sithe/Independence Power Partners, L.P., Somerset Windpower, LLC, South Glens Falls Energy, LLC, South Point Energy Center, LLC, Southern California Edison Company, Southern California Water Company, Southhaven Power, LLC, SOWEGA Power LLC, St. Paul Cogeneration, LLC, State Line Energy, L.L.C., State Line Energy, L.L.C., SWEPI LP, Tenaska Alabama Partners, L.P., Tenaska Power Services Co., Termoelectrica U.S., LLC, Texas Electric Marketing, LLC, Tiverton Power Associates, L.P., Troy Energy, LLC, Twelvepole Creek, LLC, TXU Pedricktown Cogeneration Company LP, TXU Portfolio Management Company LP, UAE Lowell Power LLC, UAE Lowell Power LLC, UBS AG, UGI Development Company, UGI Utilities, Inc., Unitil Power Corp., Unitil Resources, Inc., University Park Energy, LLC, Utility Contract Funding, L.L.C., Vandolah Power Company, L.L.C., Vineland Energy LLC, Vineland Energy, LLC, Virginia Electric and Power Company, Walton County Power, LLC, Washington County Power LLC, Waterside Power, L.L.C., Waymart Wind Farm L.P., Wellhead Power Gates, LLC, Wellhead Power Panoche, LLC, West Georgia Generating Company, LLC, Wolf Hills Energy, LLC, Wolfskill Energy Center, LLC, Wolverine Power Supply Cooperative, Inc., WPS Beaver Falls Generation, LLC, WPS Empire State, Inc., WPS Niagara Generation, LLC, WPS Syracuse Generation, LLC, Wrightsville Power Facility, LLC, Xcel Energy Services, Xcel Energy Services, XL Weather & Energy Inc., Yuba City Energy Center, LLC, Zion Energy LLC.

Take notice that on December 15, 16, and 17, 2003, the above referenced companies submitted a compliance filing in response to the Commission's November 17, 2003 Order Amending Market-based Rate Tariffs and Authorizations, in Docket No. EL01–118–000 and 001.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: January 14, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00662 Filed 12–30–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7604–6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit DuPont Dow Elastomers, L.L.C.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to State operating permit.

SUMMARY: This notice announces that the EPA Administrator has denied the petition to object to a State operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) for the chloroprene plant at DuPont Dow Chemical Company in La Place, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of this petition response in the United States Court of Appeals for the Fifth Circuit. Any petition must be filed within 60 days of the date this notice appears in the **Federal Register**, pursuant to section 307(d) of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm.*

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Braganza, Air Permitting Section, Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340, or e-mail at *braganza.bonnie@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object as appropriate to, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

The Louisiana Environmental Action Network submitted a petition requesting that the Administrator object to a title V operating permit issued by LDEQ to DuPont Dow Chemical Company, for the chloroprene unit at the DuPont Dow Elastomer's facility, in La Place, Louisiana.

The petitioner requested that the Administrator object to the DuPont Dow permit based on the following broad assertions:

1. LDEQ's interpretation of 40 Code of Federal Regulations (CFR) 63.115 is inconsistent with the Act's goal of protecting public health;
2. LDEQ's interpretation would result in increased discharges of halogenated organic hazardous air pollutants (HAP), an "extremely dangerous" class of pollutants;
3. LDEQ's interpretation results in greater controls of nonhalogenated vent streams relative to halogenated vent streams;
4. A rational interpretation of 40 CFR 63.115 must result in a Group 1 classification and the accompanying control requirements;
5. LDEQ has misinterpreted 40 CFR 63.115.

On November 20, 2003, the Administrator issued an order denying the petition. The order explains the reasons for the Administrator's decision.

Dated: December 18, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–32215 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7605–7]

California State Motor Vehicle Pollution Control Standards; Within the Scope Requests; Opportunity for Public Hearing and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and public comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has approved amendments to its regulations establishing certification requirements and procedures for heavy-duty diesel engines and vehicles. The amendments require heavy-duty engines and vehicles (except urban buses) to meet a new mandatory oxides of nitrogen (NO_X) standard in 1998 and subsequent model years and establish optional NO_X standards beginning with the 1995 model year. CARB's amendments also provide a new definition of useful life for these vehicles and require new information within California's motor vehicle emission control label. CARB requests that EPA confirm CARB's finding that its amendments are within-the-scope of previous waivers issued by EPA under section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), including a waiver of Federal preemption for California's heavy-duty diesel powered engines and vehicles, which EPA approved on March 4, 1988.

CARB has also notified EPA that it has approved amendments to its regulations establishing certification requirements and procedures for heavy-duty diesel engines and vehicles defined as urban buses. These amendments update the emission standards for particulate matter (PM) and NO_X for urban buses and align California's PM standards with Federal standards for such engines in the 1994 and 1995 model years. These amendments also align California PM standards with the Federal PM standard for 1996 and later model years and California's NO_X standard with Federal standards starting in the 1996 model year. The amendments also provide for an optional, more stringent, NO_X emission standard beginning with the 1994 model year. CARB's amendments also provide a new definition of useful life for these vehicles and require new information within California's motor vehicle emission control label. CARB requests that EPA confirm CARB's finding that its amendments are within-the-scope of previous waivers issued by

EPA under section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), including a waiver of Federal preemption for California's heavy-duty diesel powered engines and vehicles, which EPA approved on March 4, 1988.

DATES: EPA has tentatively scheduled a public hearing for January 30, 2004, beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by January 15, 2004, expressing its interest in presenting oral testimony regarding CARB's requests or other issues noted in this notice. By January 20, 2004, any person who plans to attend the hearing should call David Dickinson of EPA's Certification and Compliance Division at (202) 343–9256 to learn if we will hold a hearing. Any party may submit written comments by January 30, 2004.

ADDRESSES: EPA will make available for public inspection at the Air and Radiation Docket written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference numbers for these dockets are A–2000–45 and A–2002–16. Parties wishing to present oral testimony at the public hearing(s) should provide written notice to David Dickinson at the address noted below; parties should also submit any written comments to David Dickinson. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Certification and Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 342–2804, e-mail address: *Dickinson.David@EPA.GOV*.

EPA makes available an electronic copy of this notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (*http://www.epa.gov/otaq/*). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Regulations." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the notice on the day of publication on the primary Web site: (*http://www.epa.gov/docs/fedrgstr/EPA-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at: U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6405J), Washington, DC 20460. Telephone: (202) 343–9256. If EPA receives request for a public hearing, the public hearing will be held

SUPPLEMENTARY INFORMATION:

I. Background

Section 209(a) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7543(a), provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any State that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. The Administrator must grant a waiver unless he finds that (A) the determination of the State is arbitrary and capricious, (B) the State does not need the State standards to meet compelling and extraordinary conditions, or (C) the State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

CARB submitted a February 27, 1997 letter to the Administrator notifying EPA that it had adopted amendments to its heavy-duty diesel powered vehicles and engines program. These amendments provide for: (1) A mandatory 4.0g/bhp-hr NO_X standard for heavy-duty engines and vehicles for the 1998 and subsequent model years which parallels EPA's adoption of this standard; (2) optional, lower NO_X emission standards beginning with the 1995 model year; (3) changing the "useful life" definition for heavy-duty engines and vehicles under Title 13, California Code of Regulations, section 2112, by extending the period of "useful life" from eight to ten years while maintaining the applicable, alternative mileage provisions that range from 110,000 miles to 290,000 miles (whichever occurs first); and (4) implementing new requirements for the California Motor Vehicle Emission Control Label Specifications in order to identify those engines which are certified to the optional, lower emission standards.

CARB asserts, and requests that the Administrator determine, that its NO_X emission standards and useful life definition fall within-the-scope of EPA's previously granted waiver, and thereby may be deemed to meet the requirements of section 209(b) of the Act set forth above.

CARB also submitted a December 26, 1995 letter to the Administrator notifying EPA that it had adopted amendments to its standards for heavy-duty diesel powered vehicles and engines defined as urban buses. These amendments provide for: (1) An alignment of California's PM standards (0.07 g/bhp-hr) with Federal standards for such engines in the 1994 and 1995 model years and with the Federal PM standard (0.05 g/bhp-hr with a 0.07 g/bhp-hr in-use standard) used in 1996 and later model years; (2) a NO_X standard (4.0g/bhp-hr) starting in the 1996 model year for urban buses; (3) adoption of the Federal urban bus definition; (4) an exemption from the 4.0 g/bhp-hr NO_X standard for up to 10 percent of urban bus sales for model years 1996 and 1997; (5) an allowance to use California diesel fuel for certifying 1996 and 1997 model year urban buses and in 1998 and thereafter the applicable Federal test fuel; (6) an optional, lower NO_X emission standards beginning with the 1994 model year; (7) changing the "useful life" definition for 1994 and later urban buses from eight to ten years while maintaining the alternative mileage provision at 290,000 miles (whichever occurs first); and (8) implementing new requirements for the California Motor Vehicle Emission Control Label Specifications in order to identify those engines which are certified to the optional emission standards.

CARB asserts, and requests that the Administrator determine, that its NO_X and PM emission standards and useful life definition fall within-the-scope of

EPA's previously granted waiver, and thereby may be deemed to meet the requirements of section 209(b) of the Act set forth above.

EPA has decided in the past that when California's amendments: (1) Do not undermine the previous determination that California's standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards; (2) do not affect the consistency of California's requirements with section 202(a) of the Act; and (3) raise no new issues affecting EPA's previous waiver determinations, that EPA's concurrence that the amendments are within-the-scope of a previous waiver determination is merited.

When EPA receives new waiver requests from CARB, EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within-the-scope waiver requests from CARB, EPA traditionally publishes a decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA's decision.

EPA invites comment on the following issues before making a determination for CARB's within-the-scope requests: (1) Should EPA consider CARB's requests as within-the-scope of a previous waiver request or should they be considered and examined as new waiver requests? (2) If EPA were to consider CARB's requests as within-the-scope requests then do California's respective amendments (a) undermine California's previous determinations that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, and (c) raise new issues affecting EPA's previous waiver determinations? (3) If EPA were to consider CARB's requests as new waiver requests, then provide comment on (a) whether California's determinations that its standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious, (b) whether California needs separate standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

If a public hearing is held, any party desiring to make an oral statement on the record should file ten (10) copies of its proposed testimony and other relevant material with David Dickinson at the address listed above no later than January 28, 2004. In addition, the party should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

In recognition that a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants with special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until March 1, 2004. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: December 19, 2003.

Robert Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 03–32208 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7603–2]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held January 14–15, 2004 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: Wednesday, January 14 and the afternoon of Thursday, January 15, plenary sessions will take place; the Science and Regulatory Work Groups will meet the morning of Thursday, January 15.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The plenary CHPAC will meet on Wednesday, January 14 from 9 a.m. to 5 p.m., with a public comment period at 4:30 p.m., and on Thursday, January 15 from 12 p.m. to 5 p.m. The Science and Regulatory Work Groups will meet Thursday, January 15 from 9 a.m. to 12 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and orientation for new CHPAC members. Other potential agenda items include a presentation on the Mercury MACT and the Mercury Action Plan, and a panel presentation on Smart Growth.

Dated: December 10, 2003.

Joanne K. Rodman,

Designated Federal Official.

Agenda

Wednesday, January 14, 2004

9—*Welcome, Introductions, Review Meeting Agenda*
9:30—*Highlights of Recent OCHP Activities*
10—*General Discussion: Orientation to the CHPAC*
10:45—Break
11—*Report from the Transition Committee: Recommended Strategic Priorities for CHPAC*
12—Lunch (on your own)
1:15—*Presentation: EPA's Response to the CHPAC's Smart Growth Recommendations*
2:15—*Panel: Background Briefing on Mercury MACT*
3:30—Break
3:45—*Discussion of Possible CHPAC Comments on Mercury*
5—Public Comment
5:30—Adjourn

Thursday, January 15, 2004

9—Work Group Meetings
12 Lunch
1:15—*Science Policy Work Group Report*
2—*Regulatory Policy Work Group Report*
4—*Wrap Up/Next Steps*
4:30—*Adjourn Plenary*

[FR Doc. 03–32213 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7605–1]

Meetings of the Drinking Water Contaminant Candidate List Classification Process Work Group of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given of the forthcoming meetings of the Drinking Water Contaminant Candidate List (CCL) Classification Process Work Group of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*).

DATES: The dates for the NDWAC CCL Work Group meetings will be as follows: January 22–23, 2004; and March 4–5, 2004. All meetings will be held from 9 a.m.—5 p.m., eastern time on the first day, and 8 a.m.—3:30 p.m., eastern time on the second day.

ADDRESSES: All meetings of the CCL Work Group will be held at RESOLVE Inc., 1255 23rd Street, NW., Suite 275, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For more information on the location and times of these meetings, or general background information, please contact the Safe Drinking Water Hotline (phone: (800) 426–4791 or (703) 412–3330; e-mail: *hotline-sdwa@epa.gov*).

Notice will be given for any date change, or if additional meetings will be needed beyond the March meeting, as the Work Group proceeds through the year. Please contact RESOLVE at (202) 944–2300 if you plan to attend any of the meetings listed. Any person needing special accommodations at any of these meetings, including wheelchair access, should also contact RESOLVE at least five business days before the meeting so that appropriate arrangements can be made. For technical information, please contact Dr. Jitendra Saxena, Designated Federal Officer, CCL Classification Process Work Group, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4607M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (e-mail: *saxena.jitendra@epa.gov;* phone: (202) 564–5243).

SUPPLEMENTARY INFORMATION: The CCL serves as the primary source of priority contaminants for research and regulatory evaluations for the Agency's drinking water program. The CCL list is comprised of both chemical and microbial contaminants that are known or anticipated to occur in public water systems, that may have adverse health effects, and which, at the time of publication, are not subject to any proposed or promulgated national primary drinking water regulations. EPA has formed a CCL Classification Process Work Group of the National Drinking Water Advisory Council (NDWAC) to help the Agency in developing a new risk based priority setting process based on the recommendations made by the National Research Council (NRC) in its 2001 report.

The Work Group is comprised of 21 recognized technical experts who represent an array of backgrounds and perspectives and who are as impartial and objective as possible. The Work Group is charged with discussing, evaluating, and providing advice on methodologies, activities, and analysis needed to implement the NRC recommendations on an expanded approach for the CCL listing process. This may include advice on developing and identifying (1) an overall implementation strategy; (2) prototype classification methodology, classification attributes and criteria that should be used; (3) pilot projects to validate new classification approaches; (4) demonstration studies that explore the feasibility of the VFAR (Virulence-Factor Activity Relationships) approach; (5) risk communication issues; and (6) additional issues not addressed in the NRC report.

The Work Group has held eight meetings thus far: September 18–19, 2002; December 16–17, 2002; February 5–6, 2003; March 27–28, 2003; May 12–13, 2003; July 16–17, 2003; September 17–18, 2003; and November 13–14, 2003. The September 2002 meeting was devoted to gaining understanding of the NRC recommendations from the invited members of the NRC panel; identifying questions, issues and technical expertise needed to fulfill its charge; and, planning next steps. During subsequent meetings, the Work Group formed activity groups for small group discussions, with each group containing four to eight members; the activity groups then report back to the plenary Work Group. Each activity group holds several conference calls for more detailed group discussions in between the meetings on issues that the plenary Work Group is addressing. The Work Group has discussed methods applicable to contaminant classification and prioritization, occurrence and health effects data needed for this purpose, sources and quality of data needed, and the use of QSAR (Quantitative Structure Activity Relationships) models for providing data when experimental data is unavailable. In addition, the Work Group has held discussions about the VFAR concept and how the concept can be used for identifying high priority microbial contaminants. The Work Group has developed the groups's guiding principles, project work plan, and a tentative final report outline.

The meetings are open to the public for observation purposes only. Statements from the public will be allowed at the close of each meeting day. EPA is not soliciting written comments and is not planning to formally respond to comments.

Nanci E. Gelb,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–32216 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0366; FRL–7334–2]

Clothianidin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0366, must be received on or before January 30, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Daniel Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address:*kenny.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0366. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your

comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0366. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2003–0366. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0366.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0366. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 5, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Arvesta Corporation and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Arvesta Corporation

PP 1F6342

EPA has received a pesticide petition (1F6342) from Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of clothianidin in or on the raw agricultural commodity apples and pears at 1.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section

408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* In plants, the metabolism of clothianidin is adequately understood for the purposes of establishing these proposed tolerances. Unchanged, parent clothianidin was the predominant residue in all crop matrices (14.4% to 64.5% in corn, 66.1% to 96.6% in tomatoes, 4.3% to 24.4% in sugar beets and 24.3% to 63.3% in apples), with the exception of sugar beet leaves. In sugar beet leaves, the main components were the methylguanidine and thiazolylmethylguanidine metabolites, accounting for 28.6% and 27.7% respectively. All metabolites found in plants were also found in the animal metabolism studies. In animals, parent clothianidin was the major component in liver, muscle and fat. Based on the available metabolism data, parent clothianidin, TZG, TZU, and ATMG-Pyr are proposed to be considered as the residues of concern in livestock matrices.

2. *Analytical method.* In plants and plant products, the residue of concern, parent clothianidin, can be determined using high performance liquid chromotography (HPLC) with electrospray mass spectroscopy (MS/MS) detection. In an extraction efficiency testing, the plant residues method has also demonstrated the ability to extract aged clothianidin residue.

In animal matrices, the residues parent clothianidin, TZG, TZU, and ATMG-Pyr can also be determined using HPLC with electrospray MS/MS detection. In an extraction efficiency testing, the animal residues method has also demonstrated the ability to extract aged clothianidin, TZG, TZU, and ATMG-Pyr residues.

Although, the plant and animal residues LC-MS/MS method is highly suitable for enforcement method, an LC-UV method has also been developed which is suitable for enforcement (monitoring) purposes in all relevant matrices.

3. *Magnitude of residues.* For apples, a total of 13 field trials were conducted to evaluate the magnitude of the residues of clothianidin in apples. Apple trees were treated with clothianidin at a rate of 0.2 lb active ingredient (a.i./acre). The highest average field trial residue found was 0.174 ppm in apple at 7 days pre-harvest interval (PHI). The apple processing study conducted at the exaggerated rate of 3X rate indicated no concentration in any processed commodities including apple juice and wet pomace. A residue decline study was conducted, and an estimated half-life value was obtained at 5.9 days.

For pears, a total of seven field trials were conducted to determine the residue level in pear following one single treatment with clothianidin at a rate of 0.2 lb a.i./acre. The highest average field trial clothianidin residue was 0.163 ppm in pears. A residue decline study was conducted, and an estimated half-life value was obtained at 11.5 days for pears.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral lethal dose (LD)$_{50}$ was >5,000 milligrams/kilogram body weight (mg/kg bwt) for both male and female rats. The acute dermal LD_{50} was greater than 2,000 mg/kg bwt in rats. The 4–hour inhalation liquid chromatography (LC)$_{50}$ 6.14 milligrams per liter (mg/L) for male and female rats. Clothianidin was not irritating to rabbit skin or eyes and did not cause skin sensitization in guinea pigs.

2. *Genotoxicty.* Extensive mutagenicity studies were conducted with clothianidin. Based on the weight of evidence clothianidin was considered negative for genotoxicity.

3. *Reproductive and developmental toxicity.* In a two-generation reproduction study, rats were administered dietary levels of 0, 150, 500 and 2,500 ppm. The no observed adverse effect level (NOAEL) for reproductive parameters was 2,500 ppm. The NOAEL for developmental effects was 500 ppm based on decreased pup weights and the parental NOAEL and 150 ppm based on the decreased body weights.

A developmental toxicity study was conducted in rats with clothanidin using dose levels of 0, 10, 50 and 125 mg/kg bwt by gavage. The NOAEL for maternal toxicity was established at 10 mg/kg bwt and for developmental effects it was >125 mg/kg bwt. Additionally, a developmental toxicity was conducted with rabbits treated orally by gavage at 0, 10, 25, 75 and 100 mg/kg bwt. The NOAEL for maternal toxicity was 10 mg/kg bwt and for developmental toxicity it was 75 mg/kg bwt.

Developmental toxicity studies showed no primary developmental toxicity and no teratogenic potential was evident.

4. *Subchronic toxicity.* 90–day feeding studies were conducted in rats and dogs. The rat study was conducted at dietary levels of 0, 150, 500 and 3,000 ppm and the dog study was conducted at 0, 325, 650 and 1,500 ppm. The NOAELs were established at 500 ppm for rat and 650 ppm for the dog.

5. *Chronic toxicity.* A two–year combined rat chronic/oncogenicity conducted at dietary levels of 0, 150, 500, 1,500 and 3,000 ppm demonstrated a NOAEL of 150 ppm based on reduced weight gains and non-neoplastic histomorphological changes. A 78–week mouse oncogenicity study conducted at dose levels of 0, 100, 350, 1,250, and 2,000, and 1,800 ppm for males and females, respectively, revealed NOAEL of 350 ppm based on reduced body weight gains and increased incidence of hypercellular hypertrophy. No evidence of oncogenicity was seen in the rat or the mice. A 52–week chronic toxicity study in dogs conducted at dietary levels of 0, 325, 650, 1,500 and 2,000 ppm revealed on overall NOAEL of 325 ppm based on slight decrease in ALT.

6. *Animal metabolism.* The nature of the clothianidin residue in livestock is adequately understood. In animals, parent clothianidin was the major component in liver, muscle and fat. Based on the available metabolism data, parent clothianidin, TZG, TZU, and ATMG-Pyr are proposed to be considered as the residues of concern in livestock matrices.

7. *Metabolite toxicology.* Eight *in vivo* metabolites of clothianidin identified in the rat were investigated for acute oral endpoint mutagenic activity. None of the metabolites were mutagenic either with or without activation and the lethal dose (LD)$_{50}$ values range from <500 to >2,000 mg/kg, showing low to moderate toxicity.

8. *Endocrine disruption.* All guideline studies conducted to characterize toxicological profile showed no endocrine related toxicity or tumorgenicity. No effects on T_3, T_4, TSH were observed in the subchronic rat study. In a two-generation reproduction study in rat; and rat and rabbit teratology studies, clothianidin did not show reproductive or teratogenic effects. The extensive data base shows that clothianidin has no endocrine properties.

C. Aggregate Exposure

1. *Dietary exposure.* The acute reference dose (aRfD) of 0.6 mg/kg bwt/day (acute NOAEL with a 100–fold uncertainty factor) was used to assess acute dietary exposure.

Seed treatment use. Bayer has conducted an acute dietary exposure Tier 2 assessment estimating the percent of the aRfD and corresponding margins of exposure (MOE) for the overall U.S. population (all seasons) and the following subpopulations: all infants (<1 year), non-nursing infants (<1 year), children (1–6 years), children (7–12 years), females (13–19 years), females (13–50 years), males (13–19 years), males (>20 years), and seniors (>55 years). In this refined Tier 2 analysis, all evaluated population subgroups had an exposure equal to 0% of the aRfD with a corresponding MOE of >1 million at the 95th percentile.

Foliar application use (pome fruit). Tomen has conducted an acute dietary exposure Tier 1 analysis with Dietary Exposure Evaluation Model (DEEM) using proposed tolerance of 1 ppm, 100% crop treated and no adjustment of processing factor for the overall U.S. populations and the following subpopulations: all infants, nursing infants (<1 year), non-nursing infants (<1 year), children (1–6 years), children (7–12 years), and females (13–50 years). The results of Tier 1 analysis from foliar use of pome fruit indicated that the highest exposure never exceeds 5.42% of the aRfD at the 95th percentile.

The chronic reference dose (cRfD) of 0.097 mg/kg bwt/day (chronic NOAEL with a 100–fold uncertainty factor) was used to assess chronic dietary exposure.

Seed treatment use. Bayer's chronic dietary analysis estimated the percent of the cRfD and corresponding MOE for the overall U.S. population (all seasons) and the following subpopulations: all infants (<1 year), non-nursing infants (<1 year), children (1–6 years), children (7–12 years), females (13–19 years), females (13–50 years), males (13–19 years), males (>20 years), and seniors (>55 years). In this analysis, all evaluated population subgroups had an exposure equal to 0% of the cRfD. The corresponding MOE was >1 million.

Foliar application use. Tomen has conducted a chronic Tier 1 analysis and the results indicated that the highest exposure never exceeds 8.7% of the cRfD at the 95th percentile.

i. *Food. See* above discussion.

ii. *Drinking water.* For drinking water, the models SCI-GROW (ground water), and generic expected environmental concentration (GENEEC) (surface water), were selected to calculate the potential exposure of TM–444 in drinking water. Both short-term (acute) and long-term (chronic) exposures were estimated with respect to foliar uses on apples and pears. The predicted ground water concentrations for foliar application of apples and pears were 1.17 and 1.30 µ/L, respectively. The highest estimated acute and chronic exposures from surface water were 9.10 and 3.07 µ/L, respectively. Based on the standard exposure scenarios for drinking water (70kg adult- 2L/day; 10 kg child- 1L/day), the potential human exposure and risk can be estimated. Using the acute (0.60 mg/kg/day) and chronic (0.097 mg/kg/day) reference doses (RfD), the human risk from exposure to TM-444 in drinking water is estimated. The risk to adults and children from ground water exposure ranged from 0.006 to 0.019% of the acute RfD and from 0.038 to 0.134% of the chronic RfD; from surface water, the estimated risk ranged from 0.039% to 0.152% of the acute RfD and 0.081 to 0.316% of the chronic RfD respectively.

2. *Non-dietary exposure.* Clothianidin is currently not registered for use on any residential non-food site. Therefore, residential exposure to clothianidin residues will be through dietary exposure only.

D. Cumulative Effects

There is no information available to indicate that toxic effects produced by clothianidin are cumulative with those of any other compound.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness of the toxicity data, it can be concluded that total aggregate exposure to clothianidin from all proposed uses will be less than 9% of the RfD for the overall U.S. population. All evaluated population subgroups had an exposure less than 9% of the RfD. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, Arvesta believes that it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to clothianidin residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of clothianidin, the data from developmental toxicity studies in both the rat and rabbit, a two-generation reproduction study in rats and a developmental neurotoxicity study in rats have been considered.

The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

The developmental neurotoxicity studies evaluate the neurobehavioral and neurotoxic effects on the developing animal resulting from the exposure of the mother. FFDCA section 408 provides that EPA may apply an additional uncertainty factor for infants and children based on the threshold effects to account for prenatal and postnatal effects and the completeness of the toxicity data base. Based on the current toxicological data requirements the toxicology data base for clothianidin relative to prenatal and postnatal development is complete, including the developmental neurotoxicity study. None of the studies indicated the offsprings to be more sensitive. All effects were secondary to severe maternal toxicity. The RfD for clothianidin was calculated using the NOAEL of 9.7 mg/kg bw/day from the two–year chronic/oncogenicity study. This NOAEL is lower than the NOAEL from the two–generation reproduction study, the developmental studies, and the developmental neurotoxicity study. Moreover, using a toxicologically justified UF of 100, the RfD for a non-oncogenic clothianidin was established at a level 0.097 mg/kg/day, a value that offers a measure of safety that is the highest among the other alternative compounds for control of apple and pear pests.

F. International Tolerances

No CODEX maximum residue levels (MRL's) have been established for residues of clothianidin on any crops at this time.

[FR Doc. 03–32205 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7605–2]

National Recommended Water Quality Criteria for the Protection of Human Health

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the availability of updated national recommended water quality criteria for the protection of human health for the following fifteen pollutants: chlorobenzene; cyanide; 1,2-dichlorobenzene; 1,4-dichlorobenzene; 1,1-dichloroethylene; 1,3-

dichloropropene; endrin; ethylbenzene; hexachlorocyclopentadiene; lindane; thallium; toluene; 1,2-transdichloroethylene; 1,2,4-trichlorobenzene; and vinyl chloride.

The criteria are based on EPA's 2000 methodology for deriving human health water quality criteria and supercede criteria for these chemicals that the Agency published before this notice.

EPA's recommended section 304(a) water quality criteria are guidance to States and authorized Tribes in adopting water quality standards for protecting human health. They are also a scientific basis for developing controls of discharges or releases of pollutants. They are guidance to EPA for promulgating Federal regulations under CWA section 303(c), when such action is necessary.

Under the CWA and its implementing regulations, States and authorized Tribes are to adopt water quality criteria to protect designated uses (*e.g.*, public water supply, recreational use, industrial use). EPA's recommended human health water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. Thus, EPA's recommended criteria do not impose legally binding requirements. States and authorized Tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality standards that differ from these recommendations.

ADDRESSES: Copies of documents specifically referenced in this notice and scientific views received are in Docket ID No. OW–2002–0054. Materials in the public docket are available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426. A reasonable fee will be charged for copies. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets, at *http://www.epa.gov/edocket/*. Once in the system, select "search," then key in the appropriate docket identification number.

FOR FURTHER INFORMATION CONTACT: Cindy Roberts, Health and Ecological Criteria Division (4304T), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–1124; *roberts.cindy@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Interested Entities

Entities potentially interested in today's notice are those that produce, use, or regulate chlorobenzene; cyanide; 1,2-dichlorobenzene; 1,4-dichlorobenzene; 1,1-dichloroethylene; 1,3-dichloropropene; endrin; ethylbenzene; hexachlorocyclopentadiene; lindane; thallium; toluene; 1,2-transdichloroethylene; 1,2,4-trichlorobenzene; and vinyl chloride. Categories and entities interested in today's notice include:

Category	Examples of interested entities
States, Authorized Tribes, and Jurisdictional Governments.	NPDES Authorized States, Tribes and Jurisdictions.
Industry	Industries discharging pollutants to surface waters or to publically-owned treatment works discharging pollutants to surface waters.
Municipalities	Publically-owned treatment works discharging pollutants to surface waters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware could potentially be interested in this notice. Other types of entities not listed in the table could also be interested.

B. How Can I Get Copies of the National Recommended Water Quality Criteria for the Protection of Human Health and Other Related Information?

1. *Docket*. EPA has established an official public docket for this notice under Docket ID No. OW–2002–0054. The official public docket consists of the documents specifically referenced in this notice, any public scientific views received, and other information related to this announcement. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access*. You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view scientific views submitted by the public, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1. Once in the system, select "search," then key in the appropriate docket identification number.

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I. Background Information

A. What Are Human Health Water Quality Criteria?

Human health water quality criteria are numeric values that describe ambient water concentrations that protect human health from the harmful effects of pollutants in ambient water. These criteria are developed under CWA section 304(a) and are based solely on data and scientific judgments about the relationship between pollutant concentrations and environmental and human health effects. Human health water quality criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.

CWA section 304(a)(1) requires EPA to develop and publish and, from time to time, revise criteria for water quality that accurately reflect the latest scientific knowledge. EPA's recommended section 304(a) water quality criteria provide guidance to States and authorized Tribes in adopting water quality standards for protection of human health and can be used as a scientific basis for developing controls of discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating Federal regulations under CWA section 303(c), when such action is necessary.

B. How Is the 2000 Human Health Methodology Used?

In November 2000, EPA published the revised *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)* (EPA–822–B–00–004, October 2000; hereafter referred to as the "2000 Human Health Methodology"). Before this, the Agency developed recommended human health water quality criteria using the 1980 *Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapter of the Consent Decree Water Criteria Documents* (45 FR 79347, called the "1980 Methodology"). The 2000 Human Health Methodology incorporates significant scientific advances that have occurred over the last two decades, particularly in the areas of cancer and noncancer risk assessments (using new information, procedures, and published Agency guidelines), exposure assessments (using new studies on human intake and exposure patterns, and new Agency guidelines), and methodologies to estimate bioaccumulation in fish. EPA will use the 2000 Human Health Methodology to develop new section 304(a) water quality criteria for additional pollutants and to revise existing section 304(a) water quality criteria. The 2000 Human Health Methodology is an important part of EPA's efforts to improve the quality of the Nation's waters and strengthen the overall scientific basis of water quality criteria. Furthermore, the 2000 Human Health Methodology will help States and authorized Tribes address their unique water quality issues and make risk management decisions to protect human health consistent with CWA section 303(c). The 2000 Human Health Methodology provides a detailed means for developing water quality criteria, including systematic procedures for evaluating cancer risk, noncancer health effects, human exposure, and bioaccumulation potential in fish.

C. How Does EPA Use Its Recommended Water Quality Criteria?

Water quality standards generally consist of designated uses (*e.g.*, public water supply, recreational use, industrial use), water quality criteria to protect those uses, a policy for antidegradation (that maintains and protects existing uses and water quality conditions), and general policies for application and implementation of water quality standards. As part of the water quality standards triennial review process defined in CWA section 303(c)(1), States and authorized Tribes are responsible for maintaining and revising water quality standards. Section 303(c)(1) requires States and authorized Tribes to review and, if appropriate, modify their water quality standards at least once every three years. EPA's recommended section 304(a) water quality criteria may form the basis for Agency decisions, both regulatory and non-regulatory, until they are superseded by EPA's publication of new or revised section 304(a) water quality criteria. These recommended water quality criteria are used in the following ways:

(1) as guidance to States and authorized Tribes in adopting water quality standards,

(2) as guidance to EPA in promulgating Federal water quality standards,

(3) to interpret a State's narrative water quality standard (in the absence of a State adopted numeric standard) in order to establish National Pollutant Discharge Elimination System (NPDES) water quality-based permit limits, and

(4) for all other purposes of CWA section 304(a).

Two distinct purposes are served by the section 304(a) water quality criteria. The first is as guidance to the States and authorized Tribes in the development and adoption of water quality criteria that will protect designated uses for their waters. The second is as guidance for promulgation of Federal water quality criteria for States and authorized Tribes, when such action is necessary under the terms of the CWA.

D. What Is the Relationship Between 304(a) Criteria and Your State or Tribal Water Quality Standards?

States and authorized Tribes must adopt water quality criteria that protect designated uses pursuant to CWA section 303(c)(2)(A). Protective criteria are based on a sound scientific rationale and must contain sufficient parameters or components to protect the designated uses. Water quality criteria may be expressed in either narrative or numeric form. States and authorized Tribes may use one of four approaches when adopting water quality criteria:

(1) Establish numerical values based on section 304(a) recommended water quality criteria,

(2) Modify the section 304(a) recommended water quality criteria to reflect site-specific conditions,

(3) Use other scientifically defensible methods to derive protective water quality criteria, and

(4) Establish narrative water quality criteria where numeric criteria cannot be determined or to supplement numeric water quality criteria.

EPA encourages States and authorized Tribes to use EPA's section 304(a) water quality criteria as guidance when adopting water quality standards consistent with CWA section 303(c) and the Federal regulations at 40 CFR part 131.

E. May States and Authorized Tribes Adopt Water Quality Criteria Based on Local Conditions?

EPA encourages States and authorized Tribes to develop and adopt water quality criteria to reflect local and regional conditions. In the 2000 Human Health Methodology, EPA published default values for risk level, fish intake, drinking water intake, and body weight for use by EPA, States or authorized Tribes in deriving human health water quality criteria. EPA believes these default values result in water quality criteria that protect the general population. States and authorized Tribes may also use these default values for their own water quality criteria, or they may use other values more representative of local conditions if they have data supporting the alternative values.

F. How Does the Review and Approval of State and Tribal Water Quality Standards Affect Water Quality Criteria Adopted by States and Authorized Tribes?

In 2000, EPA published new regulations addressing its review and approval of water quality standards adopted by States and authorized Tribes (see 65 FR 24642; April 27, 2000.) Under the new regulations, (codified at 40 CFR 131.21(c)–(f)), State or authorized Tribal water quality standards that were adopted by law or regulation before May 30, 2000, are in effect for CWA purposes unless superseded by replacement Federal water quality standards (see 40 CFR 131.21(c)). However, under the new regulation, State or authorized Tribal water quality criteria adopted into State or Tribal law or regulation on or after May 30, 2000, are in effect for CWA purposes only after EPA approves any new or revised water quality standards. Therefore, new or revised water quality criteria adopted by States or authorized Tribes would not take effect for CWA purposes until after EPA approves them.

II. Human Health Water Quality Criteria Revisions

A. What Are the Criteria Revisions?

Today, EPA is announcing the availability of national recommended water quality criteria for the protection of human health for the following fifteen pollutants: Chlorobenzene; cyanide; 1,2-dichlorobenzene; 1,4-dichlorobenzene; 1,1-dichloroethylene; 1,3-dichloropropene; endrin; ethylbenzene; hexachlorocyclopentadiene; lindane; thallium; toluene; 1,2-transdichloroethylene; 1,2,4-trichlorobenzene; and vinyl chloride. The updated criteria are based on EPA's new methodology for deriving human health water quality criteria (i.e., the 2000 Human Health Methodology), and they supercede criteria previously published by the Agency.

These criteria represent partial updates of the section 304(a) water quality criteria, as described in both the draft Methodology revisions and the **Federal Register** notice that accompanied the final Methodology (65 FR 66444; November 3, 2000). EPA believes that updating a limited number of components for which there are available data or improved science (i.e., a partial update) is a reasonable and efficient way to more frequently publish revised section 304(a) water quality criteria. EPA has also described its process for publishing revised criteria [see *National Recommended Water Quality Criteria—Correction* (64 FR 19781; or EPA 822–Z–99–001) or the **Federal Register** notice for the final Methodology (65 FR 66444)].

Because recalculation of these fifteen criteria resulted in significant changes, EPA issued a **Federal Register** notice soliciting scientific views on the criteria on December 27, 2002 (67 FR 79091). This **Federal Register** Notice was issued in accordance with the published process for revising section 304(a) water quality criteria. EPA considered the scientific views received in response to the December 27, 2002, **Federal Register** notice. All criteria concentrations in this Notice are the same as those published in the December 27, 2002 (67 FR 79091), with the exception of the criterion for protecting human health from consumption of organism only for cyanide. (See section B, response to Scientific view b, Incidental ingestion should be considered when deriving human health water quality criteria for toxic pollutants with a low BCF.) Table II–1 presents the updated criteria, as well as the components used in their derivation (*e.g.*, bioconcentration factor, relative source contribution).

TABLE II–1.—REVISED HUMAN HEALTH WATER QUALITY CRITERIA

Priority pollutant	CAS No.	Human health water quality criteria for consumption of:		Components
		Water + organism (ug/L)	Organism only (ug/L)	
Thallium	7440280	0.24	0.47	RfD = 6.8E–5, BCF = 116 (RfD listed is for thallium (I) sulfate 7446–18–6), RSC = 20%, FI = 17.5.
Cyanide	57125	140	*140	RfD = 2E–2, BCF = 1, RSC = 20%, FI = 17.5.
Chlorobenzene	108907	130	1,600	RfD = 2E–2, BCF = 10.3, RSC = 20%, FI = 17.5.
1,1-Dichloroethylene	75354	330	7,100	RfD = 5E–2, RSC = 20%, BCF = 5.6, FI = 17.5.
1,3-Dichloropropene	542756	0.34	21	*q1 = 0.1, BCF = 1.9, FI = 17.5.
Ethylbenzene	100414	530	2,100	RfD = 1E–1, BCF = 37.5, RSC = 20%, FI = 17.5.
Toluene	108883	1,300	15,000	RfD = 2E–1, BCF = 10.7, RSC = 20%, FI = 17.5.
1,2-Trans-Dichloro-ethylene	156605	140	10,000	RfD = 2E–2, BCF = 1.58, RSC = 20%, FI = 17.5.
Vinyl Chloride	75014	0.025	2.4	*q1 = 1.4 (LMS exposure from birth), BCF = 1.17, FI = 17.5.
1,2-Dichlorobenzene	95501	420	1,300	RfD = 9E–2, BCF = 55.6, RSC = 20%, FI = 17.5.
1,4-Dichlorobenzene	106467	63	190	ADI = 1.34E–2, (ADI for 1,2-DCB used), BCF = 55.6, RSC = 20%, FI = 17.5.
Hexachlorocyclo-pentadiene	77474	40	1,100	RfD = 6E–3, BCF = 4.34, RSC = 20%, FI = 17.5.
1,2,4-Trichloro-benzene	120821	35	70	RfD = 1E–2, BCF = 114, RSC = 20 %, FI = 17.5.
gamma-BHC (Lindane)	58899	0.98	1.8	RfD= 3E–4, BCF = 130, RSC= 20%, FI = 17.5.
Endrin	72208	0.059	0.060	RfD = 3E–4, BCF = 3970, RSC = 20%, FI = 17.5.

RfD = reference dose; q1* = cancer potency factor; ADI = allowable daily intake; BCF = bioconcentration factor;
RSC = relative source contribution; FI = fish intake

*This recommended water quality criterion is expressed as total cyanide, even though the IRIS RfD we used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their differing abilities to liberate the CN-moiety. Some complex cyanides require even more extreme condition than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no 'bioavailability' to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (*e.g.*, $Fe_4[Fe(CN)_6]_3$), this recommended criterion may be over conservative.

EPA received much support for revising criteria based on partially updated components of the criteria equations as a way of increasing the frequency of scientific improvements to the nationally recommended criteria. For EPA to consider a water quality criterion revision based on a partial update to be acceptable, the components being used in the update should be comprehensive (*e.g.*, a revised reference dose or cancer dose-response assessment), stand alone, and be based on new national or local data. The recalculation of all fifteen water quality criteria integrates the updated national default freshwater/estuarine fish consumption rate of 17.5 grams/day. Thirteen of the criteria were calculated using a previously-determined relative source contribution (RSC) value from the national primary drinking water standards for the same chemicals. EPA also incorporated into the recalculations a new cancer potency factor (q1*) for 1,3-dichloropropene and vinyl chloride, and a new reference dose (RfD) for 1,1-dichloroethylene, hexachlorocyclopentadiene, and lindane. These values were already published in the Agency's Integrated Risk Information System (IRIS). Both an RfD and q1* are available in IRIS for 1,3-dichloropropene and vinyl chloride. Because it resulted in more protective criteria, EPA used the q1* to derive the criteria in these cases rather than the RfD.

We derived the water quality criteria presented here with bioconcentration factors (BCFs) or field-measured bioaccumulation factors (BAFs) based on the 1980 Methodology. These values are consistent with those used to promulgate human health water quality criteria for priority toxic pollutants in rules such as the 1992 National Toxics Rule and the 2000 California Toxics Rule.

B. What Are EPA's Responses to the Scientific Views Received on the Criteria Revisions?

This section summarizes the scientific views received in response to the December 27, 2002, **Federal Register** Notice. It also presents EPA's responses to the scientific views.

1. 2000 Human Health Methodology

a. Support application of EPA's new methodology for deriving human health water quality criteria.

Scientific View—One submitter expressed support of EPA's application of the new human health methodology, including using more current estimates of daily fish intake, relative source contribution (for noncarcinogenic effects), and updated toxicological data.

Response—EPA acknowledges and appreciates the submitter's support.

b. Incidental ingestion should be considered when deriving human health water quality criteria for toxic pollutants with a low BCF.

Scientific View—One submitter indicated that EPA should consider acute and chronic effects from incidental ingestion of water when deriving human health water quality criteria associated with the consumption of "organisms only" for toxic pollutants with a low BCF. It is possible to exceed the RfD based on chronic toxicity when incidental ingestion occurs at the criterion concentration established for protecting human health for consumption of organisms only. Before finalizing the criteria revisions, EPA should compare the potential for acute toxicity from incidental ingestion of acutely toxic substances to the threshold for acute toxicity. The submitter uses cyanide as an example of a chemical for which acute and chronic effects from incidental ingestion of water should be considered as we develop human health water quality criteria.

Response—In developing the 2000 Human Health Methodology, EPA reviewed estimates of incidental water ingestion rates averaged over time. Based on this review, EPA generally believes that the averaged amount is negligible and will not impact the chemical criteria values that represent both drinking water and fish ingestion, unless (as indicated in the 2000 Methodology) the chemical exhibits minimal or no bioaccumulation potential.

EPA expects that the cyanide criterion for consumption of organisms only established based on the 2000 Human Health Methodology is generally protective of human health. However, cyanide is an acutely toxic substance (with a low bioaccumulation potential), and the resulting criterion of 16,000 ug/L derived for consumption of organism only may not protect humans from acutely toxic effects. Thus, EPA considers it prudent health policy to establish the criterion concentration for consumption of organisms only at the same level as the value for protecting human health for consumption of water and organisms (140 ug/L). The EPA's IRIS RfD that we used to derive the criterion is based on free cyanide. If a substantial fraction of the cyanide present in a water body is present in a complexed form (*e.g.*, $Fe_4[Fe(CN)_6]_3$), this recommended criterion may be overly conservative. State and authorized Tribes, however, have the discretion to modify section 304(a) criteria to reflect site-specific conditions.

c. Future updates of human health water quality criteria should consider additional exposure routes.

Scientific view—A submitter supported EPA's plans to include additional exposure routes resulting from recreational activities (*e.g.*, dermal, inhalation).

Response—EPA appreciates the submitter's support. As stated in the published draft methodology revisions (65 FR 66444; November 3, 2000) and in *Response to Peer Review Comments on Draft Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (EPA–822–R–00–009, August 2000), EPA acknowledges that the potential for inhalation and dermal exposures exist, and an approach to account for them in the context of developing individual water quality criteria is appropriate. EPA intends to refine the 2000 Human Health Methodology in the future to incorporate guidance on inhalation and dermal exposures.

d. National default BCFs and BAFs should not be used in the derivation of water quality criteria.

Scientific view—A submitter stated that the 15 proposed human health water quality criteria are based, in part, on using national default BCFs or BAFs without demonstrating that a statistically and ecologically significant correlation exists between the compound in the water column and levels found in fish tissues. The submitter uses methylmercury as an example of a chemical for which that correlation has not yet been demonstrated. As a consequence, the submitter strongly objects to the use of BCFs or BAFs in deriving the criteria. The submitter further stated that EPA should notify States and authorized Tribes not to adopt the revised criteria into State or Tribal standards until they can confirm a statistically significant (and important) relationship between water column concentrations and fish tissue concentrations.

Response—Using national default BCFs for water quality criteria began in 1980 and is necessary to ensure that criteria related to human ingestion of fish and shellfish will be protective of the consumer human populations who eat them. The BCF values determined for the water quality criteria represented the best scientific information available at the time. BCFs for nonionic organic chemicals that were determined from Veith *et al.* (1979) are based on a statistically significant correlation between experimentally determined chemical concentrations in water and fish tissues. We describe in detail the scientific basis for applying this data in the 1980 Ambient Water Quality Criteria National Guidelines (45 FR 79347).

EPA recognizes that many scientific advances have occurred in the area of bioaccumulation since it published the 1980 Methodology. As a result, EPA has revised the bioaccumulation portion of the 1980 Methodology to reflect the current state of science and to improve accuracy in assessing bioaccumulation for setting 304(a) criteria. EPA's *Methodology for Deriving Ambient Water Quality Criteria for Protection of Human Health (2000)* (65 FR 66444; hereafter referred to as the "2000 Methodology") contains the revised procedures for incorporating bioaccumulation in ambient water quality criteria (AWQC) and a summary of the key changes. EPA will publish more detailed information on the BAF methodology in the near future (*Technical Support Document Volume 2: Development of National Bioaccumulation Factors*). We developed the approaches to deriving bioaccumulation factors and applying them in AWQC presented from a process that included extensive review from EPA's Science Advisory Board, peer review workshops, and stakeholder meetings (65 FR 6644).

EPA's framework deriving bioaccumulation factors is designed to account for chemical, biological and ecological attributes. For example, we provide separate procedures for deriving national BAFs depending on the type of chemical (*i.e.*, nonionic organic, ionic organic, inorganic and organometallic). More specifically, EPA's framework recognizes that the derivation of BAFs for organometallic chemicals differs in several ways from procedures for organic chemicals. For example, there are no generic bioaccumulation models that can be used to predict BAFs for organometallic chemicals as a whole; therefore, EPA's preferred approach for deriving national BAFs for such chemicals is to use empirical field data.

EPA took this approach in deriving draft national BAFs for methylmercury (see *Water Quality Criterion for the Protection of Human Health: Methylmercury* (EPA–823–R–01–001, January 2001)). We found the empirically-derived draft methylmercury BAFs to be variable, reflecting the influences of various biotic factors and abiotic factors on methylmercury bioaccumulation that were not well understood at that time. EPA acknowledged that these factors resulted in uncertainty as to the ability of the BAFs to accurately predict bioaccumulation of methylmercury across the waters of the United States. However, in this same document, EPA noted that this is not the case for other highly bioaccumulative pollutants (*i.e.*, non-organometallics). For such pollutants, EPA has methods that improve the predictive capability of empirically-derived or model-predicted BAFs.

When it conducts a full re-evaluation of the human health water quality criteria for the chemicals included in this Notice, EPA will evaluate the best available evidence concerning BAF values. EPA will develop national BAF values to the extent possible given the best available data at the time. Where derivation of National BAFs is not possible, EPA's 2000 Methodology encourages States and authorized Tribes to derive BAFs that are specific to regions or waterbodies as appropriate.

e. Scientific validity of using cancer-potency factors or RfDs to define thresholds of unacceptable adverse effects is questionable.

Scientific view—One submitter questioned the scientific validity of using cancer potency factors or RfDs to define thresholds of unacceptable adverse effects. EPA should explicitly address the "scientific gray area" that exists between human health effects and RfDs and a benchmark dose or the lowest observed effect level on which an RfD might be based.

Response—As discussed in *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)* (EPA–822–B–00–004, October 2000), human health water quality criteria are designed to minimize the risk of adverse effects to humans from chronic (lifetime) exposure to substances through the ingestion of drinking water and eating fish from surface waters.

The water quality criteria are based on chronic health effects data (both cancer and noncancer). However, the criteria also are intended to protect against adverse effects not only for the general population over a lifetime of exposure, but also for special populations (*e.g.*, sports fishers, children, elderly) who have an increased risk of receiving a dose that would elicit adverse effects due to their high water- or fish-intake rates or their biological sensitivities. Neither the benchmark dose nor a lowest observed effects level represent a "threshold" for response in the human or animal populations. Instead, those values typically are associated with a small proportional response level for the populations in question. EPA acknowledges the possibility that other populations might be more sensitive than those examined.

The Agency fully documents the derivation of its cancer potency factors and RfDs in IRIS. Those values were derived using the Agency guidelines for risk assessment, extensive peer review, and the best available information at the time the values were developed. The Agency continues to review and update the human health effects data in IRIS to ensure it considers the most current literature. That process, however, takes time. The IRIS Web (*http://www.epa.gov/iris/*) site describes EPA's policy on the "scientific gray areas" that reflect the use of uncertainty factors to cover certain types of data gaps.

2. EPA Should Adopt a Fish Tissue-Based Criteria in Lieu of the Proposed Water Column Criteria

Scientific view—EPA should derive fish tissue criteria, rather than water column concentrations, for the 15 compounds to avoid the scientific deficiencies related to the inappropriate use of BCFs and BAFs. Compliance monitoring and site-specific adjustments also are simplified when criteria are based on fish-tissue measurements in lieu of water column criteria. The submitter also requested a table of the intermediate fish tissue levels used in (or derived from) the calculation of the proposed water column criteria.

Response—For the most part, EPA has published water column concentrations as their recommended water quality criteria values for protection of human health. The recent exception being the fish tissue concentration for methylmercury (see 66 FR 1344, January 8, 2001). When the new methylmercury criterion was published, EPA withdrew its previous ambient human health water quality criteria for mercury as the recommended section 304(a) water quality criteria. At that time, EPA also recognized that this approach differed from the traditional water column criteria approach and suggested ways to relate the fish and shellfish tissue criterion to concentrations of methylmercury in the water column. We must relate tissue concentrations to water column concentrations in order to use the criterion to establish discharge limits for point sources. Fish tissue criteria can be developed and potentially simplify compliance monitoring and site-specific adjustments, yet this does not eliminate the need to develop BAFs.

Using national BAFs is a scientifically valid approach to deriving national water quality criteria. EPA encourages States and authorized Tribes to develop BAFs based on field-measured data from local/regional fish, whenever possible, when developing their own water quality standards.

The 15 revised human health criteria do not incorporate BAFs, a component of the new methodology; rather, the revised criteria are based on previously-developed BCFs. Thus, we have not estimated intermediate fish tissue concentrations.

3. EPA Should Provide All Numeric Factors Used in the Derivation of the Proposed Criteria

Scientific view—One submitter stated that EPA should provide information and references for all components needed to calculate the proposed criteria, including K_{ow} values and food chain multipliers.

Response—EPA included all basic parameters necessary for deriving the criteria in the December 27, 2002,

Federal Register notice announcing the proposed revisions (67 FR 79091). These parameters include: BCFs, fish consumption rate, body weight, reference dose or cancer potency factor, and relative source contribution. You can find information relevant to the derivation of these basic parameters (*e.g.*, K_{ow} values used in the derivation of BCFs) in other data sources such as EPA's criteria documents.

The revised human health criteria EPA developed use the BCF values derived from the 1980 Ambient Water Quality Criteria National Guidelines (45 FR 79347). We did not use food chain multipliers in the 1980 Methodology and, therefore, did not use them in deriving the proposed criteria. Rather, the proposed criteria rely on previously-derived BCFs which may have been derived from lab or field studies. Even though these BCFs emphasize bioconcentration, in some instances they may reflect trophic level transfers but not through the use of food chain multipliers.

4. EPA Should Publish All Proposed Changes to the Human Health Water Quality Criteria in the Federal Register

Scientific view—One submitter stated that EPA should publish all proposed changes to the human health water quality criteria in the **Federal Register**. In this way, dischargers and other affected parties will be aware of upcoming changes that will affect permits and other activities.

Response—EPA described its process for publishing revised criteria in *National Recommended Water Quality Criteria—Correction* (64 FR 19781; or EPA 822–Z–99–001) and the **Federal Register** notice for the final methodology (65 FR 66444). EPA specifically stated that, when making minor revisions to existing criteria based on new information about individual components of the criteria, the Agency will publish the recalculated criteria directly as the Agency's national recommended water quality criteria. This is a reasonable and efficient way to more frequently publish revised section 304(a) criteria. Based on this approach, EPA partially revised 83 national recommended water quality criteria for the protection of human health. EPA published these updated national recommended water quality criteria in a compilation entitled *National Recommended Water Quality Criteria: 2002* (EPA–822–02–047).

EPA also revised 15 more national recommended water quality criteria for the protection of human health. Although the revision of these criteria represent a partial update of the section 304(a) criteria, EPA decided to solicit scientific views on the criteria because applying the new methodology resulted in significant changes (67 FR 79091; December 27, 2002).

5. The Criteria Compilation Should Clearly Articulate That the Recommended Criteria Are Available for States To Use, as Appropriate, in Adopting Their Water Quality Criteria

Scientific view—A submitter stated that the 2000 Human Health Methodology encourages States to use local fish consumption rates to establish site-specific criteria rather than default fish consumption rates. However, without site-specific fish consumption rates, States cannot develop the most accurate criteria. Therefore, the criteria compilation should clearly articulate that States are not required to adopt EPA's recommended criteria, but that EPA's recommended criteria are available, as appropriate, when adopting criteria.

Response—CWA section 304(a)(1) requires EPA to develop and publish criteria for water quality that accurately reflect the latest scientific knowledge. Under this authority, EPA publishes national criteria that are recommendations to States and authorized Tribes in adopting water quality standards. These criteria are based on national default parameters, such as fish ingestion rates. Nevertheless, as stated in the *National Recommended Water Quality Criteria: 2002* (EPA–822–02–047) compilation, "State and Tribal decision-makers have the discretion to adopt approaches on a case-by-case basis that differ from this guidance when appropriate." In addition, the 2002 compilation document explains that:

> "States and authorized Tribes have four options when adopting water quality criteria for which EPA has published section 304(a) criteria. They can: (1) Establish numerical values based on recommended section 304(a) criteria; (2) adopt section 304(a) criteria modified to reflect site-specific conditions; (3) adopt criteria derived using other scientifically defensible methods; or (4) establish narrative criteria when numeric criteria cannot be determined (40 CFR 131.11)."

Thus, EPA clearly stated that States and authorized Tribes are not required to adopt EPA national recommended water quality criteria, and that States and authorized Tribes have the discretion to derive criteria based on site-specific considerations such as local fish consumption rates.

6. Vinyl Chloride

a. The proposed human health water quality criteria for vinyl chloride are too low.

Scientific view—A submitter indicated that improper methods, overly conservative assumptions, and data quality deficiencies result in the proposed human health water quality criteria for vinyl chloride being too low.

Response—In deriving the water quality criteria for vinyl chloride, EPA applied the 2000 Human Health Methodology. In developing this methodology, EPA solicited and incorporated input from many sources, including the EPA Science Advisory Board, several peer review workshops, and the public. EPA believes that the resulting methodology accurately reflects the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare that can be expected when pollutants are present in any body of water. Thus, the human health water quality criteria for vinyl chloride accurately reflect the relationship between vinyl chloride concentrations and human health effects.

The recommended water quality criteria for vinyl chloride are guidance for States and authorized Tribes to establish water quality standards. State and Tribal decision-makers have the discretion to adopt approaches on a case-by-case basis that differ from this guidance when appropriate.

b. EPA should use a central estimate as a point of departure in deriving vinyl chloride criteria.

Scientific view—Two submitters stated that the revised vinyl chloride human health water quality criteria for consumption of water and organism and consumption of organisms only are too low because EPA used overly conservative assumptions in their derivation. Risk-specific doses derived based on linear low-dose extrapolations using the lower 95 percent confidence limit on a dose associated with a 10 percent extra risk, or, LED_{10}, as the point of departure should not be used to derive criteria. Rather, risk-specific doses based on a central estimate, such as a dose associated with a 10 percent extra risk, or ED_{10}, should be used as a point of departure.

EPA's rationale for using the LED_{10} as the point of departure for model-based dose-response extrapolations in the 1996 proposed guidelines for carcinogen risk assessment is very weak. EPA did not hear the advice from peer review workshops on benchmark dose and the proposed cancer guidelines recommending the use a of central estimate (ED_{10}) point of departure.

EPA's decision to use an LED_{10}, as opposed to an ED_{10}, in deriving revised human health criteria for vinyl chloride is inconsistent with EPA's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency and the Information Quality Act (IQA). EPA's science policy decision to use the LED_{10}, instead of the ED_{10}, introduces significant uncertainty in the risk assessment that underlies the water quality criteria derivations, which is in violation of the IQA. The submitter requested that we correct this information.

Response—The 2000 Human Health Methodology includes toxicological and exposure assessment parameters derived from scientific analysis, science policy, and risk management decisions, including the 1986 cancer guidelines [see *Guidelines for Carcinogen Risk Assessment* (51 FR 33992)] and principles from the 1999 draft revised cancer guidelines [see *1999 Guidelines for Carcinogenic Risk Assessment—Review Draft* (NCEA–F–0644, July 1999)]. These principles arise from scientific discoveries about cancer made in the last 15 years and from EPA policy supporting full characterization of hazard and risk for both the general population and potentially sensitive groups like children.

In particular, EPA's 1999 draft revised cancer guidelines gave a rationale for selecting point of departures (PODs). For quantitative modeling of dose-response relationships in the observed range, the guidelines recommend calculating the lower 95 percent confidence limit on a dose associated with an estimated 10 percent increased tumor or relevant non-tumor response (LED_{10}). The estimate of the LED_{10} is used as the point of departure (POD) for low-dose extrapolation. This standard point of departure (LED_{10}) is adopted as a matter of science policy to remain as consistent and comparable across different studies. It is also a convenient comparison point for noncancer endpoints. The rationale for using the LED_{10} is that a 10 percent response is at or just below the limit of sensitivity for discerning a statistically significant tumor response in most long-term rodent studies and is also within the observed range for other toxicity studies. Using the lower limit takes experimental variability and sample size into account. Note that use of the lower 95 percent confidence limit on the ED_{10} implies that, given the experimental parameters (e.g., sample size, variation in response) of the study being used, there is a five percent chance or less that the "true" ED_{10} would be lower than the LED_{10}. For well-conducted studies with large numbers of animals, relatively close dose spacing, and little inherent variability in the animal responses, LED_{10} values will be close to the central estimate of the ED_{10} value. For studies that include smaller numbers of animals, wider dose spacing, and more variable responses in replicates at the same dose, the LED_{10} value will be further removed from the ED_{10} value. It is part of EPA's science policy to use the lower bound of a 95 percent confidence interval around a preferred value (e.g., central estimate of the ED_{10}) as a point of departure to ensure that the criterion will be adequately protective, that is, that the experimental uncertainty is small (a few percent or less). The EPA's IRIS cancer assessment of vinyl chloride uses the LED_{10} as the POD. EPA's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (EPA/260R–02–008, October 2002) indicated that EPA intends to specify the central estimate of human health risk when it is available. The ED_{10} (central estimate) for vinyl chloride is not presented in IRIS. More recent IRIS entries do include the central estimate, but this was not the policy at the time vinyl chloride was completed. The requirement for its inclusion was instituted in the 2003 Standard Operating Procedures for IRIS.

c. The vinyl chloride MCL is a more appropriate benchmark level.

Scientific view—A submitter indicated that the current maximum contaminant level (MCL) for vinyl chloride of two parts per billion (ppb) which was developed under the Safe Drinking Water Act (SDWA) is a more appropriate benchmark level.

Response—The human health water quality criteria developed under CWA section 304(a) are based solely on data and scientific judgments about the relationship between pollutant concentrations and environmental and human health effects. Unlike the MCLs, the criteria do not consider economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Thus, MCLs are not considered counterparts to water quality criteria.

d. The vinyl chloride water quality criterion for consumption of organisms should only be based on incidental ingestion of non-potable, recreational waters.

Scientific view—A submitter stated that the revised vinyl chloride human health criteria for potable water was derived based on the assumption that people would drink two liters of surface water each day over a lifetime. Thus, surface water is effectively considered a public water supply. However, if the intended use of the water quality criteria is to set NPDES limits for potable waters not being used as public water supplies, then the water consumption assumption is overly conservative. Such waters serve only as recreational or occasional use water bodies, so that a value for incidental water ingestion would be more appropriate. For regulatory consistency, the water quality criteria for vinyl chloride for potable water supplies should be the same as the MCL.

Response—As required by CWA section 304(a), EPA develops water quality criteria that reflect the latest scientific knowledge on effects of pollutants on human health. States and authorized Tribes use the Agency's recommended section 304(a) water quality criteria to adopt enforceable water quality standards, including designating uses of a water body consistent with CWA section 101(a) (*e.g.*, public water supply, fishing, recreation). In developing the 2000 Human Health Methodology, we made assumptions about exposure to contamination from consuming surface waters of the U.S. Our assumptions ensure that, if criteria are met in a water body designated with the uses specified in section 101(a), people can safely consume water from that water body. In order to ensure this, it is necessary to assume that all of the consumed water is taken from water bodies at the criteria level (*i.e.*, contaminated to the maximum safe level).

The designated use inherent in the submitter's example is drinking water (potable water), even though the particular water body might not be used that way at the moment. Thus, the main issue in the view relates to the State's (or authorized Tribe's) assignment of designated use, not to numeric values for the national ambient water quality criteria for vinyl chloride.

Again, the human health water quality criteria developed under CWA section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Unlike the MCLs, the criteria do not consider economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. MCLs are not counterparts to water quality criteria.

e. EPA's BCF for vinyl chloride is overstated and its water quality criterion for consumption of organisms should only be based on incidental ingestion of non-potable, recreational waters.

Scientific view—One submitter stated that EPA derived its vinyl chloride human health criterion for consumption of organisms only using a bioconcentration factor (BCF) of 1.17. The submitter believes that this BCF is overstated because:

(1) This value is based on the assumption of equilibrium conditions between water and an organisms tissue, which is not the case because the compound is highly metabolized;

(2) the high volatility of vinyl chloride would contribute to its depuration during processing or cooking;

(3) the portions of the fish most likely to contain the compound, (*e.g.*, skin and fat) are not typically consumed by humans; and

(4) cooking would result in further off-gasing or destruction of the chemical.

Thus, we expect the potential for humans consuming aquatic organisms to be exposed to vinyl chloride to be negligible. Moreover, vinyl chloride does not biomagnify, and higher tropic level organisms consumed by humans would not contain elevated levels of vinyl chloride. EPA should derive its vinyl chloride criteria for consumption of organisms only based on exposure from incidental ingestion of non-potable recreational waters only.

Response—In updating its human health water quality criteria for vinyl chloride, EPA used the BCF derived from the 1980 Ambient Water Quality Criteria National Guidelines (45 FR 79347). The submitter is correct that, if a contaminant is readily metabolized in fish, the actual BCF might be less than estimated using the KLED_{ow} method. EPA thanks the submitter for the information and will consider it when the Agency comprehensively updates the vinyl chloride criterion document to incorporate the BAF derivation procedures described in the 2000 Human Health Methodology.

C. Where Other Views Submitted?

We received a number of views on criteria that EPA was not revising, or the views expressed were not related to the science supporting the criteria derivations. EPA did not prepare responses addressing these views.

Dated: December 23, 2003.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 03–32211 Filed 12–30–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7604–7]

RIN 2040–ACXX

Preliminary Effluent Guidelines Program Plan for 2004/2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preliminary effluent guidelines plan; request for comments.

SUMMARY: Today's notice presents and invites comment on EPA's preliminary Effluent Guidelines Program Plan for 2004/2005. Under the Clean Water Act (CWA), EPA establishes technology-based national regulations, termed "effluent guidelines," to reduce pollutant discharges from industrial facilities to waters of the United States. Section 304(m) of the Clean Water Act (CWA) requires EPA to publish an Effluent Guidelines Program Plan every two years. Today's notice has three purposes. First, it presents the results of EPA's annual review of the effluent guidelines that EPA has promulgated under CWA section 304(b). Second, it solicits public comment on the preliminary Effluent Guidelines Program Plan. Third, it describes and solicits comment on the analytical framework that EPA has employed to date in performing the annual review for 2003 and in developing today's preliminary Effluent Guidelines Program Plan. EPA had articulated an early form of this evolving analytical framework in the draft Strategy for National Clean Water Industrial Regulations, which EPA hopes to finalize concurrently with the Effluent Guidelines Program Plan in 2004.

DATES: EPA must receive comments on the preliminary Effluent Guidelines Program Plan for 2004/2005 by February 17, 2004. EPA will conduct a public meeting on Wednesday, January 28, 2004, from 9 a.m. to 12 p.m. Eastern Standard Time. For information on the location of the public meeting, see **ADDRESSES** section.

ADDRESSES: You can submit comments electronically, by mail, or through hand-delivery/courier. Please mail comments to the Water Docket, Environmental Protection Agency, Mail Code: 4101 T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or submit them electronically to *http://www.epa.gov/edocket/*. For more information on submitting comments, see section I.C. EPA will hold an informational public meeting for interested stakeholders in the EPA East Building, Room 1153 (also known as the "Great Room" or the "Map Room"), 1201 Constitution Avenue, NW., Washington, DC. For more information on the details and location of the public meeting, see section I.F.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston at (202) 566–1014 or *johnston.carey@epa.gov*, or Mr. Tom Wall at (202) 566–1060 or *wall.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Is This Document Organized?

The outline of the preliminary Effluent Guidelines Program Plan for 2004/2005 follows.

I. General Information
II. Legal Authority
III. What Are Effluent Guidelines?
IV. What Requirements Apply to This Effluent Guidelines Program Plan Effort?
V. What Is the Purpose of Today's **Federal Register** Notice?
VI. 2003 Annual Review of Effluent Guidelines That EPA Has Promulgated Under CWA Section 304(b)
VII. What Will Be the Focus of EPA's 2004 Annual Review?
VIII. Identification of and Schedule for Possible Categories for Potential New Effluent Guidelines
IX. Request for Comment and Information

I. General Information

A. Regulated Entities

Today's preliminary Effluent Guidelines Program Plan for 2004/2005 does not contain regulatory requirements, nor will the final plan do so. Rather, today's preliminary Effluent Guidelines Program Plan describes the current status of the effluent guidelines planning process, presents the results of the Agency's annual review of the effluent guidelines EPA has already promulgated for industrial categories, and identifies industrial categories that EPA expects to investigate further for the possible development or revision of effluent limitations guidelines.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. OW–2003–0074. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include information claimed as Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

The following are the major documents supporting the preliminary Effluent Guidelines Program Plan:

- Factor 1 Analysis: Human Health and Environmental Impacts—Status of Screening Level Review Phase (DCN 00545, section 2.1).
- Factor 2 Analysis: Technology Advances and Process Changes—Status of Screening Level Review Phase (DCN 00546, section 2.2).
- Factor 4 Analysis: Implementation and Efficiency Considerations—Status of Screening Level Review Phase (DCN 00547, section 2.3).
- Description and Results of EPA Methodology to Synthesize Screening Level Results for the CWA 304(m) Effluent Guidelines Program Plan for 2004/2005 (DCN 00548, section 3.0).

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number for this action: OW–2003–0074.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, information claimed as CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. We will not accept comments by facsimiles (faxes). To ensure proper receipt by EPA, identify the following docket identification number in the subject line on the first page of your comment: OW–2003–0074. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit information you claim as CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit information you claim as CBI or information protected by statute.

1. Electronically

If you submit an electronic comment as prescribed in this section, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW–2003–0074. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. E-mail

Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov*, Attention Docket ID No. OW–2003–0074. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted as in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send the original and three copies of your comments and enclosures (including references) to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0074. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope.

3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2003–0074. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA Docket Center or through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, 304(m) Effluent Guidelines Planning, 1201 Constitution Ave, NW., Room 6231G, EPA West Building, Washington, DC 20004. You may claim information that you submit to EPA as CBI by marking that information as CBI. If you submit CBI on disk or CD ROM, indicate on the outside of the disk or CD ROM that it contains information claimed as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you use a disk or CD ROM, mark the outside of the disk or CD ROM clearly to indicate that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult one of the persons identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- Review section IX, "Request for Comment and Information," for areas on which EPA specifically requests comments and information.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the following docket identification number in the subject line on the first page of your response: OW–2003–0074. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. What Are the Public Meeting Details for the Preliminary Plan?

A public meeting to review the preliminary Effluent Guidelines Program Plan for 2004/2005 will be held in Washington, DC (see **DATES** and **ADDRESSES** for the date and location of the public meeting). The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. For security reasons, we request that you bring photo identification with you to the meeting. Also, it will expedite the process of signing in if you contact Ms. Patricia Harrigan at least three business days prior to the meeting with your name, phone number, and affiliation. Ms. Harrigan can be reached via e-mail at *harrigan.patricia@epa.gov*. Please use "304(m) Public Meeting Attendee" in the subject line. Ms. Harrigan can also be reached by telephone at (202) 566–1666.

EPA will not distribute meeting materials in advance of the public meeting; all materials will be distributed at the meeting. The purpose of the public meeting is to: (1) Review the preliminary Effluent Guidelines Program Plan for 2004/2005; (2) review the industry sectors identified for further investigation; and (3) identify information collection activities and analyses EPA anticipates completing for the final Plan. EPA will not record the meeting for the record supporting this action. Individuals wishing to comment on the preliminary Effluent Guidelines Program Plan for 2004/2005 would need to submit written comments as described in section I.C. in order for EPA to consider their comments in finalizing the plan.

If you need special accommodations at this meeting, including wheelchair access or special audio-visual support needs, you should contact Ms. Harrigan at least five business days prior to the meeting so that we can make appropriate arrangements. For those unable to attend the meeting, a copy of the presentation and meeting materials will be posted on the EPA Dockets Web site at: *http://www.epa.gov/edocket/* and EPA's Effluent Guidelines Planning Web site at: *http://www.epa.gov/guide/plan.html*.

Please note that parking is very limited in downtown Washington, and we recommend you use public transit. The EPA Headquarters complex is located near the Federal Triangle Metro station. Upon exiting the Metro station, walk east to 12th Street. On 12th Street, walk south to Constitution Avenue. At the corner, turn right onto Constitution Avenue and proceed to the EPA East Building entrance.

II. Legal Authority

Today's notice is published under the authority of section 304(m) of the CWA, 33 U.S.C. 1314(m).

III. What Are Effluent Guidelines?

The CWA directs EPA to promulgate effluent limitations guidelines and standards that, for most pollutants, reflect the level of pollutant control that is achievable by the best available technologies economically achievable for categories or subcategories of industrial point sources. See CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the limitations and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. See CWA sections 301(a), 301(b), and 402. For sources that discharge to POTWs (indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs and State and Federal authorities. See CWA sections 307(b) and (c).

A. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (*see* 44 FR 44501). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants (*see* Appendix A to part 403, reprinted after 40 CFR 423.17). All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. See CWA section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

B. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to the other factors specified in section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 9, 1986 (51 FR 24974).

C. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

In general, Best Available Technology Economically Achievable (BAT) effluent limitations guidelines represent the best available economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight EPA accords to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

D. New Source Performance Standards (NSPS)—Section 306 of the CWA

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

E. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

F. Pretreatment Standards for New Sources (PSNS)—Section 307(c) of the CWA

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

IV. What Requirements Apply to This Effluent Guidelines Program Plan Effort?

Section 304(m) requires EPA to publish a plan every two years containing three elements. First, EPA must establish a schedule for the annual review and revision of existing effluent guidelines in accordance with section 304(b). See CWA section 304(m)(1)(A). Section 304(b) specifies factors that EPA must consider when deciding whether to establish or revise effluent guidelines for existing direct dischargers and requires EPA to revise such regulations as appropriate. Second, EPA must identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. See CWA section 304(m)(1)(B). Finally, EPA must establish a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines. The statute requires final action on such rulemaking not later than three years after the industrial category is identified in the Effluent Guidelines Program Plan. See CWA section 304(m)(1)(C). EPA is required to publish its Effluent Guidelines Program Plan for public comment prior to taking final action on the plan. See CWA section 304(m)(2).

The Effluent Guidelines Program Plan for 2004/2005 is intended to implement these statutory requirements. As part of the Effluent Guidelines Program Plan under CWA section 304(m), EPA reviews existing limitations and standards for direct dischargers. In the course of this review EPA also reviews indirect dischargers in an industrial point source category when the industrial point source category is composed of both direct and indirect dischargers. For industrial point source categories that are entirely or almost entirely composed of indirect dischargers, EPA reviews, revises, and establishes pretreatment standards under a separate planning process, which is described in section 304(g) of the CWA.

Certain elements of EPA's current work on effluent guidelines continue to be governed by a Consent Decree. On October 30, 1989, the Natural Resources Defense Council, Inc., and Public Citizen, Inc., filed an action against EPA in which they alleged, among other things, that EPA had failed to comply with CWA section 304(m). Plaintiffs and EPA agreed to a settlement of that action in a Consent Decree entered on January 31, 1992. The Consent Decree, which has been modified several times, established a schedule for proposal and final action for eleven point source categories identified by name and for eight other point source categories identified only as new or revised rules. The Decree also established deadlines for EPA to complete studies of eight identified and three unidentified point source categories and required EPA to consider the results of those studies when identifying point source categories for possible new or revised effluent guidelines.

The last date for EPA action under the modified Decree is June 30, 2004. Table IV–1 identifies the new or revised effluent guidelines currently under development under the Decree and the schedules for final action.

TABLE IV–1.—EFFLUENT GUIDELINES GOVERNED BY CURRENT CONSENT DECREE

Category [1] (EPA web sites)	**Federal Register** proposal citation (date)	Final action date
Meat Products (*http://epa.gov/guide/mpp/*)	67 FR 8581 (Feb. 25, 2002)	02/26/04
Construction and Development (*http://epa.gov/guide/construction/*)	67 FR 42644 (June 24, 2002)	03/31/04
Aquatic Animal Production (*http://epa.gov/guide/aquaculture/*)	67 FR 57872 (Sept. 12, 2002)	06/30/04

[1] **Note:** EPA has proposed to add parts 450 and 451 to title 40 of the Code of Federal Regulations. EPA has proposed to change the title of 40 CFR 432 from "Meat Products" to "Meat and Poultry Products."

The preliminary Effluent Guidelines Program Plan for 2004/2005 ("304(m) Plan" or "Plan") is a key step in developing the final plan. It represents a considerable effort by the Agency to implement a planning process that considers the hazards or risks to human health and the environment from industrial point source categories. It reflects a lengthy outreach effort to involve stakeholders in the planning process. It also reflects EPA's initial screening-level estimates of hazard or risk, which EPA examined for the purpose of identifying industrial point source categories. EPA will use these estimates to decide if new or revised guidelines are appropriate. In preparing this preliminary plan, EPA also considered the structure of specific industries and the availability of economically achievable technology that will reduce the identified hazard or risk. EPA will complete these analyses prior to publishing the final Effluent Guidelines Program Plan for 2004/2005.

V. What Is the Purpose of Today's Federal Register Notice?

Today's **Federal Register** notice has three purposes. First, it presents the results of EPA's annual review of the effluent guidelines that EPA has promulgated under CWA section 304(b). Second, it solicits public comment on the preliminary effluent guidelines plan as required by section 304(m)(2) of the CWA. Third, it describes and solicits comment on the analytical framework that EPA has employed to date in performing the annual review for 2003 and in developing today's preliminary Effluent Guidelines Program Plan. EPA articulated an early form of this evolving analytical framework in the draft Strategy for National Clean Water Industrial Regulations ("draft Strategy"), which EPA hopes to finalize concurrently with the Effluent Guidelines Program Plan in 2004.

VI. 2003 Annual Review of Effluent Guidelines That EPA Has Promulgated Under CWA Section 304(b)

As noted in section IV, the CWA requires EPA to publish a plan every two years that establishes a schedule for the annual review of the effluent guidelines that EPA has promulgated under CWA section 304(b). In today's **Federal Register** notice, EPA proposes a schedule whereby EPA would perform its annual review under CWA section 304(m)(1)(A) in concert with its efforts to identify industrial categories for new or revised effluent guidelines. In other words, in odd-numbered years, EPA would coordinate its annual review with the preliminary Effluent Guidelines Program Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA would coordinate its annual review with its publication of the final plan.

EPA proposes this schedule for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review inform the content of the proposed and final Effluent Guidelines Program Plans. Second, publishing the results of each annual review (including a description of the review process employed) at the same time EPA publishes proposed and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, we assume that Congress intended that each successive review would build upon the results of earlier reviews. Therefore, by publishing the results of the 2003 annual review here, EPA hopes to receive data and information that will inform its review for 2004 and the future. In addition, EPA hopes that publishing the 2003 annual review will prompt comments not only on the content of that review but also on the processes and factors we used in performing it. EPA may decide to change that process as a result of comments on today's notice.

As part of its 2003 annual review, EPA also reviewed the NSPS promulgated by EPA under CWA section 306 and pretreatment standards promulgated under CWA sections 307(b) and 307(c), although it was not required under CWA section 304(m)(1)(A) to do so.

A. What Process and Rationale Did EPA Use To Review Effluent Guidelines That EPA Has Promulgated Under CWA Section 304(b)?

1. What Is an Existing Set of Effluent Guidelines for Purposes of EPA's Annual Review Under Section 304(m)(1)(A)?

EPA's annual review obligation under section 304(m)(1)(A) applies to "promulgated effluent guidelines." Because this subparagraph refers specifically to section 304(b), EPA interprets this to refer to Best Available Technology (BAT), Best Practicable Technology (BPT) and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines codified at 40 CFR parts 405–471 (representing a total of 55 categories and over 450 subcategories). As discussed in more detail in section VI.A.2, EPA used pollutant loading, technological, economic, and other factors required by the CWA to consider whether it is appropriate to revise the specific limitations codified in each set of effluent guidelines.

EPA also examined the processes and operations forming the basis of each subcategory for which EPA had already promulgated effluent guidelines in order to decide whether it might be appropriate to address (through new subcategories) other industrial activities that are similar in terms of type of operations performed, wastewaters generated, and available pollution prevention and treatment options. Issues associated with new subcategories very often are interwoven with the structure and requirements of the existing regulation. A previous example where EPA addressed industrial operations not currently regulated by existing effluent guidelines by establishing new subcategories under an existing category is the agricultural refilling establishments subcategory (subpart E) that EPA added to the Pesticide Chemicals point source category (40 CFR part 455) (November 6, 1996; 61 FR 57518).

EPA's annual review of existing effluent guidelines also focused on identifying pollutants that are not regulated by existing effluent guidelines but that comprise a significant portion of the hazard or risk estimate for the industrial point source categories. EPA believes that it is reasonable to consider new pollutants for regulation in the course of reviewing existing effluent guidelines under CWA section 304(m)(1)(A). EPA has several reasons for this. First, a newly identified pollutant might be adequately addressed through the additional control of regulated pollutants in an existing set of effluent guidelines. In some cases, revising existing limitations for one set of pollutants will address hazards or risks associated with a newly identified pollutant. Second, EPA believes it is necessary to understand the effectiveness (or ineffectiveness) of existing effluent guidelines in controlling newly identified pollutants before EPA can identify potential technology-based control options for these pollutants. For example, EPA revised existing effluent guidelines for the Oil and Gas Extraction point source category (40 CFR part 435) to address new pollutants that resulted from a new pollution prevention technology (synthetic-based drilling fluids). See 66 FR 6850 (January 22, 2001). Similarly, EPA revised BAT limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp and Paper industrial point source category in 1998 to include for the first time effluent guidelines for dioxin. Third, the regulatory organization of subcategories in an existing guidelines also has a bearing on the identification of pollutants for regulation.

In short, EPA believes that the appropriateness of creating a new subcategory or addressing a newly identified pollutant is best considered in the context of revising an existing set of effluent guidelines as a whole. Accordingly, EPA is performing these analyses as part of the Agency's responsibilities under CWA section 304(m)(1)(A).

2. What Factors Did EPA Consider When Performing its 2003 Annual Review of Existing Guidelines?

The starting point of EPA's analysis is CWA section 301(b)(2)(A), which requires dischargers to achieve effluent limitations that reflect the "best available technology economically achievable," as identified by the Administrator under the authority of CWA section 304(b)(2). Section 304(b), in turn, requires EPA to consider many factors in identifying BAT. These are discussed in section III.C. Because CWA section 304(m)(1)(A) requires EPA to review promulgated guidelines in accordance with CWA section 304(b), EPA interprets the statute to authorize EPA to employ the same factors for its annual review that it would consider in selecting BAT in a rulemaking context. EPA believes that this is a reasonable approach because the outcome of EPA's annual review is a decision—expressed in the final Effluent Guidelines Program Plan—identifying those effluent guidelines for possible revision.

By using the statutory factors in section 304(b) and section 301(b)(2)(A) as the framework for its annual review of existing guidelines, EPA can begin its investigation with a variety of technological, economic, and environmental issues associated with industrial categories that ultimately will help determine the need for, or scope of, a revised effluent guideline. In the draft Strategy for National Clean Water Industrial Regulations, EPA identified four major factors—based on section 304(b)—that the Agency would examine, in the course of its annual review, to determine whether it would be necessary and appropriate to revise an existing set of effluent guidelines, or whether to develop a new set of effluent guidelines for a newly identified industrial category.

The first factor (referred to in this notice as "Factor 1") is consideration of the extent to which the pollutants remaining in an industrial category's discharge pose a hazard or risk to human health or the environment. The second factor (referred to in this notice as "Factor 2") is identification of an applicable and demonstrated technology, process change, or pollution prevention alternative that can effectively reduce the pollutants remaining in the industrial category's wastewaters and thereby substantially reduce the hazard or risk to human health or the environment associated with these pollutant discharges.

The third factor (referred to in this notice as "Factor 3") encompasses the cost, performance, and affordability of the technology, process change, or pollution prevention measures identified using the second factor. If the financial condition of the industry indicates significant difficulties in achieving the reductions, EPA would be reluctant to select the effluent guidelines for revision because there is a significant probability that EPA might ultimately determine that standards based on the new technology, process change, or pollution prevention measures were not "economically achievable," as required by the CWA. Agency resources would be more effectively spent developing more efficient, less costly approaches to reducing pollutant loadings that would better satisfy applicable statutory requirements.

The fourth factor (referred to in this notice as "Factor 4") incorporates implementation and efficiency considerations and recommendations from stakeholders. Here, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. For example, industry requested in comments on the Offshore and Coastal effluent guidelines rulemakings that EPA specifically set standards for a new pollution prevention technology (synthetic-based drilling fluids). EPA promulgated these revision on January 22, 2001 (66 FR 6850). This factor might also prompt EPA to decide in a particular Plan against scheduling an existing effluent guideline for revision where the pollutant source is already efficiently addressed by another regulatory program or by non-regulatory programs.

EPA also considered stakeholder recommendations for guideline development or revision even when they did not raise issues associated with implementation or efficiency considerations. In evaluating those recommendations, EPA considered the extent to which the pollutants in an industrial category's discharge pose a hazard or risk to human health or the environment (see Factor 1). EPA also considered whether the industrial sectors recommended by stakeholders are potentially subject to the Effluent Guidelines Program.

In the course of performing its annual review for 2003, EPA evaluated where possible publicly available Agency databases and reports that contain nationwide information on an industry basis, but became aware of data quality and limitations in evaluating this information. EPA learned that it lacked sufficient data and information to consider the four factors for the industrial categories for which EPA has promulgated effluent guidelines under CWA section 304(b) in the exact manner and sequence described in the draft Strategy. For example, EPA found that it was much more difficult than anticipated to gather the data needed to perform a meaningful screening-level analysis of the availability of treatment or process technologies that might reduce hazard or risk beyond the performance of technologies in place at facilities in 55 industrial categories. Similarly, EPA could not identify a suitable screening-level tool for evaluating the economic affordability of treatment or process technologies because the universe of facilities is too broad and complex. Furthermore, EPA could not find a reasonable way to prioritize industries for the Effluent Guidelines Program Plan based on a broad economic profile. Consequently, for its 2003 review, EPA focused its efforts on collecting and analyzing screening-level data to identify industrial categories whose pollutant discharges potentially pose the greatest hazards or risks to human health and the environment because of their toxicity. EPA also considered efficiency and implementation issues. As described in section VII, EPA will conduct detailed studies, as part of its 2004 annual review, to evaluate economic and technology issues for industrial categories with discharges that EPA believes offer the most significant opportunities for reducing risks or hazards. EPA will also continue to collect and analyze data on other industries whose discharges potentially pose high risks or hazards. See sections VII.B and C.

In order to focus its inquiry during the 2003 annual review, EPA excluded categories for which EPA had promulgated effluent guidelines within the past seven years. EPA chose seven years because of the time it takes for effluent guidelines to be incorporated as enforceable effluent limitations into NPDES permits when they are renewed, which could be up to five years after the effluent guidelines are promulgated. This time period also allows for the pollutant reductions associated with recently-promulgated guidelines to be reflected in discharge monitoring data and Toxics Release Inventory (TRI) reports, so that the Agency can assess the potential for remaining risks or hazards. (In cases where EPA is aware of the growth of a new segment within a category for which EPA had recently revised effluent guidelines, or where new concerns are identified for pollutants discharged by facilities within the industrial category, EPA may decide not to exclude the category from review, but EPA identified no such instance during the 2003 review.) EPA also excluded categories with guideline revisions currently underway.

EPA also excluded industry categories addressed by other Clean Water Act provisions. For example, some stakeholders urged EPA to identify municipal storm water discharges for effluent limitation guidelines; however, these discharges are addressed under CWA section 402(p). Similarly, technology-based standards for publicly-owned treatment works (POTWs) are addressed under sections 301(b)(1)(B) and 304(d).

Commenters also identified discharges from ocean going vessels (cruise ships, ballast and bilge water) as a possible candidate for an effluent guidelines rulemaking. However, discharges of ballast water from vessels are not subject to CWA permitting requirements. *See* 68 FR 53165 (September 9, 2003). Under EPA's regulations at 40 CFR 122.3(a), discharges from properly functioning marine engines (*i.e.*, bilge water), laundry, shower, and galley sink wastes, and other discharges incidental to the normal operation of a vessel do not require NPDES permit authorization unless the vessel is operating in a capacity other than as a means of transportation. Finally, discharges of sewage from vessels, are regulated under CWA section 312. None of these discharges requires NPDES permits under section 402 and, therefore, none are subject to BAT limitations or NSPS. Although EPA is currently considering a citizen petition seeking detailed consideration of cruise ship discharges and, if necessary, rulemaking to regulate such discharges, EPA has not yet decided whether (and if so, which) cruise ship discharges should be regulated under NPDES permits. In addition, recently-enacted, free standing legislation—not the CWA—imposes discharges limitations on black water (*i.e.*, sewage) and gray water (*i.e.*, laundry, shower, and galley sink wastes) for cruise ships operating in certain Alaskan waters.

EPA also excluded from consideration in its 2003 review: (1) Industries composed entirely or almost exclusively of indirect dischargers (*e.g.*, dental facilities), because the facilities are not subject to effluent guidelines under CWA section 304(b)(2); and (2) industries where the estimated hazard or risk was unclear and more data were needed to determine its magnitude. For the latter group, EPA intends to collect additional information for the next biennial Plan. EPA also did not identify industries where the vast majority of the estimated hazard or risk was limited to only one or a few facilities, because EPA believes that in such cases permit writing support to the States might better address the environmental problem. In judging whether support to permit writers would more effectively address a hazard or risk than national rulemaking, EPA will consider the number of facilities, their geographic location and other relevant factors.) EPA would assist in identifying control technologies and the effluent limitations based on best professional judgment (BPJ) on a facility-specific basis. EPA will evaluate this decision criterion based on the information available at the time of each annual review. By using this multi-layered screening approach, the Agency concentrated its resources on those categories that posed the greatest hazard or risk (based on best available data), while deferring consideration of industrial point source categories that the Agency believes are not good candidates for effluent guidelines establishment or revision during this planning cycle.

As part of this year's review, EPA considered excluding from additional review industrial categories that have demonstrated that they are making significant progress through voluntary efforts to reduce hazard or risk to human health and the environment associated with their discharges. EPA agrees with stakeholders who have stated that voluntary efforts should be encouraged and rewarded, especially where voluntary reductions have been widely adopted within an industry and have led to significant reductions in pollutant discharges. EPA could not complete a systematic review of voluntary pollutant loading reductions during this annual review. However, a successful voluntary program would produce significant reductions in pollutant discharges, which in turn would be reflected in discharge monitoring and TRI data that EPA used to assess the potential hazard or risk associated with pollutant discharges.

For a number of the industries that appeared to offer the greatest potential for reducing hazard or risk to human health or the environment, EPA attempted to gather and analyze additional data prior to commencing detailed and costly economic and technology studies. EPA examined: (1) The pollutants driving the hazard or risk estimates; (2) the geographic distribution of facilities in the industry; (3) any discharge trends within the industry; and (4) possible links between industrial point source discharges and impaired waterbodies identified by EPA, States, and Tribal governments under CWA section 303(d). EPA also performed limited quality assurance checks on the data used to develop hazard or risk estimates (*e.g.*, verifying data reported to TRI and the Permit Compliance System) to determine if any of the hazard or risk estimates relied on incorrect or suspect data. To the extent possible, EPA also considered the efficiency of existing treatment and any applicable and demonstrated technology, process change, or pollution prevention alternatives that could effectively reduce the pollutants remaining in the industry category's wastewaters.

Performance of this screening level analysis constitutes EPA's annual review for 2003.

3. What Was the Outcome of the Annual Review for 2003?

As a result of its 2003 annual review, EPA identified two industrial categories for detailed investigation in its 2004 annual review: Organic Chemicals, Plastics, and Synthetic Fibers (part 414); and Petroleum Refining (part 419). During detailed investigation of these categories, EPA hopes to perform a more in-depth analysis of technology innovation and process changes in these industrial categories, as well as an analysis of technology cost and affordability. EPA will also consider whether new subcategories are needed for either of these categories. The purpose of the detailed investigation is to determine whether, in the final Effluent Guidelines Program Plan for 2004/2005, EPA should identify one or both of these industrial categories for possible revision of their existing effluent guidelines. Based on the information available to EPA at this time, EPA is not proposing to make such an identification. However, EPA will examine the results of its 2004 annual review, which it intends to conclude prior to publishing the final Effluent Guidelines Program Plan for 2004/2005, and will make a final decision on this matter as part of its final Plan. EPA requests comment and supporting data on whether it should identify either or both of these industrial categories for possible effluent guidelines rulemakings in the final Effluent Guidelines Program Plan for 2004/2005.

At that time or shortly thereafter, EPA would make available for public comment the data and information underlying any decision to identify for possible revision the guidelines for one or both of these industrial categories. EPA would then consider the public comments as part of its 2005 annual review. EPA emphasizes that a decision in the Effluent Guidelines Program Plan for 2004/2005 to identify one or both guidelines for possible revision does not in any way constitute a final decision to revise the guideline or guidelines. EPA would make any such effluent guidelines revisions—supported by an administrative record following an opportunity for public comment—only in connection with a formal rulemaking process pursuant to a schedule announced in that or a future Effluent Guidelines Program Plan.

If EPA decides to identify one or both of the guidelines for these industrial categories for possible revision in its final Effluent Guidelines Program Plan for 2004/2005, EPA would expect to announce in that plan that EPA would start the rulemaking process in the Summer of 2004. The rulemaking schedule itself would depend on a number of factors including the complexity of the industry and the availability of the data needed to support the development of a proposal. In addition, if EPA were to select both of these industrial categories for effluent guidelines rulemakings, EPA would likely stagger the start dates of the rulemakings in order to ensure that Agency resources are used most effectively. In proposing the next Effluent Guidelines Program Plan, EPA would review these schedules and its progress to date. At that time, EPA could also determine, based on more in-depth data gathering and analyses, particularly with respect to Factors 2 and 3, that revisions to the effluent guidelines for one or both industrial categories were not warranted (*i.e.*, that the existing guidelines remain appropriate in light of applicable statutory factors). See section VII.A for additional information on the status of EPA's investigation of these industries.

EPA also identified potentially high risks or hazards associated with discharges from two other industrial categories: Inorganic Chemicals (part 415) and Nonferrous Metals Manufacturing (part 421). However, the Agency identified data gaps or issues that made these industries a lower priority than organic chemicals and petroleum refining. EPA does not have enough information at this time to determine whether there is a hazard or risk warranting a detailed review of these industries for potential guideline revision and does not anticipate identifying these effluent guidelines for revision in the final 2004/2005 Effluent Guidelines Program Plan. See section VII.B for additional information on the status of EPA's investigation of these industrial point source categories.

EPA identified seven other industrial point source categories with relatively high estimates of potential hazard or risk, but also identified significant data gaps or issues affecting the Agency's estimates of these hazards or risks. EPA will continue to collect and analyze information on these seven industrial categories but will assign a higher priority to investigating the organic chemicals, petroleum refining, inorganic chemicals and nonferrous metals manufacturing industrial categories. EPA does not anticipate identifying any of these seven industries for revision of an effluent guideline in the final Effluent Guidelines Program Plan for 2004/2005. See section VII.C.

EPA's Regional Offices and stakeholders identified nine other industrial point source categories as potential candidates for effluent guideline revision based on potential opportunities to improve efficient implementation of the national water quality program or because their discharges may contribute to water quality problems. EPA evaluated these industrial point source categories and, based on available data, did not identify hazard or risks that appear to warrant effluent guideline revision. EPA does not anticipate identifying any of these nine industries for revision of an effluent guideline in the final Effluent Guidelines Program Plan for 2004/2005. See section VII.C.

The outcome of the 2003 annual review is presented in Table VI–1. The table identifies some of the information considered by EPA during this annual review, including whether the industry was mentioned at least once during stakeholder and EPA Regional outreach efforts, and where the industry ranks in terms of hazard in units of toxic-weighted pounds equivalent (TWPE) using TRI and PCS data. It also indicates whether EPA is identifying the particular industrial category for further investigation during the 2004 annual review (leading to a possible decision in the final Effluent Guidelines Program Plan for 2004/2005 to identify that category for rulemaking). A "No" in this column means that EPA does not plan to conduct a detailed study for this industry prior to publication of the final Effluent Guidelines Program Plan for 2004/2005. It also means that EPA does not plan to select this industry for effluent guidelines revisions for the final Effluent Guidelines Program Plan for 2004/2005. Finally, EPA used a set of rationales for making industry specific decisions for the preliminary Effluent Guidelines Program Plan for 2004/2005. Table VI–1 uses the following codes to describe the rationales for the Agency's industry specific decisions:

(1) Effluent guidelines for this industry were recently revised or rulemaking is underway.

(2) EPA will consider whether to provide region-, State-, or facility-specific permit support for this industry.

(3) Not identified as a hazard or risk priority.

(4) Incomplete data available for analysis: Need to collect more information for the next biennial plan.

(5) EPA will consider whether to develop guidance in order to clarify existing permitting requirements.

(6) All or nearly all sources engaged in this industrial activity are indirect dischargers.

TABLE VI–1.—INDUSTRIES COVERED BY EXISTING EFFLUENT GUIDELINES (PROMULGATED UNDER SECTION 304(B))

No.	Industry category (listed alphabetically)	40 CFR part[1]	Suggested in stakeholder outreach? (Yes/No)	TRI rank[2]	PCS rank[2]	Conduct detailed investigation of industry for 2004/2005 plan? (Yes/No)	Rationale
1	Aluminum Forming	467	No	25	18	No	(3)
2	Aquatic Animal Production Industry.	451	Yes	N/A	45	No	(1)
3	Asbestos Manufacturing	427	No	51	N/A	No	(3)
4	Battery Manufacturing	461	Yes	36	48	No	(3)
5	Canned and Preserved Fruits and Vegetable Processing.	407	Yes	29	38	No	(4)
6	Canned and Preserved Seafood Processing.	408	Yes	49	26	No	(4)
7	Carbon Black Manufacturing.	458	No	N/A	N/A	No	(3)
8	Cement Manufacturing	411	No	33	29	No	(3)
9	Centralized Waste Treatment.	437	No	N/A	N/A	No	(1)
10	Coal Mining	434	Yes	26	39	No	(1) and (4).
11	Coil Coating	465	Yes	32	N/A	No	(4)
12	Concentrated Animal Feeding Operations (CAFO).	412	No	N/A	N/A	No	(1)
13	Construction and Development.	450	Yes	N/A	N/A	No	(1)
14	Copper Forming	468	No	28	34	No	(3)
15	Dairy Products Processing.	405	Yes	37	47	No	(4)
16	Electrical and Electronic Components.	469	Yes	34	23	No	(4)
17	Electroplating	413	Yes	23	27	No	(1)
18	Explosives Manufacturing.	457	No	41	35	No	(3)
19	Ferroalloy Manufacturing.	424	No	27	31	No	(3)
20	Fertilizer Manufacturing	418	Yes	20	17	No	(4)
21	Glass Manufacturing	426	No	38	48	No	(3)
22	Grain Mills	406	No	35	42	No	(3)
23	Gum and Wood Chemicals.	454	No	46	21	No	(3)
24	Hospitals	460	Yes	40	46	No	(6)
25	Ink Formulating	447	No	45	N/A	No	(3)
26	Inorganic Chemicals Manufacturing.	415	Yes	12	7	No	See section VII.B.1.

TABLE VI–1.—INDUSTRIES COVERED BY EXISTING EFFLUENT GUIDELINES (PROMULGATED UNDER SECTION 304(B))—Continued

No.	Industry category (listed alphabetically)	40 CFR part [1]	Suggested in stakeholder outreach? (Yes/No)	TRI rank [2]	PCS rank [2]	Conduct detailed investigation of industry for 2004/2005 plan? (Yes/No)	Rationale
27	Iron and Steel Manufacturing.	420	No	6	5	No	(1)
28	Landfills	445	No	9	12	No	(1)
29	Leather Tanning and Finishing.	425	No	24	36	No	(3)
30	Meat Products	432	Yes	30	25	No	(1)
31	Metal Finishing	433	Yes	11	8	No	(1)
32	Metal Molding and Casting.	464	Yes	22	33	No	(4) and (5).
33	Metal Products and Machinery.	438	Yes	47	15	No	(1)
34	Mineral Mining and Processing.	436	Yes	52	22	No	(4)
35	Nonferrous Metals Forming and Metal Powders.	471	No	16	30	No	(3)
36	Nonferrous Metals Manufacturing.	421	No	8	9	No	See section VII.B.2.
37	Oil and Gas Extraction	435	No	50	43	No	(1) and (4).
38	Ore Mining and Dressing.	440	Yes	21	10	No	(4)
39	Organic Chemicals, Plastics and Synthetic Fibers.	414	Yes	1	4	Yes	See section VII.A.1.
40	Paint Formulating	446	No	N/A	N/A	No	(3)
41	Paving and Roofing Materials (Tars and Asphalt).	443	No	48	41	No	(3)
42	Pesticide Chemicals	455	No	31	16	No	(3)
43	Petroleum Refining	419	Yes	4	14	Yes	See section VII.A.2.
44	Pharmaceutical Manufacturing.	439	No	17	24	No	(1)
45	Phosphate Manufacturing.	422	No	44	6	No	(4)
46	Photographic	459	No	N/A	48	No	(3)
47	Plastic Molding and Forming.	463	No	15	37	No	(3)
48	Porcelain Enameling	466	No	18	20	No	(3)
49	Pulp and Paper Subparts B & E (Phase I).	430	Yes	3	3	No	(1)
50	Pulp and Paper Subparts C and F through L (Phase II).	430	Yes	7	19	No	(4)
51	Pulp and Paper Subparts A & D (Phase III).	430	Yes	30	25	No	(2)
52	Rubber Manufacturing	428	No	14	32	No	(3)
53	Soaps and Detergents Manufacturing.	417	No	42	44	No	(3)
54	Steam Electric Power Generation.	423	Yes	5	1	No	(4)
55	Sugar Processing	409	No	43	28	No	(3)
56	Textile Mills	410	Yes	19	11	No	(4)
57	Timber Products Processing.	429	Yes	2	40	No	(4)
58	Transportation Equipment Cleaning.	442	Yes	N/A	N/A	No	(1) and (6).
59	Waste Combustors	444	No	9	12	No	(1)

[1] **Note:** EPA has proposed to add parts 450 and 451 to title 40 of the Code of Federal Regulations. EPA has proposed to change the title of 40 CFR 432 from "Meat Products" to "Meat and Poultry Products."

[2] **Note:** These rankings are based on the toxic-weighted pounds equivalent (TWPE) associated with their toxic or non-conventional pollutant discharges reported to TRI or PCS. An NA in this column means that data and information were not available for this category.

B. How Did EPA Estimate Potential Hazards or Risks to Human Health or the Environment As Part of Its 2003 Annual Review?

The screening-level review of potential hazards or risks to human health or the environment (EPA's "Factor 1" review) focused on using readily available information to assess the potential hazard or risk associated with pollutants discharged from industrial point sources. EPA reviewed such data sources as Agency databases, models, existing scientific literature, the Gulf Hypoxia Action Plan, and analyses currently underway on chemical contaminants in the environment. This included data on pollutant point source discharges, water quality, environmental impacts (*e.g.*, sediment and fish contamination), and pathogen impacts. The two major data sources/analyses that formed the basis of ranking industries for the current Factor 1 analysis are the Toxics Release Inventory (TRI) and Permit Compliance System (PCS). The Factor 1 analysis also describes the available data linking water quality impairments with point sources discharges. EPA focused this impaired waters analysis on those point source dischargers discharging the most pounds of toxic and non-conventional pollutants (as estimated by the initial screening TRI and PCS analyses). Section 2.1 of the docket contains the complete analysis including descriptions of additional data sources that may be useful in future planning cycles.

EPA primarily relied on PCS and TRI for estimating pollutant discharges. EPA believes that the TRI database is a reasonable starting point for identifying possible hazard or risk concerns as it is a national database on reported toxic discharges. EPA's Permit Compliance System (PCS) contains information required by the NPDES Permit Program for major dischargers across the country.[1] EPA does not require States to include data for other dischargers (*e.g.*, minor and indirect dischargers) in PCS, so little information is available about industries dominated by minor and indirect dischargers. However, EPA is primarily concerned with facilities that may discharge high volumes of polluted wastewaters because these are more likely to pose the greatest hazard or risk to human health or the environment. PCS is the primary repository of data used to determine reductions in pollutant loads to the waters of the United States. Because of its national scope, PCS is also a reasonable starting point for identifying hazard or risk concerns, especially when combined with other sources of information. Finally, the Agency also analyzed the spatial correlation between the discharge outfalls of regulated facilities that report to PCS and impaired water bodies listed under section 303(d) of the Clean Water Act.

We used the TRI and PCS databases as the focus in this round of analysis because of their nationwide coverage, relative accessability, ability to link the source with the pollutant discharge, and the important types of toxic releases that they cover. However, as detailed in the complete Factor 1 report, the Agency is exploring other avenues of information that may be added in future planning cycles. These include, for example, regional resources such as the Gulf Hypoxia Action Plan (nutrients), various sources related to pathogens, information that becomes available as the Agency implements its Endocrine Disruptor Screening Program, and information being developed in the U.S. Geological Survey's National Water-Quality Assessment Program.

C. How Did EPA Evaluate Stakeholder Input As Part of Its 2003 Annual Review?

EPA's planning process for the Effluent Guidelines Program has historically considered information provided by stakeholders regarding the need for new or revised effluent guidelines or regarding issues associated with effluent guidelines implementation and efficiency. For the 2003 annual review, EPA obtained information from informal discussions with stakeholder groups with an interest in the Effluent Guidelines Program and with EPA and state staff charged with implementing effluent guidelines in NPDES permits, as well as from public comments submitted to EPA on the draft strategy.

Stakeholders' suggestions played a prominent role in the screening analyses conducted for the preliminary Effluent Guidelines Program Plan for 2004/2005. Examples of such sectors include food processing/preparation industries (nutrients and/or oil and grease); and drinking water supply and treatment (total suspended solids); and coalbed methane (total dissolved solids, sodium adsorption ratio).

Results of the formal comment process are presented in this notice and in the following document: Factor 4 Analysis: Implementation and Efficiency Considerations—Status of Screening Level Review Phase (DCN 00547, section 2.3). Results of the informal process are described in today's notice and in the public record, section 2.3. EPA will follow up with stakeholders, as necessary, for more information on their recommendations as the planning process continues. EPA hopes that public review of this and future proposed and final Effluent Guidelines Program Plans will elicit additional information and suggestions. Tables VI–2 and VI–3 describe which industry sectors were identified during the Agency's outreach activities. Table VI–2 uses the same codes as Table VI–1 to describe the rationales for the Agency's industry specific decisions. Table VI–3 uses the same codes as Table VIII–1 to describe the rationales for the Agency's industry specific decisions.

TABLE VI–2.—INDUSTRIAL POINT SOURCE CATEGORIES CURRENTLY REGULATED BY EFFLUENT GUIDELINES IDENTIFIED DURING OUTREACH

Industry	Formal comment process		Previous outreach	Draft stratey outreach		Rationale
	Comments on draft strategy	Comments on 2002/2003 plan		Permitting authorities	AMSA and/or ASWIPCA[1]	
Canned and Preserved Fruits and Vegetable Processing.			✔			(3)
Canned and Preserved Seafood Processing.			✔	✔	✔	(4)
Coal Mining		✔	✔		✔	(1) and (4).

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[1] A major discharger is any NPDES facility or activity classified as such by the Regional Administrator, or, in the case of approved State Programs, the Regional Administrator in conjunction with the State Director. Major industrial facilities are determined based on specific ratings criteria developed by EPA and approved State Programs.

TABLE VI–2.—INDUSTRIAL POINT SOURCE CATEGORIES CURRENTLY REGULATED BY EFFLUENT GUIDELINES IDENTIFIED DURING OUTREACH—Continued

Industry	Formal comment process		Previous outreach	Draft stratey outreach		Rationale
	Comments on draft strategy	Comments on 2002/2003 plan		Permitting authorities	AMSA and/or ASWIPCA[1]	
Coil Coating				✔		(3)
Dairy Products Processing			✔			(4)
Electrical and Electronic Components.				✔		(4)
Electroplating	✔					(1)
Fertilizer Manufacturing			✔	✔		(4)
Hospitals	✔	✔		✔		(6)
Inorganic Chemical Manufacturing.				✔		See section VII.B.1.
Meat Products			✔	✔	✔	(1)
Metal Finishing	✔		✔	✔	✔	(1)
Metal Molding and Casting	✔		✔	✔	✔	(4) and (5).
Metal Products and Machinery				✔		(1)
Mineral Mining and Processing			✔			(4)
Oil and Gas Extraction (including coal bed methane as new potential subcategory).		✔	✔	✔		(1) and (4).
Ore Mining and Dressing (hard rock mining).		✔	✔	✔		(4)
Organic Chemicals, Plastics, & Synthetic Fibers (including chemical formulating, packaging, and repackaging (including adhesives and sealants) operations as a new potential subcategory).	✔					See section VII.A.1.
Petroleum Refining (including petroleum bulk stations and terminals as a new potential subcategory).			✔	✔	✔	See section VII.A.2.
Pulp and Paper, Subparts B & E (Phase I).			✔	✔		(1)
Pulp and Paper, Subparts C and F through L (Phase II).			✔	✔		(4)
Pulp and Paper, Subparts A & D (Phase III).			✔	✔		(2)
Steam Electric			✔	✔		(4)
Textile Mills			✔	✔		(4)
Timber Products Processing				✔		(4)
Transportation Equipment Cleaning (including industrial container & drum cleaning as a new potential subcategory).	✔					(1) and (6).

[1] **Note:** Association of Metropolitan Sewerage Agencies (AMSA), Association of State and Interstate Water Pollution Control Administrators (ASWIPCA).

[2] **Note:** This column uses the same codes as Table VI–1 to describe the rationales for the Agency's industry-specific decisions.

TABLE VI–3.—INDUSTRY SECTORS CURRENTLY NOT REGULATED BY EFFLUENT GUIDELINES IDENTIFIED DURING OUTREACH

Industry	Formal comment process		Previous outreach	Draft strategy outreach		Rationale[2]
	Comments on draft strategy	Comments on 2002/2003 plan		Permitting authorities	AMSA and/or ASWIPCA[1]	
Airport Industrial Discharges			√			(3)
Aquatic Animal Production			√	√		(1)
Storm Water Discharges from Construction and Development.					√	(1)
Dental Facilities	√	√		√		(4)
Drinking Water Supply & Treatment			√			(2)
Food Service Establishments (SIC 581)	√					(4)
Discharges from Groundwater Remediation				√		(5)
Independent and Stand-Alone Laboratories	√					(4)
Ocean Going Vessels (cruise ships, ballast and bilge water).		√	√			(6)

TABLE VI–3.—INDUSTRY SECTORS CURRENTLY NOT REGULATED BY EFFLUENT GUIDELINES IDENTIFIED DURING OUTREACH—Continued

Industry	Formal comment process		Previous outreach	Draft strategy outreach		Rationale[2]
	Comments on draft strategy	Comments on 2002/2003 plan		Permitting authorities	AMSA and/or ASWIPCA[1]	
Printing and Publishing	√					(4)
Prisons				√		(4)
Municipal Storm Water Runoff			√	√	√	(5)
Wastewater Treatment and Sewerage Systems.			√			(5)

[1] **Note:** Association of Metropolitan Sewerage Agencies (AMSA), Association of State and Interstate Water Pollution Control Administrators (ASWIPCA).

[2] **Note:** This column uses the same codes as Table VIII–1 to describe the rationales for the Agency's industry-specific decisions.

VII. What Will Be the Focus of EPA's 2004 Annual Review?

A. Industrial Point Source Categories EPA Has Identified for Detailed Investigation

As noted in section VI, EPA has identified two industrial categories for detailed investigation in the 2004 annual review: Organic Chemicals, Plastics, and Synthetic Fibers (including Chemical Formulating, Packaging, and Repackaging and Adhesives and Sealants operations) (part 414); and Petroleum Refining (including Petroleum Bulk Stations & Terminals) (part 419). The purpose of the 2004 detailed investigation is to determine whether, in the final Effluent Guidelines Program Plan for 2004/2005, EPA should identify Organic Chemicals, Plastics, and Synthetic Fibers or Petroleum Refining (or both) as the subject of possible rulemaking to revise their existing effluent guidelines. During the 2004 annual review, which will conclude with EPA's publication of the final Effluent Guidelines Program Plan for 2004/2005, EPA intends to collect additional information from NPDES permits, permitting authorities, and specific industry facilities, as well as review data and comments submitted in response to today's notice.

1. Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF)

This industry ranked high in terms of toxic and non-conventional pollutant discharges among all industrial point source categories investigated in the screening level analyses. Of 1,581 facilities classified as OCPSF manufacturing facilities, PCS location data are sufficient to index 578 facilities to their receiving waterbodies. Of these facilities, 205 (35%) are discharging pollutants (*e.g.*, priority organics, nutrients, metals) identified as causing water quality impairments to their receiving streams. EPA has information that suggests there may be demonstrated pollution prevention opportunities and advanced technologies for better treating toxic pollutants and nutrients, and reducing wastewater flow. As part of its review of this industry, EPA will consider whether any subcategories should be added. For example, EPA has identified chemical formulating, packaging, and repackaging (including adhesives and sealants) operations, which is not currently regulated by technology-based effluent guidelines as a possible new subcategory.

Some stakeholders have encouraged EPA to consider revising these effluent guidelines. During outreach efforts, some stakeholders asserted that the structure and scope of part 414 presents a number of permitting and enforcement challenges: (1) Difficulties encountered in correctly calculating and establishing mass-based limits; (2) problems in obtaining the data necessary to determine compliance with mass-based limits; (3) deficiencies in permits and control mechanisms that have hindered enforcement actions against non-compliant facilities; and (4) challenges encountered in determining the correct Standard Industrial Classification (SIC) codes to apply to facilities, which in turn makes it difficult for permit writers to identify the applicable effluent guidelines requirements. Therefore, these stakeholders recommend reevaluating these guidelines to consider more general coverage that is not tied to SIC codes. They also recommend switching from mass-based limits to concentration-based limits because of difficulties in implementing and enforcing mass-based limits.

In comments on the draft Strategy a commenter identified chemical formulating, packaging, and repackaging (including adhesives and sealants) operations as an unregulated subcategory for which effluent guidelines should potentially be developed. EPA intends to review chemical formulating, packaging, and repackaging (including adhesives and sealants) operations for possible inclusion in the OCPSF point source category because of the potential similarities in operations performed, wastewaters generated, and available pollution prevention and treatment options.

2. Petroleum Refining

This industry ranked high in terms of toxic and non-conventional pollutant discharges among all industrial point source categories investigated in the screening level analyses. A large number of petroleum refineries report discharges of toxic pollutants (*e.g.*, priority organics, metals). EPA has information suggesting that there may pollution prevention alternatives opportunities for this industry (*e.g.*, via product substitution), and that treatment technologies (*e.g.*, membrane separation, novel adsorption) may exist to better prevent stormwater contamination and to control effluent discharges from this industrial category.

During outreach, some stakeholders encouraged EPA to consider revising these effluent guidelines. Their suggestions included expanding the list of regulated pollutants to include: (1) Priority pollutants; (2) metals, especially selenium; (3) nutrients (ammonia); (4) biochemical oxygen demand (BOD); and (5) chemical oxygen demand (COD). Stakeholders suggested a review of Best Practicable Technology (BPT), Best Available Technology (BAT), and Best Conventional Pollutant Control Technology (BCT) for accuracy and relevance because the current effluent guidelines were promulgated in 1982.

Some EPA Regional Offices and stakeholders also asserted that the effluent guidelines for this category are outdated relative to the current state of the industry, and should be a priority for revision. These stakeholders argue that not only have the technologies changed significantly since the guidelines were first issued in 1982, but many refineries have two to four times the throughput than was used when the effluents guidelines were first issued and can probably achieve greater pollutant reductions than they are presently required to achieve. For industries with production based limitations and standards, such as this one, a significant change in production may suggest a need to review the effluent guidelines.

As part of its review of this industry, EPA will consider whether any new subcategories should be added. For example, EPA has identified petroleum bulk stations and terminals, which are not currently regulated by technology-based effluent guidelines, as a possible new subcategory. Some stakeholders identified concerns for discharges from petroleum bulk stations and terminals facilities. EPA intends to consider petroleum bulk stations and terminals (not currently regulated by effluent guidelines) as it reviews the Petroleum Refining point source category (part 419) because of potential similarities in operations performed, wastewaters generated, and available pollution prevention and treatment options.

B. Industrial Point Source Categories EPA Has Identified as the Highest Priority for Further Investigation

EPA intends to address data gaps and uncertainties affecting EPA's estimates of the potential risks and hazards posed by two industrial categories: Inorganic Chemicals (part 414) and Nonferrous Metals Manufacturing (part 421). However, EPA does not anticipate completing its review of these industrial categories in this planning cycle. EPA expects to complete its review of Group II industries for the Effluent Guidelines Program Plan for 2006/2007. Consequently, EPA does not anticipate selecting either of these industrial categories for revision of their effluent guidelines in the final Effluent Guidelines Program Plan for 2004/2005.

1. Inorganic Chemicals

This industry ranked high in terms of toxic and non-conventional pollutant discharges among all industrial point source categories investigated in the screening level analyses. EPA identified this industry as a lower priority than the Organic Chemicals, Plastics and Synthetic Fibers and Petroleum Refining industries based on the following:

- Only a few facilities account for the reported toxic releases. For the Inorganic Chemicals Manufacturing Point Source Category, 12 facilities in the 2000 TRI database account for approximately 90 percent of the reported releases of toxic-weighted pound equivalents (TWPE) to waters of the United States.
- The reported toxic releases are dominated by dioxin. Dioxin and dioxin-like compounds represent approximately 70 percent of the TWPE reported releases to surface waters and three facilities discharge approximately 80 percent of those TWPE. The majority of reported dioxin discharges are from chlor-alkali facilities (SIC 2812).
- Use of industry-specific dioxin toxic weighting factors. Using the best available information, EPA is using different toxic weighting factors for the different dioxin congeners. Further information and data may also affect EPA's estimate of the toxicity associated with these dioxin discharges.
- Low-level mercury discharges reported in PCS account for a substantial part of the TWPE for this industry. Excluding one facility, the average mercury discharge is at a very low concentration, raising issues about the treatability of these discharges.

During outreach efforts, some stakeholders suggested that the Inorganic Chemical effluent guidelines (part 415) should be reevaluated to determine whether the "no discharge" requirement is reasonable. Stakeholders stated that there have been substantial changes to this industrial point source category since the effluent guidelines were promulgated in 1982. In particular, stakeholders suggested revising the effluent guidelines with respect to chlor-alkali and nitrous oxide manufacturing. The majority of reported dioxin discharges are from chlor-alkali facilities (SIC 2812). Stakeholders also suggested revising the potassium manufacturing subcategory to address interpretation issues for new sources as to what constitutes process wastewater.

2. Nonferrous Metals Manufacturing

This industry ranked high in terms of toxic and non-conventional pollutant discharges among all industrial point source categories investigated in the screening level analyses. The existing effluent guidelines use SIC codes to determine applicability but in some cases a single SIC code covers facilities not only in this industrial point source category, but also in other categories. Consequently, EPA has begun to conduct further review of the discharges reported in TRI and PCS for this category to ensure that EPA is not double-counting pollutants among two or more categories. This review has already lowered the estimated toxic and non-conventional pollutant discharges attributed to this category and may do so further. EPA also notes that nonferrous metals manufacturing facilities tend to have efficient metals removal from existing treatment-in-place (most metals removals are approximately 99% efficient based on 2000 TRI data).

C. Other Industry Categories

EPA identified seven other industrial point source categories with relatively high estimates of potential hazard or risk based on the screening tools used to evaluate hazard or risk and the information gathered from EPA Regional Offices and stakeholders: fertilizer manufacturing; ore mining and dressing; phosphate manufacturing; pulp and paper (phase II); steam electric power generating; textile mills; and timber products processing. EPA also identified numerous data gaps and issues that may affect the Agency's estimate of the risk or hazard posed by discharges from these industrial point source categories. EPA will continue investigating pollutant discharges from these industrial point source categories, but will assign a higher priority to the industrial categories described in sections VII A. and B. At the present time, the Agency does not have enough information to determine whether the hazard or risk that appears to be posed by these categories warrants revision of the applicable effluent guidelines. Therefore, EPA does not anticipate identifying any of these categories for revision of an effluent guideline in the final Effluent Guidelines Program Plan for 2004/2005.

EPA Regional Offices and outreach efforts identified nine other industrial point source categories as potential candidates for effluent guideline revision: canned and preserved fruits and vegetable processing; canned and preserved seafood processing; coal mining; coil coating; dairy products processing; electrical and electronic components; metal molding and casting; mineral mining and processing; and oil and gas extraction (including coalbed methane extraction). These industries were identified because of potential opportunities to improve efficient implementation of the national water quality program or because their discharges may contribute to water quality problems. EPA evaluated these categories and, based on available data, did not identify hazard or risks that appear to warrant effluent guideline revision. Therefore, EPA does not anticipate identifying any of these categories for revision of an effluent guideline in the final Effluent Guidelines Program Plan for 2004/2005.

VIII. Identification of and Schedule for Possible Categories for Potential New Effluent Guidelines

In its Effluent Guidelines Program Plan, EPA must identify categories of sources discharging toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. See CWA section 304(m)(1)(B). For the categories EPA identifies under this provision, EPA must establish a schedule for the promulgation of effluent guidelines not later than three years after such identification. See CWA section 304(m)(1)(C). Today's **Federal Register** notice presents EPA's preliminary decisions under section 304(m)(1)(B).

A. Review Process and Decision Criteria for Industrial Categories for Which EPA Has Not Promulgated Effluent Guidelines

The universe of potential industrial categories subject to section 304(m)(1)(B) is limited. First, and most important, this analysis applies only to industrial categories for which EPA has not promulgated effluent guidelines, not to unregulated subcategories or pollutants within a currently regulated industrial category. Thus, the first decision criterion asks whether the industrial operation or activity in question is properly characterized as an industry "category." The list of "categories of sources" set forth at section 306(b)(1)(A) (*e.g.*, pulp and paper mills, organic chemicals manufacturing, steam electric powerplants) suggests that Congress intended that this term should be broadly construed. EPA considers the need to address new subcategories and new pollutants as part of its annual review of existing effluent guidelines. See section VI. EPA believes that the decision whether to revise a guideline to address additional related industrial activities or pollutants should be made in the context of evaluating the promulgated effluent guideline as a whole. For example, as part of its annual review under CWA section 304(m)(1)(A), EPA is reviewing the following industrial operations as potential new subcategories of existing effluent guidelines: (1) Petroleum Bulk Stations and Terminals (SIC 5171) will be reviewed as a potential new subcategory under Petroleum Refining (part 419); and (2) Chemical Formulating, Packaging, and Repackaging (including Adhesives and Sealants) operations will be reviewed as a potential new subcategory under Organic Chemicals, Plastics, and Synthetic Fibers (part 414).

Second, the analysis under CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify industrial categories composed exclusively or almost exclusively of indirect discharging facilities regulated under section 307 or categories like wastewater treatment plants regulated under section 301(b)(1)(B). EPA also believes this criterion should be used to exclude categories where the vast majority of toxic and non-conventional pollutant discharges are accounted for by one or a few facilities. EPA believes that more effective environmental protection can be accomplished sooner for such categories, and with less use of limited Agency resources, by providing site-specific guidance to permit authorities on appropriate limitations and standards based on best professional judgment. This decision criterion acknowledges that other tools created by the Clean Water Act better pollutant discharges from some categories of facilities.

Third, the analysis under CWA section 304(m)(1)(B) applies only to industrial categories of sources that the record shows are making non-trivial discharges of toxic or non-conventional pollutants to waters of the United States. EPA does not believe that it is necessary, nor was it Congress's intent, to develop national effluent guidelines regulations for categories of sources that are likely to pose an insignificant risk to human health or the environment. See S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31. This decision criterion leads EPA to focus on those remaining industrial categories where new effluent guidelines have the potential to address an identifiable hazard or risk to human health or the environment. In other words, using this decision criterion, EPA will identify those industrial categories of polluters for which effluent guidelines may be appropriate, based on information available during the development of a particular Effluent Guidelines Program Plan. Thus, EPA might judge in 2004, based on information available at that time, that the toxic and non-conventional pollutant discharges from sources within an industrial category are trivial, and then, based on changes in the industry or new information, reach a different conclusion in 2006 or later. Priority-setting is intrinsic to any planning exercise, and this decision criterion is an important priority-setting tool. Because section 304(m)(1)(C) requires that EPA complete an effluent guidelines rulemaking within three years of identifying an industrial category in a 304(m) plan, it is important that EPA have the discretion to identify only those industrial categories where the risks or hazards are indeed non-trivial. Otherwise, EPA might find itself commencing an effluent guidelines rulemaking when none is actually needed for the protection of human health or the environment. In assessing hazard or risk for purposes of CWA section 304(m)(1)(B), EPA used the same methodology discussed in section VI for reviewing industrial categories with existing effluent guidelines.

B. Outcome of EPA's Analysis Under CWA Section 304(m)(1)(B)

Applying these decision criteria, EPA identified no new candidates for effluent guidelines rulemaking for this preliminary Plan. Consequently, EPA is not proposing to schedule an effluent guidelines rulemaking for any industrial category not already regulated by existing effluent guidelines. EPA's application of these decision criteria to industrial activities without effluent guidelines under sections 304(b) or 306 is presented in Table VIII–1 and in the record (DCN 00548, section 3.0). The "Rationale" column in Table VIII–1 uses a numeric coding system to explain why EPA did not identify the industrial activity in this preliminary Plan as a candidate for an effluent guidelines rulemaking:

(1) An effluent guidelines rulemaking for this industry is underway or was recently concluded.

(2) The vast majority of the estimated hazards are limited to only one or a few facilities.

(3) Inadequate data to determine if there are non-trivial discharges; additional data collection on-going.

(4) All or nearly all sources engaged in this industrial activity are indirect dischargers and are not subject to CWA section 304(b) or section 306.

(5) Other CWA controls apply (*e.g.* Uniform National Discharge Standards for armed forces vessels, municipal storm water regulations).

(6) Industrial activity is not subject to CWA permitting requirements.

TABLE VIII–1.—INDUSTRIAL ACTIVITIES FOR WHICH EPA HAS NOT PROMULGATED EFFLUENT GUIDELINES

Industrial activity	Suggested in stakeholder outreach? (Yes/No)	TRI rank	PCS rank	Continue investigation for possible identification for final Effluent Guidelines Program Plan for 2004/2005? (Yes/No)	Rationale
Airport Industrial Discharges	Yes	Not Avail	2	No	(3)
Aquatic Animal Production	Yes	Not Avail	Not Avail	No	(1)
Storm Water Discharges from Construction and Development.	Yes	Not Avail	Not Avail	No	(1)
Dental Facilities	Yes	Not App	Not App	No	(4)
Drinking Water Supply & Treatment.	Yes	1	1	No	(2)
Food Service Establishments (SIC 581).	Yes	Not App	Not App	No	(4)
Discharges from Groundwater Remediation.	Yes	Not App	Not App	No	(5)
Independent & Stand-Alone Laboratories.	Yes	Not App	Not App	No	(4)
Industrial Laundries	No	Not App	Not App	No	(4)
Ocean Going Vessels (cruise ships, ballast and bilge water).	Yes	Not App	Not App	No	(6)
Printing & Publishing	Yes	Not App	Not App	No	(4)
Prisons	Yes	Not App	Not App	No	(4)
Municipal Storm Water Runoff	Yes	Not App	Not App	No	(5)
Wastewater Treatment and Sewerage Systems.	Yes	Not App	Not App	No	(5)

Note: "Not Avail." means that the information was not available using data from TRI or PCS. "Not App." means that this 304(m) ranking was not applicable for this industry, in as much as this industry is not subject to 304(m) effluent guidelines planning.

IX. Request for Comment and Information

EPA invites and encourages public participation in the development of the Effluent Guidelines Program Plan for 2004/2005. The Agency asks that comments address deficiencies in the record of this preliminary Plan and that commenters provide supporting data for suggested revisions or corrections where possible.

EPA particularly requests comments and information on these issues:

A. EPA requests information on the industries recommended for detailed investigation: Organic Chemicals, Plastics, and Synthetic Fibers (40 CFR part 414) and Petroleum Refining (40 CFR part 419). Specifically, EPA hopes to gather the following information:

OCPSF (SIC codes 2821, 2823, 2824, 2865, 2869)

- What is the source (raw material, process, product) of the TRI-reported releases of toxic chemicals, particularly dioxin and dioxin-like compounds, PACs, aniline, and sodium nitrite?
- What control technologies or techniques can be used to reduce the wastewater contamination with these pollutants?
- What toxic chemicals are released from OCPSF facilities, but not reported to TRI or PCS?
- Manufacturers of azo dyes and certain facilities in the rubber industry reported wastewater releases of aniline and sodium nitrite. What is the source (raw material, process, product) of these releases? What control technologies or techniques can be used to reduce wastewater contamination with these pollutants?
- Manufacturers of ethylene dichloride and vinyl chloride monomer reported wastewater releases of dioxin and dioxin-like compounds. What is the source (raw material, process, product) of these releases? What control technologies or techniques can be used to reduce wastewater contamination with these pollutants?

Chemical Formulating, Packaging, and Repackaging (SIC codes 2841, 2842, 2844, 2851, 2891, 2893, 2899)

- What are the sources of wastewaters discharged from these facilities?
- What pollutants (toxic, conventional, and nonconventional) are contained in these wastewaters and at what quantity?
- What control technologies or techniques can be used to reduce the wastewater contamination with these pollutants?
- What is the basis for the discharge limits in NPDES permits issued to facilities in these SIC codes?

Petroleum Refining (SIC code 2911)

- In 2000, why did 19 refineries report surface water and POTW releases of PACs to TRI, while 164 refineries did not report releases?
- What control technologies or techniques can be used to reduce the PACs in refinery wastewaters?
- What is the source of dioxin and dioxin-like compounds in refinery wastewaters?
- What process modifications have been implemented at refineries to reduce the generation of dioxins?
- What is the source of vanadium and other toxic metals in refinery wastewaters?
- What process modifications have been implemented at refineries to reduce the vanadium in refinery wastewaters? Of other toxic metals?
- What toxic chemicals are released from refineries, but not reported to TRI or PCS?

Petroleum Bulk Stations and Terminals (SIC code 5171)

- What is the discharge status (number of facilities with direct, indirect, and zero discharge) of facilities in this SIC code?
- Why or how do certain facilities discharge no wastewater, while other facilities discharge substantial volumes? (off-site disposal, lack of rainfall, 100% recycle/reuse, etc.)
- What is the discharge of toxic pollutants (pollutant concentrations and mass)?
- Is ammonia a typical contaminant in wastewater from facilities in SIC code 5171? What is the source of ammonia at these facilities?

- What are wastewater sources and discharge volumes?
- Are wastewater discharges continuous or intermittent (depending on facility operations, rainfall, or other event)?
- What is the current level of treatment in place?
- One source of contaminated wastewater at PBST facilities is water that accumulates at the bottom of product tanks, known as tank bottom water. How are PBSTs currently managing this wastewater (hauled off-site for contract disposal, mixed with accumulated stormwater and treated on-site, or other means)? What determines how a PBST will dispose of its tank bottom waters? How do PBST facilities manage and treat contact stormwater?
- What is the extent of pollution prevention/recovery practices in place?
- How have EPA's stormwater regulations impacted PBST discharges?

B. EPA requests information on the industries for which the Agency states that there is incomplete data available for analysis (*i.e.*, industrial point source categories with existing effluent guidelines identified with "(4)" in the column titled "Rationale" in Tables VI–1 and industrial point source categories with no existing effluent guidelines identified with "(3)" in the column titled "Rationale" in Tables VIII–1). EPA will need to collect more information for the next biennial plan. Specifically, EPA hopes to gather the following information:

- What toxic pollutants are discharged from these industries in non-trivial amounts on an industry and per-facility basis?
- What raw material(s) or process(es) are the sources of these pollutants?
- What technologies are available (technically and economically) to control or prevent the generation and/or release of these pollutants.

C. EPA solicits comments on whether EPA used the correct evaluation factors, criteria and data sources to develop this proposed plan. Please see the record for a more detailed discussion of EPA's analysis supporting this proposal (DCN 00548, section 3.0). Also see the record for more information on how EPA's analysis differed from the analytical framework described in the draft Strategy for National Clean Water Industrial Regulations (DCN 00553, section 3.0). EPA invites comment on the appropriateness of and to suggest improvements to its approach, its identification of relevant data sources and its uses of these data.

D. EPA solicits comments on whether, and if so how, should the Agency provide EPA Regions and States with permit-based support instead of revising effluent guidelines (*e.g.*, when the vast majority of the hazard or risk is associated with one or a few facilities).

E. EPA solicits comment on how to improve its impairment analysis to better characterize and quantify relationships between industrial point sources and impaired waters.

F. EPA solicits comment on the sources of data EPA might use to document industry efforts to voluntarily reduce pollutant discharges. EPA invites commenters to provide any information they have documenting voluntary pollution reductions by any of the industry categories regulated (or potentially regulated) by effluent limitation guidelines.

G. EPA solicits comment on the methodology for grouping industries for review and prioritization and the factors and measures EPA should consider for determining if discharges are trivial.

H. Process additives in use in the steam electric power generation point source category have changed over time. Starting in the early 1990s, some power plants began converting from the use of chlorinated compounds to brominated compounds. However, many of these plants report only total residual oxidant (TRO) as part of their NPDES permit requirements. What additional data sources are available to quantify the amount and type of brominated compounds discharged from this industry?

I. EPA solicits comment on implementation issues related to existing effluent guidelines.

Dated: December 23, 2003.

G. Tracy Mehan III,

Assistant Administrator for Water.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7605–8]

Standards for the Use or Disposal of Sewage Sludge; Final Agency Response to the National Research Council Report on Biosolids Applied to Land and the Results of EPA's Review of Existing Sewage Sludge Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is publishing the results of its review of regulations under the Clean Water Act (CWA) governing the use and disposal of sewage sludge. The Clean Water Act requires that EPA review the sewage sludge regulations for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements. As part of this review, EPA commissioned the National Research Council (NRC) of the National Academy of Sciences to independently review the technical basis of the chemical and microbial regulations applicable to sewage sludge that is applied to land. In July 2002, the NRC published a report entitled "Biosolids Applied to Land: Advancing Standards and Practices" in response to the EPA's request.

In April 2003 EPA announced and requested public comments on a preliminary strategy explaining how EPA planned to respond to the NRC report recommendations. Today, the Agency is announcing its final response, also known as the final action plan, to the NRC report. EPA is also presenting the results of its review of existing sewage sludge regulations to identify additional toxic pollutants in sewage sludge for potential future regulations. Based on a screening assessment of chemical pollutants for which EPA had adequate data (*e.g.*, human health benchmark values, and information on fate and transport in the environment), as well as concentration data in sewage sludge for those pollutants, EPA has identified 15 pollutants for possible regulation. This list constitutes the final results of EPA's current review of existing sewage sludge regulations as required by the CWA. These pollutants will undergo a more refined risk assessment and risk characterization which may lead to a notice of proposed rulemaking under the Clean Water Act. In this notice, the term "biosolids" is used interchangeably with "sewage sludge," which is defined in the regulations and used in the statute.

ADDRESSES: The public record for this action has been established under Docket ID No. OW–2003–0006. Materials are available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Rick Stevens, U.S. Environmental Protection

Agency, Office of Water, Health and Ecological Criteria Division (4304T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (202) 566–1135. *stevens.rick@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Interested Entities

Entities potentially interested in this notice are those who prepare sewage sludge, apply sewage sludge to land, dispose of sewage sludge in a surface disposal unit, or incinerate sewage sludge in a sewage sludge incinerator. Categories and entities include:

Category	Examples of interested entities
State/Local/Tribal Government	Publicly owned treatment works and other treatment works that treat domestic sewage, prepare sewage sludge and/or apply sewage sludge to the land, place sewage sludge in a surface disposal unit, or incinerate sewage sludge.
Federal Government	Federal Agencies with treatment works that treat domestic sewage, prepare sewage sludge and/or apply sewage sludge to the land, place sewage sludge in a surface disposal unit, or incinerate sewage sludge.
Farmers, Ranchers and Home Gardeners	Individuals who apply sewage sludge to land.
Industry	Privately-owned treatment works that treat domestic sewage, as well as persons who receive sewage sludge and change the quality of the sewage sludge before it is applied to the land, place sewage sludge in a surface disposal unit, or incinerate sewage sludge.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this action. This table lists the types of entities that EPA is now aware could potentially be interested in this action. Other types of entities not listed in the table could also be interested. To determine whether your facility is affected by this action, you should carefully examine today's notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under Docket ID No. OW–2003–0006. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1. Once in the system, select "search," then key in the appropriate docket identification number.

C. Abbreviations and Acronyms Used

AMSA—Association of Metropolitan Sewerage Agencies
ASTM—American Society for Testing and Materials
CDC—Centers for Disease Control and Prevention
CFR—Code of Federal Regulations
CPE—Cytopathic Effects
CWA—Clean Water Act
EMS—Environmental Management System
EPA—U.S. Environmental Protection Agency
FQPA—Food Quality Protection Act
HQ—Hazard Quotient
ICC–PCR—Integrated cell culture—polymerase chain reaction
ICMA—International City/County Management Association
IRED—Interim Reregistration Eligibility Decision
IRIS—Integrated Risk Information System
ISG—Information Sharing Group
LGEAN—Local Government Environmental Assistance Network
NBP—National Biosolids Partnership
NPDES—National Pollutant Discharge Elimination System
NODA—Notice of Data Availability
NRC—National Research Council
NSSS—National Sewage Sludge Survey
OPP—Office of Pesticide Programs
OW—Office of Water
PCBs—Polychlorinated biphenyls
PCDDs/Fs—Polychlorinated dibenzo-p-dioxins/dibenzofurans
PCR—polymerase chain reaction
PCS—Permit Compliance System
PEC—Pathogen Equivalency Committee
PFRP—Process to Further Reduce Pathogens
POTW—Publicly Owned Treatment Works
PPCPs—Pharmaceutical and Personal Care Products
PSRP—Processes to Significantly Reduce Pathogens
QA/QC—Quality Assurance/Quality Control
QMRA—Quantitative Microbial Risk Assessment
RED—Reregistration Eligibility Decision
RME—Reasonable Maximum Exposure
SOP—Standard Operating Procedure
SSI—Sewage Sludge Incinerator
TBD—Technical Background Document
UA—University of Arizona
USDA—United States Department of Agriculture
VOC—volatile organic compounds
WEF—Water Environment Federation
WERF—Water Environment Research Foundation

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I. What Is the Legal History of the Standards for the Use or Disposal of Sewage Sludge?

In section 405 of the CWA, Congress, for the first time, set forth a comprehensive program designed to reduce potential health and environmental risks and maximize the beneficial use of sewage sludge. As amended, section 405(d) of the CWA requires EPA to establish numerical limits and management practices that protect public health and the environment from the reasonably anticipated adverse effects of chemical and microbial pollutants in sewage sludge. Section 405(e) prohibits any person from disposing of sewage sludge from publicly owned treatment works (POTWs) or other treatment works treating domestic sewage except in compliance with regulations promulgated under section 405.

Section 405(d) calls for two rounds of sewage sludge regulations and sets deadlines for promulgation. In the first round, EPA was required to establish numerical limits and management practices for those toxic pollutants that, based on "available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations that may adversely affect public health or the environment." *See* CWA section 405(d)(2)(A). EPA was then required to undertake a second round of rulemaking, to address toxic pollutants not regulated in the first round "which may adversely affect public health or the environment." *See* CWA section 405(d)(2)(B).

EPA did not meet the section 405(d) timetable for promulgating the first round of regulations, and a citizen's suit was filed to require EPA to fulfill this mandate. *See Gearhart* v. *Reilly*, Civ. No. 89–6266–HO (D. Ore.). A consent decree was entered by the court in this case, establishing schedules for both rounds of sewage sludge rules. EPA promulgated the first rule ("Round One") on February 19, 1993 (40 CFR part 503, 58 FR 9248). The consent decree required the Administrator to sign a notice proposing Round Two regulations no later than December 15, 1999, and to sign a notice taking final action on the proposal no later than December 15, 2001.

For the second round ("Round Two"), EPA identified 31 pollutants and pollutant categories not regulated in Round One that EPA was considering for regulation. In November 1995, EPA narrowed the original list of 31 pollutants to two pollutant groups for the second round rulemaking: polychlorinated dibenzo-p-dioxins/dibenzofurans (PCDDs/Fs) and dioxin-like coplanar polychlorinated biphenyls (PCBs) (USEPA, 1996).

On December 15, 1999, the Administrator signed a proposal to establish numerical limits for chlorinated dibenzo-p-dioxin, chlorinated dibenzofurans, and co-planar PCBs ("dioxins") in sewage sludge that is applied to the land and proposed not to regulate dioxins in sewage sludge that is disposed of in a surface disposal unit or fired in a sewage sludge incinerator. 64 FR 72045 (December 23, 1999). On December 21, 2001, the Administrator gave final notice of EPA's determination that numerical standards or management practices are not warranted for dioxins in sewage sludge that is disposed of at a surface disposal unit or a sewage sludge incinerator. 66 FR 66228 (December 21, 2001). The consent decree in *Gearhart* v. *Whitman* was amended to extend the deadline for final action on the land application Round Two rulemaking from the original date of December 15, 2001, to a new date of October 17, 2003.

On June 12, 2002, EPA published a Notice of Data Availability (NODA) containing new information relating to dioxins in land-applied sewage sludge and requested public comments. 67 FR 40554. On October 17, 2003, the Administrator signed a notice for publication in the **Federal Register** announcing EPA's decision that regulation of "dioxins" in land-applied sewage sludge was not needed to adequately protect human health and the environment. 68 FR 61084 (October 24, 2003).

Section 405(d)(2)(C) requires EPA to biennially review existing sewage sludge regulations for the purpose of identifying and regulating additional toxic pollutants in sewage sludge to adequately protect human health and the environment from the reasonably anticipated effects of such pollutants. The Agency commissioned the NRC to independently review the technical basis of the chemical and microbial regulations governing land application to help address the human health concerns raised by the public and to fulfill the requirement for periodic reassessment of the Standards for Use or Disposal of Sewage Sludge. The NRC study took place between January 2001 and June 2002. In July 2002, the NRC published a report entitled, "Biosolids Applied to Land: Advancing Standards and Practices" in response to EPA's request. The NRC identified a need to update the scientific basis of part 503 and provided approximately 60 recommendations.

EPA entered into an agreement with the parties in *Gearhart* v. *Whitman*, to publish a notice in the **Federal Register** describing how the Agency intends to respond to the NRC report recommendations and to seek public comment on its planned response. EPA also agreed to review publicly available information to identify additional toxic pollutants in sewage sludge and to publish a notice and seek public comment on the results of the review. Fulfilling these commitments, EPA published a notice in the **Federal Register** on April 9, 2003 (68 FR 17379). EPA also agreed to publish its final response to the NRC recommendations and the final results of its review under section 405(d)(2)(C). Today's Notice fulfills this agreement.

II. What Requirements Are Included in the Standards for the Use or Disposal of Sewage Sludge (40 CFR Part 503)?

CWA section 405(d)(2)(A) required the first round of regulation to be based on "available information on [the] toxicity, persistence, concentration, mobility, or potential for exposure" of toxic pollutants in sewage sludge. EPA published the Round One standards (40 CFR part 503) on February 19, 1993, establishing requirements for the final use or disposal of sewage sludge when it is: (1) Applied to the land for a beneficial purpose, including in home gardens, (2) placed in a surface disposal site, including sewage sludge-only landfills, or (3) incinerated.

For land application, EPA set numerical limits for nine metals in sewage sludge, established operational standards (described later in this notice) to reduce or eliminate pathogens in sewage sludge and to reduce vector attraction, and required management practices to restrict the application rate and placement of sewage sludge on the land. For surface disposal in sewage sludge-only units, part 503 includes numerical limits for three metals in sewage sludge, requirements for the placement and management of a surface disposal site, and operational standards to reduce or eliminate pathogens in sewage sludge and to reduce vector attraction. For incineration in a sewage sludge incinerator (SSI), EPA establishes limits for five metal pollutants in sewage sludge fired in a SSI and adopted standards under the Clean Air Act for two additional metal pollutants. The Agency has also established performance standards for SSIs through an operational standard for total hydrocarbons or carbon monoxide emissions that controls numerous organic compounds found in the emissions of sewage sludge incinerators. Part 503 also allows disposal of sewage sludge in a municipal solid waste landfill that meets the requirements of 40 CFR part 258. In addition, the final rule requires monitoring, record keeping, and reporting. Standards apply to publicly and privately-owned treatment works that generate or treat domestic sewage sludge and to anyone who uses or disposes of sewage sludge.

The Part 503 Standards consist of seven elements designed to work together to protect human health and the environment. These elements are:

(1) General requirements,
(2) Numerical limits for certain pollutants,
(3) Management practices,
(4) Operational standards,
(5) Monitoring,
(6) Recordkeeping, and
(7) Reporting.

An example of a general requirement in the standards is the provision, applicable to all land-applied sewage sludge, for sewage sludge preparers to obtain information on the nutrient content of the sewage sludge and pass this information to land appliers so that the land appliers can comply with the requirement to apply the sewage sludge at a suitable agronomic rate. Numerical pollutant limitations for certain pollutants in land-applied sewage sludge are expressed as pollutant concentrations in sewage sludge or as cumulative or annual loading rates of pollutants applied on receiving soils. Management practices prescribe how the sewage sludge is to be placed on the land or otherwise managed in the environment. For example, one management practice prohibits the application of sewage sludge to land closer than 10 meters from waters of the United States. Operational standards are technology requirements such as process descriptions and performance requirements to reduce or eliminate pathogens from sewage sludge and to reduce vector attraction. These technology-based requirements, together with required crop harvesting restrictions and site controls, constitute the approach for the control of pathogens in sewage sludge.

Under part 503, monitoring of chemical and microbial pollutants in sewage sludge and certification of certain actions by the preparer or land applier must be performed at a frequency commensurate with the annual amount of land-applied sewage sludge. Sewage sludge preparers and land appliers must keep records of these monitoring and certification activities. Finally, sewage sludge preparers and land appliers must report this information to the permitting authority (EPA or States authorized to administer the program) at least annually.

EPA has amended part 503 several times since its initial publication in February 1993. Following promulgation of the Round One rule, several petitions were filed that challenged various aspects of the rule. In one petition, mining and chemical concerns successfully challenged the land application molybdenum limits. EPA amended the numerical standards for molybdenum to delete the cumulative loading rate, annual loading rate, and the pollutant concentration in sewage sludge to be land-applied. 59 FR 9095 (February 25, 1994). The Agency retained the ceiling concentration value for molybdenum. Also, in the same **Federal Register** notice, EPA added to the sewage sludge incinerator requirements continuous monitoring of carbon monoxide as an alternative to continuous monitoring of total hydrocarbons. In addition, the court remanded several of the land application requirements as a result of petitions for review challenging various other land application standards (*Leather Industries of America* v. *EPA*, 40 F.3d 392 (D.C. Cir. 1994)). EPA deleted all numerical standards for chromium in sewage sludge to be land-applied and adjusted the limit for selenium as a result of that decision. 60 FR 54764 (October 25, 1995). In August 1999, EPA amended part 503 to make a number of technical amendments, provide regulatory flexibility, and make the sewage sludge incinerator standards self-implementing. 64 FR 42552 (August 4, 1999).

For a detailed discussion of the part 503 rule, see *A Plain English Guide to the EPA Part 503 Biosolids Rule (1994)*. A copy of the Plain English Guide is available at the EPA Web site at *http://www.epa.gov/owm/mtb/biosolids/503pe/index.htm.*

III. What Is the Purpose of Today's Notice?

In today's **Federal Register** notice, the Agency describes its final action plan to address the NRC recommendations. In addition, EPA is stating the final results of its review under section 405(d)(2)(C) of the CWA and is identifying 15 additional toxic pollutants in sewage sludge that will be further evaluated for potential regulation. As described later, EPA has considered public comments and other factors in developing its action plan and in identifying additional toxic pollutants in its review of existing regulations under section 405(d)(2)(C).

IV. What Was EPA's Charge to the National Research Council?

EPA asked the NRC to evaluate the scientific basis of EPA's current regulations and standards for chemical pollutants and microbial pollutants (pathogens) in sewage sludge that is land-applied. Specifically, EPA asked the NRC to focus on the adequacy and appropriateness of the risk assessment methods and data that the Agency used in setting regulatory requirements to protect human health. The NRC convened the Committee on Toxicants and Pathogens in Biosolids Applied to Land ("the Committee"), which conducted the evaluation and prepared a final report. The Statement of Tasks included the following:

1. Review the risk assessment methods and data used to establish concentration limits for chemical pollutants in biosolids to determine whether they are the most appropriate approaches.
2. Review the current standards for pathogen reduction or elimination in biosolids and their adequacy for protecting public health.
3. Explore whether approaches for conducting pathogen risk assessment can be integrated with those for chemical risk assessment.

The April 9, 2003, notice (68 FR 17379) contains additional details regarding EPA's charge to the NRC.

V. What Were the National Research Council's Major Findings and Recommendations Concerning Land Application of Sewage Sludge?

The NRC Committee concluded that "There is no documented scientific evidence that the part 503 rule has failed to protect human health. However, additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to [sewage sludge]." The Committee recognized that land application of sewage sludge is a widely used, practical option for managing the large volume of sewage sludge generated at waste water treatment plants that otherwise would be disposed of at landfills or by incineration. The Committee also identified a need to update the scientific basis of part 503 to ensure that the current chemical and microbial standards are supported by current scientific data and risk assessment methods. They also recommended that the EPA demonstrate effective enforcement of part 503 and validate the effectiveness of sewage sludge management practices.

The NRC report contains four overarching recommendations: (1) Use improved risk assessment methods to better establish standards for chemicals and pathogens, (2) conduct a new national survey of chemicals and pathogens in biosolids, (3) establish an approach to human health investigations, and (4) increase the resources devoted to EPA's biosolids program. These four overarching recommendations are discussed in detail and supplemented by around 56 individual recommendations contained in Chapters 2–6 of the NRC report. The April 9, 2003 notice (68 FR 17379) contains additional details regarding these findings.

VI. What Process Did EPA Use To Address the NRC Recommendations?

The April 9, 2003, **Federal Register** notice (68 FR 17379) contains details concerning this process. To summarize, upon release of the NRC report, EPA established a committee to respond to the recommendations in the report. The committee includes EPA representatives from a cross-section of offices that are involved or interested in the sewage sludge program. The committee identified and prioritized each NRC recommendation, and developed a preliminary strategy to carry out the activities identified in response to the NRC recommendations. In section VII of the April 9, 2003, **Federal Register** notice (68 FR 17384), EPA presented its preliminary strategy for responding to the NRC recommendations. The section presented three main objectives for attaining a better understanding of sewage sludge and reducing the potential for, or reducing the uncertainty related to, human health impact: (1) Update the scientific basis of part 503 by conducting research in priority areas, (2) strengthen the biosolids program by evaluating results of completed, ongoing, or planned studies both within and outside EPA, and (3) continue ongoing activities for enhancing communications with outside associations and with the public.

EPA then presented responses to the NRC recommendations and a planned strategy by specific categories: (1) Survey; (2) exposure; (3) risk assessment; (4) methods development; (5) pathogens; (6) human health studies; (7) regulatory activities; and (8) biosolids management *See* section VIII of the April 9 notice, 68 FR 17384–17393.

The format of today's notice differs from the April 9, 2003, notice. In today's notice, EPA is presenting a final action plan that includes specific projects that are an outgrowth of the categories presented in the April 9, 2003, notice, in response to many comments that the Agency was too vague in its presentation of preliminary strategies. EPA weighed several factors in determining its final action plan: (1) Major concerns presented in public comments received on the April 9, 2003, notice; (2) the findings of the Water Environment Research Foundation (WERF) Research Summit in July 2003; (3) EPA's existing research commitments in response to areas in the NRC report; and (4) feasibility of responding to specific areas given available resources.

VII. EPA's Final Action Plan To Address NRC Recommendations

A. Background

On April 9, 2003, EPA published a preliminary strategy in the **Federal Register** (68 FR 17379) to prioritize projects to respond to the NRC recommendations and to add value to the Agency's sewage sludge program. The notice summarized the NRC recommendations by category and presented EPA's evaluation of the recommendations and planned responses, and requested public comments. EPA received nearly 100 comments from States, citizens, the sewage treatment and land application industries, environmental groups, and academia. Comments ranged from support for Agency commitments and its preliminary response strategy to seeking a complete overhaul of EPA's sewage sludge program as well as for EPA to implement all of the NRC's recommendations. All comments and the Agency responses are included in the docket in a separate *Response to Public Comments Document* (USEPA, 2003d).

In the time since the NRC issued its report in 2002, EPA has taken steps to enhance its research program to improve the sewage sludge program and to begin implementing recommendations by the NRC. Much of EPA's research complements work being done by others outside the Agency, such as the research projects and the research issues identified at the July 2003 Biosolids Research Summit sponsored by the Water Environment Research Foundation (WERF). EPA plans to participate in and/or use, as appropriate, outside research, in conjunction with EPA-specific research, in order to make the most of the Agency's limited resources and to enhance the part 503 program. EPA's research program includes projects that will be initiated or completed in the near term (*i.e.*, through 2005).

The Agency does not have sufficient resources to implement all of the NRC recommendations, but we do agree that certain projects can help reduce the persistent uncertainty related to exposure to sewage sludge. EPA plans to review and evaluate completed research projects, both inside and outside EPA, as well as complete or begin other projects, to improve the basis for conducting risk assessments and upgrading the basis for the part 503 regulations or improving management practices. Therefore, EPA has developed this final action plan in response to the NRC recommendations with consideration of public comments on the April 9, 2003, preliminary strategy, information gathered from broad stakeholder input received through the WERF Research Summit, and Agency priorities and resource availability. This final action plan is based on fiscal year (FY) 2004 estimated resources. For planning purposes, the Agency has assumed the same level of funding (*i.e.*, at the estimated FY 2004 level) for future years; however, EPA recognizes that funding for FY 2005 and thereafter is subject to final appropriations.

There are two projects in the Agency's preliminary strategy (68 FR 17379), re-evaluation of the risk assessment used for pollutants regulated or evaluated in Round One and a molecular pathogen tracking exposure study, that EPA has decided not to do given all ongoing studies presented in this action plan, changing priorities, and limited resources. In addition, the latter project was intended to focus on individuals who have received medical attention and who suspect that they have been affected by sewage sludge application practices to potentially isolate causative agents. The Agency believes that such a study may still have merit, but in order to respond to reported incidences of human illnesses and adverse health effects alleged to have been caused by land application of sewage sludge, EPA believes that it should include various stakeholders who have had experiences with incidences related to sewage sludge, stakeholders who may be interested in participating, and those who have the expertise and should take part in helping to develop such a program. For this reason, EPA will participate in an incident tracking workshop to bring these stakeholders together and determine the next steps. See Project 6 later in this notice.

B. Near-Term Projects (FY 2004 through FY 2005)

The Agency expects to complete or begin the following activities, presented in this notice as "projects," within the next two to three years, with the goal of strengthening the sewage sludge use and disposal program. The sewage sludge program encompasses regulatory and non-regulatory components, as described in these projects.

Project 1: Biennial Review Under CWA Section 405(d)(2)(C)

As described above, the CWA requires EPA to review existing sewage sludge regulations at least every two years for the purpose of identifying additional pollutants for possible regulation under the CWA section 405(d)(2)(C).

This project relates to Category G, Regulatory Activities, in the April 9, 2003, notice. See 68 FR 17390. It also relates to major short-term and major long-term goals of continuing program implementation outlined in that notice. For the current biennial review, EPA has assessed available data on chemical pollutants that have been detected in sewage sludge and that have not been regulated or previously assessed in Rounds One and Two. EPA collected and conducted a preliminary review of publicly available information on chemical toxicity, environmental properties (*e.g.*, mobility and persistence), and concentration; identified chemical pollutants for which appropriate analytical methods and human health benchmarks are available; made preliminary determinations regarding sufficiency of information; and conducted an exposure and hazard-based screening assessment. Details are presented in Sections VIII through X of this notice.

In addition to any regulatory amendments that EPA may propose as a result of the current review, EPA is planning to assess the need and appropriate levels for new numerical limitations for molybdenum in land-applied sewage sludge. See Project 13 later in this notice.

Subsequent reviews will be conducted every two years as required by the CWA. EPA will review any new peer-reviewed research and other relevant information to determine whether to identify any additional toxic pollutants for regulatory consideration. This biennial review process may also be useful for identifying toxic pollutants that may warrant further research.

Project 2: Compliance Assistance and Enforcement Actions

As indicated in the Agency's preliminary strategy of April 9, 2003 (*see* 69 FR 17391), and this final action plan, EPA will continue to provide compliance assistance to individuals, municipalities, or other entities on matters pertaining to sewage sludge use and disposal and will take enforcement actions, as appropriate. This project relates to Category H, Biosolids Management Activities, in the April 9, 2003, notice. *See* 68 FR 17391.

EPA has maintained an active presence in biosolids compliance and enforcement activities. EPA's enforcement and compliance activities are tracked in the Integrated Compliance Information System (ICIS) and Permit Compliance System (PCS) databases. Specifically, the ICIS database documents the following Federal enforcement actions taken to address biosolids: 391 administrative orders for FY 1995–2002, 119 administrative penalty orders for FY 1995–2002, and one civil judicial action in FY 1997. The PCS database documents 382 regional and state biosolids inspections for FY 2000–2002.

Furthermore, EPA Regions and States have the responsibility to address situations where compliance assistance and enforcement actions to address biosolids are appropriate and necessary. Regional responsibilities for the biosolids program include actively following up on phone calls and complaints received from the public, and, where appropriate as demonstrated by the data, initiating Agency enforcement actions. EPA has taken enforcement actions and/or appropriate administrative remedies to address biosolids violations of 40 CFR part 503 and will continue to take such actions, including instances where biosolids pose an imminent and substantial endangerment to human health or the environment.

To assist the States and Regions in their oversight of the biosolids program, EPA has, either in place or in development, tools to assist and promote compliance with biosolids regulatory requirements. The National Pollutant Discharge Elimination System (NPDES) Compliance Inspection Manual, which is used by EPA and State inspectors to perform inspections in the field, includes a "Sludge (Biosolids)" chapter. EPA is currently revising and updating the manual, which is expected to be complete in 2004. The Clean Water Act/NPDES Computer Based Inspector Training CD-ROM, including a module specific to biosolids inspections, was finalized in August 2003. EPA plans to make both of these tools available on the EPA Web site.

Additionally, there are two compliance assistance Web sites, which are available for biosolids compliance studies, information and tools, and for links to other sites with pertinent biosolids compliance information. One is the National Environmental Compliance Assistance Clearinghouse at: *http://cfpub.epa.gov/clearinghouse/*. This site is a searchable clearinghouse of compliance assistance materials. The second Web site is the Local Government Environmental Assistance Network (LGEAN) at *http://www.lgean.net*. This online compliance assistance center, which focuses on local government environmental requirements, is operated by the International City/County Management Association (ICMA), and has six other partners representing local government.

EPA is also working to improve its data reporting and management system that supports compliance oversight. EPA is continuing to work with States as it modernizes the Permit Compliance System (PCS) to allow for more effective program oversight. As part of the PCS modernization, a separate workgroup (including States and EPA) was devoted to the data needed to manage the biosolids program. Based upon the recommendations of this workgroup, the PCS Executive Council decided to add data elements to PCS to improve tracking and oversight of the biosolids program, and the draft detailed design was distributed for review. The detailed design document was finalized in September 2003, which served as the basis for the software development. The anticipated implementation date for the modernized PCS is December 2005, provided adequate funding is committed to this project.

The land application of sewage sludge in compliance with EPA's regulations is an appropriate choice for communities. The NRC concluded that "There is no documented scientific evidence that the part 503 rule has failed to protect human health. However, additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human health effects from exposure to biosolids." Thus, EPA has directed its water enforcement and compliance resources to focus on risks posed by wet weather issues and untreated pollutants, including raw sewage and wastes associated with storm water, sanitary sewer overflows, combined sewer overflows, and concentrated animal feeding operations. Both agriculture and urban runoff/storm sewers are listed in the top four sources of impaired river miles in the 2000 National Water Quality Inventory Report to Congress (section 305(b) report). Given the complexity and magnitude of addressing potential human exposures to pathogens and chemicals from untreated human and animal wastes from wet weather and the present scientific knowledge of the relative risks associated with biosolids, there is an appropriate level of resources allocated to biosolids compliance and enforcement activities.

Project 3: Methods Development, Optimization, and Validation for Microbial Pollutants in Sewage Sludge

EPA's sewage sludge regulations are designed to protect human health and the environment by requiring treatment of sewage sludge to reduce or eliminate pathogens (also referred to as microbial pollutants) when land-applied (40 CFR part 503, subpart D). The regulations require that land-applied sewage sludge meet either Class A or Class B requirements to treat sewage sludge using one of various treatment processes. There are six alternative methods, one of which must be met to be classified as Class A sewage sludge. In addition, in order to be classified as Class A sewage sludge, the pathogen reduction treatment must occur prior to or in conjunction with vector attraction reduction measures, except for vector attraction reduction by alkali addition or drying. To be classified as Class B sewage sludge, one of three alternative treatment methods must be met. Because these three Class B treatment methods do not reduce pathogens to the same extent as the Class A methods, Class B sewage sludge is also subject to site restrictions, such as restrictions on crop harvesting, animal grazing and public access.

EPA recently published a document entitled *Environmental Regulations and Technology: Control of Pathogens and Vector Attraction in Sewage Sludge* (USEPA, 2003e). This document provides information concerning federal requirements under subpart D of part 503, a description of different treatment processes, vector attraction reduction issues, sampling and analysis protocols for pathogens, the process for applying for equivalency, and the kind of support EPA's Pathogen Equivalency Committee (PEC) can provide to permitting authorities. This publication not only serves to assist the user community and to link researchers with their clients, but also has been produced as part of the Agency's strategic long-term research plan for preventing and reducing risks from pollution that threaten human health and the environment.

The NRC recommended that EPA undertake a new national sewage sludge survey to look for pathogens in sewage sludge. In addition, the NRC report identified standardization and validation of methods for detection and enumeration of indicator organisms and specific pathogens as essential for oversight and compliance testing. Raw sewage, anaerobically and aerobically digested sewage sludge, and wastewater are known to contain numerous residual microorganisms that can cause disease in humans and animals. These include viruses, bacteria, protozoans and helminth ova. As described in the April 9, 2003, notice, EPA agrees that pathogens deserve further attention, and the Agency had sponsored a workshop in 2001 and initiated a number of studies (*see* Project 11). Pathogen projects relate back to Category D, Methods Development, and Category E, Pathogens, in the April 9, 2003, FR notice. See 68 FR 17388.

Several commenters stated that there is an urgent need for EPA to develop and validate methods for detection and enumeration of bacteria and viruses in sewage sludge, soil, water and air. EPA agrees and recognizes that reliable analytical methods are critical to measuring pathogens in sewage sludge, whether "raw" or "finished." Therefore, one of the Agency's priority microbial agent research areas is the development or improvement of analytical methodology. The following sections describe the available methods for helminth ova, viruses, and bacteria, each of which are in need of improvement to increase analytical specificity, sensitivity, and accuracy.

It was also suggested that EPA propose a vigorous study program to determine whether or not Class B sludge site restrictions are protective against infectious diseases. The greatest number of pathogen-related comments were directed to the issue of EPA's response regarding risk assessment, treatment efficacy, and site-specific restrictions for both Class A and B Sewage sludge. Some recommended the sewage sludge industry be involved in study efforts because of their experience in the area, while others recommended against industry involvement because of their potential bias. EPA plans to improve the methods and procedures for determining the effectiveness of these pathogen reduction or elimination treatment processes.

In addition to developing and improving the microbial analytical methods described below, WERF and EPA are funding research termed quantitative microbial risk assessment (QMRA), as described in "A Dynamic Model to Assess Microbial Health Risks Associated with Beneficial Uses of Biosolids' (WERF, 2003). *See* Project 8 later in this notice for a description of the QMRA project.

Project 3a: Optimization of the Method for Detecting, Enumerating, and Determining the Viability of Ascaris Ova in Sewage Sludge

The goal of this project is to optimize the helminth ova method for the detection in the various sewage sludge matrices in order to assess the effectiveness of treatment practices meant to inactivate ova. The helminth (*Ascaris*) ova assay described in *Environmental Regulations and Technology: Control of Pathogens and Vector Attraction in Sewage Sludge* (USEPA, 2003e) has been used a number of times, it is time consuming, and it has never been fully optimized and validated for the various sewage sludge matrices.

The first stage will optimize the assay for various sewage sludge matrices. The next stage will be a single laboratory validation followed by multi-laboratory validation of the assay. We anticipate that this research will be conducted over the next three years. Products include publication of one or more scientific papers characterizing the *Ascaris* ova assay for the various sewage sludge matrices and a standard operating procedure (SOP) detailing the optimal method for laboratory validation studies by 2007.

Project 3b: Improved Methods for Detecting Viruses in Sewage Sludge

EPA will develop improved virus detection methods for evaluating treatment technology efficacy. Some members of EPA's PEC, an ongoing committee charged with making recommendations on the adequacy of new sewage sludge treatment processes, and the NRC have questioned the reliability of existing virus methods for analysis of sewage sludge matrices. The PEC has recommended research that would improve the reliability of available analytical methods.

40 CFR 503.8(b) specifies methods that must be used when analyzing for various pathogens. The publication *Environmental Regulations and Technology: Control of Pathogens and Vector Attraction in Sewage Sludge* (USEPA, 2003e) lists the required pathogen methods, along with complete references for these methods. The appropriate method to test for enteric

viruses when monitoring is required, according to this publication, is the American Society of Testing and Materials (ASTM) Method D4994–89. Although Method D4994–89 was validated in a multi-laboratory study, the Method achieves only partial recovery of virus from sewage sludge and laboratories are sometimes allowed to use their own standard virus plaque assays. This results in wide variations in virus levels and types recovered from various sewage sludge samples, calling into question the utility of the method. Furthermore, Method D4994–89 is labor intensive, making it difficult for many laboratories to undertake.

Several groups have proposed simpler methods which may yield higher virus recoveries than Method D4994–89. However, limited data are available to evaluate these methods. EPA supports the concept of performance-based methods, and the PEC would accept data from simpler methods, if shown to be at least as effective as Method D4994–89. Therefore, the Agency has developed a research plan to improve analytical methods for viruses and anticipates this work to be completed in 2005. The goal is to have improved methods with higher sensitivity, specificity, and accuracy for detecting viruses in sewage sludge. One objective in this plan is to demonstrate whether other methods are comparable to Method D4994–89. Methods will be compared for their ability to recover viruses that are naturally present in sewage sludge in addition to their ability to recover seeded viruses.

The plaque assay was used for virus detection in the initial round-robin testing of Method D4994–89. This quantitative assay relies upon the development of virus-induced plaques within cell culture monolayers. A most probable number (MPN)-based method for measuring cytopathic effect (CPE) in cell cultures may prove a more useful assay as this is reported capable of detecting viruses at 2-to 100-fold lower concentrations than plaque assays, with the higher sensitivities observed for environmental water samples.

The plaque assay and the MPN-based CPE assays are limited because it fails to detect many of the most important human enteric viral pathogens. Thus, they may provide limited data on whether viral pathogens are inactivated by sewage sludge treatment processes. A new assay has been developed that combines the advantages of cell culture (*e.g.*, detection of infectious particles only) and polymerase chain reaction (PCR) techniques for rapid detection of important human viral pathogens. The Agency will evaluate this integrated cell culture—PCR (ICC–PCR) assay to determine whether previously undetectable human enteric viral pathogens are present in sewage sludge.

Method validation will be accomplished by comparing Method D4994–89 using plaque, MPN, and ICC–PCR assays for seeded and unseeded sewage sludge types. EPA will develop standard operating procedures (SOP) to be further tested on a wide variety of sewage sludge types.

The final objective will be to determine the appropriate virus type to use in seeding viruses in sewage sludge. Utilizing the method described in the SOP, virus recoveries will be compared using a range of virus types, including poliovirus, coxsackievirus, echovirus, and others to be determined. If possible, the Agency will determine recoveries before and after a sewage sludge treatment process. It is estimated that this project will take two years. Products include publication of scientific papers describing the method comparisons and a SOP detailing the optimal method for validation studies.

Project 3c: Development and Validation of Analytical Methods for Fecal Coliform in Sewage Sludge

Fecal coliform bacteria are used as indicators of treatment process effectiveness in the production of Class A and Class B sewage sludge. This ongoing project identifies available methods for enumerating fecal coliforms in sewage sludge, selects the most appropriate methods, determines minimum performance characteristics that must be met, and evaluates these methods in quantifying such organisms using multiple laboratories.

EPA will use multiple laboratories to update and evaluate protocols for assaying fecal coliforms in sewage sludge using multiple tube fermentation techniques and test the method on treated sewage sludge samples using independent laboratories. Samples of Class A and B sewage sludge from full-scale wastewater treatment facilities will be assayed with and without known amounts of *Escherichia coli*, a species of fecal coliform. The Agency will compare the relative performance of individual laboratories performing such tests and develop acceptable standards. The final product, anticipated to be completed in 2005, will be a draft EPA Method 1680 entitled "Fecal Coliforms in Treated Sewage Sludge by Multiple-Tube Fermentation Procedures."

Project 3d: Development and Validation of Analytical Methods for *Salmonella* in Sewage Sludge

Many serovars of *Salmonellae* can cause gastroenteritis and typhoid fever. *S. enterica* serovar Typhi is the causative agent for typhoid fever. These bacteria may be used to demonstrate treatment effectiveness of Class A sewage sludge. This project will identify available methods for enumerating *Salmonella* in treated sewage sludge, select the most appropriate methods, evaluate minimal performance characteristics that must be met, and evaluate these methods in quantifying such organisms using multiple laboratories. EPA will develop and test the method on treated sewage sludge samples.

The Agency will update and evaluate protocols for assaying *Salmonella* in sewage sludge using multiple tube fermentation techniques among multiple laboratories. Samples of Class A sewage sludge from full-scale wastewater treatment facilities will be assayed with and without known amounts of *Salmonella*. EPA will compare the relative performance of individual laboratories performing such tests and develop acceptable standards. The final product, to be completed in late FY 2004, will be a draft EPA Method 1682 titled "*Salmonella* in Sewage Sludge by Modified Semisolid Rappaport-Vassiliadis (MSRV) Medium."

Project 4: Field Studies of Application of Treated Sewage Sludge

EPA will initiate field studies to evaluate management techniques for treated sewage sludge in order to determine whether the pathogen and chemical requirements of part 503 are being met. These studies, that relate to certain categories discussed in the Agency's preliminary strategy of April 9, 2003, notice (68 FR 17385–17386, 17388–17390), will measure selected indicators of microbial, chemical, and particulate emissions from sewage sludge land application sites and will study the fate of contaminants in the soil to which biosolids are applied. Data resulting from these studies may also be appropriate for inclusion in future risk assessments of biosolids application scenarios.

EPA plans to work with State, Regional, USDA, and other partners to conduct field studies of land application practices at up to five sewage sludge land application sites. Field sampling at actual application sites will involve a variety of media and methods to characterize airborne and soil-bound contaminants resulting from land application of sewage sludge. Depending on resources, items that will be investigated include, but are not limited to: (1) Quantification of aerosol components such as pathogens, endotoxins, particulate matter, odor compounds, and volatile organic compounds (VOCs); (2) quantification of sewage sludge components such as pathogens and metals, and (3) effects of these components on the soil to which the sewage sludge is applied. Quality Assurance (QA) and specific research plans are being developed. EPA plans to initiate peer review on this research plan in 2004 and field work will not begin until the plan has been peer reviewed. The Agency plans to complete the study and draft a report two years after the QA plan has been approved.

Project 5: Targeted National Survey of Pollutants in Sewage Sludge

As EPA described in the April 9, 2003, **Federal Register** notice, EPA has concluded that undertaking a targeted survey is at present more useful than conducting a comprehensive survey modeled on the 1988–89 National Sewage Sludge Survey (NSSS) (68 FR 17385). Some commenters liked the targeted survey approach, but most commenters requested that EPA consider another national full-scale survey and made suggestions as to which pollutants should be included, or excluded, from such a survey.

Pending results of ongoing research projects and regulatory review, EPA will design and conduct a targeted survey of select chemical pollutants. Microbial pollutants (pathogens) in sewage sludge may also be included, depending on availability of resources and adequacy of methods. A survey may provide feedback for updating the science and technology of sewage sludge applied to land, disposed of in a surface disposal unit, or incinerated. The new concentration data would be used to assess human and ecological risk of identified, unregulated pollutants found in sewage sludge and identify pollutants for potential regulation.

EPA is committed in FY 2005 to starting a limited analytical survey of chemical pollutants found in sewage sludge. EPA expects this survey to address the pollutants identified by the exposure and hazard screening assessment as presenting a potential hazard, as identified in the current section 405(d)(2)(C) biennial review. The Agency will evaluate the extent to which methodology will allow expansion of the survey scope within available resources to include additional pollutants (*e.g.*, the survey may also include metals regulated in Round One using improved methods while surveying for new metals identified as presenting a potential hazard in the current review). *See* section X of this notice for a list of these pollutants.

Furthermore, the results of current research projects may help determine the scope of a survey. The survey design and pollutants to be included in the survey may be influenced based on factors that include:

- Whether to survey pollutants that were not previously detected in sewage sludge, but where new or improved methods are available and other data may indicate a potential for hazard,
- Whether to survey pollutants with reported occurrences in sewage sludge from other countries only (*i.e.*, not studied in U.S. sewage sludge),
- Whether to include pathogens, and
- Whether to include pollutants with a high indication of potential hazard when the scientific basis of the human health benchmarks in IRIS or OPP databases for these pollutants is in the process of reassessment.

EPA will design the survey starting in FY 2005. The Agency will seek stakeholder involvement in the design and implementation of the survey.

Project 6: Participate in an Incident Tracking Workshop

One of the highest research priorities identified by the NRC and participants at the July 2003 WERF Biosolids Research Summit is the need for rapid response investigations of reported health effects potentially resulting from land application practices. EPA also received many public comments urging development of an incident tracking and response process. The Agency agrees that developing an incident tracking program is important. However, the Agency believes that it should not develop an incident monitoring program on its own, but should include various stakeholders who have had experiences with incidents related to sewage sludge, stakeholders who may be interested in participating, and those who have the expertise and should take part in helping to develop such a program.

As stated above, stakeholders who have had experiences with reported incidents related to land application of sewage sludge should be consulted. A program of incident monitoring and investigation could be modeled after an existing program. Once such organization that has experience with such incidents is the State of North Carolina (NC). The North Carolina Department of Environment and Natural Resources is responsible for environmental programs in the state, including biosolids and residuals management. One purpose of the program is to assure timely and meaningful response to perceived and actual environmental incidents. The experiences of NC and others could be helpful in developing such a program and determining the next steps.

In order to respond to reported incidents of human illnesses and adverse health effects alleged to have been caused by land application of sewage sludge, and to determine the appropriate next steps in the process, EPA believes that local and State health agencies, in addition to other Federal health agencies, such as the Center for Disease Control and Prevention (CDC), are positioned best and have the necessary expertise to respond to allegations of adverse health effects following use or disposal of sewage sludge. However, EPA is committed to participating in activities related to this issue and plans to participate in the incident tracking workshop with WERF and other stakeholders in developing the research concepts and methods, and in interpreting and summarizing results.

The first step in the process will take place when WERF assembles stakeholders in a workshop to be held in 2004. EPA will participate in the workshop, which will begin evaluating the next steps for investigating adverse human health allegations following land application of sewage sludge. Ultimately, the objective is to determine whether such reported symptoms of illness can be attributed to the land application of sewage sludge.

The Cornell Waste Management Institute (CWMI) has collected over 300 incidents over the past several years in which residents living near sites where sewage sludge has been applied have reported illness (Cornell Waste Management Institute, 2003; Harrison and Oakes, 2002). However, the CWMI states that it has not been confirmed by scientific investigation that illnesses have resulted from land application of sewage sludge. The information provided by the CWMI may be useful as stakeholders begin to plan for a workshop to address such incidents.

This process, starting with the multi-stakeholder workshop, will take place at least through FY 2005. Additional activities beyond that time frame will depend on the outcome of the workshop, work with local, State and Federal agencies, as well as other stakeholders and availability of resources. Additional activities may include participating in subsequent stakeholder meetings or workshops and deciding on additional activities and next steps.

Project 7: Conduct Exposure Measurement Workshop

The purpose of this workshop is to identify exposure-related research priorities. This workshop is meant to compliment the objectives of the WERF workshop (*see* Project 6) or be a related follow-up activity that is structured around issues and ideas identified in the WERF workshop. Workshop discussions will focus on exposure measurement tools that researchers or health agencies can use to investigate reports of adverse human health effects from land application of sewage sludge. The discussions and tools will focus on scientific uncertainties related to: (1) Which particular sewage sludge contaminants or combinations of contaminants may be potentially responsible for disease outbreaks; (2) how affected individuals are exposed to these contaminants; (3) how sewage sludge treatment and management practices can reduce potential risks; and (4) how good analytical methods and monitoring have to be to obtain satisfactory answers. The workshop will explore such topic areas for identifying research priorities as methods development, ambient measurements (including spatial and temporal monitoring requirements), fate and transport modeling, and exposure measurements, including identifying the specific exposure routes (*e.g.*, oral and inhalation), exposure pathways (*e.g.*, eating food, drinking water), and contaminants.

Workshop participants would include representatives from EPA; other Federal, State and local agencies; academia; wastewater utilities; environmental groups; industry; and citizen groups. Participants would identify and possibly prioritize what, when, and where measurements should be taken, and how they should be taken during rapid response investigations. EPA will develop a report to summarize discussions and identify the exposure research tools needed to investigate reported incidents of exposure. Pending the results from a similar effort being sponsored by WERF and in which EPA will participate (Project 6), we expect to hold this workshop in 2004.

Project 8: Assess the Quality and Utility of Data, Tools and Methodologies to Conduct Microbial Risk Assessments on Pathogens

The NRC recommended that EPA develop risk assessment methods to apply to pathogenic risks from land application of sewage sludge. While numerical limits for chemical pollutants in sewage sludge are based on assessment of risk, EPA currently regulates pathogens in sewage sludge through technology-based operational standards. In issuing part 503 in 1993, the Agency acknowledged that it lacked essential tools and data to conduct microbial risk assessments on sewage sludge. As the NRC noted, while methods for assessing risks from pathogens have advanced since 1993, there are still obstacles with respect to available data, analytical methods, and exposure and risk assessment modeling.

EPA is working on a number of areas related to risk assessments of pathogens. There are two examples of projects that are ongoing and that will be assessed as part of this broader effort. One is a conceptual framework for assessing the risks of human disease following exposure to waterborne pathogens, as described in "Revised Framework for Microbial Risk Assessment" (International Life Sciences Institute, 2000). The second is a quantitative microbial risk assessment (QMRA), as described in "A Dynamic Model to Assess Microbial Health Risks Associated with Beneficial Uses of Biosolids" (WERF, 2003).

In the first example, the International Life Sciences Institute (ILSI), in cooperation with EPA, developed a framework that provides a useful and proven tool for conducting microbial risk assessments. The framework emphasizes the dynamic and iterative nature of the risk assessment process, and that future efforts need to be directed toward the examination of methods for estimating risk and ways to improve the estimates. Areas for further evaluating the assumptions in the framework model, described in the ILSI framework, include understanding the relationship between infection and subsequent illness, impact of critical susceptibility factors such as age and immune status, secondary transmission of diseases, and heterogeneous distributions of microorganisms and the potential changes in concentration of microorganisms in the environment.

In the second example, WERF and EPA are funding Quantitative Microbial Risk Assessment (QMRA) research. In addition to WERF and EPA, other organizations involved in this research include the University of California at Berkeley and Eisenberg, Olevieri and Associates. The document describing this research also presents a methodology for assessing exposure and risks to human health from pathogens in biosolids. The present methodology provides initial screening for a given scenario, identifies broad conditions for high and low risk situations, and estimates where more data are needed. Future work (beyond 2004) may focus on applying this methodology to more refined scenarios. Such validation activities will assist EPA in ultimately developing microbial risk assessment guidelines.

EPA will inventory and assess data, methods, and tools for risk assessment on pathogens in sewage sludge (such as the two examples discussed above as well as others) to better inform research activities in sewage sludge and microbial risk assessment. In conducting this assessment, EPA will review information gathered from others doing research on this issue, some of which was described in the April 2003 draft response (68 FR 17379). This project will start with a problem formulation step to identify the key elements in assessing pathogen risks in land-applied sewage sludge. During the second phase, EPA will develop a plan to identify the available and appropriate methods and data to perform the risk assessment defined in problem formulation. An expert panel will review the material and EPA will address panel comments in the final document. This project will serve as a vehicle to better define the deficiencies in microbial risk assessment and better identify research needs for microbial risk assessment in sewage sludge matrices. The final product in FY 2005 will be a peer-reviewed plan for future analysis.

Project 9: Support Pathogen Equivalency Committee

In its April 9, 2003, notice, EPA described the work of the Pathogen Equivalency Committee (PEC), which has been operating since 1985. Public comments mentioned the PEC Committee a number of times, and there was a generally favorable opinion of the Committee. Most commenters recommended that the PEC be fully recognized and authorized by EPA to approve new part 503 processes. Supporting comments by some agreed with both the Haas report (Haas, 2001) and the NRC conclusions that the PEC has an important mission. A few comments indicated that, if the PEC were further legitimized, it should be expanded to include industry and academic experts outside of the EPA.

EPA plans additional support for the PEC, including resources to help address the increasing number and complexity of requests for guidance regarding the regulatory requirements for reducing pathogens, as well as development of alternative treatment technologies. The NRC report affirmed the importance of the Committee's mission to regulators and the regulated community. The states and the Office of the Inspector General have also identified the Committee's work as a high priority. Public comments also reflected a desire to see the PEC adequately supported by EPA. All stressed the need for the PEC to have the resources it needs to fulfill its mission.

EPA created the PEC in 1985 to make recommendations to EPA management on applications for Processes to Significantly Reduce Pathogens (PSRP) and Processes to Further Reduce Pathogens (PFRP) equivalency under part 257 and later part 503. The PEC also provides guidance to applicants on the data necessary to determine equivalency, and to permitting authorities and members of the regulated community on issues (*e.g.*, sampling and analysis) related to meeting subpart D (pathogen and vector attraction reduction) requirements of part 503. If the PEC recommends that a process is equivalent to PSRP or PFRP, the operating parameters and any other conditions critical to adequate pathogen reduction are specified. The PEC consists of members with expertise in bacteriology, virology, parasitology, environmental engineering, medical and veterinary sciences, statistics, and sewage sludge regulations. It includes representatives from EPA's Offices of Research and Development, Office of Water, and Regional Offices, and the Centers for Disease Control and Prevention.

Project 10: Development and Application of Analytical Methods for Detecting Pharmaceutical and Personal Care Products in Sewage Sludge

The purpose of this project is to develop and apply analytical methodologies for detecting pharmaceutical and personal care products (PPCPs) in sewage sludge. The NRC Report specifically identified PPCPs as one category of diverse compounds that has not been studied in sewage sludge and that is especially likely to be present in domestic sewage sludge. The NRC report indicated that there is a need for a new hazard assessment of sewage sludge to expand the suite of chemicals evaluated.

EPA's preliminary strategy in the April 9, 2003, notice indicated that while study emphasis is being placed on pathogens to address areas of uncertainty and public interest, selected chemicals are also being addressed to help determine significant issues and identify information gaps that remain to be addressed in these areas. *See* 68 FR 17385. Chemical pollutants in pharmaceutical and personal care products are among those that EPA intends to study.

In FY 2004 through FY 2005, chemical analysis methods developed in-house previously for PPCPs (*e.g.*, antibiotics and musks) would be adapted for sewage sludge. In FY 2006, EPA may finish methods development, convert them to 40 CFR part 136 methodology, and publish methodologies. Subsequently, the methods may be applied to a limited number of real-world samples for a pilot-scale survey of PPCPs in sewage sludge.

Project 11: Publish the Proceedings of USEPA-USDA Workshop on Emerging Infectious Disease Agents and Issues Associated with Animal Manures, Biosolids, and Other Similar By-Products

As mentioned in connection with Project 3 (Methods for Microbial Pollutants), the NRC Report called for more information on the risks of disease associated with pathogens and how to analyze for them. It also called for more information on how to better disinfect sewage sludge.

In June 2001, EPA and USDA sponsored a workshop on "Emerging Pathogen Issues in Biosolids, Animal Manures, and Other Similar By-Products" (USEPA in press). The workshop brought together experts in sewage sludge management and animal wastes to review the state of the science, exchange ideas on how to deal with unresolved issues and suggest areas where the scientific community should focus its efforts. Participants discussed:

- Viruses, bacteria, protozoa, prions, fungi, and helminth ova;
- Migration of pathogens to groundwater and air from recycling and treatment operations;
- Qualitative identification and detection methods for pathogens; the fate of antibiotics in animal and human wastes;
- Pathogen resistance to antibiotics; and
- Susceptibility of people with immuno-suppressed conditions to pathogens.

As stated in Category E (Pathogens) of the preliminary strategy dated April 9, 2003 (68 FR 17389), EPA will make available the information produced at this workshop on pathogens in sewage sludge and animal wastes by publishing the proceedings of the workshop. The proceedings from the workshop have been peer reviewed by national and international experts, and the report will be published in early 2004.

Project 12: Support "Sustainable Land Application Conference"

The purpose of this conference will be to address soil reactions of constituents in treated sewage sludge, manures, and other non-hazardous wastes, and to further environmentally friendly management of wastes in a sustainable manner. This January 2004 conference in Lake Buena Vista, Florida will address soil constituents (chemicals and microorganisms) reactions with constituents in treated sewage sludge, wastewater treatment plant effluents, manures, and other non-hazardous wastes. Further, this international conference is expected to have about 300 participants discussing metals, pathogens, organics, nutrients, and the interface between science and real-world applications by:

- Reviewing fundamental and specific soil reactions of non-hazardous waste constituents (nutrients, organics, metals and pathogens);
- Improving our understanding of contaminant reactions in soils, emphasizing the commonalities of soil reactions among wastes;
- Synthesizing multi-disciplinary information and characterizing the state-of-the-science for land application ("what do we know?");
- Identifying high-priority and critical research needs ("what do we need to know?"); and
- Promoting intra- and inter-disciplinary approaches to solving problems of sustainable waste disposal and utilization.

Papers and presentations will be both invited and volunteered. All papers will be refereed and EPA will use conference findings, as appropriate, in future refinements of part 503.

Project 13: Review Criteria for Molybdenum in Land-applied Treated Sewage Sludge

One of the NRC's recommendations was that EPA should propose molybdenum standards to replace those that EPA rescinded following a legal challenge to numerical limitations promulgated in the Round One rule. Also, some commenters believe that EPA should reassess the molybdenum standard. The preliminary strategy in the April 9, 2003, notice indicated that EPA would determine the applicability of new information as the basis for re-proposing molybdenum standards for land-applied sewage sludge. *See* 68 FR 17391. This activity is included in the Agency's final action plan, as stated below.

In 2000, EPA held a workshop to update toxicity and environmental properties for molybdenum in sewage sludge. Based on that workshop, EPA intends to assess the need and appropriate level for a numerical standard for molybdenum in sewage sludge using a summary of workshop results and conclusions (O'Connor *et al.*, 2001), supplemented with additional data developed since 2000. EPA expects to complete this assessment in 2005.

Project 14: Improve Stakeholder Involvement and Risk Communication

The NRC recommended that stakeholders should be involved in the risk assessment process and to examine biosolids management practices to ensure that the underlying risk assessment principles are effectively translated into practice. As stated in its preliminary strategy in the April 9, 2003, notice, the Agency's policy is to involve stakeholders at various stages of policy development. The Agency intends to consider how consultation with stakeholders should be included in developing future sewage sludge risk assessments. See 68 FR 17386. EPA received many comments on its preliminary strategy of April 9, 2003, urging the Agency to involve stakeholders more widely in the many aspects of the sewage sludge program.

EPA is committed to working with stakeholders who are concerned with the application or disposal of sewage sludge (the general public, State and local agencies, and private groups). In addition, the Agency will consider how it can implement the NRC's recommendations to involve stakeholders in updating and strengthening the scientific credibility of the sewage sludge regulations.

The Agency's risk communication programs are aimed at improving public awareness of the issues and achieving pollutant exposure reductions. Embodied in all of the projects is not only a need to foster public awareness of the issues surrounding sewage sludge use and exposure, but also a recognition of the advances in problem-solving that can be achieved through collaboration and cooperation.

Through the activities and organizations described in this project, EPA will participate in improving the effectiveness of risk communication methods at national, regional, and local levels. States have their own oversight programs, some of which are quite comprehensive. There is a total of about 150 full time equivalent State employees assigned to their respective biosolids programs. Five States have been authorized by EPA to administer the part 503 program, and 15 additional States are at various stages in the authorization process. National coordination of State, regional and Headquarters biosolids programs are achieved via an annual State and Regional biosolids coordinators meeting. EPA plans to continue to work closely with State and Regional biosolids coordinators and plans to support the annual workshop for sharing the latest information about biosolids management and oversight. Other organizations and activities that are designed to promote stakeholder involvement include the following:

An *Information-Sharing Group* (ISG) has been established based upon the concepts developed in WERF studies concerning joint fact-finding research. The ISG includes concerned citizens, health scientists, municipal operators, farmer representation, biosolids managers, and input from State and Federal regulatory agencies. The ISG has been established to work jointly with about 25 scientific experts in a large cooperative study of odor, particulates, pathogens, and endotoxins in the air around biosolids and animal manure land application sites. WERF has efforts underway to expand the use of such information-sharing in various research projects.

The *National Biosolids Partnership* (NBP) is an alliance formed in 1997 with the Association of Metropolitan Sewerage Agencies (AMSA), the Water Environment Federation (WEF), and EPA. The goal of the NBP is to advance environmentally sound and accepted sewage sludge management practices through partnerships with producers, service contractors, users, regulatory agencies, universities, the farming community, and environmental organizations.

The NBP is developing a voluntary *Environmental Management System* (EMS) for sewage sludge to help wastewater agencies improve their sewage sludge management programs beyond the regulatory minimums. The EMS involves environmental improvement, public involvement, and independent third party review of the facility applying for EMS status. Fifty-three wastewater agencies in the U.S. are participating in this voluntary program. Several of these municipalities are ready or will be ready for third-party audit of their EMS programs in 2004. Participating municipalities report benefits, such as more efficient operation, reduced odors in sewage sludge, less intrusive transport of the sewage sludge to land application sites, better communication, and meaningful involvement by the public.

In order for a wastewater facility to be admitted and certified to the Partnership EMS program, it must meet five requirements established by the NBP:

1. Document responsibility for the Biosolids Value Chain-pretreatment, treatment, and all biosolids management practices;
2. Commit to 10 principles in the NBP's Code of Good Practice;
3. Meet all NBP requirements;
4. Complete a fully independent third-party audit of its EMS that has been verified by a NBP's accredited audit company; and
5. Demonstrate their commitment to continual improvements in their EMS for environmental performance, regulatory compliance, public participation, and quality biosolids management practices.

Recently, the NBP recognized the Orange County Sanitation District (OCSD) in Fountain Valley, California, as the first wastewater agency in the Nation to be admitted to the Partnership EMS for biosolids programs. The EMS certification signifies that OCSD meets the NBP's requirements for the EMS program and that it supports excellence in sewage sludge management practices, exceeds regulatory compliance obligations, and provides meaningful opportunities for public participation.

The NBP recognized the City of Los Angeles Department of Public Works as the second wastewater agency in the Nation to be admitted to the Partnership EMS for sewage sludge program. A third-party audit of the City's Biosolids EMS program led to certification on September 4, 2003. EPA continues to support the development of EMS programs for wastewater agencies and the goals of improved communication and addressing public concerns in a more timely manner.

The NBP also announced release of its 2003 *Environmental Management System for Biosolids "Self Help" Training Program* intended to help wastewater agencies that are interested in starting their own EMS. The Agency plans to continue supporting NBP activities and to work with municipalities to expand their use of EMS and other programs in biosolids management. Two NBP Web sites present relevant sewage sludge information: *http://www.biosolids.org* and *http://biosolids.policy.net/emsguide/manual/goodpractmanual.vtml.*

In conclusion, EPA believes these 14 projects and associated activities will strengthen the biosolids program by improving our ability to:

- Measure pollutants of interest;

- Determine the risks posed by contaminants identified as potentially hazardous;
- Bring various stakeholder groups together via a workshop to begin development of a national incidence tracking system to ultimately determine health effects following land application of sewage sludge;
- Better understand and characterize the odors, volatile chemicals, and bioaerosols that may be emitted from land application sites;
- Better understand the effectiveness of sewage sludge processes and management practices to control pathogens;
- Improve the Agency's inspection and compliance initiatives; and
- Improve stakeholders' involvement in EPA's sewage sludge program.

C. Other Projects

Projects that are longer term in nature are those that EPA anticipates will be initiated after 2005. Initiation of longer-term projects will depend on the outcome of the research projects listed in section B, results of research being conducted by others outside the Agency, and availability of sufficient resources.

In addition to EPA directed research and activities, there is also considerable relevant work being conducted by others outside the Agency in academia, other State and Federal agencies, and trade groups, among others, that will address issues raised by the NRC recommendations. For example, WERF's sewage sludge research projects include identifying emergent trends in pathogen detection, assessing microbial health risks, identifying and controlling odors, and better understanding the fate, effects, and bioavailability of metals and certain chemicals in sewage sludge after land application. Two WERF Web sites that address relevant sewage sludge information and research are *http://www.werf.org/Collection/biosolids_chart.cfm#table1* and *http://www.werf.org/press/winter03/default.cfm*.

One WERF project involves "Biosolids Public Perception & Participation" (WERF, In Press). The project team included members from the New England Biosolids and Residuals Association, the Northwest Biosolids Management Association, the Center for Environmental Communication, and BioCycle, as well as two review panels consisting of biosolids stakeholders and academics. The study concludes that positive public relationships with stakeholders starts by developing public participation and thus earning public trust. Building success with stakeholders involves two way communication with the public, not only through the use of brochures, fact sheets, television spots and radio talk shows, but also by having a complaint hotline, tours, open houses, door-to-door contact, and community advisory groups. The final report from this study should be available by the end of winter 2004.

The University of Arizona (UA), Department of Soil, Water and Environmental Science, investigates physical, chemical, and microbial processes that affect the quality of surface and subsurface waters. Some of the UA's research projects deal with sewage sludge land application and utilization (*e.g.*, agricultural land application and mine tailing stabilization), sewage sludge management (*e.g.*, pathogen reduction in solar drying beds), health protection (*e.g.*, fate and transport of pathogens within sewage sludge, fate of *Staphylococcus aureus* in sewage sludge and evaluation of odors from land-applied sewage sludge), and rapid response to emerging issues (*e.g.*, antibiotic-resistant bacteria and endotoxins in land-applied sewage sludge, endocrine-related effects, and fate and transport of SARS virus). In one recent study at the UA, scientists are studying *Staphylococcus aureus* in sewage sludge after it had been processed at full-scale treatment plants (Rusin *et al.*, 2003).

Much of the work being done outside of EPA, including the research described above, that relates directly to NRC recommendations is being used to improve the Agency's sewage sludge program. EPA plans to review and evaluate studies external to EPA to determine if they are useful for conducting risk assessments and improving the basis for the part 503 regulations or improving management practices. The Agency will review these studies in accordance with the Information Quality Guidelines (see "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency" USEPA, 2002). These guidelines stress that information disseminated by EPA should adhere to a basic standard of quality, including objectivity, utility, and integrity.

VIII. Process To Review Part 503 Regulations Under the CWA Section 405(d)(2)(C)

As previously described, section 405(d)(2)(C) of the CWA requires that EPA review the sewage sludge regulations for the purpose of identifying additional toxic pollutants and promulgating regulations for such pollutants consistent with the requirements of section 405(d). In 1993, EPA promulgated regulations in 40 CFR part 503 setting numerical standards for certain toxic pollutants in sludge, requirements for pathogen and vector attraction reduction, and operational standards for emissions from sewage sludge incinerators.

As explained in section IV, EPA commissioned the NRC study of existing sewage sludge land application regulations to strengthen its scientific review under section 405(d)(2)(C). EPA agreed with the parties in *Gearhart* v. *Whitman* to publish a preliminary notice seeking public comment and a final notice, stating the results of its section 405(d)(2)(C) review.

In fulfilling this commitment, EPA first collected and conducted a preliminary review of publicly available information on the occurrence of chemicals in sewage sludge. This information consists of concentration data found in national and international literature sources published between 1990 and 2002 and the 1989 National Sewage Sludge Survey (NSSS); data on environmental properties such as mobility and persistence; and available human health benchmarks (HHBs). EPA compiled a list of 799 chemical pollutants for which such information was found and described this list of candidate pollutants for ongoing sewage sludge evaluation in the April 2003 **Federal Register** notice. EPA placed the full list of candidate pollutants in the docket for public review and comment (USEPA, 2003a). EPA made minor corrections to the list, which resulted in slightly revising the list from 799 candidate pollutants to 803 candidate pollutants. See Table 1 in Appendix O of the Technical Background Document (TBD) (USEPA, 2003b).

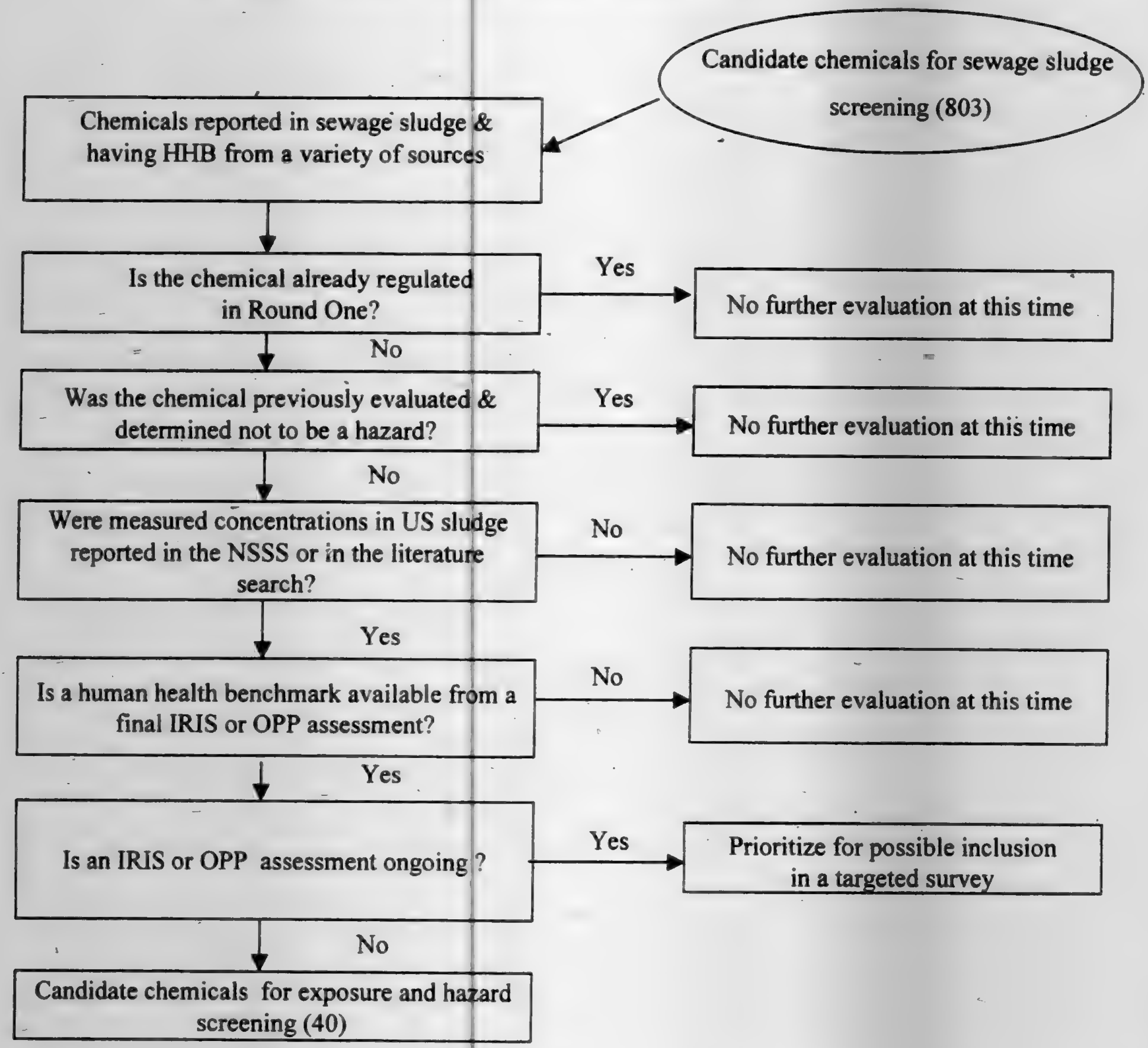
EPA then used a human health-based data evaluation and pollutant selection process to determine whether the existing data were sufficient for each of these 803 pollutants to proceed with an exposure and hazard screening assessment. This process involved identifying the pollutants for which EPA peer-reviewed final HHBs are available, and for which there are data on concentrations in U.S. sewage sludge for those pollutants with HHBs, either in the NSSS or reported in the literature.

In summary, a pollutant was selected from the list of 803 pollutants for an exposure and hazard screening assessment if it met two criteria: (1) It has measured concentrations in U.S. sewage sludge based on the literature, or it had been measured in the 1989 NSSS;

and (2) it has a HHB from one of two sources that was not undergoing reevaluation as of October 1, 2003. The sources for HHBs were EPA's Integrated Risk Information System (IRIS) health assessments and EPA's Office of Pesticide Programs (OPP) Reregistration Eligibility Decisions (REDs) or Interim Reregistration Eligibility Decisions (IREDs). Figure 1 depicts the steps involved in this process.

BILLING CODE 6560-50-P

Figure 1. Human Health-Based Pollutant Selection Process


Candidate chemicals for sewage sludge screening (803)
Chemicals reported in sewage sludge & having HHB from a variety of sources
Is the chemical already regulated in Round One?
Yes
No further evaluation at this time
No
Was the chemical previously evaluated & determined not to be a hazard?
Yes
No further evaluation at this time
No
Were measured concentrations in US sludge reported in the NSSS or in the literature search?
No
No further evaluation at this time
Yes
Is a human health benchmark available from a final IRIS or OPP assessment?
No
No further evaluation at this time
Yes
Is an IRIS or OPP assessment ongoing?
Yes
Prioritize for possible inclusion in a targeted survey
No
Candidate chemicals for exposure and hazard screening (40)

BILLING CODE 6560-50-C

Applying this process resulted in a list of 40 pollutants that merited exposure and hazard screening. These 40 pollutants are listed in Table 1.

TABLE 1.—CANDIDATE POLLUTANTS FOR EXPOSURE AND HAZARD SCREENING

Chemical	CASRN
Acetone	67–64–1
Acetophenone	98–86–2
Anthracene	120–12–7
Azinphos methyl	86–50–0
Barium	7440–39–3
Benzoic acid	65–85–0

TABLE 1.—CANDIDATE POLLUTANTS FOR EXPOSURE AND HAZARD SCREENING—Continued

Chemical	CASRN
Beryllium	7440–41–7
Biphenyl, 1,1-	92–52–4
Butyl benzyl phthalate	85–68–7
Carbon disulfide	75–15–0
Chloroaniline, 4-	106–47–8
Chlorobenzene; Phenyl chloride	108–90–7

TABLE 1.—CANDIDATE POLLUTANTS FOR EXPOSURE AND HAZARD SCREENING—Continued

Chemical	CASRN
Chlorobenzilate	510–15–6
Chlorpyrifos	2921–88–2
Cresol, o-; 2-Methylphenol	95–48–7
Diazinon	333–41–5
Dichloroethene, 1,2-trans-	156–60–5
Dichloromethane; Methylene chloride	75–09–2
Dioxane, 1,4-	123–91–1
Endrin	72–20–8
Ethyl p-nitrophenyl phenylphosphorothioate; EPN; Santox	2104–64–5
Fluoranthene	206–44–0
Hexachlorocyclohexane, alpha-	319–84–6
Hexachlorocyclohexane, beta-	319–85–7
Isobutyl alcohol	78–83–1
Manganese	7439–96–5
Methyl ethyl ketone	78–93–3
Methyl isobutyl ketone (MIBK); Methyl-2-pentanone, 4-	108–10–1
Naled	300–76–5
Nitrate	14797–55–8
Nitrite	14797–65–0
N-Nitrosodiphenylamine	86–30–6
Phenol	108–95–2
Pyrene	129–00–0
Silver	7440–22–4
Trichlorofluoromethane	75–69–4
Trichlorophenoxy propionic acid, 2-2,4,5-; Silvex	93–72–1
Trichlorophenoxyacetic acid, 2,4,5-; 2,4,5-T	93–76–5
Trifluralin	1582–09–8
Xylenes (mixture)	1330–20–7

Data collection and evaluation, along with the results for determining sufficiency of data to proceed with an exposure and hazard screening assessment for a pollutant, are available in detail in appendix O of the TBD (USEPA, 2003b).

As described by Figure 1, EPA did not include pollutants for which the scientific basis for the HHBs is currently being reassessed. This applied to certain chemicals with HHBs in IRIS or OPP's IREDs and REDs. EPA has not included these chemicals in the list of chemicals to consider for exposure and hazard screening assessment at this time because these HHBs are critical to determining whether, and at what level, pollutants might be of potential hazard in sewage sludge. Because, under section 405(d)(2)(C), EPA is required to review the sewage sludge regulations for identification of additional toxic pollutants every two years, EPA has deferred chemicals with ongoing health assessments for a future review when the assessment is complete. EPA believes that the HHB reassessments will provide valuable information relevant to possible further regulation of sewage sludge once they are complete and that it would be premature to include these pollutants in a hazard screening process at this time.

At the same time, EPA recognizes that some of the chemical pollutants which are undergoing HHB reevaluation may be of concern in sewage sludge, and that it may be prudent to include such pollutants in the planned targeted survey (*i.e.*, section VII.B, Project 5) so that concentration values in sewage sludge may be obtained and used in future section 405(d)(2)(C) reviews. Therefore, EPA used a simple estimate of potential hazard to prioritize chemicals with ongoing health assessments for possible inclusion in the targeted survey.

The simple estimate involved calculating a theoretical hazard quotient (THQ) for each of the 20 chemicals with ongoing IRIS or OPP health assessments using existing oral human health benchmarks. The THQ is the ratio of the theoretical average daily intake (TADI), for a 1–3 year old child, one of the most highly exposed population groups on a kg body weight basis, to the oral critical dose (OCD), where the OCD (in milligrams/kilograms/day, or mg/kg/day) is the lowest of the reference dose, population adjusted dose, or dose for 10^{-5} cancer risk.[1] On this basis, a prioritization scale was established for the 20 chemicals with ongoing IRIS or OPP health assessments, which have existing oral human health benchmarks. Using this priority scale and results of the exposure screening assessment, EPA decided which chemicals to consider high priority for potential health concern and, subject to the availability of adequate budgetary resources, to include in the targeted survey to be initiated in FY 2005. These are benzo[a]pyrene, PCB congeners and Aroclors (excluding coplanar PCB congeners already included in the 2001 dioxins survey), di(2-ethylhexyl) phthalate, thallium, antimony, carbon tetrachloride and fluoride. This prioritization strategy is further described in appendix O of the Technical Background Document (USEPA, 2003b). These pollutants are not being identified at this time for purposes of further regulatory consideration as part of EPA's current review under section 405(d)(2)(C).

As mentioned above, the 40 pollutants listed as a result of the selection process depicted in Figure 1 were next analyzed through an exposure and hazard screening process. The principal objective was to evaluate whether the Agency should consider any of these as additional toxic pollutants for regulation in sewage sludge under section 405(d) of the CWA. As discussed in section X, the screening assessment identified 15 pollutants with hazard quotient (HQ) values equal to or greater than one.

IX. Hazard-Based Screening Assessment

EPA used a probabilistic hazard assessment model with appropriately conservative assumptions to analyze the 40 pollutants identified as a result of the data evaluation and pollutant selection process. This section describes the data and analyses EPA used in this screen for the 40 pollutants listed in Table 1. The two major questions addressed in this assessment were:

- Which environmental pathways are of concern?
- What is the potential hazard associated with each pollutant?

The Technical Background Document (TBD) (USEPA, 2003b) contains the rationale behind the relationships addressed and the methods, data gaps, and uncertainties associated with the data and models. The TBD also contains details about properties of sewage sludge, regional climate, soil characteristics, farm size, exposure routes and pathways, toxicity values, source models and other modeling parameters and assumptions related to the screening assessment.

A. Sewage Sludge Management Practices Modeled

The exposure and hazard screening assessment evaluated the 40 chemicals for three sewage sludge management practices:

- Disposal in sewage sludge lagoons (surface disposal units),
- Application of sewage sludge to pastureland and cropland, and
- Sewage sludge fired in a sewage sludge incinerator.

Below is a summary description of the screening scenarios and key assumptions for the three sewage sludge management practices.

1. Sewage Sludge Lagoon Scenario

The lagoon scenario was the surface disposal unit chosen for the model because sewage sludge disposed in such an impoundment is likely to have the greatest potential to cause groundwater contamination of the various surface disposal configurations. For the sewage sludge lagoon scenario, EPA assumed that sewage sludge is managed in a lagoon or surface impoundment that holds the sludge for disposal. For this hazard assessment, the lagoon modeled was a non-aerated surface impoundment. Exposure to pollutants via sewage sludge in lagoons occurs through the drinking water and ambient air. We assumed that no food chain exposures occur from sewage sludge in this surface lagoon scenario because EPA has no data indicating that food is grown or raised in close proximity to surface disposal units. The surface impoundment was assumed to operate for 50 years (*i.e.*, sewage sludge is surface-disposed in the lagoon over that time period) after which it was closed. Surface impoundments were modeled based on a nationally representative sample of non-aerated, non-hazardous waste surface impoundments. See appendix A of the TBD (USEPA, 2003b).

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[1] The NRC recommended that EPA evaluate risks based on "reasonable maximum exposure" (RME). Therefore, in the hazard screening assessment, EPA uses a risk level of 1E–5 to calculate the RME to a subpopulation of highly exposed individuals, rather than a 1E–6 risk level to calculate risk to the general population. A risk level of 1E–5 is consistent with setting such a risk level for, and being protective of, the RME in the sewage sludge regulations. Members of the subpopulation defined as subject to RME are farm families assumed to live on a farm and consume farm-raised foods where land-applied sewage sludge is used as fertilizer or a soil amendment and, therefore, are more highly exposed to sewage sludge than the general population.

It was assumed that these impoundments are located in a rural industrial setting where residents live within a distribution of distances relatively close to the lagoon, where they might be exposed to ambient air contaminated by sludge pollutants and where they might ingest drinking water from residential groundwater wells. These modeled residents also use their residential wells as a source of drinking water and for other household uses, such as showering. More details of the sewage sludge lagoon screening assessment are available in the TBD (USEPA 2003b).

2. Land Application Scenario

For the agricultural land application scenario, EPA assumed that sewage sludge is applied to both pastureland and cropland that are used to raise food for human consumption. The farmer was assumed to apply sewage sludge to pastureland and cropland at the appropriate agronomic rates. For this exposure and hazard screening assessment, the following assumptions were used to reflect a distribution of typical agricultural practices common throughout the United States:

- Sewage sludge is applied at a rate of 5 to 10 metric tons per hectare per application (uniform distribution).
- Applications occur once every 2 years.
- Applications are limited to a maximum of 40 years (20 applications).
- Cropland is tilled to a depth of 20 cm at application and at two additional times during the year.
- Pastureland is not tilled, but the sludge is assumed incorporated to a depth of 2 cm by bioturbidation.

Application to both row crops and pasture includes runoff into two water-bodies types. The first is an "index reservoir" using the Shipman City Lake in Shipman, Indiana as a model for drinking water exposures. This reservoir covers 13 acres, is 9 ft deep, and has a watershed area of 427 acres. The ratio of drainage area to capacity (volume of water in the lake) is approximately 12 for the index reservoir in this assessment. These areas remain constant in this assessment, and the same index reservoir was assumed to occur in each of the 41 climate regions. Also, in the screening assessment, it was assumed that the 427-acre watershed area contains other farms that also apply sewage sludge occupying 10 to 80 percent of the watershed in aggregate (in addition to the modeled farm).

The second water-body type is a farm pond and was used to evaluate ecological exposure, and human exposure from fish consumption. It was assumed that the pond had the farm area as its total drainage basin and to have a drainage area to capacity ratio of five. The farm pond depth is assumed to be constant at 9 feet. The area of the pond is proportional to the area of the farm. EPA also assumed that there is no buffer between the amended agricultural land and the farm pond; thus, EPA assumes that the erosion and runoff from the agricultural land go directly to the farm pond. Additional details of the screening assessment for the land application scenario are available in the TBD (USEPA 2003b).

3. Sewage Sludge Incinerator Scenario

For the sewage sludge incinerator scenario, EPA assumed that the modeled receptor resides and inhales ambient air in the shadow of a sewage sludge incinerator's emissions plume. To estimate maximum exposure to ground-level concentrations of pollutants to which the modeled individual would be exposed, we used the following parameters in exposure modeling:

- Sewage sludge feed rate (SF) in the units of dry metric tons of sewage sludge fed into the incinerator per second.
- An emission factor (EF) in the units of grams of pollutant emitted at the incinerator stack per dry metric ton of sewage sludge fed into the incinerator.
- A dispersion factor (DF) obtained by air modeling in the units of micrograms of pollutant per cubic meter of ambient air at ground level per grams of pollutant emitted at the incinerator stack per second.

Multiplication of these three factors together yields an estimated maximum ground level concentration of a pollutant in units of micrograms of pollutant per cubic meter of ambient air. Additional details of the screening assessment for the incinerator scenario are available in the incineration pathway analysis (USEPA 2003c).

B. Receptors

The exposure pathways by which humans and ecological species (*i.e.*, those humans and wildlife that are exposed to components in sewage sludge) for the three sewage sludge management practices are described in the TBD, section 1.7. In summary, families living near sewage sludge incinerators and sewage sludge lagoons, as well as farm families consuming food produced on sewage sludge-amended soil, were considered the affected populations in this exposure screening assessment. Ecological receptors were assessed for exposure to contaminated habitat, food and feed following agricultural land application of sewage sludge.

For the agricultural land application scenario, human members of the subpopulation defined as subject to reasonable maximum exposure (RME) are members of a farm family assumed to live on a farm and consume farm-raised foods where land-applied sewage sludge is used as fertilizer or a soil amendment. These individuals are more highly exposed to sewage sludge than the general population. Much of the information for the RME for the agricultural land application scenario comes from the EPA Exposure Factors Handbook, a peer-reviewed source of data for use in risk assessments (USEPA, 1997). A higher percentage of the farm family's diet consists of food grown on sewage sludge-amended soil. EPA assumed that adults and children on the farm consume fish caught from a nearby waterbody (a pond) and that the farm family also raised a significant portion of its fruit and vegetable diet on sewage sludge amended soils. In addition, the farm family is exposed through drinking water or showering in either untreated surface water from an index reservoir or groundwater from a residential well.

For the incineration scenario, EPA defined RME as exposure to a rural family living in proximity to a sewage sludge incinerator. These individuals were assumed to be exposed by direct inhalation of emissions from a sewage sludge incinerator.

For the surface disposal scenario, EPA defined RME as exposure to a rural family living near a sewage sludge lagoon. EPA assumed these individuals are exposed to constituents of sewage sludge through ingestion of groundwater from a nearby residential well and by inhalation from showering.

Affected wildlife included invertebrate and vertebrate animals that may be exposed to contaminants through land application of sewage sludge. It was assumed that the ecological receptors, both aquatic and terrestrial, are exposed in the crop and pasture and in and around a farm pond. The representative terrestrial and aquatic wildlife species were selected based on their living, feeding, and foraging habitat. We included animals that derive a significant portion of their diet from a farm, as well as those that live in or feed in and around farm ponds.

The Agency did not assess exposure pathways for wildlife in the sewage sludge lagoon scenario (as a surface disposal unit) or the incineration scenario, only the land application scenario. EPA estimates that less than one percent of the sewage sludge produced annually in the United States is disposed of in surface disposal units and approximately 17 percent is disposed of by combustion in sewage sludge incinerators. Thus, these disposal methods involve a relatively small proportion of total sewage sludge produced compared to land application of sewage sludge. In addition, surface disposal sites generally are areas with poor ecological habitat. Most of the sewage sludge produced in the U.S. goes to land application to fertilize crop or as a soil amendment. Therefore, the Agency did not assess aquatic and terrestrial wildlife exposure associated with surface disposal or incineration for this screen. We deem the land application scenario, which includes the treated agricultural crop and pasture land and farm pond, to be more representative of wildlife habitat, and thus, where ecological exposures are most likely to happen. Therefore, EPA believes that the agricultural land application scenario is a good indicator of ecological hazard.

C. Exposure Assessment Modeling

Human exposures may occur as a result of sewage sludge disposal in a lagoon or incinerator, or as the result of application of sewage sludge to agricultural land. The human exposure pathways modeled for the sewage sludge lagoon scenario are presented in Table 2. It was assumed that a resident family lives near a facility with a sewage sludge lagoon and breathes the ambient air at that location. It was also assumed that the family has a residential well that supplies tap water to the household for drinking water and showering. Ambient air exposures and the inhalation of contaminants during showering were estimated by the average daily air concentrations of vapors to which an individual might be exposed. Exposure via drinking water was estimated by multiplying the modeled concentrations of the pollutants in groundwater by the drinking water consumption rate of the individual.

TABLE 2.—HUMAN EXPOSURE PATHWAYS FOR THE SEWAGE SLUDGE LAGOON SCENARIO

Receptor	Inhalation of ambient air	Inhalation of shower air (groundwater source)	Ingestion of drinking water (groundwater source)
Adult Resident	x	x	x
Child Resident	x	x	x

In the agricultural land application scenario, more exposure routes are considered in the assessment. The exposure pathways considered for the farm family are presented in the Table 3.

TABLE 3.—HUMAN EXPOSURE PATHWAYS FOR THE AGRICULTURAL LAND APPLICATION SCENARIO

Receptor	Inhalation of ambient air	Inhalation of shower indoor air (groundwater or surface water)	Ingestion of drinking water (groundwater or index reservoir)	Ingestion of soil	Ingestion of produce	Ingestion of beef and dairy products	Ingestion of fish (farm pond)
Adult Farmer	x	x	x	x	x	x	x
Child Farm Resident	x	x	x	x	x	x	x

Although all of the ingestion pathways (ingestion of food and water) were aggregated in the exposure model to estimate total ingestion hazards to humans in this screening assessment, EPA did not aggregate the ingestion and inhalation pathways. The Agency aggregates oral and inhalation pathways under certain circumstances (*e.g.*, as required by the Food Quality Protection Act, OPP adds together the ingestion and inhalation pathways for pesticides that have similar toxicological endpoints for both pathways). For purposes of this screening assessment, a pathway providing exposure approximately three orders of magnitude lower than the predominating pathway (*i.e.*, ingestion, and in particular ingestion of drinking water) need not be aggregated. In this screening assessment for sewage sludge, exposure to humans via inhalation for the pollutants that have reference concentration (RfC) values is negligible, as shown by the results of the TBD. The inhalation HQs are several orders of magnitude lower than ingestion HQs; thus, aggregating these two pathways would not add meaningful results.[2]

For the ecological screening assessment, exposure concentrations were calculated for both direct contact and ingestion pathways. The exposure pathways assessed include direct contact with treated sewage sludge applied to agricultural land and indirect exposure through ingestion of contaminated food and soil or ingestion of, or contact with, surface water that receives runoff from a sewage sludge-amended field. Table 4 shows the affected wildlife and exposure pathways in the ecological screening assessment. It was assumed that exposure concentrations in sediment and soil were the maximum annual average modeled concentrations. For exposure through surface water contact, exposure concentrations were calculated to match benchmark exposure durations. For example, if the benchmark for aquatic organisms was derived from a toxicological study in which fish were exposed to the contaminant for 96 hours, then the 4-day (96-hour) maximum modeled concentration was selected as the exposure concentration. For chronic benchmarks intended to reflect long-term or lifetime exposure, the maximum annual concentration was used in the assessment.

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[2] There were no ingestion pathways considered for the sewage sludge incineration scenario.

TABLE 4.—EXPOSURE PATHWAYS FOR WILDLIFE SPECIES

Receptor	Direct contact	Direct contact medium	Ingestion
Fish	x	Surface water (farm pond)	
Aquatic Invertebrates	x	Surface water (farm pond)	
Aquatic Plants	x	Surface water (farm pond)	
Amphibians	x	Surface water (farm pond)	
Aquatic Community	x	Surface water (farm pond)	
Sediment Biota	x	Sediment (farm pond)	
Soil Invertebrates	x	Soil (agricultural field)	
Mammals			x
Birds			x

The exposure dose of the ingestion pathway for terrestrial and aquatic species was calculated as a function of the combination of concentrations in each receptor's diet items and receptor-specific ingestion rates, body weight, and bioconcentration factors. The dietary compositions were based on species-specific data on foraging and feeding behavior and reflected a year-round adult diet. Diet items were grouped by category, including different types of vegetation (*e.g.*, fruits, forage, grain, roots) and several types of prey (*e.g.*, small birds, small mammals, invertebrates, fish).

Each species' diet was modeled using the midpoint of dietary percentages for each diet item, beginning with the item with highest midpoint value and proceeding through the diet items until a full diet (100 percent) was accumulated. In this example, a robin's diet would consist of 50.5 percent soil invertebrates and 49.5 percent fruits.

The species-specific exposure factors (ingestion rates and body weights) were taken from EPA's Wildlife Exposure Factors Handbook (USEPA, 1993) and are presented in the Technical Background Document (USEPA, 2003b).

D. Screening Criteria Development

1. Human Health Benchmarks

As indicated in the data collection and evaluation steps, we used in the screening assessment human toxicity values (or HHBs) that are available in EPA's IRIS, RED, or IRED. These toxicity values include chronic reference doses (RfDs), chronic population adjusted doses, inhalation reference concentrations (RfCs), oral cancer slope factors, air unit risk factors, and oral doses and air concentrations at specified cancer risk levels. The HHBs used in this assessment are critical doses for ingestion pathways or critical concentrations used as an air pathway criterion. For air exposures to pollutants, the critical concentration is the lower value of the RfC or concentrations in air associated with an excess cancer risk of E–5 (1 in 100,000), based on the air unit risk factor. For ingestion, the critical dose is the lower of the RfD, population adjusted dose, or dose for an excess cancer risk of E–5, based on oral cancer slope factor over a lifetime.

2. Ecological Benchmarks

The benchmarks used for ecological hazard assessment are effects or toxicity values expressed in terms of media concentration (*e.g.*, mg/l for surface water or mg/kg for soil) for the direct contact pathway and in terms of dose (mg/kg-d) for the ingestion pathway. Because there is no single repository for EPA-approved ecological benchmarks analogous to EPA's IRIS or OPP RED and IRED documents, ecological benchmarks from EPA, other government reports, and from toxicological studies in the published literature were considered for the ecological screening assessment. General criteria for selecting ecological benchmarks, as well as a hierarchy of data sources, used in the screening assessment are included in Appendix P of the TBD (USEPA 2003b).

The ecological hazard screening assessment addresses the potential for adverse effects to terrestrial and aquatic wildlife, which EPA believes are the receptors which are anticipated to experience the highest exposure to pollutants in sewage sludge. The potential for pollutants to bioaccumulate in wildlife receptors is specifically addressed through the assessment of the ingestion pathway. The assessment includes receptors exposed through ingestion of both aquatic and terrestrial food items and thus addresses the potential for bioaccumulation of pollutants from soil, surface water, and sediment.

3. Hazard Characterization

The potential hazard to human and ecological receptors is expressed in terms of hazard quotients (HQs). An HQ equal to or greater than one indicates a potential for adverse effects to occur and the need to conduct a more detailed or refined risk assessment and risk characterization. For chemicals with a human health benchmark (HHB) for ingestion, the results of the screening assessment are a ratio of the estimated average daily dose or lifetime average daily dose to a critical dose for each pollutant. For chemicals with an HHB for inhalation, the average daily air concentration is compared with the critical concentration for these pollutants. If either of these ratios exceeds one at the 95th exposure percentile, the pollutant fails the screen.

A similar comparison is performed for ecological benchmarks. If the HQs equal or exceed one for any pollutant, that pollutant also fails the screen. For the direct exposure pathway, HQs are calculated as the ratio of the exposure concentration to the relevant toxicity value. For example, we calculate the HQ for fish as the ratio of the surface water concentration to the fish 96-hour toxicity value. For the ingestion pathway, HQs are the ratio of the exposure dose to the relevant benchmark. The screening assessment was neither designed nor intended to provide definitive risk estimates. The assessments simply indicate the potential for adverse ecological effects to a variety of wildlife and provide information on the ongoing assessment of ecological risks associated with the agricultural application of sewage sludge. Additional details concerning the screening assessment are presented in sections 2 and 3 of the TBD.

X. Results of the Review of the Part 503 Regulations Under CWA Section 405(d)(2)(C)

Of the 40 pollutants for which EPA conducted its exposure and hazard screening assessment, 15 have hazard quotients (HQs) [3] that either exceed one for human receptors, or equal or exceed one for ecological receptors. We considered these 15 pollutants to have failed the screen, and, therefore, constitute the final results of EPA's current review under section 405(d)(2)(C) of the CWA. The details of screening results for all pollutants in this screening analysis are found in the TBD (USEPA, 2003b).

The results of the human and ecological exposure and hazard assessments contained in this section are intended to identify those pollutants that warrant further consideration for rulemaking. These results also indicate which exposure pathway or pathways should be the focus of further consideration with respect to these pollutants.

EPA expects to complete a more refined risk assessment and characterization for these 15 pollutants for purposes of determining whether, and if so for which, of these 15 pollutants EPA will propose rule amendments under section 405(d). Upon completion of additional assessments, if indicated, EPA will initiate a proposed rulemaking under section 405(d). Any proposed regulations may take the form of numerical limits, best management practices, or other controls and limitations needed to protect the environment and human health. The results of EPA's review described in today's notice (*i.e.*, the identified 15 pollutants) do not mean that EPA has concluded that these pollutants in sewage sludge adversely affect human health or the environment. Some, or perhaps even all, of these pollutants may not be present in concentrations that warrant regulation; or a refined risk assessment may indicate that there is insufficient risk to human health or the environment to warrant regulation. The results of EPA's review mean that EPA will obtain updated concentration data for these pollutants and will conduct a refined risk assessment using the new concentration data to determine whether to propose amendments to part 503 in order to regulate any of these pollutants under section 405(d) of the CWA.

A. Results of Human Health Screening Assessment

EPA performed a human health exposure and hazard screening assessment using both cancer and non-cancer endpoints. None of the chemicals with cancer end-points had HQs equal to or greater than one, or were considered to have failed the screen, for either the land application, surface disposal, or incineration scenarios. Also, no pollutant with a non-cancer endpoint failed the screen on the basis of inhalation exposure, either from incineration or indirectly from land application or surface disposal. Thus, EPA has identified no additional pollutants to consider for rulemaking for sewage sludge that is disposed of by incineration in a sewage sludge incinerator. However, as explained below, some pollutants failed the screen for non-cancer risks when screened for the land application and surface disposal scenarios. Table 5 presents the results for the pollutants that had HQs greater than one for the agricultural land application scenario, and Table 6 presents the results for the pollutants that had HQs greater than one for the sewage sludge lagoon scenario. Values are presented for pollutants at the 95th percentile exposure scenario of the HQ distribution.

TABLE 5.—HUMAN HAZARD QUOTIENT VALUES GREATER THAN ONE BY PATHWAY FOR THE AGRICULTURAL LAND APPLICATION SCENARIO AT THE 95TH PERCENTILE OF THE HQ DISTRIBUTION

CASRN	Chemical	Pathway receptor	HQ
14797–65–0	Nitrite	Ingestion of Surface Water: Child	1.1
		Total Ingestion: Child	1.3
7440–22–4	Silver	Ingestion of Milk:	
		Adult	3.8
		Child	12.0
		Total Ingestion:	
		Adult	4.0
		Child	12.3

TABLE 6.—HUMAN HAZARD QUOTIENT VALUES GREATER THAN ONE BY PATHWAY FOR THE SEWAGE SLUDGE LAGOON SCENARIO AT THE 95TH PERCENTILE OF THE HQ DISTRIBUTION

CASRN	Chemical	Pathway receptor	HQ
7440–39–3	Barium	Drinking Water from Groundwater:	
		Adult	1.5
		Child	3.5
106–47–8	4-Chloroaniline	Drinking Water from Groundwater:	
		Adult	2.7
		Child	6.4
7439–96–5	Manganese	Drinking Water from Groundwater:	
		Adult	32
		Child	76

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[3] Exposure at or below the HHB values are considered protective of human health. Hence, the HQ values greater than one are considered to have failed the human health screen. Exposure at or above the ecological benchmarks or values are considered to exceed a level considered to be protective of wildlife species and the environment. Hence, the HQ values equal to or greater than one are considered to have failed the ecological screen.

TABLE 6.—HUMAN HAZARD QUOTIENT VALUES GREATER THAN ONE BY PATHWAY FOR THE SEWAGE SLUDGE LAGOON SCENARIO AT THE 95TH PERCENTILE OF THE HQ DISTRIBUTION—Continued

CASRN	Chemical	Pathway receptor	HQ
14797–55–8	Nitrate	Drinking Water from Groundwater:	
		Adult	9.2
		Child	23
14797–65–0	Nitrite	Drinking Water from Groundwater:	
		Adult	14
		Child	34

Nitrite had HQs greater than one in both the agricultural land application and sewage sludge lagoon scenarios. Silver had HQs greater than one for the agricultural land application only. Barium, manganese, and nitrate had HQs greater than one for the sewage sludge lagoon scenario only. The only organic chemical that had an HQ greater than one was 4-chloroaniline, also in the sewage sludge lagoon scenario. Complete human health screening assessment results are available in appendix Q of the TBD (USEPA, 2003b).

B. Results of Ecological Screening Assessment

The ecological screen was performed by either comparing environmental concentrations to which the ecological species are exposed to comparable ambient media benchmarks for direct contact (surface water, sediment, or soil) or by comparing exposure via ingestion (food, forage, water, and incidental ingestion of soil or sediment) to comparable ingestion benchmarks. The ecological screening was performed only for the agricultural scenario, since this was considered the higher exposure scenario. Table 7 shows the pollutants that had HQs equal to or greater than one for terrestrial wildlife via the direct contact pathways. There are no ingestion hazards for any aquatic or terrestrial wildlife species from any of the chemicals, based on the results presented in the TBD. Because there are many wildlife receptors, EPA grouped the receptors and listed only the highest HQ for each receptor group in Table 7. See appendix R of the TBD for a complete listing of HQs for each receptor group.

TABLE 7.—HAZARD QUOTIENT VALUES EQUAL TO OR GREATER THAN ONE FOR AQUATIC AND TERRESTRIAL WILDLIFE VIA DIRECT CONTACT PATHWAYS FOR THE 95TH PERCENTILE OF THE HQ DISTRIBUTION

CASRN	Chemical	Receptor [1]	HQ
67–64–1	Acetone	Sediment Biota	356.2
120–12–7	Anthracene	Sediment Biota	2.9
7440–39–3	Barium	Aquatic Community	235.7
7440–41–7	Beryllium	Aquatic Community	7.8
75–15–0	Carbon disulfide	Sediment Biota	1.9
106–47–8	4-Chloroaniline	Aquatic Invertebrates	1.3
333–41–5	Diazinon	Sediment Biota	1.1
206–44–0	Fluoranthene	Aquatic Community	10.7
		Sediment Biota	4.2
7439–96–5	Manganese	Aquatic Community	13.9
78–93–3	Methyl Ethyl Ketone	Sediment Biota	5.8
108–95–2	Phenol	Sediment Biota	102.4
129–00–0	Pyrene	Aquatic Community	41.9
		Sediment Biota	21.1
		Soil Biota	4.5
7440–22–4	Silver	Aquatic Community	246.6
		Aquatic Invertebrates	28.2
		Fish	4.8

[1] Sediment biota organisms include sediment invertebrates; aquatic community organisms include fish, aquatic invertebrates, aquatic plants, and amphibians; soil biota organisms include soil invertebrates.

Values presented in Table 7 are at the 95th exposure percentile of the HQ distribution for direct contact. The screening showed that thirteen pollutants had HQs greater than one via direct contact with surface water, sediment, or soil. These consisted of four metals and nine organic pollutants. These results indicate that a more refined risk assessment and risk characterization are warranted. Full results for all pollutants and receptors assessed are presented in appendix R of the TBD (EPA, 2003b).

C. Summary

The results of the hazard screening assessment contained in this section identify those pollutants which EPA is considering for rulemaking under section 405(d). These results also indicate which exposure pathway or pathways should be the focus of further consideration with respect to these pollutants. EPA has identified 15 pollutants in its review under section 405(d)(2)(C). The results of EPA's review do not mean that EPA has concluded that these pollutants in sewage sludge adversely affect human health or the environment. The magnitude of the hazard indices discussed previously do not indicate the absolute risk for a pollutant/pathway. The results of EPA's review mean that EPA will obtain updated concentration data and conduct a refined risk assessment using the data to determine whether to propose amendments to part

503 in order to regulate any of these pollutants under section 405(d) of the CWA.

In summary, of the 40 pollutants evaluated in the screen, 15 pollutants have HQs that either exceed one for human health or are equal to or greater than one for wildlife species (*see* Tables 5 through 8), as summarized in Table 8:

TABLE 8.—SUMMARY TABLE OF THE 15 POLLUTANTS WITH HQS THAT EITHER EXCEED ONE FOR HUMAN HEALTH OR ARE EQUAL TO OR GREATER THAN ONE FOR ECOLOGICAL RECEPTORS

Chemical	Receptor	Sewage sludge scenario		
		Agricultural land application	Surface disposal	Incinerator [1]
Acetone	Sediment biota	x		
Anthracene	Sediment biota	x		
Barium	Aquatic community	x		
	Adult		x	
	Child		x	
Beryllium	Aquatic community	x		
Carbon disulfide	Sediment biota	x		
4-Chloroaniline	Aquatic invertebrates	x		
	Adult		x	
	Child		x	
Diazinon	Sediment biota	x		
Fluoranthene	Aquatic community	x		
	Sediment biota	x		
Manganese	Aquatic community	x		
	Adult		x	
	Child		x	
Methyl ethyl ketone	Sediment biota	x		
Nitrate	Adult		x	
	Child		x	
Nitrite	Adult		x	
	Child	x	x	
Phenol	Sediment biota	x		
Pyrene	Aquatic community	x		
	Sediment biota	x		
	Soil biota	x		
Silver	Aquatic community	x		
	Aquatic invertebrates	x		
	Fish	x		
	Adult	x		
	Child	x		

[1] No chemical with cancer or non-cancer end-points failed the screening assessment from incineration. In addition, no chemical with cancer end-points failed the screening assessment by either the land application or the surface disposal scenarios.

EPA will design and conduct a targeted national survey of pollutants in sewage sludge in 2005 through 2007. The results of the survey will provide pollutant concentration values that EPA will then use in a more refined risk assessment and risk characterization. Based on the results of these refined analyses, EPA will propose as soon as practicable new regulations under section 405(d) for any pollutants which it determines may be present in sewage sludge in concentrations which may adversely affect public health or the environment.

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Dated: December 23, 2003.

G. Tracy Mehan III,

Assistant Administrator, Office of Water.

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–FRL–7605–4]

Notice of Availability of Draft Aquatic Life Criteria Document for Copper and Request for Scientific Views

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for scientific views.

SUMMARY: This notice informs the public about the availability of a draft document containing updated aquatic life criteria for copper and requests scientific views. The Clean Water Act (CWA) requires EPA to develop and publish, and, from time to time, revise criteria for water quality that accurately reflect the latest scientific knowledge. EPA's recommended water quality criteria provide guidance for States and authorized Tribes to establish water quality standards under the CWA to protect human health and aquatic life.

DATES: EPA will accept scientific views on the draft *2003 Draft Updated of Ambient Water Quality Criteria for Copper* document on or before March 1, 2004.

ADDRESSES: Scientific views may be submitted electronically, by mail or through hand-delivery/courier. Follow the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section. Electronic files may be e-mailed to: *OW-Docket@epa.gov.* Scientific views may be mailed to the Water Docket, Environmental Protection Agency, Mailecode: 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0079. Instructions for couriers and other hand delivery are provided in section I.C.3. The Agency will not accept facsimiles (faxes).

FOR FURTHER INFORMATION CONTACT: Cindy Roberts, Health and Ecological Criteria Division (4304T), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–1124; *roberts.cindy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Entities potentially interested in today's notice are those that produce, use, or regulate copper. Categories and entities interested in today's notice include.

Category	Examples of interested entities
State/Local/Tribal Government.	States, Tribes and municipalities.
Industry	Mining, fabricated metal products, electric equipment.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this notice. This table lists the types of entities that EPA is now aware could potentially be interested in this notice. Other types of entities not listed in the table could also be interested.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this notice under Docket ID No. OW–2003–0079. The official public docket consists of the documents specifically referenced in this notice, any scientific views received, and other information related to this notice. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view these materials, we encourage you to call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of $25.00.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view the scientific views, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

For public commenters, it is important to note that EPA's policy is that scientific views, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the views contain copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a scientific view containing copyrighted material, EPA will provide a reference to that material in the version of the view that is placed in EPA's electronic public docket. The entire printed scientific view, including the copyrighted material, will be available in the public docket.

Scientific views submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Scientific views that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit My Scientific Views?

You may submit scientific views electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your views. Please ensure that your views are submitted within the specified time period. Scientific views received after the close of the stated time period will be marked "late." EPA is not required to consider these late submittals. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.B.2. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit electronic scientific views as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your scientific views. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the scientific views and allows EPA to contact you in case EPA cannot read your views due to technical difficulties or needs further information on the substance of your views. EPA's policy is that EPA will not edit your scientific views, and any identifying or contact information provided in the body of a view will be included as part of the scientific views that are placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your views due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your views.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit scientific views to EPA electronically is EPA's preferred method for receiving scientific views. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting scientific views. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OW–2003–0079. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your input.

ii. *E-mail.* Scientific views may be sent by electronic mail (e-mail) to: *OW-Docket@epa.gov,* Attention Docket ID No. OW–2003–0079. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail scientific view directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the scientific views that are placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD–ROM.* You may submit scientific views on a disk or CD–ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect, or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of all scientific views, enclosures, or references, to the Water Docket, Environmental Protection Agency, Mailcode MC–4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0079.

3. *By Hand Delivery or Courier.* Deliver your scientific views to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2003–0079. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

D. What Should I Consider as I Prepare My Scientific Views for EPA?

You may find these suggestions helpful for preparing your scientific views:

1. Explain your scientific views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your scientific views.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives.
6. Make sure to submit your scientific views by the time period deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your views.

II. What Are Water Quality Criteria?

Water quality criteria are scientifically-derived concentrations of a pollutant that protect aquatic life or human health from the harmful effects of pollutants in ambient water. Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish and, from time to time, revise criteria for water quality to accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not consider economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. Section 304(a) criteria help States and authorized Tribes adopt water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also help EPA promulgate federal regulations under section 303(c) when such action is necessary.

Once established, an EPA water quality criterion does not substitute for the CWA or EPA regulations; nor is it a regulation. It cannot impose legally binding requirements on the EPA, States, authorized Tribes or the regulated community. State and Tribal decision-makers have the discretion to adopt approaches that differ from EPA's guidance on a case-by-case basis.

III. How Did EPA Involve the Public in the Criteria Update Process?

EPA solicited the public for data and information that would be useful in updating its copper criteria in the1999 **Federal Register** notice titled, *Notice of Intent To Revise Aquatic Life Criteria for Copper, Silver, Lead, Cadmium, Iron and Selenium; Notice of Intent To Develop Aquatic Life Criteria for Atrazine, Diazinon, Nonylphenol, Methyl Tertiary-Butyl Ether (MtBE), Manganese and Saltwater Dissolved Oxygen (Cape Cod to Cape Hatteras); Notice of Data Availability; Request for Data and Information* (64 FR 58409, October 29, 1999). In this notice, EPA also notified the public that it was assessing the use of the biotic ligand model for updating its copper criteria.

IV. What's New About the Updated Criteria?

The draft aquatic life criteria document, titled *2003 Draft Update of Ambient Water Quality Criteria for Copper* (EPA–822-R–03–026), contains updated freshwater and saltwater aquatic life criteria for copper. These criteria revisions are based in part on new data that have become available since EPA's last comprehensive criteria updates for copper: (*Ambient Water Quality Criteria for Copper—1985* (EPA 440/5–84–031) and *Ambient Water Quality Criteria Saltwater Copper Addendum* (April 14, 1995)). We derived both the freshwater and saltwater criteria recommendations presented in this draft document based on the principles set forth in EPA's *1985 Guidelines for Deriving Numerical National Aquatic Life Criteria for Protection of Aquatic Organisms and Their Uses.* In addition to incorporating new data, the freshwater criterion maximum concentration (CMC or "acute criterion") also uses the biotic ligand model (BLM) in the criteria derivation procedures. The freshwater criterion continuous concentration (CCC or "chronic criterion") is based on a BLM-derived acute value divided by a final acute-chronic ratio.

V. How Do BLM-Derived Criteria Differ From Hardness-Dependent Criteria?

The biotic ligand model is a metal bioavailability model based on the latest information about chemical and physiological effects of metals in aquatic environments. Earlier freshwater aquatic life criteria for copper published by the Agency were based on empirical relationships of toxicity to water hardness. That is, a relationship was established linking the criteria concentrations with water hardness. These hardness-dependent criteria, however, represented combined effects of different water quality variables (such as pH and alkalinity) correlated with hardness. Unlike the empirically derived hardness-dependent criteria, the BLM explicitly accounts for individual water quality variables and addresses variables that were not factored into the hardness relationship. Where the previous freshwater aquatic life criteria were hardness-dependent, these updated criteria are dependent on a number of water quality parameters (*e.g.*, calcium, magnesium, dissolved organic carbon) described in the document.

You can find more detailed information on the development and application of the biotic ligand model in the criteria document as well as in *Draft Biotic Ligand Model: Technical Support Document for Its Application to the Evaluation of Water Quality Criteria for Copper* (EPA 822–R–03–027) and *Integrated Approach to Assessing the Bioavailability and Toxicity of Metals* in *Surface Waters and Sediments* (EPA–822–E–99–001).

VI. What Are the Updated Criteria?

The procedures described in the *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* indicate that, except where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if:

- The 4-day average concentration of dissolved copper does not exceed the BLM-derived site-water LC50 (*i.e.*, Final Acute Value (FAV)) divided by the final acute-chronic ratio more than once every 3 years on the average (*i.e.*, the CCC) and if:
- The 24-hour average dissolved copper concentration does not exceed the BLM-derived site-LC50 (or FAV) divided by two, more than once every 3 years on the average (*i.e.*, the CMC).

The procedures described in the *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* indicate that, except where a locally important species is very sensitive, saltwater aquatic organisms and their uses should not be affected unacceptably if:

- The 4-day average concentration of dissolved copper does not exceed 1.9 ug/L more than once every 3 years on the average (*i.e.*, the CCC) and if:
- The 24-hour average dissolved copper concentration does not exceed 3.1 ug/L more than once every 3 years on the average (*i.e.*, the CMC).

VII. What Specific Questions of Science Does EPA Want Views on?

Though the public is welcome to submit scientific views on any component of the copper aquatic life criteria document, EPA is specifically interested in scientific views on the following issues of science:

- The freshwater criteria presented in this document were developed utilizing the biotic ligand model (BLM). Are the procedures used to incorporate the model apt? Is the establishment of the chronic criterion through the BLM-calculated FAV and the assigned acute-chronic-ratio (ACR) appropriate?
- Measurements were not available for all input parameters, for all studies used to derive the criteria. In some cases therefore, input parameters were estimated. A detailed description of the methods used to estimate these missing parameters is included in the updated draft copper criteria document's Appendix, *Estimation of Water Chemistry Parameters for Acute Copper Toxicity Tests.* Are the estimation procedures for the parameters appropriate or could other methods be used to improve the estimations?
- To calculate the saltwater final chronic value (FCV) the *Mytilus spp.* species mean acute value (SMAV) was divided by a final acute-chronic ratio (FACR) derived from both freshwater and saltwater species, implying that a "5th percentile" ACR was applicable for use in conjunction with the *M. spp.*-FAV. Submit scientific views on the appropriateness of this calculation procedure.

VIII. What Is the Relationship Between the Water Quality Criteria and Your State or Tribal Water Quality Standards?

Section 303(c)(1) requires States and authorized Tribes to review and modify, if appropriate, their water quality standards at least once every three years. Water quality standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and general policies for application and implementation.

States and authorized Tribes must adopt water quality criteria that protect designated uses. Protective criteria, based on a sound scientific rationale, contain appropriate factors to protect the designated uses. Criteria may be either narrative or numeric. States and authorized Tribes have four options when adopting water quality criteria for which EPA has published section 304(a) criteria. They can:

(1) Establish numerical values based on recommended section 304(a) criteria;

(2) Adopt section 304(a) criteria, modified to reflect site-specific conditions;

(3) Adopt criteria derived using other scientifically defensible methods; or

(4) Establish narrative criteria where numeric criteria cannot be determined (40 CFR 131.11).

Consistent with 40 CFR 131.21 (*see: EPA Review and Approval of State and Tribal Water Quality Standards* (65 FR 24641, April 27, 2000)), water quality criteria that States and authorized Tribes adopted before May 30, 2000, are in effect for CWA purposes unless Federal regulations superseded them (see, for example, the *National Toxics Rule,* 40 CFR 131.36; *Water Quality Standards for Idaho,* 40 CFR 131.33). New or revised water quality criteria that States and authorized Tribes adopted into law or regulation on or after May 30, 2000, are in effect for CWA purposes only after EPA approves them.

IX. What Is the Status of Existing Recommended Criteria While They Are Being Revised?

Water quality criteria published by EPA are the Agency's recommended water quality criteria until EPA revises or withdraws the criteria. EPA supports using the current section 304(a) criteria for those chemicals for which criteria are being updated and considers them to be scientifically sound until the Agency publishes revised 304(a) criteria.

Dated: December 22, 2003.

G. Tracy Mehan III,

Assistant Administrator, Office of Water.

[FR Doc. 03–32209 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–OW–FRL–7605–3]

Notice of Availability of Draft Aquatic Life Criteria Document for Diazinon and Request for Scientific Views

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for scientific views.

SUMMARY: This action notifies the public about the availability of a draft aquatic life criteria document for diazinon and requests scientific views. The Clean Water Act (CWA) requires the Environmental Protection Agency (EPA) to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. When final, these criteria will provide EPA's recommendations to States and authorized Tribes as they establish their water quality standards as State or Tribal law or regulation. At this time the Agency is not making a final recommendation, rather the Agency is requesting scientific views on the draft document.

DATES: All significant scientific information must be submitted to the Agency on or before March 30, 2004.

ADDRESSES: Scientific views must be submitted electronically, by mail, or through hand-delivery/courier. Follow detailed instructions as provided in section C of the **SUPPLEMENTARY INFORMATION** section. Copies of the criteria document entitled, *Draft Ambient Aquatic Life Water Quality Criteria for Diazinon* (EPA–822–R–03–017) may be obtained from EPA's Water Resource Center by phone at (202) 566–2426, or by e-mail to *center.water.resource@epa.gov* or by conventional mail to: EPA Water Resource Center, 4101T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. You can also download the document from EPA's Web site at *http://www.epa.gov/waterscience/criteria/diazinon/.*

FOR FURTHER INFORMATION CONTACT: Heidi Bell, Health and Ecological Criteria Division (4304), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460; (202) 566–1089; *bell.heidi@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Interested Entities

Entities potentially interested in today's notice are those that produce, use, or regulate diazinon. Categories and entities interested in today's notice include:

Category	Examples of interested entities
State/Local/Tribal Government.	Texas, California, Florida.
Pesticide Producers ..	Syngenta, Makhteshim Agan.
Pesticide Users	Growers of fruit, vegetable, nut and ornamental crops.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested by this notice. This table lists the types of entities that EPA is now aware could potentially be interested by this notice. Other types of entities not listed in the table could also be interested.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this notice under Docket ID No. OW–2003–0062. The official public docket consists of the documents specifically referenced in this action, any scientific views received, and other information related to this notice. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view these documents materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents a page for each page over the 266-page limit plus an administrative fee of $25.00.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view scientific views, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.

It is important to note that EPA's policy is that scientific views, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless your views and information contain copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a scientific view containing copyrighted material, EPA will provide a reference to that material in the version of the scientific view that is placed in EPA's electronic public docket. The entire printed scientific view, including the copyrighted material, will be available in the public docket.

Scientific views submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Scientific views that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Scientific Views?

You may submit scientific views electronically, by mail, or through hand-delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your scientific views. Please ensure that your scientific views are submitted within the specified period. Scientific views received after the close of the review period will be marked "late." EPA is not required to consider these late scientific views.

1. *Electronically.* If you submit electronic information as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your scientific views. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the scientific information and allows EPA to contact you in case EPA cannot read your scientific views due to technical difficulties or needs further information on the substance of your scientific views. EPA's policy is that EPA will not edit your scientific views, and any identifying or contact information provided in the body of the scientific views will be included as part of the scientific views that are placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your scientific views due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your scientific views.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit scientific views to EPA electronically is EPA's preferred method for receiving scientific views. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting scientific views. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OW–2003–0062. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your information.

ii. *E-mail.* Scientific views may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* Attention Docket No. OW–2003–0062. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail scientific views directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the information that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit scientific views on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your scientific views to: Water Docket in the EPA Docket Center, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0062.

3. *By Hand Delivery or Courier.* Deliver your scientific views to: Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2003–0062. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

D. What Should I Consider as I Prepare My Scientific views for EPA?

You may find the following suggestions helpful for preparing your scientific views:

1. Explain your scientific views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your scientific views.
4. Provide specific examples to illustrate your concerns.
5. Offer alternatives.
6. Make sure to submit your scientific views by the deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your scientific views.

II. Background and Today's Action

A. What Are Recommended Water Quality Criteria?

Recommended water quality criteria are the concentrations of a chemical in water at or below which aquatic life are protected from acute and chronic adverse effects of the chemical. Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water. Section 304(a) criteria provide guidance to States and Tribes in adopting water quality standards. The criteria also provide a scientific basis for EPA to develop Federally promulgated water quality standards under section 303(c).

B. What Is Diazinon and Why Are We Concerned About It?

Diazinon is an organophosphorus pesticide used throughout the U.S. to control insects in agricultural areas, households and urban settings. It is mobile and moderately persistent in the environment. Due to its chemical properties and widespread use, diazinon is frequently found in effluents from wastewater treatment plants and in storm water runoff in both urban and agricultural areas. Diazinon is known to be extremely toxic to birds and aquatic life, particularly invertebrates. For these reasons, EPA has developed the following water quality criteria:

C. What Are the Draft National Recommended Water Quality Criteria?

Freshwater:

Aquatic life should not be affected unacceptably if the:

One hour average concentration of diazinon does not exceed 0.10 ug/L more than once every three years on the average (Acute Criterion) and if the four-day average concentration of diazinon does not exceed 0.10 ug/L more than once every three years on the average (chronic criterion).

Saltwater:

Aquatic life should not be affected unacceptably if the:

One-hour average concentration of diazinon does not exceed 0.82 ug/L more than once every three years on the average (acute criterion) and if the four-day average concentration of diazinon does not exceed 0.40 ug/L more than once every three years on the average (chronic criterion).

D. What Specific Questions of Science Does EPA Want Views On?

Though the public is welcome to submit scientific views on any component of the diazinon aquatic life criteria document, EPA is specifically interested in scientific views on the following issues of science:

- The derivation of final chronic values (FCVs) as protective of chronic effects to freshwater and saltwater aquatic life using the available acute and chronic data;
- Scientific information or data made available since the literature search was completed in 1997. For example, information regarding the sub-lethal effects of diazinon (*e.g.*, olfactory or predator-prey response).

E. Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Draft Criteria?

The Agency published detailed information about its revised process for developing and revising criteria in the **Federal Register** on December 10, 1998 (63 FR 68354) and in the EPA document entitled, *National Recommended Water Quality—Correction* (EPA 822–Z–99–001, April 1999). The purpose of the revised process is to provide expanded opportunities for public input, and to make the criteria development process more efficient. Also, EPA notified the public of its intent to develop aquatic life criteria for diazinon in the **Federal Register** on October 29, 1999 (64 FR 58409). At that time, EPA solicited any pertinent data or scientific views that would be useful in developing the draft aquatic life criteria for diazinon.

Dated: December 23, 2003.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 03–32210 Filed 12–30–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Strategic Plan for Fiscal Years 2004–2009

AGENCY: Farm Credit Administration.

ACTION: Notice of approval and availability.

SUMMARY: This notice announces the approval and availability of the Farm Credit Administration's (FCA or agency) Strategic Plan for Fiscal Years 2004–2009 (revised Strategic Plan). The Government Performance and Results Act of 1993 requires that Federal agencies update their strategic plans at least every 3 years and, in doing so, solicit the views and suggestions of those entities potentially affected by or interested in the plan. In formulating the revised Strategic Plan, the agency solicited input from various constituent groups. Additionally, a draft of the Strategic Plan was made available for comment in October 2003.

DATES: December 11, 2003.

ADDRESSES: The revised Strategic Plan is available on the agency's Web site at *http://www.fca.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Walker, Executive Assistant, Office of the Chief Operating Officer, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4271; TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration (FCA or agency) is charged by Congress, as established in Title V of the Farm Credit Act of 1971, as amended, with the mandate of overseeing the agricultural Government-sponsored enterprises (GSEs) serving rural America. These include the Farm Credit System (System) and the Federal Agricultural Mortgage Corporation. FCA also has statutory responsibility to examine the National Consumer Cooperative Bank, a non-System entity operating as a federally chartered, privately owned banking corporation.

The Government Performance and Results Act of 1993 (GPRA) requires that each Federal agency establish a strategic plan that covers a period of not less than 5 years. It also mandates that these plans be updated and revised at least every 3 years. In accordance with GPRA, FCA issued its first strategic plan in 1997. A revised plan was approved in 2000. Thus, the Strategic Plan for Fiscal Years 2004–2009 represents the second update to the agency's original Strategic Plan completed under GPRA. The revised Strategic Plan describes our mission, our strategic goals, and strategies to achieve those goals over the next 5 years.

The Strategic Plan for Fiscal Years 2004–2009 is the culmination of an extensive outreach effort. The FCA Board began its work on this plan in April 2003 by initiating a series of strategic planning sessions to seek input from farmers, the Farm Credit Council and other Farm Credit System representatives, academics and economists, the American Bankers Association, the Independent Community Bankers of America, former FCA Board chairmen and FCA senior management. Subsequent planning sessions held by the Board and the Office of the Chief Operating Officer over the next several months were used to establish specific direction for formulation of a draft Strategic Plan for Fiscal Years 2004–2009, which the agency released for comment in October 2003 for a 30-day period.

The agency received 24 comment letters on the draft Strategic Plan for Fiscal Years 2004–2009. Most of the comment letters (22 of 24) came from the agency's staff. To the extent practicable, applicable comments recommending revisions to specific sections of the draft Strategic Plan were incorporated in the revised Strategic Plan. Most of the revisions made were in the interest of providing clarification and did not represent material changes to the draft Strategic Plan. The most substantive revision was the decision to identify Goal 3 in the Plan, Implementation of the President's Management Agenda, as the third strategic goal rather than an operational goal, as it was defined in the draft Strategic Plan. One commenter felt this goal was also strategic in nature, just as Goals 1 and 2, and the FCA Board ultimately agreed.

Dated: December 23, 2003.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 03–32128 Filed 12–30–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 18, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0761.

Title: Closed Captioning of Video Programming.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; and individuals or households.

Number of Respondents: 1,425.

Estimate Time per Response: 30 mins. to 5 hrs.

Frequency of Response: On occasion reporting requirement; third party disclosure.

Total Annual Burden: 2,013 hours.

Total Annual Costs: $19,000.

Needs and Uses: The FCC's Report and Order, MM Docket No. 95–176, FCC 97–279, adopted rules and implementation schedules for the closed captioning of video programming, pursuant to section 305 of the Telecommunications Act of 1996, which added Section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended. The requirements set forth in section 713 are intended to ensure that video programming is accessible to individuals with hearing disabilities through close captioning, regardless of the delivery mechanism used to reach consumers. Pursuant to section 713, the FCC established phase-in schedules to increase the amount of closed captioned programming. The rules also provided procedures for entities to use to request exemptions of the closed captioning requirements based on an undue burden standard. Furthermore, they detailed a complaint process for viewers to use for the enforcement of closed captioning requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–32111 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 18, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 30, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Application for Authority to Construct or Make Changes in an International Broadcast Station.

Form No.: FCC Form 420–IB.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 160 responses.

Estimated Time Per Response: 16 hours.

Frequency of Response: On occasion, annual and other reporting requirements.

Total Annual Burden: 160 hours.

Total Annual Cost: $44,000.

Needs and Uses: The Federal Communications Commission has developed a new FCC Form 420–IB to facilitate the Commission's goal to implement electronic filing of the form and to accommodate any changes to the form in the future. International broadcasters will file the FCC Form 420–IB in lieu of FCC Form 309. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

OMB Control No.: 3060–XXXX.

Title: Application for an International Broadcast Station License.

Form No.: FCC Form 421–IB.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 120 responses.

Estimated Time Per Response: 12 hours.

Frequency of Response: On occasion, annual and other reporting requirements.

Total Annual Burden: 120 hours.

Total Annual Cost: $36,000.

Needs and Uses: The Federal Communications Commission has developed FCC Form 421–IB to facilitate the Commission's goal to implement electronic filing of the form and to accommodate any changes to the form in the future. International broadcasters will file the FCC Form 421–IB in lieu of FCC Form 310.

OMB Control No.: 3060–XXXX.

Title: Application for Renewal of an International Broadcast Station License.

Form No: FCC Form 422–IB.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 60 responses.

Estimated Time Per Response: 6 hours.

Frequency of Response: On occasion, annual and other reporting requirements.

Total Annual Burden: 60 hours.

Total Annual Cost: $32,000.

Needs and Uses: The Federal Communications Commission has developed FCC Form 422–IB to facilitate the Commission's goal to implement electronic filing of the form and to accommodate any changes to the form in the future. International broadcasters will file the FCC Form 422–IB in lieu of FCC Form 311.

OMB Control No.: 3060–XXXX.

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations.

Form No.: FCC Form 423–IB.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 30 respondents; 240 responses.

Estimated Time Per Response: 8 hours (average).

Frequency of Response: On occasion, annual and other reporting requirements.

Total Annual Burden: 240 hours.

Total Annual Cost: $62,000.

Needs and Uses: The Federal Communications Commission has developed a new FCC Form 423–IB to facilitate the Commission's goal to implement electronic filing of the form and to accommodate any changes to the form in the future. International broadcasters will file the FCC Form 423–IB in lieu of FCC Form 308.

OMB Control No.: 3060–1039.

Title: Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act—Review Process, WT Docket No. 03–128.

Form No.: To be determined.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and State, local or tribal government.

Number of Respondents: 12,000 respondents; 7,800 responses.

Estimated Time Per Response: 1–3 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 73,800 hours.

Total Annual Cost: $10,017,000.

Needs and Uses: The data is used by FCC staff, State Historic Preservation Officers (SHPO) Tribal Historic Preservation Officers (THPO) and the Advisory Council of Historic Preservation (ACHP) to take such actions as may be necessary to ascertain whether a proposed action may affect historic properties that are listed or eligible for listing in the National Register as directed by Section 106 of the National Historic Preservation Act (NHPA) and the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–32112 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

December 16, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 30, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1038.

Type of Review: Revision of a currently approved collection.

Title: Digital Television Transition Information Questionnaires.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 844.

Estimated Time per Response: 4 to 24 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 4,823 hours.

Total Annual Cost: $251,400.

Needs and Uses: In the Telecommunications Act of 1996, Congress directed that every broadcaster be given a second channel for digital operations. At the end of the transition, broadcasters' analog channels will be returned to the government. Congress set a target date of December 31, 2006, for the end of the transition, although that date can be extended if 85% of viewers in a particular market do not have access to the digital signals. In addition, at the end of the transition the broadcast spectrum will contract from channels 2–69 to channels 2–51. This 108 MHz of spectrum (channels 52–69) can then be used by advanced wireless services and public safety authorities. There are several key building blocks to a successful transition. First, content—consumers must perceive something significantly different than what they have in analog. Second, distribution—the content must be delivered to consumers in a simple and convenient way. Third, equipment—must be capable, affordable and consumer-friendly. And fourth, education—consumers must be educated about what digital television is, and what it can do for them. These information requests are designed to gather data in these key areas.

OMB Control Number: 3060–XXXX.

Title: Telecommunication Relay Services and Speech-to-Speech Services for Individual with Hearing and Speech Disabilities, CC Docket No. 98–67 (Declaratory Ruling), FCC 03–190.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1.

Estimated Time per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 8 hours.

Total Annual Cost: None.

Needs and Uses: On August 1, 2003, the Commission released the Declaratory Ruling, *In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67, FCC 03–190.* In the *Declaratory Ruling,* the Commission clarifies that captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. The Commission also clarifies that certain TRS mandatory minimum standards do not apply to captioned VCO service, and waives §§ 64.604(a)(1) and (a)(3) of the Commission's rules for all current and future captioned telephone VCO service providers, for the same period of time indicated herein, beginning on the date of release of this *Declaratory Ruling.* These waivers are contingent on the filing of annual reports, for a period of three years, with the Commission. Sections 64.604 (a)(1) and (a)(3) of the Commission's rules, which contain information collection requirements under the Paperwork Reduction Act, are not effective until approved by the Office of Management and Budget.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–32113 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 19, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 30, 2004. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0893.

Title: Universal Licensing Service (ULS) Database Corrections.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 4,442 respondents; 21,000 responses.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 10,500 hours.

Total Annual Cost: N/A.

Needs and Uses: This collection is necessary to ensure that the ULS database is as accurate as possible. It involves the correction of licensing data errors detected through integrity reports obtained by searching the ULS database. The data must be correct to prepare for specific auctions of certain radio services that have been placed in the ULS but have not yet been auctioned. The Commission will issue a series of Public Notices to conduct database corrections for services that are migrating to ULS. We have included Broadband Licensing System (BLS) licensees in this collection. This data aids in spectrum management and provides for an efficient graphical user interface for each potential auction participant.

OMB Control No.: 3060–0947.

Title: Section 101.1327, Renewal Expectancy for EA Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 18,820.

Estimated Time Per Response: .50 “ 20 hours.

Frequency of Response: Every 10 year reporting requirement.

Total Annual Burden: 284,653 hours.

Total Annual Cost: $18,820.

Needs and Uses: The information required by Section 101.1327 is used to determine whether a renewal applicant of a Multiple Address System has complied with the requirement to provide substantial service by the end of the ten-year initial license term. The FCC uses the information to determine whether an applicant's license will be renewed at the end of the license period.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–32114 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

December 19, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before March 1, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0489

Title: Section 73.37, Applications for Broadcast Facilities, Showing Required

Form Number: N/A

Type of Review: Extension of currently approved collection

Respondents: Business or other for-profit entities

Number of Respondents: 365

Estimated Hours per Response: 1

Frequency of Response: On occasion reporting requirement

Total Annual Burden: 365 hours

Total Annual Cost: $798,750

Needs and Uses: 47 CFR 73.37(d) requires an applicant for a new AM broadcast station, or for a major change in an authorized AM broadcast station, to make a satisfactory showing that objectionable interference will not result to an authorized AM station as a condition for its acceptance if new or modified nighttime operation by a Class B station is proposed. 47 CFR 73.37(f) requires applicants seeking facilities modification that would result in spacings that fail to meet any of the separation requirements to include a showing that an adjustment has been made to the radiated signal which effectively results in a site-to-site radiation that is equivalent to the radiation of a station with standard Model I facilities. FCC staff use the data to ensure that objectionable interference will not be caused to other authorized AM stations.

OMB Control Number: 3060–0320

Title: Section 73.1350, Transmission System Operation

Form Number: N/A

Type of Review: Extension of currently approved collection

Respondents: Businesses or other for-profit entities; Not-for-profit institutions

Number of Respondents: 411

Estimated Hours per Response: 0.5 hours

Frequency of Response: On occasion reporting requirements

Total Annual Costs: $0.00

Total Annual Burden: 206 hours

Needs and Uses: 47 CFR 73.1350(g) requires licensees to submit a notification to the FCC in Washington, DC whenever a transmission system control point is established at a location other than at the main studio or transmitter within 3 days of the initial use of that point. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation. FCC staff use the data to maintain complete operating information regarding licensees to be used in the event that FCC field staff needs to contact the station about interference.

OMB Control Number: 3060–0182

Title: Section 73.1620, Program Tests

Form Number: N/A

Type of Review: Extension of currently approved collection

Respondents: Business or other for-profit entities; Not-for-profit institutions

Number of Respondents: 1,501

Estimated Hours per Response: 1—5 hours

Frequency of Response: On occasion reporting requirement; Third party disclosure

Total Annual Burden: 1,505 hours

Total Annual Costs: $0.00

Needs and Uses: 47 CFR 73.1620(a)(1) requires permittees of a nondirectional AM or FM station, or a nondirectional or directional TV station to notify the FCC upon beginning of program tests. An application for license must be filed within 10 days of this notification. 47 CFR 73.1620(a)(2) requires a permittee of an AM or FM station with a directional antenna to file a request for program test authority 10 days prior to date on which it desires to begin program tests. This is filed in conjunction with an application for license. Section 73.1620(f) requires licensees of UHF TV stations, assigned to the same allocated channel which a 1000 watt UHF translator station is authorized to use, to notify the licensee of the translator station at least 10 days prior to commencing or resuming operation and certify to the FCC that such advance notice has been given. 47 CFR 73.1620(g) requires permittees to report any deviations from their promises, if any, in their application for license to cover their construction permit (FCC Form 302) and on the first anniversary of their commencement of program tests. The notification in 47 CFR 73.1620(a) alerts the Commission that construction of a station has been completed and that the station is broadcasting program material. The notification in 47 CFR 73.1620(f) alerts the UHF translator station that the potential of interference exists. The report in 47 CFR 73.1620(g) stating deviations are necessary to eliminate possible abuses of the FCC's processes and to ensure that comparative promises relating to service to the public are not inflated.

OMB Control Number: 3060–0346

Title: Section 78.27, License Conditions

Form Number: N/A

Type of Review: Extension of a currently approved collection

Respondents: Individuals or households; Business and other for-profit entities; and Not-for-profit institutions

Number of Respondents: 50

Estimated Time per Response: 10 mins. (0.167 hrs.)

Frequency of Response: One time and on occasion reporting requirements

Total Annual Burden: 8 hours

Total Annual Costs: None

Needs and Uses: 47 CFR 78.27 requires licensees of Cable Television Relay Service (CARS) stations to notify the FCC in writing when the station commences operation. A CARS licensee, which needs additional time to complete construction of the station, must request an extension of time from the FCC 30 days prior to the expiration of the one-year construction period. The Commission uses these filings to provide accurate CARS channel usage for frequency coordination, to prevent warehousing of spectrum, and to prevent frequency interference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–32115 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–3824]

ALLTEL Communications, Inc. for Designation as an Eligible Telecommunications Carrier and Rural Service Area Redefinition in North Carolina

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the ALLTEL Communications, Inc. (ALLTEL) petition. ALLTEL is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of North Carolina. ALLTEL also requests that the Commission redefine certain rural service areas.

DATES: Comments are due on or before January 12, 2004. Reply comments are due on or before January 26, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. See Supplementary Information for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released November 26, 2003. On August 26, 2003, ALLTEL filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, so that it can receive Federal universal service support in the state of North Carolina. ALLTEL also requests that the Commission redefine certain rural service areas pursuant to section 54.207 of the Commission's rules. ALLTEL provides commercial mobile radio services and seeks federal universal service support for its service offered in non-rural wire centers currently served by BellSouth Telecomm Inc., Verizon South, Inc.-NC, Verizon South, Inc. (CONTEL), and North State Telephone Co., and for service offered in rural wire centers currently served by ALLTEL Carolina, Inc., Atlantic Telephone Membership, Central Telephone Co., Concord Telephone Company, Ellerbe Telephone Co. Inc., Lexcom Telephone Company, Mebtel Inc., Piedmont Telephone Membership, Pineville Telephone Co., Randolph Telephone Co., Randolph Telephone Membership, Service Telephone Co., Sprint Mid-Atlantic, Star Telephone Membership, Surry Telephone Membership, Tri-County Telephone Membership, and Yadkin Valley Telephone Membership. ALLTEL has requested that the Commission consider ALLTEL's request to become an ETC in non-rural service areas separately from its rural area ETC designation requests, if such bifurcation would expedite Commission action on ALLTEL's ETC petitions as they relate to the non-rural service areas.

ALLTEL asserts that the North Carolina Utilities Commission (North Carolina Commission) does not regulate commercial mobile radio service providers for purposes of ETC designations and presents an order from the North Carolina Commission asserting its lack of jurisdiction. Hence, according to ALLTEL, the Commission has jurisdiction under section 214(e)(6) to consider and grant its petition. ALLTEL also maintains that it satisfies all the statutory and regulatory prerequisites for ETC designation and that designating ALLTEL as an ETC in areas served by rural LECs will serve the public interest.

In accordance with section 54.207 of the Commission's rules, ALLTEL requests that the Commission designate ALLTEL as an ETC in a service area defined along boundaries that differ from the incumbent rural local exchange carriers' study area boundaries. The service area requested by ALLTEL for ETC designation partially covers the study areas of ALLTEL Carolina, Inc., Central Telephone Company and Surry Telephone Membership Corporation. ALLTEL requests a redefinition of these rural service areas so each wire center in each of the respective study areas is designated as a separate service area. ALLTEL limits its redefinition request to those wire centers that ALLTEL serves in its entirety and notes that where ALLTEL serves only a portion of a wire center, it does not request ETC status for that wire center. ALLTEL maintains that the proposed redefinition of service areas for ETC purposes is consistent with the factors to be considered when redefining a rural telephone company service area, as enumerated by the Federal-State Joint Board on Universal Service.

The petitioner must provide copies of its petition to the North Carolina Commission. The Commission sent a copy of this Public Notice to the North Carolina Commission by overnight express mail to ensure that the North Carolina Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before January 12, 2004, and reply comments are due on or before January 26, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/*

ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Sharon Webber,

Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–32116 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–3825]

ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier and Rural Service Area Redefinition in Georgia

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the ALLTEL Communications, Inc. (ALLTEL) petition. ALLTEL is seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered throughout its licensed service area in the state of Georgia. ALLTEL also requests that the Commission redefine certain rural service areas.

DATES: Comments are due on or before January 12, 2004. Reply comments are due on or before January 26, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Karen Franklin, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released November 26, 2003. On August 26, 2003, ALLTEL filed with the Commission a petition pursuant to section 214(e)(6) of the Communications Act of 1934, as amended, so that it can receive federal universal service support in the state of Georgia. ALLTEL also requests that the Commission redefine certain rural service areas pursuant to section 54.207 of the Commission's rules. ALLTEL provides commercial mobile radio services and seeks federal universal service support for its service offered in non-rural wire centers currently served by BellSouth Telecomm Inc., and for service offered in rural wire centers currently served by Quincy Telephone Co., Progressive Rural Telephone Cooperative, Planters Rural Telephone Cooperative, Plant Telephone Co., Pineland Telephone Cooperative, Pembroke Telephone Co., Inc., Hawkinsville Telephone Co., Glenwood Telephone Co., Georgia Telephone Corp., Frontier Communications of Georgia, Darien Telephone Co. Inc., Coastal Utilities, Inc., Camden Telephone & Telegraph Co., Bulloch County Rural Telephone Co., Brantley Telephone Co. Inc., Alma Telephone Co., Inc., ALLTEL Georgia Communication Corporation, ALLTEL Georgia, Inc., Georgia ALLTEL Telecomm Inc., and Accucomm Telecommunications, Inc. ALLTEL has requested that the Commission consider ALLTEL's request to become an ETC in non-rural service areas separately from its rural area ETC designation requests, if such bifurcation would expedite Commission action on ALLTEL's ETC petitions as they relate to the non-rural service areas.

ALLTEL asserts that the Georgia Public Service Commission (Georgia Commission) does not regulate commercial mobile radio service providers for purposes of making determinations concerning eligibility for ETC designations and presents a letter from the Georgia Commission acknowledging its lack of such jurisdiction. Hence, according to ALLTEL, the Commission has jurisdiction under section 214(e)(6) to consider and grant its petition. ALLTEL also maintains that it satisfies all the statutory and regulatory prerequisites for ETC designation and that designating ALLTEL as an ETC in areas served by rural LECs will serve the public interest.

In accordance with section 54.207 of the Commission's rules, ALLTEL requests that the Commission designate ALLTEL as an ETC in a service area defined along boundaries that differ from the incumbent rural local exchange carriers' study area boundaries. The service area requested by ALLTEL for ETC designation partially covers the study areas of ALLTEL Georgia, Inc., ALLTEL Georgia Communications Corporation, Frontier Communications of Fairmont, Georgia ALLTEL Telcomm Inc., and Plant Telephone Company. ALLTEL requests a redefinition of these rural service areas so each wire center in each of the respective study areas is designated as a separate service area. ALLTEL limits its redefinition request to those wire centers that ALLTEL serves in its entirety and notes that where ALLTEL serves only a portion of a wire center, it does not request ETC status for that wire center. ALLTEL maintains that the proposed redefinition of service areas for ETC purposes is consistent with the factors to be considered when redefining a rural telephone company service area, as enumerated by the Federal-State Joint Board on Universal Service. The Wireline Competition Bureau seeks comment on the ALLTEL Petition.

The petitioner must provide copies of its petition to the Georgia Commission. The Commission sent a copy of this Public Notice to the Georgia Commission by overnight express mail to ensure that the Georgia Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due on or before January 12, 2004, and reply comments are due on or before January 26, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *<http://www.fcc.gov/e-file/ecfs.html>*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Sharon Webber,

Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–32117 Filed 12–30–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011383–038.

Title: Venezuelan Discussion Agreement.

Parties: A.P. Moller-Maersk A/S, Hamburg-Süd KG, Seaboard Marine Ltd., King Ocean Service de Venezuela, and Seafreight Line.

Synopsis: The amendment updates Maersk's corporate name and deletes Hamburg-Süd's trade names.

Agreement No.: 011421–031.

Title: East Coast of South America Discussion Agreement.

Parties: Alianca Navegacao e Logistica Ltda.; A.P. Moller-Maersk A/S; Compania Sud Americana de Vapores, S.A.; Hamburg-Süd KG; APL Co. Pte Ltd.; Lykes Lines Limited, LLC; Mediterranean Shipping Company, S.A.; Evergreen Marine Corporation (Taiwan) Limited; Companhia Libra de Navegacao; Montemar Maritima, S.A.; CMA CGM, S.A.; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; and Safmarine Container Lines, N.V.

Synopsis: The amendment updates Maersk's corporate name and deletes Hamburg-Süd's trade names.

Agreement No.: 011426–033.

Title: West Coast of South America Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Hamburg-Süd KG; APL Co. Pte Ltd.; Seaboard Marine Ltd.; Trinity Shipping Line; Mediterranean Shipping Company, S.A.; P&O Nedlloyd B.V.; South Pacific Shipping Company, Ltd. (d/b/a Ecuadorian Line); and CMA CGM, S.A.

Synopsis: The amendment updates Maersk's corporate name and deletes Hamburg-Süd's trade names.

Agreement No.: 011550–009.

Title: ABC Discussion Agreement.

Parties: A.P. Moller-Maersk A/S, Hamburg-Süd KG, King Ocean Services Limited, and Seafreight Line.

Synopsis: The amendment updates Maersk's corporate name and deletes Hamburg-Süd's trade name.

Agreement No.: 011814–002.

Title: CAT/King Ocean Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S; Hamburg-Süd KG; King Ocean Services Limited; and King Ocean Service de Venezuela, S.A.

Synopsis: The amendment updates Maersk's corporate name, deletes Hamburg-Süd's trade name, and changes internal references accordingly. It also corrects the address of King

Ocean, changes the name of the agreement, and restates the agreement.

Agreement No.: 201151.

Title: New Orleans/UMS France Road Terminal Lease Agreement.

Parties: Board of Commissioners of the Port of New Orleans Universal Maritime Service Corporation.

Synopsis: The agreement provides for the lease of certain facilities at the France Road Terminal and remains in effect through September 30, 2008.

By Order of the Federal Maritime Commission.

Dated: December 24, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–32188 Filed 12–30–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 12, 2004.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Ronald G. Chamberlin*, Eitzen, Minnesota; to acquire voting shares of Eitzen Independents, Inc., Eitzen, Minnesota, and thereby indirectly acquire voting shares of Eitzen State Bank, Eitzen, Minnesota.

Board of Governors of the Federal Reserve System, December 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–32139 Filed 12–30–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Fulton Financial Corporation*, Lancaster, Pennsylvania; to merge with Resource Bankshares Corporation, Virginia Beach, Virginia, and thereby indirectly acquire Resource Bank, Virginia Beach, Virginia.

Board of Governors of the Federal Reserve System, December 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–31995 Filed 12–30–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 03-28720) published on page 65932 of the issue for Monday, November 24, 2003.

Under the Federal Reserve Bank of Richmond heading, the entry for Bank of America Corporation, Charlotte, North Carolina, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Bank of America Corporation*, Charlotte, North Carolina; to merge with FleetBoston Financial Corporation, Boston, Massachusetts, and thereby indirectly acquire Fleet National Bank, Providence, Rhode Island, and Fleet Maine, National Association, South Portland, Maine.

In connection with this proposal, Bank of America has applied to acquire up to 19.9 percent of FleetBoston Financial Corporation; and FleetBoston Financial Corporation has an option to acquire 19.9 percent of the voting shares of Bank of America Corporation.

Comments on this application must be received by January 16, 2004.

Board of Governors of the Federal Reserve System, December 22, 2003.

Jennifer J. Johnson,

Secretary Secretary of the Board.

[FR Doc. 03–31997 Filed 12–30–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *America Bank Holding Corporation*, Corpus Chisti, Texas; to acquire 100 percent of the voting shares of First National Bank of Goliad, Golaid, Texas.

Board of Governors of the Federal Reserve System, December 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–31998 Filed 12–30–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Sulphur Springs Bancshares, Inc.*, Sulphur Springs, Texas, and Sulphur Springs Delaware Financial Corporation, Dover, Delaware; to acquire 100 percent of the voting shares of Hawkins Financial Corporation, Hawkins, Texas, and thereby indirectly acquire Hawkins Delaware Financial Corporation, Wilmington, Delaware, and First State Bank, Hawkins, Texas.

Board of Governors of the Federal Reserve System, December 23, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–32140 Filed 12–30–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. *Bayerische Hypo-und Vereinsbank AG and Munchener Ruckversicherungs–Gesellschaft AG*, both of Munich, Germany; to engage *de novo* through HVB Global Assets Company, L.P., in extending and servicing loans or other extensions of credit, pursuant to section 225.28(b)(1) of Regulation Y.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *ICNB Financial Corporation*, Ionia, Michigan; to engage *de novo* though Legacy Trust, Grand Rapids, Michigan, in trust company functions, pursuant to section 225.28(b)(5) of Regulation Y.

C. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Mountain West Financial Corp.*, Helena, Montana; to retain authority to engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.03–31994 Filed 12–30–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notices of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 03-30951) published on page 70015 of the issue for Tuesday, December 16, 2003.

Under the Federal Reserve Bank of Richmond heading, the entry for Southern Financial Bancorp, Inc., Warrenton, Virginia, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Southern Financial Bancorp., Inc.*, Warrenton, Virginia; to acquire 100 percent of the voting shares of Essex Bancorp, Inc., Norfolk, Virginia, and thereby indirectly acquire Essex Savings Bank, F.S.B., Norfolk, Virginia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

In connection with this application, Applicant also has applied to acquire 24.9 percent of the voting shares of LoanCare Servicing Center, Inc., Norfolk, Virginia, and thereby engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y, and in collection agency services, pursuant to section 225.28(b)(2)(iv) of Regulation Y.

Comments on this application must be received by January 9, 2004.

Board of Governors of the Federal Reserve System, December 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–31996 Filed 12–30–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Public Meeting: Application by Bank of America Corporation, Charlotte, North Carolina, To Merge with FleetBoston Financial Corporation, Boston, Massachusetts

AGENCY: Federal Reserve System

ACTION: Notice of Meeting.

SUMMARY: Two public meetings will be held regarding the notice submitted by Bank of America Corporation, Charlotte, North Carolina, to acquire FleetBoston Financial Corporation, Boston, Massachusetts ("FleetBoston"), and its banking and nonbanking subsidiaries pursuant to the Bank Holding Company Act ("BHC Act") and related statutes. The purpose of the public meetings is to collect information relating to factors the Board is required to consider under the BHC Act.

DATES: The Boston meeting will be held on Wednesday, January 14, 2004, at 9:00 a.m. EST. The San Francisco meeting will be held on Friday, January 16, 2004, at 8:30 a.m. PST.

ADDRESSES: The public meeting in Boston, Massachusetts, will be held at the Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts, and will begin at 9:00 a.m. EST. The public meeting in San Francisco, California, will be held at the Federal Reserve Bank of San Francisco, 101 Market Street, San Francisco, California, and will begin at 8:30 a.m. PST.

FOR FURTHER INFORMATION CONTACT: For the Boston meeting, contact Jonathan S. Fine, Assistant Vice President, Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts. Facsimile: 617/973–3219. For the San Francisco meeting, contact Joy Hoffmann, Community Affairs Officer, Federal Reserve Bank of San Francisco, 101 Market Street, San Francisco, California 94120. Facsimile: 415/393–1920.

SUPPLEMENTARY INFORMATION: On November 14, 2003, Bank of America Corporation, Charlotte, North Carolina ("Bank of America"), requested the Board's approval under the Bank Holding Company Act (12 U.S.C. 1841 et seq.) ("BHC Act") and related statutes to merge with FleetBoston. The General Counsel, acting pursuant to delegated authority, hereby orders that public meetings on the Bank of America/FleetBoston proposal be held in Boston, Massachusetts, and San Francisco, California.

Purpose and Procedures

The purpose of the public meetings is to collect information relating to factors the Board is required to consider under the BHC Act. These factors are (i) the effects of the proposal on the financial and managerial resources and future prospects of the companies and banks involved in the proposal, (2) competition in the relevant markets, and (3) the convenience and needs of the communities to be served. Convenience and needs considerations include a review of the records of performance of Bank of America and FleetBoston under the Community Reinvestment Act, which requires the Board to take into account in its review of a bank acquisition or merger proposal each institution's record of meeting the credit needs of its entire community, including low– and moderate–income neighborhoods, consistent with the safe and sound operation of the institution. 12 U.S.C. 2903.

Procedures for Hearing

Testimony at the public meeting will be presented to a panel consisting of a Presiding Officer and other panel members appointed by the Presiding Officer. In conducting the public meeting, the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. In contrast to a formal administrative hearing, the rules for taking evidence in an administrative proceeding will not apply to this public meeting. Panel members may question witnesses, but no cross–examination of witnesses will be permitted. The public meeting will be transcribed and information regarding procedures for obtaining a copy of the transcript will be announced at the public meeting.

On the basis of the requests received, the Presiding Officer will prepare a schedule for persons wishing to testify and establish the order of presentation. To ensure an opportunity for all interested commenters to present their views, the Presiding Officer may limit the time for presentation. Persons not listed on the schedule may be permitted to speak at the public meeting if time permits at the conclusion of the schedule of witnesses at the discretion of the Presiding Officer. Copies of testimony may, but need not, be filed with the Presiding Officer before a person's presentation.

Request to Testify

All persons wishing to testify at the public meeting to be held in Boston must submit a written request to Jonathan Fine, Assistant Vice President, Federal Reserve Bank of Boston, 600 Atlantic Avenue, Boston, Massachusetts 02106 (facsimile: 617/973–3219) not later than 8:00 p.m. EST, Wednesday, January 7, 2004. All persons wishing to testify at the public meeting to be held in San Francisco must submit a written request to Joy Hoffmann, Community Affairs Officer, Federal Reserve Bank of San Francisco, 101 Market Street, San Francisco, California 94120 (facsimile: 415/393–1920), not later than 5:00 p.m. PST, Wednesday, January 7, 2004. In the alternative, persons wishing to testify at either public meeting may submit a written request to Jennifer J. Johnson, Secretary of the Board of Governors of the Federal Reserve System 20th and C Streets, NW, Washington, DC 20551 (facsimile 202/452–3556) not later than 8:00 p.m. EST, Wednesday, January 7, 2004. The request must include the following information: (i) identification of which meeting the participant wishes to attend, (ii) a brief statement of the nature of the expected testimony (including whether the testimony will support or oppose the proposed transaction, or provide other comment on the proposal) and the estimated time required for the presentation; (iii) address and telephone number (e–mail address and facsimile number, if available) of the person testifying; and (iv) identification of any special needs, such as from persons desiring translation services, persons with a physical disability who may need assistance, or persons requiring visual aids for their presentation. To the extent available, translators will be provided to persons wishing to present their views in a language other than English if this information is included in the request to testify. Persons interested only in attending the meeting, but not testifying, need not submit a written request to attend.

By order of the General Counsel, acting pursuant to delegated authority, effective December 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–31993 Filed 12–30–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Public Health Preparedness; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the Secretary's Council on Public Health Preparedness.

The purpose of this public meeting is to convene the Council to discuss issues related to preparing the nation to respond to public health emergencies in general and bioterrorism in particular. The Council may consider the following major issues: BioShield; Modeling Initiatives: Transport of Possibly Infected Exotic Animals; Global IT Monitoring; Public Health Preparedness Effort; State and Local Programs; R&D Initiatives.

Name of Committee: Secretary's Council on Public Health Preparedness.

Date: January 22–23, 2004.

Time: January 22—9 a.m.–6 p.m.; January 23—9 a.m.–3 p.m.

Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024, Telephone: (202) 479–4006.

Contact Person: Dr. Judy Blumenthal, Executive Director, Secretary's Council on Public Health Preparedness, Office of the Assistant Secretary for Public Health Emergency Preparedness, 200 Independence Avenue, SW., Room 638G, Washington, DC 20201, 202–401–4848.

Supplementary Information: The Secretary's Council on Public Health Preparedness was established on October 22, 2001, by the Secretary of Health and Human Services under the authorization of Section 319 of the Public Health Service Act (42 U.S.C. § 247d); Section 222 of the Public Health Service Act (42 U.S.C. § 217a). The purpose of the Secretary's Council on Public Health Preparedness will be to advise the Secretary on appropriate actions to prepare for and respond to public health emergencies including acts of bioterrorism. The function of the Council is to advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) Improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bioterrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bio-terrorism event; and (3) improve public health preparedness at the Federal, State, and local levels.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to attend the meeting may register by e-mailing *sacphp@esi-dc.com <mailto:sacphp@esi-dc.com>* no later than close of business, January 15, 2004. All requests should include the name, address, telephone number, and business or professional affiliation of those registering.

Opportunities for oral statements by the public will be provided on Friday, January 23, 2004 at approximately 11:30 a.m. Oral comments will be limited to 5 minutes, 3 minutes to make a statement and 2 minutes to respond to questions from Council members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of registrants. Members of the public who wish to present oral comments at the meeting may register by e-mailing [E T='03']sacphp@esi-dc.com[/E] <[E T='03']mailto:sacphp@esi-dc.com[/E]> no later than close of business, January 15, 2004. All requests to present oral comments should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by stamp mail or electronic mail to: ESI Attention: Janee Pelletier/SACPHP Meeting Comments; 7735 Old Georgetown Road, Suite 400; Bethesda, MD 20814; *sacphp@esi-dc.com <mailto:sacphp@esi-dc.com>*, phone 240–744–7026, for inclusion in the public record no later than close of business, January 15, 2004.

When mailing written comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact staff at the address and telephone number listed above no later than close of business, January 15, 2004.

Dated: December 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32122 Filed 12–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–04–18]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Ambulatory Medical Care Survey (NAMCS) 2005–2006 (OMB No. 0920–0234)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

The National Ambulatory Medical Care Survey (NAMCS) was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. The survey is directed by CDC, National Center for Health Statistics, Division of Health Care Statistics. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The NAMCS target population consists of all office visits made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. To complement these data, NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) to provide data concerning patient visits to hospital outpatient and emergency departments.

The NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics, reason(s) for visit, physicians' diagnosis, diagnostic services, medications and visit disposition. In addition to the annual statistics normally collected, a key focus of the 2005–2006 survey will be on the prevention and treatment of selected chronic conditions. These data, together with trend data, may be used to monitor the effects of change in the health care system, provide new insights into ambulatory medical care, and stimulate further research on the use, organization, and delivery of ambulatory care.

Users of NAMCS data include, but are not limited to, congressional and other federal government agencies, state and local governments, medical schools, schools of public health, researchers, administrators, and health planners. NAMCS plans to extend its data collection into 2005 and 2006. To calculate the burden hours the number of respondents for NAMCS is based on a sample of 3,000 physicians with a 50 percent participation rate (this includes physicians who are out-of-scope as well as those who refuse). There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs)	Total burden hours
Office-based physicians:				
Induction Form	1,500	1	25/60	625
Patient Record Form	1,500	30	5/60	3,750
Total				4,375

Dated: December 19, 2003.

Ron Ergle,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–32164 Filed 12–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–13–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Housing and Health Study—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC is requesting OMB approval to conduct a study to examine the impact of providing housing for homeless or unstably housed people (people who are in temporary housing programs or doubled up with others) while living with HIV.

This project includes a unique collaboration with the Department of Housing and Urban Development (HUD). HUD is providing funding for housing vouchers for study participants. CDC will use the results of the data collection to inform policy makers about the types of housing and other affiliated services most likely to reduce HIV transmission and disease progression in the homeless population.

The population to be studied will be drawn from persons living with HIV/AIDS who are seeking housing services from three communities with unmet housing needs. These needs are evidenced by a waiting list for services, or other evidence of unmet housing need through the Housing Opportunities for Persons with AIDS (HOPWA) program. The project will be a longitudinal cohort study, following participants for 18 months. Participants will be randomized into two groups. One group will receive vouchers for housing subsidies plus a 2-session behavioral intervention; the other group will receive referral to housing resources through participating agencies and other agencies plus the 2-session behavioral intervention. No study participants will be denied access to other housing services that are available through participating agencies or other community resources.

Since, all participants receive the behavioral intervention, the study technically assesses the effects of housing over and above the behavioral intervention. A cost study will also be conducted to determine the resources needed for this approach and the cost benefits of providing housing for homeless and unstably housed people living with HIV. The purpose of the cost study is to evaluate the effects of housing affordability and the cost-effectiveness (*i.e.* cost-utility ratio) of this strategy relative to other interventions in other public health and other HIV prevention interventions.

Study participants will be surveyed at the beginning of the project (baseline) and at 6, 12, and 18 months after baseline. HUD site service providers will also be surveyed. Blood samples for CD4 and viral load counts will also be collected for all participants. The annualized burden for this data collection is 6,030 hours.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)
HOPWA Program Participants	1,000	4	1.5
HUD Site Service Providers	15	1	2

Dated: December 22, 2003.

Ron Ergle,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–32165 Filed 12–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–19]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: HIV/AIDS Prevention and Surveillance Project Reports, OMB No. 0920–0208—Extension—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC is requesting to extend the use of the currently approved form, OMB No. 0920–0208, for collecting HIV counseling, testing, and referral (CTR) program data. This current form expires March 30, 2004. This request is for an 18-month clearance past this date. Extension of the current form will allow grantees to continue to collect CTR data as they transition to the new set of CTR variables and the new program evaluation and monitoring system (PEMS). Over the next year, grantees will either transition to the new variables once they have reprogrammed their existing computer systems, or as the CDC-provided PEMS is made available. CDC funds cooperative agreements for 65 HIV prevention projects (50 states, 6 cities, 7 territories, Washington, DC, and Puerto Rico) and approximately 50 community based organizations to support HIV counseling, testing, and referral programs.

HIV counseling, testing, and referral services in STD clinics, women's health centers, drug treatment centers, and other health facilities have been described as a primary prevention strategy of the national HIV prevention program. The funded public health departments and community based organizations have increased the provision of HIV counseling, testing, and referral activities to those at increased risk for acquiring or transmitting HIV, as well as minority communities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention programs conducted under HIV prevention cooperative agreements. HIV counseling, testing, and referral services are a vital component of HIV prevention programs. Without data to monitor and evaluate the impact of HIV counseling, testing, and referral programs, HIV prevention program priorities cannot be assessed and improved to prevent further spread of the epidemic. CDC needs minimal core data from all grantees describing CTR services provided for at-risk persons. Until grantees are prepared for collecting the new CTR variables and reporting data electronically through PEMS, it is essential that they be allowed to continue to collect the current CTR data using the existing forms.

Completing the initial data submission will take approximately 5 minutes per form. Approximately two (2) million records annually are expected from over 11,000 directly and indirectly funded grantee facilities. The total estimated burden is 167,000 hours annually. This is the estimated burden if no one transitions to the new system during the year, but it is expected that many of the grantees will transition to PEMS in phases throughout the year. Following this notice, a separate data collection for PEMS will be submitted for public comment and will include the revised CTR data variables and associated burden estimate. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Directly or Indirectly Funded Facilities	11,000	182	5/60	167,000
Total				167,000

Dated: December 22, 2003.

Ron Ergle,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–32166 Filed 12–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[ACYF/HS–2003–01]

Request for Public Comments on the Proposed Merger of Two Head Start Grantees in Rhode Island

AGENCY: Administration on Children, Youth, and Families, ACF, DHHS.

ACTION: Request for public comments.

SUMMARY: This notice is to solicit public comments and statements of interest from interested parties on the merger of two Rhode Island Head Start Programs.

EFFECTIVE DATE: January 30, 2004.

FOR FURTHER INFORMATION CONTACT: Michelle Hastings; Pal-Tech, Inc.; 1000 Wilson Blvd., Suite 1000; Arlington, VA 22209; 1–800–458–7699; 703–243–0496 (fax)

SUPPLEMENTARY INFORMATION: Self Help, Inc., and New Visions for Newport County, Inc. are proposing to merge their federally funded Head Start programs. This proposed merger is expected to bring about a more cost effective and efficient service delivery to children and their families. The Head Start Bureau of the Administration for Children and Families (ACF), within the United States Department of Health And Human Services has this proposal under consideration and is currently evaluating its effect on Head Start Services for children and families in the community. Under the proposed merger, Self Help, Inc., would be absorbed by New Visions for Newport County, Inc., and New Visions for Newport County, Inc. would provide Head Start services for the community it now serves as well as the community new served by Self Help, Ins.

Mergers of local Head Start grantees usually require the ACF to offer an open competition in the specified service area whose grantee is being absorbed. While this request for a merger, without a competitive review process, is under consideration, public comments are being solicited. Additionally, this notice also serves to encourage and welcome statements of interest from any local public agency, local public school system, local non-profit agency or local for-profit organization, or local faith-based organization that would want to compete for funding to provide Head Start services in the area now served by Self Help, Inc.

Self Help, Inc., also receives funding to conduct an Early Head Start program. As part of a proposed merger, Self Help, Inc., is proposing that the Early Head Start grant it conducts be transferred to New Visions for Newport County, Inc. after the merger. When an Early Head Start grantee merges with another organization, the grant must usually be recompeted, but consideration is being given to transferring the Early Head Start grant to New Visions for Newport County, Inc. While this request for a transfer, without a recompetition, is under consideration, public comments are being solicited. Additionally, this notice also serves to encourage and welcome statements of interest from any public agency, public school system, non-profit agency, for-profit organization, or faith-based organization that would want to compete for funding to provide Early Head Start services in the area now served by Self Help, Inc.

Please mail or fax statements of support or objection to this proposed merger and grant transfer as well as any request for consideration by January 30, 2004 to: Michelle Hastings; Pal-Tech, Inc.; 1000 Wilson Blvd., Suite 1000; Arlington, VA 22209; 1–800–458–7699; 703–243–0496 (fax).

Dated: December 22, 2003.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–32151 Filed 12–30–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KB, the Children's Bureau, Administration on Children, Youth and Families (ACYF) (66 FR 30215–18), as last amended June 5, 2001. This notice moves the Data Team from the Division of Data, Research and Innovation, Children's Bureau to the Office of the Associate Commissioner, Children's Bureau and renames the Division.

This Chapter is amended as follows:

1. Chapter KB, Administration on Children, Youth and Families.

A. Delete KB.10 Organization in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner, who reports directly to the Assistant Secretary for Children and Families and consists of:

- Office of the Commissioner (KBA)
- Office of Management Services (KBA1)
- Head Start Bureau (KBC)
- Program Operations Division (KBC1)
- Program Support Division (KBC2)
- Program Management Division (KBC3)
- Children's Bureau (KBD)
- Office of Child Abuse and Neglect (KBD1)
- Division of Policy (KBD2)
- Division of Program Implementation (KBD3)
- Division of Research and Innovation (KBD4)
- Division of Child Welfare Capacity Building (KBD5)
- Division of State Systems (KBD6)
- Family and Youth Services Bureau (KBE)
- Child Care Bureau (KBG)
- Immediate Office/Administration (KBG1)
- Program Operations Division (KBG2)
- Policy Division (KBG3)
- Technical Assistance Division (KBG4)

B. Delete KB.20 Functions, Paragraph D introductory material, in its entirety and replace with the following:

D. The Children's Bureau is headed by an Associate Commissioner who advises the Commissioner, Administration on Children, Youth and Families, on matters related to child welfare, including child abuse and neglect, child protective services, family preservation and support, adoption, foster care and independent living. It recommends legislative and budgetary proposals, operational planning system objectives and initiatives, and projects and issue areas for evaluation, research and demonstration activities. It represents ACYF in initiating and implementing interagency activities and projects affecting children and families, and provides leadership and coordination for the programs, activities, and subordinate components of the Bureau. It is responsible for the Data and Technology Team which analyzes and disseminates program data from the Adoption and Foster Care Analysis and Reporting System (AFCARS), and the National Child Abuse and Neglect Data System (NCANDS); develops systematic methods of measuring the impact and effectiveness of various child welfare programs; performs statistical sampling functions; provides comprehensive guidance to States, local agencies and others on data collection issues, and performance outcome measures; and is the focal point for technology development within the Bureau.

C. Delete KB.20 Functions, Paragraph D.4, in its entirety and replace with the following:

4. The Division of Research and Innovation provides leadership and direction in program development, innovation, research and in the management of the Bureau's information systems under titles IV–B and IV–E of the Social Security Act, and under the Child Abuse Prevention and Treatment Act. It defines critical issues for investigation and makes recommendations regarding subject areas for research, demonstration and evaluation. It administers the Bureau's discretionary grant programs, and awards project grants to State and local agencies and organizations nationwide. It provides direction to the Crisis Nurseries and Abandoned Infants Resource Centers.

Dated: December 9, 2003.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 03–31374 Filed 12–30–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0268]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Biological Products: Reporting of Biological Product Deviations in Manufacturing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 30, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Biological Products: Reporting of Biological Product Deviations in Manufacturing—(OMB Control Number 0910–0458)—Extension

Under section 351 of the Public Health Service Act (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards designed to ensure the continued safety, purity, and potency of such products. In addition, section 501 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with current good manufacturing practice (CGMP) assuring that they meet the requirements of the act. All establishments manufacturing human blood and blood components are required to register with FDA, and comply with the CGMP regulations for human blood and blood components (parts 211 and 606 (21 CFR parts 211 and 606)). Transfusion services are required under 42 CFR 493.1273(a) to comply with part 606 and 21 CFR part 640 as they pertain to the performance of manufacturing activities. FDA regards biological product deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information. Section 600.14 (21 CFR 600.14) requires the licensed manufacturer who holds the biological product license, for other than human blood and blood components, and who had control over the product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) as soon as possible but not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171 requires a licensed manufacturer of human blood and blood components, including Source Plasma; an unlicensed registered blood establishment; or a transfusion service who had control over the product when the deviation occurred, to report to CBER as soon as possible but not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Respondents to this collection of information are the licensed manufacturers of biological products other than human blood and blood components, unlicensed registered blood establishments, and transfusion services. Based on information from CBER's databases for fiscal year (FY) 2002, there were 115 licensed manufacturers of biological products other than human blood and blood components, 207 licensed manufacturers of human blood and blood components, including Source Plasma, and 2,800 unlicensed registered blood establishments and 3,221 transfusion services. However, not all manufacturers or establishments may have any submissions in a given year and some may have multiple submissions. In the same FY, CBER's database also showed that the licensed manufacturers of biological products other than human blood and blood components submitted 476 biological product deviation reports (BPDRs) under § 600.14, the licensed manufacturers of human blood and blood components, including Source Plasma submitted 27,000 BPDRs under § 606.171, and the unlicensed registered blood establishments and transfusion services submitted a total of 6,446 BPDRs. The number of total annual responses is based on the number of BPDRs CBER received in FY 2002. The rate of submission is not expected to change significantly in the next few years. Based on information from industry, the estimated average time to complete a deviation report is 2 hours. The availability of the standardized report FDA Form 3486, and the ability to submit this report electronically further streamlines the report submission process. Activities such as investigating, changing standard operating procedures (SOPs) or processes, and followup are currently required under parts 211 (approved under OMB control numbers 0910–0139 and 0910–0353), 606 (approved under OMB control number 0910–0116), and 820 (21 CFR part 820) (approved under OMB control number 0910–0073) and, therefore, are not included in the burden calculation for the separate requirement of submitting a deviation report to FDA.

In the **Federal Register** of June 30, 2003 (68 FR 38712), FDA published a 60-day notice requesting public comment on the information collection provisions. We received two comments.

In response to whether the proposed collection of information is necessary, comment one stated that we should harmonize the biological product deviation reporting requirements (§ 600.14) with the NDA field alert reports under 21 CFR 314.81(b)(1) and, therefore, revoke § 600.14. The comment stated the adoption of the new drug application (NDA) field alert regulations for all biologics would streamline compliance activities, and facilitate and align the recent transfer of biotechnology products from CBER to the Center for Drug Evaluation and Research (CDER). The comment also stated that revocation of § 600.14 would reduce the reporting burden while continuing to support the industry in making good, risk based quality decisions.

The NDA field alert regulations (approved under OMB control number 0910–0001) are applicable only to those products that are approved for marketing under the provisions of part 314 (21 CFR part 314) (including those few products that CBER regulates even though they were approved under the NDA provisions of part 314). The NDA field alert regulations do not apply to biological drug products subject to licensing under the Public Health Service (PHS) Act, including licensed products that CDER now regulates. FDA has harmonized a number of regulations for certain biotechnology products where products regulated as biological products subject to licensure are similar to products subject to regulation as new drugs (see 65 FR 66621 at 66625, November 7, 2000). The products recently transferred from CBER to CDER are still regulated as biological products under the PHS Act. However, we recently stated in our CBER Web site that the biological product deviation reports for those transferred products are now to be sent to CDER. CBER will continue to monitor and assess its biological product deviation reporting program. If the level of reporting or the needs of the agency change, FDA will consider whether to harmonize its reporting requirements. The comment's suggestion that FDA adopt the NDA field alert regulations in § 314.81(b)(1) and revoke § 600.14 seeks a regulatory change that is outside the scope of FDA's current request for OMB renewal of the information collection in the existing regulations. Consequently, we decline to adopt the comment's recommendations.

Comment two, in response to the necessity of the proposed regulation, recommended revisions to the regulation regarding the submission of reports regarding post-donation information, and argued that only a small percentage of those reports were forwarded to District Offices for further investigation and that the reporting burden has resulted in little tangible outcome. FDA uses those reports for reasons other than initiating further investigation or product recalls. For example, some reports of post-donation information revealed to FDA that the manufacturers had flaws in their donor screening procedures, which FDA communicated to the companies. In addition, information from biological product deviation reports has been valuable to FDA in crafting guidances for industry that improve product quality and reduce manufacturing problems generally. However, we will continue to monitor and assess our biological product deviation reporting program, including the review of these type of reports. Consequently, we decline to adopt the comment's recommendations at this time.

In response to FDA's burden estimate, comment one questioned the estimated hours per response to submit a report to FDA and stated that FDA's estimate did not factor in the time to completely process the report. The comment provided an estimation of burden hours to submit a report 10 times FDA's estimate. In addition, the comment stated that additional time is required to update SOPs associated with the regulation and to perform ongoing training.

Based on comments received in response to the burden hours published in the proposed rule of September 23, 1997 (62 FR 49642), FDA revised the burden hours (hours per response) in the final rule (65 FR 66621 at 66632, November 7, 2000) to the current estimate. In response to the comments on the proposed rule, we stated the revised estimate was based in part on information from industry representatives about typical procedures, and the availability of a standardized report form. Activities such as investigating, changing SOPs or processes, and followup are required under parts 211, 606, and 820, and therefore, are not included in the burden estimate for the separate requirement of submitting to FDA a biological product deviation report. In the final rule, we estimated the hours as a one-time burden, in part, for establishing and making adjustments to SOPs and staff training. Continuance of these activities would be considered as part of normal business practice or covered by other regulations. We, therefore, decline to revise the burden hours.

Comment two questioned FDA's estimate that the rate of submissions was not expected to change significantly in the next few years. The comment stated that there was a large increase in the number of reports from the previous year.

We realize that the number of reports increased in the first couple of years after issuance of the final rule as industry adjusted to the new reporting requirements. However, we expect the numbers of reports to level off after this adjustment period, and therefore, we estimate that the rate of submission will not significantly increase in the next few years. If the number of reports significantly increases unexpectedly in the next few years, we will adjust the estimates at the next interval for approval of the information collection. Consequently, we decline to revise the estimates at this time.

In response to ways of minimizing the collection burden, comment one stated that we should notify manufacturers when a report is submitted that is not deemed to meet the threshold for reporting. The comment also stated that firms are not comfortable with filing submissions electronically because there are inadequate safeguards to ensure against false reports.

For reports submitted electronically, we notify the manufacturer of those reports that do not meet the threshold for reporting. For those submitted in hard copy, we notify the manufacturer if a trend of a particular type of unnecessary report is detected. We currently have an approximate rate of 45 percent of reports submitted electronically with the majority being submitted by the blood industry. Because the system is designed with a user name and password that is associated with the establishment, we believe there are adequate safeguards for submitting the information electronically.

Comment two responded to ways of minimizing the collection burden by recommending that post-donation information be reported in summary format not to exceed annually. Although, as mentioned previously, FDA has made valuable use of promptly-reported post-donation information, we will continue to monitor and assess our biological product deviation reporting program and make adjustments accordingly.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.14	3,486	115	4.1	476	2	952
606.171[2]	3,486	207	130.4	27,000	2	54,000
606.171[3]	3,486	6,021	1.1	6,446	2	12,892
Total						67,844

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Licensed manufacturers of human blood and blood components, including Source Plasma.
[3] Unlicensed registered blood establishments and transfusion services (2,800 + 3,221 = 6,021).

Dated: December 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–32160 Filed 12–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 2004

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2004. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**. FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on FDA's advisory committees' Internet site located at *http://www.fda.gov/oc/advisory/default.htm*. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2004. You may also obtain up-to-date meeting information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area).

Committee Name	Date(s) of Meetings	Advisory Committee 10-Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Science Board to the Food and Drug Administration	April 22, November 4	3014512603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	April 2	3014512388
Biological Response Modifiers Advisory Committee	March 18–19, July 15–16, November 18–19	3014512389
Blood Products Advisory Committee	March 18–19, July 12–13, October 21–22	3014519516
Transmissible Spongiform Encephalopathies Advisory Committee	February 12–13, June 29–30, October 14–15	3014512392

Committee Name	Date(s) of Meetings	Advisory Committee 10-Digit Information Line Code
Vaccines and Related Biological Products Advisory Committee	February 18–19, May 6–7, September 22–23, November 17–18	3014512391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Anesthetic and Life Support Drugs Advisory Committee	March 24–25, June 9–10, August 10–11, November 17–18	3014512529
Anti-Infective Drugs Advisory Committee	February 2—Joint Meeting with Pediatric Subcommittee and Psychopharmacologic Drugs Advisory Committee, February 3–4—Pediatric Subcommittee	3014512530
Antiviral Drugs Advisory Committee	April 27–28, October 27–28	3014512531
Arthritis Advisory Committee	May 12–13, July 14–15, October 21–22	3014512532
Cardiovascular and Drugs Health Advisory Committee	May 6–7, July 16, August 5–6	3014512533
Dermatologic and Ophthalmic Drugs Advisory Committee	February 26–27—Joint Meeting with Drug Safety and Risk Management Advisory Committee, April 1–2, May 6–7, June 24–25, August 26–27, September 9–10	3014512534
Drug Safety and Risk Management Advisory Committee	February 26–27—Joint Meeting with Dermatologic and Ophthalmic Drugs Advisory Committee, April 22–23, June 3–4, September 9–10, November 4–5	3014512535
Endocrinologic and Metabolic Drugs Advisory Committee	February 26–27, April 22–23, June 22–23, September 23	3014512536
Gastrointestinal Drugs Advisory Committee	To Be Announced	3014512538
Nonprescription Drugs Advisory Committee	March–Day To Be Announced June–Day To Be Announced December 16—Joint Meeting with Advisory Committee for Reproductive Health Drugs	3014512541
Oncologic Drugs Advisory Committee	March 16–17, June 15–16	3014512542
Peripheral and Central Nervous System Drugs	To Be Announced	3014512543
Pharmaceutical Science, Advisory Committee for	April 13–14	3014512539
Psychopharmacologic Drugs Advisory Committee	February 2—Joint Meeting with Anti-Infective Drugs Advisory Committee and Pediatric Subcommittee	3014512544
Pulmonary-Allergy Drugs Advisory Committee	June 29–30, November 4–5	3014512545
Reproductive Health Drugs, Advisory Committee for	October—Day To Be Announced, December—Day To Be Announced	3014512537
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	September 9–10	3014512398

Committee Name	Date(s) of Meetings	Advisory Committee 10-Digit Information Line Code
Medical Devices Advisory Committee (Comprised of 18 Panels)		
Anesthesiology and Respiratory Therapy Devices Panel	March 25–26, June 17–18, September 9–10, November 15–16	3014512624
Circulatory Systems Panel	March 17–18, May 19–20, July 21–22, September 22–23, November 17–18	3014512625
Clinical Chemistry and Clinical Toxicology Devices Panel	March 30–31, June 24–25, September 16–17, December 6–7	3014512514
Dental Products Panel	April 14–15	3014512518
Ear, Nose, and Throat Devices Panel	April 21–22, June 15–16, August 30–31, October 6–7, December 1–2	3014512522
Gastroenterology-Urology Devices Panel	April 30, July 16, October 22	3014512523
General and Plastic Surgery Devices Panel	March 11–12, May 26–27, August 9–10, October 18–19	3014512519
General Hospital and Personal Use Devices Panel	April 6–7, July 12–13, October 18–19	3014512520
Hematology and Pathology Devices Panel	April 23, October 22	3014512515
Immunology Devices Panel	February 26, April 23, October 22	3014512516
Medical Devices Dispute Resolution Panel	To Be Announced as Needed	3014510232
Microbiology Devices Panel	April 8–9, July 29–30, November 9–10	3014512517
Molecular and Clinical Genetics Panel	April 28–29, July 19–20, October 20–21	3014510231
Neurological Devices Panel	February 23, April 1–2, August 5–6, October 28–29	3014512513
Obstetrics and Gynecology Devices Panel	April 26–27, July 26–27, October 25–26	3014512524
Ophthalmic Devices Panel	February 5–6, March 4–5, May 13–14, July 8–9, September 22–23, November 4–5	3014512396
Orthopaedic and Rehabilitation Devices Panel	March 22–23, June 3–4, August 12–13, December 2–3	3014512521
Radiological Devices Panel	February 3, May 18, August 10, November 16	3014512526
National Mammography Quality Assurance Advisory Committee	April 5	3014512397
Technical Electronic Product Radiation Safety Standards Committee	None	3014512399
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee—Full Committee and Subcommittee	August 16–17	3014510564
Additives and Ingredients Subcommittee	May 26–27	3014510564
Biotechnology Subcommittee	July 21–22	3014510564
Contaminants and Natural Toxicants Subcommittee	November 16–17	3014510564

Committee Name	Date(s) of Meetings	Advisory Committee 10-Digit Information Line Code
Dietary Supplements Subcommittee	September 14–15	3014510564
Infant Formula	June 22–23	3014510564
Nutrition Subcommittee	March 30–31	3014510564
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	September 23–24	3014512548
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH		
Science Advisory Board to National Center for Toxicological Research	August 11	3014512559
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Herbicides and Contaminants	January 21, April 12, August 3, October 26	3014512560

Dated: December 23, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–32103 Filed 12–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biological Response Modifiers Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Biological Response Modifiers Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 18, 2004, from approximately 8:30 a.m. and 5 p.m.; and on March 19, 2004, from approximately 8:30 a.m. to 3 p.m.

Location: Hilton Hotel, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: Gail Dapolito or Rosanna Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3014, e-mail *dapolito@cber.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 18 and 19, 2004, the committee will discuss issues related to the design of early phase clinical trials of cellular therapies for the treatment of cardiac diseases.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 11, 2004. Oral presentations from the public will be scheduled on March 18, 2004, between approximately 4:30 p.m. and 5 p.m.; and on March 19, 2004, between approximately 9:50 a.m. and 10:20 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 11, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gail Dapolito at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 22, 2003.

Peter J. Pitts,

Assoicate Commissioner for External Relations.

[FR Doc. 03–32242 Filed 12–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–04–8004]

Memorandum of Understanding Between the Food and Drug Administration, Department of Health and Human Services of the United States of America and Swissmedic of the Swiss Confederation Regarding Exchange of Information About Pharmaceutical Products for Human and Animal Use and Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration, Department of Health and Human Services of the United States of America and Swissmedic of the Swiss Confederation. The purpose of this MOU is to further enhance and strengthen communication and existing public health promotion and protection cooperative activities related to the regulation of human or animal pharmaceutical products and human medical devices in Switzerland and the United States of America.

DATES: The agreement became effective September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Kawin, Office of International

Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0590.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: December 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MEMORANDUM OF UNDERSTANDING

BETWEEN THE
FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OF THE UNITED STATES OF AMERICA

AND

SWISSMEDIC
OF THE SWISS CONFEDERATION

REGARDING
EXCHANGE OF INFORMATION ABOUT PHARMACEUTICAL PRODUCTS FOR HUMAN AND ANIMAL USE, AND MEDICAL DEVICES

PREAMBLE

The Food and Drug Administration (FDA), of the United States Department of Health and Human Services (HHS) and Swissmedic (collectively "the Participants") recognize the importance of timely communication between U.S. and Swiss governmental authorities. These communications are especially important on matters relating to the safety, quality, and efficacy of: (a) pharmaceutical products for human use (including active pharmaceutical ingredients and finished dosage products and biological products, such as vaccines and blood products); (b) pharmaceutical products for animal use (not including biological products for animals because FDA/HHS and Swissmedic do not have oversight authority for such products in the United States of America or Switzerland respectively); and (c) medical devices for human use. The Participants share a mutual high regard for the critical role of one another's regulatory systems in the review and approval of these products for marketing. To that end, the Participants to this Memorandum of Understanding (MOU) intend to establish mechanisms by which the exchange of documents and/or information between staffs during the review and evaluation of investigational and marketing applications and the post-marketing surveillance of these products would be facilitated as agreed to by the Participants.

I. PURPOSE

This MOU is intended to further enhance and strengthen communication and existing public health promotion and protection cooperative activities related to the regulation of human or animal pharmaceutical products and human medical devices in Switzerland and the United States of America.

II. SCOPE

The products covered under this MOU include (as defined in the Preamble): pharmaceutical products for human use; pharmaceutical products for animal use; and, medical devices. The Participants intend to develop specific procedures for the exchange of regulatory (including enforcement) and public health information related to these products. The types of information that may be shared include, but are not limited to, the following:

A. Drafts of pending laws, regulations, guidance documents, procedures, and other technical documents available to the individual Participants that are related to such pharmaceutical and medical device products.

B. Post-marketing data and information that could have an impact on the public health, such as pharmacovigilance data or information about impending regulatory actions.

C. Information on quality defects or product recalls of human or animal pharmaceutical products or medical devices known by the FDA/HHS to have been manufactured or distributed in Switzerland, and products known by Swissmedic to have been manufactured or distributed in the United States of America.

D. Information contained in or related to marketing or investigational applications for human or animal pharmaceutical products or medical devices, including the various discipline reviews. This also includes information on maximum residue levels of animal drugs in tissues of animals intended for human consumption.

E. Inspection reports and product sample test results such as those describing the conformity of a human or animal pharmaceutical product or medical device, or a facility that manufactures these products, with applicable regulatory requirements.

F. Information on facilities registered or authorised in each Participant's country that then market product to the other Participant' s country.

G. Information related to import refusals for reasons related to the safety, quality, or integrity of the shipment.

Such information shall not be used for purposes other than those envisaged by this MOU.

III. CONFIDENTIALITY

Information exchanged under this MOU may include non-public information exempt from public disclosure under the laws and regulations of Switzerland or the United States of America. Information that is not appropriate for public dissemination will be shared according to the procedures and policies of the Participants as permitted by their respective laws. FDA/HHS and Swissmedic are not able to share trade secret information without the consent of the owner of the information. With regard to any other types of non-public information that may be provided to Swissmedic by FDA/HHS or to FDA/HHS by Swissmedic, such transmissions will be made in accordance with the specific signed confidentiality commitments and other requirements of the Participants.

The personnel of the agencies shall be required, even after their duties have ceased, not to disclose non-public information acquired under this MOU, including information which is of the kind covered by the obligation of professional secrecy in Switzerland and information and activities covered by 18 U.S.C. § 207 in the United States of America.

IV. SOURCE OF FUNDING

Each Participant to this MOU intends to fund its own activities subject to the availability of appropriated funds, personnel, and other resources. Any exchange of information or other activity under this MOU is to be performed in accordance with applicable laws and regulations.

V. DURATION

Cooperation under this MOU commences upon signature of the Participants and continues in effect for a period of ten (10) years unless modified by mutual consent of the Participants or terminated earlier by either Participant upon a 30 calendar-day written notification to the other Participant.

After the first year of operation, the Participants may jointly evaluate the MOU. Periodic reviews may be conducted as deemed necessary by the Participants. The MOU may be extended for additional 10-year periods, with periodic reviews as needed and agreed to by the Participants.

This MOU does not modify existing cooperative activities nor does it preclude entering into separate arrangements for special programs that can be handled more efficiently and expeditiously by special arrangements.

Nothing in this MOU is intended to diminish or otherwise affect the authority of either Participant to conduct its regulatory responsibilities and programs. In addition, no provision of this MOU restricts either Participant from conducting its own inspection of a pharmaceutical or medical device manufacturing facility within the jurisdictional boundaries of the other country when needed to meet the needs of its own pharmaceutical or medical device regulatory program.

Signed in New York, in duplicate, this twenty-second day of September 2003, in the English language.

FOR THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Tommy G. Thompson

TITLE: The Secretary

FOR THE SWISS AGENCY FOR THERAPEUTIC PRODUCTS, SWISSMEDIC, OF THE SWISS CONFEDERATION

TITLE: President of the Swiss Confederation and
Chief Executive of the Department of Home Affairs (EDI)

[FR Doc. 03-32006 Filed 12-30-03; 8:45 am]

BILLING CODE 4160-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225-04-8003]

Memorandum of Understanding Between the Food and Drug Administration and the Health Products and Food Branch, Health Canada of Canada Regarding Sharing and Exchange of Information about Therapeutic Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is providing notice of a memorandum of understanding (MOU) between the Food and Drug Administration (FDA), Department of Health and Human Services of the United States of America and the Health Products and Food Branch, Health Canada of Canada. The purpose of this MOU is to enhance and strengthen the exchange of information and existing public health protection cooperative activities related to the regulation of the specified therapeutic products.

DATES: The agreement became effective November 18, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Corey, Office of International Programs (HFG-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0855.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: December 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160-01-S

MEMORANDUM OF UNDERSTANDING

BETWEEN THE
FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OF THE UNITED STATES OF AMERICA

AND THE
HEALTH PRODUCTS AND FOOD BRANCH
HEALTH CANADA
OF CANADA

REGARDING SHARING AND
EXCHANGE OF INFORMATION ABOUT THERAPEUTIC PRODUCTS

PREAMBLE

The Food and Drug Administration (USFDA), Department of Health and Human Services of the United States of America and the Health Products and Food Branch (HPFB), Health Canada of Canada (collectively "the Participants") recognize the importance of timely and effective communication and collaboration between U.S. and Canadian governmental authorities. These communications are especially important on matters relating to the safety, quality, and efficacy of therapeutic products. Therapeutic products are defined as: pharmaceutical products for human and animal use (including active pharmaceutical ingredients, finished dosages and radiopharmaceutical products); biological products for human use (including gene, cell, blood, tissue, and organ therapies and products intended for transplantation or transfusion; vaccines; xenografts); and medical devices for human and animal use. The Participants share a mutual high regard for the critical role of one another's regulatory systems in the review and approval of these products. To that end, the Participants to this Memorandum of Understanding (MOU) intend to establish mechanisms by which the sharing and exchange of documents and/or information between staffs relating to the review and evaluation of investigational and marketing applications, establishment compliance, and post-marketing surveillance of these products would be facilitated as decided to by the Participants.

I. PURPOSE

This MOU is intended to enhance and strengthen the exchange of information and existing public health protection cooperative activities related to the regulation of the specified therapeutic products.

II. SCOPE

As defined in the Preamble, this MOU covers therapeutic products. The Participants intend to develop specific procedures for the sharing and exchange of regulatory, emergency management, and public health information related to these products. The types of information that may be shared include, but are not limited to, the following:

A. Drafts of pending laws, regulations, guidance documents, policies, procedures, and other technical documents available to the individual Participants that are related to such therapeutic products for which the Participants have responsibility.

B. Post-marketing data and information that could have an impact on the public health, such as pharmacovigilance data or information about impending regulatory actions including proposed market withdrawals and product recalls.

C. Information on quality defects or product recalls of therapeutic products known by the USFDA to have been manufactured or distributed in Canada, and products known by Canada HPFB to have been manufactured or distributed in the United States.

D. Information contained in clinical trials or related to marketing or investigational applications for therapeutic products, including the various discipline reviews. This also includes information on maximum residue levels of animal drugs in tissues of animals intended for human consumption.

E. Information related to orphan drug designations.

F. Inspection reports and product sample test results such as those describing the conformity of therapeutic products, or of a facility that manufactures, distributes, wholesales, tests, or imports these products, with applicable regulatory requirements.

G. Information on facilities registered or authorized in each Participant's country that then market product to the other Participant's country, including facilities that only export their products.

H. Information related to import refusals for reasons related to the safety, quality, or integrity of the shipment.

I. Information on activities that feature major public involvement.

J. Information on technology (e.g. information systems, database systems, and other related computer applications) that support the evaluation/review of the safety, quality, and efficacy of therapeutic products.

K. Information related to enforcement activities and product investigations. An area to be looked at in this regard relates to cross-border issues, including internet pharmacies, finished pharmaceutical controlled substances and counterfeit drugs.

Such information should not be used for purposes other than those envisaged by this MOU.

III. CONFIDENTIALITY

Information exchanged under this MOU may include non-public information exempt from public disclosure under the laws and regulations of the United States and Canada. Information that is not appropriate for public dissemination is only to be shared according to the procedures and policies of the Participants as permitted by these respective laws. Neither the USFDA nor Canada HPFB may divulge trade secret information without the consent of the owner. With regard to any non-public information that may be provided to Canada HPFB by USFDA or to the USFDA by Canada HPFB, such transmissions are to be made in accordance with the specific signed confidentiality commitments and other requirements of the Participants.

IV. SOURCE OF FUNDING

Each Participant to this MOU recognizes the other's responsibility to fund and carry out its own activities subject to, and to the extent made possible, by the availability of appropriated funds, personnel, and other resources. Any sharing or exchange of information or other activity under this MOU is to be performed in accordance with applicable laws and regulations.

V. DURATION AND PROCESS

Cooperation under this MOU commences upon signature of the Participants and continues in effect for a period of ten (10) years. After an initial period of operation of one year, the Participants intend to jointly review the MOU and make adjustments as necessary.

The MOU may be modified by mutual consent of the Participants or terminated earlier by either Participant upon a 30-day written notification to the other Participant. The MOU may be extended for additional 10-year periods, with periodic reviews as needed and as decided by the Participants in the interim.

The Participants should establish a mechanism for regular bilateral meetings for the development of plans for joint work.

This MOU does not modify existing cooperative activities nor does it preclude entering into separate arrangements for special programs that can be handled more efficiently and expeditiously by special arrangements.

Nothing in this MOU is intended to diminish or otherwise affect the authority of either Participant to carry out its regulatory responsibilities and programs. In addition, no provision of this MOU restricts either Participant from conducting its own inspection of a therapeutic product manufacturing facility within the jurisdictional boundaries of the other country when needed to meet the needs of its own regulatory programs.

Signed at Ottawa, Canada on this eighteenth day of November 2003 in duplicate in the English language.

FOR THE FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OF THE UNITED STATES OF AMERICA

Mark McClellan

Mark B. McClellan, M.D., Ph.D.
Commissioner of Food and Drugs

FOR THE HEALTH PRODUCTS AND FOOD BRANCH
HEALTH CANADA
OF CANADA

Diane C Gorman

Diane C. Gorman,
Assistant Deputy Minister

[FR Doc. 03–32104 Filed 12–30–03; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0539]

Over-the-Counter Drug Products; Safety and Efficacy Review

AGENCY: Food and Drug Administration, HHS

ACTION: Request for data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call for data for certain categories of ingredients in over-the-counter (OTC) drug products that are eligible for the original OTC drug review but have not been reviewed by FDA to date. FDA will review the submitted data and information as part of its ongoing review of OTC drug products to determine whether these ingredients and products are generally recognized as safe and effective (GRAS/E) for their labeled uses. This document also requests the

identification of other categories of OTC drug products that were in the marketplace when the OTC drug review began on May 11, 1972, or that were marketed before December 4, 1975, and describes FDA's general regulatory policy governing the marketing of these OTC drug products during the pendency of this review.

DATES: Submit data, information, and general comments by June 28, 2004.

ADDRESSES: Submit data and information directly to the Division of OTC Drug Products (HFD–560), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit general comments in writing to the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 or electronically to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson or Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In 1972, FDA established the OTC drug review to evaluate currently marketed OTC drug products. The final regulations in part 330 (21 CFR part 330) providing for the OTC drug review under 21 CFR 130.301 (recodified as § 330.10) were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). Since that time, FDA has published various calls for data inviting interested parties to submit data and information for the advisory review panels to review.[1] During the course of the OTC drug review, advisory review panels reviewed many of the categories of OTC drug products included in prior call-for-data notices but did not review every category because of resource limitations.[2] Table 1 of this document lists the categories of OTC drug products reviewed by all 17 panels and FDA and several categories of products that were reviewed by FDA only.

TABLE 1.—CATEGORIES OF OTC DRUG PRODUCTS REVIEWED BY 17 PANELS AND/OR FDA

- AcneAlcohol
- Anorectal
- Antacid
- Anthelmintic
- Anticaries
- Antidiarrheal
- Antiemetic
- Antiflatulent
- Antifungal:
  - Diaper Rash
  - Nails and Scalp
- Antimicrobial:
  - Alcohols (topical)
  - Antiseptics (First aid)
  - Antiseptics (Health Care)
  - Diaper Rash
  - Mercurials
- Antiperspirant
- Aphrodisiac
- Benign Prostatic Hypertrophy
- Boil Treatment
- Camphorated Oil
- Category II/III Ingredients (Phase I)
- Category II/III Ingredients (Phase II)
- Category II/III Ingredients (Additional)
- Cholecystokinetic
- Corn/Callus Remover
- Cold/Cough:
  - Anticholinergic
  - Antihistamine
  - Antitussive
  - Bronchodilator
  - Expectorant
  - Nasal Decongestant
- Dandruff/Seborrhea/Psoriasis
- Daytime Sedative
- Deodorant (Internal)
- Digestive Aid
- Exocrine Pancreatic Insufficiency
- External Analgesic:
  - Diaper Rash
  - Fever Blister/Cold Sore
  - Insect Bites/Stings
  - Male Genital Desensitizer
  - Poison Ivy/Oak/Sumac
- Fever Blister/Cold Sore (Internal)
- Hair Grower/Loss
- Hexachlorophene
- Hormone (topical)
- Hypo/Hyperphosphatemia
- Ingrown Toenail Relief
- Insect Repellent (Internal)
- Internal Analgesic:
  - Leg Muscle Cramps
  - Malaria
  - Overindulgence
- Laxative
- Menstrual
- Nailbiting/Thumbsucking Deterrent
- Nighttime Sleep-aid
- Ophthalmic
- Oral Health Care:
  - Antiseptic
  - Non-Antimicrobial
  - Oral Discomfort (Relief)
  - Oral Mucosal Injury

TABLE 1.—CATEGORIES OF OTC DRUG PRODUCTS REVIEWED BY 17 PANELS AND/OR FDA—Continued

  - Oral Wound Healing
  - Plaque
- Otic:
  - Drying Water-Clogged Ears
  - Earwax Removal
  - Swimmer's Ear
- Overindulgence Remedies:
  - Prevent Inebriation
- Pediculicide
- Poison Treatment:
  - Acute Toxic Ingestion Treatment
  - Emetic
- Salicylanilides (Tribromsalan)
- Silver
- Skin Bleaching
- Skin Protectant:
  - Astringent
  - Diaper Rash
  - Fever Blister/Cold Sore
  - Insect Bites/Stings
  - Poison Ivy/Oak/Sumac
- Smoking Deterrent
- Stimulant
- Stomach Acidifier
- Sunscreen
- Sweet Spirits of Nitre
- Vaginal Contraceptive
- Vaginal Drug Products
- Vitamin/Mineral
- Wart Remover
- Weight Control
- Zirconium (Aerosol)

II. The Current Request for Data and Information

To complete the OTC drug review, FDA is publishing this call-for-data notice on the following categories of ingredients: (1) Nasal moisturizer drug products, (2) urinary analgesic/antiseptic drug products, (3) urinary acidifiers and alkalinizers, (4) aloe vera and urea, (5) wrinkle remover products, and (6) lubricants and vaginal moisturizers. The categories of OTC drugs in this notice include some of the categories from the 1973 and 1975 notices that were not reviewed and several other categories that the agency has identified that were never reviewed. These include urinary analgesics/antiseptics and saline nasal products. Interested parties who identify other categories of OTC drug products that were in the marketplace when the OTC drug review began on May 11, 1972, or that were marketed before December 4, 1975 (see § 330.13), should submit comments regarding this document to the agency about those categories of OTC drug products, including the active ingredients in the products and the uses for which the products were marketed. Product labels should be provided if available.

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[1] See 38 FR 31696, November 16, 1973, and 40 FR 38179, August 27, 1975.

[2] FDA also identified several categories of marketed OTC drug products that were not reviewed by the advisory panels and publish subsequent call-for-data notices for those product categories. In the **Federal Register** of December 5, 1989 (54 FR 50240), FDA published a request for data and information on ingredients in eyewash drug products used for emergency first aid treatment of chemical burns of the eyes. FDA published a proposed rule for those products in the **Federal Register** of September 19, 1990 (55 FR 38560), FDA published a request for data and information on ingredients contained in products bearing antiplaque and antiplaque-related claims. The Dental Products Panel completed its review of the data and information that were submitted, and FDA published the panel's report in the **Federal Register** of May 29, 2003 (68 FR 32232).

A. Nasal Moisturizer Drug Products

The agency considers nasal moisturizer products[3] to be drugs when they contain the following or similar ingredients: Sodium chloride, normal saline, buffered isotonic saline solution, saline phosphate buffer solution, glycerin. A number of these nasal moisturizer products have been marketed for several years with various labeling claims. Such claims include the following statements:

- "provides soothing moisture to dry, inflamed nasal membranes due to colds, allergies, low humidity, and other minor nasal irritations"
- "restores vital moisture to provide prompt relief for dry, crusted, and inflamed nasal membranes due to chronic sinusitis, colds, low humidity, overuse of nasal decongestant drops and sprays, allergies, minor nose bleeds, and other minor nasal irritations"
- "use for dry nasal membranes caused by chronic sinusitis, allergy, asthma, dry air, oxygen therapy"
- "rhinitis medicamentosa, rhinitis sicca, and atrophic rhinitis for patients 'hooked on nose drops' and glaucoma patients on diuretics having dry nasal capillaries"
- "a nasal moisturizer formulated to be physiologically compatible with nasal membranes, providing soothing relief for clogged nasal passages without stinging or burning"
- "restores moisture to relieve dry, inflamed nasal membranes due to low humidity, colds, allergies, and overuse of nasal decongestants".

FDA currently desires additional data on which to make a determination as to the safety, effectiveness, and labeling of these products. There may be other labeling statements or formulations of the products that are marketed as OTC nasal moisturizers. FDA considers many of these claims to be drug claims and believes these products should be regulated under the monograph for OTC cough-cold or miscellaneous internal drug products. Therefore, FDA requests that interested persons who have data and information on the safety and effectiveness of nasal moisturizer products submit them to FDA at this time.

B. Urinary Analgesic/Antiseptic Drug Products

FDA is also aware that products marketed as urinary analgesics/antiseptics and products for too frequent, burning, and painful urination have been marketed for a number of years, but have not yet been evaluated as part of the OTC drug review.[4] Other products marketed for these uses for a number of years contain methylene blue and phenazopyridine hydrochloride (HCl).

Phenazopyridine HCl has had a dual prescription/OTC marketing status based on the ingredient's extensive marketing history in the United States that predates the 1951 Durham-Humphrey Amendments to the Federal Food, Drug, and Cosmetic Act (the act). FDA reviewed phenazopyridine HCl/sulfonamide combination products under the Drug Efficacy Study Implementation (DESI 12056) for the treatment of urinary tract infections caused by a sulfonamide-susceptible organism when relief of symptoms of pain, burning, or urgency is needed. None of the single-entity phenazopyridine HCl drugs marketed at that time or now have been the subject of an approved new drug application (NDA).

In the **Federal Register** of July 29, 1983 (48 FR 34516), FDA published a DESI notice containing conditions for approval and marketing of phenazopyridine-containing drug products (single entities or fixed combinations). The notice announced certain required labeling statements for phenazopyridine-containing drug products indicated for use in relieving symptoms associated with a urinary tract infection, and certain required labeling for all phenazopyridine-containing drug products. FDA recommended the following labeling requirements for phenazopyridine-containing drug products (single entities or fixed combinations) for use in the treatment of urinary tract infections:

1. The following information shall be disclosed in the INDICATION section (adapted to the labeling of particular drug products): Treatment of a urinary tract infection with phenazopyridine HCl or a combination drug product containing phenazopyridine HCl should not exceed 2 days because there is lack of evidence that the combined administration of phenazopyridine HCl and an antibacterial provides greater benefit than administration of the antibacterial alone after 2 days.

2. The part of the INDICATION section pertaining to the use of the product in urinary tract infections shall also refer to the DOSAGE and ADMINISTRATION section.

3. In its dosage and dosing interval recommendations pertaining to the use of the product in urinary tract infections, the DOSAGE and ADMINISTRATION section shall show that the product is only indicated for up to 2 days (the effect of phenazopyridine HCl should not be relied upon after 48 hours).

The DESI notice also contained the following labeling requirement for all drug products containing phenazopyridine:

> The following statement shall be included in the CARCENOGENESIS subsection of the PRECAUTION section of the labeling:
>
> Long-term administration of phenazopyridine hydrochloride has induced neoplasia in rats (large intestine) and mice (liver). Although no association between phenazopyridine hydrochloride and human neoplasia has been reported, adequate epidemiological studies along these lines have not been conducted.

This information came from a National Cancer Institute technical report (Ref. 1). FDA is not aware of any epidemiological studies that have been done since the report was published in 1978.

The 1983 DESI notice states that the product considered (Azo Gantanol) contained 500 milligrams (mg) of sulfamethoxazole (antibacterial component) and 100 mg of phenazopyridine HCl (analgesic component) per tablet, and this combination is effective only for the first 48-hour treatment period (four tablets initially followed by two tablets every 12 hours, with the last dose administered at 36 hours). There is no evidence that the phenazopyridine HCl component has a beneficial effect on symptoms beyond 48 hours. Therefore, after initial treatment with the combination product, further treatment should be continued only with the sulfonamide.

The way the labeling information appeared in the notice indicated that 200 mg of phenazopyridine was the prescription dose. Products containing lesser amounts (e.g., 190 or 195 mg) have been marketed OTC. The recommended dosage is three times a day after meals. OTC drug products containing phenazopyridine HCl as a urinary analgesic are usually labeled: "Can be used up to 3 times daily for 2 days maximum." One product surveyed (Ref. 2) does not contain the required carcinogenesis statement on the outer package labeling but does have the statement in a package insert included inside the package.

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[3] In its report on OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products (published in the **Federal Register** of September 9, 1976 (41 FR 38312)), the panel that reviewed these products classified saline phosphate buffer solution as an inactive ingredient or pharmaceutical necessity, and did not classify it as a nasal moisturizer. The panel did not review and evaluate products used as nasal moisturizers, and these products were not reviewed and evaluated in the various tentative final and final monographs under the rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products.

[4] A product containing methenamine, sodium salicylate, salicylamide, and benzoic acid was submitted in response to the 1973 and 1975 call-for-data notices mentioned previously, but has not been reviewed to date. This submission is out-of-date and needs to be updated before the agency begins its review of these products.

FDA issued a Compliance Policy Guide on October 1, 1980 (Ref. 3), revised on May 22, 1987 (Ref. 3), that addressed urinary tract preparations containing phenazopyridine HCl. FDA advised that it was not taking regulatory action against products containing this ingredient and lackingand lacking a prescription legend or full-disclosure labeling [based on their deferral to the OTC drug review].

FDA has a number of questions and issues that it plans to consider when it evaluates phenazopyridine HCl for urinary tract analgesic/antiseptic use as part of this review.

1. Is this condition appropriate for self medication?

2. If the answer to the first question is yes, should the product labeling mention the possible need for treatment with an antibacterial drug also?

3. Is there a valid basis for having single-ingredient prescription products with a 200 mg dosage and OTC products with a 190 to 195 mg dosage? What data support these dosages?

4. Have any epidemiological studies been done since 1978 that address the neoplasia findings in the National Cancer Institute technical report (Ref. 1)?

5. Are the neoplasia findings of sufficient concern to restrict this drug to prescription status?

6. Do consumers adequately understand the required carcinogenesis labeling statement? If the answer is no, how should this statement be revised?

7. Should the carcinogenesis labeling statement be required to appear on the outer package labeling, or is it adequate that it appear only in a package insert?

8. Provide updated safety data both from the literature and from adverse event reports for the last 20 years, especially those adverse events reported to companies that market these products.

FDA invites parties interested in the OTC status of this ingredient to submit their answers to these questions and any supporting data to the Division of Dockets Management as comments to this notice so that this information will be publicly available when FDA reviews this ingredient. Adverse event reports should not include names or telephone numbers.

C. Urinary Acidifiers and Alkalinizers

FDA is also aware of OTC drug products that have been marketed as urinary acidifiers and urinary alkalinizers. Ammonium chloride and ascorbic acid have been used as OTC urinary acidifiers, and sodium bicarbonate has been used as an OTC urinary alkalinizer. These products have not been included in any previous call-for-data notices as part of the OTC drug review. Therefore, at this time FDA invites interested persons to submit data or information on these and any other ingredients for use as OTC urinary acidifiers and alkalinizers.

D. Aloe Vera and Urea

Aloe vera has been present in a variety of OTC drug products. It has been listed as both an active and inactive ingredient. It has been marketed as a skin remedy for minor cuts, burns, abrasions, and for relief of minor irritations of the vagina. The Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (Vaginal Drug Products Panel) placed stabilized aloe vera in Category III (for effectiveness) for the relief of minor irritations of the vagina (advance notice of proposed rulemaking (ANPRM), 48 FR 46694 at 46711 to 46712, October 13, 1983). The panel mentioned that treatment of minor burns, insect bites, and other conditions in which a wet dressing of aloe vera is used has been widely reported and handed down from generation to generation. FDA withdrew this ANPRM in the **Federal Register** of February 3, 1994 (59 FR 5226), because recommended labeling indications and ingredients used for minor irritation, itching, or soreness are not unique to the vaginal area and are already being considered in other OTC drug rulemakings (e.g., antifungal, antimicrobial, and external analgesic). Therefore, FDA planned to consider the ingredients and indications from the vaginal drug products ANPRM in those other rulemakings, as appropriate. However, no submissions for aloe vera were made to the other rulemakings. Because there may not have been an adequate opportunity for interested parties to submit data and information on aloe vera to those rulemakings, FDA invites interested parties to submit any available data and information at this time before it finalizes the monographs for OTC topical antimicrobial and external analgesic drug products. The monograph for OTC topical antifungal drug products is finalized (21 CFR part 333, subpart C), so any interested parties should submit any data and information on aloe vera for this use as a petition to amend the final monograph.

Urea has been marketed as an antipruritic and keratolytic in a number of topical products, with claims that range from "drug" (relieves itching) to "cosmetic" (for total body dry skin care,soften dry rough skin). Several submissions on products containing urea were made to the Advisory Review Panel on OTC Miscellaneous External Drug Products, but that panel did not complete its review of those submissions before it was disbanded. The submissions need to be updated for FDA to consider them at this time. No data or information on urea have been submitted to the rulemaking for OTC external analgesic drug products. At this time, FDA invites any interested parties to submit data or information on the use of urea as an external analgesic drug product or for any other OTC drug use.

E. Wrinkle Remover Products

Whether a wrinkle remover product should be regulated as a drug or a cosmetic depends on the claims the manufacturer makes for the product. The regulation of cosmetics is covered in 21 CFR part 700. Manufacturers of these products should examine their labeling for these products and to determine if the products products should be submitted to the OTC drug review for evaluation. Manufacturers should determine if the ingredients in those products affect the structure of the skin in some physiological way and, thus, should be submitted for review as drug ingredients section (see section 201(g)(1)(C) of the act (21 U.S.C. 321(g)(1)(C)). For example, some products marketed since 1971 contain alpha hydroxy acids and beta hydroxy acids. These ingredients are included in this request for data and information.

F. Lubricants and Vaginal Moisturizers

The Vaginal Drug Products Panel reviewed OTC drug products for a number of vaginal uses (48 FR 46694). However, those uses did not include vaginal lubricant or moisturizer. A number of products are marketed as a lubricant, personal lubricant, or lubricating jelly. These products have uses that include: "For personal lubrication when vaginal dryness causes discomfort," "acts as a moisturizer for vaginal dryness," "enhances the comfort and ease of intimate activity," and "enhances sexual pleasure by adding to the body's natural lubrication." Other products are marketed as lubricating spermicides [lubricant plus nonoxynol-9] or as a lubricant with nonoxynol-9. These products have claims that state "spermicide, nonoxynol-9, plus safe water-soluble personal lubrication, feels natural and helps enhance sexual pleasure, lubricating protection against unplanned pregnancy," and "enhances sexual pleasure by adding to the body's natural lubrication, not a contraceptive;

however, because it may kill some sperm, it should not be used if pregnancy is desired." FDA considers claims related to relief of discomfort and claims related to the comfort and ease of sexual activity to be drug claims as they relate to the mitigation or treatment of disease (section 201(g)(1)(B) of the act) or use of a product to affect the structure or function of the body (section 201(g)(1)(C) of the act).

Some of these lubricant products also have claims such as: "For [or eases] insertion of rectal thermometers, enemas, douches, and similar types of nozzles, [and tampons and condoms]" and "widely used in gynecological and hospital procedures." Such claims make these products medical devices, and FDA has regulated them as such since 1976. FDA regulations in 21 CFR part 880 subpart G list products that are general hospital and personal use miscellaneous devices. The regulation in 21 CFR 880.6375 entitled "patient lubricant" states: "A patient lubricant is a device intended for medical purposes that is used to lubricate a body orifice to facilitate entry of a diagnostic or therapeutic device." Claims related to insertion of or facilitating use of rectal thermometers, enemas, douches, tampons, and condoms are considered device claims and are not included as part of this call for data. As these products with device claims can also have drug claims as discussed previously, FDA invites the submission of data to support the drug claims as part of this call for data.

Products marketed as a vaginal moisturizer have claims such as "replenishes your natural moisture for days at a time," "with regular use, provides continuous vaginal moisture for most women," and "safe immediate relief of vaginal dryness." FDA also considers these to be drug claims because they discuss affecting the structure or function of the body and, in some cases, may relate to the mitigation of a disease. Thus, they are also part of this call for data. FDA does not consider these uses of lubricants or vaginal moisturizers to be cosmetic claims because they do not relate to "cleansing, beautifying, promoting attractiveness, or altering the appearance" (see section 201(i) of the act).

G. Categories of Unreviewed Drug Products and Ingredients

The categories of unreviewed drug products listed in the following paragraphs are included in this call for data. The ingredients listed under each category heading are those that FDA has identified as possibly being in these products. This list is not intended to be all-inclusive. Manufacturers of drug products in categories not previously reviewed or that contain ingredients not listed herein should submit appropriate information to FDA.

- Ammonia as a reflex stimulant
  - Ammonia inhalants, aromatic spirits of ammonia
- Bed-wetting deterrents
  - Belladonna
- Blemish remedies (excluding topical acne active ingredients in 21 CFR 310.545(a)(1) and 333.310)
  - Allantoin, aloe vera gel, calamine, ethyl alcohol, eugenol, menthol, oil of eucalyptus, oil of peppermint, propylene glycol, sodium alkylarylpolyether sulfonate, titanium dioxide, triclocarban, triclosan
- Breast creams (for use when nursing)
  - Cetyl alcohol, cocoa butter, cod liver oil, dimethicone, glycerin, glyceryl monostearate, hard fat, lanolin, mineral oil, petrolatum, white petrolatum
- Bunion remedies
- Drawing salves (excluding products labeled for the treatment of boils in 21 CFR 310.531) —includes products labeled for the drawing or removal of splinters, slivers, or similar items
  - Ergot fluid extract, ichthammol, juniper tar (oil of cade), magnesium sulfate, pine tar, rosin, rosin cerate, sulfur
- Foot balms, baths, and creams (excluding topical antifungal active ingredients in 21 CFR 310.545(a)(22) and 333.210) —including claims for relieving foot muscle strains and soreness from working out
  - Amyl salicylate, benzalkonium chloride, benzocaine, cajeput oil, carbolic acid, di-isobutyl phenoxy ethoxy ethyldimethyl benzyl ammonium chloride, essential oils, formalin, glyceryl monostearate, 8–hydroxyquinoline, iodized botanical oil, iron sulfate, isopropyl alcohol, lanolin, lithium chloride, magnesium sulfate, methyl salicylate, natural pine needle oil, o-benzyl-p-chlorophenol, oil of eucalyptus, oil of peppermint, oil of thyme, potassium iodide, propylene glycol, sodium bicarbonate, sodium chloride, sodium hypochloride, sodium lauryl sulfate, sodium sesquicarbonate, sodium sulfate, talc, tragacanth mucilage, trisodium phosphate, water soluble chlorophyllins, witch hazel, zinc oxide
- Impotency cures
  - Yohimbine, yohimbine hydrochloride
- Impregnated body wraps for weight reduction
  - Amino acids, collagen, magnesium sulfate
- Lubricants and vaginal moisturizers
  - Benzoic acid, carbomer 934P, carbopol 940, chlorhexidine gluconate, glucono delta lactone, glycerin, hydrogenated palm oil glyceride, hydroxyethylcellulose, mineral oil, natrosol 250H, nonoxynol-9, polycarbophil, polysorbate 60, polyethylene glycol 300, polyquaternium, propylene glycol, sodium hydroxide, sorbic acid, sorbitol
- Medicated bath preparations
  - Acetylated lanolin, alkyl aryl polyether alcohol, benzophenone-3, colloidal sulfur, cottonseed oil, di-isopropyl sebacate, drometrizole, iron sulfate, isopropyl myristate, isopropyl palmitate, isostearic acid, lanolin alcohols extract, lanolin oil, liquid petrolatum, lithium chloride, magnesium sulfate, mineral oil, natural and essential oils, nonoxynol-5, octoxynol-3, PEG–4 dilaurate, PEG–8 dioleate, PEG–40 sorbitan peroleate, PEG–200 dilaurate, Peru balsam, PPG–15, pine needle oil, potassium iodide, stearyl ether oleth-2, sodium bicarbonate, sodium carbonate, sodium chloride, sodium hyposulfate, sodium lauryl sulfate, sodium sesquicarbonate, sodium sulfate, tar distillate, vitamin E, water soluble chlorophyllins
- Nasal moisturizers
  - Glycerin, buffered isotonic saline solution, buffer solution, isotonic saline solution, normal saline, sodium chloride, saline phosphate
- Nonantimicrobial skin wound cleansers (previously listed as "Detergents")
  - Tincture of Green Soap, phenol sodium, poloxamer 188
- Prickly heat products
  - Aluminum hydroxide gel, zinc carbonate, zinc oxide
- Skin protectant blister guard
  - Beta-hydroxyquinolone, eugenol, pyroxylin solution
- Urethral creams for males
- Urinary acidifiers
  - Ammonium chloride, ascorbic acid
- Urinary alkalinizers
  - Sodium bicarbonate
- Urinary analgesics/antiseptics
  - Benzoic acid, methenamine, methylene blue, phenazopyridine, phenazopyridine HCl, salicylamide, sodium salicylate
- Wet dressings (excluding astringent active ingredients in 21 CFR 310.545(a)(18)(ii) and 347.10)
  - Aloe vera, calcium polysulfide, calcium thiosulfate, oxyquinoline sulfate, sodium propionate
- Wound wash saline
  - Sodium chloride solution, sterile sodium chloride solution
- Wrinkle removers
  - Alpha hydroxy acids

Alpha-hydroxycaprylic acid, alpha-hydroxyoctanóic acid, alpha-hydroxyethanoic acid and ammonium alpha-hydroxyetnanoate, alpha hydoxy and botanical complex, glycolic acid, glycolic acid and ammonium glycolate, glycomer in crosslinked fatty acids alpha nutrium, hydroxycaprylic acid, L-alpha hydroxy acid, lactic acid, mixed fruit acid, sugar cane extract, tri-alpha hydroxy fruit acids, triple fruit acid
Beta hydroxy acids
Beta hydroxybutanoic acid, salicylic acid[1], trethocanic acid, tropic acid
Alpha and beta hydroxy acids
Citric acid, malic acid
Other ingredients
Egg albumin, magnesium aluminum silicate, protein, sodium silicate

[1] From a chemist's perspective, based on its chemical structure, salicylic acid is not a true beta hydroxy acid. However, cosmetic companies often refer to this ingredient as a beta hydroxy acid. Consequently, many consumers think of it as one as well.

III. Categories That Will Not Be Reviewed

A. Categories Reclassified or Considered as Foods

The categories "salt substitutes," "salt tablets," and "sweeteners" were included in the 1975 call-for-data notice (40 FR 38179 at 38183). These types of products are currently regulated as foods and will not be further considered as part of the OTC drug review. During the course of the review, several parties inquired whether "oral electrolyte replacement" products and "weight increasing" products would be included in the review because these product categories were not mentioned in the 1973 and 1975 call-for-data notices. Oral electrolyte replacement products intended to treat diarrhea are regulated as medical foods under section 529(b)(3) of the act (21 U.S.C. 360ee(b)(3) and 21 CFR 101.9(j)(8)), and products for "weight gain" are considered foods (21 U.S.C. 301 *et seq.*).

B. Categories Reclassified or Considered as Medical Devices

In several instances, since 1975, FDA determined that certain types of products previously regulated as drugs should be regulated as medical devices and changed its regulatory approach accordingly (Ref. 4). These products include a spray-on dressing that does not contain a drug component and a "device incorporating a drug component with the combination product having the primary intended purpose of fulfilling a device function." This latter group of products includes a skin closure or bandage with an antimicrobial agent and a wound dressing with an antimicrobial agent. These products are considered combination products regulated by the Center for Devices and Radiological Health (CDRH), using device authorities under the act.

A liquid bandage[5] is defined in 21 CFR 880.5090 as "a sterile device that is a liquid, semiliquid, or powder and liquid combination used to cover an opening in the skin or as a dressing for burns. The device is also used as a topical skin protectant." A medical adhesive tape and adhesive bandage is defined in 21 CFR 880.5240 as:

> "* * * a device intended for medical purposes that consists of a strip of fabric material or plastic, coated on one side with an adhesive, and may include a pad of surgical dressing without a disinfectant. The device is used to cover and protect wounds, to hold together the skin edges of a wound, to support an injured part of the body, or to secure objects to the skin."

FDA is not including any of these device products in this current call for data.

IV. Request for Data and Information

FDA invites the submission of data, published and unpublished, and other information, pertinent to all active ingredients in these and other eligible unreviewed OTC drug categories (see section II of this document). Interested persons should include any consumer comprehension data relating to the OTC use of drug products containing these ingredients. These data and information will contribute to the following objectives:

- Facilitate FDA's review and aid in its determination of whether these OTC drugs for human use are generally recognized as safe and effective and not misbranded under their recommended conditions of use, and
- Provide all interested persons an opportunity to present for consideration the best data and information available to support the stated claims for these products. Any relevant data and information on these drug products that may have been submitted to earlier rulemakings or in response to earlier call-for-data notices should be updated and resubmitted to facilitate FDA's review of these products.

FDA also requests manufacturers to identify other OTC drug products that still need to be reviewed to determine if they are GRAS/E for OTC use. For OTC drug products that should have been submitted for review but for which data and information have not been received, FDA may not consider those products to be GRAS/E for OTC use. In accordance with section 201(p) of the act, such drug products would be considered new drugs and would need an NDA to be marketed.

In the **Federal Register** of January 23, 2002 (67 FR 3060), FDA published a final rule providing additional criteria and procedures for classifying OTC drugs as GRAS/E and not misbranded. The procedures identified in that rule apply to OTC drugs initially marketed in the United States after the OTC drug review began in 1972 and to OTC drugs without any U.S. marketing experience. This notice is not intended to apply to ingredients covered by the additional criteria and procedures identified in that rule.

This notice also does not apply to new chemical entities that have not previously been marketed for OTC use, regardless of the claims. These products should be submitted to FDA for evaluation in an NDA under 21 CFR part 314.

Manufacturers submitting data and information in response to this call for data should include any information (e.g., information showing when the product was first marketed in the United States) relating to the regulatory status of their product under the general regulatory policy described in the next section of this document. If such information does not exist or is found to be inadequate, such products may be at risk of regulatory action by FDA.

V. General Regulatory Policy

In order for a product to be eligible for the OTC drug review that began on May 11, 1972, the product or similarly formulated and labeled products had to be marketed as OTC drugs at the inception of the OTC drug review, which date was later extended to on or before December 4, 1975. Prescription drug products were also eligible for the review, as long as they continued to be marketed on a prescription basis while FDA evaluated data to ascertain whether the ingredient or combination of ingredients in the product could be proposed as GRAS/E for OTC use.

FDA may exercise its enforcement discretion to permit OTC drug products that do not have an approved NDA during the pendency of the OTC drug review to be marketed provided the following conditions are met:

1. The product or similarly formulated and labeled products were marketed as OTC drugs at the inception

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[5] The categories "liquid bandages (sprays)—protective skin preparations" and "medicated bandages" were in the 1975 call-for-data notice (40 FR 38179 at 38181), which listed 23 active ingredients possibly used in these products. These ingredients in products for these specific uses would not be considered OTC drug active ingredients.

of the OTC drug review on May 11, 1972, a date that was later extended to on or before December 4, 1975 (see § 330.13).

2. Such product does not constitute a hazard to health.

3. The product formulation is not regarded regarded to be a prescription drug within the meaning of section 503(b) of the act (21 U.S.C. 353(b)).

4. The product is an OTC drug and does not bear claims for serious disease conditions that require the attention and supervision of a licensed practitioner.

To be considered in this review, eight copies of the data and information must be submitted, preferably bound, indexed, and on standard size paper (approximately 8½ by 11 inches). FDA suggests that all submissions be in the format described in § 330.10(a)(2).

In accordance with § 330.10(a)(2), FDA will handle all submitted data and information as confidential except the general comments submitted to the docket in response to this notice and the answers to the questions and specific information requested on phenazopyridine HCl in section II.B of this document. FDA wants the answers to the questions and the specific information on phenazopyridine HCl to be publicly available when it reviews this ingredient so that all interested parties will have access to this information and be able to participate fully in the deliberations. However, FDA will put all submitted data and information on public display in the Division of Dockets Management (see **ADDRESSES**) 30 days after publication of any proposed rules resulting from the review of the submitted material, except to the extent that the person submitting it demonstrates that it falls within the confidentiality provisions of 18 U.S.C. 1905, 5 U.S.C. 552(b), or section 301(j) of the act (21 U.S.C. 331(j)). At the time of publication, FDA will provide an address where requests for confidentiality should be submitted.

Data and information should be addressed to the Division of OTC Drug Products (see **ADDRESSES**). Data submitted after the closing of the comment period (see **DATES** section) will not be considered except by petition under 21 CFR 10.30. Interested persons may submit written or electronic comments to the Division of Dockets Management before the closing date. Three paper copies of all mailed comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Bioassay of Phenazopyridine Hydrochloride for Possible Carcinogenicity," National Cancer Institute Carcinogenesis Technical Report Series No. 99, U.S. Department of Health, Education, and Welfare, Publication No. NIH 78–1349, 1978.

2. Labeling for Uristat (Urinary Pain Relief Tablets).

3. Food and Drug Administration, Compliance Policy Guides, No. 7132b.04, issued October 1, 1980, revised May 22, 1987.

4. Food and Drug Administration, Intercenter Agreement Between the Center for Drug Evaluation and Research and the Center for Devices and Radiological Health, October 31, 1991.

Dated: December 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–32102 Filed 12–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–04–8002]

Exchange of Letters Between the Food and Drug Administration and the European Commission and the European Agency for the Evaluation of Medicinal Products Concerning the Sharing of Documents and/or Information Related to Assuring the Safety, Quality, and Efficacy of Pharmaceutical Products Intended for Human or Animal Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of an exchange of letters between FDA and the European Commission and the European Agency for the Evaluation of Medicinal Products (EMEA). The participants concluded this exchange of letters on September 12, 2003. These letters express the intentions of FDA, the European Commission, and EMEA to continue cooperative activities to further enhance and strengthen communication between the respective organizations and further enhance public health promotion and protection in the European Union and the United States of America.

DATES: The agreement became effective September 12, 2003.

FOR FURTHER INFORMATION CONTACT: Michelle Limoli, European Commission Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0908.

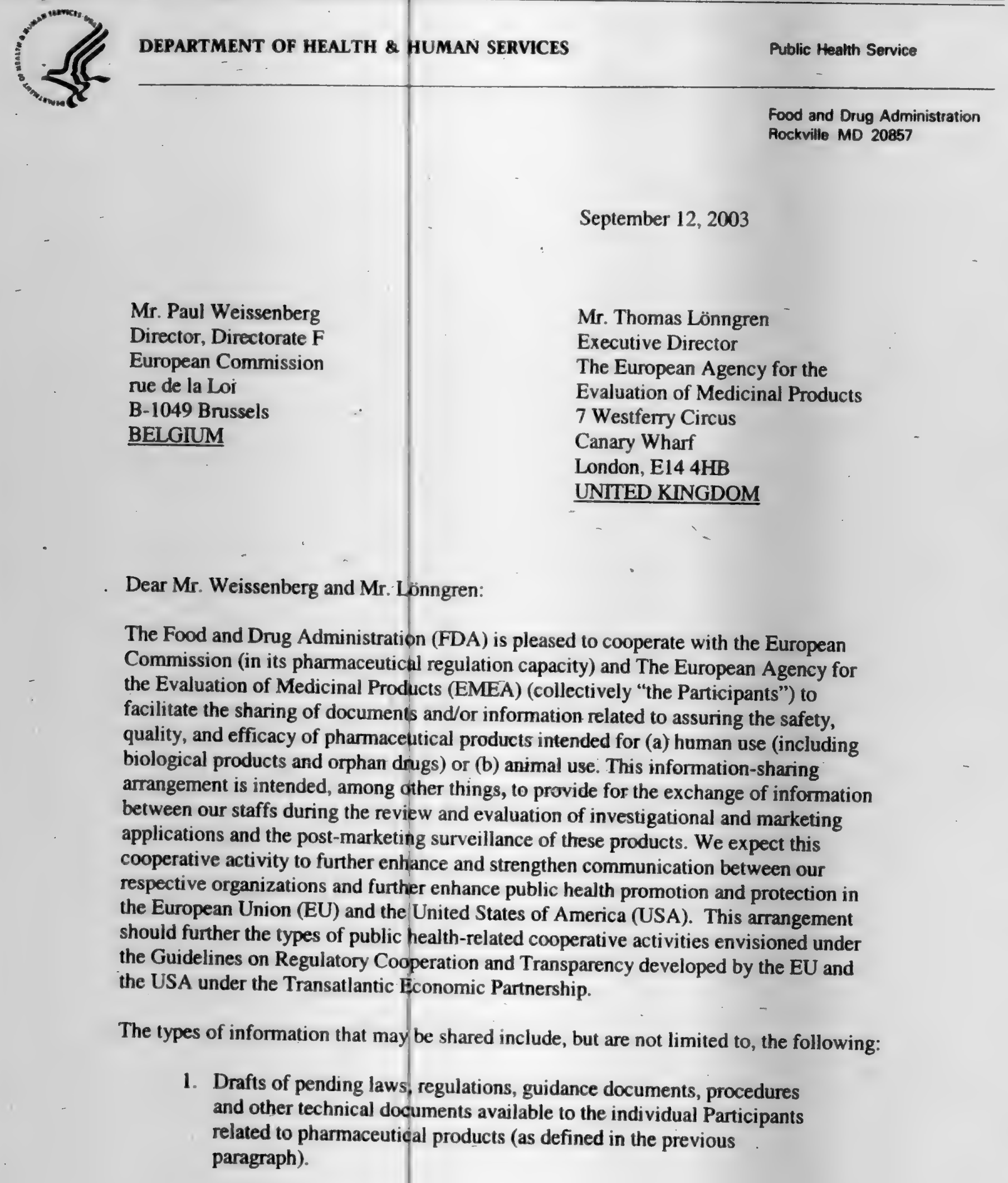
SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this exchange of letters.

Dated: December 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S



DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Food and Drug Administration
Rockville MD 20857

September 12, 2003

Mr. Paul Weissenberg
Director, Directorate F
European Commission
rue de la Loi
B-1049 Brussels
BELGIUM

Mr. Thomas Lönngren
Executive Director
The European Agency for the
Evaluation of Medicinal Products
7 Westferry Circus
Canary Wharf
London, E14 4HB
UNITED KINGDOM

Dear Mr. Weissenberg and Mr. Lönngren:

The Food and Drug Administration (FDA) is pleased to cooperate with the European Commission (in its pharmaceutical regulation capacity) and The European Agency for the Evaluation of Medicinal Products (EMEA) (collectively "the Participants") to facilitate the sharing of documents and/or information related to assuring the safety, quality, and efficacy of pharmaceutical products intended for (a) human use (including biological products and orphan drugs) or (b) animal use. This information-sharing arrangement is intended, among other things, to provide for the exchange of information between our staffs during the review and evaluation of investigational and marketing applications and the post-marketing surveillance of these products. We expect this cooperative activity to further enhance and strengthen communication between our respective organizations and further enhance public health promotion and protection in the European Union (EU) and the United States of America (USA). This arrangement should further the types of public health-related cooperative activities envisioned under the Guidelines on Regulatory Cooperation and Transparency developed by the EU and the USA under the Transatlantic Economic Partnership.

The types of information that may be shared include, but are not limited to, the following:

1. Drafts of pending laws, regulations, guidance documents, procedures and other technical documents available to the individual Participants related to pharmaceutical products (as defined in the previous paragraph).

2. Post-marketing data and information that could have an impact on the public health, such as pharmacovigilance data or information about impending regulatory actions.

3. Information on quality defect or product recalls of pharmaceutical products, known by the FDA to have been manufactured or distributed in the EU, and vice versa.

4. Information contained in or related to marketing or investigational applications for human or animal pharmaceutical products, as well as information related to orphan drug designations. This also includes information on maximum residue levels in these applications.

5. Without prejudice to arrangements set out in the framework of the Pharmaceutical Good Manufacturing Practices Annex to the Agreement on Mutual Recognition between the USA and the European Community, inspection reports and product sample test results describing the compliance of a pharmaceutical product or manufacturing facility with regulatory requirements.

6. Good Clinical Practices (GCP) inspection reports of clinical trial sites.

7. Information technology information supporting the regulatory process.

There also may be occasions when scientific experts from the Participants will visit each other's agencies and will have access to non-public information. We have, therefore, enclosed an example of the Visitor Commitment Statement that visitors from the EMEA or the European Commission would be required to sign while visiting FDA if they are to have access to non-public information during the visit. We understand that FDA visitors to the EMEA or the European Commission would sign a similar commitment if, during their visit to the EMEA or the European Commission, they are to have access to non-public information.

Both Participants note that it is an essential element of this international arrangement on regulatory cooperation that confidential information emanating from the other Participant will be treated as such.

On each occasion where there is a request for disclosure to third parties of non-public information received from EMEA or the European Commission, FDA shall consult with the EMEA or the European Commission. Likewise, on each occasion where there is a request for disclosure of non-public information received from FDA, the EMEA or the European Commission shall consult with the FDA.

Page 3 – Mr. Paul Weissenberg
Mr. Thomas Lönngren

Some of the information identified above may contain non-public information, such as confidential commercial information; trade secret information; personal privacy information; law enforcement information; or internal, pre-decisional information. FDA may only share these types of information as permitted by USA laws and FDA regulations. Among other things, FDA regulations require that a foreign government agency provide written assurance to FDA that it has the authority to protect non-public information from public disclosure and that it will not disclose such information. The EMEA and the European Commission have provided a statement to FDA affirming their authority to maintain the confidentiality of non-public information provided by FDA to their officials or representatives under Article 4.1(a) of Regulation (EC) 1049/2001, which protects non-public information from further disclosure. The EMEA and the European Commission agree that "confidential commercial information" includes information referred to in the US Freedom of Information Act, 5 U.S.C. § 552(b)(4), and in Regulation (EC) No. 1049/2001.

Similarly, FDA affirms that it has the authority to protect the confidentiality of the non-public information identified above under the Freedom of Information Act (FOIA) (5 U.S.C. § 552); the Trade Secrets Act (18 U.S.C. § 1905); section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.§ 331(j)); and other applicable laws. Under the FOIA, the above non-public information shared by the EMEA or the European Commission with FDA is the type of information that can be withheld from public disclosure. FDA, therefore, in accordance with these statutes, consents not to disclose such non-public information provided to FDA by the EMEA or the European Commission absent the written permission of the sponsor/owner of the non-public information or written confirmation by the EMEA or the European Commission that the non-public information no longer has confidential status. The FDA agrees that "confidential commercial information" includes information referred to in the US Freedom of Information Act, 5 U.S.C. § 552(b)(4), and in Regulation (EC) No. 1049/2001.

Sharing of non-public information under this arrangement is in the interest of the public health by reason of the EMEA's or the European Commission's possessing information concerning the safety, efficacy, or quality of a product or information concerning an investigation. Further, the exchange of non-public information under this arrangement is reasonably necessary to facilitate cooperative regulatory activities between FDA, on the one hand, and the EMEA and the European Commission, on the other hand. All non-public information will be shared with the EMEA and the European Commission under this agreement in accordance with Title 21 of the Code of Federal regulations § 20.89.

This cooperative arrangement is not intended to compromise any of the Participants' abilities to carry out their responsibilities and is not intended to create any kind of legal obligation under international or other law on the part of the USA, the FDA, the European Commission, the EMEA, or the European Union.

Page 4 – Mr. Paul Weissenberg
Mr. Thomas Lönngren

This arrangement will commence 12 September 2003 for an initial period of two years, and remain in effect until 12 September 2005, during which time we will together assess its effectiveness on at least an annual basis and make any needed revisions.

This letter, together with your letter on behalf of the EMEA and the European Commission, will constitute our mutual commitments to implement these procedures.

We look forward to implementing these procedures that will allow for the sharing of information and to continuing our many cooperative activities to enhance the public health of our regions and to foster further the already beneficial and productive relationship between the EMEA, the European Commission, and the FDA.

Sincerely,

Mark B. McClellan, M.D., PhD.
Commissioner of Food and Drugs

Enclosure

VISITOR COMMITMENT TO PROTECT NON-PUBLIC INFORMATION[1]

I, ________________, a representative of ________________________________ ________________________________, am on an official visit at the United States Food and Drug Administration (FDA). During the course of my visit, I understand that I may have access to non-public information, including confidential commercial information, trade secret information, and internal non-public FDA information. I agree to protect all non-public information to which I have access in the following manner:

1. Store the non-public information in the secured offices of FDA, unless released to me by appropriate FDA officials; and
2. Grant access to this information only to known employees of FDA or to such other persons as may be designated in writing by FDA.

Further, I agree to:

1. Assist in reviewing the security measures I will employ in protecting non-public information;
2. Return all non-public information and any notes related to this information to FDA either upon request by FDA or, at the latest, upon completion of my visit;
3. Report to an FDA official all incidents in which unauthorized persons might have gained access to non-public information made available to me; and
4. Not disclose, publish, or share such non-public information without the express permission of FDA.

Furthermore, I have no financial interest in any manufacturer of a human or animal drug product.

I understand that I may be subject to criminal penalties if I disclose non-public information without auathorization.

____
SIGNATURE DATE

TYPED OR PRINTED NAME OF VISITOR:________________________________

____
WITNESSED (SIGNATURE) DATE

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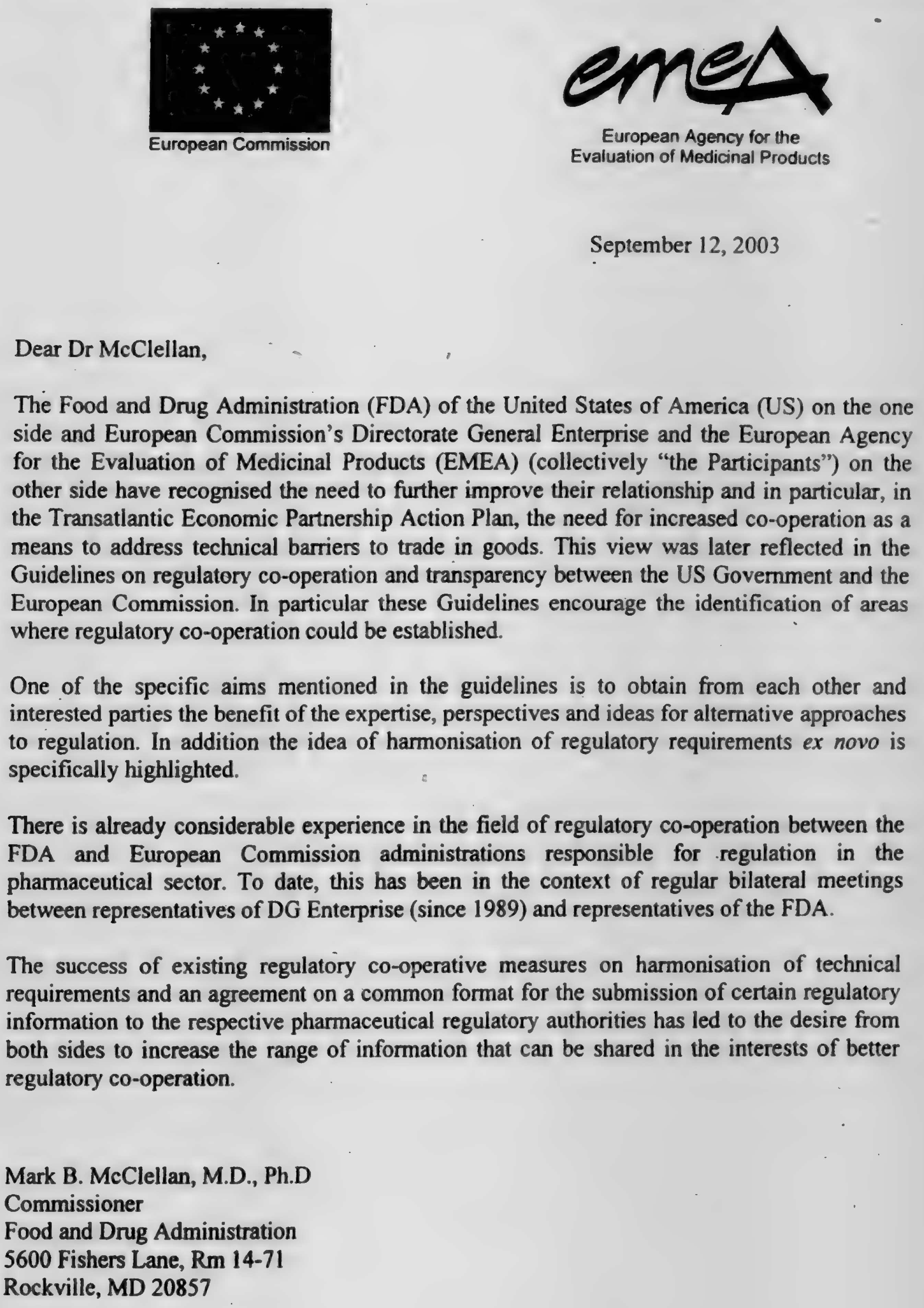
[1] This document satisfies the requirements of Title 21 of the Code of Federal Regulations § 20.89 (c)(1)(ii)(C) relating to a foreign scientist visiting the Food and Drug Administration on the agency's premises as part of a joint review or long-term cooperative training effort authorized under section 708 of the Federal Food, Drug, and Cosmetic Act.



European Commission

emea
European Agency for the
Evaluation of Medicinal Products

September 12, 2003

Dear Dr McClellan,

The Food and Drug Administration (FDA) of the United States of America (US) on the one side and European Commission's Directorate General Enterprise and the European Agency for the Evaluation of Medicinal Products (EMEA) (collectively "the Participants") on the other side have recognised the need to further improve their relationship and in particular, in the Transatlantic Economic Partnership Action Plan, the need for increased co-operation as a means to address technical barriers to trade in goods. This view was later reflected in the Guidelines on regulatory co-operation and transparency between the US Government and the European Commission. In particular these Guidelines encourage the identification of areas where regulatory co-operation could be established.

One of the specific aims mentioned in the guidelines is to obtain from each other and interested parties the benefit of the expertise, perspectives and ideas for alternative approaches to regulation. In addition the idea of harmonisation of regulatory requirements *ex novo* is specifically highlighted.

There is already considerable experience in the field of regulatory co-operation between the FDA and European Commission administrations responsible for regulation in the pharmaceutical sector. To date, this has been in the context of regular bilateral meetings between representatives of DG Enterprise (since 1989) and representatives of the FDA.

The success of existing regulatory co-operative measures on harmonisation of technical requirements and an agreement on a common format for the submission of certain regulatory information to the respective pharmaceutical regulatory authorities has led to the desire from both sides to increase the range of information that can be shared in the interests of better regulatory co-operation.

Mark B. McClellan, M.D., Ph.D
Commissioner
Food and Drug Administration
5600 Fishers Lane, Rm 14-71
Rockville, MD 20857

In this context, and within the scope of the guidelines on regulatory co-operation, the European Commission together with the EMEA and the FDA see value in establishing an arrangement to exchange more regulatory information including advance drafts of legislation and/or regulatory guidance documents as well as information related to the authorisation and supervision of medicinal products. Because this type of information may include information of a non-public nature, both sides agree, to the extent permitted by their respective laws, to keep the information exchanged confidential.

The potential benefits of this exercise are expected to include accelerated access of patients to new and innovative medicines; resource savings due to reduced duplication of assessment and improved performance and safety as a result of the involvement of the best regulatory expertise from both sides. This co-operation shall not compromise each Participant's ability to carry out its responsibilities and shall not create any kind of legal obligation on the part of the FDA, the European Commission, or the EMEA.

Therefore the European Commission and the EMEA are pleased to cooperate with the FDA to facilitate the sharing of documents and/or information related to ensuring the safety, quality, and efficacy of medicinal products for human and veterinary use, including orphan medicinal products, authorised or under review both in the US and in the European Union (EU). This is also intended to include information on maximum residue limits.

In this context, the term 'medicinal products authorised in the European Union' refers to products subject to evaluation or authorised under the centralised procedure as well as medicinal products authorised at national level by the EU Member States that are subject to official European Community arbitration and referrals.

This cooperation activity will strengthen communication between public authorities involved in these activities and reinforce public health protection.

The type of information that may be shared includes, but is not limited to:

1. All legislation and guidance documents available under the rules and regulations governing medicinal products in the EU (http://dg3.eudra.org/F2/eudralex/index.htm). This also includes all position papers, notes for guidance and any other guidance documents either in draft, finalised or released for consultation.

2. Post-authorisation pharmacovigilance data, particularly those of urgent nature related to EU or non-EU originating adverse drug reactions as well as safety concerns arising from periodic safety update reports and post-authorisation obligations and commitments.

3. Information on quality defect or product recalls for medicinal products known to the EMEA or to the European Commission to have been manufactured or distributed in the US.

4. Information contained in applications for scientific advice, orphan medicine designation, marketing authorisation or post-authorisation activities of significant public health interest, and maximum residue limits.

5. Without prejudice to arrangements set out in the framework of the US-EC Mutual Recognition Agreement in particular its Sectorial Annex on Pharmaceutical

Good Manufacturing Practices (GMP), GMP Inspection reports and product sample results available to the EMEA or the European Commission.

6. Good Clinical Practices (GCP) inspections for specific products and GCP Inspection reports available to the EMEA or the European Commission.

7. Information Technology systems supporting regulatory processes.

At the EMEA, the information may be shared with national experts on secondment from the EU Member States, EEA countries, or EU candidate countries. These individuals will be required to sign a confidentiality undertaking with the EMEA (form to be annexed). This form will also be completed by each FDA staff member visiting the EMEA.

The Participants reserve the right to limit the scope of the above information should its dissemination or exchange undermine specific interests, including commercial, industrial or professional secrecy, the protection of the individual and of privacy, the public interests of the EU or the protection of the EMEA or the European Commission's interests in the confidentiality of its proceedings. In some cases, exchange of information under this arrangement may be subject to prior authorisation from the companies concerned.

Participants note that it is an essential element of this international arrangement on regulatory cooperation that confidential information emanating from the other Participant will be treated as such.

On each occasion where there is a request for disclosure to third parties of non-public information received from EMEA or the European Commission, FDA shall consult with the EMEA or the European Commission. Likewise, on each occasion where there is a request for disclosure of non-public information received from FDA, the EMEA or the European Commission shall consult with the FDA.

The EMEA and the European Commission affirm that they have the authority to protect non-public information, including confidential commercial information, provided to their officials or representatives by the FDA, and will protect such information as information not to be disclosed under Article 4.1(a) of Regulation (EC) No 1049/2001. The EMEA and the European Commission understand that the FDA considers it crucial that this non-public information be protected from disclosure; otherwise, it could endanger the international relations between the Participants. The EMEA and the European Commission agree that "confidential commercial information" includes information referred to in the US Freedom of Information Act, 5 U.S.C. § 552(b)(4), and in Regulation (EC) No. 1049/2001

Similarly, the FDA affirms that it has the authority to protect non-public information, including confidential commercial information, provided to its officials or representatives by the EMEA or the European Commission, and will protect such information as information not to be disclosed under the US Freedom of Information Act. The FDA understands that the EMEA and the European Commission consider it crucial that this non-public information be protected from disclosure; otherwise, it could endanger the international relations between the Participants. The FDA agrees that "confidential commercial information" includes information referred to in the US Freedom of Information Act, 5 U.S.C. § 552(b)(4), and in Regulation (EC) No. 1049/2001.

This arrangement is concluded for a period of two years after which we will assess at least annually its effectiveness.

The European Commission and the EMEA should be obliged if FDA would acknowledge receipt of this letter and confirm that this letter and your reply constitute the arrangement set out above between our services.

We look forward to implementing this arrangement allowing for the sharing of non-public information and to continuing cooperative activities to further enhance the relationship between the FDA, the EMEA, and the European Commission, in the best interests of public and animal health.

Paul Weissenberg
Director, DG Enterprise
European Commission

Thomas Lönngren
Executive Director
European Agency for the
Evaluation of Medicinal
Products

[FR Doc. 03–32005 Filed 12–30–03; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Single Grant Application Form for Consolidated Community Health Centers—In Use Without Approval

The Consolidated Health Center Program is administered by the Health Resources and Services Administration's (HRSA) Bureau of Primary Health Care (BPHC). Grant funding opportunities are provided for existing Health Centers for continuation funding. The single grant application form has been designed for existing grantees to apply for continuation funding from one or more of the following BPHC program funding sources authorized under section 330 and 301 of the Public Health Service (PHS) Act: Community Health Centers (CHC), Migrant Health Centers (MHC), Health Care for the Homeless(HCH), Public Housing Primary Care (PHPC), School Based Health (aka HSHC), and/or Pacfic Basin.

Estimates of annualized reporting burden are as follows:

Type of application form	Number of respondents	Hours per response	Total burden hours
Single Grant Application	225	100	22,500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 23, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–32162 Filed 12–30–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given that the following committee will convene its forty-sixth meeting.

Name: National Advisory Committee on Rural Health and Human Services

Date and Time: February 22, 2004; 2 p.m.–5 p.m.; February 23, 2004; 8:30 a.m.–5 p.m.; February 24, 2004; 8:30 a.m.–10:30 a.m.

Place: Grand Hyatt Washington, 1000 H Street NW., Washington, DC 20001, Phone: 1–800–233–1234.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Sunday afternoon, February 22, 2004 at 2 p.m., the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The first session will open with a discussion of the Committee business and a review of the 2004 Report to the Secretary by the Honorable David Beasley. This will be followed by an update from the Committee Staff represented by the following: Ms. Jennifer Riggle, Office of Rural Health Policy; Mr. Dennis Dudley, Administration on Aging; and Ms. Rachel Owen, Administration on Children and Families. The final session for the day will be an overview of the Medicare Prescription Drug Bill. The Sunday meeting will close at 5 p.m.

Monday morning, February 23, 2004 at 8:30 a.m. the meeting will begin with the 2005 Report Planning, led by the Honorable David Beasley and Mr. Tom Morris, Acting Deputy Director of the Office of Rural Health Policy. At 9:30 a.m. the Committee will hear a presentation of the Rural Priorities of the Department of Health and Human Services by Dr. Wade Horn, Assistant Secretary for Children and Families and Secretary Tommy Thompson (invited). The Committee will resume discussion of the 2005 Workplan and break for a joint lunch with the National Rural Health Association Policy Institute (lunch will be provided for the Committee only). After lunch the Committee will hear a panel discussion on rural health and human services emerging issues. The Monday session will end with continued discussion of the 2005 Workplan.

The final session will be convened Tuesday morning, February 24 at 8:30 a.m. The Committee will review the discussion of the 2005 Workplan. The meeting will conclude with a discussion of the June and September meetings. The meeting will be adjourned at 10:30 a.m.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Tom Morris, MPA, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov*.

Dated: December 23, 2003.

Tina M. Cheatham,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 03–32161 Filed 12–30–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SBIR Phase I, Topic 46.

Date: January 8, 2004.

Time: 12 p.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Autism Spectrum Disorders.

Date: February 13, 2004.

Time: 11 a.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9608. 301–443–1513, *psherida@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Awar; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32119 Filed 12–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH SERVICES

National Institutes of Health

National Institute Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: January 29, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: Grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Division of Extramural Activities, National Institutes of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2463, *kittc@niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32120 Filed 12–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Botulinum Toxin Biophysics P01.

Date: January 16, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person; Tracy A. Shahan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3121, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2606, *tshahan@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Respiratory Immunity Against Agents of Bioterrorism.

Date: January 20, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, 3134, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3134, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 435–3569, *ns120v@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Evasion of the Innate Immune Response.

Date: January 22, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, 3134, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3134, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 435–3569, *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 23, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–32121 Filed 12–30–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16780]

Area Maritime Security Advisory Committees

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for Membership.

SUMMARY: Under the Federal Advisory Committee Act, the Secretary of Homeland Security is establishing Area Maritime Security Advisory Committees, and requesting qualified individuals interested in serving on these committees to apply for membership.

DATES: Requests for membership should reach your local Captain of the Port on or before January 30, 2004.

ADDRESSES: Requests for membership should be submitted to your local Captain of the Port. Local Addresses for each Captain of the Port are as follows:

MSO Boston, 455 Commercial St., Boston, MA 02109–1045, (617) 223–3001.

USCG Activities New York, 212 Coast Guard Dr., Staten Island, NY 10305, (718) 354–4037.

MSO Providence, 20 Risho Ave., East Providence, RI 02914–1208, Main Number: (410) 435–2300.

MSO Portland, ME, 103 Commercial St., Portland, ME 04101–4726, (207) 780–3251.

Group/MSO Long Island Sound, 120 Woodward Ave., New Haven, CT 06512–3698, Main Number: (203) 468–4401.

MSO Hampton Roads, Norfolk Fed. Bldg., 200 Granby St., Norfolk, VA 23510–1888, (757) 441–3295.

Coast Guard Activities Baltimore, 2401 Hawkins Point Rd., Baltimore, MD 21226–1791, (410) 576–2585.

MSO Wilmington, 1502 23rd St., Wilmington, NC 28405, Main Number: (910) 772–2200.

MSO/Group Philadelphia, 1 Washington Ave., Philadelphia, PA 19147–4395, (215) 271–4880.

MSO Miami, P.O. Box 01–6940, Miami, FL 33101–6940, Main Number: (305) 535–8705.

MSO Jacksonville, Suite 400, 7820 Arlington Expy., Jacksonville, FL 32211–7445, (904) 232–2640 X 108.

MSO Tampa, 155 Columbia Dr., Tampa, FL 33606–3598, (813) 228–2195.

MSO Savannah, Juliette G. Low Federal Bldg., 100 W. Oglethorpe Ave., Ste. 1017, Savannah, GA 31401, (912) 652–4353.

MSO Charleston, 196 Tradd St., Charleston, SC 29401–1899, (843) 724–7684.
MSO San Juan, P.O. Box 71526, San Juan, PR 00936–8626, Main Number: (787) 706–2400, (787) 706–2440.
MSO New Orleans, 1615 Poydras St., New Orleans, LA 70112–1254, (504) 589–4256.
MSO Morgan City, 800 David Dr., Morgan City, LA 70380–1304, (504) 380–5318.
MSO Corpus Christi, 555 North Carancahua, Ste. 500, Corpus Christi, TX 78478, (361) 888–3184.
MSO Houston-Galveston, P.O. Box 446, Galena Park, TX 77547–0446, (713) 671–5100.
MSO Mobile, 150 N. Royal St., Mobile, AL 36602, (334) 441–5196.
MSO Port Arthur, 2875 Jimmy Johnson Blvd., Port Arthur, TX 77640–2099, (409) 723–6509 X 248.
MSO St. Louis, 1222 Spruce St., Ste. 8–104E, St. Louis, MO 63103–2835, Main Number: (314) 539–3091.
MSO Huntington, 1415 6th Ave., Huntington, WV 25701–2420, Main Number: (304) 529–5524.
MSO Louisville, 600 Martin Luther King, Jr. Pl., Room 360, Louisville, KY 40202–2230, (502) 582–5194 X 39.
MSO Memphis, 200 Jefferson Ave., Ste. 1301, Memphis, TN 38103–2300, (901) 544–3941 X 226.
MSO Paducah, 225 Tully St., Paducah, KY 42003–1582, (270) 442–1621 X308.
MSO Pittsburgh, Kossman Bldg., Ste. 1150, 100 Forbes Ave., Pittsburgh, PA 15222–1371, (412) 644–5808 X 115.
MSO Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203, (716) 843–9574.
MSO Chicago, 215 W. 83rd St., Ste. D, Burr Ridge, IL 60521, (630) 986–2155.
MSO Cleveland, 1055 E. 9th St., Cleveland, OH 44114, (216) 937–0126.
MSO Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, (313) 568–9580.
MSO Duluth, 600 S. Lake Ave., Canal Park, Duluth, MN 55802–2352, (218) 720–5286.
MSO Milwaukee, 2420 S. Lincoln Memorial Dr., Milwaukee, WI 53207–1997, (414) 747–7155.
MSO Toledo, The Ohio Bldg., 420 Madison Ave., Ste. 700, Toledo, OH 43604–1209, (419) 259–6372.
MSO/Group Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783, (906) 635–3223.
MSO/Group Los Angeles/Long Beach, 1001 S. Seaside Ave., Bldg. 20, San Pedro, CA 90731, (310) 732–7380.
MSO San Diego, 2716 N. Harbor Dr., San Diego, CA 92101–1064, (619) 683–6477.
MSO San Francisco Bay, Bldg. 14, Coast Guard Island, Alameda, CA 94501–5100, (510) 437–3082.
MSO Puget Sound, 1519 Alaskan Way South, Bldg. 1, Seattle, WA 98134–1192, (206) 217–6232.
MSO/Group Portland, 6767 N. Basin Ave., Portland, OR 97217–3992, (503) 240–9317.
MSO Honolulu, 433 Ala Moana Blvd., Honolulu, HI 96813–4909, (808) 522–8260.
MARSEC/MSO Guam, PSC 455, Box 176, FPO AP, 96540–1056, (671) 339–2001X164.
MSO Juneau, 2760 Sherwood Lane, Ste. 2A, Juneau, AK 99801–8545, Main Number: (907) 463–2457.
MSO Anchorage, 510 L Street, Ste. 100, Anchorage, AK 99501–1946, (907) 271–6724.
MSO Prince William Sound (Valdez), 105 South Clifton, Valdez, AK 99686–0486, Main Number: (907) 835–7205.

FOR FURTHER INFORMATION CONTACT: For questions on Area Maritime Security Advisory Committees, contact Lieutenant Junior Grade Holly Wendelin at 202–267–4132. For questions about AMS Committee Charters, contact your local Captain of the Port using the information listed in the **ADDRESSES** section above.

SUPPLEMENTARY INFORMATION:

Establishment of Area Maritime Security Advisory Committees

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code, and authorizes the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees (AMS Committees) for any port area of the United States. The MTSA includes a provision exempting these AMS Committees from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App.2).

The AMS Committees shall assist the Captain of the Port in the development, review, and update of the AMS Plan for their area of responsibility. Such matters may include, but are not limited to:

- Identifying critical port infrastructure and operations;
- Identifying risks (threats, vulnerabilities, and consequences);
- Determining mitigation strategies and implementation methods;
- Developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and
- Providing advice to, and assisting the Captain of the Port in, developing the Area Maritime Security Plan.

We anticipate that each AMS Committee will meet more than once a year. Subcommittees of each AMS Committee may also meet between meetings of the parent committee. AMS Committee meeting locations will be established by the cognizant Captain of the Port.

AMS Committee Membership

At least seven of the members of each AMS Committee must have at least 5 years of experience related to maritime or port security operations. Total number of members will be determined by the cognizant COTP. The COTP will also determine whether to have multiple AMS Committees for those COTP zones with separate, distinct port areas. Applicants may be required to pass an appropriate security background check prior to appointment to the committee.

Members' terms of office will be for 5 years; however, to permit orderly turnover of the committee's membership, the initial terms of office will be staggered, and the members initially appointed to AMS Committees will be appointed to terms of 3, 4 or 5 years. Members will be eligible to serve an additional term of office. Members will not receive any salary or other compensation for their service on an AMS Committee.

In support of the policy of the U.S.C.G. on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Request for Applications

Those seeking membership are not required to submit formal applications to the local COTP, however, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: December 22, 2003.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Director of Port Security.

[FR Doc. 03–32081 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16696]

Pollution Prevention Equipment; Standards for Approval

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The Coast Guard will consider alternative testing standards, including but not limited to standards in International Maritime Organization (IMO) resolutions MEPC.107(49) and MEPC.108(49), for approval of oil-water separators, bilge monitors, cargo monitors and bilge alarms, and for the designation of laboratories as approved facilities to conduct tests on this pollution prevention equipment (PPE). The standards in these resolutions will come into force internationally in 2005 and will replace existing international standards reflected in current PPE Coast Guard regulations.

DATES: This policy is effective December 31, 2003. Comments and related material must reach the Docket Management Facility on or before March 30, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–16696 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. This notice and resolutions MEPC.107(49) and MEPC.108(49) are in docket USCG–2003–16696 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.* ISO 9377–2 may be obtained for a fee through ISO's website *http://www.iso.org.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Lieutenant George Grills, Systems Engineering Division, Office of Design and Engineering Standards, (202) 267–6640. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Reason for Policy Notice

As a participant in the International Maritime Organization Marine Environmental Protection Committee (MEPC) that revised international pollution prevention equipment (PPE) performance, design and maintenance standards, the U.S. Coast Guard is aware of advances in PPE technology more capable of effectively processing emulsified oils, surfactants, and contaminants.

It is also aware that current Coast Guard PPE regulations, reflected in 46 CFR 162.050–39, require use of solvents, specifically carbon tetrachloride and Freon 113 (CFC 113), that are Class I ozone-depleting substances under the Clean Air Act amendments of 1990 (42 U.S.C. 7671a). Under the Montreal Protocol on Substances that Deplete the Ozone Layer, the production of these solvents is being phased out internationally.

The United States phased out the import and production of class I ozone-depleting substances effective January 1, 1996 (*see* 40 CFR 82.4, and 60 FR 24986, May 10, 1995). A provision known as a *de minimis* exception covering the use of these solvents in laboratories does not include the oil-in-water tests called for by 46 CFR 162.050–39 (*see* both Decision XI/15 of the Parties to the Montreal Protocol, and appendix G to 40 CFR part 82, subpart A). This situation leaves domestic and foreign manufacturers and testing laboratories looking for other options to measure oil content in water samples taken from PPE.

The MEPC tasked the subcommittee on Ship Design and Equipment with updating MEPC.60(33) adopted on October 30, 1992, and A.586(14) adopted on November 20, 1985, to specifically address the concerns with PPE performance and testing. Representatives of the U.S. government participated in the subcommittee's 46th session that resulted in draft guidelines for PPE that were presented to MEPC at its 49th session.

At that session, on July 18, 2003, MEPC approved resolutions MEPC.107(49) entitled "Revised Guidelines and Specifications for Pollution Prevention Equipment for Machinery Space Bilges of Ships" and MEPC.108(49) entitled "Revised Guidelines and Specifications for Oil Discharge Monitoring and Control Systems for Oil Tankers" to replace MEPC.60(33) and A.586(14) respectively. The new resolutions carry the same titles as those they will replace but these recently approved resolutions now reference ISO 9377–2, a new oil-in-water test standard developed by the International Organization for Standardization (ISO), that does not require the use of ozone-depleting solvents.

The United States is a party to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78, Annex I/II). Resolutions MEPC.60(33) and A.586(14) were created under MARPOL 73/78, Annex I/II. These two older resolutions will be superseded on January 1, 2005, but while they remain in force, the following sections in subpart 162.050 will continue to reflect their implementation:

§ 162.050–17 Separator test rig.

§ 162.050–19 Monitor and bilge alarm test rig.

§ 162.050–23 Separator: Approval tests.

§ 162.050–27 Cargo Monitor: Approval tests.

§ 162.050–31 Bilge Monitor: Approval tests.

§ 162.050–35 Bilge alarm: Approval tests.

§ 162.050–37(b) Vibration test.

§ 162.050–39 Measurement of oil content.

All other subpart 162.050 sections are either substantially the same as new resolutions MEPC.107(49) and MEPC.108(49) or contain a unique application.

The Coast Guard expects to publish in the **Federal Register** a proposal to revise 46 CFR subpart 162.050 to reflect the new standards called for in those resolutions. In the interim, PPE manufacturers seeking Coast Guard approval and laboratories applying for designation as an authorized facility, may consider using alternative testing standards to those in the subpart 162.050 sections listed above—including alternative standards in resolutions MEPC.107(49) and MEPC.108(49), that the Coast Guard may, in its discretion, determine ensure equivalent performance characteristics.

Commenting on Notice and Viewing Documents Referenced in It

If you wish to submit comments regarding this policy notice, please send them to the Docket Management Facility at the address under **ADDRESSES**. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, and identify the docket number for this rulemaking (USCG–2003–16696). You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Authority: 46 U.S.C. 3306, 3703, E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; 46 CFR 159.001–7 and 159.005–7; Department of Homeland Security Delegation No. 0170.1.

Dated: December 12, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–32078 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on two forms used by FEMA's National Emergency Training Center (NETC) to approve and coordinate the use of the NETC facility for extracurricular training activities.

SUPPLEMENTARY INFORMATION: NETC is a FEMA facility that houses the Emergency Management Institute (EMI) and the National Fire Academy (NFA). NETC provides training and educational programs for Federal, State, and local personnel in hazard mitigation, emergency response and preparedness, fire prevention and control, disaster response, and long-term disaster recovery. Special groups sponsored by EMI, NFA or other FEMA organizations may use NETC facilities to conduct activities closely related to and in direct support of their activities. Such groups include other Federal departments and agencies, groups chartered by Congress such as the American Red Cross, State and local governments, volunteer groups, and national and international associations representing State and local governments.

Collection of Information

Title: Approval and Coordination of Requirements to use NETC for Extracurricular Training Activities.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0029.

Form Numbers: FEMA Form 75–10, Request for Housing Accommodations; and FEMA Form 75–11, Request for Use of NETC Facilities.

Abstract: Data will be obtained from special groups that request to use NETC facilities for extracurricular training activities. Extracurricular training is training over and above regularly scheduled training sessions of NFA and EMI. The policy of NETC is to accommodate other training activities on a space-available basis at the Emmitsburg campus. In order for NETC to approve and schedule the use of its facilities, information must be provided by special group organizations. A written, e-mail or telephone request for use of NETC facilities is initially made to determine availability of the facilities. If space is available, the contact person for the special group must follow up by completing FEMA Form 75–11 to provide information on the number of participants, meals, and special requirements. The information is used to assign classrooms, schedule equipment, and arrange for food service.

Affected Public: Not-for-profit institutions; Federal Government; State, local or tribal government; individuals or households; and business or other for-profit.

Estimated Total Annual Burden Hours: 142 hrs.

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C) (minutes)	Annual burden hours (A × B × C) (hours)
75–10	1500	1	5	125
75–11	100	1	10	17
Total	1600	1	15	142

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472; e-mail address: *InformationCollections @fema.gov;* or, facsimile (202) 646–3347.

FOR FURTHER INFORMATION CONTACT: Merril Sollenberger, Special Groups and Visitors Coordinator, U.S. Fire Administration, telephone number (301) 447–1179, facsimile number (301) 447–1366, or e-mail address: *merril.sollenberger@dhs.gov* for additional information. You may contact Ms. Anderson for copies of the proposed information collection.

Dated: December 22, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–32199 Filed 12–30–03; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Pre-Disaster Mitigation Disaster Resistant University Grants

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of availability of Pre-Disaster Mitigation Disaster Resistant University grants.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice of the availability of Pre-Disaster Mitigation (PDM) Disaster Resistant University (DRU) grants. FEMA will provide PDM funds to assist universities, through State and local governments, to implement a sustained pre-disaster natural hazard mitigation program to reduce overall risk to facilities, research assets, students and faculty.

These funds will be competitively awarded with a National priority of ensuring that program funds benefit a representative range of universities, based on hazard type, size, geography, and academic community served, which includes consideration of Historically Black Colleges and Universities and Tribal Colleges and Universities. Funds are available for hazard mitigation project and planning activities at universities that have demonstrated commitment to such activities through prior DRU efforts, and for planning and project activities for universities that have not undertaken DRU activities.

DATES: States, and federally recognized Indian Tribal governments that complete grant applications must submit them on paper to the appropriate FEMA Regional Office on or before midnight, eastern time, March 1, 2004. If the non-Federal cost share requirement cannot be met by the application deadline due to pending State and/or local legislative approval or fiscal year timelines, the Applicant still must submit the application by March 1, 2004, including a notation in the Budget Narrative and a letter to the FEMA Regional Director providing an explanation and stating that the cost share will be available by March 30, 2004. The Applicant must follow-up with a written certification to the FEMA Regional Director by March 30, 2004, to verify that non-Federal cost share funding is approved and available for immediate use if the application is selected by FEMA.

ADDRESSES: FEMA Regional Offices:

FEMA Region I—*Serving Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and Massachusetts:* J.W. McCormack POCH Building, Boston, MA 02109.

FEMA Region II—*Serving New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands:* 26 Federal Plaza, Rm. 1307, New York, NY 10278–0001.

FEMA Region III—*Serving the District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia:* 1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

FEMA Region IV—*Serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:* 3003 Chamblee Tucker Road, Atlanta, GA 30341.

FEMA Region V—*Serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:* 536 S. Clark Street, 6th Floor, Chicago, IL 60605.

FEMA Region VI—*Serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:* FRC 800 North Loop 288, Denton, TX 76209–3698.

FEMA Region VII—*Serving Iowa, Kansas, Missouri, and Nebraska:* 2323 Grand Avenue, Suite 900, Kansas City, MO 64108–2670.

FEMA Region VIII—*Serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:* Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

FEMA Region IX—*Serving Arizona, California, Hawaii, Nevada, the Territory of American Samoa, the Territory of Guam, and the Commonwealth of the Northern Mariana Islands:* 1111 Broadway, Suite 1200, Oakland, CA 94607–4052.

FEMA Region X—*Serving Alaska, Idaho, Oregon, and Washington:* Federal Regional Center, 130 228th Street, SW., Bothell, WA 98021–9796.

FOR FURTHER INFORMATION CONTACT: LaBrina Jones, Office of the Director/Administrator, Mitigation Division, FEMA, 500 C Street, SW., Room 404A, Washington, DC 20472, (202) 646–4331 or E-mail: *LaBrina.Jones@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Authority and Appropriations

The PDM program was authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5133, as amended by section 102 of the Disaster Mitigation Act of 2000 (DMA), Public Law 106–390, 114 Stat. 1552, to assist States and communities to implement a sustained pre-disaster natural hazard mitigation program to reduce overall risk to population, buildings and infrastructure, while also reducing reliance on funding from actual disaster declarations.

$150 million was made available for the PDM grant program under Consolidated Appropriations Resolution, 2003, Public Law 108–7, to be awarded generally on a competitive basis and without reference to State allocations, quotas, or other formula-based allocation of funds. A Notice of Funds Availability for the PDM planning grants was published on March 3, 2003, at 68 FR 10018. A Notice of Funds Availability for the PDM competitive grant program was published on July 7, 2003 at 68 FR 40284.

FEMA is now making available approximately $3.6 million of PDM funds as Disaster Resistant University (DRU) grants to State, local and Tribal governments for pre-disaster mitigation activities that benefit universities.

Background

PDM Disaster-Resistant University grants are intended to support efforts by universities to reduce and manage their vulnerability to hazards. Over the past decade, disasters have cost the Federal government, private insurers, and universities billions of dollars. These costs usually arise from losses due to such impacts as damage to university facilities, or education and research interruption. For example, the 1989 Loma Prieta earthquake caused Stanford University to spend over $300 million in building repairs over 10 years. The PDM DRU grant program provides a significant opportunity to raise risk awareness and to reduce the Nation's disaster losses at universities through pre-disaster mitigation planning, and the implementation of planned, pre-identified, cost-effective mitigation measures that are designed to reduce injuries, loss of life, and damage and destruction of property from all hazards, including damage to critical facilities, and research operations.

In FY 2000, under different funding authorities, FEMA selected six DRU pilot universities, which have made significant strides to ensure that their campuses are disaster resistant. For example, "Building a Disaster Resistant University" (Appendix A), a publication that was developed and revised by pilot universities in conjunction with FEMA, will serve as a guide for universities that seek to become disaster resistant. (Guide available at *www.fema.gov/fima/dru.shtm*).

To build on the success and mitigation efforts of the pilot initiative for DRU and to continue supporting past DRU efforts, FEMA is making PDM funds available specifically for mitigation benefiting universities, including awards of approximately $100,000 each for mitigation activities that benefit universities, and additional awards of up to $500,000 each for pre-disaster hazard mitigation activities that benefit universities that have demonstrated commitment to hazard mitigation through prior FEMA-assisted DRU efforts.

FEMA encourages Historically Black Colleges & Universities (HBCU) and Tribal Colleges & Universities (TCU) to participate in PDM DRU activities, and encourages States to facilitate HBCU and TCU opportunities to improve their disaster resistance through risk management tools and other mitigation activities, through their respective consortia or individually. FEMA also encourages pilot DRUs to build on previous mitigation efforts by identifying and implementing mitigation projects that reduce the risk of loss for the university.

Applicant Eligibility

Only the State emergency management agencies or a similar office (*i.e.*, the office that has emergency management responsibility) of the State, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, as well as Federally recognized Indian Tribal governments are eligible to apply to FEMA for assistance as Applicants under this program.

In keeping with the intent of FEMA's overall policy, "Government-to-Government Relations with American Indian and Alaska Native Tribal Governments," published at 64 FR 2095, Jan. 12, 1999, Federally recognized Indian Tribal governments may choose to apply for PDM DRU grants either through the State as a Sub-Applicant or directly to FEMA as an Applicant. (This choice is independent of a designation under other FEMA grants and programs.) Some State regulations prohibit the State from acting as an Applicant for an Indian Tribe. In such cases, or if the Tribe chooses, the Tribal government may act as its own Applicant. However, when legally permitted, Indian Tribal governments are encouraged to continue existing relationships with the State as the Applicant.

Sub-Applicant Eligibility

Other State agencies, including State universities; federally recognized Indian Tribal governments; and local governments, to include State recognized Indian Tribes, authorized tribal organizations, and Alaska Native villages, are eligible to apply to the Applicant as Sub-Applicants. Private universities are not eligible to apply as Sub-Applicants; however, they may request an eligible entity to submit an application for their proposed activity on their behalf.

All Applicants and Sub-Applicants, or the community they are located within, must be participating in the National Flood Insurance Program (NFIP) if they have been identified through the NFIP as having a Special Flood Hazard Area (SFHA) (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued). In addition, the community must not be on probation, suspended or withdrawn from the NFIP. If a State university in a SFHA is located within a community, and that community lacks jurisdiction to require the university to adopt floodplain management plans, the State in which the university is located must be in compliance with the floodplain management criteria in 44 CFR part 60.

Grant Application Process

Interested universities and potential Sub-Applicants should consult the official designated point of contact in their State or Tribe for more information pertaining to their application process.

It will be the Applicant's responsibility to determine which sub-applications will be included in their final application to FEMA. The Applicant also must prioritize the sub-applications included in its application to FEMA. FEMA will use the information transmitted to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of Federal funds, and to closeout the grant award when all work is completed.

The Applicant will submit a paper application, which can be obtained from the FEMA Regional Office. The grant application should include:

- The Applicant's DUNS number. To obtain a DUNS number call 1–866–705–5711 or visit *www.dunandbradstreet.com*.
- Application for Federal Assistance, Standard Form 424;
- Budget Information—Construction Program, FEMA Form 20–15; or
- Budget Information—Non-Construction Program, FEMA Form 20–20;
- Budget Narrative explaining cost items that have been budgeted;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances—Non-Construction Program, FEMA Form 20–16A; or,
- Assurances—Construction Program, FEMA Form 20–16B;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsible Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL;
- Approved Indirect Cost Agreement, if applicable;
- Documentation for the hazard risk assessment determination. This is only required as part of mitigation planning sub-applications (see Supplemental Questions);
- Complete Benefit-Cost Analysis documentation for mitigation projects;
- Program Narrative for the sub-application for which PDM DRU funding is requested. The Applicant must priority rank each sub-application included in the Program Narrative based on the Applicant's mitigation plan. Only

one sub-application should be ranked per number 1, 2, 3, *etc.* The Program Narrative should include:

(1) Individual activity location and name of Sub-Applicant and university;

(2) Timeline/schedule for each activity;

(3) Individual activity costs, including Federal and non-Federal shares;

(4) Activity-specific scopes of work, including a list of properties, if applicable;

(5) Certification that the Applicant has evaluated the included activities, that they meet all PDM/DRU program eligibility criteria (see *www.fema.gov/fima/dru.shtm*), and that they will be implemented in accordance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(6) Responses to the Supplemental Questions for each Sub-Applicant activity for evaluation (Supplemental Questions are available for Applicants and Sub-Applicants on the FEMA website: *www.fema.gov/fima/dru.shtm*);

(7) For proposals for mitigation projects: Recommendations and documentation regarding the environmental review required by 44 CFR part 10, Environmental Considerations, and other applicable laws and executive orders, including responses to Established Questions and complete environmental/historic documentation (the environmental/historic Established Questions are available for Applicants and Sub-Applicants on the FEMA Web site: *www.fema.gov/fima/dru.shtm*); and

(8) For proposals benefiting a former university recipient of DRU assistance: A brief description of past DRU efforts, including:

- Appointment or selection of a DRU coordinator.
- Formation of a campus partnership committee to direct the DRU activities that includes university, private sector, and local officials.
- Performance of a risk assessment to define, evaluate and prioritize the loss reduction and management activities that address the natural hazards vulnerabilities on campus.
- Development and adoption of a strategic loss reduction and management plan.
- If applicable, communication of the university's risks and plans for managing them to stimulate partnerships, and associated DRU mitigation successes.
- If applicable, implementation of a strategic loss reduction plan that identified mitigation activities.

(9) Assurance that the sub-application is complete and addresses all program requirements including the Supplemental Questions, thereby meeting the program criteria outlined under section 203(g) of the Stafford Act.

National Priorities

For FY 2003 funds, FEMA has established a national priority of providing mitigation funds to benefit a representative range of universities, based on the type of hazard addressed, geography, size, and academic community served. This includes consideration of Historically Black Colleges & Universities (HBCU) and Tribal Colleges & Universities (TCU).

FEMA encourages HBCU and TCU to participate in PDM DRU activities, and encourages States to facilitate HBCU and TCU opportunities to improve their disaster resistance through risk management tools and other mitigation activities. Communicating with these universities via their respective consortia may be the most efficient and effective means of benefiting the university's mitigation efforts. There are 117 HBCU nationwide and 34 TCU. Such institutions may be relatively small, receive less research funding, and may generally have fewer resources. For example, according to the National Center for Education Statistics, total enrollment shown at any TCU for fall 1998 did not exceed 2000 students, and only three such institutions showed enrollment over 1000. Working with a consortium can maximize DRU mitigation benefits to these institutions. Through a university consortium, universities can share expertise among the consortium members, including other HBCU or TCU. A consortium may also facilitate decisions on the allocation of future resources and program direction.

In addition, FEMA encourages universities who have demonstrated mitigation through past DRU efforts to sustain the momentum of those efforts by taking the opportunity to identify mitigation projects for implementation that can build on mitigation planning and other activities they have already accomplished.

Eligible Activities and Associated Costs

General. Proposals must be for mitigation activities that benefit a university or universities. Proposals may be for mitigation planning activities or for mitigation projects, though proposals benefiting universities demonstrating mitigation planning through past DRU efforts must include a mitigation project.

DRU Mitigation Planning. Applicants and Sub-Applicants may request mitigation planning funds to assist universities and university consortia in mitigation planning, including delivery of mitigation planning workshops, the development of risk assessments, and the development of university mitigation plans that are consistent with the planning criteria outlined in 44 CFR 201.6(b-d). Examples of planning activities to address in a mitigation plan are as follows:

- Risk assessment: Identification of hazards and vulnerabilities, an estimation of potential losses to campus facilities;
- Identification of potential mitigation actions and their priority for implementation;
- Identification of methods to foster communication with neighboring jurisdictions regarding disaster mitigation through measures such as:
  (a) University collaboration activities involving faculty and/or students,
  (b) Use of campus facilities for posting emergency procedures,
  (c) Disaster exercises on university grounds or in conjunction with the community;
- Identification of a broad range of sources for funding and technical assistance to sustain loss reduction and risk communication activities in the future; and
- Development of a Business Continuity Plan for central administrative, teaching, and research functions.

A university consortium may request funds to carry out "model" planning activities that would be used by members of the consortium. Multi-hazard mitigation planning must primarily focus on natural hazards but may also address hazards caused by non-natural forces.

Up to 10 percent of the funds requested in the sub-application may be used for information dissemination activities regarding cost-effective mitigation technologies in order to develop and maintain mutually beneficial partnerships among the DRU pilot universities, newly selected DRUs, and with underserved communities. Such activities should strive to promote a greater awareness of the institutional benefits of mitigation planning and to facilitate the implementation of appropriate mitigation actions. These activities may include outreach efforts and products (brochures and videos, *etc.*) related to the proposed mitigation activity that will help with the progress of the DRU universities and serve as models for other universities.

DRU Mitigation Projects. Multi-hazard mitigation projects must primarily focus on natural hazards but may also address hazards caused by non-natural forces. The following are eligible types of mitigation projects:

- Structural and non-structural retrofitting (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (*e.g.*, elevation, storm shutters, hurricane clips—seismic bracing or reinforcement);
- Minor structural flood hazard control or protection projects that may include vegetation management, and stormwater management (*e.g.*, culverts, floodgates, retention basins); and
- Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and that do not constitute a section of a larger flood control system.

Mitigation projects must also meet the following general criteria:

(1) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster, consistent with 44 CFR 206.434(c)(5) and related guidance, and have a Benefit-Cost Analysis that results in a benefit cost ratio of at least 1.0. Mitigation projects without a Benefit-Cost Analysis or with a benefit-cost ratio less than 1.0 will not be considered for the PDM DRU grants. Mitigation projects with higher benefit-cost ratios will be more competitive. Applicants may use programs or mechanisms other than the FEMA benefit-cost model to conduct the Benefit-Cost Analysis; however the methodology used must be consistent with the FEMA benefit-cost model and approved in advance by FEMA. For more information, see general PDM DRU Program Grant Guidance at *www.fema.gov/fima/dru.shtm*;

(2) Be in conformance with the current FEMA-approved State hazard mitigation plan and any existing local or university mitigation plans;

(3) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed, consistent with 44 CFR 206.434(c)(4);

(4) Be in conformance with 44 CFR Part 9, Floodplain Management and Protection of Wetlands, 44 CFR part 10, Environmental Considerations. For more information, see general PDM DRU Program Grant Guidance at *www.fema.gov/fima/dru.shtm;*

(5) Not duplicate the assistance that another Federal agency or program has the primary authority to provide, consistent with 44 CFR 206.434(g);

(6) Be located in a community that (a) does not have a SFHA, or (b) is participating in the NFIP if the community has an identified SFHA (a FHBM or FIRM has been issued). The community must not be on probation, suspended or withdrawn from the NFIP; and

(7) Meet the requirements of Federal, State, and local laws.

Up to 10 percent of the funds requested in the project sub-application may be used for information dissemination activities regarding cost-effective mitigation technologies in order to develop and maintain mutually beneficial partnerships among the DRU pilot universities, newly selected DRUs, and with underserved communities. Such activities should strive to promote a greater awareness of the institutional benefits of mitigation planning and to facilitate the implementation of appropriate mitigation actions. These activities may include outreach (brochures and videos, *etc.*) related to the proposed mitigation project that will help with the progress of the DRU universities and serve as models for other universities.

Applicant Management Costs. Applicants are encouraged to consider how to maximize the amount of funds used directly to benefit the university. Applicants may request up to 10 percent of the total planning and project grant funding requested for management costs to support the solicitation, review and processing of PDM DRU sub-applications and awards, and to provide technical assistance to Sub-Applicants, including assisting Sub-applicants with Benefit-Cost Analysis and environmental and historic documentation. Care must be taken not to provide more technical assistance to one Sub-Applicant than another to avoid the appearance of pre-selection. If requested, indirect costs must be included as part of management costs and must be supported with a current Indirect Cost Rate approved by a Federal Cognizant Agency. However, in no case will the amount of funding awarded for management costs exceed 10 percent of the total amount awarded for mitigation planning and project sub-grants. There is no waiver to increase Applicant Management Costs.

Applicants that request management costs must submit a separate sub-application for their management costs. Management costs must be supported with source documentation. Management costs will not affect competitiveness of planning or project proposals submitted by the Applicant and do not need a Benefit-Cost Analysis. Funding for Applicant management costs will not be awarded until all planning and project sub-applications have been awarded to ensure that Applicant management costs do not exceed 10 percent of the total planning and project sub-grant awards. Management costs will be cost shared with up to 75 percent of eligible costs provided by FEMA and at least 25 percent provided by a non-Federal source to the maximum Federal share approved by FEMA.

Sub-Applicant Management Costs. Sub-Applicants may request a maximum of 5 percent of the total grant funding requested for management costs to support approved planning activities or projects. Sub-Applicant management costs must be supported with budget narrative clearly justifying all proposed costs. Sub-Applicant management costs must be included as part of the planning activity or project costs and, therefore, must be included in the Benefit-Cost Analysis for projects. If requested, indirect costs must be included as part of the Management Costs and must be supported with a current Indirect Cost Rate approved by a Federal Cognizant Agency. There is no waiver to increase Sub-Applicant Management Costs.

Ineligible Activities

Ineligible Mitigation Projects. The following mitigation projects are ineligible for the PDM program:

- Major flood control projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams, waterway channelization; beach nourishment or renourishment;
- Warning systems;
- Engineering designs that are not integral to a proposed project;
- Feasibility studies that are not integral to a proposed project;
- Drainage studies that are not integral to a proposed project;
- Generators that are not integral to a proposed project;
- Phased or partial projects;
- Flood studies or mapping; and
- Response and communication equipment.

Cost Overruns. The PDM DRU program is a competitive grant program and therefore award amounts are final. There are no cost overruns associated with this program.

Cost Share Requirement

FEMA will contribute up to 75 percent of the total amount approved under the grant award, to implement approved activities. At least 25 percent of the total approved under the grant award must be provided from a non-

Federal source. Grants awarded to small, impoverished communities may receive a Federal share of up to 90 percent of the total amount approved under the grant award, to implement eligible approved activities.

All non-Federal contributions, cash and in-kind, are accepted as part of the non-Federal share. Except as allowed by Federal statute, no other Federal funds can be used as a cost share. Requirements for in-kind contributions can be found in 44 CFR 13.24. In-kind contributions must be directly related to eligible program costs. The following documentation is required for third-party cash and in-kind contributions: record of source of donor, dates, rates, amounts, and deposit slips for cash contributions.

Evaluation and Award Processes

National Evaluation. Disaster Resistant University mitigation proposals for PDM DRU grants will be evaluated and selected based on the following considerations (each applies to all proposals, unless specified for "planning activities" or "projects"). The specific factors will carry more weight than the general criteria.

- The extent to which the proposal benefits a university (or universities) that demonstrates the following general criteria:

(1) Top level commitment to the concept of disaster resistance (Chancellor, President, *etc.*)

(2) Capability to successfully carry out proposed mitigation activities and initiatives (*i.e.*, expertise to carry out the relevant studies and assessments of hazards and risk, their impacts on its facilities, and project implementation);

(3) For proposals benefiting former DRU universities, commitment to sustained mitigation demonstrated through past and ongoing DRU efforts, such as the selection of a DRU coordinator, partnering efforts, risk assessment and risk reduction planning activities, outreach and implementation of mitigation activities.

- The extent to which the proposal addresses the following specific factors, listed in order of importance, are:

(1) For mitigation planning activities, the university's assessment of risks by hazard (see Supplemental Questions);

(2) For mitigation projects,

a. Benefit-Cost ratio by hazard based on Applicant's Benefit-Cost Analysis;

b. Whether the project protects critical facilities;

c. Consistency with the State mitigation plan and any existing local/Tribal and university mitigation plans;

d. Consistency with Federal laws and Executive Orders to include National Environmental Policy Act, National Historic Preservation Act, Clean Water Act, Floodplain Management, and Seismic Safety of Federal Buildings; and Federal programs such as American Heritage Rivers Initiative, SBA Disaster Loan Program and EPA Watershed Initiative;

(3) The priority given to the sub-application by the Applicant;

(4) Overall size and proportion of university population that will benefit, such as:

a. Number of university employees and university-employer's rank (largest, second largest, *etc.* employer) in the community

b. Value of goods and services purchased by university within the community

c. University budget

d. Total economic impact of university on community—indicate the effect university would have on community if a disaster strikes (major job shortage, loss of medical services, *etc.*);

(5) Feasibility of methodology and outcome;

(6) Implementation involves reasonable timeline and expectations;

(7) Leverages State and local community involvement through partnerships;

(8) Identifies appropriate outreach activities that advance mitigation;

(9) Serves as a model for other universities;

(10) Innovation and creativity used as part of the best available options;

(11) Status of State/Tribal mitigation plans

(12) For community Sub-Applicants:

a. Status of the Sub-Applicant as a small, impoverished community.

b. Community mitigation factors, such as community incentives (tax credits, waiver of building permit fees, and building codes), Community Rating System class, Cooperating Technical Partner, participation as a Firewise Community, and adoption of codes to include Building Code Effectiveness Grading Schedule, International Code Series and National Fire Protection Association 5000 Code.

In making its selections, FEMA will also consider the PDM DRU National Priorities for FY 2003 funds. This includes mitigating a representative range of universities based on type of hazard addressed, geography, size, and academic community served, which includes consideration of Historically Black Colleges & Universities (HBCU) and Tribal Colleges & Universities (TCU). It also includes sustaining and building on prior DRU efforts through mitigation projects that reduce the risk of loss for past DRU universities.

Selection/Award. For FY 2003 PDM DRU grants, awards will be governed by Consolidated Appropriations Resolution, 2003, Public Law 108–7, section 203 of the Stafford Act, as amended by section 102 of the DMA, this notice, and PDM DRU program guidance, which will be made available to the public on the FEMA Web site: *www.fema.gov/fima/dru.shtm.*

The Headquarters Approving Federal Official shall consider the National Evaluation criteria and factors listed above, the National priorities, and other pertinent information to determine which sub-applications to approve. After the sub-applications are selected, FEMA Regional offices will work with Applicants whose sub-applications are selected to implement the grant award.

Environmental/Historic Preservation Review Process

FEMA has determined, in accordance with 44 CFR 10.8 (d)(2)(iii), that mitigation planning activities have no impact on the environment and will require no further environmental or historic preservation review. However, mitigation projects will require environmental/historic preservation review. Construction type activities usually require more extensive review, or even an environmental assessment with alternatives addressed, historic preservation consultation, or both. For selected mitigation projects that require any level of environmental/historic preservation review, FEMA will not award the grant and the Applicant may not initiate construction until FEMA has completed its review. FEMA will complete the environmental and historic preservation review with the assistance of both the Applicant and the Sub-Applicant.

If after review of the responses to the established environmental/historic questions, supporting documentation, and the consultations with regulatory/resource agencies, FEMA determines that certain compliance measures are required to address the environmental/historic impacts of a selected project, FEMA will notify the Applicant. The Applicant or Sub-Applicant may determine whether or not to accept the grant award based on the estimated additional cost of the compliance measures. The amount of the Federal share will not be increased to cover any additional costs. Therefore, it is essential that at the time of the application submission, Applicants and Sub-Applicants include costs associated with any anticipated environmental/historic preservation compliance measures or alternatives identified through the development of the environmental/historic preservation documentation in the project budget.

Reporting Requirements

The following report is required from universities that receive PDM DRU FY 03 funds:

- *Self-Assessment*: University recipients are to include a detailed self-assessment at the end of the year (December 2004) that highlights best practices, issues, and ways to improve the PDM DRU grant program.

The following reports are required from Applicants that are awarded PDM DRU grants (Grantees):

- *Federal Cash Transaction Reports*: If the Grantee uses the U.S. Department of Health and Human Services (HHS) Payment Management System-SMARTLINK, the Grantee shall submit a copy of the PMS 272 Cash Transaction Report submitted to HHS and to FEMA, as well.
- *Financial Status Reports*: The Grantee shall submit Financial Status Reports, SF 269 or FF 20–10, to the FEMA regional office within 30 days from the end of the first Federal quarter following the initial grant award. The Regional Director may waive this initial report. The Grantee shall submit quarterly financial status reports thereafter until the grant ends. Reports are due on January 30, April 30, July 30, and October 30.
- *Performance Reports:*

(1) The Grantee shall submit performance reports (no format requirements) to the FEMA Regional Office within 30 days after end of each quarter. Reports are due January 30, April 30, July 30 and October 30.

(2) Quarterly performance reports shall consist of a comparison of actual accomplishment of the approved activity and report the name, completion status, expenditure, and payment-to-date of each approved activity/sub-grant award under the Grant Award.

- *Final Reports:* The Grantee shall submit a Final Financial Status Report and Performance Report within 90 days from Grant Award Performance Period expiration date, per 44 CFR 13.50.
- *Enforcement:* In reference to 44 CFR 13.43 Enforcement, the Regional Director may suspend drawdowns from the HHS/Payment Management System-SMARTLINK or take other remedial actions for non-compliance if quarterly performance reports are not submitted.

Dated: December 22, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate, Department of Homeland Security.

[FR Doc. 03–32020 Filed 12–30–03; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2003–16345]

Notice Requesting Comment on the Imposition of the Aviation Security Infrastructure Fee; Extension of Comment Period

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice; extension of comment period.

SUMMARY: This document extends the comment period for a notice that was published on November 5, 2003. In that notice, the TSA requested comments on possible changes to the way it sets the Aviation Security Infrastructure Fee (ASIF), which is a fee imposed on air carriers and foreign air carriers to help pay the Government's costs of providing civil aviation security services. The public comment period was to expire on January 5, 2004. This document extends the public comment period on the notice for an additional 30 days, until February 5, 2004. This extension is a result of a request from the Air Transport Association.

DATES: Submit comments by February 5, 2004.

ADDRESSES: *Comments Submitted by Mail or In Person:* Address written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the individual listed in **FOR FURTHER INFORMATION CONTACT.**

Comments Filed Electronically: You may also submit comments through the Internet at *http://dms.dot.gov.* Please be aware that anyone is able to search the electronic form of all comments received into any of these dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or you may visit *http://dms.dot.gov.*

Reviewing Comments In the Docket: All submissions to the public docket may be viewed in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Revenue, Transportation Security Administration Headquarters, West Building, Floor 5, TSA–14, 601 South 12th Street, Arlington, VA 22202: e-mail: *TSA-Fees@dhs.gov,* telephone: 571–227–2323.

SUPPLEMENTARY INFORMATION:

Comments Invited

The TSA invites interested persons to submit written comments, data, or views on the issues described in this notice, including comments relating to the economic, environmental, energy, or federalism impacts. See **ADDRESSES** above for information on where to submit comments.

Do not submit to the public regulatory docket any comments that you believe include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) governed by 49 CFR part 1520. Such comments should be appropriately marked as containing such information and submitted by mail to the individual listed in **FOR FURTHER INFORMATION CONTACT.** When a commenter properly designates and submits confidential commercial or financial information or information the submitter considers to be a trade secret, TSA does not place it in the public docket and TSA will handle it in accordance with applicable safeguards and restrictions on access. TSA will hold it in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA would treat the request as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's FOIA regulation found in 6 CFR part 5.

With each comment, please include your name and address, identify the docket number at the beginning, and give the reason for each comment, including any supporting data. You may submit comments and material electronically, in person, or by mail as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want the TSA to acknowledge receipt of your comments, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Except for comments properly submitted as containing confidential information or SSI, we will file in the public docket all comments we receive. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable.

Document Availability

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Law and Policy web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number.

Background

On November 5, 2003, TSA published a "Notice Requesting Comment on the Imposition of the Aviation Security Infrastructure Fee" (68 FR 62613). Comments to that document were to be received on or before January 5, 2004. By a letter dated December 17, 2003, the Air Transport Association (ATA) requested that TSA extend the comment period on the notice for 30 days. ATA stated that, considering the potential substantive impact of changing the current fee methodology on their membership, it requested more time to adequately develop its comments by conducting a survey of its members so that it can provide TSA with a consensus proposal.

Extension of Comment Period

TSA has considered ATA's request and has determined that ATA has shown a substantive interest in the notice and good cause for the extension. TSA has determined that an extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. Accordingly, TSA has decided to extend the public comment period on the notice for an additional 30 days. The deadline for the public to submit comments on the notice now is February 5, 2004. TSA does not anticipate any additional extensions of the public comment period for this notice.

Issued in Arlington, VA, on December 19, 2003.

Robert Gardner,

Assistant Administrator for Finance and Administration.

[FR Doc. 03–32196 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4817–N–21]

Notice of Proposed Information Collection for Public Comment for Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program Coordinator Funding Application Form

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 30, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 4255, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (Text telephone) by calling the Federal Information Relay Services at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The purpose of the Housing Choice Voucher FSS program is to promote the development of local strategies to coordinate the use of assistance under the Housing Choice Voucher program with public and private resources to enable participating families to achieve economic independence and self-sufficiency. As a result of their participation in the FSS program, many families have achieved stable, well-paid employment, which has made it possible for them to become homeowners. An FSS program coordinator assures that program participants are linked to supportive services they need to achieve self-sufficiency. Eligible Public Housing Agencies (PHAs) can apply for Housing Choice Voucher FSS Program Coordinator funding.

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

This Notice also lists the following information:

Title of Proposal: Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program Coordinators Funding Application Form.

OMB Control Number: 2577–0178.

Description of the Need for the Information and Proposed Use: HUD will announce the availability of funds to employ program coordinators for the Housing Choice Voucher FSS program. Eligible applicants, Public Housing Agencies (PHAs), will complete and submit the funding form to HUD providing general information about the PHA. For renewal HCV FSS PHAs, the application funding form requests program status and accomplishments, and funding/positions requested. For new HCV FSS PHA applicants, the application funding form requests FSS Action Plan information and position/salaries requested. HUD will use the following form information to determine which applicants will receive HCV FSS Coordinator funding.

Agency form numbers: (To be assigned).

Members of the Affected Public: State, Local or Tribal Governments.

Estimation including the Total Number of Hours Needed to Prepare the Information Collection for the Number of Respondents, Frequency of response, and hours of response: 800 applicants, annually, one response per applicant, 45 minutes per response, 600 total burden hours.

Status of the Proposed Information Collection: Revision.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, as amended.

Dated: December 19, 2003.

Michael Liu,

Assistance Secretary for Public and Indian Housing.

[FR Doc. 03–32022 Filed 12–30–03; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–107]

Notice of Submission of Proposed Information Collection to OMB: Rent Schedule—Low Rent Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to continue to collect information necessary to ensure that approved rent levels are not exceeded and tenants are not overcharged. HUD establishes and approves project rental charges and utility allowances. Owners may request adjustments by submitting justifying information. Owners must notify tenants of approved rents.

DATES: *Comments Due Date:* January 30, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502–0012) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Rent Schedule—Low Rent Housing.

OMB Approval Number: 2502–0012.

Form Numbers: HUD–92458.

Description of the Need for the Information and its Proposed Use: HUD is requesting approval to continue to collect information necessary to ensure that approved rent levels are not exceeded and tenants are not overcharged. HUD establishes and approves project rental charges and utility allowances. Owners may request adjustments by submitting justifying information. Owners must notify tenants of approved rents.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	16,000	16,000		0.33		5,280

Total Estimated Burden Hours: 135.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 18, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–32023 Filed 12–30–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–108]

Notice of Submission of Proposed Information Collection to OMB: HOPE VI Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to continue to collect information from Public Housing Agencies (PHAs) necessary to administer the HOPE IV Grant Program. Much of the information collection is now formatted on the forms listed here. A Community and Supportive Services Workplan has been added the requirement.

DATES: *Comments Due Date:* January 30, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2577–0208) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Rent Schedule—Low Rent Housing.

OMB Approval Number: 2577–0208.

Form Numbers: HUD 52825–A, HUD 52860–A, HUD–52774, HUD–52775, HUD–52780, HUD–52785, HUD–52787, HUD–52789, HUD–52790, HUD–52797, HUD–52798, HUD–52799, HUD–52800, HUD–53001.

Description of the Need for the Information and Its Proposed Use: HUD is requesting approval to continue to collect information from Public Housing Agencies (PHAs) necessary to administer the HOPE IV Grant Program. Much of the information collection is now formatted on the forms listed here. A Community and Supportive Services Work plan has been added to the requirement.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Annually, Quarterly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	16,000	16,000		0.33		37,380

Total Estimated Burden Hours: 37,380.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 19, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–32024 Filed 12–30–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–109]

Notice of Submission of Proposed Information Collection to OMB: Comprehensive Needs Assessment (CNAs)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to continue to collect information for Comprehensive Needs Assessments (CNAs). The CNA is a description of current and future financial resources and needs of certain multifamily developments. Owners and non-profit entities submit the information.

DATES: *Comments Due Date:* January 30, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502–0505) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Comprehensive Needs Assessment (CNAs).

OMB Approval Number: 2502–0505.

Form Numbers: HUD 96001, HUD–96002, and HUD–96003.

Description of the Need for the Information and Its Proposed Use: The Comprehensive Needs Assessment is a description of current and future financial resources and needs of certain multifamily developments.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	26,034	1		3.48		90,668

Total Estimated Burden Hours: 90,668.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 22, 2003.

Donna Eden,

Director, Office of Investment Strategies, Policy and Management, Office of the Chief Information Officer.

[FR Doc. 03–32025 Filed 12–30–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–110]

Notice of Submission of Proposed Information Collection to OMB: Ginnie Mae Multiclass Securities Program Documents

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to continue to collect information for Ginnie Mae Multiclass Securities Program Documents. This collection of information is required in connection with the Multiclass Securities Program. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed residential loans.

DATES: *Comments Due Date:* January 30, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2503–0030) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Ginnie Mae Multiclass Securities Program Documents.

OMB Approval Number: 2503–0030.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This collection of information is required in connection with the Multiclass Securities Program. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed residential loans.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

REPORTING BURDEN

Number of respondents	Annual responses		Hours per response		Burden hours
16	4,800	×	4.05	=	19,456

Total Estimated Burden Hours: 19,456.

Status: Reinstatement, with change, of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 22, 2003.

Donna Eden,

Director, Office of Investment Strategies, Policy and Management, Office of the Chief Information Officer.

[FR Doc. 03–32026 Filed 12–30–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–10]

Notice of Proposed Information for Public Comments on Housing Opportunities for Persons With AIDS

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia E. Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Paula Smith (202) 708–1934 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The HOPWA Program is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901) as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550 approved October 28, 1992). The program is governed by the HOPWA Final Rule, 24 CFR part 574, as amended, and the Consolidated Submissions for Community Planning and Development Programs, Final Rule, 24 CFR part 91, as amended. This paper work submission revises and extends the current collection of information that is used by the Department in conducting an annual competition to award program funds and in reviewing grant performance submitted by grantees in the Annual Progress Report (APR), the Comprehensive Annual Performance and Evaluation Report (CAPER), and through the use of the Department's Information Technology Reporting systems (IDIS). The information collected is essential in order to implement statutory requirements and ensure that funds are used within the public trust for their intended purpose.

The Housing Opportunities for Persons with AIDS (HOPWA) Program provides housing assistance and related supportive services for low-income persons with HIV/AIDS and their families.

Funds may be used over a three year operating period. Grantees report to the Department on program accomplishments in annual progress reports and through information systems where the data is collected and maintained in an office database.

This Notice also lists the following information:

Title of Proposal: Housing Opportunities for Persons With AIDS (HOPWA) Program.

OMB Control Number, if applicable: 2506–0133.

Description of the need for the information and proposed use: The information to be collected is provided in applications for competitively awarded funds and in annual progress reports, and in formula programs through the use of annual CAPER reports and the active use of the Department's Information Technology Reporting Systems for grantees receiving these awards.

Agency form numbers, if applicable: HUD–40110–B and HUD–40110–C.

Members of affected public: States, units of general local government, and non-profit organizations.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Activity	Number of respondents	Frequency of response	Hours of response
Application	202	1	70
Annual Progress Reports/IT Reports	95	1	130

The total annual estimated burden hours for these optional activities are 27,490 hours, including 1,000 hours that are estimated for miscellaneous activities such as grant negotiations, signing, amendments, environmental, and relocation activities.

Status of the proposed information collection: Revision of a currently approved collection. Public comments requested by HUD.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

FOR FURTHER INFORMATION CONTACT: David Vos, Director, Office of HIV/AIDS Housing, Room 7212, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, and telephone number (202) 708–1934 (this is not a toll-free number) and TTY 1–800–877–8339 for copies of the proposed forms and other available documents.

Dated: December 19, 2003.

Roy Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–32030 Filed 12–30–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Agency Information Collection Activities: Submission to OMB for Extension of Collection #1093–0004; Comment Request

AGENCY: Office of the Secretary (OS), Interior.

ACTION: Notice of submission to OMB of a request for extension of an information collection (1093–0004) and request for public comments.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that the Office of Management and Budget (OMB) approved on an emergency basis on June 24, 2003, and that we have submitted to OMB for review and approval as a continuing information collection. The information collection request (ICR) concerns the paperwork requirements to carry out the national awards program required by the Take Pride In America Program Act, 16 U.S.C. 4601–4608.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 30, 2004, in order to be assured of consideration.

ADDRESSES: Please submit your comments via e-mail to the Desk Officer for the Department of the Interior, OMB Office of Information and Regulatory Affairs, at *OIRA_Docket@omb.eop.gov* or via fax at (202) 395–6566. Also, please hand-carry or mail a copy of your comments to the Department of the Interior, Office of the Secretary, Take Pride In America Program, MS–3459, 1849 C Street, NW, Washington, DC 20240, or e-mail a copy to *TakePride@ios.doi.gov.* Reference "Information Collection 1093–0004" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: To request a free copy of the information collection request or for further information about this collection, contact Marti Allbright, Executive Director, Take Pride In America Program, at 202–208–5848 or via e-mail at *TakePride@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Title: Take Pride In America National Awards Application/Nomination Process.

OMB Control Number: 1093–0004.

Abstract: Under the Take Pride In America Program Act (Act), 16 U.S.C. Sec. 4601–4608, the Secretary of the Interior is to: (1) "conduct a national awards program to honor those individuals and entities which, in the opinion of the Secretary * * * have distinguished themselves in activities" under the purposes of the Act; and also to (2) "establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals—(A) to instill in the public the importance of the appropriate use of, and appreciation for Federal, State, and local lands, facilities, and natural and cultural resources; (B) to encourage an attitude of stewardship and responsibility toward these lands, facilities, and resources; and (C) to promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources." The Act states that "[t]he Secretary is authorized * * * generally to do any and all lawful acts necessary or appropriate to further the purposes of the TPIA Program."

The Take Pride In America (TPIA) Program was re-launched on April 16, 2003. The Program collects information provided voluntarily by individuals or organizations about their events and activities to further the purposes of the Act in order to select finalists and winners of the annual Take Pride In America National Awards. The TPIA National Awards recognize the valuable and significant contributions that individuals and organizations make in support of the stewardship of America's lands. Their tireless and creative efforts play a vital role in protecting, conserving, and enhancing America's wealth of natural, historical, and cultural resources. These awards recognize the efforts of individuals and organizations in both the public and private sectors for outstanding stewardship involving Federal, State, local, Tribal, and private lands.

We use the information collected primarily to select finalists and winners of the TPIA National Awards. Information also is used to assure the integrity of the Program (so that, for example, an individual or organization does not receive an award twice for the same project), for reporting on the accomplishments of the Program, for the public awareness campaign (such as press releases and website information on winning projects), and to further the purposes of the Act (such as fostering partnerships and coordination of projects).

OMB approved TPIA's application instructions and form on June 24, 2003, on an emergency basis, with an expiration date of December 31, 2003. To obtain a copy of the approved application instructions and form, please contact the TPIA office as shown in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

No items of a sensitive nature are collected. Responses are voluntary.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. As required under 5 CFR 1320.8(d), we published a **Federal Register** notice soliciting comments on this collection of information on July 23, 2003 (68 FR 43540). We received no comments. This notice provides the public with an additional 30 days to comment.

Frequency of collection: Primarily annually.

Estimated Annual Number and Description of Respondents: Approximately 500 voluntary responses from the public, with another 500 from Federal employees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 250 hours—one hour per response for an estimated 250 public respondents. For this ICR, that burden will increase to 500 hours due to an increase in the estimated number of public respondents.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour burdens for this collection.

Comments: We specifically request your comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Dated: December 23, 2003.

Marti Allbright,

Executive Director, Take Pride In America Program.

[FR Doc. 03–32144 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 30, 2004.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Dorothy J. Harber, Denison, TX, PRT–080867.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Charles W. Murray, Alamogordo, NM, PRT–080765.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Chris Gervasi, Chester Township, NJ, PRT–080872.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James Alan Schweitzer, Winter Haven, FL, PRT–080875.

The applicant request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kent Wendall Hall, Sr., Destrehan, LA, PRT–078284.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Albuquerque Biological Park, Albuquerque, NM, PRT–070083.

The applicant requests a permit to import one live male snow leopard (*Uncia uncia*) captive-born at the Assiniboine Park Zoo, Winnipeg, Canada, for the purpose of conservation education and enhancement of the survival of the species.

Applicant: George Carden Circus Intl, Inc., Springfield, MO, PRT–080831.

The applicant requests a permit to re-export and re-import one wild born female Asian elephant (*Elephas maximus*) called "Jazz" to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Dallas World Aquarium, Dallas, TX, PRT–068264.

The applicant requests a permit to maintain two Antillean manatees (*Trichechus manatus*) imported from Venezuela in December, 1999, under CITES import permit, 99US001425/9, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the

Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: James N. Maddox, Nashville, TN, PRT–080871.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Davis Strait polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: Harold L. Ahlberg, Irving, TX, PRT–080868.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

Applicant: Brian D. Folkman, Lakeville, MN, PRT–080683.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Baffin Bay polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: Joseph Hanley Sayers, Jr., Nashville, TN, PRT–080685.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Baffin Bay polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: Trevor L. Ahlberg, Dallas, TX, PRT–080857.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

Applicant: John R. Beckstrand, Warwick, ND, PRT–080829.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Applicant: Robert D. Pettus, Charlotte, NC, PRT–080874.

The application requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Davis Strait polar bear population in Canada prior to February 18, 1997, for personal use.

Applicant: James W. Ribman, Dallas, TX, PRT–080901.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal use.

Dated: December 12, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–32040 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its sixth meeting. The meeting location is the U.S. Geological Survey, John Wesley Powell National Center, Rm. 1B215, 12201 Sunrise Valley Drive, Reston, Virginia 20192. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review the overall direction of the U.S. Geological Survey's Earthquake Hazards Program in the current and next fiscal years, with emphasis on defining future opportunities and strategies for balancing program needs against resource limitations. The Committee will also consider and recommend strategies for increasing visibility, impact, and external support for the Earthquake Hazards Program.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: January 21, 2004, commencing at 9 a.m. and adjourning at 4:30 p.m. on January 22, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. William Leith, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6785.

Dated: December 18, 2003.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 03–32192 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cheyenne and Arapaho Tribes of Oklahoma Alcohol Beverage Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Cheyenne and Arapaho Tribes of Oklahoma Alcohol Beverage Control Ordinance. The ordinance regulates and controls distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol on the Cheyenne and Arapaho Tribes of Oklahoma Tribal Land.

EFFECTIVE DATE: This Code is effective on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue NW, MS–320–SIB, Washington, DC 20240, Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Cheyenne and Arapaho Tribes of Oklahoma adopted Tribal Ordinance No. 051702S080 on May 17, 2002. The purpose of this ordinance is to govern the distribution, sale, consumption, possession, inspection, licensing, enforcement and legal compliance associated with the introduction of alcohol on the Cheyenne and Arapaho Tribes of Oklahoma Tribal Land.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs.

I certify that Liquor Ordinance No. 051702S080 was duly adopted by the Tribal Council of the Cheyenne and Arapaho Tribes of Oklahoma on May 17, 2002.

Dated: December 19, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

The Cheyenne and Arapaho Tribes of Oklahoma

Alcohol Beverage Control Ordinance

Chapter I—Introduction

101—Title. This Ordinance shall be known as the "Cheyenne and Arapaho Tribes of Oklahoma Alcohol Beverage Control Ordinance."

102—Authority. This Ordinance is enacted pursuant to the Act of August 15, 1953. Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. § 1161 and article IV, § 2, of the Constitution and By-Laws of the Cheyenne-Arapaho Tribes of Oklahoma.

103—Purpose. The purpose of this Ordinance is to regulate and control the manufacture, distribution, possession, and sale of Alcohol Beverages on Tribal lands of the Cheyenne and Arapaho Tribes of Oklahoma. The enactment of this Ordinance will enhance the ability of the Tribal government to control all such alcohol-related activities within the jurisdiction of the Tribes and will provide an important source of revenue for the continued operation and strengthening of the Tribal government and the delivery of Tribal government services.

104—Application of 18 U.S.C. § 1161. “Federal law forbids the introduction, possession and sale of liquor in Indian Country (18 U.S.C. § 1154 and other statutes), except when same is in conformity both with the laws of the State and the Tribe (18 U.S.C. § 1161). As such, compliance with this ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma.

105—Administration of Ordinance. The Business Committee, under its powers vested under the Constitution and Bylaws and this Ordinance, delegates to the Cheyenne and Arapaho Tax Commission the authority to exercise all of the powers and accomplish all of the purposes as set forth in this Ordinance, which may include the following actions:

A. Adopt and enforce rules and regulations for the purpose of effectuating this Ordinance, which includes the setting of fees;

B. Execute all necessary documents; and

C. Perform all matters and things incidental to and necessary to conduct its business and carry out its duties and functions under this Ordinance.

106—Sovereign Immunity Preserved.

A. The Tribes, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived in writing by the Tribes.

B. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Tribes or any of its constituent parts as described above, except that after exhaustion of the administrative remedies provided herein, a person appealing a final decision made pursuant to this Ordinance by the Tax Commission may appeal to the Tribal Court as specified in this Ordinance and such rules and regulations as may be prescribed by the Tax Commission.

107—Applicability. This Ordinance shall apply to all Tribal enterprises located within Tribal lands, consistent with applicable federal Indian liquor laws.

108—Computation of Time. Unless otherwise provided in this Ordinance, in computing any period of time prescribed or allowed by this Code, the day of the act, event, or default from which the designated period time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. For the purposes of this Ordinance, the term “legal holiday” shall mean all legal holidays under Tribal or Federal law. All papers mailed shall be deemed served at the time of mailing.

109—Liberal Construction. Provisions of this Ordinance shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

110—Applicable Taxes. The Tax Commission shall enforce all applicable and lawful taxes imposed on the sale of Alcohol Beverages. The failure of any licensee to pay applicable taxes on the sale of alcohol may subject the licensee to, among other things, the revocation of said license.

Chapter II—Declaration of Public Policy

201—Matter of Special Interest. The manufacture, distribution, possession, sale, and consumption of Alcohol Beverages within the jurisdiction of the Cheyenne and Arapaho Tribes of Oklahoma is a matter of significant concern and special interest to the Tribes.

The Business Committee hereby declares that the policy of the Tribes is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, and sale of Alcohol Beverages for commercial purposes and to promote temperance in the use and consumption of Alcohol Beverages by increasing Tribal control over such activities on Tribal land.

202—Federal Law. The introduction of Alcohol Beverages within the jurisdiction of the Tribes is currently prohibited by federal law (18 U.S.C. § 1154) except as provided for therein, and the Tribes are expressly delegated the right to determine when and under what conditions Alcohol Beverages shall be permitted thereon (18 U.S.C. § 1161).

203—Need for Regulation. The Tribes find that the Federal prohibition upon manufacture, distribution, possession, sale, and consumption of Alcohol Beverages has proven ineffective and that the problems associated with same should be addressed by the laws of the Tribes, with all such business activities related thereto subject to the taxing and regulatory authority of the Cheyenne and Arapaho Tribes Tax Commission.

204—Locations. The Tribes find that the manufacture, distribution, possession, sale, and consumption of Alcohol Beverages shall be licensed under this Ordinance only where such activity will be conducted within or upon Tribal land.

Chapter III—Definitions

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

Alcohol. “Alcohol” means the product of distillation of fermented liquid, whether or not rectified or diluted with water, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

301—Alcohol Beverage. “Alcohol Beverage” when used in this Ordinance means, and shall include liquor, beer, or spirits of wine, by whatever name they may be called, and from whatever source and by whatever process they may be produced, and which contain a sufficient percent of alcohol by volume which, by law, makes said beverage subject to regulation as an intoxicating beverage under the laws of the state where the beverage is sold.

302—Applicant. “Applicant” means any “person” who submits an application to the Tax Commission for an Alcohol Beverage license and who has not yet received such a license.

303—Business Committee. “Business Committee” means the duly elected Business Committee of the Cheyenne and Arapaho Tribes of Oklahoma.

304—Constitution. “Constitution” means the Constitution and By-Laws of the Cheyenne and Arapaho Tribes of Oklahoma.

305—License. “License” means an Alcohol Beverage license issued by the Cheyenne and Arapaho Tax Commission authorizing the importation, manufacture, distribution, or sale of Alcohol Beverages for commercial purposes under the provisions of this Ordinance.

306—Licensee. “Licensee” means a Tribal enterprise that holds an Alcohol Beverage license issued by the Tax Commission and includes any employee or agent of the Licensee.

307—Liquor store. “Liquor store” means any store or establishment at which liquor is sold and shall include any and all businesses engaged in the sale of Alcohol Beverages, whether sold as packaged or by the drink.

308—Manufacturer. “Manufacturer” means any person engaged in the manufacture of Alcohol Beverage.

309—Ordinance. "Ordinance" means the Cheyenne and Arapaho Tribes of Oklahoma Alcohol Beverage Control Ordinance, as hereafter amended.

310—Package. "Package" means the sale of an Alcohol Beverage by delivery of same by a seller to a purchaser in any container, bag, or receptacle for consumption beyond the premises or the location designated on the license.

311—Public Place. "Public place" means and shall include Tribal, county, State, or Federal highways, roads, and rights-of-way; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; public restaurants, buildings, meeting halls, hotels, theaters, retail stores, and business establishments generally open to the public and to which the public is allowed to have unrestricted access; and all other places to which the general public has unrestricted right of access and that are generally used by the public. For the purpose of this Ordinance, "public place" shall also include any privately owned business property or establishment that is designed for or may be regularly used by more than the owner of same but shall not include the private, family residence of any person.

312—Sale. "Sale" and "Sell" means the exchange, barter, traffic, furnishing, or giving away for commercial purpose an Alcohol Beverage by any and all means, by whatever name commonly used to describe the same, by any person to another.

313—Tax Commission. "Tax Commission" means the Cheyenne and Arapaho Tax Commission created pursuant to the Cheyenne and Arapaho Tribes of Oklahoma General Revenue and Taxation Act of 1988.

314—Tribal land(s). "Tribal land(s)" shall mean and reference the geographic area that includes all land included within the definition of "Indian country" as established and described by federal law and that is located within the former reservation boundary of the Cheyenne and Arapaho Tribes of Oklahoma, including all tribally owned trust lands located within same as are now in existence or may hereafter be added to.

315—Tribal Law. "Tribal law" means the Tribal Constitution and all laws, Ordinances, codes, resolutions, and regulations now and hereafter duly enacted by the Tribes.

316—Tribes. "Tribes" shall mean the Cheyenne and Arapaho Tribes of Oklahoma.

Chapter IV—Sales of Alcohol Beverage

401—Prohibition of the Unlicensed Sale of Alcohol Beverages. This Ordinance prohibits the importation, manufacture, distribution, or sale of Alcohol Beverages for commercial purposes, other than where conducted by a Tribal enterprise in accordance with this Ordinance. No license shall be issued to any person or entity other than a Tribal enterprise. The Federal liquor laws are intended to remain applicable to any act or transaction that is not authorized by this Ordinance, and violators shall be subject to Federal law.

402—License Required. Any and all sales of Alcohol Beverages conducted upon Tribal land shall be permitted only where the seller holds a current Alcohol Beverage license duly issued by the Cheyenne and Arapaho Tax Commission. A licensee has the right to engage only in those Alcohol Beverage transactions expressly authorized by such license in accordance with this Ordinance.

403—Sales for Cash. All sales of Alcohol Beverages conducted shall be conducted on a cash-only basis, and no credit for said purchase and consumption of same shall be extended to any person, organization, or entity except that this provision does not prohibit the payment of same by use of credit cards acceptable to the seller (including but not limited to VISA, MasterCard, or American Express).

404—Personal Consumption. All sales shall be for the personal use and consumption of the purchaser or his/her guest(s). The resale of any Alcohol Beverage purchased within or upon Tribal lands by an unlicensed seller is prohibited.

405—Consumption of Liquor. No Tribal operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto and in his or her control. The Commission will allow the consumption of liquor and shall identify where liquor may be consumed on Tribal Trust lands.

Chapter V—Licensing

501—Eligibility. Only applicants operating upon Tribal lands and owned and operated by the Cheyenne and Arapaho Tribes of Oklahoma shall be eligible to receive a license for the sale of any Alcohol Beverage.

502—Application Process. The Tax Commission may cause a license to be issued to any applicant as is deemed appropriate and not contrary to the best interests of the Tribes and its Tribal members. Any applicant that desires to be licensed to sell Alcohol Beverages and that meets the eligibility requirements of § 501 must apply to the Tax Commission of the Cheyenne and Arapaho Tribes for a license to sell or to serve Alcohol Beverages. Any such person as may be empowered to make such application shall fully and accurately complete an application provided by the Tax Commission, and shall pay such application fee as may be required by the Tax Commission.

503—Classes of Licenses. The Tax Commission shall have the authority to issue the following classes of Alcohol Beverage licenses:

A. "Retail on-sale general license" means a license authorizing the licensee to sell Alcohol Beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes, but is not limited to, hotels where alcohol beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

B. "Retail on-sale beer and wine license" means a license authorizing the licensee to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license. This class includes, but is not limited to, hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

C. "Retail off-sale general license" means a license authorizing the licensee to sell Alcohol Beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

D. "Retail off-sale beer and wine license" means a license authorizing the licensee to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

E. "Manufacturers license" means a license authorizing the applicant to manufacture Alcohol Beverages for the purpose of sale within Tribal land.

F. "Temporary license" means a license authorizing the sale of Alcohol Beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion. Temporary licenses may not be renewed upon expiration. A new application must be submitted for each such license.

504—Application Form and Content. An application for a license shall be made to the Tax Commission and shall contain at least the following information:

A. The name and address of the applicant, including the names and addresses of all of the principal officers and directors, and other employees with primary management responsibility related to the sale of Alcohol Beverages;

B. The specific area, location, and/or premise(s) for which the license is applied for;

C. The hours that the applicant will sell the Alcohol Beverages;

D. For Temporary Licenses, the dates for which the license is sought to be in effect;

E. The class of Alcohol Beverage license applied for as set forth in § 503;

F. Whether the applicant has a state liquor license;

G. A sworn statement by the applicant to the effect that none of the applicant's officers and directors, and employees with primary management responsibility related to the sale of Alcohol Beverage, were ever convicted of a felony under any law, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance; and

H. The application shall be verified under oath and notarized by a duly authorized representative.

505—Public Hearing. Upon receipt of an application for issuance or renewal of a license, and the payment of any fees required by the Tax Commission, the Tax Commission shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least twenty (20) calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Tribal lands. The notice published in the newspaper shall include the name of the applicant, whether the action involves a new issuance or renewal, the class of license applied for, and a general description of the area where the alcohol will be or has been sold. At the hearing, the Tax Commission shall hear from any person who wishes to speak for or against the application. The Tax Commission shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

506—Action on the Application. The Tax Commission shall act on the matter within thirty (30) days of the conclusion of the public hearing. The Tax Commission shall have the authority to deny, approve, or approve with conditions the application, consistent with the laws of the Tribes, including Article III, Section 2 of the Constitution and Bylaws. Upon approval of an application, the Tax Commission shall issue a license to the applicant in a form to be approved from time to time by the Tax Commission.

507—Denial of License or Renewal. An application for a new license or license renewal may be denied for one or more of the following reasons.

A. The applicant has materially misrepresented facts contained in the application;

B. The applicant is presently not in compliance with this ordinance or other Tribal or Federal laws;

C. Granting of the license (or renewal thereof) would create a threat to the peace, safety, morals, health, or welfare of the Tribes;

D. The applicant has failed to complete the application properly or has failed to tender the appropriate fee.

E. A verdict or judgment of guilty has been entered against or a plea of nolo contendere has been entered by an applicants' officer or director, or an employee with primary management responsibility related to the sale of Alcohol Beverages, to any offense under Federal or State law prohibiting or regulating the sale, use, possession or giving away of Alcohol Beverages.

508—Temporary Denial. If the application is denied solely on the basis of subsection 507(D) the Tax Commission shall, within fourteen (14) days of receipt of the application, issue a written notice of temporary denial to the applicant. Such notice shall set forth the reasons for denial and shall state that the denial will become permanent if the problem(s) is not corrected within fifteen (15) days following receipt of the notice.

509—Cure. If an applicant is denied a license, the applicant may cure the deficiency and resubmit the application for consideration. Each re-submission will be treated as a new application for license or renewal of a license.

510—Investigation. Upon receipt of an application for the issuance, transfer, or renewal of a license, the Tax Commission shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this Ordinance have been complied with, and shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

511—Term and Renewal of License. Each license shall be issued for a period not to exceed two (2) years from the original date of issuance and may be renewed thereafter on a year-to-year basis, in compliance with this Ordinance and any rules and/or regulations hereafter adopted by the Tribes. The applicant shall renew a license by, not less than 90 days prior to the license's expiration date, submitting a written renewal application to the Tax Commission on the provided form.

512—Procedures for Appealing a Denial or Condition of Application. Any applicant for a license or licensee who believes the denial of their license, request for renewal, or condition imposed on their license was wrongfully determined may appeal the decision of the Tax Commission in accordance with the Tax Commission Rules and Regulations. For purposes of appeal, an applicant or licensee shall stand in the place of a "taxpayer" as that term is used in the Tax Commission Rules and Regulations appeal procedure. For purposes of appeal, the action being complained of shall stand in the place of the term "the tax," where appropriate, as that term is used in the Tax Commission Rules and Regulations appeal procedure.

513—Revocation of License. The Tax Commission may initiate action to revoke a licence whenever it is brought to the attention of the Commission that a licensee:

A. has materially misrepresented facts contained in any license application;

B. is not in compliance with Tribal or federal laws material to the issue of licensing;

C. failed to comply with any condition of a license, including failure to pay taxes on the sale of Alcohol Beverages or failure to pay a required fee;

D. has had a verdict, or judgment of guilty entered against, or has had a plea of nolo contendere entered by one of its officers or directors, or managers with primary responsibility over the sale of Alcohol Beverages, as to any offense under Federal or State law prohibiting or regulating the sale, use, or possession, of Alcohol Beverages;

E. failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the licensed premises or any adjacent area within a reasonable time after receipt of a notice to make such corrections has been received from the Tax Commission; or

F. has had their Oklahoma liquor license suspended or revoked.

514—Initiation of Revocation Proceedings. Revocation proceedings are initiated either: (1) By the Tax Commission, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or (2) by any person who files an accusation with the Tax Commission. The accusation shall be in writing and signed by the maker. Both the accusation and resolution shall state facts showing that there are specific grounds under this Ordinance which would authorize the Tax Commission to revoke the license(s). The Tax Commission shall cause the matter to be set for a hearing before the Tax Commission on a date no later than 30 days from the Commission's receipt of an accusation or adoption of the resolution. Notice of the time, date, and place of the hearing shall be given to the licensee and the public in the same manner as set forth in section 505. The notice shall state that the licensee has the right to file a written response to the accusation or resolution, verified under oath and signed by the licensee, no later than ten (10) days prior to the hearing date.

515—Hearing. Any hearing held on any accusation shall be held under such rules and regulations as the Tax Commission may prescribe. Both the licensee and the person filing the accusation shall have the right to present witnesses to testify and to present written documents in support of their positions to the Tax Commission. The Commission shall render its decision within sixty (60) days after the date of the hearing. The decision of the Commission shall be final. Except that any person so aggrieved may file action in the Tribal Court provided that all administrative remedies have been exhausted.

516—Delivery of License. Upon revocation of a license, the enterprise shall forthwith deliver up the license to the Tax Commission.

517—Transferability of Licenses. Alcohol Beverage licenses shall be issued to a specific licensee for use at a single business location (business enterprise) and shall not be transferable for use by any business or location. Separate licenses shall be issued for each of the premises of any business establishment having more than one address.

518—Posting of License. Every licensee shall post and keep posted its license(s) in a conspicuous place(s) on the licensed premises.

Chapter VI—Powers of Enforcement

601—Tax Commission Authority. In furtherance of this Ordinance, the Tax Commission shall have exclusive authority to administer and implement this Ordinance and shall have the following powers and duties hereunder:

(a) To publish and enforce rules and regulations governing the sale, manufacture, distribution, and possession of Alcohol Beverages within the Tribal lands of the Cheyenne and Arapaho Tribes of Oklahoma;

(b) To employ such persons as may be reasonably necessary to perform all administrative and regulatory responsibilities of the Tax Commission hereunder. All such employees shall be Tribal employees;

(c) To issue licenses permitting the sale, manufacture, distribution, and possession of Alcohol Beverages within the Tribal lands;

(d) To give reasonable notice and to hold hearings on violations of this Ordinance, and for consideration of the issuance or revocation of licenses hereunder;

(e) To bring such other actions as may be required to enforce this Ordinance;

(f) To prepare and deliver such reports as may be required by law or regulation; and

(g) To collect taxes, fees, and penalties as may be required, imposed, or allowed by law or regulation, and to keep accurate books, records, and accounts of same.

602—Right of Inspection. Any business premises licensed to manufacture, distribute, or sell alcohol pursuant to this Ordinance shall be open for inspection by the Tax Commission for the purpose of insuring the compliance or noncompliance of the licensee with all provisions of this Ordinance and any applicable Tribal law or regulation.

603—Limitation on Powers. In the exercise of its powers and duties under this Ordinance, members of the Tax Commission shall not, whether individually or as a whole,

(a) Accept any gratuity, compensation or other thing of value from any Alcohol Beverage wholesale, retailer, or distributor, or from any applicant or licensee of the Tribes;

(b) Waive the sovereign immunity of the Cheyenne and Arapaho Tribes of Oklahoma, or of any agency, commission, or entity thereof without the express written consent of the Business Committee.

Chapter VII—Taxes

701—Excise Tax. There is hereby levied and shall be collected a tax on each retail and wholesale sale of Alcohol Beverages on Tribal land in the amount of one percent (1%) of the retail sales price. All taxes from the sale of such Alcohol Beverages shall be paid into a separate account under exclusive authority of the Tax Commission. This tax may be adjusted as requested by the Tax Commission and approved by the Business Committee.

702—Taxes Due. All taxes for the sale of Alcohol Beverages under this Ordinance are due on the 15th day of the month following the end of the calendar quarter for which taxes are due.

703—Delinquent Taxes. Past due taxes shall accrue interest at the rate of two percent (2%) per month until paid.

704—Reports. Along with the payment of taxes imposed hereby, the licensee shall submit a quarterly report and accounting of all income from the sale or distribution of Alcohol Beverages, and for the taxes collected.

705—Audit. All licensees are subject to the review or audit of its books and records relating to the sale of Alcohol Beverages hereunder by the Tax Commission. Such review or audit may be performed periodically by Tax Commission's agents or employees at such times as in the opinion of the Tax Commission such review or audit is appropriate to the proper enforcement of this Ordinance.

Chapter VIII—Rules, Regulations, and Enforcement

801—Sale or Distribution Without License. Any person who sells or offers for sale or distribution any Alcohol Beverage in violation of this Ordinance, or who operates a business on Tribal land and has Alcohol Beverage(s) for sale in his possession without a license shall be in violation of this Ordinance.

802—Unlawful Purchase. Any person who purchases any Alcohol Beverage on Tribal lands from a person or business who is not licensed by the tribes to sell Alcohol Beverages shall be in violation of this Ordinance.

803—Intent to Sell. Any person who keeps or possesses, or causes another to keep or possess, upon his person or any premises within his control, an Alcohol Beverage, with the intent to sell or to distribute same contrary to the provisions of this Ordinance, shall be in violation of this Ordinance.

804—Sale to Intoxicated Person. Any person who knowingly sells an Alcohol Beverage to a person who is intoxicated shall be in violation of this Ordinance.

805—Public Conveyance. Any person engaged in the business of carrying passengers for hire, and every agent, servant, or employee of such person who shall knowingly permit any person to drink an Alcohol Beverage in any such public conveyance shall be in violation of this Ordinance.

806—Age of Consumption. No person under the age to twenty-one (21) years shall possess or consume any Alcohol Beverage on Tribal lands.

807—Serving Underage Person. No person shall serve an Alcohol Beverage to a person under the age of 21 or permit any such person to consume alcohol on the premises or on any premises under his control. Any licensee violating this section shall be guilty of a separate violation of this Ordinance for each and every drink served and/or consumed.

808—False Identification. Any person who purchases or who attempts to purchase an Alcohol Beverage through the use of false, or altered identification that falsely purports to show the person to be over the age of 21 years shall be in violation of this Ordinance.

809—Documentation of Age. When requested by a seller of Alcohol Beverages, any person shall be required to present proper and satisfactory documentation of the bearer's age, signature, and photograph. For purposes of this Ordinance, proper and satisfactory documentation shall include one or more of the following:

(a) Drivers license or personal identification card issued by any state department of motor vehicles or tribal or federal government agency;

(b) United States active duty military credentials;

(c) Passport.

810—General Penalties. Any person adjudged to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil penalty f not more than Five Hundred Dollars ($500.00) for each such violation. The Tax Commission may adopt by resolution a separate schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed under a separate Ordinance adopted by the Tribes.

811—Initiation of Action. Any violation of this Ordinance shall constitute a public nuisance. The Tax Commission may initiate and maintain an action in Tribal court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance. The plaintiff shall not be required to give bond in this action.

812—Contraband; Seizure; Forfeiture.

A. All Alcohol Beverages within the Reservation held, owned, or possessed by any person or licensee operating in violation of this Ordinance is hereby declared to be contraband and subject to seizure and forfeiture to the Tribes.

B. Seizure of contraband as defined in this Ordinance shall be done by law enforcement and all such contraband seized shall be inventoried and maintained by law enforcement pending final order of the Tax Commission and any appeals there from as may be filed with the Tribal Court or Supreme Court. The owner of the contraband seized may alternatively request that the contraband seized be sold and the proceeds received therefrom be maintained by law enforcement pending final order of the Tax Commission and any appeals there from. The proceeds are subject to forfeiture in lieu of the seized contraband.

C. Within ten days following the seizure of the contraband, a hearing shall be held by the Tax Commission, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

D. Notice of the hearing of at least 10 days shall be given to the person from whom the property was seized, if known. If the person is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on the Reservation. The notice shall describe the property seized, and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized.

If upon the hearing, the evidence warrants, or, if no person appears as a claimant, the Tax Commission shall thereupon enter a judgment of forfeiture, and all such property shall be the property of the Cheyenne and Arapaho Tribes of Oklahoma.

If upon the hearing the evidence does not warrant forfeiture, the seized contraband shall be immediately returned to the owner.

Chapter IX—Nuisance and Abatement

901—Nuisance. Any room, house, building, vehicle, structure or other place where Alcohol Beverages are sold, manufactured, bartered, exchanged, given away, furnished, or otherwise possessed or disposed of in violation of this Ordinance, or of any other Tribal law related to the transportation, possession, distribution or sale of Alcohol Beverages, and including all property kept therein, or thereon, and use in, or in connection with the violation is hereby declared to be a nuisance upon any second or subsequent violation of same.

902—Action to Abate Nuisance. Upon a finding that any such place or activity is a nuisance under the provision of this Ordinance, the Tribes or the Tax Commission may bring a civil action in the Tribal Court to abate and to perpetually enjoin any such activity declared to be a nuisance. Such injunctive relief may include a closure of any business or other use of the property for up to one (1) year from the date of the order, or until the owner, lessee or tenant shall give bond of no less than Twenty-Five Thousand dollars ($25,000) payable to the Tribes and conditioned that no further violation of this Ordinance or other Tribal Alcohol Beverage law and by payment of all fines, costs and assessments against him/her. If any condition of the bond is violated, the bond may be recovered and proceeds delivered to the Tax Commission for the use of the Tribes. Any action taken under this section shall be in addition to any other penalties provided for in this Ordinance. Either party may appeal the ruling of the Tribal Court to the Supreme Court or may file a motion to reconsider initial ruling or enter other appropriate motions.

Chapter X—Revenue and Reporting

1001—Use and Appropriation of Revenue Received. All revenue received by the Tax Commission under this Ordinance, from whatever sources, shall be expended first for the administrative costs incurred in the administration and enforcement of this Ordinance. Any excess funds shall be subject to and available to appropriation by the Tribes for essential governmental, and social services, related to drug and alcohol education, counseling and treatment.

1002—Audit. Tax Commission handling of revenue received under this ordinance is subject to review and audit as a part of the annual financial audit of the Tax Commission.

1003—Reports. The Tax Commission shall submit to the Business Committee a quarterly report and an accounting of all revenue received and expended pursuant to this Ordinance,

Chapter XI—Severability and Effective Date

1101—If any provision or application of this Ordinance is deemed by a court of competent jurisdiction to be invalid and unenforceable, such determination shall not be held to render ineffectual any of the remaining provisions or applications of this Ordinance not specifically identified thereby, or to render such provision to be inapplicable to other persons or circumstances. This Ordinance shall be effective upon certification by the Secretary of the Interior and its publication in the **Federal Register** and filing for record in the office of the Clerk of the Tribal Court.

1102—Any and all prior enactments of the Cheyenne and Arapaho Tribes of Oklahoma that are inconsistent with the provisions of this Ordinance are hereby rescinded.

Chapter XII—Amendment

1201—This Ordinance may be amended only in accordance with the provisions of the Constitution of the Cheyenne and Arapaho Tribes of Oklahoma.

[FR Doc. 03–32043 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–03–1232–EA, AZ–SRP–070–04–01 and AZ–SRP–070–04–02]

Temporary Closure of Selected Public Lands in La Paz County, Arizona, During the Operation of the Parker 250 and Parker 425 Desert Races for 2004

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management Lake Havasu Field Office announces the temporary closure of selected public lands under its administration in La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the officially permitted running of the 2004 KTM Parker 250, and the 2004 Blue Water Resort and Casino Parker 425 Desert Races. Areas subject to this temporary closure include all public lands including county maintained roads and highways located on public lands, that are located within two miles of the designated racecourse. The racecourse and closure areas are described in the **SUPPLEMENTARY INFORMATION** section of this notice, and maps of the designated racecourse are maintained in the Bureau of Land Management Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, AZ 86406.

EVENT DATES: KTM Parker 250 on January 10, 2004, and Blue Water Resort and Casino Parker 425 on February 7, 2004.

FOR FURTHER INFORMATION CONTACT: Bryan Pittman, Field Staff Law Enforcement Ranger, BLM Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (928) 505–1200.

Dated: November 7, 2003.

Donald Ellsworth,

Field Manager, Lake Havasu Field Office.

SUPPLEMENTARY INFORMATION:

Description of Race Course Closed Area

Beginning at the eastern boundary of the Colorado River Indian Tribe (CRIT) Reservation, the race course runs east along Shea Road, then east along the Parker-Swansea Road to the Central Arizona Project Canal, then north, on the west side of the CAP Canal, crossing the canal on the maintained county road, running northeast into Mineral Wash Canyon, then southeast staying on the maintained county road, through the 4-corners intersection to Midway, then east on Transmission Pass Road through State Trust lands located in Butler Valley, turning north into Cunningham Wash to North Tank. Back south to the Transmission Pass Road and east (reentering public land) within two miles of Alamo Dam Road. The race course turns south and west onto the wooden power line road, onto the State Trust lands in Butler Valley, turning southwest into Cunningham Wash to the Graham Well, intersecting Butler Valley Road, then north and west onto public lands proceeding west to the "Bouse Y" intersection, located two miles north of Bouse, Arizona. The route then proceeds north, paralleling the Bouse-Midway Road to Midway. From Midway, it goes west on the north boundary road of the East Cactus Plain Wilderness Area to the Parker-Swansea Road. The route then goes west in Osborne Wash, south of the Parker-Swansea Road to the CAP Canal, along the north boundary of the Cactus Plain Wilderness Study Area, staying in Osborne Wash, and then proceeds west in Osborne Wash to the CRIT Reservation boundary.

Times of the Temporary Land Closure

The KTM Parker 250 Desert Race closure is in effect from 2 p.m. (m.s.t.) on Friday, January 9, 2004, through 5 p.m. (m.s.t.) on Saturday, January 10, 2004. The Blue Water Resort and Casino Parker 425 Desert Race closure is in effect from 2 p.m. (m.s.t.) on Friday, February 6, 2004, through 11:59 p.m. (m.s.t.) on Saturday, February 7, 2004.

Prohibited Acts

The following acts are prohibited during the temporary land closure:

1. Being present on, or driving on, the designated racecourse. This does not apply to race participants, race officials and emergency vehicles.
2. Vehicle parking or stopping in areas affected by the closure, except where such is specifically allowed (designated spectator areas).
3. Camping in any area, except in the designated spectator areas.
4. Discharge of firearms.
5. Possession or use of any fireworks.
6. Cutting or collecting firewood of any kind, including dead and down wood or other vegetative material.
7. Operate any vehicle (except registered race vehicles), including off-highway vehicles, not registered and equipped for street and highway operation.
8. Operate any vehicle in the area of the closure at a speed of more than 35 mph. This does not apply to registered race vehicles during the race, while on the designated racecourse.
9. Park any vehicle in violation of posted restrictions.
10. Park any vehicle in a manner that obstructs or impedes normal traffic movement.
11. Drive any vehicle around or past any "road closed" sign or traffic control barrier.
12. Fail to obey any person authorized to direct traffic, including law enforcement officers and designated race officials.
13. Fail to observe Spectator Area quiet hours of 10 p.m. to 6 a.m.
14. Fail to keep campsite or race viewing site free of trash and litter.
15. Allow any pet or other animal to be unrestrained by a leash of not more than 6 feet in length.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona, or La Paz County. Authority for closure of public lands is found in section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this restriction may be tried before a United States Magistrate and fined no more than $1,000, or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

[FR Doc. 03–32237 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–1110–PC, NM–020–1220–PC]

Notice of Public Land Closure, Ute Mountain, Taos County, NM

AGENCY: Bureau of Land Management, Interior, Taos Field Office, New Mexico.

ACTION: Temporary closure of certain recently acquired public lands near Ute Mountain, Taos County, New Mexico, to public entry and use; notice.

SUMMARY: This notice closes to all public entry and use certain public lands managed by the Bureau of Land Management (BLM) in the vicinity of Ute Mountain, in Taos County, New Mexico, in order to protect the land and

its resources until BLM prepares a management plan for the area. Excepted from this emergency closure is the Rio Grande Gorge below the rim, which will remain open to foot travel and boating between June 1 and March 31 each year. Also excepted from the closure are certain official activities.

EFFECTIVE DATE: December 31, 2003.

ADDRESSES: Send inquiries or suggestions to the Taos Field Office, Bureau of Land Management, 226 Cruz Alta Road, Taos, NM 87571.

FOR ADDITIONAL INFORMATION CONTACT: Ron Huntsinger, Taos Field Office Manager, (505) 758–8851.

SUPPLEMENTARY INFORMATION:

I. Background

The land subject to this closure is part of a tract of land being acquired by BLM primarily because of its value as wildlife habitat and open space for recreation. The Ute Mountain property is situated within and adjacent to the Rio Grande Wild and Scenic River corridor north of Taos, New Mexico, on the New Mexico-Colorado border. This property offers spectacular views of the Rio Grande Gorge and the Sangre de Cristo Mountains and encompasses the entire extinct volcano called Ute Mountain. The land includes the mountainous and forested former volcano, high mesa desert with sagebrush-grasslands, cliffs of the gorge, and riparian areas along the Rio Grande.

Ute Mountain rises to 10,093 feet from an elevation of about 7,600 feet at its base and has been a private sanctuary for elk, deer, antelope, and other game. The land is host to large herds of deer and elk. The property also provides critical riparian and breeding habitat for peregrine falcon, golden eagle, brown trout, and the federally-listed endangered southwestern willow flycatcher and threatened bald eagle. The property is bordered by Bureau of Land Management (BLM) lands and private lands. The western edge of the property, the Rio Grande Gorge, is an active recreation area, providing river sports and associated camping, hunting, picnicking, and wilderness recreation.

The property being closed is a little more than half of the entire 14,344-acre Ute Mountain Property. The Trust for Public Land (TPL) and BLM have completed the first phase of a multi-year effort to preserve Ute Mountain. TPL, a national non-profit land conservation organization, conveyed to BLM 7,924 acres of the Ute Mountain property, bringing part of one of New Mexico's most notable landscapes into permanent protection. When completed, the Ute Mountain property will be protected from development, leaving open a critical migratory wildlife corridor and adding approximately 7 miles of the Rio Grande to the active recreation area. BLM will manage the land, located within the Rio Grande Wild and Scenic River corridor, to protect its open space, recreational, and habitat values.

II. Lands Affected

This order affects public land in Taos County, New Mexico, described as: A certain tract of land near Costilla, Taos County, New Mexico; within the Sangre de Cristo Grant; described as part of projected Sections 24, 25, and 36, Township 32 North, Range 11 East; part of projected Sections 1, 2, 11, 12, and 13, Township 31 North, Range 11 East; part of projected Sections 19, 20, 21, 28, and 33, and all of projected Sections 29, 30, 31, and 32, Township 32 North, Range 12 East; part of projected Sections 4, 5, 8, 17, and 18, and all of projected Sections 6 and 7, Township 31 North, Range 12 East of the New Mexico principal meridian (New Mexico system); and further described as part of Tract "A" shown on a plat entitled "A Survey of the Westerly Portion of the Sangre de Cristo Grant," by Leo Archuleta, NMLS no. 4249, dated February 1980.

This tract contains 7923.85 acres, more or less; all as shown on a survey plat entitled "Robert Starks to the Trust for Public Land" RGSS survey no. L203-A1, by Scott B. Crowl, NMLS no. 12441, dated June 16, 2003, as revised August 27, 2003.

III. Closure

In compliance with 43 CFR 8364.1(c), notice is hereby given that BLM is closing the public lands in the Ute Mountain Property. These restrictions will be in effect year-round from December 31, 2003, until rescinded by BLM. The order to close these lands is needed to protect the public land resources there until the land use plan for the tract is complete. BLM is establishing and will administer this emergency closure under the authority of 43 CFR 8364.1.

BLM finds good cause to publish this closure notice effective on the date of publication and without providing for public comment due to the immediate need to protect the habitat for the endangered and threatened species in the tract. Also, the regulations on Closures and Restrictions at 43 CFR 8364.1 do not require publication of a request for comments.

BLM hereby closes the described public lands to all entry and use, except for the Rio Grande Gorge below the rim, which will remain open to foot travel and boating between June 1 and March 31. Any person who fails to comply with this order may be subject to the penalties provided in 43 CFR 8360.0–7.

This closure will remain in effect until BLM completes the acquisition of the property, expected to occur no later than the end of FY 2005. At that time BLM will prepare a management plan with input from local residents and other interested parties. During this closure period, BLM will consult with the public and develop a process for completing a management plan for the area.

BLM will post closure signs at main entry points and trails in the area indicating the area closed and explaining the reason for the closure. Maps of the closure area and more detailed information are on file at the Taos Field Office.

IV. Exceptions

The following persons are exempt from this order: all Federal, State, and local officers or employees in the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, and persons authorized in writing by the Bureau of Land Management.

Dated: November 21, 2003.

Paul Williams,

Acting Field Office Manager.

[FR Doc. 03–32239 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–03–2821–HU–Q157]

Emergency Restriction on Public Lands: Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency restriction on public land in Tooele County, Utah.

SUMMARY: The Salt Lake Field Office, Bureau of Land Management (BLM) is giving notice it is temporarily restricting a portion of public lands from all forms of public use from November 15, 2003, to November 15, 2005. The restricted area is near Stockton, Tooele County, Utah. The affected public lands include:

T. 4 S., R. 4 W., SLM,
  Sec. 18, all public lands in the SW1/4,
  Sec. 19, all public lands in the NW1/4NW1/4;
T. 4 S., R. 5 W.,
  Sec. 13, all public lands east of Highway #36 in the E1/2SE1/4,
  Sec. 24, all public lands in the NE1/4NE1/4.

The area closed contains 240 acres, more or less.

All public use within the above designated area will not be allowed during this temporary restriction in order to protect the public health and safety, allow for successful rehabilitation activities, reestablishment of native vegetation and prevent the spread of noxious and invasive weed species. BLM will post signs at all entry points to the area. You may obtain maps of the restricted area and information from the BLM Salt Lake Field Office.

DATES: This restriction will be in effect from December 31, 2003, until November 15, 2005. At the end of this 2 year period, BLM will evaluate the level of public health and safety and the success of the rehabilitation and determine if the restriction should be continued for an additional period of time.

FOR FURTHER INFORMATION CONTACT: Michael Nelson, Realty Specialist at 2370 S. 2300 W. Salt Lake City, Utah 84119, (801) 977–4355.

Discussion of the Rules: This restriction to public access and use will serve to protect the health and safety of the public from exposure to high levels of lead and arsenic present in historic mine tailings within the area of the Bauer Fire #Q157, a lightning-caused wildfire that began on July 25, 2003, and was controlled on July 27, 2003. The area where the wildfire occurred is within an urban interface heavily used for Off Highway Vehicles (OHV) play, target shooting activities, and other forms of dispersed recreation. In order to protect the public from exposure to hazardous mine tailings recently found to occur in the area, prevent the spread of noxious weeds, and allow for the successful reestablishment of vegetation on the recently burned steep slopes, the area must be temporarily restricted from all forms of public use.

A map depicting the restricted area is available for public inspection at the Bureau of Land Management, Salt Lake Field Office. Therefore, we find good cause to make this restriction effective immediately, notwithstanding the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Under the authority of 43 CFR 9268.3(d)(1)(I) and 43 CFR 8364.1(a), BLM will enforce the following rule on public lands within the restricted area: You must not enter the restricted area.

Exemptions: Persons who are exempt from these rules include: (1) Any Federal, State, or local officer or employee in the scope of their duties; (2) Members of any organized rescue or fire-fighting force in performance of an official duty; and (3) Any person authorized in writing by the Bureau of Land Management.

Penalties: The authorities for this closure are section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this restriction may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: November 12, 2003.

Glenn A. Carpenter,

Field Office Manager, Salt Lake Field Office.

[FR Doc. 03–32238 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–1020–PG]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held January 28, 2004, at the BLM's Lewistown Field Office on Airport Road, in Lewistown, Montana, beginning at 8 a.m. A 60-minute public comment period will begin at 8 a.m. The meeting is scheduled to adjourn at approximately 4:30 p.m.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary on a variety of management issues associated with public land management in Montana. At this meeting the council plans to discuss:

The access and transportation issue in the Upper Missouri River Breaks National Monument Resource Management Plan

All meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATON CONTACT: Dave Mari, Lewistown Field Manager, Lewistown Field Office, Airport Road, Lewistown, MT 59457, 406/538–7461.

Dated: December 19, 2003.

Michael P. Stewart,

Associate Lewistown Field Manager.

[FR Doc. 03–32132 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1430–FM; N–74293]

Termination of Segregation, Exchange N–74293; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination of segregation.

SUMMARY: This action terminates the segregation of the Exchange Proposal N–74293 initiated by Nevada Land and Resource Company, LLC. The land will be opened to the operation of the public land laws, including location and entry under the mining laws.

EFFECTIVE DATE: March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Helen Hankins, Elko Field Office, 3900 E. Idaho St., Elko, Nevada 89801, 775–753–0200.

SUPPLEMENTARY INFORMATION: On May 4, 2001, the land described below was segregated as to a proposed exchange with Nevada Land and Resource Company, LLC. The exchange is no longer being pursued on the lands identified below. The segregative effect is hereby terminated for the following described land:

Mount Diablo Meridian, Nevada

T. 36 N., R. 64 E.,
  Section 2, (All) Lots 1—4, S½ ,N½, S½;
  Section 4, Lots 1—4, S ½NE¼, S½ NW¼, N½SW¼, SE¼;
  Section 10, All;
  Section 12, All;
  Section 14, All;
  Section 16, All;
  Section 22, All;
  Section 24, All.
T. 37 N., R. 64 E.,
  Section 2, (All) Lots 1—4, S½ N½, S½;
  Section 4, (All) Lots 1—4, S½ N½, S½;
  Section 8, All;
  Section 10, All;
  Section 12, All;
  Section 16, All;
  Section 22, All;
  Section 24, All;
  Section 26, All;
  Section 28, All;

Section 32, All;
Section 34, All;
Section 36, N½.
T. 38 N., R. 64 E.,
Section 26, Lots 1—6, S½;
Section 28, All;
Section 32, All;
Section 34, All;
Section 36, All.
T. 37 N., R. 65 E.,
Section 6, (All) Lots 1—8, S½NE¼, SE¼NW¼, E½SW¼, S½E½;
Section 18, (All) lots 1—4, E½W½, E½;
Section 30, (All) Lots 1—4, E½W½, E½.

The area described contains 18,260.14 acres in Elko County.

1. At 9 a.m. on March 1, 2004, the land described above will be opened to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record an the requirements of applicable law. All valid applications received at or prior to 9 a.m. March 1, 2004, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on March 1, 2004, the land described will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of segregation is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 39 (1994), shall vest no rights against the United States. Act required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights because Congress has provided for such determination in local courts.

Dated: November 25, 2003.

David Stout,

Associate Field Manager.

[FR Doc. 03–32235 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ET, CACA 43949]

Notice of Proposed Withdrawal, Transfer of Jurisdiction, and Notice of Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of withdrawal

SUMMARY: The Department of the Navy has filed an application to withdraw approximately 3,005.99 acres of public lands for use as a mountain warfare training facility. Due to the sensitive nature of the training, the Department of the Navy has requested that administrative jurisdiction of the land be transferred from the Bureau of Land Management to the Department of the Navy.

DATES: The Department of the Navy will conduct a public meeting on January 13, 2004, from 4 to 8 p.m. at the Mountain Empire Community Center at 976 Sheridan Road, Campo, California 91906. The purpose of that meeting will be to explain the reason for the proposed withdrawal and to seek scoping comments from the public. Comments must be received by March 30, 2004.

ADDRESSES: Comments should be sent to Howard K. Stark, Chief, Branch of Lands (CA–930), Bureau of Land Management, 2800 Cottage Way, Suite 1834, Sacramento, California, 95825–1886.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, (916) 978–4675.

SUPPLEMENTARY INFORMATION:

1. The Department of the Navy has filed an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including mining laws, subject to valid existing rights, for use as a military training facility:

San Bernardino Meridian

T.17 S., R. 5 E.,
Sec. 13, lots 8 & 9;
Sec. 14, W½;
Sec. 15, SE¼NE¼, S½SE¼;
Sec. 22, lots 1 & 2, NE¼, E½NW¼, E½SW¼, W½SE¼;
Sec. 23, lots 1 & 2, N½, E½SW¼, SE¼;
Sec. 24, lots 4, 5, 20 & 22, SW¼SW¼;
Sec. 25, W½;
Sec. 26, lots 1, 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 27, lots 1, 9 & 10;
Sec. 34, lot 7, NE¼SE¼;
Sec. 35, lots 2, 3 & 4, NE¼, S½NW¼, N½SW¼, N½SE¼.
T.18 S., R. 5 E.,
Sec. 2, NE¼NE¼.

The area described contains approximately 3,005.99 acres in San Diego County, California.

2. The Department of the Navy has requested that jurisdiction of the lands described in paragraph 1 above be transferred to the Department of the Navy, so the land can be managed for use as a mountain warfare training facility, subject to valid existing rights.

3. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections, may present their views in writing to the Chief, Branch of Lands Management, California State Office, Bureau of Land Management, at the address listed above.

4. The application will be processed in accordance with the regulations set forth in 43 Code of Federal Regulations 2300.

5. In accordance with 43 Code of Federal Regulations 2310.2, the lands in paragraph 1 above are, for a period of 2 years from the date of publication of this Notice in the **Federal Register**, segregated from entry and appropriation under the public land laws, including the mining laws. The Bureau of Land Management may, after consulting with the Department of the Navy, allow temporary uses that are determined to be compatible with the proposed withdrawal.

Dated: November 26, 2003.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 03–32225 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 103820]

Notice of Addition of Lands to Proposed Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of withdrawal.

SUMMARY: The United States Forest Service has filed a request to add 739.71 acres to their withdrawal application in aid of legislation for the proposed Global Settlement with the Pueblo of San Idelfonso, in Rio Arriba County, New Mexico. The original notice of proposed withdrawal was published in the **Federal Register**, 67 FR 7193, February 15, 2002, and segregated the lands described therein from location under the United States mining laws, subject to valid existing rights. This

notice shall not operate to extend the segregation for the lands described in the original notice. The segregation is necessary to provide protection of these additional lands for relief of legislation during the negotiation of the proposed Global Settlement with the San Idelfonso Pueblo (*Pueblo of San Idelfonso* v. *the United States of America*—Docket No. 354 Court of Federal Claims).

DATES: Comments should be received on or before March 30, 2004.

ADDRESSES: Comments should be sent to the Forest Supervisor, Santa Fe National Forest, 1474 Rodeo Road, P.O. Box 1689, Santa Fe, New Mexico 87504–1689.

FOR FURTHER INFORMATION CONTACT: Michael Frazier, Santa Fe National Forest, 505–438–7824.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to add certain lands to its existing withdrawal application. These lands are in addition to those published in the **Federal Register**, 67 FR 7193, February 15, 2002. The following described public lands are to be withdrawn from location under the United States mining laws, subject to valid existing rights.

Santa Fe National Forest, New Mexico Principal Meridian

T. 20 N., R. 7 E.,
  Sec. 17, NE¼NE¼SE¼, NW¼NW¼SE¼, N½N½SW¼, S½SE¼SE¼, W½W½SW¼SW¼, W½E½W½SW¼SW¼, E½E½W½SW¼SW¼, E½SW¼SW¼, SW¼SE¼, and SE¼SW¼;
  Sec. 18, S½S½SE¼, N½S½SE¼, N½SE¼, and SW¼;
  Sec. 19, a portion of Tract 37 (11.26 acres), lot 5, and N½N½NE¼ (also a portion of Tract 40);
  Sec. 20, NW¼NE¼, N½N½NE¼NW¼, N½S½N½NE¼NW¼ (also Tract 41), S½S½N½NE¼NW¼, S½NE¼NW¼, and NW¼NW¼ (also a portion of Tract 40);
  Sec. 21, lot 3.

The area described contains 739.71 acres in Rio Arriba County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the addition of lands to the proposed withdrawal may present their views in writing to the Forest Supervisor of the Santa Fe National Forest.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

From the date of publication of this notice in the **Federal Register**, the additional described lands will be segregated until February 14, 2004, as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: November 25, 2003.

Carsten F. Goff,

Deputy State Director, Minerals and Lands.

[FR Doc. 03–32236 Filed 12–30–03; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–131–28 and TA–2104–10]

U.S.-Andean Countries Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: December 24, 2003.

SUMMARY: Following receipt of a request on December 8, 2003, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–28 and TA–2104–10, *U.S.-Andean Countries Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports,* under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Dennis Fravel (202–205–3404; *fravel@usitc.gov*), or Tracy Quilter (202–205–3437; *tquilter@usitc.gov*), Office of Industries, United States International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background: On November 18, 2003, the USTR notified the Congress of the President's intent to initiate a free trade agreement with Colombia, Peru, Ecuador, and Bolivia, the four Andean Trade Preference Act beneficiary countries. Accordingly, the USTR, pursuant to section 131 of the Trade Act of 1974 (19 U.S.C. 2151), requested the Commission to provide a report including advice as to the probable economic effect of providing duty-free treatment for imports of products from the Andean countries as a group (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. In preparing its advice, the Commission's analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2003 Harmonized Tariff System nomenclature and 2002 trade data. The advice with respect to the removal of U.S. duties on imports from the Andean countries will assume that any known U.S. nontariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. nontariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

As also requested, pursuant to section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)), the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of the Andean countries on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

The Commission expects to provide its report to USTR by April 8, 2004. USTR indicated that the Commission's report will be classified and considered to be an interagency memorandum containing pre-decisional advice and subject to the deliberative process privilege.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on February 10, 2004. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., January 23, 2004, in accordance with the requirements in the "Submissions" section below. In the event that, as of the close of business on January 23, 2004, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after January 23, 2004, to determine whether the hearing will be held. This will be a joint hearing at which the Commission will also take testimony in connection with its investigation *U.S.-Panama Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports* (investigation Nos. TA–131–27 and TA–2104–9).

Statements and Briefs: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning the investigation in accordance with the requirements in the "Submissions" section below. Any prehearing briefs or statements should be filed not later than 5:15 p.m., January 26, 2004; the deadline for filing post-hearing briefs or statements is 5:15 p.m., February 17, 2004.

Submissions: All written submissions including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8); any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules require that the cover of the document and the individual pages clearly be marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets.

The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8)(see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

All written submissions, except for confidential business information, will be made available for inspection by interested parties. Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Andean countries, imports, and tariffs.

Issued: December 24, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–32240 Filed 12–30–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. TA–131–27 and TA–2104–9]

U.S.-Panama Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports

AGENCY: International Trade Commission.

ACTION: Institution of investigations and scheduling of hearing.

EFFECTIVE DATE: December 24, 2003.

SUMMARY: Following receipt of a request on December 8, 2003, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–27 and TA–2104–9, *U.S.-Panama Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports,* under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to these investigations may be obtained from Queena Fan, Project Leader (202–205–3055; *qfan@usitc.gov*), or Tracy Quilter, Deputy Project Leader (202–205–3437; *tquilter@usitc.gov*), Office of Industries, United States International Trade Commission, Washington, DC, 20436. For information on the legal aspects of these investigations, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background: On November 18, 2003, the USTR notified the Congress of the President's intent to initiate free trade agreement negotiations with Panama. Accordingly, the USTR, pursuant to section 131 of the Trade Act of 1974 (19 U.S.C. 2151), requested the Commission to provide a report including advice as to the probable economic effect of providing duty-free treatment for imports of products of Panama (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. In preparing the advice, the Commission's analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2003 Harmonized Tariff System nomenclature and 2002 trade data. The advice with respect to the removal of U.S. duties on imports from Panama will assume that any known U.S. nontariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. nontariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

As also requested, pursuant to section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)), the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of Panama on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

The Commission expects to provide its report to the USTR by April 8, 2004. The USTR indicated that the Commission's report will be classified and considered to be an interagency memorandum containing pre-decisional advice and subject to the deliberative process privilege.

Public Hearing: A public hearing in connection with the investigations will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC beginning at 9:30 a.m. on February 10, 2004. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., January 23, 2004, in accordance with the requirements in the "Submissions" section below. In the event that, as of the close of business on

January 23, 2004, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after January 23, 2004, to determine whether the hearing will be held. This will be a joint hearing at which the Commission will also take testimony in connection with its investigations *U.S.-Andean Countries Free Trade Agreement: Advice Concerning the Probable Economic Effect of Providing Duty-Free Treatment for Imports* (investigation Nos. TA–131–28 and TA–2104–10).

Statements and Briefs: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning the investigation in accordance with the requirements in the "Submissions" section below. Any prehearing briefs or statements should be filed not later than 5:15 p.m., January 26, 2004; the deadline for filing post-hearing briefs or statements is 5:15 p.m., February 17, 2004. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on February 17, 2004.

Submissions: All written submissions including requests to appear at the hearing, statements, and briefs should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8); any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules require that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets.

The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

All written submissions, except for confidential business information, will be made available for inspection by interested parties. Accordingly, any confidential business information received by the Commission in these investigations and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Panama, imports, and tariffs.

Issued: December 24, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–32241 Filed 12–30–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Extension of a currently approved collection; release and receipt of imported firearms, ammunition and implements of war.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 200, pages 59637 on October 16, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 30, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Release and Receipt of Imported Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6A (5330.3C). Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Individuals or households. Other: Business or other for-profit, Not-for-profit institutions. The data provided by this information collection request is used by ATF to determine if articles imported meet the statutory and regulatory criteria for importation and if the articles shown on the permit application have been actually imported.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 20,000 respondents will complete a 24-minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 8,000 estimated annual total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: December 19, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–32143 Filed 12–30–03; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–39; Application No. D–11100]

Class Exemption for the Release of Claims and Extensions of Credit in Connection With Litigation

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986, as amended (the Code). The exemption permits transactions engaged in by a plan, in connection with the settlement of litigation. This exemption was proposed in response to concerns raised by the pension community regarding the impact of ERISA's prohibited transaction provisions on the settlement of litigation by employee benefit plans with parties in interest. The exemption affects all employee benefit plans, the participants and beneficiaries of such plans, and parties in interest with respect to those plans engaging in the described transactions.

EFFECTIVE DATE: The exemption is effective January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Andrea W. Selvaggio, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue NW., Washington, DC 20210 (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 11, 2003, the Department published a notice in the **Federal Register** (68 FR 6953) of the pendency of a proposed class exemption from the restrictions of section 406(a)(1)(A), (B) and (D) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (B) and (D) of the Code. The Department proposed the class exemption on its own motion, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, August 10, 1990).[1]

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. The Department received five (5) public comments. Upon consideration of all the comments received, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the major comments are discussed below.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it was determined that this action is "significant" under Section 3(f)(4) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA 95), the Department submitted the information collection request (ICR) included in the Class Exemption For Release of Claims and Extensions of Credit in Connection With Litigation to the Office of Management and Budget (OMB) for review and clearance at the time the proposed class exemption was published in the **Federal Register** (February 11, 2003, 68 FR 6953). The ICR for the proposed class exemption was combined with the ICR in PTCE 94–71,[2] also approved under OMB control number 1210–0091, because of the similarity of subject matter between the two exemptions. No comments were received about the burden estimates and no substantial or material changes have been made in the grant of the exemption that would affect the burden estimates in the proposal. The approval for each of the ICRs included in the two exemptions will expire on April 30, 2006.

In order to grant an exemption pursuant to section 408(a) of the Act, the Department must, among other things, make a finding that the terms of the exemption are protective of the rights of participants and beneficiaries of a plan. To support making such a finding, the Department normally imposes certain conditions on fiduciaries and parties in interest that may make use of the exemption. The information collection provisions of the exemption are among these conditions. The information collection provisions are found in sections III(c), (e), (g), and

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[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code ot the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] PTCE 94–71, 59 FR 51216, October 7, 1994, as corrected, 59 FR 60837, November 28, 1994—Settlement Agreements Resulting From An Investigation, involving remedial settlements resulting from an investigation of an employee benefit plan conducted by the Department.

(h). These requirements are summarized as follows:

Written Agreement. The exemption requires that the terms of the settlement be specifically described in a written agreement or consent decree. In the exemption as granted, the Department has added that, with regard to transactions involving assets other than cash, the assets and their fair market value, including the date for such valuation, must be described in writing in the settlement agreement. Because a description and valuation of the assets involved in a settlement transaction are usually included in a settlement agreement, the requirement serves only as a clarification about assets that are not cash for the parties seeking to use the class exemption. In addition, because the Department believes that the ability to make changes with regard to a settlement allows more flexibility to the parties involved, it has also provided in the final exemption that certain adjustments, such as the right to amend the plan, are permissible if written into the agreement. These two new requirements are only operative for certain provisions and under certain conditions that may or may not be included in the settlement. Where appropriate, including the provisions in the agreement enables interested parties described in the exemption to verify that the conditions of the exemption have been met. However, neither requirement produces a measurable burden beyond that which would be considered usual business practice, and no additional burden has been accounted for in this ICR.

Acknowledgement by a Fiduciary. On a prospective basis, the exemption also requires that a fiduciary acting on behalf of the plan acknowledge in writing that it is a fiduciary with respect to the settlement of the litigation. Under the Act, a person that exercises "any authority or control respecting disposition of [the plan's] assets," is considered a fiduciary. It is anticipated that the applicable plan fiduciary will incorporate this acknowledgement in the written agreement outlining the terms and conditions of its retention as a plan service provider, and already in existence, as part of usual and customary business practice. As such, a written acknowledgement is not expected to impose any measurable additional burden.

Recordkeeping. Prospectively, the exemption requires a plan to maintain for a period of six years the records necessary to enable certain persons to determine whether the conditions of the exemption had been met. The six-year recordkeeping requirement is consistent with the requirements in section 107 of the Act as well as general recordkeeping requirements for tax information under the Code. As such, the Department has not accounted for a burden related to recordkeeping for this exemption.

The exemption may affect employee benefit plans, the participants and beneficiaries of those plans, and parties in interest to plans engaging in the specified transactions. It is not possible to estimate the number of respondents or frequency of response to the information collection requirements of the exemption due to the wide variety of litigation involving plans, parties to that litigation, and jurisdictions in which litigation occurs. However, the lack of an ascertainable number of settlements does not impact the hour or cost burden because no additional burden is associated with the information collection requirements of the exemption.

I. Discussion of Comments Received

The comments received by the Department were generally supportive of the issuance of a class exemption for the release of claims and extensions of credit in connection with litigation. However, commenters requested specific modifications to the proposal in the following areas:

A. Whether the settlement of litigation with a party in interest is a prohibited transaction. Several commenters argued that settling litigation is not a transaction, and, therefore, not prohibited under section 406 of the Act. Other commenters requested that the Department clarify that only a fiduciary, a participant or beneficiary, or the Secretary of Labor, may bring suit to enforce ERISA's fiduciary duties. These commenters asserted that, because the statute does not identify a plan as a party with standing to pursue ERISA litigation, an ERISA claim is not a plan asset and the release of such an asset, in exchange for consideration from a party in interest, would not be a prohibited sale or exchange of any property under section 406 of ERISA. Other commenters asserted that the settlement of litigation with a party in interest is a prohibited transaction and urged stricter conditions for the provision of retroactive relief because the Department's position on this issue was clearly articulated in its 1995 Opinion Letter, AO 95–26A (October 17, 1995).

As the Department noted in proposing this exemption, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is, in fact, a prohibited transaction. Rather, the exemption is being granted in response to uncertainty expressed on the part of plan fiduciaries charged with the responsibility under ERISA for determining whether it is in the interests of a plan's participants and beneficiaries to enter into a settlement agreement with a party in interest. The comments have confirmed the Department's earlier conclusion that there was considerable uncertainty surrounding this issue. After considering all of the comments, the Department has determined that the exemption, as revised, appropriately balances the concerns of these commenters while allowing plan fiduciaries to properly carry out their responsibilities under ERISA.

In response to the comments that ERISA civil actions for breach of fiduciary duty may only be brought by participants, beneficiaries, fiduciaries, and the Secretary of Labor, the Department has modified the final class exemption to include the release of claims by both the plan and a plan fiduciary. As the Department noted in the preamble to the proposed exemption, many situations in which a plan settles litigation may not give rise to a prohibited transaction or may be covered by an existing statutory or administrative exemption. For example, correction of a prohibited transaction that complies with section 4975(f)(5) of the Code[3]; reimbursement of a plan without a release of the plan's claim; settlement with a service provider of a dispute related to the provision of services or incidental goods to the plan that is otherwise exempt under ERISA 408(b)(2) (*See*, Opinion Letter, AO 95–26A); settlements authorized by the Department pursuant to PTE 94–71 (59 FR 51216, October 7, 1994, as corrected, 59 FR 60837, November 28, 1994); and judicially approved settlements where the Labor Department or the Internal Revenue Service is a party pursuant to PTE 79–15 (44 FR 26979, May 8, 1979).

In addition, the Department notes that this class exemption would be available for settlement agreements relating to an employer's failure to timely remit participant contributions to a plan, including a collectively bargained multiemployer or multiple employer plan, to the extent the conditions contained in this final exemption are met.[4] In this regard, the Department notes that the relief provided by this exemption is limited to the prohibited transactions that arise where a plan trustee and an employer enter into a settlement involving the employer's failure to timely forward participant contributions to the plan as required under ERISA. Thus, nothing in this class exemption should be construed as exempting any of the prohibited transactions described in section 406(a) or 406(b) of ERISA that arise solely in connection with an employer's failure to timely forward participant contributions to a plan.[5]

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[3] IRC Reg. sec. 141.4975–13 provides that for purposes of the excise taxes on prohibited transactions, the definition of the term "correction" under IRC Reg. sec. 53.4941(e)–1 (concerning excise taxes on self-dealing with foundations) is controlling.

This exemption does not, however, apply to transactions described in PTE 76–1, A.I. (41 FR 12740, March 26, 1976, as corrected, 41 FR 16620, April 20, 1976) relating to delinquent employer contributions to a collectively bargained multiemployer or multiple employer plan. Finally, PTE 76–1, A.I. does not extend relief to those settlement arrangements that arise from the failure of an employer to timely forward participant contributions to a multiemployer or multiple employer plan.

Section 502(d)(1) of the Act provides that "an employee benefit plan may sue or be sued under this title as an entity." This exemption covers settlement of any type of suit the plan has brought. However this exemption is not available for settlement of claims brought by a party in interest against a plan. This exemption does not cover a plan's payment of money or other things of value to a party in interest in exchange for the dropping of claims against the plan. As with exchanges made for the release of claims in favor of the plan, the Department's determination in this regard is not dispositive of whether such an exchange constitutes a prohibited transaction.

Finally, the Department notes that a settlement between a plan and a participant or beneficiary made solely to resolve claims against a plan for the recovery of benefits, by a participant or beneficiary, may not involve a prohibited transaction. If the plan makes payment to a participant who is a party in interest to settle a benefits dispute, such payment generally would be viewed by the Department as the payment of a plan benefit that would not trigger the need for an exemption. As the Supreme Court noted in *Lockheed Corp.* v. *Spink*, 517 U.S. 882, 892–893 (1996), the payment of benefits is not a prohibited transaction.

B. The plan must obtain advice from an attorney representing the plan that a genuine controversy exists. Several commenters were concerned that imposing this requirement on past settlements would effectively limit the availability of the exemption. These commenters asserted that, prior to publication of the Department's proposed exemption, many fiduciaries were unaware that the settlement of litigation might be considered a prohibited transaction by the Department. Even if an attorney was retained in connection with the litigation, it is unlikely that the attorney would have opined as to whether or not there was a genuine controversy. Other commenters argued that: the filing of a lawsuit should be sufficient to find the existence of a genuine controversy; and class action settlements should not have to meet this requirement. Another commenter suggested retaining the requirement for a genuine controversy, but without requiring an attorney's determination. This commenter also suggested that the attorney review be permitted, but not required, as a safe harbor in certain situations. He explained that fiduciaries might find it prudent and in the interests of participants and beneficiaries to settle a frivolous case for a *de minimus* amount, rather than incur the cost of litigation. In this situation, such fiduciaries should be able to meet the condition of the class exemption by demonstrating that they sought and obtained advice of counsel before settling the case.

Several commenters asserted that the genuine controversy condition was unnecessary as the concern raised by the Department, the possibility of a collusive settlement, was addressed by the condition that the settlement is not an arrangement to benefit a party in interest. Another commenter suggested that independent legal advice and a written agreement or consent decree should be mandatory for all retroactive relief because, even if the fiduciary was unaware of the prohibited transaction issue, a prudent fiduciary would have obtained such written documentation before entering into a settlement.

On the basis of these comments, the Department has decided to amend the genuine controversy condition. No finding of genuine controversy will be required where the case has been certified as a class action by the court. In addition, for transactions entered into prior to the publication of the final exemption, and the first 30 days thereafter, no attorney review will be required to determine whether the genuine controversy exists. On a prospective basis, attorney review will be required. In response to a question from one of the commenters, the Department confirms that the independent fiduciary's in-house attorneys, as well as its outside counsel, could provide the appropriate advice concerning the existence of a genuine controversy.

C. The decision-making fiduciary has no interest in any of the parties involved in the litigation that might affect the exercise of its best judgment as a fiduciary (independent fiduciary). Several commenters suggested that the Department eliminate the requirement for an independent fiduciary or, in the alternative, limit its application to prospective relief. Among the suggestions were: limit the requirement for an independent fiduciary to material claims where there are no alternative safeguards; and eliminate the independent fiduciary requirement where a judge reviews the fairness of a class action settlement. Other commenters expressed concern that the plan's directed trustee, even if not a defendant, should not be considered sufficiently independent to make decisions settling a case. They suggested that an entirely independent fiduciary be retained. Another commenter argued that relief in large cases should be conditioned upon the retention of an independent fiduciary with no prior relationship to the plan, or the defendants, and no future relationship with the plan for three years after the engagement.

Except as noted above in connection with the finding of genuine controversy, the Department does not believe that it would be appropriate to make a distinction between the requirements applicable to class action settlements and other settlements. However, in response to comments, the Department has decided to eliminate the requirement that the independent fiduciary "negotiate" the settlement. The Department realizes that many of the settlements to which this class exemption would apply are class action settlements. Where the plan is not a lead plaintiff, the plan fiduciary's role in negotiating the terms of the settlement may be limited. The Department recognizes, however, that even where negotiation does not take place between the plan and the defendant, a fiduciary will be compelled, consistent with ERISA's fiduciary responsibility provisions, to make a decision regarding the settlement on behalf of the plan, even if that decision is merely to accept or reject a proposed settlement negotiated by other class members.

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[4] The Department notes that the relief provided by this exemption would be available for settlements involving participant or employer contributions to a single employer plan or to a non-collectively bargained multiple employer plan.

[5] In this regard, the failure of an employer to timely remit contributions made to a plan by an employee of such employer violates ERISA sections 403(a), 403(c)(1), 404(a)(1)(A), 406(a)(1)(D), and 406(b)(1).

As modified, the final class exemption covers settlements authorized by a fiduciary that are reasonable, in light of the plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone. Such settlements must be no less favorable to the plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties in similar circumstances. In addition, the transaction must not be part of an agreement, arrangement or understanding designed to benefit a party in interest. Thus, an independent fiduciary could satisfy the authorization requirements under the final exemption by deciding not to opt out of class action litigation if, after a review of the settlement, such fiduciary concludes that the chances of obtaining any further relief for the plan are not justified by the expense involved in pursuing such relief. Although the Department has determined to delete the requirement for negotiation as a specific condition of the class exemption, the Department notes that this modification does not diminish the fiduciary's responsibilities with respect to the settlement terms.

As noted above, several of the commenters expressed concern about the degree of independence of institutional fiduciaries, such as directed trustees, that may serve as the fiduciary contemplated by the class exemption. Without agreeing or disagreeing with this comment, the Department emphasizes that this class exemption does not provide relief from section 406(b) of the Act. In addition, the fiduciary's decisions in authorizing a settlement are subject to the fiduciary responsibility provisions of the Act.

D. Plans must select an independent fiduciary. Several commenters expressed concern about the additional cost of hiring independent fiduciaries in connection with settlements. The Department believes that plans often will not need to retain fiduciaries specifically to comply with this exemption. In most cases, the plan will be able to use a current fiduciary who is not a party to the action and who is not so closely allied with a party (other than the plan) as to create a conflict of interest. As with any other expense, the Department expects that fiduciaries will engage in prudent cost/benefit analysis to select the appropriate independent fiduciary in each case. In some cases, the cost of the independent fiduciary may be included in the damages claimed by the plan and may be reimbursed by the defendant in settling the litigation.

One of the commenters suggested that to avoid duplication, the independent fiduciary should be permitted to rely on the opinion of plaintiffs' class counsel or experts hired to assist class counsel. The Department agrees that the fiduciary should not spend plan resources unnecessarily. Whether and to what extent a fiduciary should rely on a particular attorney or expert hired by one of the other parties are decisions that the fiduciary must make in accordance with its fiduciary responsibilities under ERISA.

In this regard, the Department notes that on occasion the independent fiduciary may wish to retain outside experts to assist the fiduciary in determining whether or not to settle litigation. The following are some of the factors that may assist the fiduciary in its determination: the size of the claim, the expertise of the fiduciary, and the subject matter of the litigation.

Several of the commenters asked the Department to clarify that the mere fact that a party in interest pays for an attorney, an independent fiduciary, or other expert hired by the plan, does not mean that these professionals are not independent for purposes of the exemption. The Department agrees with this assertion, assuming that the professional being paid by the party in interest understands that the plan is their client, not the party paying their bill. In addition, the amount of compensation paid to the professional by the party in interest constitutes no more than a small percentage of such professional's annual gross income.

E. What is the role of the independent fiduciary where there is judicial approval of a settlement? Several commenters recommended that judicial approval of a settlement should eliminate the need for an independent fiduciary. One of the commenters suggested that where the settlement is judicially approved, relief from section 406(b) of the Act should be available under the exemption for those fiduciaries that were defendants in the litigation. The Department has determined not to adopt these suggestions. The court, in reaching its conclusion that the settlement is fair, must balance the interests of all the litigants. ERISA, on the other hand, requires that a fiduciary make its decisions with an "eye single to the interests of the participants and beneficiaries." *Donovan* v. *Bierwirth,* 680 F.2d 263, 271 (2d Cir. 1982), cert. denied, 459 U.S. 1069 (1982). In response to the request for relief from section 406(b), the Department does not believe that a sufficient showing has been made that such relief would be appropriate under the circumstances.

F. Should there be special rules for settling class action litigation? Several of the commenters explained that, with respect to certain types of class actions, class members do not have the option of opting out of the class—all are bound by the decision. The commenters explained that ERISA class actions are often non-opt out cases. According to the commenters, this means that where class action litigation is brought by the participants, the plan fiduciary may, without taking any action, be bound by the class action settlement. In light of this, the commenters asked how such a fiduciary could cause a prohibited transaction where it took no action and yet was bound by the settlement. The Department does not regard this exemption proceeding to be the appropriate setting for resolving questions concerning what types of settlement are more or less likely to be prohibited transactions.

The Department notes, however, that the fiduciary is unlikely to remain uninvolved in the settlement of an ERISA lawsuit initiated by participants for two reasons. First, the fiduciary will, in all likelihood, be named as a party to the lawsuit and the court will almost certainly require the plan fiduciary's input on the settlement. Alternatively, the party in interest likely will seek the involvement of the fiduciary because the party in interest (disqualified person) may need to take advantage of the relief provided by the class exemption in order to avoid the possible imposition of excise taxes under section 4975 of the Code. Under the Code, such excise taxes are paid by the disqualified person who participates in the prohibited transaction, not the fiduciary who caused the plan to engage in the transaction.

In order to meet the conditions of the class exemption, the fiduciary faced with a non-opt out class action must take such actions as are appropriate under the particular circumstances. For example, before such a settlement is imposed on a non-opt out class, generally there is an opportunity to object to its terms. If the fiduciary does not believe that the proposed terms and conditions of the settlement are as favorable to the plan as comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances, it should object to the settlement.

In securities fraud class action cases, there is often an option to opt out of the class. Where the plan or the plan trustee, as the holder of record of the securities, is a class member, whatever action or inaction that fiduciary determines to undertake has consequences for the plan. If the fiduciary takes no action, and the case is settled for far less than the full value of the plan's losses, the burden will be on the fiduciary to justify its inaction. The fiduciary responsible for authorizing settlement of class action claims must decide, not only whether or not to opt out of the class action, but also whether to protest the proposed settlement during the fairness hearing.[6]

G. Only cash may be received in exchange for the release, unless the transaction at issue is being rescinded. The commenters were universal in their objection to this condition. They pointed out that frequently, in cases involving investment in employer securities, the settlement consists of additional employer securities. In addition, settlements with plan sponsors often include nonmonetary relief, such as a promise of future contributions and plan amendments improving participants' rights, for example, the right to diversify their investments.

In response to these comments, the Department notes that the conditions for retroactive relief do not specify the type of the consideration that may be provided in exchange for the release. On a prospective basis, the Department has decided to modify the final exemption to permit assets other than cash to be provided in exchange for the plan's or the plan fiduciary's release of a claim. As modified, the final exemption permits contributions of qualifying employer securities, or other marketable securities, in certain instances. Any assets contributed to the plan, in connection with a settlement, must consist of securities that can be objectively valued to determine fair market value, in accordance with Section 5 of the Voluntary Fiduciary Correction (VFC) Program (67 FR 15062, March 28, 2002). The final exemption has also been modified to provide that plan amendments, additional employee benefits, and the promise of future contributions may be included as part of a settlement agreement covered by this exemption.

H. When is a settlement reasonable? One commenter urged the Department to apply this condition to all transactions and to include the costs of litigation among the factors to be considered in determining whether a settlement is reasonable. Another commenter asked to include the value of claims foregone. The Department has adopted these suggestions. The final exemption requires that the settlement must be reasonable in light of the plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone. How these factors are weighed by fiduciaries will differ, depending on the type of case, but will always involve a prudent decision-making process, given the facts and circumstances of the particular situation.

I. Should an interest rate be specified? Most of the commenters urged the Department to eliminate the requirement that a reasonable interest rate be charged for an extension of credit in connection with a settlement covered by the exemption. The commenters explained that often a settlement requires a payment of the promised sum over several years, without specifying an interest rate. In response to these comments, the Department has modified this condition to delete the reference to interest in connection with the loan or extension of credit. As modified, any extensions of credit must be made on terms that are reasonable. Although the final exemption provides more flexibility, fiduciaries that agree to an extension of credit with a party in interest nonetheless must consider that party's creditworthiness and the time value of money in evaluating the settlement.

As noted above, the settlement of litigation with a plan sponsor often involves the promise of future contributions. Another commenter requested that the Department clarify that the promise of future contributions is not loan or other extension of credit. The Department agrees with the commenter.

The Department encountered a case where the trustees had agreed to accept payments over time in order to collect amounts misappropriated by a party in interest. In this case, the trustees extended credit to the party in interest, but did not release their cause of action against him. In such a case, the class exemption will apply if the extension of credit is being made in connection with a settlement and both the settlement and the extension of credit meet all of the conditions of this exemption.

Several commenters urged the Department to require that extensions of credit be secured by property or a letter of credit. Although the Department has decided not to adopt this suggestion as a condition of the final exemption, the Department encourages fiduciaries to seek security for an extension of credit, wherever feasible, to protect the plan against the risk of default.

J. Certain applicants request that the scope of AO 95–26A (October 17, 1995) be extended. In AO 95–26A, the Department opined that settlement of litigation with a service provider may be covered by the statutory exemption for service providers provided under section 408(b)(2) of the Act. Several commenters asked whether the same rationale extended to the settlement of cases where the transaction at issue in the litigation is of the type addressed by a statutory or administrative exemption. The Department notes that the issues raised by the commenters, with respect to the scope of AO 95–26A, are beyond the scope of this exemption proceeding.

K. Who bears the burden of proof? Several commenters expressed concern that, if the retroactive conditions of the exemption are too subjective or difficult to meet, fiduciaries who acted in good faith in settling cases, particularly complex securities fraud cases, may be subject to litigation. According to the commenters, most practitioners were unaware of the Department's position that settling litigation with a party in interest might result in a prohibited transaction until the Department published the proposal for this class exemption. These commenters argued that, without a broad retroactive exemption, frivolous litigation may ensue.

Other commenters asserted that whether or not the fiduciaries were aware of potential prohibited transactions, these fiduciaries knew they were making decisions involving plan assets. If they acted prudently and in the interests of participants and beneficiaries in settling the litigation with the party in interest, these fiduciaries should have no trouble meeting the retroactive requirements of the exemption. These commenters argued that, given the Department's guidance on this issue in 1995, it is appropriate to shift the burden of proving substantive and procedural prudence from the person challenging the settlement to the fiduciary seeking the protection of the exemption.

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[6] For example, in *Great Neck Capital Appreciation Investment Partnership* v. *PriceWaterhouseCoopers*, In re Harnischfeger Industries, Inc. Securities Litigation, 212 F.R.D. 400 (E.D. Wisc. 2002), the original securities law class action settlement proposal included release of ERISA claims against the fiduciaries of the Harnischfeger employee benefit plans, even though the lawsuit had not alleged ERISA claims. At the fairness hearing, a participant protested that the participants' ERISA claims might be extinguished if this release was approved as part of the settlement. After considering the parties positions, the judge, during a conference call, "advised the parties that [he] was inclined to view the proposed settlement as unfair if its effect would be to extinguish the Plan participants' ERISA claims without compensation and that it also appeared to be unfair to require Plan participants to give up their right to participate in the settlement as a condition of asserting ERISA claims." 212 F.R.D. at 406. The securities law parties took the judge's hint and voluntarily agreed to exclude the ERISA claims from the release. In re IKON Office Solutions, Inc. Securities Litigation, 194 F.R.D. 166 (E.D.Pa. 2000), on the other hand, involved a securities law release that arguably released at least some of the ERISA claims and participants protested this at the fairness hearing. The court held that it would be premature, in the context of a settlement, for the court to address such issues—participants could either opt out and not be bound by the settlement, or take their chances pursuing what was left of their ERISA claims after receiving their portion of the securities class action settlement.

In light of these comments, the Department confirms that the party seeking to take advantage of any administrative exemption granted by the Department has the burden of proving that it met each condition of the exemption. Nonetheless, the Department has been persuaded that many practitioners were unaware of the prohibited transaction issues involved in settlements. The Department is also aware that some attorneys may have advised their clients that the settlement of litigation with a party in interest is not the type of transaction intended to be covered by section 406 of the Act. After considering these comments, the Department believes that it is appropriate to modify the retroactive relief under the final exemption. Accordingly, for settlements entered into on or before 30 days after the date of publication of the final exemption, the determination that there was a genuine controversy need not have been made by an attorney.

L. Should notice be required? Several commenters urged the Department to require notice to all participants and beneficiaries in connection with the settlement of litigation. One commenter pointed out that the Department requires notice in connection with PTE 94–71 (59 FR 51216, October 7, 1994, as corrected, 59 FR 60837, November 28, 1994) (settlement agreements between the U.S. Department of Labor and plans) where the Department is a party to the settlement. This commenter argued that without the involvement of the Department, notice is even more important to the participants and beneficiaries because their rights to pursue their own ERISA litigation could be compromised or waived entirely by the plan fiduciary. The commenter recommended that notice to participants of the nature of the allegations leading to the settlement and the terms of the proposed settlement should be required. This commenter also urged that all settlements should take the form of a proposed consent decree filed after, or contemporaneous with, the Complaint. In addition, the analytical basis for the settlement should be open to inspection by participants for a stated period of time. Another commenter explained that, in his experience, participants are not aware of litigation, or at least the plan's involvement, until after the settlement is final. Other commenters strongly oppose notice. These commenters asserted that such an undertaking could be very costly and disruptive, especially for minor litigation.

The Department has determined not to add a notice requirement as a condition of this class exemption. Requiring notice at the point where litigation is about to be settled could result in unnecessary delays and additional costs. The Department believes that the interests of the participants and beneficiaries will be sufficiently protected by the conditions of this class exemption, especially the requirement that the settlement is authorized by a fiduciary who is independent of the parties involved in the litigation.

M. Discussion of other comments. One of the commenters requested the Department's concurrence that, if ERISA claims are not covered by the release given by the plan or the plan fiduciary in settlement of litigation, the fiduciary need not obtain additional consideration to account for such claims. The Department agrees with this statement.

One commenter urged the Department to opine that, where a plan fiduciary causes a plan to release all the plan's non-ERISA claims arising out of a transaction, the fiduciary does not automatically release the fiduciary's own claims for breach of fiduciary duty arising out of the same transaction. The commenter explained that the proposed exemption did not distinguish between claims brought by the plan, *i.e.*, with the plan itself as a named party, and claims brought on behalf of the plan by a fiduciary. ERISA § 502(d)(1), 29 U.S.C. 1132(d)(1), provides that an employee benefit plan may sue and be sued as an entity. Claims for violations of title I of ERISA, however, may be brought by a fiduciary, participant or beneficiary of the plan or by the Secretary of Labor. ERISA §§ 502(a)(2), 502(a)(3), 502(a)(4), 502(a)(5), and 502(e)(1), 29 U.S.C. 1132(a)(2), 1132(a)(3), 1132(a)(4), 1132(a)(5) and 1132(e)(1). Some courts have concluded that plans may bring actions under other laws, but may not bring an action for a fiduciary breach under title I of ERISA. *E.g., Pressroom Unions-Printers League Income Security Fund* v. *Continental Assurance Co.*, 700 F.2d 889, 893 (2nd Cir. 1983). Other courts have not adopted this distinction. *E.g., Saramar Aluminum Co.* v. *Pension Plan for Employees of the Aluminum Indus. and Allied Indus.*, 782 F.2d 577, 581 (6th Cir. 1986). The commenter believes that a failure to distinguish between claims that a plan can make in its own name and those that must be made by a plan fiduciary, for example, could cause courts to conclude that releasing a plan's non-ERISA claims automatically releases a plan fiduciary's, or participant's or beneficiary's ERISA claims on behalf of the plan.

The Department amended the proposed exemption to clarify that it applies to releases by the plan or by a plan fiduciary. The issue of how a release of claims by a plan or plan fiduciary may affect ERISA claims that could otherwise be brought by a fiduciary, participant or beneficiary is beyond the scope of this exemption proceeding. In the Department's view, a fiduciary should understand, in advance of signing, the legal effect that a settlement agreement may have on all claims that might be brought by or on behalf of the plan or its participants and beneficiaries. Plan fiduciaries may need to obtain legal advice on the scope of claims affected by a proposed settlement agreement. The Department notes that it has long held the view that a fiduciary's release of ERISA claims does not bind the Secretary.

It is not uncommon for the same transactions to give rise to both ERISA and securities fraud claims. The plan, and by extension, the participants and beneficiaries of the plan, are entitled to the same recovery as other shareholders in the securities fraud settlement. However, the participants and beneficiaries may have another avenue of recovery not available to other shareholders. They are authorized, under ERISA, along with the plan fiduciary and the Secretary of Labor, to bring suit to make the plan whole for all losses caused by a breach of fiduciary duty. As noted above, the Department recognizes that, in a number of securities fraud class action settlements, the participants and/or plan fiduciaries have successfully objected to the original release and were able to modify the terms of the release to permit the plan to receive its share of the securities fraud settlement without releasing its ERISA claims against the parties in interest. In other instances, fiduciaries have successfully negotiated additional relief for the plan beyond that provided to shareholders who did not have ERISA claims against the defendants. The Department notes that plan fiduciaries should consider whether additional relief may be available for the ERISA claims before agreeing to a broad release.

In conclusion, the Department encourages participants, beneficiaries, fiduciaries, parties in interest and other interested persons to take advantage of the wide range of compliance assistance offered by the Department. Those with questions about their rights and responsibilities in particular situations should look first to our web site: *http://www.dol.gov/EBSA/*. You may also call, toll-free, the Employee & Employer Hotline 1–866–444–EBSA (3272). To discuss substantive ERISA issues in connection with particular cases, please contact your local EBSA field office. The EBSA web site mentioned above includes a state-by-state list of phone numbers and addresses for these offices. Click on "About EBSA/EBSA Offices."

II. Description of the Exemption

The exemption provides retroactive and prospective relief from the restrictions of section 406(a)(1)(A), (B) and (D) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A), (B) and (D) of the Code, for the following transactions, effective January 1, 1975:

(1) The release by the plan or by a plan fiduciary of a legal or equitable claim against a party in interest in exchange for consideration, given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's or the fiduciary's claim; and

(2) An extension of credit by a plan to a party in interest in connection with a settlement whereby the party in interest agrees to repay, over time, an amount owed to the plan in settlement of a legal or equitable claim by the plan or a plan fiduciary against the party in interest.

A. Conditions Applicable to All Transactions

The exemption is conditioned upon the existence of a genuine controversy involving the plan unless the case has been certified as a class action by the court. The Department believes that this condition is necessary to prevent the plan and parties in interest from engaging in a sham transaction purporting to fall within this class exemption, thus shielding a transaction, such as an extension of credit or other transaction with a party in interest, that would otherwise be prohibited.

The fiduciary that authorizes the settlement must have no relationship to, or interest in, any of the other parties involved in the litigation, other than the plan, that might affect its best judgment as a fiduciary. The Department intends a flexible standard for fiduciary independence, recognizing that the exemption will encompass a wide range of situations, both in terms of the type of litigation and the cost of pursuing such litigation. For example, in some instances where there are complex issues and significant amounts of money involved, it may be appropriate to hire an independent fiduciary having no prior relationship to the plan, its trustee, any parties in interest, or any other parties to the litigation. In other instances, the plan's current trustee or investment manager, assuming that fiduciary's conduct is not at issue, may be an appropriate party to make the decision on behalf of the plan as to whether to settle the litigation.

In response to comments received by the Department regarding the settlement of class action litigation in which the ability to negotiate may be limited, the Department eliminated the requirement that the settlement be "negotiated" by the fiduciary. In lieu of this requirement, the exemption provides that the fiduciary may authorize a settlement if its terms and conditions are no less favorable to the plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

The exemption is conditioned upon the settlement being reasonable given the likelihood of full recovery, the costs and risks of litigation, and the value of claims foregone. The claims foregone may include additional causes of action not available to the other plaintiffs in the same case. For example, where shareholders have brought a class action securities fraud case against the Company and its officers, the Company's employee benefit plan or the trustee, as the holder of record, may be named as a member of the class because it holds employer securities. The plan or trustee may also have ERISA claims against the Company and some or all of its officers, as well as against other parties. Before entering into a settlement with any defendant, the plan fiduciary should consider the value of these additional claims against that defendant. The plan fiduciaries may also be able to pursue claims against defendants not named in the securities fraud case, including knowing participants in the breach. Under certain circumstances, the plan will have additional sources of recovery, including fiduciary liability insurance, the plan's fidelity bond, and the personal assets of the defendants, including their own employee benefit plan accounts.[7]

The exemption also provides that the settlement must not be part of an agreement, arrangement, or understanding designed to benefit a party in interest. The intent of this condition is not to deny direct benefits to other parties to a transaction but, rather, to exclude transactions that are part of a broader overall agreement, arrangement or understanding designed to benefit parties in interest.

Where a settlement includes an extension of credit by a plan to a party in interest for purposes of repaying an amount owed in settlement of litigation, the exemption requires that the credit terms be reasonable. Fiduciaries must consider the creditworthiness of the party in interest and the time value of money in evaluating extensions of credit to settle litigation. The settling fiduciary should also consider security for such loans, such as a third party guarantee or letter of credit, to protect against default.

The Department has added a new condition which clarifies that this class exemption does not cover those transactions that are described in PTE 76–1, A.I. (41 FR 12740, March 26, 1976, as corrected, 41 FR 16620, April 20, 1976) (relating to delinquent employer contributions to multiemployer and multiple employer collectively bargained plans).

Finally, in response to a question received during the comment period, the Department has defined the terms "employee benefit plan" and "plan" to include an employee benefit plan described in section 3(3) of ERISA and/or plans as defined in section 4975(e)(1) of the Code.

B. Conditions Applicable to Prospective Transactions

On a prospective basis, the existence of a genuine controversy must be determined by an attorney retained to advise the plan unless the case has been certified as a class action by the court. That attorney must be independent of the other parties to the litigation. All terms of the settlement must be specifically described in a written agreement or consent decree and the fiduciary authorizing the settlement must acknowledge its fiduciary status in writing.

The exemption provides that in certain instances assets, other than cash, may be received by the plan from a party in interest. Assets may be received by the plan if necessary to rescind transactions. The conditions for retroactive relief do not specify the nature of the consideration exchanged for the release. On a prospective basis, securities with a generally recognized market may be exchanged for the release, provided that such securities can be objectively valued. In addition, the contribution of additional qualifying employer securities is permitted in settlement of the dispute involving such qualifying employer securities. Where assets, other than cash, are provided to the plan in exchange for a release, such assets must be specifically described in the written settlement agreement and valued at their fair market value as determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program (67 FR 15062 March 28, 2002). The final exemption also provides that the settlement may also include a written agreement to: make future contributions, adopt amendments to the plan, or provide additional employee benefits.

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[7] Section 206(d)(4) of the Act permits a plan to offset the benefits of a participant under an employee pension plan against an amount that the participant is ordered or required to pay, if the order or requirement to pay arises under a judgment of conviction of a crime involving the plan, a civil judgment, including a consent order or decree, entered into by a court, or where there is a settlement agreement between the participant and the Secretary of Labor or the PBGC in connection with a violation of Part IV of ERISA.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is applicable to a particular transaction only if the conditions specified in the class exemption are met; and

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.)

Section I. Covered Transactions

Effective January 1, 1975, the restrictions of section 406(a)(1)(A), (B) and (D) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B) and (D) of the Code, shall not apply to the following transactions, if the relevant conditions set forth in sections II through III below are met:

(a) The release by the plan or a plan fiduciary, of a legal or equitable claim against a party in interest in exchange for consideration, given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's or the fiduciary's claim.

(b) An extension of credit by a plan to a party in interest in connection with a settlement whereby the party in interest agrees to repay, over time, an amount owed to the plan in settlement of a legal or equitable claim by the plan or a plan fiduciary against the party in interest.

Section II. Conditions Applicable to All Transactions

(a) There is a genuine controversy involving the plan. A genuine controversy will be deemed to exist where the court has certified the case as a class-action.

(b) The fiduciary that authorizes the settlement has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person's best judgment as a fiduciary.

(c) The settlement is reasonable in light of the plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.

(d) The terms and conditions of the transaction are no less favorable to the plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

(f) Any extension of credit by the plan to a party in interest in connection with the settlement of a legal or equitable claim against the party in interest is on terms that are reasonable, taking into consideration the creditworthiness of the party in interest and the time value of money.

(g) The transaction is not described in Prohibited Transaction Exemption (PTE) 76–1, A.I. (41 FR 12740, March 26, 1976, as corrected, 41 FR 16620, April 20, 1976) (relating to delinquent employer contributions to multiemployer and multiple employer collectively bargained plans).

Section III. Prospective Conditions

In addition to the conditions described in section II, the following conditions apply to the transactions described in section I (a) and (b) entered into after January 30, 2004:

(a) Where the litigation has not been certified as a class action by the court, an attorney or attorneys retained to advise the plan on the claim, and having no relationship to any of the parties, other than the plan, determines that there is a genuine controversy involving the plan.

(b) All terms of the settlement are specifically described in a written settlement agreement or consent decree.

(c) Assets other than cash may be received by the plan from a party in interest in connection with a settlement only if:

(1) necessary to rescind a transaction that is the subject of the litigation; or

(2) such assets are securities for which there is a generally recognized market, as defined in ERISA section 3(18)(A), and which can be objectively valued. Notwithstanding the foregoing, a settlement will not fail to meet the requirements of this paragraph solely because it includes the contribution of additional qualifying employer securities in settlement of a dispute involving such qualifying employer securities.

(d) To the extent assets, other than cash, are received by the plan in exchange for the release of the plan's or the plan fiduciary's claims, such assets must be specifically described in the written settlement agreement and valued at their fair market value, as determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program, 67 FR 15062 (March 28, 2002). The methodology for determining fair market value, including the appropriate date for such determination, must be set forth in the written settlement agreement.

(e) Nothing in section III (c) shall be construed to preclude the exemption from applying to a settlement that includes a written agreement to: (1) Make future contributions; (2) adopt amendments to the plan; or (3) provide additional employee benefits.

(f) The fiduciary acting on behalf of the plan has acknowledged in writing that it is a fiduciary with respect to the settlement of the litigation on behalf the plan.

(g) The plan fiduciary maintains or causes to be maintained for a period of six years the records necessary to enable the persons described below in paragraph (h) to determine whether the conditions of this exemption have been met, including documents evidencing the steps taken to satisfy sections II (b), such as correspondence with attorneys or experts consulted in order to evaluate the plan's claims, except that:

(1) if the records necessary to enable the persons described in paragraph (h) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the plan fiduciary responsible for record-keeping, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (h) below;

(h)(1) Except as provided below in paragraph (h)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by—

(A) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) any fiduciary of the plan or any duly authorized employee or representative of such fiduciary;

(C) any contributing employer and any employee organization whose members are covered by the plan, or any authorized employee or representative of these entities; or

(D) any participant or beneficiary of the plan or the duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (h)(1)(B)–(D) shall be authorized to examine trade secrets or commercial or financial information which is privileged or confidential.

Section III. Definition

For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

Signed at Washington, DC this 24th of December, 2003.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–32191 Filed 12–30–03; 8:45 am]

BILLING CODE 4520–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,551]

Allegheny Ludlum Corporation, Brackenridge Works, Brackenridge, PA

Notice of Termination of Investigation Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 17, 2003 in response to a petition filed by a company official on behalf of workers at Allegheny Ludlum Corporation, Brackenridge Works, Brackenridge, Pennsylvania.

The petitioning group of workers is covered by an earlier petition instituted on November 14, 2003 (TA–W–53,538) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 19th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31982 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,222 and TA–W–42,222A]

EHV–Weidmann Industries, Inc., a Subsidiary of Wicor Americas, St. Johnsbury, Vermont; and Weidmann Systems International, Inc., St. Johnsbury, Vermont; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on November 25, 2002, applicable to workers of EHV–Weidmann Industries, Inc., a subsidiary of Wicor Americas, St. Johnsbury, Vermont. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78258).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electrical insulation boards and components.

Information from the company shows that worker separations occurred at Weidmann Systems International, St. Johnsbury, Vermont a sister company of the subject firm. Workers at Weidmann Systems International, Inc. provide sales and customer services supporting the production of electrical insulation boards and components at the subject firm.

Based on these findings, the Department is amending the certification to include workers of Weidmann Systems International, Inc., St. Johnsbury, Vermont.

The intent of the Department's certification is to include all workers of EHV–Weidmann Industries, Inc., a subsidiary of Wicor Americas, St. Johnsbury, Vermont, who were adversely affected by increased imports.

The amended notice applicable to TA–W–42,222 is hereby issued as follows:

> "All workers of EHV–Weidmann Industries, Inc., a subsidiary of Wicor Americas, St. Johnsbury, Vermont (TA–W–42,222) and Weidmann Systems International, Inc. St. Johnsbury, Vermont (TA–W–42,222A), who became totally or partially separated from employment on or after September 17, 2001, through November 25, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 25th day of November 2003.

Elliott S. Kushner,

Certifying Officer, Division, of Trade Adjustment Assistance.

[FR Doc. 03–31991 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,501]

Fishing Vessel (F/V) Exception, Homer, Alaska; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 12, 2003 in response to a petition filed by a company official on behalf of workers of F/V Exception, Homer, Alaska.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31983 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,406]

Fishing Vessel (F/V) Patricia Diann, Cordova, Alaska; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 3, 2003, in response to a petition filed by a company official on behalf of workers of Fishing Vessel (F/V) Patricia Diann, Cordova, Alaska.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 18th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31985 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,941A]

Harting, Inc. of North America, Elgin, Illinois; Including an Employee of Harting, Inc. of North America, Located in California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 5, 2003, applicable to workers of Harting, Inc. of North America, Elgin, Illinois. The notice was published in the **Federal Register** on March 19, 2003 (68 FR 13332).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker was separated involving an employee of the Elgin, Illinois facility of Harting, Inc. of North America located in California. This employee provided technical support services for the production of cable assemblies at an affiliated facility Harting Manufacturing, Inc., Elgin, Illinois.

Based on these findings, the Department is amending this certification to include an employee of the Elgin, Illinois facility of Harting, Inc. of North American, located in California.

The intent of the Department's certification is to include all workers of Harting, Inc. of North America who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,941A is hereby issued as follows:

- "All workers of Harting, Inc. of North America, Elgin, Illinois (TA–W–50,941A), including employees of Harting, Inc. of North America, Elgin, Illinois, located in California (TA–W–50,834B), who became totally or partially separated from employment on or after February 14, 2002, through March 5, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 21st day of November 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31990 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,250]

L.S. Starrett Company, Inc., Alum Bank, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 24, 2003 in response to a petition filed on behalf of workers of L.S. Starrett Company, Inc., Alum Bank, Pennsylvania.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 17th day of November 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31987 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,626]

Paper Converting Machine Company, Green Bay, Wisconsin; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and under section 246 of the Trade Act of 1974, as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 11, 2003, applicable to workers of Paper Converting Machine Company located in Green Bay, Wisconsin. The notice was published in the **Federal Register** on October 10, 2003 (68 FR 58720).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produce paper converting machinery.

The review shows that all workers of Paper Converting Machine Company, Green Bay, Wisconsin, were certified eligible to apply for adjustment assistance under TA–W–39,100, which does not expire until January 18, 2004.

Therefore, in order to avoid an overlap in worker group coverage, the Department is amending the August 14, 2002 impact date established for TA–W–52,626, to read January 19, 2004.

The amended notice applicable to TA–W–52,626 is hereby issued as follows:

> "All workers of Paper Converting Machine Company, Green Bay, Wisconsin, who become totally or partially separated from employment on or after January 19, 2004, through September 11, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended."

Signed at Washington, DC, this 22nd day of December 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31989 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,595]

Paradise Fisheries, Kodiak, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Paradise Fisheries, Kodiak, Alaska. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–51,595; Paradise Fisheries, Kodiak, Alaska (August 7, 2003).

Signed at Washington, DC this 28th day of November, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–31981 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,365]

Tietex International, Ltd, Rocky Mount Plant, Spartanburg, South Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 28, 2003 in response to a worker petition filed on behalf of workers at Tietex International, LTD, Rocky Mount Plant, Spartanburg, South Carolina.

Further review of the petition and information provided by one of the petitioners, finds that the Rocky Mount Plant is in Rocky Mount, North Carolina, not Spartanburg, South Carolina. Workers of Tietex International, LTD, Rocky Mount Plant, Rocky Mount, Virginia, are covered under an existing certification to apply for trade adjustment assistance, petition number TA–W–53,273. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 17th day of November, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31986 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,476]

Weidmann Systems International, Inc., St. Johnsbury, Vermont; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 7, 2003 in response to a worker petition which was filed on behalf of workers at Weidmann Systems International, Inc., St, Johnsbury, Vermont.

An active certification covering the petitioning group of workers is already in effect (TA–W–42,222A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 25th day of November 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31984 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,904]

York International Corporation, York, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 30, 2003, applicable to workers of York International Corporation located in York, Pennsylvania. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66880).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm producing industrial large tonnage chillers.

The review shows that the Department inadvertently omitted its findings regarding worker group eligibility to apply for Alternative Trade Adjustment Assistance under section 246 of the Trade Act of 1974, as amended. In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department determined in this case that the requirements of Section 246 were met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Therefore, the Department is amending the certification to include eligibility for workers of the subject firm to apply for ATAA.

The amended notice applicable to TA–W–52,904 is hereby issued as follows:

> "All workers of York International Corporation, York, Pennsylvania, who became totally or partially separated from employment on or after September 9, 2002 through October 30, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974, as amended."

Signed at Washington, DC, this 2nd day of December 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–31988 Filed 12–30–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act—Indian and Native American Employment and Training Programs; Solicitation for Grant Applications—Final Grantee Designation Procedures for Program Years 2004 and 2005

Announcement Type: New. Notice of final designation procedures for grantees.

Funding Opportunity Number: SGA/DFA–04–100.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.265.

Key Dates: Deadline for Notice of Intent Part A—January 30, 2004.

I. Funding Opportunity Description

Section 166 of the Workforce Investment Act (WIA) authorizes programs to serve the employment and training needs of Indians and Native Americans through competitive award by the Department of Labor (DOL) of two-year grants, contracts, or cooperative agreements with Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations. *See* section 166, Public Law 105–220 as amended, codified at 29 U.S.C. 2911. Special employment and training services for Indian and Native American people were previously provided under the Job Training Partnership Act (JTPA) Section 401 and its predecessor, Section 302 of the Comprehensive Employment and Training Act (CETA). DOL has issued two previous rounds of WIA section 166 awards—for Program Years (PY) 2000–2001 and 2002–2003.

In anticipation of Congressional reauthorization of WIA, this Solicitation for Grant Applications (SGA) contains the procedures by which DOL will select and designate service providers for PY 2004 and 2005 (July 1, 2004 to June 30, 2006) to operate Indian and Native American Employment and Training Programs under WIA section 166 within specified "service areas." Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area. Requirements for these programs are set forth in WIA section 166 and its regulations, found at 20 CFR part 668, published at 65 FR 49294, 49435 (August 11, 2000). The specific eligibility and application requirements for designation are set forth at 20 CFR part 668, subpart B, which is attached to this SGA as Exhibit A.

Under the statutory and regulatory requirements, DOL will select entities for section 166 funding for a two-year period. Designated service providers will be funded annually during the designation period, contingent upon all other grant award requirements being met, Congress' reauthorization of WIA, any new or modified terms of WIA reauthorization, and the continuing availability of Federal funds.

All applicants for designation as a section 166 service provider for PY 2004 and 2005 must submit a Notice of Intent Part A in accordance with this SGA if they wish to receive or continue to receive WIA funds. DOL has determined that no waivers of competition under WIA section 166(c)(2) will be available for the current two-year designation cycle because such waivers were allowed in the last designation cycle for PY 2002 and 2003. Existing grantees and potential eligible providers participating in Public Law 102–477 Demonstration Projects, which allow Federally recognized tribes to consolidate formula-funded employment, training, and related dollars under a single service plan administered by the Bureau of Indian Affairs, also must submit an application in accordance with this SGA.

This SGA provides the information that all applicants need to submit requests for WIA section 166 designation. A "responsibility review" will be conducted of all applications as part of the designation process, in accordance with 20 CFR 667.170, 668.220, and 668.230, to ensure that applicants are capable of properly handling and accounting for Federal funds. Entities new to this process should be aware that being designated as a section 166 service provider according to this SGA will not automatically result in a grant award. Entities that successfully complete the designation process, including winning any competition(s) for service area(s) that may occur as defined in this SGA, must prepare a two-year Comprehensive Services Plan that must be approved by DOL. Instructions for preparation of the Comprehensive Services Plan will be issued to all designated service providers in accordance with 20 CFR part 668, subpart G.

Potential applicants should be aware that Comprehensive Services Plans for PY 2004 and 2005 will be required to include an agreement to maintain records adequate to evaluate the grantee's annual performance against the "Common Measures" from the U.S. Office of Management and Budget (OMB) for evaluating all Federally funded employment and training programs. *See* Employment and Training Administration (ETA) Training and Employment Notice No. 8–02 (March 27, 2003) (available at *http://ows.doleta.gov/dmstree/ten/ten2k2/ten_08-02.htm*). The Comprehensive Services Plan also will be required to include estimates of expected grantee performance against the OMB Common Measures. For the Comprehensive Services (*i.e.*, Indian "adult") employment and training program, the Common Measures are as follows:

- Entered Employment
- Retention in Employment
- Earnings Increase
- Program Efficiency

For those entities serving reservation areas and qualifying for Supplemental Youth Services funding, the "youth" Common Measures are as follows:

- Placement in Employment or Education
- Attainment of a Degree or Certificate by Participants
- Literacy and Numeracy Gains (by Participants)
- Program Efficiency

After a section 166 designee's Comprehensive Services Plan is approved by DOL, a grant agreement ("Notice of Obligation" or NOO) must be executed in accordance with 20 CFR 668.292. Each NOO will reflect the amount of section 166 funds awarded as determined in accordance with 20 CFR 668.296 and 668.440.

In preparing applications for designation, applicants should bear in mind that the purpose of section 166 of WIA is "to support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals in order—

"(A) to develop more fully the academic, occupational, and literacy skills of such individuals;

"(B) to make such individuals more competitive in the workforce; and

"(C) to promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of such communities." Congress has also directed that section 166 programs be administered consistent with the principles of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, *et seq.*, and the government-to-government relationship between the Federal government and Indian tribal governments. WIA section 166(a)(2).

Note: Congress is now considering legislation to reauthorize WIA; statutory changes may necessitate revision of the designation or award procedures for PY 2004–2005. This SGA has been revised from prior SGAs under WIA section 166 to comply with the new standard format issued by OMB for Federal grant solicitations. See 68 FR 37370–79 (June 23, 2003). The "General Designation Principles" included in prior SGAs for this program have been omitted because we have determined that inclusion of the actual regulatory text (see Exhibit A attached) will be more useful to potential applicants.

II. Award Information

Type of assistance instrument: An initial two-year grant, which may be extended for an additional two years under appropriate circumstances.

As stated in Section I, no waivers of competition are available for the PY 2004–2005 grant cycle. Therefore applications for new awards may compete with applications from existing grantees or for supplementation of existing projects. The amount of WIA Section 166 funds to be awarded to designated Native American organizations will be determined under the procedures set by 20 CFR 668.296, as well as by § 668.440 for youth funds. DOL will determine award amounts after designation of service areas and service providers and once funding appropriations for the grant period have been made by Congress.

Amount of funds to be awarded. Depending upon final appropriation legislation, DOL anticipates awarding approximately $55 million for the Comprehensive Services program and $15 million for Supplemental Youth Services under this SGA.

Anticipated number of awards. Approximately 190 grantees will be designated under this SGA.

Expected amounts of individual awards. Awards under the Comprehensive Services program are anticipated to range from approximately $20,000 to approximately $6.5 million. Awards for the Supplemental Youth Services program are anticipated to range from approximately $4,000 to approximately $2.5 million. Final award amounts in each category will depend on Census data and the final PY 2004 and PY 2005 appropriation levels.

Average amount of funding per award. For PY 2003, the average Comprehensive Services grant amount was $295,647, and the average Supplemental Youth Services grant amount was $102,170. We expect that average funding for the PY 2004 awards will not differ significantly from these amounts.

Anticipated start dates and periods of performance for new awards. New and existing grantees will be expected to commence operations on July 1, 2004. The initial performance period for all grantees will be from July 1, 2004 to June 30, 2006.

III. Eligibility Information

1. Eligible Applicants

To be eligible for designation as a Section 166 grantee, an entity must meet all eligibility requirements of WIA Section 166 and 20 CFR 668.200, as well as the application and designation requirements found at 20 CFR part 668, subpart B (see Exhibit A attached). Potential applicants are expected to thoroughly review and comply with the statute and regulations.

Among other requirements, eligible entities must have a legal status as a government, an agency of a government, a private non-profit corporation (*i.e.*, incorporated under IRS section 501(c)(3) or 501(c)(4)), or a consortium that satisfies the requirements of 20 CFR 668.200(a), (b), and (c)(6). Additionally, eligible entities must be:

- Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations;
- Consortia of eligible entities; or
- State-recognized tribal organizations serving individuals who were eligible to participate under JTPA Section 401 as of August 6, 1998.

See WIA Sections 166(b), (c)(1), and (d)(2)(B); 20 CFR 668.200(c) and (d). Community and faith-based organizations are eligible to apply for Section 166 grants in accordance with WIA Section 166(c) and 20 CFR 668.200(c) and (d) if they are Native American- or Native Hawaiian-controlled. Non-profit corporations organized under 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants, as required by Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611).

Additional key requirements include the following: Applicants must satisfy a responsibility review and demonstrate that they have the ability to administer Federal funds. *See* 20 CFR 667.170, 668.200(a)(2), 668.220, and 668.230. Requested geographic service areas must comply with eligibility restrictions based on the formula funding level associated with population size. *See* 20 CFR 668.200(a)(3), 668.296(b), and 668.440(a).

The statute and regulations also establish comparative priorities for designation among eligible entities. A Federally recognized Indian tribe, band, or group on its reservation (including former reservation areas in Oklahoma), and Alaska Native entities defined in the Alaska Native Claims Settlement Act (ANCSA) (or consortia that include a tribe or an ANCSA entity) will receive the highest priority over any other organization for designation as the service provider for the area over which the entity has legal jurisdiction, provided that the entity has the capability to administer the program and also meets all eligibility and regulatory requirements. *See* 20 CFR 668.210(a). For areas not covered by the highest priority, DOL will designate other eligible organizations as service providers, which in some instances might be Indian tribes, bands, or groups applying for off-reservation areas. DOL will follow the regulatory procedures for consultation and communication with Native American leaders in affected service areas. *See* 20 CFR 668.210 and 668.280. New applicants (and incumbent grantees seeking designation for areas in addition to those covered by existing grants) are expected to clearly demonstrate a working knowledge of the community that they plan to serve, including available resources, resource utilization, and acceptance by the service population.

Applicants must submit a separate, complete Notice of Intent in accordance with Section IV(2) for each non-contiguous geographic area for which they seek designation. DOL is not required to adhere to the geographical service area requested in a Notice of Intent, but may make a section 166 designation for all of the area requested or, if acceptable to the designee, a portion of the area requested or more than the area requested.

Organizations with no prior grant history with the Department, or about whom there are financial or grant management concerns, may be conditionally designated pending an on-site review and/or a six-month assessment of program progress. Failure to satisfy these conditions may result in a withdrawal of designation.

As discussed in Section IV(2), applicants' Notice of Intent submission must include documentation supporting their eligibility to serve as a section 166 grantee, including documentation of their legal status and ability to administer funds.

The following definitions and special designation situations will be used by DOL in determining eligibility and designating section 166 service providers:

Indian or Native American-Controlled Organization. In accordance with WIA section 166(c) and 20 CFR 668.200(c), an Indian or Native American-controlled organization is defined as any organization with a governing body, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaska, or Native Hawaiian entity, consortium, or public or private non-profit agency. For the purpose of designation determinations, the governing body must have decision-making authority for the WIA section 166 program. It should be noted that, under WIA section 166(d)(2)(B), individuals who were eligible to participate under section 401 of JTPA on August 6, 1998, are or will be eligible to participate under WIA. Organizations serving such individuals will be considered "Indian controlled" for WIA section 166 purposes if they meet the criteria of this section.

Service Area. Service Area is defined as the geographic area, described as States, counties, or reservations, or parts or combinations thereof, for which a section 166 designation is made. In some cases, a service area also will be defined in terms of the specific population to be served. The service area is identified by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within their designated service area. *See* 20 CFR 668.650(a).

Service Areas for Alaska Native Entities. Through prior grant competitions, DOL has established geographic service areas for Alaska Native employment and training grantees based on the following: (a) The boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); (b) the boundaries of major sub-regional areas where the primary provider of human resource development-related services is an Indian Reorganization Act (IRA)-recognized tribal council; and (c) the boundaries of the one Federal reservation in Alaska. These service areas may be modified as a result of the current grant competition. Within these established or revised geographic service areas, DOL will designate the primary Alaska Native-controlled human resource development services provider or an entity formally selected by that provider. In the past, these entities have been regional non-profit corporations, IRA-recognized tribal councils, and the tribal government of the Metlakatla Indian Community.

Service Areas for Oklahoma Indians. Through prior grant competitions, DOL has established geographic service areas for Indian employment and training programs in Oklahoma, which have generally been countywide areas. These service areas may be modified as a result of the current grant competition. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction(s) of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information contained in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas will be honored by DOL. Where such mutually satisfactory arrangements cannot be made, DOL will designate and assign service areas to Native American grantees in a manner that is consistent with WIA and that will preserve continuity of services and prevent unnecessary fragmentation of the programs.

2. Cost Sharing or Matching

The section 166 program does not require grantees to share costs or provide matching funds.

3. Other Eligibility Criteria

In accordance with 29 CFR part 98, entities that are debarred or suspended shall be excluded from Federal financial assistance and are ineligible to receive a section 166 grant. Additionally, entities that have been convicted of violation of 18 U.S.C. 665 and/or 666, or that are in default of any debt repayment agreement signed with the Department or any Federal agency, are ineligible to receive an award under this SGA, unless exceptional circumstances are demonstrated to the satisfaction of DOL.

All recipients of services under section 166 must meet the definition of Indian, Alaska Native, or Native Hawaiian found at WIA section 166(b) and in the WIA regulations. *See* WIA section 166(d) and 20 CFR 668.300. In addition, priority of services must be given to veterans and spouses of certain veterans, in accordance with the provisions of the "Jobs for Veterans Act," Public Law 107–288 (38 U.S.C. 4215), which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the veterans priority statute and its effect on current employment training programs. DOL anticipates updating this guidance at the time of WIA reauthorization and issuing individual guidance on each affected employment training program.

IV. Application and Submission Information

1. Address To Request Application Package

This Solicitation for Grant Applications, together with the attached excerpt of regulations (20 CFR part 668, subpart B), includes all information needed to apply for designation as a section 166 service provider.

2. Content and Form of Application Submission

All applicants for designation as a section 166 service provider for PY 2004 and 2005, except as noted in the next sentence, must submit a signed original and two copies of a "Notice of Intent—Part A" containing the information listed below. Incumbent Federally recognized tribes participating in the demonstration under Public Law 102–477 whose status has not changed need only submit: a cover letter stating the program's status has not changed, and a completed SF–424, "Application for Federal Assistance," both signed by an authorized signatory official for the applicant. Note that a separate Notice of Intent—Part A must be submitted for each non-contiguous geographic service area.

Beginning October 1, 2003, all applicants for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. *See* OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants for section 166 designation must supply their DUNS number in item #5 of the new SF–424 issued by OMB (Rev. 9–2003). *See* Exhibit B. Where a consortium is formed to apply for designation, the consortium must obtain a DUNS number. If award will be made to the lead entity in the consortium, then the DUNS number for that lead entity should be used. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711. Requests for exemption from the DUNS number requirement must be made to OMB.

In some circumstances, as defined in Section V(2), DOL may determine based on review of the Part A submissions that further competition is required for a particular geographic area. In these instances, competing organizations will be notified and required to provide the information in Part B within 15 days of receiving notification from the Grant Officer of competition.

The Grant Officer may require additional or clarifying information or action, including a site visit, before designating applicants and/or before determining whether to conduct competitive procurement for a particular geographic service area. In addition, applicants may be required to address actions taken to correct deficiencies identified by the Department, including specific time frames for completion.

A. Notice of Intent—Part A Requirements

Each application must include a cover letter or other document (for example, a tribal resolution), signed by an authorized signatory official, that provides the information listed below or indicates that it accompanies the application.

(i) A completed SF–424, "Application for Federal Assistance," signed by the authorized signatory official. See Exhibit B.

(ii) Identification of the applicant's legal status, including copies of articles of incorporation for non-profit corporations or consortium agreement, if not already on file with DOL's Division of Indian and Native American Programs (DINAP).

(iii) A specific description of the geographic territory being applied for by State(s), counties, reservation(s), or subparts or combinations thereof, and/or by service population.

(iv) A very brief summary of the employment and training or human resource development program(s) serving Native Americans that the entity currently operates or has operated within the previous two-year period. The summary should identify the funding source, contact person, and phone number for the program(s).

(v) A brief description of the planning process used by the entity, including involvement of the governing body and local employers.

(vi) Evidence to establish an entity's ability to administer funds under 20 CFR 668.220, and 668.230, which should at a minimum include:

(a) A statement that the organization is in compliance with the Department's debt management procedures; and

(b) A statement that fraud or criminal activity has not been found in the organization, or a brief description of the circumstance where fraud or criminal activity has been found and a description of resolution, corrective action and current status; and

(c) A narrative demonstrating that an entity has or can acquire the necessary program and management personnel to safeguard Federal funds and effectively deliver program services that support the purposes of the Workforce Investment Act; and

(d) If not otherwise provided, a narrative demonstrating that an entity has successfully carried out or has the ability to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment, including the past two-year history of publicly funded grants/contracts administered including identification of the fund source and a contact person.

(vii) The assurances required by 29 CFR 37.20.

B. Notice of Intent—Part B Requirements

If the Grant Officer determines that there is competition for all or part of a given service area, as discussed in Section V(2) below, the Grant Officer will notify competing applicants and require submission of the following "Part B" information:

(i) Evidence that the entity represents the community proposed for services such as: Demonstration of support from Native American-controlled organizations, State agencies, or other entities with specific knowledge of the applicant's operational capability. Federally recognized tribes and Hawaiian and Alaska Native entities need not submit evidence of support regarding their own reservations or areas of legal jurisdiction. However, such entities are required to provide this evidence for any area that they wish to serve beyond their reservation boundaries, Congressionally mandated area, or Federally established service areas.

(ii) Submission of a service plan and other information expanding on the information required at Part A that the applicant feels can strengthen its case, including information on any unresolved or outstanding administrative problems.

An applicant whose initial Notice of Intent submission contained all Part B information will not need to supplement. Exclusive of charts, graphs, or letters of support, the additional Part B information submitted in a situation involving competition should not exceed 75 pages of double-spaced, unreduced type.

3. Submission Dates and Times

Notices of Intent (NOIs) that comply with the requirements of this solicitation and that satisfy all Part A requirements must be received in the Department by 1 p.m. on January 30, 2004. NOIs not received by the deadline will be accepted up to 15 calendar days after the deadline only with an official, U.S. Postal Service postmark indicating timely submission. Dates stamped by private express delivery service or by metered mail are unacceptable as proof of submission. All applicants are advised that U.S. mail delivery in the Washington, DC area is still erratic due to continuing concerns involving possible anthrax contamination. *All applicants must take this into consideration when preparing to meet the application deadline, as applicants assume the risk for ensuring a timely submission; that is, if because of these mail problems, the Department does not receive an application or receives it too late to give it proper consideration, even if it was timely mailed, the Department will not consider the application.*

Submission addresses and acceptable means of delivery are addressed in Section IV(6) below.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs."

5. Funding Restrictions

Potential applicants should review 20 CFR part 668, subpart H regarding administrative requirements for WIA section 166 grants. Rules relating to allowable costs are addressed in 20 CFR 667.200 through 667.220. Under 20 CFR 667.210(b), limits on administrative costs will be negotiated with the grantee and identified in the grant award document. While there are no specific limits on indirect costs, the amount of indirect cost charged to the grant is subject to the overall limitation on administrative costs as negotiated in the grant agreement. Construction (as opposed to maintenance and/or repair) costs are generally not allowed under WIA. Certain pre-award costs may be allowable with specific approval of the Grant Officer in accordance with OMB Circular A–87 or A–122.

6. Other Submission Requirements

Means of Delivery: Notices of Intent may be submitted by U.S. mail, overnight delivery, hand delivery, or e-mail in accordance with the instructions below. Please note that faxed applications will not be accepted.

Addresses: Send a signed original and two copies of the Notice of Intent—Part A (and any later submissions) to Ms. Athena Brown, Acting Chief, Division of Indian and Native American Programs, Room S–5206 FPB ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of Notice of Intent Via E-Mail: Due to the erratic mail delivery in the Washington, DC area, applicants have the option of submitting Notices of Intent *via* e-mail to *cesario.laura@dol.gov.* Due to the high volume of applications, the return receipt option (instructions below) must be utilized to verify e-mail transmission of the application. Should the applicant choose to e-mail the Notice of Intent, the applicant must send via overnight mail: the signature sheet with an original signature; a copy of the applicant's e-mail; *and* a copy of the e-mail verification of transmission. Notices of Intent sent by e-mail will be accepted in Microsoft WORD or WordPerfect only.

Instructions for Obtaining E-Mail Return Receipt: While in the e-mail and before sending, click on "file," go to "properties, return notification," and finally click on options for "Delivery receipt requested," "Read receipt requested," or similar options that will send the e-mail author an automatic e-mail when the e-mail is either delivered to DOL or opened by DOL. You should print and retain a copy of your e-mail receipt and send a copy of the receipt to DOL per the previous paragraph.

For Further Information Contact: We recommend that you confirm DOL's receipt of your submission by contacting Ms. Andrea T.B. Brown, U.S. Department of Labor, Division of Indian and Native American Programs, telephone number (202) 693–3736 (this is not a toll-free number).

V. Application Review Information

1. Application Evaluation Criteria

The factors listed below will be considered in evaluating applicants' approach to providing services and their ability to produce the best outcomes for the individuals residing in the service area.

Factors	Maximum allowable points
A. (i) Previous experience or demonstrated capabilities in successfully operating an employment and training program established for and serving Indians and Native Americans.	30
(ii) Previous experience in operating or coordinating with other human resources development programs serving Indians and Native Americans.	10
(iii) Approach to providing services, including identification of the training and employment problems and needs in the requested area, and approach to addressing such needs.	10
B. Demonstration of the ability to maintain continuity of services to Indian or Native American participants consistent with those previously provided in the community.	10
C. (i) Description of the entity's planning process and demonstration of involvement with the INA community.	5
(ii) Demonstration of involvement with local employers within the service area, and with local Workforce Investment Boards and Youth Councils, etc.	5
D. Demonstration of coordination and linkages with Indian and non-Indian employment and training resources within the community, including, but not limited to, community and/or faith-based organizations, and One-Stop systems (as applicable), to eliminate duplication of effort.	15
E. Demonstration of support and recognition by the Native American community and service population, including local tribes and adjacent Indian organizations and the client population to be served.	15
Total	100

2. Review and Selection Process

This section identifies the overall review process and the procedures that DOL will use when a competitive grantee designation process is appropriate.

Overall Review Process. DOL's Division of Indian and Native American Programs (DINAP), with the concurrence of the Grant Officer, will conduct an initial review of all submissions for section 166 designation for compliance with the statute, regulations, and this SGA. The initial review will consider, among other things, timeliness and completeness of submission, applicant eligibility, eligibility of the requested service area and population, and application of the WIA regulations at 20 CFR 668.210 regarding priority designation for Native American, Alaskan, and Hawaiian organizations. The review will include compliance with financial responsibility criteria, in accordance with 20 CFR 668.220 and 668.230, to ensure that applicants are capable of properly handling and accounting for Federal funds.

Organizations with no prior grant history with the Department, or about whom there are financial or grant management concerns, may be conditionally designated pending an on-site review and/or a six-month assessment of program progress. Failure to satisfy such conditions may result in a withdrawal of designation.

The Grant Officer is not required to adhere to the geographical service area requested in a Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested or, if acceptable to the applicant, a portion of the area requested or more than the area requested.

Competitive Selection Procedures. If two or more eligible entities apply to provide section 166 services in the same geographic area and no applicant is entitled to priority designation under 20 CFR 668.210, then a competitive selection will be made following the procedures in this section. When competitive selection is necessary, DINAP will notify each applicant of the competing Notices of Intent no later than 45 days after publication of this

SGA in the **Federal Register**, and invite the competing applicants to submit the supplemental "Part B" Notice of Intent and any additional information that the applicant determines is appropriate. To be considered, the Part B information and any additional information must be received by the Chief of DINAP or be postmarked no later than 15 days after the applicant is notified of the competition.

Where competitive evaluation is required, the Grant Officer will use a formal panel review process to score the information submitted with the complete Notice of Intent (Part A *and* B), using the criteria listed in Section V(1). The review panel will include individuals with knowledge of or expertise in programs dealing with Indians and Native Americans. The purpose of the panel is to review and evaluate an organization's potential, based on its application (including the supplemental information required in Part B), to provide services to a specific Native American community, to rate the proposals in accordance with the rating criteria described in Section V(1), and to make recommendations to the Grant Officer. The panel will be provided the information described in the Notice of Intent.

It is DOL's policy that no information affecting the panel review process will be solicited or accepted after the deadlines for receipt of applications set in this SGA. All submitted information must be in writing. This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

During the review, the panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, *e.g.*, supporting references must contain the name of the contact person, an address, and telephone number. Panel ratings and recommendations are advisory to the Grant Officer.

Determination of Designation. The Grant Officer will make the final determination of section 166 designees and of the geographic service area for which each designation is made. In accordance with 20 CFR 668.250(b)(4), the Grant Officer will select the entity that demonstrates the ability to produce the best outcomes for its customers, based on all available evidence. In addition to considering the review panel's rating in those instances in which a panel is convened, the Grant Officer will consider input from DINAP, other offices within the Employment and Training Administration, and the DOL Office of the Inspector General, and any other available information regarding applicants' financial capability, operational capability, and responsibility. The Grant Officer need not designate an entity for every geographic area. *See* 20 CFR 668.294. If there are services areas for which no entity submitted a complete Notice of Intent or for which no entity achieved a score of at least 70, the Grant Officer may either designate no service provider or may designate an entity based on demonstrated capability to provide the best services to the client population. DOL reserves the right to select applicants with scores lower than 70 or lower than competing applications if such selection would, in DOL's judgment, result in the most effective and appropriate combination of services to the client population, funding, and costs.

An applicant for section 166 designation that is refused such designation, in whole or in part, will be afforded the opportunity to appeal non-designation as provided at 20 CFR 668.270.

3. Anticipated Announcement and Award Dates

If at all possible, designation decisions will be made by March 1, 2004.

VI. Award Administration Information

1. Award Notices

The Grant Officer, Ms. Laura Cesario, will notify section 166 applicants of designation results as follows:

Designation Letter. The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will include the geographic service area for which the designation is made.

Conditional Designation Letter. Conditional designations will include identification of the geographic service area, the nature of the conditions, actions required for the designee to achieve full designation status, and the time frame in which such actions must be accomplished.

Non-Designation Letter. Any organization not designated, in whole or in part, for a requested geographic service area will be notified formally of the non-designation and given the basic reasons for the determination.

Notification by a person or entity other than the grant officer that an organization has been designated is not valid.

2. Administrative and National Policy Requirements

Grantees must comply with the provisions of WIA and its regulations, including those parts focused specifically on programs for Indians and Native Americans. As referenced in Section IV(2), Notices of Intent must provide assurances of compliance with nondiscrimination and equal opportunity laws, as listed in 29 CFR 37.20. Additionally, all grants will be subject to the following administrative standards and provisions, if applicable to the particular grantee:

- 20 CFR part 667—Administrative provisions under Title I of WIA
- 29 CFR parts 30, 31, 32, 33 and 36—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor; and Nondiscrimination on the Basis of Sex in Education Programs Receiving or Benefiting from Federal Financial Assistance
- 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA)
- 29 CFR part 93—Lobbying
- 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Commercial Organizations
- 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements
- 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 29 CFR part 98—Governmentwide Debarment and Suspension (Non-Procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)
- 29 CFR part 99—Audit of States, Local Governments, and Non-Profit Organizations

In accordance with WIA Section 195(6) and 20 CFR 668.630(f), programs funded under this SGA may not involve political activities. Additionally, in accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611), non-profit entities incorporated under 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants. Further, this program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the veterans priority statute and its effect on current employment training programs. DOL anticipates updating this guidance at the time of WIA reauthorization and issuing individual guidance on each affected employment training program.

3. Reporting

Section 166 grantees will be required to submit reports on financial expenditures, program participation, and participant outcomes on no more than a quarterly basis. Grantees are encouraged to file reports electronically, but they may also be submitted in paper form. As reflected in Section I, reporting requirements will be modified for PY 2004–2005 to incorporate OMB Common Measures and will include evaluation of the Grantee's annual performance against those Common Measures. Current reporting requirements for section 166 grants are found at 20 CFR part 668, subpart F.

VII. Agency Contacts

Programmatic questions regarding this SGA can be directed to: Mr. Greg Gross, Division of Indian and Native American Programs, Room S–5206 FPB ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; e-mail: *gross.gregory@dol.gov*; 202–693–3752; FAX: 202–693–3818.

Grant and administrative questions can be directed to: Ms. Serena Boyd, Grants Management Specialist; e-mail: *boyd.serena@dol.gov*; 202–693–3338; FAX: 202–693–2879.

VIII. Other Information

Potential applicants may obtain further information on the WIA section 166 program for employment and training of Native Americans through the website for DOL's Division of Indian and Native American Programs: *http://wdsc.doleta.gov/dinap/*. Any information submitted in response to this SGA will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate. The Department of Labor is not obligated to make any awards as a result of this SGA, and only the Grant Officer can bind the Department to the provision of funds under WIA section 166. Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and/or award of Federal funds do not waive any grant requirements and/or procedures.

Signed at Washington, DC, this 22nd day of December, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

Exhibit A [1]

BILLING CODE 4510–30–P

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[1] Exhibit A is available on the DINAP Web site at *http://wdsc.doleta.gov/dinap/*.

Exhibit B

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

2. DATE SUBMITTED

Applicant Identifier

1. TYPE OF SUBMISSION:

Application
☐ **Construction**
☐ **Non-Construction**

Pre-application
☐ **Construction**
☐ **Non-Construction**

3. DATE RECEIVED BY STATE

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Department:

Organizational DUNS:

Division:

Address:

Street:

City:

County:

State:

Zip Code

Country:

Name and telephone number of person to be contacted on matters involving this application (give area code)

Prefix:

First Name:

Middle Name

Last Name

Suffix:

Email:

Phone Number (give area code)

Fax Number (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (*EIN*):

☐☐-☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es)
(See back of form for description of letters.) ☐ ☐

Other (specify)

7. TYPE OF APPLICANT: (See back of form for Application Types)

Other (specify)

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE (Name of Program):

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*Cities, Counties, States, etc.*):

13. PROPOSED PROJECT

Start Date:

Ending Date:

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE:

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix

First Name

Middle Name

Last Name

Suffix

b. Title

c. Telephone Number (give area code)

d. Signature of Authorized Representative

e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

SF-424 (Rev. 7-97) Back

[FR Doc. 03–32126 Filed 12–30–03; 8:45 am]

BILLING CODE 4310–30–C

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.0635% (.000635) for tier 2 for calendar year 2003. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2003 shall be one-half of the annual fee rate, which is 0.03175% (.0003175).

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the final rate being adopted today are effective for calendar year 2003. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by December 31, 2003.

Gary Pechota,

Chief of Staff, National Indian Gaming Commission.

[FR Doc. 03–32125 Filed 12–30–03; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL LABOR RELATIONS BOARD

Submission for OMB Review; Comment Request

AGENCY: National Labor Relations Board.

ACTION: Notice.

The National Labor Relations Board (NLRB) has submitted to OMB for clearance, the following proposal for collection of information under provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995.

Title and Form Number: Supplemental Statement Application for Professional Position in the Office of the General Counsel; NLRB 4560.

Type of Request: New Collection.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: .5 Hours.

Annual Burden Hours: 250 Hours.

Needs and Uses: This requirement provides the collection of information from applicants applying for professional positions within the Office of the General Counsel. NLRB will use the information as a standard format that will substantially reduce the number of hours currently expended to review applications received for the positions of Attorneys and Field Examiners in the office of the General Counsel.

Affected Public: Individuals or Households.

SUMMARY: The notice is being republished to provide an additional (30) day comment period. The original notice was published on June 27, 2003 (3 FR 16308).

The National Labor Relations Board (NLRB), Office of the General Counsel, in accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, plans to request approval for the use of NLRB Form 4560, Supplemental Statement Application for Professional Position in the Office of the General Counsel. Using this form will substantially reduce the number of hours currently expended to review applications received for the positions of attorneys and field examiners in the office of the General Counsel.

Currently, applications are received in various forms, *e.g.*, SF–171, OF–612, and resumes.

As a result, required information is not easily obtained and requested information necessary to the Agency's review may be missing altogether. By providing a standard format, all information necessary to the Agency's review would be addressed and in a consistent format that would facilitate and streamline that review.

Application forms, such as the SF–171 and OF–612, and resumes do not address a very important question that is included on the Supplemental Statement. Specifically, information concerning a candidate that would create an actual or apparent conflict of interest for assignment to a particular office because of a family and/or personal relationship with someone outside the NLRB who regularly does business with that particular NLRB office.

Receiving this information as part of the application package would prevent assignments to offices where these situations may exist.

DATES: Comments should be received on or before January 30, 2004.

ADDRESSES: Written comments and recommendations on the information collection should be sent to the National Labor Relations Board, Library and Administrative Services Branch, 1099 14th Street, NW., Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: Tommie Gregg, Sr., Records Management and Anthony Wonkovich, Human Resources, at address shown above; by telephone at (202) 273–2833, (202) 237–3982; or by facsimile at (202) 273–4286.

SUPPLEMENTARY INFORMATION: Comment is requested on; (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including, whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: December 22, 2003.

By Direction of the Board.

Lester A. Heltzer,

Executive Secretary, National Labor Relations Board.

[FR Doc. 03–32127 Filed 12–30–03; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Carry Out a New Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 1 year.

DATES: Written comments on this notice must be received by March 1, 2004 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of NSF Support for Undergraduate Research Opportunities (URO).

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to carry out a new information collection for one year.

Abstract: Proposed Project: The Directorate for Engineering (ENG) initiated the Research Experiences for Teachers (RET) Supplements activity in FY 2001 to be add-ons to active awards funded by ENG programs. The intent was to build on the popular NSF-wide Research Experiences for Undergraduates (REU) Supplements activity by providing opportunities for K–12 teachers to conduct hands-on experiences in the laboratories/facilities of ENG-funded researchers interested in participating in RET. Typically the supplements supported one or two teachers. The assumption was that the teachers could also benefit from involvement in research and direct exposure to the scientific method and transfer what they learned into classroom activities. Since then, ENG has funded RET Site awards, which are similar to REU Sites in that NSF awards fund groups of teachers to work with faculty members at the same institution and to engage in group activities related to the research. In 2003, community college faculty became eligible as participants in RET awards.

This study of RET will include participants in RET Supplement and Site awards from 2001–2003 funded by the Division of Engineering Education and Centers, the Division of Bioengineering and Environmental Systems, and the Division of Design, Manufacture, and Industrial Innovation. The study will examine whether the scale and programmatic characteristics of the larger group awards, such as those funded as RET Sites, bring about different outcomes and impacts on the teachers and their subsequent instructional and professional activities, compared with those resulting from involvement in the typical small-scale RET Supplement. NSF wishes to know how RET experiences have affected participating teachers' subsequent teaching techniques and content modifications made as a result of teachers' RET activities. In addition, outcomes and impacts beyond the teachers' own classrooms from the research experiences, *e.g.*, follow-up knowledge transfer activities, any formal partnerships formed between the awardee and the teachers' school system/district, or community college, etc. should also be examined. The collection will be done on the World Wide Web.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 645.

Estimated Total Annual Burden on Respondents: 430 hours—645 respondents at 40 minutes per response.

Frequency of Response: One time.

Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 24, 2003.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–32187 Filed 12–30–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket: 030–19913]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Enviro-Test Laboratories, Casper, WY

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Robert J. Evans, Senior Health Physicist, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV Office, U.S. Nuclear Regulatory Commission, Arlington, Texas 76011. Telephone: (817) 860–8234; fax number: (817) 860–8188; e-mail *rje@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the approval of Enviro-Test Laboratories' (the licensee's) decommissioning plan for its former laboratory facility located in Casper, Wyoming, and terminating NRC Materials License 49–21194–01. Enviro-Test Laboratories (the licensee) submitted a decommissioning plan (DP) to the U.S. Nuclear Regulatory Commission (NRC) by letter dated October 1, 2002. The licensee subsequently submitted supplemental information by letters dated June 2 and July 18, 2003. The licensee's request for the proposed action was previously noticed in the **Federal Register** on June 24, 2003 (68 FR 37572), with a notice of an opportunity to request a hearing and an opportunity to provide comments on the action and its environmental impacts. No requests for hearing or comments were received.

The licensee requested that its former laboratory in Casper, Wyoming, be released for unrestricted use. The NRC has prepared an Environmental Assessment (EA) in support of these actions in accordance with the requirements in 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following publication of this notice.

II. Environmental Assessment

A. Proposed Action

The proposed action is to release for unrestricted use the former laboratory located in Casper, Wyoming. This would be accomplished by license amendment to terminate NRC Materials License 49–21194–01 upon NRC approval that the site meets its standards for unrestricted release as specified in 10 CFR part 20.

B. Need for Proposed Action

The licensee needs to have the site removed from its license because it no longer plans to conduct NRC-licensed activities at this location. Further, if the amendment request is approved, the licensee would then be in compliance with the Timeliness Rule requirements of 10 CFR 30.36, "Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas."

C. Facility Description/History

Chemical and Geological Laboratories, the original licensee, received NRC Materials License 49–21194–01 during February 1983. Core Laboratories became the licensee during July 1987 followed by Enviro-Test Laboratories during November 2000. Amendment 6 dated August 26, 2003, authorizes Enviro-Test Laboratories to possess small quantities of tritium, byproduct material, special nuclear material, and uranium mill tailings at its Casper, Wyoming, facility. The authorized uses included environmental and bioassay sampling, possession of laboratory standards and calibration sources, and evaluation of sealed source leak tests.

The licensee also conducted tests of non-radiological samples. According to information provided by the licensee, the laboratory was used for a broad range of analytical tests for metals, inorganic water parameters, organics, and petroleum products. There was also a coal analysis lab in part of the facility for a period of time. The licensee possessed and used a wide range of chemicals and standards to support these analytical tests.

The licensee halted operations in July 2002 and subsequently initiated decommissioning activities, which they completed in October 2002. Enviro-Test Laboratories submitted a DP to the NRC by letter dated October 1, 2002. The licensee submitted supplemental DP information by letters dated June 2 and July 18, 2003. In addition, the licensee submitted an NRC Form 314, "Certificate of Disposition of Materials," dated January 31, 2003, requesting termination of its radioactive materials license following the NRC's release of the property for unrestricted use.

The laboratory is located at 420 West First Street in Casper, Wyoming. The legal description of the property is: Lots 26–34 inclusive, Block 7, Midwest Addition to the City of Casper.

D. Radiological Status

The licensee possessed small quantities of numerous radionuclides in both sealed and unsealed form. The licensee possessed about 30 alpha-emitting radionuclides and 49 beta-gamma emitting radionuclides at time of closure. The predominant alpha-emitting radionuclide was thorium-230 based on the total radioactivity in the licensee's inventory. The licensee calculated that 49 percent of the total alpha activity was a result of thorium-230. The predominant beta-gamma emitting radionuclide was strontium-90 at 43.4 percent.

As part of the decommissioning process, the licensee disposed or transferred all remaining radioactive material. Some of the radioactive calibration standards and sources were transferred to one of three NRC or state licensed laboratories. The remainder of the radioactive material was drummed for disposal at a commercial low-level waste disposal facility.

The licensee submitted final status survey information to the NRC in its initial DP submittal dated October 1, 2002. The licensee's final status survey consisted of fixed (total surface) contamination surveys, removable contamination surveys, ambient gamma exposure rate measurements, and limited soil and water sampling.

The NRC conducted a confirmatory radiological survey of the laboratory during June 17–18, 2003. The NRC determined that the former soil preparation room required additional remediation. In response to the NRC's findings, the licensee conducted additional decommissioning activities during early July 2003. Additional final status survey information was provided in the licensee's third DP submittal dated July 18, 2003. The NRC conducted a second confirmatory survey on August 5, 2003. The results of the two NRC confirmatory surveys are provided in NRC Inspection Report 030–19913/2003–01. A detailed analysis of the licensee's final status survey report and the NRC's confirmatory survey will be included in the NRC's Safety Evaluation Report that will be used to support the termination of the license.

E. Alternatives

The licensee seeks NRC approval of a license amendment request as submitted. The alternative available to the NRC to the proposed action is to take no action by denying the amendment request. The no-action alternative is not a feasible alternative because it will result in violation of NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease, and to request termination of their radioactive materials license. One potential impact from the no action alternative would be to restrict potential benefits from future uses of the site. Based on the analysis in this EA, which demonstrates that the licensee has met the license termination requirements in 10 CFR 20.1402, and NRC's statutory mission to protect public health and safety, the NRC has determined the no-action alternative is not reasonable. Therefore, the no-action alternative is eliminated from further consideration in this EA.

F. Affected Environment

The laboratory was a 14,000-square foot (1301-square meter) facility comprised of three original buildings that had been connected in various remodeling projects over the past 20 years. The affected environment for the Proposed Action (NRC approval of the license amendment request) would be the interior of the building and the immediate vicinity of the building.

The former laboratory building is located in an industrial/commercial area of Casper with no residences immediately adjacent to the site. There are no streams or ponds on site property, although the North Platte River is located about 200 meters from the site property. Since the site is located within the city limits of Casper, municipal water is supplied to the former laboratory and nearby businesses.

G. Environmental Impacts

1. Occupational and Public Health Impacts

Proposed Action. The radiological criteria for unrestricted use is provided in 10 CFR 20.1402. This regulation states that a site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent to an average member of the public that does not exceed 25 millirems (0.25 mSv) per year, including that from groundwater sources of drinking water, and that the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA).

Current NRC guidance (Section 2.5 of NUREG–1757, Volume 2, "Consolidated NMSS Decommissioning Guidance") recommends that licensees demonstrate compliance with the dose criteria by using dose modeling or derived concentration guideline levels (DCGLs) and final status survey results. The licensee's request to release the site for unrestricted use is based, in part, on dose modeling calculations conducted using the NRC-approved DandD and RESRAD computer codes. The licensee used the DandD code (Version 2.1.0) to model the annual dose to members of the public inside of the building. The licensee also used the RESRAD computer code (Version 6.21) to model the annual dose to members of the public outside of the building. The code inputs included information obtained during the licensee's performance of the final radiological status survey, *i.e.*, measured radioactivity at the site. The code outputs were then compared to the 25-millirem dose criteria.

Using the DandD building occupancy scenario, the licensee conducted two analyses, one for all alpha-emitting radionuclides and the second for all beta-emitting radionuclides. The licensee used DandD's default parameters for both analyses. The licensee prorated the radionuclides based on the total activity in inventory at the time of facility closure. The licensee used 29 alpha-emitting radionuclides in the first analysis and 50 beta-gamma emitting radionuclides (including yttrium-90) in the second analysis. The calculated total dose from all pathways was 9.88 millirems for alpha-emitting radionuclides and 12.4 millirems for beta-gamma emitting radionuclides. The combined total of the two analyses was 22.28 millirems per year, a dose that is below the 25-millirem limit.

The licensee also conducted an analysis using RESRAD for radionuclides that may be in the soil in the vicinity of the building. The licensee sampled the soil and determined that the soil contained measurable amounts of uranium, thorium, and radium. The inputs into RESRAD included radium-228 and thorium-232 because the licensee could not determine a background concentration for these radionuclides. The licensee did not include uranium and radium-226 in the RESRAD program because sample analyses indicated that these two radionuclides were at or below background levels. The licensee used the default RESRAD program parameters. The calculated maximum dose was 15.08 millirems per year, a dose rate below the 25-millirem per year limit. [Since DandD and RESRAD have different occupancy factors, it is not appropriate to add the building occupancy results and outdoor exposure results together. The DandD and RESRAD results are individually compared to the 25-millirem limit.]

During a portion of laboratory decommissioning, the licensee monitored worker exposures to radioactive materials. Occupational exposure records were reviewed during the June 2003 inspection (NRC Inspection Report 030–19913/2003–001). As noted in the Inspection Report, records for 2002 (the time frame when decommissioning was conducted) were not always available. The NRC staff believes, based on exposure and environmental records for 1998–2001, that worker exposure to radioactive materials was most likely well below the NRC's annual total effective dose equivalent limit during decommissioning activities.

In summary, the licensee's final status survey results indicate that annual doses to occupants of the building and annual doses to members of the public located outdoors will be less than the NRC's radiological criteria for unrestricted use of the facility. Since the licensee used the default values for both computer codes, then the calculated results are considered conservative. No cumulative impacts or impacts of a non-radiological nature were identified in connection with the proposed action.

2. Environmental Resource Impacts

Proposed Action. The licensee conducted studies to demonstrate that the area around and under the former laboratory had not been contaminated with radioactive material. The licensee collected soil samples from around the building for analysis. The sample results revealed detectable amounts of radioactive lead, radium, thorium, and uranium at or near background levels. These sample results could be representative of naturally occurring radionuclides in the soil. No man-made gamma emitting radionuclides were identified, including cobalt-60 and cesium-137. In summary, the soil sample results suggest that all radionuclides were undetectable or were at naturally occurring background levels.

The licensee conducted a study to determine if there had been any contamination of soil or groundwater as a result of a leaking sump that was repaired during 1996. The study was conducted prior to start of decommissioning but was included in the DP submittal. The sample results identified radioactivity at background levels. The study concluded that the sump had not leaked detectable quantities of licensed radioactive material into the environs of the site.

The property owner (not the same entity as the licensee) conducted sampling of the former sump during September 2001. During drilling operations, groundwater was encountered at approximately 10.5 feet below the surface. The data presented in the owner's TriHydro Corporation report dated November 29, 2001, indicated that soils in the area of the sump did not display elevated concentrations of any constituent, except non-radioactive mercury which is not regulated by the NRC. The report documents that mercury was identified in the 0–4 foot sample at 95.6 mg/kg. The State of Wyoming's residential soil cleanup level is 23 mg/kg for mercury. The NRC does not have the regulatory authority to address the report of mercury contamination. As such, notification to the State of Wyoming was made by letter dated November 4, 2003. If the proposed action is implemented, any existing mercury in site soils would be part of the property that is released from NRC's license conditions.

Current regulations allow licensees to dispose of radioactive material through the sanitary sewer system as long as the concentration limits provided in 10 CFR Part 20, Appendix B, Table 3, "Release to Sewers," are not exceeded. The NRC conducted routine inspections of the facility, and waste disposal records were reviewed during these inspections. The NRC inspectors did not identify any violations of this regulation, suggesting that the licensee's waste disposal practices were in accordance with license and regulatory requirements.

During the confirmatory survey of the laboratory, the NRC inspector surveyed the exterior of the building for ambient gamma exposure rates and sampled for total (fixed and removable) contamination at selected exterior surfaces. The only area that exhibited an elevated gamma exposure rate was a ventilation duct that exited the building from the former soil preparation room. This room was subsequently remediated a second time by the licensee. No other area, including adjacent land areas, exhibited elevated gamma exposure rates. In addition, no exterior surface contamination sample exhibited an elevated level of radioactivity. The NRC's confirmatory survey confirmed that the building exterior and the grounds around the building were not contaminated with radioactive material.

Other than the presence of mercury in the former sump area in the rear of the building as discussed previously, no impacts of a non-radiological nature were identified in connection with the proposed action. No cumulative impacts were identified.

H. Agencies and Persons Consulted and Sources Used

The NRC staff have determined that the proposed action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, NRC staff have determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

The NRC consulted with the State of Wyoming on this EA. The State provided one comment regarding verification of waste disposal. The licensee subsequently provided documentation from the waste broker dated January 3, 2003, confirming that the radioactive wastes had been disposed in a state-licensed commercial waste facility in Richland, Washington.

I. Conclusion

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the license amendment request. The NRC staff believes that the proposed action will result in minimal environmental impacts. The staff has determined that the proposed action, approval of the license amendment request to release the facility for unrestricted use, is the appropriate alternative for selection.

J. List of Preparers

This Environmental Assessment was prepared by Robert Evans, Senior Health Physicist, Fuel Cycle & Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, and reviewed by Dr. D. Blair Spitzberg, Chief, Fuel Cycle & Decommissioning Branch.

K. References

1. Enviro-Test Laboratories' Decommissioning Plan submittal dated October 1, 2002 (ML023190414, ML023190459, ML023190486, ML023190490, ML023190561, ML023220067, ML023220319, and ML023220321; restricted access due to personal privacy information being included).
2. NRC letter to Enviro-Test Laboratories dated January 28, 2003, Completeness Review of Decommissioning Plan (ML030280684).
3. Enviro-Test Laboratories' Certificate of Disposition of Materials dated January 31, 2003 (ML031750843).
4. Enviro-Test Laboratories' second Decommissioning Plan submittal dated June 2, 2003, Additional Information for Decommissioning Activities (ML031550560, ML031550604, ML031550624, and ML031550645).
5. NRC letter to Enviro-Test Laboratories dated June 11, 2003, Acknowledgment of Receipt of Decommissioning Plan (ML031621024).
6. NRC Notice of Consideration of Amendment Request for Enviro-Test Laboratories dated June 16, 2003 (ML031671853).
7. Enviro-Test Laboratories' third Decommissioning Plan submittal dated July 18, 2003, Site Closure Plan (ML032030605, ML032030619, ML032030621, ML032030623, ML032050081, and ML032050108).
8. Oak Ridge Institute for Science and Education letter to NRC dated August 6, 2003, Revision to Analytical Results for Smear Results (ML032650667).
9. NRC Inspection Report 030–19913/2003–01 dated September 24, 2003 (ML032671877).
10. TriHydro Corporation Report to Gene George dated November 29, 2001 (ML033070386).
11. State of Wyoming, Office of Homeland Security, letter to NRC dated November 17, 2003, RE: Request for Comments Regarding the Environmental Assessment for Decommissioning of the Enviro-Test Laboratories Facility dated November 4, 2003 (ML033280170).
12. Environmental Management and Controls, Inc. letter to Enviro-Test Laboratories dated January 3, 2003, regarding disposal of radioactive wastes (ML033420169).

III. Finding of No Significant Impact

Based on the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*, at the ADAMS Accession Nos. listed with the documents. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas, this 15th day of December, 2003.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle Decommissioning Branch, Division of Nuclear Materials Safety Region IV.

[FR Doc. 03–32146 Filed 12–30–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–009]

System Energy Resources, Inc., Grand Gulf Site; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

System Energy Resources, Inc. (SERI) has submitted an application for an early site permit (ESP) for its Grand Gulf site, located in Claiborne County, near Port Gibson, Mississippi. The application for the ESP was submitted by letter dated October 16, 2003, pursuant to 10 CFR part 52. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on November 14, 2003 (68 FR 64665). A notice of acceptance for docketing of the application for an early site permit for Grand Gulf was published in the **Federal Register** on December 1, 2003 (68 FR 67219). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the ESP application and to provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 52.17(a)(2), 51.45 and 51.50, SERI submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Public Electronic Reading Room (PERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp/grand-gulf.html*. In addition, the Harriette Person Memorial County Library, located at 606 Main Street, Port Gibson, Mississippi 39150, has agreed to make the ER available for public inspection.

The following key reference documents related to the ESP applications and the NRC staff's review process are available through the NRC's web site at *www.nrc.gov*:

a. 10 CFR part 51, Environmental protection regulations for domestic licensing and related regulatory functions.

b. 10 CFR part 52, Early site permits; standard design certifications; and combined licenses for nuclear power plants.

c. 10 CFR part 100, Reactor site criteria.

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants.

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process.

f. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations.

g. Regulatory Guide 4.7, General Site Suitability Criteria for Nuclear Power Stations.

h. Fact Sheet on Nuclear Power Plant Licensing Process.

i. Draft review Standard RS–002, Processing Applications for Early Site Permits.

j. NRR Office Instruction LIC–203, Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues.

The regulations, NUREG-series documents, regulatory guide(s), and fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC web page. The draft review standard is at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp/esp-public-comments-rs-002.html*. Finally, Office Instruction LIC–203 can be found in ADAMS in two parts under accession numbers ML011710073 (main text) and ML011780314 (charts and figures).

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS in support of the review of the application an ESP for the Grand Gulf site. Possible alternatives to the proposed action (issuance of the ESP at the Grand Gulf ESP site) include no action and alternative sites. The NRC is required by 10 CFR 52.18 to prepare an EIS in connection with the issuance of an ESP. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of EIS.

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other environmental impact statements (EISs) that are being or will be prepared that are related to but are not part of the scope of the EIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies.

h. Describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, SERI.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards including the State Historic Preservation Officer.

d. Any affected Indian tribe including the Tribal Historic Preservation Officer.

e. The Advisory Council on Historic Preservation.

f. Any person who requests or has requested an opportunity to participate in the scoping process.

g. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold a public meeting for the Grand Gulf early site permit application EIS. The scoping meeting will be held in the Port Gibson City Hall, located at 1005 College Street, Port Gibson, Mississippi, on Wednesday, January 21, 2004. The meeting will convene at 7 p.m. until 10 p.m., as necessary. The meeting will be transcribed and will include the following: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, and the proposed review schedule; (2) an overview by SERI of the proposed action, Grand Gulf ESP, and the environmental impacts as outlined in the ER; and (3) the opportunity for interested Government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the Port Gibson City Hall. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments at the meeting on the NEPA scoping process by contacting Ms. Cristina Guerrero by telephone at 1 (800) 368–5642, extension 2981, or by Internet to the NRC at *GrandGulf@nrc.gov* no later than January 14, 2004. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Ms. Guerrero's attention no later than January 14, 2004, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scoping process for the EIS to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. To be considered in the scoping process, written comments should be postmarked by February 12, 2004. Electronic comments may be sent by the Internet to the NRC at GrandGulfEIS@nrc.gov. Electronic submissions should be sent no later than February 12, 2004, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's Public Electronic Reading Room (PERR) link *http://www.nrc.gov/nrc.gov/reading-rm/adams.html* at the NRC Homepage.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Notice of a hearing regarding the application for an ESP will be the subject of a future **Federal Register** notice.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue for comment the draft EIS, which will be the subject of separate notices and a separate public meeting. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final EIS, which will also be available for public inspection.

Information about the proposed action, the EIS, and the scoping process may be obtained from Mr. Wilson at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 23rd day of December 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvements Program, Office of Nuclear Reactor Regulation.

[FR Doc. 03–32147 Filed 12–30–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of December 29, 2003, January 5, 12, 19, 26, February 2, 2004.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 29, 2003

There are no meetings scheduled for the Week of December 29, 2003.

Week of January 5, 2004—Tentative

There are no meetings scheduled for the Week of January 5, 2004.

Week of January 12, 2004—Tentative

Wednesday, January 14, 2004

9:30 a.m. Briefing on Status of Office of Chief Information Officer Programs, Performance, and Plans (Public Meeting) (Contact: Jacqueline Silber, 301–415–7330).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of January 19, 2004—Tentative

Wednesday, January 21, 2004

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of January 26, 2004—Tentative

There are no meetings scheduled for the Week of January 26, 2004.

Week of February 2, 2004—Tentative

Tuesday, February 3, 2004

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Timothy J. Frye, (301) 415–1651

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 23, 2003.

Timothy J. Frye,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–32251 Filed 12–29–03; 10:06 am]

BILLING CODE 7590–01–M

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request submission to the Offices of Management and Budget (OMB Control Number 0420–0510).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget (OMB) a request for approval of an information collection, OMB Control Number 0420–0510, the Peace Corps Health Status Review form (PC–1789) and the Report of Medical and Dental Exam forms (PC–1790 S and PC–1790 Dental). This is a renewal of an active information collection and a revision. The current active renewal covers the Peace Corps Health Status Review form (PC–1789) and the Report of Medical Exam (PC–1790 S). The revision is to add an HIV Aids question to the PC–1789 form and to add the Report of Dental Exam form (PC–1790) to this collection for a total of three forms to make up the health applications for Peace Corps Volunteers. The purpose of this information collection is necessary to ensure that Volunteers meet this medical eligibility requirement, all applicants for service must undergo physical and dental examination prior to Volunteer service to provide the information needed for clearance, and to serve as a reference for any future Volunteer medical clearance, and to serve as a reference for any future Volunteer disability claims. The Health Status Review is used to review the medical history of individual applicants; the Report of Medical Exam and the Report of Dental Exam are used by the examining physician and dentist both for applicants and for currently serving Volunteers. The results of these examinations are used to ensure that applicants for Volunteer service will, with reasonable accommodation, be able to serve in the Peace Corps without jeopardizing their health.

The purpose of this notice is to allow for public comment on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A copy of the information collection may be obtained from the Office of Management and Budget, Desk Officer for the Peace Corps, Mr. David Rostker by e-mail at *David_Rostker@omb.eop.gov*. Comments on the form should also be addressed to the attention of Mr. Rostker, *David Rostker@omb.eop.gov* and should be received on or before January 30, 2004.

Information Collection Abstract

Title: The Peace Corps Health Status review form (PC–1789) and the Report of Medical and Dental Exam forms (PC–1790 S and PC–1790 Dental).

Need for and use of this information: The Health Status Review is used to review the medical history of individual applicants; the Report of Medical Exam and the Report of Dental Exam are used by the examining physician and dentist both for applicants and for currently serving Volunteers. The results of these examinations are used to ensure that applicants for Volunteer service will, with reasonable accommodation, be able to serve in the Peace Corps without jeopardizing their health.

Respondents: Potential and current Volunteers.

Respondents's Obligation To Reply: Voluntary.

Burden on the Public:

	PC–1789 Health status review	PC–1790 S report of medical exam	PC–1790 dental report of dental exam
a. Estimated number of respondents	9,700	6,000	6,000.
b. Estimated average burden per response	45 minutes	30 minutes	30 minutes.
c. Frequency of response	one time	one time	one time.
d. Annual reporting burden	7,275 hours	3,000 hours	3,000 hours.
e. Estimated annual cost to respondents	$138,298	$57,030	$57,030.

This notice is issued in Washington, DC on December 23, 2003.

Ed Anderson,

Chief Information Officer.

[FR Doc. 03–32152 Filed 12–30–03; 8:45 am]

BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on Thursday, January 15, 2004; Thursday, January 29, 2004; Thursday, February 12, 2004; and Thursday, February 26, 2004.

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: December 11, 2003.

Mary M. Rose,

Chairperson, Federal Prevailing Rate Advisory Committee.

[FR Doc. 03–32130 Filed 12–30–03; 8:45 am]

BILLING CODE 6325–49–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Survivor Insurance Annuities: OMB 3220–0030.

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees. The collection obtains the information required by the RRB to determine entitlement to and the amount of the annuity applied for.

The RRB currently utilizes Form(s) AA–17, Application for Widow(ers) Annuity, AA–17b Applications for Determination of Widow(er) Disability, AA–17cert, Application Summary and Certification, AA–18, Application for Mother's/Father's and Child's Annuity, AA–19, Application for Child's Annuity, AA–19a, Application for Determination of Child Disability, and AA–20, Application for Parent's Annuity to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes no changes to any of the forms currently in the information collection.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (min)	Burden (hrs)
AA–17 (manual, without assistance)	150	47	113
AA–17b (with assistance)	380	40	253
AA–17b (without assistance)	20	50	17
AA–17cert	3,265	20	1,088
AA–18 (manual, without assistance)	12	47	9
AA–19 (manual, without assistance)	9	47	7
AA–19a (with assistance)	285	45	214
AA–19a (without assistance)	15	65	16
AA–20 (manual, without assistance)	1	47	1

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–32129 Filed 12–30–03; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information, Washington, DC 20549.

Extension:

Rule 17Ad–16, SEC File No. 270–363, OMB Control No. 3235–0413.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17Ad–16—Notice of Assumption or Termination of Transfer Agent Services

Rule 17Ad–16, 17 CFR 240.17Ad–16, under the Securities Exchange Act of 1934, requires a registered transfer agent to provide written notice to a qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. These recordkeeping requirements address the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address.

Given that there are approximately 450 submit Rule 17Ad–16 notices, the staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–16 is approximately 15 minutes per notice or 3.5 hours per year, totaling 1,575 hours industry-wide. The average cost per hour is approximately $30 per hour, with the industry-wide cost estimated at approximately $47,250. However, the information required by Rule 17Ad–16 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–16 varies according to differences in business activity.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Considerations will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32169 Filed 12–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–2(c), (d), and (h); SEC File No. 270–149; OMB Control No. 3235–0130.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17Ad–2(c), (d) and (h) Transfer Agent Turnaround, Processing and Forwarding Requirements

Rule 17Ad–2(c), (d), and (h), 17 CFR 240.17Ad–2(c), (d), and (h), under the Securities Exchange Act of 1934, enumerate the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 900 transfer agents, approximately ten notices pursuant to 17Ad–2(c), (d), and (h) are filed annually. In view of (a) the readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion in which such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on the average, most Notices require approximately one-half hour to prepare. The Commission staff estimates that transfer agents spend an average of five hours per year complying with the rule.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: December 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32170 Filed 12–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48987; File No. SR–CTA/CQ–2003–01]

Consolidated Tape Association; Notice of Filing of the Fifth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Third Substantive Amendment to the Restated Consolidated Quotation Plan and Amendment No. 1 Thereto

December 23, 2003.

Pursuant to Rule 11Aa3–2 [1] under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on November 28, 2003, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan Participants ("Participants") [2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the CTA and CQ Plans (collectively, the "Plans"). The proposal represents the 5th substantive amendment made to the Second Restatement of the CTA Plan and the 3rd substantive amendment to the Restated CQ Plan, and reflects changes unanimously adopted by the Participants. The proposed amendments would delete the provisions of the Plans that exempt any Participant in the Plans from paying market data fees for the receipt of data on its trading floor for regulation or surveillance or for other specifically approved purposes ("Participant Fee Exemptions"). On December 23, 2003, the Participants submitted Amendment No. 1 to the proposed amendments.[3] The Commission is publishing this notice to solicit comments from interested persons on the proposed amendments to the Plans.

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2 [4]

Currently, the Plans specify that each Participant is exempt from certain market data charges (other than access fees) if it is in compliance with the requisite market data contract. According to the Participant Fee Exemptions, the market data contract must require the Participant (1) to receive market data solely at premises that it occupies solely or on its "trading floor or trading floors" (as that term is generally understood), and (2) to use the data solely for regulatory, surveillance and other approved purposes.

The Participants propose to amend the Plans to require each Participant to pay the same fees for its receipt and use of market data as other market participants pay, regardless of whether the Participant receives the data on its trading floor or elsewhere or uses the data for surveillance or other purposes.

The Participants believe that eliminating the Participant Fee Exemptions will eliminate disputes that have arisen among the Participants regarding what constitutes a "trading floor" (as that term is generally understood) and will eliminate a perceived competitive advantage that the Participant Fee Exemptions give Participant markets over non-exchange markets (such as electronic communications networks and other alternative trading systems), over NASD market makers and, in the case of Participants that trade options, over non-Participant options markets.

The Participants believe that the filing of the proposed amendments is in fulfillment of the national market system objectives regarding the dissemination of market information as anticipated by sections 11A(a)(1)(C),[5] 11A(a)(1)(D) [6] and 11A(a)(3)(B) [7] of the Act.

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[1] 17 CFR 240.11Aa3–2.

[2] Each Participant executed the proposed amendments. The Participants are the American Stock Exchange LLC; Boston Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc.; National Association of Securities Dealers, Inc. ("NASD"); New York Stock Exchange, Inc. ("NYSE"); Pacific Exchange, Inc.; and Philadelphia Stock Exchange, Inc.

[3] *See* letter to Jonathan G. Katz, Secretary, Commission, from Thomas E. Haley, Chairman, CTA, dated December 22, 2003 ("Amendment No. 1"). Amendment No. 1 makes a technical correction to the proposed amendments.

[4] 17 CFR 240.11Aa3–2.

[5] 15 U.S.C. 78k–1(a)(1)(C).

[6] 15 U.S.C. 78k–1(a)(1)(D).

[7] 15 U.S.C. 78k–1(a)(3)(B).

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendments to the CTA and CQ Plans by means of their execution of the proposed amendments. The proposed amendments would become effective upon Commission approval of the proposed amendments. The Participants will commence to pay the fees that are the subject of the exemption in the billing cycle that follows the Commission's approval of these proposed amendments.

D. Development and Implementation Phases

See Item I.C. above.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of section 11A(c)(1)(D)[8] of the Act.

F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan

The Participants do not anticipate that they will enter into any new written understandings or agreements relating to the interpretation of the Plans or to conditions for becoming a sponsor or participant in the Plans.

G. Approval by Sponsors in Accordance With Plan

In accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each of the Participants has approved the proposed amendments.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

By removing the exemptions, the proposed amendments would subject the Participants to the same fee schedule as all other recipients and users of market data.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

The proposed amendments do not change the method for determining, and the amount of, fees and charges. However, the proposed amendments do impose charges for regulation, surveillance and other previously exempted purposes on the Participants.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3-1[9]

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

By removing the Participant Fee Exemptions, the proposed amendments would subject the Participants to the same fee schedule as all other persons seeking access to the Participants' transaction reports.

G. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-CTA/CQ-2003-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of CTA.

All submissions should refer to File No. SR-CTA/CQ-2003-01 and be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-32181 Filed 12-30-03; 8:45 am]

BILLING CODE 8010-01-P

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[8] 15 U.S.C. 78k-1(c)(1)(D).

[9] 17 CFR 240.11Aa3-1.

[10] 17 CFR 200.30-3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48984; File No. SR-CTA/CQ-2003-02]

Consolidated Tape Association; Notice of Filing of the Sixth Substantive Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Fourth Substantive Amendment to the Restated Consolidated Quotation Plan and Amendment No. 1 Thereto

December 23, 2003.

Pursuant to Rule 11Aa3-2[1] under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on November 28, 2003, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan Participants ("Participants")[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the CTA and CQ Plans (collectively, the "Plans"). The proposal represents the 6th substantive amendment made to the Second

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[1] 17 CFR 240.11Aa3-2.

[2] Each Participant executed the proposed amendments. The Participants are the American Stock Exchange LLC ("Amex"); Boston Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc.; National Association of Securities Dealers, Inc.; New York Stock Exchange, Inc.; Pacific Exchange, Inc.; and Philadelphia Stock Exchange, Inc.

Restatement of the CTA Plan and the 4th substantive amendment to the Restated CQ Plan, and reflects several changes unanimously adopted by the Participants. The proposed amendments would separate the functions of administering the contracts into which vendors and others enter for the purpose of receiving and using market data. On December 23, 2003, the Participants submitted Amendment No. 1 to the proposed amendments.[3] The Commission is publishing this notice to solicit comments from interested persons on the proposed amendments to the Plans.

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2 [4]

Since 1989, NYSE has performed certain administrative functions on behalf of the Network B Administrator.[5] These functions include procuring and maintaining the contracts by which vendors and others receive and use the market data that both Network A and Network B make available.[6] NYSE executes the Consolidated Vendor Form on behalf of itself, the Network B administrator and the other Plan Participants.

The Participants propose to once again divide the contract-administration function between the Network A administrator (NYSE) (for the receipt and use of Network A market data) and the Network B administrator (Amex) (for the receipt and use of Network B market data). To make the separation of contract functions possible, the amendments propose to replace the Consolidated Vendor Form with two new forms, a "Network A Consolidated Vendor Form" and a "Network B Consolidated Vendor Form."

Under the proposal, the Amex would assume all contract-administration functions for the Network B Consolidated Vendor Form and would execute those forms on behalf of itself and the other Network B Participants. The NYSE would continue to perform the contract-administration functions for Network A and would execute the Network A Consolidated Vendor Form on behalf of itself and the other Network A Participants.

In terms of substance, the Network A Consolidated Vendor Form and the Network B Consolidated Vendor Form would offer the same terms and conditions as does the Consolidated Vendor Form. The only difference would be that the Consolidated Vendor Form governs the receipt and use of both Network A and Network B market data, whereas the Network A Consolidated Vendor Form governs the receipt and use of Network A market data and the Network B Consolidated Vendor Form will govern the receipt and use of Network B market data.

The Participants originally submitted the Consolidated Vendor Form to the Commission on October 16, 1989.[7] They made certain revisions to the form in response to changes recommended by commenters and re-filed the Consolidated Vendor Form for immediate effectiveness in August 1990.[8] In conjunction with its submission of amended and restated CTA and CQ Plans in December 1995, the Participants submitted a revised version of the Consolidated Vendor Form to the Commission. That revised version made non-substantive changes to conform the form's language to the language in the Plans and to provide greater clarity and standardization in the definitions. The Commission approved the restated Plans, including the revised version of the Consolidated Vendor Form, in May 1996.[9] The amendments propose the first changes to the Consolidated Vendor Form since then.

The Participants believe that the filing of the proposed amendments is in fulfillment of the national market system objectives regarding the dissemination of market information as anticipated by sections 11A(a)(1)(C),[10] 11A(a)(1)(D) [11] and 11A(a)(3)(B) [12] of the Act.

B. Governing or Constituent Documents

The proposed amendments would replace the Consolidated Vendor Form with a new Network A Consolidated Vendor Form and a new Consolidated Network B Vendor Form.

C. Development and Implementation of Amendments

Under the proposal, the Amex would assume Network B contract-administration functions within 90 days from the Commission's approval of these proposed amendments. The network administrators would commence to use the Network A Consolidated Vendor Form and the Network B Consolidated Vendor Form at that time. The Participants state that they intend to notify vendors and other interested parties, both in writing and through verbal contact, of the two new forms.

D. Analysis of Impact on Competition

The Participants believe that the proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of section 11A(c)(1)(D) of the Act.[13]

E. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

The Participants do not anticipate that they will enter into any new written understandings or agreements relating to the interpretation of the Plans or to conditions for becoming a sponsor or participant in the Plans.

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[3] *See* letter to Jonathan G. Katz, Secretary, Commission, from Thomas E. Haley, Vice President of Market Data, NYSE dated December 22, 2003 ("Amendment No. 1"). Amendment No. 1 makes a technical correction to the proposed amendments.

[4] 17 CFR 240.11Aa3–2.

[5] In 1989, the Participants introduced the Consolidated Vendor Form and that form of vendor agreement is still in use. *See* Securities Exchange Act Release No. 27498 (December 4, 1989), 54 FR 50828 (December 11, 1989). The Consolidated Vendor Form applies to the receipt and use of Network B market data, as well as Network A market data. Pursuant to delegated authority, NYSE has administered that consolidated vendor form on behalf of the Network B Participants as well as on behalf of the Network A Participants. Prior to the introduction of that form of vendor agreement, NYSE administered the Network A vendor agreements on behalf of the Network A Participants and the Amex administered the Network B vendor agreements on behalf of the Network B Participants.

[6] The form of contract that is the subject of the proposal is the form of contract (the Consolidated Vendor Form) that the Participants require "Customers" to enter into for their receipt and use of the market data that the Participants make available under the Plans. "Customers" include (1) vendors, (2) internal and other data redistributors, and (3) those that internally use market data for the purposes that are subject to the Plans' program classification charges. The Consolidated Vendor Form constitutes Exhibit C to each Plan.

End users that do not redistribute data and do not use it for the purposes that are the subject of the program classification charges receive the data pursuant to "subscriber" forms of agreement. NYSE, as the Network A administrator, currently administers the Network A form of that agreement. The Amex, as the Network B administrator, currently administers a Network B form of that agreement. The amendments do not propose any change to those subscriber forms.

[7] *See* Securities Exchange Act Release No. 27498 (December 4, 1989), 54 FR 50828 (December 11, 1989).

[8] *See* Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990).

[9] *See* Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996).

[10] 15 U.S.C. 78k–l(a)(1)(C).

[11] 15 U.S.C. 78k–l(a)(1)(D).

[12] 15 U.S.C. 78k–l(a)(3)(B).

[13] 15 U.S.C. 78k–l(c)(1)(D).

F. Approval by Sponsors in Accordance With Plan

In accordance with Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, each of the Participants has approved the amendments.

G. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

H. Terms and Conditions of Access

Because the two new forms make no changes in substance to the Consolidated Vendor Form, the amendments do not change the terms and conditions of access, other than that the Amex, rather than the NYSE, would now service those wishing to receive access to the Network B data feed.

I. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 [14]

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Because the two new forms make no changes in substance to the Consolidated Vendor Form, the proposed amendments do not change the terms of access to transaction reports, other than that the Amex, rather than NYSE, would now service those wishing to receive access to the Network B data feed.

G. Identification of Marketplace of Execution

Not Applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR–CTA/CQ–2003–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of CTA. All submissions should refer to File No. SR–CTA/CQ–2003–02 and be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32182 Filed 12–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48964; File No. SR–Amex–2003–107]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Six-Month Extension of the Exchange's Pilot Program for Automatic Execution of Orders for Exchange Traded Funds

December 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on December 5, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex seeks a six-month extension of Amex Rule 128A to continue its pilot program for the automatic order execution feature ("Auto-Ex") for Exchange Traded Funds ("ETFs").

The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

On June 19, 2001, the Commission approved the Exchange's proposal, adopted as Amex Rule 128A, to implement an automatic execution system for ETFs on a six-month pilot program basis.[3] On December 20, 2001, June 17, 2002, December 30, 2002, and July 2, 2003, the pilot was extended for consecutive terms of six months.[4] The Exchange now seeks to extend the pilot for an additional six months.

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[14] 17 CFR 240.11Aa3–1.

[15] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Since 1986, the Exchange has had an Auto-Ex feature for eligible orders in listed options. The Chicago Board Options Exchange, Philadelphia Stock Exchange, and Pacific Exchange established similar Auto-Ex features at about the same time as Amex, and the newest options exchange, the International Securities Exchange, also features automatic order execution. Auto-Ex, accordingly, has been a standard feature of the options markets for a number of years.

In 1993, Amex commenced trading Standard and Poor's Depositary Receipts ("SPDRs®"), the first ETF to be listed and traded on Amex. ETFs are individual securities that represent a fractional, undivided interest in a portfolio of securities. Currently, more than 100 ETFs are listed on Amex. Like an option, an ETF is a derivative security, and, according to Amex, its price is a function of the value of the portfolio of securities underlying the ETF. Thus, the Exchange asserts that, as is the case with options, it is not the price discovery market for ETFs, and that the price discovery market is the market or markets where the underlying securities trade.

The Exchange is now proposing to extend its current Auto-Ex technology for an additional six months to ETFs listed under Amex Rules 1002, 1002A, and 1202. Amex represents that this will continue to provide investors that send eligible orders to the Exchange with faster executions than they otherwise would receive. The Exchange believes that many investors desire rapid executions in trading securities that are priced derivatively since the value of the underlying instruments may fluctuate during order processing. Amex, moreover, will continue under the pilot extension to incorporate a price improvement algorithm into Auto-Ex for ETFs, which Amex expects will provide investors with better execution prices on their orders. The price improvement algorithm works in the following manner:

When Amex establishes the National Best Bid or Offer ("NBBO"), Auto-Ex is programmed to execute eligible incoming ETF orders at the Amex Published Quote ("APQ") plus a programmable number of trading increments with respect to the Amex bid, and less a programmable number of trading increments in the case of the Amex offer.[5] For example, if the APQ were 90.10 to 90.20, and the APQ constituted the NBBO, incoming sell orders might be automatically executed at 90.12 (the Amex bid plus two ticks) and incoming buy orders might be executed at 90.18 (the Amex offer less two ticks).

If Amex does not establish the NBBO, Auto-Ex is programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ.[6] Auto-Ex executes an eligible order at an improved price relative to the APQ unless such execution would result in a trade-through with respect to the price of an away market that is a participant in the Intermarket Trading System ("ITS").[7] If a trade-through would result, the order is routed to the specialist for processing through the Amex electronic order book.

For example, assume that Auto-Ex is programmed to execute an order at the Amex bid plus two ticks. If the Amex bid were 90, and an away ITS market were bidding 90.01, an incoming sell order would be automatically executed on Amex at 90.02. Continuing with this example, if the away market were bidding 90.02, an incoming sell order would be automatically executed on Amex at 90.02 (matching the away market). If the away market were bidding 90.03, the incoming sell order would not be automatically executed. Instead, it would be routed to the specialist for electronic processing through the Amex electronic order book.

The amount of price improvement that the system provides, both when Amex establishes the NBBO and when it does not, is determined by the Auto-Ex Enhancements Committee ("Committee") upon the request of a specialist and may differ among ETFs. The Committee consists of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association, and the Floor Brokers Association, respectively. The Exchange believes that the amount of price improvement will vary among securities based upon factors such as the width of the spread, the volatility of the underlying basket of securities underlying the ETF, and liquidity of available hedging vehicles. The amount of price improvement may be adjusted intra-day by the Committee.

As detailed in Amex Rule 128A, Auto-Ex for ETFs with price improvement is unavailable when the spread is at a specified minimum and maximum variation that may be adjusted security to security. The Committee determines, upon the request of a specialist, the minimum and maximum spreads at which Auto-Ex is unavailable. As further provided by Amex Rule 128A, Auto-Ex is also unavailable with respect to incoming sell orders when the Amex bid is for 100 shares, and similarly unavailable with respect to incoming buy orders when the Amex offer is for 100 shares.

Orders that are otherwise Auto-Ex eligible orders are also routed to the specialist, and not automatically executed, in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange is experiencing communications or systems problems, "fast markets," or delays in the dissemination of quotes. Members and member organizations are notified when the Exchange has determined that quotes are not reliable prior to disengaging Auto-Ex.

Specialists and Registered Options Traders ("ROTs") that sign onto the system are automatically allocated the contra side of Auto-Ex trades for ETFs. Due to the automatic price improvement feature, the specialists and ROTs that sign onto Auto-Ex for ETFs are deemed to be on parity for purposes of allocating the contra side of ETF Auto-Ex trades. Amex Rule 128A incorporates the following methodology for the allocation of the contra side to Auto-Ex ETF trades:

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[3] *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001) (approval of File No. SR–Amex–2001–29).

[4] *See* Securities Exchange Act Release Nos. 45176, 66 FR 67582 (December 31, 2001); 46085, 67 FR 42836 (June 25, 2002); 47105, 68 FR 592 (January 6, 2003); and 48126, 68 FR 41189 (July 10, 2003) (notices of filing and immediate effectiveness of File Nos. SR–Amex–2001–105, SR–Amex–2002–42, SR–Amex–2002–99, and SR–Amex–2003–61, respectively).

[5] The term "establish," as used in Amex Rule 128A, means that the APQ is currently at the NBBO, regardless of whether Amex was the first exchange to be at that price. *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001).

[6] Amex represents that once an order that is Auto-Ex eligible is sent to the Exchange, the person that initiated the order has no control over its execution. This is the case regardless of whether the order is executed by Auto-Ex or is executed by the specialist because Auto-Ex is unavailable. If the order is routed to the specialist for handling because Auto-Ex is unavailable, the specialist does not know if the order is for the account of a broker-dealer or for the account of a customer. This information is in the Exchange's order processing systems and is unavailable to the specialist.

[7] The number of trading increments designated for price improvement when Amex establishes the NBBO may be different than the number of increments designated for price improvement when Amex does not establish the NBBO. *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001).

Number of ROTs Signed on to Auto-Ex in a Crowd	Approximate Number of Trades Allocated to the Specialist Throughout the Day ("Target Ratio Percent")	Approximate Number of Trades Allocated to ROTs Signed on to Auto-Ex Throughout the Day ("Target Ratio Percent")
1	60	40
2–4	40	60
5–7	30	70
8–15	25	75
16 or more	20	80

At the start of each trading day, the sequence in which trades are allocated to the specialist and ROTs signed onto Auto-Ex is randomly determined. Auto-Ex trades then are automatically allocated in sequence on a rotating basis to the specialist and to the ROTs that have signed onto the system so that the specialist and the crowd achieve their "target ratios" over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex divides the trade into lots of 100 shares each. Each lot is considered a separate trade for purposes of determining target ratios and allocating trades within Auto-Ex.

Round lot orders delivered to the post electronically for 2,000 shares or less are eligible for Auto-Ex for ETFs. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. The Exchange represents that, if orders for such market makers were eligible for Auto-Ex with price improvement, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for other investors. (Orders for Amex ROTs are ineligible for Auto-Ex for ETFs pursuant to Commentaries .04 and .05 to Amex Rule 111 and Amex Rule 950(c).)[8]

The specialist may request the Exchange to increase the maximum size of Auto-Ex eligible orders. Under Amex Rule 128A, such requests are reviewed by the Committee, which approves, disapproves, or conditionally approves such requests. Amex Rule 128A directs the Committee to balance the interests of investors, the specialist, ROTs in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders. The Committee also may consider requests from the specialist or ROTs to reduce the size of Auto-Ex eligible orders, balancing the same interests that it would consider in reviewing a request to increase the size of Auto-Ex eligible orders. The Committee, however, is not permitted to reduce the size of Auto-Ex eligible orders below 2,000 shares.

In addition, under Amex Rule 128A, the Committee may delegate its authority to one or more Floor Governors. Amex Rule 128A provides, however, that the Committee must meet promptly to review a Floor Official's decision in the event that a Floor Governor acts pursuant to its delegated authority.

Amex Rule 128A further provides that, in the event of system problems or unusual market conditions, a Floor Governor is permitted to reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares. Any such change is temporary and lasts only until the end of the unusual market condition or the correction of the system problem. Members and member organizations are notified when the size of Auto-Ex eligible orders is adjusted due to system problems or unusual market conditions.

Amex Rule 128A also provides that the Chairman and Vice Chairman of the Exchange, acting jointly, determine which ETFs are Auto-Ex eligible.

2. Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[9] in general, and with section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposed rule change will allow the Auto-Ex for ETFs pilot program to continue for an additional six months. The Exchange believes that the proposal also facilitates the comparison and settlement of trades since Auto-Ex transactions result in "locked-in" trades. Moreover, Auto-Ex for ETFs automatically provides investors with price improvement on their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposal, in fact, will enhance competition among markets and market makers and thereby benefit investors by allowing the Exchange to continue to provide Auto-Ex for ETFs with price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

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[8] The Commission notes that it recently approved a rule change by Amex that eliminated the 10-second "speed bump" on the entry of successive Auto-Ex order for ETFs, while allowing it to be reinstated if conditions warrant its reintroduction. *See* Securities Exchange Act Release No. 48818 (November 21, 2003), 68 FR 67496 (December 2, 2003) (approving File No. SR–Amex–2003–28).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

Amex has requested that the Commission waive the usual five-business-day notice period and the usual 30-day pre-operative waiting period. The Commission notes that this proposal simply extends the existing pilot program and does not alter the pilot in any way. As a result, the Commission believes that it is consistent with the protection of investors and the public interest to waive the five-business-day notice period and accelerate the operative date so that the pilot can continue without delay and because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.[13] This pilot extension will expire on June 19, 2004.

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32172 Filed 12–30–03; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48975; File No. SR–Amex–2003–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Percentages Used To Allocate Executed Options Contracts Between the Specialist and Registered Options Traders

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 14, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 18, 2003, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend Amex Rules 933 and 950 to revise the percentages used to allocate executed contracts between the specialist and registered options traders. In addition, the Exchange is correcting the paragraph reference to the allocation provisions in Amex Rule 933 from (d) to (h).

Below is the text of the proposed rule change, as amended. Deleted language is in brackets. Proposed new language is *italicized*.

* * * * *

Rule 933 Automatic Execution of Options Orders

(a) through (g) No change.

[(d)] *(h)(i)* Options orders executed through Auto-Ex shall be automatically allocated on a rotating basis to the specialist and to each trader that has signed on to Auto-Ex. Auto-Ex trades of ten contracts or less are allocated to each Auto-Ex participant as set forth below. If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant. Each lot is considered a separate trade for purposes of allocating trades within Auto-Ex. The rotation is designed to provide that the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex in a given *equity* option class is as follows:

Number of traders signed on to Auto-Ex	*Approximate number of trades allocated to the specialist*	*trades allocated to the traders signed on to Auto-Ex (as a group)*
1	*60%*	*40%*
2	*40%*	*60%*
3 or more	*30%*	*70%*

In addition, for options on Exchange Traded Funds, Trust Issued Receipts and Indexes, the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex is as follows:

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[1] 15 U.S.C. 78S(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 17, 2003 ("Amendment No. 1"). In Amendment No. 1, Amex made technical corrections to the proposed rule text and amended the purpose section of the proposal to reflect the re-institution of the Exchange-sponsored payment for order flow program.

Number of traders signed on to Auto-Ex	*Approximate number of trades allocated to the specialist*	*Approximate number of trades allocated to the traders signed on to Auto-Ex (as a group)*
1	*60%*	*40%*
2	*40%*	*60%*
3–7	*30%*	*70%*
8 or more	*25%*	*75%*

(ii) Notwithstanding the foregoing, in the event the Exchange establishes a payment for order flow program, in which it collects a fee from the registered options traders, the rotation designed to provide that the allocation of Auto-Ex trades between the specialist and traders signed on to Auto-Ex in a given option class is as follows:

Number of traders signed on to Auto-Ex	*Approximate number of trades allocated to the specialist*	*Approximate number of trades allocated to the traders signed on to Auto-Ex (as a group)*
1	*60%*	*40%*
2–4	*40%*	*60%*
5–7	*30%*	*70%*
8–15	*25%*	*75%*
16 or more	*20%*	*80%*

* * * Commentary

.01 through .03 No change.

* * * * *

Rules of General Applicability

Rule 950

(a) through (c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply.

* * * Commentary

.01 through .05 No change.

.06(i)*(A)* When two or more bids (offers) are made simultaneously by the specialist dealing for his own account and by registered options traders, all such bids (offers) shall be on parity and any contracts sold (bought) in execution of such bids (offers) shall be divided among the specialist and registered options trader(s) so that the specialist shall receive the following percentage of contracts executed and the registered options traders shall divide the remainder in accordance with Rule 950(n), Commentary .03(a)(iii)[:]. *The following percentages shall be in effect for equity option classes:*

Number of traders on parity	*Approximate percentage of contracts allocated to the specialist*	*Approximate percentage of contracts allocated to the traders (as a group)*
1	*60*	*40*
2	*40*	*60*
3 or more	*30*	*70*

In addition, the following percentages shall be in effect for options on Exchange Traded Funds, Trust Issued Receipts and Indexes:

Number of traders on parity	*Approximate percentage of contracts allocated to the specialist*	*Approximate percentage of contracts allocated to the traders (as a group)*
1	*60*	*40*
2	*40*	*60*
3–7	*30*	*70*
8 or more	*25*	*75*

Notwithstanding the foregoing, neither the specialist nor a registered options trader will be allocated more executed contracts than the number of contracts representing the specialist's or registered options trader's portion of the aggregate quotation size, as that term is used in Rule 958A, except, when the number of executed contracts to be allocated exceeds the aggregate quotation size disseminated for that options series.

(B) In the event the Exchange establishes a payment for order flow program, in which it collects a fee from the registered options traders, when two or more bids (offers) are made simultaneously by the specialist dealing for his own account and by registered options traders, all such bids (offers) shall be on parity and any contracts sold (bought) in execution of such bids (offers) shall be divided among the specialist and registered options trader(s) so that the specialist shall receive a percentage of the contracts executed and the registered options traders shall divide the remainder in accordance with Rule 950(n), Commentary .03(a)(iii). The following percentages shall be in effect for equity option classes:

Number of traders on parity	Approximate [number] *percentage* of contracts allocated to the specialist	Approximate [number] *percentage of contracts allocated to the traders (as a group)*
1	60	40
2–4	40	60
5–7	30	70
8–15	25	75
16 or more	20	80

Notwithstanding the foregoing, neither the specialist nor a registered options trader will be allocated more executed contracts than the number of contracts representing the specialist's or registered options trader's portion of the aggregate quotation size, as that term is used in Rule 958A, except, when the number of executed contracts to be allocated exceeds the aggregate quotation size disseminated for that options series.

(ii) No change.

.07 *(i)* The Exchange's automated allocation system, known as Quick Trade, when activated for a particular transaction in a given options series, will provide for the automatic allocation on a rotating basis of executed orders to the specialist and participating registered options traders. Executed orders of ten contracts or less are allocated to Quick Trade participants as set forth below. If an executed order is greater than ten contracts, Quick Trade divides the execution into ten or less lots and allocates a lot to each participant. Each lot is considered a separate trade for purposes of allocating trades within Quick Trade. The rotation is designed to provide that the allocation of trades between the specialist and traders signed on to Quick Trade in a given *equity* option [series] *class* is as follows:

Number of traders signed on to quick trade	*Approximate number of trades allocated to the specialist*	*Approximate number of trades allocated to the traders signed on to quick trade (as a group)*
1	*60%*	*40%*
2	*40%*	*60%*
3 or more	*30%*	*70*

In addition, for options on Exchange Traded Funds, Trust Issued Receipts and Indexes, the allocation of trades between the specialist and traders signed on to Quick Trade is as follows:

Number of trades signed on to quick trade	*Approximate number of trades allocated to the specialist*	*Approximate number of trades signed on to quick trade (as a group)*
1	*60%*	*40%*

Number of trades signed on to quick trade	*Approximate number of trades allocated to the specialist*	*Approximate number of trades signed on to quick trade (as a group)*
2	*40%*	*60%*
3–7	*30%*	*70%*
8 or more	*25%*	*75%*

(ii) Notwithstanding the foregoing, in the event the Exchange establishes a payment for order flow program, in which it collects a fee from the registered options traders, the rotation is designed to provide that the allocation of trades between the specialist and traders signed on to Quick Trade in a given option class is as follows:

Number of traders *signed* on to quick trade	Approximate [percentage] *number* of trades allocated to the specialist	Approximate [percentage] *number* of trades allocated to the traders signed on to quick trade (as a group)
1	60%	40%
2–4	40%	60%
5–7	30%	70%
8–15	25%	75%
16 or more	20%	80%

(e) through (p) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 24, 2003, the Commission approved amendments to Amex Rules 933 and 950(d), codifying longstanding practices regarding the allocation of options contracts executed on the Exchange and, among other things, setting forth in Commentary .06 to Amex Rule 950(d) allocation ratios by which contracts are divided between registered options traders and specialists on parity.[4] In addition, on May 22, 2002, the Commission approved the implementation of Quick Trade, an automated allocation system activated for particular kinds of transactions that allocates trades between specialists and registered options traders using specific allocation ratios set forth in Amex Rule 950(d), Commentary .07.[5] The Exchange is now proposing to revise the allocation ratios set forth in Amex Rule 933 and in Commentaries .06 and .07 of Amex Rule 950(d), as discussed below, in connection with the re-institution of an exchange-sponsored payment for order flow program.[6]

Recently, the Exchange re-instituted an exchange-sponsored payment for order flow program. The Exchange has traditionally opposed payment for order flow, believing, among other things, that it can create serious conflicts of interest and can compromise a broker's fiduciary obligation to achieve best execution of the broker's customers' orders. However, given the institution of payment for order flow programs at other options exchanges and the continuation of payment for order flow programs by some specialist and market making organizations, the Exchange believes that the re-institution of payment for order flow is necessary to respond to these competitive pressures. Amex represents that most specialists and registered options traders are fundamentally against the practice of payment for order flow, but they recognize its necessity, especially when specialists and market makers at other exchanges engage in the practice using either their own funds or funds provided by their exchange.

The Exchange's re-instituted payment for order flow program collects a marketing fee of $0.40 per contract from both specialists and registered options traders. The Exchange represents that the marketing fee, however, will only be collected on those specialist and registered options trader transactions involving customer orders from firms that accept payment for directing their orders to the Exchange ("payment-accepting firms"). The Exchange also represents that the specialist is solely responsible for negotiating payment for order flow arrangements with payment-accepting firms. Amex asserts that specialists would not be required to negotiate with any payment-accepting firms. Accordingly, the marketing fee would be assessed only on those specialist and registered options trader transactions resulting from orders from customers of payment-accepting firms with whom a specialist has negotiated a payment for order flow arrangement. Amex represents that the current payment for order flow program in place at the Exchange also allows registered options traders to vote to eliminate the program in select classes.[7] The Exchange asserts that a vote to eliminate the marketing fee will result in registered options traders not contributing to the payment for order flow program in some option classes, which in turn will require the specialists in those classes to pay for order flow using their own funds. Amex represents that one issue of concern to the specialists is that, while they pay for order flow out of their own funds, the order flow that is received by the Exchange is shared with the registered options traders who will not be contributing to the payment for order flow program.

While specialists generally receive a larger share of order flow when on parity with registered options traders, the percentages and practices codified in Amex Rule 933 and Commentaries .06 and .07 of Rule 950(d) were established many years ago, and current payment for order flow practices had not been taken into consideration. Given the specialists' concerns, the Exchange has determined that a revision to the percentages set forth in these rules for those options classes in which the Exchange does not collect a payment for order flow marketing fee is appropriate. The Exchange has also determined that the percentages will vary depending on the type of option, whether equity option or option on an Exchange Traded Fund, Trust Issued Receipt, or index. The proposed revised percentages for equity options are set forth below:[8]

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[4] *See* Securities Exchange Act Release No. 47729 (April 24, 2003) 68 FR 23344 (May 1, 2003) (approving File No. SR–Amex SR–00–30).

[5] *See* Securities Exchange Act Release No. 45974 (May 22, 2002) 67 FR 37886 (May 30, 2002) (approving File No. SR–Amex–2001–65). The allocation ratios in Commentary .07 to Amex Rule 950(d) are the same as those in Commentary .06.

[6] *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003) (File No. SR–Amex–2003–50).

[7] *See* Securities Exchange Act Release No. 48577 (September 30, 2003), 68 FR 57943 (October 7, 2003)(File No. SR–Amex–2003–80). The Commission notes that Amex instituted the procedures by which specialists and registered options traders may determine whether to continue to participate in the payment for order flow program on a six-month pilot basis.

[8] Amex is also proposing comparable revisions to the percentages for traders signed on to Quick Trade.

Number of Traders on Parity (or Signed on to Auto-Ex or Quick Trade)	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Specialist	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Traders (as a group)
1	60%	40%
2	40%	60%
3 or more	30%	70%

The revised percentages for options on ETFs, Trust Issued Receipts, and Indexes are set forth below:

Number of Traders on Parity (or Signed on to Auto-Ex or Quick Trade)	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Specialist	Approximate Percentage of Option Contracts (or Number of Trades on Auto-Ex or Quick Trade) Allocated to the Traders (as a group)
1	60%	40%
2	40%	60%
3–7	30%	70%
8 or more	25%	75%

As discussed more fully in Amex's recently approved proposal to codify these percentages, the Exchange believes that it is appropriate to provide a greater participation to specialists since they have responsibilities and are subject to certain costs that registered options traders do not have. Specifically, some of these additional responsibilities and costs include paying for order flow, the fixed staffing costs committed to market making in a particular security whether it is actively traded or not, and the costs associated with participating in educational and marketing functions to attract order flow. However, for those options classes in which the Exchange has a payment for order flow program that collects a fee from registered options traders for the products set forth above, the allocation percentages will revert back to the percentages currently set forth in Amex Rule 933(h)(ii) and Commentaries .06(i)(B) and .07(ii) of Amex Rule 950(d). Finally, the Exchange is taking the opportunity to correct the paragraph reference in Amex Rule 933 from (d) to (h).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[9] in general and furthers the objectives of section 6(b)(5) of the Act[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR-Amex-2003-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of Amex. All submissions should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48995; File No. SR–Amex–2003–102]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Extend on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable to Trading in Nasdaq Securities

December 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. On December 23, 2003, the Amex amended the proposed rule change.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Eric Van Allen, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 23, 2003, replacing Form 19b–4 in its entirety ("Amendment No. 1").

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend paragraph (j) of Amex Rule 118 ("Trading in Nasdaq National Market Securities") and Commentary .05 of Amex Rule 205 ("Manner of Executing Odd-Lot Orders") that were implemented on a pilot program basis and to extend the pilot program for an additional six-month period ending on June 27, 2004. The text of the proposed rule change is set froth below. Proposed new language is in *italics*, and proposed deletions are in [brackets].

* * * * *

Trading in Nasdaq National Market Securities

Rule 118. (a) through (i) No change.

(j) Odd-Lot Orders—Odd-lot orders in Nasdaq National Market securities shall be executed in the following manner:

(i) Market and Executable Limit Orders—A market or executable limit order shall *be executed* [receive automatic execution], unless otherwise provided herein, at the price of the qualified national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the Amex Order File. *An order entered through the Amex Order File shall receive automatic execution at such price.*

All market [and executable limit] odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall receive automatic execution at the price of the first round-lot or Part of Round-Lot (PRL) transaction on the Exchange. *Executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall be executed manually at the price of the first round-lot or PRL transaction on the Exchange.*

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"); provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1.

(ii) Limit Orders; Stop Orders; Stop-Limit Orders; Other Order Types—Unless otherwise provided herein, non-executable limit, stop, and stop limit orders shall be executed in accordance with Rule 205, Parts A(2), A(3), and A(4), respectively. Orders to buy or sell "at the close" shall be filled at the price of the closing round-lot sale on the Exchange. An odd-lot order received prior to the close but not filled either before the close or on the close may be filled after the close in accordance with the provisions of Rule 205, Part C(1).

(iii) Non-Regular Way Trades—Non-regular way trades shall be effected in accordance with the provisions of Rule 205, Part C(2).

(iv) Locked and Crossed Market Conditions.

(a) For market and executable limit orders entered after the opening, when the national best bid and offer is in a locked market condition (*i.e.*, the bid and offer are the same), odd-lot buy and sell orders will be executed at that locked market price.

(b) Crossed Market Condition—When a crossed market condition exists (*i.e*, bid higher than offer) and the national best displayed bid is higher than the national best displayed offer by $.05 or less, market [and executable limit] orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest $.01. When the national best displayed bid is higher than the offer by more then $.05, an odd-lot *market* order will not receive automatic execution and is to be executed manually at the time a crossed market condition no longer exists, in accordance either with subparagraph (i) or (iv)(a) of this paragraph (j), as appropriate. *An executable limit order will receive automatic execution at the crossed market national best displayed bid (in the case of an order to sell) or at the crossed market national best displayed offer (in the case of an order to buy).*

(v) No odd-lot differential may be charged on any odd-lot orders, except for non-regular way trades effected under Rule 118 (j)(iii).

(vi) Odd-lot orders in Nasdaq National Market securities are permitted to be marked ("short") and are acceptable for all order types, and Rule 7, Commentary .02 shall apply to such orders.

(k) No change.

* * * * *

Manner of Executing Odd-Lot Orders

Rule 205

Commentary

.01 through .04 No Change.

.05 Odd-lot orders in Nasdaq National Market securities shall be executed in accordance with Rule 118(j).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and the basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved, and the Exchange implemented, a pilot program for odd-lot order[6] executions in Nasdaq securities transacted on the Exchange pursuant to unlisted trading privileges.[7] Paragraph (j) of Amex rule 118 describes the Exchange's odd-lot execution procedures for Nasdaq securities, and Commentary .05 to Amex Rule 205 references the odd-lot procedures described in Amex rule 118(j).

In connection with the due diligence required for upcoming enhancements to the Exchange's automatic execution procedures for Nasdaq odd-lot orders, the Exchange represents that its staff found inconsistencies between the current automatic execution procedures and the text of Amex Rule 118(j) with respect to certain order types. Accordingly, the Exchange proposes amendments to Amex Rule 118(j) to correct these discrepancies. In addition, the Exchange proposes a six-month extension for the pilot program.

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[6] An odd-lot order is an order for less than 100 shares.

[7] *See* Securities Exchange Act Release Nos. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002) (SR–Amex–2002–56) and 48174 (July 14, 2003), 68 FR 43409 (July 22, 2003) (SR–Amex–2003–56).

a. Amendments to Odd-Lot Execution Procedures

The Exchange proposes to amend subparagraph (j)(i) of Amex Rule 118 ("Market and Executable Limit Orders") to state that, after the opening, only odd-lot market orders and executable odd-lot limit orders received through the Amex Order file would be automatically executed at the qualified national best bid or offer. Odd-lot orders received at the trading post (*e.g.*, handled by a floor broker) would be manually executed at the qualified national best bid or offer. Furthermore, the Exchange proposes to amend subparagraph (j)(i) of Amex Rule 118 to state that executable odd-lot limit orders entered before the opening of Exchange trading would be executed manually at the price of the first round-lot or Part of Round Lot ("PRL") transaction on the Exchange. The Amex represents that, currently, only odd-lot market orders entered before the opening are held in accumulation and receive automatic execution at the price of the first round lot or PRL transaction.

The Exchange also proposes to amend subparagraph (j)(iv)(b) of Amex Rule 118 to more accurately describe the Exchange's odd-lot execution procedures in crossed markets (*i.e.*, where the bid is higher than the offer). In a crossed market, odd-lot market orders, but not executable odd-lot limit orders, would receive automatic executions at the mean of the bid and offer prices when the displayed national best bid is higher than the displayed national best offer by $.05 or less. When the displayed national best bid is higher than the displayed national best offer by more than $.05, odd-lot market orders, but not executable odd-lot limit orders, would be executed manually when the crossed market no longer exists in accordance with subparagraph (j)(i) of Amex Rule 118. Executable odd-lot limit orders would be automatically executed at the crossed market bid price (in the case of an order to sell) or at the crossed market offer price (in the case of an order to buy). For example, if the bid and offer were to be 20.10 and 20.00, respectively, an executable odd-lot sell limit order priced at 20.10 or less would be automatically executed at 20.10, and an executable odd-lot buy limit order priced at 20.00 or higher would be automatically executed at 20.00.

b. Extension of Odd-Lot Pilot Program

In addition to the abovementioned proposed amendments to paragraph (j) of Amex Rule 118, the Exchange seeks an extension of its odd-lot pilot program for an additional six-month period ending on June 27, 2004. The program was originally approved on August 2, 2002, for a six-month period, and was extended on July 14, 2003, for an additional six-month period ending on December 27, 2003.[8] The current odd-lot procedures have operated efficiently, and the Exchange has received no complaints or adverse comments from members or the public regarding odd-lot executions. Accordingly, the Exchange believes that it is appropriate to extend the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[9] in general, and the provisions of section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not: (1) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.[13] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.[14]

The Amex has requested that the Commission waive the 30-day operative delay. The Exchange represents that its current odd-lot procedures have operated efficiently, and that it has experienced nonoperational problems relating to odd-lot executions in Nasdaq securities under these procedures. Moreover, the Exchange states that it has received no adverse comments from its members or the public regarding such execution procedures, and believes that continued operation of the six-month pilot program beyond December 27, 2003, would continue to provide efficient execution of investors' odd-lot orders.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[15] Acceleration of the operative date will allow the Exchange to continue its pilot odd-lot execution procedures applicable to trading in Nasdaq securities without interruption for an additional six months, expiring on June 27, 2004. For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.

In addition, the Commission requests that the Exchange report any problems or complaints from members and the public regarding odd-lot execution procedures applicable to trading Nasdaq securities, and that the Amex submit any proposal to extend, or permanently approve, the pilot at least two months before the expiration of the six-month pilot.

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[8] *See id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[14] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on December 23, 2003, the date at which the Exchange filed Amendment No. 1.

[15] For purposes of accelerating the operative date of this proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comments letters should refer to File No. SR–Amex–2003–102. This file number should be included in the subject lien if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. AR–Amex–2003–102 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32184 Filed 12–30–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48990; File No. SR–CBOE–2003–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Chicago Board Options Exchange, Inc. Relating to Bid-Ask Differentials

December 23, 2003.

I. Introduction

On June 20, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit, under certain circumstances, a bid-ask differential of no more than $0.50 for options where the bid price is less than $2. The CBOE filed Amendments Nos. 1, 2, and 3 to the proposal on July 3, 2003,[3] September 10, 2003,[4] and October 29, 2003,[5] respectively.

The proposed rule change and Amendment Nos. 1, 2, and 3 were published for comment in the **Federal Register** on November 19, 2003.[6] The Commission received no comments regarding the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Currently, the CBOE's rules establish a bid/ask differential of $0.25 for options where the bid price is less than $2.[7] The CBOE proposes to amend CBOE Rule 8.7, "Obligations of Market Makers," to allow the appropriate Market Performance Committee to establish bid-ask differentials that are no more than $0.50 wide ("double-width") for options where the bid price is less than $2 when the primary market for the underlying security: (1) Reports a trade outside of its disseminated quote, including any Liquidity Quote;[8] or (2) disseminates an inverted quote (together, the "Triggering Events").

The double-width relief must terminate automatically when the Triggering Event ceases. In this regard, the CBOE states that it will program its autoquote systems to widen the quote to double the bid-ask differential automatically upon the occurrence of either of the two Triggering Events.[9] The quotes will remain double-width until the Triggering Event ceases, when the CBOE's systems automatically will return the quote to the normal bid-ask differential. Accordingly, if the primary market's quotes invert and the CBOE quotes double-wide, the CBOE's quotes must return to normal width when the underlying market's quotes no longer are inverted. Similarly, if the primary market prints a trade outside of its disseminated quote, the CBOE may quote double-wide until the print is no longer outside of the disseminated quote (*i.e.*, until the quotes move to encompass the previous print or the next print is inside of the disseminated quote).[10] A market maker will be able to utilize the double-width relief only if the market maker has an automated quotation system that returns the market maker's quotes to normal width upon the termination of the Triggering Event.[11] Double-width relief will not be available to market makers who must rely on manual input to restore quote values to normal width.[12]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[14]

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[16] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, CBOE, to Deborah Flynn, Division of Market Regulation ("Division"), Commission, dated July 2, 2003, and accompanying Form 19b–4 ("Amendment No. 1").

[4] *See* letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated September 9, 2003 ("Amendment No. 2").

[5] *See* letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated October 28, 2003 ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 48771 (November 12, 2003), 68 FR 65330.

[7] *See* CBOE Rule 8.7(b)(iv).

[8] The rules of the NYSE permit the dissemination, in selected securities, of a "Liquidity Bid" and a "Liquidity Offer" which reflect aggregated NYSE trading interest at a specific price interval below the best bid (in the case of a Liquidity Bid) or at a specific price interval above the best offer (in the case of a Liquidity Offer). See Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (File No. SR–NYSE–2002–55).

[9] *See* Amendment No. 1, *supra* note 3.

[10] *See* Amendment No. 3, *supra* note 5.

[11] *See* Amendment No. 3, *supra* note 5.

[12] *See* Amendment No. 3, *supra* note 5.

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this proposal, the Commission has considered the proposed rule's impact on

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The Commission believes that the proposal to permit CBOE market makers to widen their quotes for options where the bid price is less than $2 under specific and limited circumstances is reasonable because when one of the Triggering Events occurs it may be difficult to accurately price an option based on the security. In addition, the Commission believes that CBOE's proposal to program its systems, or to requires its market makers to program their systems, to automatically widen the quote upon the occurrence of a Triggering Event and to automatically return the quote to its normal bid-ask differential when the Triggering Event ceases should ensure that the double-width relief is only used when permitted under the rule. Accordingly, the Commission believes that the proposal is narrowly tailored to permit quote width relief only in the specific and limited circumstances provided in the proposal.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2003–25), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32176 Filed 12–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48982; File No. SR–CHX–2003–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Incorporated Relating to Automatic Quotations

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 26, 2003, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete an interpretation of CHX Article XX, Rule 7, which governs recognized quotations. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would delete an interpretation of CHX Article XX, Rule 7, which governs recognized quotations, because the Exchange believes that the provision is now obsolete. Specifically, the CHX seeks to delete an interpretation that prohibits specialists from disseminating automatically-generated quotations that are more than $.10 away from the Intermarket Trading System ("ITS") best bid or offer. This prohibition extends to all Dual Trading System (*i.e.*, listed) issues.[4]

Like many exchanges, the CHX has a functionality, commonly referred to as the "auto-quote" functionality, which its specialists may use to generate quotations automatically, based on the best bid or offer disseminated by another market. The auto-quote functionality typically is used by a CHX specialist to generate a quotation when there is no interest in the specialist's book that would be the basis for a quotation by the specialist.[5] When the CHX specialist is in auto-quote mode, CHX Article XX, Rule 7, Interpretation and Policy .02 prohibits the specialist from disseminating automatically-generated quotations that are more than $.10 away from ITS best bid or offer.[6]

Following the securities industry's transition to decimal pricing, the consolidated quotations in the national securities market "flicker" significantly throughout each trading day. Because the auto-quote functionality is based on a flickering quotation, quotations generated by the CHX auto-quote functionality correspondingly flicker, potentially resulting in confusion for order-sending firms (and even the specialist himself). Accordingly, the CHX believes that it is appropriate to remove the interpretation that mandates an auto-quote spread of $.10 or less, so that the CHX specialist may utilize the auto-quote functionality (when necessary) to generate a wider or different quotation that will not be subject to incessant flickering.[7]

Significantly, the CHX believes that this change is not only appropriate, but is mandated given recent changes in the way that systems capacity is allocated and paid for in the listed markets. Today, under an amendment to the Consolidated Quotation Association ("CQA") plan, each listed exchange is required to estimate the systems capacity needs associated with such exchange's anticipated quotation traffic for a given time period. SIAC, as the securities information processor ("SIP") for the listed markets, then bills each exchange for the systems capacity used by such exchange in disseminating its quotations. To the extent that an exchange exceeds its capacity estimates, the CQA plan provides for potentially significant financial penalties. Excessive quotation traffic is thus not only

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efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange expanded its discussion regarding the consequences of the proposed rule change, and also clarified that the proposed rule change was filed pursuant to section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

[4] There is no corresponding provision in the CHX rules relating to auto-quoting in Nasdaq/NM securities.

[5] The specialist is required to disseminate a continuous two-sided market in all listed issues pursuant to the terms of the ITS plan. Auto-quoting is a tool that enables a CHX specialist to satisfy this requirement, even when there is no interest in the specialist's book upon which the specialist could base a quotation.

[6] Prior to the securities industry transition to decimal pricing, the interpretation prohibited quotations of more than 1/8 of a point away from the ITS best bid or offer.

[7] For example, the specialist might want to set his or her auto-quote functionality based on the quote in a particular market (such as the market with the tightest spreads).

potentially confusing; it may also operate to the financial detriment of the CHX.

For the foregoing reasons, the CHX believes that it is appropriate to delete Article XX, Rule 7, Interpretation and Policy .02. The CHX anticipates that deletion of the mandatory $.10 auto-quote spread will result in a significant reduction in CHX quotation traffic, which benefits the national market system. Moreover, because the vast majority of the Exchange's automatic executions are based on execution guarantees that supplement the specialist's quotation, the Exchange does not believe that the proposed rule change will have any negative effect on execution prices.[8] In short, the only material consequence of the proposed rule change will be CHX specialist quotations that do not flicker continuously throughout the trading day. The CHX would note that each CHX specialist remains subject to their fundamental obligation to maintain "fair and orderly markets."[9] The CHX believes that this obligation will ensure that specialists will not abuse the auto-quote functionality to generate quotations that are useless or disruptive to the national market system.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[10] The CHX believes the proposal is consistent with section 6(b)(5) of the Act[11] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR-CHX-2003-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2003-17 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-32173 Filed 12-30-03; 8:45 am]

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[8] CHX Article XX, Rule 37(b) requires that orders executed automatically on the CHX be executed at the national best bid or offer in effect at the time the order is received.

[9] See CHX Article XXX, Rule 1, Interpretation and Policy .02.

[10] 15 U.S.C. 78(f)(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48985; File No. SR-CHX-2003-37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to ITS Trade-Throughs

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 26, 2003, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(1)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of CHX Article XX, Rule 40, which incorporates certain provisions of the Intermarket Trading System ("ITS") Plan ("ITS Plan"). Specifically, the CHX seeks to add Interpretation and Policy .06 to expressly recognize that certain executions will not be considered "trade-throughs" if an ITS commitment is sent contemporaneously with the execution of a trade through the bid or offer of another market center.

The text of the proposed rule change is below. Proposed new language is in *italics*.[5]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-1 4(f)(1).

[5] The Commission made a technical change to the rule text to address a minor error in the proposed

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ITS "Trade-Throughs" and "Locked Markets"

RULE 40. (a) Definitions

(1) An "Exchange trade-through," as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase on the Exchange of a security traded through ITS (an "ITS Security") at a price which is higher than the price at which the security is being offered (or initiates the sale on the Exchange of such a security at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated an Exchange trade-through."

(2) A "third participating market center trade-through," as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase of an ITS Security by sending a commitment to trade through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through."

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Interpretations and Policies:

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.06 Contemporaneous Commitments

The terms "Exchange trade-through" and "third market participating market center trade-through" do not include the situation where a member who initiates the purchase (sale) of an ITS security at a price which is higher (lower) than the price at which the security is being offered (bid) is another ITS participating market, sends contemporaneously through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's better-priced offer (bid). A trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is a participant in the ITS Plan.[6] Exhibit B to the ITS Plan is a model ITS Trade-Through Rule (the "Trade-Through Rule"), which provides that a member in one market should avoid initiating a trade if the trade would be executed at a price inferior to a price quoted by another ITS market center.[7]

As a remedy following a trade-through, the ITS Plan provides that (upon receipt of a valid trade-through complaint) the party that initiated the trade-through must send a commitment to trade, at the price and for the number of shares in the disseminated quotation, to satisfy the market that was traded through.

The ITS Operating Committee believes that a member should be able to avoid any trade-through liability when a member sends a commitment at the same time that it trades through the bid or offer in another market. Accordingly, based on the Commission's request for express clarification, the ITS Operating Committee has encouraged each ITS Participant, including the CHX, to expressly recognize that a trade will not be considered an inappropriate trade-through if an ITS commitment is sent contemporaneously with the execution of a trade through the bid or offer of another market center. Accordingly, the CHX is submitting proposed CHX Article XX, Rule 40, Interpretation and Policy .06.

As stated above, the Exchange believes that each ITS participant will propose a similar interpretation. As of the date of submission of this proposed rule change, the Exchange is only aware of a submission by the NYSE, containing proposed rule language identical to that proposed in this submission.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[8] The CHX believes the proposal is consistent with section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy,

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rule change. Telephone conversation between Kathleen M. Boege, Vice President and Associate General Counsel, CHX, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, dated December 23, 2003.

[6] The ITS Plan was approved on a permanent basis on January 27, 1983. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938. Signatories to the ITS Plan include the American Stock Exchange, LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the CHX, the Cincinnati Stock Exchange, Inc. (now known as the National Securities Exchange), the NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[7] Section 8(d)(ii) of the ITS Plan requires each Participant to adopt a rule substantially the same as the Trade-Through Rule. CHX Article XX, Rule 40 is the Exchange's version of the Trade-Through Rule.

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78f(b)(5).

practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(1) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CHX–2003–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to the File No. SR–CHX–2003–37 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32178 Filed 12–30–03; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(1).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48991; File No. SR–NASD–2003–44]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto by the National Association of Securities Dealers, Inc. To Modify an Existing Pilot Program Relating to the Bid Price Test of the Nasdaq Maintenance Listing Standards

December 23, 2003.

I. Introduction

On March 18, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change to modify an existing pilot program relating to the bid price test of Nasdaq's maintenance listing standards. Nasdaq submitted amendments to the proposed rule change on March 24, 2003,[1] and September 26, 2003.[2] On October 10, 2003, the Commission published notice of the proposal in the **Federal Register**.[3] No comments were received on the proposed rule change. On November 26, 2003, Nasdaq submitted Amendment No. 3 to the proposed rule change.[4] This notice and order solicits comment on Amendment No. 3 and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

To obtain a listing on the Nasdaq Stock Market, an issuer must meet the initial listing standards; to keep a listing on Nasdaq, an issuer must meet the maintenance listing standards on an ongoing basis.[5] One of these standards relates to the bid price of the issuer's security. On either the Nasdaq National Market or the SmallCap Market, the security must maintain a bid price of at least $1.00 or face delisting.[6] Nasdaq's listing rules provide that a failure to meet the bid price standard exists if the bid price remains less than $1.00 for 30 consecutive business days.[7] After 30 consecutive business days of the security failing the bid price test, Nasdaq would notify the issuer of the deficiency.[8] Nasdaq's listing rules would then provide for certain "grace periods" during which the issuer is expected to regain compliance with the bid price standard or be delisted.

On the Nasdaq SmallCap Market, an issuer that fails the bid price test automatically receives a 180-calendar-day grace period.[9] An issuer need not meet any special requirements to qualify for this grace period. If the issuer still fails the bid price test at the end of the 180 days,[10] it could be granted an additional 180-day grace period if it meets one of the quantitative initial listing standards (rather than the lesser maintenance standards) of the SmallCap Market.[11] If the issuer were still deficient at the end of the second 180-day grace period, it could be granted an additional 90-calendar-day grace period if the issuer again meets one of the quantitative initial listing standards of the SmallCap Market. At the end of the 90 days (or of any other grace period where the issuer does not qualify for an additional grace period), Nasdaq would delist the security, subject to the procedural requirements of the NASD Rule 4800 Series. Thus, Nasdaq's maintenance listing standards currently allow a SmallCap issuer a theoretical maximum of approximately 1.25 years of non-compliance with the bid price standard before facing delisting.

On the Nasdaq National Market, like on the SmallCap Market, an issuer that fails the bid price test would automatically receive a 180-calendar-day grace period without having to meet any special requirements.[12] If the issuer still fails the bid price test at the end of the 180 days, it could be granted an additional 180-day grace period if it meets one of the quantitative initial listing standards (rather than the lesser maintenance standards) of the National Market.[13] If an issuer were still deficient at the end of the second 180-day grace period (or does not qualify for the second 180-day grace period), Nasdaq could delist the security, subject to the procedural requirements of the NASD Rule 4800 Series. Thus, Nasdaq's maintenance listing standards currently allow a National Market issuer a theoretical maximum of approximately 1.0 years of non-compliance with the bid price test before facing delisting. A National Market security that meets the maintenance listing standards for the SmallCap Market could "phase down" to the SmallCap Market to take advantage of the additional grace period offered there.[14]

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[1] *See* letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated March 21, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made minor revisions to the original proposal.

[2] *See* letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated September 25, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq revised the length of the grace periods available to issuers not in compliance with the bid price test and added to the criteria that issuers would have to meet to avail themselves of such periods.

[3] *See* Securities Exchange Act Release No. 48592 (October 3, 2003), 68 FR 58732.

[4] *See* letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated November 25, 2003. In Amendment No. 3, Nasdaq made minor revisions to the proposal.

[5] *See* NASD Rules 4300 *et seq.* and 4400 *et seq.*

[6] *See* NASD Rule 4310(c)(4) (for SmallCap); NASD Rules 4450(a)(5) and (b)(4) (for National Market).

[7] *See* NASD Rule 4310(c)(8)(D) (for SmallCap); NASD Rule 4450(e)(2) (for National Market).

[8] *See id.*

[9] *See* NASD Rule 4310(c)(8)(D).

[10] An issuer is deemed to be back in compliance with the bid price standard if it maintains a bid price of over $1 for ten consecutive business days, *see id.*, although Nasdaq in its discretion may extend the ten-day requirement to as long as 20 consecutive business days, *see id.*

[11] *See id.* (requiring issuer to meet any of the three criteria for initial listing set forth in NASD Rule 4310(c)(2)(A)).

The second 180-day grace period and the additional 90-day grace period on the SmallCap Market were established by pilot rules adopted by Nasdaq in February 2002 and modified in March 2003.[15] Also as part of the pilot program, Nasdaq extended the first grace period on the National Market from 90 days to 180 days and established the second 180-day grace period.[16] This pilot program expires on December 31, 2004.

Nasdaq has committed to study the effect of these changes to the maintenance listing standards during the pilot period.[17]

Nasdaq is now proposing to amend the pilot program by further extending the bid price grace periods. For the National Market, Nasdaq would provide an issuer with a third 180-calendar-day grace period if, at the end of the second 180-day period, the issuer meets all of the initial listing standards of the National Market (except for the bid price test).[18] Thus, a National Market issuer could fail the bid price test for a theoretical maximum of approximately 1.5 years before being delisted. For the SmallCap Market, Nasdaq would replace the current 90-day grace period (which comes after the two 180-day grace periods), with a grace period that would last up to the issuer's next shareholder meeting,[19] provided four conditions are met: (1) The issuer meets all of the initial listing standards for the SmallCap Market (other than the bid price test); (2) the shareholder meeting is scheduled to occur no later than two years from the original notification of the bid price deficiency; (3) the issuer obtains shareholder approval at the meeting to carry out the reverse stock split; and (4) the issuer executes the reverse stock split promptly after the shareholder meeting. If the issuer fails to timely propose, obtain approval for, or promptly execute the reverse stock split, Nasdaq would immediately institute delisting proceedings. Thus, Nasdaq's proposal would allow SmallCap issuers to fail the bid price test for a theoretical maximum of 2.0 years before being delisted.[20]

In addition, Nasdaq is proposing to amend the second of the two 180-day grace periods in the SmallCap Market by requiring that an issuer, at the end of the first 180-day period, meet all of the initial listing requirements to the SmallCap Market before entering the second grace period. Currently, the issuer need meet only one of the quantitative initial listing requirements of the SmallCap Market to receive the second grace period. The first 180-day grace period would continue to be available without any stipulations.

Special provisions would apply during the transition period between the old and new rules. An issuer currently in the delisting process for bid price deficiency could avail itself of any grace period to which it would have been entitled had the new pilot rules been in effect when the issuer received the original notification of the deficiency.[21] Furthermore, upon Commission approval of the new pilot rules, an issuer that is currently using a grace period offered by the old rules could remain listed for the duration of the period even though such period would be eliminated under the new rules. For example, a SmallCap issuer currently in the final 90-day grace period under the old rules would be permitted to maintain its listing on the SmallCap Market at least until the end of this period. At the end of the 90 days, the issuer could avail itself of the new rules and remain listed up to its next shareholder meeting, provided that it meets all of the initial listing criteria of the SmallCap Market (except the bid price test) and commits to seek shareholder approval for a reverse stock split, receives such approval, and promptly thereafter carries out the reverse stock split. However, in no event would a SmallCap issuer be afforded a cumulative grace period longer than two years from the date of the notification of the original bid price deficiency, absent "extraordinary circumstances."[22]

This proposal would not change the termination date of the pilot program. The pilot program will expire on December 31, 2004.

Finally, Nasdaq is proposing to amend NASD Rule 4820(a) to reference the "Staff Warning Letter" described in the proposed amendments to paragraph (e)(2) of NASD Rule 4450 and to make other minor, technical revisions.

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[12] *See* NASD Rule 4450(e)(2).

[13] *See id.* (requiring issuer to meet the criteria for initial listing set forth in NASD Rules 4420(a)(1) and (5), Rule 4420(b)(1), or 4420(c)(6)).

[14] *See* NASD Rule 4450(i).

[15] *See* Securities Exchange Act Release No. 45387 (February 4, 2002), 67 FR 6306 (February 11, 2002) (SR–NASD–2002–13); Securities Exchange Act Release No. 47482 (March 11, 2003), 68 FR 12729 (March 17, 2003) (SR–NASD–2003–34).

[16] *See id.*

[17] *See* letter from Sara Nelson Bloom, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated January 31, 2002; letter from Florence Harmon, Division of Market Regulation, Commission, to Sara Nelson Bloom, Nasdaq, dated April 4, 2003.

[18] Under the proposal, the conditions relating to the first two 180-day grace periods would remain unchanged. The first 180-day grace period would be automatic; the second 180-day grace period would be available only if the issuer meets one (as opposed to all) of the quantitative initial listing requirements for the National Market.

[19] As originally proposed, the second year of the grace period would have lasted until the next *annual* shareholder meeting of the issuer. In Amendment No. 3, Nasdaq deleted the word "annual" and clarified that the shareholder meeting at which the reverse stock split is approved could be a special meeting rather than a regular annual meeting.

[20] In most cases, a SmallCap issuer would have a grace period of less than the two full years that is theoretically available. This can be demonstrated with the following example. Assume a SmallCap issuer receives an initial notice of bid price deficiency from Nasdaq on October 16, 2004. The issuer uses the first and the second 180-day grace periods, so the date is now October 11, 2005 (*i.e.*, 360 days after October 16, 2004). Assume further that the issuer's annual shareholder meeting is scheduled to occur on November 16, 2005. Although there is a theoretical maximum grace period of two years, the grace period in this case would extend only to November 16, 2005—a total of one year and one month. Now assume instead that the issuer holds its next annual shareholder meeting on October 10, 2006. The third grace period, therefore, could last until this annual meeting, if there is no intervening shareholder meeting. However, if there is a special shareholder meeting before October 10, 2006, authorization for the reverse stock split *must* be obtained at that meeting, because the pilot rule provides that the third grace period for the SmallCap Market extends only until the *next* shareholder meeting in the two-year window, not a shareholder meeting of the issuer's choosing. See e-mail from Sara Bloom, Nasdaq, to Michael Gaw, Division of Market Regulation, Commission, dated December 9, 2003.

[21] Nasdaq has stated that, during the pendency of this rule proposal, panels convened pursuant to the NASD Rule 4800 Series to consider delistings have been granting exemptions from the bid price rules consistent with the new pilot grace periods.

[22] Existing NASD Rule 4810(b) provides that Nasdaq may grant exceptions to its listing rules. In Amendment No. 3, Nasdaq clarified that it would be unwilling to exercise this discretion to allow a SmallCap issuer to maintain its listing beyond two years from the date of the notification of the original bid price deficiency, absent "extraordinary circumstances." Nasdaq stated that adverse financial developments affecting the issuer would not support a finding of "extraordinary circumstances." Rather, the term "extraordinary circumstances" is intended to refer to a *force majeure* event that, in the opinion of Nasdaq, makes it impossible for the issuer to effect the actions necessary to achieve compliance within the specified compliance period.

III. Discussion

A. Approval of Revised Pilot Program

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the regulations thereunder applicable to the NASD.[23] In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act.[24] Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

During the 1980s, there was widespread concern about the occurrence of so-called penny stock fraud which prompted Congress to enact the Securities Enforcement Remedies and Penny Stock Reform Act of 1990.[25] This legislation provided the Commission with expanded authority to regulate the market in securities with a low bid price. In light of these developments and that fact that the provisions of the Penny Stock Reform Act do not apply to any security listed on Nasdaq, the Commission in January 1990 wrote the NASD urging it to carefully scrutinize Nasdaq listing applications to ensure that low-priced securities fully complied with all applicable standards.[26] Nasdaq responded with a proposal to raise its listing standards by, among other things, adopting for the first time a requirement that an issuer maintain a minimum bid price. In its September 1991 approval order for that proposal, the Commission noted that there were two competing interests present. First, small, thinly capitalized companies had an interest in listing on Nasdaq to further their efforts to raise capital and grow their businesses. Second, Nasdaq had an interest in preventing suspect issuers from evading the Penny Stock Reform Act by allowing them to list on Nasdaq.[27] More broadly, Nasdaq has an interest in establishing and maintaining investor confidence in the quality of securities that it allows to trade on its market. Nasdaq's listing regime is an ongoing effort to balance these two considerations, particularly with respect to the SmallCap Market, which is designed to allow smaller companies access to the capital markets.

Nasdaq's original bid price rules allowed a perpetual exemption from the $1 bid price minimum if the issuer met heightened requirements for the market value of its public float and for the amount of capital and surplus.[28] In 1997, Nasdaq proposed to eliminate this alternative method of compliance, providing several reasons for doing so. First, Nasdaq believed that removing the exemption and enforcing a maintenance standard of a $1 bid price for all Nasdaq issuers would "provide a safeguard against certain market activity associated with low-priced securities."[29] Second, Nasdaq pointed out that, when the exemption was adopted, it was intended to address "temporary adverse market conditions," not to create a permanent means of meeting the listing standards.[30] Third, Nasdaq believed that "a $1 minimum bid price would serve to increase investor confidence and the credibility of its market commensurate with its increased prominence."[31]

Nasdaq's present proposal is in some ways a return to the alternate standard that was in effect from 1991 to 1997 since, under both regimes, an issuer can remain listed on Nasdaq if it meets heightened quantitative standards. Although the Commission found the alternate standard to be consistent with the Act in its 1991 approval order, the Commission now shares the concerns that prompted Nasdaq to rescind the alternative standard in 1997. An investor who purchases a security on the Nasdaq Stock Market should have reason to assume that the security has met all of the minimum standards to obtain a listing there, including the bid price standard. Moreover, as Nasdaq observed in 1997, enforcing a minimum bid price helps deter abusive market activity sometimes associated with low-priced, thinly capitalized securities. The Commission agrees with the NASD's 1997 statement that the $1 minimum bid price generally "serve[s] to increase investor confidence and the credibility of its market."[32]

Furthermore, the Commission echoes Nasdaq's concern in rescinding the alternate standard that derogations from the bid price standard are meant to address "temporary adverse market conditions." The Commission agrees with Nasdaq that "at times companies experience temporary adverse market conditions that cause the share price of their security to fall below $1 without having a serious impact on the health or viability of the company."[33] On that basis, the Commission was able to approve the alternate standard of compliance that allowed for the original, indefinite exemption from the bid price test. Nevertheless, an issuer should not be permitted to rely for an extended period of time on an exemption premised on "*temporary* adverse market conditions." The Commission is concerned that the length of the grace periods for bid price deficiency in this case raises concerns about investor protection. Transparency is one of the fundamental aspects of any set of listing standards. If a listing standard is suspended for too long, the standard is not transparent and the investor protection principles underlying the listing standards could be compromised.

Despite these concerns, the Commission does not presently have reason to believe that Nasdaq's proposal is inconsistent with the Act. The present proposal differs from the earlier alternative to the bid price test in that the grace periods now are only temporary (up to 2.0 years for the SmallCap Market and 1.5 years for the National Market), whereas under the old rules an issuer that met the heightened quantitative standards could keep its listing indefinitely despite a bid price below $1. The present proposal also requires issuers that fail the bid price test to meet all of the initial listing criteria (except for the bid price test), whereas the old rules required issuers to meet just two heightened quantitative criteria (market value of the public float and amount of capital and surplus). These additional requirements that an issuer must meet to qualify for the grace periods should offer additional reassurance that the issuer remains a viable business vehicle despite its low bid price.

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[23] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78o-3(b)(6).

[25] Pub. L. 101–429, 104 Stat. 931 (October 15, 1990).

[26] *See* Securities Exchange Act Release No. 29638 (August 30, 1991), 56 FR 44108, 44109 (September 6, 1991) (approval of SR–NASD–90–18) ("1991 Approval").

[27] *See* 1991 Approval, 56 FR at 44111.

[28] *See* Securities Exchange Act Release No. 38469 (April 2, 1997), 62 FR 17262, 17262, 17268 (April 9, 1997) (proposing SR–NASD–97–16) ("1997 Proposal") (showing 1991 rules providing exemption from bid price maintenance standard). For the SmallCap Market, an issuer could use the exemption if the market value of its public float was at least $1 million and it had capital and surplus of at least $2 million. For the National Market, an issuer could use the exemption if the market value of its public float was at least $3 million and it had capital and surplus of at least $4 million.

[29] 1997 Proposal, 62 FR at 17269.

[30] *Id.*

[31] *Id.*

[32] 1997 Proposal, 62 FR at 17269.

[33] 1991 Approval, 56 FR at 44111.

Nasdaq has provided the Commission with a discussion of its surveillance program for securities that fall below a $1 bid price. The Commission believes that this program, designed to detect fraudulent and abusive trading activity, should further the protection of investors and the public interest.

For these reasons, the Commission is approving this pilot proposal for extending the bid price grace periods. As noted above, Nasdaq previously has committed to study the effect of the pilot changes to its maintenance listing standards.[34] This data will be essential in analyzing—if and when Nasdaq seeks permanent approval for the rules allowing bid price grace periods—whether derogations from the bid price standards undermine the principles of the Act as they are reflected in Nasdaq's listing rules. Previously, the Commission required that Nasdaq submit the study six months prior to the expiration of the pilot (*i.e.*, by June 30, 2004).[35] However, because only 12 months remain in the pilot period, the Commission now believes that it would be appropriate to allow Nasdaq to submit the study three months prior to the expiration of the pilot (*i.e.*, by September 30, 2004). In view of its concerns about the potential for manipulation in the market for low-priced, thinly capitalized securities, the Commission believes that it would be difficult to permit any extension of the pilot provisions without first analyzing the results of Nasdaq's study.[36]

B. Accelerated Approval of Amendment No. 3

Pursuant to Section 19(b)(2) of the Act,[37] the Commission finds good cause for approving the proposal, as revised by Amendment No. 3, prior to the thirtieth day after the date that the notice of the amended proposal was published in the **Federal Register**. No comments were received on the original proposal, and the Commission believes that Amendment No. 3 does not materially alter the proposal and is intended only to make certain technical clarifications. Accordingly, the Commission is accelerating approval of the proposal, as amended.

IV. Text of Amendment No. 3

In Amendment No. 3, Nasdaq proposed further amendments to NASD Rule 4310(c), noted below. The base text is that proposed in Amendment No. 2 (*i.e.*, how the rule would appear if only Amendment No. 2 were approved by the Commission). Changes made by Amendment No. 3 are in italic; deletions are in brackets.

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4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(7) No change.

(8)(A)–(C) No change.

(D) A failure to meet the continued inclusion requirement for minimum bid price on The Nasdaq SmallCap Market shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the issuer shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. If the issuer has not been deemed in compliance prior to the expiration of the 180 day compliance period, it shall be afforded an additional 180 day compliance period, provided, that on the 180th day of the first compliance period, the issuer demonstrates that it meets the criteria for initial inclusion set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)) based on the issuer's most recent public filings and market information. If the issuer has publicly announced information (*e.g.*, in an earnings release) indicating that it no longer satisfies the applicable initial inclusion criteria, it shall not be eligible for the additional compliance period under this rule. [If on the 180th day of the second compliance period, the issuer has not been deemed in compliance during such compliance period but it satisfies the criteria for initial inclusion set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)), the issuer shall be provided with an additional compliance period up to its next annual shareholder meeting, provided: the issuer commits to seek shareholder approval for a reverse stock split to address the bid price deficiency at or before its next annual meeting, and to promptly thereafter effect the reverse stock split; and the shareholder meeting to seek such approval is scheduled to occur no later than two years from the original notification of the bid price deficiency. If the issuer fails to timely propose, or obtain approval for, or promptly execute the reverse stock split, Nasdaq shall immediately institute delisting proceedings upon such failure.] *If on the 180th day of the second compliance period, the issuer has not been deemed in compliance during such compliance period but it satisfies the criteria for initial inclusion set forth in Rule 4310(c) (except for the bid price requirement set forth in Rule 4310(c)(4)), the issuer shall be provided with an additional compliance period up to its next shareholder meeting scheduled to occur no later than two years from the original notification of the bid price deficiency, provided the issuer commits to seek shareholder approval at that meeting for a reverse stock split to address the bid price deficiency. If the issuer fails to timely propose, or obtain approval for, or promptly execute the reverse stock split, Nasdaq shall immediately institute delisting proceedings upon such failure.* Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days.

* * * * *

Amendment No. 3 clarifies that the shareholder meeting referred to in the proposed changes to NASD Rule 4310(c)(8)(D) need not be the annual shareholder meeting, but could also be a special shareholder meeting. A special meeting could be called for the express purpose of seeking shareholder approval for a reverse stock split to cure the issuer's bid price deficiency within the grace period allowed by proposed NASD Rule 4310(c)(8)(D). Nasdaq noted in Amendment No. 3 that, in some circumstances, the next annual meeting could fall outside the two-year deadline for such action and a special meeting would therefore be required.

Amendment No. 3 also clarifies the meaning of the term "extraordinary circumstances" used in regard to whether Nasdaq would exercise its discretion under NASD Rule 4810(b) to grant additional exceptions to its bid price maintenance standard.

Amendment No. 3 can be obtained from the Commission's Public Reference Room or from the principal offices of Nasdaq.

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[34] *See supra* note 17.

[35] *See* letter from Florence Harmon, Division of Market Regulation, Commission, to Sara Nelson Bloom, Nasdaq, dated April 4, 2003.

[36] In addition, following issuance of this approval order, staff of the Commission's Division of Market Regulation will send a letter to Nasdaq setting forth in more detail the data that Nasdaq should provide in its study.

[37] 15 U.S.C. 78s(b)(2).

V. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments on Amendment No. 3, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comments should refer to File No. SR–NASD–2003–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to File No. SR–NASD–2003–44 and should be submitted by January 21, 2004.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[38] that the proposed rule change (SR–NASD–2003–44) and Amendment Nos. 1 and 2 are approved, and that Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32171 Filed 12–30–03; 8:45 am]

BILLING CODE 8010–01–P

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[38] *Id.*

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48969; File No. SR–NASD–2003–07]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rules 1011, 1014 and 1017

December 22, 2003.

On January 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rules 1011, 1014 and 1017. On September 17, 2003, NASD filed Amendment No. 1 to the proposed rule change.[3] On October 16, 2003, NASD filed Amendment No. 2 to the proposed rule change.[4] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 23, 2003.[5] No comments were received on the proposed rule change. This order approves the proposed rule change.

In brief, NASD would amend certain of its rules that govern applications for NASD membership and applications for approval of changes in business structure by NASD members. Currently, NASD Rule 1014 delineates certain factors, such as pending or past regulatory actions, that NASD may consider in assessing an applicant's ability to comply with applicable law and regulations, NASD rules, and just and equitable principles of trade. Furthermore, Rule 1017 requires existing NASD members to apply to NASD for approval of continued membership in the event of certain changes to their ownership, control or business operations. In reviewing such applications, NASD staff also considers the factors listed in Rule 1014. NASD asserts that it has proposed these changes in order to strengthen its ability to protect investors with pending claims, awards or judgments against NASD members, and to otherwise detect and prevent misconduct.

Accordingly, NASD would modify Rule 1017(a)(3) regarding when a member must request approval of a disposition of assets. The rule currently requires an NASD member to file an application for an "acquisition of substantially all of the member's assets, unless the acquiring member is a member of the New York Stock Exchange, Inc. [NYSE]." NASD would amend Rule 1017(a)(3) in three ways. First, it would add that transfers of a firm's assets, and not only acquisitions, would require approval. Second, NASD would require approval of a transfer unless *both* parties to the transaction, and not just the acquiring party, are members of the NYSE. Third, NASD would change the amount of a transfer that requires a request for approval from "substantially all" of the member's assets to "25% or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues comprising 25% or more in the aggregate of the member's earnings measured on a rolling 36-month basis."

NASD would also modify the factors listed in Rule 1014 that it considers in reviewing applications for membership and continued membership by adding pending arbitrations or civil actions against the applicant, as well as unpaid arbitration awards, or other adjudicated customer awards against the applicant and other persons who may have significant control or influence over the applicant. Such other persons would include the applicant's controlling persons, principals, registered representatives, other Associated Persons, any lender of 5% or more of the applicant's net capital, and any other member with respect to which these persons were a controlling person or a 5% lender of the applicant's net capital.

In addition, NASD's proposal would provide for a rebuttable presumption that an application for membership or continued membership should be denied when an analysis of the applicant's history reveals any one of the negative events enumerated in Rule 1014(a)(3)(A), (C), (D) and (E).[6] An applicant could overcome this presumption by demonstrating that it could nevertheless meet NASD's membership standards.

Finally, for purposes of its rules governing the above-described application processes, NASD would amend its definition of "Associated Person." The term, as defined in Rule 1011(b), would be amended to bring non-natural controlling persons within the scope of its coverage.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2003.

[4] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated October 15, 2003.

[5] *See* Securities Exchange Act Release No. 48651 (October 17, 2003), 68 FR 60750 ("Notice").

[6] *See* Notice, 68 FR at 60751.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] Specifically, the Commission finds that the proposal is consistent with section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the amendments should improve NASD's ability to ensure that its membership is not likely to engage in conduct that may be harmful to public investors.

The Commission believes that NASD's proposed changes to Rule 1017 are proper. First, the adoption of a defined quantitative measure of the amount of assets transferred that will require an application for approval should provide a greater degree of clarity to NASD members such that they may more readily anticipate when it will be necessary to file an application. The Commission also notes that the changes to Rule 1017 should result in its application to a broader range of transactions, in that applications for approval will now be required for any form of asset transfer, and not only acquisitions, and will be required except where both parties are members of the NYSE. This should enhance the NASD's ability to ensure that such transactions do not result in a member or its owners insulating itself or themselves from the responsibility to pay existing or potential customer claims.

The Commission believes that NASD's codification of a rebuttable presumption to deny an application for membership or continued membership where the applicant's history reflects any of the negative events specified in Rule 1014(a)(3)(A) and (C) through (E) is also proper. The Commission notes that this presumption should provide additional guidance to applicants as to how such events will be assessed in considering an applicant's ability to comply with NASD's membership standards. Moreover, the change should serve to provide notice to potential applicants of the consequences of misconduct, and thereby discourage it. The Commission also notes that the presumption may be overcome if the applicant can demonstrate that it is otherwise capable of meeting NASD's membership standards. The Commission believes that, because NASD is a member organization charged with the protection of investors and the public interest, it is fair to require applicants to show why membership should be granted, notwithstanding any prior history of misconduct.

As a further measure to encourage compliance with arbitration or other awards, and to deny entry to those who disregard them, NASD has proposed to amend Rule 1014(a)(3) to add pending arbitrations or civil actions to the list of factors considered in deciding whether to grant membership or continued membership. Further, NASD would add the existence of unpaid arbitration awards or settlements, or other adjudicated customer awards, to the factors listed in Rule 1014(a)(3) that would trigger the presumption against granting approval of membership or continued membership. NASD would consider this factor not only in reviewing the member's application, but also in reviewing its control persons and other persons who, by virtue of other arrangements or capital structure, exercise control over the applicant. The Commission believes that these changes are appropriate because such matters may demonstrate an applicant's ability or willingness to comply with the Act, the regulations of the Commission and the rules of NASD. Moreover, the new provisions should provide incentive to NASD members, potential NASD members, and persons that control NASD members to comply with arbitration or other awards.

Finally, the Commission believes that NASD's expansion of the definition of "Associated Person," for purposes of its membership rules, to include non-natural persons is proper. The Commission believes the inclusion of such persons should permit NASD to examine a broader range of entities that potentially control an applicant, and thereby ensure that its ability to assess the applicant and the applicant's business history are not unnecessarily restricted.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NASD–2003–07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32179 Filed 12–30–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48986; File No. SR–NASD–2003–183]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Rule 1120 Regarding Regulatory Element Contact Person

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Rule 1120 to require that each member designate and identify to NASD the individual(s) who will receive Web Central Registration Depository ("CRD") continuing education ("CE") Regulatory Element e-mails. The proposed rule change further would require that each member quarterly review and update the CE contact person(s) information. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

1120. Continuing Education Requirements

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with *NASD* [the Association]. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

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[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*-3(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(a) Regulatory Element

(1) through (6) No change.

(7) Regulatory Element Contact Person

Each member shall designate and identify to NASD (by name and e-mail address) an individual or individuals responsible for receiving e-mail notifications provided via the Central Registration Depository regarding when a registered person is approaching the end of his or her Regulatory Element time frame and when a registered person is deemed inactive due to failure to complete the requirements of the Regulatory Element program, and provide prompt notification to NASD regarding any change in such designation(s). Each member must review and, if necessary, update the information regarding its Regulatory Element contact person(s) within 17 business days after the end of each calendar quarter to ensure the information's accuracy.

(b) No change.[3]

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 1120 sets forth the CE requirements for registered persons. One of the two CE components is the Regulatory Element, a computer-based education program administered by the NASD to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry. Each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. A registered person who becomes inactive for failing to complete the required Regulatory Element program ("CE inactive") is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. Members are required under NASD Rule 1120 to restrict CE inactive persons from performing the prohibited activities.

To help firms keep track of their registered persons' Regulatory Element status, NASD provides members with e-mail notifications through Web CRD when a person is both 90 days and 30 days away from the end of his or her period to complete the Regulatory Element program before going inactive. CRD also notifies members when a registered person at the firm becomes CE inactive. Currently, receipt of the e-mail notifications is optional, and some firms have elected not to receive the notifications. The proposed rule change would require each member to designate a contact person or persons to receive such CRD Regulatory Element e-mail notifications. The member would be required to provide to the NASD the name and e-mail address of the designated contact person(s) and to promptly notify the NASD of any changes to the information. The NASD intends to collect the contact information through the NASD Contact System[4] on the NASD Web site.

To ensure the accuracy of the CE contact information, the proposed rule change also would require that each member review and, if necessary, update its CE contact person information within 17 business days after the end of each calendar quarter.[5] The NASD is examining different methods of reminding members of the obligation to quarterly review and update contact person information, including the possibility of a Web page linked to the act of filing the FOCUS report that would prompt members to update such contact person and/or through e-mail reminders to the designated CE contact person.[6]

The NASD believes that the proposed rule change will help firms avoid an NASD Rule 1120(a) violation that would occur if an inactive person were permitted to perform, or receive compensation for, activities that required registration during the period of inactive status. Specifically, the notifications will ensure that firms are positioned to prevent any registered persons from becoming inactive, thus enabling firms and individuals to avoid violations that occur when persons prohibited from doing business due to a CE inactive status nonetheless conduct business or improperly receive compensation.

The NASD also believes the proposed rule change is designed to assist the NASD with its efforts to further automate various aspects of its examination program with a goal of removing a substantial portion of CE compliance inspections from on-site firm examinations. The NASD believes that a more automated approach will result in a more efficient use of the NASD Department of Member Regulation resources and lead to a less intrusive regulatory approach for firms.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is designed to accomplish these ends by helping firms ensure that their registered persons complete the required Regulatory Element training and are prevented from conducting business if they become CE inactive.

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[3] Subparagrah (c) was renumbered to subparagraph (b) to accurately reflect the current text of NASD Rule 1120. Pursuant to a telephone conversation between Grace Yeh, Counsel, NASD, and A. Michael Pierson, Law Clerk, Division of Market Regulation ("Division"), Commission, dated, December 22, 2003.

[4] Effective as of December 8, 2003, the NASD Contact System replaced the Member Firm Contact Questionnaire, the previous system used for members to update and maintain certain required contact information.

[5] This proposed schedule is consistent with a member's quarterly FOCUS reporting schedule, as well as with the proposed rule change regarding members' business continuity plans. *See* Securities Exchange Act Release No. 46444 (August 30, 2002), 67 FR 57257 (September 9, 2002) (File No. SR–NASD–2002–108); Securities Exchange Act Release No. 47441 (March 4, 2003), 68 FR 11432 (March 10, 2003) (Notice of Filing of Amendment Nos. 1, 2, and 3 of File No. SR–NASD–2002–108); Securities Exchange Act Release No. 48503 (September 17, 2003), 68 FR 55686 (September 26, 2003) (Notice of Filing of Amendment Nos. 4 and 5 of File No. SR–NASD–2002–108). The Commission notes that these filings are pending at the Commission, and would require members to review and update emergency contact information within 17 business days after the end of each calendar quarter. Similarly, the proposed schedule is consistent with a proposed rule change filed with the Commission regarding the review and update of a member's Executive Representative designation and contact information. *See* SR–NASD–2003–184.

[6] Similarly, NASD would prompt members to review and update, where necessary, their emergency contact and Executive Representative information. *See supra* note 4.

[7] 15 U.S.C. 78*o*–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–183. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–183 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32180 Filed 12–30–03; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48989; File No. SR–NASD–00–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments Nos. 6, 7, 8, 9, and 10 by the National Association of Securities Dealers, Inc. Relating to Its Corporate Financing Rule

December 23, 2003.

I. Introduction

On January 21, 2000, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NASD Conduct Rule 2710. NASD filed Amendments Nos. 1,[3] 2,[4] and 3[5] to the proposed rule change on March 6, 2000, March 21, 2000, and March 30, 2000, respectively. The proposed rule change was published for comment in the **Federal Register** on April 11, 2000.[6] The Commission received 14 comments.[7] NASD filed Amendment No. 4 on December 11, 2000.[8] NASD filed Amendment No. 5 on February 4, 2001,[9] which was published for comment in the **Federal Register** on March 14, 2001.[10] The Commission received eight comments.[11] NASD filed Amendment Nos. 6,[12] 7,[13] 8,[14] 9,[15] and 10[16] on November 19, 2001, and April

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, Inc. ("NASD Regulation"), to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 3, 2000 ("Amendment No. 1").

[4] Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 20, 2000 ("Amendment No. 2").

[5] Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 29, 2000 ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 42619 (April 4, 2000), 65 FR 19409 ("initial notice").

[7] These comments, and NASD Regulation's response, are discussed in the release cited in footnote 9.

[8] Amendment No. 4, filed December 11, 2000, amends the original filing as modified by Amendment Nos. 1, 2, and 3 in response to comments.

[9] NASD submitted a new Form 19b–4, which replaced and superseded all previous versions of the proposed rule change in their entirety.

[10] *See* Securities Exchange Act Release No. 44044 (March 6, 2001), 66 FR 14949.

[11] These comments, and the amendments proposed by NASD Regulation in response, are summarized in Section III. of this order.

[12] NASD submitted a new Form 19b–4, which replaced and superseded all previous versions of the proposed rule change in their entirety.

[13] Letter from Gary L. Goldsholle, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated April 3, 2002 ("Amendment No. 7"). Amendment No. 7 makes certain technical corrections to the rule text as it appears in Amendment No. 6, such as correcting the numbering of certain paragraphs in the rule text. As such, it is not subject to notice and comment.

[14] Letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated April 11, 2003 ("Amendment No. 8"). Among other things, Amendment No. 8: (i) Amends the definition of "item of value" in proposed Rule 2710(c)(3)(B) to exclude derivative instruments and certain other transactions; (ii) amends proposed NASD Rule 2710(a) to define "fair price;" (iii) modifies the requirement in proposed NASD Rule 2710(b)(6)(A)(iv) such that information initially filed in connection with debt securities and derivative instruments acquired or entered into for a "fair price" may be limited to a brief description of the transaction and a representation that the transaction was, or, if the pricing terms have not been set will, be entered into for a "fair price;" (iv) amends the lock-up requirements in proposed Rule 2710(g)(2) to exempt certain debt securities and derivative instruments; and (v) changes references in the rules from "the Association" to "NASD."

[15] Letter from Therese Woods, Deputy Director, Corporate Financing, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated April 25, 2003 ("Amendment No. 9"). Amendment No. 9 makes technical corrections to the proposed rule text and amends proposed Rule 2710(b)(6)(A)(iv)(b) to state: "information initially filed in connection with debt securities and derivative instruments acquired or entered into for "fair price" as defined in subsection (a)(9), but not excluded from items of value under subsection (c)(3)(B)(vi) or (vii), may be limited to a brief description of the transaction (additional information may be required in the review process) and a representation by the member that a registered principal or senior manager on behalf of the member has determined that the transaction was (or if the pricing terms have not been set) will be entered into at a fair price as defined in subsection (a)(9);".

[16] Letter from Therese Woods, Deputy Director, Corporate Financing, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated May 28, 2003 ("Amendment No. 10"). First, Amendment No. 10 makes technical corrections to the proposed rule text and revises the definition of "fair price" in proposed Rule 2710(a)(9) to include a cross reference to subsection (e)(5) and to clarify

3, 2002, April 14, 2003, April 29, 2003, and June 2, 2003, respectively. This order issues notice of, and grants accelerated approval to, the filing as modified by Amendment Nos. 6, 7, 8, 9, and 10.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In response to comments to Amendment No. 5, NASD is proposing additional amendments to Rules 2710 and 2720 of the NASD's Conduct Rules. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets. The text of the proposed rule change is marked to show additions and deletions from the NASD Corporate Financing Rule as it currently exists. The discussion section of this notice, however, focuses on the changes made in Amendment Nos. 6 through 10. For an explanation of the original filing, see the initial notice cited in footnote 6.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

(1) Issuer

The issuer of the securities offered to the public, any selling security holders offering securities to the public, any affiliate of the issuer or selling security holder, and the officers or general partners, directors, employees and security holders thereof[;].

(2) Net Offering Proceeds

Offering proceeds less all expenses of issuance and distribution[;].

(3) Offering Proceeds

Public offering price of all securities offered to the public, not including securities subject to any overallotment option, securities to be received by the underwriter and related persons, or securities underlying other securities[;].

(4) *Participating Member(s)*

Any NASD member that is participating in a public offering, any associated person of the member, any members of their immediate family, and any affiliate of the member.

[(4)](*5)* Participation or Participating in a Public Offering

Participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to SEC Rule 13e-3[; and].

[(5)](*6)* Underwriter and Related Persons

[Includes underwriters,] *Consists of* underwriter's counsel, financial consultants and advisors, finders, [members of the selling or distribution group,] any *participating* member [participating in the public offering], and any [and all] other persons [associated with or] related to *any participating member* [and members of the immediate family of any of the aforementioned persons].

(7) Listed Securities

Securities meeting the listing standards to trade on the national securities exchanges identified in SEC Rule 146, markets registered with the SEC under Section 6 of the Exchange Act, and any offshore market that is a "designated offshore securities market" under Rule 902(b) of SEC Regulation S.

(8) Derivative Instruments

A derivative instrument is any "eligible OTC derivative instrument" as defined in SEC Rule 3b–13(a)(1), (2) and (3).

(9) Fair Price

A derivative instrument or non-convertible or non-exchangeable debt security has been acquired or entered into at a fair price for purposes of subparagraphs (b)(6)(A)(iv), (c)(3)(B)(vi) and (vii), and (e)(5) if the underwriters and related persons have priced the debt security or derivative instrument in good faith; on an arm's length, commercially reasonable basis; and in accordance with pricing methods and models and procedures used in the ordinary course of their business for pricing similar transactions. A derivative instrument or other security received for acting as a private placement agent for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services, is not included within this "fair price" definition.

(10) Required Filing Date

The required filing date shall be the dates provided in subparagraph (b)(4), and for a public offering exempt from filing under subparagraph (b)(7), the required filing date for purposes of subparagraph (d) and (g) shall be the date the public offering would have been required to be filed with the NASD but for the exemption.

(b) Filing Requirements

(1)–(3) No change.

(4) Requirement for Filing

(A) Unless filed by the issuer, the managing underwriter, or another member, a member that anticipates participating in a public offering of securities subject to this Rule shall file with [the Association] *NASD* the documents and information with respect to the offering specified in subparagraphs (5) and (6) below:

(i) no later than one business day after [the filing of] any such documents *are filed with or submitted to*:

[(i)]*a.* [with] the Commission; *or*

[(ii)]*b.* [with the] *any* state securities commission *or other regulatory authority; or*

[(iii) with any other regulatory authority; or]

[(iv)]*(ii)* if not filed with *or submitted to* any regulatory authority, at least fifteen [(15)] business days prior to the anticipated [offering] date *on which offers will commence.*

(B) No [offering] *sales* of securities subject to this Rule shall commence unless:

(i) the documents and information specified in subparagraphs (5) and (6) below have been filed with and reviewed by [the Association] *NASD*; and

(ii) No change.

(C) No change.

(5) No change.

(6) Information Required To Be Filed

(A) Any person filing documents *with the NASD* that are required to be filed

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that a derivative instrument or other security received for acting as a private placement agent for the issuer for providing or arranging a loan, credit facility, merger, acquisition, or any other service, is not included within the definition of "fair price." Second, Amendment No. 10 adds subsection (a)(10) to Rule 2710, regarding required filing dates. Third, Amendment No. 10 adds the following language to proposed Rule 2710(b)(6)(A)(iv)(b): "provided, however, that information filed in connection with debt securities and derivative instruments acquired or entered into for a "fair price" as defined in subsection (a)(9) may be limited as described in subsection (b)(6)(A)(iv)b." Fourth, Amendment No. 10 adds the following language to the beginning of the first sentence of proposed Rule 2710(g): "In any public equity offering, other than a public equity offering by an issuer that can meet the requirements in subparagraphs (b)(7)(C)(i) or (ii), any * * *." Fifth, Amendment No. 10 adds new subparagraph (e)(5) to Rule 2710, regarding valuation of items of value acquired in connection with a fair price derivative or debt transaction.

under paragraph (b)(4) above shall provide the following information with respect to the offering through [the Association's] NASD's electronic filing system:

(i)–(ii) No change.

(iii) a statement of the association or affiliation with any member of any officer[,] *or* director *of the issuer, of any* [or security holder] *beneficial owner* of [the issuer in an initial public offering of equity securities, and with respect to any other offering provide such information with respect to any officer, director or security holder of five percent] *5%* or more of any class of the issuer's securities, *and of any beneficial owner of the issuer's unregistered equity securities that were acquired during the 180-day period immediately preceding the required filing date of the public offering, except for purchases described in subparagraph (c)(3)(B)(iv) below. This statement must identify* [to include]:

a. [the identity of] the person;

b. [the identity of] the member and whether such member is participating in any capacity in the public offering; and

c. the number of equity securities or the face value of debt securities owned by such person, the date such securities were acquired, and the price paid for such securities.

(iv) [a statement addressing the factors in subparagraphs (c)(4)(C) and (D), where applicable;]

[(v)] a detailed explanation of any other arrangement entered into during the [12-month] *180-day* period immediately preceding the *required* filing *date* of the *public* offering, which arrangement provides for the receipt of any item of value [and/]or the transfer of any warrants, options, or other securities from the issuer to the underwriter and related persons, *provided however:* [; and]

a. information regarding debt securities and derivative instruments not considered an item of value under subsection (c)(3)(B)(vi) and (vii) is not required to be filed; and

b. information initially filed in connection with debt securities and derivative instruments acquired or entered into for a "fair price" as defined in subsection (a)(9), but not excluded from items of value under subsection (c)(3)(B)(vi) or (vii), may be limited to a brief description of the transaction (additional information may be required in the review process) and a representation by the member that a registered principal or senior manager on behalf of the member has determined that the transaction was or (if the pricing terms have not been set) will be entered into at a fair price as defined in subsection (a)(9).

(v) a statement demonstrating compliance with all of the criteria of an exception from underwriting compensation in subparagraph (d)(5) below, when applicable; and

(vi) a detailed explanation and any documents related to:

a. the modification of any *information or representation previously provided to the NASD or of any* item of underwriting compensation, *including the information required in subparagraph (b)(6)(A)(iii) above with respect to any securities of the issuer acquired subsequent to the required filing date and prior to the effectiveness or commencement of the offering[.] ; or*

b. any new arrangement that provides for the receipt of any additional item of value by any participating member subsequent to the [review and approval of such compensation] *issuance of an opinion of no objections to the underwriting terms and arrangements* by [the Association] *NASD and within 90 days immediately following the date of effectiveness or commencement of sales of the public offering, provided, however, that information filed in connection with debt securities and derivative instruments acquired or entered into for a "fair price" as defined in subsection (a)(9) may be limited as described in subsection (b)(6)(A)(iv)b.*

(vii) any other information required to be filed under this Rule.

(B) No change.

(7)–(11) No change.

(c) Underwriting Compensation and Arrangements

(1) General

No member or person associated with a member shall participate in any manner in any public offering of securities in which the underwriting or other terms or arrangements in connection with or relating to the distribution of the securities, or the terms and conditions related thereto, are unfair or unreasonable.

(2) Amount of Underwriting Compensation

(A) No member or person associated with a member shall receive an amount of underwriting compensation in connection with a public offering [which] *that* is unfair or unreasonable and no member or person associated with a member shall underwrite or participate in a public offering of securities if the underwriting compensation in connection with the public offering is unfair or unreasonable.

(B)–(D) No change.

(E) The maximum amount of compensation (stated as a percentage of the dollar amount of the offering proceeds) [which] *that* is considered fair and reasonable generally will vary directly with the amount of risk to be assumed by [the underwriter and related persons] *participating members* and inversely with the dollar amount of the offering proceeds.

(3) Items of [Compensation] *Value*

(A) For purposes of determining the amount of underwriting compensation received or to be received by the underwriter and related persons pursuant to subparagraph *(c)*(2) above, the following items and all other items of value received or to be received by the underwriter and related persons in connection with or related to the distribution of the *public* offering, as determined pursuant to [sub]paragraph [(4)] *(d)* below shall be included:

(i)–(iii) No change.

(iv) finder's fees, *whether in the form of cash, securities or any other item of value;*

(v) wholesaler's fees;

(vi) financial consulting and advisory fees, whether in the form of cash, securities, or any other item of value;

(vii) *common or preferred* stock, options, warrants, and other *equity* securities, *including debt securities convertible to or exchangeable for equity securities,* [including securities] received [as underwriting compensation, for example]:

a. [in connection with a] *for acting as* private placement *agent* [of securities] for the issuer;

b. for providing or arranging *a loan, credit facility,* [bridge financing] *merger or acquisition services, or any other service* for the issuer;

[c. as a finder's fee;]

[d. for consulting services to the issuer; and]

[e.]*c.* [securities purchased] *as an investment* in a private placement made by the issuer; *or*

d. at the time of the public offering.

(viii) special sales incentive items [in compliance with subparagraph (6)(B)(xi)];

(ix) any right of first refusal provided to [the underwriter and related persons] *any participating member* to underwrite or participate in future public offerings, private placements or other financings, which will have a compensation value of 1% of the offering proceeds or that dollar amount contractually agreed to by the issuer and underwriter to waive or terminate the right of first refusal;

(x) No change.

(xi) commissions, expense reimbursements, or other compensation to be received by the underwriter and related persons as a result of the exercise or conversion, within twelve [(12)] months following the effective date of the offering, of warrants, options, convertible securities, or similar securities distributed as part of the *public* offering;

(xii) fees of a qualified independent underwriter; and

(xiii) compensation, including expense reimbursements, *previously* paid [in the six (6) months prior to the initial or amended filing of the prospectus or similar documents] to any member *in connection with a* [or person associated with a member for a] proposed public offering that was not completed[.], *unless the member does not participate in the revised public offering.*

(B) *Notwithstanding subparagraph (c)(3)(A) above, the following shall not be considered an item of value:*

(i) [E] expenses customarily borne by an issuer, such as printing costs; SEC, "blue sky" and other registration fees; [the Association] *NASD* filing fees; and accountant's fees, [shall be excluded from underwriter's compensation] whether or not paid through [an underwriter] a *participating member;*

(ii) cash compensation for acting as placement agent for a private placement or for providing a loan, credit facility, or for services in connection with a merger/acquisition;

(iii) listed securities purchased in public market transactions;

(iv) securities acquired through any stock bonus, pension, or profit-sharing plan that qualifies under Section 401 of the Internal Revenue Code;

(v) securities acquired by an investment company registered under the Investment Company Act of 1940;

(vi) non-convertible or non-exchangeable debt securities acquired for a fair price in the ordinary course of business in transactions unrelated to the public offering; and

(vii) derivative instruments entered into for a fair price in the ordinary course of business in a transaction unrelated to the public offering.

[(4)]*(d)* Determination of Whether [Compensation Is Received in Connection with the Offering] *Items of Value Are Included in Underwriting Compensation*

[(A)]*(1) Pre-Offering Compensation*

All items of value received [or to be received] *and all arrangements entered into for the future receipt of an item of value* by the underwriter and related persons during the [twelve (12) month] period *commencing 180 days* immediately preceding the *required* filing *date* of the registration statement or similar document *pursuant to subparagraph (b)(4) above[*, and at the time of and subsequent to] *until the date of effectiveness or commencement of sales of* the public offering[,] will be [examined to determine whether such items of value are] *considered to be* underwriting compensation in connection with the *public* offering [and, if received during the six (6) month period immediately preceding the filing of the registration statement or similar document, will be presumed to be underwriting compensation received in connection with the offering, provided, however, that such presumption may be rebutted on the basis of information satisfactory to the Association to support a finding that the receipt of an item is not in connection with the offering and shall not include cash discounts or commissions received in connection with a prior distribution of the issuer's securities].

(2) Undisclosed and Post-Offering Compensation

All items of value received and all arrangements entered into for the future receipt of an item of value by any participating member that are not disclosed to the NASD prior to the date of effectiveness or commencement of sales of a public offering, including items of value received subsequent to the public offering, are subject to post-offering review to determine whether such items of value are, in fact, underwriting compensation for the public offering.

[(B) Items of value received by an underwriter and related person more than twelve (12) months immediately preceding the date of filing of the registration statement or similar document will be presumed not to be underwriting compensation. However, items received prior to such twelve (12) month period may be included as underwriting compensation on the basis of information to support a finding that receipt of the item is in connection with the offering.]

[(C) For purposes of determining whether any item of value received or to be received by the underwriter and related persons is in connection with or related to the distribution of the public offering, the following factors, as well as any other relevant factors and circumstances, shall be considered:]

[(i) the length of time between the date of filing of the registration statement or similar document and:]

[a. the date of the receipt of the item of value;]

[b. the date of any contractual agreement for services for which the item of value was or is to be received; and]

[c. the date the performance of the service commenced, with a shorter period of time tending to indicate that the item is received in connection with the offering;]

[(ii) the details of the services provided or to be provided for which the item of value was or is to be received;]

[(iii) the relationship between the services provided or to be provided for which the item of value was or is to be received and:]

[a. the nature of the item of value;]

[b. the compensation value of the item; and]

[c. the proposed public offering;]

[(iv) the presence or absence of arm's length bargaining or the existence of any affiliate relationship between the issuer and the recipient of the item of value, with the absence of arm's length bargaining or the presence of any affiliation tending to indicate that the item of value is received in connection with the offering.]

[(D) For purposes of determining whether securities received or to be received by the underwriter and related persons are in connection with or related to the distribution of the public offering, the factors in subparagraph (C) above and the following factors shall be considered:]

[(i) any disparity between the price paid and the offering price or the market price, if a bona fide independent market exists at the time of acquisition, with a greater disparity tending to indicate that the securities constitute compensation;]

[(ii) the amount of risk assumed by the recipient of the securities, as determined by:]

[a. the restrictions on exercise and resale;]

[b. the nature of the securities (*e.g.*, warrant, stock, or debt); and]

[c. the amount of securities, with a larger amount of readily marketable securities without restrictions on resale or a warrant for securities tending to indicate that the securities constitute compensation; and]

[(iii) the relationship of the receipt of the securities to purchases by unrelated purchasers on similar terms at approximately the same time, with an absence of similar purchases tending to indicate that the securities constitute compensation.]

[(E) Notwithstanding the provisions of subparagraph (3)(A)(vi) above, financial consulting and advisory fees may be excluded from underwriting compensation upon a finding by the Association, on the basis of information satisfactory to it, that an ongoing relationship between the issuer and the underwriter and related person has been established at least twelve (12) months prior to the filing of the registration statement or similar document or that the relationship, if established subsequent to that time, was not entered into in connection with the offering, and that actual services have been or will be rendered which were not or will not be in connection with or related to the offering.]

(3) Date of Receipt of Securities

Securities of the issuer acquired by the underwriter and related persons will be considered to be received for purposes of subparagraphs (d)(1) and (d)(5) as of the date of the:

(A) closing of a private placement, if the securities were purchased in or received for arranging a private placement; or

(B) execution of a written contract with detailed provisions for the receipt of securities as compensation for a loan, credit facility, or put option; or

(C) transfer of beneficial ownership of the securities, if the securities were received as compensation for consulting or advisory services, merger or acquisition services, acting as a finder, or for any other service.

(4) Definitions

For purposes of subparagraph (d)(5) below, the following terms will have the meanings stated below.

(A) An entity:

(i) includes a group of legal persons that either:

a. are contractually obligated to make co-investments and have previously made at least one such investment; or

b. have filed a Schedule 13D or 13G with the SEC that identifies the legal persons as members of a group that have agreed to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer in connection with a previous investment: and

(ii) may make its investment or loan through a wholly owned subsidiary (except when the entity is a group of legal persons).

(B) An institutional investor is any individual or legal person that has at least $50 million invested in securities in the aggregate in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members direct or otherwise manage the institutional investor's investments or have an equity interest in the institutional investor, either individually or in the aggregate, that exceeds 5% for a publicly owned entity or 1% for a nonpublic entity.

(C) A bank or insurance company is only the regulated entity, not its subsidiaries or other affiliates.

(D) A right of preemption means the right of a shareholder to acquire additional securities in the same company in order to avoid dilution when additional securities are issued, pursuant to:

(i) any option, shareholder agreement, or other contractual right entered into at the time of a purchase of securities;

(ii) the terms of the security purchased;

(iii) the issuer's charter or by-laws; or

(iv) the domestic law of a foreign jurisdiction that regulates the issuance of the securities.

(E) "Total equity securities" means the aggregate of the total shares of:

(i) common stock outstanding of the issuer; and

(ii) common stock of the issuer underlying all convertible securities outstanding that convert without the payment of any additional consideration.

(5) Exceptions From Underwriting Compensation

Notwithstanding subparagraph (d)(1) above, the following items of value are excluded from underwriting compensation (but are subject to the lock-up restriction in subparagraph (g)(1) below), provided that the member does not condition its participation in the public offering on an acquisition of securities under an exception and any securities purchased are purchased at the same price and with the same terms as the securities purchased by all other investors.

(A) Purchases and Loans by Certain Entities—Securities of the issuer purchased in a private placement or received as compensation for a loan or credit facility before the required filing date of the public offering pursuant to subparagraph (b)(4) above by certain entities if:

(i) each entity:

a. either:

1. manages capital contributions or commitments of $100 million or more, at least $75 million of which has been contributed or committed by persons that are not participating members;

2. manages capital contributions or commitments of $25 million or more, at least 75% of which has been contributed or committed by persons that are not participating members;

3. is an insurance company as defined in Section 2(a)(13) of the Securities Act or is a foreign insurance company that has been granted an exemption under this Rule; or

4. is a bank as defined in Section 3(a)(6) of the Act or is a foreign bank that has been granted an exemption under this Rule; and

b. is a separate and distinct legal person from any member and is not registered as a broker/dealer;

c. makes investments or loans subject to the evaluation of individuals who have a contractual or fiduciary duty to select investments and loans based on the risks and rewards to the entity and not based on opportunities for the member to earn investment banking revenues;

d. does not participate directly in investment banking fees received by any participating member for underwriting public offerings; and

e. has been primarily engaged in the business of making investments in or loans to other companies; and

(ii) all entities related to each member in acquisitions that qualify for this exception do not acquire more than 25% of the issuer's total equity securities during the review period in subparagraph (d)(1), calculated immediately following the transaction.

(B) Investments In and Loans to Certain Issuers—Securities of the issuer purchased in a private placement or received as compensation for a loan or credit facility before the required filing date of the public offering pursuant to subparagraph (b)(4) above by certain entities if:

(i) each entity:

a. manages capital contributions or commitments of at least $50 million;

b. is a separate and distinct legal person from any member and is not registered as a broker/dealer;

c. does not participate directly in investment banking fees received by the member for underwriting public offerings; and

d. has been primarily engaged in the business of making investments in or loans to other companies; and

(ii) institutional investors beneficially own at least 33% of the issuer's total equity securities, calculated immediately prior to the transaction;

(iii) the transaction was approved by a majority of the issuer's board of directors and a majority of any institutional investors, or the designees of institutional investors, that are board members; and

(iv) all entities related to each member in acquisitions that qualify for this exception do not acquire more than 25% of the issuer's total equity securities, calculated immediately following the transaction.

(C) Private Placements With Institutional Investors—Securities of the issuer purchased in, or received as

placement agent compensation for, a private placement before the required filing date of the public offering pursuant to subparagraph (b)(4) above if:

(i) institutional investors purchase at least 51% of the "total offering" (comprised of the total number of securities sold in the private placement and received or to be received as placement agent compensation by any member);

(ii) an institutional investor was the lead negotiator or, if the terms were not negotiated, was the lead investor with the issuer to establish or approve the terms of the private placement; and

(iii) underwriters and related persons did not, in the aggregate, purchase or receive as placement agent compensation more than 20% of the "total offering" (excluding purchases by any entity qualified under subparagraph (d)(5)(A) above).

(D) Acquisitions and Conversions to Prevent Dilution—Securities of the issuer if:

(i) the securities were acquired as the result of:

a. a right of preemption that was granted in connection with securities that were purchased either:

1. in a private placement and the securities are not deemed by the NASD to be underwriting compensation; or

2. from a public offering or the public market; or

b. a stock-split or a pro-rata rights or similar offering; or

c. the conversion of securities that have not been deemed by the NASD to be underwriting compensation; and

(ii) the only terms of the purchased securities that are different from the terms of securities purchased by other investors are pre-existing contractual rights that were granted in connection with a prior purchase;

(iii) the opportunity to purchase in a rights offering or pursuant to a right of preemption, or to receive additional securities as the result of a stock-split or conversion was provided to all similarly situated securityholders; and

(iv) the amount of securities purchased or received did not increase the recipient's percentage ownership of the same generic class of securities of the issuer or of the class of securities underlying a convertible security calculated immediately prior to the investment, except in the case of conversions and passive increases that result from another investor's failure to exercise its own rights.

(E) Purchases Based On a Prior Investment History—Purchases of securities of the issuer if:

(i) the amount of securities purchased did not increase the purchaser's percentage ownership of the same generic class of securities of the issuer or of the class of securities underlying a convertible security calculated immediately prior to the investment; and

(ii) an initial purchase of securities of the issuer was made at least two years and a second purchase was made more than 180 days before the required filing date of the public offering pursuant to subparagraph (b)(4) above.

[(5)](*e*) Valuation of Non-Cash Compensation

For purposes of determining the value to be assigned to securities received as underwriting compensation, the following criteria and procedures shall be applied[:].

[(A) No underwriter and related person may receive a security or a warrant for a security as compensation in connection with the distribution of a public offering that is different than the security to be offered to the public unless the security received as compensation has a bona fide independent market, provided, however, that: (i) in exceptional and unusual circumstances, upon good cause shown, such arrangement may be permitted by the Association; and (ii) in an offering of units, the underwriter and related persons may only receive a warrant for the unit offered to the public where the unit is the same as the public unit and the terms are no more favorable than the terms of the public unit.]

(1) Limitation on Securities Received Upon Exercise or Conversion of Another Security

An underwriter and related person may not receive a security (including securities in a unit), a warrant for a security, or a security convertible into another security as underwriting compensation in connection with a public offering unless:

(A) the security received or the security underlying the warrant or convertible security received is identical to the security offered to the public or to a security with a bona fide independent market; or

(B) the security can be accurately valued, as required by subparagraph (f)(2)(I) below.

[(B)]*(2) Valuation of Securities That Do Not Have an Exercise or Conversion Price*

[s] *S*ecurities that [are not options, warrants or convertible securities] *do not have an exercise or conversion price* shall *have a compensation value* [be valued on the basis of] *based on*:

[(i)] (*A*) the difference between [the per security cost and]*:*

(i) either the market price per security on the date of acquisition, [where a] *or, if no* bona fide independent market exists for the security, [or] the [proposed (and actual)] public offering price per security; *and*

(ii) the per security cost;

[(ii)] *(B)* multiplied by the number of securities received or to be received as underwriting compensation;

[(iii)] *(C)* divided by the offering proceeds; and

[(iv)] *(D)* multiplied by one hundred [(100)].

(3) Valuation of Securities That Have an Exercise or Conversion Price

[(C) o] *O*ptions, warrants or convertible securities *that have an exercise or conversion price* ("warrants") shall [be valued on the basis of] *have a compensation value based on* the following formula:

[(i)] *(A)* the [proposed (and actual)] public offering price per security multiplied by .65 [(65%)];

[(ii)] *(B)* minus the [difference between] *resultant of* the exercise or conversion price per [security] *warrant* [and] *less* either*:*

(i) the market price per security on the date of acquisition, where a bona fide independent market exists for the security, or

(ii) the [proposed (and actual)] public offering price per security;

[(iii)] *(C)* divided by two [(2)];

[(iv)] *(D)* multiplied by the number of *securities underlying the* warrants[, options, and convertible securities received or to be received as underwriting compensation];

[(v)] *(E)* less the total price paid for the [securities] *warrants*;

[(vi)] *(F)* divided by the offering proceeds; and

[(vii)] *(G)* multiplied by one hundred [(100).]*;*

(H) provided, however, that, notwithstanding subparagraph (e)(4) below, such warrants shall have a compensation value of at least .2% of the offering proceeds for each amount of securities that is up to 1% of the securities being offered to the public (excluding securities subject to an overallotment option).

(4) Valuation Discount for Securities With a Longer Resale Restriction

[(D) a lower value equal to 80% and 60% of the calculated value shall be assigned if securities, and where relevant, underlying securities, are or will be restricted from sale, transfer, assignment or other disposition for a period of one and two years, respectively, beyond the one-year period of restriction required by subparagraph (7)(A)(i) below.]

A lower value equal to 10% of the calculated value shall be deducted for each 180-day period that the securities or underlying securities are restricted from sale or other disposition beyond the 180-day period of the lock-up restriction required by subparagraph (g)(1) below. The transfers permitted during the lock-up restriction by subparagraphs (g)(2)(A)(iii)–(iv) are not available for such securities.

(5) Valuation of Items of Value Acquired in Connection with a Fair Price Derivative or Debt Transaction

Any debt or derivative transaction acquired or entered into at a "fair price" as defined in subsection (a)(9) and item of value received in or receivable in the settlement, exercise or other terms of such debt or derivative transaction shall not have a compensation value for purposes of determining underwriting compensation. If the actual price for the debt or derivative security is not a fair price, compensation will be calculated pursuant to this subsection (e) or based on the difference between the fair price and the actual price.

[(6)] *(f)* Unreasonable Terms and Arrangements

[(A)] *(1) General*

No member or person associated with a member shall participate in any manner in a public offering of securities after any arrangement proposed in connection with the public offering, or the terms and conditions relating thereto, has been determined to be unfair or unreasonable pursuant to this Rule or inconsistent with any By-Law or any Rule or regulation of [the Association] *NASD.*

[(B)] *(2) Prohibited Arrangements*

Without limiting the foregoing, the following terms and arrangements, when proposed in connection with [the distribution of] a public offering of securities, shall be unfair and unreasonable[:].

[(i)] *(A)* [a]*A*ny accountable expense allowance granted by an issuer to the underwriter and related persons [which] *that* includes payment for general overhead, salaries, supplies, or similar expenses of the underwriter incurred in the normal conduct of business[;].

[(ii)] *(B)* [a]*A*ny non-accountable expense allowance in excess of [three (3) percent;] *3% of offering proceeds.*

[(iii)] *(C)* [a]*A*ny payment of commissions or reimbursement of expenses directly or indirectly to the underwriter and related persons prior to commencement of the public sale of the securities being offered, except a reasonable advance against out-of-pocket accountable expenses actually anticipated to be incurred by the underwriter and related persons, which advance is reimbursed to the issuer to the extent not actually incurred[;].

[(iv)] *(D)* [t]*T*he payment of any compensation by an issuer to a member or person associated with a member in connection with an offering of securities [which] *that* is not completed according to the terms of agreement between the issuer and underwriter, except those negotiated and paid in connection with a transaction that occurs in lieu of the proposed offering as a result of the efforts of the underwriter and related persons and provided, however, that the reimbursement of out-of-pocket accountable expenses actually incurred by the member or person associated with a member shall not be presumed to be unfair or unreasonable under normal circumstances[;].

[(v)] *(E)* [a]*A*ny "tail fee" arrangement granted to the underwriter and related persons that has a duration of more than two [(2)] years from the date the member's services are terminated, in the event that the offering is not completed in accordance with the agreement between the issuer and the underwriter and the issuer subsequently consummates a similar transaction, except that a member may demonstrate on the basis of information satisfactory to [the Association] *NASD* that an arrangement of more than two [(2)] years is not unfair or unreasonable under the circumstances.

[(vi)] *(F)* [a]*A*ny right of first refusal provided to the underwriter or related persons to underwrite or participate in future public offerings, private placements or other financings [which] *that*:

[a.] *(i)* has a duration of more than three [(3)] years from the [effective] date *of effectiveness or commencement of sales* of the *public* offering; or

[b.] *(ii)* has more than one opportunity to waive or terminate the right of first refusal in consideration of any payment or fee[;].

[(vii)] *(G)* [a]*A*ny payment or fee to waive or terminate a right of first refusal regarding future public offerings, private placements or other financings provided to the underwriter and related persons [which] *that*:

[a.]*(i)* has a value in excess of the greater of [one percent (] 1% [)] of the offering proceeds in the public offering where the right of first refusal was granted (or an amount in excess of [one percent] *1%* if additional compensation is available under the compensation guideline of the original offering) or [five percent (] 5% [)] of the underwriting discount or commission paid in connection with the future financing (including any overallotment option that may be exercised), regardless of whether the payment or fee is negotiated at the time of or subsequent to the original public offering; or

[b.]*(ii)* is not paid in cash[;].

[(viii)]*(H) The terms or the exercise of the terms of an agreement for* the receipt by the underwriter and related persons of underwriting compensation consisting of any option, warrant or convertible security [which] *that*:

[a.]*(i)* is exercisable or convertible more than five [(5)] years from the effective date of the offering;

[b. is exerciseable or convertible at a price below either the public offering price of the underlying security or, if a bona fide independent market exists for the security or the underlying security, the market price at the time of receipt;]

[c.]*(ii)* is not in compliance with subparagraph [(5)(A)] *(e)(1)* above;

[d.]*(iii)* has more than one demand registration right at the issuer's expense;

[e.]*(iv)* has a demand registration right with a duration of more than five [(5)] years from the [effective] date *of effectiveness or the commencement of sales* of the *public* offering;

[f.]*(v)* has a piggyback registration right with a duration of more than seven [(7)] years from the [effective] date *of effectiveness or the commencement of sales* of the *public* offering;

[g.]*(vi)* has anti-dilution terms [designed to provide] *that allow* the underwriter and related persons [with disproportionate rights, privileges and economic benefits which are not provided to the purchasers of the securities offered to the public (or the public shareholders, if in compliance with subparagraph (5)(A) above)] *to receive more shares or to exercise at a lower price than originally agreed upon at the time of the public offering, when the public shareholders have not been proportionally affected by a stock split, stock dividend, or other similar event; or*

[h.]*(vii)* has anti-dilution terms [designed to provide for the receipt or accrual of] *that allow the underwriter and related persons to receive or accrue* cash dividends prior to the exercise or conversion of the security[; or].

[i. is convertible or exercisable or otherwise is on terms more favorable than the terms of the securities being offered to the public;]

[(ix)]*(I)* [t]*T*he receipt by the underwriter and related persons of any item of compensation for which a value cannot be determined at the time of the offering[;].

[(x)]*(J)* [w]*W*hen proposed in connection with the distribution of a public offering of securities on a "firm commitment" basis, any over allotment option providing for the over allotment of more than [fifteen (15) percent] *15%* of the amount of securities being offered, computed excluding any securities offered pursuant to the over allotment option[;].

[(xi) stock numerical limitation. The receipt by the underwriter and related persons of securities which constitute underwriting compensation in an aggregate amount greater than ten (10) percent of the number or dollar amount of securities being offered to the public, which is calculated to exclude:]

[a. any securities deemed to constitute underwriting compensation;]

[b. any securities issued pursuant to an overallotment option;]

[c. in the case of a "best efforts" offering, any securities not actually sold; and]

[d. any securities underlying warrants, options, or convertible securities which are part of the proposed offering, except where acquired as part of a unit;]

[(xii)]*(K)* [t]*T*he receipt by a member or person associated with a member, pursuant to an agreement entered into at any time before or after the effective date of a public offering of warrants, options, convertible securities or units containing such securities, of any compensation or expense reimbursement in connection with the exercise or conversion of any such warrant, option, or convertible security in any of the following circumstances:

[a.]*(i)* the market price of the security into which the warrant, option, or convertible security is exercisable or convertible is lower than the exercise or conversion price;

[b.]*(ii)* the warrant, option, or convertible security is held in a discretionary account at the time of exercise or conversion, except where prior specific written approval for exercise or conversion is received from the customer;

[c.]*(iii)* the arrangements whereby compensation is to be paid are not disclosed:

[1.]*a.* in the prospectus or offering circular by which the warrants, options, or convertible securities are offered to the public, if such arrangements are contemplated or any agreement exists as to such arrangements at that time, and

[2.]*b.* in the prospectus or offering circular provided to security holders at the time of exercise or conversion; or

[d.]*(iv)* the exercise or conversion of the warrants, options or convertible securities is not solicited by the underwriter or related person, provided however, that any request for exercise or conversion will be presumed to be unsolicited unless the customer states in writing that the transaction was solicited and designates in writing the broker/dealer to receive compensation for the exercise or conversion[;].

[(xiii)]*(L)* [f]*F*or a member to participate with an issuer in the public distribution of a non-underwritten issue of securities if the issuer hires persons primarily for the purpose of distributing or assisting in the distribution of the issue, or for the purpose of assisting in any way in connection with the underwriting, except to the extent in compliance with 17 C.F.R. 240.3a4–1 and applicable state law.

[(xiv)]*(M)* [f]*F*or a member or person associated with a member to participate in a public offering of real estate investment trust securities, as defined in Rule 2340(c)(4), unless the trustee will disclose in each annual report distributed to investors pursuant Section 13(a) of the Act a per share estimated value of the trust securities, the method by which it was developed, and the date of the data used to develop the estimated value.

[(C) In the event that the underwriter and related persons receive securities deemed to be underwriting compensation in an amount constituting unfair and unreasonable compensation pursuant to the stock numerical limitation in subparagraph (B)(ix) above, the recipient shall return any excess securities to the issuer or the source from which received at cost and without recourse, except that in exceptional and unusual circumstances, upon good cause shown, a different arrangement may be permitted.]

[(7)]*(g) Lock-Up* Restriction[s] on Securities

[(A) No member or person associated with a member shall participate in any public offering which does not comply with the following requirements:]

[(i) securities deemed to be underwriting compensation shall not be sold, transferred, assigned, pledged or hypothecated by any person, except as provided in subparagraph (B) below, for a period of (a) one year following the effective date of the offering. However, securities deemed to be underwriting compensation may be transferred to any member participating in the offering and the bona fide officers or partners thereof and securities which are convertible into other types of securities or which may be exercised for the purchase of other securities may be so transferred, converted or exercised if all securities so transferred or received remain subject to the restrictions specified herein for the remainder of the initially applicable time period;]

[(ii) certificates or similar instruments representing securities restricted pursuant to subparagraph (i) above shall bear an appropriate legend describing the restriction and stating the time period for which the restriction is operative; and]

[(iii) securities to be received by a member as underwriting compensation shall only be issued to a member participating in the offering and the bona fide officers or partners thereof.]

(1) Lock-Up Restriction

In any public equity offering, other than a public equity offering by an issuer that can meet the requirements in subparagraphs (b)(7)(C)(i) or (ii) any common or preferred stock, options, warrants, and other equity securities of the issuer, including debt securities convertible to or exchangeable for equity securities of the issuer, that are unregistered and acquired by an underwriter and related person during 180 days prior to the required filing date, or acquired after the filing of the registration statement and deemed to be underwriting compensation by the NASD, and securities excluded from underwriting compensation pursuant to subparagraph (d)(5) above, shall not be sold during the offering, or sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the date of effectiveness or commencement of sales of the public offering, except as provided in subparagraph (g)(2) below.

(2) Exceptions to Lock-Up Restriction

[(B) The provisions of subparagraph (A) notwithstanding:]

Notwithstanding subparagraph (g)(1) above, the following shall not be prohibited:

(A) the transfer of any security:

(i) by operation of law or by reason of reorganization of the issuer [shall not be prohibited.]*;*

(ii) to any member participating in the offering and the officers or partners thereof, if all securities so transferred remain subject to the lock-up restriction in subparagraph (g)(1) above for the remainder of the time period;

[(C) Venture capital restrictions. When a member participates in the initial public offering of an issuer's securities, such member or any officer, director, general partner, controlling shareholder or subsidiary of the member or subsidiary of such controlling shareholder or a member of the immediate family of such persons, who beneficially owns any securities of said issuer at the time of filing of the offering, shall not sell such securities during the offering or sell, transfer, assign or hypothecate such securities for ninety (90) days following the effective date of the offering unless:]

[(i) the price at which the issue is to be distributed to the public is established at a price no higher than that recommended by a qualified independent underwriter who does not beneficially own 5% or more of the outstanding voting securities of the issuer, who shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and who shall exercise the usual standards of "due diligence" in respect thereto; or]

[(ii)] *(iii)* if the aggregate amount of [such] securities *of the issuer* held by [such a member and its related persons enumerated above would] *the underwriter or related person do* not exceed 1% of the securities being offered[.];

(iv) that is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that no participating member manages or otherwise directs investments by the fund, and participating members in the aggregate do not own more than 10% of the equity in the fund;

(v) that is not an item of value under subparagraphs (c)(3)(B)(iv)–(vii) above;

(vi) that is eligible for the limited filing requirement in subparagraph (b)(6)(A)(iv)b and has not been deemed to be underwriting compensation under the Rule;

(vii) that was previously but is no longer subject to the lock-up restriction in subparagraph (g)(1) above in connection with a prior public offering (or a lock-up restriction in the predecessor rule), provided that if the prior restricted period has not been completed, the security will continue to be subject to such prior restriction until it is completed; or

(viii) that was acquired subsequent to the issuer's initial public offering in a transaction exempt from registration under SEC Rule 144A; or

(B) the exercise or conversion of any security, if all securities received remain subject to the lock-up restriction in subparagraph (g)(1) above for the remainder of the time period.

[(8)] *(h)* [Conflicts of Interest] Proceeds Directed to a Member[:]

(1) Compliance With Rule 2720

No member shall participate in a public offering of an issuer's securities where more than [ten (10) percent] *10%* of the net offering proceeds, not including underwriting compensation, are intended to be paid to [members participating in the distribution of the offering or associated or affiliated persons of such members, or members of the immediate family of such persons] *participating members*, unless the price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established pursuant to Rule 2720(c)(3).

[(A)] *(2)* *Disclosure*

All offerings included within the scope of [this] subparagraph [(8)] *(h)(1)* shall disclose in the underwriting or plan of distribution section of the registration statement, offering circular or other similar document that the offering is being made pursuant to the provisions of this subparagraph and, where applicable, the name of the member acting as qualified independent underwriter, and that such member is assuming the responsibilities of acting as a qualified independent underwriter in pricing the offering and conducting due diligence.

[(B)] *(3)* *Exception From Compliance*

The provisions of [this] subparagraph*s* [(8)] *(h)(1) and (2)* shall not apply to:

[(i)] *(A)* an offering otherwise subject to the provisions of Rule 2720;

[(ii)] *(B)* an offering of securities exempt from registration with the Commission under Section 3(a)(4) of the Securities Act of 1933;

[(iii)] *(C)* an offering of a real estate investment trust as defined in Section 856 of the Internal Revenue Code; or

[(iv)] *(D)* an offering of securities subject to Rule 2810, unless the net offering proceeds are intended to be paid to the above persons for the purpose of repaying loans, advances or other types of financing utilized to acquire an interest in a pre-existing company.

[(d)] *(i)* Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" as used in this Section (d) of this Rule shall have the following meanings:

(A) "Compensation" shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, an adviser to an issuer, an underwriter and any affiliated person of such entities.

(2) Restrictions on Non-Cash Compensation

In connection with the sale and distribution of a public offering of securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Non-cash compensation arrangements are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors[17] and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph (d)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the issuer or affiliate thereof, the office of the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the issuer or affiliate of the issuer is not conditioned by the issuer or an affiliate of the issuer on the achievement of a sales target or any other non-cash compensation arrangement permitted by subparagraph (d)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

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[17] The current annual amount fixed by the Board of Governors is $100.

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in subparagraph (d)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by subparagraphs (d)(2)(C)–(E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with subparagraph (d)(2)(C)–(E).

[e] *(j)* Exemptions

Pursuant to the Rule 9600 Series, the [Association may exempt a member or person associated with a member from the provisions of this Rule] *appropriate NASD staff*, for good cause shown *after taking into consideration all relevant factors, may conditionally or unconditionally grant an exemption from any provision of this Rule to the extent that such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.*

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a) General

No Change.

(b) Definitions

(1)–(8) No Change.

(9) Immediate family—*the* parents, mother-in-law, father-in-law, [husband or wife] *spouse*, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children *of an employee or associated person of a member, except any person other than the spouse and children who does not live in the same household as, have a business relationship with, provide material support to, or receive material support from, the employee or associated person of a member. In addition, the immediate family includes* [or] any other person who [is supported, directly or indirectly, to a material extent by] *either lives in the same household as, provides material support to, or receives material support from*, an employee [of,] or *associated* person [associated, with] *of* a member.

* * * * *

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In January 2000, NASD filed with the SEC proposed amendments to the Corporate Financing Rule ("Rule") to modernize and simplify the Rule ("original proposal"). The SEC published the original proposal for comment on April 11, 2000 [18] and received 14 comment letters.[19] In January 2001, NASD submitted Amendment No. 5 to the original proposal to respond to the comments ("amended proposal"). The SEC published the amended proposal for comment on March 14, 2001[20] and received 8 comment letters [21] described later in this Section. Amendment Nos. 6 through 10 respond to the comments received.

The Corporate Financing Rule regulates underwriting compensation and prohibits unfair arrangements in connection with public offerings of securities. The Rule requires members to submit registration statements for public offerings and other supplemental information to the Corporate Financing Department ("Department") for review. In January 2000, NASD proposed comprehensive amendments to the Rule to modernize the Rule so that it would better reflect the various financial activities of multi-service firms.

The Commission has twice published for comment the proposed amendments. Commenters praised NASD for its decision to bring clarity and consistency to the application of the Rule. They also believed that the Rule should accommodate bona fide advisory and investment activities of NASD members while continuing to protect issuers and investors from unfair or unreasonable underwriting activities.

The original proposal contained an objective standard that members and the Department could follow to determine whether any "item of value," such as fees and securities received by underwriters and their affiliates should be included in the calculation of underwriting compensation under the Rule. Under this standard, all items of value received by participating members within the 180 day period before the filing of a registration statement and up to the time of the offering's effectiveness or commencement of sales (the "Review Period") would be included, unless the items were received in a transaction that met certain exceptions contained in the Rule. The exceptions are intended to distinguish securities and other items of value acquired as consideration for underwriting services from securities and other items of value acquired as consideration for venture capital investments and other financial services.

In the original proposal, securities acquired during the 90 days before the registration statement was filed would have been counted as compensation per se, notwithstanding whether their acquisition otherwise would meet an exception. Industry commenters strongly opposed the 90-day per se requirement and recommended the adoption of several alternative exceptions. They also recommended that the Department retain some flexibility under the Rule to make case-by-case determinations regarding whether certain items of value should be deemed to be underwriting compensation.

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[18] *See supra* note 6.

[19] As stated previously, these comment letters are discussed in the release cited in note.

[20] *See supra* note 10.

[21] Letters from Edward M. Alterman, Fried, Frank, Harris Shriver & Jacobson ("Fried Frank"), dated April 4, 2001; Goldman Sachs & Co. ("Goldman"), dated April 6, 2001; Michael T. Edsall, Kirkland & Ellis (Kirkland"), dated April 4, 2001; Christine Walsh, First Vice President and Co-Head of Investment Banking Counsel Corporate and Institutional Client Group, Merrill Lynch ("Merrill"), dated April 12, 2001; John Faulkner, Managing Director, Morgan Stanley Dean Witter ("Morgan"), dated April 10, 2001; Stuart J. Kaswell, General Counsel and Senior Vice President, Securities Industry Association ("SIA"), dated April 6, 2001; Linda DeRenzo, Testa, Hurwitz & Thibeault ("Testa"), dated April 3, 2001; and Morris N. Simkin, Winston & Strawn ("Winston"), dated February 27, 2001.

The amended proposal eliminates the 90-day *per se* requirement and adds the following:

- A 10% limitation on acquisitions of securities that meet the exception for "purchases and loans by certain entities" in paragraph (d)(5)(A) of Rule 2710 ("Exception 1") and the exception for "investments in and loans to certain issuers" in paragraph (d)(5)(B) of Rule 2710 ("Exception 2");
- A provision that excludes listed securities from being deemed an "item of value;'
- The addition of insurance companies and banks as qualifying entities in Exception 1;
- An exception for securities received in connection with financial consulting and advisory arrangements, if the arrangement is detailed in a written agreement executed at least 12 months before filing; and,
- Tightened lock-up restrictions that prohibit derivative transactions that result in the effective economic disposition of locked-up shares.

The following is a description of proposed amendments to the amended proposal to which the Commission is granting accelerated approval. As noted previously, the Commission has published the filing for comment on two prior occasions.[22] All of the proposed changes from the amended proposal are in response to the comments on Amendment No. 5, except as indicated for non-substantive and conforming changes to the Rule. NASD also describes several suggestions made by the commenters that it does not support because they would not improve the Rule or would be inconsistent with its purposes.

1. Lock-Up Restrictions

The current Corporate Financing Rule imposes a one-year lock-up on securities deemed to be underwriting compensation. Securities of an issuer that are not deemed to be underwriting compensation, but are held by members of the underwriting syndicate in an IPO, are subject to a 90-day "venture capital" lock-up. The lock-up provisions in the Rule are intended primarily to protect the aftermarket in a new security from the potential for manipulation. The lock-up provisions as proposed to be amended also should ensure that securities acquired during the Review Period by an underwriter or related person that are not deemed to be compensation because they were acquired in transactions that meet one of the five proposed exceptions, were acquired and held as an investment in the issuer.

The original proposal replaced the one-year and 90-day lock-up provisions with a single 180-day lock-up. According to NASD, the 180-day lock-up is consistent with the industry practice to impose a 180-day lock-up on securities of the issuer held by its officers, directors and other insiders. The amended proposal further tightens the lock-up provision by prohibiting certain derivative transactions. NASD believes that this change should ensure that securities subject to the lock-up are held as an investment and minimize the opportunity for underwriters and related persons to realize a quick profit from cheap stock and warrants acquired from the issuer or its nominees during the Review Period.

Commenters (Goldman, Fried Frank, SIA and Testa) suggested changing language in the amended proposal that could be read to prevent members from participating in public offerings in which their affiliates or associated persons are selling security-holders. They also commented that the lock-up restrictions are too broad and recommended that the restrictions apply only to securities deemed to be underwriter compensation related to initial public offerings.

In response to these comments, NASD proposes to revise the language in the proposed amendments to clarify that members may participate in public offerings in which the members, their affiliates or associated persons are offering their shares or are selling security-holders of another issuer. NASD intended for the Rule to permit such participation, but the draft rule language was not clear on this point. The proposed amendments also would limit the 180-day lock-up to equity or convertible-to-equity securities and certain derivatives ("unregistered equity securities") held by underwriters and related persons and acquired during the Review Period. NASD also proposes additional exceptions from the lock-up requirements in NASD Rule 2710(g)(2) to provide that debt securities and derivative instruments (1) that are not items of value, or (2) that are eligible for the limited filing requirement in NASD Rule 2710(b)(6)(A)(iv) and have not been deemed to be underwriting compensation by the Department under the Rule will not be locked up.

The proposed amendments retain the lock-up provision in connection with secondary offerings. Nevertheless, NASD believes that it is unusual for members and their affiliates to acquire privately placed, unregistered securities of issuers conducting secondary offerings, except pursuant to Rule 144A transactions. The proposed amendments would provide an exception from the lock-up restrictions for Rule 144A securities acquired after the completion of an issuer's IPO.

2. 10% Limitation

The original and amended proposals contained an objective standard that members and the Department would use to determine whether any "item of value," such as fees and securities, received by underwriters and their affiliates must be included in the calculation of underwriting compensation under the Rule. Under this standard, all items of value received by a participating member during the Review Period would be included, unless the items were received in a transaction that met one of the enumerated exceptions contained in the proposal.

Exceptions 1 and 2 except from underwriting compensation, securities received as consideration for certain investments and loans by entities that are affiliates of members. These entities must meet certain capital and other requirements that are designed to ensure that they are engaged in bona fide businesses providing loans to, or venture capital investments in, other companies. The amended proposal also provided that the total amount of securities received by all entities related to a member in transactions meeting the requirements in Exceptions 1 and 2 may not exceed 10% of the issuer's total equity securities, calculated immediately following the transaction.

Some commenters (Fried Frank, Goldman, Kirkland, SIA and Testa) asserted that the 10% limitation undermined the usefulness of the exceptions and was unnecessary because the other requirements in the exceptions ensure that the transactions are bona fide investments or loans. NASD proposed to retain the limitation in Exceptions 1 and 2, but raise the threshold to 25%. NASD states that other conditions of the exceptions help to ensure that the transaction is a bona fide investment or loan, but a 25% limitation is a reasonable additional protection against the potential for overreaching and unfair arrangements. The 25% limitation would apply only to transactions that qualify for the particular exception. If, for example, a member receives unregistered equity securities as placement agent compensation in a transaction that qualifies under the third exception, those securities would not count toward the 25% limitation on the amount of securities that could be acquired by an affiliated entity in a transaction that qualifies under Exception 1 or 2.

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[22] *See supra* notes 6 and 10.

Exception 1 would apply the 25% threshold to all securities acquired during the Review Period, while Exception 2 would apply the 25% threshold to each acquisition of securities under that exception. Exception 1 is available for private placements and loans in which the only parties are the member's affiliate and the issuer. Accordingly, under Exception 1 a member's affiliate could structure a single financing as a series of transactions, each of which enable it to acquire no more than 25% of the issuer's total equity securities, but in combination would bring the affiliate's acquisitions well over the 25% level. By contrast, because the issuer's board of directors must approve each transaction in Exception 2, the amount of equity an issuer must provide as consideration for a particular mezzanine level financing would be certain and discrete. Consequently, Exception 1 would apply the 25% threshold to all securities acquired during the Review Period, while Exception 2 would apply the threshold on a transaction by transaction basis.

3. Entity Definition

A. *New Partnerships.* Exceptions 1 and 2 require entities to meet certain capital requirements and to be engaged in the business of making investments in or loans to other companies. Some commenters (Goldman and SIA) pointed out that many sponsors routinely carry out investment programs through a series of similar funds, although each individual fund may not meet the capital requirements in the exceptions. Other commenters (Fried Frank and Morgan) noted that a fund whose first investment is in the issuer would not be able to establish that it is engaged in the business of making investments and loans and thus it could not qualify for the exceptions, even though the fund is part of the investment program. These commenters recommended that NASD amend the Rule to treat as one entity all funds in a series of funds that are created to engage in the same business as prior funds in the series. The fund's capital and operating history thus would reflect those of the entire investment program for purposes of these exceptions. NASD does not support this change because it would introduce a highly subjective consideration (*i.e.*, whether a fund is part of an investment program) and would undermine the requirements that a qualifying entity demonstrate through its operating history that it is a bona fide business, and that it alone meets the capital standards in the exception.

B. *Group of Legal Persons.* The definition of "entity" for purposes of Exceptions 1 and 2 includes "a group of legal persons" that are contractually obligated to make co-investments *and* have previously made at least one such investment. This provision permits a group of entities to combine their capital for purposes of the exceptions, and thus permits certain joint ventures and partnerships that would not otherwise be deemed entities to take advantage of the exceptions. Some commenters recommended that the definition be broader and include: (1) entities that have entered into a co-investment agreement, but have not yet made a co-investment; or (2) entities that do not have a co-investment agreement, but have made previous co-investments. Given the potential abuse that could arise from an illegitimate "grouping" of different entities, the proposed amendments preserve the requirements of both a co-investment history and an agreement.

C. *Bank and Insurance Company Subsidiaries.* The amended proposal added insurance companies and banks as qualifying entities in Exception 1. These entities are separately regulated and engage in a line of business that is distinct from the underwriting business. Commenters (Goldman and SIA) suggested that because the definition of "entity" includes a wholly owned subsidiary of a qualifying entity, subsidiaries of banks and insurance companies could enjoy a competitive advantage over broker/dealer subsidiaries if they were not required to meet the capitalization requirements. The proposed amendments clarify that in order to qualify for the exception, subsidiaries and affiliates of banks and insurance companies that are not themselves regulated banks and insurance companies must separately meet the requirements in Exception 1.

4. Institutional Investor Definition

Rule 2710(d)(4)(B) defines "institutional investor" for purposes of Exception 2 and the exception for "private placements with institutional investors" in paragraph (d)(5)(C) of Rule 2710 ("Exception 3"). Under the amended proposal, no participating member could have any equity interest or management responsibility in an entity intending to qualify as an "institutional investor." One commenter (Fried Frank) suggested that NASD amend the definition of "institutional investor" to permit some part of the equity interest in the entity to be held by participating members. The commenter claims that the application is otherwise too restrictive, especially with regard to widely held institutional entities like publicly owned companies or mutual funds.

In response to the comment, NASD proposes to amend the definition of "institutional investor" to permit a member to qualify for the exceptions so long as it holds no more than 5% of a publicly owned entity and no more than 1% of a non-public entity, such as a hedge fund.

5. Private Placements With Institutional Investors

Exception 3 addresses private placements in which: (1) Institutional investors acquire at least 51% of the total offering of the issuer's securities; (2) an institutional investor is the lead negotiator or lead investor with the issuer and establishes the terms of the private placement; and (3) underwriters and related persons do not acquire more than 20% of the total offering. Some commenters (Fried Frank and Goldman) claimed that it should be presumed that institutional investors participated in the negotiation of the transaction to the extent necessary to protect their interests if they acquire as much as 51% of an offering of privately placed securities, and that the "lead negotiator" or "lead investor" requirement is unnecessary. Some commenters further asserted that the 20% limitation is too low.

NASD does not propose any change to these provisions. NASD agrees that institutional investors generally will protect their interests, but the requirement that an unaffiliated institutional investor lead the negotiation or serve as lead investor is designed to prevent the potential overreaching that could occur if a member that is underwriting an issuer's public offering or its affiliate sets the price and terms of a private placement undertaken during the Review Period. Because the 20% limitation permits participating members to acquire only a relatively small portion of the issuer's equity in a private placement compared to the unaffiliated institutional investors, NASD views the limitation as reasonably designed to minimize the incentive for participating members to pressure an issuer to conduct the private placement for the member's benefit.

6. Transactions Completed Before Filing

Exceptions 1–3 require that the issuer's securities be acquired in transactions that occur before the required filing date of the public offering. Commenters (Fried Frank, Merrill, Morgan) suggested that, in view of other safeguards built into the exceptions, this requirement should be deleted. Because an issuer's ability to negotiate at arm's length to raise capital directly from participating members may be particularly compromised once the members are actively engaged in soliciting investors in the public offering on behalf of the issuer, NASD believes it is appropriate to limit the exceptions to transactions that occur before filing a registration statement.

7. Preemptive Rights and Anti Dilution Rights

The exception for "acquisitions and conversions to prevent dilution" in paragraph (d)(5)(D) of Rule 2710 ("Exception 4") would not apply to any purchase or acquisition that increases the participating member's percentage ownership of the same generic class of securities of the issuer. Some commenters (Fried Frank, Goldman, Merrill, Morgan and SIA) suggested that NASD revise Exception 4 to permit passive increases in ownership that may be the result of another investor's failure to exercise its own preemptive rights. NASD has revised the proposed amendments to make this change.

8. Purchases Based on a Prior Investment History

The exception for "purchases based on a prior investment history" in paragraph (d)(5)(E) of Rule 2710 ("Exception 5") would provide an exception for acquisitions made in private placements during the Review Period by participating members in order to prevent dilution of a long-standing equity interest in the issuer. In order to be eligible for the exception, the investor must have made at least two prior purchases of the issuer's securities: One investment must have been made at least 24 calendar months before the required filing date and another more than 180 days before the required filing date. Commenters (Merrill, Morgan, SIA) suggested various shorter time period requirements for the initial acquisitions that would broaden the availability of the exception. NASD included Exception 5 in response to comments on the original proposal. The time periods correspond roughly to investments the Department has recognized in the course of its filing reviews as typical of early round financing by long-term venture capital investors in start-up companies in the late 1990's and 2000. According to NASD, the trend in the current market environment is that these time periods are being extended, not shortened. NASD believes that the proposed time periods are consistent with the purposes of, and other protections in, Exception 5.

9. Financial Consulting and Advisory Arrangements

The exception for "financial consulting and advisory arrangements" in paragraph (d)(5)(F) of Rule 2710 ("Exception 6") addresses securities acquired in connection with financial consulting and advisory services. Codifying an exception for the receipt of securities as consideration for these services is in contrast to the proposed treatment of *cash* paid in connection with financial consulting and advisory services, which the Department proposed to continue to evaluate on a case-by-case basis to determine whether fees were in fact received in connection with underwriting services. A commenter (Fried Frank) suggested that the Department continue to evaluate whether the receipt of securities paid in connection with these services is underwriting compensation on a case-by-case basis, rather than relying solely on the proposed exception. NASD agrees that these arrangements are so fact specific that in many cases they do not fit well into the codified exception. Accordingly, the proposed amendments delete the codified exception. The Department will continue to analyze the receipt of both cash and securities in connection with financial consulting and advisory services based on the particular facts and circumstances in the arrangements.

10. Listed Securities

The amended proposal excluded from "items of value," listed securities of the issuer that are purchased in public market transactions. Commenters (Fried Frank, Goldman and SIA) suggest that the exclusion is too narrow and should instead extend to securities that are freely trading or acquired in transactions with persons unaffiliated with the issuer. Alternatively, one commenter (SIA) suggested that the definition of listed securities should be amended to specify the markets and exchanges on which securities may be listed to qualify for the exception. NASD has amended the Rule to specify eligible markets and exchanges. NASD believes that expanding the definition to include all freely trading securities or those acquired from unaffiliated persons would create unacceptable opportunities to evade the Rule and consequently NASD has not adopted the change.

11. When Securities Are Considered Received

The original and amended proposals provided that securities will be considered "received" as of the date of the closing of the private placement, not at the date a commitment letter is signed. One commenter (Fried Frank) suggested that one relevant date should be the date on which the buyer is unconditionally bound to purchase. The Department made several, ultimately unsuccessful attempts to review commitment letters and work with counsel to determine whether market-out and other termination clauses typically found in commitment letters render them binding contracts. The date of closing a private placement, when beneficial ownership is transferred, continues to be the best and most reliable indicator of when securities are received. Consequently, NASD has not made the recommended change.

12. Items of Value Received After Completion of an Offering

The amended proposal would require members to file information with the Department regarding the receipt of items of value by participating members during the 90 day period following the effective date of a registration statement. One commenter (Fried Frank) asserted that the provision would be too burdensome. NASD believes that the information is necessary to prevent fraudulent conduct and that the provision is a reasonable, narrowly defined mechanism to ensure that members comply with the Rule.

13. Non-Qualified Employee Benefit Plans

The amended proposal would have excluded from items of value securities acquired through certain plans that qualify under Section 401 of the Internal Revenue Code. Commenters (Fried Frank and Goldman) suggested that the provision be expanded to include securities received under non-qualified employee benefit plans. Under such a revision, the Department staff would be required to investigate and analyze who owns the assets, directs the trading and exercises control in the various non-qualified plans. NASD is not confident that the Department would always be provided with all necessary information on a timely basis from which it could conclude that a particular plan is not, for example, substantially an investment vehicle for employees in the investment banking or syndicate departments, or their relatives or nominees. Consequently, NASD has not made the recommended change.

14. Non-Cash Compensation

One commenter (Winston) suggested that the Rule be amended so that its treatment of non-cash compensation conforms to the requirements in the rules regulating investment company sales charges and variable annuities. The proposed amendments do not address this issue. NASD currently is working on rule amendments that would address the issue comprehensively under both the Corporate Financing Rule and NASD Conduct Rule 2810 (Direct Participation Programs).

15. Certain Derivative Securities

NASD also proposes additional amendments to the definition of "item of value" so that it does not have the unintended effect of capturing within "underwriting compensation" certain derivative and other instruments that are entered into by members or related persons in the ordinary course of business. As proposed, the definition of "items of value" would include derivative instruments and certain other transactions that were not intended to be included in the compensation provisions. Accordingly, NASD proposes to add subsections (c)(3)(B)(vi) and (vii) to NASD Rule 2710, which provide that nonconvertible or non-exchangeable debt securities and derivative instruments acquired or entered into: (i) for a fair price; (ii) in the ordinary course of business; and (iii) in transactions unrelated to the public offering; are not "items of value" under the Rule. Because they are not items of value, they would also be excluded from the lock-up requirements in the Rule, as discussed above. In addition, any securities received in settlement of the derivative entered into at a fair price would not have any compensation value.

The term "fair price" would be defined in NASD Rule 2710(a)(9) to require that the underwriters and related persons have priced the non-convertible or non-exchangeable debt security or derivative instrument in good faith, on an arm's length basis, in a commercially reasonable manner, and in accordance with pricing methods and models and procedures used in the ordinary course of their business for pricing similar transactions. This "fair price" definition is intended to distinguish covered debt and derivative transactions from a transaction in which the benefit to the underwriter or related person is related to the underwriting or similar services provided to the issuer. The proposed definition would exclude a derivative instrument or other security received for acting as a private placement agent for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services.

As stated above, proposed NASD Rule 2710(c)(3)(B)(vi) and (vii) would require that the non-convertible or non-exchangeable debt securities and derivative instruments be acquired or entered into "in transactions unrelated to the public offering." Generally, if a transaction occurring within the review period is negotiated by personnel in a member's investment banking department, it would not be considered to be "unrelated to the public offering." An exception to this general principle would be a put option or other derivative instrument that is entered into by an issuer with an underwriter or related person, in connection with a publicly disclosed share repurchase program. The public disclosure and transparent nature of the repurchase program distinguish the derivative transaction in support of the program from other privately negotiated transactions between the investment bankers and the issuer during the review period.

NASD determined not to define the term "in the ordinary course of business" for purposes of Rule 2710(c)(3)(B)(vi) and (vii). Whether a debt or derivative transaction between an issuer and an underwriter or related person is part of regular business services provided by the member to its clients or whether it is a customized transaction that is being offered in connection with a public offering depends on the particular facts and circumstances.

Under the proposed Rule, information regarding debt and derivative transactions that do not meet the "in the ordinary course of business in transactions unrelated to the public offering" requirement of Rule 2710(c)(3)(B)(vi) and (vii) would be required to be filed if the related public offering is subject to the filing requirements of the Rule. NASD proposes to amend the filing requirement in NASD Rule 2710(b)(6)(A)(iv), such that information initially filed in connection with debt securities and derivative instruments acquired or entered into for a "fair price" as defined in NASD Rule 2710(a)(9), but not excluded from items of value, may be limited to a brief description of the transaction and a representation that the transaction was (or if the pricing terms have not been set) will be entered into at a fair price as defined in NASD Rule 2710(a)(9). The required information would have to be submitted only with respect to the particular public offering to which a particular non-convertible or non-exchangeable debt security or derivative instrument relates. The Department would evaluate the information submitted in the same case-by-case manner that it will review financial consulting and advisory arrangements under the Rule.

IV. Commission Findings and Order Granting Accelerated Approval to Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[23] which requires that an Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.[24] The Commission believes that the proposed rule change should permit members to provide legitimate capital-raising services to issuers, while adopting restrictions that are designed to minimize the opportunity for abusive practices by members.

Current NASD Rule 2710 requires the terms of an underwriting to be fair and reasonable. Under the current Rule, any item of value, including certain securities of the issuer, acquired by the underwriter and related persons during the 12-month period before the filing date of a proposed public offering is examined by the Department to determine whether it was acquired "in connection with the public offering" and, therefore, is deemed to be underwriting compensation. The Rule presumes that any such item of value acquired during the six-month period before filing is underwriting compensation, but this presumption may be rebutted by the member based on information satisfactory to the Department. The proposed rule change replaces the current subjective standard with an objective standard under which all items of value received by an underwriter or related person during the 180 days before the required filing date of the registration statement or similar document will be considered to be underwriting compensation in connection with a public offering. Items of value that are not disclosed to NASD, and items of value that are received subsequent to the public offering, would be subject to post-offering review to determine whether they were underwriting compensation for the public offering. The proposed rule also contains five exceptions from the general rule that an "item of value" is deemed to be underwriting compensation. The Commission believes that replacing the subjective test with an objective, bright-line test should provide greater clarity and predictability regarding whether equity securities of the issuer and other items of value acquired by the underwriter and related persons constitute underwriting compensation. In addition, it should permit the NASD to better use its resources.

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[23] 15 U.S.C. 78*o*–3(b)(6).

[24] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

A. Six-Month Pre-Offering Test

As stated above, the proposed rule change replaces the current subjective standard with an objective standard under which all items of value received by an underwriter or related person during the 180-day period before the required filing date of the registration statement or similar document will be considered to be underwriting compensation in connection with a public offering. Under the current Rule, the Department examines all items of value acquired by the underwriter and related persons during the 12-month period before the filing date of a proposed public offering. The Commission believes that a bright-line test should provide greater clarity and predictability concerning application of the Rule to specific transactions. Consequently, members and their venture capital and lending affiliates should find it easier to determine at the time of a private placement or other financing whether their investment will be treated as underwriting compensation when the subsequent public offering is filed with the Department for review. The Commission also believes that shortening the time-frame from one year to six months is reasonable and reflects the NASD's experience that a longer time frame has generally been unnecessary to minimize the opportunity for abusive practices by members. The Commission also notes that commenters generally supported shortening the look-back period to 180 days.

Several commenters requested that the Rule be amended to provide that the 180-day review period be measured from the date that the preliminary prospectus is circulated, particularly because certain issuers file early with the SEC. According to NASD, members typically provide significant underwriting services in connection with the preparation and filing of a registration statement or other offering document. These underwriting activities are likely to have commenced during the 180-day period preceding the filing date. Consequently, the NASD is not going to amend the rule. The Commission believes it is reasonable for the NASD to measure the review period from the required filing date, rather than the date the preliminary prospectus is circulated.

B. Undisclosed and Post-Offering Compensation

The original proposal would have required the staff to examine items of value received by underwriters and related persons during the 90-day period immediately following the effective date of a public offering to determine whether they constitute underwriting compensation. Commenters expressed concern that the provision may subject members to disciplinary actions based upon the unknown activities by unaffiliated entities included in the definition of "underwriter and related person."

In response to the concerns of commenters, NASD narrowed the scope of the rule. As amended, proposed Rule 2710(d)(2) would provide that all items of value received and all arrangements entered into for the future receipt of an item of value by a participating member that are not disclosed to NASD before the date of effectiveness or the commencement of sales of a public offering (including items of value received after the public offering), are subject to post-offering review to determine whether such items of value are additional underwriting compensation for the public offering. In addition, subparagraph (b)(6)(vi)(b) would require the filing of any new arrangement that provides for receipt of an additional item of value subsequent to the issuance of an opinion of no objections to the underwriting arrangements by NASD and during the 90-day period following the date of effectiveness or commencement of the public offering. These provisions will enable NASD staff to consider whether items of value received after the public offering need to be included as underwriting compensation in order to avoid circumvention of the Rule.

C. Items of Value

Current Rule 2710(c)(3)(A) sets forth the items of value that are to be included in the calculation of underwriting compensation. NASD proposed to make non-substantive amendments to the description of the types of equity securities that are included. In addition, in response to comments, NASD is proposing several changes to Rule 2710(c)(3)(B), which sets forth exclusions from "items of value." The proposal would expand this section by adding: (i) Cash compensation for acting as placement agent for a private placement or for providing a loan, credit facility, or for services in connection with a merger/acquisition; (ii) listed securities purchased in public market transactions; (iii) securities acquired through any stock bonus, pension, or profit-sharing plan that qualifies under Section 401 of the Internal Revenue Code; (v) securities acquired by an investment company registered under the Investment Company Act of 1940; (vi) non-convertible or non-exchangeable debt securities acquired for a fair price in the ordinary course of business in transactions unrelated to the public offering; and (vii) derivative instruments (and any securities received in settlement thereof) entered into for a fair price in the ordinary course of business in a transaction unrelated to the public offering.

The Commission believes that the proposal codifies exclusions for "items of value" that should not raise concerns about abuse and overreaching. As noted above, securities received in settlement of a derivative entered into at a fair price would not be considered an item of value. The Commission believes that it is reasonable to exempt any securities received in settlement of a derivative entered into at a fair price because the derivative transaction itself is not considered to be an item of value and, thus, the securities received in settlement (like any cash received in settlement in the case of a cash-settled derivative) would not represent any additional value.

Some commenters suggested that the exclusion for listed securities that are purchased in public market transactions is too narrow and should instead extend to securities that are freely trading or acquired in transactions with persons not affiliated with the issuer. Another commenter suggested that the definition of listed securities should be amended to specify the markets and exchanges on which securities may be listed to qualify for the exception. NASD has amended the Rule to specify eligible markets and exchanges. NASD believes that expanding the definition to include all freely trading securities or those acquired from unaffiliated persons would create unacceptable opportunities to evade the Rule. The Commission agrees.

D. Exceptions to the General Rule

The proposed rule change provides five exceptions from the general rule that items of value received within 180 days of the required filing date of a registration statement or similar document will be considered to be underwriting compensation.

1. Purchases and Loans by Certain Entities

The first exception in subparagraph (d)(5)(A) is intended for acquisitions of the issuer's securities by certain entities that routinely make investments in or provide loans or credit facilities to other companies. The exception would be available to an entity that: (i) Manages capital contributions or commitments of $100 million or more, at least $75 million of which has been contributed or committed by persons that are not participating members; (ii) manages capital contributions or commitments of $25 million or more, at least 75% of which has been contributed or committed by persons that are not participating members; (iii) is an insurance company as defined under Section 2(a)(13) of the Securities Act of 1933, or a foreign insurance company that has been given an exemption; or (iv) is a bank as defined in Section 3(a)(6) of the Act or is a foreign bank that has been granted an exemption. In addition to those requirements, the entity must: (i) Be a separate and distinct legal person from any member and not be registered as a broker-dealer; (ii) make investments or loans subject to the evaluation of individuals who have a contractual or fiduciary duty to select investments and loans based on risks and rewards, not on opportunities for the member to earn investment banking revenues; (iii) not participate directly in investment banking fees received by any participating member for underwriting public offerings; and (iv) have been primarily engaged in the business of making investments in or loans to other companies. Finally, all entities related to each member in acquisitions that qualify for this exemption cannot acquire more than 25% of the issuer's total equity securities during the review period.

The Commission believes that the proposed exceptions accommodate bona fide acquisitions by entities that regularly make venture capital investments. The Commission also believes that the limitations of the exception, such as the capital under management requirement, and the 25% acquisition limit, are reasonably designed to minimize the opportunity for abusive practices. The Commission notes that the acquisition limitation was previously proposed to be 10% of the issuer's total securities. In response to the concerns of commenters, NASD has proposed to raise this limit to 25%. The Commission believes that the other conditions of the exception should help to ensure that the transactions are bona fide investments or loans, and the 25% limitation is sufficient as a reasonable additional protection against overreaching and unfair arrangements.

2. Investments in and Loans to Certain Issuers

The second exception in subparagraph (d)(5)(B) is intended for acquisitions of securities of issuers that have significant institutional investor involvement in their corporate governance. Securities of the issuer purchased in a private placement or received as compensation for a loan or credit facility would be exempt if each entity: (i) Manages capital contributions or commitments of at least $50 million; (ii) is a separate and distinct legal person from any member and is not registered as a broker/dealer; (iii) does not participate directly in investment banking fees received by the member for underwriting public offerings; and (iv) has been primarily engaged in the business of making investments in or loans to other companies. The following additional requirements would apply: (i) Institutional investors must beneficially own at least 33% of the issuer's total equity securities, calculated immediately before the transaction; (ii) the transaction was approved by a majority of the issuer's board of directors and a majority of any institutional investors, or the designees of institutional investors, that are board members; and (iii) all entities related to each member in acquisitions that qualify for this exception do not acquire more than 25% of the issuer's total equity securities, calculated immediately following the transaction.

The Commission believes this exception is reasonable and should permit bona fide investments in issuers with significant institutional investor involvement in their corporate governance. The Commission believes that the limitations of this exception, such as the requirement of substantial involvement of institutional investors, should minimize the potential for overreaching and abuse. As stated above, the Commission notes that the acquisition limitation was previously proposed to be 10% of the issuer's total securities. In response to the concerns of commenters, NASD has proposed to raise this limit to 25%. The Commission believes that the other conditions of the exception should help to ensure that the transactions are bona fide investments or loans, and the 25% limitation is sufficient as a reasonable additional protection against overreaching and abuse.

a. Definition of "Entity"

Exceptions 1 and 2 require entities to meet certain capital requirements and to be engaged in the business of making investments in or loans to other companies. Some commenters recommended that NASD amend the Rule to treat as one entity all funds in a series of funds that are created to engage in the same business as prior funds in the series. NASD determined not to adopt the suggested amendment because it believed that it would introduce a highly subjective consideration (*i.e.*, whether a fund is part of an investment program) and would undermine the requirement that a qualifying entity demonstrate through its operating history that it is a bona fide business, and that it alone meets the capital standards in the exception. The Commission believes that the proposed definition of "entity" is an objective standard that should be more easily administered by the Department than the standard suggested by comments. The Commission also believes that it is reasonable for the NASD to retain the requirement that each qualifying entity demonstrate through its operating history that it is a bona fide business.

In addition, the definition of "entity" for purposes of exceptions 1 and 2 includes "a group of legal persons" that are contractually obligated to make co-investments and have previously made at least one such investment. Some commenters recommended that the definition be broader and include: (1) Entities that have entered into a co-investment agreement, but have not yet made a co-investment; or (2) entities that do not have a co-investment agreement, but have made previous co-investments. NASD determined not to make this change because of the potential abuse that could arise from an illegitimate "grouping" of different entities; the proposed rule preserves the requirements of both a co-investment history and an agreement. The Commission believes that the proposed definition is reasonable and should minimize any potential for abuse.

3. Private Placements With Institutional Investors

Exception 3 would permit acquisitions in private placements that have significant institutional investor participation. This exception would permit private placements in which: (1)

Institutional investors acquire at least 51% of the total offering of the issuer's securities; (2) an institutional investor is the lead negotiator or lead investor with the issuer and establishes the terms of the private placement; and (3) underwriters and related persons do not acquire more than 20% of the total offering. Some commenters claimed that it should be presumed that institutional investors participated in the negotiation of the transaction to the extent necessary to protect their interests if they acquire as much as 51% of an offering of privately placed securities, and that the "lead negotiator" or "lead investor" requirement is unnecessary. Some commenters further asserted that the 20% limitation is too low.

NASD did not propose any changes in response to these comments. The Commission believes that the 20% limitation and the requirement that an unaffiliated institutional investor lead the negotiation or serve as lead investor are reasonable limitations designed to prevent the potential for overreaching that could occur if a member that is underwriting an issuer's public offering or its affiliate sets the price and terms of a private placement undertaken during the Review Period.

a. Definition of "Institutional Investor"

For purposes of exceptions 2 and 3, "institutional investor" is defined as any individual or legal person that has at least $50 million invested in securities in the aggregate in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members direct or otherwise manage the institutional investor's investments or have an equity interest in the institutional investor, either individually or in the aggregate, that exceeds 5% for a publicly owned entity or 1% for a nonpublic entity. Under a previous version of the proposal, no participating member could have any equity interest or management responsibility in an entity intending to qualify as an "institutional investor." Commenters stated that the definition of "institutional investor" should be amended to permit some part of the equity interest in the entity to be held by participating members. Other commenters stated that equity interest should not be the determinative factor, but rather control. In response to comments, NASD decided to amend the definition to allow an equity interest in the institutional investor, either individually or in the aggregate, of up to 5% for a publicly owned entity or 1% for a nonpublic entity. The Commisison believes that this limitation is reasonable and should help to ensure that only institutional investors that are independent of the influence of members will count for purposes of exceptions 2 and 3.

4. Acquisitions and Conversions To Prevent Dilution

Under the proposal, securities of the issuer would be excluded from underwriting compensation if the securities were acquired as the result of: (i) A qualifying right of preemption or a stock-split or a pro-rata rights or similar offering, or (ii) the conversion of securities that have not been deemed by NASD to be underwriting compensation. In addition, the only terms of the purchased securities that could be different from the terms of securities purchased by other investors would be pre-existing contractual rights that were granted in connection with a prior purchase. Further, the opportunity to purchase must have been provided to all similarly situated securityholders. Finally, the amount of securities purchased or received must not have increased the recipient's percentage ownership of the same generic class of securities of the issuer, except in the case of conversions and passive increases that result from another investor's failure to exercise its own rights.

Under a previous version of the proposal, this exception would not have applied to any purchase or acquisition that increased the participating member's percentage ownership of the same generic class of securities of the issuer. In response to comments, NASD revised the exception to permit passive increases in ownership that may be the result of another investor's failure to exercise its own preemptive rights.

The Commission agrees with NASD that this exception does not raise concerns about overreaching and abusive practices that the Rule was designed to address because purchases pursuant to a right of preemption are based on a purchase right granted to the purchaser in a prior investment and thus, the acquisition is not compensation for a subsequent public offering. The Commission further believes that the limitations of the exception should help to ensure that only securities acquired pursuant to a valid right of preemption will be eligible to be excluded from the underwriting exception. The Commission also believes that it is reasonable to permit passive increases in ownership that may be the result of another investor's failure to exercise its own preemptive rights. The Commission notes that shareholders frequently must decide whether to exercise their preemptive rights without knowing whether other shareholders will do the same. Consequently, without an exception for passive increases, it would be virtually impossible to determine in advance whether shares acquired pursuant to a right of preemption would be deemed underwriting compensation.

5. Purchases Based on a Prior Investment History

This exception would exempt acquisitions made in private placements during the Review Period by participating members in order to prevent dilution of a long-standing equity interest in the issuer. In order to be eligible for the exception, the investor must have made at least two prior purchases of the issuer's securities: one investment must be made at least 24 calendar months before the required filing date and another more than 180 days before the required filing date. Commenters suggested various shorter time period requirements for the initial acquisitions that would broaden the availability of the exception. NASD included this exemption in response to comments on the original proposal. NASD has stated that the time periods correspond roughly to investments the Department has recognized in the course of its filing reviews as typical of early round financing by long-term venture capital investors in start-up companies in the late 1990's and 2000. The Commission believes that this exemption is reasonable and would codify NASD's historic practice of exempting such securities from underwriting compensation. In addition, the Commission believes that the proposed time periods are reasonable in that they reflect NASD's experience with such acquisitions.

6. Financial Consulting and Advisory Arrangements

Prior versions of the proposal contained an exemption that addressed securities acquired in connection with financial consulting and advisory services. A commenter suggested that the Department continue to evaluate whether the receipt of securities paid in connection with these services are underwriting compensation on a case-by-case basis, rather than solely relying on the proposed exception. NASD determined that these arrangements are so fact specific that in many cases they do not fit well into a codified exception and, thus, proposed to delete this exception. Consequently, the Department would continue to analyze the receipt of both cash and securities in connection with financial consulting and advisory services based on the particular facts and circumstances in the arrangements. The Commission believes that it is within NASD's discretion to delete this exception and to continue to review such acquisitions based on the particular facts and circumstances.

E. Lock-Up Restriction

Under the proposal, common or preferred stock, options, warrants, and other equity securities of the issuer that are unregistered and acquired by an underwriter and related person within 180 days before the filing of the registration statement, or acquired after the filing of the registration statement and deemed to be compensation by NASD, would be subject to a 180-day lock-up. The proposed lock-up also would prohibit certain derivative transactions.[25] In addition, the proposal contains several exceptions to the lock-up restriction for transfers of securities, including, but not limited to, transfers of securities that are not considered to be an item of value, transfers by operation of law or reorganization of the issuer, and transfers of securities that were previously, but no longer are, subject to a lock-up restriction in connection with a prior public offering.

Under the original version of the proposal, a 180-day lock-up restriction would have applied to all equity securities of the issuer that are held by any underwriter and related person at the time of effectiveness of the public offering, unless the securities or transaction complied with an exception. In response to comments, NASD determined to limit the 180-day lock-up to unregistered equity or convertible-to-equity securities and certain derivatives held by underwriters and related persons and acquired during the Review Period. Despite contrary views of commenters, NASD determined to retain the lock-up provision in connection with secondary offerings. However, the proposal would provide an exception from the lock-up restrictions for Rule 144A securities acquired after the completion of the issuer's IPO. In addition, in response to comments, NASD is proposing to amend the proposed rule change to clarify that members may participate in public offerings in which the members, their affiliates or associated persons are offering their shares or are selling security-holders of another issuer. NASD has stated that it intended to permit such participation, but the prior version of the proposal was unclear.

The Commission believes that the proposed lock-up restrictions, and exceptions thereto, are reasonably designed to protect the aftermarket in a new security from the potential for fraud and manipulation that exists when a member is an underwriter, actively trades the securities, and is a selling security-holder. The Commission further believes that the proposed prohibition against any hedging, short sale, derivative, put, or call transaction that would result in the effective economic disposition of the securities should help to prevent circumvention of the lock-up restrictions.

F. Exemptive Authority

Under the proposal, the NASD has retained the ability to grant exemptions from any provision of the Rule, if such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest. The Commission believes that this exemptive authority is reasonable and should give NASD the authority to exempt transactions that, although covered by the Rule, the Rule was not intended to address.

The Commission finds good cause for accelerating approval of Amendment Nos. 6, 7, 8, 9, and 10. The Commission notes that the proposed rule change has been previously published twice for comment.[26] Amendment Nos. 6 through 10 respond to the concerns previously raised by commenters and make certain technical corrections to the proposed rule change. Accordingly, the Commission finds that good cause exists, consistent with Sections 15A(b)(6) of the Act,[27] and Section 19(b)(2) of the Act[28] to accelerate approval of Amendment Nos. 6 through 10 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 6 through 10, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rulecomments@sec.gov*. All comment letters should refer to File No. SR–NASD–00–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–00–04 and should be submitted by January 21, 2004.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASD–00–04), as amended, is approved, and Amendment Nos. 6 through 10 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32183 Filed 12–30–03; 8:45 am]

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[25] However, as discussed above, debt securities and derivative instruments (1) that are not items of value, or (2) that are eligible for the limited filing requirement in NASD Rule 2710(b)(6)(A)(iv) and have not been deemed to be underwriting compensation by the Department under the Rule will not be subject to the lock-up.

[26] *See supra* notes 6 and 10.

[27] 15 U.S.C. 78*o*–3(b)(6).

[28] 15 U.S.C. 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48976; File No. SR–PCX–2003–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Trade-Related Charges portion of its Schedule of Fees and Charges ("Schedule"). The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Trade-Related Charges portion of its Schedule in order to create an incentive program for Market Makers with respect to transaction charges. Currently, Market Maker transactions are assessed a charge of $0.21 per contract side for all issues regardless of market share or Top 120 designation. As part of its ongoing effort to secure existing volumes and attract higher levels of liquidity, the PCX is proposing to adopt a three-tiered rate schedule that would lower transaction charges for Market Makers (including Lead Market Makers) as the Exchange attains higher levels of market share on individual issues.[3]

Specifically, the incentive program would lower marginal transaction costs on an issue-by-issue basis for those underlying symbols that the PCX attained market share beyond certain tiers. The three-tiered system is based on the percentage of market share attained for each issue and whether the issue is designated as a Top 120. The table below shows the marginal Market Maker transaction rates for Top 120 Issues:

Market share tiers	Marg rate
0.00% to 11.00%	$0.21
11.00% to 20.00%	0.11
20.00% to 100.00%	....

Under the proposed rate schedule, the rates would be applied based on market share at the end of the trade month. The PCX proposes that these Market Maker transaction rates would be assessed in a fair and equitable manner to ensure that all Market Makers trading in a particular issue receive the same rate incentives. Accordingly, a Top 120 issue that had 1,000,000 contracts in national volume and a 30% PCX market share (or 300,000 PCX contracts) would be billed in the following manner. The first 11% in market share would be billed at a transaction rate of $0.21 per contract (11% × 1,000,000 × $0.21=$23,100). The next 9% in market share would be billed at a transaction rate of $.11 per contract (9% × 1,000,000 × $0.11 = $9,900). The final 10% in market share would be billed at a transaction rate of $0.00. The net effective rate on said issue would be $0.11 per contract (total transaction charges/total PCX market maker contracts or $33,000/300,000 contracts). All Market Makers would receive the same rate incentive because all Market Maker volumes in that issue would be charged the same effective rate: $0.11 per contract.[4]

Rates for issues that are not in the Top 120 in terms of national volume will still benefit from the rate incentive, albeit employing a different set of marginal rates. The table below summarizes those marginal transaction rates for Market Makers:

Market share tiers	Marg rate
0% to 15%	$0.21
15% to 25%	0.15
25% to 100%	0.05

Using the previous example, an issue that was not in the Top 120 but had the same contract volumes would receive the following billing treatment. The first 15% in market share would be billed at a transaction rate of $0.21 per contract (15% × 1,000,000 × $0.21=$31,500). The next 10% in market share would be billed at a transaction rate of $.15 per contract (10% × 1,000,000 × $0.15 = $15,000). The final 5% in market share would be billed at a transaction rate of $0.05 (5% × 1,000,000 × $0.05 = $2,500). The net effective rate on said issue would be $0.1633 per contract ($49,000 in charges divided by 300,000 contracts). The PCX believes all Market Makers would receive the same rate incentive because all Market Maker volumes in that issue would be charged at the same effective rate: $0.1633 per contract. Singly listed issues would continue to be billed at the current flat Market Maker transaction rate of $0.21 per contract.

The Exchange believes that the incentive program will help the PCX attract higher levels of liquidity and therefore enable the PCX to compete aggressively with other market centers. Moreover, the PCX believes the incentive program provides for a natural means of attracting more crowd participation on the trading floor. The incentive program will apply equally to issues traded on the POETS and the PCX Plus trading platforms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(4) requirements that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section

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[3] The Exchange states that transaction charges will not change for Customer, Firm or Broker/Dealer transactions.

[4] For purposes of simplicity, this example assumes that all PCX contracts were executed by Market Makers. In the event this was not the case, for example, the Exchange had the same contract volumes but 100,000 contracts were customer contracts and 200,000 Market Maker contracts, Market Makers would still receive the same rate incentive: $0.11 per Market Maker contract.

[5] 15 U.S.C. 78f(b).

19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2003–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–68 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32175 Filed 12–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48963; File No. SR–Phlx–2003–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Revise Its Schedule of Dues, Fees and Charges To Provide a Rebate for Certain Trades Executed Pursuant to a Dividend Spread Strategy

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to provide a rebate for certain trades executed pursuant to a dividend spread strategy.[3] The proposed rebate would be effective for trades clearing on and after December 17, 2003.

The schedule of dues, fees and charges is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that the purpose of the proposed rule change is to amend the Exchange's schedule of dues, fees and charges to adopt a rebate for certain contracts executed in trades occurring as part of a dividend spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread strategy by member registered options traders ("ROT") and options specialists who have not elected to have the specialist unit fixed monthly fee ("non-fixed specialists")[4] be applicable on the business day before the underlying stock's ex-date,[5] the Exchange would rebate $0.08 per contract side for ROT executions and $0.07 per side for non-fixed specialists executions. The proposed rebate would be effective for trades clearing on and after December 17, 2003.

The Exchange's billing system is unable to distinguish between dividend spreads and other types of trades. The Exchange has therefore developed a manual procedure to implement the proposed rebate. Specifically, within thirty calendar days of the billing period (*i.e.*, within thirty days from the issue date of the invoice) for these transactions, a Fee Reimbursement Form, including the appropriate documentation, must be completed and submitted to the Exchange. After the appropriate verification and subsequent acceptance, the Exchange would credit the appropriate member's account for the amount of the rebate (*i.e.*, either $0.08 or $0.07 per contract side) charged on contracts executed in trades occurring as part of a dividend spread strategy.

The Exchange states that the primary reason for this fee is to create a cost effective environment for a dividend spread strategy to be executed. By keeping fees low, the Exchange believes that this program should encourage specialists and registered options traders to provide liquidity for these types of financial strategies and should permit the Exchange to remain competitive.

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[6] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

[4] Specialist units that have been active trading equity and index option books in the capacity of a specialist unit for at least one year from September 1, 2002 may elect to pay a fixed monthly charge as described in the Exchange's fee schedule. A specialist unit may, by the 15th day of the billing month, select the fixed monthly fee methodology for subsequent months, which would be continued until February 29, 2004. *See* Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003).

[5] The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date, a stock is said to trade ex-dividend.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(4) of the Act[7] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members. The Exchange notes that although the rebate would result in a net transaction charge of $0.11 per contract side for a ROT and $0.14 per contract side for non-fixed specialist executions, ROTs pay an additional comparison charge of $0.03. Thus, both member organizations—ROTs and non-fixed specialist—would pay the same net per contract side charge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Phlx–2003–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–80 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–32174 Filed 12–30–03; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48961; File No. SR–NASD–2003–176]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Chief Executive Officer and Chief Compliance Officer Certification

December 23, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to establish NASD Rule 3013 and accompanying Interpretive Material ("IM") 3013 to require each member to designate a chief compliance officer ("CCO") and further require the member's chief executive officer ("CEO") and CCO to certify annually to having in place a process to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and the federal securities laws. Below is the text of the proposed rule change. Proposed new language is in *italics.*

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3013. Annual Certification of Compliance and Supervisory Processes

(a) Designation of Chief Compliance Officer

Each member shall designate and specifically identify to NASD on Schedule A of Form BD a principal to serve as chief compliance officer.

(b) Annual Certification

Each member shall have its chief executive officer (or equivalent officer) and chief compliance officer jointly certify annually, as set forth in IM–3013, that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations.

IM–3013. Annual Compliance and Supervision Certification

The NASD Board of Governors is issuing this interpretation to the requirement under Rule 3013(b), which requires that the member's chief executive officer (or equivalent officer) and chief compliance officer execute annually[1] *a certification that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[1] Members must ensure that each ensuing annual certification is effected no later than on the anniversary date of the previous year's certification.

rules, MSRB rules and federal securities laws. The certification shall state the following:

Annual Compliance and Supervision Certification

The undersigned are respectively the chief executive officer (or equivalent officer) and chief compliance officer of [name of member corporation/partnership/sole proprietorship] (the "Member"). As required by NASD Rule 3013(b), the undersigned make the following certification:

1. The Member has in place processes to:

(a) establish and maintain policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws;

(b) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and

(c) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with NASD rules, MSRB rules and federal securities laws;

2. The Member's processes, with respect to item 1 above, are evidenced in a report reviewed by the chief executive officer (or equivalent officer), chief compliance officer and such other officers as the Member may deem necessary to make this certification. These processes at a minimum must include: (a) one or more meetings between the chief executive officer (or equivalent officer) and the chief compliance officer to discuss and review the matters that are the subject of this certification and (b) review of the report by the Member's board of directors and audit committee; and

3. The undersigned chief executive officer (or equivalent officer), chief compliance officer and other officers as applicable (referenced in item 2 above) have consulted with or otherwise relied on those employees, officers, outside consultants, lawyers and accountants, to the extent they deem appropriate, in order to attest to the statements made in this certification.

It is critical that each NASD member understand the importance of employing comprehensive and effective compliance policies and written supervisory procedures. Compliance with applicable NASD rules, MSRB rules and federal securities laws and rules is the foundation of ensuring investor protection and market integrity and is essential to the efficacy of self-regulation. Consequently, the certification requirement is intended to require processes by each member to establish, maintain, review, test and modify its compliance policies and written supervisory procedures in light of the nature of its businesses and the laws and rules that are applicable thereto, and to evidence such processes in a report reviewed by those executing the certification.

The execution of the certification by the chief compliance officer (and other designated officers with primary compliance responsibility) is intended to ensure that the person(s) charged with managing the member's compliance program has regular and significant interaction with senior management concerning the subject matter of the certification. The rule permits co-certifications by other compliance officers that report to the chief compliance officer. However, the NASD Board of Governors expects that any such co-certifications will be executed only by senior compliance officers that have primary compliance responsibility over a segment of a member's business operations.

The NASD Board of Governors recognizes that supervisors with business line responsibility are accountable for the discharge of a member's compliance policies and written supervisory procedures. The signatories to the certification are certifying only as to having processes in place to establish, maintain, review, test and modify the member's written compliance and supervisory policies and procedures and the execution of this certification does not by itself establish business line responsibility.

The requirement to designate a chief compliance officer does not preclude such person from holding any other position within the member, including the position of chief executive officer, provided that such person can discharge the duties of a chief compliance officer in light of his or her other additional responsibilities. The requirement that a member's processes include a review of the report (required by item 2 of the certification) by the board of directors and audit committee does not apply to members that do not utilize these types of governing bodies and committees in the conduct of their business.[2]

The report required in item 2 of the certification must document the member's processes for establishing, maintaining, reviewing, testing and modifying compliance policies. The report must be produced prior to execution of the certification and be reviewed by the chief executive officer (or equivalent officer), chief compliance officer and any other officers the member deems necessary to make the certification. The report should include the manner and frequency in which the processes are administered, as well as the identification of officers and supervisors that have responsibility for such administration. The report need not contain any conclusions produced as a result of following the processes set forth therein. The report may be combined with any other compliance report or other similar report required by any other self-regulatory organization provided that (1) such report is clearly titled in a manner indicating that it is responsive to the requirements of the certification and this Interpretive Material; (2) a member that submits a report for review in response to an NASD request must submit the report in its entirety; and (3) the member makes such report in a timely manner, i.e., annually.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Comprehensive compliance and supervisory systems constitute the bedrock of effective securities industry self-regulation and the primary strata of investor protection. As such, NASD believes that a member's senior management should focus the same attention to a member's compliance and supervisory policies and procedures as is accorded to a member's revenue-producing businesses and such fundamental operational prerequisites as, for example, net capital requirements.

To that end, NASD is proposing a rule change that would bolster investor protection by promoting regular and meaningful interaction between senior management and compliance personnel to ensure that compliance is given the highest priority by a member's senior executive officers. Specifically, the proposed rule change would require (1) that each member designate a principal to serve as CCO and (2) the CEO and CCO to certify annually to having in place processes to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws.

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[2] *Members, as a part of their process, must have the report reviewed by their governing bodies and committees that serve similar functions in lieu of a board of directors and audit committee.*

As to the former, NASD Rule 1022 currently requires a person designated as a CCO on Schedule A of Form BD to be registered as a General Securities Principal unless certain exceptions apply.[3] However, the current rules do not require that a member so designate such a person. The proposed rule change would mandate that a member designate a CCO and identify that person on Schedule A of Form BD.

With respect to the certification, the proposed rule change also would require the CEO and CCO to certify annually that senior executive management has in place processes to (1) establish and maintain policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws; (2) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis, the timing of which is reasonably designed to ensure continuing compliance with NASD rules, MSRB rules and the federal securities laws. The proposed rule change further would require the CEO and CCO to certify that those processes are evidenced in a report that has been reviewed by those executing the certification, as well as the member's board of directors and audit committee.[4] Notably, the processes, at a minimum, must include one or more meetings between the CEO and CCO to discuss and review the matters that are subject of the certification.

The proposed rule change also would create IM–3013, which sets forth the language of the certification and gives further guidance as to the requirements and limitations of the rule. For example, the interpretive material clarifies that the person designated as CCO also may hold other positions within the member, including CEO, provided that individual can effectively discharge the CCO responsibilities while maintaining another position. Thus, resource-constrained members are not required to hire or designate a dedicated CCO. The proposed interpretive material also explains that the rule permits co-certifications by other compliance officers that report to the CCO, provided those individuals are senior compliance officers who have primary responsibility over a segment of the member's business operations.

The proposed interpretive material further recognizes that responsibility for discharging compliance policies and written supervisory procedures rests with business line supervisors. The proposed interpretive material clarifies that execution of the certification does not by itself establish a signatory as having such line supervisory responsibility.

The proposed interpretive material also sets forth the particulars regarding the report that must evidence a member's compliance processes. It states that the report must be produced prior to execution of the certification and reviewed by the CEO, CCO and such other officers as the member deems necessary. The report also must include the manner and frequency in which the processes are administered and identify those officers and supervisors with responsibility for such administration. The proposed interpretive material further explains that the report need not contain conclusions that result from following the specified processes, such as compliance deficiencies. Additionally, the proposed interpretive material states that the report may be combined with other reports required by a self-regulatory organization, provided the report is made annually, clearly indicates in the title that it contains the information required by Rule 3013, and that the entire report is provided in response to any regulatory request for all or part of the combined report.

Finally, with respect to review of the report, the proposed interpretive material clarifies that review by a member's board of directors and audit committee only applies to those members whose corporate governance structure have such or similar governing bodies and committees—it does not impose a requirement that members create them if they do not currently exist.

The proposal would complement and underscore the closely related obligations that currently exist under NASD rules that require each member to designate principals who must review the member's supervisory systems and procedures and recommend to senior management appropriate action to ensure the systems are reasonably designed to achieve compliance with applicable rules and regulations.[5] NASD believes the proposal provides an effective mechanism to compel substantial and purposeful interaction between senior management and compliance personnel, thereby enhancing the quality of members' supervisory and compliance systems. NASD further believes the rule change imposes the minimal additional burden on members that is necessary to achieve the proposal's purpose.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that that the proposed rule change is consistent with the provisions of the Act noted above in that it will enhance focus on members' compliance and supervision systems, thereby decreasing the likelihood of fraud and manipulative acts and increasing investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

In June 2003, NASD issued Notice to Members 03–29, seeking comment on a different proposal with similar objectives. That proposal would have required each member to designate a CCO and further required that the CCO and CEO certify annually to the adequacy of the member's compliance and supervisory systems. A proposed interpretive material clarified that the signatories to the certification would incur no additional liability as a consequence of the certification, provided there was a reasonable basis to certify at the time of execution. The previous proposal differed from the current proposal in that it would have required, among other things, that the CCO and CEO have a reasonable basis to certify that a member was in compliance with all applicable laws, rules and regulations at a fixed moment in time. By contrast, the current proposal requires certification to having processes in place to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with those laws, rules and regulations.

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[3] *See* Notice to Members 01–51 (August 2001).

[4] Members that do not employ a board of directors or audit committee or other similar bodies in their governance and management would not be subject to this requirement.

[5] *See* 3010(a)(8). NASD has filed with the Commission a proposed rule change that would incorporate the requirements of Rule 3010(a)(8) into new Rule 3012 and eliminate Rule 3010(a)(8) altogether. If the proposed rule change is approved, Rule 3012 would require members to designate one or more principals who will establish, maintain, and enforce a system of supervisory control policies and procedures that test and verify that the member's supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and NASD rules and amend supervisory procedures where the need is identified. *See* SR–NASD–2002–162.

NASD received 166 comments to the proposal, including submissions on behalf of members from 65 CCOs and 34 CEOs, as well as nine comments from various trade organizations. The overwhelming majority of commenters disfavored the proposal. Only six commenters favored the proposal.

Broadly, commenters questioned the value of the proposal, whether it was duplicative of existing requirements, the scope of the certification, and the potential liability of the signatories. CCOs expressed concern that the proposal could lead to retaliation by CEOs if a CCO refused to certify. Additionally, questions arose as to whether the goal of better compliance could be achieved only at the expense of increased potential liability on the part of members. Commenters also noted that the dynamic nature of compliance and the need to allocate finite compliance resources on a risk assessment basis did not lend itself to a certification of compliance certainty at any fixed moment. Commenters further expressed concern that the proposal would spawn baseless litigation by opportunistic plaintiffs' attorneys. Small firms also commented that the cost of compliance would outweigh the benefits for their firms and would divert resources from more substantive compliance matters.

NASD disagrees with a number of the comments, including that the previous proposal duplicated existing requirements and added no value to the quality of compliance. On the contrary, both the previous and present proposals would place focus on the obligations of the compliance function in an unprecedented manner by giving an elevated voice to compliance personnel and forcing regular and productive interaction with the CCO by the CEO. NASD also disagrees that the proposal would have created new liability on CEOs and CCOs who otherwise have no supervisory responsibility—a fact expressly stated in the previously proposed interpretive material. Moreover, NASD does not believe the possibility of meritless litigation should dictate its regulatory actions—abusive litigation should be dealt with by sanctions, not abandoned policy.

Nonetheless, NASD agrees with many of the commenters' other concerns. In particular, NASD recognizes the difficulty in certifying to absolute compliance at any given moment in the face of dynamic regulatory and business environments. At the same time, NASD is committed to the initial proposal's intent: to promote investor protection through improved compliance and supervisory systems and the promotion of regular and meaningful interaction between senior management and compliance personnel. Thus, NASD now is submitting to the Commission a modified proposal that takes a different approach to the issue, one that NASD believes more efficiently and pragmatically achieves the same goal of enhanced compliance. In addition, NASD believes the new proposal effectively focuses senior management attention on compliance matters in a way that allays CCO concerns about incurring additional personal liability and fear of retaliation.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–176. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–176 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–32131 Filed 12–30–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4578]

Culturally Significant Objects Imported for Exhibition Determinations: "From Fra Angelico to Bonnard: Masterpieces from the Rau Collection"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "From Fra Angelico to Bonnard: Masterpieces from the Rau Collection," imported from

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[6] 17 CFR 200.30-3(a)(12).

abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Portland Art Museum, from on or about January 24, 2004 until on or about September 5, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Damir Arnaut, the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 23, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–32193 Filed 12–30–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–79]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 23, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–13273.
Petitioner: Stuart Air Show.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/Disposition: To permit the Visiting Nurse Association to conduct local sightseeing flights at the Martin County Airport, Stuart, Florida, for the Stuart Air Show on November 8 and 9, 2003, for compensation or hire, without complying with certain any-drug and alcohol misuse prevention requirements of part 135.
Grant, 10/23/2003, Exemption No. 8159

Docket No.: FAA–2003–16344.
Petitioner: Sky Care.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Sky Care to operate certain aircraft under part 135 without a TSP–C112 (Mode S) transponder installed in those aircraft.
Grant, 10/31/2003, Exemption No. 8165

Docket No.: FAA–2001–11025.
Petitioner: Miller Aviation.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Miller Aviation to operate certain aircraft under part 135 without a TSP–C112 (Mode S) transponder installed in those aircraft.
Grant, 10/31/2003, Exemption No. 7663A

Docket No.: FAA–2002–12354.
Petitioner: Keystone Helicopter Corporation.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Keystone Helicopter Corporation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.
Grant, 10/31/2003, Exemption No. 7783A

Docket No.: FAA–2002–11493.
Petitioner: Central Copters, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Central Copters, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.
Grant, 10/31/2003, Exemption No. 7724A

Docket No.: FAA–2003–16276.
Petitioner: Federal Express Corporation.
Section of 14 CFR Affected: 14 CFR 121.583(a).
Description of Relief Sought/Disposition: To permit Federal Express Corporation to transport medical personnel assigned to Project Orbis without complying with all the passenger-carrying requirements in §§ 121.291, 121.309(f), 121.310, and 121.391.
Grant, 11/3/2003, Exemption No. 5129F

Docket No.: FAA–2001–10799.
Petitioner: Garrett Aviation Services.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Garrett Aviation Services to place an maintain its inspection procedures manual (IPM) in strategically located areas throughout its facility rather than give a copy of the IPM to each of its supervisory and inspection personnel.
Grant, 11/3/2003, Exemption No. 7089B

Docket No.: FAA–2003–15045.
Petitioner: T.B.M., Inc.
Section of 14 CFR Affected: 14 CFR 36.1581(d).
Description of Relief Sought/Disposition: To permit T.B.M., Inc. to operate its Douglas DC–6 and Douglas DC–7 aircraft in aerial fire suppression operations at landing weights greater than the maximum landing weight.
Grant, 11/3/2003, Exemption No. 2745C

Docket No.: FAA–2003–15716.
Petitioner: Triad International Maintenance Corporation.
Section of 14 CFR Affected: 14 CFR 145.45(f).
Description of Relief Sought/Disposition: To permit Triad International Maintenance Corporation to place and maintain its inspection procedures manual (IPM) in its hangar library and inspection office rather than give a copy to each of its supervisory and inspection personnel.
Grant, 11/4/2003, Exemption No. 8166

Docket No.: FAA–2003–16199.
Petitioner: Pacific Airways, Inc.
Section of 14 CFR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/Disposition: To permit Pacific Airways, Inc., to conduct operations under visual flight rules outside controlled airspace, over water, at an altitude below 500 feet above the surface.
Grant, 11/4/2003, Exemption No. 8167

Docket No.: FAA–2002–11499.

Petitioner: Mr. Randy L. Bailey.

Section of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/ Disposition: To permit Mr. Randy L. Bailey to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bonanza, and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls.

Grant, 11/4/2003, Exemption No. 7734A

Docket No.: FAA–2001–9772.

Petitioner: Leading Edge Aviation Services, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Leading Edge Aviation Services, Inc., to operate certain aircraft under part 135 without a TSO–112C (Mode S) transponder installed in those aircraft.

Grant, 11/5/2003, Exemption No. 8168

Docket No.: FAA–2003–16412.

Petitioner: Richland Aviation.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Richland Aviation to operate certain aircraft under part 135 without a TSO–112C (Mode S) transponder installed in those aircraft.

Grant, 11/7/2003, Exemption No. 8169

Docket No.: FAA–2001–10793.

Petitioner: Taconite Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.145(c)(2).

Description of Relief Sought/ Disposition: To permit Taconite Aviation, Inc., to operate certain aircraft under part 135 without a TSO–112C (Mode S) transponder installed in those aircraft.

Grant, 11/7/2003, Exemption No. 6735C

Docket No.: FAA–2001–10605.

Petitioner: United Air Lines, Inc.

Section of 14 CFR Affected: 14 CFR 121.440(a) and SFAR 58, paragraph 6(b)(3)(ii)(A).

Description of Relief Sought/ Disposition: To permit United Air Lines, Inc., to meet line check requirements using an alternative line check program.

Grant, 11/7/2003, Exemption No. 3451N

Docket No.: FAA–2002–12573.

Petitioner: Regional Aviation Partners.

Section of 14 CFR Affected: 14 CFR 119.21(a)(1).

Description of Relief Sought/ Disposition: To permit members of Regional Aviation Partners, that are direct air carriers conducting domestic operations, in accordance with § 119.3 with airplanes having a passenger seat configuration of more than 9 and less than 31 seats, excluding and crewmember seat, required to conduct operations under part 121 to instead conduct operations under part 135.

Denial, 11/10/2003, Exemption No. 8170

Docket No.: FAA–2001–10919.

Petitioner: Gulfstream Aerospace Corporation.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Gulfstream Aerospace Corporation to give copies of its Inspection Procedures Manual (IPM) to individuals as necessary and make the manual available electronically to all other employees, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.

Grant, 11/20/2003, Exemption No. 7706A

Docket No.: FAA–2001–10452.

Petitioner: Air Logistics, LLC.

Section of 14 CFR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To permit Air Logistics, LLC, to place and maintain its inspection procedures manual (IPM) in a number of fixed locations within the facility, in lieu of giving a copy of its IPM to each of its supervisory and inspection personnel.

Grant, 11/20/2003, Exemption No. 7097B

Docket No.: FAA–2001–9783.

Petitioner: Lider Signature S.A.

Section of 14 CFR Affected: 14 CFR 145.47(b).

Description of Relief Sought/ Disposition: To permit Lider Signature S.A., to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial, Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology, for testing of its inspection and test equipment.

Grant, 11/19/2003, Exemption No. 8177

Docket No.: FAA–2001–10676.

Petitioner: Air Transport Association.

Section of 14 CFR Affected: Appendix H to part 121.

Description of Relief Sought/ Disposition: To permit member airlines of the Air Transport Association to use level C simulators for pilot-in-command initial and upgrade training and checking.

Grant, 11/20/2003, Exemption No. 5400F

Docket No.: FAA–2001–10800.

Petitioner: Sierra industries, Inc.

Section of 14 CFR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit certain qualified pilots of its Cessna Citation Model 500 series airplanes equipped with supplemental type certificate (STC) No. SA8176SW or STC No. SA09377SC and either STC No. SA2172NM or STC No. SA645NW to operate those aircraft without a pilot who is designated as second in command.

Grant, 11/20/2003, Exemption No. 5517G

Docket No.: FAA–2003–16399.

Petitioner: New World Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit New World Aviation to operate Business Aircraft Group's 1969 Gulfstream Aerospace G–1159 aircraft under part 135 without the aircraft being equipped with an approved digital flight data recorder.

Denial, 11/24/2003, Exemption No. 8181

Docket No.: FAA–2000–8533.

Petitioner: Israel Aircraft Industries, Ltd.

Section of 14 CFR Affected: 14 CFR 61.77(a).

Description of Relief Sought/ Disposition: To permit pilots employed by, or under contract to, Israel Aircraft Industries, Ltd., to operate any U.S.-registered airplane, for which they are licensed by the Israeli CAA, to the United States from Israel, ferry and deliver U.S.-registered airplanes from Israel to other countries for its customers, and perform test and acceptance flights on U.S.-registered airplanes to its customers.

Denial, 11/24/2003, Exemption No. 8180

Docket No: FAA–2003–14819.

Petitioner: AiRadio Corporation, d.b.a. ElectroSonics.

Section of 14 CFR Affected: 14 CFR 145.57(a) and 145.09(d)(3) and (4).

Description of Relief Sought/ Disposition: To permit AiRadio Corporation, d.b.a. ElectroSonics (ElectroSonics) to use manufacturer's service manuals, instructions, and service bulletins provided by the aircraft owners or operators rather than maintain current copies of these documents at the repair station for each aircraft ElectroSonics may repair or alter.

Denial, 10/27/2003, Exemption No. 8161

Docket No.: FAA–2003–15792.

Petitioner: Northwest Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.505(b).

Description of Relief Sought/ Disposition: To permit pilots operating a single Northwest Airlines, Inc., airplane to be on duty for more than 16 hours during 24 consecutive hours.

Denial, 12/1/2003, Exemption No. 8182

Docket No: FAA–2001–9353.

Petitioner: Promech, Inc.

Section of 14 CFR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought/ Disposition: To permit certain certificate holders conducting operations under part 135 to operate seaplanes inside the Ketchikan, Alaska, Class E airspace under Special Visual Flight Rules below 500 feet above surface.

Grant, 11/24/2003, Exemption No. 4760J

Docket No.: FAA–2001–9142.

Petitioner: Honeywell International, Inc., Systems, and Services.

Section of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To permit Honeywell International, Inc., Systems, and Services (Honeywell ES&S) to issue export airworthiness approval tags for class II and class III products manufactured at Honeywell's Singapore facility, which is an approved supplier to Honeywell ES&S under parts manufactured approval No. PQ1222NM.

Grant, 11/17/2003, Exemption No. 7075C

Docket No.: FAA–2001–10475.

Petitioner: Air Transport Association of America.

Section of 14 CFR Affected: 14 CFR 45.11(a) and (d), 91.417(d), and paragraph (d) of appendix B to part 43.

Description of Relief Sought/ Disposition: To permit aircraft to be operated without complying with the requirements pertaining to (1) the location of the aircraft identification plates and (2) the carriage of FAA Form 337 as evidence of installation approval for fuel tank installation in the passenger compartment or a baggage compartment.

Grant, 11/10/2003, Exemption No. 4902I

Docket No.: FAA–2003–16576.

Petitioner: Martinair, Inc.

Section of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Martinair, Inc., to operate certain aircraft under part 135 without a TSO–112C (Mode S) transponder installed in those aircraft.

Grant, 12/4/2003, Exemption No. 8186

Docket No.: FAA–2001–11050.

Petitioner: Big Sky Transportation Company d.b.a. Big Sky Airlines.

Section of 14 CFR Affected: 14 CFR 121.345(d)(2).

Description of Relief Sought/ Disposition: To permit Big Sky Transportation Company d.b.a. Big Sky Airlines to operate certain aircraft under part 121 without a TSO–112C (Mode S) transponder installed in those aircraft.

Grant, 12/4/2003, Exemption No. 7685A

Docket No.: FAA–2003–16561.

Petitioner: Alaska Coastal Airlines, Inc., d.b.a. Wings Airways.

Section of 14 CFR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought/ Disposition: To permit Alaska Coastal Airlines, Inc., d.b.a. Wings Airways to conduct operations under visual flight rules outside controlled airspace, over water, at an altitude below 500 feet above the surface.

Grant, 12/2/2003, Exemption No. 8185

Docket No.: FAA–2001–10384.

Petitioner: Weary Warriors Squadron, Inc.

Section of 14 CFR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).

Description of Relief Sought/ Disposition: To permit Weary Warriors Squadron, Inc., to operate its North American B–25 for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes.

Grant, 12/2/2003, Exemption No. 6786D

Docket No.: FAA–2003–16518.

Petitioner: Helicopter Association International.

Section of 14 CFR Affected: 14 CFR 61.197(b)(2).

Description of Relief Sought/ Disposition: To permit certificated flight instructors who renewed their certificates at the Helicopter Association International's HELI–EXPO in February 2002, and whose certificates are due to expire on February 29, 2004, and extension period to March 31, 2004.

Denial, 12/2/2003, Exemption No. 8184

Docket No.: FAA–2002–11491.

Petitioner: Cessna Aircraft Company.

Section of 14 CFR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).

Description of Relief Sought/ Disposition: To permit the Cessna Aircraft Company to allow certain qualified pilots of Cessna Citation Model 550, S550, 552, or 560 aircraft to operate those aircraft without a pilot who is designated as second in command.

Grant, 12/2/2003, Exemption No. 4050M

[FR Doc. 03–32084 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–05–C–00–BUF To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Buffalo Niagara International Airport, Buffalo, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Buffalo Niagara International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Lawrence M. Meckler, Executive Director of the Niagara Frontier Transportation Authority at the following address: 181 Ellicott Street, Buffalo, New York 14203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Niagara Frontier Transportation Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, 11530, (516) 227–3800. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Buffalo Niagara International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 16, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Niagara Frontier Transportation Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 25, 2004.

The following is a brief overview of the application.

Proposed charge effective date: May 1, 2009.

Proposed charge expiration date: April 1, 2010.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $7,045,262.

Brief description of proposed project(s):

1. Design and Construction, Extension of Runway 14/32;
2. Design and Construction, Extension, Widening and Rehabilitation of Taxiway D;
3. Design and Construction, Extension and Rehabilitation of Runway 5/23;
4. Design and construction, Extension and Rehabilitation of Taxiway A;
5. Design and Construction, Overhead Canopies for Pedestrian Walkways.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Niagara Frontier Transportation Authority.

Issued in Garden City, New York on December 16, 2003.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 03–32090 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–07–C–00–EYW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key West International Airport, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key West International and use the revenue from a PFC at Florida Keys Marathon Airports under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, FL 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Peter Horton, Director of Airports of the Monroe County Board of County Commissioners at the following address: Key West International Airport, 3491 S. Roosevelt Boulevard, Key West, Florida 33040.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monroe County Board of County Commissioners under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Moore, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, FL 32822, (407) 812–6331.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC Key West International and Florida Keys Marathon Airports under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 18, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Monroe County Board of County Commissioners was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the applications, in whole or in part, no later than April 1, 2004.

The following is a brief overview of the application.

Proposed charge effective date: May 1, 2004.

Proposed charge expiration date: January 1, 2006.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $1,437,200.

Brief description of proposed project(s): PFC Application and Administration, THangar Taxiways and Apron, New Terminal Development, Noise Improvement Program Design and Construction—Phase 3 (50 Homes), Noise Contour Update #4, Runway Safety Area Environmental Impact Study Design and Construction—Phase 1, Runway 9/27 Drainage Construction, Aprons Sealcoat Design, Rehabilitate Airport Beacon and Tower, Disadvantage Business Enterprise Program Implementation, Ground Vehicle Operations Video Training Equipment and Cargo Apron Rehabilitation (at Florida Keys Marathon). Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO filing FAA Form 1800–31 and CAC filing Form 298C T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe County Board of County Commissioners.

Issued in Orlando, Florida, Airports District Office on December 19, 2003.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 03–32091 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Applications 03–04–C–00–SGF To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Springfield-Branson Regional Airport, Springfield, MO

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Springfield-Branson Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget

Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert D. Hancik, A.A.E., Director of Aviation, at the following address: Springfield-Branson Regional Airport, 5000 West Kearney, Suite 15, Springfield, Missouri 65803.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Springfield, Springfield-Branson Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust Street, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Springfield-Branson Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 12, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Springfield, Missouri, was not substantially complete within the requirements of section 158.25 of Part 158. The City of Springfield submitted supplemental information on December 3, 2003, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than April 1, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July, 2004.

Proposed charge expiration date: August, 2005.

Total estimated PFC revenue: $1,847,000.

Brief description of proposed project(s): Design the midfield terminal; purchase and install loading bridges; modify existing loading bridges; and PFC consulting fees.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield-Branson Regional Airport.

Issued in Kansas City, Missouri on December 18, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–32092 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Geosynchronous Orbit Aeronautical Mobile Satellite Services Aircraft Earth Station Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This announces the availability of and request comments on a proposed Technical Standard Order (TSO) C–132, Geosynchronous Orbit Aeronautical Mobile Satellite Services Aircraft Earth Station Equipment. The proposed TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standard (MPS) their equipment must first meet to obtain approval and identification with the applicable TSO markings.

DATES: Comments must identify the TSO and arrive by January 30, 2004.

ADDRESSES: Send all comments on the proposed TSO to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Attn. Mr. Albert Sayadian, AIR–130. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Sayadian, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 385–4652, Fax (202) 385–4651. E-mail *albert.sayadian@FAA.GOV.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You may comment on the proposed TSO listed in this notice by sending such written data, views, or arguments to the above listed address. You may also examine comments received on the proposed TSO, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final TSO.

Background

This proposed TSO applies to Aeronautical Mobile Satellite Services (AMSS) Aircraft Earth Station (AES) equipment that provides direct worldwide communications between aircraft subnetworks and ground sub networks via aeronautical mobile satellites and their ground earth stations. Note that the capability of the AMSS includes the support of both data and voice communications between aircraft and ground-based users. To accomplish this task, the MPS contained in the proposed TSO–C132 will assist manufacturers of geosynchronous orbit AMSS AES articles in their compliance with the applicable requirements of RTCA Document Number (RTCA/DO) 210D, Minimum Operational Performance Standards (MOPS) for Geosynchronous Orbit Aeronautical Mobile Satellite Services Avionics, dated April 19, 2000.

How To Get Copies

You may get a copy of the proposed TSO via the Internet at, *http://www.faa.gov/certification/aircraft/TSOA.htm,* or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on December 19, 2003.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–32089 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

TSO–C163, VDL Mode 3 Communications Equipment Operating Within the Frequency Range 117.975 to 137.000 Megahertz (MHz)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of, and request comments, on a proposed Technical Standard order (TSO) for VDL Mode 3 Communications Equipment Operating within the Frequency Range 117.975 to 137.000 Megahertz (MHz). The proposed TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standard (MPS) their VDL Mode 3 Communications Equipment Operating within the Frequency Range 117.975 to 137.000 MHz must first meet to obtain approval and identification with the applicable TSO markings. Note that this proposed VDL Mode 3 TSO is drafted to recognize RTCA document (RTCA/DO)—271A, Minimum Operational Performance Standards (MOPS) for Aircraft VDL Mode 3 Transceiver Operating in the Frequency Range 117.975 to 137.000 Megahertz (MHz).

DATES: Comments must identify the TSO and arrived by February 5, 2004.

ADDRESSES: Send all comments on the proposed TSO to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Gregory Frye, AIR–130. Or, you may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Frye, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 385–4649, FAX (202) 385–4651. E-mail *gregory.e.frye@FAA.GOV*.

SUPPLEMENTARY INFORMATION:

Comments Invited

You may comment on the proposed TSO listed in this notice by sending such written data, views, or arguments to the above listed address. You may also examine comments received on the proposed TSO, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final TSO.

Background

The steady growth of aviation has brought about the corresponding growth in air/ground communications requirements. Further, the growing diversity of air traffic has resulted in an increasing complex air traffic control environment, which adds to the demand for spectrum efficiency, necessitates the impending relief granted with the usage of this VDL Mode 3 communication enhancement.

The current Very High Frequency (VHF) air/ground communications system lacks the channel capacity for future air traffic integrated voice and data communications demands. Deficiencies in the existing communication system includes:

- Lack of additional channels for voice services.
- Lack of integrated data link capacity.
- Insufficient ability to significantly improve NAS safety and efficiency.
- Increase radio frequency interference susceptibility.
- Outdated equipment and infrastructure.
- System maintenance concerns.

The VDL Mode 3 system is designed to address deficiencies in the current air traffic management system as well as utilizing technological advances in communications equipment design in order to meet future air traffic system voice and data demands.

How To Get Copies

You may get a copy of the proposed TSO from the Internet at *http://av-info.faa.gov/tso/Tsoro/Proposed.htm*, or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. You may inspect the RTCA document at the FAA office listed under **ADDRESSES**. Because RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc., you may purchase a copy of RTCA/DO–271A from: RTCA Inc., 1828 L Street, NW., Suite 807, Washington, DC 20036.

Issued in Washington, DC, on December 19, 2003.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–32088 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Chittenden County, Vermont

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a new supplement to a final environmental impact statement will be prepared for a proposed highway project in Chittenden County, Vermont, and that a 1984 supplement to the final environmental impact statement will not be completed.

FOR FURTHER INFORMATION CONTACT: Rob Sikora, Environmental Program Manager, Federal Highway Administration, P.O. Box 568, Montpelier, Vermont 05601. Telephone: 802–828–4433.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Vermont Agency of Transportation (VTrans) and the City of Burlington, will prepare a supplement to the final Environmental Impact Statement (EIS) on a proposal to construct a new highway known as the Southern Connector/Champlain Parkway in the City of Burlington, Chittenden County, Vermont. The original EIS for the Southern Connector (FHWA–VT–EIS–77–02–F) was approved on July 3, 1979. As described in the 1979 EIS, the proposed improvements provide an undivided four-lane, limited access highway on new location, commencing at the interchange of I–189 with Shelburne Street (U.S. Route 7) and extending westerly and northerly to the intersection of Battery and King Streets in the Burlington Central Business District for a distance of about 2.5 miles.

A portion of the proposed project has been constructed. Preliminary design and right-of-way acquisition for an additional portion has been completed. The remaining segment has been delayed due to the fact that it traverses an EPA Superfund Site.

On August 29, 1984, FHWA issued a Notice of Intent to prepare a Supplemental EIS to address any additional environmental impacts caused by constructing the new highway in a wetland contaminated by hazardous waste from a coal gasification plant. A draft Supplemental EIS was approved by FHWA on December 6, 1984, and circulated for public and agency review and comment. Resolution of issues could not be reached and therefore a final Supplemental EIS has not been issued.

A Supplemental EIS (FHWA–VT–EIS–77–02–FS) was approved on February 18, 1997, that provided for the construction of a temporary detour around the Superfund Site along a combination of existing streets and new roadway. The detour was intended to allow interim operation of the Southern Connector/Champlain Parkway pending the resolution of issues related to the Superfund Site and completion of the 1984 Supplemental EIS. The temporary detour has not been constructed.

A new Supplemental EIS is being initiated because FHWA, VTrans, and the City of Burlington are now restudying the portion of the Southern Connector/Champlain Parkway between Lakeside Avenue and the intersection of Battery and King Streets to determine if permanently avoiding the Superfund Site would be appropriate. As a result, it is unnecessary to complete the Supplemental EIS initiated in 1984. In addition to impacts associated with avoiding the Superfund Site, the new Supplemental EIS will also evaluate the impacts of reducing the proposed highway to a two-lane facility.

Alternatives under consideration include (1) taking no action; (2) constructing through the Superfund Site on the approved location; and (3) a range of alternatives for permanently voiding the Superfund Site using a combination of existing streets and new location roadways.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public hearing will be held in Burlington. Public notice will be given of the time and place of the hearing. The draft Supplemental EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Supplemental EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 23, 2003.

Kenneth R. Sikora, Jr.,

Environmental Program Manager, Montpelier, Vermont.

[FR Doc. 03–32159 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement: Denver, Boulder, Broomfield, Adams, Larimer and Weld Counties, Colorado

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: FHWA and FTA are issuing this notice to advise the public that an environmental impact statement/Section 4(f) Evaluation will be prepared for transportation improvements in the Counties of Denver, Boulder, Broomfield, Adams, Larimer and Weld.

ADDRESSES: Written comments on the project scope should be sent to David Martinez, Resident Engineer, Colorado Department of Transportation, Region 4, 2207 East Highway 402, Loveland, CO 80537, Telephone: (907) 667–4670, extension 5119.

FOR FURTHER INFORMATION CONTACT: Jean Wallace, Operations/Pavement Engineer, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO 80228, Telephone: (303) 969–6730, extension 382. John Dow, Community Planner, FTA, 216 16th Street Mall, Suite 650, Denver, CO 80202, Telephone: (303) 844–3243. David Martinez, Resident Engineer, Colorado Department of Transportation, Region 4. 2207 East Highway 402, Loveland, CO 80537, Telephone: (907) 667–4670, extension 5119.

SUPPLEMENTARY INFORMATION:

I. Description of Corridor and Transportation Needs

The FHWA and FTA, in cooperation with the Colorado Department of Transportation (CDOT), will prepare an environmental impact statement (EIS/Section 4(f) Evaluation in accordance with the National Environmental Policy Act (NEPA) for transportation improvements between Denver and Fort Collins, Colorado. Improvements between Denver and Fort Collins are considered necessary to provide for existing and projected travel demand, improve safety, replace aging infrastructure and accommodate multiple modes of transportation. These problems were identified in past studies and long-range transportation plans, including the North Front Range Transportation Alternatives Feasibility Study.

II. Alternatives

Alternatives under consideration include (1) Taking no action; (2) improvements to the existing highway network, particularly interstate 25, but perhaps also US 85 and US 287; (3) transit options including bus and rail technologies; and (4) constructing a highway on a new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment, interchange improvements or new interchanges, and transit station and maintenance facility locations.

III. Issues To Be Studied

FHWA and FTA will evaluate social, economic and environmental impacts of the various alternatives. Factors to be evaluated include transportation service including future corridor capacity, transit ridership and costs, community impacts such as land use, right of way needs, noise, neighborhood compatibility and aesthetics and resource impacts including impacts to historic and archaeological resources, air quality, wetlands, water quality and threatened or endangered species.

IV. Scoping

Project scoping will be accomplished through coordination with affected parties, stakeholders, organizations, Federal, State and local agencies; agency scoping meetings; and through public meetings in the project corridor. Meetings will be held as follows(:)

Greeley—February 3, 2004, 4 p.m. to 7 p.m., Greeley Recreation Center, 651 10th Avenue, Greeley, CO.

Tri-Towns Area—February 5, 2004, 4 p.m. to 7 p.m., Southwest Weld County Services Building, 4209 Weld County Rd 24, ½ (one-half mile north of the intersection of I–25 and Colorado Highway 119).

Fort Collins—February 10, 2004, 4 p.m. to 7 p.m., Fort Collins Lincoln Center, 417 W. Magnolia, Fort Collins, CO.

A scoping information packet will be available at these meetings or by contacting CDOT at the address above.

Information on the time and place of the public scoping meetings will also be provided in local newspapers.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA, FTA or Colorado Department of Transportation at the addresses provided above. Interested individuals, organizations, or agencies may propose the consideration of an additional, specific alternative or the study of a specific environmental effect associated with an alternative.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 22, 2003.

William C. Jones,

Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

Lee O. Waddleton,

Regional Administrator, Federal Transit Administration, Denver, Colorado.

[FR Doc. 03–31979 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2003–16241]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 24 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On October 30, 2003, the FMCSA published a Notice of its receipt of applications from 24 individuals, and requested comments from the public (68 FR 61857). The 24 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Ronald G. Austin, William E. Barrett, Eric D. Bennett, Zack Bradford, Sr., Rickey C. Dalton, Dustin G. Davis, John K. DeGolier, Martiano L. Espinosa, Roy M. Field, Derek T. Ford, James G. LaBair, Dennis A. Leschke, Lonnie Lomax, Jr., Ernesto R. Martinez, Bennet G. Maruska, James T. McGinnis, Gary L. Miller, Jack D. Miller, Ezequiel M. Ramirez, Carl W. Skinner, Jr., Doyce J. Soriez, Peter D. Wehner, Howard W. Williams, and Jack E. Wilson.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 24 applications on their merits and made a determination to grant the exemptions to all of them. The comment period closed on December 1, 2003. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the agency has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supports the agency's view that the present visual acuity standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 24 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, corneal and retinal scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 11 of the applicants were either born with their vision impairments or have had them since childhood. The 11 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 35 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 24 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 49 years. In the past 3 years, four of the drivers have had convictions for traffic violations. Three of these convictions were for speeding and one was for "failure to yield right of way to an emergency vehicle." Two drivers were involved in a crash but did not receive a citation.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 30, 2003 notice (68 FR 61857). Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 68 FR 61857.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies have been added to the docket (FHWA–98–3637).

We believe we can properly apply the principle to monocular drivers, because data from a former FMCSA waiver study program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (*See* Weber, Donald C., Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 24 applicants receiving an exemption, we note that the applicants have had only two crashes and four traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 24 applicants listed in the October notice (68 FR 61857).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 24 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comments to the docket and based upon its evaluation of the 24 exemption applications, the FMCSA exempts Ronald G. Austin, William E. Barrett, Eric D. Bennett, Zack Bradford, Sr., Rickey C. Dalton, Dustin G. Davis, John K. DeGolier, Martiano L. Espinosa, Roy M. Field, Derek T. Ford, James G. LaBair, Dennis A. Leschke, Lonnie Lomax, Jr., Ernesto R. Martinez, Bennet G. Maruska, James T. McGinnis, Gary L. Miller, Jack D. Miller, Ezequiel M. Ramirez, Carl W. Skinner, Jr., Doyce J. Soriez, Peter D. Wehner, Howard W. Williams, and Jack E. Wilson from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: December 12, 2003.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 03–32093 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD–2003–16753]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel AMICI.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16753 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003–16753. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AMICI is:

Intended Use: "Provide cruises as fundraising activity for non-profit organizations."

Geographic Region: "Maine to Florida Keys."

Dated: December 23, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–32096 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD–2003–16758]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CATTLEYA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-

build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16758 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003–16758. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St. SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CATTLEYA is:

Intended Use: "Sailing Charters & sailing Instruction."

Geographic Region: "All U.S. waters excluding Alaska, Hawaii, Washington, and Oregon. Primary expected use is in the waters of Florida and Texas."

Dated: December 23, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–32099 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD–2003–16751]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JUSTUS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16751 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003–16751. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JUSTUS is:

Intended Use: "Tourist day trips around Boston, MA."

Geographic Region: "Massachusetts waters."

Dated: December 23, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–32094 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD–2003–16755]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MEMORY MAKER.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16755 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003–16755. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MEMORY MAKER is:

Intended Use: "Uninspected vessel for 6 passengers or less for hire upon the Great Lakes."

Geographic Region: "The Great Lakes of the U.S."

Dated: December 23, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–32098 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD–2003–16754]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MON AMIE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16754 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003–16754. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MON AMIE is:

Intended Use: "Lessons, charters and tours."

Geographic Region: "East Coast of USA."

Dated: December 23, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–32097 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD–2003–16752]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel VERITAS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16752 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before January 30, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2003–16752. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VERITAS is:

Intended Use: "Charter cruises."

Geographic Region: "U.S. East Coastal Waters and the Caribbean."

Dated: December 23, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–32095 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4957]

Request for Public Comments and OMB Approval of Existing Information Collection

AGENCY: Research and Special Programs Administration (RSPA), DOT.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration, Office of Pipeline Safety published its intention to revise forms RSPA F 7100.1, Incident Report for Gas Distribution Systems, and Form RSPA F 7100.1–1, Annual Report for Gas Distribution Systems, (68 FR 33759, June 5, 2003). Several operators, two trade associations representing natural gas distribution pipeline operators, one state utility commission, and one individual provided comments. The purpose of this additional notice is to provide the public an additional 30 days to comment on the proposed revisions to the natural gas distribution incident and annual reporting forms, including the form instructions.

DATES: Comments on this notice must be received by January 30, 2004, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Shauna Turnbull by telephone at (202) 366–3731, by fax at (202) 366–4566, by e-mail at *shauna.turnbull@rspa.dot.gov,* or by mail at the DOT/RSPA Office of Pipeline Safety, DPS–13, 400 Seventh Street, SW., Washington, DC 20590.

ADDRESSES: Copies of the proposed information collection and the revised forms and instructions can be viewed in this docket at *http://dms.dot.gov.* You may also visit the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. Comments should identify the docket number of this notice, RSPA–98–4957, and can be mailed directly to: Office of Information and Regulatory Affairs OIRA), Office of Management and Budget (OMB), 726 Jackson Place, N.W., Washington, D.C. 20503, ATTN: Desk Officer for Department of Transportation (DOT).

SUPPLEMENTARY INFORMATION:

Filing Information

The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays. You should submit an original and one copy of a comment. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. To file written comments electronically, after logging onto *http://dms.dot.gov,* click on "Electronic Submission." You can read comments and other material in the docket at: *http://dms.dot.gov.* General information about our pipeline safety program is available at: *http://ops.dot.gov.*

Background

Operators of pipeline systems subject to the Research and Special Programs Administration/Office of Pipeline Safety (RSPA/OPS) natural gas distribution systems pipeline safety regulations are required to report annually, and for each reportable incident, certain information about those systems. RSPA/OPS uses this information to compile a national pipeline inventory, to identify and determine the scope of safety problems, and to target inspections. The information provides the basis for more efficient and meaningful analyses of RSPA/OPS gas distribution pipeline incident and annual data.

RSPA/OPS uses pipeline incident and annual data to identify safety issues and to target risk-based inspections. The data are collected from incidents reported by operators on RSPA Form F 7100.1, Incident Report—Gas Distribution Pipelines. Operators are required to file an incident report form within thirty days after a reportable incident occurs. Annual information is collected from operators reporting on RSPA Form F 7100.1–1, Annual Report "Gas Distribution Pipelines. Operators are required to file annual report forms with RSPA/OPS by March 15th for the preceding calendar year.

RSPA/OPS published a notice in the **Federal Register** on June 5, 2003 (68 FR 33759) inviting comments on proposed revisions to the gas distribution pipeline operator incident and annual reports and associated instructions. These revisions require operators to submit information necessary for the normalization of incident information for safety trend analysis. The proposed changes are intended to make information collection more useful to the public, government agencies, and industry.

Summary of Comments

In response to the **Federal Register** notice of June 5, 2003 (68 FR 33759) RSPA/OPS received comments from the American Gas Association (AGA), the American Public Gas Association (APGA), the State of Colorado Public Utilities Commission (CPUC), Southern Connecticut Gas and the Connecticut Natural Gas Corporation (Connecticut), Consolidated Edison Company of New York, Inc. (Con Edison), Southwest Gas Corporation (Southwest), Atmos Energy Corporation (Atmos), and Mr. John Erikson, Pipeline Safety Consultant (Mr. Erikson). The comments and RSPA/OPS responses are summarized below for the proposed incident and annual report forms and instructions.

Incident Report Form RSPA F 7100.1

Operator Time Burden

AGA expects that, at least for the first year, the operator burden for completing the forms will exceed the estimated 12 hour completion time and cost burden. Gas distribution pipeline operators usually computerize the collection of incident and annual report form data.

Approximately five percent of the workforce may have to be trained to manage the new data format. One operator estimated that $40,000 would be spent to reprogram the data systems that collect, record, validate, retrieve, and process this information. APGA states that asking for extraneous information will increase compliance costs.

RSPA/OPS Response: RSPA/OPS agrees with the comment that the amount of time to complete the forms was underestimated in the notice. We have considered the extra impact of computerization and the cost of increased training, and have doubled the amount of estimated time to complete the required incident and annual report forms.

RSPA/OPS believes that the time differential for filing a revised incident report compared to the existing incident report is small, because the form is completed for only one of the 25 cause categories for any given incident. Furthermore, because only a small percentage of distribution operators have reportable incidents, the cumulative total time for filing the revised annual information with RSPA/OPS will not increase significantly.

The revised natural gas distribution pipeline operator annual report is substantially unchanged, with the major revision being the addition of the new table for mileage by decade of installation. The increased time to file the new information for mileage by decade of installation should not be substantial for most companies, because the information will be readily available in existing computerized systems for those decades for which the information is available. When the information is not available, RSPA agrees that mileage should be tabulated in the "Unknown" category, in lieu of an extensive and costly information gathering effort. For those operators with computerized systems, there would be an initial cost for conversion to provide the information in the tabulated format, but RSPA/OPS believes the cost would be minimal and the value of collecting the information outweighs completion time or conversion costs. Smaller companies without computerization of the information would generally have little mileage to tabulate. This would result in a minimal increase in preparation time relative to the time required to complete the current form.

Operator Cost Burden

AGA stated that:

> * * * [p]roper trending of incidents needs to account for inflationary cost increases. The $50,000 [property damage] incident reporting threshold has not been increased for more than ten years. The effect of inflation over a period of time involving the past decades can be considerable.

For example, a $50,000 loss in 1989 dollars would be equivalent to $61,543 in 1998. Conversely, if inflation is ignored, a $50,000 incident today can be compared to a $40,622 incident in 1989. Thus, when adjusted for inflation, natural gas distribution incidents decreased from 105 in 1989 to 98 in 1998. Accordingly, AGA suggests that, as part of a future rulemaking, OPS consider raising the monetary threshold for incident reporting to a higher limit. Additionally, any reporting of intrastate incidents meeting lower cost thresholds (*e.g.*, $5,000) should be identified and segregated from the $50,000 incidents.

RSPA/OPS response: RSPA/OPS interprets AGA's comment to mean that if operators were required to report incidents with property damage of $50,000 in 1989, they would estimate the change in the consumer price index and report only incidents with a real cost of $50,000 in 2003. Although this would save operators a small amount of money in reduced paperwork costs, it would cause a great loss to RSPA/OPS in terms of safety information. For instance, if there were 10 fewer incidents reported per year, this would save operators 120 hours per year if each incident took 12 hours to report. At $80 per hour, the total savings would be less than $1,000 per year. However, if the information from any incident helped RSPA/OPS identify a potential problem that could prevent one major incident in the future, the value of this information would potentially prevent an incident that could cost millions of dollars in property damage, as well as preventing potential injuries or fatalities.

RSPA/OPS feels the small burden of reporting incidents resulting in $50,000 or more in property damage is outweighed by the benefit of the information provided. Due to the relative scarcity of pipeline incidents, the information that is gained from any one incident is very valuable and justifies the minimal expense to the operators.

Data Clarity and Intended Use

APGA observed that if data elements and instructions are unclear, incorrect data submissions will make it less likely that statistically significant conclusions could be drawn from the information. APGA supports data collection if the data is readily available and beneficial, but urges RSPA/OPS not to collect data unless it can identify how it will be used in analyses. Moreover, APGA urges RSPA/OPS to provide information on the intended use for each data element requested.

RSPA/OPS response: RSPA/OPS agrees that unclear instructions could result in incorrect submissions and our goal is to ensure that all instructions are as clear as possible. However, practicality and resource constraints prohibit line-by-line justification of each requested data element. Current RSPA/OPS forms are based on the work of two separate data teams that extensively evaluated reporting needs, taking into consideration the American Society of Mechanical Engineers (ASME) cause categories contained in standard ASME B31.4. These cause categories have already been adopted for natural gas transmission incident and hazardous liquid accident report forms beginning in 2002, along with the adopted stakeholder best practices. RSPA/OPS based its submission requirements on this information and concludes that its data requests are reasonable and cost of compliance is minimal.

Item Labeling

AGA, Con Edison, and Southwest recommend renumbering subsections to correct sequential item identification. Various minor renumbering suggestions were made to improve form flow. For brevity's sake, they are not individually outlined in this summary.

RSPA/OPS response: Renumbering and reformatting suggestions are accepted as general recommendations for proper formatting and increased clarity.

Latitude/Longitude

AGA and APGA request definition of the phrase "projections and datum used in collecting this data." Both associations ask for clear identification of where this information is to be entered on the form or elimination of the phrase from the form instructions.

AGA alleged that many local distribution company operators may not have latitude and longitude information and the information would more likely be used by cross-country pipeline operators. AGA also noted that while Tiger/Line Data tools were considered helpful in locating latitude and longitude, AGA believes it is important for operators to understand how the data would be used so they could support RSPA/OPS data trending efforts. AGA recommends the inclusion of form instructions that demonstrate how latitude/longitude data would be used.

APGA tested logon time to the tiger.census.gov website (*http://tiger.census.gov/cgi-bin/mapbrowse-tbl*) to determine the time required to pinpoint the latitude and longitude of the APGA office using a broadband internet connection. This effort required approximately ten minutes and provided an address to seven decimals. However, the form's space allotment does not provide enough room for numbers of this size.

APGA believes there is no known or proven geographical trend in incidents. If no potential use for this data can be identified, APGA urges RSPA/OPS to delete it from the form and instructions. If, however, RSPA/OPS chooses to continue to ask for the data, it should specify how many decimals to include and provide sufficient space on the form.

Southwest stated that the additional request for latitude and longitude requires an increase in man-hours of approximately ten to thirty minutes using the website, depending on the location to research. Southwest finds the website non-user friendly and states that returned results were only marginally accurate because gas lines are not shown on base maps. Southwest believes these fields should be removed if they are not going to be significant in analysis.

APGA and Southwest question the value of collecting latitude/longitude data and its application for incident analyses.

RSPA/OPS Response: We have eliminated the request for projections and datum used in collecting latitude/longitude information. However, RSPA/OPS requests latitude and longitude information for the specific purpose of obtaining a location description to pinpoint the site of the incident. Without this information, RSPA/OPS would not be able to geographically locate most incidents.

Furthermore, RSPA/OPS is often requested by Congress to provide maps of gas pipeline incidents, necessitating this data collection. RSPA/OPS is also working to create risk-based tools to assist in targeting solutions where problems occur, to identify risks in highly-populated corridors, and to identify future risks in expected growth corridors. Latitude and longitude information further provides macro level information necessary to develop these risk-based tools.

RSPA/OPS is requiring latitude and longitude to be stated in decimal degrees with a minimum of five decimal places. No projection is required. Form instructions have been clarified to further explain how latitude and longitude should be reported. In the event operators lack GIS capability, latitude and longitude is readily available on the Internet. As APGA noted, and tests by RSPA/OPS confirm, trials to access the Tiger/Line were successful within ten minutes or less. Note, however, that operators are not required to use the Tiger/Line site. Many similar Internet tools are available that will facilitate provision of latitude/longitude coordinates.

Federal Land Incident

AGA and Southwest allege that it is the responsibility of RSPA/OPS to obtain federal land location, and not that of the operator. Definitions for "federal land" provided for the incident and annual reports are cited as inconsistent. A recommendation was made to use the same definition in both instructions.

RSPA/OPS Response: RSPA/OPS requires Federal Land identification for incidents that occur on federal lands to comply with 30 U.S.C. 185. RSPA/OPS has revised the definition in the form instructions to state: "All lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf."

Type of Leak or Rupture

AGA stated: "[t]ype of leak or rupture asks the operator for a puncture diameter in inches. There may be situations where the puncture is not circular in shape. If this data is to be used to calculate areas of the puncture opening, rectangular dimensions should also be sought for punctures that approach a rectangular shape."

RSPA/OPS response: It is not the intent of RSPA/OPS to restrict measurements to circular dimensions. For the purposes of this data collection, provide length in inches of a representational cross section of the leak or rupture, or diameter, whichever best suits the shape of the puncture. We further clarify this in the instructions.

Leak Reporting

APGA stated:

> OPS asks operators to report the type of leak or rupture. The instructions for this section are confusing. In the instructions OPS includes a note to operators not to report leaks that are either inconsequential or incidental to the operation of the pipeline and which can be repaired under routine daily maintenance. Neither of these types of leaks would be involved in an incident, therefore would not be reported on the incident form under any circumstances. The instructions would be more clear if this note would simply state that the operator should only report information about the one leak that the operator has determined to be the proximate cause of the incident.

RSPA/OPS response: RSPA/OPS agrees with the comment and is clarifying the instructions accordingly.

Pinhole Leaks

Southwest comments:

> * * * RSPA/OPS has not defined what constitutes a pinhole. If operators are left to interpret this, each operator will have its own definition of a pinhole—that will vary from operator to operator. This in effect will minimize the usefulness of any type of meaningful analysis because of the various criteria used to establish the date. Southwest suggests that RSPA/OPS define what constitutes a pinhole.

RSPA/OPS Response: RSPA/OPS agrees with the comment concerning the need for a definition of "pinhole" and will define a "pinhole" as one that is hard to see with the naked eye characterized as being a small hole made as by a pin.

Consequences—Reporting Reasons

Connecticut commented on the section of the form titled "Consequences." The current report has a heading for the same type of information, titled "Reasons for Reporting." Those reasons align directly with criteria in 49 CFR Part 191—to make clear for reporting purposes why the Operator is reporting the incident. The proposed change in the section heading from "Reasons for Reporting" to "Consequences" substantially alters the meaning and causes confusion with the current report. Connecticut recommends the section heading be retained as "Reasons for Reporting." Additional recommendations include retaining all the areas under "Reasons for Reporting" as in the existing report and in alignment with Part 191 reporting criteria.

The two proposed additions, "gas ignited" and "evacuation," are not specific Part 191 reporting criteria and can be open to interpretation and confusion. Connecticut asks, "[i]f during a planned purging operation, an operator ignited and burned off gas, would that trigger a report, since "gas ignited" is now one of the "consequences, or if 3 people were evacuated from a home by the Fire Department because of a gas odor due to a pilot light out (non-jurisdictional), would that trigger a Report?"

RSPA/OPS response: All the items in this revised section are not triggers (*i.e.*, gas ignited and evacuation) for filing a natural gas distribution incident. The "Consequences" title has been adopted to align with the gas transmission form and the hazardous liquid accident form revisions that also adopted the revised heading for this section. A "reason for reporting" is readily discernable regardless of what the section heading is labeled. For consistency with the natural gas transmission and hazardous liquid incident and accident forms, RSPA/OPS therefore retains the proposed "Consequences" title for this section.

The "gas ignited" and "evacuation" events will not trigger a report filing, because these revisions do not change the reporting criteria.

Estimated Property Damage/Loss

AGA asks that cost of relighting gas services shut off due to incidents be included in the instructions for estimated costs because all property damages related to the incident should be reported. Southwest requests clarification if relighting costs are to be included in the total dollars for property damage.

RSPA/OPS response: We agree and we will clarify that relighting costs are to be included in the instructions.

Gas Ignited—Explosion or No Explosion

The current form instructions require operators to report whether gas ignited with or without an explosion, but do not clarify at what point in time "explosion" is considered to have occurred or what constitutes a fire or explosion. AGA and Southwest suggest adoption of definitions based on National Fire Protection Association (NFPA) standards.

APGA states that an unconfined cloud of natural gas cannot explode (*i.e.*, causing a shock wave that causes damage outside the immediate area of the gas cloud). If gas is ignited within a confined space (*e.g.*, within a building) it can cause the building to explode. APGA does not understand how RSPA/OPS would treat an incident differently depending on whether property damage was caused by fire or explosion of a structure. Given the confusion about what is or is not an explosion, any analysis relying on this data element is unlikely to provide statistically significant results. APGA suggests that the term "explosion" not be included on the form, but instead that RSPA/OPS ask whether the gas ignited or did not ignite. Con Edison recommends re-labeling the field "Gas Ignited—No Explosion" to "Gas Ignited".

RSPA/OPS Response: To provide needed clarity, RSPA/OPS has relabeled block 5d on the form to "Gas Ignited," adding two checkbox options, one appearing as "explosion" and the other as "no explosion." Block 5e has been relabeled as "Gas Did Not Ignite," adding checkbox options "explosion" and "no explosion." RSPA/OPS did not propose to adopt a definition of ignition, fire, or explosion based on NFPA standards. We will continue to rely on the common understanding of these terms as reflected in NFPA and other documents and standards.

Evacuation Reason

RSPA/OPS asks operators to estimate the number of persons evacuated as a result of the incident. Commenters noted that evacuation is sometimes performed by firemen, police, or other emergency officials, in which case the operator may not know how many persons were evacuated. Even when the operator requests evacuation, obtaining an accurate count of the number of persons is not and should not be a priority. RSPA/OPS should clarify that the operator is not expected to expend significant time and effort to determine this number. Southwest requests clarification of which field should be selected as the default when the reason for evacuation or who ordered it is not known. If there is no default field, a supplemental report will have to be sent to RSPA, possibly contradicting the idea behind the Paperwork Reduction Act of 1995. A similar comment stated that supplemental report filing may contract the intent of the Paperwork Reduction Act of 1995 regarding incidents with cause of plastic pipe failure not always determined or known at the time that the report is submitted.

RSPA/OPS Response: The operator is not expected to expend significant time and effort to determine the numbers of people involved during an evacuation. An indication of order of magnitude is sufficient (1, 10, or closest hundred, thousand, *etc.*) Local companies should have contact with local emergency responders and officials as part of their standard operating procedures, and obtaining this information could be as simple as calling officials and speaking with responders.

Filing supplemental report information is routine where additional information not available at the time of incident becomes available. Furthermore, RSPA/OPS was urged by the General Accounting Office and others to seek complete incident information beyond that which is known at initial reporting.

Incident Origin—Failure Occurred On

Con Edison recommends that another option labeled "Saddle Tee" be added because it may be confusing as to whether the failure occurred on the body of pipe, joint, component, or other.

RSPA/OPS Response: RSPA/OPS believes that the general public will be best served by utilizing the "Other" option along with the form allowance for a write-in cause. This will allow RSPA/OPS to consider future additions based on frequency of write-in causes.

Corrosion

AGA and Southwest point out that current form fields only allow operators to answer yes or no to the question of whether the pipe was previously damaged in the area of corrosion. Operators would be able to correctly indicate unknown if a field were provided or if instructions included the caveat that a "no" response would be inclusive of an "unknown" response.

RSPA/OPS response: RSPA/OPS has added an "Unknown" field for this element.

Other Outside Force Damage—Fire/Explosion as Primary Cause

AGA believes that instructions on reporting fire or explosion occurring as a result of the pipeline failure, but not as a cause of the failure, should read:

> If a fire/explosion occurred as a result of the failure, but was not a primary cause of the failure, do not check item 10 of this section. Part A, items 5d and/or 5f should already be checked to show that the fire/explosion occurred.

Southwest believes that the instructions given for completing this section are inaccurate, and currently lead the operator to the section referencing corrosion. If it is the intent of the form to cover the possibility of fire and/or explosion due to corrosion, Southwest explains that there could be other causes of failure (fatigue, stresses due to rocks or other infrastructure), and suggests that RSPA/OPS revisit the instructions for clarity and relevance.

Con Edison recommends that an item be added for "Electric Wire Down or Electric Fault in a Manhole." The current form instructions appear to cover only one possibility, namely a fire and/or explosion due to corrosion. There could be other causes of failure due to a downed electric wire or an electric fault in a manhole, which are more common type incidents.

RSPA/OPS response: RSPA/OPS agrees with the comments and has revised the instructions.

Test Medium

RSPA/OPS requires operators to specify the test medium used to establish the Maximum Allowable Operating Pressure (MAOP) and provides check boxes for "water," "natural gas," "inert gas," and "other." If RSPA/OPS elects to include this data element in the final revised form, APGA recommends that "air" be included as one of the options since the vast majority of distribution piping is tested with air prior to being placed into service. APGA questions whether knowledge of the test medium is necessary for any analysis.

RSPA/OPS Response: RSPA/OPS agrees that information on the test medium is not necessary for analysis. We have eliminated this data element.

Equipment or Operations

RSPA/OPS offers the cause option, "Ruptured or leaking seals/pump packing." APGA finds this confusing as pumps are not a common component on gas distribution systems. The association also questions whether this refers to pumps only, or if seal or packing leaks on valves, couplings, regulators, meters and other equipment should be included. Unless RSPA/OPS requires that the cause categories be identical across all three incident forms (liquid, gas transmission, and distribution), the field should be deleted. If the pump identification is retained on the form, RSPA/OPS should recognize that confusion about its proper application may make it more difficult to draw statistically significant conclusions about causes of equipment and operations failures.

Con Edison believes this section refers more appropriately to hazardous liquid operations, especially "pump packing." They recommend changing this item to address more common equipment failures, such as "Mechanical Device Not Installed Properly." There are many mechanical connectors being used on plastic pipe systems that may not be properly installed, and could lead to an incident. There should be a provision for this. Although there is a box to check off for "Poor Workmanship," there appears to be no follow-up to this category when a mechanical device is involved.

RSPA/OPS Response: RSPA/OPS recognizes that pump packing is not a common element in the natural gas distribution pipeline industry. Therefore, we change this cause category from "Ruptured or leaking seals/pump packing" to "Leaking Seals."

Annual Report Form RSPA F 7100.1–1

Federal Land Incident

With regard to leaks reported on annual reports, AGA asks RSPA/OPS to clarify the exclusion that "Federal Buildings such as Federal court houses and warehouses are not to be reported in the incident on Federal lands." Southwest asks whether the exclusion also applies to leaks reported on the annual report.

RSPA/OPS Response: RSPA/OPS has corrected the definition in the form instructions to state: "All lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf." We have eliminated the exclusion of federal buildings because determining whether buildings were federally owned would be an unnecessary burden on pipeline operators and would serve no analytical purpose.

Miles of Main and Numbers of Services by Decade of Installation

RSPA/OPS asks operators to submit data on the decade of installation of mains and services. AGA and APGA state that this information may not be readily available to operators, and ask RSPA/OPS to clarify that operators are not required to undertake a massive records search to develop the data. APGA offers that operators should be able to list mains and services as "unknown" if the data is not readily available.

APGA notes that RSPA/OPS recently began collecting this data from gas transmission and hazardous liquid operators. Transmission and liquid operators are more likely to have the information readily available because these pipelines tend to be constructed in major projects in a particular decade. Distribution mains and services are installed in smaller increments. Every day an operator may be installing new mains and services, retiring mains and services, and replacing small sections of its piping network. Depending on the record keeping systems, developing the requested installation-by-decade data could require significant time and effort.

Southwest believes that the new requirement will require an increase in the number of hours required to collect distribution data—approximately a day or two longer than is required to complete the current distribution annual report.

Atmos questions the value of such information. Until the value of the data is better justified, Atmos prefers that the proposed changes not be made.

RSPA/OPS Response: The lack of information about overall age of the national pipeline infrastructure has been a major data gap identified by RSPA/OPS, the National Transportation Safety Board, the Department of Transportation Office of the Inspector General, the General Accounting Office, and others. RSPA/OPS also emphasizes that operators are not required to undertake a massive records search to develop the data if it is not readily available. RSPA/OPS seeks best estimates only and does not expect operators to conduct costly manual searches. However, we believe that information on most lines should be available. RSPA/OPS believes the value of the data will increase over time and its accuracy will improve. In the long term, mileage by decade will be of significant value.

Average Length of Service Line

Mr. Erikson reports that the use of the RSPA/OPS Annual Report data for analyses is necessary in his safety consultancy, and therefore accuracy and usability of the data is of high interest. Mr. Erikson recommends that RSPA/OPS cease asking for average length of service line. Few, if any, operators know this length, and nearly one-sixth of operators reported an average length of zero feet. Experience with operators points to the fact that numbers reported are often a guess, rendering the information unreliable.

RSPA/OPS Response: The estimated average length of service line data element is the sole source for mileage of services nationally. RSPA/OPS uses this information to survey per decade changes in the overall environment. We also use the information to characterize the overall infrastructure. Therefore, this data element will be retained.

Leak Cause

RSPA/OPS proposes to revise the categories for leaks eliminated and/or repaired during the year. However, APGA asks that RSPA/OPS recognize that many operators collect leak repair data using forms and procedures provided to the field crews. Many operators use computer software to store this data. These forms, procedures, and software will have to be modified to reflect the new categories and the new procedures must be explained to field personnel. APGA urges RSPA/OPS to provide adequate lead-time to allow operators to modify their forms, procedures, and software to start tracking new categories. A minimum of six months between the date that RSPA/OPS promulgates changes to leak categories and the start of the year for which new annual reports will be used to collect leak repair data is deemed reasonable.

RSPA/OPS Response: RSPA/OPS acknowledges that time is needed to revise systems to tabulate the new information on the revised annual report form. Accordingly, we will request the information annually beginning March 15, 2005 for calendar year 2004.

Altering Leak Cause Categories

CPUC provided RSPA/OPS with an extensively revised instruction guide and proposed form for annual report completion to ensure leakage data that would be useful for Colorado regulatory analysis purposes. The proposed form is a tool that alters past definitions used to classify "leaks" into different "Leak Cause" categories. CPUC's recommended instructions are provided with the intent to provide clarity and correlation with past leak cause data collection efforts. Because in-depth failure investigations are conducted for each "incident" as defined under 49 CFR 191.3 during the 30-day incident reporting period, a failure investigation into the cause of a leak under normal gas distribution system operating conditions is usually determined by the operator's field technician. Therefore, instructions should help clarify which leak category the field technician must focus on for the purposes of the annual report.

CPUC suggests that the data collection and reporting using the proposed form should coincide with a full calendar year of leak repair data to ensure meaningful data reporting and analysis. Partial calendar year or "Unknown" data classification will result in inconsistent data collection and questionable conclusions.

RSPA/OPS Response: The data collection for the natural gas distribution annual report has historically been, and will remain, per calendar year for the preceding calendar year. As stated above, we request the revised forms to be filed annually beginning March 15, 2005, for calendar year 2004.

Combining Categories

Southwest questions combining equipment leaks and operation leaks into one category. As explained in the instructions for the annual report, equipment leaks are leaks resulting from malfunctioning valves, regulators, couplings, etc. Operation leaks are leaks resulting from inadequate procedures or safety practices, failure to follow correct procedures, or other operator errors. These categories are distinct and justify separation into their own category. Southwest believes that separating these into distinct categories will better enable RSPA/OPS to perform a proper analysis of the data.

RSPA/OPS Response: RSPA/OPS agrees that the categories are distinct and justify separation into their own category. Accordingly, the form and instructions are changed to separate Equipment leaks and Operation leaks.

Abstract of Proposed Information Collection and Request for Comments

The forms to be revised are two of the four gas pipeline reporting forms authorized by Information Collection OMB 2137–0522, Incident and Annual Reports for Gas Pipeline Operators. The proposed revisions represent the final phase of an ongoing process to revise all incident and annual reports. RSPA/OPS revised the natural gas transmission operator annual report forms in 2001 for collection beginning in 2002.

Title of Information Collection: Incident and Annual Reports for Gas Pipeline Operators—Revision of Natural Gas Distribution Incident Report (RSPA F 7100.1) and the Annual Report Form for Gas Distribution Systems (RSPA F 7100.1–1)

OMB Number: 2137–0522.

Respondents: Natural Gas Distribution Pipeline Operators.

Estimated Number of Respondents: 1,200.

Estimated Total Annual Burden on Respondents: 30,240 hours.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on December 24, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–32201 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publication, they are not repeated here. Request of modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before January 15, 2004.

ADDRESS COMMENTS TO: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 24, 2003.

Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
11215–M	....	Orbital Sciences Corporation, Majave, CA.	49 CFR Part 172, Subparts C, D; 172.101, Special Provision 109.	11215	To modify the exemption to authorize an alternate takeoff/landing site of the L–1011/Pegasus fuel rocket.
11818–M	....	Raytheon Company, El Segundo, CA.	49 CFR 173.34(d)	11818	To modify the exemption to authorize alternative containers for the packaging and transport of heat pipes into larger assemblies in connection with a flight project spacecraft.
13181–M	RSPA–02–14022	Thermo MF Physics, Colorado Springs, CO.	49 CFR 173.403; 173.424.	13181	To modify the exemption to authorize a design change of the high voltage accelerator system for the transportation of a Division 2.2 material.
13318–M	RSPA–03–16446	Western Industries, Chilton, WI.	49 CFR 173.301; 177.840.	13318	To reissue the exemption originally issued on an emergency basis for the use of a DOT Specification cylinder packaged in an alternative method transporting certain Division 2.1 materials.

[FR Doc. 03–32194 Filed 12–30–03; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 30, 2004.

ADDRESS: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 24, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions & Approvals.

NEW EXEMPTION

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13341–N	....	National Propane Gas Association Washington, DC.	49 CFR 173.315(j)(4) ..	To authorize the one-way transportation in commerce of certain non-DOT specification storage tanks containing propane. (mode 1).
13343–N	....	Olin Corporation, Winchester Division, East Alton, IL.	49 CFR 173–60(b)(4); 177.834(1)(1).	To authorize the transportation in commerce of trinitroresorcinol, wetted, Class 1.1D, packaged in accordance with the required packaging instruction in motor vehicles equipped with heating and refrigerating (heat-pump) apparatus. (mode 1).
13344–N	....	Precision Technik, Atlanta, GA.	49 CFR 173.301(a)(f)(1); 180.209; 173.201; 173.202; 173.203; 173.302; 173.304.	To authorize the manufacture, marking and sale of a salvage cylinder which do not contain a pressure relief device for use in transporting damaged or leaking gas cylinder. (mode 1).
13347–N	....	ShipMate, Inc., Torrance, CA.	49 CFR 172.301; 172.401; 173.201; 173.202; 172.203(a); 172.301(c).	To authorize the transportation in commerce of certain unmarked, unlabeled, hazardous materials in single packagings or inner receptacles of combination packagings, placed in properly marked and labeled non-specification devices. (mode 1).

NEW EXEMPTION—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13336–N	....	Renaissance Industries, Sparpsville, PA.	49 CFR 173.302(a)(1); 173.304; 175.3.	To authorize the manufacture, mark, sale and use of a non-DOT specifications cylinder for use in transporting certain classes of hazardous materials. (modes 1, 2, 3, 4, 5).
13337–N	....	Albemarle Corporation, Baton Rouge, LA.	49 CFR 176.83(b)&(d)	To authorize the transportation in commerce of certain cylinders, non-bulk packaging and small portable tanks containing various Division 4.2 and 4.3 materials without meeting segregation requirements. (mode 3).
13338–N	....	Sacramento Municipal Utility District, Herald, CA.	49 CFR 173.403; 173.427(a), (b)& (c); 173.465(c)&(d).	To authorize the transportation in commerce of two steam generators having a Class 7 radioactive material on its surfaces. (mode 2).
13339–N	....	ExxonMobil Chemical Company, Mont Belvieu, TX.	49 CFR 173.242	To authorize the transportation in commerce of certain pyrophoric solids in non-DOT specification portable tanks comparable to DOT Specification 51 portable tanks with alternative testing criteria. (mode 1).

[FR Doc. 03–32195 Filed 12–30–03; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–98–4470]

Pipeline Safety: Meetings of the Pipeline Safety Advisory Committees

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; Meetings of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee.

SUMMARY: Meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) will be held from Tuesday, February 3 to Thursday, February 5, 2004, at the Washington-Dulles Airport Marriott Hotel, Dulles, Virginia. The Office of Pipeline Safety (OPS) will provide briefings on pending rulemakings and regulatory initiatives. The advisory committees will discuss various proposed rulemakings and associated risk assessments.

ADDRESSES: Members of the public may attend the meetings at the Washington-Dulles Airport Marriott Hotel, 45020 Aviation Drive, Dulles, Virginia. The exact location and room number for this meeting will be posted on the OPS Web page approximately 15 days before the meeting date at *http://ops.dot.gov*.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493–0967, not later than January 16, 2004, on the topic of the statement and the length of the presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You may also submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov*. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should reference docket number RSPA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493–0967.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The TPSSC and THLPSSC are statutorily mandated advisory committees that advise the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) on proposed safety standards for gas and hazardous liquid pipelines. These advisory committees are constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committees consist of 15 members—five each representing government, industry, and the public. The TPSSC and THLPSSC are tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline regulations.

Federal law requires that OPS submit cost-benefit analyses and risk assessment information on proposed safety standards to the advisory committees. The TPSSC and/or THLPSSC evaluate the merit of the data and methods used within the analyses, and when appropriate, provide recommendations relating to the cost-benefit analyses.

On Tuesday, February 3; 2004, from 9 a.m. to 12:30 p.m. e.s.t., the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) will meet. The preliminary agenda includes briefings on the following topics:

1. Hazardous Liquid Pipeline Operator Annual Report
2. Hazardous Liquid Integrity Management Program Update
3. Definition of Hazardous Liquid Gathering Lines

4. Permitting Project and Best Management Practices
5. Controller Project
6. Fatigue

On Tuesday, February 3, 2004, from 1:30 p.m. to 4 p.m. e.s.t., the THLPSSC and the Technical Pipeline Safety Standards Committee will meet in joint session and continue on Wednesday, February 4, 2004, from 9 a.m. to 4 p.m. e.s.t. OPS will provide the Committees with briefings on the following topics:

1. Periodic Underwater Inspections
2. Annual Update of Standards Incorporated by Reference
3. Pipeline Industry Implementation of Effective Public Awareness (API 1162)
4. Amendments to Operator Qualification.
5. 2005 Budget Proposal and Departmental Reorganization
6. Pipeline Research and Development Program
7. Common Ground Alliance Update
8. Inspector General and General Accounting Office Reports
9. National Pipeline Mapping System
10. National Pipeline Security Preparedness
11. Safety Orders and Penalty Structure
12. Fire Marshals Project
13. Council of Energy Resource Tribes (CERT)
14. Energy Impacts

On Thursday, February 5, 2004, from 9 a.m. to 1 p.m. e.s.t. the TPSSC will meet. The TPSSC will vote on the Cost Benefit for the Notice of Proposed Rulemaking on the Passage of Internal Inspection Devices. The TPSSC will also be provided briefings on the following topics:

1. Pipeline Integrity Management for Gas Transmission Pipelines in High Consequence Areas (Final Rule)
2. Pipeline Direct Assessment
3. Gas Gathering Line Definition
4. Gas Transmission Definition
5. Excess Flow Valves
6. Waivers for Class Location
7. Permit Project and Best Management Practices
8. Integrity Management Tracking System
9. Controller Project
10. Fatigue

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on December 24, 2003.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 03–32203 Filed 12–30–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34445]

Lehigh Valley Rail Management, LLC-Acquisition and Operation Exemption-Rail Lines in Pennsylvania

Lehigh Valley Rail Management, LLC (LVRM), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 170.079 miles of rail line owned by ISG Railways, Inc. (ISGR).[1] LVRM will acquire and operate the following rail lines: (1) An approximately 132-mile line in Northampton County, PA, formerly operated by Keystone Railroad, LLC, comprised of yard and switching tracks, with no assigned mileposts; (2) an approximately 32-mile line in Cambria County, PA, formerly operated by Conemaugh & Black Lick Railroad, LLC, comprised of yard and switching tracks, with no assigned mileposts; and (3)(a) an approximately 4.5-mile line extending between approximately milepost 6.4 at Edensburg Junction and approximately milepost 10.45189, and (b) an approximately 1.579-mile connecting segment between milepost 15.355 (RJCP milepost 10.45189) and approximately milepost 16.934, in Cambria County, formerly operated by Cambria and Indiana Railroad, Inc.

LVRM certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and that such revenues will not exceed $5 million annually.

Consummation of the transaction was scheduled to take place on or after December 17, 2003, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34445, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*"

Decided: December 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–31959 Filed 12–30–03; 8:45 am]

BILLING CODE 4915–00–P

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[1] In May 2003, ISGR acquired the rail lines and substantially all other assets of the Bethlehem Steel Corporation subsidiary railroads. *See ISG Railways, Inc.—Acquisition of Control Exemption—Assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc.*, STB Finance Docket No. 34344 (STB served May 22, 2003). In this proceeding, ISGR has agreed to transfer to LVRM three of the subsidiary railroads along with related assets.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request—CRA Sunshine

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC, Board, FDIC, and OTS (collectively, the Agencies) may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies hereby give notice that they plan to submit information collections regarding their respective CRA Sunshine (Disclosure and Reporting of CRA-Related Agreements) regulations to OMB for review and approval.

DATES: Submit written comments on or before January 30, 2004.

ADDRESSES: You should direct your comments to:

OCC: Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0219, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit their comments by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can make an appointment to inspect the comments by calling (202) 874–5043 for an appointment.

Board: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Steven F. Hanft, (202) 898–3907, Legal Division (Consumer and Compliance Unit), Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the OMB control number 3064–1039. Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

OMB Desk Officer: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from:

OCC: John Ference, Acting OCC Clearance Officer, (202) 874–4824, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cindy Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, fax number (202) 898–3838, Legal Division (Consumer and Compliance Unit), Federal Deposit Insurance Corporation, Room MB–3064, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, at marilyn.burton@ots.treas.gov, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Comments

The Agencies jointly requested comments on the proposed extension, without revision, of the information collections contained in the CRA Sunshine regulations on September 18, 2003 (68 FR 54785). No comments were received.

Titles

OCC: Disclosure and Reporting of CRA-Related Agreements (12 CFR 35).

Board: Disclosure and Reporting Requirements of CRA-Related Agreements (Reg G).

FDIC: CRA Sunshine (12 CFR 346).

OTS: CRA Sunshine (12 CFR 533).

OMB Control Numbers

OCC: 1557–0219.

Board: 7100–0299.

FDIC: 3064–1039.

OTS: 1550–0105.

Description

Section 48 of the Federal Deposit Insurance Act requires nongovernmental entities or persons (NGEPs), insured depository institutions, and affiliates of insured depository institutions that are parties to certain agreements that are in fulfillment of the Community Reinvestment Act of 1977 to make the agreements available to the public and the appropriate agency, and to file annual reports concerning the agreements with the appropriate agency.

The Agencies are proposing to extend OMB approval of the information collections associated with the regulations implementing the CRA Sunshine provisions of section 48. The regulations are found at 12 CFR part 35 (OCC), 12 CFR part 207 (Board), 12 CFR part 346 (FDIC), and 12 CFR part 533 (OTS). This submission involves no change to the regulations or to the information collection requirements.

The information collection requirements contained in the regulations are as follows:

Section ____.6(b)(1) requires each nongovernmental entity or person (NGEP) and each insured depository institution or affiliate (IDI) that enters into a covered agreement to make a copy of the covered agreement available to any individual or entity upon request.

Section ____.6(c)(1) requires each NGEP that is a party to a covered agreement to provide within 30 days after receiving a request from the relevant supervisory agency (1) a complete copy of the agreement; and (2) in the event the NGEP seeks confidential treatment of any portion of the agreement under FOIA, a copy of the agreement that excludes information for which confidential treatment is sought and an explanation justifying the request.

Sections ____.6(d)(1)(i) and ____.6(d)(1)(ii) require each IDI within 60 days of the end of each calendar quarter to provide each supervisory agency with either (1) a complete copy of each covered agreement entered into by the IDI or affiliate during the calendar quarter; and in the event the IDI seeks confidential treatment of any portion of the agreement under FOIA, a copy of the agreement that excludes information for which confidential treatment is sought and an explanation justifying the request; or (2) a list of all covered agreements entered into by the IDI or affiliate during the calendar quarter.

Section ____.6(d)(2) requires an IDI or affiliate to provide any relevant supervisory agency with a complete copy and public version of any covered agreement, if the IDI submits a list of their covered agreements pursuant to section ____.6(d)(1)(ii).

Section ____.7(b) requires each NGEP and IDI that is a party to a covered agreement to file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

Section ____.7(f)(2)(ii) requires an IDI that receives an annual report from a NGEP pursuant to section ____.7(f)(2)(i) to file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

Section ____.4(b) requires an IDI that is party to a covered agreement that concerns any activity described in section ____.4(a) of a CRA affiliate to notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate.

Affected Public

Business or other for-profit; individuals.

Burden Estimates

The reduction in the estimated burden is due to a change in the method of estimation. The old estimate, made three years ago, was based on the assumption and projection that 50 percent of insured depository institutions would be parties to a covered agreement. The new estimate is based on the actual number of IDIs or their affiliates that reported covered agreements to the agencies in 2001 and 2002, and is therefore more accurate. The number of NGEP respondents is based on an assumption that one NGEP is a party to each covered agreement.

Estimated Number of Respondents

OCC: 25 IDI; 337 NGEP.
Board: 13 IDI; 78 NGEP.
FDIC: 13 IDI; 36 NGEP.
OTS: 24 IDI; 120 NGEP.

Estimated Number of Responses

OCC: 2,813.
Board: 637.
FDIC: 316.
OTS: 984.

Estimated Annual Burden Hours

OCC: 3,899 hours.
Board: 910 hours.
FDIC: 501.6 hours.
OTS: 1,416 hours.

Frequency of Response

On occasion.

All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;

(b) The accuracy of the Agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System December 18, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated in Washington, DC, this 15th day of December, 2003. Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: December 17, 2003.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 03–32118 Filed 12–30–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: American Southern Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is supplement No. 5 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003 at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 Revision, on page 39191 to reflect this addition: American Southern Insurance Company. Business Address: P.O. Box 723030, Atlanta, Georgia 31139–0030. Phone: (404) 266–9599. Underwriting Limitation b/:$3,274,000. Surety Licenses c/:AL, AR, FL, GA, IL, KS, KY, MD, MS, NE, NC, OH, PA, SC, TN, UT, WA, WV, WY. Incorporated in: Kansas.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this Notice may be directed to the U.S. department of the Treasury, Financial Management Service, Financial Accounting and Services Division surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: December 18, 2003.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–32189 Filed 12–30–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Securities Offering Disclosure

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before March 1, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Gary Jeffers, Senior Attorney, Business Transactions Division, Office of Chief Counsel, (202) 906–6457, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Securities Offering Disclosure.

OMB Number: 1550–0035.

Form Number: SEC Forms S–1, S–2, S–3, S–4, S–8, SB–1, and SB–2, and OTS Forms PS, OC and G–12.

Regulation requirement: 12 CFR Part 563g.

Description: OTS collects information for disclosure in securities offerings by savings associations related directly to U.S. Securities and Exchange Commission requirements for offering of information to potential securities purchasers.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 8.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 335 hours.

Estimated Total Burden: 5,699 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: December 23, 2003.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 03–32185 Filed 12–30–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—General Reporting and Recordkeeping by Savings Associations

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before March 1, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Josephine Battle, Supervision Policy, (202) 906–6870, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: General Reporting and Recordkeeping by Savings Associations.

OMB Number: 1550–0011.

Form Number: N/A.

Regulation requirements: 12 CFR 544.8, 545.96(c), 552.11, 562.1, 562.4, 563.1(b), 563.47(e), 563.76(c), and 584.1(f).

Description: This collection of information allows management of savings associations to exercise prudent controls and to provide OTS with a means of determining the integrity of savings association records and operations when examining for safety, soundness, and regulatory compliance.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 941.

Estimated Number of Responses: 941.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 3,369.

Estimated Total Burden: 3,170,229.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: December 23, 2003.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 03–32186 Filed 12–30–03; 8:45 am]

BILLING CODE 6720–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

Federal Register

Wednesday,
December 31, 2003

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, et al.
Hazardous Materials: Matter Incorporated by Reference; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180

[Docket No. RSPA–03–15574 (HM–189U)]

RIN 2137–AD83

Hazardous Materials: Matter Incorporated by Reference

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) to standardize the format used to cross-reference consensus standards published by nationally and internationally recognized standard-setting organizations and industry that are incorporated by reference into the HMR. In addition, this rule adds missing cross-references and removes unnecessary cross-references in the HMR. The amendments contained in this rule are minor editorial changes and impose no new requirements.

DATES: *Effective date:* January 1, 2004.

Incorporation by Reference Date: The incorporation by reference of the publications listed in this final rule has been approved by the Director of the Federal Register as of January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Research and Special Programs Administration (RSPA, we, us) references certain consensus standards, specifications, and recommended practices developed by nationally and internationally recognized standard-setting organizations and the hazardous materials industry to establish certain requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). This practice, known as incorporation by reference, allows us to incorporate the provisions of widely accepted technical standards into the regulations and to reduce the volume of material published in the **Federal Register**. The legal effect of incorporation by reference is that the referenced provisions are treated as if they were published in the **Federal Register** and in the HMR. As with any other requirements appearing in regulations, the incorporated provisions have the force and effect of law.

The Office of the Federal Register's (OFR's) regulations, at 1 CFR Part 51, govern how RSPA and other Federal agencies may incorporate various documents by reference. These regulations require agencies to obtain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a publication is limited to the specific edition approved by the OFR. In the HMR, § 171.7 contains a complete listing of the source and name of each publication approved by the OFR regulations.

The OFR requires an agency to use the words "incorporated by reference" in the language incorporating a publication. The HMR incorporate by reference more than 100 publications and contain hundreds of references to these publications. For conciseness, we are using the wording "IBR, see § 171.7 of this subchapter" in the language incorporating a publication. This wording appears the first time a publication is referenced in a particular section. Some sections in the HMR currently contain multiple references to the same publication. These repeated references when they appear in the same section are being removed in this final rule.

In an earlier final rule (RSPA Docket No. 02–13658 (HM–215E), 68 FR 1013, January 8, 2003), we revised § 171.7 to incorporate by reference the 2002 edition of International Maritime Dangerous Goods Code (IMDG Code), including Amendment 31. We also authorized the continued use of the 2000 edition of the IMDG Code, including Amendment 30, until January 1, 2004. We are removing the reference to the 2000 edition of the IMDG Code in this final rule.

The rule also contains minor editorial corrections (*e.g.*, incomplete section references, and typographical and punctuation errors), and certain other minor adjustments to enhance the clarity of the HMR.

Because these amendments impose no new requirements, notice and public comment procedures are unnecessary. In addition, making these amendments effective without the customary 30-day delay following publication will allow the changes to appear in the next revision of 49 CFR.

II. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 ("Federalism"). This final rule does not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

C. Executive Order 13175

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes that will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

E. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Incorporation by reference, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Incorporation by reference, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§171.7 [Amended]

■ 2. In § 171.7, the table in paragraph (a)(3) is revised and the table in paragraph (b) is amended by adding an entry in the appropriate alphabetical order to read as follows:

§171.7 Referenced material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
Air Transport Association of America, 1301 Pennsylvania Avenue, N.W., Washington, DC 20004–1707:	
ATA Specification No. 300 Packaging of Airline Supplies, Revision 19, July 31, 1996.	172.102.
The Aluminum Association, 420 Lexington Avenue, New York, NY 10017:	
Aluminum Standards and Data, Seventh Edition, June 1982	172.102; 178.65.
American National Standards Institute, Inc., 25 West 43rd Street, New York, NY 10036:	
ANSI/ASHRAE 15–94, Safety Code for Mechanical Refrigeration ..	173.306; 173.307.
ANSI B16.5–77, Steel Pipe Flanges, Flanged Fittings	178.360–4.
ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 1971, 1982, 1987, 1990, 1995 and 2001 Editions.	173.417; 173.420.
American Petroleum Institute, 1220 L Street, NW, Washington, D.C. 20005–4070:	
API Recommended Practice Closures of Underground Petroleum Storage Tanks, 3rd Edition, March 1996.	1604172.102.
American Pyrotechnics Association (APA), P.O. Box 213, Chestertown, MD 21620:	
APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version.	173.56.
American Society of Mechanical Engineers, ASME International, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900:	

Source and name of material	49 CFR reference
ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code.	172.102; 173.24b; 173.32; 173.306; 173.315; 173.318; 173.420; 178.245–1; 178.245–3; 178.245–4; 178.245–6; 178.245–7; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.270–2; 178.270–3; 178.270–7; 178.270–9; 178.270–11; 178.270–12; 178.271–1; 178.272–1; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407.
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428:	
Noncurrent ASTM Standards are available from: Engineering Societies Library, 354 East 47th Street, New York, NY 10017	
ASTM A 20/A 20M–93a Standard Specification for General Requirements for Steel Plates for Pressure Vessels.	178.337–2; 179.102–4; 179.102–1; 179.102–17.
ASTM A 47–68 Malleable Iron Castings	179.200–15.
ASTM A 240/A 240M–99b Standard Specification for Heat-Resisting Chromium and Chromium-Nickel Stainless Steel Plate, Sheet and Strip for Pressure Vessels.	178.57; 178.358–5; 179.100–7; 179.100–10; 179.102–1; 179.102–4; 179.102–17; 179.200–7; 179.201–5; 179.220–7; 179.300–7; 179.400–5.
ASTM A 242–81 Standard Specification for High-Strength Low-Alloy Structural Steel.	178.338–2.
ASTM A 262–93a Standard Practices for Detecting Susceptibility to Intergranular Attack in Austenitic Stainless Steels.	179.100–7; 179.200–7; 179.201–4.
ASTM A 285–78 Pressure Vessel Plates, Carbon Steel, Low- and Intermediate-Tensile Strength.	179.300–7.
ASTM A 300–58 Steel Plates for Pressure Vessels for Service at Low Temperatures.	178.337–2.
ASTM A 302/A 302M–93 Standard Specification for Pressure Vessel Plates, Alloy Steel, Manganese-Molybdenum and Manganese-Molybdenum Nickel.	179.100–7; 179.200–7; 179.220–7.
ASTM A 333–67 Seamless and Welded Steel Pipe for Low-Temperature Service.	178.45.
ASTM A 370–94 Standard Test 179.102–1; 179.102–4; Methods and Definitions for Mechanical Testing of Steel Products.	179.102–17.
ASTM A 441–81 Standard Specification for High-Strength Low-Alloy Structural Manganese Vanadium Steel.	178.338–2.
ASTM A 514–81 Standard Specification for High-Yield Strength Quenched and Tempered Alloy Steel Plate, Suitable for Welding.	178.338–2.
ASTM A 515/A 515M–03 Standard Specification for Pressure Vessel Plates, Carbon Steel, for Intermediate- and Higher-Temperature Service.	179.300–7.
ASTM A 516/A 516M–90 Standard Specification for Pressure Vessel Plates, Carbon Steel, for Moderate and Lower-Temperature Service.	178.337–2; 179.100–7; 179.102–1; 179.102–2; 179.102–4; 179.102–17; 179.200–7; 179.220–7; 179.300–7.
ASTM A 537/A 537M–91 Standard Specification for Pressure Vessel Plates, Heat-Treated, Carbon-Manganese-Silicon Steel.	179.100–7; 179.102–4; 179.102–17.
ASTM A 572–82 Standard Specification for High-Strength Low-Alloy Columbian-Vanadium Steels of Structural Quality.	178.338–2.
ASTM A 588–81 Standard Specification for High-Strength Low-Alloy Structural Steel with 50 Ksi Minimum Yield Point to 4 in. Thick.	178.338–2.
ASTM A 606–75 Standard Specification for Steel Sheet and Strip Hot- Rolled and Cold-Rolled, High-Strength, Low-Alloy, with Improved Atmospheric Corrosion Resistance, 1975 (Reapproved 1981).	178.338–2.
ASTM A 607–98 Standard Specification for Steel, Sheet and Strip, High-Strength, Low-Alloy, Columbium or Vanadium, or Both, Hot-Rolled and Cold-Rolled.	178.338–2.
ASTM A 612–72a High Strength Steel Plates for Pressure Vessels for Moderate and Lower Temperature Service.	178.337–2.
ASTM A 633–79a Standard Specification for Normalized High-Strength Low-Alloy Structural Steel, 1979 Edition.	178.338–2.
ASTM A 715–81 Standard Specification for Steel Sheet and Strip, Hot-Rolled, High-Strength, Low-Alloy with Improved Formability, 1981.	178.338–2.
ASTM B 162–93a Standard Specification for Nickel Plate, Sheet, and Strip.	173.249; 179.200–7.
ASTM B 209–93 Standard Specification for Aluminum and Aluminum-Alloy Sheet and Plate.	179.100–7; 179.200–7; 179.220–7.
ASTM B 221–76 Aluminum Alloy Extruded Bars, Rods, Shapes, and Tubes.	178.46.

Source and name of material	49 CFR reference
ASTM B 557–84 Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products.	178.46.
ASTM B 580–79 Standard Specification for Anodic Oxide Coatings on Aluminum, (Re-approved 2000).	173.316; 173.318; 178.338–17.
ASTM D 1238–90b Standard Test Method for Flow Rates of Thermoplastics for Extrusion Plastometer.	173.225.
ASTM D 1709–01 Standard Text Methods for Impact Resistance of Plastic Film by the Free-Falling Dart Method.	173.197.
ASTM D 1835–97 Standard Specification for Liquefied Petroleum (LP) Gases.	180.209.
ASTM D 1838–64 Copper Strip Corrosion by Liquefied Petroleum (LP) Gases.	173.315.
ASTM D 1922–00a Standard Test Method for Propogation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum Method.	173.197.
ASTM D 4206–96 Standard Test Method for Sustained Burning of Liquid Mixtures Using the Small Scale Open-Cup Apparatus.	173.120.
ASTM D 4359–90 Standard Test Method for Determining Whether a Material is a Liquid or a Solid.	171.8.
ASTM E 8–99 Standard Test Methods for Tension Testing of Metallic Materials.	178.36; 178.37; 178.38; 178.39; 178.44; 178.45; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.68.
ASTM E 23–98 Standard Test Methods for Notched Bar Impact Testing of Metallic Materials.	178.57.
ASTM E 112–88 Standard Test Methods for Determining Average Grain Size.	178.44.
ASTM E 112–96 Standard Test Methods for Determining Average Grain Size, 1996 Edition.	178.274; Part 178, appendix A.
ASTM E 114–95 Standard Practice for Ultrasonic Pulse-Echo Straight-Beam Examination by the Contact Method.	178.45.
ASTM E 213–98 Standard Practice for Ultrasonic Examination of Metal Pipe and Tubing.	178.45.
American Water Works Association, 1010 Vermont Avenue, N.W., Suite 810, Washington, DC 20005:	
AWWA Standard C207–55, Steel Pipe Flanges, 1955	178.360–4.
American Welding Society, 550 N.W. Le Jeune Road, Miami, Florida 33126:	
AWS Code B 3.0; Standard Qualification Procedure; 1972 (FRB 3.0–41, rev. May 1973).	178.356–2, 178.358–2.
AWS Code D 1.0; Code for Welding in Building Construction (FR D 1.0–66, 1966).	178.356–2; 178.358–2.
Association of American Railroads, American Railroads Building, 50 F Street, NW., Washington, DC 20001:	
AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, (AAR Specifications for Tank Cars), December 2000.	173.31; 174.63; 179.6; 179.7; 179.15; 179.16; 179.20; 179.22; 179.100–9; 179.100–10; 179.100–12; 179.100–13; 179.100–14; 179.100–18; 179.101–1; 179.102–1; 179.102–4; 179.102–17; 179.103–5; 179.200–7; 179.200–9; 179.200–10; 179.200–11; 179.200–13; 179.200–17; 179.200–22; 179.201–6; 179.220–6; 179.220–7; 179.220–10; 179.220–11; 179.220–14; 179.220–18; 179.220–26; 179.300–9; 179.300–10; 179.300–15; 179.300–17; 179.400–5; 179.400–6; 179.400–8; 179.400–11; 179.400–12; 179.400–15; 179.400–18; 179.400–20; 179.400–25; 180.509; 180.513; 180.515; 180.517.
AAR Manual of Standards and Recommended Practices, Section I, Specially Equipped Freight Car and Intermodal Equipment, 1988.	174.55; 174.63.
AAR Specifications for Design, Fabrication and Construction of Freight Cars, Volume 1, 1988.	179.16.
Chlorine Institute, Inc., 2001 L Street, NW., Suite 506, Washington, DC 20036:	
Chlorine Institute Emergency Kit "A" for 100-lb. & 150-lb. Chlorine Cylinders (with the exception of repair method using Device 8 for side leaks), Edition 9, June 2000.	173.3.
Chlorine Institute Emergency Kit "B" for Chlorine Ton Containers (with the exception of repair method using Device 9 for side leaks) Edition 8, June 1996.	173.3.
Type 1½ JQ 225, Dwg., H51970, Revision D, April 5, 1989; or Type 1½ JQ 225, Dwg. H50155, Revision F, April 4, 1989.	173.315.
Section 3, Pamphlet 57, Emergency Shut-Off Systems for Bulk Transfer of Chlorine, 3rd Edition, October 1997.	177.840.
Standard Chlorine Angle Valve Assembly, Dwg. 104–8, July 1993	178.337–9.
Excess Flow Valve with Removable Seat, Dwg. 101–7, July 1993	178.337–8.
Excess Flow Valve with Removable Basket, Dwg. 106–6, July 1993.	178.337–8.

Source and name of material	49 CFR reference
Standards for Housing and Manway Covers for Steel Cargo Tanks, Dwgs. 137–1 and 137–2, September 1, 1982.	178.337–10.
Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151:	
CGA Pamphlet C–3, Standards for Welding on Thin-Walled Steel Cylinders, 1994.	178.47; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68; 180.211.
CGA Pamphlet C–5, Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991.	173.302a.
CGA Pamphlet C–6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 1993.	173.198; 180.205; 180.209; 180.211; 180.411; 180.519.
CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 1995.	180.205; 180.209.
CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1996, Third Edition.	180.205.
CGA Pamphlet C–6.3, Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, 1991.	180.205; 180.209.
CGA Pamphlet C–7, A Guide for the Preparation of Precautionary Markings for Compressed Gas Containers, appendix A, issued 1992 (6th Edition).	172.400a.
CGA Pamphlet C–8, Standard for Requalification of DOT–3HT Cylinder Design, 1985.	180.205; 180.209.
CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 2001, Third Edition.	178.35.
CGA Pamphlet C–12, Qualification Procedure for Acetylene Cylinder Design, 1994.	173.301; 173.303; 178.59; 178.60.
CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 2000, Fourth Edition.	173.303; 180.205; 180.209.
CGA Pamphlet C–14, Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems, 1979.	173.301; 173.323.
CGA Pamphlet G–2.2 Tentative Standard Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia, 1985.	173.315.
CGA Pamphlet G–4.1, Cleaning Equipment for Oxygen Service, 1985.	178.338–15.
CGA Pamphlet P–20, Standard for the Classification of Toxic Gas Mixtures, 1995.	173.115.
CGA Pamphlet S–1.1, Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 2001 (with the exception of paragraph 9.1.1.1), Ninth Edition.	173.301; 173.304a.
CGA Pamphlet S–1.2, Safety Relief Device Standards Part 2—Cargo and Portable Tanks for Compressed Gases, 1980.	173.315; 173.318; 178.276; 178.277.
CGA Pamphlet S–7, Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, 1996.	173.301.
CGA Technical Bulletin TB–2, Guidelines for Inspection and Repair of MC–330 and MC–331 Cargo Tanks, 1980.	180.407; 180.413.
Department of Defense (DOD), 2461 Eisenhower Avenue, Alexandria, VA 22331:	
DOD TB 700–2; NAVSEAINST 8020.8B; AFTO 11A–1–47; DLAR 8220.1: Explosives Hazard Classification Procedures, January 1998.	173.56.
Department of Energy (USDOE), 100 Independence Avenue SW., Washington, DC 20545:	
USDOE publications available from: Superintendent of Documents, Government Printing Office (GPO) or The National Technical Information Service (NTIS).	
USDOE, CAPE–1662, Revision 1, and Supplement 1, Civilian Application Program Engineering Drawings, April 6, 1988.	178.356–1; 178.356–2; 178.358–1; 178.358–2; 178.358–3; 178.358–4.
USDOE, Material and Equipment Specification No. SP–9, Rev. 1, and Supplement—Fire Resistant Phenolic Foam, March 28, 1968.	178.356–2; 178.358–2.
USDOE, ORO 651—Uranium Hexafloride; A Manual of Good Practices, Revision 6, 1991 edition.	173.417.
USDOE, KSS–471, November 30, 1986—Proposal for Modifications to U.S. Department of Transportation Specification 21PF–1, Fire and Shock Resistant Phenolic Foam—Insulated Metal Overpack.	178.358–1; 178.358–3.
General Services Administration, Specification Office, Room 6662, 7th and D Street, S.W., Washington, DC 20407:	
Federal Specification RR–C–901C, Cylinders, Compressed Gas: High Pressure Steel DOT 3AA, and Aluminum Applications, January 15, 1981 (Superseding RR–C–901B, August 1, 1967).	173.302; 173.336; 173.337.

Source and name of material	49 CFR reference
Institute of Makers of Explosives, 1120 19th Street NW., Suite 310, Washington, DC 20036–3605:	
IME Safety Library Publication No. 22 (IME Standard 22), Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, May 1993.	173.63; 177.835.
International Atomic Energy Agency (IAEA), P.O. Box 100, Wagramer Strasse 5, A–1400 Vienna, Austria:	
Also available from: Bernan Associates, 4611–F Assembly Drive, Lanham, MD 20706–4391, USA; or Renouf Publishing Company, Ltd., 812 Proctor Avenue, Ogdensburg, New York 13669, USA.	
IAEA, Regulations for the Safe Transport of Radioactive Material, No. TS–R–1, 1996 Edition (Revised), (ST–1, Revised).	171.12.
IAEA, Regulations for the Safe Transport of Radioactive Material, Safety Series No. 6, 1985 Edition (as Amended 1990).	171.12; 173.415; 173.416; 173.417; 173.473.
International Civil Aviation Organization (ICAO), P.O. Box 400, Place de l'Aviation Internationale, 1000 Sherbrooke Street West, Montreal, Quebec, Canada H3A 2R2:	
ICAO Technical Instructions available from: INTEREG, International Regulations, Publishing and Distribution Organization, P.O. Box 60105, Chicago, IL 60660.	
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), DOC 9284–AN/905, 2003–2004 Edition, including Erratum.	171.8; 171.11; 172.202; 172.401; 172.512; 172.602; 173.320; 175.33; 178.3.
International Maritime Organization (IMO), 4 Albert Embankment, London, SE17SR, United Kingdom or New York Nautical Instrument & Service Corporation, 140 West Broadway, New York, NY 10013:	
International Convention for the Safety of Life at Sea, (SOLAS) Amendments 2000, Chapter II–2/Regulation 19, 2001.	176.63.
International Maritime Dangerous Goods (IMDG) Code, 2002 Edition, including Amendment 31–02 (English Edition).	171.12; 172.202; 172.401; 172.502; 172.602; 173.21; 176.2; 176.5; 176.11; 176.27; 176.30, 178.3.
International Organization for Standardization, Case Postale 56, CH–1211, Geneve 20, Switzerland:	
Also available from: ANSI 25 West 43rd Street, New York, NY 10036	
ISO 82–74(E) Steels Tensile Testing	178.270–3.
ISO 535–1991(E) Paper and board—Determination of water absorptiveness—Cobb method.	178.516; 178.707; 178.708.
ISO 1496–3–1995(E)—Series Freight Containers—Specification and Testing—Part 3: Tank Containers for Liquids, Gases and Pressurized Dry Bulk March 1, 1995, Fourth Edition.	1173.411; 178.274.
ISO 2431–1984(E) Standard Cup Method	173.121.
ISO 2592–1973(E) Petroleum products—Determination of flash and fire points—Cleveland open cup method.	173.120.
ISO 2919–1980(E)—Sealed radioactive sources—Classification	173.469.
ISO 3036–1975(E) Board—Determination of puncture resistance	178.708.
ISO 3574–1986(E) Cold-reduced carbon steel sheet of commercial and drawing qualities.	178.503; Part 178, appendix C.
ISO 4126–1 Safety valves—Part 1: General Requirements, December 15, 1991, First Edition.	178.274.
ISO/TR 4826–1979(E)—Sealed radioactive sources—Leak test methods.	173.469.
ISO 6892 Metallic materials—Tensile testing, July 15, 1984, First Edition.	178.274.
ISO 8115 Cotton bales—Dimensions and density, 1986 Edition	172.102.
National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229:	
National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors, NB–23, 1992 Edition.	180.413.
National Fire Protection Association, Batterymarch Park, Quincy, MA 02269:	
NFPA 58-Liquefied Petroleum Gas Code, 2001 Edition	173.315.
National Institute of Standards and Technology, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22151:	
USDC, NBS Handbook H–28 (1957), 1957 Handbook of Screw-Thread Standards for Federal Services, December 1966 Edition.	179.2; 178.45; 178.46.
Organization for Economic Cooperation and Development (OECD), OECD Publications and Information Center, 2001 L Street, N.W., Suite 700, Washington, DC 20036:	
OECD Guideline for Testing of Chemicals, No. 404 "Acute Dermal Irritation/Corrosion," 1992.	173.137.
Transport Canada, TDG Canadian Government Publishing Center, Supply and Services, Canada, Ottawa, Ontario, Canada K1A 059:	

Source and name of material	49 CFR reference
Transportation of Dangerous Goods Regulations (TDG Regulations), 1 July 1985, SOR/85/77, incorporating the following Registration Numbers: SOR/85–314, SOR/85–585, SOR/85–609, SOR/86–526, SOR/87–186, SOR/87–335, SOR/88–635, SOR/89–39, SOR/89–294, SOR/90–847, SOR/91–711, SOR/91–712, SOR/92–447, SOR/92–600, SOR/93–203, SOR/93–274, SOR/93–525, SOR/94–146 and SOR/94–264 (English edition), SOR/95–241, and SOR/95–547.	171.12a; 172.401; 172.502; 172.602.
Truck Trailer Manufacturers Association, 1020 Princess Street, Alexandria, Virginia 22314:	
TTMA RP No. 61–98, Performance of manhole and/or Fill Opening Assemblies on MC 306, DOT 406, Non-ASME MC 312 and Non-ASME DOT 412 Cargo Tanks, June 1, 1998.	180.405.
TTMA RP No. 81–97, Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks, July 1, 1997 Edition.	178.345–10; 178.346–3.
TTMA TB No. 107, Procedure for Testing In-Service Unmarked and/or Uncertified MC 306 and Non-ASME MC 312 Type Cargo Tank Manhole Covers, June 1, 1998 Edition.	180.405.
United Nations, United Nations Sales Section, New York, NY 10017:	
UN Recommendations on the Transport of Dangerous Goods (UN Recommendations), Twelfth Revised Edition (2001).	171.12; 172.202; 172.401; 172.502; 173.22; 173.24; 173.24b; 173.197; Part 173, appendix H; 178.274; 178.801.
UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria), Third Revised Edition (1999).	172.102; 173.21; 173.56; 173.57; 173.58; 173.124; 173.125; 173.127; 173.128; 173.185.

(b) * * *

Source and name of material	49 CFR reference
* * * *	* * *
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428:	
Noncurrent ASTM Standards are available from: Engineering Societies Library, 354 East 47th Street, New York, NY 10017	
ASTM E 380–89 Standards for Metric Practice	171.10
* * * *	* * *

* * * * *

■ 3. In § 171.8, the definitions for "Competent Authority," "Liquid," "Liquid phase," "NPT," "UN Recommendations," and "UN standard packaging" are revised to add the parenthetical phrase "(IBR, see § 171.7)," and a definition for "Incorporated by reference or IBR" is added, to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Competent Authority means a national agency responsible under its national law for the control or regulation of a particular aspect of the transportation of hazardous materials (dangerous goods). The term *Appropriate Authority*, as used in the ICAO Technical Instructions (IBR, see § 171.7), has the same meaning as *Competent Authority*. For purposes of this subchapter, the Associate Administrator is the Competent Authority for the United States.

* * * * *

Incorporated by reference or *IBR* means a publication or a portion of a publication that is made a part of the regulations of this subchapter. See § 171.7.

* * * * *

Liquid means a material, other than an elevated temperature material, with a melting point or initial melting point of 20 °C (68 °F) or lower at a standard pressure of 101.3 kPa (14.7 psia). A viscous material for which a specific melting point cannot be determined must be subjected to the procedures specified in ASTM D 4359 "Standard Test Method for Determining Whether a Material is Liquid or Solid" (IBR, see § 171.7).

Liquid phase means a material that meets the definition of liquid when evaluated at the higher of the temperature at which it is offered for transportation or at which it is transported, not at the 37.8 °C (100 °F) temperature specified in ASTM D 4359 (IBR, see § 171.7).

* * * * *

NPT means an American Standard taper pipe thread conforming to the requirements of NBS Handbook H–28 (IBR, see § 171.7).

* * * * *

UN Recommendations means the UN Recommendations on the Transport of Dangerous Goods (IBR, see § 171.7).

UN standard packaging means a packaging conforming to standards in the UN Recommendations (IBR, see § 171.7).

* * * * *

■ 4. In § 171.10, paragraph (c)(1) is revised to read as follows:

§ 171.10 Units of measure.

* * * * *

(c) * * *

(1) Conversion values are provided in the following table and are based on values provided in ASTM E 380, "Standard for Metric Practice".

* * * * *

§ 171.11 [Amended]

■ 5. In § 171.11, amend the introductory paragraph by removing the parenthetical phrase "(incorporated by reference, see § 171.7)" and adding the parenthetical phrase "(IBR, see § 171.7)" in its place.

■ 6. In § 171.12, paragraphs (b) introductory text, (d) introductory text, and paragraph (e)(5) are revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) *IMDG Code.* The IMDG Code (IBR, see § 171.7) sets forth descriptions, classifications, packagings, labeling and vessel stowage requirements. Notwithstanding the provisions of this subchapter, a material that is packaged, marked, classed, labeled, placarded, described, stowed and segregated, and certified (including a container packing certification, if applicable) in accordance with the IMDG Code, and otherwise conforms to the requirements of this section, may be offered and accepted for transportation and transported within the United States. The following conditions and limitations apply:

* * * * *

(d) *Use of International Atomic Energy Agency (IAEA) regulations for Class 7 (radioactive) materials.* Class 7 (radioactive) materials being imported into or exported from the United States, or passing through the United States in the course of being shipped between places outside the United States, may be offered and accepted for transportation when packaged, marked, labeled, and otherwise prepared for shipment in accordance with IAEA "Regulations for the Safe Transport of Radioactive Material," Safety Series No. 6 or TS–R–1 (IBR, see § 171.7), if—

* * * * *

(e) * * *

(5) A label or placard that conforms to the UN Recommendations (IBR, see § 171.7) specifications for a "Division 2.3" or "Division 6.1" label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard required by §§ 172.400(a) and 172.504(e) of this subchapter on a package transported in a closed transport vehicle or freight container. The transport vehicle or freight container must be marked with identification numbers for the material, regardless of the total quantity contained in the transport vehicle or freight container, in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of this subchapter.

* * * * *

■ 7. In § 171.12a, paragraph (b) introductory text is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) *Conditions and limitations.* Notwithstanding the requirements of parts 172, 173, and 178 of this subchapter, and subject to the limitations of paragraph (a) of this section, a hazardous material that is classed, marked, labeled, placarded, described on a shipping paper, and packaged in accordance with the Transportation of Dangerous Goods (TDG) Regulations (IBR, see § 171.7) issued by the Government of Canada may be offered for transportation and transported to or through the United States by motor vehicle or rail car. The following conditions and limitations apply:

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 172—[AMENDED]

■ 9. In Part 172, amend the following sections by removing the parenthetical phrase "(see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

172.102(c)(1), Special provision 23
172.102(c)(1), Special provision 43
172.102(c)(1), Special provision 57
172.102(c)(1), Special provision 125
172.102(c)(1), Special provision 129
172.102(c)(1), Special provision 142
172.102(c)(7)(viii), Special provision TP6
172.202(e)
172.401(c)(1)
172.401(c)(3)
172.401(c)(4)
172.502(b)(1)
172.512(a)(3)
172.602(a)(1)

■ 10. In § 172.102:

a. In paragraph (c)(1), Special provisions 39, 44, 119, 132, 137, and 144 are revised.

b. In paragraph (c)(2), Special provision A52 is revised.

c. In paragraph (c)(3), Special provisions B13, c., and the text preceding the table in B33 are revised.

The revisions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

39 This substance may be carried under provisions other than those of Class 1 only if it is so packed that the percentage of water will not fall below that stated at any time during transport. When phlegmatized with water and inorganic inert material, the content of urea nitrate must not exceed 75 percent by mass and the mixture should not be capable of being detonated by test 1(a)(i) or test 1(a)(ii) in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

* * * * *

44 The formulation must be prepared so that it remains homogenous and does not separate during transport. Formulations with low nitrocellulose contents and neither showing dangerous properties when tested for their ability to detonate, deflagrate or explode when heated under defined confinement by the appropriate test methods and criteria in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), nor classed as a Division 4.1 (flammable solid) when tested in accordance with the procedures specified in § 173.124 of this subchapter (chips, if necessary, crushed and sieved to a particle size of less than 1.25 mm), are not subject to the requirements of this subchapter.

* * * * *

119 This substance, when in quantities of not more than 11.5 kg (25.3 pounds), with not less than 10 percent water, by mass, also may be classed as Division 4.1, provided a negative test result is obtained when tested in accordance with test series 6(c) of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

* * * * *

132 Ammonium nitrate fertilizers of this composition are not subject to the requirements of this subchapter if shown by a trough test (see UN Manual of Tests and Criteria, Part III, sub-section 38.2) (IBR, see § 171.7 of this subchapter) not to be liable to self-sustaining decomposition and provided that they do not contain an excess of nitrate greater than 10% by mass (calculated as potassium nitrate).

* * * * *

137 Cotton, dry, is not subject to the requirements of this subchapter when it is baled in accordance with ISO 8115, "Cotton Bales—Dimensions and

Density" (IBR, see § 171.7 of this subchapter) to a density of at least 360 kg/m3 (22.4lb/ft3) and it is transported in a freight container or closed transport vehicle.

* * * * *

144 If transported as a residue in an underground storage tank (UST), as defined in 40 CFR 180.12, that has been cleaned and purged or rendered inert according to the American Petroleum Institute (API) Standard 1604 (IBR, see § 171.7 of this subchapter), then the tank and this material are not subject to any other requirements of this subchapter. However, sediments remaining in the tank that meet the definition for a hazardous material are subject to the applicable regulations of this subchapter.

(2) * * *

Code/Special Provisions

* * * * *

A52 A cylinder containing Oxygen, compressed, may not be loaded into a passenger-carrying aircraft or into an inaccessible cargo location on a cargo-only aircraft unless it is placed in an overpack or outer packaging that conforms to the performance criteria of Air Transport Association (ATA) Specification No. 300 (IBR, see § 171.7 of this subchapter) for Category I shipping containers.

* * * * *

(3) * * *

* * * * *

B13 * * *

c. Packagings are excepted from the design stress limits at elevated temperatures, as described in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter). However, the design stress limits may not exceed 25 percent of the stress for 0 temper at the maximum design temperature of the cargo tank, as specified in the Aluminum Association's "Aluminum Standards and Data" (IBR, see § 171.7 of this subchapter).

* * * * *

B33 MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, and DOT 406 cargo tanks equipped with a 1 psig normal vent used to transport gasoline must conform to Table I of this Special Provision. Based on the volatility class determined by using ASTM D 439 and the Reid vapor pressure (RVP) of the particular gasoline, the maximum lading pressure and maximum ambient temperature permitted during the loading of gasoline may not exceed that listed in Table I.

* * * * *

■ 11. In § 172.400a, paragraph (a)(1)(iv) is revised to read as follows:

§ 172.400a Exceptions from labeling.

(a) * * *

(1) * * *

(iv) Durably and legibly marked in accordance with CGA C–7, appendix A (IBR, see § 171.7 of this subchapter).

* * * * *

■ 12. In § 172.401, paragraph (c)(2) is revised to read as follows:

§ 172.401 Prohibited labeling.

* * * * *

(c) * * *

(2) The IMDG Code (IBR, see § 171.7 of this subchapter);

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 13. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

PART 173—[AMENDED]

■ 14. In Part 173, amend the following sections by removing the parenthetical phrase "(incorporated by reference; see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

173.115(c)(2)
173.198(a)
173.225(e)(3)(vi) note 173.301(c)
173.301(g)
173.304a(e)(1)(ii)

■ 15. In Part 173, amend the following sections by removing the parenthetical phrase "(incorporated by reference, see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

173.316(a)(4)
173.318(a)(4)
173.415(d)
173.416(b)
173.417(a)(5)
173.417(a)(8)(i)

■ 16. In Part 173, amend the following sections by removing the parenthetical phrase "(see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

173.21(f) introductory text
172.21(f)(3)(ii)
173.24(d)(2)
173.32(c)(4)(i)
173.185(c)(3)
173.185(e)(6)
173.469(d)(1)

■ 17. In Part 173, amend the following sections by removing the parenthetical phrase "(incorporated by reference, see § 171.7 of this subchapter)" in each of the following places:

173.417(b)(4)
173.420(b)
173.420(c)
173.473(a)(1)

■ 18. In § 173.6, paragraph (a)(2) is revised to read as follows:

§ 173.6 Materials of trade exceptions.

* * * * *

(a) * * *

(2) A Division 2.1 or 2.2 material in a cylinder with a gross weight not over 100 kg (220 pounds), or a permanently mounted tank manufactured to the ASME Code of not more than 70 gallon water capacity for a non-liquefied Division 2.2 material with no subsidiary hazard.

* * * * *

■ 19. In § 173.22, paragraph (a)(2)(iii) is revised to read as follows:

§ 173.22 Shipper's responsibility.

* * * * *

(a) * * *

(2) * * *

(iii) National or international regulations based on the UN Recommendations (IBR, see § 171.7 of this subchapter), as authorized in § 173.24(d)(2);

* * * * *

■ 20. In § 173.24b, paragraph (e)(2) introductory text, and paragraphs (e)(2)(i) and (e)(2)(iii) are revised to read as follows:

§ 173.24b Additional general requirements for bulk packagings.

* * * * *

(e) * * *

(2) *UN portable tanks manufactured outside the United States.* A UN portable tank manufactured outside the United States, in accordance with national or international regulations based on the UN Recommendations (IBR, see § 171.7 of this subchapter), which is an authorized packaging under § 173.24 of this subchapter, may be filled, offered and transported in the United States, if the § 172.101 Table of this subchapter authorizes the hazardous material for transportation in the UN portable tank and it conforms to the applicable T codes, and tank provision codes, or other special provisions assigned to the hazardous material in Column (7) of the Table when manufactured in a country other than the United States. In addition, the portable tank must—

(i) Conform to applicable provisions in the UN Recommendations (IBR, see

§ 171.7 of this subchapter) and the requirements of this subpart;

* * * * *

(iii) Be designed and manufactured according to the ASME Code (IBR, see § 171.7 of this subchapter) or a pressure vessel design code approved by the Associate Administrator;

* * * * *

■ 21. In § 173.31, the first sentence in paragraph (b)(5) is revised to read as follows:

§ 173.31 Use of tank cars.

* * * * *

(b) * * *

(5) *Bottom-discontinuity protection requirements.* No person may offer for transportation a hazardous material in a tank car with bottom-discontinuity protection unless the tank car has bottom-discontinuity protection that conforms to the requirements of E9.00 and E10.00 of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter). * * *

* * * * *

■ 22. In § 173.32, paragraphs (c)(4) introductory text and (c)(4)(i) are revised to read as follows:

§ 173.32 Requirements for the use of portable tanks.

* * * * *

(c) * * *

(4) Any portable tank container constructed prior to May 15, 1950, complying with the requirements of either the ASME Code for Unfired Pressure Vessels, 1946 Edition, or the API ASME Code for Unfired Pressure Vessels, 1943 Edition, may be used for the transportation of liquefied compressed gas, provided it fulfills all the requirements of the part and specifications for the particular gas or gases to be transported. Such portable tanks must be marked "ICC Specification 51X" on the plate required by the specification, except as modified by any or all of the following:

(i) Portable tanks designed and constructed in accordance with Pars. U–68, U–69, or U–201 of the ASME Code, 1943 and 1946 editions, may be used. Portable tanks designed and constructed in accordance with Par. U–68 or Par. U–69 may be re-rated at a working pressure 25 percent in excess of the design pressure for which the portable tank was originally constructed. If the portable tank is re-rated, the re-rated pressure must be marked on the plate as follows: "Re-rated working pressure— psig".

* * * * *

■ 23. In § 173.56, paragraphs (b)(2)(i), (b)(3)(i), (b)(4), and (j)(1) are revised to read as follows:

§ 173.56 New explosives—definition and procedures for classification and approval.

* * * * *

(b) * * *

(2) * * *

(i) U.S. Army Technical Center for Explosives Safety (SMCAC–EST), Naval Sea Systems Command (SEA–9934), or Air Force Safety Agency (SEW), when approved by the Chairman, DOD Explosives Board, in accordance with the DOD Explosives Hazard Classification Procedures (IBR, see § 171.7 of the subchapter); or

* * * * *

(3) * * *

(i) Examined by the DOE in accordance with the DOD Explosives Hazard Classification Procedures, and must be classed and approved by DOE; or

* * * * *

(4) For a material shipped under the description of "ammonium nitrate-fuel oil mixture (ANFO)", the only test required for classification purposes is the Cap Sensitivity Test—Test Method 5(a) prescribed in the Explosive Test Manual (UN Manual of Tests and Criteria) (IBR, see § 171.7 of the subchapter). The test must be performed by an agency listed in paragraph (b)(1), (b)(2), or (b)(3) of this section, the manufacturer, or the shipper. A copy of the test report must be submitted to the Associate Administrator before the material is offered for transportation, and a copy of the test report must be retained by the shipper for as long as that material is shipped. At a minimum, the test report must contain the name and address of the person or organization conducting the test, date of the test, quantitative description of the mixture, including prill size and porosity, and a description of the test results.

* * * * *

(j) * * *

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87–1 (IBR, see § 171.7 of this subchapter);

* * * * *

■ 24. In § 173.57, paragraph (a) introductory text is revised to read as follows:

§ 173.57 Acceptance criteria for new explosives.

(a) Unless otherwise excepted, an explosive substance must be subjected to the Drop Weight Impact Sensitivity Test (Test Method 3(a)(i)), the Friction Sensitivity Test (Test Method 3(b)(iii)), the Thermal Stability Test (Test Method 3(c)) at 75 °C (167 °F) and the Small-Scale Burning Test (Test Method 3(d)(i)), each as described in the Explosive Test Manual (UN Manual of Tests and Criteria) (IBR, see § 171.7 of this subchapter). A substance is forbidden for transportation if any one of the following occurs:

* * * * *

■ 25. In § 173.58, paragraph (a) introductory text is revised to read as follows:

§ 173.58 Assignment of class and division for new explosives.

(a) *Division 1.1, 1.2, 1.3, and 1.4 explosives.* In addition to the test prescribed in § 173.57 of this subchapter, a substance or article in these divisions must be subjected to Test Methods 6(a), 6(b), and 6(c), as described in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), for assignment to an appropriate division. The criteria for assignment of class and division are as follows:

* * * * *

■ 26. In § 173.63, paragraph (f)(2) is revised to read as follows:

§ 173.63 Packaging exceptions.

(f) * * *

(2) IME Standard 22 container (IBR, see § 171.7 of this subchapter) or compartment is used as the outer packaging;

* * * * *

■ 27. In § 173.120, paragraphs (a)(3), (a)(4), and (b)(3) are revised to read as follows:

§ 173.120 Class 3—Definitions.

(a) * * *

(3) Any liquid with a flash point greater than 35 °C (95 °F) that does not sustain combustion according to ASTM D 4206 (IBR, see § 171.7 of this subchapter) or the procedure in appendix H of this part.

(4) Any liquid with a flash point greater than 35 °C (95 °F) and with a fire point greater than 100 °C (212 °F) according to ISO 2592 (IBR, see § 171.7 of this subchapter).

* * * * *

(b) * * *

(3) A combustible liquid that does not sustain combustion is not subject to the requirements of this subchapter as a combustible liquid. Either the test method specified in ASTM D 4206 or the procedure in appendix H of this part may be used to determine if a material sustains combustion when heated under

test conditions and exposed to an external source of flame.

* * * * *

■ 28. In § 173.121, paragraph (b)(2)(i) is revised to read as follows:

§ 173.121 Class 3—Assignment of packing group.

(b) * * *

(2) * * *

(i) *Viscosity test.* The flow time in seconds is determined at 23 °C (73.4 °F) using the ISO standard cup with a 4 mm (0.16 inch) jet as set forth in ISO 2431 (IBR, see § 171.7 of this subchapter). Where the flow time exceeds 100 seconds, a further test is carried out using the ISO standard cup with a 6 mm (0.24 inch) jet.

* * * * *

■ 29. In § 173.124, paragraph (a)(2)(iii)(C), (a)(2)(iv), (a)(3)(ii), and (a)(3)(iii) are revised to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(C) Performance of the self-reactive material under the test procedures specified in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) and the provisions of paragraph (a)(2)(iii) of this section; and

* * * * *

(iv) *Tests.* The generic type for a self-reactive material must be determined using the testing protocol from Figure 14.2 (Flow Chart for Assigning Self-Reactive Substances to Division 4.1) from the UN Manual of Tests and Criteria.

* * * * *

(3) * * *

(ii) Show a burning rate faster than 2.2 mm (0.087 inches) per second when tested in accordance with the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter); or

(iii) Any metal powders that can be ignited and react over the whole length of a sample in 10 minutes or less, when tested in accordance with the UN Manual of Tests and Criteria.

* * * * *

■ 30. In § 173.125, paragraph (a) is revised to read as follows:

§ 173.125 Class 4—Assignment of packing group.

(a) The packing group of a Class 4 material is assigned in column (5) of the § 172.101 Table. When the § 172.101 Table provides more than one packing group for a hazardous material, the packing group shall be determined on the basis of test results following test methods given in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) and by applying the appropriate criteria given in this section.

* * * * *

■ 31. In § 173.127, paragraph (a)(1) is revised to read as follows:

§ 173.127 Class 5, Division 5.1—Definition and assignment of packing groups.

(a) * * *

(1) A solid material is classed as a Division 5.1 material if, when tested in accordance with the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), its mean burning time is less than or equal to the burning time of a 3:7 potassium bromate/cellulose mixture.

* * * * *

■ 32. In § 173.128, paragraphs (c)(3) and (e) are revised to read as follows:

§ 173.128 Class 5, Division 5.2—Definitions and types.

* * * * *

(c) * * *

(3) Performance of the organic peroxide under the test procedures specified in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), and the provisions of paragraph (d) of this section.

* * * * *

(e) *Tests.* The generic type for an organic peroxide shall be determined using the testing protocol from Figure 20.1(a) (Classification and Flow Chart Scheme for Organic Peroxides) from the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).

■ 33. In § 173.137, the introductory paragraph is revised to read as follows:

§ 173.137 Class 8—Assignment of packing group.

The packing group of a Class 8 material is indicated in Column 5 of the § 172.101 Table. When the § 172.101 Table provides more than one packing group for a Class 8 material, the packing group must be determined using data obtained from tests conducted in accordance with the 1992 OECD Guideline for Testing of Chemicals, Number 404, "Acute Dermal Irritation/Corrosion" (IBR, see § 171.7 of this subchapter) as follows:

* * * * *

■ 34. In § 173.158, paragraph (b)(1)(v) is revised to read as follows:

§ 173.158 Nitric acid.

* * * * *

(b) * * *

(1) * * *

(v) All parts of drum exposed to lading must be capable of withstanding the corrosive effect of nitric acid to the extent that 65 percent boiling nitric acid does not penetrate the metal more than 0.0381 mm (0.002 inches) per month. (ASTM A 262 may be used for a suitable corrosion test procedure.)

* * * * *

■ 35. In § 173.197, paragraph (c) introductory text is revised to read as follows:

§ 173.197 Regulated medical waste.

* * * * *

(c) *Large Packagings.* Large Packagings constructed, tested, and marked in accordance with the requirements of the UN Recommendations (IBR, see § 171.7 of this subchapter) and conforming to other requirements of this paragraph (c) may be used for the transportation of regulated medical waste, provided the waste is contained in inner packagings conforming to the requirements of paragraph (e) of this section. Each Large Packaging design must be capable of meeting the vibration test specified in § 178.819 of this subchapter. Each Large Packaging is subject to the periodic design requalification requirements for IBCs in § 178.801(e) of this subchapter, and to the proof of compliance requirements of § 178.801(j) and record retention requirements of § 178.801(l) of this subchapter. Inner packagings used for liquids must be rigid.

* * * * *

■ 36. In § 173.225, paragraph (e)(4) is revised to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(e) * * *

(4) For tertiary butyl hydroperoxide (TBHP), each tank car, cargo tank or portable tank must contain 7.6 cm (3.0 inches) low density polyethylene (PE) saddles having a melt index of at least 0.2 grams per 10 minutes, as set forth in ASTM D 1238, condition E (IBR, see § 171.7 of this subchapter), as part of the lading, with a ratio of PE to TBHP over a range of 0.008 to 0.012 by mass. Alternatively, plastic or metal containers equipped with fusible plugs having a melting point between 69 °C (156 °F) and 71 °C (160 °F) and filled with a sufficient quantity of water to dilute the TBHP to 65 percent or less by mass may be used. The PE saddles must be visually inspected after each trip and, at a minimum, once every 12 months, and replaced when discoloration,

fracture, severe deformation, or other indication of change is noted.

* * * * *

■ 37. In § 173.249, paragraph (d) is revised to read as follows:

§ 173.249 Bromine.

* * * * *

(d) The tank must be made from nickel-clad or lead-lined steel plate. Nickel cladding or lead lining must be on the inside of the tank. Nickel cladding must comprise at least 20 percent of the required minimum total thickness. Nickel cladding must conform to ASTM B 162 (IBR, see § 171.7 of this subchapter). Lead lining must be at least 4.763 mm (0.188 inch) thick. All tank equipment and appurtenances in contact with the lading must be lined or made from metal not subject to deterioration by contact with lading.

* * * * *

■ 38. In § 173.301, paragraph (f)(1) is revised to read to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

* * * * *

(f) * * *

(1) Except as provided in paragraphs (f)(5) and (f)(6) of this section, a cylinder filled with a gas and offered for transportation must be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA S–1.1 (compliance with paragraph 9.1.1.1 of CGA S–1.1 is not required) and S–7. The pressure relief device must be capable of preventing rupture of the normally filled cylinder when subjected to a fire test conducted in accordance with CGA C–14 (IBR, see § 171.7 of this subchapter), or, in the case of an acetylene cylinder, CGA C–12 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 39. In § 173.302, paragraph (b)(3) is revised to read as follows:

§ 173.302 Filling of cylinders with non-liquefied (permanent) compressed gases.

* * * * *

(b) * * *

(3) Each cylinder must be cleaned in accordance with the requirements of GSA Federal Specification RR–C–901C, paragraphs 3.3.1 and 3.3.2 (IBR, see § 171.7 of this subchapter). Cleaning agents equivalent to those specified in Federal Specification RR–C–901C may be used provided they do not react with oxygen. One cylinder selected at random from a group of 200 or fewer and cleaned at the same time must be tested for oil contamination in accordance with Federal Specification RR–C–901C, paragraph 4.4.2.2, and meet the specified standard of cleanliness.

* * * * *

■ 40. In § 173.302a, the definition of "K" in paragraph (b)(3)(i)(A) and paragraph (b)(3)(iii) are revised to read as follows:

§ 173.302a Additional requirements for shipment of non-liquefied (permanent) compressed gases in specification cylinders.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(A) * * *

Where: * * *

K = factor × 10^{-7} experimentally determined for the particular type of cylinder being tested or derived in accordance with CGA C–5 (IBR, see § 171.7 of this subchapter);

* * * * *

(iii) Compliance with average wall stress limitation may be determined by computing the elastic expansion rejection limit in accordance with CGA C–5, by reference to data tabulated in CGA C–5, or by the manufacturer's marked elastic expansion rejection limit (REE) on the cylinder.

* * * * *

■ 41. In § 173.303, paragraphs (a) and (e) are revised to read as follows:

§ 173.303 Charging of cylinders with compressed gas in solution (acetylene).

(a) *Cylinder, filler and solvent requirements.* (Refer to applicable parts of Specification 8 and 8AL). Acetylene gas must be shipped in Specification 8 or 8AL cylinders (§ 178.59 or § 178.60 of this subchapter). The cylinders shall consist of metal shells filled with a porous material, and this material must be charged with a suitable solvent. The cylinders containing the porous material and solvent shall be successfully tested in accordance with CGA C–12 (IBR, see § 171.7 of this subchapter). Representative samples of cylinders charged with acetylene must be successfully tested in accordance with CGA C–12.

* * * * *

(e) *Prefill requirements.* Before each filling of an acetylene cylinder, the person filling the cylinder must visually inspect the outside of the cylinder in accordance with the prefill requirements contained in CGA C–13, Section 3 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 42. In § 173.306, paragraphs (e)(1)(iii) and (e)(1)(v) are revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(e) * * *

(1) * * *

(iii) Each pressure vessel must be equipped with a safety device meeting the requirements of ANSI/ASHRAE 15 (IBR, see § 171.7 of this subchapter).

* * * * *

(v) Pressure vessels must be manufactured, inspected and tested in accordance with ANSI/ASHRAE 15, or when over 6 inches internal diameter, in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 43. In § 173.307, paragraph (a)(4)(iv) is revised to read as follows:

§ 173.307 Exceptions for compressed gases.

(a) * * *

(4) * * *

(iv) Except when offered or transported by air or vessel, 20 kg (44 pounds) or less of a Group A1 refrigerant specified in ANSI/ASHRAE Standard 15 (IBR, see § 171.7 of this subchapter); or

* * * * *

■ 44. In § 173.315, paragraph (a) Notes 3, 11, and 15, and paragraphs (i)(1)(i), (i)(13), (j)(1), (k) introductory paragraph, (k)(3), (l)(5), and (m)(1) are revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) * * *

Note 3: If cargo tanks and portable tank containers for carbon dioxide, refrigerated liquid, and nitrous oxide, refrigerated liquid, are designed to conform to the requirements in Section VIII of the ASME Code for low temperature operation (IBR, see § 171.7 of this subchapter), the design pressure may be reduced to 100 psig or the controlled pressure, whichever is greater.

* * * * *

Note 11: MC–330, MC–331 and MC–338 cargo tanks must be insulated. Cargo tanks must meet all the following requirements. Each tank must have a design service temperature of minus 100°F., or no warmer than the boiling point at one atmosphere of the hazardous material to be shipped therein, whichever is colder, and must conform to the low-temperature requirements in Section VIII of the ASME Code. When the normal travel time is 24 hours or less, the tank's holding time as loaded must be at least twice the normal travel time. When the normal travel time exceeds 24 hours, the tank's holding time as loaded must be at least 24 hours greater than the normal travel time. The holding time is the elapsed time from loading until venting occurs under equilibrium conditions. The cargo tank must have an outer jacket made of steel when the cargo tank is used to transport a flammable gas.

* * * * *

Note 15: Specifications MC 330 and MC 331 cargo tanks constructed of other than quenched and tempered steel (NQT) are authorized for all grades of liquefied petroleum gases. Only grades of liquefied petroleum gases determined to be "noncorrosive" are authorized in Specification MC 330 and MC 331 cargo tanks constructed of quenched and tempered steel (QT). "Noncorrosive" means the corrosiveness of the gas does not exceed the limitations for classification 1 of the ASTM Copper Strip Classifications when tested in accordance with ASTM D 1838, "Copper Strip Corrosion by Liquefied Petroleum (LP) Gases" (IBR, see § 171.7 of this subchapter). (For (QT) and (NQT) marking requirements, see § 172.328(c) of this subchapter. For special shipping paper requirements, see § 172.203(h) of this subchapter.)

* * * * *

(i) * * *

(1) * * *

(i) The total relieving capacity, as determined by the flow formulas contained in Section 5 of CGA S–1.2 (IBR, see § 171.7 of this subchapter), must be sufficient to prevent a maximum pressure in the tank of more than 120 percent of the design pressure;

* * * * *

(13) A safety relief valve on a chlorine cargo tank must conform to one of the following standards of The Chlorine Institute, Inc.: Type 1 ½ JQ225, Dwg. H51970 (IBR, see § 171.7 of this subchapter); or Type 1 ½ JQ225, Dwg. H50155 (IBR, see § 171.7 of this subchapter).

* * * * *

(j) * * *

(1) Each container must be constructed in compliance with the requirements in Section VIII of the ASME Code (containers built in compliance with earlier editions starting with 1943 are authorized) and must be marked to indicate compliance in the manner specified by the respective Code.

* * * * *

(k) A nonspecification cargo tank meeting, and marked in conformance with, the edition of Section VIII of the ASME Code in effect when it was fabricated may be used for the transportation of liquefied petroleum gas provided it meets all of the following conditions:

* * * * *

(3) It must have been manufactured in conformance with Section VIII of the ASME Code prior to January 1, 1981, according to its ASME name plate and manufacturer's data report.

* * * * *

(l) * * *

(5) The analysis method for water content must be as prescribed in CGA G–2.2, "Tentative Standard Method for Determining Minimum of 0.2 percent water in Anhydrous Ammonia," (IBR, see § 171.7 of this subchapter).

* * * * *

(m) * * *

(1) Has a minimum design pressure of 250 psig and meets the requirements of the edition of Section VIII of the ASME Code in effect at the time it was manufactured and is marked accordingly;

* * * * *

■ 45. In § 173.318, paragraph (b)(2)(i) introductory text and paragraph (b)(9)(ii) are revised to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(b) * * *

(2) * * *

(i) *Tanks in oxygen or flammable cryogenic liquid service.* For tanks in oxygen or flammable cryogenic liquid service, the primary system and the secondary system of pressure relief devices must each have a flow capacity equal to or greater than that calculated by the applicable formula in paragraph 5.3.2 or paragraph 5.3.3 of CGA S–1.2 (IBR, see § 171.7 of this subchapter). In addition:

* * * * *

(9) * * *

(ii) On a vacuum-insulated cargo tank the jacket must be protected by a suitable relief device to release internal pressure. The discharge area of this device must be at least 0.00024 square inch per pound of water capacity of the tank. This relief device must function at a pressure not exceeding the internal design pressure of the jacket, calculated in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), or 25 psig, whichever is less.

* * * * *

■ 46. In § 173.320, paragraph (c) is revised to read as follows:

§ 173.320 Cryogenic liquids; exceptions.

* * * * *

(c) For transportation aboard aircraft, see the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter), Packing Instruction 202 and the packaging specifications in part 6, chapter 5.

* * * * *

■ 47. In § 173.323, the last two sentences in paragraph (b)(3) are revised to read as follows:

§ 173.323 Ethylene oxide.

* * * * *

(b) * * *

(3) * * * The capacity of relief device and insulation must be such that the charged receptacle will not explode when tested by the method described in CGA Pamphlet C–14 (IBR, see § 171.7 of this subchapter) or other equivalent method. Each completed package must be capable of passing all Packing Group I performance tests.

* * * * *

■ 48. Section 173.336 is revised to read as follows:

§ 173.336 Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied.

Nitrogen dioxide, liquefied, or dinitrogen tetroxide, liquefied, must be packaged in specification cylinders as prescribed in § 173.192. Specification cylinders prescribed in § 173.192 with valve removed are authorized. Each valve opening must be closed by means of a solid metal plug with tapered thread properly luted to prevent leakage. Transportation in DOT 3AL cylinders is authorized only by highway or rail. Each cylinder must be cleaned in compliance with the requirements of GSA Federal Specification RR–C–901C, paragraphs 3.3.1 and 3.3.2 (IBR, see § 171.7 of this subchapter). Cleaning agents equivalent to those specified in Federal Specification RR–C–901C may be used; however, any cleaning agent must not be capable of reacting with oxygen. One cylinder selected at random from a group of 200 or fewer and cleaned at the same time must be tested for oil contamination in accordance with Federal Specification RR–C–901C, paragraphs 4.4.2.2 and meet the standard of cleanliness specified therein.

■ 49. In § 173.337, paragraph (b) is revised to read as follows:

§ 173.337 Nitric oxide.

* * * * *

(b) Each cylinder must be cleaned in compliance with the requirements of GSA Federal Specification RR–C–901C, paragraphs 3.3.1 and 3.3.2 (IBR, see § 171.7 of this subchapter). Cleaning agents equivalent to those specified in Federal Specification RR–C–901C may be used; however, any cleaning agent must not be capable of reacting with oxygen. One cylinder selected at random from a group of 200 or fewer and cleaned at the same time must be tested for oil contamination in accordance with Federal Specification

RR–C–901C paragraph 4.4.2.2 and meet the standard of cleanliness specified therein.

■ 50. In § 173.411, paragraphs (b)(5)(ii) and (b)(5)(iii) are revised to read as follows:

§ 173.411 Industrial packagings.

* * * * *

(b) * * *

(5) * * *

(ii) Be designed to conform to the requirements of ISO 1496–3, "Series 1 Freight Containers—Specifications and Testing—Part 3: Tank Containers for Liquids, Gases and Pressurized Dry Bulk" (IBR, see § 171.7 of this subchapter);

(iii) Be designed so that loss of shielding will not result in a significant increase in the radiation levels recorded at the external surfaces if they are subjected to the tests specified in ISO 1496–3; and

* * * * *

■ 51. In § 173.420, paragraphs (a)(1) and (a)(2)(iii) introductory text are revised to read as follows:

§ 173.420 Uranium hexafluoride (fissile, fissile excepted and non-fissile).

(a) * * *

(1) Before initial filling and during periodic inspection and test, packagings must be cleaned in accordance with ANSI N14.1 (IBR, see § 171.7 of this subchapter).

(2) * * *

(iii) Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), provided the packaging —

* * * * *

■ 52. In § 173.469, paragraph (a)(4)(ii) is revised to read as follows:

§ 173.469 Tests for special form Class 7 (radioactive) materials.

(a) * * *

(4) * * *

(ii) A specimen that comprises or simulates Class 7 (radioactive) material contained in a sealed capsule need not be subjected to the leaktightness procedure specified in this section provided it is alternatively subjected to any of the tests prescribed in ISO/TR4826, "Sealed Radioactive Sources Leak Test Methods" (IBR, see § 171.7 of this subchapter).

* * * * *

■ 53. In § 173.473, the introductory paragraph is revised to read as follows:

§ 173.473 Requirements for foreign-made packages.

In addition to other applicable requirements of this subchapter, each offeror of a foreign-made Type B, Type B(U), Type B(M), or fissile material package for which a Competent Authority Certificate is required by IAEA's "Regulations for the Safe Transport of Radioactive Materials, Safety Series No. 6" (IBR, see § 171.7 of this subchapter), shall also comply with the following requirements:

* * * * *

■ 54. In Appendix H to Part 173, paragraph 3. introductory paragraph is revised to read as follows:

Appendix H to Part 173—Method of Testing for Sustained Combustibility

* * * * *

3. Apparatus

A combustibility tester consisting of a block of aluminum alloy or other corrosion-resistant metal of high thermal conductivity is used. The block has a concave well and a pocket drilled to take a thermometer. A small gas jet assembly on a swivel is attached to the block. The handle and gas inlet for the gas jet may be fitted at any convenient angle to the gas jet. A suitable apparatus is shown in Figure 5.1 of the UN Recommendations, and the essential dimensions are given in Figures 5.1 and 5.2 of the UN Recommendations (IBR, see § 171.7 of this subchapter). The following equipment is needed:

* * * * *

PART 174—CARRIAGE BY RAIL

■ 55. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 56. In § 174.55, paragraph (c) is revised to read as follows:

§ 174.55 General requirements.

* * * * *

(c) The doors of a freight container or transport vehicle may not be used to secure a load that includes a package containing a hazardous material unless the doors meet the design strength requirements of Specification M–930 (for freight containers) and M–931 (for trailers) in the AAR's specification for "Specially Equipped Freight Car and Intermodal Equipment" (IBR, see § 171.7 of this subchapter) and the load is also within the limits of the design strength requirements for the doors.

■ 57. In § 174.63, paragraphs (c)(2), (c)(3), and (c)(4) are revised to read as follows:

§ 174.63 Portable tanks, IM portable tanks, IBCs, cargo tanks, and multi-unit tank car tanks.

* * * * *

(c) * * *

(2) The tank and flatcar conform to requirements in AAR 600 of the AAR Specifications for Tank Cars, "Specifications for Acceptability of Tank Containers" (IBR, see § 171.7 of this subchapter);

(3) For TOFC service, the trailer chassis conforms to requirements in paragraphs 3, 4, 5, and 6 of AAR Specification M–943, "Container Chassis For TOFC Service" of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment" (IBR, see § 171.7 of this subchapter);

(4) For COFC service, the container support and securement systems conform to requirements in Specification M–952, "Intermodal Container Support and Securement Systems for Freight Cars", of the AAR specification for "Specially Equipped Freight Car and Intermodal Equipment" (IBR, see § 171.7 of this subchapter);

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 58. In § 175.33, paragraph (a)(1) introductory text is revised to read as follows:

§ 175.33 Notification of pilot-in-command.

(a) * * *

(1) The proper shipping name, hazard class and identification number of the material, including any remaining aboard from prior stops, as specified in § 172.101 of this subchapter or the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter). In the case of Class 1 material, the compatibility group letter also must be shown. If a hazardous material is described by the proper shipping name, hazard class, and identification number appearing in:

* * * * *

PART 176—CARRIAGE BY VESSEL

■ The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 176—[AMENDED]

■ 59. In Part 176, amend the following sections by removing the parenthetical phrase "(see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

178.2, Explosive article
176.5(b)(8)
176.11(a) introductory text
176.27(b)
176.30(a) introductory text

■ 60. In § 176.2, the definition for *INF cargo* is revised to read as follows:

§ 176.2 Definitions.

* * * * *

INF cargo means packaged irradiated nuclear fuel, plutonium or high-level radioactive wastes as those terms are defined in the "International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships" (INF Code) contained in the IMDG Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 61. In § 176.140, paragraph (b) introductory paragraph is revised to read as follows:

§ 176.140 Segregation from other classes of hazardous materials.

* * * * *

(b) Class 1 (explosive) materials must be segregated from bulk solid dangerous cargoes in accordance with the IMDG Code (IBR, see § 171.7 of this subchapter). Notwithstanding § 176.83(b), ammonium nitrate and sodium nitrate may be stowed together with blasting explosives, except those containing chlorates, provided the mixed stowage is treated as blasting explosives (see § 176.410(e)).

■ 62. Section 176.720 is revised to read as follows:

§ 176.720 Requirements for carriage of INF cargo in international transportation.

In addition to all other applicable requirements of this subchapter, a vessel carrying INF cargo (see § 176.2, under INF cargo definition) in international transportation must meet the requirements of the INF Code contained in the IMDG Code (IBR, see § 171.7 of this subchapter).

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 63. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 177.835 [Amended]

■ 64. In § 177.835, amend paragraph (g)(3)(ii) by removing the parenthetical phrase "(incorporated by reference, see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in its place.

■ 65. In § 177.840, paragraph (u) is revised to read as follows:

§ 177.840 Class 2 (gases) materials.

* * * * *

(u) *Unloading of chlorine cargo tank motor vehicles.* After July 1, 2001, unloading of chlorine from a cargo tank motor vehicle must be performed in compliance with Section 3 of the Chlorine Institute Pamphlet 57, "Emergency Shut-off Systems for Bulk Transfer of Chlorine" (IBR, see § 171.7 of this subchapter).

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 66. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 178—[AMENDED]

■ 67. In Part 178, amend the following sections by removing the parenthetical phrase "(incorporated by reference; see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

178.36(k)(3)(i)
178.37(k)(3)(i)
178.38(k)(3)(i)
178.39(k)(3)(i)
178.44(m)(3)(i)
178.45(j)(3)(i)
178.47(d)
178.50(d)
178.50(k)(3)(i)
178.51(d)(2)
178.51(j)(3)(i)
178.51(l)(1)
178.53(d)
178.53(j)(5)(i)
178.55(k)(3)(i)
178.56(j)(3)(i)
178.57(d)(5)
178.57(j)(3)(i)
178.57(l)(4)(v)
178.57(o)(1)
178.58(d)(1)
178.58(m)(5)(i)
178.59(d)
178.59(j)(3)(i)
178.60(d)
178.60(l)(3)(i)
178.61(d)(4)
178.61(j)(3)(i)
178.65(c)(4)
178.68(j)(3)(i)
178.68(l)(2)
178.358–5(c)

■ 68. In Part 178, amend the following sections by removing the parenthetical phrase "(see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

178.276(a)(1)
178.276(c)(7)
178.277(a)—Design pressure
178.277(b)(3)
178.277(e)(4)(iv)

■ 69. In Part 178, amend the following sections by removing the parenthetical phrase "(incorporated by reference; see § 171.7 of this subchapter)" in each of the following places:

178.51(l)(2)
178.51(l)(3)
178.56(l)(1)
178.56(l)(2)
178.56(l)(3)
178.57(e)(3)
178.57(l)(1)
178.57(l)(2)
178.57(l)(3)
178.57(l)(4)(vi)
178.57(m)(1)
178.60(n)(1)
178.60(n)(2)
178.60(n)(3)
178.61(l)(1)
178.61(l)(2)
178.61(l)(3)
178.61(m)(1)

■ 70. In Part 178, amend the following sections by removing the parenthetical phrase "(see § 171.7 of this subchapter)" in each of the following places:

178.273(c)(1)
178.276(b)(1)
178.276(b)(2)(i)
178.277(b)(1)

■ 71. In § 178.3, paragraph (b)(1) is revised to read as follows:

§ 178.3 Marking of packagings.

* * * * *

(b) * * *

(1) The U.S. manufacturer must establish that the packaging conforms to the applicable provisions of the ICAO Technical Instructions (IBR, see § 171.7 of this subchapter) or the IMDG Code (IBR, see § 171.7 of this subchapter), respectively.

* * * * *

■ 72. In § 178.35, paragraph (g) is revised to read as follows:

§ 178.35 General requirements for specification cylinders.

* * * * *

(g) *Inspector's report.* Each inspector shall prepare a report containing, at a minimum, the applicable information listed in CGA Pamphlet C–11 (IBR, see § 171.7 of this subchapter) or, until October 1, 1997, in accordance with the applicable test report requirements of this subchapter in effect on September 30, 1996. Any additional information or markings that are required by the applicable specification must be shown on the test report. The signature of the inspector on the reports certifies that the processes of manufacture and heat treatment of cylinders were observed and found satisfactory.

* * * * *

■ 73. In § 178.44, the introductory text preceding the table in paragraph (b) is revised to read as follows:

§ 178.44 Specification 3HT seamless steel cylinders for aircraft use.

* * * * *

(b) *Authorized steel.* Open hearth or electric furnace steel of uniform quality must be used. A heat of steel made under the specifications listed in Table 1 in this paragraph (b), a check chemical analysis that is slightly out of the specified range is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded. The maximum grain size shall be 6 or finer. The grain size must be determined in accordance with ASTM E 112–88 (IBR, see § 171.7 of this subchapter). Steel of the following chemical analysis is authorized:

* * * * *

■ 74. In § 178.45, paragraphs (f)(5)(ii), (f)(5)(iii), (f)(5)(iv), and (j)(4) are revised to read as follows:

§ 178.45 Specification 3T seamless steel cylinder.

* * * * *

(f) * * *

(5) * * *

(ii) Taper threads, when used, must be the American Standard Pipe thread (NPT) type and must be in compliance with the requirements of NBS Handbook H–28 (IBR, see § 171.7 of this subchapter).

(iii) Taper threads conforming to National Gas Taper thread (NGT) standards must be in compliance with the requirements of NBS Handbook H–28.

(iv) Straight threads conforming with National Gas Straight thread (NGS) standards are authorized. These threads must be in compliance with the requirements of NBS Handbook H–28.

* * * * *

(j) * * *

(4) Each impact specimen must be Charpy V-notch type size 10 mm x 10 mm taken in accordance with paragraph 11 of ASTM A 333 (IBR, see § 171.7 of this subchapter). When a reduced size specimen is used, it must be the largest size obtainable.

* * * * *

■ 75. In § 178.46, footnote 2 following table 1 in paragraph (b)(4), and paragraphs (e)(5)(ii)(A), (e)(5)(ii)(B), (e)(5)(iii)(A), (e)(5)(iii)(B), (e)(5)(iii)(C), (e)(5)(iv), and (i)(3)(i) are revised to read as follows:

§ 178.46 Specification 3AL seamless aluminum cylinders.

* * * * *

(b) * * *

(4) * * *

[2] Except for "Pb" and "Bi", the chemical composition corresponds with that of Table 1 of ASTM B 221 (IBR, see § 171.7 of this subchapter) for Aluminum Association alloy 6061.

* * * * *

(e) * * *

(5) * * *

(ii) * * *

(A) American Standard Pipe Thread (NPT) type, conforming to the requirements of NBS Handbook H–28 (IBR, see § 171.7 of this subchapter);

(B) National Gas Taper Thread (NGT) type, conforming to the requirements of NBS Handbook H–28; or

* * * * *

(iii) * * *

(A) National Gas Straight Thread (NGS) type, conforming to the requirements of NBS Handbook H–28;

(B) Unified Thread (UN) type, conforming to the requirements of NBS Handbook H–28;

(C) Controlled Radius Root Thread (UN) type, conforming to the requirements of NBS Handbook H–28; or

* * * * *

(iv) All straight threads must have at least 6 engaged threads, a tight fit, and a factor of safety in shear of at least 10 at the test pressure of the cylinder. Shear stress must be calculated by using the appropriate thread shear area in accordance with NBS Handbook H–28.

* * * * *

(i) * * *

(3) * * *

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM B 557 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 76. In § 178.55, paragraph (d)(3) is revised to read as follows:

§ 178.55 Specification 4B240ET welded or brazed cylinders.

* * * * *

(d) * * *

(3) Welding procedures and operators must be qualified in accordance with CGA C–3 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 77. In § 178.56, paragraph (d)(3) is revised to read as follows:

§ 178.56 Specification 4AA480 welded steel cylinders.

* * * * *

(d) * * *

(3) Welding procedures and operators must be qualified in accordance with CGA C–3 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 78. In § 178.59, paragraph (l)(1)(v) is revised to read as follows:

§ 178.59 Specification 8 steel cylinders with porous fillings for acetylene.

* * * * *

(l) * * *

(1) * * *

(v) The installed filling material must meet the requirements of CGA C–12 (IBR, see § 171.7 of this subchapter); and

* * * * *

■ 79. In § 178.60, paragraph (p)(1)(v) is revised to read as follows:

§ 178.60 Specification 8AL steel cylinders with porous fillings for acetylene.

* * * * *

(p) * * *

(1) * * *

(v) The installed filling material must meet the requirements of CGA C–12 (IBR, see § 171.7 of this subchapter); and

* * * * *

■ 80. In § 178.65, paragraph (b)(2) is revised to read as follows:

§ 178.65 Specification 39 non-reusable (non-refillable) cylinders.

* * * * *

(b) * * *

(2) *Aluminum.* Aluminum is not authorized for service pressures in excess of 500 psig. The analysis of the aluminum must conform to the Aluminum Association standard for alloys 1060, 1100, 1170, 3003, 5052, 5086, 5154, 6061, and 6063, as specified in its publication entitled "Aluminum Standards and Data" (IBR, see § 171.7 of this subchapter).

* * * * *

■ 81. In § 178.245–1, paragraph (a) is revised to read as follows:

§ 178.245–1 Requirements for design and construction.

(a) Tanks must be seamless or welded steel construction, or a combination of both, and have a water capacity in excess of 454 kg (1,000 pounds). Tanks must be designed, constructed, certified and stamped in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 82. In § 178.245–3, paragraph (a) and Note 1 are revised to read as follows:

§ 178.245–3 Design pressure.

(a) The design pressure of a tank authorized under this specification shall be not less than the vapor pressure of the commodity contained therein at 46 °C (115 °F), or as prescribed for a particular commodity by part 173 of this chapter, except that in no case shall the design pressure of any container be less than 100 psig or more than 500 psig. When corrosion factor is prescribed by these regulations, the wall thickness of the tank calculated in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) shall be increased by 20 percent or 2.54 mm (0.10 inch), whichever is less.

Note 1: The term design pressure as used in this specification is identical to the term "MAWP" as used in the ASME Code.

* * * * *

■ 83. In § 178.245–4, paragraph (b) is revised to read as follows:

§ 178.245–4 Tank mountings.

* * * * *

(b) All tank mountings such as skids, fastenings, brackets, cradles, lifting lugs, etc., intended to carry loadings shall be permanently secured to tanks in accordance with the requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) under which the tanks were fabricated, and shall be designed to withstand static loadings in any direction equal to twice the weight of the tank and attachments when filled with the lading using a safety factor of not less than four, based on the ultimate strength of the material to be used. The specific gravity used in determining the static loadings shall be shown on the marking required by § 178.245–6(a) and on the report required by § 178.245–7(a).

* * * * *

■ 84. In § 178.245–6, the first sentence in paragraph (a) is revised to read as follows:

§ 178.245–6 Name plate.

(a) In addition to the markings required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) under which tanks were constructed, they shall have permanently affixed, in close proximity to the ASME "U" stamp certification, a metal plate.* * *

* * * * *

■ 85. In § 178.245–7, paragraph (a) is revised to read as follows:

§ 178.245–7 Report.

(a) A copy of the manufacturer's data report required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) under which the tank is fabricated shall be furnished to the owner for each new tank.

* * * * *

■ 86. In § 178.255–1, paragraph (b) is revised to read as follows:

§ 178.255–1 General requirements.

* * * * *

(b) Tanks must be designed, constructed, certified, and stamped in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 87. In § 178.255–2, paragraph (a) is revised to read as follows:

§ 178.255–2 Material.

(a) Material used in the tank must be steel of good weldable quality and conform with the requirements in Sections V, VIII, and IX of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 88. In § 178.255–14, paragraph (a) is revised to read as follows:

§ 178.255–14 Marking.

(a) In addition to markings required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), every tank shall bear permanent marks at least 1/8-inch high stamped into the metal near the center of one of the tank heads or stamped into a plate permanently attached to the tank by means of brazing or welding or other suitable means as follows: * * *

* * * * *

■ 89. In § 178.255–15, the first sentence in paragraph (a) is revised to read as follows:

§ 178.255–15 Report.

(a) A copy of the manufacturer's data report required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) under which the tank is fabricated must be furnished to the owner for each new tank. * * *

* * * * *

■ 90. In § 178.270–2, paragraph (c) is revised to read as follows:

§ 178.270–2 General.

* * * * *

(c) Each portable tank must have a cross-sectional design that is capable of being stress analyzed either mathematically or by the experimental method contained in UG–101 in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), or other method acceptable to the Associate Administrator.

* * * * *

■ 91. In § 178.270–3, paragraphs (a), (b)(1), and the last three sentences of paragraph (e) are revised to read as follows:

§ 178.270–3 Materials of construction.

(a) Each portable tank must be constructed of carbon or alloy steels. Materials included in part UHT in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) or equivalent materials are not authorized. Any materials used in the tank shell must conform to a recognized national standard and must be suitable for the external environments in which the tank will be carried. The minimum elongation for any material must be 20 percent or greater.

(b) * * *

(1) 1.5 times the specified values for the material at 93 °C (200 °F) in Section VIII of the ASME Code;

* * * * *

(e) * * * Tensile tests and analysis of results must be in accordance with ISO 82, "Steels-Tensile Testing" (IBR, see § 171.7 of this subchapter). The yield strength in tension shall be the stress corresponding to a permanent strain of 0.2 percent of the gauge length, except that for high alloy austenitic steels the yield strength shall be the stress corresponding to a permanent strain of 0.2 or 1.0 percent of the gauge length as appropriate. The elongation must be at least 20 percent.

* * * * *

■ 92. Section 178.270–7 is revised to read as follows:

§ 178.270–7 Joints in tank shells.

Joints in tank shells must be made by fusion welding. Such joints and their efficiencies must be as required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter). Weld procedures and welder performance must be ASME Code qualified or must be qualified by the approval agency in accordance with the procedures in the ASME Code, Section IX, Welding and Brazing Qualifications. A record of each qualification must be retained by the manufacturer for the period prescribed in Section VIII of the ASME Code, and must be made available to any duly identified representative of the Department and the owner of the tank.

■ 93. Section 178.270–9 is revised to read as follows:

§ 178.270–9 Inspection openings.

Each portable tank must be fitted with a manhole or other inspection opening sited above the maximum liquid level to allow for complete internal inspection and adequate access for maintenance and repair of the interior. Each portable tank with a capacity of more than 1,894

L (500 gallons) must be fitted with an elliptical or round manhole at least 279 × 381 mm (11 × 15 inches), or 254 × 405 mm (10 × 16 inches), or with a circular manhole at least 381 mm (15 inches) in diameter. Any inspection opening and closure must be designed and reinforced as required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

■ 94. In § 178.270–11, paragraph (d)(6) introductory text is revised to read as follows:

§ 178.270–11 Pressure and vacuum relief devices.

* * * * *

(d) * * *

(6) The flow capacity rating of any pressure relief device must be certified by the manufacturer to be in accordance with the applicable provisions in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) with the following exceptions:

* * * * *

■ 95. In § 178.270–12, paragraph (f) is revised to read as follows:

§ 178.270–12 Valves, nozzles, piping, and gauging devices.

* * * * *

(f) All nozzles and tank shell penetrations for nozzles shall be designed and constructed in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 96. In § 178.271–1, paragraph (c) is revised to read as follows:

§ 178.271–1 General requirements.

* * * * *

(c) Each tank shall be designed and constructed in accordance with the requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) except as limited or modified in this section or in § 178.270 of this subpart. ASME certification or stamp is not required.

■ 97. In § 178.272–1, paragraph (c) is revised to read as follows:

§ 178.272–1 General requirements.

* * * * *

(c) Each tank shall be designed and constructed in accordance with the requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) except as limited or modified in this section or in § 178.270 of this subpart. ASME certification or stamp is not required.

■ 98. In § 178.273, paragraph (b)(6)(i) is revised to read as follows:

§ 178.273 Approval of Specification IM portable tanks and UN portable tanks.

* * * * *

(b) * * *

(6) * * *

(i) The portable tank has been designed, constructed, certified, and stamped in accordance with the requirements in Division 1 of Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter). Other design codes may be used if approved by the Associate Administrator (see § 178.274(b)(1));

* * * * *

■ 99. In § 178.274, the definitions for Fine grain steel and Off-shore portable tank in paragraph (a)(3), the first four sentences in paragraph (b)(1), and paragraphs (c)(5), (c)(11), (d)(1)(ii), (d)(3), (f)(1)(v), (h)(5)(iv), (i)(1) introductory text, and (j)(6) are revised to read as follows:

§ 178.274 Specifications for UN portable tanks.

(a) * * *

(3) * * *

Fine grain steel means steel that has a ferritic grain size of 6 or finer when determined in accordance with ASTM E 112–96 (IBR, see § 171.7 of this subchapter).

* * * * *

Offshore portable tank means a portable tank specially designed for repeated use in the transportation of hazardous materials to, from and between offshore facilities. An offshore portable tank is designed and constructed in accordance with the Guidelines for the Approval of Containers Handled in Open Seas specified in the IMDG Code (IBR, see § 171.7 of this subchapter).

(b) * * *

(1) The design temperature range for the shell must be -40 °C to -50 °C (-40 °F to 122 °F) for hazardous materials transported under normal conditions of transportation, except for portable tanks used for refrigerated liquefied gases where the minimum design temperature must not be higher than the lowest (coldest) temperature (for example, service temperature) of the contents during filling, discharge or transportation. For hazardous materials handled under elevated temperature conditions, the design temperature must not be less than the maximum temperature of the hazardous material during filling, discharge or transportation. More severe design temperatures must be considered for portable tanks subjected to severe climatic conditions (for example, portable tanks transported in arctic regions). Shells must be designed and constructed in accordance with the requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), except as limited or modified in this subchapter. * * *

* * * * *

(c) * * *

(5) For shells of portable tanks used for liquefied compressed gases, the shell must consist of a circular cross section. Shells must be of a design capable of being stress-analyzed mathematically or experimentally by resistance strain gauges as specified in UG–101 of Section VIII of the ASME Code, or other methods approved by the Associate Administrator.

* * * * *

(11) For the purpose of determining actual values for materials for sheet metal, the axis of the tensile test specimen must be at right angles (transversely) to the direction of rolling. The permanent elongation at fracture must be measured on test specimens of rectangular cross sections in accordance with ISO 6892 (IBR, see § 171.7 of this subchapter), using a 50 mm gauge length.

(d) * * *

(1) * * *

(ii) the minimum thickness determined in accordance with Section VIII of the ASME Code or other approved pressure vessel code; or

* * * * *

(3) When additional protection against shell damage is provided in the case of portable tanks used for liquid and solid hazardous materials requiring test pressures less than 2.65 bar (265.0 kPa), subject to certain limitations specified in the UN Recommendations (IBR, see § 171.7 of this subchapter), the Associate Administrator may approve a reduced minimum shell thickness.

* * * * *

(f) * * *

(1) * * *

(v) the rated flow capacity of the device in standard cubic meters of air per second (m^3/s) determined according to ISO 4126–1 (IBR, see § 171.7 of this subchapter); and

* * * * *

(h) * * *

(5) * * *

(iv) Protection of the shell against damage from impact or overturning by use of an ISO frame in accordance with ISO 1496–3 (IBR, see § 171.7 of this subchapter); and

* * * * *

(i) * * *

(1) Every portable tank must be fitted with a corrosion resistant metal plate

permanently attached to the portable tank in a conspicuous place and readily accessible for inspection. When the plate cannot be permanently attached to the shell, the shell must be marked with at least the information required by Section VIII of the ASME Code. At a minimum, the following information must be marked on the plate by stamping or by any other equivalent method: * * *

* * * * *

(j) * * *

(6) A UN portable tank that meets the definition of "container" in the CSC (see 49 CFR 450.3(a)(2)) must be subjected to an impact test using a prototype representing each design type. The prototype portable tank must be shown to be capable of absorbing the forces resulting from an impact not less than 4 times (4 g) the maximum permissible gross mass of the fully loaded portable tank at a duration typical of the mechanical shocks experienced in rail transportation. A listing of standards describing methods acceptable for performing the impact test are provided in the UN Recommendations. UN portable tanks used for the dedicated transportation of "Helium, refrigerated liquid," UN1963 and "Hydrogen, refrigerated liquid," UN1966 that are marked "NOT FOR RAIL TRANSPORT" in letters of a minimum height of 10 cm (4 inches) on at least two sides of the portable tank are excepted from the 4 g impact test.

* * * * *

■ 100. In § 178.276, the last sentence in paragraph (f) is revised to read as follows:

§ 178.276 Requirements for the design, construction, inspection and testing of portable tanks intended for the transportation of non-refrigerated liquefied compressed gases.

* * * * *

(f) * * * For gases that have critical temperatures near or below the temperature at the accumulating condition, the calculation of the pressure relief device delivery capacity must consider the additional thermodynamic properties of the gas, for example see CGA S–1.2 (IBR, see § 171.7 of this subchapter).

■ 101. In § 178.277, paragraphs (b)(2) and (b)(13) are revised to read as follows:

§ 178.277 Requirements for the design, construction, inspection and testing of portable tanks intended for the transportation of refrigerated liquefied gases.

(b) * * *

(2) Portable tanks must be postweld heat treated and radiographed as prescribed in Sections V and VIII of the ASME Code except that each tank constructed in accordance with part UHT in Section VIII of the ASME Code must be postweld heat treated. Where postweld heat treatment is required, the tank must be treated as a unit after completion of all the welds to the shell and heads. The method must be as prescribed in the ASME Code. Welded attachments to pads may be made after postweld heat treatment is made. The postweld heat treatment must be as prescribed in Section VIII of the ASME Code, but in no event at less than 1,050 °F tank metal temperature.

* * * * *

(13) The jacket of a vacuum-insulated double-wall tank must have either an external design pressure not less than 100 kPa (1 bar) gauge pressure calculated in accordance with Section VIII of the ASME Code or a calculated critical collapsing pressure of not less than 200 kPa (2 bar) gauge pressure. Internal and external reinforcements may be included in calculating the ability of the jacket to resist the external pressure.

* * * * *

■ 102. In § 178.320, in paragraph (a) the definitions for "Constructed and certified in accordance with the ASME Code," "Constructed in accordance with the ASME Code," and "Maximum allowable working pressure or MAWP" are revised to read as follows:

§ 178.320 General requirements applicable to all DOT specification cargo tank motor vehicles.

(a) * * *

Constructed and certified in accordance with the ASME Code means a cargo tank is constructed and stamped in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), and is inspected and certified by an Authorized Inspector.

Constructed in accordance with the ASME Code means a cargo tank is constructed in accordance with Section VIII of the ASME Code with authorized exceptions (see §§ 178.346 through 178.348) and is inspected and certified by a Registered Inspector.

* * * * *

Maximum allowable working pressure or *MAWP* means the maximum pressure allowed at the top of the tank in its normal operating position. The MAWP must be calculated as prescribed in Section VIII of the ASME Code. In use, the MAWP must be greater than or equal to the maximum lading pressure conditions prescribed in § 173.33 of this subchapter for each material transported.

* * * * *

■ 103. In § 178.337–1, paragraphs (a)(2) and (f) are revised to read as follows:

§ 178.337–1 General requirements.

(a) * * *

(2) Designed, constructed, certified, and stamped in accordance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter);

* * * * *

(f) *Postweld heat treatment.* Postweld heat treatment must be as prescribed in the ASME Code except that each cargo tank constructed in accordance with Part UHT of Section VIII of the ASME Code must be postweld heat treated. Each chlorine cargo tank must be fully radiographed and postweld heat treated in accordance with the provisions in Section VIII of the ASME Code under which it is constructed. Where postweld heat treatment is required, the cargo tank must be treated as a unit after completion of all the welds in and/or to the shells and heads. The method must be as prescribed in Section VIII of the ASME Code. Welded attachments to pads may be made after postweld heat treatment. A cargo tank used for anhydrous ammonia must be postweld heat treated. The postweld heat treatment must be as prescribed in Section VIII of the ASME Code, but in no event at less than 1,050 §F cargo tank metal temperature.

* * * * *

■ 104. In § 178.337–2, paragraph (a)(1), the first sentence in paragraph (a)(2), and paragraphs (b)(1)(i), (b)(2)(i), and (b)(2)(ii) are revised to read as follows:

§ 178.337–2 Material.

(a) * * *

(1) All material used for construction of the cargo tank and appurtenances must be suitable for use with the commodities to be transported therein and must conform to the requirements in Section II of the ASME Code (IBR, see § 171.7 of this subchapter) and/or requirements of the American Society for Testing and Materials in all respects.

(2) Impact tests are required on steel used in the fabrication of each cargo tank constructed in accordance with part UHT in Section VIII of the ASME Code. * * *

* * * * *

(b) * * *

(1) * * *

(i) Material shall conform to ASTM A 300, "Steel Plates for Pressure Vessels for Service at Low Temperatures" (IBR, see § 171.7 of this subchapter); * * *

* * * * *

(2) * * *

(i) Material shall conform to ASTM A 612 (IBR, see § 171.7 of this subchapter), Grade B or A 516/A 516M (IBR, see § 171.7 of this subchapter), Grade 65 or 70;

(ii) Material shall meet the Charpy V-notch test requirements of ASTM A 20/A 20M (IBR, see § 171.7 of this subchapter); and

* * * * *

■ 105. In § 178.337–3, paragraphs (a)(1), (b), the last sentence in paragraph (g)(2), and paragraph (g)(3)(i) are revised to read as follows:

§ 178.337–3 Structural integrity.

(a) * * *

(1) Except as provided in paragraph (d) of this section, the maximum calculated design stress at any point in the cargo tank may not exceed the maximum allowable stress value prescribed in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), or 25 percent of the tensile strength of the material used.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each cargo tank must be in accordance with Section VIII of the ASME Code. The cargo tank design must include calculation of stresses generated by design pressure, the weight of lading, the weight of structure supported by the cargo tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of thermal stresses.

(2) Stress concentrations in tension, bending and torsion which occur at pads, cradles, or other supports must be considered in accordance with appendix G in Section VIII of the ASME Code.

* * * * *

(g) * * *

(2) * * * Attachments meeting the requirements of this paragraph are not authorized for cargo tanks constructed under part UHT in Section VIII of the ASME Code.

(3) * * *

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 106. In § 178.337–4, paragraph (a), the first three sentences in paragraph (b), and paragraph (e) are revised to read as follows:

§ 178.337–4 Joints.

(a) Joints shall be as required in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), with all undercutting in shell and head material repaired as specified therein.

(b) Welding procedure and welder performance must be in accordance with Section IX of the ASME Code. In addition to the essential variables named therein, the following must be considered as essential variables: Number of passes; thickness of plate; heat input per pass; and manufacturer's identification of rod and flux. When fabrication is done in accordance with part UHT in Section VIII of the ASME Code, filler material containing more than 0.08 percent vanadium must not be used. * * *

* * * * *

(e) The maximum tolerance for misalignment and butting up shall be in accordance with the requirement in Section VIII of the ASME Code.

* * * * *

■ 107. In § 178.337–6, paragraph (a) is revised to read as follows:

§ 178.337–6 Closure for manhole.

(a) Each cargo tank marked or certified after April 21, 1994, must be provided with a manhole conforming to paragraph UG–46(g)(1) and other applicable requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), except that a cargo tank constructed of NQT steel having a capacity of 3,500 water gallons or less may be provided with an inspection opening conforming to paragraph UG–46 and other applicable requirements of the ASME Code instead of a manhole.

* * * * *

■ 108. In § 178.337–8, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 178.337–8 Openings, inlets, and outlets.

* * * * *

(b) * * *

(1) A valve conforming to The Chlorine Institute, Inc., Dwg. 101–7 (IBR, see § 171.7 of this subchapter), must be installed under each liquid angle valve.

(2) A valve conforming to The Chlorine Institute, Inc., Dwg. 106–6 (IBR, see § 171.7 of this subchapter), must be installed under each gas angle valve.

* * * * *

■ 109. In § 178.337–9, paragraph (b)(8) is revised to read as follows:

§ 178.337–9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) * * *

(8) *Chlorine cargo tanks.* Angle valves on cargo tanks intended for chlorine service must conform to the standards of The Chlorine Institute, Inc., Dwg. 104–8 (IBR, see § 171.7 of this subchapter). Before installation, each angle valve must be tested for leakage at not less than 225 psig using dry air or inert gas.

* * * * *

■ 110. In § 178.337–10, paragraph (d)(1) is revised to read as follows:

§ 178.337–10 Accident damage protection.

(d) * * *

(1) Tanks manufactured on or before December 31, 1974: Dwg. 137–1 (IBR, see § 171.7 of this subchapter), or Dwg. 137–2 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 111. In § 178.337–16, paragraphs (a), (b)(1), and (b)(2) are revised to read as follows:

§ 178.337–16 Testing.

(a) *Inspection and tests.* Inspection of materials of construction of the cargo tank and its appurtenances and original test and inspection of the finished cargo tank and its appurtenances must be as required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) and as further required by this specification, except that for cargo tanks constructed in accordance with part UHT in Section VIII of the ASME Code the original test pressure must be at least twice the cargo tank design pressure.

(b) * * *

(1) Each cargo tank constructed in accordance with part UHT in Section VIII of the ASME Code must be subjected, after postweld heat treatment and hydrostatic tests, to a wet fluorescent magnetic particle inspection to be made on all welds in or on the cargo tank shell and heads both inside and out. The method of inspection must conform to appendix 6 in Section VIII of the ASME Code except that permanent magnets shall not be used.

(2) On cargo tanks of over 3,500 gallons water capacity other than those described in paragraph (b)(1) of this section unless fully radiographed, a test must be made of all welds in or on the shell and heads both inside and outside

by either the wet fluorescent magnetic particle method conforming to appendix U in Section VIII of the ASME Code, liquid dye penetrant method, or ultrasonic testing in accordance with appendix 12 in Section VIII of the ASME Code. Permanent magnets must not be used to perform the magnetic particle inspection.

* * * * *

■ 112. In § 178.337–18, paragraph (a) introductory text is revised to read as follows:

§ 178.337–18 Certification.

(a) At or before the time of delivery, the cargo tank motor vehicle manufacturer must supply and the owner must obtain, a cargo tank motor vehicle manufacturer's data report as required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), and a certificate stating that the completed cargo tank motor vehicle conforms in all respects to Specification MC 331 and the ASME Code. The registration numbers of the manufacturer, the Design Certifying Engineer, and the Registered Inspector, as appropriate, must appear on the certificates (see subpart F, part 107 in subchapter A of this chapter).

* * * * *

■ 113. In § 178.338–1, paragraphs (a)(1) and (c) are revised to read as follows:

§ 178.338–1 General requirements.

(a) * * *

(1) *Design pressure* means the "MAWP" as used in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), and is the gauge pressure at the top of the tank.

* * * * *

(c) Each tank must be designed, constructed, certified, and stamped in accordance with Section VIII of the ASME Code.

* * * * *

■ 114. In § 178.338–2, paragraphs (a), (c), and (e) are revised to read as follows:

§ 178.338–2 Material.

(a) All material used in the construction of a tank and its appurtenances that may come in contact with the lading must be compatible with the lading to be transported. All material used for tank pressure parts must conform to the requirements in Section II of the ASME Code (IBR, see § 171.7 of this subchapter). All material used for evacuated jacket pressure parts must conform to the chemistry and steelmaking practices of one of the material specifications in Section II of the ASME Code or the following ASTM Specifications: A 242, A 441, A 514, A 572, A 588, A 606, A 607, A 633, A 715 (IBR, see § 171.7 of this subchapter).

* * * * *

(c) Impact tests are required on all tank materials, except materials that are excepted from impact testing by the ASME Code, and must be performed using the procedure prescribed in Section VIII of the ASME Code.

* * * * *

(e) Each tank constructed in accordance with part UHT in Section VIII of the ASME Code must be postweld heat treated as a unit after completion of all welds to the shell and heads. Other tanks must be postweld heat treated as required in Section VIII of the ASME Code. For all tanks the method must be as prescribed in the ASME Code. Welded attachments to pads may be made after postweld heat treatment.

* * * * *

■ 115. In § 178.338–3, paragraph (b), the last sentence in paragraph (g)(2), and paragraph (g)(3)(i) are revised to read as follows:

§ 178.338–3 Structural integrity.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each tank must be in accordance with appendix G in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter). The tank design must include calculation of stress due to the design pressure, the weight of lading, the weight of structures supported by the tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of the thermal stresses.

(2) Stress concentrations in tension, bending, and torsion which occur at pads, cradles, or other supports must be considered in accordance with appendix G in Section VIII of the ASME Code.

* * * * *

(g) * * *

(2) * * * Attachments meeting the requirements of this paragraph are not authorized for cargo tanks constructed under part UHT in Section VIII of the ASME Code.

* * * * *

(3) * * *

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements in Section IX of the ASME Code (IBR, see § 171.7 of this subchapter).

■ 116. In § 178.338–4, paragraph (a) is revised to read as follows:

§ 178.338–4 Joints.

(a) All joints in the tank, and in the jacket if evacuated, must be as prescribed in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), except that a butt weld with one plate edge offset is not authorized.

* * * * *

■ 117. In § 178.338–5, paragraph (a) is revised to read as follows:

§ 178.338–5 Stiffening rings.

(a) A tank is not required to be provided with stiffening rings, except as prescribed in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 118. In § 178.338–6, paragraph (a) is revised to read as follows:

§ 178.338–6 Manholes.

(a) Each tank in oxygen service must be provided with a manhole as prescribed in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 119. In § 178.338–13, the last three sentences in paragraph (a) introductory text and the last two sentences in paragraph (b) introductory text are revised to read as follows:

§ 178.338–13 Supports and anchoring.

* * * * *

(a) * * * The design calculations for the supports and load-bearing tank or jacket, and the support attachments must include beam stress, shear stress, torsion stress, bending moment, and acceleration stress for the loaded vehicle as a unit, using a safety factor of four, based on the tensile strength of the material, and static loading that uses the weight of the cargo tank and its attachments when filled to the design weight of the lading (see appendix G in Section VIII of the ASME Code) (IBR, see § 171.7 of this subchapter), multiplied by the following factors. The effects of fatigue must also be considered in the calculations. Minimum static loadings must be as follows:

(b) * * * Static loadings must take into consideration the weight of the tank and the structural members when the tank is filled to the design weight of lading (see appendix G in Section VIII of the ASME Code), multiplied by the following factors. When load rings in the jacket are used for supporting the tank, they must be designed to carry the fully loaded tank at the specified static loadings, plus external pressure. Minimum static loadings must be as follows:

* * * * *

■ 120. In § 178.338–15 is revised to read as follows:

§ 178.338–15 Cleanliness.

A cargo tank constructed for oxygen service must be thoroughly cleaned to remove all foreign material in accordance with CGA G–4.1 (IBR, see § 171.7 of this subchapter). All loose particles from fabrication, such as weld beads, dirt, grinding wheel debris, and other loose materials, must be removed prior to the final closure of the manhole of the tank. Chemical or solvent cleaning with a material compatible with the intending lading must be performed to remove any contaminants likely to react with the lading.

■ 121. In § 178.338–16, paragraph (a), the first sentence in paragraph (c), and paragraph (d) are revised to read as follows:

§ 178.338–16 Inspection and testing.

(a) *General.* The material of construction of a tank and its appurtenances must be inspected for conformance to Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter). The tank must be subjected to either a hydrostatic or pneumatic test. The test pressure must be one and one-half times the sum of the design pressure, plus static head of lading, plus 101.3 kPa (14.7 psi) if subjected to external vacuum, except that for tanks constructed in accordance with Part UHT in Section VIII of the ASME Code the test pressure must be twice the design pressure.

* * * * *

(c) *Weld inspection.* All tank shell or head welds subject to pressure shall be radiographed in accordance with Section VIII of the ASME Code. * * *

(d) *Defect repair.* All cracks and other defects must be repaired as prescribed in Section VIII of the ASME Code. The welder and the welding procedure must be qualified in accordance with Section IX of the ASME Code (IBR, see § 171.7 of this subchapter). After repair, the tank must again be postweld heat-treated, if such heat treatment was previously performed, and the repaired areas must be retested.

* * * * *

■ 122. In § 178.338–17, paragraph (b) is revised to read as follows:

§ 178.338–17 Pumps and compressors.

* * * * *

(b) A valve or fitting made of aluminum with internal rubbing or abrading aluminum parts that may come in contact with oxygen (cryogenic liquid) may not be installed on any cargo tank used to transport oxygen (cryogenic liquid) unless the parts are anodized in accordance with ASTM B 580 (IBR, see § 171.7 of this subchapter).

■ 123. In § 178.338–18, paragraphs (a)(1) and (a)(3) are revised to read as follows:

§ 178.338–18 Marking.

(a) * * *

(1) The plates must be legibly marked by stamping, embossing, or other means of forming letters into the metal of the plate, with the information required in paragraphs (b) and (c) of this section, in addition to that required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), in characters at least 3/16 inch high (parenthetical abbreviations may be used). All plates must be maintained in a legible condition.

* * * * *

(3) The information required for both the name and specification plate may be displayed on a single plate. If the information required by this section is displayed on a plate required by Section VIII of the ASME Code, the information need not be repeated on the name and specification plates.

* * * * *

■ 124. In § 178.338–19, paragraph (a)(1) is revised to read as follows:

§ 178.338–19 Certification.

(a) * * *

(1) The tank manufacturer's data report as required by the ASME Code (IBR, see § 171.7 of this subchapter), and a certificate bearing the manufacturer's vehicle serial number stating that the completed cargo tank motor vehicle conforms to all applicable requirements of Specification MC 338, including Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter) in effect on the date (month, year) of certification. The registration numbers of the manufacturer, the Design Certifying Engineer, and the Registered Inspector, as appropriate, must appear on the certificates (see subpart F, part 107 in subchapter B of this chapter).

* * * * *

■ 125. In § 178.345–1, paragraph (f) is revised to read as follows:

§ 178.345–1 General requirements.

* * * * *

(f) Each cargo tank must be designed and constructed in conformance with the requirements of the applicable cargo tank specification. Each DOT 412 cargo tank with a "MAWP" greater than 15 psig, and each DOT 407 cargo tank with a maximum allowable working pressure greater than 35 psig must be "constructed and certified in conformance with Section VIII of the ASME Code" (IBR, see § 171.7 of this subchapter) except as limited or modified by the applicable cargo tank specification. Other cargo tanks must be "constructed in accordance with Section VIII of the ASME Code," except as limited or modified by the applicable cargo tank specification.

* * * * *

■ 126. In § 178.345–2, paragraph (a) introductory text and paragraph (a)(1) are revised to read as follows:

§ 178.345–2 Material and material thickness.

(a) All material for shell, heads, bulkheads, and baffles must conform to Section II of the ASME Code (IBR, see § 171.7 of this subchapter) except as follows:

(1) The following steels are also authorized for cargo tanks "constructed in accordance with the ASME Code", Section VIII.

* * * * *

■ 127. In § 178.345–3, paragraphs (a)(1), (b), (b)(1), and (b)(2) are revised to read as follows:

§ 178.345–3 Structural integrity.

(a) * * *

(1) The maximum calculated design stress at any point in the cargo tank wall may not exceed the maximum allowable stress value prescribed in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), or 25 percent of the tensile strength of the material used at design conditions.

* * * * *

(b) *ASME Code design and construction.* The static design and construction of each cargo tank must be in accordance with Section VIII of the ASME Code. The cargo tank design must include calculation of stresses generated by the MAWP, the weight of the lading, the weight of structures supported by the cargo tank wall and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in the calculation of thermal stresses.

(1) Stress concentrations in tension, bending and torsion which occur at pads, cradles, or other supports must be considered in accordance with appendix G in Section VIII of the ASME Code.

(2) Longitudinal compressive buckling stress for ASME certified vessels must be calculated using paragraph UG–23(b) in Section VIII of the ASME Code. For cargo tanks not required to be certified in accordance with the ASME Code, compressive buckling stress may be calculated using alternative analysis methods which are accurate and verifiable. When alternative methods are used, calculations must include both the static loads described in this paragraph and the dynamic loads described in paragraph (c) of this section.

* * * * *

■ 128. In § 178.345–4, paragraph (a) is revised to read as follows:

§ 178.345–4 Joints.

(a) All joints between the cargo tank shell, heads, baffles, baffle attaching rings, and bulkheads must be welded in conformance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

■ 129. In § 178.345–7, paragraphs (a)(1) and (d)(3) are revised to read as follows:

§ 178.345–7 Circumferential reinforcements.

(a) * * *

(1) Circumferential reinforcement must be located so that the thickness and tensile strength of the shell material in combination with the frame and reinforcement produces structural integrity at least equal to that prescribed in § 178.345–3 and in such a manner that the maximum unreinforced portion of the shell does not exceed 60 inches. For cargo tanks designed to be loaded by vacuum, spacing of circumferential reinforcement may exceed 60 inches provided the maximum unreinforced portion of the shell conforms with the requirements in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * * * *

(d) * * *

(3) When used to meet the vacuum requirements of this section, ring stiffeners must be as prescribed in Section VIII of the ASME Code.

* * * * *

■ 130. In § 178.345–14, the first sentence of paragraph (a) is revised to read as follows:

§ 178.345–14 Marking.

(a) *General.* The manufacturer shall certify that each cargo tank motor vehicle has been designed, constructed and tested in accordance with the applicable Specification DOT 406, DOT 407 or DOT 412 (§§ 178.345, 178.346, 178.347, 178.348) cargo tank requirements and, when applicable, with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter).

* * *

* * * * *

■ 131. In § 178.345–15, paragraph (b)(2) is revised to read as follows:

§ 178.345–15 Certification.

* * * * *

(b) * * *

(2) For each ASME cargo tank, a cargo tank manufacturer's data report as required by Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter). For each cargo tank motor vehicle, a certificate signed by a responsible official of the manufacturer and a Registered Inspector certifying that the cargo tank motor vehicle is constructed, tested and completed in conformance with the applicable specification.

* * * * *

■ 132. In § 178.346–1, paragraphs (d), (d)(1), (d)(8), and (d)(10) are revised to read as follows:

§ 178.346–1 General requirements.

* * * * *

(d) Each cargo tank must be "constructed in accordance with Section VIII of the ASME Code" (IBR, see § 171.7 of this subchapter) except as modified herein:

(1) The record-keeping requirements contained in the ASME Code Section VIII do not apply. Parts UG–90 through 94 in Section VIII do not apply. Inspection and certification must be made by an inspector registered in accordance with subpart F of part 107.

* * * * *

(8) The following paragraphs in parts UG and UW in Section VIII of the ASME Code do not apply: UG–11, UG–12, UG–22(g), UG–32(e), UG–34, UG–35, UG–44, UG–76, UG–77, UG–80, UG–81, UG–96, UG–97, UW–13(b)(2), UW–13.1(f) and the dimensional requirements found in Figure UW–13.1.

* * * * *

(10) The requirements of paragraph UW–9(d) in Section VIII of the ASME Code do not apply.

■ 133. In § 178.346–3, paragraph (b)(3) is revised to read as follows:

§ 178.346–3 Pressure relief.

* * * * *

(b) * * *

(3) Notwithstanding the requirements in § 178.345–10(b), after August 31, 1996, each pressure relief valve must be able to withstand a dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding 1 L before the relief valve recloses to a leak-tight condition. This requirement must be met regardless of vehicle orientation. This capability must be demonstrated by testing. TTMA RP No. 81 (IBR, see § 171.7 of this subchapter), cited at § 178.345–10(b)(3)(i), is an acceptable test procedure.

* * * * *

■ 134. In § 178.347–1, paragraphs (c), (d), (d)(1) and (d)(8) are revised to read as follows:

§ 178.347–1 General requirements.

* * * * *

(c) Any cargo tank built to this specification with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum must be constructed and certified in conformance with Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter). The external design pressure for a cargo tank loaded by vacuum must be at least 15 psi.

(d) Each cargo tank built to this specification with MAWP of 35 psig or less must be "constructed in accordance with Section VIII of the ASME Code" except as modified.

(1) The record-keeping requirements contained in Section VIII of the ASME Code do not apply. The inspection requirements of parts UG–90 through 94 do not apply. Inspection and certification must be made by an inspector registered in accordance with subpart F of part 107.

* * * * *

(8) The following paragraphs in parts UG and UW in Section VIII the ASME Code do not apply: UG–11, UG–12, UG–22(g), UG–32(e), UG–34, UG–35, UG–44, UG–76, UG–77, UG–80, UG–81, UG–96, UG–97, UW–12, UW–13(b)(2), UW–13.1(f), and the dimensional requirements found in Figure UW–13.1.

* * * * *

■ 135. In § 178.348–1, paragraphs (e)(1), (e)(2), (e)(2)(i) and (e)(2)(viii) are revised to read as follows:

§ 178.348–1 General requirements.

* * * * *

(e) * * *

(1) MAWP greater than 15 psig must be "constructed and certified in conformance with Section VIII of the

ASME Code" (IBR, see § 171.7 of this subchapter); or

(2) MAWP of 15 psig or less must be "constructed in accordance with Section VIII of the ASME Code," except as modified herein:

(i) The recordkeeping requirements contained in Section VIII of the ASME Code do not apply. Parts UG–90 through 94 in Section VIII do not apply. Inspection and certification must be made by an inspector registered in accordance with subpart F of part 107.

* * * * *

(viii) The following paragraphs in parts UG and UW in Section VIII of the ASME Code do not apply: UG–11, UG–12, UG–22(g), UG–32(e), UG–34, UG–35, UG–44, UG–76, UG–77, UG–80, UG–81, UG–96, UG–97, UW–13(b)(2), UW–13.1(f), and the dimensional requirements found in Figure UW–13.1.

■ 136. In § 178.356–1, paragraph (e) is revised to read as follows:

§ 178.356–1 General requirements.

* * * * *

(e) Drawings in DOE CAPE–1662, Rev. 1 and Supplement 1 (IBR, see § 171.7 of this subchapter), which include bills of material, are a part of this specification.

* * * * *

■ 137. In § 178.356–2, paragraph (a) introductory text, and paragraphs (d) and (e) are revised to read as follows:

§ 178.356–2 Materials of construction and other requirements.

(a) Phenolic foam insulation must be fire-resistant and fabricated in accordance with USDOE Material and Equipment Specification SP–9, Rev. 1 and Supplement (IBR, see § 171.7 of this subchapter), which is a part of this specification. (Note: Packagings manufactured under USAEC Specification SP–9 and Rev. 1 thereto are authorized for continued manufacture and use.) A 13.7 cm (5.4-inch) minimum thickness of foam must be provided over the entire liner except:

* * * * *

(d) Vent holes 5 mm (0.2-inch) diameter must be drilled in the outer shell to provide pressure relief during the insulation foaming and in the event of a fire. These holes, which must be drilled in all areas of the shell that mate with the foam insulation, must be spaced in accordance with DOE CAPE–1662, Rev. 1 and Supplement 1 (IBR, see § 171.7 of this subchapter).

(e) Welding must be by a fusion welding process in accordance with American Welding Society Codes B–3.0 and D–1.0 (IBR, see § 171.7 of this subchapter). Body seams and joints for the liner or shell must be continuous welds.

* * * * *

■ 138. In § 178.358–1, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 178.358–1 General requirements.

(a) * * *

(1) Specification 21PF–1 overpacks includes the series of 21PF–1, 21PF–1A, and 21PF–1B models. Details of the three models are included in DOE CAPE–1662, Rev. 1 and Supplement 1 (IBR, see § 171.7 of this subchapter).

(2) Drawings in CAPE–1662, Rev. 1 and Supplement 1, that include bills of materials, and KSS–471 (IBR, see § 171.7 of this subchapter), are a part of this specification.

* * * * *

■ 139. In § 178.358–2, paragraphs (a) introductory text, (b), and (f) are revised to read as follows:

§ 178.358–2 Materials of construction and other requirements.

(a) Phenolic foam insulation must be fire resistant and fabricated in accordance with USDOE Material and Equipment Specification SP–9, Rev. 1 and Supplement (IBR, see § 171.7 of this subchapter), which is a part of this specification. (Note: Packagings manufactured under USAEC Specification SP–9, and Rev. 1 thereto are authorized for continued manufacture and use.) A 14 cm (5.5-inch) minimum thickness of foam must be provided over the entire liner except where:

* * * * *

(b) Gaskets for inner liner, outer shell, or where otherwise specified in DOE CAPE–1662, Rev. 1 (IBR, see § 171.7 of this subchapter), must be as specified in DOE CAPE–1662, Rev. 1.

* * * * *

(f) Welding must be by a fusion process in accordance with the American Welding Society Codes B–3.0 and D–1.0 (IBR, see § 171.7 of this subchapter). Body seams and joints for the liner and shell must be continuous welds.

* * * * *

■ 140. In § 178.358–3, paragraphs (a) and (b)(5) are revised to read as follows:

§ 178.358–3 Modification of Specification 21PF–1 overpacks.

(a) Each Specification 21PF–1 overpack for which construction began or was completed before April 1, 1989, in conformance with drawing E–S–31536–J, Rev. 1 of DOE CAPE–1662 (IBR, see § 171.7 of this subchapter), must be modified in conformance with drawing S1E–31536–J1–D of DOE CAPE–1662, Rev. 1, Supplement 1, before April 1, 1991.

* * * * *

(b) * * *

(5) As an alternate moisture measurement, a calibrated moisture meter reading for 20 percent maximum water content may be used to indicate an end point in the drying cycle, which is detailed in report "Renovation of DOT Specification 21PF–1 Protective Shipping Packages," Report No. K–2057, Revision 1, November 21, 1986, available from the USDOE and part of USDOE Report No. KSS–471 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 141. In § 178.358–4, paragraph (a) is revised to read as follows:

§ 178.358–4 Construction of Specification 21PF–1B overpacks.

(a) Each Specification 21PF–1 overpack for which construction began after March 31, 1989, must meet the requirements of Specification 21PF–1B, in conformance with drawings E–S–31536–J–P, and S1E–31536–J2–B of DOE CAPE–1662, Rev. 1, Supplement 1 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 142. In § 178.360–4, paragraphs (a)(2) and (a)(2)(i) are revised to read as follows:

§ 178.360–4 Closure devices.

(a) * * *

(2) An opening may be closed by a securely bolted flange and leak-tight gasket. Each flange must be welded or brazed to the body of the 2R vessel per (ANSI) Standard B16.5 or (AWWA) Standard C207–55, section 10 (IBR, see § 171.7 of this subchapter). A torque wrench must be used in securing the flange with a corresponding torque of no more than twice the force necessary to seal the selected gasket. Gasket material must be capable of withstanding up to 149 °C (300 °F) without loss of efficiency. The flange, whether of ferrous or nonferrous metal, must be constructed from the same metal as the vessel and must meet the dimensional and fabrication specifications for welded construction as follows:

(i) Pipe flanges described in Tables 13, 14, 16, 17, 19, 20, 22, 23, 25 and 26 of ANSI B16.5 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 143. In § 178.503, paragraph (a)(9)(i) is revised to read as follows:

§ 178.503 Marking of packagings.

(a) * * *

(9) * * *

(i) Metal drums or jerricans must be marked with the nominal thickness of the metal used in the body. The marked nominal thickness must not exceed the minimum thickness of the steel used by more than the thickness tolerance stated in ISO 3574 (IBR, see § 171.7 of this subchapter). (See appendix C of this part.) The unit of measure is not required to be marked. When the nominal thickness of either head of a metal drum is thinner than that of the body, the nominal thickness of the top head, body, and bottom head must be marked (*e.g.*, "1.0–1.2–1.0" or "0.9–1.0–1.0").

* * * * *

■ 144. In § 178.516, paragraph (b)(1) is revised to read as follows:

§ 178.516 Standards for fiberboard boxes.

* * * * *

(b) * * *

(1) Strong, solid or double-faced corrugated fiberboard (single or multi-wall) must be used, appropriate to the capacity and intended use of the box. The water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 g per square meter (0.0316 pounds per square foot)—see ISO 535 (IBR, see § 171.7 of this subchapter). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

* * * * *

■ 145. In § 178.601, paragraph (g)(8) introductory text is revised to read as follows:

§ 178.601 General requirements.

(g) * * *

(8) For a steel drum with a capacity greater than 50 L (13 gallons) manufactured from low carbon, cold-rolled sheet steel meeting ASTM designations A 366/A 366M or A 568/A 568M variations in elements other than the following design elements are considered minor and do not constitute a different drum design type, or "different packaging" as defined in paragraph (c) of this section for which design qualification testing and periodic retesting are required. Minor variations authorized without further testing include changes in the identity of the supplier of component material made to the same specifications, or the original manufacturer of a DOT specification or UN standard drum to be remanufactured. A change in any one or more of the following design elements constitutes a different drum design type:

* * * * *

■ 146. In § 178.707, paragraph (c)(4)(iv)(A) is revised to read as follows:

§ 178.707 Standards for composite IBCs.

* * * * *

(c) * * *

(4) * * *

(iv) * * *

(A) Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 grams per square meter (0.0316 pounds per square foot)—see ISO 535 (E) (IBR, see § 171.7 of this subchapter). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

* * * * *

■ 147. In § 178.708, paragraphs (c)(2) introductory text and (c)(2)(i) are revised to read as follows:

§ 178.708 Standards for fiberboard IBCs.

* * * * *

(c) * * *

(2) Fiberboard IBCs must be constructed of strong, solid or double-faced corrugated fiberboard (single or multiwall) that is appropriate to the capacity of the outer packaging and its intended use. Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 grams per square meter (0.0316 pounds per square foot)—see ISO 535 (E) (IBR, see § 171.7 of this subchapter). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

(i) The walls, including top and bottom, must have a minimum puncture resistance of 15 Joules (11 foot-pounds of energy) measured according to ISO 3036 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 148. In § 178.801, paragraph (i) is revised to read as follows:

§ 178.801 General requirements.

* * * * *

(i) *Approval of equivalent packagings.* An IBC that differs from the standards in subpart N of this part, or that is tested using methods other than those specified in this subpart, may be used if approved by the Associate Administrator. Such IBCs must be shown to be equally effective, and testing methods used must be equivalent. A large packaging, as defined in § 171.8 of this subchapter, may be used if approved by the Associate Administrator. The large packaging must conform to the construction standards, performance testing and packaging marking requirements specified in the UN Recommendations (IBR, see § 171.7 of this subchapter).

* * * * *

■ 149. In Appendix A to Part 178, footnote 2 in Table 1 is revised to read as follows:

Appendix A to Part 178—Specifications for Steel

* * * * *

Table 1 * * *

[2] Ferritic grain size 6 or finer according to ASTM E 112–96 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 150. In Appendix C to Part 178, the introductory paragraph is revised to read as follows:

Appendix C to Part 178—Nominal and Minimal Thicknesses of Steel Drums and Jerricans

For each listed packaging capacity, the following table compares the ISO 3574 (IBR, see § 171.7 of this subchapter) nominal thickness with the corresponding ISO 3574 minimum thickness.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 179—[AMENDED]

■ 151. In Part 179 amend the following sections by removing the parenthetical phrase "(incorporated by reference; see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

179.100–10(c)
179.102–4(a)(1)
179.102–17(b)(1)

■ 152. In § 179.2, paragraph (a)(8) is revised to read as follows:

§ 179.2 Definitions and abbreviations.

(a) * * *

(8) *NPT* means an American Standard Taper Pipe Thread conforming to the requirements of NBS Handbook H–28 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 153. Section 179.6 is revised to read as follows:

§ 179.6 Repairs and alterations.

For procedure to be followed in making repairs or alterations, see appendix R of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

■ 154. In § 179.7, paragraph (b)(8) is revised to read as follows:

§ 179.7 Quality assurance program.

* * * * *

(b) * * *

(8) Provisions indicating that the requirements of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter), apply.

* * * * *

■ 155. In § 179.15, paragraphs (a), (c), (d), and (h) are revised to read as follows:

§ 179.15 Pressure relief devices.

* * * * *

(a) *Performance standard.* Each tank must have a pressure relief device, made of materials compatible with the lading, having sufficient flow capacity to prevent pressure build-up in the tank to no more than the flow rating pressure of the pressure relief device in fire conditions as defined in appendix A of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

* * * * *

(c) *Flow capacity of pressure relief devices.* The total flow capacity of each reclosing and nonreclosing pressure relief device must conform to appendix A of the AAR Specifications for Tank Cars.

(d) *Flow capacity tests.* The manufacturer of any reclosing or nonreclosing pressure relief device must design and test the device in accordance with appendix A of the AAR Specifications for Tank Cars.

* * * * *

(h) *Marking of pressure relief devices.* Each pressure relief device and rupture disc must be permanently marked in accordance with the appendix A of the AAR Specifications for Tank Cars.

■ 156. In § 179.16, paragraphs (c)(2) and (c)(3) are revised to read as follows:

§ 179.16 Tank-head puncture-resistance systems.

* * * * *

(c) * * *

(2) The design and test requirements of the full-head protection (shields) or full tank-head jackets must meet the impact test requirements in Section 5.3 of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

(3) The workmanship must meet the requirements in Section C, Part II, Chapter 5, of the AAR Specifications for Design, Fabrication, and Construction of Freight Cars (IBR, see § 171.7 of this subchapter).

■ 157. Section 179.20 is revised to read as follows:

§ 179.20 Service equipment; protection systems.

If an applicable tank car specification authorizes location of filling or discharge connections in the bottom shell, the connections must be designed, constructed, and protected according to paragraphs E9.00 and E10.00 of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

■ 158. In § 179.22, paragraph (a) is revised to read as follows:

§ 179.22 Marking.

* * * * *

(a) Each tank car must be marked according to the requirements in appendix C of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

* * * * *

■ 159. In § 179.100–7, the table in paragraph (a), paragraph (b) introductory text, and paragraph (c)(2)(i) introductory text are revised to read as follows:

§ 179.100–7 Materials.

* * * * *

(a) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[1]	Minimum elongation in 2 inches (percent) welded condition (longitudinal)
AAR TC 128, Gr. B	81,000	19
ASTM A 302[2], Gr.B	80,000	20
ASTM A 516[2]	70,000	20
ASTM A 537[2], Class 1	70,000	23

[1] Maximum stresses to be used in calculations.

[2] These specifications are incorporated by reference (IBR, see § 171.7 of this subchapter).

(b) *Aluminum alloy plate:* Aluminum alloy plate material used to fabricate tank shell and manway nozzle must be suitable for fusion welding and must comply with one of the following specifications (IBR, see § 171.7 of this subchapter) with its indicated minimum tensile strength and elongation in the welded condition. * * *

(c) * * *

(2) * * *

(i) High alloy steels used to fabricate tank must be tested in accordance with the following procedures in ASTM A 262, "Standard Practices for Detecting Susceptibility to Intergranular Attack in Austenitic Stainless Steel" (IBR, see § 171.7 of this subchapter), and must exhibit corrosion rates not exceeding the following: * * *

* * * * *

■ 160. In § 179.100–9, paragraph (a) is revised to read as follows:

§ 179.100–9 Welding.

(a) All joints shall be fusion-welded in compliance with the requirements of AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter). Welding procedures, welders and fabricators shall be approved.

* * * * *

■ 161. In § 179.100–10, paragraph (a) is revised to read as follows:

§ 179.100–10 Postweld heat treatment.

(a) After welding is complete, steel tanks and all attachments welded thereto must be postweld heat treated as a unit in compliance with the requirements of AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

* * * * *

■ 162. In § 179.100–12, paragraph (a) is revised to read as follows:

§ 179.100–12 Manway nozzle, cover and protective housing.

(a) Manway nozzles must be of approved design of forged or rolled steel for steel tanks or of fabricated aluminum alloy for aluminum tanks, with an access opening of at least 18 inches inside diameter, or at least 14 inches by 18 inches around or oval. Each nozzle must be welded to the tank and the opening reinforced in an approved manner in compliance with the requirements of AAR Specifications for Tank Cars, appendix E, Figure E10 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 163. In § 179.100–13, paragraph (e) is revised to read as follows:

§ 179.100–13 Venting, loading and unloading valves, measuring and sampling devices.

* * * * *

(e) Bottom of tank shell may be equipped with a sump or siphon bowl, or both, welded or pressed into the shell. Such sumps or siphon bowls, if applied, are not limited in size and must be made of cast, forged or fabricated metal. Each sump or siphon bowl must be of good welding quality in conjunction with the metal of the tank shell. When the sump or siphon bowl is pressed in the bottom of the tank shell, the wall thickness of the pressed section must not be less than that specified for the shell. The section of a circular cross section tank to which a sump or siphon bowl is attached need not comply with the out-of-roundness requirement specified in AAR Specifications for Tank Cars, appendix W, W14.06 (IBR, see § 171.7 of this subchapter). Any portion of a sump or siphon bowl not forming a part of cylinder of revolution must have walls of such thickness and be so reinforced that the stresses in the walls caused by a given internal pressure are no greater than the circumferential stress that would exist under the same internal pressure in the wall of a tank of circular cross section designed in accordance with § 179.100–6(a), but in no case shall the wall thickness be less than that specified in § 179.101–1.

■ 164. In § 179.100–14, paragraph (a)(1) is revised to read as follows:

§ 179.100–14 Bottom outlets.

(a) * * *

(1) The extreme projection of the bottom washout equipment may not be more than that allowed by appendix E of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

* * * * *

§ 179.100–18 [Amended]

■ 165. In § 179.100–18, amend paragraph (c) by removing the parenthetical phrase "(see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in its place.

■ 166. In § 179.101–1, footnote 6 following the table is revised to read as follows:

§ 179.101–1 Individual specification requirements.

* * * * *

[6] See AAR Specifications for Tank Cars, appendix E, E4.01 (IBR, see § 171.7 of this subchapter), and § 179.103–2.

* * * * *

■ 167. In § 179.102–1, paragraph (a)(1) is revised to read as follows:

§ 179.102–1 Carbon dioxide, refrigerated liquid.

(a) * * *

(1) All plates for tank, manway nozzle and anchorage of tanks must be made of carbon steel conforming to ASTM A 516/A 516M (IBR, see § 171.7 of this subchapter), Grades 55, 60, 65, or 70, or AAR Specification TC 128–78, Grade B. The ASTM A 516/A 516M plate must also meet the Charpy V-Notch test requirements of ASTM A 20/A 20M (see table 16) (IBR, see § 171.7 of this subchapter) in the longitudinal direction of rolling. The TC 128 plate must also meet the Charpy V-Notch energy absorption requirements of 15 ft.-lb. minimum average for 3 specimens, and 10 ft.-lb. minimum for one specimen, at minus 50 °F in the longitudinal direction of rolling in accord with ASTM A 370 (IBR, see § 171.7 of this subchapter). Production-welded test plates prepared as required by W4.00 of AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter), must include impact test specimens of weld metal and heat-affected zone. As an alternate, anchor legs may be fabricated of stainless steel, ASTM A 240/A 240M Types 304, 304L, 316 or 316L, for which impact tests are not required.

* * * * *

■ 168. In § 179.102–2, paragraph (a)(1) is revised to read as follows:

§ 179.102–2 Chlorine.

(a) * * *

(1) Tanks must be fabricated from carbon steel complying with ASTM Specification A 516 (IBR, see § 171.7 of this subchapter), Grade 70, or AAR Specification TC 128, Grade A or B.

* * *

* * * * *

■ 169. In § 179.102–4, paragraphs (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), and (a)(2)(iii)(A) are revised to read as follows:

§ 179.102–4 Vinyl fluoride, stabilized.

(a) * * *

(2) Steel complying with ASTM Specification A 516 (IBR, see § 171.7 of this subchapter); Grade 70; ASTM Specification A 537 (IBR, see § 171.7 of this subchapter), Class 1; or AAR Specification TC 128, Grade B, in which case impact tests must be performed as follows:

(i) ASTM A 516/A 516M and A 537/A 537M material must meet the Charpy V-Notch test requirements, in longitudinal direction of rolling, of ASTM A 20/A 20M (IBR, see § 171.7 of this subchapter).

(ii) AAR Specification TC 128 material must meet the Charpy V-Notch test requirements, in longitudinal direction of rolling, of 15 ft.-lb. minimum average for 3 specimens, with a 10 ft.-lb. minimum for any one specimen, at minus 50 °F or colder, in accordance with ASTM A 370 (IBR, see § 171.7 of this subchapter).

(iii) * * *

(A) Be prepared in accordance with AAR Specifications for Tank Cars, appendix W, W4.00 (IBR, see § 171.7 of this subchapter);

* * * * *

■ 170. In § 179.102–17, paragraphs (b)(2) introductory text, (b)(2)(i), (b)(2)(ii), and (b)(2)(iii)(A) are revised to read as follows:

§ 179.102–17 Hydrogen chloride, refrigerated liquid.

* * * * *

(b) * * *

(2) Steel conforming to ASTM A 516/A 516M (IBR, see § 171.7 of this subchapter), Grade 70; ASTM A 537/A 537M, (IBR, see §171.7 of this subchapter) Class 1; or AAR Specification TC 128, Grade B in which case impact tests must be performed as follows:

(i) ASTM A 516/A 516M and A 537/A 537M material must meet the Charpy V-notch test requirements, in longitudinal direction of rolling, of ASTM A 20/A 20M (IBR, see § 171.7 of this subchapter).

(ii) AAR Specification TC 128 material must meet the Charpy V-notch test requirements, in longitudinal direction of rolling of 15 ft.-lb. minimum average for 3 specimens, with a 10 ft.-lb. minimum for any one specimen, at minus 50 °F or colder, in accordance with ASTM A 370 (IBR, see § 171.7 of this subchapter).

(iii) * * *

(A) Be prepared in accordance with AAR Specifications for Tank Cars, appendix W, W4.00 (IBR, see § 171.7 of this subchapter);

* * * * *

■ 171. In § 179.103–5, the first two sentences in paragraph (b)(1) are revised to read as follows:

§ 179.103–5 Bottom outlets.

* * * * *

(b) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than allowed by appendix E of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter). All bottom outlet reducers and closures and their attachments shall be secured to the car by at least ⅜ inch chain, or its equivalent, except that bottom outlet closure plugs may be attached by ¼ inch chain. * * *

■ 172. In § 179.200–7, the table in paragraph (b), paragraph (c) introductory text, footnote 2 of paragraph (d) introductory text, the table in paragraph (e), paragraph (f) introductory text, and paragraph (h) are revised to read as follows:

* * * * *

§ 179.200–7 Materials.

* * * * *

(b) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
AAR TC 128, Gr. B	81,000	19
ASTM A 516 [2]	70,000	20

[1] Minimum stresses to be used in calculations.

[2] This specification is incorporated by reference (IBR, see § 171.7 of this subchapter).

(c) *Aluminum alloy plate:* Aluminum alloy plate must be suitable for welding and comply with one of the following specifications (IBR, see § 171.7 of this subchapter):

* * * * *

[2] High alloy steel materials used to fabricate tank and expansion dome, when used, must be tested in accordance with Practice A of ASTM Specification A 262 titled, "Standard Practices for Detecting Susceptibility to Intergranular Attack in Austenitic Stainless Steels" (IBR; see § 171.7 of this subchapter). If the specimen does not pass Practice A, Practice B or C must be used and the corrosion rates may not exceed the following:

* * * * *

(e) *Nickel plate:* * * *

Specifications	Minimum tensile strength (psi) welded condition [1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
ASTM B 162 [2]	40,000	20

* * * * *

(f) *Manganese-molybdenum steel plate:* Manganese-molybdenum steel plate must be suitable for fusion welding and comply with the following specification (IBR, see § 171.7 of this subchapter): * * *

* * * * *

(h) All external projections that may be in contact with the lading and all castings, forgings, or fabrications used for fittings or attachments to tank and expansion dome, when used, in contact with lading must be made of material to an approved specification. See AAR Specifications for Tank Cars, appendix M, M4.05 (IBR, see § 171.7 of this subchapter) for approved material specifications for castings for fittings.

■ 173. In § 179.200–9, paragraph (a) is revised to read as follows:

§ 179.200–9 Compartment tanks.

(a) When a tank is divided into compartments, by inserting interior heads, interior heads must be inserted in accordance with AAR Specifications for Tank Cars, appendix E, E7.00 (IBR, see § 171.7 of this subchapter), and must comply with the requirements specified in § 179.201–1. Voids between compartment heads must be provided with at least one tapped drain hole at their lowest point, and a tapped hole at the top of the tank. The top hole must be closed, and the bottom hole may be closed, with not less than three-fourths inch and not more than 1½-inch solid pipe plugs having NPT threads.

* * * * *

■ 174. In § 179.200–10, paragraph (a) is revised to read as follows:

§ 179.200–10 Welding.

(a) All joints shall be fusion-welded in compliance with the requirements of AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter). Welding procedures, welders and fabricators shall be approved.

■ 175. Section 179.200–11 is revised to read as follows:

§ 179.200–11 Postweld heat treatment.

When specified in § 179.201–1, after welding is complete, postweld heat treatment must be in compliance with the requirements of AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

■ 176. In § 179.200–13, paragraph (a) is revised to read as follows:

§ 179.200–13 Manway ring or flange, pressure relief device flange, bottom outlet nozzle flange, bottom washout nozzle flange and other attachments and openings.

(a) These attachments shall be fusion welded to the tank and reinforced in an approved manner in compliance with the requirements of appendix E, figure 10, of the AAR Specifications for Tank

Cars (IBR, see § 171.7 of this subchapter).

* * * * *

■ 177. In § 179.200–15, paragraph (c) is revised to read as follows:

§ 179.200–15 Closures for manways.

* * * * *

(c) Manway covers must be of approved cast, forged, or fabricated metals. Malleable iron, if used, must comply with ASTM A 47 (IBR, see § 171.7 of this subchapter), Grade 35018. Cast iron manway covers must not be used.

* * * * *

■ 178. In § 179.200–17, the first sentence of paragraph (a)(1) is revised to read as follows:

§ 179.200–17 Bottom outlets.

(a) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than that allowed by appendix E of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter). * * *

* * * * *

■ 179. In § 179.200–22, paragraph (d) is revised to read as follows:

§ 179.200–22 Test of tanks.

* * * * *

(d) Caulking of welded joints to stop leaks developed during the foregoing tests is prohibited. Repairs in welded joints shall be made as prescribed in AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

■ 180. Section 179.201–4 is revised to read as follows:

§ 179.201–4 Material.

All fittings, tubes, and castings and all projections and their closures, except for protective housing, must also meet the requirements specified in ASTM A 262 (IBR, see § 171.7 of this subchapter), except that when preparing the specimen for testing the carburized surface may be finished by grinding or machining.

■ 181. Section 179.201–5 is revised to read as follows:

§ 179.201–5 Postweld heat treatment and corrosion resistance.

(a) Tanks and attachments welded directly thereto must be postweld heat treated as a unit at the proper temperature except as indicated below. Tanks and attachments welded directly thereto fabricated from ASTM A 240/A 240M (IBR, see § 171.7 of this subchapter) Type 430A, Type 304 and Type 316 materials must be postweld heat treated as a unit and must be tested to demonstrate that they possess the corrosion resistance specified in § 179.200–7(d), Footnote 2. Tanks and attachments welded directly thereto, fabricated from ASTM A 240/A 240M Type 304L or Type 316L materials are not required to be postweld heat treated.

(b) Tanks and attachments welded directly thereto, fabricated from ASTM A 240/A 240M Type 304L and Type 316 materials must be tested to demonstrate that they possess the corrosion resistance specified in § 179.200–7(d), Footnote 2.

■ 182. In § 179.201–6, paragraph (c) is revised to read as follows:

§ 179.201–6 Manways and manway closures.

* * * * *

(c) The manway ring and cover for specifications DOT–103CW, 103DW, 103EW, 111360W7, or 11A100W6 must be made of the metal and have the same inspection procedures specified in AAR Specifications for Tank Cars, appendix M, M3.03 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 183. In § 179.220–6, in paragraph (a), the definition of "*S*" following the formula is revised to read as follows:

§ 179.220–6 Thickness of plates.

(a) * * *

Where: * * *

S = Minimum tensile strength of plate material in psi as prescribed in AAR Specifications for Tank Cars, appendix M, Table M1 (IBR, see § 171.7 of this subchapter);

* * * * *

■ 184. In § 179.220–7, the table in paragraph (b), paragraph (c) introductory text, paragraph (d) introductory text, and paragraph (e) introductory text are revised to read as follows:

§ 179.220–7 Materials.

* * * * *

(b) * * *

Specifications	Minimum tensile strength (p.s.i.) welded condition[1]	Minimum elongation in 2 inches (percent) weld metal (longitudinal)
AAR TC 128, Gr. B	81,000	19
ASTM A 516[2], Gr. 70	70,000	20

[1] Maximum stresses to be used in calculations.

[2] This specification is incorporated by reference (IBR, see § 171.7 of this subchapter).

(c) *Aluminum alloy plate:* Aluminum alloy plate must be suitable for welding and comply with one of the following specifications (IBR, see § 171.7 of this subchapter): * * *

* * * * *

(d) High alloy steel plate: High alloy steel plate must comply with one of the following specifications (IBR, see § 171.7 of this subchapter): * * *

(e) Manganese-molybdenum steel plate: Manganese-molybdenum steel plate must be suitable for fusion welding and must comply with the following specification (IBR, see § 171.7 of this subchapter): * * *

* * * * *

■ 185. In § 179.220–10, paragraph (a) is revised to read as follows:

§ 179.220–10 Welding.

(a) All joints must be fusion welded in compliance with AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter). Welding procedures, welders, and fabricators shall be approved.

* * * * *

■ 186. In § 179.220–11, paragraph (b) is revised to read as follows:

§ 179.220–11 Postweld heat treatment.

* * * * *

(b) Postweld heat treatment of the cylindrical portions of the outer shell to which the anchorage or draft sills are attached must comply with AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

* * * * *

■ 187. Section 179.220–14 is revised to read as follows:

§ 179.220–14 Openings in the tanks.

Openings in the inner container and the outer shell must be reinforced in compliance with AAR Specifications for Tank Cars, appendix E (IBR, see § 171.7 of this subchapter). In determining the required reinforcement area for openings in the outer shell, *t* shall be one-fourth inch.

■ 188. In § 179.220–18, the first sentence in paragraph (a)(1) is revised to read as follows:

179.220–18 Bottom outlets.

(a) * * *

(1) The extreme projection of the bottom outlet equipment may not be more than that allowed by appendix E of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter). * * *

* * * * *

■ 189. In § 179.220–26, paragraph (a) is revised to read as follows:

§ 179.220–26 Stenciling.

(a) The outer shell, or the jacket if the outer shell is insulated, must be stenciled in compliance with AAR Specifications for Tank Cars, appendix C (IBR, see § 171.7 of this subchapter).

* * * * *

■ 190. In § 179.300–7, the table in paragraph (a) is revised to read as follows:

§ 179.300–7 Materials.

(a) * * *

Specifications [2]	Tensile strength (psi) welded condition [1] (minimum)	Elongation in 2 inches (percent) welded condition [1] (longitudinal) (minimum)
ASTM A 240/A 240M type 304	75,000	25
ASTM A 240/A 240M type 304L	70,000	25
ASTM A 240/A 240M type 316	75,000	25
ASTM A 240/A 240M type 316L	70,000	25
ASTM A 240/A 240M type 321	75,000	25
ASTM A 285 Gr. A	45,000	29
ASTM A 285 Gr. B	50,000	20
ASTM A 285 Gr. C	55,000	20
ASTM A 515/A 515M Gr. 65	65,000	20
ASTM A 515/A 515M Gr. 70	70,000	20
ASTM A 516/A 516M Gr. 70	70,000	20

[1] Maximum stresses to be used in calculations.

[2] These specifications are incorporated by reference (IBR, see § 171.7 of this subchapter.)

* * * * *

■ 191. In § 179.300–9, paragraph (a) is revised to read as follows:

§ 179.300–9 Welding.

(a) Longitudinal joints must be fusion welded. Head-to-shell joints must be forge welded on class DOT–106A tanks and fusion welded on class DOT–110A tanks. Welding procedures, welders and fabricators must be approved in accordance with AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

* * * * *

■ 192. Section 179.300–10 is revised to read as follows:

§ 179.300–10 Postweld heat treatment.

After welding is complete, steel tanks and all attachments welded thereto, must be postweld heat treated as a unit in compliance with the requirements of AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

■ 193. In § 179.300–15, paragraph (a) is revised to read as follows:

§ 179.300–15 Pressure relief devices.

(a) Unless prohibited in part 173 of this subchapter, tanks shall be equipped with one or more relief devices of approved type, made of metal not subject to rapid deterioration by the lading and screwed directly into tank heads or attached to tank heads by other approved methods. The total discharge capacity shall be sufficient to prevent building up pressure in tank in excess of 82.5 percent of the tank test pressure. When relief devices of the fusible plug type are used, the required discharge capacity shall be available in each head. See AAR Specifications for Tank Cars, appendix A (IBR, see § 171.7 of this subchapter), for the formula for calculating discharge capacity.

* * * * *

■ 194. In § 179.300–17, paragraph (b) is revised to read as follows:

§ 179.300–17 Tests of pressure relief devices.

* * * * *

(b) Rupture disks of non-reclosing pressure relief devices must be tested and qualified as prescribed in appendix A, Paragraph 5, of the AAR Manual of Standards and Recommended Practices, Section C—Part III, AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

* * * * *

■ 195. In § 179.400–3, paragraph (a)(1) is revised to read as follows:

§ 179.400–3 Type.

(a) * * *

(1) Consist of an inner tank of circular cross section supported essentially concentric within an outer jacket of circular cross section, with the out of roundness of both the inner tank and outer jacket limited in accordance with Paragraph UG–80 in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter);

* * * * *

■ 196. In § 179.400–5, paragraph (a) introductory text is revised to read as follows:

§ 179.400–5 Materials.

(a) Stainless steel of ASTM A 240/A 240M (IBR, see § 171.7 of this subchapter), Type 304 or 304L must be used for the inner tank and its appurtenances, as specified in AAR Specifications for Tank Cars, appendix M (IBR, see § 171.7 of this subchapter), and must be—

* * * * *

■ 197. In § 179.400–6, paragraph (b) is revised to read as follows:

§ 179.400–6 Bursting and buckling pressure.

* * * * *

(b) The outer jacket of the required evacuated insulation system must be designed in accordance with § 179.400–8(d) and in addition must comply with the design loads specified in Section 6.2 of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter). The designs and calculations must provide for the loadings transferred to the outer jacket through the support system.

■ 198. In § 179.400–8, in paragraph (a), the definition of "S" following the formula is revised to read as follows:

§ 179.400–8 Thickness of plates.

(a) * * *

Where: * * *

* * * * *

S = minimum tensile strength of the plate material, as prescribed in AAR Specifications for Tank Cars, appendix M, Table M1 (IBR, see § 171.7 of this subchapter), in psi;

* * * * *

■ 199. In § 179.400–11, paragraph (c) is revised to read as follows:

§ 179.400–11 Welding.

* * * * *

(c) Each joint must be welded in accordance with the requirements of AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

* * * * *

■ 200. In § 179.400–12, paragraph (b) introductory text is revised to read as follows:

§ 179.400–12 Postweld heat treatment.

* * * * *

(b) The cylindrical portion of the outer jacket, with the exception of the circumferential closing seams, must be postweld heat treated as prescribed in AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter). Any item to be welded to this portion of the outer jacket must be attached before postweld heat treatment. Welds securing the following need not be postweld heat treated when it is not practical due to final assembly procedures:

* * * * *

■ 201. Section 179.400–15 is revised to read as follows:

§ 179.400–15 Radioscopy.

Each longitudinal and circumferential joint of the inner tank, and each longitudinal and circumferential double welded butt joint of the outer jacket, must be examined along its entire length in accordance with the requirements of AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

■ 202. In § 179.400–18, paragraph (b) is revised to read as follows:

§ 179.400–18 Test of inner tank.

* * * * *

(b) Caulking of welded joints to stop leaks developed during the test is prohibited. Repairs to welded joints must be made as prescribed in AAR Specifications for Tank Cars, appendix W (IBR, see § 171.7 of this subchapter).

■ 203. In § 179.400–20, paragraph (c)(1) is revised to read as follows:

§ 179.400–20 Pressure relief devices.

* * * * *

(c) * * *

(1) *Safety vent.* The safety vent shall function at the pressure specified in § 179.401–1. The safety vent must be flow rated in accordance with the applicable provisions of AAR Specifications for Tank Cars, appendix A (IBR, see § 171.7 of this subchapter), and provide sufficient capacity to meet the requirements of AAR Specifications for Tank Cars, appendix A, A8.07(a).

* * * * *

■ 204. In § 179.400–25, the introductory text is revised to read as follows:

§ 179.400–25 Stenciling.

Each tank car must be stenciled in compliance with the provisions of the AAR Specifications for Tank Cars, appendix C (IBR, see § 171.7 of this subchapter). The stenciling must also include the following:

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

PART 180—[AMENDED]

■ 205. In Part 180, amend the following sections by removing the parenthetical phrase "(incorporated by reference; see § 171.7 of this subchapter)" and adding the parenthetical phrase "(IBR, see § 171.7 of this subchapter)" in each of the following places:

180.205(f)(1)
180.209(b)(1)(iii)
180.209(d)
180.209(e)
180.209(g)
180.209(i)(1) introductory text
180.211(c)(1)(iv)
180.211(d)(1)(ii)

■ 206. In Part 180, amend the following sections by removing the parenthetical phrase "(incorporated by reference; see § 171.7 of this subchapter)" in each of the following places:

180.209(f)
180.209(i)(2)

■ 207. In § 180.209, paragraph (k) is revised to read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

* * * * *

(k) *3HT cylinders.* In addition to the other requirements of this section, a cylinder marked DOT–3HT must be requalified in accordance with CGA C–8 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 208. In § 180.407, paragraph (g)(3) is revised to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(g) * * *

(3) Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel in accordance with Part UHT in Section VIII of the ASME Code (IBR, see § 171.7 of this subchapter), or constructed of other than quenched and tempered steel but without postweld heat treatment, used for the transportation of anhydrous ammonia or any other hazardous materials that may cause corrosion stress cracking, must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel in accordance with Part UHT in Section VIII of the ASME Code and used for the transportation of liquefied petroleum gas must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. The wet fluorescent magnetic particle inspection must be in accordance with Section V of the ASME Code and CGA Technical Bulletin TB–2 (IBR, see § 171.7 of this subchapter). This paragraph does not apply to cargo tanks that do not have manholes. (See § 180.417(c) for reporting requirements.)

* * * * *

■ 209. In § 180.411, paragraph (b) introductory text is revised to read as follows:

§ 180.411 Acceptable results of tests and inspections.

* * * * *

(b) *Dents, cuts, digs and gouges.* For evaluation procedures, see CGA C–6 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 210. In § 180.413, paragraph (b)(6) is revised to read as follows:

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

* * * * *

(b) * * *

(6) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 (IBR, see § 171.7 of this subchapter) and the National Board Inspection Code (IBR, see § 171.7 of this subchapter). Each cargo tank having cracks or other defects requiring welded repairs must meet all inspection, test, and heat treatment requirements in § 178.337–16 of this subchapter in effect at the time of the repair, except that postweld heat treatment after minor weld repairs is not required. When a repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those repaired by grinding, the affected area of the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

* * * * *

■ 211. In § 180.509, in paragraph (g)(1)(ii), Note 2 following the table is revised to read as follows:

§ 180.509 Requirements for inspection and test of specification tank cars.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

Notes: * * *

2. Any reduction in the tank car shell may not affect the structural strength of the tank car so that the tank car shell no longer conforms to Section 6.2 of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

* * * * *

■ 212. In § 180.513, paragraph (a) is revised to read as follows:

§ 180.513 Repairs, alterations, conversions, and modifications.

(a) In order to repair tank cars, the tank car facility must comply with the requirements of appendix R of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter).

* * * * *

■ 213. In § 180.515, paragraph (a) is revised to read as follows:

§ 180.515 Markings.

(a) When a tank car passes the required inspection and test with acceptable results, the tank car facility shall mark the date of the inspection and test and the due date of the next inspection and test on the tank car in accordance with appendix C of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter). When a tank car facility performs multiple inspection and test at the same time, one date may be used to satisfy the requirements of this section. One date also may be shown when multiple inspection and test have the same due date.

* * * * *

■ 214. In § 180.517, paragraph (a) is revised to read as follows:

§ 180.517 Reporting and record retention requirements.

(a) *Certification and representation.* Each owner of a specification tank car shall retain the certificate of construction (AAR Form 4–2) and related papers certifying that the manufacture of the specification tank car identified in the documents is in accordance with the applicable specification. The owner shall retain the documents throughout the period of ownership of the specification tank car and for one year thereafter. Upon a change of ownership, the requirements in Section 1.3.15 of the AAR Specifications for Tank Cars (IBR, see § 171.7 of this subchapter) apply.

* * * * *

■ 215. In § 180.519, paragraph (c) is revised to read as follows:

§ 180.519 Periodic retest and inspection of tank cars other than single-unit tank car tanks.

* * * * *

(c) *Visual inspection.* Tanks of Class DOT 106A and DOT 110A–W specifications (§§ 179.300 and 179.301 of this subchapter) used exclusively for transporting fluorinated hydrocarbons and mixtures thereof, and that are free from corroding components, may be given a periodic complete internal and external visual inspection in place of the periodic hydrostatic retest. Visual inspections shall be made only by competent persons. The tank must be accepted or rejected in accordance with the criteria in CGA C–6 (IBR, see § 171.7 of this subchapter).

* * * * *

Issued in Washington, DC, on September 24, 2003, under the authority delegated in 49 CFR Part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Tuberculosis; Proposed Rule; Termination of Rulemaking Respiratory Protection for M. Tuberculosis; Final Rule; Revocation

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; termination of rulemaking.

SUMMARY: OSHA is withdrawing its 1997 proposed standard on Occupational Exposure to Tuberculosis (TB). Because of a broad range of Federal and community initiatives, the rate of TB has declined steadily and dramatically since OSHA began work on the proposal in 1993. Hospitals, which are the settings where workers are likely to have the highest risk of exposure to TB bacteria, have come into substantial compliance with Federal guidelines for preventing the transmission of TB. Overall reductions in TB mean that all workers are much less likely now to encounter infectious TB patients in the course of their jobs.

In addition, an OSHA standard is unlikely to result in a meaningful reduction of disease transmission caused by contact with the most significant remaining source of occupational risk: exposure to individuals with undiagnosed and unsuspected TB. Particularly outside of hospitals, workers often will not identify suspect TB cases quickly enough to implement isolation procedures and other precautions before exposure occurs.

OSHA recognizes, however, that continued vigilance is necessary to maintain the gains achieved so far. OSHA intends to provide guidance to workplaces with less medical expertise and fewer resources than hospitals, and to use cooperative relationships with employers, public health experts and other government agencies to promote TB control. OSHA will also continue to enforce the General Duty Clause of the OSH Act and relevant existing standards in situations where employers' failure to implement available precautions exposes workers to the hazard of TB infection.

DATES: This withdrawal is effective December 31, 2003.

FOR FURTHER INFORMATION CONTACT: George Shaw, OSHA Office of Communication, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On August 25, 1993, the Coalition to Fight TB in the Workplace petitioned OSHA to promulgate both an Emergency Temporary Standard (ETS) under section 6(c) of the Occupational Safety and Health Act (OSH Act), and a permanent occupational health standard under section 6(b) of the Act to protect workers from occupational exposure to TB (Ex.1). 29 U.S.C. 655(b), 655(c). Citing the resurgence of TB at that time and the emergence and increasing prevalence of multi-drug resistant TB (MDR–TB), the petition argued that a mandatory standard was needed to address the hazards associated with occupational exposure to TB. According to the petition, TB Guidelines developed by the Federal Centers for Disease Control and Prevention (CDC) were not an adequate response to this hazard because the guidelines were not mandatory and were not being implemented fully or rigorously in most workplaces. The petition also requested that, as an interim measure, OSHA immediately issue nationwide enforcement guidelines.

On October 8, 1993, OSHA issued a directive governing enforcement activities to address occupational exposure to TB. (Ex. 7–1–A, updated February 9, 1996) The directive explained that, although OSHA had no standard directed specifically at occupational exposure to TB, some of its generally applicable standards provide protection from this hazard. For example, OSHA's Respiratory Protection Standard, 29 CFR 1910.134, requires employers to provide protection to workers exposed to airborne hazards. When this standard was revised in 1998, the earlier version was recodified as an interim standard governing respirators used to provide protection from TB. (29 CFR 1910.139; 63 FR 1152) (For the revocation of this rule, see the final rule published elsewhere in this separate part of the **Federal Register**) Another standard, 29 CFR 1901.145, requires accident prevention tags to warn of biological hazards. In addition, section 5(a)(1), the General Duty Clause of the Act, requires that each employer:

> * * * furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

OSHA compliance personnel were directed to evaluate employers' efforts to protect their workers from TB at health care facilities and other workplaces where CDC had identified a risk of occupational TB transmission, as well as to respond to complaints about inadequate TB control measures. The TB Directive is still in effect. OSHA has also implemented a number of National and Local 2002–2003 National Emphasis Program (NEP) for nursing and personal care facilities directed enforcement personnel to determine whether each facility where there was a suspect or confirmed TB case within the past six months had implemented appropriate infection control procedures, including isolation procedures and employee skin tests. OSHA conducted 1000 inspections under the NEP this year.

On January 26, 1994, OSHA responded to the rulemaking petition, saying that it was initiating rulemaking on a permanent standard, but would not issue an ETS. On October 17, 1997, OSHA published a Proposed Rule on Occupational Exposure to Tuberculosis (62 FR 54160). In the proposal, the Agency made a preliminary determination that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings faced a significant risk of incurring TB infection through occupational exposure. The Agency also made a preliminary conclusion that use of established infection prevention and control measures could reduce or eliminate this significant risk. The protective measures OSHA proposed were based in large part on existing CDC guidelines, and included instituting procedures for the early identification and treatment of TB patients, isolating patients with infectious TB in rooms designed to protect others from contact with disease-causing microorganisms, requiring healthcare workers to use respirators to perform certain high-hazard procedures on infectious patients, training workers in TB recognition and control, and providing medical follow-up for occupationally exposed workers who become infected and information to their colleagues with similar exposures.

OSHA accepted comments and held public hearings on the proposed standard in 1998. Additional comments on specific issues were also accepted in 1999 and 2002. (64 FR 32447 (June 17, 1999); 64 FR 34625 (June 28, 1999); 67 FR 3465 (January 24, 2002); 67 FR 9934 (March 5, 2002)) On the latter occasion, OSHA asked for comment on a revised risk assessment and peer reviews of that assessment, as well as on a National Academy of Sciences/Institute of Medicine (NAS/IOM) report, "Tuberculosis in the Workplace," that Congress had commissioned in 1999. (Exs. 184; 185; 186; 187)

Rulemaking participants represented diverse constituencies, including public health organizations such as the CDC, the American Lung Association's American Thoracic Society, the Infectious Disease Society of America, the National TB Controller's Association, and state and local health departments; labor unions such as the American Federation of State, County, and Municipal Employees and the Service Employees International Union; safety and health professionals and employees working in hospitals, correctional facilities, TB clinics, nursing homes, drug treatment centers and homeless shelters; and professional and trade associations such as the Society of Healthcare Epidemiologists of America, the American Hospital Association and the Association for Professionals in Infection Control and Epidemiology. These groups have extensive experience in TB control, and provided a broad range of perspectives on the issues involved in the rulemaking.

II. Reasons for Withdrawal of the Proposed Standard

OSHA has decided not to promulgate a standard addressing occupational exposure to TB because it does not believe a standard would substantially reduce the occupational risk of TB infection. Many commenters argued forcefully that the proposed rule was based on an overestimate of this risk. In addition, existing TB control efforts, initiated by the Federal government in concert with other public health agencies, have led to a dramatic decline in TB over the past decade, greatly reducing the risk of occupational exposure to TB. Because of these TB control efforts, effective infection control measures are already in place, particularly in hospitals, which is where the occupational risk of TB exposure would be most severe.

Moreover, much of the current occupational transmission appears to occur when workers do not realize that a patient, client, or other contact has infectious TB. An OSHA standard is unlikely to be more effective than the CDC guidelines in eliminating this risk. OSHA believes that workers in many situations, particularly those with limited medical qualifications and resources, will not be able to identify or diagnose currently undiagnosed TB cases frequently and rapidly enough to prevent this transmission from occurring. Risk to workers encountering undiagnosed cases will be reduced most effectively by reducing even further the incidence of TB in the population as a whole, and therefore in their client populations. OSHA will use technical assistance, outreach, and cooperative activities to assist employers and their workers in implementing infection control measures. In addition, OSHA will continue to use its existing enforcement tools, as appropriate, with employers who are not taking adequate action to protect their workers from exposure to TB.

TB in the United States has declined significantly since OSHA decided to propose a TB Standard.

Until 1985, the number and rate of TB cases in the United States had declined steadily for more than 30 years. Unexpectedly, however, the incidence of TB started to increase in 1986. At the peak of this resurgence in 1992, CDC reported 26,673 TB cases (10.5 per 100,000 population)—an increase of 20% over the number of cases, and of more than 12% over the case rate, reported in 1985. The situation was especially pronounced in states with historically high TB rates. In 1992, when the rate of TB for the nation as a whole was 10.5 cases per 100,000 population, New York, Florida, California, Texas and Illinois, had rates ranging from 10.9 to 25.2 per 100,000, and accounted for 58% of the total cases. In addition, by 1991 there had been a seven-fold increase in the percentage of multidrug-resistant TB (MDR–TB), TB that is resistant to both isoniazid and rifampin, the two major drug treatments for the disease. (Ex. 187, p. 13)

The Federal agency with primary responsibility for responding to the TB crisis is the CDC. In 1989, CDC published its "Strategic Plan for the Elimination of Tuberculosis in the United States." (Ex. 6–19, pp. 1–25) This plan, which had been under development since 1984, called for a comprehensive governmental and public health effort to address TB transmission. In 1992, it was supplemented by the CDC's National Action Plan to Combat Multidrug-Resistant Tuberculosis. (Ex. 7–65) These plans provided the framework for the Federal response to the TB resurgence of the late 1980s and early 1990s.

The plans prescribed a broad and multifaceted attack on TB, including infection control guidelines describing methods to reduce transmission in a number of settings; physician education programs and practice guidelines to ensure effective treatment; research into new and faster methods of identifying TB, particularly MDR–TB; the implementation and maintenance of community-based TB control programs, and the development of alternative TB treatments. (Ex. 187, pp. 17–23) As well as beginning work on its TB proposal, OSHA's contribution to this national effort included the enforcement activities described in its 1993 directive, as well as outreach and educational activities directed at employers with workers at risk of occupational exposure to TB. As a result of all of this coordinated activity, starting in 1993, the incidence of TB began to decline again.

By 1996, as OSHA noted in the preamble to its 1997 proposal, both the number and the rate of TB cases were lower than they had been in 1985, before the resurgence began. This decline has continued, and for 2002 CDC reported 15,078 TB cases (5.2 per 100,000 population). These numbers represent a reduction of more than 50% in the rate of TB since the 1992 peak, and of 43.5% in the number of cases. (Table 1) The number of reported TB cases and the national TB case rate are now at their lowest levels since TB reporting began in 1953, with significant decreases occurring in the states where the resurgence was most severe. The most dramatic decline occurred in New York, which in 1992 had the highest TB rate in the Nation, 25.2 cases per 100,000 population. By 2002, it had experienced a 70% decline in the case rate, to 7.5 per 100,000. New York, California, Florida, Texas, and Illinois together account for fully 65% of the decrease in the number of cases since 1992. The number of TB cases in these five states was reduced by about 50% over this period, 7% more than the Nation as a whole. The number and percentage of MDR–TB cases have also declined dramatically over this period. In 2002, 138, or 1.3%, of culture-positive TB cases were resistant to isoniazid and rifampin, down from 468, or 2.7% reported in 1993, a reduction of more than 70% in the number, and 50% in the percentage, of cases that are MDR–TB. (Centers for Disease Control and Prevention, Trends in Tuberculosis Morbidity, (United States, 1992–2002), MMWR 2003; 52: 217–222).

CDC has noted, however, that even though TB is declining in all demographic groups studied, there remains substantial variation in disease incidence among these groups. (MMWR 2003: 52: 217) In 2002, for the first time, more than half of all TB cases occurred in individuals who were born outside of the United States, and CDC believes that the majority of these cases are the result of infections also incurred outside of this country. This suggests that TB transmission in the U.S. may be even less common than the numbers in Table 1 would indicate. Even among the U.S. born population, there are substantial disparities among racial, ethnic, and economic groups, with higher TB rates associated with lower socioeconomic status. (MMWR 2003: 52: 218) Well over half of all TB cases are in individuals who are not in the workforce, so the TB rates for workers are substantially lower than the overall population rates. (Ex. 187, pp. 153, 154 citing MMWR 2003: 52: 222)

TABLE 1.—U.S. TUBERCULOSIS CASES AND CASE RATES PER 100,000 POPULATION

Year	Number	Rate	Percent change number	Percent change rate
1992	26,673	10.5	+1.5	+1.0
1993	25,287	9.8	−5.2	−6.7
1994	24,361	9.4	−3.7	−4.1
1995	22,860	8.7	−6.2	−7.4
1996	21,337	8.0	−6.7	−8.0
1997	19,851	7.4	−7.0	−7.5
1998	18,361	6.8	−7.5	−8.1
1999	17,531	6.4	−4.5	−5.9
2000	16,377	5.8	−6.6	−9.4
2001	15,989	5.6	−2.4	−3.4
2002	15,078	5.2	−5.7	−7.1

From CDC: "Reported Tuberculosis in the United States, 2001"; "Trends in Tuberculosis Morbidity—U.S., 1992–2002."

The occupational risk of TB infection is lower than that reflected in OSHA's proposed standard.

The proposed standard was based on OSHA's preliminary assessment that workers occupationally exposed to TB were at substantially greater risk of TB infection, and therefore of active TB disease and death, than was the general population. Both OSHA's preliminary risk assessment, and the revision released in 2000 were based in large part on published data on the number of workers in different health care and prison settings with skin tests indicating recent TB infection (the conversion rate), and on comparisons of those data to estimates of background conversion rates among comparable populations without occupational exposure. In order to determine the estimated background conversion rates, OSHA used calculations derived from the number of active TB cases reported to CDC in a given year. OSHA assumed that about 10% of infected individuals who do not undergo prophylactic treatment would eventually develop active TB, 40% of them in the first year after infection, 20% in the second year, and the remaining 40% distributed equally through the remainder of their lifetimes. The revised risk assessment estimated that, based on the existing frequency of prophylactic treatment, active TB would occur in only about 6.5% of infected individuals. OSHA also assumed that 7.8% of active TB cases would be fatal.

As both OSHA's peer reviewers and many commenters pointed out, however, there are several uncertainties associated with these calculations, and the risk assessments likely overstated the occupational risk. (Exs. 185; 186; 187, p.153; 189–21; 189–20; 189–32; 189–28; 189–25) First, for a number of reasons ranging from imprecise testing protocols to poor availability of appropriate study populations, data on conversion rates are of less than ideal reliability and estimates of increased risk among occupationally exposed workers are necessarily imprecise. Second, a number of participants pointed to data indicating that far less than 10% of infected individuals, possibly even less than 5%, will develop active TB. (Exs. 185; 187 pp. 152–153, 216–220) This most obviously affects OSHA's estimate of the number of occupationally-acquired infections that will develop into active TB. In addition, because background infection rates were derived in large part by applying this assumption about disease development to actual data on the number of active cases, the assumptions also affect the calculation of excess occupational risk of infection. If only half the assumed percentage of infected individuals develop active TB (5% instead of 10%), the number of TB infections leading to a given number of active TB cases (the background rate) would be twice as high as calculated, meaning that the excess risk of infection attributed to occupational exposure would be lower than originally assumed.

Similarly, even though the fatality rate was not a major basis for OSHA's preliminary determination of significant risk, many participants criticized the assumption that 7.8% of TB cases would be fatal. The IOM report stated that, for healthcare workers who are not immunocompromised or infected with MDR–TB, the risk of death is negligible. (Ex. 187, pp. 154, 222). Several participants noted that the 7.8% mortality rate was derived from 1989 to 1991 data, and that the death rate for those years was much higher than it has been since; in fact, for 1999 and 2000, the death rate was 3%. (Exs. 187, p. 153; 185, p.12; 189–13, p. 3; 189–22, p. 3; 189–25, p. 7; 189–28, p.3)

In any event, whatever may have been the case when the proposal was issued in 1997, there is no dispute that occupational risk has declined as the incidence of TB in the population as a whole has declined. This is demonstrated by the fact that there has been a decline in TB among occupationally exposed workers that mirrors the decline in the population at large. The proposal noted that in the early 1990s, when the record shows that few employers were using infection control measures to protect their workers from exposure to TB, workplace exposures resulted in TB infections, disease and, in some cases death. (Exs. 187, pp. 95–96, 7–3; 5–16; 151–3; 151–15; 5–3; 7–136; 6–25) Healthcare workers represent the largest group of TB-exposed workers, and in the early years of TB recordkeeping, they were more likely than other workers to develop TB. (Exs. 187, pp. 105–107; 7–3; 5–16; 5–11; 151–3; 151–15) As the Society for Healthcare Epidemiologists of America (SHEA) noted, more recent data indicate that healthcare workers "represent a small proportion of all cases and are not disproportionately represented in the TB caseload compared to their presence in the workforce" (Ex. 183–15, p.1–2). IOM reported that for 1998, although healthcare workers accounted for 9% of the working population of the U.S., these workers accounted for only 8% of TB cases among the working population, which does not appear consistent with these workers being at much higher risk of infection than the rest of the population. Moreover, from 1994 to 1998, the TB rate for health care workers declined almost 20%, from 5.6 to 4.6 per 100,000 population, while the rate for other workers remained steady at 5.2 per 100,000. (Ex. 187, p.89)

Because TB rates among healthcare workers vary demographically in a manner similar to rates among the general population, and because it is very difficult to determine whether any individual case was transmitted occupationally, many participants believed that much of the risk to these workers likely arises outside of work. For example, the Infectious Disease Society of America pointed to data "suggest[ing] that community exposure was responsible for most conversions even at a hospital which cares for a large number of TB patients." (Ex. 183–1, p.2) IOM pointed out that foreign-born workers account for a very high percentage of TB cases in healthcare workers. (Ex. 187, p. 89) Many of these workers are from countries such as India and the Philippines, which have very high TB rates.

Increased implementation of TB controls has reduced TB levels.

The record contains virtually unanimous agreement on two crucial points. First, along with the spread of AIDS and an influx of immigrants from areas where TB is common, widespread complacency about TB and a consequent lack of resources focused on TB prevention contributed significantly to the 1985–1992 resurgence of the disease. (62 FR 54173, 54175; NY TR, p. 211) Second, the post-1992 decline in TB has resulted from public health and infection control measures taken as part of the intense Federally-coordinated response to the resurgence. (62 FR 54175, 54176; DC TR, pp. 767, 884) Primarily because of this CDC-coordinated anti-TB campaign, the public and occupational health communities better understand the factors creating risk of TB transmission and disease, are more knowledgeable about TB containment strategies, and are more aware of the importance of implementing those strategies. (Exs. 187, pp. 13–22, 82; 183–15, p. 1; TR NY p. 212)

Prominent among these TB control strategies are the recommendations in several CDC guidelines for preventing the transmission of TB. CDC updated its TB guidelines for health care settings (first issued in 1982) in 1990 and 1994. (Ex. 4B) The guidelines recommend measures such as early identification and isolation of individuals with infectious TB, prompt initiation of therapy for these individuals, the use of negative pressure ventilation in TB isolation rooms, the use of respiratory protection for health care workers performing high-hazard procedures or working in TB isolation rooms, and employee tuberculin skin testing and training. CDC issued additional guidelines for long term care facilities in 1990, for facilities dealing with homeless persons in 1992, and for correctional facilities in 1996, all locations where the resident populations have relatively high levels of infectious TB. (Exs. 3–35; 6–15; 7–284) As part of its outreach and compliance assistance efforts, OSHA notifies employers of these guidelines, and provides links to them on its own Web site.

Because TB is an airborne hazard, the CDC guidelines have recommended that exposed workers wear respirators. OSHA requires the use of respirators certified by CDC's National Institute for Occupational Safety and Health (NIOSH). See 29 CFR 1910.134; 29 CFR 1910.139 (1997)(to be revoked). In 1992, NIOSH recommended specific types of respirators for health care workers working around TB patients, and CDC's 1994 guidelines listed specific performance criteria that a respirator needed to meet to provide protection against TB. (Exs. 7–64; 4B) In 1995, NIOSH issued a new certification protocol for respirators, creating new classes of respirators that meet the CDC performance criteria. One new type of respirator is the N95, now the most frequently used respirator for TB protection. (Ex. 7–261)

The record shows that compliance with CDC's TB guidelines has increased significantly since OSHA began work on a TB standard in 1993. Compliance is most extensive in hospitals. Hospitals are where the greatest risk of TB exposure occurs, because most TB cases are diagnosed and treated in a hospital setting, and this diagnosis and treatment often involves the use of cough-inducing procedures such as sputum induction and bronchoscopies that are likely to expose workers to high concentrations of infectious material. During the rulemaking, the American Hospital Association (AHA) relied on the results of 1992 and 1996 surveys that it conducted in conjunction with CDC to show that "hospitals have made significant progress in implementing control measures to prevent transmission of TB consistent with the 1994 CDC guidelines." (Ex. 17–454) As shown in Table 2, by 1996, the vast majority of hospitals were using isolation rooms meeting CDC's criteria, providing appropriate respiratory protection, and performing periodic skin testing of potentially exposed workers.

TABLE 2.—COMPARISON OF TUBERCULOSIS CONTROL MEASURES FOR 103 HOSPITALS THAT REPORTED MORE THAN SIX ADMISSIONS OF PATIENTS WITH TUBERCULOSIS IN 1992 CDC SURVEY AND THAT ALSO RESPONDED TO 1996 CDC SURVEY (EX. 187, P. 111)

	1992 number (%)	1996 number (%)
Engineering Controls:		
• Isolation rooms meeting CDC criteria	59/92 (64)	99/103 (96)
• Routine check of negative air pressure	42/85 (49)	96/99 (97)
• Monthly check of negative air pressure	5/35 (14)	76/90 (84)
Respiratory Protection[1]**:**		
• Nonfitted surgical mask	69/101 (68)	1/103 (1)
• Soft mask, molded or fitted	34/101 (34)	NA
• Particulate respirator	8/101 (98)	40/103 (39)
• N95	NA	85/103 (83)
Tuberculin Skin Testing:		
Testing by Worker Category:		
• Nurses	103/103 (100)	103/103 (100)
• Respiratory therapists	102/103 (99)	103/103 (100)
• House staff	65/81 (69)	65/73 (89)

TABLE 2.—COMPARISON OF TUBERCULOSIS CONTROL MEASURES FOR 103 HOSPITALS THAT REPORTED MORE THAN SIX ADMISSIONS OF PATIENTS WITH TUBERCULOSIS IN 1992 CDC SURVEY AND THAT ALSO RESPONDED TO 1996 CDC SURVEY (EX. 187, P. 111)—Continued

	1992 number (%)	1996 number (%)
• Attending physicians	43/86 (69)	65/94 (69)
• Students	55/95 (58)	74/97 (76)
Testing Elements:		
• After exposure incident	98/101 (97)	102/103 (99)
• Two-step testing	NA	77/98 (79)
• Maintain yearly reports	64/98 (65)	93/98 (95)

[1] Numbers add to more than one hundred because facilities may use more than one type of mask.

The record also shows increased compliance with TB control procedures in prisons and other correctional facilities. CDC published TB control guidelines for these facilities in June 1996, and surveys it conducted with National Institute of Justice between 1992 and 1997 showed an increasing implementation of TB control measures in correctional facilities. The surveys examined the implementation of recommended control provisions in the Federal Bureau of Prisons facilities, all 50 state systems, and a number of large local jail systems. Results showed that 90% of facilities screened new employees for TB, and 75% of those included periodic tuberculin skin testing. The use of negative pressure isolation rooms increased from 30% in 1993 to nearly 98% in 1997 (for Federal and State systems) and 85% (for local jail systems). The use of directly observed therapy for inmates with active TB disease increased from 77% to 98% for Federal and State systems and 84% to 95% for local jail systems (Ex. 187, p. 113–114). Although an AFSCME report of a 1997 survey of correctional facilities where its members were employed showed "a wide variation of adherence to CDC guidelines from departments that had instituted rigorous programs throughout prison systems to those that had done very little," the survey covered a "very small, nonrandom set" of facilities, and does not contradict the conclusion that compliance in correctional facilities is increasing. (Ex. 189–23, p. 4; 187 p. 116) The evidence in the record indicates that both hospitals and correctional facilities improved their TB control practices significantly over the 1990s.

Taken together, survey results suggest, at a minimum, two conclusions. First, institutional departures from recommended tuberculosis control policies and procedures were common, if not the norm, in the late 1980s and early 1990s. Second, institutions—at least hospitals and correctional facilities—were taking tuberculosis control measures more seriously and reporting substantially higher rates of implementation of recommended measures in later years. (Ex. 187, p. 116).

Evidence about the use of infection control procedures in other types of settings also showed increasing levels of compliance, although generally not as high a level of compliance with CDC guidelines as was occurring in hospitals. (Ex. 187, pp. 114–117; DC TR, p. 676) AFSCME reported that, "in non-hospital healthcare settings, [its] survey revealed inadequate to virtually non-existent TB control programs." (Ex. 189–23, p. 4) As noted above, however, IOM pointed out that this survey was of a "very small, nonrandom set of respondents," only 23 long-term care facilities, 28 mental health facilities, and 28 social service agencies, and that its results "must be viewed with considerable caution." (Ex. 187, p. 116) In contrast to the AFSCME survey, a number of participants provided evidence that voluntary implementation of the CDC TB guidelines had increased dramatically since 1994, even outside of hospitals. For example, Barbara Hood, testifying on behalf of the California Association of Homes and Services for the Aging stated:

> * * * many health care employers have implemented key control measures as recommended in CDC's 1994 TB guidelines and have incorporated these recommendations in their policies and procedures. This has improved screening and surveillance protocols for both residents and staff. As a result, nursing facility providers have significantly reduced the level of TB in long-term care organizations. (LA TR, pp. 124–125)

AHCA also asserted that many nursing and long-term care facilities have protected their workers effectively by implementing many of the CDC recommendations, even though these facilities are not necessarily complying with all the provisions in OSHA's proposal. (Ex. 17–756)

Particularly in nursing homes and other long-term care facilities, this trend has probably been accelerated by the need to comply with requirements for Medicare and Medicaid eligibility. A regulation that took effect in October 1992 requires each of these facilities "to establish and maintain an infection control program * * * to help prevent the development and transmission of disease and infection." (42 CFR 483.65) IOM reports that, at least as of 2000, the guidelines used by state inspectors to determine compliance in nursing homes "specifically require that facilities demonstrate procedures for early detection and management of residents with signs and symptoms of infectious tuberculosis, screening of residents and workers for tuberculosis infection and disease, and evaluation of workers exposed to tuberculosis in the workplace." (Exs. 187, p. 58, n. 3; 17–756) Moreover, the Centers for Medicare and Medicaid Services (CMS) recently inaugurated a new Program of All-inclusive Care for the Elderly (PACE), which requires participants to "follow accepted policies and standard procedures with respect to infection control, including at least the standard precautions developed by the Centers for Disease Control and Prevention." (42 CFR 460.74)

The national efforts to reduce the incidence of TB in the general population have also protected workers by reducing the likelihood that they will encounter infectious TB at work. As the IOM points out, "Overall, fewer cases of tuberculosis and less multidrug-resistant disease means less risk for nurses, doctors, correctional officers, and others who work for organizations that serve people who have tuberculosis or who are at increased risk for the disease." (Ex. 187, p. 104) The Society of Healthcare Epidemiologists of America (SHEA) also credits the efforts of public health officials, government agencies, professional organizations and clinicians for "clearly put[ting] the United States back on the road to TB elimination." (Ex. 183–15, p. 1) The effectiveness of all of these measures is demonstrated by a decline in TB among occupationally exposed workers that has exceeded the decline in the population at large. (Exs. 7–147; 7–148; 7–149; 7–173; 7–167; 151–15; 18–49A; 181–3; 18–53; 187, p. 89)

An OSHA standard would not substantially reduce transmission of TB from undiagnosed sources.

Finally, evidence in the rulemaking record indicates that, with the current level of compliance with CDC guidelines, the "primary risk" of occupational exposure to TB is from individuals with unsuspected and undiagnosed infectious TB. (Ex. 187, p. 2) One commenter, St. Joseph Mercy Hospital, called these exposures the "Achilles heel" of TB control efforts. (Ex. 17–881, p. 3) Although OSHA's proposed standard called for early identification and isolation of infectious TB patients, this early identification can be extremely difficult. (Exs. 5–4; 5–18; 6–27; 7–76; 7–77; 7–78; 7–79; 5–12) An OSHA standard must substantially reduce a significant risk, and OSHA believes it is unlikely that employers will identify enough of the currently undiagnosed TB cases their workers come in contact with to reduce the remaining occupational risk of TB infection substantially. *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute, et al.*, 448 U.S. 607, 642, 653 (1980).

The record shows that there are a number of reasons that a client's or patient's infectious TB may not be recognized. (Exs. 17–11; 17–12; 17–36; 17–458) In some situations, the infectious person may not manifest evident signs and symptoms of TB. And even after receiving training, a worker who is not expecting to see TB, which is especially likely in an area where the disease is uncommon, may not recognize the significance of TB signs and symptoms. In other cases, an exposed employee may lack the clinical expertise or resources to identify a patient or client as a suspect TB case and make a referral for diagnosis.

Lack of recognition may also occur where a worker has contact with many patients or clients who have coughs or other possible TB symptoms. Also, workplaces such as drug treatment centers and homeless shelters operate with unique limitations, and rarely possess either the resources or the clinical expertise to identify and isolate TB cases in a timely manner. (Exs. 187, p. 132; 17–53; 17–76; 17–58; 17–12; DC TR, pp. 2019–2020, 2113, 2131; NY TR, pp. 610, 612; LA TR, pp. 598, 600, 601, 617, 630) They are also less likely to be able to distinguish between active TB disease and other medical conditions with similar symptoms.

As the Association for Professionals in Infection Control and Epidemiology (APIC) put it:

> Obviously, protecting workers against exposure to TB from patients is contingent upon suspecting that the patients have TB in the first place. Patients may initially enter a hospital for a different reason or show only vague symptoms of TB. Until diagnosed, these patients unwittingly expose probably dozens of individuals to their illness. (Ex. 17–671, p. 3)

APIC then reported on 17 outbreaks since 1960 where transmission to healthcare workers was reported, pointing out that 75.6% of the workers were infected by an undiagnosed and unsuspected TB patient. (Id.) The Home Health Services and Staffing Association (HHSSA) also asserted that 75% of TB transmissions from patients to healthcare workers are not preventable because, at the time of transmission, the patient's TB could not be readily identified or even suspected. (Ex. 17–673, p. 3) To the extent that these reports do not reflect advances made in infection control over the last decade, they may overstate the percentage of undiagnosable cases, but HHSSA's and APIC's conclusions about the significance of these cases are consistent with those of the IOM. Moreover, the case reports APIC submitted describe situations where transmissions have occurred, and OSHA's own review of these reports indicates that, even with a modern TB infection control program, a number of the source patients would still not have been diagnosed before healthcare workers were exposed to them.

These reports also show that occupational exposures to undiagnosed TB and potential disease transmission can occur in all settings, including hospitals that have implemented the CDC Guidelines. The IOM pointed out that, in locations such as hospital emergency rooms, exposure may occur before infectious individuals are recognized and isolated, and that infectious individuals may remain asymptomatic for some time. (Ex. 187, p. 135) Consistent with CDC guidelines, the proposal called for treating contacts as having suspected infectious TB if they had both a persistent cough lasting at least three weeks, and at least two of the following additional symptoms: bloody sputum, night sweats, weight loss, fever, and anorexia. (62 FR 54292–3).

First, for workers in residential settings such as nursing homes and correctional facilities, this criterion does not provide any protection in the first three weeks that a resident has symptoms and is not recognized as having TB. In some other settings, identification of infectious individuals depends on the self-reports of patients or clients to determine whether almost any of the symptoms are present. Several participants pointed out that, outside of health care settings, potentially infectious individuals who fear they will be denied a benefit (such as a shelter bed or substance abuse treatment), or be compelled to enter a coercive treatment situation, may feel a strong incentive not to respond honestly to questions about symptoms. (Exs. 18–22A, 18–57A; 183–15, p. 4; NY TR, p. 615; DC TR, pp. 2009; 2034; 2069)

Homeless shelters are a prime example of a population where many clients have the coughs, fevers, night sweats, weight loss, and other symptoms associated with TB. (NY TR, pp. 607–608; Chicago TR, pp. 710–711, 768, 789) These non-hospital settings do not diagnose, treat, or isolate individuals with active TB disease; at most, they screen clients for symptoms of infectious disease and transfer or refer those with suspect symptoms to facilities with appropriate diagnostic and isolation capabilities. (Exs. 17–50; NY TR, p. 697; Chicago TR, pp. 789–790; DC TR, pp. 1867–1868) They rarely possess any means to identify asymptomatic individuals. They often lack the resources even to provide all the services they believe their clients need, and may well resist transferring any of their limited resources to a TB screening program, particularly when, as noted above, the screening may engender fear or hostility in their clients. (Exs 18–22A, 18–57A; 17–50; 183–15, p. 3, NY TR, p. 703; Chicago TR, pp. 701–702, 713; DC TR, pp. 1910, 2046, 2069)

The bottom line is that no infection control regime, including that in OSHA's proposed standard, would have much effect on workplaces where the greatest source of exposure and risk is unsuspected and undiagnosed active TB disease.

The Need for an OSHA Standard

The major issue in the rulemaking was whether, in light of the ongoing decline in the national incidence of TB, the steps that employers were already taking, and the difficulty in identifying many infectious TB patients, there is a current justification for an OSHA rule on occupational exposure to TB. Many participants argued that the rule would not result in a meaningful additional reduction in risk. According to these commenters, the problem addressed by

OSHA's proposed standard has already largely been solved. APIC testified, "Clearly, the TB crisis that OSHA is attempting to address has passed." (DC TR, p. 722). This sentiment was echoed by other commenters, such as the American Medical Association, Infectious Disease Society of America, Home Health Service Staffing Association, American Health Care Association, Society of Healthcare Epidemiologists of America, American Association of Homes and Services for the Aging, who also questioned the need for an OSHA standard in an era of declining TB cases. (Exs.17–719; 183–1; 17–673; 18–61; 17–666; 17–673). The American Lung Association's American Thoracic Society, stated:

> The [proposed] OSHA * * * TB standard, is based heavily on the CDC's 1994 guidelines. * * * The CDC guidelines were an appropriate response at the time they were formulated but the proposed OSHA standard will be far out of proportion to the risk by the time it is implemented and increasingly inappropriate and burdensome with each passing year if the current epidemiologic trends continue. (DC TR, pp. 1035–36)

In contrast, other commenters, such as the United Food and Commercial Workers Union and the Service Employees International Union (SEIU), argued that, because CDC's TB guidelines are not directly enforceable, there remain employers who have placed their workers at risk by failing to implement them fully. (DC TR, p. 676; Ex. 17–1089, p.1–2; DC TR, pp. 635–636). Some of these commenters, such as SEIU, pointed to the geographic variation in TB rates to support the argument that a standard is needed because not all employers are taking appropriate protective action. (Tr LA, pp. 245–246)

In response to these arguments, OSHA acknowledges that a standard is often the most efficient way of assuring that employers reduce their employees' exposure to specific hazards. TB is primarily a public health hazard, however, and occupational exposure at this time is in large part a function of the prevalence of active TB in the population at large. There has been a decade-long decline in TB prevalence, resulting in large part from the Federal resources devoted to public health and infection control measures that were implemented without an OSHA standard in effect.

OSHA believes this shows that, in the unique case of TB, there are powerful incentives for employers to continue to provide appropriate protection even without an OSHA TB standard. The ongoing Federal commitment to TB control provides them with a wealth of information and expert resources to assist in TB control efforts. Among other incentives, hospitals and nursing homes must have infection control plans to qualify for Medicaid and Medicare reimbursement, and are subject to annual reviews to verify their continuing compliance. (Ex 17–756, 42 CFR 482.42; 42 CFR 483.65) Facilities participating in CMS's PACE program must comply with "at least" the CDC guidelines. (42 CFR 460.74) The Joint Commission for the Accreditation of Healthcare Organizations (JCAHO), which many hospitals and nursing homes use to demonstrate qualification for Medicare and Medicaid reimbursement, also requires an infection control plan as a condition of accreditation. (Exs. 17–756; 187, p. 58; Chicago TR, p. 931) The record also shows, as does CDC's new TB elimination plan, that the sobering memory of the 1985–1992 TB resurgence is not likely to fade anytime soon, and that the complacency that led to that resurgence is unlikely to recur. (Ex. 187, p. 21; NY TR, p. 212)

Nor does OSHA believe that the facts that there are pockets of TB prevalence and a few states where TB rates have increased require it to promulgate a standard. First, the states with the highest levels of TB during the resurgence are also states that have been aggressive in implementing control measures, and are among the states where the most significant recent declines have occurred. From 1992 to 2002, only three states reported an increase in their TB rates, and these increases represent only an additional 106 TB cases (which is less than 1% of the total TB cases in the U.S). (Centers for Disease Control and Prevention, Trends in Tuberculosis Morbidity—United States, 1992–2002, MMWR 2003; 52: 217–222) These increases do not detract from the fact that, nationally, there are fewer TB cases and lower TB rates being reported each year. CDC's new plan for TB elimination, CDC's Response to *Ending Neglect*, directs resources specifically at localized areas and population groups who remain at higher risk for TB. (Centers for Disease Control and Prevention. *CDC's Response to Ending Neglect: The Elimination of Tuberculosis in the United States.* Atlanta, GA: U.S. Department of Health and Human Services, CDC; 2002) Even without a standard, OSHA can take appropriate enforcement action to address those situations where employers are not taking adequate steps to reduce their workers' TB exposure.

OSHA has additionally concluded that, as a practical matter, early identification of infectious TB patients will not occur enough more often than it already does to justify adoption of a standard. The fact that TB symptoms are neither universal nor unique to TB could also make OSHA enforcement of an early identification provision highly problematic. As the proposal recognized, identification of suspect cases requires the exercise of judgment. (62 FR 54247) Unless an employer simply fails to implement any identification criteria at all, it would be very difficult to establish when a violation occurs. As noted above, however, the record shows that most affected workplaces with the expertise and other resources to do so have already adopted programs to control exposure, including early identification of infectious TB patients, and OSHA will continue to use its general duty clause to require others to follow suit.

For employers without these resources, OSHA believes that providing assistance in exercising the judgment necessary for an effective early identification program can best be accomplished through outreach, consultation, and education efforts, and OSHA intends to provide this type of assistance. CDC's targeted guidelines already provide some guidance, and OSHA believes that the most effective approaches are likely to be the integrated ones that build on the CDC guidelines and target occupational TB transmission as part of a broader TB control program.

As noted above, workers are exposed to TB when they serve patients or clients who have infectious disease, and one of the most straightforward ways to reduce that exposure is to reduce the number of such contacts that occur by reducing the rate of infectious TB in the patient or client population. As CDC's most recent prevalence data show, ongoing TB reduction efforts have been remarkably effective in achieving this goal.

Nor is there any indication that this success is leading to the type of complacency and inattention that contributed to the last TB resurgence. CDC's new TB control plan takes full account of the "scientific, programmatic, and health-sector developments of the last decade." This plan is focused strongly on the current demographic and epidemiological profile of TB, with one of its major goals being to reduce the global burden of TB. In *CDC's Response to Ending Neglect*, CDC explained that "the heavy impact of TB in foreign-born persons living in this country" is a major factor tempering its recent success in TB control." (CDC; 2002, p. 13) Now that foreign-born residents account for more than half the incidence of TB in the United States, reducing TB in this population is more critical than ever to controlling TB domestically. CDC is much better suited than OSHA, which has authority only over domestic workplaces and employers, to address this increasingly important aspect of TB control.

OSHA believes its role in this process should be to continue with the initiatives that have already contributed to reducing the occupational risk of TB infection. OSHA will continue to provide both industry- and workplace-specific TB control information and guidance, through its website as well as targeted outreach activities. OSHA will also continue the successful enforcement policy, described in its TB Enforcement Directive and in several national, local and regional emphasis programs targeting TB risks, to make sure that employers protect their employees from TB infection. In fact, OSHA's experience in these programs has helped convince it of the high level of compliance with TB exposure safeguards. When appropriate, however, OSHA has cited these employers for violations of the general duty clause, the TB-specific respirator standard, or other applicable requirements. These citations, (32 of the general duty clause and 92 of the TB-specific respirator standard since the proposal was issued), have provided protection to a broad range of workers, including ambulance drivers, physicians, therapists, lab personnel, health care social workers, emergency medical technicians, support personnel, and morticians. The availability of this enforcement mechanism, coupled with OSHA's ongoing monitoring of TB-control efforts, will help prevent the widespread complacency of the mid-1980s from recurring, and will allow an expeditious response to any backsliding that does occur.

In summary, OSHA has concluded that the success of existing Federal and community programs to control TB has significantly diminished the need for a standard, and that promulgating a standard will not reduce the remaining occupational risk substantially. Under the leadership of the CDC, community, institutional, and occupational public health efforts, including OSHA's own continuing outreach and enforcement, have increased worker and employer awareness of the factors leading to TB infection and disease and led to an increased implementation of CDC's TB guidelines. OSHA also intends to continue to use its enforcement, outreach, and education resources to ensure that employers' TB control efforts remain effective.

Review Under Executive Order

This document has been reviewed by OMB pursuant to E.O. 12866.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210. It is issued pursuant to sections 4,6, and 8 of the Occupational and Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary's Order 3–2000, and 29 CFR part 1911.

Signed at Washington, DC, this 19th day of December, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–31845 Filed 12–30–03; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AA05

Respiratory Protection for M. Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; revocation.

SUMMARY: OSHA is revoking "Respiratory Protection for M. Tuberculosis" (29 CFR 1910.139) which is simply a recodification of OSHA's 1971 General Industry Respiratory Protection standard that was revised in 1998. At the time of the revision of the 1971 standard, OSHA decided that, because its proposed standard for occupational exposure to TB, published three months earlier, included a comprehensive respiratory protection provision, the Agency would allow compliance with the previous respirator standard for TB protection until completion of the TB rulemaking. Thus, pending conclusion of the TB rulemaking, OSHA redesignated the old Respiratory Protection Standard in a new section entitled "Respiratory Protection for M. tuberculosis". However, in a document published elsewhere in this separate part of the **Federal Register**, OSHA is today withdrawing its proposed TB standard. Because this withdrawal concludes the TB rulemaking, OSHA is revoking the redesignated Respiratory Protection Standard, and will begin applying the General Industry Respiratory Protection Standard (29 CFR 1910.134) to respiratory protection against TB.

DATES: This revocation is effective December 31, 2003.

FOR FURTHER INFORMATION CONTACT: George Shaw, OSHA Office of Communication, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 1997, OSHA published its Notice of Proposed Rulemaking (NPRM) for Occupational Exposure to TB (62 FR 54160). In the proposal, the Agency made a preliminary determination that workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings were at significant risk of incurring TB infection while caring for their patients and clients or performing certain procedures. The Agency also preliminarily concluded that this significant risk can be minimized or eliminated using infection prevention and control measures that have been demonstrated to be highly effective in reducing or eliminating job-related TB infections. These measures included the use of respiratory protection when performing certain high-hazard procedures on infectious individuals.

On January 8, 1998 OSHA revised its 1971 General Industry Standard for Respiratory Protection (63 FR 1152). Because the 1997 TB proposal included all of the respiratory protection provisions that OSHA believed would be applicable to respirator use for TB protection, the Agency did not require this use to comply with the new § 1910.134 during the rulemaking proceedings on the TB proposal. Instead, pending conclusion of the TB rulemaking, OSHA redesignated the old § 1910.134 as § 1910.139, "Respiratory protection for M. tuberculosis."

However, OSHA is today withdrawing its proposed TB standard (*see* Occupational Exposure to Tuberculosis; Proposed Rule; Withdrawal published elsewhere in this **Federal Register**), and with this document is revoking 29 CFR 1910.139.

II. Reasons for the Revocation of 29 CFR 1910.139

OSHA is revoking 29 CFR 1910.139 because it was intended to apply only during the pendency of the TB rulemaking, and that rulemaking is being terminated. The standard being revoked is simply a recodification of OSHA's 1971 General Industry Respiratory Protection Standard, 29 CFR 1910.134, which was revised in 1998. (63 FR 1152, (January 8, 1998)). At the time of the revision, OSHA decided that, because the TB proposal issued three months earlier included a self-contained respiratory protection provision, the Agency would allow compliance with the previous respirator standard for TB protection until completion of the TB rulemaking. (62 FR 54289); (63 FR 1180). To accomplish this, OSHA redesignated the old § 1910.134 as § 1910.139, "Respiratory protection for M. tuberculosis." OSHA made clear in both rulemakings, however, that it intended the respiratory protection requirements ultimately made applicable to TB protection to be consistent with the revised § 1910.134, and the TB proposal was itself consistent with that revision. (62 FR 54257, 54287–54288; 63 FR 1180). In fact, the relevant comments from the Respiratory Protection rulemaking were made part of the TB rulemaking. (Exs. 150–1 through 150–178): With this termination of the TB rulemaking, it is now appropriate for OSHA to begin applying the revised 29 CFR 1910.134 to respiratory protection against TB.

Applying the General Industry Respiratory Protection standard to the use of respirators for TB protection is supported by the records in both the TB and respirator rulemaking proceedings. OSHA noted in the proposed TB rule that one option was to apply the general respirator standard to TB protection. (62 FR 54257). A number of participants in the TB rulemaking urged OSHA to take this course. (*See, e.g.*, Exs. 17–215; 17–271; 17–455; 17–570; 17–906; 17–1145). The proposed TB standard's respiratory protection requirements were largely consistent with those in the revised general industry standard. One of the hazards the latter standard was designed to address is the "inhalation of bacteria * * * including tuberculosis." (63 FR 1159).

The revised general industry standard reflects the Agency's evaluation of current knowledge and technology as they relate to effective respiratory protection programs. The revisions help to ensure that employers have sufficient guidance to select and maintain appropriate respiratory protection. Given the extensive rulemaking undertaken to establish these requirements, and the intensive review and consideration of all issues related to respiratory protection in that rulemaking, the Agency believes it is appropriate and necessary to ensure that employees exposed to TB have the same protections as employees exposed to other types of hazards in the workplace. All facilities that use respirators for any purpose other than TB protection are already required to comply with the revised respiratory protection standard. The revised standard has also been upheld in its entirety by the U.S. Court of Appeals for the Eleventh Circuit. *AISI* v. *OSHA*, 182 F.3d 1261, 1273 (11th Cir. 1999).

The new requirements in the revised respiratory protection standard include updating the facility's respirator program, complying with amended medical evaluation requirements, annual fit testing of respirators, and some training and recordkeeping provisions. These provisions were also included in the TB proposal, and the only one that elicited significant comment was the requirement for annual fit testing.

With regard to updating each facility's respiratory protection program,

§ 1910.139 provides the skeletal requirements for such a program, but does not elaborate on what would be required in each element. The revised respiratory protection rule provides employers with additional guidance on what constitutes an appropriate and effective program, giving employers a better road map to follow when relying on respiratory protection in the workplace. It is the Agency's view, supported by the Respiratory Protection rulemaking record, that an effective program requires a systematic approach to evaluating workplace conditions, selecting the appropriate respirator, ensuring the respirator fits, and maintaining the respirator properly. The revised standard specifies how this systematic approach is to be implemented in the workplace.

Similarly, § 1910.139 requires medical evaluation, but does not set forth the components of the evaluation, or how it is to be accomplished. The medical evaluation provisions of the revised § 1910.134 set forth the minimum requirements employers must implement to determine if employees are medically qualified to wear respirators in their places of work. The employer must provide a medical evaluation for each covered employee, performed by either a physician or another licensed health care professional. Information from the medical evaluation is to be used to determine the employee's eligibility to wear the respirator proposed for the employee. The employer must base the determination on the recommendation of the health care professional. Administration of the medical questionnaire in § 1910.134, Appendix C, is a further requirement.

The medical evaluation provisions of revised § 1910.134 are significantly better than the original standard. They ensure that the health care professional, the employee, and the employer are aware of the factors that must be considered in evaluating an employee's respiratory protection needs, and provide the tools to ensure appropriate decisions are made.

With regard to employee training, § 1910.139 states only that employees must be "instructed and trained in the proper use of respirators and their limitations," with no provision for annual retraining. Revised § 1910.134 requires employers to provide effective training to employees who are required to use respirators. The training must be comprehensive, understandable and recur at least annually. Employers must provide the training before their employees are required to use the respirator. Topics to be covered include why the respirator is necessary, what the limitations of the equipment are, how to use the respirator in emergencies, how to use and care for the equipment, and how to recognize the medical signs and symptoms that may limit or prevent the use of respirators. OSHA has determined that these more detailed requirements regarding employee training will help to ensure that the training provided is appropriate and effective, thus leading to a more effective workplace respiratory protection program.

Section 1910.134 requires more recordkeeping than § 1910.139. Section 1910.134 consolidates recordkeeping requirements with respect to medical evaluations, fit testing and the respirator program into one section of the standard. Commenters agreed that such consolidation of requirements would improve understanding of the standard's recordkeeping obligations (Exs. 54–267; 54–286).

Both § 1910.139 and § 1910.134 recognize that fit testing is an important component of an effective respiratory protection program. Fit testing is necessary because a respirator that does not fit properly provides only the illusion of protection. While it has long been known that fit can affect respiratory protection significantly, particularly for these types of respirators that depend on filtering the contaminant (rather than providing a separate source of uncontaminated air), specific protocols for fit testing are a more recent development. The revised § 1910.134 reflects this newer technology, and provides specific guidance on appropriate fit testing procedures. OSHA believes that following these types of procedures is necessary to ensure that respirators are really providing the protection needed.

The frequency of fit testing was an issue in both the respiratory Protection and TB rulemakings, and it generated significant comment in both records. There was little dispute that some additional fit testing beyond the initial test is necessary because respirator fit can be affected by a number of factors, including the size and shape of a person's face, dental changes, changes in the types of movements required to perform work when wearing the respirator, and the presence of facial hair. As OSHA explained when it promulgated the annual retesting requirement in 29 CFR 1910.134, waiting more than a year between fit tests allows a substantial fraction of workers to lose the protection respirators provide (63 FR 1224). This is no less true when respirators are used for TB protection than it is when they are used for protection against other hazards.

Consistent with current practice, CDC guidelines and NIOSH recommendations, and the selection criteria in § 1910.134, OSHA anticipates that half-mask N95 air-purifying filtering facepiece respirators will be the primary type of respirator used for TB protection. This type of respirator has a securely-fitting facepiece that filters the air, preventing inhalation of contaminants. Effective protection requires a good face-to-facepiece seal in order to ensure that there are no gaps through which contaminated air can enter the facepiece and be breathed in by the worker. Thus in order to provide protection, the respirator must fit the employee well enough to prevent leakage from occurring. This is particularly important for a hazard such as TB that does not have any warning properties that would allow an employee to detect that it is being inhaled, *e.g.*, there is no odor that might indicate a breakthrough.

The proposed TB standard acknowledged these issues by proposing that fit testing be performed as follows. Each employee who would have been required to wear a tight-fitting respirator would have had to pass a fit test at the time of initial fitting of the respirator; whenever changes occurred in the employee's facial characteristics that affected the fit of the respirator; and whenever a different size or make of respirator was assigned for use by that employee. At a minimum, the proposal would have required fit tests to be conducted annually unless an annual medical evaluation (also required by the proposal) indicated that a fit test was not necessary. The revised respiratory protection standard imposes the same requirements, except that it does not require annual medical evaluations, and annual fit tests are required for all respirator users.

Several commenters supported the proposed provision allowing a licensed health care professional to determine the need for an annual fit test during a face-to-face evaluation. (*See, e.g.*, Exs. 17–671; 17–454; 17–932.) However, others argued compellingly that there are no objective data demonstrating that it is possible to determine whether a respirator fits by examining a person's face. (*See, e.g.*, Exs. 17–271; 17–697; 18–60A; 17–455; 17–768; 17–920).

A number of commenters argued that repeat fit testing should only be done when the respirator changes, or when there is a significant change in the employee's physical condition that may interfere with the facepiece seal (*see, e.g.*, Exs. 150–56; 150–69; 150–125).

Some infection control professionals cited additional costs and a perceived lack of benefits from repeating fit testing on an annual basis. (*See, e.g.*, Exs. 17–671–I; 17–671–X; 17–211; 17–464; 189–22; 183–15; 183–13.) In particular, the Infectious Disease Society of America cited studies by Blumberg *et al.* that examined tuberculin skin test conversion rates before and after the implementation of expanded TB control measures at a large metropolitan hospital. (Exs. 189, p. 22; 18–5300; 7–173.) The implementation of expanded controls, which included retrofitting rooms into negative-pressure isolation rooms, expanding respiratory isolation policies, 6-month skin testing of all health care workers, and the addition of NIOSH certified respiratory protection, led to a 90% reduction in skin test conversions. Because annual fit testing was not a part of the expanded infection control program, the IDSA asserted that these studies demonstrate that there is no benefit to annual fit testing.

The fact that a single study of workers whose respirators were fit tested only once did not show excess TB infections does not overcome the evidence supporting OSHA's conclusion in the revised respiratory protection standard that "annual fit testing * * * is appropriate to protect employee health" (63 FR 1224). The studies by Blumberg, *et al.* were not designed to study the efficacy of fit testing but rather the efficacy of an overall expanded TB infection control program in which many different protective measures were implemented simultaneously. Thus, it is difficult, if not impossible, to determine the relative efficacy of any one measure. Moreover, not all exposed workers would have been infected even without respirators. In the absence of periodic fit testing, there is no way to determine which of the exposed workers were wearing properly fitting respirators. It is the fit of a respirator that determines its effectiveness, and the record contains no evidence indicating that factors affecting fit are different for TB-exposed workers than they are for other workers.

A large number of participants in both the respiratory protection and TB rulemakings supported annual fit testing (*see, e.g.*, Exs. 150–23; 150–24; 150–27; 150–45; 150–52; 150–53; 150–58; 150–74; 150–89; 150–93; 150–96; 150–103; 150–117; 150–123; 150–45; 150–52; 150–141; Respiratory Protection Hearing TR, pp. 1573, 1610, 1653, 1674). These participants agreed that fit is not static, and that a one-time, initial fit test without a requirement for annual re-fitting does not ensure that the appropriate level of protection would continue to be provided over time. A number of participants in the TB rulemaking suggested that the respiratory protection standard be applied in its entirety for protection from TB exposures. For example, Health Evaluation Programs, Inc. indicated:

> Respirator fit testing is not a hazard-specific or industry specific activity. It is specific to tight-fitting respirators worn by people. OSHA recognized this when the new Respiratory Standard 29 CFR 1910.134 was released on January 8, 1998. The fit testing provisions of this new standard replace those found in the various substance-specific OSHA standards. Likewise, there is no reason to make an exception for TB. The respirator either provides the level of fit it is rated for, or it does not. (Ex. 17–570)

This commenter went on to state:

> OSHA's responsibility to base a final standard on the best respirator information available can best be served by incorporating what OSHA has already learned and decided regarding respirator fit testing frequency.

Another commenter, Certified Industrial Hygienist David L. Spelce, noted the particular aspects of TB exposures that indicate fit testing is necessary to ensure proper fit for protective purposes, as well as reinforcing the training aspects of fit testing that help employees don respirators appropriately:

> Annual fit testing provides the opportunity for employees to receive feedback on how well they are donning their respirator. TB droplet nuclei have no warning properties such as taste, odor, or irritation. Employees cannot detect if TB droplet nuclei leak into their respirators. Qualitative fit test challenge agents are detectable by odor, taste, or irritation and provide instant feedback as to how well the respirator fits and if the respirator was properly donned. Quantitative fit tests also provide instant feedback to employees through instrumentation. Employees need fit testing annually as part of training to ensure they don the respirators correctly so that the respirator properly seals to their face. Fit testing is one of the respirator program elements that is essential to ensure the respirators issued to employees provide the protection factor assigned to that particular class of respirator. (Ex. 17–920)

(*See also* Exs. 17–455; 17–591; 17–717; 18–53; 183–7).

Some commenters who supported the concept of periodic fit testing suggested varying time intervals for that testing, either more or less frequent than annually. (Exs. 150–16; 150–55; 150–124; 54–290.) NIOSH, in addition to its support for applying all of the provisions of the revised § 1910.134 to TB exposures, also supported periodic fit testing for those exposures. (Exs. 18–60A; 189–36.) NIOSH suggested that, in the absence of TB-specific data on the appropriate fit testing interval, the "record for and the provisions of 29 CFR 1910.134 [would] be the best guide." (Ex. 18–60A.)

It should also be noted that the annual fit testing requirement of the revised respiratory protection standard was specifically challenged in court, and was upheld. The court concluded that the requirement is supported by substantial evidence in the record, even though "some evidence" indicated that such frequent retesting might not be necessary. 182 F.3d at 1273.

In summary, OSHA believes that the provisions of revised § 1910.134 represent the Agency's assessment of the best information available at the time that rule was issued to ensure that respiratory protection in the workplace is effective. In order to extend similar protection to workers exposed to TB in the workplace, OSHA will apply all of the provisions of § 1910.134, including annual fit testing to TB exposures. Because of the current widespread adherence to § 1910.134, and the ongoing nationwide decline in active TB, the Agency believes the rulemaking records for both the revised respiratory protection standard and the proposed TB standard support such an approach to respiratory protection.

III. Summary of the Final Economic Analysis and Regulatory Flexibility Certification

Introduction

By including TB-related respirator use in Section 134, OSHA is imposing some new requirements on employers who require their employees to use respirators for this purpose. However, this action is not a significant rulemaking under Executive Order 12866, or a "major rule" under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501) or Section 801 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601). Even though this action does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant statutes, as shown in the remainder of this summary of the Final Economic Analysis and Regulatory Flexibility Certification, it was reviewed by OMB pursuant to E.O. 12866. (The full analysis this summary relies upon has been entered into the docket as Ex. 192.)

Affected Establishments

The scope of this action is limited to establishments in the health services industry (SIC 80) that follow the CDC guidelines and provide respiratory protection for employees potentially exposed to tuberculosis. These establishments are primarily hospitals. To the extent that patients with active tuberculosis may be treated in other health services facilities, such as those that may be affiliated with nursing homes, correctional facilities, or substance abuse treatment facilities, these may also be potentially affected by this action.

An estimated 6,500 establishments are potentially affected by this action. The employees who would be covered are those using respirators for protection against occupational exposure to TB. Unfortunately, there are no data showing exactly how many persons use respirators for the purpose of protecting against occupational exposure to tuberculosis. For the purposes of this analysis, OSHA is using a BLS estimate of the number of persons using filtering face piece respirators in the health care sector. This results in an estimate of 638,000 affected employees. Using this estimate overestimates the number of respirator users using respirators for occupational exposure to TB by including respirator users in unaffected sectors and by including employees using respirators for reasons other than occupational exposure to TB. However, the estimate may exclude some employees who should be using respirators for occupational exposure to TB and are not doing so.

An estimated 5,312 of the potentially affected establishments are small entities. Small entities were identified in accordance with the definitions established by the Small Business Administration, as specified in the Regulatory Flexibility Act. These small entities employ approximately 457,000 of the employees potentially affected by this action.

Benefits

The employees covered by this action are those using respirators for protection against potential occupational exposure to tuberculosis. The reduction in risk achieved through compliance with the requirements of this action will result in reductions in the numbers of infections, active disease cases, and fatalities occurring among the covered workers. Although the employees working in establishments covered by this action will be the primary beneficiaries of the increased protection provided by the standard, many other individuals will also benefit from the standard because tuberculosis is a communicable disease.

For the final respirator program standard, OSHA concluded based on the best available evidence that from 5 to 50 percent of employees would lack a proper fit without annual fit testing. OSHA further concluded that overall, moving from full compliance with the old standard to full compliance with the new standard would reduce exposures by 27 percent on average across all employees covered by the respirator protection program. OSHA estimates that this action will have similar effects in reducing the number of infections, active disease cases, and fatalities occurring among the covered workers.

Technological Feasibility

In accordance with the provisions of the OSH Act, OSHA has reviewed the requirements of this action and has assessed their technological feasibility. As a result of this review, OSHA has determined that fulfilling the resulting requirements of this action is technologically feasible.

Compliance with the requirements of the action can be achieved with methods and measures that have already been developed and implemented in many establishments already under the respirator protection standard. As established in the final respiratory protection standard, the standard's provisions in the respirator program standard require only technology that is currently and readily available and widely in use. There is no barrier to applying these technologies in a health care setting. In fact, the requirements added by this action are already applicable to and have already been implemented in many of the affected health care establishments to the extent that any use of respirator protection is occurring for purposes other than protection from occupational exposure to tuberculosis.

Costs of Compliance

When OSHA promulgated its final respiratory protection standard in 1998, all potentially affected establishments and employees, including those in the health services industry and those using respirators only for protection from tuberculosis, were included in the analysis of the costs of compliance and potential impacts. This was done because of uncertainty as to the extent to which respirators were being used for protection against occupational exposure to tuberculosis. Thus, the conclusions and determinations regarding impacts and feasibility associated with the provisions of the standard for these establishments have already been established by the evidence in the record and other documents and decisions associated with the rulemaking. Nevertheless, the final economic analysis for this action analyzes the full economic impacts of this action alone. Using the estimate of the number of respirator users provided by BLS, which probably overestimates the number of affected employees, the total annualized estimated costs for this action are $11.7 million, as shown in Table 1. The largest component of the costs is comprised of the requirements associated with employee fit-testing and training (which OSHA assumes will be done at the same time), which account for about 92 percent of the total costs, or $10.7 million. Costs associated with revising respirator programs and with the recordkeeping requirements have an estimated annualized cost of about $1 million. Given these costs, this action is not an economically significant rule with respect to E0 12866.

TABLE 1.—COMPLIANCE COSTS ASSOCIATED WITH REVISED REQUIREMENTS FOR RESPIRATORY PROTECTION

Type of cost	Annualized incremental costs
Respirator Program	$325,000
Fit Testing And Training	10,716,719
Recordkeeping	638,000
Total	11,679,719

Economic Feasibility

In order to assess the nature and magnitude of economic impacts, OSHA compares the estimated costs of compliance to industry revenues and profits. The estimated compliance costs represent less than 0.005 percent of the revenues of the affected establishments in the hospital sector. The estimated compliance costs also represent about 0.08 percent of profits among affected for-profit establishments. For these establishments, the costs of compliance with the OSHA action would also be economically feasible. The affected establishments face more significant increases in costs or reductions in revenues on a continuing basis, through changes in rent, labor costs, utility costs, and costs of other resources purchased, through changes in levels of donations and contributions provided, and through changes in government funding levels. Even if such costs cannot be passed on to consumers, changes in revenues or profits of this magnitude will not threaten the existence or competitive structure of an industry [the test for economic feasibility stated in *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189, 1272 (D.C. Circuit 1980)].

Regulatory Flexibility Screening Analysis

OSHA also analyzed the potential economic impacts of this action on small entities (as defined in accordance with SBA criteria) and on very small establishments (those with fewer than 20 employees). For small entities as defined by SBA criteria, the costs represent 0.008 percent of revenues and 0.21 percent of profits (for those entities which are not nonprofits). For small entities with fewer than 20 employees, the cost also represents 0.008 percent of revenues and 0.21 percent of profits (for those entities which are not nonprofits). OSHA's Procedures define a significant impact as one in which the costs exceed 1 percent of revenues or 5 percent of profits. OSHA therefore certifies that this final regulation will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Analysis

OSHA reviewed this action according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed above in the Final Economic Analysis and Regulatory Flexibility Certification of this preamble, the Agency has determined that this action imposes less than $100 million in costs in any given year on either private or public sector entities. As a result, this is not a major rule under UMRA. OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt a State Plan approved by the Agency. Consequently, this action does not meet the definition of a "Federal intergovernmental mandate" (see section 421(5) of the UMRA (2 U.S.C. 658(5))). In conclusion, this action does not mandate that state, local, and tribal governments adopt new, unfunded regulatory obligations.

Paperwork Review

The paperwork burdens for this action were included in the final standard on Respiratory Protection, published January 8, 1998 (63 FR 1152). The OMB control number is 1218–0019.

Environmental Impacts

The provisions of this action have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 [42 U.S.C. 432, *et seq.*], the Council on Environmental Quality (CEQ) NEPA regulations [40 CFR part 1500], and OSHA's DOL NEPA Procedures [29 CFR part 11]. As a result of this review, OSHA has determined that this action will have no significant adverse effect on air, water, or soil quality, plant or animal life, use of land, or other aspects of the environment.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational and Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary's Order 3–2000, and 29 CFR part 1911.

Signed at Washington, DC, this 19th day of December, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

■ For the reasons set forth in the preamble, 29 CFR part 1910, Subpart I is amended as follows:

PART 1910—[AMENDED]

■ 1. The authority citation for Subpart I of part 1910 is revised to read as follows:

Authority: Sections 4, 6 and 8, Occupational Safety Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable. Sections 1910.132, 1910.134, and 1910.138 also issued under 29 CFR part 1911. Sections 1910.133, 1910.135, and 1910.136 also issued under 20 CFR part 1911 and 5 U.S.C. 553.

§ 1910.139 [Removed]

■ 2. Section 1910.139 is removed.

[FR Doc. 03–31846 Filed 12–30–03; 8:45 am]

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Federal Register

Wednesday,
December 31, 2003

Part IV

Environmental Protection Agency

40 CFR Part 69

Special Exemption From Requirements of the Clean Air Act for the Territory of United States Virgin Islands; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[Region 2 Docket No. VI–5–265 B, FRL–7605–6]

Special Exemption From Requirements of the Clean Air Act for the Territory of United States Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing approval of a petition, from the Governor of the Virgin Islands (US VI), which seeks an exemption of the Clean Air Act (CAA) section 165(a) requirement to obtain a Prevention of Significant Deterioration (PSD) permit to construct prior to construction of a new gas turbine at the Virgin Islands Water and Power Authority (VIWAPA) St. Thomas facility. This exemption allows for construction, but not operation, of Unit 23 prior to issuance of a final PSD permit.

DATES: This direct final rule is effective on March 1, 2004, without further notice, unless EPA receives adverse comment by January 30, 2004. If any adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven C. Riva, Chief, Permitting Section, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Riva.Steven@epa.gov* or to *http://www.regulations.gov* which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments.

Copies of the Governor's petition and submittals relied upon in the approval process are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, New York, New York 10007–1866, Attn: Umesh Dholakia.

Environmental Protection Agency, Region 2 Office, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127, Attn: John Aponte.

The U. S. Virgin Islands Department of Planning and Natural Resources (VIDPNR), Division of Environmental Protection, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, U.S. Virgin Islands 00802, Attn: Leslie Leonard.

FOR FURTHER INFORMATION CONTACT: Umesh Dholakia, Environmental Engineer, Air Programs Branch, Division of Environmental Protection and Planning, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4023 or at *Dholakia.Umesh@epa.gov*.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

I. What Action Is EPA Taking Today?
II. What are the Regulatory Requirements for Authorizing an Exemption under the CAA?
III. What are the Bases for the Petitioner's Request?
IV. What Is EPA's Analysis of the Petition?
V. What is EPA's Conclusion?
VI. Statutory and Executive Order Review

I. What Action Is EPA Taking Today?

EPA is approving a petition from the U.S. VI Governor seeking an exemption of the CAA requirement to obtain a PSD permit to construct prior to commencing construction of a new gas turbine at the VIWAPA St. Thomas facility.

Pursuant to section 325(a) of the CAA, on July 21, 2003, the Governor of the U.S. VI filed a petition with the Administrator seeking an exemption from the CAA section 165(a) PSD requirement to obtain a PSD permit to construct prior to commencing construction. The Governor requested the exemption on behalf of VIWAPA so that it can proceed, as quickly as possible, to construct Unit 23, a 36 megawatt (MW) gas turbine at its St. Thomas facility.

This exemption will allow for construction, not operation, prior to issuance of a final PSD permit, of Unit 23 at the VIWAPA St. Thomas facility.

II. What Are the Regulatory Requirements for Authorizing an Exemption Under the CAA?

Section 325(a) of the CAA provides the Administrator of EPA the authority to exempt sources in the U.S. VI from any requirement under the Act other than section 112 or any requirement under section 110 or part D necessary to attain or maintain National Ambient Air Quality Standard (NAAQS) provided the Administrator determines that compliance is not feasible due to unique geographical, meteorological or economic factors or such other factors deemed significant.

III. What Are the Bases for the Petitioner's Request?

The Petitioner contends that granting this exemption will not impact upon compliance with any requirement under sections 112, 110, or part D of the Act necessary to attain or maintain National Ambient Air Quality Standards. To support this contention, petitioner first acknowledges that because the exemption will not authorize operation of the unit until after receipt of the PSD permit, the exemption will not result in any violations of sections 112, 110, or part D of the Act necessary to attain or maintain a NAAQS. In addition petitioner contends that modeling, submitted in support of the permit application for the unit and supplemented since that application, demonstrates that NAAQS and PSD increments will continue to be preserved if both the new unit and all other existing units on St. Thomas are operating at maximum permitted capacity burning.

Petitioner further asserts that the exemption should be granted because of severe geographic constraints on the U.S. VI power system and because of a power crisis on St. Thomas. A summary of these assertions appears below:

a. Geographic Constraints

The petitioner contends that the exemption is necessary because of severe geographic constraints on the U.S. VI power system. The petition states that the VIWAPA St. Thomas facility is unable to interconnect with a larger power supply grid. Furthermore, the petition states that the distance between St. Thomas and St. Croix prohibit interconnection between the two VIWAPA plants. Thus, the petitioner explains, St. Thomas is serviced by a single power plant.

The petitioner also contends that when significant problems occur units must be shipped off-island for inspection and repair because vendors who provide such services are not located within the U.S. VI. The reasons it provides for this are that vendors do not have inspection and repair facilities in the U.S. VI. Thus, the petition states, major outages extend longer and cost more to correct than they would on the mainland. The petitioner explains that to account for the need to send units off-island for repair, VIWAPA developed a policy and practice of attempting to maintain sufficient reserve capacity. The petitioner goes on to state that because of the long-term loss of one unit (Unit 11) for major repairs and the imminent major repair of another unit (Unit 22), the maximum capacity of all remaining units on St. Thomas is about to drop significantly and therefore the petitioner anticipates a number of scenarios in which there will not be sufficient reserve capacity for powering St. Thomas. The petitioner points out that this will exacerbate an already problem-ridden power supply.

b. Power Crisis on St. Thomas

The petition claims that VIWAPA "no longer has sufficient capacity to ensure a continuous power supply sufficient to meet public needs. Consequently the island has been experiencing frequent power outages whenever a major unit is forced out or is taken out of service for maintenance."

The petitioner states that with Units 11 and 22 unavailable, whenever there is an outage of Unit 13 alone, or an outage of a combination of any two remaining units except 12 and 14, a serious power outage will occur. The petitioner claims the age and unreliability of a number of VIWAPA's units resulted in significant blackouts over the past 12 months even though Units 11 and 22 were available for service. These assertions are documented in three tables attached to the petition.

IV. What Is EPA's Analysis of the Petition?

EPA has reviewed the modeling submitted by VIWAPA in support of its application for a permit to construct and operate Unit 23 and in support of this petition and has determined that authorizing this exemption will not impact upon compliance with any requirement under sections 112, 110, or part D of the Act necessary to attain or maintain a NAAQS or PSD increment.

Upon consideration of VIWAPA's contentions, EPA has determined that the petition presents unique geographic and economic circumstances which meet the section 325 criteria for authorizing an exemption from the CAA section 165(a) requirement to obtain a PSD permit to construct prior to commencing construction of Unit 23 at the VIWAPA St. Thomas facility.

V. What Is EPA's Conclusion?

The EPA is approving the petition for an exemption of the CAA section 165(a) requirement to obtain a PSD permit to construct prior to commencing construction of a new gas turbine, Unit 23, at the VIWAPA St. Thomas facility. This exemption will allow for the construction, but not the operation, of Unit 23 prior to issuance of a final PSD permit.

EPA is relying on the Governor's assertion that the construction and ultimate operation of Unit 23 should provide a reliable baseload which will give VIWAPA flexibility to meet electrical demand and that the additional capacity provided by this unit would be sufficient to allow for both planned and unplanned outages of generating units at the VIWAPA St. Thomas facility. EPA believes that by accelerating the time period by which this unit can be constructed, this rulemaking may increase VIWAPA's potential to provide more reliable power in St. Thomas.

The EPA is publishing this direct final rule without prior proposal because the Agency views this as a noncontroversial approval and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve this same petition should adverse comments be filed. This final rule will be effective March 1, 2004, without further notice unless the Agency receives relevant adverse comments by January 30, 2004.

If the EPA receives any adverse comments, EPA will publish a notice withdrawing the final rule and inform the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 1, 2004, and no further action will be taken on the proposed rule.

VI. Statutory and Executive Order Review.

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *" 44 U.S.C. 3502(3)(A). Because the exemption only applies to one company, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because the exemption applies to only one source and does not create any new requirements but simply postpones requirements that will be met. This Federal exemption does not create any new requirements; therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve an exemption under Federal law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves an exemption from a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability exempting Virgin Islands Water and Power Authority's St. Thomas facility, Unit 23 from obtaining a PSD permit to construct.

K. Other

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 1, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control.

Dated: December 23, 2003.

Michael O. Leavitt,

Administrator.

■ Part 69 of chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 69—[AMENDED]

■ 1. The authority citation for part 69 continues to read as follows:

Authority: Section 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

■ 2. Section 69.41 is amended by adding paragraph (h) to read as follows:

§ 69.41 New exemptions.

* * * * *

(h) Pursuant to Section 325(a) of the Clean Air Act (CAA) and a petition submitted by the Governor of United States Virgin Islands on July 21, 2003, ("2003 Petition"), the Administrator of EPA conditionally exempts Virgin Islands Water and Power Authority

("VIWAPA") from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 2003 Petition as Unit 23, St. Krum Bay plant in St. Thomas with the following condition:

(i) Unit 23 shall not operate until a final PSD permit is received by VIWAPA for this unit;

(ii) Unit 23 shall not operate until it complies with all requirements of its PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Unit 23 operates either prior to the issuance of a final PSD permit or without BACT equipment, Unit 23 shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit.

(2) [Reserved]

[FR Doc. 03-32207 Filed 12-30-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[Region 2 Docket No. VI 5–265 A; FRL–7605–5]

Special Exemption From Requirements of the Clean Air Act for the Territory of United States Virgin Islands

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a July 21, 2003, petition (petition), from the Governor of the Virgin Islands (US VI), which seeks an exemption of the Clean Air Act (CAA) section 165(a) requirement to obtain a Prevention of Significant Deterioration (PSD) permit to construct prior to commencing construction of a new gas turbine, Unit 23, at the Virgin Islands Water and Power Authority's (VIWAPA's) St. Thomas facility. This exemption will allow for the construction, but not the operation, of Unit 23 prior to issuance of a final PSD permit.

In the same separate part of this **Federal Register**, EPA is also approving the petition as a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule.

If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 30, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Steven C. Riva, Chief, Permitting Section, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Riva.Steven@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments.

Copies of the petition and supporting submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, Attn: Umesh Dholakia.

Environmental Protection Agency, Region 2 Office, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127, Attn: John Aponte.

The U.S. Virgin Islands Department of Planning and Natural Resources (VIDPNR), Division of Environmental Protection, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, U.S. Virgin Islands 00802, Attn: Leslie Leonard.

FOR FURTHER INFORMATION CONTACT: Umesh Dholakia, Air Programs Branch, Environmental Protection Agency, Region 2 office, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4023 or at *Dholakia.Umesh@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the same separate part of this **Federal Register**.

Dated: December 23, 2003.

Michael O. Leavitt,

Administrator.

[FR Doc. 03–32206 Filed 12–30–03; 8:45 am]

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December 31, 2003

Part V

The President

Proclamation 7746—To Implement the United States-Chile Free Trade Agreement

Proclamation 7747—To Implement the United States-Singapore Free Trade Agreement

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Federal Register
Vol. 68, No. 250
Wednesday, December 31, 2003

Presidential Documents

Title 3—

The President

Proclamation 7746 of December 30, 2003

To Implement the United States-Chile Free Trade Agreement

By the President of the United States of America

A Proclamation

1. On June 6, 2003, the United States entered into the United States-Chile Free Trade Agreement (USCFTA). The Congress approved the USCFTA in section 101(a) of the United States-Chile Free Trade Agreement Implementation Act (the "USCFTA Act") (Public Law 108–77, 117 Stat. 909) (19 U.S.C. 3805 note).

2. Section 105 of the USCFTA Act authorizes the President to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under Chapter 22 of the USCFTA.

3. Section 201 of the USCFTA authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 3.3 (including the schedule of United States duty reductions with respect to originating goods set forth in Annex 3.3 to the USCFTA), 3.7, 3.9, and 3.20(8), (9), (10), and (11) of the USCFTA.

4. Section 202 of the USCFTA Act provides certain rules for determining whether a good is an originating good for the purpose of implementing tariff treatment under the USCFTA. I have decided that it is necessary to include these rules of origin, together with particular rules applicable to certain other goods, in the Harmonized Tariff Schedule of the United States (HTS).

5. Consistent with section 201(a)(2) of the USCFTA Act, Chile is to be removed from the enumeration of designated beneficiary developing countries eligible for the benefits of the Generalized System of Preferences (GSP). Further, consistent with section 604 of the Trade Act of 1974 (the "1974 Act") (19 U.S.C. 2483), as amended, I have determined that other technical and conforming changes to the HTS are necessary to reflect that Chile is no longer eligible to receive benefits of the GSP.

6. Section 208 of the USCFTA Act authorizes the President to direct the Secretary of the Treasury to take certain actions related to verifications conducted consistent with Article 3.21 of the USCFTA.

7. Subtitle B of title III of the USCFTA Act authorizes the President to take certain actions in response to a request by an interested party for relief from imports that are a cause of serious damage, or actual threat thereof, to a domestic industry producing certain textile or apparel articles.

8. Executive Order 11651 of March 3, 1972, as amended, establishes the Committee for the Implementation of Textile Agreements (CITA) to supervise the implementation of textile trade agreements.

9. Section 604 of the 1974 Act, as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 105, 201, 202, and 208 of the USCFTA Act, section 604 of the 1974 Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to provide generally for the preferential tariff treatment being accorded under the USCFTA, to set forth rules for determining whether goods imported into the customs territory of the United States are eligible for preferential tariff treatment under the USCFTA, to provide certain other treatment to originating goods for the purposes of the USCFTA, to provide tariff-rate quotas with respect to certain originating goods, to reflect Chile's removal from the enumeration of designated beneficiary developing countries for purposes of the GSP, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in Annex I of Publication 3652 of the United States International Trade Commission, entitled *Modifications of the Harmonized Tariff Schedule of the United States Implementing the United States- Chile Free Trade Agreement* (Publication 3652), which is incorporated by reference into this proclamation.

(2) In order to implement the initial stage of duty elimination provided for in the USCFTA, and to provide for future staged reductions in duties for products of Chile for purposes of the USCFTA, the HTS is modified as provided in Annex II of Publication 3652, effective on the dates specified in the relevant sections of such publication and on any subsequent dates set forth for such duty reductions in that publication.

(3) The Secretary of Commerce is authorized to exercise the authority of the President under section 105(a) of the USCFTA Act to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section.

(4) The CITA is authorized to exercise the authority of the President under section 208 of the USCFTA Act with respect to verifications conducted in a manner consistent with article 3.21 of the USCFTA.

(5) The CITA is authorized to exercise the authority of the President under subtitle B of title III of the USCFTA Act to review requests and to determine whether to commence consideration of such requests; to cause to be published in the **Federal Register** a notice of commencement of consideration of a request and notice seeking public comment; to determine whether a Chilean textile or apparel article is being imported into the United States in such increased quantities and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article; and to provide relief from imports of an article that is the subject of such a determination.

(6)(a) The amendments to the HTS made by paragraph (2) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the relevant dates indicated in Annex II to Publication 3652.

(b) Except as provided in paragraph (6)(a) of this proclamation, this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

(7) All provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

[FR Doc. 03-32319
Filed 12-30-03; 11:33 am]
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Presidential Documents

Proclamation 7747 of December 30, 2003

To Implement the United States-Singapore Free Trade Agreement

By the President of the United States of America

A Proclamation

1. On May 6, 2003, the President entered into the United States-Singapore Free Trade Agreement (USSFTA). The USSFTA was approved by the Congress in section 101(a) of the United States-Singapore Free Trade Agreement Implementation Act (the "USSFTA Act") (Public Law 108–78, 117 Stat. 948) (19 U.S.C. 3805 note).

2. Section 105 of the USSFTA Act authorizes the President to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under Chapter 20 of the USSFTA.

3. Section 201 of the USSFTA Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.2, 2.5, 2.6, and 2.12 of the USSFTA and the schedule of reductions with respect to the Republic of Singapore (Singapore) set forth in Annex 2B of the USSFTA.

4. Section 202 of the USSFTA Act provides certain rules for determining whether a good is an originating good for the purposes of implementing tariff treatment under the USSFTA. I have decided that it is necessary to include these rules of origin, together with particular rules applicable to certain other goods, in the Harmonized Tariff Schedule of the United States (HTS).

5. Section 205 of the USSFTA Act authorizes the President to take certain enforcement actions relating to trade with Singapore in textile and apparel goods.

6. Subtitle B of title III of the USSFTA Act authorizes the President to take certain actions in response to a request by an interested party for relief from imports that constitute a substantial cause of serious damage, or actual threat thereof, to a domestic industry producing certain textile or apparel articles.

7. Executive Order 11651 of March 3, 1972, as amended, establishes the Committee for the Implementation of Textile Agreements (CITA) to supervise the implementation of textile trade agreements.

8. Section 604 of the Trade Act of 1974 (the "1974 Act") (19 U.S.C. 2483), as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 105, 201, 202, 205, and 321–328 of the USSFTA Act, section 301 of title 3, United Code, and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide generally for the preferential tariff treatment being accorded under the USSFTA, to set forth rules for determining whether goods imported into the customs territory of the United States are eligible for preferential tariff treatment under the USSFTA, to provide certain other treatment to originating goods for the purposes of the USSFTA, and to provide tariff-rate quotas with respect to certain originating goods, the HTS is modified as set forth in Annex I of Publication 3651 of the United States International Trade Commission, entitled *Modifications to the Harmonized Tariff Schedule of the United States Implementing the United States-Singapore Free Trade Agreement* (Publication 3651), which is incorporated by reference into this proclamation.

(2) In order to implement the initial stage of duty elimination provided for in the USSFTA and to provide for future staged reductions in duties for products of Singapore for purposes of the USSFTA, the HTS is modified as provided in Annex II of Publication 3651, effective on the dates specified in the relevant sections of such publication and on any subsequent dates set forth for such duty reductions in that publication.

(3) The Secretary of Commerce is authorized to exercise the authority of the President under section 105(a) of the USSFTA Act to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section.

(4) (a) The amendments to the HTS made by paragraphs (1) and (2) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the relevant dates indicated in Annex II to Publication 3651.

(b) Except as provided in paragraph (4)(a) of this proclamation, this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

(5) The CITA is authorized to exercise the authority of the President under section 205 of the USSFTA Act to exclude textile and apparel goods from the customs territory of the United States; to determine whether an enterprise's production of, and capability to produce, textile and apparel goods are consistent with statements by the enterprise; to find that an enterprise has knowingly or willfully engaged in circumvention; and to deny preferential tariff treatment to textile and apparel goods.

(6) The CITA is authorized to exercise the authority of the President under subtitle B of title III of the USSFTA Act to review requests and to determine whether to commence consideration of such requests; to cause to be published in the **Federal Register** a notice of commencement of consideration of a request and notice seeking public comment; to determine whether imports of a Singaporean textile or apparel article constitute a substantial cause of serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article; and to provide relief from imports of an article that is the subject of such a determination.

(7) All provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of December, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

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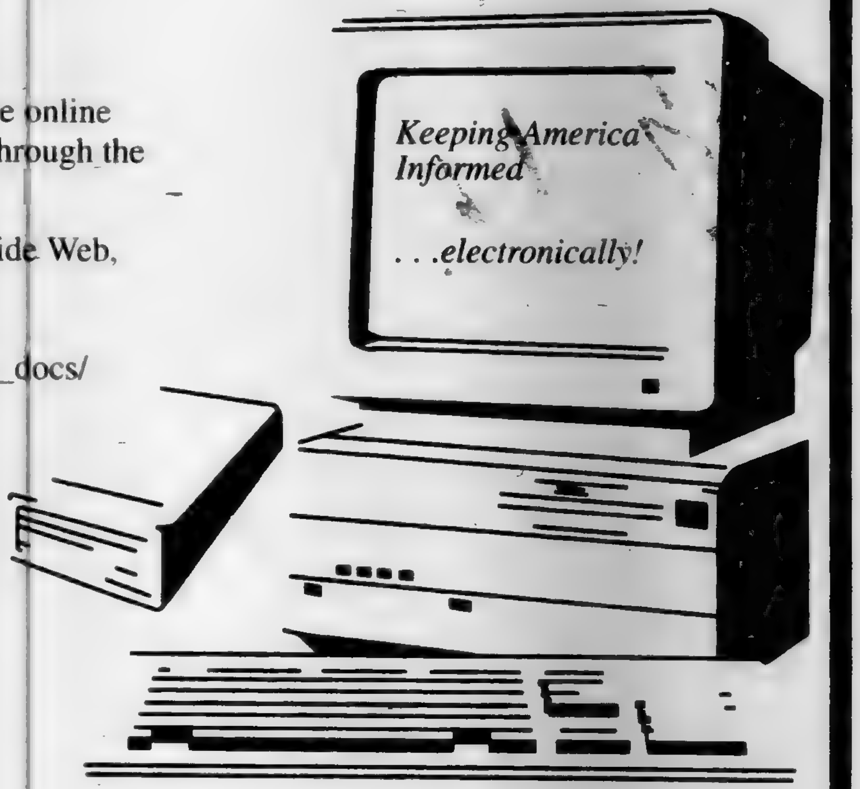

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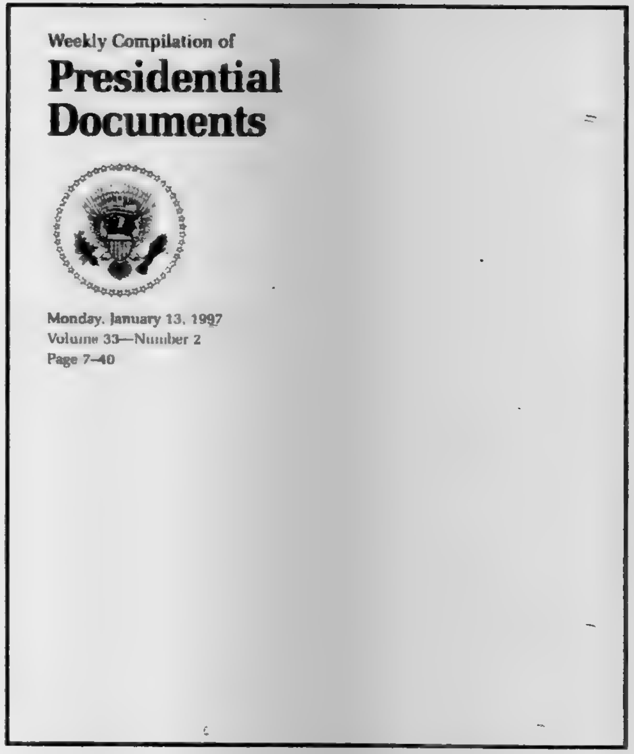

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